

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

THE ERGOBABY BABY CARRIER, INC,

Plaintiff,

v.

BABYBJÖRN AB,

Defendant.

Case No. 6:24-cv-0083-DAE

DEFENDANT BABYBJÖRN AB'S OPENING CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION

The Patent Act requires a patentee to conclude their patent application with “one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor or a joint inventor regards as the invention.” 35 U.S.C. §112(b) (emphasis added). In this case, the inventor of the patent-in-suit, U.S. Patent No. 11,786,055 (the “’055 Patent”) filed the original application in 2015. The specification and figures of that application disclosed a baby carrier that used a particular pair of “base width adjusters” and a particular pair of “thigh width adjusters” to perform specific adjustment functions, and the claims in the resulting patents that have been assigned to Plaintiff The Ergo Baby Carrier, Inc. (“Ergobaby”) recite those two structures so as to clearly claim what was actually invented.

Eight years later, however, Ergobaby filed a continuation application, using the same patent specification, but this time the claims recited a brand new term not disclosed in the original application, nor ever used by the inventor in any patent in this patent family, to define the invention—“thigh support adjuster.” Because there is no accepted structure of that adjuster, the inventor used a statutory claim convention that provides that the structure of the term to be will be the structural disclosures in the patent’s specification that correspond to the claimed function. *See* 35 U.S.C. § 112(f). Under well-accepted claim construction law, the claimed “thigh support adjuster” is not *anything* that adjusts a thigh support – effectively Plaintiff’s plain and ordinary meaning construction – but is limited to the structure described as performing the claimed function of the “thigh support adjuster” in the specification.

Here, in the ‘055 Patent, the inventor claimed a device that adjusts the length of the carrier to accommodate the growth of the child. When a patentee employs a broad functional claiming convention to cover all structures for performing a function, that claim term is limited to only those structures actually disclosed as performing that function. Because an “adjuster” is not a specific,

known device or structure, under Section 112(f), the meaning of the term must be limited to those structures identified in the specification as corresponding to the function set forth in the claims. Therefore, the meaning of “thigh support adjuster” requires the identification of the specific structures in the patent specification that are disclosed as performing the functions ascribed to the “thigh support adjuster” in the claims.

Because the specification of the '055 Patent nowhere describes the structure of the “thigh support adjuster” claim element, the Court should find that every claim with such language is indefinite. Alternatively, the only structure that could correspond to the “thigh support adjuster” would be the “base width adjuster” from the patent specification, and the term should be limited to the structures disclosed as the base width adjuster, i.e. a pair of flaps or tabs coupled to the thigh support areas that rotate or pivot to selectively attach to three locations on the waist belt using a fastening mechanism such as hook and loop, buttons, snaps, zippers, and the like.

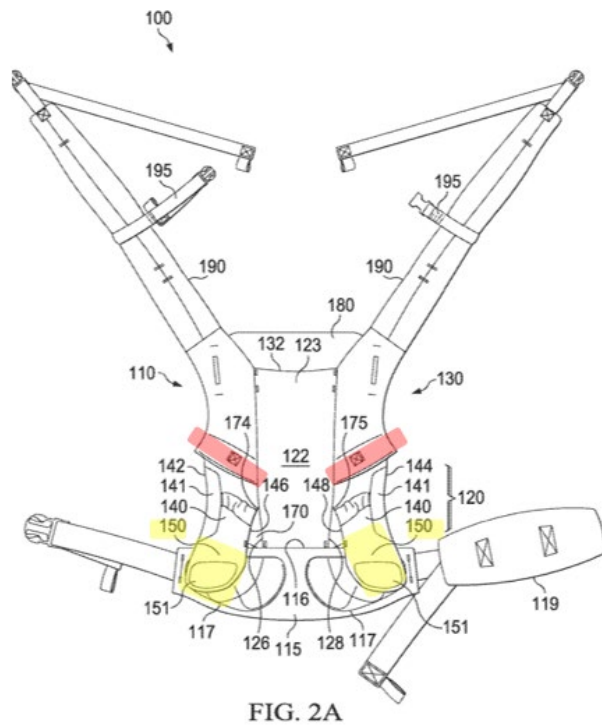
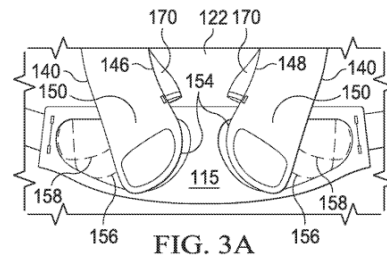
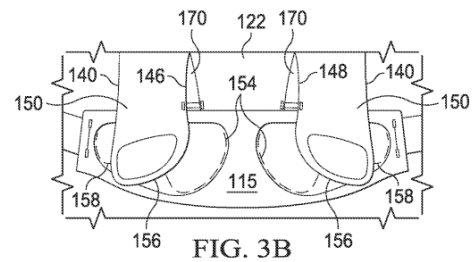
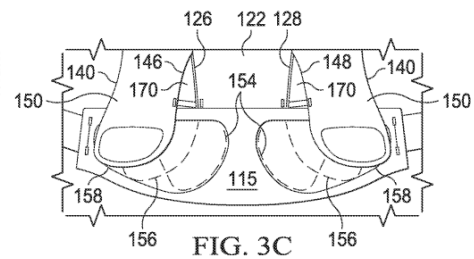
II. OVERVIEW OF THE '055 PATENT

