

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT AND APPEAL BOARD

Case IPR2023-01460

Patent 9,730,484

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LULULEMON ATHLETICA

CANADA, INC. and

LULULEMON USA, INC.,

Petitioners,

- against -

NIKE, INC.,

Patent Owner.

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June 7, 2024

9:13 a.m.

VIDEOTAPED DEPOSITION of DR. DAVID
BROOKSTEIN, held at the offices of Knobbe
Martens Olson & Bear LLP, located at 1155
Avenue of the Americas, New York, New York
10036, before Anthony Giarro, a Registered
Professional Reporter, a Certified Realtime
Reporter and a Notary Public of the State
of New York.

lululemon v. NIKE, Inc.
IPR2023-01460
Patent No. 9,730,484
Ex. 2005

1 A P P E A R A N C E S :

2
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7
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22 ALSO PRESENT:
23 BOB RUDIS, Videographer

1 THE VIDEOGRAPHER: Good
2 morning. We are going on the record
3 at 9:13 a.m. on June 7th, 2024.
4 Please note the microphones are
5 sensitive and may pick up whispering
6 and private conversations. Please
7 mute your mobile phones at this time.
8 Audio and video recording will
9 continue to take place unless all
10 parties agree to go off the record.

11 This is Media Unit 1 of the
12 video-recorded deposition of Dr.
13 David Brookstein, taken by counsel
14 for patent owner, in the matter of
15 lululemon USA Inc. versus Nike, Inc.,
16 filed in the United States Patent and
17 Trademark Office, Before the Patent
18 and Appeal Board, Case Number
19 IPR2023-01460. The location of the
20 deposition is Knobbe, Martens, Olson
21 & Bear LLP, 1155 Avenue of the
22 Americas, New York, New York.

23 My name is Robert Rudis.
24 I'm the videographer. The court
25 reporter is Anthony Giarro. And we

1 represent the firm Veritext Legal
2 Solutions.

3 I'm not related to any party
4 in this action, nor am I financially
5 interested in the outcome.

6 If there are any objections
7 to proceeding, please state them at
8 the time of your appearance.

9 Counsel and all present will
10 now please state their appearances
11 and affiliations for the record,
12 beginning with the noticing attorney.

13 MR. BOWLING: Aaron Bowling
14 of Arnold & Porter on behalf of Nike.
15 And with me today is Lindsey
16 Staubach, also of Arnold & Porter.

17 MR. SMITH: Brandon Smith of
18 Knobbe Martens on behalf of lululemon
19 and the witness.

20 THE VIDEOGRAPHER: Will the
21 court reporter please swear in the
22 witness. And then counsel may
23 proceed.

24 D R. D A V I D B R O O K S T E I N,
25 after having first been duly sworn by a

1 Notary Public of the State of New York, was
2 examined and testified as follows:

3 EXAMINATION BY

4 MR. BOWLING:

5 Q Good morning, Dr.
6 Brookstein.

7 A Good morning.

8 Q Thank you for being here
9 today.

10 We just went over this on
11 Wednesday. But we'll go through it one
12 more time, just to make sure we're all on
13 the same page. I'm going to be asking
14 you a series of questions. If there's
15 anything you don't hear, let me know.
16 I'm happy to repeat myself. If there's
17 anything you don't understand, same
18 thing. Just let me know. I'll work with
19 you to figure out what it is you don't
20 understand. But if you do answer my
21 question, I'm going to assume that you
22 heard me, and you understood me, and
23 you're answering to the best of your
24 ability. Does that sound good?

25 A It sounds fine.

1 Q Today's deposition is being
2 transcribed. So if you could please give
3 verbal answers, instead of nodding or
4 saying mm-hmm, that would be helpful to
5 our court reporter. Sound good?

6 A Yes.

7 Q We could take breaks
8 whenever you'd like. The only exception
9 is if I have a question pending, I'll ask
10 for you to answer the question. And then
11 we could take a break right after.

12 A I understand.

13 (The above-referred-to
14 document was marked as Brookstein
15 Exhibit 1 for identification, as of
16 this date.)

17 Q Dr. Brookstein, I've handed
18 you what we've marked as Brookstein
19 Exhibit 1. It's also page No. 15 in the
20 IPR proceeding. Do you recognize this
21 document?

22 A I do.

23 Q What is it?

24 A It's my notice of a
25 deposition.

1 Q You understand that you're
2 testifying today under oath?

3 A I do.

4 Q And that's the same oath
5 that you'd be testifying under if you
6 were in a courtroom before a judge?

7 A I understand.

8 Q Is there any reason you
9 can't give truthful testimony today?

10 A None.

11 (The above-referred-to
12 document was marked as Brookstein
13 Exhibit 2 for identification, as of
14 this date.)

15 Q Dr. Brookstein, we're now
16 handing you what we've marked as
17 Brookstein Exhibit 2. This is also
18 lululemon USA's Exhibit 1002.

19 Do you recognize this
20 document?

21 A Yes.

22 Q And what is it?

23 A It's my declaration in
24 support of the petition for the IPR of
25 U.S. Patent 9730484.

1 Q I'll ask you to turn to the
2 last page of your declaration, page 101.

3 A Yes.

4 Q You see below paragraph 162,
5 there's a date and a digital signature?

6 A Yes.

7 Q Is that your digital
8 signature?

9 A Yes.

10 Q And you signed this document
11 on September 25th, 2023?

12 A Yes.

13 Q Approximately how long did
14 you spend preparing your declaration?

15 A It was a while back. I
16 don't remember. It was probably between
17 40 and 80 hours.

18 Q As you sit here today, are
19 you aware of any inaccuracies in your
20 declaration?

21 A Other than there might be a
22 typo with regard to a citation. And
23 there was a typo. Just give me a second.
24 I can find it. Rather than spend a lot
25 of time looking for that typo, if we get

1 to that part of the declaration, I'll say
2 that was a typo. Is that okay with you?

3 Q Do you remember what the
4 typo referred to or what the subject
5 matter was?

6 A I mentioned two patents.
7 And I should have only mentioned one
8 patent.

9 Q But aside from typos and
10 citations and one instance in which you
11 accidentally mentioned two patents
12 instead of one, you're not aware of any
13 inaccuracies in your declaration?

14 A As I sit here, I'm not aware
15 of any.

16 Q Is there anything that
17 you're aware of that's related to the
18 subject matter of this declaration that
19 you omitted from the declaration?

20 A No.

21 Q No opinions were omitted?

22 A No opinions were omitted.

23 Q Aside from the typos we
24 discussed just a moment ago, are there
25 any changes you'd like to make to your

1 declarations as you sit here today?

2 A No.

3 Q Do you have any opinions
4 related to the '484 patent in the prior
5 art discussed in this declaration that
6 aren't set forth in the declaration?

7 A No.

8 Q I'm going to ask you to turn
9 to paragraph 2 of your declaration. It's
10 on page 9.

11 A Yes.

12 Q You see there, you say that
13 this declaration is provided after my
14 review and analysis of the '484 patent.
15 The prior art, relevant background
16 technology and is also based on my
17 education and experience, as well as
18 additional materials identified herein.

19 Do you see that?

20 A I do.

21 Q During the time when you
22 were rendering your opinions set forth in
23 this declaration, did you read the '484
24 patent in its entirety?

25 A Many times.

1 Q About how many times?

2 A Probably 20.

3 Q And the prior art references
4 that are discussed in your declaration,
5 there's several of them. I'm going to
6 ask you the same question for those, if
7 that's okay.

8 A Whatever you want to ask me,
9 you can ask me.

10 Q During the time when you
11 were rendering your opinions as set forth
12 in this declaration, did you consider the
13 Lockwood reference in its entirety?

14 A Yes, I did.

15 Q How many times?

16 A About 20 times.

17 Q During the time when you
18 were rendering your opinions as set forth
19 in this declaration, did you consider the
20 Dua reference, Exhibit 1004?

21 A Yes.

22 Q And you considered that in
23 its entirety?

24 A Yes.

25 Q How many times?

1 A Approximately 20.

2 Q During the time when you
3 rendered the opinions set forth in this
4 declaration, did you consider the Hong
5 reference in its entirety?

6 A Yes.

7 Q Approximately how many
8 times?

9 A About 20 times.

10 Q During the time when you
11 rendered the opinions set forth in this
12 declaration, did you consider the
13 Voughlon reference in its entirety?

14 A Yes.

15 Q Approximately how many
16 times?

17 A Approximately 20 times.

18 Q Have you read the
19 prosecution history for the '484 patent?

20 A I think I say only excerpts
21 of the prosecution history.

22 Q How did you select the
23 excerpts of the prosecution history that
24 you decided to review?

25 A They were given to me by

1 counsel.

2 Q So you didn't decide which
3 part of the prosecution history to
4 review?

5 A That is correct.

6 Q And you didn't review any
7 aspects of the prosecution history that
8 were not provided to you by counsel; is
9 that correct?

10 A I don't recall if I read
11 anything else.

12 Q As you sit here today,
13 you're not aware of any portions of the
14 prosecution history that you reviewed in
15 preparing your opinions that were not
16 identified for you by counsel; correct?

17 A As best I can recollect.

18 Q Yes?

19 A As best as I can recollect,
20 yes. That's the word I was looking for.

21 Q And I'm just looking for an
22 answer. I know you're doing the best you
23 can to recollect. But you could say as
24 best as I recollect, no; as best as I
25 recollect, yes.

1 A It's a compound question.

2 Q So I'm asking you, as you
3 sit here today, you didn't review any
4 portions of the prosecution history as
5 part of preparing your opinions in this
6 case that were not identified for you by
7 counsel; correct?

8 A Correct.

9 Q How many times did you
10 review the excerpts of the prosecution
11 history that counsel identified for you?

12 A Less than 20.

13 Q Approximately how many would
14 you say?

15 A Five to ten.

16 Q One of the concepts that's
17 discussed in your declaration is
18 knit-to-shape knitting; right?

19 A Yes.

20 Q Are you familiar with that
21 term?

22 A Very familiar.

23 Q What is knit-to-shape
24 knitting?

25 A In the textile industry,

1 another term for it is full-fashioned
2 knitting. It's where -- it's like it
3 says, you're knitting actual to the shape
4 of the thing you're trying to make.

5 Q So knit-to-shape and
6 fully-fashioned are synonyms?

7 A In my mind, yes.

8 Q They mean the same thing in
9 your mind?

10 A In my mind.

11 Q So in your declaration when
12 you say fully-fashioned garments, that
13 just means knit-to-shape garments?

14 A Yes.

15 Q So knit-to-shape is
16 different from cut-and-sew knitting; is
17 that right?

18 A Yes.

19 Q What are the differences
20 between knit-to-shape knitting and
21 cut-and-sew knitting?

22 MR. SMITH: Objection,
23 beyond the scope.

24 A Cut-and-sew would be where
25 you would make various individual parts

1 and then have to sew them together where
2 knit-to-shape, you don't have to sew the
3 parts that were knitted to shape.

4 Q Are there any other
5 differences that you're aware of between
6 cut-and-sew and knit-to-shape?

7 MR. SMITH: Same objection.

8 A It depends on the
9 application.

10 Q Does knit-to-shape knitting
11 yield less waste than cut-and-sew
12 knitting?

13 MR. SMITH: Same objection.

14 A Again, it depends on what it
15 is you're trying to make.

16 Q In some instances, does it?

17 A In some instances, yes.

18 Q And why is that?

19 MR. SMITH: Same objection.

20 A If you're knitting to shape,
21 that means you're knitting to the shape
22 you want. So there would be no waste.

23 Q Because you're not cutting
24 away any of the waste material?

25 A Yes. You're not cutting --

1 let me clarify that. You're not cutting
2 away any waste material that's not part
3 of the finished garment or shoe or
4 whatever it is you're making, but apparel
5 item you're making.

6 Q So knit-to-shape knitting
7 yields less waste in some situations than
8 cut-and-sew knitting because you're
9 knitting directly to the shape, and
10 you're not having to cut away other waste
11 material that's not part of that shape;
12 is that?

13 MR. SMITH: Objection,
14 beyond the scope.

15 A I don't think you really
16 asked -- you made a statement. Then you
17 said is that right, is that considered a
18 question?

19 Q Yes.

20 A Can you repeat it, please?

21 Q Sure.

22 In some situations,
23 knit-to-shape knitting yields less waste
24 than cut-and-sew knitting because when
25 you're doing knit-to-shape knitting,

1 you're knitting directly to a shape, and
2 you don't have to cut away waste material
3 that's not part of that shape; is that
4 right?

5 MR. SMITH: Objection, form
6 beyond the scope.

7 A You're using the wrong term
8 to a shape. You're knitting a shape.
9 You're not cutting to a shape.

10 Q Got it.

11 In what situations would
12 knit-to-shape not reduce the amount of
13 waste material as compared with
14 cut-and-sew knitting?

15 MR. SMITH: Objection,
16 beyond the scope.

17 A Well, if you were knitting
18 to shape and you were knitting multiple
19 components, you could have waste between
20 those components. It's not waste that's
21 part of the item that -- the shape. But
22 there could be parts.

23 Q Connecting pieces?

24 A Connecting pieces.

25 Q That would be if you're

1 knitting a series of knit-to-shape
2 elements?

3 A Yes.

4 Q So you still could have some
5 waste in the knit-to-shape elements, but
6 even in that scenario, wouldn't you have
7 less waste than a cut-and-sew knitting
8 process?

9 MR. SMITH: Objection, form,
10 beyond the scope.

11 A It depends on how much space
12 you want to leave between the series of
13 parts.

14 Q Generally speaking, would
15 you say knit-to-shape yields less waste
16 than cut-and-sew knitting?

17 MR. SMITH: Objection, form.

18 Q Although there may be some
19 exceptions to that?

20 MR. SMITH: Objection,
21 beyond the scope.

22 A Generally, yes.

23 Q How does knit-to-shape
24 knitting work?

25 A Knit-to-shape works by -- it

1 only can be done on a weft knitting
2 machine. And it's done by controlling
3 the knitting needles. So at some points,
4 you don't knit. You leave areas where
5 you're not knitting. And then you'd have
6 a shape where there was no knitting going
7 on.

8 Excuse me a sec.

9 Q Yeah.

10 A Okay.

11 Q Are there other ways to
12 knit-to-shape beyond the way of knitting
13 that you just described where you stopped
14 knitting in certain areas?

15 A What do you mean other ways?

16 Q Are there any other methods
17 of knitting to shape that you're aware
18 of?

19 A Ask that question again.

20 Q I'm just trying to
21 understand how this really works.

22 So you just told me that
23 knitting to shape works by controlling
24 the knitting needles, so there's some
25 areas where you don't knit, and those

1 areas won't have any material, and the
2 other is you do knit?

3 A Right.

4 Q So in that way, you can kind
5 of control the shape; is that right?

6 A That is right.

7 Q So is that programmed into
8 the knitting machine somehow?

9 A Yes. It's programmed in
10 where each needle can be electronically
11 controlled by a program.

12 Q And is that done on a
13 computer?

14 A Well, if it's programmed,
15 yes.

16 Q Is that what's referred to
17 as the fashioning operation?

18 A I don't know what you mean
19 by the fashioning operation.

20 Q You don't know that term?

21 A I know the full fashioning
22 operation. But you just said fashioning.

23 Q You know these terms much
24 better than me. So feel free to correct
25 me, please.

1 A If the question, it's
2 full-fashioned. So repeat the question
3 using the word full-fashioned.

4 Q Okay.

5 So we were talking about
6 programming the needles in a specific way
7 to knit to shape a textile; right?

8 A Correct.

9 Q Is that programming referred
10 to as the full-fashioning operation?

11 A That's one way you could do
12 it. I mean that's one way you could
13 define it, or you could call it
14 knit-to-shape because I already said
15 those are synonymous.

16 Q So full-fashioning
17 operation, is that another term for a
18 knit-to-shape?

19 A I already said that, yes.

20 Q So earlier, we talked about
21 a knit-to-shape garment being the same as
22 a fully-fashioned garment?

23 A Right.

24 Q So a full-fashioning
25 operation is really just a way of

1 knitting a fully-fashioned garment?

