

**United States Patent and Trademark Office
Before the Patent Trial and Appeal Board**

lululemon usa inc. v. Nike, Inc.

IPR2024-00159

U.S. Pat. No. 9,375,046

Patent-Owner's Presentation

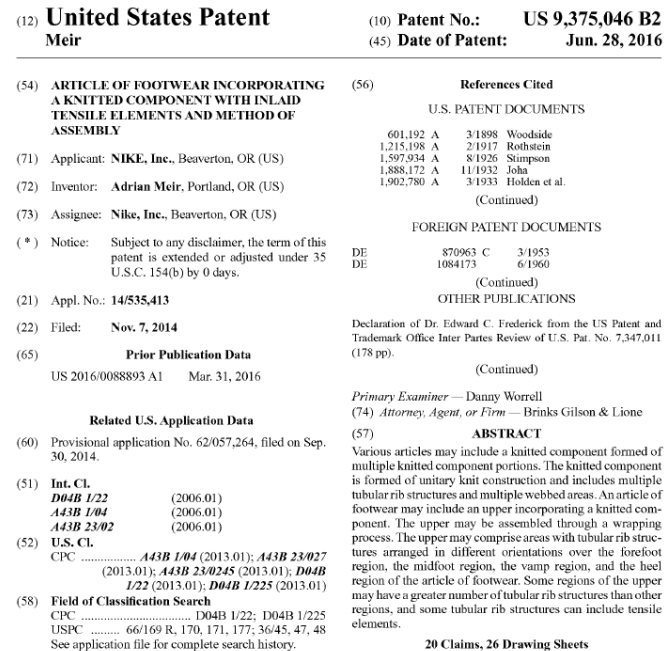
April 3, 2025



- 1. Overview of '046 Patent and Instituted Grounds**
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- 3. The Grounds: lululemon Failed to Prove Unpatentability by a Preponderance of the Evidence**
 - A. Ground 1: lululemon fails to show that Good anticipates any of claims 1–3, 7, 16–18, or 20 or alternatively renders obvious claim 3
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 - C. Ground 3: lululemon fails to show that Minami anticipates any of claims 8, 9, 14, 15, or 19, or alternatively renders obvious claims 9 or 15



Overview of '046 Patent and Instituted Grounds



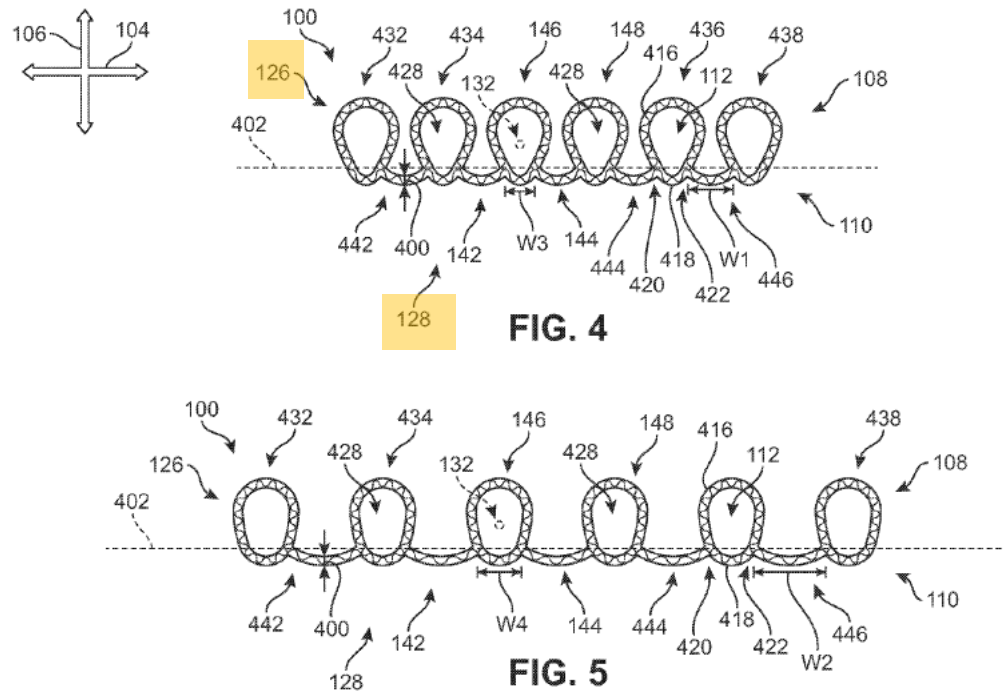
'046 Patent, Ex. 1001 at Cover

Overview of the '046 Patent

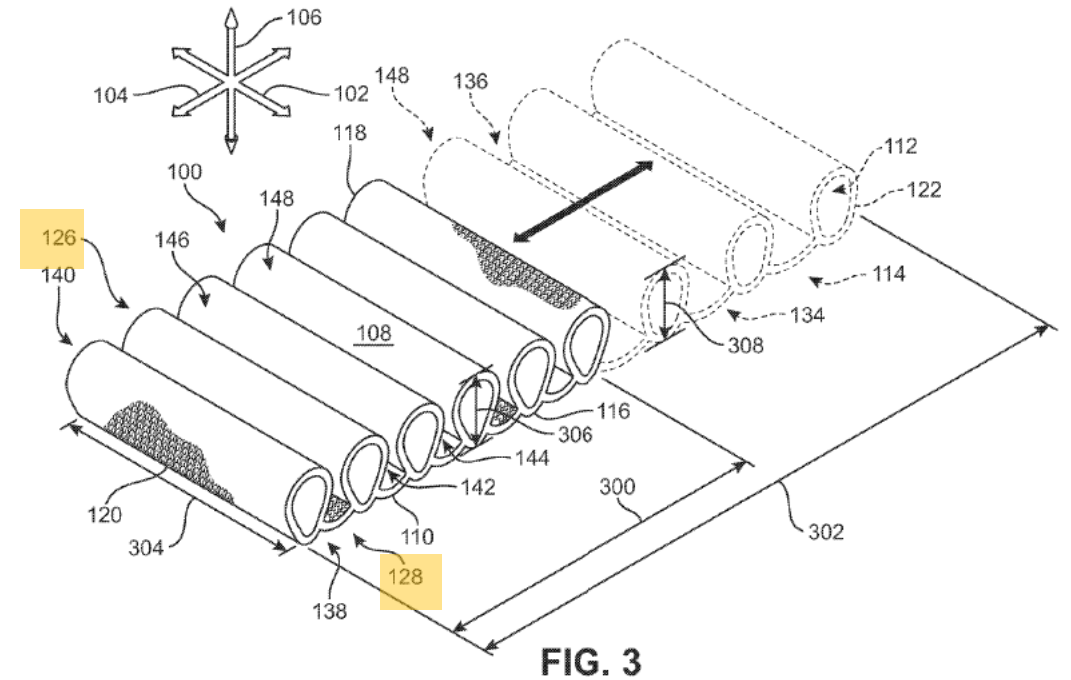


Directed to articles, e.g., footwear, having a knitted component including “tubular rib structures” and “webbed areas.”

Pastore Decl. [Ex. 2006] at ¶23



'046 Patent, Ex. 1001 at Figs. 4, 5



'046 Patent, Ex. 1001 at Figs. 3



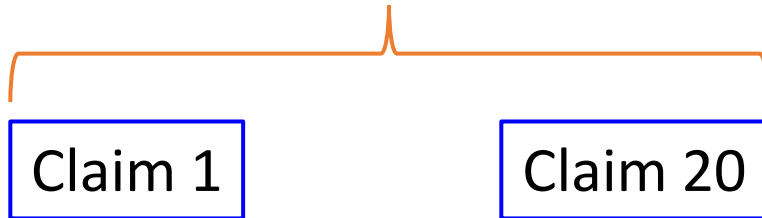
'046 Patent, Ex. 1001 at Fig. 26



Ground	35 U.S.C. §	Claims	Reference(s)
1	§ 102 § 103	1–3, 7, 16–18, 20 3	Good
2	§ 102	1–3, 7, 17, 18, 20	Munsing
3	§ 102 § 103	8, 9, 14, 15, 19 9, 15	Minami

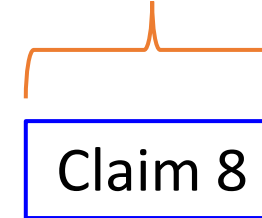


“Article” Independent Claims



- Ground 1 (Good)
- Ground 2 (Munsing)

