

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

BABY JOGGER, LLC,	)	
	)	
Plaintiff,	)	Civil Action
	)	No. 24-11582-ADB
v.	)	
	)	
MONAHAN PRODUCTS, LLC	)	
d/b/a UPPABABY,	)	
	)	
Defendant.	)	

BEFORE THE HONORABLE ALLISON D. BURROUGHS
UNITED STATES DISTRICT JUDGE

MOTION HEARING

July 17, 2025
10:07 a.m.

John J. Moakley United States Courthouse
Courtroom No. 17
One Courthouse Way
Boston, Massachusetts 02210

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P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Allison D. Burroughs, United States District Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, One Courthouse Way, Courtroom 17, Boston, Massachusetts, on July 17, 2025.)

(Case called to order.)

COURTROOM CLERK: Will counsel identify themselves for the record.

MR. LEONARD: For the plaintiff Baby Jogger, Robert Leonard with the firm Meunier, Carlin & Curfman.

MR. CARLIN: Gregory Carlin with Meunier, Carlin & Curfman.

MR. FILBIN: Michael Filbin with Cozen O'Connor, also for the plaintiff.

MR. SMITH: Good morning, Your Honor. Craig Smith on behalf of the defendant Monahan Products, doing business as UPPAbaby.

MS. REED: Good morning. Andrea Reed, also on behalf of UPPAbaby.

THE COURT: All right. Before we get started, I'm just a little curious why this thing sat for so long and now we're engaged in hand-to-hand combat.

MR. SMITH: Your Honor, the case has proceeded sort of

1 according to the schedule in terms of how the parties have been
2 going forward. Sort of parallel to this, independent of this
3 litigation, we've also filed inter partes reviews challenging
4 the validity of the patents. Those recently got filed within
5 the last month. But in terms of the case progression, we think
6 that the case has just been proceeding according to the normal
7 schedule that the parties had agreed to at the onset of the
8 litigation.

9 THE COURT: No, I'm not questioning the calendar of
10 the litigation. I'm questioning the amount of time that went
11 between the time you all figured out that there was a potential
12 patent violation and the time the lawsuit got filed and why
13 we're -- I'm wondering why you're all fighting now.

14 MR. SMITH: Oh, that's a very good question, Your
15 Honor.

16 THE COURT: Yeah, I know your position on it.

17 MR. SMITH: Okay. Thank you, Your Honor.

18 MR. LEONARD: So, Your Honor, there was some initial
19 conversations between the companies I believe it was -- I can't
10:09 20 remember the exact dates -- when some of the initial patents
21 were filed. There were a number of things that happened with
22 the companies, restructuring some acquisitions, some additional
23 patents were acquired.

24 So it was always, I suppose, on the radar of the
25 company, but due to business things going on, they decided not

1 to pursue with the initial litigation, and now that they've
2 built up a robust patent family, they chose to -- they
3 identified infringing products and decided to pursue it at this
4 time.

5 THE COURT: What's the end game for you? Are you
6 trying to knock products out of the market that are already in
7 the market, or are you concerned about what they have coming
8 down the pike? What's your end game here?

9 MR. LEONARD: Well, I think it's the current products
10:09 10 and some of the features that are in those products that are
11 covered by our patents, whether it's a licensing deal, we
12 haven't had any fruitful conversations regarding resolution to
13 this stage. But I think that's the end goal, is to discuss how
14 we can coexist, understanding that we innovated some of these
15 features that they have incorporated into their products.

16 THE COURT: But you've been coexisting relatively
17 smoothly in the marketplace for a long time.

18 MR. LEONARD: I'm sorry, Your Honor. The products?

19 THE COURT: Yes.

10:10 20 MR. LEONARD: Sure. But I think as the company
21 decided to continue to acquire patents and build up a patent
22 portfolio, they decided it was time to assert those against
23 companies they believe were infringing. And we believe that
24 UPPAbaby has infringed features that are covered by our
25 patents.

1 THE COURT: Okay. So you guys may know, I have twins.
2 They're older now, but their double stroller was a Bumble Ride.
3 Just saying.

4 All right. You can get started then, I take it claim
5 by claim? Is that how you're going to do this?

6 MR. SMITH: Your Honor, I think that's the most
7 fruitful way to do it.

8 THE COURT: Agreed.

9 MR. SMITH: And if it's okay with you, there are six
10:11 10 claim terms disputed.

11 The first four are ones where we are arguing for a
12 specific construction. The latter two we're arguing are
13 indefinite. And with your permission, I would like to take the
14 first four, and Andrea Reed is going to take the two on the
15 indefiniteness.

16 THE COURT: Yeah, that's fine.

17 MR. SMITH: With your permission, I'll start, and then
18 we can have counsel for plaintiff respond.

19 THE COURT: How do you want to do this? Do you want
10:11 20 to go term by term, you do a term and he responds, or do you
21 want to do the first four and he responds? What are you
22 thinking?

23 MR. SMITH: Whatever you would find most useful, Your
24 Honor. I'm happy to do it either way. We've done it both ways
25 at times. I find that sometimes there are things that are

1 related, meaning sometimes it's helpful to hear the whole
2 argument, but it's really up to you in terms of what you think
3 would be most useful for you.

4 THE COURT: Well, I'm going to leave it to you because
5 it's your presentation. I'm just trying to figure out, I just
6 want to figure out what the plan is. I have generally found it
7 easier to go term by term, but if they are interrelated enough
8 that you want to do it separately -- I mean together, that's
9 fine. But I just wanted to know what your intention was on how
10:12 10 you're going to proceed for my own organizational purposes up
11 here.

12 MR. SMITH: Why don't we proceed term by term?

13 MR. LEONARD: I would suggest that as well. I think
14 that makes most sense.

15 THE COURT: Okay. Go ahead.

16 MR. SMITH: Thank you, Your Honor. Is it all right if
17 we present from here?

18 THE COURT: Anywhere where you want.

19 MR. SMITH: It's just easier in terms of the setup.

10:12 20 THE COURT: Fine.

21 MR. SMITH: Good morning, Your Honor.

22 We represent UPPAbaby. We're the defendant in this
23 case. UPPAbaby was a company that was started by a husband and
24 wife team right here in Massachusetts, the Monahans. They
25 created this company basically out of nothing and built it up

1 into a relatively successful company today. They've got
2 premium products on the market. If you're familiar with
3 strollers, one of their strollers is called the Vista stroller.
4 It's been around since 2006.

5 To your point, one of the first questions in the
6 hearing today: Why now? That's a question we've been asking
7 ourselves, too. We've had these products on the market for
8 years. The Vista stroller was actually out and in the
9 marketplace before any of these patents were filed. Yet their
10:13 10 complaint actually alleges that the Vista stroller infringes
11 some of these patents.

12 Similarly they've also designed attachments. So the
13 Vista stroller is a stroller that just seats one child, but
14 there are attachments to it. There's something called a Rumble
15 Seat, which allows you to put a second seat onto the stroller
16 so now you converted a single-seat into a double-seat stroller,
17 convenient when you have extra kids that you need to add in
18 terms of the stroller.

19 The Rumble Seat was something that our team invented.
10:13 20 It's actually something that was shown at a trade show in 2008.
21 And it was shown at a time in September 2008 that was three
22 months before Baby Jogger filed their very first patent
23 application, which was in December of 2008. And one of the
24 things that we're going to explore in this case is that Baby
25 Jogger was actually at that trade show, as was UPPAbaby at the

1 trade show, where we were showing the Rumble Seat.

2 So now I want to quickly sort of lay the framework in
3 terms of what's going on here. We've been accused of
4 infringing five patents. All of the patents have to do with
5 adding an additional seat to a stroller.

6 THE COURT: Just to interrupt you for a second. My
7 screen on which I can see your screen is down here, so when I'm
8 staring down at the floor, it's not personal, okay?

9 MR. SMITH: Thank you, Your Honor.

10:14 10 THE COURT: If you give me the page numbers, I'll work
11 on the hard copy.

12 MR. SMITH: Okay. Yeah, that's great. We're now on
13 slide 6. I'm just going to give a brief introduction to the
14 patent family we're talking about.

15 So we've been accused of infringing five patents out
16 of a family that includes at least nine patents and a whole
17 host of applications that they continue to file even as
18 recently within the last year.

19 This is a large patent family, and again, it all
10:15 20 started in December of 2008 after we had already had our Vista
21 stroller on the market by two years and after we showed our
22 Rumble Seat on the market.

23 On slide 7 we just showed what a visual of the patent
24 family looks like. We sort of categorized the patents into two
25 groupings. One we call the continuation patents, which is the

1 '869 patent and '550 patent. Those two patents have the exact
2 same specification. So the same written description is in
3 them.

4 Then the other three patents we refer to as the
5 continuation-in-part patents. That's the '568, the '231 and
6 the '729 patents. The reason we call them a
7 continuation-in-part is because Baby Jogger added new material
8 into them, including figures and new descriptions. So we call
9 those the continuation-in-part patents.

10:15 10 Moving on to slides 8 and 9, all the patents deal with
11 this idea of adding an extra seat onto a stroller. So if you
12 look at the figures, you'll see that it is just referring to
13 this idea like how do you get an extra seat onto a stroller.
14 And you can do it in a number of different ways. And they also
15 talk about, well, in slide 9, you can actually do it either
16 forward-facing or rearward-facing, so the seat can face in
17 either direction.

18 Now, what's really important for thinking about claim
19 construction in this case is that this is a very crowded field,
10:16 20 meaning that strollers have been around for hundreds of years.
21 Patents on strollers have been around for over 100 years.
22 There are a lot of patents that deal with stroller technology.
23 So this isn't a new field. And as a result, there are lots of
24 prior art. Meaning, there's lots of other people that have
25 come up with ideas, single strollers, double strollers, adding

1 seats to strollers, reversible seats on strollers. There's a
2 lot of prior art here, including prior art that is so similar,
3 if you go to slide 11, that it looks identical to the figures
4 in Baby Jogger's own patent.

5 There's an inventor by the name of Liao who filed a
6 patent before Baby Jogger filed any of their patents. Liao's
7 patent is shown on the left-hand side of slide 11, and the Baby
8 Jogger figure is shown on the right-hand side of slide 11. If
9 you look at those two figures, it's hard to tell the difference
10:17 10 between the two of them. They look identical. And Liao came
11 up with this idea and filed his application prior to Baby
12 Jogger filing theirs.

13 Why is all this relevant for claim construction? It's
14 relevant because if you look at this particular field, which is
15 so crowded, courts have looked at crowded fields of art and
16 said, well, when there's such a crowded field, we have to be
17 careful about how we construe these because this is typically
18 just an improvement on what's been done before, and we tend to
19 construe these things narrowly because it's such a crowded
10:17 20 field. Slide 12 just gives a few examples of quotes from court
21 cases that support this idea that when you're in a crowded
22 field, claim terms are typically construed narrowly.

23 As you know, claim construction is looked at through
24 the perspective or the lens of a person of skill in the art.
25 This is slide 13. So a person of skill in the art is going to

1 be someone who would be able to read the patent and understand
2 it. So patents aren't written for lay people. They're written
3 for someone who is a person of skill in the art. The reason
4 for this is you don't want to necessarily have to start from
5 first principles to describe your invention. You want to be
6 able to describe it to somebody who already has that relevant
7 skill in that particular art.

