

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**CASE NO. 1:19-CV-02950-PAB-SKC**

<b>THE ERGO BABY CARRIER, INC.,</b>  <b>Plaintiff,</b>  <b>v.</b>  <b>LILLEBABY, LLC,</b>  <b>Defendant.</b>	<b>AMENDED COMPLAINT FOR PATENT INFRINGEMENT</b>  <b>JURY TRIAL DEMANDED</b>
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Plaintiff The ERGO Baby Carrier, Inc., files this Amended Complaint for Patent Infringement against LILLEbaby, LLC, and alleges on its own knowledge, and on information and belief, as follows:

**THE PARTIES**

1. Plaintiff The ERGO Baby Carrier, Inc. (“ERGO”) is a corporation duly organized and existing under the laws of Hawaii, with a principal place of business at 617 W. 7th Street, Suite 1000, Los Angeles, California 90017.

2. Upon information and belief, LILLEbaby LLC, (“LILLEbaby”) is a limited liability corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 700 12th Street, Golden, Colorado 80401.

**JURISDICTION AND VENUE**

3. This Complaint for patent infringement arises under the patent laws of the United States, Title 35 U.S.C. §§ 1 *et seq.*

4. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

5. This Court has personal jurisdiction over Defendant LILLEbaby because Defendant resides in the State of Colorado and maintains continuous, systematic, and substantial contacts within the State of Colorado including: (i) a portion of the infringing activity alleged herein occurs in Colorado; and (ii) Defendant is regularly doing or soliciting business in Colorado, engaging in other persistent courses of conduct in Colorado, and/or deriving substantial revenue from goods and services provided to individuals in Colorado. By way of non-limiting example, Defendant LILLEbaby sells its products, including the infringing child carriers identified below, throughout the United States including Colorado through its online retail portal at [www.lillebaby.com](http://www.lillebaby.com). Moreover, Defendant LILLEbaby directs consumers to brick-and-mortar retail stores located in Colorado that warehouse and sell LILLEbaby products including the infringing child carriers—and where in turn—consumers can make in-store purchases of those carriers. *See* [www.lillebaby.com/pages/find-a-store-near-you](http://www.lillebaby.com/pages/find-a-store-near-you). Defendant LILLEbaby has also recently availed itself of jurisdiction in this Court by, *inter alia*, filing multiple law suits in this court. *See, e.g., LILLEbaby, LLC v. YOU + ME*, Case No. 1:19-cv-00679 (D. Colo. Mar. 6, 2019); *LILLEbaby, LLC v. Mountain Buggy USA*, Case No. 1:19-cv-00662 (D. Colo. Mar. 6, 2019); *LILLEbaby, LLC v. Wuxi Kangarouse Trading Co. Ltd., et al.*, Case No. 1:19-cv-00677 (D. Colo. Mar. 6, 2019).

6. Venue is appropriate in this District pursuant to 28 U.S.C. §§ 1391 and 28 U.S.C. § 1400(b). Upon information and belief, Defendant LILLEbaby has transacted business in this District and has committed acts of patent infringement in this District. Moreover, Defendant has a regular and established place of business in Colorado and, therefore, within this District.

## **THE PARTIES**

### **ERGO**

7. Founded in 2003, ERGO manufactures babywearing products and accessories designed to support a natural and ergonomic position for babies.

8. ERGO babywearing products are sold in more than 700 retailers in the United States and in over 50 countries internationally, have received an assortment of industry awards and accolades, and are covered by a portfolio of no less than fifteen (15) U.S. patents.

