UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

BABY JOGGER, LLC,
Patent Owner.

_____

U.S. Patent No. 9,403,550

Case No.: IPR2025-01106

_____

PETITIONER'S OPPOSITION TO PATENT OWNER'S DISCRETIONARY DENIAL BRIEF

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List of Exhibits

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EX1001	Declaration of Douglas Prairie
EX1002	U.S. Provisional Patent Application No. 61/119,920
EX1003	U.S. Publication No. 2010/0140902
EX1004	U.S. Pat. No. 8,955,869
EX1005	U.S. Pat. No. 9,403,550
EX1006	U.S. Provisional Patent Application No. 62/311,224
EX1007	U.S. Patent No. 9,944,305
EX1008	U.S. Patent No. 10,730,543
EX1009	U.S. Patent No. 11,192,568
EX1010	U.S. Patent No. 11,731,682
EX1011	U.S. Patent No. 11,577,771
EX1012	U.S. Patent No. 11,505,231
EX1013	U.S. Patent No. 11,878,729
EX1014	Non-certified File History of U.S. Patent Pub. No. 2010/0140902
EX1015	Non-certified File History of U.S. Patent No. 8,955,869
EX1016	Non-certified File History of U.S. Patent No. 9,403,550
EX1017	Non-certified File History of U.S. Patent No. 9,944,305
EX1018	Non-certified File History of U.S. Patent 10,730,543
EX1019	Certified File History of U.S. Patent No. 11,192,568

Exhibit	Description
EX1020	Certified File History of U.S. Patent No. 11,731,682
EX1021	Certified File History of U.S. Patent No. 11,577,771
EX1022	Non-certified File History of U.S. Patent No. 11,505,231
EX1023	Non-certified File History of U.S. Patent No. 11,878,729
EX1024	Certified File History of U.S. Patent Application No. 18/448, 417
EX1025	Sewell, Samuel J. "The History of Children's and Invalids' Carriages." *Journal of the Royal Society of Arts*, vol. 71, no. 3694, 1923, pp. 716–728
EX1026	U.S. Patent No. 405,600
EX1027	U.S. Patent No. 510,355
EX1028	*Intentionally left blank*
EX1029	U.S. Patent No. 4,191,397
EX1030	U.S. Patent No. 6,513,827
EX1031	Declaration of Hollie Schultz
EX1032	Declaration of Greg Allen
EX1033	U.S. Patent No. 7,641,216
EX1034	U.S. Patent No. 4,398,748
EX1035	U.S. Patent Pub. No. 2008/0238042
EX1036	*Intentionally left blank*
EX1037	U.S. Patent No. 6,086,087
EX1038	Kolcraft Contours Options Tandem Stroller Instruction Sheet, EXA to Affidavit of Christoper Butler

Exhibit	Description
EX1039	French Patent 2,615,155 and Non-certified English Translation
EX1040	U.S. Patent No. 6,209,892
EX1041	EP 0980810 and Certified Translation
EX1042	U.S. Design Patent No. D514,036
EX1043	Evenflo Take Me Too Manual – Double Stroller/Double Travel System (Oct. 2004)
EX1044	U.S. Patent No. 6,045,145
EX1045	U.S. Patent No. 5,794,951
EX1046	Comparison of First Non-Provisional Specification and '305 CIP Specification
EX1047	U.S. Patent No. 8,882,134
EX1048	U.S. Design Patent No. D593,459
EX1049	U.S. Patent Pub. No. 2006/0071451
EX1050	U.S. Patent No. 6,702,316
EX1051	*Intentionally left blank*
EX1052	Non-certified File History of U.S. Pat. App. No. 29/324,044
EX1053	CN2778636Y and Certified English Translation
EX1054	U.S. Patent Pub. No. 2003/0075902
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EX1072	Baby Jogger and UPPAbaby's District Court Case Schedule
EX1074	UPPAbaby's Answer and Counterclaims to Baby Jogger's First Amended Complaint