“Upper” Independent Claim



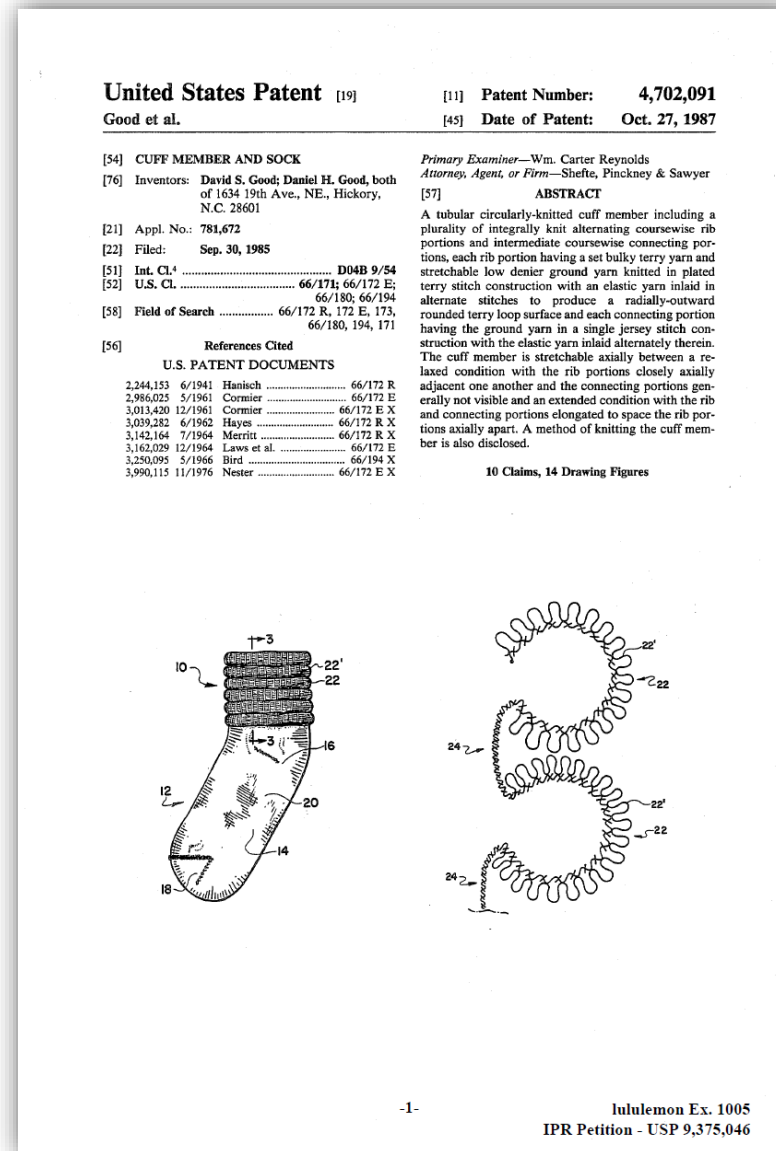
- Ground 3 (Minami)

POR, Paper 11 at 1



- Directed to a sock with a cuff
- The cuff has “several annular circumferentially-extending rib portions” and “several annular circumferentially-extending connection portions” in an “axially alternating arrangement”

POR, Paper 11 at 8

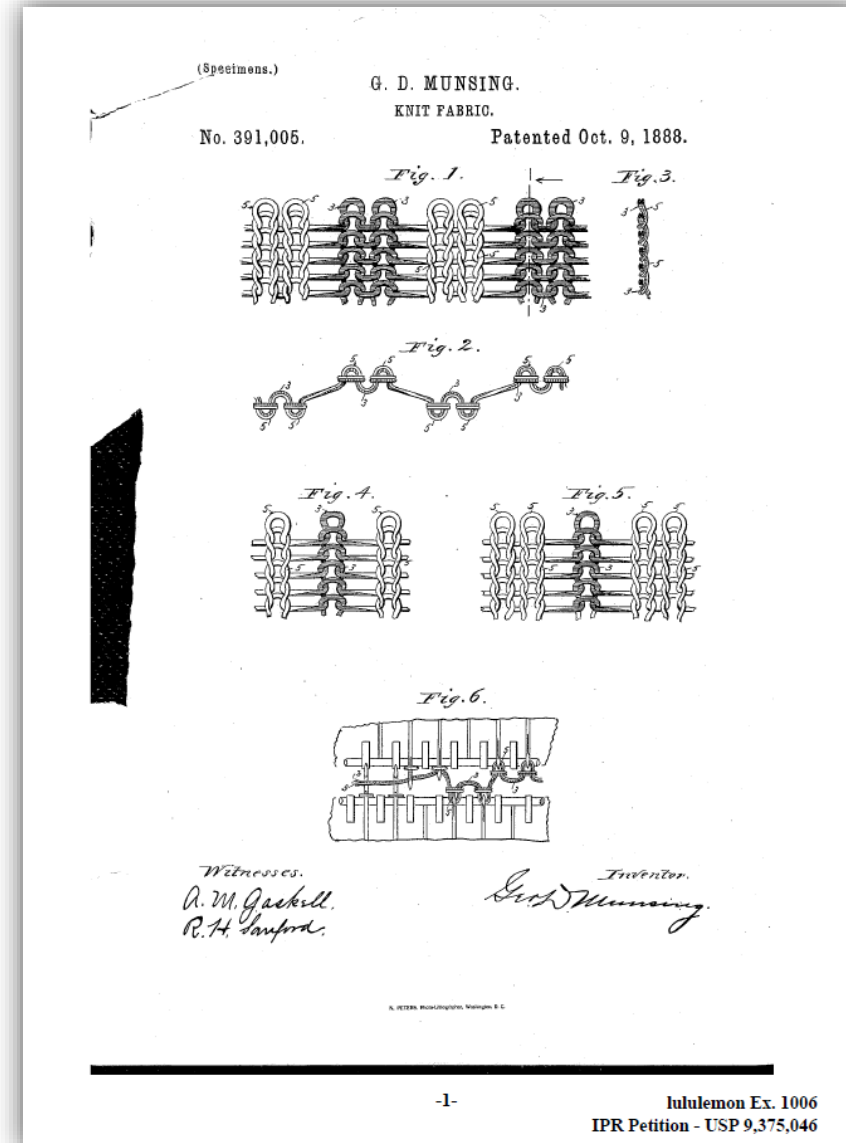


Overview of Munsing



- 1888 patent directed to underwear
- Stretchy double-ribbed jersey fabric

POR, Paper 11 at 10–11

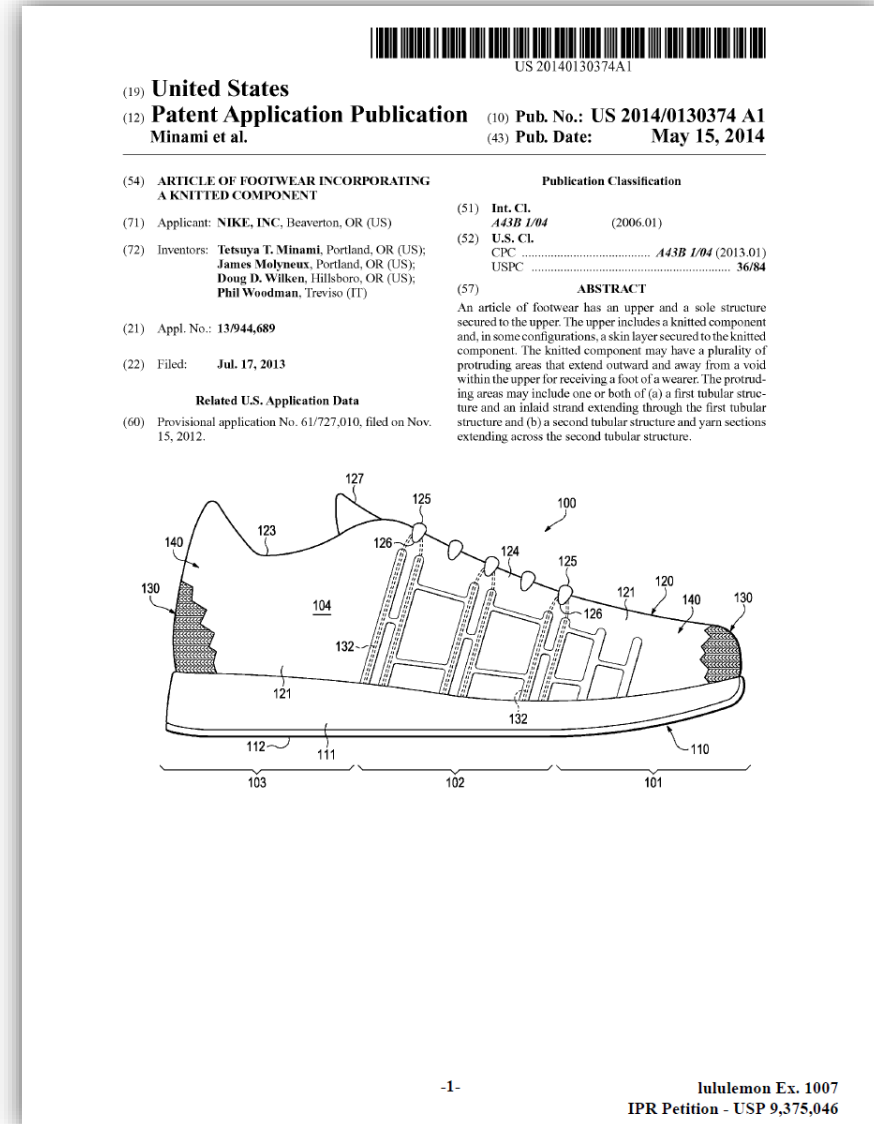


Munsing, Ex. 1006 at Cover



- Nike application
- Directed to knitted upper having various structural features including a “skin layer” and “protruding areas”

POR, Paper 11 at 12–13



Minami, Ex. 1007 at Cover



Claim Construction



“tubular structures” / “tubular rib structures”



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.

'046 Patent, Ex. 1001 at 32:40–59

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.

'046 Patent, Ex. 1001 at 33:43–62



The '046 patent provides
that “tubular structures” refer to the same structures as “tubular rib structures.”
Ex.1001, 10:16-19; Ex.1003, ¶127.

Petition, Paper 1 at 61



In the parties’ parallel district court litigation:

Both the ordinary meaning and the specification compel the conclusion that the claimed “tubular structures” have the shape of tubes, namely elongated hollow structures.

Ex. 2003 at 3 (cited in POPR, Paper 6 at 17)

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 at 3 (cited in POPR, Paper 6 at 17)



In this IPR:

Specifically, Petitioner submits that “tubular structure” must have the shape of a tube. Thus, “tubular structures” should be construed as “elongated hollow structures.” *Id.* This construction is consistent with the claim language and specification.

Petition, Paper 1 at 15



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BEFORE THE PATENT TRIAL AND APPEAL BOARD

LULULEMON USA INC.,
Petitioner,

v.

NIKE, INC.,
Patent Owner.

