

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 No. 9,375,046

PATENT OWNER'S SUR-REPLY

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	CLAIM CONSTRUCTION	2
	A. lululemon’s new construction is inconsistent with its prior positions for “tubular structures”	3
	B. lululemon’s new construction is not supported by the ’046 patent specification.....	4
	1. The Board’s construction does not exclude embodiments	4
	2. lululemon misapplies the doctrine of claim differentiation.....	7
III.	GROUND 1: LULULEMON FAILS TO DEMONSTRATE THAT GOOD ANTICIPATES AND/OR RENDERS OBVIOUS ANY CHALLENGED CLAIM	9
	A. Good does not disclose the “tubular structures” recited in claims 1 and 20	9
	B. Good does not disclose a “plurality of webbed areas” and a “plurality of tubular structures” extending along a “longitudinal direction,” as recited by dependent claim 2	10
IV.	GROUND 2: LULULEMON FAILS TO DEMONSTRATE THAT MUNSING ANTICIPATES ANY CHALLENGED CLAIM	12
V.	GROUND 3: LULULEMON FAILS TO DEMONSTRATE THAT MINAMI ANTICIPATES AND/OR RENDERS OBVIOUS ANY CHALLENGED CLAIM	13
	A. Minami does not disclose that “the tubular rib structures have a first curved portion with a first curve length” that is “greater” than “a second curve length” of a “second curved portion,” as recited in claim 8	13
	B. Minami does not disclose “webbed areas” that are “configured to move between a neutral position and an extended position,” as recited in claim 8	16

VI. CONCLUSION.....	18
---------------------	----

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>Aspex Eyewear, Inc. v. Marchon Eyewear, Inc.</i> , 672 F.3d 1335 (Fed. Cir. 2012)	17
<i>Autogiro Co. of America v. U.S.</i> , 384 F.3d 391 (1967).....	7
<i>Clare v. Chrysler Group LLC</i> , 819 F.3d 1323 (Fed. Cir. 2016)	8
<i>Curtiss-Wright Flow Control Corp. v. Velan, Inc.</i> , 438 F.3d 1374 (Fed. Cir. 2006)	8
<i>Hockerson-Halberstadt, Inc. v. Avia Grp. Int’l, Inc.</i> , 222 F.3d 951 (Fed. Cir. 2000)	13, 14, 15, 16
<i>Hormone Research Foundation, Inc. v. Genentech, Inc.</i> , 904 F.2d 1558 (Fed. Cir. 1990)	8
<i>In re Aslanian</i> , 590 F.2d 911 (CCPA 1979)	16
<i>In re Mraz</i> , 455 F.2d 1069 (CCPA 1972)	16
<i>Indacon, Inc. v. Facebook, Inc.</i> , 824 F.3d 1352 (Fed. Cir. 2016)	7, 8
<i>Medrad, Inc. v. MRI Devices Corp.</i> , 401 F.3d 1313 (Fed. Cir. 2005)	5
<i>PayPal Holdings, Inc. v. Fintiv, Inc.</i> , IPR2023-00744, Paper 29 (PTAB Oct. 2, 2024).....	4
<i>Retractable Techs., Inc. v. Beckton, Dickinson and Co.</i> , 653 F.3d 1296 (Fed. Cir. 2011)	8

EXHIBITS

Exhibit No.	Description
2001	File History of U.S. Patent No. 9,375,046 (Excerpted)
2002	02/29/2024 Declaration of Dr. Christopher M. Pastore
2003	lululemon's Responsive Claim Construction Brief (ECF No. 88), <i>Nike, Inc. v. lululemon usa inc.</i> , No. 1:23-cv-00771 (S.D.N.Y.) (Excerpted)
2004	12/11/2023 Markman Hearing Transcript, <i>Nike, Inc. v. lululemon usa inc.</i> , No. 1:23-cv-00771 (S.D.N.Y.) (Excerpted)
2005	Nike's Opening Claim Construction Brief (ECF No. 74), <i>Nike, Inc. v. lululemon usa inc.</i> , No. 1:23-cv-00771 (S.D.N.Y.) (Excerpted)
2006	08/16/2024 Declaration of Dr. Christopher M. Pastore
2007	08/08/2024 Deposition Transcript of Dr. David S. Brookstein

I. INTRODUCTION

Neither the Petition nor Petitioner’s Reply to Patent Owner’s Response (Paper 15; “Reply”) demonstrates by a preponderance of the evidence that any Challenged Claim of the ’046 patent is unpatentable.

