

Petitioner lululemon's Demonstratives For Oral Argument

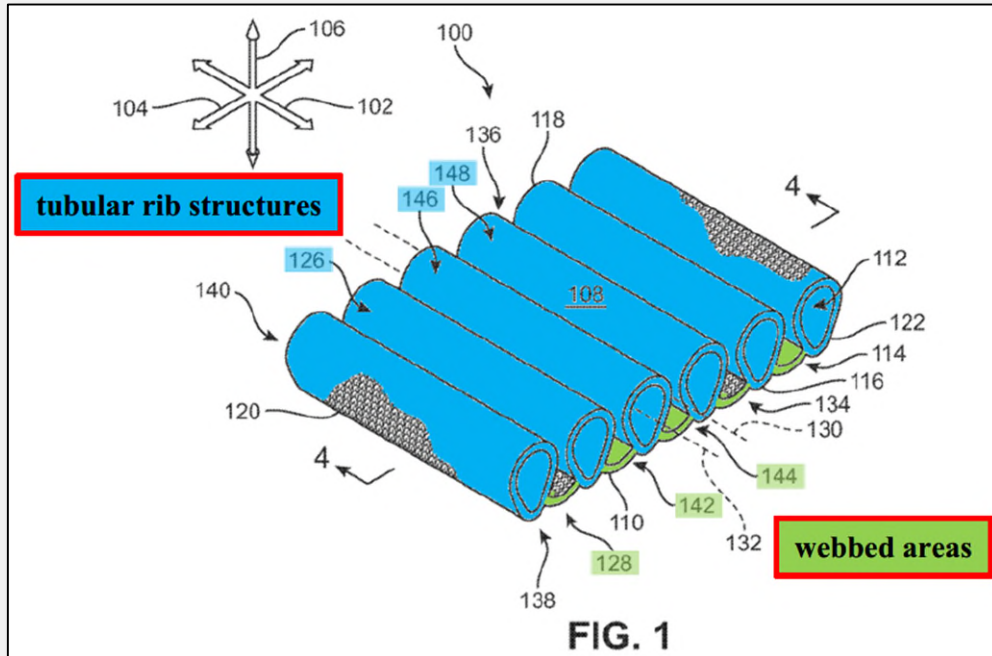
April 3, 2025

lululemon usa inc. v. Nike, Inc.

IPR2024-00159 (Patent 9,375,046)

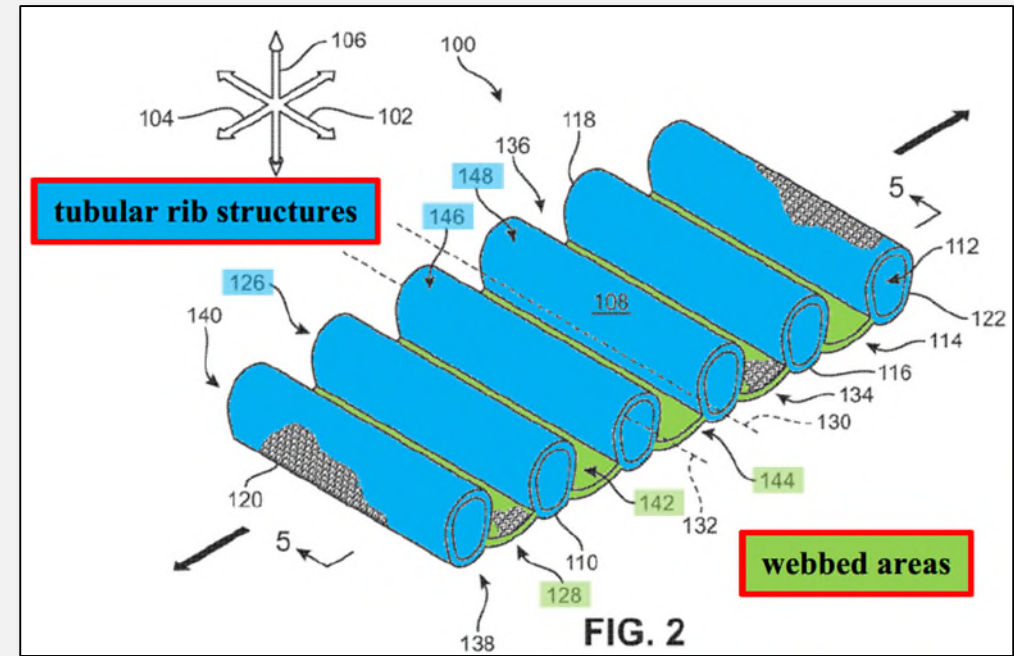
The '046 Patent

Neutral Position



(Ex. 1001, Fig. 1 (annotated))

Extended Position



(Ex. 1001, Fig. 2 (annotated))

Claim 1 Of The '046 Patent

1. An article comprising:
a plurality of webbed areas that include a plurality of courses formed from a first yarn, the webbed areas having a front surface, the webbed areas configured to move between a neutral position and an extended position, the webbed areas being biased to move toward the neutral position and
a plurality of tubular structures that are adjacent to the webbed areas, the tubular structures including a plurality of courses;
wherein at least one of the webbed areas or tubular structures is configured to stretch to move the webbed areas to the extended position in response to a force applied to the article
wherein in the neutral position, a first area of the front surface is hidden from visual observation from a first viewing perspective, and
wherein in the extended position, the first area of the front surface is revealed for visual observation from the first viewing perspective.

(Ex. 1001, Claim 1)

Claim 8 Of The '046 Patent

8. An upper comprising:
a plurality of webbed areas and a plurality of tubular rib structures;
the plurality of webbed areas having a front side and a back side;
the tubular rib structures being disposed adjacent to the webbed areas;
the tubular rib structures having a first curved portion with a first curve length extending from the front side of the webbed areas, and a second curved portion with a second curve length extending from the back side of the webbed areas, the first curve length being greater than the second curve length;
the webbed areas configured to move between a neutral position and an extended position, the webbed areas being biased to move toward the neutral position; and
at least one of the webbed areas and the tubular rib structures configured to stretch from the neutral position to the extended position in response to a force applied to the upper.

(Ex. 1001, Claim 8)

Claim Construction

“Tubular Structures / Tubular Rib Structures”

lululemon’s Construction	Nike’s Construction
“elongated hollow structure”	“tube-like structures” that need not be hollow

(Ex. 1014, 3-6; Petition 14-15)

Ⓢ ***Puma* District Court:** “tube-like structures”

(Ex. 1012, 17)

Tubular Structures Can Be Channels

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Furthermore, knitted component 100 can have a body thickness that changes as knitted component 100 moves. Body thickness refers to the height of tubular rib structures 126 in knitted component 100 in thickness direction 106. For example, in some embodiments, body thickness can vary as the curvature of tubular rib structures 126 change as knitted component 100 stretches and compresses. Specifically, as shown in FIG. 3, knitted component 100 has a first body thickness 306 in the first position, depicted in solid lines, and knitted component 100 has a second body thickness 308 in the second position, depicted in broken lines. In FIG. 3, first body thickness 306 is greater than second body thickness 308.

In addition, different areas of knitted component 100 can have different body thicknesses. In different embodiments, one portion of knitted component 100 may have a greater body thickness than another portion of knitted component 100. In another embodiment, some tubular rib structures of knitted component 100 may experience greater stretching and have a body thickness that is less than the body thickness of other tubular rib structures in knitted component 100.

Webbed areas 128 and tubular rib structures 126 of knitted component 100 will now be discussed in greater detail. In some embodiments, webbed areas 128 can be elongated and substantially straight, as shown in FIGS. 1-3. More specifically, webbed areas 128 can extend longitudinally along a respective web axis 130, one of which is indicated in FIG. 1 as an example. Webbed areas 128 can include a first longitudinal end 134 and a second longitudinal end 136, as shown in FIG. 2. Similarly, tubular rib structures 126 can extend longitudinally along a respective tubular axis 132, one of which is indicated in FIG. 1 as an example. Tubular rib structures 126 can include a first longitudinal end 138 and a second longitudinal end 140, as shown in FIGS. 1 and 2. In some embodiments, web axis 130 and tubular axis 132 can be substantially straight and parallel to longitudinal direction 102. In other embodiments, web axis 130 and/or tubular axis 132 can be curved relative to longitudinal direction 102. Also, in some embodiments, webbed areas 128 and tubular rib structures 126 can be nonparallel relative to each other. In one embodiment, tubular rib structures 126 may exhibit greater curvature than webbed areas 128. In another embodiment, webbed areas 128 may exhibit greater curvature than tubular rib structures 126.

