

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

EVENFLO COMPANY, INC.

Petitioner

v.

BABY JOGGER, LLC,

Patent Owner.

---

IPR2025-01140

Patent 11,577,771

---

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

Although Petitioner Evenflo has not yet served or filed any documents in the parallel district court action, its gamesmanship has already begun. The Petitions in IPR2025-01122 and IPR2025-01140—and Evenflo’s positions in the related IPR proceedings with its fellow Petitioners UPPAbaby and Mockingbird—make clear that Evenflo will advance inconsistent claim construction positions before the Board and the district court. The Petitions themselves declare that “there are Section 112 issues in the Challenged Claims” and that “Petitioner reserves the right to argue different constructions in other actions”—precisely what the Director declined to permit in *Tesla*. And Evenflo has already signed on to inconsistent claim construction positions in related, jointly coordinated petitions. Taken together, these circumstances strongly support discretionary denial of institution.

The Board authorized this brief to address the impact of the *Revvo* and *Tesla* decisions on these proceedings in view of Petitioner’s claim construction positions.<sup>1</sup> In *Revvo*, for example, the petitioner did not propose its own claim constructions in the petition; instead, it adopted the patent owner’s constructions from the parties’ district court litigation without explaining why *petitioner* had

---

<sup>1</sup> Non-identical Papers and exhibits in each proceeding are referenced by the IPR number followed by the document, while duplicated exhibits are referenced by number only. E.g., “122 IPR Ex-01048” or “140 IPR Ex-01048” versus “Ex-1014.”

advanced *different* constructions there. *Revvo Technologies, Inc. v. Cerebrum Sensor Technologies, Inc.*, IPR2025-00632, Paper 20 (Nov. 3, 2025). The Director found that petitioner’s inconsistent adoption of the patent owner’s positions failed to comply with 37 C.F.R. § 42.104(b)(3). *Id.* at 5.

Here, Petitioner has likewise confirmed that it intends to take inconsistent claim construction positions before the Board and the district court. The Petitions allege that “there are several Section 112 issues with the Challenged Claims,” 122 IPR Pet. 15; 140 IPR Pet. 10-11, but they do not identify what any of those issues are. *Id.* Rather, the Petitions purport to adopt the constructions that Baby Jogger “has implicitly or explicitly applied in litigation,” pointing to Baby Jogger’s claim construction briefs and positions taken at the district court against related petitioner Monahan Products, LLC d/b/a UPPAbaby (“UPPAbaby”). 122 IPR Pet. 15; 140 IPR Pet. 10-11 (citing EX1055, EX1056).<sup>2</sup> The Petitions then affirmatively “reserves the right to argue different constructions in other actions.” *Id.*

The Petitions present one term for construction, “handle portion,” and contend “no formal construction ... appears necessary” for any others. Notably, Evenflo made these *same statements* in its related Petitions jointly filed with its co-

---

<sup>2</sup> Evenflo is a co-Petitioner with UPPAbaby (and Mockingbird) in the related pending IPRs: IPR2025-01095, IPR2025-01100, and IPR2025-01120.

Petitioner UPPAbaby. *See, e.g.*, IPR2025-01095, Paper 1, 7.

Evenflo is thus taking (or will take) the same inconsistent positions here as it has in the related proceedings with its fellow Petitioners. Instead of identifying how the challenged claims are to be construed (except as to the one limitation) as required by 37 C.F.R. § 42.104(b)(3), Evenflo purports to rely on *Baby Jogger's* proposed interpretations from a parallel litigation against its co-Petitioner. And, like in the related IPRs, Petitioner Evenflo has expressly stated its belief that it can use one construction here before the Board and then take a different position before the district court. This is precisely the type of improper gamesmanship that the Director has cautioned against. *See Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00340, Paper 18 at 3-4 (Nov. 5, 2025); *Revvo Techs.*, IPR2025-00632, Paper 20 at 3-5. Petitioner's clear intention to game the system by seeking one construction at the Board and a different construction before the district court warrants discretionary denial of institution here. To prevent inconsistent claim constructions between forums, this issue should be left to the district court.