8 In this particular case, our expert, Professor Clark,
9 is a person of skill in the art. He's someone who has a
10:18 10 mechanical engineering degree. He's a professor at the
11 University of Pittsburgh. He has experience even in some
12 patent cases, although his job is being a professor. And
13 Professor Clark looked at all the evidence and provided a
14 declaration of his opinion of what a person of skill in the art
15 would understand these terms to mean.

16 And in this case, Professor Clark's declaration is the
17 only evidence that is in front of the court of what an actual
18 person of skill in the art would understand these terms to
19 mean. There's no other declaration, no other expert that has
10:19 20 provided any testimony of any sort.

21 Contrast that with attorney argument. Of course
22 you're going to hear a lot of attorney argument today. We've
23 seen it all in the briefs. Attorney argument isn't evidence.
24 It's not intrinsic evidence for the patents. It's not
25 extrinsic evidence. It's just argument. It is not evidence.

1 All right. Now we're going to just jump into the
2 claim terms. We're going to start with "connector portion,"
3 since that's the first one that the parties briefed. There are
4 four terms that we'll go through that we're asking for specific
5 construction of: "connector portion," "rotated with respect
6 to," "handle portion," and "adjacent."

7 "Connector portion" we're asking the court to construe
8 to mean a male meeting element that attaches by insertion into
9 a corresponding part. "Connector portion" is not a term of
10:20 10 art. It's not something that a person of skill in the art
11 would hear and say, "I know exactly what that means," it isn't,
12 so you have to go and look and see what does this actually
13 mean? What does "connector portion" mean in the context of the
14 patent?

15 We're now on slide 19. "Connector portion" is used in
16 the '869 patent. It's also used in other patents, including
17 the '550 patent. And our job, any time we're in a claim
18 construction Markman hearing is to try to figure out how do we
19 put the pieces together. Meaning, we look at the claims. We
10:20 20 look at the specification. We look at the prosecution history.
21 We look at expert testimony. We try to see what makes the most
22 sense here. What actually pulls all of this together to sort
23 of make the puzzle fit and say, well, what is the definition
24 here that makes the most sense?

25 And so that's what we did. We looked at all of this,

1 and we're at a disadvantage, as the defendant we come in and
2 see these patents and are trying to figure out, we didn't draft
3 them, we didn't write them, we're trying to figure out what do
4 these terms mean and why were they changing terms and changing
5 things as they went along in this process.

6 Starting with "connector portion," the language in the
7 claim says, and this is slide 21, the connector portion is
8 capable of "removably connecting to a stroller frame." You say
9 okay, what does "connector portion" mean? So we look into the
10:21 10 patent and say what does "connector portion" mean to us? In
11 the patent they define it. They say a connector portion is
12 item 21. What is item 21? It's a male mating element that
13 actually puts itself into a portion of the stroller so you can
14 connect the seat to it.

15 Now, Claim 1 and some of the other claims that use
16 "connector portion," they provide what -- they just say, "This
17 is the connector portion," and it has some information about
18 what it is. But then we look also at the dependent claims and
19 say, What do the dependent claims tell us about connector
10:22 20 portion?

21 THE COURT: Can I interrupt you on this one?

22 MR. SMITH: Sure.

23 THE COURT: I don't see anything in this that limits
24 this to a male/female connection relationship. It is one of
25 the illustrations that they give, but that seems to be an

1 example of a connector, and it seems like you're reading a term
2 into the claim that isn't there. So go through your
3 presentation, but if you could, focus that for me.

4 MR. SMITH: Certainly. So we don't feel like we're
5 reading into anything. We're just reading the patent and
6 trying to understand what it says. So the specification talks
7 about a connector portion and specifically refers over and over
8 again to a male mating element. They don't show any other --
9 there's no figure in the entire patent that shows any other way
10:22 10 that you would mate this to the other.

11 THE COURT: Why do you say that? They talk about
12 things like -- it feels more generic than that to me. It says,
13 "The attachment portions include," it says, "any type of
14 connector portion." Clearly the male/female connection is in
15 the Venn diagram, but why is it limited to that?

16 MR. SMITH: It's limited to it because that is the
17 only thing that they've disclosed as being their invention. So
18 one of the problems with "connector portion" the way Baby
19 Jogger is construing it, they basically said anything that can
10:23 20 connect to a stroller is a connector portion, which is broad.
21 It means it includes any possible way of connecting to a
22 stroller. And we're saying that's not what you told the Patent
23 Office. That's not how you described your invention to the
24 Patent Office. You explained that our connector portion is
25 this specific piece, and then you even described it, going to

1 slide 24 to your point, where they talk about other
2 embodiments. When they refer to other embodiments, they're
3 referring to, you could have different cross-sections so the
4 male mating element doesn't have to be just this particular
5 cylindrical piece that's shown in item 21. It can have other
6 shapes. So it could be square, rectangular, triangular. So it
7 can have other elements to it; meaning it could have different
8 shapes but it's still a male mating element.

9 And what's interesting is when you then look in the
10:24 10 specification where they talk about other things they can put,
11 they don't call them connector portions. They call them
12 something else.

13 So Baby Jogger has referred to other portions of the
14 patent and said, well, there are other portions of the patent
15 that talk about the fact that there are releasable connections
16 or that there are other types of ways that you could connect
17 it, but the reality is that when they talk about a connector
18 portion, so you read it in the claim, you look back and say,
19 okay, where in the specification do they tell us what this
10:24 20 connector portion is, because we don't know what it means on
21 its own, we look at it and we say, okay, looking at "connector
22 portion," here is what they've told us it means. They said --
23 this is 21, this is element 21 in the patent, so we look at
24 element 21 and say what is that? That's a male mating element.
25 You say, okay, now I know what the connector portion needs to

1 be.

2 One of the issues with patents is that you have to
3 sort of, as someone coming in as a defendant, you're looking
4 and saying, like, would I know if I read this whether or not my
5 product is covered or not covered by this? So you read
6 "connector portion," and if you were to subscribe to Baby
7 Jogger's view, you'd have to say that any way of connecting to
8 a stroller would be covered by their patent. And in our view
9 that's just too broad. That gives no limitation into what you
10:25 10 would mean by a connector portion.

11 So our view is anyone looking at the patents would
12 have to figure out what did they mean by "connector portion."
13 They use the specific term. How are they using that term in
14 the patent to help us understand what are the metes and bounds
15 of this particular claim. And so we think that is one way that
16 you can sort of figure out, well, what does this mean.

17 Another way to do it is we looked at the dependent
18 claims, and this is an issue that we've discussed in our
19 briefing, the parties have discussed it. And so, for example,
10:25 20 Claim 7 in the patent is a dependent claim. So the dependent
21 claim makes a modification to another element in the claim, and
22 it says that the attachment frame members, those members
23 include slots. Okay. Well, that's interesting because if the
24 attachment frame member includes a slot, then something would
25 have to fit in the slot. What would fit in the slot? A male

1 mating element would fit in the slot.

2 THE COURT: It says "may be a slot," doesn't it?

3 MR. SMITH: No. Claim 7 says that it is a slot,
4 meaning that the --

5 THE COURT: Is there a slide on Claim 7, just so I can
6 read it?

7 MR. SMITH: I don't have a specific slide on Claim 7.
8 There's another, the language that I have for Claims 9 and 10
9 is quoted verbatim where it talks about the attachment portions
10:26 10 include left and right slots. So they're specifically calling
11 out the slots as a specific element of the attachment.

12 THE COURT: Is the language of those claims in here?
13 What slide are they on?

14 MR. SMITH: This is on slide 22, Your Honor.

15 THE COURT: Okay.

16 MR. SMITH: The reason we think this is important --
17 and I hadn't picked up on this until I recently was reading a
18 claim construction order that you had written in another case.
19 And there was a case that you had cited to that talks about
10:27 20 this idea that when you have a dependent claim and it describes
21 an embodiment, then the assumption is the independent claim
22 must be able to cover that embodiment. And I thought, oh,
23 that's interesting because here we have a very similar
24 situation.

25 We have a situation where the dependent claim says

1 that the attachment frame member is a slot, and so you would
2 have to interpret the independent claim to include something
3 that would fit in a slot. Whereas, if you took Baby Jogger's
4 position and said it can be anything, then the "anything" might
5 not fit in a slot. So then it's only, well, it's not anything,
6 it's not anything that connects it. It can only be certain
7 things that would satisfy the dependent claim that would fit
8 into a slot.

9 So the "anything" language that they're sort of
10:28 10 proposing as, well, it really doesn't matter, you don't have to
11 define "connector portion" because it can be anything that
12 connects, would be inconsistent with the way the dependent
13 claims are written, where the dependent claims are basically
14 saying we already know the connector portion is a male mating
15 element. That's why we're calling that there's a slot here.

16 So these things, when you put them together, you
17 combine that language, you combine that with the expert looking
18 at the same evidence, saying, yeah, this is how I would
19 interpret it as a person of skill in the art. We come to the
10:28 20 conclusion that this is the way that someone of skill in the
21 art would interpret this language if they were going to
22 understand what "connector portion" means.

23 THE COURT: Okay.

24 MR. SMITH: Thank you.

25 MR. LEONARD: Thank you, Your Honor. First I want to

1 address some of the comments that were stated before we got
2 into the claim construction, which aren't necessarily relevant
3 to the issue of claim construction, but my colleague said that
4 the Vista stroller was introduced early on, and if they had a
5 Rumble Seat, that was introduced in 2008. We don't dispute
6 that. Those are not accused products. I believe he said they
7 were accused products. That's not true. Those products do not
8 infringe because they don't incorporate the features that are
9 in the patents.

10:29 10 What the asserted patents did was, at the time, in the
11 2007-2008 time period, double strollers existed, but they were
12 kind of a new innovation. So you had these big clunky
13 strollers, either doublewide ones or if you add a seat to the
14 front, it made it an enormous thing that was hard to maneuver.

15 So what Baby Jogger did is it came up with a
16 particular seat attachment that you could attach to a single
17 stroller to convert an existing single stroller into a double
18 stroller that allowed that new seat to be removable so you can
19 take it off if you had only one child at the time or, if you
10:30 20 had two, you could add it. It can be reversible, so it could
21 be forward-facing, frontward-facing. You could do any type of
22 configuration. You could add different seats to it, if you
23 wanted to have a bassinet, a toddler seat, a car seat, anything
24 like that. That did not exist at the time.

25 So when counsel said that the Rumble Seat that they

1 had in 2008 existed before our patents were filed, that's a
2 very different device than what is in the patents and then was
3 accused of infringement.

4 With respect to claim construction, claim construction
5 is generally a process to simplify complex technology, complex
6 language. You know, patents can be confusing things to read.
7 They can be overly technical. They can use words that aren't
8 really understood to normal people. So you need to construe
9 those terms so we understand what the scope of the claims are
10:30 10 so that the jury, the counsel and the judge can tell what are
11 the parameters of the claims.

