

Patent Trial and Appeal Board (PTAB) Invalidates Patent in First Inter Partes Review (IPR) Trial of a Design Patent

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On April 21, 2014, the **Patent Trial and Appeal Board (PTAB)** of the U.S. Patent and Trademark Office issued a final written decision in the first *inter partes* review proceeding involving a design patent ([IPR2013-00072](#)). In the decision, the PTAB found Luv n' Care's U.S. Design Patent No. D617465 for a baby's drinking cup to be unpatentable under 35 U.S.C. § 103 as being obvious over the patent holder's own prior art. The petition for *inter partes* review was filed on December 5, 2012 by Munchkin Inc. against the '465 patent and trial was instituted on April 25, 2013. A copy of the decision is available [here](#).

During trial, the patent owner filed a motion to amend its claim such that it would be supported by the disclosure of its parent application in order to disqualify the references in the petition as prior art. However, the PTAB denied this motion because the scope of the proposed amended claim was broader than the issued claim with respect to the spout tip and vent of the claimed drinking cup. The PTAB found that the proposed amendment impermissibly sought to enlarge the scope of the claim. The PTAB then concluded that "Petitioner has demonstrated by a preponderance of the evidence that the sole claim of the '465 patent is unpatentable under 35 U.S.C. § 103" over the cited references.

A party to an *inter partes* review who is dissatisfied with the final written decision of the PTAB may appeal the Board's decision only to the United States Court of Appeals for the Federal Circuit. 35 U.S.C. § 141(c).

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