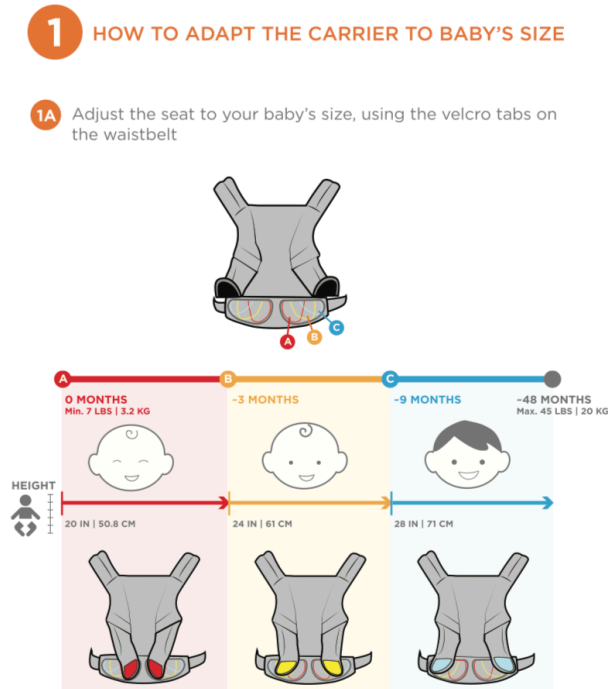
9. In 2016, ERGO announced the release of its ADAPT™ Baby Carrier, which had an innovative seat that gradually adjusts to a growing baby.

10. ERGO's ADAPT™ carrier was developed by the design team at ERGO, headed by Rodney Telford.

11. Other employees of ERGO were also involved with the development and sale of the ADAPT™. ERGO's then-Global Product & Regulatory Compliance Director, Rizza Abucejo-Ranario, was involved at every step of the development of the ADAPT™ with respect to compliance issues. *See* Ex. 1 (LinkedIn). Another ERGO employee, then-Production and Sourcing Supervisor Yassin Deo, was involved with the ADAPT™ development process as part of the production and sourcing team. *See* Ex. 2 (LinkedIn). David Sullivan, ERGO's then-Director of International Sales, oversaw the sales operations process of bringing the ADAPT™ to market. *See* Ex. 3 (LinkedIn).

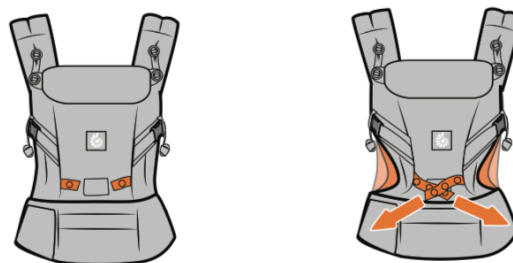
12. ERGO's ADAPT™ carrier features included an ergonomic bucket seat that gradually adjusts to ensure baby is seated in a spread-squat, natural "M shape" position from newborn to toddler.

13. As depicted in the ADAPT™ instruction manual, the base width of the seat can be adjusted to the size of the baby using Velcro tabs on the waist belt:



14. The ERGO ADAPT™ further contains thigh width adjusters:

**1B** Pull the front straps to the desired snap position, to support baby's thighs in an ergonomic "M" shape position



15. ERGO filed for a patent to protect this innovative design on October 30, 2015 (the “ADAPT™ Patent Application”). At the time that ERGO filed for this patent, Ms. Abucejo-

Ranario, Mr. Deo, and Mr. Sullivan were all employees of ERGO who were involved in the development and sale of the ADAPT™. On information and belief, all of these former ERGO employees – Ms. Abucejo-Ranario, Mr. Deo, and Mr. Sullivan– were also aware of the ADAPT™ Patent Application. As Directors, Ms. Abucejo-Ranario and Mr. Sullivan were informed and knowledgeable regarding ERGO’s patenting strategies and activities, including the ADAPT™ Patent Application.

16. By April 2016, ERGO’s ADAPT™ carrier was publicly announced and commercially released. *See e.g.*, <https://www.prnewswire.com/news-releases/ergobabys-next-innovation-the-adapt-baby-carrier-300244298.html>.

17. In October 2016, Alicia Mitchell joined ERGO as a Technical Designer, where she assisted in the development of the ERGO carriers and, on information and belief, had knowledge of the ADAPT™ Patent Application.

18. On May 4, 2017 – while Ms. Abucejo-Ranario, Mr. Deo, Mr. Sullivan and Ms. Mitchell were still employed by ERGO – the ADAPT™ Patent Application published as US 2017/0119173 A1.

19. The United States Patent Office issued U.S. Patent No. 10,426,275 on October 1, 2019 .

20. The claims of the ‘275 Patent, as issued, are substantially similar to the ADAPT™ Patent Application claims published on May 4, 2017 (the “Published” claims).

21. For example, claim 1 of the ‘275 Patent contains the limitations of Published claims 1 and 6, written into independent form.