12 Now, here we're talking about baby strollers. We're
13 not talking about super complex stuff, stuff that a regular
14 person would understand, and the claims use words that are
15 readily understandable. So for most of the terms that have
16 been proposed for construction, in our view, they're pretty
17 straightforward and easily understood.

18 Mr. Smith noted that they had submitted an expert
19 declaration. To be honest, again, we're talking about baby
10:31 20 strollers here, and an expert opinion on the meaning of
21 "adjacent" or "connector portion" is just not necessary. And
22 for claim construction, when the claims and the specifications
23 are clear in the intrinsic record, you're not even supposed to
24 look at extrinsic evidence; it's just not necessary. And it
25 seems what they're doing is trying to fill in some of the gaps

1 that aren't present in the intrinsic record.

2 Several of defendant's constructions appear to not
3 ignore the claim language in the spec, but they don't rely on
4 the language of the actual claims and what's in the
5 specification. Instead, they're trying to import limitations
6 into the claims where there's just no support for that. And at
7 times they import language that doesn't exist in the patents at
8 all and other times rely on example embodiments, as Your Honor
9 noted when we were talking about connector portion, that don't
10:32 10 limit the claims. A general rule of claim construction is that
11 claims are not limited to example embodiments.

12 So moving on to the disputed claim term "connector
13 portion," in our view the term claims are crystal clear on what
14 a connector portion is. If you read the claims, "A 'connector
15 portion' is capable of removably connecting to a stroller
16 frame. The 'connector portion' is the portion that connects to
17 the stroller frame."

18 And the claims repeatedly use that language
19 consistently, and the language, it's just unambiguous and
10:33 20 doesn't require construction. So if you look at slide 3, the
21 claims of the '869 patent repeatedly say, "Connector portion
22 capable of removably connecting to a stroller frame." That's
23 straightforward language that doesn't require any
24 interpretation, doesn't require any expert testimony to
25 understand what we're talking about there.

1 Same is true of the '550 patent, talking about a first
2 connector portion releasably connected to the stroller frame.
3 Again, the connector portion is the portion that connects to
4 the stroller frame. The connector portion is part of the
5 adapter that connects the second seat. So we have an adapter
6 that has a part that connects to the seat, a part that connects
7 to the stroller, and that's what attaches to the single
8 stroller to convert it to a double stroller. So the connector
9 portion is the portion of that adapter that connects to the
10:33 10 stroller. Again, in our view the claims are pretty
11 straightforward.

12 The additional claims of the '231 and '729 patent talk
13 about "a first connector portion configured to removably attach
14 to the left side of the front wheel support portion." The
15 front wheel support portion again is a part of the frame.
16 Again, it's consistently describing that it's the part that
17 connects to the frame.

18 If we look at the specification, it's the same thing.
19 It repeatedly describes what the connector portion is and what
10:34 20 it does. It's the part that allows the second seat to connect
21 to the stroller frame. I won't read through these, but you can
22 see that the applicant was consistent in how it described this.
23 So in our view there's no construction necessary because the
24 meaning of this term is pretty clear.

25 UPPAbaby's proposed construction for it, which is a

1 "Male mating element that attaches by insertion into a
2 corresponding part," as Your Honor noted, what they're doing is
3 they're importing language into the claims that just don't
4 exist. I mean, the phrase "male mating element" isn't in the
5 claims anywhere. It's not in the specification anywhere.
6 There's no description of a male mating element for insertion
7 into a corresponding part.

8 And if we look at the specification, it specifically
9 notes that there are other types of connector portions. So it
10:35 10 says -- I'm on slide 7, Your Honor, "Other embodiments of the
11 seat attachment may include any type of connector portion." So
12 it's not limiting itself to one specific way to connect to the
13 stroller frame. And then it gives examples, attachment
14 mechanisms such as U-shape brackets, U-bolts, pipe clamps,
15 O-shaped brackets, screws, bolts, and other clamping or
16 attachment means. The claims in the spec are read in view of a
17 person of ordinary skill in the art, and they would really
18 understand the different ways you can attach this adapter to
19 the stroller frame.

10:35 20 Defendants referenced the dependent claims which add
21 the limitation of a slot. Now, just the addition of that
22 limitation in the dependent claims means that the independent
23 claim is not limited to that embodiment. So we agree that the
24 independent claim would cover that possibility, but now the
25 dependent claims have added that limitation, so it's unique.

1 What they're trying to do is import that into the independent
2 claims, which would essentially render these dependent claims
3 just redundant and superfluous.

4 The independent claim cannot be limited to this
5 concept of a slot. And if you look at the language the
6 dependent claims use, whereas the dependent claim is talking
7 about just a connector portion, broadly talk about removably
8 connecting to the frame, removably attaching, releasably
9 connecting. When we add this concept of the slot, which we
10:36 10 agree, when you add the concept of a slot, now the connector
11 portion must be some type of component that can insert into
12 that slot, that's the connection mechanism that we have in this
13 dependent claim. But now when it describes that, it talks
14 about removably receiving the connector portion. We're not
15 talking about connecting or attaching. Now we have this new
16 additional limitation of a slot, so now it receives the
17 connector portion as opposed to just connecting or attaching.

18 Just to summarize, for this particular claim term, we
19 think the claims in the specification are clear. We don't
10:37 20 think it requires construction, and we think that defendant's
21 proposed construction just isn't supported by the intrinsic
22 record and that you don't even need to look to extrinsic
23 evidence such as expert testimony because the claims in the
24 spec are so clear.

25 MR. SMITH: Thank you, Your Honor. I'm just going to

1 make one brief point, then I'll move on to the next claim term.

2 THE COURT: I should have said this at the beginning.
3 Just so you know, I have a hard stop at 12:30. I can resume
4 again in the afternoon but only for about an hour.

5 MR. SMITH: I don't expect us to go that long.

6 THE COURT: I didn't think you would either.

7 MR. SMITH: I would hope it doesn't last past that,
8 Your Honor.

9 Quick rebuttal, Your Honor. The last point that was
10:38 10 made was interesting because it suggests that "connector
11 portion" in the independent claim changes depending on what the
12 dependent claim says, which wouldn't be accurate that the
13 independent claim is what it says, but the dependent claim now
14 adding a slot doesn't change the connector portion.

15 So our argument is that by indicating that the slot is
16 there, it is indicating that, in the independent claim, the
17 connector portion has to be able to fit into that slot. That
18 has to be an embodiment that is covered by it. And the case
19 you referred to in your other opinion was *Littelfuse*, and the
10:39 20 cite is 29 F.4th 1376, Federal Circuit, 2022, which I think
21 might be relevant here.

22 We're going to switch now to the second term, which is
23 "rotated with respect to." Here UPPAbaby proposes that it be
24 construed to mean "Rotatably coupled at a common pivot point."
25 This is starting on slide 29 of our slide deck, Your Honor.

1 "Rotated with respect to" appears in the '568 patent
2 in Claim 1. This is on slide 30. Now, starting on slide 31,
3 we start to do the analysis where we dig into the claims and
4 specification to try to figure out what does that language
5 mean, "rotated with respect to." The first thing that's clear
6 from the patent is it's talking about two elements of the
7 stroller and that those two elements are rotated with respect
8 to one another. So there's a back wheel support frame and
9 there's an upper tube support frame. So these two elements of
10:40 10 the stroller are going to rotate with respect to one another.

11 The specification uses language that's very similar to
12 what we're proposing in our construction where they talk about
13 the back wheel support frame, the upper tube support frame.
14 They're rotatably coupled. They can be rotatably adjusted.

15 You can see on slide 32 the relationship between those
16 two pieces. So you can see in pink the upper tube support
17 frame portion, and you can see in green the back wheel support
18 frame. So those are the two parts in the claim that are
19 supposed to be rotating with regard to one another. And so
10:40 20 here you can see that they're rotating around a common point.
21 We refer to it as a common pivot point, which is in sort of a
22 brown-ish color in the figures. But the patent doesn't
23 describe any other way that these two elements would be
24 rotated, other than by some common pivot point between those
25 two pieces.

1 What I think is really interesting is that Baby
2 Jogger, during prosecution, seems to agree with the way that we
3 have construed it; meaning that when they were faced in
4 prosecution with a piece of prior art called this Cheng
5 reference, and Cheng is a prior art stroller that you could
6 have two seats lined up, one in front of the other, and you
7 could have them interchangeable. So this is a piece of prior
8 art that Baby Jogger faced multiple times during prosecution.

9 So this Cheng reference says, it shows a picture and
10:41 10 it shows a picture of what the stroller looks like and how it's
11 rotating. And you can see there's different elements that are
12 rotating. What's most interesting about slide 33 in the figure
13 there is that Baby Jogger argued that if you look at this
14 particular figure, you can tell that the two yellow components,
15 which are elements 31 and 32, those are rotatable with respect
16 to each other; meaning they're rotating with respect to each
17 other because there's a common pivot point. That pink point is
18 the common point where they rotate with respect to one another.

19 In contrast, they point to element 10 of the same
10:42 20 stroller, which is kind of in a brown or maroon color in slide
21 33, and they say that particular element doesn't rotate with
22 respect to item 31. So they specifically call out, when we're
23 talking about rotation, we're talking about a rotation that
24 relates to two elements together, not some other part of the
25 stroller that could also potentially rotate.

1 The reason this is important is, if you look at Baby
2 Jogger's proposed construction, their proposed construction
3 could mean any two elements of the stroller could be considered
4 to be rotating with respect to one another simply because one
5 would rotate. There's no connection between the two elements.
6 So any two parts of the stroller and almost -- most strollers
7 today fold and collapse in some way, and the Cheng reference is
8 no different. It allows it to collapse. Their definition is
9 so broad, it would allow any two parts of the stroller to be
10:43 10 considered rotated with respect to one another because there's
11 no limitation on the fact of where does this rotation occur.

12 We're simply saying, well, based on what they said in
13 their patent, where they show the two pieces rotating with
14 respect to one another at a common point, what they said in the
15 prosecution history, which is, here is a rotation that we're
16 going to call "rotated with respect to one another with a
17 common point," and we're going to specifically point to another
18 part of the stroller that also rotates, you can see the arrow
19 in the figure where it says that the top part is rotating, and
10:43 20 we're going to say, no, that doesn't rotate with respect to
21 element 31.

22 So they're specifically making a distinction between
23 what does it mean to rotate with respect to elements of the
24 stroller. We think that's important because that helps us
25 understand what did you mean when you say it, and we think what

1 they meant is the two pieces have to rotate at a common point,
2 a pivot point for them.

3 We also asked our expert the same question that we
4 asked for every one of the claim terms: How would you
5 understand this? What would you understand this to mean? On
6 slide 34 he said, yeah, "rotated with respect to" there would
7 be this common pivot point. It's not just having two common
8 points anywhere rotating. Otherwise it's meaningless what that
9 term would mean because now you could have any part of the
10:44 10 stroller where those two pieces could be rotated, and that
11 can't possibly mean that every single part of the stroller is
12 rotated with respect to.