Exhibit	Description
EX1075	Baby Jogger's Answer to UPPAbaby's Counterclaims
EX1076	Baby Jogger's Objections and responses to UPPAbaby's First Set of Interrogatories
EX1077	Markman Hearing Transcript, Baby Jogger, LLC v. Monahan Products, LLC d/b/a/ UPPAbaby; July 17, 2025
EX1078	Baby Jogger and Evenflo Joint Letter to the Court
EX1079	Baby Generation (Mockingbird) Letter to the Court
EX1080	Evenflo Pacer Docket Sheet
EX1081	Mockingbird Pacer Docket Sheet
EX1082	Docket Navigator Statistics for Judge Allison D. Burroughs
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I. INTRODUCTION

Baby Jogger's ("PO") request for discretionary denial of the petitions in IPR2025-01105 and IPR2025-01106 ("105 Petition" and "106 Petition", respectively) should be rejected, and both petitions should be referred to the panel for decisions on their merits. The 105 and 106 Petitions are among seven total petitions challenging a family of seven related patents being asserted by PO against UPPAbaby, Mockingbird, and Evenflo separately in multiple district court actions.[1] Instead of each of the three defendants individually filing fifteen separate petitions challenging the patents the defendants are accused of infringing, the defendants consolidated their invalidity challenges and filed seven joint petitions based on the patents that each party is accused of infringing. This consolidation of validity challenges not only greatly conserves Office and judicial resources, it also avoids duplicative efforts and the potential for inconsistent outcomes across the different proceedings. As the Office has previously found in similar situations, this makes discretionary denial inappropriate. *See Berkshire Hathaway Energy Co. v. Birchtech Corp.*, IPR2025-00274, Paper 23, p. 2-3 (Director July 2, 2025) ("Because the litigation between the parties would proceed to several district court trials in different

[1] The other five proceedings are IPR2025-01095, IPR2025-01100, IPR2025-01120, IPR2025-01122, and IPR2025-01140. The "Petitioner" varies across the seven IPRs.

jurisdictions, resolving the dispute between the parties at the Office would be more efficient."); *Harbor Freight Tools USA Inc. v. Champion Power Equipment, Inc.*, IPR2025-00805, Paper 20, p. 2 (Director Sept. 19, 2025) (same).

The subject matter of the '869 and '550 Patents challenged in the 105 and 106 Petitions is similar to and overlaps with the subject matter of the other five challenged patents in the family. Likewise, the asserted prior art in the 105 and 106 Petitions is similar to and overlaps with the prior art asserted in the other five IPR petitions. Notably, ***PO does not dispute that each of the seven petitions present compelling grounds of invalidity on the merits.*** Indeed, to date, PO opted to not file a preliminary response for any of the five IPRs in which the deadline has already passed. Given these circumstances, referring all seven petitions to a panel for consideration on the merits would promote judicial efficiency and avoid inconsistent outcomes.

The three grounds for discretionary denial raised by PO all fail under scrutiny. First, PO's "settled expectations" argument paints a misleading and incomplete picture by omitting the fact that, although PO originally raised the threat of enforcement of its patents against UPPAbaby in 2015, it subsequently led UPPAbaby to believe for nearly a decade that the dispute over the '869 Patent had been resolved after UPPAbaby advised PO that the patent was likely invalid in view of UPPAbaby's own prior art products. Accordingly, the "settled expectations"

between UPPAbaby and PO was that the patents would not be enforced—not that the patents were valid.

With respect to Mockingbird, PO's claim of "settled expectations" is also unfounded. Contrary to PO's assertion otherwise, the fact that PO and Mockingbird may operate in the same market does not establish constructive knowledge of PO's patents, much less any settled expectations of validity. Plus, Mockingbird introduced the earliest Accused Product only about four years before PO filed suit, which falls short of the six-year period that the Office presumes to create "settled expectations."

Second, the petitions' reliance on expert testimony does not justify discretionary denial. PO primarily complains that the declarations are too "voluminous" and that they are cited "for *every* claim limitation and every ground[.]" (Paper 11, p. 12 (emphasis in original)). But the petitions' reliance on the declarations are proper, as it is entirely appropriate for a petition to cite expert testimony for all claim limitations. PO's hyperbolic claims of the "scale" of the declarations are also misleading, as PO sums together the length of both declarations when calculating their length, even though they ought to be treated separately (and, in fact, have much content that is common to both).

