

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 IPR2013-00533
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 26 (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.

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