13 In slide 35 we just talk a little bit about one of
14 Baby Jogger's arguments. One of their arguments was that
15 essentially "rotated with respect to" can mean any part is
16 rotated with respect to one another. We think that's too broad
17 and is inconsistent with both the patent and the prosecution
18 history, but also they talk about a folding mechanism, and they
19 say a folding mechanism has a slightly different language, but
10:45 20 the folding mechanism is not part of the claim. All it says is
21 these elements, these two pieces are rotated with respect to
22 one another. Thank you.

23 THE COURT: I'm going to tell you, Mr. Leonard, you've
24 thoroughly confused me on this one because I don't understand
25 what rotated -- I'm looking at the stroller. As I've told you,

1 I've used a double stroller. I don't understand what it means
2 to say "component rotated relevant to another component," and I
3 don't understand the concept of "indirectly coupled." You just
4 kind of lost me.

5 MR. LEONARD: Okay, fair enough. So obviously we
6 think that the claim construction is clear, so our proposed
7 construction, you don't even need to get there if you just look
8 at the claims. So we're talking about, when we talk about one
9 component being rotated relative to another, in the context of
10:45 10 this claim, the '568 patent, we're talking about the first back
11 wheel support frame and the first upper tube support frame. So
12 if we -- if we're looking at figure 8A, the back wheel support
13 frame is labeled 81b and the upper tube for support frame 81c,
14 so what this is describing is how the stroller is folded.

15 THE COURT: Yes.

16 MR. LEONARD: So I agree that in this example
17 embodiment we have a common pivot point, right. We have a
18 folding mechanism where they meet, and when you collapse a
19 stroller, typically you have some kind of handle release and
10:46 20 then it folds.

21 So what's happening here is the upper tube support
22 frame and the back tube support frame are rotating with respect
23 to each other to collapse the stroller. That's what the claims
24 are trying to describe. They're trying to describe that
25 function of folding the stroller. So it's telling you that

1 this back wheel support frame needs to fold up so you can get
2 it into a collapsible state.

3 So if we talk about our proposed construction, what
4 that was meant to say, I agree "one component rotated relative
5 to another" sounds broad, but in the context of the claim, the
6 claim tells us what those components are. So we're not saying
7 that any component is rotated to any other component. Here,
8 those components are the back wheel support frame and the upper
9 tube support frame.

10:47 10 THE COURT: What does it mean to rotate relative to
11 another? If there's not a common pivot point, what does it
12 mean to rotate relative to?

13 MR. LEONARD: So they're collapsing into each other,
14 so you can envision an embodiment where you have an upper part
15 of a frame, some sort of intermediary portion, and then the
16 back wheel is, say, a little lower, so they could collapse, and
17 you would still have an intermediary portion that is not
18 directly coupled with each other.

19 The idea is you don't have to have every component
10:47 20 coupled to a single point for it to be foldable. There's
21 certainly embodiments where you can have multiple locations
22 that fold. You could have the upper tube support comes down,
23 the back wheel comes up. You still have a middle portion
24 there, that would be covered by the claims. And the claims say
25 nothing about a common pivot point. The specification doesn't

1 say anything about a common pivot point. There's absolutely no
2 discussion of these components having to have a common pivot
3 point, a common folding mechanism where they all meet.

4 And the specification I think gets directly to that
5 point when it talks about the folding mechanism where it says
6 that these components, and it identifies the front wheel
7 support frame, which is the part of the frame connected to the
8 front wheels, the back wheel support frame connected to the
9 back wheels, and then the upper tube support frame, they can be
10:48 10 directly or indirectly coupled. So again, it's broader than
11 this concept of having them all have to be connected in a
12 common pivot point.

13 And while the example embodiments show that, that's
14 just a very simple way to show this concept, but it's not
15 limited to that. There's nothing that limits the claims to
16 that single point where they all meet and then they rotate
17 relative to each other from there.

18 MR. CARLIN: May I make a quick statement, Your Honor?

19 THE COURT: Sure.

10:49 20 MR. CARLIN: In mechanical engineering, it's pretty
21 well known that when you are describing the motion between two
22 objects, there are components of that motion that are either
23 rotational or translational. And there are lots of different
24 ways to achieve rotation, and not all of them require a pivot
25 point. You can have multi-bar linkages and those types of

1 things. And I think this is just trying to capture the concept
2 that there are different ways to achieve that rotational motion
3 without it specifically having to be a pivot point.

4 THE COURT: Okay.

5 MR. LEONARD: Just to reiterate, there's nothing that
6 supports the concept of the claims being limited to the single
7 pivot point.

8 And I just want to address, Mr. Smith mentioned some
9 prosecution history. It wasn't this application for the '568.
10:50 10 It was a separate application but a related patent where he had
11 showed the Cheng reference, which was cited multiple times by
12 the examiner and overcome in every instance.

13 In that prosecution history, there's no discussion of
14 a common pivot point. The Cheng reference was overcome for
15 several reasons. They didn't have seat attachment adapters
16 that were removable. They weren't reversible.

17 MR. CARLIN: A good example is the Earth and the moon
18 rotate with respect to each other, but they have no pivot point
19 between the two of them, if that helps.

10:51 20 MR. LEONARD: So all the applicant was saying in the
21 application in the prosecution history was it showed those two
22 components that were folding, so they're folding into each
23 other, so they're rotating relative to each other. There's no
24 discussion that that has to be the way that the claim folds,
25 that it has to have this common pivot point. There's

1 absolutely no discussion about that. So I think they're taking
2 a leap by saying that that's required by the claims based on
3 just a figure that happens to be in the prosecution that was
4 overcome for several reasons. There's just no limitation by
5 the applicant in the prosecution history by any of the
6 statements that they've made.

7 So again, we don't think it requires construction. We
8 think that our proposed construction kind of gets to the point
9 that it doesn't require a common pivot point and that
10:51 10 defendant's proposed construction just doesn't have any support
11 in the intrinsic record.

12 THE COURT: Okay.

13 MR. SMITH: Two quick rebuttal points, Your Honor.
14 First is they concede that the figures, the only thing we're
15 looking at to understand what that means, shows a common pivot
16 point. There's no other description. There's no other figures
17 that show how would this other, complicated other mechanism
18 work. And so we think it's pretty clear, as someone skilled in
19 the art has to read the patent and understand it, what are you
10:52 20 going to understand? You're going to understand exactly what
21 they showed you, which is, there's a common pivot point.

22 Baby Jogger also suggests that you can't have a
23 construction that uses language that is found outside of the
24 patent, but that's the whole point of claim construction.
25 You're trying to sort of understand what these terms mean. And

1 so when you use language to describe something, you're not
2 limited to using language that comes verbatim out of the
3 patent. You can use any language that amply describes what
4 actually is going on here. So they sort of criticize us for
5 using "pivot point." "Pivot point" doesn't show up in the
6 patent. It doesn't have to.

7 This claim construction is trying to find out what is
8 the right way of understanding these particular terms so that
9 we can move forward with arguments related to noninfringement
10:53 10 invalidity in the case. But there's no requirement under the
11 law that you have to pick out words that come directly from the
12 patent and say, okay, now I'm going to define it only limited
13 to words that I can find in the patent. That's not the law.

14 MR. LEONARD: Your Honor, could I make a brief
15 comment? The claims are not limited to example embodiments.
16 This is all in our brief. And the specification directly
17 contradicts this concept of a common pivot point. It talks
18 about indirect coupling of these components. So there's just
19 -- while all of the language doesn't have to necessarily be in
10:53 20 the specification or the claims, there's got to be some support
21 for it, and there's just no support for a common pivot point,
22 for the claims being limited to only a common pivot point.

23 MR. SMITH: I would just respond that they agree and
24 we agree that the figures show a common pivot point, so there's
25 no dispute.

1 Your Honor, we're going to move on to the third claim
2 term which is "handle portion." UPPAbaby proposes that we
3 interpret "handle portion" to mean a lateral frame portion that
4 is grasped when pushing the stroller. I think the parties are
5 actually really close on this one.

6 THE COURT: I agree.

7 MR. SMITH: I'm not really sure why there's a dispute
8 here.

9 THE COURT: Agreed.

10:54 10 MR. SMITH: In reading through the briefs, the only
11 thing I could think of that is disputed is possibly that we are
12 referring to it as saying, well, this is the part you grab on
13 to. It's a handle. So it's a part that you grab on to and
14 push the stroller. They don't have that language in their
15 definition, which would suggest that it could be some other
16 part of the stroller, which I'm not sure what that would be,
17 meaning some other part of the stroller that's a bar that comes
18 across.

19 THE COURT: What I wondered is -- and maybe you can
10:54 20 just clear it, because if there's no dispute here, let's move
21 on. I was wondering, they're talking about the handle, like
22 what you hold on to, and I was wondering are you talking about
23 the handle plus the pieces that come down sideways to it?

24 MR. LEONARD: I think it's close to that. I think
25 when we talk about a handle, it's not necessarily limited to a

1 crossbar, the lateral portion that they're talking about. What
2 the handle portion is is the upper part of the frame, so where
3 you grab the handle, which has two little arm pieces that are
4 still in line with the frame. The independent claims are not
5 limited to this lateral portion of the frame. That's added by
6 the dependent claims, so that concept exists.

7 THE COURT: So they're talking about a bar that goes
8 across. You're telling me you're talking about either a bar
9 that goes across or a bar that goes across and has two little
10:55 10 handles so you hold on like this instead of like that
11 (indicating). Is that what you're saying?

12 MR. LEONARD: I believe so. What we're saying is, in
13 the independent claims there's no requirement of a bar that
14 goes across. That is one of the options. Because there's also
15 limitation for when it's in the unfolded orientation. The
16 front wheel support portion has to be parallel to the handle
17 portion, so there must be some part of the handle portion that
18 is in line with the rest of the frame.

19 So the handle can be just two handles. It can include
10:56 20 a lateral frame or crossbar, but the independent claims are not
21 limited to that. That's added by dependent claims, and that
22 limitation comes later. So the independent claims are slightly
23 broader than that. That's why we take issue with the proposed
24 construction.

25 THE COURT: So you're both talking about the thing

1 that you hold on to, right?

2 MR. SMITH: Now I understand, yes, we both -- I think
3 their definition doesn't seem to support what was just said.
4 Their definition is "portion of the frame coupled to the left
5 and right upper tube support." So, to me, that's essentially
6 exactly what we describe, which is a piece that goes across the
7 stroller and attaches to the upper frame support piece.

8 THE COURT: No. I think what he's saying, I think, if
9 I'm getting this right, is that if you have a handle that goes
10:56 10 across and then there are two things, like, so you're holding
11 it from below, that that's the handle portion, he's describing
12 something a little bigger than you are. He's describing the
13 bar and whatever is attached to it. You're describing just the
14 bar.

15 MR. SMITH: Right.

16 THE COURT: So "handle portion" would seem to cover
17 whatever you hold on to.

18 MR. SMITH: "Handle portion," at least the way they've
19 described it in their patent, they just show it's a portion
10:57 20 that goes across the stroller. They don't show anything else.
21 So any of these other descriptions that you just heard, none of
22 those are in the patent. There's no description of like, well,
23 the handle portion could be something else. There could be
24 some other configuration. All they do is treat it like almost
25 every other patent where they're talking about a stroller and

1 they say the handle portion is just this lateral piece that
2 they hold on to.

