

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TARGET CORPORATION
Petitioner

v.

DESTINATION MATERNITY CORPORATION
Patent Owner

Patent No. RE43,563
Filing Date: June 15, 2011
Issue Date: August 7, 2012
Title: BELLY COVERING GARMENT

Inter Partes Review No. IPR2014-00508
Filing Date: March 14, 2014

**CORRECTED PETITION FOR *INTER PARTES* REVIEW
UNDER 35 U.S.C. §§ 311-319 AND 37 C.F.R. § 42.100 *ET SEQ.***

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LIST OF EXHIBITS

- Exhibit 1001: Hendrickson et al. US Patent No. RE43,563 (“the ’563 Patent”)
- Exhibit 1002: *J.C. Penney ontrend Maternity Catalog*, dated Fall/Winter 2005, cover and pages 15 and 19 (“JCP”)
- Exhibit 1003: US Patent Application Publication No. 2004/0049834 A1 to Stangle, et al., published March 18, 2004 (“Stangle”)
- Exhibit 1004: US Patent No. 6,276,175 to Browder (“Browder”).
- Exhibit 1005: “*expecting style*,” by Lauren Sara, published by Bulfinch Press, a division of AOL Time Warner Book Group, in 2003 (“Lauren Sara”)
- Exhibit 1006: Plaintiff’s Infringement contentions in *Destination Maternity Corp. v. Target Corp et al.*, 2:12-cv-05680-AB (E.D. Pa.)
- Exhibit 1007: Certified File Wrapper of US Patent No. RE43,563
- Exhibit 1008: Certified File Wrapper of US Patent No. 7,900,276 (whose reissue application resulted in the ’563 Patent)
- Exhibit 1009: Hendrickson et al. US Patent No. 7,900,276 (“the ’276 Patent”)
- Exhibit 1010: PULSE; An Early Lesson in Prada, by Danielle Pergament, published by the New York Times on February 27, 2005 (“Pergament”)
- Exhibit 1011: Declaration of Frances Harder Executed Aug. 26, 2013
- Exhibit 1012: Curriculum Vitae of Frances Harder
- Exhibit 1013: Documents Considered by Frances Harder
- Exhibit 1014: Simplicity 4890 by Simplicity Pattern Co., Inc.

- Exhibit 1015: McCall’s 2431 by The McCall Pattern Company
- Exhibit 1016: Plaintiff Destination Maternity Corporation’s Objections and Responses to Defendant’s First Set of Interrogatories
- Exhibit 1017: US Patent No. 4,506,390 to Stern (“Stern”)
- Exhibit 1018: Hendrickson et al. US Patent No. RE43,531 (“the ’531 Patent”)
- Exhibit 1019: Hendrickson et al. US Patent No. 7,814,575 (“the ’575 Patent”)
- Exhibit 1020: Certified File Wrapper of US Patent No. 7,814,575 (whose reissue application resulted in the ’531 Patent)
- Exhibit 1021: Certified File Wrapper of US Patent No. RE43,531
- Exhibit 1022: US Patent Application Publication No. 2004/0210987 to Carney
- Exhibit 1023: US Patent Application Publication No. 2006/0010571 to Oakley
- Exhibit 1024: US Patent No. 6,311,333 to Batra
- Exhibit 1025: US Patent No. 3,045,678 to Geimer
- Exhibit 1026: Petition for *Inter Partes* Review for IPR2013-00530
- Exhibit 1027: PTAB Decision for IPR2013-00530 dated February 14, 2014
- Exhibit 1028: Petition for *Inter Partes* Review for IPR2013-00531
- Exhibit 1029: PTAB Decision for IPR2013-00531 dated February 14, 2014
- Exhibit 1030: Petition for *Inter Partes* Review for IPR2013-00532
- Exhibit 1031: PTAB Decision for IPR2013-00532 dated February 19, 2014

- Exhibit 1032: Petition for *Inter Partes* Review for IPR2013-00533
- Exhibit 1033: PTAB Decision for IPR2013-00533 dated February 19, 2014
- Exhibit 1034: Japanese Utility Model Patent No. 3,086,624 to Asada
- Exhibit 1035: Certified Translation of Asada
- Exhibit 1036: Declaration of Frances Harder Executed March 14, 2014
- Exhibit 1037: US Patent No. 8,185,970 to Summers
- Exhibit 1038: Webster's Encyclopedic Unabridged Dictionary of the English Language: Definition of Hourglass
- Exhibit 1039: The New Oxford Dictionary: Definition of Hourglass
- Exhibit 1040: Target's First Set of Requests for Production to DMC (served Mar. 12, 2013)
- Exhibit 1041: Target's First Set of Interrogatories to DMC (served Mar. 12, 2013)
- Exhibit 1042: Pertinent Pages Excerpted from DMC's Objections and Second Supplemental Responses to Target's First Set of Interrogatories (served Oct. 14, 2013)
- Exhibit 1043: Letter from Counsel for DMC, Dated October 11, 2013, Memorializing DMC's Supplemental Production of Documents Bearing Bates Nos. DMC0119316-DMC0119453
- Exhibit 1044: Letter from Counsel for DMC, Dated September 27, 2013, Memorializing DMC's Supplemental Production of Documents Bearing Bates Nos. DMC0064438-DMC0116976
- Exhibit 1045: English Translation and Japanese-Language Version of a Preliminary Notice of Rejection, Dated June 26, 2012, in Japanese Patent Application No. 2010-510393, as Produced by

DMC Bearing Bates Nos. DMC0116962-DMC0116968

- Exhibit 1046: Japanese Patent Application No. 2010-510393
- Exhibit 1047: International Publication No. WO 2008/150595
- Exhibit 1048: E-mail from Counsel for DMC, Dated March 7, 2014, Confirming that the Document Produced by DMC Bearing Bates Nos. DMC0116962-DMC0116968 Is Not Confidential
- Exhibit 1049: Declaration of Debbie Cairns in Support of Defendants' Uncontested Motion to Serve Defendants' First Supplemental Invalidity Contentions, Dated October 14, 2013
- Exhibit 1050: E-mail from Park IP Translation Delivery, Dated October 2, 2013, at 11:46 PM, Conveying a Certified English Translation of Japanese Registered Utility Model No. 3086624 ("Asada")
- Exhibit 1051: Japanese-Language Version and Certified English Translation of a Decision of Rejection Dated December 25, 2013, in Japanese Patent Application No. 2010-510393
- Exhibit 1052: Changes to Implement *Inter Partes* Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for Covered Business Method Patents, 77 Fed. Reg. 48679, 48680 (Aug. 14, 2012)
- Exhibit 1053: Materials Considered for the Second Declaration of Frances Harder

Pursuant to 35 U.S.C. §§ 311-319 and 37 C.F.R. § 42.100 *et seq.*, Target Corporation (“Petitioner”) requests *inter partes* review of claims 1-4, 6-8, 10-14, 16, 20, and 21 of US Patent No. RE43,563 (“the ’563 Patent,” Ex. 1001).

A. Real Party In Interest

Target Corporation is the real party-in-interest for this petition.

B. Related Matters

The ’563 Patent is the subject of a patent infringement lawsuit brought by Destination Maternity Corp. (“DMC” or “Patent Owner”) against Petitioner in the US District Court for the Eastern District of Pennsylvania, case number: 2:12-cv-05680-AB.

In addition to the above identified district court litigation, the following matters may affect or be affected by a decision in this proceeding:

Target Corp. v. Destination Maternity Corp.; Patent Trial and Appeal Board (“PTAB”), Petition for *Inter Partes* Review, Case No. IPR2013-00530 (Ex. 1026), the ’563 Patent, Institution Decision (Ex. 1027);

Target Corp. v. Destination Maternity Corp.; PTAB, Petition for *Inter Partes* Review, Case No. IPR2013-00531 (Ex. 1028), the ’563 Patent, Decision (Ex. 1029);

Target Corp. v. Destination Maternity Corp.; PTAB, Petition for *Inter Partes* Review, Case No. IPR2013-00533 (Ex. 1030), Patent RE43,531 (“the ’531 Patent”), Decision (Ex. 1031);

Target Corp. v. Destination Maternity Corp.; PTAB, Petition for *Inter Partes* Review, Case No. IPR2013-00532 (Ex. 1032), the ’531 Patent, Decision (Ex. 1033); and

Target Corporation v. Destination Maternity Corp.; PTAB, Petition for *Inter Partes* Review, Case No. IPR2014-00509, Patent RE43,531 filed March 14, 2014.

C. Lead and Back-Up Counsel

Lead Counsel

Norman Hedges
Faegre Baker Daniels LLP
300 N. Meridian St.
Indianapolis, IN 46204-1750
Tele: 317-237-8691
Fax: 317-237-1000
Norman.Hedges@FaegreBD.com
Reg. No. 44,151

Back-Up Counsel

Trevor Carter, same address and fax
Tele: 317-237-1352
Trevor.Carter@FaegreBD.com
Reg. No. 40,549

Daniel Lechleiter, same address and fax
Tele: 317-237-1070
Daniel.Lechleiter@FaegreBD.com
Reg. No. 58,254

Petitioner hereby reserves the right to add additional registered practitioners as backup counsel in the event that this Petition for *Inter Partes* Review is granted.

D. Service Information

Please address all correspondence to the lead counsel at the address shown above. Petitioner also consents to electronic service to the email address above.

E. Grounds for Standing

Petitioner hereby certifies that the patent for which review is sought is available for *inter partes* review and that Petitioner is not barred or estopped from requesting an *inter partes* review challenging the '563 Patent claims on the grounds identified in this Petition. This Petition is accompanied by a motion for joinder with IPR2013-00531 and has been timely filed within one month of the February 14, 2014 institution date of IPR2013-00531 (and IPR2013-00530). The one year bar set forth in §42.101(b) does not apply. 37 C.F.R. §42.122(b).

F. Power of Attorney

A power of attorney designating counsel is being filed with this Petition.

G. Fees

The Commissioner is authorized to charge the \$9,000 request fee, the \$14,000 post-institution fee (total of \$23,000), and any additional fees to our Deposit Account No. 02-0390 and to notify us of the same.

II. STATEMENT OF THE PRECISE RELIEF REQUESTED

Petitioner respectfully requests that '563 Patent claims 1-4, 6-8, 10-14, 16, 20, and 21 be canceled based on the following grounds. A full statement of the reasons for this request is presented in later sections of this Petition.

