

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BABY BJÖRN AB,

Petitioner,

v.

THE ERGO BABY CARRIER, INC.

Patent Owner

Case IPR2025-00110
Patent No. 11,786,055

**PATENT OWNER'S PRELIMINARY RESPONSE
TO PETITION FOR *INTER PARTES* REVIEW**

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I. INTRODUCTION

Patent Owner The Ergo Baby Carrier, Inc. (“Patent Owner”) requests the Board deny institution because Petitioner BabyBjörn AB (“Petitioner”) fails to demonstrate a reasonable likelihood of unpatentability of any challenged claim of U.S. Patent No. 11,786,055 (“the ’055 Patent”).

II. CLAIM CONSTRUCTION

A. All Grounds: Petitioner Disparages Its Own Means-Plus-Function and P&O Constructions, Alone Warranting Denial of Institution

Each of the Petition’s grounds argues the challenged independent claims each include a limitation that should be construed as a means-plus-function limitation or, alternatively, under the “nearest” definition for the limitation. *Petition*, 9–11, 27, 53–54, 86. For this limitation, Petitioner contends it is indefinite. *Petition*, 9 n.4, 11. Because Petitioner fails to construe the limitation and otherwise argues for an advisory opinion from the Board on indefiniteness, the Petition should be denied.

When construing claims, the Petition must state (1) “how the challenged claim is to be construed[,]” which for means-plus-function claims requires an identification of “the specific portions of the specification that describe the structure, material, or acts corresponding to each claimed function”; and (2) “[h]ow the construed claim is unpatentable.” 37 C.F.R. §§ 42.104(b)(3)-(4). “Failure to comply with this mandatory requirement...will result in a petition being denied.” *Head Sport GmbH v. Vermont Safety Devs. LLC*, IPR2024-01099, Paper 15 at 34 (PTAB Jan.

15, 2025).

Here, Petitioner fails to comply with this requirement. Instead, for the *at least one thigh support adjuster*¹ limitation found in every challenged independent claim, the Petition presents unpatentability challenges based on two “nearest” constructions for the limitation. *Petition*, 10–11. Petitioner does this because, by its own admission, it does not agree with its own constructions. *Id.* The PTAB’s precedent is unambiguous—by proposing claim constructions Petitioner believes is wrong, Petitioner cannot demonstrate a reasonable likelihood of prevailing. Accordingly, institution should be denied.

Independent claims 1, 6, and 11 each recites *at least one thigh support adjuster*. Ex. 1001, 17:40–41, 18:34–35, 19:45–46. Petitioner advances two alternative proposed constructions for *at least one thigh support adjuster*—neither of which it believes is correct. Petitioner first contends this limitation should be construed as a means-plus-function limitation. *Petition*, 9–11. But rather than identify the corresponding structure in the specification for the *at least one thigh support adjuster* limitation, as required by § 42.104(b)(3), Petitioner argues that “the specification fails to disclose any ‘thigh support adjuster,’ or clearly associate this claim term with a specific component described in the written description.” *Petition*,

¹ Claim language is italicized for ease of reference.

9–10. As a result, Petitioner contends this limitation is indefinite. *Id.* Second, Petitioner similarly argues that should the Board determine this limitation not be construed as a means-plus-function limitation, then *thigh support adjuster* has no plain and ordinary (“P&O”) meaning. *Petition*, 11. But recognizing the Board will not institute based on an indefiniteness challenge (*Petition*, 10–11, 11 n.6), Petitioner asks the Board to conduct its invalidity analysis using either “the nearest corresponding structure” or, alternatively, “the nearest” P&O meaning of the limitation. *Petition*, 10–11. The Board should decline to do so.

Petitioner’s unambiguous admission that it does not believe its “nearest” constructions are correct does not comply with § 42.104(b)(3). Regarding its means-plus-function construction, Petitioner argues that its proposed “nearest corresponding structure”—the base width adjusters described in the ’055 Patent—is not the corresponding structure for the claimed *at least one thigh support adjuster*. *Petition*, 10. Indeed, because Petitioner contends the base width adjusters are not linked to the recited function for the *at least one thigh support adjuster*, Petitioner could not argue the base width adjuster is the corresponding structure because that “would be a position that would be inconsistent with [its] indefiniteness argument.” *Id.*; see *Ebates Performance Mktg., Inc. v. Int’l Bus. Machs. Corp.*, IPR2022-00439, Paper 11 at 11–12 (PTAB Oct. 3, 2022) (explaining that “Petitioner does not characterize a general-purpose computer as corresponding structure, which would

be a position that would be inconsistent with Petitioner’s indefiniteness argument” where Petitioner “argue[d] that neither a general-purpose computer nor any other structure in the ’676 patent is clearly linked or associated with the recited functions”). As the PTAB has explained:

The position Petitioner takes in the Petition with respect to the means-plus-function limitations is improper, because it, in effect, seeks an advisory opinion from the Board as to whether the challenge claims are indefinite under 35 U.S.C. § 112(b). In particular, Petitioner argues that, under the correction construction, certain means-plus-function terms of the challenged claims are indefinite because the Specification does not recite adequate corresponding structure. Petitioner then invites us to either agree with its construction...and declare the claims to be indefinite (and presumably deny institution on that basis), or to adopt constructions it expressly advocates against...and proceed with trial using those allegedly incorrect constructions.

Samsung Elecs. Am., Inc. v. Uniloc 2017 LLC, IPR2020-00046, Paper 6 at 7–8 (PTAB Apr. 1, 2020) (internal citations omitted).

Applying *Samsung*, the Board should reject Petitioner’s implicit request for an advisory opinion² and “decline to take a position on whether the challenged

² This is not an abstract concern. Petitioner is advancing this same indefiniteness argument in the related litigation. *See* Ex. 2003 (Petitioner’s claim construction in

claims are indefinite or whether Petitioner’s claim constructions are correct[.]” *Id.* at 8–10. *Ebates*, IPR2022-00439, Paper 11 at 12; *Carefusion Corp. v. Baxter Int’l, Inc.*, IPR2016-01456, Paper 9 at 7 (PTAB Feb. 6, 2017) (denying institution where the Petitioner did not comply with § 42.104(b)(3) when it stated it did not agree those constructions were correct).

Turning to its alternative construction, Petitioner argues, again unambiguously, that *thigh support adjuster* has no P&O meaning. *Petition*, 11. So, as it did before, Petitioner asks the Board to adopt the “nearest” P&O meaning for the limitation. *Id.* However, “Petitioner does not assert that the applied construction is the plain and ordinary meaning of the claim term, or provide reasoning or evidence showing why” its “nearest” construction is correct. *Id.*; *Samsung Elecs. Am., Inc. v. Cobblestone Wireless, LLC*, IPR2024-00319, Paper 16 at 18 (PTAB June 24, 2024). Therefore, Petitioner again fails to comply with § 42.104(b)(3), and the Board should decline to adopt Petitioner’s construction. *Samsung*, IPR2024-00319, Paper 16 at 18.

Denial of institution is warranted because Petitioner’s failure to comply with § 42.104(b)(3) necessarily precludes a finding that Petitioner has demonstrated a

the concurrent litigation, *The Ergo Baby Carrier, Inc. v. BabyBjorn AB*, Case No. 6:24-cv-00083 (W.D. Tex. 2024)). Petitioner is, at least implicitly, asking the Board to deny its Petition on that basis to strengthen its litigation position.

reasonable likelihood that the challenged claims are unpatentable. “Where a petitioner specifically relies on a particular construction of a claim term in order to demonstrate unpatentability, particularly a construction different from the ordinary meaning, that claim construction is part of the unpatentability analysis, and the petitioner must provide a sufficient basis to support that construction.” *Samsung*, IPR20204-00319, Paper 16 at 20. The PTAB has routinely denied institution of petitions that advance unpatentability challenges based on “different construction[s] that Petitioner” admits it does not agree with. *Id.*; *Ebates*, IPR2022-00439, Paper 11 at 12; *Samsung*, IPR2020-00046, Paper 6 at 10; *Hologic, Inc. v. Enzo Life Sciences, Inc.*, IPR2018-00019, Paper 17 at 8 (PTAB Apr. 18, 2018); *Carefusion*, IPR2016-01456, Paper 9 at 7.

Accordingly, because the *at least one thigh support adjuster* is required by every Challenged Claim, the Petitioner cannot show there is a reasonable likelihood that at least one of the Challenged Claims is unpatentable, and the Board should deny institution.

