

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 11,731,682 B2)
IPR2025-01140 (Patent 11,577,771 B2)

Record of Oral Hearing
Held: August 27, 2026

Before: CARL M. DEFRANCO, KARA L. SZPONDOWSKI, and
RYAN H. FLAX, *Administrative Patent Judges*.

IPR2025-01122 (Patent 11,731,682 B2)
IPR2025-01140 (Patent 11,577,771 B2)

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Alexandria, VA.

1 P R O C E E D I N G S

2 - - - - -

3 JUDGE FLAX: Okay, I'm Judge Flax. I'm joined by my panel
4 mates, Judge DeFranco and Judge Szpondowski. You can see on the
5 monitors behind me. So, when you're at the podium and speaking, you may
6 be looking to either of them on the monitors, but the camera that is covering
7 your face is probably that one right there. And when they're looking
8 somewhere, it won't be exactly where you are at the podium. But trust me,
9 everybody's paying attention to everybody here. So, we are here today for
10 IPR 2025-1122, and also, PGR --

11 MR. THOMAS: No, IPR.

12 JUDGE FLAX: -- I'm sorry, IPR -- thank you -- 01140. And these
13 concern, respectively, U.S. Patent 11,731,682 and 11,577,771. Thank you
14 for correcting me. I've got other cases where --

15 MR. THOMAS: No, I understand.

16 JUDGE FLAX: -- IPRs and PGRs mingle. So, each party has
17 asked for 45 minutes today. So, you've got 45 minutes on the clock behind
18 me. You can reserve some time for rebuttal argument, if you want. You can
19 see the time as it's elapsing on the monitor behind me. I'll try to remind you
20 if I notice it that you're getting close to your expiration of whatever you've
21 got for the beginning, but it is your time. You can use it all right at the first
22 part and not have anything for the end, but it will be over at 45 minutes for
23 each side. So, if Counsel for the parties could please introduce themselves,
24 starting with Petitioner, that would be great.

25 MR. RONDINI: Your Honors, John Rondini on behalf of

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1 Petitioner, Evenflo Company, Incorporated. With me today is Kyle Konz.

2 MR. THOMAS: And for Patent Owner is Warren Thomas and my
3 colleague, Bob Leonard -- Robert Leonard.

4 JUDGE FLAX: Okay. So, we'll start argument today with
5 Petitioner, who has the burden in these cases. Whenever you're ready.

6 MR. RONDINI: May it please the Board. Again, John Rondini on
7 behalf of Petitioner, Evenflo Company. And as Your Honor just briefly
8 mentioned, we're here today on behalf of basically two IPRs for two patents,
9 the '682 and the '771.

10 JUDGE FLAX: Do you want to reserve any time?

11 MR. RONDINI: Yes, I would like to reserve 15 minutes.

12 JUDGE FLAX: Okay. So, go ahead. And also, I won't start it yet,
13 but I want to instruct you that as you're arguing, both sides, please identify
14 what you are talking about. So, if you're on a certain slide --

15 MR. RONDINI: Sure.

16 JUDGE FLAX: -- identify what slide you're on. If you're talking
17 about a certain paper, please identify it. And if it's a certain bit of evidence,
18 by exhibit number. It'll help us a lot when we go back through the record at
19 the end if we have a nice clean hearing transcript.

20 MR. RONDINI: Understood.

21 JUDGE FLAX: All right, here we go.

22 MR. RONDINI: So, on Slide 2, Your Honors, we have the patent
23 family that we put into our petition. It's a quite extensive patent family, and
24 today we're here on two patents, the '771 and the '682. And as Your Honors
25 are well aware by the papers, one of the disputes is a priority dispute. And

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1 that's because the '771 and '682 claim priority back to the 305 CIP, which is
2 highlighted in blue on the screen.

3 And then they both claim priority back to two provisionals -- a
4 2016 provisional, which is highlighted in green, and a 2008 provisional,
5 which is highlighted in red. And like I said, there is a priority dispute with
6 regards to both of these patents, which is one of the grounds in both of them.
7 And there's also several grounds that relate to traditional prior art, and they
8 predate both the 2008 and 2016 provisionals.

9 So, moving into the priority dispute, Your Honors had asked us
10 during the pre-hearing about allocations of burden and to address that at the
11 hearing. In our opening petition, we submitted a case. It was Google v.
12 AGIS Software Development. It's a PTAB decision. It's 2018-01082. And
13 on pages 18 through 23 of that decision, the PTAB actually went through the
14 allocations of burden in great detail. At page 18, it's actually -- the title is
15 Allocation of Burden.

16 And one of the things that this case stated was, where there's a
17 patent at issue that claims priority through a CIP and the examiner did not
18 expressly address priority during prosecution, there's a different burden that
19 arises, a burden of production. And that burden never shifts. It always stays
20 with the Patent Owner. And the Google case went on to describe how the
21 written description in the earlier applications must be supported by a 112
22 support.

23 The case went on to say, to gain the benefit of the filing date, the
24 earlier applications must have 112 support, and it's not just 112 support back
25 to the earliest. So, going back to this slide, for the '682 and the '771, it's not

1 just the support back in the first provisional or in the first nonprovisional.
2 The Google case cited Federal Circuit precedents that you must show the
3 chain is continuous and you must show intervening applications have written
4 description support.

5 So, essentially, the burden on the Patent Owner is to show from the
6 '682 and the '771 all the way back through the 305, back to the 2016
7 provisional, back through the 550, and back all the way back to the 2008. If
8 they want to claim the 2008, they have to show a continuous 112 support in
9 each one of those applications. And we submit that they didn't do that.
10 That's their first failure.

11 Now, the Google case goes on and it talks about the Four Corners
12 Test. The Four Corners Test, that's how you have to show each one of those
13 applications, they had to do the Four Corners Test. They had to show
14 whatever the dispute is, here there are several different terms that are in
15 dispute, they had to show that there was support not only in the '682 and the
16 '771, but all the way back through each one of these applications on Slide 2,
17 back to the 2008.

18 And that, again, is in the Google case, and they actually cite
19 several cases. One of the cases it cites is Lockwood v. American Airlines,
20 107 F.3rd, 1565 et 1571, which stands for the same proposition. In this case,
21 Google also identified that the Patent Owner said the Petitioner failed to
22 meet its burden to dispute priority because it just had one sentence.

23 And the Court there, they ended it with this, it is incumbent on the
24 Patent Owner, not Petitioner, to demonstrate that the later filed application is
25 entitled to a benefit from a priority date. So, that is actually part of the

1 dispute, is Patent Owner is saying the burden shifted and it's our burden to
2 show that they don't have priority. That is not true. The burden of priority --
3 they're the ones claiming priority. They're the ones that are claiming priority
4 from the '682 and '771, back to the first provisional. If they want that
5 priority, they have to prove it, and we submit that they haven't done that.

6 JUDGE DEFRANCO: Mr. Rondini?

7 MR. RONDINI: Yes.

8 JUDGE DEFRANCO: Am I correct that you're referring to the
9 2008 provisional and the 2009 provisional collectively as a single
10 document?

11 MR. RONDINI: I am not.

12 JUDGE DEFRANCO: Because that's the way I recall the parties
13 referring to it in their briefs.

14 MR. RONDINI: So, it's interesting. I think they got a little bit
15 blurred. So, the 2008 provisional is the document that Patent Owner wants
16 to get priority back to. So in the 2009 nonprovisional -- so let me go back to
17 Slide 2. So, in the 2009 nonprovisional, there was changes that actually
18 occurred. One of the changes was to a term called connector portion 17,
19 which is part of the priority dispute with regards to the housing.

20 In the 2009 nonprovisional, Patent Owner rewrote a lot of it and
21 changed that term. Not only did they change it, they changed what the -- in
22 the 2008 provisional, it was talking about a connector 17, and it was talking
23 about in the frame, there was a recess. In the 2009 non-provisional, the
24 recess became a slot. If you move forward to the '682, and it's at column --
25 sorry, I jumped ahead a little bit here -- column 6, 36 through 40, that

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1 connector portion 17 now becomes an attachment portion 17, and the slot or
2 recess -- the recess that was in the 2008 provisional, which became a slot in
3 the 2009 provisional -- now becomes a substantially cylindrical slot, and it
4 also becomes a cylindrical or substantially cylindrical slot 18.

5 So, they not only changed -- there was a generic genus of
6 connector portion, and now they added two species under there. And under
7 the Tronzo line of cases by the Fed Circuit, adding different species to a
8 generic genus breaks priority, as well. So, that is just one of the reasons why
9 we submitted the Exhibit 1046 to the record, which that's a redline
10 comparison of the 305 CIP to that first nonprovisional in 2009, just to show
11 the extent of changes that occurred. Because under the case law, under the
12 Four Corners Test of going back through each application, you would not
13 get back to 2008. You wouldn't even get back past the 2016, because the
14 amount of changes that occurred in this, there is no continuous chain of any
15 of the terms anymore. So, there is a break in priority, we believe, right at
16 2016. I hope that answered Your Honor's question.

17 JUDGE DEFRANCO: Not really, because what I'm looking for is
18 -- I understand that there were changes made to each application.

19 MR. RONDINI: Um-hum.

20 JUDGE DEFRANCO: But the fact that you, the parties, and I
21 believe Petitioner did too, refer to the 2008 and 2009 collectively as a single
22 document, should we be looking at it as a single document? Because it's the
23 priority applications, right?

24 MR. RONDINI: Yeah. So --

25 JUDGE DEFRANCO: That's what priority is based on.

1 MR. RONDINI: Correct. So, Petitioner, we submit that it
2 shouldn't. It should be, if they want the 2008 priority date, they need to --
3 they, the Patent Owner, because the burden's on them -- the burden of
4 production is on them. They needed to demonstrate through their expert that
5 the 2008, not the 2009 nonprovisional, has complete support for every term
6 that's in dispute for priority.

7 JUDGE DEFRANCO: Why can't they rely on the 2009
8 application?

9 MR. RONDINI: They can, but then it would be the 2009 -- would
10 be the -- unless they could show the 2009 nonprovisional has the same
11 support back in the 2008. And I believe, Your Honor, the reason there was
12 some going between the two was when you look at the 2008 provisional, for
13 example, on the right-hand side of -- this is Slide 3. You'll see the three
14 figures from the 2008 provisional. They're not as crisp because they were
15 not fully submitted patent drawings.

