

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CEVA SANTÉ ANIMALE S.A.,
EGG-CHICK AUTOMATED TECHNOLOGIES S.A.S, and
CEVA ANIMAL HEALTH, LLC.,
Petitioners,

v.

TARGAN, INC.,
Patent Owner.

IPR2024-00595
Patent 10,806,124 B2

Before KARL D. EASTHOM, MICHELLE N. WORMMEESTER, and BRIAN P.
MURPHY, *Administrative Patent Judges*.

MURPHY, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
Authorizing Additional Briefing on Claim Construction
37 C.F.R. § 42.5, 42.20(d)

Ceva Santé Animale S.A., Egg-Chick Automated Technologies S.A.S, and
Ceva Animal Health, LLC (collectively, “Petitioner”) filed a Petition pursuant to
35 U.S.C. § 311 requesting institution of *inter partes* review of claims 1–18 of U.S.

Patent No. 10,806,124 B2 (Ex. 1001; “the ’124 patent”). Paper 1 (“Pet.”). Targan, Inc. (“Patent Owner”) timely filed a Patent Owner Preliminary Response. Paper 8 (“Prelim. Resp.”). We instituted *inter partes* review on August 5, 2024. Paper 9 (“Decision” or “Dec.”). In our Decision we invited the parties to address claim construction in their briefs. Dec. 6.

The parties have addressed claim construction in their briefs and raised several issues. One of those issues centers on the antecedent basis for “the chick” recited in the body of independent claims 1, 6, and 9. Paper 19 (“Reply”), 6–7; Paper 28 (“Sur-Reply”), 15–17. Petitioner contends the “antecedent basis for ‘the chick’ that is imaged is clearly ‘a chick’ in the preamble whose sex is determined and not ‘an unrestrained chick’ as recited elsewhere in the claim.” Reply 6. Petitioner takes particular issue with Patent Owner’s statement that “[t]he claims required that the chick be unrestrained *throughout the recited process*” *Id.* at 7 (quoting Patent Owner’s Response, Paper 16, 44).

Patent Owner contends the antecedent basis for “the chick” is not “a chick,” as recited in the preamble, but rather is “an unrestrained chick” recited in the first limitation of the body of the independent claims. Sur-Reply 15–17. Patent Owner cites to the Federal Circuit decision in *Shoes by Firebug LLC v. Stride Rite Children’s Grp., LLC*, 962 F.3d 1362 (Fed. Cir. 2020) (“*Firebug*”) in support of its position. *Id.* Patent Owner emphasizes the following quote from the *Firebug* decision:

Notably, the first limitation of the body of claim 1 of the [] patent **reintroduces** ‘a footwear’ which ‘comprises a sole and an upper.’ The preamble, then, cannot be said to provide essential structure or necessary meaning to the claimed invention because the same

element—the footwear—is independently recited in the body of the claim.

Id. at 16. Patent Owner contends that, under *Firebug*, “the antecedent basis for ‘the chick’ recited in the second and third limitations must be ‘an unrestrained chick,’ not the chick recited in the preamble.” *Id.*

On May 6, 2025, counsel for Petitioner and Patent Owner appeared before us for oral argument during an in-person hearing at the USPTO Headquarters in Alexandria, Virginia. A transcript of the hearing is not yet available. During the course of the hearing, counsel for Petitioner requested an opportunity to respond to the *Firebug* case cited in Patent Owner’s Sur-Reply in support of the contention that the antecedent basis for “the chick” is “an unrestrained chick.” Counsel’s request was so noted during the hearing.

Our rules provide that “[t]he Board may order briefing on any issue involved in the trial.” 37 C.F.R. § 42.20(d); *see also id.* at 42.5 (“The Board . . . may enter non-final orders to administer the proceeding.”). The Board would find it helpful to have additional views of counsel on the question of the antecedent basis for “the chick” recited in the independent claims, particularly in view of the *Firebug* case and any other pertinent case law. Therefore, we authorize Petitioner and Patent Owner to file additional briefing addressing that question within 10 days of the entry of this Order.

Accordingly, it is

ORDERED that, pursuant to 37 C.F.R. §§ 42.5, 42.20(d), Petitioner and Patent Owner are authorized to file briefs addressing the question of the antecedent basis for “the chick” recited in the independent claims, particularly in view of the *Firebug* case and any other pertinent case law; and

FURTHER ORDERED that the briefs shall be filed within 10 days of this Order and shall not exceed seven pages.

Case IPR2024-00595
Patent 10,806,124 B2

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