

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
Patent RE43,531

Dated: December 4, 2013

**PATENT OWNER'S PRELIMINARY RESPONSE TO CORRECTED
PETITION FOR INTER PARTES REVIEW OF U.S. PATENT NO.
RE43,531**

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. BACKGROUND OF THE INVENTION	3
III. PETITIONER'S REFERENCES DO NOT ANTICIPATE THE '531 PATENT'S CLAIM 1	5
a. JCP-A does not disclose the garment upper portion having the features claimed.....	7
b. Stangle does not disclose either a garment upper portion or a garment lower portion that recedes downward to make way for expansion of the belly panel.....	17
c. Browder fails to disclose either a garment upper portion or a garment lower portion that recedes downward to make way for expansion of the belly panel.....	23
d. The dependent claims are neither anticipated nor obvious because none of the asserted prior art is anticipatory to claim 1	26
e. Petitioner's references do not disclose the limitations of the dependent claims	28
IV. THE CORRECTED PETITION'S CLAIM CHARTS IMPROPERLY CIRCUMVENT THE PAGE LIMIT SET FORTH IN 37 C.F.R. § 42.24	31
V. THE REAL-WORLD VALUE OF THE INVENTION IS SUPPORTED BY STRONG SECONDARY CONSIDERATIONS OF NON-OBVIOUSNESS.....	33
VI. IF THE CORRECTED PETITION IS GRANTED, THE VERTICAL AND HORIZONTAL REDUNDANCIES IN PRIOR ART AND INTER PARTES PETITIONS SHOULD BE ELIMINATED	38
VII. CONCLUSION.....	40

LIST OF EXHIBITS

- Exhibit 2001: October 19, 2007 blog post on The Mommy Playbook
- Exhibit 2002: July 31, 2008 blog post on Mamanista!
- Exhibit 2003: Color artifact of JC Penney Catalog 2005 found in USSN 12/117,004 (US 7,900,276)
- Exhibit 2004: December 4, 2011 Form 1449 from US RE43,531
- Exhibit 2005: Excerpts from the October 10, 2013 Deposition of Mindy Simon
- Exhibit 2006: Excerpts from the October 4, 2013 Deposition of Gregory Stangle
- Exhibit 2007: May 31, 2008 blog post on Everyday Becky
- Exhibit 2008: July 15, 2008 Review: Secret Fit Belly Jeans from Motherhood Maternity
- Exhibit 2009: January 30, 2008 blog post on Pinching Your Pennies Forums
- Exhibit 2010: October 28, 2008 blog post on The Shy Girl's Guide to Pregnancy and Parenting
- Exhibit 2011: October 3, 2008 blog post on Mamapedia
- Exhibit 2012: January 2008 blog post on The Bump
- Exhibit 2013: October 15, 2008 blog post on Pregnant Fashionista
- Exhibit 2014: August 2008 blog post on Libby's Latest
- Exhibit 2015: January 6, 2009 blog post on Keeping the Kingdom First
- Exhibit 2016: May 21, 2009 blog post on Pregnant Fashionista

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.107, patent owner, Destination Maternity Corporation (“Patent Owner”), hereby submits the following Preliminary Response to Target Corporation's (“Petitioner”) Corrected Petition for *Inter Partes* Review of U.S. Patent No. RE43,531 (the “531 Patent”). This filing is timely under 35 U.S.C. 313 and 37 C.F.R. 42.107, as it is being filed within three months of the September 5, 2013 mailing date of the Notice granting the Corrected Petition a filing date of August 27, 2013. *See* PTAB Sept. 5, 2013 Not. at 1. A trial should not be instituted in this matter as none of the references relied upon by Petitioner in its Corrected Petition gives rise to a reasonable likelihood of Petitioner prevailing with respect to a challenged claim of the '531 Patent.

Petitioner has simultaneously filed three additional petitions for *Inter Partes* Review, two for each of the patents-in-suit (the '531 Patent and Patent No. RE43,563 (the “563 Patent”))¹ that are being asserted against Petitioner in a litigation pending

¹ The Petition for *Inter Partes* Review No. 2013-00532 requested review of claims 1, 2, 5, 6, 10, 11, 15-17 of the '531 Patent. The Petition for *Inter Partes* Review No. 2013-00530 requested review of claims 1-4 and 6-8 of the '563 Patent. The Petition for *Inter Partes* Review No. 2013-00531 requested review of claims 1, 10-14, 16, 20, and 21 of the '563 Patent.

in the United States District Court for the Eastern District of Pennsylvania. In the litigation, Patent Owner alleges that maternity clothing sold by Petitioner infringes the patents-in-suit. Petitioner's infringing maternity clothing products compete with Patent Owner's patented Secret Fit Belly® line of maternity bottoms. An exemplary image of Patent Owner's Secret Fit Belly® line of maternity bottoms is provided below:



Petitioner's petitions, including the one at issue, all seek to cancel claim 1 of Patent Owner's patents-in-suit as anticipated, and each relies on the same three references: (1) images of a maternity garment from a J.C. Penney catalog that was

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.