B. All Grounds: The *At Least One Thigh Support Adjuster* Limitation Should Not Be Interpreted as a Means-Plus-Function Limitation Under 35 U.S.C. § 112(f)

Petitioner’s improper argument that the claimed *at least one thigh support adjuster* limitation is indefinite rests on the premise that the limitation should be construed as a means-plus-function limitation under 35 U.S.C. § 112(f). *Petition*, 7–

9. That premise is unsound: the limitation does not use the word “means”; Petitioner admits persons of ordinary skill would have understood *adjusters* to connote a specific class of structures; and the ’055 Patent’s disclosure confirms that understanding. Accordingly, should the Board reach this question, it should not construe the *at least one thigh support adjuster* limitation under 35 U.S.C. § 112(f).

1. A POSITA Would Understand Adjuster Designates a Particular Class of Structures

The essential inquiry under *Williamson* is “whether the words of the claim are understood by persons of ordinary skill in the art to have sufficiently definite meaning as the name for structure.” *Team Worldwide Corp. v. Intex Recreation Corp.*, No. 2020-1975, 2021 WL 4130634, at *5 (Fed. Cir. Sept. 9, 2021) (quoting *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1348 (Fed. Cir. 2015)). Where, as here, the limitation “does not contain the words ‘means for,’ there is a rebuttable presumption that section [112(f)] does not apply[.]” *Samsung Elecs. Am., Inc. v. Prisia Eng’g Corp.*, 948 F.3d 1342, 1353 (Fed. Cir. 2020) (citing *Williamson*, 792 F.3d at 1348). To overcome that presumption, Petitioner has to “demonstrate[] that the claim term fails to ‘recite sufficiently definite structure’ or else recites ‘function without reciting sufficient structure for performing that function.’” *Id.* at 1354 (quoting *Williamson*, 792 F.3d at 1349). Petitioner has not overcome that presumption.

Petitioner argues that because “the ‘at least one thigh support adjuster’ is

defined solely by its intended function” and that “[t]he term ‘adjuster’ is merely a nonce word for anything capable of achieving adjustment[.]” the limitation “does not connote sufficiently definite structure[.]” *Petition*, 8. As a threshold matter, the Petitioner’s characterization that this limitation is defined solely by function is incorrect. *Id.* The limitation also defines the *thigh support adjuster* structurally: it must be *coupled to the first thigh support and the second thigh support* and must be *configured to be selectively positioned to one of the first setting, the second setting, or the third setting*. Ex. 1001, 17:40–44. Thus, the plain language of the claims refutes the contention that the *thigh support adjuster* limitation is defined solely by its intended function. *See Samsung*, 948 F.3d at 1354.

Petitioner’s argument that *adjuster* is a nonce word is likewise without merit. “A ‘critical question’ underlying [the nonce word] inquiry ‘is whether the claim term is used in common parlance or by [skilled artisans] to designate structure, including either a particular structure or a class of structures.’” *Team Worldwide*, 2021 WL 4130634, at *5 (quoting *MTD Prods. Inc. v. Iancu*, 933 F.3d 1336, 1341 (Fed. Cir. 2019)). Here, all of the evidence, including Petitioner’s own evidence, establishes that an *adjuster* was used in common parlance to designate structure.

Petitioner admits that “[a] POSITA would have knowledge of various

components that can be incorporated in child carriers to make the *adjustments*³ to various dimensions of the child carriers, including “drawstrings, cords, belt straps, buckles, Velcro, D-rings, O-rings, snaps, buttons, press studs, zippers, or the like.” *Petition*, 12 (citing Ex. 1003, ¶¶ 106–108). Therefore, Petitioner’s own argument establishes that the claim term *thigh support adjuster* “designate[s] structure, including either a particular structure or class of structures[,]” namely drawstrings, cords, etc. *Team Worldwide*, 2021 WL 4130634, at *5.

Petitioner’s expert, Mr. Smith, expands on Petitioner’s admission, opining that “[a] POSITA would further understand that the above components are interchangeable and their incorporation is a design choice made by the designer.” Ex. 1003, ¶ 107. Thus again, Petitioner’s own evidence supports the claimed *adjuster* refers to structures ““that people in the art are generally familiar with[,]”” and is therefore not a nonce word. *See Samsung*, 948 F.3d at 1354 (citation omitted) (noting that Patent Owner’s own argument based on its expert’s testimony supported the conclusion that “digital processing unit” is not a means-plus-function limitation).

Patent Owner’s expert, Mr. Duffner, further confirms that persons of ordinary skill in the art would have understood *adjuster* to refer to a specific class of structures. Dec. 23-25. Specifically, the class of adjustment mechanisms, which a

³ Emphasis added unless specified otherwise.

POSITA would have understood to include, e.g., buckles, snaps, hook and loop, zippers, buttons, straps, rings, and clasps. *Id.*

2. *The Structural Nature of the Adjuster Is Confirmed by the Intrinsic Evidence*

The intrinsic evidence bolsters this conclusion. The *thigh support adjuster* limitation must be “‘interpreted in light of the written description...whether or not the claim construction involves interpreting a ‘means’ clause.’” *MTD Prods.*, 933 F.3d at 1342 (quoting *Inventio AG v. ThyssenKrupp Elevator Ams. Corp.*, 649 F.3d 1350, 1365 (Fed. Cir. 2011), *overruled on other grounds by Williamson*, 792 F.3d at 1339). Thus, both the claim language and the specification can provide “further evidence of the structural nature of the” *at least one thigh support adjuster* limitation. *See Zeroclick, LLC v. Apple Inc.*, 891 F.3d 1003, 1008–09 (Fed. Cir. 2018) (rejecting court’s means-plus-function analysis in part because the court “removed the terms from their context” in the claims and ignored the disclosure in the specification); *Samsung*, 948 F.3d at 1354 (noting the surrounding claim language supported the structural nature of the term “digital processing unit”).

Beginning with the claims, the structure of the independent claims evidences the structural nature of the *thigh support adjuster*. The independent claims do not define the *thigh support adjuster* solely by its intended function. The claims also set forth specific structural requirements for the *thigh support adjuster* by reciting the components *the thigh support adjuster* connects to (e.g., *thigh supports*) and the

positions *the thigh support adjuster* must be placeable in (e.g., *first*, *second*, and *third settings*). And contrary to Petitioner’s assertion (*Petition*, 9), the *thigh support* language is itself evidence of the structural nature of the limitation—the *adjuster* is for adjusting the claimed *thigh supports*, components that Petitioner does not contend lack structure. Thus, the structure and surrounding limitations of the independent claims is strong evidence of the structural nature of the *at least one thigh support adjuster* limitation. *Samsung*, 948 F.3d at 1354.

The specification, too, provides strong evidence that *adjuster* is not a nonce word. The specification describes at least two types of exemplary adjusters: base width adjusters 150 and thigh width adjusters 160. *See generally* Ex. 1001, 8:15–13:54. Both types of adjusters are repeatedly described in ways that demonstrate their structural nature. For example, the specification provides known structures that may act as adjusters and describes the components the adjusters connect to. Ex. 1001, 8:64–9:2, 11:21–35. The specification describes known mechanisms that may be used for connecting the adjusters to those other components. Ex. 1001, 9:7–13, 11:46–55. Finally, the specification explains how the adjusters work together to make adjustments to the carrier. Ex. 1001, 12:3–13:38.

Together with the claim language, the specification’s disclosure shows that *adjuster* is being used “not as [a] generic term[] or black box recitation[] of structure or abstraction[], but rather as specific references to conventional [adjusters], existing

in prior art at the time of the inventions.” *Zeroclick*, 891 F.3d at 1008–09. Indeed, many of the adjusting components mentioned in the ’055 specification are the very same components Petitioner’s expert admitted were within the conventional knowledge of a POSITA. *Compare id.* at 9:7–13, 11:50–55 with Ex. 1003, ¶¶ 106–07.

Because both the intrinsic and extrinsic evidence confirm that the term *adjuster* was “‘used in common parlance or by [skilled artisans] to designate structure[,]’” Petitioner fails to rebut the presumption that the *at least one thigh support adjuster* limitation does not invoke § 112(f). *Samsung*, 948 F.3d at 1353 (quoting *MTD Prods.*, 933 F.3d at 1341).