16 So, the parties moved to the 2009, simply because the drawings
17 were a little bit clearer to see. But some of the disclosure did change
18 between the 2008 and the 2009 nonprovisional. And on top of that, there
19 was material added in the 2009 nonprovisional during prosecution that finds
20 no support back to the 2008 provisional. For example, Figures 10 and 11.

21 So, if Patent Owner wishes to rely on the 2009 nonprovisional, that
22 would be the date of priority and it wouldn't be the 2008 provisional. The
23 case law says if you -- whatever the date -- wherever you want to claim
24 priority, whatever the date of priority you want to claim back through the
25 chain, you have to show continuous support all the way back to that point.

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1 So, in this case, it would have to be all the way back to the 2008 provisional.

2 JUDGE DEFRANCO: Well, they can show support back to -- for
3 one limitation back to 2009. For another limitation they can show back to
4 2008, can't they?

5 MR. RONDINI: Correct if they wanted to get support for a
6 limitation to 2009, then you would have split priority, and that can happen.
7 That happens a lot with CIPs.

8 JUDGE DEFRANCO: Right.

9 MR. RONDINI: So, they could get some back to 2009 and some
10 back to 2008.

11 JUDGE DEFRANCO: Okay.

12 MR. RONDINI: And so, hitting on the various terms, the terms
13 that we did raise as a priority dispute are shown on the screen, and I'm sure
14 Your Honors are well aware of that. We had four for the '682, and we had 2
15 for the '771 . Today, I'm only going to be touching on two of them. I'm just
16 going to talk about handle portion and seat attachment adapter/seat
17 attachment housing. The other ones, we're just going to rely on what we
18 stated in the papers.

19 And with respect to -- I'm going to turn to Slide 21 real quick.
20 With respect to the handle portion, I'm going to start at the 2016 and I'm
21 going to work my way back, because that's what the case law says you're
22 supposed to do. Again, even though it wasn't Petitioner's burden to show --
23 the burden of production to show that there was or was not continuity, in our
24 opening petition, our expert did lay out -- he started with the 2008
25 provisional and he worked his way all the way through to the current patents

1 to show the various changes and why there is a break in priority. And one of
2 the things that we found was, yes, there was a change with the handle
3 portion. In 2016, there was a new limitation added, the upper tube support
4 frame 11C, and that discloses being coupled to the handle portion.

5 And that was very clearly laid out during prosecution of the '543,
6 which -- I'm on Slide 20 now -- or Slide 23, I'm sorry. It was very clearly
7 laid out by the Patent Owner during prosecution of their patent. Now, Patent
8 Owner's going to say the Four Corners Test for priority, you don't look at
9 prosecution. And that's generally true, but here, we're -- you're looking at a
10 term and you're looking at the construction and you're looking at the changes
11 that occurred. It is instructive, and there's case law that says it's instructive
12 to look at. And the Google case that I cited earlier actually states that. It's
13 instructive to look at the prosecution to help and aid in figuring out priority
14 disputes under 120.

15 And here, the file history does clearly state that the handle portion
16 is coupled. And actually, the Patent Owner had to clearly identify where the
17 break was, the coupling that happened between the handle portion and the
18 upper tube support frame. And the reason that that's a priority dispute is
19 when you go back to the original -- and I'm going to start with the 2009, and
20 I can move back to 2008 -- but to Your Honor's point, for this term, I don't
21 think there's any difference between the 2008 and 2009, in terms of the
22 handle portion.

23 So, it's easier just to see it here. And what you'll see is the way the
24 patent described 81C, which is a handle portion -- it describes a handle
25 portion -- it describes it as being coupled to the yellow thing, which is a

1 folding mechanism. It also says that there is a front wheel support, 81A, and
2 a back wheel support, 81B, all coupled to the same folding mechanism. So,
3 what the earlier priority documents say, going back to 2009, going back to
4 2008, is a handle portion -- there's one single handle portion that starts at the
5 folding mechanism and wraps all the way back around to the other folding
6 mechanism. So, it's one continuous single piece.

7 And again, what was disclosed in -- what's disclosed after the CIP
8 is a break. And there was a break for a reason and the reason -- and I'm on
9 Slide 22 of our presentation now -- is because the Patentee in 2016 added
10 new species. So, you had a very generic genus handle portion, and they
11 added new species. They added the upper tube and the handle portions
12 could be made of a single unitary piece of material. The handle portion and
13 the upper tube could be separated, two separate pieces that are combined
14 together, coupled together, using the same material or different materials.
15 So, that's three different species.

16 At best the earlier application discloses one of those species. So,
17 under *Tronzo v. Biomet*, 156 F.3d.1154, the Court there, they were looking
18 at a very similar situation. They were looking at acetabular cups, which was
19 a generic genus. The priority document disclosed trapezoidal cones, one
20 species. The CIP disclosed trapezoidal cones and it described hemispherical
21 cones. So, it had two species.

22 And the Federal Circuit found when you add species to a generic
23 genus, priority is broken. Here, we have a handle portion. At best, the
24 earlier priority document discloses one of those species. It doesn't disclose
25 the other two. And since there's three species under *Tronzo*, we submit

1 priority is also broken. In addition to just Tronzo --

2 JUDGE DEFRANCO: Mr. Rondini --

3 MR. RONDINI: Um-hum.

4 JUDGE DEFRANCO: -- let me take you to paragraph 31 of the
5 2008 provisional.

6 MR. RONDINI: Okay.

7 JUDGE DEFRANCO: And I think there's similar language in the
8 2009 non-provisional, as well, that's relied on for clarity. So, when you go
9 to paragraph 31 of the 2008 provisional, it speaks to a handle and it talks
10 about users of a stroller. And I quote, "Users of the stroller may hang purses
11 or shopping bags on the handle of the stroller." Isn't that language -- doesn't
12 that give support for the handle portion that's eventually claimed? Because,
13 I mean, you can't hang purses or bags from the vertical -- the diagonally
14 vertical portion of that frame. It's only the horizontal push bar that's shown
15 by the demarcation line. And what is it, Exhibit -- up on your slide, Exhibit
16 103?

17 MR. RONDINI: Exhibit 1003 --

18 JUDGE DEFRANCO: 1003?

19 MR. RONDINI: -- in Figure 8. So --

20 JUDGE DEFRANCO: Yes.

21 MR. RONDINI: So, Your Honor, that, at best, discloses what I
22 said. It discloses the one species. It discloses a handle that starts at the
23 folding mechanism, goes all the way around to the other folding mechanism.
24 So, the handle portion is considered part of the horizontal tubing, and then,
25 like you said, the perpendicular tubing that you would be -- the user would

1 grasp onto. It's the whole thing. It's silent as to the material. And that's
2 where Tronzo becomes an important case, because in Tronzo, when you
3 have different species, and here we have it -- even if you look at this and you
4 say it's broken up, it's silent as to what the materials are. It's silent as to
5 whether it's one continuous piece of material. It's silent as to whether it's
6 two different types of materials. It's silent as to whether it's coupled and it's
7 the same type of material.

8 So, under Tronzo, because there's multiple species now disclosed
9 in the 2016, the earlier 2009, 2008 provisional and non-provisional, since
10 they're silent on it, there is no priority for those species back to that point.
11 That came into effect in 2016, so that is the date of priority.

12 JUDGE DEFRANCO: The way I read paragraph 31 is it's talking
13 about the handle where you hang a purse from --

14 MR. RONDINI: Um-hum.

15 JUDGE DEFRANCO: -- meaning it's got to be from the
16 horizontal push bar, the crossbar of that portion, that handle portion, 81C. I
17 understand it labels it handle portion 81C, but really, in reality -- and this is
18 through the eyes of a skilled artisan -- they're going to understand that you're
19 not pushing the cart or hanging purses from the vertical -- diagonal part of
20 that portion.

21 MR. RONDINI: Right.

22 JUDGE DEFRANCO: Only the portion that's horizontal. So, I
23 just don't understand why that can't be -- give support for the handle --

24 MR. RONDINI: I think --

25 JUDGE DEFRANCO: -- in the claim.

1 MR. RONDINI: So, Your Honor, I think -- I don't disagree with
2 you. That is part of the handle. That is part of the priority dispute because
3 the handle portion could start all the way at the folding mechanism, like I
4 said, or it could wrap all the way around. So, it's one single piece. So, that
5 handle portion that you're talking about, the part you grasp onto that you
6 would hang a purse on, that is part of the handle portion, but the species --
7 the break in priority is because of the varying materials.

8 It talks about in 2016 -- it's silent here as to what the handle is. It
9 just says there's a handle and you could hang things on the handle. The
10 handle goes down and it connects to the folding mechanism. It's silent as to,
11 is it one continuous piece of metal, bent tubing like it talks about in the
12 2016; is it two separate pieces, a piece of plastic and a piece of metal that are
13 coupled together; is it two pieces of plastic that are coupled together? And
14 that's where there's the priority dispute with respect to the handle portion.
15 And that was something that was added in 2016 that didn't exist prior to that.

16 JUDGE DEFRANCO: Well, it just says handle portion. It doesn't
17 get into the type of materials or the tubing or --

18 MR. RONDINI: Right, the priority document doesn't. So, that
19 was --

20 JUDGE DEFRANCO: No, I mean the claim.

21 MR. RONDINI: Well, the claim as construed --

22 JUDGE DEFRANCO: The claim (CROSSTALK) --

23 MR. RONDINI: Right, the claim as construed requires it to be an
24 upper tube support that is coupled to the handle portion. That's undisputed.
25 That was the construction Patent Owner proffered in District Court.

1 JUDGE DEFRANCO: Okay.

2 MR. RONDINI: So, that construction, you'd have to read it on the
3 different species that are in the specification. And here, you have an upper
4 tube, you have a handle portion, and it's either going to be, like I said, one
5 continuous or coupled together, and it could be different materials or the
6 same material.

7 JUDGE DEFRANCO: So, you agree that Exhibit 1003 shows a
8 handle?

9 MR. RONDINI: It shows a handle, yes. I don't think it shows the
10 as-constructed handle portion, which requires the upper tube support frame
11 and a separate coupled-to-handle portion. And, again, that's per the Tronzo
12 case law.