Consistent with the parties’ positions, the Board preliminarily construed “tubular structures”—which appears in independent claims 1 and 20—to mean structures having at least a “closed periphery or circumference.” Institution Decision at 8. Under this construction, the Board found that neither Good (Ground 1) nor Munsing (Ground 2) discloses “tubular structures.” lululemon doesn’t address Munsing in its Reply, and thus concedes Ground 2. But in a last-ditch effort to salvage Ground 1, lululemon now contests the Board’s construction and argues that “tubular structures” include structures having an “open-periphery configuration.” These arguments are both unsupported by the intrinsic record and inconsistent with lululemon’s claim construction arguments in the Petition and in the parties’ district court litigation. Thus, the Board should reject lululemon’s arguments and maintain its preliminary construction. Under that construction, Ground 1 fails.

As to Ground 3, lululemon still fails to demonstrate that Minami discloses “tubular rib structures” having “a first curved portion with a first curve length” greater than “a second curve length” of a “second curved portion,” as recited in independent claim 8. lululemon’s reliance on the precise proportions of small details

of Minami's figure 7A is contrary to well-established Federal Circuit law. lululemon also fails to show that Minami discloses "webbed areas configured to move between a neutral position and an extended position," as further recited in claim 8.

For at least these reasons, lululemon has not carried its burden of proving by a preponderance of the evidence that any Challenged Claim of the '046 patent is unpatentable.

II. CLAIM CONSTRUCTION

lululemon incorrectly alleges Nike misled the Board in some way with respect to the parties' positions for the term "tubular structures." Reply at 2. The record evidence shows otherwise. In the Preliminary Response (Paper 6; "POPR"), Nike explained that "[t]he parties agree that ... a 'tubular structure' must be a closed-loop structure that is shaped like a tube." POPR at 17. Nike relied upon lululemon's own statements made in claim construction briefing in the parties' parallel district court litigation in which lululemon argued that "the ordinary meaning and the specification compel the conclusion that the claimed 'tubular structures' have the shape of tubes." Ex. 2003 at 3. And Nike pointed to dictionaries upon which lululemon relied that define "tube" as a "hollow *cylinder*" for conveying fluids. *Id.* (emphasis added). Consistent with its district court argument, lululemon proposed an express construction for "tubular structures" in the Petition. Petition at 14–16. lululemon argued that tubular structures "*must have the shape of a tube.*" *Id.* at 15

(emphasis added). lululemon further argued that “[t]his construction is consistent with the claim language and specification.” *Id.* After considering the parties pre-institution arguments, the Board preliminarily construed “tubular structures” to mean structures having at least a “closed periphery or circumference.” Institution Decision at 8.

lululemon now reverses course and argues that “tubular structures” don’t have to be in the shape of a tube. lululemon dedicates nearly 10 pages of its Reply explaining why “tubular structures” allegedly include “open-periphery configurations.” Reply at 2–11. These arguments should be rejected for two reasons. First, lululemon’s Reply arguments are inconsistent with positions it took in the Petition and in district court. And second, lululemon’s new proposed construction lacks support in the intrinsic record.

A. lululemon’s new construction is inconsistent with its prior positions for “tubular structures”

lululemon’s Reply arguments for “tubular structures” should be rejected because they are inconsistent with lululemon’s prior positions for this term. As explained above, lululemon argued in the Petition and in district court that the claimed “tubular structures” *must* have the shape of a tube. And they relied on dictionary definitions that define a tube as a hollow cylinder. Now in light of the Board’s preliminary construction, lululemon pivots and argues that “the claim term

at issue is not ‘tube.’”¹ Reply at 4. And that “tubular” “does not require all properties of an actual tube.” *Id.* “At the very least,” lululemon’s inconsistent positions should “instill doubt” that its Reply claim construction arguments are correct. *See PayPal Holdings, Inc. v. Fintiv, Inc.*, IPR2023-00744, Paper 29 at 21–23 (PTAB Oct. 2, 2024).

