UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	ISSUE DATE	PATENT NO.	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/355,801	06/09/2020	10674786	ATZ00003	1012

34399 7590 05/20/2020

GARLICK & MARKISON
100 Congress Avenue, Suite 2000
AUSTIN, TX 78701

ISSUE NOTIFICATION

The projected patent number and issue date are specified above.

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
(application filed on or after May 29, 2000)

The Patent Term Adjustment is 257 day(s). Any patent to issue from the above-identified application will include an indication of the adjustment on the front page.

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (http://pair.uspto.gov).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Application Assistance Unit (AAU) of the Office of Data Management (ODM) at (571)-272-4200.

APPLICANT(s) (Please see PAIR WEB site http://pair.uspto.gov for additional applicants):

Michael R. Adair, Woodruff, SC;
Timothy W. Markison, Mesa, AZ;

The United States represents the largest, most dynamic marketplace in the world and is an unparalleled location for business investment, innovation, and commercialization of new technologies. The USA offers tremendous resources and advantages for those who invest and manufacture goods here. Through SelectUSA, our nation works to encourage and facilitate business investment. To learn more about why the USA is the best country in the world to develop technology, manufacture products, and grow your business, visit SelectUSA.gov.

Petitioner Under Armour, Inc.
Exhibit 1004

Issue Fee Transmittal Form

Application Number	Filing Date	First Named Inventor	Atty. Docket No.	Confirmation No.
13355801	23-Jan-2012	Michael Adair	ATZ00003	1012

TITLE OF INVENTION :

ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF

Entity Status	Application Type	Art Unit	Class - Subclass	EXAMINER
Small	Utility under 35 USC 111(a)	3732	088000	MEGAN LYNCH

Issue Fee Due	Publication Due	Total Fee(s) Due	Date Due	Prev. Paid Fee
$500	$0	$500	30-Apr-2020	$0

1.Change of Correspondence Address and/or Indication Of Fee Address (37 CFR 1.33 & 1.363)

Current Correspondence Address:	Current Indicated Fee Address :
34399 GARLICK & MARKISON 100 Congress Avenue, Suite 2000 AUSTIN TX 78701 UNITED STATES 214-938-2452 MMurdock@TEXASPATENTS.COM	
☐ Change of correspondence address requested, system generated AIA/122-EFS form attached	☐ Fee Address indication requested, system generated SB/47-EFS form attached

2.Entity Status

Change in Entity Status

○ Applicant certifying micro entity status; system generated Micro Entity certification form attached. See 37 CFR 1.29.
Note: Absent a valid certification of micro entity status, issue fee payment in the micro entity amount will not be accepted at the risk of application abandonment. If this box is checked, you will be prompted to choose a micro entity status on the gross income basis (37 CFR 1.29(a)) or the institution of higher education basis (37 CFR 1.29(d)), and make the applicable certification online.

◉ Applicant asserting small entity status. See 37 CFR 1.27.
Note: If the application was previously under micro entity status, checking this box will be taken to be a notification of loss of entitlement to micro entity status.

○ Applicant changing to regular undiscounted fee status.
Note: Checking this box will be taken to be a notification of loss of entitlement to small or micro entity status, as applicable.

3.The Following Fee(s) Are Submitted:

☒ Issue Fee

☐ I authorize USPTO to apply my previously paid issue fee to the current fees due

☐ Publication Fee

☐ The Director is hereby authorized to apply my previously paid issue fee to the current fee due and to charge deficient fees to Deposit Account Number _____

☐ Advance Order - # of copies _____

☐ If **in addition to** the payment of the issue fee amount submitted with this form, there are any discrepancies in any amount(s) due, the Director is authorized to charge any deficiency, or credit any overpayment, to Deposit Account Number _____. The **issue fee must be submitted** with this form. **If payment of the issue fee does not accompany this form, checking this box and providing a deposit account number will NOT be effective to satisfy full payment of the fee(s) due.**

4.Firm and/or Attorney Names To Be Printed

NOTE: If no name is listed, no name will be printed
For printing on the patent front page, list to be displayed as entered

1. Garlick & Markison
2. Timothy W. Markison
3.

5.Assignee Name(s) and Residence Data To Be Printed

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

Name	City	State	Country	Category
ATHALONZ, LLC	Mesa	ARIZONA	united states	corporation

6.Signature

I certify, in accordance with 37 CFR 1.4(d)(4) that I am an attorney or agent registered to practice before the Patent and Trademark Office who has filed and has been granted power of attorney in this application. I also certify that this Fee(s) Transmittal form is being transmitted to the USPTO via EFS-WEB on the date indicated below.

Signature	/Timothy W. Markison/	**Date**	04-14-2020
Name	Timothy W. Markison	**Registration Number**	33534

Electronic Patent Application Fee Transmittal

Application Number:	13355801
Filing Date:	23-Jan-2012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Filer:	Timothy W. Markison/Kimberly Brown
Attorney Docket Number:	ATZ00003

Filed as Small Entity

Filing Fees for Utility under 35 USC 111(a)

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
UTILITY APPL ISSUE FEE	2501	1	500	500
PUBL. FEE- EARLY, VOLUNTARY, OR NORMAL	1504	1	0	0
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				
Miscellaneous:				
			Total in USD ($)	500

Electronic Acknowledgement Receipt

EFS ID:	39157162
Application Number:	13355801
International Application Number:	
Confirmation Number:	1012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Customer Number:	34399
Filer:	Timothy W. Markison/Kimberly Brown
Filer Authorized By:	Timothy W. Markison
Attorney Docket Number:	ATZ00003
Receipt Date:	14-APR-2020
Filing Date:	23-JAN-2012
Time Stamp:	16:53:45
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	CARD
Payment was successfully received in RAM	$500
RAM confirmation Number	E20204DG53423838
Deposit Account	
Authorized User	

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Issue Fee Payment (PTO-85B)	Web85b.pdf	46181 abb03ea39d585fd029f6c133fdde6000d0d5a7dc9	no	2
Warnings:					
Information:					
2	Fee Worksheet (SB06)	fee-info.pdf	32045 289a72784448caaf8c3c7c2b8339b0350f605dc7	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	78226		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

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www.uspto.gov

NOTICE OF ALLOWANCE AND FEE(S) DUE

34399 7590 01/30/2020

GARLICK & MARKISON
100 Congress Avenue, Suite 2000
AUSTIN, TX 78701

EXAMINER	
LYNCH, MEGAN E	
ART UNIT	PAPER NUMBER
3732	

DATE MAILED: 01/30/2020

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/355,801	01/23/2012	Michael R. Adair	ATZ00003	1012

TITLE OF INVENTION: ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF

APPLN. TYPE	ENTITY STATUS	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	SMALL	$500	$0.00	$0.00	$500	04/30/2020

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

HOW TO REPLY TO THIS NOTICE:

I. Review the ENTITY STATUS shown above. If the ENTITY STATUS is shown as SMALL or MICRO, verify whether entitlement to that entity status still applies.

If the ENTITY STATUS is the same as shown above, pay the TOTAL FEE(S) DUE shown above.

If the ENTITY STATUS is changed from that shown above, on PART B - FEE(S) TRANSMITTAL, complete section number 5 titled "Change in Entity Status (from status indicated above)".

For purposes of this notice, small entity fees are 1/2 the amount of undiscounted fees, and micro entity fees are 1/2 the amount of small entity fees.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Maintenance fees are due in utility patents issuing on applications filed on or after Dec. 12, 1980. It is patentee's responsibility to ensure timely payment of maintenance fees when due. More information is available at www.uspto.gov/PatentMaintenanceFees.

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), by mail or fax, or via EFS-Web.

By mail, send to: Mail Stop ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

By fax, send to: (571)-273-2885

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

34399 7590 01/30/2020
GARLICK & MARKISON
100 Congress Avenue, Suite 2000
AUSTIN, TX 78701

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being transmitted to the USPTO via EFS-Web or by facsimile to (571) 273-2885, on the date below.

(Typed or printed name)

(Signature)

(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/355,801	01/23/2012	Michael R. Adair	ATZ00003	1012

TITLE OF INVENTION: ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF

APPLN. TYPE	ENTITY STATUS	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	SMALL	$500	$0.00	$0.00	$500	04/30/2020

EXAMINER	ART UNIT	CLASS-SUBCLASS
LYNCH, MEGAN E	3732	036-088000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

❑ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

❑ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-09 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list
(1) The names of up to 3 registered patent attorneys or agents OR, alternatively,
(2) The name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1 _____
2 _____
3 _____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document must have been previously recorded, or filed for recordation, as set forth in 37 CFR 3.11 and 37 CFR 3.81(a). Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE (B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent) : ❑ Individual ❑ Corporation or other private group entity ❑ Government

4a. Fees submitted: ❑ Issue Fee ❑ Publication Fee (if required) ❑ Advance Order - # of Copies _____

4b. Method of Payment: *(Please first reapply any previously paid fee shown above)*

❑ Electronic Payment via EFS-Web ❑ Enclosed check ❑ Non-electronic payment by credit card (Attach form PTO-2038)

❑ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment to Deposit Account No. _____

5. **Change in Entity Status** (from status indicated above)

❑ Applicant certifying micro entity status. See 37 CFR 1.29

❑ Applicant asserting small entity status. See 37 CFR 1.27

❑ Applicant changing to regular undiscounted fee status.

NOTE: Absent a valid certification of Micro Entity Status (see forms PTO/SB/15A and 15B), issue fee payment in the micro entity amount will not be accepted at the risk of application abandonment.
NOTE: If the application was previously under micro entity status, checking this box will be taken to be a notification of loss of entitlement to micro entity status.
NOTE: Checking this box will be taken to be a notification of loss of entitlement to small or micro entity status, as applicable.

NOTE: This form must be signed in accordance with 37 CFR 1.31 and 1.33. See 37 CFR 1.4 for signature requirements and certifications.

Authorized Signature _____ Date _____

Typed or printed name _____ Registration No. _____

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/355,801	01/23/2012	Michael R. Adair	ATZ00003	1012

34399 7590 01/30/2020

GARLICK & MARKISON
100 Congress Avenue, Suite 2000
AUSTIN, TX 78701

EXAMINER	
LYNCH, MEGAN E	
ART UNIT	PAPER NUMBER
3732	

DATE MAILED: 01/30/2020

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
(Applications filed on or after May 29, 2000)

The Office has discontinued providing a Patent Term Adjustment (PTA) calculation with the Notice of Allowance.

Section 1(h)(2) of the AIA Technical Corrections Act amended 35 U.S.C. 154(b)(3)(B)(i) to eliminate the requirement that the Office provide a patent term adjustment determination with the notice of allowance. See Revisions to Patent Term Adjustment, 78 Fed. Reg. 19416, 19417 (Apr. 1, 2013). Therefore, the Office is no longer providing an initial patent term adjustment determination with the notice of allowance. The Office will continue to provide a patent term adjustment determination with the Issue Notification Letter that is mailed to applicant approximately three weeks prior to the issue date of the patent, and will include the patent term adjustment on the patent. Any request for reconsideration of the patent term adjustment determination (or reinstatement of patent term adjustment) should follow the process outlined in 37 CFR 1.705.

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

OMB Clearance and PRA Burden Statement for PTOL-85 Part B

The Paperwork Reduction Act (PRA) of 1995 requires Federal agencies to obtain Office of Management and Budget approval before requesting most types of information from the public. When OMB approves an agency request to collect information from the public, OMB (i) provides a valid OMB Control Number and expiration date for the agency to display on the instrument that will be used to collect the information and (ii) requires the agency to inform the public about the OMB Control Number's legal significance in accordance with 5 CFR 1320.5(b).

The information collected by PTOL-85 Part B is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

Notice of Allowability	Application No. 13/355,801	Applicant(s) Adair et al.	
	Examiner MEGAN E LYNCH	Art Unit 3732	AIA (FITF) Status No

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☑ This communication is responsive to 12/16/2019.
   ☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.

2. ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on _____; the restriction requirement and election have been incorporated into this action.

3. ☑ The allowed claim(s) is/are 1,3-5 and 9-13 . As a result of the allowed claim(s), you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information , please see **http://www.uspto.gov/patents/init_events/pph/index.jsp** or send an inquiry to **PPHfeedback@uspto.gov.**

4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   Certified copies:

   a) ☐ All b) ☐ Some *c) ☐ None of the:

   1. ☐ Certified copies of the priority documents have been received.
   2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
   3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

   * Certified copies not received: _____ .

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
   ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____ .

   Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____.
3. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material _____.
4. ☐ Interview Summary (PTO-413), Paper No./Mail Date. _____.
5. ☐ Examiner's Amendment/Comment
6. ☑ Examiner's Statement of Reasons for Allowance
7. ☐ Other _____.

/MEGAN E LYNCH/
Primary Examiner, Art Unit 3732

Notice of Pre-AIA or AIA Status

The present application is being examined under the pre-AIA first to invent provisions.

Reasons for Allowance

The following is an examiner's statement of reasons for allowance: Allowable claims were indicated based on the decision of the Appeal Board filed 11/01/2019, and the claims were indicated as free of art. Therefore, Claims 1, 3-5, and 9-13 are ultimately allowed based on the decision of the Appeal Board filed 11/01/2019 and the subsequent RCE filing 12/16/2019.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MEGAN E LYNCH whose telephone number is (571)272-3267. The examiner can normally be reached on Monday to Friday, 8:00am-4:00pm EST.

Examiner interviews are available via telephone, in-person, and video conferencing using a USPTO supplied web-based collaboration tool. To schedule an

interview, applicant is encouraged to use the USPTO Automated Interview Request (AIR) at http://www.uspto.gov/interviewpractice.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoa Huynh can be reached on 571-272-4888. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MEGAN E LYNCH/
Primary Examiner, Art Unit 3732

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13/355,801	Adair et al.
	Examiner	Art Unit
	MEGAN E LYNCH	3732

CPC - Searched*		
Symbol	Date	Examiner
A43B7/142; A43B7/144; A43B13/38; A43B13/145; A43B5/00; A43B13/12; A43B7/00; A43B7/14; A43B3/00	12/26/2013	MB
A61F5/0195; A61F5/14	12/26/2013	MB

CPC Combination Sets - Searched*		
Symbol	Date	Examiner

US Classification - Searched*			
Class	Subclass	Date	Examiner
36	44, 43, 25R, 110, 103, 132, 142, 144	12/26/2013	MB

* See search history printout included with this form or the SEARCH NOTES box below to determine the scope of the search.

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13/355,801	Adair et al.
	Examiner	Art Unit
	MEGAN E LYNCH	3732

Search Notes		
Search Notes	**Date**	**Examiner**
Inventorship Search	12/26/2013	MB
Assignee Search	12/26/2013	MB
Search Assistance Ted Kavanaugh	12/26/2013	MB
Updated Search	03/01/2014	MB
Updated Search	8/22/2014	MB
Updated Search	10/29/2014	MB
Updated Search	5/1/2015	MB
Updated Search	9/24/2015	MB
Updated Search	11/17/2016	MB
Updated Search	8/3/2017	MB
Updated Search	3/5/2018	MB
Updated Search	01/15/2020	ML

Interference Search			
US Class/CPC Symbol	**US Subclass/CPC Group**	**Date**	**Examiner**
	See attached Interference Search	01/15/2020	ML

Issue Classification	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13/355,801	Adair et al.
	Examiner	Art Unit
	MEGAN E LYNCH	3732

CPC						
Symbol					Type	Version
A43B	/	7	/	14	F	2013-01-01
A43B	/	13	/	14	I	2013-01-01
A43B	/	13	/	143	I	2013-01-01
A43B	/	7	/	141	I	2013-01-01
A43B	/	7	/	142	I	2013-01-01
A43B	/	7	/	143	I	2013-01-01
A43B	/	7	/	144	I	2013-01-01
A43B	/	7	/	1445	I	2013-01-01
A43B	/	13	/	148	I	2013-01-01
A43B	/	7	/	24	I	2013-01-01

CPC Combination Sets							
Symbol					Type	Set	Ranking	Version
	/		/					

NONE		Total Claims Allowed:	
(Assistant Examiner)	(Date)	9	
/MEGAN E LYNCH/ Primary Examiner, Art Unit 3732	15 January 2020	O.G. Print Claim(s)	O.G. Print Figure
(Primary Examiner)	(Date)	1	Fig.5

U.S. Patent and Trademark Office — Part of Paper No.: 20200115

Issue Classification	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13/355,801	Adair et al.
	Examiner	Art Unit
	MEGAN E LYNCH	3732

INTERNATIONAL CLASSIFICATION				
CLAIMED				
A43B7/14	/	7	/	14
A43B7/24	/	7	/	24

NON-CLAIMED				
	/		/	

US ORIGINAL CLASSIFICATION	
CLASS	SUBCLASS

CROSS REFERENCES(S)						
CLASS	SUBCLASS (ONE SUBCLASS PER BLOCK)					

NONE		Total Claims Allowed:	
(Assistant Examiner)	(Date)	9	
/MEGAN E LYNCH/ Primary Examiner, Art Unit 3732	15 January 2020	O.G. Print Claim(s)	O.G. Print Figure
(Primary Examiner)	(Date)	1	Fig.5

Issue Classification	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13/355,801	Adair et al.
	Examiner	Art Unit
	MEGAN E LYNCH	3732

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

CLAIMS

Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original
1	1														
2	3														
3	4														
4	5														
5	9														
6	10														
7	11														
8	12														
9	13														

NONE		Total Claims Allowed:	
(Assistant Examiner)	(Date)	9	
/MEGAN E LYNCH/ Primary Examiner, Art Unit 3732	15 January 2020	O.G. Print Claim(s)	O.G. Print Figure
(Primary Examiner)	(Date)	1	Fig.5

U.S. Patent and Trademark Office

Part of Paper No.: 20200115

EAST Search History

EAST Search History (Prior Art)

Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
S2	18301	(A43B7/142 A43B7/144 A43B13/38 A43B13/145 A43B5/00 A43B13/12 A61F5/0195 A43B7/00 A61F5/14 A43B7/14 A43B3/00).cpc.	US-PGPUB; USPAT; FPRS; EPO; JPO	OR	ON	2013/12/26 09:59
S3	7	US-6976322-$.DID. OR US-7487604-$.DID. OR US-20070271820-$.DID. OR US-20090100710-$.DID. OR US-20090293308-$.DID. OR US-1331018-$.DID.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO	ADJ	ON	2013/12/26 12:18
S4	5	(("4685227") or ("20080295362")).PN.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2013/12/26 12:25
S5	12	(Admark Athletic Ventures).as.	US-PGPUB; USPAT; FPRS; EPO; JPO; DERWENT	ADJ	ON	2013/12/26 13:34
S6	7	("2002/0139011").URPN.	USPAT	ADJ	ON	2013/12/26 13:56
S7	50	("20020139011" | "2099418" | "2917842" | "3418732" | "3576911" | "3591882" | "3738373" | "3766669" | "4076876" | "4216131" | "4316335" | "4372059" | "4378642" | "4418483" | "4476180" | "4615126" | "4640797" | "4642911" | "4694589" | "4747989" | "4779359" | "4823483" | "4864739" | "4910886" | "4936030" | "5025573" | "5154682" | "5282328" | "5551173" | "5687441" | "5695850" | "5709954" | "5786057" | "5885500" | "6092314" | "6360453" | "6528140" | "6725578" | "7100308").PN. OR ("7464428").URPN.	US-PGPUB; USPAT; USOCR	ADJ	ON	2013/12/26 14:01
S8	5479	((36/44) or (36/43) or (36/25r) or (36/103) or (36/142) or (36/144) or (36/132) or (36/110)).CCLS.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2013/12/26 14:06
S9	1	("2006/0000114").URPN.	USPAT	ADJ	ON	2013/12/26 15:45
S11	36449	("36").CLAS.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2013/12/27 12:03

S12	3111	S11 and sandal	US-PGPUB; USPAT; FPRS; EPO; JPO; DERWENT	ADJ	ON	2013/12/27 12:03
S13	1391	S12 and insole	US-PGPUB; USPAT; FPRS; EPO; JPO; DERWENT	ADJ	ON	2013/12/27 12:03
S14	15	Adair Michael.inv.	US-PGPUB; USPAT; FPRS; EPO; JPO; DERWENT	ADJ	ON	2014/03/01 13:39
S15	61	("1477825" | "2909854" | "20020005000" | "20030056401" | "20060059726" | "4685227" | "5345701" | "6604301" | "6684532" | "6725578" | "7464428" | "7707742" | "8387277").PN.	US-PGPUB; USPAT; FPRS; EPO; JPO; DERWENT	ADJ	ON	2014/03/01 13:49
S16	7	("2002/0139011").URPN.	USPAT	ADJ	ON	2014/03/07 10:51
S17	3	("4934073").PN.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2015/09/23 16:12
S18	3	("4642911").PN.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2015/09/23 16:13
S19	2	("6041523").PN.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2015/09/23 16:22
S20	9	("6041523").URPN.	USPAT	ADJ	ON	2015/09/23 16:22
S21	3	("4578882").PN.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2015/09/23 16:24
S22	21544	(A43B7/142 A43B7/144 A43B13/38 A43B13/145 A43B5/00 A43B13/12 A61F5/0195 A43B7/00 A61F5/14 A43B7/14 A43B3/00).cpc.	US-PGPUB; USPAT; FPRS; EPO; JPO; DERWENT	OR	ON	2015/09/24 08:49
S23	276	((36/142) or (36/143) or (36/144)).CCLS.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2015/09/24 08:52
S24	3	("7793437").URPN.	USPAT	ADJ	ON	2015/09/24

						09:21
S25	2	("20080163513").PN.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2015/09/24 13:40
S26	2	("20100115793").PN.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2015/09/24 15:03
S27	2	("20080163513").PN.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	OFF	2017/08/03 13:32
S28	3	("8631592").PN.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	OFF	2019/02/19 09:09

EAST Search History (Interference)

Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
L1	18	(platform slope heel greater edge).clm.	US-PGPUB; USPAT	AND	ON	2020/01/15 09:02
S29	20	(sole athletic slope heel edge).clm.	US-PGPUB; USPAT	AND	ON	2019/02/19 09:12

1/ 15/ 2020 9:03:18 AM
C:\ Users\ mbrandon\ Documents\ EAST\ Workspaces\ 13355801.wsp

Doc code: RCEX
Doc description: Request for Continued Examination (RCE)

PTO/SB/30EFS (07-14)
Approved for use through 07/31/2016. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

REQUEST FOR CONTINUED EXAMINATION(RCE)TRANSMITTAL
(Submitted Only via EFS-Web)

Application Number	13355801	Filing Date	2012-01-23	Docket Number (if applicable)	ATZ00003	Art Unit	3765
First Named Inventor	Michael R. Adair			Examiner Name	BRANDON, MEGAN E		

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application.
Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, to any international application that does not comply with the requirements of 35 U.S.C. 371, or to any design application. The Instruction Sheet for this form is located at WWW.USPTO.GOV.

SUBMISSION REQUIRED UNDER 37 CFR 1.114

Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

☐ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

- ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____
- ☐ Other _____

☒ Enclosed

- ☒ Amendment/Reply
- ☐ Information Disclosure Statement (IDS)
- ☐ Affidavit(s)/ Declaration(s)
- ☐ Other _____

MISCELLANEOUS

☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of months _____ (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)

☐ Other _____

FEES

The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

☒ The Director is hereby authorized to charge any underpayment of fees, or credit any overpayments, to Deposit Account No 502126

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

☒ Patent Practitioner Signature

Applicant Signature

PTO/SB/30EFS (07-14)
Approved for use through 07/31/2016. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

Signature of Registered U.S. Patent Practitioner			
Signature	/Timothy W. Markison/	Date (YYYY-MM-DD)	2019-12-16
Name	Timothy W. Markison	Registration Number	33534

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

REMARKS/ARGUMENTS

1. In the above referenced Decision on Appeal, the final rejection of claims 1 and 3-13 was reversed and a new ground of rejection was entered.

2. Claims 6-8 were rejected under 35 U.S.C. § 112, second paragraph, as indefinite. The Applicant has cancelled claims 6-8, and believes that remaining claims 1, 3-5, and 9-13 are now allowable.

CONCLUSION

For the foregoing reasons, the Applicant believes that claims 1, 3-5 and 9-13 are in condition for allowance and respectfully requests that they be passed to allowance.

The Applicant hereby rescinds any disclaimer of claim scope made in the parent application or any predecessor application in relation to the instant application. The Examiner is advised that any such previous disclaimer and the prior art that it was made to avoid, may need to be revisited. Further, the claims in the instant application may be broader than those of a parent application. Moreover, the Examiner should also be advised that any disclaimer made in the instant application should not be read into or against the parent application.

A Request for Continued Examination is concurrently filed herewith along with a credit card payment of the associated fee. No additional fees are believed to be due. In the event that additional fees are due or a credit for an overpayment is due, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Garlick & Markison Deposit Account No. 50-2126.

The Examiner is invited to contact the undersigned by e-mail if the Examiner believes that such a communication would advance the prosecution of the present invention.

RESPECTFULLY SUBMITTED,

By: /Timothy W. Markison/Reg. No. 33534
Timothy W. Markison

Garlick & Markison
100 Congress Avenue, Suite 2000
Austin, TX 78701
Phone: (214) 676-1020
E-mail: tmarkison@texaspatents.com

AMENDMENT TO THE CLAIMS

1. (Previously Presented) An apparatus comprises:

a heel platform section that has a uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus, wherein the uniform height establishes a reference slope from the outer edge to the inner edge, the reference slope substantially parallel to a bottom surface of the apparatus;

a mid-foot section juxtaposed to the heel platform section; and

a toe section juxtaposed to the mid-foot section, wherein the mid-foot section and the toe section form an angled support platform that has a first slope along the inner edge of the apparatus from a front edge of the apparatus to the heel platform section, a second slope along the front edge of the apparatus from the inner edge to the outer edge of the apparatus, and a third slope along the outer edge of the apparatus from the front edge of the apparatus to the heel platform section, the first slope, second slope, and the third slope each greater than the reference slope, wherein the toe section is lower than the heel platform section as a result of the first, second, and third slopes.

2. (Canceled)

3. (Previously Presented) The apparatus of claim 1 further comprises:

the heel platform section, the mid-foot section, and the toe section constituting at least one of an insole for footwear; and

a sole of footwear.

4. (Previously Presented) The apparatus of claim 1 further comprises:

the heel platform section has a uniform platform height, wherein, from a front edge of the heel platform to the rear edge of the apparatus, the uniform platform height has the reference slope; and

the toe section and the mid-foot section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

5. (Previously Presented) The apparatus of claim 1 further comprises:

an insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

6 -8. (Cancelled)

9. (Previously Presented) A shoe comprises:

an upper shoe section; and

a sole coupled to the upper shoe section, wherein the sole includes:

a specific bottom; and

an athletic positioning sole section having:

a heel platform section that has a uniform height from an outer edge to an inner edge of the athletic positioning sole section at a rear edge of the athletic positioning sole section, wherein the uniform height establishes a reference slope from the outer edge to the inner edge, the reference slope substantially parallel to a bottom surface of the sole;

a mid-foot section; and

a toe section, wherein the mid-foot section and the toe section form an angled support platform that has a first slope along the inner edge of the athletic positioning sole section from a front edge of the athletic positioning sole section to the heel platform section, a second slope along the front edge of the athletic positioning sole section from the inner edge to the outer edge of the athletic positioning sole section, and a third slope along the outer edge of the athletic positioning sole section from the front edge of the athletic positioning sole section to the heel platform section, the first slope, second slope, and the third slope each greater than the reference slope.

10. (Previously Presented) The shoe of claim 9 further comprises:

the heel platform section has a uniform platform height, wherein, from a front edge of the heel platform to the rear edge of the athletic positioning sole section, the uniform platform height has the reference slope; and

the toe section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

11. (Previously Presented) The shoe of claim 9 further comprises:

an insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

12. (Original) The shoe of claim 9, wherein the specific bottom comprises one of:

a cleat pattern bottom;
a baseball spike bottom;
a basketball bottom;
a tennis bottom;
a golf bottom;
an ice skate bottom;
a ski boot bottom;
a cross-trainer bottom;
a running shoe bottom;
a walking shoe bottom;
a dress shoe bottom; and
a snowboard boot bottom.

13. (Original) The shoe of claim 9, wherein the upper section comprises:

a sandal structure that includes one or more straps for securing the shoe to a foot.

14-18. (Canceled)

Certification under 37 C.F.R. §1.8

Date of Mailing or Transmission: 12/16/2019

I hereby certify that I have caused the document indicated herein on the date indicated above to be transmitted via the Office electronic filing system in accordance with 37 C.F.R. §1.6(a)(4).

BY: /Kimberly Brown/ (Signature) **Name:** Kimberly Brown (Typed Name)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

1st Named Inventor:	Michael R. Adair	**Examiner:**	LYNCH, MEGAN E
Application No.:	13/355,801	**Art Unit:**	3765
Filing Date:	23 Jan 2012	**Docket No.:**	ATZ00003
Confirmation No.:	1012		
Title:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF		

RESPONSE TO DECISION BY THE PATENT TRIAL AND APPEAL BOARD

Date: 12/16/2019

United States Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450

In response to the Decision on Appeal dated 11/1/2019, the Applicant submits the following response.

Electronic Patent Application Fee Transmittal

Application Number:	13355801
Filing Date:	23-Jan-2012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Filer:	Timothy W. Markison/Kimberly Brown
Attorney Docket Number:	ATZ00003

Filed as Small Entity

Filing Fees for Utility under 35 USC 111(a)

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Miscellaneous:				
RCE- 2ND AND SUBSEQUENT REQUEST	2820	1	950	950
		Total in USD ($)		**950**

Electronic Acknowledgement Receipt

EFS ID:	38043677
Application Number:	13355801
International Application Number:	
Confirmation Number:	1012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Customer Number:	34399
Filer:	Timothy W. Markison/Kimberly Brown
Filer Authorized By:	Timothy W. Markison
Attorney Docket Number:	ATZ00003
Receipt Date:	16-DEC-2019
Filing Date:	23-JAN-2012
Time Stamp:	16:24:41
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	CARD
Payment was successfully received in RAM	$950
RAM confirmation Number	E2019BFG25231199
Deposit Account	
Authorized User	

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Request for Continued Examination (RCE)	ATZ00003_RCE.pdf	1349887 7d962e6cc873a6fbfc2763f9e96e8ad6ba44778	no	3
Warnings:					
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2		ATZ00003_PTAB_Response.pdf	112824 fab653da16c1ec795da48b76cf86236bd4d88732	yes	7

	Multipart Description/PDF files in .zip description		
	Document Description	**Start**	**End**
	Applicant Arguments/Remarks Made in an Amendment	6	7
	Claims	2	5
	Amendment Submitted/Entered with Filing of CPA/RCE	1	1

Warnings:					
Information:					
3	Fee Worksheet (SB06)	fee-info.pdf	30680 d7afc61ac3fd3e721ed7cdeba0c6162ca97ffe6	no	2
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PATENT APPLICATION FEE DETERMINATION RECORD Substitute for Form PTO-875	Application or Docket Number 13/355,801	Filing Date 01/23/2012	☐ To be Mailed

ENTITY: ☐ LARGE ☑ SMALL ☐ MICRO

APPLICATION AS FILED - PART I

FOR	(Column 1) NUMBER FILED	(Column 2) NUMBER EXTRA		RATE ($)	FEE ($)
☐ BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A		N/A	
☐ SEARCH FEE (37 CFR 1.16(k), (l), or (m))	N/A	N/A		N/A	
☐ EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A		N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =	*		x $30 =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*		x $125 =	
☐ APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is $310 ($155 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).				
☐ MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))					
* If the difference in column 1 is less than zero, enter "0" in column 2.				TOTAL	

APPLICATION AS AMENDED - PART II

		(Column 1)		(Column 2)	(Column 3)			
AMENDMENT	12/16/2019	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA		RATE ($)	ADDITIONAL FEE ($)
	Total (37 CFR 1.16(i))	* 9	Minus	** 20	= 0		x $50 =	0
	Independent (37 CFR 1.16(h))	* 2	Minus	*** 4	= 0		x $230 =	0
	☐ Application Size Fee (37 CFR 1.16(s))							
	☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))							
							TOTAL ADD'L FEE	0

		(Column 1)		(Column 2)	(Column 3)			
AMENDMENT		CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA		RATE ($)	ADDITIONAL FEE ($)
	Total (37 CFR 1.16(i))	*	Minus	**	=		x $0 =	
	Independent (37 CFR 1.16(h))	*	Minus	***	=		x $0 =	
	☐ Application Size Fee (37 CFR 1.16(s))							
	☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))							
							TOTAL ADD'L FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.	LIE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/355,801	01/23/2012	Michael R. Adair	ATZ00003	1012

34399 7590 11/01/2019

GARLICK & MARKISON
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EXAMINER
LYNCH, MEGAN E

ART UNIT	PAPER NUMBER
3732	

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL R. ADAIR and TIMOTHY W. MARKISON

Appeal 2019-002809
Application 13/355,801
Technology Center 3700

Before JENNIFER D. BAHR, JOHN C. KERINS, and LISA M. GUIJT, *Administrative Patent Judges.*

BAHR, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the Examiner's decision to reject claims 1 and 3–13. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE and enter a NEW GROUND OF REJECTION.

---

[1] We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Athalonz LLC. Appeal Br. 1.

CLAIMED SUBJECT MATTER

Appellant's invention is directed to "footwear and more particularly to athletic positioning footwear." Spec. 1:19–20. Claim 1, reproduced below, is illustrative of the claimed subject matter.

> 1. An apparatus comprises:
>
> a heel platform section that has a uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus, wherein the uniform height establishes a reference slope from the outer edge to the inner edge, the reference slope substantially parallel to a bottom surface of the apparatus;
>
> a mid-foot section juxtaposed to the heel platform section; and
>
> a toe section juxtaposed to the mid-foot section, wherein the mid-foot section and the toe section form an angled support platform that has a first slope along the inner edge of the apparatus from a front edge of the apparatus to the heel platform section, a second slope along the front edge of the apparatus from the inner edge to the outer edge of the apparatus, and a third slope along the outer edge of the apparatus from the front edge of the apparatus to the heel platform section, the first slope, second slope, and the third slope each greater than the reference slope, wherein the toe section is lower than the heel platform section as a result of the first, second, and third slopes.

EVIDENCE

The prior art relied upon by the Examiner is:

Name	Reference	Date
Kerrigan	US 2002/0139011 A1	Oct. 3, 2002
Chapman	US 2008/0163513 A1	July 10, 2008
Kraisosky	US 2010/0115793 A1	May 13, 2010

REJECTIONS

I. Claims 1, 3, 4, 6, 7, 9, 10, and 12 stand rejected under U.S.C. § 102(b) as anticipated by Chapman.

II. Claims 5, 8, and 11 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Chapman and Kerrigan.

III. Claim 13 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Chapman and Kraisosky.

OPINION

Rejection I—Anticipation

Claims 1, 3, 4, 9, 10, and 12:

Independent claims 1 and 9 require, in pertinent part, that the uniform height of the heel platform establish a reference slope from the outer edge to the inner edge, the reference slope being "substantially parallel to a bottom surface of the [apparatus or sole]," and "a second slope along the front edge of the [apparatus or sole section] from the inner edge to the outer edge of the [apparatus or sole section]" that is "greater than the reference slope." Appeal Br. 10, 12–13 (Claims App.).

The Examiner finds that Chapman's shoe sole 100 comprises all of the features of the "apparatus" of claim 1 and the "sole section" of claim 9. Final Act. 2–5. In particular, the Examiner finds, in pertinent part, that the "second slope (Fig.10 from 150 to 140)" is "greater than the reference slope (as seen in Fig.5, 200 has no slope from 150 to 140 and the [second slope is] angled which is greater than a region with no slope)." *Id.* at 3.

Appellant emphasizes that claim 1 recites "a second slope along the front edge of the apparatus from the inner edge to the outer edge of the apparatus," and asserts that, in contrast, "Chapman teaches that, at the ball of

foot area, the shoe is flat from the medial to lateral side." Appeal Br. 6. Appellant relies on the same argument for independent claim 9, which has substantially the same "second slope" limitation. *Id.*

In response, in support of the finding that Chapman discloses "a second slope along the front edge of the apparatus from the inner edge to the outer edge of the apparatus" that is greater than the reference slope established by the uniform height of the heel platform section, the Examiner states that Figures 4 and 10 of Chapman show "that the top surface of the sole slopes upward at the edges, providing a second slope as claimed along the front edge of the sole from the inner to the outer edges of the sole." Ans. 4. The Examiner errs in reading the "second slope" of claim 1 on the upward slope of the medial or lateral edge of the front edge (*see* Chapman, Fig. 10) because this upward (positive) slope does not extend "from the inner edge to the outer edge of the apparatus" as required in claim 1. Further, given the similarity in the upper profile of the transverse slice of Chapman's shoe sole across the rear heel area illustrated in Figure 5 and the transverse slice of the shoe sole across the toe area illustrated in Figure 10, both of which have side walls 400 separated by a flat region, the Examiner's position that the toe area shown in Figure 10 has a second slope from inner edge 150 to outer edge 140 that is angled and, thus, greater than no slope, appears to be at odds with the Examiner's position that the rear heel area shown in Figure 5 has no slope from inner edge 150 to outer edge 140.

Thus, we do not sustain the rejection of independent claims 1 and 9, or their dependent claims 3, 4, 10, and 12, as anticipated by Chapman.

Claims 6 and 7:

For the reasons explained below in the new ground of rejection of claims 6–8 under 35 U.S.C. § 112, second paragraph, claims 6 and 7 are indefinite. Having determined that these claims are indefinite, we cannot sustain the rejection of these claims under 35 U.S.C. § 102(b) because to do so would require speculation as to the scope of the claims. *See In re Aoyama*, 656 F.3d 1293, 1300 (Fed. Cir. 2011) (holding that the Board erred in affirming an anticipation rejection of indefinite claims); *In re Steele*, 305 F.2d 859, 862–63 (CCPA 1962) (holding that the Board erred in affirming a rejection of indefinite claims under 35 U.S.C. § 103(a) because the rejection was based on speculative assumptions as to the meaning of the claims).

Rejections II and III—Obviousness

Claims 5, 11, and 13:

The Examiner's application of Kerrigan and Kraisosky does not make up for the deficiency in the rejection of claims 1 and 9, from which claims 5, 11, and 13 depend. *See* Final Act. 7–8; Appeal Br. 11, 13, 14 (Claims App.). Thus, we do not sustain the rejection of claims 5 and 11 as unpatentable over Chapman and Kerrigan or the rejection of claim 13 as unpatentable over Chapman and Kraisosky.

Claim 8:

For the reasons explained below in the new ground of rejection of claims 6–8 under 35 U.S.C. § 112, second paragraph, claim 8 is indefinite. Thus, as with claims 6 and 7, we cannot sustain the rejection of claim 8 under 35 U.S.C. § 103(a) because to do so would require speculation as to the scope of the claims. *See In re Steele*, 305 F.2d at 862–63.

NEW GROUND OF REJECTION

Pursuant to our authority under 37 C.F.R. § 41.50 (b), we reject claims 6–8 under 35 U.S.C. § 112, second paragraph, as indefinite.

Claims, when read in light of the specification, must "reasonably apprise those skilled in the art both of the utilization and scope of the invention" using language "as precise as the subject matter permits." *In re Packard*, 751 F.3d 1307, 1313 (Fed. Cir. 2014). In determining whether a claim is definite under 35 U.S.C. § 112, second paragraph, "[t]he USPTO, in examining an application, is obliged to test the claims for reasonable precision according to [this principle]." *Id.*

Claim 6 recites that "the toe section is lower than the heel platform section as a result of the first, second, and third slopes." Appeal Br. 11 (Claims App.). It is unclear to what "the first, second, and third slopes" in claim 6 refer because claim 6 does not expressly mention a "second slope" or a "third slope." *See id.* Claim 6 recites the "heel platform section having a *reference slope* from its outer portion to its inner portion," as well as "a mid-foot section having a *first slope* from its outer portion to its inner portion." *Id.* (emphasis added). Claim 6 also recites that "the line between the heel platform and the mid-foot section has *zero slope*." *Id.* (emphasis added). One might speculate that "the first, second, and third slopes" in claim 6 are intended to refer to the mid-foot first slope, the reference slope, and the zero slope. However, such an interpretation would render unclear the limitation that "the toe section is lower than the heel platform section as a result of the first, second, and third slopes" because three slopes defined from the outer portion to the inner portion would not logically result in the toe section being lower than the heel platform section. Consequently, the

metes and bounds of the recitation "the toe section is lower than the heel platform section as a result of the first, second, and third slopes" are not clear, thereby rendering claim 6, as well as claims 7 and 8, which depend from claim 6, indefinite.

Moreover, there is some ambiguity as to what is meant by "dimension" in claim 6. Even if we construe "dimension" in accordance with its ordinary and customary meaning as a measure in one direction, claim 6 does not clearly recite either the direction or the end points between which such a measure is taken. For example, claim 6 recites that the geometric shape defined by the mid-foot section and the toe section has "a first dimension along a line between the heel platform section and the mid-foot section." Appeal Br. 11 (Claims App.). Is this dimension measured: (1) in a lateral direction, between the inner and outer edges along this line; (2) in a vertical direction, between the upper surface and the lower surface of the apparatus in a vertical plane taken through the "line"; or (3) in a vertical direction, from the lowest point of the lower surface of the apparatus to height of the upper surface at the "line"? Similarly, how are the "second dimension" and the "third dimension" measured?

For the above reasons, claim 6 does not reasonably apprise those of skill in the art of the scope of the claimed invention. Thus, claim 6, and claims 7 and 8, which depend from claim 6, are indefinite.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/ Basis	Affirmed	Reversed	New Ground
1, 3, 4, 6, 7, 9, 10, 12	102(b)	Chapman		1, 3, 4, 6, 7, 9, 10, 12	
5, 8, 11	103(a)	Chapman, Kerrigan		5, 8, 11	
13	103(a)	Chapman, Kraisosky		13	
6–8	112, second paragraph	Indefiniteness			6–8
Overall Outcome				1, 3–13	6–8

FINALITY AND TIME PERIOD FOR RESPONSE

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 37 C.F.R. § 41.50(b) provides "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review." 37 C.F.R. § 41.50(b) also provides:

> When the Board enters such a non-final decision, the appellant, within two months from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:
>
> (1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the prosecution will be remanded to the examiner. The new ground of rejection is binding upon the examiner unless an amendment or new Evidence not previously of Record is made which, in the opinion

> of the examiner, overcomes the new ground of rejection designated in the decision. Should the examiner reject the claims, appellant may again appeal to the Board pursuant to this subpart.
>
> (2) *Request rehearing*. Request that the proceeding be reheard under § 41.52 by the Board upon the same Record. The request for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in entering the new ground of rejection and also state all other grounds upon which rehearing is sought.

Further guidance on responding to a new ground of rejection can be found in the Manual of Patent Examining Procedure § 1214.01.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

REVERSED; 37 C.F.R. § 41.50(b)

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13/355,801	01/23/2012	Michael R. Adair	ATZ00003	1012

34399 7590 03/01/2019
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EXAMINER
LYNCH, MEGAN E

ART UNIT	PAPER NUMBER
3732	

NOTIFICATION DATE	DELIVERY MODE
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Appeal No: 2019-002809
Application: 13/355,801
Appellant: Michael R. Adair et al.

Patent Trial and Appeal Board Docketing Notice

Application 13/355,801 was received from the Technology Center at the Board on February 26, 2019 and has been assigned Appeal No: 2019-002809.

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RMM

Electronic Patent Application Fee Transmittal

Application Number:	13355801
Filing Date:	23-Jan-2012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Filer:	Timothy W. Markison/Kimberly Brown
Attorney Docket Number:	ATZ00003

Filed as Small Entity

Filing Fees for Utility under 35 USC 111(a)

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
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Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
FILING APPEAL BRIEF INTER PARTES REEXAM	2404	1	1000	1000
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Miscellaneous:				
			Total in USD ($)	**1000**

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Application Number:	13355801
International Application Number:	
Confirmation Number:	1012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Customer Number:	34399
Filer:	Timothy W. Markison/Kimberly Brown
Filer Authorized By:	Timothy W. Markison
Attorney Docket Number:	ATZ00003
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34399 7590 12/26/2018

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EXAMINER
LYNCH, MEGAN E

ART UNIT	PAPER NUMBER
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Application Number: 13/355,801
Filing Date: 23 Jan 2012
Appellant(s): Adair et al.

Timothy W. Markison
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 27, 2018.

(1) Grounds of Rejection to be Reviewed on Appeal

Every ground of rejection set forth in the Office action dated March 29, 2018 from which the appeal is taken is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(2) Response to Argument

It is noted that Appellant only argues the rejection of Claim 1, as seen on Page 6 of the Appeal Brief, and by dependency Claims 3-5. No arguments are directed specifically to the rejection(s) of Claims 6-13.

Appellant asserts that Chapman does not teach the toe section is lower than the heel platform section, and Chapman specifically teaches away from having the toe section below the heel section.

Examiner respectfully disagrees and notes that Chapman does not teach away from the toe section being below the heel section and Appellant's attempts to formulate such an argument are misguided. Any reference in Chapman to the heel not being placed above the toe are with regard to flat soles, not curved soles as in Chapman's invention. Additionally, Chapman clearly shows in Fig.4 that the surface of 260 is higher in the heel section than in the toe section, this is clarified in the annotated Figure seen on Page 5 of the outstanding Office Action filed March 29, 2018. For all of these reasons the Board should uphold the rejection under Chapman.

Appellant asserts that Claim 1 requires a second slope along the front edge of the apparatus from the inner edge to the outer edge of the apparatus, and Chapman teaches at the ball of foot area that the shoe is flat from the medial to the lateral side.

Examiner respectfully disagrees and notes that Chapman shows a second slope along the front edge of the apparatus from the inner edge to the outer edge of the apparatus, in Fig.3, 4, & 10. One can see in Fig.4 & 10, specifically, of Chapman that the top surface of the sole slopes upward at the edges, providing a second slope as claimed along the front edge of the sole from the inner to the outer edges of the sole. For all of these reasons the Board should uphold the rejection under Chapman.

Appellant asserts that Claim 1 requires the mid-foot and the toe section form an angled support platform. Further arguing, Chapman teaches the ball of the foot area is depressed and the toe area is raised.

Examiner respectfully disagrees and notes that Appellant has not pointed out how the current claim language distinguishes over the angled support platform of the mid-foot and toe section of Chapman. Further, as seen in Fig.4-10 of Chapman, the mid-foot and toe sections are angled both laterally and longitudinally and, therefore, provide an angled support platform inasmuch as has been claimed by Appellant. Appellant's argument that the ball of the foot is depressed and the toe area is raised, is merely a statement and not a valid argument. Additionally, the assertion is not found persuasive as such an orientation does not negate that the combined areas of Chapman still provide an "angled support platform" as currently claimed. Appellant has

provided no specific structure in claim 1 to define the angles or slopes; i.e. as greater than another or in a specific orientation. For all of these reasons the Board should uphold the rejection under Chapman.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/MEGAN E LYNCH/
Primary Examiner, Art Unit 3732

Conferees:

/KHOA D HUYNH/
Supervisory Patent Examiner, Art Unit 3732

/CLINTON T OSTRUP/
Supervisory Patent Examiner, Art Unit 3732

Requirement to pay appeal forwarding fee. In order to avoid dismissal of the instant appeal in any application or ex parte reexamination proceeding, 37 CFR 41.45 requires payment of an appeal forwarding fee within the time permitted by 37 CFR 41.45(a), unless appellant had timely paid the fee for filing a brief required by 37 CFR 41.20(b) in effect on March 18, 2013.

Certification under 37 C.F.R. §1.8

Date of Mailing or Transmission: 10/27/2018

I hereby certify that I have caused the document indicated herein on the date indicated above to be transmitted via the Office electronic filing system in accordance with 37 C.F.R. §1.6(a)(4).

BY: /Kimberly Brown/ (Signature) **Name:** Kimberly Brown (Typed Name)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

1st Named Inventor:	Michael R. Adair	**Examiner:**	BRANDON, MEGAN E
Application No.:	13/355,801	**Art Unit:**	3765
Filing Date:	23 Jan 2012	**Docket No.:**	ATZ00003
Confirmation No.:	1012		
Title:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF		

APPEAL BRIEF

Date:

United States Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450

Subsequent to a Final Office Action mailed on March 29, 2018, Applicant filed a Notice of Appeal on July 27, 2018. The time period for filing the Appeal Brief is two (2) months from the file date of the Notice of Appeal, namely September 27, 2018. As such, the time period for filing the Appeal Brief falls on September 27, 2018.

REAL PARTY IN INTEREST

The present U.S. utility patent application is currently owned by Athalonz LLC, a Texas limited liability corporation, having its principal place of business in Arizona.

RELATED APPEALS, INTERFERENCES, AND TRIALS

There are no known appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in this pending appeal.

SUMMARY OF THE CLAIMED SUBJECT MATTER

Please find below a concise explanation of the subject matter defined in each of the three (3) standing independent claims 1, 6, and 9.

Independent claim 1:

Independent claim 1 describes a heel platform section that has a uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus (*e.g., see specification, p. 20, lines 1-7, figures: 21 in FIG. 5, etc.*), wherein the uniform height establishes a reference slope from the outer edge to the inner edge, the reference slope substantially parallel to a bottom surface of the apparatus (*e.g., see specification, p. 20, lines 9-17, figures: 23 and 25 in FIGs. 5 and 8, etc.*); a mid-foot section juxtaposed to the heel platform section (*e.g., see specification, p. 20, lines 19-28, figures: 23 in FIG. 5 and 8, etc.*); and; a toe section juxtaposed to the mid-foot section (*e.g., see specification, p. 20, lines 19-28, figures: 25 in FIG. 5 and 8, etc.*), wherein the mid-foot section and the toe section form an angled support platform that has a first slope along the inner edge of the apparatus from a front edge of the apparatus to the heel platform section (*e.g., see specification, p. 21, lines 4-10, figures: 36 in FIG. 8-10, etc.*), a second slope along the front edge of the apparatus from the inner edge to the outer edge of the apparatus (*e.g., see specification, p. 20, lines 14-17, figures: 34 in FIG. 10, etc.*), and a third slope along the outer edge of the apparatus from the front edge of the apparatus to the heel platform section (*e.g., see specification, p. 21, lines 12-17, figures: FIG. 11, etc.*), the first slope, second slope, and the third slope each greater than the reference slope (*e.g., see specification, p. 21, lines 4-25, figures: 21, 23, and 25 in FIG. 8-10, etc.*), wherein the toe section is lower than the heel platform section as a result of the first, second, and third slopes (*e.g., see specification, p. 18, lines 11-21, figures: 25 in FIG. 3 and 4, etc.*).

Independent claim 6:

Independent claim 6 describes a heel platform section having a reference slope from its outer portion to its inner portion, the reference slope substantially parallel to a bottom surface of the apparatus (*e.g., see specification, p. 20, lines 9-17, figures: 23 and 25 in FIGs. 5 and 8, etc.*),: a mid-foot section having a first slope from its outer portion to its inner portion, the first slope greater than the reference slope (*e.g., see specification, p. 21, lines 19-25, figures: 23 in FIG. 8-10, etc.*); and a toe section, wherein the mid-foot section, and the toe section collectively have a geometric shape having a first dimension along a line between the heel platform section and the mid-foot section (*e.g., see specification, p. 21, lines 19-25, figures: 23 and 25 in FIG. 8-10, etc.*), a second dimension at front outer edge of the apparatus, and a third dimension at front inner edge of the apparatus (*e.g., see specification, p. 21, lines 19-25, figures: 23 and 25 in FIG. 8-10, etc.*),

wherein the first dimension has a magnitude that is greater than a magnitude of the second dimension and the magnitude of the second dimension is greater than a magnitude of the third dimension (*e.g., see specification, p. 21, lines 19-25, figures: 23 and 25 in FIG. 8-10, etc.*), and wherein the first dimension is uniform such that, from an inner edge of the apparatus to an outer edge of the apparatus, the line between the heel platform section and the mid-foot section has zero slope (*e.g., see specification, p. 21, lines 19-25, figures: 23 and 25 in FIG. 8-10, etc.*), wherein the toe section is lower than the heel platform section as a result of the first, second, and third slopes (*e.g., see specification, p. 18, lines 11-21, figures: 25 in FIG. 3 and 4, etc.*).

Independent claim 9:

Independent claim 9 describes a sole coupled to the upper shoe section (*e.g., see specification, p. 19, lines 9-21, p. 37, line 24- p. 38, line 5– figures: FIG. 59-62, etc.*), wherein the sole includes a specific bottom (*e.g., see specification, p. 38, lines 7-16, figures: 190 in FIG. 63-64, etc.*), an athletic positioning sole section having a heel platform section that has a uniform height from an outer edge to an inner edge of the athletic positioning sole section at a rear edge of the athletic positioning sole section, (*e.g., see specification, p. 38, lines 7-16, p. 38, line 26- p. 39, line 4– figures: FIG. 63, 64, and 65 etc.*), wherein the uniform height establishes a reference slope from the outer edge to the inner edge, the reference slope substantially parallel to a bottom surface of the sole (*e.g., see specification, p. 39, lines 6-15, figures: FIG. 65, etc.*), a mid-foot section (*e.g., see specification, p. 18, lines 11-21, figures: 23 in FIG. 3 and 4, etc.*), a toe section (*e.g., see specification, p. 18, lines 11-21, figures: 25 in FIG. 3 and 4, etc.*), wherein the mid-foot section and the toe section form an angled support platform that has a first slope along the inner edge of the athletic positioning sole section from a front edge of the athletic positioning sole section to the heel platform section (*e.g., see specification, p. 21, lines 4-10, p. 21, lines 11-17, and p. 21, line 26- p. 22, line 2 – figures: 36 in FIG. 8-11, etc.*), a second slope along the front edge of the athletic positioning sole section from the inner edge to the outer edge of the athletic positioning sole section (*e.g., see specification, p. 20, lines 14-17, figures: 34 in FIG. 10, etc.*), and a third slope along the outer edge of the athletic positioning sole section from the front edge of the athletic positioning sole section to the heel platform section (*e.g., see specification, p. 21, lines 12-17, figures: FIG. 11, etc.*), the first slope, second slope, and the third slope each greater than the reference slope (*e.g., see specification, p. 21, lines 4-25, figures: 21, 23, and 25 in FIG. 8-10, etc.*).

ARGUMENT

REJECTION OF CLAIMS 1, 3, 4, 6, 7, 9, 10, and 12 UNDER 35 U.S.C. § 102(b)

Claims 1, 3, 4, 6, 7, 9, 10, and 12 have been rejected under pre-AIA 35 USC §102 (b) as being anticipated by Chapman (U.S. Pub. No. 2008/0163513).

A cited prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is found in a single cited prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985)

The standard for rejection under 35 U.S.C. § 102 is extremely specific and quite strict. If that singular reference fails to teach and disclose each and every limitation of the subject matter as claimed by the Appellant, the rejections under 35 U.S.C. § 102 is improper and should be withdrawn.

Appellant respectfully asserts that Chapman fails to teach or disclose a heel platform section, a mid-foot section, and a toe section, where the mid-foot section and the toe section form an angled support platform that angles downward with multiple slopes from the heel platform section. As such, the heel platform section is above the toe section. In particular, Chapman specifically teaches away from a shoe having a heel section raised above the toe section.

Chapman teaches in paragraph 4, that the natural design of the foot enables a smooth rolling motion through a step when walking, and further, that the toe at the end of the step and the heel at the beginning of the step are on the same plane.

Chapman teaches in paragraph 5, that traditional shoe soles cancel much of this natural design. Most traditional shoe soles are constructed with a heel portion that raises the bottom horizontal plane of the heel above the bottom horizontal plane of the ball of the foot and toes. This orientation of the foot distorts the natural interaction of certain foot joints and ligaments and results in chronic tension that leads to inflammation of various foot joints. [emphasis added] ...With traditional shoe soles, when the step begins, the heel is set down at an elevated level above the walking surface. The ball of the foot and the toes are at an unnatural angle relative to the heel.

Chapman teaches in paragraph 9, that what is needed, therefore, is a shoe sole that allows the foot to roll naturally from heel to toe and side to side. What is further needed is such a shoe sole that supports the entire foot throughout the entire step.

Chapman teaches in paragraph 10, that the invention is a shoe sole with a rocker or roller bottom that is a continuously curved bottom surface. ... The continuous curve curves downward from the heel section through a mid-section that presents the lowest point of the continuous curve, and then upward to the toe section. ... Also, formed in the lower surface is a longitudinal flex groove that allows the shoe sole to flex along lines that extend in the longitudinal direction of the shoe sole, thereby allowing the foot to roll naturally from side to side simultaneously as it rolls from the heel toward the first toe.

Chapman teaches in paragraph 32, that FIG. 2 shows a flat area 260 ... and a ball depression 250...the plane of the toe area 110 is raised relative to the lower plane of the ball depression 250. Together, the ball depression 250 and the flat area 260 bed the foot in a way that accommodates the natural curve of the foot of a barefoot person standing on sand... .

Chapman teaches in paragraph 37, that FIG. 8 shows a transverse slice across of the ball area 160, illustrating the ball depression 250. The inner side 140 is now very close to the same level of the outer side 140 [should be reference number 150]. When the foot rolls naturally from the heel onto the ball, it also rolls sideways into pronation, placing more of the body weight on the ball of the foot just behind the first toe.

Chapman teaches in paragraph 38, that FIG. 9 and 10 show the ball depression 250 serves to hold the food in a naturally curved orientation, with the ball of the foot in a lower plane than the toes and the arch.

Further, Chapman specifically teaches away from the heel section being higher than the toe section in paragraph 5 by stating that traditional shoe soles are constructed with a heel portion that raises the bottom horizontal plane of the heel above the bottom horizontal plane of the ball of the foot and toes. This orientation of the foot distorts the natural interaction of certain foot joints and ligaments and results in chronic tension that leads to inflammation of various foot joints. Chapman further explains, that the raised heel portion forces the center of gravity of the body off-center, back toward the ankle and heel, which causes too much weight to be placed on the heel. According to Chapman, this shift in the center of gravity caused by a raised heel leads to chronic misalignment of the foot and the eventual development of chronic postural problems.

Chapman further teaches away from the raised heel in paragraph 29 wherein FIGS. 1 and 12 illustrate the natural foot motion of the foot through a complete walking step as a forward and side-rolling motion which Chapman asserts is the natural motion for a barefoot person walking on a surface such as sand. The shoe sole 100 is described as emulating and promoting this same natural forward and side-rolling motion.

Chapman further teaches that a cross section of the ball of foot area is substantially flat as shown in figure 8 and described in paragraph 37.

Claim 1 claims, in part, that the toe section is lower than the heel platform section. Chapman specifically teaches away from having the toe section below the heel section as discussed above. Claim 1 further claims, in part, a second slope along the front edge of the apparatus from the inner edge to the outer edge of the apparatus. Chapman teaches that, at the ball of foot area, the shoe is flat from the medial to lateral side. Claim 1 further claims, in part, the mid-foot and the toe section form an angled support platform. Chapman teaches that the ball of the foot area is depressed and the toe area is raised.

As shown above, Chapman does not anticipate claim 1. Accordingly, the appellant requests that the rejection of claim 1 be withdrawn. The Appellant believes that the above arguments are applicable to distinguish claims 3, 4, 6, 7, 9, 10 and 12 over the same rejection.

REJECTION OF CLAIMS 5, 8, and 11 UNDER 35 U.S.C. § 103(a)

Claims 5, 8, and 11 have been rejected under pre-AIA 35 USC §103(a) as being unpatentable over Chapman (U.S. Pub. No. 2008/0163513) in view of Kerrigan (U.S. Pub. No. 2002/0139011).

The Appellant believes that the above arguments with respect to claims 1, 3, 4, 6, 7, 9, 10, and 12 are applicable in distinguishing claims 5, 8, and 11 over the present rejection. Accordingly, the Appellant requests that the rejection of claims 5, 8, and 11 be withdrawn.

REJECTION OF CLAIMS 5, 8, and 11 UNDER 35 U.S.C. § 103(a)

Claim 13 has been rejected under pre-AIA 35 USC §103(a) as being unpatentable over Chapman (U.S. Pub. No. 2008/0163513) in view of Kraisosky (U.S. Pub. No. 2010/0115793). The Applicant respectfully disagrees with this rejection and the reasoning thereof.

The Appellant believes that the above arguments with respect to claims 1, 3, 4, 6, 7, 9, 10, and 12 are applicable in distinguishing claims 13 over the present rejection. Accordingly, the Appellant requests that the rejection of claim 13 be withdrawn.

The Appellant has demonstrated that the present invention as claimed is clearly distinguishable over the prior art cited of record. Therefore, the Appellant respectfully requests that the Board of Patent Appeals and Interferences to reverse the final rejection of the Examiner and instruct the Examiner to issue a notice of allowance of all claims.

The Examiner is invited to contact the undersigned by telephone or facsimile if the Examiner believes that such a communication would advance the prosecution of the present U.S. utility patent application.

RESPECTFULLY SUBMITTED,

By: /Timothy W. Markison/Reg. No. 33534
Timothy W. Markison

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CLAIMS APPENDIX

1. (Previously Presented) An apparatus comprises:

a heel platform section that has a uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus, wherein the uniform height establishes a reference slope from the outer edge to the inner edge, the reference slope substantially parallel to a bottom surface of the apparatus;

a mid-foot section juxtaposed to the heel platform section; and

a toe section juxtaposed to the mid-foot section, wherein the mid-foot section and the toe section form an angled support platform that has a first slope along the inner edge of the apparatus from a front edge of the apparatus to the heel platform section, a second slope along the front edge of the apparatus from the inner edge to the outer edge of the apparatus, and a third slope along the outer edge of the apparatus from the front edge of the apparatus to the heel platform section, the first slope, second slope, and the third slope each greater than the reference slope, wherein the toe section is lower than the heel platform section as a result of the first, second, and third slopes.

2. (Canceled)

3. (Previously Presented) The apparatus of claim 1 further comprises:

the heel platform section, the mid-foot section, and the toe section constituting at least one of an insole for footwear; and

a sole of footwear.

4. (Previously Presented) The apparatus of claim 1 further comprises:

the heel platform section has a uniform platform height, wherein, from a front edge of the heel platform to the rear edge of the apparatus, the uniform platform height has the reference slope; and

the toe section and the mid-foot section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

5. (Previously Presented) The apparatus of claim 1 further comprises:

an insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

6. (Previously Presented) An apparatus comprises:

a heel platform section having a reference slope from its outer portion to its inner portion, the reference slope substantially parallel to a bottom surface of the apparatus;

a mid-foot section having a first slope from its outer portion to its inner portion, the first slope greater than the reference slope; and

a toe section, wherein the mid-foot section, and the toe section collectively have a geometric shape having a first dimension along a line between the heel platform section and the mid-foot section, a second dimension at front outer edge of the apparatus, and a third dimension at front inner edge of the apparatus, wherein the first dimension has a magnitude that is greater than a magnitude of the second dimension and the magnitude of the second dimension is greater than a magnitude of the third dimension, and wherein the first dimension is uniform such that, from an inner edge of the apparatus to an outer edge of the apparatus, the line between the heel platform section and the mid-foot section has zero slope, wherein the toe section is lower than the heel platform section as a result of the first, second, and third slopes.

7. (Previously Presented) The apparatus of claim 6 further comprises:

the heel platform section, the mid-foot section, and the toe section constituting at least one of an insole for footwear; and

a sole of footwear.

8. (Previously Presented) The apparatus of claim 6 further comprises:

an insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

9. (Previously Presented) A shoe comprises:

an upper shoe section; and

a sole coupled to the upper shoe section, wherein the sole includes:

a specific bottom; and

an athletic positioning sole section having:

a heel platform section that has a uniform height from an outer edge to an inner edge of the athletic positioning sole section at a rear edge of the athletic positioning sole section, wherein the uniform height establishes a reference slope from the outer edge to the inner edge, the reference slope substantially parallel to a bottom surface of the sole;

a mid-foot section; and

a toe section, wherein the mid-foot section and the toe section form an angled support platform that has a first slope along the inner edge of the athletic positioning sole section from a front edge of the athletic positioning sole section to the heel platform section, a second slope along the front edge of the athletic positioning sole

section from the inner edge to the outer edge of the athletic positioning sole section, and a third slope along the outer edge of the athletic positioning sole section from the front edge of the athletic positioning sole section to the heel platform section, the first slope, second slope, and the third slope each greater than the reference slope.

10. (Previously Presented) The shoe of claim 9 further comprises:

the heel platform section has a uniform platform height, wherein, from a front edge of the heel platform to the rear edge of the athletic positioning sole section, the uniform platform height has the reference slope; and

the toe section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

11. (Previously Presented) The shoe of claim 9 further comprises:

an insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

12. (Original) The shoe of claim 9, wherein the specific bottom comprises one of:

a cleat pattern bottom;
a baseball spike bottom;
a basketball bottom;
a tennis bottom;
a golf bottom;
an ice skate bottom;
a ski boot bottom;

a cross-trainer bottom;
a running shoe bottom;
a walking shoe bottom;
a dress shoe bottom; and
a snowboard boot bottom.

13. (Original) The shoe of claim 9, wherein the upper section comprises:

a sandal structure that includes one or more straps for securing the shoe to a foot.

14-18. (Canceled)

Electronic Patent Application Fee Transmittal

Application Number:	13355801
Filing Date:	23-Jan-2012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Filer:	Timothy W. Markison/Kimberly Brown
Attorney Docket Number:	ATZ00003

Filed as Small Entity

Filing Fees for Utility under 35 USC 111(a)

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Extension - 1 month with $0 paid	2251	1	100	100
Miscellaneous:				
			Total in USD ($)	**100**

Electronic Acknowledgement Receipt

EFS ID:	34136441
Application Number:	13355801
International Application Number:	
Confirmation Number:	1012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Customer Number:	34399
Filer:	Timothy W. Markison/Kimberly Brown
Filer Authorized By:	Timothy W. Markison
Attorney Docket Number:	ATZ00003
Receipt Date:	27-OCT-2018
Filing Date:	23-JAN-2012
Time Stamp:	14:11:21
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	CARD
Payment was successfully received in RAM	$100
RAM confirmation Number	102918INTEFSW14151400
Deposit Account	
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The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Appeal Brief Filed	ATZ00003_Appeal_Brief_2018-10-26_TWM.pdf	151410 272db319a083obe2db37d91e77691443e9625cf1	no	14
Warnings:					
Information:					
2	Fee Worksheet (SB06)	fee-info.pdf	30702 0098652575 4e1d6cabf30ee9630e016d9e3a6933	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	182112		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111
If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.
National Stage of an International Application under 35 U.S.C. 371
If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.
New International Application Filed with the USPTO as a Receiving Office
If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

PTO/AIA/31 (03-14)
Approved for use through 07/31/2016. OMB 0651-0031
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NOTICE OF APPEAL FROM THE EXAMINER TO THE PATENT TRIAL AND APPEAL BOARD

Docket Number (Optional): ATZ00003

I hereby certify that this correspondence is being facsimile transmitted to the USPTO, EFS-Web transmitted to the USPTO, or deposited with the United States Postal Service with sufficient postage in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, on Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on 7/27/2018.

Signature /Kimberly Brown/

Typed or printed name Kimberly Brown

In re Application of: Michael R. Adair

Application Number	Filed
13/355,801	1/23/2012

For: ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF

Art Unit	Examiner
3765	BRANDON, MEGAN E

Applicant hereby **appeals** to the Patent Trial and Appeal Board from the last decision of the examiner.

The fee for this Notice of Appeal is (37 CFR 41.20(b)(1)) $ 800

☑ Applicant asserts small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by 50%, and the resulting fee is: $ 400

☐ Applicant certifies micro entity status. See 37 CFR 1.29. Therefore, the fee shown above is reduced by 75%, and the resulting fee is: $
Form PTO/SB/15A or B or equivalent must either be enclosed or have been submitted previously.

☐ A check in the amount of the fee is enclosed.

☐ Payment by credit card. Form PTO-2038 is attached.

☐ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. _____.

☑ Payment made via EFS-Web.

☑ A petition for an extension of time under 37 CFR 1.136(a) (PTO/AIA/22 or equivalent) is enclosed.
For extensions of time in reexamination proceedings, see 37 CFR 1.550.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

I am the

☐ applicant

☑ attorney or agent of record
Registration number 33534

☐ attorney or agent acting under 37 CFR 1.34
Registration number _____

Signature /Timothy W. Markison/

Typed or printed name Timothy W. Markison

Telephone Number 214-676-1020

Date 7/27/2018

NOTE: This form must be signed in accordance with 37 CFR 1.33. See 37 CFR 1.4 for signature requirements and certifications. Submit multiple forms if more than one signature is required, see below*.

☑ * Total of 1 forms are submitted.

This collection of information is required by 37 CFR 41.20(b)(1) and 41.31. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

Electronic Patent Application Fee Transmittal

Application Number:	13355801
Filing Date:	23-Jan-2012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Filer:	Timothy W. Markison/Kimberly Brown
Attorney Docket Number:	ATZ00003

Filed as Small Entity

Filing Fees for Utility under 35 USC 111(a)

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
NOTICE OF APPEAL	2401	1	400	400
Post-Allowance-and-Post-Issuance:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Extension-of-Time:				
Extension - 1 month with $0 paid	2251	1	100	100
Miscellaneous:				
			Total in USD ($)	**500**

Electronic Acknowledgement Receipt

EFS ID:	33310200
Application Number:	13355801
International Application Number:	
Confirmation Number:	1012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Customer Number:	34399
Filer:	Timothy W. Markison/Kimberly Brown
Filer Authorized By:	Timothy W. Markison
Attorney Docket Number:	ATZ00003
Receipt Date:	27-JUL-2018
Filing Date:	23-JAN-2012
Time Stamp:	21:11:36
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	CARD
Payment was successfully received in RAM	$500
RAM confirmation Number	073018INTEFSW21131400
Deposit Account	
Authorized User	

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Notice of Appeal Filed	ATZ00003_Notice_of_Appeal.pdf	237828 ce52dfa5ca71e0aaa9456eb644532a4708ea0a32	no	2
Warnings:					
Information:					
2	Fee Worksheet (SB06)	fee-info.pdf	32307 8302559bdd2a2f25c89e4f97f997614a1e871724	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	270135		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/355,801	01/23/2012	Michael R. Adair	ATZ00003	1012

34399 7590 03/29/2018
GARLICK & MARKISON
106 E. 6th Street, Suite 900
AUSTIN, TX 78701

EXAMINER	
LYNCH, MEGAN E	

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
03/29/2018	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

MMurdock@TEXASPATENTS.COM
bpierotti@texaspatents.com

Office Action Summary	Application No. 13/355,801	Applicant(s) ADAIR ET AL.	
	Examiner MEGAN BRANDON	Art Unit 3765	AIA (First Inventor to File) Status No

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01/29/2018*.

☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on _____; the restriction requirement and election have been incorporated into this action.

4)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims*

5)☒ Claim(s) *1 and 3-13* is/are pending in the application.

5a) Of the above claim(s) _____ is/are withdrawn from consideration.

6)☐ Claim(s) _____ is/are allowed.

7)☒ Claim(s) *1 and 3-13* is/are rejected.

8)☐ Claim(s) _____ is/are objected to.

9)☐ Claim(s) _____ are subject to restriction and/or election requirement.

* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to PPHfeedback@uspto.gov.

Application Papers

10)☐ The specification is objected to by the Examiner.

11)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

Certified copies:

a)☐ All b)☐ Some** c)☐ None of the:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

** See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b) Paper No(s)/Mail Date _____.

3) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

4) ☐ Other: _____.

The present application is being examined under the pre-AIA first to invent provisions.

DETAILED ACTION

Response to Amendment

Applicant's amendment filed January 29, 2018 has been received, Claims 1 and 3-13 are currently pending.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of pre-AIA 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim 1, 3, 4, 6, 7, 9, 10, and 12 are rejected under pre-AIA 35 U.S.C. 102(b) as being anticipated by Chapman (US 2008/0163513).

Regarding Claims 1, 6, and 9, Chapman discloses a shoe comprises an upper shoe section (as seen outlined in Fig.14) and a sole coupled to the upper shoe section (Fig.14). The sole includes a specific bottom (310) and an athletic positioning sole section (100) having a heel platform section (from heel end edge to marker 5 seen in Fig.3) that has a uniform height (200 as seen in Fig.5) from an outer edge (140) to an inner edge (150) of the athletic positioning sole section at a rear edge (heel end edge) of the athletic positioning sole section (Fig.3 & 5). The uniform height (of 200 in Fig.5) establishes a reference slope from the outer edge to the inner edge, the reference slope

substantially parallel to a bottom surface of the sole (as seen in Fig.5, 200 has no slope from 150 to 140 and is substantially parallel to 310). A mid-foot section (from marker 5 to marker 8 as seen in Fig.3) is juxtaposed to the heel platform section, and a toe section (from marker 8 to marker 10) juxtaposed to the mid-foot section (Fig.3). The mid-foot section and the toe section form an angled support platform (200 from marker 5 to 10) that has a first slope (as seen in cross-sections Fig.6-10) along the inner edge (150) of the athletic positioning sole section from a front edge (Fig.10) of the athletic positioning sole section to the heel platform section (marker 5 in Fig.3), a second slope along the front edge (Fig.10) of the athletic positioning sole section from the inner edge (150) to the outer edge (140) of the athletic positioning sole section, and a third slope (as seen in cross-sections Fig.6-10) along the outer edge (140) of the athletic positioning sole section from the front edge (Fig.10) of the athletic positioning sole section to the heel platform section (marker 5 in Fig.3). The first slope (as seen in cross-sections Fig.6-10 along 150), second slope (Fig.10 from 150 to 140), and the third slope (as seen in cross-sections Fig.6-10 along 140) each greater than the reference slope (as seen in Fig.5, 200 has no slope from 150 to 140 and the first, second, and third slopes are angled which is greater than a region with no slope); wherein the toe section is lower than the heel platform section as a result of the first, second, and third slopes (See annotated Figure below).

A heel platform section (from heel end edge to marker 5 seen in Fig.3) having a reference slope from its outer portion to its inner portion, the reference slope substantially parallel to a bottom surface of the apparatus (as seen in Fig.5, 200 has no

slope from 150 to 140 and is substantially parallel to 310). A mid-foot section (from marker 5 to marker 8 as seen in Fig.3) having a first slope from its outer portion to its inner portion (as seen in Fig.7), the first slope (as seen in Fig.7) greater than the reference slope (as seen in Fig.5). The mid-foot section and the toe section collectively (from marker 5 to marker 10) have a geometric shape having a first dimension (200 as seen in Fig.5) along a line (marker 5) between the heel platform section and the mid-foot section, a second dimension (200 in Fig.8) at a front outer edge (140) of the apparatus, and a third dimension (200 in Fig.10) at a front inner edge (150) of the apparatus. The first dimension (200 as seen in Fig.5) has a magnitude that is greater than a magnitude of the second dimension (200 in Fig.8 at 140), and the magnitude of the second dimension is greater than a magnitude of the third dimension (200 in Fig.10 at 150). The first dimension is uniform such that, from an inner edge (150) of the apparatus to an outer edge (140) of the apparatus, the line (marker 5) between the heel platform section and the mid-foot section has zero slope (as seen in Fig.5, 200 has no slope from 150 to 140).

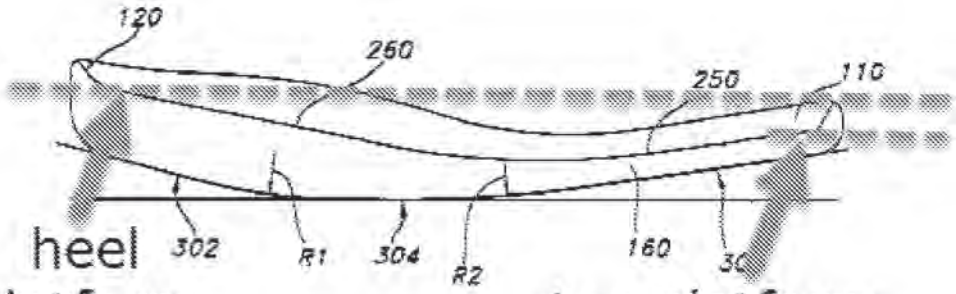


FIG 4

Regarding Claims 3 and 7, Chapman discloses a shoe further comprises the heel platform section, the mid-foot section, and the toe section constituting a sole of footwear (as seen in Fig.3 & 4).

Regarding Claims 4 and 10, Chapman discloses a shoe further comprises the heel platform (from heel end edge to marker 5 seen in Fig.3) section has a uniform platform height (200 as seen in Fig.5), wherein, from a front edge (marker 5) of the heel platform to the rear edge (heel end edge) of the apparatus, the uniform platform height has the reference slope (200 as seen in Fig.5). The toe section and the mid-foot section (from marker 5 to marker 10 as seen in Fig.3) having a second dimension (200 as seen in Fig.7) at a front outer edge (140) of the apparatus and a third dimension (200 as seen in Fig.7) at a front inner edge (150) of the apparatus.

Regarding Claim 12, Chapman discloses a shoe wherein the specific bottom comprises one of: a cleat pattern bottom, a baseball spike bottom, a basketball bottom, a tennis bottom, a golf bottom, an ice skate bottom, a ski boot bottom, a cross-trainer bottom, a running shoe bottom, a walking shoe bottom, a dress shoe bottom, and a snowboard boot bottom. It is noted that shoes are utilized for walking and the shoe of Chapman can be used for walking or running and is therefore a walking or running shoe bottom. Additionally, it is noted that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

Claim Rejections - 35 USC § 103

The following is a quotation of pre-AIA 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 5, 8, and 11 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Chapman (US 2008/0163513) in view of Kerrigan (US 2002/0139011).

Regarding Claim 5, 8, and 11, Chapman discloses the invention substantially as claimed above. Chapman does not discloses an insole on a first surface of the apparatus covering one or more of at least a portion of the heel platform section, at least a portion of the mid-foot section, and at least a portion of the toe section. However, Kerrigan discloses a sole having an insole layer that extends the full length of the sole (Pg.3, para.29).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have included an insole as taught by Kerrigan on the sole surface of Chapman, in order to provide a sole with a comfortable insole layer that provides cushioning and support to the user's foot.

3. Claim 13 is rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Chapman (US 2008/0163513) in view of Kraisosky (US 2010/0115793).

Regarding Claim 13, Chapman discloses the invention substantially as claimed above. Chapman does not disclose the upper of the shoe being a sandal with one or more straps. However, Kraisosky teaches a shoe (10) with a sole having an upper section comprising a sandal structure (16,24,22) that includes one or more straps (16,24) for securing the shoe to a foot (Fig.2 & 7).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have substituted the shoe upper of Chapman with the sandal upper, as taught by Kraisosky, as a simple substitution of one well known type of shoe upper for another to provide for the predictable result of attaching a shoe to

a wearer's foot. It is noted that Applicant has provided no criticality for the specific upper structure of the shoe.

Response to Arguments

In view of Applicant's amendment, the search has been updated, and newly modified grounds of rejection have been identified and applied. Applicant's arguments have been considered but, as they are drawn solely to the newly amended limitations, are moot in view of the newly modified ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MEGAN BRANDON whose telephone number is (571)272-3267. The examiner can normally be reached on Monday-Friday 8:00am-4:30pm.

Examiner interviews are available via telephone, in-person, and video conferencing using a USPTO supplied web-based collaboration tool. To schedule an interview, applicant is encouraged to use the USPTO Automated Interview Request (AIR) at http://www.uspto.gov/interviewpractice.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoa Huynh can be reached on (571)272-4888. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MEGAN BRANDON/
Primary Examiner, Art Unit 3765

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13355801	ADAIR ET AL.
	Examiner	Art Unit
	MEGAN BRANDON	3765

CPC- SEARCHED		
Symbol	Date	Examiner
A43B7/142; A43B7/144; A43B13/38; A43B13/145; A43B5/00; A43B13/12; A43B7/00; A43B7/14; A43B3/00	12/26/2013	MB
A61F5/0195; A61F5/14	12/26/2013	MB

CPC COMBINATION SETS - SEARCHED		
Symbol	Date	Examiner

US CLASSIFICATION SEARCHED			
Class	Subclass	Date	Examiner
36	44, 43, 25R, 110, 103, 132, 142, 144	12/26/2013	MB

* See search history printout included with this form or the SEARCH NOTES box below to determine the scope of the search.

SEARCH NOTES		
Search Notes	Date	Examiner
Inventorship Search	12/26/2013	MB
Assignee Search	12/26/2013	MB
Search Assistance Ted Kavanaugh	12/26/2013	MB
Updated Search	03/01/2014	MB
Updated Search	8/22/2014	MB
Updated Search	10/29/2014	MB
Updated Search	5/1/2015	MB
Updated Search	9/24/2015	MB
Updated Search	11/17/2016	MB
Updated Search	8/3/2017	MB
Updated Search	3/5/2018	MB

INTERFERENCE SEARCH			
US Class/ CPC Symbol	US Subclass / CPC Group	Date	Examiner

Certification under 37 C.F.R. §1.8

Date of Mailing or Transmission: 1/29/2018

I hereby certify that I have caused the document indicated herein on the date indicated above to be transmitted via the Office electronic filing system in accordance with 37 C.F.R. §1.6(a)(4).

BY: /Kimberly Brown/ (Signature) **Name:** Kimberly Brown (Typed Name)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

1st Named Inventor:	Michael R. Adair	**Examiner:**	LYNCH, MEGAN E
Application No.:	13/355,801	**Art Unit:**	3765
Filing Date:	23 Jan 2012	**Docket No.:**	ATZ00003
Confirmation No.:	1012		
Title:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF		

RESPONSE TO NON-FINAL OFFICE ACTION

Date: 1/29/2018

United States Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450

In response to an office action dated August 29, 2017 regarding the above-captioned patent application, the Applicant respectfully submits the following amendment and response.

AMENDMENT TO THE CLAIMS

1. (Currently Amended) An apparatus comprises:

a heel platform section that has a uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus, wherein the uniform height establishes a reference slope from the outer edge to the inner edge, the reference slope substantially parallel to a bottom surface of the apparatus;

a mid-foot section juxtaposed to the heel platform section; and

a toe section juxtaposed to the mid-foot section, wherein the mid-foot section and the toe section form an angled support platform that has a first slope along the inner edge of the apparatus from a front edge of the apparatus to the heel platform section, a second slope along the front edge of the apparatus from the inner edge to the outer edge of the apparatus, and a third slope along the outer edge of the apparatus from the front edge of the apparatus to the heel platform section, the first slope, second slope, and the third slope each greater than the reference slope, wherein the toe section is lower than the heel platform section as a result of the first, second, and third slopes.

2. (Canceled)

3. (Previously Presented) The apparatus of claim 1 further comprises:

the heel platform section, the mid-foot section, and the toe section constituting at least one of an insole for footwear; and

a sole of footwear.

4. (Previously Presented) The apparatus of claim 1 further comprises:

the heel platform section has a uniform platform height, wherein, from a front edge of the heel platform to the rear edge of the apparatus, the uniform platform height has the reference slope; and

the toe section and the mid-foot section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

5. (Previously Presented) The apparatus of claim 1 further comprises:

an insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

6. (Currently Amended) An apparatus comprises:

a heel platform section having a reference slope from its outer portion to its inner portion, the reference slope substantially parallel to a bottom surface of the apparatus;

a mid-foot section having a first slope from its outer portion to its inner portion, the first slope greater than the reference slope; and

a toe section, wherein the mid-foot section, and the toe section collectively have a geometric shape having a first dimension along a line between the heel platform section and the mid-foot section, a second dimension at front outer edge of the apparatus, and a third dimension at front inner edge of the apparatus, wherein the first dimension has a magnitude that is greater than a magnitude of the second dimension and the magnitude of the second dimension is greater than a magnitude of the third dimension, and wherein the first dimension is uniform such that, from an inner edge of the apparatus to an outer edge of the apparatus, the line between the heel platform section and the mid-foot section has zero slope, wherein the toe section is lower than the heel platform section as a result of the first, second, and third slopes.

7. (Previously Presented) The apparatus of claim 6 further comprises:

the heel platform section, the mid-foot section, and the toe section constituting at least one of an insole for footwear; and

a sole of footwear.

8. (Previously Presented) The apparatus of claim 6 further comprises:

an insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

9. (Previously Presented) A shoe comprises:

an upper shoe section; and

a sole coupled to the upper shoe section, wherein the sole includes:

a specific bottom; and

an athletic positioning sole section having:

a heel platform section that has a uniform height from an outer edge to an inner edge of the athletic positioning sole section at a rear edge of the athletic positioning sole section, wherein the uniform height establishes a reference slope from the outer edge to the inner edge, the reference slope substantially parallel to a bottom surface of the sole;

a mid-foot section; and

a toe section, wherein the mid-foot section and the toe section form an angled support platform that has a first slope along the inner edge of the athletic positioning sole section from a front edge of the athletic positioning sole section to the heel platform section, a second slope along the front edge of the athletic positioning sole

section from the inner edge to the outer edge of the athletic positioning sole section, and a third slope along the outer edge of the athletic positioning sole section from the front edge of the athletic positioning sole section to the heel platform section, the first slope, second slope, and the third slope each greater than the reference slope.

10. (Previously Presented) The shoe of claim 9 further comprises:

the heel platform section has a uniform platform height, wherein, from a front edge of the heel platform to the rear edge of the athletic positioning sole section, the uniform platform height has the reference slope; and

the toe section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

11. (Previously Presented) The shoe of claim 9 further comprises:

an insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

12. (Original) The shoe of claim 9, wherein the specific bottom comprises one of:

a cleat pattern bottom;
a baseball spike bottom;
a basketball bottom;
a tennis bottom;
a golf bottom;
an ice skate bottom;
a ski boot bottom;

a cross-trainer bottom;
a running shoe bottom;
a walking shoe bottom;
a dress shoe bottom; and
a snowboard boot bottom.

13. (Original) The shoe of claim 9, wherein the upper section comprises:

a sandal structure that includes one or more straps for securing the shoe to a foot.

14-18. (Canceled)

REMARKS/ARGUMENTS

1. In the above referenced Office Action:

a. Status of the claims.

- Claims 1 and 3-13 are pending;
- Claims 1 and 3-13 are rejected;
- Claims 2 and 14-18 are cancelled.

b. Claims 1, 3, 4, 6, 7, 9, 10 and 12 have been rejected under pre-AIA 35 USC §102 (b) as being anticipated by Chapman (U.S. Pub. No. 2008/0163513);

c. Claims 5, 8 and 11 have been rejected under pre-AIA 35 USC §103(a) as being unpatentable over Chapman (U.S. Pub. No. 2008/0163513) in view of Kerrigan (U.S. Pub. No. 2002/0139011);

d. Claim 13 has been rejected under pre-AIA 35 USC §103(a) as being unpatentable over Chapman (U.S. Pub. No. 2008/0163513) in view of Kraisosky (U.S. Pub. No. 2010/0115793).

The rejections and objections have been traversed. Applicant respectfully requests reconsideration of the allowability of claims 1 and 3-13.

2. Claims 1, 3, 4, 6, 7, 9, 10 and 12 have been rejected under pre-AIA 35 USC §102 (b) as being anticipated by Chapman (U.S. Pub. No. 2008/0163513). The Applicant respectfully disagrees with this rejection and the reasoning thereof.

Chapman teaches:

In paragraph 5 that traditional shoe soles cancel much of this natural design. Most traditional shoe soles are constructed with a heel portion that raises the bottom horizontal plane of the heel above the bottom horizontal plane of the ball of the foot and toes. This orientation of the foot distorts the natural interaction of certain foot joints and ligaments and results in chronic tension that leads to inflammation of various foot joints. [emphasis added]

In paragraph 9 that, what is needed, therefore, is a shoe sole that allows the foot to roll naturally from heel to toe and side to side. What is further needed is such a shoe sole that supports the entire foot throughout the entire step.

In paragraph 10 that the invention is a shoe sole with a rocker or roller bottom that is a continuously curved bottom surface. ... Also, formed in the lower surface is a longitudinal flex groove that allows the shoe sole to flex along lines that extend in the longitudinal direction of the shoe sole, thereby allowing the foot to roll naturally from side to side simultaneously as it rolls from the heel toward the first toe.

In paragraph 37 that FIG. 8 shows a transverse slice across of the ball area 160, illustrating the ball depression 250. The inner side 140 is now very close to the same level of the outer side 140 [should be reference number 150]. When the foot rolls naturally from the heel onto the ball, it also rolls sideways into pronation, placing more of the body weight on the ball of the foot just behind the first toe.

As such, Chapman is teaching a shoe that has a rocker or roller bottom that is a continuously curved bottom surface. It is designed to support the natural movement of the foot; as if it were walking in sand. Chapman further teaches that a cross section of the ball of foot area is substantially flat as shown in figure 8 and described in paragraph 37. Chapman specifically teaches away from the heel section being higher than the toe section by stated that traditional shoe soles are constructed with a heel portion that raises the bottom horizontal plane of the heel above the bottom horizontal plane of the ball of the foot and toes. This orientation of the foot distorts the natural interaction of certain foot joints and ligaments and results in chronic tension that leads to inflammation of various foot joints in paragraph 5.

Claim 1 claims, in part, that the toe section is lower than the heel platform section. Chapman specifically teaches away from the having the toe section below the heel section. Claim 1 further claims, in part, a second slope along the front edge of the apparatus from the inner edge to the outer edge of the apparatus. Chapman teaches that, at the ball of foot area, the shoe is flat from the medial to lateral side. Based on these points, Chapman does not anticipate claim 1.

The applicant believes that the above arguments are applicable to distinguish claims 3, 4, 6, 7, 9, 10 and 12 over the same rejection.

3. Claims 5, 8 and 11 have been rejected under pre-AIA 35 USC §103(a) as being unpatentable over Chapman (U.S. Pub. No. 2008/0163513) in view of Kerrigan (U.S. Pub. No. 2002/0139011). The Applicant respectfully disagrees with this rejection and the reasoning thereof.

The applicant believes that the above arguments are applicable to distinguish claims 5, 8 and 11 over the present rejection.

4. Claim 13 has been rejected under pre-AIA 35 USC §103(a) as being unpatentable over Chapman (U.S. Pub. No. 2008/0163513) in view of Kraisosky (U.S. Pub. No. 2010/0115793). The Applicant respectfully disagrees with this rejection and the reasoning thereof.

The applicant believes that the above arguments are applicable to distinguish claim 13 over the present rejection.

CONCLUSION

For the foregoing reasons, the Applicant believes that claims 1 and 3-13 are in condition for allowance and respectfully requests that they be passed to allowance.

The Applicant hereby rescinds any disclaimer of claim scope made in the parent application or any predecessor application in relation to the instant application. The Examiner is advised that any such previous disclaimer and the prior art that it was made to avoid, may need to be revisited. Further, the claims in the instant application may be broader than those of a parent application. Moreover, the Examiner should also be advised that any disclaimer made in the instant application should not be read into or against the parent application.

No additional fees are believed to be due. In the event that additional fees are due or a credit for an overpayment is due, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-2126.

The Examiner is invited to contact the undersigned by e-mail if the Examiner believes that such a communication would advance the prosecution of the present invention.

RESPECTFULLY SUBMITTED,

By: /Timothy W. Markison/Reg. No. 33534
Timothy W. Markison

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Phone: (214) 676-1020
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

1st Named Inventor:	Michael R. Adair	**Examiner:**	LYNCH, MEGAN E
Application No.:	13/355,801	**Art Unit:**	3765
Filing Date:	23 Jan 2012	**Docket No.:**	ATZ00003
Confirmation No.:	1012		
Title:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF		

AUTHORIZATION FOR INTERNET COMMUNICATIONS IN A PATENT APPLICATION OR REQUEST TO WITHDRAW AUTHORIZATION FOR INTERNET COMMUNICATIONS

I. To authorize permission for Internet Communications.

Recognizing that Internet communications are not secure, I hereby authorize the USPTO to communicate with the undersigned and practitioners in accordance with 37 CFR 1.33 and 37 CFR 1.34 concerning any subject matter of this application via video conferencing, instant messaging, or electronic mail. I understand that a copy of these communications will be made of record in the application file. (MPEP 502.03).

I am the attorney or agent of record. Registration No. 33534.

RESPECTFULLY SUBMITTED,

By: /Timothy W. Markison/Reg. No. 33534
Timothy W. Markison

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Austin, TX 78701
Phone: (214) 676-1020
E-mail: tmarkison@texaspatents.com

Electronic Patent Application Fee Transmittal

Application Number:	13355801
Filing Date:	23-Jan-2012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Filer:	Timothy W. Markison/Kimberly Brown
Attorney Docket Number:	ATZ00003

Filed as Small Entity

Filing Fees for Utility under 35 USC 111(a)

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Extension - 2 months with $0 paid	2252	1	300	300
Miscellaneous:				
			Total in USD ($)	**300**

Electronic Acknowledgement Receipt

EFS ID:	31636384
Application Number:	13355801
International Application Number:	
Confirmation Number:	1012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Customer Number:	34399
Filer:	Timothy W. Markison/Kimberly Brown
Filer Authorized By:	Timothy W. Markison
Attorney Docket Number:	ATZ00003
Receipt Date:	29-JAN-2018
Filing Date:	23-JAN-2012
Time Stamp:	17:12:35
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	CARD
Payment was successfully received in RAM	$300
RAM confirmation Number	013018INTEFSW17150001
Deposit Account	
Authorized User	

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1		ATZ00003_NFOA_Response.pdf	120056 2c92ce53a2aedc8606ae60b3aac0be#ddd4 1b624	yes	11

	Multipart Description/PDF files in .zip description		
	Document Description	**Start**	**End**
	Amendment/Req. Reconsideration-After Non-Final Reject	1	1
	Claims	2	6
	Applicant Arguments/Remarks Made in an Amendment	7	10
	Internet Communications Authorized	11	11

Warnings:					
Information:					
2	Fee Worksheet (SB06)	fee-info.pdf	30704 6f496b938be0c2432488e53d3d45057062 006708	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	150760		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

PTO/SB/06 (09-11)
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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
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PATENT APPLICATION FEE DETERMINATION RECORD Substitute for Form PTO-875	Application or Docket Number 13/355,801	Filing Date 01/23/2012	☐ To be Mailed

ENTITY: ☐ LARGE ☑ SMALL ☐ MICRO

APPLICATION AS FILED - PART I

FOR	(Column 1) NUMBER FILED	(Column 2) NUMBER EXTRA		RATE ($)	FEE ($)
☐ BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A		N/A	
☐ SEARCH FEE (37 CFR 1.16(k), (l), or (m))	N/A	N/A		N/A	
☐ EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A		N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =	*		x $30 =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*		x $125 =	
☐ APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is $310 ($155 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).				
☐ MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))					
* If the difference in column 1 is less than zero, enter "0" in column 2.				TOTAL	

APPLICATION AS AMENDED - PART II

		(Column 1)		(Column 2)	(Column 3)			
AMENDMENT	01/29/2018	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA		RATE ($)	ADDITIONAL FEE ($)
	Total (37 CFR 1.16(i))	* 12	Minus	** 20	= 0		x $50 =	0
	Independent (37 CFR 1.16(h))	* 3	Minus	*** 4	= 0		x $230 =	0
	☐ Application Size Fee (37 CFR 1.16(s))							
	☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))							
							TOTAL ADD'L FEE	0

		(Column 1)		(Column 2)	(Column 3)			
AMENDMENT		CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA		RATE ($)	ADDITIONAL FEE ($)
	Total (37 CFR 1.16(i))	*	Minus	**	=		x $0 =	
	Independent (37 CFR 1.16(h))	*	Minus	***	=		x $0 =	
	☐ Application Size Fee (37 CFR 1.16(s))							
	☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))							
							TOTAL ADD'L FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.	SLIE
** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".	DeShonne T Martino
*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".	
The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.	

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/355,801	01/23/2012	Michael R. Adair	ATZ00003	1012

34399 7590 08/29/2017
GARLICK & MARKISON
106 E. 6th Street, Suite 900
AUSTIN, TX 78701

EXAMINER
LYNCH, MEGAN E

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
08/29/2017	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

MMurdock@TEXASPATENTS.COM
ghmptocor@texaspatents.com
bpierotti@texaspatents.com

Office Action Summary	Application No. 13/355,801	Applicant(s) ADAIR ET AL.	
	Examiner MEGAN BRANDON	Art Unit 3765	AIA (First Inventor to File) Status No

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06/22/2017*.

☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on _____; the restriction requirement and election have been incorporated into this action.

4)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims*

5)☒ Claim(s) *1 and 3-13* is/are pending in the application.

5a) Of the above claim(s) _____ is/are withdrawn from consideration.

6)☐ Claim(s) _____ is/are allowed.

7)☒ Claim(s) *1 and 3-13* is/are rejected.

8)☐ Claim(s) _____ is/are objected to.

9)☐ Claim(s) _____ are subject to restriction and/or election requirement.

* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to PPHfeedback@uspto.gov.

Application Papers

10)☐ The specification is objected to by the Examiner.

11)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

Certified copies:

a)☐ All b)☐ Some** c)☐ None of the:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

** See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b) Paper No(s)/Mail Date _____.

3) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

4) ☐ Other: _____.

The present application is being examined under the pre-AIA first to invent provisions.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 22, 2016 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of pre-AIA 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim 1, 3, 4, 6, 7, 9, 10, and 12 are rejected under pre-AIA 35 U.S.C. 102(b) as being anticipated by Chapman (US 2008/0163513).

Regarding Claims 1, 6, and 9, Chapman discloses a shoe comprises an upper shoe section (as seen outlined in Fig.14) and a sole coupled to the upper shoe section (Fig.14). The sole includes a specific bottom (310) and an athletic positioning sole section (100) having a heel platform section (from heel end edge to marker 5 seen in

Fig.3) that has a uniform height (200 as seen in Fig.5) from an outer edge (140) to an inner edge (150) of the athletic positioning sole section at a rear edge (heel end edge) of the athletic positioning sole section (Fig.3 & 5). The uniform height (of 200 in Fig.5) establishes a reference slope from the outer edge to the inner edge, the reference slope substantially parallel to a bottom surface of the sole (as seen in Fig.5, 200 has no slope from 150 to 140 and is substantially parallel to 310). A mid-foot section (from marker 5 to marker 8 as seen in Fig.3) is juxtaposed to the heel platform section, and a toe section (from marker 8 to marker 10) juxtaposed to the mid-foot section (Fig.3). The mid-foot section and the toe section form an angled support platform (200 from marker 5 to 10) that has a first slope (as seen in cross-sections Fig.6-10) along the inner edge (150) of the athletic positioning sole section from a front edge (Fig.10) of the athletic positioning sole section to the heel platform section (marker 5 in Fig.3), a second slope along the front edge (Fig.10) of the athletic positioning sole section from the inner edge (150) to the outer edge (140) of the athletic positioning sole section, and a third slope (as seen in cross-sections Fig.6-10) along the outer edge (140) of the athletic positioning sole section from the front edge (Fig.10) of the athletic positioning sole section to the heel platform section (marker 5 in Fig.3). The first slope (as seen in cross-sections Fig.6-10 along 150), second slope (Fig.10 from 150 to 140), and the third slope (as seen in cross-sections Fig.6-10 along 140) each greater than the reference slope (as seen in Fig.5, 200 has no slope from 150 to 140 and the first, second, and third slopes are angled which is greater than a region with no slope).

A heel platform section (from heel end edge to marker 5 seen in Fig.3) having a reference slope from its outer portion to its inner portion, the reference slope substantially parallel to a bottom surface of the apparatus (as seen in Fig.5, 200 has no slope from 150 to 140 and is substantially parallel to 310). A mid-foot section (from marker 5 to marker 8 as seen in Fig.3) having a first slope from its outer portion to its inner portion (as seen in Fig.7), the first slope (as seen in Fig.7) greater than the reference slope (as seen in Fig.5). The mid-foot section and the toe section collectively (from marker 5 to marker 10) have a geometric shape having a first dimension (200 as seen in Fig.5) along a line (marker 5) between the heel platform section and the mid-foot section, a second dimension (200 in Fig.8) at a front outer edge (140) of the apparatus, and a third dimension (200 in Fig.10) at a front inner edge (150) of the apparatus. The first dimension (200 as seen in Fig.5) has a magnitude that is greater than a magnitude of the second dimension (200 in Fig.8 at 140), and the magnitude of the second dimension is greater than a magnitude of the third dimension (200 in Fig.10 at 150). The first dimension is uniform such that, from an inner edge (150) of the apparatus to an outer edge (140) of the apparatus, the line (marker 5) between the heel platform section and the mid-foot section has zero slope (as seen in Fig.5, 200 has no slope from 150 to 140).

Regarding Claims 3 and 7, Chapman discloses a shoe further comprises the heel platform section, the mid-foot section, and the toe section constituting a sole of footwear (as seen in Fig.3 & 4).

Regarding Claims 4 and 10, Chapman discloses a shoe further comprises the heel platform (from heel end edge to marker 5 seen in Fig.3) section has a uniform platform height (200 as seen in Fig.5), wherein, from a front edge (marker 5) of the heel platform to the rear edge (heel end edge) of the apparatus, the uniform platform height has the reference slope (200 as seen in Fig.5). The toe section and the mid-foot section (from marker 5 to marker 10 as seen in Fig.3) having a second dimension (200 as seen in Fig.7) at a front outer edge (140) of the apparatus and a third dimension (200 as seen in Fig.7) at a front inner edge (150) of the apparatus.

Regarding Claim 12, Chapman discloses a shoe wherein the specific bottom comprises one of: a cleat pattern bottom, a baseball spike bottom, a basketball bottom, a tennis bottom, a golf bottom, an ice skate bottom, a ski boot bottom, a cross-trainer bottom, a running shoe bottom, a walking shoe bottom, a dress shoe bottom, and a snowboard boot bottom. It is noted that shoes are utilized for walking and the shoe of Chapman can be used for walking or running and is therefore a walking or running shoe bottom. Additionally, it is noted that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

Claim Rejections - 35 USC § 103

The following is a quotation of pre-AIA 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 5, 8, and 11 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Chapman (US 2008/0163513) in view of Kerrigan (US 2002/0139011).

Regarding Claim 5, 8, and 11, Chapman discloses the invention substantially as claimed above. Chapman does not discloses an insole on a first surface of the apparatus covering one or more of at least a portion of the heel platform section, at least a portion of the mid-foot section, and at least a portion of the toe section. However, Kerrigan discloses a sole having an insole layer that extends the full length of the sole (Pg.3, para.29).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have included an insole as taught by Kerrigan on the sole surface of Chapman, in order to provide a sole with a comfortable insole layer that provides cushioning and support to the user's foot.

3. Claim 13 is rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Chapman (US 2008/0163513) in view of Kraisosky (US 2010/0115793).

Regarding Claim 13, Chapman discloses the invention substantially as claimed above. Chapman does not disclose the upper of the shoe being a sandal with one or more straps straps. However, Kraisosky teaches a shoe (10) with a sole having an upper section comprising a sandal structure (16,24,22) that includes one or more straps (16,24) for securing the shoe to a foot (Fig.2 & 7).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have substituted the shoe upper of Chapman with the sandal upper, as taught by Kraisosky, as a simple substitution of one well known type of shoe upper for another to provide for the predictable result of attaching a shoe to a wearer's foot. It is noted that Applicant has provided no criticality for the specific upper structure of the shoe.

Response to Arguments

In view of Applicant's amendment, the search has been updated, and newly modified grounds of rejection have been identified and applied. Applicant's arguments have been considered but, as they are drawn to the newly amended limitations, are moot in view of the newly modified ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MEGAN BRANDON whose telephone number is (571)272-3267. The examiner can normally be reached on Monday-Friday 8:00am-4:30pm.

Examiner interviews are available via telephone, in-person, and video conferencing using a USPTO supplied web-based collaboration tool. To schedule an interview, applicant is encouraged to use the USPTO Automated Interview Request (AIR) at http://www.uspto.gov/interviewpractice.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoa Huynh can be reached on (571)272-4888. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MEGAN BRANDON/
Examiner, Art Unit 3765

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13355801	ADAIR ET AL.
	Examiner	Art Unit
	MEGAN BRANDON	3765

CPC- SEARCHED

Symbol	Date	Examiner
A43B7/142; A43B7/144; A43B13/38; A43B13/145; A43B5/00; A43B13/12; A43B7/00; A43B7/14; A43B3/00	12/26/2013	MB
A61F5/0195; A61F5/14	12/26/2013	MB

CPC COMBINATION SETS - SEARCHED

Symbol	Date	Examiner

US CLASSIFICATION SEARCHED

Class	Subclass	Date	Examiner
36	44, 43, 25R, 110, 103, 132, 142, 144	12/26/2013	MB

* See search history printout included with this form or the SEARCH NOTES box below to determine the scope of the search.

SEARCH NOTES

Search Notes	Date	Examiner
Inventorship Search	12/26/2013	MB
Assignee Search	12/26/2013	MB
Search Assistance Ted Kavanaugh	12/26/2013	MB
Updated Search	03/01/2014	MB
Updated Search	8/22/2014	MB
Updated Search	10/29/2014	MB
Updated Search	5/1/2015	MB
Updated Search	9/24/2015	MB
Updated Search	11/17/2016	MB
Updated Search	8/3/2017	MB

INTERFERENCE SEARCH

US Class/ CPC Symbol	US Subclass / CPC Group	Date	Examiner

Doc code: RCEX
Doc description: Request for Continued Examination (RCE)

PTO/SB/30EFS (07-14)
Approved for use through 07/31/2016. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

REQUEST FOR CONTINUED EXAMINATION(RCE)TRANSMITTAL
(Submitted Only via EFS-Web)

Application Number	13355801	Filing Date	2012-01-23	Docket Number (if applicable)	ATZ00003	Art Unit	3765
First Named Inventor	Michael R. Adair			Examiner Name	BRANDON, MEGAN E		

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application.
Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, to any international application that does not comply with the requirements of 35 U.S.C. 371, or to any design application. The Instruction Sheet for this form is located at WWW.USPTO.GOV.

SUBMISSION REQUIRED UNDER 37 CFR 1.114

Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

☐ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

- ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____
- ☐ Other _____

☒ Enclosed

- ☒ Amendment/Reply
- ☐ Information Disclosure Statement (IDS)
- ☐ Affidavit(s)/ Declaration(s)
- ☐ Other _____

MISCELLANEOUS

☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of months _____ (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)

☒ Other Three Month Extension of Time

FEES

The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

☒ The Director is hereby authorized to charge any underpayment of fees, or credit any overpayments, to Deposit Account No 502126

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

☒ Patent Practitioner Signature

Applicant Signature

PTO/SB/30EFS (07-14)
Approved for use through 07/31/2016. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

Signature of Registered U.S. Patent Practitioner			
Signature	/Bruce E. Garlick/	Date (YYYY-MM-DD)	2017-06-22
Name	Bruce E. Garlick	Registration Number	36520

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

REMARKS/ARGUMENTS

1. In the above referenced Office Action:

a. Status of the claims.

- Claims 1, 3-14 and 16-18 are pending;
- Claims 1, 3-14 and 16-18 are rejected.

b. Claims 16, 11, 8 and 5 have been rejected under 35 USC §112(a) or 35 USC §112 (pre-AIA), first paragraph, as failing to comply with the enablement requirement;

c. Claims 1, 4, 6, 9, 10 and 14 have been rejected under 35 USC §112(a) or 35 USC §112 (pre-AIA), first paragraph, as failing to comply with the written description requirement;

d. Claims 1, 3, 4, 6, 7, 9, 10, 12-14 and 15-18 have been rejected under pre-AIA 35 USC §102 (b) as being anticipated by Chapman (U.S. Pub. No. 2008/0163513);

e. Claims 5, 8, 11 and 16 have been rejected under pre-AIA 35 USC §103(a) as being unpatentable over Chapman (U.S. Pub. No. 2008/0163513) in view of Kerrigan (U.S. Pub. No. 2002/0139011);

f. Claims 13 and 18 have been rejected under pre-AIA 35 USC §103(a) as being unpatentable over Chapman (U.S. Pub. No. 2008/0163513) in view of Kraisosky (U.S. Pub. No. 2010/0115793).

2. Claims 16, 11, 8 and 5 have been rejected under 35 USC §112(a) or 35 USC §112 (pre-AIA), first paragraph, as failing to comply with the enablement requirement. Claims 16, 11, 8, and 5 are amended herein to overcome these rejections.

3. Claims 1, 4, 6, 9, 10 and 14 have been rejected under 35 USC §112(a) or 35 USC §112 (pre-AIA), first paragraph, as failing to comply with the written description requirement. Claims 1, 4, 6, 9, and 10 are amended herein to overcome these rejections. Claim 14 is canceled.

4. Claims 1, 3, 4, 6, 7, 9, 10, 12-14 and 15-18 have been rejected under pre-AIA 35 USC §102 (b) as being anticipated by Chapman (U.S. Pub. No. 2008/0163513). Claims 1, 6, and 9 are amended herein to overcome these rejections. Chapman fails to disclose a heel section with a

reference slope that is substantially parallel to a bottom surface of the sole (apparatus) and other portions of the sole (apparatus) having greater slopes that the reference slope.

5. Claims 5, 8, 11 and 16 have been rejected under pre-AIA 35 USC §103(a) as being unpatentable over Chapman (U.S. Pub. No. 2008/0163513) in view of Kerrigan (U.S. Pub. No. 2002/0139011). For the reasons stated above, these rejections are overcome.

6. Claims 13 and 18 have been rejected under pre-AIA 35 USC §103(a) as being unpatentable over Chapman (U.S. Pub. No. 2008/0163513) in view of Kraisosky (U.S. Pub. No. 2010/0115793). For the reasons stated above, these rejections are overcome.

CONCLUSION

For the foregoing reasons, the Applicant believes that claims 1, and 3-13 are in condition for allowance and respectfully requests that they be passed to allowance.

The Applicant hereby rescinds any disclaimer of claim scope made in the parent application or any predecessor application in relation to the instant application. The Examiner is advised that any such previous disclaimer and the prior art that it was made to avoid, may need to be revisited. Further, the claims in the instant application may be broader than those of a parent application. Moreover, the Examiner should also be advised that any disclaimer made in the instant application should not be read into or against the parent application.

The Examiner is invited to contact the undersigned by telephone or e-mail if the Examiner believes that such a communication would advance the prosecution of the present invention.

RESPECTFULLY SUBMITTED,

By: /Bruce E. Garlick/Reg. No. 36520
Bruce E. Garlick
Garlick & Markison
106 E. 6th Street, Suite 900
Austin, TX 78701
Phone: (512) 751-5682
E-mail: bgarlick@texaspatents.com

AMENDMENT TO THE CLAIMS

1. (currently amended) An apparatus comprises:

a heel platform section that has a uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus, wherein the uniform height establishes a reference ~~has zero~~ slope from the outer edge to the inner edge, the reference slope substantially parallel to a bottom surface of the apparatus;

a mid-foot section juxtaposed to the heel platform section; and

a toe section juxtaposed to the mid-foot section, wherein the mid-foot section and the toe section form an angled support platform that has a first slope ~~of a polarity~~ along the inner edge of the apparatus from a front edge of the apparatus to the heel platform section, a second slope ~~of the polarity~~ along the front edge of the apparatus from the inner edge to the outer edge of the apparatus, and a third slope ~~of the polarity~~ along the outer edge of the apparatus from the front edge of the apparatus to the heel platform section, the first slope, second slope, and the third slope each greater than the reference slope.

2. (canceled)

3. (previously presented) The apparatus of claim 1 further comprises:

the heel platform section, the mid-foot section, and the toe section constituting at least one of an insole for footwear; and

a sole of footwear.

4. (currently amended) The apparatus of claim 1 further comprises:

the heel platform section has a uniform platform height, wherein, from a front edge of the heel platform to the rear edge of the apparatus, the uniform platform height has the reference ~~zero~~ slope; and

the toe section and the mid-foot section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

5. (currently amended) The apparatus of claim 1 further comprises:

an ~~padded~~ insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

6. (currently amended) An apparatus comprises:

a heel platform section having a reference slope from its outer portion to its inner portion, the reference slope substantially parallel to a bottom surface of the apparatus;

a mid-foot section having a first slope from its outer portion to its inner portion, the first slope greater than the reference slope; and

a toe section, wherein the mid-foot section, and the toe section collectively have a geometric shape having a first dimension along a line between the heel platform section and the mid-foot section, a second dimension at front outer edge of the apparatus, and a third dimension at front inner edge of the apparatus, wherein the first dimension has a magnitude that is greater than a magnitude of the second dimension and the magnitude of the second dimension is greater than a magnitude of the third dimension, and wherein the first dimension is uniform such that, from an inner edge of the apparatus to an outer edge of the apparatus, the line between the heel platform section and the mid-foot section has zero slope .

7. (previously presented) The apparatus of claim 6 further comprises:

the heel platform section, the mid-foot section, and the toe section constituting at least one of an insole for footwear; and

a sole of footwear.

8. (currently amended) The apparatus of claim 6 further comprises:

an ~~padded~~ insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

9. (currently amended) A shoe comprises:

an upper shoe section; and

a sole coupled to the upper shoe section, wherein the sole includes:

a specific bottom; and

an athletic positioning sole section having:

a heel platform section that has a uniform height from an outer edge to an inner edge of the athletic positioning sole section at a rear edge of the athletic positioning sole section, wherein the uniform height establishes a reference ~~has zero~~ slope from the outer edge to the inner edge, the reference slope substantially parallel to a bottom surface of the sole;

a mid-foot section; and

a toe section, wherein the mid-foot section and the toe section form an angled support platform that has a first slope ~~of a polarity~~ along the inner edge of the athletic positioning sole section from a front edge of the athletic positioning sole

section to the heel platform section, a second slope ~~of the polarity~~ along the front edge of the athletic positioning sole section from the inner edge to the outer edge of the athletic positioning sole section, and a third slope ~~of the polarity~~ along the outer edge of the athletic positioning sole section from the front edge of the athletic positioning sole section to the heel platform section, the first slope, second slope, and the third slope each greater than the reference slope.

