

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TARGET CORPORATION,
Petitioner

v.

DESTINATION MATERNITY CORPORATION,
Patent Owner

Case IPR2013-00533
Patent RE43,531 E

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

FITZPATRICK, *Administrative Patent Judge*.

ORDER
Patent Owner Motion To Seal
37 C.F.R. § 42.14

On May 5, 2014, Patent Owner, Destination Maternity Corporation, filed a motion to seal certain documents. Paper 23, “Mot.” The subject documents are:

- (1) Exhibit 2019, which is a transcript of a deposition of Amy Brady in a related lawsuit, Case No. 2:12-cv-05680-AB (E.D. Pa.);
- (2) Exhibit 2020, which is an exhibit from Ms. Brady’s deposition;
- (3) Exhibit 2022, which is a declaration by Philip Green, a witness for Patent Owner in this trial; and
- (4) Paper 25, which is Patent Owner’s response to the petition.¹

Pursuant to 37 C.F.R. § 42.14, a party may file a motion to seal along with the filing of the subject documents to be sealed. The subject documents are provisionally sealed pending the outcome of the motion. *Id.* Consistent with this rule, Patent Owner filed the above-identified documents under seal along with its motion to seal. Consistent with paragraph 4(a)(ii) of the protective order in this proceeding (Paper 26), Patent Owner also filed redacted, public versions of the documents. *See* Paper 24; Exs. 2027–2029.²

Patent Owner states that the transcript of Ms. Brady’s deposition (Exhibit 2019) and an exhibit used during that deposition (Exhibit 2020) contain information designated by Petitioner as “Highly Confidential -- Attorneys’ Eyes Only” under a protective order entered in the related lawsuit. Mot. at 3–4. Patent Owner further states that it understands the documents to contain confidential

¹ Patent Owner’s motion to seal also requests sealing of a motion to amend, *see* Mot. at 2, but no motion to amend was filed.

² Exhibits 2027 and 2028 are completely redacted, such that the public cannot discern, from the exhibits themselves, what they are.

business activities and strategies concerning the portion of Petitioner's business directed to developing and selling maternity garments. *Id.*

Patent Owner states that the declaration of Philip Green (Exhibit 2022) contains its own confidential information, in particular, "highly sensitive, confidential financial information related to Patent Owner's sales of maternity products." Mot. at 4. Also, the declaration relies on confidential documents produced in the related lawsuit. *Id.*

Finally, Patent Owner states that its response (Paper 25) also includes confidential information by virtue of its inclusion of portions of the aforementioned documents (i.e., Exhibits 2019, 2020, and 2022).

Petitioner has not opposed the motion. We *grant* the motion.

Accordingly, it is

ORDERED that Paper 25 and Exhibits 2019, 2020, and 2020 shall remain sealed.

FURTHER ORDERED that Exhibits 2027 and 2028 shall be expunged; and

FURTHER ORDERED that Patent Owner shall file replacement exhibits for Exhibits 2027 and 2028 within 10 business days of this Order; the replacement for Exhibit 2027 shall contain the first four pages of Exhibit 2019 without redaction; the replacement for Exhibit 2028 shall reveal the stamped deposition exhibit number that is apparent on Exhibit 2020.

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