

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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EVENFLO COMPANY, INC.

Petitioner

v.

BABY JOGGER II, LLC,

Patent Owner.

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IPR2025-01122 (Patent No. 11,731,682)  
IPR2025-01140 (Patent No. 11,577,771)<sup>1</sup>

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Patent Owner's Motion to Excuse Late Filing Under 37 C.F.R. § 42.5(c)(3)

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<sup>1</sup> The Board authorized use of this combined caption page on March 30, 2026. An identical copy of this paper has been filed in each case recited in the consolidated caption.

## **I. INTRODUCTION**

Patent Owner Baby Jogger II, LLC (“Baby Jogger” or “Patent Owner”) respectfully moves the Board to excuse the late filing of Patent Owner’s Responses and accompanying expert declaration in the above-captioned proceedings. The Board authorized Patent Owner to file this motion in an email on March 30, 2026. Petitioner Evenflo Company, Inc. (“Evenflo” or “Petitioner”) does not oppose the requested relief.

As set forth below, Patent Owner’s Responses and expert declaration were filed between approximately 75 and 105 minutes after the midnight deadline due to unforeseen difficulties Patent Owner’s expert encountered in finalizing the expert declaration. Good cause exists to excuse this brief delay. Additionally, Petitioner has not suffered any prejudice from the delay and does not oppose the requested relief, so consideration of the Responses and declaration on the merits is also in the interests of justice.

## **II. STATEMENT OF MATERIAL FACTS**

1. Pursuant to the Board’s Scheduling Order, as modified by the parties’ stipulation (Paper 15), the deadline for Patent Owner to file its Patent Owner Responses in both proceedings was March 26, 2026. Paper 14 (Scheduling Order); Paper 15 (Stipulation).

2. The Patent Owner's Responses necessarily relied upon and cited to the expert declaration of Dr. Kimberly Cameron,<sup>2</sup> which was still being finalized as of the due date. Declaration of Warren Thomas (EX2014) ¶ 3.

3. Early Thursday morning, March 26, Dr. Cameron informed counsel that she believed that certain work within the declaration she had substantially completed was missing from the document. She therefore spent time on Thursday rewriting portions of the declaration that were, in fact, present in the "tracked changes" view of the document. *Id.* ¶ 4.

4. Subsequently, there was a misunderstanding between Counsel and Dr. Cameron about where her revisions to the declaration were located, causing further miscommunication and confusion about the status of the declaration. *Id.* ¶ 5.

5. These factors delayed her and Counsel's final review of the declaration and, consequently, the Responses. *Id.* ¶ 6.

6. Dr. Cameron completed her revisions to the portions at issue and approved the full declaration shortly after midnight, on Friday March 27. *Id.* ¶ 7.

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<sup>2</sup> Due to the overlapping subject matter and some overlapping prior art and arguments, Dr. Cameron submitted a single declaration addressing both proceedings and both challenged patents.

7. The Patent Owner Response documents themselves and the declaration were otherwise completed well before the deadline, but for certain portions depending on the yet-to-be-finalized testimony of the expert. *Id.* ¶ 8.

8. Patent Owner’s counsel then worked diligently to finalize the two Responses in view of the completed declarations. The expert declaration and Patent Owner Response in IPR2015-01122 were completed and filed at approximately 1:15 AM on March 27, 2026, about one hour and fifteen minutes after the midnight deadline. *Id.* ¶ 9.

9. The Patent Owner Response in IPR2015-01140 was finalized shortly thereafter and filed at approximately 1:45 AM—one hour and forty-five minutes after the midnight deadline. *Id.* ¶ 10.

10. While counsel still expected that the declaration would be completed before the midnight deadline, counsel recognized that there was a risk the filings could be close to the deadline. To mitigate the potential for issues and minimize the time needed to complete the filings later, counsel directed that certain exhibits wholly independent of the expert’s work be filed in advance of the Responses. Thus, five exhibits were filed in each proceeding between approximately 6:17 PM and 6:22 PM. Later, at approximately 11:30 PM, counsel directed that two additional exhibits (Dr. Cameron’s CV and an annotated figure cited in her declaration) be filed in both proceedings. *Id.* ¶ 11.

11. Patent Owner served copies of the two Responses and supporting exhibits on Petitioner’s counsel at approximately 1:30 AM (for IPR2025-01122) and 1:45 AM (for IPR2025-01140). *Id.* ¶ 12.

12. Patent Owner promptly notified Petitioner’s counsel of the late filing and asked whether Petitioner would stipulate (post hoc) to a one-day extension of time on the Responses or not oppose a request for other relief. *Id.* ¶ 13.

13. The parties conferred by email on Friday, March 27,<sup>3</sup> including a request by Petitioner for additional information about the circumstances Patent Owner would contend constitutes “good cause” for the delay. Petitioner ultimately indicated it would not oppose Patent Owner requesting relief from the Board. *Id.* ¶ 14.