Additionally, in some embodiments, as shown in FIG. 2, first longitudinal ends 134 of webbed areas 128 can be disposed proximate first edge 116 of knitted component 100, and second longitudinal ends 136 of webbed areas 128 can be disposed proximate second edge 118 of knitted component 100. Likewise, first longitudinal ends 138 of tubular rib structures 126 can be disposed proximate to first edge 116 of knitted component 100, and second longitudinal ends 140 of tubular rib structures 126 can be disposed proximate to second edge 118 of knitted component 100.

Furthermore, in some embodiments, first longitudinal ends 134 of webbed areas 128 and first longitudinal ends 138 of tubular rib structures 126 can cooperate to define first edge 116 of knitted component 100. Similarly, second longitudinal ends 136 of webbed areas 128 and second longitudinal ends 140 of tubular rib structures 126 can cooperate to define second edge 118 of knitted component 100 in some embodiments.

Webbed areas 128 can include a first webbed area 142. In some embodiments, first webbed area 142 can be representative of other webbed areas 128. Referring to FIGS. 1-5, in different embodiments, first webbed area 142 may be curved or may be relatively flat along the lateral direction 104. In one embodiment, first webbed area 142 can be generally flat. In

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other embodiments, first webbed area 142 can be curved or angled. In some embodiments, first webbed area 142 can be concave on front surface 108. In other embodiments, first webbed area 142 can be convex on front surface 108.

It should be understood that in some embodiments, webbed areas 128 can be stretched to a greater extent relative to other embodiments, resulting in a substantially flattened shape of knitted component 100. In these embodiments, webbed areas 128 may comprise a relatively more planar than rounded shape.

In some embodiments, webbed areas 128 of knitted component 100 can have a similar shape and dimensions to other webbed areas 128. In other embodiments, the shape and dimensions of webbed areas 128 can vary across knitted component 100.

In different embodiments, tubular rib structures 126 can include a first tubular structure 146. In some embodiments, first tubular structure 146 can be representative of other tubular rib structures 126. First tubular structure 146 can have a tube shape in some embodiments. When viewed in cross-section, as shown in FIGS. 4 and 5, tubular rib structures 126 can include a first curved portion 416 and a second curved portion 418. In an exemplary embodiment, first curved portion 416 is disposed opposite of second curved portion 418 on the respective top and bottom of tubular rib structures 126. In some embodiments, first curved portion 416 and second curved portion 418 may be knitted together to define the tube-forming tubular rib structure 126. In the embodiment of FIGS. 4 and 5, first curved portion 416 and second curved portion 418 meet along a first transition edge 420 and also along a second transition edge 422, forming a tunnel or tube shape.

In some embodiments, first curved portion 416 can comprise a portion of front surface 108 of knitted component. In some embodiments, second curved portion 418 can comprise a portion of back surface 110 of knitted component 100. Together, first curved portion 416 and second curved portion 418 may comprise two sides of first tubular structure 146. In different embodiments, first curved portion 416 may be comprised of one knit layer and second curved portion 418 may be comprised of another knit layer.

Various areas of first tubular structure 146 can comprise different shapes. In different embodiments, first curved portion 416 and second curved portion 418 can move and change shape. In some embodiments, first curved portion 416 and/or second curved portion 418 can be relatively level or flattened. In other embodiments, first curved portion 416 and/or second curved portion 418 can be rounded or curve by varying amounts.

In other embodiments, first curved portion 416 and/or second curved portion 418 can comprise curved areas of tubular rib structures 126. First curved portion 416 and/or second curved portion 418 can be curved or bent to a greater degree in some embodiments, and to a lesser degree in other embodiments. For example, in some embodiments, the amount of curves of knit material forming first curved portion 416 and/or second curved portion 418 may be varied (changing the associated degree or amount of curvature of the respective first curved portion 416 and/or second curved portion 418). Additionally, the direction of the curvature of each of first curved portion 416 and/or second curved portion 418 may vary. In one embodiment, first curved portion 416 and/or second curved portion 418 may be provided such that first tubular structure 146 can be convex on front surface 108 and convex on back surface 110.

In different embodiments, tubular rib structures 126 can define one or more hollow tubes. A hollow tube 112 may be a

In different embodiments, tubular rib structures 126 can define one or more hollow tubes. 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. In some

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(Ex. 1001, 10:66-11:3)

Like's Patents Confirm Channels Have Open-Periphery

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sole structure 101. In this embodiment, channel 500 is located generally in midfoot region 12 of sole structure 100. In some cases, channel 500 may be located so as to be substantially aligned with an arch of a foot of a wearer of the article of footwear 100.

In some embodiments, forward alignment strip 404 and rearward alignment strip 406 may assist to guide wrap member 150 along an angle extending under sole structure 101. In an exemplary embodiment, wrap member 150 may extend under a portion of sole structure 101 through channel 500 at a first angle 31. In one embodiment, first angle 31 may be associated with an alignment of the plurality of facing holes disposed on wrap member 150. In this embodiment, first facing hole 312, second facing hole 324, third facing hole 326, and fourth facing hole 328 may be substantially aligned, respectively, with second cycle 312, third cycle 314, fourth cycle 316, and fifth cycle 318 on medial side 14 of upper 102 to form first angle 31 of a wrap member 150 as it extends under sole structure 101 through channel 500.

In some embodiments, wrap member 150 may include a first edge 502 located at a first longitudinal end and a second edge 504 located at a second longitudinal end. First edge 502 and second edge 504 are disposed on opposite ends of a wrap member 150 along the longitudinal axis. In this embodiment, first facing hole 312, second facing hole 324, third facing hole 326, and fourth facing hole 328 may be disposed adjacent to first edge 502 on first longitudinal end of wrap member 150. Similarly, fifth facing hole 332, sixth facing hole 334, seventh facing hole 336, and eighth facing hole 338 may be disposed adjacent to second edge 504 on second longitudinal end of wrap member 150.

Wrap member 150 may include a reduction portion 506 disposed generally between first edge 502 and second edge 504. In this embodiment, reduction portion 506 may extend under sole structure 101 when wrap member 150 is attached to article 100. With this arrangement, reduction portion 506 may provide support to an arch of a foot of a wearer when wrap member 150 is fastened around article 100. With this arrangement, lightening hole 310 may extend under sole structure 101 when channel 500 and provide support to an arch of a foot of a wearer.

In some embodiments, wrap member 150 may taper from a first width W1 associated with first edge 502 and/or second edge 504 to a second width W2 associated with reduction portion 506. In one embodiment, first width is larger than second width W2. In other embodiments, first width W1 and second width W2 may be substantially similar. In still other embodiments, second width W2 may be larger than first width W1.

In some embodiments, first width W1 may be sized and dimensioned so as to be substantially correspond to a first length L1 associated with a portion of facing area 100. In some embodiments, first length L1 associated with a portion of facing area 100 may correspond to one or more of the plurality of cycles in upper 102. In one embodiment, first length L1 corresponds to the opening in upper 102 associated with second cycle 312, third cycle 314, fourth cycle 316, and fifth cycle 318.

In an exemplary embodiment, second width W2 may be sized and dimensioned so as to be substantially correspond to a second length L2 associated with channel 500. In some embodiments, second length L2 associated with channel 500 may correspond to a portion of a foot of a wearer of the article of footwear 100. In one exemplary embodiment, second length L2 may be associated with an arch of a foot of a wearer of the article of footwear 100. In other embodiments, second

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width W2 may be larger or smaller to provide different amounts of support to article 100 at midfoot region 12. FIG. 8 illustrates an exploded view of underside of article 100 showing sole structure 101 with wrap member 150 removed. In this embodiment, sole structure 101 includes midsole 200 and outsole 202. In some embodiments, outsole 202 may include one or more portions disposed in forefoot region 16, midfoot region 12, and/or heel region 14 of article 100. In an exemplary embodiment, outsole 202 may include a forefoot outsole portion 208 associated generally with forefoot region 16 of sole structure 101. Outsole 202 also may include a heel outsole portion 206 associated generally with heel region 14 of sole structure 101. In this embodiment, outsole 202 is not continuous through midfoot region 12 between forefoot outsole portion 208 in forefoot region 16 and heel outsole portion 206 in heel region 14. In other embodiments, outsole 202 may extend into a portion of midfoot region 12.

In some embodiments, sole structure 101 may include midsole 200 extending through each of forefoot region 16, midfoot region 12, and/or heel region 14 between medial side 18 and lateral side 18 of article 100. In one embodiment, sole structure 101 includes a portion of midsole 200 disposed generally in midfoot region 12 that is exposed between outsole 202 in forefoot region 16 and heel region 14. In an exemplary embodiment, midsole 200 may include channel 500 disposed at a location between forefoot outsole portion 208 and heel outsole portion 206. In some cases, channel 500 may be formed by an exemplary midsole 200 incorporating channel 500. In other cases, channel 500 may be formed by removing material from midsole 200, including, but not limited to, using lasers to remove the material.

