

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 No. IPR2024-00595
U.S. Patent No. 10,806,124

**PATENT OWNER'S
ADDITIONAL BRIEFING ON CLAIM CONSTRUCTION**

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TABLE OF AUTHORITIES

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Cases

<i>Shoes by Firebug LLC v. Stride Rite Children’s Grp., LLC</i> , 962 F.3d 1362 (Fed. Cir. 2020)	1, 3, 4, 6
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EXHIBIT LIST

No.	Exhibit
1001	U.S. Patent No. 10,806,124 to Karimpour
1002	Prosecution history of Application No. 15/775,706, resulting in U.S. Patent No. 10,806,124
1003	Gershman, Y., “A simple way to determine the sex of one-day poultry chickens”; The Papers of Independent Authors [online]; vol. 28, DNA 2014, [https://vixra.org/pdf/1405.0016v1.pdf] (as cited by Applicant)
1004	FR Patent Publication No. 2909836 to Pierre et al., with Certified English Translation
1005	U.S. Patent Publication No. 2001/0035370 to Yavnai et al.
1006	U.S. Patent No. 6,396,938 to Tao et al.
1007	U.S. Patent No. 3,994,292 to Goodwin
2002	Declaration of Kevin Keener, Ph.D., P.E.
2003	Declaration of Lina J. Karam, Ph.D.
2004	Curriculum Vitae of Lina J. Karam, Ph.D.
2005	Excerpts from Merriam Webster Dictionary
2006	Adjanohoun et al., “Chick processing and automation within the hatchery”; International Hatchery Practice, Vol. 22 No. 8, pp 7-11.
2007	Curriculum Vitae of Kevin Keener, Ph.D., P.E.
2008	Deposition Transcript of Shawn LeCroy, dated April 15, 2025

TABLE OF ABBREVIATIONS

Abbreviation	Meaning
'124 patent	U.S. Patent No. 10,806,124 to Karimpour
PO	Patent Owner Targan, Inc.
Petitioners	Petitioners Ceva Santé Animale S.A., Egg-Chick Automated Technologies S.A.S, and Ceva Animal Health, LLC's
Petition	Petitioners' Petition (Paper 1)
POR	Patent Owner Response (Paper 16)
Reply	Petitioners' Reply (Paper 19)
POSA	Person Of Ordinary Skill In The Art at the time of the invention

*All emphases in this brief are supplied unless otherwise noted.

I. INTRODUCTION

Patent Owner Targan submits this Additional Brief on Claim Construction pursuant to the Board’s May 15, 2025 Order (Paper 32) and May 28, 2025 email granting PO an extension on the deadline for the filing thereof. The Board authorized briefing on the claim construction issue of what is the proper antecedent basis for “the chick” recited in the bodies of the independent claims. PO contends the antecedent basis for “the chick” recited in the second and third limitations of the claims is “an unrestrained chick,” recited in the first limitation—immediately preceding the disputed term “the chick.” Under PO’s construction, the claims require that the chick be unrestrained when the claimed system stimulates and images the chick. Petitioners contend that the antecedent basis for “the chick” is the term “a chick” recited in the preamble.

PO’s construction is correct because it is: 1) compelled by the Federal Circuit’s instructions in *Shoes by Firebug LLC v. Stride Rite Children’s Grp., LLC*, 962 F.3d 1362 (Fed. Cir. 2020) (“*Firebug*”); 2) supported by the express claim language; and 3) supported by the prosecution history.

II. THE INDEPENDENT CLAIMS

All independent claims recite the disputed terms, “an unrestrained chick” and “the chick.” Claim 1 is representative and reproduced below, with the relevant terms highlighted and the limitations numbered for ease of reference.

- [pre.] 1. A system for determining the sex of a chick comprising:
- [lim. 1] a moving platform to support an unrestrained chick of a particular breed;
- [lim. 2] at least one stimuli to cause the chick to open its wings;
- [lim. 3] an image capture device to capture at least one image of the chick; and
- [lim. 4] a computer processor having a database of images of male and female wing patterns for the particular breed, the computer processor in communication with the image capture device, 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.

III. PO's CONSTRUCTION IS CORRECT

A. *Firebug* Confirms PO's Construction Is Correct

Firebug controls here and confirms that the antecedent basis for “the chick” is found in the first limitation, not in the preamble. Under *Firebug*, a term used in the preamble does not provide antecedent basis when, after the preamble, the term is *reintroduced* using an “a” (or “an”) article. That is the case here where, after mention of the chick in the preamble, the chick is reintroduced as “an unrestrained chick” in the first limitation. The subsequent references in the second and third limitations to “the chick” thus refer to the “unrestrained chick,” the term that immediately precedes them.

In *Firebug*, there were two patents at issue, the '574 patent and the '038 patent, and both were directed to a type of footwear. At issue was whether the antecedent basis for the claim term “the footwear” recited in Claim 1 of

both patents was in the preamble or in the body of the claims. The court came to different conclusions for each claim because one claim reintroduced the term in the claim body but the other did not. For the '574 patent, the court determined the antecedent basis for “the footwear” was in the preamble because the term was *not* reintroduced in the claim body, but for the '038 patent the court found the antecedent basis was in the claim body because the term *was* reintroduced in the claim body, as explained in more detail below.

Starting with the '574 patent, Claim 1 is reproduced in relevant part:

1. An internally illuminated textile *footwear* comprises:
 - a sole and an upper;
 - an illumination system; ...
 - the illumination system being housed within *the footwear*; and

Firebug, 962 F.3d at 1365. As can be seen above, the term “footwear” is introduced in the preamble as “[a]n internally illuminated textile footwear.” The next recitation of the term is in the body of the claim where it recites “*the* footwear.” In this case, the only possible antecedent basis for “*the* footwear” is “[a]n internally illuminated textile footwear” in the preamble. The court thus held that for this claim the antecedent basis for “*the* footwear” was in the preamble. *Id.* at 1368.