13 JUDGE DEFRANCO: Well, what is 81C pointing to, isn't that the
14 upper tube support frame?

15 MR. RONDINI: It's silent. It doesn't say that's the upper tube.
16 That's the point. Okay. So, even if you were to break it up and say --

17 JUDGE DEFRANCO: Yeah. Wouldn't a skilled artisan
18 understand that that's the upper tube --

19 MR. RONDINI: You could break it up, and that's the point of
20 Tronzo, is yes, you could break it up and say that is the upper tube. So, there
21 could be a lower tube and an upper tube, and under that, yes, you're talking
22 about two different tubes. And you're saying, okay, I have two different
23 tubes. Are they the same material? They could be. Are they different
24 materials? Well, this is where you're getting into different species. And this
25 is where the priority document's silent and they don't have priority. It could

1 be two different materials coupled together, same material coupled together,
2 or one single piece of material.

3 So, I agree with you, you could break it up and you could relabel it
4 and call it lower tube, or you could call it lower handle portion, upper handle
5 portion. You could give a different label to 81C and you can move another
6 one up. What is not disclosed is the variations of how the upper tube and
7 handle portion are connected or are formed. And as construed, that's where I
8 think there's part of the problem.

9 JUDGE DEFRANCO: All right.

10 MR. RONDINI: Real quick, because I know I'm running short on
11 time, is the housing aspect, which was another priority dispute. And
12 housing, we had offered plain and ordinary, and the plain and ordinary that
13 we offer is a seat attachment housing, is an enclosing structural component
14 that houses an adapter. We believe that's fully supported by the 2016
15 provisional that was added as CIP matter at EX2011, paragraph 61. That's
16 the only paragraph that Patent Owner's expert has on the matter, and it's
17 three sentences. And she says the seat attachment housing corresponds to
18 the connector portion 17.

19 And as I described earlier, the connector portion 17, which is
20 disclosed, is actually an embodiment still in the '682. It's the first
21 embodiment. It's a separate embodiment than the housing, which is fully
22 disclosed throughout the rest of the patent. It's also described as a slot or
23 recess. We do not believe a slot or recess is a housing, as described, as
24 disclosed both in the 2016 provisional and then moving through the CIP
25 chain.

1 The connector portion, again, it's not only disclosed in the priority
2 document, but going back to 2008, it's also still described at column 6, lines
3 36 through 40 of EX1010. So, that can't be the housing because it's a
4 different embodiment, it's still disclosed. The other aspect of her analysis is
5 she says both documents describe the same function, a receiving structure on
6 the stroller in which the adapter's connector portion inserts.

7 That's an obviousness analysis. A lot of Dr. Cameron's analysis is
8 an obviousness analysis. And under *Lockwood v. American Airlines*, 107
9 F.3d 1565, it clearly states -- and it's also in *Martin v. Mayer*, 823 F.2d 500 -
10 - obviousness can't be how you go through your 112 analysis. It has to be
11 expressly disclosed. The *Martin-Mayer* case actually said it's not a question
12 of whether one of skill in the art might be able to construct the Patentee's
13 device. There has to be a literal disclosure of it within the supporting
14 documents. So, with that, I'm going to reserve the rest of my time, unless
15 Your Honors have some other questions.

16 MR. KONZ: Yeah. We're not reserving any.

17 MR. RONDINI: No, I just meant myself.

18 MR. KONZ: Sorry.

19 JUDGE FLAX: You're just swapping?

20 MR. RONDINI: Yes.

21 JUDGE FLAX: Okay.

22 MR. KONZ: Good afternoon, Your Honors. Kyle Konz for
23 Petitioner. I'm going to talk to you first here about the Offord and Offord
24 Ground, which is in both IPRs. So, here on Slide 50, we've got an overview
25 of Offord '797, which is the secondary reference. This particular patent

1 application has a frame for and a subframe or interface portion 10, and that's
2 shown in green here on the figure here on Slide 50.

3 The interface portion 10 is reversible, as shown in these two
4 figures, and when you do that, you can reverse both the height, so inline
5 descending versus inline ascending, as well as the direction of the seats.
6 Now, we're looking here at Offord '341. This is the primary reference for
7 this ground. This is chronologically after Offord '797 and includes the same
8 inventor, David Offord.

9 This patent application also has a frame assembly for and also has
10 an interface portion, which is also called the subframe. The subframe is
11 detachably connected to the frame assembly, and it may be one or more
12 parts. For example, two parts, as Offord states at column 4, lines 15 to 17.
13 We're looking here at the two-part embodiment.

14 So, there are two interface component portions, 100, each of which
15 includes a mounting piece with a connecting leg, 102, which is that
16 cylindrical cup facing downward. That is received within a cup 34. That's
17 part of the stroller frame. It additionally includes two sockets, 106, which
18 are designed to receive the seats. And it includes lugs, 108, located on the
19 lower portion of the lower sockets, which forms a secondary support
20 structure for connecting this to the stroller frame. In particular, they engage
21 with a basket frame.

22 Offord '341 discloses that the interface portion 100 are adjustable.
23 You can adjust the distance between the two sockets so that the stroller can
24 accommodate different sized children and grow with the child over time.
25 I'm here now on Slide 53. The petition and the accompanying declaration

1 set forth two theories of obviousness. The first is that a POSITA would have
2 understood that the interface components 100 were reversible. The second
3 is that it would have been obvious to reverse the orientation of the subframe
4 of Offord '341, as taught by Offord '797. And for examples, Your Honor, in
5 the '771 IPR, you can find that at petition pages 96 and 97, and 122, as well
6 as Mr. Prairie's declaration, Exhibit 1001, at paragraphs 505, 508, 512, and
7 583.

8 I'm now going to go to Slide 54. So, under Mr. Prairie's first
9 theory of obviousness set forth, he based his opinion that a skilled artisan
10 would understand that Offord '341 was reversible based on his experience
11 designing strollers at BOB, and as well as what he observed in the Offord
12 '341 disclosure. He stated that a POSITA would have recognized that the
13 interface components were reversible based on their structure and how
14 they're shown. So, these components 100 have these projecting cups -- or
15 I'm sorry -- projections that are received in cups. They're all cylindrical. It's
16 his opinion that they were reversible.

17 He further bolstered his opinion with an extensive state-of-the-art
18 section in which he showed that it was well known at the time to have
19 reversible seats and that it was also a known and desirable feature. But he
20 didn't stop there. Offord '341 includes this excerpt we have in the top right
21 where the inventor says, a similar subframe arrangement is disclosed in
22 Offord '797. That's his prior work. He's specifically telling the skilled
23 artisan to go look at his prior work to understand his future work. He doesn't
24 just say another frame. He says --

25 JUDGE DEFRANCO: Mr. Konz --

1 MR. KONZ: Yes, Your Honor.

2 JUDGE DEFRANCO: That phrase, a similar subframe
3 arrangement is disclosed in WO 2008-797. Is that an incorporation by
4 reference? Is that the Petitioner's argument?

5 MR. KONZ: No, no, Your Honor. We do not argue that this is an
6 incorporation by reference. We're using it to show the why.

7 JUDGE DEFRANCO: Okay.

8 MR. KONZ: Why would a skilled artisan look to Offord '797?
9 Because the inventor told them to. And we're using Offord '797 --

10 JUDGE DEFRANCO: But the inventor there is telling you, it
11 seems like -- because it's in the paragraph. If you look at, I think, what you
12 have bolded above, that reference to the -- what is it -- the Offord '797, it
13 says on the underside of the lower connector sockets, there is a downwardly
14 curved lug 108, which serves to rest upon a part of the basket frame. Isn't
15 that what the inventor of the Offord '341 is referring to? Hey, go look, go
16 take a look at the Offord '797, you'll see that has a similar lug 108. It's not
17 looking -- it's not necessarily telling you to look at the reversible
18 configuration of that frame that's in '797. It's telling you to look at the lug
19 108 aspect of that frame in '797. So, I just wondered how that paragraph
20 gets you to the reversible aspect of it.

21 MR. KONZ: Well, Your Honor, the subframe is the entire piece.
22 It's not the lug. It says a similar subframe arrangement. So, we believe that
23 this is absolutely talking about the entire subframe as being similar. And
24 when we get to our second theory, which is that it would have been obvious
25 to a POSITA to reverse the interface components 100 in view of Offord's

1 '797 subframe, we use this as evidence of the why. Why would a POSITA
2 look at '797? Well, the inventor pointed you to it, and as Mr. Prairie opined,
3 a skilled artisan reading that would, of course, investigate his prior work.
4 And when you look at Offord '797, you see that the inventor, David Offord,
5 there explained that the interface components then were reversible, to not
6 only reverse the orientation of the seats, but also the vertical positioning of
7 the seats. And he opined in his declarations, Exhibit 1001, that that would
8 have been a motivation to reverse the interface components 100 based on
9 those prior teachings.

10 JUDGE DEFRANCO: Mr. Konz, it seems to me that if the
11 inventor goes and looks at '797 based on that reference in the '341, and they
12 think, okay, hey, I like the reversible aspect that's shown in '797, why didn't
13 the inventor in the '341 say that that was reversible. I mean, they had
14 supposedly the teaching in '797 based on that reference that you point to, but
15 yet they're silent. Yet '341 is silent on reversible. You agree it's silent. It
16 says nothing about reversible, right?

17 MR. KONZ: Yes, you're right, Your Honor. It doesn't say
18 anything about reversible. Offord '341, if you look at the claimed invention
19 and most of the disclosure, focuses on the folding mechanisms. I think that's
20 why he included this reference to his prior work, so that you could
21 understand the subframe and how it works without being described herein,
22 because it wasn't the focus of the later patent. So, I think that's why he did
23 this. Hey, go see my other one for this aspect of the stroller frame that I'm
24 not claiming in this particular patent.

25 Also, I think the subjective intent of what the inventor did or didn't

1 say in Offord '341 doesn't negate what a skilled artisan would glean from
2 these two references together. It's a question of whether or not it would have
3 been obvious in view of all these references together, not if the inventor
4 provided a specific disclosure in any one of those documents. We're over
5 our time, so I'm going to --

6 MR. RONDINI: No, no, we have more.

7 MR. KONZ: Oh, sorry.

8 MR. RONDINI: We're going to switch real quick. I had just
9 forgotten to -- I know Your Honor had asked some questions about the Liao
10 reference, so I just want to get that in our opening before we sit down and
11 reserve the rest of our time. Specifically, Your Honor asked if a design
12 patent could be used for either anticipation or obviousness. And as for case
13 law, the Application of Aslanian, which is 590 F.2d 911, 913-14, which is a
14 1979 case, hits the point. It says that design patents can be properly cited as
15 a basis for anticipation rejection of claims in an application for a utility
16 patent. It also says that it could be used, properly citable, in a rejection
17 under 35 U.S.C. 103, so as an obviousness ground.