22. Dependent claim 6 of the ‘275 Patent contains Published claim 7.

23. Dependent claim 7 of the '275 Patent contains Published claim 8.

24. Dependent claim 8 of the '275 Patent contains Published claim 9.

**LILLEbaby**

25. LILLEbaby has been a competitor of Ergo in the market for child carriers since at least 2009.

26. In 2017, private equity firm The Riverside Company entered into a partnership with, and provided related financing of, LILLEbaby.

27. LILLEbaby's partnership with The Riverside Company was further facilitated by Tree Line Capital Partners, which provided debt financing and an equity co-investment.

28. With investment from The Riverside Company and Tree Line Capital Partners, LILLEbaby's founder stepped down from managing the company, and a new chief executive officer – Jeff Colton – was named to “lead[ ] the LILLEbaby team as it develops and executes on its growth strategy, including new product development, supply chain optimization and distribution expansion.” <https://www.prnewswire.com/news-releases/lillebaby-makes-key-executive-appointments-300614197.html>.

29. Once Mr. Colton joined LILLEbaby in January 2018, LILLEbaby's research and development efforts changed. LILLEbaby had not launched a new product in years, but Mr. Colton was charged with growth strategy and focused on product expansion. Mr. Colton “start[ed] work on what then became the Serenity.” Ex. 4 (Colton ITC Testimony 265:22-266:5).

30. With respect to that new product development, LILLEbaby formulated its “2018 Product Strategy.”

31. As dictated by the “2018 Product Strategy,” LILLEbaby’s primary strategy for its “Product development process” was as follows:

**“Strategy 1: Steal from Ergo.”**

In particular, LILLEbaby’s goal was to “Develop new product that directly competes with Tula and Ergo.” Ex. 5 (Colton ITC Testimony 324:15-325:14).

32. Mr. Colton “spent a lot of time hiring people and identifying designers and people involved with product design and development who are still with [LILLEbaby].” Ex. 6 (Colton ITC Testimony 265:22-266:8).

33. Putting the “Steal from Ergo” strategy into action, Mr. Colton began recruiting ERGO employees with knowledge of ERGO’s intellectual property, including the ERGO ADAPT™ and ADAPT™ Patent Application, to work with LILLEbaby.

34. According to Mr. Colton, within his first two or three weeks as CEO of LILLEbaby, he met with Mr. Sullivan (ERGO’s Director of International Sales) and hired him as a contractor for LILLEbaby, where Mr. Sullivan now heads up LILLEbaby’s international sales. Ex. 7 (Colton ITC Testimony 327:20-328:15).

35. Through Mr. Sullivan, Mr. Colton met Ms. Abucejo-Ranario and recruited her from ERGO to LILLEbaby. Ms. Abucejo-Ranario joined LILLEbaby in August 2018 and is currently the Vice President of Supply Chain at LILLEbaby. Ex. 8 (Colton ITC Testimony 328:23-329:17). Ms. Abucejo-Ranario “heads up all product development as well and quality and compliance . . . overseeing and managing that product development loop . . .” Ex. 9 (Colton ITC Testimony 268:22-269:22).

36. LILLEbaby also hired former-ERGO employees Mr. Deo and Ms. Mitchell. Ex. 10 (Colton ITC Testimony 326:24-327:19, 328:16-22).

37. In addition, as part of its product development process, LILLEbaby was aware of competitor models and sometimes purchased such models to have within their office. Ex. 11 (Colton ITC Testimony 317:24-318:7).

38. In November 2018, LILLEbaby specifically purchased an ERGO ADAPT™ carrier (and other ERGO carriers with similar adjustable bucket seats). Ex. 12 (Exs. 36 and 37 to ITC Complaint). LILLEbaby purchased the ADAPT™ in order to evaluate it in detail, as it was preparing to file a Complaint against ERGO in the International Trade Commission (“ITC”).

39. After acquiring four ex-ERGO employees with knowledge of ERGO design, development, and patents, LILLEbaby completed its “Steal from Ergo” strategy by developing a baby carrier called the “Serenity” carrier that copied the patented features of the ERGO ADAPT™ carrier.

