

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BABYBJÖRN AB,
Petitioner,

v.

THE ERGO BABY CARRIER, INC.,
Patent Owner.

IPR2025-00111
Patent 11,786,055 B2

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

JESCHKE, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

I. BACKGROUND

Petitioner, BabyBjörn AB, filed a Petition to institute *inter partes* review of claims 1–15, 19–24, and 28–30 of U.S. Patent No. 11,786,055 B2 (Ex. 1001, “the challenged patent”) in this proceeding. Paper 1 (“Pet.”). Patent Owner, The ERGO Baby Carrier, Inc., timely filed a Preliminary Response. Paper 14.

On the same day as the filing of the Petition in this proceeding, Petitioner filed another petition—in IPR2025-00110 (the “110 IPR”)—challenging the *same* claims of the *same* patent. *See BabyBjörn AB v. The ERGO Baby Carrier, Inc.*, IPR2025-00110, Paper 1 (PTAB Oct. 29, 2024) (the “110 Petition”).

With our authorization (Paper 9), Petitioner filed in this proceeding a Second Substitute Explanation for Multiple Petitions (Paper 12, “Expl.”) and Patent Owner filed a Response (Paper 15, “Resp.”).

We have authority to determine whether to institute *inter partes* review. *See* 35 U.S.C. § 314 (2018); 37 C.F.R. § 42.4(a) (2024) (“The Board institutes the trial on behalf of the Director.”). Upon consideration of the evidence and arguments in the record, for the reasons below and based on the particular facts of this case, we exercise our discretion under 35 U.S.C. § 314(a) and decline to institute *inter partes* review of the challenged patent in this proceeding.

A. Related Proceedings

The parties identify a proceeding in the U.S. District Court for the Western District of Texas involving the challenged patent: *The ERGO Baby Carrier, Inc. v. BabyBjörn AB*, No. 6:24-cv-0083-DAE (W.D. Tex.), filed February 9, 2024 (the “Texas Litigation”). Pet. 4; Paper 5 (Patent Owner’s

Mandatory Notice) at 2; Paper 16 (Petitioner's Updated Mandatory Notices) at 1. Concurrently with this Decision, we issue a decision on institution in the 110 IPR.

B. The Challenged Patent

The challenged patent “relates to a child carrier that is adaptable to ergonomically carry a child as the child grows.” Ex. 1001, 1:21–24.

Figure 1 is reproduced below:

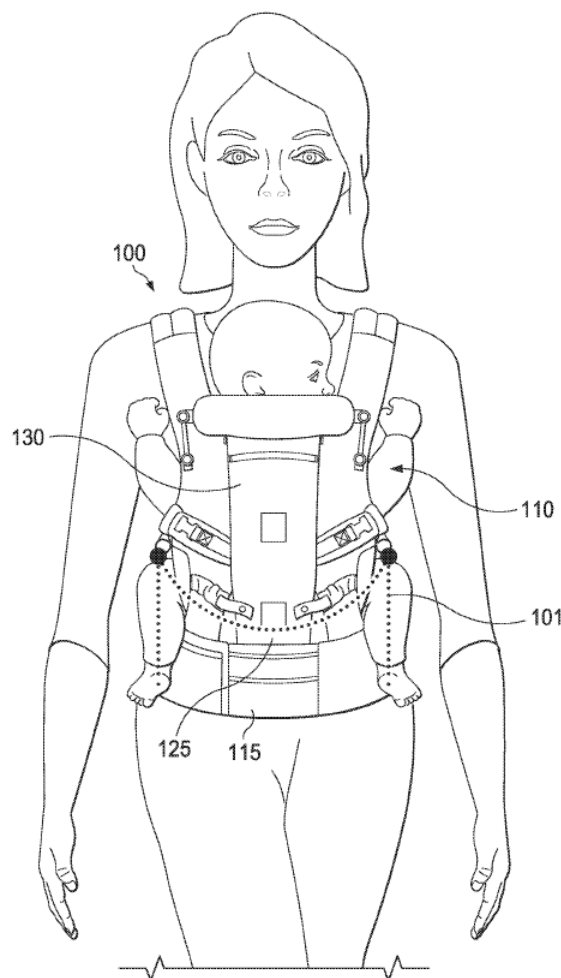


FIG. 1

Figure 1 depicts an adult carrying a child in an adjustable carrier. Ex. 1001, 4:25–26. Specifically, depicted adjustable carrier 100 includes

main body 110, coupled to waist belt 115. *Id.* at 7:18–21. Main body 110 includes torso support portion 130 and bucket seat 125. *Id.* at 7:21–22.

