

**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 23, 2014

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

**PATENT OWNER'S REPLY TO PETITIONER'S OPPOSITION TO  
PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE**

## TABLE OF CONTENTS

	Page
I. INTRODUCTION .....	1
II. ARGUMENT.....	1
A. THE THOMAS DECLARATION SHOULD BE EXCLUDED AS LEGAL OPINION.....	1
B. PETITIONER DOES NOT CONTEST THE EXCLUSION OF SMILOVIC.....	3
C. PETITIONER CANNOT END-RUN THE BOARD'S INSTITUTION DECISION BY ARGUING THAT THE ASADA REFERENCE IS MERE BACKGROUND .....	3
D. PATENT OWNER'S COMMUNICATIONS WITH COMPETITORS SHOULD BE EXCLUDED BECAUSE THEY ARE COMPROMISE NEGOTIATIONS AND ARE IRRELEVANT TO CLAIM CONSTRUCTION .....	4
III. CONCLUSION.....	5

## LIST OF EXHIBITS

- EXHIBIT 1071 DL1961 Website Milano Bootcut Jeans Review
- EXHIBIT 1072 Annotated Being Pregnant US blog Re Salsa Hope
- EXHIBIT 1075 5/19/2011 Letter from Taufer to N. Lehrer (DMC0116526)
- EXHIBIT 1076 Annotated 5/19/2011 Letter from Taufer to N. Lehrer
- EXHIBIT 1077 Annotated 6/20/2012 Letter to J. Kyle from Taufer re: Suits Your Belly
- EXHIBIT 1080 3/16/2011 Letter from Taufer to Hinrichs (TAR060\_00000058)
- EXHIBIT 1081 Claim Chart: DMC-Target Liz Lange Pants (DMC0116321)
- EXHIBIT 1082 3/10/2011 Email from Taufer to Budow re Salsa Jeans (DMC0116289)
- EXHIBIT 1083 Claim Chart: DMC-Salsa Jeans (DMC0116307)
- EXHIBIT 1086 5/19/2011 Letter from Taufer to N. Lehrer - higher quality copy (DMC0116526)
- EXHIBIT 1087 6/2/2011 Letter from Taufer to N. Lehrer (DMC0116548)
- EXHIBIT 1088 DMC Draft Complaint against M'Chic (DMC0116549)
- EXHIBIT 1089 4/6/2009 Email from K. Scarduzio to L. Hendrickson (DMC0055277)
- EXHIBIT 1090 Copy of product label for M'Chic pant that is Exhibit 1074
- EXHIBIT 1091 USPN 6817034 Smilovic
- EXHIBIT 1092 1/16/2007 Email from L. Hendrickson re Belly Panel Notes (DMC0110373; Hendrickson Exhibit 49)
- EXHIBIT 1110 Declaration of Vince Thomas

- EXHIBIT 1116    Public Version of V. Thomas Declaration
- EXHIBIT 2037    Japanese Utility Model Patent No. 3,086,624 (Asada)  
Translated Version
- EXHIBIT 2099    Deposition Transcript of Vince Thomas

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>CASES</b>	
<i>Daubert v. Merrell Dow Pharm., Inc.</i> , 509 U.S. 579 (1993).....	2
<i>Goodyear Tire &amp; Rubber Co. v. Chiles Power Supply, Inc.</i> , 332 F.3d 976 (6th Cir. 2003) .....	4
<i>Pro-Mold and Tool Co. v. Great Lakes Plastics, Inc.</i> , 75 F.3d 1568 (Fed Cir. 1996) .....	1
<b>OTHER AUTHORITIES</b>	
37 C.F.R. § 42.24(c)(1).....	3
37 CFR §§ 42.6 and 42.120 .....	6
Fed. R. Evid. 408 .....	4
Fed. R. Evid. 702 .....	2

# 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.