'055 PATENT DISCLOSURE

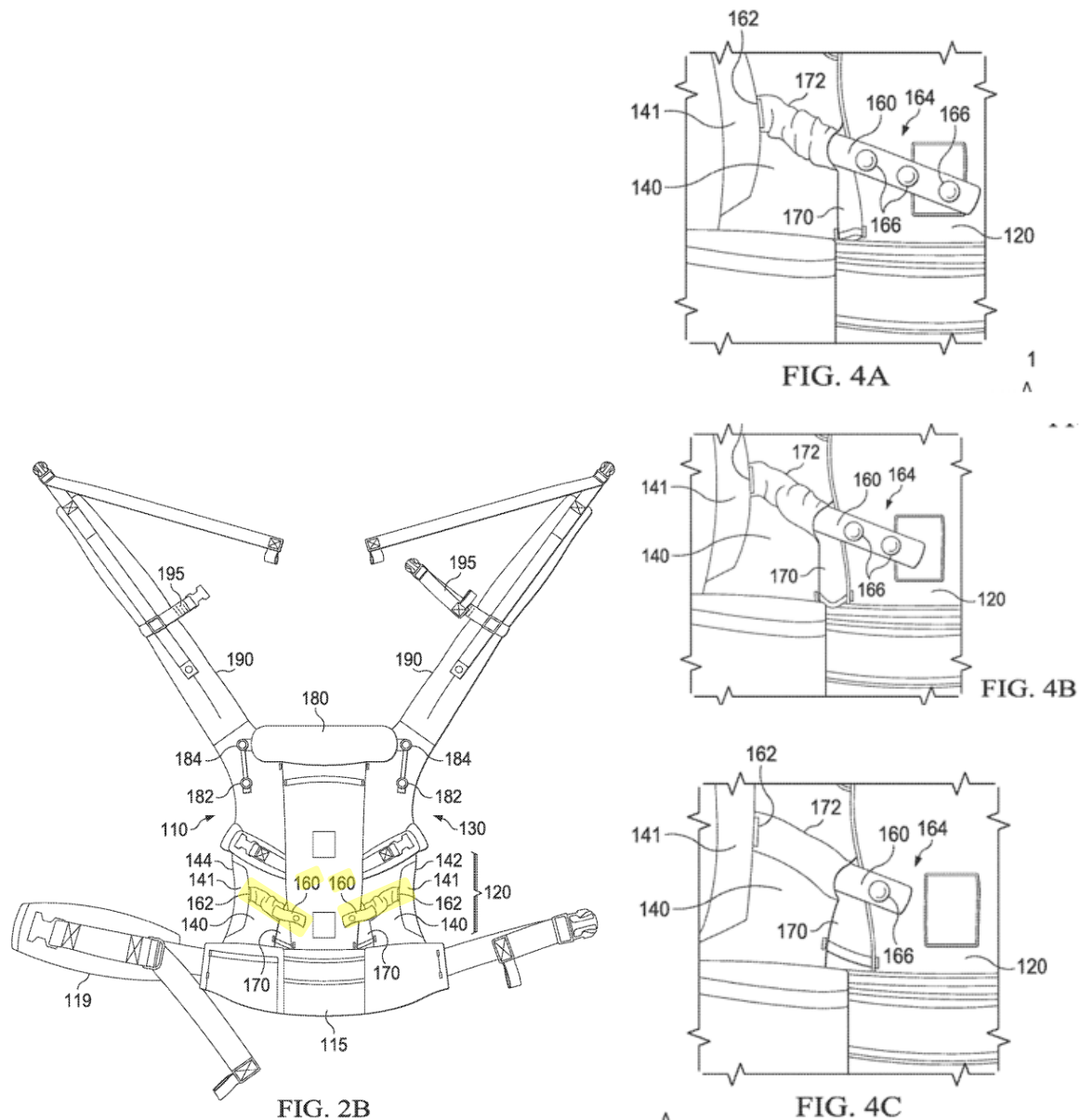
The '055 Patent discloses an adjustable child carrier that allows a child to be carried in a manner that supports the child and maintains the child's pelvis and thighs in a preferred ergonomic position through a range of ages. Ex. 1 ('055 Patent), 5:30-33. The child carrier includes a bucket seat and “adjustment areas” to adjust a depth of the bucket seat and a length of the child carrier. *Id.* 5:52-6:4. To accomplish such adjustment, the patent discloses adjustment points to adjust the shape of the bucket seat area, including a pair of “base width adjusters” which are shown as elements 150 in Figure 2A (annotated in yellow below), showing an interior view of the child carrier (*i.e.*, the side facing the child and parent). Figures 3A-3C show how the user can pivot or

rotate¹ a lower end of the “base width adjusters” about points where the upper end of each attaches to the body of the carrier to adjust where the lower ends attach to the hip belt through use of the hook and loop (e.g. Velcro®) portions. This adjusts the orientation of the “base width adjusters.” By rotating or pivoting the base width adjusters to another connection point on the hip belt (*see* elements 154, 156, and 158 in Figs. 3A-3C, showing inward-most, middle, and outer-most connection locations, respectively), one can adjust the width of the carrier and, in turn, the amount of support afforded the thighs of the baby carried therein. *See, e.g., id.* 10:19-11:20. This adjustment would also provide more depth and length to the bucket seat and the body, respectively. Ex. 1 9:31-45.

¹ The rotation or pivot point for the base width adjusters may be seen at the proximate end of the flaps/tabs, annotated in rose below.



The '055 Patent also discloses “thigh width adjusters” (i.e., elements 160 in Figures 2B and 4A-4C below, exterior views of the baby carrier) that adjust the width of the carrier body at a location above the waist belt, as opposed to at the waistbelt like the “base width adjusters” discussed above. The “thigh width adjusters” are a pair of straps with snap sockets 166 that can mate with snap studs positioned on the body of the baby carrier. Depending on which of the snap sockets is mated with the snap stud, the width of the carrier body can be varied to thereby adjust the location and amount of support to the baby. *Id.* 11:21-12:16.



Through use of the “base width adjusters” and the “thigh width adjusters,” the ’055 Patent teaches that the child carrier can be adjusted to an ergonomic “spread-squat-position” through a range of sizes. *Id.* 6:65-7:6; 12:45-60.

Claim 1 is representative of other asserted claims for purposes of this brief. The claim term proposed for the Court’s construction is shown in bold and italics.