Figures 2A and 2B are reproduced below:

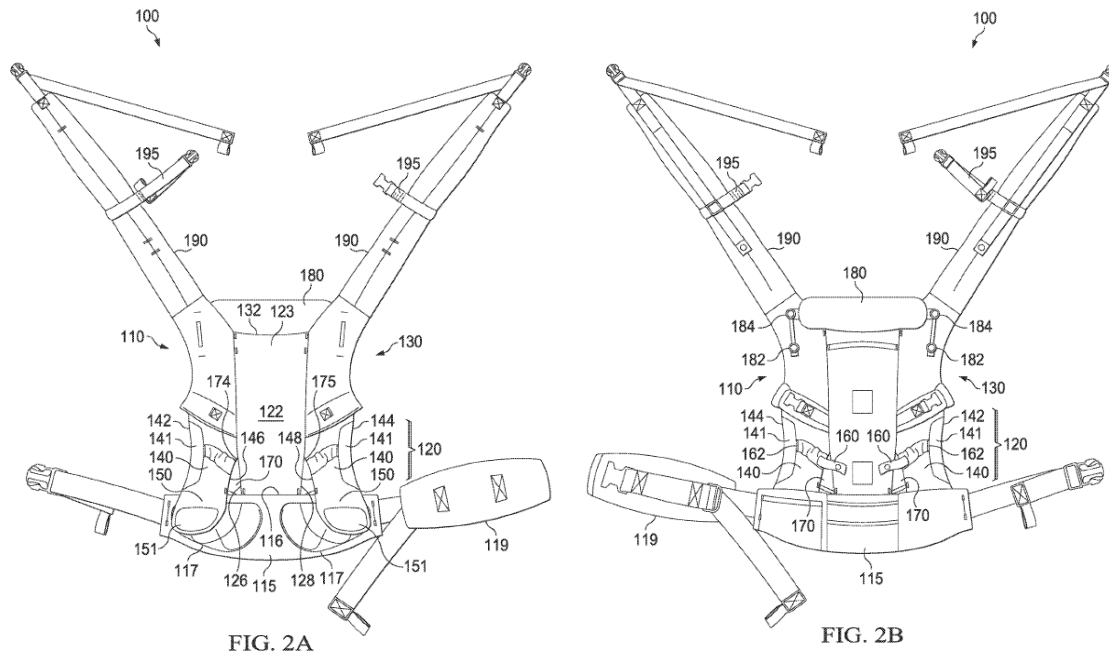


Figure 2A depicts an *inside* view of an adjustable baby carrier, and Figure 2B depicts an *outside* view of a carrier. Ex. 1001, 4:27–30. In addition to the features discussed above, main body 110 includes seat portion 120 and thigh support areas 140. *Id.* at 7:66–67. “Torso support portion 130 is configured to support [the] upper body of the child while in the carrier while seat portion 120 cooperates with adjustable thigh support areas 140 to form an adjustable bucket seat 125 (FIG. 1) adapted to ergonomically position the child’s legs and hips.” *Id.* at 8:4–8.¹

Moreover, the challenged patent discloses that “[i]nner end portions of thigh support areas 140 can be selectively coupled to waist belt 115 by base

¹ In this Decision, we omit emphasis on reference numerals in quotations from the challenged patent and prior art references.

width adjusters 150 that are configurable for adjusting the width and depth of the bucket seat 125.” Ex. 1001, 8:15–19. “Base width adjusters 150 may be coupled to respective thigh support areas 140” (including potentially “being part of the same thigh support straps”) and “can be selectively coupled to waist belt 115 to couple thigh support areas 140 of main body 110 to waist belt 115.” *Id.* at 8:64–9:6.

