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UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	ISSUE DATE	PATENT NO.	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/236,742	09/18/2012	8266749	005127.01675	5214

22910 7590 08/29/2012
BANNER & WITCOFF, LTD.
28 STATE STREET
SUITE 1800
BOSTON, MA 02109-1701

ISSUE NOTIFICATION

The projected patent number and issue date are specified above.

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

The Patent Term Adjustment is 0 day(s). Any patent to issue from the above-identified application will include an indication of the adjustment on the front page.

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

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

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

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

Bhupesh Dua, Portland, OR;
Edward Nathaniel Thomas, Portland, OR;

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

IR103 (Rev. 10/09)

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: **Mail Stop ISSUE FEE**
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
or Fax (571)-273-2885

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

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

22910 7590 05/21/2012
BANNER & WITCOFF, LTD.
28 STATE STREET
SUITE 1800
BOSTON, MA 02109-1701

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

Certificate of Mailing or Transmission

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

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/236,742	09/20/2011	Bhupesh Dua	005127.01675	5214

TITLE OF INVENTION: ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1740	\$300	\$0	\$2040	08/21/2012

EXAMINER	ART UNIT	CLASS-SUBCLASS
PATTERSON, MARIE D	3765	012-14600C

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

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list

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

1 Banner & Witcoff, Ltd.

2 _____

3 _____

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

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

(A) NAME OF ASSIGNEE

Nike, Inc.

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Beaverton, Oregon

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

4a. The following fee(s) are submitted:

- ☒ Issue Fee
- ☒ Publication Fee (No small entity discount permitted)
- ☐ Advance Order - # of Copies _____

4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☒ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number 19-0733 (enclose an extra copy of this form).

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

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27.
- ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature /Jeanne M. Tanner/

Date August 15, 2012

Typed or printed name Jeanne M. Tanner

Registration No. 45,156

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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NOTICE OF ALLOWANCE AND FEE(S) DUE

22910 7590 05/21/2012
BANNER & WITCOFF, LTD.
28 STATE STREET
SUITE 1800
BOSTON, MA 02109-1701

EXAMINER

PATTERSON, MARIE D

ART UNIT

PAPER NUMBER

3765

DATE MAILED: 05/21/2012

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/236,742	09/20/2011	Bhupesh Dua	005127.01675	5214

TITLE OF INVENTION: ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1740	\$300	\$0	\$2040	08/21/2012

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

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

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

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

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

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: **Mail** **Mail Stop ISSUE FEE**
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
or **Fax** **(571)-273-2885**

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22910 7590 05/21/2012
BANNER & WITCOFF, LTD.
28 STATE STREET
SUITE 1800
BOSTON, MA 02109-1701

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

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(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/236,742	09/20/2011	Bhupesh Dua	005127.01675	5214

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EXAMINER	ART UNIT	CLASS-SUBCLASS
PATTERSON, MARIE D	3765	012-14600C

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

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

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

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(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

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

4a. The following fee(s) are submitted:

- ☐ Issue Fee
- ☐ Publication Fee (No small entity discount permitted)
- ☐ Advance Order - # of Copies _____

4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

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

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature _____

Date _____

Typed or printed name _____

Registration No. _____

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/236,742	09/20/2011	Bhupesh Dua	005127.01675	5214
22910	7590	05/21/2012	EXAMINER	
BANNER & WITCOFF, LTD. 28 STATE STREET SUITE 1800 BOSTON, MA 02109-1701			PATTERSON, MARIE D	
			ART UNIT	PAPER NUMBER
			3765	
DATE MAILED: 05/21/2012				

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

The Patent Term Adjustment to date is 0 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 0 day(s).

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

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

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

Privacy Act Statement

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

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

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

Notice of Allowability	Application No.		Applicant(s)	
	13/236,742		DUA ET AL.	
	Examiner		Art Unit	
	MARIE PATTERSON		3765	

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

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

1. ☒ This communication is responsive to request for reconsideration filed 4/17/12.
2. ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
3. ☒ The allowed claim(s) is/are 1-21.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: ____.

