

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNDER ARMOUR, INC.
Petitioner

v.

ATHALONZ, LLC
Patent Owner

Case No. TBD
Patent No. 11,064,760

DECLARATION OF GRANT DELGATTY

I. ENGAGEMENT AND COMPENSATION

1. My name is Grant Delgatty. I have been retained by Under Armour, Inc. for the purpose of providing my opinion with respect to the unpatentability of U.S. Patent No. 11,064,760 (“the ‘760 Patent”). I am being compensated for my time in preparing this declaration at my standard hourly rate of \$400, and my compensation is not dependent upon my opinions or the outcome of the proceedings. My curriculum vitae is attached as Ex. 1003.

II. QUALIFICATIONS

2. I have designed and developed performance athletic shoes, among other types of shoes, for more than 25 years, and have extensive experience studying sole design, as well as the effects of cushioning and stability, particularly in the context of performance athletic footwear.

3. Early in my career, as an athletic footwear designer, I had the opportunity to be mentored and work directly under the tutelage of the legendary Bill Peterson, who worked as one of the first industrial designers at Nike and its prior name of Blue Ribbon Sports. Bill was originally given the task of developing the methodology by which Frank Rudy’s patented airbag technology could be commercialized into a viable construction application for mass production. It was under Bill’s guidance where I first learned to apply principles in shoe construction methodologies of performance footwear and the aspects of how biomechanics

influenced new and innovative solutions for constructing performance athletic footwear including innovative sole designs.

4. From 1996 to 1999, I worked as the only employee at E-West Designs, an athletic footwear design and development consulting firm started by Bill Peterson and ex-Nike Olympic trial runner, Mark Feig. At E-West Designs, I worked on many commissioned projects within the performance footwear industry, including being credited for designing the 50th anniversary PUMA CELL 5-0 basketball shoe. In addition, I worked on the Avia cantilever system, the first line of Shaquille O'Neal's basketball shoe company, DUNK.NET, an internal harness technology for Vans step-in snowboard boots, and many other shoe-related innovations.

5. In 1999, I became the in-house Director of Design for the DVS Shoe Company, which was a startup performance skate shoe company focused on developing cutting edge technologies to address the performance needs of professional skateboarders. While at DVS, I developed many new performance technologies, including the Shock pad, Dual Lacing Technology, and the DIM (Drop In Midsole) system, which utilized an innovative over-lasted upper technology to allow for an insole containing an integrated combination airbag/impact pad cushioning technology to address heel bruising that the company's professional team riders were experiencing.

6. From 2001-2008, I was the Senior Director of Product Design at Vans, where I managed a team of 5 Designers, 6 Senior Designers, and 1 Design Director and was responsible for overseeing the design of all Vans shoes across all product categories in the Vans portfolio.

7. More recently, I have been working on a new shoe technology that provides an innovative sustainable construction methodology for performance athletic shoe soles. This work has yet to be released and is subject to a nondisclosure agreement, therefore I cannot provide further details at this time.

8. Additional details of my education and employment history, recent professional service, patents, publications, and other testimony are set forth in my current curriculum vitae, attached to this Declaration as Appendix A (*See Delgatty CV*).

III. MATERIALS REVIEWED AND EXHIBITS

Exhibit No.	Description
1001	U.S. Patent No 11,064,760 (“the ‘760 patent”)
1004	Prosecution History Excerpts of U.S. Patent Application No. 16/152,538
1005	U.S. Patent Publication No. 2004/0040181 (“Kim”)
1006	U.S. Patent No. 4,754,561 (“Dufour”)

1007	U.S. Patent No. 3,789,523 (“Rubin”)
1008	U.S. Patent No. 4,535,554 (“De Obaldia”)
1009	Excerpts from Athalonz’s Infringement Contentions for the ‘760 patent, served in <i>Athalonz, LLC v. Under Armour</i> , Case No. 2:23-cv-00193 (E.D. Tex.)
1010	Reserved
1011	Reserved
1012	Reserved
1013	1977 Nike Boston Running Shoe
1014	FootJoy 51409
1015	FootJoy 1970 Product Catalog
1016	U.S. Patent No. D275146
1017	U.S. Patent No. D310294
1018	1971 Nike Cortez
1019	Publication No. 2009/0293307 (“Koyama”)
1020	Reserved

1021	CAD Image of Heel Platform of Curry 4 FloTro
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IV. LEGAL STANDARDS

9. In forming my opinions and considering the subject matter of the ‘760 Patent and its claims in light of the prior art, I am relying on certain legal principles that counsel explained to me. My understanding of these concepts is summarized below.

A. Claim Construction

10. I have been informed that the United States Patent and Trademark Office interprets claim terms in an *inter partes* review proceeding under the same claim construction standard that is used in a United States federal court. I have been informed that under this standard, the meaning of claim terms is considered from the viewpoint of a person of ordinary skill in the art at the time of the alleged invention.

11. I have been informed that claim terms are generally given their ordinary and customary meaning as understood by one of ordinary skill in the art in light of the specification and the prosecution history pertaining to the patent. I have been informed, however, that claim terms are generally not limited by the embodiments described in the specification.

12. I have been informed that in addition to the claims, specification, and prosecution history, other evidence may be considered to ascertain the meaning of claim terms, including textbooks, encyclopedias, articles, and dictionaries. I have

been informed that this other evidence is often less significant and less reliable than the claims, specification, and prosecution history.

B. Obviousness

13. I have been informed that a patent claim can be unpatentable under 35 U.S.C. § 103(a) if it is obvious. A claim is unpatentable for obviousness if the differences between the claimed subject matter and the prior art are such that the subject matter as a whole would have been obvious at the time the alleged invention was made to a person having ordinary skill in the art to which the subject matter pertains. I further have been informed that a hypothetical person of ordinary skill in the art is assumed to know and have all relevant prior art in the relevant subject matter covered by the patent at issue and all analogous prior art.

14. I have been informed that obviousness does not require that every element of the claim be in a single prior art reference. Instead, claim elements can be described in different prior art references, so long as there is motivation or sufficient reasoning to combine the references and a reasonable expectation of success in achieving what is set forth in the claims.

15. I have been informed that one must consider the claim “as a whole” when evaluating obviousness. This consideration must be made from the perspective of the hypothetical person of ordinary skill in the relevant art, and that such perspective must be considered as of the time the invention was made.

16. I have been informed that in considering the obviousness of a claim, one must consider the scope and content of the prior art, the level of ordinary skill in the art at the relevant time, the differences between the prior art and the claim, and any “secondary considerations.”

17. I have been informed that “secondary considerations” include real-world evidence that can tend to make a conclusion of obviousness either more probable or less probable. For example, the commercial success of a product embodying a claim of the patent could provide evidence tending to show that the claimed invention is not obvious. To understand the strength of the evidence, one would want to know whether the commercial success is traceable to a certain aspect of the claim not disclosed in a single prior art reference (a “nexus”). One would also want to know how the market reacted to disclosure of the invention and whether commercial success might be traceable to things other than innovation, for example, the market power of the seller, an advertising campaign, or the existence of a complex system having many features beyond the claims that might be desirable to a consumer. One would also want to know how the product compared to similar products not embodying the claim. I have been informed that commercial success evidence should be reasonably commensurate with the scope of the claim, but that is not necessary for a commercial product to embody the full scope of the claim.

18. Other kinds of secondary considerations are possible. For example, evidence that the relevant field had a long-established, unsolved problem or need that was later provided by the claimed invention could be indicative of nonobviousness. Evidence that others had tried but failed to make an aspect of the claim might indicate that the art lacked the requisite skill to do so. Evidence of copying the patent owner's products before the patent was published might also indicate that its approach to solving a particular problem was not obvious. Evidence that the art recognized the value of products embodying a claim, for example, by praising the named inventors' work, might tend to show that the claim was non-obvious.

19. I further have been informed that prior art references can be combined where there is an express or implied rationale to do so. Such rationale might include an expected advantage to be obtained or might be implied under the circumstances. For example, a claim is likely obvious if design needs or market pressures existing in the prior art make it natural for one or more known components to be combined where each component continues to function in the expected manner when combined (i.e., when there are no unpredictable results). A claim is also likely unpatentable where it is the combination of a known base system with a known technique that can be applied to the base system without an unpredictable result. In these cases, the combination must be within the capabilities of a person of ordinary skill in the art.

20. I have been informed that when considering obviousness, one must not refer to teachings in the specification of the patent itself. One may, however, refer to portions of the specifications admitted to being prior art, including the “BACKGROUND” section.

V. THE ‘760 PATENT

A. Overview

21. The ‘760 patent relates to “athletic positioning footwear.” Ex. 1001 at 1:43. The ‘760 patent explains that previous athletic footwear were known to include an upper, a sole, an insole, cleats or spikes. *Id.* at 1:53-65. Previous athletic shoes were also known to have a “sole and/or padded insole [that] provide a relatively flat platform for the foot” or alternatively, provide a “heel portion of the shoe [that is] higher than the toe portion of the shoe from a side perspective.” *Id.* 1:65-2:3, Figs. 1-2.

22. Unlike previous shoes, those described in the ‘760 patent position the big toe area at a lower position than the heel area and the small toe area, and include a sole that is substantially linear from the inner edge to the outer edge, at the ball of the foot. *Id.*, 10:10-13, 22:5-15, 22:26-35, Figs 5-7, 67-68. The ‘760 patent claims also require that the sole section includes a heel area having substantially no slope. *Id.*, Claim 1.

23. As discussed below, all of these shoe features were well-known to a person of ordinary skill in the art (“POSITA”) prior to the filing date of the ’760 Patent.

B. Summary of the Prosecution History

24. During the prosecution of the ’760 patent, the application was rejected on various grounds including anticipation and obviousness based on U.S. Patent Nos. 4,642,911 (“Talarico ‘911”) and 6,604,301 (“Manoli II”), and Publication Nos. 2009/0293307 (“Koyama”) and 2006/0090377 (“Segalin”). Ex. 1004, pp. 93-97.

25. To overcome these rejections the Applicant amended the claims to include both a “foot platform” and “from the inner edge to the outer edge of the [left/right] shoe at a cross section at a ball of a ball,¹ a bottom of the [left/right] sole is substantially liner.” The Applicant also argued that “the Office mischaracterize[ed] the Applicant’s claim 1 by ignoring the requirement that ... each of the left and right shoe includes a big toe area that is at a lower position than an outer small toe area.” *Id.*, pp. 73-85.

26. The application was subsequently allowed after the Applicant filed a Terminal Disclaimer to overcome a double patenting rejection over the claims of U.S. Patent Nos. 8,631,592, 8,938,893, and 10,092,061. *Id.*, pp. 8-12, 41-44, 56-64.

¹ I understand that “ball of a ball” is likely a typo, and that Patent Owner likely meant “ball of a foot,” based on positions taken by Patent Owner elsewhere, *e.g.* in its infringement contentions. Ex. 1009, Ex. B, p. 28.

VI. CLAIM CONSTRUCTION

27. I was asked by counsel to apply the following definitions in my analysis. For all terms not specifically construed, I applied the plain and ordinary meaning of the terms in the ‘760 Patent and prior art.

- a. “heel area that has substantially no slope from the inner edge to the outer edge” – “inner” and “outer” edge of the heel area means the edges of the portion of the shoe where the heel of the foot sits, not the inner and outer-most edges of the shoe, and this limitation encompasses a heel area that includes some degree of curvature and height change from its inner edge to its outer edge, as shown in Ex. 1009, Ex. B, pp. 23-27. I also reviewed a confidential Under Armour design drawing of the Curry 4 FloTro product shown in Ex. 1009, an excerpt of which is included as Ex. 2021, showing that the heel platform has a radius of curvature and height change from the inner to the outer edge.
- b. “from the inner edge to the outer edge of the left/right shoe at a cross section at a ball of a [foot], a bottom of the left/right sole is substantially linear” – encompasses a sole that is curved, textured and/or includes protrusions on the bottom of the sole, as shown in Ex. 1009, Ex. B, pp. 26-36.

VII. PERSON OF ORDINARY SKILL IN THE ART

A. Understanding of the Test

28. In rendering the opinions set forth in this declaration, I was asked to consider the patent claims and the prior art through the eyes of a POSITA as of the time of the alleged invention, which I understand is March 8, 2011, the filing date of U.S. Provisional Patent Application No. 61/450,485, to which the ‘760 patent claims priority.

29. I have been informed that the factors considered in determining the ordinary level of skill in a field of art include the level of education and experience of persons working in the field, the types of problems encountered in the field, the teachings of the prior art, and the sophistication of the technology at the time of the alleged invention.

30. I have been informed that a person of ordinary skill in the art is not a specific real individual, but instead is a hypothetical individual having the qualities reflected by the factors above. I have been informed that a person of ordinary skill in the art would also know the teachings of the prior art, including the art cited below.

B. Definition

31. Based on my education, experience, and knowledge of problems encountered in the field, the POSITA would have (1) at least a B.S. or equivalent degree related to industrial or product design and at least two years' experience designing or developing athletic shoes; or (2) at least five years designing or developing athletic shoes.

32. I believe I would meet (or exceed) this definition and would have met this definition in the relevant timeframe. I have also worked with and managed many individuals who would meet this definition, including at the date of filing of the '760 patent. My testimony is offered from this perspective.

VIII. PRIOR ART

A. Effective Prior Art Dates

33. U.S. Patent Publication No. 2004/0040181 (“Kim”, Ex. 1005) published on March 4, 2004.

34. U.S. Patent No. 4,754,561 (“Dufour”, Ex. 1006) issued July 5, 1988.

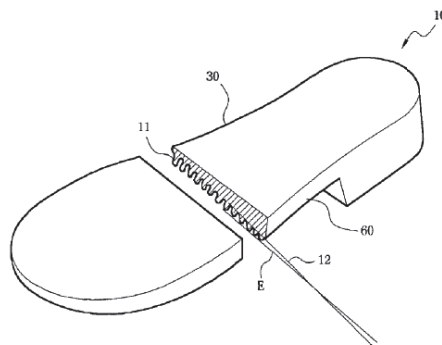
35. U.S. Patent No. 3,789,523 (“Rubin”, Ex. 1007) issued February 5, 1974.

36. U.S. Patent No. 4,535,554 (“De Obaldia”, Ex. 1008) issued on August 20, 1985.

B. Overview of Kim

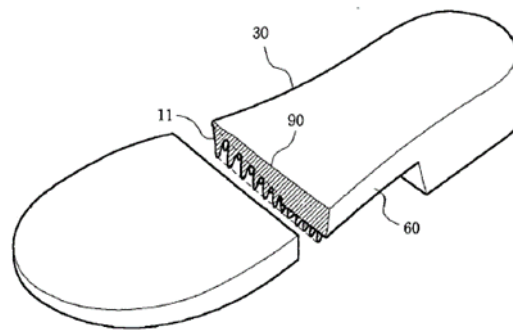
37. Kim discloses a pair of golf shoes that allow golfers to concentrate their weight balance on the inner edges of the soles of the feet. Ex. 1005, ¶ 12. Kim explains that such a position “allow[s] the golfer to perform the swing motion while maintaining his/her stable motion.” *Id.*, ¶ 12, Fig. 2.

FIG. 2



38. Kim discloses golf shoes that include an upper leather portion and an outsole. *Id.*, ¶ 27. The outsole “includes a lower surface inclined from its outer edge to its inner edge so that the outer edge has a thickness larger than that of the inner edge,” as shown in Figure 3a. *Id.*, ¶¶ 16 (“[p]referably, the lower surface of the outsole may be stepped upward from the outer edge to the inner edge.”), 27. Here, the inclined lower surface “may be formed only at the front portion of the outsole.” *Id.*, ¶ 46.

FIG. 3a

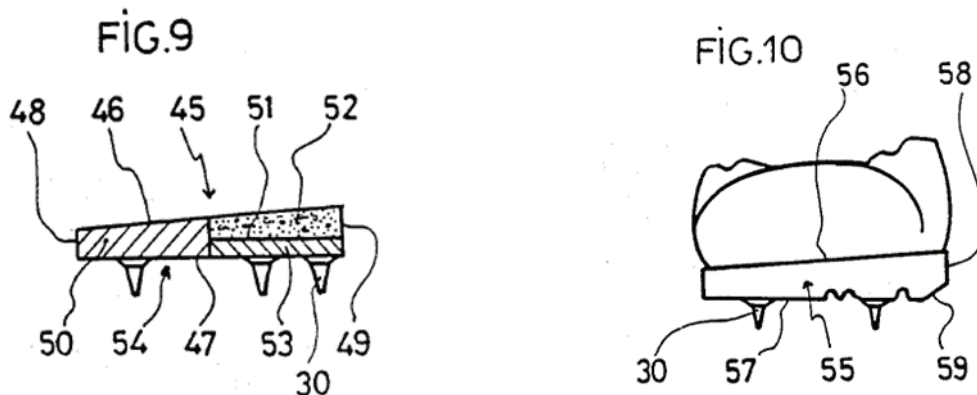


39. Kim explains that “[e]xcept for the outsole including the inclined lower surface, the golf shoe ... is substantially the same as conventional golf shoes.” *Id.*, ¶ 27.

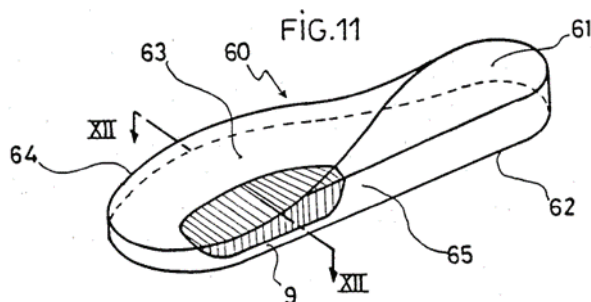
C. Overview of Dufour

40. Dufour discloses a golf shoe, where the sole “has a traverse section in which the inside support surface is inclined with respect to the walking surface.” *Id.*, 4:51-54. For the left shoe, Dufour explains that “the incline of the surface rises from

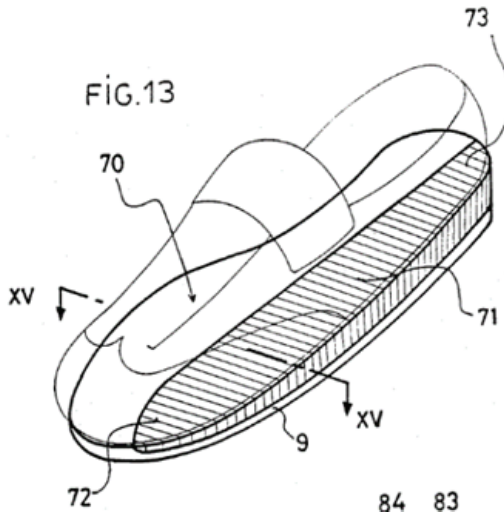
the right inner edge of said sole to to the outer edge thereof,” as shown in Figures 9 and 10. *Id.*, 4:54-57.



41. Dufour also discloses a support zone at the level of the heel that is substantially parallel to the to the walking surface, while the front area is inclined upwards from the inner edge towards the outer edge. *Id.*, 5:7-14., Fig 11.



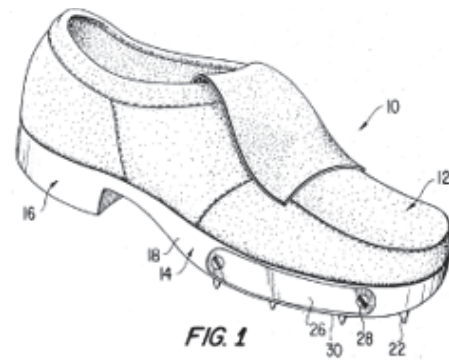
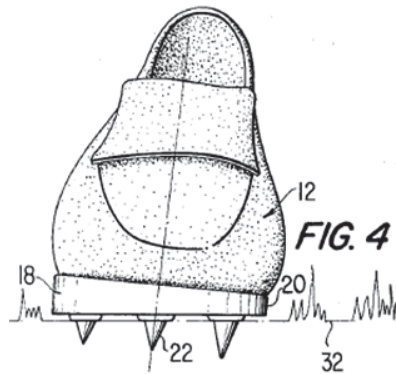
42. Dufour also discloses a sole that is provided with a shock absorbing element, which extends from the front portion of the golf shoe up to the heel zone. *See id.*, 5:15-24. The shock absorbing element has a “variable thickness so that the front part is thinner than the part at the heel.” *Id.* Dufour explains that the “thickness of the sole ... increases as it goes towards the heel zone,” as shown in Figure 13. *Id.*



D. Overview of Rubin

43. Rubin discloses a golf shoe designed to aid a golfer in assuming a proper stance, and thus develop a more consistent swing. Ex. 1007, 1:5-22.