C. The Challenged Claims

Petitioner challenges claims 1–15, 19–24, and 28–30, of which claims 1, 6, and 11 are independent. Claims 2–5, 19, 21, and 28 depend from claim 1, claims 7–10, 20, 22, and 29 depend from claim 6, and claims 12–15, 23, 24, and 30 depend from claim 11. Independent claim 1 is reproduced below, reformatted from the version provided in the challenged patent, with bracketed alphanumeric designations added to each clause, and with emphasis added to language relevant to the discussion below:

1. [1pre] An adjustable child carrier for supporting a child by a user, the adjustable child carrier comprising:

[1a] a body configured to support the child,

[1b] wherein the body forms a bucket seat configured to support legs of the child;

[1c] a neck support comprising a first neck support attachment and a second neck support attachment;

[1d] a first shoulder strap coupled to the body and configured to extend over a first shoulder of the user;

[1e] a second shoulder strap coupled to the body and configured to extend over a second shoulder of the user;

[1f] a first attachment disposed on the first shoulder strap and configured to receive the first neck support attachment;

[1g] a second attachment disposed on the second shoulder strap and configured to receive the second neck support attachment,

[1h] wherein the neck support is configured in an upward neck supporting position when the first neck support attachment is coupled to the first attachment and the second neck support attachment is coupled to the second attachment;

[1i] the body forming a first thigh support and a second thigh support;

[1j] a first setting, a second setting, and a third setting defined by the adjustable child carrier; and

[1k] *at least one thigh support adjuster* coupled to the first thigh support and the second thigh support,

[1m] wherein the at least one thigh support adjuster is configured to be selectively positioned to one of the first setting, the second setting, or the third setting to thereby adjust a length of the body to accommodate various sizes of the child as the child ages,

[1n] wherein the length is defined from a bottom of the bucket seat to a top of the body.

Ex. 1001, 17:15–48.²

² We adopt and apply below Petitioner’s designations for the elements of the challenged claims. *See* Pet. i–vii (showing alphanumeric designations for the language in the challenged claims).

D. Asserted Grounds of Unpatentability

Petitioner challenges claims 1–15, 19–24, and 28–30 on the following grounds:

Grounds	Claim(s) Challenged	35 U.S.C. §³	Reference(s)/Basis
4a ⁴	1–15, 19–24, 28–30	102	Andren ⁵
4b	1–15, 19–24, 28–30	103	Andren
4c	1–15, 19–24, 28–30	103	Andren, knowledge of a person of ordinary skill in the art
4d	1–15, 19–24, 28–30	103	Andren, Lundh ⁶
4e	1–15, 19–24, 28–30	103	Andren, knowledge of a person of ordinary skill in the art, Lundh
5a	1–15, 19–24, 28–30	102	Sharp ⁷

³ The Leahy-Smith America Invents Act (“AIA”) included revisions to 35 U.S.C. §§ 102, 103 that became effective on March 16, 2013. Pub. L. No. 112-29, §§ 3(b)–3(c), 3(n)(1), 125 Stat. 284, 285–87, 293 (2011). Because there is no dispute that the challenged claims have effective filing dates after March 16, 2013, we apply the AIA versions of the statutes. We would reach the same outcome, however, under the pre-AIA versions.

⁴ The numbers for the grounds in this proceeding continue the numbering sequence from the 110 Petition. In presenting this Ground 4, Petitioner states that the challenged claims “are anticipated and obvious over Andren, alone or in view of knowledge of a POSITA and/or Lundh.” Pet. 21 (heading). For clarity, we break out each of the indicated alternative bases in this chart. We similarly break out each of the alternative bases for the grounds generally based on Sharp and Kalouskova.

⁵ US 2014/0014692 A1, published January 16, 2014 (Ex. 1005, “Andren”).

⁶ US 2018/0199730 A1, published July 19, 2018 (Ex. 1008, “Lundh”).

⁷ US 4,009,808, issued March 1, 1977 (Ex. 1006, “Sharp”).

Grounds	Claim(s) Challenged	35 U.S.C. § ³	Reference(s)/Basis
5b	1–15, 19–24, 28–30	103	Sharp
5c	1–15, 19–24, 28–30	103	Sharp, Lundh
6a	1–15, 19–24, 28–30	102	Kalouskova ⁸
6b	1–15, 19–24, 28–30	103	Kalouskova
6c	1–15, 19–24, 28–30	103	Kalouskova, Lundh

Petitioner supports its challenges with a declaration from Mr. David Smith, P.E., CSP. Ex. 1003. In response to Petitioner’s challenges, Patent Owner provides the Declaration of Mr. Dirk Duffner with the Preliminary Response. Ex. 2005.

