

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LULULEMON USA INC.

Petitioner,

v.

NIKE, INC.

Patent Owner.

Case IPR2024-00159

Patent 9,375,046

VIDEOTAPED DEPOSITION OF DR. CHRISTOPHER PASTORE

APPEARING REMOTELY

October 25, 2024

9:00 a.m.

Reported by: Eileen Mulvenna, CSR/RMR/CRR/RDR

DIGITAL EVIDENCE GROUP

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Washington, D.C. 20036

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1 REMOTE DEPOSITION of DR. CHRISTOPHER
2 PASTORE, a Declarant in the above-titled action,
3 held on Friday, October 25, 2024, commencing at
4 approximately 9:00 a.m., before Eileen Mulvenna,
5 CSR/RMR/CRR/RDR, Certified Shorthand Reporter,
6 Registered Merit Reporter, Certified Realtime
7 Reporter, Registered Diplomate Reporter, and Notary
8 Public of the State of New York.

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

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19

20 ALSO PRESENT:

21 Henry Marte, Exhibit Technician

22

1 I N D E X

2 WITNESS EXAMINATION BY PAGE

3 DR. CHRISTOPHER PASTORE

4 MR. EVERTON 5

5

6 E X H I B I T S

7 PAGE

8 Exhibit 1001 U.S. Patent No. 9,375,046 30

9 Exhibit 1007 U.S. Patent Application No. 54

10 2014/0130374

11 Exhibit 2006 Declaration of Dr. 16

12 Christopher Pastore

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1 THE REPORTER: Counsel, before I swear
2 in the witness, can you please state your
3 appearances and whom you represent.

4 MR. EVERTON: Ben Everton from Knobbe
5 Martens on behalf of Lululemon.

6 MS. STAUBACH: Lindsey Staubach from
7 Arnold & Porter on behalf of patent owner,
8 Nike, Inc.

9 DR. CHRISTOPHER PASTORE,
10 having been duly sworn by Eileen Mulvenna,
11 a Notary Public of the State of New York,
12 was examined and testified as follows:

13 EXAMINATION

14 BY MR. EVERTON:

15 Q. Good morning.

16 A. Good morning.

17 Q. Will you please state your name for
18 the record.

19 A. Christopher Pastore.

20 Q. How do you spell your last name?

21 A. P-A-S-T-O-R-E.

22 Q. Do you understand that this is a

1 deposition for the IPR relating to U.S. Patent No.
2 9,375,046?

3 A. Yes, I do.

4 Q. And that is IPR No. 2024-00159; is
5 that correct?

6 A. That is correct.

7 Q. In this IPR, do you refer to this
8 patent as the '046 patent?

9 A. I do.

10 Q. And is it okay if during this
11 deposition, I continue to refer to the patent as the
12 '046 patent?

13 A. Yes, it is.

14 Q. Have you ever been deposed before?

15 A. Yes, I have.

16 Q. Approximately how many times?

17 A. I think last time you and I met, I
18 told you 12. So it's probably -- I guess counting
19 this, it must be somewhere around 14 by this point.

20 Q. Okay. So you had another deposition
21 in between the previous deposition that I had with
22 you?

1 A. Yes.

2 Q. In which matter was that deposition?

3 A. That was a matter of BSM versus Rugged
4 Cross Hunting Blinds.

5 Q. Unrelated to the matters between
6 Lululemon and Nike; is that correct?

7 A. That is correct.

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

10 A. No, there is no reason.

11 Q. Are you on any medication?

12 A. Yes.

13 Q. Any medication that would affect your
14 testimony today?

15 A. No.

16 Q. Are you in good health?

17 A. Yes.

18 Q. As we go through the deposition,
19 please let me know if you don't understand any of my
20 questions; otherwise, I will assume that you
21 understand them.

22 Does that sound okay?

1 A. That sounds okay.

2 Q. Also, let me know if you need to take
3 a break; otherwise, we'll plan to take a break about
4 every hour or so. Okay?

5 A. Okay.

6 Q. How did you prepare for your
7 deposition?

8 A. I reviewed the referenced patents, the
9 '046 and the prior art patents. I reviewed my
10 report. I had conversations with counsel.

11 Q. How long did you spend preparing for
12 this deposition?

13 A. How many hours all told?

14 Q. Yes, how many hours total?

15 A. I'm not certain. I would say
16 somewhere around six hours all together.

17 Q. Who did you meet with to prepare for
18 this deposition?

19 MS. STAUBACH: I'll caution the
20 witness just not to reveal any substance of
21 our conversations, but you can say who you
22 met with, how long we met, et cetera.

1 THE WITNESS: I met with Lindsey
2 Staubach to review these documents and to
3 talk about the understanding thereof.

4 BY MR. EVERTON:

5 Q. Did you meet with anybody else to
6 prepare for the deposition?

7 A. It's possible that in one of the Zoom
8 meetings we had, there was someone else in the
9 meeting, but the conversations were always between
10 Lindsey and myself.

11 Q. You don't recall who else might have
12 been in those meetings?

13 A. I would be speculating if I were to
14 tell you here.

15 Q. Did you speak with anyone other than
16 counsel about this deposition?

17 A. No.

18 Q. Did you speak with anyone from Nike?

19 A. No, I did not.

20 Q. You mentioned reviewing your
21 declaration in this IPR; is that correct?

22 A. That is correct.

1 Q. And you also mentioned reviewing the
2 '046 patent.

3 Were there any other documents that
4 you reviewed?

5 A. Yes, the prior art patents that I
6 reference as Good, Munsing and Minami in the
7 declaration.

8 Q. Are there any other documents other
9 than those that you reviewed for this deposition?

10 A. No.

11 Q. In your experience, have you ever
12 worked with an article that has tubular structures?

13 A. Yes.

14 MS. STAUBACH: Objection, form.

15 THE WITNESS: Yes, I have.

16 BY MR. EVERTON:

17 Q. And what was that article?

18 A. There were a number of articles over
19 the years: Stints, aortic valve replacements,
20 bifurcated aortic valve replacements, braided
21 sleeves with multiple channels, catheter covers for
22 tool guidance. Gosh, I don't have an exhaustive

1 list with me.

2 Q. Did you ever work with any clothing
3 articles that had tubular structures?

4 MS. STAUBACH: Objection, form.

5 THE WITNESS: I think I have when I
6 was working on chemical protective gear for
7 the U.S. Army.

8 BY QUESTIONER:

9 Q. Can you describe those clothing
10 articles that had tubular structures?

11 A. These are one piece coveralls that
12 soldiers will don in the event of a chemical attack,
13 and they have a number of different places to store
14 things on the outside that they might need access
15 to, they're frequently tubular structures.

