IN THE 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)

PETITIONER'S EXPLANATION FOR MULTIPLE PETITIONS

Petitioner filed two petitions (IPR2025-00110 and -00111) on the same day, both challenging U.S. Patent No. 11,786,055 (the "'055 Patent"). Two petitions are required because: (1) a pending Federal Circuit case is expected to determine whether or not references like Lundh are available as a basis for *Inter Partes* Review under 35 USC §311(b); (2) materially different arguments are needed to address alternative proposed claim constructions; and (3) Patent Owner has asserted a large number of claims in litigation.

I. MATERIAL DIFFERENCES BETWEEN THE PETITIONS WARRANT INSTITUTION OF BOTH PETITIONS

Material differences between the petitions and the reasons why those differences warrant institution of both petitions are as follows:

(1) Undetermined status of the Lundh reference: IPR2025-00111 presents grounds of invalidity relying on three base references (Synergy Manual, Staten, and Stomper-Rosam), all potentially in view of Lundh. On the other hand, in IPR2025-00110, Ground 3 does not involve Lundh.

This is an important difference between the two petitions because the availability in *Inter Partes* Review of references like Lundh has never been determined by the Federal Circuit. Indeed, there is a pending case expected to address that issue. In particular, the Federal Circuit is set to decide in, *Lynk Labs, Inc. v. Samsung Elec-*

tronics Co., No. 23-2346 (Fed. Cir., argued October 10, 2024), whether or not patents and printed publications with a priority date before the claimed priority date of the challenged patent but a publication date after the critical date—such as Lundh—can form the basis of an IPR ground under §311(b).[1] The PTO elected to intervene in the *Lynk* appeal solely to address that legal issue, presumably due to the unsettled nature of the law in this area.

Once final, the forthcoming decision in *Lynk* has the potential to disqualify Lundh from the IPR Grounds that use it. This is a recognized justification for instituting two petitions against the same patent. *Comcast Cable Commc'n, LLC v. Veveo, Inc.*, IPR2019-00290, Paper 15 at *15 (July 19, 2019) ("We are persuaded that the potential to [disqualify] a reference relied on in a Petition and claim construction arguments resulting in different manner of application of the prior art are material differences between the submitted Petitions, and these differences warrant institution of *inter partes* review of a second petition.").

(2) Different approaches to the claim term "at least one thigh support adjuster": Petitioner's prior art combinations teach the term "at least one thigh support adjuster" in different ways depending on whether it is given its plain and ordinary meaning or construed as a means-plus-function limitation under §112(f) per

[1] https://oralarguments.cafc.uscourts.gov/default.aspx?fl=23-2346_10102024.mp3

Williamson v. Citrix Online LLC, 792 F.3d 1339 (Fed. Cir. 2015). Grounds 3, 4, and 6 (Stomper-Rosam, Andren, and Kalouskova) disclose adjustable drawstrings, zippers, and buckles to allow the carrier to adjust the location and amount of support provided by these carriers to the thighs of the child. *See, e.g.*, IPR2025, Pet., 17 and IPR2025-00111, Pet., 14-17. Their teachings are analogous to the '055 patent's disclosed embodiment, where hook-and-loop components on each side of the seat support parts to perform the same or similar functions. Ex.1001, Fig. 2a, element 151. Grounds 1, 2, and 5 (Synergy Manual, Staten, and Sharp) are analogous to Patent Owner's asserted accused product, which may be beyond the scope of a §112(f) construction because it has a <u>single</u>, <u>central</u> mechanism directly beneath the child's seat to adjust the support provided to the child. IPR2025-00110, Pet., 12-16 and IPR2025-00111, Pet., 15-16. These grounds are necessary if the term is broadly construed without limitation to the written description under §112(f). Petitioner applies different prior art teachings—some better suited to a narrower § 112(f) construction and others that are suited to a broad plain meaning construction—to address alternative constructions that could encompass or exclude different prior art.

Alternate constructions are necessary because Patent Owner has not answered discovery requests necessary to understand the scope of claims. Petitioner's district court interrogatories asked Patent Owner to identify the written description support

for "at least one thigh support adjuster"—a term not in the specification—to understand Patent Owner's position. Ex.1029, p. 5 (Interrogatory No. 4). Patent Owner has not timely provided this information *Id*., 5-6. Petitioner requires multiple petitions to address these different potential constructions. This is a recognized justification for instituting two IPRs against the same patent. *SolarEdge v. SMA Solar Technologies*, IPR2019-01224, Paper 10 at *10-12 (Jan. 23, 2020) (addressing a term's construction in materially different ways warrants institution of two IPRs).

(3) Large number of claims: The Board permits a second petition when, as here, "the patent owner has asserted a large number of claims in litigation." Consolidated Trial Practice Guide ("CTPG"), 59; *Apple Inc. v. Seven Networks, LLC*, IPR2020-00156, Paper 10 at *28 (June 15, 2020) (declining to exercise discretion to deny multiple petitions filed to challenge 20 asserted claims); *Adobe, Inc. v. Synkloud Techs. LLC*, IPR2020-01392, Paper 8 at *8-10 (March 11, 2021).

Synkloud is illustrative. Petitioner there requested review of 20 claims using ten overlapping grounds in two petitions, involving varying combinations of six references—eleven claims in the first petition and nine in the latter. *Id.* at 7; IPR2020-01393, Paper 1 at 1-2. The 20 claims challenged in *Synkloud* totaled 1,160 words and the second challenged independent claim had a limitation not found in independent claim 1. IPR2020-01392, Paper 8 at 9 n.9. The Board found that "the length of the claims, and the difference in scope of independent claims…warranted the filing

of two petitions." *Id*. The 24 Challenged Claims here total over 1,966 words (74% more than *Synkloud*). Like *Synkloud*, the independent claims in these proceedings present discrete limitations meriting independent analysis. *See, e.g.*, '055 patent claim elements [11i] and [11k] (reciting specific composition and/or performance characteristics of the "neck support" and "seat"); IPR2025-00111, Paper 1 at 44-45 (Petitioner's independent analysis for same).

The only distinction from *Synkloud* is that Petitioner has divided its grounds across two petitions challenging every Challenged Claim in each petition, rather than asserting all (or nearly all) invalidity grounds against half the claims in each petition. This is a distinction without a difference in view of the considerations of the CTPG, which expresses concern for the Board's limited resources.

II. ORDERING OF THE PETITIONS

Petitioner respectfully submits that both filed petitions should be considered on their merits and respectfully requests that the Board institute both petitions. To the extent necessary, Petitioner ranks IPR2025-00110 ahead of IPR2025-00111.

Dated: January 10, 2025

Respectfully submitted,

/s/ *Mark A. Miller*
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