

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Casper Sleep Inc.,
Petitioner,

v.

Werner Media Partners, LLC,
Patent Owner.

U.S. Patent 10,842,301
IPR2024-00474

**Petitioner's Objections to Evidence
Under 37 C.F.R. § 42.64(b)(1)**

Pursuant to 37 C.F.R. § 42.64(b)(1), Casper Sleep Inc. (“Petitioner”) provides the following objections to Exhibits 2030–2034 and 2036–2042 produced by Werner Media Partners, LLC (“Patent Owner”) on December 6, 2024.¹ Petitioner reserves the right to present further objections as allowed by the applicable rules or other authority.

Exhibit 2030 (Andrew Gross Second Declaration (Confidential))

Exhibit 2030 is inadmissible for at least the following reasons:

- FRE 106 (lack of related statements);
- FRE 702/703 (opinions are not sufficiently reliable at least because: (i) Mr. Gross fails to set forth sufficient facts underlying his opinions, (ii) Mr. Gross’s testimony is not the product of reliable principles and methods, and (iii) Mr. Gross’s opinions do not reflect a reliable application of the principles and methods to the facts of the case);
- FRE 801/802/805 (hearsay); and
- FRE 901 (lack of authentication).

¹ Patent Owner’s Exhibits 2030–2045, which accompanied Patent Owner’s Sur-Reply to Petitioner’s Reply (Paper 31), are separately subject to Petitioner’s Board-authorized upcoming Motion to Strike to be filed by December 17, 2024 (Exhibit 3001).

In addition, Exhibit 2030 is inadmissible because it relies on Exhibits that are themselves objected to for the reasons set forth for these Exhibits.

Exhibit 2031 (Declaration of Joseph Progar re: Andrew Gross)

Exhibit 2031 is inadmissible for at least the following reasons:

- FRE 106 (lack of related statements);
- FRE 602 (lack of foundation as to underlying source of alleged data);
- FRE 801/802/805 (hearsay); and
- FRE 901 (lack of authentication).

Exhibit 2032 (PCM-Over-Gel-Pack-White-Paper-R3-23-July-2024)

Exhibit 2032 is inadmissible for at least the following reasons:

- FRE 106 (lack of related statements);
- FRE 602 (lack of foundation as to underlying source of alleged data);
- FRE 801/802 (hearsay);
- FRE 901 (lack of authentication); and
- FRE 1002/1003 (lack of original or duplicate recording).

Exhibit 2033 (Jeff Quinn Second Declaration (Confidential))

Exhibit 2033 is inadmissible for at least the following reasons:

- FRE 106 (lack of related statements);
- FRE 702/703 (opinions are not sufficiently reliable at least because:
 - (i) Mr. Quinn does not meet the qualification for a person of ordinary skill in the art in this proceeding and, as such, is not qualified to testify as an expert in this case, (ii) Mr. Quinn fails to set forth sufficient facts underlying his opinions, (iii) Mr. Quinn's testimony is not the product of reliable principles and methods, and (iv) Mr. Quinn's opinions do not reflect a reliable application of the principles and methods to the facts of the case);
- FRE 801/802/805 (hearsay, and hearsay within hearsay);
- FRE 901 (lack of authentication); and
- FRE 1001/1002 (lack of original or duplicate recording).

Exhibit 2033 is also inadmissible because it relies on one or more technical tests or data from such tests without an affidavit that meets the requirement of 37 C.F.R. § 42.65(b).

In addition, Exhibit 2033 is inadmissible because it relies on Exhibits that are themselves objected to for the reasons set forth for these Exhibits.

Exhibit 2034 (Viscoelastic (Memory) Foam Systems)

Exhibit 2034 is inadmissible for at least the following reasons:

- FRE 106 (lack of related statements);
- FRE 602 (lack of foundation as to underlying source of alleged data);
- FRE 801/802 (hearsay);
- FRE 901 (lack of authentication); and
- FRE 1002/1003 (lack of original or duplicate recording).

Exhibit 2036 (Declaration of Alan Hirschhorn)

Exhibit 2036 is inadmissible for at least the following reasons:

- FRE 106 (lack of related statements);
- FRE 602 (lack of foundation as to underlying source of alleged data);
- FRE 801/802 (hearsay); and
- FRE 901 (lack of authentication).

Exhibit 2037 (Phase Change Material Failure)

Exhibit 2037 is inadmissible for at least the following reasons:

- FRE 106 (lack of related statements);
- FRE 602 (lack of foundation as to underlying source of alleged data);
- FRE 801/802 (hearsay);

- FRE 901 (lack of authentication); and
- FRE 1002/1003 (lack of original or duplicate recording).

Exhibit 2038 (Whirlpool - How hot does a dryer get)

Exhibit 2038 is inadmissible for at least the following reasons:

- FRE 106 (lack of related statements);
- FRE 602 (lack of foundation as to underlying source of alleged data);
- FRE 801/802 (hearsay);
- FRE 901 (lack of authentication); and
- FRE 1002/1003 (lack of original or duplicate recording).

Exhibit 2039 (Britannica – Likert scale)

Exhibit 2039 is inadmissible for at least the following reasons:

- FRE 106 (lack of related statements);
- FRE 602 (lack of foundation as to underlying source of alleged data);
- FRE 801/802 (hearsay);
- FRE 901 (lack of authentication); and
- FRE 1002/1003 (lack of original or duplicate recording).

Exhibit 2039 is also inadmissible because some text within the document is not displayed, rendering its contents ambiguous.

Exhibit 2040 (Declaration of Greg Fawler)

Exhibit 2040 is inadmissible for at least the following reasons:

- FRE 106 (lack of related statements);
- FRE 602 (lack of foundation as to underlying source of alleged data);
- FRE 801/802 (hearsay); and
- FRE 901 (lack of authentication).

Exhibit 2041 (Largest online retailers in the U.S.)

Exhibit 2041 is inadmissible for at least the following reasons:

- FRE 106 (lack of related statements);
- FRE 602 (lack of foundation as to underlying source of alleged data);
- FRE 801/802 (hearsay);
- FRE 901 (lack of authentication); and
- FRE 1002/1003 (lack of original or duplicate recording).

Exhibit 2042 (Declaration of Mark Werner(Confidential))

Exhibit 2042 is inadmissible for at least the following reasons:

- FRE 106 (lack of related statements);
- FRE 602 (lack of foundation as to underlying source of alleged data);
- FRE 801/802 (hearsay); and
- FRE 901 (lack of authentication).

Respectfully submitted,

Dated: December 13, 2024

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CERTIFICATE OF SERVICE

The undersigned certifies that, in accordance with 37 C.F.R. § 42.6(e), service was made on Patent Owner as detailed below.

Date of Service December 13, 2024

Manner of Service Email to patent@assoulineberlowe.com,
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Document Served This Petitioner's Objections to Evidence Under
37 C.F.R. § 42.64(b)(1)

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