

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EVENFLO COMPANY, INC.
Petitioner

v.

BABY JOGGER II, LLC,
Patent Owner.

IPR2025-01122
Patent No. 11,731,682

Patent Owner's Motion for Leave to Request a Certificate of Correction
Under 35 U.S.C. § 256 and 37 C.F.R. §§ 1.324, 42.22

(authorized during June 12, 2026 conference call)

TABLE OF CONTENTS

PATENT OWNER’S UPDATED EXHIBIT LIST	ii
I. Introduction	1
II. Pertinent Law	1
III. The Board should grant Patent Owner’s motion.....	3
A. The mistake is correctable.....	3
B. There is no prejudice to Petitioner needing accommodation.....	4
1. No change to scope of proceeding.....	4
2. The timing does not create any cognizable prejudice	6

PATENT OWNER'S UPDATED EXHIBIT LIST

Exhibit No.	Description
2001	<i>RESERVED</i>
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	<i>RESERVED</i>
2006	<i>RESERVED</i>
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	<i>RESERVED</i>
2009	<i>RESERVED</i>
2010	<i>RESERVED</i>
2011	Declaration of Dr. Kimberly Cameron (Mar. 26, 2026)
2012	CV of Dr. Kimberly Cameron
2013	Annotated Fig. 16 of EX1051
2014	Declaration of Warren J. Thomas
2015	Requests for Correction of Inventorship under 37 C.F.R. § 1.324 for Patents 10,730,543 and 11,192,568 (filed May 27, 2026)
2016	Transcript of June 12, 2026, Conference Call with the Board
2017–2099	<i>RESERVED</i>
2100	Transcript of the Cross-Examination of Douglas Prairie (Mar. 13, 2026)

Exhibit No.	Description
2101	Declaration of Douglas Prairie, Exhibit 1002 from <i>Precision Planting, LLC and AGCO Corporation v. Deere & Company</i> , IPR2019-01044 (May 29, 2019)
2102	Declaration of Douglas Prairie, Exhibit 2004 from <i>Bazooka-Farmstar, LLC v. Nuhn Industries Ltd.</i> , IPR2023-01161 (Oct. 10, 2023)
2103	<i>RESERVED</i>
2104	Declaration of Douglas Prairie, Exhibit 1001 from <i>Baby Generation, Inc., Evenflo Company Inc., and Monahan Products, LLC v. Baby Jogger, LLC</i> , IPR2025-01095 (June 5, 2025)
2105	<i>RESERVED</i>
2106	Declaration of Douglas Prairie, Exhibit 1001 from <i>Evenflo Company Inc., Baby Generation, Inc., and Monahan Products, LLC v. Baby Jogger, LLC</i> , IPR2025-01100 (June 6, 2025)

I. INTRODUCTION

Patent Owner Baby Jogger II, LLC (PO) moves pursuant to 37 C.F.R. §§ 1.324 and 42.22 for permission to file papers requesting the Director to correct inventorship of U.S. Patent No. 11,731,682 (the '682 Patent) under 35 U.S.C. § 256. The requested correction would remove three inventors leaving Mark Zehfuss as the sole inventor. PO has assembled every item required by Rule 1.324 for the correction. In fact, PO *already* filed requests to correct two related patents (Nos. 10,730,543 and 11,192,568) that are *not* the subject of any IPR. *See generally* EX2015 (showing statements that address all three patents).

Petitioner will suffer no prejudice from granting this motion. The correction will not affect the patentability inquiries or the schedule of this proceeding; indeed, the proposed corrections are consistent with PO's priority arguments in its Response, which Petitioner can respond to in its Reply. Petitioner identified no legally recognizable prejudice during the June 12 conference call. To the extent there is any concern about the timing of Petitioner's Reply, the Board's extension of time has resolved it.