1. An adjustable child carrier for supporting a child by a user, the adjustable

child carrier comprising:

a body configured to support the child,

wherein the body forms a bucket seat configured to support legs of the child;

a neck support comprising a first neck support attachment and a second neck support attachment;

a first shoulder strap coupled to the body and configured to extend over a first shoulder of the user;

a second shoulder strap coupled to the body and configured to extend over a second shoulder of the user;

a first attachment disposed on the first shoulder strap and configured to receive the first neck support attachment;

a second attachment disposed on the second shoulder strap and configured to receive the second neck support attachment,

wherein the neck support 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;

the body forming a first thigh support and a second thigh support; a first setting, a second setting, and a third setting defined by the adjustable child carrier; and

at least one thigh support adjuster coupled to the first thigh support and the second thigh support,

wherein the at least one thigh support adjuster is configured to be selectively positioned to one of the first setting, the second setting, or the third setting to thereby adjust a length of the body to accommodate various sizes of the child as the child ages,

wherein the length is defined from a bottom of the bucket seat to a top of the body.

Asserted dependent claims further limit the scope of the thigh support adjuster claim elements. For example, claims 2, 7, and 14 describe that positioning the thigh support adjusters in

the three positions will adjust the length of the body of the carrier. Claims 3, 8, and 12 describe how the thigh support adjusters will enable adjustment of the depth of the carrier seat. Claims 4, 9, and 13 describe that the three thigh support adjuster positions will be vertically offset from one another. Claims 25-27 recite that the three thigh support adjuster positions will be discrete from one another. Claims 28-30 recite that the three thigh support adjuster positions will be visible to the user of the carrier.

A. PROSECUTION HISTORY FOR THE '055 PATENT

The provisional patent application to which the '055 Patent claims priority (App. No. 62/248,745, hereafter “the '745 provisional”) was filed on Oct. 30, 2015. Ex. 2 (D. Smith Declaration) at Attachment 2. The continuation application that resulted in the '055 Patent (no. 18/136,979, hereafter “the '979 application”) was filed eight years later on April 20, 2023.² *Id.* at Attachment 3. The '055 Patent is assigned to The Ergobaby Carrier, Inc., (“Ergobaby”).

The '745 provisional describes the invention using two types of adjusters: “base width adjusters” and “thigh width adjusters.” Ex. 2 ¶¶30-32 (emphases added). The '745 provisional does not identify “at least one thigh support adjuster coupled to the first thigh support and the second thigh support” or near equivalents. It does not reference the term “thigh support adjuster,” at all.

The original claim filed with the '979 application that matured into the '055 Patent recited “one or more thigh width adjusters ... attached to the front panel” of the carrier. Ex. 2 ¶31 (emphasis added). This made sense because the Patent specification discloses “thigh width adjusters” as part of the invention (e.g. Fig 4A of the '055 Patent, above). However, on May 2,

² To provide context for the overall dispute, the current iterations of the two products accused of infringement were first sold after the priority date of the '055 Patent, but well before April 20, 2023.

2023, and before the patent examiner had even examined the proposed claims, the inventor made a preliminary amendment cancelling the original claim and adding claims that recited, for the first time in this patent family, “at least one thigh support adjuster coupled to the first thigh support and the second thigh support.” Ex. 2 ¶¶31-32. The examiner issued a notice of allowance concerning claims with this new term on August 31, 2023, and the patent issued on October 17, 2023. *See id.* There is no specific discussion of the meaning of “thigh support adjuster” in the patent specification or in the prosecution history.

III. LEGAL STANDARDS FOR CLAIM CONSTRUCTION

“Claim construction, or interpretation, is a question of law.” *Innova/Pure Water v. Safari Water Filtration*, 381 F.3d 1111, 1115 (Fed. Cir. 2004). “It is a bedrock principle of patent law that the claims of a patent define the invention to which the patentee is entitled the right to exclude.” *Id.* When construing claims, the court considers “the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (*en banc*) (quoting *Innova*, 381 F.3d at 1116). “[I]ndefiniteness is a question of law and in effect part of claim construction.” *ePlus, Inc. v. Lawson Software, Inc.*, 700 F.3d 509, 517 (Fed. Cir. 2012). A court, therefore, may find a claim indefinite during claim construction. *See, e.g., Jawbone Innovations, LLC v. Meta Platforms, Inc. d/b/a Meta*, No. 6:23-CV-00158-ADA, slip op. at 24 &34 (W.D. Tex. Nov. 24, 2024).

Section 112(f) allows a patentee to express a claim limitation by reciting a function to be performed, rather than reciting structure for performing that function, but the scope of coverage is restricted to only the structure, materials, or acts described in the specification as corresponding to the claimed function and equivalents thereof. *Williamson v. Citrix Online, LLC*, 792 F.3d 1339,

1347 (Fed. Cir. 2015). In determining whether to construe a claim limitation as a means-plus-function limitation, “[t]he standard is whether the words of the claim are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure.” *Williamson*, 792 F.3d at 1349. Where a claim limitation does not use the term “means,” it may nonetheless invoke Section 112(f) where the claim term fails to recite sufficiently definite structure, or where the claim recites function without reciting sufficient structure for performing that function. *Id.*

“Once a court establishes that a means-plus-function limitation is at issue, it must identify and construe that limitation, thereby determining what the claimed function is, and what structures disclosed in the written description correspond to the ‘means’ for performing that function.” *Lockheed Martin Corp. v. Space Systems/Loral, Inc.*, 249 F.3d 1314, 1324 (Fed. Cir. 2001). Where a means-plus-function limitation is used, the claimed function and its supporting structure in the specification must be presented, and an applicant fails to particularly point out and distinctly claim the invention where the applicant fails to set forth an adequate supporting disclosure. *S3 Inc. v. nVidia Corp.*, 259 F.3d 1364, 1367 (Fed. Cir. 2001); *see also Atmel Corp. v. Information Storage Devices, Inc.*, 198 F.3d 1374, 1382 (Fed. Cir. 1999). A means-plus-function limitation is indefinite when the specification fails to disclose adequate corresponding structure to perform the claimed function. *Traxcell Techs., LLC v. Sprint Communs. Co. LP*, 15 F.4th 1121, 1134 (Fed. Cir. 2021) (citing *Williamson*, 792 F.3d at 1351-52).