3 The figures in the patent are pretty clear. I mean,
4 if you look, this is slide 39 on our slide deck, this is figure
5 8A of the patent. It says the handle portion is 81d, and they
6 show this is exactly what it is. It's the portion that goes
7 across and connects the two pieces of the frame, the left and
8 right.

9 THE COURT: I'm looking at their slide deck now, and
10:58 10 I'm going to just see if I can short-circuit this.

11 They're saying that the handle portion has to have the
12 two ends attached, but it doesn't exclude having something else
13 attach to them that allows you to grip it differently, although
14 you're right about their diagrams. Right? But they say,
15 "where the handle portion includes parallel support members,"
16 but it doesn't necessarily limit it to that.

17 MR. SMITH: I'm sorry, Your Honor. I'm not following
18 where you're reading from.

19 THE COURT: I was just reading from their slide 13.

10:58 20 MR. SMITH: 13, thank you.

21 MR. LEONARD: Maybe I can help you, Your Honor. If
22 you look at slide 12 that comes before that, we agree there is
23 an embodiment which we talked about and it's added in on figure
24 9 that has this lateral support, then you have the parts of the
25 handle portion connected to the upper tube support frame, so

1 the handle portion is just a part of the frame. You can have a
2 lateral portion that connects the two, but what the
3 specification talks about is just that the handle portion has
4 to be coupled to the upper tube support frame. Whether it
5 continues and goes across and has this lateral bar is an
6 embodiment, but the independent claim isn't limited to that.

7 Again, if you go to the dependent claims, it adds this
8 concept of a crossbar, which I interpret as a lateral frame
9 portion that connects the two sides, the parallel sides of the
10:59 10 handle portion. So if we're adding that in the dependent
11 claims, the independent claim can't be limited to that. It's
12 broader than that. So it can be just the parallel portions
13 that you hold on to with nothing in between. It's just, you
14 know, you push it. They have lots of strollers that don't have
15 a crossbar. So it encompasses those embodiments as well.

16 MR. SMITH: Your Honor, there's no description of any
17 of this in the patents. Meaning, this idea that there's some
18 other design or handle, I mean, the handle is described as
19 exactly what you see in figure 8A, this is in slide 39 of ours.
11:00 20 There's no other description of what the handle would be.
21 There's no other, well, it could be two pieces that aren't
22 actually attached to one another but are attached to the upper
23 bars.

24 Even their definition, when I read their definition, I
25 thought, I think we're talking about exactly the same thing.

1 They're saying it's attached to the upper bars, and they don't
2 say one bar or the other bar. They say it's attached to the
3 upper two bars, which would suggest that there's a connection
4 between those two pieces. I don't really see what the
5 difference is here in the two proposed constructions, except
6 for the fact that they're now suggesting that there could be
7 some other implementation that's never been disclosed to anyone
8 as to what the handle portion could mean.

9 And I think, you know, just looking through even
11:01 10 during prosecution when they were faced with other references
11 that had handle portions, there was no sort of discussion,
12 Well, our handle portion is different; it has some other
13 different description to it. They pointed to the Cheng
14 reference, which is slide 40 on our deck, and said, yeah, the
15 handle portion, that's 23.

16 So I don't think there's really a dispute that during
17 the whole process these patents were being prosecuted when they
18 were written everyone understood what the handle portion is.
19 It's only in this litigation, and, quite frankly, it's
11:01 20 litigation-driven that we're now talking about a handle portion
21 that bears no resemblance to any of the figures or descriptions
22 that are put into the patent. And we just think that sort of
23 broadening of the patent in an effort to capture other products
24 that are on the marketplace is just inappropriate.

25 THE COURT: Okay.

1 MR. LEONARD: Your Honor, if I may, again, we're
2 talking about strollers here. And I think you picked up on the
3 concept. We're talking about a handle portion, right? It's
4 the part that you grab. A person would understand that.

5 What they're trying to do is narrow the claims to a
6 very specific type of handle portion that the only support for
7 that is in the dependent claims. So that's an additional
8 limitation added to the independent claims, so it can't be the
9 only type of handle portion that's permitted. The
11:02 10 specification doesn't have to describe every single word,
11 again, because we're talking about fairly simple things that
12 people understand.

13 The handle portion is the upper part of the frame that
14 you can grab to push it. It doesn't have to be a lateral
15 portion. It doesn't have to be anything specific. A person of
16 ordinary skill can design it however they would like, but the
17 concept of a handle portion I think is just readily understood.
18 I think they're just trying to limit it to something very
19 specific that's just not supported.

11:02 20 THE COURT: Okay. I got it.

21 MR. SMITH: Just a quick response, Your Honor. To the
22 extent you look at the dependent claim that calls it a
23 crossbar, it actually includes a huge number of other
24 limitations. Crossbar isn't just one limitation. So it's
25 basically describing a whole different scenario. They're

1 suggesting that because they use the word "crossbar," which our
2 expert doesn't even know what they're referring to there, that
3 it somehow excludes that fact that you would have exactly what
4 they showed in the patent. That can't be the proper
5 description of it that you have now excluded their one
6 preferred embodiment from their independent claim.

7 Now we're going to move on to the fourth of the
8 disputed claim terms. This is the term "adjacent." We argue
9 that "adjacent" means next to and having contact with. Baby
10 Jogger's definition is close but not identical. They agree to
11 the "next to" language but they don't agree to the contact
12 part. They add in language that says it can just be nearby.

13 Our concern with "nearby" is on a stroller that is a
14 relatively small device, you could argue any two pieces are
15 nearby to one another. Is it the handle nearby to the wheels?
16 Well, they're only a foot or two apart. Is this part nearby to
17 another part? Anything on a stroller could be considered
18 nearby. It provides no guidance to us when we're trying to
19 understand these claims to determine like are these two parts
20 actually adjacent to one another? "Nearby" essentially reads
21 the word "adjacent" out of the claim, and it means nothing
22 because you could argue that any two parts are adjacent to one
23 another.

24 Looking at the term "adjacent," the reason we came up
25 with this definition is we looked at the specification. On

1 slide 47 we've got a few examples where they talk about what
2 does "adjacency" mean. So they're talking about one part which
3 talks about the "front wheel, 82, being coupled to the stroller
4 adjacent the left front wheel support frame." So you have the
5 wheel in purple. You have the frame in blue. They talk about
6 those two elements being adjacent to one another. They're
7 obviously in contact. They're next to each other.

8 Similarly, when they talk about the seat support
9 element 84, this is in figure 8A, they say it's "adjacent to
10 the front wheel support portion, 81a." Again, those two pieces
11 are next to each other, and they're touching one another. So
12 we're trying to figure out, well, how do we understand what
13 this term "adjacent" means in the patent? Does it mean that
14 these two things have to be right next to each other or not?
15 And looking through the patent, we're trying to figure out is
16 that the definition they're using.

17 We also notice that in the patents they use a
18 different term called "substantially adjacent." And this is in
19 slide 48. And to us, that sort of indicates that they
20 understood there's a difference between "adjacent" and
21 "substantially adjacent." If you used their definition of just
22 "nearby," "substantially adjacent" would be "substantially
23 nearby." What does that mean in the context of a stroller? Is
24 everything substantially nearby to another part?

25 What they're referring to when they're talking about

1 substantially nearby, they're actually talking about two parts
2 that aren't touching one another. This is on slide 48. And
3 you're looking at the piece in green that is showing a
4 connection point for adding the second seat and saying, well,
5 that one is substantially adjacent to the frame. The frame is
6 in blue. So that connection point doesn't touch the frame, but
7 they say it's substantially adjustment to the frame.

8 So our view is, well, if you look at that language,
9 that means they're close to one another, but they're not
11:06 10 touching one another. So maybe "substantially adjacent" means,
11 well, you don't have to have that true connection in order to
12 make it work. So that's how we sort of came up with this idea,
13 what does "adjacent" mean.

14 But I think the clincher for us is, if you look at the
15 prosecution history, again, the Cheng reference comes up again.
16 It was used many, many times during prosecution. And in that,
17 they specifically are telling the Patent Office what
18 "adjacency" can mean.

19 So the examiner argued that -- and if you look at
11:07 20 figure 5 in the Cheng reference, which is on slide 50, the
21 examiner argued that item 410, which is sort of colored in
22 gold, is adjacent to the front wheels, which are in purple.
23 And you can see in the figure that 410 and the wheel, 33,
24 they're pretty close to each other. I would think Baby Jogger
25 would argue they're nearby one another according to their

1 definition, so they're pretty close in space to one another.

2 And in response, Baby Jogger said, no, those two
3 elements aren't adjacent to one another. And when we read that
4 language, that helps us understand, well, if those two pieces
5 aren't adjacent, then there has to be something to "adjacent"
6 that makes sense; meaning, what would make sense to say, well,
7 those two pieces aren't adjacent, so what does "adjacency"
8 mean? It means they have to be touching one another.

9 Otherwise, why would they be telling the Patent
11:08 10 Office, and quite frankly telling the world because this is a
11 public document we have to rely upon, that in this prior art
12 when we're trying to get our patents allowed by the Patent
13 Office, here we're saying these aren't adjacent, but now in the
14 courtroom in the litigation where we're trying to define what
15 does "adjacency" mean, we're hearing that adjacency can be
16 nearby. To us that's inconsistent.

17 And courts have routinely said we don't like this idea
18 if you're going to treat claims like a nose of wax. Well, when
19 you're trying to get your patent allowed to the Patent Office,
11:08 20 you give this narrow interpretation, and you use that narrow
21 interpretation to say, yes, here is why we should get the
22 patent allowed, but then it comes to litigation you say, oh,
23 no, the claim term is much broader than that; it encompasses
24 other things, too.

25 That type of inconsistency shouldn't be allowed

1 because what it does is tell the public we can't trust what is
2 actually being said in the record because now you're telling us
3 what you said was adjacent is not adjacent and vice versa.

4 Thank you, Your Honor.

5 MR. LEONARD: Again, Your Honor, I think this is
6 another misuse of a commonly understood term. I mean,
7 "adjacent" has a generally understood meaning. I would say
8 that my counsel table is adjacent to defendant's counsel table.
9 We're not touching. But if I say that, people understand what
10 that means.

11 There's nothing in the claims or the specification
12 that say that the components have to be next to and having
13 contact with. In fact, if you look at the claims, if that were
14 the case, it would just result in some kind of bizarre
15 consequences. So, for example, for the '869 patent, this
16 phrase comes up, and we're talking again about the connector
17 portions which are the part that connect to the frame being
18 adjacent to the front wheels.

19 Now, the connector portions do not need to be
20 attached, do not need to have contact with the wheels, but
21 that's what they're suggesting in their proposed construction
22 for "adjacent," that the connector portions have to be
23 connected to the wheels. That just doesn't make sense. It
24 just wouldn't be a functional device if they had to be in
25 contact with the front wheels. They have to be near the front

1 wheels because what we're talking about is a double stroller,
2 you have a single stroller with a seat, and you're adding a
3 second stroller which is adjacent to the front wheels. It's
4 closer to the front wheels. It's telling you where you're
5 connecting those connection portions. But there's nothing in
6 the specification or the claims that say they have to be
7 connected to the front wheels. It just would not make any
8 sense.