In an exemplary embodiment, channel 500 may include a groove 602 formed in midsole 200 at midfoot region 12 of sole structure 101. In some embodiments, groove 602 may be shaped so as to be substantially correspond to the shape of wrap member 150. In this embodiment, wrap member 150 may include a first size groove 602 in midsole 200 between outsole 202 when wrap member 150 is attached to article 100. Groove 602 may have a size corresponding to second length L2. In one embodiment, groove 602 may be more or less thick than wrap member 150.

In some embodiments, wrap member 150 may be configured to be symmetric along one or more axes. In this embodiment, wrap member 150 may be configured to be substantially symmetric along the lateral axis. With this arrangement, first edge 502 and second edge 504 may generally align when wrap member 150 is folded in half. In other embodiments, wrap member 150 may be configured to be asymmetric along one or more axes. In one embodiment, wrap member 150 may be configured to be asymmetric along the longitudinal axis.

In an exemplary embodiment, wrap member 150 may include a leading edge 508 on a trailing edge 510. In this embodiment, leading edge 508 may have a generally convex shape. In some embodiments, leading edge 508 may have a generally concave shape. In other cases, leading edge 508 and trailing edge 510 may have a substantially similar shape. In other embodiments, leading edge 508 and/or trailing edge 510 may have other shapes.

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In an exemplary embodiment, channel 500 may include a groove 602 formed in midsole 200 at midfoot region 12 of sole structure 101. In some embodiments, groove 602 may be

(Ex. 1016, 10:33-35)

The terms “deep channel,” “deep groove,” and “primary groove” are used interchangeably and synonymously in this specification, and the terms “secondary channel” and “secondary groove” are used interchangeably and synonymously in this specification. In general, primary grooves may be

(Ex. 1017, 6:27-31)

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to the specific articles discussed in the following material and depend on the accompanying figures. Sports generally involve constant pounding of the foot against a hard surface, such as the foot. For example, shockloading is a term that is known to mean high impact loads under the foot, especially when unilaterally or sequentially loading limbs and/or unilaterally crossing off the foot on a hard, unforgiving surface. Over the past several years, shockloading risks have grown much higher, resulting in even higher impact loads, especially in the medial and the heel regions of the foot. This is true whether the foot remains on the ground during landing or, alternatively, the landing is off the ground.

On the other hand, shockloaders and many other devices cause sole structures and accompanying upper structures that are lightweight, low profile, and provide a good “fit” that allows for control of the shockload, ball, etc. A sole structure and accompanying upper structure for an article of footwear capable of handling the high “big stick” impact loads, without overloading the entire foot for the foot, is a sole structure and accompanying upper structure that responds somewhat softly when a user is walking or running, relatively low impact ambulatory activities.

Shockloading is a term that is known to mean high impact loads under the foot, especially when unilaterally or sequentially loading limbs and/or unilaterally crossing off the foot on a hard, unforgiving surface. Over the past several years, shockloading risks have grown much higher, resulting in even higher impact loads, especially in the medial and the heel regions of the foot. This is true whether the foot remains on the ground during landing or, alternatively, the landing is off the ground.

On the other hand, shockloaders and many other devices cause sole structures and accompanying upper structures that are lightweight, low profile, and provide a good “fit” that allows for control of the shockload, ball, etc. A sole structure and accompanying upper structure for an article of footwear capable of handling the high “big stick” impact loads, without overloading the entire foot for the foot, is a sole structure and accompanying upper structure that responds somewhat softly when a user is walking or running, relatively low impact ambulatory activities.

Shockloading is a term that is known to mean high impact loads under the foot, especially when unilaterally or sequentially loading limbs and/or unilaterally crossing off the foot on a hard, unforgiving surface. Over the past several years, shockloading risks have grown much higher, resulting in even higher impact loads, especially in the medial and the heel regions of the foot. This is true whether the foot remains on the ground during landing or, alternatively, the landing is off the ground.

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Various aspects of this disclosure relate to articles of footwear having sole structures and/or accompanying upper structures capable of addressing these various and sometimes conflicting design challenges. As used herein, the modifiers “upper,” “inner,” “top,” “bottom,” “outer,” “downward,” “lateral,” “medial,” “internal,” “external,” “inner,” “back,” “heel,” etc., unless otherwise defined or made clear from the disclosure, are relative terms used to place the various structures and/or orientations of the structures of the article of footwear in the context of an article of footwear worn by a user standing on a flat, horizontal surface. Also, the term “5-shaped,” as used herein, refers to a 5-shape curve shape with corners generally facing opposite directions, i.e., the concave side of one curve facing generally upward and the convex side of the opposite curve facing generally downward. The concave side of one curve generally facing right and the convex side of the opposite curve generally facing left, etc. Such 5-shaped curve shapes may appear similar to structure in a “cup” or “bowl” shape generally two-dimensional, especially curved regions. A curve is a “5-shape” regardless of whether the structure is oriented like an “S” or like a mirror image of an “S”. Also, the individual curves of a double curve structure can have any depths, slopes, and/or sharpness (including curves of different depths, slopes, and/or sharpness) and will be considered as “5-shaped” curves.

The terms “deep channel,” “deep groove,” and “primary groove” are used interchangeably and synonymously in this specification, and the terms “secondary channel” and “secondary groove” are used interchangeably and synonymously in this specification. In general, primary grooves may be deeper and/or wider than any secondary grooves provided in the same sole structure (if any secondary grooves are provided). Because of their relatively deep and/or wide structure, deep channels or primary grooves may be used in areas of a sole structure to facilitate greater flexion as well as shockloading at that area. Because of their relatively shallow and/or narrow structure, secondary channels or secondary grooves may be used in areas of the sole structure primarily to facilitate greater flexion at that area (plastic deformation may be limited across a secondary groove because the secondary adjacent material across the groove prevents substantial relative motion in the side-to-side movement of the heel and/or toes in the opposite direction (i.e., shockload and away from the side joint) is called “plantar flexion”).

In addition, the ability to “grip” the foot, whether with the sole of the shoe, or the upper of the article of footwear, is another important feature desired by shockloaders. Softer materials tend to provide higher coefficients of friction and, thus, generally provide better traction and “grip” than harder materials. However, softer materials also tend to wear and wear quickly. Thus, another feature sought by shockloaders is a durable sole and/or a durable upper. Because of the abrasive nature of the top surface of a shockload (e.g., a typically equipped sole on a hard floor surface), the sole and/or upper surface on which a shockload is used, however durable, can be a very important consideration when selecting a shockload shoe.

Finally, it is important to all athletes, so that the shoe keeps the user's foot, serves with the user's foot, comfortably supports the user's foot and does not rub or slip relative to the user's foot. Lightweight and breathable shoes are important features for such shoes. For shockloading or other activities where the foot loads under high impact loads, the upper and/or sole structure may need to provide room for the foot to splay outward at the time of impact.

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lululemon Ex. 1017
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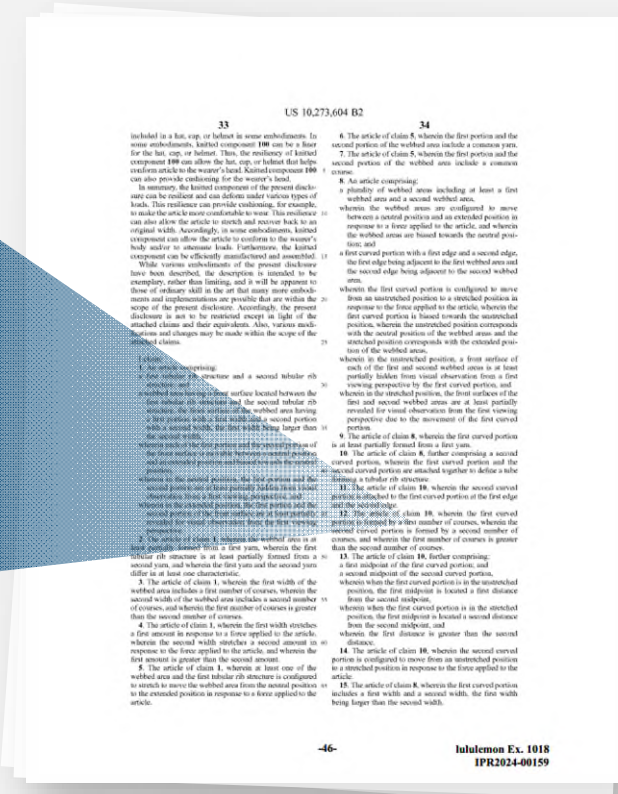
Claim Differentiation Confirms Open-Periphery Disclosure

Nike's '604 Patent, a grandchild of the '046 Patent, includes claim 10, which covers a "tubular rib structure" that is not attached at both edges.