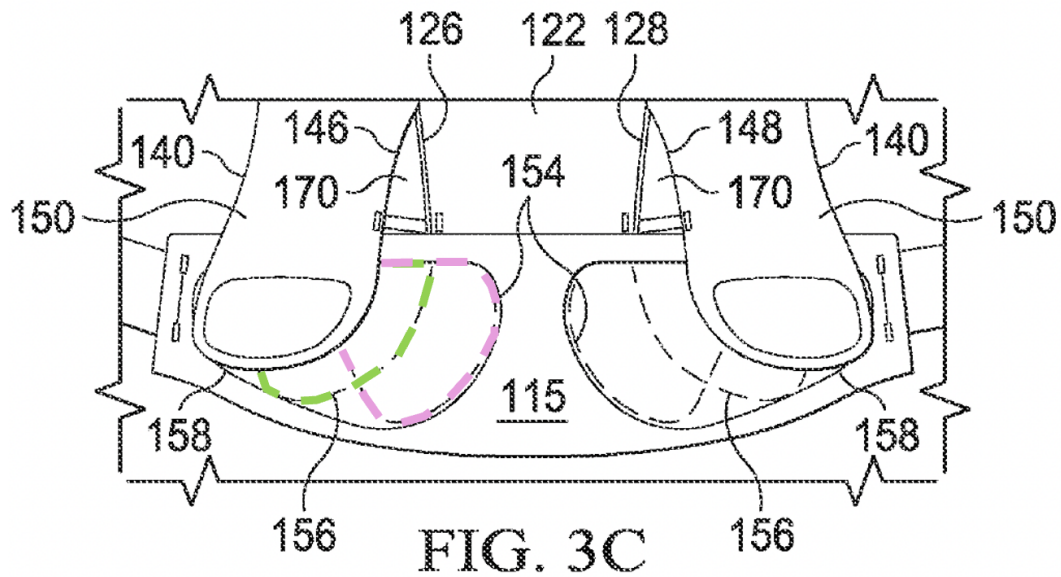
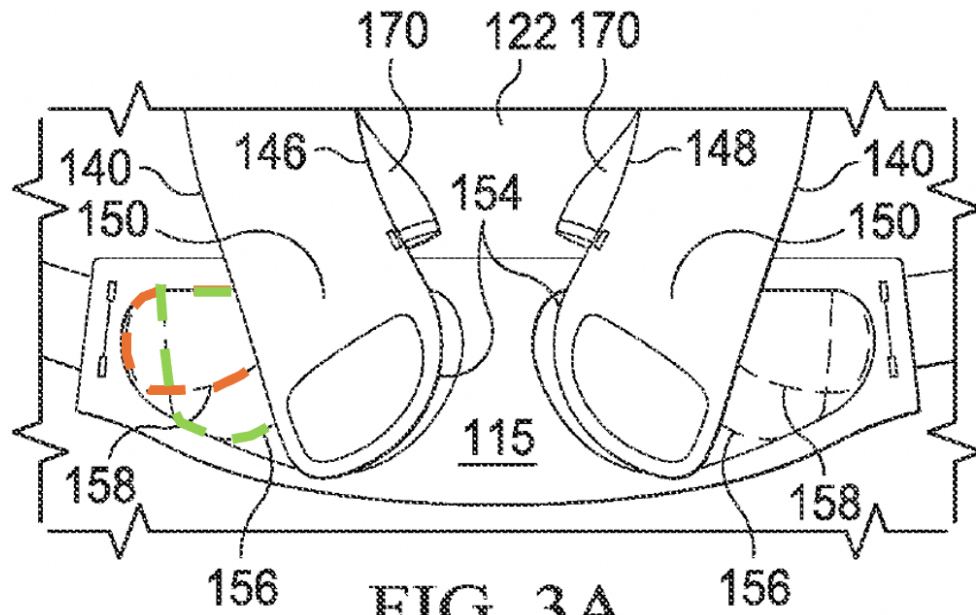
C. Ground 3: The *Defined By* Language in Limitations [1j], [6k], and [11l] Should Be Given Its Plain and Ordinary Meaning

Claims 1 and 11 of the ’055 Patent recite *a first setting, a second setting, and a third setting defined by the adjustable child carrier* (Petitioner’s [1j] and [11l], respectively), while Claim 6 recites *a first position, second position, and a third position defined by the adjustable child carrier* (Petitioner’s [6k]). Ex. 1001, 17:38–39, 18:36–37, 19:43–44. Petitioner does not propose a construction for these limitations. *Petition*, 7–11. However, the mapping Petitioner advances in Ground 3 of the *Petition* effectively reads the *defined by* requirement out of these limitations. *See infra*, Section VII. Accordingly, Patent Owner requests the Board construe limitations [1j]/[6k]/[11l] in accordance with the P&O meaning of *defined by*; that

is, as encompassing at least first, second, and third settings/positions each having a location fixed or marked on the adjustable child carrier. *The Merriam-Webster Dictionary*, Tenth Edition (Ex. 2001), 303 (definition of “define” as “2: to fix or mark the limits of”).

The Board should adopt Patent Owner’s construction because neither the ’055 specification nor prosecution history suggest the inventor departed from that meaning. *DDR Holdings, LLC v. Priceline.com LLC*, 122 F.4th 911, 915 (Fed. Cir. 2024) (noting that the only two exceptions to the rule that claim terms be given their ordinary meaning are “1) when the patentee sets out a definition and acts as his own lexicographer, or 2) when the patentee disavows the full scope of a claim term in the specification or during prosecution”). Instead, the ’055 specification’s description of the settings/positions is consistent with the P&O meaning of *defined by*. For example, as shown in Figures 3A–3C, positions 154, 156, and 158 each has a location marked⁴ on the adjustable child carrier. Figures 3A and 3C are representative:

⁴ For the avoidance of doubt, that each *position/setting* has a location marked on the adjustable child carrier does not necessarily limit the placement of the base width adjusters 150 to only those positions. Indeed, the ’055 specification makes clear that, in the embodiment shown in Figures 3A–3C, the “base width adjusters 150 can be



coupled to fastening mechanism 117 in a continuous range of positions,” while
 “other embodiments may provide discrete attachment points.” Ex. 1001, 10:39–43.

Ex. 1001, FIGs. 3A, 3C (annotated). Thus, because the description of the *positions/settings* in the specification is consistent with the P&O meaning of *defined by* in limitations [1j]/[6k]/[111], the Board should adopt that meaning and construe these limitations to encompass at least first, second, and third settings/positions each having a location fixed or marked on the adjustable child carrier. *DDR Holdings*, 122 F.4th at 915.

III. GROUND 1: PETITIONER FAILS TO ESTABLISH THE *SYNERGY MANUAL* IS PRIOR ART

Ground 1 of the Petition is based on the *Synergy Manual*, which the Petitioner describes as “a consumer-facing product manual” and contends is “prior art to the Challenged Claims under 35 U.S.C. § 102” because it “published [in] 2007[.]” *Petition*, 2, 13. “Whether a reference qualifies as a ‘printed publication’ involves a case-by-case inquiry into the facts and circumstances surrounding the reference’s disclosure to members of the public.” *ENS Labs Ltd. v. Unstoppable Domains Inc.*, IPR2024-00872, Paper 8 at 10 (PTAB Nov. 22, 2024) (citing *In re Klopfenstein*, 380 F.3d 1345, 1350 (Fed. Cir. 2004)). “The key inquiry is whether the reference was” publicly accessible, which is established “upon a satisfactory showing that the document has been ‘disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence[] can locate it.’” *Id.* (quoting *In re Lister*, 583 F.3d 1307, 1311 (Fed. Cir. 2009) and *Kyocera Wireless Corp. v. ITC*, 545 F.3d 1340, 1350 (Fed. Cir.

2008)). To make this showing “at the institution stage, the petition must identify, with particularity, evidence sufficient to establish a reasonable likelihood that the reference was publicly accessible before the critical date of the challenged patent and therefore that there is a reasonable likelihood that it qualifies as a printed publication.” *Hulu v. Sound View Innovations, LLC*, IPR2018-01039, Paper 29 at 13 (PTAB Dec. 20, 2019) (precedential). The Petitioner fails to make that satisfactory showing for the *Synergy Manual* in its Petition.

The Petition’s sole basis for contending that the *Synergy Manual* is prior art under 35 U.S.C. § 102 is that it was “published [in] 2007[.]” *Petition*, 13. This bare assertion does not even suggest that the *Synergy Manual* was disseminated or made available to interested persons exercising reasonable diligence or otherwise publicly accessible, let alone “identify, with particularity, evidence sufficient to establish a reasonable likelihood” that it was publicly accessible. *Hulu*, IPR2018-01039, Paper 29 at 13. For these reasons alone, the Board should find that the Petitioner’s “failure to develop any argument regarding the prior art status” of the *Synergy Manual* is “a fatal flaw in the Petition.” *Microsoft Corp. v. ThroughPuter, Inc.*, IPR2023-00852, Paper 18 at 17–18 (determining that the Petition’s inclusion of “only a date and a footnote with two citations to [a witness’s] testimony...is facially insufficient to satisfy Petitioner’s requirement” under 35 U.S.C. § 312(a)(3)).