16 Q. What was the time frame when you
17 worked on those clothing articles with tubular
18 structures?

19 MS. STAUBACH: Objection, form.

20 THE WITNESS: I worked on the chemical
21 protective gear from roughly 1999 to 2001.

22

1 BY QUESTIONER:

2 Q. When were those clothing articles with
3 tubular structures used?

4 MS. STAUBACH: Objection, form.

5 THE WITNESS: I'm not sure I
6 understand the question.

7 BY QUESTIONER:

8 Q. Were those clothing articles with the
9 tubular structures ever used by anyone?

10 A. I'm not certain. I was involved in
11 research on the design.

12 Q. For whom was that research performed?

13 A. That was for DARPA.

14 Q. Can you spell that?

15 A. It's an acronym. D-A-R-P-A, Defense
16 Advanced Research Projects Agency.

17 Q. What does that company do?

18 A. It's a branch of the U.S. government
19 that supports the Department of Defense.

20 Q. You don't know whether or not those
21 clothing articles that had tubular structures were
22 ever used by DARPA?

1 A. Correct.

2 Q. Do you know if they were ever used by
3 anyone else other than DARPA?

4 A. I do not know.

5 Q. You mentioned that you were on the
6 design side for these clothing articles with tubular
7 structures for DARPA. What did that entail, doing
8 the designs?

9 MS. STAUBACH: Objection; form, scope.

10 THE WITNESS: We -- I was part of a
11 team. We focused on selecting the materials,
12 the assembly methods and the coating
13 technologies necessary to make the garments
14 function according to specifications.

15 BY QUESTIONER:

16 Q. What materials were those garments
17 made from?

18 A. There were a range of materials.
19 Primarily polyester and nylon.

20 Q. And the portions that included the
21 tubular structures, do you remember what material
22 that was made of?

1 MS. STAUBACH: Objection, form.

2 THE WITNESS: I don't recall, but it
3 was most likely either polyester or nylon.

4 BY QUESTIONER:

5 Q. On those clothing articles, how was
6 the -- how were the tubular structures constructed?

7 MS. STAUBACH: Objection; form, scope.
8 This is well beyond the scope of
9 Dr. Pastore's declaration in this proceeding.

10 THE WITNESS: I knew the tubular
11 structures in those instances were created
12 through sewing operations.

13 BY QUESTIONER:

14 Q. Can you describe those sewing
15 operations?

16 MS. STAUBACH: Objection; form, scope.

17 THE WITNESS: It would be a matter of
18 aligning the fabric into the tubular shape
19 and using a sewing operation, or perhaps an
20 ultrasonic welding operation, to ensure that
21 there was a closed periphery to the tubular
22 structure.

1 BY QUESTIONER:

2 Q. Are you aware of any other clothing
3 articles that include tubular structures?

4 MS. STAUBACH: Objection, form.

5 THE WITNESS: Yes.

6 BY QUESTIONER:

7 Q. Can you tell me what those are?

8 A. I believe the most obvious ones would
9 be shirts and trousers, jackets.

10 Q. What type of tubular structures are
11 you referring to in these clothing articles?

12 MS. STAUBACH: Objection, form.

13 THE WITNESS: I'm referencing what you
14 would call sleeves or pants legs.

15 BY QUESTIONER:

16 Q. Other than sleeves or pants legs, are
17 you aware of any other tubular structures in
18 clothing articles?

19 MS. STAUBACH: Objection, form.

20 THE WITNESS: For many garments, belt
21 loops are actually tubular structures that
22 are then sewn into place to hold the belt in

1 place.

2 BY QUESTIONER:

3 Q. Any other examples of tubular
4 structures in clothing articles?

5 MS. STAUBACH: Objection, form.

6 THE WITNESS: Nothing crosses my mind
7 right now.

8 MR. EVERTON: I'd like to look at
9 Exhibit 2006. We can pull that.

10 (Exhibit 2006, Declaration of Dr.
11 Christopher Pastore, received and marked.)

12 MS. STAUBACH: Ben, like last time,
13 Dr. Pastore brought in some paper copies,
14 clean copies of documents from this
15 proceeding. He has a copy of his
16 declaration, Exhibit 2006. He has a copy of
17 the '046 patent, Exhibit 1001. And he has a
18 copy of Good, Munsing and Minami with him.

19 MR. EVERTON: Okay. Sounds good.

20 BY MR. EVERTON:

21 Q. So looking at Exhibit 2006, do you
22 have that in front of you?

1 A. I do.

2 Q. Is Exhibit 2006 a copy of your
3 declaration in this IPR?

4 A. Yes, it is.

5 Q. And the declaration, Exhibit 2006,
6 relates to the '046 patent; correct?

7 A. Correct.

8 Q. As you sit here today, are you aware
9 of any corrections that need to be made to this
10 declaration for the '046 patent?

11 A. Yes, I am.

12 Q. What are those?

13 A. On page 29, Section 12A begins with
14 the word "Munsing" and it should have said Minami.

15 Q. Okay. Are there any other corrections
16 that need to be made?

17 A. Not that I'm aware of.

18 Q. Now, if we go to paragraph 12 of your
19 declaration, that's on page 4. Do you see where it
20 says "Legal Standards"?

21 A. Yes.

22 Q. Does your declaration for the '046

1 patent contain all the legal standards that you have
2 considered for the '046 patent?

3 A. Yes, all the standards that I
4 considered which were informed by counsel are
5 addressed there.

6 Q. In preparing your declaration for the
7 '046 patent, did you rely on any legal standards or
8 legal principles that are not stated in your
9 declaration?

10 A. No, I did not.

11 Q. Now, if we go to paragraph 19, do you
12 see where it says, "Level of ordinary skill in the
13 art"?

14 A. Yes.

15 Q. Does your declaration, Exhibit 2006,
16 set forth your entire opinion regarding the level of
17 ordinary skill in the art for the '046 patent?

18 MS. STAUBACH: Objection, form.

19 THE WITNESS: As it states, "For the
20 purposes of this declaration, I applied
21 Lululemon's definition of a POSITA," person
22 of ordinary skill in the art.

1 BY QUESTIONER:

2 Q. Do you agree with Lululemon's level of
3 ordinary skill in the art for the '046?

4 A. I have no objections to that. I have
5 used that in my analysis.

6 Q. You haven't proposed any different
7 level of ordinary skill in the art; correct?

8 A. Not for this, no.

9 Q. Do you believe that you are a person
10 of skill in the art as of September 2014?

11 A. I certainly had more than the
12 threshold established in this definition, yes.

13 Q. Why do you think that you have more
14 than the threshold for the level of ordinary skill
15 in the art?

16 A. I have a doctoral degree in material
17 science and engineering which emphasize textiles.
18 I've been teaching textiles since 1988, and I've
19 been working with knitted textiles for fabric-based
20 articles since 1988.

21 Q. When designing a shoe upper in the
22 September 2014 time period, is there a particular

1 starting point a person of skill in the art would
2 use to start their design?

3 MS. STAUBACH: Objection, form.

4 THE WITNESS: I would imagine, like
5 most industries, each company will have their
6 own protocols in place for how they would
7 like their designers to go about starting the
8 design process.

9 BY QUESTIONER:

10 Q. Are you familiar with those protocols
11 for how to start the design process for a shoe
12 upper?

13 MS. STAUBACH: Objection, form.

14 THE WITNESS: Those have not been
15 shared with me by the various industries.

16 BY QUESTIONER:

17 Q. Have you ever designed a shoe upper?

18 A. Yes.

19 Q. What was your starting point when
20 designing that shoe upper?

21 A. When I did that, my starting point was
22 the mechanical performance of the upper as the first

1 criteria.