10. (currently amended) The shoe of claim 9 further comprises:

the heel platform section has a uniform platform height, wherein, from a front edge of the heel platform to the rear edge of the athletic positioning sole section, the uniform platform height has the reference ~~zero~~ slope; and

the toe section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

11. (currently amended) The shoe of claim 9 further comprises:

an ~~padded~~ insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

12. (original) The shoe of claim 9, wherein the specific bottom comprises one of:

a cleat pattern bottom;
a baseball spike bottom;
a basketball bottom;
a tennis bottom;
a golf bottom;
an ice skate bottom;
a ski boot bottom;
a cross-trainer bottom;
a running shoe bottom;
a walking shoe bottom;
a dress shoe bottom; and
a snowboard boot bottom.

13. (original) The shoe of claim 9, wherein the upper section comprises:

a sandal structure that includes one or more straps for securing the shoe to a foot.

14-18. (canceled)

Certification under 37 C.F.R. §1.8

Date of Mailing or Transmission: June 22, 2017

I hereby certify that I have caused the document indicated herein on the date indicated above to be transmitted via the Office electronic filing system in accordance with 37 C.F.R. §1.6(a)(4).

BY: /Kimberly Brown/ (Signature) **Name:** Kimberly Brown (Typed Name)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

1st Named Inventor:	Michael R. Adair	**Examiner:**	Brandon, Megan E
Application No.:	13/355,801	**Art Unit:**	3765
Filing Date:	23 Jan 2012	**Docket No.:**	ATZ00003
Confirmation No.:	1012		
Title:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF		

RESPONSE TO FINAL OFFICE ACTION

Date: June 22, 2017

United States Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450

In response to an office action dated December 22, 2016 regarding the above-captioned patent application, the Applicant respectfully submits the following amendment and response, which is being filed within three (3) months of the mailing date thereof.

The three (3) month due date for responding to the office action falls on March 22, 2017, and the Applicant respectfully asserts that this amendment and response being filed on or before March 22, 2017 is timely filed in accordance with M.P.E.P. §710.05, 35 U.S.C. §21, and 37 C.F.R. §1.7.

Electronic Patent Application Fee Transmittal

Application Number:	13355801
Filing Date:	23-Jan-2012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Filer:	Bruce Emory Garlick/Kimberly Brown
Attorney Docket Number:	ATZ00003

Filed as Small Entity

Filing Fees for Utility under 35 USC 111(a)

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Extension - 3 months with $0 paid	2253	1	700	700
Miscellaneous:				
RCE- 2ND AND SUBSEQUENT REQUEST	2820	1	850	850
		Total in USD ($)		**1550**

Electronic Acknowledgement Receipt

EFS ID:	29573735
Application Number:	13355801
International Application Number:	
Confirmation Number:	1012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Customer Number:	34399
Filer:	Bruce Emory Garlick/Kimberly Brown
Filer Authorized By:	Bruce Emory Garlick
Attorney Docket Number:	ATZ00003
Receipt Date:	22-JUN-2017
Filing Date:	23-JAN-2012
Time Stamp:	10:48:25
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	CARD
Payment was successfully received in RAM	$1550
RAM confirmation Number	062217INTEFSW10501100
Deposit Account	502126
Authorized User	Melanie Murdock

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

37 CFR 1.16 (National application filing, search, and examination fees)

37 CFR 1.17 (Patent application and reexamination processing fees)

37 CFR 1.21 (Miscellaneous fees and charges)

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Request for Continued Examination (RCE)	ATZ00003_RCE_3mo_EOT.pdf	1350094 5c28701f2989e8f0b24be31241bcb7021522303d6	no	3
Warnings:					
Information:					
2		ATZ00003_RFOA_wRCE_6-22-17.pdf	107087 5ac69a0028f198d60f35431270135b0e67c3991c	yes	10

Multipart Description/PDF files in .zip description

Document Description	Start	End
Applicant Arguments/Remarks Made in an Amendment	8	10
Claims	2	7
Amendment Submitted/Entered with Filing of CPA/RCE	1	1

Warnings:					
Information:					
3	Fee Worksheet (SB06)	fee-info.pdf	32348 9df3d402baa6160591dc49e07be2dd5561ce0e3	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	1489529		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

PTO/SB/06 (09-11)
Approved for use through 1/31/2014. OMB 0651-0032
U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PATENT APPLICATION FEE DETERMINATION RECORD Substitute for Form PTO-875	Application or Docket Number 13/355,801	Filing Date 01/23/2012	☐ To be Mailed

ENTITY: ☐ LARGE ☒ SMALL ☐ MICRO

APPLICATION AS FILED – PART I

FOR	(Column 1) NUMBER FILED	(Column 2) NUMBER EXTRA	RATE ($)	FEE ($)
☐ BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A	N/A	
☐ SEARCH FEE (37 CFR 1.16(k), (i), or (m))	N/A	N/A	N/A	
☐ EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A	N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =	*	X $ =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*	X $ =	
☐ APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is $310 ($155 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).			
☐ MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))				
* If the difference in column 1 is less than zero, enter "0" in column 2.			TOTAL	

APPLICATION AS AMENDED – PART II

AMENDMENT	06/22/2017	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
	Total (37 CFR 1.16(i))	* 12	Minus	** 20	= 0	X $40 =	0
	Independent (37 CFR 1.16(h))	* 3	Minus	***4	= 0	X $210 =	0
	☐ Application Size Fee (37 CFR 1.16(s))						
	☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
						TOTAL ADD'L FEE	0

AMENDMENT		(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
	Total (37 CFR 1.16(i))	*	Minus	**	=	X $ =	
	Independent (37 CFR 1.16(h))	*	Minus	***	=	X $ =	
	☐ Application Size Fee (37 CFR 1.16(s))						
	☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
						TOTAL ADD'L FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.
** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".
*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".
The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

LIE
GLORIA NORRIS

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**
If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PTO/SB/06 (09-11)
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PATENT APPLICATION FEE DETERMINATION RECORD Substitute for Form PTO-875	Application or Docket Number 13/355,801	Filing Date 01/23/2012	☐ To be Mailed

ENTITY: ☐ LARGE ☒ SMALL ☐ MICRO

APPLICATION AS FILED – PART I

FOR	(Column 1) NUMBER FILED	(Column 2) NUMBER EXTRA	RATE ($)	FEE ($)
☐ BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A	N/A	
☐ SEARCH FEE (37 CFR 1.16(k), (i), or (m))	N/A	N/A	N/A	
☐ EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A	N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =	*	X $ =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*	X $ =	
☐ APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is $310 ($155 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).			
☐ MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))				
* If the difference in column 1 is less than zero, enter "0" in column 2.			TOTAL	

APPLICATION AS AMENDED – PART II

AMENDMENT	06/22/2017	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
	Total (37 CFR 1.16(i))	* 12	Minus	** 20	= 0	X $40 =	0
	Independent (37 CFR 1.16(h))	* 3	Minus	***4	= 0	X $210 =	0
	☐ Application Size Fee (37 CFR 1.16(s))						
	☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
						TOTAL ADD'L FEE	0

AMENDMENT		(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
	Total (37 CFR 1.16(i))	*	Minus	**	=	X $ =	
	Independent (37 CFR 1.16(h))	*	Minus	***	=	X $ =	
	☐ Application Size Fee (37 CFR 1.16(s))						
	☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
						TOTAL ADD'L FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.
** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".
*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".
The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

LIE
GLORIA NORRIS

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/355,801	01/23/2012	Michael R. Adair	ATZ00003	1012

34399 7590 12/22/2016

GARLICK & MARKISON
Melanie Murdock
P.O. BOX 160727
AUSTIN, TX 78716-0727

EXAMINER	
BRANDON, MEGAN E	

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
12/22/2016	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

MMurdock@TEXASPATENTS.COM
ghmptocor@texaspatents.com
bpierotti@texaspatents.com

Office Action Summary	Application No. 13/355,801	Applicant(s) ADAIR ET AL.	
	Examiner MEGAN BRANDON	Art Unit 3765	AIA (First Inventor to File) Status No

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11/08/2016*.

☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on _____; the restriction requirement and election have been incorporated into this action.

4)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims*

5)☒ Claim(s) *1,3-14 and 16-18* is/are pending in the application.

5a) Of the above claim(s) _____ is/are withdrawn from consideration.

6)☐ Claim(s) _____ is/are allowed.

7)☒ Claim(s) *1, 3-14 and 16-18* is/are rejected.

8)☐ Claim(s) _____ is/are objected to.

9)☐ Claim(s) _____ are subject to restriction and/or election requirement.

* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to PPHfeedback@uspto.gov.

Application Papers

10)☐ The specification is objected to by the Examiner.

11)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

Certified copies:

a)☐ All b)☐ Some** c)☐ None of the:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

** See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b) Paper No(s)/Mail Date _____

3) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

4) ☐ Other: _____.

The present application is being examined under the pre-AIA first to invent provisions.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Response to Arguments

Applicant's arguments filed November 8, 2016 have been fully considered but they are not persuasive.

1. Applicant's Remarks: Applicant asserts that Claims 5, 8, 11 and 16 should not be rejected under 35 USC 112, first paragraph as failing to comply with the enablement requirement, stating that any part of the specification can support an enabling disclosure.

Examiner's Response: Examiner respectfully disagrees and notes that though a padded insole is discussed in Applicant's disclosure with regard to Prior Art Figures, Applicant's disclosure does not provide support for a "padded insole" to be used with and/or be a part of the present invention. Therefore, the "padded insole" being a part of the present invention that Applicant is seeking patent protection for is not enabled by Applicant's disclosure, in other words, the padded insole being disclosed with regard to Prior Art does not provide for the structure of the padded insole being a part of the claimed invention, as the structure of such is not discussed with regard to the present invention and its structure. While a padded insole may be mentioned in Applicant's disclosure, a padded insole in conjunction with Applicant 's present invention is not considered to be enabled, especially when such a combination of structures has not been provided sufficient support in the disclosure, therefore the 35 U.S.C. 112(a) rejection is maintained at this time.

2. Applicant's Remarks: Applicant asserts that Claims 1, 4, 6, 9, 10, and 14 should not have been rejected under 35 USC § 112(a) and argues that it is well known from basic geometry that a uniform height will have no slope. Additionally noting, with regard to Examiner's statement that the uniform height when mentioned is stated as being "substantially" uniform in height, that "substantially" is not used in the claim, thus the Examiner is inappropriately reading limitations of the specification into the claims.

Examiner's Response: Examiner respectfully disagrees and notes that Applicant's Specification on Page 20, lines 1-3 clearly states "The heel section 21 has a first dimension that is **substantially uniform** from the outer edge to the inner edge along a back edge of the apparatus and from the back edge of the apparatus to a front portion of the heel section 21", additionally, none of Applicant's drawings denote a zero slope. This recitation does not, in any measure, support a claim that "the uniform height has zero slope from the outer edge to the inner edge". Applicant's argument that this it is well known from basic geometry that a line that is a uniform height will have no slope is not found persuasive as Applicant's specification clearly notes that the height is "substantially uniform" which does not support a claim that the height is perfectly uniform with no slope. After a full review of Applicant's specification there appears to be no reference of any degree of slope with regard to the uniform height. More to the point, the uniform height when mentioned is stated as being "substantially" uniform in height; which is to say that no particular degree of slope, or any critical measurement, has been provided to describe the uniform height. Applicant's disclosure does not detail that the uniform height has zero slope in a manner that avoids the 35 U.S.C. 112, 1st paragraph

rejection under New Matter. Further, Examiner did not inappropriately read the limitation of "substantially" into the claims when rejecting the present Claims, the claim was properly rejected with prior art that shows zero slope in the heel platform section of Chapman (as seen below). The limitation is regarded as new matter.

3. Applicant's Remarks: Applicant asserts that Chapman teaches that the heel section has a slope from the inner side to the outer side, and therefore does not teach that the athletic positioning sole has a uniform height having a zero slope from an outer edge to an inner edge of the athletic shoe.

Examiner's Response: Examiner respectfully disagrees and notes that while Figure 6 of Chapman shows a slope from the inner side to the outer side of the sole, Figure 5 which is referenced in the rejection to meet the claimed limitations does not show a slope from the inner side to the outer side. Chapman's Figure 5 indeed shows the sole has a uniform height from an outer edge to an inner edge of the athletic shoe (See rejection below). Applicant's attempt to measure Figure 5 as evidence that there is a slope is not found persuasive as drawings are not always to scale and may suffer some imperfections, additionally nowhere in Chapman's written disclosure is there evidence that Figure 5 shows a slope. Additionally, Applicant is reminded that such a claim of "zero slope" is new matter and should be removed from the claims. Applicant has provided no further amendments to distinguish the present claims over the prior art as applied.

4. Applicant's Remarks: Applicant asserts, with regard to Claims 1, 3, 4, 6, 7, 9, 10, 12-14, and 15-18 rejected under 35 U.S.C. 102(b) as anticipated by Chapman, that Chapman in Fig.4 shows an arch that places the toe section above the mid-foot section, which is not the equivalent of the recitation "the mid-foot section and the toe section form an angled support platform that has a first slope of a polarity along the inner edge of the apparatus from a front edge of the apparatus to the heel platform section, a second slope of the polarity along the front edge of the apparatus from the inner edge to the outer edge of the apparatus, and a third slope of the polarity along the outer edge of the apparatus from the front edge of the apparatus to the heel platform section" found in Claim 1.

Examiner's Response: Examiner notes that Claim 1 as currently presented recites only first, second, and third slopes of polarity and does not recite any limitations to differentiate one slope from another, such as one slope being greater or lesser than another, nor does Claim 1 recite any structure pertaining to the positioning of certain portions of the foot in a particular arrangement. Chapman meets all of the limitations of Claim 1, specifically teaching first, second, and third slopes of polarity: "The mid-foot section and the toe section form an angled support platform (200 from marker 5 to 10) that has a first slope of a polarity (as seen in cross-sections Fig.6-10) along the inner edge (150) of the athletic positioning sole section from a front edge (Fig. 10) of the athletic positioning sole section to the heel platform section (marker 5 in Fig.3), a second slope of the polarity along the front edge (Fig.10) of the athletic positioning sole section from the inner edge (150) to the outer edge (140) of the athletic positioning sole

section, and a third slope of the polarity (as seen in cross-sections Fig.6-10) along the outer edge (140) of the athletic positioning sole section from the front edge (Fig.10) of the athletic positioning sole section to the heel platform section (marker 5 in Fig.3)". Applicant has provided no further amendments to distinguish the present claims over the prior art as applied below.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112(a):

> (a) IN GENERAL.—The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor or joint inventor of carrying out the invention.

The following is a quotation of the first paragraph of pre-AIA 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 16, 11, 8 and 5 are rejected under 35 U.S.C. 112(a) or 35 U.S.C. 112 (pre-AIA), first paragraph, because the specification, while being enabling for a padded insole that is mentioned only with regard to the prior art figures, does not reasonably provide enablement for the present invention having a padded insole. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these

claims. Applicant's specification only mentions a padded insole, on Page 2 of Applicant's disclosure, when briefly discussing Figures 1 and 2 which are noted as Prior Art figures and are not figures detailing the present invention. Therefore, Applicant's disclosure does not appear to provide support for a padded insole to be used with and/or be a part of the present invention.

6. Claims 1, 4, 6, 9, 10 and 14 are rejected under 35 U.S.C. 112(a) or 35 U.S.C. 112 (pre-AIA), first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor or a joint inventor, or for pre-AIA the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1, 4, 6, 9, 10 and 14 recite "a zero slope" of the uniform height of the heel platform. After a full review of Applicant's specification there appears to be no reference of any degree of slope with regard to the uniform height, more to the point, the uniform height when mentioned is stated as being "substantially" uniform in height; which is to say that no particular degree of slope, or any critical measurement at all has been provided to describe the uniform height. The limitation is regarded as new matter.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of pre-AIA 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 1, 3, 4, 6, 7, 9, 10, 12-14 and 15-18 are rejected under pre-AIA 35 U.S.C. 102(b) as being anticipated by Chapman (2008/0163513).

Regarding Claims 9 and 1, and 6 and 14, Chapman discloses a shoe comprises an upper shoe section (as seen outlined in Fig.14) and a sole coupled to the upper shoe section (Fig.14). The sole includes a specific bottom (310) and an athletic positioning sole section (100) having a heel platform section (from heel end edge to marker 5 seen in Fig.3) that has a uniform height (200 as seen in Fig.5) from an outer edge (140) to an inner edge (150) of the athletic positioning sole section at a rear edge (heel end edge) of the athletic positioning sole section (Fig.3 & 5). The uniform height (of 200 in Fig.5) has zero slope from the outer edge to the inner edge (as seen in Fig.5, 200 has no slope from 150 to 140). A mid-foot section (from marker 5 to marker 8 as seen in Fig.3) is juxtaposed to the heel platform section, and a toe section (from marker 8 to marker 10) juxtaposed to the mid-foot section (Fig.3). The mid-foot section and the toe section form an angled support platform (200 from marker 5 to 10) that has a first slope of a polarity (as seen in cross-sections Fig.6-10) along the inner edge (150) of the athletic positioning sole section from a front edge (Fig.10) of the athletic positioning sole section to the heel platform section (marker 5 in Fig.3), a second slope of the polarity along the

front edge (Fig.10) of the athletic positioning sole section from the inner edge (150) to the outer edge (140) of the athletic positioning sole section, and a third slope of the polarity (as seen in cross-sections Fig.6-10) along the outer edge (140) of the athletic positioning sole section from the front edge (Fig.10) of the athletic positioning sole section to the heel platform section (marker 5 in Fig.3).

The mid-foot section and the toe section collectively (from marker 5 to marker 10) have a geometric shape having a first dimension (200 as seen in Fig.5) along a line (marker 5) between the heel platform section and the mid-foot section, a second dimension (200 in Fig.8) at a front outer edge (140) of the apparatus, and a third dimension (200 in Fig.10) at a front inner edge (150) of the apparatus. The first dimension (200 as seen in Fig.5) has a magnitude that is greater than a magnitude of the second dimension (200 in Fig.8 at 140), and the magnitude of the second dimension is greater than a magnitude of the third dimension (200 in Fig.10 at 150). The first dimension is uniform such that, from an inner edge (150) of the apparatus to an outer edge (140) of the apparatus, the line (marker 5) between the heel platform section and the mid-foot section has zero slope (as seen in Fig.5, 200 has no slope from 150 to 140).

Regarding Claims 7 and 3, Chapman discloses a shoe further comprises the heel platform section, the mid-foot section, and the toe section constituting a sole of footwear (as seen in Fig.3 & 4).

Regarding Claims 10 and 4, Chapman discloses a shoe further comprises the heel platform (from heel end edge to marker 5 seen in Fig.3) section has a uniform platform height (200 as seen in Fig.5), wherein, from a front edge (marker 5) of the heel platform to the rear edge (heel end edge) of the athletic positioning sole section, the uniform platform height has zero slope (200 as seen in Fig.5). The toe section and the mid-foot section (from marker 5 to marker 10 as seen in Fig.3) having a second dimension (200 as seen in Fig.7) at a front outer edge (140) of the apparatus and a third dimension (200 as seen in Fig.7) at a front inner edge (150) of the apparatus.

Regarding Claims 17 and 12, Chapman discloses a shoe wherein the specific bottom comprises one of: a cleat pattern bottom, a baseball spike bottom, a basketball bottom, a tennis bottom, a golf bottom, an ice skate bottom, a ski boot bottom, a cross-trainer bottom, a running shoe bottom, a walking shoe bottom, a dress shoe bottom, and a snowboard boot bottom. It is noted that shoes are utilized for walking and the shoe of Chapman can be used for walking or running and is therefore a walking or running shoe bottom. Additionally, it is noted that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

Claim Rejections - 35 USC § 103

The following is a quotation of pre-AIA 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 5, 8, 11 and 16 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Chapman in view of Kerrigan (US 2002/0139011).

Regarding Claims 16, 11, 8 and 5, Chapman discloses the invention substantially as claimed above. Chapman does not discloses a padded insole on a first surface of the apparatus covering one or more of at least a portion of the heel platform section, at least a portion of the mid-foot section, and at least a portion of the toe section. However, Kerrigan discloses a sole having an insole layer that is padded since it conforms to a user's foot and fabrics are known to have some give/cushion/padding (Pg.3, para.29).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have included a padded insole as taught by Kerrigan on the sole surface of Chapman, in order to provide a sole with a comfortable insole layer that provides cushioning and support to the user's foot. It is noted that Applicant has provided no disclosed or claimed criticality for what constitutes a padded insole.

9. Claims 13 and 18 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Chapman in view of Kraisosky (US 2010/0115793).

Regarding Claims 18 and 13, Chapman discloses the invention substantially as claimed above. Chapman does not disclose the upper of the shoe being a sandal with straps. However, Kraisosky teaches a shoe (10) with a sole having an upper section comprising a sandal structure (16,24,22) that includes one or more straps (16,24) for securing the shoe to a foot (Fig.2 & 7).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have substituted the shoe upper of Chapman with the sandal upper, as taught by Kraisosky, as a simple substitution of one well known type of shoe upper for another to provide for the predictable result of attaching a shoe to a wearer's foot. It is noted that Applicant has provided no criticality for the specific upper structure of the shoe.

Conclusion

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MEGAN BRANDON whose telephone number is (571)272-3267. The examiner can normally be reached on Monday-Friday 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoa Huynh can be reached on (571)272-4888. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MEGAN BRANDON/
Examiner, Art Unit 3765

/Khoa Huynh/
Supervisory Patent Examiner, Art Unit 3765

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13355801	ADAIR ET AL.
	Examiner	Art Unit
	MEGAN BRANDON	3765

CPC- SEARCHED		
Symbol	Date	Examiner
A43B7/142; A43B7/144; A43B13/38; A43B13/145; A43B5/00; A43B13/12; A43B7/00; A43B7/14; A43B3/00	12/26/2013	MB
A61F5/0195; A61F5/14	12/26/2013	MB

CPC COMBINATION SETS - SEARCHED		
Symbol	Date	Examiner

US CLASSIFICATION SEARCHED			
Class	Subclass	Date	Examiner
36	44, 43, 25R, 110, 103, 132, 142, 144	12/26/2013	MB

SEARCH NOTES		
Search Notes	Date	Examiner
Inventorship Search	12/26/2013	MB
Assignee Search	12/26/2013	MB
Search Assistance Ted Kavanaugh	12/26/2013	MB
Updated Search	03/01/2014	MB
Updated Search	8/22/2014	MB
Updated Search	10/29/2014	MB
Updated Search	5/1/2015	MB
Updated Search	9/24/2015	MB
Updated Search	11/17/2016	MB

INTERFERENCE SEARCH			
US Class/ CPC Symbol	US Subclass / CPC Group	Date	Examiner

Index of Claims	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13355801	ADAIR ET AL.
	Examiner	**Art Unit**
	MEGAN BRANDON	3765

✓	Rejected	-	Cancelled	N	Non-Elected	A	Appeal
=	Allowed	÷	Restricted	I	Interference	O	Objected

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

CLAIM		DATE							
Final	Original	08/09/2013	12/26/2013	03/01/2014	08/22/2014	10/29/2014	05/01/2015	09/24/2015	11/17/2016
	1	÷	✓	✓	✓	✓	✓	✓	✓
	2	÷	✓	✓	✓	-	-	-	-
	3	÷	✓	✓	✓	✓	✓	✓	✓
	4	÷	✓	✓	✓	✓	✓	✓	✓
	5	÷	✓	✓	✓	✓	✓	✓	✓
	6	÷	✓	✓	✓	✓	✓	✓	✓
	7	÷	✓	✓	✓	✓	✓	✓	✓
	8	÷	✓	✓	✓	✓	✓	✓	✓
	9	÷	✓	✓	✓	✓	✓	✓	✓
	10	÷	✓	✓	✓	✓	✓	✓	✓
	11	÷	✓	✓	✓	✓	✓	✓	✓
	12	÷	✓	✓	✓	✓	✓	✓	✓
	13	÷	✓	✓	✓	✓	✓	✓	✓
	14	÷	✓	✓	✓	✓	✓	✓	✓
	15	÷	✓	✓	-	-	-	-	-
	16	÷	✓	✓	✓	✓	✓	✓	✓
	17	÷	✓	✓	✓	✓	✓	✓	✓
	18	÷	✓	✓	✓	✓	✓	✓	✓

Doc code: RCEX
Doc description: Request for Continued Examination (RCE)

PTO/SB/30EFS (07-09)
Approved for use through 07/31/2012. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
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REQUEST FOR CONTINUED EXAMINATION(RCE)TRANSMITTAL
(Submitted Only via EFS-Web)

Application Number	13355801	Filing Date	2012-01-23	Docket Number (if applicable)	ATZ00003	Art Unit	3765
First Named Inventor	Michael R. Adair			Examiner Name	Brandon, Megan E		

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application.
Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. The Instruction Sheet for this form is located at WWW.USPTO.GOV

SUBMISSION REQUIRED UNDER 37 CFR 1.114

Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

☐ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

- ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____
- ☐ Other _____

☒ Enclosed

- ☒ Amendment/Reply
- ☐ Information Disclosure Statement (IDS)
- ☐ Affidavit(s)/ Declaration(s)
- ☐ Other _____

MISCELLANEOUS

☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of months _____ (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)

☐ Other _____

FEES

☒ **The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.**
The Director is hereby authorized to charge any underpayment of fees, or credit any overpayments, to Deposit Account No 502126

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

☒ Patent Practitioner Signature

Applicant Signature

PTO/SB/30EFS (07-09)
Approved for use through 07/31/2012. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

Signature of Registered U.S. Patent Practitioner			
Signature	/Timothy W. Markison/	Date (YYYY-MM-DD)	2016-11-08
Name	Timothy W. Markison	Registration Number	33534

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

Electronic Patent Application Fee Transmittal

Application Number:	13355801
Filing Date:	23-Jan-2012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Filer:	Timothy W. Markison/Beth Pierotti
Attorney Docket Number:	ATZ00003

Filed as Small Entity

Filing Fees for Utility under 35 USC 111(a)

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Miscellaneous:				
RCE- 2ND AND SUBSEQUENT REQUEST	2820	1	850	850
		Total in USD ($)		**850**

Electronic Acknowledgement Receipt

EFS ID:	27442097
Application Number:	13355801
International Application Number:	
Confirmation Number:	1012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Customer Number:	34399
Filer:	Timothy W. Markison/Beth Pierotti
Filer Authorized By:	Timothy W. Markison
Attorney Docket Number:	ATZ00003
Receipt Date:	08-NOV-2016
Filing Date:	23-JAN-2012
Time Stamp:	10:15:38
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	CARD
Payment was successfully received in RAM	$850
RAM confirmation Number	110816INTEFSW10164100
Deposit Account	502126
Authorized User	Melanie Murdock

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

37 CFR 1.17 (Patent application and reexamination processing fees)

37 CFR 1.21 (Miscellaneous fees and charges)

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Request to Withdraw Appeal by Appellant	ATZ00003_Withdrawal_of_Appeal.pdf	385994 ac43ec7e5611b2&cd503a1e83f4dc3962a4f3173	no	15
Warnings:					
Information:					
2	Request for Continued Examination (RCE)	ATZ00003_RCE2.pdf	697800 732d693dbe8b9a89db6aef5d66f006d192c52431	no	3
Warnings:					
Information:					
3	Fee Worksheet (SB06)	fee-info.pdf	30311 d032087a7fa39f07644e21bba8dd1683270866c	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	1114105		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111
If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371
If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office
If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

Certification under 37 C.F.R. §1.8

Date of Mailing or Transmission: November 8, 2016
I hereby certify that I have caused the document indicated herein on the date indicated above to be transmitted via the Office electronic filing system in accordance with 37 C.F.R. §1.6(a)(4).

BY: /Beth Pierotti/ (Signature) **Name:** Beth Pierotti (Typed Name)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

1st Named Inventor:	Michael R. Adair	**Examiner:**	Brandon, Megan E
Application No.:	13/355,801	**Art Unit:**	3765
Filing Date:	23 Jan 2012	**Docket No.:**	ATZ00003
Confirmation No.:	1012		
Title:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF		

REQUEST TO WITHDRAW FROM APPEAL AND RESPONSE TO FINAL OFFICE ACTION WITH REQUEST FOR CONTINUED EXAMINATION

Date: November 8, 2016

United States Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450

Prior to a decision by the Board, Applicant wishes to withdraw the above-referenced application from appeal and reopen prosecution of the application. A Request for Continued Examination under 37 C.F.R. § 1.114, the foregoing submission pursuant to 37 C.F.R. § 1.111 and the RCE fee set forth under 37 C.F.R. § 1.17(e) are submitted herewith.

AMENDMENT TO THE CLAIMS

1. (previously presented) An apparatus comprises:

a heel platform section that has a uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus, wherein the uniform height has zero slope from the outer edge to the inner edge;

a mid-foot section juxtaposed to the heel platform section; and

a toe section juxtaposed to the mid-foot section, wherein the mid-foot section and the toe section form an angled support platform that has a first slope of a polarity along the inner edge of the apparatus from a front edge of the apparatus to the heel platform section, a second slope of the polarity along the front edge of the apparatus from the inner edge to the outer edge of the apparatus, and a third slope of the polarity along the outer edge of the apparatus from the front edge of the apparatus to the heel platform section.

2. (canceled)

3. (previously presented) The apparatus of claim 1 further comprises:

the heel platform section, the mid-foot section, and the toe section constituting at least one of an insole for footwear; and

a sole of footwear.

4. (previously presented) The apparatus of claim 1 further comprises:

the heel platform section has a uniform platform height, wherein, from a front edge of the heel platform to the rear edge of the apparatus, the uniform platform height has zero slope; and

the toe section and the mid-foot section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

5. (previously presented) The apparatus of claim 1 further comprises:

a padded insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

6. (previously presented) An apparatus comprises:

a heel platform section;

a mid-foot section; and

a toe section, wherein the mid-foot section, and the toe section collectively have a geometric shape having a first dimension along a line between the heel platform section and the mid-foot section, a second dimension at front outer edge of the apparatus, and a third dimension at front inner edge of the apparatus, wherein the first dimension has a magnitude that is greater than a magnitude of the second dimension and the magnitude of the second dimension is greater than a magnitude of the third dimension, and wherein the first dimension is uniform such that, from an inner edge of the apparatus to an outer edge of the apparatus, the line between the heel platform section and the mid-foot section has zero slope.

7. (previously presented) The apparatus of claim 6 further comprises:

the heel platform section, the mid-foot section, and the toe section constituting at least one of an insole for footwear; and

a sole of footwear.

8. (previously presented) The apparatus of claim 6 further comprises:

a padded insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

9. (previously presented) A shoe comprises:

an upper shoe section; and

a sole coupled to the upper shoe section, wherein the sole includes:

a specific bottom; and

an athletic positioning sole section having:

a heel platform section that has a uniform height from an outer edge to an inner edge of the athletic positioning sole section at a rear edge of the athletic positioning sole section, wherein the uniform height has zero slope from the outer edge to the inner edge;

a mid-foot section; and

a toe section, wherein the mid-foot section and the toe section form an angled support platform that has a first slope of a polarity along the inner edge of the athletic positioning sole section from a front edge of the athletic positioning sole section to the heel platform section, a second slope of the polarity along the front edge of the athletic positioning sole section from the inner edge to the outer edge of the athletic positioning sole section, and a third slope of the polarity along the outer edge of the athletic positioning sole section from the front edge of the athletic positioning sole section to the heel platform section.

10. (previously presented) The shoe of claim 9 further comprises:

the heel platform section has a uniform platform height, wherein, from a front edge of the heel platform to the rear edge of the athletic positioning sole section, the uniform platform height has zero slope; and

the toe section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

11. (previously presented) The shoe of claim 9 further comprises:

a padded insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

12. (original) The shoe of claim 9, wherein the specific bottom comprises one of:

a cleat pattern bottom;
a baseball spike bottom;
a basketball bottom;
a tennis bottom;
a golf bottom;
an ice skate bottom;
a ski boot bottom;
a cross-trainer bottom;
a running shoe bottom;
a walking shoe bottom;
a dress shoe bottom; and
a snowboard boot bottom.

13. (original) The shoe of claim 9, wherein the upper section comprises:

a sandal structure that includes one or more straps for securing the shoe to a foot.

14. (previously presented) A shoe comprises:

an upper shoe section; and

a sole coupled to the upper shoe section, wherein the sole includes:

a specific bottom; and

an athletic positioning sole section having:

a heel platform section;

a mid-foot section; and

a toe section, wherein the mid-foot section and the toe section collectively have a geometric shape having a first dimension along a line between the heel platform section and the mid-foot section, a second dimension at a front outer edge of the apparatus, and a third dimension at a front inner edge of the apparatus, wherein the first dimension has a magnitude that is greater than a magnitude of the second dimension and the magnitude of the second dimension is greater than a magnitude of the third dimension, and wherein the first dimension is uniform such that, from an inner edge of the apparatus to an outer edge of the apparatus, the line between the heel platform section and the mid-foot section has zero slope.

15. (cancelled)

16. (previously presented) The shoe of claim 14 further comprises:

a padded insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

17. (original) The shoe of claim 14, wherein the specific bottom comprises one of:

a cleat pattern bottom;
a baseball spike bottom;
a basketball bottom;
a tennis bottom;
a golf bottom;
an ice skate bottom;
a ski boot bottom,
a cross-trainer bottom;
a running shoe bottom;
a walking shoe bottom;
a dress shoe bottom; and
a snowboard boot bottom.

18. (original) The shoe of claim 14, wherein the upper section comprises:

a sandal structure that includes one or more straps for securing the shoe to a foot.

REMARKS/ARGUMENTS

1. In the Final Office Action dated October 19, 2015:

a. Status of the claims.

- Claims 1, 3-14 and 16-18 are pending;
- Claims 1, 3-14 and 16-18 are rejected;
- Claims 2 and 15 are cancelled.

b. Claims 16, 11, 8 and 5 have been rejected under 35 USC §112 (a) or 35 USC §112 (pre-AIA), first paragraph, as failing to comply with the enablement requirement;

c. Claims 1, 4, 6, 9, 10 and 14 have been rejected under 35 USC §112 (a) or 35 USC §112 (pre-AIA), first paragraph, as failing to comply with the written description requirement;

d. Claims 1, 3, 4, 6, 7, 9,10, 12-14 and 15-18 are rejected under pre-AIA 35 U.S.C. § 102(b) as being anticipated by Chapman (U.S. Pub. No. 2008/0163513);

e. Claims 5, 8, 11 and 16 have been rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Chapman (U.S. Pub. No. 2008/0163513) in view of Kerrigan (U.S. Pub. No. 2002/0139011);

f. Claims 13 and 18 have been rejected under pre-AIA 35 USC §103 (a) as being unpatentable over Chapman (U.S. Pub. No. 2008/0163513) in view of Kraisosky (U.S. Pub. No. 2010/0115793).

The rejections and objections have been traversed. Applicant respectfully requests reconsideration of the allowability of claims 1, 3-14 and 16-18.

2. Claims 16, 11, 8 and 5 have been rejected under 35 USC §112 (a) or 35 USC §112 (pre-AIA), first paragraph, as failing to comply with the enablement requirement. The Applicant respectfully disagrees with this rejection and the reasoning thereof.

MPEP 2164.01 states, in part, that the test of enablement is whether one reasonably skilled in the art could make or use the invention from the disclosures in the patent coupled with information known in the art without undue experimentation."). A patent need not teach, and preferably omits, what is well known in the art. Any part of the specification can support an

enabling disclosure, even a background section that discusses, or even disparages, the subject matter disclosed therein. [emphasis added]

From this passage of the MPEP, the background of the invention can be used as support for an enabling disclosure. As such, disclosing a padded sole in the background section of the present patent application provides an enabling disclosure to one of average skill in the art. Accordingly, the Applicant requests that this rejection be withdrawn.

3. Claims 1, 4, 6, 9, 10 and 14 have been rejected under 35 USC §112 (a) or 35 USC §112 (pre-AIA), first paragraph, as failing to comply with the written description requirement. The Applicant respectfully disagrees with this rejection and the reasoning thereof.

In the Final Office Action of October 19, 2015, the Examiner stated that "Claims 1, 4, 6, 9, 10 and 14 recite "a zero slope" of the uniform height of the heel platform. After a full review of Applicant's specification there appears to be no reference of any degree of slope with regard to the uniform height, more to the point, the uniform height when mentioned is stated as being "substantially" uniform in height; which is to say that no particular degree of slope, or any critical measurement at all has been provided to describe the uniform height. The limitation is regarded as new matter."

The Applicant respectfully disagrees.

MPEP 2111 states, in part, that the broadest reasonable interpretation does not mean the broadest possible interpretation. Rather, the meaning given to a claim term must be consistent with the ordinary and customary meaning of the term (unless the term has been given a special definition in the specification), and must be consistent with the use of the claim term in the specification and drawings. Further, the broadest reasonable interpretation of the claims must be consistent with the interpretation that those skilled in the art would reach.

MPEP 2173.05(b)(III)(D) states that the term "substantially" is often used in conjunction with another term to describe a particular characteristic of the claimed invention. It is a broad term.

In re Nehrenberg, 280 F.2d 161, 126 USPQ 383 (CCPA 1960). The court held that the limitation "to substantially increase the efficiency of the compound as a copper extractant" was definite in view of the general guidelines contained in the specification. In re Mattison, 509 F.2d 563, 184 USPQ 484 (CCPA 1975). The court held that the limitation "which produces substantially equal E and H plane illumination patterns" was definite because one of ordinary skill in the art would know what was meant by "substantially equal." Andrew Corp. v. Gabriel Electronics, 847 F.2d 819, 6 USPQ2d 2010 (Fed. Cir. 1988).

Claim 1 claims, in part, a heel platform section that has a uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus, wherein the uniform height has zero slope from the outer edge to the inner edge. [Emphasis added]

Numerous figures of the patent application illustrate a heel platform section that has a uniform height. Figures 8, 9, 11, 12, 13, 14, and 15 are a few figures that show a uniform height and that the uniform height has a zero slope. The specification states on page 20, line 20, that the heel platform includes a height (h) and a width (w). [Emphasis added]

The specification further states on page 21, lines 19-25, that in an example, the toe section 25 and the mid-foot section 23 collectively have a geometric shape having a first dimension along an abutment edge of the heel platform section 38 and the mid-foot section 23, a second dimension at front outer edge of the apparatus, and a third dimension at front inner edge of the apparatus. The first dimension is substantially uniformly throughout the heel platform section 38 and has a magnitude that is greater than or equal to a magnitude of the second dimension. The magnitude of the second dimension is greater than a magnitude of the third dimension. [Emphasis added]

In the present office action, the Examiner has given the meaning of "no particular degree of slope" to the phrase "heel platform section that has a uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus, wherein the uniform height has zero slope from the outer edge to the inner edge". Such an interpretation is:

a. not consistent with the teachings of the specification and the drawings, which clearly teach a uniform height for the heel platform along a rear edge of the platform as referenced above;

b. not consistent with an interpretation that those skilled in the art would reach since the specification and drawings clearly teach the meaning of a "heel platform section that has a uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus, wherein the uniform height has zero slope from the outer edge to the inner edge".

Clearly, from the above discussion, the term "zero slope" is not new matter. As such, the application requests that the Examiner withdraw this rejection.

4. Claims 1, 3, 4, 6, 7, 9,10, 12-14 and 15-18 are rejected under pre-AIA 35 U.S.C. § 102(b) as being anticipated by Chapman (U.S. Pub. No. 2008/0163513). The Applicant respectfully disagrees with this rejection and the reasoning thereof.

In the present office action, the Examiner stated that the sole includes a specific bottom (310) and an athletic positioning sole section (100) having a heel platform section (from heel end edge to marker 5 seen in Fig. 3) that has a uniform height (200 as seen in Fig. 5) from an outer edge (140) to an inner edge (150) of the athletic positioning sole section at a rear edge (heel end edge) of the athletic positioning sole section (Figs. 3 and 5). The uniform height (of 200 in Fig. 5) has zero slope from the outer edge to the inner edge (as seen in Fig. 5, 200 has no slope from 150 to 140).

The Applicant respectfully disagrees.

With respect to Figure 5, Chapman teaches, in paragraph 17, that FIG. 5 is a transverse slice of the shoe sole across the rear heel area. Chapman further teaches, in paragraph 35, that FIG. 5 shows a transverse slice across the very rear section of the shoe sole; FIG. 6 shows a transverse slice across the middle section of the heel area 120. The outer side 140 of the upper surface 200 is slightly lower than the inner side 150, to promote a roll of the foot to the outer side

during the first half of the step motion, that is, when the heel is placed on the walking surface. [emphasis added]

Yet, when looking at Figures 5 and 6 (reproduced below), Chapman is illustrating the opposite of the description of paragraph 35. In the text of paragraph 35, Chapman states that the outer side 140 is slightly lower than the inner side 150. Figures 5 and 6, however, show the inner side 150 being lower than the outer side 140.

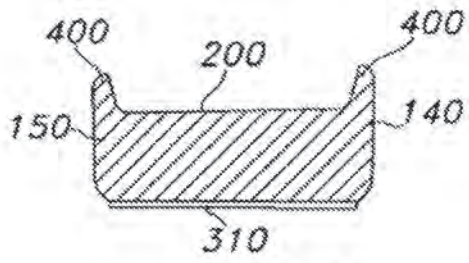


FIG. 5

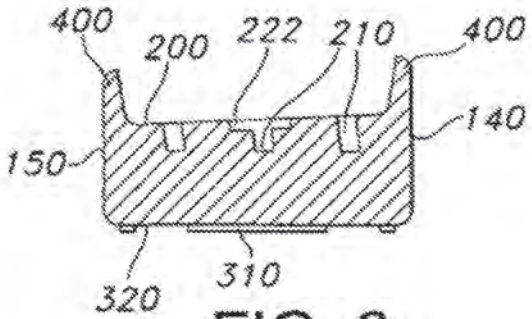
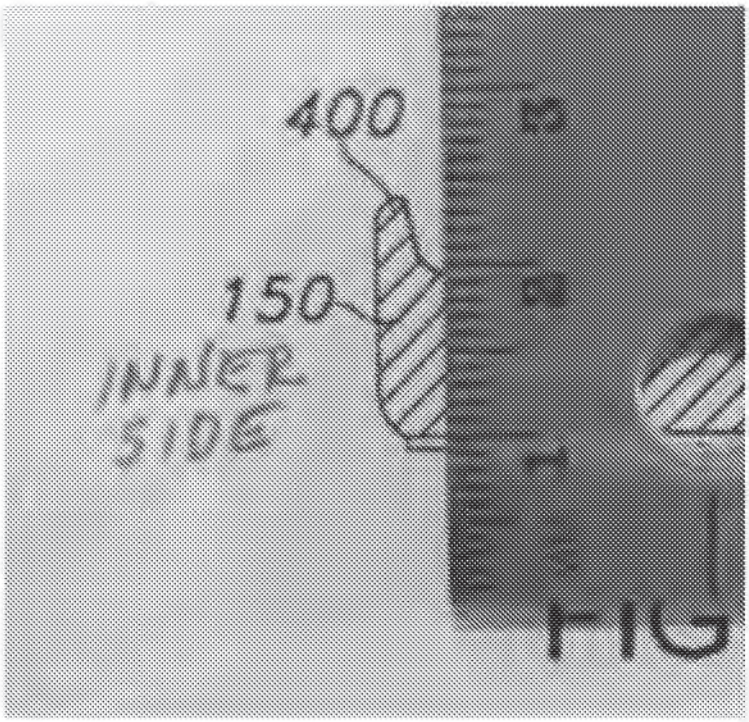


FIG. 6



FIG

The above is an image of Figure 5 with a ruler measuring the illustrated height of the inner side 150, which is slightly less than 10 mm.

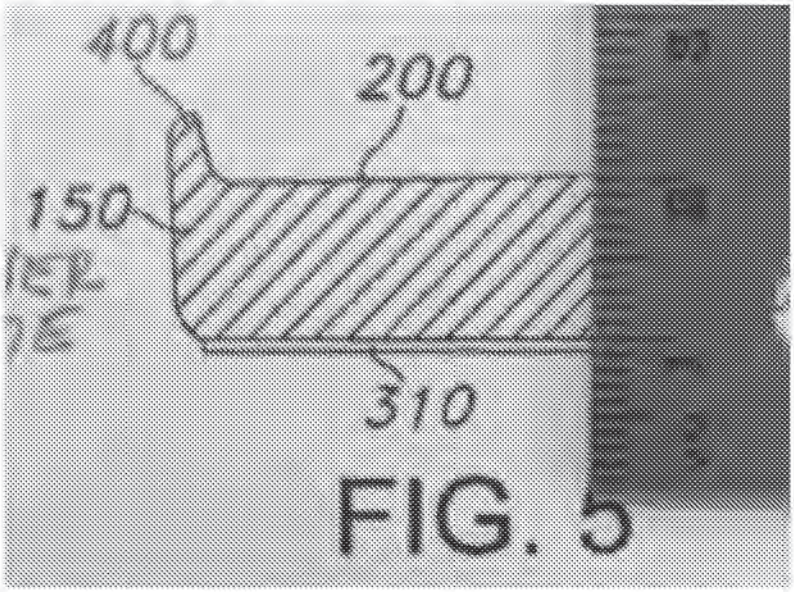


FIG. 5

The above is an image of Figure 5 with a ruler measuring the illustrated height of the outer side 140, which is slightly greater than 10 mm. As such, Figure 5 is showing that the inner edge is lower than the outer edge, which is more clearly shown in Figure 6.

Regardless of whether the text is correct or the figures are correct, Chapman is teaching that the heel section has a slope from the inner to outer side. Chapman does not teach that the athletic positioning sole has a uniform height from an outer edge to an inner edge of the athletic shoe along the rear edge of a heel section of the athletic shoe to position, from a rear perspective, a heel of the foot to be parallel to the ground.

Further, Chapman teaches, in paragraph 31, that an arch support 230 is formed on the inner side 130, which supports the arch throughout the walking step and holds the foot in a slightly supinated position, that is, oriented toward the outer side 140, for the first half of the step. A side wall 400 that is adapted to attach to an upper shoe rises from and encircles the upper surface 200. [emphasis added] Chapman teaches in paragraph 4 that supinate corresponds to an outside slant.

As such, Chapman is teaching that the mid-sole area of the sole has a downward slope to supinate the foot. In contrast, claim 1 claims, in part, that the athletic positioning sole has a first decreasing slope along the inner edge of the athletic positioning sole in a mid-foot section and into a toe section of the athletic positioning sole, has a second decreasing slope along the outer edge of the athletic positioning sole in the mid-foot section and into the toe section, and has a third decreasing slope from the outer edge to the inner edge of the athletic positioning sole in the mid-foot section and into the toe section to position the heel above a mid-foot and a ball-of-foot of the foot and to position an outer edge of the mid-foot and the ball-of-foot above an inner edge of the mid-foot and the ball-of-foot.

Based on the foregoing, the Applicant believes that claims 1, 3, 4, 6, 7, 9,10, 12-14 and 15-18 overcome the present rejection.

5. Claims 5, 8, 11 and 16 have been rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Chapman (U.S. Pub. No. 2008/0163513) in view of Kerrigan (U.S. Pub. No. 2002/0139011). The Applicant respectfully disagrees with this rejection and the reasoning thereof.

The Applicant believes that the arguments presented above are applicable in distinguishing claims 5, 8, 11, and 16 over the present rejection.

6. Claims 13 and 18 have been rejected under pre-AIA 35 USC §103 (a) as being unpatentable over Kerrigan (U.S. Pub. No. 2002/0139011) in view of Kraisosky (U.S. Pub. No. 2010/0115793). The Applicant respectfully disagrees with this rejection and the reasoning thereof.

The Applicant believes that the arguments presented above are applicable in distinguishing claims 13 and 18 over the present rejection.

CONCLUSION

For the foregoing reasons, the Applicant believes that claims 1, 3-14 and 16-18 are in condition for allowance and respectfully requests that they be passed to allowance.

The Applicant hereby rescinds any disclaimer of claim scope made in the parent application or any predecessor application in relation to the instant application. The Examiner is advised that any such previous disclaimer and the prior art that it was made to avoid, may need to be revisited. Further, the claims in the instant application may be broader than those of a parent application. Moreover, the Examiner should also be advised that any disclaimer made in the instant application should not be read into or against the parent application.

No additional fees are believed to be due. In the event that additional fees are due or a credit for an overpayment is due, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Garlick & Markison Deposit Account No. 50-2126.

The Examiner is invited to contact the undersigned by telephone or e-mail if the Examiner believes that such a communication would advance the prosecution of the present invention.

RESPECTFULLY SUBMITTED,

By: /Timothy W. Markison/Reg. No. 33,534
Timothy W. Markison

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PATENT APPLICATION FEE DETERMINATION RECORD Substitute for Form PTO-875	Application or Docket Number 13/355,801	Filing Date 01/23/2012	☐ To be Mailed

ENTITY: ☐ LARGE ☒ SMALL ☐ MICRO

APPLICATION AS FILED – PART I

FOR	(Column 1) NUMBER FILED	(Column 2) NUMBER EXTRA	RATE ($)	FEE ($)
☐ BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A	N/A	
☐ SEARCH FEE (37 CFR 1.16(k), (i), or (m))	N/A	N/A	N/A	
☐ EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A	N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =	*	X $ =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*	X $ =	
☐ APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is $310 ($155 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).			
☐ MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))				
* If the difference in column 1 is less than zero, enter "0" in column 2.			TOTAL	

APPLICATION AS AMENDED – PART II

AMENDMENT 11/08/2016

	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
Total (37 CFR 1.16(i))	- 16	Minus	** 20	= 0	X $40 =	0
Independent (37 CFR 1.16(h))	- 4	Minus	***4	= 0	X $210 =	0
☐ Application Size Fee (37 CFR 1.16(s))						
☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
					TOTAL ADD'L FEE	0

AMENDMENT

	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
Total (37 CFR 1.16(i))	-	Minus	**	=	X $ =	
Independent (37 CFR 1.16(h))	-	Minus	***	=	X $ =	
☐ Application Size Fee (37 CFR 1.16(s))						
☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
					TOTAL ADD'L FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.
** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".
*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".
The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

LIE
/STELLA LITTLE/

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/355,801	01/23/2012	Michael R. Adair	ATZ00003	1012

34399 7590 09/08/2016

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AUSTIN, TX 78716-0727

EXAMINER	
BRANDON, MEGAN E	

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
09/08/2016	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

MMurdock@TEXASPATENTS.COM
ghmptocor@texaspatents.com
bpierotti@texaspatents.com

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Application Number: 13/355,801
Filing Date: January 23, 2012
Appellant(s): ADAIR ET AL.

Timothy W. Markinson
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 28, 2016.

(1) Grounds of Rejection to be Reviewed on Appeal

Every ground of rejection set forth in the Office action dated October 19, 2015 from which the appeal is taken is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(2) Response to Argument

Appellant makes assertions in the Appeal Brief filed 03/28/2016 regarding the rejection of claims 1, 3-12, 14, 16, and 17 under 35 U.S.C. 103(a) as being unpatentable over Kerrigan (US 2002/0139011) and the rejection of Claims 13 and 18 under 35 U.S.C. 103(a) as being unpatentable over Kerrigan (US 2002/0139011) in view of Kraisosky (US 2010/0115793).

Examiner respectfully notes that the rejections indicated in the Appeal Brief filed by Appellant are directed toward the Non-Final Office Action filed 06/04/2015 **not** the most recent, outstanding, Final Office Action which was filed 10/19/2015. It is further noted that the Final Office Action filed 10/19/2015 contains a 35 U.S.C. 112, 1st paragraph New Matter rejection, and prior art rejections: Claims 1, 3, 4, 6, 7, 9, 10, 12-14, and 15-18 are rejected under 35 U.S.C. 102(b) as anticipated by Chapman (US 2008/0163513); Claims 5, 8, 11 and 16 are rejected under 35 U.S.C. 103(a) as unpatentable over Chapman (US 2008/0163513) in view of Kerrigan (US 2002/0139011); and Claims 13 and 18 rejected under 35 U.S.C. 103(a) as being

unpatentable over Chapman (US 2008/0163513) in view of Kraisosky (US 2010/0115793) which are not addressed by Appellant in the Appeal Brief filed 03/28/2016. The arguments directed toward the rejection of claims 1, 3-12, 14, 16, and 17 under 35 U.S.C. 103(a) as being unpatentable over Kerrigan (US 2002/0139011) and the rejection of Claims 13 and 18 under 35 U.S.C. 103(a) as being unpatentable over Kerrigan (US 2002/0139011) in view of Kraisosky (US 2010/0115793) are moot as they do not pertain to the outstanding Final Office Action.

As a courtesy, this Examiner's Answer will address the arguments laid out in the Pre-Appeal Brief Request filed 12/21/2015 as they appear to be directed toward the outstanding Final Office Action, as well as Appellant's remarks from the Appeal Brief filed 03/28/2016 regarding the rejection of Claims 16, 11, 8, and 5 under 35 U.S.C. 112, 1st paragraph Enablement rejection.

Appellant asserts that Claims 5, 8, 11 and 16 should not be rejected under 35 USC 112, first paragraph as failing to comply with the enablement requirement, stating that any part of the specification can support an enabling disclosure.

Examiner respectfully disagrees and notes that though a padded insole is discussed in Appellant's disclosure with regard to Prior Art Figures, Appellant's disclosure does not provide support for a "padded insole" to be used with and/or be a part of the present invention. Therefore, the "padded insole" being a part of the present invention that Appellant is seeking patent protection for is not enabled by

Appellant's disclosure, in other words, the padded insole being disclosed with regard to Prior Art does not provide for the structure of the padded insole being a part of the claimed invention, as the structure of such is not discussed with regard to the present invention and its structure. While a padded insole may be mentioned in Appellant's disclosure, a padded insole in conjunction with Appellant's present invention is not considered to be enabled, especially when such a combination of structures has not been provided sufficient support in the disclosure, therefore the 35 U.S.C. 112(a) rejection is maintained at this time and should be upheld by the Board.

Appellant asserts that Claims 1, 4, 6, 9, 10, and 14 should not have been rejected under 35 USC § 112(a) and argues that it is well known from basic geometry that a line that is uniform in height above a reference line, or surface, will have no slope. Further, asserting while not specifically stated, but clearly implied, the reference line or surface is with respect to the bottom of the heel platform. Additionally noting, with regard to Examiner's statement that the uniform height when mentioned is stated as being "substantially" uniform in height, that "Substantially" is not used in the claim, thus the Examiner is inappropriately reading limitations of the specification into the claims.

Examiner respectfully disagrees and notes that Appellant's Specification on Page 20, lines 1-3 clearly states "The heel section 21 has a first dimension that is **substantially uniform** from the outer edge to the inner edge along a back edge of the apparatus and from the back edge of the apparatus to a front portion of the heel section 21". This recitation does not, in any measure, support a claim that "the uniform height

has zero slope from the outer edge to the inner edge". Appellant's argument that this it is well known from basic geometry that a line that is a uniform height above a reference line will have no slope is not found persuasive as Appellant's specification clearly notes that the height is "substantially uniform" which does not support a claim that the height is perfectly uniform with no slope. After a full review of Appellant's specification there appears to be no reference of any degree of slope with regard to the uniform height. More to the point, the uniform height when mentioned is stated as being "substantially" uniform in height; which is to say that no particular degree of slope, or any critical measurement, has been provided to describe the uniform height. Appellant's disclosure does not detail that the uniform height has zero slope in a manner that avoids the 35 U.S.C. 112, 1st paragraph rejection under New Matter. Further, Examiner did not inappropriately read the limitation of "substantially" into the claims when rejecting the present Claims. The limitation is regarded as new matter and such a rejection should be upheld by the Board.

Appellant asserts, with regard to Claims 1, 3, 4, 6, 7, 9, 10, 12-14, and 15-18 rejected under 35 U.S.C. 102(b) as anticipated by Chapman, that Chapman in Fig.4 shows an arch that places the toe section above the mid-foot section, which is not the equivalent of the recitation "the mid-foot section and the toe section form an angled support platform that has a first slope of a polarity along the inner edge of the apparatus from a front edge of the apparatus to the heel platform section, a second slope of the polarity along the front edge of the apparatus from the inner edge to the outer edge of

the apparatus, and a third slope of the polarity along the outer edge of the apparatus from the front edge of the apparatus to the heel platform section" found in Claim 1.

Examiner notes that Claim 1 as currently presented recites only first, second, and third slopes of polarity and does not recite any limitations to differentiate one slope from another, such as one slope being greater or lesser than another, nor does Claim 1 recite any structure pertaining to the positioning of certain portions of the foot in a particular arrangement. Chapman meets all of the limitations of Claim 1, specifically teaching first, second, and third slopes of polarity: "The mid-foot section and the toe section form an angled support platform (200 from marker 5 to 10) that has a first slope of a polarity (as seen in cross-sections Fig.6-10) along the inner edge (150) of the athletic positioning sole section from a front edge (Fig. 10) of the athletic positioning sole section to the heel platform section (marker 5 in Fig.3), a second slope of the polarity along the front edge (Fig.10) of the athletic positioning sole section from the inner edge (150) to the outer edge (140) of the athletic positioning sole section, and a third slope of the polarity (as seen in cross-sections Fig.6-10) along the outer edge (140) of the athletic positioning sole section from the front edge (Fig.10) of the athletic positioning sole section to the heel platform section (marker 5 in Fig.3)". The rejection of Claim 1 should be upheld by the Board as Chapman discloses all of the features of present Claim 1 (see Final Office Action filed 10/19/2015).

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/MEGAN BRANDON/

Examiner, Art Unit 3765

Conferees:

/Khoa Huynh/
Supervisory Patent Examiner, Art Unit 3765

/LEN TRAN/

Supervisory Patent Examiner, Art Unit 3744

Requirement to pay appeal forwarding fee. In order to avoid dismissal of the instant appeal in any application or ex parte reexamination proceeding, 37 CFR 41.45 requires payment of an appeal forwarding fee within the time permitted by 37 CFR 41.45(a), unless appellant had timely paid the fee for filing a brief required by 37 CFR 41.20(b) in effect on March 18, 2013.

Certification under 37 C.F.R. §1.8

Date of Mailing or Transmission: March 28, 2016

I hereby certify that I have caused the document indicated herein on the date indicated above to be transmitted via the Office electronic filing system in accordance with 37 C.F.R. §1.6(a)(4).

BY: /Beth Pierotti/ (Signature) **Name:** Beth Pierotti (Typed Name)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

1st Named Inventor:	Michael R. Adair	**Examiner:**	Brandon, Megan E
Application No.:	13/355,801	**Art Unit:**	3765
Filing Date:	23 Jan 2012	**Docket No.:**	ATZ00003
Confirmation No.:	1012		
Title:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF		

APPEAL BRIEF

Date: March 28, 2016

United States Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450

Subsequent to a Final Office Action mailed on 10-19-2015, Appellant filed a Pre-Appeal Brief Request for Review and Notice of Appeal on 12-21-2015. The Notice of Panel Decision from Pre-Appeal Brief Review, mailed on 01-27-2016, contained instructions for the Appellant to proceed to the Patent Trial and Appeal Board.

The Appellant respectfully submits herewith an Appeal Brief.

The time period for filing the Appeal Brief is the later of two (2) months from the file date of the Notice of Appeal, namely 02-21-2016, or one (1) month from the mailing date of the Notice of Panel Decision from Pre-Appeal Brief Review, namely, 02-27-2016; as such, the time period for filing the Appeal Brief falls on 02-27-2016, which is extendable. The Appellant respectfully asserts that this Appeal Brief is being timely filed in accordance with M.P.E.P. § 710.05, 35 U.S.C. § 21, and 37 C.F.R. § 1.7.

REAL PARTY IN INTEREST

The present U.S. utility patent application is currently owned by Athalonz, LLC, a Texas Limited Liability Company, having its principal place of business in Mesa, Arizona.

RELATED APPEALS, INTERFERENCES, AND TRIALS

There are no known appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in this pending appeal.

SUMMARY OF THE CLAIMED SUBJECT MATTER

Please find below a concise explanation of the subject matter defined in each of the three (3) standing independent claims 1, 6, 9, and 14, including their respective dependent claims.

Independent claim 1:

Independent claim 1 describes an apparatus comprising a heel platform section that has a uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus, wherein the uniform height has zero slope from the outer edge to the inner edge (*e.g., see specification, p. 20, lines 1-3, p. 21, lines 22-25, etc.– figures: 38 in FIG. 8, 38 in FIG. 9, 38 in FIG. 11, 38 in FIG. 12, 38 in FIG. 14, 38 in FIG. 15, 38 in FIG. 67, etc.*) and a mid-foot section juxtaposed to the heel platform section (*e.g., see specification, p. 20, lines 24-27, etc.– figures: 23 in FIG. 5, 23 in FIG. 8, etc.*) and a toe section juxtaposed to the mid-foot section, (*e.g., see specification, p. 20, lines 23-24, etc.– figures: 25 in FIG. 5, 25 in FIG. 8, etc.*) wherein the mid-foot section and the toe section form an angled support platform that has a first slope of a polarity along the inner edge of the apparatus from a front edge of the apparatus to the heel platform section (*e.g., see specification, p. 20, lines 9-12, p. 21, lines 12-15, p. 22, lines 4-7, etc.– figures: ϕ1, 23, 25, in FIG. 5, 36 in FIG. 8, ϕ3, 36 in FIG. 11, 36 in FIG. 12, ϕ4, 36 in FIG. 13, etc.*) and a second slope of the polarity along the front edge of the apparatus from the inner edge to the outer edge of the apparatus (*e.g., see specification, p. 20, lines 14-17, p. 21, lines 15-16, p. 22, lines 7-8, etc.– figures: ϕ2 in FIG. 5, ϕ2 in FIG. 10, ϕ2 in FIG. 11, ϕ2 in FIG. 12, etc.*) and a third slope of the polarity along the outer edge of the apparatus from the front edge of the apparatus to the heel platform section. (*e.g., see specification, p. 21, lines 16-17, p. 22, lines 8-9, etc.– figures: ϕ3 in FIG. 8, ϕ1 in FIG. 12, ϕ2 in FIG. 13, etc.*)

Dependent claim 3:

Dependent claim 3 further limits the subject matter of independent claim 1 by the heel platform section, the mid-foot section, and the toe section constituting at least one of an insole for footwear and a sole of footwear. (*e.g., see specification, p. 19, lines 23-30, p. 21, lines 4-9, etc.– figures: 10, 12, 21, 23, 25 in FIG. 5, 21, 23, 25, 30 in FIG. 8, etc.*)

Dependent claim 4:

Dependent claim 4 further limits the subject matter of independent claim 1 by the heel platform section has a uniform platform height, wherein, from a front edge of the heel platform to the rear edge of the apparatus, the uniform platform height has zero slope and the toe section and the mid-foot section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus. (*e.g., see specification, p. 20, lines 1-7, p. 21, lines 19-25, etc.– figures: ϕ3 in FIG. 8, ϕ1 in FIG. 9, etc.*)

Dependent claim 5:

Dependent claim 5 further limits the subject matter of independent claim 1 by a padded insole on a first surface of the apparatus covering one or more of, at least a portion of the heel platform section, at least a portion of the mid-foot section, and at least a portion of the toe section. (*e.g., see specification, p. 18, lines 11-16, etc.– figures: 12 in FIG. 3, 12 in FIG. 4, 12, 21, 23, 25 in FIG. 5, etc.*)

Independent claim 6:

Independent claim 6 describes an apparatus comprises a heel platform section a mid-foot section and a toe section (*e.g., see specification, p. 18, lines 13-16, p. 19, lines 23-30, etc.– figures: 21, 213, 25 in FIG. 5, 21, 23, 25, 30 in FIG. 8, etc.*) wherein the mid-foot section, and the toe section collectively have a geometric shape having a first dimension along a line between the heel platform section and the mid-foot section, a second dimension at front outer edge of the

apparatus, and a third dimension at front inner edge of the apparatus, wherein the first dimension has a magnitude that is greater than a magnitude of the second dimension and the magnitude of the second dimension is greater than a magnitude of the third dimension, and wherein the first dimension is uniform such that, from an inner edge of the apparatus to an outer edge of the apparatus, the line between the heel platform section and the mid-foot section has zero slope. (*e.g., see specification, p. 20, lines 1-7, p. 20, lines 19-24, p. 21, lines 19-25, etc.– figures: 21, 23, 25, in FIG. 5, ø3, 21, 23, 25 in FIG. 8, ø1, 38 in FIG. 9, ø2 in FIG. 10, etc.*)

Dependent claim 7:

Dependent claim 7 further limits the subject matter of independent claim 6 by the heel platform section, the mid-foot section, and the toe section constituting at least one of an insole for footwear and a sole of footwear. (*e.g., see specification, p. 19, lines 23-30, p. 21, lines 4-9, etc.– figures: 10, 12, 21, 23, 25 in FIG. 5, 21, 23, 25, 30 in FIG. 8, etc.*)

Dependent claim 8:

Dependent claim 8 further limits the subject matter of independent claim 6 by a padded insole on a first surface of the apparatus covering one or more of at least a portion of the heel platform section, at least a portion of the mid-foot section, and at least a portion of the toe section. (*e.g., see specification, p. 18, lines 11-16, etc.– figures: 12 in FIG. 3, 12 in FIG. 4, 12, 21, 23, 25 in FIG. 5, etc.*)

Independent claim 9:

Independent claim 9 describes a shoe comprising an upper shoe section and a sole coupled to the upper shoe section, wherein the sole includes a specific bottom; and an athletic positioning sole section having (*e.g., see specification, p. 19, lines 9-21, p. 19, lines 23-25, etc.– figures: 10, 12, 18 in FIG. 3, 10, 12, 18 in FIG. 4, etc.*) a heel platform section that has a uniform height from an outer edge to an inner edge of the athletic positioning sole section at a rear edge of the athletic positioning sole section, wherein the uniform height has zero slope from the outer edge to the inner edge (*e.g., see specification, p. 20, lines 1-3, p. 21, lines 22-25, etc.– figures: 38 in FIG. 8, 38 in FIG. 9, 38 in FIG. 11, 38 in FIG. 12, 38 in FIG. 14, 38 in*

FIG. 15, 38 in FIG. 67, etc.) and a mid-foot section and a toe section, wherein the mid-foot section and the toe section form an angled support platform that has a first slope of a polarity along the inner edge of the athletic positioning sole section from a front edge of the athletic positioning sole section to the heel platform section (*e.g., see specification, p. 20, lines 9-12, p. 21, lines 12-15, p. 22, lines 4-7, etc.– figures: ϕ1, 23, 25, in FIG. 5, 36 in FIG. 8, ϕ3, 36 in FIG. 11, 36 in FIG. 12, ϕ4, 36 in FIG. 13, etc.*) and a second slope of the polarity along the front edge of the athletic positioning sole section from the inner edge to the outer edge of the athletic positioning sole section (*e.g., see specification, p. 20, lines 14-17, p. 21, lines 15-16, p. 22, lines 7-8, etc.– figures: ϕ2 in FIG. 5, ϕ2 in FIG. 10, ϕ2 in FIG. 11, ϕ2 in FIG. 12, etc.*) and a third slope of the polarity along the outer edge of the athletic positioning sole section from the front edge of the athletic positioning sole section to the heel platform section. (*e.g., see specification, p. 21, lines 16-17, p. 22, lines 8-9, etc.– figures: ϕ3 in FIG. 8, ϕ1 in FIG. 12, ϕ2 in FIG. 13, etc.*)

Dependent claim 10:

Dependent claim 10 further limits the subject matter of independent claim 9 by the heel platform section has a uniform platform height, wherein, from a front edge of the heel platform to the rear edge of the athletic positioning sole section, the uniform platform height has zero slope and the toe section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus. (*e.g., see specification, p. 20, lines 1-7, p. 21, lines 19-25, etc.– figures: ϕ3 in FIG. 8, ϕ1 in FIG. 9, etc.*)

Dependent claim 11:

Dependent claim 11 further limits the subject matter of independent claim 9 by a padded insole on a first surface of the apparatus covering one or more of at least a portion of the heel platform section, at least a portion of the mid-foot section, and at least a portion of the toe section. (*e.g., see specification, p. 18, lines 11-16, etc.– figures: 12 in FIG. 3, 12 in FIG. 4, 12, 21, 23, 25 in FIG. 5, etc.*)

Dependent claim 12:

Dependent claim 12 further limits the subject matter of independent claim 9 by the specific bottom comprising one of a cleat pattern bottom, a baseball spike bottom, a basketball bottom, a tennis bottom, a golf bottom, an ice skate bottom, a ski boot bottom, a cross-trainer bottom, a running shoe bottom, a walking shoe bottom, a dress shoe bottom, and a snowboard boot bottom. (*e.g., see specification, p. 19, lines 13-19, p. 39, lines 6-15, p. 39, line 28 – p. 40, line 7, etc.– figures: 190 in FIG. 63, 190 in FIG. 64, 190 in FIG. 66, etc.*)

Dependent claim 13:

Dependent claim 13 further limits the subject matter of independent claim 9 by the upper section comprising a sandal structure that includes one or more straps for securing the shoe to a foot. (*e.g., see specification, p. 19, lines 19-21, etc.– figures: 10, 12 in FIG. 3, 10, 12 in FIG. 4, 202 in FIG. 65 etc.*)

Independent claim 14:

Independent claim 14 describes a shoe comprising an upper shoe section, and a sole coupled to the upper shoe section wherein the sole includes a specific bottom and an athletic positioning sole section (*e.g., see specification, p. 19, lines 9-21, p. 19, lines 23-25, etc.– figures: 10, 12, 18 in FIG. 3, 10, 12, 18 in FIG. 4, etc.*) having a heel platform section a mid-foot section and a toe section wherein the mid-foot section and the toe section collectively have a geometric shape having a first dimension along a line between the heel platform section and the mid-foot section, a second dimension at a front outer edge of the apparatus, and a third dimension at a front inner edge of the apparatus, wherein the first dimension has a magnitude that is greater than a magnitude of the second dimension and the magnitude of the second dimension is greater than a magnitude of the third dimension, and wherein the first dimension is uniform such that, from an inner edge of the apparatus to an outer edge of the apparatus, the line between the heel platform section and the mid-foot section has zero slope. (*e.g., see specification, p. 20, lines 1-7, p. 20, lines 19-24, p. 21, lines 19-25, etc.– figures: 21, 23, 25, in FIG. 5, ϕ3, 21, 23, 25 in FIG. 8, ϕ1, 38 in FIG. 9, ϕ2 in FIG. 10, etc.*)

Dependent claim 16:

Dependent claim 16 further limits the subject matter of independent claim 14 by a padded insole on a first surface of the apparatus covering one or more of at least a portion of the heel platform section, at least a portion of the mid-foot section, and at least a portion of the toe section. (*e.g., see specification, p. 18, lines 11-16, etc.– figures: 12 in FIG. 3, 12 in FIG. 4, 12, 21, 23, 25 in FIG. 5, etc.*)

Dependent claim 17:

Dependent claim 17 further limits the subject matter of independent claim 14 by the specific bottom comprising one of a cleat pattern bottom, a baseball spike bottom, a basketball bottom, a tennis bottom, a golf bottom, an ice skate bottom, a ski boot bottom, a cross-trainer bottom, a running shoe bottom, a walking shoe bottom, a dress shoe bottom, and a snowboard boot bottom. (*e.g., see specification, p. 19, lines 13-19, p. 39, lines 6-15, p. 39, line 28 – p. 40, line 7, etc.– figures: 190 in FIG. 63, 190 in FIG. 64, 190 in FIG. 66, etc.*)

Dependent claim 18:

Dependent claim 18 further limits the subject matter of independent claim 14 by the upper section comprising a sandal structure that includes one or more straps for securing the shoe to a foot. (*e.g., see specification, p. 19, lines 19-21, etc.– figures: 10, 12 in FIG. 3, 10, 12 in FIG. 4, 202 in FIG. 65 etc.*)

ARGUMENT

Whether claims 16, 11, 8 and 5 are rejected under 35 USC §112 (a) or 35 USC §112 (pre-AIA), first paragraph, as failing to comply with the enablement requirement;

Whether claims 1, 3-12, 14, 16 and 17 are rejected under pre-AIA 35 USC §103 (a) as being unpatentable over Kerrigan (U.S. Pub. No. 2002/0139011);

Whether claims 13 and 18 are rejected under pre-AIA 35 USC §103 (a) as being unpatentable over Kerrigan (U.S. Pub. No. 2002/0139011) in view of Kraisosky (U.S. Pub. No. 2010/0115793).

REJECTION OF CLAIMS 16, 11, 8 AND 5 UNDER 35 USC §112 (A) OR 35 USC §112 (PRE-AIA), FIRST PARAGRAPH

In the office action dated 6/4/15, the Examiner stated that claims 16, 11, 8, and 5 are rejected because the specification, while being enabling for a padded insole that is mentioned only with regard to the prior art figures, does not reasonably provide enablement for the present invention having a padded insole. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. Applicant's specification only mentions a padded insole, on Page 2 of Applicant's disclosure, when briefly discussing Figures 1 and 2, which are noted as Prior Art figures and are not figures detailing the present invention. Therefore, Applicant's disclosure does not appear to provide support for a padded insole to be used with and/or be a part of the present invention.

The Appellant respectfully disagrees. In particular, MPEP 2164.01 states, in part, that the test of enablement is whether one reasonably skilled in the art could make or use the invention from the disclosures in the patent coupled with information known in the art without undue experimentation."). A patent need not teach, and preferably omits, what is well known in the art. Any part of the specification can support an enabling disclosure, even a background section that discusses, or even disparages, the subject matter disclosed therein. [emphasis added]

To one of average skill in the art of shoes, an insole is a well-known component of the shoe. One of average skill in the art also clearly understands the word "padded".

Further, MPEP 2111 states, in part, that the meaning given to a claim term must be consistent with the ordinary and customary meaning of the term (unless the term has been given a special definition in the specification), and must be consistent with the use of the claim term in the specification and drawings.

The specification provides no description of the claim term "padded insole" that would cause it to be interpreted differently than its ordinary and customary meaning. Per Merriam-Webster, an "insole" is defined as (1) an inside sole of a shoe; and (2) a loose thin strip placed inside a shoe for warmth or comfort. Per Merriam-Webster, a "pad" is defined as (1) a thin flat mat or cushion; (2) a piece of soft stuffed material used as or under a saddle; (3) used to shape an article of clothing; (4) a guard worn to shield body parts against impact; (5) a piece of usually folded absorbent material (as gauze) used as a surgical dressing or protective covering; and (6) a component of certain brake systems (as disc brakes) consisting of a plate covered with a frictional material.

Clearly, from the disclosure in the specification regarding a "padded insole" and the ordinary and customary meaning, one of average skill in the art understands what this claim term means and how it is used in practice. Accordingly, the Appellant requests that this rejection be withdrawn.

REJECTION OF CLAIMS 1, 3-12, 14, 16 and 17 UNDER 35 U.S.C. § 103(a)

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima*

facie case of obviousness is established does the burden shift to the Appellant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the Appellant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on Applicant's disclosure. MPEP § 2142

Claim 1 claims an apparatus that comprises:

a heel platform section that has a uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus, wherein the uniform height has zero slope from the outer edge to the inner edge;

a mid-foot section juxtaposed to the heel platform section; and

a toe section juxtaposed to the mid-foot section, wherein the mid-foot section and the toe section form an angled support platform that has a first slope of a polarity along the inner edge of the apparatus from a front edge of the apparatus to the heel platform section, a second slope of the polarity along the front edge of the apparatus from the inner edge to the outer edge of the apparatus, and a third slope of the polarity along the outer edge of the apparatus from the front edge of the apparatus to the heel platform section.

In the office action dated 6/4/15, the Examiner stated that regarding Claims 9 and 1, and 6 and 14, Kerrigan discloses a shoe (Fig.2) comprises an upper shoe section (38) and a sole (32) coupled to the upper shoe section. The sole (32) includes a specific bottom and an athletic positioning sole section (34) having a heel platform section (12) that has a uniform height from an outer edge (20) to an inner edge (22) of the athletic positioning sole section at a rear edge of the athletic positioning sole section (section 12 as can be seen in Fig.3; Pg.3, para.33 & 35). The uniform height has a slope of about two degrees from the outer edge (20) to the inner edge (22)(Pg.3, para.33 & 35, i.e. "about two degrees"). A mid-foot section (14) is juxtaposed to the heel platform section (12), and a toe section (16,18) juxtaposed to the mid-foot section (14)(Fig.3). The mid-foot section (14) and the toe section (16,18) form an angled support platform (24) that has a first slope of a polarity (from 12 to 18) along the inner edge (22) of the athletic positioning sole section from a front edge (at 18) of the athletic positioning sole section to the heel platform section (at 12), a second slope of the polarity (16h1 and 18h1 to 16h2 and 18h2) along the front edge (at 18) of the athletic positioning sole section from the inner edge (22) to the outer edge (20) of the athletic positioning sole section, and a third slope of the polarity (from 12 to 18) along the outer edge (20) of the athletic positioning sole section from the front edge (at 18) of the athletic positioning sole section to the heel platform section (at 12)(Fig.3). The mid-foot section (14) and the toe section (16) collectively have a geometric shape having a first dimension (14h1 and 14h2) along a line (14) between the heel platform section (12) and the mid-foot section (14), a second dimension at a front outer edge (20, seen at 16h2 and 18h2) of the apparatus, and a third dimension at a front inner edge (22, seen at 16h1 and 18h1) of the apparatus (34)(as seen in Fig.3). The first dimension (at 14h1 to 14h2) has a magnitude that is greater than or equal to a magnitude of the second dimension (seen at 16h2 and 18h2), and the magnitude of the second dimension (seen at 16h2 and 18h2) is greater than a magnitude of the third dimension (see at 16h1 and 18h1). The first dimension (14h1 to 14h2) is uniform such that, from an inner edge (20) of the apparatus to an outer edge (22) of the apparatus, the line (14) between the heel platform section (12) and the mid-foot section (14) has a slope of about two degrees (Pg.3, para.33, i.e. heights 14h1 and 14h2 are substantially the same, meaning there would be a slope of about two degrees along line 14).

Kerrigan does not specifically disclose the uniform height having a slope of less than two degrees from the outer edge to the inner edge or the line between the heel platform section and the mid-foot section having a slope of less than two degrees. However, Kerrigan does disclose the slope of the claimed areas to be "about" two degrees, which could reasonably be less than two degrees. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the areas with a slope of less than two degrees in order to provide the optimum configuration for the incline of a user's foot, as discovering an optimum value of a result effective variable involves only routine skill in the art. Further, it is noted that Applicant's disclosure does not appear to provide criticality for the slopes being specifically less than two degrees, the specific claimed value of less than two degrees appears to be one in a range of multiple options provided for in Applicant's disclosure.

The Appellant respectfully disagrees. To begin, claims 1 and 9 do not include the limitation "a slope of less than two degrees" for the uniform height of the heel platform section. Claims 1 and 9 include the limitation "a zero slope" for the uniform height of the heel platform section. As such, the Examiner's argument that Kerrigan does disclose the slope of the claimed areas to be "about" two degrees, which could reasonably be less than two degrees, is moot. On this point alone, the USPTO has failed to show a *prima facie* case of obviousness.

Further, Kerrigan teaches in paragraph 29 that the present invention can be incorporated into virtually any type of footwear, including the shoe illustrated in FIG. 2, regardless of the structure or style of the upper or outer sole. In one embodiment, the primary features of the invention are incorporated into the midsole 34, which can be incorporated into a desired shoe design. Alternatively, the midsole 34 can be of any conventional design, and the shoe can include an insole insert, sock liner 36, or the like, incorporating the features of the present invention.

Kerrigan further teaches in paragraphs 31-34 that FIG. 3 illustrates one embodiment of a midsole 34 according to the present invention. The midsole 34 includes a body 48 having a top surface 24, bottom surface 26, medial side 22, lateral side 20, and a toe portion 18, forefoot portion 16, midfoot portion 14, and heel portion 12. The midsole 34 can have a shape that follows the contours of a natural footprint. Alternatively, the midsole 34 can extend medially

beneath the arch of a wearer's foot without any laterally extending indentation at the arch portion 56 (FIG. 2).

The body 48 of the midsole 34 has a wedge-shaped profile (sometimes referred to as the "lateral wedge") in which the lateral side 20 of the body 48 has a height h that is greater than the height of the medial side 22 of the body 48. The difference in height between the medial 22 and lateral 20 sides of the midsole defines an incline or lateral wedge, which can extend along the length of the midsole 34, or can vary along different portions of the midsole.

As shown in FIG. 3, the height of the medial and lateral sides 22, 20 of the body 48 varies throughout the length of the body 48. The toe 18 and midfoot 14 portions each have respective medial heights 18h1, 14hl, and respective lateral heights 18h2, 14h2 that are substantially the same. Conversely, the heel 12 and forefoot 16 portions each have respective lateral heights 12h2, 16h2 that are greater than their respective medial heights 12h1, 16h1. The height differential from the medial side 22 to the lateral side 20 at the heel 12 and forefoot 16 portions defines a slope having an incline in the range of about 2° and 12°, more preferably in the range of about 4° and 5°, and most preferably about 5°. [emphasis added]

While the height may vary between the medial 22 and lateral 20 sides of the body 48, the midsole 34 can support the heel 12 and forefoot 16 portions at substantially the same height along the longitudinal axis L.

Kerrigan further teaches in paragraph 35 that FIG. 4 illustrates another embodiment of the midsole 34 according to the present invention. As shown in FIG. 4, the midsole 34 includes a top layer 40 and a bottom layer 42. The bottom layer 42 has a wedge-shaped profile in which the lateral side 20 has a height greater than the medial side 22, as described with respect to FIG. 3. The top layer 40, on the other hand, includes a medial wedge-shaped profile in which the medial side has a height greater than the lateral side. The toe 18 and midfoot 14 portions of the top layer 40 each have respective medial heights 18h3, 14h3 and respective lateral heights 18h4, 14h4 that are substantially the same. Conversely, the heel 12 and forefoot 16 portions each have respective lateral heights 12h4, 16h4 that are greater than their respective medial heights 12h3, 16h3. The

top layer 40, like the bottom layer 42, can support the heel 12 and forefoot 16 portions at substantially the same height along the longitudinal axis L.

As such, Kerrigan is teaching that:

a) each of the heel and forefoot sections have a lateral to medial slope (e.g., from the outer edge to the inner edge),

b) the arch section and the toe section are substantially flat from the lateral side to medial side, and

c) the heel and forefoot portions are at substantially the same height along the longitudinal axis L.

In contrast, claim 1 includes that the heel section has zero slope from the outer edge to the inner edge. Kerrigan teaches a slope from the outer edge to the inner edge for the heel section.

Further in contrast, claim 1 includes the mid-foot section and the toe section forming an angled support platform that has a first slope of a polarity along the inner edge of the apparatus from a front edge of the apparatus to the heel platform section and a third slope of the polarity along the outer edge of the apparatus from the front edge of the apparatus to the heel platform section. The first and third slopes position the toe section at a different height than the heel section. Kerrigan teaches that the heel section and the toe section are at the same height.

Still further in contrast, claim 1 includes that the angled support platform includes a second slope of the polarity along the front edge of the apparatus from the inner edge to the outer edge of the apparatus. As such, the midfoot and the toe sections have the second slope. Kerrigan teaches that the arch section and the toe section are flat from the lateral side to the medial side (i.e., no slope).

With respect to claims 6 and 14, the mid-foot section and the toe section collectively have a geometric shape. The geometric shape has a first dimension along a line between the heel platform section and the mid-foot section, a second dimension at front outer edge of the

apparatus, and a third dimension at front inner edge of the apparatus. The first dimension has a magnitude that is greater than a magnitude of the second dimension. The first dimension is uniform such that, from an inner edge of the apparatus to an outer edge of the apparatus, the line between the heel platform section and the mid-foot section has zero slope. The magnitude of the second dimension is greater than a magnitude of the third dimension.

Kerrigan does not teach or suggest the mid-foot section and the toe section collectively forming a geometric shape that has the three dimensions as specified. Kerrigan teaches that each of the arch section, the forefoot section, and the toe section has its own geometric shape. In particular, each of the arch section and the toe section has a geometric shape that is substantially flat from the lateral side to the medial side and the forefoot section has a geometric shape that has a lateral to medial slope. Further, Kerrigan teaches that the heel section has a lateral to medial slope, where, in contrast, claim 6 includes the line between the heel platform section and the mid-foot section has zero slope.

Based on the foregoing, it is clear that the USPTO has failed to provide a *prima facie* case of obviousness regarding claims 1, 3-12, 14, 16 and 17. Accordingly, the Appellant requests that claims 1, 3-12, 14, 16 and 17 be passed to allowance.

REJECTION OF CLAIMS 13 and 18 UNDER 35 U.S.C. § 103(a)

STANDARD

The standard for a rejection under 35 U.S.C. § 103(a) is also provided above with respect to the rejections of claims 1, 3-12, 14, 16 and 17.

Claim 13 is dependent upon claim 9 and claim 18 is dependent upon claim 14. As discussed above, claims 9 and 14 have been shown to overcome the 103 rejection. The Appellant believes that the arguments that distinguished claims 9 and 14 over the 103 are applicable in distinguishing claims 9 and 18 over the present rejection.

CLAIMS APPENDIX

1. (previously presented) An apparatus comprises:

a heel platform section that has a uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus, wherein the uniform height has zero slope from the outer edge to the inner edge;

a mid-foot section juxtaposed to the heel platform section; and

a toe section juxtaposed to the mid-foot section, wherein the mid-foot section and the toe section form an angled support platform that has a first slope of a polarity along the inner edge of the apparatus from a front edge of the apparatus to the heel platform section, a second slope of the polarity along the front edge of the apparatus from the inner edge to the outer edge of the apparatus, and a third slope of the polarity along the outer edge of the apparatus from the front edge of the apparatus to the heel platform section.

2. (canceled)

3. (previously presented) The apparatus of claim 1 further comprises:

the heel platform section, the mid-foot section, and the toe section constituting at least one of an insole for footwear; and

a sole of footwear.

4. (previously presented) The apparatus of claim 1 further comprises:

the heel platform section has a uniform platform height, wherein, from a front edge of the heel platform to the rear edge of the apparatus, the uniform platform height has zero slope; and

the toe section and the mid-foot section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

5. (previously presented) The apparatus of claim 1 further comprises:

a padded insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

6. (previously presented) An apparatus comprises:

a heel platform section;

a mid-foot section; and

a toe section, wherein the mid-foot section, and the toe section collectively have a geometric shape having a first dimension along a line between the heel platform section and the mid-foot section, a second dimension at front outer edge of the apparatus, and a third dimension at front inner edge of the apparatus, wherein the first dimension has a magnitude that is greater than a magnitude of the second dimension and the magnitude of the second dimension is greater than a magnitude of the third dimension, and wherein the first dimension is uniform such that, from an inner edge of the apparatus to an outer edge of the apparatus, the line between the heel platform section and the mid-foot section has zero slope.

7. (previously presented) The apparatus of claim 6 further comprises:

the heel platform section, the mid-foot section, and the toe section constituting at least one of an insole for footwear; and

a sole of footwear.

8. (previously presented) The apparatus of claim 6 further comprises:

a padded insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

9. (previously presented) A shoe comprises:

an upper shoe section; and

a sole coupled to the upper shoe section, wherein the sole includes:

a specific bottom; and

an athletic positioning sole section having:

a heel platform section that has a uniform height from an outer edge to an inner edge of the athletic positioning sole section at a rear edge of the athletic positioning sole section, wherein the uniform height has zero slope from the outer edge to the inner edge;

a mid-foot section; and

a toe section, wherein the mid-foot section and the toe section form an angled support platform that has a first slope of a polarity along the inner edge of the athletic positioning sole section from a front edge of the athletic positioning sole section to the heel platform section, a second slope of the polarity along the front edge of the athletic positioning sole section from the inner edge to the outer edge of the athletic positioning sole section, and a third slope of the polarity along the outer edge of the athletic positioning sole section from the front edge of the athletic positioning sole section to the heel platform section.

10. (previously presented) The shoe of claim 9 further comprises:

the heel platform section has a uniform platform height, wherein, from a front edge of the heel platform to the rear edge of the athletic positioning sole section, the uniform platform height has zero slope; and

the toe section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

11. (previously presented) The shoe of claim 9 further comprises:

a padded insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

12. (original) The shoe of claim 9, wherein the specific bottom comprises one of:

a cleat pattern bottom;
a baseball spike bottom;
a basketball bottom;
a tennis bottom;
a golf bottom;
an ice skate bottom;
a ski boot bottom;
a cross-trainer bottom;
a running shoe bottom;
a walking shoe bottom;
a dress shoe bottom; and
a snowboard boot bottom.

13. (original) The shoe of claim 9, wherein the upper section comprises:

a sandal structure that includes one or more straps for securing the shoe to a foot.

14. (previously presented) A shoe comprises:

an upper shoe section; and

a sole coupled to the upper shoe section, wherein the sole includes:

a specific bottom; and

an athletic positioning sole section having:

a heel platform section;

a mid-foot section; and

a toe section, wherein the mid-foot section and the toe section collectively have a geometric shape having a first dimension along a line between the heel platform section and the mid-foot section, a second dimension at a front outer edge of the apparatus, and a third dimension at a front inner edge of the apparatus, wherein the first dimension has a magnitude that is greater than a magnitude of the second dimension and the magnitude of the second dimension is greater than a magnitude of the third dimension, and wherein the first dimension is uniform such that, from an inner edge of the apparatus to an outer edge of the apparatus, the line between the heel platform section and the mid-foot section has zero slope.

15. (cancelled)

16. (previously presented) The shoe of claim 14 further comprises:

a padded insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

17. (original) The shoe of claim 14, wherein the specific bottom comprises one of:

a cleat pattern bottom;
a baseball spike bottom;
a basketball bottom;
a tennis bottom;
a golf bottom;
an ice skate bottom;
a ski boot bottom;
a cross-trainer bottom;
a running shoe bottom;
a walking shoe bottom;
a dress shoe bottom; and
a snowboard boot bottom.

18. (original) The shoe of claim 14, wherein the upper section comprises:

a sandal structure that includes one or more straps for securing the shoe to a foot.

The Appellant has demonstrated that the present invention as claimed is clearly distinguishable over the prior art cited of record. Therefore, the Appellant respectfully requests that the Board of Patent Appeals and Interferences to reverse the final rejection of the Examiner and instruct the Examiner to issue a notice of allowance of all claims.

The Examiner is invited to contact the undersigned by email if the Examiner believes that such a communication would advance the prosecution of the present U.S. utility patent application.

RESPECTFULLY SUBMITTED,

By: /Timothy W. Markison/Reg. No. 33,534
Timothy W. Markison

Garlick & Markison
P. O. Box 160727
Austin, TX 78716-0727
Phone: (214) 676-1020
E-mail: tmarkison@texaspatents.com

Electronic Patent Application Fee Transmittal

Application Number:	13355801
Filing Date:	23-Jan-2012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Filer:	Timothy W. Markison/Beth Pierotti
Attorney Docket Number:	ATZ00003

Filed as Small Entity

Filing Fees for Utility under 35 USC 111(a)

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Extension - 1 month with $0 paid	2251	1	100	100
Miscellaneous:				
			Total in USD ($)	**100**

Electronic Acknowledgement Receipt

EFS ID:	25315201
Application Number:	13355801
International Application Number:	
Confirmation Number:	1012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Customer Number:	34399
Filer:	Timothy W. Markison/Beth Pierotti
Filer Authorized By:	Timothy W. Markison
Attorney Docket Number:	ATZ00003
Receipt Date:	28-MAR-2016
Filing Date:	23-JAN-2012
Time Stamp:	10:58:49
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	Credit Card
Payment was successfully received in RAM	$100
RAM confirmation Number	10140
Deposit Account	502126
Authorized User	PIEROTTI, BETH

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

Charge any Additional Fees required under 37 CFR 1.17 (Patent application and reexamination processing fees)

Charge any Additional Fees required under 37 CFR 1.21 (Miscellaneous fees and charges)

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Appeal Brief Filed	ATZ00003_Appeal_Brief.pdf	103040 dce0f94dc18af96ea01be4cc8fa726b77c7814b3	no	22
Warnings:					
Information:					
2	Fee Worksheet (SB06)	fee-info.pdf	30559 97a996b73669e7152dd23d5889cb0354c0de0f6a	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	133599		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111
If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371
If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office
If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

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www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/355,801	01/23/2012	Michael R. Adair	ATZ00003	1012

34399 7590 01/27/2016

GARLICK & MARKISON
Melanie Murdock
P.O. BOX 160727
AUSTIN, TX 78716-0727

EXAMINER	
BRANDON, MEGAN E	

ART UNIT	PAPER NUMBER
3765	

MAIL DATE	DELIVERY MODE
01/27/2016	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of Panel Decision from Pre-Appeal Brief Review	Application No.	Applicant(s)
	13/355,801	ADAIR ET AL.
	Examiner	Art Unit
	MEGAN BRANDON	3765

This is in response to the Pre-Appeal Brief Request for Review filed 21 December, 2015.

1. ☐ **Improper Request** – The Request is improper and a conference will not be held for the following reason(s):

☐ The Notice of Appeal has not been filed concurrent with the Pre-Appeal Brief Request.
☐ The request does not include reasons why a review is appropriate.
☐ A proposed amendment is included with the Pre-Appeal Brief request.
☐ Other:

The time period for filing a response continues to run from the receipt date of the Notice of Appeal or from the mail date of the last Office communication, if no Notice of Appeal has been received.

2. ☒ **Proceed to Board of Patent Appeals and Interferences** – A Pre-Appeal Brief conference has been held. The application remains under appeal because there is at least one actual issue for appeal. Applicant is required to submit an appeal brief in accordance with 37 CFR 41.37. The time period for filing an appeal brief will be reset to be one month from mailing this decision, or the balance of the two-month time period running from the receipt of the notice of appeal, whichever is greater. Further, the time period for filing of the appeal brief is extendible under 37 CFR 1.136 based upon the mail date of this decision or the receipt date of the notice of appeal, as applicable.

☒ The panel has determined the status of the claim(s) is as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: *1, 3-14 and 16-18*.
Claim(s) withdrawn from consideration: _____.

3. ☐ **Allowable application** – A conference has been held. The rejection is withdrawn and a Notice of Allowance will be mailed. Prosecution on the merits remains closed. No further action is required by applicant at this time.

4. ☐ **Reopen Prosecution** – A conference has been held. The rejection is withdrawn and a new Office action will be mailed. No further action is required by applicant at this time.

All participants:

(1) *MEGAN BRANDON*.	(3) *THANH TRUONG*.
(2) *KHOA HUYNH*.	(4)_____.

/MEGAN BRANDON/ Examiner, Art Unit 3765	/Khoa Huynh/ Supervisory Patent Examiner, Art Unit 3765	/THANH TRUONG/ Supervisory Patent Examiner, Art Unit 3721

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-09)
Approved for use through 07/31/2012. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): ATZ00003

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on _____

Signature _____

Typed or printed name _____

Application Number	Filed
13/355,801	01/23/2012

First Named Inventor: Michael R. Adair

Art Unit	Examiner
3765	BRANDON, MEGAN E

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- ☑ attorney or agent of record. Registration number 33,534
- ☐ attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____

/Timothy W. Markison/
Signature

Timothy W. Markison
Typed or printed name

214-676-1020
Telephone number

12/21/2015
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☑ *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

Certification under 37 C.F.R. §1.8

Date of Mailing or Transmission: December 21, 2015

I hereby certify that I have caused the document indicated herein on the date indicated above to be transmitted via the Office electronic filing system in accordance with 37 C.F.R. §1.6(a)(4).

BY: /Beth Pierotti/ (Signature) **Name:** Beth Pierotti (Typed Name)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

1st Named Inventor:	Michael R. Adair	**Examiner:**	Brandon, Megan E
Application No.:	13/355,801	**Art Unit:**	3765
Filing Date:	23 Jan 2012	**Docket No.:**	ATZ00003
Confirmation No.:	1012		
Title:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF		

December 21, 2015

Pre-Appeal Brief Request for Review

1. In the Final Office Action dated October 19, 2015, the Examiner reasserted the rejection of claims 1, 3-14, and 16-18. In particular, claims 16, 11, 8, and 5 have been rejected under 35 USC §112(a); claims 1, 4, 6, 9, 10, and 14 have been rejected under 35 USC § 112(a); claims 1, 3, 4, 6, 7, 9, 10, 12-14 have been rejected under 35 USC §102(b), and 16-18 have been rejected under 35 USC §102(b); and claims 5, 8, 11, and 16 have been rejected under 35 USC §103(a). Applicant respectfully believes that there is a clear deficiency in the prima facie case in support of these rejections and requests review of the allowability of claims 1, 3-14, and 16-18.

2. Claims 16, 11, 8, and 5 have been rejected under 35 USC §112(a). The Examiner has stated that the specification, while being enabling for a padded insole that is mentioned only with regard to the prior art figures, does not reasonably provide enablement for the present invention having a padded insole. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. Applicant's specification only mentions a padded insole, on Page 2 of Applicant's disclosure, when briefly discussing Figures 1 and 2, which are noted as Prior Art figures

and are not figures detailing the present invention. Therefore, Applicant's disclosure does not appear to provide support for a padded insole to be used with and/or be a part of the present invention. The Applicant respectfully disagrees.

MPEP 2164.01 states, in part, that the test of enablement is whether one reasonably skilled in the art could make or use the invention from the disclosures in the patent coupled with information known in the art without undue experimentation."). A patent need not teach, and preferably omits, what is well known in the art. Any part of the specification can support an enabling disclosure, even a background section that discusses, or even disparages, the subject matter disclosed therein. [emphasis added]

From this passage of the MPEP, the background of the invention can be used as support for an enabling disclosure. As such, disclosing a padded sole in the background section of the present patent application provides an enabling disclosure to one of average skill in the art. Accordingly, the Applicant requests that this rejection be withdrawn.

3. Claims 1, 4, 6, 9, 10, and 14 have been rejected under 35 USC § 112(a). The Examiner has stated that claims 1, 4, 6, 9, 10 and 14 recite "a zero slope" of the uniform height of the heel platform. After a full review of Applicant's specification there appears to be no reference of any degree of slope with regard to the uniform height, more to the point, the uniform height when mentioned is stated as being "substantially" uniform in height; which is to say that no particular degree of slope, or any critical measurement at all has been provided to describe the uniform height. The Applicant respectfully disagrees.

MPEP 2164.01 states, in part, that a patent need not teach, and preferably omits, what is well known in the art.

Claim 1 claims, in part, a heel platform section that has a uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus, wherein the uniform height has zero slope from the outer edge to the inner edge.

As is well known from basic geometry, a line that is a uniform height above a reference line, or surface, will have no slope (i.e., will be parallel) to the reference line or reference surface. In claim 1, the heel platform has a uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus (e.g., a line or a surface). While not specifically stated, but clearly implied, the reference line or surface is with respect to the bottom of the heel platform. As such, with respect to a reference line or surface of the bottom of the heel platform, the line or surface along the rear edge is parallel, thus has no slope.

Since claim 1 relies on basic concepts of geometry, MPEP 2164.01 states that such well known concepts need not be, and preferably are not, included in the specification.

With respect to the Examiner's statement that the uniform height when mentioned is stated as being "substantially" uniform in height; which is to say that no particular degree of slope, or any critical measurement at all has been provided to describe the uniform height. "Substantially" is not used in the claim, thus the Examiner is inappropriately reading limitations of the specification into the claims.

Further, MPEP 2173.05(b)III, D states that the term "substantially" is often used in conjunction with another term to describe a particular characteristic of the claimed invention. It is a broad term. In re Nehrenberg, 280 F.2d 161, 126 USPQ 383 (CCPA 1960). The Court held that the limitation "to substantially increase the efficiency of the compound as a copper extractant" was definite in view of the general guidelines contained in the specification. In re Mattison, 509 F.2d 563, 184 USPQ 484 (CCPA 1975). The Court held that the limitation "which produces substantially equal E and H plane illumination patterns" was definite because one of ordinary skill in the art would know what was meant by "substantially equal." Andrew Corp. v. Gabriel Electronics, 847 F.2d 819, 6 USPQ2d 2010 (Fed. Cir. 1988).

Thus, even if "substantially" were to be read into the claims, one of average skill in the art would know the meaning of "a substantially uniform height" producing a zero slope. Accordingly, the Applicant believes that this rejection has been overcome.

4. Claims 1, 3, 4, 6, 7, 9, 10, 12-14, and 16-18 have been rejected under 35 USC §102(b) as being anticipated by Chapman.

Claim 1 includes, in part, the mid-foot section and the toe section form an angled support platform that has a first slope of a polarity along the inner edge of the apparatus from a front edge of the apparatus to the heel platform section, a second slope of the polarity along the front edge of the apparatus from the inner edge to the outer edge of the apparatus, and a third slope of the polarity along the outer edge of the apparatus from the front edge of the apparatus to the heel platform section.

With reference to Figure 4 of Chapman, which is a side view, the sole of Chapman has an arch that places the toe section above the mid-foot section. This is not the equivalent of the above referenced limitation of claim 1.

Based on the foregoing, the Applicant believes that claims 1, 3, 4, 6, 7, 9, 10, 12-14.

5. Claims 5, 8, 11, and 16 have been rejected under 35 USC §103(a) as being unpatentable over Chapman in view of Kerrigan.

The Applicant believes that the arguments presented above are applicable in distinguishing claims 16-18 over the present rejection.

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RESPECTFULLY SUBMITTED,

By: /Timothy W. Markison/Reg. No. 33,534
Timothy W. Markison

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PTO/SB/31 (02-14)
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NOTICE OF APPEAL FROM THE EXAMINER TO THE PATENT TRIAL AND APPEAL BOARD

Docket Number (Optional): ATZ00003

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on 12/21/2015

Signature /Beth Pierotti/

Typed or printed name Beth Pierotti

In re Application of: Michael R. Adair

Application Number	Filed
13/355,801	01/23/2012

For: ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF

Art Unit	Examiner
3765	BRANDON, MEGAN E

Applicant hereby **appeals** to the Patent Trial and Appeal Board from the last decision of the examiner.

The fee for this Notice of Appeal is (37 CFR 41.20(b)(1)) $ 800

☑ Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by half, and the resulting fee is: $ 400

☐ A check in the amount of the fee is enclosed.

☑ Payment by credit card. ~~Form PTO-2038 is attached.~~

☑ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 50-2126

☐ A petition for an extension of time under 37 CFR 1.136(a) (PTO/SB/22) is enclosed.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

☑ attorney or agent of record. Registration number 33,534

☐ attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____

/Timothy W. Markison/
Signature

Timothy W. Markison
Typed or printed name

214-676-1020
Telephone number

12/21/2015
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☑ *Total of 1 forms are submitted.

This collection of information is required by 37 CFR 41.31. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
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6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

Electronic Patent Application Fee Transmittal

Application Number:	13355801
Filing Date:	23-Jan-2012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Filer:	Timothy W. Markison/Beth Pierotti
Attorney Docket Number:	ATZ00003

Filed as Small Entity

Filing Fees for Utility under 35 USC 111(a)

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Notice of Appeal	2401	1	400	400
Post-Allowance-and-Post-Issuance:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Extension-of-Time:				
Miscellaneous:				
			Total in USD ($)	**400**

Electronic Acknowledgement Receipt

EFS ID:	24427681
Application Number:	13355801
International Application Number:	
Confirmation Number:	1012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Customer Number:	34399
Filer:	Timothy W. Markison/Beth Pierotti
Filer Authorized By:	Timothy W. Markison
Attorney Docket Number:	ATZ00003
Receipt Date:	21-DEC-2015
Filing Date:	23-JAN-2012
Time Stamp:	15:26:45
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	Credit Card
Payment was successfully received in RAM	$400
RAM confirmation Number	2195
Deposit Account	502126
Authorized User	PIEROTTI, BETH

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

Charge any Additional Fees required under 37 CFR 1.17 (Patent application and reexamination processing fees)

Charge any Additional Fees required under 37 CFR 1.21 (Miscellaneous fees and charges)

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Pre-Brief Conference request	ATZ00003_PAB.pdf	233537 6026804630ba21927bb7fd5ccf659d23675...eb05f	no	2
Warnings:					
Information:					
2	Pre-Brief Conference request	ATZ00003_pre-appeal_brief.pdf	22519 b19ab4594423202&eb55bda51d76754ca6f...db870	no	5
Warnings:					
Information:					
3	Notice of Appeal Filed	ATZ00003_Notice_of_Appeal.pdf	212295 627dbbe96825a35e37563adf79987112e94...1cec6	no	2
Warnings:					
Information:					
4	Fee Worksheet (SB06)	fee-info.pdf	30394 22d44bf97f9202f8f1f3b5b5dac409d3709d...7406	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	498745		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111
If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371
If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office
If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/355,801	01/23/2012	Michael R. Adair	ATZ00003	1012

34399 7590 10/19/2015

GARLICK & MARKISON
Melanie Murdock
P.O. BOX 160727
AUSTIN, TX 78716-0727

EXAMINER	
BRANDON, MEGAN E	

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
10/19/2015	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

MMurdock@TEXASPATENTS.COM
ghmptocor@texaspatents.com
bpierotti@texaspatents.com

Office Action Summary	Application No. 13/355,801	Applicant(s) ADAIR ET AL.	
	Examiner MEGAN BRANDON	Art Unit 3765	AIA (First Inventor to File) Status No

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09/04/2015*.

☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on _____; the restriction requirement and election have been incorporated into this action.

4)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims*

5)☒ Claim(s) *1,3-14 and 16-18* is/are pending in the application.

5a) Of the above claim(s) _____ is/are withdrawn from consideration.

6)☐ Claim(s) _____ is/are allowed.

7)☒ Claim(s) *1,3-14 and 16-18* is/are rejected.

8)☐ Claim(s) _____ is/are objected to.

9)☐ Claim(s) _____ are subject to restriction and/or election requirement.

* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to PPHfeedback@uspto.gov.

Application Papers

10)☐ The specification is objected to by the Examiner.

11)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

Certified copies:

a)☐ All b)☐ Some** c)☐ None of the:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

** See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b) Paper No(s)/Mail Date _____.

3) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

4) ☐ Other: _____.

The present application is being examined under the pre-AIA first to invent provisions.

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed September 4, 2015 has been received, Claims 1, 3-14 and 16-18 are currently pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112(a):

> (a) IN GENERAL.—The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor or joint inventor of carrying out the invention.

The following is a quotation of the first paragraph of pre-AIA 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 16, 11, 8 and 5 are rejected under 35 U.S.C. 112(a) or 35 U.S.C. 112 (pre-AIA), first paragraph, because the specification, while being enabling for a padded insole that is mentioned only with regard to the prior art figures, does not reasonably provide enablement for the present invention having a padded insole. The specification

does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. Applicant's specification only mentions a padded insole, on Page 2 of Applicant's disclosure, when briefly discussing Figures 1 and 2 which are noted as Prior Art figures and are not figures detailing the present invention. Therefore, Applicant's disclosure does not appear to provide support for a padded insole to be used with and/or be a part of the present invention.

3. Claims 1, 4, 6, 9, 10 and 14 are rejected under 35 U.S.C. 112(a) or 35 U.S.C. 112 (pre-AIA), first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor or a joint inventor, or for pre-AIA the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1, 4, 6, 9, 10 and 14 recite "a zero slope" of the uniform height of the heel platform. After a full review of Applicant's specification there appears to be no reference of any degree of slope with regard to the uniform height, more to the point, the uniform height when mentioned is stated as being "substantially" uniform in height; which is to say that no particular degree of slope, or any critical measurement at all has been provided to describe the uniform height. The limitation is regarded as new matter.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of pre-AIA 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1, 3, 4, 6, 7, 9, 10, 12-14 and 15-18 are rejected under pre-AIA 35 U.S.C. 102(b) as being anticipated by Chapman (2008/0163513).

Regarding Claims 9 and 1, and 6 and 14, Chapman discloses a shoe comprises an upper shoe section (as seen outlined in Fig.14) and a sole coupled to the upper shoe section (Fig.14). The sole includes a specific bottom (310) and an athletic positioning sole section (100) having a heel platform section (from heel end edge to marker 5 seen in Fig.3) that has a uniform height (200 as seen in Fig.5) from an outer edge (140) to an inner edge (150) of the athletic positioning sole section at a rear edge (heel end edge) of the athletic positioning sole section (Fig.3 & 5). The uniform height (of 200 in Fig.5) has zero slope from the outer edge to the inner edge (as seen in Fig.5, 200 has no slope from 150 to 140). A mid-foot section (from marker 5 to marker 8 as seen in Fig.3) is juxtaposed to the heel platform section, and a toe section (from marker 8 to marker 10) juxtaposed to the mid-foot section (Fig.3). The mid-foot section and the toe section form an angled support platform (200 from marker 5 to 10) that has a first slope of a polarity (as seen in cross-sections Fig.6-10) along the inner edge (150) of the athletic positioning sole section from a front edge (Fig.10) of the athletic positioning sole section

to the heel platform section (marker 5 in Fig.3), a second slope of the polarity along the front edge (Fig.10) of the athletic positioning sole section from the inner edge (150) to the outer edge (140) of the athletic positioning sole section, and a third slope of the polarity (as seen in cross-sections Fig.6-10) along the outer edge (140) of the athletic positioning sole section from the front edge (Fig.10) of the athletic positioning sole section to the heel platform section (marker 5 in Fig.3).

The mid-foot section and the toe section collectively (from marker 5 to marker 10) have a geometric shape having a first dimension (200 as seen in Fig.5) along a line (marker 5) between the heel platform section and the mid-foot section, a second dimension (200 in Fig.8) at a front outer edge (140) of the apparatus, and a third dimension (200 in Fig.10) at a front inner edge (150) of the apparatus. The first dimension (200 as seen in Fig.5) has a magnitude that is greater than a magnitude of the second dimension (200 in Fig.8 at 140), and the magnitude of the second dimension is greater than a magnitude of the third dimension (200 in Fig.10 at 150). The first dimension is uniform such that, from an inner edge (150) of the apparatus to an outer edge (140) of the apparatus, the line (marker 5) between the heel platform section and the mid-foot section has zero slope (as seen in Fig.5, 200 has no slope from 150 to 140).

Regarding Claims 7 and 3, Chapman discloses a shoe further comprises the heel platform section, the mid-foot section, and the toe section constituting a sole of footwear (as seen in Fig.3 & 4).

Regarding Claims 10 and 4, Chapman discloses a shoe further comprises the heel platform (from heel end edge to marker 5 seen in Fig.3) section has a uniform platform height (200 as seen in Fig.5), wherein, from a front edge (marker 5) of the heel platform to the rear edge (heel end edge) of the athletic positioning sole section, the uniform platform height has zero slope (200 as seen in Fig.5). The toe section and the mid-foot section (from marker 5 to marker 10 as seen in Fig.3) having a second dimension (200 as seen in Fig.7) at a front outer edge (140) of the apparatus and a third dimension (200 as seen in Fig.7) at a front inner edge (150) of the apparatus.

Regarding Claims 17 and 12, Chapman discloses a shoe wherein the specific bottom comprises one of: a cleat pattern bottom, a baseball spike bottom, a basketball bottom, a tennis bottom, a golf bottom, an ice skate bottom, a ski boot bottom, a cross-trainer bottom, a running shoe bottom, a walking shoe bottom, a dress shoe bottom, and a snowboard boot bottom. It is noted that shoes are utilized for walking and the shoe of Chapman can be used for walking or running and is therefore a walking or running shoe bottom. Additionally, it is noted that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

Claim Rejections - 35 USC § 103

The following is a quotation of pre-AIA 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 5, 8, 11 and 16 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Chapman in view of Kerrigan (US 2002/0139011).

Regarding Claims 16, 11, 8 and 5, Chapman discloses the invention substantially as claimed above. Chapman does not discloses a padded insole on a first surface of the apparatus covering one or more of at least a portion of the heel platform section, at least a portion of the mid-foot section, and at least a portion of the toe section. However, Kerrigan discloses a sole having a insole layer that is padded since it conforms to a user's foot and fabrics are known to have some give/cushion/padding (Pg.3, para.29).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have included a padded insole as taught by Kerrigan on the sole surface of Chapman, in order to provide a sole with a comfortable insole layer that provides cushioning and support to the user's foot. It is noted that Applicant has provided no disclosed or claimed criticality for what constitutes a padded insole.

6. Claims 13 and 18 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Chapman in view of Kraisosky (US 2010/0115793).

Regarding Claims 18 and 13, Chapman discloses the invention substantially as claimed above. Chapman does not disclose the upper of the shoe being a sandal with straps. However, Kraisosky teaches a shoe (10) with a sole having an upper section comprising a sandal structure (16,24,22) that includes one or more straps (16,24) for securing the shoe to a foot (Fig.2 & 7).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have substituted the shoe upper of Chapman with the sandal upper, as taught by Kraisosky, as a simple substitution of one well known type of shoe upper for another to provide for the predictable result of attaching a shoe to a wearer's foot. It is noted that Applicant has provided no criticality for the specific upper structure of the shoe.

Response to Arguments

Applicant's arguments filed September 4, 2015 have been fully considered but they are not persuasive.

7. Applicant's Remarks: Applicant asserts that Claims 5, 8, 11 and 16 should not be rejected under 35 USC 112, first paragraph as failing to comply with the enablement requirement.

Examiner's Response: Examiner respectfully disagrees. Though a padded insole is discussed in Applicant's disclosure with regard to Prior Art Figures, Applicant's disclosure does not provide support for a "padded insole" to be used with and/or be a part of the present invention. Therefore, the "padded insole" being a part of the present invention that Applicant is seeking patent protection for is not enabled by Applicant's disclosure, in other words, the padded insole being disclosed with regard to Prior Art does not provide for the structure of the padded insole being a part of the claimed invention, as the structure of such is not discussed with regard to the present invention and its structure. While an insole may be considered conventional in the footwear art, an insole in conjunction with Applicant's present invention is not considered to be "conventional", especially when such a combination of structures has not been provided sufficient support in the disclosure, therefore the 35 U.S.C. 112(a) rejection is maintained at this time.