IPR2024-00159
Patent 9,375,046 B2

Before CARL M. DeFRANCO, GEORGE R. HOSKINS, and
STEPHEN E. BELISLE, *Administrative Patent Judges*.

DeFRANCO, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314(a)

Although not addressed by the district court, the parties and their experts appear to agree that “tubular structures” comprise “co-extensive and overlapping knit layers that are *closed* to form the tube.” *Compare* Pet. 9 (quoting Ex. 1001, 4:58–61 (emphasis added)), *with* Prelim. Resp. 17 (“The parties agree that, under either construction, a ‘tubular structure’ must be a closed-loop structure that is shaped like a tube.”). Indeed, the specification of the ’046 patent clearly supports such an interpretation. *See* Ex. 1001, 17:43–46 (“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” (emphasis added)); *id.* at 20:3–5 (“course 1002 may form the second curved portion of tubular rib structure 126 that *closes* tubular rib structure 126 and forms a hollow tunnel” (emphasis added)); *see also id.* at 10:20–32 (“first curved portion 416 and second curved portion 418 may be *knitted together* to define the tube forming tubular rib structure 126” (emphasis added)). Thus, for purposes of institution and consistent with the parties’ positions, we construe the claimed “tubular structures” as at least having a closed periphery or circumference.

Institution Decision, Paper 7 at 8



As an initial matter, the claim term at issue is not “tube” but “*tubular* structure.” Both parties, along with the district court, agree that “tubular” means “tube-like” and does not require all properties of an actual tube.

Petitioner’s Reply, Paper 15 at 4



“ ... Petitioner submits that ‘tubular structure’ ***must have the shape of a tube*** ...”

Petition, Paper 1 at 15

vs.

“ ... the ***claim term at issue is not ‘tube’*** ... ‘tubular’ means ‘tube-like’ and ***does not require all properties of an actual tube*** ...”

Petitioner’s Reply, Paper 15 at 4



“At the very least, these inconsistent positions instill doubt that [Petitioner’s] claim construction arguments ... presented in this proceeding are correct.”

PayPal Holdings, Inc. v. Fintiv, Inc., IPR2023-00744, Paper 29 at 21–23 (PTAB Oct. 2, 2024)

Case referenced in Sur-Reply, Paper 16 at 4



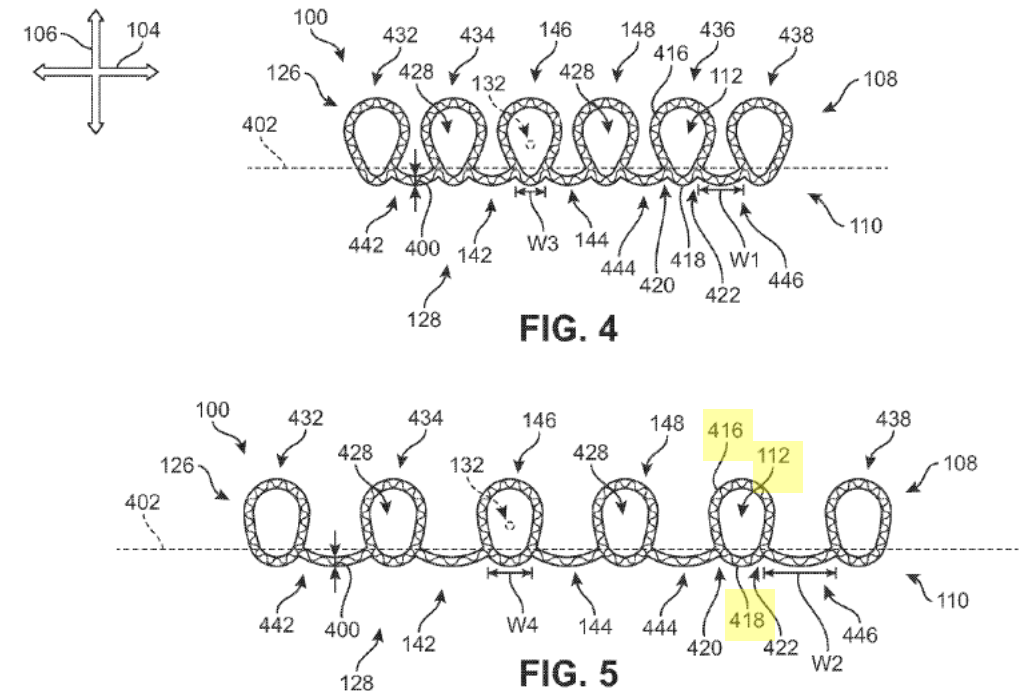
lululemon incorrectly argues that the Board's construction would exclude embodiments in the specification that disclose tubular structures having the configuration of a "channel." Reply at 5–7. But the specification never indicates that channels have open peripheries. lululemon merely assumes—without support—that channels are open-periphery structures. *Id.*

Sur-Reply, Paper 16 at 4–5



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.

'046 patent, Ex. 1001 at 10:66–11:3 (cited in Petitioner's Reply, Paper 15 at 5)



'046 Patent, Ex. 1001 at Figs. 4, 5



For example, knitted component **100** can include ribs, tunnels, peaks and troughs, corrugations, steps, raised ridges and recessed channels, or other uneven features formed by the knit structure of knitted component **100**. Such features where they occur can extend across knitted component **100** in any direction. In some embodiments, knitted component **100** can include a plurality of tubular rib structures **126** and a plurality of webbed areas **128**.

'046 patent, Ex. 1001 at 7:4–11 (cited in Petitioner's Reply, Paper 15 at 5)



“A particular term used in one patent need not have the same meaning when used in an entirely separate patent.”

Medrad, Inc. v. MRI Devices Corp., 401 F.3d 1313, 1318–19 (Fed. Cir. 2005)

Case referenced Patent Owner’s Sur-Reply, Paper 16 at 5



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.

Sur-Reply, Paper 16 at 7



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.

Sur-Reply, Paper 16 at 7



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)

Case referenced Patent Owner’s Sur-Reply, Paper 16 at 7



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.

'046 Patent, Ex. 1001 at 32:40–59

8. An article comprising:

- a plurality of webbed areas including at least a first webbed area and a second webbed area, wherein the webbed areas are configured to move between a neutral position and an extended position in response to a force applied to the article, and wherein the webbed areas are biased towards the neutral position; and
- a first curved portion with a first edge and a second edge, the first edge being adjacent to the first webbed area and the second edge being adjacent to the second webbed area, wherein the first curved portion is configured to move from an unstretched position to a stretched position in response to the force applied to the article, wherein the first curved portion is biased towards the unstretched position, wherein the unstretched position corresponds with the neutral position of the webbed areas and the stretched position corresponds with the extended position of the webbed areas, wherein in the unstretched position, a front surface of each of the first and second webbed areas is at least partially hidden from visual observation from a first viewing perspective by the first curved portion, and wherein in the stretched position, the front surfaces of the first and second webbed areas are at least partially revealed for visual observation from the first viewing perspective due to the movement of the first curved portion.

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 at 34:6–35, 34:38–44 (cited in Petitioner's Reply, Paper 15 at 8)



20. An article comprising:

a plurality of 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;

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.

'046 Patent, Ex. 1001 at 34:57–35:6

8. An article comprising:

a plurality of webbed areas including at least a first webbed area and a second webbed area,

wherein the webbed areas are configured to move between a neutral position and an extended position in response to a force applied to the article, and wherein the webbed areas are biased towards the neutral position; and

a first curved portion with a first edge and a second edge, the first edge being adjacent to the first webbed area and the second edge being adjacent to the second webbed area,

wherein the first curved portion is configured to move from an unstretched position to a stretched position in response to the force applied to the article, wherein the first curved portion is biased towards the unstretched position, wherein the unstretched position corresponds with the neutral position of the webbed areas and the stretched position corresponds with the extended position of the webbed areas,

wherein in the unstretched position, a front surface of each of the first and second webbed areas is at least partially hidden from visual observation from a first viewing perspective by the first curved portion, and

wherein in the stretched position, the front surfaces of the first and second webbed areas are at least partially revealed for visual observation from the first viewing perspective due to the movement of the first curved portion.

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 at 34:6–35, 34:38–44 (cited in Petitioner's Reply, Paper 15 at 8)



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.

Sur-Reply, Paper 16 at 8



Claim differentiation cannot be applied in a way that “overshadow[s] the express and contrary intentions of the patent draftsman.”