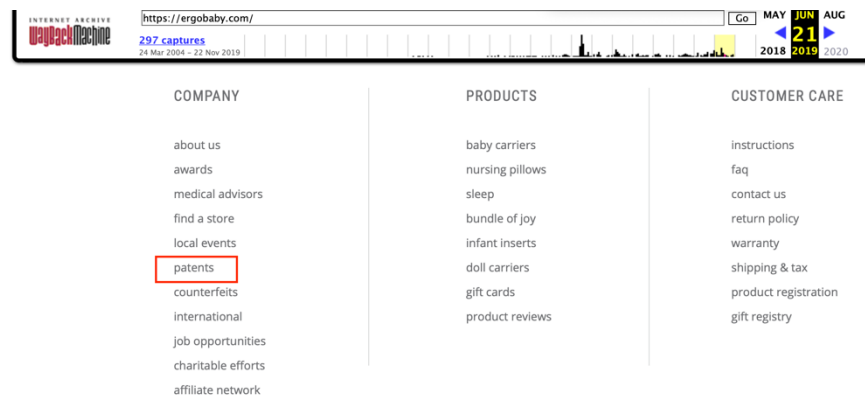
40. Development of the Serenity began in the summer of 2018. Armed with her knowledge of the ERGO ADAPT™ carrier and ERGO ADAPT™ Patent Application, Ms. Abucejo-Ranario was involved with the design and development of LILLEbaby’s Serenity carrier when she joined LILLEbaby in August 2018. Ex. 13 (Colton ITC Testimony 268:19-25, 333:5-8, 334:6-9, Beerman ITC Testimony 365:16-22).

41. On information and belief, LILLEbaby was aware of ERGO’s patent and patent applications, including the ADAPT™ Patent Application, during the development of the Serenity carrier. Not only did LILLEbaby hire ERGO employees with direct knowledge of the ADAPT™ Patent Application, but LILLEbaby analyzed ERGO patents in connection with the ITC



investigation that it brought against ERGO. For example, in June 2019, LILLEbaby raised targeted questions to ERGO regarding ERGO patents through discovery requests. These requests evidenced that LILLEbaby had performed some research regarding ERGO patents, through which LILLEbaby would have seen the ADAPT™ Patent Application, which published two years earlier.

42. As of at least June 2019, ERGO further identified patents, including noting “patent pending” where appropriate, on its website:



43. In September 2019, LILLEbaby unveiled the result of its “new product development,” the Serenity carrier.

44. At the time of the commercial release of the Serenity carrier, LILLEbaby had actual knowledge of the ADAPT™ Patent Application.

45. At the time of the commercial release of the Serenity carrier, LILLEbaby had actual knowledge of ERGO’s patents and patent applications.

46. At the time of the commercial release of the Serenity carrier, LILLEbaby had actual knowledge of the ERGO ADAPT™ carrier.

47. As confirmed by Mr. Colton, the Serenity is a new LILLEbaby carrier launched to compete with ERGO. Ex. 14 (Colton ITC Testimony 235:16-236:2)

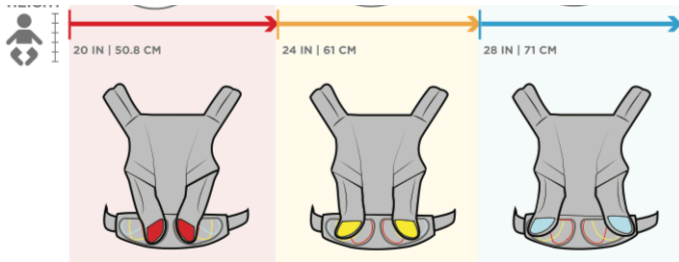
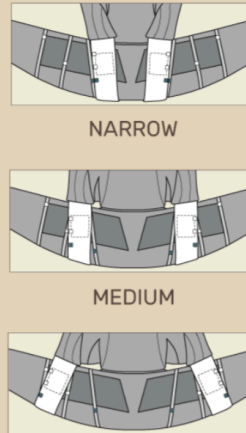
48. LILLEbaby's website states that the Serenity carrier offers "three easy-to-adjust seat positions for baby (narrow, medium and wide seat)."

<https://www.lillebaby.com/pages/serenity-collection>

### VERSATILITY

Our multi-position carrier easily adjusts to support your growing baby, Serenity adjusts with your needs from infancy through the toddler years. Offering three easy-to-adjust seat positions for baby (narrow, medium and wide seat) create near limitless options for an ergonomic fit that suits you and your little one's shape and comfort.

