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Subject: RE: BABYBJÖRN AB v. THE ERGO BABY CARRIER, INC., IPR2025-00110 and -00111 - Petitioner's Request for Leave to File a Preliminary Reply
Date: Thursday, March 13, 2025 9:58:02 AM

Counsel:

The Board has received the parties' email below.

For reasons that will be explained in a future order, we *deny* Petitioner's request for authorization to file in each proceeding a five-page preliminary reply, and we *deny* Petitioner's request for authorization to file in each proceeding a two-page reply addressing multiple petitions.

No conference call is needed.

Regards,

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From: Mitch Yang <Mitch@carmichaelip.com>
Sent: Tuesday, March 11, 2025 4:10 PM
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Subject: BABYBJÖRN AB v. THE ERGO BABY CARRIER, INC., IPR2025-00110 and -00111 - Petitioner's Request for Leave to File a Preliminary Reply

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Your honors,

This email is being sent jointly by the Parties and sets forth Petitioner's and Patent Owner's respective positions.

Petitioner's Position

Petitioner seeks permission to file a 5-page Preliminary Reply to Patent Owner's Preliminary Response, a 2-page Reply to Patent Owner's Response to Petitioner's Explanation for Multiple Petitions, and supporting exhibits in each of IPR2025-00110 and -00111.

The purpose of the Preliminary Reply is as follows:

1. First, Petitioner requests an opportunity to address Patent Owner's argument that Petitioner's claim constructions do not satisfy § 42.104(b)(3). Paper 15, 3-6.
2. Second, Petitioner seeks permission to respond to Patent Owner's argument that Lundh is not prior art. Paper 15, 19. Because Lundh is a post-AIA patent, the response would address the impact of *Penumbra, Inc. v. RapidPulse, Inc.*, IPR2021-01466, on Patent Owner's *Dynamic Drinkware* argument.
3. Third, Petitioner requests an opportunity to respond to Patent Owner's argument that Synergy Manual is not prior art and provide a supplemental declaration from David Grünbaum addressing his personal knowledge of the prior art status of Synergy Manual. The Board has previously afforded Petitioners the opportunity to respond to Patent Owner's arguments about the status of prior art, including by providing supplemental evidence upon a showing of good cause. *Meta Platforms, Inc. v. VL Collective IP LLC*, IPR2022-00923, Paper 13. Good cause exists because Petitioner could not have anticipated that Patent Owner would contest Petitioner's declarant's personal knowledge that Synergy Manual is prior art.

The purpose of the Reply to Patent Owner's Response to Petitioner's Explanation for Multiple Petitions is to correct the Response's mistaken representation that the "time to request rehearing [for the Lynk Labs case] has passed." Paper 15, 2. While Patent Owner's Preliminary Response (Paper No. 14) at 15-16 argues the prior art status of Lundh (albeit for a different reason), Paper 15 mistakenly states as final the status of the controlling case: *Lynk Labs, Inc. v. Samsung Elecs. Co., Ltd.*, 125 F.4th 1127 (Fed. Cir. 2025). To correct the record, Petitioner seeks to file as Exhibits and brief the following papers from *Lynk*: (1) the Court's order extending to March 14, 2025, the time to petition for rehearing *en banc*; (2) Lynk Labs' petition for rehearing *en banc*; and (3) amicus briefs in support of Lynk Lab's petition for rehearing *en banc*.

Petitioner seeks leave to file the Replies and exhibits within 10 days of the Board granting such permission.

Patent Owner's Position

Patent Owner opposes Petitioner's request for supplemental briefing.

1. Petitioner provides no legal support for this request. Petitioner presented its claim construction arguments under § 42.104(b)(3) in the Petition, and Patent Owner responded to those arguments in the Preliminary Response. Petitioner does not claim that either its own or Patent Owner's claim construction arguments were unforeseen. Petitioner should not be given an opportunity to supplement its briefing further.
2. Petitioner's cited decision, *Penumbra, Inc. v. Rapid Pulse, Inc.*, 2021-01466, does not support its position. In *Penumbra*, the Board held only that the first step of the *Dynamic Drinkware* analysis did not apply post-AIA. Paper 34, at 32. However, *Penumbra* did not disturb the second step of the analysis (establishing the priority document discloses the relied-upon subject matter), and the Board determined the Petitioner satisfied step two in *Penumbra*. *Id.*, at 33-34. Patent Owner's more recent

authority, *Intelligent Wellhead Sys., Inc. v. Downing Wellhead Equip., LLC*, IPR2024-00245, Paper 11, at 11-12, confirms Patent Owner's position. Here, Petitioner makes no showing that Lundh's (Ex. 1008) priority document describes the subject matter relied upon. No good cause exists to allow Petitioner the opportunity to cure the Petition's deficiencies.

3. Petitioner's cited decision, *Meta Platforms, Inc. v. VL Collective IP LLC*, IPR 2023-00923, Paper 13, also does not support its position. There, the Board actually *denied* the request to submit supplemental evidence because that was "not a case where Patent Owner has presented evidence and arguments that Petitioner could not have reasonably foreseen." Paper 13, at 3. The same is true here—that Petitioner originally submitted Mr. Grunbaum's declaration addressing the Synergy Manual's public availability demonstrates Petitioner foresaw a challenge by Patent Owner to the Synergy Manual's prior art status. Again, no good cause exists to allow Petitioner the opportunity to cure the Petition's deficiencies.

Regarding Petitioner's request for a reply in support of multiple petitions, Patent Owner agrees to Petitioner's request to file the Court's order extending Lynk Labs' deadline to request hearing. However, Patent Owner opposes the request to submit the remaining proposed exhibits because, as of this email, they do not exist. Patent Owner also opposes supplemental briefing because the Court's order extending Lynk Labs' deadline is clear on its face and because Patent Owner does not dispute the order.

Respectfully,

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