B. lululemon’s new construction is not supported by the ’046 patent specification

lululemon’s Reply arguments for “tubular structures” should also be rejected as unsupported by the intrinsic record. lululemon incorrectly argues that the Board’s construction (1) would exclude embodiments in the ’046 patent specification, and (2) violates the doctrine of claim differentiation. Both of lululemon’s arguments fail for the reasons discussed below.

1. The Board’s construction does not exclude embodiments

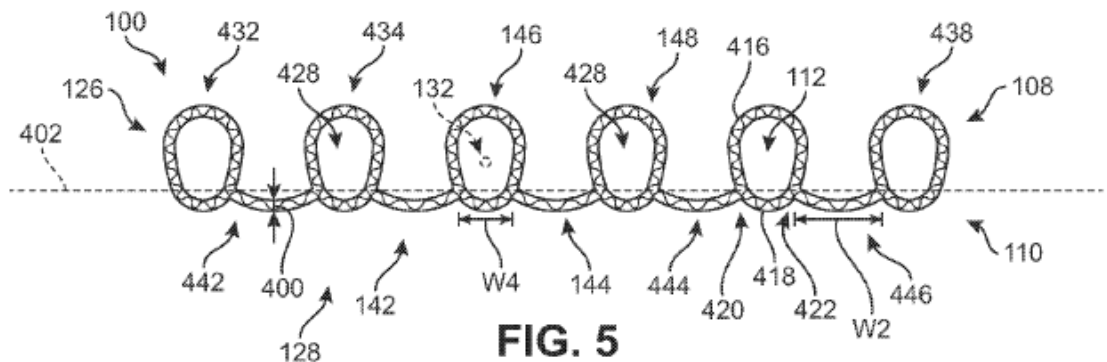
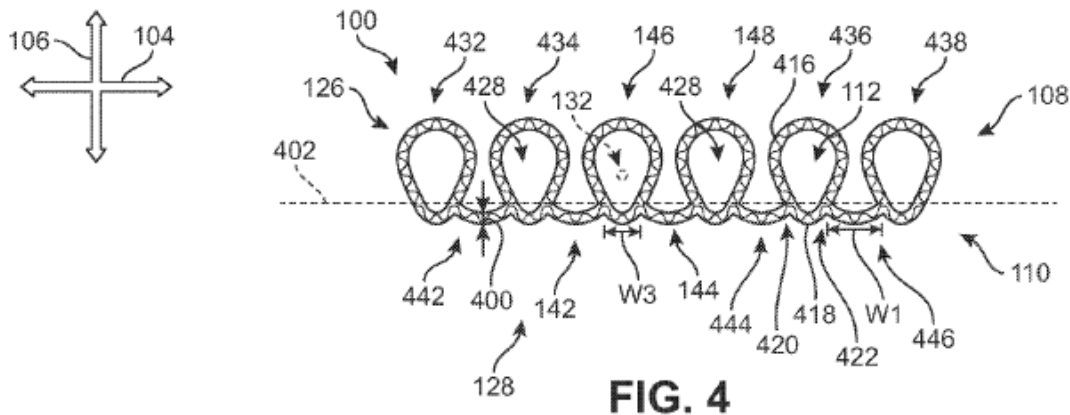
lululemon incorrectly argues that the Board’s construction would exclude embodiments in the specification that disclose tubular structures having the configuration of a “channel.” Reply at 5–7. But the specification never indicates that

¹ lululemon points to statements from Nike and the court in Nike’s prior proceedings against Puma that “tubular” is broader than “tube.” *Id.* at 4–5. Nike agrees that “tubular structures” can vary in shape and dimension. But nothing lululemon cites indicates that “tubular structures” can have open peripheries.

channels have open peripheries. lululemon merely assumes—without support—that channels are open-periphery structures. *Id.*

lululemon points to only two passages in the '046 patent² specification using the term “channel,” but neither supports lululemon’s position that the claimed “tubular structures” may be open-periphery structures. *Id.* First, lululemon points to the following sentence: “A hollow tube 112 may be a generally unsecured area disposed between first curved portion 416 and second curved portion 418 of tubular rib structure that has the configuration of a tunnel or channel.” *Id.* at 5 (citing Ex. 1001 at 10:66–11:3). The part numbers in this sentence correspond to the embodiment shown in Figures 4 and 5 (reproduced below). Those figures depict tubular structures 126 having hollow tubes 112 with closed-peripheries.