44. Rubin explains that the shoe includes a conventional upper molded integrally with a sole, which has opposed inner and outer sides, and a conventional heel. *Id.*, 2:55-68. As shown in Figure 4, the outer side of the sole extends to a lower elevation than the inner side, creating a “toe-in effect to aid the golfer during his swing to pivot about a more or less stationary vertical line rather than sway.” *Id.*, 2:5-11, claim 1.

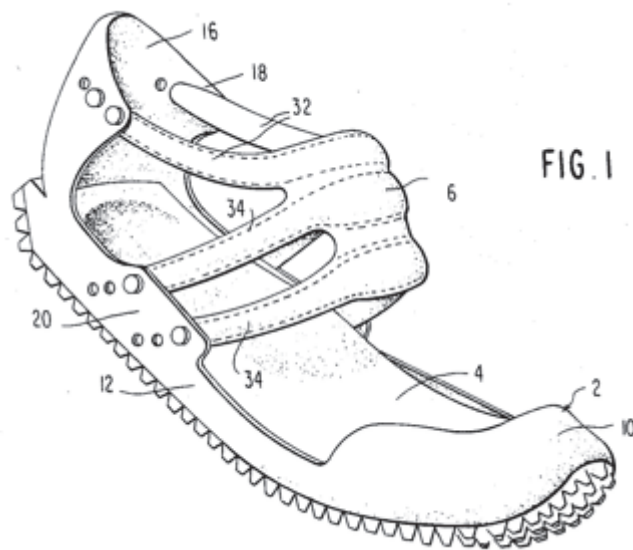


45. Rubin also discloses cleats that project downwardly from the bottom of the sole, which serve to anchor the foot of a golfer. *Id.*, 3:24-27.

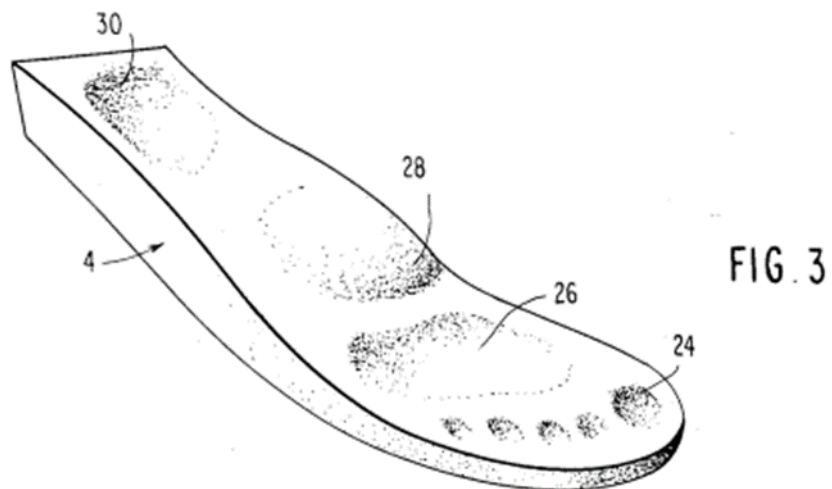
46. Rubin explains that, when the shoes are worn, “the golfer will imbed cleats in a golf playing surface when addressing a golf ball,” and “[the] rewardmost foot of the golfer will be tilted inwardly because of the wedge-shaped sole of the shoe ... provid[ing] a more satisfactory weight distribution when hitting the ball.” *Id.*, 3:51-65.

E. Overview of De Obaldia

47. De Obaldia discloses an article of footwear that includes a molded body member, a molded foot support member which supports the wearer’s foot, and a flexible harness, as depicted in Figure 1. Ex. 1008, Abstract, 2:23-44, claim 1.



48. De Obaldia explains that “the upper surface of the foot support member is configured to correspond to and provide anatomical support for the wearer’s foot.” *Id.*, 2:63-64. As shown in Figure 3, this configuration preferably “includes at least one toe recess 24, [and] a recess 26 for accommodating a ball of the wearer’s foot” *Id.*, 2:65-68; *see also* claims 5, 13.



F. “Conventional” Shoes

49. A POSITA would understand that shoes in general, including athletic shoes and golf shoes, have several traits and features that are “conventional” or “standard.” These conventional design traits include a heel area that has substantially no slope from the inner edge to the outer edge, at least based on Patent Owner’s apparent interpretation of this limitation, discussed in Section VI, above. Having a heel area that has substantially no slope from the inner edge to the outer edge is standard shoe design, both before and after the priority date of the ‘760 patent. In fact, over the course of my career, the vast majority, if not all, of the shoes I designed or oversaw the design of had this feature. For example, this feature was included in the shoes I designed for Vans that were sold in the United States between 2002 and 2005, as depicted below.









50. In each of the Vans shoes I designed, the heel area has substantially no slope from the inner edge to the outer edge on the inside of the shoe as well as the outside of the shoe.

51. Other examples of athletic shoes having a heel area that has substantially no slope from the inner edge to the outer edge are shown in Nike running shoes from the 1970s, including the 1977 Boston running shoe, and 1971 Cortez, both of which I am familiar with and am aware of being sold in the United States during that time:



Ex. 1013.



Ex. 1018.

52. A heel area that has substantially no slope from the inner edge to the outer edge is also shown in Nike's U.S. Design Patent No. D275146, filed in 1982, which discloses the sole for Nike's "Air Force One" basketball shoe having a heel platform with substantially no slope on both the inside and the outside of the shoe.

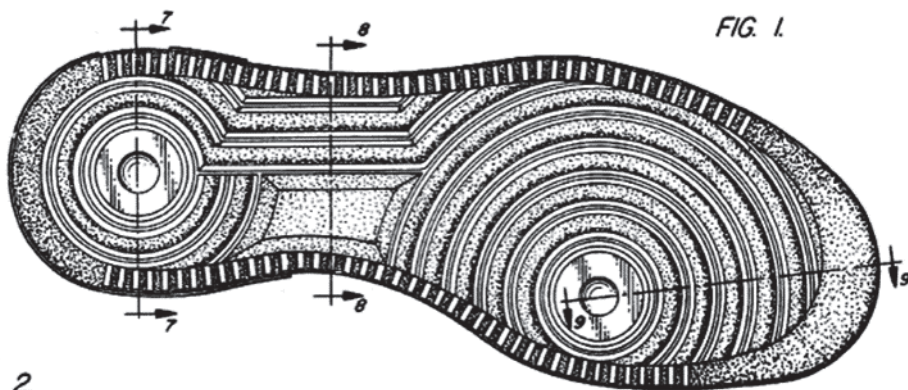


FIG. 2.

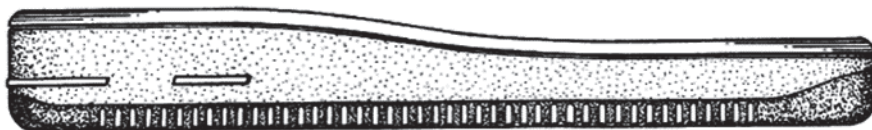


FIG. 3.



FIG. 5.

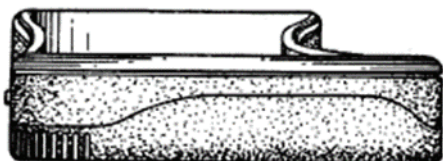


FIG. 6.

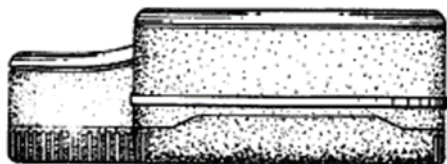


FIG. 7.



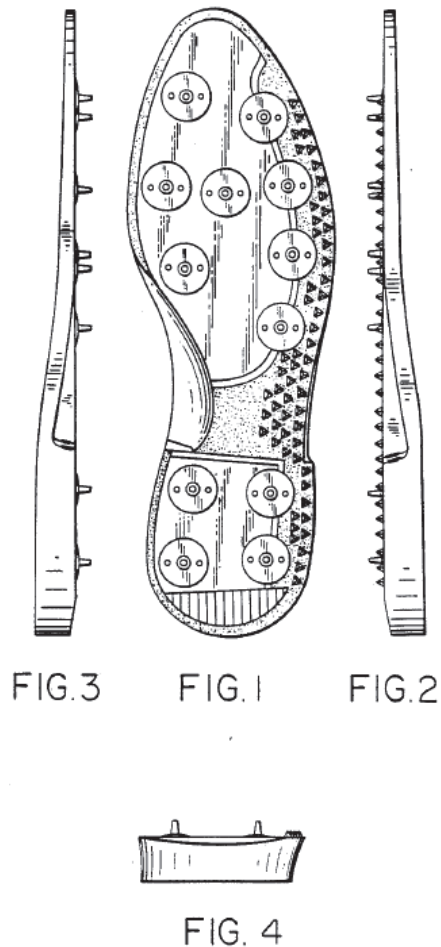
Ex. 1016.

53. Having a heel area that has substantially no slope from the inner edge to the outer edge is also standard in golf shoes, as shown, for example, in the 1970 FootJoy Style 51409:



Exs. 1014, 1015.

54. See also the golf shoe sole disclosed in Tretorn's U.S. Design Patent No. D310294, filed in 1987:



Ex. 1017.

55. A POSITA would also understand that these conventional design traits include outsoles having a substantially linear lower surface from the inner edge to the outer edge at the ball of the foot, at least based on Patent Owner's apparent interpretation of this limitation, discussed in Section VI, above. This feature is standard shoe design, both before and after the priority date of the '760 patent. In fact, over the course of my career, the vast majority, if not all, of the shoes I designed

or oversaw the design of had this feature. For example, this feature was included in the shoes I designed for Vans that were sold in the United States between 2002 and 2005, as depicted below.







56. Other examples of athletic shoes having outsoles with a substantially linear lower surface from the inner edge to the outer edge at the ball of the foot include the 1977 Nike Boston running shoe, and 1971 Cortez.

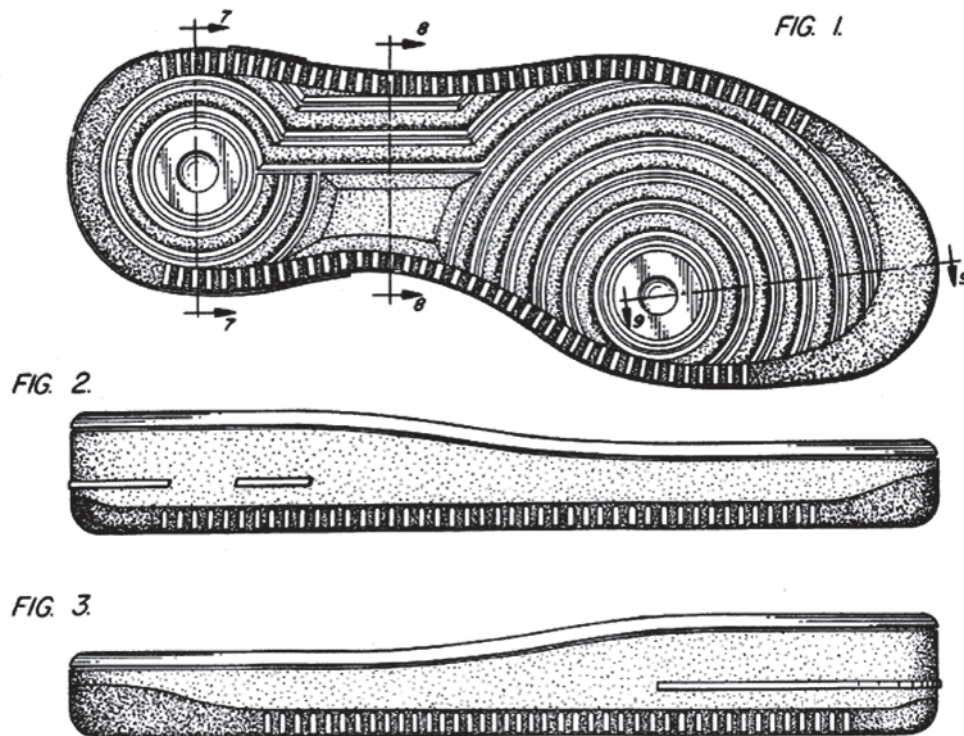


Ex. 1013.



Ex. 1018.

57. An outsole with substantially linear lower surface from the inner edge to the outer edge at the ball of the foot is also shown in Nike's U.S. Design Patent No. D275146, filed in 1982, which discloses the sole for Nike's "Air Force One" basketball shoe.



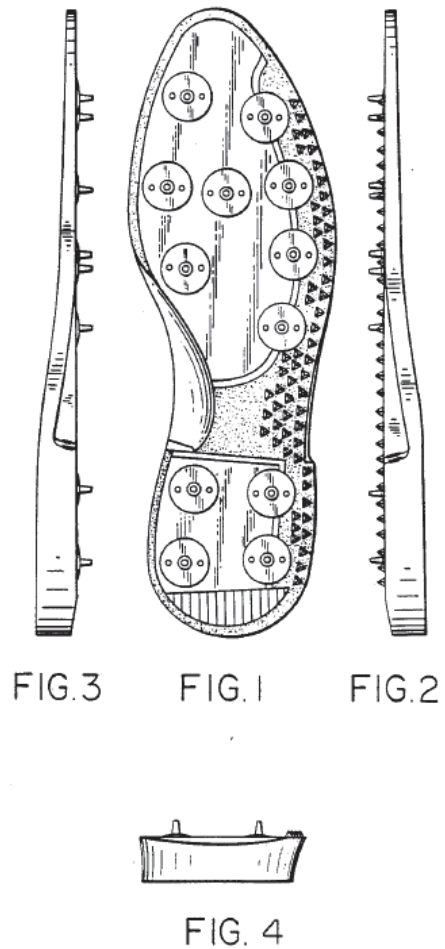
Ex. 1016.

58. Having outsole with substantially linear lower surface from the inner edge to the outer edge at the ball of the foot is also standard in golf shoes, as shown, for example, in the 1970 FootJoy Style 51409.



Exs. 1014, 1015.

59. See also the Golf shoe sole disclosed in Tretorn's U.S. Design Patent No. D310294, filed in 1987.



Ex. 1017.

IX. OPINIONS ON UNPATENTABILITY

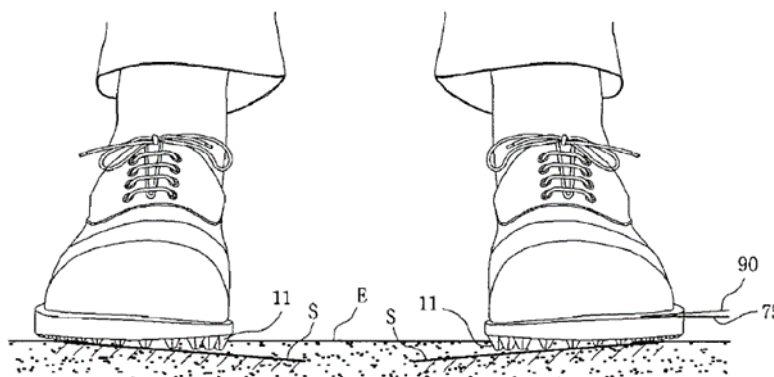
A. Ground 1: Claims 1-3, 6-8 and 11 are Obvious Based on Kim

60. It is my opinion that a POSITA would have found claims 1-3, 6-8 and 11 obvious based on Kim.

(a) [1.0] A pair of shoes comprises:

U.S. Patent No. 11,064,760	Kim
[1.p] A pair of shoes comprises:	Kim teaches and/or suggests a pair of golf shoes.

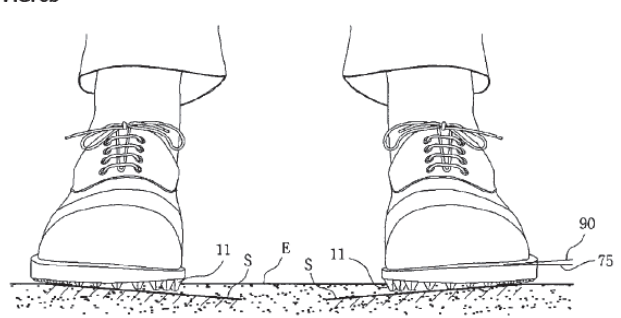
FIG. 5b



“Disclosed is a pair of golf shoes, each comprising an outsole provided with a plurality of spikes protruded from a lower surface of the outsole, in which the lower surface of the outsole is inclined from an outer edge of the outsole to an inner edge of the outsole so that the spikes at the inner edge of the outsole have a height larger than that of the spikes at the outer edge of the outsole, and the spikes respectively have heights so that an upper surface of the outsole is substantially parallel with a ground. The golf shoes allow golfer’s feet to be stably mounted on the surface of a green, thereby assisting a golfer in taking a stable position during address and swing motions. thereby assisting a golfer in taking a stable position during address and Swing motions.” Ex. 1005, Abstract.

(b) [1.1] a left foot shoe including:

U.S. Patent No. 11,064,760	Kim
[1.1] a left foot shoe including:	Kim teaches and/or suggests a left foot shoe.

	FIG. 5b  “Disclosed is a pair of golf shoes, each comprising an outsole provided with a plurality of spikes protruded from a lower surface of the outsole, in which the lower surface of the outsole is inclined from an outer edge of the outsole to an inner edge of the outsole so that the spikes at the inner edge of the outsole have a height larger than that of the spikes at the outer edge of the outsole, and the spikes respectively have heights so that an upper surface of the outsole is substantially parallel with a ground. The golf shoes allow golfer’s feet to be stably mounted on the surface of a green, thereby assisting a golfer in taking a stable position during address and swing motions. thereby assisting a golfer in taking a stable position during address and Swing motions.” <i>Id.</i>
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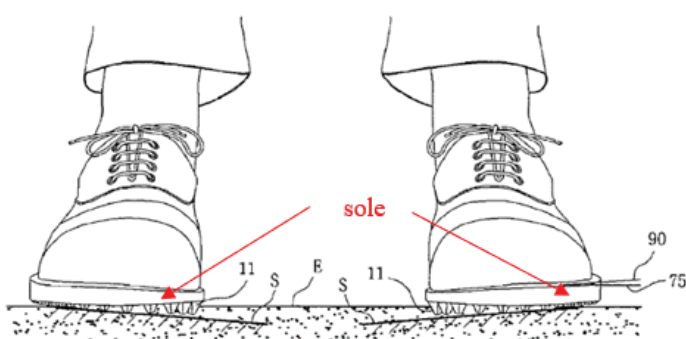
(c) [1.2] a left upper shoe potion; and

U.S. Patent No. 11,064,760	Kim
[1.2] a left upper shoe portion; and	Kim teaches and/or suggests an upper leather portion for accommodating a golfer’s foot.

A diagram showing a side view of a shoe sole. The sole is divided into an upper portion (11) and a lower portion (90). The upper portion (11) is the main body of the sole, and the lower portion (90) is a thin layer at the bottom. A red arrow points to the upper portion (11) with the label "Upper Portion". The sole is shown on a surface (S) with a dashed line (E) indicating a boundary. The sole is labeled with 11, 90, and 75.

“That is, the golf shoe 100 of the present invention comprises the upper leather portion 20 for accommodating a golfer’s foot, and the outsole 10 attached to the lower surface of the upper leather portion 20 and adapted to contact the ground. Further, the golf shoe 100 further comprises an insole (not shown) arranged on the bottom of the inside of the upper leather portion 20.” *Id.*, ¶ 28.