Hormone Research Foundation, Inc. v. Genentech, Inc., 904 F.2d 1558, 1567 n.15 (Fed. Cir. 1990)

Case referenced Patent Owner’s Sur-Reply, Paper 16 at 8



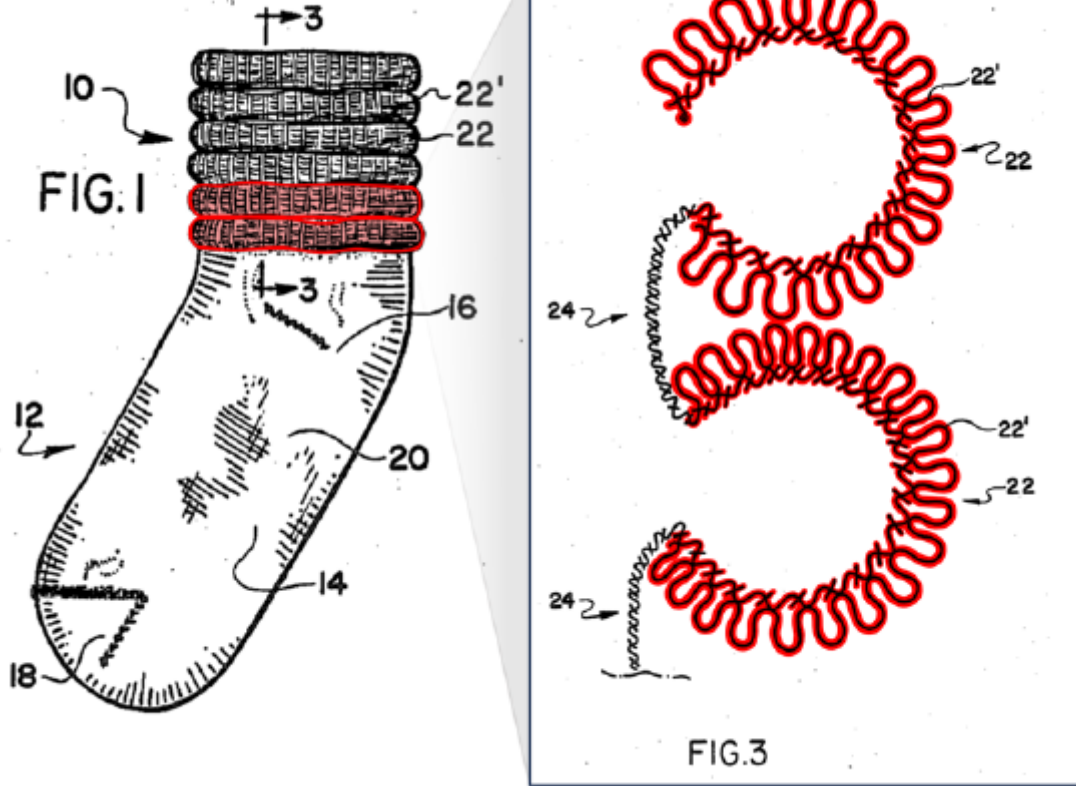
Ground 1: lululemon Fails To Show That Good Anticipates Any of Claims 1–3, 7, 16–18, or 20 or Alternatively Renders Obvious Claim 3



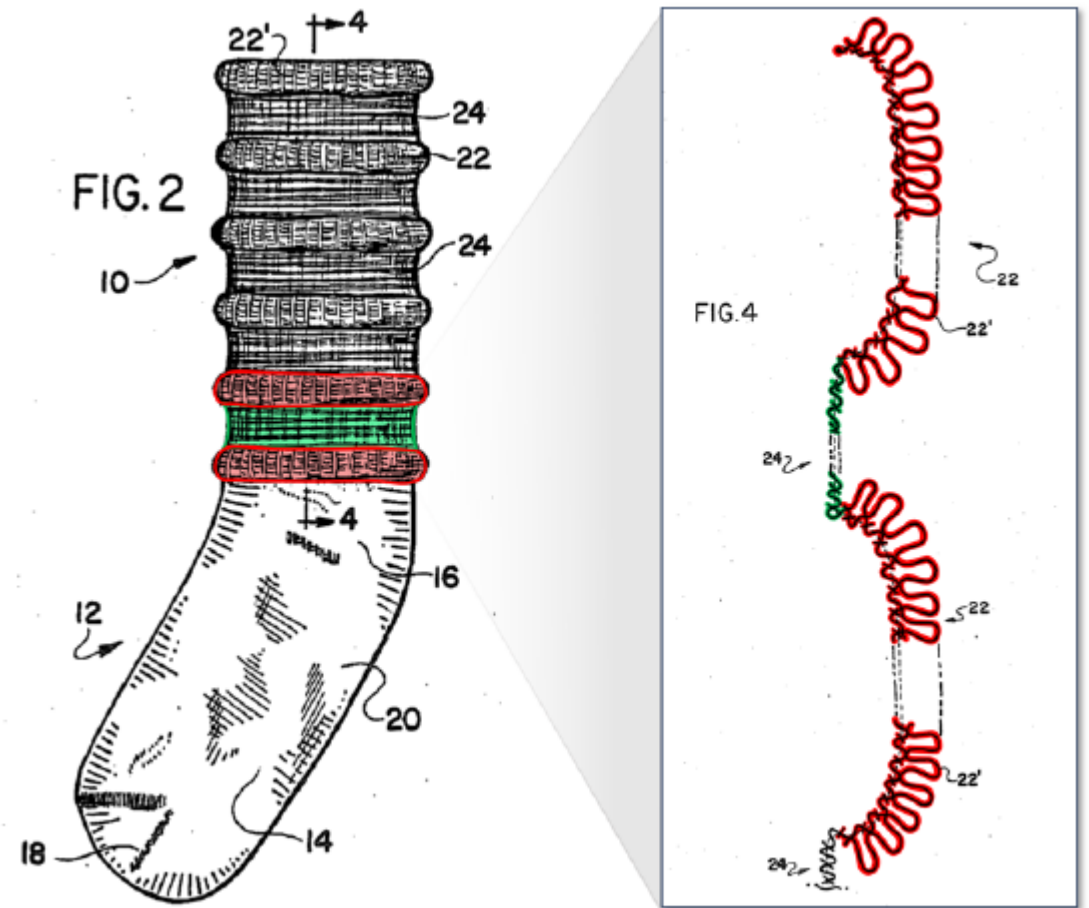
Ground	35 U.S.C. §	Claims	Reference(s)
1	§ 102 § 103	1–3, 7, 16–18, 20 3	Good
2	§ 102	1–3, 7, 17, 18, 20	Munsing
3	§ 102 § 103	8, 9, 14, 15, 19 9, 15	Minami



Good doesn't disclose "tubular structures," as properly construed



Good, Ex. 1005 at Figs. 1, 3 (cited in POR, Paper 11 at 19)



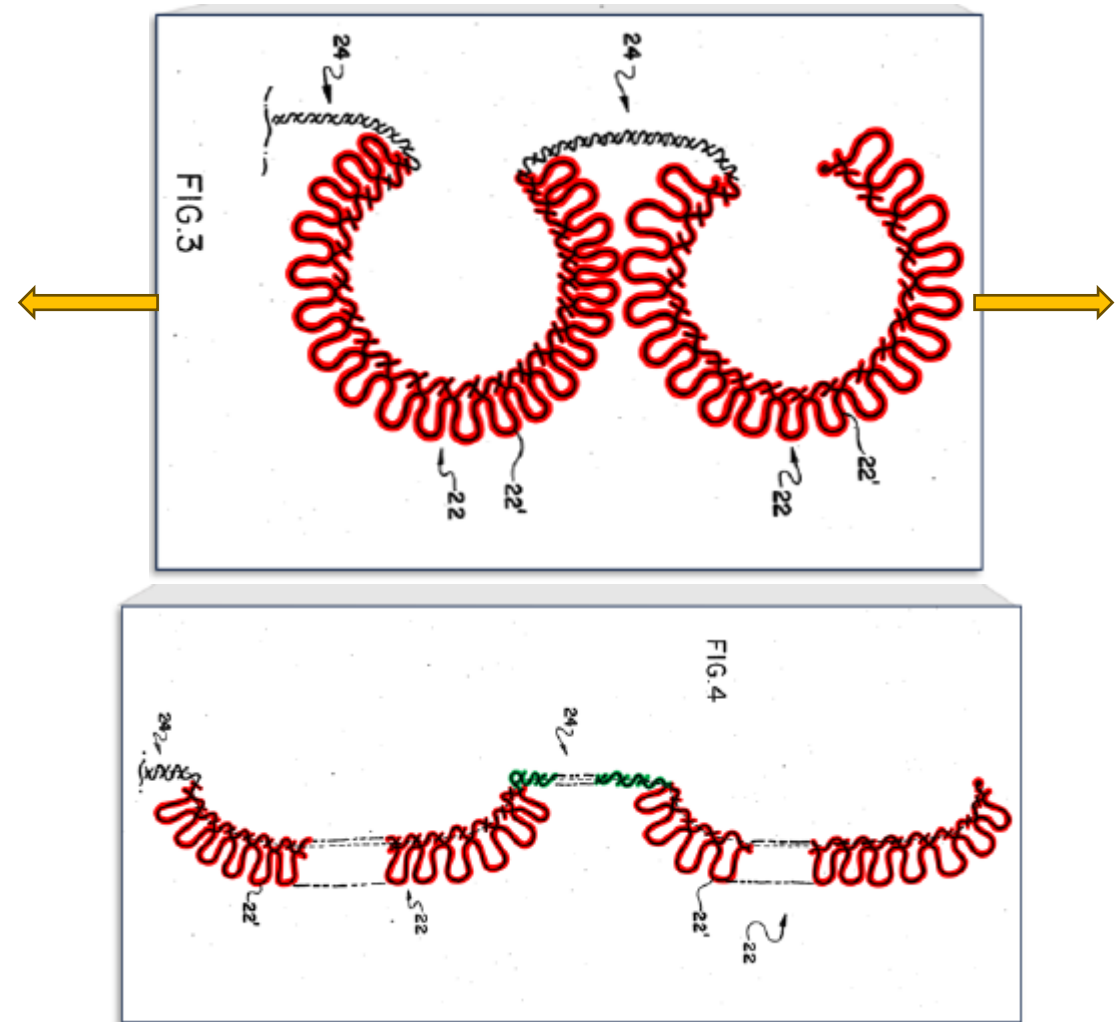
Good, Ex. 1005 at Figs. 2, 4 (cited in POR, Paper 11 at 20)

Good doesn't disclose "tubular structures"



48. In my opinion, Good's rib portions 22 shown above in Figure 1 are not tubular structures as construed by the Board. Figure 3 depicts a vertical cross-section of two of Good's rib portions 22 in a "normal," i.e., unstretched position. As shown in Figure 3, Good's rib portions 22 are C-shaped knitted portions, not closed-loop or closed periphery structures. When Good's cuff member is extended, these rib portions become almost linear, as shown below in Figures 2 and 4.

