UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BABYBJÖRN AB,
Petitioner

v.

THE ERGO BABY CARRIER, INC.,
Patent Owner

Case Nos. IPR2025-00110 and IPR2025-00111
Patent No. 11,786,055

PATENT OWNER'S RESPONSE TO PETITIONER'S EXPLANATION FOR MULTIPLE PETITIONS

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I. INTRODUCTION

The Board should exercise its discretion and deny institution of one of Petitioner's two petitions because Petitioner failed to show multiple petitions are justified under the Board's precedent. **Each** of Petitioner's two Petitions presents **three** grounds, where each ground relies on a **different primary reference**, each ground challenges unpatentability of **all** 24 Challenged Claims, and each ground presents multiple unpatentability theories. Additionally, each Petition presented grounds under **both** Petitioner's claim constructions. A total of six grounds relying on six different primary references for all 24 claims is presented across the two petitions. The Board's Consolidated Trial Practice Guide ("TPG") does not provide for multiple petitions under these circumstances.

Petitioner's purported justifications for two petitions are unavailing. First, *Lundh*'s alleged unavailability as prior art because it published after the priority date of the '055 Patent lacks merit. The Federal Circuit's decision in *Lynk Labs* confirmed *Lundh*'s availability, mooting Petitioner's argument. Regardless, Petitioner was able to present complete grounds in Petition 1 that do not require *Lundh*, negating the need for a second petition. Second, Petitioner's competing constructions do not justify multiple petitions because Petitioner was also able to address both constructions in Petition 1. Third, the number of claims does not justify multiple

petitions here because, once again, Petitioner was able to successfully address all 24 claims ***in all three grounds*** in Petition 1.

II. THE ALLEGED UNCERTAIN AVAILABLITY OF *LUNDH* DOES NOT JUSTIFY MULTIPLE PETITIONS

Petitioner argues two petitions are necessary because the law was not settled that *Lundh* is available as prior art. As an initial matter, Petitioner raises this rationale after-the-fact; any alleged issue with *Lundh's* availability as prior art was never raised in either Petition. Regardless, the Federal Circuit's recent decision in *Lynk Labs* moots Petitioner's argument. *Lundh* is available as prior art. *Lynk Labs, Inc. v. Samsung Elecs. Co., Ltd.*, 125 F.4th 1127 (Fed. Cir. 2025). Therefore, Petitioner does not require two petitions where one petition presents *Lundh*-based grounds, and one petition does not. Petitioner argues that *Lynk Labs* is not final because a request for rehearing or petition for certiorari could be filed. Paper 12, 2 n.2. The time to request rehearing has passed and no rehearing request was filed, and the date to petition for certiorari will have passed before the Board decides institution. Ex. 2004. Petitioner's argument relying on whether *Lundh* is prior art is meritless.

Additionally, how Petitioner applies *Lundh* in Petitioner's grounds confirms a second petition is unnecessary. Petitioner's Ground 3 does even rely on *Lundh*. *Petition 1*, 78. Grounds 1 and 2 rely on *Lundh* in the alternative, meaning Grounds 1 and 2 include full mappings of all Challenged Claims that do not rely on *Lundh* at all. *Petition 1*, 21, 47. Thus, Petitioner successfully advanced grounds with and

without *Lundh* in Petition 1, so Petitioner did not need multiple petitions to advance "arguments under multiple prior art references." *TPG*, 59.

Petitioner also admits the teachings cited in *Lundh* for limitation [1k] are available in *Gray*. *Petition 1*, 54 n.9 ("[E]ither Gray or Lundh can be used to modify any of the primary references discussed herein to implement 'at least one thigh support adjuster'"). Thus, Petitioner could have relied on *Gray* instead of *Lundh* if Petitioner was concerned *Lundh* was not available as prior art. And because *Gray*'s teachings are duplicative of *Lundh*'s, Petitioner cannot—and did not—make the showing required to justify multiple petitions. *See Abbott Diabetes Care Inc. v. Dexcom, Inc.,* IPR2024-00860, Paper 12 at 11–12 (PTAB Nov. 20, 2024) (denying multiple petitions where Petitioner did not compare the references in its two petitions and explain why the references' disclosures were "'materially different and not cumulative'"); *TPG*, 59–60.

