

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

BROOK + WHITTLE LTD,

Plaintiff,

v.

NESTLÉ USA, INC., ET AL.,

Defendants.

Case No. 2:24-CV-00735-JRG-RSP

**DEFENDANT FUJI SEAL INTERNATIONAL INC.'S
OBJECTIONS AND RESPONSES TO PLAINTIFF BROOK + WHITTLE'S
FIRST SET OF INTERROGATORIES (NOS. 1-11)**

Pursuant to Fed. R. Civ. P. 26 and 33, Defendant Fuji Seal International, Inc. ("FSI") provides these responses and objections to Plaintiff Brook + Whittle LTD's ("B+W") first set of interrogatories:

GENERAL STATEMENT AND OBJECTIONS

1. The following responses are based on information available as of the date of these responses. Discovery is not yet complete, and these responses are therefore subject to revision. It is anticipated that further discovery, investigation, and analysis may supply additional facts and add meaning to known facts as well as establish entirely new factual conclusions and legal contentions, all of which may lead to substantial changes, additions, or variations to the information set forth herein.

2. The following responses are given without prejudice to FSI's right to produce evidence of any subsequently discovered fact or facts that FSI may later recall or produce. FSI accordingly reserves the right to change the responses herein as additional facts are ascertained,

analysis is made, legal research is completed, and contentions are made. The responses contained herein are made in a good faith effort to comply with the provisions of the Federal Rules of Civil Procedure, but nothing in these responses shall limit FSI's ability to conduct further investigation, research, or analysis, or to amend the responses as necessary at or before trial.

3. In addition to any specific objections that may be made on an individual basis in the separate responses set forth below, FSI objects generally to each interrogatory to the extent that it seeks disclosure of information that is protected by the attorney-client privilege, the attorney work product doctrine, the common interest doctrine, and/or any other applicable privilege, protection, or doctrine. Nothing contained herein is intended to be or should be construed as a waiver of the attorney-client privilege, the attorney work product doctrine, the common interest doctrine, or any other applicable privilege, protection, or doctrine.

4. FSI objects to each interrogatory to the extent it seeks confidential or proprietary information pertaining to FSI's business, trade secrets, and/or economic relationships, or to the extent it seeks confidential information that would impinge upon any protected right to privacy. FSI further objects to each interrogatory to the extent it seeks information that contains confidential, proprietary, or trade secret information of third parties.

5. FSI objects to the definitions of "Defendants," "You," and "Your" to include entities or persons other than FSI and thus purportedly seek to require FSI to respond with regard to information, documents, or records that are not within FSI's possession, custody, and control. Furthermore, by including "all of their corporate locations, and all predecessors, successors, subsidiaries, divisions, parents and/or affiliates thereof, past or present, and all past or present officers, directors, agents, employees, inventors, researchers, scientists, consultants, accountants, attorneys, representatives, partners, joint venturers, and any other person or entity acting on behalf

of any of the foregoing," the definition is vague and overbroad, and any interrogatories that include these terms therefore purport to require FSI to provide any information, produce any document, or prepare any witness to testify concerning information that is beyond the discovery obligations of FSI under Fed. R. Civ. P. 26 and 33. For purposes of FSI's response to B+W's interrogatories, the terms "Defendants," "you," and "your" mean Fuji Seal International, Inc.

6. FSI objects to the definition of "Defendants' Accused Product(s)" and "Accused Product(s)" to the extent the definition purports to include any apparatus, product, device, process, method, act, or other instrumentality for which B+W has not specifically identified where each element of each asserted claim is allegedly found within the apparatus, product, device, process, method, act, or other instrumentality on the ground that any use of the definition would request information that is not relevant to any claim or defense. For purposes of FSI's response to B+W's interrogatories, the term "Accused Product(s)" means the specific labels for which B+W's infringement contentions expressly identify where each element of each asserted claim is allegedly found within the product.

7. FSI objects to the definition of "Document" as overly broad. For purposes of FSI's response to the notice, the term "Document" has the same meaning as used in Fed. R. Civ. P. 34(a) and applicable case law.

8. FSI objects to the definition of "Including" and "includes" to mean "including, but not limited to," "including, without limitation," "includes, but is not limited to," and "includes, without limitation," which makes an interrogatory overly broad and impermissibly boundless, requiring FSI to speculate as to what B+W would consider to be within the scope of the interrogatory.