8. In view of Applicant's amendment, the search has been updated, and new grounds of rejection have been identified and applied. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MEGAN BRANDON whose telephone number is (571)272-3267. The examiner can normally be reached on Monday-Friday 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoa Huynh can be reached on (571)272-4888. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MEGAN BRANDON/
Examiner, Art Unit 3765

/Khoa Huynh/
Supervisory Patent Examiner, Art Unit 3765

Notice of References Cited	Application/Control No. 13/355,801	Applicant(s)/Patent Under Reexamination ADAIR ET AL.	
	Examiner MEGAN BRANDON	Art Unit 3765	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	CPC Classification	US Classification
*	A	US-7,793,437 B2	09-2010	Chapman; Steven	A43B7/141	36/142
*	B	US-2008/0163513 A1	07-2008	Chapman; Steve	A43B7/141	36/91
	C	US-				
	D	US-				
	E	US-				
	F	US-				
	G	US-				
	H	US-				
	I	US-				
	J	US-				
	K	US-				
	L	US-				
	M	US-				

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	CPC Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

Index of Claims	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13355801	ADAIR ET AL.
	Examiner	Art Unit
	MEGAN BRANDON	3765

✓	Rejected	-	Cancelled	N	Non-Elected	A	Appeal
=	Allowed	÷	Restricted	I	Interference	O	Objected

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

CLAIM		DATE								
Final	Original	08/09/2013	12/26/2013	03/01/2014	08/22/2014	10/29/2014	05/01/2015	09/24/2015		
	1	÷	✓	✓	✓	✓	✓	✓		
	2	÷	✓	✓	✓	-	-	-		
	3	÷	✓	✓	✓	✓	✓	✓		
	4	÷	✓	✓	✓	✓	✓	✓		
	5	÷	✓	✓	✓	✓	✓	✓		
	6	÷	✓	✓	✓	✓	✓	✓		
	7	÷	✓	✓	✓	✓	✓	✓		
	8	÷	✓	✓	✓	✓	✓	✓		
	9	÷	✓	✓	✓	✓	✓	✓		
	10	÷	✓	✓	✓	✓	✓	✓		
	11	÷	✓	✓	✓	✓	✓	✓		
	12	÷	✓	✓	✓	✓	✓	✓		
	13	÷	✓	✓	✓	✓	✓	✓		
	14	÷	✓	✓	✓	✓	✓	✓		
	15	÷	✓	✓	-	-	-	-		
	16	÷	✓	✓	✓	✓	✓	✓		
	17	÷	✓	✓	✓	✓	✓	✓		
	18	÷	✓	✓	✓	✓	✓	✓		

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13355801	ADAIR ET AL.
	Examiner	Art Unit
	MEGAN BRANDON	3765

CPC- SEARCHED		
Symbol	Date	Examiner
A43B7/142; A43B7/144; A43B13/38; A43B13/145; A43B5/00; A43B13/12; A43B7/00; A43B7/14; A43B3/00	12/26/2013	MB
A61F5/0195; A61F5/14	12/26/2013	MB

CPC COMBINATION SETS - SEARCHED		
Symbol	Date	Examiner

US CLASSIFICATION SEARCHED			
Class	Subclass	Date	Examiner
36	44, 43, 25R, 110, 103, 132, 142, 144	12/26/2013	MB

SEARCH NOTES		
Search Notes	Date	Examiner
Inventorship Search	12/26/2013	MB
Assignee Search	12/26/2013	MB
Search Assistance Ted Kavanaugh	12/26/2013	MB
Updated Search	03/01/2014	MB
Updated Search	8/22/2014	MB
Updated Search	10/29/2014	MB
Updated Search	5/1/2015	MB
Updated Search	9/24/2015	MB

INTERFERENCE SEARCH			
US Class/ CPC Symbol	US Subclass / CPC Group	Date	Examiner

Certification under 37 C.F.R. §1.8

Date of Mailing or Transmission: September 4, 2015

I hereby certify that I have caused the document indicated herein on the date indicated above to be transmitted via the Office electronic filing system in accordance with 37 C.F.R. §1.6(a)(4).

BY: /Beth Pierotti/ (Signature) **Name:** Beth Pierotti (Typed Name)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

1st Named Inventor:	Michael R. Adair	**Examiner:**	Brandon, Megan E
Application No.:	13/355,801	**Art Unit:**	3765
Filing Date:	23 Jan 2012	**Docket No.:**	ATZ00003
Confirmation No.:	1012		
Title:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF		

RESPONSE TO NON FINAL OFFICE ACTION

Date: September 4, 2015

United States Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450

In response to an office action dated June 4, 2015 regarding the above-captioned patent application, the Applicant respectfully submits the following amendment and response.

AMENDMENT TO THE CLAIMS

1. (currently amended) An apparatus comprises:

a heel platform section that has a uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus, wherein the uniform height has [[a]] zero slope ~~of less than two degrees~~ from the outer edge to the inner edge;

a mid-foot section juxtaposed to the heel platform section; and

a toe section juxtaposed to the mid-foot section, wherein the mid-foot section and the toe section form an angled support platform that has a first slope of a polarity along the inner edge of the apparatus from a front edge of the apparatus to the heel platform section, a second slope of the polarity along the front edge of the apparatus from the inner edge to the outer edge of the apparatus, and a third slope of the polarity along the outer edge of the apparatus from the front edge of the apparatus to the heel platform section.

2. (canceled)

3. (previously presented) The apparatus of claim 1 further comprises:

the heel platform section, the mid-foot section, and the toe section constituting at least one of an insole for footwear; and

a sole of footwear.

4. (currently amended) The apparatus of claim 1 further comprises:

the heel platform section has a uniform platform height, wherein, from a front edge of the heel platform to the rear edge of the apparatus ~~athletic positioning sole section~~, the uniform platform height has [[a]] zero slope ~~of less than the two degrees~~; and

the toe section and the mid-foot section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

5. (previously presented) The apparatus of claim 1 further comprises:

a padded insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

6. (currently amended) An apparatus comprises:

a heel platform section;

a mid-foot section; and

a toe section, wherein the mid-foot section, and the toe section collectively have a geometric shape having a first dimension along a line between the heel platform section and the mid-foot section, a second dimension at front outer edge of the apparatus, and a third dimension at front inner edge of the apparatus, wherein the first dimension has a magnitude that is greater than ~~or equal to~~ a magnitude of the second dimension and the magnitude of the second dimension is greater than a magnitude of the third dimension, and wherein the first dimension is uniform such that, from an inner edge of the apparatus to an outer edge of the apparatus, the line between the heel platform section and the mid-foot section has [[a]] zero slope ~~of less than two degrees~~.

7. (previously presented) The apparatus of claim 6 further comprises:

the heel platform section, the mid-foot section, and the toe section constituting at least one of an insole for footwear; and

a sole of footwear.

8. (previously presented) The apparatus of claim 6 further comprises:

a padded insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

9. (currently amended) A shoe comprises:

an upper shoe section; and

a sole coupled to the upper shoe section, wherein the sole includes:

a specific bottom; and

an athletic positioning sole section having:

a heel platform section that has a uniform height from an outer edge to an inner edge of the athletic positioning sole section at a rear edge of the athletic positioning sole section, wherein the uniform height has [[a]] zero slope ~~of less than two degrees~~ from the outer edge to the inner edge;

a mid-foot section; and

a toe section, wherein the mid-foot section and the toe section form an angled support platform that has a first slope of a polarity along the inner edge of the athletic positioning sole section from a front edge of the athletic positioning sole section to the heel platform section, a second slope of the polarity along the front edge of the athletic positioning sole section from the inner edge to the outer edge of the athletic positioning sole section, and a third slope of the polarity along the outer edge of the athletic positioning sole section from the front edge of the athletic positioning sole section to the heel platform section.

10. (currently amended) The shoe of claim 9 further comprises:

the heel platform section has a uniform platform height, wherein, from a front edge of the heel platform to the rear edge of the athletic positioning sole section, the uniform platform height has [[a]] zero slope ~~of less than the two degrees~~; and

the toe section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

11. (previously presented) The shoe of claim 9 further comprises:

a padded insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

12. (original) The shoe of claim 9, wherein the specific bottom comprises one of:

a cleat pattern bottom;
a baseball spike bottom;
a basketball bottom;
a tennis bottom;
a golf bottom;
an ice skate bottom;
a ski boot bottom;
a cross-trainer bottom;
a running shoe bottom;
a walking shoe bottom;
a dress shoe bottom; and
a snowboard boot bottom.

13. (original) The shoe of claim 9, wherein the upper section comprises:

a sandal structure that includes one or more straps for securing the shoe to a foot.

14. (currently amended) A shoe comprises:

an upper shoe section; and

a sole coupled to the upper shoe section, wherein the sole includes:

a specific bottom; and

an athletic positioning sole section having:

a heel platform section;

a mid-foot section; and

a toe section, wherein the mid-foot section and the toe section collectively have a geometric shape having a first dimension along a line between the heel platform section and the mid-foot section, a second dimension at a front outer edge of the apparatus, and a third dimension at a front inner edge of the apparatus, wherein the first dimension has a magnitude that is greater than ~~or equal to~~ a magnitude of the second dimension and the magnitude of the second dimension is greater than a magnitude of the third dimension, and wherein the first dimension is uniform such that, from an inner edge of the apparatus to an outer edge of the apparatus, the line between the heel platform section and the mid-foot section has [[a]] zero slope ~~of less than two degrees~~.

15. (cancelled)

16. (previously presented) The shoe of claim 14 further comprises:

a padded insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

17. (original) The shoe of claim 14, wherein the specific bottom comprises one of:

a cleat pattern bottom;
a baseball spike bottom;
a basketball bottom;
a tennis bottom;
a golf bottom;
an ice skate bottom;
a ski boot bottom;
a cross-trainer bottom;
a running shoe bottom;
a walking shoe bottom;
a dress shoe bottom; and
a snowboard boot bottom.

18. (original) The shoe of claim 14, wherein the upper section comprises:

a sandal structure that includes one or more straps for securing the shoe to a foot.

REMARKS/ARGUMENTS

1. In the above-referenced Office Action:

a. Status of the claims.

- Claims 1, 3-14 and 16-18 are pending;
- Claims 1, 3-14 and 16-18 are rejected;
- Claims 2 and 15 are cancelled.

b. Claims 16, 11, 8 and 5 have been rejected under 35 USC §112 (a) or 35 USC §112 (pre-AIA), first paragraph, as failing to comply with the enablement requirement;

c. Claim 4 has been rejected under 35 USC §112 (b) or 35 USC §112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention;

d. Claims 1, 3-12, 14, 16 and 17 have been rejected under pre-AIA 35 USC §103 (a) as being unpatentable over Kerrigan (U.S. Pub. No. 2002/0139011);

e. Claims 13 and 18 have been rejected under pre-AIA 35 USC §103 (a) as being unpatentable over Kerrigan (U.S. Pub. No. 2002/0139011) in view of Kraisosky (U.S. Pub. No. 2010/0115793).

The rejections and objections have been traversed. Applicant respectfully requests reconsideration of the allowability of claims 1, 3-14 and 16-18.

2. Claims 16, 11, 8 and 5 have been rejected under 35 USC §112 (a) or 35 USC §112 (pre-AIA), first paragraph, as failing to comply with the enablement requirement. The Applicant respectfully disagrees with this rejection and the reasoning thereof.

MPEP 2164.01 states, in part, that the test of enablement is whether one reasonably skilled in the art could make or use the invention from the disclosures in the patent coupled with information known in the art without undue experimentation."). A patent need not teach, and preferably omits, what is well known in the art. Any part of the specification can support an enabling disclosure, even a background section that discusses, or even disparages, the subject matter disclosed therein. [emphasis added]

From this passage of the MPEP, the background of the invention can be used as support for an enabling disclosure. As such, disclosing a padded sole in the background section of the present patent application provides an enabling disclosure to one of average skill in the art. Accordingly, the Applicant requests that this rejection be withdrawn.

3. Claim 4 has been rejected under 35 USC §112 (b) or 35 USC §112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention. The Applicant has amended claim 4 to overcome this rejection.

4. Claims 1, 3-12, 14, 16 and 17 have been rejected under pre-AIA 35 USC §103 (a) as being unpatentable over Kerrigan (U.S. Pub. No. 2002/0139011). The Applicant respectfully disagrees with this rejection and the reasoning thereof.

Kerrigan teaches in paragraph 29 that the present invention can be incorporated into virtually any type of footwear, including the shoe illustrated in FIG. 2, regardless of the structure or style of the upper or outer sole. In one embodiment, the primary features of the invention are incorporated into the midsole 34, which can be incorporated into a desired shoe design. Alternatively, the midsole 34 can be of any conventional design, and the shoe can include an insole insert, sock liner 36, or the like, incorporating the features of the present invention.

Kerrigan further teaches in paragraphs 31-34 that FIG. 3 illustrates one embodiment of a midsole 34 according to the present invention. The midsole 34 includes a body 48 having a top surface 24, bottom surface 26, medial side 22, lateral side 20, and a toe portion 18, forefoot portion 16, midfoot portion 14, and heel portion 12. The midsole 34 can have a shape that follows the contours of a natural footprint. Alternatively, the midsole 34 can extend medially beneath the arch of a wearer's foot without any laterally extending indentation at the arch portion 56 (FIG. 2).

The body 48 of the midsole 34 has a wedge-shaped profile (sometimes referred to as the "lateral wedge") in which the lateral side 20 of the body 48 has a height h that is greater than the height of the medial side 22 of the body 48. The difference in height between the medial 22 and

lateral 20 sides of the midsole defines an incline or lateral wedge, which can extend along the length of the midsole 34, or can vary along different portions of the midsole.

As shown in FIG. 3, the height of the medial and lateral sides 22, 20 of the body 48 varies throughout the length of the body 48. The toe 18 and midfoot 14 portions each have respective medial heights 18h1, 14hl, and respective lateral heights 18h2, 14h2 that are substantially the same. Conversely, the heel 12 and forefoot 16 portions each have respective lateral heights 12h2, 16h2 that are greater than their respective medial heights 12h1, 16h1. The height differential from the medial side 22 to the lateral side 20 at the heel 12 and forefoot 16 portions defines a slope having an incline in the range of about 2° and 12°, more preferably in the range of about 4° and 5°, and most preferably about 5°.

While the height may vary between the medial 22 and lateral 20 sides of the body 48, the midsole 34 can support the heel 12 and forefoot 16 portions at substantially the same height along the longitudinal axis L.

Kerrigan further teaches in paragraph 35 that FIG. 4 illustrates another embodiment of the midsole 34 according to the present invention. As shown in FIG. 4, the midsole 34 includes a top layer 40 and a bottom layer 42. The bottom layer 42 has a wedge-shaped profile in which the lateral side 20 has a height greater than the medial side 22, as described with respect to FIG. 3. The top layer 40, on the other hand, includes a medial wedge-shaped profile in which the medial side has a height greater than the lateral side. The toe 18 and midfoot 14 portions of the top layer 40 each have respective medial heights 18h3, 14h3 and respective lateral heights 18h4, 14h4 that are substantially the same. Conversely, the heel 12 and forefoot 16 portions each have respective lateral heights 12h4, 16h4 that are greater than their respective medial heights 12h3, 16h3. The top layer 40, like the bottom layer 42, can support the heel 12 and forefoot 16 portions at substantially the same height along the longitudinal axis L.

As such, Kerrigan is teaching that:

a) each of the heel and forefoot sections have a lateral to medial slope (e.g., from the outer edge to the inner edge),

b) the arch section and the toe section are substantially flat from the lateral side to medial side, and

c) the heel and forefoot portions are at substantially the same height along the longitudinal axis L.

In contrast, claim 1 includes that the heel section has zero slope from the outer edge to the inner edge. Kerrigan teaches a slope from the outer edge to the inner edge for the heel section.

Further in contrast, claim 1 includes the mid-foot section and the toe section forming an angled support platform that has a first slope of a polarity along the inner edge of the apparatus from a front edge of the apparatus to the heel platform section and a third slope of the polarity along the outer edge of the apparatus from the front edge of the apparatus to the heel platform section. The first and third slopes position the toe section at a different height than the heel section. Kerrigan teaches that the heel section and the toe section are at the same height.

Still further in contrast, claim 1 includes that the angled support platform includes a second slope of the polarity along the front edge of the apparatus from the inner edge to the outer edge of the apparatus. As such, the midfoot and the toe sections have the second slope. Kerrigan teaches that the arch section and the toe section are flat from the lateral side to the medial side (i.e., no slope).

With respect to claim 6, the mid-foot section and the toe section collectively have a geometric shape. The geometric shape has a first dimension along a line between the heel platform section and the mid-foot section, a second dimension at front outer edge of the apparatus, and a third dimension at front inner edge of the apparatus. The first dimension has a magnitude that is greater than a magnitude of the second dimension. The first dimension is uniform such that, from an inner edge of the apparatus to an outer edge of the apparatus, the line between the heel platform section and the mid-foot section has zero slope. The magnitude of the second dimension is greater than a magnitude of the third dimension.

Kerrigan does not teach or suggest the mid-foot section and the toe section collectively forming a geometric shape that has the three dimensions as specified. Kerrigan teaches that each of the arch section, the forefoot section, and the toe section has its own geometric shape. In

particular, each of the arch section and the toe section has a geometric shape that is substantially flat from the lateral side to the medial side and the forefoot section has a geometric shape that has a lateral to medial slope. Further, Kerrigan teaches that the heel section has a lateral to medial slope, where, in contrast, claim 6 includes the line between the heel platform section and the mid-foot section has zero slope.

Based on the foregoing, the Applicant believes that claims 1, 3-12, 14, 16 and 17 overcome the present rejection.

5. Claims 13 and 18 have been rejected under pre-AIA 35 USC §103 (a) as being unpatentable over Kerrigan (U.S. Pub. No. 2002/0139011) in view of Kraisosky (U.S. Pub. No. 2010/0115793). The Applicant respectfully disagrees with this rejection and the reasoning thereof.

The Applicant believes that the reasons stated above are applicable in distinguishing claims 13 and 18 over the present rejection.

CONCLUSION

For the foregoing reasons, the Applicant believes that claims 1, 3-14 and 16-18 are in condition for allowance and respectfully requests that they be passed to allowance.

The Applicant hereby rescinds any disclaimer of claim scope made in the parent application or any predecessor application in relation to the instant application. The Examiner is advised that any such previous disclaimer and the prior art that it was made to avoid, may need to be revisited. Further, the claims in the instant application may be broader than those of a parent application. Moreover, the Examiner should also be advised that any disclaimer made in the instant application should not be read into or against the parent application.

No additional fees are believed to be due. In the event that additional fees are due or a credit for an overpayment is due, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Garlick & Markison Deposit Account No. 50-2126.

The Examiner is invited to contact the undersigned by telephone or e-mail if the Examiner believes that such a communication would advance the prosecution of the present invention.

RESPECTFULLY SUBMITTED,

By: /Timothy W. Markison/Reg. No. 33,534
Timothy W. Markison

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Electronic Acknowledgement Receipt

EFS ID:	23415982
Application Number:	13355801
International Application Number:	
Confirmation Number:	1012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Customer Number:	34399
Filer:	Timothy W. Markison/Beth Pierotti
Filer Authorized By:	Timothy W. Markison
Attorney Docket Number:	ATZ00003
Receipt Date:	04-SEP-2015
Filing Date:	23-JAN-2012
Time Stamp:	18:54:13
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1		ATZ00003_response_to_2015-6-4_OA.pdf	53666 c1c9f038ca490b2c7a0cfd6ac5476c4826498880	yes	13

	Multipart Description/PDF files in .zip description		
	Document Description	**Start**	**End**
	Amendment/Req. Reconsideration-After Non-Final Reject	1	1
	Claims	2	7
	Applicant Arguments/Remarks Made in an Amendment	8	13
Warnings:			
Information:			
	Total Files Size (in bytes):	53666	

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111
If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371
If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office
If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

PTO/SB/06 (09-11)
Approved for use through 1/31/2014. OMB 0651-0032
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PATENT APPLICATION FEE DETERMINATION RECORD Substitute for Form PTO-875	Application or Docket Number 13/355,801	Filing Date 01/23/2012	☐ To be Mailed

ENTITY: ☐ LARGE ☒ SMALL ☐ MICRO

APPLICATION AS FILED – PART I

FOR	(Column 1) NUMBER FILED	(Column 2) NUMBER EXTRA	RATE ($)	FEE ($)
☐ BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A	N/A	
☐ SEARCH FEE (37 CFR 1.16(k), (i), or (m))	N/A	N/A	N/A	
☐ EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A	N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =	*	X $ =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*	X $ =	
☐ APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is $310 ($155 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).			
☐ MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))				
* If the difference in column 1 is less than zero, enter "0" in column 2.			TOTAL	

APPLICATION AS AMENDED – PART II

AMENDMENT 09/04/2015

	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
Total (37 CFR 1.16(i))	- 16	Minus	** 20	= 0	X $40 =	0
Independent (37 CFR 1.16(h))	- 4	Minus	***4	= 0	X $210 =	0
☐ Application Size Fee (37 CFR 1.16(s))						
☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
					TOTAL ADD'L FEE	0

AMENDMENT

	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
Total (37 CFR 1.16(i))	-	Minus	**	=	X $ =	
Independent (37 CFR 1.16(h))	-	Minus	***	=	X $ =	
☐ Application Size Fee (37 CFR 1.16(s))						
☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
					TOTAL ADD'L FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.
** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".
*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".
The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

LIE
/BRENDA TURNER/

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**
If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/355,801	01/23/2012	Michael R. Adair	ATZ00003	1012

34399 7590 06/04/2015

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EXAMINER	
BRANDON, MEGAN E	

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
06/04/2015	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

MMurdock@TEXASPATENTS.COM
ghmptocor@texaspatents.com
bpierotti@texaspatents.com

Office Action Summary	Application No. 13/355,801	Applicant(s) ADAIR ET AL.	
	Examiner MEGAN BRANDON	Art Unit 3765	AIA (First Inventor to File) Status No

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03/23/2015*.

☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on _____; the restriction requirement and election have been incorporated into this action.

4)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims*

5)☒ Claim(s) *1,3-14 and 16-18* is/are pending in the application.

5a) Of the above claim(s) _____ is/are withdrawn from consideration.

6)☐ Claim(s) _____ is/are allowed.

7)☒ Claim(s) *1, 3-14 and 16-18* is/are rejected.

8)☐ Claim(s) _____ is/are objected to.

9)☐ Claim(s) _____ are subject to restriction and/or election requirement.

* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to PPHfeedback@uspto.gov.

Application Papers

10)☐ The specification is objected to by the Examiner.

11)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

Certified copies:

a)☐ All b)☐ Some** c)☐ None of the:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

** See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b) Paper No(s)/Mail Date _____

3) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

4) ☐ Other: _____.

The present application is being examined under the pre-AIA first to invent provisions.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 16, 2015 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112(a):

> (a) IN GENERAL.—The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor or joint inventor of carrying out the invention.

The following is a quotation of the first paragraph of pre-AIA 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 16, 11, 8 and 5 are rejected under 35 U.S.C. 112(a) or 35 U.S.C. 112 (pre-AIA), first paragraph, because the specification, while being enabling for a padded insole that is mentioned only with regard to the prior art figures, does not reasonably provide enablement for the present invention having a padded insole. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. Applicant's specification only mentions a padded insole, on Page 2 of Applicant's disclosure, when briefly discussing Figures 1 and 2 which are noted as Prior Art figures and are not figures detailing the present invention. Therefore, Applicant's disclosure does not appear to provide support for a padded insole to be used with and/or be a part of the present invention.

> The following is a quotation of 35 U.S.C. 112(b):
> (b) CONCLUSION.—The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor or a joint inventor regards as the invention.
>
> The following is a quotation of 35 U.S.C. 112 (pre-AIA), second paragraph:
> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 4 is rejected under 35 U.S.C. 112(b) or 35 U.S.C. 112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention.

Claim 4 recites the limitation "the athletic positioning sole section" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of pre-AIA 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 3-12, 14, 16 and 17 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Kerrigan (US 2002/0139011).

Regarding Claims 9 and 1, and 6 and 14, Kerrigan discloses a shoe (Fig.2) comprises an upper shoe section (38) and a sole (32) coupled to the upper shoe section. The sole (32) includes a specific bottom and an athletic positioning sole section (34) having a heel platform section (12) that has a uniform height from an outer edge (20) to an inner edge (22) of the athletic positioning sole section at a rear edge of the athletic positioning sole section (section 12 as can be seen in Fig.3; Pg.3, para.33 & 35). The uniform height has a slope of about two degrees from the outer edge (20) to the inner edge (22)(Pg.3, para.33 & 35, i.e. "about two degrees"). A mid-foot section (14) is juxtaposed to the heel platform section (12), and a toe section (16,18) juxtaposed

to the mid-foot section (14)(Fig.3). The mid-foot section (14) and the toe section (16,18) form an angled support platform (24) that has a first slope of a polarity (from 12 to 18) along the inner edge (22) of the athletic positioning sole section from a front edge (at 18) of the athletic positioning sole section to the heel platform section (at 12), a second slope of the polarity (16h1 and 18h1 to 16h2 and 18h2) along the front edge (at 18) of the athletic positioning sole section from the inner edge (22) to the outer edge (20) of the athletic positioning sole section, and a third slope of the polarity (from 12 to 18) along the outer edge (20) of the athletic positioning sole section from the front edge (at 18) of the athletic positioning sole section to the heel platform section (at 12)(Fig.3).

The mid-foot section (14) and the toe section (16) collectively have a geometric shape having a first dimension (14h1 and 14h2) along a line (14) between the heel platform section (12) and the mid-foot section (14), a second dimension at a front outer edge (20, seen at 16h2 and 18h2) of the apparatus, and a third dimension at a front inner edge (22, seen at 16h1 and 18h1) of the apparatus (34)(as seen in Fig.3). The first dimension (at 14h1 to 14h2) has a magnitude that is greater than or equal to a magnitude of the second dimension (seen at 16h2 and 18h2), and the magnitude of the second dimension (seen at 16h2 and 18h2) is greater than a magnitude of the third dimension (see at 16h1 and 18h1). The first dimension (14h1 to 14h2) is uniform such that, from an inner edge (20) of the apparatus to an outer edge (22) of the apparatus, the line (14) between the heel platform section (12) and the mid-foot section (14) has a slope of about two degrees (Pg.3, para.33, i.e. heights 14h1 and 14h2 are substantially the same, meaning there would be a slope of about two degrees along line 14).

Kerrigan does not specifically disclose the uniform height having a slope of less than two degrees from the outer edge to the inner edge or the line between the heel platform section and the mid-foot section having a slope of less than two degrees. However, Kerrigan does disclose the slope of the claimed areas to be "about" two degrees, which could reasonably be less than two degrees. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the areas with a slope of less than two degrees in order to provide the optimum configuration for the incline of a user's foot, as discovering an optimum value of a result effective variable involves only routine skill in the art. Further, it is noted that Applicant's disclosure does not appear to provide criticality for the slopes being specifically less than two degrees, the specific claimed value of less than two degrees appears to be one in a range of multiple options provided for in Applicant's disclosure.

Regarding Claims 7 and 3, Kerrigan discloses a shoe further comprises the heel platform section (12), the mid-foot section (14), and the toe section (16,18) constituting at least one of an insole (34; Abstract) for footwear and a sole of footwear (Fig.2).

Regarding Claims 10 and 4, Kerrigan discloses a shoe further comprises the heel platform section (12) has a uniform platform height, wherein, from a front edge (line from 12h1 to 12h2) of the heel platform to the rear edge (the terminating edge of heel section 12 directly opposite the toe terminating edge of toe section 18) of the athletic positioning sole section, the uniform platform height has a slope of about the two

degrees (Fig.3)(Pg.3, para.33 & 35, i.e. "about two degrees"). The toe section (16,18) and the mid-foot section (14) having a second dimension (seen at 16h2 and 18h2) at a front outer edge (22) of the apparatus and a third dimension (see at 16h1 and 18h1) at a front inner edge (20) of the apparatus (Fig.3).

Kerrigan does not specifically disclose the uniform platform height has a slope of less than the two degrees. However, Kerrigan does disclose the slope of the claimed area to be "about" two degrees, which could reasonably be less than two degrees. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the uniform platform height with a slope of less than two degrees in order to provide the optimum configuration for the incline of a user's foot, as discovering an optimum value of a result effective variable involves only routine skill in the art. Further, it is noted that Applicant's disclosure does not appear to provide criticality for the slope being specifically less than two degrees, the specific claimed value of less than two degrees appears to be one in a range of multiple options provided for in Applicant's disclosure.

Regarding Claims 16, 11, 8 and 5, Kerrigan discloses a shoe further comprises a padded insole (36) on a first surface of the apparatus (34) covering one or more of at least a portion of the heel platform section (12), at least a portion of the mid-foot section (14), and at least a portion of the toe section (16,18)(Fig.6)(Pg.4, para.47). Applicant has provided no disclosed or claimed criticality for what constitutes a padded insole. Therefore, in as much as has been defined and claimed by Applicant, Kerrigan

discloses a fabric insole layer that is padded since it conforms to a user's foot and fabrics are known to have some give/cushion/padding.

Regarding Claims 17 and 12, Kerrigan discloses a shoe wherein the specific bottom comprises one of: a cleat pattern bottom, a baseball spike bottom, a basketball bottom, a tennis bottom, a golf bottom, an ice skate bottom, a ski boot bottom, a cross-trainer bottom, a running shoe bottom, a walking shoe bottom, a dress shoe bottom, and a snowboard boot bottom (Fig.2; Abstract). It is noted that shoes are utilized for walking and the shoe of Kerrigan can be used for walking or running and is therefore a walking or running shoe bottom. Additionally, it is noted that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

5. Claims 13 and 18 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Kerrigan in view of Kraisosky (US 2010/0115793).

Regarding Claims 18 and 13, Kerrigan discloses the invention substantially as claimed above. Kerrigan does not disclose the upper of the shoe being a sandal with straps. However, Kraisosky teaches a shoe (10) with an insole (34), and having an upper section comprising a sandal structure (16,24,22) that includes one or more straps (16,24) for securing the shoe to a foot (Fig.2 & 7).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have substituted the shoe upper of Kerrigan with the sandal upper, as taught by Kraisosky, as a simple substitution of one well known type of shoe upper for another to provide for the predictable result of attaching a shoe to a wearer's foot. It is noted that Applicant has provided no criticality for the specific upper structure of the shoe.

Response to Arguments

Applicant's arguments filed March 16, 2015 have been fully considered but they are not persuasive.

6. Applicant's Remarks: Applicant asserts that Claims 5, 8, 11 and 16 should not be rejected under 35 USC 112, first paragraph as failing to comply with the enablement requirement.

Examiner's Response: Examiner respectfully disagrees. Though a padded insole is discussed in Applicant's disclosure with regard to Prior Art Figures, Applicant's disclosure does not provide support for a "padded insole" to be used with and/or be a part of the present invention. Therefore, the "padded insole" being a part of the present invention that Applicant is seeking patent protection for is not enabled by Applicant's disclosure, in other words, the padded insole being disclosed with regard to Prior Art

does not provide for the structure of the padded insole being a part of the claimed invention, as the structure of such is not discussed with regard to the present invention and its structure. While an insole may be considered conventional in the footwear art, an insole in conjunction with Applicant's present invention is not considered to be "conventional", especially when such a combination of structures has not been provided sufficient support in the disclosure, therefore the 35 U.S.C. 112(a) rejection is maintained at this time.

7. In view of Applicant's amendment, the search has been updated, and new grounds of rejection have been identified and applied. Applicant's arguments, with regard to the previous application of Kerrigan, have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MEGAN BRANDON whose telephone number is (571)272-3267. The examiner can normally be reached on Monday-Friday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoa Huynh can be reached on (571)272-4888. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MEGAN BRANDON/
Examiner, Art Unit 3765

/Khoa Huynh/
Supervisory Patent Examiner, Art Unit 3765

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13355801	ADAIR ET AL.
	Examiner	Art Unit
	MEGAN BRANDON	3765

CPC- SEARCHED		
Symbol	Date	Examiner
A43B7/142; A43B7/144; A43B13/38; A43B13/145; A43B5/00; A43B13/12; A43B7/00; A43B7/14; A43B3/00	12/26/2013	MB
A61F5/0195; A61F5/14	12/26/2013	MB

CPC COMBINATION SETS - SEARCHED		
Symbol	Date	Examiner

US CLASSIFICATION SEARCHED			
Class	Subclass	Date	Examiner
36	44, 43, 25R, 110, 103, 132, 142, 144	12/26/2013	MB

SEARCH NOTES		
Search Notes	Date	Examiner
Inventorship Search	12/26/2013	MB
Assignee Search	12/26/2013	MB
Search Assistance Ted Kavanaugh	12/26/2013	MB
Updated Search	03/01/2014	MB
Updated Search	8/22/2014	MB
Updated Search	10/29/2014	MB
Updated Search	5/1/2015	MB

INTERFERENCE SEARCH			
US Class/ CPC Symbol	US Subclass / CPC Group	Date	Examiner

Index of Claims	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13355801	ADAIR ET AL.
	Examiner	Art Unit
	MEGAN BRANDON	3765

✓	Rejected	-	Cancelled	N	Non-Elected	A	Appeal
=	Allowed	÷	Restricted	I	Interference	O	Objected

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

CLAIM		DATE								
Final	Original	08/09/2013	12/26/2013	03/01/2014	08/22/2014	10/29/2014	05/01/2015			
	1	÷	✓	✓	✓	✓	✓			
	2	÷	✓	✓	✓	-	-			
	3	÷	✓	✓	✓	✓	✓			
	4	÷	✓	✓	✓	✓	✓			
	5	÷	✓	✓	✓	✓	✓			
	6	÷	✓	✓	✓	✓	✓			
	7	÷	✓	✓	✓	✓	✓			
	8	÷	✓	✓	✓	✓	✓			
	9	÷	✓	✓	✓	✓	✓			
	10	÷	✓	✓	✓	✓	✓			
	11	÷	✓	✓	✓	✓	✓			
	12	÷	✓	✓	✓	✓	✓			
	13	÷	✓	✓	✓	✓	✓			
	14	÷	✓	✓	✓	✓	✓			
	15	÷	✓	✓	-	-	-			
	16	÷	✓	✓	✓	✓	✓			
	17	÷	✓	✓	✓	✓	✓			
	18	÷	✓	✓	✓	✓	✓			

Doc code: RCEX
Doc description: Request for Continued Examination (RCE)

PTO/SB/30EFS (07-09)
Approved for use through 07/31/2012. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
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REQUEST FOR CONTINUED EXAMINATION(RCE)TRANSMITTAL
(Submitted Only via EFS-Web)

Application Number	13355801	Filing Date	2012-01-23	Docket Number (if applicable)	ATZ00003	Art Unit	3765
First Named Inventor	Michael R. Adair			Examiner Name	BRANDON, MEGAN E		

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application.
Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. The Instruction Sheet for this form is located at WWW.USPTO.GOV

SUBMISSION REQUIRED UNDER 37 CFR 1.114

Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

☒ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____

☒ Other Response After Final Action filed 3/16/2015

☐ Enclosed

☐ Amendment/Reply

☐ Information Disclosure Statement (IDS)

☐ Affidavit(s)/ Declaration(s)

☐ Other _____

MISCELLANEOUS

☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of months _____ (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)

☐ Other _____

FEES

The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

☒ The Director is hereby authorized to charge any underpayment of fees, or credit any overpayments, to Deposit Account No 502126

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

☒ Patent Practitioner Signature

☐ Applicant Signature

PTO/SB/30EFS (07-09)
Approved for use through 07/31/2012. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

Signature of Registered U.S. Patent Practitioner			
Signature	/Timothy W. Markison/	Date (YYYY-MM-DD)	2015-03-23
Name	Timothy W. Markison	Registration Number	33534

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

Electronic Patent Application Fee Transmittal

Application Number:	13355801
Filing Date:	23-Jan-2012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Filer:	Timothy W. Markison/Beth Pierotti
Attorney Docket Number:	ATZ00003

Filed as Small Entity

Filing Fees for Utility under 35 USC 111(a)

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Extension - 2 months with $100 paid	2252	1	200	200
Miscellaneous:				
RCE- 2nd and Subsequent Request	2820	1	850	850
		Total in USD ($)		**1050**

Electronic Acknowledgement Receipt

EFS ID:	21848244
Application Number:	13355801
International Application Number:	
Confirmation Number:	1012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Customer Number:	34399
Filer:	Timothy W. Markison/Beth Pierotti
Filer Authorized By:	Timothy W. Markison
Attorney Docket Number:	ATZ00003
Receipt Date:	23-MAR-2015
Filing Date:	23-JAN-2012
Time Stamp:	14:50:25
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	Credit Card
Payment was successfully received in RAM	$1050
RAM confirmation Number	1211
Deposit Account	502126
Authorized User	PIEROTTI, BETH

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

Charge any Additional Fees required under 37 C.F.R. Section 1.17 (Patent application and reexamination processing fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.21 (Miscellaneous fees and charges)

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Request for Continued Examination (RCE)	ATZ00003_RCE.pdf	698020 2d98daa133db75daa7ad8096678ea1da373 6ae08b	no	3
Warnings:					
Information:					
2	Fee Worksheet (SB06)	fee-info.pdf	32386 4e7b20b75649b50c205ed87e41347edcd9 38522a	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	730406		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111
If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371
If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office
If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

PTO/SB/06 (09-11)
Approved for use through 1/31/2014. OMB 0651-0032
U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE
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PATENT APPLICATION FEE DETERMINATION RECORD Substitute for Form PTO-875	Application or Docket Number 13/355,801	Filing Date 01/23/2012	☐ To be Mailed

ENTITY: ☐ LARGE ☒ SMALL ☐ MICRO

APPLICATION AS FILED – PART I

FOR	(Column 1) NUMBER FILED	(Column 2) NUMBER EXTRA	RATE ($)	FEE ($)
☐ BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A	N/A	
☐ SEARCH FEE (37 CFR 1.16(k), (i), or (m))	N/A	N/A	N/A	
☐ EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A	N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =	*	X $ =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*	X $ =	
☐ APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is $310 ($155 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).			
☐ MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))				
* If the difference in column 1 is less than zero, enter "0" in column 2.			TOTAL	

APPLICATION AS AMENDED – PART II

AMENDMENT	03/23/2015	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
	Total (37 CFR 1.16(i))	* 16	Minus	** 20	= 0	X $40 =	0
	Independent (37 CFR 1.16(h))	* 4	Minus	*** 4	= 0	X $210 =	0
	☐ Application Size Fee (37 CFR 1.16(s))						
	☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
						TOTAL ADD'L FEE	0

AMENDMENT		(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
	Total (37 CFR 1.16(i))	*	Minus	**	=	X $ =	
	Independent (37 CFR 1.16(h))	*	Minus	***	=	X $ =	
	☐ Application Size Fee (37 CFR 1.16(s))						
	☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
						TOTAL ADD'L FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.
** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".
*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".
The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

LIE
/TONI HAKIM/

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**
If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/355,801	01/23/2012	Michael R. Adair	ATZ00003	1012

34399 7590 03/20/2015

GARLICK & MARKISON
Melanie Murdock
P.O. BOX 160727
AUSTIN, TX 78716-0727

EXAMINER	
BRANDON, MEGAN E	

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
03/20/2015	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

MMurdock@TEXASPATENTS.COM
ghmptocor@texaspatents.com
bpierotti@texaspatents.com

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 13/355,801	**Applicant(s)** ADAIR ET AL.	
	Examiner MEGAN BRANDON	**Art Unit** 3765	**AIA (First Inventor to File) Status** No

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 March 2015 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

NO NOTICE OF APPEAL FILED

1. ☒ The reply was filed after a final rejection. No Notice of Appeal has been filed. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114 if this is a utility or plant application. Note that RCEs are not permitted in design applications. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action; or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
   c) ☐ A prior Advisory Action was mailed more than 3 months after the mailing date of the final rejection in response to a first after-final reply filed within 2 months of the mailing date of the final rejection. The current period for reply expires months from the mailing date of *the prior Advisory Action* or SIX MONTHS from the mailing date of the final rejection, whichever is earlier.

   Examiner Note: If box 1 is checked, check either box (a), (b) or (c). ONLY CHECK BOX (b) WHEN THIS ADVISORY ACTION IS THE FIRST RESPONSE TO APPLICANT'S FIRST AFTER-FINAL REPLY WHICH WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. ONLY CHECK BOX (c) IN THE LIMITED SITUATION SET FORTH UNDER BOX (c). See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) or (c) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendments filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   b) ☐ They raise the issue of new matter (see NOTE below);
   c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: *See Continuation Sheet.* (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): (a) ☒ will not be entered, or (b) ☐ will be entered, and an explanation of how the new or amended claims would be rejected is provided below or appended.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.
9. ☐ The affidavit or other evidence filed after final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
10. ☐ The affidavit or other evidence filed after the date of filing the Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
11. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

12. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
13. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
14. ☐ Other: _____.

STATUS OF CLAIMS

15. The status of the claim(s) is (or will be) as follows:
    Claim(s) allowed:
    Claim(s) objected to:
    Claim(s) rejected: 1,3-14 and 16-18.
    Claim(s) withdrawn from consideration:

/Khoa Huynh/ Supervisory Patent Examiner, Art Unit 3765	/MEGAN BRANDON/ Examiner, Art Unit 3765

Continuation of 3. NOTE: Applicant's amendments to Claims 1, 6, 9 and 14 change the scope of the independent claims, and consequently the dependent claims. By deleting the word "about" from the previously present recitation of a "slope of less than about two degrees" the independent claims have been narrowed in scope to now recite a "slope of less than two degrees". Such a change in scope would require fruther consideration and/or search, possibly necessitating new grounds of rejection.

Applicant's arguments appear to address the amended language of the independent claims and, as stated above, the scope of the claims has been altered. Applicant asserts that the 35 U.S.C. 112(a) rejection of Claims 16, 11, 8 and 5 should be reconsidered as the "padded insole" recitation is supported by the background section of Applicant's specification. Examiner respectfully disagrees as there is no discussion within Applicant's disclosure of a padded insole being used in conjunction with the invention. While an insole may be considered conventional in the footwear art, an insole in conjunction with Applicant's present invention is not considered to be "conventional", especially when such a combination of structures has not been provided sufficient support in the disclosure, therefore the 35 U.S.C. 112(a) rejection is maintained at this time.

Certification under 37 C.F.R. §1.8

Date of Mailing or Transmission: 3/16/2015

I hereby certify that I have caused the document indicated herein on the date indicated above to be transmitted via the Office electronic filing system in accordance with 37 C.F.R. §1.6(a)(4).

BY: /Beth Pierotti/ (Signature) **Name:** Beth Pierotti (Typed Name)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

1st Named Inventor:	Michael R. Adair	**Examiner:**	Brandon, Megan E
Application No.:	13/355,801	**Art Unit:**	3765
Filing Date:	23 Jan 2012	**Docket No.:**	ATZ00003
Confirmation No.:	1012		
Title:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF		

RESPONSE TO FINAL OFFICE ACTION

Date: 3/16/2015

United States Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450

DO NOT ENTER: /M.B./

In response to an office action dated November 17, 2014 regarding the above-captioned patent application, the Applicant respectfully submits the following amendment and response.

/Megan Brandon/

03/17/2015

Certification under 37 C.F.R. §1.8

Date of Mailing or Transmission: 3/16/2015

I hereby certify that I have caused the document indicated herein on the date indicated above to be transmitted via the Office electronic filing system in accordance with 37 C.F.R. §1.6(a)(4).

BY: /Beth Pierotti/ (Signature) **Name:** Beth Pierotti (Typed Name)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

1st Named Inventor:	Michael R. Adair	**Examiner:**	Brandon, Megan E
Application No.:	13/355,801	**Art Unit:**	3765
Filing Date:	23 Jan 2012	**Docket No.:**	ATZ00003
Confirmation No.:	1012		
Title:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF		

RESPONSE TO FINAL OFFICE ACTION

Date: 3/16/2015

United States Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450

In response to an office action dated November 17, 2014 regarding the above-captioned patent application, the Applicant respectfully submits the following amendment and response.

AMENDMENT TO THE CLAIMS

1. (currently amended) An apparatus comprises:

a heel platform section that has a uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus, wherein the uniform height has a slope of less than ~~about~~ two degrees from the outer edge to the inner edge;

a mid-foot section juxtaposed to the heel platform section; and

a toe section juxtaposed to the mid-foot section, wherein the mid-foot section and the toe section form an angled support platform that has a first slope of a polarity along the inner edge of the apparatus from a front edge of the apparatus to the heel platform section, a second slope of the polarity along the front edge of the apparatus from the inner edge to the outer edge of the apparatus, and a third slope of the polarity along the outer edge of the apparatus from the front edge of the apparatus to the heel platform section.

2. (canceled)

3. (previously presented) The apparatus of claim 1 further comprises:

the heel platform section, the mid-foot section, and the toe section constituting at least one of an insole for footwear; and

a sole of footwear.

4. (currently amended) The apparatus of claim 1 further comprises:

the heel platform section has a uniform platform height, wherein, from a front edge of the heel platform to the rear edge of the athletic positioning sole section, the uniform platform height has a slope of less than the ~~about~~ two degrees; and

the toe section and the mid-foot section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

5. (previously presented) The apparatus of claim 1 further comprises:

a padded insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

6. (currently amended) An apparatus comprises:

a heel platform section;

a mid-foot section; and

a toe section, wherein the mid-foot section, and the toe section collectively have a geometric shape having a first dimension along a line between the heel platform section and the mid-foot section, a second dimension at front outer edge of the apparatus, and a third dimension at front inner edge of the apparatus, wherein the first dimension has a magnitude that is greater than or equal to a magnitude of the second dimension and the magnitude of the second dimension is greater than a magnitude of the third dimension, and wherein the first dimension is uniform such that, from an inner edge of the apparatus to an outer edge of the apparatus, the line between the heel platform section and the mid-foot section has a slope of less than ~~about~~ two degrees.

7. (previously presented) The apparatus of claim 6 further comprises:

the heel platform section, the mid-foot section, and the toe section constituting at least one of an insole for footwear; and

a sole of footwear.

8. (previously presented) The apparatus of claim 6 further comprises:

a padded insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

9. (currently amended) A shoe comprises:

an upper shoe section; and

a sole coupled to the upper shoe section, wherein the sole includes:

a specific bottom; and

an athletic positioning sole section having:

a heel platform section that has a uniform height from an outer edge to an inner edge of the athletic positioning sole section at a rear edge of the athletic positioning sole section, wherein the uniform height has a slope of less than ~~about~~ two degrees from the outer edge to the inner edge;

a mid-foot section; and

a toe section, wherein the mid-foot section and the toe section form an angled support platform that has a first slope of a polarity along the inner edge of the athletic positioning sole section from a front edge of the athletic positioning sole section to the heel platform section, a second slope of the polarity along the front edge of the athletic positioning sole section from the inner edge to the outer edge of the athletic positioning sole section, and a third slope of the polarity along the outer edge of the athletic positioning sole section from the front edge of the athletic positioning sole section to the heel platform section.

10. (currently amended) The shoe of claim 9 further comprises:

the heel platform section has a uniform platform height, wherein, from a front edge of the heel platform to the rear edge of the athletic positioning sole section, the uniform platform height has a slope of less than the ~~about~~ two degrees; and

the toe section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

11. (previously presented) The shoe of claim 9 further comprises:

a padded insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

12. (original) The shoe of claim 9, wherein the specific bottom comprises one of:

a cleat pattern bottom;
a baseball spike bottom;
a basketball bottom;
a tennis bottom;
a golf bottom;
an ice skate bottom;
a ski boot bottom;
a cross-trainer bottom;
a running shoe bottom;
a walking shoe bottom;
a dress shoe bottom; and
a snowboard boot bottom.

13. (original) The shoe of claim 9, wherein the upper section comprises:

a sandal structure that includes one or more straps for securing the shoe to a foot.

14. (currently amended) A shoe comprises:

an upper shoe section; and

a sole coupled to the upper shoe section, wherein the sole includes:

a specific bottom; and

an athletic positioning sole section having:

a heel platform section;

a mid-foot section; and

a toe section, wherein the mid-foot section and the toe section collectively have a geometric shape having a first dimension along a line between the heel platform section and the mid-foot section, a second dimension at a front outer edge of the apparatus, and a third dimension at a front inner edge of the apparatus, wherein the first dimension has a magnitude that is greater than or equal to a magnitude of the second dimension and the magnitude of the second dimension is greater than a magnitude of the third dimension, and wherein the first dimension is uniform such that, from an inner edge of the apparatus to an outer edge of the apparatus, the line between the heel platform section and the mid-foot section has a slope of less than ~~about~~ two degrees.

15. (cancelled)

16. (previously presented) The shoe of claim 14 further comprises:

a padded insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

17. (original) The shoe of claim 14, wherein the specific bottom comprises one of:

a cleat pattern bottom;
a baseball spike bottom;
a basketball bottom;
a tennis bottom;
a golf bottom;
an ice skate bottom;
a ski boot bottom;
a cross-trainer bottom;
a running shoe bottom;
a walking shoe bottom;
a dress shoe bottom; and
a snowboard boot bottom.

18. (original) The shoe of claim 14, wherein the upper section comprises:

a sandal structure that includes one or more straps for securing the shoe to a foot.

REMARKS/ARGUMENTS

1. In the above-referenced Office Action:

a. Status of the claims.

- Claims 1, 3-14 and 16-18 are pending;
- Claims 1, 3-14 and 16-18 are rejected;
- Claims 2 and 15 are cancelled.

b. Claims 16, 11, 8 and 5 have been rejected under 35 USC §112 (a) or 35 USC §112 (pre-AIA), first paragraph, as failing to comply with the enablement requirement;

c. Claims 1, 3-14 and 16-18 have been rejected under 35 USC §112 (b) or 35 USC §112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention;

d. Claims 1, 3-12, 14, 16 and 17 have been rejected under pre-AIA 35 USC §102 (b) as being anticipated by Kerrigan (U.S. Pub. No. 2002/0139011);

e. Claims 13 and 18 have been rejected under pre-AIA 35 USC §103 (a) as being unpatentable over Kerrigan (U.S. Pub. No. 2002/0139011) in view of Kraisosky (U.S. Pub. No. 2010/0115793).

The rejections and objections have been traversed. Applicant respectfully requests reconsideration of the allowability of claims 1, 3-14 and 16-18.

2. Claims 16, 11, 8 and 5 have been rejected under 35 USC §112 (a) or 35 USC §112 (pre-AIA), first paragraph, as failing to comply with the enablement requirement. The Applicant respectfully disagrees with this rejection and the reasoning thereof, but nevertheless has amended the claims to remove the word "about".

3. Claims 1, 3-14 and 16-18 have been rejected under 35 USC §112 (b) or 35 USC §112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention. The Applicant respectfully disagrees with this rejection and the reasoning thereof.

MPEP 2163 (I) states in part that to satisfy the written description requirement, a patent specification must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention. ... It is now well accepted that a satisfactory description may be in the claims or any other portion of the originally filed specification.

MPEP 2163 (I)(A) states in part that there is a strong presumption that an adequate written description of the claimed invention is present when the application is filed. However, as discussed in subsection I., supra, the issue of a lack of adequate written description may arise even for an original claim when an aspect of the claimed invention has not been described with sufficient particularity such that one skilled in the art would recognize that the applicant had possession of the claimed invention. The claimed invention as a whole may not be adequately described if the claims require an essential or critical feature which is not adequately described in the specification and which is not conventional in the art or known to one of ordinary skill in the art. [emphasis added]

From these passages of the MPEP, it is clear that a conventional feature of an insole as disclosed in the background section (which is part of the originally filed specification) provides an adequate description to one of average sill in the art. As such, the Applicant requests that this rejection be withdrawn.

4. Claims 1, 3-12, 14, 16 and 17 have been rejected under pre-AIA 35 USC §102 (b) as being anticipated by Kerrigan (U.S. Pub. No. 2002/0139011). The Applicant respectfully disagrees with this rejection and the reasoning thereof.

Kerrigan teaches in paragraph 33 that the height differential from the medial side 22 to the lateral side 20 at the heel 12 and forefoot 16 portions defines a slope having an incline in the range of about 2° and 12°, more preferably in the range of about 4° and 5°, and most preferably about 5°. Claim 1 includes the limitation that the heel platform section has a uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus, wherein the uniform height has a slope of less than two degrees from the outer edge to the inner edge.

Based on the foregoing, the Applicant believes that claims 1, 3-12, 14, 16 and 17 overcome the present rejection.

5. Claims 13 and 18 have been rejected under pre-AIA 35 USC §103 (a) as being unpatentable over Kerrigan (U.S. Pub. No. 2002/0139011) in view of Kraisosky (U.S. Pub. No. 2010/0115793). The Applicant respectfully disagrees with this rejection and the reasoning thereof.

The Applicant believes that the arguments presented above are applicable in distinguishing claims 13 and 18 over the present rejection.

CONCLUSION

For the foregoing reasons, the Applicant believes that claims 1, 3-14 and 16-18 are in condition for allowance and respectfully requests that they be passed to allowance.

The Applicant hereby rescinds any disclaimer of claim scope made in the parent application or any predecessor application in relation to the instant application. The Examiner is advised that any such previous disclaimer and the prior art that it was made to avoid, may need to be revisited. Further, the claims in the instant application may be broader than those of a parent application. Moreover, the Examiner should also be advised that any disclaimer made in the instant application should not be read into or against the parent application.

No additional fees are believed to be due. In the event that additional fees are due or a credit for an overpayment is due, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Garlick & Markison Deposit Account No. 50-2126.

The Examiner is invited to contact the undersigned by telephone or e-mail if the Examiner believes that such a communication would advance the prosecution of the present invention.

RESPECTFULLY SUBMITTED,

By: /Timothy W. Markison/Reg. No. 33,534
Timothy W. Markison

Garlick & Markison
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Phone: (214) 676-1020
E-mail: tmarkison@texaspatents.com

Electronic Patent Application Fee Transmittal

Application Number:	13355801
Filing Date:	23-Jan-2012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Filer:	Timothy W. Markison/Beth Pierotti
Attorney Docket Number:	ATZ00003

Filed as Small Entity

Filing Fees for Utility under 35 USC 111(a)

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Extension - 1 month with $0 paid	2251	1	100	100
Miscellaneous:				
			Total in USD ($)	**100**

Electronic Acknowledgement Receipt

EFS ID:	21776012
Application Number:	13355801
International Application Number:	
Confirmation Number:	1012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Customer Number:	34399
Filer:	Timothy W. Markison/Beth Pierotti
Filer Authorized By:	Timothy W. Markison
Attorney Docket Number:	ATZ00003
Receipt Date:	16-MAR-2015
Filing Date:	23-JAN-2012
Time Stamp:	13:13:27
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	Credit Card
Payment was successfully received in RAM	$100
RAM confirmation Number	11145
Deposit Account	502126
Authorized User	PIEROTTI, BETH

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

Charge any Additional Fees required under 37 C.F.R. Section 1.17 (Patent application and reexamination processing fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.21 (Miscellaneous fees and charges)

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1		ATZ00003_response_to_2014-11-17_FOA.pdf	38946 8d338fc3e87d551c72b091174c073115536b9bfe9	yes	11

Multipart Description/PDF files in .zip description		
Document Description	**Start**	**End**
Response After Final Action	1	1
Claims	2	7
Applicant Arguments/Remarks Made in an Amendment	8	11

Warnings:

Information:

2	Fee Worksheet (SB06)	fee-info.pdf	30560 5cef95fb2a8337a17f6c6b2cecd861790b91e89d	no	2

Warnings:

Information:

Total Files Size (in bytes):	69506

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111
If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371
If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office
If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

PTO/SB/06 (09-11)
Approved for use through 1/31/2014. OMB 0651-0032
U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PATENT APPLICATION FEE DETERMINATION RECORD Substitute for Form PTO-875	Application or Docket Number 13/355,801	Filing Date 01/23/2012	☐ To be Mailed

ENTITY: ☐ LARGE ☒ SMALL ☐ MICRO

APPLICATION AS FILED – PART I

FOR	(Column 1) NUMBER FILED	(Column 2) NUMBER EXTRA	RATE ($)	FEE ($)
☐ BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A	N/A	
☐ SEARCH FEE (37 CFR 1.16(k), (i), or (m))	N/A	N/A	N/A	
☐ EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A	N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =	*	X $ =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*	X $ =	
☐ APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is $310 ($155 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).			
☐ MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))				
* If the difference in column 1 is less than zero, enter "0" in column 2.			TOTAL	

APPLICATION AS AMENDED – PART II

AMENDMENT 03/16/2015

	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
Total (37 CFR 1.16(i))	- 16	Minus	** 20	= 0	X $40 =	0
Independent (37 CFR 1.16(h))	- 4	Minus	***4	= 0	X $210 =	0
☐ Application Size Fee (37 CFR 1.16(s))						
☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
					TOTAL ADD'L FEE	0

AMENDMENT

	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
Total (37 CFR 1.16(i))	-	Minus	**	=	X $ =	
Independent (37 CFR 1.16(h))	-	Minus	***	=	X $ =	
☐ Application Size Fee (37 CFR 1.16(s))						
☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
					TOTAL ADD'L FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.
** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".
*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".
The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

LIE
/SHARON HARRIS/

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**
If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/355,801	01/23/2012	Michael R. Adair	AAV003	1012

34399 7590 11/17/2014

GARLICK & MARKISON
Melanie Murdock
P.O. BOX 160727
AUSTIN, TX 78716-0727

EXAMINER	
BRANDON, MEGAN E	

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
11/17/2014	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

MMurdock@TEXASPATENTS.COM
ghmptocor@texaspatents.com
bpierotti@texaspatents.com

Office Action Summary	Application No. 13/355,801	Applicant(s) ADAIR ET AL.	
	Examiner MEGAN BRANDON	Art Unit 3765	AIA (First Inventor to File) Status No

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10/21/2014*.

☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on _____; the restriction requirement and election have been incorporated into this action.

4)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims*

5)☒ Claim(s) *1,3-14 and 16-18* is/are pending in the application.

5a) Of the above claim(s) _____ is/are withdrawn from consideration.

6)☐ Claim(s) _____ is/are allowed.

7)☒ Claim(s) *1, 3-14 and 16-18* is/are rejected.

8)☐ Claim(s) _____ is/are objected to.

9)☐ Claim(s) _____ are subject to restriction and/or election requirement.

* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to PPHfeedback@uspto.gov.

Application Papers

10)☐ The specification is objected to by the Examiner.

11)☒ The drawing(s) filed on *01/23/2012* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

Certified copies:

a)☐ All b)☐ Some** c)☐ None of the:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

** See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b) Paper No(s)/Mail Date _____.

3) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

4) ☐ Other: _____.

The present application is being examined under the pre-AIA first to invent provisions.

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed October 21, 2014 has been received, Claims 1, 3-14 and 16-18 are currently pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112(a):

> (a) IN GENERAL.—The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor or joint inventor of carrying out the invention.

The following is a quotation of the first paragraph of pre-AIA 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 16, 11, 8 and 5 are rejected under 35 U.S.C. 112(a) or 35 U.S.C. 112 (pre-AIA), first paragraph, because the specification, while being enabling for a padded insole that is mentioned only with regard to the prior art figures, does not reasonably provide enablement for the present invention having a padded insole. The specification

does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. Applicant's specification only mentions a padded insole, on Page 2 of Applicant's disclosure, when briefly discussing Figures 1 and 2 which are noted as Prior Art figures and are not figures detailing the present invention. Therefore, Applicant's disclosure does not appear to provide support for a padded insole to be used with and/or be a part of the present invention.

> The following is a quotation of 35 U.S.C. 112(b):
> (b) CONCLUSION.—The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor or a joint inventor regards as the invention.
>
> The following is a quotation of 35 U.S.C. 112 (pre-AIA), second paragraph:
> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 3-14 and 16-18 are rejected under 35 U.S.C. 112(b) or 35 U.S.C. 112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention.

Claims 1, 4, 6, 9, 10 and 14 recite "less than about two degrees". The claimed limitation is indefinite due to the fact that to give a measurement of "less than about" or "greater than about" is not intuitive, not common sense and can reasonably lead to different results. For example, it is not illogical to conclude that "less than about two

degrees" yields a measurement of 1) any value less than but not including "two degrees" because of the phrase "less than" but without the phrase "or equal to", 2) any value less than or equal to "two degrees" because of the phrase "less than" and the word "about", and 3) any value less than more or less than "two degrees", including values just "greater than" "two degrees" because a value greater than "two degrees" gives import to the chosen word "about". However, to give import to the word "about" can mean more or less than "two degrees" in this example, but then that would seem to vitiate the import of the "less than".

Claim 4 recites the limitation "the athletic positioning sole section" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of pre-AIA 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3-12, 14, 16 and 17 are rejected under pre-AIA 35 U.S.C. 102(b) as being anticipated by Kerrigan (US 2002/0139011).

Regarding Claims 9 and 1, and 6 and 14, Kerrigan discloses a shoe (Fig.2) comprises an upper shoe section (38) and a sole (32) coupled to the upper shoe section. The sole (32) includes a specific bottom and an athletic positioning sole section (34) having a heel platform section (12) that has a uniform height from an outer edge (20) to an inner edge (22) of the athletic positioning sole section at a rear edge of the athletic positioning sole section (section 12 as can be seen in Fig.3; Pg.3, para.33 & 35). The uniform height has a slope of less than about two degrees from the outer edge (20) to the inner edge (22)(Pg.3, para.33 & 35, i.e. "about two degrees"). A mid-foot section (14) is juxtaposed to the heel platform section (12), and a toe section (16,18) juxtaposed to the mid-foot section (14)(Fig.3). The mid-foot section (14) and the toe section (16,18) form an angled support platform (24) that has a first slope of a polarity (from 12 to 18) along the inner edge (22) of the athletic positioning sole section from a front edge (at 18) of the athletic positioning sole section to the heel platform section (at 12), a second slope of the polarity (16h1 and 18h1 to 16h2 and 18h2) along the front edge (at 18) of the athletic positioning sole section from the inner edge (22) to the outer edge (20) of the athletic positioning sole section, and a third slope of the polarity (from 12 to 18) along the outer edge (20) of the athletic positioning sole section from the front edge (at 18) of the athletic positioning sole section to the heel platform section (at 12)(Fig.3).

The mid-foot section (14) and the toe section (16) collectively have a geometric shape having a first dimension (14h1 and 14h2) along a line (14) between the heel platform section (12) and the mid-foot section (14), a second dimension at a front outer

edge (20, seen at 16h2 and 18h2) of the apparatus, and a third dimension at a front inner edge (22, seen at 16h1 and 18h1) of the apparatus (34)(as seen in Fig.3). The first dimension (at 14h1 to 14h2) has a magnitude that is greater than or equal to a magnitude of the second dimension (seen at 16h2 and 18h2), and the magnitude of the second dimension (seen at 16h2 and 18h2) is greater than a magnitude of the third dimension (see at 16h1 and 18h1). The first dimension (14h1 to 14h2) is uniform such that, from an inner edge (20) of the apparatus to an outer edge (22) of the apparatus, the line (14) between the heel platform section (12) and the mid-foot section (14) has a slope of less than about two degrees (Pg.3, para.33, i.e. heights 14h1 and 14h2 are substantially the same, meaning there would be a slope of less than about two degrees along line 14).

Regarding Claims 7 and 3, Kerrigan discloses a shoe further comprises the heel platform section (12), the mid-foot section (14), and the toe section (16,18) constituting at least one of an insole (34; Abstract) for footwear and a sole of footwear (Fig.2).

Regarding Claims 10 and 4, Kerrigan discloses a shoe further comprises the heel platform section (12) has a uniform platform height, wherein, from a front edge (line from 12h1 to 12h2) of the heel platform to the rear edge (the terminating edge of heel section 12 directly opposite the toe terminating edge of toe section 18) of the athletic positioning sole section, the uniform platform height has a slope of less than the about two degrees (Fig.3)(Pg.3, para.33 & 35, i.e. "about two degrees"). The toe section

(16,18) and the mid-foot section (14) having a second dimension (seen at 16h2 and 18h2) at a front outer edge (22) of the apparatus and a third dimension (see at 16h1 and 18h1) at a front inner edge (20) of the apparatus (Fig.3).

Regarding Claims 16, 11, 8 and 5, Kerrigan discloses a shoe further comprises a padded insole (36) on a first surface of the apparatus (34) covering one or more of at least a portion of the heel platform section (12), at least a portion of the mid-foot section (14), and at least a portion of the toe section (16,18)(Fig.6)(Pg.4, para.47). Applicant has provided no disclosed or claimed criticality for what constitutes a padded insole. Therefore, in as much as has been defined and claimed by Applicant, Kerrigan discloses a fabric insole layer that is padded since it conforms to a user's foot and fabrics are known to have some give/cushion/padding.

Regarding Claims 17 and 12, Kerrigan discloses a shoe wherein the specific bottom comprises one of: a cleat pattern bottom, a baseball spike bottom, a basketball bottom, a tennis bottom, a golf bottom, an ice skate bottom, a ski boot bottom, a cross-trainer bottom, a running shoe bottom, a walking shoe bottom, a dress shoe bottom, and a snowboard boot bottom (Fig.2; Abstract). It is noted that shoes are utilized for walking and the shoe of Kerrigan can be used for walking or running and is therefore a walking or running shoe bottom. Additionally, it is noted that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not

differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

Claim Rejections - 35 USC § 103

The following is a quotation of pre-AIA 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 13 and 18 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Kerrigan in view of Kraisosky (US 2010/0115793).

Regarding Claims 18 and 13, Kerrigan discloses the invention substantially as claimed above. Kerrigan does not disclose the upper of the shoe being a sandal with straps. However, Kraisosky teaches a shoe (10) with an insole (34), and having an upper section comprising a sandal structure (16,24,22) that includes one or more straps (16,24) for securing the shoe to a foot (Fig.2 & 7).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have substituted the shoe upper of Kerrigan with the sandal upper, as taught by Kraisosky, as a simple substitution of one well known type of

shoe upper for another to provide for the predictable result of attaching a shoe to a wearer's foot. It is noted that Applicant has provided no criticality for the specific upper structure of the shoe.

Response to Arguments

Applicant's arguments filed October 21, 2014 have been fully considered but they are not persuasive.

6. Applicant's Remarks: Applicant asserts that Claims 5, 8, 11 and 16 should not be rejected under 35 USC 112, first paragraph as failing to comply with the enablement requirement.

Examiner's Response: Examiner respectfully disagrees. Though a padded insole is discussed in Applicant's disclosure with regard to Prior Art Figures, Applicant's disclosure does not provide support for a "padded insole" to be used with and/or be a part of the present invention. Therefore, the "padded insole" being a part of the present invention that Applicant is seeking patent protection for is not enabled by Applicant's disclosure, in other words, the padded insole being disclosed with regard to Prior Art does not provide for the structure of the padded insole being a part of the claimed invention, as the structure of such is not discussed with regard to the present invention and its structure.

7. In view of Applicant's amendment, the search has been updated, and new grounds of rejection been identified and applied. Applicant's arguments, with regard to the application of Kerrigan, have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MEGAN BRANDON whose telephone number is (571)272-3267. The examiner can normally be reached on Monday-Friday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoa Huynh can be reached on (571)272-4888. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MEGAN BRANDON/
Examiner, Art Unit 3765

/KATHERINE MORAN/
Primary Examiner, Art Unit 3765

Index of Claims	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13355801	ADAIR ET AL.
	Examiner	**Art Unit**
	MEGAN BRANDON	3765

✓	Rejected	-	Cancelled	N	Non-Elected	A	Appeal
=	Allowed	÷	Restricted	I	Interference	O	Objected

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

CLAIM		DATE								
Final	Original	08/09/2013	12/26/2013	03/01/2014	08/22/2014	10/29/2014				
	1	÷	✓	✓	✓	✓				
	2	÷	✓	✓	✓	-				
	3	÷	✓	✓	✓	✓				
	4	÷	✓	✓	✓	✓				
	5	÷	✓	✓	✓	✓				
	6	÷	✓	✓	✓	✓				
	7	÷	✓	✓	✓	✓				
	8	÷	✓	✓	✓	✓				
	9	÷	✓	✓	✓	✓				
	10	÷	✓	✓	✓	✓				
	11	÷	✓	✓	✓	✓				
	12	÷	✓	✓	✓	✓				
	13	÷	✓	✓	✓	✓				
	14	÷	✓	✓	✓	✓				
	15	÷	✓	✓	-	-				
	16	÷	✓	✓	✓	✓				
	17	÷	✓	✓	✓	✓				
	18	÷	✓	✓	✓	✓				

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13355801	ADAIR ET AL.
	Examiner	Art Unit
	MEGAN BRANDON	3765

CPC- SEARCHED		
Symbol	Date	Examiner
A43B7/142; A43B7/144; A43B13/38; A43B13/145; A43B5/00; A43B13/12; A43B7/00; A43B7/14; A43B3/00	12/26/2013	MB
A61F5/0195; A61F5/14	12/26/2013	MB

CPC COMBINATION SETS - SEARCHED		
Symbol	Date	Examiner

US CLASSIFICATION SEARCHED			
Class	Subclass	Date	Examiner
36	44, 43, 25R, 110, 103, 132, 142, 144	12/26/2013	MB

SEARCH NOTES		
Search Notes	Date	Examiner
Inventorship Search	12/26/2013	MB
Assignee Search	12/26/2013	MB
Search Assistance Ted Kavanaugh	12/26/2013	MB
Updated Search	03/01/2014	MB
Updated Search	8/22/2014	MB
Updated Search	10/29/2014	MB

INTERFERENCE SEARCH			
US Class/ CPC Symbol	US Subclass / CPC Group	Date	Examiner

Certification under 37 C.F.R. §1.8

Date of Mailing or Transmission: 10/21/2014

I hereby certify that I have caused the document indicated herein on the date indicated above to be transmitted via the Office electronic filing system in accordance with 37 C.F.R. §1.6(a)(4).

BY: /Beth Pierotti/ (Signature) **Name:** Beth Pierotti (Typed Name)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

1st Named Inventor:	Michael R. Adair	**Examiner:**	Brandon, Megan E
Application No.:	13/355,801	**Art Unit:**	3765
Filing Date:	23 Jan 2012	**Docket No.:**	AAV003
Confirmation No.:	1012		
Title:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF		

RESPONSE TO NON FINAL OFFICE ACTION

Date: 10/21/2014

United States Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450

In response to an office action dated September 17, 2014 regarding the above-captioned patent application, the Applicant respectfully submits the following amendment and response.

AMENDMENT TO THE CLAIMS

1. (currently amended) An apparatus comprises:

a heel platform section that has a uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus, wherein the uniform height has a slope of less than about two degrees from the outer edge to the inner edge ~~is within an industry accepted tolerance~~;

a mid-foot section juxtaposed to the heel platform section; and

a toe section juxtaposed to the mid-foot section, wherein the mid-foot section and the toe section form an angled support platform that has ~~collectively have a geometric shape having~~ a first slope of a polarity along [[an]] the inner edge of the apparatus from a front edge of the apparatus to the heel platform section, ~~the toe section to the mid-foot section~~ ~~and~~ a second slope of the polarity along the front ~~the inner~~ edge of the apparatus from the inner edge to the outer edge of the apparatus ~~at the toe section~~, and a third slope of the polarity along the outer edge of the apparatus from the front edge of the apparatus to the heel platform section.

2. (canceled)

3. (previously presented) The apparatus of claim 1 further comprises:

the heel platform section, the mid-foot section, and the toe section constituting at least one of an insole for footwear; and

a sole of footwear.

4. (currently amended) The apparatus of claim 1 further comprises:

the heel platform section has ~~having~~ a uniform platform height, wherein, from a front edge of the heel platform to the rear edge of the athletic positioning sole section, the uniform platform height

has a slope of less than the about two degrees ~~first dimension that is uniform, in accordance with the industry accepted tolerance, throughout the heel platform section~~; and

the toe section and the mid-foot section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

5. (previously presented) The apparatus of claim 1 further comprises:

a padded insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

6. (currently amended) An apparatus comprises:

a heel platform section;

a mid-foot section; and

a toe section, wherein the mid-foot section, and the toe section collectively have a geometric shape having a first dimension along ~~an abutment edge~~ a line between [[of]] the heel platform section and the mid-foot section, a second dimension at front outer edge of the apparatus, and a third dimension at front inner edge of the apparatus, wherein the first dimension has a magnitude that is greater than or equal to a magnitude of the second dimension and the magnitude of the second dimension is greater than a magnitude of the third dimension, and wherein the first dimension is uniform such that, from an inner edge of the apparatus to an outer edge of the apparatus, the line between the heel platform section and the mid-foot section has a slope of less than about two degrees ~~, in accordance with an industry accepted tolerance, throughout the heel platform section, wherein the uniform height is within an industry accepted tolerance~~.

7. (previously presented) The apparatus of claim 6 further comprises:

the heel platform section, the mid-foot section, and the toe section constituting at least one of an insole for footwear; and

a sole of footwear.

8. (previously presented) The apparatus of claim 6 further comprises:

a padded insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

9. (currently amended) A shoe comprises:

an upper shoe section; and

a sole coupled to the upper shoe section, wherein the sole includes:

a specific bottom; and

an athletic positioning sole section having:

a heel platform section that has a uniform height from an outer edge to an inner edge of the athletic positioning sole section ~~apparatus~~ at a ~~the~~ rear edge of the athletic positioning sole section ~~apparatus~~, wherein the uniform height has a slope of less than about two degrees from the outer edge to the inner edge ~~is within an industry accepted tolerance~~;

a mid-foot section; and

a toe section, wherein the mid-foot section and the toe section form an angled support platform that has ~~collectively have a geometric shape having~~ a first slope of a polarity along [[an]] the inner edge of the athletic positioning sole section ~~apparatus~~ from a front edge of the athletic positioning sole section to the heel

platform section ~~the toe section to the mid-foot section,~~ ~~and~~ a second slope of the polarity along the front ~~the inner~~ edge of the athletic positioning sole section ~~apparatus~~ from the inner edge to [[an]] the outer edge of the athletic positioning sole section ~~apparatus at the toe section~~, and a third slope of the polarity along the outer edge of the athletic positioning sole section from the front edge of the athletic positioning sole section to the heel platform section.

10. (currently amended) The shoe of claim 9 further comprises:

the heel platform section has ~~having~~ a uniform platform height, wherein, from a front edge of the heel platform to the rear edge of the athletic positioning sole section, the uniform platform height has a slope of less than the about two degrees ~~first dimension that is uniform, in accordance with the industry accepted tolerance, throughout the heel platform section~~; and

the toe section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

11. (previously presented) The shoe of claim 9 further comprises:

a padded insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

12. (original) The shoe of claim 9, wherein the specific bottom comprises one of:

a cleat pattern bottom;

a baseball spike bottom;

a basketball bottom;

a tennis bottom;

a golf bottom;

an ice skate bottom;

a ski boot bottom;

a cross-trainer bottom;

a running shoe bottom;

a walking shoe bottom;

a dress shoe bottom; and

a snowboard boot bottom.

13. (original) The shoe of claim 9, wherein the upper section comprises:

a sandal structure that includes one or more straps for securing the shoe to a foot.

14. (currently amended) A shoe comprises:

an upper shoe section; and

a sole coupled to the upper shoe section, wherein the sole includes:

a specific bottom; and

an athletic positioning sole section having:

a heel platform section;

a mid-foot section; and

a toe section, wherein the mid-foot section and the toe section collectively have a geometric shape having a first dimension along ~~an abutment edge~~ a line between [[of]] the heel platform section and the mid-foot section, a second dimension at a front outer edge of the apparatus, and a third dimension at a front inner edge of the apparatus, wherein the first dimension has a magnitude that is greater than or equal to a magnitude of the second dimension and the magnitude of the second dimension is greater than a magnitude of the third dimension, and wherein the first dimension is uniform such that, from an inner edge of the apparatus to an outer edge of the apparatus, the line between the heel platform section and the mid-foot section has a slope of less than about two degrees ~~, in accordance with an industry accepted~~

~~tolerance, throughout the heel platform section, wherein the uniform height is within an industry accepted tolerance~~.

15. (cancelled)

16. (previously presented) The shoe of claim 14 further comprises:

a padded insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

17. (original) The shoe of claim 14, wherein the specific bottom comprises one of:

a cleat pattern bottom;

a baseball spike bottom;

a basketball bottom;

a tennis bottom;

a golf bottom;

an ice skate bottom;

a ski boot bottom;

a cross-trainer bottom;

a running shoe bottom;

a walking shoe bottom;

a dress shoe bottom; and

a snowboard boot bottom.

18. (original) The shoe of claim 14, wherein the upper section comprises:

a sandal structure that includes one or more straps for securing the shoe to a foot.

REMARKS/ARGUMENTS

1. In the above-referenced Office Action:

a. Status of the claims.

- Claims 1-14 and 16-18 are pending;
- Claims 1-14 and 16-18 are rejected;
- Claim 15 has been cancelled.

b. The Figures have been objected to for failing to show a "padded insole" in claims 5, 8, 11 and 16 and an "abutment edge" in claim 14 as described in the specification;

c. Claims 5, 8, 11 and 16 have been rejected under 35 USC §112 (a) or 35 USC §112 (pre-AIA), first paragraph, as failing to comply with the enablement requirement;

d. Claims 1-12, 14, 16 and 17 have been rejected under pre-AIA 35 USC §102 (b) as being anticipated by Kerrigan (U.S. Pub. No. 2002/0139011);

e. Claims 13 and 18 have been rejected under pre-AIA 35 USC §103 (a) as being unpatentable over Kerrigan (U.S. Pub. No. 2002/0139011) in view of Kraisosky (U.S. Pub. No. 2010/0115793).

The rejections and objections have been traversed. Applicant respectfully requests reconsideration of the allowability of claims 1, 3-14 and 16-18.

2. The Figures have been objected to for failing to show a "padded insole" in claims 5, 8, 11 and 16 and an "abutment edge" in claim 14 as described in the specification. The Applicant respectfully disagrees with this objection and the reasoning thereof.

The Applicant has amended claim 14 to overcome the present objection.

With respect to a "padded insole", it is clearly shown in Figures 1 and 2. While Figures 1 and 2 are prior art figures of the Description of Related Art, they are still part of the specification of the present patent application and are applicable in providing support for a claimed term. In particular, MPEP 601 states, in part, that for the arrangement and contents of the specification, the following order of arrangement is preferable in framing the specification. Each of the lettered items should appear in upper case, without underlining or bold type, as section headings.

(A) Title of the invention.

(B) Cross-reference to related applications.
(C) Statement regarding federally sponsored research or development.
(D) The names of the parties to a joint research agreement.
(E) Reference to a "Sequence Listing," a table, or a computer program listing appendix submitted on compact disc and an incorporation-by-reference of the material on the compact disc.
(F) Statement regarding prior disclosures by an inventor or joint inventor.
(G) Background of the invention.
(1) Field of the invention.
(2) Description of related art including information disclosed under **37 CFR 1.97** and **37 CFR 1.98**.
(H) Brief summary of the invention.
(I) Brief description of the several views of the drawing.
(J) Detailed description of the invention.
(K) Claim(s) (commencing on a separate sheet).
(L) Abstract of the Disclosure (commencing on a separate sheet).
(M) Sequence Listing, if on paper.

As such, per the MPEP 601, the description of related art section is part of the specification.

MPEP 2173.01 states, in part that, under a broadest reasonable interpretation, words of the claim must be given their plain meaning, unless such meaning is inconsistent with the specification. The plain meaning of a term means the ordinary and customary meaning given to the term by those of ordinary skill in the art at the time of the invention. The ordinary and customary meaning of a term may be evidenced by a variety of sources, including the words of the claims themselves, the specification, drawings, and prior art. However, the best source for determining the meaning of a claim term is the specification - the greatest clarity is obtained when the specification serves as a glossary for the claim terms. [emphasis added]

As such, per MPEP 2173.01, the specification (which includes the description of related art section) and the drawings are used to determining the meaning of a claim term. In the present objection, the claim term of "padded insole" is shown in Figures 1 and 2, which is part of the specification and thus compliant with 37 CFR 1.83(a).

3. Claims 5, 8, 11 and 16 have been rejected under 35 USC §112 (a) or 35 USC §112 (pre-AIA), first paragraph, as failing to comply with the enablement requirement. The Applicant respectfully disagrees with this rejection and the reasoning thereof.

The Applicant believes that the arguments presented above are applicable in overcoming this rejection. In particular, since the description of the related art is part of the specification, claim terms are interpreted in light of the specification, the claim term "padded insole" is enabled by the specification.

4. Claims 1-12, 14, 16 and 17 have been rejected under pre-AIA 35 USC §102 (b) as being anticipated by Kerrigan (U.S. Pub. No. 2002/0139011). The Applicant respectfully disagrees with this rejection and the reasoning thereof.

Kerrigan teaches in paragraphs 31-34 that:

- The midsole 34 includes a body 48 having a top surface 24, bottom surface 26, medial side 22, lateral side 20, and a toe portion 18, forefoot portion 16, midfoot portion 14, and heel portion.
- The body 48 of the midsole 34 has a wedge-shaped profile (sometimes referred to as the "lateral wedge") in which the lateral side 20 of the body 48 has a height h that is greater than the height of the medial side 22 of the body 48.
- The difference in height between the medial 22 and lateral 20 sides of the midsole defines an incline or lateral wedge, which can extend along the length of the midsole 34, or can vary along different portions of the midsole.
- As shown in FIG. 3, the height of the medial and lateral sides 22, 20 of the body 48 varies throughout the length of the body 48.
- The toe 18 and midfoot 14 portions each have respective medial heights *18h1, 14hl*, and respective lateral heights *18h2, 14h2* that are substantially the same.
- Conversely, the heel 12 and forefoot 16 portions each have respective lateral heights *12h2, 16h2* that are greater than their respective medial heights *12h1, 16h1*.
- The height differential from the medial side 22 to the lateral side 20 at the heel 12 and forefoot 16 portions defines a slope having an incline in the range of about 2° and 12°,

more preferably in the range of about 4° and 5°, and most preferably about 5°.

- While the height may vary between the medial 22 and lateral 20 sides of the body 48, the midsole 34 can support the heel 12 and forefoot 16 portions at substantially the same height along the longitudinal axis L. This feature is believed to contribute to a reduction in the knee flexor and hip flexor torque, and will also help reduce the knee varus and hip adductor torques compared to traditional footwear.

As is presently claimed, the athletic positioning sole section of claim 9 includes a heel platform section, a mid-foot section, and a toe section. The heel platform section has a uniform height from an outer edge to an inner edge of the athletic positioning sole section at a rear edge of the athletic positioning sole section. The uniform height has a slope of less than about two degrees from the outer edge to the inner edge. In contrast, Kerrigan teaches, in paragraph 33, that the medial side 22 to the lateral side 20 at the heel 12 defines a slope having an incline in the range of about 2° and 12°, more preferably in the range of about 4° and 5°, and most preferably about 5°.

The mid-foot section and the toe section of claim 9 form an angled support platform. The angled support platform has three slopes. The first slope is along the inner edge of the athletic positioning sole section from a front edge of the athletic positioning sole section to the heel platform section. The second slope is along the front edge of the athletic positioning sole section from the inner edge to the outer edge of the athletic positioning sole section. The third slope is along the outer edge of the athletic positioning sole section from the front edge of the athletic positioning sole section to the heel platform section.

Accordingly, the mid-foot section includes a portion of each of the first, second, and third slopes and the toe section includes a remaining portion of each of the first, second, and third slopes. In contrast, Kerrigan teaches in paragraph 34 that the heel 12 and forefoot 16 portions are at substantially the same height along the longitudinal axis L (i.e., the forefoot section does not have a first slope or a third slope). Further, Kerrigan teaches in paragraph 33 that the toe 18 and midfoot 14 portions each have respective medial heights *18h1* , *14hl*, and respective lateral heights *18h2, 14h2* that are substantially the same (i.e., they do not have a second slope).

Since Kerrigan does not teach or suggest a heel platform section that has a uniform height from an outer edge to an inner edge of the athletic positioning sole section at a rear edge of the athletic positioning sole section, where the uniform height has a slope of less than about two degrees from the outer edge to the inner edge (Kerrigan teaches a lateral wedge of 2 to 12 degrees in the heel section) and does not teach or suggest the mid-foot section including a portion of each of the first, second, and third slopes and the toe section including a remaining portion of each of the first, second, and third slopes (Kerrigan teaches that the forefoot section does not have a first slope or a third slope and that each of the midfoot and the toe portions do not have a second slope), Kerrigan does not anticipate claim 9.

The Applicant believes that the foregoing arguments are applicable in distinguishing claims 1, 3-8, 10-12, 14, 16 and 17 over the present rejection.

5. Claims 13 and 18 have been rejected under pre-AIA 35 USC §103 (a) as being unpatentable over Kerrigan (U.S. Pub. No. 2002/0139011) in view of Kraisosky (U.S. Pub. No. 2010/0115793). The Applicant respectfully disagrees with this rejection and the reasoning thereof.

The Applicant believes that the foregoing arguments are applicable in distinguishing claims 13 and 18 over the present rejection.

CONCLUSION

For the foregoing reasons, the Applicant believes that claims 1, 3-14 and 16-18 are in condition for allowance and respectfully requests that they be passed to allowance.

The Applicant hereby rescinds any disclaimer of claim scope made in the parent application or any predecessor application in relation to the instant application. The Examiner is advised that any such previous disclaimer and the prior art that it was made to avoid, may need to be revisited. Further, the claims in the instant application may be broader than those of a parent application. Moreover, the Examiner should also be advised that any disclaimer made in the instant application should not be read into or against the parent application.

No additional fees are believed to be due. In the event that additional fees are due or a credit for an overpayment is due, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Garlick & Markison Deposit Account No. 50-2126.

The Examiner is invited to contact the undersigned by telephone or e-mail if the Examiner believes that such a communication would advance the prosecution of the present invention.

RESPECTFULLY SUBMITTED,

By: /Timothy W. Markison/Reg. No. 33534
Timothy W. Markison

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Electronic Acknowledgement Receipt

EFS ID:	20477380
Application Number:	13355801
International Application Number:	
Confirmation Number:	1012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Customer Number:	34399
Filer:	Timothy W. Markison/Beth Pierotti
Filer Authorized By:	Timothy W. Markison
Attorney Docket Number:	AAV003
Receipt Date:	21-OCT-2014
Filing Date:	23-JAN-2012
Time Stamp:	16:39:36
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1		AAV003_response_to_2014-9-17_OA.pdf	53102 f906a060672a6ed59d815fcc4baea477a91c...bba1	yes	13

	Multipart Description/PDF files in .zip description		
	Document Description	**Start**	**End**
	Amendment/Req. Reconsideration-After Non-Final Reject	1	1
	Claims	2	7
	Applicant Arguments/Remarks Made in an Amendment	8	13
Warnings:			
Information:			
	Total Files Size (in bytes):	53102	

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111
If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371
If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office
If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

PTO/SB/06 (09-11)
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PATENT APPLICATION FEE DETERMINATION RECORD Substitute for Form PTO-875	Application or Docket Number 13/355,801	Filing Date 01/23/2012	☐ To be Mailed

ENTITY: ☐ LARGE ☒ SMALL ☐ MICRO

APPLICATION AS FILED – PART I

FOR	(Column 1) NUMBER FILED	(Column 2) NUMBER EXTRA	RATE ($)	FEE ($)
☐ BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A	N/A	
☐ SEARCH FEE (37 CFR 1.16(k), (i), or (m))	N/A	N/A	N/A	
☐ EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A	N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =	*	X $ =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*	X $ =	
☐ APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is $310 ($155 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).			
☐ MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))				
* If the difference in column 1 is less than zero, enter "0" in column 2.			TOTAL	

APPLICATION AS AMENDED – PART II

AMENDMENT		(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
	Total (37 CFR 1.16(i))	*	Minus	**	=	X $ =	
	Independent (37 CFR 1.16(h))	*	Minus	***	=	X $ =	
	☐ Application Size Fee (37 CFR 1.16(s))						
	☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
						TOTAL ADD'L FEE	

AMENDMENT	10/21/2014	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
	Total (37 CFR 1.16(i))	* 16	Minus	** 20	= 0	X $40 =	0
	Independent (37 CFR 1.16(h))	* 4	Minus	*** 4	= 0	X $210 =	0
	☐ Application Size Fee (37 CFR 1.16(s))						
	☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
						TOTAL ADD'L FEE	0

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.
** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".
*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".
The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

LIE
/THERESA LINDSAY/

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**
If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/355,801	01/23/2012	Michael R. Adair	AAV003	1012

34399 7590 09/17/2014

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EXAMINER	
BRANDON, MEGAN E	

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
09/17/2014	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

MMurdock@TEXASPATENTS.COM
ghmptocor@texaspatents.com
bpierotti@texaspatents.com

Office Action Summary	Application No. 13/355,801	Applicant(s) ADAIR ET AL.	
	Examiner MEGAN BRANDON	Art Unit 3765	AIA (First Inventor to File) Status No

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07/01/2014*.

☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on _____; the restriction requirement and election have been incorporated into this action.

4)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims*

5)☒ Claim(s) *1-14 and 16-18* is/are pending in the application.

5a) Of the above claim(s) _____ is/are withdrawn from consideration.

6)☐ Claim(s) _____ is/are allowed.

7)☒ Claim(s) *1-14 and 16-18* is/are rejected.

8)☐ Claim(s) _____ is/are objected to.

9)☐ Claim(s) _____ are subject to restriction and/or election requirement.

* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to PPHfeedback@uspto.gov.

Application Papers

10)☐ The specification is objected to by the Examiner.

11)☒ The drawing(s) filed on *2/10/2014 & 01/23/2012* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

Certified copies:

a)☐ All b)☐ Some** c)☐ None of the:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

** See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☒ Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b) Paper No(s)/Mail Date *08/07/2014*.

3) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

4) ☐ Other: _____.

The present application is being examined under the pre-AIA first to invent provisions.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 23, 2014 has been entered.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show a "padded insole" in Claims 5, 8, 11 and 16, and an "abutment edge" in Claim 14 as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure

is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112(a):

> (a) IN GENERAL.—The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor or joint inventor of carrying out the invention.

The following is a quotation of the first paragraph of pre-AIA 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 16, 11, 8 and 5 are rejected under 35 U.S.C. 112(a) or 35 U.S.C. 112 (pre-AIA), first paragraph, because the specification, while being enabling for a padded

insole that is mentioned only with regard to the prior art figures, does not reasonably provide enablement for the present invention having a padded insole. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. Applicant's specification only mentions a padded insole, on Page 2 of Applicant's disclosure, when briefly discussing Figures 1 and 2 which are noted as Prior Art figures and are not figures detailing the present invention. Therefore, Applicant's disclosure does not appear to provide support for a padded insole to be used with and/or be a part of the present invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of pre-AIA 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-12, 14, 16 and 17 are rejected under pre-AIA 35 U.S.C. 102(b) as being anticipated by Kerrigan (US 2002/0139011).

Regarding Claims 9 and 1, 14 and 6, 10 and 2, Kerrigan discloses a shoe (Fig.2) comprising an upper shoe section (38) and a sole (32) coupled to the upper shoe section. The sole (32) includes a specific bottom, and an athletic positioning sole

section (34) having a heel platform section (12) that has a uniform height from an outer edge (20) to an inner edge (22) of the apparatus at the rear edge of the apparatus (as can be seen in Fig.3, section 12; Pg.3, para.33 & 35), wherein the uniform height is within an industry accepted tolerance (Pg.3, para.33 & 35; it is noted that Applicant defines "an industry-accepted tolerance" as ranging from less than one percent to fifty percent on Page 72, lines 22-24 of Applicant's disclosure; it is further noted that Kerrigan's incline of 2 degrees is within an industry-accepted tolerance as defined by Applicant's disclosure), a mid-foot section (14), and a toe section (16,18)(Fig.1). The mid-foot section (14) and the toe section (16,18) collectively have a geometric shape having a first slope of a polarity (from 14 to 16,18) along an inner edge (22) of the apparatus from the toe section (16,18) to the mid-foot section (14) and a second slope (16h1 and 18h1 to 16h2 and 18h2) of the polarity along the inner edge (22) of the apparatus to an outer edge (20) of the apparatus at the toe section (16,18)(Fig.3). Kerrigan teaches a third slope (14 to 16,18) of the polarity along the outer edge (20) of the apparatus from the toe section (16,18) to the mid- foot section (14)(Fig.3).

The mid-foot section (14) and the toe section (16,18) collectively have a geometric shape having a first dimension along an abutment edge (14) of the heel platform section (12) and the mid-foot section (14)(Fig.1). The heel platform section (12) having a first dimension that is uniform, in accordance with the industry accepted tolerance, throughout the heel section (as can be seen in Fig.3, section 12; Pg.3, para.33 & 35; it is noted that Applicant defines "an industry-accepted tolerance" as ranging from less than one percent to fifty percent on Page 72, lines 22-24 of

Applicant's disclosure; it is further noted that Kerrigan's incline of 2 degrees is within an industry-accepted tolerance as defined by Applicant's disclosure). The toe section (16,18) and the mid-foot section (14) having a second dimension at a front outer edge (20, seen at 16h2 and 18h2) of the apparatus and a third dimension at a front inner edge (22, seen at 16h1 and 18h1) of the apparatus (34)(as seen in Fig.3). The first dimension (at 14h1 to 14h2) has a magnitude that is greater than or equal to a magnitude of the second dimension (seen at 16h2 and 18h2), and the magnitude of the second dimension (seen at 16h2 and 18h2) is greater than a magnitude of the third dimension (see at 16h1 and 18h1). The first dimension is uniform, in accordance with the industry accepted tolerance, throughout the heel platform section (Pg.3, para.33,34; it is noted that Applicant defines "an industry-accepted tolerance" as ranging from less than one percent to fifty percent on Page 72, lines 22-24 of Applicant's disclosure; it is further noted that Kerrigan's incline of 2 degrees is within an industry-accepted tolerance as defined by Applicant's disclosure).

Regarding Claims 7 and 3, Kerrigan discloses a (shoe) apparatus further comprises the heel platform section (12), the mid-foot section (14), and the toe section (16,18) constituting at least one of an insole (34; Abstract) for footwear and a sole of footwear (Fig.2).

Regarding Claim 4, Kerrigan discloses a (shoe) apparatus further comprises the heel platform section (12) having a first dimension that is uniform, in accordance with

the industry accepted tolerance (Pg.3, para.33 & 35; it is noted that Applicant defines "an industry-accepted tolerance" as ranging from less than one percent to fifty percent on Page 72, lines 22-24 of Applicant's disclosure; it is further noted that Kerrigan's incline of 2 degrees is within an industry-accepted tolerance as defined by Applicant's disclosure), from the outer edge to the inner edge along a back edge of the apparatus and from the back edge of the apparatus to a front portion of the heel section (as can be seen in Fig.3, section 12). The toe section (16,18) and the mid-foot section (14) having a second dimension at a front outer edge (20) of the apparatus and a third dimension (22) at a front inner edge of the apparatus (as seen in Fig.3).

Regarding Claims 16, 11, 8 and 5, Kerrigan discloses a (shoe) apparatus further comprises a padded insole (36) on a first surface of the apparatus (34) covering one or more of at least a portion of the heel platform section (12), at least a portion of the mid-foot section (14), and at least a portion of the toe section (16,18)(Fig.6)(Pg.4, para.47). Applicant has provided no disclosed or claimed criticality for what constitutes a padded insole. Therefore, in as much as has been defined and claimed by Applicant, Kerrigan discloses a fabric insole layer that is padded since it conforms to a user's foot and fabrics are known to have some give/cushion/padding.

Regarding Claims 17 and 12, Kerrigan discloses a shoe wherein the specific bottom comprises one of: a cleat pattern bottom, a baseball spike bottom, a basketball bottom, a tennis bottom, a golf bottom, an ice skate bottom, a ski boot bottom, a cross-

trainer bottom, a running shoe bottom, a walking shoe bottom, a dress shoe bottom, and a snowboard boot bottom (Fig.2; Abstract). It is noted that shoes are utilized for walking and the shoe of Kerrigan can be used for walking or running and is therefore a walking or running shoe bottom. Additionally, it is noted that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Claim Rejections - 35 USC § 103

The following is a quotation of pre-AIA 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 13 and 18 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Kerrigan in view of Kraisosky (US 2010/0115793).

Regarding Claims 18 and 13, Kerrigan discloses the invention substantially as claimed above. Kerrigan does not disclose the upper of the shoe being a sandal with straps. However, Kraisosky teaches a shoe (10) with an insole (34), and having an upper section comprising a sandal structure (16,24,22) that includes one or more straps (16,24) for securing the shoe to a foot (Fig.2 & 7).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have substituted the shoe upper of Kerrigan with the sandal upper, as taught by Kraisosky, as a simple substitution of one well known type of shoe upper for another to provide for the predictable result of attaching a shoe to a wearer's foot. It is noted that Applicant has provided no criticality for the specific upper structure of the shoe.

Response to Arguments

Applicant's arguments filed June 23, 2014 have been fully considered but they are not persuasive.

6. Applicant's Remarks: Applicant asserts that the "abutment edge" between the heel section and the mid-foot section is clearly shown as a dotted line, or solid line between the two sections.

Examiner's Response: Examiner respectfully disagrees. Applicant does not mention in Applicant's disclosure that the dotted or solid line indicates the "abutment edge". This description is also not noted with reference to the drawings. Therefore, the drawing objection is maintained.

7. Applicant's Remarks: Applicant asserts that Kerrigan does not teach a midfoot section having a slope from the outer edge (lateral edge) to the inner edge (medial edge). Applicant also argues that claim 1 includes a heel platform section that has a uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus, wherein the uniform height is within an industry accepted tolerance, and that Kerrigan teaches that the heel section having a slope at the outer edge. Further, Applicant believes the Examiner to have taken official notice and requests a written affidavit from the Examiner stating that, in accordance with industry accepted tolerances, a two degree slope is of a uniform height; alternatively, the Applicant requests the Examiner to submit a reference that defines a relevant industry accepted standard that specifically states that a two degree slope is of a uniform height.

Examiner's Response: Examiner respectfully disagrees. As currently claimed, the midfoot section is not required to have a slope from an outer edge to an inner edge, it is only required that "the midfoot section and the toe section collectively have a geometric shape having a first slope of a polarity along an inner edge of the apparatus from the toe section to the midfoot section and a second slope of the polarity along the inner edge of the apparatus to an outer edge of the apparatus at the toe section...and a third slope of the polarity along the outer edge of the apparatus from the toe section to the mid-foot section". As currently claimed, Kerrigan discloses all of the structural limitations as claimed, please, see the rejection above.

Applicant also argues that Kerrigan does not teach a heel platform section that has a uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus, wherein the uniform height is within an industry accepted tolerance, because Kerrigan's heel section has a slope at the outer edge. Applicant's attention is pointed to Applicant's own disclosure which specifically defines "an industry-accepted tolerance" as ranging from less than one percent to fifty percent on Page 72, lines 22-24. It is further noted that such a definition provided within the disclosure of an invention is the standard by which the examiner has reviewed the application and applied prior art; because Applicant has clearly defined what they meant to be attributed to the phrase "industry-accepted tolerance". That said, when reviewing the presently claimed invention, examiner has used the definition provided by Applicant to apply prior art, and Kerrigan's incline of 2 degrees (to 12 degrees, or more preferably 4-5 degrees) in the heel section is within the industry-accepted tolerance as defined by Applicant's disclosure. Examiner did not take official notice with regard to 2 degrees being of a uniform height, as the disclosure of an incline of 2 degrees by Kerrigan fits within Applicant's definition as a uniform height in accordance with industry accepted tolerances. In light of Applicant's own disclosed definition, the examiner is not required nor is it the examiner's burden to produce an affidavit stating that, in accordance with industry accepted tolerances, a two degree slope is of a uniform height, or to submit a reference that defines a relevant industry accepted standard that specifically states that a two degree slope is of a uniform height. Applicant has provided no amended claim

language to distinguish the presently claimed invention over that of the prior art of record.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MEGAN BRANDON whose telephone number is (571)272-3267. The examiner can normally be reached on Monday-Friday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoa Huynh can be reached on (571)272-4888. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MEGAN BRANDON/
Examiner, Art Unit 3765

/KATHERINE MORAN/
Primary Examiner, Art Unit 3765

PTO/SB/08a (01-10)
Approved for use through 07/31/2012. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Not for submission under 37 CFR 1.99)

Application Number	13355801
Filing Date	2012-01-23
First Named Inventor	MICHAEL R. ADAIR
Art Unit	3765
Examiner Name	BRANDON, MEGAN E
Attorney Docket Number	AAV003

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Examiner Initial*	Cite No	Patent Number	Kind Code[1]	Issue Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear
/M.B./	1	4620376		1986-11-04	Louis C. Talarico, II	

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Examiner Signature	/Megan Brandon/	Date Considered	08/22/2014

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[1] See Kind Codes of USPTO Patent Documents at www.USPTO.GOV or MPEP 901.04. [2] Enter office that issued the document, by the two-letter code (WIPO Standard ST.3). [3] For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. [4] Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. [5] Applicant is to place a check mark here if English language translation is attached.

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	Attorney Docket Number	AAV003

CERTIFICATION STATEMENT

Please see 37 CFR 1.97 and 1.98 to make the appropriate selection(s):

☐ That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(1).

OR

☐ That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in 37 CFR 1.56(c) more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(2).

☐ See attached certification statement.

☐ The fee set forth in 37 CFR 1.17 (p) has been submitted herewith.

☒ A certification statement is not submitted herewith.

SIGNATURE

A signature of the applicant or representative is required in accordance with CFR 1.33, 10.18. Please see CFR 1.4(d) for the form of the signature.

Signature	/Timothy W. Markison/	Date (YYYY-MM-DD)	2014-08-07
Name/Print	Timothy W. Markison	Registration Number	33534

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

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5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

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Index of Claims	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13355801	ADAIR ET AL.
	Examiner	Art Unit
	MEGAN BRANDON	3765

✓	Rejected	-	Cancelled	N	Non-Elected	A	Appeal
=	Allowed	÷	Restricted	I	Interference	O	Objected

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

CLAIM		DATE								
Final	Original	08/09/2013	12/26/2013	03/01/2014	08/22/2014					
	1	÷	✓	✓	✓					
	2	÷	✓	✓	✓					
	3	÷	✓	✓	✓					
	4	÷	✓	✓	✓					
	5	÷	✓	✓	✓					
	6	÷	✓	✓	✓					
	7	÷	✓	✓	✓					
	8	÷	✓	✓	✓					
	9	÷	✓	✓	✓					
	10	÷	✓	✓	✓					
	11	÷	✓	✓	✓					
	12	÷	✓	✓	✓					
	13	÷	✓	✓	✓					
	14	÷	✓	✓	✓					
	15	÷	✓	✓	-					
	16	÷	✓	✓	✓					
	17	÷	✓	✓	✓					
	18	÷	✓	✓	✓					

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	Examiner	Art Unit
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CPC- SEARCHED		
Symbol	Date	Examiner
A43B7/142; A43B7/144; A43B13/38; A43B13/145; A43B5/00; A43B13/12; A43B7/00; A43B7/14; A43B3/00	12/26/2013	MB
A61F5/0195; A61F5/14	12/26/2013	MB

CPC COMBINATION SETS - SEARCHED		
Symbol	Date	Examiner

US CLASSIFICATION SEARCHED			
Class	Subclass	Date	Examiner
36	44, 43, 25R, 110, 103, 132, 142, 144	12/26/2013	MB

SEARCH NOTES		
Search Notes	Date	Examiner
Inventorship Search	12/26/2013	MB
Assignee Search	12/26/2013	MB
Search Assistance Ted Kavanaugh	12/26/2013	MB
Updated Search	03/01/2014	MB
Updated Search	8/22/2014	MB

INTERFERENCE SEARCH			
US Class/ CPC Symbol	US Subclass / CPC Group	Date	Examiner

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Attorney Docket Number	AAV003

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Examiner Signature		Date Considered	

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OR

☐ That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in 37 CFR 1.56(c) more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(2).

☐ See attached certification statement.

☐ The fee set forth in 37 CFR 1.17 (p) has been submitted herewith.

☒ A certification statement is not submitted herewith.

SIGNATURE

A signature of the applicant or representative is required in accordance with CFR 1.33, 10.18. Please see CFR 1.4(d) for the form of the signature.

Signature	/Timothy W. Markison/	Date (YYYY-MM-DD)	2014-08-07
Name/Print	Timothy W. Markison	Registration Number	33534

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these record s.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

Electronic Acknowledgement Receipt

EFS ID:	19800519
Application Number:	13355801
International Application Number:	
Confirmation Number:	1012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Customer Number:	34399
Filer:	Timothy W. Markison/Beth Pierotti
Filer Authorized By:	Timothy W. Markison
Attorney Docket Number:	AAV003
Receipt Date:	07-AUG-2014
Filing Date:	23-JAN-2012
Time Stamp:	11:55:21
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Information Disclosure Statement (IDS) Form (SB08)	AAV003_IDS.pdf	612238 d2f7bd0d10a34097817217 44e94a112b650 8746b	no	4

Warnings:

Information:

Total Files Size (in bytes):	612238

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111
If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371
If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office
If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

Doc code: RCEX
Doc description: Request for Continued Examination (RCE)

PTO/SB/30EFS (07-09)
Approved for use through 07/31/2012. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

REQUEST FOR CONTINUED EXAMINATION(RCE)TRANSMITTAL
(Submitted Only via EFS-Web)

Application Number	13355801	Filing Date	2012-01-23	Docket Number (if applicable)	AAV003	Art Unit	3765
First Named Inventor	Michael R. Adair			Examiner Name	BRANDON, MEGAN E		

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application.
Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. The Instruction Sheet for this form is located at WWW.USPTO.GOV

SUBMISSION REQUIRED UNDER 37 CFR 1.114

Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

☒ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____

☒ Other Response After Final Action filed 6/23/2014

☐ Enclosed

☐ Amendment/Reply

☐ Information Disclosure Statement (IDS)

☐ Affidavit(s)/ Declaration(s)

☐ Other _____

MISCELLANEOUS

☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of months _____ (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)

☐ Other _____

FEES

The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

☒ The Director is hereby authorized to charge any underpayment of fees, or credit any overpayments, to Deposit Account No 502126

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

☒ Patent Practitioner Signature

☐ Applicant Signature

PTO/SB/30EFS (07-09)
Approved for use through 07/31/2012. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

Signature of Registered U.S. Patent Practitioner			
Signature	/Timothy W. Markison/	Date (YYYY-MM-DD)	2014-07-01
Name	Timothy W. Markison	Registration Number	33534

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Privacy Act Statement

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9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

Electronic Patent Application Fee Transmittal

Application Number:	13355801
Filing Date:	23-Jan-2012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Filer:	Timothy W. Markison/Beth Pierotti
Attorney Docket Number:	AAV003

Filed as Small Entity

Utility under 35 USC 111(a) Filing Fees

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				
Extension - 1 month with $0 paid	2251	1	100	100

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Miscellaneous:				
Request for Continued Examination	2801	1	600	600
		Total in USD ($)		**700**

Electronic Acknowledgement Receipt

EFS ID:	19470938
Application Number:	13355801
International Application Number:	
Confirmation Number:	1012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Customer Number:	34399
Filer:	Timothy W. Markison/Beth Pierotti
Filer Authorized By:	Timothy W. Markison
Attorney Docket Number:	AAV003
Receipt Date:	01-JUL-2014
Filing Date:	23-JAN-2012
Time Stamp:	17:14:47
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	Credit Card
Payment was successfully received in RAM	$700
RAM confirmation Number	3723
Deposit Account	502126
Authorized User	PIEROTTI, BETH

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

Charge any Additional Fees required under 37 C.F.R. Section 1.17 (Patent application and reexamination processing fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.21 (Miscellaneous fees and charges)

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Request for Continued Examination (RCE)	AAV003_RCE.pdf	698025 8ec81a0a23a2bf94060ba4cb862654836837 7b1db	no	3
Warnings:					
Information:					
2	Fee Worksheet (SB06)	fee-info.pdf	32230 bc2e489cfadbd2b89804bdf83457476addd b67e0	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	730255		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111
If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371
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New International Application Filed with the USPTO as a Receiving Office
If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

PTO/SB/06 (09-11)
Approved for use through 1/31/2014. OMB 0651-0032
U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PATENT APPLICATION FEE DETERMINATION RECORD Substitute for Form PTO-875	Application or Docket Number 13/355,801	Filing Date 01/23/2012	☐ To be Mailed

ENTITY: ☐ LARGE ☒ SMALL ☐ MICRO

APPLICATION AS FILED – PART I

FOR	(Column 1) NUMBER FILED	(Column 2) NUMBER EXTRA	RATE ($)	FEE ($)
☐ BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A	N/A	
☐ SEARCH FEE (37 CFR 1.16(k), (i), or (m))	N/A	N/A	N/A	
☐ EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A	N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =	*	X $ =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*	X $ =	
☐ APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is $310 ($155 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).			
☐ MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))				
* If the difference in column 1 is less than zero, enter "0" in column 2.			TOTAL	

APPLICATION AS AMENDED – PART II

AMENDMENT 07/01/2014

	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
Total (37 CFR 1.16(i))	* 17	Minus	** 20	= 0	X $40 =	0
Independent (37 CFR 1.16(h))	* 4	Minus	***4	= 0	X $210 =	0
☐ Application Size Fee (37 CFR 1.16(s))						
☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
					TOTAL ADD'L FEE	0

AMENDMENT

	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
Total (37 CFR 1.16(i))	*	Minus	**	=	X $ =	
Independent (37 CFR 1.16(h))	*	Minus	***	=	X $ =	
☐ Application Size Fee (37 CFR 1.16(s))						
☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
					TOTAL ADD'L FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.
** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".
*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".
The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

LIE
/LYNNELL JOHNSON/

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**
If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/355,801	01/23/2012	Michael R. Adair	AAV003	1012

34399 7590 06/30/2014

GARLICK & MARKISON
Melanie Murdock
P.O. BOX 160727
AUSTIN, TX 78716-0727

EXAMINER	
BRANDON, MEGAN E	

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
06/30/2014	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

MMurdock@TEXASPATENTS.COM
ghmptocor@texaspatents.com
bpierotti@texaspatents.com

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 13/355,801	**Applicant(s)** ADAIR ET AL.	
	Examiner MEGAN BRANDON	**Art Unit** 3765	**AIA (First Inventor to File) Status** No

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 June 2014 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

NO NOTICE OF APPEAL FILED

1. ☒ The reply was filed after a final rejection. No Notice of Appeal has been filed. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114 if this is a utility or plant application. Note that RCEs are not permitted in design applications. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action; or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
   c) ☐ A prior Advisory Action was mailed more than 3 months after the mailing date of the final rejection in response to a first after-final reply filed within 2 months of the mailing date of the final rejection. The current period for reply expires months from the mailing date of *the prior Advisory Action* or SIX MONTHS from the mailing date of the final rejection, whichever is earlier.
   Examiner Note: If box 1 is checked, check either box (a), (b) or (c). ONLY CHECK BOX (b) WHEN THIS ADVISORY ACTION IS THE FIRST RESPONSE TO APPLICANT'S FIRST AFTER-FINAL REPLY WHICH WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. ONLY CHECK BOX (c) IN THE LIMITED SITUATION SET FORTH UNDER BOX (c). See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) or (c) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendments filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   b) ☐ They raise the issue of new matter (see NOTE below);
   c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: *See Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): (a) ☒ will not be entered, or (b) ☐ will be entered, and an explanation of how the new or amended claims would be rejected is provided below or appended.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.
9. ☐ The affidavit or other evidence filed after final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
10. ☐ The affidavit or other evidence filed after the date of filing the Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
11. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

12. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
13. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
14. ☐ Other: _____.

STATUS OF CLAIMS

15. The status of the claim(s) is (or will be) as follows:
    Claim(s) allowed:
    Claim(s) objected to:
    Claim(s) rejected: 1-18.
    Claim(s) withdrawn from consideration:

/KATHERINE MORAN/
Primary Examiner, Art Unit 3765

Continuation of 3. NOTE: Applicant's amendments to Claims 1,4-6, 8-11, 14 & 16 introduce new limitations that alter the scope of the independent claims, and consequently the dependent claims. New limitations "the uniform height within an industry accepted tolerance", and "in accordance with industry accepted tolerance", and "padded insole", and "in accordance with industry accepted standards" would require further consideration and/or search, possibly necessitating new grounds of rejection.

Applicant's arguments appear to address the amended language of the independent claims and, as stated above, the scope of the dependent claims is altered when the scope of the independent claim is altered. With regard to Applicant's arguments regarding the term "substantially", Applicant's attention is directed to Page 72, lines 22-24 of Applicant's disclosure which recites "As may be used herein, the terms "substantially" and "approximately" provides an industry-accepted tolerance for its corresponding term and/or relativity between items. Such an industry-accepted tolerance ranges from less than one percent to fifty percent"; it is noted that Kerrigan's slope being between 2 and 12 degrees is within Applicant's own definition of "substantially".

Certification Under 37 C.F.R. 1.8

Date of Mailing or Transmission: 6/23/2014

I hereby certify that I have caused the document indicated herein on the date indicated above to be transmitted via the Office electronic filing system in accordance with 37 C.F.R. §1.6(a)(4).