IV. CONSTRUING THE TERM “AT LEAST ONE THIGH SUPPORT ADJUSTER COUPLED TO THE FIRST THIGH SUPPORT AND THE SECOND THIGH SUPPORT”

A. THE PARTIES’ RESPECTIVE CONSTRUCTIONS

<u>Ergobaby</u>	<u>BabyBjörn</u>
Plain and ordinary meaning	<p data-bbox="574 327 703 359">Indefinite.</p> <p data-bbox="574 399 1382 468">Alternatively, because this is a means-plus-function term under 35 U.S.C. § 112(f) with no corresponding disclosure:</p> <p data-bbox="574 504 1370 573">Function: adjusting the length of the body to accommodate three different settings or positions as the child ages</p> <p data-bbox="574 609 1398 678">Structure: No corresponding structure in the specification and thus indefinite.</p> <p data-bbox="667 714 1414 949">Alternatively: if there is corresponding structure, that structure is the base width adjusters 150 as shown in and described with reference to Figures 3A, 3B, and 3C, which comprise, i.e. a pair of flaps or tabs coupled to the thigh support areas that rotate or pivot to selectively attach to three locations on the waist belt using a fastening mechanism such as hook and loop, buttons, snaps, zippers, and the like.</p>

Ergobaby proposes that the term “thigh support adjuster” be afforded its “plain and ordinary” meaning. But, there is no such meaning and Ergobaby has not identified one. If this Court were to construe the term by just stating “plain and ordinary meaning,” the public would be afforded no reasonable notice as to the scope of this term, and in turn no reliable means to avoid infringement of the term, rendering it invalid. *See, e.g., Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 789 F.3d 1335, 1345 (Fed. Cir. 2015) (holding that the claim term “average molecular weight” was invalid for indefiniteness where there was no “plain meaning to one of skill in the art” and where the patent specification failed to correct for this problem). As set forth below, the “thigh support adjuster” term is a means-plus-function term that needs to be construed in accordance with that claim construction rubric, *i.e.* identifying the function of the “thigh support adjuster” in the patent specification and then construing the term to mean the structure that the inventor identified as corresponding to the function.

1. THE “THIGH SUPPORT ADJUSTER” TERM HAS NO UNDERSTOOD MEANING

The term “thigh support adjuster” appears nowhere in the specification of the ’055 Patent, nor anywhere in any other patent or patent application in the ’055 Patent family. Ex. 2 ¶¶33-36. Expert witness David Smith³ opines that the term “thigh support adjuster” is not common to the field of children’s products to refer to a known type or set of structures. *Id.* ¶¶36, 39. In support of this opinion, Mr. Smith performed a Google search for the exact term “thigh support adjuster” and recorded the first five pages of search results. *Id.* Every single result for this term, save one, is in the field of car seat design,⁴ relating to electrical- or mechanical-actuated support for the driver’s thighs by the driver’s seat. *Id.* The one exception is a summary of Ergobaby’s allegations against BabyBjörn under the ’055 patent itself. *Id.* Mr. Smith searched for the term “adjuster” in available engineering dictionaries and industrial design treatises and similarly came back with no definitions or other guidance about the structure of such a component or mechanism. *Id.* The most common result for “adjuster” in lay dictionaries is from the field of insurance, referring to a specialized employee for valuing loss, and which is clearly different from what is claimed in the ’055 Patent. *Id.* While Ergobaby points to two lay dictionary definitions for “adjuster” in support of its plain and ordinary construction (*see* Dkt. 38 at 7-8), these definitions merely prove the point that this is not a known, structural term in this field.

Collins Dictionary: adjuster – “An adjuster is a **device** that allows you to alter a piece of equipment’s position or setting”

Dictionary.com Online Dictionary: adjuster – “a **person or thing** that adjusts.”

Id. (emphases added). These references use “person,” “thing,” and “device” because

³ Mr. Smith is a Professional Engineer with experience designing products in the children’s products field, and in mechanical consumer products more broadly. *See* Ex. 2, Attachment 1.

⁴ Driver and passenger seats, not children’s safety seats.

“adjuster” lacks any shared, structural meaning to confine the term more narrowly. Therefore, a Person of Ordinary Skill in the Art⁵ (a “POSITA”) reading this claim term would have neither intrinsic nor extrinsic guidance from which to determine those components or structures that qualify as a “thigh support adjuster” from those that do not.⁶ Ex. 2 ¶56 (“The claims offer some guidance about what the “thigh support adjuster” must do—e.g., couple to both thigh supports, adjust seat depth, achieve three different settings/positions—but this context does not provide the POSITA a reasonable idea of what the “thigh support adjuster” is from a physical standpoint.”) In the absence of reasonable certainty about the scope of the claim, the patentee has failed his notice duty to the public, rendering all patent claims with such nebulous claim terms invalid. *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 901 (2014) (“[A] patent is invalid for indefiniteness if its claims, read in light of the specification delineating the patent, and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention.”)

Indeed, in every other patent in this family, and in the initial set of claims proposed to the examiner in the application leading to the issuance of the '055 Patent, the patentee chose to use the terms it coined to describe the invention and which are actually found in the '055 Patent specification and depicted in the figures—“thigh width adjuster” and “base width adjuster.” *Id.* ¶¶35. But, in this patent application, the inventor chose to strike the explained term “thigh width adjuster” from his originally proposed claims and replace it with a new,

⁵ Claim construction is performed from the perspective of a POSITA as of the priority date of the Asserted Patent, bringing with them the knowledge that a POSITA would be understood to possess at that time. *Phillips*, 415 F.3d at 1313.

⁶ Were that meaning so plain and ordinary, one would presume that Ergobaby would provide an *i.e.* or *e.g.* addendum to the proposed construction. Ergobaby has chosen not to do so, perhaps revealing an intent to maintain maximum scope and flexibility for this claim term during the infringement and invalidity stage of the case.

undefined term, “thigh support adjuster.” *Id.* ¶¶30-32. Additionally, per the claims, this new “thigh support adjuster” must be coupled to both thigh supports and be configured to be selectively positioned to one of three settings to accommodate a child as the child ages, whereas the thigh width adjusters are not. *See e.g.* Ex. 1, 17:40-45. Additionally, per the dependent claims, it must be positionable in discrete locations, be positionable in vertically offset positions, have adjustment positions visible to the user, adjust the length of the body, and adjust the depth of the seat. *See, e.g.*, Ex. 1, Cls. 2, 4, 7, 25, 28.