In contrast, the court found that, in the '038 patent claim, “the footwear” found its antecedent basis in the claim body, *not* the preamble:

1. An internally illuminated textile footwear comprises:

a footwear;

the footwear comprises a sole and an upper;

Id. at 1365. As can be seen above, after its introduction in the preamble, the footwear element is **reintroduced** in the body of the claim as “**a** footwear” in the first limitation, using the article “**a**.” Thus, the term “**the** footwear” recited in the second limitation, as the Federal Circuit held, finds its antecedent basis in the first limitation’s recitation of “**a** footwear.” *Id.* at 1367-68.

The differentiating factor in *Firebug* was whether, after a claim term is introduced in the preamble, the term is **reintroduced** in the body of the claim using the article “**a**” (or by extension “**an**”). For the ’038 patent, after its recitation in the preamble, the term “footwear” was reintroduced as “**a** footwear” in the first limitation. Thus, the second limitation’s recitation of “**the** footwear” found its antecedent basis in the immediately preceding term “**a** footwear,” not all the way back in the preamble. As the court explained, “[n]otably, the first limitation of the body of claim 1 ... **reintroduces** ‘**a** footwear’” and “[t]he 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.* In contrast, where there is no reintroduction after the preamble using an “**a**” article, antecedent basis may be found in the preamble. *Id.* at 1368.

Under *Firebug*, the antecedent basis for “**the** chick” in the second and third limitations is “**an** unrestrained chick” from the first limitation, not the chick of the preamble because Claim 1 **reintroduces** the chick as “**an** unrestrained chick” in the body of the claims, as illustrated below. As such, the term “**an** unrestrained chick” is the antecedent basis for “**the** chick”. This conclusion is clear under both the instructions of *Firebug* as well as the common understanding of how antecedents work.

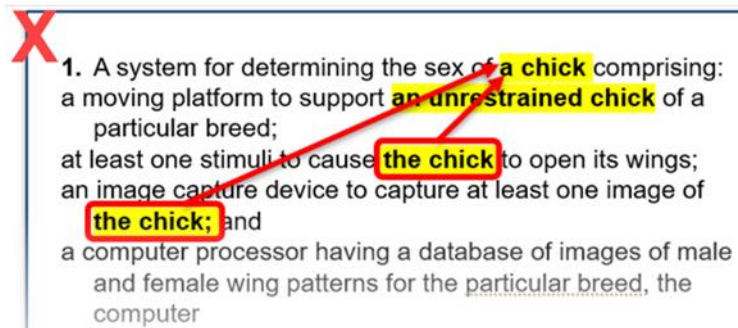


During the Oral Argument, counsel for Petitioners argued that the issue in *Firebug* was whether the preamble was limiting and not the question of antecedent basis. However, as set forth in Section III.A. above, the court’s determination of whether the preamble was limiting *turned upon* whether the “footwear” recited in the preamble provided an antecedent basis for the use of “the footwear” in the body of the claim. The court instructed that (i) if the preamble provided a necessary antecedent, then that supports a finding that the preamble is limiting, but (ii) where the body of the claim provided an antecedent of its own, then that supports a finding that the preamble is not

limiting. *See id.* at 1367 (“[D]ependence 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.”). Thus, the issue of antecedent basis was at the heart of *Firebug*.

B. The Claim Language Confirms PO’s Construction Is Correct

Even aside from *Firebug*, basic principles of grammar demonstrate PO’s construction is correct because the term “an unrestrained chick” in the first limitation immediately precedes “*the* chick” in the second and third limitations. Petitioners would improperly skip over “an unrestrained chick” and instead reach back into the preamble for antecedent basis:



Petitioners provided no reason to ignore the “an unrestrained chick” limitation.

C. The Prosecution History Confirms PO’s Construction Is Correct

Lastly, the prosecution history supports PO’s construction. Claim 1 as filed recited only “a chick,” not “an unrestrained chick.” Ex. 1002 at 505. The original claims were, however, rejected over Yavnai, which discloses a system that restrains a chick when it is stimulated and imaged. To distinguish

Yavnai, the applicants amended the claims to recite “an unrestrained chick” (*Id.* at 184), and explained that the claimed invention was directed to “a system that allows a chick to be ***moved unrestrained through the system.***” *Id.* at 196. The system mentioned is what is recited in the limitations of Claim 1, and thus *includes* the chick’s movement through the at least one stimuli and image capture device. This accords with PO’s construction, which requires that the chick be unrestrained during stimulation and imaging.

The Board noted (Paper 32 at 2) that “Petitioner takes particular issue with [PO’s] statement that ‘[t]he claims required that the chick be unrestrained throughout the recited process’” However, PO’s statement is entirely consistent with what applicants explained to the Office during prosecution—the chick is unrestrained as it moves through the system recited in the independent claims. The POR’s mention of the “recited process” in this context was a reference to the limitations of the claimed system relating to moving, stimulating, and imaging the chick.

IV. CONCLUSION

PO respectfully submits that the Board adopt PO’s construction.

CERTIFICATE OF LENGTH (37 C.F.R. §§ 42.24)

The undersigned hereby certifies that, according to the word-processing system used to prepare the foregoing document, this document has 1529 words and thus complies with the applicable word limit.

Date: June 3, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, the undersigned hereby certify that the foregoing Patent Owner Response was served on June 3, 2025 by e-mailing copies to:

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