

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TARGET CORPORATION
Petitioner

v.

DESTINATION MATERNITY CORPORATION
Patent Owner

Case No. IPR2013-00532
(U.S. Patent No. RE43,531)

Dated: July 11, 2014

Before JENNIFER S. BISK, MICHAEL J. FITZPATRICK, and
MITCHELL G. WEATHERLY *Administrative Patent Judges*.

**PATENT OWNER'S MOTION FOR ENTRY TO SEAL
UNDER 37 C.F.R. §42.54**

Pursuant to 37 C.F.R. § 42.14, Patent Owner Destination Maternity Corporation (“Patent Owner”) hereby moves to seal the following: (1) Secret Fit Belly Historical Sales & GM.xls (Ex. 2056); (2) Belly not Secret Fit 2009_2013 Kohl's.xls (Ex. 2058); (3) Belly not Secret Fit HE,MH,Out.xls (Ex. 2060); (4) Belly Secret Fit Kohl's 10-18-13.xls (Ex. 2062); (5) Figures 2 and 3 of the Green Declaration (Ex. 2064); (6) Exhibit C of the Green Declaration (Ex. 2068); (7) Exhibit D of Green's Declaration (Ex. 2070); and (8) Exhibit D1 of the Green Declaration (Ex. 2072) (collectively, the “Proposed Sealed Documents”).¹ The Proposed Sealed Documents were filed contemporaneously with this Motion.

Pursuant to the Protective Order entered in this *Inter Partes* Review, Patent Owner is also filing partially redacted public versions of the Proposed Sealed Documents. *See* Protective Order, ¶ 4 (Paper No. 24).

Because the Proposed Sealed Documents contain proprietary confidential business information, Patent Owner moves to seal them for good cause explained in more detail below.

I. Good Cause Exists for Sealing Confidential Information

The *Office Patent Trial Practice Guide* provides that “[t]he rules aim to strike a balance between the public’s interest in maintaining a complete and

¹ The Board granted Patent Owner permission to file this Motion in an Order entered on July 8, 2014.

understandable file history and the parties' interest in protecting truly sensitive information." 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). Further, those "rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information." *Id.* (citing 37 C.F.R. § 42.54); *see also Illumina v. Columbia University*, IPR2013-00011, Paper 66, Aug. 12, 2013 Dec. (granting a motion to seal "technical and business information" and "product development information").

The Proposed Sealed Documents contain information that Patent Owner maintains is proprietary, sensitive, and confidential business, technical, financial, and/or strategy information further described below.

The Proposed Sealed Documents contain Patent Owner confidential information, which is highly sensitive, confidential financial information related to Patent Owner's sales of maternity products. These documents have been designated "Highly Confidential -- Attorneys' Eyes Only" by Patent Owner under the Protective Order entered in this *Inter Partes* Review. Moreover, the Board has already granted a motion to redact portions of the Green Report and its exhibits, which are being filed separately here. *See* Order, Paper No. 29.

II. Certification of Non-Publication

On behalf of Patent Owner, undersigned counsel certifies the information

sought to be sealed by this Motion to Seal has not, to their knowledge, been published or otherwise made public.

III. Conclusion

Accordingly, Patent Owner requests that Exhibits 2056, 2058, 2060, 2062, 2064, 2068, 2070 and 2072 be sealed.

Date: July 11, 2014

DLA PIPER LLP (US)

s/ Paul A. Taufer

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CERTIFICATE OF SERVICE

The undersigned certifies that on July 11, 2014, a complete and entire copy of the Patent Owner's Motion For Entry To Seal Under 37 C.F.R. §42.54 was provided via email to the Petitioner by serving the email correspondence address of record as follows:

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