

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.*

BISK, *Administrative Patent Judge.*

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

On June 6, 2013, the initial conference call for this proceeding was held between respective counsel for the parties and Judges Medley, Bisk, and Fitzpatrick. Neither party filed a list of intended motions prior to the call.

At the outset of the call, lead counsel for Patent Owner was reminded that it is his responsibility to make sure the electronic filing system, PRPS, has up to date information, including email addresses of counsel. This will ensure that counsel receives the automatic email notification from PRPS when documents, including orders, are filed in this case. Any questions regarding PRPS should be directed to the PTAB support phone number.

During the call, counsel for both parties indicated that they do not, at this time, need to modify any due dates set in the Scheduling Order dated April 25, 2013.

Counsel for Petitioners represented that they do not seek authorization to file any motions at this time. Counsel for Patent Owner represented that Patent Owner may file a motion to amend either in lieu of, or in addition to, the patent owner response due July 25, 2013. As discussed, in filing its motion to amend, Patent Owner should note the guidance provided in the Office Patent Trial Practice Guide¹, 37 C.F.R. § 42.121, and certain decisions of the Board, including IPR2013-00016, Paper 20. In particular, 37 C.F.R. §42.121(b)(1) requires the patent owner to set forth the support in the original disclosure of the patent for the proposed substitute claim.

The parties also had a brief discussion of discovery. Counsel for Petitioners represented that discovery would be inappropriate for this proceeding. Counsel for Patent Owner, however, was unsure, at this time, whether discovery would be required or not. As discussed, the rules governing *inter partes* review contemplate several types of discovery, some of which are automatic and do not require authorization of the Board, such as routine discovery. 37 C.F.R. § 42.51(b)(1). Parties may also agree to

¹ 77 Fed. Reg. 48766.

IPR2013-00072
D617,465

additional discovery between themselves. 37 C.F.R. § 42.51(b)(2). Finally, if necessary, a party may request authorization to move for additional discovery, but any authorized motion must show that such additional discovery is in the interests of justice. *Id.*

Lastly, the parties represented that there have been no recent settlement discussions.

It is

ORDERED that Luv N' Care is authorized to file a motion to amend no later than July 25, 2013, and

FURTHER ORDERED that all due dates set in the Scheduling Order dated April 25, 2013, remain unchanged, subject to any stipulation by the parties as to Due Dates 1-3.

PETITIONER:

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