UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NIKE, INC.,	)	
	)	
Plaintiff, Counter-Defendant,	)	
	)	
vs.	)	Case No. 1:23-cv-00771-AS
	)	
LULULEMON USA INC.,	)	
	)	
Defendant, Counter-Plaintiff.	)	
	)	
	)	

JOINT DISPUTED CLAIM TERMS CHART

Plaintiff Nike, Inc. ("Nike") and Defendant lululemon usa inc. ("lululemon"), hereinafter "the parties," submit this Joint Disputed Claim Terms Chart pursuant to the May 23, 2023 Scheduling Order (ECF No. 56) and Local Patent Rule 11.

The parties have identified four disputed claim terms for construction:

- "incorporating [the knitted textile element / at least one of the first and second textile elements] into the article of footwear ('749 patent);
- "tubular structures" ('046 patent);
- "flat knitting process" ('484 patent); and
- "a flat knitted element formed from at least one yarn mechanically manipulated in a flat knitting process" ('484 patent).

In **Table I** below, the parties have set forth each party's proposed claim construction, along with an identification of intrinsic and extrinsic evidence (including expert testimony) on which they intend to rely. The parties have further agreed to constructions for six claim phrases as shown in **Table II** below.

I. DISPUTED CONSTRUCTIONS

Term (Patent / Claims)	Nike's Proposed Construction	Nike's Supporting Evidence	lululemon's Proposed Construction	lululemon's Supporting Evidence
"incorporating [the knitted textile element / at least one of the first and second textile elements] into the article of footwear" ('749 patent, claims 1, 13)	Ordinary and customary meaning; no further construction required	'749 patent at 1:20–23, 3:27–29, 3:44–46, 3:48–50, 4:1–2, 4:17–22, 4:43–54, 10:8–11, 10:32–62, Figs. 1, 12–14.	the removed knitted textile element is incorporated into the article of footwear without the addition of other non-knitted textile elements prior to its incorporation	**'749 Patent:** 1:25-2:13; 3:4-23; 3:40-53; 4:43-54; 5:37-57; 5:59-6:40; 9:18-28; 10:8-62 **File History of '749 Patent** November 9, 2011 Restriction Requirement **File History of U.S. Patent No. 7,814,598** Office Action dated July 27, 2009 Response to Office Action dated October 20, 2009 Office Action dated November 30, 2009 Response to Office Action dated March 17, 2010

Term (Patent / Claims)	Nike's Proposed Construction	Nike's Supporting Evidence	lululemon's Proposed Construction	lululemon's Supporting Evidence
				U.S. Patent No. 1,910,251 to Joha **IPR2016-00922** Papers 9 and 31
"tubular structures" ('046 patent, claims 1–3, 16, 17, 20)	Ordinary and customary meaning; i.e., tube-like structures	'046 patent at 2:20–26, 2:30–38, 2:57–63, 7:9–8:2, 8:18–20, 8:26–27, 8:60–62, 9:1–7, 9:14–20, 9:29–43, 9:49–61, 10:16–13:31, 14:49–55, 17:14–18:15, 18:34–39, 19:39–20:42, 20:56–21:13, 21:53–66, 22:11–33, 22:44–51, 22:57–23:19, 23:27–24:3, 24:9–39, 24:55–57, 25:25–32, 28:1–30:67, 31:20–35, Figs. 1–27. ***Nike, Inc. v. Puma N. Am., Inc.*, 18-cv-10876 (D. Mass.)** Dkt. 100 – Nike, Inc.'s Preliminary Claim Construction Brief (June 28, 2019)	Plain and ordinary meaning, which is elongated hollow structure	**'046 Patent:** Figs. 1-10B; 2:13-65; 3:48-54; 4:55-5:4; 5:26-47; 7:4-44; 7:56-8:2; 8:17-27; 8:60-64; 9:4-7; 9:21-10:41; 11:3-13:31; 14:26-33; 14:54-15:55; 16:49-57; 17:14-18:14; 19:41-60; 19:64-20:35; 20:56-21:10; 21:53-62; 22:31-43; 22:62-65; 23:7-24:3; 24:9-63; 25:25-32; 27:54-30:40; 30:50-67; 31:1-50; 31:65-32:5 **File History of the '046 Patent** Office Action dated July 20, 2015 Office Action Response dated October 20, 2015

Term (Patent / Claims)	Nike's Proposed Construction	Nike's Supporting Evidence	lululemon's Proposed Construction	lululemon's Supporting Evidence
		Dkt. 107 – Nike, Inc.'s Reply to Preliminary Claim Construction Brief (August 12, 2019) Dkt. 111 – Claim Construction Order (October 24, 2019)		**File History of U.S. Patent No. 9,826,798** Office Action dated October 13, 2016 Office Action Response dated January 13, 2017 Office Action dated February 27, 2017 Office Action Response dated April 27, 2017 **File History of U.S. Patent No. 11,197,518** Office Action dated June 18, 2021 Office Action Response dated August 26, 2021 ***Nike Inc. v. Puma N. Am., Inc.*, 18-CV-10876-LTS (D. Mass.)** Doc. No. 111 – Claim Construction Order dated Oct. 24, 2019

Term (Patent / Claims)	Nike's Proposed Construction	Nike's Supporting Evidence	lululemon's Proposed Construction	lululemon's Supporting Evidence
				Doc. No. 99 - PUMA North America, Inc. Preliminary Claim Construction Briefs dated June 28, 2019 Doc. No. 100 - Nike, Inc. Preliminary Claim Construction Briefs dated June 28, 2019 Doc. No. 107 - Nike, Inc. Reply to Preliminary Claim Construction Briefs dated Aug. 12, 2019 Doc. No. 108 – PUMA North America, Inc. Reply to Preliminary Claim Construction Briefs dated Aug. 12, 2019 **American Heritage Dictionary, 5th Ed. (2013)** Definitions of "Tube" and "Tubular"