9 THE COURT: What about this idea of "substantially
10 adjacent" as distinct from "adjacent"?
11:10

11 MR. LEONARD: So in the specification, and to be
12 clear, this language isn't in the '869 patent, which contains
13 this language. It is in the later patents, the '231. What
14 that language is talking about, again, it's talking about an
15 example embodiment, so the claims are not limited to an example
16 embodiment. But if you read the language -- I don't have a
17 slide for this, but it's at ECF 57-5, just the '231, column 10,
18 lines 60 through 55, it talks about certain examples where the
19 removable seat attachment adapter is capable of supporting a
11:11 20 second stroller seat, so again we're talking about the second
21 stroller seat, that has a child in the second stroller seat
22 that is substantially above the frame of the stroller.

23 So I think that's the important part. In this
24 embodiment, we're talking about a stroller that is now higher
25 than it normally would be. It's substantially above the frame.

1 And the specification goes on to talk about why that's
2 important. You have extra storage space. You can incorporate
3 different types of seats. You can have easier access to the
4 child. So that language is important, that it's substantially
5 above. So now we're further away from just being adjacent to
6 the front wheels because we're now substantially above, so now
7 we're substantially adjacent because of this difference in
8 vertical height of the stroller seat.

9 So this specific embodiment is talking about a
10 specific way to incorporate the seat at a higher level, but
11 because it's substantially above, it's now substantially
12 adjacent as opposed to just adjacent to the front wheels.
13 Again, it's an example embodiment that's adding a little
14 wrinkle to one of the embodiments of the stroller. So that
15 doesn't limit, the word "adjacent" doesn't limit the
16 independent claims.

17 The same is true of the language in the '231 patent.
18 Again, we think the claims are clear. It's talking about a
19 storage seat support portion position at a first vertical
20 position adjacent to the handle portion. It's just talking
21 about the position of where this storage seat support portion
22 is going to be. So you have one that's adjacent to the handle
23 portion. It's not suggesting that the -- anyone who has had a
24 stroller, it's not suggesting that the seat is in contact with
25 the handle portion. I've never seen a stroller like that. I

1 don't think that would make a lot of sense. So it would be
2 next to, it's closer to the handle portion.

3 Then, again, the language is used when we're talking
4 about in the folding configuration, it's talking about the
5 collapsibility. These components are all next to each other
6 because we're rotating these components with respect to each
7 other and they're next to each other. There's no requirement
8 they have to be touching. There's no discussion of that.
9 There's nothing that suggests that.

11:13 10 With respect to the prosecution history, again, this
11 Cheng reference came up a lot, and it was distinguished for
12 several reasons, most notably because it didn't have seat
13 attachment adapters that were removable and reversible. That
14 was the main distinguishing feature that Cheng didn't have,
15 which is one of the main features of the patents.

16 In its discussion of adjacency, again, the '869 patent
17 talks about the connector portion attaching to the frame, and
18 that portion is adjacent to the front wheels. All Baby Jogger
19 noted was that, in Cheng -- and I don't have an image, but it's
11:13 20 figure 5 of Cheng -- where the seat attaches in Cheng, what the
21 examiner identifies as the seat attachment element isn't
22 attached to what it identifies as the frame. So it's
23 completely removed, so it's not attached to the frame adjacent
24 to the front wheels. It's attached to a completely different
25 component altogether.

1 So again, there's nothing in that language that limits
2 the scope of the claim. And we discuss that in our brief, Your
3 Honor, at docket 67, docket page 17.

4 So again, we think this is just another use of a
5 commonly understood word that doesn't require construction.
6 There's no limitation in the intrinsic record that anything has
7 to be in contact with each other. Now, it could be, as an
8 alternative construction, "adjacent" could be next to or being
9 in contact, but it's just not required. In the context of the
11:14 10 claim, it just wouldn't make any sense. Thank you, Your Honor.

11 MR. SMITH: Just one quick point on the prosecution
12 history, Your Honor. This is on slide 50 of our slide deck.
13 The exact language that is used, Baby Jogger argued, "So the
14 seat support elements are not connected to the frame adjacent
15 to the front wheels. They are connected to a pivoting frame
16 member 41." They're specifically making a distinction between
17 adjacency here and saying this is not adjacent. Whereas if you
18 listen to what Baby Jogger's proposed construction is, that
19 would cover what the examiner is saying Cheng actually
11:15 20 disclosed because he said it's nearby, and that would be enough
21 for them. Thank you, Your Honor.

22 THE COURT: Can you respond to that for me?

23 MR. LEONARD: Yeah, and I think that gets to what I
24 mentioned. If you look at the figure, where the -- if we can
25 go back to the previous, if that's okay. I think this is

1 illustrating exactly what I said where the seat -- where the
2 connector portion is attaching is not to the frame that's
3 adjacent to the wheel. So what they've highlighted here shows
4 that the storage seat and adapter attaching the second stroller
5 seat isn't connecting to the frame adjacent to the wheel. It's
6 connecting to a separate component.

7 So there's no discussion, there's no limitation of
8 "adjacent." It's just not -- this isn't what the claims say.
9 The adapter has to connect to the frame that is adjacent to the
10 front wheels. This is attaching to a separate component that
11 is not adjacent to the front wheels. It just doesn't meet the
12 claim language.

13 THE COURT: Okay.

14 MS. REED: Good morning, Your Honor, Andrea Reed.

15 I want to start by saying two things. One, I am not
16 going to talk until your hard stop at 12:30 because it is
17 11:16, and I am very hungry for lunch, so we're not talking for
18 over an hour about two terms.

19 On a more serious note, so I'll be covering these two
11:17 20 indefinite claim terms, it is perfectly appropriate to hold
21 claim terms indefinite at this stage in the case, at the claim
22 construction stage, if the intrinsic evidence warrants it and
23 if there is no extrinsic evidence to the contrary. So I do
24 want us to keep that in mind as we go through these claims.

25 Just a quick slide on the standard. I'm sure you're

1 already familiar with section 112, but I like this Federal
2 Circuit case. It's a different way to articulate
3 indefiniteness. "There is an indefiniteness problem if the
4 claim language might mean several different things and no
5 informed and confident choice is available among the contending
6 definitions."

7 That's exactly what we have here for both "closer" and
8 "substantially parallel." There are several different ways of
9 interpreting these, and there's no informed and confident
10 choice among the different options.

11 So for "closer," we don't propose an alternate
12 definition. It's indefinite, and we don't know what it means.
13 So it appears absolutely nowhere in the '550 patent's written
14 description. And there are two claims in the '550 patent where
15 it appears. These are the only two claims at issue with this
16 word.

17 So I broke this up into four different ways to think
18 about it. There is the first, first vertical position of the
19 stroller frame closer to a handle.

11:18 20 Number two, it is closer to the front wheels. And
21 then three and four we look at together because they're very
22 similar. One is the first connector portion closer to the left
23 front wheel and then four closer to the right front wheel. So
24 I'll discuss those numbers three and four together because
25 they're similar.

1 So this is a recurring question. For occurrence
2 number one, that is the "first seat coupled to the stroller
3 frame and at a first vertical position of the stroller frame
4 closer to a handle of the stroller," I read that and the first
5 thing I thought was "closer to the handle" than what?

6 We need to ask what is the element of the stroller
7 that's forming the basis of the comparison? Just the most
8 obvious one first, if you just want to look at that first
9 bullet point on slide 57, it says "a first seat coupled to the
11:19 10 stroller frame at a first vertical position." Are we talking
11 about the first seat being closer to the handle or the first
12 vertical position being closer to the handle?

13 And there are a lot of different variations that we
14 can slot in relative elements. So another example I have here
15 is, perhaps the first vertical position is closer to the handle
16 than the first vertical position is to the front wheels or the
17 back wheels. These are all in red on page 57. These are claim
18 terms that have already been introduced that may be the basis
19 of the comparison here, but we don't know because the claim is
11:20 20 not saying that.

21 "Closer" occurrence number two, similar points here.
22 This time we're talking about the "second seat attachment
23 coupled to the stroller frame at a second vertical position
24 closer to the front wheels." So first, again, is it the second
25 seat attachment that's closer to the front wheels? Is it the

1 second vertical portion that's closer to the front wheels?

2 And to further complicate "closer" in this second
3 occurrence is now we've had even more claim terms introduced by
4 the time we're getting down to this portion of the claim. I
5 didn't write them out for this because there's just too many
6 combinations, but there are equally plausible combinations with
7 any of these previously introduced terms. What exactly is
8 closer to the front wheels, than what, what's being compared?

9 Closer occurrence numbers three and four, again,
10 closer to the left or the right front wheel than what? In
11 this, similar to number two, the further down the claim we get
12 the more claim terms have already been introduced in close
13 proximity to these words that all provide a basis for equally
14 plausible comparisons of this, closer than what?

15 So these slides are important. I'm going to skip a
16 slide for a second. Another Federal Circuit case, *Datamize*,
17 says that, "When a word of degree is used," and certainly
18 "closer" is a word of degree, "the district court has to
19 determine whether the specification provides a standard for
11:21 20 measuring that degree."

21 So let's go back to the slide I just skipped. These
22 images here are different ways that we could measure "closer."
23 And again, the point is, going back to that interval licensing
24 case, there is no informed and confident choice among all these
25 different ways to measure "closer." Should we measure it

1 according to the green lines going vertical? I'm on slide 60.
2 And where are the start and end points? There are certain ways
3 you could measure vertically where one might be closer to the
4 handle, one might be farther from the handle. We're still
5 looking at the first seat.

6 If the measurement is some portion of vertical and
7 lateral, you could come up with very different answers. So
8 there's a lot of different ways to measure this and ask which
9 one is closer to which, and we just don't know how to do that.

11:22 10 And the problem is a person of ordinary skill in the art
11 reading the patent needs to know if what they're about to
12 embark on, is that going to infringe the patent. And if we
13 don't know how to measure "closer," a person of ordinary skill
14 in the art can't make that informed choice.

15 We do have Professor Clark who explained this relative
16 term. Just saying A is closer to B is not going to inform a
17 person of ordinary skill in the art how to measure what's being
18 compared relative to another. And he gave an example where A
19 is closer to B than C is to B. That's an example for proper
11:23 20 comparison because we know what we're measuring. Even if we
21 knew what we were measuring here, we still have the problem of
22 how do you measure it.

23 So just real quick. Baby Jogger's proposed
24 construction is wrong. I want to note in the briefs that Baby
25 Jogger is emphasizing the first seat being closer to the

1 handle. But again, the way this claim is written, it could
2 just as easily be emphasized that it's the first vertical
3 position that is closer to the handle. That's just two terms
4 that we have to choose from. There are a whole bunch of others
5 in proximity to this language that are equally plausible
6 combinations.

7 I don't think I have anything else to add on that
8 slide. I will let opposing counseling speak.

9 MR. LEONARD: Your Honor, I think, again, this is
11:23 10 consistent with the theme for the day. We're talking about
11 language that's not complex and that I think is fairly easily
12 understood.