2 Q. And after that first criteria, what
3 did you do?

4 A. Then I looked at shape forming
5 capabilities and manufacturing processes.

6 Q. Did you look at any available designs
7 at that time?

8 MS. STAUBACH: Objection, form.

9 THE WITNESS: No.

10 BY QUESTIONER:

11 Q. What company did you design the shoe
12 upper for?

13 MS. STAUBACH: Objection; form,
14 foundation.

15 THE WITNESS: Adidas.

16 BY QUESTIONER:

17 Q. When was that that you designed the
18 shoe upper for Adidas?

19 A. It was late 1990s. I can't remember
20 precisely. '97, '98, '99, somewhere in that range.

21 Q. Were there knitted shoe uppers prior
22 to September 2014?

1 A. Yes.

2 Q. What were those knitted shoe uppers
3 like prior to September 2014?

4 MS. STAUBACH: Objection, form.

5 THE WITNESS: I'm not sure what you
6 mean by "like" in that question.

7 BY MR. EVERTON:

8 Q. What types of knitted shoe uppers were
9 they that you're referring to prior to
10 September 2014?

11 MS. STAUBACH: Objection, form.

12 THE WITNESS: Primarily weft knitted,
13 but I believe there was some morph knitted
14 shoe uppers as well.

15 BY MR. EVERTON:

16 Q. Do you recall which companies had
17 knitted shoe uppers prior to September 2014?

18 A. I don't have that information in front
19 of me.

20 Q. Let's go back to your declaration,
21 Exhibit 2006. If we go to paragraph 28.

22 Is paragraph 28 in the claim

1 construction section of your declaration?

2 A. Yes.

3 Q. And could you read for the record the
4 second-to-last sentence in paragraph 28 that starts,
5 "I further understand"?

6 A. Yes.

7 "I further understand that the board
8 construed 'tubular structures' at least as having a
9 'closed periphery or circumference'."

10 Q. Is this the construction that you've
11 adopted for your analysis in your declaration?

12 A. I have included that, yes.

13 Q. What does that mean that the tubular
14 structures have a "closed periphery or
15 circumference"?

16 A. It means that the periphery of the
17 cross-section of the tubular shape must be
18 continuous, that it is closed, there's no gaps,
19 there's no openings, there's no way to change it so
20 that it becomes an open structure. There is a
21 continuity of material that goes completely around
22 the periphery.

1 Q. So the ends of the tube can be open,
2 but the sides of the tube must be closed along its
3 entire length; is that correct?

4 A. Yes, the cross-section must be closed
5 at any point in the tubular structure.

6 Q. What if the tube doesn't go all the
7 way around but there's another material backing that
8 closes off the sides of the tube on its periphery?

9 MS. STAUBACH: Objection, form.

10 THE WITNESS: I'm not certain what you
11 mean. As I said, we have to have a
12 continuity of material that goes along the
13 entire tubular cross-section; but I'm not
14 really understanding your example.

15 BY MR. EVERTON:

16 Q. Yes, so I guess my question is, does
17 it have to be the walls of the tube that close off
18 the tube structure or it can be another backing or
19 material that forms part of the wall of the tube in
20 order to close it off?

21 MS. STAUBACH: Objection, form.

22 THE WITNESS: I think I have to see an

1 example of what you're referencing.

2 It's possible to have -- we're looking
3 at knitted tubes in this structure. You
4 could have different yarn types within the
5 closed periphery. So if that's what you're
6 referencing, then, yes, you could have
7 different materials that exist within a
8 closed periphery.

9 BY MR. EVERTON:

10 Q. In the context of the '046 patent and
11 its tubular structures, does the tubular structure
12 need to be closed off in all positions or states?

13 MS. STAUBACH: Objection, form.

14 THE WITNESS: Yes, the tubular
15 structure with a closed periphery would mean
16 that it can't change its closed quality in
17 different states. It must be closed at all
18 times.

19 BY MR. EVERTON:

20 Q. What about if in the relaxed state,
21 the edges of the tubed structure come together in a
22 closed configuration, but when forces act on the

1 tubular structure, the edges come apart; is that no
2 longer closed off?

3 MS. STAUBACH: Objection, form.

4 THE WITNESS: In something like you're
5 describing, it would never have been closed
6 in the first place.

7 BY MR. EVERTON:

8 Q. Why is that?

9 A. Because it would not be a continuity
10 of material that maintains a closed periphery.
11 Sounds like you're talking about something that make
12 two edges bump into other as opposed to having a
13 continuity. So it was never a closed structure.
14 It's an open structure that happens to bump into
15 itself.

16 Q. So if the edges of the tube just
17 contact one another so that there's no space in the
18 periphery, or no gaps, but they're not securely
19 attached to one another, then that's not a tubular
20 structure; is that correct?

21 MS. STAUBACH: Objection, form.

22 THE WITNESS: Just the fact that there

1 were edges means it's not a closed periphery.

2 BY MR. EVERTON:

3 Q. Okay. So in order to be a tubular
4 structure, it cannot not have any edges, it must be
5 continuous along the periphery; is that correct?

6 A. Yes. Except, of course, the ends of
7 the tube, the top and bottom, but along -- looking
8 at cuts through the cross-section, it can have no
9 edges that run parallel to the length of the tube.

10 Q. And the tubular structure must stay
11 closed even when subjected to forces; is that
12 correct?

13 MS. STAUBACH: Objection, form.

14 THE WITNESS: "Stay" sounds funny. It
15 has a closed periphery and that periphery --
16 the closed status, the closed quality of the
17 tubular structure would not change under
18 application of load.

19 BY MR. EVERTON:

20 Q. So going back to the example where we
21 have the two edges along a tubular structure are
22 contacting one another and the tubular structure is

1 rigid such that those edges would always contact one
2 another, would that still be a tubular structure in
3 this context of the '046 patent?

4 MS. STAUBACH: Objection, form.

5 THE WITNESS: No. As I said, because
6 it has the edges, it would not have a closed
7 periphery, therefore, would not be a tubular
8 structure in the context of this declaration.

9 BY MR. EVERTON:

10 Q. And if the tubular structure has the
11 edges along its periphery and those edges are
12 connected with a flexible material that allows
13 movement between those edges, would that be a
14 tubular structure in the context of the '046 patent?

15 MS. STAUBACH: Objection, form.

16 THE WITNESS: I'm not certain I
17 understand the hypothetical you're
18 presenting.

19 BY MR. EVERTON:

20 Q. So I guess what I'm asking is, if
21 those edges on the periphery of the tubular
22 structure are connected by a separate material that

1 is flexible and allows movement -- relative movement
2 between those edges, could that still be a tubular
3 structure in the context of the '046 patent?

4 MS. STAUBACH: Objection, form.

5 THE WITNESS: As I understand, you're
6 proposing something that is like a split
7 tube, so it has no edges, and then you are
8 joining those edges together with the
9 material that is firmly bonded in which case
10 we would have a continuity of material and a
11 closed periphery, if I'm understanding your
12 question correctly.