49. As illustrated below, LILLEbaby's Serenity carrier copied ERGO's innovative design, including its patented multi-position seat adjustment:

ERGO ADAPT	LILLEBaby Serenity
	<p><b>MULTI-POSITION WAIST BELT</b></p>  <p>NARROW</p> <p>MEDIUM</p> <p>WIDE</p>

50. Like the ERGO ADAPT™, the LILLEbaby Serenity utilizes hook-and-loop (i.e., VELCRO) tabs to selectively couple the thigh supports to the waist belt at multiple locations.

51. In the product manual, LILLEbaby instructs users how to adjust the thigh supports of the Serenity at each of these multiple locations.

52. On information and belief, LILLEbaby copied ERGO's patented technology, claiming it as its own.

53. Soon after LILLEbaby's release of the Serenity carrier in September 2019, the '275 Patent issued on October 1, 2019.

54. ERGO filed its Original Complaint for patent infringement against LILLEbaby on October 16, 2019, alleging that the Serenity infringed at least claim 1 of the '275 Patent.

55. Since the filing of the Original Complaint, LILLEbaby has not disputed ERGO's allegations of infringement.

56. Since the filing of the Original Complaint, LILLEbaby has not ceased selling the Serenity carrier, but has continued to infringe and induce its customers to infringe.

57. To the contrary, LILLEbaby's infringement has accelerated since the filing of the Original Complaint. Nearly two months after ERGO filed the Original Complaint, LILLEbaby's CEO, Mr. Colton, acknowledged that he had ignored ERGO's allegations of infringement.

58. In particular, in December 2019, Mr. Colton was asked whether he knew "whether or not [this lawsuit] involves a patent, a trade secret? What's the type of intellectual property?", and he responded: "I don't. . . again, I haven't reviewed the specifics of the suit." Ex. 15 (Colton ITC Testimony 344:16-345:4).

### **THE PATENT-IN-SUIT**

59. This cause of action asserts infringement of U.S. Patent No. 10,426,275 (“the ’275 Patent” or “the Asserted Patent”) entitled “Adjustable Child Carrier” issued October 1, 2019, a copy of which is attached hereto as **Exhibit A**.

60. ERGO is the owner of all rights, title, and interest to the ’275 Patent.

61. ERGO has the sole and exclusive right to prosecute this Action, to enforce the ’275 Patent against infringers, including Defendant, and to collect damages on the ’275 Patent for all relevant times.

62. The ’275 Patent describes an adjustable child carrier that includes an adjustable bucket seat that can be adjusted to accommodate children of a wide range of sizes. Multiple adjustments work alone or in cooperation to adjust the width and depth of the bucket seat area to provide support for children of various sizes in an ergonomic position appropriate for the child’s size.

63. ERGO’s ADAPT™ carrier embodies at least one or more claims of the ’275 Patent.

### **DEFENDANT’S INFRINGING CONDUCT**

64. On information and belief, Defendant LILLEbaby, LLC makes, uses, sells, offers for sale, imports, sells for importation, and offers for sale after importation in the United States various infringing child carriers.

65. Specifically, LILLEbaby makes, uses, offers to sell, and sells in the United States, and imports into the United States, the LILLEbaby Serenity line of baby carriers—including at least the Serenity Airflow and Serenity All Seasons baby carriers—that infringe at least one claim of the ’275 Patent (the “Accused Products”).

66. By way of example, LILLEbaby sells the Accused Products throughout the United States through various channels including its online store at [www.lillebaby.com](http://www.lillebaby.com). Moreover, Defendant further directs consumers to brick-and-mortar retail stores that warehouse and sell LILLEbaby products including the Accused Products—and, where, in turn—consumers can make in-store purchases of those carriers. *See, e.g.*, [www.lillebaby.com/pages/find-a-store-near-you](http://www.lillebaby.com/pages/find-a-store-near-you).