While the Petitioner includes a declaration from the General Counsel for Petitioner, David Grünbaum, as Exhibit 1017, the Petition never cites this exhibit—either to support its assertion that the *Synergy Manual* qualifies as prior art or anywhere else in its Petition. *Petition*, 2. But even if it had, that would “amount[] to improper incorporation by reference in contravention of 37 C.F.R. § 42.6(a)(3)[,]” so the Board should give the substance of Ex. 1017 no weight. *See, e.g., Hulu*, IPR2018-01039, Paper 29 at 18; *VMAC Global Techs. Inc. v. Vanair Mfg., Inc.*, IPR2018-00670, Paper 9 at 11–12 (PTAB Aug. 10, 2018) (“In the situation here, where the reference at issue is not, *on its face*, clearly prior art, merely providing a conclusory statement in the Petition that the [reference] is a printed publication and an unexplained citation to a declaration does not satisfy the necessary threshold showing to demonstrate public accessibility.”).

Even if the Board considers Ex. 1017, Mr. Grünbaum’s statements are not sufficient to make the satisfactory showing needed for Petitioner to establish a reasonable likelihood that the *Synergy Manual* qualifies as a printed publication. In Exhibit 1017, Mr. Grünbaum purports to “affirm that the Synergy Manual was drafted in 2007 and included in the product packaging for UK-based consumers who purchased the product depicted therein[,]” that “UK consumers purchased thousands of Synergy carriers prior to 2015[,]” and that “[t]o secure this manual, consumers or other interested persons needed only to purchase the Synergy Carrier and open the

packaging[.]” Ex. 1017, ¶ 4. Missing, however, is any evidence that Mr. Grünbaum has “personal knowledge to support [his] statements.” *See SWM Int’l, LLC v. DynaEnergetics Europe GmbH*, PGR2021-00097, Paper 86 at 104 (PTAB Jan. 3, 2023). Exhibit 1017 does not say whether Mr. Grünbaum was employed by Petitioner at the relevant time, how he purportedly knows how and when the *Synergy Manual* was disseminated, or otherwise explain the basis for his stated personal knowledge. *See generally*, Ex. 1017. Indeed, Mr. Grünbaum’s LinkedIn profile states that he did not begin working for Petitioner until 2020. Ex. 2002. Thus, “Ppetitioner has not adequately explained why [Mr. Grünbaum] had personal knowledge as to the” public dissemination of the *Synergy Manual*. *See, e.g., SWM*, PGR2021-00097, Paper 87 at 104; *First Solar, Inc. v. Rovshan Sade*, IPR2023-00827, Paper 13 at 25 (PTAB Nov. 16, 2023) (determining “that Petitioner ha[d] not met its burden to show that [a reference] was publicly accessible as of the priority date” because “the record at hand does not provide any suitable corroboration for [the declarant’s] expressed ‘belief and opinion’ and ‘personal knowledge’ as to the [reference’s] public availability[.]”).

For at least these reasons, Petitioner has failed to make the necessary threshold showing that the *Synergy Manual* qualifies as a printed publication and, by extension, has failed to establish a reasonable likelihood that the challenged claims are unpatentable under Ground 1.

IV. GROUNDS 1 AND 2: PETITIONER FAILS TO ESTABLISH *LUNDH* IS PRIOR ART

Grounds 1 and 2 of the Petition rely, in part, on *Lundh*, which the Petitioner contends is “prior art to the Challenged Claims under 35 U.S.C. § 102” because it was “filed January 4, 2018; published July 19, 2018; [and has a] priority date [of] July 17, 2015[.]” *Petition*, 3. However, *Lundh*’s filing date is after the ’055 Patent’s priority date, so “Petitioner therefore must seek the benefit of the earlier [July 17, 2015] filing date of” the foreign patent application upon which it relies. *Intelligent Wellhead Sys., Inc. v. Downing Wellhead Equip., LLC*, IPR2024-00256, Paper 11 at 11 (PTAB June 5, 2024); Ex. 1008, (30). To do that, Petitioner must show the earlier foreign reference “describes the subject matter in [Lundh] that the Petition relies on[.]” *Id.* at 11–12 (citing *Dynamic Drinkware LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1380 (Fed. Cir. 2015)). Petitioner has not made this showing.

Petitioner does “not explain how the [earlier foreign reference] supports the relevant subject matter relied on in [Lundh].” *Intelligent Wellhead*, IPR2024-00256, Paper 11 at 12. Per the Board’s precedent, this failure alone warrants a determination that “Petitioner does not have a reasonable likelihood of prevailing with respect to any of the claims challenged in Grounds [1 or 2], which grounds rely on [Lundh] in whole or substantial part.” *Id.* Additionally, Petitioner did not even introduce *Lundh*’s foreign priority application, so the Board could not make this determination even if it wanted to. *Id.* at 12. Petitioner is not entitled to cure this deficiency because

it was self-evident on the face of *Lundh* that Petitioner could not rely on *Lundh*'s actual filing date to establish its prior art status. *Id.* at 12 n.7. Therefore, the Board should find that Petitioner has failed to establish a reasonable likelihood of prevailing with respect to any of the claims challenged in Grounds 1 or 2, which grounds rely on *Lundh* in whole or substantial part. *Id.* at 12 n.7.

V. ALL GROUNDS: PETITIONER FAILS TO MEET ITS BURDEN OF IDENTIFYING WITH PARTICULARITY WHERE EACH ELEMENT OF INDEPENDENT CLAIMS 1, 6, AND 11 IS FOUND IN THE PRIOR ART

The PTAB may not consider a petition unless “the petition identifies, in writing and **with particularity** each claim challenged...and the evidence that supports the grounds for the challenge to each claim.” 35 U.S.C. § 312(a)(3); *Intelligent Biosys. Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016) (“It is of the utmost importance that petitioners identify ‘with particularity’ the ‘evidence that supports the grounds for the challenge to each claim’”). The PTAB’s rules further require that a petition “must include...[a] full statement of the reasons for the relief requested, including a detailed explanation of the significance of the evidence[]” and “**specify where each element of the claim is found** in the prior art patents or printed publications relied upon.” 37 C.F.R. §§ 42.22(a)(2), 42.104(b)(4). The Petition fails to comply with these requirements. Instead, in several instances, the Petition includes only brief, unclear, or incomplete statements that fall short of the particularity and specificity required. Accordingly, the Board

should conclude that Petitioner has failed to establish a reasonable likelihood that the challenged claims identified below, and any dependents therefrom, are unpatentable.

A. Grounds 1 and 3: The Petition Does Not Identify [1h]/[6h]/[11h]’s ...when the First Neck Support Attachment is Coupled to the First Attachment and the Second Neck Support Attachment is Coupled to the Second Attachment in Grounds 1 and 3

Petitioner’s mapping for limitation [1h]⁵ in Ground 1 is limited. In part, it reads, “[a]s shown in the below figure, the neck support shown in the Synergy Manual is configured as recited in limitation [1h].” *Petition*, 25. However, Petitioner does not identify where, or explain how, the included image satisfies the limitation. *Id.* Instead, the image shown shows only the alleged neck support. *Id.* The image does not identify *the first neck support attachment* or *the second neck support attachment*, nor does the image identify whether the *neck support is configured in an upward neck supporting position* when those attachments are coupled specifically to the *first attachment* and *second attachment* that Petitioner previously identified in limitations [1f] and [1g]. *Id.*

⁵ The Petition’s mappings for limitations [6h] and [11h] in both Grounds 1 and 3 only cite back to limitation [1h]. *Petition*, 34, 37, 98, 101. Accordingly, these mappings fail for the same reasons as limitation [1h].

