

IN THE 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.

Case IPR2024-00595

U.S. Patent No. 10,806,124

**PETITIONERS' CLAIM CONSTRUCTION BRIEF
CONCERNING ANTECEDENT BASIS AND *FIREBUG* OPINION**

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In its May 15, 2025 Order (Paper 32), the Board authorized additional briefing on whether the preamble of the independent claims of the ‘124 patent provides antecedent basis for “the chick” in view of *Shoes by Firebug LLC v. Stride Rite Children’s Grp., LLC*, 962 F.3d 1362 (Fed. Cir. 2020) (“*Firebug*”). For the reasons set forth below, Petitioner maintains that the preamble of the ‘124 patent clearly provides antecedent basis for “the chick” and the claims at issue are factually distinguishable from the claims of the ’038 patent cited in *Firebug*.

I. The ‘124 Patent Preambles Provide Antecedent Basis for “a chick” and for “determining the sex of a chick”

Claim 1 of the ‘124 patent recites:

1. A system for **determining the sex** of **a chick** comprising:
 - a moving platform to support **an unrestrained chick** of a particular breed;
 - at least one stimuli to cause **the chick** to open its wings;
 - an image capture device to capture at least one image of **the chick**;
 - and
 - a computer processor ... whereby the image capture device **captures at least one image of the chick** and transmits it to the computer processor where the image is processed and compared to the database to **determine the sex**.

The ‘124 patent discloses two systems for evaluating the chick, one determines the chick’s health and the other determines the sex of the chick. Claim 1 is directed to the latter.¹ Further, the end of claim 1 concludes that the captured image is processed “to determine the sex.” Because “the sex of a chick” was introduced in the preamble, the preamble provides antecedent basis for “the sex” and it is the sex of the chick referred to in the preamble that is being determined.

The first element in claim 1 after the preamble is “the *moving platform* to support an unrestrained chick.” Here, during prosecution the moving platform was qualified to be a particular type of moving platform, i.e., to support an “unrestrained chick.” The requirement to support an “unrestrained chick” is simply a limitation on the moving platform. The amendment did not suddenly make the preamble not limiting or reintroduce the same chick. The later recitations of “the chick” that is stimulated and whose image is captured is the same chick whose sex is determined as set forth in the preamble and the end of claim 1.

II. The Specification Does Not Require An Unrestrained Chick

A patent’s specification is the “single best guide to the meaning of a disputed claim term” and “the best source for understanding a technical term.” *Phillips v. AWH Corp.*, 415 F.3d, 1303, 1315 (Fed. Cir. 2005) (*en banc*) (internal citations omitted). The ‘124 patent discusses determining the sex of the chick on

¹ Claim 6 is directed to the former, and claim 9 attempts to cover both.

three occasions. In each case, a stimuli is required to cause the chick to open its wings, but the specification *nowhere requires or suggests that the chick must also be unrestrained on the moving platform* at the time of imaging.

“The embodiments described herein further include a system having a device for *causing a chick to spread its wings, and an image capturing device to capture at least one electronic image of the chick's wings as they are spread.*”

“The embodiments herein also describe a method for determining the gender of a chick including the steps of providing a *moving platform to support a chick, introducing at least one stimuli to cause the chick to spread its wings and capturing at least one image of the chick as it spreads its wings.*”

“At the end of travel along the third conveyor 34, the chick moves onto the second angled conveyor 38... The ... cause the chick to feel unbalanced. In an effort to regain its balance, *the chick begins to lift and flap its wings. As it does the cameras 18 take images of the opened wing pattern.*”

EX 1001; 2:58-60; 3:5-10; and 6:10-20; emphasis added.

As the specification consistently shows, all that is required is a stimuli that causes the chick’s wings to be open when imaged, and no more. Whether or not the chick itself is unrestrained on the moving platform (a negative limitation found nowhere in the specification) is irrelevant to the objectives of the ‘124 patent.

III. The Prosecution History is at Best Ambiguous

While the ‘124 patent prosecution history must be considered when interpreting the preamble, “it often lacks the clarity of the specification and thus is less useful for claim construction purposes.” *Phillips*, 415 F.3d at 1316. During prosecution claim 1 was amended to recite a moving platform to support “an unrestrained chick.” Patent Owner then argued that Tao and Yavnai teach a system with a restrained chick, and a POSITA “would be discouraged from pursuing a system that allows a chick to move unrestrained through the system on the basis of the teaching of Tao et al. and Yavnai et al.” EX 1002; p. 196. During oral argument the Board questioned the significance of this sentence. The sentence lacks clarity because it does not correspond to the ‘124 patent claim language or scope. Specifically, the claims do not require a chick to move unrestrained *through the system*. Because of the disconnect between the Patent Owner’s argument during prosecution and the actual claim scope, this prosecution history statement provides no meaningful assistance in resolving the antecedent basis question at issue here. In other words, it lacks clarity and is not useful for claim construction.

