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Paper 8
Entered: April 25, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MUNCHKIN, INC. AND TOYS "R" US, INC.
Petitioners

v.

LUV N' CARE, LTD.
Patent Owner

Case IPR2013-00072
Patent D617,465

Before SALLY C. MEDLEY, JENNIFER S. BISK, and MICHAEL J. FITZPATRICK, *Administrative Patent Judges.*

FITZPATRICK, *Administrative Patent Judge.*

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. BACKGROUND

On December 5, 2012, Petitioners Munchkin, Inc. and Toys "R" Us, Inc. filed a Petition requesting *inter partes* review of the sole claim of U.S. Patent D617,465 (the "'465 Patent") pursuant to 35 U.S.C. § 311. Patent Owner Luv N' Care, Ltd. did not file a Preliminary Response pursuant to 35 U.S.C. § 313. We have jurisdiction under 35 U.S.C. § 314.

Institution of *inter partes* review is authorized by statute when "the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." 35 U.S.C. §314(a); *see also* 37 C.F.R. § 42.108.

We determine that the petition demonstrates that there is a reasonable likelihood that Petitioners would prevail with respect to the sole claim of the '465 Patent, and we therefore institute *inter partes* review.

A. Related Proceedings

The parties identify pending litigation concerning the '465 Patent brought by the Patent Owner and styled *Luv N' Care, Ltd. et al. v. Toys "R" Us, Inc. et al.*, 1:12-cv-00228 (S.D.N.Y. filed Jan. 11, 2012). (Pet. 2; Patent Owner Mandatory Notices 2; Ex. 1003.)

Petitioners additionally identify an *Inter Partes* Reexamination of related U.S. Patent D634,439 bearing control no. 95/001,973.

Patent Owner additionally identifies *Luv N' Care, Ltd. et al. v. Regent Baby Products Corp.*, 10-9492 (S.D.N.Y. filed Dec. 21, 2010) and *Luv N' Care, Ltd. v. Royal King Infant Prod's Co. Ltd. et al.*, 10-cv-00461 (E.D. Tex. filed Nov. 4, 2010). (Patent Owner Mandatory Notices 2.)

B. The ’465 Patent

The ’465 Patent (Ex. 1002), entitled “Drinking Cup,” issued on June 8, 2010, names Nouri E. Hakim as inventor, and is assigned to Luv N’ Care, Ltd. The claim of the ’465 Patent recites “the ornamental design for a drinking cup, as shown and described.” The ’465 Patent includes five Figures, reproduced below.

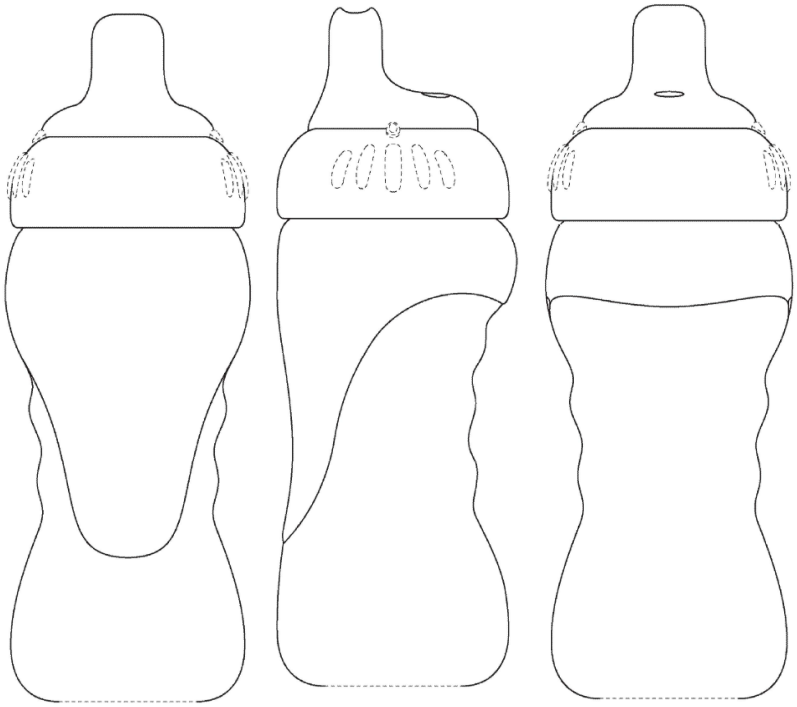

FIGURE 1 FIGURE 2 FIGURE 5

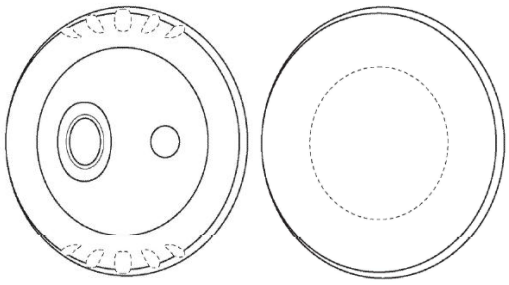

FIGURE 3 FIGURE 4

Figures 1-5 show front, right, top, bottom, and back views, respectively, of a drinking cup having a vessel, collar, and spout.