Reference	Basis	Claims Challenged
Asada (Japanese UM 3,086,624)	§102	1, 2, 6-8, 10, 11, 16, 21
Asada and Lauren Sara (“expecting style” by Lauren Sara)	§103	12 and 13
Asada and JCP maternity bootcut jeans (J.C. Penney ontrend Maternity Catalog at p. 19)	§103	3, 4, and 14
Asada and Summers (US Patent No. 8,185,970)	§103	20
Asada and Stern (US Patent No. 4,506,390)	§103	20
JCP fold-over panel jeans (J.C. Penney ontrend Maternity Catalog at p. 15)	§102	1
JCP fold-over panel jeans and Asada	§103	21
JCP fold-over panel jeans and Summers	§103	20

III. OVERVIEW OF THE ’563 PATENT

A. The Disclosed Invention in the ’563 Patent

The ’563 Patent (Ex. 1001) discloses a garment that may be worn “during different stages of pregnancy and different stages of postpartum body changes.” ’563 Patent at Abstract. The upper portion of the garment includes a belly panel that is expansible to cover and fit over the abdomen of a pregnant woman, while

the lower portion includes a circumference that recedes downward in front to make way for expansion of the upper belly panel. *Id.*

Annotated copies of FIGS. 1 and 2 of the '563 Patent are reproduced below:

FIG. 1:

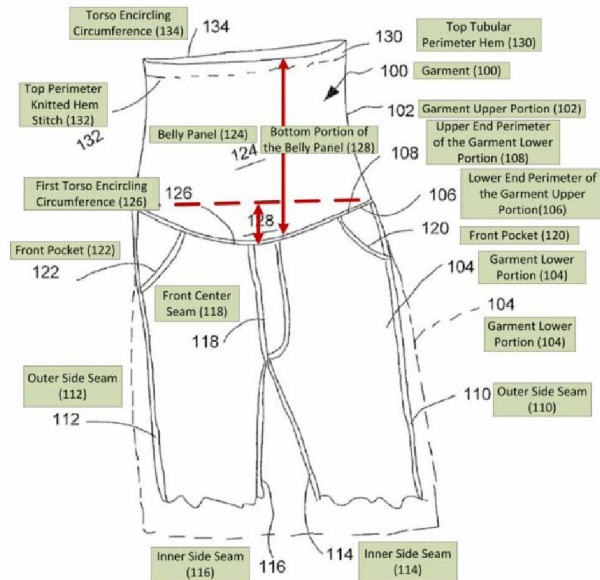
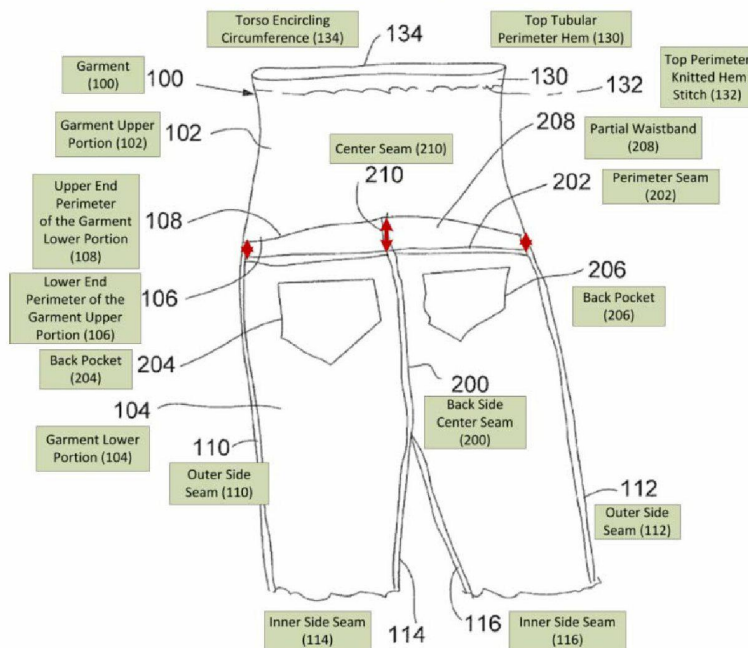


FIG. 2:



Belly covering garment 100 includes a garment upper portion 102 whose lower end perimeter 106 is in communication with upper end perimeter 108 of the garment lower portion 104. '563 Patent at 2:35-40.

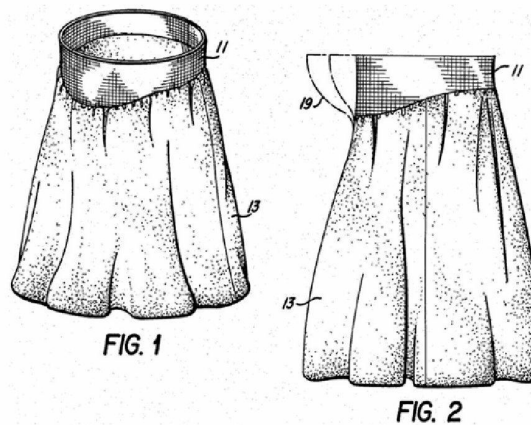
Lower portion 104 of garment 100 includes outer 110, 112 and inner 114, 116 side seams, inner side seams 114, 116 joining a front center seam 118 and a back side curved center seam 200. '563 Patent at 2:40-51. Garment lower portion 104 may also include a partial waistband 208 joining and extending from side seams 110, 112 of garment lower portion 104 and extending across the back side of garment lower portion. *Id.* at 2:58-67. The partial waistband may also be sewn into perimeter seam 202 on the back side, and may taper towards side seams 110, 112 with a center seam 210 to shape waistband 208 with a curvature above wearer's pelvis. *Id.*

Lower portion 104 of garment 100 also includes a first torso encircling circumference 126 that recedes downward with a parabolic shape adjacent and below bottom portion 128 of belly panel 124. '563 Patent at 3:8-20. Belly panel 124 extends at least partially under the abdomen of the garment wearer and may include elastic or stretchable fabric. *Id.* at 3:16-31. If lower portion 104 pockets are desired, front 120, 122 and back pockets 204, 206 may be added; lower portion 104 may also include a zipperless fly front defined in part by center seam 118. *Id.* at 2:55-57, 2:50-51. Garment upper portion 102 includes a torso encircling

perimeter 134 to hold garment 100 up and in place. '563 Patent at 3:37-39. Upper portion 102 may also have a top perimeter hem 130 made by folding over a top edge of the fabric and sewing or knitting the loose edge to the inside of upper portion 102 to create a hem stitch 132. *Id.* at 3:32-37.

B. Prosecution History of the '563 Patent

The United States Patent and Trademark Office (“PTO”) repeatedly rejected the pending claims of the application that ultimately became the '563 Patent, App. No. 12/117,004, and the subsequent reissue application, App. No. 13/161,169, over US Patent No. 4,506,390 to Stern (“Stern”)(Ex. 1017) alone or in combination with other references.¹ Copies of FIGS. 1 and 2 of Stern are provided below.



¹ See Ex. 1007 for the prosecution history of the '563 Patent and Ex. 1008 for the prosecution history of US Patent No. 7,900,276, which reissued as the '563 Patent. US Patent No. 7,814,575 is a continuation of US Patent No. 7,900,276 (Ex. 1009). The reissue of US Patent No. 7,900,276 is US Patent No. RE43,563 (Ex. 1001).

To overcome the PTO's repeated rejections in view of Stern and obtain issuance of the only two independent claims at issue here and in the other co-filed Petition for *Inter Partes* Review, Patent Owner amended both claims to specify a panel height that exceeded the height of the panel disclosed in Stern. The prior art Petitioner submits in this Petition discloses this "missing" element of Stern, the absence of which led to the PTO's issuance of this patent.

IV. OVERVIEW OF BOARD DECISIONS RELATING TO THE '563 PATENT

In IPR2013-00530 and IPR2013-00531, the Board collectively instituted *inter partes* review of claims 1-4, 6-8, 10-14, 16, and 20. Ex. 1027 at p. 22 and Ex. 1029 at p. 28. The Board did not institute *inter partes* review of claim 21. Ex. 1029 at p. 28. Regarding claim 20 and 21, the Board indicated that the garment of the primary reference, JCP fold-over panel jeans, is shown being worn by a model and is not commensurate with the scope of the claim term "formed" as construed in the decision. Ex. 1029 at p. 15. In the decision, the Board construed "formed" as the garment upper portion's "residual shape." Ex. 1029 at p. 10.

Unlike the JCP fold-over panel jeans, Asada illustrates a belly panel 2 when not worn by a wearer/model (e.g., FIGS. 1(a) and 1(b)). Thus, Asada illustrates the "residual" shape of a belly panel 2, namely that of a straight-sided cylinder (*see* claim 21). Asada is the basis (alone or in combination) for all but two of the

proposed grounds for cancellation. Summers and Stern, respectively, disclose a belly panel having a residual hourglass shape (*see* claim 20).

V. OVERVIEW OF THE PRIOR ART RELIED UPON FOR THE CHALLENGE

A. *Asada*

Asada (Ex. 1034) was published no later than June 28, 2002 and is a §102(b) prior art printed publication to the '563 Patent. *Asada* was not cited in the '563 Patent. *Asada* discloses maternity pants including pants portion 1 and an “entire abdomen-covering portion 2” comprised of “stretch knit material” that “envelop[s] the abdomen....” “over a long period of time from during a pregnancy to post-partum.” *Asada* Trans., Ex. 1035 at ¶¶ [0009], [0011], [0013], [0016]. Abdomen-covering portion 2 is “expandable, contractible, and foldable.” *Id.* at ¶ [0008].

Figures 1(a) and 1(b) of *Asada* are reproduced below.

