

EXHIBIT 1029:

5/10/2013 OFFICE ACTION IN *INTER PARTES* REEXAMINATION 95/001,973

Petitioner Munchkin, Inc  
Exhibit 1029  
Munchkin, Inc. v. Luv N' Care, Ltd  
Case ID: 2013-0073



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
95/001,973	04/20/2012	D634,439 S	047122/416892	3482
28083	7590	05/10/2013	EXAMINER	
Goldberg Cohen LLP 1350 Avenue of the Americas 4th Floor New York, NY 10019			TUTTLE, CATHERINE A	
			ART UNIT	PAPER NUMBER
			2912	
			MAIL DATE	DELIVERY MODE
			05/10/2013	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Petitioner Munchkin, Inc

PTOL 80A (Rev. 04/07)

<b>Transmittal of Communication to Third Party Requester <i>Inter Partes</i> Reexamination</b>	<b>Control No.</b>	<b>Patent Under Reexamination</b>	
	95/001,973	D634,439 S ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	CATHERINE TUTTLE	2912	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address. --**

(THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS)

ALSTON & BIRD LLP  
BANK OF AMERICA PLAZA  
101 SOUTH TRYON STREET, SUITE 4000  
CHARLOTTE, NC 28280-4000

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above-identified reexamination proceeding. 37 CFR 1.903.

Prior to the filing of a Notice of Appeal, each time the patent owner responds to this communication, the third party requester of the *inter partes* reexamination may once file written comments within a period of 30 days from the date of service of the patent owner's response. This 30-day time period is statutory (35 U.S.C. 314(b)(2)), and, as such, it cannot be extended. See also 37 CFR 1.947.

If an *ex parte* reexamination has been merged with the *inter partes* reexamination, no responsive submission by any *ex parte* third party requester is permitted.

**All correspondence** relating to this *inter partes* reexamination proceeding should be directed to the **Central Reexamination Unit** at the mail, FAX, or hand-carry addresses given at the end of the communication enclosed with this transmittal.

<b>OFFICE ACTION IN INTER PARTES REEXAMINATION</b>	<b>Control No.</b>	<b>Patent Under Reexamination</b>
	95/001,973	D634,439 S ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	CATHERINE TUTTLE	2912

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address. --**

Responsive to the communication(s) filed by:

Patent Owner on \_\_\_\_\_

Third Party(ies) on \_\_\_\_\_

**RESPONSE TIMES ARE SET TO EXPIRE AS FOLLOWS:**

*For Patent Owner's Response:*

2 MONTH(S) from the mailing date of this action. 37 CFR 1.945. EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.956.

*For Third Party Requester's Comments on the Patent Owner Response:*

30 DAYS from the date of service of any patent owner's response. 37 CFR 1.947. NO EXTENSIONS OF TIME ARE PERMITTED. 35 U.S.C. 314(b)(2).

**All correspondence** relating to this inter partes reexamination proceeding should be directed to the **Central Reexamination Unit** at the mail, FAX, or hand-carry addresses given at the end of this Office action.

This action is not an Action Closing Prosecution under 37 CFR 1.949, nor is it a Right of Appeal Notice under 37 CFR 1.953.

**PART I. THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:**

1.  Notice of References Cited by Examiner, PTO-892
2.  Information Disclosure Citation, PTO/SB/08
3.  \_\_\_\_\_

**PART II. SUMMARY OF ACTION:**

- 1a.  Claims \_\_\_\_\_ are subject to reexamination.
- 1b.  Claims \_\_\_\_\_ are not subject to reexamination.
2.  Claims \_\_\_\_\_ have been canceled.
3.  Claims \_\_\_\_\_ are confirmed. [Unamended patent claims]
4.  Claims \_\_\_\_\_ are patentable. [Amended or new claims]
5.  Claims single are rejected.
6.  Claims \_\_\_\_\_ are objected to.
7.  The drawings filed on \_\_\_\_\_  are acceptable  are not acceptable.
8.  The drawing correction request filed on \_\_\_\_\_ is:  approved.  disapproved.
9.  Acknowledgment is made of the claim for priority under 35 U.S.C. 119 (a)-(d). The certified copy has:
  - been received.  not been received.  been filed in Application/Control No \_\_\_\_\_.
10.  Other \_\_\_\_\_

### **I. Issue of Continuity**

Patent D-634439, at issue, claimed priority as a continuation of copending serial No 29/292909 ('909), which claimed priority as a continuation of copending serial No. 10/536106. Also, while not reflected in the bibliographic data of the patent, the patent application file also claimed priority as continuation directly from grand-parent application serial No. 10/536106. The grand-parent application (co-parent) was incorporated as part of the original disclosure in the parent application in accordance with provisions of 37 CFR 1.57(b).

Third party requestor contends that the '439 patent claim is not entitled to the filing date of either parent application because the parent applications fail to disclose the patented invention as provided for by 35 USC 112, paragraph (a). In support of this contention, requestor points to certain differences between the '439 claim and the disclosure in the patent issuing from parent application 29/292909 and the publication of parent application 10/536106 (US 2007/022604).

The examiner finds that there is in fact a lack of continuity with the parent applications. However, requestor's conclusion was improperly based on a comparison between patent drawings, rather than between the originally filed disclosures of the '439 patent and its parent application '909. Under 35 USC 120, the disclosure required to establish continuity must be present as of the filing dates of each linked application. A review of the original disclosures in the '439 patent and each of its parent applications nonetheless show a lack of continuity based on the following differences.

In the exhibits below the examiner refers the originally filed disclosure of the '439 patent by its application number, 29/358,241.

For the comparison of original disclosure filed in application 29/358,241 relative to the original disclosure in parent application 29/292,909, refer to **EXHIBIT A** below:

- i. The exact spout perimeter shape **a** as seen from the top, which is not defined in Fig. 3 of the '909 application;
- ii. The exact size and shape of the upper (or inner) spout border **b** as seen from the top, which deviates from Fig. 3 of the original '909 application;
- iii. The showing and particular shape of notches **c** and **d** as seen from the top and side;
- iv. The exact shape of air valve border **e** as seen from the top, side and rear;

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