13 BY MR. EVERTON:

14 Q. So as long as those edges of the
15 tubular structure are connected with some sort of
16 material or something else, then it could still be a
17 tubular structure in the context of the '046 patent;
18 correct?

19 MS. STAUBACH: Objection, form.

20 THE WITNESS: If those edges are
21 connected to each other, then we would no
22 longer have edges. So then we could have a

1 closed periphery. Depending on the details,
2 of course. This is all hypothetical.

3 BY MR. EVERTON:

4 Q. But those edges would need to be
5 connected along the entirety of the length of the
6 tubular structure without any gaps; is that correct?

7 MS. STAUBACH: Objection, form.

8 THE WITNESS: If there are
9 cross-sectional areas where we don't have
10 material continuity, then we would not have a
11 closed periphery there.

12 BY MR. EVERTON:

13 Q. And if there's not a closed periphery
14 along the entire length of the tubular structure,
15 then it would not be a tubular structure in the
16 context of the '046 patent?

17 A. That's right, a tubular structure has
18 to have a closed periphery.

19 (Exhibit 1001, U.S. Patent No.
20 9,375,046, received and marked.)

21 BY MR. EVERTON:

22 Q. Now, if we go to Exhibit 1001, is

1 Exhibit 1001 a copy of the '046 patent?

2 A. It appears to be, yes.

3 Q. And if we go to Column 4, line 58 of
4 the '046 patent. Can you read for the record the
5 sentence that starts "In some cases"?

6 A. "In some cases, rib structures can be
7 hollow tubes formed in knitted component 100 by
8 coextensive and overlapping knit layers that are
9 closed to form the tube."

10 Q. So is this describing an example of
11 the tubular structure in the context of the '046
12 patent?

13 A. Yes, it's describing a closed hollow
14 tube.

15 Q. And when it says "In some cases," what
16 does that mean?

17 A. That means there are other ways to
18 achieve the design intent of the patent.

19 Q. So does this indicate that this
20 feature is not essential to the invention?

21 MS. STAUBACH: Objection, form.

22 THE WITNESS: This is an example of

1 how the invention can be realized.

2 BY MR. EVERTON:

3 Q. Are there other examples provided in
4 the '046 patent of how the invention can be
5 realized?

6 A. I don't remember as I sit here. I'd
7 have to scour through the patent.

8 Q. So let's go to Column 17, line 43 of
9 the '046 patent. Can you read into the record that
10 sentence that starts, "In an exemplary embodiment"?

11 A. "In an exemplary embodiment, during
12 the knitting process, at least one tubular course
13 804 may be joined by knitting to at least one web
14 course 806 so as to form a loop and close tubular
15 rib structure 126."

16 Q. Does this describe an example of a
17 tubular structure in the '046 patent?

18 A. This describes a step in the -- in a
19 process to create a tubular structure.

20 Q. What does that mean that "one tubular
21 course 804 may be joined by knitting to at least one
22 web course 806"?

1 A. It means that -- a course refers to a
2 line of knit, that one line of knit for the tubular
3 structure can be joined to the web a line of knit.
4 So it's describing how the tubular structure would
5 be attached to the webs between the tubular
6 structures.

7 Q. How is that done? Are the edges of
8 the tubular structure attached to the web portion?

9 MS. STAUBACH: Objection, form.

10 THE WITNESS: In this example -- and
11 you're taking one sentence out of a long
12 description of how this might be
13 accomplished -- there aren't any edges here.
14 The tubular structure is closed and attached
15 to the web region.

16 BY MR. EVERTON:

17 Q. Okay. So this is just one example of
18 how that tubular structure can be formed in the '046
19 patent; is that correct?

20 MS. STAUBACH: Objection, form.

21 THE WITNESS: It's one step in the
22 process, yes, of exemplary embodiment.

1 BY MR. EVERTON:

2 Q. So now let's turn to Column 10,
3 line 20 of the '046 patent. Actually, we'll go to
4 line 25 of Column 10.

5 Can you read for the record that
6 sentence that starts "In some embodiments"?

7 A. "In some embodiments, first curved
8 portion 416 and second curved portion 418 may be
9 knitted together to define the tube forming tubular
10 rib structure 126."

11 Q. What does that mean, "the first curved
12 portion 416 and the second curved portion 418 may be
13 knitted together"?

14 A. In this description, there are --
15 there was a first portion and a second portion that
16 are being knit independently, and then they may be
17 knitted together to create the closed tubular
18 periphery.

19 Q. So the edges of the curved portions
20 416 and 418 are knitted together; is that correct?

21 A. What's happening here is there are no
22 edges. The first curved portion is joined with the

1 second curved portion through a knitting operation.

2 So there are no edges.

3 Q. So the knitting operation eliminates
4 the edges of these curved portions?

5 A. Correct. There are no sewn edges.

6 Q. And that sentence begins "In some
7 embodiments."

8 Do you see that?

9 A. I do.

10 Q. So is this knitting of the curved
11 portions just one example of the embodiments of the
12 invention of the '046 patent?

13 A. That is my understanding.

14 Q. Let's go back to your declaration,
15 Exhibit 2006. If we can go to paragraph 51.

16 Can you read out loud the first
17 sentence of paragraph 51 of your declaration?

18 A. "In my opinion, Good does not disclose
19 a 'plurality of webbed areas' and a 'plurality of
20 tubular structures' extending along a 'longitudinal
21 direction' of the first article, as recited by
22 dependent Claim 2."

1 Q. So does Claim 2 of the '046 patent
2 require that the webbed areas and tubular structures
3 extend along a longitudinal direction?

4 A. Of the article, yes.

5 Q. What does that mean, "extend along the
6 longitudinal direction of the article"?

7 A. That means once we establish for the
8 article what is the longitudinal direction, then the
9 length of the tube would be parallel to that
10 longitudinal direction.

11 Q. Let's go to paragraph 52, then. Do
12 you see in the first sentence in paragraph 52, "In
13 my opinion, the longitudinal direction that
14 Dr. Brookstein identifies in Good's Figure 2 is not
15 'parallel to the axes of tubular structures'?"

16 Do you see that?

17 A. I do.

18 Q. Then can you read the next two
19 sentences of paragraph 52?

20 A. Yes.

21 "Unlike the tubular rib structures of
22 Figure 1 of the '046 patent, Good's rig portions 22

1 extend circumferentially around Good's cuff 10.
2 They do not extend along a straight line and thus do
3 not extend along a longitudinal direction."

4 Q. Is it your opinion that because Good's
5 rib portions do not extend along a straight line,
6 they do not meet that claim limitation of extending
7 along a longitudinal direction?

8 A. It's my opinion that's why
9 Dr. Brookstein is incorrect. He wants to identify a
10 longitudinal direction associated with the
11 cylindrical object instead of taking the natural
12 longitudinal direction, which would be the axes of
13 extrusion, he wants it -- this line to somehow
14 reference a circumferential hoop orientation, and
15 it's not clear how that could be accomplished.

16 Q. Do those rib portions of Good extend
17 along a longitudinal direction even if it's not the
18 longitudinal direction identified by Dr. Brookstein?