2 A Yes.

3 Q Thank you for that
4 clarification.

5 Is there a way to
6 knit-to-shape without the use of
7 computers?

8 A Not that I know of. Can I
9 clarify?

10 Q Of course, always.

11 A The computers don't actually
12 do the knitting.

13 Q Right.

14 A The computers activate or
15 not activate the knitting needles. Prior
16 to the use of computers, they used the
17 CAM system to do that, a mechanical
18 system. This is now an electronic system
19 that was developed in the early '90s.

20 Q So this electronic system
21 that allowed you to knit to shape was
22 first developed in the early '90s?

23 MR. SMITH: Objection, form.

24 A As best as I know, no later
25 than the early '90s. It might have been

1 even before that.

2 Q As best as you know, it was
3 in the early '90s?

4 A I know that in 1995, I went
5 to the International Textile Machinery
6 show in Milan and show a Shima Seiki
7 machine that they were saying was -- they
8 were saying was the first to be -- the
9 first way to do it.

10 Q To do what?

11 A Knit to shape
12 electronically.

13 Q So in 1995 in Milan,
14 Shima -- and that's a manufacturer of a
15 knitting machine?

16 A Shima Seiki.

17 Q So in 1995, you went to
18 Milan, and Shima Seiki, which is a
19 knitting machine manufacturer, told you
20 that they had developed the first
21 knitting machine capable of
22 electronically creating a knit-to-shape
23 textile?

24 MR. SMITH: Objection, form.

25 A Well, they didn't tell me.

1 That's what the sign said, as best as I
2 can recollect. This was 30 years ago.
3 But I did see that machine.

4 Q Were you a professor in the
5 1990s?

6 A Yes. I was a professor and
7 dean of the School of Textile -- at that
8 time, it was called the School of
9 Materials Technology, Textiles and
10 Materials Technology. It was at that
11 time called the Philadelphia College of
12 Textiles and Science. And I was a dean
13 and a professor of textile engineering.

14 Q What was your status in the
15 textile engineering community at that
16 point? Were you well-known, were you
17 considered to have a good grasp of the
18 industry?

19 A I was very well-known. In
20 1989, I received something called the
21 Fiber Society Award for distinguished
22 achievement, which is, in my field, the
23 highest award you can get.

24 Q That was in 1989?

25 A As best to my recollection,

1 yeah.

2 Q And as best as you can
3 recall, the first time you ever heard of
4 an electronic system for creating
5 knit-to-shape textile garments was in
6 1995 when you were in Milan, and you saw
7 some promotional materials from Shima
8 Seiki; is that right?

9 A Yes.

10 Q What did these new
11 electronic systems, like the one made by
12 Shima Seiki, allow individuals to create
13 that they couldn't have created before?

14 MR. SMITH: Objection, form.

15 A To be able to individually
16 control the knitting needles, either
17 going up or down, to catch a loop or not.

18 Q And that control, that's
19 what makes the knit-to-shape garments you
20 were explaining earlier?

21 A As far as I know, yes.

22 Q Was that a big deal in the
23 knitting community?

24 A That's a subjective word. I
25 can't tell you a big deal. I can tell

1 you there were a lot of people around
2 that booth. That's all I remember.

3 Q It's a fair point. Let's
4 talk about your subjective beliefs at
5 that time.

6 When you first saw these
7 electronic systems for flat knitting
8 knit-to-shape garments in 1995, how did
9 you view that advance in the textile
10 engineering arts?

11 A As an advancement.

12 Q Was it a major advancement?

13 A That's subjective.

14 Q In your opinion.

15 A Major advancement in what?

16 Q In the textile engineering
17 world.

18 A Well, that would include
19 yarn manufacturing. There's a lot of
20 different machinery. So you have to be
21 more specific.

22 Q Was it a significant advance
23 in the field of knitted garments?

24 A It was to me.

25 Q Major advance?

1 A Again, I don't like to use
2 words like major or minor. It was an
3 advance.

4 Q But there was a lot of
5 people around that booth, you said?

6 A There were a lot of people
7 around that booth.

8 Q People seemed excited about
9 it?

10 A Yes. Remember, this was 30
11 years ago.

12 Q Right.

13 So with knit-to-shape, we
14 don't need to cut away the material that
15 surrounds the textile element; is that
16 right?

17 MR. SMITH: Objection, form,
18 beyond the scope.

19 A I'd rather use words that's
20 surrounding the textile element, not
21 surrounds.

22 Q When you use knit-to-shape
23 knitting processes, you don't need to cut
24 away the material that is surrounding the
25 textile element; is that right?

1 MR. SMITH: Objection, form,
2 beyond the scope.

3 A That is right.

4 Q And that generally reduces
5 waste; right?

6 MR. SMITH: Objection,
7 beyond the scope.

8 A I think if you don't cut
9 something away, then there's no waste.

10 Q So you're reducing waste?

11 A Yes.

12 Q With knit-to-shape
13 processes; right?

14 MR. SMITH: Objection,
15 beyond the scope.

16 A Right.

17 Q You're probably also
18 reducing some labor because nobody has to
19 stand there and cut it out; is that
20 right?

21 MR. SMITH: Objection, form,
22 beyond the scope.

23 A You'd be reducing labor for
24 that part of it, yes.

25 Q Right.

1 You'd be specifically
2 eliminating the labor that's involved in
3 cutting away the material that's
4 surrounding the textile element; right?

5 A That's correct.

6 Q So there may be other labor
7 involved, but you're eliminating that
8 labor?

9 A Right.

10 Q So with knit-to-shape
11 processes, you're eliminating the cost
12 and the labor associated with removing
13 the material that surrounds the textile
14 element?

15 MR. SMITH: Objection, form.

16 Q Correct?

17 MR. SMITH: Objection, form,
18 beyond the scope.

19 A I would say correct.

20 (The above-referred-to
21 document was marked as Brookstein
22 Exhibit 3 for identification, as of
23 this date.)

24 Q Dr. Brookstein, we've handed
25 you what we've marked as Brookstein

1 Exhibit 3. This is also lululemon's
2 Exhibit 1005 in the IPR proceeding.

3 A Yes.

4 Q Do you recognize this
5 document?

6 A I do.

7 Q What is it?

8 A It's a paper titled
9 "Development of 3D-Shaped Fabrics for
10 Technical Purposes on a Flat Knitting
11 Machine."

12 Q And this is what you
13 referred to in your declaration as the
14 Hong reference?

15 A That's correct.

16 Q So if I use the term Hong
17 reference, you'll know that I'm referring
18 to this?

19 A I will.

20 Q Earlier, you testified, Dr.
21 Brookstein, that the Shima Seiki allowed
22 you to individually control the knitting
23 needles, either going up or down, to
24 catch a loop or not. Do you remember
25 that?

1 A Yes.

2 Q What's the loop that you
3 were referring to there?

4 A What I really meant was the
5 yarn that forms the loop.

6 Q Forms what loop?

7 A The knitted loop.

8 Q And what's a knitted loop?

9 A It depends on for which kind
10 of form of knitting.

11 Q In the context you were
12 using it.

13 A The weft knitting?

14 Q Yes.

15 A A knitted loop is a stitch.

16 Q So a loop just refers to one
17 stitch?

18 A Well, it depends. If you
19 have what's called a tuck loop, you could
20 have one stitch but with two yarns in it.

21 Q So I want you to look down
22 at the first page of the Hong reference.

23 A Yes.

24 Q The second paragraph of the
25 introduction.

1 A Yes.

2 Q It starts with, "For many
3 years."

4 Do you see that?

5 A I do.

6 Q I want you to look at the
7 second sentence.

8 It begins with, "With the
9 further development."

10 Do you see that?

11 A With the further -- the
12 second sentence of --

13 Q The paragraph that we were
14 just looking at.

15 A I don't see that term you
16 just said. Oh. I'm looking -- I thought
17 you meant line. Okay. Second sentence,
18 yes, yes.

19 Q "With the further
20 development of new end uses, it has been
21 realized that each technical product
22 requires a different technical textile
23 with a different set of characteristics.
24 And some of these characteristics might
25 be found in loop-based structures."

1 You see that?

2 A I do.

3 Q What's a loop-based
4 structure?

5 A It's a structure made from
6 loops.

7 Q So that just means a knitted
8 structure?

9 A It includes a knitted
10 structures. As I sit here, I can't think
11 of other looped structures.

12 Q And I'm just trying to
13 understand the terminology because this
14 stuff's a little complicated for me.

15 A That's why I'm here.

16 Q So are all knitted garments
17 loop-based structures?

18 A All knitted garments have
19 loop-based structures. But there are
20 knitted garments that have other
21 structures in them that are not looped.

22 Q But all knitted garments
23 have at least some loop-based structures
24 in them?

25 A That would be fair to say.

1 Q And that's because these
2 loop structures that we're talking about
3 are really just the stitches; it's the
4 way that the fabric is knitted; is that
5 right?

6 A That's the way the fabric is
7 knitted. But there can be other
8 structures in a loop-based structure that
9 are not loops.

10 Q What would be an example of
11 a non-loop-based structure in a knitted
12 garment?

13 A One that has a straight
14 inlay yarn.

15 Q That would run in between
16 loop-based structures?

17 A It would run horizontally
18 between the loop-based structures, yes.

19 Q Anything else?

20 A Not that I can think of.

21 Q So all --

22 A We're only talking about
23 weft knitting.

24 Q I'll be more specific.

25 All weft knitted garments

1 have loop-knitted structures, and they
2 may also have inlay strands; is that
3 correct?

4 A That's fair.

5 Q So when Hong uses this term
6 loop-based structures, that means the
7 really small portions of the knitted
8 garment; right? The actual stitches?

9 A When you say small, you have
10 to be specific.

11 Q Okay.

12 So when Hong uses this term,
13 loop-based structures, they're referring
14 to the individual stitches in the knitted
15 garment?

16 A Yes.

17 Q If I was going to knit a
18 textile that's the size of this piece of
19 paper, 8-by-11 piece of paper, how many
20 loop-based structures would that textile
21 element have?

22 MR. SMITH: Objection, form.

23 A It depends on what size yarn
24 you're using.

25 Q What's a common size yarn?

1 A There's no way to answer
2 that. Yarns vary. Yarns are
3 characterized what's called linear.
4 They're linear density. And they can
5 vary from 50 denier to 1,000 denier. And
6 each one would be different. Or stated
7 another way, if you had a very course
8 yarn, there would be fewer loops. If you
9 had a very fine yarn, there would be more
10 loops.

11 Q Let's say we had a fine
12 yarn --

13 A When you say fine, what do
14 you mean?

15 Q Help me out.
16 What's an example of a yarn
17 size that we could use? What's a common
18 yard size in the industry for knitting
19 shirts, for example?

20 A There's two ways to talk
21 about sizes of yarn. In both cases,
22 we're talking about linear density. In
23 another case, we're talking about direct
24 measurements. And that's usually done by
25 the denier system or the tex system. And

1 there, we talk about how many grams there
2 are. For denier, per 9,000 meters. For
3 the tex system, grams per 10,000 meters.
4 That's called the direct system.

5 Then we have, if you're
6 dealing with staple fibers, which are
7 short fibers like cotton yarns, we use
8 the indirect system. And in that system,
9 we have something called the cotton
10 count, which tells you how many 840-yard
11 segments there are per pound.

12 Q If I wanted to knit a
13 textile element that's the size of this
14 8-by-11 piece of paper, what's the most
15 amount of loop structures you think I
16 could get in that textile element,
17 approximately?

18 MR. SMITH: Objection, form.

19 A There's no way I could tell
20 you that without doing a lot of
21 calculations.

22 Q Would it be like 10 or
23 10,000 or 10 million? I'm just trying to
24 get an understanding of scale.

25 A It wouldn't be 10. But

1 unless I had -- and there's many ways to
2 calculate this and I knew what the yarn
3 size was, you could make that calculation
4 based on the literature. But I don't
5 recall. I can't answer that question.

6 Q What's the minimum amount of
7 loop-based structures you could have in a
8 textile that size? Could you make one
9 with two, with five?

10 A If you had a hypothetical
11 yarn that was one foot in diameter, yeah,
12 one or two.

13 Q So continuing with Hong,
14 let's go to the third paragraph.

15 A Yes, sir.

16 Q Actually, let's go up to the
17 very top.

18 Underneath the title,
19 there's kind of an abstract-type thing up
20 there. Do you see that?

21 A Yes. I see the abstract.

22 Q It begins with, "The use of
23 a new electronic flat knitting machine,
24 Shima Seiki SES 122 FF."

25 You see that?

1 A Yes, I do.

2 Q Is that the knitting machine
3 that you saw in Milan in 1995?

4 A I don't recall the model
5 number.

6 Q But Shima Seiki, that's the
7 company we talked about?

8 A Yes.

9 Q Are you aware of any other
10 new electronic flat knitting machines
11 that Shima Seiki was introducing into the
12 market around that time, other than the
13 one we talked about earlier?

14 A Well, I have a Shima Seiki
15 book called the Wholegarment System. And
16 they list a lot of machines. That's what
17 they do. I don't know when they do them.

18 Q Did you look at that book in
19 preparing your opinions --

20 A No.

21 Q -- in this proceeding?

22 A No.

23 Q But as best we know, sitting
24 here today, the new electronic flat
25 knitting machine that Hong's referring to

1 is the type of flat knitting machine that
2 you saw in Milan which was a new
3 electronic knit-to-shape knitting
4 machine?

5 A I don't know if it was that
6 particular model number, no.

7 Q Do you have any reason to
8 believe that this is referring to a
9 different Shima Seiki machine?

10 A No.

11 Q Let's go down to the third
12 paragraph now.

13 A Okay.

14 Q We're going to go down to
15 the ninth line of the third paragraph.

16 A All right. Let me get my
17 pointer. Ninth line.

18 Q All the way on the right.
19 It starts with the word, "By."

20 A Okay. That helps. Starts
21 with the word - -

22 Q On the right side of the
23 paragraph.

24 A Oh. On the right side.
25 Okay. "By using"?

1 Q Yes. You see that?

2 A Yup.

3 Q "By using the new flat
4 knitting machines"?

5 A Yes.

6 Q Do you think Hong's
7 referring to the new Shima Seiki
8 knit-to-shape machines there?

9 MR. SMITH: Objection, form.

10 A He's talking about the
11 machine in his paper. So I would assume,
12 yes.

13 Q So when Hong refers to the
14 new flat knitting machines in this paper,
15 your understanding is that he's referring
16 to the new electronic systems for making
17 knit-to-shape garments that we talked
18 about earlier that you saw in Milan in
19 1995?

20 MR. SMITH: Objection, form.

21 A Yes. That doesn't mean they
22 were invented in 1995.

23 Q I didn't ask that.

24 A Well, the first sentence of
25 the abstract says, "The use of the new

1 electronic flat knitting machine, the
2 Shima Seiki SES 122 FF." That's how it
3 starts. So yes. The answer to that
4 would be yes.

5 Q So when Hong refers to "the
6 new flat knitting machines" in his paper,
7 your understanding is that he's referring
8 to the new electronic systems for making
9 knit-to-shape garments that we talked
10 about earlier that you saw in Milan for
11 the first time in 1995; is that correct?

12 A That I saw for the first
13 time, yes.

14 Q That's correct?

15 A That's correct.

16 Q He says, "By using the new
17 flat knitting machines, it is possible
18 not only to knit the new loop structures,
19 which are not possible on the
20 conventional flat knitting machines, but
21 also knit fully-fashioned garments."

22 Do you see that?

23 A I do.

24 Q And when he says
25 "fully-fashioned garments" there, we

1 talked about this earlier, that's a
2 knit-to-shape garment; right?

3 A That's my understanding.

4 Q So Hong here is saying, by
5 using these new flat knitting machines,
6 you can knit these new loop structures
7 which allow you to make a knit-to-shape
8 garment; right?

