

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

TARGET CORPORATION,

Petitioner

v.

DESTINATION MATERNITY CORPORATION,

Patent Owner

Case IPR2013-00530, Patent RE43,563 E

Case IPR2013-00531, Patent RE43,563 E

Case IPR2013-00532, Patent RE43,531 E

Case IPR2013-00533, Patent RE43,531 E

DECLARATION OF

VINCENT A. THOMAS, CPA, CVA, CFF, ABV

REGARDING COMMERCIAL SUCCESS

Submitted July 25, 2014

CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

Target Corporation Exhibit 1110

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CONFIDENTIAL
PURSUANT TO PROTECTIVE ORDER

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I. EXPERIENCE AND CREDENTIALS

1. I am a Senior Managing Director in the Forensic & Litigation Consulting ("FLC") practice of FTI Consulting, Inc. ("FTI"), a multidisciplinary international financial advisory and consulting firm. I am a member of the FLC National Leadership Team, serve as market and administrative leader for the Chicago and Indianapolis offices and also co-lead FTI's National Intellectual Property Practice. Before joining FTI, I was a partner with the international professional services firm, KPMG, LLP.

2. I have significant experience assisting companies and clients with complex accounting, corporate finance and litigation issues. I focus on the preparation of sophisticated economic analyses and the assessment of damages in various types of commercial disputes; and over the course of my career, I have analyzed economic and financial issues in more than one hundred commercial disputes, many of which involved patent, copyright, trade secret, and trademark infringement. Many of those assignments have also involved complex studies of damages and sophisticated valuation analysis in matters involving various biotechnology and pharmaceutical products, and drug technologies.

3. In addition to preparing damages studies in commercial litigation, I also have significant experience in corporate, financial, and accounting management positions, including Analyst and Director as well as Chief Financial Officer for a high-tech company, where I was responsible for managing its intellectual property portfolio. In that capacity, as well as during my consulting

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career, I have been involved in license negotiations, performing royalty analysis, valuing intellectual property and reviewing and analyzing license agreements.

4. I graduated *cum laude* from DePauw University with a Bachelor of Arts degree in Economics and subsequently received a Masters of Business Administration degree from Indiana University. I am a Certified Public Accountant, Certified Valuation Analyst, and am Certified in Financial Forensics and Accredited in Business Valuation. I am also a member of the American Institute of Certified Public Accountants and National Association of Certified Valuation Analysts. **Exhibit 1111** contains a summary of my education, experiences, prior testimony, and publications/seminars that I have authored.

II. SCOPE OF ASSIGNMENT

5. Target Corporation (“Target” or “Petitioner”) filed four petitions for *inter partes* review (“IPR”) of various claims of U.S. Patent RE43,531 E (“531 patent”), titled “Belly Covering Garment,” and U.S. Patent RE43,563 E (“563 patent”), also titled “Belly Covering Garment.”^{1,2} The patents-in-suit are owned by Destination Maternity Corporation (“DMC”) and relate to bottoms that are

¹ Jointly referred to as “patents-in-suit”.

² Exhibit 1027 (Institution Decision IPR2013-00530), Exhibit 1029 (Institution Decision IPR2013-00531), Exhibit 1031 (Institution Decision IPR2013-00532), Exhibit 1033 (Institution Decision IPR2013-00533).

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worn during different stages of pregnancy, different stages of post-partum body changes, and different stages of torso weight gains and losses. Generally, I understand the bottoms are trousers or skirts with an attached belly panel. DMC sells bottoms under its trademark “Secret-Fit Belly” that DMC represents are covered by the patents-in-suit.

6. On February 14, 2014 and February 19, 2014, the Patent Trial and Appeal Board (“PTAB”) issued decisions related to the ‘563 patent³ and ‘531 patent,⁴ respectively. I understand that the PTAB Institution Decisions related to the ‘563 patent found that there is a reasonable likelihood that the Petitioner would prevail in showing anticipation of claims 1-3, 6-8, 10, 11, 16, and 20,⁵ and that claims 3, 4, and 12-14 will likely be shown to be obvious.⁶ I understand that

³ Exhibit 1027 (Institution Decision IPR2013-00530); Exhibit 1029 (Institution Decision IPR2013-00531).

⁴ Exhibit 1031 (Institution Decision IPR2013-00532), Exhibit 1033 (Institution Decision IPR2013-00533).

⁵ Exhibit 1027 (Institution Decision IPR2013-00530), p. 22; Exhibit 1029 (Institution Decision IPR2013-00531), p. 29.

⁶ Exhibit 1027 (Institution Decision IPR2013-00530), p. 22; Exhibit 1029 (Institution Decision IPR2013-00531), p. 29.

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