The Petitions also present the facial inconsistency of alleging there are "Section 112 issues" with the claims while simultaneously asserting "no formal construction" is necessary (except for the single limitation). Evenflo's only explanation for failing to disclose these "issues" is that they do not "preclude the Board from evaluating validity based on the [asserted] grounds." 122 IPR Pet. 15;

That would include asserting the §112 issues it alleges exist. 122 IPR Pet. 15; 140 IPR Pet. 10. More than failing to explain the inconsistent position as in *Tesla* or *Revvo*, Evenflo has stated there *are* inconsistencies *within* its Petitions but chose not to disclose them to either Patent Owner or the Board.

So while claim construction in the parallel district court action here has not yet occurred, Petitioner's statements that it reserves the right to assert “different constructions” and has hidden § 112 positions support denial of institution. These “amount[] to an assertion that a petitioner should be permitted to raise inconsistent invalidity challenges in the two forums,” *Tesla*, IPR2025-00340, Paper 18 at 3, and conflict with the goals of “predictability and certainty in the patent system.” *Revvo Techs.*, IPR2025-00632, Paper 20 at 4 (quoting 83 Fed. Reg. at 51,342-43).

Petitioner’s gamesmanship is further demonstrated by its related petitions, where Petitioners adopted Patent Owner’s proposed constructions from the district court—positions that co-Petitioner UPPAbaby *opposed*. In the court, UPPAbaby argued that (i) “connector portion” means a “[m]ale mating element that attaches by insertion into a corresponding part” (Ex-1055, 7) and (ii) “handle portion” means a “[l]ateral frame portion that is grasped when pushing the stroller” (Ex-1055, 14). But Petitioners—including Evenflo—didn’t adopt UPPAbaby’s constructions before the Board or disclose they were advancing inconsistent positions (much less explain why such inconsistencies are warranted). *See* 122 IPR

Pet. 15; 140 IPR Pet. 11. This conduct invites a scenario where identical claim terms are construed differently across multiple courts and Board proceedings, undermining judicial economy and the integrity of the IPR process.

The Board should also decline any attempt by Petitioner to distance itself from the inconsistent positions at issue in the co-pending proceedings. While the Petitions here name only Evenflo as an RPI, the similarities between these Petitions and the jointly-filed petitions reflect a highly coordinated effort. Multiple sections are identical (or nearly so) to the jointly filed petitions. Each petition relies on the same expert,<sup>3</sup> has several sections that are almost identical,<sup>4</sup> and incorporates many of the same color-coded, annotated figures.<sup>5</sup>

Petitioner should not be permitted to take different claim construction positions in different forums. Petitioner has already expressed its intent to adopt inconsistent constructions and has done so in related petitions, without explaining why different positions are warranted. To avoid inconsistent outcomes in claim construction between forums, institution should be denied.

---

<sup>3</sup> Compare 122 IPR Ex-1001; 140 IPR Ex-1001, *with* 100 IPR Ex-1001.

<sup>4</sup> Compare 122 IPR Pet. §§ I, III, IV, VII, IX.A-C; 140 IPR Pet. § III, IV, VII, IX.A, *with* 100 IPR Pet. § I, III, IV, VI, VIII.A-C.

<sup>5</sup> Compare 122 IPR Pet. 28, 51, 52; 140 IPR Pet. 33, *with* 100 IPR Pet. 27, 36, 38.

Respectfully submitted,

/Christopher B. Kelly/

Christopher B. Kelly (Reg. No. 62,573)

**CERTIFICATE OF SERVICE**

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

John P. Rondini

Frank A. Angileri

Thomas W. Cunningham

Kyle G. Konz

jroncini@brookskushman.com

fangileri@brookskushman.com

tcunningham@brookskushman.com

kkonz@brookskushman.com

GBBL0112IPR@brookskushman.com

/Meg Cogburn/

Meg Cogburn, Senior Paralegal

Meunier Carlin & Curfman LLC

999 Peachtree St, NE

Suite 1300

Atlanta, GA 30309