

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TARGET CORPORATION,
Petitioner,

v.

DESTINATION MATERNITY CORPORATION,
Patent Owner.

Case IPR2014-00509
Patent RE43,531 E

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

FITZPATRICK, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 315(b)

Petitioner Target Corporation filed a corrected Petition (“Petition”) for an *inter partes* review of claims 1, 2, 5, 6, 10, 11, 15–19, and 24–29¹ of U.S. Patent No. RE43,531 E (the “’531 patent”). Paper 9. The Petition was accorded a filing date of March 14, 2014. Paper 5. The Patent Owner, Destination Maternity Corporation, filed a Preliminary Response pursuant to 35 U.S.C. § 313. Paper 16. We have authority to determine whether to institute an *inter partes* review under 35 U.S.C. § 314(b) and 37 C.F.R. § 42.4(a). We *deny* the Petition.

Petitioner previously filed two other petitions for *inter partes* reviews of different, yet overlapping, subsets of claims of the ’531 patent. We instituted trial in both of those proceedings: IPR2013-00532 and IPR2013-00533 (“the pending trials”). Collectively, we instituted trial on all but two of the claims of the ’531 patent that Petitioner had challenged in the pending trials. See Paper 10 in IPR2013-00532 (instituting trial on all of challenged claims 1, 2, 5, 6, 10, 11, and 15–17); Paper 11 in IPR2013-00533 (instituting trial on challenged claims 1 and 24–29 but not on challenged claims 18 and 19).

Prior to the filing of all of Petitioner’s petitions for *inter partes* reviews of the ’531 patent, Patent Owner asserted the patent against Petitioner in a lawsuit: *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 was served, in that lawsuit, with a complaint alleging infringement of the ’531 patent on

¹ Petitioner subsequently filed a motion to limit the claims being challenged by its Petition to only claims 1, 18, and 19. Paper 7.

October 4, 2012. *Destination Maternity Corporation v. Target Corporation et al.*, Case No. 2:12-cv-05680-AB (E.D. Pa.) (Dkt. No. 5).

The instant Petition, accorded a filing date of March 14, 2014, was filed more than one year after Petitioner was served with the complaint alleging infringement of the '531 patent. See Paper 5. We may not institute an *inter partes* review when “the petition . . . is filed more than 1 year after the date on which the petitioner, . . . is served with a complaint alleging infringement of the patent.” 35 U.S.C. § 315(b). Section 315(b) further states this “time limitation . . . shall not apply to a request for joinder under subsection (c).” *Id.* Thus, it does not apply to a person’s request to “join as a party to that [i.e., a previously instituted] *inter partes* review.” 35 U.S.C. § 315(c).² However, the time limitation does apply to that person’s petition.

Accordingly, it is

ORDERED that the Petition is denied and no trial is instituted.

² Petitioner’s request for joinder is denied, by separate decision, entered contemporaneously with this Decision.

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