18 Our expert looked at this and said this is a type of schematical
19 design that he's used to seeing, and he was able to fully read it in order to
20 evaluate it in terms of using it for obviousness. The Patent Owner's expert
21 did not dispute this. She only had three paragraphs on it. Her three
22 paragraphs looked at the connector portion where she said the connector
23 portions were in line, and based on that, she said in Figure 11 -- and I'm on
24 Slide 43 of our presentation -- she said that the two seats shown in Figure 11
25 are in line and not descending.

1 And we don't dispute that with Figure 11, but the focus isn't really
2 on the connector portions, it was on the seats. Our expert, if we move to
3 Slide 44, he looked at one of the other figures where the seats are different
4 now, and the claims, the patents, the scope of it, do cover different seats.
5 Here you have a bassinet in the back and you have a child seat in the front,
6 and due to the bassinet, it is raised up higher than the lower child seat, so it
7 is in line and descending and that's what our expert in his reply declaration
8 said, hey, it doesn't matter where I measure it from, it's always going to be in
9 line and descending based on the two different seats.

10 At Slide 45, our expert, he also stated, hey, the back seat, the
11 bassinet, there's actually an intermediate connector, and that intermediate
12 connector raises the bassinet up even a little bit further than the front
13 connector. So, even if you were to go with Patent Owner's proposed
14 construction for the in line and descending, the Liao design patent still
15 teaches it because the connection point between the back seat and the front
16 seat is still in line and descending.

17 The last aspect I just really want to touch quickly on that Your
18 Honor asked us to address was the claim of the '682 says a first seat
19 attachment adapter spaced from and coupled to the first seat housing by a
20 first attachment frame member. During prosecution, Patent Owner was
21 asked to identify which embodiment it was going to elect to pursue. It said
22 Figures 1 through 3, and Figure 2 on Slide 27, as shown. And what the
23 Patent Owner stated was, when asked by the examiner to identify the
24 adapter, they identified number 24 as the adapter. And the examiner said,
25 well, what's the housing, and they identified number 20.

1 The problem with that is the housing is now being identified as the
2 adapter. 24, which is the adapter, is actually in the specification, is disclosed
3 as being the first attachment frame member. So, now you have a little bit of
4 confusion. And our expert actually stepped through that in EX1001. That's
5 the 1122 IPR declaration at paragraphs 155 through 158. He said, okay, this
6 is a little bit of confusion. But he also said the patent at EX1010, column
7 1022 through 1024, says the adapter can be made of one piece or can be
8 made of multiple pieces.

9 So, based on that understanding, in his -- and I'm jumping to Slide
10 47 -- he did evaluate and he said, okay, I know what the adapter is. The
11 adapter goes into the housing that I've identified. And he said the lower
12 portion of that adapter, since it could be made of multiple pieces, I'm going
13 to identify the lower portion. That's the attachment frame member that is
14 spaced from and coupled to the housing. So, that is the reason why Your
15 Honor asked us about the little bit of confusion with that claim. The claim is
16 a little bit confusing, I believe, based on the prosecution history, but our
17 expert evaluated that and evaluated what the patent discloses, and was able
18 to find both the adapter and the first attachment frame member in the Liao
19 reference. And with that, we're going to reserve the rest of our time.

20 JUDGE FLAX: Okay. So, we'll call it a little over 10 minutes --

21 MR. RONDINI: Okay.

22 JUDGE FLAX: -- for rebuttal.

23 MR. THOMAS: I have to get the right glasses. And Judge Flax,
24 I'm going to reserve 10 minutes for surrebuttal.

25 JUDGE FLAX: Okay. Okay, whenever you're ready.

1 MR. THOMAS: All right. Thank you, Your Honors, for your
2 time, and it's a pleasure being here in Alexandria today. Sorry to miss some
3 of you here in person. Again, Warren Thomas for Patent Owner, and I just
4 want to start with a brief introduction of the patent itself to just sort of set the
5 context.

6 Baby Jogger is a leading stroller innovator. We've been a stroller
7 innovator since 1984, and in 2008, it developed a modular system that
8 transforms this old-school sort of plain single stroller into a true double
9 stroller, while keeping a compact and maneuverable footprint. That's a
10 feature that parents want.

11 Before the invention, parents chose between these unwieldy and
12 oversized doubles and designs that sacrifice space or storage or flexibility, or
13 as is illustrated by the Offord and the Gotting prior art references in
14 particular, there were these bulky additions that you had to put on to allow
15 two seats to be attached to a stroller. So, those things were out there, yes,
16 but this particular modular design was not. The innovation here was that we
17 have this optional second seat added to the front of the frame, lower -- the
18 different claims will talk about it being towards the front of the frame or
19 lower on the frame, through these adapters, and then the seats were also
20 reversible and interchangeable.

21 And the claims do capture that architecture. The first seat is on the
22 frame near the handle, second seat hardware added lower on the frame, and
23 the two seats that creates the two-seat inline descending configuration. In
24 the '682 patent, as Mr. Rondini was just saying, is that those -- that hardware
25 is called the seat attachment adapters. In the '771, it's referred to as an

1 optional second seat assembly with right and left seat attachments.

2 And so, we'll talk about priority, and I think where I want to start
3 with this is just sort of the big picture is that Petitioner's story as it relates to
4 priority is that the claim structures are present here in -- this is Figure 8A of
5 both patents -- but not here in Figure 8 of the 2009 provisional and Figure 8
6 of the 2008 -- sorry, the 2009 non-provisional and the 2008 provisional
7 Exhibits 1002 and 1003. And --

8 JUDGE FLAX: So, Counsel, I agree with you. Those two
9 drawings look basically the same. I think what I hear their argument is, is
10 that when it came time to prosecute the patent that's being challenged now,
11 the Patent Owner decided that that upright diagonal was no longer a single
12 handle and that the two tubes that are leaving the hinge area became separate
13 pieces that you could just call that part of the frame, even though the handle
14 is part of the frame, but not part of the handle. And so, something different
15 is plugged into those tubes that your client wanted to call the handle and
16 claimed it that way. And so, if we agree with that, that that handle is
17 something separate, that those tubes are different structural features, does
18 that present a priority problem in view of the disclosure of the provisional?

19 MR. THOMAS: No, it doesn't, Your Honor. And I'm going to
20 skip to Slide 25, right? So, this is the mapping that you were just talking
21 about where you have this, and I want to -- let's start with that language of
22 this claim construction, which we've accepted for the purpose of this
23 proceeding. A portion of the frame, the handle portion is a portion of the
24 frame coupled to the left and right upper tube support frame.

25 And so, here is Petitioner's mapping of that. They're saying that

1 the handle portion is only this pink -- I think that's 81D, circled in red. Now,
2 we've pointed to -- we have these sort of mirror images of the Figure 3 and
3 Figure 8 are -- yeah, it's very obvious, as testified to by our expert. These
4 are mirror images, it's the same structure.

5 JUDGE FLAX: Ah, that's an interesting choice of terminology,
6 because I know that written description cannot be based on simply what
7 would make it obvious. That's basic case law. So, I agree with you that
8 there is a little rectangle at the top that looks like the little rectangle, rounded
9 rectangle, at the top of the other side. But if the Patent Owner just decided
10 that for some reason, those were different things during prosecution, why do
11 we not go with the Patent Owner's decision?

12 MR. THOMAS: Well, two reasons, Your Honor. First is that the -
13 - as discussed by Mr. Rondini, the real question and the analysis focuses on
14 the four corners of the priority documents themselves, and we do rely on
15 those. And what those documents show is -- and I think -- I can't -- I wrote
16 it down somewhere, but I'm not seeing where it was. I think Mr. Rondini
17 said there was no separation. But if you look at Figure 3, there's literally a
18 separation in that diagram, and there's also a separation in all of the other
19 diagrams.

20 And so, as testified by Dr. Cameron, and frankly I see it too, when
21 -- if I look at a POSA -- if a POSA looks at that figure, then they see that
22 that at least discloses -- that discloses a separate feature. If it is a separate
23 feature, then it's there. And in fact, it's all of these structures are there.
24 You've got the upper two support members in red. You've got the back
25 wheel support portion in tan or brown. You've got the front wheel support

1 portion in blue. And then of course you've got the pink handle portion, as
2 alleged by Petitioner.

3 All of these things are in those documents, in the 2008 and 2009
4 documents, and there's not -- the prosecution that happened later, it's just
5 labeling. And the law doesn't require you to use the same labels. And I
6 think we pointed to that in the -- I think it was the Blue Calypso case. It says
7 that Blue Calypso or one of the others says that you can use different
8 terminology to describe the same thing. And when a POSA looks at this
9 figure, Figure 3 of the provisional, of the priority documents, and the other
10 figures of the priority documents, and reads the description about the handle
11 that Judge DeFranco was talking about, they can see, yes, the things that the
12 Petitioner is claiming that the handle portion should be, it's all there.

13 I'll step back for a moment and talk about the burden questions.
14 We'll go back to Slide 11. Maybe a little bit further. So, yeah, Slide 7
15 actually. So, let's talk about this shifting burden. Petitioner said that we
16 have the burden of production, and that's true. There is a burden of
17 production, but the ultimate burden of persuasion of showing unpatentability
18 never falls to us.

19 The burden of production moves in three steps. When a Petitioner
20 introduces intervening prior art, Rolicki here, and it made arguments about
21 these five specific limitations. I collapsed the handle portion in two into
22 one. I think they say six, but it's effectively the same. So, that then shifts
23 the burden of production to the Patent Owner to come forward with evidence
24 and argument that the claims are entitled to their earlier dates. And we did
25 that. That discharges the burden of production.

1 And in Parus Holdings v. Google, 70 F.4th 1365, the Federal --
2 that's from a 2023 Federal Circuit case -- Federal Circuit called that a
3 temporary burden. It's temporary. It's discharged and then the burden shifts
4 back to the Petitioner. And that burden is then for Petitioners to prove that
5 the claims are not entitled to the priority. And prove is the Federal Circuit's
6 own verb there in Dynamic Drinkware.

7 Dynamic Drinkware also discusses and cites heavily to the
8 Technology Licensing case. And I would direct you all to the -- there's a
9 paragraph in Dynamic Drinkware and into -- it quotes from Technology
10 Licensing, and then in Technology Licensing as well, about the patent
11 challenger, the one asserting invalidity and asserting the intervening prior
12 art, was the party named Gennum. And the paragraph in Dynamic
13 Drinkware concludes, TLC's -- Technology Licensing -- evidence and
14 argument in support of the earlier filing date is before the Court. The burden
15 of going forward again shifts to the proponent of the invalidity defense,
16 Gennum, to convince the Court that TLC is not entitled to the benefit of the
17 filing date.

