Lathrop Gage Invalidates Patent in Milestone Case

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First inter partes review of a design patent favors petitioners

KANSAS CITY, Mo. (April 22, 2014) – Lathrop Gage LLP was recently successful in the very first inter partes review of a design patent in the case *Munchkin, Inc., et al. v. Luv N' Care, LTD.* The decision from the U.S. Patent and Trademark Office (USPTO) found that a design for a baby drinking cup was unpatentable, illustrating that strong cases against design patents can be effectively raised at the USPTO.

Munchkin, Inc. argued—and the USPTO found—that Luv N' Care's patent, which shows a drinking cup and lid, is obvious in view of its own prior application. Luv N' Care also attempted to amend the patent claim, but the Patent Trial and Appeal Board ruled that the amendment constituted an impermissible broadening. This decision will affect the co-pending litigation, where Luv N' Care has accused Munchkin, Inc. of patent infringement.

"This decision is important, because it demonstrates that design patents can be successfully challenged in this way," said A. Justin Poplin (Intellectual Property – Overland Park), a partner with Lathrop Gage and co-lead counsel to Munchkin, Inc. "Others who are accused of design patent infringement will likely reference this decision and may be more inclined to challenge validity at the Patent Office."

Poplin, Cameron Garrison (Intellectual Property – Kansas City) and Hissan Anis (Intellectual Property – Overland Park) represented Munchkin, Inc. in this matter.

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