### **III. STATEMENT OF REASONS FOR RELIEF REQUESTED**

The Board’s rules provide that a “late action” by a party will be excused on either a “a showing of good cause” or “upon a Board decision that consideration on the merits would be in the interests of justice.” 37 C.F.R. § 42.5(c)(3). This rule is to “be construed to secure the just, speedy, and inexpensive resolution of every proceeding.” 37 C.F.R. § 42.1(b). Additionally, the Board considers that Due Date 1 (for the Patent Owner’s Responses) is “an intermediate deadline that may be

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<sup>3</sup> Petitioner’s lead counsel was traveling that day.

changed by agreement of the parties.” *RPX Corp. v. Vertical Connection Techs.*, IPR2018-01388, Paper 26, 2-3 (May 30, 2019); *Standard Innovation Corp. v. Lelo, Inc.*, IPR2014-00148, Paper 19 (Sept. 15, 2014) (same). Both good cause and the interests of justice support excusing Patent Owner’s late filing here.

**A. Good Cause Exists to Excuse the Late Filing**

Patent Owner’s delay resulted from unforeseen difficulties that Patent Owner’s counsel and its expert encountered in finalizing the expert declaration supporting the Patent Owner’s Responses. Early morning the day the Responses were due, Dr. Cameron informed counsel that she believed that certain work within the declaration she had substantially completed was missing from the document. She thus spent time Thursday *rewriting* portions of the declaration. As it turned out, the edits were in fact not missing from the document but hidden “tracked changes” in Word that she did not see. During the process of rewriting, there was also a misunderstanding between counsel and Dr. Cameron about *where* her revisions were located, which caused further miscommunication and confusion about the status of the declaration. These factors delayed Dr. Cameron’s and Patent Owner’s counsel’s final review of the declaration.

The Patent Owner Response documents themselves were complete *other than* the portions that depended on the yet-to-be-finalized declaration testimony. While counsel still expected that the declaration would be completed before the

midnight deadline, counsel recognized that the timing might become an issue. To mitigate that potential and minimize the time it would take to complete the filings, the undersigned counsel directed that the other exhibits, independent of the expert's work, be filed in advance of the Responses to minimize any other potential delays.

Shortly after midnight (now Friday, March 27), Dr. Cameron completed the revisions and approved the full declaration. Once the declaration was finalized, Patent Owner finalized and filed both Responses and the signed declaration as soon as practicable—within approximately one hour and forty-five minutes of the deadline—and promptly served Petitioner. Patent Owner then followed up its service email with another message to Petitioner acknowledged the late filing. After conferring with Petitioner, Patent Owner promptly sought authorization to file this motion.

The technical issues and miscommunications with the expert, leading to unanticipated rework, were the source of the delay. Patent Owner submits that these circumstances constitute good cause to excuse the delay.

**B. Consideration on the Merits Is in the Interests of Justice**

Even if the facts above do not establish good cause, excusing the late filing is independently warranted because consideration of the Responses and expert declaration on the merits is in the interests of justice.

As stated above, Petitioner does not oppose this motion, and there is no prejudice to Petitioner resulting from the brief delay. The Responses and declaration were filed less than two hours after the deadline—late at night or early morning. Petitioner was served promptly thereafter. Thus, no subsequent deadlines for Petitioner were affected by the short delay. Nor does the delay affect the timely completion of this proceeding.<sup>4</sup>

On the other hand, the prejudice to Patent Owner of *not* considering the Responses or the declaration would be great: It would deprive Baby Jogger of any opportunity to defend the patentability of the challenged claims. And the Board benefits from having a full record—including Patent Owner’s arguments and expert testimony—in reaching a just decision on the merits of the patentability of those claims. *See Luraco Health & Beauty, LLC v. Lexor Manufacturing, LLC*,

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<sup>4</sup> Patent Owner also offered to stipulate to an extension of Petitioner’s due date for its Replies by at least one day as well. Petitioner has not yet indicated whether that additional day is requested.

IPR2019-00204, Paper 24, 4-5 (Sept. 9, 2019) (granting *opposed* motion to excuse late filing because considering late declaration would be in the interests of justice, even though “[t]he circumstances that led to the late filing were not entirely out of Patent Owner’s control”).

Accordingly, the consideration of the merits of Patent Owner’s Responses and declaration and the interests of justice far outweigh any theoretical prejudice to Petitioner caused by the short (less than two hour) delay. *See also, e.g., Corelogic, Inc. v. Boundary Solutions, Inc.*, IPR2015-00219, Paper 32, 3 (Oct. 27, 2015) (excusing one-day delay of patent owner’s Response based on interests of justice despite finding lack of good cause); *Formlabs Inc. v. EnvisionTEC, Inc.*, IPR2017-01258, Paper 11 (Sept. 22, 2017) (same for a patent owner’s Preliminary Response); *Symantec Corp. v. Intellectual Ventures I LLC*, IPR2016-01433, Paper 35, 3 (granting motion because “refusal to consider” Petitioner’s Reply “as a consequence of a few hours’ delay would not be in the interest of justice”).

#### **IV. CONCLUSION**

Patent Owner and its counsel regret the inconvenience to the Board and to Petitioner caused by its late filing, including the burden placed on the Board to address this motion. Nevertheless, Patent Owner requests that the Board excuse the late filing of its Patent Owner Responses and the accompanying expert declaration and deem them as timely filed.

Respectfully submitted,

/Warren Thomas/

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

**CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. § 42.6(e) and agreement of the parties, I certify that on April 1, 2026, a copy of this paper was served on counsel for the Petitioner by email to:

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