

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EVENFLO COMPANY, INC.,
Petitioner,

v.

BABY JOGGER II, LLC,
Patent Owner.

U.S. Patent No. 11,731,682

Case No.: IPR2025-01122

**PETITIONER'S OPPOSITION TO PATENT OWNER'S MOTION FOR
LEAVE TO REQUEST A CERTIFICATE OF CORRECTION**

(Authorized by Board during June 12, 2026 conference call)

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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. Patent No. 8,955,869
EX1005	U.S. Patent 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
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EX1017	Non-certified File History of U.S. Patent No. 9,944,305
EX1018	Non-certified File History of U.S. Patent No. 10,730,543
EX1019	Certified File History of U.S. Patent No. 11,192,568

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.” <i>Journal of the Royal Society of Arts</i> , vol. 71, no. 3694, 1923, pp. 716–728
EX1026	U.S. Patent No. 405,600
EX1027	U.S. Patent No. 510,355
EX1028	Non-certified File History of U.S. Patent Application No. 13/123,550, including certified copy of GB0818605
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	U.S. Patent No. 5,338,096
EX1037	U.S. Patent No. 6,086,087
EX1038	Kolcraft Contours Options Tandem Stroller Instruction Sheet, EXA to Affidavit of Christopher Butler

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
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EX1058	Merriam-Webster, Parallel, https://www.merriam-webster.com/dictionary/parallel (last visited Feb. 21, 2025)
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I. INTRODUCTION

As the Petition explains, the 2008 Provisional lists one inventor, Mark Zehfuss (“Zehfuss”). (Petition, p.10.) In 2016, a second provisional (“2016 Provisional”) disclosed the inventive subject matter of Mr. Lee, Mr. Roe, and Ms. Simpson (“Lee/Roe/Simpson”). (Petition, p.11.) Unlike other CIP applications where inventive entities may overlap, this patent family presents a clear demarcation between Zehfuss’s invention and Lee/Roe/Simpson’s invention. The Petition raised this disparity, arguing the ’682 Patent *claims* recite subject matter disclosed only in the 2016 Provisional. (Petition, pp.10-11, 13-14, 18-25.) As filed, the Petition argued PO was not entitled to 2008 priority because the claims recite inventive subject matter attributable to Lee/Roe/Simpson.

The Petition therefore raises more than a priority dispute; it asks which inventors provide the written description support for the claimed subject matter of the ’682 Patent, and granting PO’s request now may remove properly named inventors. Inventorship is therefore material to the Petition. (Petition, pp.18-25.) Because the Board will decide priority in less than six months, PO would suffer no prejudice from denial. And as the Board recognized, PO forfeited its right to seek inventorship through delay, and PO’s cases do not require action now. PO’s motion should therefore be denied until the Board’s final decision.

II. ARGUMENT

A. PO would not be prejudiced by staying its request until after the final written decision

PO's central argument is that Petitioner would not be prejudiced by having the Board grant its motion. (Paper 27, p.1.) But the hearing in this case is scheduled for August 27, 2026 with a final written decision (FWD) due by December 1, 2026. (Paper 14, p.13; Paper 13.) Given a FWD is due in less than six months, it is PO that would not be prejudiced by having its motion denied at this time.

PO is not prejudiced as the priority dispute raised by Petitioner will ultimately determine whether PO's request for removing Lee, Roe, **and** Simpson should be permitted. Given the 2016 Provisional lists Lee/Roe/Simpson, the priority dispute raised may determine whether some or none of these inventors should be removed. PO's request should therefore be denied until after the Board determines the priority dispute raised within the Petition as the FWD will determine whether an inventorship change request should be submitted to the Director.¹

B. Inventorship is material to this IPR proceeding

PO contends that "[i]nventorship is not a ground of unpatentability in an

¹ Contrary to PO's position, if the Board also finds the '771 Patent lacks a 2008 priority date, PO would need to ***add*** Lee, Roe, and/or Simpson. (Paper 27, p.5.)

IPR[.]” (Paper 27, p.4.) That is beside the point; “inventorship” was raised as part of the priority grounds, and the 2016 Provisional lists Lee/Roe/Simpson as inventors. (Petition, p.11.) The Petition then argued the ’682 Patent *claims* subject matter whose written description support is found in the 2016 Provisional. (Petition, pp.19-24.) What the priority date is for the claimed subject matter of the ’682 Patent is therefore highly material in determining *who* are the correct inventors.

C. PO’s cited case law is distinguishable facts

PO’s motion includes a section of “Pertinent Law” that establish general principles Petitioner does not dispute. (Paper 27, pp.1-3.) For instance, Petitioner does not dispute “§ 256 is a savings provision, functioning to prevent invalidation when correction is available.” *Egenera, Inc. v. Cisco Systems, Inc.*, 972 F.3d 1367, 1377 (Fed. Cir. 2020). But none of PO’s cited cases addresses the question of *whether* the Board should grant leave during an active IPR in which the opposing party has identified inventorship as material to its priority challenge. Based on the facts, each of PO’s cited cases are distinguishable.

Egenera involved a materially different circumstance. There, correction was sought only after the district court construed the patent’s “logic” terms as means-plus-function limitations, which prompted a need to correct inventorship. *Id.* at 1379. In the present proceeding, no analogous trigger exists warranting immediate correction. Instead, a determination by the Board on priority will be the trigger that

determines whether an inventorship correction is warranted.

