

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BABYBJÖRN AB,
Petitioner,

v.

THE ERGO BABY CARRIER, INC.,
Patent Owner.

IPR2025-00110 (Patent 11,786,055 B2)
IPR2025-00111 (Patent 11,786,055 B2)¹

Before FRANCES L. IPPOLITO, KEVIN W. CHERRY, and
ERIC C. JESCHKE, *Administrative Patent Judges*.

JESCHKE, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. §§ 42.5, 42.63

¹ This Order addresses issues that are the same in each of the above-listed proceedings. We issue one Order to be filed in each proceeding. The parties are not authorized to use this heading style in any subsequent papers, except where specifically authorized by the Board.

I. BACKGROUND

On December 26, 2024, Petitioner emailed the Board “to request a conference call to seek leave to file a ‘ranking and explanation for multiple petitions.’” Ex. 3001 at 1. Later that same day, Patent Owner emailed the Board to request that “the Board grant the parties’ request for a conference in light of the cost and time Patent Owner will be required to expend to substantively respond to a second improper Petition.” *Id.*

On January 6, 2025, we held a conference call to discuss the issues raised in the parties’ emails. The parties’ arguments are addressed below.

II. DISCUSSION

A. Petitioner’s Request to File a Ranking and Explanation in Each Proceeding

The Patent Trial and Appeal Board has provided guidance on the filing of multiple parallel petitions by the same petitioner. *See* Patent Trial and Appeal Board Consolidated Trial Practice Guide (Nov. 2019) (“Trial Practice Guide”)² at 56–61.

As discussed in the Trial Practice Guide, one petition should be sufficient to challenge the claims of a patent in most situations. Trial Practice Guide at 59. The Board recognizes, however, that some situations require more than one petition, and, therefore, the Trial Practice Guide provides instruction when a petitioner files more than one petition challenging a patent:

To aid the Board in determining whether more than one petition is necessary, if a petitioner files two or more petitions challenging the same patent, then the petitioner should, in its petitions or in a separate paper filed with the petitions, identify: (1) a ranking of the petitions in the order in which it wishes the

² Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

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Board to consider the merits, if the Board uses its discretion to institute any of the petitions, and (2) a succinct explanation of the differences between the petitions, why the issues addressed by the differences are material, and why the Board should exercise its discretion to institute additional petitions if it identifies one petition that satisfies petitioner's burden under 35 U.S.C. § 314(a).

Id. at 59–60.

During the conference call, Petitioner argued that counsel had inadvertently neglected to file a ranking document with the petitions in these proceedings. Patent Owner opposed the filing, and argued that allowing Petitioner's request would prejudice Patent Owner by forcing it to respond to both Petitions in Patent Owner Preliminary Responses in each proceeding. Patent Owner also argued that Petitioner's request amounts to an attempt to circumvent the word limits in the Petitions as well as an attempt to review Patent Owner's arguments before filing the requested ranking document.

The Trial Practice Guide indicates that petitioners filing two or more petitions challenging the same patent "should"—i.e., optionally—file the ranking document in a separate paper filed with the petitions. Trial Practice Guide at 59–60. We also do not see any risk of gamesmanship here because Patent Owner has not yet filed preliminary response in either proceeding. Further, a ranking document would likely assist the Board in determining whether to institute these proceedings. Accordingly, Petitioner's request to file a ranking document is *granted*.

Within seven calendar days of this Order, Petitioner shall provide a Notice in each proceeding,³ not to exceed five substantive pages,

³ Petitioner is instructed to file the same paper in each proceeding using the caption above.

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identifying: (1) a ranking of the Petitions in the order in which it wishes the Board to consider the merits, if the Board exercises its discretion to institute any of the Petitions; and (2) a succinct explanation of the differences between the Petitions, why the issues addressed by the differences are material, and why the Board should exercise its discretion to institute additional Petitions if it identifies one Petition that satisfies Petitioner's burden under 35 U.S.C. § 314(a). Trial Practice Guide at 59–60.

Within seven calendar days of Petitioner's filings, Patent Owner may respond in a paper of no more than five substantive pages in each proceeding to explain why the Board should not exercise its discretion to institute more than one Petition (if it institutes at all).⁴ The Board will consider the parties' submissions in determining whether to exercise its discretion to institute an *inter partes* review of any Petition under 35 U.S.C. § 314(a).

*B. Patent Owner's Request for the Board to
Order Petitioner to Withdraw One Petition*

During the conference, Patent Owner requested the Board to order Petitioner to withdraw the second Petition. In support of this request, Patent Owner contends that Petitioner has not identified any reason that two petitions are necessary.

We decline to order Petitioner to withdraw either petition. The proper procedural mechanism is for Patent Owner to file a responsive paper as outlined above; in that paper, Patent Owner is free to argue for discretionary denial under 35 U.S.C. § 314(a), including based on improper use of parallel petitions challenging the same patent. *See* Trial Practice Guide at 59–61.

⁴ Patent Owner is instructed to file the same paper in each proceeding using the caption above.

*C. Joint Request to File Corrected
Versions of Petitioner's Exhibits*

During the conference call, the parties raised a new issue: Petitioner's exhibits filed with the Petitions were inadvertently filed without exhibit labels or page numbers. *See* 37 C.F.R. § 42.63(d)(1)(i). The parties followed up with a jointly drafted written request on this issue. *See* Ex. 3002. The panel indicated that Petitioner should file corrected versions of the exhibits without expunging the current exhibits. If assistance is needed, Petitioner may wish to contact the PTAB Trials division to request instructions on how to file replacement exhibits (e.g., via a joint email to Trials@uspto.gov mailbox).

The parties' joint request for Petitioner to file corrected versions of the exhibits filed with the Petitioner is *granted*. Petitioner should file the corrected exhibits within seven calendar days of this Order and should not make any modifications to the exhibits other than adding the required labels and page numbering as set forth in 37 C.F.R. § 42.63.

It is hereby:

ORDERED that Petitioner's request to file a Ranking and Explanation in each proceeding is *granted*;

FURTHER ORDERED that within seven calendar days of this Order, Petitioner shall file a Notice in each proceeding consistent with the discussion above;

FURTHER ORDERED that within seven calendar days of Petitioner's filings, Patent Owner may file a response in each proceeding consistent with the discussion above;

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FURTHER ORDERED that Patent Owner's request for the Board to order Petitioner to withdraw one of the petitions is *denied*; and

FURTHER ORDERED that the joint request for Petitioner to file corrected versions of the exhibits filed with the Petitioner is *granted*;

FURTHER ORDERED that Petitioner shall file corrected exhibits within seven calendar days of this Order consistent with the discussion above.

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