18 And in TLC, Tech Licensing v. Video Tech, 545 F.3d 1316, at
19 page 1327, TLC said convince is the operative word, and it explained that if
20 the challenger doesn't convince the fact-finder here -- you. In that case, it
21 was a District Court, but if you don't convince by the applicable burden of
22 persuasion, then the challenge fails, right? Tie goes to the runner, as they
23 say. So, the question is not whether we have provided -- or sorry, the
24 question isn't whether we've proved support. It's whether Evenflo has
25 proved by the preponderance of evidence that written description support is

1 absent. And that was directly your question from our pre-hearing
2 conference, Your Honor.

3 So, one note I will make, I'll flip to -- we talked about how you
4 conduct an objective inquiry into the four corners. The four corners don't
5 include additional explanations or new embodiments entitled to -- added to a
6 CIP. In Blue Calypso, which was cited here on the slide, the challenger
7 made similar arguments as to the Petitioner. They pointed to new words and
8 new explanations that were added in a CIP, and the Court said those give no
9 insight into the relevant inquiry. Instead, you just look at the four corners.

10 Slide 10, you also don't look at prosecution history, such as the
11 related applications that were cited in the prosecution history that were cited
12 by Petitioner. GEODynamics says that too is outside the four corners and
13 shouldn't be relied on. Slide 11, on our point about proving it, and Mr.
14 Rondini made some comments about you have to show the chain all the way
15 back. That's true, but the evidence here and the argument that supports the
16 claim of priority all the way back to the 2008 and 2009 documents is
17 provided by the Petitioner.

18 This is Petitioner's own graphic. They concede the two chain
19 priority claim. It's admitted in the face of the petitions that both patents
20 claim priority to the 2016 provisional and through the 2009 nonprovisional,
21 back to 2008. Those are the two. And so, our four corners here that we look
22 at are the two highlighted in the top left. The only dispute -- the only dispute
23 -- that Petitioner raised as to any of this was these five specific terms.
24 Everything else is good. Everything else is undisputed by the Petitioner and
25 it's proved by their own papers.

1 Judge DeFranco, I think you asked about whether or not 2008 and
2 2009 are the same, or like why have the parties sort of treated them
3 equivalently. Petitioner's own graphics, when they talk about, we don't have
4 the support, they point to the 2009, not to the 2008. And that's because those
5 two documents do disclose the same features. And that's not really disputed,
6 or at least not before now in today's hearing. That's why both parties use the
7 2009 documents as a proxy even for what is in the 2008, because there are
8 more patent drawings. It is easier for us to talk about in this proceeding.

9 Dr. Cameron testified at Exhibit 2011, paragraphs 47 to 49, that
10 they disclosed the same features and they have effectively the same
11 disclosure. That's undisputed. They didn't cross-examine her on it. And
12 even Mr. Prairie said both figures and descriptions are "very similar to what
13 is disclosed by the first provisional." He said that in the 1122, Exhibit 1001,
14 paragraph 102, and in the 1140 IPR Exhibit 1001, paragraph 113. He said
15 that they were largely a carryover. And specifically, as it relates to, like, the
16 embodiments that we're primarily talking about, like the Figure 8
17 embodiments, that that was all the same. They disclosed the same features.

18 And that's why it is proper for us to use 2008 as a proxy for --
19 sorry, to use the 2009 figures and descriptions, discussion, as a proxy for
20 claiming priority all the way back to 2008, as well. As we pointed out in our
21 papers, Petitioner's evidence is almost entirely outside the four corners of
22 these priority documents. Second sentence of both petitions' priority
23 sections points to evidence outside the four corners.

24 Slide 13. Virtually every argument they advance relies on
25 evidence outside the four corners. It points to the 2016 provisional, the CIP

1 application, the prosecution history. Now Slide 14, the replies contain more
2 of the same. Why is that important? Because the evidence and the
3 testimony of their expert is focused on the wrong documents. So, when we
4 point -- we kind of step back to who has the burden and what do they have to
5 show. In terms of evidence or argument about the relevant documents, they
6 don't have much.

7 What do they have is on Slide 15. These are what they sort of have
8 left, relying on word matching. Ignoring our evidence of support, kind of
9 pointing back to like making claim construction arguments and some legal
10 misstatements, as well, that we pointed out in our surreply.

11 I think I will point -- skip to -- as to the handle portion, this is Slide
12 18. On page 8 of their reply, Petitioner argues that Figure 8 doesn't disclose
13 the handle portions, according to their theory, but they ignore the fact that
14 we used both Figure 3 and Figure 8 presenting that mirror image together,
15 which is how a POSA would have read the documents. They look at the
16 whole disclosure and say, is this handle portion there? Yes, it is. But they
17 don't discuss the Figure 3 part because that doesn't help their case.

18 On the seat attachment housing, on page 15 of the reply -- this is
19 Slide 19. Sorry. The Petitioner argues that the connector portions 17 don't
20 disclose the seat attachment housing, but that's, again, just this claim
21 construction argument. And what they're doing is they're saying, well, it's
22 got to be this -- an enclosing structure that houses something. And what
23 they're referring to is the sliding door and the keyed shape and stop flanges
24 and all this stuff. Those are not claimed in these patents. Could have
25 claimed it. There are other patents that claim those features, but those are

1 not claimed here. It's just the term housing structure.

2 And until the reply, we didn't have any real dispute that it was just
3 anything but plain meaning. So, what is it -- what's a housing? Something
4 that houses something. But I'd submit to you that even under their
5 construction, that the priority documents still disclose a housing. I'm going
6 to skip over these. One note on --

7 JUDGE DEFRANCO: Mr. Thomas?

8 MR. THOMAS: Yes, sir.

9 JUDGE DEFRANCO: Just looking at that slide you have up there
10 now, it says, as Mr. Prairie testified, a housing is an enclosing structure that
11 houses something. And then the next sentence refers to, prior to 2016, there
12 was no adapter receiving cavity. Is Petitioner admitting there that the
13 housing has to be a receiving cavity?

14 MR. THOMAS: I don't know that I would characterize this as
15 admitting that there has to be a receiving cavity, but what the 2008 and 2009
16 documents describe -- I mean, I think the language about the -- let me see if I
17 -- where was it? All right. The cylindrical recess that was sort of mentioned
18 in there. When there's a housing, something's going to fit into something
19 else. I know that in the cross-examination of Mr. Prairie at one point, and I
20 wish I could remember where it was, but it was raised in our Patent Owner
21 response, that we asked him like to look at Figure 7 of the 2009 document,
22 and there's like a U-shape, and then we said, what is that? He goes, I have
23 no -- he says, I don't know. I can't tell.

24 There's something that houses, and it's how the adapters work, but
25 the 2008 and 2009 documents describe how those things fit together. No, it

1 does not use the exact identical terms. If it did, I'm sure we wouldn't be
2 having this argument, but it doesn't need to. That is not what --

3 JUDGE DEFRANCO: Let me ask. Do the priority applications,
4 meaning 2008, 2009 -- do they show a receiving cavity?

5 MR. THOMAS: I believe that they do, Your Honor. They
6 certainly describe it.

7 JUDGE DEFRANCO: I guess what I'm getting at is that
8 cylindrical recess that's identified as -- what is it, Part 18, I think? I think
9 they described it as a cylindrical recess.

10 MR. THOMAS: Yeah.

11 JUDGE DEFRANCO: Could you characterize that as a receiving
12 cavity?

13 MR. THOMAS: I think that would be -- that could be
14 characterized as a receiving cavity, yes. And that's why I said that we --

15 JUDGE DEFRANCO: Okay.

16 MR. THOMAS: A recess that holds something, that could be a
17 housing. I think that's correct. I'd say Figure 4 of Exhibit 1003, that could
18 be a housing. Figure 7 might disclose a housing. I cannot, standing here in
19 front of you, say specifically if we don't recall whether we had testimony on
20 those in detail, and of course, we couldn't have submitted testimony on that
21 with our surreply.

22 But I think I'd submit to you that overall, a POSA looking at the
23 disclosure -- and this is supported by Dr. Cameron's testimony -- that plain
24 meaning of those terms, she looked at those figures and said, I see
25 everything there. It is all there. And a POSA would be able to interpret it,

1 looking at the entire disclosure together.

2 I lost my clicker. I'm going to go to Slide 30. Yeah, okay. Well,
3 we do have an illustration here that the connector portion 17 allows the seat
4 attachment to be connected to the front of the stroller. The attachment
5 portion 21 may be inserted into the cylindrical recess -- like inserted into. I
6 think that's sort of the language that is helpful there, is that it's inserted into a
7 cylindrical recess of the connector portion 17.

8 And the attachment frame members 17 allow the seat attachment to
9 convert into a single to a double. So, this idea that the -- I think Petitioner
10 said, well, it's a different embodiment because it's Figure 1 or Figure 3 and it
11 is -- yes, it is a different embodiment, but this language describing that
12 embodiment talks about also converting from a single to a double.

13 That was where we were, 30. One other point I would -- a note I
14 would make is that Petitioner mentioned cases Lockwood and Martin
15 something in their argument, and those were not raised. I think if you look,
16 those would not be -- those were not raised in their papers, and so we object
17 to that as new argument.

18 Go to the Offord ground, and that's going to be Slide 35, 36. As
19 Mr. Konz was talking about, you've got these different structures. One is
20 designed to reverse, one is not. And that is plain from the face of the
21 documents. And let's look at why. Offord '797 subframe has these channels
22 21 that are shown in the callout there. At the corners, 20, those rest on the
23 basket frame. No matter which orientation you're in, you can reverse it.

24 And Offord '797 has these crossbar members highlighted in brown.
25 They're the same level and length at both ends of this square symmetrical

1 structure -- the subframe. And there's clip 16 on the front and back. Those
2 clip onto the rear crossbar of the basket of the main frame of the stroller, I
3 think that's labeled number 4. And then you also have supports at the
4 reference number 14. Those are the end socket connectors.