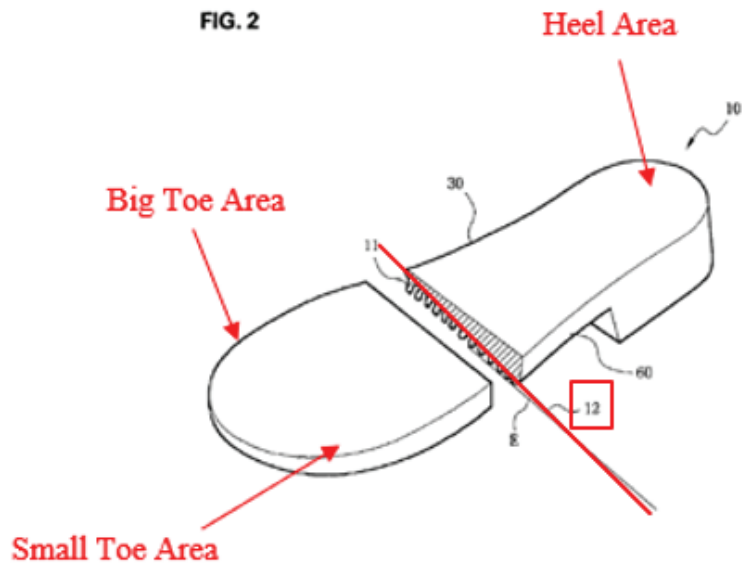
U.S. Patent No. 11,064,760	Kim
[1.3] a left sole coupled to the left upper shoe portion,	Kim teaches and/or suggests a sole attached to the upper leather portion.

	FIG. 5b  “That is, the golf shoe 100 of the present invention comprises the upper leather portion 20 for accommodating a golfer’s foot, and the outsole 10 attached to the lower surface of the upper leather portion 20 and adapted to contact the ground. Further, the golf shoe 100 further comprises an insole (not shown) arranged on the bottom of the inside of the upper leather portion 20.” <i>Id.</i>
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- (e) [1.4] wherein a foot platform of the left sole provides an athletic positioning of a left big toe area of the left shoe at a lower position than a left heel area of the left shoe and at a lower position than an outer small toe area of the left shoe,

U.S. Patent No. 11,064,760	Kim
[1.4] wherein a foot platform of the left sole provides an athletic positioning of a left big toe area of the left shoe at a lower position than a left heel area of the left shoe and at a lower position than an outer small toe area of the left shoe,	Kim teaches and/or suggests a foot platform that provides an athletic positioning, such that the big toe area is at a lower position than the heel area, and at a lower position than an outer small toe area. “Therefore, the present invention has been made in view of the above problems, and it is an object of the present invention to provide a pair of golf shoes, which assist a golfer in concentrating his/her proper weight balance on the inner edges of soles of feet during the address and swing motions, thus allowing the golfer to perform the swing motion while maintaining his/her stable position.” <i>Id.</i>, ¶ 12.

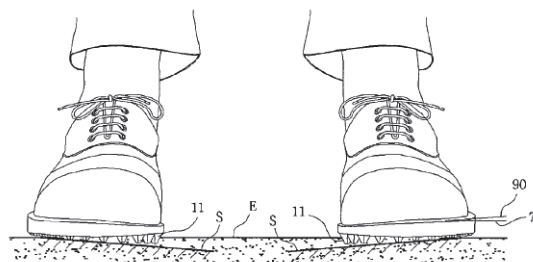
	“It is another object of the present invention to provide a pair of golf shoes, which allow a golfer to stably maintain the lower part of his/her body on the surface of a green during the address and swing motions, thus assisting the golfer in swinging a club along a correct path and to correctly impact a golf ball by means of the swing of the club.” <i>Id.</i>, ¶ 13. “In accordance with the present invention, the above and other objects can be accomplished by the provision of a pair of golf shoes, each comprising an outsole provided with a plurality of spikes protruded from a lower surface of the outsole, wherein: bottoms of the spikes (an upper surface of the outsole) are substantially parallel with the ground; the lower surface of the outsole is inclined so that the thickness of the lower surface of the outsole is decreased from its outer edge to its inner edge; and spikes at the inner edge of the outsole have a height larger than that of the spikes at the outer edge of the outsole.” <i>Id.</i>, ¶ 14. “That is, the lower surface of the outsole is inclined so that the thickness of the lower surface of the outsole is decreased from the outer edge to the inner edge, the spikes protruded from the lower surface of the outsole have different heights at outer and inner edges of the outsole (the height of spikes at the inner edge is larger than the height of the spikes at the outer edge), and the bottoms of the spikes are substantially parallel with the ground, thereby allowing a golfer in the golf shoes to concentrating his/her weight during the address and swing phases on the inner edges of soles of feet and assisting the golfer in performing a stable swing motion.” <i>Id.</i>, ¶ 15. “Preferably, the lower surface of the outsole may be stepped upward from the outer edge to the inner edge.” <i>Id.</i>, ¶ 16.
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“As shown in FIGS. 1 and 2, the golf shoe 100 in accordance with one embodiment of the present invention comprises an upper leather portion 20 and an outsole 10. The outsole 10 includes a lower surface 12 inclined from its outer edge 60 to its inner edge 30 so that the outer edge 60 has a thickness larger than that of the inner edge 30. Except for the outsole 10 including the inclined lower surface 12, the golf shoe 100 of the present invention is substantially the same as conventional golf shoes.” *Id.*, ¶ 27.

“Here, the lower surface 12 of the outsole 10 is inclined from the outer edge 60 to the inner edge 30. That is, the outsole 10 at the outer edge 60 has a thickness larger than that of the outsole 10 at the inner edge 30.” *Id.*, ¶ 32.

FIG. 5b



“FIG. 5*b* is a schematic view illustrating feet of a golfer in a pair of the golf shoes 100 of the present invention standing on the ground E of a green. When the golfer in a pair of the golf shoes 100 of the present invention stands on the ground E of the green, since the height of the spikes 11 at the inner edge 30 of the outsole 10 is larger than that of the spikes 11 at the outer edge 60 of the outsole 10, the spikes 11 at the inner edge 30 penetrate the ground E of the green more deeply than the spikes 11 at the outer edge 60, and has a holding power stronger than the holding power of the spikes 11 at the outer edge 60. Thereby, both legs of the golfer in the stance position are close to each other toward the inner edges of the soles of the feet, thus allowing the weight balance of the golfer's body to be concentrated on the inner edges of the soles of the feet.” *Id.*, ¶ 36.

“In FIGS. 5*a* and 5*b*, the reference numeral 90 denotes a line representing the level of the golfer's feet being parallel with the ground E, and the reference numeral 75 denotes a line being parallel with a line (S) representing the level of the bottoms of the spikes 11.” *Id.*, ¶ 39.

FIG. 3*a*

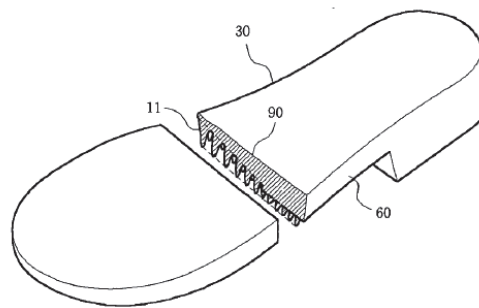
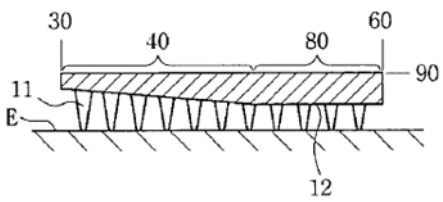


	FIG. 3b  “FIGS. 3a and 3b illustrate an outsole of a golf shoe in accordance with another embodiment of the present invention. In this embodiment, the height of the spikes 11 at the inner edge 30 of the outsole 10 is larger than that of the spikes 11 at the outer edge 60 of the outsole 10. However, the lower surface 12 of the outsole 10 is not gradually inclined from the outer edge 60 to the inner edge 30, but includes a horizontal plane 80 extended from the outer edge 60, and an inclined plane 40 extended from the end of the horizontal plane 80.” <i>Id.</i>, ¶ 41. “Although the preferred embodiments of the present invention have been disclosed for illustrative purposes, those skilled in the art will appreciate that various modifications, additions and substitutions are possible, without departing from the scope and spirit of the invention as disclosed in the accompanying claims. For example, the inclined plane may be formed only at the front portion of the outsole, or only at parts of the front and/or rear portions of the outsole.” <i>Id.</i>, ¶ 46.
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(f) [1.5] wherein, from an inner edge to an outer edge of the left shoe, the left heel area has substantially no slope,

U.S. Patent No. 11,064,760	Kim
[1.5] wherein, from an inner edge to an outer edge of the left shoe,	Kim teaches and/or suggests a heel area that has substantially no slope from the inner edge to the outer edge.

the left heel area has substantially no slope,

“As shown in FIGS. 1 and 2, the golf shoe 100 in accordance with one embodiment of the present invention comprises an upper leather portion 20 and an outsole 10. The outsole 10 includes a lower surface 12 inclined from its outer edge 60 to its inner edge 30 so that the outer edge 60 has a thickness larger than that of the inner edge 30. Except for the outsole 10 including the inclined lower surface 12, the golf shoe 100 of the present invention is substantially the same as conventional golf shoes.” *Id.*, ¶ 27.

“Although the preferred embodiments of the present invention have been disclosed for illustrative purposes, those skilled in the art will appreciate that various modifications, additions and substitutions are possible, without departing from the scope and spirit of the invention as disclosed in the accompanying claims. For example, the inclined plane may be formed only at the front portion of the outsole, or only at parts of the front and/or rear portions of the outsole.” *Id.*, ¶ 46.

FIG. 2

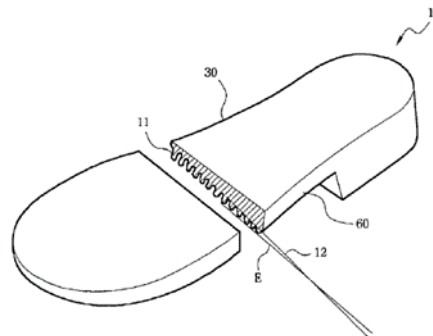
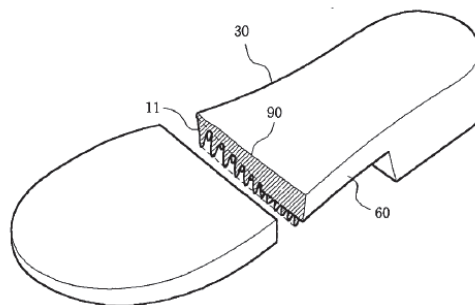
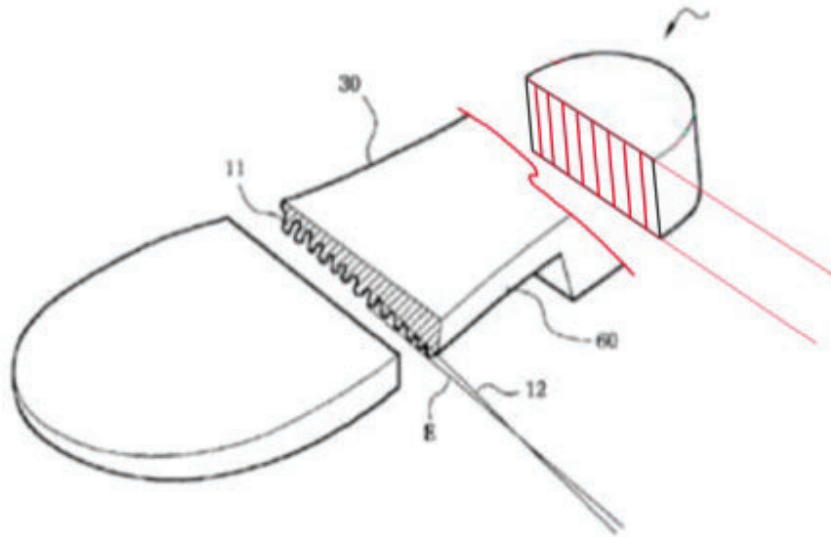


FIG. 3a



61. A POSITA would understand that the heel area shown in Figures 2 and 3a has substantially no slope from the inner edge to the outer edge. I created the image below to show how a POSITA would understand the heel platform depicted in Kim.



62. This is confirmed by Kim’s disclosure that “the inclined plane may be formed only at the front portion of the outsole, or only at parts of the front and/or rear portions of the outsole.” *Id.*, ¶ 46.

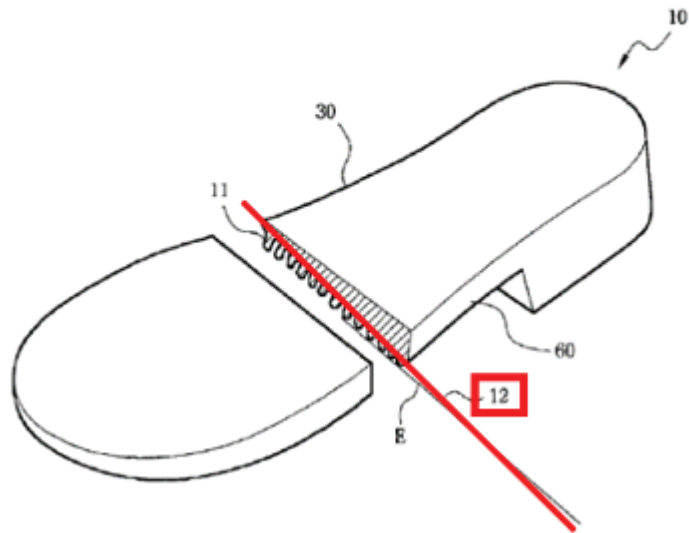
63. Kim also discloses that “[e]xcept for the outsole including the inclined lower surface, the golf shoe of the present invention is substantially the same as conventional golf shoes.” *Id.*, ¶ 27. A POSITA would understand that conventional athletic shoes, including golf, basketball, running and skateboard shoes, include a heel area with substantially no slope from the inner edge to the outer edge based on

Patent Owner's apparent interpretation of this limitation, as described in Section VIII.F, above.

- (g) **[1.6] and wherein, from the inner edge to the outer edge of the left shoe at a cross section at a ball of [foot], a bottom of the left sole is substantially linear; and**

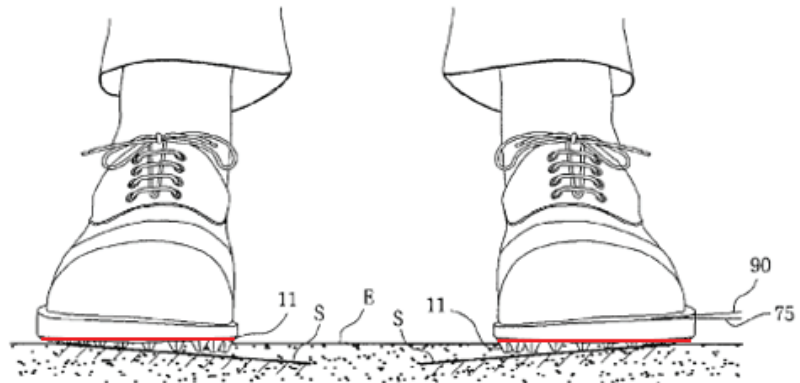
U.S. Patent No. 11,064,760	Kim
[1.6] and wherein, from the inner edge to the outer edge of the left shoe at a cross section at a ball of [foot], a bottom of the left sole is substantially linear; and	Kim teaches and/or suggests a sole bottom that is substantially linear from the inner edge to the outer edge at the ball of the foot. “As shown in FIGS. 1 and 2, the golf shoe 100 in accordance with one embodiment of the present invention comprises an upper leather portion 20 and an outsole 10. The outsole 10 includes a lower surface 12 inclined from its outer edge 60 to its inner edge 30 so that the outer edge 60 has a thickness larger than that of the inner edge 30. Except for the outsole 10 including the inclined lower surface 12, the golf shoe 100 of the present invention is substantially the same as conventional golf shoes.” <i>Id.</i>, ¶ 27.

FIG. 2



“In FIGS. 5a and 5b, the reference numeral 90 denotes a line representing the level of the golfer's feet being parallel with the ground E, and the reference numeral 75 denotes a line being parallel with a line (S) representing the level of the bottoms of the spikes 11.” *Id.*, ¶ 39.

FIG. 5b



64. A POSITA would understand that the bottom of the sole in Figures 2 and 5b are substantially linear from the inner edge to the outer edge at the ball of the

foot. For example, Figure 2 shows an outsole 10 that has a linear lower surface from the inner edge to the outer edge at the ball of the foot, as indicated by linear line 12. To the extent the cross section depicted in Figure 2 is not precisely at the ball of the foot, a POSITA would understand that the bottom of the sole is substantially linear throughout the forefoot area, including at the ball of the foot, based on Figure 5b.

65. Kim also discloses that “[e]xcept for the outsole including the inclined lower surface, the golf shoe of the present invention is substantially the same as conventional golf shoes.” *Id.*, ¶ 27. A POSITA would understand that conventional athletic shoes, including golf, basketball, running and skateboard shoes, include sole bottoms that are substantially linear at the balls of the feet based on Patent Owner’s apparent interpretation of this limitation, as described in Section VIII.F, above.

(h) [1.7] a right foot shoe including:

66. See limitations 1.p and 1.1 above, describing Kim’s disclosure of a pair of golf shoes, which include a left and right foot shoe.

(i) [1.8] a right upper shoe portion; and

67. See limitation 1.2 above, describing Kim’s disclosure of an upper leather portion.

(j) [1.9] a right sole coupled to the right upper shoe portion,

68. See limitation 1.3 above, describing Kim’s disclosure of an outsole attached to the upper portion.

- (k) **[1.10] wherein a foot platform of the right sole provides an athletic positioning of a right big toe area of the right shoe at a lower position than a right heel area of the right shoe and at a lower position than an outer small toe area of the right shoe and**

69. See limitation 1.4 above, describing Kim's disclosure of an outsole having an inclined lower surface that places the front inner edge at a lower position than the front outer edge and the heel area.

- (l) **[1.11] wherein, from an inner edge to an outer edge of the right shoe, the right heel area has substantially no slope, and**

70. See limitation 1.5 above, describing Kim's disclosure of a heel area with substantially no slope from the inner edge to the outer edge.

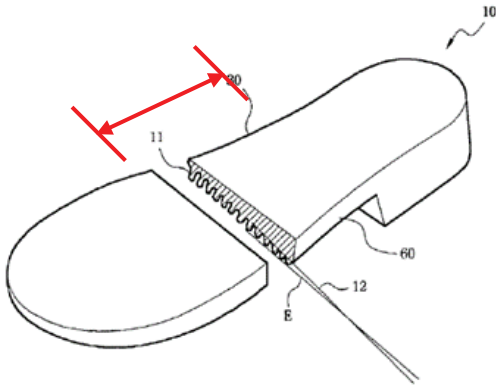
- (m) **[1.12] wherein, from an inner edge to an outer edge of the right shoe at a cross section at a ball of [foot], a bottom of the right shoe is substantially linear.**

71. See limitation 1.6 above, describing Kim's disclosure of shoes including sole bottoms that are substantially linear at the balls of the feet.

- (n) **[2.1] The pair of shoes of claim 1, wherein the foot platform of the left sole comprises: a heel section that, from the inner edge to the outer edge of the left shoe, has substantially no slope [2.2] a toe section that provides the left big toe area of the left shoe at the lower position than the left heel area of the left shoe and at the lower position than the outer small toe area of the left shoe; and**

72. See the discussion above for limitations 1.4 – 1.5.

- (o) [2.3] a mid-foot section having a shape to transition from the heel section to the toe section.