10. The article of claim 8, further comprising a second curved portion, wherein the first curved portion and the second curved portion are attached together to define a tube forming a tubular rib structure.

11. The article of claim 10, wherein the second curved portion is attached to the first curved portion at the first edge and the second edge.

(Ex. 1018, Claims 10-11)



The Ordinary Meaning Of Tubular Structures Is Broad

- ④ The court in the *Puma* Litigation noted that the “specification provides that the tubular structure can **vary in shape and dimensions.**” (Ex. 1012, 16)
- ④ Nike argued in the *Puma* Litigation that the “ordinary meaning of ‘tubular’ or ‘tube-like’ [] is broader than ‘tube’ because it can encompass something that **merely resembles a tube.**” (Ex. 1021, 24)
- ④ Nike argued in the *Puma* IPR that “ordinary meaning of ‘tubular’ or ‘tube-like’ [] is broader than ‘tube’ because it can encompass something that merely resembles a tube” and “**the ‘046 Patent does not limit the shape or dimension of the ‘tubular structure,’**” (Ex. 1001, 7:34-44), **which means ‘tubular structures’ do not have to be ‘tubes.’**” (Ex. 1022, 13)
- ④ Nike’s expert in the *Puma* IPR asserted that “**[a] structure can be ‘tubular’ without having a tube shape[,] [f]or example, a structure may be tube-like but not have a tube shape.**” (Ex. 1023, 18)

No Definition Or Disclaimer Means Full Scope Applies

- ④ "There is a heavy presumption that claim terms are to be given their ordinary and customary meaning." *Aventis Pharms. Inc. v. Amino Chems. Ltd.*, 715 F.3d 1363, 1373 (Fed. Cir. 2013)
- ④ "Absent a clear disavowal or contrary definition in the specification or the prosecution history, the patentee is entitled to the full scope of its claim language.'" *Aug. Tech. Corp. v. Camtek, Ltd.*, 655 F.3d 1278, 1286 (Fed. Cir. 2011)
- ④ A "patentee is free to choose a broad term and expect to obtain the full scope of its plain and ordinary meaning unless the patentee explicitly redefines the term or disavows its full scope." *Thorner v. Sony Comput. Ent. Am. LLC*, 669 F.3d 1362, 1367 (Fed. Cir. 2012)

Nike Confirmed No Lexicography Or Disavowal Of Claim Scope

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plurality of courses formed from a first yarn," that "the webbed areas hav[e] a front surface," that "the webbed areas [are] configured to configured to move between a neutral position and an extended position, the webbed areas being biased to move toward the neutral position," and that the webbed areas are "adjacent to" the tubular structures. (Ex. G, 32:41-49.) The specification likewise provides non-limiting descriptions of the webbed area:

Generally, webbed areas 128 *may* be connecting portions between various elements and/or components of knitted component 100. Webbed areas 128 are formed of unitary knit construction with the remaining portions of knitted component 100 and *may* serve to connect various portions together as a one-piece knit element. Knitted component 100 *can* include any suitable number of webbed areas 128. In different embodiments, webbed areas 128 *can* be an area of knitted component 100 comprising one knit layer.

(*Id.* at 7:45-53 (emphasis added).)

PUMA's construction improperly adds a "knit base" limitation to the claim. There is no support for this limitation anywhere in the intrinsic record. Nothing in the claim language or the specification refers to the "webbed areas" as a "knit base," or even as a "base." (Ex. G, 2:13-35:6); *Phillips*, 415 F.3d at 1323-1328 (improper to add limitations).

Thus, this claim term has its ordinary and customary meaning, which is readily apparent because the term uses commonly understood words. No further construction is required.

D. "tubular structure"

NIKE's Construction	PUMA's Construction
Ordinary and customary meaning. No further construction is needed.	tube shaped structure, i.e., having the structure of a hollow elongated cylinder

This claim term appears in asserted claims of the '046 patents. The term has the full scope of its ordinary and customary meaning. Neither of the exceptions to the presumption of giving a claim term its ordinary and customary meaning applies. The inventors did not act as their own lexicographers, and the inventors did not disavow the full scope of the term in the specification or during prosecution. (Ex. G, 2:13-32:37.)

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D. "tubular structure"

NIKE's Construction	PUMA's Construction
Ordinary and customary meaning. No further construction is needed.	tube shaped structure, i.e., having the structure of a hollow elongated cylinder

This claim term appears in asserted claims of the '046 patents. The term has the full scope of its ordinary and customary meaning. Neither of the exceptions to the presumption of giving a claim term its ordinary and customary meaning applies. The inventors did not act as their own lexicographers, and the inventors did not disavow the full scope of the term in the specification or during prosecution. (Ex. G, 2:13-32:37.)

(Ex. 1020, 23)

Dr. Brookstein Explained Tubular Structures Can Be Open-Loop

His declaration:

- ⊕ "Good's rib portions 22 are tubular structures, each having an elongate hollow structure and the shape of a tube."

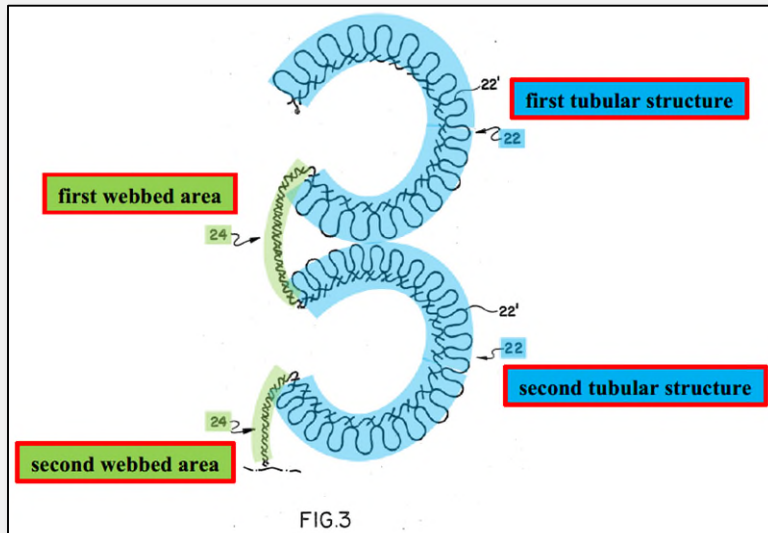


Figure from Good with Tubular Structure Annotations

(Ex. 1003, ¶159)

His deposition:

Q. Do you agree that a tubular structure at least has a closed periphery or circumference?

A. Not necessarily. I disagree with this.

(Ex. 2007, 39:14-18)

The '046 Patent's Specification Does Not Require Closed-Loop

- ④ **"In some cases**, rib structures can be hollow tubes formed in the knitted component 100 by co-extensive and overlapping knit layers that are closed to form the tube." (Ex. 1001, 4:58-61)
- ④ "at least one tubular course 804 **may be joined** by knitting to at least one web course 806 so as to form a loop and close tubular rib structure 126" (Ex. 1001, 17:43-46)
- ④ The "course 1002 **may form** the second curved portion of tubular rib structure 126 that closes tubular rib structure 126 and forms a hollow tunnel." (Ex. 1001, 20:3-5)
- ④ The "first curved portion 416 and second curved portion 418 **may be knitted together** to define the tube forming tubular rib structure 126." (Ex. 1001, 10:20-32)

Non-Limiting Phrases Are Not A Clear Disavowal Of Scope

- ④ "[U]se of 'may' and 'for example' does not rise to the level of disclaimer or disavowal." *In re Lockwood*, 679 Fed. App'x 1021, 1027 (Fed. Cir. 2017) (non-precedential)
- ④ "[P]hrases such as 'one technique,' 'can be carried out,' and 'a way' indicate that using Probelec XB 7081 is only one method for making the invention and does not automatically lead to finding a clear disavowal of claim scope." *Cont'l Cirs. LLC v. Intel Corp.*, 915 F.3d 788, 797 (Fed. Cir. 2019)
- ④ "Under the most straightforward reading of this disclosure, the conditional language 'may be used' demonstrates the patentee's unwillingness to make control by a single organization a necessary feature of the invention." *Sri Int'l, Inc. v. Dell Inc.*, No. CV 13-1534-SLR, 2015 WL 2265756, at *3 (D. Del. May 14, 2015), *aff'd sub nom. SRI Int'l, Inc. v. Cisco Sys., Inc.*, 918 F.3d 1368 (Fed. Cir. 2019)

No Justification For Importing Closed-Loop Requirement

“[I]t is improper to read limitations from a preferred embodiment described in the specification—even if it is the only embodiment—into the claims absent a clear indication in the intrinsic record that the patentee intended the claims to be so limited.”

