

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BABY GENERATION, INC d/b/a MOCKINGBIRD;
EVENFLO COMPANY, INC.; and
MONAHAN PRODUCTS, LLC d/b/a UPPABABY;

Petitioners,

v.

BABY JOGGER, LLC,
Patent Owner.

IPR2025-01100
Patent 11,192,568

PATENT OWNER'S AUTHORIZED BRIEF ADDRESSING THE
IMPACT OF THE BOARD'S DECISIONS IN *REVVO* AND *TESLA*

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PATENT OWNER'S EXHIBIT LIST

Exhibit No.	Description
2001	Baby Jogger Letter to UPPAbaby dated December 4, 2015
2002	Excerpt of File History of Application No. 12/631,375, Applicant's Response to Office Action, Remarks and Attachments (Nov. 4. 2013)
2003	United States District Courts—National Judicial Caseload Profile for 12-month period ending December 31, 2024; <i>available at</i> https://www.uscourts.gov/sites/default/files/2025-02/fcms_na_distprofile1231.2024.pdf
2004	U.S. Patent No. 10,449,987, Information Disclosure Statement dated February 28, 2018
2005	Docket Sheet (as of Sept. 1, 2025) for <i>Baby Jogger, LLC v. Monahan Products, LLC d/b/a UPPAbaby</i> , No. 1:24-cv-11582 (D. Mass. filed June 18, 2024)
2006	Docket Sheet (as of Sept. 1, 2025) for <i>Baby Jogger, LLC v. Baby Generation, Inc. d/b/a Mockingbird</i> , No. 1:24-cv-00725 (D. Del. filed June 18, 2024)
2007	Docket Sheet (as of Sept. 1, 2025) for <i>Baby Jogger, LLC v. Evenflo Company, Inc.</i> , No. 1:24-cv-00723 (D. Del. filed June 18, 2024)
2008	UPPAbaby's Invalidity Contentions in <i>Baby Jogger, LLC v. Monahan Products, LLC d/b/a UPPAbaby</i> , No. 1:24-cv-11582 (D. Mass. served Feb. 14, 2025)
2009	Scheduling Order, <i>Baby Jogger, LLC v. Monahan Products, LLC d/b/a UPPAbaby</i> , No. 1:24-cv-11582 (D. Mass. Dec. 2, 2024), ECF No. 37
2010	UPPAbaby's Opening Claim Construction Brief, <i>Baby Jogger, LLC v. Monahan Products, LLC d/b/a UPPAbaby</i> , No. 1:24-cv-11582 (D. Mass. Mar. 28, 2025), ECF No. 58

I. Introduction.

Petitioner UPPIAbaby continues to advance *four* different claim construction positions in district court that it (and its co-Petitioners) avoid adopting before the Board. Not only are these inconsistent positions unwarranted, but the Petition failed to acknowledge or attempt to justify these diverging claim constructions. Petitioners were *required* to do so in the Petition, and their failure compels denial of institution under 37 C.F.R. § 42.104(b)(3). *See Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00340, Paper 18 at 3 (Nov. 5, 2025) (citing *Revvo Technologies, Inc. v. Cerebrum Sensor Technologies, Inc.*, IPR2025-00632, Paper 20 at 3-5 (Nov. 3, 2025) (precedential)).

Moreover, Petitioners construe the term “substantially parallel” before the Board although Petitioner UPPIAbaby argued that term was *indefinite* in district court. UPPIAbaby’s attempt to invalidate the ’568 patent for indefiniteness while simultaneously arguing to the Board that the *same* disputed limitation is clear enough to be construed and found in the prior art is precisely the type of gamesmanship that warranted denial of institution in *Tesla*. The Board should deny institution for the same reasons here.

II. Petitioner UPPIAbaby’s attempt to invalidate the ’568 patent for indefiniteness is the same gamesmanship addressed in *Tesla*.

In *Tesla*, the “Petitioner argued indefiniteness in the district court and then *adopted Patent Owner’s...construction* from the district court litigation in its

Petition.” *Tesla*, IPR2025-00340, Paper 18 at 4 (emphasis added). The Board denied institution, reasoning that “[a]llowing a petitioner to advance a claim construction before the Board when that petitioner has made inconsistent indefiniteness arguments in district court fails to further, but instead detracts from, the Office’s goal of ‘providing greater predictability and certainty in the patent system.’” *Id.* (quoting *Revvo*, IPR2025-00632, Paper 20 at 4-5). The facts are nearly identical here and compel the same result.