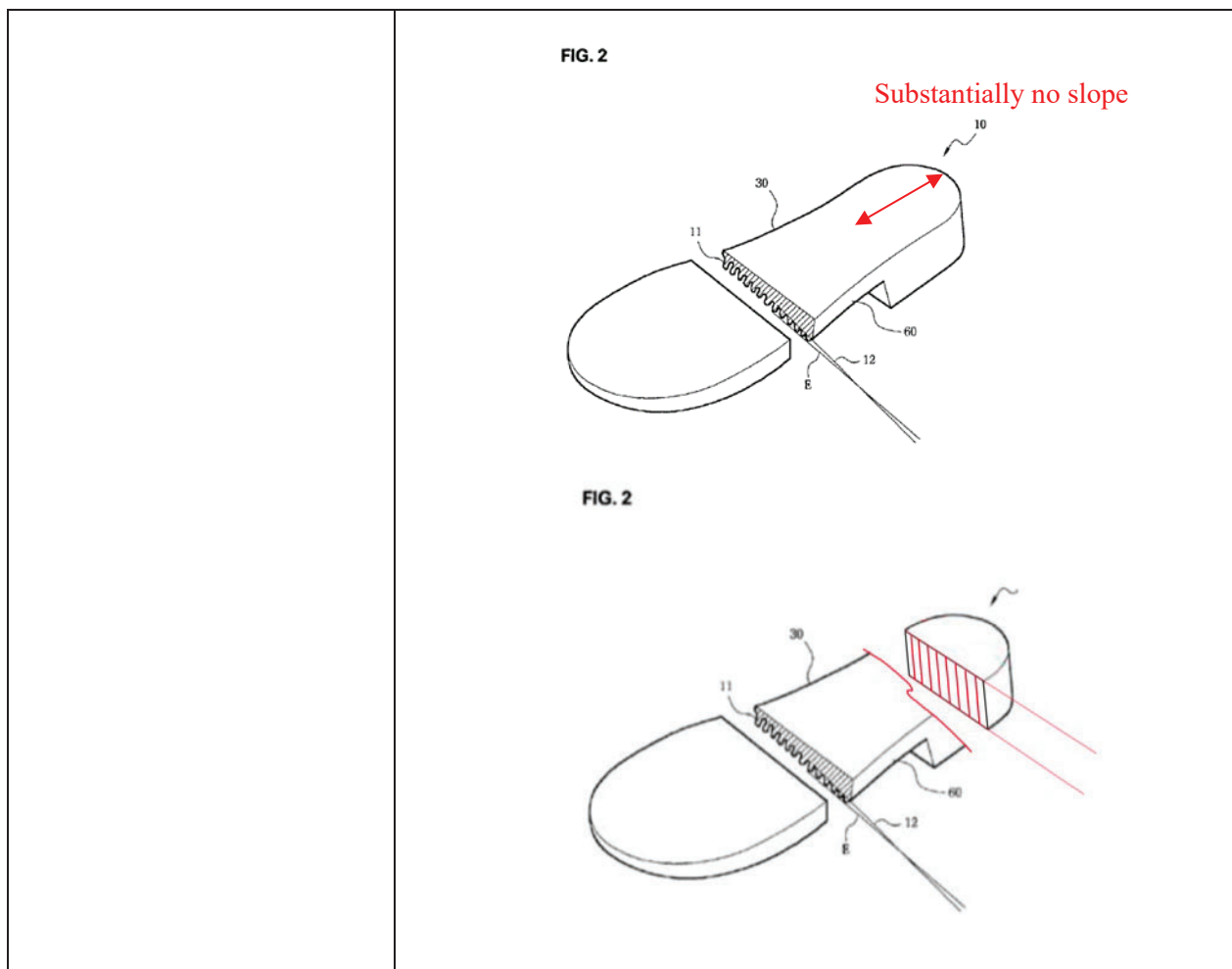
U.S. Patent No. 11,064,760	Kim
[2.3] a mid-foot section having a shape to transition from the heel section to the toe section.	Kim teaches and/or suggests a pair of golf shoes, each having a mid-foot section of certain shape to transition from the heel to the toe section. “As shown in FIGS. 1 and 2, the golf shoe 100 in accordance with one embodiment of the present invention comprises an upper leather portion 20 and an outsole 10. The outsole 10 includes a lower surface 12 inclined from its outer edge 60 to its inner edge 30 so that the outer edge 60 has a thickness larger than that of the inner edge 30. Except for the outsole 10 including the inclined lower surface 12, the golf shoe 100 of the present invention is substantially the same as conventional golf shoes.” <i>Id.</i>, ¶ 27. FIG. 2 Mid-Foot Section  The diagram shows a cross-section of a shoe sole. Label 10 points to the entire sole assembly. Label 11 points to the upper portion of the sole. Label 60 points to the outer edge of the sole. Label 12 points to the lower surface of the sole, which is inclined from the outer edge 60 towards the inner edge. Label E points to the inner edge of the sole.

73. A POSITA would understand that the golf shoe in Figure 2 includes a mid-foot section having a shape to transition from the heel section to the toe section. This is a necessary element of any shoe.

- (p) [3] The pair of shoes of claim 2, wherein the heel section of the foot platform of the left sole comprises: a heel platform

that includes a surface having substantially no slope from the inner edge to the outer edge of the left shoe and for a length of the surface, wherein, when the left shoe is worn, the heel platform supports a left heel of a wearer.

U.S. Patent No. 11,064,760	Kim
[3] The pair of shoes of claim 2, wherein the heel section of the foot platform of the left sole comprises: a heel platform that includes a surface having substantially no slope from the inner edge to the outer edge of the left shoe and for a length of the surface, wherein, when the left shoe is worn, the heel platform supports a left heel of a wearer.	Kim teaches and/or suggests a heel platform that has substantially no slope from the inner edge to the outer edge shoe, and for the length of the surface thereof, wherein the heel platform supports the heel of the wearer when worn. “As shown in FIGS. 1 and 2, the golf shoe 100 in accordance with one embodiment of the present invention comprises an upper leather portion 20 and an outsole 10. The outsole 10 includes a lower surface 12 inclined from its outer edge 60 to its inner edge 30 so that the outer edge 60 has a thickness larger than that of the inner edge 30. Except for the outsole 10 including the inclined lower surface 12, the golf shoe 100 of the present invention is substantially the same as conventional golf shoes.” <i>Id.</i>, ¶ 27. “Although the preferred embodiments of the present invention have been disclosed for illustrative purposes, those skilled in the art will appreciate that various modifications, additions and substitutions are possible, without departing from the scope and spirit of the invention as disclosed in the accompanying claims. For example, the inclined plane may be formed only at the front portion of the outsole, or only at parts of the front and/or rear portions of the outsole.” <i>Id.</i>, ¶ 46.



74. See limitation 1.5 above, describing Kim’s disclosure of a heel area with substantially no slope from the inner edge to the outer edge. A POSITA would understand that the heel section shown and described above has substantially no slope for a length of its surface. This is confirmed by Kim’s disclosure that “the inclined plane may be formed only at the front portion of the outsole.” *Id.*, ¶ 46.

75. A POSITA would understand that “conventional” shoes (*see id.*, ¶ 27) include heel areas with substantially no slope for a length of their surface. A

POSITA would also understand that “conventional” shoes include heel platforms that support the heel of a wearer when worn. This is true of any shoe.

- (q) [6] **The pair of shoes of claim 1, wherein the foot platform of the left sole comprises: a specific bottom that includes one of: a sport specific tread pattern; a spike pattern; a sliding coupling pattern; and a cleat pattern.**

U.S. Patent No. 11,064,760	Kim
[6] The pair of shoes of claim 1, wherein the foot platform of the left sole comprises: a specific bottom that includes one of: a sport specific tread pattern; a spike pattern; a sliding coupling pattern; and a cleat pattern.	Kim teaches and/or suggests a plurality of spikes that protrude from the lower surface of the outsole. “Disclosed is a pair of golf shoes, each comprising an outsole provided with a plurality of spikes protruded from a lower surface of the outsole, in which the lower surface of the outsole is inclined from an outer edge of the outsole to an inner edge of the outsole so that the spikes at the inner edge of the outsole have a height larger than that of the spikes at the outer edge of the outsole, and the spikes respectively have heights so that an upper surface of the outsole is substantially parallel with a ground. The golf shoes allow golfe’s feet to be stably mounted on the surface of a green, thereby assisting a golfer in taking a stable position during address and swing motions. thereby assisting a golfer in taking a stable position during address and Swing motions.” <i>Id.</i>, Abstract. “That is, the lower surface of the outsole is inclined so that the thickness of the lower surface of the outsole is decreased from the outer edge to the inner edge, the spikes protruded from the lower surface of the outsole have different heights at outer and inner edges of the outsole (the height of spikes at the inner edge is larger than the height of the spikes at the outer edge), and the bottoms of the spikes are substantially parallel with the ground, thereby allowing a golfer in the golf shoes to concentrating his/her weight during the address and

swing phases on the inner edges of soles of feet and assisting the golfer in performing a stable swing motion.” *Id.*, ¶ 15.

“A plurality of spikes are protruded from the lower surface of the outsole so that the golf shoe is firmly gripped on the ground. The spikes are integrally formed with the outsole. As shown in FIGS. 1 and 2, a plurality of cleat-shaped spikes are also protuded from the lower surface of the outsole. The cleat-shaped spikes may be integrally formed with the outsole or detachably attached to the outsole using bolts, etc.” *Id.*, ¶ 30.

FIG. 2

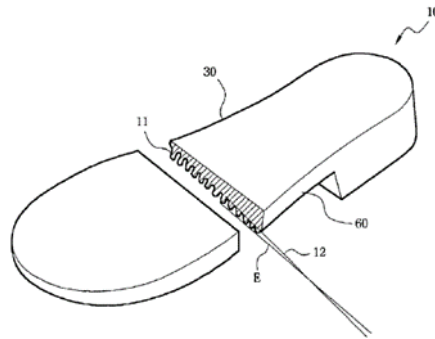
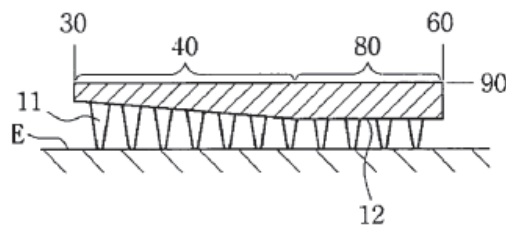


FIG. 3b



- (r) [7.1] The pair of shoes of claim 1, wherein the foot platform of the right sole comprises: a heel section that, from the inner edge to the outer edge of the right shoe, has substantially no slope; [7.2] a toe section that provides the right big toe area

of the right shoe at the lower position than the right heel area of the right shoe and at the lower position than the outer small toe area of the right shoe; and [7.3] a mid-foot section having a shape to transition from the heel section to the toe section.

76. See corresponding discussions for limitations 1.4-1.5 and 2.3, above.

The limitations of claim 7 are nearly identical thereto, the only difference being that claim 7 is specific to the right foot shoe.

(s) [8] The pair of shoes of claim 7, wherein the heel section of the foot platform of the right sole comprises: a heel platform that includes a surface having substantially no slope from the inner edge to the outer edge of the right shoe and for a length of the surface, wherein, when the right shoe is worn, the heel platform supports a right heel of a wearer.

77. See corresponding discussion for claim 3, above. Claim 8 is nearly identical thereto, the only difference being that claim 8 is specific to the right foot shoe.

(t) [11] The pair of shoes of claim 1, wherein the foot platform of the right sole comprises: a specific bottom that includes one of: a sport specific tread pattern; a spike pattern; a sliding coupling pattern; and a cleat pattern.

78. See corresponding discussion for claim 6, above. Claim 11 is nearly identical thereto, the only difference being that claim 11 is specific to the right foot shoe.

B. Ground 2: Claims 1-3, 6-8, and 11 are Obvious Based on Dufour

79. It is my opinion that a POSITA would have found claims 1-3, 6-8 and 11 obvious based on Dufour.

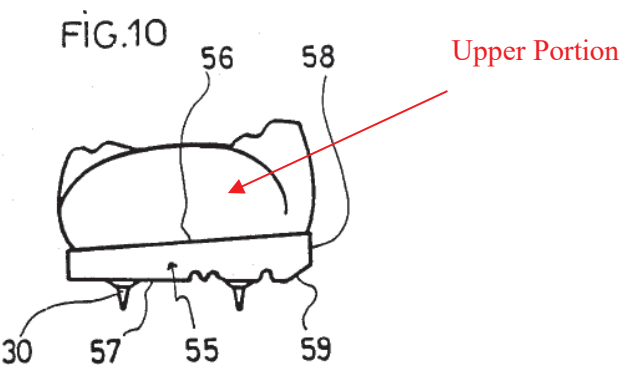
(a) [1.0] A pair of shoes comprises:

U.S. Patent No. 11,064,760	Dufour
[1.p] A pair of shoes comprises:	Dufour teaches and/or suggests a pair of golf shoes. “This invention pertains to golf shoes, and especially a shoe sole able to facilitate the rolling of the foot (the left foot for a left-handed person; the right for a right-handed person) during the golfer's swing movement; the term "swing" indicates the kinematics of the golfer's compound movements in order to hit the ball.” Ex. 1006, 1:5-10. “Generally, a left shoe, thus a shoe for right-handed golfers, which represent 90% of the players, will be discussed.” <i>Id.</i> 1:55-57. “As explained above, a left shoe, thus a shoe especially for right-handed players, is preferably described; of course, the characteristics presented below can be applied to a right shoe, which thus will be for left-handed golfers (about 10%), without departing from the framework of the invention.” <i>Id.</i>, 3:43-48.

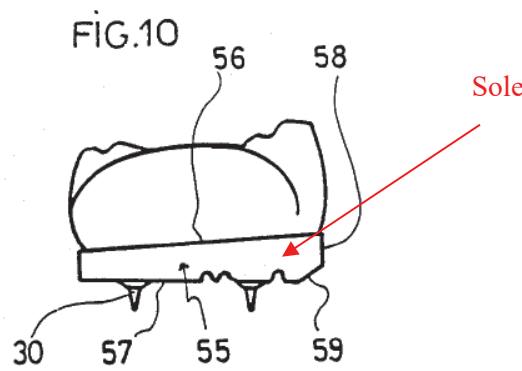
(b) [1.1] a left foot shoe including:

U.S. Patent No. 11,064,760	Dufour
[1.1] a left foot shoe including:	Dufour teaches and/or suggests a left foot shoe. “This invention pertains to golf shoes, and especially a shoe sole able to facilitate the rolling of the foot (the left foot for a left-handed person; the right for a right-handed person) during the golfer's swing movement; the term "swing" indicates the kinematics of the golfer's compound movements in order to hit the ball.” <i>Id.</i>, 1:5-10. “As explained above, a left shoe, thus a shoe especially for right-handed players, is preferably described; of course, the characteristics presented below can be applied to a right shoe, which thus will be for left-handed golfers (about 10%), without departing from the framework of the invention.” <i>Id.</i>, 3:43-48. “As assembled in FIG. 10, the sole transversely has a plantar support surface for the foot, providing the latter with a seating inclined with respect to the walking surface, as described above in reference to FIG. 9; conversely, in order to facilitate the rolling of the foot on the left outer edge of the sole, an inclined plane, secant to the walking surface, is made on the lower side of said edge.” <i>Id.</i>, 4:67-5:6.

(c) [1.2] a left upper shoe portion; and

U.S. Patent No. 11,064,760	Dufour
[1.2] a left upper shoe portion; and	Dufour teaches and/or suggests an upper shoe portion. 

(d) [1.3] a left sole coupled to the left upper shoe portion,

U.S. Patent No. 11,064,760	Dufour
[1.3] a left sole coupled to the left upper shoe portion,	Dufour teaches and/or suggests a sole attached to an upper shoe portion.  “As assembled in FIG. 10, the sole transversely has a plantar support surface for the foot, providing the latter with a seating inclined with respect to the walking surface, as described above in reference to FIG. 9; conversely, in order to facilitate the rolling of the foot on the left outer edge of the sole, an inclined

	plane, secant to the walking surface, is made on the lower side of said edge.” <i>Id.</i> , 4:66-5:6.
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- (e) [1.4] wherein a foot platform of the left sole provides an athletic positioning of a left big toe area of the left shoe at a lower position than a left heel area of the left shoe and at a lower position than an outer small toe area of the left shoe,

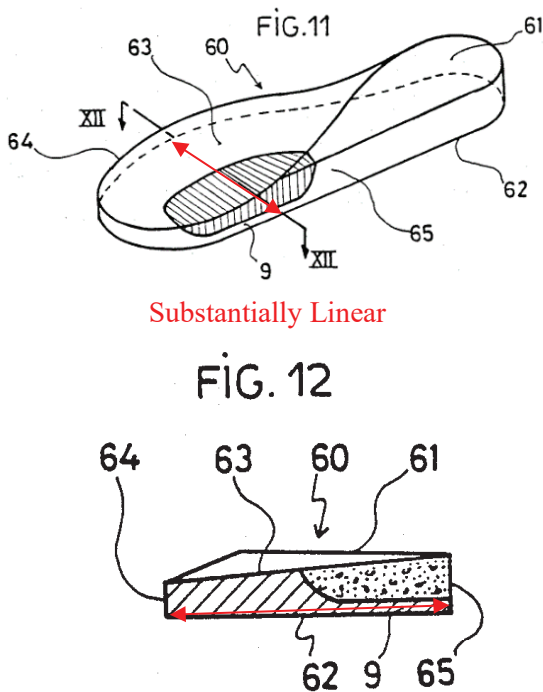
U.S. Patent No. 11,064,760	Dufour
[1.4] wherein a foot platform of the left sole provides an athletic positioning of a left big toe area of the left shoe at a lower position than a left heel area of the left shoe and at a lower position than an outer small toe area of the left shoe,	Dufour teaches and/or suggests a foot platform that provides an athletic positioning, such that the big toe area is at a lower position than the heel area, and at a lower position than an outer small toe area. FIG.9 “Still according to the invention (FIG. 9), the sole has a transverse section in which the inside support surface is inclined with respect to the walking surface. Considering that this involves the sole of a left shoe, the incline of the surface rises from the right inner edge 48 of said sole to the outer edge thereof.” <i>Id.</i>, 4:51-57. FIG.10

	in elevation in its longitudinal direction, also increases as it goes towards the heel zone.” <i>Id.</i> , 5:15-24.
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- (f) [1.5] wherein, from an inner edge to an outer edge of the left shoe, the left heel area has substantially no slope,

U.S. Patent No. 11,064,760	Kim
[1.5] wherein, from an inner edge to an outer edge of the left shoe, the left heel area has substantially no slope,	Dufour teaches and/or suggests a heel area that has substantially no slope from the inner edge to the outer edge. “Provision is also made (FIGS. 11 and 12) for the sole to furnish a transverse seating for the foot, having variations in the plantar support surface. As such, the plantar support zone at the level of the heel remains substantially parallel to the walking surface, while the support surface in the front area of the foot is inclined upwards from the inner edge towards the outer edge.” <i>Id.</i>, 5:7-14.

- (g) [1.6] and wherein, from the inner edge to the outer edge of the left shoe at a cross section at a ball of [foot], a bottom of the left sole is substantially linear; and

U.S. Patent No. 11,064,760	Dufour
[1.6] and wherein, from the inner edge to the outer edge of the left shoe at a cross section at a ball of [foot], a bottom of the left sole is substantially linear; and	Dufour teaches and/or suggests a sole bottom that is substantially linear from the inner edge to the outer edge at the ball of the foot.  FIG. 11 is a perspective view of a shoe sole 60. The sole has an inner edge 63, an outer edge 61, and a bottom surface 62. A cross-section line XII-XII is shown. The sole is divided into an upper layer 64 and a lower layer 9. A red arrow points to the bottom surface 62, which is labeled 'Substantially Linear'. FIG. 12 is a cross-sectional view of the sole 60 along line XII-XII. It shows the inner edge 63, outer edge 61, and bottom surface 62. The sole is divided into an upper layer 64 and a lower layer 9. A red arrow points to the bottom surface 62, which is labeled 'Substantially Linear'.

- (h) [1.7] a right foot shoe including:

80. See limitations 1.p and 1.1 above, describing Dufour's disclosure of a pair of golf shoes, which include a left and right foot shoe. Dufour also discloses: "As explained above, a left shoe, thus a shoe especially for right-handed players, is preferably described; of course, the characteristics presented below can be applied

to a right shoe, which thus will be for left-handed golfers (about 10%), without departing from the framework of the invention.” *Id.*, 3:43-48.

81. To the extent Dufour suggests providing the described features to only one of the shoes (left or right, not both), it would have been obvious to apply these features to both shoes to provide the associated benefits for both feet, *e.g.* the transverse seating for the foot having an inclined support surface from the inner edge to the outer edge, as shown in Figs. 11-12, that provides for a better golf stance.

(i) [1.8] a right upper shoe portion; and

82. See limitation 1.2 above, describing Dufour’s disclosure of an upper leather portion.

(j) [1.9] a right sole coupled to the right upper shoe portion,

83. See limitation 1.3 above, describing Dufour’s disclosure of an outsole attached to the upper portion.

(k) [1.10] wherein a foot platform of the right sole provides an athletic positioning of a right big toe area of the right shoe at a lower position than a right heel area of the right shoe and at a lower position than an outer small toe area of the right shoe and

84. See limitation 1.4 above, describing Dufour’s disclosure of an outsole having an inclined lower surface that places the front inner edge at a lower position than the front outer edge and the heel area.