Similarly, Mr. Smith’s testimony cited in the Petition also fails to specify what the *neck support attachment[s]* and *attachment[s]* are in the *Synergy Manual* or explain how such attachments *couple[]* together *when* the *neck support* is in an *upward neck supporting position*. As a threshold matter, “[i]t is the Petition, not the expert declaration, that must make Petitioners’ case.” *Vimeo, Inc. v. British Telecomm. PLC*, IPR2019-00833, Paper 20 at 48 (PTAB Aug. 5, 2020). But even if Mr. Smith’s testimony is considered, it falls short. Mr. Smith’s testimony states only that “when coupled to the shoulder straps, the neck support is configured, in one example, in an upward position,” and therefore concludes that “Synergy discloses” the limitation. Ex. 1003, 84. Missing from Mr. Smith’s testimony is any explanation as to how the relationship between the neck support and shoulder straps satisfies limitation 1[h]. *Id.*

Petitioner’s mapping for limitation [1h] in Ground 3 is similarly deficient. Again, Petitioner purports “Stomper-Rosam discloses limitation [1h] as illustrated in the below figure,” but fails to identify any *neck support attachment[s]* or *attachment[s]*. *Petition*, 83–84. Petitioner also fails to explain how the figure shows *Stomper-Rosam*’s headrest 11 is configured *in an upward neck supporting position when the first neck support attachment is coupled to the first attachment and the second neck support attachment is coupled to the second attachment*. *Id.* Petitioner cites *Stomper-Rosam*’s disclosure of headrest 11 being “raised and secured using

two loops 10 attached to the left and right outermost edges of the headrest 11.” *Id.* (citing Ex. 1015, [0034]). However, loops 10 only address Petitioner’s mapped *neck support attachment[s]*, not the *first* or *second attachment[s]* of *Stomper-Rosam. Petition*, 80–81. While Petitioner also states “[w]hen connected to the shoulder straps and configured in the upward position, neck support is positioned behind the child’s head and neck for support[,]” Petitioner does not specify with any particularity whether this “connect[ion]” is *when the first neck support attachment is coupled to the first attachment and the second neck support attachment is coupled to the second attachment. Petition*, 83. Nor does Petitioner mention any *first* or *second attachment* the loops 10 couple to as forming the vague “connect[ion].” *Id.* Thus, Petitioner fails to specify how *Stomper-Rosam* teaches and/or suggests the *when...* clause of [1h].

Any additional testimony from Mr. Smith (Ex. 1003, ¶ 135) “needed to be set forth in the Petition.” *Qualcomm Inc. v. FedEx Corp. Serv., Inc.*, IPR2022-00587, Paper 14 at 22 (PTAB Oct. 11, 2022); *Google LLC v. Kwazinga Corp.*, IPR2021-00525, Paper 14 at 19 (PTAB Aug. 24, 2021). Regardless, Mr. Smith also fails to specify what components of *Stomper-Rosam*’s carrier are the *neck support attachment[s]* and the *attachment[s]* that *couple[]* together to meet the *when...* clause. Ex. 1003, ¶ 135. Instead, Mr. Smith says only “[t]he’620 discloses” the verbatim claim language. Ex. 1003, ¶ 135.

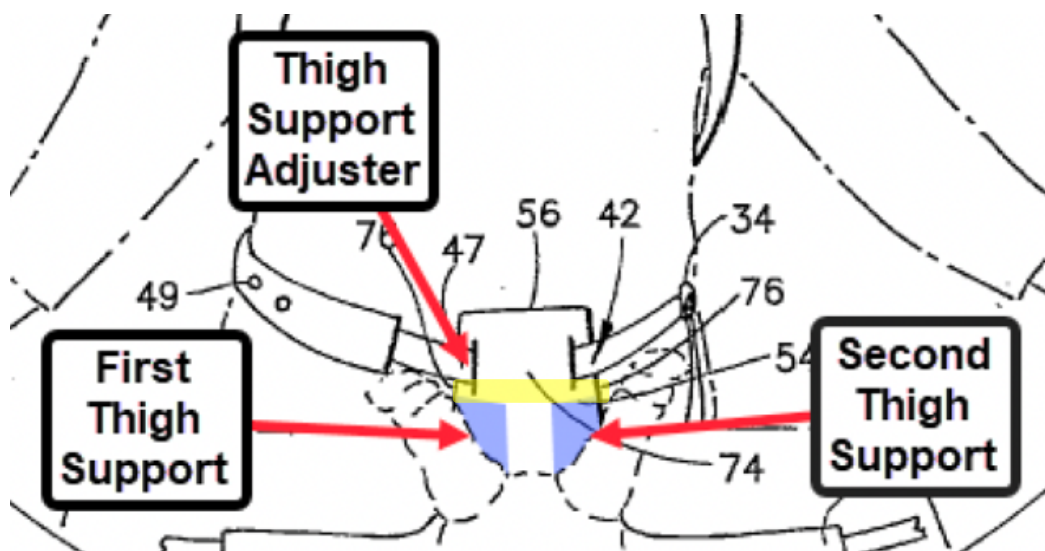
Having “fail[ed] to specify where the” *when...* clause of [1h] is found in the *Synergy Manual* or *Stomper-Rosam*, Grounds 1 and 3 “fail[] to meet the requirements” of 37 C.F.R. § 42.104(b)(4). *Webinar.Net, Inc. v. ON24, Inc.*, IPR2022-00826, Paper 10 at 16–17 (PTAB Sept. 23, 2022) (stating the Board is “not tasked with divining where the prior art might possibly disclose the claim element at issue”). Nor has Petitioner “sufficiently shown that [the references] teach[] or suggest[]” the claim limitation because its mappings “suffer[] from a lack of specificity.” *TCL Comm. Tech. Holdings LTD. v. Dataquill Limited*, IPR2020-00746, Paper 21 at 24–25 (PTAB Sept. 18, 2020). Accordingly, because Petitioner fails to specify how the *Synergy Manual* or *Stomper-Rosam* “teaches *all* elements” in [1h]/[6h]/[11h], the Board should deny institution of Grounds 1 and 3. *TCL Comm.*, IPR2020-00746, Paper 21 at 30–31.

B. Grounds 2 and 3: The Petition Fails to Identify [1k]’s *Coupled to the First Thigh Support and the Second Thigh Support* in Grounds 2 and 3

Petitioner’s mapping of limitation [1k] in Ground 2 argues *Staten*’s tether 47 “provides thigh support adjustment by coupling to the pockets and/or [slits]⁶ in each

⁶ The Petition recites “tethers” here, but that appears to be in error, as the preceding sentences discuss how *Staten* includes “pockets and/or slits for receiving a tether[.]” *Petition*, 54.

of the defined settings.” *Petition*, 54. However, the *Petition* does not map the pockets or tethers as the claimed *first thigh support* or *second thigh support*. *Petition*, 51–52. So, the *Petition*’s contention that tether 47 is coupled to the pockets or tethers is insufficient to show how tether 47 is coupled to *the first thigh support* and *the second thigh support* as claimed. Indeed, *Petitioner*’s own annotation shows *Staten*’s alleged *thigh support[s]* (purple) **located away from *Staten*’s tether** by a distance (yellow):



Petition, 55. Despite showing the alleged *thigh support adjuster* being separated from both the *first thigh support* and *second thigh support*, the *Petition* provides no explanation as to how *Staten* nonetheless satisfies the *coupled to* requirement of limitation [1h].

Mr. Smith’s opinions differ from the position taken in the *Petition*, arguing the “tether 47 is selectively coupled to the thigh supports” via pockets 66/slits 60. Ex. 1003, 111–12. As a threshold matter, to the extent *Petitioner* seeks to rely on Mr.

Smith’s testimony “as though it were part of the Petition, such incorporation by reference is improper[,]” and the Board should ignore Mr. Smith’s testimony. *Google LLC v. Kwazinga Corp.*, IPR2021-00525, Paper 14 at 19; *Google LLC v. Parus Holdings, Inc.*, IPR2022-00355, Paper 7 at 28 (expert testimony “advanc[ing] argument not included in the Petition...constitut[es] an improper incorporation by reference”). Moreover, Mr. Smith’s assertion that tether 47 is “selectively coupled to the thigh supports” is not supported by any evidence. Ex. 1003, 111–12. So, even if it is considered, it does not cure the Petition’s deficiency. In short, Mr. Smith does not make up for what is unclear and missing within the “Petition” itself. *Vimeo*, IPR2019-00833, Paper 20 at 48.

Petitioner’s alternative obviousness argument with *Lundh* also fails. To begin with, the Petition fails to establish that *Lundh* qualifies as a prior art at all. *See supra* Section IV. Moreover, the Petition does not contend, let alone show, how modifying *Staten* to include *Lundh*’s “adjustable bottom portion” would result in *Staten*’s carrier having a thigh support adjuster that is coupled to the thigh supports. *Petition*, 55–56. Thus, even when modified as proposed by Petitioner, *Staten* would still have the same deficiency as *Staten* alone.