5 So, in total, you have eight structural support points built into this
6 thing. Four corners, two in the middle at 14, and the two clips, 16. At any
7 time, no matter which way you have this thing oriented, five of them are
8 supporting this subframe. And the duplication here -- the duplication of
9 these structures to enable and permit the rotation is, in fact, the design for
10 the reversal. Offord itself calls these features out as critical to stability.
11 Note the language here that says, in order to achieve suitable stability, it's
12 supported at other locations on the vehicle, other than through just the
13 connectors.

14 Later on the same page, which is page 4 of Exhibit 1051, Offord
15 repeats that the structures and the supports are provided, "in order to
16 maintain stability." Stability is important to a person of skill in the art, in
17 this art. Offord '797 also discusses it. That's Exhibit 1050 in the 1140 IPR.

18 Gotting even talks about it, about the tendency of the strollers to
19 tip over, and a POSA needs to design with stability in mind. That's Exhibit
20 1041, paragraph 3. And when you then look at Offord '341, the Liao
21 reference in this combination, there's no crossbar members, there's only two
22 support points per component, you have these two separate components
23 structurally, and it's not symmetric.

24 Offord '341 teaches that while the length of this curved bar can be
25 changed -- that's true -- it says, "the adjustment must be kept within safe

1 limits, such that the child-carrying units remain as close to the center of
2 gravity of the vehicle too as possible to prevent any possibility of dangerous
3 tilting or toppling over." And we identified all these things in our briefing
4 and explained why, with testimony and support from Dr. Cameron, why
5 these differences mean that a POSA would not be motivated to create the
6 proposed combination.

7 Mr. Prairie, in his rebuttal, paragraph 30, that's Exhibit 1082, he
8 looks at all this, and I think as you called out, Judge DeFranco, like, he notes
9 that those documents are -- that the Offord '341 document is silent as to
10 reversibility. When Mr. Prairie sees the silence here in the -- he says, oh,
11 that supports my opinion. It's paragraph 30. The silence supports his
12 opinion that it is obvious to reverse because he says, oh, a POSA can fine-
13 tune the design. Never mind that the same inventor had purposefully built a
14 different -- an entirely different structure -- to meet the goal of stability -- of
15 reversibility with stability in mind.

16 And this is just another of the examples we've talked about, these
17 like two standards applied to the same documents or the same case.
18 Repeatedly in this case, Petitioner and Mr. Prairie find whatever
19 functionality or structures they want to find in the prior art to support their
20 arguments, but that silence they interpret as, oh yeah, this is good enough, I
21 can take that, I can run with it. But they can't see simple structures like the
22 handle structures in the priority documents. That is not the objective inquiry
23 that the law requires. That is hindsight. It is quintessential hindsight.

24 The Petitioner's response here is they point to the general similarity
25 -- Mr. Konz talked about that -- of the subframes. Your Honor, this

1 language about the subframe being similar, it's because both strollers, Offord
2 '341 and Offord '797, they have these subframe structures that allow you to
3 attach two stroller seats to the same mainframe. I think even in both
4 documents, the mainframe is 4, and there's subframe. Subframe 10 in one
5 and subframe 100 in the other.

6 The subframe, at best, is just saying, this is the thing that I attach to
7 the stroller frame to enable two seats to be attached. It does not tell you that
8 it is reversible. There's no discussion about there being any reversibility in
9 Offord '341, and if you want it to be reversible, Offord '797 tells you how to
10 build that.

11 I will move to Liao now. This is Slide 56. This is Liao's entire
12 disclosure. It is 13 figures, and I will say that the Patent Owner agrees with
13 Petitioner about the in re Aslanian case, I think is how it's said. It is
14 undisputably permissible to use a design patent to invalidate a utility patent.
15 Federal Circuit has made -- well, the CCPA held that in '79.

16 The question, though, is, and the dispute here is what does that
17 design patent disclose? Because the design patent can be prior art, just like
18 any other reference, for what it reasonably discloses and suggests to a
19 POSA. And so, we disagree here about what it reasonably discloses and
20 suggests.

21 Slide 58, I think as Petitioner just agreed, Figure 11, there's no
22 height differential. There's no inline descending configuration, but they say,
23 well, we're going to look at this one figure, and frankly -- I'm flipping to
24 Slide 59 -- we'll even be charitable and say that there's two figures. Figure 9
25 uses a similar -- another attachment, but the Petitioner's theory is that a

1 POSA interprets Liao to disclose a stroller having an inline descending
2 configuration based on just two out of these 13 figures. And we submit
3 that's not reading the reference for what it reasonably discloses to a POSA.

4 Slide 59, or actually, this is still the same slide, just a different
5 thing. And Liao is sort of like the claim because this is a design patent. It is
6 a combination pushchair frame. That's one pushchair frame embodiment.
7 There's not multiple embodiments like you might have in the utility patent.
8 It's just different views of the same embodiment, the same stroller. And
9 Petitioner never really explains why a POSA would interpret Liao by
10 selectively focusing on just these two figures with this seat attachment on it.
11 And again, they admit that the other 11 figures don't show a stroller with an
12 inline descending configuration.

13 Mr. Prairie's approach to finding what he wants is arbitrary. As we
14 pointed out in a reply, he said, if you want to find an inline descending
15 configuration, you can make it. That is, again, classic hindsight. That's not
16 looking to what the reference teaches it. That says, what was I told to look
17 for, what's in the claim? I'm going to go find that, and I can make it if I want
18 to. And that's not the proper analysis. Construction of inline descending
19 that they have --

20 JUDGE FLAX: Is the bassinet in dotted line there, is that a seat?
21 That counts, right?

22 MR. THOMAS: It does. It would count, yeah. We have claims
23 that would encompass that within the definition of the seat, according to the
24 claim.

25 JUDGE FLAX: So, if the bassinet and the normal kind of seat are

1 in a declining orientation, and you said that that's not what's being claimed?

2 MR. THOMAS: It's not -- I think we even -- I think there is an
3 embodiment or a figure in the 2000 -- in the '682 patent that has a bassinet
4 on the top and a regular seat or something else down on the bottom. It can
5 certainly be different seats, but the problem here -- let me see if I have a
6 better figure. The problem here is that the only change that comes with this
7 is that it's a slight difference in the attachment of the seat itself. It's not that
8 there is something built into the claimed stroller or the frame that creates the
9 inline descending configuration, which is what the patent talks about. It's
10 that you have -- if it's just the difference in the accessories, that -- we submit
11 that is not teaching to a POSA to arrive at the claim limitation. You look at
12 this figure and -- or a POSA --

13 JUDGE FLAX: We're talking about the last clause of Claim 1,
14 right?

15 MR. THOMAS: Correct. Wherein the first and second seat, when
16 connected to the frame, are arranged in an inline descending configuration
17 along the stroller frame.

18 JUDGE FLAX: And your position is that that means the part of
19 the frame that holds the seats is in that configuration, not the seats
20 themselves?

21 MR. THOMAS: Yes, Your Honor. I think that's correct. And this
22 goes to --

23 JUDGE FLAX: What if we don't agree with that?

24 MR. THOMAS: I think that if you don't agree with that, then it is -
25 - it would be unmoored from what the claim requires. And this sort of gets

1 to our point about the claim construction of the inline descending sort of
2 phrase, and frankly, Judge DeFranco's question from last week about what
3 does "along" mean. And the claims -- the claim as a whole, right -- it's not
4 just this element 1.8, the last phrase, but it's the entire claim that sort of
5 anchors and fixes the structures.

6 The claim names the reference or the measure for what it is inline
7 descending up, and that is that it has to be inline descending along the
8 stroller frame. The '682 patent claims make that location express. The first
9 seat and the two housings, they sit at vertical positions, "of the stroller
10 frame." That's elements 1.3 through 1.5.

11 JUDGE FLAX: Well, this is something that Judge DeFranco
12 brought up in our pre-hearing conference. He had a question about, along
13 the stroller frame, what exactly might that mean. If you're walking along a
14 river was his example. You're kind of walking in general parallel with the
15 river. Why does this not mean that sort of idea where it's sort of generally in
16 parallel with the frame, how is that requiring more?

17 MR. THOMAS: It requires more because it is -- it's really
18 structuring the locations. All of these structures are oriented around
19 locations on the frame or along the frame. Here when we get to the Element
20 1.8, it's along the frame, but these earlier limitations, it's at a location of the
21 frame, vertical position of the frame. These things are locked into -- the seat
22 is coupled to the frame.

23 Now, here in this -- in the Liao reference -- these are all these
24 longer arms that extend up, and they create a level picture in all the others,
25 and then you swap out the attachment and then now it's no -- it wasn't in an

1 inline descending configuration along the frame indisputably in Figure 11.

2 And now you change the first seat to be from a regular stroller seat to a
3 bassinet and now all of a sudden, it is reading on being along the stroller
4 frame. I don't think that that is a correct interpretation of the claim.

5 JUDGE FLAX: Well, let me ask you this. On the figure there that
6 -- we're on Slide 64, right?

7 MR. THOMAS: Yes. Yes. Thank you.

8 JUDGE FLAX: And you've got Figures 10 and 11 to sort of
9 compare the two from the reference, from Liao. Now, let's just not consider
10 the frame connections for a moment. Let's pretend like they're not part of
11 Figure 10. If you just consider the seats, are those seats in an inline
12 descending configuration along -- with respect to the stroller frame?

13 MR. THOMAS: No, they're not, Your Honor. And first, I'd point
14 out in Figure 11, even not considering the specific attachments, it's obvious
15 that they are not. They're level.

16 JUDGE FLAX: Okay.

17 MR. THOMAS: They're --

18 JUDGE FLAX: If I agree with you on that --

19 MR. THOMAS: Okay. We --

20 JUDGE FLAX: Fine. What about the other one?

21 MR. THOMAS: The other one, they are not inline descending
22 along the frame because even if -- I don't have the Petitioner's figure, but
23 even when they -- in Mr. Prairie's surrebuttal, his line that sort of draws
24 through the -- it's barely not level. I think I do have -- here we go. I have
25 this illustration -- no, I don't have this illustration here.

1 JUDGE FLAX: Well, we can find it. Tell me where it is in the
2 record. We have the record in front of us. Is it in the Petition?

3 MR. THOMAS: No, it was in Mr. Prairie's rebuttal declaration.
4 He drew in one of the slides for Petitioner. It was Exhibit 1082, paragraph
5 20. Accepting your premise for the sake of argument, Judge Flax, that line I
6 would submit is not, according to a POSA, inline descending along the
7 frame. It's slightly negative of horizontal, but it is not along the frame. It's
8 not walking along the river, if you will. If there's houses along a river, they
9 don't have to be exactly next to it.