9. FSI objects to B+W's definition of "referred to," "referring to," "refer to," "related to," "relating to," and "relate to":

without limitation, assessing, comprising, concerning, constituting, containing, describing, discussing, embodying, evidencing, identifying, pertaining to, reflecting, stating, supporting, or tending to support or refute, or referring in any other way, directly or indirectly, in whole or in part, to the subject matter specified.

Use of the above "meaning" would require FSI to conduct an entirely subjective enterprise with only a best guess as to what B+W would consider within the scope of the definition. For example, "referring to," "pertaining to," "regarding," etc. all reference ambiguity and therefore describe nothing. Conversely, other requested meanings, such as "tending to support or to rebut, in any manner whatsoever, whether directly or indirectly" reference relatedness of any kind—and therefore everything.

10. These responses are made solely for the purpose of discovery in this action. Nothing herein is intended to waive the following objections, which are expressly reserved: all objections as to competency, relevancy, proportionality, authenticity, propriety, materiality, and admissibility of the subject matter of the interrogatories; all objections as to vagueness, ambiguity, or undue burden; all objections on any ground as to the use of any documents or tangible things provided in response to these interrogatories; all objections on any ground to any interrogatory for further responses to these or other interrogatories; and any and all other objections and grounds that would or could require or permit the exclusion of any document or statement therein from evidence, all of which objections and grounds are reserved and may be interposed at the time of trial.

11. Any statement of intent to produce responsive documents, information, writings, or things contained herein is not an admission by FSI that any such documents, information, writings, or things exist.

12. FSI objects to each interrogatory, definition, and instruction to the extent that it seeks information that is not relevant to a claim or defense of any party.

13. FSI objects to each request to the extent it seeks information that is in the possession, custody, or control of third parties (such as, for example, Defendant Nestle, Inc. or nonparty American Fuji Seal, Inc.) and not in FSI's possession, custody, or control.

14. FSI objects to each interrogatory, definition, and instruction to the extent the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive.

15. FSI objects to each interrogatory, definition, and instruction to the extent the burden or expense of discovery sought outweighs its likely benefit.

16. FSI objects to each interrogatory to the extent it asks for an opinion or contention that relates to fact or the application of law to fact on the ground that both the interrogatory and FSI's response to any such interrogatory are premature at this stage of the case.

17. FSI objects to each interrogatory to the extent it seeks discovery that is not proportional to the needs of the case.

18. FSI further objects to each interrogatory, definition, and instruction to the extent that it seeks to impose duties or obligations on FSI beyond or inconsistent with those authorized by the Federal Rules of Civil Procedure, Local Rules of the Eastern District of Texas, and/or the Local Patent Rules of the Eastern District of Texas.

19. The General Statement and Objections shall be deemed to be incorporated in full into each response set forth below, and any statement of intent to produce information contained in any such response is subject to the limitations, objections, and exceptions set forth therein.

SPECIFIC RESPONSES AND OBJECTIONS

INTERROGATORY NO. 1:

Describe in detail all factual and legal bases for any contention(s) You have made or will make that Defendants have not infringed and do not infringe, willfully or otherwise, contribute to infringement of, or actively induce others to infringe, either literally or by application of the doctrine of equivalents, any Asserted Claim of the Asserted Patents. Your response should Identify at a minimum each limitation of each asserted claim that you contend is not met by the accused products and a detailed explanation of why you contend that limitation is not met by the accused products.

RESPONSE AND OBJECTIONS:

FSI objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege, and the common interest doctrine, and FSI likewise objects on the other grounds set forth in its General Statement and Objections above, which FSI hereby incorporates by reference as if fully set forth herein. In addition, the use of "accused products" renders the interrogatory vague, ambiguous, unduly burdensome, and requiring subjective judgment on the part of FSI and its attorneys. FSI further objects on the ground that the use of "describe in detail," "all factual and legal bases for any contention(s) You have made or will make," "Identify at a minimum," and "a detailed explanation of why" renders the interrogatory overly broad and impermissibly boundless, requiring FSI to speculate as to what B+W would consider to be within the scope of the interrogatory. FSI also objects to this interrogatory to the extent that it requests FSI to answer on behalf of another party, specifically "You," "Defendants," and "Your." Moreover, FSI objects on the ground that this contention interrogatory is premature; B+W has failed to justify with specific grounds the alleged need for such information early in the pretrial period, before substantial documentary or testimonial discovery has been completed and before the claim construction process has occurred. FSI also objects to this interrogatory to the extent it calls for a legal conclusion and prematurely

seeks expert opinions, which will be the subject of expert reports that are not yet due to be disclosed. Additionally, FSI objects to this interrogatory as containing multiple subparts, which individually should constitute separate interrogatories.