67. LILLEbaby advertises the Accused Products under its own LILLEbaby brand name.

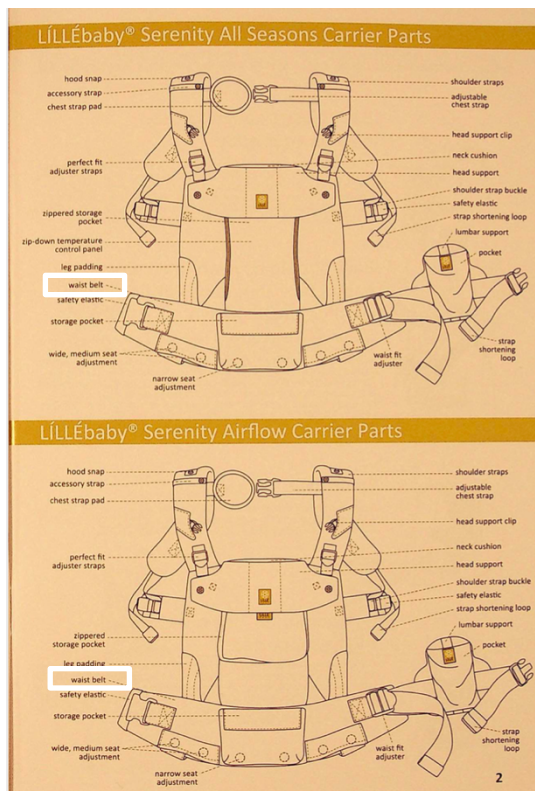
### **INFRINGEMENT OF THE '275 PATENT**

68. ERGO restates and incorporates by reference the paragraphs above as if fully stated herein.

69. LILLEbaby has directly infringed and continues to directly infringe at least claims 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, and 17 of the '275 Patent as reflected in **Exhibit B**, in violation of 35 U.S.C. § 271(a), literally and under the doctrine of equivalents, by, among other things, making, using, offering for sale, selling in the United States, and/or importing into the United States, the Serenity products, and will continue to do so unless such infringing activities are enjoined by this Court.

70. With reference to exemplary claim 1 of the '275 Patent, LILLEbaby's Serenity carrier contains a "waist belt adapted for securing about a wearer's hips."

71. The Serenity manual depicts the waist belt as follows:

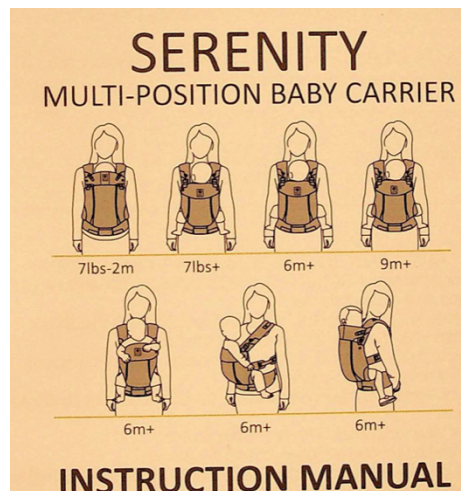


72. The LILLEbaby Serenity manual further instructs how to secure the waist belt about a wearer’s hips:



73. LILLEbaby’s Serenity carrier also has a “main body coupled to the waist belt, the main body adapted to form a child carrying area in cooperation with a wearer’s torso.”

74. The Serenity carrier manual depicts the main body of the carrier forming a child carrying area:

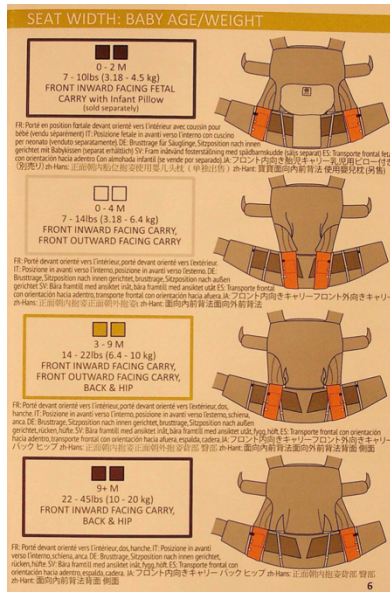


75. The main body of LILLEbaby’s Serenity carrier has a “torso support portion configured for supporting at least of the torso of a child.”

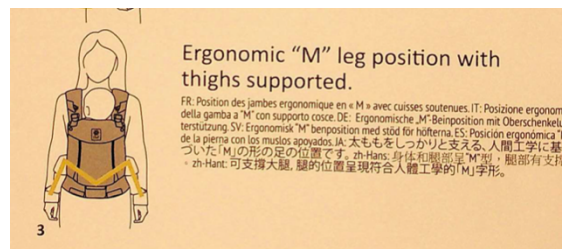
76. As depicted in the Serenity manual shown in paragraph 73, the main body of the Serenity supports the torso of a child.