² lululemon also cites to two unrelated Nike patents that include the word “channel” in their specifications. Reply at 6 (citing Exs. 1016, 1017). These specifications are not instructive. Patentees are free to use terminology differently in different, unrelated patent specifications. *E.g., Medrad, Inc. v. MRI Devices Corp.*, 401 F.3d 1313, 1318–19 (Fed. Cir. 2005) (“A particular term used in one patent need not have the same meaning when used in an entirely separate patent.”).



The Board’s construction does not exclude this embodiment. If anything, this passage makes clear that the “tunnel or channel” shape is a closed-periphery structure, and that “tunnel” and “channel” in this sentence are used synonymously.

Second, lululemon points to the following disclosure: “knitted component 100 can include ribs, tunnels, peaks and troughs, corrugations, steps, raised ridges and recessed channels, or other uneven features.” Reply at 5 (citing Ex. 1001 at 7:4–7). The Board’s construction would not exclude this embodiment either. A review of the surrounding disclosure shows that this sentence isn’t even tied to “tubular structures.” Indeed, the following sentence appears later in the same paragraph: “In

some embodiments, knitted component 100 can include a plurality of tubular rib structures 126 ...”. Ex. 1001 at 7:9–11.

lululemon has not identified a single embodiment that is inconsistent with the Board’s construction. Nor has lululemon identified any support for its construction, i.e., that the claimed “tubular structures” include “open-periphery configurations.” Thus, the Board’s preliminary construction for this term is consistent with every embodiment in the ’046 patent specification.

2. lululemon misapplies the doctrine of claim differentiation

lululemon argues that the Board’s preliminary construction violates the doctrine of claim differentiation. Reply at 7–9. But lululemon’s claim differentiation argument involves a *different* patent with *different claims*. In particular, lululemon asks the Board to construe claims 1 and 20 of the ’046 patent based on dependent claim 11 of U.S. Pat. No. 10,273,604, a divisional of the ’046 patent. *Id.* But lululemon’s argument fails as a matter of law.

The Federal Circuit “decline[s] to apply the doctrine of claim differentiation where, as here, the claims are not otherwise identical in scope.” *Indacon, Inc. v. Facebook, Inc.*, 824 F.3d 1352, 1358 (Fed. Cir. 2016). That is because the doctrine of claim differentiation is designed to avoid “redundancy” between claims. *Autogiro Co. of America v. U.S.*, 384 F.3d 391, 404 (1967) (“[A]n interpretation of a claim should be avoided if it would make the claim read like another one.”). For that

reason, the application of claim differentiation is especially rare when comparing different claims in different patents. *See, e.g., Clare v. Chrysler Group LLC*, 819 F.3d 1323, 1330 (Fed. Cir. 2016).

Claim 11 of the divisional '604 depends from a claim that has features far different from claims 1 and 20 of the '046 patent. For example, claim 10 of the divisional '604 recites a “first curved portion” and “second curved portion” that define a “tube.” Claims 1 and 20 of the '046 patent do not recite any of those limitations. For this reason alone, lululemon’s claim differentiation argument fails as a matter of law. *See Indacon*, 824 F.3d at 1358.

lululemon’s argument also fails because claim differentiation cannot be applied in a way that “overshadow[s] the express and contrary intentions of the patent draftsman.” *See Hormone Research Foundation, Inc. v. Genentech, Inc.*, 904 F.2d 1558, 1567 n.15 (Fed. Cir. 1990). As discussed above, the '046 patent specification consistently describes “tubular structures” as having a closed-periphery. *See* POPR at 17–18. Indeed, every figure depicting tubular structures shows closed-loop structures. *Id.* (citing Ex. 1001 at Figs. 1–8, 11, 12–17). lululemon’s attempt to use claim differentiation to “broaden [the] claims beyond their correct scope”—such that “tubular structures” include open-periphery structures—must fail. *See Curtiss-Wright Flow Control Corp. v. Velan, Inc.*, 438 F.3d 1374, 1380–81 (Fed. Cir. 2006); *Retractable Techs., Inc. v. Beckton, Dickinson*

and Co., 653 F.3d 1296, 1305 (Fed. Cir. 2011) (rejecting claim differentiation argument that attempted to broaden the term “body” beyond the description in the specification”).