9 MR. SMITH: Objection, form.

10 A Well, he says "fully
11 fashioned garment." But we're saying
12 fully-fashioned is synonymous with
13 knit-to-shape.

14 Q Right.

15 You told me that earlier.

16 A Yes. But you were reading a
17 sentence, but you weren't readying it
18 exactly.

19 Q Oh, no. I wasn't reading.

20 A I thought I understood it
21 that you were reading this sentence.

22 Q My apologies.

23 To summarize what Hong is
24 saying here, using the language that you
25 and I have been using today, is it

1 accurate to say that Hong is describing
2 using these new flat knitting machines to
3 create "new loop structures that allow
4 for the creation of knit-to-shape
5 garments"?

6 A You could say that, yes.

7 Q And then he says, "This is
8 very important to reduce the waste of
9 expensive materials during cutting, as
10 well as eliminating the additional making
11 up operation."

12 Do you see that?

13 A I do.

14 Q That's consistent with what
15 we talked about earlier; right?

16 A It's very consistent.

17 Q So Hong is saying knitting
18 to shape reduces the waste of the
19 materials during cutting and the sewing
20 of those cut-and-sew materials; correct?

21 MR. SMITH: Objection, form.

22 A He's saying additional
23 making up operation which in the apparel
24 industry, that is considering sewing,
25 yes.

1 Q And those are the same
2 things that you and I talked about
3 earlier; right?

4 A They are.

5 Q So knit-to-shape reduces the
6 waste of the cutting materials and the
7 sewing that's required when you're sewing
8 together different parts to create that
9 shape; is that right?

10 A Yes.

11 Q Let's look at the header on
12 the right side that says "Short
13 Description of the Shima Seiki SES 122 FF
14 Flat Knitting Machine."

15 Do you see that?

16 A I do.

17 Q It says, "The SES 122 FF
18 machine is one of a new generation of
19 computer controlled flat knitting
20 machines."

21 You see that?

22 A I do.

23 Q That's consistent with your
24 understanding, what you said earlier,
25 which was that these new machines had a

1 new capability which is they could knit
2 to shape; correct?

3 MR. SMITH: Objection, form.

4 A Correct.

5 Q Then Hong says, "The main
6 features of this machine are as follows."

7 The first feature he
8 discusses is a double CAM system by
9 knitting and transfer facilities at each
10 CAM system in which 31 different stitch
11 lengths can be set.

12 You see that?

13 A I do.

14 Q What does that mean?

15 A It means that you could
16 determine -- I'd have to draw a picture
17 for you.

18 Q Sure.

19 You could draw it on the
20 back of Brookstein Exhibit 3.

21 A So if this is a loop, he's
22 talking about this as the length.

23 Q Okay.

24 A So a loop has the top part
25 and then the length, and then it goes

1 around again. He's talking about that
2 part there.

3 Q And what is he saying about
4 that part that you could set it to 31
5 different lengths?

6 A That's what he's saying,
7 that you can have 31 different lengths.

8 Q And that helps create
9 knit-to-shape garments how?

10 A I don't think you have to --
11 that's not what you need to knit to
12 shape. What you need to knit to shape is
13 to be able to control the needles.

14 Q So this was just some other
15 benefit of the machine?

16 A Correct.

17 Q What was the benefit of
18 being able to knit 31 different stitch
19 lengths?

20 A Well, in the context of the
21 Hong paper, that is one of the key
22 points, what Hong's saying by being able
23 to do that, you can make complex shapes.

24 Q So you can make more complex
25 knit-to-shape shapes?

1 A Yes.

2 Q It wasn't just that you
3 could knit to shape, but because of this
4 specific double CAM system --

5 A Right.

6 Q -- you're able to create
7 complex knit-to-shape elements with this
8 Shima Seiki machine?

9 A It's my understanding, yes.

10 Q So this first benefit, the
11 double CAM system of the Shima Seiki
12 machine, that's for complex knit-to-shape
13 elements?

14 A That's if you're using -- if
15 you're using all, you use 31 different
16 stitch lengths; okay? That doesn't mean
17 you have to use different. It just means
18 you have that option to do that. So it
19 could all be the same.

20 Q So this double CAM system of
21 the Shima Seiki machine gave you the
22 capability to use 31 different stitch
23 lengths, which allowed you, if you
24 wanted, to create more complex
25 knit-to-shape elements?

1 A Right. You might use five
2 different stitch lengths. You might use
3 ten different stitches. You don't have
4 to use 31. It's within that range.

5 Q Okay.

6 But that capability allowed
7 you to make more complex knit-to-shape
8 elements?

9 A That's the way I understand
10 it.

11 Q Let's go to the next one.
12 It says, "The combination of
13 holding down sinkers and presser foot in
14 the machine facility which enables the
15 knitting of fancy stitch effects and
16 knit-to-shape."

17 What does that mean?

18 A It means that you could
19 make -- the way I read that, fancy stitch
20 effects would be those effects that would
21 yield -- could yield complex shapes.

22 Q So this second feature of
23 the Shima Seiki machine also gives users
24 the capability of making more complex
25 knit-to-shape elements?

1 A That's my understanding.

2 Q And what does it mean to
3 hold down sinkers and presser foot?

4 A Okay. So when you knit,
5 yarn has to come off the machine. And
6 what a presser foot does is it gives you
7 the opportunity to not have to roll the
8 fabric up. You could just have a piece
9 of fabric come off the machine. And when
10 you're done knitting, it falls on to the
11 floor -- well, not on the floor -- but
12 into a container, something like that.

13 Q So when you press the
14 presser foot, it releases the textile
15 element; is that right?

16 A No. It not so much releases
17 it. It pulls it down off the needle.

18 Q Which allows you to kind of
19 stop that knitting process exactly when
20 you want?

21 A Not stop the knitting
22 process. It means you're done with that
23 course, the course being the horizontal
24 row of loops.

25 Q So if you wanted to start

1 and stop knitting in certain places, you
2 would use that presser foot to pull the
3 element off and on; is that right?

4 A No, no, no. The presser
5 foot pulls down the entire fabric; okay?
6 I want to get it really straight. Give
7 me the question so I could give you a
8 really precise answer.

9 Q Sure. I'm just trying to
10 understand better. And forgive me
11 because I'm screwing this up. But I'm
12 trying to understand what the presser
13 foot means.

14 A My job here as an expert is
15 to tell you how it works, the way I
16 understand it.

17 Q Okay. So help me understand
18 what this sinker and presser foot does.
19 Just say it one more time in your own
20 words.

21 A So you've made a loop.
22 You've made a loop with a knitting
23 needle. In some cases, when you're doing
24 full fashioning, you're skipping making
25 loops along the vertical direction. That

1 could be called the wale direction. So
2 what this does is, it gives -- you've
3 made that loop. Now you have to remove
4 that from that course; okay? And the
5 needle -- there's two kinds of knitting
6 needles. There's what's called a bearded
7 knitting needle and a latch knitting
8 needle. And if you'd like, I could get
9 into the details of that. It's not
10 really important.

11 Q Okay.

12 A What is important is you've
13 made that loop now. And now you've got
14 to get it away from the knitting needles
15 so you could knit the next set of loops,
16 the next course of loops. What these
17 devices do, the sinker and the presser,
18 is help remove it from the needles that
19 were knitting. Again, I want to
20 emphasize: Not all the needles along the
21 width of the machine are knitting which
22 is what gives you the full fashion.

23 Q So this portion is critical
24 to knit-to-shape, this presser foot and
25 sinker capability?

1 A In my mind it is, yes.

2 Q You couldn't knit to shape
3 without that?

4 A I don't want to say you
5 couldn't. I don't know of a way to do
6 it.

7 Q Only three more features to
8 explain to me.

9 A That's fine.

10 Q The next feature of the
11 Shima Seiki machine talks about a belt
12 drive system that gives smooth and
13 high-speed carriage travel which enables
14 the yarn to be picked up or not as
15 required. What does that refer to?

16 A Okay. When you knit, when
17 you weft knit, you're knitting one yarn
18 at a time. And the yarn starts at one
19 end, one side of the fabric. And then it
20 has to be carried across the width of the
21 machine, and that belt drive enables you
22 to do it in a relatively quick fashion.

23 Q So is this also a feature
24 that enables knitting to shape?

25 A No. You'd have to do that

1 even if you weren't knitting to shape, if
2 you were just doing a straight piece of
3 fabric.

4 Q So why was this a feature or
5 I guess was this a new feature that was
6 introduced in the Shima Seiki machine or
7 that's something that existed before?

8 MR. SMITH: Objection, form.

9 A I don't know if it existed
10 before. He's just -- the author's just
11 saying it's in there. I don't know if it
12 existed before.

13 Q And what would you say is
14 the main purpose of that at a high level
15 of that feature?

16 A You can knit quicker.

17 Q So it's a quickness, speed
18 type feature?

19 A It's my understanding it is,
20 yes.

21 Q Next one, it says, "The
22 setup device in finally-tuned takedown
23 system for added take down requirements."

24 What does that mean?

25 A That's just referring back

1 to the presser foot-sinker combination.

2 Q So that's also just a
3 feature that's required for knitting to
4 shape?

5 A Yes.

6 Q And then the last feature of
7 the Shima Seiki machine listed here
8 says, "The machine controller which is
9 programmed for knitting and shaping from
10 a microcomputer with floppy disk drive
11 and has a screen resolution of
12 1024-by-1024 pixels."

13 What does that refer to?

14 A That's just referring to the
15 programming system that tells the needles
16 to go up or down.

17 Q So that computer is what
18 programs in the shape of the
19 knit-to-shape garment?

20 A No. That computer program
21 determines which needles are active and
22 which needles are inactive. As a result
23 of that, you get the knit-to-shape. But
24 that in and of itself is not making you
25 knit to shape.

1 Q Right.

2 The computer isn't making
3 it?

4 A Right.

5 Q It's telling the needles --

6 A But I want to be really
7 specific here.

8 Q So this last feature of the
9 Shima Seiki machine refers to a computer
10 that allows you to program the needles,
11 such that the needles can generate the
12 exact shape of the knit-to-shape garment
13 that you want; is that right?

14 A You're missing a step.

15 Q Okay.

16 A Read what you just -- back
17 what you just said to me.

18 Q So this fifth feature of the
19 Shima Seiki machine described in Hong,
20 the machine controller refers to a
21 computer that allows the user to program
22 the needles, such that the needles will
23 knit and not knit in a way that generates
24 a specific shape for the knit-to-shape
25 garment; is that right?

1 A That's right. I thought I
2 missed something, the way you read it.

3 Q So all --

4 THE WITNESS: And I'm going
5 to need a break. One more question.
6 Then I want a break.

7 MR. BOWLING: Okay.

8 Q So these features of this
9 new knitting machine introduced by Shima
10 Seiki allowed for the knitting of complex
11 knit-to-shape elements, and the belt
12 drive system also provided some
13 additional quickness to the knitting
14 process; is that right?

15 A The way I understand it,
16 yes.

17 Q Are you aware of --

18 THE WITNESS: Remember I
19 said one more question, and I need a
20 break?

21 MR. BOWLING: Can I ask you
22 one more wrap-up question, and then
23 we're done?

24 THE WITNESS: Yes.

25 MR. BOWLING: Thank you.

1 Q Are you aware of any other
2 benefits provided by these features of
3 the Shima Seiki machine that we haven't
4 discussed?

5 A As I sit here, no. But I'd
6 have to think more about it.

7 MR. BOWLING: We could take
8 a break.

9 THE VIDEOGRAPHER: Off the
10 record at 10:16.

11 (A short recess was taken.)

12 THE VIDEOGRAPHER: On the
13 record at 10:22, marking the
14 beginning of Media unit No. 2.

15 Q Let's go down to the next
16 heading, Dr. Brookstein, of Hong.

17 On page 2 of the left-hand
18 column, it says "Three Techniques for
19 Knitting to Shape."

20 Do you see that?

21 A I do.

22 Q It says, "On flat knitting
23 machines, it is possible to use the
24 following techniques for knitting to
25 shape."

1 The first says, "Using
2 different structural combinations."

3 The next one says, "Using
4 different loop lengths."

5 And the last one says,
6 "Altering the number of operating needles
7 from course to course."

8 Are these the same types of
9 things we talked about earlier with
10 knitting to shape?

11 A I don't think we talked
12 about different structural combinations.

13 Q What does that mean?

14 A Well, in weft knitting,
15 there are several commonly known
16 stitches. There is a jersey stitch,
17 there's a rib stitch, there's a purl
18 stitch, there's a tuck stitch. These are
19 all different ways to describe how the
20 loops are interlooped next to each other
21 along a course.

22 Q So a different structural
23 combination would mean a different
24 combination of those types of commonly
25 known stitches?

1 A That's the way I understand
2 it.

3 Q Using different loop
4 lengths, we talked about earlier.

5 That would allow you to make
6 different shapes and more complex shapes?

7 A Not different shapes,
8 different lengths of what's called the
9 leg of the loop, the leg of the loop.

10 Q And what would that allow
11 you to do?

12 A Well, that's the whole
13 concept of what he's trying to show here
14 and being able to do 3D products, that
15 you could make different loop lengths
16 along different wales, different lengths
17 along different wales.

18 Q Help me understand that
19 because earlier, you testified that the
20 different loop lengths, the 31 different
21 stitch lengths -- right?

22 A Right.

23 Q -- would allow you to make
24 more complex knit-to-shape elements;
25 right?

1 A I did say that.

2 Q So help me understand.

3 And this is talking about
4 knitting to shape; right?

5 A That's my understanding,
6 yes. That's what it says.

7 Q So he's saying there's three
8 techniques for knitting to shape?

9 A Right.

10 Q The first technique is to
11 use structural combinations which means
12 different combinations of the commonly
13 known stitch types: Jersey stitch, tuck
14 stitch, purl stitch, that sort thing;
15 right?

16 A Yes, sir.

17 Q So that's the first
18 technique for knitting to shape?

19 A Right.

20 Q So the second technique for
21 knitting to shape that Hong describes is
22 using different loop lengths.

23 How does different loop
24 lengths allow you to knit to shape?

25 A Because using different loop

1 lengths allows you to have complex shapes
2 which is described later on in Figure 1.

3 Q How do different loop
4 lengths allow you to have more complex
5 shapes?

6 A Because you're not having
7 along a given wale as many loops.

8 Q And what does that translate
9 to when we look at a finished garment?

10 A It would be narrower if you
11 didn't have as many loops. If you had
12 more loops, it would be wider.

13 Q What would be narrower?

14 A The fabric.

15 Q So the width of the fabric
16 could vary, depending on the length of
17 the loops?

18 A It's not so much the length
19 of the loops. It's the absence of loops
20 because you have a longer length. So
21 there are no loops in that area than
22 there would be if you don't have a longer
23 length.

24 Q So by using different loop
25 lengths, you can knit to shape because

1 you can reduce the number of loops in a
2 given part of the garment and, therefore,
3 adjust the width of that garment; is that
4 right?

5 A Yes. That's an important
6 part, the width of the garment.

7 Q And then the third technique
8 for knitting to shape is altering the
9 number of operating needles from course
10 to course.

11 That's what we talked about
12 earlier where you knit in some areas, and
13 you don't knit in others; right?

14 A That's correct.

15 Q So these three techniques,
16 these are ways to knit to shape,
17 different techniques for knitting to
18 shape; right?

19 A Well, when you say shape,
20 are you talking about shape in the
21 plainer sense or shape in the
22 three-dimensional, three dimensions?

23 Q Well, when we've been
24 talking about knit-to-shape, what do you
25 mean by that?

1 A Well, it could be either.
2 But in this particular case, we're
3 talking about making 3D items. But you
4 could also knit to shape -- let's say
5 you're making just a flat piece of fabric
6 and you want to change the width, that's
7 knitting to shape also.

8 Q Which of these three
9 techniques set forth here in Hong on page
10 2 would allow you to knit a
11 three-dimensional structure during the
12 knitting process?