19 MS. STAUBACH: Objection, form.

20 THE WITNESS: No.

21 BY MR. EVERTON:

22 Q. So the rib portions of Good cannot

1 extend along any longitudinal direction; is that
2 correct?

3 MS. STAUBACH: Objection, form.

4 THE WITNESS: The ribs that Good draws
5 move in a hoop orientation. So there is no
6 longitudinal direction that corresponds with
7 that.

8 BY MR. EVERTON:

9 Q. In order to extend along a
10 longitudinal direction, would the rib portions need
11 to extend in a straight line?

12 A. Yes.

13 Q. So to satisfy this limitation of
14 Claim 2, the tubular structures must be totally
15 straight in the longitudinal direction; is that
16 correct?

17 A. If there weren't tubular structures as
18 required in Claim 2, there's a requirement of
19 tubular structures, I don't think that the claim
20 requires totally straight, but needs to be
21 substantially straight.

22 Q. What does that mean, "substantially

1 straight"? How straight is that?

2 A. That means upon inspection, one would
3 say, yes, those extend in the longitudinal
4 direction.

5 Q. And so how would a person of ordinary
6 skill perform that inspection to know that the
7 tubular structures are straight enough?

8 A. Well, they would look to see what is
9 the longitudinal direction and then look to see if
10 the tubular structures are oriented with that
11 longitudinal direction.

12 Q. Right, but you said that the tubular
13 structures would need to be substantially straight,
14 and I'm just trying to figure out how --

15 MS. STAUBACH: Objection, form.

16 BY MR. EVERTON:

17 Q. -- to determine whether the tubular
18 structure are straight enough?

19 MS. STAUBACH: Objection; form,
20 mischaracterizes testimony.

21 THE WITNESS: I think that would be
22 accomplished through a visual inspection.

1 BY MR. EVERTON:

2 Q. So the person of ordinary skill in the
3 art would know it when they see it whether it's
4 straight enough?

5 A. Yes, if it looks like it's straight --
6 these are textile materials and textile materials
7 are never going to be perfect. That's understood.
8 There are going to be natural variations that occur
9 during the construction. So nobody would expect a
10 perfect alignment. They would expect if you looked
11 at the longitudinal direction and looked at the
12 tubular structures, they would appear to be
13 parallel.

14 Q. So what if the axes of the tubular
15 structures curve slightly, could they still satisfy
16 this limitation of Claim 2?

17 A. The longitudinal axes of the article
18 is established before any evaluation of the tubular
19 structures.

20 Q. Right.

21 So what if the axis of the tubular
22 structures curve slightly when compared to the

1 longitudinal axis that was defined?

2 MS. STAUBACH: Objection, form.

3 THE WITNESS: I'm not sure what the
4 question is asking me, "what if."

5 BY MR. EVERTON:

6 Q. Yeah, so I'm just asking if the
7 tubular structure has an axis that curves slightly
8 and is not completely straight, can the tubular
9 structure meet the limitation of Claim 2?

10 A. Depending on the amount of curvature,
11 whether it comes back towards the longitudinal
12 direction or not, it would be something that a
13 POSITA would evaluate by looking at the object.

14 Q. Does the entire tubular structure need
15 to be straight or only a portion of the tubular
16 structure?

17 A. The Claim 2 requires that the
18 plurality of webbed areas and the plurality of
19 tubular structures extend along the longitudinal
20 direction. So the extension of the tubular
21 structures must be in the longitudinal direction.

22 Q. Does the entire tubular structure --

1 let me start over.

2 Does the entire tubular structure need
3 to extend along the longitudinal direction?

4 A. As I mentioned, to substantially align
5 with the longitudinal direction. So there could be
6 a little bit of waviness or wrinkling that goes on.

7 Q. But does the entire tubular structure
8 need to be straight or only a portion of the tubular
9 structure?

10 A. The claim requires that they extend
11 along the longitudinal direction, and that extension
12 would correspond with the axis of the tubular
13 structure.

14 Q. The axis of the entire tubular
15 structure or just a portion of the tubular
16 structure?

17 A. There's no reference to a portion of
18 the tubular structure. There's only reference to
19 the tubular structures. That one would look at each
20 tubular structure and evaluate if it was extending
21 along the longitudinal direction.

22 Q. So the entire tubular structure, its

1 entire length would need to be straight and extend
2 along the longitudinal direction; correct?

3 A. Yes.

4 Q. Let's go to Exhibit 1001, the '046
5 patent. We can go to Figure 25.

6 In Figure 25, do you see the tubular
7 structures 1802?

8 A. 1802 tubular structure or the webbing?

9 Q. So 1802 refers to -- or is a call-out
10 number for the tubular rib structures, is that
11 correct, if you look at the top of Column 28?

12 A. Right. I'm just confirming here.

13 Okay. Yes, I see the call-outs for
14 1802.

15 Q. So would any of these tubular
16 structures 1802 satisfy the longitudinal direction
17 limitation of Claim 2 that we were just discussing?

18 MS. STAUBACH: Objection, form.

19 THE WITNESS: I have not analyzed
20 this, but at a quick glance, it appears on
21 what we see as the heel region on the left
22 side of this figure, we have 1802 all running

1 parallel in a longitudinal direction.

2 BY MR. EVERTON:

3 Q. So those tubular structures that you
4 identified would be straight enough to satisfy the
5 longitudinal direction limitation of the Claim 2?

6 A. They appear to, yes. Again, I haven't
7 analyzed this, but they appear to.

8 Q. What about the tubular structures on
9 the front portion of the shoe in Figure 25, would
10 those satisfy the longitudinal direction limitation
11 of Claim 2?

12 A. I suppose it depends on which part of
13 the shoe you wanted to consider, but I haven't
14 analyzed these. To give you a full answer, I'd need
15 some time to think this through and read it in
16 context.

17 Q. How about the tubular structures on
18 the toe portion of the shoe shown in Figure 25,
19 would those tubular structures be straight enough to
20 satisfy the limitation of Claim 2?

21 A. I have not spent the time to analyze
22 this and, of course, it will be necessary to

1 consider this fabric before it was formed into a
2 shoe to see what the orientation of the materials
3 was during that knitting process, but I don't have
4 an answer for you here because I have not analyzed
5 this.

6 Q. And does Claim 2 require that the
7 tubular structures and webbed areas extend along a
8 longitudinal direction when the article is in its
9 fully formed state?

10 MS. STAUBACH: Objection, form.

11 THE WITNESS: I don't believe so.

12 BY MR. EVERTON:

13 Q. So if the tubular structures in the
14 webbed areas were extending along a longitudinal
15 direction in a previous state, like the knitting
16 state or in some state where the fabric was flat,
17 would that be sufficient to satisfy the limitations
18 of Claim 2?

19 MS. STAUBACH: Objection, form.

20 THE WITNESS: I believe so.

21 BY MR. EVERTON:

22 Q. Now, turning to Figure 26 of

1 Exhibit 1001, the '046 patent. This Figure 26 also
2 shows the tubular structures 1802; correct?

3 A. Yes.

4 Q. Would any of these tubular structures
5 1802 satisfy the longitudinal direction limitation
6 of Claim 2?

7 A. I haven't analyzed this, and I'm not
8 sure what the fabric looks like before it's
9 transformed into a shoe. So I don't really have an
10 opinion on this.