Because the term, “thigh support adjuster” has no plain and ordinary meaning that would meet the requirements set forth above and be understood by a person of ordinary skill in the art, to simply construe the term by its “plain and ordinary meaning” would leave it subject to conflicting reasonable interpretations, and for that reason invalid for indefiniteness. *See, e.g., IQASR LLC v. Wendt Corp.*, 825 F. App’x 900, 902-04 (Fed. Cir. 2020) (affirming district court indefiniteness finding because the disputed claim term, “magnetic fuzz,” lacked an ordinary meaning in the art and the patent specification failed to provide sufficient guidance for the limits of the term).

2. THE “THIGH SUPPORT ADJUSTER” MUST BE CONSTRUED UNDER A MEANS-PLUS-FUNCTION RUBRIC

An inventor may claim an invention in a patent claim “as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof.” 35 U.S.C. § 112(f). If the inventor chooses to do so, the scope of the claim is construed as “the structure, materials, or acts described in the specification as corresponding to the claimed function and equivalents thereof.” *Williamson*, 792 F.3d at 1347; *see also Ozmo Licensing LLC v. Acer Inc.*, No. 6:21-CV-1225-ADA, 2022 U.S. Dist. LEXIS 252769, at *12-22 (W.D. Tex. Sept. 20, 2022) (interpreting means-plus-function limitation to correspond with

disclosed structure). That is, the construction is that structure specifically linked to the function in the intrinsic evidence. *Williamson*, 792 F.3d at 1347.

The absence of the word “means” in a claim creates a rebuttable presumption that Section 112(f) does not apply. *Id.* at 1348. However, “the presumption can be overcome . . . if the challenger demonstrates that the claim term fails to recite sufficiently definite structure or else recites function without reciting sufficient structure for performing that function.” *Id.* at 1349 (internal quotations omitted). That is the case here, and Section 112(f) should therefore apply. Courts may consider both intrinsic and extrinsic evidence to determine whether a claim limitation is “so devoid of structure that the drafter constructively engaged in means-plus-function claiming.” *Inventio AG v. ThyssenKrupp Elevator Americas Corp.*, 649 F.3d 1350, 1357 (Fed. Cir. 2011), *rev’d on other grounds*, *Williamson*, 792 F.3d at 1349.

Although the relevant disputed claim term lacks the term “means,” it is written using a format that the Federal Circuit has repeatedly found consistent with means-plus-function claiming. In *Williamson*, for example, the Federal Circuit addressed the limitation “distributed learning control module for receiving communications . . .”. 792 F.3d at 1350 (emphasis added). The Court found the language “consistent with traditional means-plus-function limitations” despite the absence of the word “means” because it simply “replaces the term ‘means’ with the term ‘module’ and recites three functions performed by the ‘distributed learning control module.’” *Id.* The *Williamson* decision explained that this holding should apply wherever a patentee employs such “black-box” language. “Generic terms such as ‘mechanism,’ ‘element,’ ‘device,’ and other nonce words that reflect nothing more than verbal constructs may be used in a claim in a manner that is tantamount to using the word ‘means’ because they typically do not connote sufficiently definite structure.” *Id.* at 1350; *see also e.g.*

Team Worldwide Corp. v. Intex Recreation Corp., 2020-1975, 2021 WL 4130634, at *5 (Fed. Cir. Sept. 9, 2021) (“[T]he word ‘assembly’ used with functional descriptors is similar to other generic, black-box words that this court has held to be nonce terms similar to ‘means’ and subject to § 112, ¶6.” (quotations omitted)).

The Patent Trial and Appeal Board (“PTAB”) similarly interprets claim limitations of this kind as means-plus-function limitations, even where the claim does not use the term “means.” For example, in *Adlens USA, Inc. v. Superfocus Holdings LLC*, the PTAB construed the limitation “adjustable element” as a means-plus-function term, despite the absence of the term “means,” because the claim limitation did not define a particular structure. No. IPR2015-01821, Final Written Decision, pp. 9-10. While Ergobaby has avoided use of the term “element” in its claims, the difference between an “adjuster” and an “adjustable element” is negligible because both terms merely describe the function of component that allows for adjustment without reciting any particular structure.⁷ This is demonstrated by both the intrinsic and extrinsic evidence.

Starting with the intrinsic evidence, the ’055 Patent nowhere outside of the claims uses

⁷ This case is distinct from other cases construing claim terms with derivative forms of “adjust” because those cases ordinarily use the term together with a known, structural term (*see, e.g., Metalcraft of Mayville, Inc. v. Ariens Co.*, 293 F. Supp. 3d 828, 830-31 (E.D. Wis. 2018) (construing “adjustable baffle”); *Graphics Props. Holdings v. Asus Comput. Int’l, Inc.*, Civil Action No. 12-cv-210-LPS, 2014 U.S. Dist. LEXIS 137776, at *57-58 (D. Del. Sep. 29, 2014) (construing “adjustment circuit”); *Vertical Doors, Inc. v. Bonn*, No. SACV 05-905 JVS (ANx), 2006 U.S. Dist. LEXIS 98253, at *38-39 (C.D. Cal. Oct. 30, 2006) (construing “sag adjuster screw”)) or have patent disclosures teaching about the structures of that term. *See, e.g., Qfix Systems, LLC v. Klarity Medical Products, LLC*, Case 1-23-cv-00077, Dkt. 149 (D. Del. Dec. 12, 2024) (providing plain and ordinary construction of “adjusters” where the specification “provides examples of adjusters” and other claim limitations “tell us something about the type and shape of the adjuster being used here”) (internal quotation marks omitted); *Metalcraft of Mayville, Inc. v. The Toro Co.*, Case No. 16-C-544, Dkt. 132 (E.D. Wis., Jan. 3, 2018) (providing constructions for disputed “adjuster” terms where “[t]he specification describes a preferred embodiment with a “coarse-stiffness adjuster” and a “fine-stiffness adjuster.”).

the term “thigh support adjuster.” In the prosecution file history for the ’055 Patent, the patentee chose to amend claims that recited a “thigh width adjuster” to “thigh support adjuster.” While this inference indicates that the “thigh width adjuster” and the “thigh support adjuster” are distinct in scope, it does not provide a POSITA with any idea about the structural difference between the two.