- (l) [1.11] wherein, from an inner edge to an outer edge of the right shoe, the right heel area has substantially no slope, and

85. See limitation 1.5 above, describing Dufour's disclosure of a heel area with substantially no slope from the inner edge to the outer edge.

- (m) [1.12] wherein, from an inner edge to an outer edge of the right shoe at a cross section at a ball of [foot], a bottom of the right shoe is substantially linear.

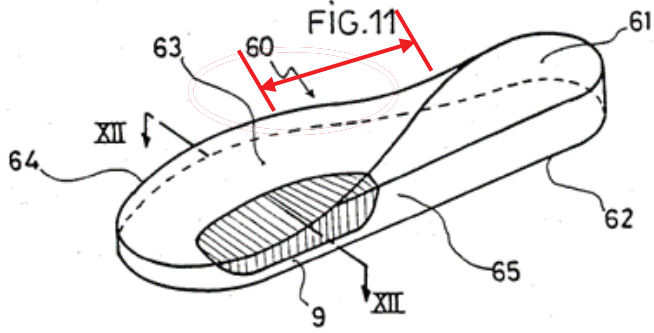
86. See limitation 1.6 above, describing Dufour's disclosure of shoes including sole bottoms that are substantially linear at the balls of the feet.

- (n) [2.1] The pair of shoes of claim 1, wherein the foot platform of the left sole comprises: a heel section that, from the inner edge to the outer edge of the left shoe, has substantially no slope [2.2] a toe section that provides the left big toe area of the left shoe at the lower position than the left heel area of the left shoe and at the lower position than the outer small toe area of the left shoe; and

87. See the discussion above for limitations 1.4 – 1.5.

- (o) [2.3] a mid-foot section having a shape to transition from the heel section to the toe section

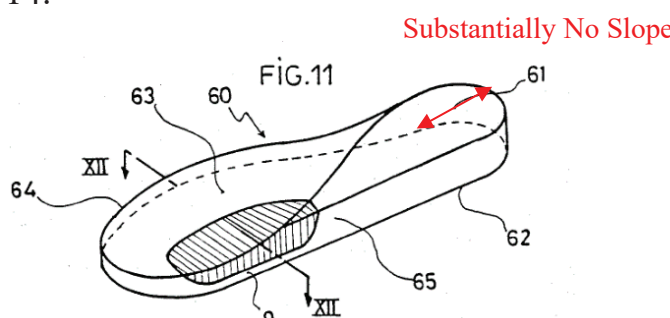
U.S. Patent No. 11,064,760	Dufour
[2.3] a mid-foot section having a shape to transition from the heel section to the toe section.	Dufour teaches and/or suggests and/or suggests a pair of golf shoes, each having a mid-foot section of certain shape to transition from the heel to the toe section. “Provision is also made (FIGS. 11 and 12) for the sole to furnish a transverse seating for the foot, having variations in the plantar support surface. As such, the plantar support zone at the level of the heel remains substantially parallel to the walking surface, while the

	support surface in the front area of the foot is inclined upwards from the inner edge towards the outer edge.” <i>Id.</i>, 5:7-14. Mid-Foot Section 
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88. A POSITA would understand that the shoes in Figure 11 include a mid-foot section having a shape to transition from the heel section to the toe section. This is a necessary element of any shoe.

- (p) [3] The pair of shoes of claim 2, wherein the heel section of the foot platform of the left sole comprises: a heel platform that includes a surface having substantially no slope from the inner edge to the outer edge of the left shoe and for a length of the surface, wherein, when the left shoe is worn, the heel platform supports a left heel of a wearer.

U.S. Patent No. 11,064,760	Dufour
[3] The pair of shoes of claim 2, wherein the heel section of the foot platform of the left sole comprises: a heel platform that includes a surface having substantially no slope from the inner edge to	Dufour teaches and/or suggests a heel platform that has substantially no slope from the inner edge to the outer edge shoe, and for the length of the surface thereof, wherein the heel platform supports the heel of the wearer when worn. “As can be seen in FIG. 1, the golf shoe is shown in a transparent manner to better display the details of the construction of the sole 2. This sole has two separate

the outer edge of the left shoe and for a length of the surface, wherein, when the left shoe is worn, the heel platform supports a left heel of a wearer.	zones, respectively 3 and 4, intended to accommodate and support the golfer's left foot.” <i>Id.</i>, 3:49-53. “Provision is also made (FIGS. 11 and 12) for the sole to furnish a transverse seating for the foot, having variations in the plantar support surface. As such, the plantar support zone at the level of the heel remains substantially parallel to the walking surface, while the support surface in the front area of the foot is inclined upwards from the inner edge towards the outer edge.” <i>Id.</i>, 5:7-14. 
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89. See limitation 1.5 above, describing Dufour’s disclosure of a heel area with substantially no slope from the inner edge to the outer edge. A POSITA would understand that the heel section shown and described above has substantially no slope for a length of the surface. A POSITA would also understand that the disclosed shoes in Dufour include a heel platform that supports the heel of a wearer when worn. The is true of any shoe.

- (q) [6] The pair of shoes of claim 1, wherein the foot platform of the left sole comprises: a specific bottom that includes one of:

a sport specific tread pattern; a spike pattern; a sliding coupling pattern; and a cleat pattern.

U.S. Patent No. 11,064,760	Dufour
[6] The pair of shoes of claim 1, wherein the foot platform of the left sole comprises: a specific bottom that includes one of: a sport specific tread pattern; a spike pattern; a sliding coupling pattern; and a cleat pattern.	Dufour teaches and/or suggests golf shoes that are providing with gripping means, such as spikes. “Still according to the invention (FIG. 9), the sole has a transverse section in which the inside support surface is inclined with respect to the walking surface. Considering that this involves the sole of a left shoe, the incline of the surface rises from the right inner edge of said sole to the outer edge thereof.” <i>Id.</i>, 4:51-57. “As assembled in FIG. 10, the sole transversely has a plantar support surface 56 for the foot, providing the latter with a seating inclined with respect to the walking surface, as described above in reference to FIG. 9; conversely, in order to facilitate the rolling of the foot on the left outer edge of the sole, an inclined plane, secant to the walking surface, is made on the lower side of said edge.” <i>Id.</i>, 4:67-5:6. Claim 18. Golf shoe according to claim 1 or 2, wherein the walking surface of the sole is provided with a certain number of spikes. <i>Id.</i>, claim 18.

(r) [7.1] The pair of shoes of claim 1, wherein the foot platform of the right sole comprises: a heel section that, from the inner

edge to the outer edge of the right shoe, has substantially no slope; [7.2] a toe section that provides the right big toe area of the right shoe at the lower position than the right heel area of the right shoe and at the lower position than the outer small toe area of the right shoe; and [7.3] a mid-foot section having a shape to transition from the heel section to the toe section.

90. See corresponding discussions for limitations 1.4-1.5 and 2.3, above.

The limitations of claim 7 are nearly identical thereto, the only difference being that claim 7 is specific to the right foot shoe.

- (s) [8] The pair of shoes of claim 7, wherein the heel section of the foot platform of the right sole comprises: a heel platform that includes a surface having substantially no slope from the inner edge to the outer edge of the right shoe and for a length of the surface, wherein, when the right shoe is worn, the heel platform supports a right heel of a wearer.**

91. See corresponding discussion for claim 3, above. Claim 8 is nearly identical thereto, the only difference being that claim 8 is specific to the right foot shoe.

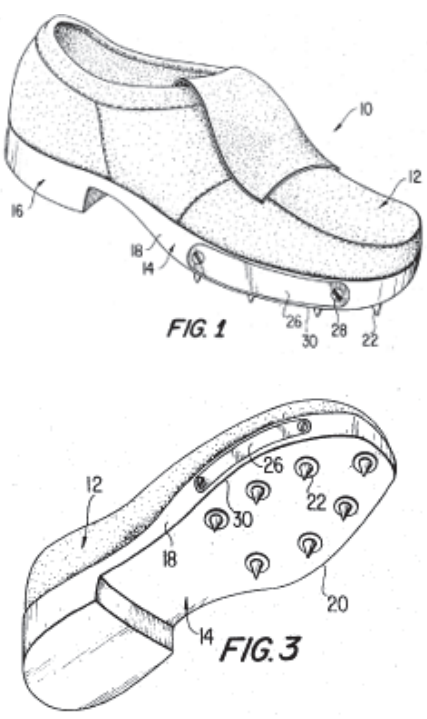
- (t) [11] The pair of shoes of claim 1, wherein the foot platform of the right sole comprises: a specific bottom that includes one of: a sport specific tread pattern; a spike pattern; a sliding coupling pattern; and a cleat pattern.**

92. See corresponding discussion for claim 6, above. Claim 11 is nearly identical thereto, the only difference being that claim 11 is specific to the right foot shoe.

C. Ground 3: Claims 1-3, 6-8 and 11 are Obvious Over Rubin

93. It is my opinion that a POSITA would have found claims 1-3, 6-8 and 11 obvious over Rubin.

(a) [1.0] A pair of shoes comprises:

U.S. Patent No. 11,064,760	Rubin
[1.p] A pair of shoes comprises:	Rubin teaches and/or suggests a golf shoe.  FIG. 1 shows a perspective view of a golf shoe (10) with an upper (12) and a sole (14). The sole has an inner side (16) and an outer side (18). A metal plate (20) is fixed to the sole along the outer side (18) to preclude undue bending and FIG. 3 shows a top view of the sole (14) with a toe-in effect. The sole has a curved shape with a toe-in effect (22) and a heel (24). The sole is shown with a series of small circles (26) representing the sole's structure. The sole is shown with a series of small circles (26) representing the sole's structure.

	wear of the sole edge during the pivotal portion of the golfer's swing. A plurality of cleats are attached to the sole and extend along the sole adjacent the outer and inner sides thereof. The cleats adjacent the outer side of the sole are smaller than the cleats adjacent the inner side of the sole by an amount approximately equal to the difference in elevation between the outer and inner sides of the sole so that when the golfer walks on a planar surface, his foot will be substantially level." Ex. 1007, Abstract. "This invention relates to a golf shoe, and more particularly, a golf shoe designed to aid the golfer in assuming a proper stance on a golf playing surface so that during his swing the golfer will pivot in a proper manner to enhance the change of straight flight of the golf ball when struck." <i>Id.</i>, 1:6-11.
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94. To the extent Rubin does not expressly disclose a "pair" of shoes having the disclosed features, it would have been obvious to provide both left and right shoes with the disclosed features based on Rubin's teachings and the knowledge of a POSITA. For example, Rubin explains that providing a built-up sole at the outer edge so that the bottom of the sole converges toward the inner side of the shoe, which provides "toe-in effect," results in an improved golf stance. *Id.*, 2:3-11, 3:9-15, Abstract. It would have been obvious to apply these features to both shoes to provide the associated benefits for both feet, for example to provide the golfer's weight to be placed on the inside of both feet. This would improve the golfer's stance and weight distribution even further. As Kim explains, providing both shoes with the claimed features:

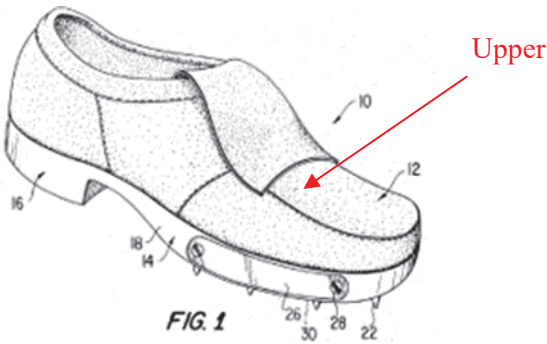
- “allow[s] a golfer to stably maintain the lower part of his/her body on the surface of a green during the address and swing motions, thus assisting the golfer in swinging a club along a correct path and to correctly impact a golf ball by means of the swing of the club.” Ex. 1005, ¶ 13.
- puts “both legs of the golfer in the stance position [] close to each other toward the inner edges of the soles of the feet, thus allowing the weight balance of the golfer's body to be concentrated on the inner edges of the soles of the feet.” *Id.*, ¶ 36.
- “assist[s] a golfer in concentrating his/her proper weight balance on the inner edges of soles of feet during the address and swing motions, thus allowing the golfer to perform the swing motion while maintaining his/her stable position.” *Id.*, ¶ 12.

(b) [1.1] a left foot shoe including:

U.S. Patent No. 11,064,760	Rubin
[1.1] a left foot shoe including:	Rubin teaches and/or suggests a left foot shoe. “As shown more clearly in FIGS. 2 and 4, sole has an outer side and an inner side. The term outer is used to identify the outermost surface of sole on the rearmost foot positioned when the golfer takes his stance over the ball. For example, the shoe depicted in the drawings will be worn on the right foot of the golfer, assuming that he is right handed.” <i>Id.</i>, 3:1-8.

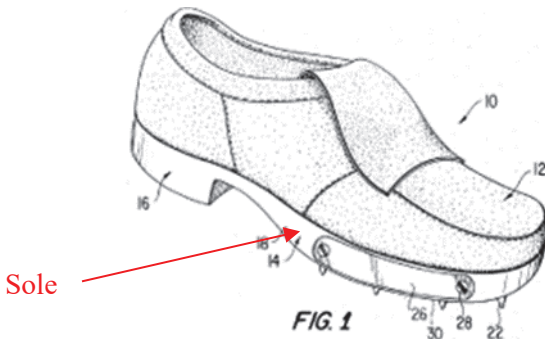
95. As described above, to the extent Rubin is found to only show or describe a right shoe, a POSITA would understand that a shoe of similar design, including a built up sole on the outer side, would also be worn on the left foot.

(c) [1.2] a left upper shoe portion; and

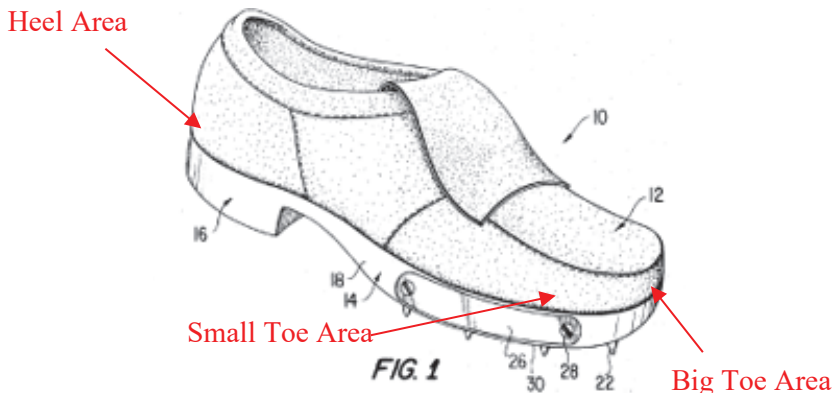
U.S. Patent No. 11,064,760	Rubin
[1.2] a left upper shoe portion; and	Rubin teaches and/or suggests a conventional shoe upper. “Shoe includes a conventional upper and a sole which can be molded integrally with upper from such material as poly vinyl chloride. Sole should be sufficiently flexible to enable the wearer latitude to flex the shoe when walking but yet rigid enough to preclude undue roll of the shoe when used by the golfer once he has assumed a proper stance over a golf ball. A conventional heel is also molded integrally with sole.” <i>Id.</i>, 2:60-68. 

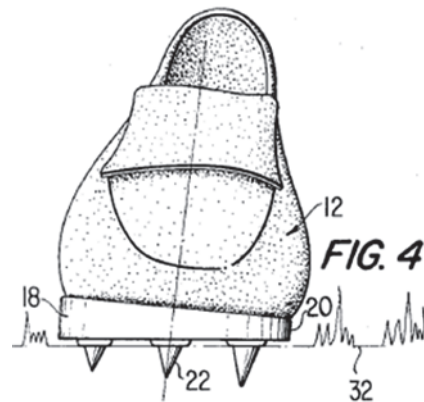
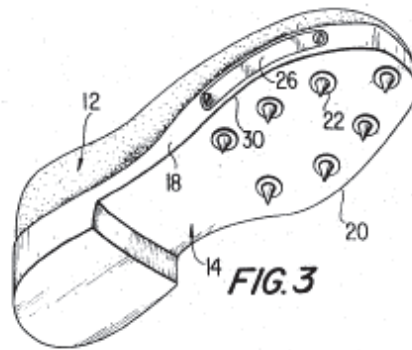
(d) [1.3] a left sole coupled to the left upper shoe portion,

U.S. Patent No. 11,064,760	Rubin
[1.3] a left sole coupled to the left upper shoe portion,	Rubin teaches and/or suggests a sole attached to the conventional upper.

	“Shoe includes a conventional upper and a sole which can be molded integrally with upper from such material as poly vinyl chloride. Sole should be sufficiently flexible to enable the wearer latitude to flex the shoe when walking but yet rigid enough to preclude undue roll of the shoe when used by the golfer once he has assumed a proper stance over a golf ball. A conventional heel is also molded integrally with sole.” <i>Id.</i>, 2:60-68. 
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- (e) [1.4] wherein a foot platform of the left sole provides an athletic positioning of a left big toe area of the left shoe at a lower position than a left heel area of the left shoe and at a lower position than an outer small toe area of the left shoe,

U.S. Patent No. 11,064,760	Rubin
[1.4] wherein a foot platform of the left sole provides an athletic positioning of a left big toe area of the left shoe at a lower position than a left heel area of the left shoe and at a lower position than an outer small toe area of the left shoe	Rubin teaches and/or suggests a foot platform that provides an athletic positioning, such that the big toe area is at a lower position than the heel area, and at a lower position than an outer small toe area. 



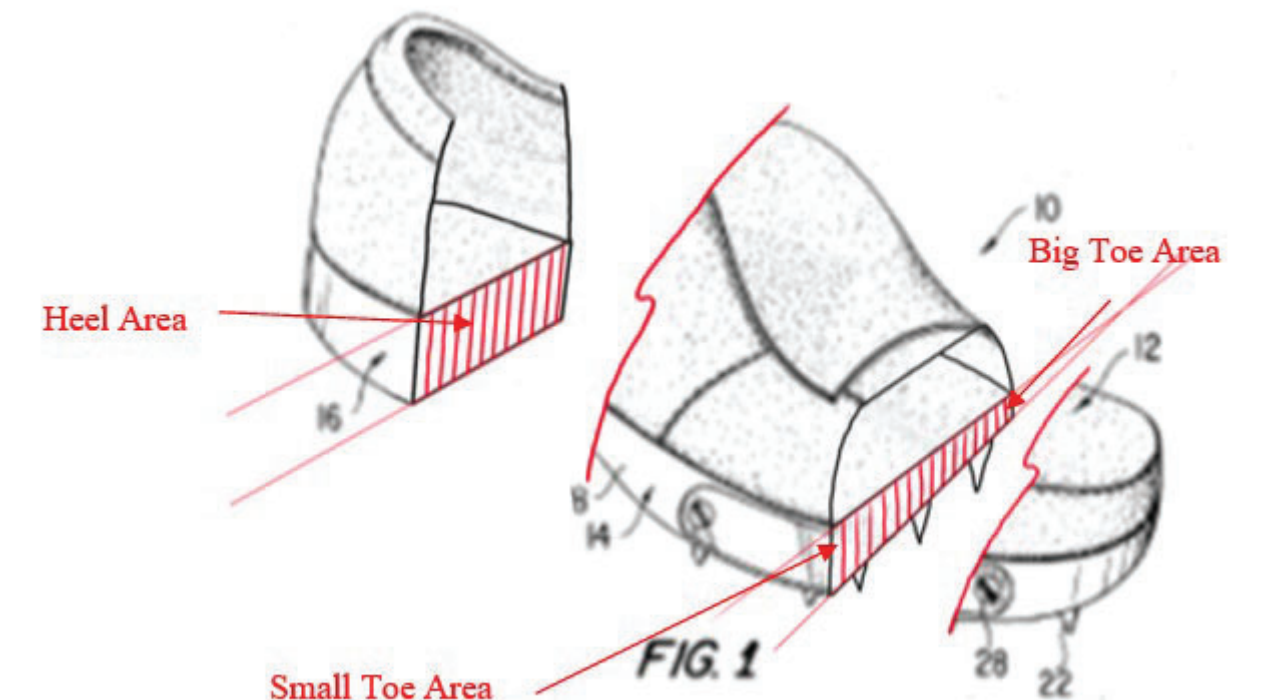
“Shoe includes a conventional upper and a sole which can be molded integrally with upper from such material as poly vinyl chloride. Sole should be sufficiently flexible to enable the wearer latitude to flex the shoe when walking but yet rigid enough to preclude undue roll of the shoe when used by the golfer once he has assumed a proper stance over a golf ball.