11 Q. So if this fabric of the shoe upper
12 were flat before it was formed into a shoe, would
13 the tubular structures satisfy the limitation of
14 Claim 2 for extending along a longitudinal
15 direction?

16 A. I haven't seen the drawing in its
17 as-knitted form, but it would be much simpler to
18 knit them with the tubular structures running
19 parallel to each other. But without having seen
20 that, I can't really draw an opinion.

21 Q. For the tubular structure -- strike
22 that.

1 Let's continue discussing this Claim 2
2 extending along a longitudinal direction limitation.
3 So if you have a 3D coordinate system, could a line
4 extend in the X direction and the Z direction
5 simultaneously?

6 MS. STAUBACH: Objection, form.

7 THE WITNESS: Yes, there can be a line
8 that lies in the X-Z plane.

9 BY MR. EVERTON:

10 Q. But is it your opinion that Claim 2
11 requires that the tubular structure extend in a
12 single direction or straight line?

13 A. Claim 2 specifies that the article of
14 Claim 1 wherein the article is associated with a
15 longitudinal direction. So, yes, it would be a
16 single direction.

17 Q. So it can extend in only one
18 dimension; is that correct?

19 A. No, that longitudinal direction could
20 be oriented anywhere in three space, but it's linear
21 and infinitely extensive.

22 Q. Could the tubular structure extend in

1 two directions at the same time or just one?

2 MS. STAUBACH: Objection -- sorry. Go
3 ahead. Objection, form.

4 THE WITNESS: I'm not sure what you
5 mean by that. As you first said, could a
6 line exist in the X-Z plane which would mean
7 it has an X component and a Z component of
8 orientation. Yes, but it would still be a
9 single line and it would be straight.

10 BY MR. EVERTON:

11 Q. Are you familiar with the earth's
12 lines of longitude and latitude?

13 A. Yes.

14 Q. What are the earth's lines of
15 longitude and latitude?

16 A. They are a method of identifying
17 positions on the earth that refer to the projected
18 angle from the center of the earth to the surface,
19 and refer to the angle from the North Pole starting
20 at Greenwich and circulating around in a
21 counterclockwise fashion as viewed from above the
22 North Pole.

1 Q. Do the lines of longitude run north
2 and south from pole to pole?

3 MS. STAUBACH: Objection, scope.

4 THE WITNESS: Can you rephrase the
5 question for me, please?

6 BY MR. EVERTON:

7 Q. Yes.

8 So talking about the lines of
9 longitude that you just mentioned, do those lines of
10 longitude and the earth run north and south in that
11 direction from one pole to the other pole?

12 A. They're hemicircles -- well, we know
13 the earth isn't a perfect sphere, but they're
14 approximately hemicircles that go from the North
15 Pole and South Pole and touch the surface of the
16 globe.

17 Q. Do the lines of latitude run east and
18 west parallel to the equator?

19 MS. STAUBACH: Objection, form.

20 THE WITNESS: In a sense, these are
21 circles that are parallel to the equator that
22 are located at different angels of elevation

1 from the center of the earth and touch the
2 surface of the earth.

3 BY MR. EVERTON:

4 Q. Do the earth's lines of longitude
5 extend along the longitudinal direction?

6 MS. STAUBACH: Objection, form.

7 THE WITNESS: No, these are surface
8 grids that are used to identify locations on
9 the surface of the earth. We call them lines
10 of longitude, but they're circles.

11 BY MR. EVERTON:

12 Q. So the earth's lines of longitude do
13 not run or extend longitudinally; is that correct?

14 MS. STAUBACH: Objection, form.

15 THE WITNESS: Correct. We only call
16 them lines because the earth is so big that
17 to us on the human scale they appear to be
18 straight at our scale, but if we look at the
19 globe, they're circles.

20 BY MR. EVERTON:

21 Q. So in order to extend longitudinally,
22 the earth's lines of longitude would need to be

1 straight instead of curved; is that correct?

2 MS. STAUBACH: Objection, form.

3 THE WITNESS: I don't think we want to
4 change the system of longitude and latitude.
5 That's what we call a spherical coordinate
6 system to describe points on the surface of
7 the earth.

8 If one were to define a longitudinal
9 axis for the earth, one would probably go
10 from the South Pole to the North Pole, what
11 would be the Z axis in the spherical
12 coordinate system, and say that's the closest
13 you could get to a true longitudinal
14 direction.

15 BY MR. EVERTON:

16 Q. So the earth's lines of longitude do
17 extend along a longitudinal direction in that sense;
18 correct?

19 MS. STAUBACH: Objection; form.

20 THE WITNESS: No, they're circles that
21 surround the planet.

22

1 BY MR. EVERTON:

2 Q. Why is it that they don't extend along
3 a longitudinal direction even if they are circles?

4 A. Because they're circles. And as
5 circles, they can't be straight at the same time.

6 Q. So in order to extend along a
7 longitudinal direction or a latitudinal direction,
8 the line must be straight; is that correct?

9 MS. STAUBACH: Objection, form.

10 THE WITNESS: Yes, to align with the
11 longitudinal direction, it must be straight.

12 BY MR. EVERTON:

13 Q. So I didn't ask "to align with." I
14 said "to extend along the longitudinal direction."

15 And in order to extend along a
16 longitudinal direction, the line must be straight;
17 is that your opinion?

18 MS. STAUBACH: Objection, form.

19 THE WITNESS: Yes. First, one must
20 establish longitudinal direction and then the
21 extension must be parallel to that
22 longitudinal direction.

1 BY MR. EVERTON:

2 Q. And that's exactly parallel; correct?

3 A. Substantially parallel.

4 Q. Can you tell me how much deviation
5 from exactly parallel is allowed in order to be
6 substantially parallel?

7 A. I described earlier it would be done
8 through a visual inspection, and a person of
9 ordinary skill in the art understanding the natural
10 variation of textile materials would be able to
11 establish if it was substantially parallel or not.

12 Q. But you can't quantify it for me an
13 amount of curvature or deviation from a straight
14 line that would still satisfy the limitations of
15 Claim 2; is that correct?

16 MS. STAUBACH: Objection, asked and
17 answered.

18 THE WITNESS: That is correct.

19 BY MR. EVERTON:

20 Q. I think we've been going about an
21 hour. Is it all right if we take a ten-minute
22 break?

1 A. Sounds good to me.

2 THE REPORTER: We're off the record.

3 (Recess from the record.)

4 THE REPORTER: We're back on the
5 record.

6 MR. EVERTON: Let's turn to
7 Exhibit 1007.

8 (Exhibit 1007, U.S. Patent Application
9 No. 2014/0130374, received and marked.)

10 BY MR. EVERTON:

11 Q. Is Exhibit 1007 the Minami reference
12 that you've analyzed in your declaration?

13 A. Yes.

14 Q. Let's go to paragraph 62 of your
15 declaration now. If we go back to your declaration,
16 Exhibit 2006, paragraph 62, this section of your
17 declaration addresses the Minami reference, the
18 Minami ground; is that correct?