The term “adjuster” is a “generic, black-box word” with no definite structural connotation. *Williamson*, 792 F.3d at 1350; *see also Adlens USA, Inc. v. Superfocus Holdings LLC*, No. IPR2015-01821, Final Written Decision, pp. 9-10 (construing the limitation “adjustable element” as a means-plus-function term, despite the absence of the term “means”). As referenced in the preceding section, expert witness David Smith opines in support of this conclusion based on his experience in the field and available third-party resources, concluding that a POSITA reading the ’055 Patent would not be provided with a sufficiently definite idea of the structure of such a component or mechanism (the term “adjuster” providing no indication whether it is a single component or an assembly of components forming a mechanism). *See* Ex. 2 ¶¶36-39.

As discussed *supra* at Section IV.1, Mr. Smith opines that “thigh support adjuster” is not a known term in the field, and this is confirmed by available internet, engineering, and lay dictionary resources. *See id.* While Ergobaby points to two lay dictionary definitions for “adjuster;” these definitions are consistent with Mr. Smith’s conclusions because each definition uses the very nonce terms decried in *Williamson* as failing to disclose any structure to a POSITA. Dkt. 38 at 7-8 (Collins Dictionary: “An adjuster is a device that allows you to alter a piece of equipment’s position or setting,” and Dictionary.com: adjuster – “a person or thing that adjusts.” (emphases added). Thus, even relying on Ergobaby’s dictionary evidence,

any device or any thing that adjusts is an “adjuster,” which means that this claim term operates as a term akin to “means” under *Williamson*. Accordingly, the Section 112(f) means-plus-function treatment should apply.

3. IDENTIFYING THE STRUCTURE(S) THAT COULD PERFORM THE CLAIMED FUNCTION

Once the Court concludes that a claim term is subject to Section 112(f), the Court must “determine what structure, if any, disclosed in the specification corresponds to the claimed function.” *Williamson*, 792 F.3d at 1351. In the absence of specification disclosure of structure corresponding to recited functions, the claim is indefinite. *See, e.g., Aristocrat Techs. Austl. PTY Ltd. v. Int’l Game Tech.*, 521 F.3d 1328, 1331 (Fed. Cir. 2008) (“in the absence of structure disclosed in the specification to perform [claimed] functions, the claim limitation would lack specificity, rendering the claim as a whole invalid for indefiniteness under 35 U.S.C. § 112 ...”); *XR Communications, LLC v. Arris Sols., Inc.*, No. 2022-1125, 2023 U.S. App. LEXIS 12187, at *8-*10 (Fed. Cir. 2023) (specification’s failure to disclose adequate corresponding structure for means-plus-function term renders claim indefinite); *see also Med. Instrumentation & Diagnostics Corp. v. Elekta AB*, 344 F.3d 1205, 1211 (Fed. Cir. 2003); *see also O.I. Corp. v. Tekmar Co.*, 115 F.3d 1576, 1583 (Fed. Cir. 1997) (disparaging “attempt[s] to claim in functional terms [inventions] unbounded by any reference to structure in the specification.”); *Joao Control & Monitoring Sys., LLC v. Protect Am., Inc.*, No. 1-14-CV-134-LY, 2015 U.S. Dist. LEXIS 109187, at *18-19 (W.D. Tex. Aug. 18, 2015) (finding that the lack of structure in the specification that corresponds to the claimed function rendered the term indefinite). Here, all the independent claims identify the function of the “at least one thigh support adjuster” is to “to be selectively positioned to one of the first setting, the second setting, or the third setting to thereby adjust a length of the body to accommodate various sizes

of the child as the child ages.”

The claims further provide information to help identify the structure in the specification or figures that correspond to this function. For example, each independent claim describes that the thigh support adjuster must be coupled to both a first and second thigh support. Additionally, the dependent claims variously describe that the thigh support adjusters will have these additional characteristics or functions:

- Adjusts a depth of the bucket seat for the child.⁸
- Positioning at the second setting at least partially obscures the first setting.⁹
- Positioning at the third setting at least partially obscures the second setting.¹⁰
- Each of the first, second and third settings is a discrete location on the child carrier at which the user selectively positions the at least one thigh support adjuster.¹¹
- First, second and third settings/positions are visible to the user for the selective positioning of the at least one thigh support adjuster.¹²

The specification of the '055 patent does not disclose a “thigh support adjuster,” but does disclose different pairs of base width adjusters and thigh width adjusters.

The thigh width adjusters disclosed in the specification (elements 160) cannot be the structure corresponding to the functions and characteristics of the claimed thigh support adjusters. To begin, this was the original term used in the claims that was replaced by amendment with “thigh support adjuster,” thus providing notice to the public that the two terms have distinct meanings. The thigh width adjusters are disclosed only to adjust the width of the bucket seat, not its depth. Ex. 1 at 11:21-35. As a result, they do not “adjust a length

⁸ '055 Patent, Claims 3, 8 and 12.

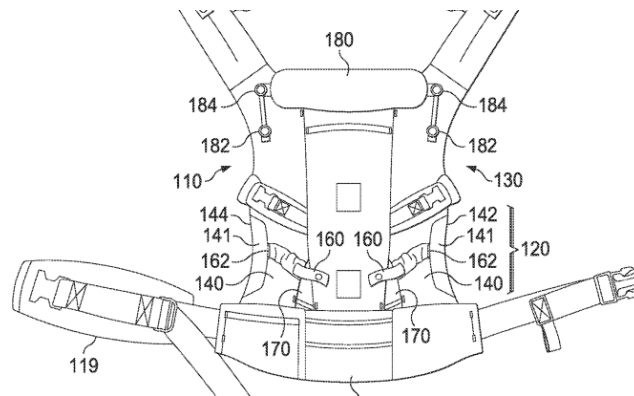
⁹ '055 Patent, Claim 16.