A conventional heel is also molded integrally with sole.” *Id.*, 2:60-68.

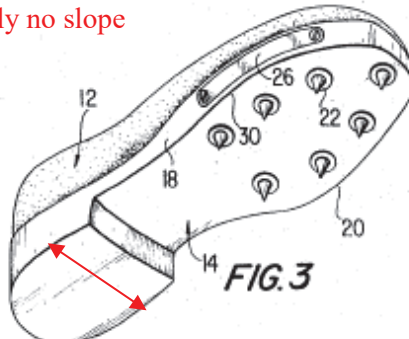
“The outer side of sole extends downwardly from the shoe upper to a lower elevation than the inner side of sole. The sole portion of shoe will therefore have the appearance of having a built-up sole along outer side so that the planar bottom of sole will converge towards inner side of sole.” *Id.*, 3:9-15.

“FIGS. 2 and 4 illustrate the manner of use of the shoe. Specifically, in FIG. 4, the golfer will imbed cleats in a

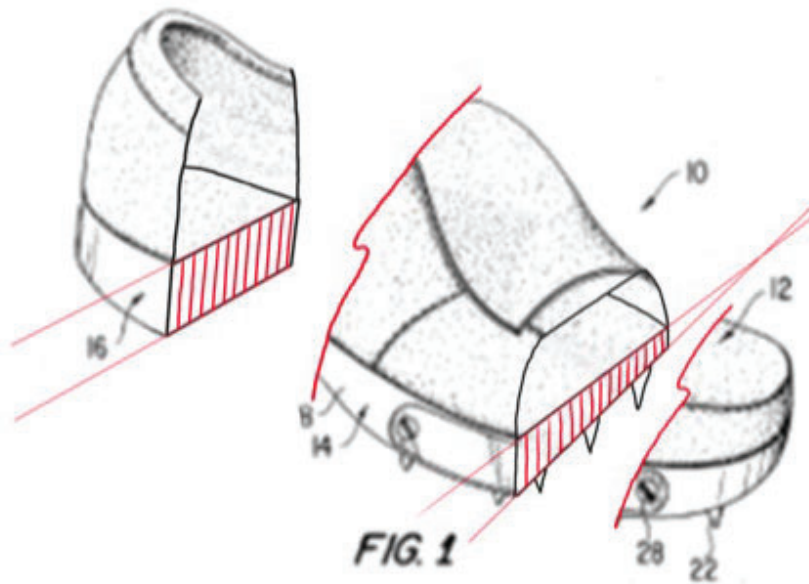
	golf playing surface when addressing a golf ball. The rearwardmost foot of the golfer will be tilted inwardly because of the wedge-shaped sole of shoe. This will tend to provide a more satisfactory weight distribution when hitting the ball. Furthermore, it has been found that a more desirable pivot will result when a golfer assumes the stance illustrated in FIG. 4.” <i>Id.</i>, 3:56-65. “[W]hen said shoe is worn on the foot of a golfer and the golfer assumes his stance on a golf playing surface it will create a toe-in effect to aid the golfer during his swing.” <i>Id.</i>, claim 1.
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- (f) [1.5] wherein, from an inner edge to an outer edge of the left shoe, the left heel area has substantially no slope,

U.S. Patent No. 11,064,760	Rubin
[1.5] wherein, from an inner edge to an outer edge of the left shoe, the left heel area has substantially no slope,	Rubin teaches and/or suggests a heel area that has substantially no slope from the inner edge to the outer edge. “Shoe includes a conventional upper and a sole which can be molded integrally with upper from such material as poly vinyl chloride. Sole should be sufficiently flexible to enable the wearer latitude to flex the shoe when walking but yet rigid enough to preclude undue roll of the shoe when used by the golfer once he has assumed a proper stance over a golf ball. A conventional heel is also molded integrally with sole.” <i>Id.</i>, 2:60-68. Substantially no slope 

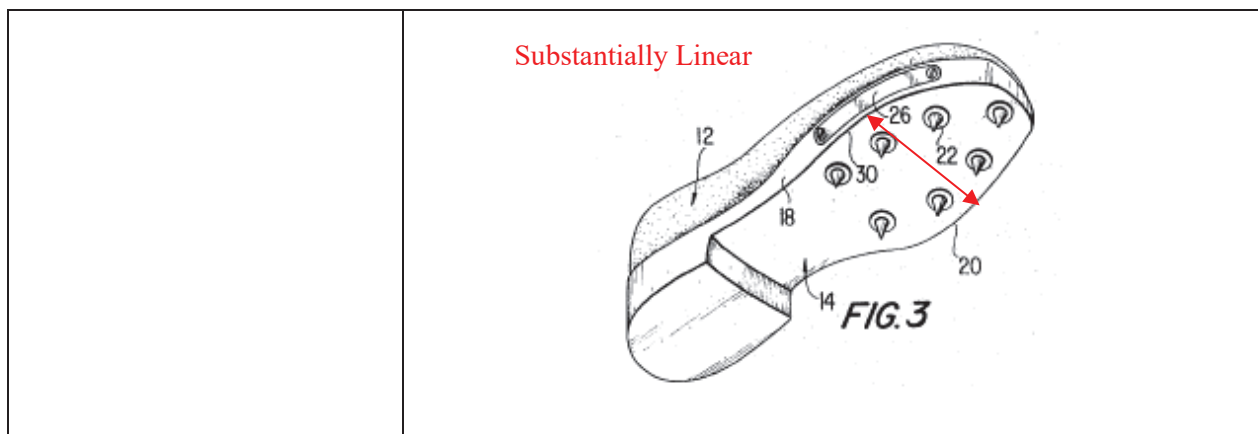
97. I created the image below to show how a POSITA would understand the sole of Rubin to be constructed, which includes a heel platform having substantially no slope.



98. Rubin also discloses that a “conventional heel is molded integrally with the sole,” which a POSITA would understand includes a heel area that has substantially no slope from the inner edge to the outer edge, as discussed in Section VIII.F.

- (g) [1.6] and wherein, from the inner edge to the outer edge of the left shoe at a cross section at a ball of [foot], a bottom of the left sole is substantially linear; and

U.S. Patent No. 11,064,760	Rubin
[1.6] and wherein, from the inner edge to the outer edge of the left shoe at a cross section at a ball of [foot], a bottom of the left sole is substantially linear; and	Rubin teaches and/or suggests a sole bottom that is substantially linear from the inner edge to the outer edge at the ball of the foot.



(h) [1.7] a right foot shoe including:

99. See limitations 1.p and 1.1 above, describing Rubin's disclosure of a pair of golf shoes, which include a left and right foot shoe.

(i) [1.8] a right upper shoe portion; and

100. See limitation 1.2 above, describing Rubin's disclosure of an upper leather portion.

(j) [1.9] a right sole coupled to the right upper shoe portion

101. See limitation 1.3 above, describing Rubin's disclosure of an outsole attached to the upper portion.

(k) [1.10] wherein a foot platform of the right sole provides an athletic positioning of a right big toe area of the right shoe at a lower position than a right heel area of the right shoe and at a lower position than an outer small toe area of the right shoe and

102. See limitation 1.4 above, describing Rubin's disclosure of an outsole having an inclined lower surface that places the front inner edge at a lower position than the front outer edge and the heel area.

- (l) **[1.11] wherein, from an inner edge to an outer edge of the right shoe, the right heel area has substantially no slope, and**

103. See limitation 1.5 above, describing Rubin's disclosure of a heel area with substantially no slope from the inner edge to the outer edge.

- (m) **[1.12] wherein, from an inner edge to an outer edge of the right shoe at a cross section at a ball of [foot], a bottom of the right shoe is substantially linear.**

104. See limitation 1.6 above, describing Rubin's disclosure of shoes including sole bottoms that are substantially linear at the balls of the feet.

- (n) **[2.1] The pair of shoes of claim 1, wherein the foot platform of the left sole comprises: a heel section that, from the inner edge to the outer edge of the left shoe, has substantially no slope [2.2] a toe section that provides the left big toe area of the left shoe at the lower position than the left heel area of the left shoe and at the lower position than the outer small toe area of the left shoe; and**

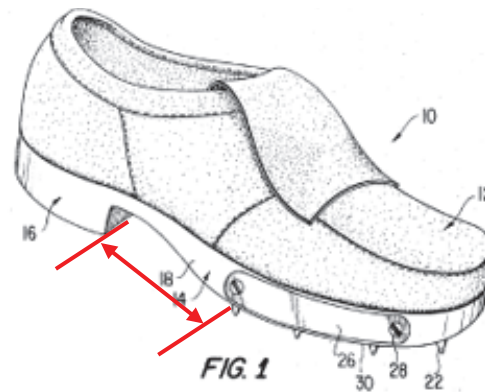
105. See the discussion above for limitations 1.4 – 1.5.

- (o) **[2.3] a mid-foot section having a shape to transition from the heel section tot the toe section.**

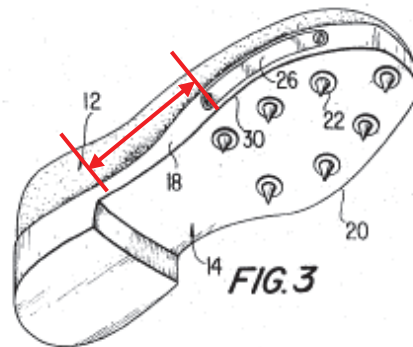
U.S. Patent No. 11,064,760	Rubin
[2.3] a mid-foot section having a shape to transition from the heel section to the toe section.	Rubin teaches and/or suggests a pair of golf shoes, each having a mid-foot section of certain shape to transition from the heel to the toe section. “Shoe includes a conventional upper and a sole which can be molded integrally with upper from such material as poly vinyl chloride. Sole should be sufficiently flexible to enable the wearer latitude to flex the shoe when walking but yet rigid enough to preclude undue

roll of the shoe when used by the golfer once he has assumed a proper stance over a golf ball.
A conventional heel is also molded integrally with sole.” *Id.*, 2:60-68.

Mid-Foot Section



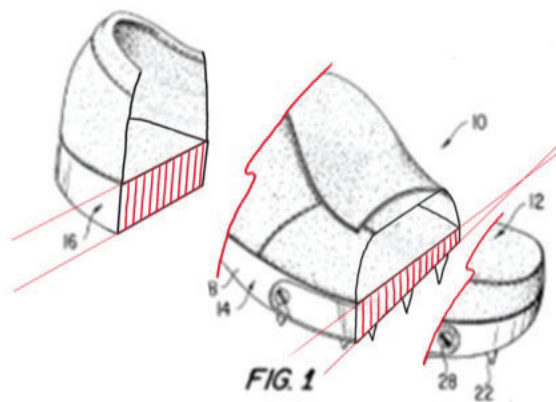
Mid-Foot Section

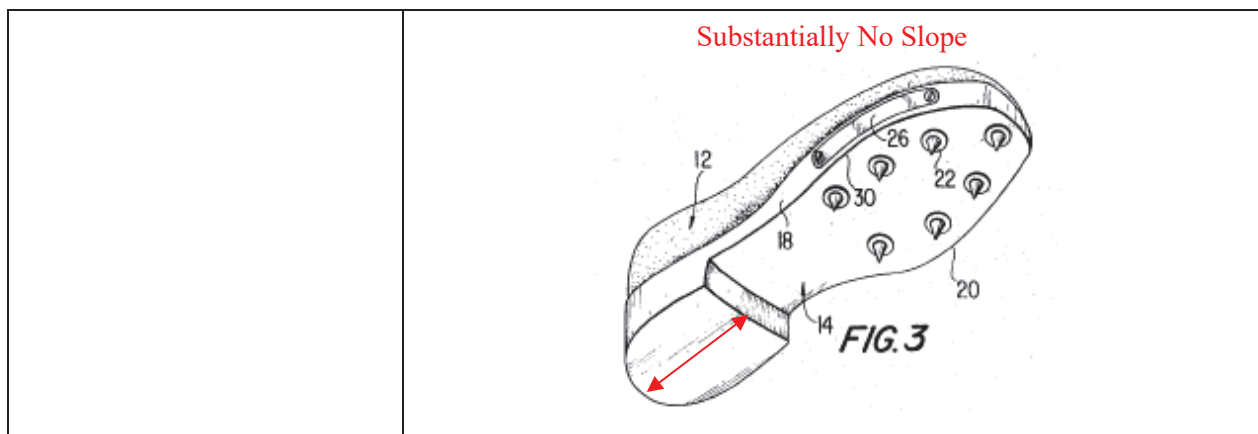


106. A POSITA would understand that the shoe in Figures 1 and 3 includes a mid-foot section having a shape to transition from the heel section to the toe section. This is a necessary element of any shoe.

- (p) [3] The pair of shoes of claim 2, wherein the heel section of the foot platform of the left sole comprises: a heel platform that includes a surface having substantially no slope from the inner edge to the outer edge of the left shoe and for a length

of the surface, wherein, when the left shoe is worn, the heel platform supports a left heel of a wearer.

U.S. Patent No. 11,064,760	Rubin
[3] The pair of shoes of claim 2, wherein the heel section of the foot platform of the left sole comprises: a heel platform that includes a surface having substantially no slope from the inner edge to the outer edge of the left shoe and for a length of the surface, wherein, when the left shoe is worn, the heel platform supports a left heel of a wearer.	Rubin teaches and/or suggests a heel platform that has substantially no slope from the inner edge to the outer edge shoe, and for the length of the surface thereof, wherein the heel platform supports the heel of the wearer when worn. “Shoe includes a conventional upper and a sole which can be molded integrally with upper from such material as poly vinyl chloride. Sole should be sufficiently flexible to enable the wearer latitude to flex the shoe when walking but yet rigid enough to preclude undue roll of the shoe when used by the golfer once he has assumed a proper stance over a golf ball. A conventional heel is also molded integrally with sole.” <i>Id.</i>, 2:60-68. 

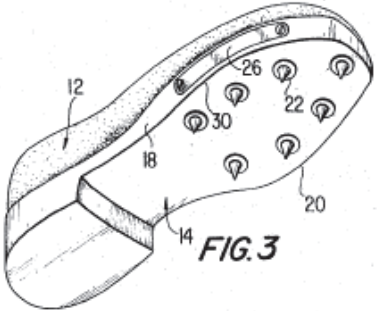


107. See limitation 1.5 above, describing Rubin’s disclosure of a heel area with substantially no slope from the inner edge to the outer edge. A POSITA would understand that the heel section shown and described above has substantially no slope for a length of the surface.

108. A POSITA would also understand that a “conventional heel” (*see id.*, 2:67-68) has substantially no slope for a length of its surface. A POSITA would likewise understand that the shoes described in Rubin include a heel platform that supports the heel of a wearer when worn. The is true of any shoe.

- (q) **[6] The pair of shoes of claim 1, wherein the foot platform of the left sole comprises: a specific bottom that includes one of: a sport specific tread pattern; a spike pattern; a sliding coupling pattern; and a cleat pattern.**

U.S. Patent No. 11,064,760	Rubin
[6] The pair of shoes of claim 1, wherein the foot platform of the left sole comprises: a specific bottom that includes one of: a sport	Dufour teaches and/or suggests golf shoes that are providing with gripping means, such as spikes. “The sole also includes a plurality of cleats attached to and depending from the sole for anchoring the foot and shoe in the proper stance. The cleats extend along the

specific tread pattern; a spike pattern; a sliding coupling pattern; and a cleat pattern.	bottom of the sole adjacent the outer and inner sides of the sole.” <i>Id.</i>, 2:12-16. “Projecting downwardly from the bottom of sole 14 are a plurality of cleats 22. Cleats 22 serve to anchor the foot of the golfer in position once he has assumed his stance on a golf playing surface. Cleats 22 extend along the bottom of sole 14 adjacent both the outer side 18 and inner side 20 of the sole 4.” <i>Id.</i>, 3:24-29. 
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- (r) [7.1] The pair of shoes of claim 1, wherein the foot platform of the right sole comprises: a heel section that, from the inner edge to the outer edge of the right shoe, has substantially no slope; [7.2] a toe section that provides the right big toe area of the right shoe at the lower position than the right heel area of the right shoe and at the lower position than the outer small toe area of the right shoe; and [7.3] a mid-foot section having a shape to transition from the heel section to the toe section.

109. See corresponding discussions for limitations 1.4-1.5 and 2.3, above.

The limitations of claim 7 are nearly identical thereto, the only difference being that claim 7 is specific to the right foot shoe.

- (s) [8] The pair of shoes of claim 7, wherein the heel section of the foot platform of the right sole comprises: a heel platform that includes a surface having substantially no slope from the inner edge to the outer edge of the right shoe and for a length

of the surface, wherein, when the right shoe is worn, the heel platform supports a right heel of a wearer.

110. See corresponding discussion for claim 3, above. Claim 8 is nearly identical thereto, the only difference being that claim 8 is specific to the right foot shoe.

(t) [11] The pair of shoes of claim 1, wherein the foot platform of the right sole comprises: a specific bottom that includes one of: a sport specific tread pattern; a spike pattern; a sliding coupling pattern; and a cleat pattern.

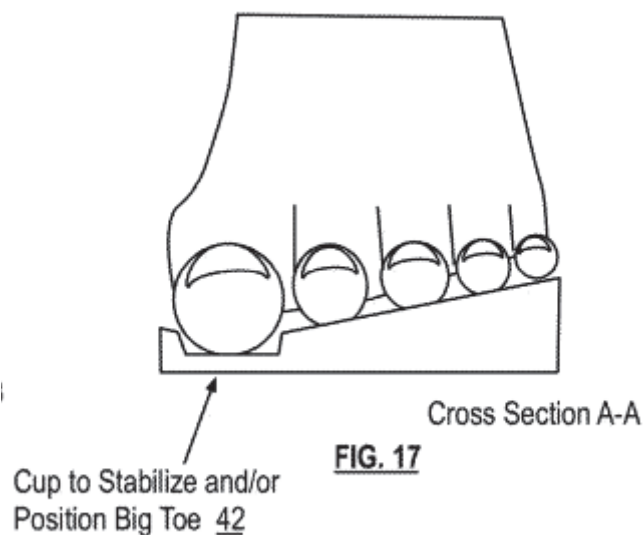
111. See corresponding discussion for claim 6, above. Claim 11 is nearly identical thereto, the only difference being that claim 11 is specific to the right foot shoe.

D. Ground 4 - Claims 4-5 and 9-10 are Obvious Based on Kim in View of De Obaldia

112. Claims 4 and 9 recite “a stabilizing cup” in the big toe area such that, when the shoe is worn, the stabilizing cup functions to at least one of stabilize and position the big toe of the wearer in the big toe area. Claims 5 and 10 recite “a stabilizing cup” in the big toe area such that, when the shoe is worn, the stabilizing cup functions to at least one of stabilize and position the ball of the foot of the wearer in the big toe area. I believe that these claims would be obvious based on Kim in view of De Obaldia.

113. Notably, the ‘760 patent does not define what a “stabilizing cup,” means, however it describes with reference to Figures 16-19 (including Figure 17

copied below) that the stabilizing cups can be understood as “shapes... [that] help[] 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.” Ex. 1001 at 13:17-30. As an example, the cup is shown as a toe recess (just as DeObaldia) that “may be a few millimeters in depth, have sloped sides...” *Id.* at 13:30-32.



Overview of the Combination

114. The combination of Kim and De Obaldia renders claims 4-5 and 9-10 obvious. Kim discloses a pair of golf shoes where the sole has an inclined lower surface from its outer edge to its inner edge, but does not expressly disclose a stabilizing cup in the big toe area. De Obaldia, however, does.

Rationale (Motivation) Supporting Obviousness

115. It would have been obvious to incorporate recesses for the wearer's toe(s) and balls of the feet, like that in De Obaldia, into the shoe disclosed in Kim. A POSITA would have found it obvious to have combined the teachings of Kim and De Obaldia with a predictable outcome.