Pastore Decl., Ex. 2006 at ¶48 (cited in POR, Paper 11 at 19)



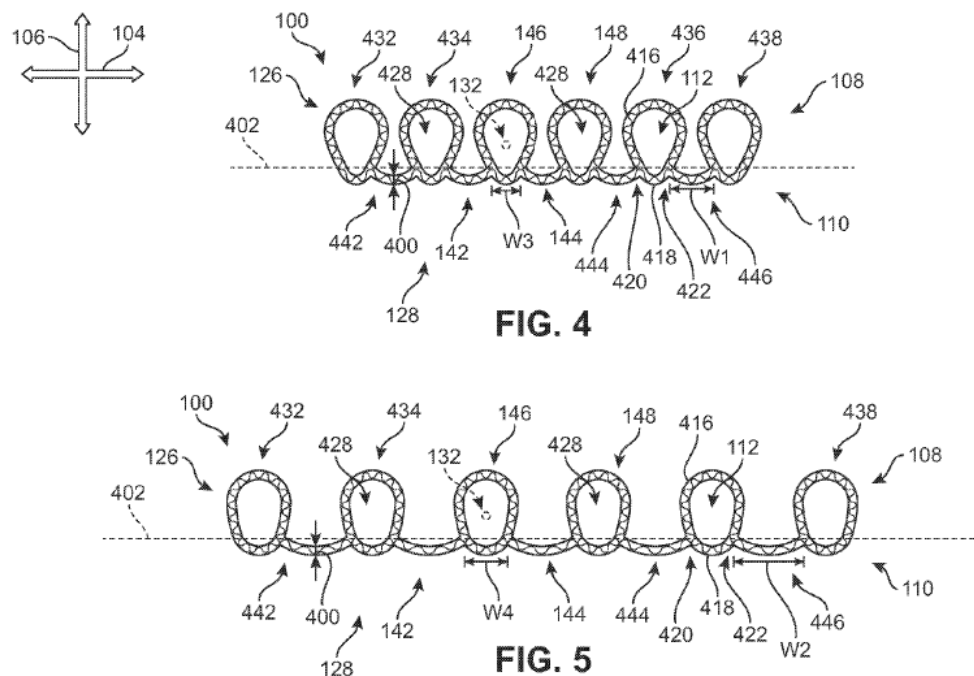
Good, Ex. 1005 at Figs. 3, 4 (cited in POR, Paper 11 at 19–20)

Good doesn't disclose "tubular structures"

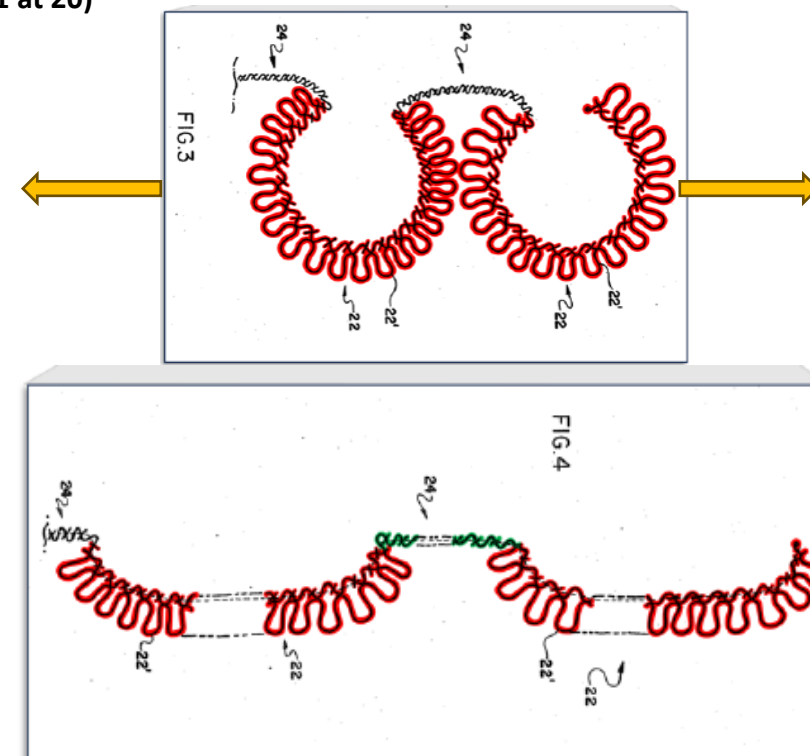


49. In my opinion, this is different from the "tubular structures" disclosed in the '046 patent, which retain their tubular shape during elongation. *See, e.g.*, Ex. 1001, Fig. 2.

Pastore Decl., Ex. 2006 at ¶49 (cited in POR, Paper 11 at 20)



'046 Patent, Ex. 1001 at Figs. 4, 5



Good, Ex. 1005 at Figs. 3, 4 (cited in POR, Paper 11 at 19–20)



"Tubular structures" "contrasts with 'rib structures,' described as having a 'wavy, undulating, corrugated, or otherwise uneven appearance.'"

Petitioner's Reply, Paper 15 at 5



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STEPHEN E. BELISLE, *Administrative Patent Judges*.

DeFRANCO, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314(a)

Nowhere does Good disclose that the ends of C-shaped rib 22 meet and remain in a *closed* configuration per our construction of "tubular rib structure," as discussed above in Section II.B. In at least this way, Good's C-shaped rib portions 22 differ from the claimed "tubular structures."⁵ This is true regardless of whether the claimed "tubular structures" are construed *to be hollow*, because Good's rib portions 22 are in fact hollow and nothing is disposed inside of them. Thus, we conclude that lululemon does not demonstrate a reasonable likelihood of prevailing on its Good-based ground.

Institution Decision, Paper 7 at 10



Good doesn't disclose a "plurality of webbed areas" and a "plurality of tubular structures" extending along a "longitudinal direction" (claim 2)

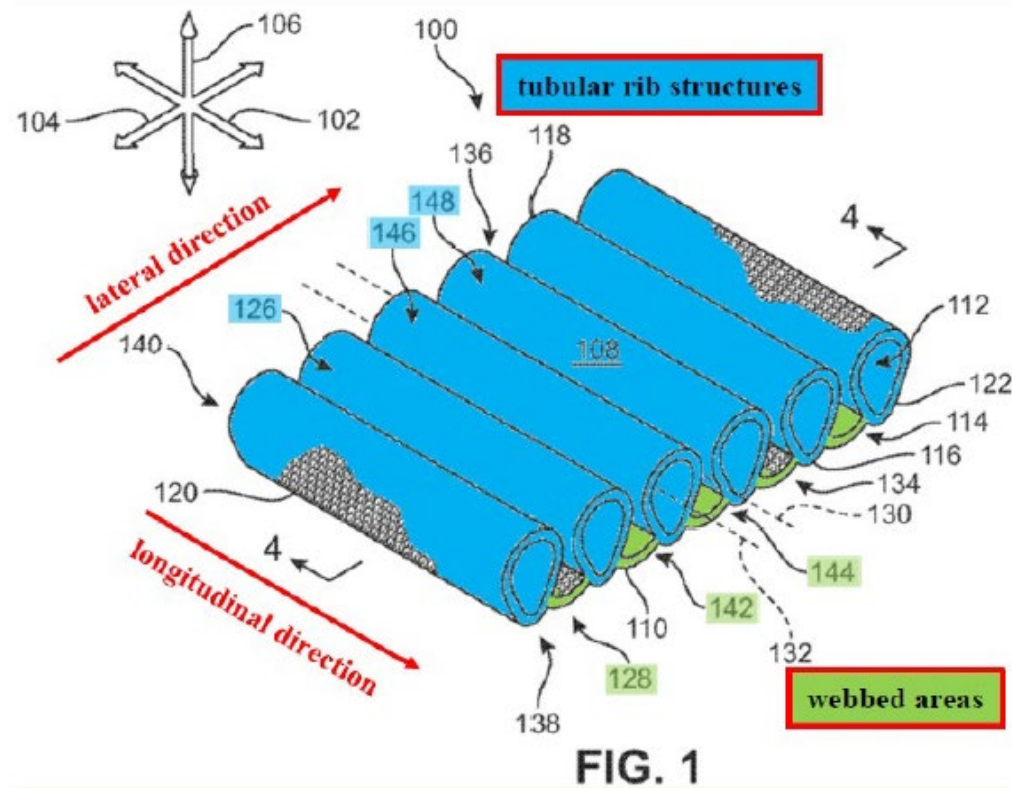


2. The article of claim 1, wherein the article is associated with a longitudinal direction and a lateral direction;
wherein the plurality of webbed areas and the plurality of tubular structures extend along the longitudinal direction,
wherein the plurality of webbed areas and the plurality of tubular structures are spaced apart in the lateral direction, and
wherein the article is configured to stretch in the lateral direction between the neutral position and the stretched position, the article biased toward the neutral position.