Before the district court, Petitioner UPPAbaby argued that both the ’568 and ’231 patents are *invalid* because the term “substantially parallel” is indefinite. Ex-2008, 21-22; Ex-2010, 26-30.¹ In that forum, UPPAbaby professed that it could not decipher “what ‘substantially parallel’ means or how to measure it.” Ex-2010, 26; *see also* 27 (“it is unclear what ‘substantially parallel’ means”). According to UPPAbaby, “[n]o one knows” when two members become “substantially parallel.” Ex-2010, 28.

Yet in the Petition, “substantially parallel” is no longer unclear. Instead, Petitioners take the same approach attempted in *Tesla*, eschewing their indefiniteness position and instead arguing that Patent Owner’s district court

¹ The district court has not yet ruled on UPPAbaby’s indefiniteness arguments, and UPPAbaby has not withdrawn them.

construction should be adopted. Pet., 16 (“This Petition applies PO’s assertions and construes ‘substantially parallel’ as meaning “the parallel relationship is not a strict relationship, such that some deviation from exactly parallel is permitted”); id. at 15 (“This Petition applies constructions that PO has implicitly or explicitly applied in litigation”). Contrary to UPPAbaby’s position in district court that “no one knows” when two members are “substantially parallel,” the Petition offers *illustrations* of this relationship alleged to be in the prior art. *See* Pet., 34 (“A POSITA would understand the upper support is ‘substantially parallel’ to the lower support.”); id. at 53.

The Petition offered no justification for its attempt to propose different constructions in two forums. Acknowledging merely that “there are several §112 issues with the Challenged Claims” (Pet., 15), the Petition failed to disclose to the Board that it had already argued “substantially parallel” is indefinite in district court and made no attempt to explain why this inconsistent position was warranted. Furthermore, Petitioners expressly “reserve[d] the right to argue different constructions in other actions.” Pet., 15. And even after Baby Jogger raised (in its Request for Discretionary Denial) the inconsistency of Petitioners’ positions between the two forums, Petitioners only argued that “indefiniteness cannot be raised in an IPR.” Paper 11, 20. But the Director has concluded this fact was “not a sufficient explanation for the different positions.” *Tesla*, IPR2025-00340, Paper 18

at 3 (“Indeed, the statement amounts to an assertion that a petitioner should be permitted to raise inconsistent invalidity challenges in the two forums.”). This inconsistency alone warrants denial of institution.

III. Petitioner UPPAbaby’s additional inconsistent claim constructions further warrant denial under *Revvo* and *Tesla*.

In district court, UPPAbaby argued that “rotated with respect to” in the ’568 patent means “rotatably coupled at a common pivot point.” Ex-2010, 10.

UPPAbaby also argued that “connector portion” means a “[m]ale mating element that attaches by insertion into a corresponding part” (Ex-2010, 6) and that “adjacent” means “next to and having contact with” (Ex-2010, 16).² Petitioners adopted none of these constructions before the Board, failed to disclose that they were adopted before the district court, and failed to explain why any of the inconsistencies were warranted. *See* Pet. 15 (“Except for the term below, no formal construction currently appears necessary.”), 15-16 (identifying only “substantially parallel” as a term requiring construction).

The gamesmanship at play here is self-evident. As one example, UPPAbaby argues in district court that “rotated with respect to” requires “rotatably coupled at a common pivot point.” Ex-2010, 10. But the Petition never alleges that the prior

² These terms appear in the ’568 patent despite being identified in related patents in UPPAbaby’s claim construction briefing before the district court.

art discloses elements that are “rotatably coupled at a common pivot point” even though UPPAbaby argues that feature is *required* in district court. *See e.g.*, Pet. 101-102. Here, Petitioners plainly “seek[] broader constructions at the Board to support a patentability challenge while seeking narrower constructions in litigation to avoid infringement liability.” *Revvo*, IPR2025-00632, Paper 20 at 4. Under *Revvo* and *Tesla*, no justification exists for Petitioners’ attempt to advance inconsistent positions in different forums.

IV. The Petition’s failure to justify its inconsistent claim construction arguments is fatal under *Revvo*.

“The Board may authorize additional briefing ... to determine whether Petitioner has provided a sufficient reason why different claim construction positions are warranted.” *Revvo*, IPR2025-00632, Paper 20 at 5. But such briefing is not an opportunity to provide a *new justification* not articulated in the Petition itself. *See* 37 C.F.R. 42.104 (“the *petition* must set forth...”). The Petition acknowledged that there were different positions being taken but failed to disclose what any of them were, much less explain why the inconsistencies were warranted. No post hoc rationale can cure this fatal flaw. Institution should be denied.

Respectfully submitted,
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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e) and agreement of the parties, I certify that on November 18, 2025, a copy of this paper and all accompanying exhibits were served on counsel for the Petitioner by email to:

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