Liebel-Flarsheim Co. v. Medrad, Inc., 358 F.3d 898, 913 (Fed. Cir. 2004)

The POPR Misrepresented Agreement On Claim Construction

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Here, lululemon has not shown a reasonable likelihood of success for any challenged claim under any ground of unpatentability. The Board should thus deny institution.

VI. GROUND 1: LULULEMON HASN'T SHOWN A REASONABLE LIKELIHOOD THAT GOOD ANTICIPATES OR RENDERS OBVIOUS CLAIMS 1–3, 7, 16–18, OR 20

lululemon fails to show to a reasonable likelihood that Good anticipates or renders obvious any challenged claim in Ground 1.

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

Under either party’s proposed construction of “tubular structures”—whether “hollow,” “elongated,” or neither—Good does not disclose any “tubular structures.”

The parties agree that, under either construction, a “tubular structure” must be a closed-loop structure that is shaped like a tube. Ex. 2003, 3 (“the specification compel[s] the conclusion that the claimed ‘tubular structures’ have the shape of tubes”), 3 (citing definition of “tube” as “hollow cylinder” “that conveys a fluid or functions as a passage”); Ex. 2004, 68 (“a full tube of toothpaste is still a tube”); Ex. 2005, 12 (“tubular structures” can be shaped as “a generally circular or elliptical cylinder”); Ex. 2004, 56–57, 61; *see* Ex. 2002, ¶¶37–38. The parties’ positions parallel the ’046 patent specification, which also discloses “tubular structures” as closed-loop structures. For example, the specification discloses that “at least one

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(POPR, 17)

Iululemon Described “Tubular” As “Like A Tube” – Not Closed-Loop

Nike mischaracterized Iululemon’s statements:

“the specification compel[s] the conclusion that the claimed ‘tubular structures’ have the shape of tubes, namely elongated hollow structures.” (Ex. 2003, 3) (emphasis added)

hollow. Dictionaries define “tubular” as “like a tube” and “tube” as a “hollow cylinder.” Razai Decl., Ex. 7 at 1557 (defining “tubular” as “of or shaped like a tube” and “tube” as “a *hollow* cylinder or pipe or metal, glass, rubber, etc., usually long in proportion to its diameter, used for conveying fluids, etc.”) (emphasis added); Razai Decl., Ex. 8 (defining “tubular” as “[o]f or having the form of a tube” and “tube” as “[a] *hollow* cylinder, esp. one that conveys a fluid or functions as a passage”) (emphasis added).

(Ex. 2003, 3)

Nothing Nike Cites Suggests An Agreement On Closed-Loop

- ⌚ The claims recite “tubular” not “tube.”
- ⌚ Nike relied on irrelevant statements:
 - Ex. 2004, 68 (“a full tube of toothpaste is still a tube”)
 - Ex. 2005, 12 (“tubular structures” can be shaped as “a generally circular or elliptical cylinder”)
- ⌚ There is no dispute that closed-loop cylinders can be tubular structures.
- ⌚ But tubular structures are not required to be closed-loop.

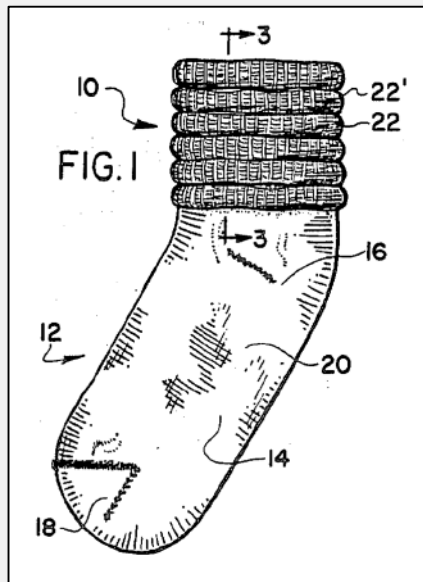
Record Shows: “Tubular Structure” Does Not Require Closed-Loop

- ⊕ The '046 patent confirms that “tubular structures” can be channels with an open periphery.
- ⊕ “Tubular structures” are “tube-like structures,” per Nike and the *Puma* court.
- ⊕ Nike confirmed no lexicography or disavowal of claim scope.
- ⊕ Nike argued that “tubular structures” are not necessarily “tubes.”
- ⊕ Related patents confirms that the '046 patent discloses “tubular structures” with an open periphery.
- ⊕ Dr. Brookstein confirmed that “tubular structures” include open-loop structures.
- ⊕ Nike’s reliance on non-limiting examples in the '046 patent does not justify narrowing “tubular structures” to closed-loop configurations.

Ground 1

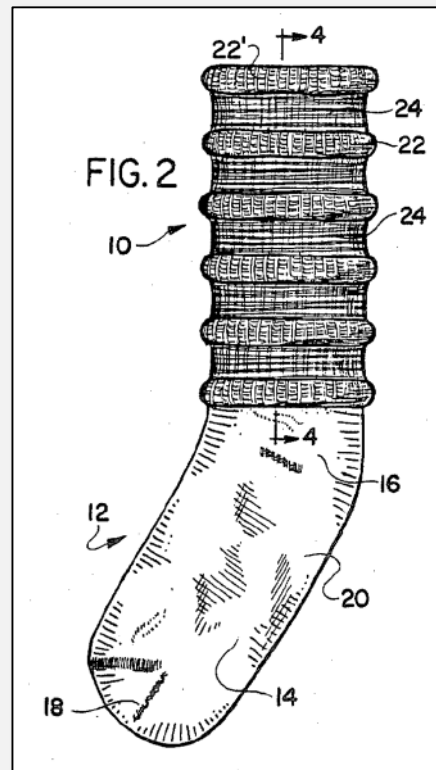
Good Discloses Tubular Structures

Neutral Position



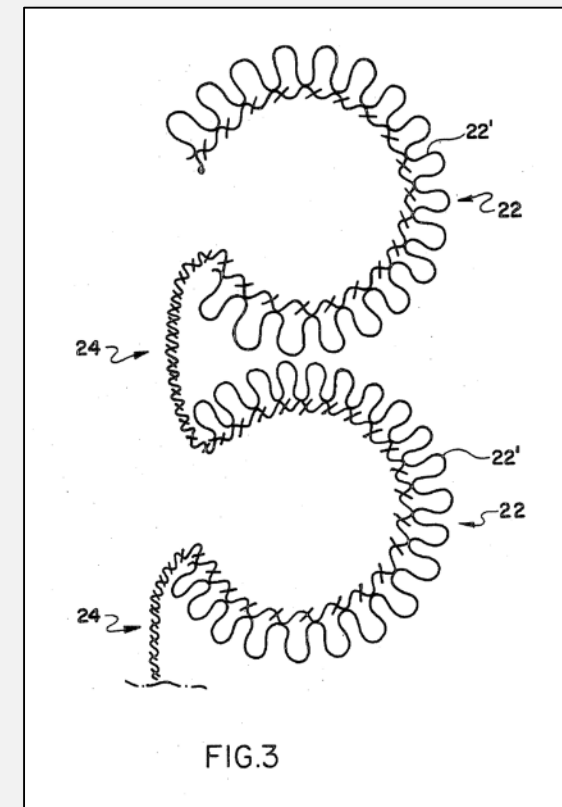
(Ex. 1005, Fig. 1)

Extended Position



(Ex. 1005, Fig. 2)

Cross-Sectional View



(Ex. 1005, Fig. 3)

Good's Tubular Structures Match Those In The '046 Patent

Dr. Brookstein Declaration:

59. Good discloses limitation 1[b]. Good provides that “each rib portion 22 is formed of a selected predetermined number of courses sufficient to enable the axial ends of each rib portion 22 to roll substantially together in the relaxed condition.” Ex.1005, 12:34-44; *see also id.*, 12:55-59 (“the rib portions 22 maintain their outwardly rolled configuration”), 12:14-20 (“the rib portions 22 to roll axially upon themselves”). Good’s rib portions 22 are tubular structures, each having an elongate hollow structure and the shape of a tube. The rib portions 22 (blue) and connecting portions 24 (green) are depicted below in Figure 3 in a cross-section view. *Id.*, 3:16-18.

