

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TARGET CORPORATION
Petitioner

v.

DESTINATION MATERNITY CORPORATION
Patent Owner

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

Dated: September 23, 2014

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

**JOINT 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") and Petitioner Target Corporation ("Petitioner") jointly move to seal Petitioner's Reply in Support of Its Motion to Exclude Evidence Pursuant to 37 C.F.R. § 42.64(c) ("Petitioner's Reply"). Petitioner's Reply was filed contemporaneously with this Motion.

Pursuant to the Protective Order entered in this *Inter Partes* Review, Petitioner is also filing a partially redacted public version of Petitioner's Reply. *See* Protective Order, ¶ 4 (Paper No. 26). Because Petitioner's Reply contains nonpublic technical, financial, and other commercially sensitive information, the Parties jointly move to seal it for good cause explained in more detail below.

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").

There is good cause to seal Petitioner's Reply because it contains confidential financial information of Patent Owner's products from Patent Owner's commercial success expert, Philip Green ("The Green Material"). The Green Material has been previously sealed in this proceeding and contains highly sensitive, confidential financial information and analysis related to Patent Owner's sales of products. The Green Material has been designated "Highly Confidential - - Attorneys' Eyes Only" by Patent Owner under the Protective Order entered in this *Inter Partes* Review. The Green Material 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. Accordingly, good cause exists to seal Patent Owner's Exclusion Opposition.

II. Certification of Non-Publication

The undersigned counsel certify that the information sought to be sealed by this Motion to Seal has not, to their knowledge, been published or otherwise made public. The Parties have made efforts to maintain the confidentiality of this information in this proceeding and 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, the Parties request that Petitioner's Reply be sealed pursuant to 37 C.F.R. § 42.14.

Date: September 23, 2014

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CERTIFICATE OF SERVICE

The undersigned certifies that on September 23, 2014, a complete and entire copy of the Joint Motion For Entry To Seal Under 37 C.F.R. §42.54 was provided via email to the Petitioner by serving the email correspondence address of record as follows:

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