

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
Denying Petitioner's Request for Additional Briefing
37 C.F.R. §§ 42.5, 42.20

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 March 11, 2025, Petitioner sent a joint submission to the Board presenting arguments both for (by Petitioner) and against (by Patent Owner) Petitioner's request for authorization to file in each of these proceedings (1) a five-page preliminary reply and (2) a two-page reply to Patent Owner's response to Petitioner's explanation for multiple petitions. Ex. 3003² at 1–3.

On March 13, 2025, the Board notified the parties by e-mail that both of Petitioner's requests for authorization to file additional briefing were *denied*. Ex. 3003 at 1. Concurrent with the issuance of this Order, we issue decisions denying institution in IPR2025-00110 (*see* IPR2025-00110, Paper 20, “110 Dec. Inst.”) and denying institution in IPR2025-00111 (*see* IPR2025-00111, Paper 19, “111 Dec. Inst.”). Below, we explain the prior denial of Petitioner's requests for additional briefing now that we have made public the reasoning of the two decisions on institution in these proceedings.

II. DISCUSSION

A. Petitioner's Request for Authorization to File a Five-Page Preliminary Reply

Petitioner presented three different topics that it sought to address in a preliminary reply in each proceeding. *See* Ex. 3003 at 1. First, Petitioner sought to address “Patent Owner's argument that Petitioner's claim constructions do not satisfy [37 C.F.R.] § 42.104(b)(3).” *Id.* at 2 (citing IPR2025-00110, Paper 14³ at 3–6; IPR2025-00111, Paper 14 at 3–6).

² Because both proceedings have the document as Exhibit 3003, we use this citation format.

³ Although Petitioner cites “Paper 15,” we understand Petitioner to have intended to cite Patent Owner's preliminary responses (Papers 14) in each proceeding, which address 37 C.F.R. § 42.104(b)(3) at the pages cited.

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Second, Petitioner sought “to respond to Patent Owner’s argument that Lundh is not prior art.” *Id.* (citing IPR2025-00110, Paper 14⁴ at 19–20; IPR2025-00111, Paper 14 at 15–16). Because neither of the decisions on institution in these proceedings addresses the two issues above, further briefing by Petitioner would not have aided the Board in the analysis needed. *See generally* 110 Dec. Inst.; 111 Dec. Inst.

Third, Petitioner requested “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.” Ex. 3003 at 2.

As an initial matter, and for reasons discussed more fully in the Decision on Institution in IPR2025-00110, Petitioner did not discuss in the Petition *any* evidence supporting the implicit position that the Synergy Manual was *publicly accessible* prior to the critical date of the claimed invention. *See* 110 Dec. Inst. § II.C.1. And, more germane to the discussion here, the petition in IPR2025-00110 does not mention, cite to, or discuss the *original* Grünbaum Declaration *at all*. *Id.* Thus, even if we had granted Petitioner’s request to file a *supplemental* declaration from Mr. Grünbaum, that would not have cured the failure to *even mention* the original Grünbaum Declaration in the Petition. *SAS Inst. Inc. v. Iancu*, 138 S. Ct. 1348, 1358 (2018) (stating the statute “makes the petition the center-piece of the proceeding both before and after institution”).

⁴ Petitioner cites “Paper 15, 19,” and we again understand Petitioner to have intended to cite Patent Owner’s preliminary responses (Paper 14) in each proceeding. We have revised and expanded the citations above to refer to the arguments as to Lundh’s status as prior art in both proceedings.

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We turn now to Petitioner’s argument as to alleged good cause for a preliminary reply and supplemental declaration from Mr. Grünbaum in each proceeding. The rules of *inter partes* review do not automatically authorize a petitioner to file a reply to a patent owner preliminary response; instead, a petitioner seeking to file a reply prior to institution must make a showing of “good cause.” *See* 37 C.F.R. § 42.108(c) (2024) (“A petitioner may seek leave to file a reply to the preliminary response in accordance with §§ 42.23 and 42.24(c). Any such request must make a showing of good cause.”).