II. PERTINENT LAW

Section 256 "is a savings provision, functioning to prevent invalidation when correction is available." *Egenera, Inc. v. Cisco Sys., Inc.*, 972 F.3d 1367, 1377 (Fed. Cir. 2020); *Canon Computer Sys., Inc. v. Nu-Kote Int'l, Inc.*, 134 F.3d

1085, 1089 (Fed. Cir. 1998) (“Incorrect inventorship is a technical defect in a patent that may be easily curable.”). The statute’s two subsections provide independent paths to correction: a “ministerial administrative correction” under subsection (a) or “a judicial proceeding” under subsection (b). *See Stark v. Advanced Magnetics, Inc.*, 119 F.3d 1551, 1557 (Fed. Cir. 1997) (Plager, J., concurring-in-part) (describing “two routes” to correct inventorship). The Office’s Rule confirms this disjunction, providing that the Director may correct inventorship on either “application of all the parties and assignees, *or* on order of a court before which such matter is called in question.” 37 C.F.R. § 1.324(a) (emphasis added); *see also Cobra Int’l, Inc. v. BCNY Int’l, Inc.*, No. 05-cv-61225, 2014 WL 11321379, at *2-3 (S.D. Fla. Dec. 10, 2014) (“[B]oth forms of correction are equally efficacious, alternative methods of correcting inventorship.”); *HRD Corp. v. Bagherzadeh*, 822 F. Supp. 2d 667, 670-71 (S.D. Tex. 2011).¹

In *Honeywell Int’l Inc. v. Arkema Inc.*, 939 F.3d 1345 (Fed. Cir. 2019), the Federal Circuit explained the process for seeking correction of a patent in an AIA trial. The patentee (1) seeks authorization from the Board to file a motion, (2) files

¹ As recognized in the Office’s MPEP, here, “parties” refers to the “originally named inventors and assignees”—not adverse parties like Petitioner. MPEP § 1481.02 (characterizing the process as “ministerial,” in accord with *Egenera*).

a motion asking the Board to cede its exclusive jurisdiction, and (3) if the motion is granted, petitions the Director for a Certificate of Correction. *Id.* at 1349. At the second step, the Board does not adjudicate the merits of the correction; its inquiry is limited to “whether there is *sufficient basis* supporting [PO’s] position that the mistake *may* be correctable,” and to “evaluate whether prejudice to [Petitioner] requires accommodation.” *Id.* at 1349, 1351 (quotation marks omitted).²

Thus, the substantive requirements of Section 256(a) and Rule 1.324 are reserved exclusively for the Director who “examines [the] request only for the presence of supporting statements and the required fee.” *Egenera*, 972 F.3d at 1380; *see also Honeywell*, 939 F.3d at 1349-50 (holding Board abused its discretion by “assuming the authority” delegated to the Director).

III. THE BOARD SHOULD GRANT PATENT OWNER’S MOTION

A. The mistake is correctable

As shown in the requests for the related patents, PO has in-hand everything required to accompany its request: (1) statements from all four currently named inventors that they do not disagree with the change; (2) the assignee’s statement of

² The correction at issue in *Honeywell* was under 35 U.S.C. § 255, which requires the mistake to be of “minor character” and “occurred in good faith.” 939 F.3d at 1349. Section 256 imposes no such requirements.

consent complying with Rule 3.73(c); and (3) a proposed certificate of correction. *See, e.g.*, EX2015, 16-19, 8-11, 12 (respectively). Nothing more is needed.

Consistent with that framework, the Board routinely grants leave in similar circumstances. *See, e.g., BeiGene USA, Inc. v. Pharmacyclics LLC*, PGR2024-00009, Paper 21, 3 (July 11, 2024) (granting leave to request correction where patent owner’s proposed request included the required statements); *SharkNinja Operating LLC v. iRobot Corp.*, PGR2021-00066, Paper 17, 3 (Aug. 20, 2021) (retroactively authorizing patent owner’s previously filed request to correct); *Google LLC v. Space Data Corp.*, IPR2018-00945, Paper 19, 5-6 (Nov. 7, 2018) (same); *see also Aceto Agric. Chems. Corp. v. Gowan Co.*, IPR2016-00076, Papers 35 and 45 (Nov. 3 and Dec. 21, 2016, respectively) (authorizing briefing after Petitioner’s *Reply* was filed, then granting motion for leave under § 1.48(i), and rejecting petitioner’s argument that correction requires a “deliberate analysis of evidence” because “no specific additional information to corroborate the corrected inventorship appears to be required”).