13 For a claim to be indefinite, it just must inform a
14 person of ordinary skill with reasonable certainty what the
15 scope of the claim is. And I think the claims here, again,
16 we're talking about strollers, it has a single seat then a
17 second seat, this isn't complex stuff that a person of ordinary
18 skill would have no idea what the claims are talking about.

19 And if I could just address the *Datamize* case, that
11:24 20 involved the term "aesthetically pleasing," which is a
21 subjective standard, and I agree, that's very tough to measure.
22 Here we have a stroller that has a first seat that's closer to
23 a handle and a second seat that's closer to the front wheels.
24 That's pretty clear to me, and certainly a person of ordinary
25 skill would understand what we're talking about. You have one

1 end of the stroller, the handle. The other end is the front
2 wheels. And you have two seats in between there. Where do we
3 put those seats? You put the first seat closer to the handle
4 and the second seat closer to the front wheels.

5 The scope to me is pretty clear. And if we look at
6 the claims, so they talk about, you know, whether it's the
7 first seat or this first vertical position, but it's really the
8 same thing. The first seat is coupled to the stroller frame at
9 a first vertical position. And this vertical positioning tells
11:25 10 us even more about the location of the seats.

11 So we have a first seat that's coupled to the stroller
12 frame at a first vertical position, which is closer to the
13 handles, so now we know which end of the stroller the first
14 seat is. You have a second seat that's attached -- or a second
15 seat attachment, which the second seat attaches to, which is
16 coupled to the stroller frame in a second vertical position and
17 then it tells us where that second vertical position is. It's
18 substantially below the first vertical position, which is
19 closer to the front wheels.

11:25 20 That language is pretty clear, and I think it's a
21 little telling the way they analyze this on occurrence number
22 one and occurrence number two. Because you have to read the
23 claims in totality. You can't isolate them and say, "I read
24 this portion, and I don't understand what it means," because
25 the rest of the claim language is going to inform the scope.

1 So if you read the entire claim language, the scope of
2 the claims are clear. We know where the first seat goes. We
3 know where the second seat goes. And if there was any
4 question, we look at the figures. The figures tell us, you
5 know, where this first seat, how it's closer to the handle, and
6 the second seat is closer to the front wheels. So to say a
7 person of ordinary skill would have no idea what the scope of
8 this claim is, we just simply disagree with that.

9 The same is true of the connector portions, which we
11:26 10 talked a lot about today, contains a lot of the disputed
11 language. So you have a left seat -- so strollers have two
12 sides of the frame. You have a right side and left side. So
13 we have a left seat support element which is the adapter that's
14 going to support the second seat that attaches to the frame on
15 one end and attaches to the seat on the other.

16 Now, that left seat support element has a connector
17 portion that is connected to the stroller frame closer to the
18 left front wheel. So it's telling us we have a left attachment
19 connected to the left side near the left front wheel. Same
11:27 20 thing with the right side. We have a right seat support
21 element, a connector portion, again, connected to the right
22 side next to the right front wheels. Again, it's just saying
23 we have these two components that are connected on opposite
24 sides and are closer to each front wheel relative to each
25 other.

1 So again, we think that's clear. And I think an
2 important fact here is that this specific language "closer to,"
3 was added during prosecution by examiner amendment. So the
4 examiner looked at the claims. It thought it needed something
5 else to be able to tell where these claims go, and it added
6 this language. It added this "closer to" language, and this is
7 in our brief at docket 67 at docket page 19.

8 So the examiner who presumably is a person of ordinary
9 skill in the art added this language so that the application
11:27 10 would be in a condition for allowance. It was then allowed and
11 then issued as a patent. So I think it's just further evidence
12 that, while we think it's clear on its face, the examiner added
13 this to make it perfectly clear so it could be allowed.

14 I'll just address one thing. They notice that there's
15 not a specific measurement in the specification of, you know,
16 what does it mean to be closer to the handle; how close does it
17 have to be? You don't have to describe your invention with --
18 and I think the cases say that -- with mathematical precision.
19 I think the claims clearly tell what the orientation of these
11:28 20 components are. It doesn't have to be one foot from the handle
21 or two feet from the front wheels. It's just not required.

22 MS. REED: All right. A couple of things to unpack.
23 First, it's not our position that the claim terms, that "closer
24 to" is indefinite because it doesn't say how close it needs to
25 be. The indefiniteness is because the relatively of what needs

1 to be measured, what are the components that are being compared
2 to each other, how do we measure that. And the "how do we
3 measure that" is very important.

4 Baby Jogger's counsel had a figure with some green
5 annotations showing here is the handle, here is the first seat,
6 the second seat attachment, the front wheels. I agree that's
7 one way that the claims could be interpreted, but there are
8 many other claim terms that I could substitute on that chart in
9 different parts of the figure that I could circle to say,
10 actually, given the language of the claims, these are what's
11 being compared.

12 And if we could quickly go to my slide 60, I have to
13 come back to this again because, while there is one way that
14 Baby Jogger would like to interpret these, there are many
15 different ways to actually make that closer measurement. If
16 you look at the upper red line between, say, the handle and the
17 first seat, that's one way to say that actually compared to,
18 say, either of the lower red lines, actually the front seat is
19 farther away from the handle depending on where you're
20 measuring that, and the same could be true of any of the green
21 lines. A person of ordinary skill in the art needs to know
22 where he's measuring in deciding whether something is closer or
23 farther away.

24 So I also want to briefly address the point that the
25 examiner made this amendment. I know opposing counsel cited a

1 case in their brief. It was *Tinnus* or *Tinnis*. So it's an
2 unpublished opinion. It hasn't been cited for that proposition
3 by any other cases that we could find. It was a review of an
4 administrative decision. That case absolutely did not create
5 some new heightened standard or new presumption or an exception
6 for an examiner amendment. There is only one presumption of
7 validity, and *Tinnus* just said it a different way. There would
8 be absolutely no principled reason for saying there is an
9 exception where the examiner makes the amendment, and there are
11:31 10 no cases that go that far.

11 So one other very important point actually to
12 distinguish that case, the patentee had submitted testimony
13 from a person of ordinary skill in the art in the Federal
14 Circuit on de novo review was taking that into consideration in
15 saying that the claim language was not indefinite. And I know
16 that Baby Jogger's counsel continues to say this is so simple;
17 we don't need a person of ordinary skill in the art; we don't
18 need an expert. But all I keep hearing is this, that, or the
19 other is what a person of ordinary skill in the art would
11:32 20 consider these claims to mean. And again, if it needs to be
21 said that many times, then it's not as simple as saying
22 everyone knows what these words mean. Thank you.

23 MR. LEONARD: Just briefly, Your Honor.

24 THE COURT: Yeah.

25 MR. LEONARD: I'll just point out one thing that

1 counsel noted, figure 9A, I believe she agreed that is an
2 embodiment covered by the claims, which I think is enough to
3 overcome indefiniteness. I'm not going to say it's an
4 admission, but she acknowledged that this is one way that the
5 claims -- this is an example of the claim language. I think
6 that overcomes that no person of ordinary skill could
7 understand the scope of this.

8 And to the point that this could be interpreted in
9 many ways, there could be many -- I think the Fed Circuit has
10 said just because the term is susceptible to more than one
11 meaning does not render it indefinite. That's *ClearOne* at 35
12 F.4th 1345 at 1351. So I think her argument almost supported
13 our position.

14 MS. REED: If I may?

15 THE COURT: I understand you disagree with that.

16 MS. REED: Sorry. I have to respond to that. Please
17 go to slide 54. The problem here is not just that there are
18 multiple different ways to view the term. It's that there is
19 no informed and confident choice available.

11:33 20 Professor Clark, our expert witness, looked at these
21 and said there is no informed and confident choice available.
22 We don't have any other expert saying otherwise. So it's not
23 simply that the figure could be looked at one way or could be
24 looked at the other. It's that there is no way to choose
25 between the two of those.

1 THE COURT: Okay.

2 MS. REED: I forgot that I was going again.

3 "Substantially parallel." This is our second term that we are
4 seeking an indefiniteness holding on. Again, this is an
5 appropriate time during the case to find a claim indefinite.
6 And this would be the other one. It's the last claim term
7 we'll be talking about today. Professor Clark has given
8 testimony that "substantially parallel" is not a term of art.

9 And I do want to be clear that we are not seeking a
11:34 10 holding of indefiniteness because "substantially parallel" is a
11 relative term or because there is no particular number
12 associated in the disclosure with "substantially parallel."
13 The problem with "substantially parallel" in the context of
14 these claims is it cannot be reconciled with anything in the
15 specification, and I'll go through that.

16 So let's first start with the '568 patent, Claim 1.
17 This is referencing "substantially parallel" with respect to
18 the first front wheel support frame and an upper tube support
19 frame. And the other occurrence in this particular claim is a
11:34 20 second front wheel support frame with respect to the second
21 upper tube support frame.

22 So those are a lot of words. Let's look at a picture.
23 This is substantially parallel in the '568 patent. I used
24 color coding here to make it easier for you. It's on slide 68.
25 What's being claimed substantially parallel is teal green, 81a,

1 that's the front wheel support frame, and hot pink, that's 81c,
2 the upper tube support frame. If you look at the top figure on
3 the right, they are shown as being in line, colinear. Colinear
4 is not parallel. They aren't side by side. It is literally
5 one line where every single point is intersecting all the way
6 up.

7 So Professor Clark has given detailed testimony on
8 colinear not being the same thing as parallel. So that's one
9 disclosure that cannot be reconciled with the claim language.

11:35 10 The other one is in figure 9, showing an embodiment
11 where the stroller has alternating concave and convex portions.
12 So the front wheel support frame is, I guess that would be
13 concave. Then the upper tube support frame is convex. Those
14 are antonyms and there's no way to reconcile those two very
15 different types of curvature, one on top of the other, as being
16 parallel.

17 To go back for a second, the '231 patent claim, this
18 is Claim 1. And this one has a different problem than the
19 colinear and curvature problem I just discussed. This one is
11:36 20 saying that the front wheel portion and the handle portion are
21 substantially parallel. So we're looking at two different
22 elements of the stroller now. And I will go to the
23 corresponding figures for this one.

24 Again, we're using teal 81a to show the front wheel
25 support portion and yellow 81d to show the handle portion.

1 Either of these images show a handle portion that has that
2 perpendicular component. It's the antonym of a parallel
3 component. So similar to how the first patent we discussed
4 colinear and curvature cannot be reconciled as parallel,
5 substantially parallel, the same is true when it comes to
6 perpendicular lines.

7 So another example where I think it's important to
8 have expert testimony despite Baby Jogger's counsel saying this
9 is a simple technology, there has been a back and forth in the
10 briefing as to what exactly does "substantially parallel" mean.
11 Is colinear the same thing as substantially parallel? And this
12 is exactly the sort of thing where Professor Clark can bring
13 helpful information.

14 He had explained in detail in his deposition why a
15 skilled artisan would not refer to colinear as being
16 substantially parallel. Something that is parallel is going to
17 have two lines that do not intersect. I'm just talking about
18 parallel right now, not substantially parallel. Colinear lines
19 are the complete opposite. They intersect at every single
20 point. So parallel never intersects at any point. Colinear
21 intersects at every single point. "Colinear" is as much an
22 antonym to "substantially parallel" as "perpendicular" is to
23 "parallel."