13 A Using different loop lengths
14 and altering the number of operating
15 needles from course to course.

16 Q So let's take the first one.
17 Where does Hong describe
18 using different loop lengths to form a
19 three-dimensional structure during the
20 knitting process?

21 A I'd have to look at the
22 paper. It's in there. But I'd have to
23 look in the paper.

24 Q Yes. Please do.

25 A That's what he's showing in

1 Figure 1.

2 Q Figure 1, show me where the
3 different loop lengths are shown.

4 A Well, on the far left, you
5 see -- upper left-hand corner, you see
6 the No. 1. That's a loop. The lower
7 left-hand corner, No. 1, that refers to
8 Wale 1, that's the next loop.

9 So that means between 1 at
10 the top and 1 on the bottom, that would
11 be the length of the loop, the length of
12 the leg of the loop, the length of the
13 leg of the loop.

14 Q So T1 refers to the length
15 of the loop?

16 A T1, no. T1, yes, yes. T1
17 is length of the loop.

18 Q What about Figure 1 tells
19 you that a three-dimensional structure is
20 being formed during the knitting process?

21 A Because along each course,
22 you're having -- in this particular case,
23 each course has a smaller -- a lower
24 number of loops. So you see in the top
25 course, you have ten loops. The next

1 course, we have eight loops. The next
2 course, we have six loops and so on. And
3 then it starts to increase again. So
4 that means you're changing the shape.

5 Q I understand you're changing
6 the shape.

7 But where does that show a
8 three-dimensional object being formed?

9 A No. That doesn't show a
10 three-dimensional. But a POSA would look
11 at that and know that you would get a
12 three-dimensional form from that 2D plan.

13 Q What do you mean a POSA
14 would know that you would get a
15 three-dimensional form from that 2D plan?

16 A Because if you're changing
17 the number of loops in a course, in
18 subsequent courses, that fabric is going
19 to take on a shape.

20 Q Is that described anywhere
21 in Hong?

22 A It's what his whole paper's
23 about. I don't know if it's described
24 normally. A POSA would look at that and
25 know that's what he's trying to show

1 there.

2 Q How do you know that this
3 isn't just showing a two-dimensional
4 object that's knit-to-shape with certain
5 gaps we talked about, certain areas where
6 you're not knitting?

7 A You're talking about apples
8 and oranges here. If you look at
9 Figure 2, which is a V bed machine, a V
10 bed machine is knitting what you see in
11 Figure 1. And as a result of what you're
12 knitting in Figure 1, it will come off in
13 a three-dimensional shape.

14 Q I just don't understand how
15 this is showing a three-dimensional
16 shape.

17 Where T1 is, couldn't that
18 just be a gap where there's no knitted
19 material?

20 A No. There's the yarn there.
21 There's still yarn. Remember I said it's
22 the length of the leg.

23 Q Is there anywhere in Hong
24 where T1 is described as the loop length?

25 A No. A POSA would know

1 that's what it means.

2 Q Do you have any evidence to
3 support that?

4 MR. SMITH: Objection, form.

5 A My 49 years of experience as
6 a textile engineer.

7 Q Anything else?

8 A No.

9 Q There's nowhere in Hong
10 where Figure 1 is described as creating a
11 three-dimensional object; is that right?

12 A Well, the first sentence
13 under 3.2, "Fabrics knitted with the same
14 knitted structure, but using different
15 loop lengths have different geometrical
16 dimensions."

17 Q Right, geometrical
18 dimensions.

19 That doesn't say anything
20 about three-dimensional.

21 MR. SMITH: Objection to
22 form.

23 Q In Figure 1, the only place
24 it is described, it says "fashioning
25 operation, decreasing and increasing the

1 number of knitting needles in one needle
2 bed."

3 You told me earlier that's
4 just one way to knit to shape.

5 A To shape this way, along the
6 width. And I'm telling you when you do
7 it this way, the way they're showing it
8 in Figure 1, you're going to end up with
9 a resulting shape that is not a flat
10 piece of fabric.

11 Q But that's not described
12 anywhere here?

13 A It's described to me.

14 Q Just by looking at Figure 1?

15 A Looking at Figure 1 and
16 Figure 2 together, yes.

17 Q So your testimony is that a
18 skilled artisan in looking at nothing
19 other than Figure 1 and Figure 2 would
20 know that Figure 1 is creating a
21 three-dimensional garment?

22 A Could, yes; could.

23 Q But it doesn't have to?

24 A I'm not sure about the have
25 to. I'm not sure. I know it could.

1 Q You said Figure 1 could
2 create a three-dimensional garment?

3 A Could, yes.

4 Q In what circumstances would
5 Figure 1 not create a three-dimensional
6 garment?

7 A I don't know how to answer
8 that question.

9 Q I just asked you if a
10 skilled artisan in looking at Figure 1
11 would know that Figure 1 is creating a
12 three-dimensional garment. And you said
13 it could.

14 A Right.

15 Q So that suggests to me that
16 there's times where it wouldn't.

17 A Not necessarily. But I mean
18 here again, skilled artisan sees this
19 paper, sees the title and says how do I
20 do it? And then it tells you how to do
21 it in the paper here.

22 Q But I don't see anywhere
23 where it tells you how to do it. It
24 shows decreasing and increasing in the
25 number of knitting needles in one needle

1 bed.

2 MR. SMITH: Objection, form.

3 Q So you mean to tell me that
4 just this 10-by-10 grid showing gaps in
5 between some of the garment, that alone
6 tells you it's going to take a
7 three-dimensional form?

8 MR. SMITH: Objection, form.

9 A I'm telling you that when
10 you have the layout that you see in
11 figure 1 and you submit to that layout,
12 the fabric that comes off the machine
13 will have a shape to it. That's not
14 necessarily flat.

15 Q But it could be flat?

16 A I don't know if it could be
17 flat.

18 Q How do you not know?

19 MR. SMITH: Objection, form.

20 A I haven't really thought
21 about that. I was focusing on how to
22 make a 3D fabric.

23 Q What do you mean you weren't
24 focused on whether this could come off
25 the machine flat?

1 MR. SMITH: Objection, form.

2 Q You're telling me a skilled
3 artisan would look at this and know it's
4 a three-dimensional form?

5 A I would.

6 Q As you sit here today?

7 A Yes.

8 Q But in 2006, would a skilled
9 artisan have looked at this and known
10 that it created a three-dimensional form?
11 Did you do that analysis?

12 A No. In 1994, a skilled
13 artisan would know this.

14 Q Did you do an analysis of
15 how a skilled artisan would interpret
16 this Hong reference in 2006?

17 A In 2006?

18 Q Yes.

19 A If they read the paper from
20 1994, yes.

21 Q What did you do to conduct
22 that analysis?

23 A I didn't.

24 Q What do you mean?

25 A I see this paper. This

1 paper instructs me how to make a 3D shape
2 structure.

3 Q Today, it instructs you?

4 A No. If I read it in 1994,
5 it would instruct me.

6 Q How do you know?

7 A Because I put myself in
8 1994, and I'm reading this, and I'm
9 saying, oh, this is how you make a 3D.

10 Q But in 1994, you'd never
11 even seen one of these machines.

12 MR. SMITH: Objection, form.
13 Please let him finish.

14 A I didn't have to see a
15 machine. I've seen an explanation of the
16 machine.

17 Q So your testimony is that
18 before you even know about knitting to
19 shape, you could have looked at Figure 1
20 and known that this yielded a
21 three-dimensional textile?

22 MR. SMITH: Objection, form.

23 A I'm knowing that in 1994, if
24 I read this paper, I would be instructed
25 on how to make -- and you keep saying

1 knit to shape. What I mean is knit to a
2 shape that's not a flat fabric.

3 Q So didn't you tell me
4 earlier that decreasing and increasing
5 the number of needles in the needle bed
6 is a way to create a two-dimensional
7 knit-to-shape garment?

8 A Yes.

9 Q That's exactly how Figure 1
10 is described, decreasing and increasing
11 the number of knitting needles in one
12 needle bed.

13 MR. SMITH: Objection, form.

14 A No, it's not, because --

15 Q That's what it says.

16 MR. SMITH: Objection, form.

17 Please let him finish. I'm talking
18 to counsel, not you.

19 A Ask me again.

20 Q I just read directly from
21 the description of Figure 1. And it's
22 consistent with what you just said,
23 yields a two-dimensional knit-to-shape
24 garment, decreasing and increasing the
25 number of knitting needles in one needle

1 bed.

2 A Correct, no. It is talking
3 about the fashioning operation. And the
4 fashioning operation, it does not say
5 that it makes it 3D. But that's the
6 subject of this paper. Yes, you could
7 use this to make a fashion -- a
8 full-fashioned garment, yes.

9 Q So you could use Figure 1 to
10 create a two-dimensional knit-to-shape
11 textile; correct?

12 A To which shape? A 3D shape
13 or a 2D?

14 Q No. A two-dimensional
15 textile.

16 Could you use the layout
17 here in Figure 1?

18 A I haven't considered that.

19 Q You never considered that?

20 A No.

21 Q So you never considered
22 whether the layout in Figure 1 of Hong
23 would yield a two-dimensional textile
24 garment?

25 A Could, if it could do it.

1 Q So you never considered
2 whether the layout in Figure 1 of Hong
3 could yield a two-dimensional
4 knit-to-shape textile garment; correct?

5 A Correct.

6 Q What else would you need to
7 know to determine whether what's shown in
8 Figure 1 could yield a two-dimensional
9 knit-to-shape textile garment?

10 A If the number of courses,
11 change in the number of courses was not
12 as dramatic as you see here where you go
13 from one wale -- let's say ten wales to
14 two wales for that section.

15 Q What would that tell you?

16 A It would tell me that it's
17 primarily still plainer. For instance,
18 if you went -- if the first course were
19 one to ten, and the second course were
20 three to ten and then the next course was
21 back to one to ten, that would probably
22 be a flatter garment. But this is much
23 more dramatic than that, changing the
24 number of wales, wales in a course.

25 Q So when you look at

1 Figure 1, the thing that tells you that
2 this forms a three-dimensional structure
3 during the knitting process is that the
4 number of wales, as we move from the top
5 to the bottom of the figure, changes
6 dramatically?

7 A Not the number of wales, but
8 the number of loops in a course. And
9 then it increases. When you get about
10 halfway down, then it starts to go up
11 again.

12 Q Where does it show you the
13 number of loops in a course?

14 A By those numbers.

15 Q So those numbers are loops
16 in a course?

17 A That's the way I understand
18 it.

19 Q Where does it say that?

20 A That's common. A person who
21 understands the knitting knows what that
22 would mean.

23 Q So when you look at Hong
24 Figure 1, the only thing that tells you
25 this forms a three-dimensional structure

1 during the knitting process is that the
2 number of loops in each course decreases
3 and then increases at a dramatic rate?

4 MR. SMITH: Objection, form.

5 A Did I use the word dramatic?

6 Q Yes.

7 A It changes. I'd like to
8 just say it changes.

9 Q But doesn't changing the
10 number of loops just change the width of
11 the material?

12 A Not if the loop length also
13 increases.

14 Q How do you know the loop
15 length is increasing here?

16 A Because they're showing it
17 to you. That's what 11 and 12 are or T1
18 is and T2 and T3 and T4.

19 Q Where does Hong disclose
20 that T1 and T4 are the loop lengths?

21 A In the picture, in the
22 drawing.

23 Q Anywhere else?

24 A Well, under lower take down
25 tension, T1's greater than T2; T3 is

1 greater than T4.

2 Q But that doesn't say they're
3 loop lengths?

4 A But that's the way I read
5 it.

6 Q But it doesn't say that?

7 A In those words, no.

8 Q So nowhere does Hong say
9 that T1, T2, T3 and T4 are loop lengths;
10 correct?

11 A It says it schematically,
12 but not verbally.

13 Q In your opinion?

14 A Everything's in my opinion.

15 Q Hong nowhere discloses that
16 1 through 10 refer to the number of
17 loops; right?

18 A Number of -- no. But that
19 would be the way a POSA would understand
20 what that means.

21 Q But in the text of Hong,
22 nowhere is T1, T2, T3 and T4 discloses
23 loop lengths, and nowhere are the Nos. 1
24 through 10 of Figure 1 described as the
25 number of loops; right?

1 MR. SMITH: Objection, form.

2 A As I recall, not verbally,
3 but in the drawing, yes.

4 Q That's how you interpret the
5 drawing?

6 A That's how a POSA would
7 interpret the drawing.

8 Q Is that in your declaration
9 anywhere?

10 A I don't know. Give me a
11 minute to look at my declaration.
12 Page 57, just in paragraph 57 where it
13 says Hong describes three processes for
14 knitting three-dimensional shapes, using
15 different structural combinations, using
16 different loop lengths and altering the
17 number of knitting needles and knitting
18 courses.

19 Q But we looked at those
20 earlier. Those aren't processes for
21 knitting three-dimensional shapes.

22 Hong says specifically that
23 those are "techniques for knitting to
24 shape"; right?

25 MR. SMITH: Objection, form.

1 A For knitting to
2 three-dimensional shapes.

3 Q No. That's not what Hong
4 says.

5 MR. SMITH: Objection, form.

6 Q Page 2 of Hong, the heading
7 on the top left says "Techniques for
8 Knitting to Shape."

9 Where in that paragraph do
10 you see three-dimensional?

11 A Well, that's the title of
12 the paper. That's what he's talking
13 about. The title of the paper is "The
14 Development of 3D-Shaped Knitted Textile
15 Fabrics."

16 So the whole point of this
17 paper is about 3D shapes.

18 Q So because the title of this
19 paper is "The Development of 3D Shaped
20 Knitted Fabrics," you interpret knitting
21 to shape in each instance in this paper
22 as knitting to a three-dimensional shape?

23 A That's what it says right
24 there in the abstract, yes.

25 Q Where does it say that?

1 A The use of the new
2 electronic flat knitting machines, Shima
3 Seiki, whatever, for producing
4 three-dimensional-shaped fabrics for
5 technical purposes as described, the
6 three methods which can be applied to
7 knit to shape. And in that case, it
8 refers back to the title which should be
9 3D shape, for example --

10 Q Where does that refer back
11 to the title?

12 MR. SMITH: Objection. Let
13 him finish, please.

14 Q I don't see a reference back
15 to the title.

16 A But that's what the paper's
17 about. So why would you have an abstract
18 about something that wasn't in the title?
19 It wouldn't make any sense.

20 Q Well, in the first sentence,
21 it says "three-dimensional-shaped
22 fabrics"; right?

23 A Right.

24 Q Yes?

25 A Yes.

1 Q In the second sentence, it
2 says "knit-to-shape."

3 So the author knew how to
4 say three-dimensional shaped fabrics when
5 he wanted to, but he didn't say that in
6 the second sentence. He just said
7 knit-to-shape.

8 MR. SMITH: Objection, form.

9 A When you write a technical
10 paper, a lot of times, there are word
11 count limitations. So I wasn't there
12 when he wrote it. But it's clear to
13 me -- and it would be clear to a POSA --
14 this whole paper's about 3D
15 knit-to-shape -- a technique for knitting
16 to shape, a 3D shape.

17 Q So the title says "The
18 Development of 3D-Shaped Knitting
19 Fabrics"; right?

20 A Yes.

21 Q If I take a 2D fabric and I
22 fold it into a three-dimensional shape,
23 have I developed a 3D-shaped fabric?

24 A You haven't knitted a
25 3D-shaped fabric.

1 Q The title says "The
2 Development of 3D-Shaped Knitted
3 Fabrics"; right?

4 A Yes.

5 Q If I knit in a 2D form and I
6 knit it in a specific way that allows it
7 to be folded easily and then I fold it
8 into a 3D form, have I developed a
9 3D-shaped fabric?

10 A You haven't developed --
11 yeah. You developed a 3D-shaped fabric
12 after you knitted, yes, but not during
13 knitting. This is during knitting.

14 Q Where does it say "during
15 knitting" in the title?

16 A It doesn't have to. If they
17 meant just doing a fit-to-shape material
18 that wasn't 3D shaped, there would be no
19 reason to have this paper.