Subject to and without waiving the foregoing objections, FSI states that, as FSI understands the interrogatory: FSI intends to rely on its technical expert(s) to provide the information sought by this interrogatory. At this time, FSI contends that it is not infringing and has not infringed any claims of the '422 Patent at least because it does not make, use, sell, offer to sell, or import the Accused Products in the United States. Moreover, FSI also contends that all claims of the '422 Patent are invalid and therefore cannot be infringed. FSI may supplement its response to this contention interrogatory or otherwise make known such additional information to B+W during the discovery process or in writing, such as through an expert's written report, after B+W serves sufficient infringement contentions and as otherwise required by the Court's scheduling orders.

INTERROGATORY NO. 2:

Separately for each of the Asserted Patents, Describe the complete circumstances regarding when and how Defendants became aware of each Asserted Patent and any actions Defendants took as a result of becoming aware of the Asserted Patents, including any investigation into potential infringement, invalidity, and unenforceability, any actions to avoid infringement, any efforts to design around any of the Asserted Patents, and any opinion of counsel You sought or obtained regarding the Asserted Patents, and Identify the three Persons most knowledgeable of, and all Documents relating to, the foregoing.

RESPONSE AND OBJECTIONS:

FSI objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege, and the common interest doctrine, and FSI likewise objects on the other grounds set forth in its General Statement and Objections above, which FSI hereby incorporates by reference as if fully set forth herein. In addition, the use of "any actions Defendants took as a result of becoming aware," "any efforts,"

and "the three Persons most knowledgeable of" renders the interrogatory vague, ambiguous, unduly burdensome, and requiring subjective judgment on the part of FSI and its attorneys. FSI further objects on the ground that the use of "Describe the complete circumstances," "including," and "relating to" renders the interrogatory overly broad and impermissibly boundless, requiring FSI to speculate as to what B+W would consider to be within the scope of the interrogatory. FSI also objects to this interrogatory to the extent that it requests FSI to answer on behalf of another party, specifically "You," "Defendants," and "Your." Moreover, FSI objects to this interrogatory to the extent it calls for a legal conclusion and prematurely seeks expert opinions, which will be the subject of expert reports that are not yet due to be disclosed. FSI further objects to this interrogatory as containing multiple subparts, which individually should constitute separate interrogatories.

Subject to and without waiving any of the foregoing objections, FSI states that, as FSI understands the interrogatory: FSI first became aware of the '422 Patent on or around the time B+W's May 8, 2024 press release was published on its publicly available website at <https://brookandwhittle.com/brook-whittle-awarded-patent-for-light-blocking-shrink-sleeve-innovation/>. FSI further states that Masayuki Morita is likely the most knowledgeable of these facts. Moreover, pursuant to Rule 33(d), FSI will produce and identify business records from which B+W can ascertain the date FSI first became aware of the '422 Patent. FSI cannot respond to the remainder of the interrogatory, as FSI understands it, without disclosing information protected by the attorney-client privilege or the attorney work product doctrine.

INTERROGATORY NO. 3:

Describe in detail all facts, circumstances, and contentions relating to Fuji's first knowledge and Nestlé's first knowledge of each of the Practicing Products including, but not limited to the date when You first learned of each Practicing Product, the circumstances that led to that knowledge, any actions Defendants took

as a result of becoming aware of the Practicing Products, including any efforts took to copy any Practicing Product, and Identify the three Persons most knowledgeable of, and all Documents relating to, the foregoing.