¹⁰ '055 Patent, Claim 18.

¹¹ '055 Patent, Claim 25.

¹² '055 Patent, Claims 28, 29 and 30.

of the body to accommodate various sizes of the child as the child ages.” Neither thigh width adjuster is coupled to **both** thigh supports, as recited in the independent claims. Ex. 2 ¶42. Further, each thigh width adjuster is coupled to a corresponding single thigh support area, and each of the depicted snap sockets attaches to a snap stud also found on the back or seat of the carrier corresponding to the single thigh support area. And, the first, second, and third settings, if they exist in the thigh width adjusters, must be the three snap sockets. But none of those sockets obscures any other when attached to the snap stud, as required by dependent claims 16-18. *See id.* at Figs. 4A-4C. The three snap sockets are in discrete locations on the depicted strap, which would be visible to the user wearing the carrier. Clearly, the thigh width adjusters cannot qualify as structure corresponding to the claimed “thigh width adjuster.”



The other pair of adjusters in the '055 patent are the base width adjusters (elements 150 in the patent figures), which are the flaps or tabs with a top end pivoting or rotating from a single point and extending to a bottom end adjustably connected with the waistbelt, forming the seat area of the carrier. Ex. 2 ¶¶60-61; Ex. 1 8:64-9-16. The patent specification discloses that the base width adjusters are operable to adjust the depth of the seat,¹³ and depicts the base

¹³ *See, e.g.,* Ex. 1 at 9:31-32 (“Base width adjusters 150 can be used to control the depth of the bucket seat 125.”).

width adjuster tabs/flaps being placed in three overlapping positions or settings on the hip belt. *See* Ex. 1 10:29-11:19; Figs. 3A-3C. Additionally, the base width adjusters together perform the function of changing the depth of the seat and, in turn, changing the length of the body, which is the required function of the thigh support adjusters. Ex. 1 at 9:31-32; 12:17-30 (“Carrier 100 may also adjust in height based on other settings of carrier 100. In particular, adjusting base width adjusters 150 adjusts the wearable back height (length from bottom of bucket seat 125 to top edge 132.)”). However, the base width adjusters are taught to make such depth adjustment when working in tandem—the left and right base width adjusters adjust the length of the left and right sides of the seat, respectively. This does not correspond to the requirements of each of the independent claims, wherein a single thigh support adjuster must be capable of performing this function alone.

Notwithstanding that the base width adjusters described in the specification perform some of the functions ascribed to the claimed “thigh support adjuster” by the claims, like the thigh width adjusters, they still cannot meet all of the key claim elements and therefore cannot be the corresponding structure for the thigh support adjuster. *See, e.g., Noah Sys. Inc. v. Intuit Inc.*, 675 F.3d 1302, 1318-19 (Fed. Cir. 2012) (“[W]here a disclosed algorithm supports some, but not all, of the functions associated with a means-plus-function limitation . . . [w]e cannot allow disclosure as to one function to fill the gaps in a specification as to a different, albeit related, function. To hold otherwise would allow a patentee to employ generic functional claiming unbounded by any reference to structure in the specification.”)¹⁴ (cleaned up); *Cardiac Pacemakers, Inc. v. St. Jude Med., Inc.*, 296 F.3d 1106, 1118-19 (Fed. Cir. 2002)

¹⁴ This case analyzed Section 112 before it was updated as part of the America Invents Act. Current Section 112(f) corresponds to the former Section 112 ¶6, and are analyzed consistently as it relates to the present issue.

(“Because no structure disclosed in the embodiments of the invention actually performs the claimed dual functions, the specification lacks corresponding structure.”).

For example, while each base width adjuster flap/tab is arguably coupled to a corresponding single one of the “thigh support area[s] 140,” neither is coupled to **both** thigh supports as is required by every claim for the thigh support adjuster.¹⁵ Ex. 2 ¶¶60-61. That is, there is not a single base width adjuster, nor any adjuster for that matter, that is described in the patent as being coupled to both of the thigh supports. Rather each one of the base width adjusters is coupled to a corresponding single thigh support

Additionally, the three depicted positions (i.e. elements 154, 156, and 158 in Figs. 3A-3C) are not discrete from one another, as required by asserted claims 25-27. Ex. 2 ¶53. Rather, Figures 3A-3C unambiguously show that the three positions substantially overlap each other, such that the three positions or settings cannot reasonably be considered “discrete” from one another.

Finally, the base width adjusters are not visible to the “user” of the carrier, as required by claims 28-30 – they are on the inside of the carrier, and adjust on the hip belt on the inside surface facing the user, not the outside visible to the user. The clear meaning of the phrase “visible to the user” must be that the positions/settings are visible when being worn, as otherwise this limitation would be no limitation at all. Ex. 2 ¶54. When not being worn, everything would be visible at some level. Importantly, one does not “use” a baby carrier when it is on the floor or a table—potential settings for the depiction of the inside of the carrier found in Figure 2A, wherein the three depicted positions/settings may be seen. One uses a

¹⁵ The disputed term recites “at least one thigh support adjuster...” performing various functions. “Use of the phrase ‘at least one’ means that there could be only one or more than one.” *Rhine v. Casio, Inc.*, 183 F.3d 1342, 1345 (Fed. Cir. 1999). Accordingly, the patentee must disclose a single structure for performing all claimed functions.

baby carrier when it is worn by an adult to carry a child. *See, e.g.*, Ex. 1 at 5:38-41, Fig. 1. When in use, the user simply cannot see the three positions or settings depicted in Figure 2A because each is “sandwiched” between the waist belt and the wearer, sitting below and obscured by the baby in the seat of the carrier. *See, e.g.*, Fig. 1.

