



## Claim Construction Issues and Large Number of Claims Not Enough to Institute a Second Petition for Inter Partes Review

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The Patent Trial and Appeal Board recently declined to institute a petition for IPR that was filed on the same day that the petitioner filed another petition challenging the same claims of the same patent. The board was not persuaded by petitioner's arguments that a second petition was needed due to alleged claim construction issues or the number, length or scope differences of the challenged claims.

Petitioner raised three grounds in its petition, which challenged 24 patent claims generally directed to an ergonomic, adjustable baby carrier. It was filed the same day as another petition challenging the same claims of the same patent, but asserting different grounds. Petitioner ranked the other petition first and the present petition second.

The board's Consolidated Trial Practice Guide provides that, in most situations, one petition should be sufficient to challenge the claims of a patent and that, while more than one petition may be necessary in certain circumstances, two petitions should be rare. Petitioner argued that a second petition was needed here for three reasons: (1) one of the references had an allegedly undetermined status as prior art because of a pending decision from the Federal Circuit; (2) petitioner proposed two different "approaches" to construing a certain term; and (3) the large number of claims necessitated a second petition.

Petitioner's first argument was that the Federal Circuit's decision in *Lynk Labs, Inc. v. Samsung Electronics Co.*, 125 F.4th 1120 (Fed. Cir. 2025), which applied pre-AIA law, had the potential to disqualify a certain reference as prior art. Given that there was no dispute that AIA law applied to this proceeding, the board rejected that argument. Even if the Federal Circuit's

decision were overturned on rehearing or at the Supreme Court, the decision would not impact the availability of the reference as prior art here.

Next, petitioner contended that a second petition was needed because it was presenting two different “approaches” to construing a claim term: (1) plain and ordinary meaning and (2) means-plus-function under § 112(f). In a board decision cited by petitioner, the first-ranked petition presented one approach to the prior art, and a second petition was permitted because it presented a different approach such that the petitions did not meaningfully overlap. See *SolarEdge v. SMA Solar Techs.*, IPR2019-01224, Paper 10 at 10 (PTAB Jan. 23, 2020). But here, petitioner had addressed both approaches to claim construction in both its petitions. As such, the board was not persuaded that a second petition was warranted.

Petitioner’s third argument was that the number of challenged claims, claim length and alleged differences in claim scope warranted a second petition. For support, petitioner quoted the Consolidated Trial Practice Guide’s discussion of parallel petitions, stating that a second petition may be needed when a large number of claims has been asserted in litigation. The board rejected that argument. The board stated that if petitioner could challenge 24 claims across three grounds in one petition, the number of claims does not necessarily warrant a second petition to again challenge the same 24 claims across three additional grounds. The board also noted that, if the length of the claims were such an issue, petitioner would not have been able to challenge all 24 claims across multiple **different** grounds in **each petition**. Further, the board was not persuaded that alleged differences in claim scope warranted a second petition, because much of petitioner’s analysis within each ground relied almost exclusively on cross-referencing prior analysis. For reach of these reasons, the board exercised its discretion to deny institution of the petition.

## Practice Tip:

More than one approach to claim construction and a large number of challenged claims do not necessarily warrant institution of a second IPR challenging the same claims. Further, the board may deny institution of multiple petitions where the challenged claims have insubstantial differences such that a petitioner can rely on cross referencing prior analyses in the petition. Given that the board’s procedures indicate that institution of a second petition should be a rare occurrence, a petitioner should strongly consider advancing its strongest arguments in a single petition or its first-ranked petition.

*BabyBjörn AB v. Ergo Baby Carrier Inc.*, IPR2025-00111, Paper 19 (P.T.A.B. Apr. 22, 2025)

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