19 A. That is correct.

20 Q. In your declaration, you do not opine
21 on whether Minami discloses tubular structures;
22 correct?

1 A. Correct.

2 Q. But as shown in Figure 7A of Minami,
3 does Minami disclose tubular structures?

4 A. I'm sorry, you said Figure 7 and 8?

5 Q. Figure 7A.

6 A. Figure 7A. Okay.

7 (Document review.)

8 THE WITNESS: Minami talks about
9 inlaid yarns 132, but I do not argue that
10 those are not tubular structures. I accept
11 that.

12 BY MR. EVERTON:

13 Q. So in your opinion, those structures
14 that have a circular cross-section as shown in 7A
15 are tubular structures; correct?

16 A. I believe so.

17 Q. Can you explain to me why those
18 circular structures shown in Figure 7A of Minami are
19 tubular structures as compared to the Good
20 reference?

21 MS. STAUBACH: Objection, form.

22 THE WITNESS: There's no similarity

1 between these and the Good reference
2 drawings. Figure 7A, of course, it needs to
3 be taken in context with, for example,
4 Figure 7B or Figure 6. These are closed
5 peripheries that extend for some length.

6 BY MR. EVERTON:

7 Q. So the structures shown in Minami
8 Figure 7A are closed tubular structures that extend
9 into or out of the page; is that correct?

10 A. Correct.

11 Q. Do the tubular structures disclosed in
12 Minami stay tubular structures even when they are
13 stretched?

14 A. Minami emphasizes trying to not
15 stretch, but there's nothing about these tubular
16 structures that would open up under the exertion of
17 load.

18 Q. In paragraph 62 of your declaration,
19 you opine that Minami does not disclose webbed areas
20 that are configured to move between a neutral
21 position and an extended position; is that correct?

22 A. That is correct.

1 Q. Is this because they are configured
2 not to stretch?

3 A. Minami emphasizes not stretching
4 throughout the patent.

5 Q. But are the webbed areas of Minami
6 those areas between the tubular structures
7 configured not to stretch?

8 A. The webbed areas along with the entire
9 design of the upper are configured not to stretch.

10 Q. So are you saying that the webbed
11 areas between Minami's tubular structures do not
12 stretch at all?

13 A. No, everything stretches. A piece of
14 steel stretches.

15 Q. What are those webbed areas in
16 Minami -- let me start over.

17 What are Minami's webbed areas made
18 out of?

19 A. I'm going to reference back to the
20 patent so I get the correct language.

21 (Document review.)

22 THE WITNESS: So the webbed areas that

1 we see here are a combination of a knitted
2 material and a skin.

3 BY MR. EVERTON:

4 Q. So is the knitted material you're
5 referring to the knit element 131?

6 A. I believe it's 130 that I'm
7 referencing.

8 Q. Okay. So knitted component 130 and
9 skin layer 140; is that correct?

10 A. Correct.

11 Q. Do you know how much the knitted
12 component 130 and skin layer 140 would stretch?

13 A. It's not specified in the patent.

14 Q. But Minami's webbed portions would
15 have some stretching; correct?

16 A. Everything in existence can stretch,
17 yes.

18 Q. Do you know the material used for the
19 knitted component 130 of the webbed areas?

20 A. Minami tells us it is a knitted
21 material, knitted component.

22 Q. So that would be knitted with yarns?

1 A. Yes, it would be knitted with yarns.

2 Q. And generally do knitted components
3 have some stretch to them?

4 A. Everything that exists has -- can be
5 stretched.

6 Q. Now, if we go to paragraph 65 of your
7 declaration, if we go down to the bottom, if you see
8 at the bottom there of page 30, the last sentence on
9 page 30 that starts "Minami explains" --

10 A. Yes.

11 Q. -- could you read that sentence into
12 the record?

13 A. "Minami explains that the inlaid
14 strands 'stretch less than the knit element.'"

15 Q. So what does that mean, that the
16 inlaid strands stretch less than the knit element
17 131?

18 A. That means if we take a material, same
19 width, and expose it to the same applied force, the
20 inlaid strands would see less deformation than the
21 regions that do not have the inlaid strands, knit
22 element 131.

1 Q. The knit element 131 is referring to
2 the knit element of the webbed portions; correct?

3 A. Yes.

4 Q. So the knit element of the webbed
5 portions stretches more than the inlaid strands; is
6 that correct?

7 A. That is correct.

8 Q. What are the inlaid strands?

9 A. They're yarns that are incorporated
10 into the knit structure.

11 Q. Do those inlaid strands stretch as
12 well?

13 A. Everything in existence stretches.

14 Q. Do you know how much those inlaid
15 strands stretch?

16 A. No, it would depend on the specific
17 material, size, configuration, any other factors
18 that are not described in the patent.

19 Q. So how would you quantify or figure
20 out how much the webbed portions of Minami stretch?

21 MS. STAUBACH: Objection, form.

22 THE WITNESS: One could take the

1 material and expose it to a mechanical test
2 where load is applied in the direction that
3 one wanted to explore extension, and, for
4 example, choose a load and see how much
5 deformation the material experiences under
6 that load, and that would give a metric of
7 its stretchability under that load or
8 preferably under a fixed stress.

9 BY MR. EVERTON:

10 Q. Let's go to Exhibit 1007, the Minami
11 reference.

12 Do you have that?

13 A. Yes.

14 Q. If we turn to Figure 7A.

15 A. Yes.

16 Q. So we were just talking about this
17 Figure 7A and the tubular structures that are shown
18 and the web portions in between the tubular
19 structures; is that correct?

20 A. We were.

21 Q. Now, looking specifically at the
22 tubular structures in Figure 7A, do you see how the

1 tubular structures have two curved portions, one
2 upper curved portion and one lower curved portion?

3 A. Yes.

4 Q. As shown in Figure 7A, the upper
5 curved portion is longer than the lower curved
6 portion; correct?

7 A. That's hard to say since it's clearly
8 stated these are not drawn to scale. So it's
9 possible that one's longer than the other. In this
10 particular illustration, it appears that the top
11 might be longer than the bottom.

12 Q. So I'm just asking about this specific
13 illustration in Figure 7A. It shows that the upper
14 curve length is greater than the lower curve length;
15 correct?

16 A. I sort of object to saying that it
17 shows that the upper curve length is longer than the
18 lower curve length. I think if one were to isolate
19 this, zoom in and measure the length one might
20 discover that, but I don't think it shows it in that
21 I don't think it's illustrating that feature.

22 Q. Have you zoomed in and looked at the

1 upper curve length compared to the lower curve
2 length? Do you know if the upper is longer than the
3 lower?

4 A. I have seen an expanded and annotated
5 version that Dr. Brookstein presented making that
6 argument.

7 Q. And you agree that the upper curve
8 length is indeed longer than the lower curve length
9 in Figure 7A; correct?

10 MS. STAUBACH: Asked and answered.

11 Objection.

12 THE WITNESS: I believe that
13 measurement could be made, yes.

14 BY MR. EVERTON:

15 Q. And so I'm not asking whether or not
16 that measurement could be made. I'm asking that in
17 Figure 7A of Minami, the upper curve length of the
18 tubular structure is longer than the lower curve
19 length; correct?