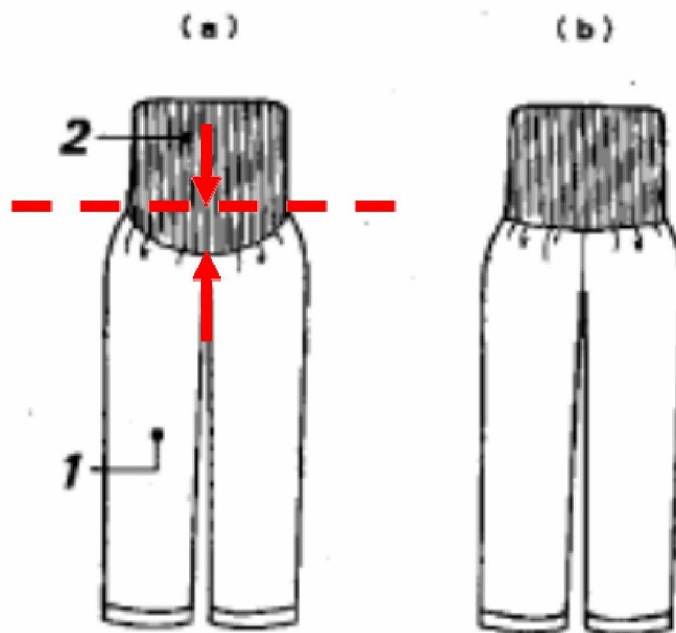
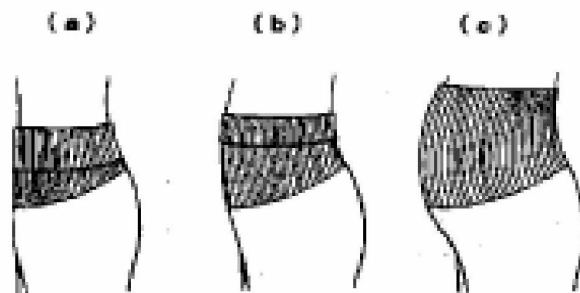


Figure 1(a) is a front view of the maternity pants of Asada and FIG. 1(b) is a rear view collectively showing abdomen-covering portion 2 extending front to back. The front of pants portion 1 includes a recessed, parabolic, and curved dip across the front to allow for the changing size of a woman's belly before, during and after pregnancy. See Ex. 1036, Harder Dec. II at ¶ 26. Figures 1(a) and 1(b) show the maternity pants when not worn and abdomen-covering portion 2 in its residual shape. This is in contrast to FIGS. 2(a)-2(c) (reproduced below) showing the maternity pants worn by a woman. Belly panel 2 has a residual shape of a straight-sided cylinder. See Ex. 1036, Harder Dec. II at ¶ 23.

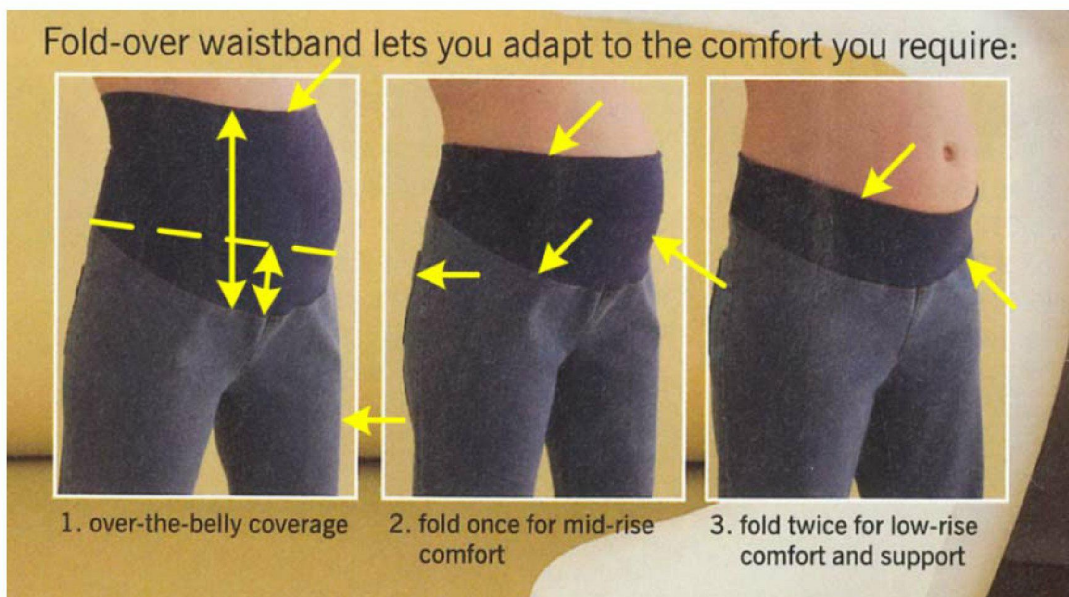


Figures 2(a) and 2(b) of Asada show the maternity pants with abdomen-covering portion 2 folded once at differing amounts to provide the wearer with desired levels of coverage. The stretch knit panel comprises fibers with elasticity that expand and contract. See Ex. 1036, Harder Dec. II at ¶ 27.

B. J.C. Penney ontrend Maternity Catalog, Fall/Winter 2005

The selected pages from the *J.C. Penney ontrend Maternity Catalog*, Fall/Winter 2005 (“JCP”) (Ex. 1002) disclose maternity jeans with a fold-over

waistband comprised of spandex that provides “over-the-belly coverage,” “before, during and after your pregnancy” (*Id.* at p. 15)(“JCP fold-over panel jeans”) and Levis® slim-fit stretch bootcut jeans modified to include a fold-over waistband comprised of spandex (*Id.* at p. 19)(“JCP maternity bootcut jeans”). JCP was published no later than December 31, 2005, and is a §102(b) prior art printed publication to the ’563 Patent. Page 15 of JCP was submitted to the PTO during prosecution of the ’276 and ’563 Patents. The below image shows Figures 1, 2, and 3, in the lower left hand corner of catalog page 15.



JCP also includes a description and images of the JCP maternity bootcut jeans, which are described as Levis® slim-fit stretch bootcut maternity jeans, that were not made available to the PTO during prosecution of the ’276 and ’563 Patents. The following image (without the arrow and dash annotations) may be found on page 19 of JCP.



As shown in the above image, the full height of the belly panel of JCP maternity bootcut jeans is unclear, but the belly panel does share many of the same features as the belly panel of page 15. For example, the JCP fold-over panel jeans (p. 15) and JCP maternity bootcut jeans (p. 19) may be folded up or down depending on the wearer's stage of pregnancy. *Id.* at pp. 15, 19.

Figure 1 on page 15, describing how the fold-over band may be unfolded or folded over in the maternity jeans, and the text of page 19, describing how the all-around belly panel can be folded up or down, illustrate how the maternity jeans may be worn with the fold-over panel completely unfolded. *Id.* at pp. 15 and 19. The polyester/spandex fold-over panel is attached, via a seam, to the upper circumference of the denim jeans, and covers the wearer's torso from beneath the

belly to just below the breast area. *Id.* at p. 15. *See* Ex. 1011, Harder Dec. I at ¶ 30. The tubular-knitted polyester-spandex panel inherently comprises fibers with elasticity that expand and contract, allowing the panel to fit a variety of shapes and body types including hyperboloid cylinder, straight-sided cylinder, and tapered torso. *See* Ex. 1011, Harder Dec. I at ¶ 29. The front of the jeans includes a recessed, parabolic, and curved dip across the front of the wearer to allow for the changing size of a woman's belly before, during and after pregnancy. JCP at pp. 15 and 19, Ex. 1002. As is apparent in FIG. 1 of JCP at p. 15, the fold-over panel encircles the wearer's torso at a location above the wearer's belly region and at a location below the wearer's belly region. *Id.* at p. 15.

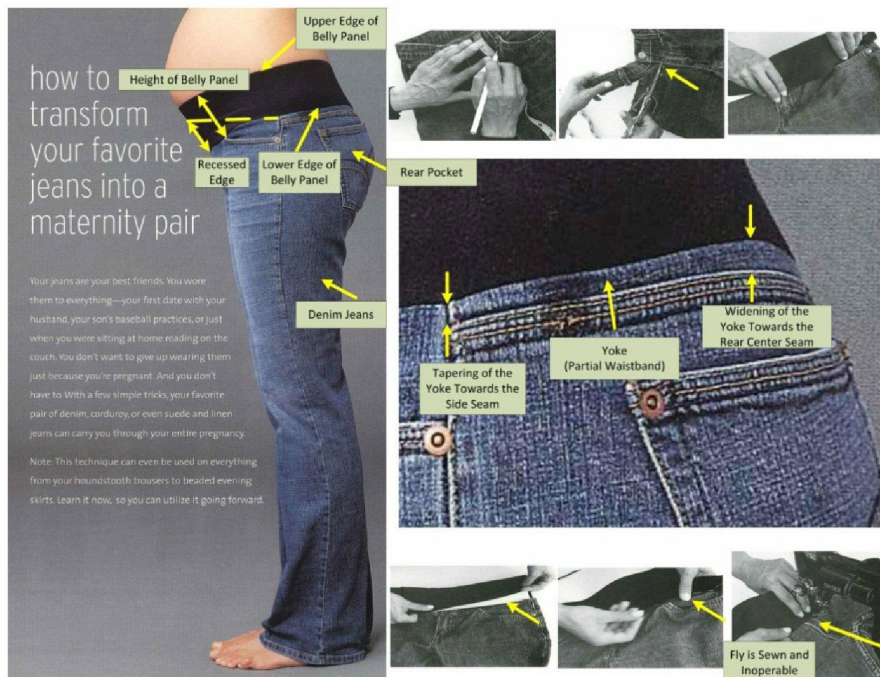
Figures 2 and 3 on page 15 and text on page 19 (“[The] all-around elastic belly panel may be folded up or down depending on your stage of pregnancy.”) illustrate the maternity jeans with the fold-over panel folded once or twice, respectively, so as to provide the wearer with desired levels and locations of belly comfort and support. *Id.* at pp. 15, 19. For example, the fold-over panel of JCP fold-over panel jeans “stretch[es] for comfort.” *Id.* at p. 15. The image and text on page 19 describe the “[f]aux fly” front and “[c]lassic 5-pocket styling” that is included in the maternity jeans. *Id.* at p. 19. The rear yoke (i.e., partial waistband) of JCP maternity bootcut jeans is visible on p. 19 and the yoke extends from side seam to side seam while expanding up and over the pelvis at the back center

vertical seam. *Id.* at p. 19. The width of that yoke also changes, tapering towards the side seams and widening up and over the pelvis towards the rear center seam.