BY: /Beth Pierotti/ (Signature) Name: Beth Pierotti (Typed Name)

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor: Michael R. Adair
Application No: 13/355,801
Filing Date: 01/23/2012
Confirmation No.: 1012
Examiner: Brandon, Megan E
Art Unit: 3765
Docket No: AAV003
Title: ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF

RESPONSE TO FINAL OFFICE ACTION

Date: 6/23/2014

United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

In response to an office action dated March 21, 2014 regarding the above-captioned patent application, the Applicant respectfully submits the following amendment and response.

DO NOT ENTER: /M.B./

/Megan Brandon/

06/25/2014

Certification Under 37 C.F.R. 1.8

Date of Mailing or Transmission: 6/23/2014

I hereby certify that I have caused the document indicated herein on the date indicated above to be transmitted via the Office electronic filing system in accordance with 37 C.F.R. §1.6(a)(4).

BY: /Beth Pierotti/ (Signature) Name: Beth Pierotti (Typed Name)

PATENT APPLICATION

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First Named Inventor: Michael R. Adair
Application No: 13/355,801
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In response to an office action dated March 21, 2014 regarding the above-captioned patent application, the Applicant respectfully submits the following amendment and response.

AMENDMENT TO THE CLAIMS

1. (currently amended) An apparatus comprises:

a heel platform section that has a ~~substantially~~ uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus, wherein the uniform height is within an industry accepted tolerance;

a mid-foot section juxtaposed to the heel platform section; and

a toe section juxtaposed to the mid-foot section, wherein the mid-foot section and the toe section collectively have a geometric shape having a first slope of a polarity along an inner edge of the apparatus from the toe section to the mid-foot section and a second slope of the polarity along the inner edge of the apparatus to the outer edge of the apparatus at the toe section.

2. (original) The apparatus of claim 1 further comprises:

a third slope of the polarity along the outer edge of the apparatus from the toe section to the mid-foot section.

3. (previously presented) The apparatus of claim 1 further comprises:

the heel platform section, the mid-foot section, and the toe section constituting at least one of an insole for footwear and

a sole of footwear.

4. (currently amended) The apparatus of claim 1 further comprises:

the heel platform section having ~~the~~ a first dimension that is ~~substantially~~ uniform, in accordance with the industry accepted tolerance, throughout the heel section; and

the toe section and the mid-foot section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

5. (currently amended) The apparatus of claim 1 further comprises:

a ~~cushioning layer~~ padded insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

6. (currently amended) An apparatus comprises:

a heel platform section;

a mid-foot section; and

a toe section, wherein the mid-foot section, and the toe section collectively have a geometric shape having a first dimension along an abutment edge of the heel platform section and the mid-foot section, a second dimension at front outer edge of the apparatus, and a third dimension at front inner edge of the apparatus, wherein the first dimension has a magnitude that is greater than or equal to a magnitude of the second dimension and the magnitude of the second dimension is greater than a magnitude of the third dimension, and wherein the first dimension is ~~substantially~~ uniform, in accordance with an industry accepted tolerance, throughout the heel platform section, wherein the uniform height is within an industry accepted tolerance.

7. (previously presented) The apparatus of claim 6 further comprises:

the heel platform section, the mid-foot section, and the toe section constituting at least one of an insole for footwear and

a sole of footwear.

8. (currently amended) The apparatus of claim 6 further comprises:

a ~~cushioning layer~~ padded insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

9. (currently amended) A shoe comprises:

an upper shoe section; and

a sole coupled to the upper shoe section, wherein the sole includes:

a specific bottom; and

an athletic positioning sole section having:

a heel platform section that has a ~~substantially~~ uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus, wherein the uniform height is within an industry accepted tolerance;

a mid-foot section; and

a toe section, wherein the mid-foot section and the toe section collectively have a geometric shape having a first slope of a polarity along an inner edge of the apparatus from the toe section to the mid-foot section and a second slope of the polarity along the inner edge of the apparatus to an outer edge of the apparatus at the toe section.

10. (currently amended) The shoe of claim 9 further comprises:

the heel platform section having ~~the~~ a first dimension that is ~~substantially~~ uniform, in accordance with the industry accepted tolerance, throughout the heel platform section; and

the toe section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

11. (currently amended) The shoe of claim 9 further comprises:

a ~~cushioning layer~~ padded insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

12. (original) The shoe of claim 9, wherein the specific bottom comprises one of:

a cleat pattern bottom;
a baseball spike bottom;
a basketball bottom;
a tennis bottom;
a golf bottom;
an ice skate bottom;
a ski boot bottom;
a cross-trainer bottom;
a running shoe bottom;
a walking shoe bottom;
a dress shoe bottom; and
a snowboard boot bottom.

13. (original) The shoe of claim 9, wherein the upper section comprises:

a sandal structure that includes one or more straps for securing the shoe to a foot.

14. (currently amended) A shoe comprises:

an upper shoe section; and

a sole coupled to the upper shoe section, wherein the sole includes:

a specific bottom; and

an athletic positioning sole section having:

a heel platform section;

a mid-foot section; and

a toe section, wherein the mid-foot section[[,]] and the toe section collectively have a geometric shape having a first dimension along an abutment edge of the heel platform section and the mid-foot section, a second dimension at a front outer edge of the apparatus, and a third dimension at a front inner edge of the apparatus, wherein the first dimension has a magnitude that is greater than or equal to a magnitude of the second dimension and the magnitude of the second dimension is greater than a magnitude of the third dimension, and wherein the first dimension is ~~substantially~~ uniform, in accordance with industry accepted standards, throughout the heel platform section.

15. (cancelled)

16. (currently amended) The shoe of claim 14 further comprises:

a ~~cushioning layer~~ padded insole on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

17. (original) The shoe of claim 14, wherein the specific bottom comprises one of:

a cleat pattern bottom;

a baseball spike bottom;

a basketball bottom;

a tennis bottom;

a golf bottom;

an ice skate bottom;

a ski boot bottom;

a cross-trainer bottom;

a running shoe bottom;

a walking shoe bottom;

a dress shoe bottom; and

a snowboard boot bottom.

18. (original) The shoe of claim 14, wherein the upper section comprises:

a sandal structure that includes one or more straps for securing the shoe to a foot.

REMARKS/ARGUMENTS

1. In the above-referenced Office Action:

   a. Status of the claims.

      - Claims 1-14 and 16-18 are pending;
      - Claim 15 is cancelled;

   b. The Figures have been objected to for failing to show a cushioning layer in claims 5, 8, 11, 16 and 17 and an abutment edge in claim 14 as described in the specification;

   c. Claim 14 has been objected to for informalities;

   d. Claims 4 and 10 have been rejected under 35 USC §112 (b) or 35 USC §112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention;

   e. Claims 1-12, 14, 16 and 17 have been rejected under pre-AIA 35 USC §102 (b) as being anticipated by Kerrigan (U.S. Pub. No. 2002/0139011);

   f. Claims 13 and 18 have been rejected under pre-AIA 35 USC §103 (a) as being unpatentable over Kerrigan (U.S. Pub. No. 2002/0139011) in view of Kraisosky (U.S. Pub. No. 2010/0115793);

   g. Claims 1-18 have been rejected under the judicially created obviousness-type double patenting doctrine as being unpatentable over claims 1-12 of Adair (U.S. Patent No. 8,631,592).

The rejections and objections have been traversed. Applicant respectfully requests reconsideration of the allowability of claims 1-14 and 16-18.

2. The Figures have been objected to for failing to show a cushioning layer in claims 5, 8, 11, 16 and 17 and an abutment edge in claim 14 as described in the specification. The Applicant respectfully disagrees with this objection and the reasoning thereof.

With respect to the cushioning layer, the Applicant has amended claims 5, 8, 11, and 16 to overcome this objection.

With respect to the "abutment edge" between the heel section and the mid-foot section, this is clearly shown as a dotted line, or solid line, between the two sections in at least Figures 8, and 11-14. As such, the Applicant believes that this objection has been overcome.

3. Claim 14 has been objected to for informalities. The Applicant has amended claim 14 in accordance with the Examiner's suggestion.

4. Claims 4 and 10 have been rejected under 35 USC §112 (b) or 35 USC §112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention. The Applicant has amended claims 4 and 10 to overcome this rejection.

5. Claims 1-12, 14, 16 and 17 have been rejected under pre-AIA 35 USC §102 (b) as being anticipated by Kerrigan (U.S. Pub. No. 2002/0139011). The Applicant respectfully disagrees with this rejection and the reasoning thereof.

Kerrigan teaches with reference to Figure 3 that the midsole section 34 includes a body 48 having a top surface 24, bottom surface 26, medial side 22, lateral side 20, and a toe portion 18, forefoot portion 16, midfoot portion 14, and heel portion 12. [paragraph 31]

As shown in FIG. 3 and discussed in paragraph 33:

The height of the medial and lateral sides 22, 20 of the body 48 varies throughout the length of the body 48. The toe 18 and midfoot 14 portions each have respective medial heights *18h1, 14hl,* and respective lateral heights *18h2, 14h2* that are substantially the same.

Conversely, the heel 12 and forefoot 16 portions each have respective lateral heights *12h2, 16h2* that are greater than their respective medial heights *12h1, 16h1.* The height differential from the medial side 22 to the lateral side 20 at the heel 12 and forefoot 16 portions defines a slope having an incline in the range of about 2° and 12°, more preferably in the range of about 4° and 5°, and most preferably about 5°.

As such, the midfoot section 14 and the toe section 18 do not have a slope from the outer edge (lateral side) to the inner edge (medial side). The heel section 12 and the forefoot section 16 have a slope from the outer edge to the inner edge and provides a specific range for the slope.

In contrast, claim 1 includes a heel platform section that has a uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus, wherein the uniform height is within an industry accepted tolerance. Kerrigan teaches that the heel section does include a slope at the outer edge. In the present office action, it is stated that an incline of 2 degrees is not considered to be a substantial change in height. Kerrigan does make this statement, it specifically states that it does have a slope in the range of 2 to 12 degrees. As such, this statement appears to be official notice by the Examiner. If the official notice is based on the Examiner's opinion, then the Applicant requests a written affidavit from the Examiner stating that, in accordance with industry accepted tolerances, a two degree slope is of a uniform height. Alternatively, the Applicant requests the Examiner to submit a reference that defines a relevant industry accepted standard that specifically states that a two degree slope is of a uniform height.

Further contrasting claim 1 with Kerrigan, Kerrigan teaches that the midfoot section 14 has no slope from the outer edge to the inner edge. Claim 1, however includes the limitation that the mid-foot section and the toe section collectively have a geometric shape having ... a second slope of the polarity along the inner edge of the apparatus to the outer edge of the apparatus at the toe section.

Since Kerrigan teaches that the heel section has a slope from the outer edge to the inner edge and the midfoot section does not have a slope from the outer edge to the inner edge, the Applicant believes that Kerrigan does not anticipate claim 1 and, for the same reasons, does not believe that Kerrigan anticipates claims 2-12, 14, 16 and 17.

6. Claims 13 and 18 have been rejected under pre-AIA 35 USC §103 (a) as being unpatentable over Kerrigan (U.S. Pub. No. 2002/0139011) in view of Kraisosky (U.S. Pub. No. 2010/0115793). The Applicant respectfully disagrees with this rejection and the reasoning thereof.

As discussed above, Kerrigan does not anticipate claims 1-12, 14, 16 and 17. Thus, combining the teaching of Kerrigan with Kraisosky does not render claims 13 and 18 obvious.

7. Claims 1-18 have been rejected under the judicially created obviousness-type double patenting doctrine as being unpatentable over claims 1-12 of Adair (U.S. Patent No. 8,631,592). The Applicant respectfully disagrees with this rejection and the reasoning thereof. Nevertheless, upon the finding of allowability of the claims for the present patent application, the Applicant will file a terminal disclaimer.

CONCLUSION

For the foregoing reasons, the Applicant believes that claims 1-14 and 16-18 are in condition for allowance and respectfully requests that they be passed to allowance.

The Applicant hereby rescinds any disclaimer of claim scope made in the parent application or any predecessor application in relation to the instant application. The Examiner is advised that any such previous disclaimer and the prior art that it was made to avoid, may need to be revisited. Further, the claims in the instant application may be broader than those of a parent application. Moreover, the Examiner should also be advised that any disclaimer made in the instant application should not be read into or against the parent application.

No additional fees are believed to be due. In the event that additional fees are due or a credit for an overpayment is due, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Garlick & Markison Deposit Account No. 50-2126.

The Examiner is invited to contact the undersigned by email if the Examiner believes that such a communication would advance the prosecution of the present invention.

RESPECTFULLY SUBMITTED,

By: /Timothy W. Markison/ Reg. No. 33,534
Timothy W. Markison
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Electronic Acknowledgement Receipt

EFS ID:	19374556
Application Number:	13355801
International Application Number:	
Confirmation Number:	1012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Customer Number:	34399
Filer:	Timothy W. Markison/Beth Pierotti
Filer Authorized By:	Timothy W. Markison
Attorney Docket Number:	AAV003
Receipt Date:	23-JUN-2014
Filing Date:	23-JAN-2012
Time Stamp:	11:11:15
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1		AAV003_response_to_2014-3-21_FOA.pdf	43392 97194161deea7e7f6f89f86f4f044ddac61edf509	yes	12

	Multipart Description/PDF files in .zip description		
	Document Description	**Start**	**End**
	Response After Final Action	1	1
	Claims	2	7
	Applicant Arguments/Remarks Made in an Amendment	8	12
Warnings:			
Information:			
	Total Files Size (in bytes):	43392	

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111
If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371
If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office
If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

PTO/SB/06 (09-11)
Approved for use through 1/31/2014. OMB 0651-0032
U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PATENT APPLICATION FEE DETERMINATION RECORD Substitute for Form PTO-875	Application or Docket Number 13/355,801	Filing Date 01/23/2012	☐ To be Mailed

ENTITY: ☐ LARGE ☒ SMALL ☐ MICRO

APPLICATION AS FILED – PART I

FOR	(Column 1) NUMBER FILED	(Column 2) NUMBER EXTRA	RATE ($)	FEE ($)
☐ BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A	N/A	
☐ SEARCH FEE (37 CFR 1.16(k), (i), or (m))	N/A	N/A	N/A	
☐ EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A	N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =	*	X $ =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*	X $ =	
☐ APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is $310 ($155 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).			
☐ MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))				
* If the difference in column 1 is less than zero, enter "0" in column 2.			TOTAL	

APPLICATION AS AMENDED – PART II

AMENDMENT 06/23/2014

	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
Total (37 CFR 1.16(i))	* 17	Minus	** 20	= 0	X $40 =	0
Independent (37 CFR 1.16(h))	* 4	Minus	***4	= 0	X $210 =	0
☐ Application Size Fee (37 CFR 1.16(s))						
☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
					TOTAL ADD'L FEE	0

AMENDMENT

	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
Total (37 CFR 1.16(i))	*	Minus	**	=	X $ =	
Independent (37 CFR 1.16(h))	*	Minus	***	=	X $ =	
☐ Application Size Fee (37 CFR 1.16(s))						
☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
					TOTAL ADD'L FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.
** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".
*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".
The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

LIE
/HALLEY MASSEY/

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**
If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/355,801	01/23/2012	Michael R. Adair	AAV003	1012

34399 7590 03/21/2014

GARLICK & MARKISON
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P.O. BOX 160727
AUSTIN, TX 78716-0727

EXAMINER	
BRANDON, MEGAN E	

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
03/21/2014	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

MMurdock@TEXASPATENTS.COM
ghmptocor@texaspatents.com
bpierotti@texaspatents.com

Office Action Summary	Application No. 13/355,801	Applicant(s) ADAIR ET AL.	
	Examiner MEGAN BRANDON	Art Unit 3765	AIA (First Inventor to File) Status No

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02/10/2014*.

☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on _____; the restriction requirement and election have been incorporated into this action.

4)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims*

5)☒ Claim(s) *1-18* is/are pending in the application.

5a) Of the above claim(s) _____ is/are withdrawn from consideration.

6)☐ Claim(s) _____ is/are allowed.

7)☒ Claim(s) *1-18* is/are rejected.

8)☐ Claim(s) _____ is/are objected to.

9)☐ Claim(s) _____ are subject to restriction and/or election requirement.

* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to PPHfeedback@uspto.gov.

Application Papers

10)☐ The specification is objected to by the Examiner.

11)☒ The drawing(s) filed on *02/10/2014 & 01/23/2012* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

Certified copies:

a)☐ All b)☐ Some** c)☐ None of the:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

** See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b) Paper No(s)/Mail Date _____.

3) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

4) ☐ Other: _____.

The present application is being examined under the pre-AIA first to invent provisions.

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed February 10, 2014 has been received, Claims 1-18 are currently pending.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show a "cushioning layer" in Claims 5, 8, 11 and 16, and 17, and an "abutment edge" in Claim 14 as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claim 14 is objected to because of the following informalities: Claim 14 recites "at front outer edge" which appears to be a grammatical error and should read "at a front outer edge". Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of 35 U.S.C. 112(b):
(b) CONCLUSION.—The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor or a joint inventor regards as the invention.

The following is a quotation of 35 U.S.C. 112 (pre-AIA), second paragraph:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 4 and 10 are rejected under 35 U.S.C. 112(b) or 35 U.S.C. 112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly

claim the subject matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention.

Claims 4 and 10 recite the limitation "the first dimension" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of pre-AIA 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-12, 14, 16 and 17 are rejected under pre-AIA 35 U.S.C. 102(b) as being anticipated by Kerrigan (US 2002/0139011).

Regarding Claims 9 and 1, 14 and 6, 10 and 2, Kerrigan discloses a shoe (Fig.2) comprising an upper shoe section (38) and a sole (32) coupled to the upper shoe section. The sole (32) includes a specific bottom, and an athletic positioning sole section (34) having a heel platform section (12) that has a substantially uniform height from an outer edge (20) to an inner edge (22) of the apparatus at the rear edge of the apparatus (as can be seen in Fig.3, section 12; Pg.3, para.33 & 35, it is also noted that an incline of 2 degrees is not considered to be a substantial change in height, and therefore section 12 is "substantially uniform in height"), a mid-foot section (14), and a

toe section (16,18)(Fig.1). The mid-foot section (14) and the toe section (16,18) collectively have a geometric shape having a first slope of a polarity (from 14 to 16,18) along an inner edge (22) of the apparatus from the toe section (16,18) to the mid-foot section (14) and a second slope (16h1 and 18h1 to 16h2 and 18h2) from of the polarity along the inner edge (22) of the apparatus to an outer edge (20) of the apparatus at the toe section (16,18)(Fig.3). Kerrigan teaches a third slope (14 to 16,18) of the polarity along the outer edge (20) of the apparatus from the toe section (16,18) to the mid- foot section (14)(Fig.3).

The mid-foot section (14) and the toe section (16,18) collectively have a geometric shape having a first dimension along an abutment edge (14) of the heel platform section (12) and the mid-foot section (14)(Fig.1). The heel platform section (12) having a first dimension that is substantially uniform throughout the heel section (as can be seen in Fig.3, section 12; Pg.3, para.33 & 35, it is also noted that an incline of 2 degrees is not considered to be a substantial change in height, and therefore section 12 is "substantially uniform in height"). The toe section (16,18) and the mid-foot section (14) having a second dimension at a front outer edge (20, seen at 16h2 and 18h2) of the apparatus and a third dimension at a front inner edge (22, seen at 16h1 and 18h1) of the apparatus (34)(as seen in Fig.3). The first dimension (at 14h1 to 14h2) has a magnitude that is greater than or equal to a magnitude of the second dimension (seen at 16h2 and 18h2), and the magnitude of the second dimension (seen at 16h2 and 18h2) is greater than a magnitude of the third dimension (see at 16h1 and 18h1). The

first dimension is substantially uniform throughout the heel platform section (Pg.3, para.33,34).

Regarding Claims 7 and 3, Kerrigan discloses a (shoe) apparatus further comprises the heel platform section (12), the mid-foot section (14), and the toe section (16,18) constituting at least one of an insole (34; Abstract) for footwear and a sole of footwear (Fig.2).

Regarding Claim 4, Kerrigan discloses a (shoe) apparatus further comprises the heel platform section (12) having a first dimension that is substantially uniform from the outer edge to the inner edge along a back edge of the apparatus and from the back edge of the apparatus to a front portion of the heel section (as can be seen in Fig.3, section 12; Pg.3, para.33 & 35, it is also noted that an incline of 2 degrees is not considered to be a substantial change in height, and therefore section 12 is "substantially uniform in height"). The toe section (16,18) and the mid-foot section (14) having a second dimension at a front outer edge (20) of the apparatus and a third dimension (22) at a front inner edge of the apparatus (as seen in Fig.3).

Regarding Claims 16, 11, 8 and 5, Kerrigan discloses a (shoe) apparatus further comprises a cushioning layer (36) on a first surface of the apparatus (34) covering one or more of at least a portion of the heel platform section (12), at least a portion of the mid-foot section (14), and at least a portion of the toe section (16,18)(Fig.6)(Pg.4,

para.47). Applicant has provided no disclosed or claimed criticality for what constitutes a cushioning layer. Therefore, in as much as has been defined and claimed by Applicant, Kerrigan discloses a fabric layer that is cushioning since it conforms to a user's foot and fabrics are known to have some give/cushion.

Regarding Claims 17 and 12, Kerrigan discloses a shoe wherein the specific bottom comprises one of: a cleat pattern bottom, a baseball spike bottom, a basketball bottom, a tennis bottom, a golf bottom, an ice skate bottom, a ski boot bottom, a cross-trainer bottom, a running shoe bottom, a walking shoe bottom, a dress shoe bottom, and a snowboard boot bottom (Fig.2; Abstract). It is noted that shoes are utilized for walking and the shoe of Kerrigan can be used for walking or running and is therefore a walking or running shoe bottom. Additionally, it is noted that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Claim Rejections - 35 USC § 103

The following is a quotation of pre-AIA 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 13 and 18 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Kerrigan in view of Kraisosky (US 2010/0115793).

Regarding Claims 18 and 13, Kerrigan discloses the invention substantially as claimed above. Kerrigan does not disclose the upper of the shoe being a sandal with straps. However, Kraisosky teaches a shoe (10) with an insole (34), and having an upper section comprising a sandal structure (16,24,22) that includes one or more straps (16,24) for securing the shoe to a foot (Fig.2 & 7).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have substituted the shoe upper of Kerrigan with the sandal upper, as taught by Kraisosky, as a simple substitution of one well known type of shoe upper for another to provide for the predictable result of attaching a shoe to a wearer's foot. It is noted that Applicant has provided no criticality for the specific upper structure of the shoe.

Response to Arguments

7. In view of Applicant's amendment, the search has been updated, and new prior art has been identified and applied. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

With regard to the Drawing objections and newly submitted Drawings, a cushioning layer as disclosed by Applicant would be a separate layer from the apparatus and a separate layer is not shown as such in the drawings submitted. Additionally, an abutment edge is also not shown in the elected Species Figures; the Drawing objections are directed towards the elected Species being prosecuted at this time.

Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory double patenting rejection is appropriate where the claims at issue are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the reference application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement. A terminal disclaimer must be signed in compliance with 37 CFR 1.321(b).

The USPTO internet Web site contains terminal disclaimer forms which may be used. Please visit http://www.uspto.gov/forms/. The filing date of the application will determine what form should be used. A web-based eTerminal Disclaimer may be filled out completely online using web-screens. An eTerminal Disclaimer that meets all requirements is auto-processed and approved immediately upon submission. For more information about eTerminal Disclaimers, refer to http://www.uspto.gov/patents/process/file/efs/guidance/eTD-info-I.jsp.

Claims 1-18 are rejected on the ground of nonstatutory double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 8,631,592. Although the claims at issue are not identical, they are not patentably distinct from each other because the claims of U.S. Patent No. 8,631,592 disclose fully all of the structural limitations recited in the currently pending Application.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MEGAN BRANDON whose telephone number is (571)272-3267. The examiner can normally be reached on Monday-Friday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoa Huynh can be reached on (571)272-4888. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MEGAN BRANDON/
Examiner, Art Unit 3765

/KATHERINE MORAN/
Primary Examiner, Art Unit 3765

Notice of References Cited	Application/Control No. 13/355,801	Applicant(s)/Patent Under Reexamination ADAIR ET AL.	
	Examiner MEGAN BRANDON	Art Unit 3765	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-2002/0139011	10-2002	Kerrigan, D. Casey	36/144
	B	US-			
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13355801	ADAIR ET AL.
	Examiner	Art Unit
	MEGAN BRANDON	3765

CPC- SEARCHED		
Symbol	Date	Examiner
A43B7/142; A43B7/144; A43B13/38; A43B13/145; A43B5/00; A43B13/12; A43B7/00; A43B7/14; A43B3/00	12/26/2013	MB
A61F5/0195; A61F5/14	12/26/2013	MB

CPC COMBINATION SETS - SEARCHED		
Symbol	Date	Examiner

US CLASSIFICATION SEARCHED			
Class	Subclass	Date	Examiner
36	44, 43, 25R, 110, 103, 132, 142, 144	12/26/2013	MB

SEARCH NOTES		
Search Notes	Date	Examiner
Inventorship Search	12/26/2013	MB
Assignee Search	12/26/2013	MB
Search Assistance Ted Kavanaugh	12/26/2013	MB
Updated Search	03/01/2014	MB

INTERFERENCE SEARCH			
US Class/ CPC Symbol	US Subclass / CPC Group	Date	Examiner

Index of Claims	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13355801	ADAIR ET AL.
	Examiner	Art Unit
	MEGAN BRANDON	3765

✓	Rejected	-	Cancelled	N	Non-Elected	A	Appeal
=	Allowed	÷	Restricted	I	Interference	O	Objected

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

CLAIM		DATE								
Final	Original	08/09/2013	12/26/2013	03/01/2014						
	1	÷	✓	✓						
	2	÷	✓	✓						
	3	÷	✓	✓						
	4	÷	✓	✓						
	5	÷	✓	✓						
	6	÷	✓	✓						
	7	÷	✓	✓						
	8	÷	✓	✓						
	9	÷	✓	✓						
	10	÷	✓	✓						
	11	÷	✓	✓						
	12	÷	✓	✓						
	13	÷	✓	✓						
	14	÷	✓	✓						
	15	÷	✓	✓						
	16	÷	✓	✓						
	17	÷	✓	✓						
	18	÷	✓	✓						

Certification Under 37 C.F.R. 1.8

Date of Mailing or Transmission: 2/10/2014

I hereby certify that I have caused the document indicated herein on the date indicated above to be transmitted via the Office electronic filing system in accordance with 37 C.F.R. §1.6(a)(4).

BY: /Beth Pierotti/ (Signature) Name: Beth Pierotti (Typed Name)

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor: Michael R. Adair
Application No: 13/355,801
Filing Date: 01/23/2012
Confirmation No.: 1012
Examiner: BRANDON, MEGAN E
Art Unit: 3765
Docket No: AAV003
Title: ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF

RESPONSE TO A NON-FINAL OFFICE ACTION

Date: 2/10/2014

United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

In response to an office action dated January 28, 2014 regarding the above-captioned patent application, the Applicant respectfully submits the following amendment and response.

CLAIM AMENDMENTS

1. (currently amended) An apparatus comprises:

a heel platform section that has a substantially uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus;

a mid-foot section juxtaposed to the heel platform section; and

a toe section juxtaposed to the mid-foot section, wherein the mid-foot section and the toe section collectively have a geometric shape having a first slope of a polarity along an inner edge of the apparatus from the toe section to the mid-foot section and a second slope of the polarity along the inner edge of the apparatus to the outer edge of the apparatus at the toe section.

2. (original) The apparatus of claim 1 further comprises:

a third slope of the polarity along the outer edge of the apparatus from the toe section to the mid-foot section.

3. (currently amended) The apparatus of claim 1 further comprises ~~at least one of~~:

the heel platform section, the mid-foot section, and the toe section constituting at least one of an insole for footwear[[;]] and

~~the heel section, the mid-foot section, and the toe section constituting~~ a sole of footwear.

4. (currently amended) The apparatus of claim 1 further comprises:

the heel platform section having the [[a]] first dimension that is substantially uniform throughout ~~from the outer edge to the inner edge along a back edge of the apparatus and from the back edge of the apparatus to a front portion of~~ the heel section; and

the toe section and the mid-foot section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

5. (original) The apparatus of claim 1 further comprises:

a cushioning layer on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

6. (currently amended) An apparatus comprises:

a heel platform section;

a mid-foot section; and

a toe section, wherein the mid-foot section, and the toe section collectively have a geometric shape having a first dimension along an abutment edge of the heel platform section and the mid-foot section, a second dimension at front outer edge of the apparatus, and a third dimension at front inner edge of the apparatus, wherein the first dimension has a magnitude that is greater than or equal to a magnitude of the second dimension and the magnitude of the second dimension is greater than a magnitude of the third dimension, and wherein the first dimension is substantially uniform ~~uniformly~~ throughout the heel platform section.

7. (currently amended) The apparatus of claim 6 further comprises ~~at least one of~~:

the heel platform section, the mid-foot section, and the toe section constituting at least one of an insole for footwear[[;]] and

~~the heel platform section, the mid-foot section, and the toe section constituting~~ a sole of footwear.

8. (original) The apparatus of claim 6 further comprises:

a cushioning layer on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

9. (currently amended) A shoe comprises:

an upper shoe section; and

a sole coupled to the upper shoe section, wherein the sole includes:

a specific bottom; and

an athletic positioning sole section having:

a heel platform section <u>that has a substantially uniform height from an outer edge to an inner edge of the apparatus at the rear edge of the apparatus</u>;

a mid-foot section; and

a toe section, wherein the mid-foot section and the toe section collectively have a geometric shape having a first slope of a polarity along an inner edge of the apparatus from the toe section to the mid-foot section and a second slope of the polarity along the inner edge of the apparatus to an outer edge of the apparatus at the toe section.

10. (currently amended) The shoe of claim 9 further comprises:

the heel platform section having <u>the</u> [[a]] first dimension that is substantially uniform throughout the heel platform section; and

the toe section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

11. (original) The shoe of claim 9 further comprises:

a cushioning layer on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

12. (original) The shoe of claim 9, wherein the specific bottom comprises one of:

a cleat pattern bottom;
a baseball spike bottom;
a basketball bottom;
a tennis bottom;
a golf bottom;
an ice skate bottom;
a ski boot bottom;
a cross-trainer bottom;
a running shoe bottom;
a walking shoe bottom;
a dress shoe bottom; and
a snowboard boot bottom.

13. (original) The shoe of claim 9, wherein the upper section comprises:

a sandal structure that includes one or more straps for securing the shoe to a foot.

14. (currently amended) A shoe comprises:

an upper shoe section; and

a sole coupled to the upper shoe section, wherein the sole includes:

a specific bottom; and

an athletic positioning sole section having:

a heel platform section;

a mid-foot section; and

a toe section, wherein the mid-foot section, and the toe section collectively have a geometric shape having a first dimension along an abutment edge of the heel platform section and the mid-foot section, a second dimension at front outer edge of the apparatus, and a third dimension at a front inner edge of the apparatus, wherein the first dimension has a magnitude that is greater than or equal to a magnitude of the second dimension and the magnitude of the second dimension is greater than a magnitude of the third dimension, and wherein the first dimension is substantially uniform ~~uniformly~~ throughout the heel platform section.

15. (cancelled)

16. (original) The shoe of claim 14 further comprises:

a cushioning layer on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

17. (original) The shoe of claim 14, wherein the specific bottom comprises one of:

a cleat pattern bottom;

a baseball spike bottom;

a basketball bottom;

a tennis bottom;

a golf bottom;

an ice skate bottom;

a ski boot bottom;

a cross-trainer bottom;

a running shoe bottom;

a walking shoe bottom;

a dress shoe bottom; and

a snowboard boot bottom.

18. (original) The shoe of claim 14, wherein the upper section comprises:

a sandal structure that includes one or more straps for securing the shoe to a foot.

SPECIFICATION AMENDMENTS

Please amend the specification on page 21 at lines 4-10 as follows:

Figures 8-10 illustrate an isometric diagram 30, a cross-sectional side view diagram 32, and a cross-sectional front view diagram 34 of an embodiment of an athletic positioning shape, which may be used in an insole 12 and/or sole 10 of a shoe. The athletic positioning shape includes an overall geometric shape that corresponds to the shape of a shoe, but is shown in block form for ease of illustration. The athletic positioning shape further includes a heel platform 38, ~~and~~ an angled support platform 36, and an abutment edge there between. The heel platform includes a height (hl) and width (w). The insole 12 and/or sole 10 may include a cushioning layer on a first surface covering at least a portion of the heel, mid-foot, and/or toe section.

Please amend the specification on page 22 at lines 4-9 as follows:

The angled support platform 36 abuts the heel platform 38 along an abutment edge and includes a length (L- L3 and L- L4), a first width (wl), a second width corresponding to the toe area 42 (wl-w2), a first height (hl), a second height (h2), a first angle (e.g., 01) from the heel platform to the toe on the outside edge of the shoe, a second angle (e.g., 02) from the outer edge of the shoe to the edge of the toe area 42, and a third angle (e.g., 03) from the heel platform 38 to the toe area 42 on the inner edge of the shoe.

Please amend the specification on page 22 at lines 19-26 as follows:

The angled support platform 36 abuts the heel platform 38 along an abutment edge and includes a length (L - heel length), a first width (w2 - wl) at heel platform 38, a second width (w2-wl) at toe area, a first height (hl), a second height (h2), a first angle (e.g., 01) from the heel platform 38 to the toe on the outside edge of the shoe, and a second angle (e.g., 02) from the outer edge of the shoe to the edge of the toe area. The angled edge platform 52 includes a length (L – heel length), a first width (w4) at heel platform 38, a second width (w2) at toe area, a first height (hl), a second height (h2), and a first angle (e.g., 01) from the heel platform 38 to the toe on the outside edge of the shoe.

Please amend the specification on page 23 at line 27 through page 24 at line 5 as follows:

The heel platform includes a height (hl), a width, and a length. The angled arch support

platform abuts the heel platform along an abutment edge and includes a length (L- heel length and the big toe area length), a width, a first height (hl), a second height (h2), a first angle (e.g., 02) from the heel platform to the toe on the outside edge of the toe platform, and a second angle (e.g., 02) from the outer edge of the shoe to the edge of the toe area. The toe platform includes a length (L – heel length and the length of the arch platform), a width, a first height (h2), a second height (h3), and a first angle (e.g., 01) from the arch platform 72 to the toe platform 74 and a second angle (e.g., 03) from the outside edge of the shoe to the toe area. In this embodiment, 01 is greater than 02 such that the angle of the toes is greater than the angle of the arch platform and allows for more flexing of the toes.

Please amend the specification on page 24 at lines 16-25 as follows:

The heel platform includes a height (hl), a width, and a length. The angled arch support platform abuts the heel platform along an abutment edge and includes a length (L- heel length and the big toe area length), a width, a first height (hl), a second height (h2), a first angle (e.g., 02) from the heel platform to the toe on the outside edge of the toe platform, and a second angle (e.g., 02) from the outer edge of the shoe to the edge of the toe area. The toe platform includes a length (L – heel length and the length of the arch platform), a width, a first height (h2), a second height (h3), and a first angle (e.g., 01) from the arch platform to the toe platform and a second angle (e.g., 03) from the outside edge of the shoe to the toe area. In this embodiment, 02 is greater than 01 such that the angle of the toes is less than the angle of the arch platform, which allows for less flexing of the toes.

DRAWING AMENDMENTS

One or more of the figures have been changed and such figures include a replacement figure header. Replacement sheets are included herewith. An explanation of the drawing changes is presented in the remarks section.

REMARKS/ARGUMENTS

1. In the above-referenced Office Action:

   a. Claims 1-18 are pending;

   b. The drawings have been objected to under 37 CFR 1.83(a);

   c. Claim 14 has been objected to for informalities;

   d. Claims 3, 4, 7, and 15 have been rejected under 35 USC §112, second paragraph;

   e. Claims 1-12, 14, 16, and 17 have been rejected under 35 USC §102 as being anticipated by Love (US 2006/0000114); and

   f. Claims 13 and 18 have been rejected under 35 USC 103 as being unpatentable over Love in view of Kraisosky (US 2010/0115793).

These objections and rejections have been traversed and the Applicant respectfully requests reconsideration of the allowability of claims 1-14 and 16-18.

2. The drawings have been objected to under 37 CFR 1.83(a).

   i. "Cushioning layer" of claims 5, 8, 11, 16, and 17 is not shown in the drawings. The Applicant is submitting herewith replacement sheets to overcome this objection, which has been done without adding new subject matter to the specification.

   ii. "Sandal structure" of claims 13 and 18 is not shown in the drawings. As per 37 CFR 1.83(a), in part, conventional features disclosed in the description and claims, where their detailed illustration is not essential for a proper understanding of the invention, should be illustrated in the drawing in the form of a graphical drawing symbol or a labeled representation (e.g., a labeled rectangular box). In the present situation, claims 13 and 18 include further limitations regarding the upper shoe section to include a sandal structure. The Applicant contends that a sandal structure is a conventional feature of footwear and, as such, may be shown by a labeled box. At least figures 3, 4, 65, 77, 78, 89, 90, and 99 illustrate an upper shoe section. Since the figures include an upper shoe section and a sandal structure is a conventional feature, the Applicant believes that this objection has been overcome.

iii. "Abutment edge" of claim 14 is not shown the drawings. The Applicant is submitting herewith replacement sheets to overcome this objection, which has been done without added new subject matter to the specification.

3. Claim 14 has been objected to for informalities. The Applicant has amended the claim to overcome this rejection.

4. Claims 3, 4, 7, and 15 have been rejected under 35 USC §112, second paragraph. The Applicant has amended the claims to overcome this rejection.

5. Claims 1-12, 14, 16, and 17 have been rejected under 35 USC §102 as being anticipated by Love (US 2006/0000114). The Applicant respectfully disagrees with this rejection and the reasonings therefor.

Love teaches with reference to Figures 4 and 6 and paragraphs 25 and 26 that the thickness of the insole 10 graduatedly increases from the center of the insole outward toward the outer side of the insole 10. The insole 10 is flat at the instep-to-center portion of insole X1, and increases to the second thickness X2, and increases again to the third thickness X3, and increases a final time at the outer portion of insole X4, such that the outer portion of insole X4 is approximately four times the thickness of the instep-to-center portion of insole X1.

FIG. 6 illustrates through sectional views of the embodiment of FIG. 4 the graduated increase in thickness of the insole 10 as seen in from the rear foot section 16 view 4-4, the mid foot section 18 view 5-5, and the forefoot section 20 view 6-6. In an alternative embodiment, FIG. 7 illustrates the insole 10 with the thickness of the insole reversed, such that the thickness increases from the center of the foot toward instep portion of insole x4.

As such, Love is teaching that each section of the insole (i.e., the rear foot (or heel) section, the mid foot section, and the forefoot sections) has an increasing thickness from the center portion to the edge of the sole.

Love, however, does not teach or suggest a heel platform that has a substantially uniform height across the back edge of an apparatus (i.e., an insole and/or a sole of a shoe) or throughout the entire heel platform. In contrast, Love teaches as shown in Figures 4 and 6 that the rear foot (or heel) section has a varying thickness where the outer edge of an insole is 4 times as thick as the center of the insole.

Based on the foregoing arguments, the Applicant believes that claims 1-12, 14, 16, and 17 overcome the present rejection.

6. Claims 13 and 18 have been rejected under 35 USC 103 as being unpatentable over Love in view of Kraisosky (US 2010/0115793). The Applicant respectfully disagrees with this rejection and the reasonings therefor.

The Applicant believes that the arguments presented above are applicable in distinguishing claims 13 and 18 over the present rejection.

CONCLUSION

For the foregoing reasons, the Applicant believes that claims 1-14 and 16-18 are in condition for allowance and respectfully requests that they be passed to allowance.

The Applicant hereby rescinds any disclaimer of claim scope made in the parent application or any predecessor application in relation to the instant application. The Examiner is advised that any such previous disclaimer and the prior art that it was made to avoid, may need to be revisited. Further, the claims in the instant application may be broader than those of a parent application. Moreover, the Examiner should also be advised that any disclaimer made in the instant application should not be read into or against the parent application.

No additional fees are believed to be due. In the event that additional fees are due or a credit for an overpayment is due, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Garlick & Markison Deposit Account No. 50-2126.

The Examiner is invited to contact the undersigned by telephone or facsimile if the Examiner believes that such a communication would advance the prosecution of the present invention.

RESPECTFULLY SUBMITTED,

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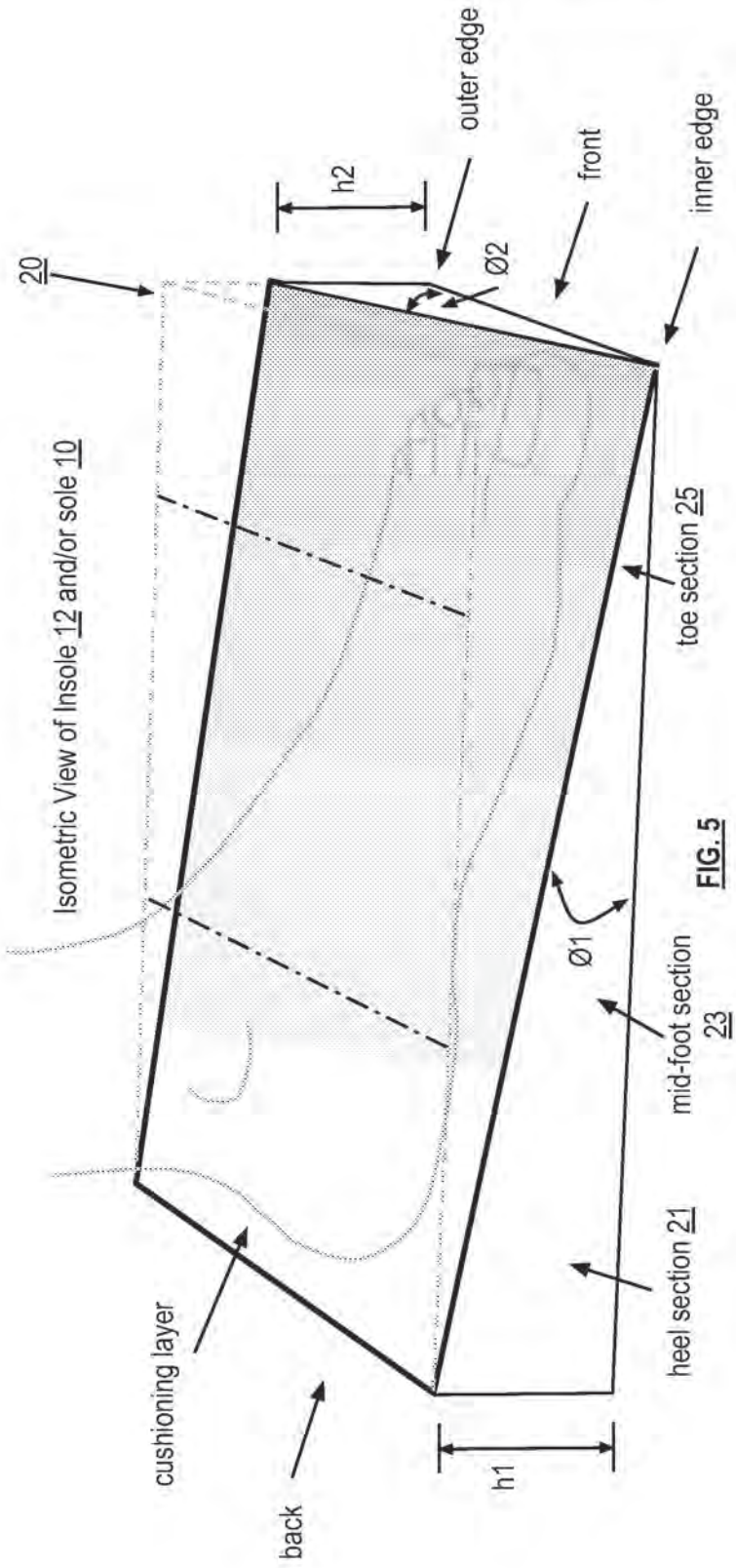


FIG. 5

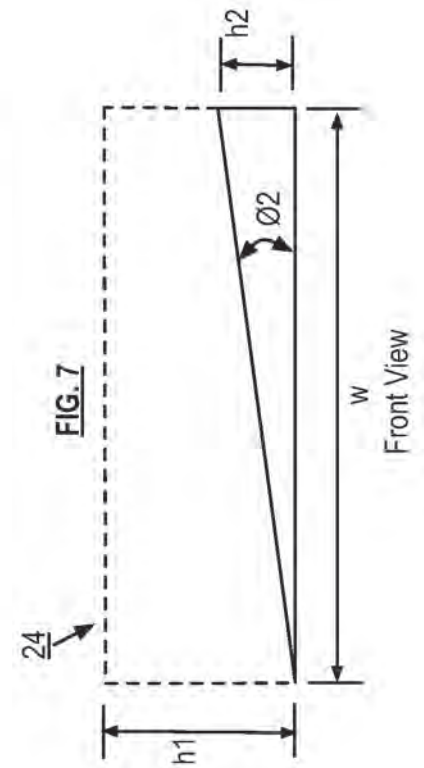


FIG. 7

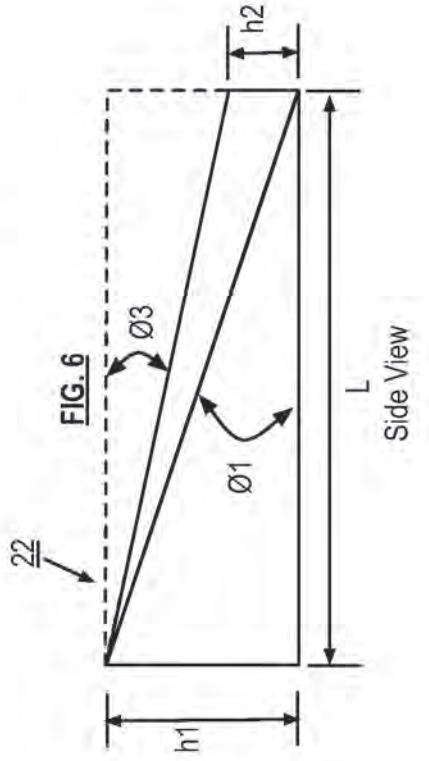


FIG. 6

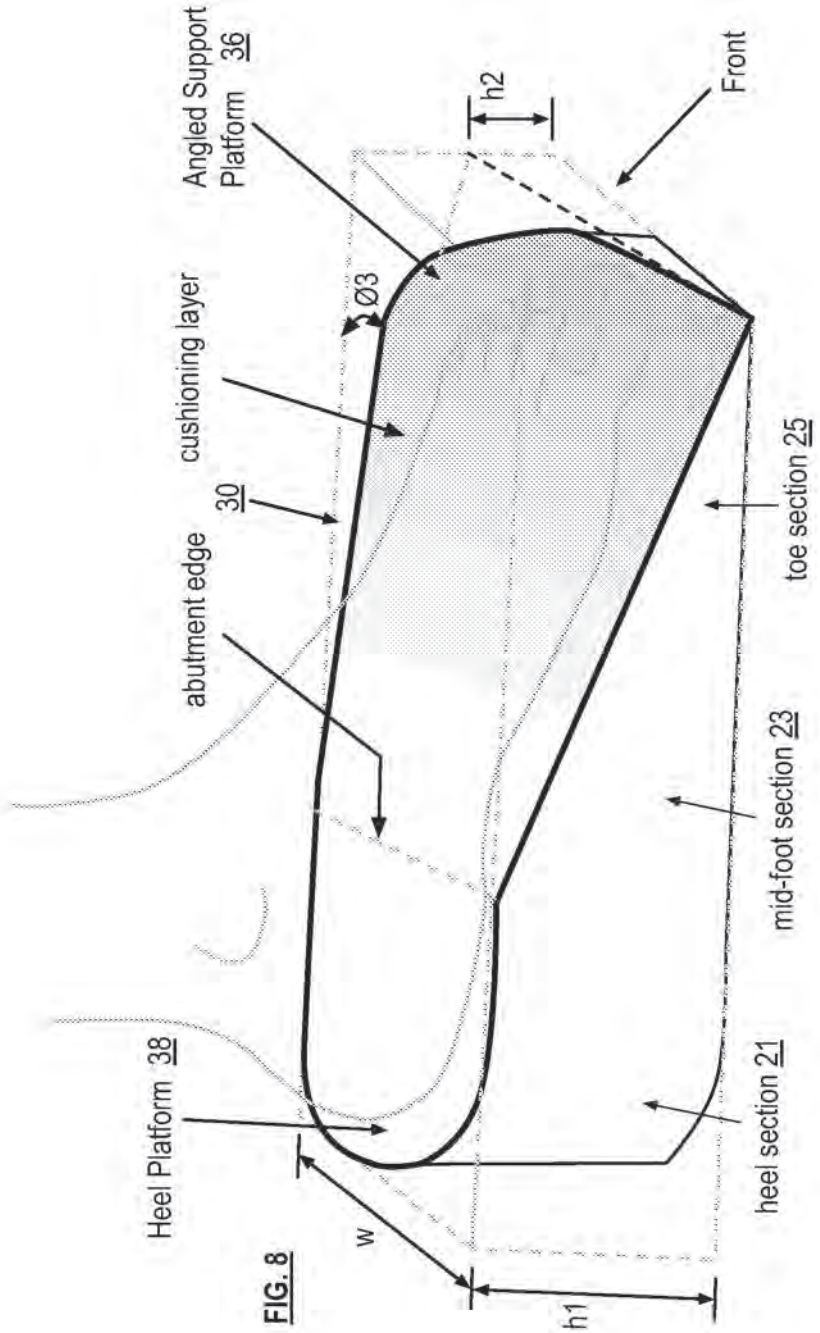


FIG. 8

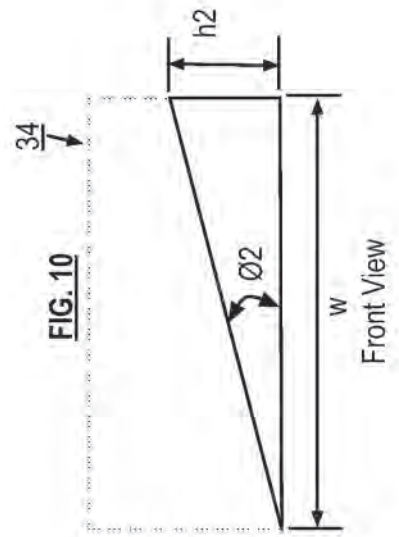


FIG. 10

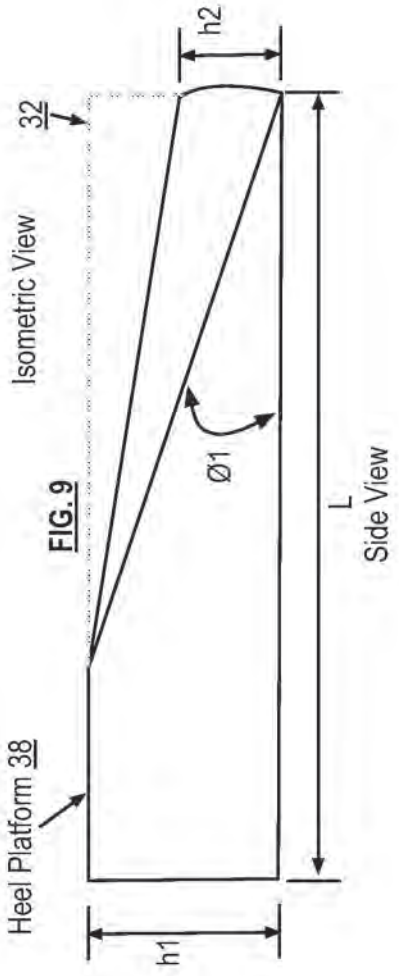


FIG. 9

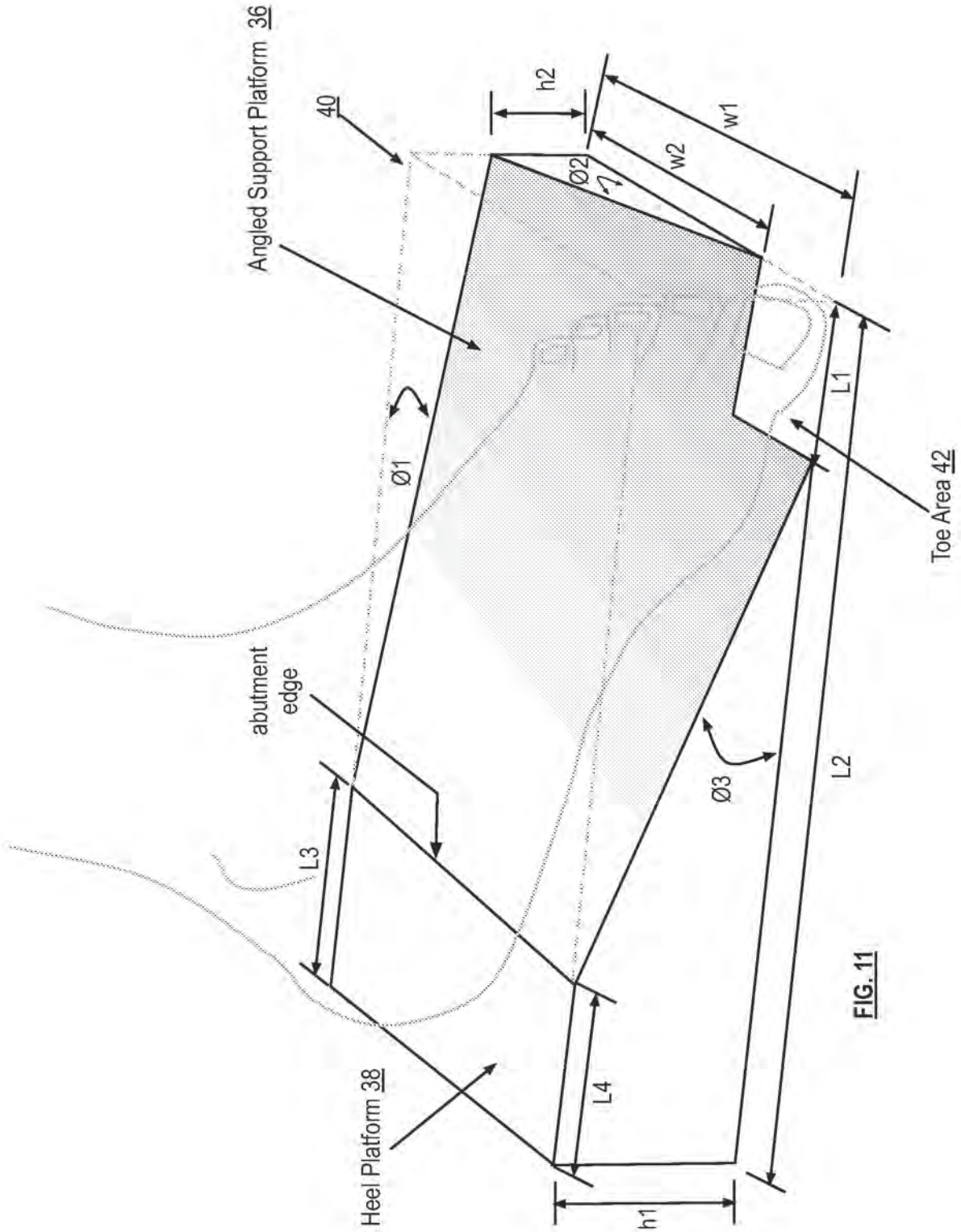

Angled Support Platform 36
40
h2
w1
w2
Ø2
Ø1
L1
Toe Area 42
abutment edge
L3
Ø3
L2
L4
Heel Platform 38
h1

FIG. 11

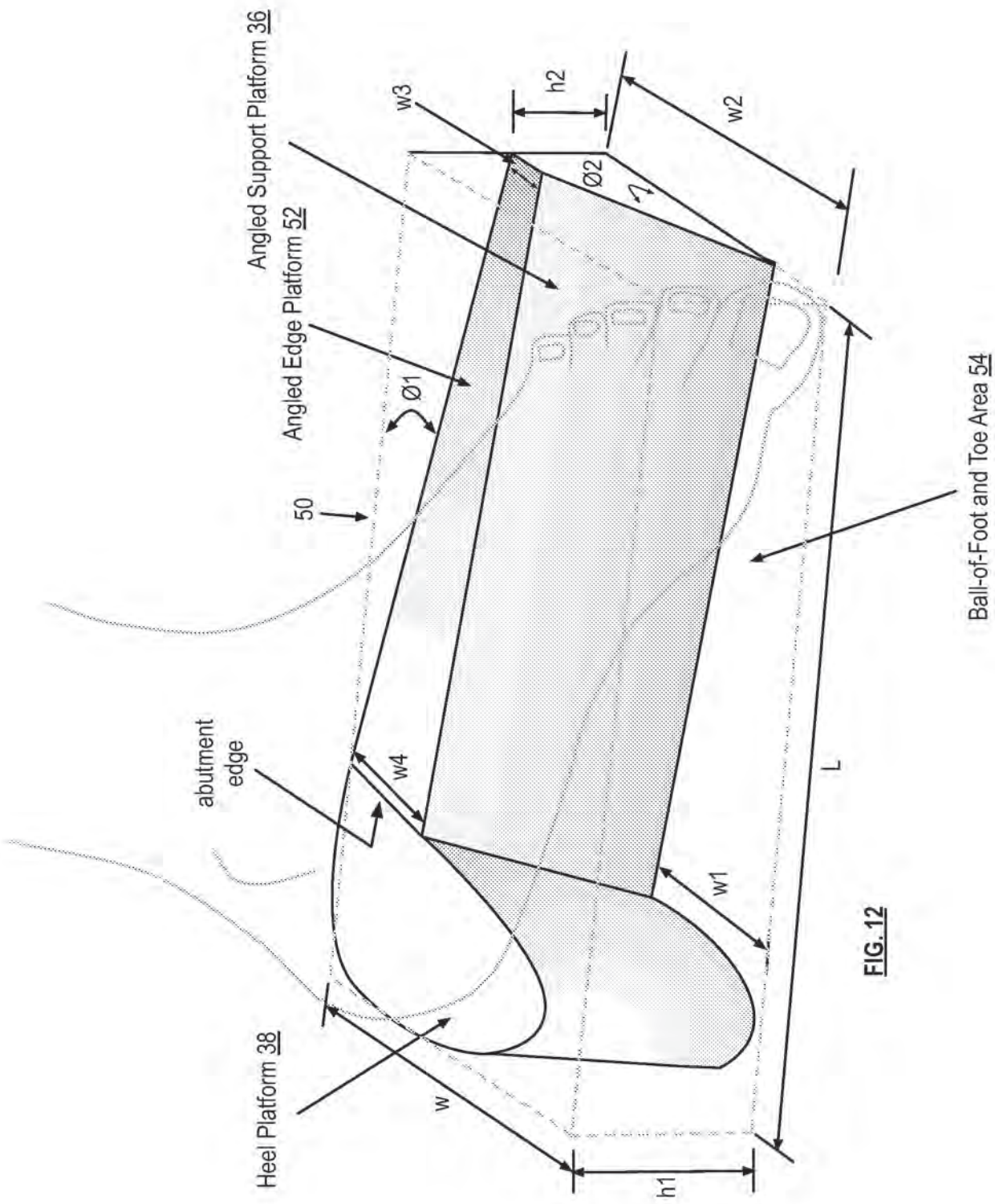

Angled Support Platform 36
Angled Edge Platform 52
50
Heel Platform 38
abutment edge
Ball-of-Foot and Toe Area 54
w3
h2
w2
Ø2
Ø1
w4
w
h1
w1
L

FIG. 12

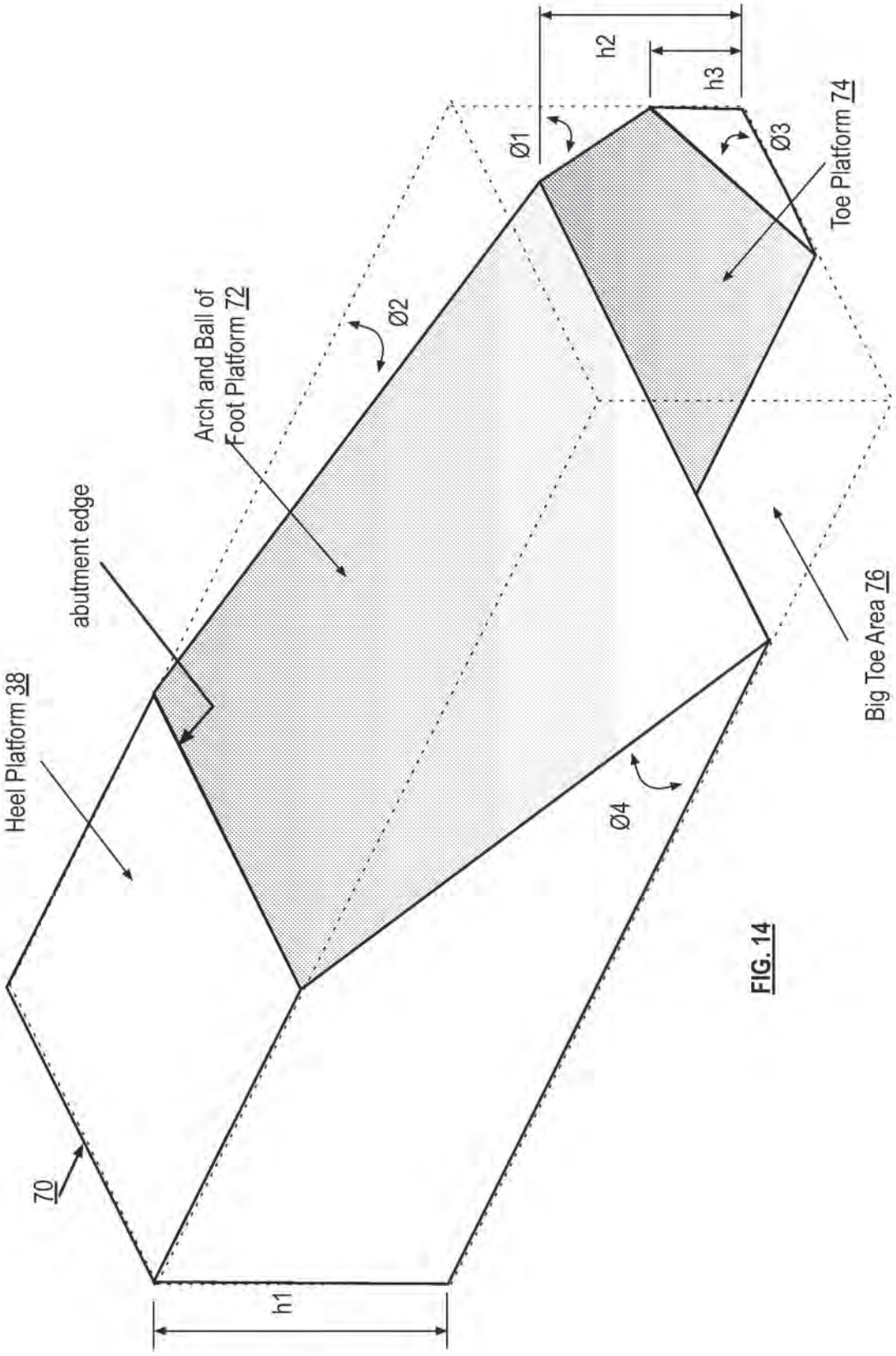

h2
h3
Ø1
Ø3
Toe Platform 74
Arch and Ball of Foot Platform 72
Ø2
abutment edge
Heel Platform 38
Big Toe Area 76
Ø4
70
h1

FIG. 14

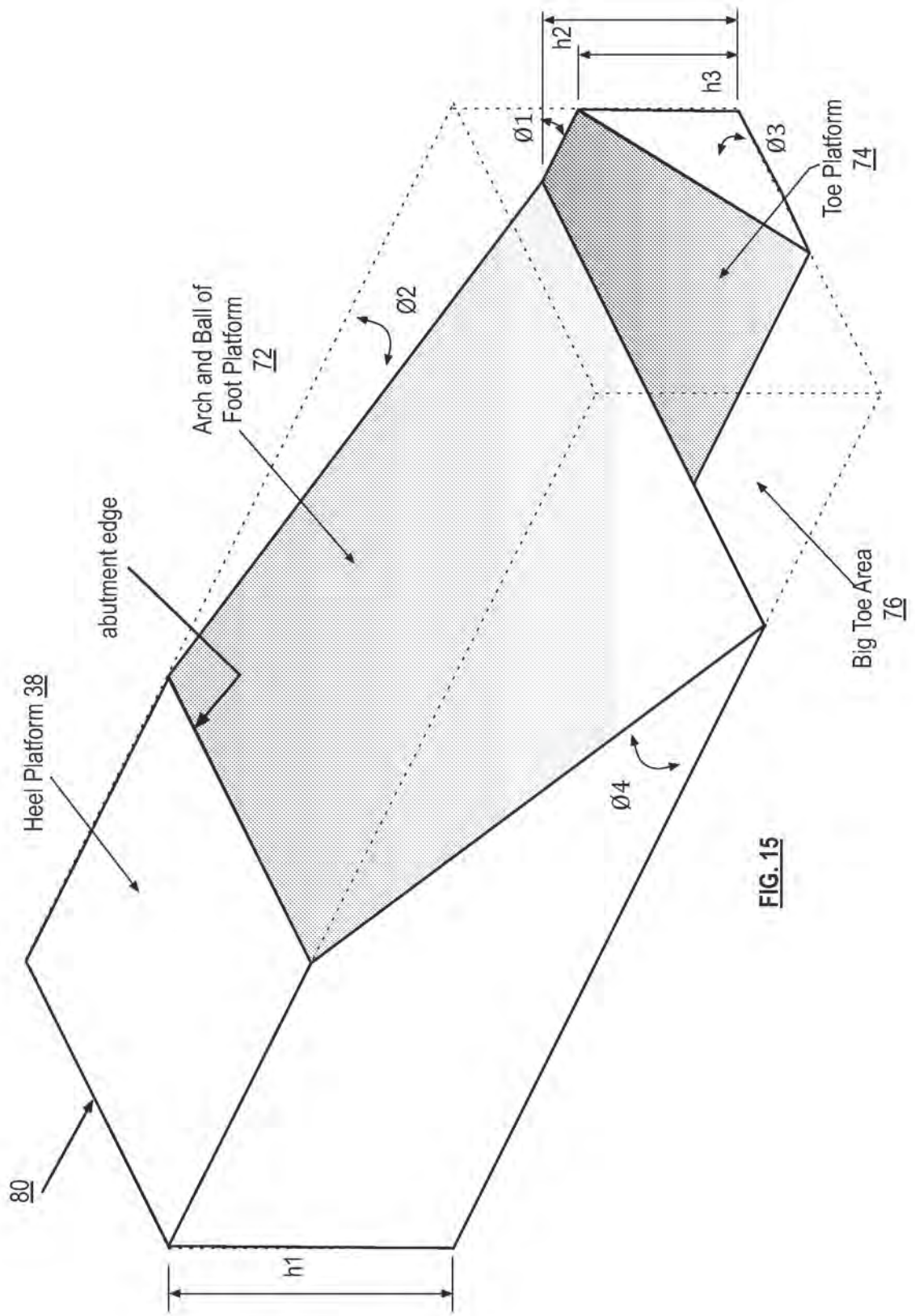

h2
h3
Ø1
Ø3
Toe Platform
74
Arch and Ball of
Foot Platform
72
Ø2
abutment edge
Heel Platform 38
Big Toe Area
76
Ø4
80
h1

FIG. 15

Electronic Acknowledgement Receipt

EFS ID:	18162644
Application Number:	13355801
International Application Number:	
Confirmation Number:	1012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Customer Number:	34399
Filer:	Timothy W. Markison/Beth Pierotti
Filer Authorized By:	Timothy W. Markison
Attorney Docket Number:	AAV003
Receipt Date:	10-FEB-2014
Filing Date:	23-JAN-2012
Time Stamp:	15:50:12
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1		AAV003_response_to_2014-01-28_OA.pdf	48142 a5c57fa8e7a57770f5e48d61e1552f3b13e8ee1c	yes	14

	Multipart Description/PDF files in .zip description		
	Document Description	**Start**	**End**
	Amendment/Req. Reconsideration-After Non-Final Reject	1	1
	Claims	2	7
	Specification	8	9
	Drawings-only black and white line drawings	10	10
	Applicant Arguments/Remarks Made in an Amendment	11	14

Warnings:					
Information:					
2	Drawings-only black and white line drawings	AAV003_replacement_figs.pdf	155984 4019a5399462cf302d8f3b5dbdee347f88d ef1f	no	6
Warnings:					
Information:					
		Total Files Size (in bytes):	204126		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111
If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371
If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office
If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

SCORE Placeholder Sheet for IFW Content

Application Number: 13355801 Document Date: 02/10/2014

The presence of this form in the IFW record indicates that the following document type was received in electronic format on the date identified above. This content is stored in the SCORE database.

- Drawings – Other than Black and White Line Drawings

Since this was an electronic submission, there is no physical artifact folder, no artifact folder is recorded in PALM, and no paper documents or physical media exist. The TIFF images in the IFW record were created from the original documents that are stored in SCORE.

To access the documents in the SCORE database, refer to instructions below.

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- Other USPTO employees can bookmark the current SCORE URL (http://Score.uspto.gov/ScoreAccessWeb/).
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Form Revision Date: September 30, 2013

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/355,801	01/23/2012	Michael R. Adair	AAV003	1012

34399 7590 01/28/2014

GARLICK & MARKISON
Melanie Murdock
P.O. BOX 160727
AUSTIN, TX 78716-0727

EXAMINER	
BRANDON, MEGAN E	

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
01/28/2014	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

MMurdock@TEXASPATENTS.COM
ghmptocor@texaspatents.com
bpierotti@texaspatents.com

Office Action Summary	Application No. 13/355,801	Applicant(s) ADAIR ET AL.	
	Examiner MEGAN BRANDON	Art Unit 3765	AIA (First Inventor to File) Status No

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12/10/2013*.

☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on _____; the restriction requirement and election have been incorporated into this action.

4)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims*

5)☒ Claim(s) *1-18* is/are pending in the application.

5a) Of the above claim(s) _____ is/are withdrawn from consideration.

6)☐ Claim(s) _____ is/are allowed.

7)☒ Claim(s) *1-18* is/are rejected.

8)☐ Claim(s) _____ is/are objected to.

9)☐ Claim(s) _____ are subject to restriction and/or election requirement.

* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to PPHfeedback@uspto.gov.

Application Papers

10)☐ The specification is objected to by the Examiner.

11)☒ The drawing(s) filed on *1/23/2012* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

Certified copies:

a)☐ All b)☐ Some** c)☐ None of the:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

** See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☒ Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b) Paper No(s)/Mail Date *1/23/2012*.

3) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

4) ☐ Other: _____.

The present application is being examined under the pre-AIA first to invent provisions.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Species 1, and Subspecies 9 in the reply filed on December 10, 2013 is acknowledged. Claims 1-18 are currently pending for examination, as elected by Applicant. The traversal is on the ground(s) that even though the Species are different embodiments, they, however have a similar technical effect and are covered by the generic claim 1. This is not found persuasive because the species are distinct due to their mutually exclusive characteristics, and furthermore, **the species are not obvious variants of each other based on the current record**. Additionally, traversal is on the ground(s) that all inventions could be examined without a serious burden. This is not found persuasive because **the entire application contains a number of species that are patentably distinct from one another and including divergent claimed subject matter that separate the species**. Such recognized divergent subject matter separating the species is a burden to examination.

The requirement is still deemed proper and is therefore made **FINAL**.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show a "cushioning layer" in Claims 5, 8, 11 and 16, and 17, a "sandal structure...one or more straps" in Claims 13 and 18, and an "abutment edge" in Claim 14 as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claim 14 is objected to because of the following informalities: Claim 14 recites "at front outer edge" which appears to be a grammatical error and should read "at a front outer edge". Appropriate correction is required.

4. Claim 14 is objected to because of the following informalities: Claim 14 recites "substantially uniformly" which appears to be a grammatical error and should read "uniform". Appropriate correction is required.

Claim Rejections - 35 USC § 112

> The following is a quotation of 35 U.S.C. 112(b):
> (b) CONCLUSION.—The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor or a joint inventor regards as the invention.
>
> The following is a quotation of 35 U.S.C. 112 (pre-AIA), second paragraph:
> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 3 and 7 are rejected under 35 U.S.C. 112(b) or 35 U.S.C. 112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention. Claims 3 and 7 recite "at least one of: the heel platform section, the mid-foot section, and the toe section constituting an insole for footwear; and the heel platform section, the mid-foot section, and the toe section

constituting a sole of footwear". The claimed limitation is indefinite and unclear. What does "at least one of" apply to: at least one of an insole and sole, or in the alternative, at least one of the heel platform section, the mid-foot section, and the toe section? For purposes of examination the claimed limitation will be interpreted as at least one of an insole and sole, as best understood by examiner.

6. Claim 4 is rejected under 35 U.S.C. 112(b) or 35 U.S.C. 112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention. Claim 4 recites "a first dimension that is substantially uniform from the outer edge to the inner edge along a back edge of the apparatus and from the back edge of the apparatus to a front portion of the heel section". The claimed limitation is indefinite and unclear. How can the "first dimension" be both from the outer edge to the inner edge along a back edge of the apparatus **and** from the back edge of the apparatus to a front portion of the heel section? It appears that Applicant is trying to claim that the first dimension is substantially uniform throughout the entire heel platform section. For purposes of examination the claimed limitation will be interpreted as the first dimension is substantially uniform throughout the entire heel platform section, as best understood by examiner.

7. Claim 15 is rejected under 35 U.S.C. 112(b) or 35 U.S.C. 112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the

subject matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention. Claim 15 recites a "first dimension is substantially uniform from the outer edge to the inner edge". The claimed limitation is indefinite. Where are the outer and inner edges? It appears that the inner and outer edges are meant to refer to an area of the heel platform section, and will be interpreted as such for purposes of examination, as best understood by examiner.

The following is a quotation of 35 U.S.C. 112(d):

> (d) REFERENCE IN DEPENDENT FORMS.—Subject to subsection (e), a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.

The following is a quotation of 35 U.S.C. 112 (pre-AIA), fourth paragraph:

> Subject to the [fifth paragraph of 35 U.S.C. 112 (pre-AIA)], a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.

8. Claim 15 is rejected under 35 U.S.C. 112(d) or pre-AIA 35 U.S.C. 112, 4th paragraph, as being of improper dependent form for failing to further limit the subject matter of the claim upon which it depends, or for failing to include all the limitations of the claim upon which it depends. Claim 15 recites that the "first dimension is substantially uniform from the outer edge to the inner edge (of the heel platform section)" which is not further limiting as it depends from Claim 14 which recites that the "first dimension is substantially uniform(ly) throughout the heel platform section". If the entire heel platform section has a first dimension then to further recite that a portion of

the heel platform section has a first dimension does not further limit the already described heel platform section. Applicant may cancel the claim(s), amend the claim(s) to place the claim(s) in proper dependent form, rewrite the claim(s) in independent form, or present a sufficient showing that the dependent claim(s) complies with the statutory requirements.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of pre-AIA 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-12, 14, 16 and 17 are rejected under pre-AIA 35 U.S.C. 102(b) as being anticipated by Love (US 2006/0000114).

Regarding Claims 9 and 1, 14 and 6, 10 and 2, Love discloses a shoe comprising an upper shoe section and a sole coupled to the upper shoe section (as seen in Fig.2)(Abstract). The sole includes a specific bottom (the lower surface of sole seen in Fig.2), and an athletic positioning sole section (14) having a heel platform section (4), a mid-foot section (5), and a toe section (6)(as seen in Fig.4). The mid-foot section (5) and the toe section (6) collectively have a geometric shape having a first slope (Fig.5 & 4, 2-2) of a polarity along an inner edge (1x) of the apparatus from the toe section (6) to

the mid-foot section (5) and a second slope of the polarity (as seen in Fig.6, cross section 6) along the inner edge (1x) of the apparatus to an outer edge (4x) of the apparatus at the toe section (6)(as seen in Fig.6). A third slope of the polarity (as seen in Fig.5 & 4, 3-3) along the outer edge (4x) of the apparatus from the toe section (6) to the mid- foot section (5)(Fig.4-6).

The mid-foot section (5) and the toe section (6) collectively have a geometric shape having a first dimension (the insole width dimension across the insole from the lateral to the medial side of the insole at dotted line between 4 and 5) along an abutment edge (dotted line from the lateral to the medial side of insole between 4 and 5, seen in Fig.4) of the heel platform section (4) and the mid-foot section (5)(Fig.4). A second dimension (dimension seen at 4x in Fig.6) at a front outer edge (4x) of the apparatus and a third dimension (dimension seen at 1x in Fig.6) at a front inner edge (1x) of the apparatus (Fig.6). The first dimension (the insole width dimension across the insole from the lateral to the medial side of the insole at dotted line between 4 and 5) has a magnitude that is greater than (as seen in Fig.4 and 6) or equal to a magnitude of the second dimension (4x), and the magnitude of the second dimension (4x) is greater than a magnitude of the third dimension (1x)(Fig.6). The first dimension (the insole width dimension across the insole from the lateral to the medial side of the insole at dotted line between 4 and 5 in Fig.4) is substantially uniform throughout the heel platform section (4)(for instance from the outer edge to the inner edge of section 4)(Fig.4).

Regarding Claims 7 and 3, Love discloses a (shoe) apparatus further comprises at least one of the heel platform section (4), the mid-foot section (5), and the toe section (6) constituting an insole (10) for footwear; and the heel section, the mid-foot section, and the toe section constituting a sole of footwear (Fig.2-4)(Abstract).

Regarding Claim 4, Love discloses a (shoe) apparatus further comprises the heel platform section (4) having a first dimension (the insole width dimension across the insole from the lateral to the medial side of the insole at dotted line between 4 and 5) that is substantially uniform from the outer edge (4x) to the inner edge (1x) along a back edge (as can be seen in Fig.2 & 6) of the apparatus and from the back edge (of 16) of the apparatus to a front portion of the heel section (area where 16 and 18 meet, as seen in Fig.4 & 5)(Fig.5 & 4 show that the first dimension is uniform from the back edge of the apparatus to a front portion/area of 18). The toe section (6) and the mid-foot section (5) having a second dimension (dimension seen at 4x in Fig.6) at a front outer edge (4x) of the apparatus and a third dimension (dimension seen at 1x in Fig.6) at a front inner edge (1x) of the apparatus (Fig.4 & 6).

Regarding Claims 16, 11, 8 and 5, Love discloses a (shoe) apparatus further comprises a cushioning layer (12) on a first surface of the apparatus (14) covering one or more of at least a portion of the heel platform section, at least a portion of the mid-foot section, and at least a portion of the toe section (as seen in Fig.3 the layer 12 covers the entire top surface of 14)(Pg.1, para.24). Applicant has provided no disclosed

or claimed criticality for what constitutes a cushioning layer. Therefore, in as much as has been defined and claimed by Applicant, Love discloses a fabric layer that is cushioning since fabrics are known to have some give/cushion.

Regarding Claims 17 and 12, Love discloses a shoe wherein the specific bottom (the lower surface of sole seen in Fig.2) comprises one of: a cleat pattern bottom, a baseball spike bottom, a basketball bottom, a tennis bottom, a golf bottom, an ice skate bottom, a ski boot bottom, a cross-trainer bottom, a running shoe bottom, a walking shoe bottom, a dress shoe bottom, and a snowboard boot bottom (Pg.1, para.3-4). It is noted that shoes are utilized for walking and the shoe of Love can be used for walking and is therefore a walking shoe bottom. Additionally, it is noted that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Claim Rejections - 35 USC § 103

The following is a quotation of pre-AIA 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 13 and 18 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Love in view of Kraisosky (US 2010/0115793).

Regarding Claims 18 and 13, Love discloses the invention substantially as claimed above. Love does not disclose the upper of the shoe being a sandal with straps. However, Kraisosky teaches a shoe (10) with an insole (34), and having an upper section comprising a sandal structure (16,24,22) that includes one or more straps (16,24) for securing the shoe to a foot (Fig.2 & 7).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have substituted the shoe upper of Love with the sandal upper, as taught by Kraisosky, as a simple substitution of one well known type of shoe upper for another to provide for the predictable result of attaching a shoe to a wearer's foot. It is noted that Applicant has provided no criticality for the specific upper structure of the shoe.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MEGAN BRANDON whose telephone number is

(571)272-3267. The examiner can normally be reached on Monday-Friday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoa Huynh can be reached on (571)272-4888. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MEGAN BRANDON/
Examiner, Art Unit 3765

/KATHERINE MORAN/
Primary Examiner, Art Unit 3765

Notice of References Cited	Application/Control No. 13/355,801	Applicant(s)/Patent Under Reexamination ADAIR ET AL.	
	Examiner MEGAN BRANDON	Art Unit 3765	Page 1 of 3

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-4,685,227 A	08-1987	Simmons, Ronald G.	36/127
*	B	US-2002/0005000 A1	01-2002	Choi, Byoung-Hoon	36/144
*	C	US-2002/0139011 A1	10-2002	Kerrigan, D. Casey	36/144
*	D	US-2004/0025376 A1	02-2004	Grisoni et al.	36/44
*	E	US-2006/0000114 A1	01-2006	Love, Bethel White	036/043
*	F	US-2006/0053664 A1	03-2006	Tager, Steven E.	036/144
*	G	US-2006/0090377 A1	05-2006	Segalin, Sergio	036/174
*	H	US-2007/0074430 A1	04-2007	Coomer, Sven Olof	036/145
*	I	US-2007/0193071 A1	08-2007	Gilmore, Andre	36/174
*	J	US-2008/0086909 A1	04-2008	Raspini, Sandro	36/44
*	K	US-2008/0086918 A1	04-2008	Chung, Chu-Yun	36/141
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FOREIGN PATENT DOCUMENTS

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	P					
	Q					
	R					
	S					
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Notice of References Cited	Application/Control No. 13/355,801	Applicant(s)/Patent Under Reexamination ADAIR ET AL.	
	Examiner MEGAN BRANDON	Art Unit 3765	Page 2 of 3

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-7,464,428 B2	12-2008	Norton, Daniel Eugene	12/146B
*	B	US-2009/0084000 A1	04-2009	Pai, Chun-Shun	36/91
*	C	US-2009/0183390 A1	07-2009	Miller et al.	36/91
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*	I	US-2011/0000102 A1	01-2011	Chaw, Chong Sing Andy	36/28
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*	M	US-2011/0113649 A1	05-2011	Merritt et al.	36/102

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	Examiner MEGAN BRANDON	Art Unit 3765	Page 3 of 3

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*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-2011/0131840 A1	06-2011	YANG, Stanley W.	36/144
*	B	US-2012/0137540 A1	06-2012	Vattes et al.	36/11.5
*	C	US-2010/0115793	05-2010	Kraisosky, Alissa	36/94
	D	US-			
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INFORMATION DISCLOSURE STATEMENT BY APPLICANT
(Not for submission under 37 CFR 1.99)

Application Number	13355801
Filing Date	2012-01-23
First Named Inventor	Michael R. Adair
Art Unit	
Examiner Name	
Attorney Docket Number	AAV003

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Examiner Initial*	Cite No	Patent Number	Kind Code[1]	Issue Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear
	1	6976322	B1	2005-12-20	Walker	
	2	7487604	B2	2009-02-10	Perron, Jr.	

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	1	20070271820	A1	2007-11-29	Nurse et al.	
	2	20090100710	A1	2009-04-23	Potter et al.	
	3	20090293308	A1	2009-12-03	Bruce et al.	
	4	20100293813	A1	2010-11-25	Baucom et al.	

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)		
	Application Number	13355801
	Filing Date	2012-01-23
	First Named Inventor	Michael R. Adair
	Art Unit	
	Examiner Name	
	Attorney Docket Number	AAV003

	5	20100299965	A1	2010-12-02	Avar et al.	
	6	20100317465	A1	2010-12-16	Thomas	

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	Application Number	13355801
	Filing Date	2012-01-23
	First Named Inventor	Michael R. Adair
	Art Unit	
	Examiner Name	
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INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)		
	Application Number	13355801
	Filing Date	2012-01-23
	First Named Inventor	Michael R. Adair
	Art Unit	
	Examiner Name	
	Attorney Docket Number	AAV003

CERTIFICATION STATEMENT

Please see 37 CFR 1.97 and 1.98 to make the appropriate selection(s):

☐ That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(1).

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☐ See attached certification statement.

☐ The fee set forth in 37 CFR 1.17 (p) has been submitted herewith.

☒ A certification statement is not submitted herewith.

SIGNATURE

A signature of the applicant or representative is required in accordance with CFR 1.33, 10.18. Please see CFR 1.4(d) for the form of the signature.

Signature	/Timothy W. Markison/Reg. No. 33,534	Date (YYYY-MM-DD)	2012-01-23
Name/Print	Timothy W. Markison	Registration Number	33,534

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

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2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

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5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

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7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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SERIAL NUMBER	FILING or 371(c) DATE	CLASS	GROUP ART UNIT	ATTORNEY DOCKET NO.
13/355,801	01/23/2012 RULE	036	3765	AAV003

APPLICANTS

INVENTORS

Michael R. Adair, Woodruff, SC;
Timothy W. Markison, Mesa, AZ;

**** CONTINUING DATA ***************************

This appln claims benefit of 61/450,485 03/08/2011

**** FOREIGN APPLICATIONS ***************************

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Foreign Priority claimed ☐ Yes ☑ No 35 USC 119(a-d) conditions met ☐ Yes ☑ No Verified and Acknowledged /MEGAN E BRANDON/ Examiner's Signature	☐ Met after Allowance MB Initials	STATE OR COUNTRY	SHEETS DRAWINGS	TOTAL CLAIMS	INDEPENDENT CLAIMS
		SC	92	18	4

ADDRESS

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Melanie Murdock
P.O. BOX 160727
AUSTIN, TX 78716-0727
UNITED STATES

TITLE

ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF

FILING FEE RECEIVED	FEES: Authority has been given in Paper	
810	No._____ to charge/credit DEPOSIT ACCOUNT No._____ for following:	☐ All Fees ☐ 1.16 Fees (Filing) ☐ 1.17 Fees (Processing Ext. of time) ☐ 1.18 Fees (Issue) ☐ Other _____ ☐ Credit

Index of Claims	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13355801	ADAIR ET AL.
	Examiner	Art Unit
	MEGAN BRANDON	3765

✓	Rejected	-	Cancelled	N	Non-Elected	A	Appeal
=	Allowed	÷	Restricted	I	Interference	O	Objected

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

CLAIM		DATE								
Final	Original	08/09/2013	12/26/2013							
	1	÷	✓							
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	18	÷	✓							

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	13355801	ADAIR ET AL.
	Examiner	Art Unit
	MEGAN BRANDON	3765

CPC- SEARCHED		
Symbol	Date	Examiner
A43B7/142; A43B7/144; A43B13/38; A43B13/145; A43B5/00; A43B13/12; A43B7/00; A43B7/14; A43B3/00	12/26/2013	MB
A61F5/0195; A61F5/14	12/26/2013	MB

CPC COMBINATION SETS - SEARCHED		
Symbol	Date	Examiner

US CLASSIFICATION SEARCHED			
Class	Subclass	Date	Examiner
36	44, 43, 25R, 110, 103, 132, 142, 144	12/26/2013	MB

SEARCH NOTES		
Search Notes	Date	Examiner
Inventorship Search	12/26/2013	MB
Assignee Search	12/26/2013	MB
Search Assistance Ted Kavanaugh	12/26/2013	MB

INTERFERENCE SEARCH			
US Class/ CPC Symbol	US Subclass / CPC Group	Date	Examiner

EAST Search History

EAST Search History (Prior Art)

Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
L1	12	(Admark Athletic Ventures).as.	US-PGPUB; USPAT; FPRS; EPO; JPO; DERWENT	ADJ	ON	2013/12/26 13:34
L3	7	("2002/0139011").URPN.	USPAT	ADJ	ON	2013/12/26 13:56
L6	50	("20020139011" | "2099418" | "2917842" | "3418732" | "3576911" | "3591882" | "3738373" | "3766669" | "4076876" | "4216131" | "4316335" | "4372059" | "4378642" | "4418483" | "4476180" | "4615126" | "4640797" | "4642911" | "4694589" | "4747989" | "4779359" | "4823483" | "4864739" | "4910886" | "4936030" | "5025573" | "5154682" | "5282328" | "5551173" | "5687441" | "5695850" | "5709954" | "5786057" | "5885500" | "6092314" | "6360453" | "6528140" | "6725578" | "7100308").PN. OR ("7464428").URPN.	US-PGPUB; USPAT; USOCR	ADJ	ON	2013/12/26 14:01
L7	5479	((36/44) or (36/43) or (36/25r) or (36/103) or (36/142) or (36/144) or (36/132) or (36/110)).CCLS.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2013/12/26 14:06
S1	18690	(A43B7/142 A43B7/144 A43B13/38 A43B13/145 A43B5/00 A43B13/12 A61F5/0195 A43B7/00 A61F5/14 A43B7/14 A43B3/00).cpc.	US-PGPUB; USPAT; FPRS; EPO; JPO; DERWENT	OR	ON	2013/12/26 09:57
S2	18301	(A43B7/142 A43B7/144 A43B13/38 A43B13/145 A43B5/00 A43B13/12 A61F5/0195 A43B7/00 A61F5/14 A43B7/14 A43B3/00).cpc.	US-PGPUB; USPAT; FPRS; EPO; JPO	OR	ON	2013/12/26 09:59
S3	7	US-6976322-$.DID. OR US-7487604-$.DID. OR US-20070271820-$.DID. OR US-20090100710-$.DID. OR US-20090293308-$.DID. OR US-1331018-$.DID.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO	ADJ	ON	2013/12/26 12:18
S4	5	(("4685227") or ("20080295362")).PN.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2013/12/26 12:25

EAST Search History (Interference)

< This search history is empty>

12/ 26/ 2013 3:44:07 PM
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Certification Under 37 C.F.R. 1.8

Date of Mailing or Transmission: 12/10/2013

I hereby certify that I have caused the document indicated herein on the date indicated above to be transmitted via the Office electronic filing system in accordance with 37 C.F.R. §1.6(a)(4).

BY: /Beth Pierotti/ (Signature) Name: Beth Pierotti (Typed Name)

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor: Michael R. Adair
Application No: 13/355,801
Filing Date: 01/23/2012
Confirmation No.: 1012
Examiner: BRANDON, MEGAN E
Art Unit: 3765
Docket No: AAV003
Title: ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF

RESPONSE TO A REQUIREMENT FOR RESTRICTION/ELECTION OFFICE ACTION

Date: 12/10/2013

United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

In response to an office action dated November 12, 2013 regarding the above-captioned patent application, the Applicant respectfully submits the following amendment and response.

CLAIM AMENDMENTS

1. (original) An apparatus comprises:

a heel platform section;

a mid-foot section juxtaposed to the heel platform section; and

a toe section juxtaposed to the mid-foot section, wherein the mid-foot section and the toe section collectively have a geometric shape having a first slope of a polarity along an inner edge of the apparatus from the toe section to the mid-foot section and a second slope of the polarity along the inner edge of the apparatus to the outer edge of the apparatus at the toe section.

2. (original) The apparatus of claim 1 further comprises:

a third slope of the polarity along the outer edge of the apparatus from the toe section to the mid-foot section.

3. (original) The apparatus of claim 1 further comprises at least one of:

the heel platform section, the mid-foot section, and the toe section constituting an insole for footwear; and

the heel section, the mid-foot section, and the toe section constituting a sole of footwear.

4. (original) The apparatus of claim 1 further comprises:

the heel platform section having a first dimension that is substantially uniform from the outer edge to the inner edge along a back edge of the apparatus and from the back edge of the apparatus to a front portion of the heel section; and

the toe section and the mid-foot section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

5. (original) The apparatus of claim 1 further comprises:

a cushioning layer on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

6. (original) An apparatus comprises:

a heel platform section;

a mid-foot section; and

a toe section, wherein the mid-foot section, and the toe section collectively have a geometric shape having a first dimension along an abutment edge of the heel platform section and the mid-foot section, a second dimension at front outer edge of the apparatus, and a third dimension at front inner edge of the apparatus, wherein the first dimension has a magnitude that is greater than or equal to a magnitude of the second dimension and the magnitude of the second dimension is greater than a magnitude of the third dimension, and wherein the first dimension is substantially uniformly throughout the heel platform section.

7. (original) The apparatus of claim 6 further comprises at least one of:

the heel platform section, the mid-foot section, and the toe section constituting an insole for footwear; and

the heel platform section, the mid-foot section, and the toe section constituting a sole of footwear.

8. (original) The apparatus of claim 6 further comprises:

a cushioning layer on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

9. (original) A shoe comprises:

an upper shoe section; and

a sole coupled to the upper shoe section, wherein the sole includes:

a specific bottom; and

an athletic positioning sole section having:

a heel platform section;

a mid-foot section; and

a toe section, wherein the mid-foot section and the toe section collectively have a geometric shape having a first slope of a polarity along an inner edge of the apparatus from the toe section to the mid-foot section and a second slope of the polarity along the inner edge of the apparatus to an outer edge of the apparatus at the toe section.

10. (original) The shoe of claim 9 further comprises:

the heel platform section having a first dimension that is substantially uniform throughout the heel platform section; and

the toe section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

11. (original) The shoe of claim 9 further comprises:

a cushioning layer on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

12. (original) The shoe of claim 9, wherein the specific bottom comprises one of:

a cleat pattern bottom;
a baseball spike bottom;
a basketball bottom;
a tennis bottom;
a golf bottom;
an ice skate bottom;
a ski boot bottom;
a cross-trainer bottom;
a running shoe bottom;
a walking shoe bottom;
a dress shoe bottom; and
a snowboard boot bottom.

13. (original) The shoe of claim 9, wherein the upper section comprises:

a sandal structure that includes one or more straps for securing the shoe to a foot.

14. (original) A shoe comprises:

an upper shoe section; and

a sole coupled to the upper shoe section, wherein the sole includes:

a specific bottom; and

an athletic positioning sole section having:

a heel platform section;

a mid-foot section; and

a toe section, wherein the mid-foot section, and the toe section collectively have a geometric shape having a first dimension along an abutment edge of the heel platform section and the mid-foot section, a second dimension at front outer edge of the apparatus, and a third dimension at front inner edge of the apparatus, wherein the first dimension has a magnitude that is greater than or equal to a magnitude of the second dimension and the magnitude of the second dimension is greater than a magnitude of the third dimension, and wherein the first dimension is substantially uniformly throughout the heel platform section.

15. (original) The shoe of claim 14 further comprises:

the first dimension is substantially uniform from the outer edge to the inner edge.

16. (original) The shoe of claim 14 further comprises:

a cushioning layer on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

17. (original) The shoe of claim 14, wherein the specific bottom comprises one of:

a cleat pattern bottom;

a baseball spike bottom;

a basketball bottom;

a tennis bottom;

a golf bottom;

an ice skate bottom;

a ski boot bottom;

a cross-trainer bottom;

a running shoe bottom;

a walking shoe bottom;

a dress shoe bottom; and

a snowboard boot bottom.

18. (original) The shoe of claim 14, wherein the upper section comprises:

a sandal structure that includes one or more straps for securing the shoe to a foot.

REMARKS/ARGUMENTS

1. In the above referenced Office Action, an election/restriction has been issued as follows:
   a. Species 1 is directed towards Figures 3-7;
   b. Species 2 is directed towards Figures 8-10;
   c. Species 3 is directed towards Figure 11;
   d. Species 4 is directed towards Figure 12;
   e. Species 5 is directed towards Figure 13;
   f. Species 6 is directed towards Figure 14;
   g. Species 7 is directed towards Figure 15;
   h. Species 8 is directed towards Figures 16-18;
   i. Species 9 is directed towards Figure 19;
   j. Species 10 is directed towards Figure 20;
   k. Species 11 is directed towards Figure 21;
   l. Species 12 is directed towards Figure 22;
   m. Species 13 is directed towards Figures 23-33;
      1. Subspecies 1: as shown in Figures 34-35;
      2. Subspecies 2: as shown in Figures 36-37;
      3. Subspecies 3: as shown in Figure 38;
      4. Subspecies 4: as shown in Figure 39;
      5. Subspecies 5: as shown in Figure 40;
      6. Subspecies 6: as shown in Figure 41;
      7. Subspecies 7: as shown in Figure 42;
      8. Subspecies 8: as shown in Figure 43;
      9. Subspecies 9: as shown in Figures 63-64;
      10. Subspecies 10: as shown in Figure 65;
      11. Subspecies 11: as shown in Figure 66;
      12. Subspecies 12: as shown in Figures 86-87;
      13. Subspecies 13: as shown in Figure 88.
   n. Species 14 is directed towards Figure 44;
   o. Species 15 is directed towards Figure 45;

p. Species 16 is directed towards Figure 46;
q. Species 17 is directed towards Figure 47;
r. Species 18 is directed towards Figures 48-51;
s. Species 19 is directed towards Figure 52;
t. Species 20 is directed towards Figure 53;
u. Species 21 is directed towards Figure 54;
v. Species 22 is directed towards Figures 55-58;
w. Species 23 is directed towards Figures 59-62;
x. Species 24 is directed towards Figure 67;
y. Species 25 is directed towards Figure 68;
z. Species 26 is directed towards Figure 69;
aa. Species 27 is directed towards Figures 70-71;
bb. Species 28 is directed towards Figures 72-74;
cc. Species 29 is directed towards Figures 75-76;
dd. Species 30 is directed towards Figures 77-79;
    1. Subspecies 1: as shown in Figures 80-82;
    2. Subspecies 2: as shown in Figures 83-85;
ee. Species 31 is directed towards Figure 89;
ff. Species 32 is directed towards Figure 90;
gg. Species 33 is directed towards Figure 91;
hh. Species 34 is directed towards Figure 92;
ii. Species 35 is directed towards Figures 93-94;
jj. Species 36 is directed towards Figure 95;
kk. Species 37 is directed towards Figure 96;
ll. Species 38 is directed towards Figure 97;
mm. Species 39 is directed towards Figures 98-99;
nn. Species 40 is directed towards Figure 100;
oo. Species 41 is directed towards Figures 101-102;
pp. Species 42 is directed towards Figures 103-105;
qq. Species 43 is directed towards Figure 106;
rr. Species 44 is directed towards Figure 107;

ss. Species 45 is directed towards Figures 108-109;

tt. Species 46 is directed towards Figure 110;

uu. Species 47 is directed towards Figure 111;

vv. Species 48 is directed towards Figures 112-113;

ww. Species 49 is directed towards Figures 114-115;

xx. Species 50 is directed towards Figures 116-118;

yy. Species 51 is directed towards Figures 119-121;

zz. Species 52 is directed towards Figures 122-123;

aaa. Species 53 is directed towards Figure 124;

bbb. Species 54 is directed towards Figure 125;

ccc. Species 55 is directed towards Figures 126-128;

ddd. Species 56 is directed towards Figure 129;

eee. Species 57 is directed towards Figures 130-132;

fff. Species 58 is directed towards Figure 133;

ggg. Species 59 is directed towards Figures 134;

hhh. Species 60 is directed towards Figures 135;

iii. Species 61 is directed towards Figures 136-138;

jjj. Species 62 is directed towards Figure 139;

kkk. Species 63 is directed towards Figure 140;

lll. Species 64 is directed towards Figure 141;

mmm. Species 65 is directed towards Figure 142;

nnn. Species 66 is directed towards Figure 143;

ooo. Species 67 is directed towards Figures 144-146;

ppp. Species 68 is directed towards Figures 147-148;

qqq. Species 69 is directed towards Figure 149;

rrr. Species 70 is directed towards Figure 150;

2. The Applicant respectfully requests reconsideration of the election/restriction pursuant to 37 CFR § 1.143, provides the reasons therefore below, and, for the purposes of this response, elects Species 1 and subspecies 9 and the Applicant is identifying claims 1-18 as encompassing the elected species or grouping of patentably indistinct species. If the Examiner rejects the

Applicant's request for reconsideration, the Applicant requests that the Examiner make the election/restriction final so that the Applicant may petition the Director to review the requirement for election/restriction.

In support of the Applicant's request for reconsideration, the Applicant states the following:

RELEVANT MPEP SECTIONS:

MPEP 802 cites the basis for restrictions to include:

35 U.S.C. 121. Divisional applications. (in part)

If two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions. [emphasis added]

37 CFR 1.141. Different inventions in one national application. (in part)
(a) Two or more independent and distinct inventions may not be claimed in one national application, except that more than one species of an invention, not to exceed a reasonable number, may be specifically claimed in different claims in one national application, provided the application also includes an allowable claim generic to all the claimed species and all the claims to species in excess of one are written in dependent form (§ 1.75) or otherwise include all the limitations of the generic claim. [emphasis added]

37 CFR 1.142. Requirement for restriction.
(a) If two or more independent and distinct inventions are claimed in a single application, the examiner in an Office action will require the applicant in the reply to that action to elect an invention to which the claims will be restricted, this official action being called a requirement for restriction (also known as a requirement for division). Such requirement will normally be made before any action on the merits; however, it may be made at any time before final action.
(b) Claims to the invention or inventions not elected, if not canceled, are nevertheless withdrawn from further consideration by the examiner by the election, subject however to reinstatement in the event the requirement for restriction is withdrawn or overruled.

802.01 Meaning of "Independent" and "Distinct" (in part)

I. INDEPENDENT

The term "independent" (i.e., unrelated) means that there is no disclosed relationship between the

two or more inventions claimed, that is, they are unconnected in design, operation, and effect. For example, a process and an apparatus incapable of being used in practicing the process are independent inventions. See also MPEP § 806.06 and § 808.01.

II. RELATED BUT DISTINCT

Two or more inventions are related (i.e., not independent) if they are disclosed as connected in at least one of design (e.g., structure or method of manufacture), operation (e.g., function or method of use), or effect. Examples of related inventions include combination and part (subcombination) thereof, process and apparatus for its practice, process and product made, etc. In this definition the term related is used as an alternative for dependent in referring to inventions other than independent inventions.

Related inventions are distinct if the inventions *as claimed* are not connected in at least one of design, operation, or effect (e.g., can be made by, or used in, a materially different process) and wherein at least one invention is PATENTABLE (novel and nonobvious) OVER THE OTHER (though they may each be unpatentable over the prior art). [emphasis added]

It is further noted that the terms "independent" and "distinct" are used in decisions with varying meanings. All decisions should be read carefully to determine the meaning intended.

803 Restriction — When Proper (in part)

Under the statute, the claims of an application may properly be required to be restricted to one of two or more claimed inventions only if they are able to support separate patents and they are either independent or distinct.

If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions.

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

(A) The inventions must be independent or distinct as claimed; and

(B) There would be a serious burden on the examiner if restriction is not required.

For purposes of the initial requirement, a serious burden on the examiner may be *prima facie* shown by appropriate explanation of separate classification, or separate status in the art, or a

different field of search. [emphasis added]

806.06 Independent Inventions (in part)

Inventions as claimed are independent if there is no disclosed relationship between the inventions, that is, they are unconnected in design, operation, and effect. If it can be shown that two or more inventions are independent, and if there would be a serious burden on the examiner if restriction is not required, applicant should be required to restrict the claims presented to one of such independent inventions. For example:

(A) Two different combinations, not disclosed as capable of use together, having different modes of operation, different functions and different effects are independent. An article of apparel and a locomotive bearing would be an example. A process of painting a house and a process of boring a well would be a second example.

(B) Where the two inventions are process and apparatus, and the apparatus cannot be used to practice the process or any part thereof, they are independent. A specific process of molding is independent from a molding apparatus that cannot be used to practice the specific process.

8.20.02 Unrelated Inventions

Inventions are unrelated if it can be shown that they are not disclosed as capable of use together, and they have different designs, modes of operation, and effects. (MPEP § 802.01 and § 806.06).

806.04 Genus and/or Species Inventions [R-3]

Where an application includes claims directed to different embodiments or species that could fall within the scope of a generic claim, restriction between the species may be proper if the species are independent or distinct. However, 37 CFR 1.141 provides that an allowable generic claim may link a reasonable number of species embraced thereby. The practice is set forth in 37 CFR 1.146.

37 CFR 1.146. Election of species.

In the first action on an application containing a generic claim to a generic invention (genus) and

claims to more than one patentably distinct species embraced thereby, the examiner may require the applicant in the reply to that action to elect a species of his or her invention to which his or her claim will be restricted if no claim to the genus is found to be allowable. However, if such application contains claims directed to more than a reasonable number of species, the examiner may require restriction of the claims to not more than a reasonable number of species before taking further action in the application.

806.04(d) Definition of a Generic Claim [R-3]

In an application presenting three species illustrated, for example, in Figures 1, 2, and 3, respectively, a generic claim should read on each of these views; but the fact that a claim does so read is not conclusive that it is generic. It may define only an element or subcombination common to the several species.

In general, a generic claim should require no material element additional to those required by the species claims, and each of the species claims must require all the limitations of the generic claim.

Once a generic claim is allowable, all of the claims drawn to species in addition to the elected species which require all the limitations of the generic claim will ordinarily be allowable over the prior art in view of the allowability of the generic claim, since the additional species will depend thereon or otherwise require all of the limitations thereof. When all or some of the claims directed to one of the species in addition to the elected species do not require all the limitations of the generic claim.

ARGUMENTS:

The present restriction is inappropriate for one or more of the following reasons:

1. Independent claims 1, 6, 9, and 14 are for an apparatus for use with a shoe and for a shoe incorporating the apparatus.

    a. Each of species 63 – 66, which are identified as being associated with Figures 140-142, is a pitching rubber. While a pitching rubber is clearly a distinct and independent concept from an athletic shoe, it is not a species of the present claims for an athletic shoe.

    b. Each of species 52-55, which are identified as being associated with Figures 122-

128, is a spike pattern. While a spike pattern is clearly a distinct and independent concept from an athletic shoe, it is not a species of the present claims for an athletic shoe.

c. Each of species 57-62, which are identified as being associated with Figures 130-139, is an attachment. While an attachment is clearly a distinct and independent concept from an athletic shoe, it is not a species of the present claims for an athletic shoe.

2. Figures 104-110 of the present patent application are different views of adjustable athletic positioning sole and/or insole and yet are listed as being in separate species 42-46. As such, these species are not separate and distinct.

3. Many of the features illustrated in the drawings are not claimed. For instance, the sole or insole including compressible and rigid materials as shown in Figures 34-37, which the Examiner identified as being two different sub-species, is not claimed. To interpret the claims to include such limitations would be contra to MPEP 2111 which states, in part, that the court explained that "reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is a quite different thing from 'reading limitations of the specification into a claim,' to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim." And MPEP 2111.01 which states, in part, that we have cautioned against reading limitations into a claim from the preferred embodiment described in the specification, even if it is the only embodiment described, absent clear disclaimer in the specification. Since many of the features of various identified species are not claimed, they are inappropriate species since a restriction is of the claims, not of the specification.

4. MPEP 803 states that a restriction is proper when the inventions are independent or distinct as claimed and there would be a serious burden on the examiner if restriction is not required. A serious burden on the examiner may be *prima facie* shown by appropriate explanation of separate classification, or separate status in the art, or a different field of search.

In the present restriction, the Examiner stated, with respect to a serious burden,
(a) the inventions have acquired a separate status in the art in view of their different

classification;
(b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;
(c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries).

The Applicant respectfully disagrees with each of the above statements. In addition, the term "the inventions" is unclear. Is it referring to each of the 70 identified species and 15 identified subspecies? If so, the Examiner has not provided which different classification or sub-classification each of the species falls into and does not indicate how they have acquired a separate status in the art due to their recognized divergent subject matter. As such, the Applicant contends that the Examiner has not met the requirement of explaining the separate classifications, separate status in the art, or a different field of search as required by MPEP 803. Merely stating these requirements is not an explanation of them.

5. Each of independent claims 1, 6, 9, and 14 are for an apparatus for use with a shoe or for a shoe. Each independent claim includes a heel platform section, a mid-foot section, and a toe section. The corresponding dependent claims provide individual limitations regarding one or more of these elements. As such, per the definition of a generic claim in MPEP 806.04(d), claims 1, 6, 9, and 14 are generic to their respective dependent claims in that, claims 1, 6, 9, and 14 require no material element additional to those required by their respective dependent claims, and each of the dependent claims require the limitations of their respective independent claims.

CONCLUSION

No additional fees are believed to be due. In the event that additional fees are due or a credit for an overpayment is due, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Garlick & Markison Deposit Account No. 50-2126.

The Examiner is invited to contact the undersigned by telephone or facsimile if the Examiner believes that such a communication would advance the prosecution of the present invention.

RESPECTFULLY SUBMITTED,

By: /Timothy W. Markison/ Reg. No. 33,534
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Electronic Acknowledgement Receipt

EFS ID:	17611869
Application Number:	13355801
International Application Number:	
Confirmation Number:	1012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Customer Number:	34399
Filer:	Timothy W. Markison/Beth Pierotti
Filer Authorized By:	Timothy W. Markison
Attorney Docket Number:	AAV003
Receipt Date:	10-DEC-2013
Filing Date:	23-JAN-2012
Time Stamp:	10:11:12
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1		AAV003_Response_to_2013-11-12_Restriction.pdf	58982 b2a4550f87f698ae56c006acc7527544c40f6f40	yes	17

	Multipart Description/PDF files in .zip description		
	Document Description	**Start**	**End**
	Response to Election / Restriction Filed	1	1
	Claims	2	7
	Applicant Arguments/Remarks Made in an Amendment	8	17
Warnings:			
Information:			
	Total Files Size (in bytes):	58982	

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111
If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371
If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office
If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

PTO/SB/06 (09-11)
Approved for use through 1/31/2014. OMB 0651-0032
U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE
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PATENT APPLICATION FEE DETERMINATION RECORD Substitute for Form PTO-875	Application or Docket Number 13/355,801	Filing Date 01/23/2012	☐ To be Mailed

ENTITY: ☐ LARGE ☒ SMALL ☐ MICRO

APPLICATION AS FILED – PART I

FOR	(Column 1) NUMBER FILED	(Column 2) NUMBER EXTRA	RATE ($)	FEE ($)
☐ BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A	N/A	
☐ SEARCH FEE (37 CFR 1.16(k), (i), or (m))	N/A	N/A	N/A	
☐ EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A	N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =	*	X $ =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*	X $ =	
☐ APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is $310 ($155 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).			
☐ MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))				
* If the difference in column 1 is less than zero, enter "0" in column 2.			TOTAL	

APPLICATION AS AMENDED – PART II

AMENDMENT 12/10/2013

	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
Total (37 CFR 1.16(i))	* 18	Minus	** 20	= 0	X $40 =	0
Independent (37 CFR 1.16(h))	* 4	Minus	***4	= 0	X $210 =	0
☐ Application Size Fee (37 CFR 1.16(s))						
☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
					TOTAL ADD'L FEE	0

AMENDMENT

	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
Total (37 CFR 1.16(i))	*	Minus	**	=	X $ =	
Independent (37 CFR 1.16(h))	*	Minus	***	=	X $ =	
☐ Application Size Fee (37 CFR 1.16(s))						
☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
					TOTAL ADD'L FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.
** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".
*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".
The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

LIE
/PAMELA YOUNG/

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**
If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/355,801	01/23/2012	Michael R. Adair	AAV003	1012

34399 7590 11/12/2013

GARLICK & MARKISON
Melanie Murdock
P.O. BOX 160727
AUSTIN, TX 78716-0727

EXAMINER	
BRANDON, MEGAN E	

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
11/12/2013	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

MMurdock@TEXASPATENTS.COM
ghmptocor@texaspatents.com
bpierotti@texaspatents.com

Office Action Summary	Application No. 13/355,801	Applicant(s) ADAIR ET AL.	
	Examiner MEGAN BRANDON	Art Unit 3765	AIA (First Inventor to File) Status No

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 January 2012*.

☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.

2a)☐ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on _____; the restriction requirement and election have been incorporated into this action.

4)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

5)☒ Claim(s) *1-18* is/are pending in the application.

5a) Of the above claim(s) _____ is/are withdrawn from consideration.

6)☐ Claim(s) _____ is/are allowed.

7)☐ Claim(s) _____ is/are rejected.

8)☐ Claim(s) _____ is/are objected to.

9)☒ Claim(s) *1-18* are subject to restriction and/or election requirement.

* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to PPHfeedback@uspto.gov.

Application Papers

10)☐ The specification is objected to by the Examiner.

11)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

Certified copies:

a)☐ All b)☐ Some * c)☐ None of the:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____

3) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

4) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-18 are pending.