III. GROUND 1: LULULEMON FAILS TO DEMONSTRATE THAT GOOD ANTICIPATES AND/OR RENDERS OBVIOUS ANY CHALLENGED CLAIM

lululemon’s Ground 1 fails in its entirety because Good fails to teach “tubular structures,” as recited in independent claims 1 and 20 and as properly construed. lululemon additionally fails to show that Good discloses “a plurality of webbed areas” and a “plurality of tubular structures” extending along a “longitudinal direction,” as recited by dependent claim 2.

A. Good does not disclose the “tubular structures” recited in claims 1 and 20

As discussed above, the Board preliminarily found that “tubular structures” means structures having at least a “closed periphery or circumference.” Institution Decision at 8. For the reasons discussed above in Section II, the Board’s construction is correct. Under that construction, Good fails to disclose the “tubular structures” recited in independent claims 1 and 20 of the ’046 patent.

lululemon now argues that Good teaches “tubular structures” so long as Good’s rib portions “are tubular structures in at least one configuration or mode of operation.” Reply at 11–12. lululemon alleges Nike assumed that Good’s rib

portions “must retain a tubular form under all conditions to qualify as tubular structures,” pointing to Nike’s argument that Good’s rib portions “become ‘essentially linear’ when stretched.” *Id.* at 11–12. This misses the point. Nike contends that Good’s rib portions are *never* tubular structures because they lack a closed-periphery structure³ in both the relaxed and extended configurations. *See* POR at 18–21. This deficiency is, however, especially apparent in Good’s depiction of the extended configuration.

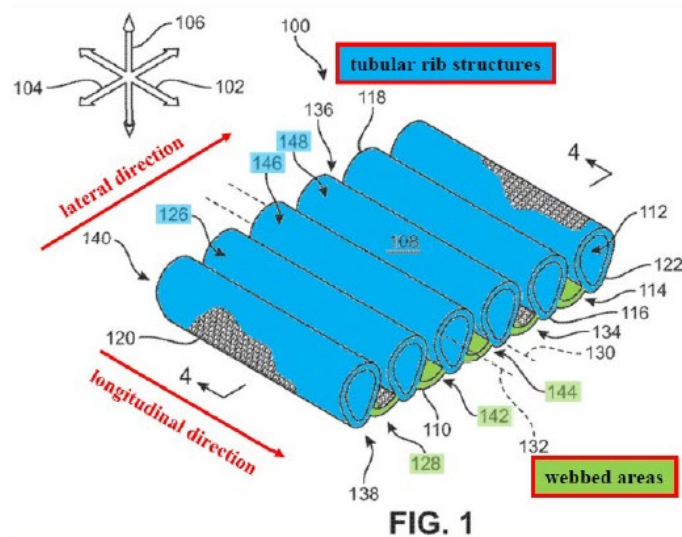
For at least this reason and for those discussed in Nike’s Response, lululemon fails to show that Good anticipates and/or renders obvious any challenged claims in Ground 1.