Id. at p. 19. *See Ex. 1011, Harder Dec. I at ¶ 19.*

C. “expecting style” by Lauren Sara

Lauren Sara (Ex. 1005) at the cover page, the copyright page, and pp. 42-43, discloses a pair of maternity jeans with an expansible waist that extends from below the belly to just beneath the belly button, and a method for creating those maternity jeans from a pair of regular denim jeans. Lauren Sara was published in 2003 by Bulfinch Press and is §102(b) prior art to the ’563 Patent. Copies of images showing the finished maternity jeans and six images depicting various steps for creating the jeans are reproduced below, with a collection of arrows to indicate features present in Lauren Sara. *See Ex. 1011, Harder Dec. I at ¶ 23.*



As provided in instructions 7-12, the dark blue, Lycra section of the waistband of Lauren Sara is formed by folding a piece of material in half, which creates a double-layer, and attaching the folded material to the inside of the lower portion jeans. Lauren Sara at p. 43, Ex. 1005. The enlarged, center image above on the right shows that the yoke (i.e., partial waistband), as indicated by the arrow, of Lauren Sara remains in the jeans and that the yoke extends across the rear of the jeans and into the left and right side seams of the jeans. *Id.* at p. 42. The yoke also narrows towards the side seams and expands, above the pelvis, towards the rear center seam. *Id.*

D. US Patent No. 8,185,970 to Summers

Summers (Ex. 1037) was published no later than May 3, 2007 and was filed on June 28, 2006, claiming priority to US Provisional Patent Application No. 60/694,623, filed on June 28, 2005. Summers is and §102(e) prior art to the '563 Patent. Summers was not cited in the '563 Patent. Summers (Ex. 1037) discloses several embodiments of a garment, each including a girdle portion 4 and a shirt portion 6. Girdle portion 4 is made of an elastic material, such as interwoven nylon or lycra spandex. *Id.* at 4:20-22. Girdle portion 4 can have a “uniform, tapered, or silhouette contour that provides support and shapes the abdomen region of a user.” *Id.* at 3:64-67. Girdle portion 4 aids “pregnant women” and gives “post-pregnancy women” support. *Id.* at 7:6-13. The girdle portion 4 is worn

“immediately below the chest line” and provides support for both the upper abdomen and lower abdomen. *Id.* at 7:15 and 6:44-46. Summers teaches that belly panel 4 may have a “uniform, tapered, or silhouette contour.” *Id.* at 3:64-67.

E. US Patent No. 4,506,390 to Stern

Stern (Ex. 1017) was published no later than March 26, 1985 and is a §102(b) prior art printed publication to the '563 Patent. Stern was cited in the '563 Patent. Stern discloses an elastic, tapered waistband portion 11 that is sewn to body portion 13, illustrated as a skirt, but may also be other types of maternity garments, such as a pair of slacks. Stern, Ex. 1017 at 3: 26, 27; 3:60; 4: 22; 3: 27-30. Waistband portion 11 is designed not to abrade or cut a wearer “at any stage of pregnancy.” *Id.* at 4: 67, 68. As discussed below in greater detail, waistband portion 11 has a residual hourglass shape.

VI. CONSTRUCTION OF CERTAIN CLAIM TERMS

A claim in *inter partes* review is given the “broadest reasonable construction in light of the specification.” *See* 37 C.F.R § 42.100(b). For this proceeding, claim terms are presumed to take their broadest reasonable ordinary meaning. Regarding “hyperboloid cylinder” (claim 20), the Board construed this term as “an hourglass-shaped cylinder.” *See* Ex. 1029 at p. 10. Regarding “shaped and formed” (claims 20 and 21), the Board indicated that the required form refers to the belly panel’s

“residual shape.” *See* Ex. 1029 at pp. 10, 11. In addition to these terms, the Board also made observations regarding other claim terms.

VII. LEVEL OF ORDINARY SKILL IN THE ART

A person of ordinary skill in the art (“POSA”) of the ’563 Patent would have been any of the following: (a) a graduate of a two or four-year degree program with an associate’s or bachelor’s degree in fashion design and at least one to two years of full-time, technical design experience in the commercial garment industry; or (b) an individual with at least four years of full-time, technical design experience in the commercial garment industry. *See* Ex. 1011, Harder Dec. I at ¶15. The capabilities of a POSA are described in Ex. 1011, Harder Dec. I at ¶16.

VIII. THRESHOLD REQUIREMENT FOR *INTER PARTES* REVIEW

A petition for *inter partes* review must demonstrate “a reasonable likelihood that the Petitioner would prevail with respect to at least one of the claims challenged in the petition.” 35 U.S.C. §314(a). This Petition meets that threshold. All elements of claims 1-4, 6-8, 10-14, 16, 20, and 21 of the ’563 Patent are taught in the prior art references as explained below, and reasons to combine the features of these prior art references are established for each ground under §102 and §103.

IX. STATEMENT OF REASONS FOR RELIEF REQUESTED

A. Ground 1: Claims 1, 2, 6-8, 10, 11, 16, and 21 are Unpatentable as Being Anticipated by Asada

As required by claim 1 and as shown in FIGS. 2(c) of Asada, abdomen-covering portion 2 is an expandable belly panel 2 adapted to substantially cover a wearer's entire belly region. Unlike the JCP fold-over panel jeans, Asada illustrates the belly panel 2 in its "residual shape," when not worn by a woman/model (e.g. FIGS. 1(a) and 1(b)). The upper edge of belly panel 2 is above the belly, i.e. at the wearer's upper torso, because belly panel 2 covers the "entire abdomen" and "envelops" the abdomen. Asada Trans. at [0014] and [0013]. Belly panel 2 of Asada covers the entire belly region including an area that extends just beneath the wearer's breast area that extends over the wearer's abdomen to a lower abdomen region beneath the wearer's belly.

As required by claim 1 and as shown in FIGS. 2(a), 2(b), and 2(c) of Asada, an upper edge portion of belly panel 2 defines a first encircling circumference about a wearer's torso that is at or above the wearer's upper abdomen region. *See* Ex. 1036, Harder Dec. II at ¶ 22. As also shown in these figures, belly panel 2 of Asada also includes a lower edge portion spaced apart from this upper edge portion that defines a second encircling circumference about the wearer's lower abdomen region. Ex. 1036, Harder Dec. II at ¶ 23.

As required by claim 1, pants portion 1 of Asada is a garment lower portion

1. Garment lower portion 1 of Asada is attached, via a seam, to belly panel 2 (and vice versa) and is in communication with the lower edge portion of belly panel 2 and has a torso encircling circumference that recedes downward to make way for expansion of belly panel 2 as shown in FIG. 1(a).

As required by claim 2, pants 1 of Asada are a pair of trousers attached to a lower edge portion of belly panel 2. Ex. 1036, Harder Dec. II at ¶ 25.

As mentioned above, belly panel 2 of Asada is an “entire abdomen-covering portion” comprised of “stretch knit material” that “envelop[s] the abdomen” “over a long period of time from during a pregnancy to post-partum.” As such, belly panel 2 of Asada is adapted to cover a wearer’s belly region during different periods of weight gains and losses as required by claim 6. *See also*, FIGS. 2(a), 2(b), 2(c) of Asada. Belly panel 2 of Asada is “expandable, contractible, and foldable.” A belly panel 2 that covers the entire abdomen and is made of a stretchable material that is expandable and contractible is adapted to substantially cover and fit over different body types as required by claim 7. This stretchable material will conform to the wearer’s body type. As expressly stated in Asada, belly panel 2 of Asada is expandable and contractible as required by claim 8.

As expressly stated in Asada and as shown in FIGS. 2(a) and 2(b) of Asada, belly panel 2 is foldable. Additionally, belly panel 2 is a tubular band that extends

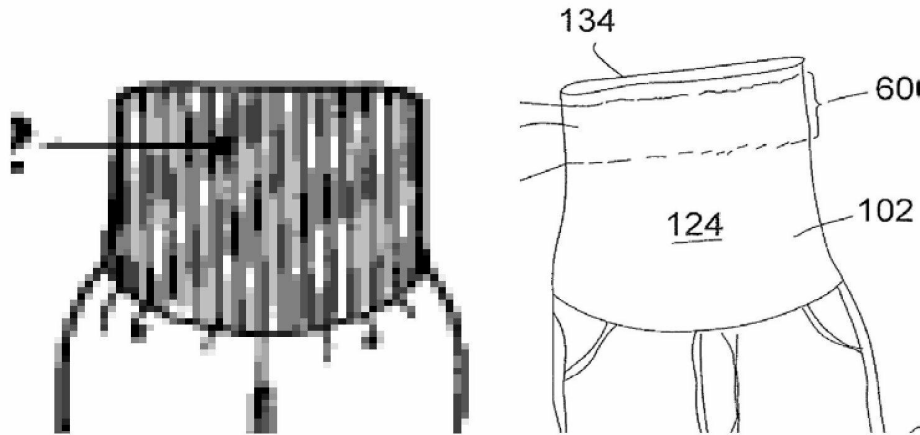
from front to back as shown in FIGS. 1(a) and 1(b). As such, belly panel 2 of Asada is foldable to comprise a folded band as required by claim 10.

As expressly stated in Asada, belly panel 2 is a “stretch knit” material. The most common composition of belly panel material is interwoven nylon or lycra spandex. Summers at 4:20-22, Ex. 1037. JCP also teaches that spandex one type of stretch knit material commonly used in maternity belly panels. *See* JCP, Ex. 1002. Spandex is comprised of stretchable elastic strands. *See* Ex. 1011, Harder Dec. I at ¶ 29. As such, belly panel 2 of Asada is knitted with elastic, stretchable strands as required by claim 11. Ex. 1036, Harder Dec. II at ¶ 27.

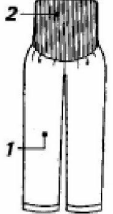

As required by claim 16, the lower edge portion of belly panel 2 of Asada is configured to extend downward with a parabolic shape to accommodate an expanding belly (*see* Figs 2(a), 2(b), and 2(c) of Asada), as shown by the dashed line and smaller double-arrowed line of FIG. 1(a) reproduced above. Ex. 1036, Harder Dec. II at ¶ 26.

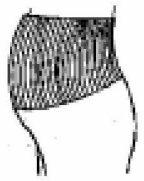
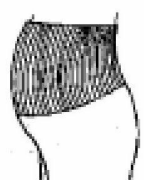
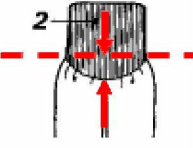
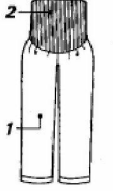
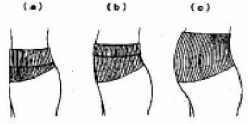
A portion of FIG. 1(a) of Asada and a portion of FIG. 6 of the '563 Patent are shown below. The sides of the tubular cylinder of the Asada belly panel 2 in its residual shape are at least as straight as the sides of belly panel 124 that the '563 Patent discloses as being an example straight-sided cylinder-shaped. As such, elastic belly panel 2 of Asada defines a tubular structure that is shaped and formed

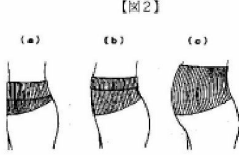
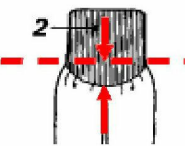
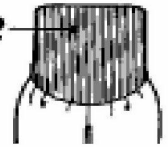
as a straight-sided cylinder to fit a body type having a corresponding torso as required by claim 21.