(Ex. 1003, ¶159)

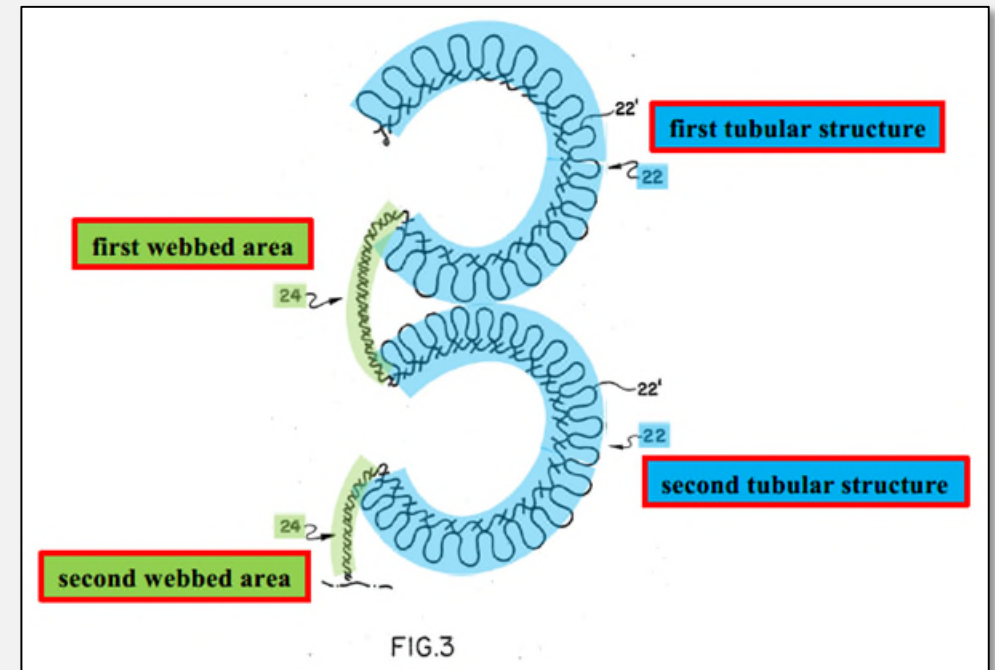
'046 Patent:

In different embodiments, tubular rib structures 126 can define one or more hollow tubes. 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.

(Ex. 1001, 10:66-11:3)

Good Discloses “Tubular Structures” Under Both Constructions

- ③ *lululemon*: plain and ordinary meaning is “**elongated hollow structures.**”
- ③ *Nike*: plain and ordinary meaning is “**tube-like**” structures that **need not be hollow.**
- ③ Under both constructions, Good’s rib portions are tubular structures.



(Ex. 1005, Fig. 3 (annotated))

Good Discloses “Tubular Structures”

- ⌚ Good’s rib portions are tubular structures in at least one configuration or mode of operation.
- ⌚ “[I]nfringement is not avoided merely because a non-infringing mode of operation is possible.” *Care Wireless Licensing v. Apple Inc.*, 899 F.3d 1356, 1363 (Fed. Cir. 2018).
- ⌚ “That which infringes, if later, would anticipate, if earlier.” *CommScope Techs. LLC v. Dali Wireless Inc.*, 10 F.4th 1289, 1294 (Fed. Cir. 2021).

Good's Rib Portions Also Maintain Their Tubular Shape

11
4,702,091
12

sinker cap is moved to its inactive position to avoid radially inward manipulation of the sinkers to insure receipt of the body yarn on the lower and not upper surfaces of the sinkers thereby to avoid formation of terry loops of the body yarn. In this manner, the ground yarn G and the body yarn B are knitted in plated relationship by all of the needles 30 and sinkers 36 to form plated needle loops of the ground and body yarn within the hook and latch areas of the needles 30 and plated sinker loops of the ground and body yarn over the lower yarn receiving surfaces 38 of the sinkers 36. Following the operation of the knitting machine in this manner for a predetermined initial number of revolutions, the control arrangement of the machine deactivates rotational operation of the needle cylinder and sinker ring and activates reciprocal operation thereof utilizing only a portion of the needles and the associated sinkers to knit a number of partial courses of the ground and body yarns to form the contoured heel pocket 16 in conventional manner. Thereafter, the rotational operation of the knitting machine is resumed for a predetermined subsequent number of revolutions of the needle cylinder and sinker ring to form the main tubular length 20 of the foot portion 14, after which the machine is returned to reciprocal operation to form the contoured toe pocket 18 to complete the knitting of the sock 12. As will be understood, the toe pocket 18 of the sock 12 is completed on the knitting machine in the open so-called "fish mouth" type which is seamed closed in a subsequent sewing operation to complete the formation of the sock 12 as shown in FIG. 1.

The method of knitting the cuff member 10 of FIGS. 6 and 7 is substantially identical to the above-described method for knitting the cuff member 10 except that, in the formation of each rib portion 22, only selected spaced groups of successive needles 30 and associated sinkers 36 are operative for forming the terry loops T₁ of the terry yarn T with the remaining intermediate groups of successive needles 30 and associated sinkers 36 being operative for knitting the terry yarn T in a single jersey stitch construction identical to that of the ground yarn G. This is accomplished by positioning the sinker cap at the intermediate partially active position and utilizing long butt sinkers 36 as the selected sinkers of each group designated for terry stitch formation while utilizing short butt sinkers 36 as the non-selected sinkers of each group designated for single jersey stitch formation. In this manner, during each revolution of the knitting machine in the formation of the rib portions 22 of the cuff member 10, the long butt sinkers 36 are manipulated radially with respect to their associated needles 30 in the same manner as illustrated in FIGS. 9 and 10 to form plated needle loops G₁T₁ of the ground and terry yarns G,T in the hook and latch area of each associated needle and sinker loop G₁T₁ of the terry yarn T of the ground and terry yarns G,T respectively over the lower and upper yarn receiving surfaces 38,40 of each long butt sinker 36. On the other hand, the sinker caps of the sinker cap are cooperative on the short butts 44 of the non-selected sinkers 36 so that each short butt sinker 36 is not manipulated radially inwardly with respect to their associated needles 30 during stitch formation by the needles 30 as shown in FIG. 10. Instead, as shown in FIG. 14, the short butt sinkers 36 remain radially outwardly withdrawn with respect to their associated needles 30 whereby, when the associated needles 30 are manipulated withdrawn within the needle cylinder for stitch formation, the terry yarn T is not formed over the upper raised yarn receiving surfaces 40 of the short butt sinkers 36 but instead is merely formed as a plated sinker loop T₁ of the terry yarn T over the lower yarn receiving surfaces 38 of the short butt sinkers 36 in the same manner as the ground yarn G. Thus, the aforementioned walewise aligned terry and non-terry areas 26,28 are formed in the rib portions 22 of the cuff member 10.

The above-described construction of the cuff member 10 provides the cuff member 10 with several unique qualities. First, the use of both the elastic yarn E and the stretch nylon ground yarn G provides the cuff member 10 with significant degrees of both coursewise and walewise stretchability. In addition, the elastic and ground yarns E,G cause the rib portions 22 to contract walewise in the relaxed condition of the cuff member 10 and constrain the rib portions 22 to roll axially upon themselves on the face side of the fabric to give the terry loop surfaces 22' on the reverse side of the fabric the aforementioned rounded configuration. Notably, in contrast to conventional socks and other knitted articles, the tubular cuff members 10,110 are intended to be worn with the face side of the knitted fabric construction disposed radially inwardly to present the terry loop surfaces 22' on the reverse side of the knitted fabric construction at the radially outwardly facing side of the cuff member 10,110. The connecting portions 24, being constructed essentially only of the low denier nylon ground yarn G with the elastic yarn E inlaid therein, have an open mesh construction in the nature of a knitted scrim of gauze-like fabric, whereby the connecting portions 24 contract in the relaxed condition of the cuff member 10,110 to an even greater extent than the rib portions 22. According to the present invention, each rib portion 22 is formed of a selected predetermined number of courses sufficient to enable the axial ends of each rib portion 22 to roll substantially together in the relaxed condition of the cuff member 10, and each connecting portion 24 is formed of a selected predetermined number of courses to permit the adjacent rib portions 22 to be disposed closely axially adjacent one another in the relaxed condition of the cuff member 10, as shown in FIGS. 1, 3 and 6, so that the connecting portions 24 are essentially unnoticeable. In such relaxed condition, the cuff member 10 is very compact walewise to enable the cuff member 10 to serve as an ankle-type cuff for the sock 12. However, as mentioned, the cuff member 10 has a high degree of walewise stretchability enabling it to be elongated axially to the aforementioned extended condition, shown in FIGS. 2,4,7 with the rib and connecting portions 22,24 substantially elongated to dispose the rib portions 22 at an axial spacing from one another, whereby the cuff member 10,110 is adapted to function as an ordinary leg portion for the sock 12. Notably, in both the relaxed and extended conditions of the cuff member 10,110, the rib portions 22 maintain their outwardly-rolled configuration to provide a unique and pleasing decorative appearance in each case.

It will therefore be readily understood by those persons skilled in the art that the present invention is susceptible of a broad utility and application. Many embodiments and adaptations of the present invention other than those herein described, as well as many variations, modifications and equivalent arrangements will be apparent from or reasonably suggested by the present invention and the foregoing description thereof, without departing from the substance or scope of the

sock 12. Notably, in both the relaxed and extended conditions of the cuff member 10,110, the rib portions 22 maintain their outwardly rolled configuration to provide a unique and pleasing decorative appearance in each case.