24 I have here on slide 71 a quote from Professor Clark,
25 and I think I will save 72 for a short rebuttal.

1 MR. LEONARD: Your Honor, I do want to address one
2 thing that was said. They argue they're not disputing you need
3 to put some kind of numerical precision on what "substantially"
4 means, but they did exactly that in their brief on docket 58,
5 docket page 30. While that may not be the crux of their
6 argument, they certainly made that argument.

7 The interesting thing about their argument with
8 "substantially parallel" is that it doesn't seem like they're
9 arguing that a person of ordinary skill wouldn't understand
10 what that term means. What they're arguing is that that term
11 does not seem to match up with what is shown in the figures.
12 So I'm not sure they're quite arguing that a person would look
13 at this and not understand what it means. They just disagree
14 that the words that were used by the applicant and described in
15 the figures in their opinion don't match up. But the applicant
16 is allowed to use language they choose to use to describe their
17 invention.

18 Here the language "substantially parallel," what we're
19 talking about is when we're going from -- and the claims say
20 this for the '568 patent. When the stroller frame is unfolded
21 -- so you have a stroller frame that collapses. When you
22 unfold it, you have two components that are substantially
23 parallel, so the frame components are substantially parallel to
24 each other, the first front wheel, which is the bottom portion
25 of the frame, and the upper tube. So you have the stroller,

1 you unfold it, this is what your stroller looks like.

2 Those two components are substantially parallel with
3 respect to each other. And I think a person of ordinary skill
4 would see that language, understand what that means. I don't
5 think you can look at that language and be like, oh, that
6 doesn't make any sense to me. They're substantially parallel
7 with respect to each other. I think one of the reasons you
8 don't get into extrinsic evidence and expert testimony --

9 THE COURT: But how are they substantially parallel
11:40 10 with each other? They're colinear with each other.

11 MR. LEONARD: See, I think the problem with that is --
12 that's what I was going to get to. When the intrinsic evidence
13 is clear, you don't need to go to extrinsic evidence. So now
14 what we're having is an academic dispute.

15 THE COURT: Just go back and tell me, how are the two
16 seats parallel to each other?

17 MR. LEONARD: The two components of the frame?

18 THE COURT: Yeah.

19 MR. LEONARD: They're parallel with respect to each
11:41 20 other in that they're within the same plain. They have the
21 same longitudinal access. They would never intersect. So
22 they're fixed components. They're not lines traveling where --
23 you know, the common way we think of parallel is you have two
24 components, they go straight, they never intersect, right? But
25 for two components to be parallel with respect to each other,

1 that means they have the same longitudinal axis, so they would
2 never intersect. Now, they would overlap if you continued
3 them, but we're talking about components of a mechanical
4 device.

5 THE COURT: Do you have a picture? Because you lost
6 me on that.

7 MR. LEONARD: Yeah, of course.

8 THE COURT: Which picture?

9 MR. LEONARD: So if we look at figure 8a, the two
11:41 10 green portions are parallel with respect to each other. I
11 think a person of ordinary skill would see that and agree that
12 those components, when unfolded, are parallel with respect to
13 each other. They'll never intersect. They have the same
14 longitudinal access, the same slope.

15 This colinearity argument is an academic argument
16 that, one, there's just no discussion of it in the spec. It
17 just kind of -- I think it's a red herring that's brought in to
18 kind of muddy the waters. But I think if you look at that
19 language and you look at the figures, it tells you this is what
11:42 20 it means when we say they're substantially parallel with
21 respect to each other. Now, an academic may disagree, but this
22 is how the applicant described his device in the intrinsic
23 record. And that's what we look to in interpreting claims.

24 To me, this figure is pretty clear on what we're
25 talking about here. They're parallel with respect to each

1 other. They're not going to intersect. They have the same
2 slope. It's talking about, when you unfold it, this is what
3 the stroller is going to look like. While this figure doesn't
4 show it, "substantially parallel," which is specifically
5 defined in the specification as allowing for some -- it says,
6 "The term 'substantially parallel' indicates that the parallel
7 relationship is not a strict relationship. It does not exclude
8 functionally similar variations therefrom." So it specifically
9 defines the term in the specification. And the figures show us
11:43 10 what we're talking about, when we're talking about when it's
11 unfolded, they're parallel with respect to each other. I
12 struggle to find any ambiguity in this language, Your Honor.

13 THE COURT: Okay.

14 MR. LEONARD: Thank you, Your Honor.

15 MS. REED: Again, a few things to unpack. First, the
16 definition, the term "substantially parallel" indicates, "The
17 parallel relationship is not a strict relationship." That's
18 not a useful definition. It doesn't tell us anything or mean
19 anything, and I'll point back to, I think it's the *Datamize*
11:43 20 case. There needs to be some definition, but it needs to be a
21 useful definition that a person of ordinary skill in the art
22 can use. And yes, these are words put down on paper, but they
23 don't mean anything, they're not helpful. And that was part of
24 the reason that we had Professor Clark come in and look at
25 these claims.

1 Baby Jogger's counsel is asking you to read the claims
2 in a vacuum or pretend that a person of ordinary skill in the
3 art is going to read them in a vacuum. Just look at the claim.
4 It's clear what "substantially parallel" means. But the truth
5 is, a person of ordinary skill in the art is going to read the
6 specification. He's not just going to read the claims and stop
7 there. He reads the claims in light of the specification.

8 And when you read the claim in light of the
9 specification, you're left with three different circumstances:
11:44 10 colinear, curved, and perpendicular. So we have to recognize
11 that someone like Professor Clark is going to look at the
12 claims and then look at the specification to inform his
13 understanding. And the specification here is just going to
14 leave him confused. And he had said that. He said that he
15 does not understand what "substantially parallel" means in
16 light of the specification, which he's deemed to have read.

17 Again, I have to point out we're talking about a now
18 mathematical theory in a case where it's been said this is a
19 simple technology, we don't need an expert, and we're
11:45 20 discussing what does it mean to be colinear versus parallel.

21 I'm going to read for you a portion of Professor
22 Clark's deposition testimony. His answer is: "So parallel
23 lines, which I will treat these as lines because they are
24 tubular members, would not intersect in a plane. And as far as
25 I can tell from this drawing, these lines completely overlap

1 with one another, which makes them colinear, not parallel,
2 because they intersect at every point." So that is a different
3 meaning than parallel.

4 Professor Clark has looked at this as a person of
5 ordinary skill in the art and said he does not understand what
6 it means, and there is no counter-extrinsic evidence to that.

7 I think that's all I have, Your Honor. Thank you.

8 MR. LEONARD: Very briefly, Your Honor?

9 THE COURT: Sure.

11:45 10 MR. LEONARD: So again, when we're talking about claim
11 construction, as counsel said, we look at the claims in light
12 of the specification. The applicant can describe their
13 invention in the claims how they would like, but they need to
14 support that in the specification.

15 Now, if we look at the specification, we see figure 8,
16 which shows how the frame looks when it's in the unfolded
17 configuration. When I asked Mr. Clark, their expert, during
18 deposition, I said -- this is Exhibit I which is our docket
19 67-2, I asked, "If we look at figure 8," which is what we're
11:46 20 looking at here, "and the way that these components are
21 presented, doesn't this demonstrate to a person of ordinary
22 skill how the components could be aligned when the stroller is
23 unfolded?" His answer was, "It does."

24 So he agrees that figure 8 is showing how these
25 components can be aligned when unfolded. So this academic

1 discussion on what "parallel" means and is it colinear, I think
2 in the context here, something that is colinear can be
3 parallel, based on what we have here.

4 And one thing I didn't touch on initially is with
5 respect to the '231 patent, where the front wheel support
6 portion is folded and its relationship to the handle portion,
7 it's really the same argument.

8 Their position is that, well, now these components are
9 perpendicular, but that's relying on their lateral frame
10 argument that we talked about, the handle portion. So again,
11 it's another reason that argument doesn't really make sense.
12 It has to be the upper part of the frame. So again, we think
13 the intrinsic record is clear on this claim. Thank you, Your
14 Honor.

15 MS. REED: Just briefly. I pulled up the testimony
16 that Baby Jogger's counsel referenced. Professor Clark was
17 answering the question that was asked, and the question that
18 was asked was, "Doesn't this demonstrate to a person of
19 ordinary skill how the components could be aligned when the
11:47 20 stroller is unfolded." "How they could be aligned." We're
21 right back at the same problem. There are a lot of different
22 ways to interpret these terms, and there's no informed and
23 confident choice how to use them.

24 I skipped this slide 72 but it's up there right now.
25 Part of the problem here is the interpretation of "handle

1 portion." And I do want to be clear, my colleague, Mr. Smith,
2 had mentioned at the outset we have two different groups of
3 patents.

4 There are the early continuation patents, and then
5 there are the later three, we call them the CIP branch patents.
6 "Handle portion" is shown differently in the two continuation
7 patents. If you look on slide 72, I have figure 8, the two
8 early continuation patents, that's the '869 and '550, those are
9 the first ones, they define the handle portion as 81c, and I
11:48 10 have that highlighted in hot pink for you to see.

11 It is not until the later three CIP branch patents
12 that Baby Jogger changed its mind and it's now calling 81c the
13 upper tube support frame and the 81d the handle portion. So
14 between the initial continuation patents and then the three CIP
15 branch patents, Baby Jogger has flip-flopped what it is
16 defining as the handle portion. And this is slightly tying
17 into the earlier presentation on handle portion itself.

18 But this mix and match of component names and
19 numerical identifiers, it's allowing Baby Jogger to argue this
11:49 20 both ways, and they can't have it both ways. The handle
21 portion is one or the other. And given that the claims we're
22 looking at right now with "substantially parallel" -- hang on,
23 it's in the '568 and the '231. Neither of those is the 81c
24 handle portion disclosure.

25 So I think it's relevant when we're trying to

1 interpret "substantially parallel" and whether it's indefinite,
2 we should be looking at the CIP branch patents that these terms
3 are being claimed in. And that is the disclosure on the right
4 side of figure 72, figure 8a, where 81d is culled out as the
5 perpendicular component at the top. Thank you.

6 MR. LEONARD: Can I just address that briefly? I
7 don't think it changes the analysis at all. All that the
8 applicant did was add a component in between the front wheel
9 and the handle portion. So it used to be there was a front
10 wheel portion and the handle portion. They added what they now
11 call upper tube support frame and then a handle portion.
12 They're just further describing their invention. There was no
13 flip-flopping. And in my view that's just a nonissue. It's
14 just a further description of the invention.

15 THE COURT: Okay. Give me a second. Let me make sure
16 I haven't missed anything here.

17 She thinks I got it right enough this morning. We'll
18 take it under advisement. We'll kick out an opinion when we
19 can. Thanks, everyone. We're recessed.

20 (Adjourned, 11:50 a.m.)
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I, Kelly Mortellite, Registered Professional Reporter, Registered Merit Reporter and Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that the foregoing transcript is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter to the best of my skill and ability.

Dated this 28th day of July, 2025.

/s/ Kelly Mortellite

Kelly Mortellite, RPR, RMR, CRR

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