Election/Restrictions

This application contains claims directed to the following patentably distinct species:

Species 1: as shown in Fig.3-7

Species 2: as shown in Fig.8-10

Species 3: as shown in Fig.11

Species 4: as shown in Fig.12

Species 5: as shown in Fig.13

Species 6: as shown in Fig.14

Species 7: as shown in Fig.15

Species 8: as shown in Fig.16-18

Species 9: as shown in Fig.19

Species 10: as shown in Fig.20

Species 11: as shown in Fig.21

Species 12: as shown in Fig.22

Species 13: as shown in Fig.23-33

If Applicant should elect any one of Species 1-13, Applicant must also elect one of the following Subspecies:

Subspecies 1: as shown in Fig.34-35

Subspecies 2: as shown in Fig.36-37

Subspecies 3: as shown in Fig.38

Subspecies 4: as shown in Fig.39

Subspecies 5: as shown in Fig.40

Subspecies 6: as shown in Fig.41

Subspecies 7: as shown in Fig.42

Subspecies 8: as shown in Fig.43

Subspecies 9: as shown in Fig.63-64

Subspecies 10: as shown in Fig.65

Subspecies 11: as shown in Fig.66

Subspecies 12: as shown in Fig.86-87

Subspecies 13: as shown in Fig.88

Species 14: as shown in Fig.44

Species 15: as shown in Fig.45

Species 16: as shown in Fig.46

Species 17: as shown in Fig.47

Species 18: as shown in Fig.48-51

Species 19: as shown in Fig.52

Species 20: as shown in Fig.53

Species 21: as shown in Fig.54

Species 22: as shown in Fig.55-58

Species 23: as shown in Fig.59-62

Species 24: as shown in Fig.67

Species 25: as shown in Fig.68

Species 26: as shown in Fig.69

Species 27: as shown in Fig.70-71

Species 28: as shown in Fig.72-74

Species 29: as shown in Fig.75-76

Species 30: as shown in Fig.77-79

If Applicant should elect Species 30, Applicant must also elect one of the following Subspecies:

Subspecies 1: as shown in Fig.80-82

Subspecies 2: as shown in Fig.83-85

Species 31: as shown in Fig.89

Species 32: as shown in Fig.90

Species 33: as shown in Fig.91

Species 34: as shown in Fig.92

Species 35: as shown in Fig.93-94

Species 36: as shown in Fig.95

Species 37: as shown in Fig.96

Species 38: as shown in Fig.97

Species 39: as shown in Fig.98-99

Species 40: as shown in Fig.100

Species 41: as shown in Fig.101-102

Species 42: as shown in Fig.103-105

Species 43: as shown in Fig.106

Species 44: as shown in Fig.107

Species 45: as shown in Fig.108-109

Species 46: as shown in Fig.110

Species 47: as shown in Fig.11

Species 48: as shown in Fig.112-113

Species 49: as shown in Fig.114-115

Species 50: as shown in Fig.116-118

Species 51: as shown in Fig.119-121

Species 52: as shown in Fig.122-123

Species 53: as shown in Fig.124

Species 54: as shown in Fig.125

Species 55: as shown in Fig.126-128

Species 56: as shown in Fig.129

Species 57: as shown in Fig.130-132

Species 58: as shown in Fig.133

Species 59: as shown in Fig.134

Species 60: as shown in Fig.135

Species 61: as shown in Fig.136-138

Species 62: as shown in Fig.139

Species 63: as shown in Fig.140

Species 64: as shown in Fig.141

Species 65: as shown in Fig.142

Species 66: as shown in Fig.143

Species 67: as shown in Fig.144-146

Species 68: as shown in Fig.147-148

Species 69: as shown in Fig.149

Species 70: as shown in Fig.150

The species are independent or distinct because the Species are directed to various and diverse matter. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, or a single grouping of patentably indistinct species, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims generic.

There is a search and/or examination burden for the patentably distinct species as set forth above because at least the following reason(s) apply:

(a) the inventions have acquired a separate status in the art in view of their different classification;

(b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;

(c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examined even though the requirement may be traversed (37 CFR 1.143) **and (ii) identification of the claims encompassing the elected species or grouping of patentably indistinct species**, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species or grouping of patentably indistinct species.

Should applicant traverse on the ground that the species, or groupings of patentably indistinct species from which election is required, are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing them

to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103 or pre-AIA 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be corrected in compliance with 37 CFR 1.48(a) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. A request to correct inventorship under 37 CFR 1.48(a) must be accompanied by an application data sheet in accordance with 37 CFR 1.76 that identifies each inventor by his or her legal name and by the processing fee required under 37 CFR 1.17(i).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MEGAN BRANDON whose telephone number is (571)272-3267. The examiner can normally be reached on Monday-Friday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoa Huynh can be reached on (571)272-4888. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MEGAN BRANDON/

Examiner, Art Unit 3765

/Khoa D. Huynh/
Supervisory Patent Examiner, Art Unit 3765

Index of Claims	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13355801	ADAIR ET AL.
	Examiner	Art Unit
	MEGAN BRANDON	3765

✓	Rejected	-	Cancelled	N	Non-Elected	A	Appeal
=	Allowed	÷	Restricted	I	Interference	O	Objected

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

CLAIM		DATE								
Final	Original	08/09/2013								
	1	÷								
	2	÷								
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
13/355,801	01/23/2012	Michael R. Adair	AAV003

CONFIRMATION NO. 1012

34399
GARLICK & MARKISON
P.O. BOX 160727
AUSTIN, TX 78716-0727

PUBLICATION NOTICE



Title:ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF

Publication No.US-2012-0227284-A1
Publication Date:09/13/2012

NOTICE OF PUBLICATION OF APPLICATION

The above-identified application will be electronically published as a patent application publication pursuant to 37 CFR 1.211, et seq. The patent application publication number and publication date are set forth above.

The publication may be accessed through the USPTO's publically available Searchable Databases via the Internet at www.uspto.gov. The direct link to access the publication is currently http://www.uspto.gov/patft/.

The publication process established by the Office does not provide for mailing a copy of the publication to applicant. A copy of the publication may be obtained from the Office upon payment of the appropriate fee set forth in 37 CFR 1.19(a)(1). Orders for copies of patent application publications are handled by the USPTO's Office of Public Records. The Office of Public Records can be reached by telephone at (703) 308-9726 or (800) 972-6382, by facsimile at (703) 305-8759, by mail addressed to the United States Patent and Trademark Office, Office of Public Records, Alexandria, VA 22313-1450 or via the Internet.

In addition, information on the status of the application, including the mailing date of Office actions and the dates of receipt of correspondence filed in the Office, may also be accessed via the Internet through the Patent Electronic Business Center at www.uspto.gov using the public side of the Patent Application Information and Retrieval (PAIR) system. The direct link to access this status information is currently http://pair.uspto.gov/. Prior to publication, such status information is confidential and may only be obtained by applicant using the private side of PAIR.

Further assistance in electronically accessing the publication, or about PAIR, is available by calling the Patent Electronic Business Center at 1-866-217-9197.

Office of Data Managment, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
13/355,801	01/23/2012	Michael R. Adair	AAV003

CONFIRMATION NO. 1012

POA ACCEPTANCE LETTER

34399
GARLICK HARRISON & MARKISON
P.O. BOX 160727
AUSTIN, TX 78716-0727



Date Mailed: 02/10/2012

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 01/23/2012.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

/ddkitila/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

PATENT APPLICATION FEE DETERMINATION RECORD

Substitute for Form PTO-875

Application or Docket Number: 13/355,801

APPLICATION AS FILED - PART I

FOR	(Column 1) NUMBER FILED	(Column 2) NUMBER EXTRA	SMALL ENTITY RATE($)	SMALL ENTITY FEE($)	OR	OTHER THAN SMALL ENTITY RATE($)	OTHER THAN SMALL ENTITY FEE($)
BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A	N/A	95		N/A	
SEARCH FEE (37 CFR 1.16(k), (l), or (m))	N/A	N/A	N/A	310		N/A	
EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A	N/A	125		N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	18 minus 20 =	*	x 30 =	0.00	OR		
INDEPENDENT CLAIMS (37 CFR 1.16(h))	4 minus 3 =	* 1	x 125 =	125			
APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is $310 ($155 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).			155			
MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))				0.00			
* If the difference in column 1 is less than zero, enter "0" in column 2.			TOTAL	810		TOTAL	

APPLICATION AS AMENDED - PART II

		(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	SMALL ENTITY RATE($)	SMALL ENTITY ADDITIONAL FEE($)	OR	OTHER THAN SMALL ENTITY RATE($)	OTHER THAN SMALL ENTITY ADDITIONAL FEE($)
AMENDMENT A	Total (37 CFR 1.16(i))	*	Minus	**	=	x =		OR	x =	
	Independent (37 CFR 1.16(h))	*	Minus	***	=	x =		OR	x =	
	Application Size Fee (37 CFR 1.16(s))									
	FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))							OR		
						TOTAL ADD'L FEE		OR	TOTAL ADD'L FEE	

		(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE($)	ADDITIONAL FEE($)		RATE($)	ADDITIONAL FEE($)
AMENDMENT B	Total (37 CFR 1.16(i))	*	Minus	**	=	x =		OR	x =	
	Independent (37 CFR 1.16(h))	*	Minus	***	=	x =		OR	x =	
	Application Size Fee (37 CFR 1.16(s))									
	FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))							OR		
						TOTAL ADD'L FEE		OR	TOTAL ADD'L FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.
** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".
*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".
The "Highest Number Previously Paid For" (Total or Independent) is the highest found in the appropriate box in column 1.

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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
13/355,801	01/23/2012	3728	810	AAV003	18	4

CONFIRMATION NO. 1012

34399
GARLICK HARRISON & MARKISON
P.O. BOX 160727
AUSTIN, TX 78716-0727

FILING RECEIPT



Date Mailed: 02/10/2012

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

Michael R. Adair, Woodruff, SC;
Timothy W. Markison, Mesa, AZ;

Assignment For Published Patent Application

ADMARK ATHLETIC VENTURES, Mesa, AZ

Power of Attorney: The patent practitioners associated with Customer Number 34399

Domestic Priority data as claimed by applicant

This appln claims benefit of 61/450,485 03/08/2011

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

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If Required, Foreign Filing License Granted: 02/03/2012

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 13/355,801**

Projected Publication Date: 09/13/2012

Non-Publication Request: No

Early Publication Request: No
** **SMALL ENTITY** **

Title

ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF

Preliminary Class

036

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

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Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

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The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor: Michael R. Adair **Docket No.**: AAV003

Filed: Herewith

Title: Athletic positioning apparatus including a heel platform and applications thereof

Date: January 23, 2012

U. S. Patent and Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

The documents filed simultaneously herewith are for a U.S. Utility Application claiming priority to Application No. 61/450,485, filed March 8, 2011, pending, entitled "ATHLETIC POSITIONING FOOTWEAR", and to other filings as detailed therein.

The claims presented in this application may have similar structure and/or terminology as claims in one or more other applications claiming priority to the above-referenced application(s).

The Examiner is advised that the prior art cited in one or more of the other application(s) claiming priority to the above-referenced application(s) may need to be visited in the examination of the pending claims in the present application.

The Examiner should also be advised that any disclaimer that may be made in the instant application should not be read into or against the one or more other application(s) claiming priority to the above-referenced application(s).

RESPECTFULLY SUBMITTED,

By: /Timothy W. Markison/ Reg. No. 33,534
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Phone: (214) 676-1020
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PTO/SB/14 (11-08)
Approved for use through 09/30/2010. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

Application Data Sheet 37 CFR 1.76	Attorney Docket Number	AAV003
	Application Number	
Title of Invention	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF	

The application data sheet is part of the provisional or nonprovisional application for which it is being submitted. The following form contains the bibliographic data arranged in a format specified by the United States Patent and Trademark Office as outlined in 37 CFR 1.76.
This document may be completed electronically and submitted to the Office in electronic format using the Electronic Filing System (EFS) or the document may be printed and included in a paper filed application.

Secrecy Order 37 CFR 5.2

☐ Portions or all of the application associated with this Application Data Sheet may fall under a Secrecy Order pursuant to 37 CFR 5.2 (Paper filers only. Applications that fall under Secrecy Order may not be filed electronically.)

Applicant Information:

Applicant 1 Remove

Applicant Authority ◉ Inventor ○ Legal Representative under 35 U.S.C. 117 ○ Party of Interest under 35 U.S.C. 118

Prefix	Given Name	Middle Name	Family Name	Suffix
	Michael	R.	Adair	

Residence Information (Select One) ◉ US Residency ○ Non US Residency ○ Active US Military Service

City	Woodruff	State/Province	SC	Country of Residence i	US

Citizenship under 37 CFR 1.41(b) i: US

Mailing Address of Applicant:

Address 1	419 Winding Oak Dr.		
Address 2			
City	Woodruff	State/Province	SC
Postal Code	29388	Country i	US

Applicant 2 Remove

Applicant Authority ◉ Inventor ○ Legal Representative under 35 U.S.C. 117 ○ Party of Interest under 35 U.S.C. 118

Prefix	Given Name	Middle Name	Family Name	Suffix
	Timothy	W.	Markison	

Residence Information (Select One) ◉ US Residency ○ Non US Residency ○ Active US Military Service

City	Mesa	State/Province	AZ	Country of Residence i	US

Citizenship under 37 CFR 1.41(b) i: US

Mailing Address of Applicant:

Address 1	3922 Northridge Circle		
Address 2			
City	Mesa	State/Province	AZ
Postal Code	85215	Country i	US

All Inventors Must Be Listed - Additional Inventor Information blocks may be generated within this form by selecting the **Add** button. Add

Correspondence Information:

Enter either Customer Number or complete the Correspondence Information section below.
For further information see 37 CFR 1.33(a).

☐ **An Address is being provided for the correspondence Information of this application.**

PTO/SB/14 (11-08)
Approved for use through 09/30/2010. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
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Application Data Sheet 37 CFR 1.76	Attorney Docket Number	AAV003
	Application Number	
Title of Invention	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF	

Customer Number	34399		
Email Address	tmarkison@texaspatents.com	Add Email	Remove Email

Application Information:

Title of the Invention	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF		
Attorney Docket Number	AAV003	**Small Entity Status Claimed**	☒
Application Type	Nonprovisional		
Subject Matter	Utility		
Suggested Class (if any)		**Sub Class (if any)**	
Suggested Technology Center (if any)			
Total Number of Drawing Sheets (if any)	92	**Suggested Figure for Publication (if any)**	

Publication Information:

☐ Request Early Publication (Fee required at time of Request 37 CFR 1.219)

☐ **Request Not to Publish.** I hereby request that the attached application not be published under 35 U.S. C. 122(b) and certify that the invention disclosed in the attached application **has not and will not** be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication at eighteen months after filing.

Representative Information:

Representative information should be provided for all practitioners having a power of attorney in the application. Providing this information in the Application Data Sheet does not constitute a power of attorney in the application (see 37 CFR 1.32).
Enter either Customer Number or complete the Representative Name section below. If both sections are completed the Customer Number will be used for the Representative Information during processing.

Please Select One:	◉ Customer Number	○ US Patent Practitioner	○ Limited Recognition (37 CFR 11.9)
Customer Number	34399		

Domestic Benefit/National Stage Information:

This section allows for the applicant to either claim benefit under 35 U.S.C. 119(e), 120, 121, or 365(c) or indicate National Stage entry from a PCT application. Providing this information in the application data sheet constitutes the specific reference required by 35 U.S.C. 119(e) or 120, and 37 CFR 1.78(a)(2) or CFR 1.78(a)(4), and need not otherwise be made part of the specification.

Prior Application Status	Pending		Remove
Application Number	Continuity Type	Prior Application Number	Filing Date (YYYY-MM-DD)
	non provisional of	61450485	2011-03-08

Additional Domestic Benefit/National Stage Data may be generated within this form by selecting the **Add** button. Add

Foreign Priority Information:

PTO/SB/14 (11-08)
Approved for use through 09/30/2010. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
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Application Data Sheet 37 CFR 1.76	Attorney Docket Number	AAV003
	Application Number	
Title of Invention	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF	

This section allows for the applicant to claim benefit of foreign priority and to identify any prior foreign application for which priority is not claimed. Providing this information in the application data sheet constitutes the claim for priority as required by 35 U.S.C. 119(b) and 37 CFR 1.55(a).

Remove

Application Number	Country [i]	Parent Filing Date (YYYY-MM-DD)	Priority Claimed
			○ Yes ◉ No

Additional Foreign Priority Data may be generated within this form by selecting the **Add** button. Add

Assignee Information:

Providing this information in the application data sheet does not substitute for compliance with any requirement of part 3 of Title 37 of the CFR to have an assignment recorded in the Office.

Assignee 1 Remove

If the Assignee is an Organization check here. ☒

Organization Name	AdMark Athletic Ventures		
Mailing Address Information:			
Address 1	3922 Northridge Circle		
Address 2			
City	Mesa	**State/Province**	AZ
Country [i] US		Postal Code	85215
Phone Number		Fax Number	
Email Address			

Additional Assignee Data may be generated within this form by selecting the **Add** button. Add

Signature:

A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature.

Signature	/Timothy W. Markison/Reg. No. 33,534			Date (YYYY-MM-DD)	2012-01-23
First Name	Timothy	Last Name	Markison	Registration Number	33534

This collection of information is required by 37 CFR 1.76. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 23 minutes to complete, including gathering, preparing, and submitting the completed application data sheet form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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The information provided by you in this form will be subject to the following routine uses:

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2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

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4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

TITLE OF THE INVENTION

ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF

CROSS REFERENCE TO RELATED PATENTS

This patent application is claiming priority under 35 USC § 119(e) to a provisionally filed patent application entitled ATHLETIC POSITIONING FOOTWEAR, having a provisional filing date of 03/08/2011, and a provisional serial number of 61/450,485 (Attorney Docket # AAV001), which is incorporated by reference herein.

STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT – NOT APPLICABLE

INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC – NOT APPLICABLE

BACKGROUND OF THE INVENTION

TECHNICAL FIELD OF THE INVENTION

This invention relates generally to footwear and more particularly to athletic positioning footwear.

DESCRIPTION OF RELATED ART

As is known, a wide variety of shoes are available in today's market. The types, designs, and style of the shoes vary greatly depending on their use. For example, dress shoes have a particular design and style based on a more formal use. As another example, athletic shoes have a particular design and style based on their use while playing sports. For instance, each of tennis shoes, golf shoes, running shoes, cross training shoes, hiking shoes, basketball shoes, etcetera have a particular sole pattern, a sole design, an insole design, and upper shoe portion design. In addition, each type of athletic shoe may further include a lateral stability design, an arch support design, a pronation compensation design, and/or a supination compensation design.

As another specific example, Figures 1 and 2 illustrate a cross sectional front view and a cross-sectional side view of a pair of baseball spikes. As is shown, the baseball spikes include a sole, a padded insole, an upper shoe portion, and cleats (or spikes). The positioning of the cleats facilitates better traction in grass and/or dirt while playing baseball. In these figures, the sole and/or the padded insole provide a relatively flat platform for the foot within the baseball spikes. In some designs of baseball spikes, the heel portion of the shoe may be higher than the toe portion of the shoe from a side perspective.

BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S)

Figure 1 illustrates a cross-sectional front view diagram of baseball spikes of the prior art;

Figure 2 illustrates a cross-sectional side view diagram of baseball spikes of the prior art;

Figure 3 illustrates a cross-sectional side view diagram of an embodiment of a shoe having an athletic positioning insole and/or sole in accordance with the present invention;

Figure 4 illustrates a cross-sectional front view diagram of an embodiment of a shoe having an athletic positioning insole and/or sole in accordance with the present invention;

Figure 5 illustrates an isometric diagram of an embodiment of an athletic positioning shape in accordance with the present invention;

Figure 6 illustrates a cross-sectional side view diagram of an embodiment of an athletic positioning shape in accordance with the present invention;

Figure 7 illustrates a cross-sectional front view diagram of an embodiment of an athletic positioning shape in accordance with the present invention;

Figure 8 illustrates an isometric diagram of another embodiment of an athletic positioning shape in accordance with the present invention;

Figure 9 illustrates a cross-sectional side view diagram of another embodiment of an athletic positioning shape in accordance with the present invention;

Figure 10 illustrates a cross-sectional front view diagram of another embodiment of an athletic positioning shape in accordance with the present invention;

Figure 11 illustrates an isometric diagram of another embodiment of an athletic positioning shape in accordance with the present invention;

Figure 12 illustrates an isometric diagram of another embodiment of an athletic positioning shape in accordance with the present invention;

Figure 13 illustrates an isometric diagram of another embodiment of an athletic positioning shape in accordance with the present invention;

Figure 14 illustrates an isometric diagram of another embodiment of an athletic positioning shape in accordance with the present invention;

Figure 15 illustrates an isometric diagram of another embodiment of an athletic positioning shape in accordance with the present invention;

Figure 16 illustrates a top view diagram of an embodiment of an athletic positioning insole and/or sole having one or more cups in accordance with the present invention;

Figure 17 illustrates a cross-sectional front view diagram of an embodiment of an athletic positioning insole and/or sole having a toe cup in accordance with the present invention;

Figure 18 illustrates a cross-sectional front view diagram of an embodiment of an athletic positioning insole and/or sole having a ball of foot cup in accordance with the present invention;

Figure 19 illustrates a topographical diagram of another embodiment of an athletic positioning shape in accordance with the present invention;

Figure 20 illustrates a topographical diagram of another embodiment of an athletic positioning shape in accordance with the present invention;

Figure 21 illustrates a topographical diagram of another embodiment of an athletic positioning shape in accordance with the present invention;

Figure 22 illustrates a topographical diagram of another embodiment of an athletic positioning shape in accordance with the present invention;

Figure 23 illustrates a topographical diagram of another embodiment of an athletic positioning shape in accordance with the present invention;

Figures 24 – 33 illustrate layers of another embodiment of an athletic positioning shape in accordance with the present invention;

Figure 34 illustrates a cross-sectional side view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 35 illustrates a cross-sectional front view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 36 illustrates a cross-sectional side view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 37 illustrates a cross-sectional front view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 38 illustrates a cross-sectional side view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 39 illustrates a cross-sectional side view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 40 illustrates a cross-sectional side view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 41 illustrates a cross-sectional side view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 42 illustrates a cross-sectional side view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 43 illustrates a cross-sectional side view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 44 illustrates an isometric diagram of an embodiment of an athletic positioning sole in accordance with the present invention;

Figure 45 illustrates an isometric diagram of another embodiment of an athletic positioning sole in accordance with the present invention;

Figure 46 illustrates an isometric diagram of another embodiment of an athletic positioning sole in accordance with the present invention;

Figure 47 illustrates an isometric diagram of another embodiment of an athletic positioning sole in accordance with the present invention;

Figure 48 illustrates a cross-sectional side view diagram of an embodiment of an athletic positioning sole and an athletic positioning insole in accordance with the present invention;

Figure 49 illustrates a top view diagram of an embodiment of an athletic positioning sole and an athletic positioning insole in accordance with the present invention;

Figure 50 illustrates a bottom view diagram of an embodiment of an athletic positioning sole and an athletic positioning insole in accordance with the present invention;

Figure 51 illustrates a cross-sectional front view diagram of an embodiment of an athletic positioning sole and an athletic positioning insole in accordance with the present invention;

Figure 52 illustrates a cross-sectional side view diagram of another embodiment of an athletic positioning sole and an athletic positioning insole in accordance with the present invention;

Figure 53 illustrates a cross-sectional side view diagram of another embodiment of an athletic positioning sole and an athletic positioning insole in accordance with the present invention;

Figure 54 illustrates a cross-sectional side view diagram of another embodiment of an athletic positioning sole and an athletic positioning insole in accordance with the present invention;

Figure 55 illustrates a top view diagram of another embodiment of an athletic positioning insole in accordance with the present invention;

Figure 56 illustrates a cross-sectional outside view diagram of another embodiment of an athletic positioning insole in accordance with the present invention;

Figure 57 illustrates a cross-sectional inside view diagram of another embodiment of an athletic positioning insole in accordance with the present invention;

Figure 58 illustrates a cross-sectional front view diagram of another embodiment of an athletic positioning insole in accordance with the present invention;

Figure 59 illustrates a top view diagram of another embodiment of an athletic positioning sole in accordance with the present invention;

Figure 60 illustrates a cross-sectional outside view diagram of another embodiment of an athletic positioning sole in accordance with the present invention;

Figure 61 illustrates a cross-sectional inside view diagram of another embodiment of an athletic positioning sole in accordance with the present invention;

Figure 62 illustrates a cross-sectional front view diagram of another embodiment of an athletic positioning sole in accordance with the present invention;

Figure 63 illustrates a cross-sectional front view diagram of another embodiment of an athletic positioning sole and/or insole with compensating sport specific bottom in accordance with the present invention;

Figure 64 illustrates a cross-sectional side view diagram of another embodiment of an athletic positioning sole and/or insole with compensating sport specific bottom in accordance with the present invention;

Figure 65 illustrates a cross-sectional front view diagram of another embodiment of shoe having an athletic positioning sole and/or insole in accordance with the present invention;

Figure 66 illustrates a cross-sectional heel view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 67 illustrates an isometric diagram of an embodiment of an adjustable athletic positioning sole and/or insole in accordance with the present invention;

Figure 68 illustrates a cross-sectional side view diagram of another embodiment of an adjustable athletic positioning sole and/or insole in accordance with the present invention;

Figure 69 illustrates a top view diagram of another embodiment of an adjustable athletic positioning sole and/or insole in accordance with the present invention;

Figure 70 illustrates a cross-sectional front view diagram of an embodiment of an adjustable toe section of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 71 illustrates a cross-sectional side view diagram of an embodiment of an adjustable toe section of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 72 illustrates a top view diagram of another embodiment of an adjustable ball of foot section of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 73 illustrates a cross-sectional front view diagram of an embodiment of an adjustable ball of foot section of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 74 illustrates a cross-sectional inside view diagram of an embodiment of an adjustable ball of foot section of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 75 illustrates a top view diagram of another embodiment of an adjustable heel section of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 76 illustrates a cross-sectional heel view diagram of an embodiment of an adjustable heel section of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 77 illustrates a side view diagram of an embodiment of a shoe having an adjustable athletic positioning sole and/or insole in accordance with the present invention;

Figure 78 illustrates a front view diagram of an embodiment of a shoe having an adjustable athletic positioning sole and/or insole in accordance with the present invention;

Figure 79 illustrates an expanded view diagram of another embodiment of an adjustable athletic positioning sole and/or insole in accordance with the present invention;

Figure 80 illustrates a top view diagram of an embodiment of removable plates of an adjustable athletic positioning sole and/or insole in accordance with the present invention;

Figure 81 illustrates a cross-sectional side view diagram of an embodiment of removable plates of an adjustable athletic positioning sole and/or insole in accordance with the present invention;

Figure 82 illustrates a cross-sectional side view diagram of an embodiment of a securing mechanism for removable plates of an adjustable athletic positioning sole and/or insole in accordance with the present invention;

Figure 83 illustrates an expanded cross-sectional side view diagram of another embodiment of an adjustable athletic positioning sole and/or insole in accordance with the present invention;

Figure 84 illustrates a cross-sectional side view diagram of another embodiment of a securing mechanism for removable plates of an adjustable athletic positioning sole and/or insole in accordance with the present invention;

Figure 85 illustrates a cross-sectional side view diagram of another embodiment of an adjustable athletic positioning sole and/or insole in accordance with the present invention;

Figure 86 illustrates a cross-sectional front view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 87 illustrates a cross-sectional front view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 88 illustrates a cross-sectional front view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 89 illustrates a cross-sectional front view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 90 illustrates a cross-sectional front view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 91 illustrates a cross-sectional front view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 92 illustrates a cross-sectional front view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 93 illustrates a cross-sectional front view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 94 illustrates a cross-sectional side view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 95 illustrates a cross-sectional front view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 96 illustrates a cross-sectional front view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 97 illustrates a cross-sectional front view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 98 illustrates a cross-sectional front view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 99 illustrates a cross-sectional front view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 100 illustrates a cross-sectional front view diagram of another embodiment of an athletic positioning sole and/or insole in accordance with the present invention;

Figure 101 illustrates a cross-sectional front view diagram of another embodiment of an adjustable athletic positioning sole and/or insole in accordance with the present invention;

Figure 102 illustrates a cross-sectional front view diagram of another embodiment of an adjustable athletic positioning sole and/or insole in accordance with the present invention;

Figure 103 illustrates a cross-sectional front view diagram of another embodiment of an adjustable athletic positioning sole and/or insole in accordance with the present invention;

Figure 104 illustrates a side view diagram of an embodiment of a panel of an adjustable athletic positioning sole and/or insole in accordance with the present invention;

Figure 105 illustrates a cross-sectional view diagram of an embodiment of a panel of an adjustable athletic positioning sole and/or insole in accordance with the present invention;

Figure 106 illustrates a cross-sectional front view diagram of another embodiment of an adjustable athletic positioning sole and/or insole in accordance with the present invention;

Figure 107 illustrates a cross-sectional front view diagram of another embodiment of an adjustable athletic positioning sole and/or insole in accordance with the present invention;

Figure 108 illustrates a cross-sectional side view diagram of another embodiment of an adjustable athletic positioning sole and/or insole in accordance with the present invention;

Figure 109 illustrates a cross-sectional side view diagram of another embodiment of an adjustable athletic positioning sole and/or insole in accordance with the present invention;

Figure 110 illustrates a cross-sectional top view diagram of another embodiment of an adjustable athletic positioning sole and/or insole in accordance with the present invention;

Figure 111 illustrates a cross-sectional heel view diagram of another embodiment of a varying positioning athletic positioning sole and/or insole in accordance with the present invention;

Figure 112 illustrates a cross-sectional front view diagram of another embodiment of a varying positioning athletic positioning sole and/or insole in accordance with the present invention;

Figure 113 illustrates a cross-sectional front view diagram of another embodiment of a varying positioning athletic positioning sole and/or insole in accordance with the present invention;

Figure 114 illustrates a cross-sectional front view diagram of another embodiment of a varying positioning athletic positioning sole and/or insole in accordance with the present invention;

Figure 115 illustrates a cross-sectional front view diagram of another embodiment of a varying positioning athletic positioning sole and/or insole in accordance with the present invention;

Figure 116 illustrates a side view diagram of an embodiment of a training shoe that includes an athletic positioning sole in accordance with the present invention;

Figure 117 illustrates a front view diagram of an embodiment of a training shoe that includes an athletic positioning sole in accordance with the present invention;

Figure 118 illustrates an isometric view diagram of an embodiment of an athletic positioning sole of a training shoe in accordance with the present invention;

Figure 119 illustrates a side view diagram of another embodiment of a training shoe that includes an athletic positioning sole in accordance with the present invention;

Figure 120 illustrates a front view diagram of another embodiment of an athletic positioning sole of a training shoe in accordance with the present invention;

Figure 121 illustrates a bottom view diagram of another embodiment of an athletic positioning sole of a training shoe in accordance with the present invention;

Figure 122 illustrates a side view diagram of an embodiment of baseball spikes that include an athletic positioning spike pattern in accordance with the present invention;

Figure 123 illustrates a front view diagram of an embodiment of baseball spikes that include an athletic positioning spike pattern in accordance with the present invention;

Figure 124 illustrates a bottom view diagram of another embodiment of baseball spikes that include an athletic positioning spike pattern in accordance with the present invention;

Figure 125 illustrates a bottom view diagram of another embodiment of baseball spikes that include an athletic positioning spike pattern in accordance with the present invention;

Figure 126 illustrates a heel view diagram of another embodiment of baseball spikes that include an athletic positioning spike pattern in accordance with the present invention;

Figure 127 illustrates a heel view diagram of another embodiment of baseball spikes that include an athletic positioning spike pattern in accordance with the present invention;

Figure 128 illustrates a diagram of an embodiment of a spike for baseball spikes that include an athletic positioning spike pattern in accordance with the present invention;

Figure 129 illustrates a cross-section front view diagram of another embodiment of an athletic positioning pattern in accordance with the present invention;

Figure 130 illustrates a side view diagram of an embodiment of an athletic positioning heel attachment for baseball spikes in accordance with the present invention;

Figure 131 illustrates a bottom view diagram of an embodiment of an athletic positioning heel attachment for baseball spikes in accordance with the present invention;

Figure 132 illustrates a bottom view diagram of another embodiment of an athletic positioning heel attachment for baseball spikes in accordance with the present invention;

Figure 133 illustrates a bottom view diagram of an embodiment of an athletic positioning toe & ball-of-foot attachment for baseball spikes in accordance with the present invention;

Figure 134 illustrates a heel view diagram of another embodiment of an athletic positioning heel attachment for baseball spikes in accordance with the present invention;

Figure 135 illustrates a side view diagram of another embodiment of an athletic positioning heel attachment and athletic positioning toe & ball-of-foot attachment for baseball spikes in accordance with the present invention;

Figure 136 illustrates a bottom view diagram of an embodiment of an athletic positioning attachment for baseball spikes in accordance with the present invention;

Figure 137 illustrates an inside view diagram of an embodiment of an athletic positioning attachment for baseball spikes in accordance with the present invention;

Figure 138 illustrates an outside view diagram of an embodiment of an athletic positioning attachment for baseball spikes in accordance with the present invention;

Figure 139 illustrates a topological view diagram of an embodiment of an athletic positioning attachment for baseball spikes in accordance with the present invention;

Figure 140 illustrates an isometric view diagram of an embodiment of a pitching training aid that includes an athletic positioning shape in accordance with the present invention;

Figure 141 illustrates an isometric view diagram of another embodiment of a pitching training aid that includes an athletic positioning shape in accordance with the present invention;

Figure 142 illustrates an isometric view diagram of an embodiment of a pitching rubber that includes an athletic positioning shape in accordance with the present invention;

Figure 143 illustrates an isometric view diagram of another embodiment of a pitching rubber that includes an athletic positioning shape in accordance with the present invention;

Figure 144 illustrates a top view diagram of an embodiment of a fitting mechanism for a shoe that includes an athletic positioning shape in accordance with the present invention;

Figure 145 illustrates a cross-section front view diagram of an embodiment of a fitting mechanism for a shoe that includes an athletic positioning shape in accordance with the present invention;

Figure 146 illustrates a side view diagram of an embodiment of a fitting mechanism for a shoe that includes an athletic positioning shape in accordance with the present invention;

Figure 147 illustrates a side view diagram of another embodiment of a fitting mechanism for a shoe that includes an athletic positioning shape in accordance with the present invention;

Figure 148 illustrates a side view diagram of another embodiment of a fitting mechanism for a shoe that includes an athletic positioning shape in accordance with the present invention;

Figure 149 illustrates a side view diagram of another embodiment of a fitting mechanism for a shoe that includes an athletic positioning shape in accordance with the present invention; and

Figure 150 illustrates an isometric view diagram of another embodiment of a fitting mechanism for a shoe that includes an athletic positioning shape in accordance with the present invention.

DETAILED DESCRIPTION OF THE INVENTION

Figures 3 and 4 illustrate a cross-sectional side view and a cross-sectional front view, respectively, of an embodiment of footwear having an apparatus that facilitates athletic positioning via an insole and/or a sole of a shoe. The shoe includes an upper section 18, and insole section 12, and a sole section 10. The apparatus, which may be the insole section 12 and/or the sole section 10, of a shoe, has an athletic positioning shape as formed by a heel section 21, a mid-foot section 23, and/or a toe section 25. In general, the athletic positioning shape has the heel section 21 higher than the toe section by a particular angle (e.g., Ø1, which may range from a fraction of a degree to 10's of degrees) and the outside edge of the shoe higher than the inside edge of the shoe by another angle (e.g., Ø2, which may range from a fraction of a degree to 10's of degrees) at the ball of foot and/or toe section of the shoe.

When a person wears such a shoe, the athletic positioning shape of the insole and/or sole, places the person in an athletic position (e.g., knees slightly bent, weight more on the inside of the legs than the outside of the legs, knees position aligned with ankles and hips, and/or other athletic positioning characteristics). For example, when a pitcher wears a pair of baseball spikes that include the athletic positioning shape insole 12 and/or sole 10, the pitcher's toe and ball of foot are a primary contact point with the ground, which shifts the pitcher's weight to the inside of his/her legs and slightly bends the pitcher's knees. In this position, the pitcher's lower half is in a more optimal position for pitching.

As another example, a batter may wear a pair of baseball spikes that include the athletic positioning shape insole 12 and/or sole 10. When in the batter's box, the baseball spikes enable the batter to place more weight on his/her big toe and ball of foot than on the outer edge of the foot. In addition, the batter's knees are flexed and his/her weight is shifted to the inside portion of the leg as opposed to the outside portion of the leg, which promotes a better hitting stance.

The athletic positioning insole 12 and/or sole 10 may be used in any type of shoe (e.g., a dress shoe, a casual shoe, a sport specific shoe, a training shoe, and/or a combination thereof) For example, the athletic positioning insole 12 and/or sole 10 may be used in basketball shoes, tennis shoes, golf shoes, ski boots, ice skates, baseball cleats, football cleats, soccer shoes, running shoes, track shoes, cross fitness shoes, etc. For each of these sport specific shoes, the athletic positioning insole 12 and/or sole 10 are coupled to a specific bottom and a corresponding upper shoe section to promote a better athletic position for an athlete. The specific bottom may comprise one or more of a cleat pattern bottom, a baseball spike bottom, a basketball bottom, a tennis bottom, a golf bottom, an ice skate bottom, a ski boot bottom, a cross-trainer bottom, a running shoe bottom, a walking shoe bottom, a dress shoe bottom and a snowboard boot bottom. The upper section of a shoe may also have a sandal structure that includes one or more straps for securing the shoe to a foot.

Figures 5-7 illustrate an isometric diagram 20, a cross-sectional side view diagram 22, and a cross-sectional front view diagram 24 of an embodiment of an athletic positioning shape, which may be used in an insole 12 and/or sole 10 of a shoe. The athletic positioning shape includes a heel section 21, a mid-foot section 23, and a toe section the collectively have an overall geometric shape that corresponds to the shape of a shoe, but is shown in block form for ease of illustration. The heel section 21, mid-foot section 23, and toe section 25 may each be separate pieces, a uniform piece, and/or two of the sections may be a uniform piece while the other is a separate piece.

The heel section 21 has a first dimension that is substantially uniform from the outer edge to the inner edge along a back edge of the apparatus and from the back edge of the apparatus to a front portion of the heel section 21. The toe section 25 has a second dimension at the front outer edge of the apparatus and a third dimension at the front inner edge of the apparatus. The first dimension has a magnitude that is greater than or equal to a magnitude of the second dimension and the magnitude of the second dimension is greater than a magnitude of the third dimension.

As shown, the heel section 21 of the shoe has a particular height (e.g., h1, which may be 1 to 10's of mm) that has a first slope (e.g., corresponding to Ø1) of the polarity through the mid-foot section 23 to the toe section 25 on the inside edge of the shoe. The inside edge of the shoe at the toe section may have a height of zero to a few millimeters.

As also shown, the athletic positioning shape includes a second height (e.g., h2) at the outer edge of the shoe at the toe section 25, which has a second slope (e.g., corresponding to Ø2) of the polarity to the inside edge of the shoe. Accordingly, a third angle exists from the heel to the toe section 25 on the outer edge of the shoe.

The heel section 21 may also include a first structure corresponding to a first portion of the geometric shape, while the mid-foot section 23 may include a second structure corresponding to a second portion of the geometric shape, and the toe section 25 may include a third structure corresponding to a third portion of the geometric shape, wherein the heel section 21 is juxtaposed to the mid-foot section 23, which is juxtaposed to the toe section 25. For example, the heal section may be mechanically coupled to the mid-foot section 23 and the mid-foot section 23 may be mechanically coupled to the toe section 25, wherein spacing between the sections maybe near zero to several centimeters. The apparatus may also include a cushioning layer on a first surface covering at least a portion of the heel, mid-foot and/or toe sections.

While the surface on which the foot lies, the angles, and the perimeter lines are shown as straight lines and/or flat surfaces, they may be contoured lines and/or angles,

contoured surfaces, contour slopes, concave and/or convex slopes and/or surfaces, and/or a combination thereof to provide a more comfortable and/or custom fit.

Figures 8-10 illustrate an isometric diagram 30, a cross-sectional side view diagram 32, and a cross-sectional front view diagram 34 of an embodiment of an athletic positioning shape, which may be used in an insole 12 and/or sole 10 of a shoe. The athletic positioning shape includes an overall geometric shape that corresponds to the shape of a shoe, but is shown in block form for ease of illustration. The athletic positioning shape further includes a heel platform 38 and an angled support platform 36. The heel platform includes a height (h1) and width (w).

The angled support platform 36 includes a length (L – heel platform length), the width (w), a first height (h1), a second height (h2), an inner toe section height (e.g., 0 to a few mm), a first angle (e.g., Ø1) from the heel platform 38 to the toe on the inside edge of the shoe, a second angle (e.g., Ø2) from the outer edge of the shoe to the inside edge of the shoe, and a third angle (e.g., Ø3) from the heel platform 38 to the toe section 25 on the outer edge of the shoe.

In an example, the toe section 25 and the mid-foot section 23 collectively have a geometric shape having a first dimension along an abutment edge of the heel platform section 38 and the mid-foot section 23, a second dimension at front outer edge of the apparatus, and a third dimension at front inner edge of the apparatus. The first dimension is substantially uniformly throughout the heel platform section 38 and has a magnitude that is greater than or equal to a magnitude of the second dimension. The magnitude of the second dimension is greater than a magnitude of the third dimension.

Figure 11 illustrates an isometric diagram of another embodiment of an athletic positioning shape 40, which may be used in an insole 12 and/or sole 10 of a shoe. The athletic positioning shape includes an overall geometric shape that corresponds to the shape of a shoe, but is shown in block form for ease of illustration. The athletic positioning shape further includes a heel platform 38, an angled support platform 36, and

a toe area 42. The heel platform 38 includes a height (h1), a width (w), a first length (L4) and a second length (L3), where L3 is greater than L4.

The angled support platform 36 includes a length (L – L3 and L – L4), a first width (w1), a second width corresponding to the toe area 42 (w1-w2), a first height (h1), a second height (h2), a first angle (e.g., Ø1) from the heel platform to the toe on the outside edge of the shoe, a second angle (e.g., Ø2) from the outer edge of the shoe to the edge of the toe area 42, and a third angle (e.g., Ø3) from the heel platform 38 to the toe area 42 on the inner edge of the shoe.

Figure 12 illustrates an isometric diagram 50 of another embodiment of an athletic positioning shape, which may be used in an insole 12 and/or sole 10 of a shoe. The athletic positioning shape includes an overall geometric shape that corresponds to the shape of a shoe, but is shown in block form for ease of illustration. The athletic positioning shape further includes a heel platform 38, an angled support platform 36, an angled edge platform 52, and a ball-of-foot/toe area 54. The heel platform 38 includes a height (h1), a width (w), and a length.

The angled support platform 36 includes a length (L – heel length), a first width (w2 - w1) at heel platform 38, a second width (w2-w1) at toe area, a first height (h1), a second height (h2), a first angle (e.g., Ø1) from the heel platform 38 to the toe on the outside edge of the shoe, and a second angle (e.g., Ø2) from the outer edge of the shoe to the edge of the toe area. The angled edge platform 52 includes a length (L – heel length), a first width (w4) at heel platform 38, a second width (w2) at toe area, a first height (h1), a second height (h2), and a first angle (e.g., Ø1) from the heel platform 38 to the toe on the outside edge of the shoe.

Figure 13 illustrates an isometric diagram 60 of another embodiment of an athletic positioning shape, which may be used in an insole 12 and/or sole 10 of a shoe. The athletic positioning shape includes an overall geometric shape that corresponds to the shape of a shoe, but is shown in block form for ease of illustration. The athletic

positioning shape further includes an angled heel platform 62 and an angled support platform 36. The angled heel platform 62 includes a first height (h1), a second height (h2), a length, a width (w), and an angle (Ø1), which may be in the range of -10 to 10 degrees. As shown, the angle (Ø1) is shown to be a positive angle such that the heel platform 62 is slightly angled from the outer edge of the shoe to the inner edge, which may be to facilitate the athletic position and/or to adjust for supination. While not shown, if the angle (Ø1) is negative, the heel platform 62 is slightly angled from the inner edge of the shoe to the outer edge, which may be to facilitate the athletic position and/or to adjust for pronation.

The angled support platform 36 includes a length (L – heel platform length), the width (w), a first height (h1), a second height (h2), an inner toe section height (e.g., 0 to a few mm), a first angle (e.g., Ø4) from the heel platform to the toe on the inside edge of the shoe, a second angle (e.g., Ø3) from the outer edge of the shoe to the inside edge of the shoe, and a third angle (e.g., Ø2) from the angled heel platform 62 to the toe section 25 on the outer edge of the shoe.

Figure 14 illustrates an isometric diagram of another embodiment of an athletic positioning shape 70, which may be used in an insole 12 and/or sole 10 of a shoe. The athletic positioning shape includes an overall geometric shape that corresponds to the shape of a shoe, but is shown in block form for ease of illustration. The athletic positioning shape further includes a heel platform 38, an angled arch support platform 72, an angled toe platform 74, and a toe area 76. Note that the inside portion of the ball of foot may be in the toe area and the rest of the ball of foot may be in the angle arch support platform.

The heel platform includes a height (h1), a width, and a length. The angled arch support platform includes a length (L – heel length and the big toe area length), a width, a first height (h1), a second height (h2), a first angle (e.g., Ø2) from the heel platform to the toe on the outside edge of the toe platform, and a second angle (e.g., Ø2) from the outer edge of the shoe to the edge of the toe area. The toe platform includes a length (L – heel

length and the length of the arch platform), a width, a first height (h2), a second height (h3), and a first angle (e.g., Ø1) from the arch platform 72 to the toe platform 74 and a second angle (e.g., Ø3) from the outside edge of the shoe to the toe area. In this embodiment, Ø1 is greater than Ø2 such that the angle of the toes is greater than the angle of the arch platform and allows for more flexing of the toes.

Figure 15 illustrates an isometric diagram 80 of another embodiment of an athletic positioning shape, which may be used in an insole 12 and/or sole 10 of a shoe. The athletic positioning shape includes an overall geometric shape that corresponds to the shape of a shoe, but is shown in block form for ease of illustration. The athletic positioning shape further includes a heel platform 38, an angled arch support platform 72, an angled toe platform 74, and a toe area 76. Note that the inside portion of the ball of foot may be in the toe area and the rest of the ball of foot may be in the angle arch support platform.

The heel platform includes a height (h1), a width, and a length. The angled arch support platform includes a length (L – heel length and the big toe area length), a width, a first height (h1), a second height (h2), a first angle (e.g., Ø2) from the heel platform to the toe on the outside edge of the toe platform, and a second angle (e.g., Ø2) from the outer edge of the shoe to the edge of the toe area. The toe platform includes a length (L – heel length and the length of the arch platform), a width, a first height (h2), a second height (h3), and a first angle (e.g., Ø1) from the arch platform to the toe platform and a second angle (e.g., Ø3) from the outside edge of the shoe to the toe area. In this embodiment, Ø2 is greater than Ø1 such that the angle of the toes is less than the angle of the arch platform, which allows for less flexing of the toes.

While the surfaces on which the foot and toes lie, the angles, and the perimeter lines are shown as straight lines and/or flat surfaces in each of the embodiments of Figures 5 – 15, they may be contoured lines and/or angles, contoured surfaces, contour slopes, concave and/or convex slopes and/or surfaces, and/or a combination thereof to provide a more comfortable and/or custom fit. Note that the shoe may further include

arch support as a separate layer of the insole or integrated into the insole. Further note that the present athletic positioning shape may be used in a standalone athletic positioning insole product, in a standalone athletic positioning sole attachment, in a training shoe, and/or a sock. Still further note that with the combination of height and angles of the embodiments of Figures 5-15, the wearer of a shoe that incorporates an athletic positioning insole and/or sole having one of the athletic positioning shapes is placed in an athletic position, which may promote better athletic performance and/or which may promote better biomechanical body functioning.

Figure 16 illustrates a top view diagram of an embodiment of an athletic positioning insole 12 and/or sole 10 having one or more positioning and/or stabilizing cups. The athletic positioning insole 12 and/or sole 10 may include one or more of the athletic positioning shapes of the previous figures and/or of the subsequent figures. In this example embodiment, the athletic positioning insole 12 and/or sole 10 include a big toe stabilizing and/or positioning cup 90 and an inner-ball of foot stabilizing 92 and/or positioning cup. The cup helps with positioning the foot on the athletic positioning insole and/or sole and may further help with stabilizing the foot in its position on the athletic positioning insole and/or sole during athletic activities. Each of the cups may be a few millimeters in depth, have sloped sides, may be of a different material then the insole and/or sole, and/or a combination thereof.

Figure 17 illustrates a cross-sectional front view diagram of an embodiment of an athletic positioning insole and/or sole having a toe cup. As shown, the big toe fits within the toe cup 42 to provide positioning and/or stabilization of the foot within the insole 12 and/or sole 10.

Figure 18 illustrates a cross-sectional front view diagram of an embodiment of an athletic positioning insole 12 and/or sole 10 having a ball of foot cup. As shown, the inner portion of the ball of foot fits within the ball of foot cup 92 to provide positioning and/or stabilization of the foot within the insole 12 and/or sole 10.

Figure 19 illustrates a topographical diagram 100 of another embodiment of an athletic positioning shape, which may be used in an insole 12 and/or sole 10 of a shoe. The athletic positioning shape further includes a heel platform 38, an angled support platform 36, a toe cup 42, and a ball-of-foot cup 92. With respect to the toe cup and/or the ball of foot cup, the heel platform may be 10 to 30 mm higher and may have a shape corresponding to the heel of a shoe.

The angle support platform includes a contoured shape that angles from the outer edge of the foot to the inner edge of the foot with a greater slope in the ball of foot area than in the toe area. The gradient at which the angled support platform angles may vary depending on the desired athletic positioning. In alternate implementations of this embodiment, the athletic positioning shape may omit one or both of the cups.

Figure 20 illustrates a topographical diagram 110 of another embodiment of an athletic positioning shape, which may be used in an insole 12 and/or sole 10 of a shoe. The athletic positioning shape further includes a heel platform 38, an angled support platform 36, and a toe area 112. With respect to the toe area 112, the heel platform 38 may be 10 to 30 mm higher and may have a shape corresponding to the heel of a shoe.

The angle support platform 36 includes a contoured shape that angles from the outer edge of the foot to the inner edge of the foot with a lesser slope along the outer edge of the shape than along the inner edge of the shape. The gradient at which the angled support platform angles may vary depending on the desired athletic positioning.

Figure 21 illustrates a topographical diagram of another embodiment of an athletic positioning shape, which may be used in an insole 12 and/or sole 10 of a shoe. The athletic positioning shape further includes a heel platform 38, an angled support platform 36, a toe cup 42, and/or a ball-of-foot cup 92. With respect to the toe cup and/or the ball-of-foot cup, the heel platform may be 10 to 30 mm higher and may have a shape corresponding to the heel of a shoe.

The angle support platform 36 includes a contoured shape that includes two angles sections. The first angled section is along the outer edge of the shape and slopes from the heel to the toe. The second angled section is from the first angled section to the inner edge of the shape and angles from the heel to the toe and from the outer edge to the inner edge. The gradient at which each of the angled section angles may vary depending on the desired athletic positioning.

Figure 22 illustrates a topographical diagram 120 of another embodiment of an athletic positioning shape, which may be used in an insole 12 and/or sole 10 of a shoe. The athletic positioning shape further includes a heel platform 38 and an angled support platform 36. The athletic positioning shape may further include a toe layer 122 and/or a partial ball-of-foot cup layer 124. With respect to the big toe and/or ball of foot, the heel platform may be 10 to 30 mm higher and may have a shape corresponding to the heel of a shoe.

The angle support platform 36 includes a contoured shape that angles from the outer edge of the foot to the inner edge of the foot with a lesser slope along the outer edge of the shape than along the inner edge of the shape. The gradient at which the angled support platform angles may vary depending on the desired athletic positioning.

Figure 23 illustrates a topographical diagram of another embodiment of an athletic positioning shape, which may be used in an insole 12 and/or sole 10 of a shoe. The athletic positioning shape further includes a heel platform 38 and an angled support platform 36 where the big toe is the lowest point 130. Alternatively, the athletic positioning shape may further include a toe layer and omit the layer under the inside ball-of-foot to allow the inside ball-of-foot to be the lowest point. With respect to the big toe and/or ball of foot, the heel platform 38 may be 10 to 30 mm higher and may have a shape corresponding to the heel of a shoe.

The angle support platform 36 includes a contoured shape that angles from the outer edge of the foot to the inner edge of the foot with a lesser slope along the outer edge

of the shape than along the inner edge of the shape. The gradient at which the angled support platform angles may vary depending on the desired athletic positioning.

With the combination of heights and angles of the embodiments of Figures 19 - 23, the wearer of a shoe that incorporates an athletic positioning insole and/or sole having one of the athletic positioning shapes is placed in an athletic position, which may promote better athletic performance and/or which may promote better biomechanical body functioning. Note that a shoe, which incorporates one of the athletic positioning shapes of Figures 19-23, may further include arch support as a separate layer of the insole and/or integrated into the insole. Further note that one or more of the athletic positioning shapes may be used in a standalone athletic positioning insole product, in a standalone athletic positioning sole attachment, in a training shoe, and/or a sock.

Figures 24 – 33 illustrate layers of another embodiment of an athletic positioning shape for an insole 12 and/or a sole 10. Each layer may be of the same material (e.g., leather, rubber, foam, etc.), of a different material, or a combination thereof. For example, layers 1-4 may be of a rigid material (e.g., rubber, leather, plastic, carbon fiber, etc.) while layers 5-10 may be of a compressible material (e.g., foam, liquid material such as water, gel, etc.).

Figures 34 and 35 illustrate a cross-sectional side view diagram and a cross-sectional front view diagram of another embodiment of an athletic positioning sole 10 and/or insole 12 that includes a compressible material section 140 and a rigid material section 142. In this embodiment, the compressible material section 140 is on top of the rigid material section 142 (i.e., closer to the foot). The compressible material section 140 includes one or more of the athletic positioning shapes and comprises a compressible material (e.g., foam, a soft rubber, memory foam, compressible housing that holds a liquid material (e.g., water, gel, etc.), and/or any other material that compresses under pressure and substantially returns to its uncompressed shape when the pressure is removed).

The rigid section 142 includes one or more the athletic positioning shapes, which may be the same one as used in the compressible material section 140 or different, and comprises a rigid material. The rigid material has minimal compression under pressure but allows for a desired level of flexion of the foot during use of the shoe. For example, the rigid material may be a rubber, a carbon fiber, leather, plastic, Polyurethane, any material that provides a rigid structure for the shoe, and/or a combination thereof.

Figures 36 and 37 illustrate a cross-sectional side view diagram and a cross-sectional front view diagram of another embodiment of an athletic positioning sole 10 and/or insole 12 that includes a compressible material section and a rigid material section. In this embodiment, the compressible material section 140 is under the rigid material section 142 (i.e., farther from the foot). The compressible material section 140 includes one or more of the athletic positioning shapes and comprises a compressible material (examples previously provided). The rigid section 142 includes one or more the athletic positioning shapes, which may be the same one as used in the compressible material section 140 or different, and comprises a rigid material. The rigid material has minimal compression under pressure but allows for a desired level of flexion of the foot during use of the shoe (examples previously provided).

Figure 38 illustrates a cross-sectional side view diagram of another embodiment of an athletic positioning sole 10 and/or insole 12 that includes a compressible material section 140, a rigid material section 142, and a recoil material section 144. In this embodiment, the compressible material section is layered on top of the recoil material section 144, which is layered on top of the rigid material section 142. The compressible material section 140 includes one or more of the athletic positioning shapes and comprises a compressible material (examples previously provided). The rigid section includes one or more the athletic positioning shapes, which may be the same one as used in the compressible material section or different, and comprises a rigid material. The rigid material has minimal compression under pressure but allows for a desired level of flexion of the foot during use of the shoe (examples previously provided).

The recoil section 144 includes one or more the athletic positioning shapes, which may be the same as one of the ones used in the compressible material section 140 and/or on the rigid material section 142, or a different shape. The recoil section 144 comprises a recoil material that, when placed under a force 146, converts the force into a potential energy and, when the force is released, converts the potential energy into kinetic energy 148. In this manner, the force that is generated by pushing off in the shoe is used to propel the foot in a desired direction when the force is released. For example, when a pitcher loads his/her drive leg, a force is applied to the shoe. When the pitcher begins his/her motion and pushes off the rubber, the force is released and the recoil material section 144 applies a force to the foot in a direction toward home plate.

The recoil material 144 may be a series of springs embedded in the recoil material layer, may be a resilient rubber material, some other material that provides a recoil effect, and/or a combination thereof. In addition, the recoil material may be imbalanced such that the direction of the recoil force is between perpendicular and parallel to the foot force. For example, if the recoil material includes a series of springs, the springs along the outer edge of the shoe may have a greater recoil force than those on the inner edge of the shoe. As such, when the foot force is released, the springs on the outer edge of the shoe "push" harder than the springs on the inner edge of the shoe, thus creating a more horizontal force.

Figure 39 illustrates a cross-sectional side view diagram of another embodiment of an athletic positioning sole and/or insole that includes a compressible material section and a recoil material section. In this embodiment, the compressible material section is layered on top of the recoil material section. The compressible material section includes one or more of the athletic positioning shapes and comprises a compressible material (examples previously provided).

The recoil section includes one or more the athletic positioning shapes, which may be the same as the one used in the compressible material section or a different shape. The roil section comprises a recoil material that, when placed under a force, converts the

force into a potential energy and, when the force is released, converts the potential energy into kinetic energy.

Figure 40 illustrates a cross-sectional side view diagram of another embodiment of an athletic positioning sole 10 and/or insole 12 that includes a compressible material section 140, a rigid material section 142, and a recoil material section 144. In this embodiment, the compressible material section 140 is layered on top of the rigid material section 142, which is layered on top of the recoil material section 144. The compressible material section 140 includes one or more of the athletic positioning shapes and comprises a compressible material (examples previously provided). The rigid section 142 includes one or more the athletic positioning shapes, which may be the same one as used in the compressible material section 140 or different, and comprises a rigid material. The rigid material 142 has minimal compression under pressure but allows for a desired level of flexion of the foot during use of the shoe (examples previously provided).

The recoil section 144 includes one or more the athletic positioning shapes, which may be the same as one of the ones used in the compressible material section 140 and/or on the rigid material section 142, or a different shape. The recoil section 144 comprises a recoil material that, when placed under a force, converts the force into a potential energy and, when the force is released, converts the potential energy into kinetic energy.

Figure 41 illustrates a cross-sectional side view diagram of another embodiment of an athletic positioning sole 10 and/or insole 12 that includes a compressible material section 140 and a recoil material section 144. In this embodiment, the compressible material section 140 is layered below the recoil material section 144. The compressible material section 140 includes one or more of the athletic positioning shapes and comprises a compressible material (examples previously provided).

The recoil section 144 includes one or more the athletic positioning shapes, which may be the same as the one used in the compressible material section 140 or a different shape. The recoil section 144 comprises a recoil material that, when placed under a

force, converts the force into a potential energy and, when the force is released, converts the potential energy into kinetic energy.

Figure 42 illustrates a cross-sectional side view diagram of another embodiment of an athletic positioning sole 10 and/or insole 12 that includes a first compressible material section 150, a second compressible material section 152, and a rigid material section 142. In this embodiment, the first compressible material section 150 is layered above the second compressible material section, which is layered above the rigid material section 142. The first compressible material section 150 includes one or more of the athletic positioning shapes and comprises a first compressible material. The second compressible material section 152 includes one or more of the athletic positioning shapes and comprises a second compressible material. For example, the first compressible material may comprise a flexible housing containing a gel and the second compressible material may comprise a memory foam.

The rigid section 142 includes one or more the athletic positioning shapes, which may be the same as one of the ones used in the first or second compressible material sections or different. The rigid section 142 comprises a rigid material, which has minimal compression under pressure but allows for a desired level of flexion of the foot during use of the shoe.

Figure 43 illustrates a cross-sectional side view diagram of another embodiment of an athletic positioning sole 10 and/or insole 12 that includes a first compressible material section 150, a second compressible material section 152, and a recoil material section 144. In this embodiment, the first compressible material section 150 is layered above the rigid material section 142, which is layered above the second compressible material section 152. The first compressible material section 150 includes one or more of the athletic positioning shapes and comprises a first compressible material. The second compressible material section 152 includes one or more of the athletic positioning shapes and comprises a second compressible material 152. For example, the first compressible material may more compressible material than that of the second compressible material.

The recoil section 144 includes one or more the athletic positioning shapes, which may be the same as the one used in the compressible material section 140 or a different shape. The recoil section 144 comprises a recoil material that, when placed under a force, converts the force into a potential energy and, when the force is released, converts the potential energy into kinetic energy.

Figure 44 illustrates an isometric diagram of an embodiment of an athletic positioning sole that includes an overall geometric shape that corresponds to the shape of a shoe, but is shown in block form for ease of illustration. As shown, the heel of the sole has a particular height (e.g., h1, which may be 1's to 10's of mm) that slopes at an angle (e.g., Ø1) to the toe on the inside edge of the sole. The inside edge of the sole at the toe section 25 may have a height of zero to a few millimeters with respect to the insole of the shoe.

As also shown, the athletic positioning sole includes a second height (e.g., h2) at the outer edge of the sole at the toe section, which tapers at an angle (e.g., Ø2) to the inside edge of the sole. Accordingly, a third angle exists from the heel to the toe section 25 on the outer edge of the sole.

Figure 45 illustrates an isometric diagram of another embodiment of an athletic positioning sole that includes an overall geometric shape that corresponds to the shape of a shoe, but is shown in block form for ease of illustration. The athletic positioning sole further includes a heel platform and an angled support platform. The heel platform includes a height (h1), a length (L1), and a width (w).

The angled support platform includes a length (L – heel platform length), the width (w), a first height (h1), a second height (h2), an inner toe section height (e.g., 0 to a few mm), a first angle (e.g., Ø1) from the heel platform to the toe on the inside edge of the shoe, a second angle (e.g., Ø2) from the outer edge of the shoe to the inside edge of

the shoe, and a third angle from the heel platform 38 to the toe section 25 on the outer edge of the shoe.

Figure 46 illustrates an isometric diagram of another embodiment of an athletic positioning sole that includes an overall geometric shape that corresponds to the shape of a shoe, but is shown in block form for ease of illustration. The athletic positioning sole further includes a heel platform 38, an angled support platform 36, and an angled edge platform 160. The heel platform includes a height (h1), a width (w), and a length.

The angled support platform 36 includes a length (L – heel length), a first width (w – width of the angled edge platform), a first height (h1), a second height (h2), a first angle (e.g., Ø1) from the heel platform 38 to the toe on the outside edge of the shoe, and a second angle (e.g., Ø2) from the outer edge of the shoe to the edge of the toe area. The angled edge platform includes a length (L – heel length), a first width (w – width of the angled support platform), a first height (h1), a second height (h2), and a first angle (e.g., Ø1) from the heel platform to the toe on the outside edge of the shoe.

Figure 47 illustrates an isometric diagram of another embodiment of an athletic positioning sole that includes an overall geometric shape that corresponds to the shape of a shoe, but is shown in block form for ease of illustration. The athletic positioning sole further includes a heel platform 38, an angled support platform 36, and a ball-of-foot/toe area 112. The heel platform 38 includes a height (h1), a width (w), and a length (L1).

The angled support platform 36 includes a length (L –L1), a first width (w), a second width corresponding to the toe area (w-width of toe area), a first height (h1), a second height (h2), a first angle (e.g., Ø1) from the heel platform 38 to the toe on the outside edge of the shoe, a second angle (e.g., Ø2) from the outer edge of the shoe to the edge of the toe area, and a third angle (e.g., Ø3) from the heel platform 38 to the toe area 112 on the inner edge of the shoe.

For each of the athletic position soles of Figures 44-47, the surface on which the specific sole pattern lies, the angles, and the perimeter lines are shown as straight lines and/or flat surfaces; however, they may be contoured lines and/or angles, contoured surfaces, contour slopes, concave and/or convex slopes and/or surfaces, and/or a combination thereof to provide a more comfortable and/or custom fit. In addition, each of the athletic positioning soles of Figures 44-47 may be flipped such that the angled surface is coupled to the shoe and the other side is coupled to a specific sole pattern (e.g., basketball, tennis, baseball, football, dress shoe, casual shoe, cross-training, etc.). In either implementation of coupling the athletic positioning sole to the remainder of the shoe, the wearer of the shoe is placed in an athletic position that may promote better athletic performance.

Figures 48 - 51 illustrates a cross-sectional side view diagram, a top view diagram, a bottom view diagram, a cross-sectional front view diagram, and a cross-sectional side view diagram of an embodiment of an athletic positioning sole 10 and an athletic positioning insole 12. The athletic positioning insole may have one of the athletic positioning shapes and may be comprised of a compressible material 140, a recoil material 144, and/or a rigid material 142. Similarly, the athletic positioning sole may have one of the athletic positioning shapes and may be comprised of a compressible material, a recoil material, and/or a rigid material.

In this embodiment, the combination of the sole and the insole provide the overall athletic positioning shape for a shoe. For example, the heel height of the combined insole and sole is h1, which may be 10-30 mm or more, and the outer edge toe height of the combined insole and sole is h2, which may be 5-15 mm. In the present example, the sole and the insole contribute equally to the heights (h1 and h2); however the ratio of may range from 50/50 to 90/10 to 10/90 (insole/sole).

The heel-to-toe angles (e.g., Ø1 for inner edge and Ø3 for outer edge) are provided by a combination of the heel to toe angles of each of the insole and the sole. In the present example, the sole 10 and the insole 12 contribute equally to the heel-to-toe

angles (Ø1 and Ø3); however the ratio of may range from 50/50 to 90/10 to 10/90 (insole/sole). Similarly, the insole 12 and sole 10 are shown to equally contribute to the outer edge to inner edge angle (e.g., Ø2), however the ratio of may range from 50/50 to 90/10 to 10/90 (insole/sole).

Figure 52 illustrates a cross-sectional side view diagram of another embodiment of an athletic positioning sole and an athletic positioning insole. The athletic positioning insole may have one of the athletic positioning shapes and may be comprised of one or more compressible materials 170 and/or of one or more rigid materials 172. The athletic positioning sole may have one of the athletic positioning shapes and may be comprised of one or more compressible materials 170 and/or of one or more rigid materials 172. For example, the rigid material 172 may be a rubber, carbon fiber, and/or plastic that is/are traditionally used for athletic shoe soles and the compressible material 170 may be memory foam, foam, and/or a gel that is/are traditionally used for athletic shoe insoles.

Figure 53 illustrates a cross-sectional side view diagram of another embodiment of an athletic positioning sole and an athletic positioning insole. The athletic positioning insole may have one of the athletic positioning shapes and may be comprised of one or more compressible materials 170 and/or of one or more rigid materials 172. The athletic positioning sole may have one of the athletic positioning shapes and may be comprised of one or more rigid materials 172.

Figure 54 illustrates a cross-sectional side view diagram of another embodiment of an athletic positioning sole and an athletic positioning insole. The athletic positioning insole may have one of the athletic positioning shapes and may be comprised of one or more compressible materials 170. The athletic positioning sole may have one of the athletic positioning shapes and may be comprised of one or more rigid materials 172. For example, the sole may be comprised of a rubber, carbon fiber, and/or plastic that is/are traditionally used for athletic shoe soles and the insole may be comprised of memory foam, foam, and/or a gel that is/are traditionally used for athletic shoe insoles.

For each of the athletic position soles of Figures 48-54, the angled surfaces of the sole and/or insole, the angles, and the perimeter lines are shown as straight lines and/or flat surfaces; however, they may be contoured lines and/or angles, contoured surfaces, contour slopes, concave and/or convex slopes and/or surfaces, and/or a combination thereof to provide a more comfortable and/or custom fit. In addition, the athletic positioning soles of Figures 48-54 may be flipped such that the angled surface is coupled to the shoe and the other side is coupled to a specific sole pattern (e.g., basketball, tennis, baseball, football, dress shoe, casual shoe, cross-training, etc.). In either implementation of coupling the athletic positioning sole to the remainder of the shoe, the wearer of the shoe is placed in an athletic position that may promote better athletic performance.

Figures 55 - 58 illustrate a top view diagram, a cross-sectional outside view diagram, a cross-sectional inside view diagram, and a cross-sectional front view diagram of a specific embodiment of an athletic positioning insole. The insole includes a heel platform, an angled support platform, and a partial ball-of-foot cup. The insole may have one of the athletic positioning shapes and is comprised of one or more compressible materials. For a given athletic positioning shape, the height of the heel section 21 is 3/8 inch and the length & width of the insole correspond to an 11-1/2 size man's shoe (which can be adjusted for any shoe size). The big toe section is 1/8 inch thick and the little toe section is ¼ inch thick. The angles are based on the dimensions of the lengths, widths, and heights of the insole, where the dimensions may be for a pre-compressed condition or a compressed condition.

Figures 59 - 62 illustrate a top view diagram, a cross-sectional outside view diagram, a cross-sectional inside view diagram, and a cross-sectional front view diagram of a specific embodiment of an athletic positioning sole. The sole includes a heel platform 38, an angled support platform 36, and an upper shoe connecting sides 180. The sole may have one of the athletic positioning shapes and is comprised of one or more rigid materials 172 and/or compressible materials 170. For a given athletic positioning shape, the height of the heel section 21 is ½ inch and the length & width of the sole correspond to an 11-1/2 size man's shoe (which can be adjusted for any shoe size). The

big toe section is 1/8 inch thick and the little toe section is ¼ inch thick. The angles are based on the dimensions of the lengths, widths, and heights of the insole, where the dimensions may be for a pre-compressed condition or a compressed condition. The sizing of the sides may vary depending on the connecting mechanism (e.g., stitch, glue, stable, fuse, etc.) to the upper shoe section.

Figures 63 - 64 illustrate a cross-sectional front view diagram and a cross-sectional side view diagram of another embodiment of an athletic positioning sole 10 and/or insole 12 with compensating sport specific bottom 190. The athletic positioning insole may have one of the athletic positioning shapes and may be comprised of a compressible material, a recoil material, and/or a rigid material. Similarly, the athletic positioning sole may have one of the athletic positioning shapes and may be comprised of a compressible material, a recoil material, and/or a rigid material. Note that a shoe implemented in accordance with this embodiment may include the athletic positioning sole and a conventional insole, a conventional sole and an athletic positioning insole, or may include an athletic positioning insole and an athletic positioning sole.

In an athletic position, more pressure is applied on the inside edge of the shoe at the ball-of-foot area than on other parts of the shoe. To compensate for this increased pressure, which could lead to greater wear and tear, the sport specific bottom 190 is thicker in this region than along the outer edge of the shoe. In addition, the sport specific sole may be thicker or equally as thick in the inner ball-of-foot region as in the heel region of the shoe. The sport specific bottom 190 may have an overall shape that reduces shock on the body when running and/or when making explosive movement.

Figure 65 illustrates a cross-sectional front view diagram of another embodiment of shoe having an athletic positioning sole and/or insole and a sport specific bottom that includes an upper shoe securing area 200. The athletic positioning insole may have one of the athletic positioning shapes and may be comprised of a compressible material, a recoil material, and/or a rigid material. Similarly, the athletic positioning sole may have one of the athletic positioning shapes and may be comprised of a compressible material, a recoil

material, and/or a rigid material. Note that a shoe implemented in accordance with this embodiment may include the athletic positioning sole and a conventional insole, a conventional sole and an athletic positioning insole, or may include an athletic positioning insole and an athletic positioning sole.

The sport specific bottom 190 includes a sport specific tread pattern (e.g., tennis, basketball, training, running, etc.), a spike and/or cleat pattern (e.g., baseball, football, golf, soccer, etc.), or a sliding coupling pattern (e.g., ice skates, ski boots, snowboard boots, rollerblades, etc.). In addition, the sport specific bottom 190 includes the upper securing area 200 to secure the sole assembly (e.g., sport specific bottom, the athletic positioning insole, and/or the athletic positioning sole) to an upper shoe 202, which may be a conventional upper shoe for a given sport, activity, or dress, or may an upper shoe as described in subsequent figures. The sole assembly may be secured to the upper shoe 200 by stitching, gluing, stapling, fusing, riveting, etc. The sport specific bottom may also include a sloped bottom as discussed with reference to Figures 63 and 64.

Figure 66 illustrates a cross-sectional heel view diagram of another embodiment of an athletic positioning sole 10 and/or insole 12 and a sport specific bottom 190. The athletic positioning insole may have one of the athletic positioning shapes and may be comprised of a compressible material, a recoil material, and/or a rigid material. Similarly, the athletic positioning sole may have one of the athletic positioning shapes and may be comprised of a compressible material, a recoil material, and/or a rigid material. Note that a shoe implemented in accordance with this embodiment may include the athletic positioning sole and a conventional insole, a conventional sole and an athletic positioning insole, or may include an athletic positioning insole and an athletic positioning sole.

The sport specific bottom 190 includes a sport specific tread pattern (e.g., tennis, basketball, training, running, etc.), a spike and/or cleat pattern (e.g., baseball, football, golf, soccer, etc.), or a sliding coupling pattern 212 (e.g., ice skates, ski boots, snowboard boots, rollerblades, etc.). In addition, the sport specific bottom 190 includes a wider base

than its upper portion to provide lateral stability. As shown, the outer edge of the sport specific bottom 190 angles in at a first angle (e.g., Ø1) and the inner edge of the bottom angles in at a second angle (e.g., Ø2). When the shoe includes the athletic positioning insole 12 and/or sole 10, it may be desirable to have the first angle larger than the second to provide more lateral stability, but both angles may be equal. The sport specific bottom 190 may also include a sloped bottom as discussed with reference to Figures 63 and 64. Note that the heel section may include a heel cup area 214

Figure 67 illustrates an isometric diagram of an embodiment of an adjustable athletic positioning sole 10 and/or insole 12. The insole and/or sole includes a fixed area 220 and an adjustable area 222, each area may be of one of the athletic positioning shapes. In addition, the fixed area 220 may include one or more compressible materials, one or more rigid materials, and/or one or more recoil materials.

The adjustable area 222 may be implemented in a variety of ways, which will be discussed in subsequent drawings. In general, the adjustable area 222 allows for the heights, widths, lengths, and/or angles of the athletic positioning insole and/or athletic positioning sole to be adjusted from a minimum setting (e.g., the fixed area dimensions) to a maximum setting (e.g., the fixed area dimensions plus the adjustable area dimensions). The present figures illustrates a left shoe implementation, the concepts are equally applicable to a right shoe.

Figure 68 illustrates a cross-sectional side view diagram of another embodiment of an adjustable athletic positioning sole 10 and/or insole 12 having an alternating fixed area 220 and adjustable area 222. The first adjustable area (e.g., the lowest one) allows the height of the heel platform to be adjusted. The second adjustable area (e.g., the next one up) allows for the angled support platform to be adjusted with minimal adjustment to the toe area. The third adjustable area (e.g., the top one) allows for the overall athletic position shape to be adjusted.

Figure 69 illustrates a top view diagram of another embodiment of an adjustable athletic positioning sole 10 and/or insole 12 that includes an adjustable heel section 230, an adjustable ball of foot and arch area 232, and an adjustable toe area 234. Each adjustable area may be implemented using an air bladder structure that can be expanded from a minimal size (e.g., height, width, length, and/or angles) to a maximum size. Accordingly, each section would need an air intake nozzle to allow a needle to be inserted to add or remove air from the air bladder. In this instance, the air bladder would maintain the minimal shape even when all of the air is removed and expands to the maximum shape when sufficient air is added.

Alternatively, each adjustable area may include a fixed section and an adjustable section. The fixed section has a shape as shown and is comprised of one or more compressible materials, one or more rigid materials, and/or one or more recoil materials. The adjustable section may be an air bladder, stackable plates, and/or another adjusting mechanism.

Figures 70 and 71 illustrate a cross-sectional front view diagram and a cross-sectional side view diagram of an embodiment of an adjustable toe section 234 of an athletic positioning sole 10 and/or insole 12. The adjustable toe section 234 may be adjusted from a minimal shape (e.g., height, width, length, and/or angles) to a maximum size. For example, the toe section includes an air bladder that has a minimal shape corresponding to the toe section of one of the athletic positioning shapes, which can be expanded to a maximum shape. As another example, the toe section includes a fixed section that has a minimal shape corresponding to the toe section of one of the athletic positioning shapes and an adjustable section (e.g., air bladder, stackable plates, etc.) that allows the toe section to expand to its maximum shape.

Figures 72-74 illustrate a top view diagram, a cross-sectional front view diagram, and a cross-sectional inside view diagram of another embodiment of an adjustable ball of foot section of an athletic positioning sole 10 and/or insole 12. The adjustable ball of foot section 232 may be adjusted from a minimal shape (e.g., height, width, length, and/or

angles) to a maximum size. For example, the ball of foot section 232 includes an air bladder that has a minimal shape corresponding to the ball of foot and/or arch section 232 of one of the athletic positioning shapes, which can be expanded to a maximum shape. As another example, the ball of foot section includes a fixed section that has a minimal shape corresponding to the ball of foot and/or arch section of one of the athletic positioning shapes and an adjustable section (e.g., air bladder, stackable plates, etc.) that allows the ball of foot section to expand to its maximum shape.

Figures 75 and 76 illustrate a top view diagram and a cross-sectional heel view diagram of another embodiment of an adjustable heel section of an athletic positioning sole 10 and/or insole 12. The adjustable heel section 230 may be adjusted from a minimal shape (e.g., height, width, length, and/or angles) to a maximum size. For example, the heel section includes an air bladder that has a minimal shape corresponding to the heel section of one of the athletic positioning shapes, which can be expanded to a maximum shape. As another example, the heel section 230 includes a fixed section that has a minimal shape corresponding to the heel section of one of the athletic positioning shapes and an adjustable section (e.g., air bladder, stackable plates, etc.) that allows the heel section to expand to its maximum shape.

Figure 77 illustrates a side view diagram of an embodiment of a shoe 246 having an adjustable athletic positioning sole. The shoe includes a sport specific lower plate 240 of the sole (which includes the sport specific sole pattern), one or more removable plates of the sole 242, a fixed upper plate of the sole, and a shoe top. The shoe may further include an athletic positioning insole (not shown), which may be fixed 244 or adjustable.

The fixed upper plate 244 is secured to the shoe top using conventional means (e.g., glue, stitching, fusing, stapling, riveting, etc.). The fixed upper plate 244 includes a securing mechanism that allows a removable plate or the sport specific bottom (if no removable plates are used) to be mechanically coupled thereto. In addition, the fixed upper plate 244 includes a shape that corresponds to one of the athletic positioning shapes

(or a relatively flat shape) and is comprised of one or more rigid materials and/or one or more recoil materials.

The sport specific plate includes a sport specific pattern 240 and a securing mechanism that allows it to be mechanically coupled to a removable plate 242 or to the sport specific bottom 240 (if no removable plates are used). The sport specific lower plate 240 includes a shape that corresponds to one of the athletic positioning shapes (or a relatively flat shape) and is comprised of one or more rigid materials and/or one or more recoil materials.

Each of the removable plates 242 includes a securing mechanism that allows it to be mechanically coupled to another removable plate, to the fixed upper plate 244, or to the sport specific bottom 240. Each of the removable plates includes a shape that corresponds to one of the athletic positioning shapes (which, from plate to plate, may be different and/or of the same shape but of different dimensions) and is comprised of one or more rigid materials and/or one or more recoil materials (which, from plate to plate, may be different or the same).

Figure 78 illustrates a front view diagram of an embodiment of a shoe 246 having an adjustable athletic positioning sole. The shoe, as discussed with reference to Figure 77, includes a sport specific lower plate of the sole 240 (which includes the sport specific sole pattern), one or more removable plates of the sole 242, a fixed upper plate of the sole 244, and a shoe top 246. The shoe may further include an athletic positioning insole (not shown), which may be fixed or adjustable.

Figure 79 illustrates an expanded view diagram of another embodiment of an adjustable athletic positioning sole, which includes the fixed upper plate 244, one or more removable plates 242, and a sport specific lower plate 240. Each of the plates includes a securing mechanism, a shape that corresponds to one of the athletic positioning shapes (or a relatively flat shape) and is comprised of one or more rigid materials and/or one or more recoil materials.

An adjustable athletic positioning insole includes a fixed upper insole plate 244, one or more removable insole plates 242, and a lower insole plate 240. Each of the plates includes a securing mechanism, a shape that corresponds to one of the athletic positioning shapes (or a relatively flat shape) and is comprised of one or more rigid materials, one or more compressible materials, and/or one or more recoil materials.

Figure 80 illustrates a top view diagram of an embodiment of the fixed upper plate, one or more of the removable plates, and a lower plate of an adjustable athletic positioning sole and/or of an adjustable athletic positioning insole. The securing mechanisms 250 are positioned throughout the plate to provide secure and reliable mechanically fastening of one plate to another. Note that more or less locations of the securing mechanisms 250 may be included on each plate. Further note that each plate includes substantially the same pattern of securing mechanisms.

Figure 81 illustrates a cross-sectional side view diagram of an embodiment of plates of an adjustable athletic positioning sole 10 and/or insole 12 mechanically coupled together at one of the securing mechanisms 268 of the pattern of securing mechanisms. The fixed upper plate 262 (of the sole or insole) includes a base securing mechanism 260 (e.g., a custom nut having an encircling flange to maintain its position in the fixed upper plate) at one or more securing mechanism positions of the securing mechanism pattern. Each of the other plates 264 (e.g., the lower plate and the removable plates) includes a securing mechanism 268 (e.g., a custom bolt with a threaded receptacle head) at one or more securing mechanism positions of the securing mechanism pattern. Each of the plates 264 includes a notched receptacle 270, which may be tapered, for holding the respective securing mechanism 268 in place. In addition, each plate includes a securing ledge, which allows the securing mechanisms to be screwed together to produce a secure butt joint between the plates.

The lower plate securing mechanism 268 may include a threaded plug 274, which may include a cap, to substantially cover the open area of the securing mechanism

holding area. Each of the securing mechanisms 268 includes a standard drive head pattern (e.g., Phillips, straight blade, star, Allen wrench, etc.) or a custom drive head pattern, which requires a proprietary tool for securing and unsecuring plates.

Figure 82 illustrates a cross-sectional side view diagram of an embodiment of a securing mechanism 268 for removable plates of an adjustable athletic positioning sole and/or insole. The securing mechanism 268 includes a threaded bolt section 280, a fastening ledge 282, a pressure fit ring 284, and a threaded receptacle 286. The thread count may be any number so long as at least one full turn is required to secure the plates together. The fastening ledge presses against the inside edge of the plate as it is screwed into the threaded receptacle of the securing mechanism of the other plate, which presses against the notched receptacle 272.

Figure 83 illustrates an expanded cross-sectional side view diagram of another embodiment of an adjustable athletic positioning sole 10 and/or insole 12 at one of the securing mechanisms 268 of the pattern of securing mechanisms. The adjustable insole and/or sole includes a fixed upper plate 244, one or more removable plates 242, and a lower plate 240. The fixed upper plate 244 includes a keyhole receptacle 290, which is illustrated in Figure 84, at one or more securing mechanism positions of the securing mechanism pattern. Each of the removable plates includes a keyhole receptacle and a mating peg 292 at one or more securing mechanism positions of the securing mechanism pattern. The lower plate 240 includes a mating peg 292 at one or more securing mechanism positions of the securing mechanism pattern.

Figure 85 illustrates a cross-sectional side view diagram of another embodiment of an adjustable athletic positioning sole 10 and/or insole 12 at one of the securing mechanisms 268 of the pattern of securing mechanisms. In this example, the mating pegs 292 are inserted and moved into position to provide mechanical coupling of the plates together. In an example, the keyhole 290 and peg assembly 292 may be used at the big toe – ball of foot area when the material thinner and the securing mechanism of Figures 81 and 82 would be used at other securing mechanism positions.

Figure 86 illustrates a cross-sectional front view diagram of another embodiment of an athletic positioning sole 10 and/or insole 12 that includes a recoil component. The recoil component may be achieved by including a series of springs, stiffened memory foam, and/or resilient rubber material. The recoil component may have one of the athletic positioning shapes or it may be a layer in an athletic positioning sole and/or insole.

The recoil component functions to provide a recoil force 300 after a foot force 302 is removed. The force may be in the opposite direction of the foot force or at some angle thereof.

Figure 87 illustrates a cross-sectional front view diagram of another embodiment of an athletic positioning sole 10 and/or insole 12 that includes a recoil component within a housing. The recoil component may have one of the athletic positioning shapes or it may be a layer in an athletic positioning sole and/or insole. The recoil component 310 including a series of springs, stiffened memory foam, and/or resilient rubber material that have more recoil force on the outer edge of the shoe 312 versus the inner edge of the shoe 314. In this manner, the direction of the recoil force is not opposite that of the foot force, but more horizontal and in the direction from the outside of the shoe to the inside of the shoe.

Figure 88 illustrates a cross-sectional front view diagram of another embodiment of an athletic positioning sole 10 and/or insole 12 that includes a recoil layer 320, a base layer 322, and a foot layer 324. The base layer 322 includes one of the athletic positioning shapes and may be comprises of one or more rigid materials and/or one or more compressible materials. The foot layer may include arch support and may include a relatively flat shape or it may include one of the athletic positioning shapes. In addition, the foot layer 324 may be comprised of one or more compressible materials. The recoil layer 320 includes one or more recoil materials and may include a relatively flat shape or it may include one of the athletic positioning shapes.

Figure 89 illustrates a cross-sectional front view diagram of another embodiment of a shoe that includes an athletic positioning sole 10, an athletic positioning insole 12, and an upper shoe 330. From the font perspective, the upper shoe 330 forms a toe box around and over the toe area. From a side perspective, the upper shoe 330 forms the remainder of the shoe for containing the foot. The upper shoe 330 may include one or more materials (e.g., leather, a synthetic material, plastic, cotton, a wicking material, etc.) to form the sides, heel, tongue, and/or toe areas of the shoe. The upper shoe 330 may further include a toe cover area of material similar to that of the sole 10, which provides at least a portion of the toe box.

In this embodiment, the insole comprises a compressible material, which, under a load of the wearer, compresses by a few millimeters to 10 or more millimeters. The upper shoe 330 is mechanically coupled (e.g., stitched, glued, fused, stapled, etc.) to the insole and/or sole such that, as the insole 12 compresses and decompresses, the upper shoe moves accordingly to maintain the toe box at a desired size and/or shape. For example, the upper shoe 330 is mechanically coupled to the upper portion of the insole 12, which is within a vertically extended outersole portion of the sole 10, such that the upper shoe 330 moves with the compression and decompression of the insole 12.

As another example, the upper shoe includes a compressible coupling section for mechanically coupling to the sole 10 and/or insole 12. As the insole 12 compresses and decompresses, the compressible coupling section, which includes a compressible material, compresses and decompresses similarly. In this manner, the size and/or shape of the toe box is substantially maintained.

Figure 90 illustrates a cross-sectional front view diagram of another embodiment of a shoe that includes a sole 10, an insole 12, and an upper shoe 330. The insole 12 and/or sole 10 are/is adjustable and at least a portion of the sole and insole has a shape corresponding to one of the athletic positioning shapes. The upper shoe 330 may include one or more materials (e.g., leather, a synthetic material, plastic, cotton, a wicking

material, etc.) to form the sides, heel, tongue, and/or toe areas of the shoe. The upper shoe 330 may further include a toe cover area of material similar to that of the sole 10, which provides at least a portion of the toe box.

The upper shoe 330 is mechanically coupled to the sole/insole assembly such that, as the sole/insole assembly is adjusted, the upper shoe maintains a desires size and shape of the toe box. For example, the upper shoe 330 is mechanically coupled to the upper portion of the sole/insole assembly, which is within a vertically extended outersole portion of the sole, such that the upper shoe tracks the adjustment of the sole/insole assembly.

Figure 91 illustrates a cross-sectional front view diagram of another embodiment of a sole/insole assembly that includes a sole 10, an athletic positioning insole 340, and an arch support 342. The sole may include a conventional sole design for a specific sport (or other use) or it may include one of the athletic positioning shapes discussed herein. In addition, the sole 10 may be comprised of a conventional sole material and/or one or more rigid materials. Note that the conventional sole material and the rigid materials are not mutually exclusive.

The athletic positioning insole 340 has a shape corresponding to one of the athletic positioning shapes, may be adjustable, and is comprised of one or more rigid materials, one or more recoil materials, and/or one or more compressible materials. The athletic positioning insole may be mechanically coupled to the sole or it may just rest on the sole (i.e., not glued, stitched, fused, etc.).

The arch support may be integrated into the athletic positioning insole 340 or it may be a separate piece that is mechanically coupled to the sole and/or insole or rests on the sole and/or insole. The arch support may be shaped to compensate for one or more of flat feet, plantar fasciitis, high arches, low arches, pronation, supination, etc. The arch support 342 may be of a custom design, a conventional design, etc. and/or may be

comprised of one or more of a graphite material, leather, a rigid material, a compressible material, etc.

Figure 92 illustrates a cross-sectional front view diagram of another embodiment of a sole/insole assembly that includes an athletic positioning sole 10 and an insole 12 with an integrated arch support 342. The sole 10 includes one of the athletic positioning shapes discussed herein and may be adjustable. In addition, the sole 10 may be comprised of a conventional sole material and/or one or more rigid materials. Note that the conventional sole material and the rigid materials are not mutually exclusive.

The insole 12 has a conventional insole shape or a shape corresponding to one of the athletic positioning shapes and has an arch support integrated therein. The arch support may be shaped to compensate for one or more of flat feet, plantar fasciitis, high arches, pronation, supination, etc. The insole with the integrated arch support 342 may be of a custom design, a conventional design, etc. and may be comprised of one or more of a graphite material, leather, a rigid material, a compressible material, etc.

Figures 93 and 94 illustrate a cross-sectional front view diagram and a cross-sectional side view diagram of another embodiment of an integrated athletic positioning sole and insole. The integrated sole 10 and insole 12 is comprised of one or more materials that provides a more compressible area towards the big toe/ball of foot area and increasingly less compressible away from the big toe/ball of foot area to facilitate an athletic position. The integrated sole and insole may be adjustable to adjust the athletic position (e.g., include removable plates, air bladders, etc.).

For example, the integrated sole and insole may include a rigid material as an outersole (e.g., a sport specific bottom) to provide a base. On top of the base, the integrated sole and insole includes one or more varying compressible materials. For example, the next layer is a single resilient material (e.g., rubber, gel, foam, synthetic material, etc.) of varying density to provide a compressible gradient. As another example, the next layer includes a plurality of materials, each having a shape to

collectively provide the athletic positioning shape. In addition, at least some of the materials have a different level of compressibility to facilitate the compressible gradient.

The integrated sole and insole may further include an insole cover layer and/or an arch support cover layer. The insole cover layer may be of a compressible material to provide a more comfortable fit. The arch support may be shaped to compensate for one or more of flat feet, plantar fasciitis, high arches, pronation, supination, etc. The arch support may be of a custom design, a conventional design, etc. and may be comprised of one or more of a graphite material, leather, a rigid material, a compressible material, etc.

Figure 95 illustrates a cross-sectional front view diagram of another embodiment of an integrated athletic positioning sole and insole. The integrated sole and insole is comprised of a flexible and resilient material that creates a chamber (which may be filled with gel, air, another liquid material, oil, water, etc), which provides a more compressible area towards the big toe/ball of foot area 350 and increasingly less compressible away from the big toe/ball of foot area 352 to facilitate an athletic position. The material may be one or more of rubber, a synthetic material, plastic, fiberglass, carbon fiber, etc. In addition, the integrated sole and insole may be adjustable to adjust the athletic position (e.g., include removable plates, air bladders, etc.). Further, the integrated sole and insole may include an outsole of a rigid material (e.g., a sport specific bottom).

As shown, the walls of the integrated sole and insole are thicker on the outer edge 352of the shoe than on the inner edge of the shoe 350. As such, the outer edge of the sole/insole is less compressible than the inner edge. Similarly, the walls of the sole/insole at big toe & ball of foot area is thinner than the walls towards the heel of the shoe. Accordingly, when a shoe that includes the present insole/sole assembly is worn, the more compressible areas on the insole/sole assembly compress more than the less compressible areas, putting the wearer in an athletic position (e.g., one or more of heel higher than toes, knees bent, more weight on big toe &/or ball-foot, more weight on inside of leg versus outside of leg, etc.).

Figure 96 illustrates a cross-sectional front view diagram of another embodiment of an integrated athletic positioning sole and insole. The integrated sole and insole is comprised of a flexible and resilient material and includes a plurality of supporting columns and/or panels. The columns and/or panels create a plurality of chambers (which may be filled with gel, air, oil, another liquid material, water, etc). The number and/or thickness of the columns and/or panels is greater at the outer edge 362 of the shoe than on the inner edge of the shoe 360, which provides a more compressible area towards the big toe/ball of foot area and increasingly less compressible away from the big toe/ball of foot area. The material may be one or more of rubber, a synthetic material, plastic, fiberglass, carbon fiber, etc. In addition, the integrated sole 10 and insole12 may be adjustable to adjust the athletic position (e.g., include removable plates, air bladders, etc.). Further, the integrated sole and insole may include an outsole of a rigid material (e.g., a sport specific bottom).

As shown, the number of columns is greater at the outer edge of the shoe than at the inner edge of the shoe. As such, the outer edge 362 of the sole/insole is less compressible than the inner edge 360. Similarly, the number of columns and/or the thickness of the columns is less at the sole/insole at big toe & ball of foot area than the number and/or thickness of columns towards the heel of the shoe. Accordingly, when a shoe that includes the present insole/sole assembly is worn, the more compressible areas on the insole/sole assembly compress more than the less compressible areas, putting the wearer in an athletic position.

Figure 97 illustrates a cross-sectional front view diagram of another embodiment of an athletic positioning sole/insole assembly that includes a sole10, an insole 12, a rigid outer edge 362, and padding 360. The insole 12 has a conventional insole shape or a shape corresponding to one of the athletic positioning shapes. The insole 12 may have an arch support integrated therein, where the arch support is shaped to compensate for one or more of flat feet, plantar fasciitis, high arches, pronation, supination, etc. In addition, the insole may be comprised of one or more of a graphite material, leather, a rigid material, a compressible material, etc.

The sole 10 includes a conventional shape or a shape corresponding to one of the athletic positioning shapes. In addition, the sole may be adjustable and may be comprised of a conventional sole material and/or one or more rigid materials. Note that the conventional sole material and the rigid materials are not mutually exclusive.

The sole 10 may further include an outersole (e.g., sport specific bottom) that includes an inner supporting wall 364 and may further include the rigid outer edge 362. The outersole may be comprised of a conventional sole material and/or of one or more rigid materials. Regardless of the material, the inner supporting wall is, at least on the inside edge by the toe, substantially perpendicular to the slope of the insole/sole assembly to minimize pinching of the big toe and/or the ball-of-foot. Similarly, the rigid outer edge 362 (or wall) is, at least on the inside edge by the little toe, substantially perpendicular to the slope of the insole/sole assembly to provide a rigid surface to push against when a lateral force is applied (i.e., the horizontal or near horizontal force component of the foot force during an athletic move) and/or to minimize a "give" of the shoe (e.g., foot sliding in the shoe, which may detract from the athletic move). Note that there may be padding on the inside of the rigid outer wall and/or on the inside of the inside supporting wall.

Alternatively, the rigid outer edge 362 may be coupled to, or integrated into, the insole 12. In this alternative, the outersole would further include an outer supporting wall 364, which is outside of the rigid outer edge 362. In this instance, both the rigid outer edge 362 and the outer supporting wall 364 provide a rigid surface to push against for the lateral force.

Figure 98 illustrates a cross-sectional front view diagram of another embodiment of a sole/insole assembly that includes an athletic positioning sole 10 and an insole 12. The insole 12 has a conventional insole shape and may be comprised of a compressible material. In addition, the insole may include an arch support integrated therein, where

the arch support is shaped to compensate for one or more of flat feet, plantar fasciitis, high arches, pronation, supination, etc.

The sole 10 includes a shape corresponding to one of the athletic positioning shapes. In addition, the sole may be adjustable and may be comprised of a conventional sole material and/or one or more rigid materials. Note that the conventional sole material and the rigid materials are not mutually exclusive.

Figure 99 illustrates a cross-sectional front view diagram of another embodiment of a shoe that includes an athletic positioning sole 10, an insole 12, and a shoe housing 372. The sole 10 and insole 12 are similar to the sole 10 and insole 12 of Figure 98. The shoe housing 372 (e.g., the shoe upper) includes a decompressible material (e.g., similar material to a compressible material, but its normal state is compressed as opposed to decompressed) on the inside of the shoe housing 372.

When the shoe is place on a foot and with minimal foot force, the compressible material insole is not substantially compressed and the decompressible material is substantially compressed. When a foot force is applied (e.g., wearer of the shoe is standing, running, et.), the compressible insole compresses and, when the foot force is removed (e.g., foot off ground), the compressible insole decompresses. As the foot force varies from minimal force (e.g., foot off ground) to maximal force (e.g., leg on ground while running), the compression of the compressible insole varies proportionally.

The compression and/or decompression of the decompressible material during the variations of the foot force depend on how the shoe housing is anchored 374 (e.g., mechanically coupled) to the sole/insole assembly. In this figure, the shoe housing 372 is anchored 374 to the top of the compressible material; as such the shoe housing moves with the compression and decompression of the compressible insole. The decompressible material, however, stays in the substantially compressed state.

Figure 100 illustrates the shoe housing anchored to the rigid sole 374. In this example, the shoe housing does not move with the compression and decompression of the compressible insole. Accordingly, the decompressible material decompresses as the compressible insole compresses and the decompressible material compresses as the compressible insole decompresses. In either of the examples of Figures 99 and 100, the decompressible material facilitates a snug fit of the shoe, which may reduce loss energy during an athletic move that results from a loose fitting shoe.

Figures 101 and 102 illustrate a cross-sectional front view diagram of another embodiment of a sole/insole assembly that includes a dynamic athletic positioning sole-insole and a sport specific bottom (e.g., an outersole). The athletic positioning sole-insole has a shape corresponding to one of the athletic positioning shapes, which is adaptable based on the force applied.

As shown in Figure 101, when a downward force (e.g., approximately perpendicular to the sport specific bottom 190 or slightly off perpendicular from the outer edge to the inner edge) is applied to the insole/sole assembly during a forward or backward movement (e.g., running, walking, jumping, etc. in a forward or backward direction), the angle from the outside edge of the shoe to the inside edge of shoe is of a first value (e.g., Ø1). The first value of the angle may be in the range of near zero degrees to less than 10 degrees to simulate a more conventional insole/sole assembly for forward/backward movements. In addition, the angle between the big toe/ inner ball of foot area and the heel may be in the range of near zero degrees to less than 10 degrees to simulate a more conventional insole/sole assembly for forward/backward movements.

As shown in Figure 102, when a force (e.g., off perpendicular from the inner edge to the outer edge) is applied to the insole/sole assembly during a lateral movement (e.g., pitching, hitting, making a cut while running, etc.), the angle from the outside edge of the shoe to the inside edge of shoe is of a second value (e.g., Ø2). The second value of the angle may be in the range of a fraction of a degree to 10-20 degrees (or more) to provide an athletic position for lateral movements. In addition, the angle between the big toe/

inner ball of foot area and the heel may be in the range of a fraction of a degree to 10 – 20 degrees (or more) to provide an athletic position for lateral movements.

Figure 103 illustrates a cross-sectional front view diagram of an embodiment of the varying athletic positioning sole/insole assembly of Figure 101 and 102. The sole/insole assembly includes an elastic housing 380, a plurality of support and pressure shifting panels 382, and a liquid material 384. The elastic housing 380 is comprised of an elastic material such as one or more of rubber, a synthetic material, plastic, etc. In addition, the elastic housing 380 may be more elastic at the outer edge of the sole/insole assembly (and towards the heel) and less elastic at the inner edge of the sole/insole assembly towards the big toe/inner ball of foot area.

In a no load, steady-state condition, the flaps of the panels are closed and the liquid material is approximately equally distributed in the chambers between the panels. Note that equal distribution of the liquid material (e.g., gel, water, an oil, etc.) may be volume based and/or based on substantially equal pressure applied on the panels. In this state, the sole/insole assembly has a shape corresponding to one of the athletic positioning shapes.

Figures 104 and 105 illustrate a side view diagram and a cross-sectional view diagram of an embodiment of a panel of the sole/insole assembly of Figure 103. The panel includes a plurality of larger release holes 390, a plurality of larger release flaps 392, a plurality of smaller release holes 394, and a plurality of smaller flaps 396. The panel 398 may be comprised of a semi rigid, elastic, and resilient material such as one or more of rubber, a synthetic material, plastic, etc.

The larger 392 and smaller flaps 396 are comprised of the substantially the same semi rigid, elastic, and resilient material as the panel and function to block flow of the liquid material through the corresponding release hole in one direction and enable flow of the liquid material through the corresponding release hole in the opposite direction. The

size of the holes and/or the ratio between the sizes of the holes is dependent on the desired levels of flow of the liquid material in the given directions.

Figure 106 illustrates a cross-sectional front view diagram of another embodiment of the sole/insole assembly of Figure 103 under a force (e.g., due to a lateral movement) as shown. In this example, more force 400 is being applied at the big toe and inner ball of foot area than at the outer edge. This puts greater force on the chambers below the big toe and inner ball of foot area than in the chambers under the outer edge of the foot. Once the pressure between an inner chamber and an adjacent outer chamber exceeds a rigidity factor of the larger flaps (e.g., a measure of how much force is needed for the flap to open), the flaps open and the liquid material 384 flows through the corresponding larger holes from the inner chamber to the adjacent outer chamber.

In this load condition, the panels under the big toe and ball of foot area are compressed. Conversely, the panels under the outer edge of the sole/insole assembly are expanded. In addition, since the elastic housing 380 is more elastic at the outer edge of the sole/insole assembly than at the inner edge, the liquid material 402 expands the outer chambers 404 more readily than the inner chambers 406. Accordingly, the angle form the outer edge to the inner edge increases with respect to the angle during the no load steady-state condition. To insure that the hole do not close during such forces, the holes may include grommets to hold their shape.

If too much pressure builds up in the outer chambers versus an adjacent inner chamber, one or more of the smaller flaps may open to allow the liquid material to flow to the adjacent inner chamber. Note that ratio between the larger holes and the smaller holes favors flow 410 of the liquid material from the inner chambers to the outer chambers. Further note that when the force is removed (e.g., return to a no load steady state), the larger flaps close and some of the smaller flaps open until the no load steady state condition is substantially achieved.

Figure 107 illustrates a cross-sectional front view diagram of another embodiment of the sole/insole assembly of Figure 103 under a force 400 (e.g., due to a forward or backward movement or on the outer edge of the shoe) as shown. In this example, less force 400 is being applied at the big toe and inner ball of foot area than at the outer edge. This puts less force on the chambers below the big toe and inner ball of foot area than in the chambers under the outer edge of the foot. Once the pressure between an outer chamber and an adjacent inner chamber exceeds a rigidity factor of the larger flaps 382 (e.g., a measure of how much force is needed for the flap to open), the flaps open and the liquid material flows 410 through the corresponding smaller holes from the outer chamber to the adjacent inner chamber.

In this load condition, the panels under the big toe and ball of foot area are substantially uncompressed. Conversely, the panels under the outer edge of the sole/insole assembly are compressed. In addition, since the elastic housing 380 is more elastic at the outer edge of the sole/insole assembly than at the inner edge, the liquid material contracts the outer chambers less readily than the inner chambers. Accordingly, the angle form the outer edge to the inner edge decreases (or at least stays approximately the same) with respect to the angle during the no load steady-state condition.

If too much pressure builds up in the inner chambers versus an adjacent outer chamber, one or more of the larger flaps may open to allow the liquid material to flow to the adjacent outer chamber. Note that when the force is removed (e.g., return to a no load steady state), the smaller flaps close and some of the larger flaps open until the no load steady state condition is substantially achieved.

Figure 108 illustrates a cross-sectional side view diagram of another embodiment of the sole/insole assembly of Figure 103 in the no load steady state condition. From a side perspective, the sole/insole assembly includes the elastic housing 380, a plurality of support panels 420, the plurality of support and pressure shifting panels 382, and the liquid material 384. The plurality of support panels 420 is located under the heel platform and provides substantially equal support for the heel. In the heel section 21, the

panels do not includes release holes or flaps, so the liquid material 384 does not flow between the chambers of the heel section.

Under the support platform for the remainder of the foot, and in the no load, steady-state condition, the flaps of the panels are closed and the liquid material 384 is approximately equally distributed in the chambers between the panels. Note that equal distribution of the liquid material 384 (e.g., gel, water, an oil, etc.) may be volume based and/or based on substantially equal pressure applied on the panels. In this state, the sole/insole assembly has a shape corresponding to one of the athletic positioning shapes.

Figure 109 illustrates a cross-sectional side view diagram of another embodiment of the sole 10/insole 12 assembly of Figure 103 under a force 400 (e.g., due to a lateral movement or forward/backward movement) as shown. In this example, more force 400 is being applied at the big toe and ball of foot area than near the heel. This puts greater force on the chambers below the big toe and ball of foot area than in the chambers under the heel. Once the pressure between a forward chamber and an adjacent rearward chamber exceeds a rigidity factor of the larger flaps (e.g., a measure of how much force is needed for the flap to open), the flaps open and the liquid material 384 flows through the corresponding larger holes from the forward chamber to the adjacent rearward chamber.

In this load condition, the panels 382 under the big toe and ball of foot area are compressed. Conversely, the panels under the near heel section are expanded. In addition, since the elastic housing is more elastic at the near heel section of the sole/insole assembly than at the toe section 25, the liquid material 384 expands the rearward chambers more readily than the forward chambers. Accordingly, the angle form the near heel section to the toe section 25 increases with respect to the angle during the no load steady-state condition.

If too much pressure builds up in the rearward chambers versus an adjacent forward chamber, one or more of the smaller flaps may open to allow the liquid material 384 to flow to the adjacent forward chamber. Note that that when the force 400 is

removed (e.g., return to a no load steady state), the larger flaps close and some of the smaller flaps open until the no load steady state condition is substantially achieved.

Figure 110 illustrates a cross-sectional top view diagram of another embodiment of the sole/insole assembly of Figure 103. The heel section 21 includes fixed chambers 430 that do not allow the liquid material 384 to flow between the heel section chambers. The remaining sections of the sole/insole assembly include chambers that have panels 382 that allow the liquid metal to flow between the chambers. To promote an athletic position, the panels are orientated such that the flow of the liquid material favors the direction of the arrow during a lateral movement.

Figure 111 illustrates a cross-sectional heel view diagram of another embodiment of a varying positioning athletic positioning sole/insole assembly, which includes a sole 10, an insole 12, and a sport specific bottom 190. The sole 10 may include a conventional sole design for a specific sport (or other use) or it may include one of the athletic positioning shapes. In addition, the sole may be comprised of a conventional sole material and/or one or more rigid materials. Note that the conventional sole material and the rigid materials are not mutually exclusive.

The insole 12 may have a conventional insole shape or a shape corresponding to one of the athletic positioning shapes. The insole may be adjustable and is comprised of one or more rigid materials, one or more recoil materials, and/or one or more compressible materials. The insole may be mechanically coupled to the sole or it may just rest on the sole (i.e., not glued, stitched, fused, etc.) and may further include an integrated arch support.

From the heel perspective, the sole/insole assembly further includes an inward slope from a near middle point to the inner edge, which has an angle (e.g., Ø1). The angle may be in the range of a fraction of a degree to about 10 degrees. When a forward or backward movement force is applied to the sole/insole assembly, the non-angled section primarily supports the heel, which remains substantially parallel to the bottom of

the sole/insole assemble. When a lateral movement force is applied, the angled section at least partially supports the heel such that a greater inward angling of the foot is achieved during athletic positioning.

Figure 112 illustrates a cross-sectional front view diagram of another embodiment of a varying positioning athletic positioning sole/insole assembly that includes an outersole, a sole-insole section, and an inner sole. The outersole may be a sport specific bottom, a casual shoe bottom, or a dress shoe bottom. The inner sole includes a rigid-flexible platform that may include a padding layer and/or an arch support layer.

The sole/insole section includes a rigid material section 142 and an easily compressible section 140. The rigid material section is comprised of one or more rigid materials and has a shape corresponding to one of the athletic positioning shapes. The easily compressible section is comprised of one or more easily compressible materials (e.g., foam, memory foam, soft rubber, a housing filled with a liquid material, etc.) and has a mating shape to that of the rigid material section 142 such that, under a no load condition, the combination of the rigid material section and the easily compressible material section provide a conventional soul shape or a slight athletic positioning shape (e.g., angles less than a few degrees).

Under a forward or backward movement force 440, the easily compressible material compresses slightly, such that the sole/insole assembly substantially maintains its no load shape. This condition is achieved by having more of the force 400 supported by the flat section of the rigid material section than the angled section.

Figure 113 illustrates a cross-sectional front view diagram of another embodiment of a varying positioning athletic positioning sole/insole assembly of Figure 112 under a lateral movement force 442. In this diagram, the angled section of the rigid material 142 is supporting more of the force than that being supported by the flat section such that the easily compressible material 140 compresses and the inner sole tilts. The tilting of the

inner sole facilitates an athletic positioning. Note that the inner sole may be somewhat flexible to allow it to conform to the athletic positioning shape.

Figure 114 illustrates a cross-sectional front view diagram of another embodiment of a varying positioning athletic positioning sole/insole assembly that includes an outersole, a sole-insole section, and an inner sole. The outersole may be a sport specific bottom, a casual shoe bottom, or a dress shoe bottom. The inner sole includes a rigid-flexible platform that may include a padding layer and/or an arch support layer.

The sole-insole section includes a rigid material section 142 and an easily compressible section 140. The rigid material section 142 is comprised of one or more rigid materials and has a basic shape corresponding to one of the athletic positioning shapes, but has two angles for the angled support platform. The easily compressible section 140 is comprised of one or more easily compressible materials (e.g., foam, memory foam, soft rubber, a housing filled with a liquid material, etc.) and has a mating shape to that of the rigid material section such that, under a no load condition, the combination of the rigid material section and the easily compressible material section provide a conventional soul shape or a slight athletic positioning shape (e.g., angles less than a few degrees).

Under a forward or backward movement force 440, the easily compressible material 140 compresses slightly, such that the sole/insole assembly substantially maintains its no load shape. This condition is achieved by having more of the force supported by the flat section of the rigid material section 142 than the angled section.

Figure 115 illustrates a cross-sectional front view diagram of another embodiment of a varying positioning athletic positioning sole/insole assembly of Figure 114 under a lateral movement force 442. In this diagram, the angled sections of the rigid material are supporting more of the force than the flat section such that the easily compressible material 140 compresses and the inner sole tilts. The more lateral movement force the

greater the tilt of the inner sole. The tilting of the inner sole facilitates an athletic positioning.

Figures 116 - 118 illustrate a side view diagram, a front view diagram, and an isometric view diagram of an embodiment of a training shoe that includes an athletic positioning sole. The sole 10 includes an angled notch portion to facilitate achieving the desired athletic position. The angles of the angled notch portion may be greater than the angles of an insole/sole assembly to accentuate training the body to achieve a desired athletic positioning.

Figures 119 - 121 illustrate a side view diagram, a front view diagram, and a bottom view diagram of another embodiment of a training shoe that includes an athletic positioning sole. The sole 10 includes an athletic positioning shape to facilitate achieving the desired athletic position. The angles of the athletic positioning shape may be greater than the angles of an insole/sole assembly to accentuate training the body to achieve a desired athletic positioning.

Figures 122 and 123 illustrate a side view diagram and a front view diagram of an embodiment of baseball spikes that include an athletic positioning spike pattern. The baseball spikes include an insole/sole assembly, an outersole, and an upper shoe (not shown). The insole/sole assembly includes a sole 10 and an insole 12. The sole 10 may include a conventional sole design or it may include one of the athletic positioning shapes. In addition, the sole 10 may be comprised of a conventional sole material and/or one or more rigid materials. Note that the conventional sole material and the rigid materials are not mutually exclusive.

The insole 12 may have a conventional insole shape or a shape corresponding to one of the athletic positioning shapes. The insole may be adjustable and is comprised of one or more rigid materials, one or more recoil materials, and/or one or more compressible materials. The insole may be mechanically coupled to the sole or it may

just rest on the sole (i.e., not glued, stitched, fused, etc.) and may further include an integrated arch support.

The spikes may have differing heights to form one of the athletic positioning shapes. Accordingly, the spikes underneath the heel are the longest and the spike or spikes underneath the big toe and/or inner ball of foot are the shortest. The other spikes are of a length between the longest and shorted depending on their position. Note that the spikes may be metal spikes, plastic cleats, changeable plastic cleats, and/or a combination thereof. Further note that the same concept applies to football cleats, soccer cleats, golf shoes, track shoes, and any other sport shoes that include cleats and/or spikes.

Figure 124 illustrates a bottom view diagram of another embodiment of baseball spikes that include spike pattern for the drive leg of a pitcher. The spike pattern may also include the athletic positioning pattern of Figures 122 and 123. The baseball spikes may also include the sole/insole assembly of Figures 122 and 123.

The pitcher drive leg spike pattern includes two or three spikes aligned with the big toe and the inner ball of the foot. This row of spikes may be used to engage the pitching rubber such that multiple spikes are engaging the rubber. The pitcher drive leg spike pattern further includes two or three spikes along the outer edge of the toe and ball of foot area. These spikes may be linearly aligned, may be positioned along a line that outlines the outer edge of the toes and ball of foot, or may be positioned in another manner. A set of heel spikes may be positioned in a conventional manner. Note that the pitcher's drive leg spike pattern does not include a spike at the top of the shoe under the middle toe(s). Further note that the spikes may be metal spikes and/or plastic cleats.

Figure 125 illustrates a bottom view diagram of another embodiment of baseball spikes that includes a spike pattern for the plant leg of a pitcher. The spike pattern may also include the athletic positioning pattern of Figures 122 and 123. The baseball spikes may also include the sole/insole assembly of Figures 122 and 123.

The spike pattern for the plant leg of pitcher includes a conventional heel spike configuration and a ball of foot & toe pattern to firmly plant the spikes into the pitching mound. The ball of foot & toe spike pattern may be as shown.

Note that a pair of baseball spikes may include outer-soles that allow for the spike pattern to be changed depending on whether the wearer is left-handed or right-handed. For example, a left-handed pitcher would configure the spike pattern of Figure 124 for his/her left foot and the spike pattern of Figure 125 for his/her right foot. Conversely, a right-handed pitcher would configure the spike pattern of Figure 125 for his/her right foot and the spike pattern of Figure 125 for his/her left foot.