Third, PO's *Fintiv* analysis of the multiple parallel litigations in multiple judicial districts is fundamentally flawed. In the Mockingbird litigation, Mockingbird has not yet answered PO's Complaint, and discovery has not yet

opened. In the UPPAbaby's litigation, claim construction has not yet completed, and investment in invalidity issues has been minimal. When the *Fintiv* factors are properly considered, they weigh against discretionary denial. Indeed, the Office has previously found that "resolving the dispute between the parties at the Office would be more efficient" when, as here, the litigation would proceed to multiple district courts in different jurisdictions. *Berkshire Hathaway Energy Co.*, IPR2025-00274, Paper 23, at 2-3; *Harbor Freight Tools USA Inc.*, IPR2025-00805, Paper 20 at 2.

For these reasons, and those discussed below, the 105 and 106 Petitions should be referred to the panel along with the other five petitions for consideration on the merits.

II. THERE ARE NO "SETTLED EXPECTATIONS" THAT WARRANT DISCRETIONARY DENIAL

A. There are no "settled expectations" as to Petitioner

1. PO led UPPAbaby to believe that the Challenged Patents would not be enforced due to the invalidity issues UPPAbaby raised in 2015.

PO's "settled expectations" argument focuses on a December 2015 letter where its counsel alleged that UPPABaby's "Vista stroller … may be covered by one or more claims in the '869 patent." (EX2001; EX1083, p.2). PO omits, however, that UPPAbaby promptly responded to that letter on December 30, 2015, unequivocally denying infringement and informing PO that the '869 Patent was invalid in view of the prior art, including UPPAbaby's own accused product that

predated the patent. Specifically, UPPAbaby's counsel explained: (1) the accused Vista stroller had been sold since ***2006***, before the filing date of the instant patents; and (2) the "Rumble Seat" adapter for converting its single-seat Vista stroller to a dual-seat stroller was publicly disclosed "before the earliest application filed by Baby Jogger," including at a trade show that was attended by PO's representatives. (EX1083, p.4). In response, PO acknowledged in its final letter, dated March 15, 2016, that UPPAbaby sold an earlier version of the Vista+RumbleSeat, and that a version of the RumbleSeat "launched in 2015" may be infringing. (EX1083, p.7).

PO has admitted in response to UPPABaby's counterclaims that it then ***"took no action against UPPAbaby following the 03/15/2016 Letter*** until filing the complaint in this action on June 18, 2024." (*See* EX1074, p.28 and ¶23;[2] EX1075, p.3, ¶23-answering "Admitted"). Thus, after UPPAbaby informed PO of the invalidity issues with the '869 Patent, PO declined to pursue assertion of the '869 Patent for eight years, and instead built its expanded patent portfolio, even though it had full "knowledge of" the accused products and the invalidity issues as "early as December 2015." (EX1076, p.14-15.)

In UPPAbaby's district court litigation, Judge Burroughs pointedly questioned PO about "the amount of time" between determining a "potential patent

[2] All emphases added herein, unless indicated otherwise.

violation" against UPPAbaby and "the time the lawsuit got filed." (EX1077, 4:10-12.) PO's counsel answered bluntly that PO's strategy was to intentionally forgo a lawsuit in 2015 and instead wait until it had a more "robust" portfolio to assert. (EX1077, 4:24-5:4 ("So [litigation] was always … on the radar of the company, ***but due to business things going on, they decided not to pursue with the initial litigation, and now that they've built up a robust patent family, they chose to … pursue it at this time.***"; *id.* at 5:20-25 (PO's counsel: "[A]s the company decided to acquire patents and build up a patent portfolio, they decided it was time to assert those against companies they believe were infringing."). PO's admission confirms a "lying-in-wait" strategy—choosing to let potential damages accrue and choosing to amass a larger portfolio, while leading on UPPAbaby to believe that the dispute had been resolved in light of the invalidity issues UPPAbaby raised nearly a decade ago. Such conduct does not create "settled expectations" in favor of validity; it confirms a lengthy non-enforcement strategy counseling against discretionary denial. *See, e.g., Apple Inc. v. Ferid Allani*, IPR2025-00856, Paper 11 p.3 (Sept. 11, 2025) (eleven-year delay counsels against discretionary denial).