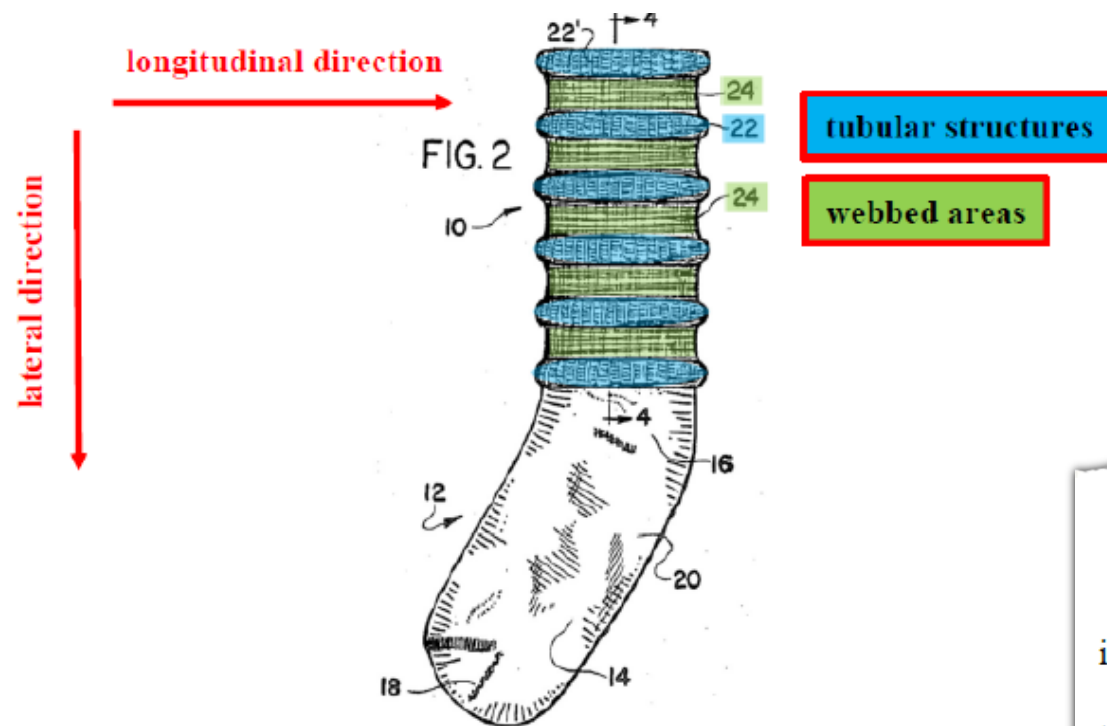
'046 Patent, Ex. 1001 at 32:60–33:3



The '046 patent describes the longitudinal direction 102 as a direction parallel to the axes of the tubular structures (blue) and the lateral direction 104 as a direction perpendicular to the axes of the tubular structures, as shown in Figure 1:



Petition, Paper 1 at 34



Petition, Paper 1 at 35

Q. And is that cuff tubular in shape?

A. Yes.

Brookstein Tr., Ex. 2007 at 52:24–53:1 (cited in POR, Paper 11 at 23)

52. In my opinion, the longitudinal direction that Dr. Brookstein identifies in Good's Figure 2 is not "parallel to the axes of the tubular structures." Unlike the tubular rib structures of Figure 1 of the '046 patent, Good's rib portions 22 extend circumferentially around Good's cuff 10. They do not extend along a straight line, and thus do not extend along a longitudinal direction.

Pastore Decl., Ex. 2006 at ¶52 (cited in POR, Paper 11 at 23)



Ground 2: lululemon fails to show that Munsing anticipates any of claims 1–3, 7, 17, 18, and 20



Ground	35 U.S.C. §	Claims	Reference(s)
1	§ 102 § 103	1–3, 7, 16–18, 20 3	Good
2	§ 102	1–3, 7, 17, 18, 20	Munsing
3	§ 102 § 103	8, 9, 14, 15, 19 9, 15	Minami



Munsing doesn't disclose "tubular structures"

Munsing doesn't disclose "tubular structures"



lululemon's entire argument:

Munsing discloses this limitation. Ex.1003, ¶¶101-103. For example, as discussed with respect to limitation 1[a] in this ground, Munsing's fabric is formed of ribs and valleys (webbed areas) between the ribs. *Id.*, ¶101; *see* Section VIII.C.2. The ribs separating the valleys are tubular structures positioned adjacent to the webbed areas (valleys between ribs). Ex.1003, ¶101.

Petition, Paper 1 at 50

101. Munsing discloses limitation 1[b]. As I explained for limitation 1[a] in this ground, Munsing provides that its fabric is formed of ribs and valleys (webbed areas) between the ribs. The ribs separating the valleys are tubular structures positioned adjacent to the webbed areas (valleys between ribs) under Patent Owner's broad claim interpretation.

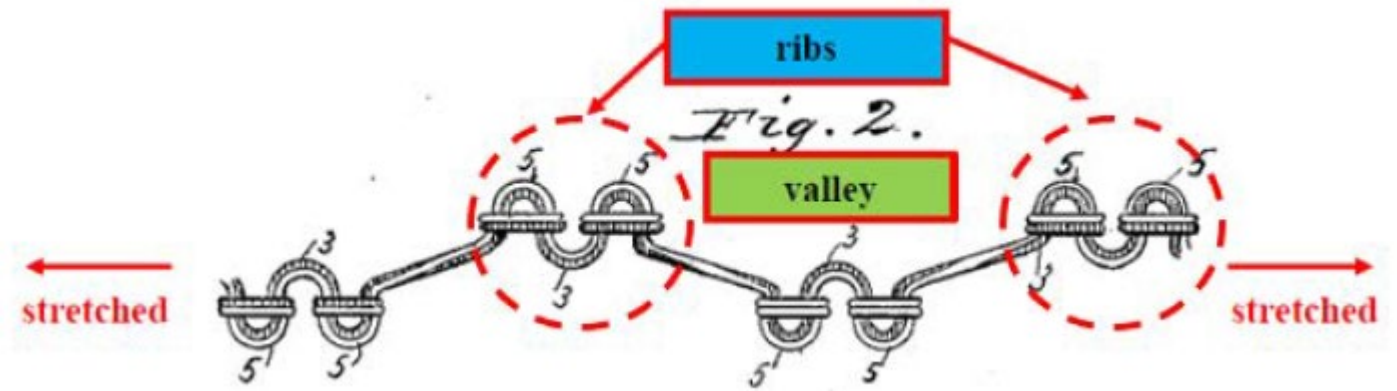
Brookstein Decl., Ex. 1003 at ¶101

Munsing doesn't disclose "tubular structures"



56. In my opinion, Munsing's ribs are different than the "tubular structures" claimed in the '046 patent. First, Munsing never shows how its ribs actually appear on the article of underwear. *See* Ex. 1006, Figs. 1–6. Munsing only shows how its ribs look on a small scale, i.e., an individual knitting loop scale. Munsing explains that the fabric depicted in Figure 2 is a "two-and-two knit fabric," or a fabric having ribs with two courses. Ex. 1006, 2:45–49.

Pastore Decl., Ex. 2006 at ¶56 (cited in POR, Paper 11 at 25)



Munsing, Ex. 1006 at Fig. 2 (cited in POR, Paper 11 at 26)

Munsing doesn't disclose "tubular structures"



In Ground

2, I specifically address the invalidity of the claims 1–3, 7, 17, 18, and 20 under Patent Owner's proposed construction that a tubular structure is a non-tubular rib.

Brookstein Decl., Ex. 1003 at ¶40 (cited in POR, Paper 11 at 26)

7	Q.	So you agree that Ground 2,
8		which is based on the Munsing reference,
9		in that Ground Munsing only discloses a
10		non-tubular rib?
11	A.	That's what I said.

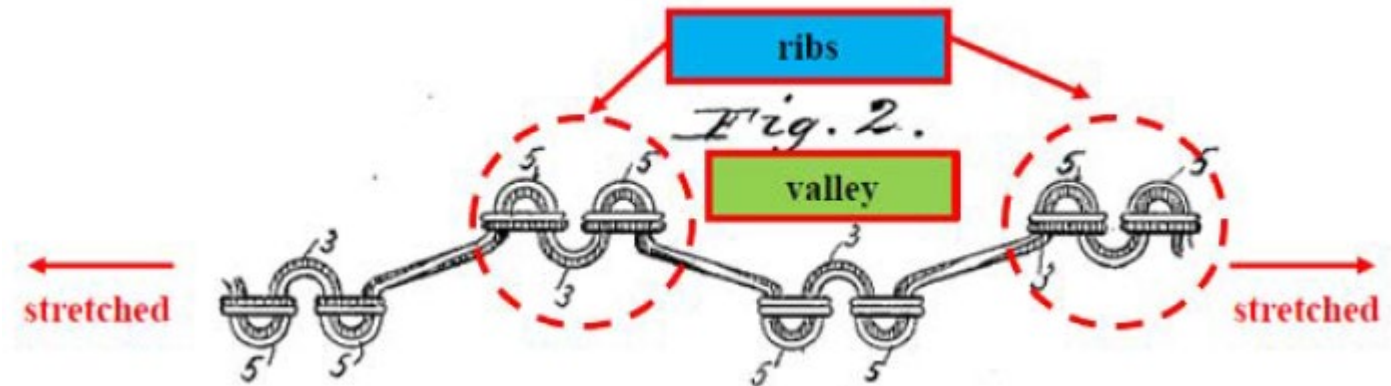
Brookstein Tr., Ex. 2007 at 41:7–11 (cited in POR, Paper 11 at 26)

Munsing doesn't disclose "tubular structures"



57. This figure shows that Munsing's ribs have a wavy, or corrugated cross-sectional shape which do not have a closed periphery. In my opinion, this is far different from a tubular structure.

Pastore Decl., Ex. 2006 at ¶57 (cited in POR, Paper 11 at 27)



Munsing, Ex. 1006 at Fig. 2 (cited in POR, Paper 11 at 26)

Munsing doesn't disclose "tubular structures"



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lululemon provides no meaningful explanation as to how the rows of "stitches" that form Munsing's ribs equate to "tubular structures." At best, Munsing depicts rows of C-shaped stitches or loops that together form a rib on the fabric. But nowhere does Munsing indicate that the rows of stitches or loops form a rib that is tubular-like, let alone one with a closed periphery. Nor does lululemon's expert declaration offer any help, as it simply parrots the petition. *See* Ex. 1003 ¶¶ 101–102. Thus, lululemon does not demonstrate a reasonable likelihood of prevailing on its Munsing-based ground.