20 Q But you told me that
21 knit-to-shape was introduced around 1995,
22 and you told me that in 1995, people were
23 very excited about that advance.

24 MR. SMITH: Objection, form.

25 Q So why wouldn't this paper

1 in 1994 have been about knitting specific
2 types of knit-to-shape articles that you
3 could then fold into 3D shapes?

4 MR. SMITH: Objection, form.

5 A I don't know why -- I don't
6 know why he wrote that. This is what he
7 wanted to write about.

8 Q Yeah.

9 But you're assuming that
10 this title's about developing 3D-shaped
11 fabrics during the knitting process. But
12 it doesn't say that.

13 MR. SMITH: Objection, form.

14 Is there a question there?

15 A That title says to me about
16 knitting a 3D-shaped fabric during the
17 knitting process.

18 Q But it doesn't say that.

19 A It says it to me.

20 Q Where?

21 A Again, as a POSA, when I
22 read this, I would read this and say this
23 is a way I could make 3D knitted fabrics.
24 Of course, you could make a 3D fabric by
25 taking a piece of fabric and folding it.

1 That's not new. You would get a paper
2 publication if you said that.

3 Q But what if I was able to
4 use these new knit-to-shape machines to
5 knit a specific shape that allowed me to
6 fold without any cutting steps? Wouldn't
7 that be an advance?

8 A No.

9 Q Why not?

10 A You could always take a
11 piece of fabric and fold it ever since
12 we've had knitting.

13 Q But I'm talking about
14 without cutting steps.

15 You told me earlier that
16 knitting to shape without cutting shapes
17 was an advance in 1995.

18 MR. SMITH: Objection, form.

19 A I was specifically talking
20 about knitting to 3D shapes was an
21 advance.

22 Q You didn't say that.

23 A Well, that's what I meant.

24 Q So your testimony is that in
25 1995 in Milan, this Shima Seiki machine

1 that you saw was knitting
2 three-dimensional shapes?

3 MR. SMITH: Objection, form.

4 A Could.

5 Q How do you know it could?

6 A Because I saw them do it.

7 Q You saw it in Milan in 1995?

8 A That I remember, yes.

9 Q Is that in your declaration?

10 A No.

11 Q Why not?

12 MR. SMITH: Objection, form.

13 A Because at the time I wrote
14 this declaration, I forgot that I had
15 seen this machine. In later
16 declarations, I do talk about this
17 machine.

18 Q What later declarations?

19 A The subsequent IPRs. This
20 was the first of a group of IPRs.

21 Q So you spent 40 to 80 hours
22 preparing this declaration?

23 A Right.

24 Q Talking specifically about
25 knitting three-dimensional shapes in a

1 patent in 2006, and you just forgot to
2 mention that you had seen a knitting
3 machine in 1995 knit a three-dimensional
4 shape?

5 A That's correct. That was 30
6 years ago. I mean that's 30 years after
7 I wrote this paper.

8 Q Do you have any
9 documentation about what you saw in 1995?

10 A No.

11 Q How do you remember you saw
12 three-dimensional knitting?

13 A How do I remember? Because
14 I remember it.

15 Q But it was 30 years ago as
16 you said.

17 A Correct.

18 Q And you forgot it when you
19 were writing your declaration, and then
20 you just remembered after?

21 A I remembered sometime after,
22 yes, I got that Shima Seiki book. And
23 when I read it, I said, wait a second, I
24 saw that machine.

25 Q Is the book cited in your

1 paper?

2 A No, because I got the book
3 after the paper. I already testified to
4 that.

5 Q You purchased the book after
6 you submitted your declaration?

7 A Yes.

8 Q Was that book made available
9 to Nike?

10 A No, because it's not part of
11 my declaration.

12 Q So you interpret this title,
13 the sentence, "The development of
14 3D-shaped knitted fabrics for technical
15 purposes on a flat knitting machine" as
16 meaning the formation of
17 three-dimensional-shaped fabrics during
18 the knitting process?

19 A Correct.

20 Q And your reason for that is
21 because why?

22 A Because it's explained in
23 this paper. And it's explained both in
24 the abstract and in the Section 3, the
25 techniques for knitting to shape. So

1 when I see knitting to shape, if this
2 were just knitting full-fashioned
3 materials that were plainer, there would
4 be no paper here.

5 Q Why?

6 A Because that had been done
7 before.

8 Q When?

9 A I don't know.

10 Q How do you know it had been
11 done before?

12 A Because I taught it before.

13 Q You taught it before 1994?

14 A Yes. I don't remember all
15 my lectures from Georgia Tech.

16 Q So you don't remember if you
17 taught it before?

18 A No. We're talking 40 years
19 ago.

20 Q But you don't remember if
21 you taught it in 1994?

22 A I know I taught it by at
23 least 2006.

24 Q But you're telling me you're
25 interpreting this entire Hong reference

1 as relating to forming three-dimensional
2 shapes during the knitting process based
3 on your recollection that knitting to
4 shape plainer textiles was already
5 well-known in 1994; right?

6 MR. SMITH: Objection, form.

7 A I can't remember that far
8 back.

9 Q Right.

10 A I can't remember that far
11 back. I'm really just concerned with
12 what was known -- whenever the priority
13 date of this patent is.

14 Q But you're telling me you're
15 interpreting this Hong reference in a
16 specific way because as you said, there
17 would be no paper because in 1994,
18 knitting to shape two-dimensional
19 textiles was well-known; right? That's
20 what you said?

21 A That's what I said, yes.
22 But I don't know when it was well-known.

23 Q So you don't know if it was
24 before 1994.

25 So how can you say there

1 would be no paper if this was directed to
2 knitting to shape two-dimensional
3 garments?

4 A I don't understand your
5 question.

6 Q You're telling me that Hong
7 must relate to forming three-dimensional
8 objects during the knitting process
9 because otherwise, they wouldn't have
10 published this paper; right?

11 A I'm assuming that, yes.

12 Q So that's an assumption?

13 A That's an assumption.

14 Q And that assumption is based
15 on your recollection of what was
16 well-known in 1994; right?

17 A No. This journal here, The
18 Journal of Fiber and Textile Research is
19 a Peer Reviewed paper, meaning it's Peer
20 Reviewed. It means other people who know
21 about knitting have to read it. If they
22 saw this paper and they say he's just
23 talking about something that's already
24 been done, it wouldn't have been
25 published.

1 Q Right.

2 So you're assuming that
3 knitting to shape two-dimensional textile
4 elements was well-known in 1994.

5 And therefore, you're
6 interpreting Hong in a certain way;
7 right?

8 A Yes.

9 Q But you just told me you
10 don't know what was well-known in 1994.
11 You can't remember?

12 A No. I can't remember what
13 was known pre-'94.

14 Q Right.

15 And you don't remember
16 whether or not knitting to shape
17 two-dimensional textile elements was
18 well-known in 1994; right? You just said
19 that.

20 A If I said it --

21 Q Right?

22 A Yes. But the statement is I
23 don't remember. Doesn't mean they
24 weren't. I just don't remember.

25 Q Right.

1 But you've made an
2 assumption in the way that you interpret
3 Hong; right?

4 A The assumption is -- what's
5 the assumption I made?

6 Q You assumed that Hong must
7 relate to three-dimensional structures
8 formed during the knitting process
9 because of what you're assuming was
10 well-known in 1994. But you don't know
11 what was well-known in 1994.

12 A I know that you can't
13 publish a Peer Reviewed paper with
14 something that has been done before.

15 Q Right. There's no dispute
16 about that.

17 A Yeah.

18 Q But your interpretation of
19 Hong is based on something you don't even
20 know.

21 MR. SMITH: Objection, form.

22 A That's not true. You're
23 mischaracterizing me totally.

24 Q Where am I going wrong?
25 Because you told me that Hong must relate

1 to a process for forming
2 three-dimensional structures during the
3 knitting process because knitting to
4 shape two-dimensional textile elements
5 was well-known in 1994, and he wouldn't
6 have gotten a paper for just that; right?

7 A Yes.

8 Q But then you told me that
9 you don't remember whether knitting to
10 shape two-dimensional objects was
11 well-known in 1994; right?

12 A I don't remember, correct.
13 But I'm basing this on the way papers are
14 written and accepted for publication in
15 Peer Reviewed documents. And I made sure
16 this was Peer Reviewed, that it has to be
17 new material. So it's new material in
18 1994, at least 1994.

19 Q I want you to point me to
20 somewhere in Hong where it explains the
21 formation of a three-dimensional
22 structure explicitly during the knitting
23 process.

24 A The whole paper.

25 Q Show me one example where it

1 explicitly discusses forming a
2 three-dimensional object during the
3 knitting process.

4 A If you look at 4 on page 3,
5 it says, "Three-dimensional-shaped
6 knitted fabrics developed on the Shima
7 Seiki machine."

8 It talks about tubular
9 forms, and it talks about spherical
10 forms.

11 Q Where does that say that the
12 three-dimensional shape is formed during
13 the knitting process and not as part of a
14 post-processing folding and sewing step?

15 A Because it says it's
16 developed on the machine, not off the
17 machine.

18 Q Yeah.
19 The fabric's developed on
20 the machine; right?

21 A Right.

22 Q We agree there?

23 A Yes.

24 Q But it doesn't say that it's
25 formed into a three-dimensional structure

1 on the machine.

2 A That's what that sentence
3 says: "Develop three-dimensional-shaped
4 knitted fabrics developed on the Shima
5 Seiki machine."

6 It doesn't say take them off
7 and make a three-dimensional structure.
8 It says "on the machine."

9 Q But the fabrics are
10 developed on the Shima Seiki machine, and
11 then they're shaped into a
12 three-dimensional object.

13 A That's not what it says.

14 Q In your opinion, as you're
15 interpreting it.

16 A As I read the sentence.
17 I'll read it one more time.

18 "Three-dimensional-shaped
19 knitted fabrics developed on the Shima
20 Seiki machine."

21 Q What's the purpose of the
22 two-dimensional pattern that's shown here
23 on page 3?

24 A What they're showing is, you
25 have to go back and look at Figure 2. At

1 that point, you're knitting the fabric --
2 it's being knitted on a V bed knitting
3 machine. So you have to give a pattern
4 diagram of how it should be knitted at
5 that time.

6 But when it comes off the
7 machine -- when I say off the machine, I
8 don't mean off and then subsequently
9 processed -- it takes a three-dimensional
10 shape.

11 Q How?

12 A By the way, this paper says,
13 by using different structural
14 combinations, using different loop
15 lengths, and altering the number of
16 operating needles from course to course.

17 Q So let's use this example.
18 I think it's described as a knee
19 structure.

20 A Yes.

21 Q On page 3; right?

22 A Yes.

23 Q How is that knee structure
24 formed on the knitting machine, that
25 three-dimensional fabric specifically?

1 A I haven't looked at the knee
2 structural. I was only looking at the
3 spherical structure.

4 Q You never looked at the knee
5 structure?

6 A No.

7 Q Aren't those seams at the
8 top of the knee structure?

9 A The top of what?

10 Q In the knitted fabric on the
11 side, the right side.

12 A I can't see if they're seams
13 or not.

14 Q You can't tell?

15 A No, not from that picture.

16 Q And you didn't consider
17 that?

18 A No.

19 Q So you don't know anything
20 about this knee structure, how it's
21 formed on the machine, whether or not
22 it's a three-dimensional structure?

23 A He says it is. But I didn't
24 examine it.

25 Q Where does it say that that

1 three-dimensional shape is formed on the
2 knitting machine?

3 A In 4, three-dimensional -- I
4 keep repeating the sentence.

5 "Three-dimensional-knitted
6 shaped fabrics developed on the Shima
7 Seiki machine," 4.1, tubular forms.

8 Q Yeah. They're developed on
9 the machine. And I understand the way
10 you're reading it.

11 But isn't it possible that
12 he just means you're developing these
13 fabrics using this specific machine. I
14 mean nothing in that sentence says you
15 can't later form it. He's using this
16 machine to develop a certain
17 three-dimensional object, but he never
18 says anywhere that it's formed as a
19 three-dimensional object while it's on
20 the machine. It just says he's
21 developing it on the machine.

22 MR. SMITH: Objection, form.

23 A I think you're saying the
24 same thing. The way I read it is, it
25 comes off the machine, and it's

1 three-dimensional.

2 Q But it never says during the
3 knitting process, it takes that
4 three-dimensional form nowhere in Hong;
5 right?

6 A The whole paper is about --
7 it makes a three-dimensional shape. The
8 whole paper is about that. What else
9 would it be? That's what the paper's
10 about.

11 Q You're assuming?

12 A I'm not assuming. It's the
13 way I read it and a way a POSA would read
14 it.

15 Q So you didn't consider this
16 knee example here on page 3 at all?

17 A No, I didn't.

18 Q Did you just skip over that
19 part?

20 A No. I was looking at --
21 remember why we were doing this is to see
22 if there was prior art that could be used
23 in showing that the '484 was invalid. A
24 tubular structure like this isn't
25 anything that's in the '484.

1 THE WITNESS: I need a break
2 in two questions.

3 Q Did you consider either of
4 the patterns in the shapes shown in
5 Figure 5?

6 A No.

7 Q Why not?

8 A Again, because I was looking
9 for something that I could use to support
10 my obviousness argument for.

11 For example, Ground 3 where
12 we're using a couple of other patents to
13 show that if you would combine those, you
14 would get the '484.

15 Q And you didn't look to other
16 aspects of Hong to see if maybe they
17 contradicted your opinions?

18 A No.

19 THE WITNESS: I think that
20 was the Question No. 2 which means
21 it's break time.

22 MR. BOWLING: Sure.

23 THE VIDEOGRAPHER: Off the
24 record at 11:09, marking the end of
25 Media Unit No. 2.

1 (A short recess was taken.)

2 THE VIDEOGRAPHER: On the
3 record at 11:13, marking the
4 beginning of Media Unit No. 3.

5 Q Dr. Brookstein, when you
6 formed your opinions in this case, did
7 you consider Figure 6 of Hong?

8 A I did not.

9 Q When you were forming your
10 opinions in this case, did you consider
11 Figures 8 or 9 of Hong?

12 A I did not.

13 Can I put this one aside?

14 Q We'll come back to it.

15 A I know. But we're not going
16 to do it right now.

17 Q Sure.

18 (The above-referred-to
19 document was marked as Brookstein
20 Exhibit 4 for identification, as of
21 this date.)

22 Q Dr. Brookstein, we're
23 handing you what we've marked as
24 Brookstein Exhibit 4. This is Nike's
25 Exhibit 2002 in the IPR proceeding.

1 Do you recognize this
2 document?

3 A I do.

4 Q Did you review this
5 document?

6 A I did.

7 Q When?

8 A When it was first on the
9 PTAB site.

10 Q I'm going to ask you to turn
11 to page 21 of Exhibit 2002. 21 in the
12 small numbers at the bottom. There's two
13 sets of numbers here.

14 A Wait, wait. Hold on. Wait.
15 This is --

16 MR. SMITH: These numbers
17 (pointing).

18 A I see what you're saying.
19 Okay. Yes. I see it. Let me just make
20 sure. We're talking this page here
21 (pointing)?

22 Q Yes.

23 A Okay.

24 Q Paragraph 46.

25 A Yes.

1 Q And I guess for clarity -- I
2 don't know if we covered this -- but
3 Exhibit 4 is the declaration of Chris
4 Pastore in support of Nike's preliminary
5 response in the IPR proceeding; correct?

6 A I understand.

7 Q And you considered
8 Dr. Pastore's opinions when you were
9 rendering your opinions in this case;
10 correct?

11 MR. SMITH: Objection to
12 form.

13 A No. I think the timing is I
14 submitted as on behalf of the petitioner,
15 and then the patent owner comes back with
16 a response that is supported by a
17 declaration.