Claims 1, 2, 6-8, 10, 11, 16, and 21 of the '563 Patent are therefore unpatentable under §102 as being anticipated by Asada. A claim chart mapping relevant features of Asada to those claims follows.

<p>'563 Patent Claim 1: A garment portion having an attached belly panel portion comprising:</p>	<p><u>Asada, Exs. 1034, 1035</u> <i>See, e.g.,</i> “abdomen-covering portion 2” and “pants portion 1.” Asada, Ex. 1035 at [0009], [0011], [0013], and [0016].</p>	<p><u>Asada, Ex. 1034</u></p> 
<p>'563 Patent Claim 1: [a] an expansible belly panel adapted to substantially cover a wearer's entire belly region, said belly region comprising an area beginning just beneath the wearer's breast area and extending over the wearer's abdomen to a lower abdomen region beneath the wearer's belly, said belly panel comprising:</p>	<p>“[A]bdomen-covering portion [2] . . . is expandable.” Asada, Ex. 1035 at [0008]. “[The garment] can be worn completely to envelop the abdomen with the entire abdomen-covering portion 2 as shown in Fig. 2(c).” <i>Id.</i> at Fig. 2(c), [0013], and [0014].</p>	<p>(c)</p> 

<p>'563 Patent Claim 1: [b] an upper edge portion defining a first encircling circumference about a wearer's torso that is at or above the wearer's upper abdomen region, and</p>	<p>Asada, Ex. 1035 at Figs. 2(a)-2(c). Ex. 1036. "Entire abdomen-covering portion 2" <i>Id.</i> at [0014]. "[A]bdomen-covering portion 2... can be worn completely to envelope the abdomen...." <i>Id.</i> at [0013]., Harder Dec. II at ¶ 22.</p>	<p>(a)</p> 
<p>'563 Patent Claim 1: [c] a lower edge portion spaced from the upper edge portion and defining a second encircling circumference about the wearer's lower abdomen region; and</p>	<p>Asada, Ex. 1035 at Figs. 2(a)-2(c). Ex. 1036, Harder Dec. II at ¶ 23.</p>	<p>(a)</p> 
<p>'563 Patent Claim 1: [d] a garment lower portion, in communication with the lower edge portion, having a torso encircling circumference that recedes downward to make way for expansion of the belly panel.</p>	<p>Asada, Ex. 1035 at Fig. 1(a). Ex. 1036, Harder Dec. II at ¶ 26.</p>	
<p>'563 Patent Claim 2: The garment portion of claim 1, further comprising a pair of trousers attached to said lower edge portion.</p>	<p><i>See, e.g.,</i> "pants portion 1." Asada, Ex. 1035 at [0009], [0011], [0013], and [0016].</p>	
<p>'563 Patent Claim 6: The garment portion of claim 1, wherein said belly panel is adapted to cover the wearer's belly region during different stages of weight gains and losses.</p>	<p>Asada, Ex. 1035 at Figs. 2(a)-2(c) and [0011]-[0014]. "[A]bdomen covering portion... is expandable... [and] contractible... using a stretch knit..." <i>Id.</i> at [0008]. "[A]bdomen-covering portion... can be worn comfortably over a long period of time from during a pregnancy to post-partum." <i>Id.</i> at [0016].</p>	<p>(a) (b) (c)</p> 
<p>'563 Patent Claim 7: The garment portion of claim 1, wherein said belly panel is adapted to substantially cover and fit over</p>	<p>Asada, Ex. 1035 at Figs. 2(a)-2(c). "Entire abdomen-covering portion 2" <i>Id.</i> at [0014]. "[A]bdomen covering portion... is expandable... [and] contractible... using a</p>	

different body types.	stretch knit....” <i>Id.</i> at [0008].	
’563 Patent Claim 8: The garment portion of claim 1, wherein the belly panel is elastically expansible and contractible.	Asada, Ex. 1035. “[A]bdomen covering portion...is expandable...[and] contractible...using a stretch knit....” <i>Id.</i> at [0008].	
’563 Patent Claim 10: The garment portion of claim 1, wherein the belly panel is foldable to comprise a folded band.	Asada, Ex. 1035 at Figs. 2(a)-2(c). “[A]bdomen covering portion...is ...foldable” <i>Id.</i> at [0008].	
’563 Patent Claim 11: The garment portion of claim 1, wherein the belly panel is woven or knitted with elastic, stretchable strands.	Asada, Ex. 1035 at [0011] and [0012]; Ex. 1036. “[A]bdomen covering portion...is expandable...[and] contractible...using a stretch knit....” <i>Id.</i> at [0008]. , Harder Dec. II at ¶ 26	
’563 Patent Claim 16: The garment portion of claim 1, wherein the lower edge portion is configured to extend downward with a parabolic shape to accommodate the wearer’s expanding belly region.	Asada, Ex. 1035 at Figs. 1(a) and 2(a)-2(c).	
’563 Patent Claim 21: The garment portion of claim 1, wherein the belly panel defines a tubular structure that is shaped and formed as straight-sided cylinder to fit a body type having a correspondingly shaped torso.	Asada, Ex. 1035 at Fig. 1(a). Ex. 1036, Harder Dec. II at ¶ 23.	

B. Ground 2: Claims 12 and 13 are Unpatentable as Being Obvious Over Asada in View of “expecting style” by Lauren Sara

Asada (Ex. 1035) does not expressly discuss the limitations of claims 12 and 13, but Lauren Sara (Ex. 1005) discloses these imitations. Asada discloses every limitation of claim 1 as shown in Ground 1 (Section VIII. A). To the extent that Asada does not disclose pants with a belly panel of claims 12 and 13, a POSA would have understood that belly panels could include a top edge of the belly panel

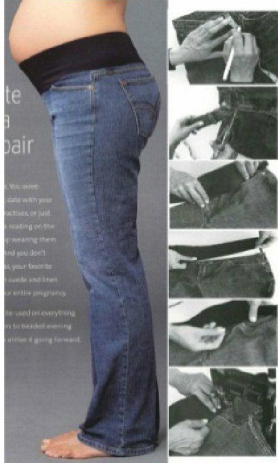
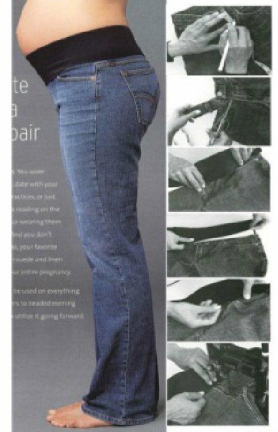
folded over (claim 13) and sewn or knitted to an inside of the belly panel fabric (claim 12) as taught by Lauren Sara (Ex. 1005) at least because these features of maternity garments were well-known to a POSA and desired by potential customers at the time of the alleged invention of the '563 Patent. *See* Ex. 1036, Harder Dec. II at ¶ 31.

Lauren Sara, for example, expressly discloses denim maternity jeans, and step-by-step instructions for making those jeans, that include, among other things, a belly panel with a top edge of the belly panel folded over (claim 13) and sewn or knitted to an inside of the belly panel fabric (claim 12). *See also* Ex. 1011, Harder Dec. I at ¶¶ 27 and 35 and Ex. 1036, Harder Dec. II at ¶ 31.

As provided in instructions 7-12 and the Lauren Sara image, the waistband of Lauren Sara is formed by folding a piece of material in half and attaching the inner portion of the fold to the inside of the exterior fold of the waistband to form a double-layer waistband. Lauren Sara at the images on p. 43 and Steps 7-12. Ex. 1005. *See also* Board Decision for IPR2013-00531, Ex. 1029 at p. 21, where the Board indicated that “Lauren Sara appears to meet the requirement of a belly panel that “comprises a double layer tubular structure,”” that modifying JCP fold-over panel jeans “in view of the known use of hemlines” results in the subject matter of claim 12, and “in view of Lauren Sara’s teaching of triple layered belly panel” results in the subject matter of claim 13.

Because, for example, both Asada and Lauren Sara relate to maternity pants and wearers desire value and comfort in their clothing purchases, it would have been obvious to use the folded over belly panel construction disclosed in Lauren Sara at the height disclosed in Asada. *See* Ex. 1036, Harder Dec. II at ¶ 31. *See, e.g.,* Stangle at FIG. 4, [0030], [0031] (teaching that a tubular belly panel, that may be incorporated into pants, may include an edge that is folded over and knitted or sewn to an inside of the belly panel) and Lauren Sara at pp. 42-43 (teaching steps for creating a folded-over and sewn belly panel). Similarly, it would have been obvious to utilize the heightened double-layer waistband of Lauren Sara in place of the stretch knit material used in Asada, for several reasons, including for fabricators who may not have easy access to tubular knits. *See* Ex. 1036, Harder Dec. II at ¶ 32.

Claims 12 and 13 of the '563 Patent are therefore unpatentable under §103 as being obvious in view of Asada in further view of Lauren Sara. A claim chart mapping relevant features of Asada and Lauren Sara to the limitations of claim 12 of the '563 Patent follows.

<p>'563 Patent Claim 12: The garment portion of claim 1, wherein a top edge margin of the belly panel is folded over and sewn or knitted to an inside of the belly panel fabric.</p>	<p><u>Lauren Sara, Ex. 1005</u></p> 
<p>'563 Patent Claim 13: The garment portion of claim 1, wherein the belly panel comprises a double layer tubular structure.</p>	

C. Ground 3: Claims 3, 4, and 14 are Unpatentable as Being Obvious Over Asada in View of the J.C. Penney ontrend Maternity Catalog at Page 19

Asada does not expressly state that the “ordinary pants” that comprise pants portion 1 are made of denim jeans material and that the pants portion 1 includes one or more pockets, a sewn zipperless fly, or a partial waistband. The JCP bootcut maternity pants (Ex. 1002 at p. 19) discloses Levis® bootcut jeans with pockets, a zipperless “faux fly” front, and a partial waistband. JCP, Ex. 1001 at p. 19. Therefore, the combination of Asada and JCP maternity bootcut jeans renders

claim 3 (denim jeans), claim 4 (zipperless fly), and claim 14 (partial waistband) unpatentable as obvious under §103.

JCP maternity bootcut jeans consist of Levis® 5-pocket stretch denim maternity jeans and an “all-around elastic belly panel that can be folded up or down depending on your stage in pregnancy,” but the belly panel is not fully visible on catalog page 19. This is cured by the disclosed design and functionality of the “foldable” belly panel of Asada.