B. Good does not disclose a “plurality of webbed areas” and a “plurality of tubular structures” extending along a “longitudinal direction,” as recited by dependent claim 2

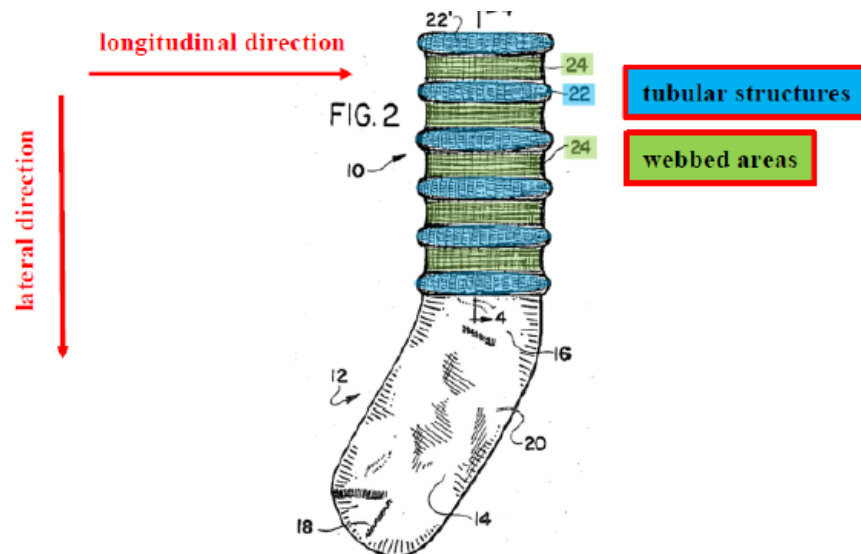
Nothing in lululemon’s Petition or Reply establishes that Good discloses a “plurality of webbed areas” and a “plurality of tubular structures” extending along a “longitudinal direction” of the article, as recited by dependent claim 2. In the Petition, lululemon relied on the ’046 patent’s disclosure of a directional coordinate system (shown below), in which “longitudinal direction 102” is a “*direction parallel*

³ lululemon alleges that neither party’s construction for “tubular structures” requires a “closed periphery or circumference.” Reply at 13. This is wrong. In its Preliminary Response, Nike explicitly explained that a “tubular structure” must be a “closed-loop structure.” *E.g.*, POPR at 17–18.

to the axes of the tubular structure.” POR at 22–23 (citing Petition at 34–35) (emphasis added).



Based on this disclosure in the '046 patent, lululemon argued that Good discloses this limitation. *Id.* Specifically, lululemon identified the “longitudinal direction” in Good’s Figure 2 shown below.



Inconsistent with its Petition, lululemon argues on Reply that Good’s rib portions—which extend circumferentially around Good’s cuff—extend along a longitudinal direction even if they “also extend along a third dimension.” Reply at 14–15. But the longitudinal direction lululemon identified is not parallel to the circumference of Good’s donut-shaped rib portions. Nor could it be. *See* Ex. 1019 at 37:22–38:7 (**Q**: So the rib portions of Good cannot extend along any longitudinal direction; is that correct? **A**: The ribs that Good draws move in a hoop orientation. So there is no longitudinal direction that corresponds with that.). lululemon points to testimony from Dr. Pastore that “a line [can] extend in the X direction and the Z direction simultaneously.” Reply at 15. Dr. Pastore’s testimony does not support lululemon because Good’s rib portions aren’t *linear*, they’re circular or oblong.

For at least this reason and for those discussed in Nike’s Response, lululemon has not shown that Good discloses claim 2.

IV. GROUND 2: LULULEMON FAILS TO DEMONSTRATE THAT MUNSING ANTICIPATES ANY CHALLENGED CLAIM

For the reasons discussed in Nike’s Response, Munsing fails to anticipate any challenged claim in Ground 2.

V. GROUND 3: LULULEMON FAILS TO DEMONSTRATE THAT MINAMI ANTICIPATES AND/OR RENDERS OBVIOUS ANY CHALLENGED CLAIM

lululemon's Ground 3 fails in its entirety for two independent reasons. First, lululemon has not shown that Minami discloses "tubular rib structures" having "a first curved portion" with "a first curve length" that is "greater" than "a second curve length" of "a second curved portion." lululemon's reliance on the precise proportions of small details of Minami's figure 7A to meet this limitation is contrary to well-established Federal Circuit law. Second, lululemon has not shown that Minami discloses "webbed areas" that are "configured to move between a neutral position and an extended position."