77. The main body of LILLEbaby’s Serenity carrier further has an “adjustable bucket seat configurable in a plurality of bucket seat configurations, each of the plurality of bucket seat configurations having a different a) bucket seat depth and b) bucket seat width and adapted to support a child in a corresponding size range in a spread squat position.”

78. For example, the manual for the LILLEbaby Serenity describes the plurality of bucket seat configurations, which each result in a different bucket seat depth and width:



79. The LILLEbaby Serenity manual further depicts a child being supported in a spread squat position, also described as an “Ergonomic ‘M’ leg position with thighs supported”:

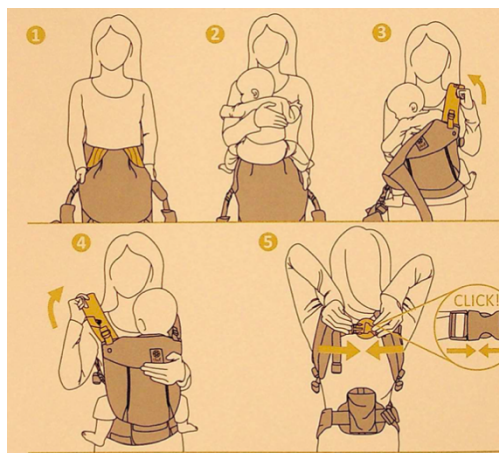


80. The adjustable bucket seat of the Serenity carrier further has a “seat center portion coupled to the waist belt and torso support portion.”

81. The adjustable bucket seat of the Serenity carrier has “thigh supports disposed on either side of the seat center portion” that are “adapted to pass under and support a child’s thighs and cooperate with the seat center portion to form the bucket seat.”

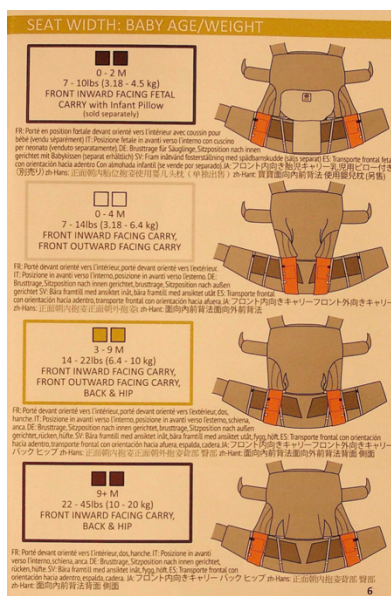
82. The Serenity manual depicts the thigh supports that support a child’s thighs and cooperate with the seat center portion to form the bucket seat:





83. Finally, the LILLEbaby Serenity carrier has “a base width adjuster coupled to each thigh support, wherein the base width adjusters are configured for selective coupling to the waist belt at multiple locations to adjust a width of the main body at the waist belt.”

84. The base width adjusters are depicted at multiple locations in the Serenity manual, shown in red:



85. LILLEbaby also has knowingly, intentionally, and actively aided, abetted, and/or induced others to infringe the '275 Patent through its customers, users, business partners, and retail partners in this judicial District and throughout the United States.

86. On information and belief, by at least September 2019, when LILLEbaby commercially released the Serenity carrier, LILLEbaby knew of ERGO's ADAPT™ carrier and the ADAPT™ Patent Application. The '275 Patent issued from the ADAPT™ Patent Application. On information and belief, LILLEbaby developed the Serenity carrier in view of its knowledge of the ADAPT™ carrier and the ADAPT™ Patent Application, and with knowledge that the Serenity carrier would infringe the '275 Patent. LILLEbaby further instructs users on how to use the Serenity carrier in an infringing way, such as by securing the waist belt around the wearer's hips and by adjusting the bucket seat in a plurality of configurations with different widths and depths, including by coupling the base width adjusters to the waist belt at multiple locations to adjust a width of the main body at the waist belt. Through its marketing and promoting the use of the Serenity carrier, including its instructions explaining how to use the Serenity, LILLEbaby induces purchasers and other users of the Serenity to use the carrier in an infringing manner.

