

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NEXT STEP GROUP, INC.,
Petitioner

v.

DECKERS OUTDOOR CORPORATION,
Patent Owner

Case IPR2024-00525
U.S. Patent No. D927,161

DECLARATION OF JIM GANDY

Mail Stop "PATENT BOARD"
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-145

Deckers Outdoor Corp. EX2009
Next Step Group, Inc. v. Deckers Outdoor Corp.
IPR2024-00525

I, Jim Gandy, hereby declare as follows.

1. I have been retained on behalf of Deckers Outdoor Corporation (“Deckers”) for the above-captioned *inter partes* review proceeding to provide my expert opinions and expert knowledge. I understand that this proceeding involves U.S. Patent No. D927,161 (EX1001, “the ’161 patent”) titled “Footwear Upper,” and that the ’161 patent is currently assigned to Deckers. The ’161 patent issued on August 10, 2021 from U.S. Application No. 29/712,480 (“the ’480 application”).

2. As indicated in my *curriculum vitae*, provided as Exhibit 2010, I am a retired USPTO employee with more than 32 years of experience in examining design patent applications, and supervising and training design patent examiners. In my 24 years as a design patent examiner, I examined over 10,000 design patent applications.

3. In preparing this declaration, I reviewed and am familiar with the file history of the ’480 application provided as Exhibit 2001.

4. Pages 32–47 of Exhibit 2001 are copies of two non-patent literature documents submitted with an information disclosure statement (IDS) filed by Deckers on January 14, 2020. The first document is a copy of the webpage www.zappos.com/ugg-classic-mini-sand showing the UGG® Classic Mini boot (“NPL1”). EX2001, 32-35. The second document is a copy of the webpage <https://www.zappos.com/p/ugg-classic-mini-ii/product/8733926> showing the

UGG® Classic Mini II boot (“NPL2”). *Id.*, 36-47.

5. It is consistent with my experience that the text and images present in NPL1 and NPL2 are in grayscale. It is also consistent with my experience that the resolution of the text and images is limited. When accessed from the USPTO’s Image File Wrapper, documents submitted with an applicant’s IDS appear in grayscale and with limited resolution. When reviewing documents submitted with applicants’ IDSs during my time at the USPTO, documents made available to me for review often had the same or similar grayscale appearance and resolution.

6. That said, the quality of the non-patent literature document copies made available to me during examination was generally sufficient to fully consider the documents for purposes of assessing patentability of a claimed design. If a non-patent literature webpage looked particularly relevant to patentability, I would have viewed a higher quality version of the webpage by visiting the cited URL provided in the applicant’s IDS. Alternatively or additionally, I would have asked the applicant for a better copy of the non-patent literature document, if necessary. Applicants could have provided me with a better copy of the non-patent literature document via email or during an in-person interview.

7. Pages 66–69, 106–109, and 136–139 of Exhibit 2001 are copies of the same foreign patent reference cited by the examiner during prosecution—namely CN 304964897 (“CN’897”). It is consistent with my experience that the text and

images present in the Image File Wrapper copies of CN'897 are in grayscale. It is also consistent with my experience that the resolution of the text and images is limited. Copies of foreign patent references cited by US patent examiners often appear in grayscale and with limited resolution when accessed from the USPTO's Image File Wrapper.

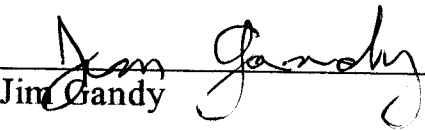
8. That said, the quality of CN'897 in the Image File Wrapper is not indicative of the quality of foreign patent references electronically accessible by US patent examiners during examination. To my knowledge, the USPTO provides examiners with access to searchable databases that include high quality electronic copies of foreign patent references. These searchable databases were used by examiners during the nine years I was a supervisory patent examiner and design patent practice specialist. To my knowledge, the high quality electronic copy of any foreign reference accessed via the searchable databases is what US patent examiners would consider during examination.

9. I am being compensated at a rate of \$350 per hour for my work on this case. My compensation is not dependent upon my opinions, my testimony, or the outcome of this case.

10. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the

knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Executed on this 3rd day of May, in 2024.



Jim Gandy

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