Because the lower portion 1 of the garment of Asada consists of pants that “does not look any different from ordinary pants” (Asada Trans., Ex. 1035 at [0012]) and JCP maternity bootcut jeans consist of denim jeans, a type of ordinary pants, and because women desire comfortable jeans to wear during pregnancy that closely resemble ordinary clothing, it would have been obvious to use the “foldable” panel disclosed in Asada in place of the “all-around elastic belly panel” disclosed in JCP maternity bootcut jeans to provide “entire abdomen-covering.” *See* Ex. 1036, Harder Dec. II at ¶ 28. Stated another way, it would have been obvious to use the lower Levis® stretch denim jeans of the JCP maternity bootcut jeans with pockets, a sewn zipperless fly, and partial waistband in place of the “ordinary pants” disclosed in Asada. *See* Ex. 1036, Harder Dec. II at ¶ 28.

Swapping the type of belly panel attached to ordinary pants or jeans, or exchanging the style or fabric of pant bottoms for denim, was a routine

modification and was an obvious design choice available to a POSA and was desired by consumers, as shown, for example, in Lauren Sara (Ex. 1005) (“Your jeans are your best friends. . . . You don’t want to give them up just because you’re pregnant. And you don’t have to. . . . your favorite pair of *denim*, corduroy, or even suede and linen jeans”) (emphasis added) and PULSE; An Early Lesson in Prada, by Danielle Pergament, published by the New York Times on February 27, 2005 (Exhibit 1010) (“When you find a designer you like, you don’t have to give the clothes up because you’re pregnant. For like-minded do-it-yourselfers, the Denim Doctors at Fred Segal in Los Angeles will tailor jeans to fit an expanding girth for a fee of \$40, while Liz Lange Maternity sells elasticized, pull-up versions of jeans by labels like Citizens of Humanity and Earl for \$175 a pair. . . . Dynasty Tailors in New York City . . . and Susie’s Custom Design in Los Angeles . . . will maternitize cloths with elastic triangles or panels for \$35 to \$45 a garment.”) (internal quotation marks omitted). *See* Ex. 1011, Harder Dec. I at ¶ 25. *See also* Stangle, Ex. 1003 at [0032] and [0038]-[0042]. *See also* Board Decisions for IPR2013-00531, Ex. 1031 at p. 17 and IPR2013-00530, Ex. 1027 at p. 14, where the Board indicated that “swapping panels would have been an obvious design choice. . . .that does no more than yield predictable results.”

Because JCP maternity bootcut jeans disclose denim jeans and it would be obvious to provide such denim jeans as garment lower portion 1 of Asada, they


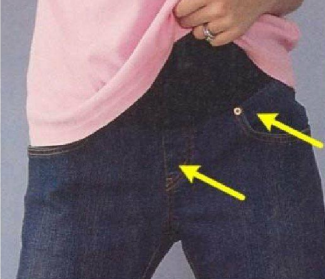

render claim 3 as unpatentable. To the extent that JCP maternity bootcut jeans does not explicitly disclose denim jeans, stretch denim jeans are inherently disclosed based on the text and images shown in JCP maternity bootcut jeans. Ex. 1011, Harder Dec. I at ¶ 24. *See* JCP at p. 19, Ex. 1002.

Because JCP maternity bootcut jeans disclose pockets and a sewn zipperless fly and it would be obvious to provide such jeans as garment lower portion 1 of Asada, they render claim 4 as unpatentable.

Figures 1(b), 2(a), 2(b), and 2(c) of Asada (Ex. 1034) illustrate the back side of the pants portion 1 and Asada teaches that it “does not look any different from ordinary pants.” Ex. 1035 at [0012]. JCP maternity bootcut jeans (Ex. 1002 at p. 19), explicitly discloses a rear yoke (i.e. partial waistband) of maternity jeans. This partial waistband extends across a back side of the lower edge portion and extends down into side seams of an article of clothing connected thereto. *See also* Board Decision for IPR2013-00531, Ex. 1029 at p. 17, where the Board indicated that JCP maternity bootcut jeans “appear to have such a partial waistband.” Because JCP maternity bootcut jeans disclose a partial waistband and it would be obvious to provide such jeans as garment lower portion 1 of Asada, they render claim 14 as unpatentable.

Claims 3, 4, and 14 of the '563 Patent are therefore unpatentable under §103 as being obvious over Asada in view of JCP maternity bootcut jeans. A claim

chart mapping relevant features of Asada and JCP maternity bootcut jeans to those claims follows.

<p>'563 Patent Claim 3: The garment portion of claim 2, wherein said trousers comprise denim jeans.</p>	<p><u>JCP bootcut maternity jeans, Ex. 1002</u> “Your favorite Levi’s® bootcut jeans redesigned for the mom-to-be.” JCP bootcut maternity jeans, Ex. 1002 at p. 19.</p>	 <p>JCP bootcut maternity jeans (annotated)</p>
<p>'563 Patent Claim 4: The garment portion of claim 3, wherein said denim jeans comprise one or more pockets and a sewn zipperless fly front.</p>	<p>stage of pregnancy. Classic five-pocket styling. Faux fly. Cotton/spandex. Panel is polyester/spandex. Washable. Made in</p>  <p>JCP bootcut maternity jeans (annotated)</p>	
<p>'563 Patent Claim 14: The garment of portion of claim 1, wherein the belly panel further comprises a partial waistband extending across a back side of the lower edge portion and extending down into side seams of an article of clothing connected thereto.</p>	 <p>JCP bootcut maternity jeans (annotated)</p>	

D. Ground 4: Claim 20 is Unpatentable as Being Obvious Over Asada in View of US Patent No. 8,185,970 to Summers

Asada discloses every limitation of claim 1 as shown in Ground 1 (Section VIII. A). Summers discloses a belly panel that defines a tubular structure that is shaped and formed as a hyperboloid cylinder in its residual shape to fit a body type having a tapered torso as required by claim 20.

Summers (Ex. 1037) discloses several garment embodiments, each of which includes a girdle and shirt portions 4, 6. Girdle portion 4 is made of an elastic material, such as “interwoven nylon or lycra spandex.” *Id.* at 4:20-22. Girdle portion 4 can have a “uniform, tapered, or silhouette contour that provides support and shapes the abdomen region of a user.” *Id.* at 3:64-67. Girdle portion 4 aids “pregnant women” and gives “post-pregnancy women” support. *Id.* at 7:6-13. Girdle portion 4 is worn “immediately below the chest line” and provides support for both the upper abdomen and lower abdomen. *Id.* at 7:15 and 6:44-46. As such, Asada and Summers both relate to entire belly covering, elastic supporting panels for maternity garments. Figure 8 of Summers is reproduced below. Unlike Stern, discussed below, the figures of Summers (see below) do not disclose that the belly panel (girdle portion 4) has an hourglass shape.

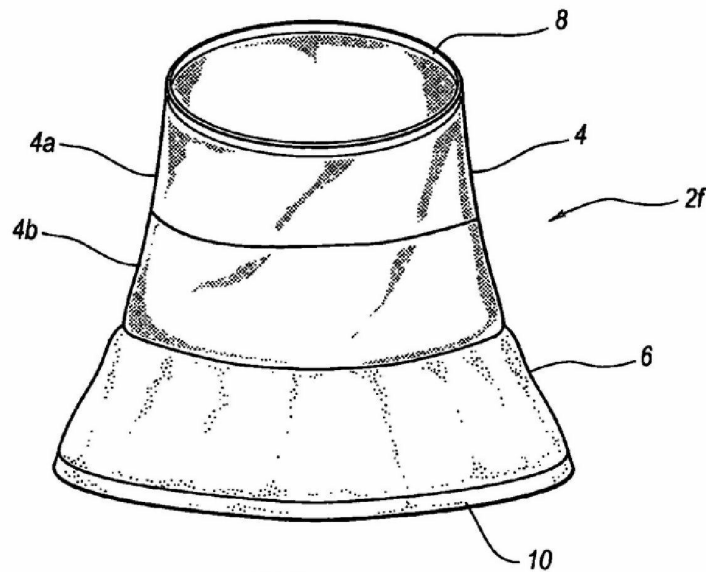


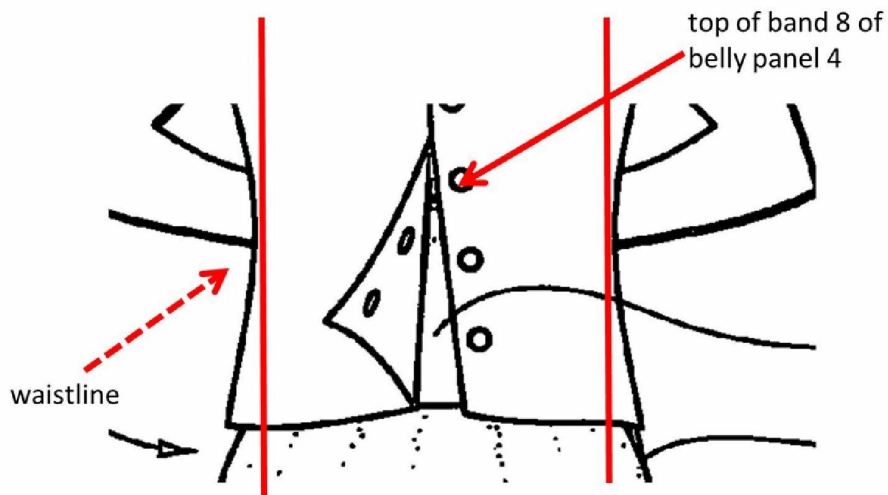
FIG. 8

As illustrated above, belly panel 4 of Summers curves inward from a lower portion, but never curves back outward. Thus, the belly panels of the figures of Summers do not have an hourglass shape. *See* Ex. 1036, Harder Dec. II at ¶ 39. However, Summers does disclose that a belly panel can have a “silhouette contour,” which is hourglass-shaped.

To a POSA, a “silhouette” contour as it relates to women’s clothing is the silhouette of a woman’s torso. The typical silhouette of a women’s torso is hourglass-shaped. *See* Ex. 1036, Harder Dec. II at ¶ 36. *See, e.g.,* Webster’s Encyclopedic Unabridged Dictionary, Ex. 1038, (“[H]ourglass...*adj.* 2. having a notably slim or narrow waist, midsection, or joining segment: *She has an hourglass figure.*” (emphasis original) and The New Oxford Dictionary, Ex. 1039, (“[H]ourglass...*n.* an invertible device with two connected glass bulbs containing

sand that takes an hour to pass from the upper to the lower bulb. [as *adj.*] shaped like such a device: *her hourglass figure.*” (emphasis original).