RESPONSE AND OBJECTIONS:

FSI objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege, and the common interest doctrine, and FSI likewise objects on the other grounds set forth in its General Statement and Objections above, which FSI hereby incorporates by reference as if fully set forth herein. In addition, the use of "any actions Defendants took as a result of becoming aware," "any efforts," and "the three Persons most knowledgeable of" renders the interrogatory vague, ambiguous, unduly burdensome, and requiring subjective judgment on the part of FSI and its attorneys. FSI further objects on the ground that the use of "Describe in detail," "all facts, circumstances, and contentions," "relating to," "including, but not limited to," and "including" renders the interrogatory overly broad and impermissibly boundless, requiring FSI to speculate as to what B+W would consider to be within the scope of the interrogatory. FSI also objects to this interrogatory to the extent that it requests FSI to answer on behalf of another party, specifically "Nestlé," "You," and "Defendants." FSI further objects to this interrogatory as containing multiple subparts, which individually should constitute separate interrogatories.

Subject to and without waiving any of the foregoing objections, FSI states that, as FSI understands the interrogatory: FSI first became aware of the B+W GreenLabel BlockOut product on or around the time B+W's September 8, 2022 press release was published on its publicly available website at <https://brookandwhittle.com/brook-whittle-launches-light-blocking-shrink-sleeve/>. FSI further states that Masayuki Morita is likely the most knowledgeable of these facts. Moreover, pursuant to Rule 33(d), FSI will produce and identify business records from which B+W can ascertain the date FSI first became aware of B+W's GreenLabel BlockOut product. FSI

cannot respond to the remainder of the interrogatory, as FSI understands it, without disclosing information protected by the attorney-client privilege or the attorney work product doctrine.

INTERROGATORY NO. 4:

For each Accused Product, Identify all patents, patent applications, licenses, assignments, covenants not to sue, contracts, indemnification agreements, or other agreements that You contend cover the Accused Products and Identify Persons knowledgeable of, and Documents relating to, the foregoing.

RESPONSE AND OBJECTIONS:

FSI objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege, and the common interest doctrine, and FSI likewise objects on the other grounds set forth in its General Statement and Objections above, which FSI hereby incorporates by reference as if fully set forth herein. In addition, the use of "Accused Product," "Accused Products," and "Persons knowledgeable of" renders the interrogatory vague, ambiguous, unduly burdensome, and requiring subjective judgment on the part of FSI and its attorneys. FSI further objects on the ground that the use of "relating to" renders the interrogatory overly broad and impermissibly boundless, requiring FSI to speculate as to what B+W would consider to be within the scope of the interrogatory. FSI also objects to this interrogatory to the extent that it requests FSI to answer on behalf of another party, specifically "You." Moreover, FSI objects on the ground that this contention interrogatory is premature; B+W has failed to justify with specific grounds the alleged need for such information early in the pretrial period, before substantial documentary or testimonial discovery has been completed. FSI also objects to this interrogatory to the extent it calls for a legal conclusion and prematurely seeks expert opinions, which will be the subject of expert reports that are not yet due to be disclosed. FSI further objects on the ground that the interrogatory seeks information that is not relevant and therefore not discoverable. Additionally, FSI objects to this interrogatory on the

ground that it seeks discovery that is not proportional to the needs of the case.

Subject to and without waiving the foregoing objections, FSI states that, as FSI understands the interrogatory: Pursuant to Rule 33(d), FSI will produce and identify business records from which B+W can ascertain any patents or patent applications that cover the Accused Products and licenses or covenant with third parties without which FSI understands such third parties may contend the Accused Products would infringe one or more claims of a United States patent. FSI may supplement its response to this contention interrogatory or otherwise make known such additional information to B+W during the discovery process or in writing, such as through an expert's written report, after B+W serves sufficient infringement contentions and as otherwise required by the Court's scheduling orders.

INTERROGATORY NO. 5:

Describe in detail the research, design, testing, tooling, manufacturing processes, discussions, and procedures used to research, design and develop each Accused Product from conception to the first sale, first offer for sale, first public use, first disclosure, first promotional activity, and first manufacture of each version of each Accused Product. Your response should include detailed factual descriptions of any discussions related to the foregoing that occurred between Fuji and Nestlé, AFS and Nestlé, Fuji and any third party, and Nestlé and any third party. Your response should include, without limitation, identification and description of the beginning and ending (if applicable) dates for each version of each Accused Product, and Identify Persons knowledgeable of, and Documents relating to, the foregoing.