18 Q But you've reviewed this
19 declaration of Dr. Pastore; correct?

20 A After I wrote my
21 declaration, yes.

22 Q Let's look at paragraph 46.

23 A Yes.

24 Q Dr. Pastore says, "Further,
25 in my opinion, the patterns shown in

1 Hong's Figures 3(2)-9(2) are not
2 sufficient to create the elements shown
3 in Hong's Figures 3(3)-9(3)."

4 A Right.

5 Q "During the knitting
6 process."

7 You see that?

8 A I do.

9 Q He says, "As example, Hong's
10 Figure 5 (annotated) is reproduced
11 below."

12 Do you see that?

13 A I do.

14 Q In the next paragraph, he
15 says, "The 2D pattern shown in Figure 52
16 is not sufficient to produce the fully
17 performed knitted fabric shown in
18 Figure 53."

19 You see that?

20 A I do.

21 Q It says, "In Figure 52,
22 there are two parallel lines, DF -- in
23 red -- and two parallel lines, DG -- in
24 green -- that must be met and be adjoined
25 to form the smaller bifurcated tubes

1 shown at the top of Figure 5(3)."

2 Do you see that?

3 A Where does he say
4 "bifurcated"?

5 Q At the end of the sentence
6 that we were just reading.

7 A What sentence is this?

8 Q It's at the top of page 19.

9 A Okay. Yes.

10 Q In your opinion, is the 2D
11 pattern shown in Figure 52 sufficient to
12 produce the fully formed knitted fabric
13 shown in Figure 53?

14 A I told you I've never looked
15 at any other pattern, other than the
16 spherical patterns. So I can't answer
17 that question as I sit here.

18 Q Because according to
19 Dr. Pastore, it's impossible.

20 MR. SMITH: Is there a
21 question there?

22 A What's the question?

23 Q So when you reviewed the
24 Hong reference --

25 A Right.

1 Q -- 20 times I think you
2 said --

3 A At least.

4 Q -- you never considered
5 Figures 3, 4, 5, 6, 8 or 9 or their
6 corresponding descriptions; is that
7 right?

8 A That's what I testified to,
9 yes.

10 Q That's correct?

11 A That's correct.

12 Q Why not?

13 A Because, again, I was
14 looking at Hong when I was looking at
15 writing my declaration for the '484 which
16 talks about a dome knitting and dome
17 structure. These aren't dome structures.
18 So why look at it?

19 Q So if those portions of the
20 Hong reference that you didn't consider
21 contradicted your interpretation of the
22 Hong reference, you wouldn't know because
23 you didn't consider them; right?

24 A I would not know because I
25 did not consider them.

1 Q How would it affect your
2 opinions in this case if some of the
3 three-dimensional-shaped fabrics
4 disclosed in Hong could not possibly be
5 knitted and formed during the knitting
6 process on a weft knitting machine?

7 A Other than the spherical
8 form?

9 Q How would it affect your
10 opinions in this case if some of the
11 three-dimensional fabrics disclosed in
12 Hong could not possibly be formed during
13 the knitting process on a weft knitting
14 machine?

15 A What kind of weft knitting
16 machine?

17 Q The Shima Seiki machine.

18 A Could you repeat the
19 question?

20 Q Sure.

21 How would it affect your
22 opinions in this case if some of the
23 three-dimensional-shaped fabrics
24 disclosed in Hong could not possibly be
25 formed during the knitting process on the

1 Shima Seiki machine?

2 A As long as the figure
3 associated with the curved -- the
4 spherical curved item could be, that's
5 all I was concerned about.

6 Q It wouldn't affect your
7 interpretation of some of the terminology
8 or the phraseology used in the Hong
9 reference?

10 A No.

11 Q Why not?

12 A Because I was only
13 interested in the description of how to
14 make the spherical fabric.

15 Q And you admitted you made
16 certain interpretations of the phrases
17 used in the Hong reference, including the
18 phrase knit-to-shape; right?

19 A Correct.

20 Q You interpreted
21 knit-to-shape in the Hong reference as
22 meaning the formation of a
23 three-dimensional structure during the
24 knitting process; correct?

25 A On the knitting process, on

1 the knitting machine, yes; during the
2 knitting process, correct.

3 Q And if it turned out that
4 some of the three-dimensional-shaped
5 fabrics in Hong could not be formed on a
6 knitting machine during the knitting
7 process, that wouldn't affect your
8 interpretation of knit-to-shape as that
9 term's used in Hong?

10 A That's correct.

11 Q Why not?

12 A Because that's not what I
13 was concerned about. I was only
14 concerned about knitting to a curve
15 shape.

16 Q You knew what you wanted to
17 find?

18 A I wasn't doing this in a
19 vacuum. I was doing this looking at the
20 '484 patent and seeing if there was prior
21 art that could be used to show that what
22 was done in the '484 was known prior to
23 the -- whatever the date was.

24 Q So you were using the '484
25 patent as a roadmap to help you figure

1 out what to look for in the prior art
2 references; is that right?

3 MR. SMITH: Objection, form.

4 A Not on a roadmap. What
5 would be relevant to the '484.

6 Q What about my question
7 wasn't right?

8 MR. SMITH: Objection, form.

9 A Ask the question again.

10 Q Did you use the '484 patent
11 as a roadmap to help you figure out what
12 aspects of the prior art references you
13 wanted to consider as part of your
14 analysis?

15 A Yes.

16 Q And you didn't consider
17 other aspects of those prior art
18 references like Hong; correct?

19 A What other prior art
20 references are you talking about?

21 Q So in the case of Hong, you
22 didn't consider other aspects of the
23 reference that you hadn't identified as
24 part of that analysis, using the '448
25 patent as a roadmap; right?

1 A That's correct.

2 Q Do any of the other
3 references, the prior art references in
4 this proceeding disclose the formation of
5 three-dimensional objects during the
6 knitting process?

7 A Ask me that again.

8 Q Sure.

9 Do any of the other prior
10 references in this proceeding disclose
11 the formation of three-dimensional
12 objects during the knitting process?

13 A No.

14 Q In your opinion, only Hong
15 discloses that?

16 A In my opinion, that's
17 correct.

18 Q Earlier, we talked about
19 some of the benefits of knitting to
20 shape, like reducing the wasted material
21 that you'd otherwise have to cut away and
22 saving the steps and the labor involved
23 in cutting away the textile element. Do
24 you remember that?

25 A Yes, and the makeup

1 operation.

2 Q Right.

3 Do those benefits apply to
4 knit-to-shape two-dimensional objects as
5 compared with cut-and-sew two-dimensional
6 objects?

7 MR. SMITH: Objection, form,
8 beyond the scope.

9 A Yes. Knit-to-shape is going
10 to be more efficient than cut-and-sew.

11 Q Whether it's 2D or 3D?

12 MR. SMITH: Same objection.

13 A I agree, whether it's 2D or
14 3D.

15 Q These features of the Shima
16 Seiki machine that we discussed earlier,
17 those five features, do you remember
18 that?

19 A Show me where.

20 Q It's on page 1 of Hong.

21 A Yes.

22 Q Those features would allow
23 you to make two-dimensional knit-to-shape
24 elements; correct?

25 A I believe so.

1 Q Do any of those features
2 apply only to the creation of
3 three-dimensional knitted garments?

4 A I thought I just answered
5 that. What was the question before that
6 and how did I answer it?

7 Q These five features listed
8 in Hong, the features of the Shima Seiki
9 reference allow a user to create
10 two-dimensional knit-to-shape elements;
11 correct?

12 A Correct.

13 Q Do any of these features
14 apply only to three-dimensional
15 knit-to-shape elements?

16 A No. I answered. Also
17 two-dimensional elements.

18 Q So none of the features
19 listed here on the first page of Hong on
20 the Shima Seiki reference are directed
21 only to three-dimensional knit-to-shape
22 elements; right?

23 A To only three-dimensional?
24 No. They would allow you to do
25 two-dimensional too.

1 Q And on page 2 of Hong, the
2 three techniques for knitting to shape,
3 each of those techniques described could
4 be referring to two-dimensional
5 knit-to-shape fabrics; correct?

6 A I don't know. I only looked
7 at them with regard to 3D shape.

8 Q You never considered whether
9 this disclosure in Hong was referring to
10 two-dimensional knit-to-shape garments?

11 A No, because that's not what
12 the subject of the paper was. It was
13 three-dimensional.

14 Q So you never considered it?

15 A I never considered for
16 two-dimensional, no.

17 Q Did you ever consider
18 whether Hong referred to the creation of
19 two-dimensional patterns that were then
20 formed into three-dimensional objects
21 after the knitting process was complete?

22 A No.

23 (The above-referred-to
24 document was marked as Brookstein
25 Exhibit 5 for identification, as of

1 this date.)

2 Q Dr. Brookstein, we've handed
3 you what we've marked as Brookstein
4 Exhibit 5.

5 Do you recognize this
6 document?

7 A I do.

8 Q And what is it?

9 A It's U.S. Patent 9730484B2,
10 titled "Article of Footwear Having a Flat
11 Knit Upper Construction or Other Upper
12 Construction."

13 Q I'm going to ask you to turn
14 to the last page of the '484 patent. And
15 let's start with Claim 2.

16 A Yes.

17 Q Do you see Claim 2 says,
18 "The article of footwear in Claim 1
19 further comprising a first loop being
20 formed as a second layer of unitary
21 construction with the first layer"?

22 You see that?

23 A I do.

24 Q What does the term loop mean
25 in that claim?

1 A In that claim, they're
2 talking about loops for laces.

3 Q That's different than the
4 loops that we discussed in Hong?

5 A Totally different.

6 Q These are loops for laces,
7 like shoelaces?

8 A That's my understanding.

9 Q Hong doesn't disclose that;
10 right?

11 A Not at all. Hold on, hold
12 on. I think he might say something. Let
13 me look back at Hong. I'm starting to
14 remember he said something about loops.
15 Give me a minute. I'm going to need a
16 few minutes to read this again because in
17 my mind, I think I did see something
18 about that.

19 There's a statement in the
20 first column of page 1 at the bottom.

21 By using the new flat
22 knitting machines, it's possible to not
23 only to knit the new loop structures,
24 which are not possible on -- I think he's
25 talking about -- he's talking about

1 knitted loops.

2 Q Yeah.

3 We talked about those
4 earlier; right?

5 A Yeah. I just remember the
6 word loop in there.

7 Q But Hong's loops are
8 different?

9 A Yes.

10 Q Totally different?

11 A Totally different.

12 Q And Hong doesn't even talk
13 about footwear; right?

14 A Well, he does talk about --
15 he does say -- at the end, he says -- or
16 maybe it's even at the beginning.

17 He says in the very first
18 paragraph, technical textiles have been
19 applied in different fields such as
20 protective clothing,
21 transportation-related textiles, cars,
22 planes, spacecrafts, geotextiles,
23 building construction-related textiles,
24 patching materials, military-related
25 textiles, medical textiles,

1 sports-related textiles.

2 So I would say footwear is a
3 sports-related textile.

4 Q Could be, but he doesn't say
5 anything about footwear?

6 A Specifically, no.

7 Q No disclosure of footwear?

8 A Not the word footwear.

9 Q Or shoes or any type of
10 footwear?

11 A Well, when you say
12 sports-related textiles, these patents
13 are about footwear used in sports-related
14 items, I think he indirectly says. He
15 doesn't use the word footwear.

16 Q Even if he says "textiles"
17 in theory, that would include all
18 textiles?

19 A Right. But he says
20 sports-related

21 Q So Hong doesn't disclose the
22 type of loops that are described here in
23 2 which are for receiving shoelaces; you
24 said?

25 A That is the way I understand

1 it.

2 (The above-referred-to
3 document was marked as Brookstein
4 Exhibit 6 for identification, as of
5 this date.)

6 Q We've handed you what we've
7 marked as Brookstein Exhibit 6.

8 Do you recognize this
9 document?

10 A I do.

11 Q What is it?

12 A It's Patent Publication
13 US2005/0193592A1, titled "Article of
14 Footwear Having a Textile Upper."

15 Q And if we call this the Dua
16 reference for purposes of today's
17 proceeding, you'll know what I'm
18 referring to?

19 A I know exactly what you're
20 referring to.

21 Q This is the Dua reference
22 described in your report?

23 A It is.

24 Q Your declaration?

25 A Yes.

1 Q In your declaration, you
2 opine that Dua discloses this limitation
3 of Claim 2, the loop limitation; is that
4 right?

5 A I have to look at my
6 declaration again.

7 Q Sure.

8 A Will you tell me where that
9 is?

10 Q Paragraph 111 on page 74.

11 A Okay. Give me a minute.
12 111 on page -- what page did you say?

13 Q 74, please.

14 A Okay. Yes.

15 Q So here, you opine that Dua
16 discloses this limitation and includes
17 similar loops; right?

18 A I do.

19 Q And you point to three
20 paragraphs in Dua: Paragraph 37,
21 paragraph 41 and paragraph 60. Do you
22 see that in your report, in your
23 declaration?

24 A You're talking about
25 paragraphs in my report?

1 Q The same sentence we were
2 just reading, you cite to three
3 paragraphs.

4 A Oh, correct, correct.

5 Q 37 --

6 A Which exhibit -- yeah. It's
7 this exhibit, 37.

8 Q In your declaration --

9 A I see.

10 Q -- you cite to three
11 paragraphs as support for your opinion
12 that Dua discloses this limitation;
13 right?

14 A Yes.

15 Q And those paragraphs are
16 paragraph 37, paragraph 41 and
17 paragraph 70; correct?

18 A Yes.

19 Q In your opinion, are there
20 any other aspects of Dua that disclose
21 this limitation?

22 A Yes. The figures, if I
23 recall, Figure 13.

24 Q Okay.

25 A Figure 12. And I think that

1 might be all.

2 Q Where do you cite to
3 Figure 12?

4 A On Dua.

5 Q Where in your declaration do
6 you cite to Dua?

7 A Oh, do I cite to it? Oh, I
8 don't cite to it, no.

9 Q Is it your opinion that
10 Figure 12 of Dua supports your opinion
11 that Dua discloses this loop limitation?

12 A Yes.

13 Q Figure 12?

14 A Figure 12 and Figure 13.

15 Q But you don't cite Figure 12
16 in your declaration?

17 A I don't recall. Wait, wait.
18 Yes, I do. It says Figure 13 below from
19 Dua illustrates first loops, yeah. It's
20 right there, Figure 13 below from Dua.

21 Q I'm asking you about
22 Figure 12.

23 A Oh, Figure 12. No. I only
24 talk to Figure 13.

25 Q In your opinion, Figure 12

1 supports your opinion about Dua
2 disclosing the loop structures?

3 A Yes.

4 Q Let's look at Figure 12 of
5 Dua, please.

6 Can you show me where the
7 loop structures are located? Can you
8 draw on your copy for me?

9 A What I'm going to do is
10 circle them. And I'll call it L1, L2, L3
11 and L4; okay?

12 Q Okay.

13 Aside from paragraphs 37, 41
14 and 60 and paragraphs 12 and 13, are
15 there any other aspects of Dua that you
16 think disclose the loop limitation of
17 Claim 2?

18 MR. SMITH: Objection, form.

19 A Could you ask me the
20 question again?

21 Q Sure.

22 Aside from paragraphs 37, 41
23 and 60 and Figures 12 and 13, are there
24 any other aspects of Dua that you think
25 disclosed the loop limitation of Claim 2?

1 A I have to go back and look
2 at those paragraphs. What were the
3 paragraphs that I cited: 37, 41 and 60?

4 Q I think you have the wrong
5 exhibit in your hand.

6 A You asked me about Dua.
7 This is Dua.

8 Q Okay.

9 A Oh, no. This is the '484.
10 I'm sorry. I apologize. I apologize.
11 37, paragraph 37.

12 Q And I'm not currently asking
13 you about those paragraphs. I'm asking
14 if you have any other parts of Dua that
15 support your opinion in paragraph 12 of
16 your report. So let's take a step back.

17 A Yeah.

18 Q Your opinion is that Dua
19 discloses the loop limitation of Claim 2;
20 correct?

21 A Yes.

22 Q And that it also discloses
23 the loop limitations of Claim 10E and 18;
24 right?

25 A We're talking about in the

1 '484; right?