Term (Patent / Claims)	Nike's Proposed Construction	Nike's Supporting Evidence	lululemon's Proposed Construction	lululemon's Supporting Evidence
				Webster Dictionary, 5th Ed. (2014) Definitions of "Tube" and "Tubular" **U.S. Patent No. 5,118,569 to Kuroda** **U.S. Patent No. 3,307,379 to Woolley** **US Patent Pub. No. 2010/0154256 to Dua** **U.S. Patent Pub. No 2014/0245633 to Podhajny** **U.S. Patent Pub. No. 2004/0181972 to Csorba**
"flat knitting process" ("484 patent, claims 1, 11–14)	Ordinary and customary meaning; i.e., a warp or weft knitting process yielding a substantially flat sheet of knitted textile material	'484 patent at 4:28–31, 4:49–5:7, 6:36–46, 6:52–62, 7:25–8:26, 9:60–65, 10:11–22, 10:34–46, 10:60–62, 10:66–11:3, 11:40–42, 11:66–12:3, 12:28–31. **Declaration of Dr. Christopher M. Pastore**	Plain and ordinary meaning, which is a sub-type of weft knitting, in which the weft knit textile is produced as a sheet of more or less flat material	**'484 Patent:** 2:44-54; 4:28-31; 4:49-5:7; 6:36-67; 7:27-8:18; 12:49-60 **U.S. Patent Pub. No. 2005/0193592** [0044] [0061]

Term (Patent / Claims)	Nike's Proposed Construction	Nike's Supporting Evidence	lululemon's Proposed Construction	lululemon's Supporting Evidence
		LULU_NIKEFW-0007065 [Spencer] **NIKE0470373 [Choi et al]** **U.S. Pat. No. 4,977,759** **U.S. Pat. No. 4,781,039** **U.S. Pat. No. 4.041,192** **U.S. Pat. No. 3,827,261** **U.S. Pat. No. 4,270,368** **U.S. Pat. No. 4,838,043** **U.S. PG Pub. No. 2004/0168479**		**File History of U.S. Patent No. 8,215,132** Office Action Response dated February 27, 2012 **File History of U.S. Patent No. 8,196,317** Office Action Response dated September 30, 2011 **File History of EP 21166675.5** Communication dated December 9, 2022 Communication dated February 2, 2022 Communication dated July 9, 2021 **U.S. Patent No. 6,754,983 (Hartfield)** **U.S. Patent No. 4,150,498 (Palmer)** **IPR No. 2013-00067** Paper 31

Term (Patent / Claims)	Nike's Proposed Construction	Nike's Supporting Evidence	lululemon's Proposed Construction	lululemon's Supporting Evidence
				Paper 44 Paper 60 **LULU_NIKEFW-0004884 (Hong)** **LULU_NIKEFW-0007065 (Spencer)** *E.g.*, Pages 48-59, 85-89, 286-312 **NIKE0470373 (Choi)** **NIKE0029479; NIKE0029504 (Man-made Fiber and Textile Dictionary)** **NIKE0029514 (Dictionary of Fiber & Textile Technology)** **LULU_NIKEFW-0004588 (Buck)** *E.g.*, Pages 9-15 **NIKE0029728 (McGraw Hill Dictionary of Scientific and Technical Terms)**

Term (Patent / Claims)	Nike's Proposed Construction	Nike's Supporting Evidence	lululemon's Proposed Construction	lululemon's Supporting Evidence
				Declaration of Robin Wagner **NIKE0492203 (Thomas Deposition Transcript):** 14:11-19, 16:9-18:8, 18:20-19:1, 19:10-17, 186:1-17 **NIKE0493463 (Dua Deposition Transcript):** 41:9-22, 42:8-44:16, 248:4-9, 284:18-286:9, 400:7-19
"a flat knitted element formed from at least one yarn mechanically manipulated in a [flat knitting process]" ('484 patent, claim 1)	Plain and ordinary meaning; no further construction required	'046 patent at 2:44–54, 3:10–13, 6:36–42, 6:52–57, Figs. 1–13.	a flat knitted element having the claimed features is formed from a [flat knitting process] using at least one yarn	**'484 Patent:** Abstract, 3:19-29; 4:28-31; 4:49-5:7; 6:36-46; 6:50-62; 7:26-8:15; 9:60-65; 10:18-46; 12:49-60 **File History of EP 21166675.5** Communication dated December 9, 2022 Communication dated February 2, 2022

Term (Patent / Claims)	Nike's Proposed Construction	Nike's Supporting Evidence	lululemon's Proposed Construction	lululemon's Supporting Evidence
				Communication dated July 9, 2021 **LULU_NIKEFW-0004884 (Hong)**

II. AGREED CONSTRUCTIONS

Term (Patent / Claims)	Agreed Construction
"unitary construction" ('749 patent, claims 11, 21)	configuration wherein portions of a textile element are not joined together by seams or other connections
"a first area and a second area with a [unitary construction]" ('749 patent, claims 11, 21)	a textile element having a [unitary construction] and having a first area and a second area
"neutral position" ('046 patent, claims 1, 2, 20)	position in the absence of applied force
"extended position" ('046 patent, claims 1, 20)	position in response to applied force
"unitary knit construction" ('046 patent, claim 18)	formed as a one-piece element through a knitting process
"unitary construction" ('484 patent, claims 1, 11)	one piece construction

Respectfully submitted,

Dated: September 11, 2023

/s/ Christopher J. Renk

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