

**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: September 2, 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) Patent Owner's Motion for Observation Regarding Cross-Examination of Reply Witness; (2) Patent Owner's Motion to Exclude Evidence; and (3) the deposition transcript of Vincent A. Thomas (Ex. 2099) (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 Motion for Observation Regarding Cross-Examination of Reply Witness, Motion to Exclude Evidence, and the deposition transcript of Vincent A. Thomas. *See* Protective Order, ¶ 4 (Paper No. 26). Patent Owner is filing fully redacted versions of the deposition transcript of Vincent A. Thomas because the testimony contains proprietary confidential information.

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> Patent Owner requested permission to file this Motion on September 2, 2014, and informed the Board that Petitioner does not oppose the Motion.

## **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 maintains is proprietary, sensitive, and confidential business, technical, financial, and/or strategy information further described below.

The Proposed Sealed Documents all relate to the sealed Declaration of Vincent A. Thomas (Ex. 1110), which contains Patent Owner confidential information. This document contains highly sensitive, confidential financial information related to Patent Owner's sales of maternity products. 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.

The Proposed Sealed Documents all include information related to the sealed Declaration of Vincent A. Thomas via a deposition transcript of Vincent A. Thomas (Ex. 2099) related to Mr. Thomas's declaration, Patent Owner's Motion for Observation Regarding Cross-Examination of Reply Witness Vincent A. Thomas, and Patent Owner's Motion to Exclude Evidence related to Vincent A. Thomas. These documents include highly sensitive, confidential financial information related to Patent Owner's sales of maternity products.

## **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, 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 its Motion for Observation Regarding Cross-Examination of Reply Witness, Motion to Exclude Evidence and deposition transcript of Vincent A. Thomas be sealed.

Date: September 2, 2014

**DLA PIPER LLP (US)**

*s/ Paul A. Taufer*

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