Turning to Ground 3, Petitioner purports the annotated *Stomper-Rosam* figure shows thigh support adjusters but does not contend that either the “bridge reduction feature” or “drawstrings” *couple to the first thigh support and the second thigh*

support. Petition, 87. Indeed, Petitioner implicitly concedes the “bridge reduction feature” and “drawstrings” do not *couple to the first thigh support and the second thigh support* by arguing instead that such coupling is not actually required (despite the plain language of the claims to the contrary). *Id.*

Petitioner’s obviousness argument based on *Stomper-Rosam* in view of *Gray* similarly fails. Petitioner refers to *Gray*’s “pull tab” as the “thigh support adjuster” being combined into *Stomper-Rosam*. *Petition*, 89. But Petitioner fails to specify how *Gray*’s pull tab is *coupled* to any *thigh support[s]*, per [1k]. *Id.* Petitioner contends *Gray*’s drawstrings “adjust the thigh support” and are coupled to thigh supports, not *Gray*’s pull tab. *Petition*, 88–89. Thus, Petitioner fails to specify how *Gray*’s *thigh support adjuster* (i.e., pull tab) *couple[s]* to any thigh supports. *Id.*

Mr. Smith’s testimony, which “differs and is in addition to Petitioner’s argument in the Petition,” should be ignored because it represents an improper incorporation by reference. *Qualcomm*, IPR2022-00587, Paper 14 22 (citing 37 C.F.R. § 42.6(a)(3))). But even if it is considered, Mr. Smith’s opinions allege without evidence or explanation that *Gray*’s drawstrings are the *thigh supports* and contradict Petitioner’s position that the drawstrings *couple to the thigh supports*. *Compare* Ex. 1003, 139 with *Petition*, 89. As such, Mr. Smith’s opinions, even if considered, cannot cure the deficiencies in the Petition. Accordingly, *Stomper-*

Rosam in view of *Gray* fails to render obvious [1k] and does not remedy Petitioner’s deficient *Stomper-Rosam* positions.

Accordingly, Petitioner “fails to specify” where the prior art references in Grounds 2-3 teach, suggest, and/or render obvious [1k]⁷ and fails to clearly specify what the *thigh support adjuster* is in *Staten* for Ground 2. *Webinar.Net*, IPR2022-00826, Paper 10 at 16–17. Because Petitioner fails to meet their burden under 37 C.F.R. § 42.104(b)(4), the Board should deny institution of Grounds 2-3.

C. Ground 3: The Petition Fails to Specifically Map Every Limitation by Relying on the Same Element of *Stomper-Rosam* for [1j]’s *Settings* and [1k]’s *Thigh Support Adjuster*

Petitioner contends the bridge reduction feature 1 and drawstrings 9 of *Stomper-Rosam* “provide[]” the three *setting[s]* of limitation [1j], but then maps the same reduction 1 and drawstrings 9 as the *thigh support adjuster* of [1k]. *Petition*, 85–86. However, the *adjuster* and three *settings* are listed separately, so there is “a presumption that those components are distinct.” *Kyocera Senco Indus. Tools Inc. v. Int’l Trade Comm’n*, 22 F.4th 1369, 1382 (Fed. Cir. 2022). This presumption is

⁷ Claims [6j] and [11m] are identical limitations to [1k]. Ex. 1001, 17:40-41, 18:34-35, 19:45-46. Because Petitioner cites to their [1k] mapping for claims 6 and 11, Patent Owner’s arguments apply to all independent claims. *Petition*, 64, 69, 98, 103.

strong when interpreting the limitations as the same structure would be “nonsensical.” *Barrday, Inc. v. Lincoln Fabrics Inc.*, No. 2022-1903, 2023 WL 7871688 at *4 (Fed. Cir. Nov. 16, 2023) (nonprecedential). That is the case here, where Petitioner’s interpretation results in the bridge reduction feature 1 and drawstrings 9 to *selectively position[]* to themselves.

Thus, because Petitioner relies on the same structures in *Stomper-Rosam* for both the *settings* of [1j] and the *thigh support adjuster* of [1k], Petitioner fails to meet their burden of specifying where each distinct element of the independent claims is found in *Stomper-Rosam*. *Palo Alto Networks, Inc., v. Taaser Licensing LLC*, IPR2023-00705, Paper 9 (PTAB Nov. 21, 2023), 15–18 (denying institution because Petitioner mapped the same prior art structure to two distinct claim elements). Though Petitioner does attempt an obviousness argument in view of *Gray* for [1k], *Gray*’s pull tab also does not satisfy the *thigh support adjuster coupled to a first thigh support and a second thigh support* because the pull tab is not coupled to any *thigh support[s]*. *Dec.* 29-33; *See also*, Section VII.C.1. *Gray*’s pull tab is not coupled to any fabric supporting the child’s legs but is instead coupled to drawstrings. *Dec.* 29-33. Thus, *Stomper-Rosam* in view of *Gray* fails to render obvious [1k] and cannot remedy Petitioner’s deficient *Stomper-Rosam* positions for [1j]-[1k]. Accordingly, Petitioner fails to map all limitations of the independent claims for Ground 3, and the Board should deny institution thereof.

For all the reasons above, all Grounds fail to specify, with the required particularity, where **each** element of the independent claims is taught by the prior art per § 42.104(b)(4). Accordingly, the Board should deny institution.

VI. ALL GROUNDS: PETITIONER FAILS TO IDENTIFY HOW THE PRIOR ART SATISFIES ITS PROPOSED CONSTRUCTIONS FOR THE *AT LEAST ONE THIGH SUPPORT ADJUSTER*

The Petition is fatally flawed for another reason: it does not consistently or clearly apply its two alternative constructions for *at least one thigh support adjuster* to the claims. As a result, the Petition fails to show “[h]ow the **construed claim** is unpatentable.” 37 C.F.R. § 42.104(b)(4) (emphasis added). As discussed, Petitioner contends the *at least one thigh support adjuster* should either be construed as a means-plus-function limitation having a “nearest corresponding structure” of “the **two base width adjusters** disclosed in the specification[,]” or be construed to have its “nearest” P&O meaning of “a component that can be adjusted to change the length, width, height, location or position of the thigh support.” *Petition*, 10–11. While not in the Petition, Petitioner has further argued its P&O construction requires “a single, central mechanism,” in conflict with its “nearest” corresponding structure of two base width adjusters. Paper 12, 3. Often, however, the Petition does not state which construction is being applied. And even when it does, the Petition does not explain how the prior art meets that construction. These deficiencies are fatal to the Petition, and the Board should deny institution.

A. Ground 1: The Petition Does Not Show the *Synergy Manual* Satisfies the Proposed Constructions for the *at Least One Thigh Support Adjuster*

Petitioner argues that limitation [1k] is disclosed by the *Synergy Manual* “under either a 112(f) or P&O construction.” *Petition*, 27. However, the Petition includes only one sentence to support its argument:

Namely, the sliding buckle discussed *supra* at limitation [1j] is a thigh support adjuster extending between the thigh supports, and having first, second, and third settings to adjust a depth and width of the seat that provides thigh support and accommodate a child at different sizes....

Id. Missing from this sentence is any mention of Petitioner’s “nearest” corresponding structure (e.g., two base width adjusters) or Petitioner’s “nearest” P&O construction (e.g., a single, central mechanism that can be adjusted to change the length, width, height, location or position of the thigh support). *Id.* Also missing is any explanation of how the sliding buckle satisfies limitation [1k] under either of Petitioner’s constructions. *Id.* These deficiencies are fatal to Ground 1. *See Kingston Tech. Co. v. SPEXTechs., Inc.*, IPR2017-00824, Paper 8 at 18–19 (PTAB Aug. 17, 2017) (“An unpatentability determination with respect to claims subject to construction under § 112 ¶ 6 requires structural analysis demonstrating that the corresponding structure in the challenged patent . . . is present in the prior art. . . . Petitioner’s failure to perform any structural comparison . . . is fatal to Petitioner’s contentions.”); *Apple Inc. v. Red.com*, IPR2019-01065, Paper 17 at 13 (PTAB Nov.

8, 2019) (finding that the petitioner had not shown a reasonable likelihood that it would prevail where the petitioner provided only a conclusory statement that the prior art disclosed the claim limitation and the petitioner did not discuss its proposed construction).

The Petition's citation to Mr. Smith's testimony cannot cure these fatal deficiencies. First, Mr. Smith does not even purport to apply the Petitioner's means-plus-function construction, only the P&O construction. Ex. 1003, 87. Second, Mr. Smith's opinions applying the P&O construction are even more cursory than the Petition's, stating only that the "buckle" is "connected to the front piece, such as to the thigh support areas[.]" *Id.* But Mr. Smith ignores entirely whether and how that buckle can be adjusted to change the length, width, height, location or position of the thigh support as the Petitioner's P&O construction requires. *Id.* Mr. Smith's cursory opinion cannot save Ground 1. *Apple Inc.*, IPR2019-01065, Paper 17 at 14 (finding that expert's opinions failed to support the Petitioner's assertions, in part because the expert failed to explain how the prior art's teachings met the requirements of the Petitioner's claim construction). For at least these reasons, the Petitioner fails to demonstrate a reasonable likelihood it would prevail in showing that any of claims [1k]/[6j][11m] are anticipated by the *Synergy Manual*, and the Board should deny institution of Ground 1.