87. Further, LILLEbaby was on notice of ERGO's specific allegations of infringement of the '275 Patent by at least October 16, 2019, when ERGO filed its original Complaint in this action. For example, LILLEbaby had actual notice by October 16, 2019 that its Serenity carrier infringed at least claim 1 of the '275 Patent.

88. In addition, as of the filing of this Amended Complaint, LILLEbaby is inducing its customers to use the Serenity in an infringing manner. As of the date of this Amended Complaint, LILLEbaby knows its customers' actions infringe the '275 Patent, and actually intended to cause

direct infringement. For example, with full knowledge that the Serenity carrier infringes the ‘275 patent, as detailed herein, LILLEbaby continues to market its Serenity carrier and instructs its customers to configure and use the Serenity carrier in an infringing manner. By instructing and educating its end-users or customers on how to use its Serenity carrier in an infringing manner, LILLEbaby specifically intended and intends to induce infringement of the ‘275 Patent.

89. ERGO has suffered, and continues to suffer, damages and irreparable harm as a result of LILLEbaby’s past and ongoing infringement.

90. Unless LILLEbaby’s infringement is enjoined, ERGO will continue to be damaged and irreparably harmed.

91. LILLEbaby’s ongoing infringement of the ’275 Patent has been willful and egregious, making this an exceptional case and entitling ERGO to recover enhanced trebled damages and attorneys’ fees pursuant to 35 U.S.C. §§ 284 and 285. For example, LILLEbaby developed the infringing Serenity carrier with knowledge of ERGO’s ADAPT™ and ADAPT™ Patent Application, using ex-ERGO employees with express knowledge of the ADAPT™ Patent Application, and with a stated product development strategy to “Steal from Ergo.” The ADAPT™ Patent Application published, and was therefore publicly known and available, prior to LILLEbaby’s development of the Serenity. LILLEbaby’s actions – copying the ADAPT™ knowing that it was subject to patent protection in an effort to compete with and steal from ERGO – were willful, wanton, malicious, bad-faith, deliberate, consciously wrongful, flagrant, and/or “characteristic of a pirate.” LILLEbaby’s egregious conduct has continued since the filing of the Complaint on October 16, 2019, as evidenced by the admission of LILLEbaby’s CEO that he had ignored ERGO’s allegations of infringement for months after this lawsuit was filed.

**DEMAND FOR JURY TRIAL**

92. Pursuant to FED. R. CIV. P. 38, ERGO demands a trial by jury of all issues triable of right and raised by the pleadings in this Action.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff The ERGO Baby Carrier, Inc. requests that this Court enter the following orders and judgments:

- a. Awarding damages no less than a reasonable royalty together with interests and costs;
- b. Awarding provisional damages;
- c. Enjoining Defendant and its parents, subsidiaries, divisions, officers, directors, agents, dealers, representatives, servants, employees, successors, assigns, and all parties acting in concert or participation with them, from infringing the Asserted Patent;
- d. Finding Defendant's infringement of the Asserted Patent to be willful under 35 U.S.C. § 285; and
- e. Awarding ERGO such other and further relief as the Court deems just and proper.

This the 10<sup>th</sup> day of February 2020.

Respectfully submitted,

/s/ Adam P. Seitz

Adam P. Seitz  
Michelle L. Marriott  
Daniel Sokoloff  
ERISE IP, PA  
7015 College Blvd., Suite 700  
Overland Park, KS 66211  
[Adam.Seitz@eriseIP.com](mailto:Adam.Seitz@eriseIP.com)  
[Michelle.Marriott@eriseIP.com](mailto:Michelle.Marriott@eriseIP.com)  
[Daniel.Sokoloff@eriseIP.com](mailto:Daniel.Sokoloff@eriseIP.com)

Paul R. Hart, Colorado Bar No. 45697  
Kelly Hughes, Colorado Bar No. 51117  
5299 DTC Blvd., Suite 1340  
Greenwood Village, CO 80111  
[Paul.Hart@eriseIP.com](mailto:Paul.Hart@eriseIP.com)  
[Kelly.Hughes@eriseIP.com](mailto:Kelly.Hughes@eriseIP.com)

*Counsel for Plaintiff The ERGO Baby Carrier, Inc.*