Figures 126 and 127 illustrate heel view diagrams of another embodiment of baseball spikes of Figures 122 – 125 engaging a pitching rubber 460. As shown in Figure 126, the row of spikes 462 under the big toe and inner ball of foot area is engaging the rubber. As shown in Figure 127, the outer row of spikes 462 is engaging the rubber 460. Note that the angles of the spike pattern of figures 122 and 123 may be adjusted depending on whether the inner or outer row of spikes 462 is used to engage the rubber. For instance, if the inner row of spikes are used to engage the rubber 460, the angles of the spike pattern may be less than when the outer row of spikes 462 are used since the rubber adds to achieving the desired athletic positioning when the inner row of spikes 462 are engaging the rubber 460.

Figure 128 illustrates a diagram of an embodiment of a spike for baseball spikes. The baseball spikes may include a spike pattern of one or more of Figures 122-127 and may further include the sole/insole assembly of Figures 122 and 123. In this embodiment, one or more of the spikes 462 that engage the rubber 460 includes a notch to facilitate a secure engagement with the rubber 460. The notch may be along a major edge of the spike 462 (e.g., a rear view of the spike is shown in the present figure). Alternatively, the spike may include one or more sides (forming an L or a C shape from a top perspective) where one or more of the sides include the notch.

In another embodiment, the spike pattern of Figure 124 further includes one or more spikes 462 that are perpendicular to the spikes at the big toe and/or ball of foot. The perpendicular spike(s) include a notch that is aligned with the inner row of spikes 462 to further improve engagement with the rubber 460.

Figure 129 illustrates a cross-section front view diagram of another embodiment of an insertable sole/insole assembly that may be inserted into a pair of sport specific shoes (e.g., baseball spikes). The insertable sole/insole assembly includes a sole 10, an insole 12, and may further include an arch support. The sole 10 may include a conventional sole design for a specific sport (or other use) or it may include one of the athletic positioning shapes discussed herein. In addition, the sole 10 may be comprised of a conventional sole material and/or one or more rigid materials. Note that the conventional sole material and the rigid materials are not mutually exclusive.

The insole 12 includes a conventional insole shape or it has a shape corresponding to one of the athletic positioning shapes. The insole 12 may be adjustable and is comprised of one or more rigid materials, one or more recoil materials, and/or one or more compressible materials. The insole 12 may be mechanically coupled to the sole 10 or it may just rest on the sole 10 (i.e., not glued, stitched, fused, etc.). The arch support may be integrated into the athletic positioning insole or it may be a separate piece that is mechanically coupled to the insole or rests on the insole. The insertable sole/insole assembly may be used in combination with one or more of the heel attachments of Figures 130 – 139 to modify a conventional pair of baseball spikes into athletic positioning baseball spikes.

Figures 130 - 132 illustrate a side view diagram and a bottom view diagram of an embodiment of an athletic positioning heel attachment for baseball spikes. The heel attachment 472 includes a height, width, and depth to raise the heel of the baseball spikes with respect to the toe of the spikes by 5-20 mm. In addition, the heel attachment 472 may include one or more notches or holes to clear one or more of the spikes on the heel section 470 of the baseball spikes. Further, the heel attachment 472 may be comprised of

one or more of the rigid materials and may be mechanically coupled (e.g., glued, stitched, riveted, fused, etc.) to the heel of the baseband spikes.

Figure 133 illustrates a bottom view diagram of another embodiment of an athletic positioning attachment for baseball spikes that attaches to the outer edge of the ball of foot and toe section of the baseball spikes. The athletic positioning attachment 480 has a shape corresponding to the non-heel section of one of the athletic positioning shapes. In addition, the athletic positioning attachment may include one or more notches or holes to clear one or more spikes of the baseball spikes. Further, the athletic positioning attachment may be comprised of one or more of the rigid materials and may be mechanically coupled (e.g., glued, stitched, riveted, fused, etc.) to the heel of the baseband spikes.

Figure 134 illustrates a heel view diagram of another embodiment of an athletic positioning attachment for baseball spikes. In this diagram, the athletic positioning attachment 490 is attached to a pitcher's drive leg baseball spike to provide a desired athletic positioning of the drive leg.

Figure 135 illustrates a side view diagram of another embodiment of a heel attachment 472 and an athletic positioning attachment 490 attached to one of a pair of baseball spikes. The heel 472 and athletic positioning attachments 490 may be separate attachments as previously discussed with reference to Figures 130-134. Alternatively, the attachments may be a single attachment as discussed below.

Figures 136 - 138 illustrate a bottom view diagram, an inside view diagram, and an outside view diagram of an embodiment of an athletic positioning attachment for baseball spikes. The attachment 500 may have a shape corresponding to one of the athletic positioning shapes and may be comprised of one or more rigid materials. In addition, the attachment 500 may be mechanically coupled (e.g., glued, stitched, riveted, fused, etc.) to the outer-sole of the baseband spikes and may include one or more notches to provide clearance for one or more spikes.

Figure 139 illustrates a topological view diagram of an embodiment of an athletic positioning attachment of Figures 136 – 138. The attachment has a topology that ranges from a thickness of 1-4 mm under the ball of foot to 10-20 mm under the heel.

Figure 140 illustrates an isometric view diagram of an embodiment of a pitching training aid that includes a platform 510, a push-off platform that has one of the athletic positioning shapes, and a plurality of anchoring cleats 514. In an example, the training aid has dimensions that include a height (h1) of 20-50 mm, a second height (h3) of 5-20 mm, a width of 75-125 mm, a length of 250-350 mm, and corresponding angles (Ø2, Ø3, & Ø4).

In use, the pitching training aid is placed in front of the rubber and secured into the pitching mound via the anchoring cleats. The pitcher places his/her drive leg shoe on the training aid 512 (e.g., on the push-off platform) such that his/her big toe and/or ball of foot is positioned at the lowest point the training aid and the heel is positioned at a higher point. This will help place the pitcher's drive leg to be in an athletic position.

Figure 141 illustrates an isometric view diagram of another embodiment of a pitching training aid that includes one of the athletic positioning shapes, a notch for engaging the rubber (no notch shown), and a plurality of anchoring cleats 514. In an example, the training aid has dimensions that include a height (h1) of 20-50 mm, a second height (h3) of 5-20 mm, a width of 75-125 mm, a length of 250-350 mm, and corresponding angles (Ø2, Ø3, & Ø4).

In use, the pitching training aid is placed such that the notch engages the front edge of the rubber. The training aid is secured the pitching mound via the anchoring cleats 514. The pitcher places his/her drive leg shoe on the training aid 512 such that his/her big toe and/or ball of foot is positioned at the lowest point the training aid and the heel is positioned at a higher point.

Figure 142 illustrates an isometric view diagram of an embodiment of a pitching rubber that includes a left-handed side and a right-handed side. Each side includes one of the athletic positioning shapes to facilitate achieving an athletic position for pitching. The pitching rubber may further include a ledge to ensure a proper height for engaging the athletic positioning ends of the rubber.

Figure 143 illustrates an isometric view diagram of another embodiment of a pitching rubber that includes a left-handed middle section and a right-handed middle section. Each middle section includes one of the athletic positioning shapes to facilitate achieving an athletic position for pitching. The pitching rubber may further include a ledge to ensure a proper height for engaging the athletic positioning ends of the rubber.

Figures 144 and 145 illustrate a top view diagram and a cross-section front view diagram of an embodiment of a shoe that includes an athletic positioning insole/sole assembly, an upper shoe 534, one or more tightening sections, and one or more securing mechanisms 526. The upper shoe 534 includes a toe cover section, sides, and an Achilles heel section. The one or more tightening sections include one or more flaps (one shown), where each flap includes one or more securing tabs attached thereto. A flap 532 may be comprised of a similar material as a tongue on a conventional shoe and/or of a similar material as at least a portion of the upper shoe 534.

The upper shoe 534 is attached to the one or more tightening sections via a hinged coupling mechanism 524 (e.g., a flexible and durable material mechanically coupling (e.g., stitched, glued, fused, stapled, riveted, etc.) the upper shoe 534 to the tightening section, a fabric hinge, a plastic and/or rubber hinge, etc.). The one or more securing mechanisms 526 (e.g., Velcro, buckles, shoe laces, hook & eyelets, clasps, etc.) include one mating element mechanically coupled to the vertical component of the outer-sole and/or to the sole/insole assembly on the inside edge of the shoe and another mating element mechanically coupled to the securing tabs 530 of the tightening section.

In use, the tightening section 532 is open to allow the wearer to easily insert his/her foot. Once the foot is placed within the shoe, the wearer pulls the tightening section 532 over the top of his/her foot. Due to the sole/insole assembly, the outer edge of the foot is higher than the inside edge (especially towards the toes and ball of foot areas) and the heel is higher than the toes and ball of foot areas. With this orientation of the foot, applying a force 400 from the outside edge to the inside edge while closing and fastening the tightening section 532 to the securing mechanism 526 provides a desired snug fit and may further promote the athletic positioning. Padding within the shoe provides added comfort.

Figure 146 illustrates a side view diagram of an embodiment of the shoe of Figures 144 and 145 with the one or more tightening sections 532 (e.g., pull over top) securely fastened to the one or more securing mechanisms 326, which are securely mounted on the vertical outer-sole section on the inside edge of the shoe. With the tightening section 532 securely fastened, it is applying a force from the outer edge of the shoe to the inner edge of the shoe, which provides the desired snug fit and promotes the athletic positioning.

Figures 147 and 148 illustrate side view diagrams of another embodiment of a shoe that includes an athletic positioning insole/sole assembly, an upper shoe, one or more tightening sections 532, and one or more securing mechanisms 526. The securing mechanism 526(s) includes an anchoring mechanism 548, a first set of hoops 560, a second set of hoops 546, a shoelace 544 (which are shown in Figure 147), and a hook section (which is shown in Figure 148).

The first set of hoops 550 (which may be eyelets, holes with grommets, etc.) is secured to the tightening section 532 and the second set of hoops 546 is secured to the sole or outersole and is horizontal offset from the first set of hoops. The shoelace 544 is woven through the sets of hooks and is anchored at one by the anchoring mechanism 548 (e.g., stitching, riveting, gluing, etc.) to the sole, outersole, or the toe box cover. The shoelace 544, which may have some to no elasticity, includes a holding tab 540 and a

hook 560 (or eyelet 564) at its other end. The hook section 560 (Figure 148) includes a plurality of hooks 560 arranged in a pattern (e.g., linearly aligned, aligned in an upward angle, aligned in a downward angle, equally spaced, unequally spaced, etc.) and includes a cover with a Velcro 568(or other) securing tab.

In use, the wearer provides slack to the shoelace 544 such that the tightening section 532 can be opened enough to enable the wearer to insert his/her foot into the shoe. In this position, the first set of hoops 546 is vertically offset from the second set of hoops 550. Once the foot is in the shoe, the wearer pulls the shoelace 544 via the holding tab 542, which causes the first set of hoops 546 to be pulled downward towards the second set of hoops 550. This motion causes the tightening section 532 to tighten around the foot. Once the wearer has achieved the desired snug fit, he/she couples the eyelet 564 of the shoelace 544 on one of the hooks 560 (Figure 148) to maintain the present fit of the shoe. The wearer then secures the hook cover 562 over the hooks 560. To remove the shoe, the wearer performs the process in reverse.

Figure 149 illustrates a side view diagram of another embodiment of shoe that includes an athletic positioning insole/sole assembly, an upper shoe, one or more tightening sections 532, and one or more securing mechanisms 526. The securing mechanism(s) 526 includes anchoring mechanisms 548, a first set of hoops 576, a second set of hoops 578, a third set of hoops 580, a first shoelace 582, a second shoelace 584, a first hook section 570, and a second hook section 572.

The first set of hoops 576 (which may be eyelets, holes with grommets, etc.) is secured to the tightening section 532; the second set of hoops 578 is free floating; and the third set of hoops 580 is secured to the sole or outersole. The first shoelace 582 is woven through the first 570 and second sets of hooks 572 and is anchored at one by the first anchoring mechanism 548 to the sole, outersole, or the toe box cover. The second shoelace 584 is woven through the second 578 and third sets of hooks 580 and is anchored at one by the second anchoring mechanism 548 to the sole, outersole, or the toe box cover.

Each of the shoelaces, which may have some to no elasticity, includes a holding tab and a hook 564 (or eyelet) at its other end. Each of the hook sections 560 includes a plurality of hooks arranged in a pattern (e.g., linearly aligned, aligned in an upward angle, aligned in a downward angle, equally spaced, unequally spaced, etc.). A shoe may further include a cover that covers the hook sections.

In use, the wearer provides slack to the shoelaces such that the tightening section 532 can be opened enough to enable the wearer to insert his/her foot into the shoe. In this position, the first set of hoops 576 is vertically offset from the second set of hoops, 578 which are vertically offset from the third set of hoops 580. Once the foot is in the shoe, the wearer pulls the second shoelace 584 via the holding tab, which causes the second set of hoops 578 to be pulled downward towards the third set of hoops 580. The wearer then pulls (or pulls contemporaneously) the first shoe via its holding tab, which causes the first set of hoops 576 to be pulled downward toward the second 578 and third set of hoops 580. These motions cause the tightening section to tighten around the foot. Once the wearer has achieved the desired snug fit, he/she couples the eyelets of the shoelaces on hooks 570 of the respective hook sections to maintain the present fit of the shoe. The wearer then secures the hook cover 562 over the hook sections. To remove the shoe, the wearer performs the process in reverse.

Figure 150 illustrates an isometric view diagram of another embodiment of shoe that includes an athletic positioning insole/sole assembly, an upper shoe 590, one or more tightening sections 532, and one or more securing mechanisms 526. The securing mechanism 526 may be any one or a combination of the securing mechanisms previously discussed. The tightening section 532 is shown as being an integral part of the upper shoe 590 to include one or more flaps 532 that pull over the top of the shoe towards the instep. The upper shoe 590 is further shown to include a tongue 592.

In use, the wearer unsecures the pull over flap (s) 532 from the securing mechanisms 526 or loosens the pull over flaps 532 from the securing mechanisms 526

depending on the type of the securing mechanism. In this condition, the wearer inserts his/her foot into the shoe and positions the tongue 592, if needed. Once the foot is inserted into the shoe, the wearer pulls the pull over flap(s) 532 and secures it/them using the securing mechanisms 526.

A shoe (sport, dress, casual, etc.) may be implemented using one or more of the concepts presented with reference to the preceding figures. For instance, a shoe may include a combination of concepts discussed with reference to different figures even if the discussion of one figure did not specifically mentioned that the concept(s) it is presenting can be combined with one or more concepts discussed with reference to another figure. In addition, one or more of the concepts presented with reference to one or more of the figures may be used in a stand alone athletic positioning insole, a standalone athletic positioning attachment, a standalone training aid, and/or in a combination thereof. Further, the concepts presented in the preceding figures may be diagramed for left footwear (e.g., sole, insole, bottom, sock, shoe, etc.) or right footwear. Regardless of which footed footwear is illustrated, the concepts apply equally to left footed footwear and to right footed footwear. Still further, a sole/insole assembly (i.e., a sole and an insole that individually or collectively have an athletic positioning shape) may be incorporated into any type of shoe along with other shoe parts (e.g., an outersole (e.g., a sport specific bottom), a upper shoe, a toe cover, etc.).

As may be used herein, the terms "substantially" and "approximately" provides an industry-accepted tolerance for its corresponding term and/or relativity between items. Such an industry-accepted tolerance ranges from less than one percent to fifty percent and corresponds to, but is not limited to, component values, integrated circuit process variations, temperature variations, rise and fall times, and/or thermal noise. Such relativity between items ranges from a difference of a few percent to magnitude differences. As may also be used herein, the term(s) "operably coupled to", "coupled to", and/or "coupling" includes direct coupling between items and/or indirect coupling between items via an intervening item (e.g., an item includes, but is not limited to, a component, an element, a circuit, and/or a module) where, for indirect coupling, the

intervening item does not modify the information of a signal but may adjust its current level, voltage level, and/or power level. As may further be used herein, inferred coupling (i.e., where one element is coupled to another element by inference) includes direct and indirect coupling between two items in the same manner as "coupled to". As may even further be used herein, the term "operable to" or "operably coupled to" indicates that an item includes one or more of power connections, input(s), output(s), etc., to perform, when activated, one or more its corresponding functions and may further include inferred coupling to one or more other items. As may still further be used herein, the term "associated with", includes direct and/or indirect coupling of separate items and/or one item being embedded within another item. As may be used herein, the term "compares favorably", indicates that a comparison between two or more items, signals, etc., provides a desired relationship. For example, when the desired relationship is that signal 1 has a greater magnitude than signal 2, a favorable comparison may be achieved when the magnitude of signal 1 is greater than that of signal 2 or when the magnitude of signal 2 is less than that of signal 1.

As may also be used herein, the terms "processing module", "processing circuit", and/or "processing unit" may be a single processing device or a plurality of processing devices. Such a processing device may be a microprocessor, micro-controller, digital signal processor, microcomputer, central processing unit, field programmable gate array, programmable logic device, state machine, logic circuitry, analog circuitry, digital circuitry, and/or any device that manipulates signals (analog and/or digital) based on hard coding of the circuitry and/or operational instructions. The processing module, module, processing circuit, and/or processing unit may be, or further include, memory and/or an integrated memory element, which may be a single memory device, a plurality of memory devices, and/or embedded circuitry of another processing module, module, processing circuit, and/or processing unit. Such a memory device may be a read-only memory, random access memory, volatile memory, non-volatile memory, static memory, dynamic memory, flash memory, cache memory, and/or any device that stores digital information. Note that if the processing module, module, processing circuit, and/or processing unit includes more than one processing device, the processing devices may be

centrally located (e.g., directly coupled together via a wired and/or wireless bus structure) or may be distributedly located (e.g., cloud computing via indirect coupling via a local area network and/or a wide area network). Further note that if the processing module, module, processing circuit, and/or processing unit implements one or more of its functions via a state machine, analog circuitry, digital circuitry, and/or logic circuitry, the memory and/or memory element storing the corresponding operational instructions may be embedded within, or external to, the circuitry comprising the state machine, analog circuitry, digital circuitry, and/or logic circuitry. Still further note that, the memory element may store, and the processing module, module, processing circuit, and/or processing unit executes, hard coded and/or operational instructions corresponding to at least some of the steps and/or functions illustrated in one or more of the Figures. Such a memory device or memory element can be included in an article of manufacture.

The present invention has been described above with the aid of method steps illustrating the performance of specified functions and relationships thereof. The boundaries and sequence of these functional building blocks and method steps have been arbitrarily defined herein for convenience of description. Alternate boundaries and sequences can be defined so long as the specified functions and relationships are appropriately performed. Any such alternate boundaries or sequences are thus within the scope and spirit of the claimed invention. Further, the boundaries of these functional building blocks have been arbitrarily defined for convenience of description. Alternate boundaries could be defined as long as the certain significant functions are appropriately performed. Similarly, flow diagram blocks may also have been arbitrarily defined herein to illustrate certain significant functionality. To the extent used, the flow diagram block boundaries and sequence could have been defined otherwise and still perform the certain significant functionality. Such alternate definitions of both functional building blocks and flow diagram blocks and sequences are thus within the scope and spirit of the claimed invention. One of average skill in the art will also recognize that the functional building blocks, and other illustrative blocks, modules and components herein, can be implemented as illustrated or by discrete components, application specific integrated

circuits, processors executing appropriate software and the like or any combination thereof.

The present invention may have also been described, at least in part, in terms of one or more embodiments. An embodiment of the present invention is used herein to illustrate the present invention, an aspect thereof, a feature thereof, a concept thereof, and/or an example thereof. A physical embodiment of an apparatus, an article of manufacture, a machine, and/or of a process that embodies the present invention may include one or more of the aspects, features, concepts, examples, etc. described with reference to one or more of the embodiments discussed herein. Further, from figure to figure, the embodiments may incorporate the same or similarly named functions, steps, modules, etc. that may use the same or different reference numbers and, as such, the functions, steps, modules, etc. may be the same or similar functions, steps, modules, etc. or different ones.

Unless specifically stated to the contra, signals to, from, and/or between elements in a figure of any of the figures presented herein may be analog or digital, continuous time or discrete time, and single-ended or differential. For instance, if a signal path is shown as a single-ended path, it also represents a differential signal path. Similarly, if a signal path is shown as a differential path, it also represents a single-ended signal path. While one or more particular architectures are described herein, other architectures can likewise be implemented that use one or more data buses not expressly shown, direct connectivity between elements, and/or indirect coupling between other elements as recognized by one of average skill in the art.

The term "module" is used in the description of the various embodiments of the present invention. A module includes a processing module, a functional block, hardware, and/or software stored on memory for performing one or more functions as may be described herein. Note that, if the module is implemented via hardware, the hardware

may operate independently and/or in conjunction software and/or firmware. As used herein, a module may contain one or more sub-modules, each of which may be one or more modules.

While particular combinations of various functions and features of the present invention have been expressly described herein, other combinations of these features and functions are likewise possible. The present invention is not limited by the particular examples disclosed herein and expressly incorporates these other combinations.

CLAIMS

What is claimed is:

1. An apparatus comprises:

a heel platform section;

a mid-foot section juxtaposed to the heel platform section; and

a toe section juxtaposed to the mid-foot section, wherein the mid-foot section and the toe section collectively have a geometric shape having a first slope of a polarity along an inner edge of the apparatus from the toe section to the mid-foot section and a second slope of the polarity along the inner edge of the apparatus to the outer edge of the apparatus at the toe section.

2. The apparatus of claim 1 further comprises:

a third slope of the polarity along the outer edge of the apparatus from the toe section to the mid-foot section.

3. The apparatus of claim 1 further comprises at least one of:

the heel platform section, the mid-foot section, and the toe section constituting an insole for footwear; and

the heel section, the mid-foot section, and the toe section constituting a sole of footwear.

4. The apparatus of claim 1 further comprises:

the heel platform section having a first dimension that is substantially uniform from the outer edge to the inner edge along a back edge of the apparatus and from the back edge of the apparatus to a front portion of the heel section; and

the toe section and the mid-foot section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

5. The apparatus of claim 1 further comprises:

a cushioning layer on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

6. An apparatus comprises:

a heel platform section;

a mid-foot section; and

a toe section, wherein the mid-foot section, and the toe section collectively have a geometric shape having a first dimension along an abutment edge of the heel platform section and the mid-foot section, a second dimension at front outer edge of the apparatus, and a third dimension at front inner edge of the apparatus, wherein the first dimension has a magnitude that is greater than or equal to a magnitude of the second dimension and the magnitude of the second dimension is greater than a magnitude of the third dimension, and wherein the first dimension is substantially uniformly throughout the heel platform section.

7. The apparatus of claim 6 further comprises at least one of:

the heel platform section, the mid-foot section, and the toe section constituting an insole for footwear; and

the heel platform section, the mid-foot section, and the toe section constituting a sole of footwear.

8. The apparatus of claim 6 further comprises:

a cushioning layer on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

9. A shoe comprises:

an upper shoe section; and

a sole coupled to the upper shoe section, wherein the sole includes:

a specific bottom; and

an athletic positioning sole section having:

a heel platform section;

a mid-foot section; and

a toe section, wherein the mid-foot section and the toe section collectively have a geometric shape having a first slope of a polarity along an inner edge of the apparatus from the toe section to the mid-foot section and a second slope of the polarity along the inner edge of the apparatus to an outer edge of the apparatus at the toe section.

10. The shoe of claim 9 further comprises:

the heel platform section having a first dimension that is substantially uniform throughout the heel platform section; and

the toe section having a second dimension at a front outer edge of the apparatus and a third dimension at a front inner edge of the apparatus.

11. The shoe of claim 9 further comprises:

a cushioning layer on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

12. The shoe of claim 9, wherein the specific bottom comprises one of:

a cleat pattern bottom;

a baseball spike bottom;

a basketball bottom;

a tennis bottom;

a golf bottom;

an ice skate bottom;

a ski boot bottom;

a cross-trainer bottom;

a running shoe bottom;

a walking shoe bottom;

a dress shoe bottom; and

a snowboard boot bottom.

13. The shoe of claim 9, wherein the upper section comprises:

a sandal structure that includes one or more straps for securing the shoe to a foot.

14. A shoe comprises:

an upper shoe section; and

a sole coupled to the upper shoe section, wherein the sole includes:

a specific bottom; and

an athletic positioning sole section having:

a heel platform section;

a mid-foot section; and

a toe section, wherein the mid-foot section, and the toe section collectively have a geometric shape having a first dimension along an abutment edge of the heel platform section and the mid-foot section, a second dimension at front outer edge of the apparatus, and a third dimension at front inner edge of the apparatus, wherein the first dimension has a magnitude that is greater than or equal to a magnitude of the second dimension and the magnitude of the second dimension is greater than a magnitude of the third dimension, and wherein the first dimension is substantially uniformly throughout the heel platform section.

15. The shoe of claim 14 further comprises:

the first dimension is substantially uniform from the outer edge to the inner edge.

16. The shoe of claim 14 further comprises:

a cushioning layer on a first surface of the apparatus covering one or more of:

at least a portion of the heel platform section;

at least a portion of the mid-foot section; and

at least a portion of the toe section.

17. The shoe of claim 14, wherein the specific bottom comprises one of:

a cleat pattern bottom;
a baseball spike bottom;
a basketball bottom;
a tennis bottom;
a golf bottom;
an ice skate bottom;
a ski boot bottom;
a cross-trainer bottom;
a running shoe bottom;
a walking shoe bottom;
a dress shoe bottom; and
a snowboard boot bottom.

18. The shoe of claim 14, wherein the upper section comprises:

a sandal structure that includes one or more straps for securing the shoe to a foot.

ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF

ABSTRACT OF THE DISCLOSURE

An apparatus includes a heel platform section, a mid-foot section juxtaposed to the heel platform section, and a toe section juxtaposed to the mid-foot section. The mid-foot section and toe section collectively have a geometric shape having a first slope of a polarity along an inner edge of the apparatus from the toe section to the mid-foot section and a second slope of the polarity along the inner edge of the apparatus to the outer edge of the apparatus at the toe section.

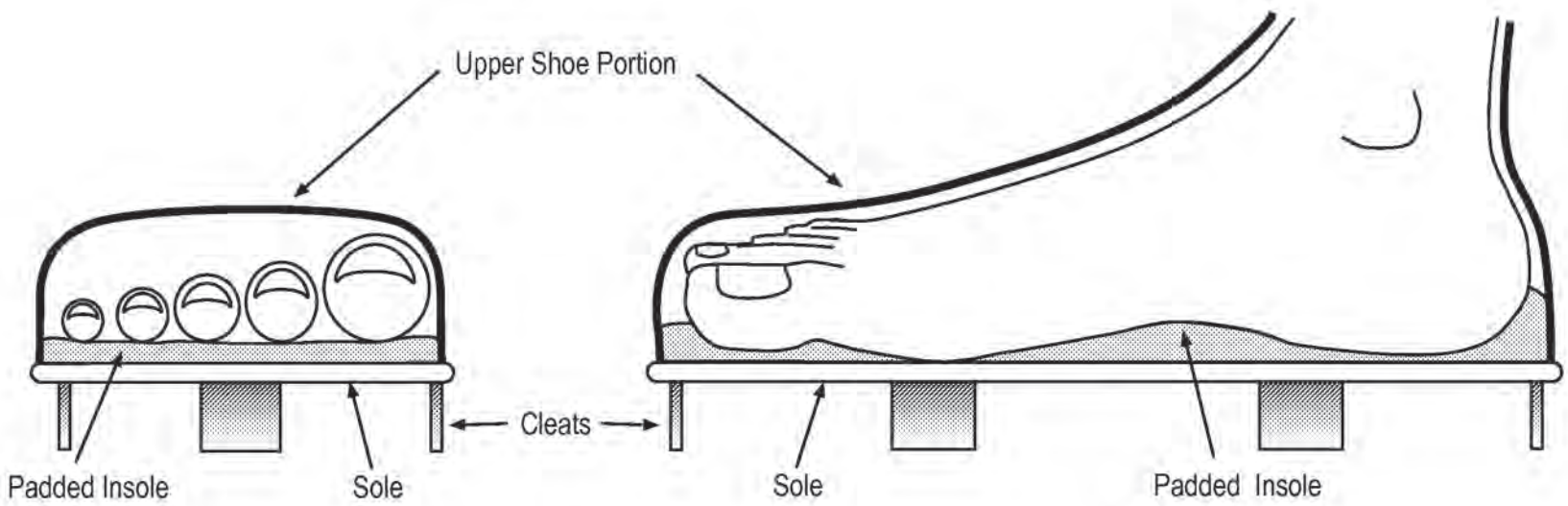


FIG. 1

Front Cross Section of
Drive Leg Shoe

FIG. 2

Side Cross Section of
Drive Leg Shoe

Prior Art

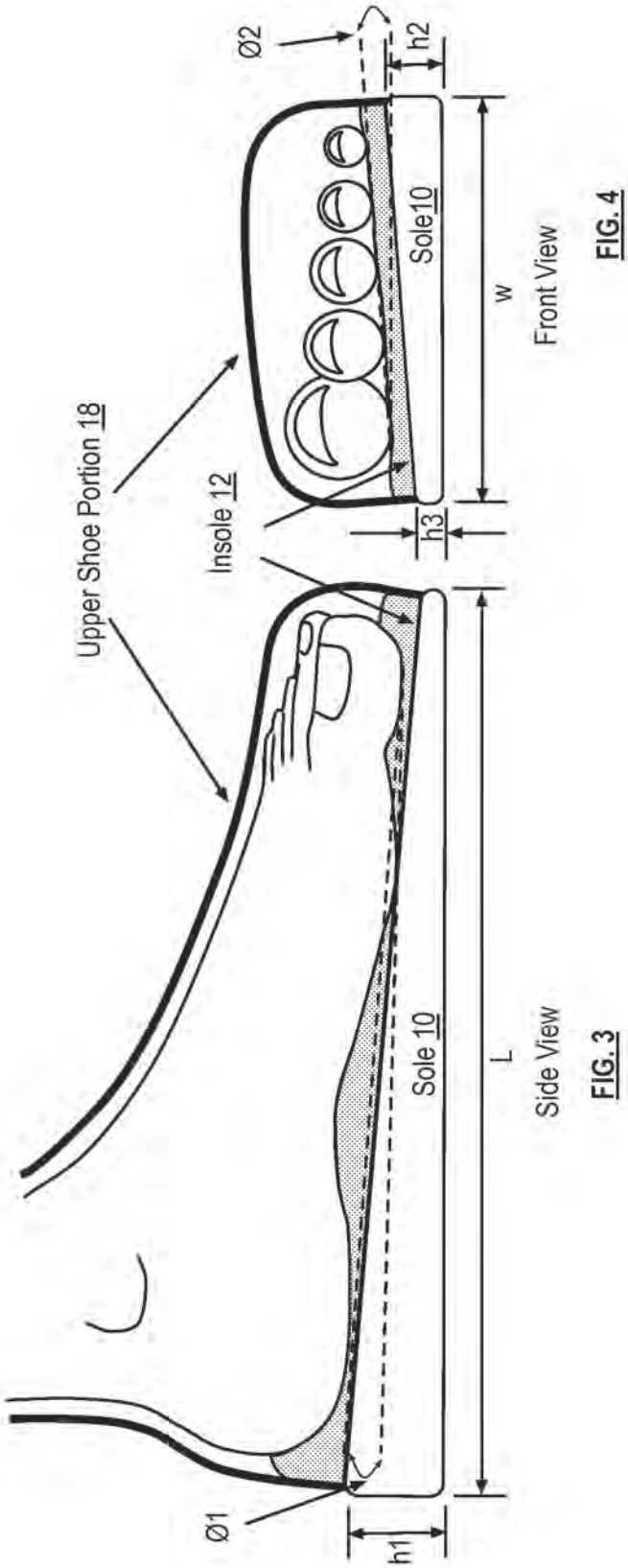

Ø2
h2
Sole10
w
Front View
Upper Shoe Portion 18
Insole 12
h3
Sole 10
L
Side View
Ø1
h1

FIG. 4

FIG. 3

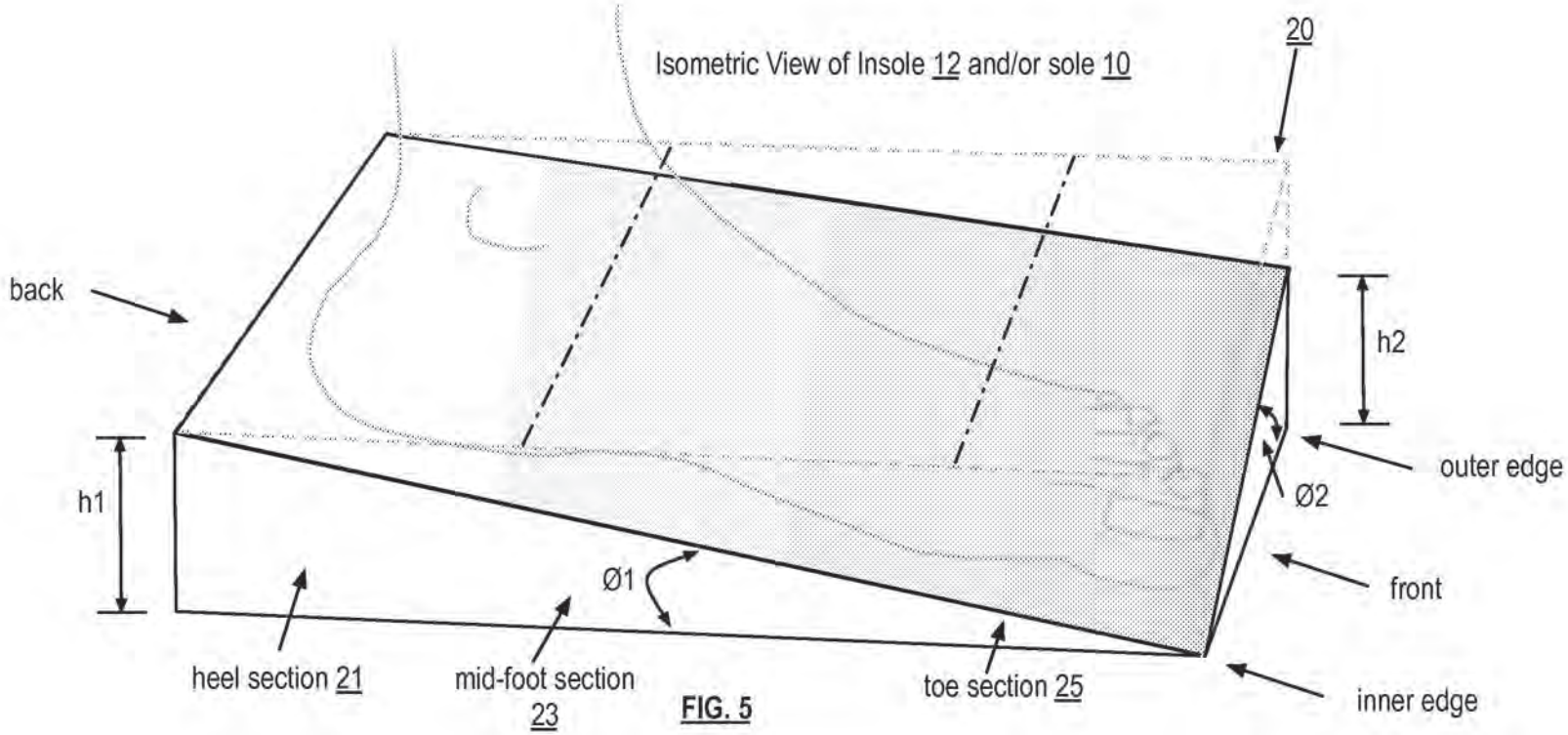


FIG. 5

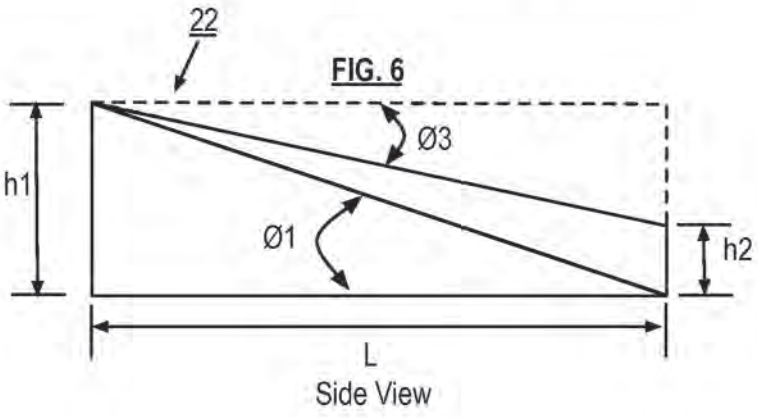


FIG. 6

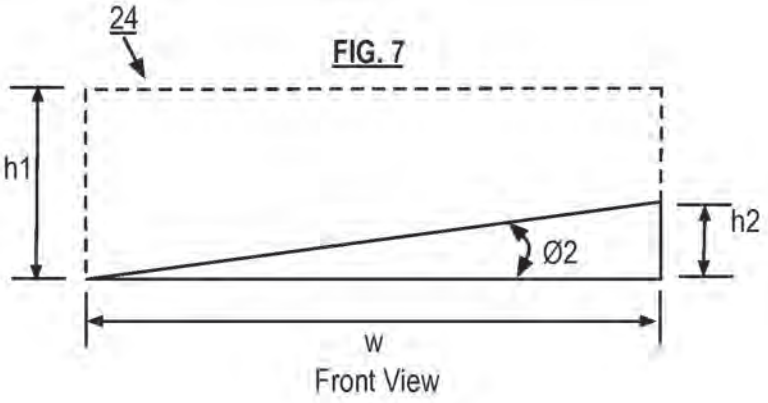


FIG. 7

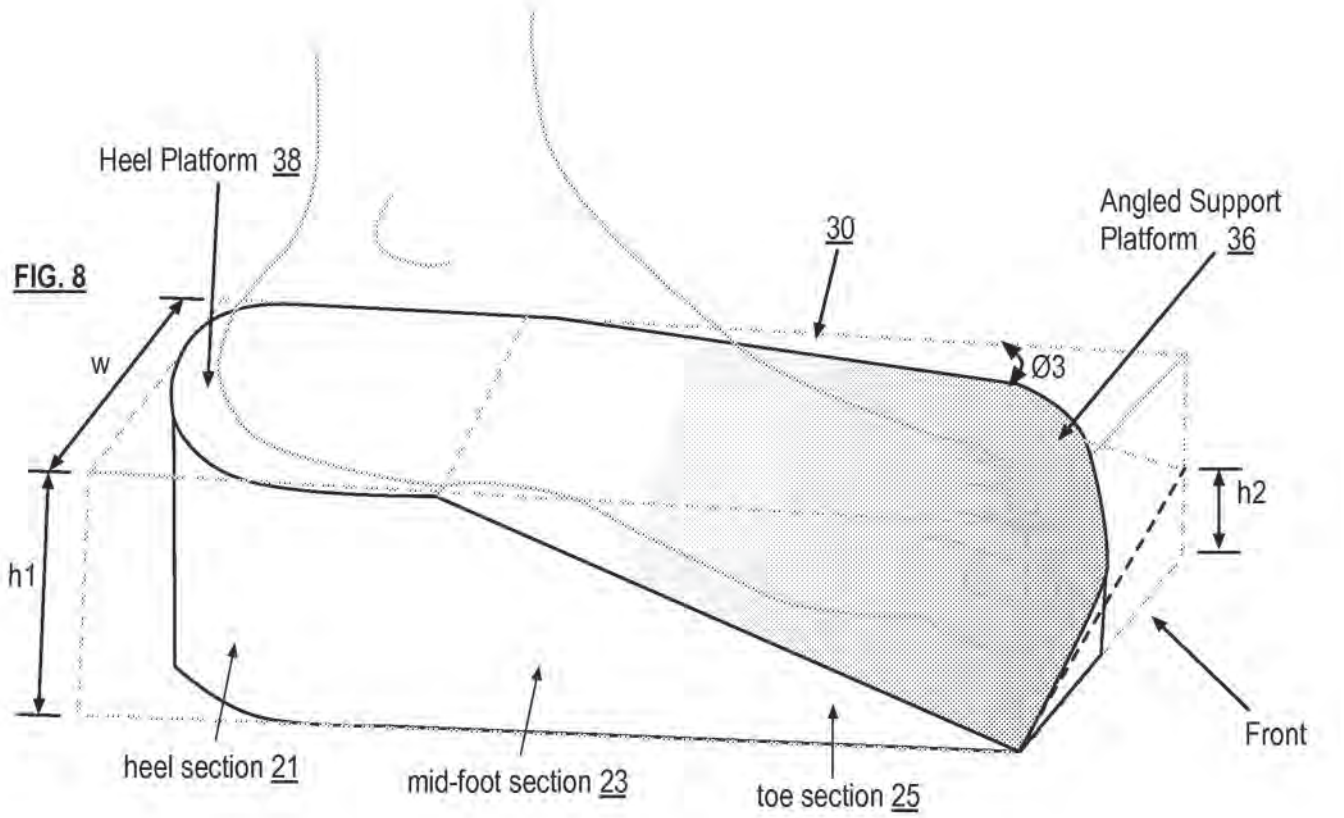


FIG. 8

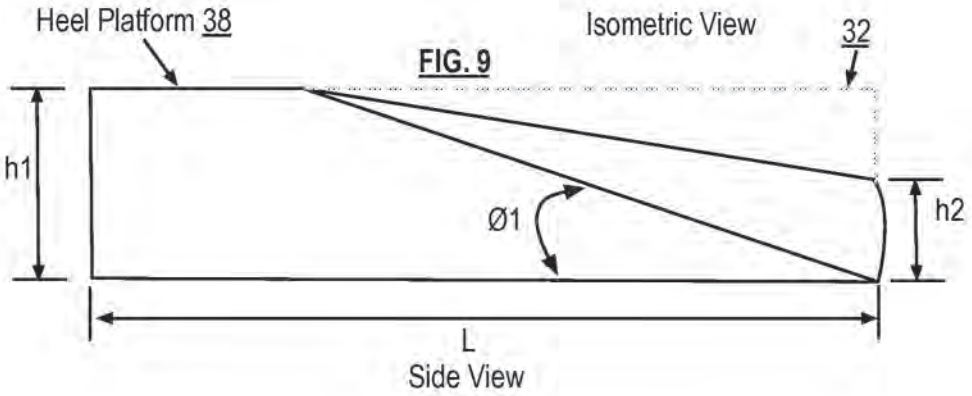


FIG. 9

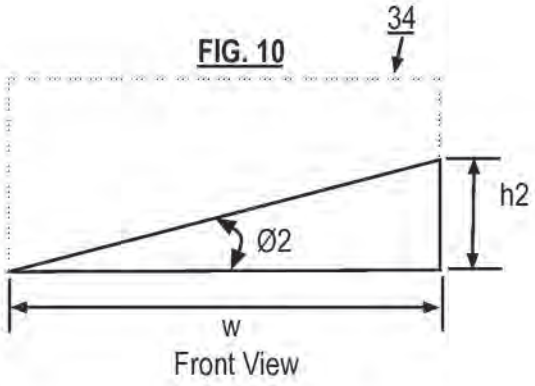


FIG. 10

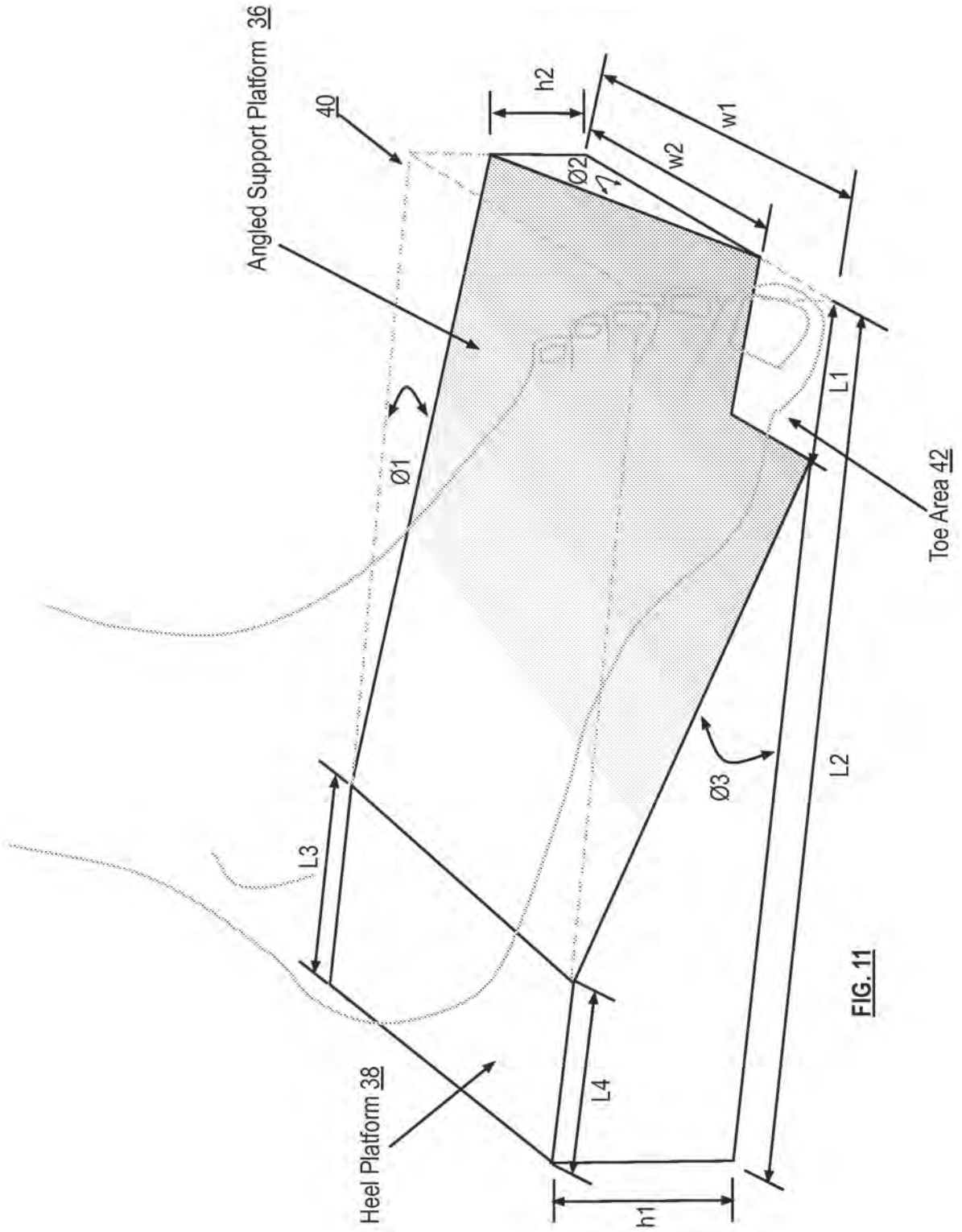

Angled Support Platform 36
40
h2
w1
w2
Ø2
Ø1
L1
Toe Area 42
L3
Ø3
L2
L4
Heel Platform 38
h1

FIG. 11

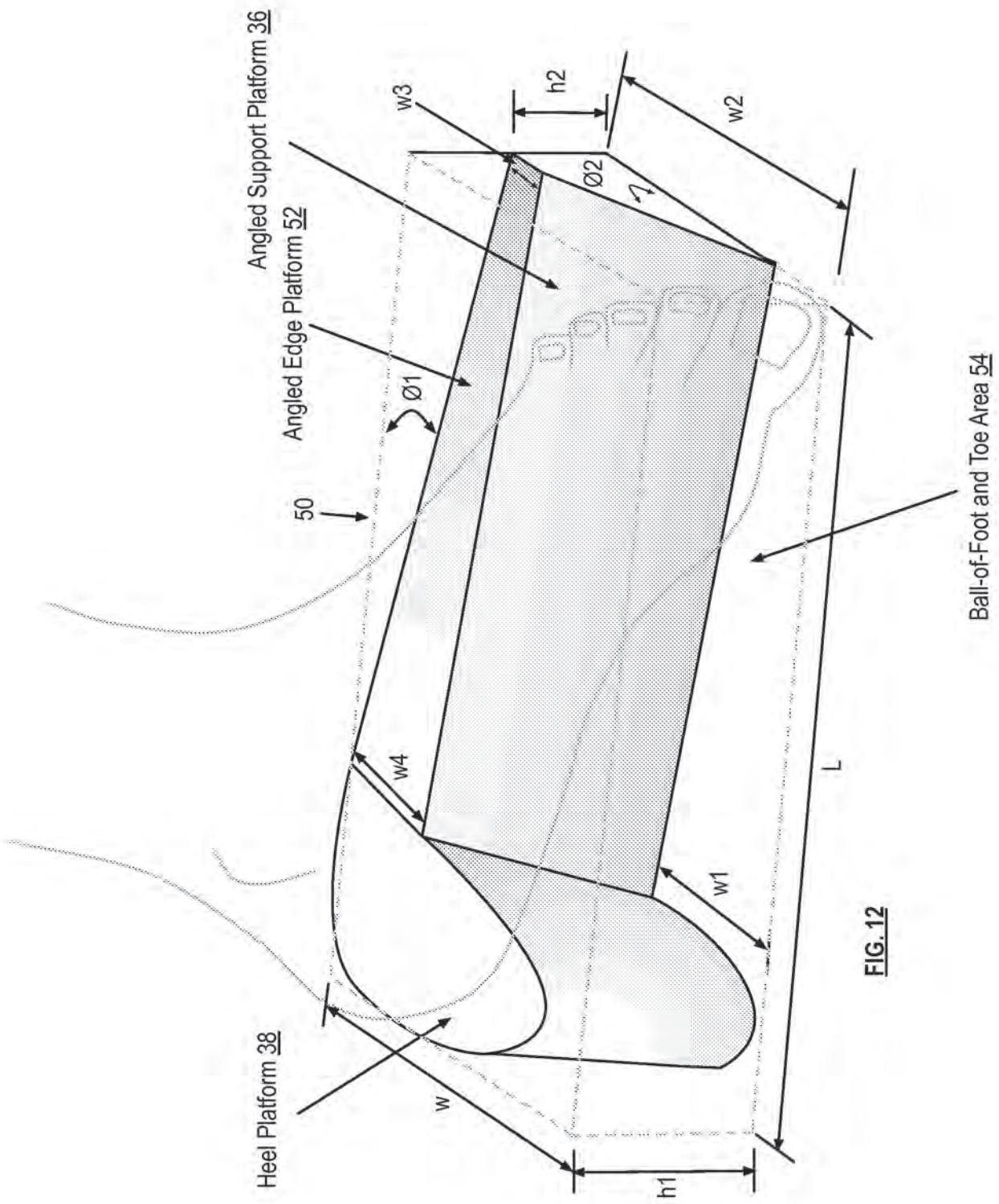

Angled Support Platform 36
Angled Edge Platform 52
50
Heel Platform 38
Ball-of-Foot and Toe Area 54
w3
h2
w2
Ø2
Ø1
w4
w
h1
w1
L

FIG. 12

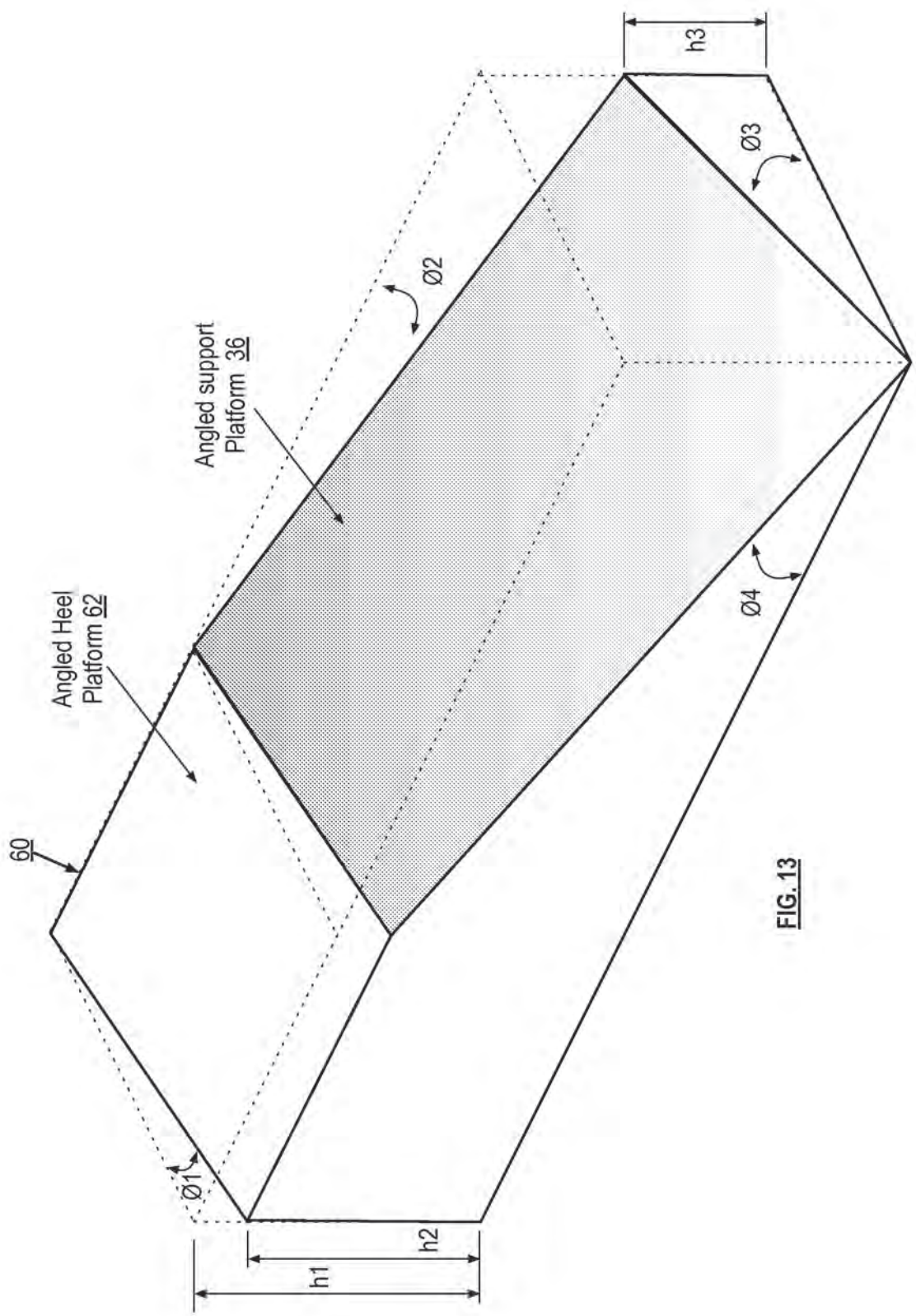

60
Angled Heel Platform 62
Angled support Platform 36
Ø1
Ø2
Ø3
Ø4
h1
h2
h3

FIG. 13

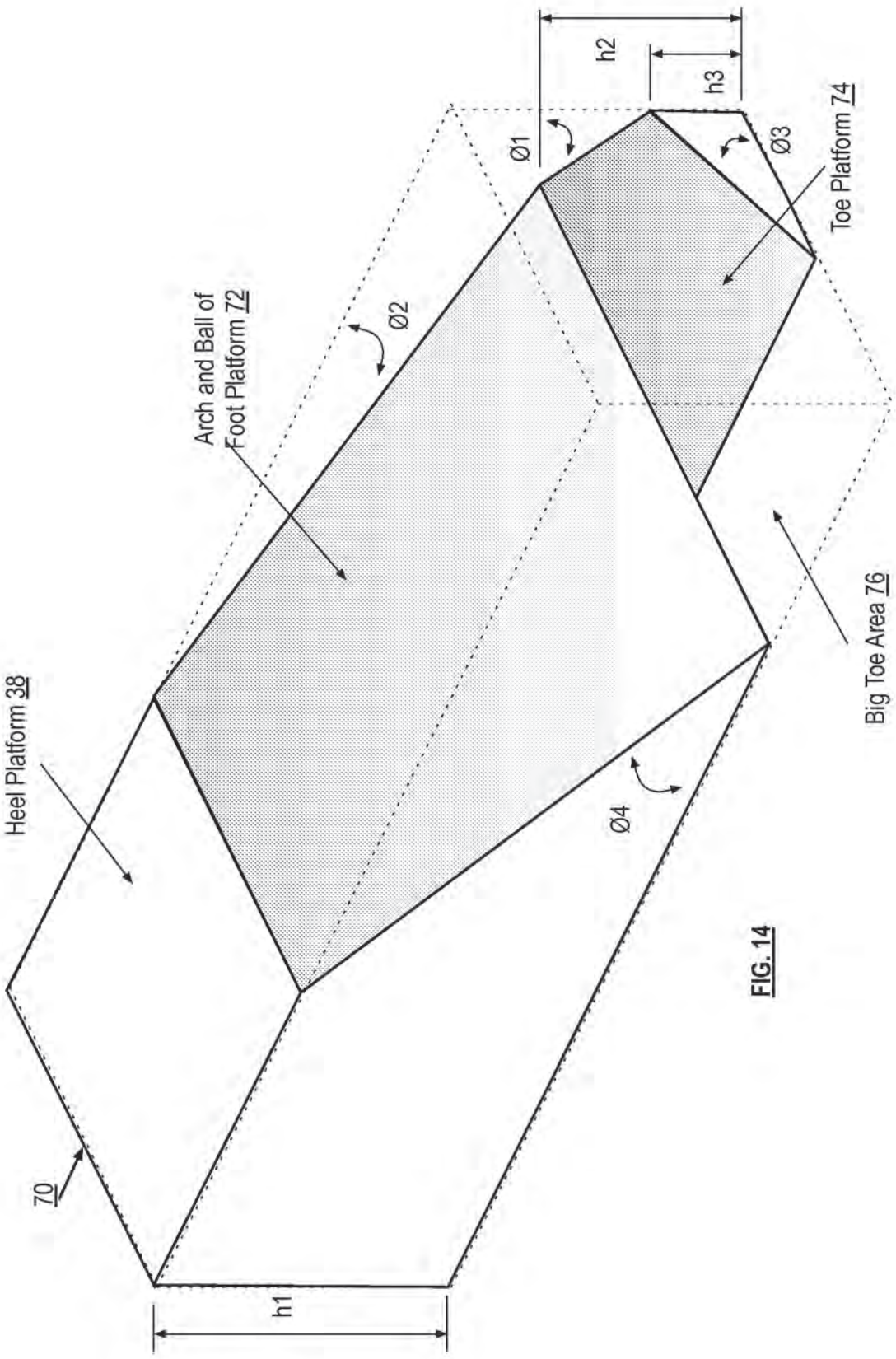

70
Heel Platform 38
Arch and Ball of Foot Platform 72
Toe Platform 74
Big Toe Area 76
h1
h2
h3
Ø1
Ø2
Ø3
Ø4

FIG. 14

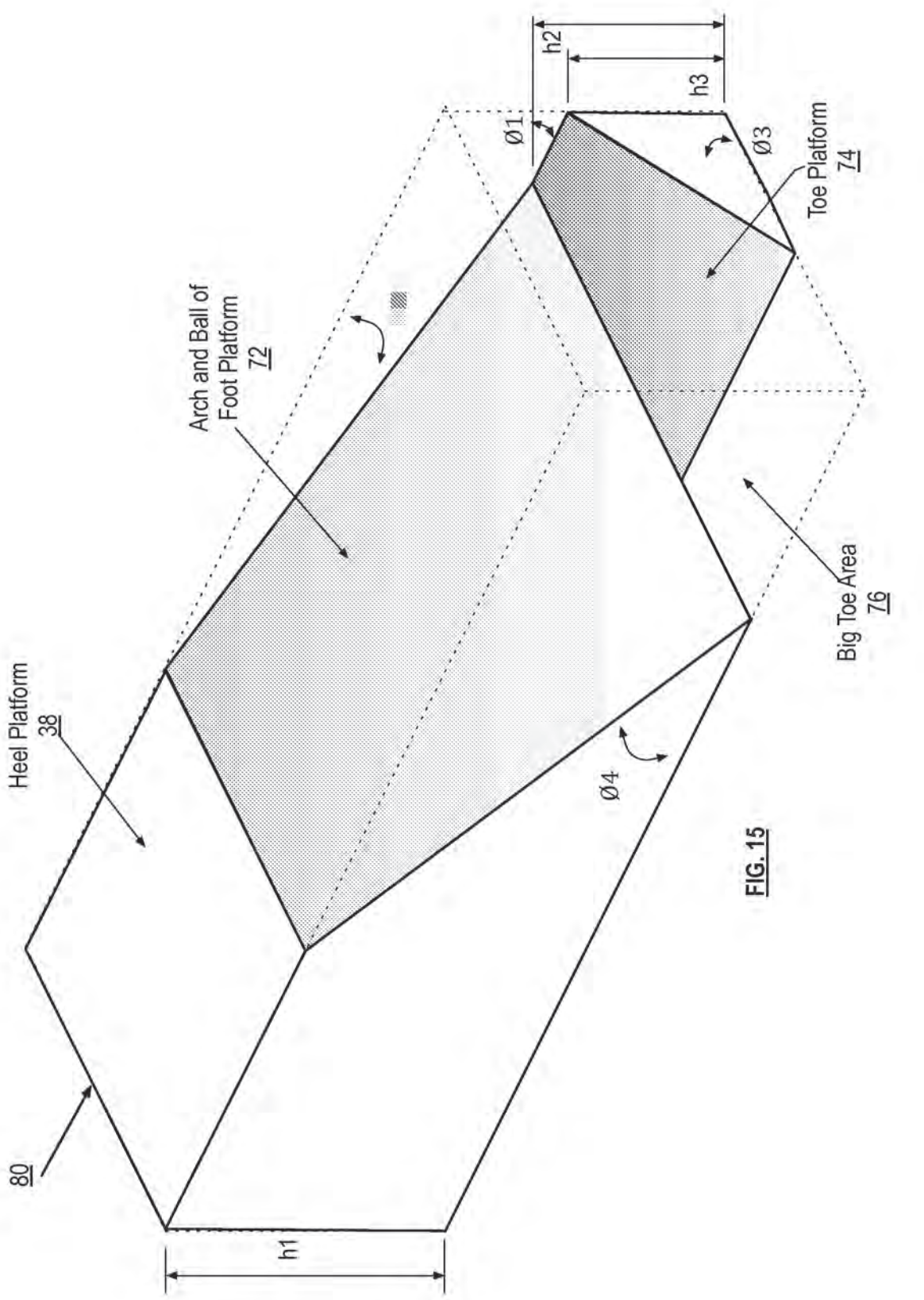

h2
h3
Ø1
Ø3
Toe Platform
74
Arch and Ball of
Foot Platform
72
Heel Platform
38
Big Toe Area
76
Ø4
80
h1

FIG. 15

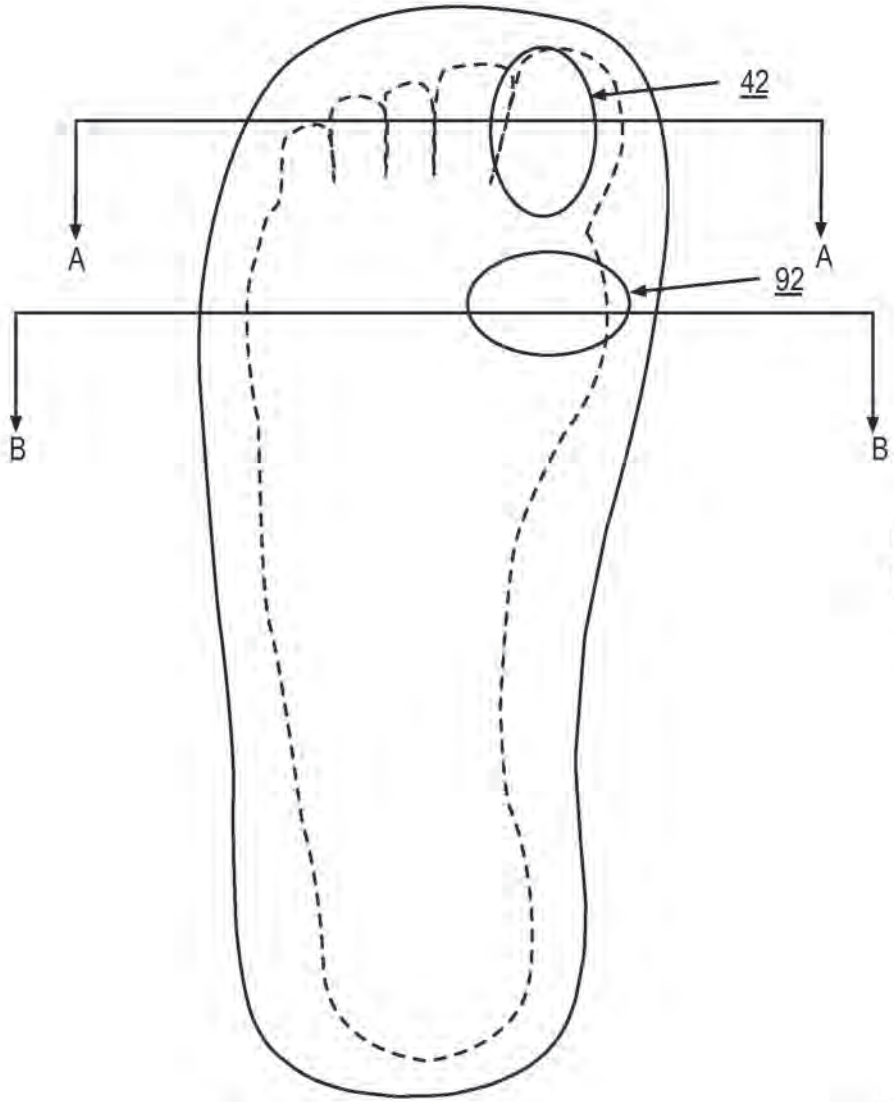


FIG. 16

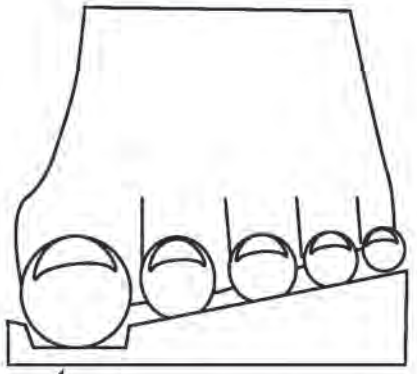


FIG. 17

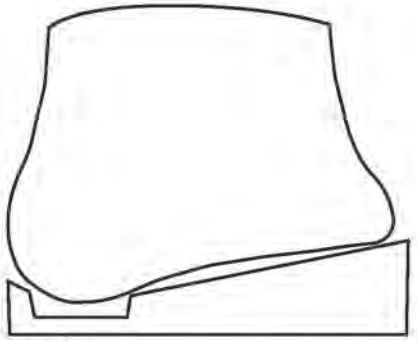


FIG. 18

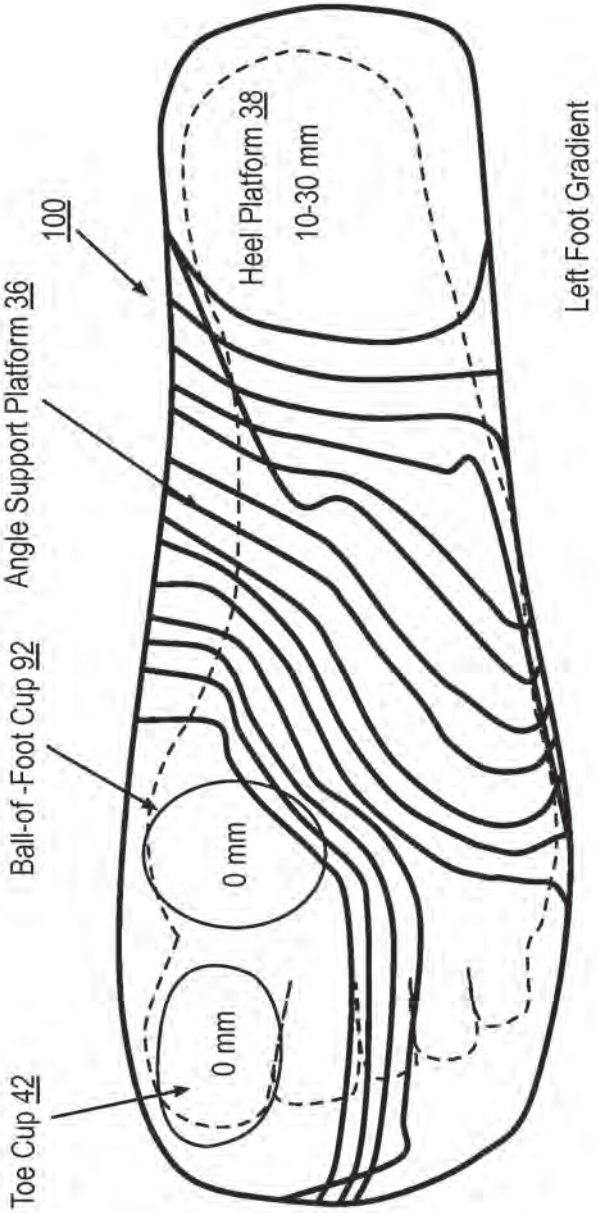

100
Angle Support Platform 36
Ball-of -Foot Cup 92
Toe Cup 42
0 mm
0 mm
Heel Platform 38
10-30 mm
Left Foot Gradient

FIG. 19

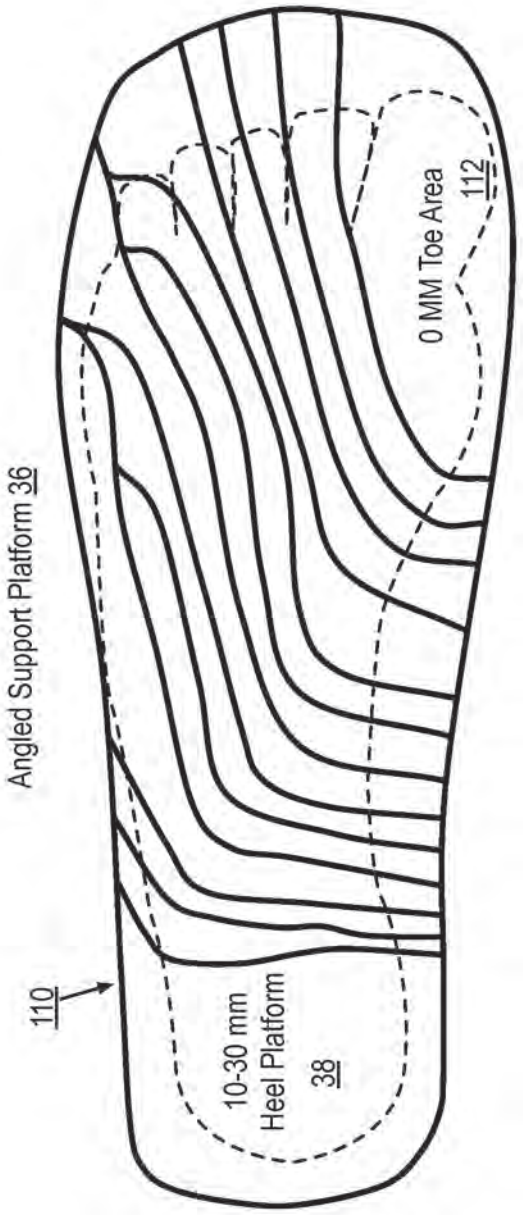

Angled Support Platform 36
110
10-30 mm
Heel Platform
38
0 MM Toe Area
112

FIG. 20

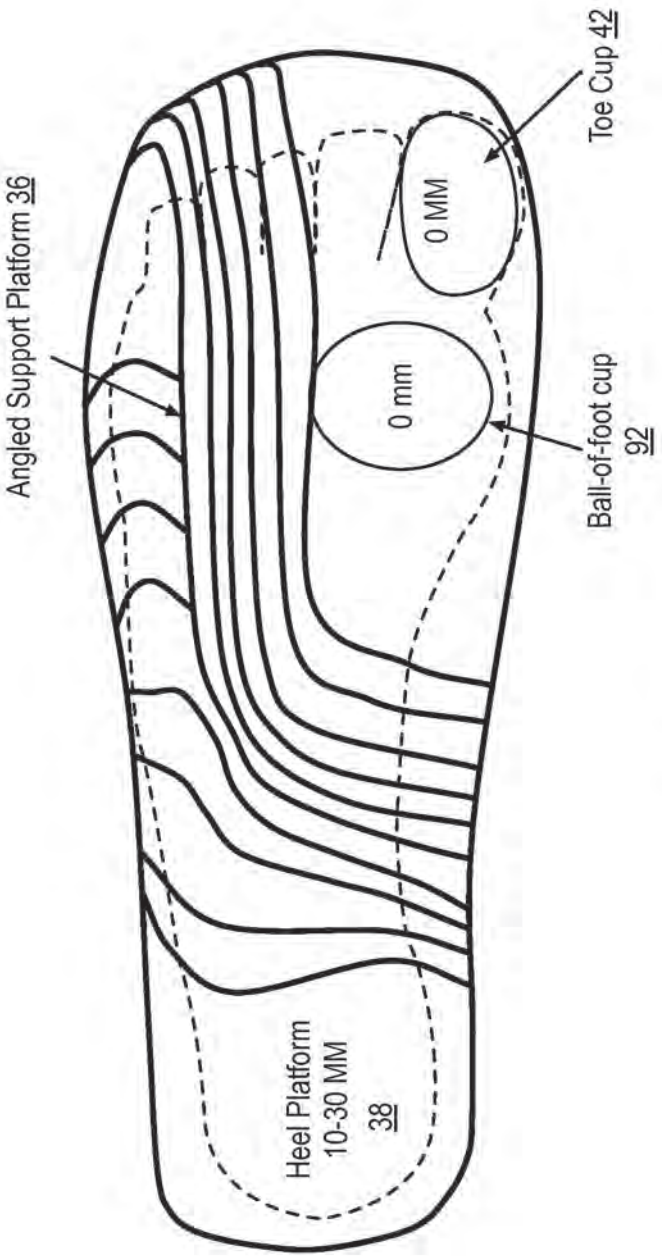

Angled Support Platform 36
Toe Cup 42
0 MM
0 mm
Ball-of-foot cup 92
Heel Platform 10-30 MM 38

FIG. 21

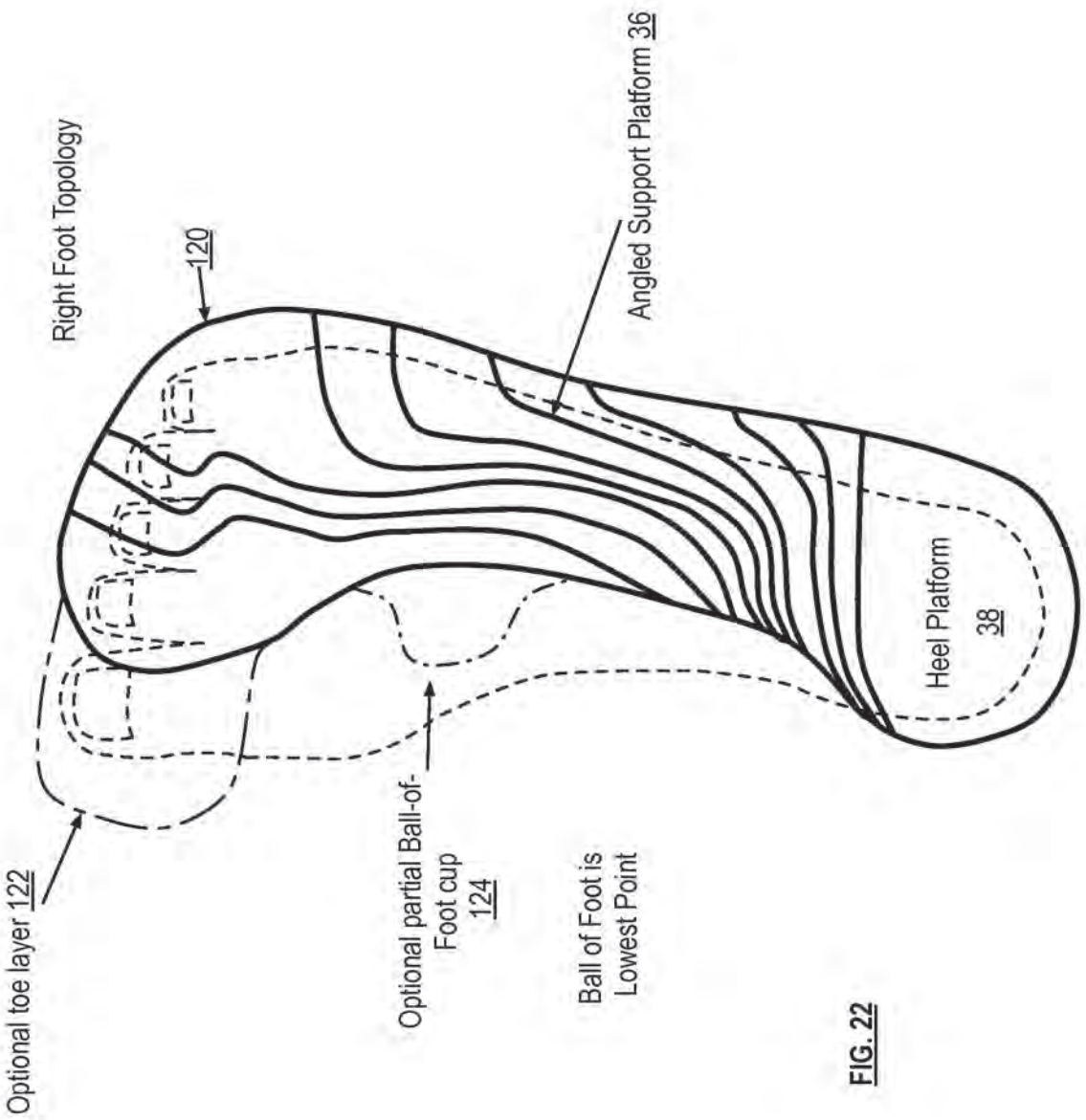

Right Foot Topology
120
Angled Support Platform 36
Heel Platform
38
Optional toe layer 122
Optional partial Ball-of-Foot cup
124
Ball of Foot is Lowest Point

FIG. 22

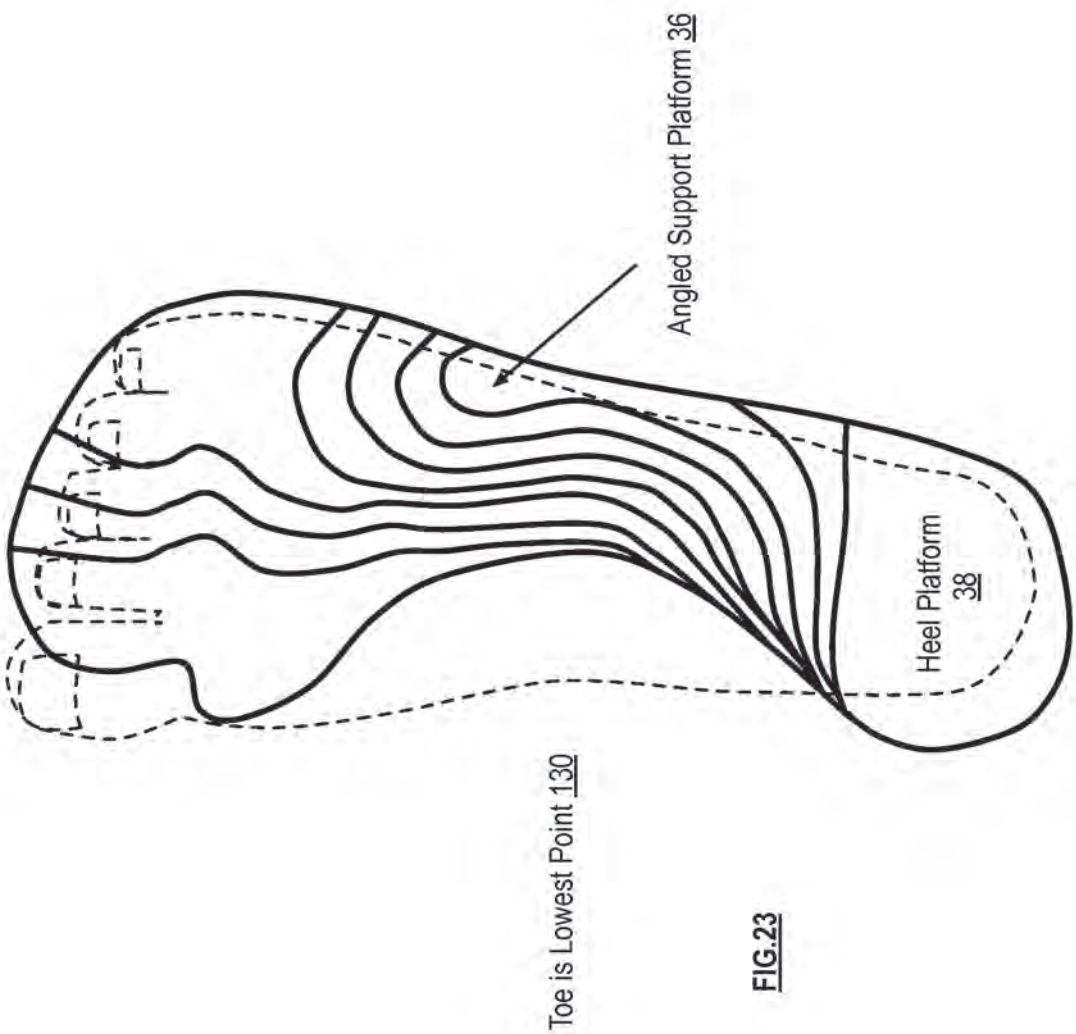

Angled Support Platform 36
Heel Platform 38
Toe is Lowest Point 130

FIG.23

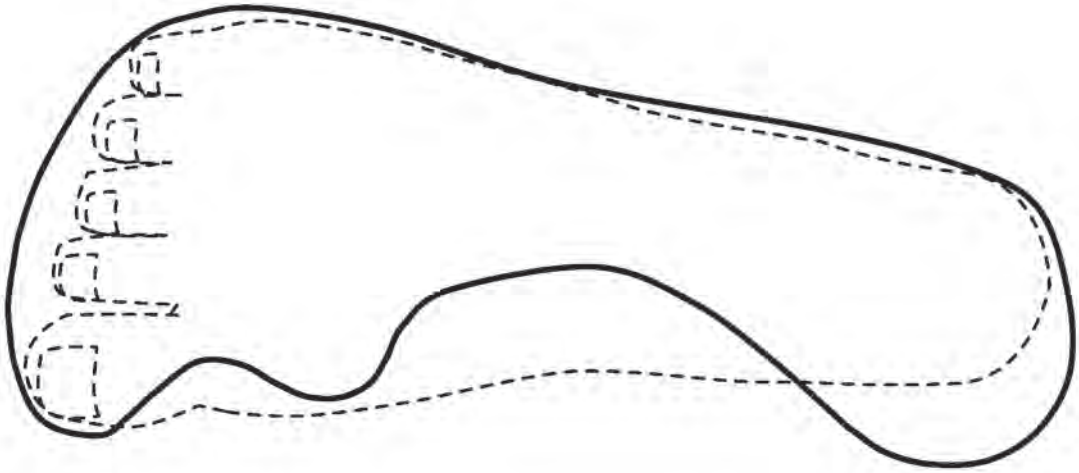


FIG. 24
Layer 1

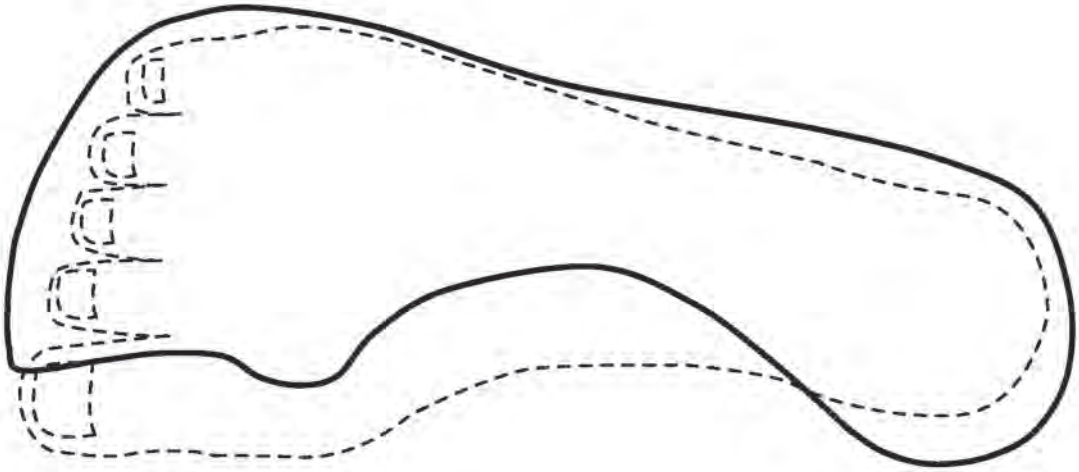


FIG. 25 Layer 2

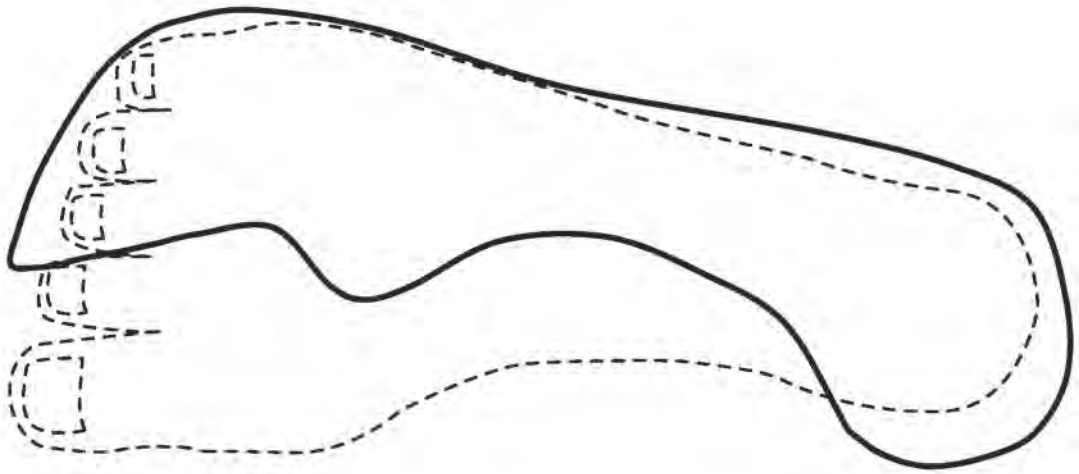


FIG. 26 Layer 3

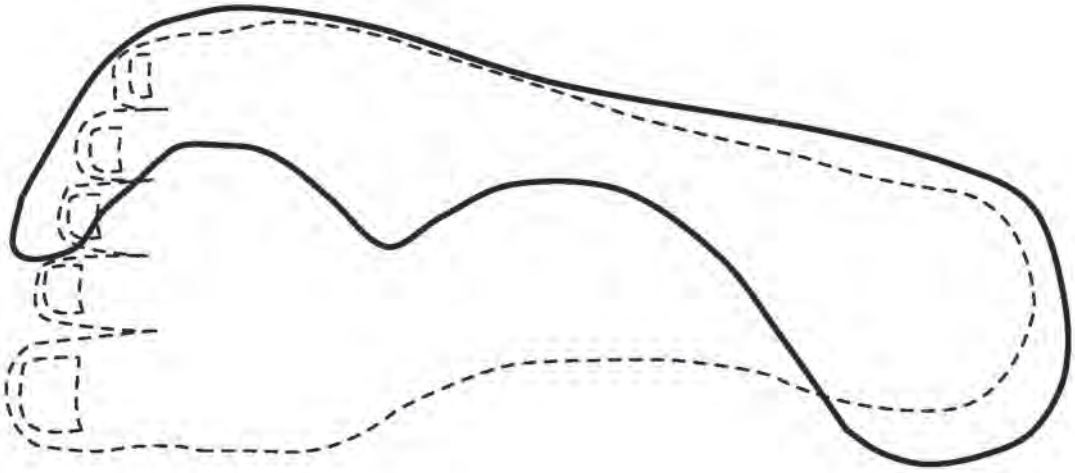


FIG. 27
Layer 4

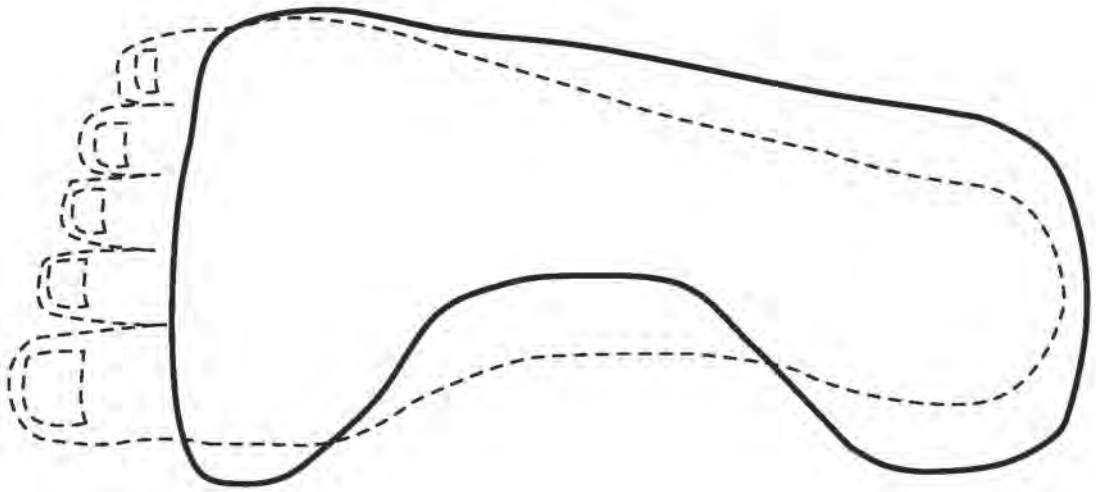


FIG.28
Layer 5

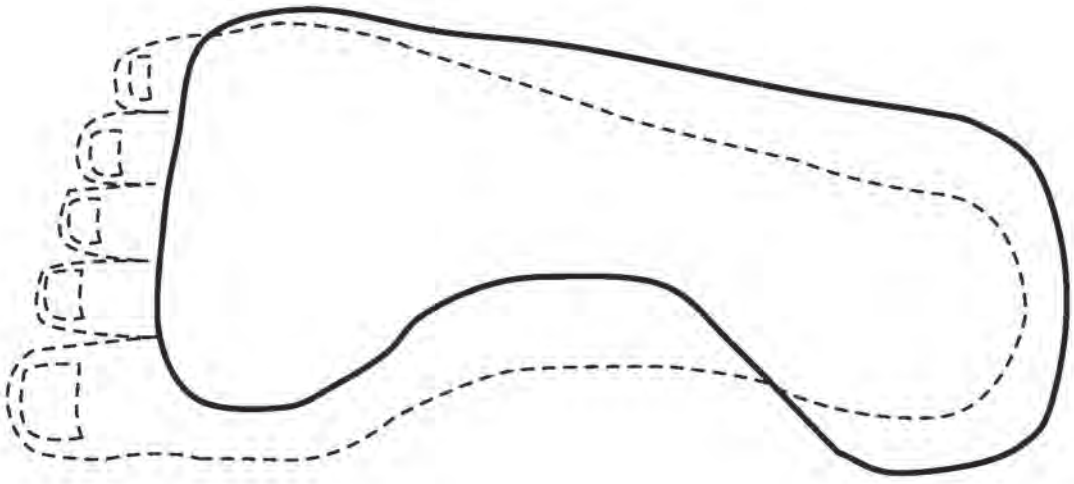


FIG.29

Layer 6

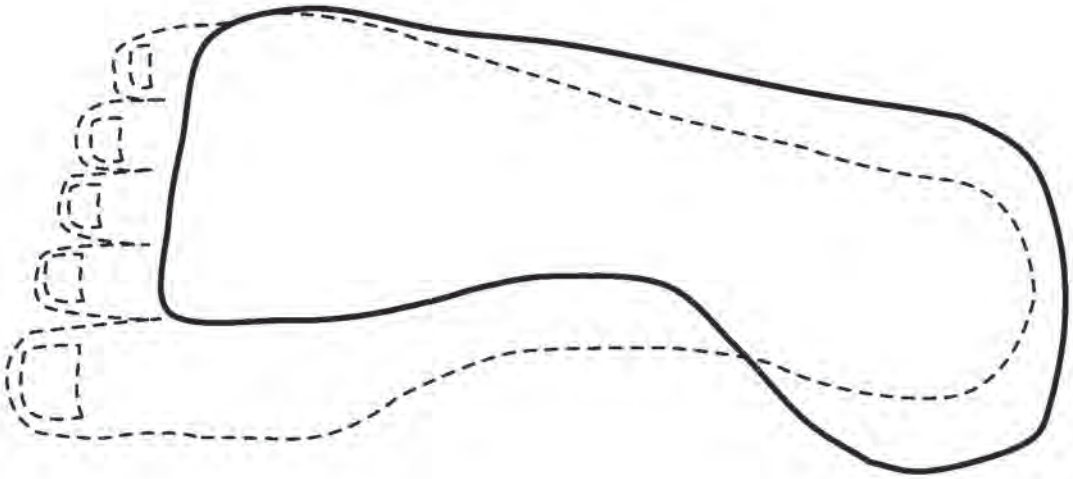


FIG.30 Layer 7

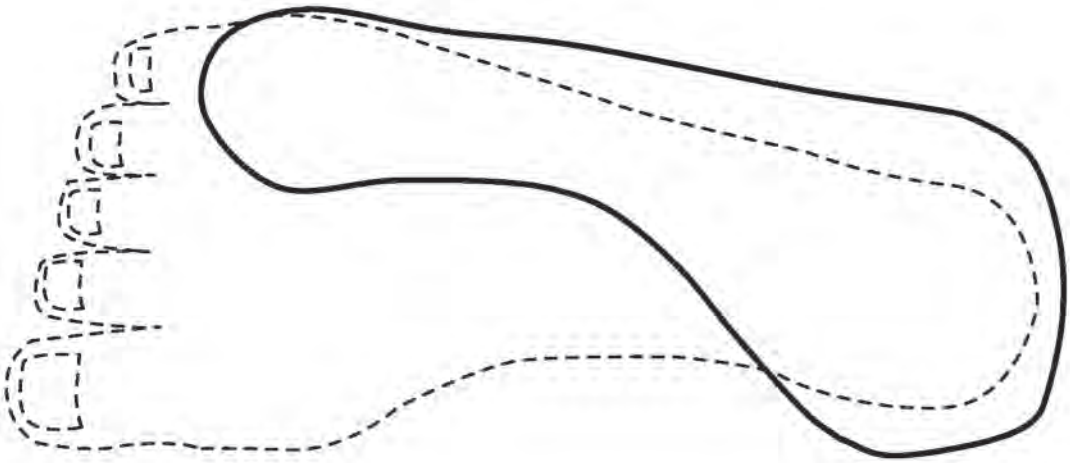


FIG.31

Layer 8

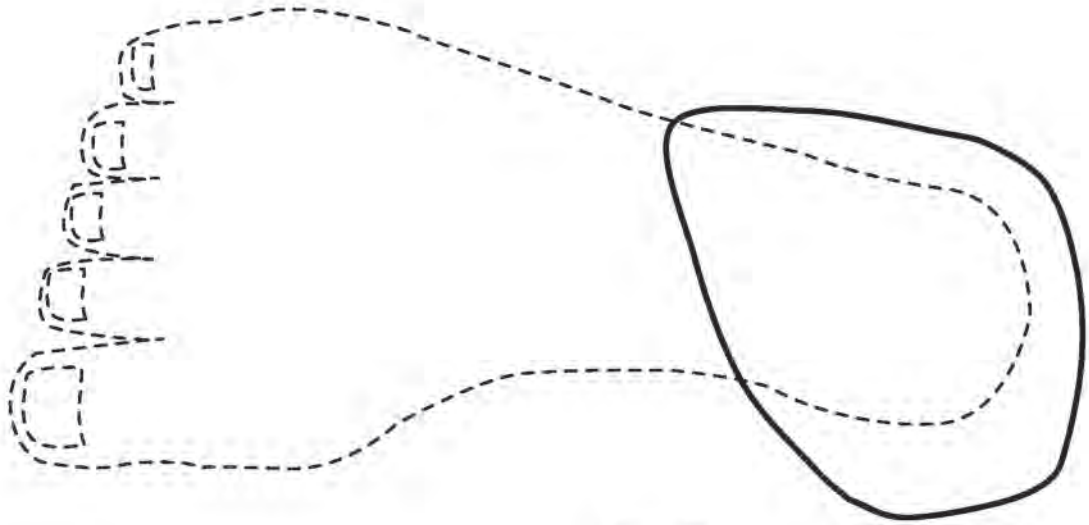


FIG. 33

Layer 10

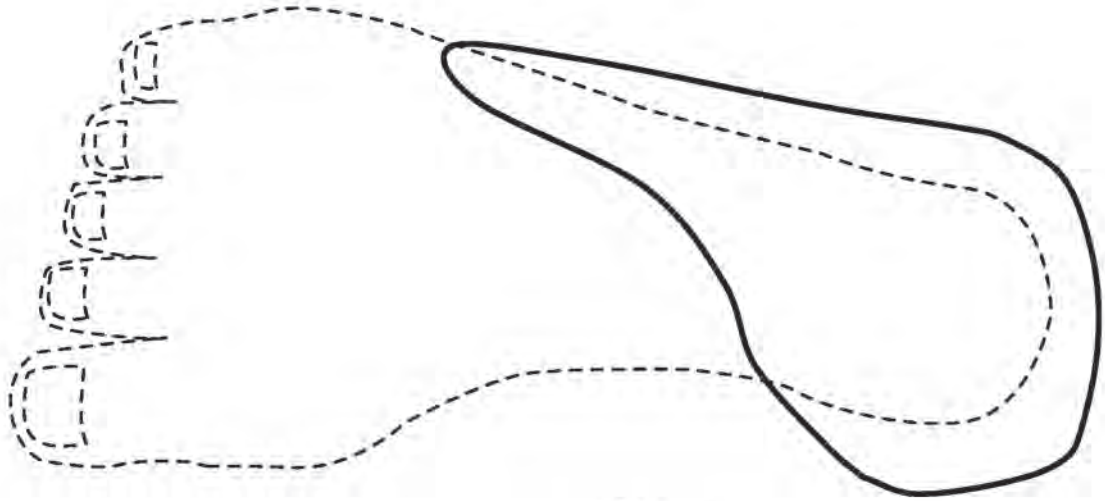


FIG. 32

Layer 9

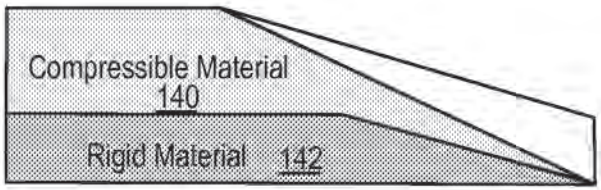


FIG. 34
Insole Side View

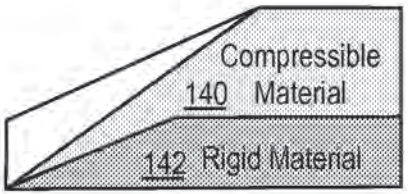


FIG. 35
Front View

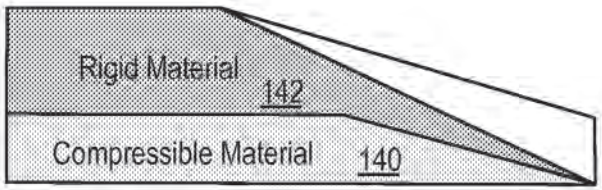


FIG. 36
Insole Side View

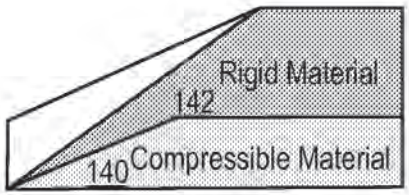


FIG. 37
Front View

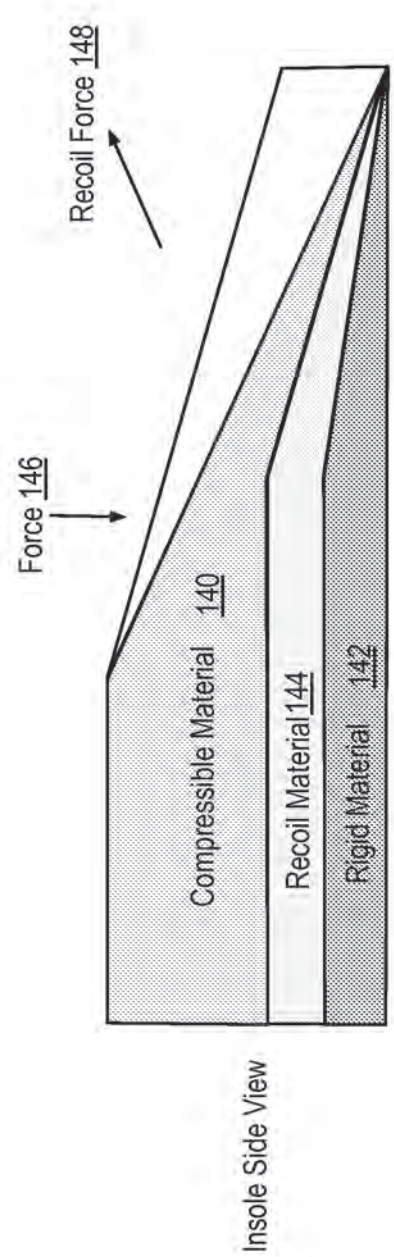

Recoil Force 148
Force 146
Compressible Material 140
Recoil Material 144
Rigid Material 142
Insole Side View

FIG. 38

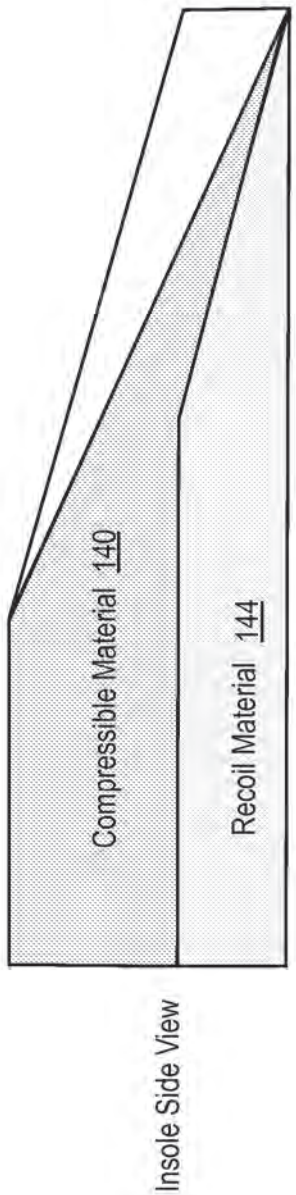

Compressible Material 140
Recoil Material 144
Insole Side View

FIG. 39

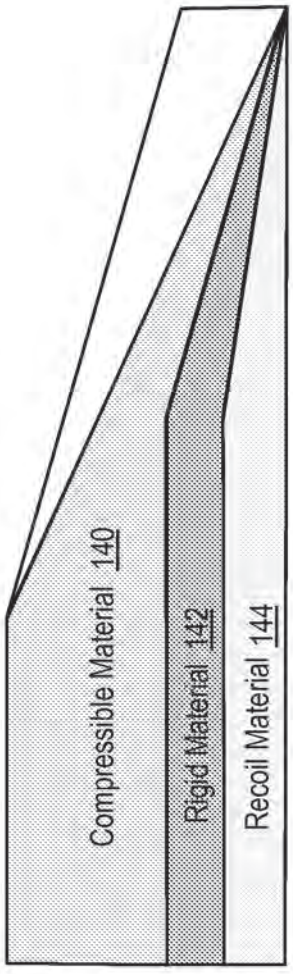

Compressible Material 140
Rigid Material 142
Recoil Material 144
Insole Side View

FIG. 40

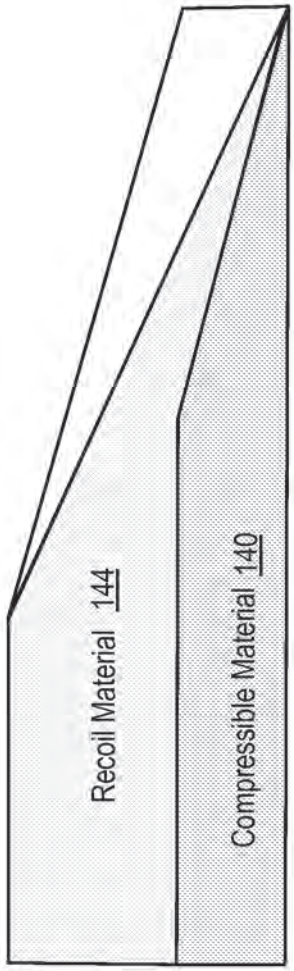

Recoil Material 144
Compressible Material 140
Insole Side View

FIG. 41

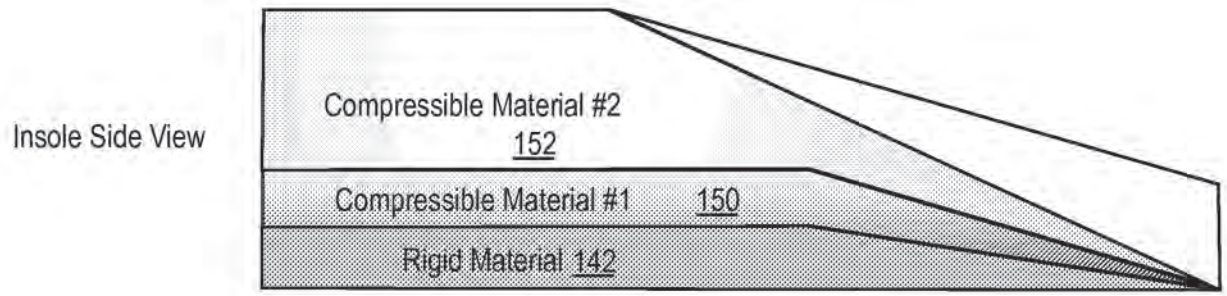

Insole Side View
Compressible Material #2
152
Compressible Material #1 150
Rigid Material 142

FIG. 42

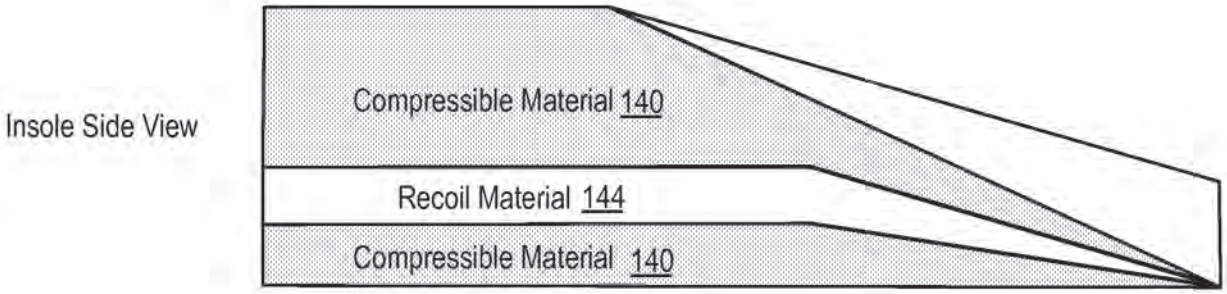

Insole Side View
Compressible Material 140
Recoil Material 144
Compressible Material 140

FIG. 43

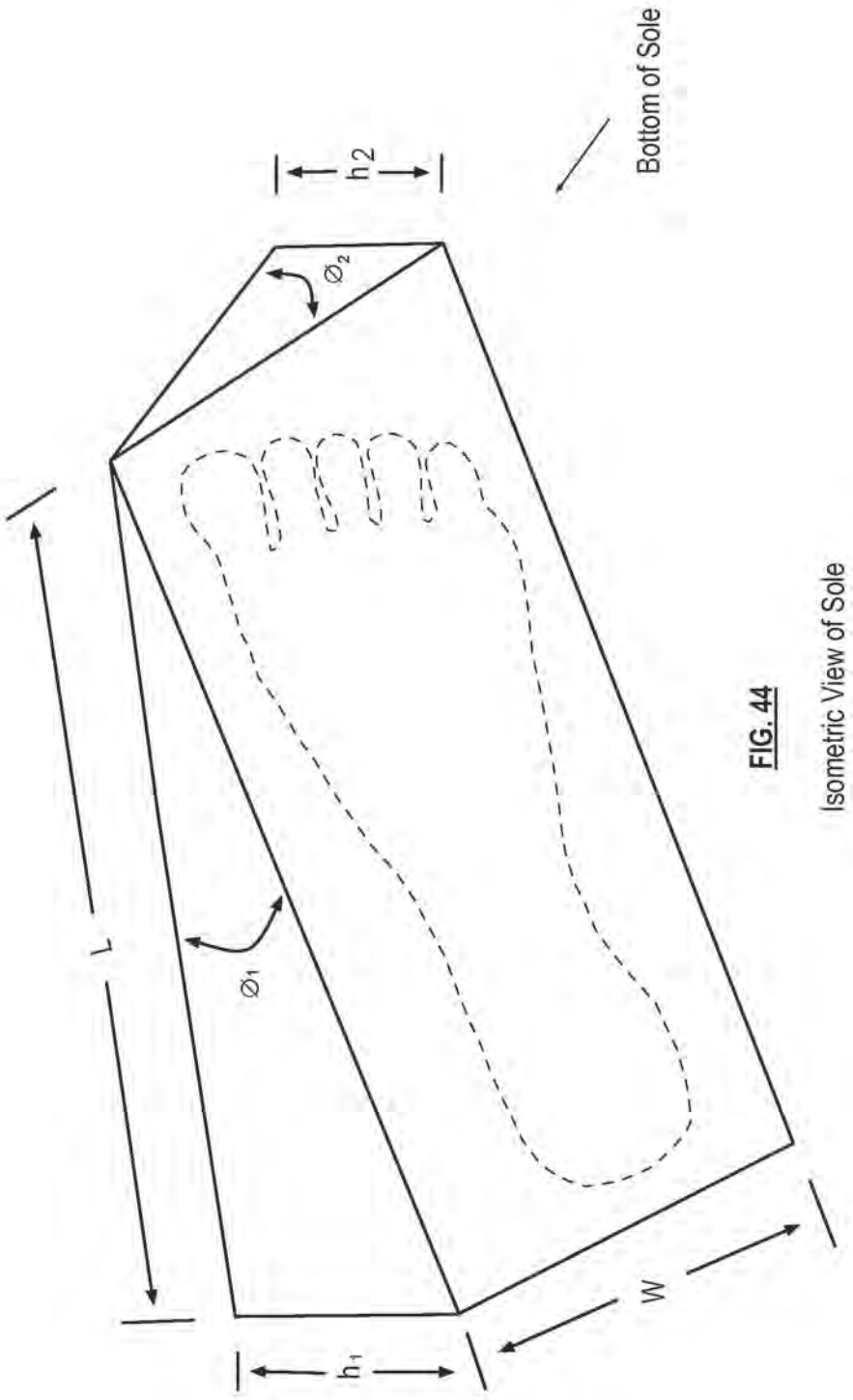


FIG. 44

Isometric View of Sole

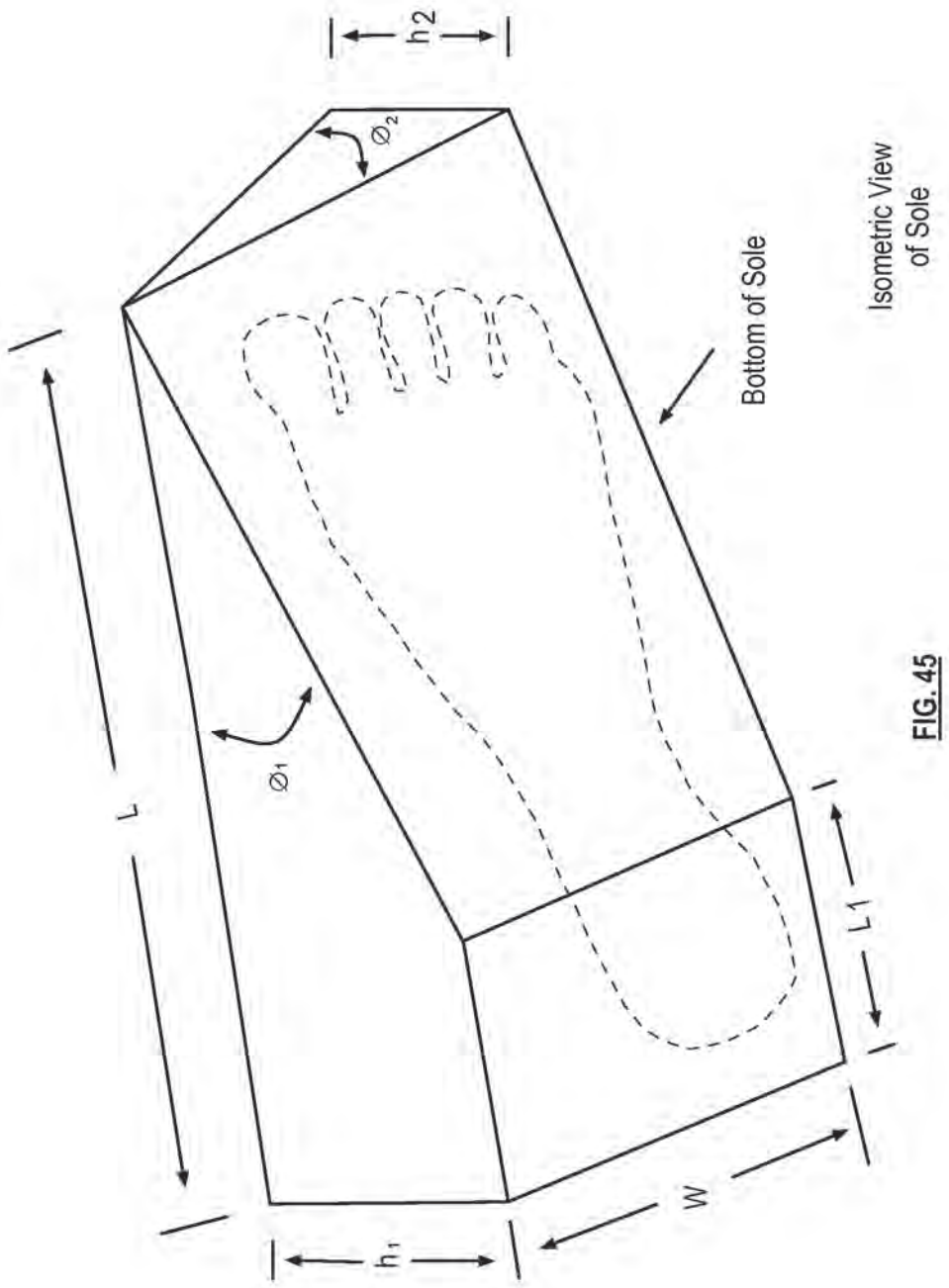


FIG. 45

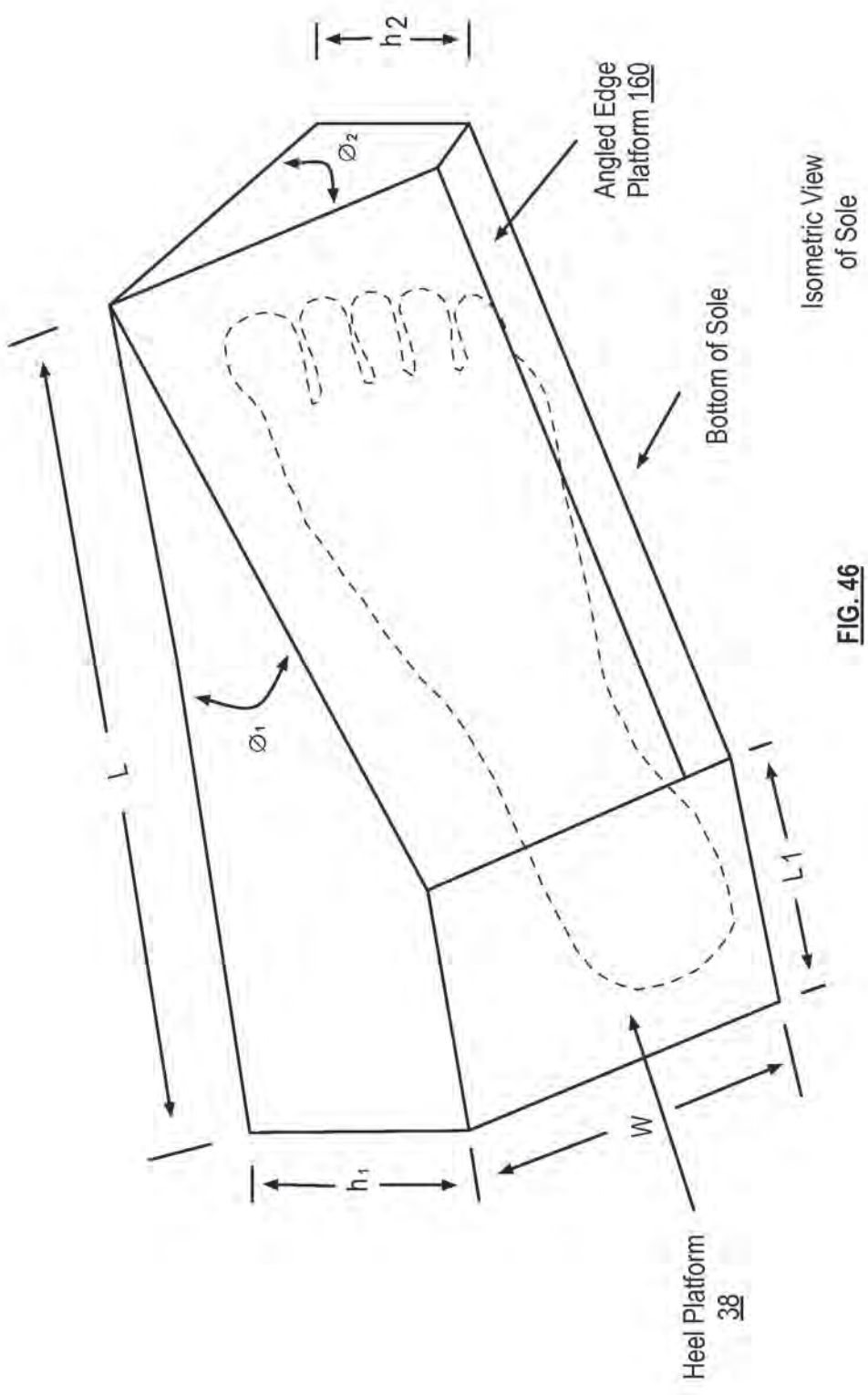

h2
Angled Edge Platform 160
Ø2
Isometric View of Sole
Bottom of Sole
L
Ø1
L1
h1
W
Heel Platform 38

FIG. 46

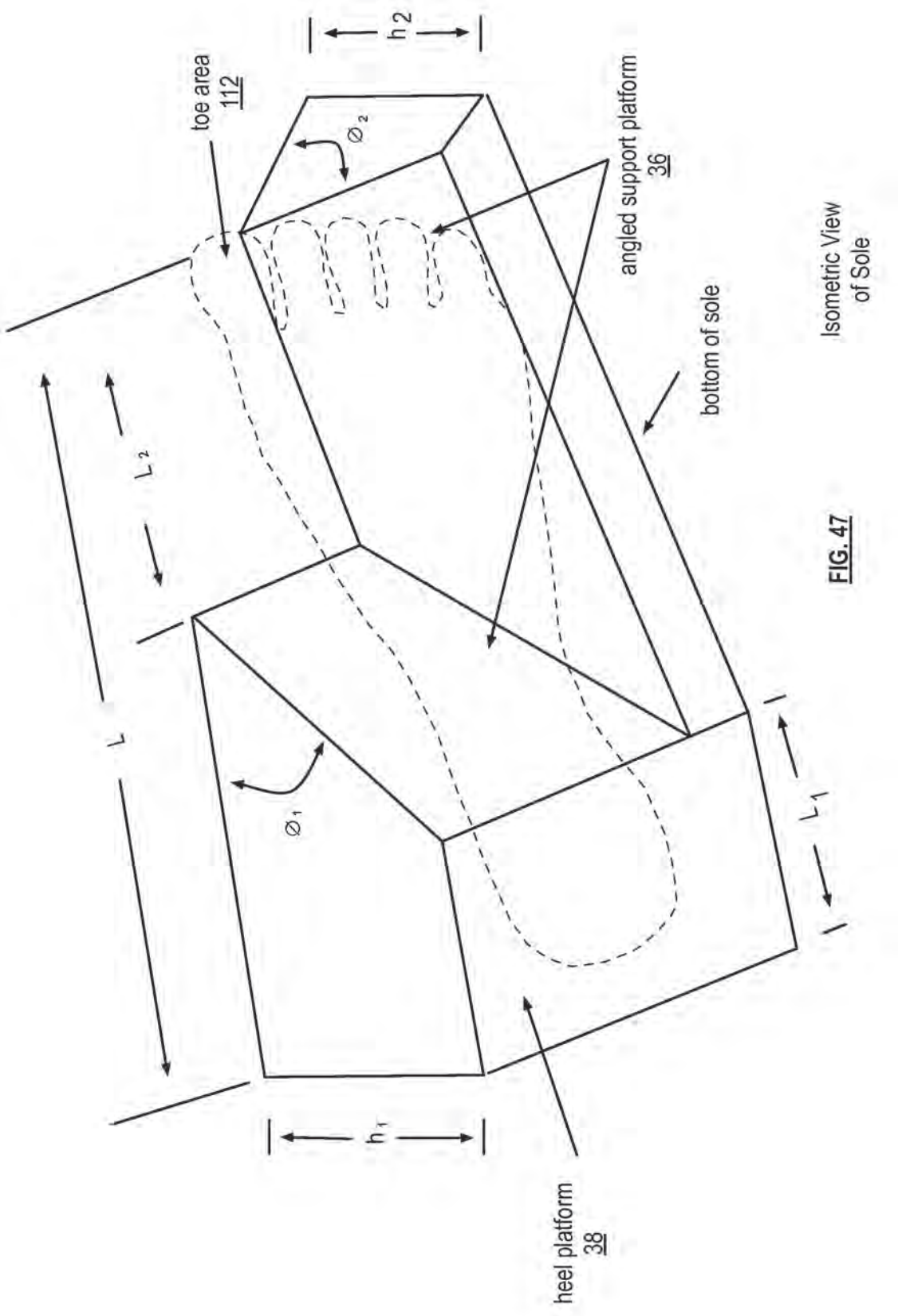
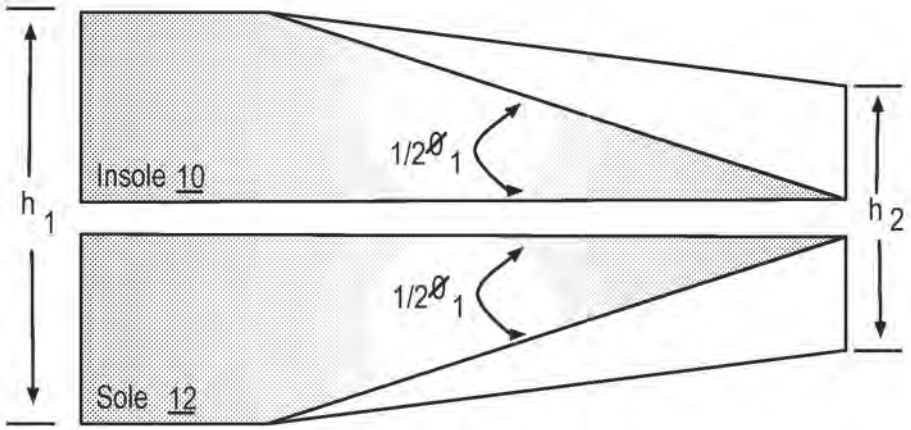

toe area
112
h 2
Ø 2
angled support platform
36
bottom of sole
Isometric View
of Sole
L 2
L
Ø 1
L 1
h 1
heel platform
38

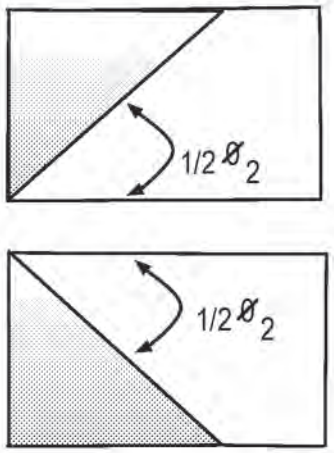
FIG. 47

Side

FIG. 48



Can be other ratio than 50/50 could have more or less insole.