RESPONSE AND OBJECTIONS:

FSI objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege, and the common interest doctrine, and FSI likewise objects on the other grounds set forth in its General Statement and Objections above, which FSI hereby incorporates by reference as if fully set forth herein. In addition, the use of "research," "Accused Product," and "Persons knowledgeable of" renders the interrogatory vague, ambiguous, unduly burdensome, and requiring subjective judgment on the

part of FSI and its attorneys. FSI further objects on the ground that the use of "describe in detail," "include," "detailed factual descriptions," "related to," "include, without limitation," and "relating to" renders the interrogatory overly broad and impermissibly boundless, requiring FSI to speculate as to what B+W would consider to be within the scope of the interrogatory. FSI also objects to this interrogatory to the extent that it requests FSI to answer on behalf of another party, specifically "Your," "Fuji," and "any third party." Additionally, FSI objects to this interrogatory on the ground that it seeks discovery that is not proportional to the needs of the case.

Subject to and without waiving the foregoing objections, FSI states that, as FSI understands the interrogatory: The Accused Products are manufactured by American Fuji Seal, Inc. Moreover, American Fuji Seal, Inc. notified FSI of the design, development, and testing of the Accused Products: FSI_0000001-07; FSI_0000008-14; FSI_0000015-17; FSI_0000018-23; FSI_0000024-31; FSI_0000032-38; FSI_0000039-45; FSI_0000046-53; FSI_0000054-59; FSI_0000060-66; FSI_0000067-71; FSI_0000072-77; FSI_0000078-80. FSI further states that Izumi Hongo is likely the most knowledgeable of these facts.

INTERROGATORY NO. 6:

Identify all products (including but not limited to Practicing Products) that You contend compete with each Accused Product on a product-by-product basis (i.e., products in the market) and all facts regarding the basis for such contentions, including the market for each Accused Product, the Identity of all competitive products sold, the dates that each competitive product was on sale in the United States, the actual or estimated dollar sales or market share of each competitive product, the price(s) of each competitive product during the period it was on sale, the channels of distribution of each competitive product, and Identify Persons knowledgeable of, and Documents relating to, the foregoing.

RESPONSE AND OBJECTIONS:

FSI objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege, and the common interest doctrine, and FSI likewise objects on the other grounds set forth in its General Statement

and Objections above, which FSI hereby incorporates by reference as if fully set forth herein. In addition, the use of "compete," "Accused Product," "products in the market," "the market," "all competitive products sold," "each competitive product was on sale," "the actual or estimated dollar sales or market share of each competitive product," "the price(s) of each competitive product during the period it was on sale," "the channels of distribution of each competitive product," and "Persons knowledgeable of" renders the interrogatory vague, ambiguous, unduly burdensome, and requiring subjective judgment on the part of FSI and its attorneys. FSI further objects on the ground that the use of "including but not limited to," "including," and "relating to" renders the interrogatory overly broad and impermissibly boundless, requiring FSI to speculate as to what B+W would consider to be within the scope of the interrogatory. FSI also objects to this interrogatory to the extent that it requests FSI to answer on behalf of another party, specifically "You." Moreover, FSI objects on the ground that this contention interrogatory is premature; B+W has failed to justify with specific grounds the alleged need for such information early in the pretrial period, before substantial documentary or testimonial discovery has been completed. FSI also objects to this interrogatory to the extent it calls for a legal conclusion and prematurely seeks expert opinions, which will be the subject of expert reports that are not yet due to be disclosed. FSI further objects to this interrogatory as containing multiple subparts, which individually should constitute separate interrogatories. Additionally, FSI objects to this interrogatory on the ground that it seeks discovery that is not proportional to the needs of the case.

Subject to and without waiving the foregoing objections, FSI states that, as FSI understands the interrogatory: FSI does not sell, offer for sale, or manufacture any products. Moreover, American Fuji Seal, Inc. notified FSI of the market of the Accused Products and other products in said market: FSI_0000001-07; FSI_0000008-14; FSI_0000015-17; FSI_0000018-23;

FSI_0000024-31; FSI_0000032-38; FSI_0000039-45; FSI_0000046-53; FSI_0000054-59; FSI_0000060-66; FSI_0000067-71; FSI_0000072-77; FSI_0000078-80. FSI further states that Izumi Hongo is likely the most knowledgeable of these facts. FSI may supplement its response to this contention interrogatory or otherwise make known such additional information to B+W during the discovery process or in writing, such as through an expert's written report, after B+W serves sufficient infringement contentions and as otherwise required by the Court's scheduling orders.