B. There is no prejudice to Petitioner needing accommodation

1. No change to scope of proceeding

Granting the motion will not change this proceeding at all. Inventorship is not a ground of unpatentability in an IPR, and correcting inventorship does not change the ’682 Patent’s claims, the priority dates on the face of the patent, or its

effective filing date. Indeed, none of the issues raised in the Petition—prior art, priority, or obviousness—depend on who is named as an inventor. By Petitioner’s own framing, whether Rolicki qualifies as prior art turns on a written-description inquiry—a merits question the Board decides regardless of which names appear on the patent’s face. That inquiry depends on the disclosure, not on who is listed as inventors. *Cf. Egenera*, 972 F.3d at 1376 (“Accordingly, who should be listed on the face of a patent may vary depending on what ... a court determines the claim scope to be.”).

Petitioner nonetheless contends that the identity of the named inventors is a “big argument” central to its priority challenge. *See* EX2016, 30:5-23. The parallel proceeding (IPR2025-01140) refutes that. The ’771 Patent *already names only Mr. Zehfuss*—the intended state of the ’682 Patent.³ Yet Petitioner makes essentially the same priority/written description challenge there, on the same record. *Compare* Paper 1, 17-24, *with* IPR2025-01140, Paper 1, 13-20; *see also* EX2015, 39:21-40:14 (noting identity of issues). If inventorship were truly central to the priority analysis, there would be a substantive difference between Petitioner’s challenge here and the one it advances in IPR2025-01140. There is none. Conforming the

³ In contrast, a *missing* inventor might prevent antedating a reference with an otherwise identical inventive entity.

'682 Patent's named inventors therefore adds no new issue and deprives Petitioner of nothing. The proposed inventorship is consistent with PO's priority arguments in *both* IPRs, which Petitioner can answer in its forthcoming Reply. That Petitioner points to the named inventorship as circumstantial support for its priority theory is a litigation choice that does not entitle Petitioner to freeze an erroneous inventorship in place.

2. *The timing does not create any cognizable prejudice*

Section 256 imposes no deadline for correcting inventorship, and the Board's inquiry is not whether the request is timely but whether any prejudice from its timing "requires accommodation." *Honeywell*, 939 F.3d at 1351. It does not. PO requested authorization soon after it had assembled the declarations of consent—documents that took time to obtain. Critically, Petitioner cannot identify any discovery in this proceeding that the timing forecloses: because inventorship is not a ground here, deposing the inventors would bear on nothing the Board decides, and Petitioner has never even suggested what additional discovery would be "in the interests of justice" under the Board's *Garmin* factors. Acting now, before any final written decision, is the diligent course—not a basis to deny leave. The Reply Due Date therefore creates no cognizable prejudice, and any prejudice from interrupting Petitioner's work on the Reply has already been mitigated by the Board's extension of time.

Questions about the forum, timing, or prior notice to Petitioner of the request are also misplaced.⁴ As noted above, the Director or Court are *alternative* paths to correction. And even much later timing within disputes and more drastic effects do not prevent correction because the *purpose* is to remedy the technical defect of improper inventorship. *See, e.g., Egenera*, 972 F.3d at 1371-72, 1376-78 (patentee petitioned the Director for correction *twice*, once during an IPR and later in response to an adverse claim construction by the district court); *HQ Specialty Pharma Corp. v. Fresenius Kabi USA, L.L.C.*, No. 1:21-cv-01714, 2025 WL 1825572 (D. Del. July 2, 2025) (granting motion to add inventors *post-trial* after jury found two claims invalid for improper inventorship); *Cassidian Commc'ns, Inc. v. Microdata GIS, Inc.*, No. 2:12-cv-162, 2015 WL 1848533, at *2 (E.D. Tex. Apr. 20, 2015) (granting motion to vacate final judgment of invalidity because plaintiff subsequently obtained correction through the Office, noting that sequence might “[a]t a cursory level ... present a difficult and seemingly circular proposition,” but nevertheless concluding that the “outcome should not be surprising”). The Board should grant PO’s motion.

Respectfully submitted,

/Warren Thomas/

⁴ The Board has rejected similar objections before. *See Akamai Techs., Inc. v. Equil IP Holdings LLC*, IPR2023-00330, Paper 15, 31-33 & n.11 (July 21, 2023).

Warren J. Thomas (Reg. No. 70,581)

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e) and agreement of the parties, I certify that on June 15, 2026, a copy of this paper was served on counsel for the Petitioner by email to:

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