20 A. I think that might be true.

21 Q. So when you say that it "might be
22 true," you don't know whether it's true or not

1 looking at the zoomed-in Figure 7A?

2 A. I did not take any measurements on
3 this, and it's hard to tell from the illustration
4 where the transition from the webbed region to the
5 tubular region actually begins and ends. So I'm not
6 sure exactly what point should be used to measure
7 the upper and lower lengths. The illustration is
8 not very instructive in that sense.

9 MR. EVERTON: So if we can just zoom
10 in on Figure 7A on one of the tubular
11 structures there. That's good.

12 BY MR. EVERTON:

13 Q. So if you're measuring -- if the curve
14 structures end where they attach to the web
15 portions, and that's how you define the curve, the
16 upper curve and the lower curve, they end where they
17 attach to the web portions, Figure 7A shows that the
18 upper curve length is longer than the lower curve
19 length; correct?

20 A. If you were to simply draw a line
21 between 140 and 130 to represent -- oh, I suppose
22 that's not fair. But perhaps. If you draw a line

1 through the center of 130 and then try to trace the
2 center line, you would get a longer arc on the top
3 than on the bottom, but that's presuming that the
4 transition from web to tubular structure happens at
5 that center line of the web; whereas in the
6 description that Minami gives us, he talks about
7 different ways that the tubular structures might
8 connect to the web region.

9 So the point of the onset of the
10 tubular structure might not be the mid plane of the
11 webbed agent depending on how the knitted process is
12 designed.

13 We also don't know how much stretch
14 occurred to the knit during the insertion of those
15 inlays.

16 So several assumptions are needed to
17 come to the conclusion that this shows the top is
18 longer than the bottom.

19 Q. But under the assumptions that you
20 just described, the top curve length is longer than
21 the lower curve length; correct?

22 A. I can in my mind create a set of

1 assumptions that would allow that to be true, yes.

2 Q. And a person of skill -- or person of
3 ordinary skill in the art looking at Figure 7A would
4 see that the top curve length is longer than the
5 lower curve length; correct?

6 A. I don't think a person of ordinary
7 skill in the art would look at this and say, Wait a
8 minute, let me check to see if the top curve length
9 is greater than the bottom curve length. This is a
10 not-to-scale drawing that's just trying to
11 illustrate that the inlays are inside the knit
12 structure. I don't think it's trying to show
13 anything more than that.

14 So I don't think a person of ordinary
15 skill in the art would want to make these
16 assumptions and do those calculations.

17 Q. But when you look at this figure now
18 as we're looking at it zoomed in, Figure 7A, you can
19 see that the top curve length is longer than the
20 lower curve length; correct?

21 MS. STAUBACH: Objection, asked and
22 answered.

1 THE WITNESS: I -- having seen
2 Dr. Brookstein's annotations, I can see what
3 he meant.

4 BY MR. EVERTON:

5 Q. Let's look at the '046 patent,
6 Exhibit 1001. If we go to Claim 1, so Claim 1 in
7 the first limitation says, "A plurality of webbed
8 areas that include a plurality of courses formed
9 from a first yarn. The webbed areas having a front
10 surface. The webbed areas configured to move
11 between a neutral position and an extended position.
12 The webbed areas being biased to move toward the
13 neutral position."

14 Do you see that?

15 A. Yes.

16 Q. Are these webbed areas in Claim 1 knit
17 or knitted?

18 A. Yes, but the claim does not require
19 it. It implies it, formed from -- a course formed
20 from a first yarn, but it does not say knitted in
21 this claim here.

22 Q. So does Claim 1 require that the

1 webbed areas are knitted?

2 A. Does not require knitting. It
3 requires a plurality of courses. So I suppose one
4 could crochet this as well.

5 Q. Now, if we go to Claim 17, it says,
6 "The article of Claim 1 wherein the article includes
7 a knitted component, the knitted component
8 comprising the plurality of webbed areas and the
9 plurality of tubular structures."

10 Do you see that?

11 A. I do.

12 Q. In Claim 17, are the webbed areas
13 knitted?

14 A. Yes.

15 Q. Are the webbed areas part of a knitted
16 component?

17 A. Yes.

18 MR. EVERTON: I don't have any further
19 questions.

20 MS. STAUBACH: No questions here.

THE REPORTER: That concludes today's
21 deposition. The time is 10:35 a.m.

22 (Off the recors at 10:35 a.m.)

1 STATE OF NEW YORK)
2) ss:
3 COUNTY OF WESTCHESTER)
4)

5 I, EILEEN MULVENNA, CSR/RMR/CRR, a
6 Certified Court Reporter, Registered Merit Reporter,
7 Certified Realtime Reporter, and Notary Public in
8 and for the State of New York, do hereby certify:

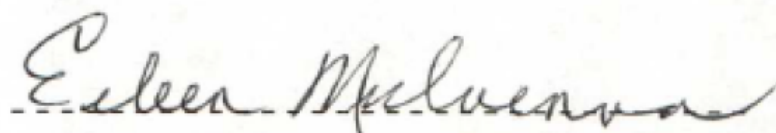
9 That I reported the taking of the
10 deposition of the witness, DR. CHRISTOPHER PASTORE,
11 commencing on the 25th day of October, 2024, at the
12 hour of 9:00 a.m.

13 That prior to being examined, the witness
14 was duly sworn by me to testify to the truth, the
15 whole truth, and nothing but the truth.

16 That I thereafter transcribed my said
17 shorthand notes into typewriting and that the
18 typewritten transcript of said deposition is a
19 complete, true and accurate transcription of my
20 said shorthand notes taken down at said time, and
21 that a request has been made to review the
22 transcript.

I further certify that I am not a relative
or employee of an attorney or counsel of any of the
parties, nor a relative or employee of any attorney
or counsel involved in said action, nor a person
financially interested in the action.

IN WITNESS WHEREOF, I have hereunto
set my signature this 26th day of October, 2024.



EILEEN MULVENNA, CSR/RMR/CRR/RDR

1 Dr. Christopher Pastore, c/o
Arnold & Porter

2 601 Massachusetts Ave, NW
Washington, DC 20001-3743

3

4 Case: Lululemon USA Inc. v. Nike, Inc.

Date of deposition: October 25, 2024

5 Deponent: Dr. Christopher Pastore

6

7 Please be advised that the transcript in the above
8 referenced matter is now complete and ready for signature.
9 The deponent may come to this office to sign the transcript,
10 a copy may be purchased for the witness to review and sign,
11 or the deponent and/or counsel may waive the option of
12 signing. Please advise us of the option selected.

13 Please forward the errata sheet and the original signed
14 signature page to counsel noticing the deposition, noting the
15 applicable time period allowed for such by the governing
16 Rules of Procedure. If you have any questions, please do
17 not hesitate to call our office at (202)-232-0646.

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5 Witness Name: Dr. Christopher Pastore
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10 (Check appropriate box):
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11 complete transcription of the answers given by
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12

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22 Signature

Date

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