INTERROGATORY NO. 7:

Describe in detail any alleged benefits and or differentiating features of the Accused Products compared to other competitive products in the market, including the Practicing Products, and any design or product not on the market, and Identify Persons knowledgeable of, and Documents relating to, the foregoing.

RESPONSE AND OBJECTIONS:

FSI objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege, and the common interest doctrine, and FSI likewise objects on the other grounds set forth in its General Statement and Objections above, which FSI hereby incorporates by reference as if fully set forth herein. In addition, the use of "any alleged benefits and or differentiating features," "Accused Products," "compared to other competitive products in the market," "any design or product not on the market," and "Persons knowledgeable of" renders the interrogatory vague, ambiguous, unduly burdensome, and requiring subjective judgment on the part of FSI and its attorneys. FSI further objects on the ground that the use of "Describe in detail," "including," and "relating to" renders the interrogatory overly broad and impermissibly boundless, requiring FSI to speculate as to what B+W would consider to be within the scope of the interrogatory. Moreover, FSI objects on the ground that this contention interrogatory is premature; B+W has failed to justify with specific grounds the alleged need for such information early in the pretrial period, before substantial documentary or

testimonial discovery has been completed. FSI also objects to this interrogatory to the extent it calls for a legal conclusion and prematurely seeks expert opinions, which will be the subject of expert reports that are not yet due to be disclosed. FSI further objects to this interrogatory on the ground that it seeks discovery that is not proportional to the needs of the case.

Subject to and without waiving any of the foregoing objections, FSI states that, as FSI understands the interrogatory: FSI does not sell, offer for sale, or manufacture any products. American Fuji Seal, Inc. notified FSI of the design, development, and testing of the Accused Products, the market of the Accused Products, and other products in said market: FSI_0000001-07; FSI_0000008-14; FSI_0000015-17; FSI_0000018-23; FSI_0000024-31; FSI_0000032-38; FSI_0000039-45; FSI_0000046-53; FSI_0000054-59; FSI_0000060-66; FSI_0000067-71; FSI_0000072-77; FSI_0000078-80. FSI further states that Izumi Hongo is likely the most knowledgeable of these facts. FSI may supplement its response to this contention interrogatory or otherwise make known such additional information to B+W during the discovery process or in writing, such as through an expert's written report, after B+W serves sufficient infringement contentions and as otherwise required by the Court's scheduling orders.

INTERROGATORY NO. 8:

Identify and Describe all of Your past, current, and forthcoming products that include a recyclable heat-shrink film which blocks at least 75% of visible light, and Identify Persons knowledgeable of, and Documents relating to, the foregoing.

RESPONSE AND OBJECTIONS:

FSI objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege, and the common interest doctrine, and FSI likewise objects on the other grounds set forth in its General Statement and Objections above, which FSI hereby incorporates by reference as if fully set forth herein. In addition, the use of "Identify and Describe all of Your past, current, and forthcoming products,"

"a recyclable heat-shrink film which blocks at least 75% of visible light," and "Persons knowledgeable of" renders the interrogatory vague, ambiguous, unduly burdensome, and requiring subjective judgment on the part of FSI and its attorneys. FSI further objects on the ground that the use of "include" and "relating to" renders the interrogatory overly broad and impermissibly boundless, requiring FSI to speculate as to what B+W would consider to be within the scope of the interrogatory. FSI also objects to this interrogatory to the extent that it requests FSI to answer on behalf of another party, specifically "Your." Moreover, FSI objects on the ground that the interrogatory seeks information that is not relevant and therefore not discoverable. FSI further objects to this interrogatory on the ground that it seeks discovery that is not proportional to the needs of the case.

Subject to and without waiving any of the foregoing objections, FSI states that, as FSI understands the interrogatory: FSI does not sell, offer for sale, or manufacture any products. FSI further states that Izumi Hongo is likely the most knowledgeable of these facts.

