

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
Patent RE43,531

Dated: September 2, 2014

**PATENT OWNER'S MOTION FOR OBSERVATION REGARDING
CROSS-EXAMINATION OF REPLY WITNESS**

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LIST OF EXHIBITS

- EXHIBIT 1110 Declaration of Vincent Thomas (Sealed)
- EXHIBIT 1116 Public Version of Declaration of Vincent Thomas
- EXHIBIT 2022 UNDER SEAL Declaration of Philip Green
- EXHIBIT 2029 REDACTED Declaration of Philip Green
- EXHIBIT 2099 UNDER SEAL Deposition Transcript of Vincent Thomas
- EXHIBIT 2100 REDACTED Deposition Transcript of Vincent Thomas

TABLE OF AUTHORITIES

CASES	PAGE(S)
<i>Applied Materials v. Advadnced Semi. Materials</i> , 98 F. 3d 1563, 1570 (Fed. Cir. 1996)	4
<i>Demaco Corp. v. F. Von Langsdorff Licensing Ltd.</i> , 851 F.2d 1387, 1392, 1393 (Fed. Cir. 1988)	3, 12
<i>Honeywell Int'l Inc. v. Hamilton Sundstrand</i> , 370 F. 3d 1131 (Fed. Cir. 2004)	4
<i>In re Mettke</i> , 570 F. 3d 1356, 1361 (Fed. Cir. 2009)	11, 12
<i>Jones v. Hardy</i> , 727 F.2d 1524, 1528 (Fed. Cir. 1984)	4

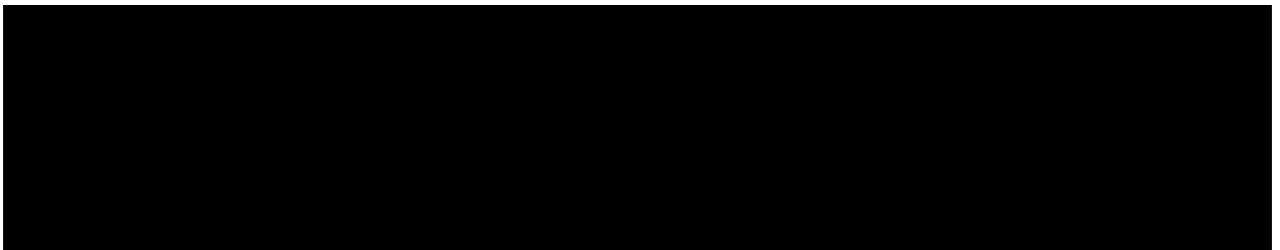
I. Introduction

Pursuant to the Board's July 30, 2014 e-mail, Patent Owner hereby provides observations on the August 22, 2014 deposition of Vincent A. Thomas.

II. Observations

A. Mr. Thomas's Legal Opinions Should Be Given No Weight

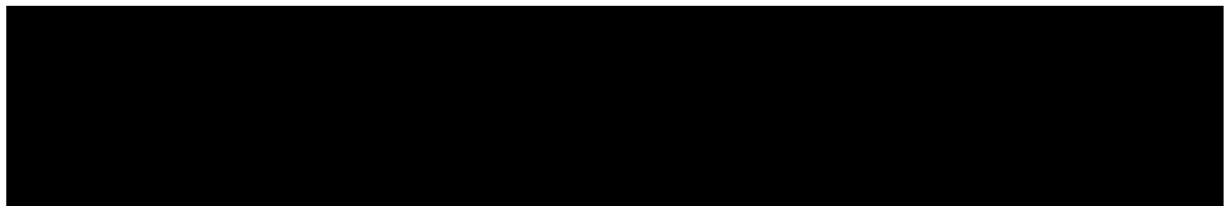
In Exhibit 2099, on page 12, lines 8-9, Mr. Thomas testified:



This testimony is relevant to the Declaration of Vincent Thomas Regarding Commercial Success (the "Thomas Declaration") filed as Exhibits 1110 and 1116 on at least paragraphs 10-12. The testimony is relevant because it shows that the legal opinions from the Thomas Declaration should be given no weight if admissible.

B. Mr. Thomas Did Not Consider Limitations Recited In The Independent Claims Portion Of The Dependent Claims

Mr. Thomas testified:



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