III. PETITIONER'S ALTERNATIVE CLAIM CONSTRUCTIONS DO NOT REQUIRE MULTIPLE PETITIONS

Petitioner's advancement of alternative claim constructions also does not justify multiple petitions. Paper 12, 2–4. As a threshold matter, the Board should reject this argument because Petitioner "has not explained or demonstrated why it could not have presented its argument for each proposed claim construction in a single petition." *Medtronic Vascular, Inc. v. TMT Systems, Inc.* IPR2021-01533, Paper 20 at 12 (PTAB March 22, 2022). But more problematically, Petitioner ***was***

able to address both its constructions in both of its Petitions. Paper 12, 2 (acknowledging Grounds 1 and 2 in Petition 1 and Ground 5 in Petition 2 applied Petitioner's P&O construction while Ground 3 in Petition 1 and Grounds 4 and 6 in Petition 2 applied Petitioner's M+F construction). Thus, Petitioner's own Petitions confirm that its alternative constructions did not "require multiple petitions to address these different approaches to the claim terms." Paper 12, 4. The Board regularly disallows multiple positions under these circumstances. *See, e.g.*, *Medacta USA, Inc. v. RSB Spine, LLC,* IPR2020-00275, Paper 22, 10–11 (PTAB May 22, 2020) ("Because Petitioner was able to present an alternative challenge contingent upon [the] alternative claim construction" in the same Petition, "we fail to see how uncertainty regarding claim construction justifies two petitions."); *Fitbit, Inc. v. Koninklijke Philips N.V.,* IPR2020-00772, Paper 14, 26–27 (PTAB Oct. 19, 2020) (denying institution where only one aspect of the claims was impacted by the differing claim constructions and "the Petition include[d] comparable discussions under both constructions for much of the analysis").

IV. THE NUMBER OF CLAIMS PROVIDES NO BASIS TO ALLOW MULTIPLE PETITIONS

The number of claims at issue here, 24, is not unusual. What is unusual is Petitioner's challenge of all 24 claims in each of six grounds spread across two Petitions. Indeed, the Board consistently denies multiple petitions when the Petitioner successfully addresses every claim in a single petition. *See Apple Inc. v.*

SEVEN Networks, LLC, IPR2020-00254, Paper 13 at 9–10 (July 28, 2020) (denying one of two petitions each challenging the same 50 claims); *FreeWheel Media, Inc., v Intent IQ, LLC,* IPR2024-00423, Paper 9 at 7 (PTAB Oct. 3, 2024) (denying institution of a second set of petitions addressing the same 152 claims as a first set of petitions). Nor are there substantial differences between the scope of the independent claims. In fact, the overlap between the independent claims was so extensive that Petitioner was able to rely almost exclusively on cross-reference mapping that required few words for the latter two independent claims in each of the three grounds in Petition 1. *Petition 1*, 33–35, 36–40, 63–65, 66–70, 97–98, 100–03. Under these circumstances, Petitioner's reliance on the TPG and *Synkloud* is misplaced, as both apply only where challenging all claims in a single petition is unreasonable. Paper 12, 4; *TPG*, 59; *Adobe, Inc. v. Synkloud Techs. LLC,* IPR2020-01392, Paper 8 at 8 (PTAB March 11, 2021) (allowing two petitions where the petitioner had to rely on the same prior art in both petitions, there were material differences between the scope of the independent claims, and where the petitioner required excessive pages to make its showing for each claim).

V. CONCLUSION

For the reasons explained, if the Board institutes one of Petitions 1 or 2, the Board should deny the other one.

Dated: February 21, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE ON PATENT OWNER
UNDER 37 C.F.R. § 42.105(a)

Pursuant to 37 C.F.R. §§ 42.6(e) and 42.105(b), the undersigned certifies that on February 21, 2025, a complete and entire copy of this *Patent Owner's Response to Petitioner's Explanation for Multiple Petitions and Exhibits*, were served by email on the following counsel of record for Petitioner:

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