INTERROGATORY NO. 9:

Describe in detail all facts, circumstances, and contentions relating to any actual or potential design-arounds or non-infringing alternatives for any claim of the Asserted Patents. Describe all Communications related to the foregoing. Your response should include, without limitation, all facts, circumstances, and contentions relating to any actual or potential design-around or non-infringing alternative, all discussions, evaluations, plans, or attempts to design-around, any costs financial or otherwise associated with any actual or potential design-arounds or non-infringing alternatives, any decisions not to design around any claim of any of the Asserted Patents, the dates of any such activities, identification and description of each element of each claim of the Asserted Patents that you contend is missing from each such design around and why, and Identify Persons knowledgeable of, and Documents relating to, the foregoing.

RESPONSE AND OBJECTIONS:

FSI objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege, and the common

interest doctrine, and FSI likewise objects on the other grounds set forth in its General Statement and Objections above, which FSI hereby incorporates by reference as if fully set forth herein. In addition, the use of "any actual or potential design-arounds or non-infringing alternatives" and "all discussions, evaluations, plans, or attempts to design-around," "any costs financial or otherwise associated with any actual or potential design-arounds or non-infringing alternatives," "any decisions not to design around any claim of any of the Asserted Patents," "the dates of any such activities," "identification and description of each element of each claim of the Asserted Patents that you contend is missing from each such design around and why," and "Persons knowledgeable of" renders the interrogatory vague, ambiguous, unduly burdensome, and requiring subjective judgment on the part of FSI and its attorneys. FSI further objects on the ground that the use of "Describe in detail," "all facts, circumstances, and contentions," "relating to," "Describe all Communications," "related to," and "include, without limitation" renders the interrogatory overly broad and impermissibly boundless, requiring FSI to speculate as to what B+W would consider to be within the scope of the interrogatory. FSI also objects to this interrogatory to the extent that it requests FSI to answer on behalf of another party, specifically "Your." Moreover, FSI objects on the ground that this contention interrogatory is premature; B+W has failed to justify with specific grounds the alleged need for such information early in the pretrial period, before substantial documentary or testimonial discovery has been completed and before the claim construction process has occurred. FSI also objects to this interrogatory to the extent it calls for a legal conclusion and prematurely seeks expert opinions, which will be the subject of expert reports that are not yet due to be disclosed. Additionally, FSI objects to this interrogatory as containing multiple subparts, which individually should constitute separate interrogatories. FSI also objects to this interrogatory on the ground that it seeks discovery that is not proportional to the needs of

the case.

Subject to and without waiving any of the foregoing objections, FSI states that, as FSI understands the interrogatory: Both before and during the period of FSI's alleged infringement of the '422 Patent, experience, equipment, material, and know-how were all readily available to design and manufacture substitutes for the Accused Products, and such substitutes could have and can be designed in many ways that would be acceptable to purchasers of the Accused Products. FSI may supplement its response to this contention interrogatory or otherwise make known such additional information to B+W during the discovery process or in writing, such as through an expert's written report, after B+W serves sufficient infringement contentions and as otherwise required by the Court's scheduling orders.

INTERROGATORY NO. 10:

Describe in detail Your pricing and sales process for the Accused Products (including the components thereof), from the release date of each version of each Accused Product to present, including list price, price of each component, customer agreements, and discounts, and Identify any Persons knowledgeable of, and Documents Relating to, the foregoing.

RESPONSE AND OBJECTIONS:

FSI objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege, and the common interest doctrine, and FSI likewise objects on the other grounds set forth in its General Statement and Objections above, which FSI hereby incorporates by reference as if fully set forth herein. In addition, the use of "Your pricing and sales process," "Accused Products," "components thereof," "price of each component," and "Persons knowledgeable of" renders the interrogatory vague, ambiguous, unduly burdensome, and requiring subjective judgment on the part of FSI and its attorneys. FSI further objects on the ground that the use of "Describe in detail," "including," and "Relating to" renders the interrogatory overly broad and impermissibly boundless, requiring FSI

to speculate as to what B+W would consider to be within the scope of the interrogatory. FSI also objects to this interrogatory to the extent that it requests FSI to answer on behalf of another party, specifically "Your." Moreover, FSI objects to this interrogatory as containing multiple subparts, which individually should constitute separate interrogatories. FSI also objects to this interrogatory on the ground that it seeks discovery that is not proportional to the needs of the case.