2. No "settled expectations" exist as to Mockingbird

PO does not, and cannot, claim that "settled expectations" exist with respect to Mockingbird based on actual notice, or even constructive notice pursuant to 35 U.S.C. § 287, of any asserted patents. Instead, PO resorts to arguing that

Mockingbird "was aware of the Patents … by virtue of [PO's] stroller system being lauded in the same technology space in which the Petitioners operate." Paper 11 at 9. Even if PO's assertion were true, simply operating in the same technology space as a "lauded" product does not impute knowledge that the product is patented. PO also ignores that the Mockingbird first offered its earliest Accused Product only about four years before PO filed suit, which is insufficient to create "settled expectations" with respect to Mockingbird.

B. PO's reliance on *Ericsson* is misplaced

PO is incorrect in implying that, based on *Ericsson v Procomm,* IPR2024-01455, Paper 15, p.2 (May 16, 2025), discretionary denial is warranted because Petitioner somehow delayed in filing these Petitions. (Paper 11, p.11). The denial in *Ericsson* was a straightforward application of *Fintiv*, based on a single, overriding fact: the district court trial was scheduled to conclude a full nine months before the PTAB's projected final written decision. *Ericsson,* IPR2024-01455, Paper 15, p.2. *Ericsson* was concerned with the inefficiency of an IPR decision that would issue long after the parallel case had been tried. *Id.*

The circumstances here are polar opposite. In both litigations ***no trial dates have even been set***. (*see* EX1072; EX1078-1079). Claim construction has not yet completed in the UPPAbaby case. The Mockingbird case has also been dormant while Mockingbird's motion to dismiss is pending, with no scheduling order and no

discovery conducted. (EX1078-1081). Unlike *Ericsson*, a final written decision in these IPRs will issue long before any potential trials, thus simplifying the issues for the courts, not duplicating them.

Furthermore, there was no undue delay in filing the petitions as PO alleges. The challenged patents are part of a deeply complex and convoluted family, involving an abandoned application, the insertion of drawings that never appeared in the original application, the addition of new matter via a CIP, and questionable inventorship changes. Untangling this procedural history and developing the robust, evidence-based challenges to all challenged patents required a diligent and thorough investigation. Petitioner acted promptly to analyze these complex issues and filed all petitions within the statutory one-year bar.

III. THE *FINTIV* FACTORS STRONGLY FAVOR INSTITUTION

When the parallel litigations are viewed correctly—as separate litigations against multiple distinct parties—the *Fintiv* factors also weigh heavily against discretionary denial.

Factor 1 (Existence of a Stay): Because Mockingbird's district court litigation has been effectively stayed to await the Court's ruling on Mockingbird's still-pending motion to dismiss, a motion to stay the case pending IPR has been unnecessary in the Mockingbird litigation. If IPR is instituted, Mockingbird and UPPAbaby both intend to promptly move to stay their cases pending final

disposition of the IPRs. Given the early stages of both cases and the simplification of issues that would result from a stay, it is likely that stays would be granted. This factor is at best neutral.

Factor 2 (Proximity to Trial Date): No trial date has been set in any of the litigations. There has been no substantive activity in the case against Mockingbird, which has been dormant now for over a year. PO does not address the time to trial for Mockingbird, which is likely a significant amount of time, given that the case has been effectively stayed to await a ruling on Mockingbird's motion to dismiss, a Rule 26(f) conference has not occurred, discovery has not commenced, and no scheduling order has been entered. (EX1078-EX1081.) Even if the court were to issue a scheduling order before the end of 2025, the median time to trial (based on PO's stats) in the District of Delaware is over two years, resulting in a trial occurring in ***late 2027 or 2028***. This is well after any final written decision will be issued and therefore heavily favors institution.