10 I think that there is some play in that, candidly, but there's no real
11 association with the location of that second forward seat and the frame. And
12 there's nothing that ties the relationship between the two seats to being along
13 the stroller frame. Assuming for the sake of argument that there is a slight
14 height difference between them, that is not a height difference that is caused
15 by the locations of the seat attachment housings and where the seats connect
16 to the stroller frame being along the stroller frame. That's --

17 JUDGE DEFRANCO: Let me ask you, Mr. Thomas.

18 MR. THOMAS: Yes, Your Honor.

19 JUDGE DEFRANCO: Let me just go through the claim itself. Do
20 you agree that Liao shows a first seat coupled to the stroller frame?

21 MR. THOMAS: We have not disputed --

22 JUDGE DEFRANCO: That would be --

23 MR. THOMAS: We have not disputed that.

24 JUDGE DEFRANCO: That would be that purple clamp, so to
25 speak.

1 MR. THOMAS: I think that is -- I don't think we dispute that. We
2 do dispute that in the surreply that they have now changed their mapping of
3 what, where, and how the first seat couples to the frame. So, we disputed
4 that in this -- looking at this intermediary connector theory that we raised as
5 new. But in terms of the petition, if I go back certainly to Figure 11, we do
6 not dispute that there's a first seat connected to the frame in Figure 11.

7 JUDGE DEFRANCO: Okay. Now, what about the adapter that's
8 shown in Figure 11 on the lower seat? You agree that's an adapter -- seat
9 attachment adapter, correct?

10 MR. THOMAS: I think that our position, if I recall correctly, was
11 that it was a little vague, but we did not argue in our Patent Owner response
12 that it does not disclose a seat attachment adapter.

13 JUDGE DEFRANCO: So, you admit it's -- you agree it's an
14 adapter then, bottom line?

15 MR. THOMAS: I think that would be.

16 JUDGE DEFRANCO: Okay.

17 MR. THOMAS: Yeah.

18 JUDGE DEFRANCO: Now, where is that adapter connected to
19 the frame?

20 MR. THOMAS: According to Petitioner, that adapter is connected
21 to the frame at the -- down by the lower -- I think the middle wheel that's
22 there in the figure.

23 JUDGE DEFRANCO: Okay. What would be termed -- which
24 could be termed as the housing in the frame, and then the adapter goes
25 through that frame, correct?

1 MR. THOMAS: I believe that is Petitioner's position. Yes, Your
2 Honor.

3 JUDGE DEFRANCO: I'm asking you what your position is.

4 MR. THOMAS: I --

5 JUDGE DEFRANCO: Is that Patent Owner's position?

6 MR. THOMAS: No, Your Honor. That is not our position. The
7 Petitioner has --

8 JUDGE DEFRANCO: Let me ask you, you agree the adapter is
9 connected to the frame, correct?

10 MR. THOMAS: Are you talking about in Liao?

11 JUDGE DEFRANCO: In Liao. Liao shows the adapter -- which
12 you admit in Liao, that it's connected to the frame. Liao shows that, correct?

13 MR. THOMAS: I don't think I can dispute that there is some sort
14 of structure attached to the frame. Yes, Your Honor.

15 JUDGE DEFRANCO: Meaning the adapter is connected to the
16 frame, correct?

17 MR. THOMAS: That is the Petitioner's position. I mean, I'm
18 going to say, Your Honor, I --

19 JUDGE DEFRANCO: You've already admitted that that's the
20 adapter, and I think you've admitted that the adapter is connected to the
21 frame, right?

22 MR. THOMAS: I don't think that's correct, Your Honor. What I
23 would tell you, and I understand the Petitioner has the burden to prove every
24 element is there, and we did not argue that some of those elements are
25 absent. I understand the implications of not arguing that, but it is still -- if

1 we hadn't filed a Patent Owner response, the Board still has to find by the
2 preponderance of the evidence that those elements are present, but that's not
3 our burden. So, that's what I'm -- that's my response to you, Your Honor.

4 JUDGE FLAX: So, Counsel --

5 JUDGE DEFRANCO: All right, assuming that connection point is
6 --

7 JUDGE FLAX: One moment, Judge DeFranco. I just want to
8 remind Counsel that these numbers are getting bigger.

9 MR. THOMAS: Yes, I know.

10 JUDGE FLAX: Okay. All right. Sorry. Sorry, Judge. Go ahead.

11 JUDGE DEFRANCO: Tell me why that connection point where
12 the adapter meets the frame is not in line with the connection point where
13 the first seat is attached to the frame.

14 MR. THOMAS: Can you ask that one more time, Your Honor,
15 make sure I understand it?

16 JUDGE DEFRANCO: Tell me why the connection point where
17 the adapter meets the frame, the stroller frame, in Liao, is not in line with the
18 point where the first seat is connected to the frame.

19 MR. THOMAS: I think what I would say is that the point where
20 this adapter in Liao attaches to the frame, assuming for the sake of argument,
21 their -- Petitioner's position -- would be in line with the first connection
22 point of the first seat. However, the claimed structure in the whole thing
23 says that when the first seat and second seat are arranged in an inline
24 descending configuration along the stroller frame. And so, even if you find
25 that the -- we'll call it the second seat in Figure 11 of Liao is -- the bottom of

1 that structure is in line with the first structure "along the stroller frame", the
2 second seat itself is not -- when connected to the frame -- is not arranged in
3 the inline descending configuration --

4 JUDGE DEFRANCO: Whoa. Mr. Thomas, you've already told
5 us, or you've argued, that we should be interpreting inline descending
6 configuration based on the mounting points. So, I just took you through
7 those mounting points. I mean, you've argued construction, we're applying
8 your construction to Liao. Tell us why that's not an inline configuration,
9 based on the mounting points, not the seats.

10 MR. THOMAS: I --

11 JUDGE DEFRANCO: Say we reject Petitioner's construction and
12 we adopt yours. It seems like Liao satisfies all the elements of the claim.

13 MR. THOMAS: Your Honor, we would disagree with that. Dr.
14 Cameron disagreed with that. Our position and her testimony is that when a
15 person of ordinary skill in the art looks at this Figure 11, they do not see --
16 and looks at the entire disclosure allowed, they do not see an inline
17 descending configuration under our claim construction. All of these
18 mounting points and stuff have to be read together, and looking at the
19 overall picture and overall requirements of the claim, the adapter -- Liao's
20 alleged adapter is not an adapter that places those seats in an inline
21 descending configuration. That would be our position, Your Honor. And I
22 don't know if I can reserve 30 seconds for rebuttal --

23 JUDGE DEFRANCO: Okay.

24 MR. THOMAS: -- but I think I'll try that. Thank you, Your
25 Honors.

1 JUDGE FLAX: Call it one minute.

2 MR. RONDINI: Is Your Honor ready?

3 JUDGE FLAX: Whenever you are.

4 MR. RONDINI: Okay, I'm going to work backwards real quick
5 and just touch on the last point that opposing Counsel was just talking about
6 and Your Honor was asking him about. Dr. Cameron only has three
7 paragraphs with respect to the Liao reference, and two of those paragraphs is
8 the image that you see on Slide 43 of our presentation. All she says is she
9 looked at Figure 5, and then what she classifies as the connection point -- the
10 upper connection points -- and she said those are in line. And that's all she
11 said. She didn't say anything else. So, there's no other opinion from their
12 expert on this point.

13 One other point I want to bring up is, Judge Flax, you mentioned it
14 when opposing Counsel got up. He said it's very obvious, and you corrected
15 him, he corrected himself. And he objected to some case law. So, we cited
16 PowerOasis v. T-Mobile, 522 F.3d 1299. I believe we cited Lockwood. I
17 believe we cited Martin v. Mayer, but even if we didn't, they are found in
18 PowerOasis. The actual quotes that I said for Lockwood and for Martin v.
19 Mayer, they're right in the PowerOasis.

20 This is not some new law from the Fed Circuit that's not known.
21 You cannot have an obviousness for a 112 argument. If you look at Dr.
22 Cameron's analysis for both, the handle portion and then you look at it for
23 the housing, that's what she did. She did not do a 112 analysis. She
24 recognizes -- that's what she says for the handle portion -- she recognizes
25 things by looking at blank figures. The blank figures she looked at were --

1 JUDGE FLAX: Counsel, let me ask you this. If we don't agree
2 with your claim construction on handle portion, does that kind of defeat the
3 priority arguments?

4 MR. RONDINI: Well, it's not a dispute. It was actually a
5 construction for handle portion that Patent Owner proffered in District Court
6 litigation.

7 JUDGE FLAX: Yeah, I looked at that, and what they said was that
8 it doesn't need construction.

9 MR. RONDINI: Okay.

10 JUDGE FLAX: Right? Am I wrong?

11 MR. RONDINI: Well, they said that, and then they advanced, I
12 believe, in the reply, that that was their construction. I think they got a little
13 more affirmative in their reply, but I'd have to look back at the papers.
14 (CROSSTALK) disputed it in this proceeding.

15 JUDGE FLAX: And they said that the plain and ordinary meaning
16 was kind of what you're proposing here.

17 MR. RONDINI: Right. And I believe the handle portion, even if
18 you did that, like I said, there is additional disclosures, different species of
19 what the handle portion and how it can be broken up in terms of the
20 material. So, I think even under a plain and ordinary, you still wouldn't get
21 back to the disclosure. All their expert did was Dr. Cameron just looked at
22 these two blank figures. She never cites to anything in the 2008-2009. She
23 doesn't look at the actual text. So, Your Honor was asking me about --
24 Judge DeFranco was asking me about certain text that's in the 2008-2009
25 documents. Dr. Cameron never cites to anything really in the 2008-2009.

1 JUDGE FLAX: So, are you saying that they were -- this gets
2 thrown around a lot, but that they were their own lexicographer with regard
3 to handle portion, that they created a definition for that?

4 MR. RONDINI: I believe they did. In the 2016, I believe they
5 changed the definition and they --

6 JUDGE FLAX: But if you do that, you have to be very clear about
7 it.

8 MR. RONDINI: Right. And I don't think it's so much a
9 lexicographer, as it's that they changed what the handle portion was. It
10 became something a little bit different than what was previously disclosed.
11 So, previously it was -- like I said, it went from the connector portion all the
12 way around. It was very generic, and they were very clear on that. There's
13 actually Claim 23 of the 2008 and Claim 23 of the 2009 non-provisional
14 actually says that. It says the frame includes a handle portion, a lower wheel
15 portion, and a back wheel portion. That's the same thing with 2009. They
16 claimed it. They claimed that's what the frame encompasses, the three
17 things.