116. Kim and De Obaldia are both in the same field (shoe design), and both disclose similar improvements over typical shoes, namely, a sole configured to provide enhanced positioning or support for the wearer's feet. A POSITA would have naturally looked to De Obaldia when considering ways to improve the Kim sole design. A POSITA would understand that including recesses for the toe(s) and or balls of the feet provides several benefits. For example, as De Obaldia explains, these recesses provide increased anatomical support for the wearer's foot. Ex. 1008, 1:14-18, 2:63-68.²

² I note that during prosecution, the Examiner of the application that became the '760 patent found that a "stabilizing cup" in the big toe areas was known in the art and disclosed in several prior art references, including U.S. Patent No. 6,604,301 ("Manoli") and U.S. Patent Publ. No. 2006/0090377 ("Segalin"). She also found that it would be obvious to combine these features with other footwear "to prevent the sliding and misalignment of the foot on the foot contacting surfaces." (Ex. 1004, p. 97). Although the Applicants disputed that these claims were unpatentable for the same distinctions raised in the independent claims (*id.*, p. 84), the Applicant did not separately provide any argument against the Examiner's motivation to combine on claims 4-5 or 9-10.

Reasonable Expectation of Success

117. A POSITA would have had a reasonable expectation of success in incorporating toe and/or ball-of-foot recesses, like that in De Obaldia, into the shoe disclosed in Kim. Kim's multi-layered sole could easily be modified to include the recesses disclosed in De Obaldia to stabilize and position the big toe and the ball of the foot in a particular location, but also provide the additional benefit described above. The art was relatively predictable in the relevant timeframe. A POSITA would also have been able to make any necessary modifications to the shoe or shoe components to implement this Ground.

Analogous Art

118. Kim and De Obaldia are analogous art, because they are in the same field as the '760 patent (Ex. 1001, '760 patent at Abstract, Title) (Ex. 1005, Kim at Abstract, Title) (Ex. 1008, De Obaldia at Abstract, Title), and all three relate to shoe designs that incorporate soles/insoles that improve foot positioning and/or support.

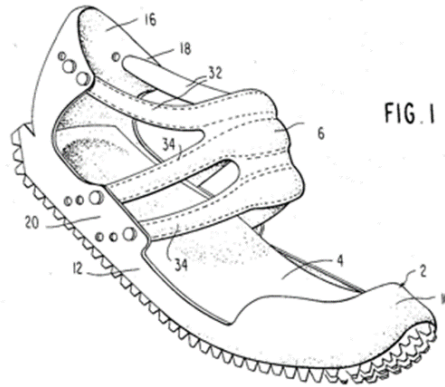
Claims 4, 5, 9, and 10 are Obvious Over Kim in View of De Obaldia

- (a) [4] The pair of shoes of claim 2, wherein the toe section of the foot platform of the left sole comprises: a stabilizing cup in the left big toe area, wherein, when the left shoe is worn, the stabilizing cup functions to, at least one of, stabilize and position a left big toe of a wearer in a particular location in the left big toe area.**

119. Kim discloses all elements of dependent claim 2, as described in Ground 1 above. Kim does not, however, disclose a "stabilizing cup" in the big toe

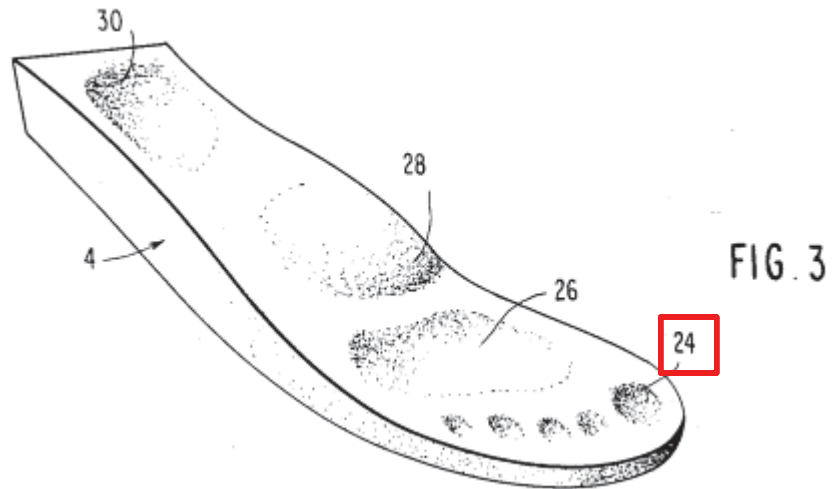
area that functions to “at least one of, stabilize and position” the big toe in a particular location. De Obaldia does.

U.S. Patent No. 11,064,760	De Obaldia
[4] The pair of shoes of claim 2, wherein the toe section of the foot platform of the left sole comprises: a stabilizing cup in the left big toe area, wherein, when the left shoe is worn, the stabilizing cup functions to, at least one of, stabilize and position a left big toe of a wearer in a particular location in the left big toe area.	De Obaldia teaches and/or suggests an article of footwear that includes at least one toe recess. “An article of footwear is formed of a molded plastic body member, a molded plastic foot support member which supports the wearer's foot, and a flexible harness which retains the body member on the wearer's foot. The body member has a sole portion, a toe cup, a heel cup, and longitudinal sidewalls which extend from the toe cup to the heel cup. The foot support member has an upper surface, located at about the same height as the upper edges of the sidewalls, which provides anatomical support for a wearer's foot. The harness has a horizontal strap and inclined straps. The horizontal strap is connected to the heel cup, and the inclined straps are connected to the sidewalls of the body member.” Ex. 1008, Abstract. “Articles of footwear constructed according to the invention may be used for various purposes, but preferably it is a jogging sandal which is shown in FIG. 1. It is formed of three principal components, each of which is a unitary, integrally-molded piece of plastic material such as natural rubber, synthetic rubber or an elastomeric polymer. These components are the body member, the anatomical foot support and the harness member. In normal use, these components are connected together as shown in FIG. 1.” <i>Id.</i>, 2:23-33.



“The upper edges of the sidewalls are at about the same height as the upper surface of the foot support member. FIG. 3 shows that the upper surface of the foot support member is configured to correspond to and provide anatomical support for the wearer's foot. Preferably, this configuration includes at least one toe recess, a recess for accommodating a ball of the wearer's foot, a raised arch support portion, and a recess for accommodating the heel of a wearer's foot.” *Id.*, 2:60-68.

“An article of footwear according to claim 1 wherein the upper surface of the foot support member is provided with the following: at least one toe recess, a recess for accommodating a ball of a wearer's foot, a recess for accommodating the heel of a wearer's foot, and a raised arch support portion.” *Id.*, claim 5.

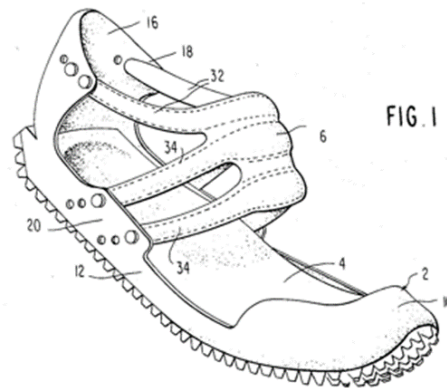


- (b) [5] The pair of shoes of claim 2, wherein the toe section of the foot platform of the left sole comprises: a stabilizing cup in the left big toe area, wherein, when the left shoe is worn, the stabilizing cup functions to, at least one of, stabilize and position a left ball-of-foot of a wearer in a particular location in the left big toe area.

120. Kim discloses all elements of dependent claim 2, as described in Ground 1 above. Kim does not, however, disclose a “stabilizing cup” in the big toe area that functions to “at least one of, stabilize and position” the ball of the foot in a particular location. De Obaldia does.

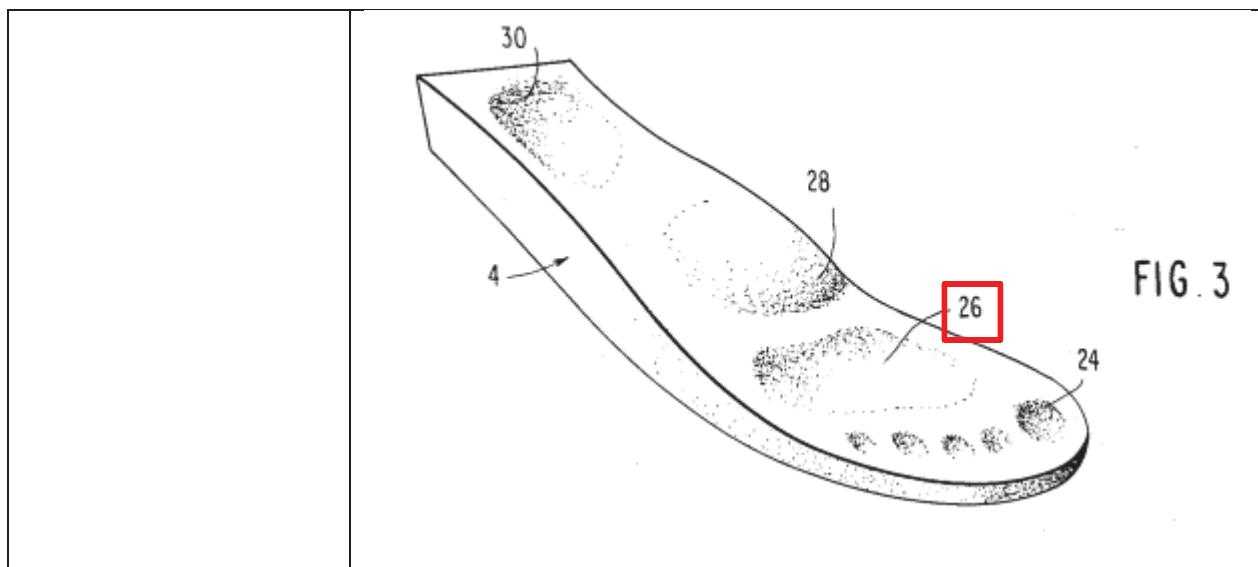
U.S. Patent No. 11,064,760	De Obaldia
[4] The pair of shoes of claim 2, wherein the toe section of the foot platform of the left sole comprises: a stabilizing cup in the left big toe area, wherein, when the left shoe is worn, the stabilizing cup functions to, at least one of, stabilize and position a left ball-of-foot of a wearer in a particular location in the left big toe area.	De Obaldia teaches and/or suggests an article of footwear that includes at least one toe recess. “An article of footwear is formed of a molded plastic body member, a molded plastic foot support member which supports the wearer's foot, and a flexible harness which retains the body member on the wearer's foot. The body member has a sole portion, a toe cup, a heel cup, and longitudinal sidewalls which extend from the toe cup to the heel cup. The foot support member has an upper surface, located at about the same height as the upper edges of the sidewalls, which provides anatomical support for a wearer's foot. The harness has a horizontal strap and inclined straps. The horizontal strap is connected to the heel cup, and the inclined straps are connected to the sidewalls of the body member.” <i>Id.</i>, Abstract. “Articles of footwear constructed according to the invention may be used for various purposes, but preferably it is a jogging sandal which is shown in FIG. 1. It is formed of three principal components, each of which is a unitary, integrally-molded piece of plastic material such as

natural rubber, synthetic rubber or an elastomeric polymer. These components are the body member, the anatomical foot support and the harness member. In normal use, these components are connected together as shown in FIG. 1.” *Id.*, 2:23-33.



“The upper edges of the sidewalls are at about the same height as the upper surface of the foot support member. FIG. 3 shows that the upper surface of the foot support member is configured to correspond to and provide anatomical support for the wearer's foot. Preferably, this configuration includes at least one toe recess, a recess for accommodating a ball of the wearer's foot, a raised arch support portion, and a recess for accommodating the heel of a wearer's foot.” *Id.*, 2:60-68.

“An article of footwear according to claim 1 wherein the upper surface of the foot support member is provided with the following: at least one toe recess, a recess for accommodating a ball of a wearer's foot, a recess for accommodating the heel of a wearer's foot, and a raised arch support portion.” *Id.*, claim 5.



- (c) [9] The pair of shoes of claim 7, wherein the toe section of the foot platform of the right sole comprises: a stabilizing cup in the right big toe area, wherein, when the right shoe is worn, the stabilizing cup functions to, at least one of, stabilize and position a right big toe of a wearer in a particular location in the right big toe area.

121. See corresponding discussion for claim 4, above. Claim 9 is nearly identical thereto, the only difference being that claim 9 is specific to the right foot shoe.

- (d) [10] The pair of shoes of claim 7, wherein the toe section of the foot platform of the right sole comprises: a stabilizing cup in the right big toe area, wherein, when the right shoe is worn, the stabilizing cup functions to, at least one of, stabilize and position a right ball-of-foot of a wearer in a particular location in the right big toe area.

122. See corresponding discussion for claim 5, above. Claim 10 is nearly identical thereto, the only difference being that claim 10 is specific to the right foot shoe.

E. Ground 5 - Claims 4-5 and 9-10 are Obvious Over Dufour in View of De Obaldia

123. Claims 4 and 9 recite “a stabilizing cup” in the big toe area such that, when the shoe is worn, the stabilizing cup functions to at least one of stabilize and position the big toe of the wearer in the big toe area. Claims 5 and 10 recite “a stabilizing cup” in the big toe area such that, when the shoe is worn, the stabilizing cup functions to at least one of stabilize and position the ball of the foot of the wearer in the big toe area. I believe that these claims would be obvious based on Dufour in view of De Obaldia.

124. See discussion in paragraph 113 above with respect to the disclosure of a “stabilizing cup” in the ‘760 patent.

Overview of the Combination

125. The combination of Dufour and De Obaldia renders claims 4-5 and 9-10 obvious. Dufour discloses a golf shoe where the sole includes an interior support surface that is inclined with respect to a walking surface, but does not expressly disclose a stabilizing cup in the big toe area. De Obaldia, however, does.

Rationale (Motivation) Supporting Obviousness

126. It would have been obvious to incorporate recesses for the wearer’s toe(s) and balls of the feet, like that in De Obaldia, into the shoe disclosed in Dufour. A POSITA would have found it obvious to have combined the teachings of Dufour and De Obaldia with a predictable outcome.

127. Dufour and De Obaldia are both in the same field (shoe design), and both disclose similar improvements over typical shoes, namely, a sole configured to provide enhanced positioning or support for the wearer's feet. A POSITA would have naturally looked to De Obaldia when considering ways to improve the Dufour sole design. A POSITA would understand that including recesses for the toe(s) and or balls of the feet provides several benefits. For example, as De Obaldia explains, these recesses provide increased anatomical support for the wearer's foot. Ex., 1008, 1:14-18, 2:63-68.

Reasonable Expectation of Success

128. A POSITA would have had a reasonable expectation of success in incorporating toe and/or ball-of-foot recesses, like that in De Obaldia, into the shoe disclosed in Dufour. Dufour's sole could easily be modified to include the recesses disclosed in De Obaldia to stabilize and position the big toe and the ball of the foot in a particular location, but also provide the additional benefit described above. The art was relatively predictable in the relevant timeframe. A POSITA would also have been able to make any necessary modifications to the shoe or shoe components to implement this Ground.

Analogous Art

129. Dufour and De Obaldia are analogous art, because they are in the same field as the '760 patent (Ex. 1001, '760 patent at Abstract, Title) (Ex. 1006, Dufour

at Abstract, Title) (Ex. 1008, De Obaldia at Abstract, Title), and all three related to shoe designs that incorporate soles/insoles that improve foot positioning and/or support.

Claims 4, 5, 9, and 10 are Obvious Over Dufour in View of De Obaldia

- (a) **[4] The pair of shoes of claim 2, wherein the toe section of the foot platform of the left sole comprises: a stabilizing cup in the left big toe area, wherein, when the left shoe is worn, the stabilizing cup functions to, at least one of, stabilize and position a left big toe of a wearer in a particular location in the left big toe area.**

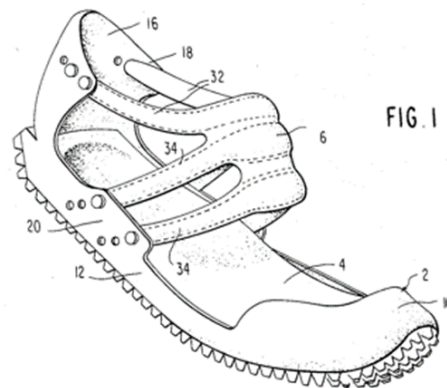
130. Dufour discloses all elements of dependent claim 2, as described in Ground 2 above. Dufour does not, however, disclose a “stabilizing cup” in the big toe area that functions to “at least one of, stabilize and position” the big toe in a particular location. De Obaldia does.

U.S. Patent No. 11,064,760	De Obaldia
[4] The pair of shoes of claim 2, wherein the toe section of the foot platform of the left sole comprises: a stabilizing cup in the left big toe area, wherein, when the left shoe is worn, the stabilizing cup functions to, at least one of, stabilize and position a left big toe of a wearer in a	De Obaldia teaches and/or suggests an article of footwear that includes at least one toe recess. “An article of footwear is formed of a molded plastic body member, a molded plastic foot support member which supports the wearer's foot, and a flexible harness which retains the body member on the wearer's foot. The body member has a sole portion, a toe cup, a heel cup, and longitudinal sidewalls which extend from the toe cup to the heel cup. The foot support member has an upper surface, located at about the same height as the upper edges of the sidewalls, which provides anatomical support for a wearer's foot. The harness has a horizontal strap and inclined straps. The horizontal strap is connected to the

particular location in the left big toe area.

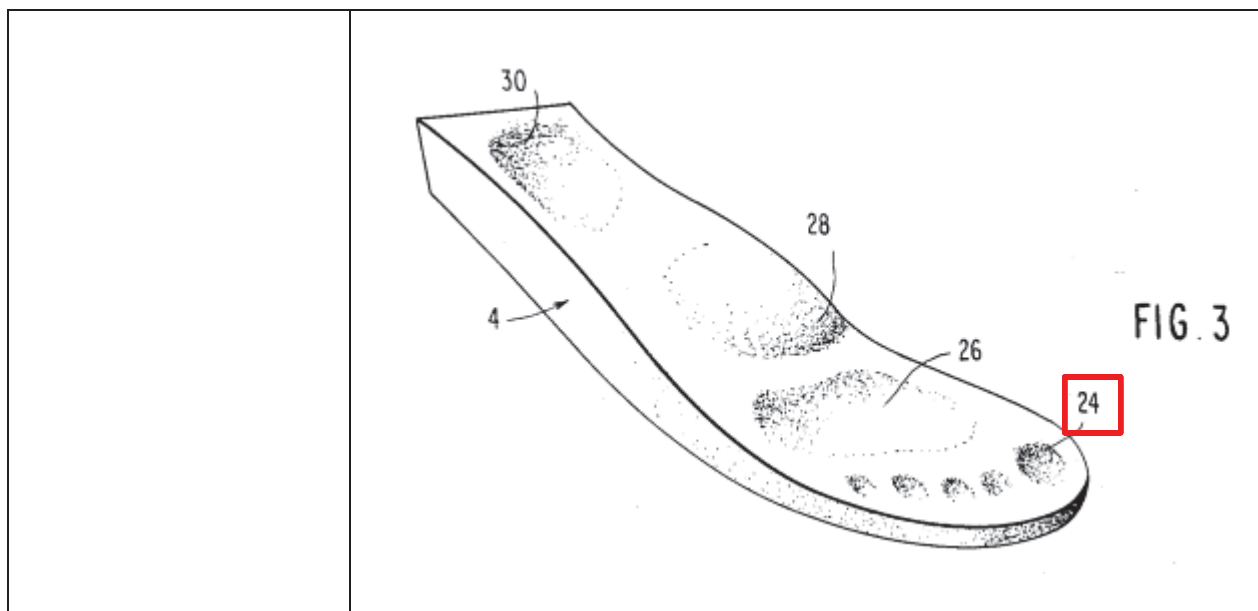
heel cup, and the inclined straps are connected to the sidewalls of the body member.” *Id.*, Abstract.

“Articles of footwear constructed according to the invention may be used for various purposes, but preferably it is a jogging sandal which is shown in FIG. 1. It is formed of three principal components, each of which is a unitary, integrally-molded piece of plastic material such as natural rubber, synthetic rubber or an elastomeric polymer. These components are the body member, the anatomical foot support and the harness member. In normal use, these components are connected together as shown in FIG. 1.” *Id.*, 2:23-33.