Subject to and without waiving any of the foregoing objections, FSI states that, as FSI understands the interrogatory: FSI does not sell the Accused Products. FSI further states that Izumi Hongo is likely the most knowledgeable of these facts.

INTERROGATORY NO. 11:

For each of the Asserted Patents, describe in detail Your contention(s) regarding the amount of damages B+W is entitled to recover if Defendants are found to infringe that patent, including the category of damages (e.g., lost profits or a reasonable royalty), the bases for the applicability of those categories, the inputs to each category of damages, including the smallest saleable unit and whether the entire market value rule applies in this case, the date(s) on which damages should begin and the bases supporting such dates, the date of hypothetical negotiation, any alleged non-infringing alternative, whether damages should be limited under 35 U.S.C. §§ 286, 287 and/or 288, and the amount of damages attributable to each Accused Product and each of the Patents-in-Suit; and Identify Persons knowledgeable thereof, all Documents and things referring or Relating to the foregoing.

RESPONSE AND OBJECTIONS:

FSI objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege, and the common interest doctrine, and FSI likewise objects on the other grounds set forth in its General Statement and Objections above, which FSI hereby incorporates by reference as if fully set forth herein. In addition, the use of "the inputs to each category of damages," "Accused Product," and "Persons knowledgeable thereof" renders the interrogatory vague, ambiguous, unduly burdensome, and requiring subjective judgment on the part of FSI and its attorneys. FSI further objects on the

ground that the use of "describe in detail," "including," "the bases for the applicability of those categories," and "referring or Relating to" renders the interrogatory overly broad and impermissibly boundless, requiring FSI to speculate as to what B+W would consider to be within the scope of the interrogatory. FSI also objects to this interrogatory to the extent that it requests FSI to answer on behalf of another party, specifically "Your" and "Defendants." Moreover, FSI objects on the ground that this contention interrogatory is premature; B+W has failed to justify with specific grounds the alleged need for such information early in the pretrial period, before substantial documentary or testimonial discovery has been completed. FSI also objects to this interrogatory to the extent it calls for a legal conclusion and prematurely seeks expert opinions, which will be the subject of expert reports that are not yet due to be disclosed.

Subject to and without waiving any of the foregoing objections, FSI states that, as FSI understands the interrogatory: FSI does not infringe the '422 Patent and therefore B+W is not entitled to recover any damages. If FSI is found to infringe the '422 Patent, however, B+W would be entitled to recover no less than a reasonable royalty. FSI intends to rely on its damages expert to provide the information sought by this interrogatory.

B+W has not indicated the time frame for which it seeks damages for alleged infringement of the '422 Patent or whether B+W marked any alleged practicing products; it is therefore premature to determine whether damages in this case are limited by 35 U.S.C. § 287. FSI understands that 35 U.S.C. § 286 would not further limit damages in this case. FSI is unaware that any Asserted Claim has been found invalid yet, and FSI therefore understands that 35 U.S.C. § 288 currently would not further limit damages in this case.

At this time, FSI does not know what documents, facts, or data FSI's damages expert will consider in forming his or her opinions, but FSI expects that his or her opinions may be based on

his or her judgment and expertise; his or her review of documents produced in this case (including the pleadings, discovery responses, deposition transcripts and exhibits, expert reports, and documents cited therein); publicly available information, such as the parties' websites; and discussions that he or she may have with FSI's technical expert, third parties, and current and former employees of FSI.

FSI may supplement its response to this contention interrogatory or otherwise make known such additional information to B+W during the discovery process or in writing, such as through an expert's written report, after B+W serves sufficient infringement contentions and as otherwise required by the Court's scheduling orders.

Dated: February 21, 2025

Respectfully submitted,

/s/ Amy E. LaValle

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document, DEFENDANT FUJI SEAL INTERNATIONAL, INC.'S OBJECTIONS AND RESPONSES TO PLAINTIFF BROOK + WHITTLE'S FIRST SET OF INTERROGATORIES (NOS. 1-11), has been served via email as follows:

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Dated: February 21, 2025

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