2 Q If that's your opinion.

3 A No. I've got to look. I
4 didn't memorize these claims. 10 is an
5 overlap loop, yes. And what was the
6 other one besides 10? 18?

7 Q 18.

8 A Yes. And what's your
9 question again?

10 Q In your opinion --

11 A Yes.

12 Q -- Dua discloses the loop
13 limitations of Claims 2, 10 and 18;
14 correct?

15 A Well, 19 does too where it
16 talks about a lace element through the
17 first loop.

18 Q Is it your opinion, Dr.
19 Brookstein, that Dua discloses the loop
20 limitation of Claims 2, 10 and 18?

21 A And, again, we're talking
22 about the publication Dua; right?
23 Because the patent also is Dua.

24 Q So I'm looking at your
25 declaration.

1 A Yeah, I understand.

2 Q Paragraph 111.

3 A Right.

4 Q That says, "Dua discloses
5 this limitation."

6 A Yes.

7 Q Is it your opinion that Dua
8 discloses the loop limitation of Claims
9 2, 10 and 18?

10 A Yes.

11 Q In support of that opinion,
12 are you aware of any evidence, aside from
13 paragraphs 37, 41, 60 of Dua and Figures
14 12 and 13 of Dua, that support your
15 opinion?

16 A As I sit here, no.

17 Q It's just those three
18 paragraphs and those two figures?

19 A As I sit here, right.

20 Q Let's start with
21 paragraph 37 of Dua.

22 A Yes, sir.

23 Q What portion of 37, in your
24 opinion, teaches the loop limitations?

25 A Let me read 37.

1 The first sentence in 37
2 says upper 30 is at least partially
3 formed from the textile element 40, which
4 forms Regions 31 to 35, and they also
5 include laces or other elements
6 associated with a conventional upper
7 footwear. So if they're laces, there has
8 to be the loops. You can't just have
9 laces.

10 Q What about grommets or
11 eyelets?

12 A You could have grommets or
13 eyelets. Let me read more further. And
14 what's the next paragraph? You asked me
15 about 37. What was the other one?

16 Q I want to focus on 37.

17 A Okay.

18 Q Is there anything in 37 that
19 discloses a lace loop that's formed as a
20 second layer of unitary construction with
21 the first layer of the textile element?

22 A Let me read through it
23 again. Not that I see.

24 Q So when you pointed to
25 paragraph 37 in your declaration, what

1 specifically were you identifying there
2 in support of your opinion that Dua
3 discloses the loop features of Claims 2,
4 10 and 18?

5 A I was inferring from this
6 that because they were laces, they were
7 loops.

8 Q But that's not true; right?

9 A I realize now that they
10 could be grommets or eyelets.

11 Q So you no longer think that
12 paragraph 37 supports your opinion that
13 Dua discloses the loop features of Claims
14 2, 10 and 18; is that right?

15 A It could. But it's not only
16 those. It could be other things.

17 Q In order to disclose the
18 loop features, it would have to say
19 something about loops. All it says is
20 laces. And that doesn't say anything
21 about loops.

22 MR. SMITH: Objection, form.

23 Q Right?

24 A Laces doesn't say
25 specifically about loops.

1 Q So as you sit here today, do
2 you believe there's any disclosure in
3 paragraph 37 that supports your opinion
4 that Dua discloses the loop limitation of
5 Claims 2, 10 and 18?

6 A Not specifically, no.

7 Q Let's go to paragraph 41
8 which is the next paragraph you rely on.

9 A Yes.

10 Q I'll give you a moment to
11 read that.

12 A Yes. I read it.

13 Q As you sit here today, is
14 there anything in the disclosure of
15 paragraph 41 of Dua that supports your
16 opinion that Dua discloses the loop
17 limitation of Claims 2, 10 and 18?

18 A I just want to see something
19 before I answer that question. Only says
20 a lacing system.

21 Q As we've discussed, that
22 doesn't necessarily mean loops; right?

23 A It doesn't only include
24 loops, but it could include loops.

25 Q It could, but there's no

1 disclosure of loops in paragraph 41;
2 right?

3 A Not the way it is in the
4 patent, no.

5 Q There's no disclosure at all
6 of loops; correct?

7 A Well, again, in my mind, a
8 lacing system can be certainly the two
9 items you represented, eyelets or
10 grommets, but they could also be loops.

11 Q But it doesn't disclose
12 loops; it just mentions laces?

13 A It mentions lacing, but a
14 lacing can go through a loop and now
15 since you've brought it up, a garment or
16 an eyelet. But it could go through a
17 loop.

18 Q In your opinion, does a
19 mention of shoelaces in Dua support your
20 opinion that Dua discloses the loop
21 limitations of Claims 2, 10 and 18?

22 A Yes, in that a lacing system
23 could go through loops, yes.

24 Q So what's your understanding
25 of the standard that you're supposed to

1 be applying when you look at prior art
2 references and compare them to the
3 claims? Do they need to actually
4 disclose loops or can they just disclose
5 something that might be loops?

6 MR. SMITH: Objection, form.

7 A I think in an obviousness
8 argument, it would be something that a
9 POSA could look at and then be able to
10 tell what was going on, yes. If it was
11 an anticipation argument, no.

12 Q So in an obviousness
13 scenario, is it your understanding that
14 the prior art reference just needs to
15 disclose something that could be
16 interpreted as loops?

17 MR. SMITH: Objection, form.

18 A That a POSA would realize
19 that it could be loops, yes.

20 Q That it could be loops; not
21 that it is loops, that it could be?

22 MR. SMITH: Objection, form.

23 A It could be loops.

24 Q So in your opinion, when
25 you're looking at these references and

1 conducting an obviousness analysis,
2 you're looking at the prior art reference
3 to determine whether a person of ordinary
4 skill in the art would realize that the
5 claim elements could possibly be
6 disclosed in the prior art reference?

7 MR. SMITH: Objection, form.

8 A The question again.

9 Q When you performed your
10 analysis in this case and you looked at
11 prior art references as part of an
12 obviousness analysis, is it accurate to
13 say that you looked at the prior art
14 reference and asked whether a person of
15 ordinary skill in the art would realize
16 that the prior art reference might
17 possibly teach some of the claim
18 elements?

19 MR. SMITH: Objection, form.

20 A Possibly, yes.

21 Q That's an accurate
22 recitation of the standard that you
23 applied?

24 MR. SMITH: Objection, form.

25 A Yes.

1 Q Let's look at paragraph 60
2 now.

3 A 60, you said?

4 Q Of Dua.

5 A Okay.

6 Q I'll let you review it.

7 A Okay. Yes. I read it.

8 Q Can you point me to anything
9 in paragraph 60 of Dua that supports your
10 opinion that Dua discloses the loop
11 limitations of Claims 2, 10 and 18?

12 A Let me read it one more
13 time. I don't see one, no.

14 Q Nothing?

15 A I don't see it.

16 Q So in paragraphs 37, 41 and
17 60, the only thing that you can point to
18 as potential support for your opinion,
19 that Dua discloses the loop limitations
20 of Claims 2, 10 and 18, is the fact that
21 paragraph 37 mentions laces, and
22 paragraph 41 mentions a lacing system; is
23 that right?

24 A That's correct.

25 Q What about Figures 12 and

1 13? What can you point me to that shows
2 the loop limitations of Claims 2, 10 and
3 18 in those figures?

4 A In Figure 13, they look like
5 they could be loops, yes.

6 Q They look like they could be
7 loops?

8 A Let's put it this way. They
9 are not like the eyelets that you see in
10 12. They're different. And let me see
11 how 13 is described in the publication.

12 Q So just taking a step back
13 quickly, you said Figure 12 is eyelets;
14 right?

15 A Or grommets, yes.

16 Q So those aren't lace loops?

17 A They are not lace loops.

18 Q So Figure 12 doesn't support
19 your opinion; correct?

20 A Correct. I don't see
21 wording about Figure 13 in paragraph 58
22 which talks about Figure 13. But the
23 drawing, to me, I would say that those
24 are loops, yes.

25 Q You sure?

1 A That's why I'm saying it,
2 yes.

3 Q So in your opinion, those
4 show loops, but there's no disclosure
5 that says that?

6 MR. SMITH: Objection, form.

7 A Well, I think Figure 13 is a
8 disclosure. It's part of the
9 specification.

10 Q So in Dua, the only
11 disclosure you can point to that supports
12 your opinion, that Dua teaches the claim
13 limitation, the loop limitation of Claims
14 2, 10 and 18 is the mention of laces in
15 paragraph 37, the mention of a lacing
16 system in paragraph 41 and your opinion
17 about what Figure 13 shows; is that
18 right?

19 A That is right.

20 Q Now, the loop limitation in
21 Claim 2, for example, requires that the
22 loops be formed as part of the textile
23 element; right?

24 A That's my understanding.

25 Q Is there anything in Dua

1 that talks about loops formed as part of
2 a textile element?

3 A The textile element being
4 what number? I want to be able to
5 cross-reference by the figures.

6 Q Let's go back to the support
7 that you relied on that we just
8 summarized.

9 Is there anything in
10 paragraph 37 that discloses loops formed
11 as part of a textile element? We just
12 talked about that the only mention is of
13 laces.

14 A Can I read this?

15 Q Sure.

16 A In paragraph 58, it says the
17 Upper 230 includes a Textile Element 240
18 that forms an interior layer. In
19 addition, Upper 230 includes an
20 Intermediate Layer 250 and an Exterior
21 Layer 260.

22 Q Any mention of lace loops?

23 A Other than it refers back to
24 Figure 13, which shows lace loops.

25 Q No mention of lace loops;

1 right?

2 A Not in wording, no.

3 Q And no mention of lace loops
4 formed as part of the textile element?

5 A Well, in the figures, yes;
6 in the figure, yeah.

7 Q Which layer of the textile
8 element are the lace loops formed in?

9 MR. SMITH: Objection, form.

10 A From Figure 13, it looks
11 like 230 which is the upper.

12 Q Well, you just said the
13 upper includes several layers; right?

14 A It includes an intermediate
15 layer and an exterior layer, yes.

16 Q And an interior layer;
17 right?

18 A Yes.

19 Q In what layer are the lace
20 loops formed?

21 A I can't tell from -- wait.
22 Hold on. Let me see.

23 Q You can't tell?

24 A Let me take a minute and see
25 what Figure 13 is described as. It just

1 says it's a lateral elevation view of yet
2 another article of footwear having an
3 upper in accordance with the present
4 invention, yes.

5 Q So we've already discussed
6 lace loops aren't mentioned anywhere in
7 Dua explicitly.

8 And so, of course, there's
9 nowhere in Dua where lace loops are
10 described as being part of a textile
11 element; right?

12 A Well, the whole shoe is part
13 of the textile element. So if they're
14 there, it's part of the textile element.

15 Q Your opinion is that the
16 entire shoe is the textile element?

17 A Well, the entire upper is
18 the textile element, not the sole,
19 obviously.

20 Q I'm going to ask you to look
21 at paragraph 57 of Dua, please.

22 A Okay. Yes.

23 Q Let's look at the sentence
24 that begins with, "Furthermore." It's
25 about two-thirds of the way down.

1 A Let me find it.

2 "Furthermore, Elements 135?

3 Q Yes. Let's actually go to
4 the next sentence that begins
5 with, "Whereas."

6 It says, "The upper is
7 almost exclusively formed by a textile
8 element, but it also includes lace and
9 other elements"; right?

10 A Yes.

11 Q So there's non-knitted,
12 non-textile parts of the upper; right?

13 A Are you referring -- it says
14 "almost exclusively"?

15 Q Right.

16 And then it says that
17 there's lace and other element.

18 A Well, it says "elements."

19 Q So is it your opinion that
20 the entire upper is made of textile
21 material?

22 A The entire upper -- well,
23 the lace might not be a textile material.
24 And Elements 132, 135, let me see what
25 132 and 135 look like. What's your

1 question?

2 Q I'm still trying to figure
3 out what layer you think the lace loops
4 are on. What layer of the upper? Do you
5 think the lace loops are part of the
6 textile element?

7 A Do I think they are?

8 Q Yes.

9 A Where? The patent?

10 Q Do they disclose lace loops
11 that are formed as a unitary construction
12 with the knitted textile element of the
13 upper?

14 A In Figure 13, I think they
15 are, yes.

16 Q What makes you say that?

17 A The way the drawing looks.

18 Q That shows you they're
19 formed in unitary construction with the
20 textile portion of the upper?

21 A Well, they're adjacent to
22 the textile upper, so yes, yes.

23 Q Is the entire upper textile
24 in your opinion?

25 A The part where the lace

1 loops are, yes.

2 Q What makes you say that?

3 A Because they -- in
4 Figure 12, they talk about other
5 elements, like 135, which are some kind
6 of additional material that's on the
7 footwear. And 140 is I think defined as
8 the textile element. I have to look and
9 see.

10 Q So the upper has several
11 layers; right?

12 A Yes.

13 Q Interior, intermediate,
14 exterior?

15 A Yes.

16 Q Which layer has the loop
17 structures in your opinion?

18 A I can't tell from that
19 picture. Hold on one second. I define
20 it as the second layer.

21 Q The intermediate layer?

22 A That would be the second
23 layer, yes.

24 Q So your opinion is that the
25 lace loops disclosed in Dua are disclosed

1 as being part of the intermediate layer?

2 A Yes.

3 Q You're sure?

4 A Well, that's what my
5 declaration says, so yes.

6 MR. SMITH: We're getting
7 close to a stopping point. It's been
8 about an hour. I think lunch is
9 here.

10 MR. BOWLING: Yes. I think
11 we could probably wrap up in about 20
12 minutes.

13 MR. SMITH: And be done,
14 done?

15 MR. BOWLING: Yes. So let's
16 take a quick break.

17 MR. SMITH: Yes. Let's take
18 five.

19 MR. BOWLING: And then we'll
20 be done.

21 THE VIDEOGRAPHER: Off the
22 record at 12:11, marking the end of
23 Media Unit No. 3.

24 (A short recess was taken.)

25 THE VIDEOGRAPHER: On the

1 record at 11:22, marking the
2 beginning of Media Unit No. 4.

3 (The above-referred-to
4 document was marked as Brookstein
5 Exhibit 7 for identification, as of
6 this date.)

7 Q Dr. Brookstein, we're
8 handing you what we've marked as
9 Brookstein Exhibit 7.

10 Do you recognize this
11 document?

12 A I do.

13 Q And what is it?

14 A It's U.S. Patent Application
15 US2006/0053658A1, entitled "Unique
16 Fastening Systems and Methods for
17 Fastening Footwear."

18 Q And this is what you
19 referred to in your declaration as the
20 Voughlon reference; is that right?

21 A We've tried many ways to
22 pronounce it. How are you pronouncing
23 it?

24 Q Whatever you want to use.

25 A I don't know. I just call

1 it the V patent.

2 Q We'll just call it Voughlon
3 today. V might be a little confusing.

4 A Okay.

5 Q In paragraph 148 of your
6 declaration --

7 A Paragraph 148 of my
8 declaration?

9 Q -- in the second sentence,
10 you say, "Specifically, Voughlon
11 discloses systems and methods for
12 fastening footwear, including footwear
13 composed of fabric."

14 You see that?

15 A Yes, I do.

16 Q And you cite to paragraph
17 345 of Voughlon?

18 A Right.

19 Q Let's look at paragraph 455
20 of Voughlon that you cite to.

21 A You just said 345.

22 Q 345. I'm sorry.

23 A You didn't say 345.

24 Q 345, I should have said.

25 Thank you.

1 A Okay, yes.

2 Q And this is where the
3 footwear of Voughlon is described;
4 correct?

5 A Wait a second. 345 just
6 says 6, footwear; is that what you're
7 talking about?

8 Q Yes, and 346 below that.

9 A I got it.

10 Q You cite it at 345.

11 So I'm just assuming you
12 meant 345 and 346?

13 A Yeah, because they all come
14 underneath that, yes.

15 Q And you said that Voughlon
16 discloses systems and methods for
17 fastening footwear, including footwear
18 composed of fabric; right?

