

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TARGET CORPORATION
Petitioner

v.

DESTINATION MATERNITY CORPORATION
Patent Owner

Case IPR2013-00532
Patent No. RE43,531 E

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

**PETITIONER'S MOTION TO SEAL DOCUMENTS PURSUANT TO
STIPULATED PROTECTIVE ORDER AND 37 C.F.R. § 42.14**

I. Introduction

Pursuant to the Stipulated Protective Order entered in this proceeding, *see* Paper 25 (the “Protective Order”), and 37 C.F.R. § 42.14, Petitioner Target Corporation (“Petitioner”) hereby moves to seal the following, all of which are filed contemporaneously with this Motion and are collectively referred to as the “Proposed Sealed Documents”:¹

- Petitioner’s exhibits numbered 1068, 1070, 1071, 1072, 1080, 1081, 1082, 1083, 1089, 1092, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, and 1117 (collectively, “Patent Owner’s Proprietary Documents”);
- Petitioner’s exhibits numbered 1078, 1079, and 1093 (collectively, “Patent Owner’s Witnesses’ Deposition Testimony”);
- Petitioner’s exhibits numbered 1110, 1113, 1114, 1115 (collectively, “Petitioner’s Expert Materials”); and
- Petitioner’s Reply to Patent Owner’s Response.

¹ Petitioner understands that Paragraph 4(A) of the Protective Order both authorizes and requires the present Motion.

Further, Petitioner has filed a partially redacted, public version of each of the following documents for which “confidentiality is alleged as to some but not all of the information” therein, *see* Protective Order, ¶ 4(A)(ii):

- Exhibit 1110, the Declaration of Vincent A. Thomas Regarding Commercial Success (partially redacted, public version filed as Exhibit 1116);
- Exhibit 1117, Patent Owner’s Motion to Amend filed in IPR2013-00531 (partially redacted, public version filed as Exhibit 1118); and
- Petitioner’s Reply to Patent Owner’s Response.

Because the Proposed Sealed Documents contain information that Patent Owner has designated as “Confidential” or “Highly Confidential - Attorneys’ Eyes Only” information pursuant to the Protective Order entered in this proceeding and/or the protective order entered by the U.S. District Court for the Eastern District of Pennsylvania in the related district court litigation between the parties, *Destination Maternity Corporation v. Target Corporation, Cherokee Inc. and Elizabeth Lange LLC*, Case No. 2:12-cv-05680-AB (the “Related Litigation”), Petitioner moves to seal them for good cause explained in more detail below.

II. 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 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, Inc. v. Columbia Univ.*, IPR2013-00011, Paper 66 (P.T.A.B. Aug. 12, 2013) (granting a motion to seal “technical and business information” and “product development information”).

Based on Patent Owner’s designation of the Proposed Sealed Documents, or of the documents from which certain information discussed, summarized, and/or otherwise revealed therein is derived, as “Confidential” or “Highly Confidential - Attorneys’ Eyes Only” pursuant to the Protective Order entered in this proceeding and/or the protective order entered in the Related Litigation, Petitioner understands that Patent Owner maintains that the Proposed Sealed Documents contain

information that is proprietary, sensitive, and confidential business, technical, financial, and/or strategy information of Patent Owner.²

In general, Petitioner understands that the exhibits designated above as Patent Owner's Proprietary Documents or Patent Owner's Witnesses' Deposition Testimony fall into the following categories of information that Patent Owner maintains is its proprietary and confidential information, all of which Patent Owner has designated as "Confidential" or "Highly Confidential - Attorneys' Eyes Only" pursuant to the Protective Order entered in this proceeding and/or the protective order entered in the Related Litigation:

- Business strategy information and/or competitive analysis: Exhibits 1068, 1071, 1072, 1080, 1081, 1082, 1083, 1089, 1092, 1095, 1096, 1097, 1101, 1104, 1106, 1107, 1108, and 1109
- Sales, marketing, and/or financial information: Exhibits 1079, 1093, 1098, 1099, 1100, 1102, 1103, and 1105

² Petitioner does necessarily not agree that all of the Proposed Sealed Documents are, or should be maintained as, "Confidential" or "Highly Confidential - Attorneys' Eyes Only" in these proceedings; for example, Exhibits 1070, 1071, 1072, and 1078.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.