IV. The *Firebug* Case Does Not Support Patent Owner

In its sur-reply Patent Owner for the first time cited and relied heavily on *Firebug*. Two different independent claims were at issue in *Firebug*, and it is noteworthy that a small change in the claim language led to a finding that the

preamble was not limiting in one and limiting in the other. The preamble in the ‘038 patent recited an “internally illuminated textile footwear” and then “a footwear” was subsequently introduced in the body of the claim. The question was whether the second mention of “footwear” was limited by the preamble as a *textile* footwear. The Court found that the later introduction of the footwear in the body of the claim reintroduced the term and was not limiting because the body of the claim recited a structurally complete invention. 962 F.3d at 1367-68.

The ‘124 patent claims are different in several important respects. First, unlike in *Firebug*, the preamble in the ‘124 patent does not impose any limitations on the chick. Instead, the unrestrained chick is simply a limitation on the moving platform. In other words, in *Firebug* the preamble disclosed a specific footwear and the body referred to footwear generally which was considered to reintroduce the footwear. Here, the situation is reversed and also different, as the preamble refers to determining the sex of a chick generally, and the moving platform is qualified by a particular type of chick and does not reintroduce the chick generally.

Second, in *Firebug* the specification was examined to see if the narrower understanding (the *textile* footwear) was required by the patent specification. The court found that a textile footwear was not required. 962 F.3d at 1368. This is consistent with the cases cited by *Firebug* itself, which stated “[w]hether to treat a preamble as a limitation is a determination ‘resolved only on review of the entire[]

... patent to gain an understanding of what the inventors actually invented and intended to encompass by the claim.” 962 F.3d at 1367, citing *Catalina Mktg. Int'l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002) (quoting *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1257 (Fed. Cir. 1989)). Similarly here, the newly introduced concept of a moving platform to support an *unrestrained* chick is clearly not required by the specification as discussed above. All that is required by the ‘124 specification is that the wings be opened by a stimuli so that an image of the wings can be taken to determine the sex of the chick. Whether the chick itself is restrained at the time of imaging or when the sex is determined is simply not required by the ‘124 patent specification. Thus, the specification does not support Patent Owner’s interpretation.

Third, as pointed out at the outset, the preamble also recites “determining the sex” of a chick. The sex determined after the image comparison is recited again at the end of claim 1 and is clearly “the sex” (of a chick) that was initially introduced in the preamble. As *Firebug* itself stated, “dependence on a particular disputed preamble phrase for antecedent basis may limit claim scope because it indicates a reliance on both the preamble and claim body to define the claimed invention.” 962 F.3d at 1367 (internal citations omitted). That is precisely the situation here. The preamble of claim 1 provides antecedent basis for *both* the sex and the chick.

The further introduction of a platform that must support a particular type of chick does not change the conclusion.

Finally, the ‘574 patent at issue in *Firebug*, where the textile footwear recitation in the preamble was found to be limiting, is more similar to the ‘124 claims at issue here. The preamble in the ‘574 patent was found to provide antecedent basis for a recitation of the footwear recited later in the claim. 962 F.3d at 1368. Similarly, “the chick” appears again in the stimuli, image capture, and processor limitations and finds antecedent basis in the original “chick” recited in the preamble. It is the same chick whose sex is determined as stated in the preamble that is subjected to the stimuli to open its wings, have its image captured, and its image processed to determine the sex. In this sense, the present case bears many similarities to *Pacing Techs. LLC v. Garmin Intern., Inc.*, 778 F.3d 1021 (2015). In *Pacing*, the preamble recited a “repetitive motion pacing system for pacing *a user* ...” As in the ‘124 patent claim 1 reciting a “system for determining the sex of *a chick*,” the type of *user* was not limited by the preamble, but simply served as antecedent basis for a limitation later in the claim allowing the user to preselect activity. *Id.* at 1023-1024.

For these reasons, and the reasons presented during oral argument, Petitioner submits that the preambles in the ‘124 patent are limiting.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned hereby certifies that the foregoing Petitioners' Claim Construction Brief Concerning Antecedent Basis and Firebug Opinion was served May 27, 2025 by e-mail to:

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