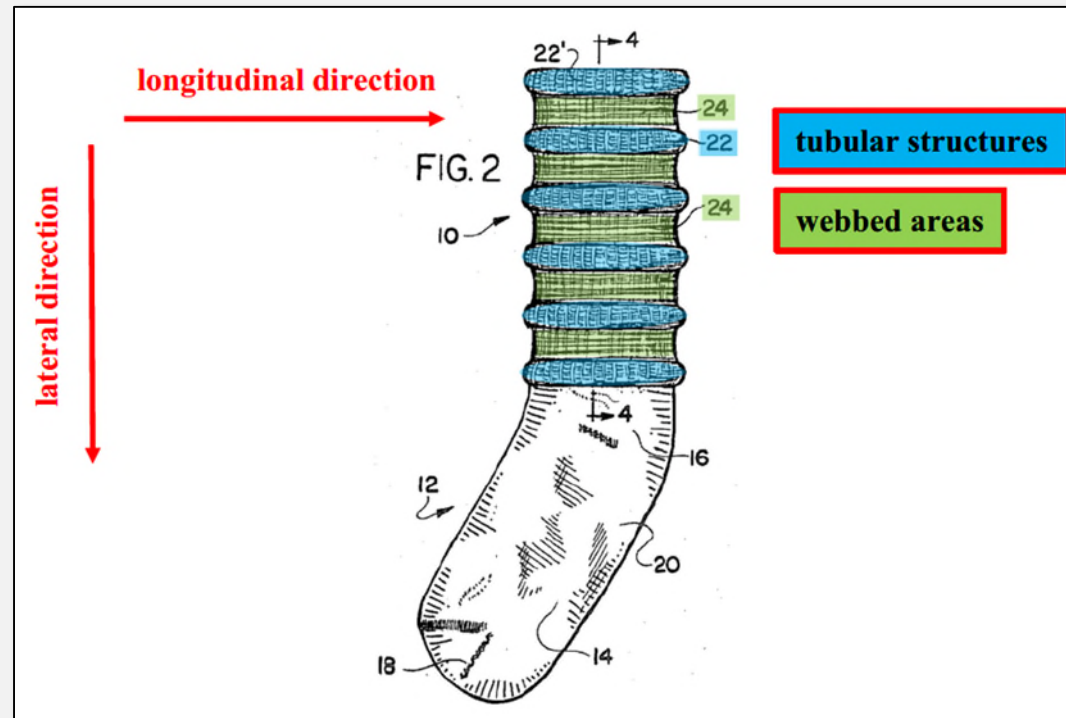
(Ex. 1005, 12:55-59)

-14-

lululemon Ex. 1005
IPR Petition - USP 9,375,046

Good Anticipates Claim 2

- ④ Good discloses its webbed areas and tubular structures extend along the longitudinal direction



(Ex. 1005, Fig. 2 (annotated))

Nike's Argument On Longitudinal Extension Is Flawed

- ⌚ Nike mistakenly argues that Good's connecting and rib portions do not extend along the longitudinal direction because they are arranged circumferentially.
- ⌚ Nike's own expert testified that in a 3D coordinate system, "a line [can] extend in the X direction and the Z direction simultaneously." (Ex. 1019, 47:3-8)

Nike's Argument Improperly Narrows Claim Scope

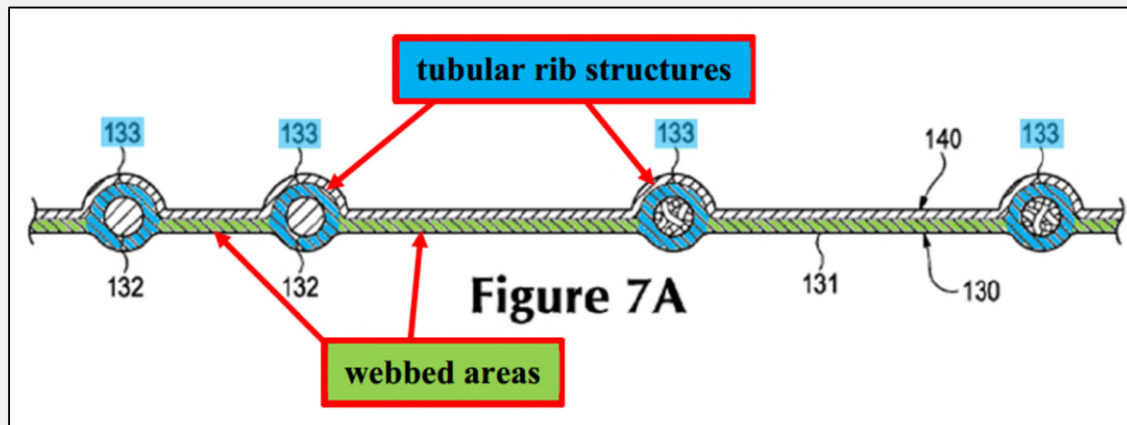
- ⌚ Claim 2 recites "the plurality of webbed areas and the plurality of tubular structures extend **along** the longitudinal **direction**."
- ⌚ This language does not require extension in a **straight line**.

Ground 3

Minami Anticipates Claim 8

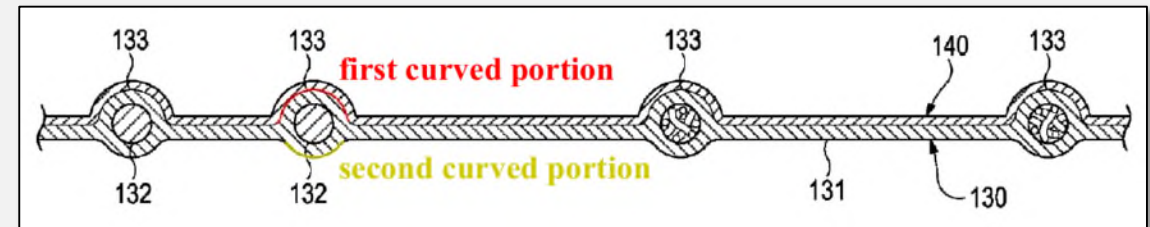
- ④ Minami discloses webbed areas, tubular structures, first and second curved portions, and both neutral and extended positions.

Tubular Rib Structures & Webbed Areas



(Ex. 1007, Fig. 7A (annotated))

Curved Portions



(Ex. 1007, Fig. 7A (annotated))

Ground 3

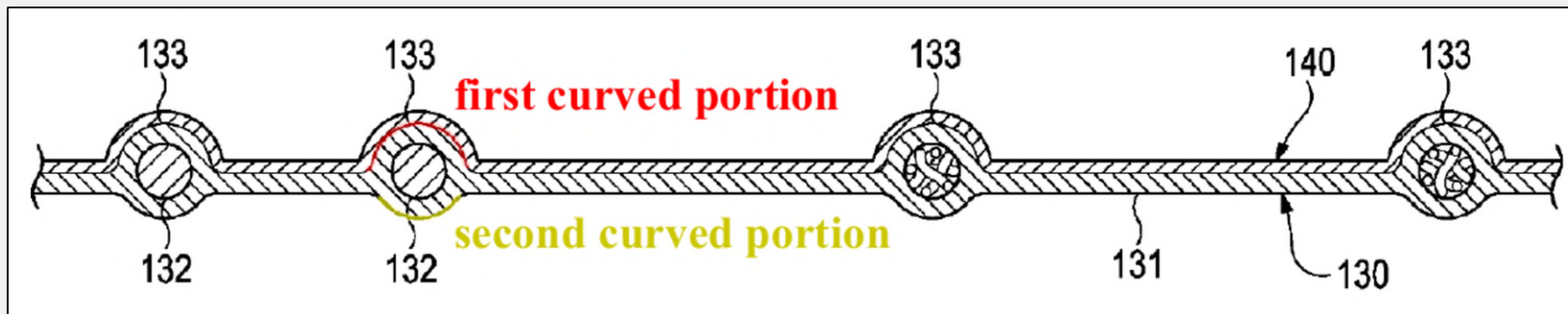
Minami discloses tubular rib structures where first curved portions have greater curve length than second curved portions

Minami's Upper Curve Is Longer

④ Dr. Brookstein explained:

As can be seen, the representative tubular rib structure has two curved portions and includes a first curved portion extending from the front side of adjacent webbed areas and a second curved portion extending from the back side of adjacent webbed areas. Ex.1007, [0061]. The first curved portion's curve length is greater than the second curved portion's curve length as evidenced by the first curved portion protruding farther and extending a greater distance between the adjacent webbed areas than the second curved portion.