C. Prior Art Relied Upon

Petitioners challenge the patentability of the claim of the '465 Patent as obvious under 35 U.S.C. § 103(a) in view of the following items of asserted prior art:

Ex. 1006	US 2007/0221604 A1 to Hakim, pub. Sep. 27, 2007 ("Hakim '604")
Ex. 1007	Japan Patent No. D1129061, pub. Dec. 17, 2001 ("Japan '061")
Ex. 1008	Japan Patent Application No. 10-185624, pub. Jul. 1, 2000 as 2000-000288 ("Japan '624")
Ex. 1009	US 6,880,713 B2 to Holley, iss. Apr. 19, 2005 ("Holley")
Ex. 1010	US D359,417 to Chen, iss. Jun. 20, 1995 ("Chen")
Ex. 1011	US D475,890 S to Mazonkey, iss. Jun. 17, 2003 ("Mazonkey")
Ex. 1012	US D567,384 S to Sakulsacha et al., iss. Apr. 22, 2008 ("Sakulsacha")
Ex. 1013	US 6,994,225 B2 to Hakim, iss. Feb. 7, 2006 ("Hakim '225")
Ex. 1014	Japan Patent No. D1369925, pub. Sep. 28, 2009 ("Japan '925")
Ex. 1015	Japan Patent No. D1370096, pub. Sep. 28, 2009 ("Japan '096")[1]
Ex. 1016	US D476,850 S to Featherston et al., iss. Jul. 8, 2003 ("Featherston")
Ex. 1017	US D354,416 to Cautereels et al., iss. Jan. 17, 1995 ("Cautereels")
Ex. 1018	US D559,622 S to Carreno, iss. Jan. 15, 2008 ("Carreno")
Ex. 1019	US 2002/0066741 A1 to Rees, pub. Jun. 6, 2002 ("Rees")

[1] Petitioners do not supply a translation of Japan '925 (Ex. 1014) or Japan '096 (Ex. 1015). Petitioners also do not identify the subsection(s) of 35 U.S.C. § 102 under which they contend that these references are prior art to the '465 Patent nor do Petitioners assert requisite facts (e.g., publication dates) to support such a determination. The Japan '925 and '096 references both appear to have been filed on March 9, 2009, and published on September 28, 2009. Accordingly, based on the record before us, they do not qualify as prior art to the '465 Patent.

Ex. 1020	US 5,839,581 to Vagedes, iss. Nov. 24, 1998 ("Vagedes")
Ex. 1021	US D327,818 to Haralson et al., iss. Jul. 14, 1992 ("Haralson")
Ex. 1022	US 6,321,931 B1 to Hakim et al., iss. Nov. 27, 2001 ("Hakim '931")
Ex. 1023	US 5,474,028 to Larson et al., iss. Dec. 12, 1995 ("Larson")
Ex. 1024	US 6,422,415 B1 to Manganiello, iss. Jul. 23, 2002 ("Manganiello")
Ex. 1025	US 6,102,245 to Haberman, iss. Aug. 15, 2000 ("Haberman")
Ex. 1026	US 2,588,069 to Allen, iss. Mar. 4, 1952 ("Allen")
Ex. 1027	US 5,330,054 to Brown, iss. Jul. 19, 1994 ("Brown")
Ex. 1028	2003 New Product Directory, Juvenile Products Manufacturers Association ("2003 JPMA Directory")

D. Proposed Grounds for Review

The Petition raises two grounds for review based on single references: obviousness over Hakim '604 and obviousness over Hakim '225. (Pet. 4-5.)

Petitioners also challenge the patentability of the sole claim of the '465 Patent on numerous, multi-reference grounds that they have classified into nine categories according to the primary reference being asserted, the primary references being Hakim '604, Hakim '225, Japan '061, Japan '624, Holley, Sakulsacha, Chen, Cautereels, and Mazonkey. (Pet. 4-7.)

Each category proposes the respective principal reference "in view of one or more of" twenty additional references.[2] Thus, the proposed grounds must number in the hundreds, if not thousands. Although Petitioners are not entitled to consideration of all such grounds, *see Liberty Mutual Ins. Co. v.*

[2] For each category, the Petition actually proposes a principal reference in view of one or more of *twenty-two* additional references but, as stated above, two of Petitioners' asserted references do not qualify as prior art.

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