The UPPAbaby case is in the claim construction phase, but no trial date is scheduled. (EX1072). Judge Burroughs' minimum time to claim construction is 15 months and her single time-to-trial statistic is ***over 4 years*** (49.3 months). (*see* EX1082.) Based on the stage of the case and Judge Burroughs' statistics, UPPAbaby will likely not go to trial for nearly 3 years (*i.e.*, 34.3 months). It is therefore likely UPPAbaby will not have a trial date before the PTAB's Final Written Decisions

issue. Thus, an IPR decision on the merits will likely resolve or simplify issues in the litigation, leading to considerable efficiency gains. This counsels in favor of institution.

Factor 3 (Investment in Parallel Proceeding): In the Mockingbird litigation, a motion to dismiss remains pending, Mockingbird has not yet answered the Complaint, and discovery has not even opened. (EX1079; EX1091). The investment in the Mockingbird case is *de minimis*, weighing heavily against discretionary denial.

Although the UPPAbaby case is in the claim construction phase (EX1077), the costliest litigation phases—fact and expert discovery, dispositive motions, and trial—remain ahead. *Arthrex, Inc. v. Medshape, Inc.*, IPR2025-00053, Paper 11, p.11 (P.T.A.B., April 25, 2025). Thus, and particularly in view of the time-to-trial statistics for Judge Burroughs, the PTAB's decision will issue well before discovery concludes, preventing massive duplication.

Factor 4 (Overlap of Issues): PO attempts to diminish both parties' *Sotera* Stipulations, claiming they do not result in the IPRs being a "true alternative" to the separate court proceedings. (Paper 11, p.17-18). But Mockingbird has not served invalidity contentions, making PO's argument speculative. While UPPAbaby's invalidity contentions reference system art, PO overlooks that the litigation has seen minimal investment in invalidity issues and that a stay is likely if IPR is instituted.

Given neither of the two district court cases "involve 'substantial investment,'" then "even discounting the weight of Petitioner's *Sotera* stipulation[,] … the *Fintiv* factors as a whole indicate that the efficiency and integrity of the patent system are best served by instituting review." *Liberty Energy, Inc. v. U.S. Well Svcs. LLC*, IPR2025-00031, Paper 9, p.18-19 (Apr. 29, 2025). Moreover, to the extent any claims survive, the Board's analysis will streamline invalidity issues in the district court for non-system-based art. *See Nikon Corp. v. Optimum Imaging Techs. LLC*, IPR2024-01373, Paper 17, p.20-24 (Apr. 23, 2025) (holding where system art is present, a *Sotera* stipulation still substantially reduces overlap between litigation and the IPR).

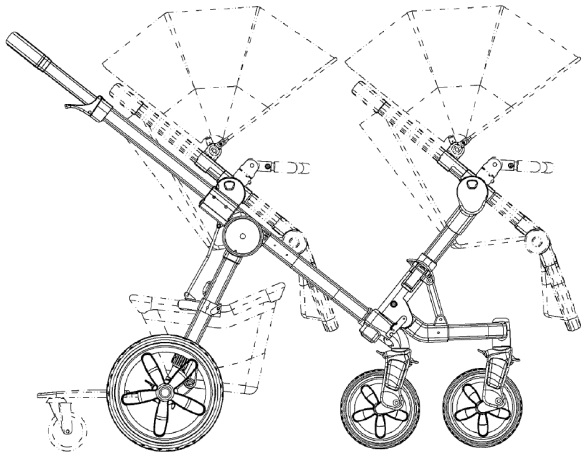
Factor 5 (Same Party): The parties, and more importantly, each "Petitioner" in all seven pending IPR petitions are not the same. PO filed ***separate lawsuits, against unrelated defendants, in multiple jurisdictions.*** Denying institution would create a tremendous duplication of efforts and risk inconsistent rulings. *See Berkshire Hathaway Energy*, IPR2025-00274, Paper 23, p.2.