B. Ground 2: The Petition Does Not Show *Staten* or *Staten* in View of *Lundh* Satisfy the Proposed Constructions for the *at Least One Thigh Support Adjuster*

Turning to Ground 2, Petitioner only contends that *Staten* discloses limitation [1k] under its proposed 112(f) construction or, alternatively, that it would have been obvious to modify *Staten*'s carrier to satisfy [1k] in view of *Lundh*. *Petition*, 53–54. But as in Ground 1, the Petition is again devoid of any discussion of how *Staten* or *Lundh* satisfy the corresponding structure of two base width adjusters. *Petition*, 54–56. Regarding the former, the Petition contends that based on the location and relationship between *Staten*'s pockets, slits, and tether, “the tether provides thigh support adjustment by coupling to the pockets.” *Petition*, 54. As to the latter, the Petition contends *Lundh*'s bottom portion 109 satisfies the limitation because it “is adjustable between multiple positions to accommodate a child at different sizes.” *Id.* But missing from the Petition is the comparison to the Petitioner's “nearest” corresponding structure required to show a reasonable likelihood that it will prevail under its means-plus-function construction. *Kingston Tech. Co.*, IPR2017-00824, Paper 8 at 19. Moreover, Mr. Smith did not even *analyze* limitation [1k] under the Petitioner's means-plus-function limitation, so his analysis cannot save the Petition. Ex. 1003, 112. For at least these reasons, the Petitioner fails to demonstrate a reasonable likelihood it would prevail in showing that any of claims [1k]/[6j][11m]

are anticipated and/or rendered obvious by *Staten* alone or *Staten* in view of *Lundh*, and the Board should deny institution of Ground 2.

C. Ground 3: The Petition Does Not Show *Stomper-Rosam* or *Stomper-Rosam* in View of *Lundh* And/Or *Gray* Satisfies the Proposed Constructions for the *at Least One Thigh Support Adjuster*

Finally, Petitioner contends limitation [1k] is disclosed by *Stomper-Rosam* under either its 112(f) or P&O construction. *Petition*, 86. The Petition’s analysis under its P&O construction discussion is woefully inadequate. The entirety of the Petition’s discussion is a single sentence: “These features likewise meet this limitation under a P&O construction.” *Petition*, 88. Such conclusory statements are not sufficient to show a reasonable likelihood of prevailing. *See Apple Inc.*, IPR2019-01065, Paper 17 at 13 (denying institution where the petitioner provided only a conclusory statement that the prior art disclosed the claim limitation and failed to discuss its proposed construction). Further undermining the Petition, Mr. Smith actually ***confirms*** that *Stomper-Rosam* does not satisfy the ***single***, central mechanism required by Petitioner’s P&O construction because *Stomper-Rosam* “does not disclose ***a*** thigh support adjuster coupled to both the first thigh support and the second thigh support.” Ex. 1003, 139.

Turning to the Petition’s means-plus-function analysis, Petitioner argues that “[t]he bridge reduction feature and/or the drawstrings are thigh support adjusters, under either a P&O or a 112(f) interpretation.” *Petition*, 87. But again, missing from

the Petition is the comparison to the Petitioner’s “nearest” corresponding structure required to show a reasonable likelihood that it will prevail under its means-plus-function construction. *Kingston Tech. Co.*, IPR2017-00824, Paper 8 at 19.

As a fallback position, the Petition also contends that “the *pairs* of adjusters in *Stomper-Rosam* are equivalent disclosure to the *pair* of base width adjusters” of the ’055 Patent because, allegedly, neither are “coupled to the first thigh support *and* the second thigh support[.]” *Petition*, 87. However, this contention does not show how the pairs of adjusters in *Stomper-Rosam* “perform[] the claimed function in substantially the same way to achieve substantially the same result as the corresponding structure described in the specification[.]” so it is insufficient to establish equivalency. *Impinj, Inc. v. NXP, USA, INC.*, IPR2020-01629, Paper 13 at 14 (PTAB Apr. 6, 2021) (quoting *Odetics, Inc. v. Storage Tech. Corp.*, 185 F.3d 1259, 1267 (Fed. Cir. 1999)); see *Millerknoll, Inc. v. Aaron Dejule*, IPR2023-01427, Paper 7 at 26 (PTAB Mar. 22, 2024) (explaining that a proper equivalency analysis “require[s] an analysis of the potential equivalence between the overall structures in [the prior art] and the corresponding structure in the [challenged] patent[.]”).

Mr. Smith’s opinions, again, cannot cure the Petition’s deficiencies. Ex. 1003, 139. Like the Petition, Mr. Smith does not provide the comparison between the alleged structure in *Stomper-Rosam* and its “nearest” corresponding structure. *Id.* Nor does he provide the required analysis needed to support a finding of structural

equivalence. *Id.* Thus, neither the Petition alone nor in combination with Mr. Smith’s supporting testimony is sufficient for the Petitioner to meet its burden of establishing a reasonable likelihood of prevailing. *See Feit Elec. Co., Inc. v. Philips Lighting N. Am. Corp.*, IPR2018-00790, Paper 9 at 15 (Board finding Petitioner failing to meet their burden under 35 U.S.C. § 312(a)(3) when Petitioner failed to “explain how” the identified prior art components meet “the structures Petitioner identifies”); *Becton, Dickinson and Co. v. Baxter Int’l Inc.*, IPR2018-01741, Paper 8 at 16 (PTAB Mar. 18, 2019) (“Patent Owner should not be required to speculate the basis for Petitioner’s contentions that the relied-upon structures are the same as or equivalent to the corresponding structure in the [asserted] patent.”); IPR2020-01629, Paper 13 at 14–16 (Denying institution because the “Petitioner does not provide sufficient evidence and argument to support structural equivalence” and denying institution).

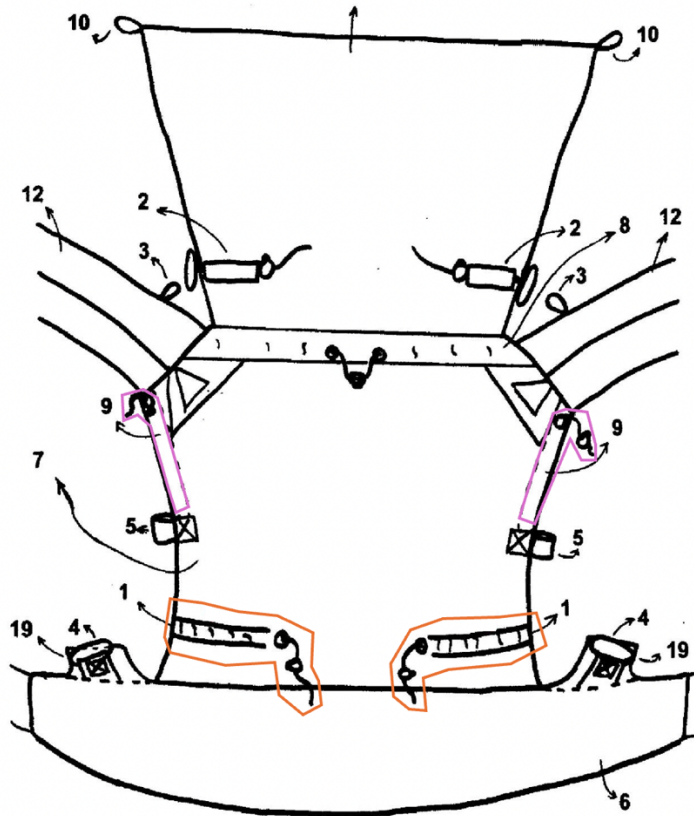
Petitioner’s obviousness arguments with *Gray* and *Lundh* suffer the same fatal flaws as its anticipation argument. *Petition*, 87–90. Both Petitioner and Mr. Smith fail to apply, let alone compare, their “nearest” corresponding structure or P&O construction to *Gray*’s pull tab or to any structure in *Lundh*. *Petition*, 87–90; Ex. 1003, 139–40. Thus, Petitioner fails to establish a reasonable likelihood that the Petitioner will prevail in proving the unpatentability of the Challenged Claims as obvious.