A. Minami does not disclose that "the tubular rib structures have a first curved portion with a first curve length" that is "greater" than "a second curve length" of a "second curved portion," as recited in claim 8

lululemon's Reply only confirms that its reliance on Minami's Figure 7A to show a "first curve length" greater than a "second curve length" is improper and contrary to settled Federal Circuit law. Under *Hockerson-Halberstadt*, lululemon's reliance on this figure fails for two reasons.

First, lululemon cannot rely on Minami's Figure 7A to show a quantitative relationship between two components because Minami's written description never once mentions the "first curved portion" and the "second curved portion"—let alone their relative dimensions. lululemon concedes that Minami does not disclose the

length of the curved portions. Reply at 22. lululemon baselessly argues, however, that because Minami’s tubular rib portions “enhance ball control,” that a POSITA would have understood those rib portions “are intended to protrude more prominently from the webbed area than the foot-facing portions.” *Id.* lululemon cites no support for this proposition from Minami or Dr. Brookstein. Nor does lululemon cite any legal authority. The Board should thus reject this argument.

Second, lululemon cannot rely on Minami’s Figure 7A to show a quantitative relationship between two components because Minami explicitly states that the drawings are “not necessarily drawn to scale.” Response at 33–34. As Minami explains the figures are merely to “illustrat[e] the principles of the invention.” *Id.* lululemon attempts to distinguish Minami from *Hockerson-Halberstadt*. Reply at 20. According to lululemon, Minami merely says that its figures are “not necessarily” drawn to scale. *Id.* “The court in *Hockerson-Halberstadt*,” lululemon explains, “based its reluctance on the absence of an indication that drawings reflected scale.” *Id.* In other words, lululemon explains, Minami’s “not necessarily” language means that “Minami’s disclosure does not preclude its figures from reflecting relative proportions.” *Id.*

But this distinction only further undermines lululemon’s argument. Unlike *Hockerson-Halberstadt*, where the specification is silent on dimensions—Minami goes one step further. 222 F.3d 951, 956 (Fed. Cir. 2000). Minami expressly states

that its drawings “*are not*” drawn to scale and intended only to “illustrat[e] the principles of the invention.” Ex. 1007 at [0010]; Response at 35–36.

lululemon next attempts to circumvent *Hockerson-Halberstadt* by casting the relationship between the length of the “first curved portion” and “second curved portion” as “qualitative.” This argument also fails. As Nike explained in its Response, the court in *Hockerson-Halberstadt* considered a scenario on all fours with the instant limitation: whether a claimed “groove” was wider than claimed “fins.” Response at 34–35. The *Hockerson-Halberstadt* court characterized “the *respective widths* of the groove and fins” as a “*quantitative* relationship.” *Id.* Just so here. The relationship between the lengths of the “first curved portion” and “second curved portion” is intrinsically quantitative. And as Nike discussed in its Response, the Federal Circuit’s subsequent jurisprudence has consistently applied this holding. *Id.* at 35.

lululemon also fails to account for the fact that Figure 7A reflects a greatly enlarged section of a small drawing never intended to show dimensions. *See* Response at 36–37. In its Reply, lululemon merely says that the claimed features are “already apparent in the original figure.” Reply at 21. But as Nike discussed in its Response, even Dr. Brookstein admitted that he needed to enlarge Figure 7A so that he could “make a visual observation of it.” Response at 37 (citing Ex. 2007 at 69:9–70:6). lululemon’s enlargement of small details of Figure 7A support rejection of

lululemon's arguments for this limitation. *See In re Mraz*, 455 F.2d 1069, 1072 (CCPA 1972).

lululemon's reliance on Court of Customs and Patent Appeals cases from the 1970's do not alter this settled precedent. Reply at 16–17 (citing *In re Mraz* and *In re Aslanian*). lululemon points to no other binding authority (Reply at 17–18), and to no other cases that present the same set of circumstances, i.e., where the written description of the reference is entirely silent to the claimed features and expressly disclaims that the figures are drawn to scale. Thus, the Board should treat this limitation as the *Hockerson-Halberstadt* court did, and reject lululemon's reliance on Minami's Figure 7A.

For these reasons and for those discussed in Nike's Response, lululemon fails to prove by a preponderance of the evidence that Minami anticipates claim 8, and therefore fails to satisfy its burden with respect to any challenged claim in Ground 3.