Factor 6 (Other Circumstances): Other circumstances, including the strong merits of the Petition, favor institution. First, the art cited by the Petitioner across

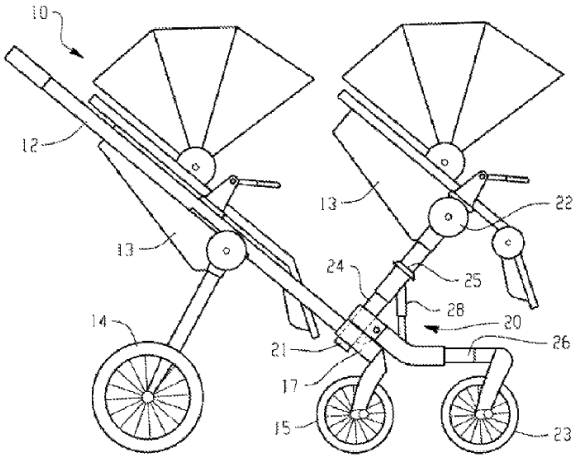
the 105 and 106 Petitions (Liao, Stopp, Chen, Wun, Lake, and Sweeney),[3] were not considered by the Examiner of the '869 or '550 Patents. Secondly, PO does not dispute that the 105 and 106 Petitions present compelling invalidity challenges to patents. Tellingly, PO's brief avoids any analysis of the merits, instead summarily concluding that factor six weighs in favor of denying institution. (Paper 11, p. 19.)

PO did not, and cannot, deny that the petitions do present strong invalidity challenges. For example, in the '869 Patent, the claims recite conventional stroller elements, such as "a frame" and "front wheels," and add only "attachment frame members," which are clearly disclosed by Liao. The figures in Liao, which is a design patent and asserted in the 105 and 106 Petitions, are virtually identical to the figures of the '869 and '550 Patents, as shown below.

[3] A "Chen" reference is mentioned on the face of the '550 Patent, but it is not related to the Chen reference relied upon by the petitions.



LIAO Figure



'869/'550 Patent Figure

(EX1048 at FIG. 11; EX1004 at FIG. 3; EX1005 at FIG. 3). As shown in the petitions, Liao discloses most, if not all, the challenged claims.

IV. THE PETITIONS' RELIANCE ON EXPERT TESTIMONY DOES NOT WARRANT DISCRETIONARY DENIAL

Citing only *iRhythm Techs., Inc. v. Welch Allyn, Inc.*, IPR2025-00363, Paper 10, p.2-3 (June 6, 2025), PO argues denial is warranted because the Petition is over-reliant on "voluminous" expert testimony. (Paper 11, p.12). However, the Petition properly relies on expert testimony to explain POSITA background knowledge and cites prior art in support, as required by 37 C.F.R. § 42.65(a). As correctly found in *iRhythm*, "[t]his also weighs against discretionary denial." *iRhythm*, IPR2025-00363, Paper 10, p.2-3.

PO also argues that the petitions should be discretionarily denied for being overly reliant upon expert testimony to "gap-fill" missing limitations. PO identifies only two claim limitations for which the expert supposedly provides such gap-filler.

(*See* Paper 11, p.12-13.) A simple review of the petitions, however, shows that the petitions point to the references themselves as disclosing those limitations and that expert testimony is merely cited as confirmation. (*See*, *e.g.*, 105 Pet. at p. 39 (citing and annotating FIG. 5 of Liao; 105 Pet. at p.102-105 (citing col 2:1-34 of Stopp; citing and annotating and FIGS. 2-6 of Stopp).) Therefore, PO's claims of excessive reliance on expert testimony for gap-filling are false.