VII. GROUND 3: PETITIONER FAILS TO EXPLAIN HOW *STOMPER-ROSAM* TEACHES, SUGGESTS, OR RENDERS OBVIOUS THREE SETTINGS/POSITIONS *DEFINED BY THE ADJUSTABLE CHILD CARRIER*

Patent Owner proposes that limitation [1j]/[6k]/[11l]’s ...*defined by the adjustable child carrier* language be construed as having its ordinary meaning, which encompasses each setting/position having a location fixed or marked on the adjustable child carrier. *See* Section II. Under this construction, *Stomper-Rosam* fails to teach, suggest, or render obvious [1j]/[6k]/[11l]. But even without an express construction, *Stomper-Rosam* still fails to teach, suggest, or render obvious [1j]/[6k]/[11l] because *Stomper-Rosam* does not include three settings/positions *defined by the adjustable child carrier*.

Stomper-Rosam discloses a “carrying device” having a “continuously adjustable bridge and back reduction (1)” and a “drawstring system (9) in the upper area” of the carrier’s back panel 7. Ex. 1015, (57). Bridge reduction 1 consists of two drawstrings on the lower left and right of back panel 7 that, “when tightened, reduce the bridge width” and shorten the back panel height. Ex. 1015, [0017], [0028]-[0029] (describing reduction 1 “allows for stepless adjustment of the seat bridge”), [0030]. Similarly, drawstrings 9 are on the upper left and right of back panel 7. Ex. 1015, [0019], [0031]. Both reduction 1 and drawstrings 9 may be “other fastening systems, such as straps with ladder locks, hook-and-loop fasteners, or

snaps could also be used.” Ex. 1015, [0017], [0019]. FIG. 1 below illustrates both reduction 1 and drawstrings 9:



Ex. 1015, FIG. 1 (annotating drawstrings 9 (pink) and reduction 1 (orange)).

As a threshold matter, *Stomper-Rosam* does not teach or suggest any *setting[s]/position[s]* that have a fixed or marked location in relation to reduction 1 or drawstrings 9, let alone three *setting[s]/position[s]* each having a fixed or marked location on the carrier. *Dec.* 34-36. Instead, *Stomper-Rosam*’s disclosure of reduction 1 being “stepless” indicates to a POSITA that no steps (e.g., positions) are delineated on the carrier. Ex. 1015, [0029]; *Dec.* 37. Moreover, while Mr. Smith claims *Stomper-Rosam*’s three settings are “a fully loose setting, a fully tightened

setting, and at least one setting between fully loose and fully tightened[,]” Mr. Smith cites to nothing in *Stomper-Rosam* to support his claim. Ex. 1003, 137. Indeed, the portion of *Stomper-Rosam* Mr. Smith cites at best suggests one position—a further adjustment for smaller children. *Id.* (quoting Ex. 1015, [0030]). But Mr. Smith has no evidence that *Stomper-Rosam* discloses the three positions he claims, or that such settings have a fixed or marked location on the carrier. Ex. 1003, 137 (using the same vague annotated Figure). Moreover, none of the settings Mr. Smith created are fixed or marked on the carrier. *Dec.* 38. Rather, Mr. Smith’s settings are adjustments arbitrarily chosen by a user. *Id.* Thus, even if Mr. Smith’s three settings had evidentiary support, *Stomper-Rosam* would still not teach that the carrier contains three settings/positions each being at fixed or marked locations on the carrier.

The alternative adjustments (e.g., hook-and-loop, snaps) *Stomper-Rosam* teaches may be used also do not satisfy the claimed *setting[s]/position[s]*. Ex. 1015, [0017], [0019]. Petitioner attempts to leverage *Stomper-Rosam*’s teachings that other kinds of fastening systems can be used. *Petition*, 86. But the mere disclosure of other fasteners that may be used still does not teach, suggest, or render obvious **three settings/positions that are *defined by the carrier***. *Dec.* 39-40. At best, the alternative adjustments indicate to a POSITA that the adjustment mechanism is interchangeable. *Id.*

Compounding the Petition’s deficiencies, Petitioner fails to provide the required motivation for why a POSITA would have been motivated to modify *Stomper-Rosam* carrier to utilize the alternative fastening adjustment systems. *See Amazon.com Inc., v. Almondnet, Inc.*, IPR2022-01455, Paper 12 at 17 (PTAB Apr. 6, 2023), (“Regardless of whether an obviousness argument ‘is based on combining disclosures from multiple references, combining multiple embodiments from a single reference, or selecting from large lists of elements in a single reference,’ Petitioner must direct us to ‘a motivation to make the combination[.]’”) (citing *In re Stephan*, 868 F.3d 1342, 1346 n.1 (Fed. Cir. 2017)). But even if Petitioner had provided a motivation for using *Stomper-Rosam*’s alternative fastening systems instead of drawstrings, the Petition still does not explain why a POSITA would have been motivated to both select one of the alternatives and also to *define* three settings/positions on the carrier, as these limitations require. Thus, a POSITA would not have understood *Stomper-Rosam* to teach, suggest, or render obvious [1j]/[6k]/[11l] when construed as proposed by Patent Owner. *Dec.* 40.

Stomper-Rosam also fails to teach or suggest **three** setting[s]/position[s] *defined by* the carrier even when not construed as Patent Owner proposes because *Stomper-Rosam* does not disclose that its carrier defines any settings or positions. *See, generally*, Ex.1015; *Dec.* 41. Rather, *Stomper-Rosam*’s stepless adjustments for adjusting the carrier to the size of the child indicates the child’s size dictates the

drawstring orientations, not the carrier itself. *Stomper-Rosam*, [0029], Abstract; *Dec.* 41. Limitations [1j]/[6j]/[111] “expressly require not only” *a first setting/position, a second setting/position, and a third setting/position*, but that those settings be *defined by the adjustable child carrier*. Ex. 1001, 17:38-39.. Thus, the claim language “strongly suggests that the [child carrier] defines the [positions], and not merely that the [child carrier]” could conceivably be arranged in three different positions. *Autostore Sys. Inc. v. Ocado Innovation LTD.*, IPR2021-00798, Paper 14 at 9 (PTAB Oct. 8, 2021). By Petitioner’s own admission, *Stomper-Rosam*’s carrier does not set forth any defined positions but “provide[s] continuous adjustment.” *Petition*, 86. Accordingly, because *Stomper-Rosam* fails to disclose limitations [1j]/[6j]/[111], Petitioner cannot establish a reasonable likelihood that it will prevail in showing any of the Challenged Claims unpatentable under Ground 3.

VIII. CONCLUSION

For the reasons provided herein, Patent Owner submits that Petitioner has not established a reasonable likelihood that at least one challenged claim is unpatentable, and therefore, institution should be denied.

Respectfully submitted,

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APPENDIX OF EXHIBITS

Exhibit 2001	<i>The Merriam-Webster Dictionary</i> . Tenth Edition. 1998.
Exhibit 2002	David Grünbaum's LinkedIn Profile
Exhibit 2003	BABY BJÖRN AB's claim construction in the concurrent litigation, <i>The Ergo Baby Carrier, Inc. v. BabyBjorn AB</i> , Case No. 6:24-cv-00083, No. 41 (W.D.Tex. Feb. 18, 2025)
Exhibit 2004	<i>Lynk Labs, Inc. v. Samsung Elecs. Co., Ltd.</i> , 125 F.4th 1127 (Fed. Cir. 2025), General Docket
Exhibit 2005	Declaration of Mr. Dirk Duffner
Exhibit 2006	U.S. Patent No. 9,185,993 to Telford et al. ("Telford")
Exhibit 2007	U.S. Patent No. 8,561,861 to Muehlen ("Muehlen")
Exhibit 2008	U.S. Patent No. 9,295,341 to Sonnenberg ("Sonnenberg")
Exhibit 2009	Ergobaby 360 – Front and Back Facing Carriers, Web Archive, August 3, 2018, http://web.archive.org/web/20140803210530/http://store.ergobaby.com/baby-carrier/four-position-360?jumpTo=instructions#carrierInfo

CERTIFICATION OF WORD COUNT

The undersigned certifies pursuant to 37 C.F.R. § 42.24 that the foregoing Patent Owner's Preliminary Response to Petition for *Inter Partes* Review, excluding any table of contents, mandatory notices under 37 C.F.R. § 42.8, certificates of service or word count, or appendix of exhibits, contains 9,097 words according to the word-processing program used to prepare this document (Microsoft Word).

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Patent Owner's Preliminary Response To Petition For Inter Partes Review and Exhibits* were served on February 21, 2025, by email on the following counsel of record for Petitioner:

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