An example of this silhouette shape of a woman is provided in FIG. 7 of Summers, a marked-up copy of which is provided below. *See also*, FIGS. 3 and 4, of Browder (Ex. 1004) showing an hourglass shape as indicated by the Board. *See* Board Decision for IPR2013-00531, Ex. 1029 at p. 28.



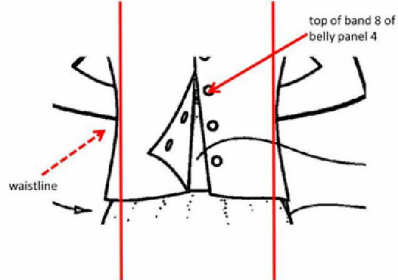
As shown above, a woman is wearing a button-up shirt. The button-up shirt is fitted/shaped to match the hourglass-shape silhouette of the women. *Id.* at ¶ 37. The upper, horizontal red line is positioned at the top of belly panel 4, which includes band 8. Summers, Ex. 1037 at 3:53-57. The dashed arrow points to the approximate narrowest point of the fitted button-up shirt, which also corresponds to the women’s waistline. Harder Dec. II at ¶ 38. A pair of vertical lines is also provided. Starting at the bottom of the shirt, the shirt and underlying silhouette of the women curve inward toward the vertical lines, reach the narrowest point at the

waistline (indicated by the dashed arrow), and then curve outward away from the vertical lines. Starting from the bottom, a belly panel having a “silhouette contour” will likewise curve inward until it reaches a point corresponding to the waistline (at the dashed arrow) and then curve outward until it reaches the top of the belly panel (indicated by the solid line arrow). The top of belly panel 4 of Summers is positioned above the waistline. As such, a corresponding belly panel having a residual “silhouette contour” will also have a top portion positioned above the waistline. The narrowest portion of such a belly panel will be positioned above the bottom of the belly panel and below the top of the belly panel (i.e. a portion of the belly panel positioned above and a portion positioned below will be wider than at least a portion therebetween). This results in a belly panel that defines a tubular structure that is shaped and formed as a hyperboloid cylinder in its residual shape.

A POSA would have understood that a belly panel having the tubular structure of claim 20 was well-known to a POSA and desired by potential customers of the relevant body type and shape at the time of the invention disclosed in the '563 Patent. *See* Ex. 1036, Harder Dec. II at ¶ 20. Additionally, a POSA would have understood that providing belly panel having a residual “silhouette contour” as expressly taught by Summers was well-known to a POSA and desired by potential customers of the relevant body type and shape at the time of the invention disclosed in the '563 Patent. *Id.* at ¶ 41.

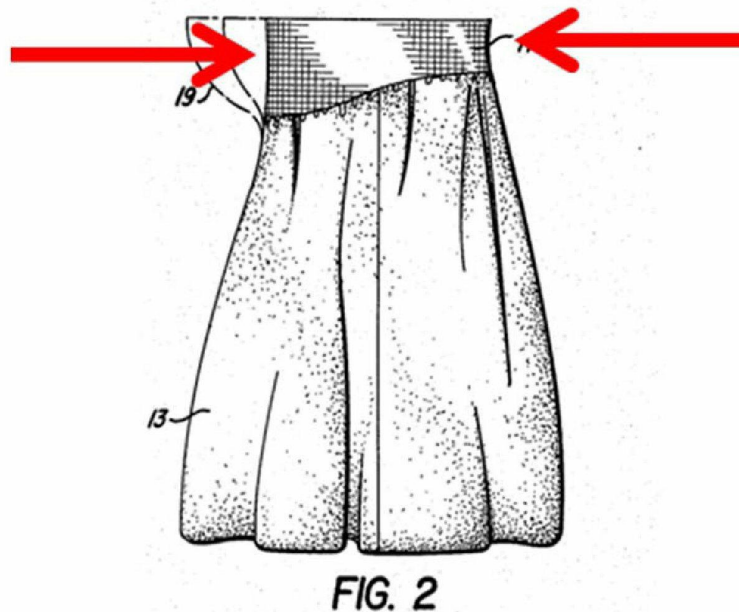
Because, for example, Asada and Summers are both used in the maternity setting as expressly stated therein, a POSA would have recognized that the shape of the belly panel described in Summers would be used in the belly panel 2 of the maternity garment disclosed in Asada to better fit an individual with a tapered or hourglass-shaped torso. *Id.* at ¶ 42. *See, e.g.*, Stangle, Ex. 1003 at [0032], (“the [belly panel] may be manufactured to accommodate different body portions and different size requirements and conditions of the persons intending to wear the [belly panel].”) and Lauren Sara, Ex. 1005, (describing how to alter/tailor a garment to fit the intended wearer’s body type).

Claim 20 of the ’563 Patent is therefore unpatentable under §103 as being obvious over Asada in view of Summers. A claim chart mapping relevant features of Asada and Summers to claim 20 of the ’563 Patent follows.

<p>’563 Patent Claim 20: The garment portions of claim 1, wherein the belly panel defines a tubular structure that is shaped and formed as a hyperboloid cylinder to fit a body type having a tapered torso.</p>	<p><u>Summers, Ex. 1037</u> “In one embodiment, girdle portion 4 can be made of a girdle material and can have a uniform, tapered, or silhouette contour that provides support and shapes the abdominal region of a user.” Summers, Ex. 1037 at Fig. 7 and 3:64-67. Ex. 1036, Harder Dec. II at ¶¶ 36-42.</p>	 <p>Summers Fig. 7 (annotated)</p>
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E. Ground 5: Claim 20 is Unpatentable as Being Obvious Over Asada in View of US Patent No. 4,506,390 to Stern

Stern (Ex. 1017) discloses an elastic, tapered waistband portion 11 that is sewn to body portion 13, illustrated as a skirt, but may also be other types of maternity garments, such as a pair of slacks. Stern, Ex. 1017 at 3: 26, 27; 3:60; 4: 22; 3: 27-30. Waistband portion 11 is designed not to abrade or cut a wearer “at any stage of pregnancy.” *Id.* at 4: 67 and 68. As such, Asada and Stern both relate to elastic belly supporting panels for all stages of pregnancy. Figure 2 is reproduced below along with arrows showing the approximate narrowest portion of belly panel 11 illustrating the hourglass shape of Stern.



As shown in FIG. 2, the sides of belly panel 11 have upper and lower edge portions that are wider than a narrowest mid-portion (shown by the arrows). Belly

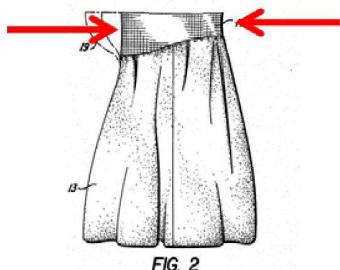
panel 11 not only curves inward (starting at the bottom) to the narrowest portion of the belly panel 11 (shown by the hashed arrows), but continues from the narrowest portion and curves back out to define an hourglass shape.

Asada discloses the limitations of claim 1 (*see* Ground 1, Section IX.A). Stern discloses belly panel 11 in a residual shape that defines a tubular structure that is shaped and formed as a hyperboloid cylinder to fit a body type having a tapered torso as required by claim 20. A POSA would have understood that a belly panel having the tubular structure of claim 20 was well-known to a POSA and desired by potential customers of the relevant body type and shape at the time of the invention disclosed in the '563 Patent. *See* Ex. 1036, Harder Dec. II at ¶ 40. The typical body type has an hourglass shape. *Id.* at ¶ 36. As such, a POSA would find it obvious to provide belly panel 2 of Asada with an hourglass shape, such as that shown in Stern, to match bodies having an hourglass-shape. *Id.* at ¶ 45.

Because, for example, Asada and Stern are both used in the maternity setting as expressly stated therein, a POSA would have recognized that the hourglass-shape of the belly panel 11 of Stern would be used in the belly panel 2 of the maternity garment disclosed in Asada to better fit an individual with a tapered or hourglass-shaped torso. *Id.* at ¶45. *See, e.g.,* Stangle, Ex. 1003 at [0032], (“the [belly panel] may be manufactured to accommodate different body portions and different size requirements and conditions of the persons intending to wear the




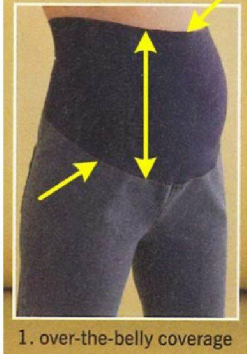
[belly panel].”); Lauren Sara, Ex. 1005, (teaching how to alter/tailor a garment to fit the wearer’s body type); and Summers, Ex. 1037 at 4:64-66, (teaching belly panel 4 “can have a uniform, tapered, or silhouette contour”).

Claim 20 of the ’563 Patent is therefore unpatentable under §103 as being obvious over Asada in view of Stern. A claim chart mapping relevant features of Asada and Stern to claim 20 of the ’563 Patent follows.

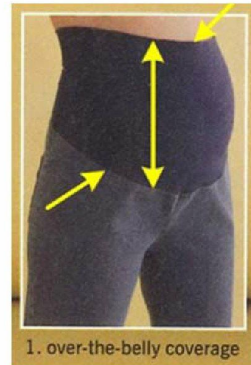
<p>’563 Patent Claim 20: The garment portions of claim 1, wherein the belly panel defines a tubular structure that is shaped and formed as a hyperboloid cylinder to fit a body type having a tapered torso.</p>	<p><u>Stern, Ex. 1017</u> Stern, Ex. 1017 at Fig. 2. <i>See also</i> Ex. 1036, Harder Dec. II at ¶ 36-38, 40, 44, and 45.</p>	<p><u>Stern, Ex. 1017</u></p>  <p>FIG. 2 Stern Fig. 2 (annotated)</p>
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F. Ground 6: Claim 1 is Unpatentable as Being Anticipated by *J.C. Penney ontrend Maternity Catalog* at Page 15

In previous petitions for *inter partes* review, IPR2013-00530 (Ex. 1026) and IPR2013-00531 (Ex. 1028), Petitioner requested the cancellation of claim 1 of the ’531 Patent in view of selected pages of JCP (Ex. 1002). These requests were granted. *See* Exs. 1027, 1029. As shown in those petitions, and below, JCP fold-over panel jeans anticipates claim 1 of the ’563 Patent. A claim chart mapping the features of JCP fold-over panel jeans (Ex. 1002 at p. 15) to the features of the ’563 Patent under §102 is provided below.