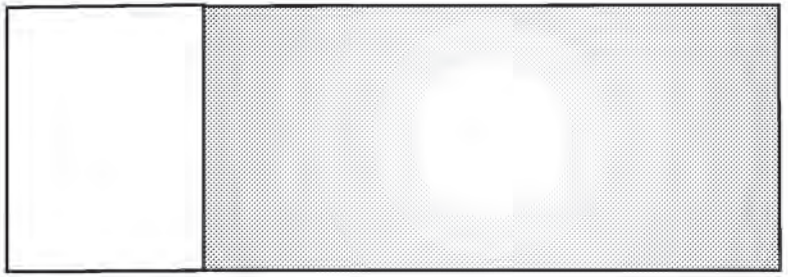


Front

FIG.51

Top

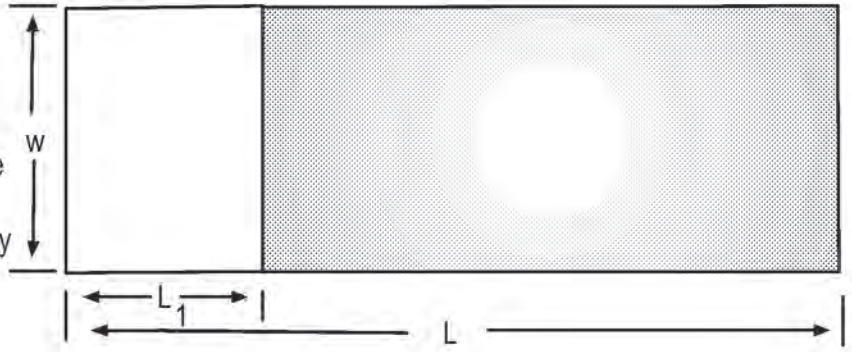
FIG. 49



Bottom

FIG. 50

NOTE: Could have various rounding of corners, overall shape more like a sole or insole. Shown this way for slopes



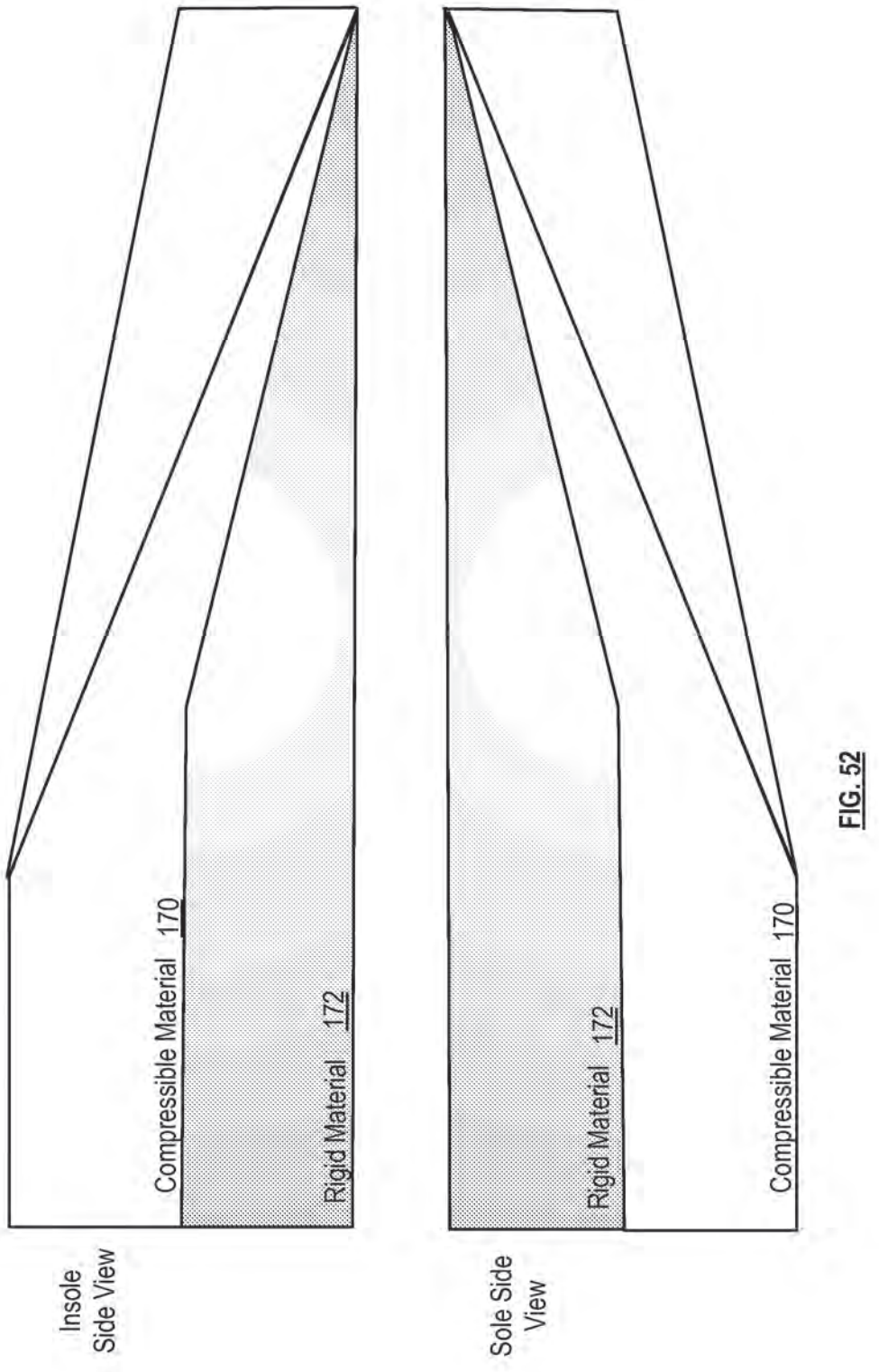

Insole
Side View
Compressible Material 170
Rigid Material 172
Sole Side
View
Rigid Material 172
Compressible Material 170

FIG. 52

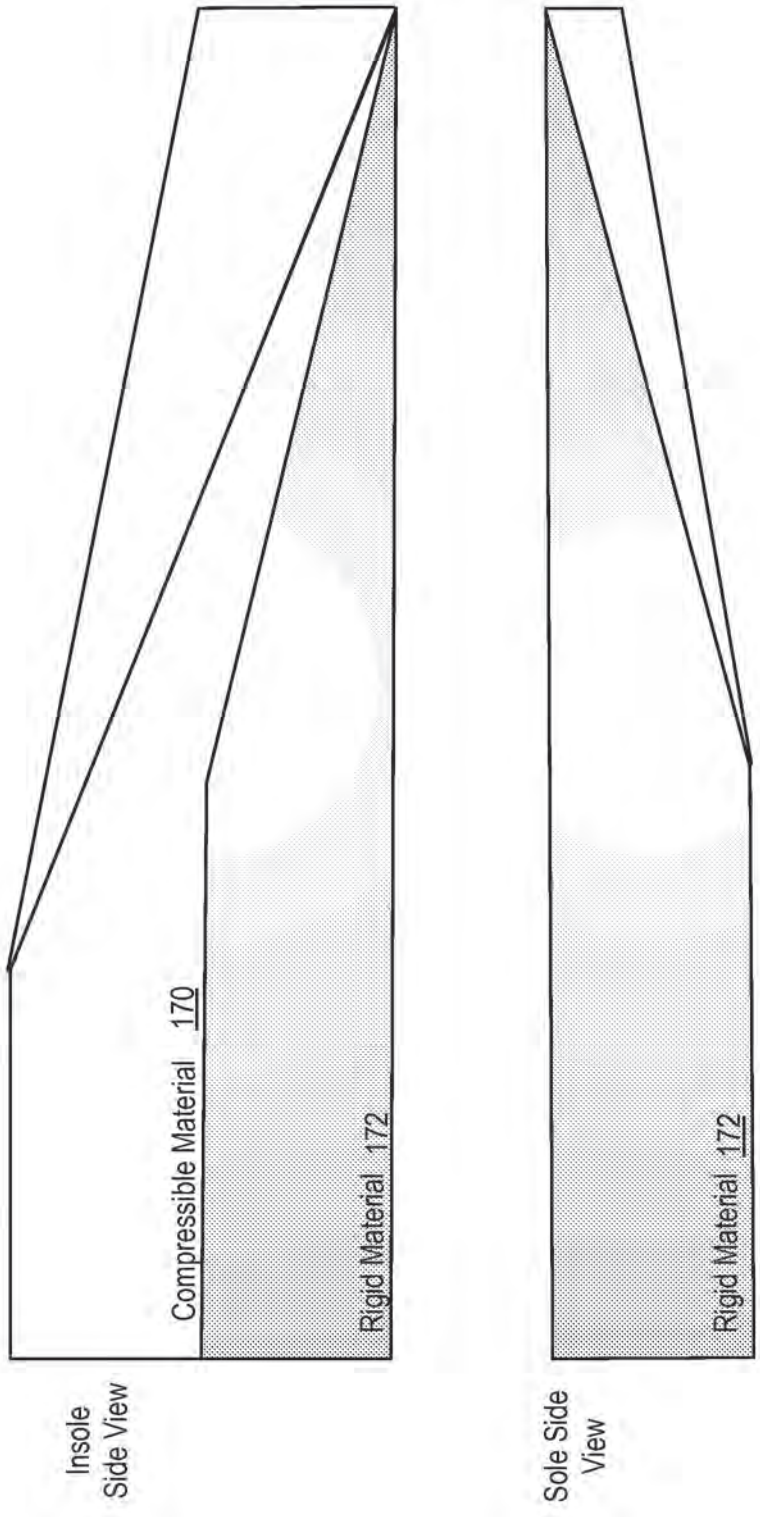
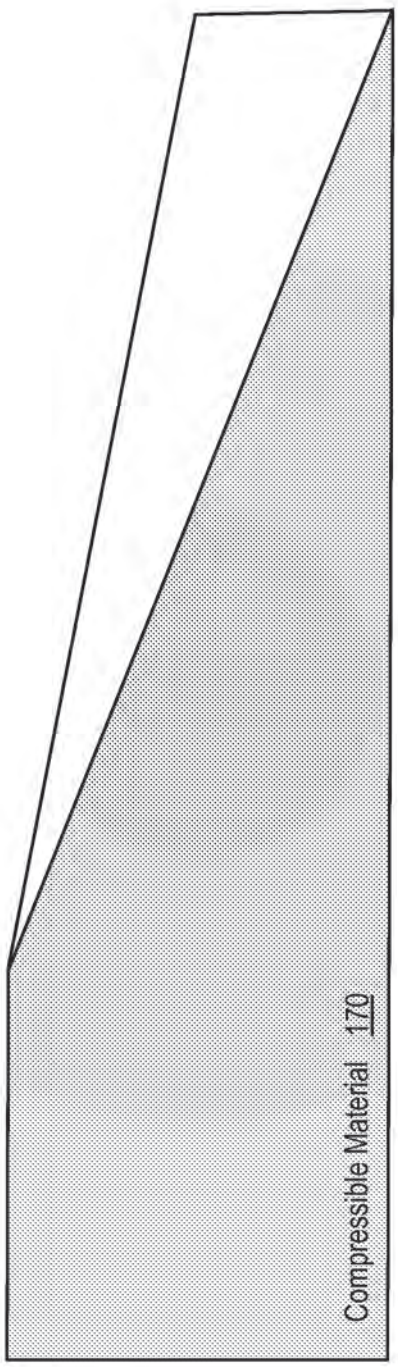

Insole
Side View
Compressible Material 170
Rigid Material 172
Sole Side
View
Rigid Material 172

FIG. 53


Insole
Side View
Compressible Material 170

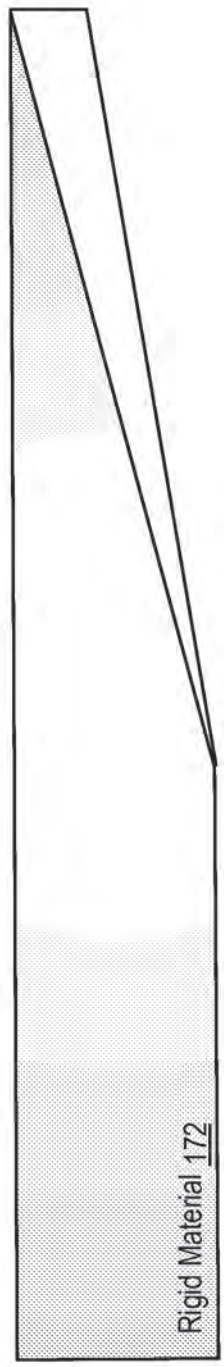
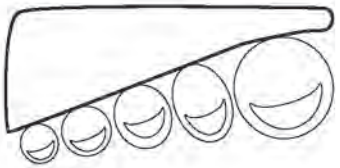

Sole Side
View
Rigid Material 172

FIG. 54



Front View

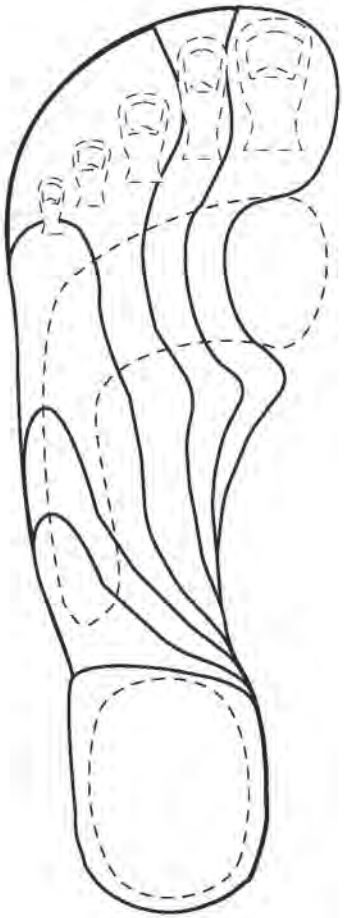
FIG. 58



Insole for Left Foot (prototype)

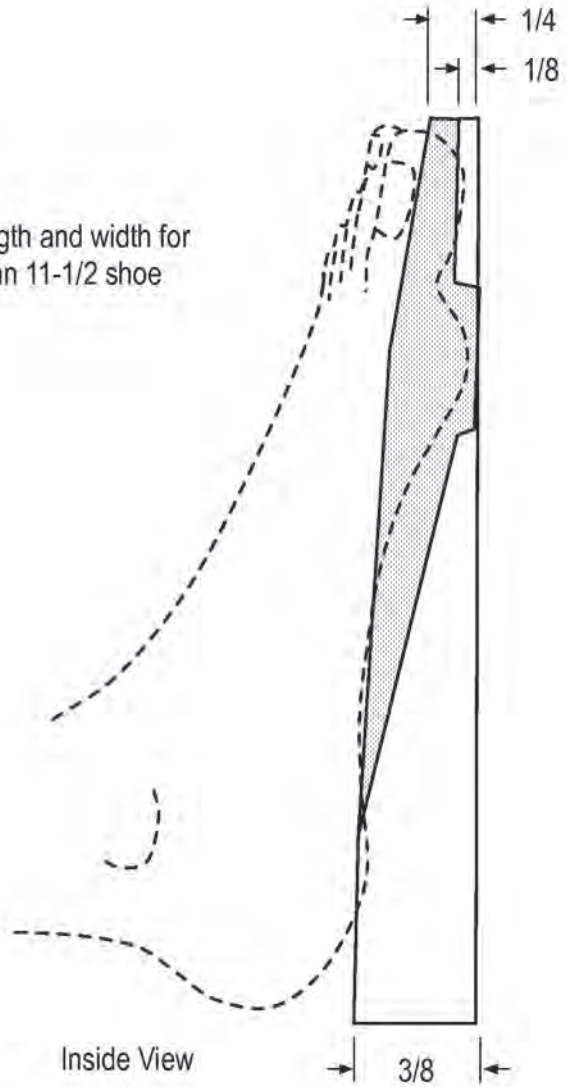
Outside View

FIG. 55



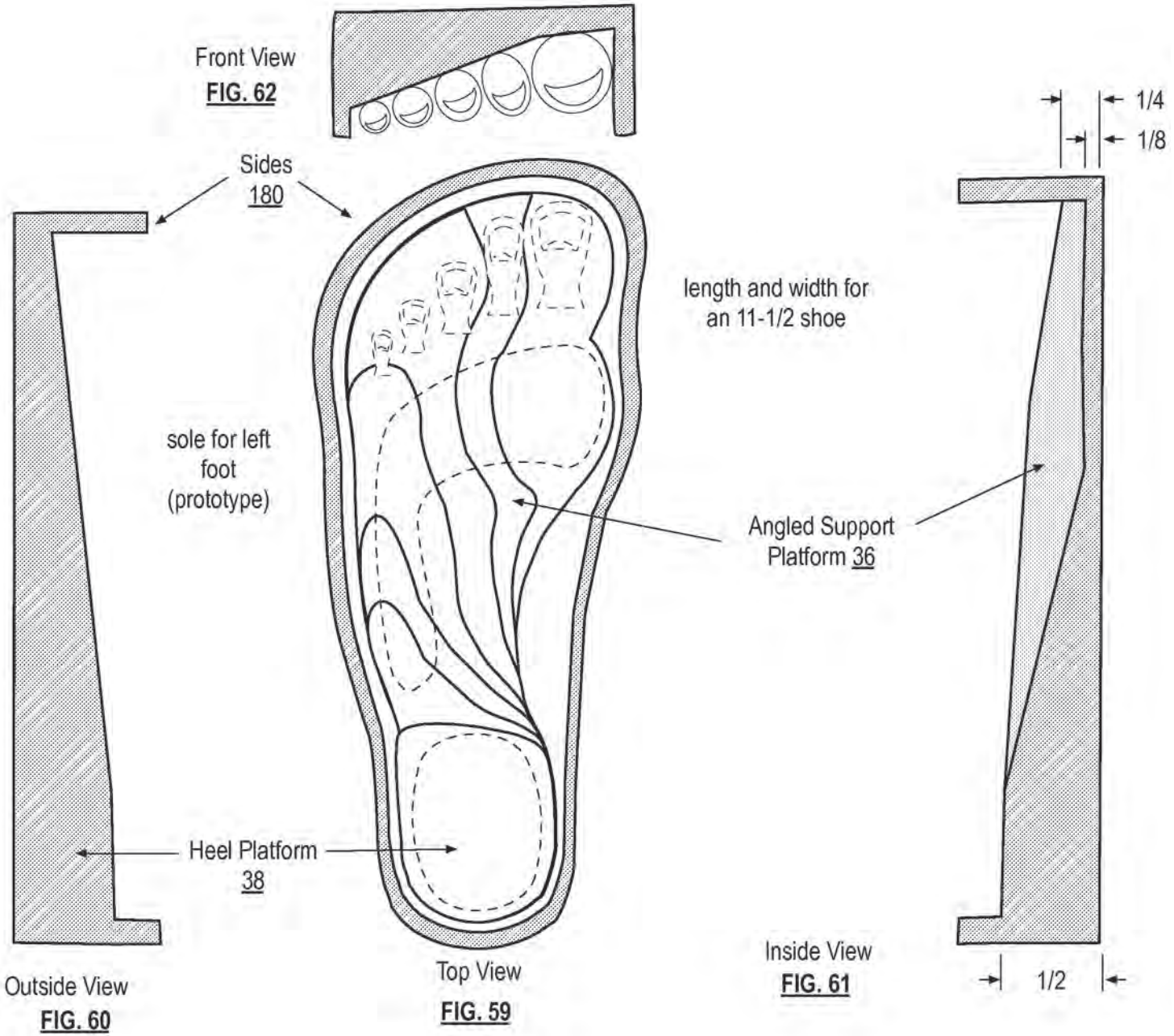
Top View

FIG. 56



Inside View

FIG. 57


Front View
FIG. 62
Sides
180
sole for left
foot
(prototype)
length and width for
an 11-1/2 shoe
Angled Support
Platform 36
Heel Platform
38
Outside View
FIG. 60
Top View
FIG. 59
1/4
1/8
Inside View
FIG. 61
1/2

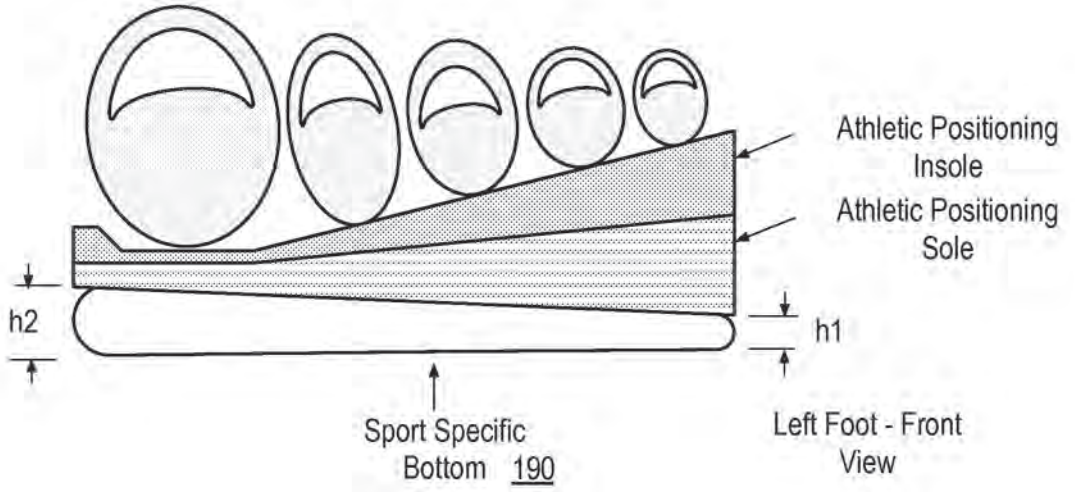

Athletic Positioning Insole
Athletic Positioning Sole
h2
h1
Sport Specific Bottom 190
Left Foot - Front View

FIG. 63

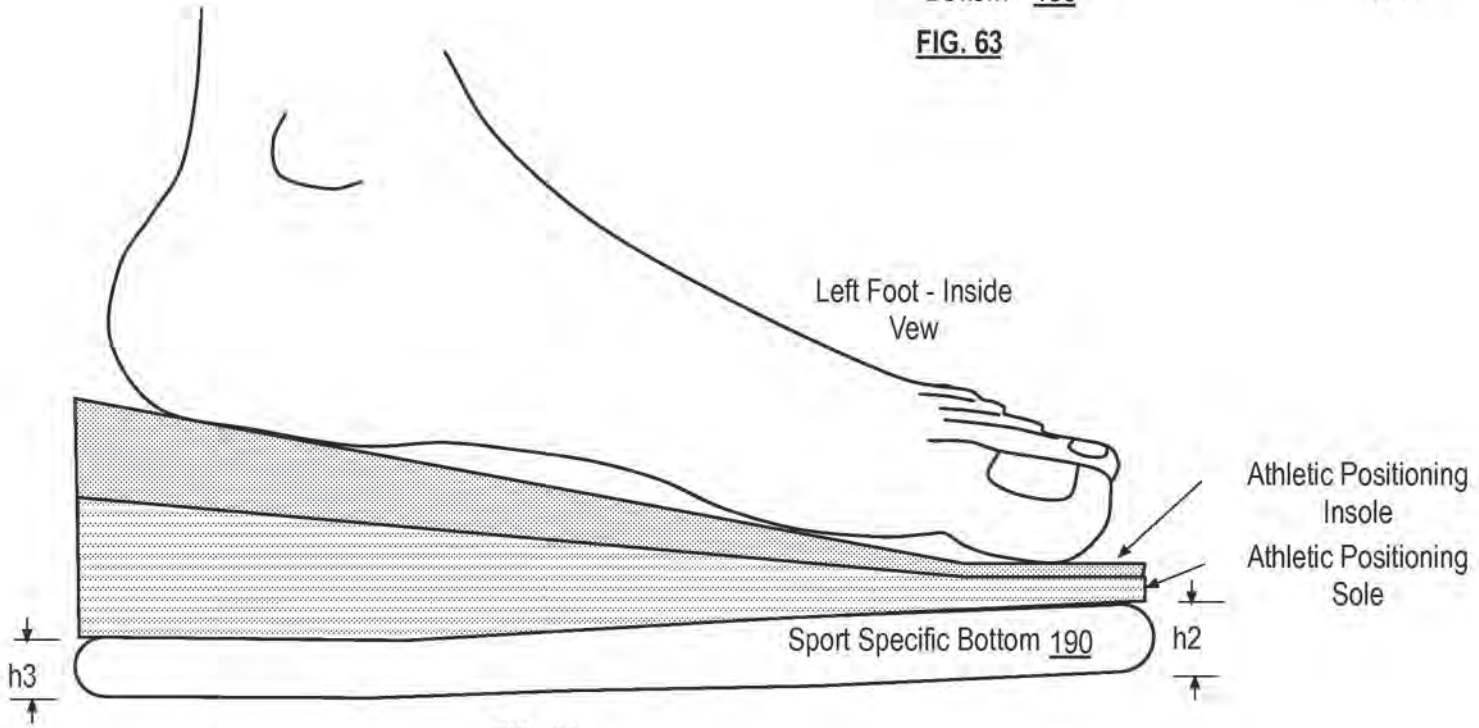

Left Foot - Inside Vew
Athletic Positioning Insole
Athletic Positioning Sole
Sport Specific Bottom 190
h2
h3

FIG. 64

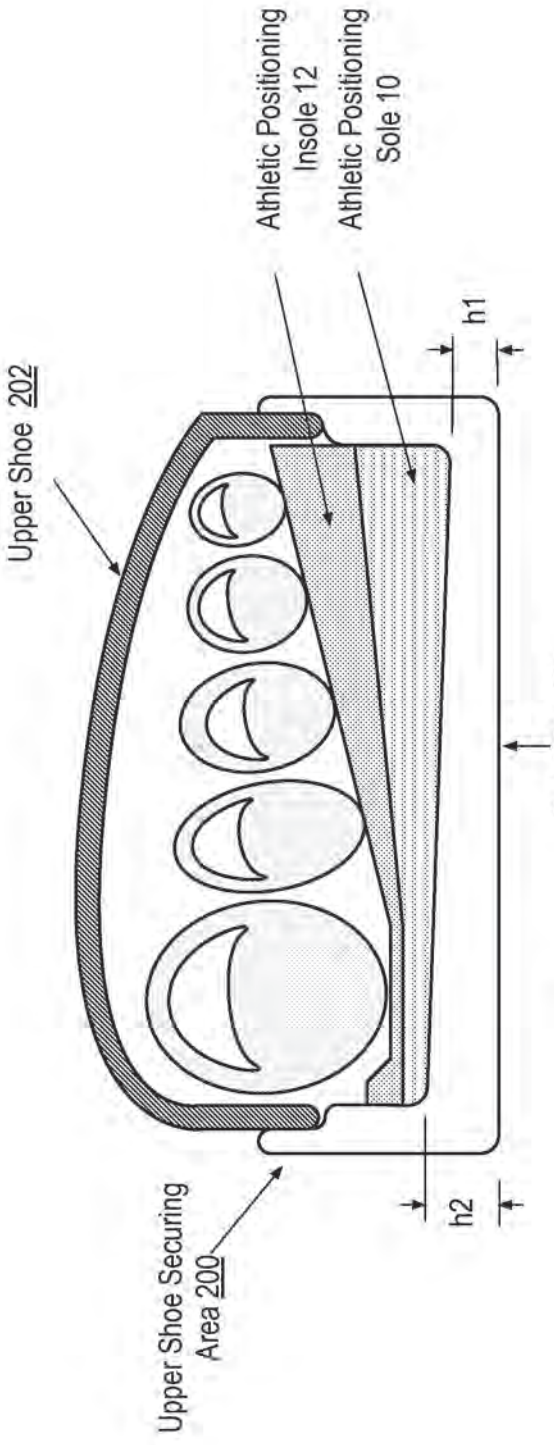


FIG. 65

Left Foot - Front View

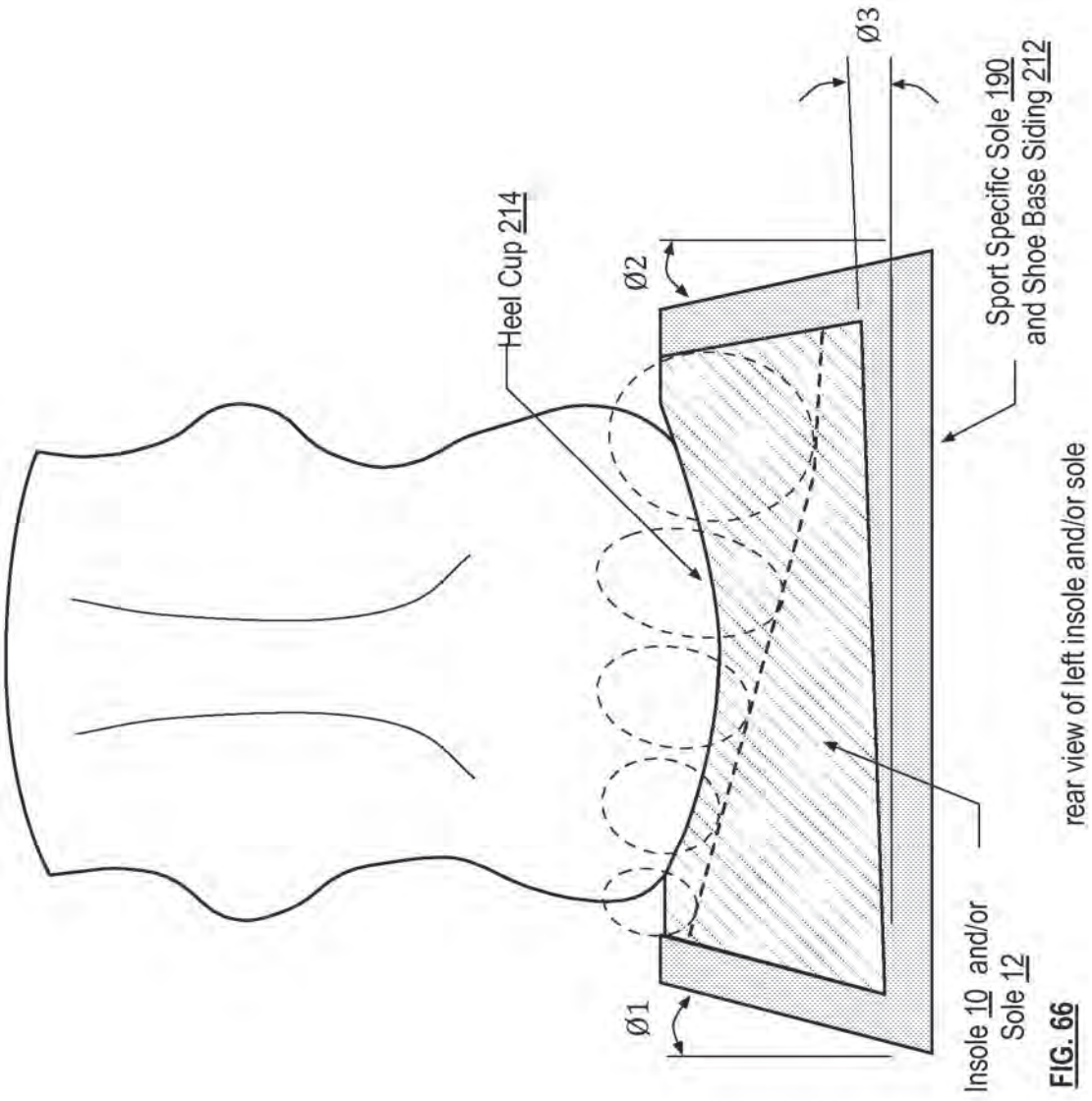

Heel Cup 214
Ø1
Ø2
Ø3
Sport Specific Sole 190
and Shoe Base Siding 212
Insole 10 and/or
Sole 12
rear view of left insole and/or sole

FIG. 66

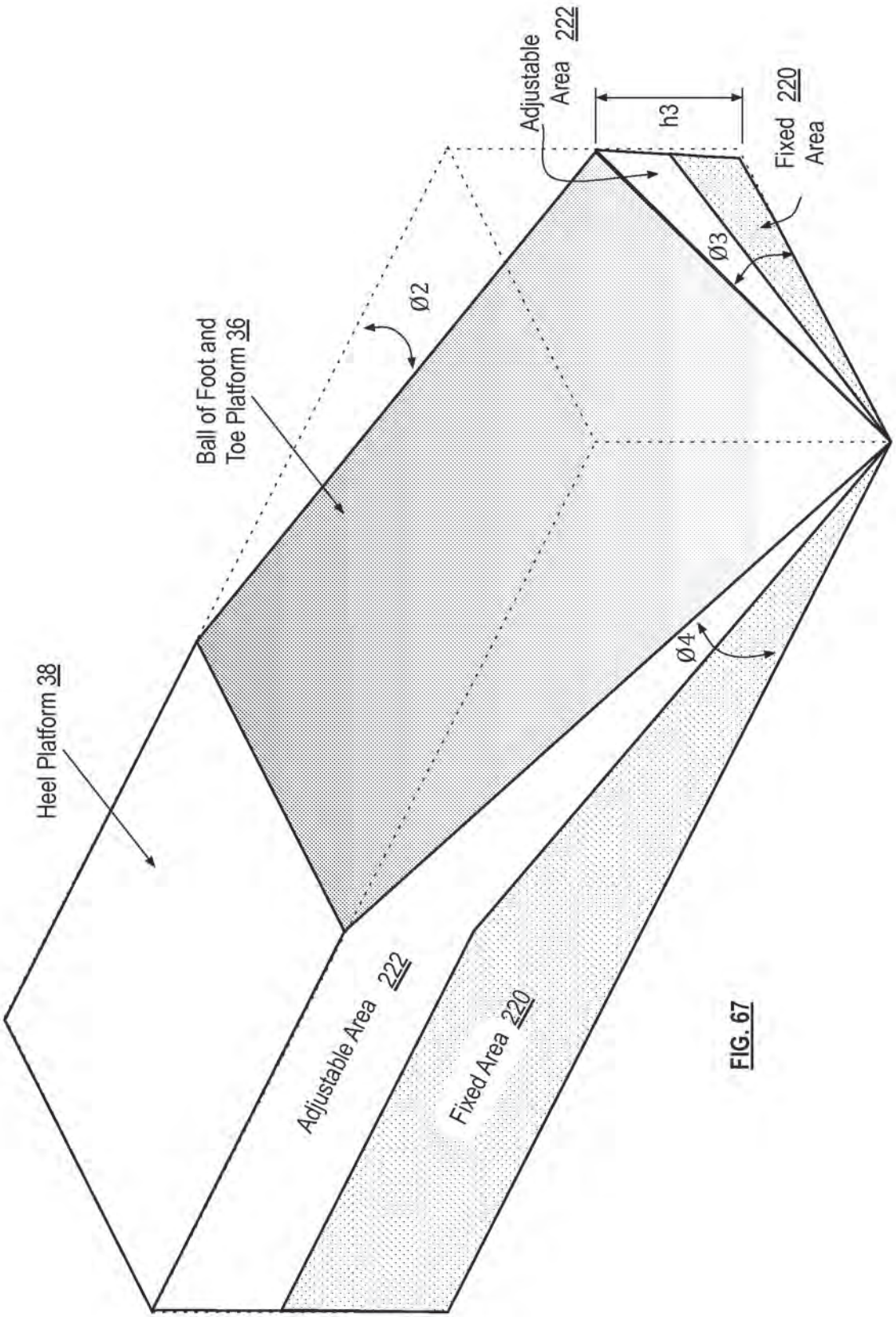
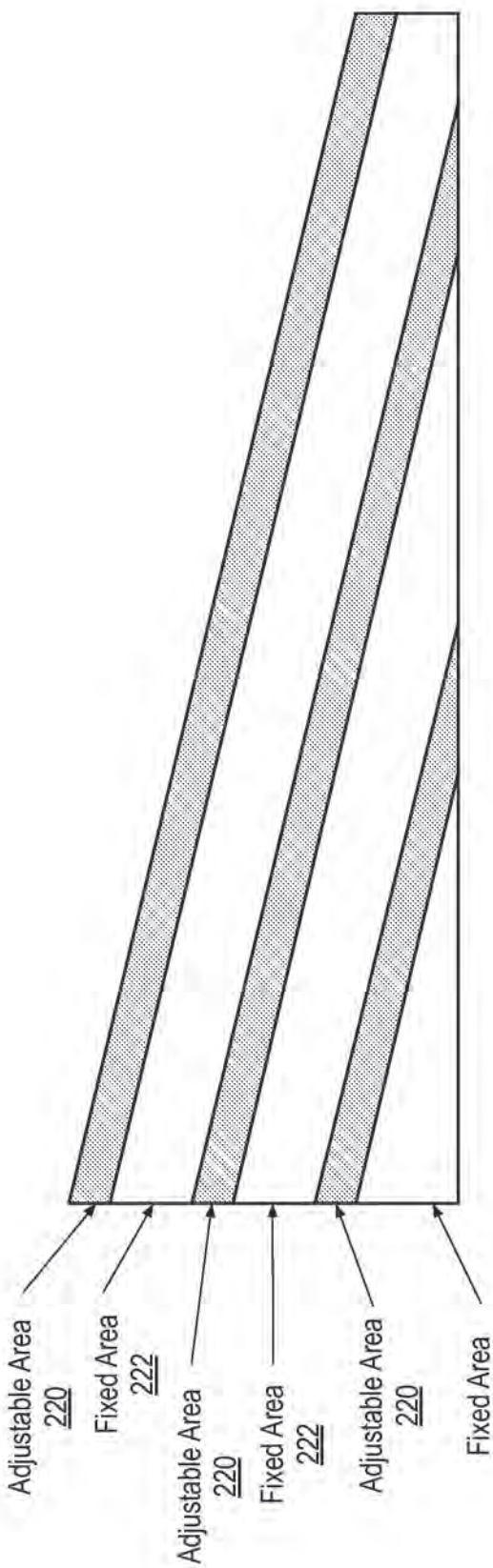

Heel Platform 38
Ball of Foot and Toe Platform 36
Adjustable Area 222
Fixed Area 220
Ø2
Ø3
Ø4
h3
Adjustable Area 222
Fixed Area 220

FIG. 67



cross section of adjustable athletic positioning insole and/or sole

FIG. 68

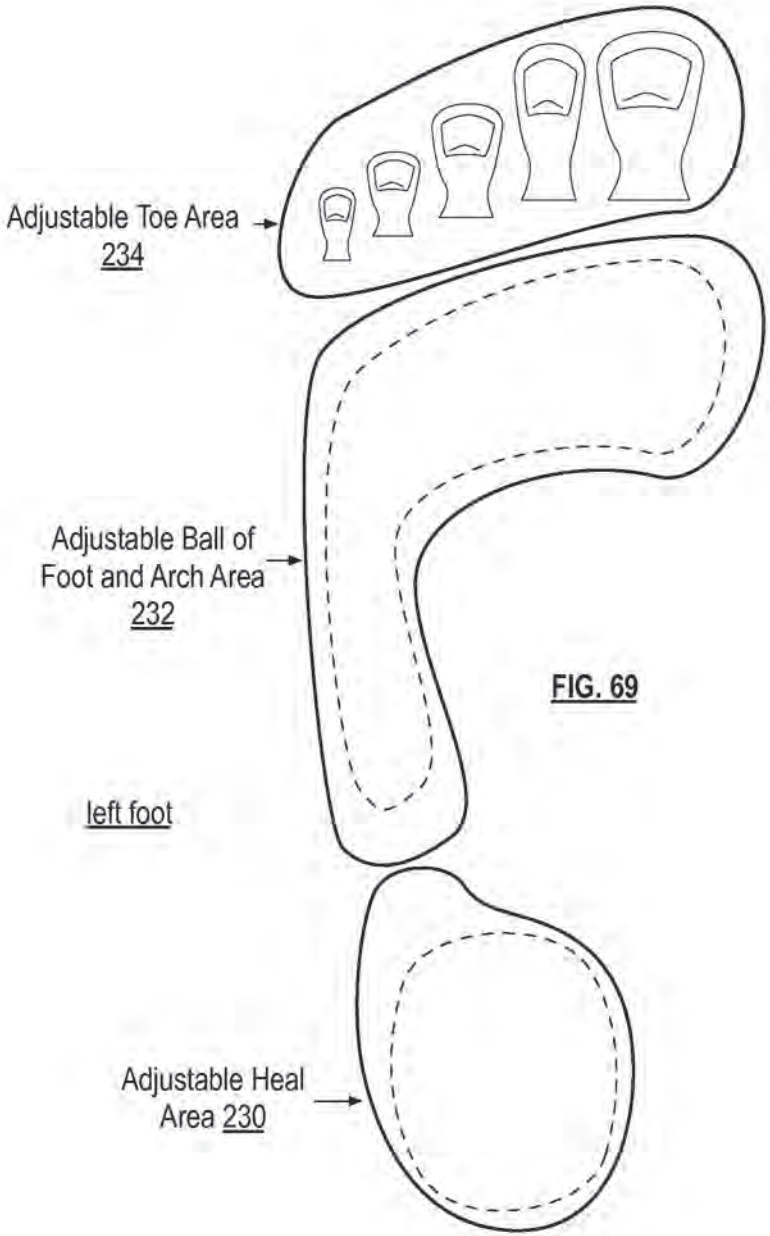
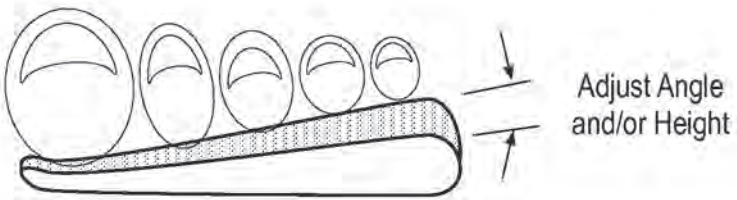
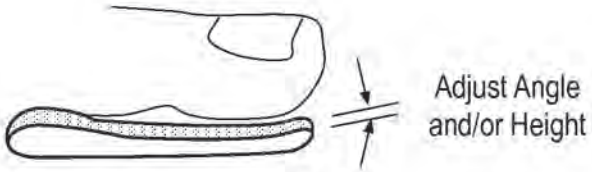


FIG. 69



Front View of Left Adjustable
Toe Area 234

FIG. 70



Side View of Left Adjustable
Toe Area 234

FIG. 71

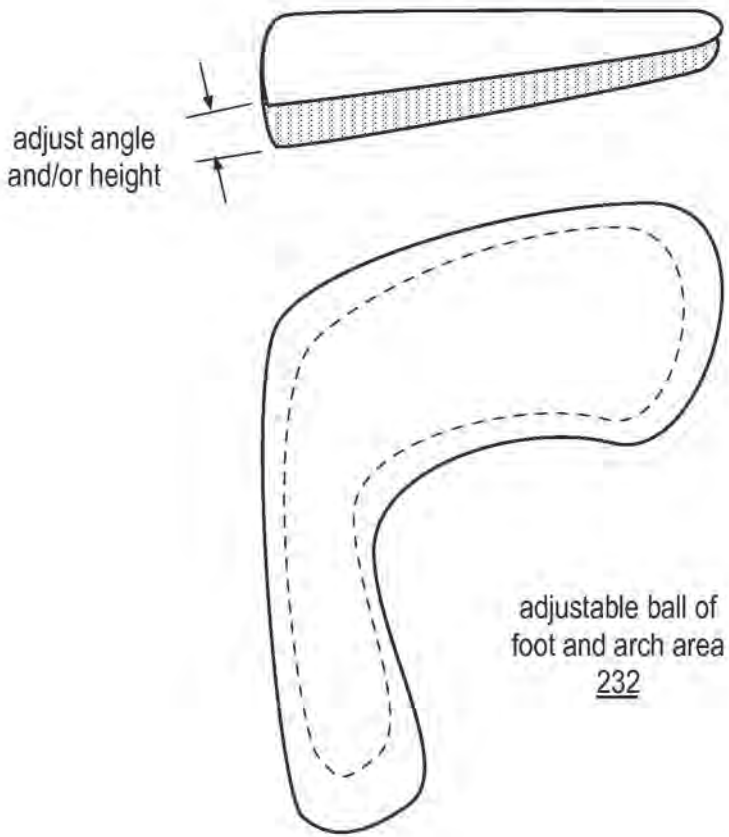
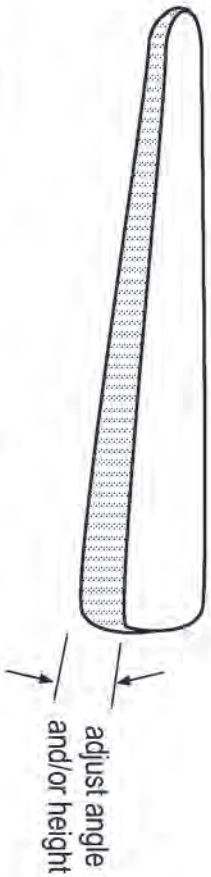


FIG. 72

FIG. 73
Front View

FIG. 74
Inside View



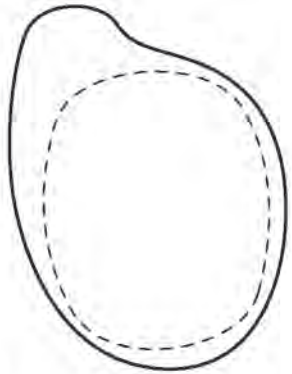


FIG. 75

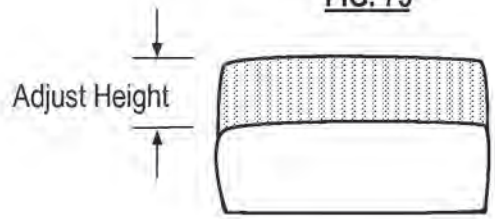
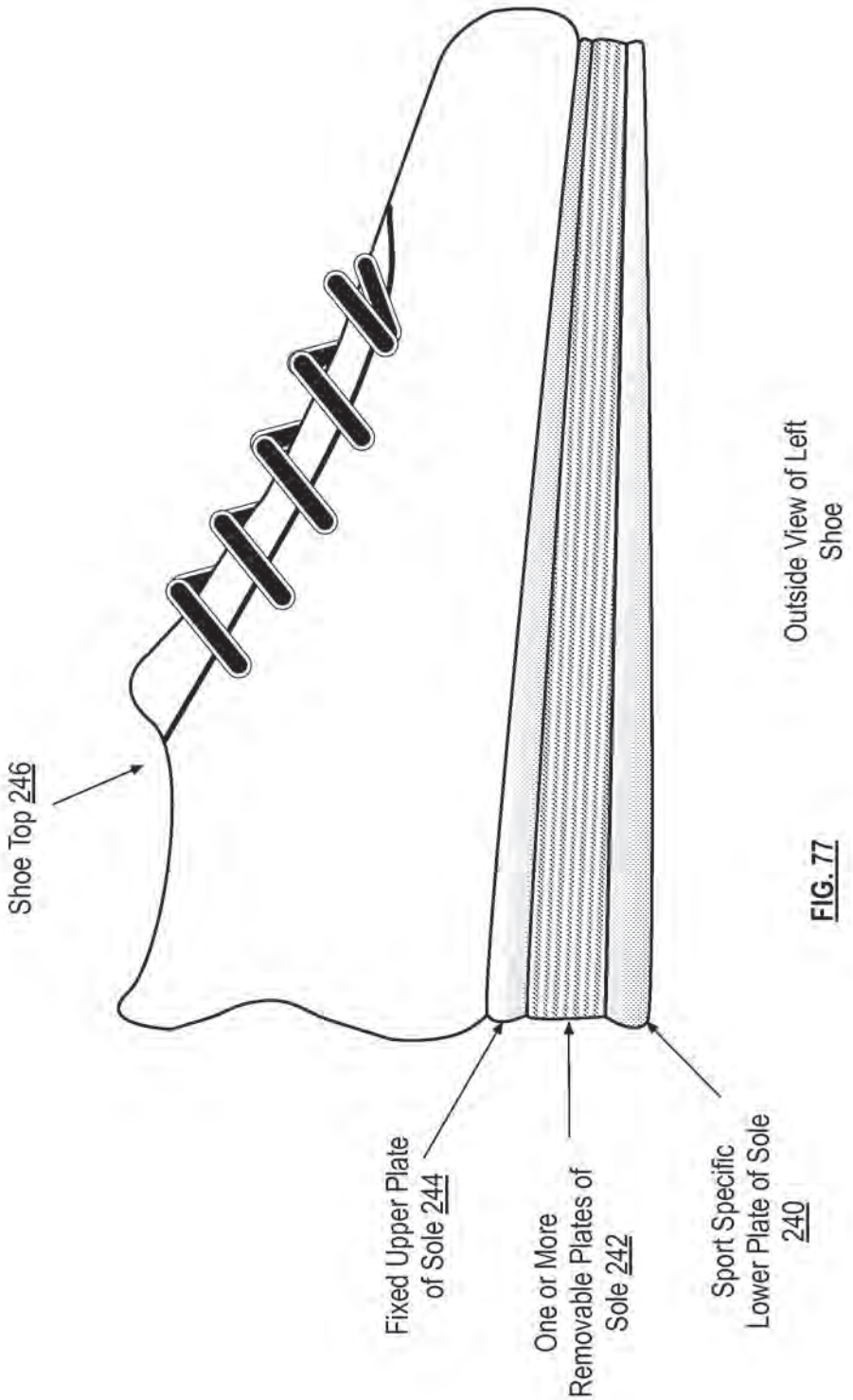


FIG. 76



Outside View of Left Shoe

FIG. 77

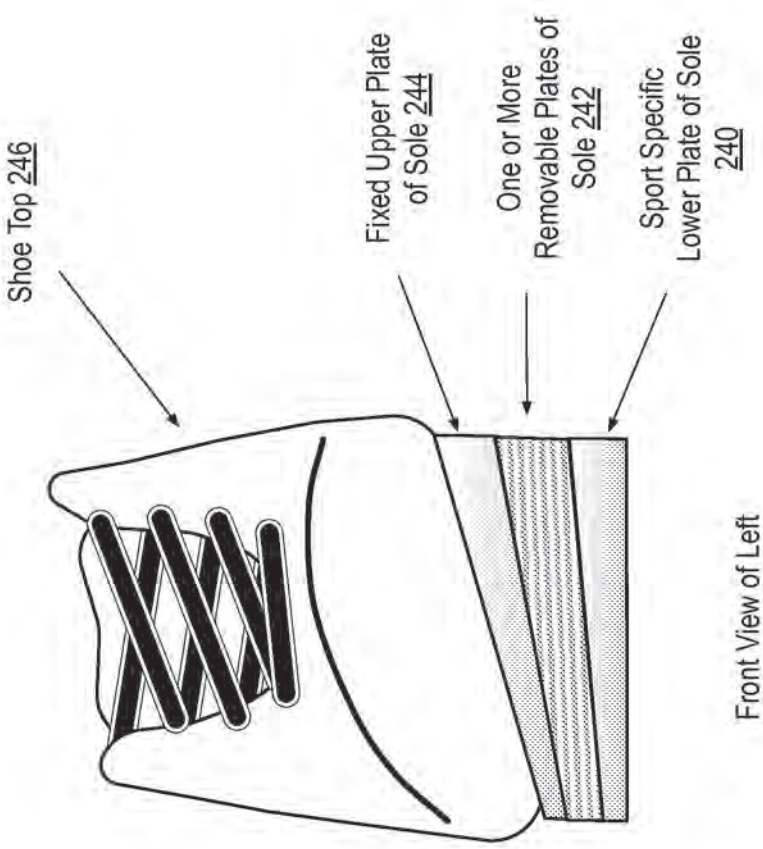

Shoe Top 246
Fixed Upper Plate of Sole 244
One or More Removable Plates of Sole 242
Sport Specific Lower Plate of Sole 240
Front View of Left Shoe

FIG. 78

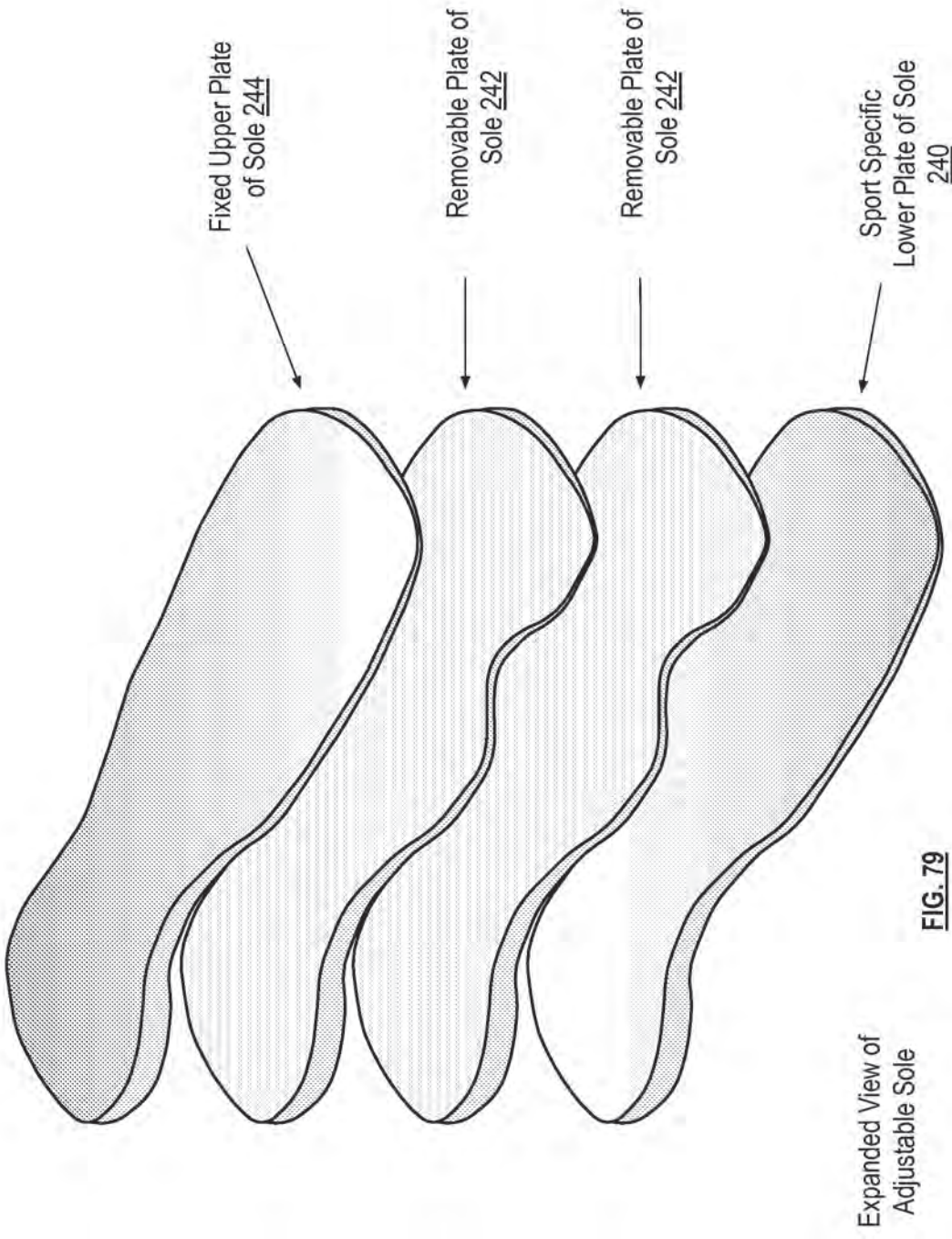

Fixed Upper Plate of Sole 244
Removable Plate of Sole 242
Removable Plate of Sole 242
Sport Specific Lower Plate of Sole 240
Expanded View of Adjustable Sole

FIG. 79

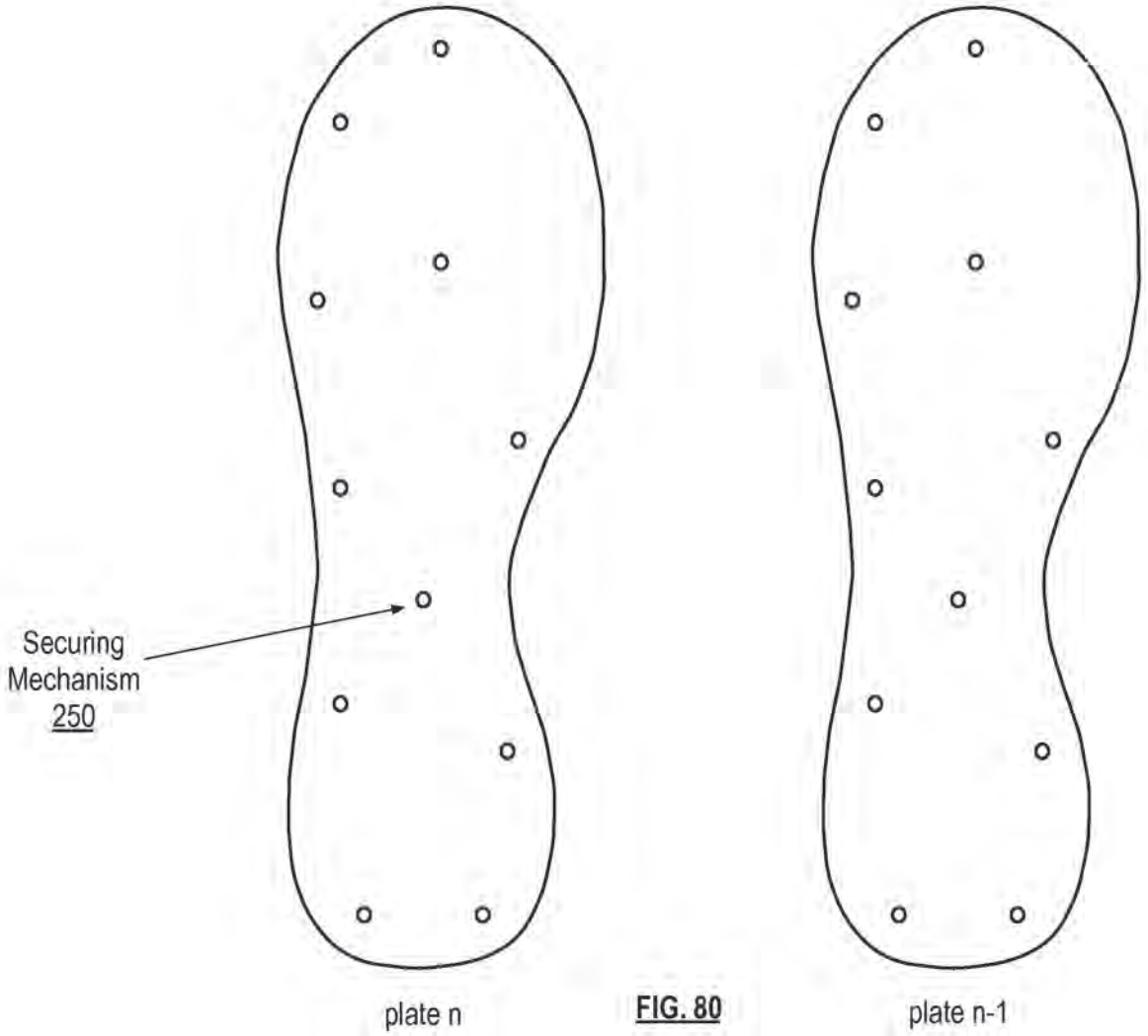


FIG. 80

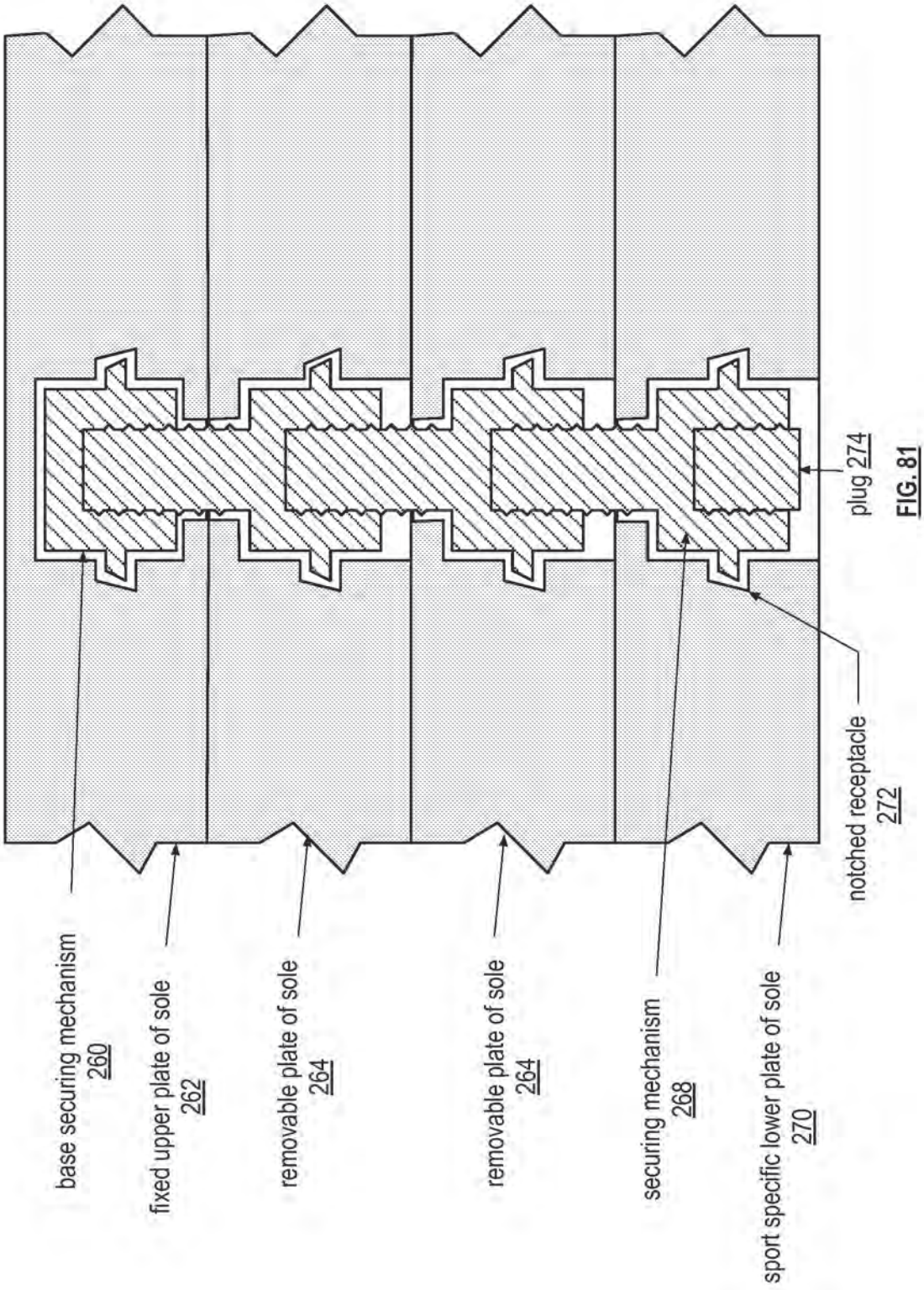

base securing mechanism 260
fixed upper plate of sole 262
removable plate of sole 264
removable plate of sole 264
securing mechanism 268
sport specific lower plate of sole 270
notched receptacle 272
plug 274

FIG. 81

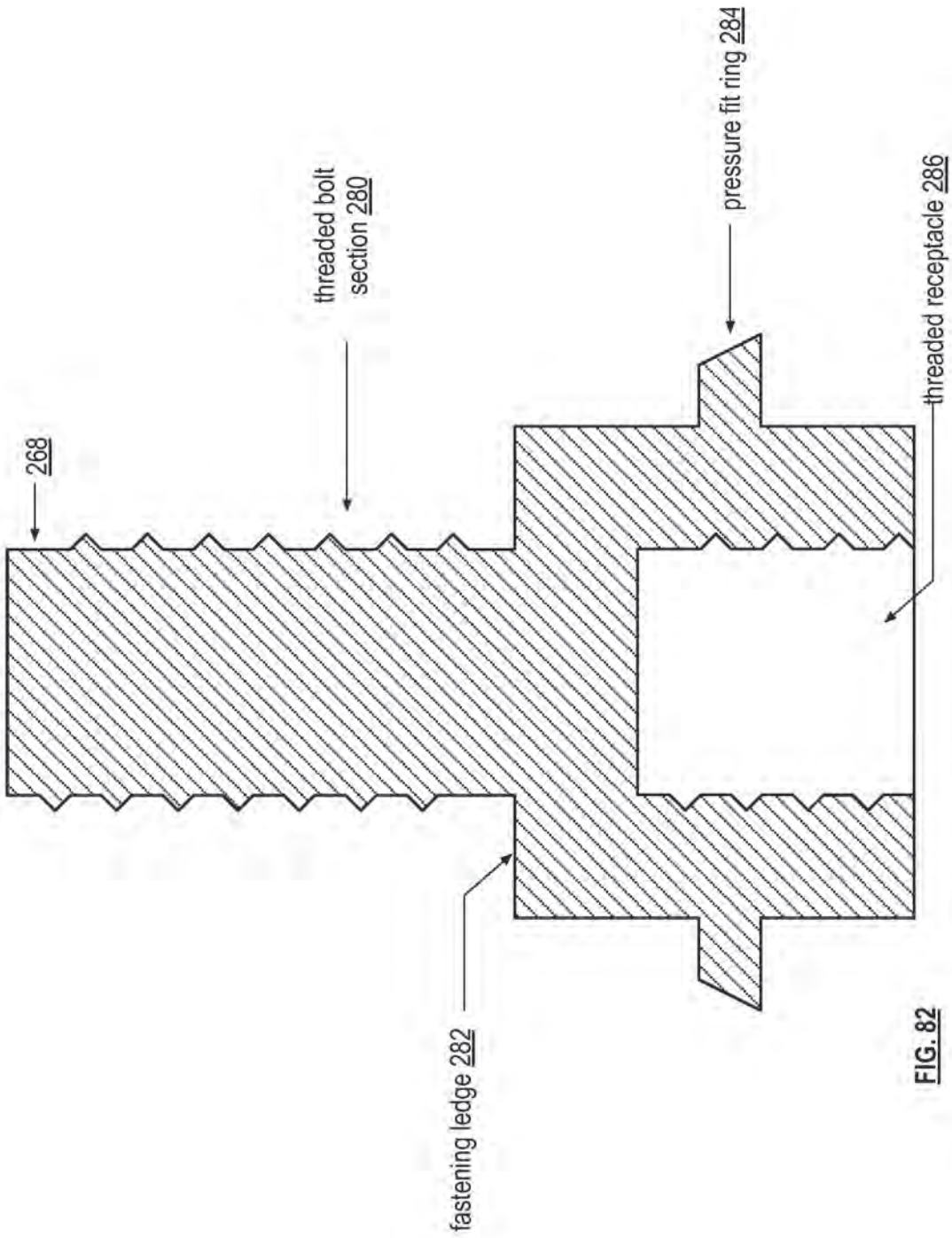
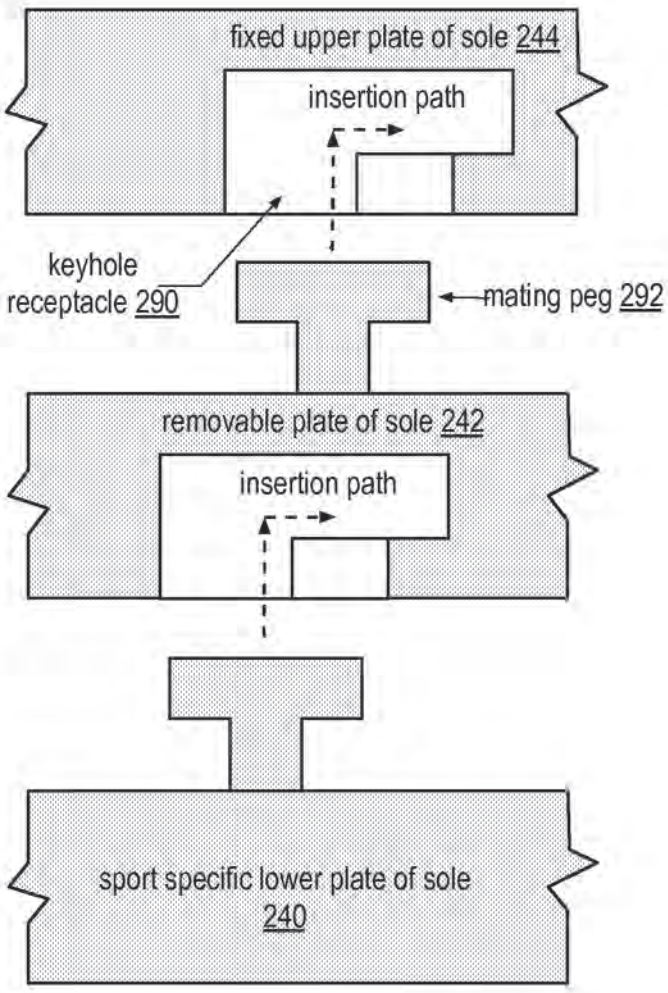

268
threaded bolt section 280
pressure fit ring 284
threaded receptacle 286
fastening ledge 282

FIG. 82



securing mechanism 268

FIG. 83



keyhole receptacle 290
bottom view

FIG. 84

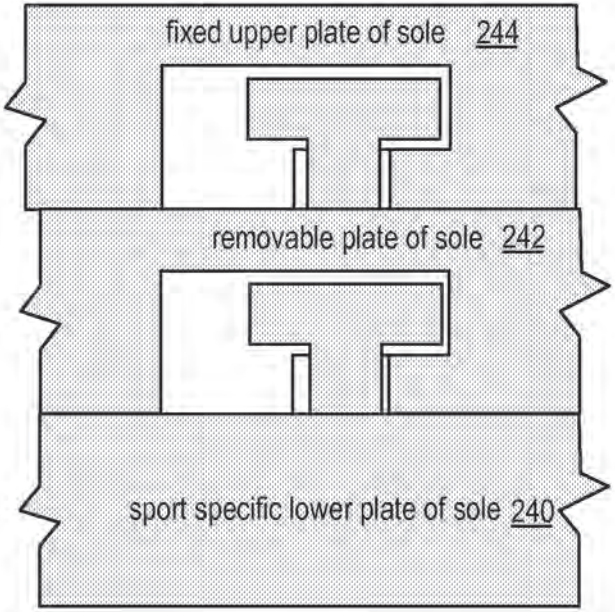


FIG. 85

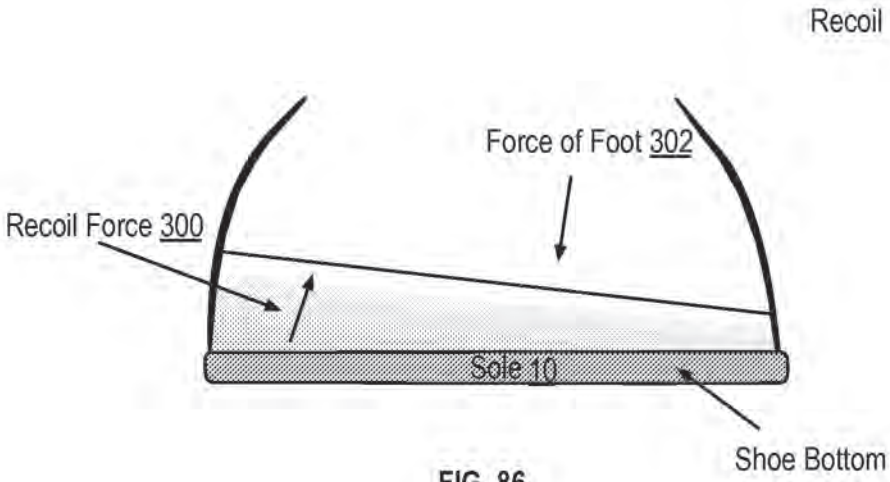

Recoil
Force of Foot 302
Recoil Force 300
Sole 10
Shoe Bottom

FIG. 86

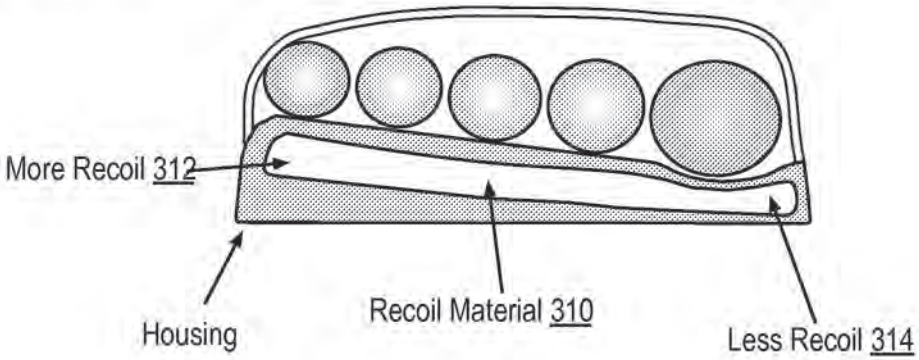

More Recoil 312
Housing
Recoil Material 310
Less Recoil 314

FIG.87

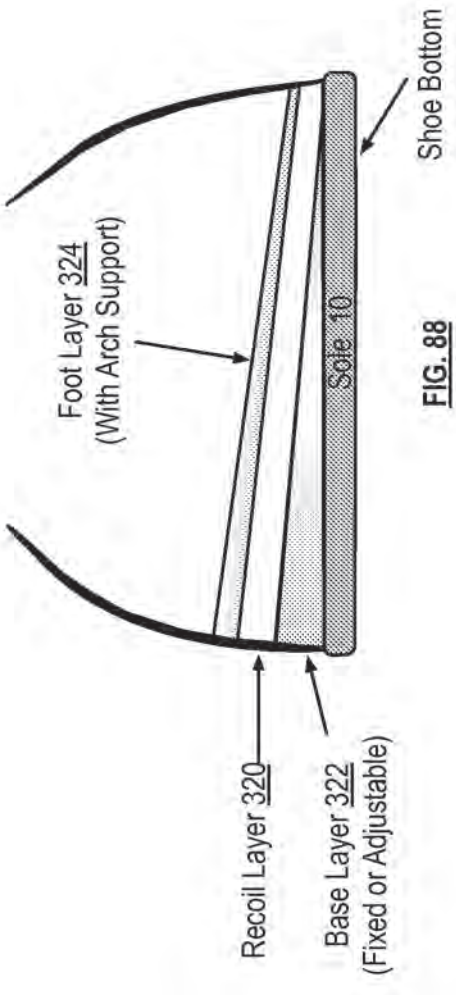

Shoe Bottom
Foot Layer 324
(With Arch Support)
Sole 10
Recoil Layer 320
Base Layer 322
(Fixed or Adjustable)

FIG. 88

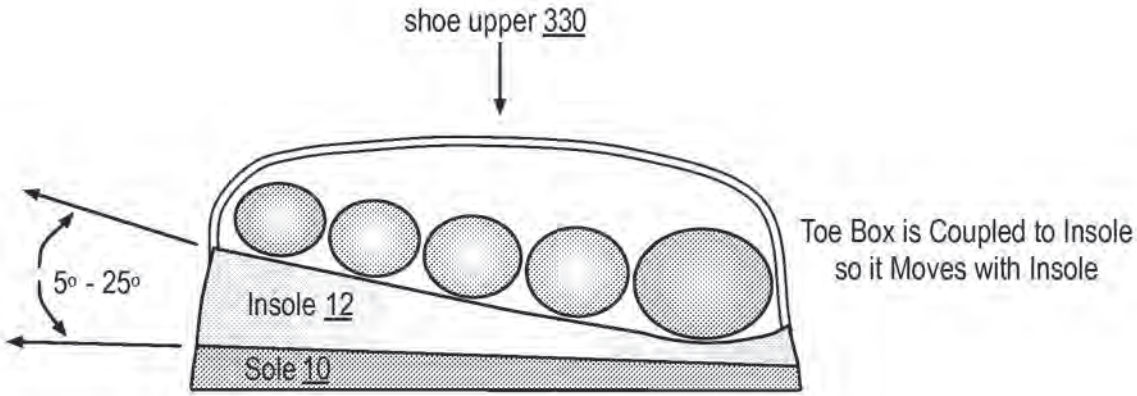

shoe upper 330
5° - 25°
Insole 12
Sole 10
Toe Box is Coupled to Insole
so it Moves with Insole

FIG. 89

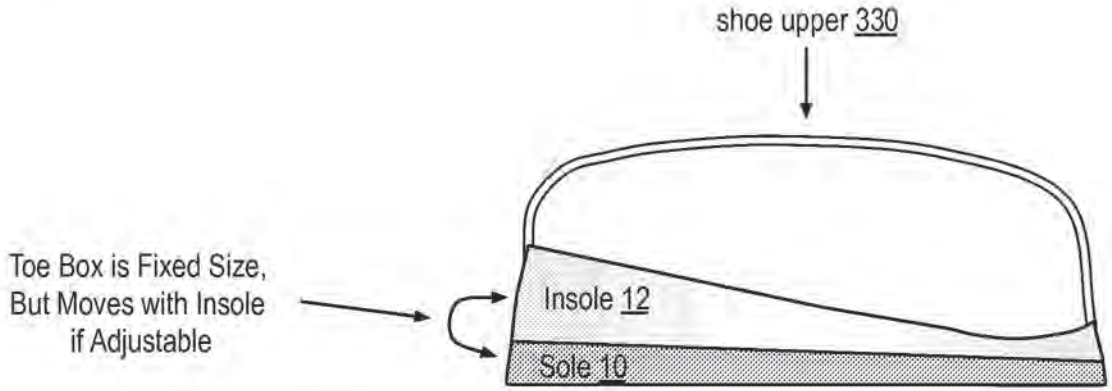

shoe upper 330
Toe Box is Fixed Size,
But Moves with Insole
if Adjustable
Insole 12
Sole 10

FIG. 90

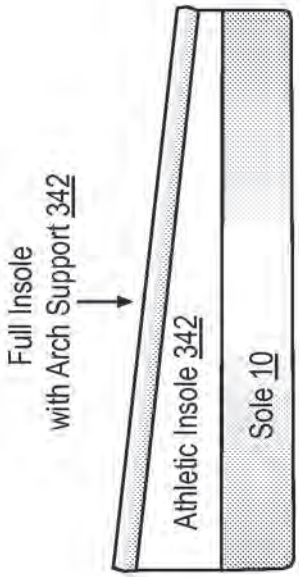

Full Insole
with Arch Support 342
Athletic Insole 342
Sole 10

FIG. 91

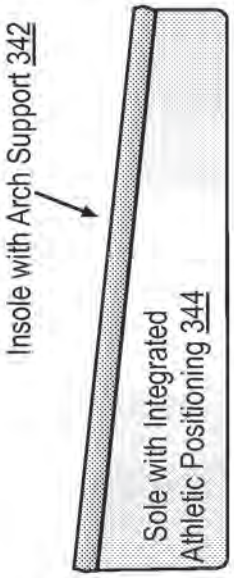

Insole with Arch Support 342
Sole with Integrated
Athletic Positioning 344

FIG. 92

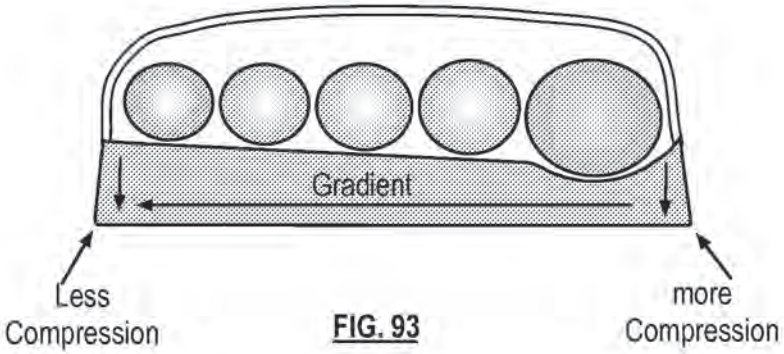

Gradient
Less
Compression
more
Compression

FIG. 93

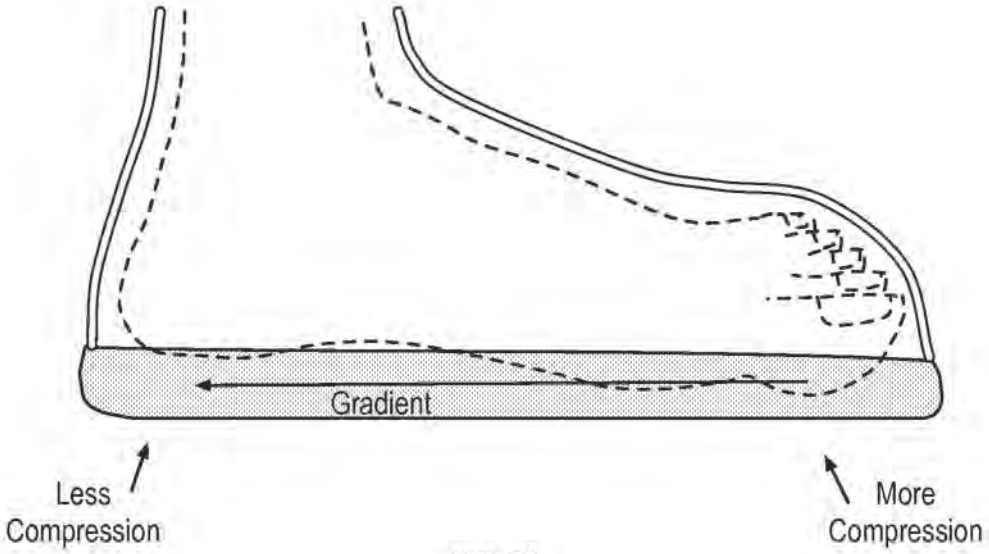

Gradient
Less
Compression
More
Compression

FIG. 94

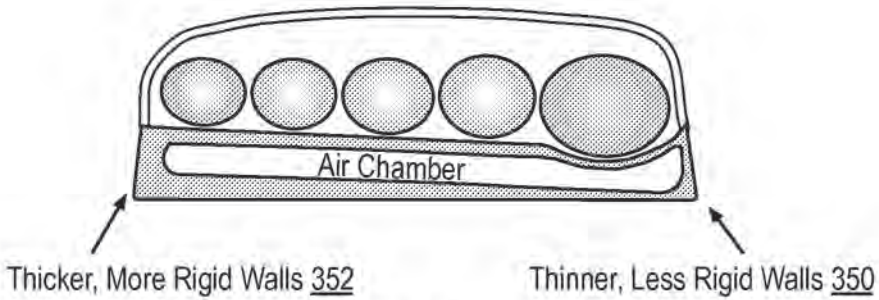

Air Chamber
Thicker, More Rigid Walls 352
Thinner, Less Rigid Walls 350

FIG. 95

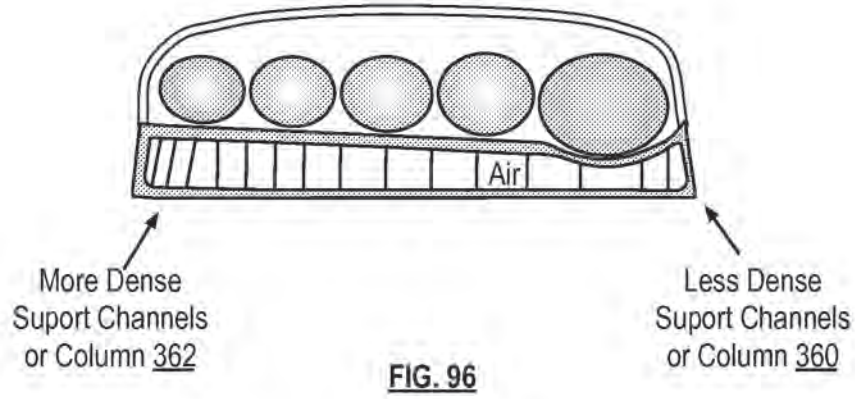

Air
More Dense
Suport Channels
or Column 362
Less Dense
Suport Channels
or Column 360

FIG. 96

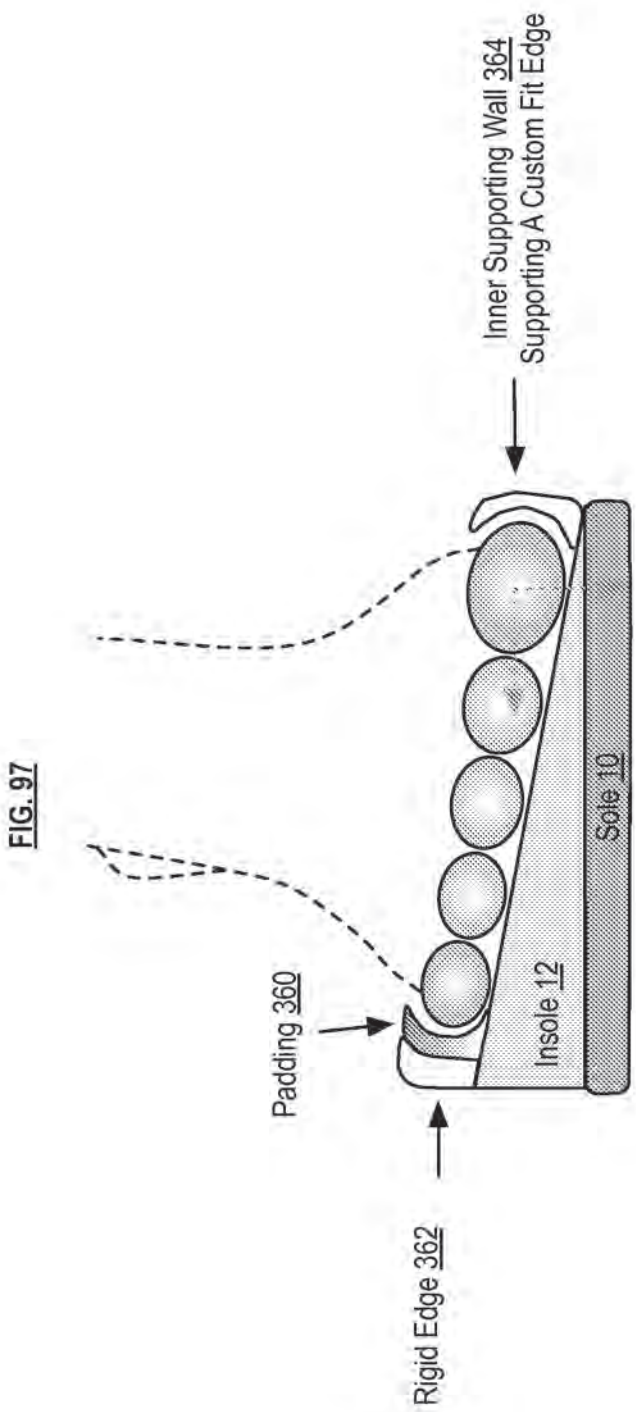

Inner Supporting Wall 364
Supporting A Custom Fit Edge
Sole 10
Insole 12
Padding 360
Rigid Edge 362

FIG. 97


insole 12
sole 10
Compressible
Rigid

FIG. 98

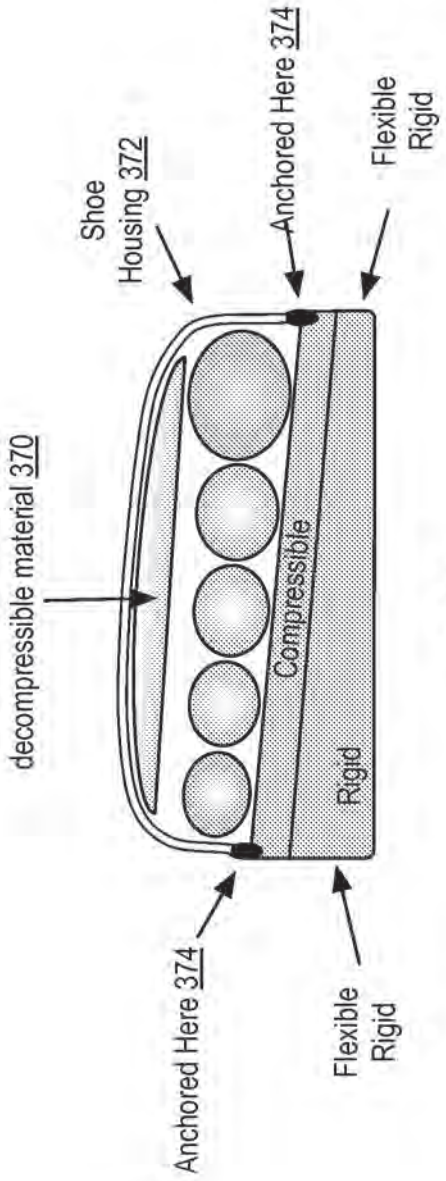

Shoe Housing 372
Anchored Here 374
Flexible Rigid
decompressible material 370
Compressible
Rigid
Anchored Here 374
Flexible Rigid

FIG. 99

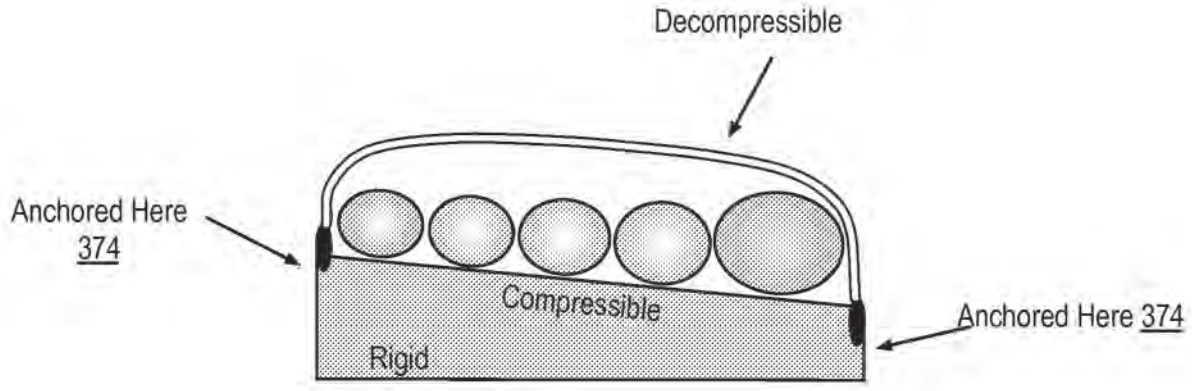


FIG. 100

Sole Front Cross Sectional View

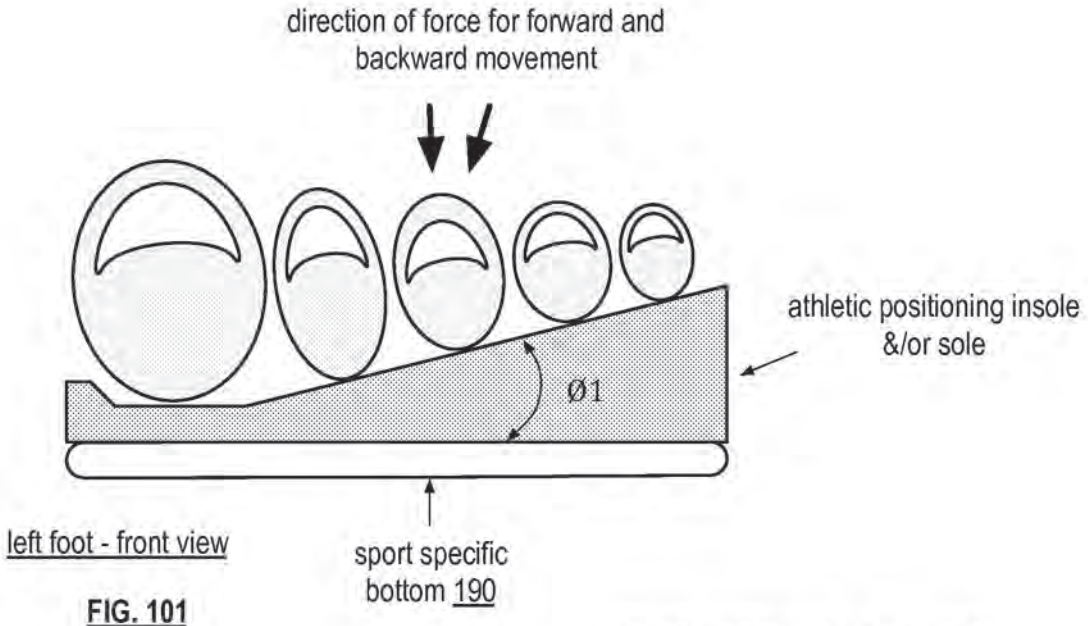


FIG. 101

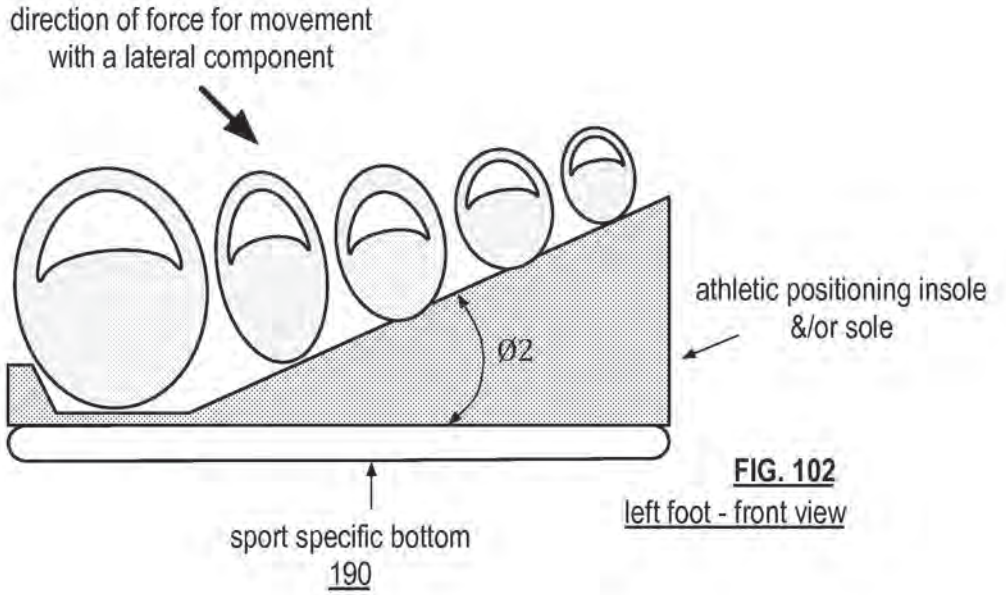
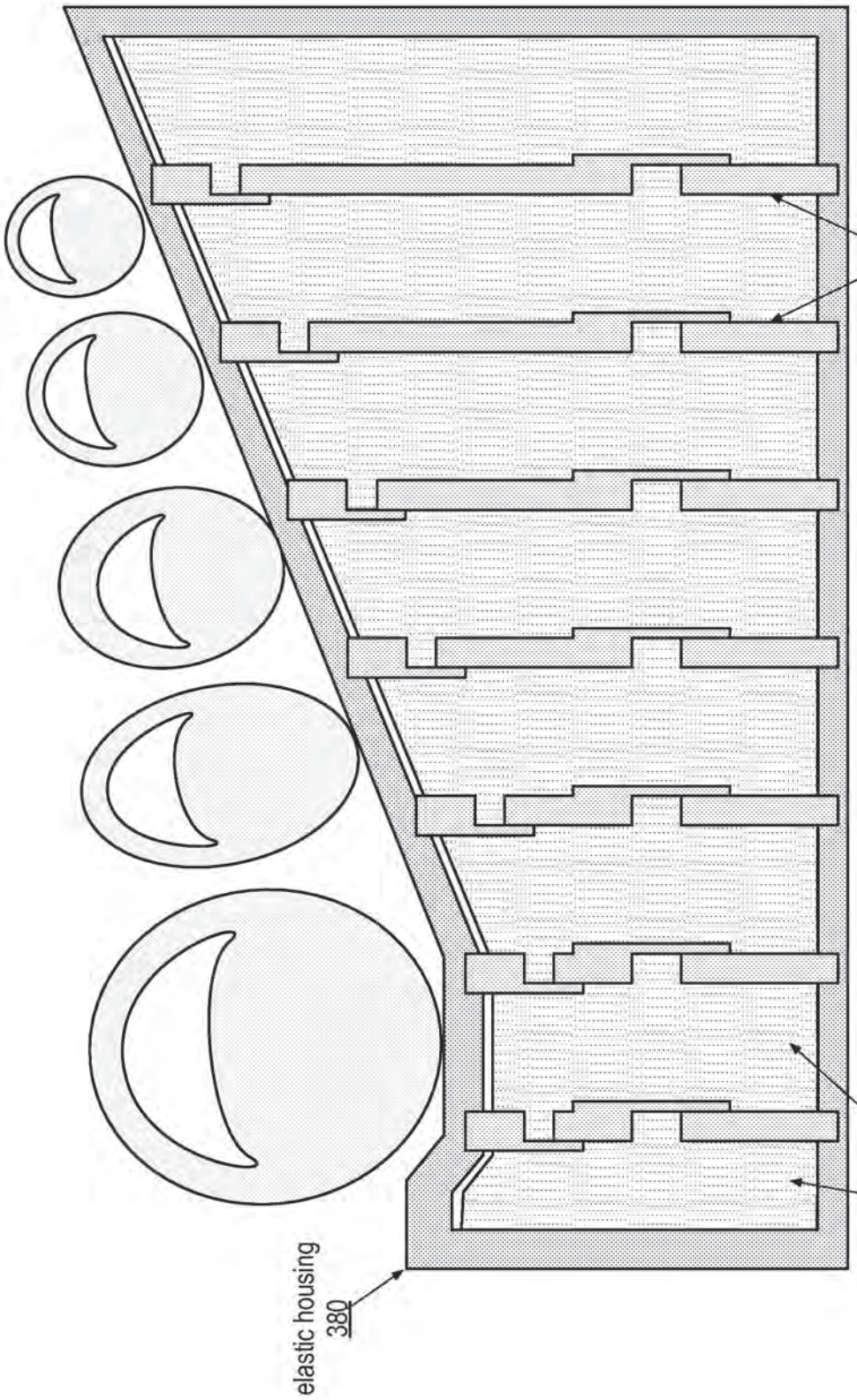


FIG. 102
left foot - front view



front cross sectional view of left insole 12 and/or sole 10 (no load steady state condition)

FIG. 103

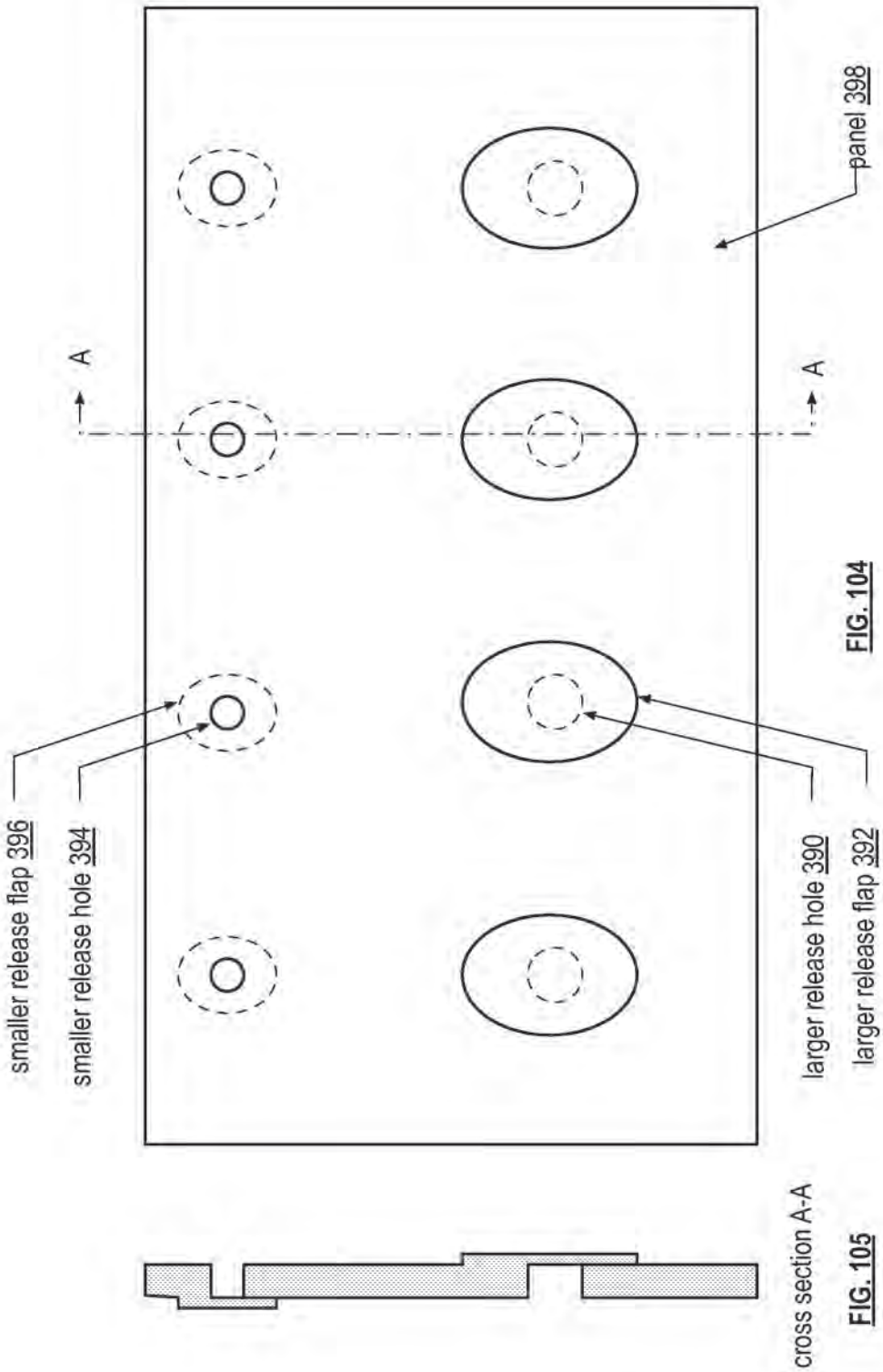


FIG. 104

FIG. 105

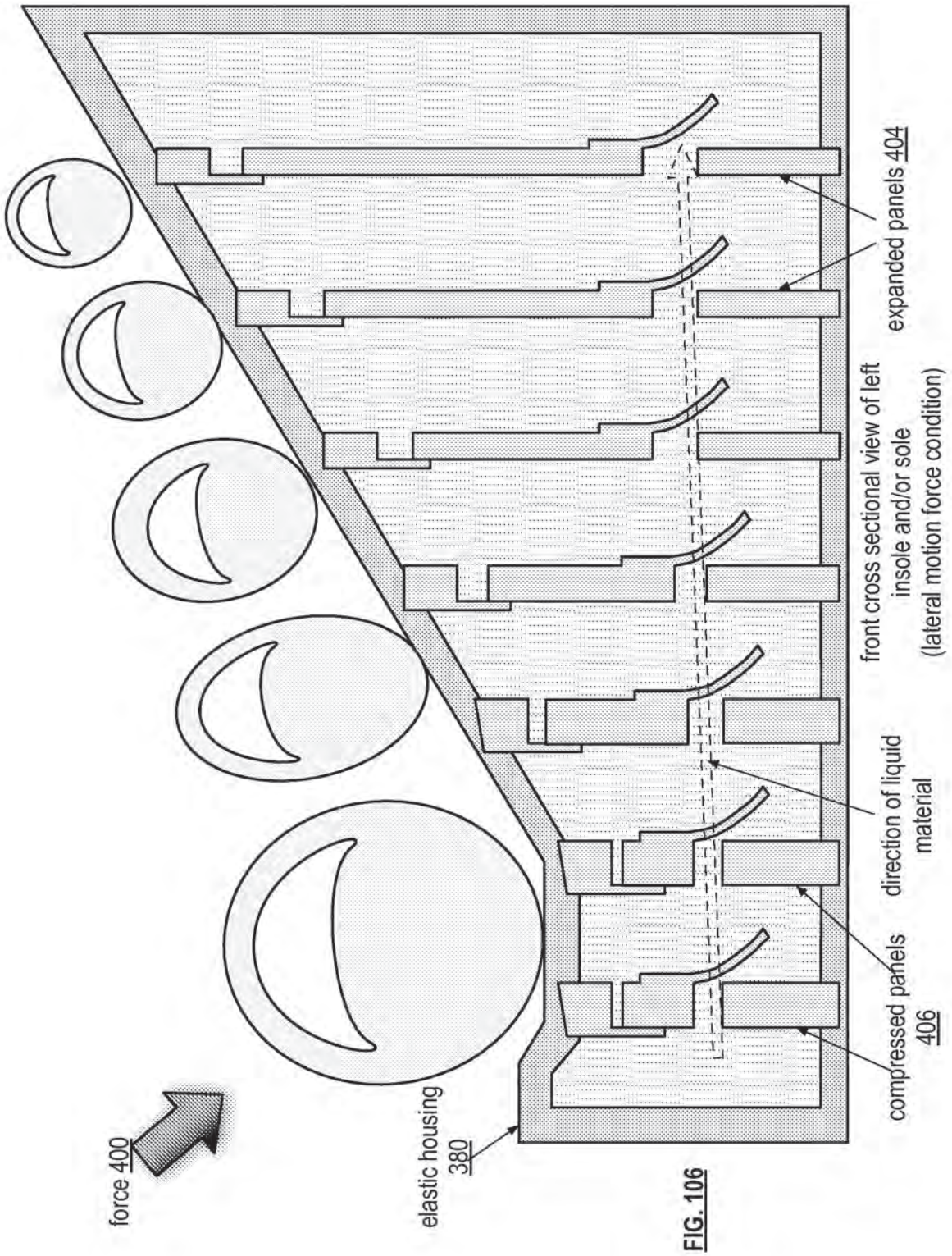

force 400
elastic housing 380
compressed panels 406
direction of liquid material
front cross sectional view of left insole and/or sole (lateral motion force condition)
expanded panels 404