PO argues, for example, that Petitioner relies on expert testimony concerning Liao and the disclosure of a "latch" to meet the claim limitations of "removable" or "releasable" connector portion. (Paper 11, p.12). However, the expert confirmed that a POSA would understand that Liao shows a latch for removing a second seat:

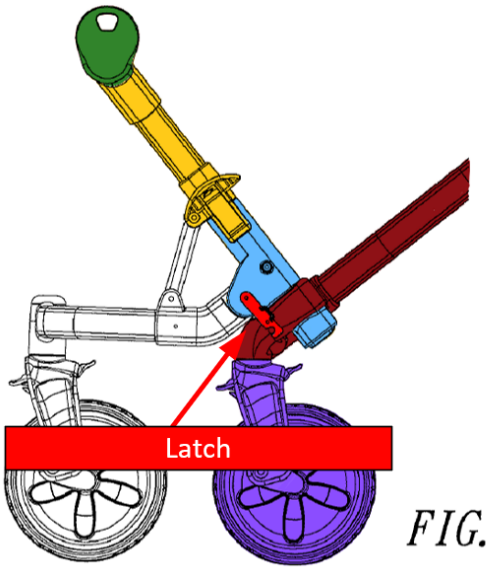


FIG. 5

(EX1048 at FIG. 5).

The expert's understanding is supported by the Patent Office's examination of related patents in the family. In the prosecution of family-member U.S.

application 18/448,417, the Examiner found that Liao disclosed a stroller convertible from a single to double stroller with "one or more seat attachment portion removably attached to the stroller frame." (EX1024 at pg. 1203). The Examiner's conclusion is reasonable and obvious given that the existence and purpose of the latch is readily apparent just by looking at the figures of Liao. The Patent Office reached the same conclusion that the expert reached.

PO's argument concerning Stopp is similarly misplaced. While PO argues that the expert testimony is used to gap-fill, this is not so. Stopp states that the stroller is conventional except in the ways described, and such connector portions were conventional elements, which the expert accurately observes in his declaration. (EX1063 at col. 2:1-20; EX1001 ¶ 273).

V. REFERRAL TO THE PANEL IS APPROPRIATE BECAUSE THE EXAMINER MATERIALLY ERRED IN EXAMINATION OF THE PATENTS

A. PO Does Not Dispute that the Examiner Materially Erred in Allowing the '869 and '550 Patents

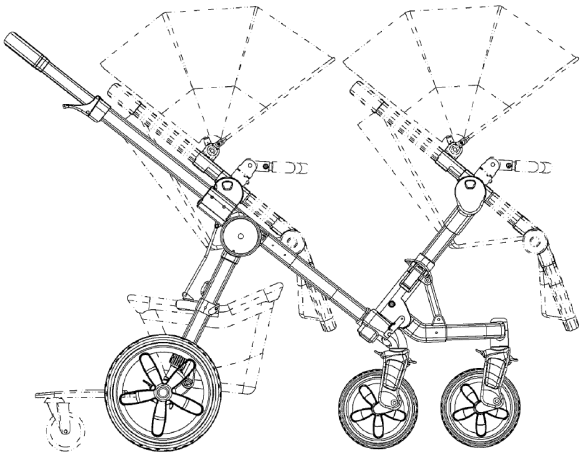
Discretionary denial is further inappropriate because the Examiner erred in a manner material to the patentability of the challenged claims. In allowing the '869 Patent, the Examiner concluded that the "prior art of record" did not "teach or fairly suggest" any limitation of the independent claims. (EX1015 at p.170.) Similarly, in allowing the '550 Patent, the Examiner concluded the "prior art or record" did not "teach or fairly suggest" several limitations of the independent claims. (EX1016 at

p.257.)

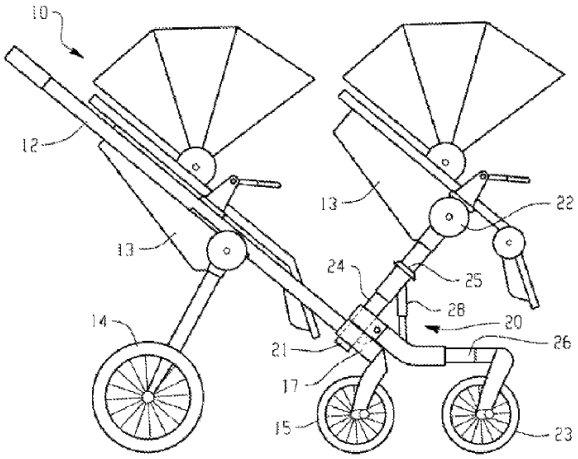
The 105 and 106 Petitions show that each of the limitations that were supposedly missing from the "prior art of record" were indeed disclosed and/or rendered obvious in the prior art. Notably, ***PO does not dispute that the petitions present a compelling case of invalidity of the '869 and '550 Patents in view of the references asserted in the petitions.*** And PO does not argue that the art or arguments raised in the petitions are the same as those considered during prosecution. Therefore, it is undisputed that the Examiner materially erred in allowing the '869 and '550 Patents.

