

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TARGET CORPORATION,
Petitioner

v.

DESTINATION MATERNITY CORPORATION,
Patent Owner

Case IPR2013-00532
Patent RE43,531 E

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

FITZPATRICK, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

Petitioner Target Corporation filed a Corrected Petition for an *inter partes* review of claims 1, 2, 5, 6, 10, 11, and 15–17 of U.S. Patent No. RE43,531 E (the “’531 patent”). Paper 4 (“Pet.”). The Patent Owner, Destination Maternity Corporation, filed a Preliminary Response pursuant to 35 U.S.C. § 313. Paper 7 (“Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 314.

The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides as follows:

THRESHOLD—The Director may not authorize an *inter partes* review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.

Upon consideration of the Petition and the Preliminary Response, we determine that the information presented shows there is a reasonable likelihood that Petitioner will prevail with respect to claims 1, 2, 5, 6, 10, 11, and 15–17 of the ’531 patent. Accordingly, pursuant to 35 U.S.C. § 314, we authorize an *inter partes* review to be instituted as to those claims.

A. Related Proceedings

Patent Owner asserted the ’531 patent against Petitioner in a pending lawsuit titled: *Destination Maternity Corporation v. Target Corporation et al.*, Case No. 2:12-cv-05680-AB (E.D. Pa.). Pet. 1; Patent Owner Mandatory Notices 2 (Paper 6). Petitioner contemporaneously filed another petition for a separate *inter partes* review of the ’531 patent. Claims 1, 18, 19, and 24–29 are the subject of

that petition. *See* IPR2013-00533. Petitioner also filed two petitions for *inter partes* reviews of related U.S. Patent No. RE43,563 E. *See* IPR2013-00530; IPR2013-00531.

B. The Asserted Grounds

Petitioner presents the following grounds of unpatentability:

References	Basis	Claims challenged
JCP fold-over panel jeans (Ex. 1002, 2) ¹	§ 102	1, 2, 5, 10, and 17
JCP fold-over panel jeans and JCP maternity bootcut jeans (Ex. 1002, 3) ²	§ 103	6 and 11
JCP fold-over panel jeans and Stangle (Ex. 1003) ³	§ 103	15 and 16
Stangle	§ 102	1, 2, 5, 10, and 15–17
Stangle and JCP maternity bootcut jeans	§ 103	6 and 11
Stangle and Lauren Sara (Ex. 1005) ⁴	§ 103	6 and 11
Browder (Ex. 1004) ⁵	§ 102	1

¹ Ex. 1002 is an excerpt from JC Penney’s *ontrend Maternity, Fall/Winter Catalog* (2005) (the “JCP catalog”). Page 2 of the exhibit (catalog page 15) depicts “fold-over panel jeans,” hereafter, the “JCP fold-over panel jeans.”

² Page 3 of Ex. 1002 (catalog page 19) depicts “maternity bootcut jeans,” hereafter, the “JCP maternity bootcut jeans.”

³ U.S. Patent Application Publication US 2004/0049834 A1 (Mar. 18, 2004).

⁴ Ex. 1005 is an excerpt from *expecting style* by Lauren Sara (2003).

⁵ U.S. Patent 6,276,175 B1 (Aug. 21, 2001).

ll. 27–31, col. 2, l. 66 – col. 3, l. 4. In the embodiment of Figure 1, the garment lower portion comprises trousers, but other lower portions are contemplated, such as a skirt, which is indicated by phantom lines. *Id.* at ll. 31–34.

The garment upper portion includes belly panel 124 that is expansible or stretchable to cover and fit over the abdomen during different stages of pregnancy. *Id.* at col. 2, ll. 59–63. The belly panel includes top perimeter hem 130, which forms second torso encircling circumference 134. Bottom portion 128 of the belly panel projects downward in the front. *Id.* at ll. 63–66. Upper perimeter 108 of the garment lower portion correspondingly recedes downward in the front. *Id.* at col. 2, l. 66 – col. 3, l. 4. Thus, the belly panel extends, partially at least, under the abdomen of the wearer before meeting and joining the garment lower portion. *Id.* at col. 3, ll. 6–10.

D. Illustrative Claim

Of the challenged claims 1, 2, 5, 6, 10, 11, and 15–17, claim 1 is the sole independent claim. It is illustrative and reproduced as follows:

1. A garment, comprising:

a garment upper portion having a belly panel that is expansible to cover and fit over a growing abdomen during different stages of pregnancy;

a garment lower portion having a first torso encircling circumference that recedes downward to make way for expansion of the belly panel; and

the garment upper portion having a second torso encircling circumference defining an upper edge of the belly panel that encircles a wearer's torso just beneath the wearer's breast area configured to hold the garment up and in place about the torso in a position of a

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.