II. DENIAL UNDER 35 U.S.C. § 314(a)

A. Legal Framework

The Board has discretion on whether to institute *inter partes* review. *See SAS Inst. Inc. v. Iancu*, 138 S. Ct. 1348, 1356 (2018) (explaining that section “314(a) invests the Director with discretion on the question whether to institute review” (emphasis omitted)); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2140 (2016) (“[T]he agency’s decision to deny a petition is a matter committed to the Patent Office’s discretion.”); *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) (explaining that under § 314(a), “the PTO is permitted, but never compelled, to institute an IPR proceeding”); *see also* 37 C.F.R. § 42.4(a) (“The Board institutes the trial on behalf of the Director.”).

⁸ Czech Republic Industrial Property Office Publication CZ2010-531 A3, published January 11, 2012 (Ex. 1007 (English version and certification), “Kalouskova”).

In deciding whether to exercise discretion to deny institution when a petitioner files two or more petitions challenging the same patent, we consider guidance in the Consolidated Trial Practice Guide, which provides that “one petition should be sufficient to challenge the claims of a patent in most situations” and that “multiple petitions by a petitioner are not necessary in the vast majority of cases.” Trial Practice Guide 59 (Nov. 2019), *available at* <https://www.uspto.gov/TrialPracticeGuideConsolidated> (“TPG”). In such circumstances, a petitioner should provide:

- (1) a ranking of the petitions in the order in which it wishes the 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).

TPG 59–60. The Trial Practice Guide provides that “the Board recognizes that there may be circumstances in which more than one petition may be necessary” and that “two petitions by a petitioner may be needed, although this should be rare.” *Id.* at 59.

B. Procedural Background

In its Explanation, Petitioner (1) ranked the 110 Petition first and the Petition in this proceeding second and (2) explained the alleged need to file a second petition challenging the same claims of the same patent. *See* Expl. 1–5. Patent Owner responded to Petitioner’s arguments. *See* Resp.

C. Analysis

Petitioner presents three arguments as to the alleged need for a second petition. *See* Expl. 1–5. For the reasons below, we are not persuaded that any of the arguments weighs in favor of a second petition.

1. The Availability of Lundh as Prior Art

First, Petitioner argues that a second petition is needed because of the allegedly undetermined status of Lundh as prior art. *See* Expl. 1–2. Specifically, Petitioner highlights the Federal Circuit’s panel decision⁹ in *Lynk Labs, Inc. v. Samsung Electronics Co.*, Appeal No. 2023-2346. *See* 125 F.4th 1120 (Fed. Cir. 2025). According to Petitioner, at issue in *Lynk Labs* was “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).” Expl. 1–2. Petitioner asserts that the decision in *Lynk Labs* “has the potential to disqualify Lundh from the IPR Grounds that use it,” which are two of the three grounds in the 110 IPR and all grounds in this proceeding. *Id.*

We disagree with Petitioner that the still-open outcome of *Lynk Labs* in any way impacts the availability of Lundh in either the 110 IPR or this proceeding.¹⁰ Critically, in *Lynk Labs*, the Federal Circuit examined the prior art date of a U.S. patent application publication under *pre-AIA* § 102(e)(1) because the challenged patent in that case had a priority date in February 2004—well before the 2013 effective date of the AIA’s revisions to §§ 102, 103—such that the pre-AIA versions of § 102 determined the

⁹ The *Lynk Labs* decision issued on January 14, 2025, the day before Petitioner filed its Explanation.

¹⁰ As noted by Petitioner, the decision in *Lynk Labs* is not final, as a petition for certiorari is still available. *See* Expl. 2 n.2. The Federal Circuit recently denied a petition for rehearing en banc. *See Lynk Labs, Inc. v. Samsung Elecs. Co.*, Appeal No. 2023-2346 (Fed. Cir. Apr. 15, 2025), ECF No. 136.

availability of prior art. *See Lynk Labs*, 125 F.4th at 1125 n.6 (“The parties do not dispute that pre-Leahy Smith America Invents Act (‘AIA’) § 102 applies here. *See* AIA, Pub. L. No. 112-29, sec. 3(n), 125 Stat. 284, 293 (2011). Our references to § 102 therefore refer to pre-AIA § 102.”); *supra* note 3 (discussing the 2013 effective date of §§ 102 and 103 under the AIA). The Federal Circuit held that § 311(b) and pre-AIA § 102(e)(1) together “permit IPR challenges based upon published patent applications, and such published patent applications can be deemed prior art in IPRs as of their filing date.” *Lynk Labs*, 125 F.4th at 1132.