Institution Decision, Paper 7 at 12

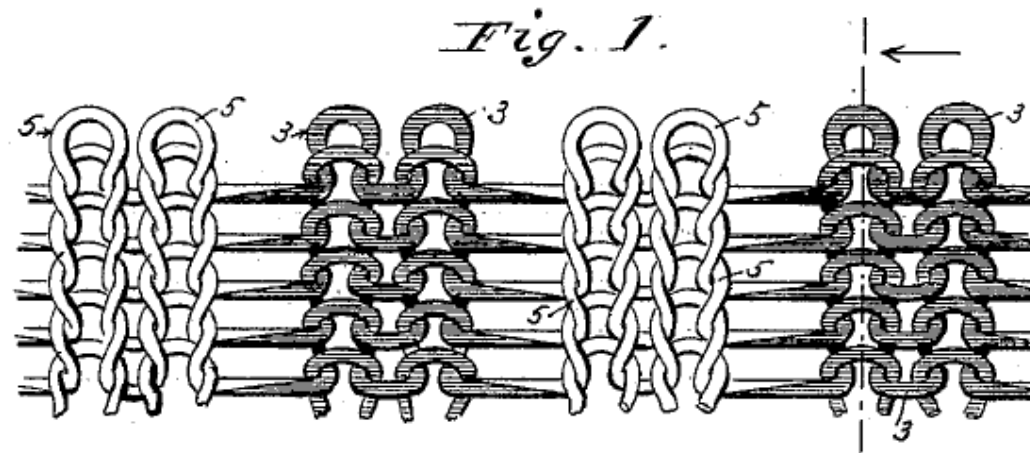


Munsing doesn't disclose a "plurality of webbed areas" and a "plurality of tubular structures" extending along a "longitudinal direction" (claim 2)



2. The article of claim 1, wherein the article is associated with a longitudinal direction and a lateral direction; wherein the plurality of webbed areas and the plurality of tubular structures extend along the longitudinal direction, wherein the plurality of webbed areas and the plurality of tubular structures are spaced apart in the lateral direction, and wherein the article is configured to stretch in the lateral direction between the neutral position and the stretched position, the article biased toward the neutral position.

'046 Patent, Ex. 1001 at 32:60–33:3



Munsing, Ex. 1006 at Fig. 1 (cited in Petition, Paper 1 at 54)

When the fabric is stretched
as the garments are worn, the uncovered por-
tions of the woolen thread between the ribs
will be exposed.

Munsing, Ex. 1006 at 2:1-4 (cited in Brookstein Decl., Ex. 1003 at ¶110)



But these portions of Munsing are silent as to the arrangement of Munsing's ribs on its underwear. Indeed, other than a small-scale depiction of a few courses of knit, Munsing never depicts its finished product. In my opinion, it is not possible to adjudge whether Munsing's ribs and valleys extend in a "longitudinal direction," or are spaced apart in a "lateral direction."

Pastore Decl., Ex. 2006 at ¶60 (cited in POR, Paper 11 at 30)



Ground 3: lululemon fails to show that Minami anticipates any of claims 8, 9, 14, 15, or 19, or alternatively renders obvious claims 9 or 15



Ground	35 U.S.C. §	Claims	Reference(s)
1	§ 102 § 103	1–3, 7, 16–18, 20 3	Good
2	§ 102	1–3, 7, 17, 18, 20	Munsing
3	§ 102 § 103	8, 9, 14, 15, 19 9, 15	Minami



Minami doesn't disclose "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" (claim 8)



But Minami's written specification is entirely silent as to the lengths of the "first curved portion" and the "second curved portion." *See generally* Ex. 1007.

POR, Paper 11 at 33



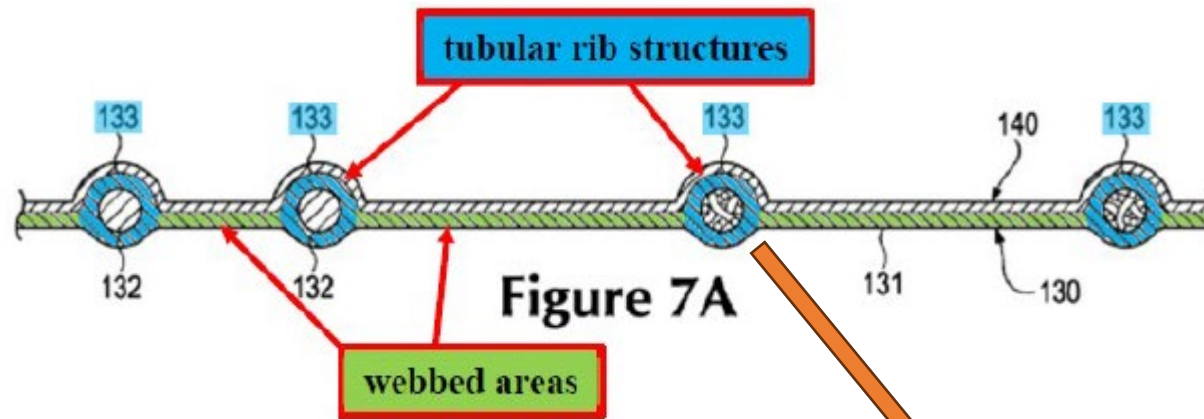
[0010] The invention can be better understood with reference to the following drawings and description. The components in the figures are not necessarily to scale, emphasis instead being placed upon illustrating the principles of the invention. Moreover, in the figures, like reference numerals designate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

Minami, Ex. 1007 at [0010] (cited in POR, Paper 11 at 33)

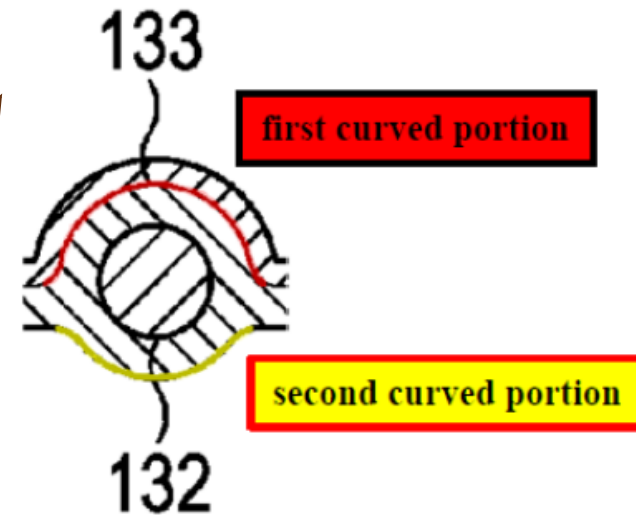
Q: If a drawing is not to scale, then it doesn't have the same proportions as what it's representing?

A: If it's not to scale, it doesn't have the same proportion.

Brookstein Tr., Ex. 2007 at 76:17–21 (cited in POR, Paper 11 at 35)



Minami, Ex. 1007 at Fig. 7A (cited in Petition, Paper 1 at 61)



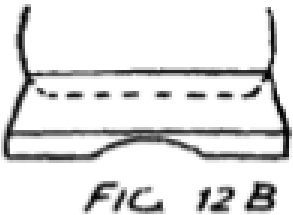
Minami, Ex. 1007 at Fig. 7A (enlarged) (cited in Petition, Paper 1 at 65)



“Under our precedent, however, it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue. Absent any written description in the specification of quantitative values, arguments based on measurement of a drawing are of little value.”

Hockerson-Halberstadt, Inc. v. Avia Grp. Int’l, Inc., 222 F.3d 951, 956 (Fed. Cir. 2000)

Case referenced POR, Paper 11 at 34



Hockerson-Halberstadt	This IPR
HHI relied on patent figures to show that “a groove is wider than [] fins” (POR, Paper 11 at 34, 36)	lululemon relies on Minami’s Figure 7A to show that the first curve length is greater than the second curve length (Petition, Paper 1 at 64–65)
Written description “devoid of any indication that the proportions of the groove and fins are drawn to scale” (POR, Paper 11 at 34)	Written description silent as to curve length, or any disparity in curve length (POR, Paper 11 at 33)
No explicit disclosure that figures are not drawn to scale (U.S. Pat. No. 4,259,792) (POR, Paper 11 at 34)	Written description explicitly says figures not drawn to scale (POR, Paper 11 at 33)



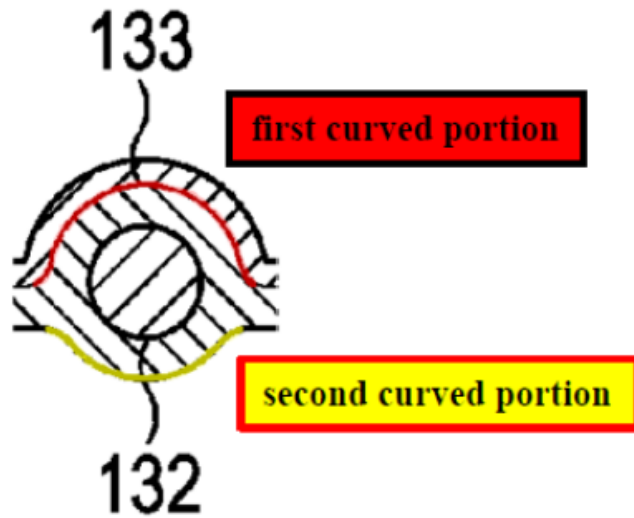
lululemon next attempts to circumvent *Hockerson-Halberstadt* by casting the relationship between the length of the “first curved portion” and “second curved portion” as “qualitative.” This argument also fails. As Nike explained in its Response, the court in *Hockerson-Halberstadt* considered a scenario 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.