(Ex. 1003, ¶132) (emphasis added)



(Ex. 1007, Fig. 7A (annotated))

Dr. Pastore Acknowledged Minami's Upper Curve Is Longer

Dr. Pastore testified:

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

A. I think that might be true.

(Ex. 1019, 63:15-20)

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

THE WITNESS: I -- having seen

Dr. Brookstein's annotations, I can see what he meant.

(Ex. 1019, 66:17-67:3)

Drawings Are Useful For What They Reasonably Teach A POSITA

- ③ *Ex parte Jurek*: “[A] person of ordinary skill in the art would readily observe in Praisner’s Figure 3 that the ratio of the axial distance d1 of the first gap and the axial distance d2 of the second gap, illustrated as substantially or approximately the same length, ‘is less than 2.0.’ Such a determination is not the result of measurements to determine *precise* proportions or *particular sizes* of elements. Rather, it is based on what is illustrated in Praisner’s Figure 3 to a person of ordinary skill in the art by mere viewing and comparing two dimensions, that is, the length of the first axial distance d1 to the length of the second axial distance d2.” Appeal No. 2018-006215, Appl. No. 14/608,304, at 5-9 (P.T.A.B. April 19, 2019) (emphasis added)
- ③ *Nested Bean v. Big Beings USA*: “Here, the limitation is a very broad qualitative limitation. We find that Petitioner’s analysis of Figure 1 is sufficient to show that ‘width of the suit between the wing portions is greater than the width of the bodice portion.’” IPR2020-01234, FWD, at 29-30, 35-36 (P.T.A.B. Jan. 24, 2022) (emphasis added)

Drawings Are Useful For What They Reasonably Teach A POSITA

- ③ *Ex parte De Coninck et al.*: “We thus agree with the Examiner that a simple observation of Gruskin’s Figure 6 reveals to a person of ordinary skill in the art that the top surface T of handle 50 forms an angle of about 90° with a vertical axis passing through the top and bottom of container 10. As 90° is greater than about 50°, Gruskin discloses an angle ‘a’, as called for by claim 1. Such a determination is not the result of measurements to determine *precise* proportions or *particular sizes* of elements. Rather, it is based on what is clearly shown in Gruskin’s Figure 6 to a person of ordinary skill in the art.” Appeal No. 2017-003938, Appl. No. 13/475,013, at 6-8 (P.T.A.B. April 12, 2017) (internal citations omitted) (emphasis added)

Drawings Are Useful For What They Reasonably Teach A POSITA

- ⌚ *In re Aslanian*: The court invalidated claims based on patent figures and confirmed that courts “evaluate and apply the teachings of all relevant references on the basis of what they reasonably disclose and suggest to one skilled in the art.”

590 F.2d 911, 914 (CCPA 1979) (citation omitted)

- ⌚ *In re Mraz*: The court explained that “[d]escription for the purposes of anticipation can be by drawings alone as well as by words.”

455 F.2d 1069, 1072 (CCPA 1972)

Nike's Cases Are Distinguishable

- ⌚ *Hockerson-Halberstadt*: This case involved a “quantitative relationship” requiring specific measurements between a groove and a fin. 222 F.3d 951, 956.
- ⌚ *In re Olson and Nystrom v. TREX*: These cases focused on precise measurements. 212 F.2d 590, 592 (CCPA 1954); 424 F.3d 1136, 1149 (Fed. Cir. 2005).
- ⌚ *Plantronics v. Aliph*: The court observed that a specific patent’s figures “do not evidence actual dimensions.” 724 F.3d 1343, 1351 (Fed. Cir. 2013).

Nike's Arguments On Minami's Upper Curve Length Are Flawed

- ⊙ Nike wrongly states that Minami's Figure 7A was "never intended to show the dimensions of anything."

[0062] Skin layer 140 extends over protruding areas 133 and may be secured to protruding areas 133, as well as other areas of knitted component 130. As such, skin layer 140 forms corresponding bulges, protrusions, bumps, or other outwardly-extending portions at the locations of protruding areas 133 and on exterior surface 121, as depicted in FIGS. 7A and 7C, for example. An advantage of this configuration is that the friction properties of footwear 100 may be controlled through the specific pattern that protruding areas 133 form in upper 120. As an example, the combination of protruding areas 133 and skin layer 140 may provide enhanced control of a ball during the sport of soccer. That is, a soccer player may obtain enhanced control of a soccer ball through the raised or outwardly-extending portions of upper 120 that are formed by protruding areas 133.

(Ex. 1007, [0062])

US 2014/0130374 A1

May 15, 2014

thickness than the pores of knit diacon 135. Moreover, the materials forming island 132 may include any of the materials for the yarn within knit diacon 133, such as cotton, elastane, polyester, rayon, wool, and nylon, but may also include a material having a different chemical composition, such as polypropylene, polyethylene, or polyurethane. The island 132 is utilized for high-moisture-barrier applications, including athletic (e.g., pants, trousers and mini-skirts), low-high moisture-barrier applications, and liquid repellent polymers. As another example, a brushed polypropylene mat may also be utilized in island 132.

[0154] The combination of knitted component 130 and skin layer 140 provide various advantages to footwear 100. In some configurations, however, skin layer 140 may be absent from footwear 100. That is, knitted component 130 may be utilized individually to form portions of upper 120, and knitted component 130 may form a majority of relatively large portions of each of surfaces 121 and 122. Moreover, the pres-

[0060] The skin layer 140 may be utilized individually, alone or in combination with one or more of the other layers. For example, the skin layer 140 may be utilized in combination with the additional thickness or felt or super 128, while still preserving the stretch properties of super 128. Although decreased in stretch properties with skin layer 140, therefore, knitted composite 130 may be utilized individually.

[illegible]

structure of a two-piece saddle with three-point pressure distribution that may be needed to attain compression 130 is disclosed in U.S. Patent Application Publication 2005/0190409 (hereafter "disc"), which is incorporated herein by reference. Moreover, additional configurations relating to this first 140 may be found in U.S. Patent Application Publication 2005/0190409. In disc, which is incorporated herein by reference.

[illegible]

of the β -form, the polymer material transitions from the amorphous to liquid state to the solid state when sufficiently cooled. Although the thermoplastic polymer material may be melt-crystallized, cooled, and re-melted, and then cooled again through multiple cycles, the thermoplastic polymer material may also be solidified or hardened to create a thermoset, such as a laminated composite.

[0056] In many configurations of between 100 to a single digit of 1000 layers, the laminate may be limited to a maximum 100 and may accommodate all four orientations

1206 In further configurations, however, different elements in skin layer 140 may be formed from different materials and positioned in separate areas of knitted component 130. That is, a portion of skin layer 140 formed from one material may

-39- Iululemon Ex. 1007
USD Decision - USD 0.376 046

Reply, 18-19, 22

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Nike's Arguments on Minami's Upper Curve Length Are Flawed

- ⌚ Nike misinterprets Minami's disclaimer that components are "not necessarily to scale"

[0010] The invention can be better understood with reference to the following drawings and description. The components in the figures are not necessarily to scale, emphasis instead being placed upon illustrating the principles of the invention. Moreover, in the figures, like reference numerals designate corresponding parts throughout the different views.

(Ex. 1007, [0010])



Ground 3

**Minami discloses webbed areas
configured to move between neutral
and extended positions**

Minami's Upper Stretches Between Positions

⦿ Dr. Brookstein explained:

Minami's knit element 131 stretches and can include different types of yarn that allow for stretching. Minami's knit element 131 stretches as a result of its loop structure and the physical properties of the yarn (such as the elasticity or twist in yarn) that forms the knit element 131. Minami provides that: "Depending upon the types and combinations of stitches utilized, areas of knit element 131 may have a plain knit structure, a mesh knit structure, or a rib knit structure, for example. The different types of stitches may affect the physical properties of knit element 131, including aesthetics [and] stretch ... of knit element 131." Minami also explains that knit element 131, which includes the connecting portions corresponding to the '046 patent's webbed areas, has varying stretch properties that depend on the type of yarn used and discloses that "[t]he different types of yarns may affect the physical properties of knit element 131, including aesthetics [and] stretch ... of knit element 131."

(Ex. 1003, ¶134) (internal citations omitted) (emphasis added)

Minami Confirms Its Upper Is Configured To Stretch

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Dr. Pastore Acknowledged Minami's Upper Stretches

Dr. Pastore testified:

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

A. That is correct.

(Ex. 1019, 60:4-7)

Nike's Claims About Minami's Lack Of Stretching Are Incorrect

- Ⓢ Nike incorrectly argues that Minami's inlaid strand and skin layer indicate that Minami's knit element is not configured to stretch.
- Ⓢ Nike provides no evidence that Minami's webbed areas are not "designed to stretch."
- Ⓢ Nike wrongly asserts that Minami's webbed areas are not configured to move between neutral and extended positions.