When determining whether a petitioner has shown good cause for a reply to a preliminary response, the Board may assess whether the argument at issue in the preliminary response was reasonably foreseeable. *See, e.g., Illumina, Inc. v. The Trs. of Columbia Univ. in the City of New York*, IPR2018-00797, Paper 17 at 3 (PTAB Aug. 7, 2018) (stating that “the Board may authorize a reply to afford a petitioner the opportunity to address evidence or arguments that it could not have reasonably foreseen”); *Sandoz Inc. v. Abbvie Biotechnology Ltd.*, IPR2017-01824, Paper 13 at 3 (PTAB Dec. 15, 2017) (same).

Petitioner contended that “[g]ood 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.” Ex. 3003 at 2. Patent Owner responds, “that Petitioner originally submitted Mr. Grünbaum’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.” *Id.* at 3. The record supports Patent Owner.

That Petitioner not only *should have*—but, in fact, *did*—foresee Patent Owner’s challenge to the status of the Synergy Manual as a printed publication is demonstrated by Petitioner having filed *the original*

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Grünbaum Declaration with the petitions in each of these proceedings. *See* Ex. 1017 (both proceedings); *see also BMW of N. Am. LLC v. Intellectual Ventures II LLC*, IPR2017-01558, Paper 8 at 2–3 (PTAB Oct. 25, 2017) (denying a pre-institution reply, stating, “[t]hat Patent Owner would challenge the sufficiency of Petitioner’s showing [as to printed publication status] is an entirely foreseeable circumstance”). Indeed, the original Grünbaum Declaration appears focused *solely* on the alleged public accessibility of the Synergy Manual. Ex. 1017. Although the reasons for Petitioner’s failure to mention, cite to, or discuss the original Grünbaum Declaration in either petition are unclear, the issue did not lack foreseeability. And, as further argued by Patent Owner, “no good cause exists to allow Petitioner the opportunity to cure the Petition’s deficiencies” in IPR2025-00110 on this issue. Ex. 3003 at 3.

On the particular facts here, Petitioner reasonably should have foreseen—and it appears did foresee—that Patent Owner would challenge Petitioner’s sole reliance on a copyright date as support for the alleged status of the Synergy Manual as a printed publication. *See* 110 Dec. Inst. § II.C.1. Because Petitioner has not demonstrated good cause to file a pre-institution reply to address Patent Owner’s arguments as to the status of the Synergy Manual, we *deny* the request for a preliminary reply in each proceeding.

*B. Petitioner’s Request for Authorization to File a
Two-Page Reply on Multiple Petitions*

We turn now to Petitioner’s request for authorization to file in each proceeding a two-page reply to Patent Owner’s response to Petitioner’s explanation for multiple petitions. Ex. 3003 at 1–2. Petitioner contended that, if authorized, the reply would have corrected Patent Owner’s “mistaken representation” as to the finality of the Federal Circuit decision in *Lynk*

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Labs, Inc. v. Samsung Electronics Co., Ltd., 125 F.4th 1127 (Fed.

Cir. 2025). *Id.* at 2. Petitioner adds

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*.

Id.

For reasons discussed more fully in the Decision on Institution in IPR2025-00111, the Federal Circuit’s holding in *Lynk Labs* as to the application of *pre-AIA* § 102(e)(1)—even if overturned on rehearing or at the United States Supreme Court—will not impact the availability of Lundh as prior art in the 110 IPR or this proceeding. *See* 111 Dec. Inst. § II.C.1. Thus, Petitioner’s requested reply on this issue would not have impacted the analysis as to the availability of Lundh as prior art. *Id.* Accordingly, we *deny* Petitioner’s request for authorization to file in each proceeding a two-page reply as to multiple petitions.

III. ORDER

It is hereby:

ORDERED that Petitioner’s request for authorization to file in each proceeding a five-page preliminary reply is *denied*;

FURTHER ORDERED that Petitioner’s request for authorization to file in each proceeding a two-page reply to Patent Owner’s response to Petitioner’s explanation for multiple petitions is *denied*.

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