In contrast, in this proceeding, there is *no dispute* that the AIA versions of both § 102 and § 103 apply. In fact, Petitioner expressly states that it “treats the priority date for the [c]hallenged [c]laims as *not earlier than* October 30, 2015” (Pet. 2 (emphasis added))—i.e., well *after* the 2013 effective date of the AIA’s revisions to §§ 102, 103. The current record supports this view. *See* Ex. 1001, code (60) (listing a provisional application dated October 30, 2015). Thus, 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.

2. *Alternative Claim Constructions*

Second, Petitioner contends that a second petition is needed because Petitioner has proposed two different “approaches” to construing the term “at least one thigh support adjuster” (in each of the independent claims, including limitation 1k above): (1) the “plain and ordinary meaning” and (2) construction as a means-plus-function term under § 112(f). *See* Expl. 2–4.

According to Petitioner, ground 3 in the 110 IPR (based on Stomper-Rosam) and grounds 4 and 6 in this proceeding (based on Andren and Kalouskova, respectively) identify as the recited “at least one thigh support adjusters” a *first* category of structures (allegedly similar to an embodiment in the challenged patent), whereas grounds 1 and 2 in the 110 IPR (based on the Synergy Manual and Staten, respectively) and ground 5 in this proceeding (based on Sharp) identify as the “at least one thigh support adjusters” a *second* category of structures (allegedly similar to accused devices in the Texas Litigation, but which “may be beyond the scope of a § 112(f) construction”). Expl. 3. Petitioner also asserts that a second petition is needed because Patent Owner “has not answered discovery requests [in the Texas Litigation] necessary to understand the scope of the claims.” *Id.* at 3–4.

We are not persuaded that this assertion supports the argument for a second petition. As argued by Patent Owner, Petitioner’s alleged need is undermined by the distribution of its arguments across the 110 IPR and this proceeding. As discussed above, for the “at least one thigh support adjusters” in the 110 IPR, Petitioner relies on one prior art structure from the first category and two prior art structures from the second category; and for the “at least one thigh support adjusters” in this proceeding, Petitioner relies on two prior art structures from the first category and one prior art structure from the second category. *Id.*

In other words, as stated by Patent Owner, “Petitioner *was* able to address both its constructions in both of its Petitions.” Resp. 3–4¹¹; *see also Medacta USA, Inc. v. RSB Spine, LLC*, IPR2020-00275, Paper 22 at 10–11 (PTAB May 22, 2020) (denying institution of a second-ranked parallel petition challenging the same claims of the same patent and stating, “Because Petitioner was able to present an alternative challenge contingent upon [the] alternative claim construction” in the first-ranked petition, “we fail to see how uncertainty regarding claim construction justifies two petitions.”). In contrast, in the *SolarEdge* decision cited by Petitioner, the first-ranked petition presented one *approach* as to the prior art and the second-ranked petition was permitted because it presented *a different approach*, such that the two petitions “do not overlap in any meaningful way.” *SolarEdge v. SMA Solar Techs.*, IPR2019-01224, Paper 10 at 10 (PTAB Jan. 23, 2020), *cited at* Expl. 4.

Turning to the discovery issue, we determine that the alleged failure of Patent Owner to answer adequately an interrogatory in the Texas Litigation seeking information on “all corresponding disclosures and written

¹¹ Petitioner highlights the two categories of prior art structures identified across the six grounds in these two proceedings rather than the two different constructions for “at least one thigh support adjuster” proposed. Looking at the distributions of the constructions presented, however, the same reasoning above applies as Petitioner relied on *each* construction *at least twice* to address the “one thigh support adjuster” *in each proceeding*. *See* 110 Petition 27 (relying on both constructions for Ground 1), 53–57 (relying on only a § 112(f) construction for Ground 2), 86–90 (relying on both constructions for Ground 3); Pet. 29–34 (relying on only a § 112(f) construction for Ground 4), 61–63 (relying on both constructions for Ground 5), 88–90 (relying on both constructions for Ground 6).

description support for the ‘at least one thigh support adjuster’ limitation” (Ex. 1029 at 5) does not warrant a second petition here. The challenged patent was clearly available to Petitioner, and Petitioner was—even with Patent Owner’s non-substantive answer to the interrogatory (*id.* at 6)—able to propose a construction of “at least one thigh support adjuster” under § 112(f). *See* Pet. 7–12. For these reasons, the two different constructions presented do not warrant a second petition in this proceeding.