FIG. 106

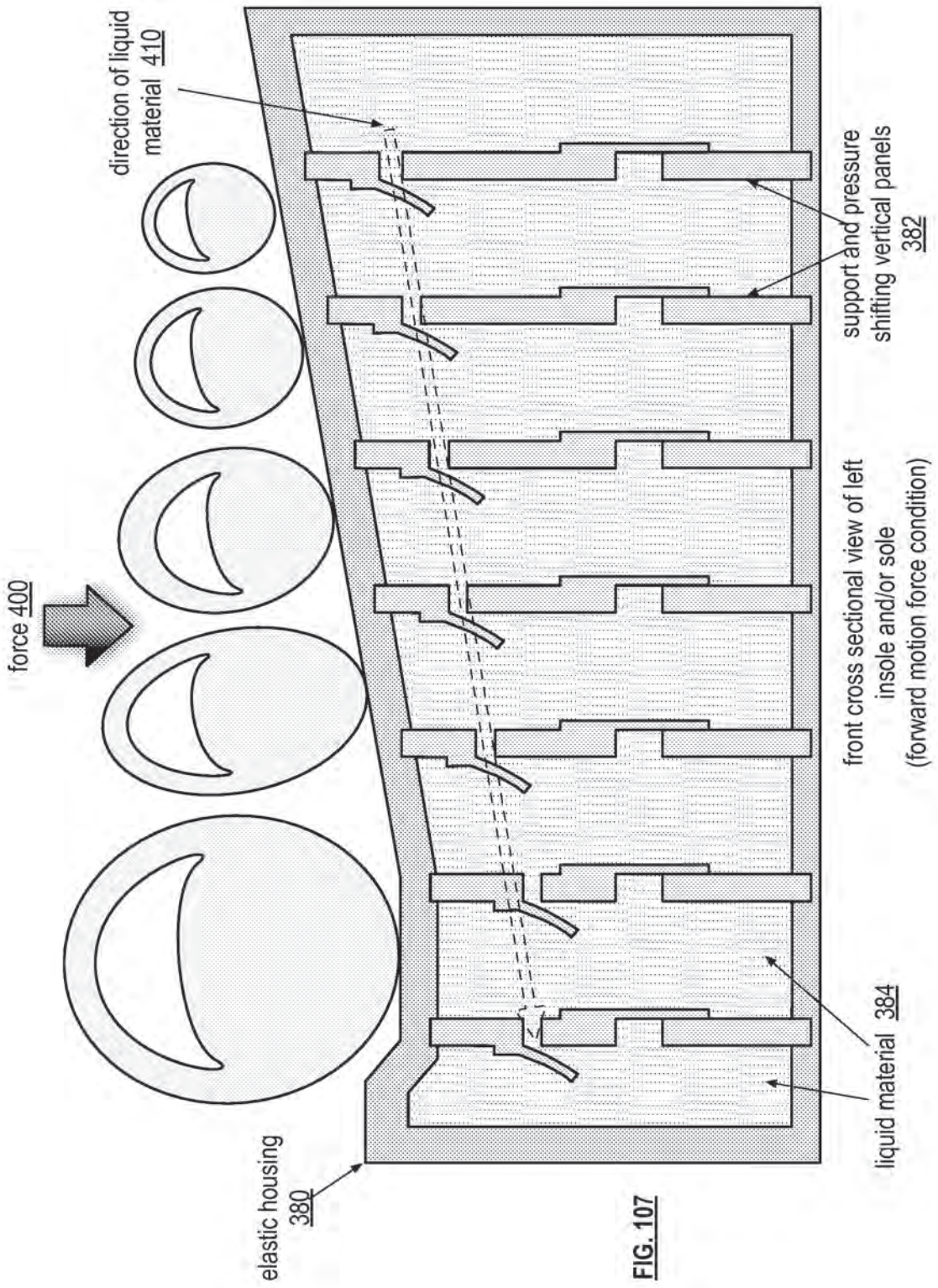

direction of liquid material 410
force 400
elastic housing 380
liquid material 384
front cross sectional view of left insole and/or sole (forward motion force condition)
support and pressure shifting vertical panels 382

FIG. 107

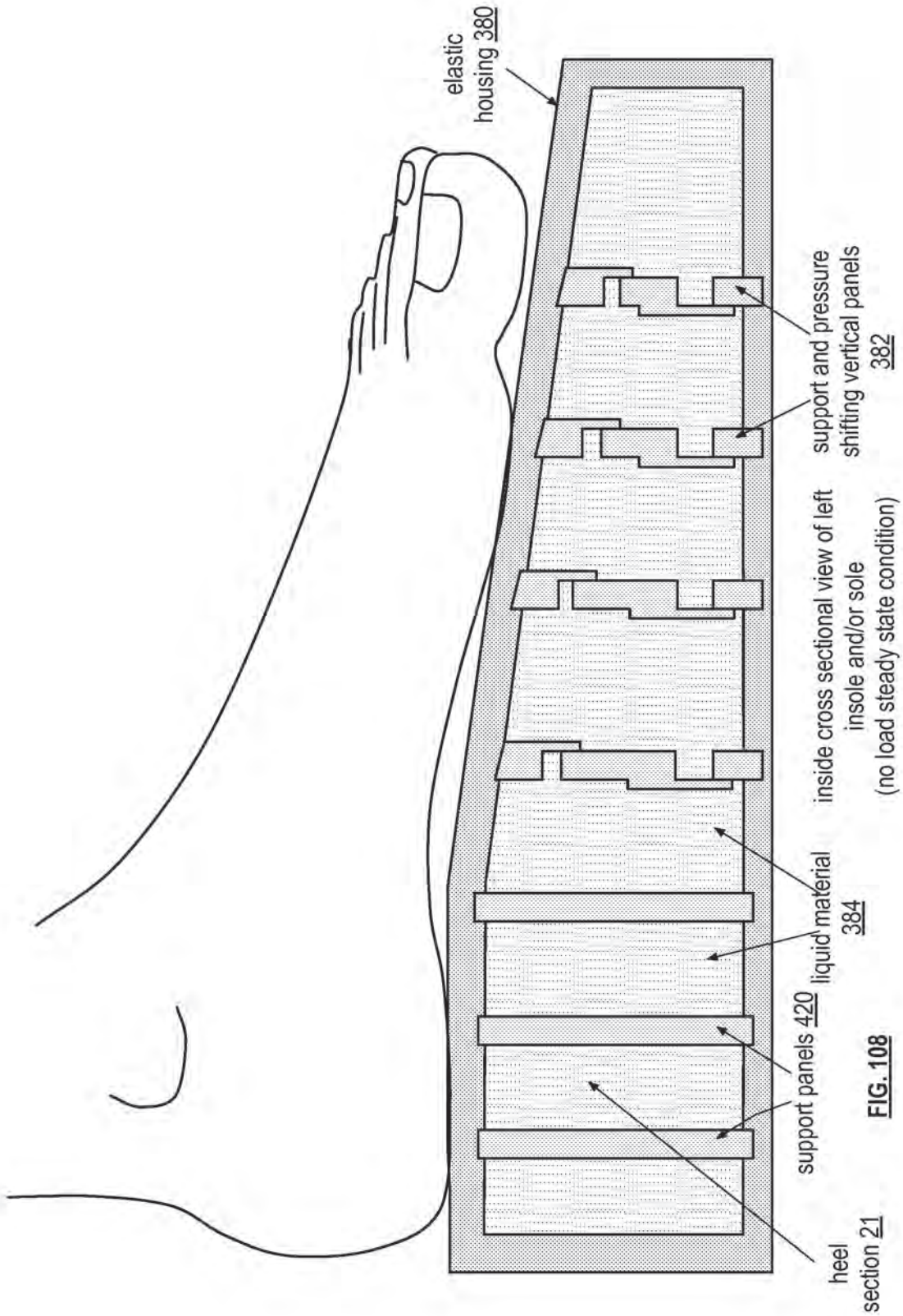

elastic housing 380
support and pressure shifting vertical panels 382
inside cross sectional view of left insole and/or sole (no load steady state condition)
liquid material 384
support panels 420
heel section 21

FIG. 108

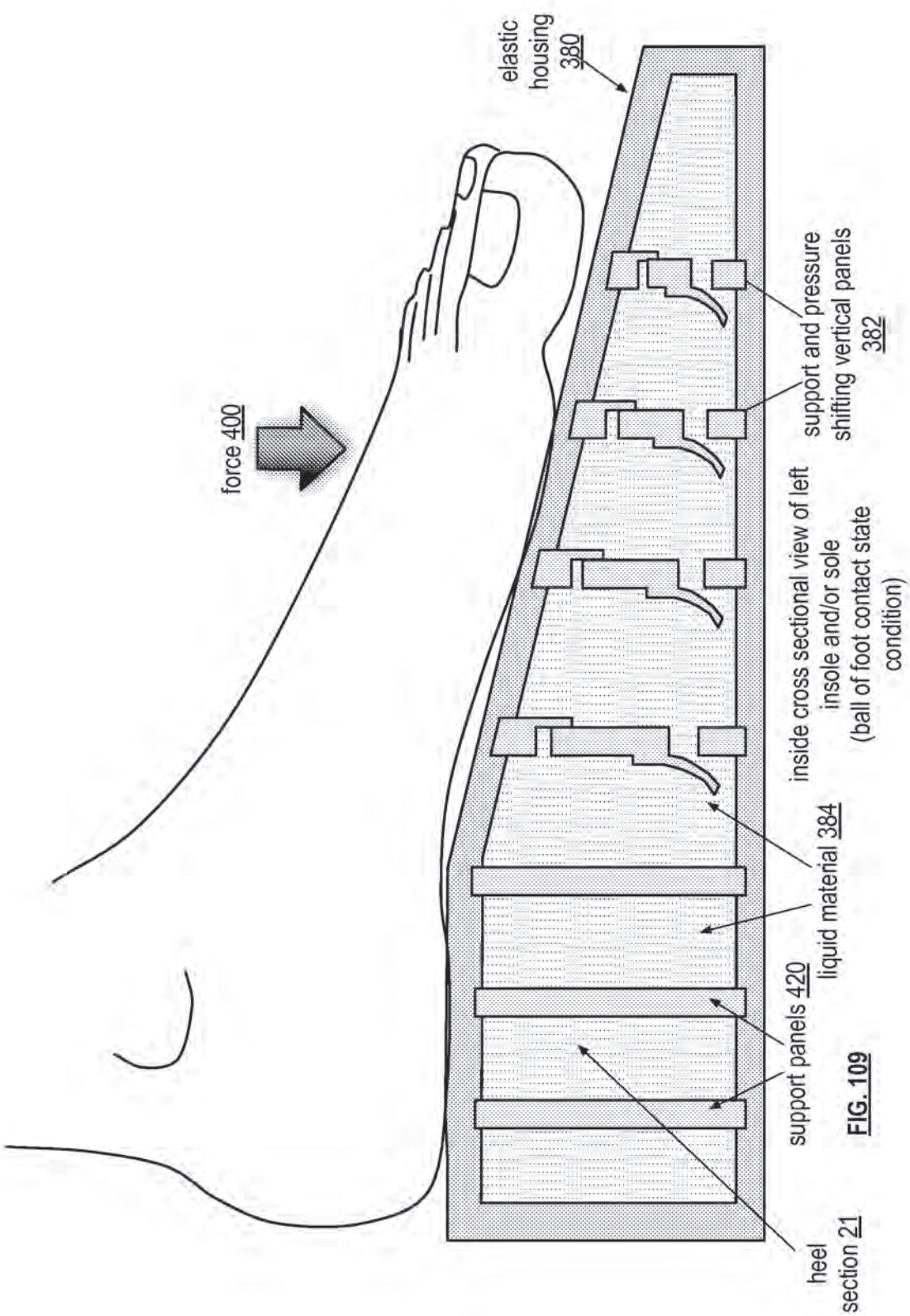

elastic housing 380
force 400
support and pressure shifting vertical panels 382
inside cross sectional view of left insole and/or sole (ball of foot contact state condition)
liquid material 384
support panels 420
heel section 21

FIG. 109

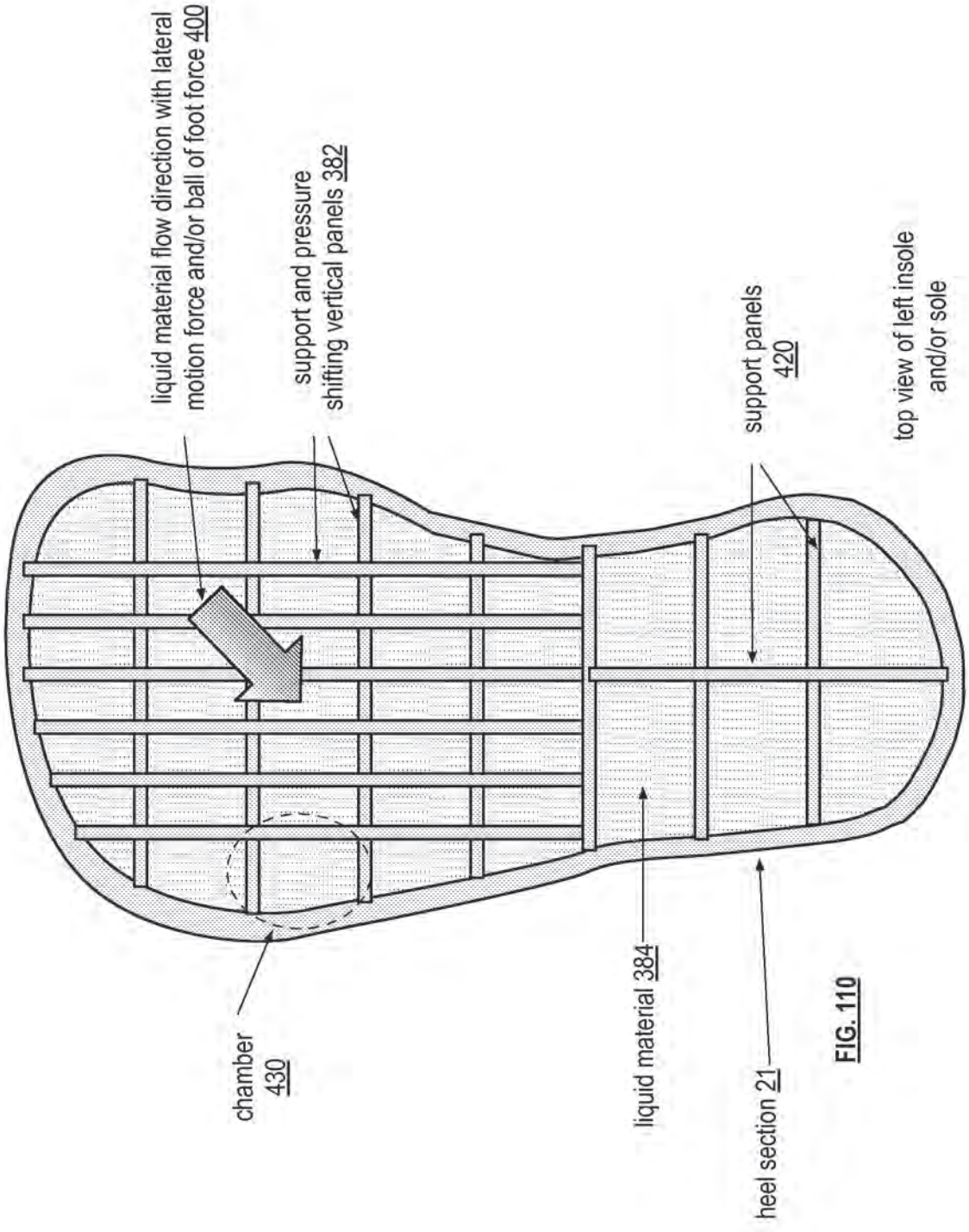

liquid material flow direction with lateral motion force and/or ball of foot force 400
support and pressure shifting vertical panels 382
support panels 420
top view of left insole and/or sole
chamber 430
liquid material 384
heel section 21

FIG. 110

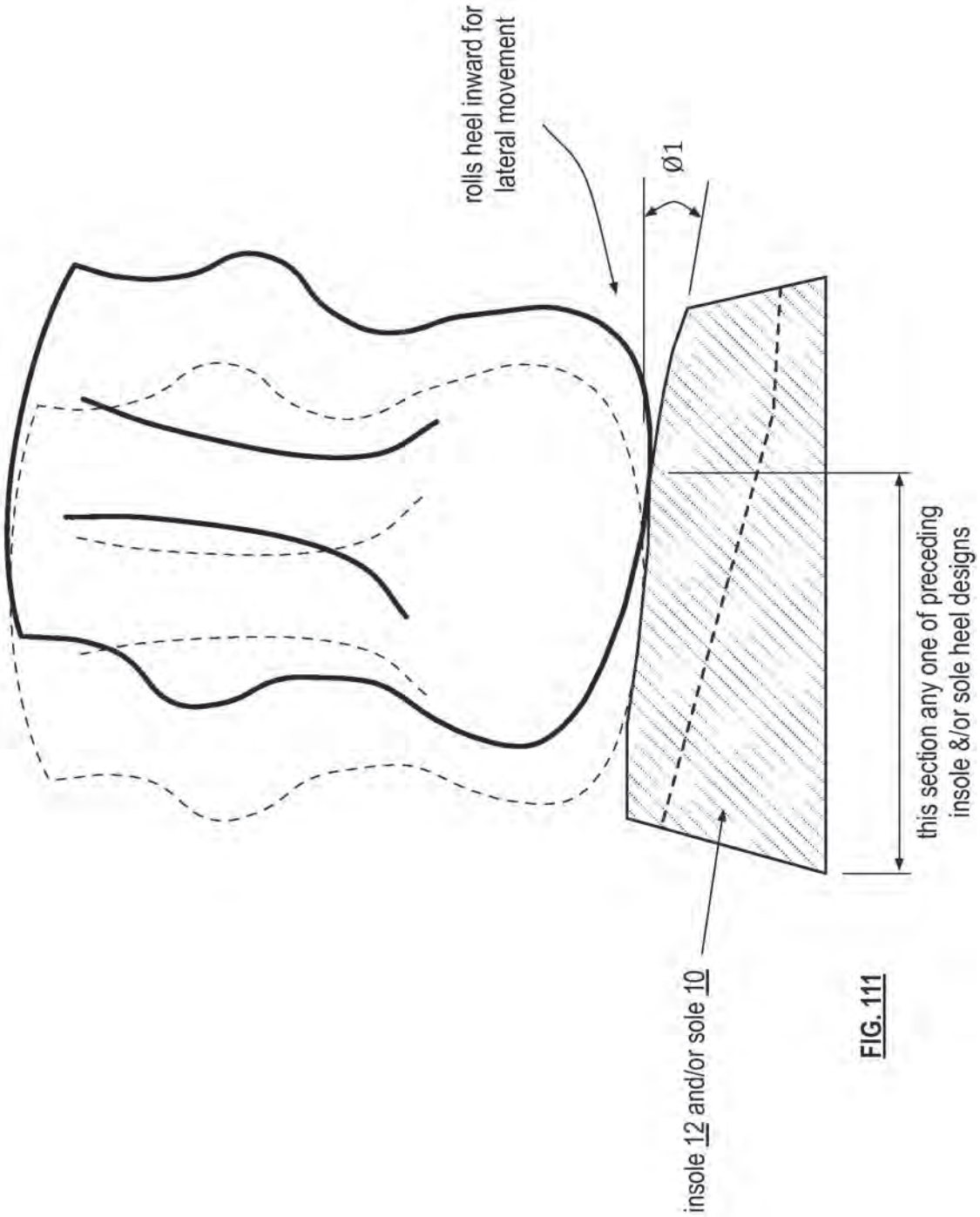

rolls heel inward for lateral movement
Ø1
this section any one of preceding insole &/or sole heel designs
insole 12 and/or sole 10

FIG. 111

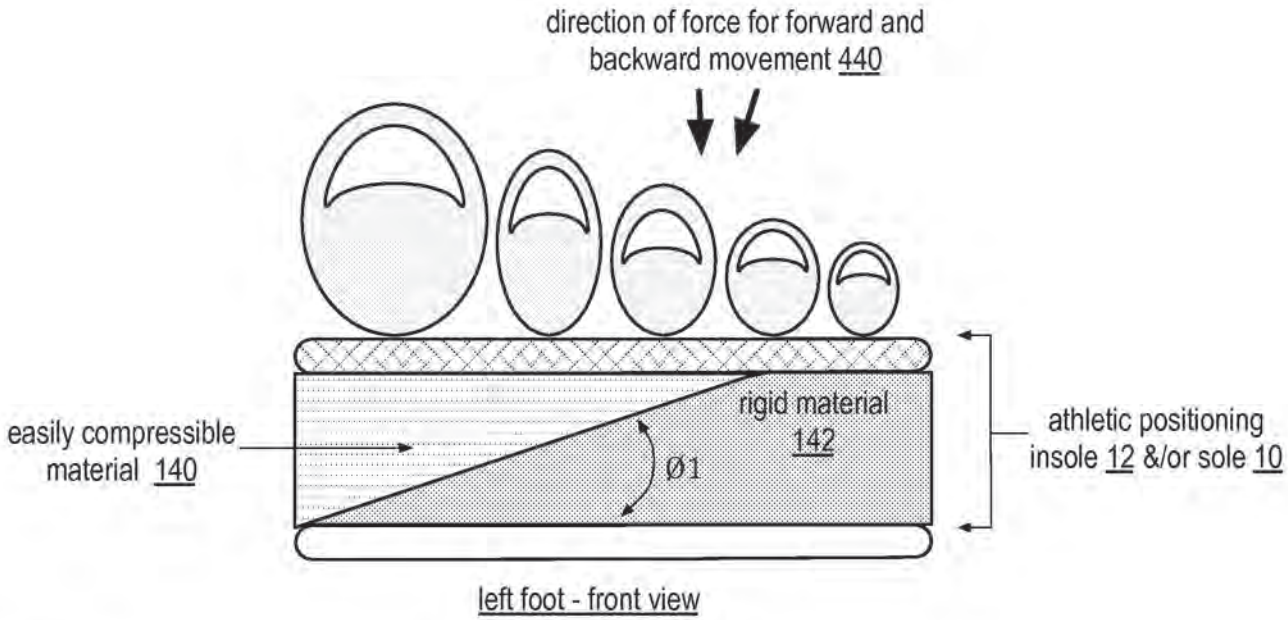


FIG. 112

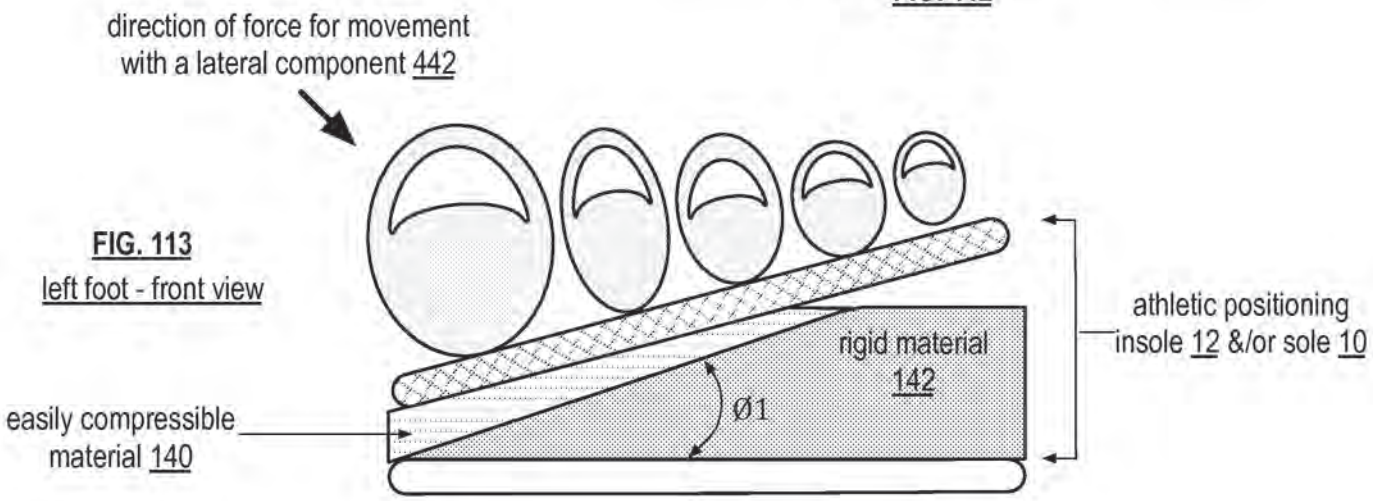


FIG. 113
left foot - front view

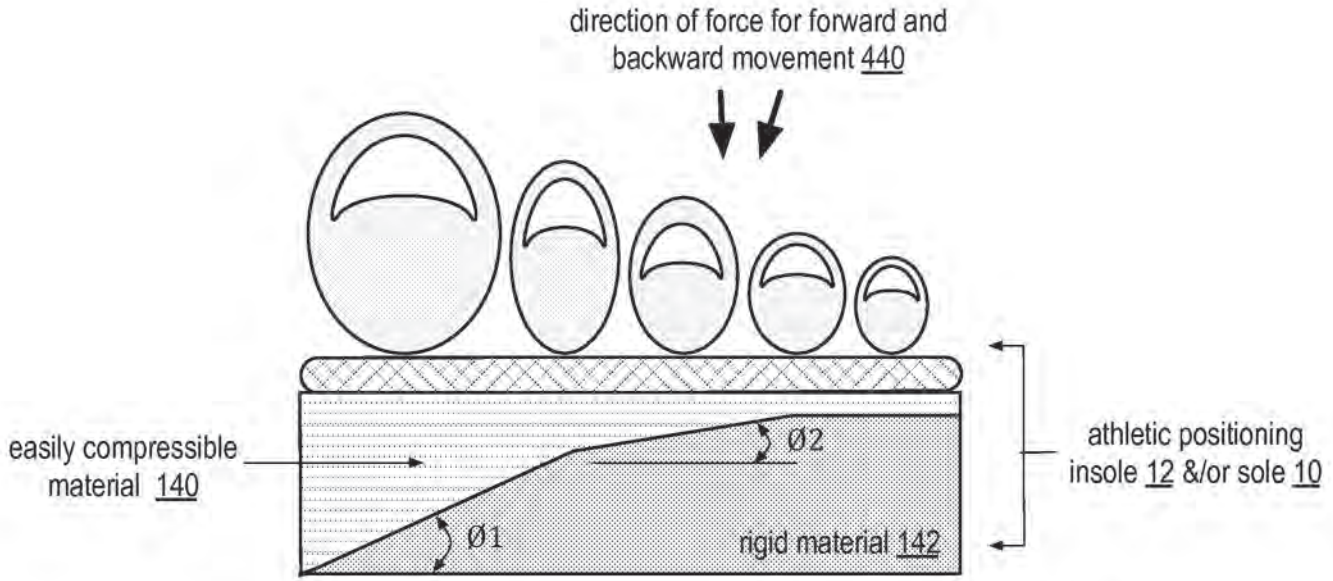


FIG. 114
left foot - front view

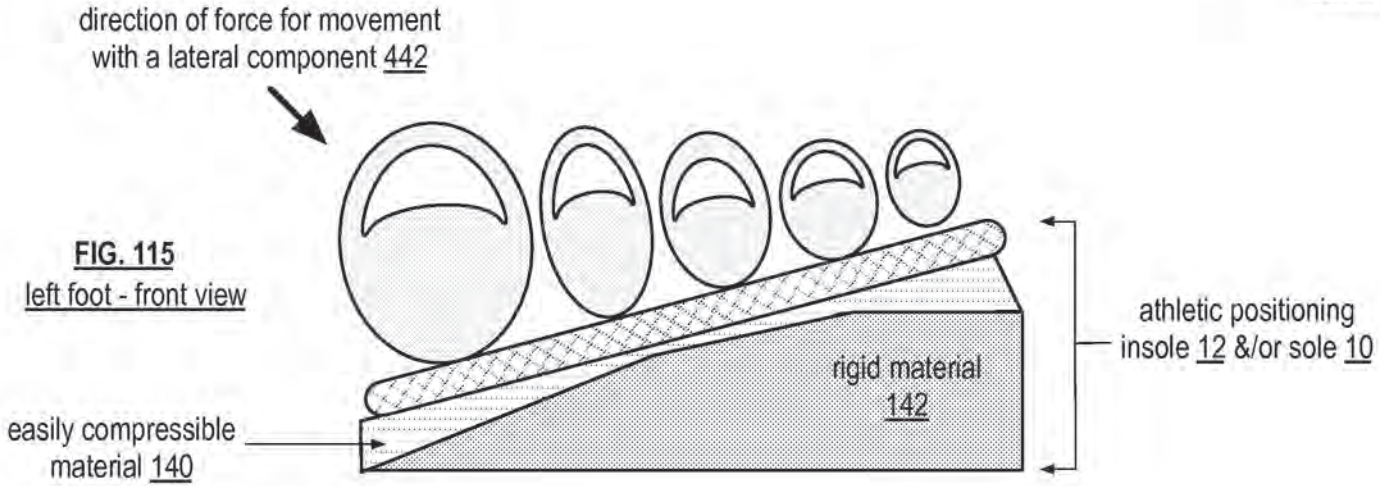


FIG. 115
left foot - front view

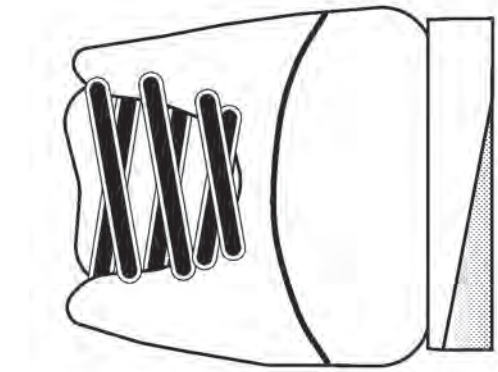


FIG. 117

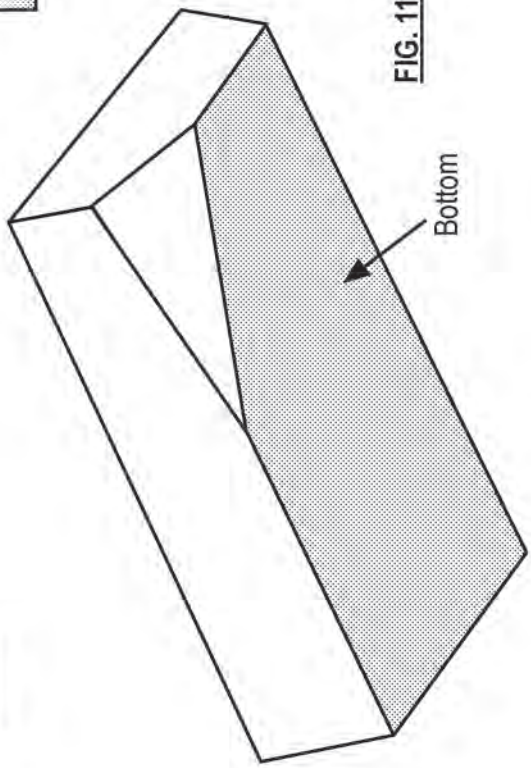


FIG. 118

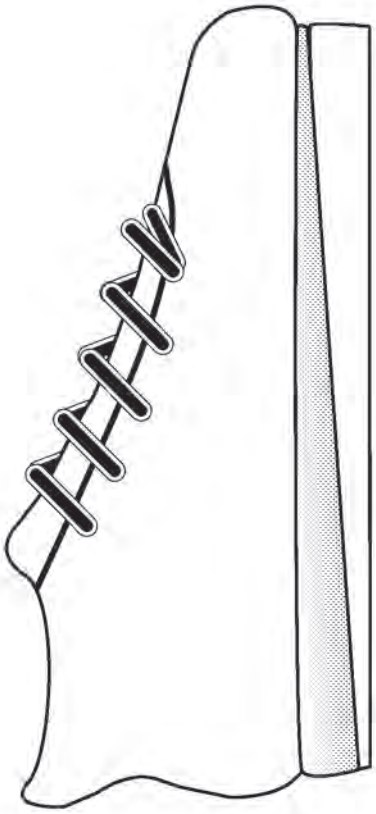
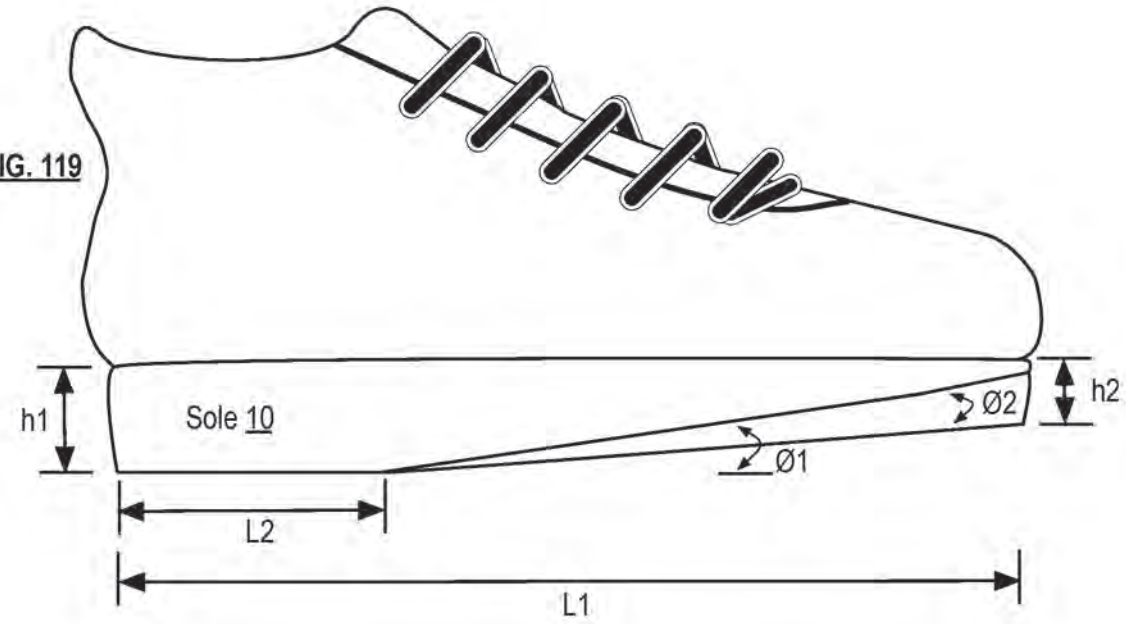


FIG. 116

FIG. 119



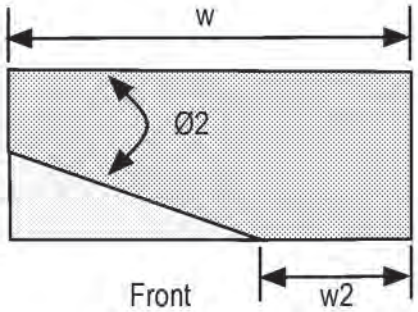
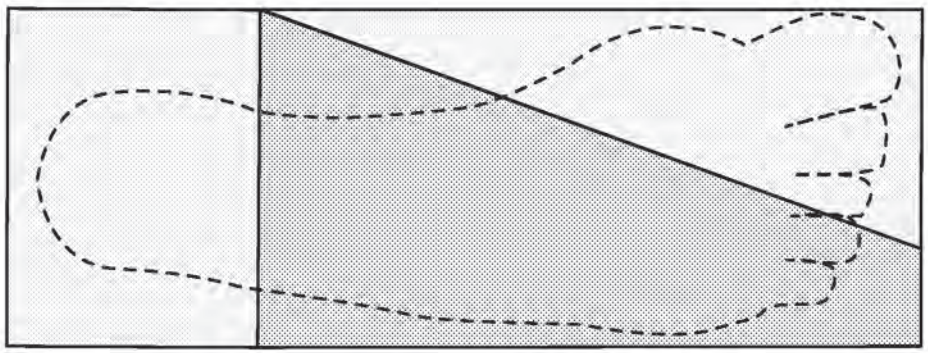
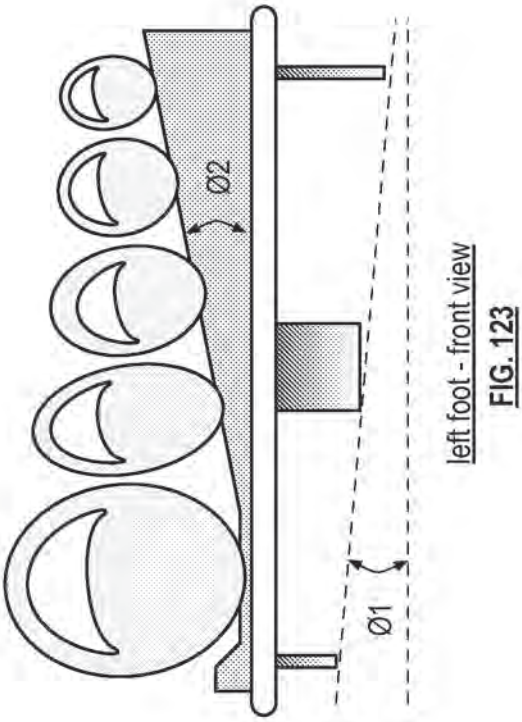


FIG. 120



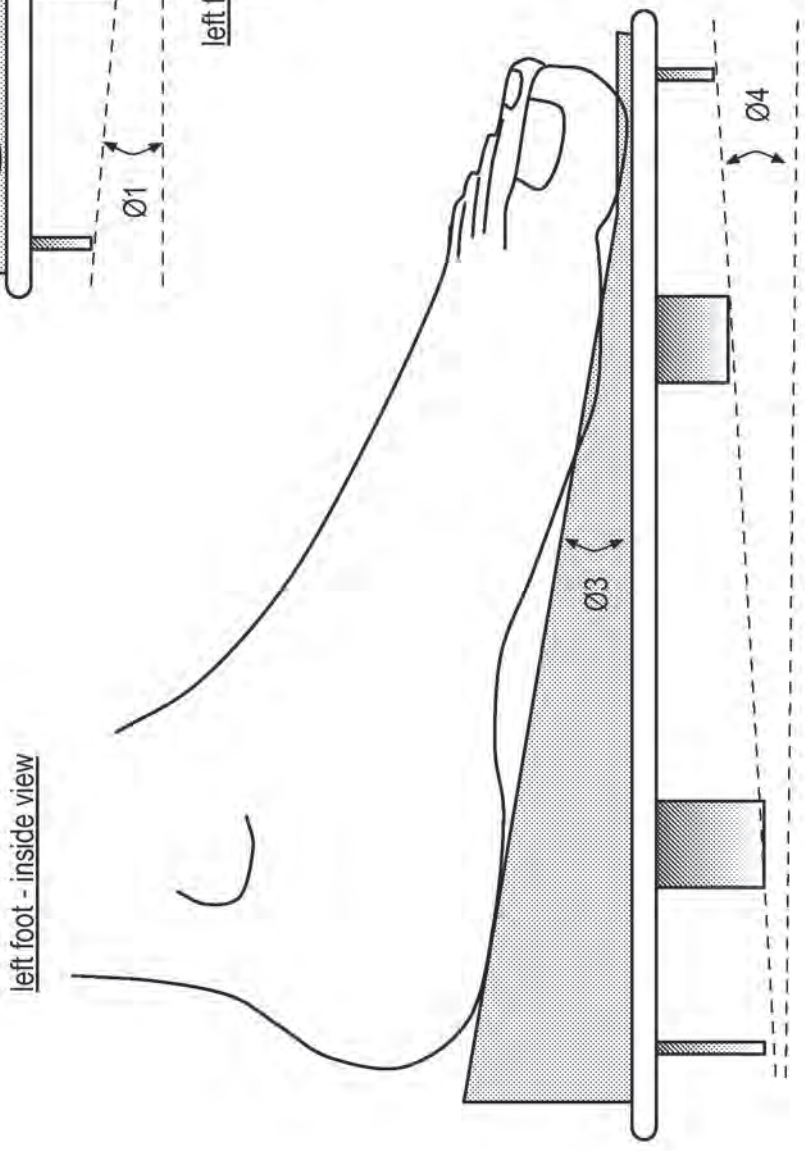
Bottom

FIG. 121



left foot - front view

FIG. 123



left foot - inside view

FIG. 122

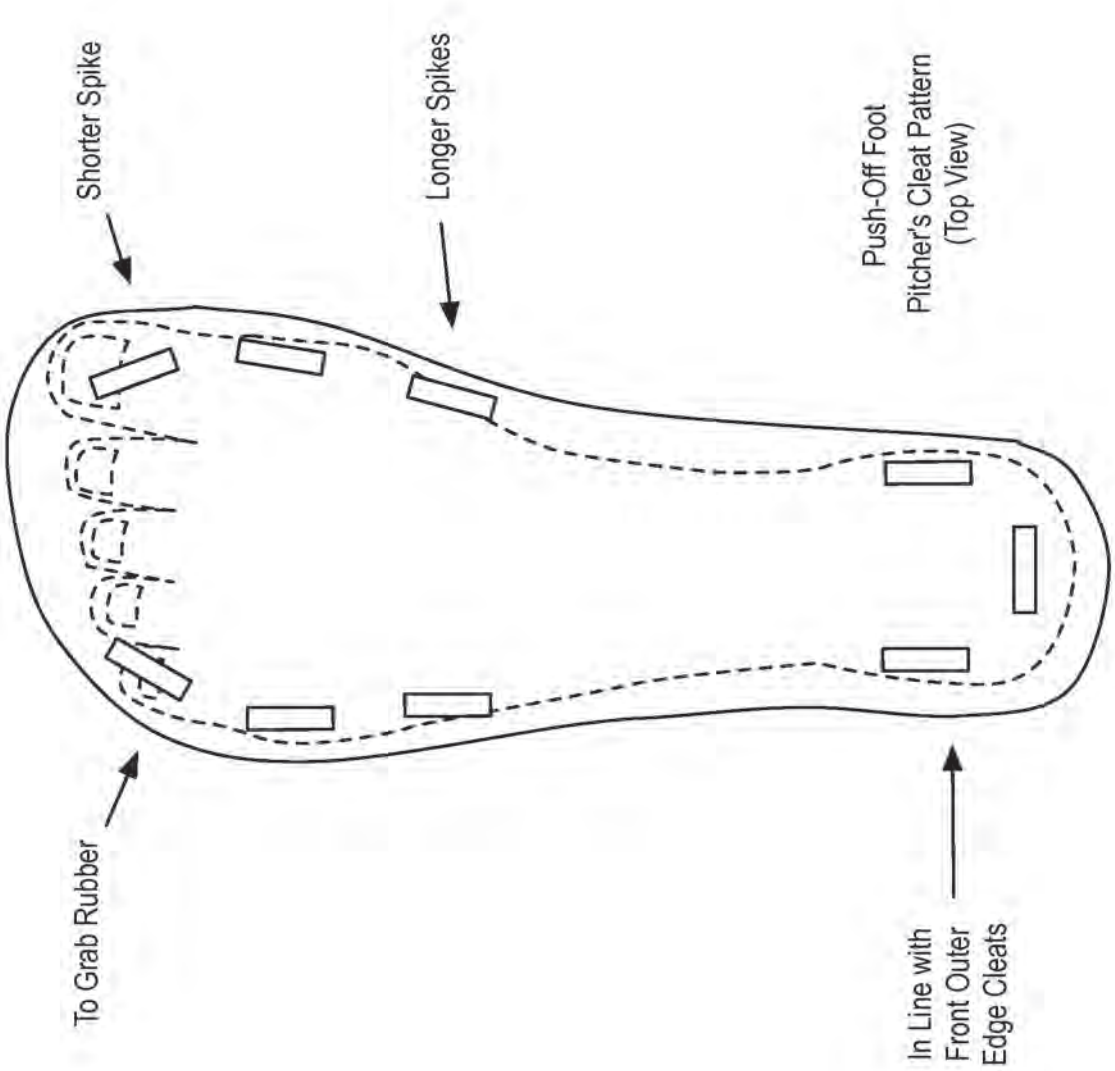

Shorter Spike
Longer Spikes
Push-Off Foot
Pitcher's Cleat Pattern
(Top View)
To Grab Rubber
In Line with
Front Outer
Edge Cleats

FIG. 124

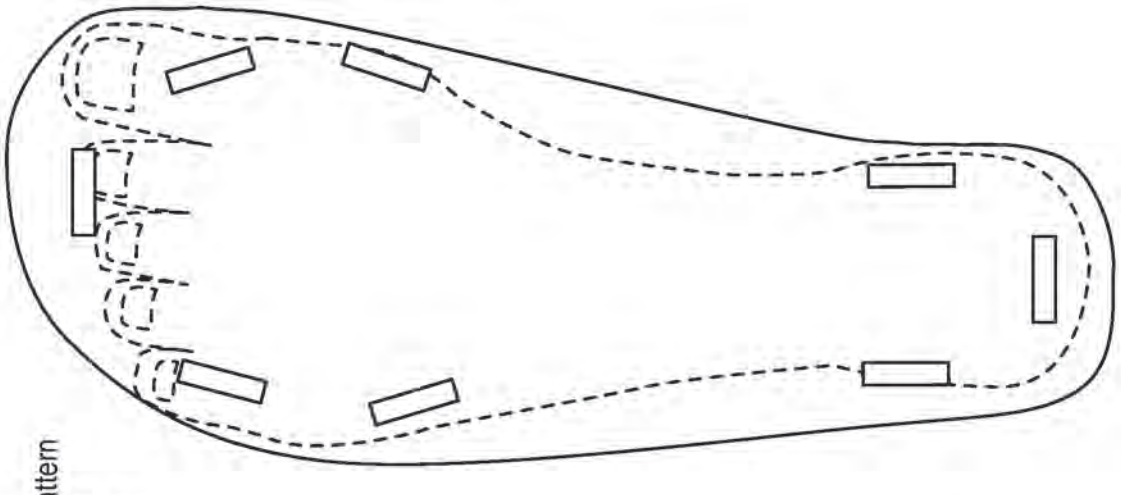


FIG. 125

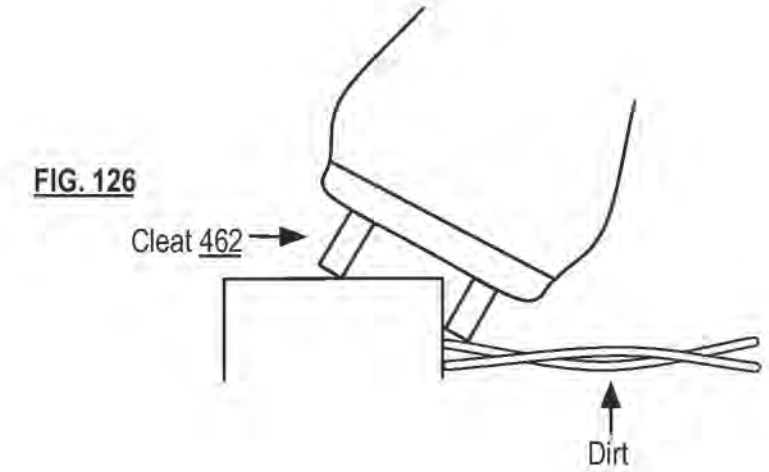


FIG. 126

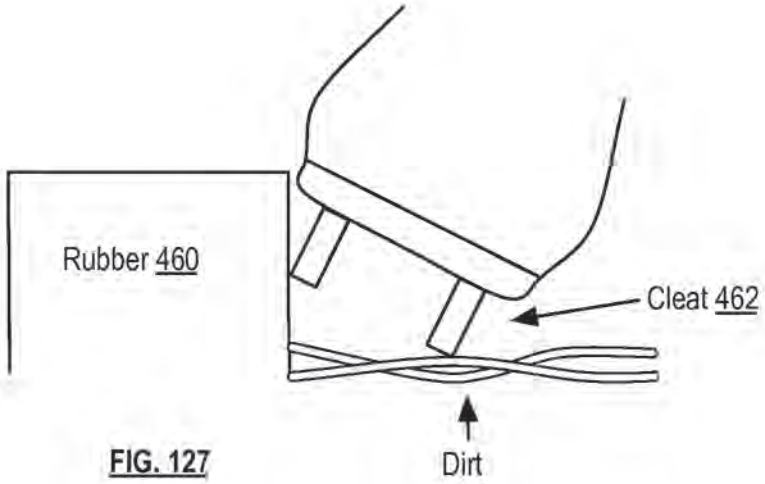


FIG. 127

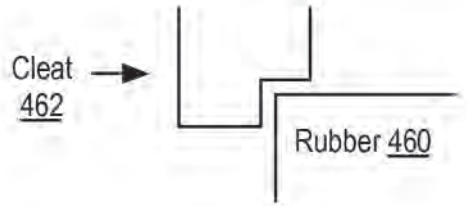


FIG. 128

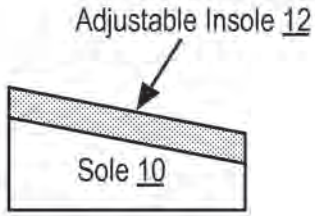


FIG. 129

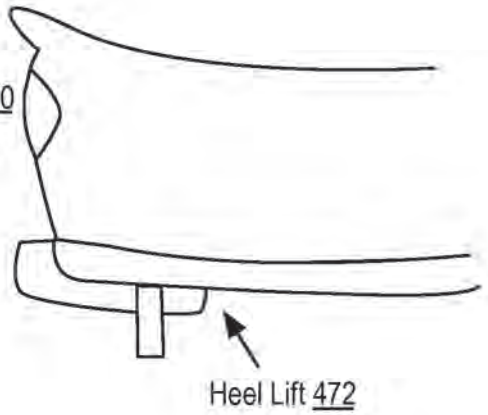


FIG. 130

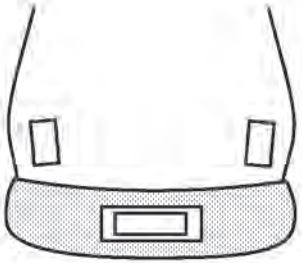


FIG. 131

Heel (bottom view) includes eyelet for clearing rear spike.

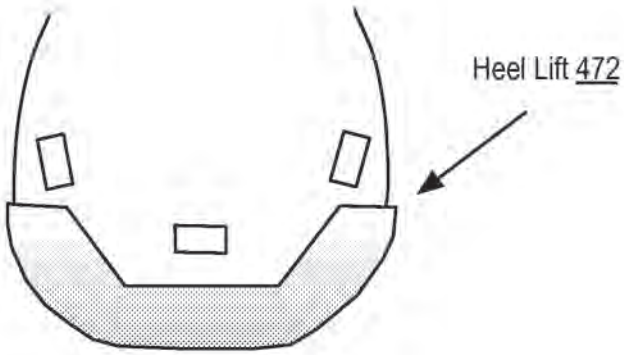


FIG. 132

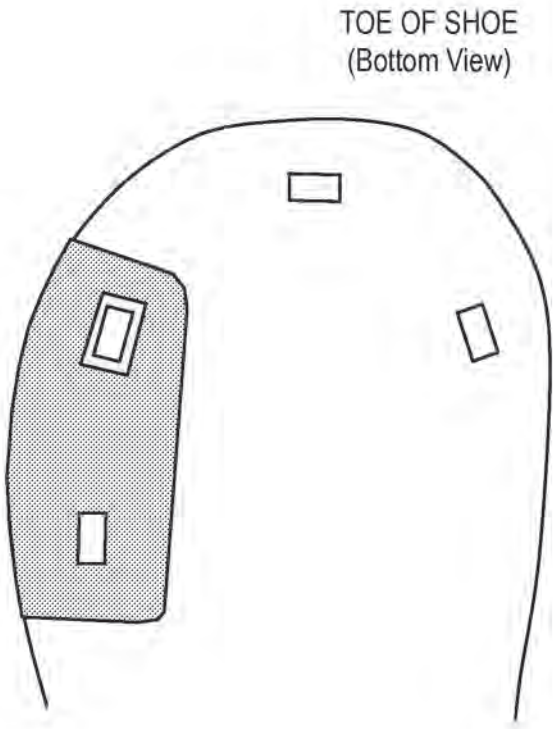


FIG. 133

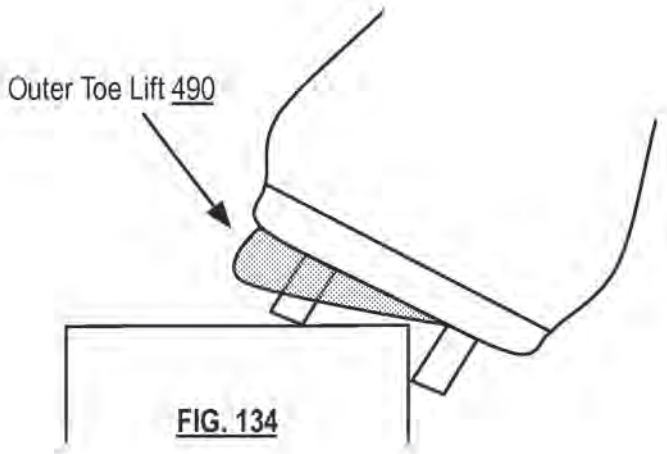


FIG. 134

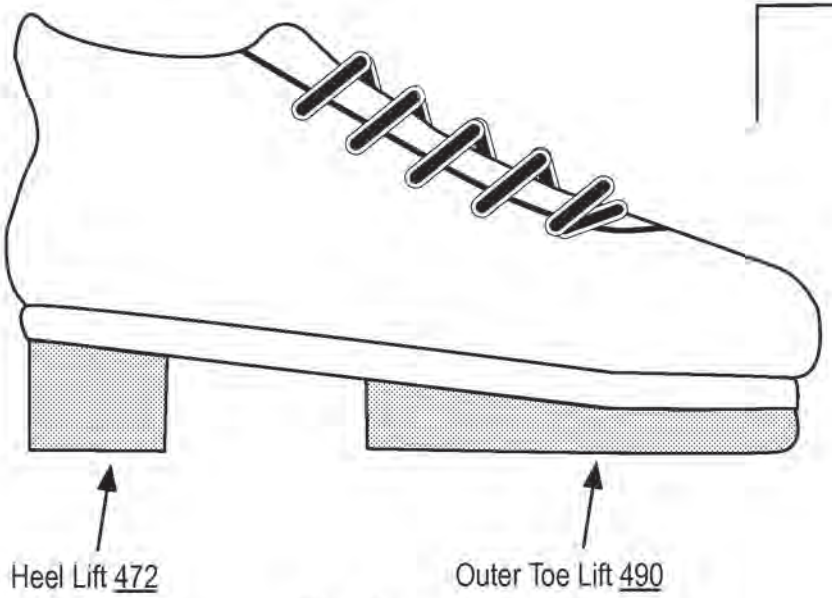


FIG. 135

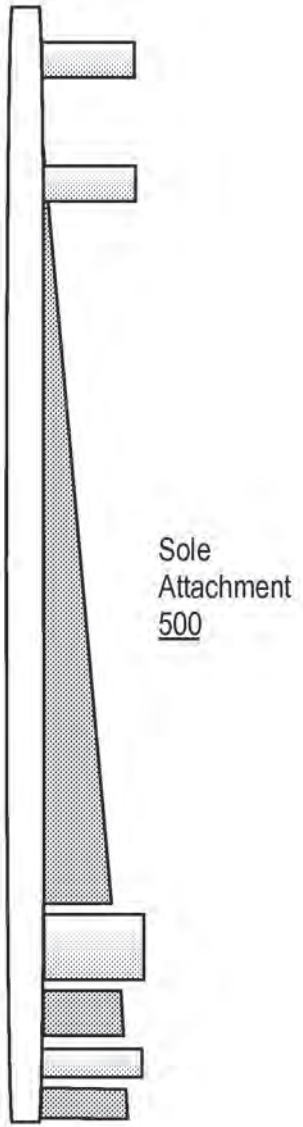


FIG. 137

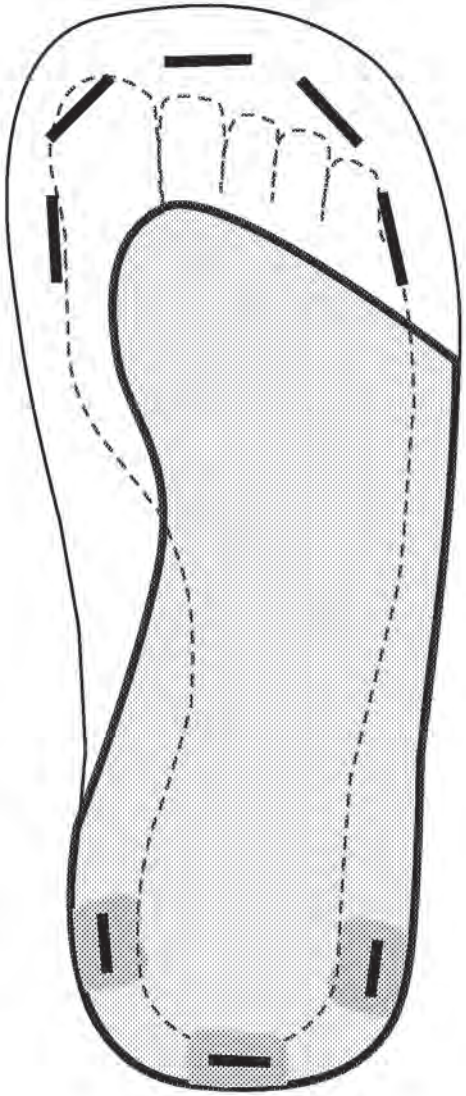


FIG. 136
Bottom of Left Drive Shoe

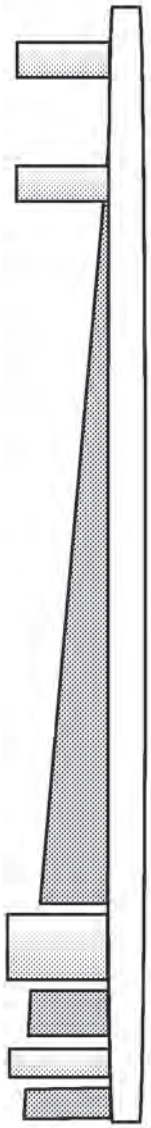
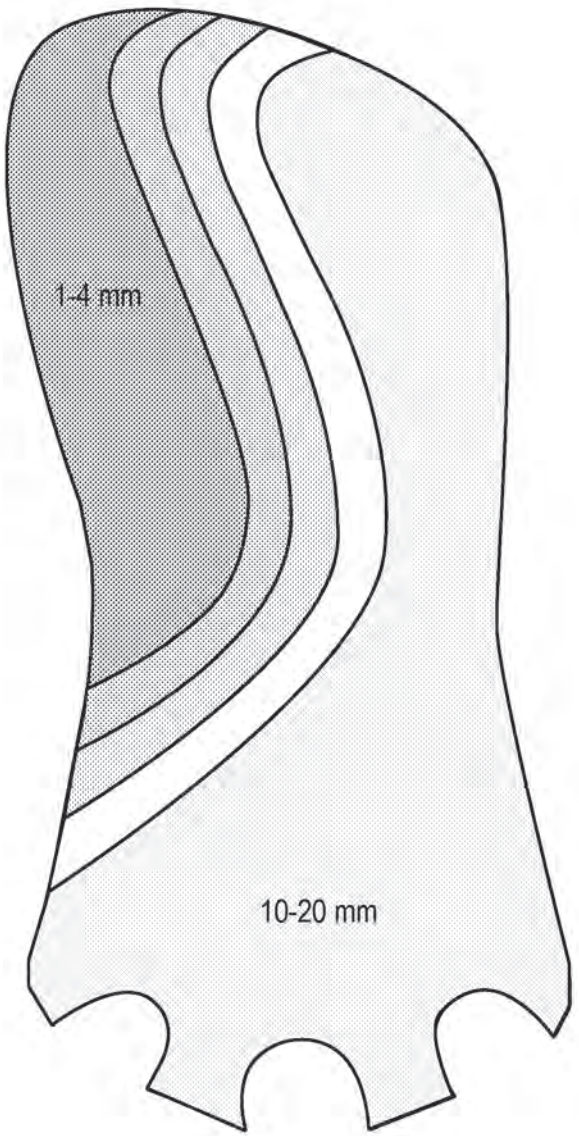


FIG. 138



Topography of
Sole Attachment

FIG. 139

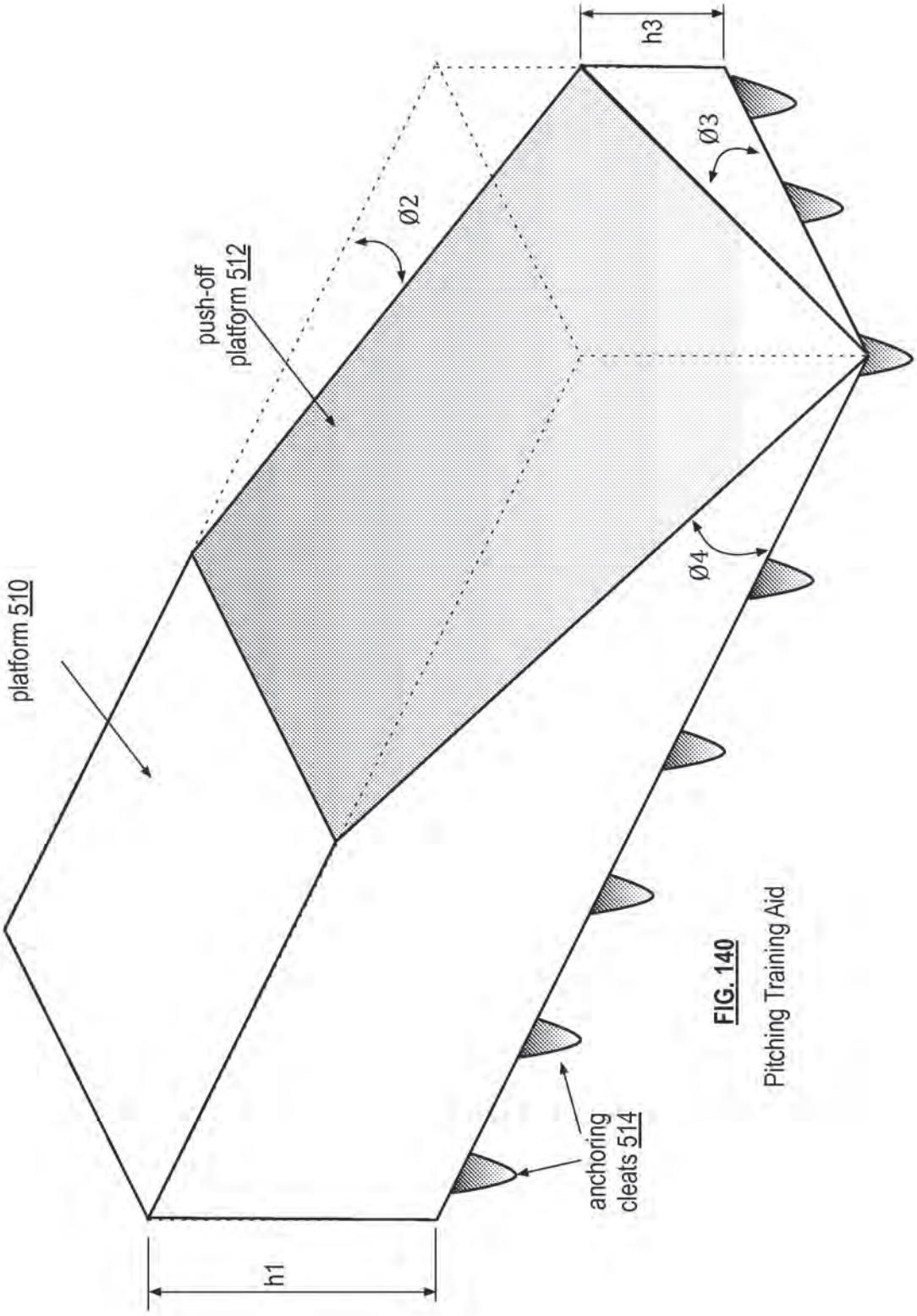


FIG. 140

Pitching Training Aid

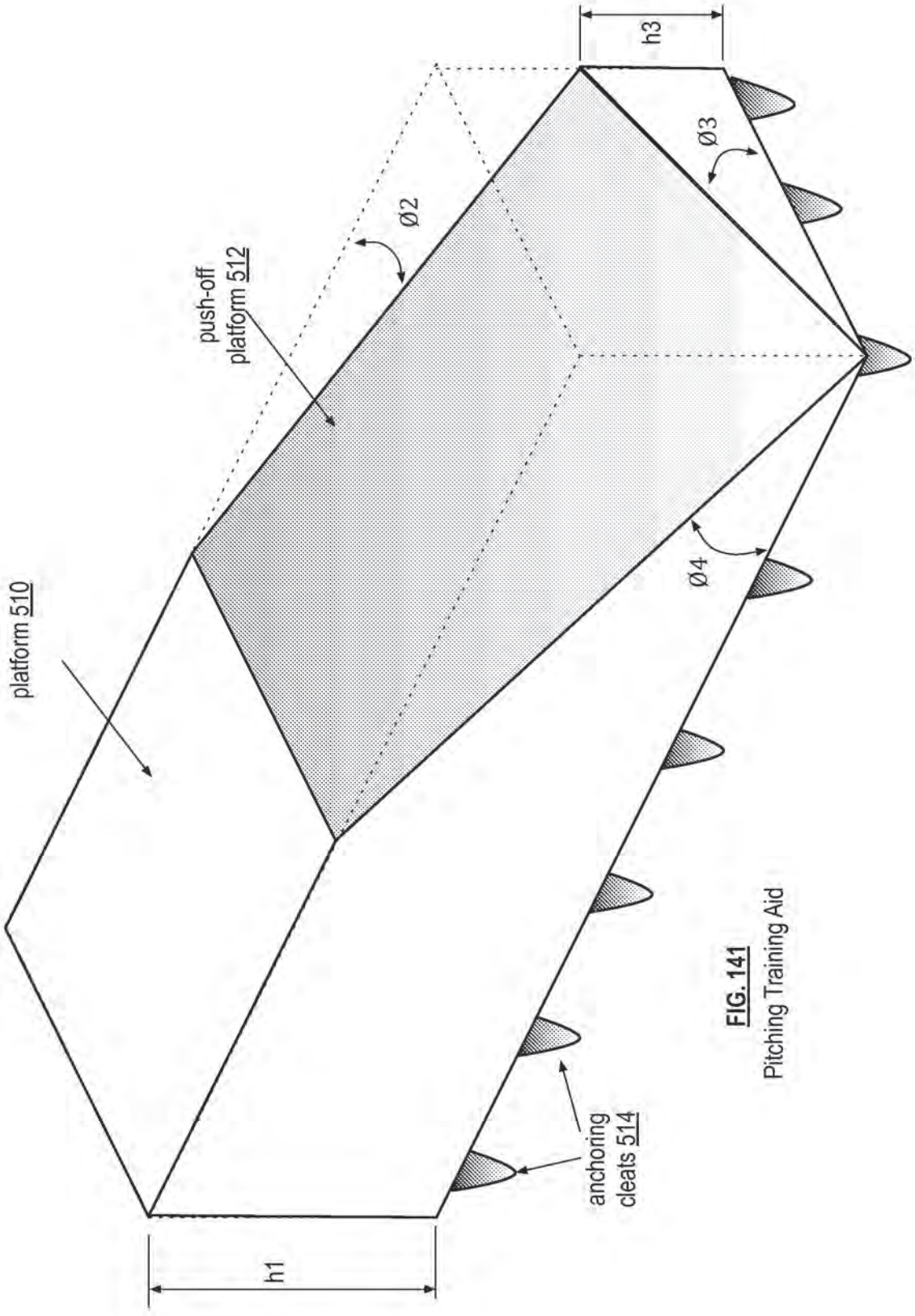


FIG. 141
Pitching Training Aid

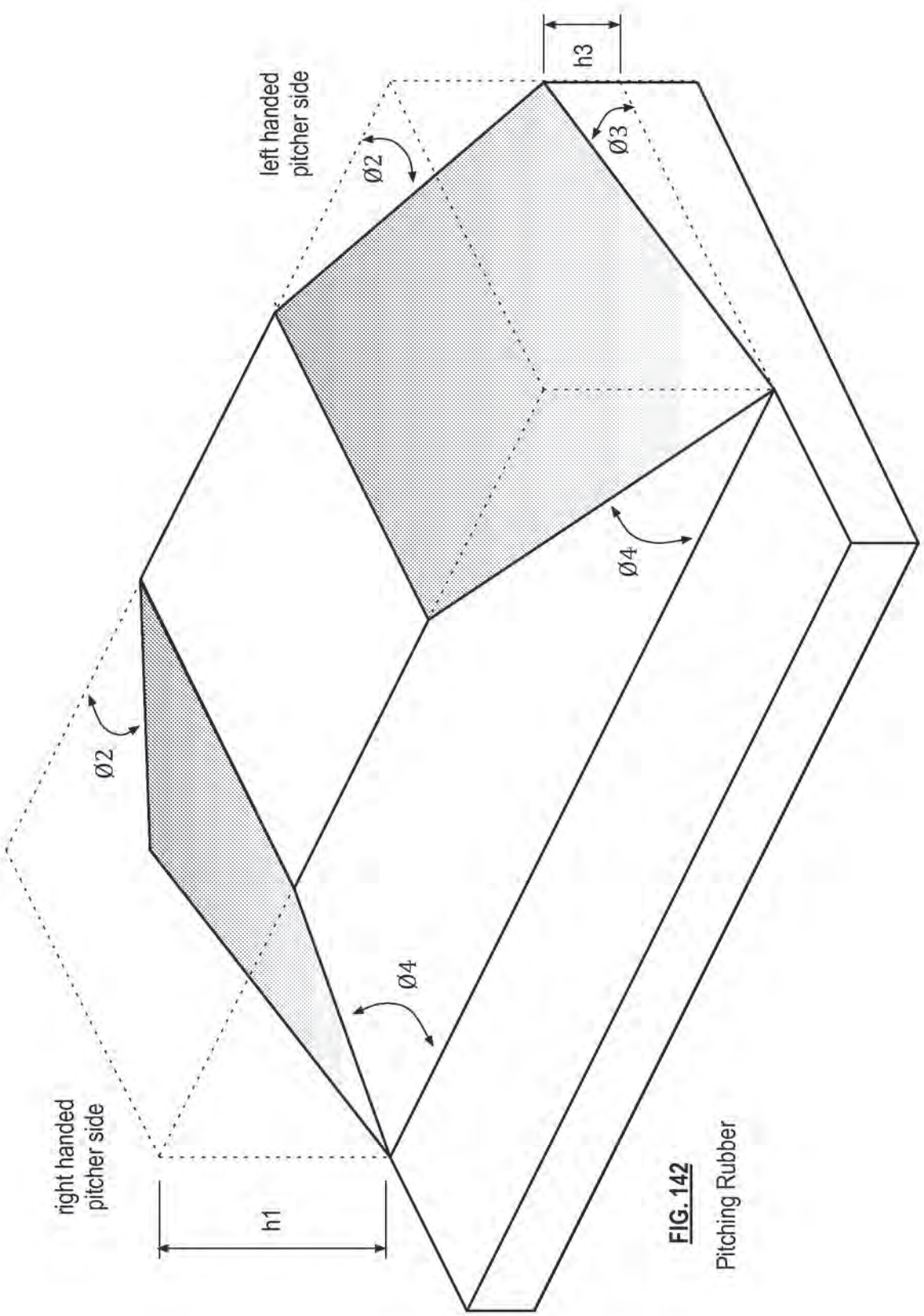


FIG. 142

Pitching Rubber

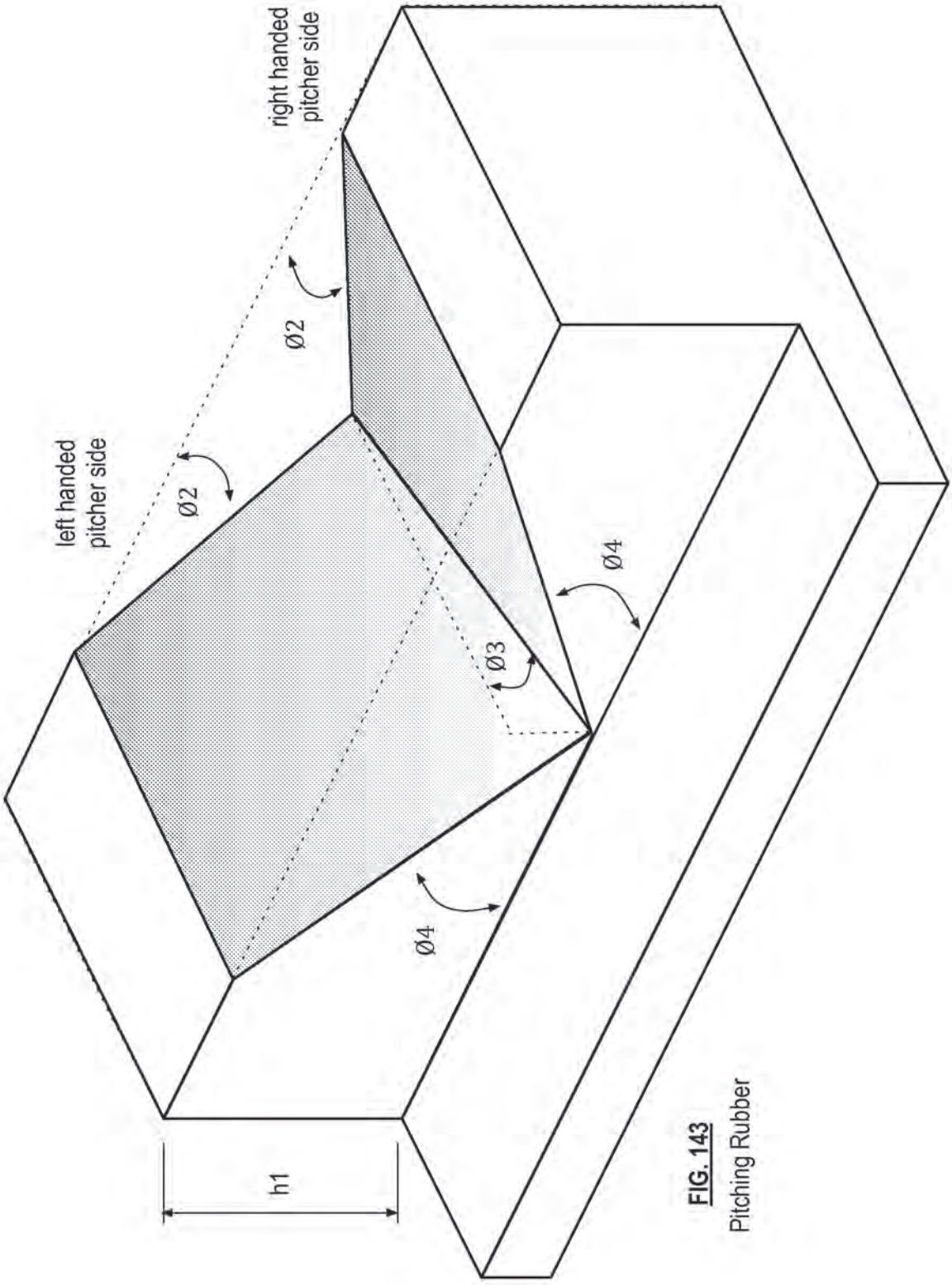


FIG. 143
Pitching Rubber

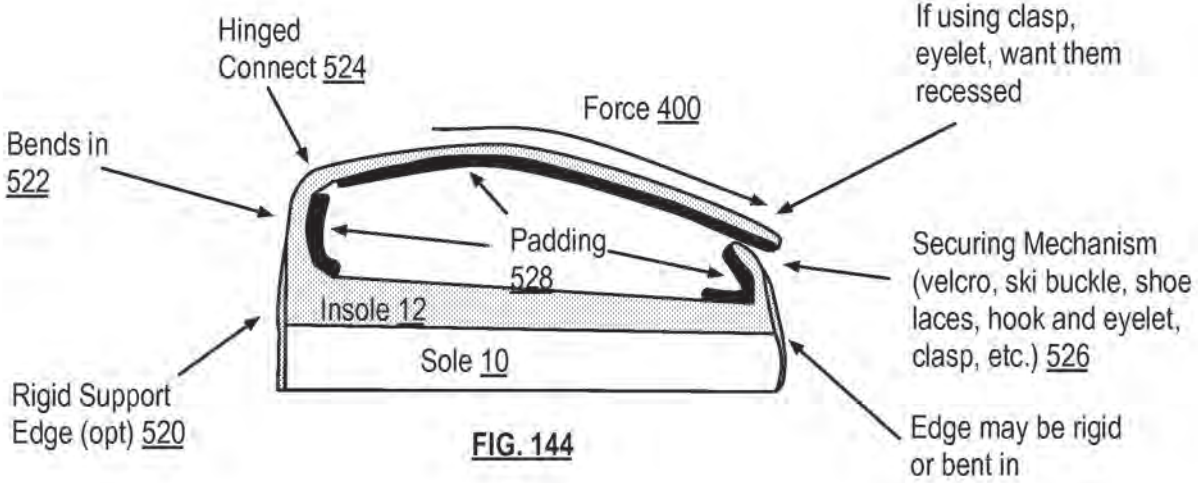


FIG. 144

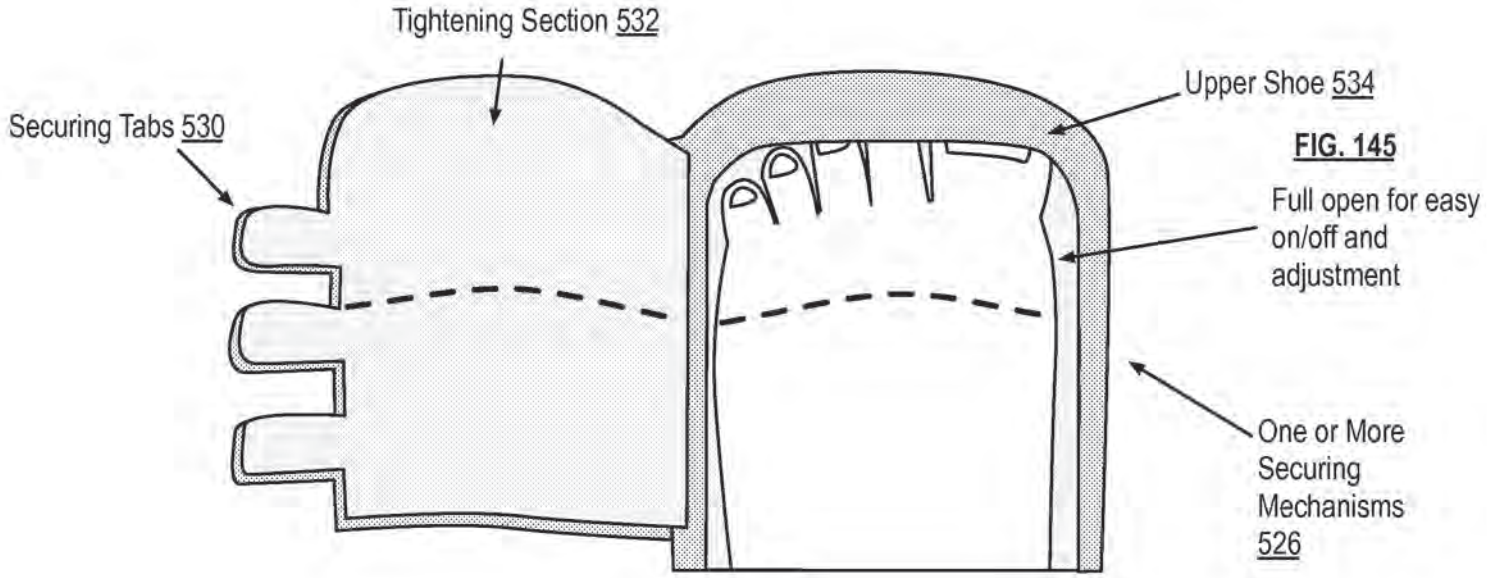


FIG. 145

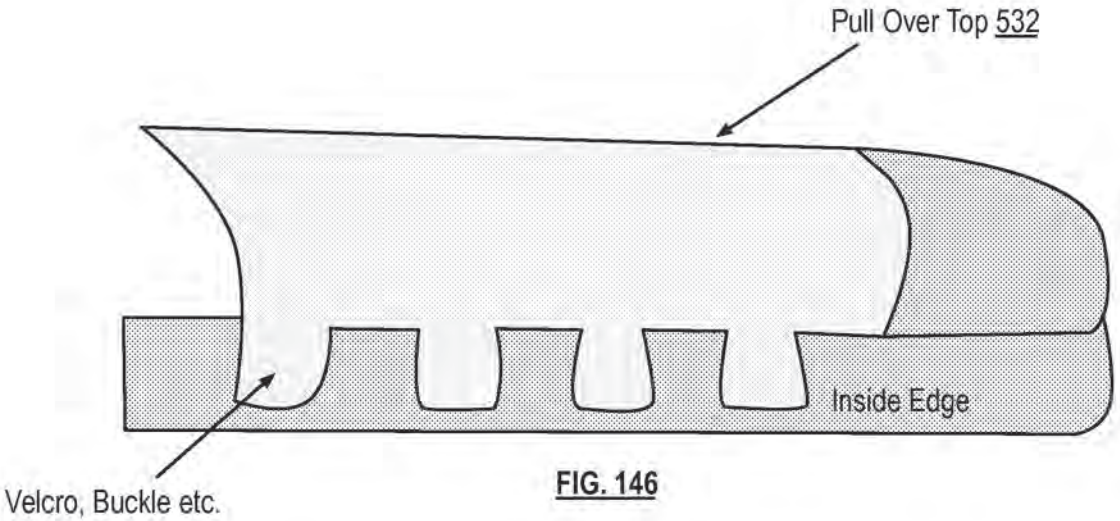


FIG. 146

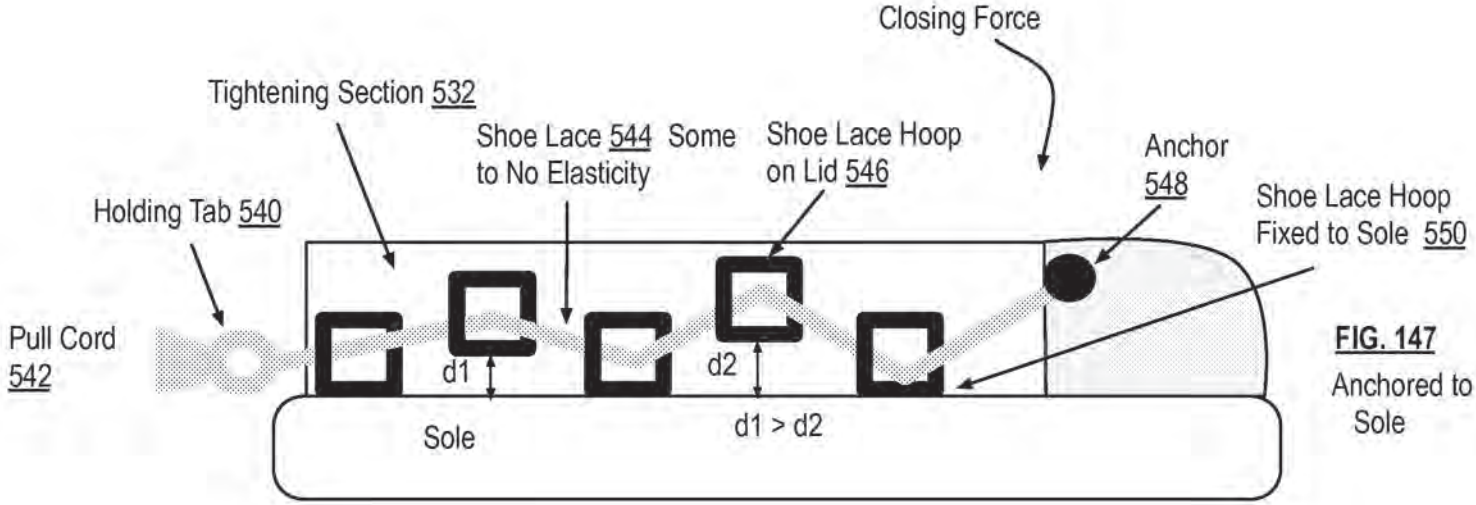


FIG. 147

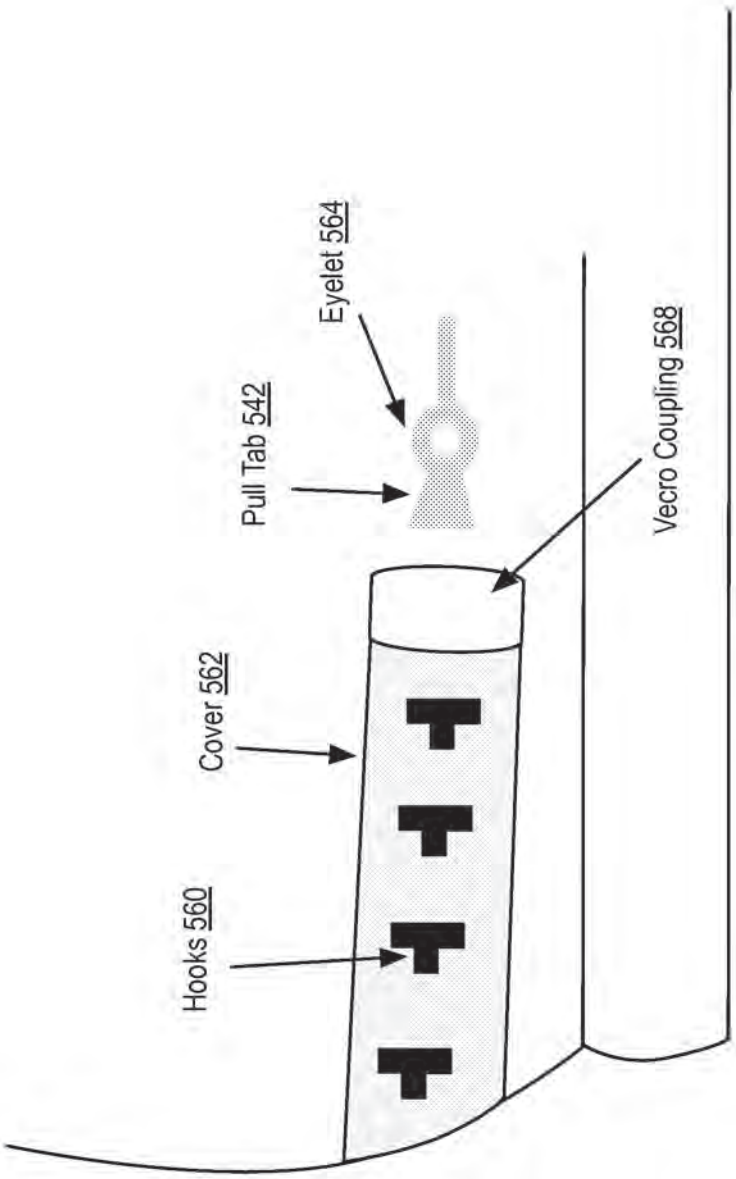

Eyelet 564
Pull Tab 542
Vecro Coupling 568
Cover 562
Hooks 560

FIG. 148

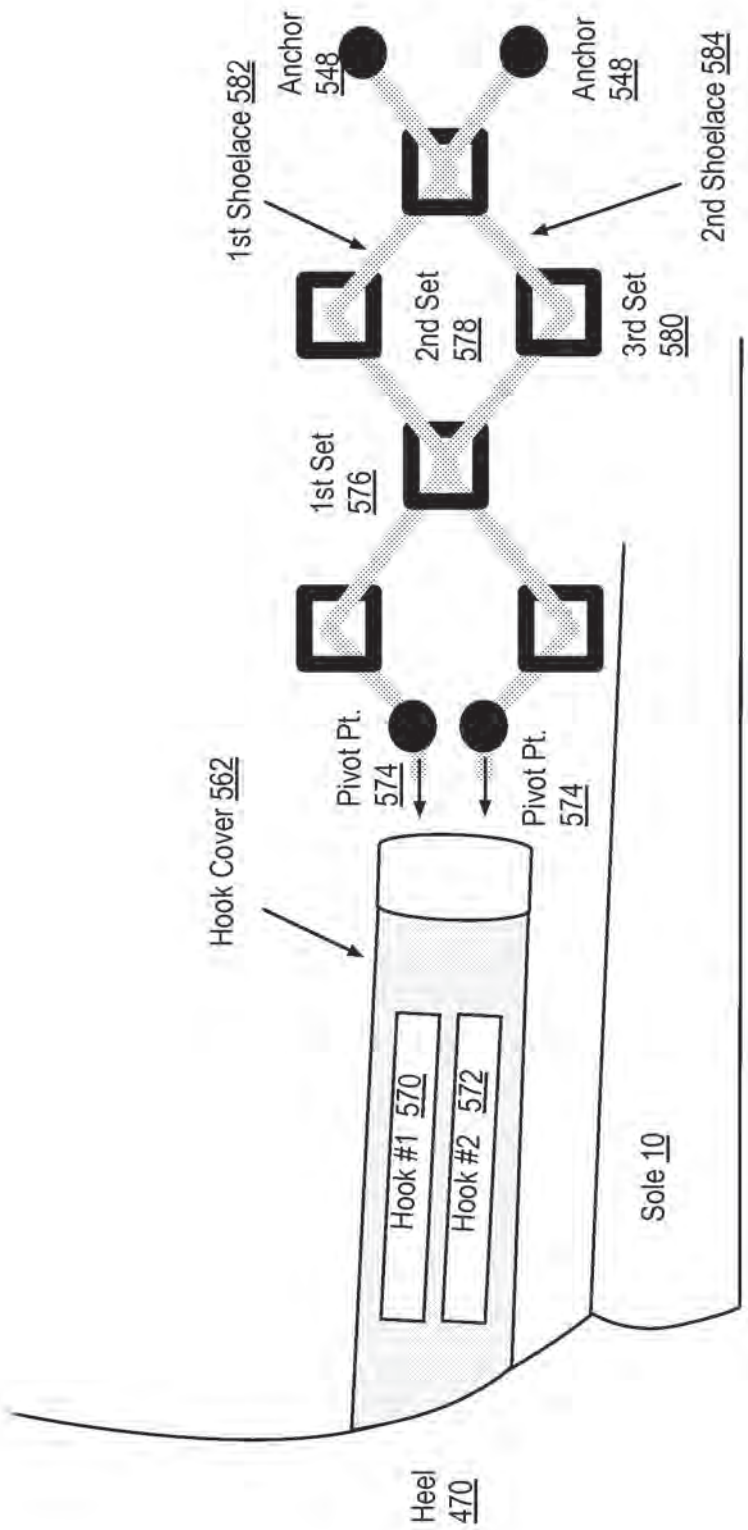

1st Shoelace 582
Anchor 548
Anchor 548
2nd Shoelace 584
2nd Set 578
3rd Set 580
1st Set 576
Pivot Pt. 574
Pivot Pt. 574
Hook Cover 562
Hook #1 570
Hook #2 572
Sole 10
Heel 470

FIG. 149

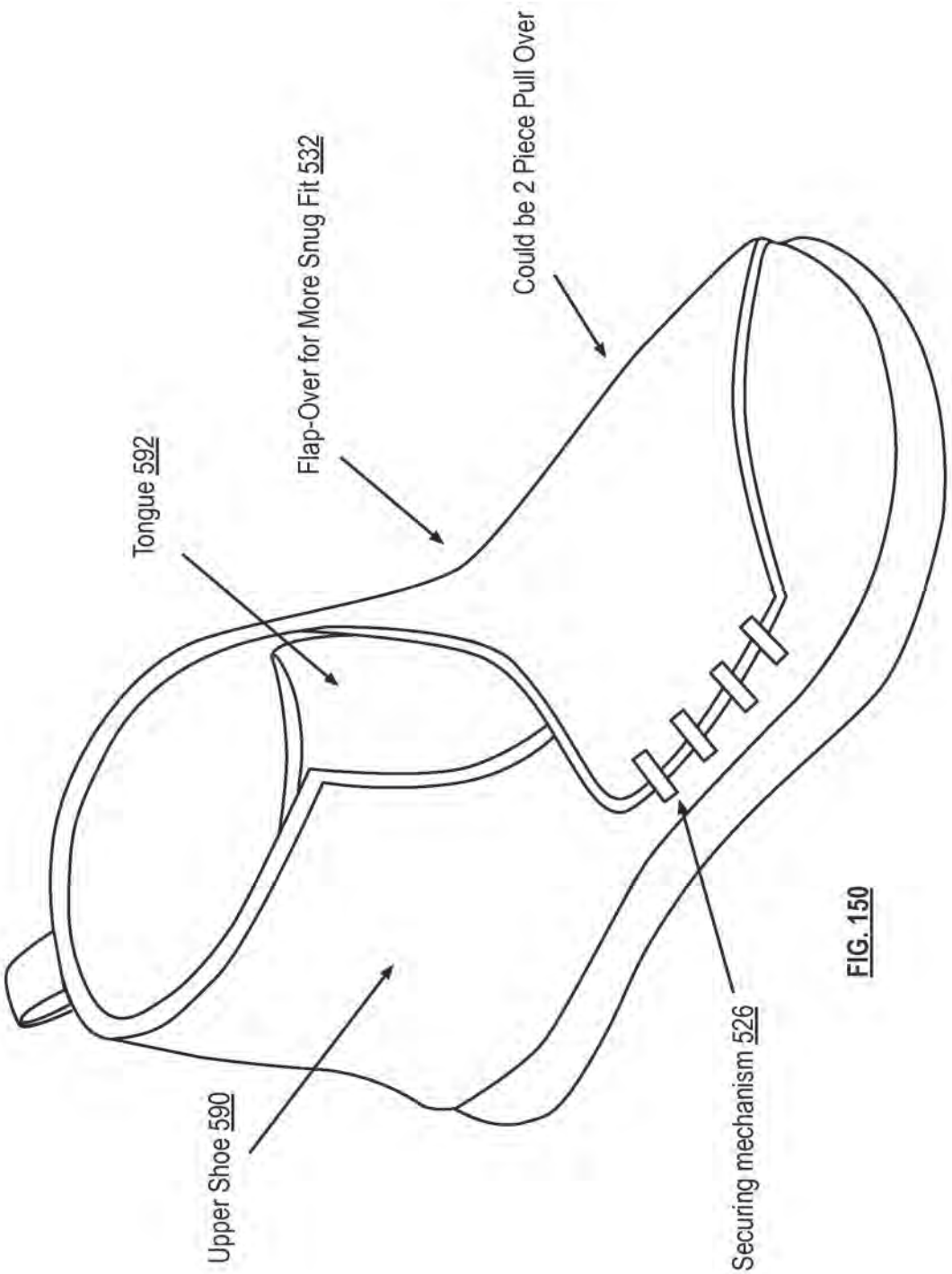

Could be 2 Piece Pull Over
Flap-Over for More Snug Fit 532
Tongue 592
Upper Shoe 590
Securing mechanism 526

FIG. 150

PTO/SB/01 (04-09)
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DECLARATION FOR UTILITY OR DESIGN PATENT APPLICATION (37 CFR 1.63)

[X] Declaration Submitted With Initial Filing OR [ ] Declaration Submitted After Initial Filing (surcharge (37 CFR 1.16(f)) required)

Attorney Docket Number	AAV003
First Named Inventor	Michael R. Adair
COMPLETE IF KNOWN	
Application Number	
Filing Date	
Art Unit	
Examiner Name	

I hereby declare that: (1) Each inventor's residence, mailing address, and citizenship are as stated below next to their name; and (2) I believe the inventor(s) named below to be the original and first inventor(s) of the subject matter which is claimed and for which a patent is sought on the invention titled:

ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF

(Title of the Invention)

the application of which

[X] is attached hereto

OR

[ ] was filed on (MM/DD/YYYY) _____ as United States Application Number or PCT International Application Number _____ and was amended on (MM/DD/YYYY) _____ (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified application, including the claims, as amended by any amendment specifically referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56, including for continuation-in-part applications, material information which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

Authorization To Permit Access To Application by Participating Offices

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DECLARATION — Utility or Design Patent Application

Claim of Foreign Priority Benefits

I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or (f), or 365(b) of any foreign application(s) for patent, inventor's or plant breeder's rights certificate(s), or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below, by checking the box, any foreign application for patent, inventor's or plant breeder's rights certificate(s), or any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number(s)	Country	Foreign Filing Date (MM/DD/YYYY)	Priority Not Claimed	Certified Copy Attached? YES	NO
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐

☐ Additional foreign application number(s) are listed on a supplemental priority data sheet PTO/SB/02B attached hereto.

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Name		
Address		
City	State	Zip
Country	Telephone	Email

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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 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

NAME OF SOLE OR FIRST INVENTOR:	[ ] A petition has been filed for this unsigned inventor
Given Name (first and middle [if any])	Family Name or Surname
Michael R.	Adair
Inventor's Signature: Michael R Adair	Date: 1-17-12

Residence: City	State	Country	Citizenship
Woodruff	SC	US	US
Mailing Address			
419 Winding Oak Drive			
City	State	Zip	Country
Woodruff	SC	29388	US

[X] Additional inventors or a legal representative are being named on the 1 supplemental sheet(s) PTO/SB/02A or 02LR attached hereto

PTO/SB/02A (07-07)
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DECLARATION

ADDITIONAL INVENTOR(S)
Supplemental Sheet

Name of Additional Joint Inventor, if any:	☐ A petition has been filed for this unsigned inventor		
Given Name (first and middle (if any))	Family Name or Surname		
Timothy W.	Markison		
Inventor's Signature			Date 11/17/2012
Mesa	AZ	US	US
Residence: City	State	Country	Citizenship
3922 Northridge Circle			
Mailing Address			
Mesa	AZ	85215	US
City	State	Zip	Country

Name of Additional Joint Inventor, if any:	☐ A petition has been filed for this unsigned inventor		
Given Name (first and middle (if any))	Family Name or Surname		
Inventor's Signature			Date
Residence: City	State	Country	Citizenship
Mailing Address			
City	State	Zip	Country

Name of Additional Joint Inventor, if any:	☐ A petition has been filed for this unsigned inventor		
Given Name (first and middle (if any))	Family Name or Surname		
Inventor's Signature			Date
Residence: City	State	Country	Citizenship
Mailing Address			
City	State	Zip	Country

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Electronic Patent Application Fee Transmittal

Application Number:	
Filing Date:	
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Filer:	Timothy W. Markison/Sherry McWhinnie
Attorney Docket Number:	AAV003

Filed as Small Entity

Utility under 35 USC 111(a) Filing Fees

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Utility filing Fee (Electronic filing)	4011	1	95	95
Utility Search Fee	2111	1	310	310
Utility Examination Fee	2311	1	125	125
Pages:				
Utility Appl Size fee per 50 sheets >100	2081	1	155	155
Claims:				
Independent claims in excess of 3	2201	1	125	125
Miscellaneous-Filing:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				
Miscellaneous:				
			Total in USD ($)	810

Electronic Acknowledgement Receipt

EFS ID:	11895292
Application Number:	13355801
International Application Number:	
Confirmation Number:	1012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Customer Number:	34399
Filer:	Timothy W. Markison/Sherry McWhinnie
Filer Authorized By:	Timothy W. Markison
Attorney Docket Number:	AAV003
Receipt Date:	23-JAN-2012
Filing Date:	
Time Stamp:	14:11:55
Application Type:	Utility under 35 USC 111(a)

Payment information:

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Payment Type	Credit Card
Payment was successfully received in RAM	$810
RAM confirmation Number	498
Deposit Account	502126
Authorized User	MCWHINNIE,SHERRY

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File Listing:					
Document Number	**Document Description**	**File Name**	**File Size(Bytes)/ Message Digest**	**Multi Part /.zip**	**Pages (if appl.)**
1	Transmittal of New Application	AAV003_appl_statement.pdf	7441 f15adc3e962e3a2f092f154fd3bb65bf4e0f8c	no	1
Warnings:					
Information:					
2	Application Data Sheet	AAV003_ApplDataSheet.pdf	1031676 f7c947eb88bb8928c74dab07983ba5af6155ffff	no	4
Warnings:					
Information:					
3		AAV003_patent_application_01232012.pdf	325199 bbb9b54c4594eed23882ea6641de72f8bd1e06d	yes	84
	Multipart Description/PDF files in .zip description				
	Document Description		**Start**	**End**	
	Specification		1	76	
	Claims		77	83	
	Abstract		84	84	
Warnings:					
Information:					
4	Drawings-only black and white line drawings	AAV003_figures_01232012.pdf	1628746 b2f5365d19f66318c3daa9821fbab4254df1de0c	no	92
Warnings:					
Information:					
5	Oath or Declaration filed	AAV003_executed_declaration.pdf	1640143 91fc8501d59d52a46f17a9d293c5fb4dfed657533	no	4
Warnings:					
Information:					
6	Fee Worksheet (SB06)	fee-info.pdf	38205 526eb9b4cc1f0a681fe68590fc5f993f38b67915	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	4671410		

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New International Application Filed with the USPTO as a Receiving Office

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Electronic Acknowledgement Receipt

EFS ID:	11895292
Application Number:	13355801
International Application Number:	
Confirmation Number:	1012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Customer Number:	34399
Filer:	Timothy W. Markison/Sherry McWhinnie
Filer Authorized By:	Timothy W. Markison
Attorney Docket Number:	AAV003
Receipt Date:	23-JAN-2012
Filing Date:	
Time Stamp:	14:11:55
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	Credit Card
Payment was successfully received in RAM	$810
RAM confirmation Number	498
Deposit Account	502126
Authorized User	MCWHINNIE,SHERRY

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Charge any Additional Fees required under 37 C.F.R. Section 1.21 (Miscellaneous fees and charges)					
File Listing:					
Document Number	**Document Description**	**File Name**	**File Size(Bytes)/ Message Digest**	**Multi Part /.zip**	**Pages (if appl.)**
1	Transmittal of New Application	AAV003_appl_statement.pdf	7441 f15adc3e962e3a2f092f154fd3bb65bf44c0f8c	no	1
Warnings:					
Information:					
2	Application Data Sheet	AAV003_ApplDataSheet.pdf	1031676 f7c947eb88bb8928c74dab07983ba5af6155ffff	no	4
Warnings:					
Information:					
3		AAV003_patent_application_01232012.pdf	325199 bbb9b54c4594eed23882ea6641de72f8bd1e06d	yes	84
	Multipart Description/PDF files in .zip description				
	Document Description		**Start**	**End**	
	Specification		1	76	
	Claims		77	83	
	Abstract		84	84	
Warnings:					
Information:					
4	Drawings-only black and white line drawings	AAV003_figures_01232012.pdf	1628746 b215365d19f66318c3daa9821fbab4254df1de0c	no	92
Warnings:					
Information:					
5	Oath or Declaration filed	AAV003_executed_declaration.pdf	1640143 91fc8501d59d52a46f17a9d293c5fb4dfed657533	no	4
Warnings:					
Information:					
6	Fee Worksheet (SB06)	fee-info.pdf	38205 526eb9b4cc1f0a681fe68590fc5f993f38b67915	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	4671410		

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New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

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PTO/SB/81 (01-09)
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POWER OF ATTORNEY OR REVOCATION OF POWER OF ATTORNEY WITH A NEW POWER OF ATTORNEY AND CHANGE OF CORRESPONDENCE ADDRESS

Application Number	13/355,801
Filing Date	01/23/2012
First Named Inventor	Michael R. Adair
Title	Athletic positioning apparatus including a heel platform and applications thereof
Art Unit	
Examiner Name	
Attorney Docket Number	AAV003

I hereby revoke all previous powers of attorney given in the above-identified application.

☐ A Power of Attorney is submitted herewith.

OR

☒ I hereby appoint Practitioner(s) associated with the following Customer Number as my/our attorney(s) or agent(s) to prosecute the application identified above, and to transact all business in the United States Patent and Trademark Office connected therewith:

34,399

OR

☐ I hereby appoint Practitioner(s) named below as my/our attorney(s) or agent(s) to prosecute the application identified above, and to transact all business in the United States Patent and Trademark Office connected therewith:

Practitioner(s) Name	Registration Number

Please recognize or change the correspondence address for the above-identified application to:

☒ The address associated with the above-mentioned Customer Number.

OR

☐ The address associated with Customer Number:

OR

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Address					
City		State		Zip	
Country					
Telephone		Email			

I am the:

☒ Applicant/Inventor.

OR

☐ Assignee of record of the entire interest. See 37 CFR 3.71.
Statement under 37 CFR 3.73(b) (Form PTO/SB/96) submitted herewith or filed on _____

SIGNATURE of Applicant or Assignee of Record

Signature	Michael R. Adair	Date	1-17-12
Name	Michael R. Adair	Telephone	
Title and Company			

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 2 forms are submitted.

This collection of information is required by 37 CFR 1.31, 1.32 and 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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34,399

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Practitioner(s) Name	Registration Number

Please recognize or change the correspondence address for the above-identified application to:

☒ The address associated with the above-mentioned Customer Number.

OR

☐ The address associated with Customer Number:

OR

☐ Firm or Individual Name					
Address					
City		State		Zip	
Country					
Telephone		Email			

I am the:

☒ Applicant/Inventor.

OR

☐ Assignee of record of the entire interest. See 37 CFR 3.71.
Statement under 37 CFR 3.73(b) (Form PTO/SB/96) submitted herewith or filed on _____

SIGNATURE of Applicant or Assignee of Record

Signature		Date	1/17/2012
Name	Timothy W. Markison	Telephone	214-676-1020
Title and Company			

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 2 forms are submitted.

This collection of information is required by 37 CFR 1.31, 1.32 and 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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Electronic Acknowledgement Receipt

EFS ID:	11897210
Application Number:	13355801
International Application Number:	
Confirmation Number:	1012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Customer Number:	34399
Filer:	Timothy W. Markison/Sherry McWhinnie
Filer Authorized By:	Timothy W. Markison
Attorney Docket Number:	AAV003
Receipt Date:	23-JAN-2012
Filing Date:	
Time Stamp:	15:33:08
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Power of Attorney	AAV003_executed_POA_01232012.pdf	1674231 544330945af38d83d5770b8aac2a27356f 606fd	no	2

Warnings:	
Information:	

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New International Application Filed with the USPTO as a Receiving Office
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PTO/SB/08a (01-10)
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INFORMATION DISCLOSURE STATEMENT BY APPLICANT
(Not for submission under 37 CFR 1.99)

Application Number	13355801
Filing Date	2012-01-23
First Named Inventor	Michael R. Adair
Art Unit	
Examiner Name	
Attorney Docket Number	AAV003

U.S.PATENTS Remove

Examiner Initial*	Cite No	Patent Number	Kind Code[1]	Issue Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear
	1	6976322	B1	2005-12-20	Walker	
	2	7487604	B2	2009-02-10	Perron, Jr.	

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Examiner Initial*	Cite No	Publication Number	Kind Code[1]	Publication Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear
	1	20070271820	A1	2007-11-29	Nurse et al.	
	2	20090100710	A1	2009-04-23	Potter et al.	
	3	20090293308	A1	2009-12-03	Bruce et al.	
	4	20100293813	A1	2010-11-25	Baucom et al.	

INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)		
	Application Number	13355801
	Filing Date	2012-01-23
	First Named Inventor	Michael R. Adair
	Art Unit	
	Examiner Name	
	Attorney Docket Number	AAV003

	5	20100299965	A1	2010-12-02	Avar et al.	
	6	20100317465	A1	2010-12-16	Thomas	

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Examiner Initial*	Cite No	Foreign Document Number[3]	Country Code[2] i	Kind Code[4]	Publication Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear	T[5]
	1							☐

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Examiner Initials*	Cite No	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc), date, pages(s), volume-issue number(s), publisher, city and/or country where published.	T[5]
	1	Pribut: [downloaded from Internet 02/26/2011; http://www.drpribut.com/sports/shoes.html]; 7 pgs.	☐
	2	Olin: [downloaded from Internet 02/26/2011; http://olin.msu.edu/athleticshoes.php]; 2 pgs.	☐

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Examiner Signature		Date Considered	

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through a citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)		
	Application Number	13355801
	Filing Date	2012-01-23
	First Named Inventor	Michael R. Adair
	Art Unit	
	Examiner Name	
	Attorney Docket Number	AAV003

[1] See Kind Codes of USPTO Patent Documents at www.USPTO.GOV or MPEP 901.04. [2] Enter office that issued the document, by the two-letter code (WIPO Standard ST.3). [3] For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. [4] Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. [5] Applicant is to place a check mark here if English language translation is attached.

INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)		
	Application Number	13355801
	Filing Date	2012-01-23
	First Named Inventor	Michael R. Adair
	Art Unit	
	Examiner Name	
	Attorney Docket Number	AAV003

CERTIFICATION STATEMENT

Please see 37 CFR 1.97 and 1.98 to make the appropriate selection(s):

☐ That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(1).

OR

☐ That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in 37 CFR 1.56(c) more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(2).

☐ See attached certification statement.

☐ The fee set forth in 37 CFR 1.17 (p) has been submitted herewith.

☒ A certification statement is not submitted herewith.

SIGNATURE

A signature of the applicant or representative is required in accordance with CFR 1.33, 10.18. Please see CFR 1.4(d) for the form of the signature.

Signature	/Timothy W. Markison/Reg. No. 33,534	Date (YYYY-MM-DD)	2012-01-23
Name/Print	Timothy W. Markison	Registration Number	33,534

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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The information provided by you in this form will be subject to the following routine uses:

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2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

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Electronic Acknowledgement Receipt

EFS ID:	11901767
Application Number:	13355801
International Application Number:	
Confirmation Number:	1012
Title of Invention:	ATHLETIC POSITIONING APPARATUS INCLUDING A HEEL PLATFORM AND APPLICATIONS THEREOF
First Named Inventor/Applicant Name:	Michael R. Adair
Customer Number:	34399
Filer:	Timothy W. Markison/Sherry McWhinnie
Filer Authorized By:	Timothy W. Markison
Attorney Docket Number:	AAV003
Receipt Date:	23-JAN-2012
Filing Date:	
Time Stamp:	19:35:43
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Information Disclosure Statement (IDS) Form (SB08)	AAV003_IDS_sb08_01232012.pdf	612588 2e3497ef88a597ea39485a14824933de05aa153	no	5

Warnings:	
Information:	

2	Non Patent Literature	NPL01_Pribut_Tips_on_Athletic_Shoe_Selection.pdf	135224 f7c0f3f015ea43193210455c50a1058aa41c1fdad	no	7
Warnings:					
Information:					
3	Non Patent Literature	NPL02_Olin_Athletic_Shoes.pdf	142862 88dfbb0052bb061dc24aa035792db540bf38c1591	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	890674		

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SCORE Placeholder Sheet for IFW Content

Application Number: 13355801 Document Date: 1/23/2012

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- Drawings – Other than Black and White Line Drawings

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Form Revision Date: February 8, 2006