19 A Yes.

20 Q Does Voughlon mention
21 anywhere, knitted footwear or any
22 knitting processes?

23 A It says fabric and
24 knitting -- knit is part of a fabric, can
25 be knit fabric, it can be woven fabric.

1 So once you say fabric, that would
2 include knit.

3 Q But it doesn't say knitting.
4 It just says fabric.

5 A Doesn't have to.

6 Q So when you were reviewing
7 these prior art references as part of
8 your analysis for rendering opinions in
9 this case, you viewed any disclosure of
10 fabric as being a disclosure of a knitted
11 material; is that right?

12 A You're wording it backwards.
13 I'll tell you.

14 Q Sure. Go ahead.

15 A When I see the word fabric,
16 that is the main genus, that there's
17 knitted fabrics, woven fabrics and
18 nonwoven fabrics. And then when I see
19 knitted, I see weft knitted or warp
20 knitted. So once I see the word fabric,
21 it covers knitted fabrics.

22 Q So in your opinion, any
23 disclosure in a prior art reference of
24 fabric is a disclosure of a knitted
25 fabric?

1 A Can include a knitted
2 fabric, yes.

3 Q So I'm asking you
4 specifically for Voughlon, does Voughlon
5 disclose knitted footwear? And you're
6 saying this mention of fabric here is
7 akin to a disclosure of knitted footwear?

8 A Would include knitted
9 footwear, yes.

10 Q Does paragraph 346 in your
11 opinion disclose knitted footwear?

12 A Yes.

13 Q And that's because it
14 discloses fabric footwear?

15 A Correct.

16 Q When you were reviewing the
17 prior art as part of rendering your
18 opinions in this case, did you consider
19 all mentions of fabric to be a disclosure
20 of knitted fabrics?

21 A If it didn't say knitted --
22 once it said fabric, I assumed -- I mean
23 I concluded that it would include knitted
24 fabrics, yes.

25 Q And so when you were

1 rendering your opinions in this case, if
2 a prior art reference mentioned fabric,
3 you considered that a disclosure of
4 knitted fabric?

5 A Yes.

6 Q Because fabric is a genus
7 that include the species, knitted
8 fabrics?

9 A Yes.

10 Q Any other mention of knitted
11 footwear in Voughlon that you're aware
12 of?

13 A I don't recall.

14 Q In your declaration, you
15 only cited to paragraph 345.

16 And as you sit here today,
17 you're not aware of any other disclosure
18 in Voughlon of knitted fabrics?

19 A The words knitted fabric or
20 fabric?

21 Q Aside from paragraph 345, as
22 you sit here today, are you aware of any
23 mention of knitted footwear or a knitting
24 process in Voughlon?

25 A You mean 346?

1 Q I'm just looking at what you
2 cited to.

3 A Okay. I see what you're
4 saying, yes.

5 Q We'll use 346.

6 A Yes, because it's underneath
7 that, right.

8 Q I could try it again.

9 A I know what you mean. But
10 maybe for the record, you should try
11 again.

12 Q Sure.

13 As you sit here today, aside
14 from paragraph 345, are you aware of any
15 mention of knitted footwear or a knitting
16 process in Voughlon?

17 A Without reading it all, I'd
18 say no.

19 Q We'll stay with
20 paragraph 148.

21 A Yes.

22 Q It says, "As shown in
23 Figures 1A and 10 -- so I'm reading from
24 your declaration, paragraph 148.

25 A Yes.

1 Q "As shown in Figures 1A and
2 10, Voughlon discloses embodiments of
3 footwear with different fasteners for
4 laces."

5 A Yes.

6 Q And you say, "Voughlon's
7 Figure 10 shows and discloses the lace
8 receiver and/or a part of the lace
9 section fastener can comprise a plastic
10 or fabric ring --

11 A Where are you reading that
12 from?

13 Q Your declaration.

14 A Oh, okay. Yes.

15 Q "A plastic or fabric ring,
16 103, 104 or 105, attached to or
17 integrated into the underside of a
18 footwear with rivets or threads."

19 A With what as threads?

20 Q You want to follow with me
21 in paragraph 148 of your declaration?

22 A I'm reading that. It goes
23 to the second page. Yes. Okay. I'm
24 reading the whole 148. That was the
25 paragraph you wanted me to read, yes.

1 Q So Voughlon discloses lace
2 receivers that are plastic or fabric
3 rings. Do you see that?

4 A Yes.

5 Q And it specifically says
6 that they're attached by riveting or
7 sewing. Do you see that?

8 A Or sewn, yes.

9 Q Each the rings -- 103, 104,
10 105 -- is a strip of material rivetted or
11 sewn to the footwear to create an affixed
12 or movable ring. I see that?

13 A I see that.

14 Q So that means those rings
15 are separate components that are attached
16 to the upper; correct?

17 A Let me read it again.

18 It uses the word comprised.
19 So that doesn't mean it's only the -- if
20 it was only that, it would say "consists
21 of." But it says "can comprise."

22 Q Well, this isn't a claim.
23 We're just looking at the parenthetical
24 here in your declaration.

25 A I understand.

1 Q And in the parenthetical,
2 each of rings, 103, 104 and 105, is a
3 strip of material rivetted or sewn to the
4 footwear to create a fixed or movable
5 ring; right?

6 A Yes.

7 Q Each of the rings is
8 attached that way; right?

9 A Yes.

10 Q And that tells us that those
11 are separate components that are attached
12 to the article of footwear by either
13 being sewn or rivetted; correct?

14 A That's the way I read it,
15 yes.

16 Q So those rings are not
17 knitted into any sort of knitted upper;
18 right? They're not formed simultaneously
19 with the upper; correct?

20 A In Figure 10, right.

21 Q Correct?

22 A Correct.

23 Q So Rings 103, 104 and 105
24 are separate components that are attached
25 to the upper through rivetting or sewing;

1 they're not part of any knitted
2 component; correct?

3 A That is correct for
4 Figure 10 but not for Figure 1A.

5 Q Is there anywhere in your
6 declaration where you discuss Figure 1A?

7 A Other than putting the
8 figure in there, yes, I'm disclosing it.

9 Q In your mind, does Figure A
10 disclose lace loops?

11 A 1A?

12 Q Yes.

13 A 72, 73, 74, 77.

14 Q What tells you those are
15 loops as opposed to garments or eyelets?

16 A Because they're not holes.
17 If you look at the thread, it goes around
18 and under. So that wouldn't be an
19 eyelet. An eyelet would go through it to
20 the other side.

21 Q What about some sort of
22 metal grommet?

23 A Metal grommets are parallel
24 to the fabric. And, again, it would go
25 through the fabric, not the way -- these

1 look like the projections which would
2 tell me that they're loops.

3 Q Do you have any reason to
4 believe that those rings in Figure 1A are
5 attached to the upper in a way that's
6 different from what's described in
7 Figure 10?

8 A Yes. It's a different way
9 of doing it, yes.

10 Q So how would you think that
11 those are attached in Figure 1A?

12 A Well, like I said, they're
13 loops. And they have to be -- they can
14 just stand there alone. They have to be
15 part of something.

16 Q So would they be sewn on?

17 A They could be, but they
18 could also be knitted in.

19 Q Knitted into what?

20 A Number -- whatever the big
21 piece is. It's hard to make out all
22 those other numbers.

23 Q But we already agreed
24 there's no mention specifically of
25 knitting anywhere in Voughlon; right?

1 A No. We said that fabric is
2 part of knitting.

3 Q Right.

4 But there's no explicit
5 mention of the word knitted or knitting
6 or knitted footwear anywhere in Voughlon;
7 right?

8 A Correct.

9 Q So what would make you guess
10 that what's in Figure A is a knitted
11 loop?

12 MR. SMITH: Objection.

13 A You mean Figure 1A?

14 Q Yes.

15 A Again, the argument I used
16 earlier. Once it says "fabric," it could
17 include knitting.

18 Q So it could be knitting, but
19 we don't know?

20 A We don't know specifically.
21 We know it's fabric. And knitted fabrics
22 are part of fabrics.

23 Q We know that the shoe
24 contains some fabric materials?

25 A That is correct.

1 Q And that's it?

2 A Yes. No. It contains but
3 it's not solely fabric.

4 Q Right.

5 So all we know from Voughlon
6 is that it contains some fabric
7 materials?

8 A Yes.

9 Q We don't know anything about
10 the rings shown in Figure 1A, what
11 material they're made of, how they're
12 made or how they're attached; right?

13 A Well, it does say -- okay.
14 If you read the third sentence, it says a
15 plastic or fabric ring -- and I'm staying
16 with the knitted fabrics -- are part of
17 the fabrics ring, attached to or
18 integrated into the upper side of the
19 footwear.

20 Q Right.

21 Are you talking about
22 Figure 10 now?

23 A Yes, sir. I'm sorry, yes.
24 I'm sorry.

25 Q So let's stick with

1 Figure 1A.

2 A Yes. I understand.

3 Q We don't know anything about
4 the rings shown in Figure 1A, what
5 material they're made of, how they're
6 made or how they're attached; correct?

7 MR. SMITH: Objection to
8 form.

9 A Well, I'd like to look at
10 what the description of what 1A is.

11 Q Sure.

12 A What's the question on the
13 table?

14 Q Is there anything whatsoever
15 in Voughlon that suggests to you that the
16 lace fasteners in Figure 1A --

17 A Yes.

18 Q -- are made of a knitted
19 material?

20 A Let me give you a whole
21 bunch of examples. I have to go through
22 each example.

23 I don't see any.

24 MR. BOWLING: Thank you.

25 Nothing further.

1 EXAMINATION BY

2 MR. SMITH:

3 Q I have a few brief follow-up
4 questions.

5 A Sure.

6 Q Dr. Brookstein, when you
7 analyzed the prior art in this
8 proceeding, did you analyze whether the
9 prior art actually discloses the claim
10 elements?

11 A Yes.

12 Q Have you read the Hong
13 reference in its entirety?

14 A Many times.

15 Q Do you recall some
16 discussion earlier this morning about
17 whether Hong discloses knitting
18 three-dimensional shapes?

19 A Yes.

20 Q Can you pull out Hong? It's
21 Exhibit 3.

22 A Yes.

23 Q Can you look at the first
24 page, the first full paragraph in the
25 second column?

1 A First paragraph in the
2 second column.

3 Q What's the first sentence of
4 that first paragraph?

5 A The SES 122 FF machine?

6 Q No.

7 "This work describes."

8 A Repeat the question, please.

9 Q Can you go to the first full
10 paragraph in the second column, starting,
11 "This work describes"?

12 A Oh, okay. Yes, sir.

13 Q Can you read the first
14 sentence of that paragraph?

15 A "This work describes the use
16 of the new flat knitting machines to knit
17 3D structures by using different
18 techniques in the Shima Seiki SES 122 FF
19 flat knitting machine. It is thought
20 that these knitted shapes can be
21 interesting as technical textiles, and
22 they also stimulate the imagination
23 towards new applications."

24 Q In your opinion, is that
25 sentence a disclosure of knitting 3D

1 shapes?

2 MR. BOWLING: Objection,
3 leading.

4 A Yes. It says in the
5 second -- in the first sentence, it says
6 it in the first part, yes.

7 Q Can you go to Section 3.1?

8 A Yes.

9 Q Can you read the first
10 sentence of Section 3.1?

11 A You want me to read it
12 again?

13 Q You don't need to read it on
14 the record. Just to yourself.

15 A I'm looking. Okay. Yes.

16 Q Does that paragraph discuss
17 knitting a 3D shape?

18 A Yes.

19 Q Can you go to page 3 of
20 Hong?

21 A Yes.

22 Q Do you see the second full
23 paragraph there on the first column?

24 A That begins with the word,
25 "The absence"?

1 Q No. Next one down.

2 A Yes.

3 Q Does that paragraph describe
4 knitting 3D shapes?

5 A Yes, it does.

6 Q Do you recall some questions
7 about sewing various shapes together in
8 Hong?

9 A I do.

10 Q Having read Hong in its
11 entirety multiple times, do you recall
12 any discussion in Hong about sewing
13 shapes together?

14 A Mr. Smith, I looked. I did
15 word searches. I did everything possible
16 for the word sew or sewn and did not see
17 those words.

18 MR. SMITH: That's all I've
19 got.

20 MR. BOWLING: Okay. Just
21 one last question for you while we're
22 on Hong.

23 FURTHER EXAMINATION BY

24 MR. BOWLING:

25 Q That same paragraph on

1 page 3 that we just looked at that
2 begins, "When this method was used."

3 A Yes.

4 Q It says, "When this method
5 is used to knit three-dimensional
6 structures, the main techniques consist
7 in transferring the three-dimensional
8 form to two-dimensional patterns because
9 the fashioning operation, increasing or
10 decreasing the knitting needles, is only
11 determined according to two-dimensional
12 patterns."

13 What does that mean?

14 MR. SMITH: Objection,
15 beyond the scope.

16 A Well, it's knitted on the V
17 bed machine, which means it's
18 two-dimensional, and then when it comes
19 off the machine, it becomes
20 three-dimensional.

21 MR. BOWLING: No further
22 questions.

23 MR. SMITH: Quick re-direct.

24 FURTHER EXAMINATION BY

25 MR. SMITH:

1 Q When you said it comes off
2 the machine, it becomes
3 three-dimensional, were you speaking
4 about a post-processing step?

5 MR. SMITH: Objection,
6 leading.

7 A No. It was all part of the
8 knitting process.

9 MR. SMITH: No further
10 questions.

11 (Continued on the following page.)

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1 THE VIDEOGRAPHER: Off the
2 record. This concludes today's
3 testimony given by Dr. David S.
4 Brookstein as stipulated by all
5 parties. The total number of media
6 units used was four and will be
7 retained by Veritext Legal Solutions.
8 Off the record at 12:47.

9 (Time noted: 12:47 p.m.)

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I N D E X

E X A M I N A T I O N

EXAMINATION FURTHER EXAMINATION

Mr. Bowling	5	164
Mr. Smith	161	165

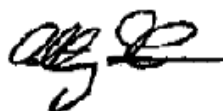
E X H I B I T S - -

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Brookstein Exhibit 7	Patent	146

C E R T I F I C A T I O N

I, ANTHONY GIARRO, a Shorthand Reporter and a Notary Public, do hereby certify that the foregoing witness, DR. DAVID BROOKSTEIN, was duly sworn on the date indicated, and that the foregoing, to the best of my ability, is a true and accurate transcription of my stenographic notes.

I further certify that I am not employed by nor related to any party to this action.



ANTHONY GIARRO

Veritext Legal Solutions
1100 Superior Ave
Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

June 12, 2024

To: Brandon Smith, Esq.

Case Name: lulumemon Atletica Canada, Inc., et al. v. Nike Inc.

Veritext Reference Number: 6711558

Witness: Dr. David S. Brookstein Deposition Date: 6/7/2024

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,
Production Department

NO NOTARY REQUIRED IN CA

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6711558

CASE NAME: lulumemon Atletica Canada, Inc., et al. v. Nike Inc.

DATE OF DEPOSITION: 6/7/2024

WITNESS' NAME: Dr. David S. Brookstein

In accordance with the Rules of Civil
Procedure, I have read the entire transcript of
my testimony or it has been read to me.

I have made no changes to the testimony
as transcribed by the court reporter.

Date Dr. David S. Brookstein

Sworn to and subscribed before me, a
Notary Public in and for the State and County,
the referenced witness did personally appear
and acknowledge that:

They have read the transcript;

They signed the foregoing Sworn
Statement; and

Their execution of this Statement is of
their free act and deed.

I have affixed my name and official seal

this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

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In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).

I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

Date

Dr. David S. Brookstein

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;

They have listed all of their corrections in the appended Errata Sheet;

They signed the foregoing Sworn Statement; and

Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

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ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST
ASSIGNMENT NO: 6711558

PAGE/LINE(S) / CHANGE /REASON

Date Dr. David S. Brookstein
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DAY OF _____, 20____ .

Notary Public

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

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