3. The Number of Claims Challenged

Third, Petitioner, quoting the Trial Practice Guide’s discussion of parallel petitions, contends that a second petition is needed “when, as here, ‘the patent owner has asserted a large number of claims in litigation.’” Expl. 4 (quoting TPG 59). Petitioner highlights that, in this proceeding, the 24 challenged claims “total over 1,966 words.” *Id.* at 5.

We are not persuaded that this argument shows a second petition is needed. As argued by Patent Owner, both the 110 Petition and the Petition in this proceeding challenge the *same 24 claims of the same patent* across three separate grounds *in each petition*. *See* Resp. 4 (“What is unusual is Petitioner’s challenge of all 24 claims in each of six grounds spread across two Petitions.”). Petitioner presents as “illustrative” the decision in *Adobe, Inc. v. Syncloud Technologies, LLC*, IPR2020-01392, Paper 8 (PTAB March 11, 2021), but the distribution of challenged claims across the two petitions in that case *differed entirely* from the distribution here: one petition challenged an independent claim (and its dependent claims), and the other petition challenged another independent claim of differing scope (and its dependent claims). *Id.* at 8 (“In the Petition before us, Petitioner challenges

independent claim 1 and dependent claims 2–11. In IPR2020-01393, Petitioner challenges independent claim 12 and dependent claims 13–20.”).

Petitioner acknowledges this difference between the situation here and that in *Adobe*, but Petitioner suggests it “is a distinction without a difference in view of the considerations of the []TPG, which expresses concern for the Board’s limited resources.”¹² Expl. 5. We disagree. Put simply, if Petitioner can challenge 24 claims across three grounds in one petition, the number of claims does not, on the facts here, warrant a *second* petition to *again* challenge the same 24 claims across three additional grounds.

Moreover, the length of the claims and the alleged difference in scope of the three challenged independent claims do not warrant a second petition. *See* Expl. 5. If the length of the claims warranted a second petition, Petitioner would not have been able to challenge *all 24 claims* across three *different* grounds *in each petition*. *Cf. Adobe, Inc.*, Paper 8 at 9–10 (discussing how the length of the claims warranted a second petition addressing claims 12–30 as well as a first petition addressing claims 1–11). And as to the alleged difference in scope of the claims here, as noted by Patent Owner, numerous pages of Petitioner’s analysis within each ground (including much of the analysis of independent claims 6 and 11) “rely almost exclusively on cross-reference mapping” to prior analysis. Resp. 5 (citing 110 Petition 1, 33–35, 36–40, 63–65, 66–70, 97–98, 100–03).

¹² We note that the concern highlighted by Petitioner—“the Board’s limited resources” (Expl. 5)—would weigh (if anything) in favor of *denying* a second parallel petition.

For these reasons, neither the number of claims challenged in these proceedings nor the length nor the alleged different scope of the claims warrants a second petition.

III. CONCLUSION

For the reasons above, we exercise our discretion under 35 U.S.C. § 314(a) to deny institution of this *inter partes* review.

IV. ORDER

Accordingly, it is hereby:

ORDERED that the Petition is denied as to all challenged claims, and no *inter partes* review is instituted.

IPR2025-00111
Patent 11,786,055 B2

FOR PETITIONER:

James T. Carmichael
Minghui Yang
CARMICHAEL IP, PLLC
jim@carmichaelip.com
mitch@carmichaelip.com

Mark A. Miller
Elliot J. Hales
Anthony J. Jones
DORSEY & WHITNEY LLP
miller.mark@dorsey.com
hales.elliott@dorsey.com
jones.anthony@dorsey.com

FOR PATENT OWNER:

Jennifer C. Bailey
Clifford T. Brazen
Virginia A. Brown
ERISE IP, P.A.
jennifer.bailey@eriseip.com
clifford.brazen@eriseip.com
virginia.brown@eriseip.com
PTAB@eriseip.com