Sur-Reply, Paper 16 at 15



In the wake of *Hockerson-Halberstadt*, the Federal Circuit has consistently found reversible error where courts attempt to “read[] precise proportions into patent drawings which do not expressly provide such proportions.” *E.g., Nystrom v. TREX Co., Inc.*, 424 F.3d 1136, 1149 (Fed. Cir. 2005). In *Plantronics, Inc. v. Aliph, Inc.*, the Federal Circuit went even further: holding that a district court erred by relying on patent drawings as evidence that a particular element was “elongated.” 724 F.3d 1343, 1351 (Fed. Cir. 2013). Citing to *Hockerson-Halberstadt*, the court held that “the figures in the ’453 patent do not evidence actual dimensions of the ‘stabilizer support’ and the ‘concha stabilizer.’” *Id.*

POR, Paper 11 at 35



Minami, Ex. 1007 at Fig. 7A (enlarged) (cited in Brookstein Decl., Ex. 1003 at ¶132)

Q: Why do you include what you call “A magnified annotated excerpt of Minami’s Figure 7A here?”

A: So I could make a visual observation of it.

Brookstein Tr., Ex. 2007 at 69:9–70:6 (cited in POR, Paper 11 at 37)



Rejecting attempt to rely on a “greatly enlarged section of a small drawing obviously never intended to show the dimensions of anything.”

In re Mraz, 455 F.2d 1069, 1072 (CCPA 1972)
Case referenced POR, Paper 11 at 36–37



[0061] Knitted component 130 includes a plurality of protruding areas 133 that extend outward and away from the void within upper 120. Protruding areas 133 form bulges, protrusions, bumps, or other outwardly-extending portions in knitted component 130. As with inlaid strand 132, many of protruding areas 133 extend in a generally vertical direction and from throat area 124 to the area where sole structure 110 is secured to upper 120. Some of protruding areas 133 correspond with and incorporate inlaid strand 132. In addition, some of protruding areas 133 extend in a generally horizontal direction and between two other protruding areas 133. That is, the horizontal protruding areas 133 extend between and effectively join with two of the vertical protruding areas 133. In addition to providing a unique aesthetic to footwear 100, protruding areas 133 may enhance the strength of upper 120 or impart a variety of different properties to upper 120.

Minami, Ex. 1007 at [0061] (cited in Petition, Paper 1 at 64–65)

Q: Sure. In paragraphs 131 through 133 of your declaration, do you cite to anything else in Minami other than Figure 7A or paragraph 61?

A: No.

Brookstein Tr., Ex. 2007 at 73:17–21 (cited in POR, Paper 11 at 33)



Minami doesn't disclose "webbed areas" that are "configured to move between a neutral position and an extended position" (claim 8)

Minami's knit element is configured not to stretch

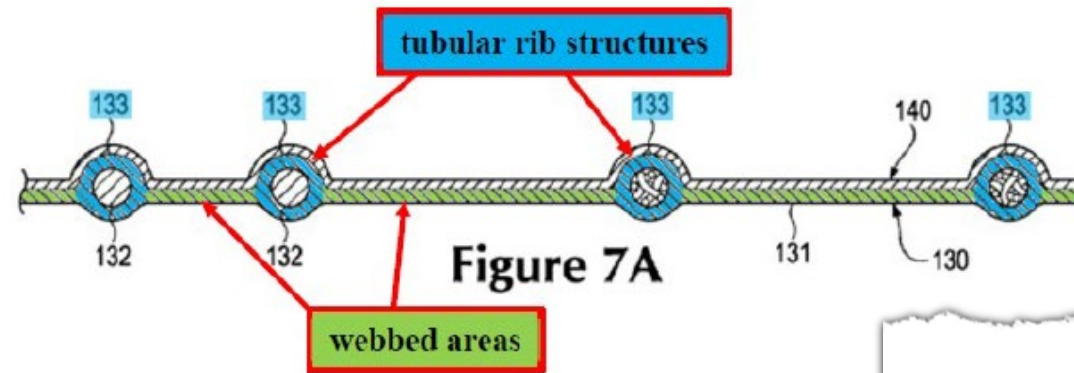


Figure 7A

64. In my opinion, Minami's Figure 7A confirms that knit element 131 is meant not to stretch. Minami discloses that the knit element 131 shown in Figure 7A is coated in "skin layer 140." See Ex. 1007, [0044]. Minami further discloses that the skin layer prevents knit element 131 from stretching, provides structural reinforcement, and gives Minami's shoe a "relatively tight and glove-like fit." *Id.* Minami describes that the skin layer may be made of "polymer sheet, elements of leather or synthetic leather, a woven or non-woven textile, or a metal foil." *Id.* I agree with Minami's disclosure that application of these materials on top of knit element 131 would inhibit stretch, not facilitate stretch.

Pastore Decl., Ex. 2006 at ¶64 (cited in POR, Paper 11 at 38)

[0044] The combination of knitted component 130 and skin layer 140 provides various advantages to footwear 100. As an example, knitted component 130 and skin layer 140 impart a relatively tight and glove-like fit to upper 120 that secures the foot within footwear 100 during walking, running, and other ambulatory activities. When formed as a soccer shoe, for example, the relatively tight and glove-like fit may provide the wearer with enhanced feel and control of a ball. Skin layer 140 may also be utilized to reinforce areas of upper 120. For example, skin layer 140 may inhibit stretch in knitted component 130 and may enhance the wear-resistance or abrasion-resistance of upper 120. Skin layer 140 may also impart water-resistance to footwear 100. Additionally, forming footwear 100 in this configuration may provide a relatively light weight or mass, support for the foot, uniform fit and conformance to a shape of the foot, and a relatively seamless interior with enhanced comfort for the wearer.

Minami, Ex. 1007 at [0044], Fig. 7A (cited in POR, Paper 11 at 38)

Minami's knit element is configured not to stretch



Indeed, Minami discloses in one of lululemon's cited paragraphs—paragraph 52—that the regions of Minami's upper having strands 132 are stretch-resistant. *See id.*, [0052]. Minami explains that the inlaid strands “stretch less than knit element 131.” *See id.* Because the “webbed areas” that lululemon points to in Minami are located in a region having inlaid strands 132, they are located in a stretch-resistant region of the upper.

Pastore Decl., Ex. 2006 at ¶65 (cited in POR, Paper 11 at 38)

Given that numerous sections of inlaid strand 132 extend toward sole structure 110 from throat area 124, inlaid strand 132 imparts stretch-resistance to this area of upper 120.

Minami, Ex. 1007 at [0052] (cited in POR, Paper 11 at 38)



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”

Aspex Eyewear, Inc. v. Marchon Eyewear, Inc., 672 F.3d 1335, 1349 (Fed. Cir. 2012)

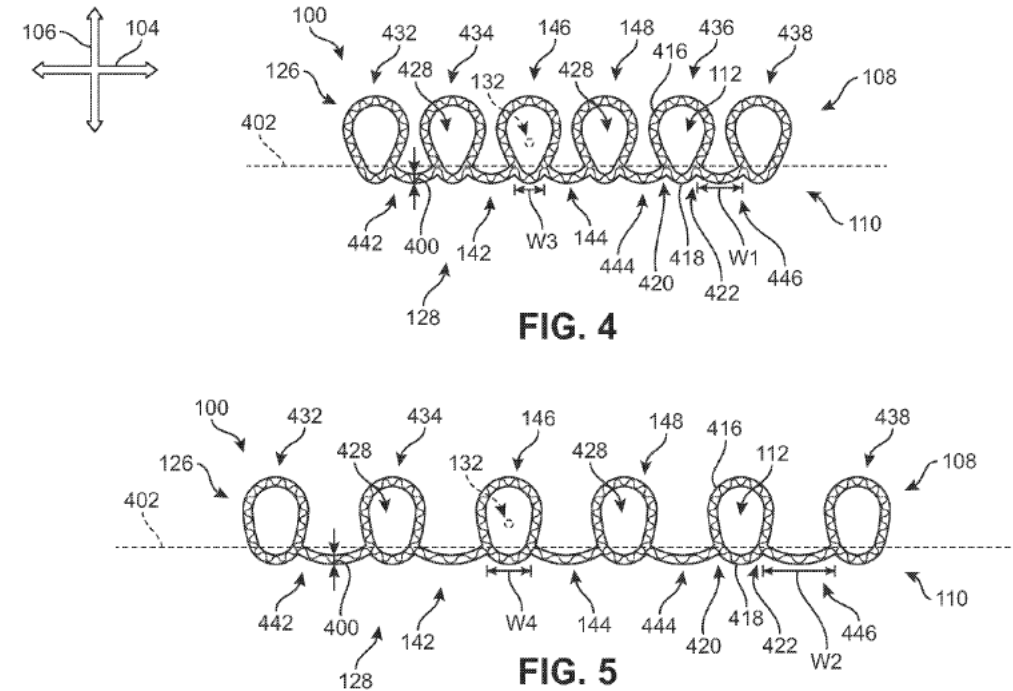
Case referenced POR, Paper 11 at 39

Minami's knit element not configured to move between distinct configurations



66. It is my further opinion that a POSITA in 2014 reading the '046 patent would have understood that claim 8 requires the webbed areas to move between two distinct configurations: a “neutral position” and an “extended position.” For example, an embodiment of these configurations is shown clearly in the '046 patent. The '046 patent describes that “webbed areas 128” can be “biased toward the neutral position represented in FIGS. 1 and 4.” Ex. 1001 at 13:19–21; *see also id.* at 24:9–12. And the '046 patent also describes that webbed areas 128 can “respond to a force

Pastore Decl., Ex. 2006 at ¶66 (cited in POR, Paper 11 at 39)



'046 Patent, Ex. 1001 at Figs. 4, 5



But, as
the Institution Decision correctly noted (ID, 16 fn. 6), Minami explicitly discloses
that the skin layer is absent in some embodiments (Ex. 1007, [0054]), which directly
undermines Nike's assertion.

Petitioner's Reply, Paper 15 at 22

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 DEMONSTRATIVE EXHIBITS**, which was served on March 31, 2025 to the following Counsel for Petitioner via e-mail:

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