PO cites *Canon Computer Systems, Inc., v. Nu-Kote International, Inc.*, 134 F.3d 1085, 1089 (Fed. Cir. 1998) for the proposition that “[i]ncorrect inventorship is a technical defect in a patent that *may* be easily curable.” (Paper 27, pp. 1-2, emphasis added.) PO also cites *Stark v. Advanced Magnetics, Inc.*, 119 F.3d 1551, 1557 (Fed. Cir. 1997) for the proposition that § 256 provides “‘two routes’ to correct inventorship.” (Paper 27, p. 2.) These cases discuss the principle of how inventorship may be corrected, but neither addresses the Board’s discretion to deny leave to seek a request during an active IPR proceeding where priority is disputed.

PO also relies on *Honeywell Int’l Inc. v. Arkema Inc.*, 939 F.3d 1345, 1349-50 (Fed. Cir. 2019), as “explain[ing] the process for seeking correction of a patent in an AIA trial.” (Paper 27, p. 2.) But *Honeywell* found the Board erred in refusing to allow a patent owner the ability to file a motion seeking leave for correction. *Id.* at 1351. *Honeywell’s* circumstance is not present here, because after an hour-long hearing the Board granted PO’s request to file its motion. (EX2016, 41:21-43:4.) PO’s motion also ignores that, in *Honeywell*, the patent owner sought authorization only a little over a year after the ’017 patent **issued** and less than three months after the Board instituted review. *Honeywell*, 939 F.3d at 1346-1347. The patent owner in *Honeywell* also stated, without dispute, that it sought authorization “‘promptly upon discovering the mistake while preparing its Patent Owner Responses.’” *Id.* at 1347.

Here, the '682 Patent has been in existence far longer than a year, the District Court action asserting the patent was filed two years ago, and the current IPR petition was filed one year ago. (EX1010, cover; Petition, 1; EX1070; EX2016, 3:23-4:3.) PO also filed its Response on March 27, 2026, without seeking correction and waited until June 2026 to raise the issue. (Papers 20, p. 27.) PO even admitted during the hearing for this motion that it was aware of the inventorship issue during preparation of its response. (EX2016, 11:19-23.) Thus, unlike *Honeywell*, PO did not act promptly upon discovering the mistake. Instead, it sat on the issue for months. This delay further demonstrates why PO's motion should be denied until after the FWD.

D. Inventorship can be corrected after the FWD issues

PO contends that “the Board routinely grants leave in similar circumstances.” (Paper 27, p.4.) But the petition raises a priority dispute on whether the claimed subject matter is disclosed in the 2008 Provisional invented by Zehfuss or the 2016 Provisional invented by Lee/Roe/Simpson. Thus, the Director would be better informed on whether to grant PO's request *after* the FWD issues. None of the authorities PO cites support a different finding.

BeiGene USA and *Google LLC* involved *unopposed motions*. *BeiGene USA, Inc. v. Pharmacyclics LLC*, PGR2024-00009, Paper 21, p. 2 (PTAB July 11, 2024); *Google LLC v. Space Data Corp.*, IPR2018-00945, Paper 19, pp. 5-6 (PTAB Nov. 7, 2018). Here, PO's motion is opposed.

SharkNinja involved briefing for a correction occurring in a PGR *before institution*, and the Board noted that petitioner could ““withdraw its petition ... prior to institution.”” *SharkNinja Operating LLC v. iRobot Corp.*, PGR2021-00066, Paper 17, pp. 2-3, 6 (PTAB Aug. 20, 2021). Here, PO waited until years after filing suit, one year after the petition, seven months after institution, and after filing its POR.

Aceto involved an IPR where a patent owner sought to replace “placeholder[]” inventor names, e.g., AAA AAAA, used in the provisional application with the “true names of the inventors” listed in the non-provisional application. *Aceto Agric. Chems. Corp. v. Gowan Co.*, IPR2016-00076, Paper 45, p. 3 (Dec. 21, 2016). The Board granted leave because there was no dispute that (1) the provisional and non-provisional applications were ““substantially the same[;]”” and (2) the non-provisional application listed the correct inventors. *Id* at p. 4. Here, there is a priority dispute over whether the 2008 or 2016 Provisional provides written description support for the claimed subject matter of the ’682 Patent. Because the 2016 Provisional lists Lee/Roe/Simpson as inventors and the 2008 Provisional lists Zehfuss as sole inventor, inventorship is necessarily disputed. The FWD will resolve the priority dispute and assist in determining correct inventorship.

E. Alternatively, PO forfeited its opportunity to change inventorship

Diligence is required when seeking inventorship correction during an

interference proceeding where a change can affect the outcome. *Implicit, LLC v. Sonos, Inc.*, 169 F.4th 1107, 1111 (Fed. Cir. 2026). *Implicit* found forfeiture appropriate where the patent owner had an earlier opportunity to seek correction and assert its inventorship theory, and “change of inventorship ... could ‘directly affect the trial and outcome of the proceeding.’” *Id.*

The facts here are similar. The Board questioned counsel about whether there were “settled expectations” based on PO’s extensive delay. (EX2016, 13:7-17.) Counsel offered no substantive explanation. (EX2016, 13:18-15:08.) PO’s motion likewise provides none. Although the Board framed the issue as “settled expectations,” *Implicit*’s forfeiture principle applies the same reasoning. Given PO’s lack of diligence in seeking a correction that could directly affect the district court trial and this IPR, PO’s motion should be denied under *Implicit*.

III. CONCLUSION

Granting leave to seek correction of inventorship is a fact-specific inquiry, not a ministerial review of paperwork. Because PO was not diligent, the Board should deny PO’s motion for leave.

Respectfully submitted,

Dated: June 22, 2026

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e)(1), I hereby certify that on **June 22, 2026**, a copy of the foregoing **PETITIONER’S OPPOSITION TO PATENT OWNER’S MOTION FOR LEAVE TO REQUEST A CERTIFICATE OF CORRECTION** was served in its entirety via electronic mail to the following counsel:

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