

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TARGET CORPORATION,
Petitioner

v.

DESTINATION MATERNITY CORPORATION,
Patent Owner

Case IPR2013-00533
Patent RE43,531 E

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

FITZPATRICK, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

Petitioner Target Corporation filed a Corrected Petition for an *inter partes* review of claims 1, 18, 19, and 24–29 of U.S. Patent No. RE43,531 E (the “’531 patent”). Paper 4 (“Pet.”). The Patent Owner, Destination Maternity Corporation, filed a Preliminary Response pursuant to 35 U.S.C. § 313. Paper 7 (“Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 314.

The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides as follows:

THRESHOLD—The Director may not authorize an *inter partes* review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.

Upon consideration of the Petition and the Preliminary Response, we determine that the information presented shows there is a reasonable likelihood that Petitioner will prevail with respect to claims 1 and 24–29 of the ’531 patent. Accordingly, pursuant to 35 U.S.C. § 314, we authorize an *inter partes* review to be instituted as to those claims, but not as to claims 18 and 19.

A. Related Proceedings

Patent Owner asserted the ’531 patent against Petitioner in a pending lawsuit titled: *Destination Maternity Corporation v. Target Corporation et al.*, Case No. 2:12-cv-05680-AB (E.D. Pa.). Pet. 1; Patent Owner Mandatory Notices 2 (Paper 6). Petitioner contemporaneously filed another petition for a separate *inter partes* review of the ’531 patent. Claims 1, 2, 5, 6, 10, 11, and 15–17 are the

subject of that petition. *See* IPR2013-00532. Petitioner also filed two petitions for *inter partes* reviews of related U.S. Patent No. RE43,563 E. *See* IPR2013-00530; IPR2013-00531.

B. The Asserted Grounds

Petitioner presents the following grounds of unpatentability:

References	Basis	Claims challenged
JCP fold-over panel jeans (Ex. 1002, 2) ¹	§ 102	1, 18, 19, 24–26, 28, and 29
JCP fold-over panel jeans and JCP maternity bootcut jeans (Ex. 1002, 3) ²	§ 103	26 and 27
JCP fold-over panel jeans and Browder (Ex. 1004) ³	§ 103	18
JCP fold-over panel jeans and Lauren Sara (Ex. 1005) ⁴	§ 103	26
Stangle (Ex. 1003) ⁵	§ 102	1, 18, 19, 24, 25, 28, and 29
Stangle and JCP maternity bootcut jeans	§ 103	26 and 27
Stangle and Browder	§ 103	18
Stangle and Sara	§ 103	26

¹ Ex. 1002 is an excerpt from JC Penney’s *ontrend Maternity, Fall/Winter Catalog* (2005) (the “JCP catalog”). Page 2 of the exhibit (catalog page 15) depicts “fold-over panel jeans,” hereafter, the “JCP fold-over panel jeans.”

² Page 3 of Ex. 1002 (catalog page 19) depicts “maternity bootcut jeans,” hereafter, the “JCP maternity bootcut jeans.”

³ U.S. Patent 6,276,175 B1 (Aug. 21, 2001).

⁴ Ex. 1005 is an excerpt from *expecting style* by Lauren Sara (2003).

⁵ U.S. Patent Application Publication US 2004/0049834 A1 (Mar. 18, 2004).

Browder	§ 102	1 and 18
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C. The '531 Patent

The '531 patent relates to a garment worn during different stages of pregnancy and different stages of postpartum body changes. Ex. 1018, col. 1, ll. 10–12. A stated “purpose of the invention is to provide a garment that adapts to cover and fit a growing abdomen during pregnancy, wherein the garment stays up when worn.” *Id.* at ll. 42–44. Figure 1 of the '531 patent is reproduced below.

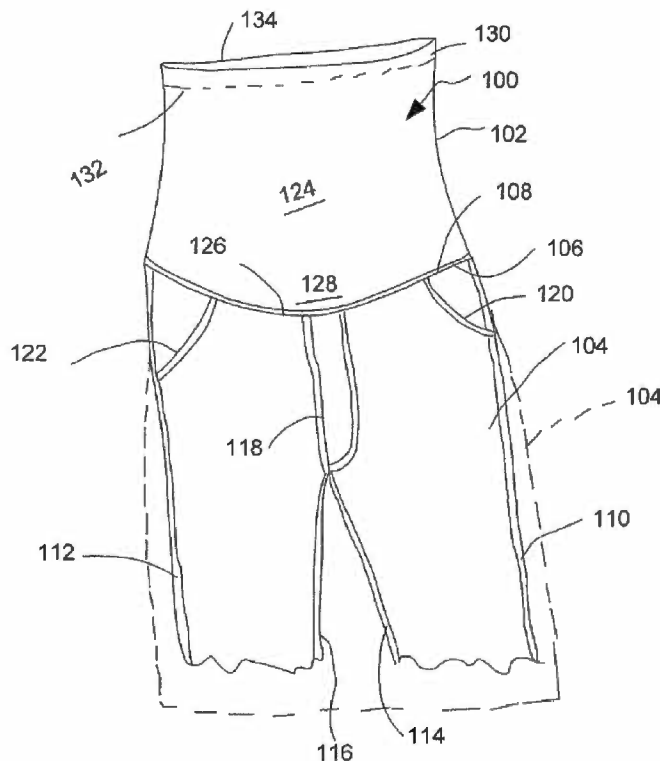


FIG. 1

Figure 1 illustrates a front view of garment 100 in accordance with the claimed invention of the '531 patent. Ex. 1018, col. 2, ll. 7–8, ll. 26–27. The garment has upper portion 102 and lower portion 104 that are joined to one another

approximate the waistline, at first torso encircling circumference 126. *Id.* at col. 2, ll. 27–31, col. 2, l. 66 – col. 3, l. 4. In the embodiment of Figure 1, the garment lower portion comprises trousers, but other lower portions are contemplated, such as a skirt, which is indicated by phantom lines. *Id.* at ll. 31–34.

The garment upper portion includes belly panel 124 that is expansible or stretchable to cover and fit over the abdomen during different stages of pregnancy. *Id.* at col. 2, ll. 59–63. The belly panel includes top perimeter hem 130, which forms second torso encircling circumference 134. Bottom portion 128 of the belly panel projects downward in the front. *Id.* at ll. 63–66. Upper perimeter 108 of the garment lower portion correspondingly recedes downward in the front. *Id.* at col. 2, l. 66 – col. 3, l. 4. Thus, the belly panel extends, partially at least, under the abdomen of the wearer before meeting and joining the garment lower portion. *Id.* at col. 3, ll. 6–10.

D. Illustrative Claim

Of the challenged claims 1, 18, 19, and 24–29, claim 1 is the sole independent claim. It is illustrative and reproduced as follows:

1. A garment, comprising:
 - a garment upper portion having a belly panel that is expansible to cover and fit over a growing abdomen during different stages of pregnancy;
 - a garment lower portion having a first torso encircling circumference that recedes downward to make way for expansion of the belly panel; and
 - the garment upper portion having a second torso encircling circumference defining an upper edge of the belly panel that encircles a wearer's torso just beneath the wearer's breast area configured to

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