<p>'563 Patent Claim 1: A garment portion having an attached belly panel portion comprising:</p>	<p><u>JCP fold-over panel jeans, Ex. 1002</u> “Great-fitting jeans are a must—especially when you’re expecting! These have a unique fold-over panel design that allows you to wear them before, during and after your pregnancy[.]” JCP fold-over panel jeans, Ex. 1002 at p. 15.</p>	<p>Fold-over waistband lets you adapt to the comfort you require:</p>  <p>1. over-the-belly coverage 2. fold once for mid-rise comfort 3. fold twice for low-rise comfort and support</p> <p>JCP fold-over panel jeans (annotated)</p>
<p>'563 Patent Claim 1: [a] an expansible belly panel adapted to substantially cover a wearer’s entire belly region, said belly region comprising an area beginning just beneath the wearer’s breast area and extending over the wearer’s abdomen to a lower abdomen region beneath the wearer’s belly, said belly panel comprising:</p>	 <p>1. over-the-belly coverage</p> <p>JCP fold-over panel jeans (annotated)</p>	
<p>'563 Patent Claim 1: [b] an upper edge portion defining a first encircling circumference about a wearer’s torso that is at or above the wearer’s upper abdomen region, and</p>	 <p>1. over-the-belly coverage</p> <p>JCP fold-over panel jeans (annotated)</p>	
<p>'563 Patent Claim 1: [c] a lower edge portion spaced from the upper edge portion and defining a second encircling circumference about the wearer’s lower abdomen region; and</p>	 <p>1. over-the-belly coverage</p> <p>JCP fold-over panel jeans (annotated)</p>	

'563 Patent Claim 1: [d] a garment lower portion, in communication with the lower edge portion, having a torso encircling circumference that recedes downward to make way for expansion of the belly panel.



JCP fold-over panel jeans (annotated)

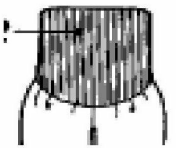
G. Ground 7: Claim 21 is Unpatentable as Being Obvious Over JCP fold-over panel jeans in View of Asada

Regarding claim 21, however, JCP fold-over panel jeans only shows the fold-over waistband maternity jeans on a model or form. JCP at p. 15. Asada shows a maternity garment with a belly panel 2 having the residual shape of a straight-sided cylinder. *See* Ex. 1036, Harder Dec. II at ¶ 29. Therefore, if Asada and/or JCP fold-over panel jeans do not anticipate claim 21, the combination of JCP fold-over panel jeans in view of Asada renders claim 21 obvious under § 103.

To the extent that JCP fold-over panel jeans does not disclose every limitation of claim 21, a POSA would have understood that garments with a belly panel could utilize the tubular structure of Asada (and claim 21) at least because that feature was well-known to a POSA and designed by potential customers of the relevant body type and shape at the time of the invention disclosed in the '563 Patent. *See* Ex. 1036, Harder Dec. II at ¶ 29.

Swapping the type and/or shape of the belly panel attached to bottoms to form a maternity garment was a routine modification and was an obvious design choice available to a POSA and was desired by consumers, as shown, for example, in Lauren Sara, Ex. 1005, (“Your jeans are your best friends. . . . You don’t want to give them up just because you’re pregnant. And you don’t have to. . . . your favorite pair of *denim*, corduroy, or even suede and linen jeans”) (emphasis added) and PULSE; An Early Lesson in Prada, by Danielle Pergament, published by the New York Times on February 27, 2005, Exhibit 1010, (“When you find a designer you like, you don’t have to give the clothes up because you’re pregnant. For like-minded do-it-yourselfers, the Denim Doctors at Fred Segal in Los Angeles will tailor jeans to fit an expanding girth for a fee of \$40, while Liz Lange Maternity sells elasticized, pull-up versions of jeans by labels like Citizens of Humanity and Earl for \$175 a pair. . . . Dynasty Tailors in New York City . . . and Susie’s Custom Design in Los Angeles . . . will maternitize cloths with elastic triangles or panels for \$35 to \$45 a garment.”) (internal quotation marks omitted). *See* Ex. 1011, Harder Dec. I at ¶ 25. *See also* Stangle, Ex. 1003 at [0032], [0038]-[0042]; Summers, Ex. 1037 at 3:64-67; Ex. 1036, Harder Dec. II at ¶ 29. *See also* Board Decisions for IPR2013-00533, Ex. 1033 at p. 14 and IPR2013-00532, Ex. 1031 at p. 15, where the Board indicated that “swapping panels would have been an obvious design choice. . . . that does no more than yield predictable results.” Claim

21 of the '563 Patent is therefore unpatentable under § 103 as being obvious in view of JCP fold-over panel jeans in further view of Asada. A claim chart mapping relevant features of JCP fold-over panel jeans and Asada to the limitations of claim 21 follows.

'563 Patent Claim 21: The garment portion of claim 1, wherein the belly panel defines a tubular structure that is shaped and formed as straight-sided cylinder to fit a body type having a correspondingly shaped torso.	<u>Asada, Exs. 1034, 1035</u> Asada, Ex. 1035 at Fig. 1(a). Ex. 1036, Harder Dec. II at ¶ 23.	
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H. Ground 8: Claim 20 is Unpatentable as Being Obvious Over JCP fold-over panel jeans in View of Summers

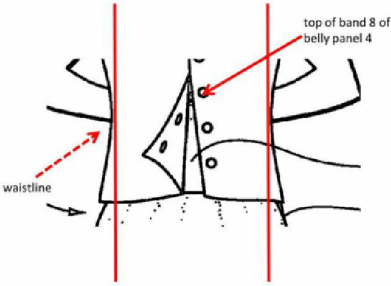
Regarding claim 20, JCP fold-over panel jeans only shows the fold-over waistband maternity jeans on a model or form. JCP at p. 15. As discussed in Ground 5 (Section IX.E), Summers discloses a garment suitable for maternity use that includes a belly panel that defines a tubular structure that is shaped and formed as a hyperboloid cylinder in its residual shape. Therefore, if Asada and/or JCP fold-over panel jeans do not anticipate claim 20 and the combination of Asada and Summers does not render claim 20 obvious under § 103, the combination of JCP fold-over panel jeans in view of Summers renders claim 20 obvious under § 103.

A POSA would have understood that a belly panel having the tubular structure of claim 20 was well-known to a POSA and desired by potential customers of the relevant body type and shape at the time of the invention

disclosed in the '563 Patent. *See* Ex. 1036, Harder Dec. II at ¶ 43. Additionally, a POSA would have understood that providing belly panel having a residual “silhouette contour” as expressly taught by Summers was well-known to a POSA and desired by potential customers of the relevant body type and shape at the time of the invention disclosed in the '563 Patent. *Id.* at ¶ 43.

Because, for example, JCP fold-over panel jeans and Summers are both used in the maternity setting as expressly stated therein, a POSA would have recognized that a belly panel having the residual silhouette contour of Summers would be used in the belly panel of the maternity garment disclosed in JCP fold-over panel jeans to better fit an individual with a tapered or hourglass-shaped torso. Ex. 1036, Harder Dec. II at ¶ 43. *See, e.g.,* Stangle, Ex. 1003 at [0032] (“the [belly panel] may be manufactured to accommodate different body portions and different size requirements and conditions of the persons intending to wear the [belly panel].”) and Lauren Sara, Ex. 1005, (describing how to alter/tailor a garment to fit the intended wearer’s body type).

Claim 20 of the '563 Patent is therefore unpatentable under §103 as being obvious over JCP fold-over panel jeans in view of Summers. A claim chart mapping relevant features of JCP fold-over panel jeans and Summers to claim 20 of the '563 Patent follows.

<p>'563 Patent Claim 20: The garment portions of claim 1, wherein the belly panel defines a tubular structure that is shaped and formed as a hyperboloid cylinder to fit a body type having a tapered torso.</p>	<p><u>Summers (Ex. 1037)</u> “In one embodiment, girdle portion 4 can be made of a girdle material and can have a uniform, tapered, or silhouette contour that provides support and shapes the abdominal region of a user.” Summers, Ex. 1037 at Fig. 7 and 3:64-67. Ex. 1036, Harder Dec. II at ¶¶ 36-42.</p>	 <p>The diagram shows a side view of a garment with a girdle. Two vertical red lines are drawn on either side of the girdle. A dashed red arrow points to the waistline. Another red arrow points to the top of a band on the belly panel. Labels include 'waistline' and 'top of band 8 of belly panel 4'.</p> <p>Summers Fig. 7 (annotated)</p>
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X. SECONDARY CONSIDERATIONS

As detailed in Harder Dec. II provided herewith, the Petitioner is unaware of any secondary considerations that alone, or in combination, defeat the obviousness combinations presented herein. *See* Ex. 1036, Harder Dec. II at ¶¶17-19.

XI. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests the grant of this Petition and cancellation of claims 1-4, 6-8, 10-14, 16, 20, and 21 of the '563 Patent.

FAEGRE BAKER DANIELS LLP

Dated: March 28, 2014

By: /s/ Norman J. Hedges
Norman J. Hedges
Reg. No. 44,151
Customer No.: 27268

Faegre Baker Daniels LLP
300 N. Meridian St. Suite 2700
Indianapolis, Indiana 46204-1750
Telephone: 317-237-0300
Facsimile: 317-237-1000

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.105, I hereby certify that I caused a true and correct copy of the foregoing corrected petition for *inter partes* review to be served via email on March 28, 2014 on the following:

Paul A. Taufer
Michael L. Burns
DLA Piper LLP (US)
One Liberty Place
1650 Market Street, Suite 4900
Philadelphia, Pennsylvania 19103-7300
Telephone: 215-656-3385
Facsimile: 215-606-3385
Paul.Taufer@dlapiper.com
Michael.Burns@dlapiper.com

Stuart E. Pollack
DLA Piper LLP (US)
1251 Avenue of the Americas
New York, New York 10020-1104
Telephone: 212-335-4964
Facsimile: 212-884-8464
Stuart.Pollack@dlapiper.com

FAEGRE BAKER DANIELS LLP

Dated: March 28, 2014

By: /s/ Norman J. Hedges
Norman J. Hedges

Faegre Baker Daniels LLP
300 N. Meridian St. Suite 2700
Indianapolis, Indiana 46204-1750
Telephone: 317-237-0300
Facsimile: 317-237-1000