

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CASPER SLEEP INC.,  
Petitioner,

v.

WERNER MEDIA PARTNERS, LLC,  
Patent Owner.

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IPR2024-00474  
Patent 10,842,301 B2

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Before BARRY L. GROSSMAN, JASON W. MELVIN, and  
RYAN H. FLAX, *Administrative Patent Judges*.

FLAX, *Administrative Patent Judge*.

ORDER  
Conduct of the Proceeding  
*37 C.F.R. § 42.5*

## I. INTRODUCTION

Werner Media Partners LLC (“Patent Owner”) is the owner of U.S. Patent 10,842,301 B2 (Ex. 1001, “the ’301 patent”). Paper 5, 1. On January 18, 2024, Casper Sleep Inc. (“Petitioner”) filed a Petition for *inter partes* review challenging the patentability of claims 1 and 2 of the ’301 patent (all claims). Paper 2, 1 (“Pet.”). On April 26, 2024, trial was instituted. Paper 7.

On January 3, 2025, each party filed a respective Motion to Exclude (Papers 39 and 41) concerning certain evidence in this proceeding—these motions were timely according to Due Date 5 of our Scheduling Order (Paper 8). Patent Owner’s Motion to Exclude (Paper 41) was 20 pages long; 5 pages longer than allowed under 37 C.F.R. § 42.24, which Patent Owner concedes to be a procedural mistake. On January 6, 2025, Patent Owner then filed a Motion to Substitute an Amended Motion to Exclude; the proposed substitute motion to exclude was included as an attachment and was a shortened 15-page version. Paper 43 (this Motion to Substitute was filed without prior authorization, as required by our rules (37 C.F.R. § 42.20(b)), which we will overlook on this one occasion for procedural kindness).

The circumstances are highlighted in an email to the Board from Petitioner. Ex. 3002. In that email, Petitioner indicates the parties met-and-conferred on the matter, but are at an impasse. *Id.* The email indicates that Petitioner desires authorization to file a second motion to strike directed to Patent Owner’s Motion to Exclude and that Petitioner opposes any revisions to Patent Owner’s original motion to put it in compliance with our rules. *Id.* The email also indicates Patent Owner seeks authorization to file a substitute

motion to put it within the page limitations under our rules, without adding content or arguments. *Id.* To discuss and resolve these matters, the parties requested a conference call between the parties and panel, which we held on January 8, 2025 (a transcript of this conference call will be made of record in due course).

## II. DISCUSSION

Having considered the parties' positions and the circumstances, we find that Patent Owner's conceded procedural error in filing a too-long motion to exclude was unintentional, that Patent Owner promptly sought to remedy the error, and that allowing Patent Owner to remedy its error will ultimately not prejudice Petitioner (as it has already seen Patent Owner's proposed modified motion). We find good cause exists to allow Patent Owner to *immediately* file a modified substitute motion to exclude in compliance with our rules under 37 C.F.R. § 42.24.

Patent Owner may immediately file in this proceeding its substitute motion to exclude (as proposed at Paper 43), and we will expunge Patent Owner's original Motion to Exclude (Paper 41) from the record. No additional arguments or evidence are authorized.

In fairness to Petitioner, we require that Patent Owner also file as an exhibit a marked-up (redlined) version of its original Motion to Exclude (Paper 41) to show all changes made resulting in its modified substitute motion to exclude, and to also certify that no new content or arguments are included in its modified substitute motion. Moreover, we modify the schedule (*see* Paper 8) of this proceeding to change Due Date 6 as to the date for filing oppositions to motions to exclude to **Monday, January 13, 2025**, to provide Petitioner additional time to consider and respond to Patent

Owner's modified substitute motion. No other modifications to the schedule are made (the parties indicated during the conference call that none were needed).

In view of the above, there is no need for us to authorize Petitioner to file a second motion to strike (Petitioner agrees—*see* conference call transcript once in evidence).

No other relief is granted and no other modifications to this proceeding are made.

### III. ORDER

Accordingly, it is

ORDERED that Patent Owner shall immediately file its proposed modified substitute motion to exclude;

FURTHER ORDERED that Paper 41 shall be expunged from the record;

FURTHER ORDERED that, as an exhibit to its modified substitute motion to exclude, Patent Owner shall file a marked-up version of its original Motion to Exclude (Paper 41), showing any changes made so as to result in the modified substitute version, and shall certify that the modified substitute motion to exclude contains no new content or arguments;

FURTHER ORDERED that the schedule in this proceeding is modified to change Due Date 6, as to filing oppositions to motions to exclude, to be Monday, January 13, 2025; and

FURTHER ORDERED that a transcript of the conference call in this proceeding, held January 8, 2025, shall be filed as an exhibit as soon as possible.

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Patent 10,842,301 B2

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