B. Minami does not disclose “webbed areas” that are “configured to move between a neutral position and an extended position,” as recited in claim 8

lululemon has not shown that Minami discloses “webbed areas” that are “configured to move between a neutral position and an extended position,” as recited in claim 8.

It is not Nike's position that Minami's knit element 131 does not stretch at all. Response at 37–39. The parties and the Board are all in agreement that knit element 131 stretches to some degree. *Id.*; Petition at 66–67; Institution Decision at 15–16. But as Dr. Pastore testified, everything stretches. Ex. 1019 at 57:10–14 (**Q:** So are you saying that the webbed areas between Minami's tubular structures do not stretch at all? **A:** No, everything stretches. A piece of steel stretches."). Whether something is *designed to* or *configured to* stretch is a separate question. Minami repeatedly discloses that its upper is designed *not to stretch*. See Response at 37–39; Ex. 1019 at 57:3–4 ("Minami emphasizes not stretching throughout the patent."). lululemon's application of this limitation to Minami must fail because it ignores the claim phrase "configured to" entirely. See *Aspex Eyewear, Inc. v. Marchon Eyewear, Inc.*, 672 F.3d 1335, 1349 (Fed. Cir. 2012) (holding that "configured to" requires that a structure be "designed ... to accomplish the specified objective, not simply that [it] can be made to serve that purpose.>").

For these reasons, Minami doesn't anticipate claim 8, and therefore doesn't anticipate and/or render obvious any challenged claim in Ground 3.

VI. CONCLUSION

For the reasons set forth above, lululemon has failed to prove by a preponderance of the evidence that any of claims 1–3, 7–9, and 14–20 of the '046 patent are unpatentable. Nike requests that the Board enter a final written decision affirming the patentability of those claims.

Dated: December 20, 2024

/s/ Christopher J. Renk

Christopher J. Renk (Reg. No. 33,761)

Michael J. Harris (Reg. No. 62,957)

Aaron P. Bowling (Reg. No. 67,311)

Arnold & Porter Kaye Scholer LLP

70 West Madison Street, Suite 4200

Chicago, IL 60602-4231

Tel: (312) 583-2300

Fax: (312) 583-2360

Lindsey C. Staubach (Reg. No. 76,738)

Arnold & Porter Kaye Scholer LLP

601 Massachusetts Avenue, NW

Washington, DC 20001-3743

Tel: (202) 942-5000

Attorneys for Patent Owner Nike, Inc.

CERTIFICATE OF WORD COUNT

Under the provisions of 37 C.F.R. § 42.24(d), the undersigned hereby certifies that the Microsoft Office word count including all footnotes for the foregoing Patent Owner's Sur-reply, excluding the table of contents, table of authorities, certificate of word count, appendix and certificate of service, totals 3,479 words, which is less than the 5,600 words allowed under 37 C.F.R. § 42.24(c)(4).

Dated: December 20, 2024

/s/ Christopher J. Renk

Christopher J. Renk (Reg. No. 33,761)

Arnold & Porter Kaye Scholer LLP

70 West Madison Street, Suite 4200

Chicago, IL 60602-4231

Tel: (312) 583-2300

Fax: (312) 583-2360

CERTIFICATE OF SERVICE

The undersigned hereby certifies service on the Petitioner, pursuant to 37 C.F.R. § 42.6(e) and by agreement of counsel, by electronic (e-mail) delivery of a true copy of the foregoing **PATENT OWNER'S SUR-REPLY**, which was served on December 20, 2024 to the following Counsel for Petitioner via e-mail:

Ali S. Razai (Reg. No. 60,771)
Joseph F. Jennings (Reg. No. 40,664)
Benjamin J. Everton (Reg. No. 60,659)
Jacob L. Peterson (Reg. No. 65,096)
Knobbe, Martens, Olson, & Bear LLP
2040 Main St., 14th Floor
Irvine, CA 92614
2AZR@knobbe.com
2JFJ@knobbe.com
2BJE@knobbe.com
2JUP@knobbe.com
lululemonIPR-046@knobbe.com

/s/ Timothy Haugh
Timothy Haugh