B. The Examiner Did Not Consider Liao Because PO Did Not Disclose It During Prosecution, Despite Knowing of Its Existence and of the Inventor's Collaborations on Stroller Designs with Mr. Liao

An example of the Examiner's material error is the fact that the Liao reference was not considered during prosecution. As shown below, the figures in Liao are virtually identical to the figures of the '869 and '550 Patents.



LIAO Figure



'869/'550 Patent Figure

(EX1048 at FIG. 11; EX 1004 at FIG. 3; EX1005 at FIG. 3).

The similarities between the design in Liao and the '869 and '550 are not a coincidence. During prosecution of a separate, non-related—and now abandoned—application (13/418,101), the named inventor of the '869 and '550 Patents, Mark Zehfuss, admitted ***to a different Examiner*** that he had a professional working relationship with Mr. Liao on stroller designs and that he knew Mr. Liao had invented "approximately one hundred" U.S. patents, including the very Liao patent relied upon in the 105 and 106 Patents. (EX1084, p. 4-10, 39-43). Yet, ***PO never shared this information with the Examiner during prosecution of the '869 and '550 Patents***. As a result, the Examiner concluded that the prior art did not "teach or fairly suggest" any limitation of the independent claims of the '869 Patent and several limitations of the independent claims of the '550 Patent. (EX1015 at p.170; EX1016 at p.257.) The petitions demonstrate that the Examiner was incorrect,

because Liao (and other references) anticipate and/or render obvious all limitations of the challenged claims.

C. Cheng has no bearing on Liao's materiality or value as Prior Art

PO argues that Liao and Cheng are similar, and that since the Examiner allowed some patents in view of Cheng, that the Examiner would also have allowed the '869 and '550 patents over Liao. (Paper 11 at p. 6.) This argument is without merit. Liao and Cheng are distinct references with different disclosures. As discussed above, for example, Liao contains figures virtually identical to the '869 Patent and '550 Patent, while Cheng does not.

D. The Examiner's Consideration of Certain References After Issuance of the '869 and '550 Patents Is Irrelevant

PO states, without citation or further explanation, that institution should be denied because "[t]he Petitions also rely on … references the Examiner already considered[.]" (Paper 11, p. 3.) PO's fails to specify which references it is referring to, leaving the basis for its argument ambiguous. However, to the extent that PO is referring to the Examiner's consideration of Liao (or other references) when examining subsequent applications after the '869 and '550 Patents issued, such consideration is clearly irrelevant, as the Examiner did not actually consider those references during the examination of the '869 and '550 Patents.

VI. CONCLUSION

Having the merits of all seven related petitions considered by the Board will promote efficiency by resolving validity issues of seven related patents in one forum rather than through three separate litigations. PO's request for discretional denial should be rejected, and all seven petitions of the seven related patents should be referred to the panel for consideration on the merits.

Dated: October 8, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e)(1), I hereby certify that on **October 8, 2025**, a copy of the foregoing **PETITIONER'S OPPOSITION TO PATENT OWNER'S DISCRETIONARY DENIAL BRIEF**, including any supporting exhibits filed therewith, was served in its entirety via electronic mail to the following counsel:

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Certificate of Compliance Pursuant

This paper complies with the 20 page limit requirement permitted for Opposition Briefs responding to a Patent Owner's Discretionary Denial Brief filed after September 1, 2025 (*See* https://www.uspto.gov/patents/ptab/interim-director-discretionary-process, Section III.C.iii "Page Limits").

This paper also complies with the format and type style requirements of 37 C.F.R. § 42.6(a).

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