“The upper edges of the sidewalls are at about the same height as the upper surface of the foot support member. FIG. 3 shows that the upper surface of the foot support member is configured to correspond to and provide anatomical support for the wearer's foot. Preferably, this configuration includes at least one toe recess, a recess for accommodating a ball of the wearer's foot, a raised arch support portion, and a recess for accommodating the heel of a wearer's foot.” *Id.*, 2:60-68.

“An article of footwear according to claim 1 wherein the upper surface of the foot support member is provided with the following: at least one toe recess, a recess for accommodating a ball of a wearer's foot, a recess for accommodating the heel of a wearer's foot, and a raised arch support portion.” *Id.*, claim 5.



- (b) [5] The pair of shoes of claim 2, wherein the toe section of the foot platform of the left sole comprises: a stabilizing cup in the left big toe area, wherein, when the left shoe is worn, the stabilizing cup functions to, at least one of, stabilize and position a left ball-of-foot of a wearer in a particular location in the left big toe area.

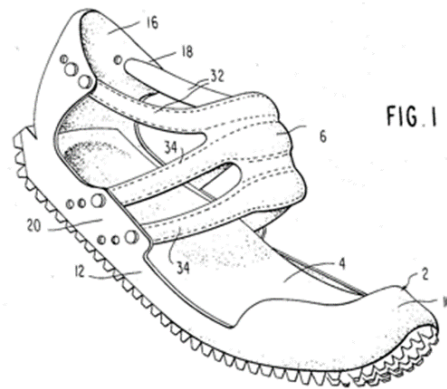
131. Dufour discloses all elements of dependent claim 2, as described in Ground 2 above. Dufour does not, however, disclose a “stabilizing cup” in the big toe area that functions to “at least one of, stabilize and position” the ball of the foot in a particular location. De Obaldia does.

U.S. Patent No. 11,064,760	De Obaldia
[4] The pair of shoes of claim 2, wherein the toe section of the foot platform of the left sole comprises: a stabilizing cup in the left big toe area, wherein, when the	De Obaldia teaches and/or suggests an article of footwear that includes at least one toe recess. “An article of footwear is formed of a molded plastic body member, a molded plastic foot support member which supports the wearer's foot, and a flexible harness which retains the body member on the wearer's foot. The body member has a sole portion, a toe cup, a heel cup, and

left shoe is worn, the stabilizing cup functions to, at least one of, stabilize and position a left ball-of-foot of a wearer in a particular location in the left big toe area.

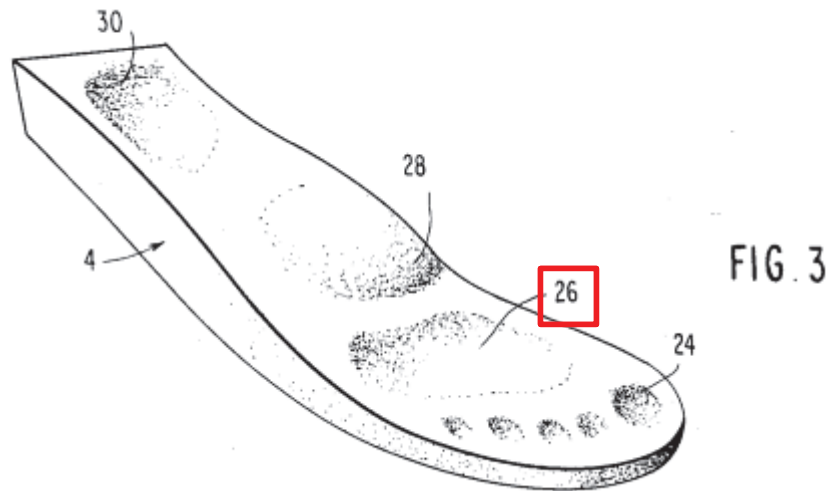
longitudinal sidewalls which extend from the toe cup to the heel cup. The foot support member has an upper surface, located at about the same height as the upper edges of the sidewalls, which provides anatomical support for a wearer's foot. The harness has a horizontal strap and inclined straps. The horizontal strap is connected to the heel cup, and the inclined straps are connected to the sidewalls of the body member.” *Id.*, Abstract.

“Articles of footwear constructed according to the invention may be used for various purposes, but preferably it is a jogging sandal which is shown in FIG. 1. It is formed of three principal components, each of which is a unitary, integrally-molded piece of plastic material such as natural rubber, synthetic rubber or an elastomeric polymer. These components are the body member, the anatomical foot support and the harness member. In normal use, these components are connected together as shown in FIG. 1.” *Id.*, 2:23-33.



“The upper edges of the sidewalls are at about the same height as the upper surface of the foot support member. FIG. 3 shows that the upper surface of the foot support member is configured to correspond to and provide anatomical support for the wearer's foot. Preferably, this configuration includes at least one toe recess, a recess for accommodating a ball of the wearer's foot, a raised arch support portion, and a recess for accommodating the heel of a wearer's foot.” *Id.*, 2:60-68.

“An article of footwear according to claim 1 wherein the upper surface of the foot support member is provided with the following: at least one toe recess, a recess for accommodating a ball of a wearer's foot, a recess for accommodating the heel of a wearer's foot, and a raised arch support portion.” *Id.*, claim 5.



- (c) [9] The pair of shoes of claim 7, wherein the toe section of the foot platform of the right sole comprises: a stabilizing cup in the right big toe area, wherein, when the right shoe is worn, the stabilizing cup functions to, at least one of, stabilize and position a right big toe of a wearer in a particular location in the right big toe area.

132. See corresponding discussion for claim 4, above. Claim 9 is nearly identical thereto, the only difference being that claim 9 is specific to the right foot shoe.

- (d) **[10] The pair of shoes of claim 7, wherein the toe section of the foot platform of the right sole comprises: a stabilizing cup in the right big toe area, wherein, when the right shoe is worn, the stabilizing cup functions to, at least one of, stabilize and position a right ball-of-foot of a wearer in a particular location in the right big toe area.**

133. See corresponding discussion for claim 5, above. Claim 10 is nearly identical thereto, the only difference being that claim 10 is specific to the right foot shoe.

F. Ground 6 - Claims 4-5 and 9-10 are Obvious Over Rubin in View of De Obaldia

134. Claims 4 and 9 recite “a stabilizing cup” in the big toe area such that, when the shoe is worn, the stabilizing cup functions to at least one of stabilize and position the big toe of the wearer in the big toe area. Claims 5 and 10 recite “a stabilizing cup” in the big toe area such that, when the shoe is worn, the stabilizing cup functions to at least one of stabilize and position the ball of the foot of the wearer in the big toe area. I believe that these claims would be obvious based on Rubin in view of De Obaldia.

135. See discussion in paragraph 113 above with respect to the disclosure of a “stabilizing cup” in the ‘760 patent.

Overview of the Combination

136. The combination of Rubin and De Obaldia renders claims 4-5 and 9-10 obvious. Rubin discloses a golf shoe where the outer side of the sole extends

downwardly from the shoe upper to a lower elevation than the inner side of the sole, but does not expressly disclose a stabilizing cup in the big toe area. De Obaldia, however, does.

Rationale (Motivation) Supporting Obviousness

137. It would have been obvious to incorporate recesses for the wearer's toe(s) and balls of the feet, like that in De Obaldia, into the shoe disclosed in Rubin. A POSITA would have found it obvious to have combined the teachings of Rubin and De Obaldia with a predictable outcome.

138. Rubin and De Obaldia are both in the same field (shoe design), and both disclose similar improvements over typical shoes, namely, a sole configured to provide enhanced positioning or support for the wearer's feet. A POSITA would have naturally looked to De Obaldia when considering ways to improve the Rubin sole design. A POSITA would understand that including recesses for the toe(s) and or balls of the feet provides several benefits. For example, as De Obaldia explains, these recesses provide increased anatomical support for the wearer's foot. Ex., 1008, 1:14-18, 2:63-68.

Reasonable Expectation of Success

139. A POSITA would have had a reasonable expectation of success in incorporating toe and/or ball-of-foot recesses, like that in De Obaldia, into the shoe disclosed in Rubin. Rubin's sole or insole could easily be modified to include the

recesses disclosed in De Obaldia to stabilize and position the big toe and the ball of the foot in a particular location, but also provide the additional benefit described above. The art was relatively predictable in the relevant timeframe. A POSITA would also have been able to make any necessary modifications to the shoe or shoe components to implement this Ground.

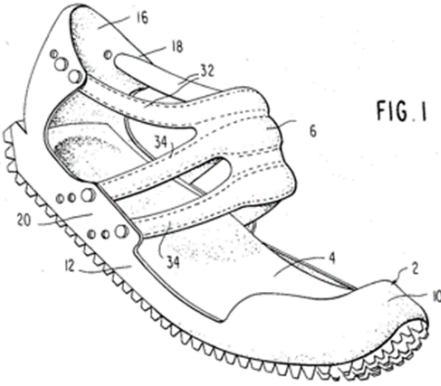
Analogous Art

140. Rubin and De Obaldia are analogous art because they are in the same field as the '760 patent (Ex. 1001, '760 patent at Abstract, Title) (Ex. 1007, Rubin at Abstract, Title) (Ex. 1008, De Obaldia at Abstract, Title), and all three related to shoe designs that incorporate soles/insoles that improve foot positioning and/or support.

Claims 4, 5, 9, and 10 are Obvious Over Rubin in View of De Obaldia

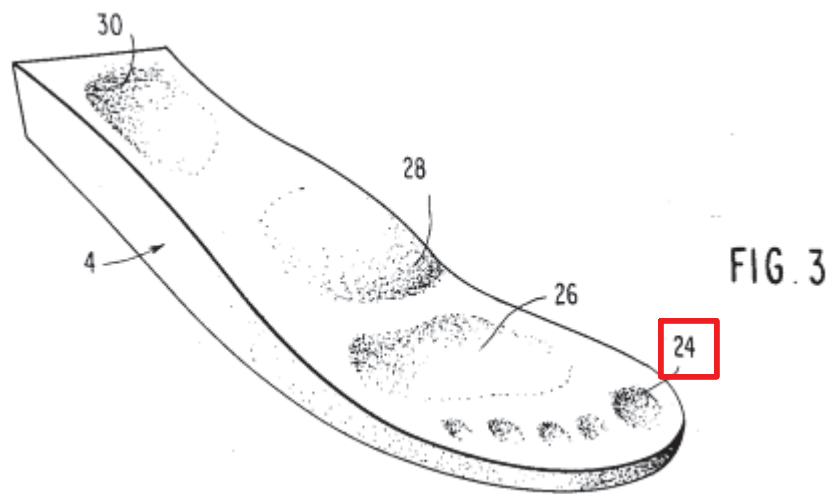
- (a) [4] The pair of shoes of claim 2, wherein the toe section of the foot platform of the left sole comprises: a stabilizing cup in the left big toe area, wherein, when the left shoe is worn, the stabilizing cup functions to, at least one of, stabilize and position a left big toe of a wearer in a particular location in the left big toe area.**

141. Rubin discloses all elements of dependent claim 2, as described in Ground 3 above. Rubin does not, however, disclose a “stabilizing cup” in the big toe area that functions to “at least one of, stabilize and position” the big toe in a particular location. De Obaldia does.

U.S. Patent No. 11,064,760	De Obaldia
[4] The pair of shoes of claim 2, wherein the toe section of the foot platform of the left sole comprises: a stabilizing cup in the left big toe area, wherein, when the left shoe is worn, the stabilizing cup functions to, at least one of, stabilize and position a left big toe of a wearer in a particular location in the left big toe area.	De Obaldia teaches and/or suggests an article of footwear that includes at least one toe recess. “An article of footwear is formed of a molded plastic body member, a molded plastic foot support member which supports the wearer's foot, and a flexible harness which retains the body member on the wearer's foot. The body member has a sole portion, a toe cup, a heel cup, and longitudinal sidewalls which extend from the toe cup to the heel cup. The foot support member has an upper surface, located at about the same height as the upper edges of the sidewalls, which provides anatomical support for a wearer's foot. The harness has a horizontal strap and inclined straps. The horizontal strap is connected to the heel cup, and the inclined straps are connected to the sidewalls of the body member.” <i>Id.</i>, Abstract. “Articles of footwear constructed according to the invention may be used for various purposes, but preferably it is a jogging sandal which is shown in FIG. 1. It is formed of three principal components, each of which is a unitary, integrally-molded piece of plastic material such as natural rubber, synthetic rubber or an elastomeric polymer. These components are the body member, the anatomical foot support and the harness member. In normal use, these components are connected together as shown in FIG. 1.” <i>Id.</i>, 2:23-33. 

“The upper edges of the sidewalls are at about the same height as the upper surface of the foot support member. FIG. shows that the upper surface of the foot support member is configured to correspond to and provide anatomical support for the wearer's foot. Preferably, this configuration includes at least one toe recess, a recess for accommodating a ball of the wearer's foot, a raised arch support portion, and a recess for accommodating the heel of a wearer's foot.” *Id.*, 2:60-68.

“An article of footwear according to claim 1 wherein the upper surface of the foot support member is provided with the following: at least one toe recess, a recess for accommodating a ball of a wearer's foot, a recess for accommodating the heel of a wearer's foot, and a raised arch support portion.” *Id.*, claim 5.

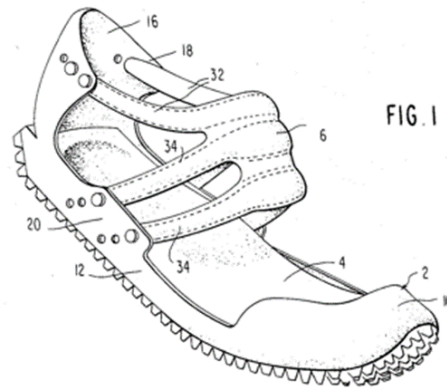


- (b) [5] The pair of shoes of claim 2, wherein the toe section of the foot platform of the left sole comprises: a stabilizing cup in the left big toe area, wherein, when the left shoe is worn, the stabilizing cup functions to, at least one of, stabilize and position a left ball-of-foot of a wearer in a particular location in the left big toe area.

142. Rubin discloses all elements of dependent claim 2, as described in Ground 3 above. Rubin does not, however, disclose a “stabilizing cup” in the big toe area that functions to “at least one of, stabilize and position” the ball of the foot in a particular location. De Obaldia does.

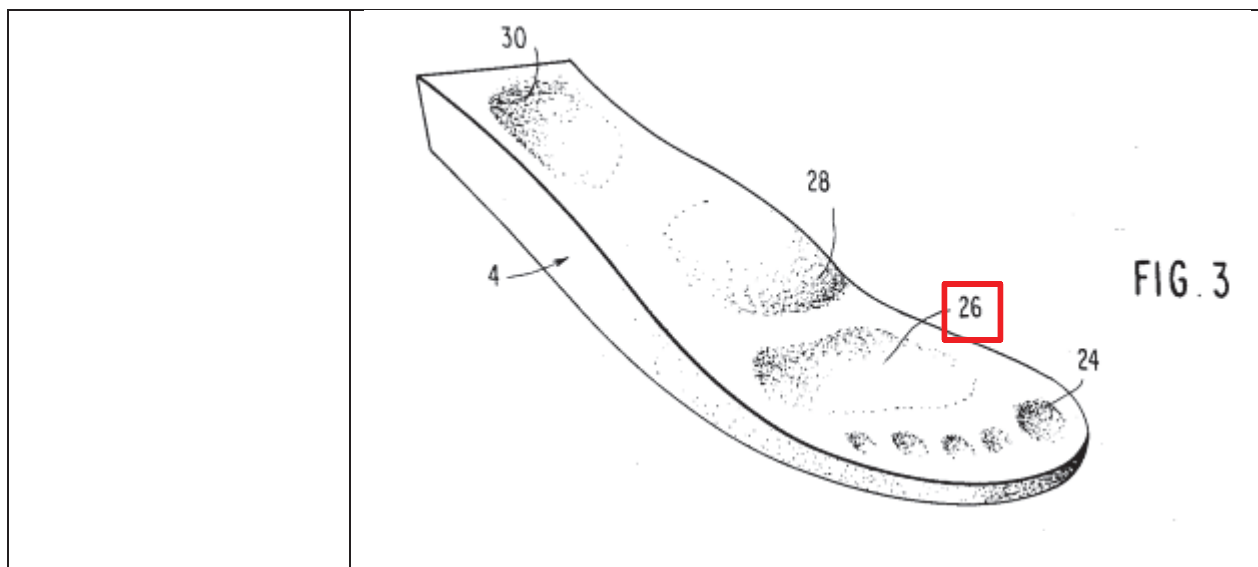
U.S. Patent No. 11,064,760	De Obaldia
[4] The pair of shoes of claim 2, wherein the toe section of the foot platform of the left sole comprises: a stabilizing cup in the left big toe area, wherein, when the left shoe is worn, the stabilizing cup functions to, at least one of, stabilize and position a left ball-of-foot of a wearer in a particular location in the left big toe area.	De Obaldia teaches and/or suggests an article of footwear that includes at least one toe recess. “An article of footwear is formed of a molded plastic body member, a molded plastic foot support member which supports the wearer's foot, and a flexible harness which retains the body member on the wearer's foot. The body member has a sole portion, a toe cup, a heel cup, and longitudinal sidewalls which extend from the toe cup to the heel cup. The foot support member has an upper surface, located at about the same height as the upper edges of the sidewalls, which provides anatomical support for a wearer's foot. The harness has a horizontal strap and inclined straps. The horizontal strap is connected to the heel cup, and the inclined straps are connected to the sidewalls of the body member.” <i>Id.</i>, Abstract. “Articles of footwear constructed according to the invention may be used for various purposes, but preferably it is a jogging sandal which is shown in FIG. 1. It is formed of three principal components, each of which is a unitary, integrally-molded piece of plastic material such as natural rubber, synthetic rubber or an elastomeric polymer.

These components are the body member, the anatomical foot support and the harness member. In normal use, these components are connected together as shown in FIG. 1.” *Id.*, 2:23-33.



“The upper edges of the sidewalls are at about the same height as the upper surface of the foot support member. FIG. shows that the upper surface of the foot support member is configured to correspond to and provide anatomical support for the wearer's foot. Preferably, this configuration includes at least one toe recess, a recess for accommodating a ball of the wearer's foot, a raised arch support portion, and a recess for accommodating the heel of a wearer's foot.” *Id.*, 2:60-68.

“An article of footwear according to claim 1 wherein the upper surface of the foot support member is provided with the following: at least one toe recess, a recess for accommodating a ball of a wearer's foot, a recess for accommodating the heel of a wearer's foot, and a raised arch support portion.” *Id.*, claim 5.



- (c) [9] The pair of shoes of claim 7, wherein the toe section of the foot platform of the right sole comprises: a stabilizing cup in the right big toe area, wherein, when the right shoe is worn, the stabilizing cup functions to, at least one of, stabilize and position a right big toe of a wearer in a particular location in the right big toe area.

143. See corresponding discussion for claim 4, above. Claim 9 is nearly identical thereto, the only difference being that claim 9 is specific to the right foot shoe.

- (d) [10] The pair of shoes of claim 7, wherein the toe section of the foot platform of the right sole comprises: a stabilizing cup in the right big toe area, wherein, when the right shoe is worn, the stabilizing cup functions to, at least one of, stabilize and position a right ball-of-foot of a wearer in a particular location in the right big toe area.

144. See corresponding discussion for claim 5, above. Claim 10 is nearly identical thereto, the only difference being that claim 10 is specific to the right foot shoe.

X. CONCLUSION

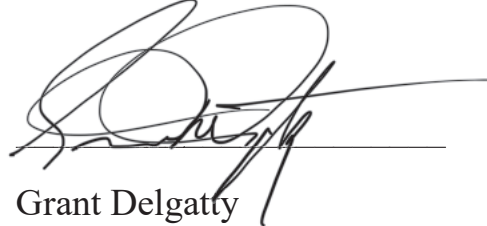
145. For the reasons set forth above, it is my opinion that claims 1-11 of the '760 patent are rendered obvious by the prior art.

146. In signing this declaration, I understand that the declaration will be filed as evidence in a contested case before the Patent Trial and Appeal Board of the United States Patent and Trademark Office. I acknowledge that I may be subject to cross-examination in this case.

I declare that all statements made herein of my knowledge are true, that all statements made on information and belief are believed to be true, and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

DATED: 3/1/24

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Grant Delgatty', is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

Grant Delgatty