18 JUDGE FLAX: Okay.

19 MR. RONDINI: Claim 27 further says you have a folding
20 mechanism where all three of those things connect. So, they were very clear
21 on what was the handle portion.

22 JUDGE FLAX: Well, Claim 1 says you got a frame with handle
23 portion and front end portion.

24 MR. RONDINI: Um-hum.

25 JUDGE FLAX: And then over the course of the rest of the claim,

1 it says some things are closer to the handle portion and some things are
2 closer to the front end portion. Doesn't that read sort of general?

3 MR. RONDINI: It does read general, but that's the -- the locations
4 of things matters, especially as you get later into the patents. As they started
5 prosecuting these, and I believe in their papers, they said there was five
6 different attorneys over 14 years and all these things got changed, but that's
7 part of the problem is the requirement of the 112, the burden of production is
8 on them, not on us, to try to show the priority chain all the way back.

9 And because of all these changes to Your Honor's question about,
10 well, how do we figure it out, that was what their expert was supposed to
11 prove, is go back and say, okay, when looking at this, I can find it here, here
12 it is. I can find it here, here it is. I can find it here, here it is. Looking at the
13 four corners and showing the actual disclosure. Not just looking generically
14 at a figure and saying, well, 12 is right there, now that I know the
15 construction, I'm going to use a little bit of hindsight bias, I'm going to say I
16 can recognize it based on the construction that I was told to apply. And
17 that's essentially what she did. So, and that's in violation, I believe, of
18 Lockwood and Martin, that says you can't use an obviousness-based analysis
19 to try to find the 112 support. You have to actually find it in the disclosure.

20 JUDGE DEFRANCO: Mr. Rondini, didn't Patent Owner really get
21 more specific about what constitutes the upper tube support in the later
22 application, as opposed to --

23 MR. RONDINI: Yes, they did.

24 JUDGE DEFRANCO: Yeah, but didn't they also say that, okay --
25 they identified a handle portion, and the handle portion that they identified

1 definitely includes an actual handle portion.

2 MR. RONDINI: Yes. They --

3 JUDGE DEFRANCO: Right?

4 MR. RONDINI: The handle portion --

5 JUDGE DEFRANCO: And that's all that's claimed is the handle
6 portion.

7 MR. RONDINI: In the '682? Well, I mean, but the -- you're
8 correct, but the handle portion --

9 JUDGE DEFRANCO: You have to find support for what's
10 claimed, right?

11 MR. RONDINI: Right.

12 JUDGE DEFRANCO: Not necessarily what's disclosed in the
13 '682. You have to find support for what's claimed, right?

14 MR. RONDINI: Right. And so, Judge Flax hit on the as claimed.
15 The as claimed is there's a lower front portion and then there's the handle
16 portion, and then it says the upper seat has to be located closer to the handle
17 portion than the front wheel. So, that was part of the breakup, was now
18 you're getting -- you can move that upper seat up closer to the handle portion
19 and away from that front end portion.

20 So, they were adding a little bit of a temporal, where is it located,
21 as opposed to if you look back in the 2008, 2009, it was simply the seat is
22 adjacent to the handle portion, and it's always adjacent when it's starting at
23 the folding mechanism, going all the way around. Closer means it can move
24 up and down. If it moves too far down, it may be closer to the front end
25 portion. So, that's why knowing where the boundary of the handle portion --

1 that was one of the -- in the 543, why the examiner said, well, where is the
2 location? Where is the stop point for the handle portion? And Patent Owner
3 said, here it is, and it added an express disclosure as to where the breakup
4 was supposed to happen between the upper tube and the handle portion.

5 JUDGE DEFRANCO: And you agree that that Exhibit 1003, it
6 shows the first seat adjacent to the handle portion, right?

7 MR. RONDINI: Yes. It does show a first seat adjacent to the
8 handle portion in the earlier -- so I'm on Slide 4. So, if the handle portion is
9 the entire upper from the folding mechanism, all the way around, yes, the
10 seat is definitely adjacent to it.

11 JUDGE DEFRANCO: Right. And what about -- where's the front
12 end portion?

13 MR. RONDINI: Well --

14 JUDGE DEFRANCO: And --

15 MR. RONDINI: -- the 2009, it's silent, but I would assume it's still
16 near the front. I wouldn't dispute that.

17 JUDGE DEFRANCO: Yes.

18 MR. RONDINI: So, I agree with that. But these are just figures.
19 They're representative figures. So, when you're talking about how they want
20 to assert it, what they want to try to claim, having that location -- I mean,
21 that seat can move up and down from this figure. So, that's where the
22 disclosure of the patent -- that's where breaking it up, that's where having a
23 different handle portion than what was previously described becomes
24 important. Because they've expanded, they've changed what was the handle
25 portion before. Before it was just adjacent.

1 Now it can move up and down in a certain direction. And if it's
2 closer to the handle portion, it meets the claim. If it moves down too far, it's
3 not. Just real quick, I only got a couple seconds. I wanted to touch on -- oh,
4 already hit this one. The last thing Counsel talked about was you can't use
5 file history, that can't be a 112, except their expert did exactly that with
6 respect -- and I think, Judge DeFranco, you're talking about the 2009, 2008.

7 During prosecution of the 2009, they added these two figures.
8 Their expert says, well, I can look at these and this is where I can find the
9 housing, this is where I can find the adapter. The problem is, these figures
10 didn't become part of the "four corners" of a document until the '869 patent,
11 which if we go back to the first one -- it's there in purple on Slide 2. And the
12 '869 was filed in 2014.

13 So, the Figure 10, Figure 11 analysis for housing and adapter
14 actually doesn't become part of the four corner analysis till the '869, which is
15 again why I was saying that the case law requires you go all the way back
16 and do a full continuity test. And the continuity test isn't a test that we're
17 supposed to do, as -- yes, the burden of persuasion for invalidity is always
18 on us. That's an undisputed fact. The burden of production, once we raise a
19 priority dispute, they'll rest with the Patent Owner. And the last thing I just
20 wanted to say is --

21 JUDGE DEFRANCO: So, Mr. Rondini, it's your position that it
22 stays with the Patent Owner throughout?

23 MR. RONDINI: No, it doesn't. It can flip back, if they meet their
24 burden. We don't believe --

25 JUDGE DEFRANCO: Yeah.

1 MR. RONDINI: -- they met their burden. And we believe -- well,
2 in Figure 3, we've disputed that the priority is there. We've disputed it all
3 the way through. We disputed it in our replies. So, we've never not disputed
4 it. We don't believe they ever --

5 JUDGE DEFRANCO: Okay.

6 MR. RONDINI: -- the burden ever came back to us. We don't
7 think they've met it sufficiently. And the last thing is just with the continuity
8 is the Google case I cited at page 23, it actually -- it ended, it said, in
9 addition, Patent Owner has not even attempted to show the intervening
10 applications in the chain of priority, provide written description support.
11 And that was one of the reasons it also agreed that priority -- Patent Owner
12 failed to show priority. It's not doing the continuity test all the way back.
13 And with that, I believe we're out of time. Thank you, Your Honors.

14 JUDGE FLAX: Okay, sir. If you want one minute.

15 MR. THOMAS: I think one minute is --

16 JUDGE FLAX: That's all you need. All right.

17 MR. THOMAS: Thank you, Your Honor. To your question,
18 Judge Flax, about the construction of handle portion, 1122 IPR, Patent
19 Owner Response 6, we argued that the term requires no construction, but we
20 agreed to apply it here. So, that is Patent Owner's position is that it does not
21 require construction in this proceeding.

22 On the obviousness inquiry about the support, Petitioner is saying
23 that we argued that the experts said, well, these were obvious. And yes, I
24 did have a slip-up in my wording, but what the experts said, paragraph 50 of
25 Exhibit 2011, was that these structures were plainly disclosed. In another

1 paragraph, she said they're easily recognized. A POSA would recognize
2 these things. That's paragraphs 52, 53. The housing that was just raised
3 about the -- looking at the prosecution history, paragraphs 61 to 62 of
4 Exhibit 2011, she explains why a POSA would recognize the housing.

5 Finally, just on the burden of production, very briefly if I could, I'd
6 say that the burden of production on a Patent Owner is not light -- sorry, it is
7 light. It is not a heavy burden to satisfy a burden of production. The
8 evidence and the arguments are there. The burden of persuasion shifts back
9 to the Patent Owner, and we submit that they have failed, including to show
10 that the patent claims are invalid. Thank you for your time, Your Honors.

11 JUDGE DEFRANCO: Mr. Thomas, can I ask you, did you
12 address the continuity argument in your briefs? What Petitioner says is the
13 continuity argument?

14 MR. THOMAS: I don't recall if we expressly discussed the
15 continuity argument in the briefs. I don't believe that that is necessary, like,
16 for us to do, for the reasons that I explained in my opening argument today,
17 that the Petitioner admits that the claims -- like, they show the continuity in
18 their own petitions. So, it's there in the record. That meets the burden of
19 production on that question.

20 The only thing that they challenged were these specific limitations
21 that were not there. Their expert traces -- there's a whole lot of testimony
22 from Mr. Prairie about one application claims priority to the next, claims
23 priority to the next. In arguing that these things were changed, he traces the
24 connectivity, all the way through up to the challenged patents. And so that
25 testimony and Petitioner's arguments concede that the continuity is

1 established. And the only question is whether or not these particular items
2 have written description support.

3 JUDGE DEFRANCO: Okay. So, it's your position that you didn't
4 address it because you didn't think Patent Owner disputed continuity?

5 MR. THOMAS: To the extent that we did not express it expressly
6 -- we did not address it expressly, it's because Patent Owner -- or Petitioner
7 has conceded it.

8 JUDGE DEFRANCO: Petitioner, right. Thank you.

9 MR. THOMAS: Thank you.

10 JUDGE FLAX: Okay. Well, thank you all for the oral argument.
11 We'll, of course, consider what you had to say today and the entire record,
12 and we'll get you a final decision in due course. The record is now closed,
13 and we'll adjourn the hearing. Everyone have a great day.

14 MR. THOMAS: Thank you. You, as well.

15 (Whereupon the above-entitled matter went off the record at 3:14
16 p.m.)

IPR2025-01122 (Patent 11,731,682 B2)

IPR2025-01140 (Patent 11,577,771 B2)

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