

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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**TARGET CORPORATION**  
Petitioner

v.

**DESTINATION MATERNITY CORPORATION**  
Patent Owner

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Case No. IPR2013-00533  
(U.S. Patent No. RE43,531)

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Dated: May 5, 2014

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

**PATENT OWNER'S MOTION FOR ENTRY TO SEAL  
UNDER 37 C.F.R. §42.54**

Pursuant to 37 C.F.R. § 42.14, Patent Owner Destination Maternity Corporation (“Patent Owner”) hereby moves to seal the following: (1) deposition transcript of Amy Brady (Ex. 2019); (2) exhibit 114 from the deposition of Amy Brady (Ex. 2020); (3) Declaration of Philip Green Regarding Commercial Success (Ex. 2022); and (4) Patent Owner’s Response and Motion to Amend, which contain information from the aforementioned Exhibits (collectively, the “Proposed Sealed Documents”).<sup>1</sup> The Proposed Sealed Documents were filed contemporaneously with this Motion.

Pursuant to the Protective Order entered in this *Inter Partes* Review, Patent Owner is also filing partially redacted public versions of its Patent Owner Response and the Declaration of Philip Green Regarding Commercial Success. *See* Protective Order, ¶ 4 (Paper No. 24). Patent Owner is filing fully redacted versions of the deposition transcript of Amy Brady, and its exhibit 114, because the entirety of each were marked “Highly Confidential -- Attorneys' Eyes Only” by Petitioner Target Corporation (“Petitioner”).

Because the Proposed Sealed Documents contain proprietary confidential business information, Patent Owner moves to seal them for good cause explained in more detail below.

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<sup>1</sup> The Board granted Patent Owner permission to file this Motion in a May 2, 2014 e-mail to the parties.

## I. 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 v. Columbia University*, IPR2013-00011, Paper 66, Aug. 12, 2013 Dec. (granting a motion to seal “technical and business information” and “product development information”).

The Proposed Sealed Documents contain information that Patent Owner and Petitioner maintain is proprietary, sensitive, and confidential business, technical, financial, and/or strategy information further described below.

The deposition transcript of Amy Brady (Ex. 2019) contains, according to Petitioner, Petitioner confidential information. Amy Brady was a Fed. R. Civ. P. 30(b)(6) designee regarding various topics including product development and sales in the underlying U.S. District Court litigation. It is Patent Owner’s understanding that this document contains, *inter alia*, a non-public discussion of Petitioner’s confidential business activities and strategies concerning the portion

of its business that is directed to developing and selling maternity products. This information was designated “Highly Confidential -- Attorneys' Eyes Only” by Petitioner under the Protective Order entered by the U.S. District Court in the underlying litigation.

Likewise, Exhibit 114 from the deposition of Amy Brady (Ex. 2020) contains, according to Petitioner, Petitioner confidential information. It is Patent Owner’s understanding that this document contains, *inter alia*, a non-public discussion of Petitioner’s confidential business activities and strategies concerning the portion of its business that is directed to developing and selling maternity products. This information was also designated “Highly Confidential -- Attorneys' Eyes Only” by Petitioner under the Protective Order entered by the U.S. District Court in the underlying litigation.

The Declaration of Philip Green Regarding Commercial Success (Ex. 2022) contains Patent Owner confidential information. This document contains highly sensitive, confidential financial information related to Patent Owner’s sales of maternity products. This document has been designated “Highly Confidential -- Attorneys' Eyes Only” by Patent Owner under the Protective Order entered in this *Inter Partes* Review. The document also relies on documents produced in the underlying litigation that were designated “Confidential” and “Highly Confidential -- Attorneys' Eyes Only” by Patent Owner under the Protective Order

entered by the U.S. District Court.

Patent Owner's Response and Motion to Amend contain Patent Owner and Petitioner confidential information. These documents include portions of Exhibits 2019, 2020, 2022, which are demonstrated above as confidential. The portions used contain proprietary, sensitive, and confidential business, technical, financial, and/or strategy information from both Patent Owner and Petitioner regarding product development and sales information.

## **II. Certification of Non-Publication**

On behalf of Patent Owner, undersigned counsel certifies the information sought to be sealed by this Motion to Seal has not, to their knowledge and based on Petitioner's prior representations, been published or otherwise made public. Efforts to maintain the confidentiality of this information have been undertaken by Patent Owner and Petitioner in a related district court proceeding between the parties in the U.S. District Court for the Eastern District of Pennsylvania (CA. No. 2:12-cv05680 AB).

## **III. Conclusion**

Accordingly, Patent Owner requests that Exhibits 2019, 2020, 2022, and Patent Owner's Response and Motion to Amend be sealed.

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