Accordingly, as there is no structure that corresponds to the function and meets the claim limitations, the coined “thigh support adjuster” term is indefinite. The present case is similar to *Advanced Ground Info. Sys. v. Life360, Inc.*, in which the patents-in-suit contained a coined term that was not used in common parlance or by persons of skill in the art to designate structure. 830 F.3d 1341, 1348 (Fed. Cir. 2016). In that case, the coined term “symbol generator” did not use the term “means,” but was nevertheless found to be an abstraction that describes the function being performed (i.e., generation of a symbol), and claims reciting this term were held indefinite because the patents-in-suit failed to disclose sufficient structure to perform the claimed function. *Id.* at 1348-50. Similarly, the ’055 Patent coins the term “thigh support adjuster” as an abstraction (e.g., a device or thing to adjust thigh support), but it fails to disclose sufficient corresponding structure – indeed, the patent specification fails to disclose any “thigh support adjuster” at all. Accordingly, the ’055 Patent should be held invalid as indefinite.

Similarly, in *Sable Networks, Inc. v. Cloudflare, Inc.*, No. 6:21-cv-00261-ADA, slip op. at 7 (W.D. Tex. Jan. 25, 2024), the court found the term “means for determining a capacity of a buffer containing a microflow based on a characteristic” to be indefinite because the specification failed to disclose any structure corresponding to that function. *Id.* at 5-7. In so holding, the Court noted that a corresponding structure must be clearly linked in the prosecution history or the specification to the claimed function. *Id.* at 6 (citing *Default Proof*

Credit Card Sys. v. Home Depot U.S.A., Inc., 412 F.3d 1291, 1298 (Fed. Cir. 2005)). Here, Ergobaby cannot point to anything in the patent record to clearly link any disclosed structure with the claimed “thigh support adjuster.” The failure to disclose such structure (and further to link the structure to the claimed function) renders the ’055 Patent indefinite.

As a final example, in *Haddad v. United States* a claim limitation was held indefinite where a person of ordinary skill in the art was unable to recognize the structure in the specification and associate it with the corresponding function in the claim. 164 Fed. Cl. 28, 44 (Fed. Cl. 2023). In *Haddad*, the court noted that indefiniteness relates to whether the bounds of the invention are sufficiently demarcated, not whether one of ordinary skill in the art may find a way to practice the invention. *Id.* (citing *ePlus, Inc. v. Lawson Software, Inc.*, 700 F.3d 509, 517 (Fed. Cir. 2012)). The court, thus, found that the bounds of the means-plus-function limitation were not sufficiently demarcated, and the limitation was therefore found indefinite. *Id.* In the present case, Ergobaby likewise fails to demarcate the boundaries of the “thigh support adjuster.” As a result, the claim term is indefinite, rendering the asserted patent claims invalid.

4. ALTERNATIVELY, THE COURT SHOULD FIND THE STRUCTURE OF THE “THIGH SUPPORT ADJUSTERS” TO BE THE STRUCTURE OF THE “BASE WIDTH ADJUSTERS 150”

Alternatively, if not indefinite, the only possible corresponding structure for the claimed thigh support adjuster is the base width adjusters 150: *i.e.* a pair of flaps or tabs coupled to the thigh support areas that rotate or pivot to selectively attach to three locations on the waist belt using a fastening mechanism such as hook and loop, buttons, snaps, zippers, and the like. “In order to qualify as corresponding [structure], the structure must not only perform the claimed function, but the specification must clearly associate the structure with performance of the function. ... This inquiry is undertaken from the perspective of a person of ordinary skill in

the art.” *Cardiac Pacemakers, Inc. v. St. Jude Med., Inc.*, 296 F.3d 1106, 1113 (Fed. Cir. 2002). “A disclosed structure is corresponding only if the specification or the prosecution history clearly links or associates that structure to the function recited in the claim. ... In other words, the structure must be necessary to perform the claimed function.” *Omega Eng’g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1322 (Fed. Cir. 2003).

The functional limitations of the thigh support adjuster, as found in the independent claims, is that it is positionable in three settings/positions to adjust the length of the body, thereby accommodating a child at varying stages of development. The only structure in the patent specification disclosed as performing these functions is the pair of base width adjusters (assuming that somehow one base width adjuster can couple to two different thigh supports and perform the function of both base width adjusters on its own). Ex. 2 ¶¶59-61.

The patent specification confirms this understanding of the structure of the base width adjusters 150. At column 10, the ’055 Patent describes that the base width adjusters will be secured to the waist belt in one of three positions, the positions corresponding to the growth of the baby/child as they age. *Id.* 10:7-26. The patent goes on to explain that movement between these three positions will “essentially rotate from a pivot point as they are adjusted.” *Id.* 10:29-30 (emphasis added). *See also* Ex. 1 at 9:17-30. The patent nowhere describes any embodiment of the base width adjusters where they may be adjusted in a non-pivoting/rotational manner to achieve a new position on the waist belt.

While the ’055 Patent depicts hook-and-loop as the connector between the base width adjusters and the waistbelt, it also discloses that “buttons, snaps, zipper, etc., can cooperate with a corresponding fastening mechanism 117 on waist belt 115 to couple thigh support areas 140 to waist belt 115.” Ex. 1 9:9-12. In view of each of the above disclosures, and as proposed

by BabyBjörn, the essential structure for a section 112(f) claim construction for the thigh width adjusters is: (1) a pair of flaps or tabs coupled to each of the thigh support areas that (2) rotate or pivot to selectively attach to (3) three locations on the waist belt using (4) a fastening mechanism such as hook and loop, buttons, snaps, zippers, and the like. Ex. 2 ¶59.

V. CONCLUSION

In view of the foregoing, the Court should:

- (1) Find that the single disputed claim term is subject to Section 112(f) mean-plus-function claim requirements;
- (2) find that there is no sufficient corresponding disclosure for this limitation, rendering the term (and all claims with such a term) indefinite under Section 112(a); or
- (3) in the alternative, find that the single disputed term is limited by Section 112(f) to the only hardware that arguably corresponds to the functions claimed for this claim element, the base width adjusters, as described above.

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By: /s/ Elliot J. Hales

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CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure and Local Rule CV-5, I hereby certify that, on February 18, 2025, all counsel of record who have appeared in this case are being served with a copy of the foregoing.

/s/ Elliot J. Hales
Elliot J. Hales