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

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date ____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date ____.

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

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

Attachment(s)

1. ☐ Notice of References Cited (PTO-892) 2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date ____ 4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material	5. ☐ Notice of Informal Patent Application 6. ☐ Interview Summary (PTO-413), Paper No./Mail Date ____. 7. ☒ Examiner's Amendment/Comment 8. ☐ Examiner's Statement of Reasons for Allowance 9. ☐ Other ____.
--	--

/Marie Patterson/ Primary Examiner Art Unit: 3765	
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1. This application is in condition for allowance except for the presence of claim 22 directed to an invention non-elected without traverse. Accordingly, claim 22 has been cancelled.

1. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at www.uspto.gov.

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (571)273-8300 **(FORMAL FAXES ONLY)**. Please identify Examiner Marie Patterson of Art Unit 3765 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Patterson whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.

/Marie Patterson/
Primary Examiner
Art Unit 3765

PATENT**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re the Patent Application of:	)	
	)	Examiner: Marie D. Patterson
Bhupesh DUA, et al.	)	
	)	Group Art Unit: 3765
Appln. No. 13/236,742	)	
	)	Confirmation No.: 5214
Filed: September 20, 2011	)	
	)	Attorney Docket No.: 005127.01675
For: ARTICLE OF FOOTWEAR	)	
HAVING A TEXTILE UPPER	)	
	)	

RESPONSE TO FINAL OFFICE ACTION

Mail Stop – AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Final Office Action mailed February 1, 2012, Applicants submit the following:

A Listing of the Claims begins on page 2. No amendments have been made.

Remarks begin on page 6.

General Authorization of Payment of Fees

If any fees are due in this application, whether or not associated with this filing, please charge any fees due to Deposit Account No. 19-0733.

Issue Classification 	Application/Control No.	Applicant(s)/Patent under Reexamination	
	13/236,742	DUA ET AL.	
	Examiner	Art Unit	
	MARIE PATTERSON	3765	

ISSUE CLASSIFICATION									
ORIGINAL					CROSS REFERENCE(S)				
CLASS		SUBCLASS			CLASS	SUBCLASS (ONE SUBCLASS PER BLOCK)			
012		146C			036	45			
INTERNATIONAL CLASSIFICATION									
A	4	3	D	8/00					
				/					
				/					
				/					
				/					
----- (Assistant Examiner) (Date)					/Marie Patterson/ 4/19/12 (Primary Examiner) (Date)				
(Legal Instruments Examiner) (Date)									
					Total Claims Allowed: 21 O.G. Print Claim(s) 1 O.G. Print Fig. 9				

☒ Claims renumbered in the same order as presented by applicant						☐ CPA		☒ T.D.		☐ R.1.47	
Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original
1	1		31		61		121		151		181
2	2		32		62		122		152		182
3	3		33		63		123		153		183
4	4		34		64		124		154		184
5	5		35		65		125		155		185
6	6		36		66		126		156		186
7	7		37		67		127		157		187
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U.S. Patent and Trademark Office

Part of Paper No. 20120419

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Patent Application of:	)	
	)	Examiner: Marie D. Patterson
Bhupesh DUA, et al.	)	
	)	Group Art Unit: 3765
Appln. No. 13/236,742	)	
	)	Confirmation No.: 5214
Filed: September 20, 2011	)	
	)	Attorney Docket No.: 005127.01675
For: ARTICLE OF FOOTWEAR	)	
HAVING A TEXTILE UPPER	)	
	)	

RESPONSE TO FINAL OFFICE ACTION

Mail Stop – AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Final Office Action mailed February 1, 2012, Applicants submit the following:

A Listing of the Claims begins on page 2. No amendments have been made.

Remarks begin on page 6.

General Authorization of Payment of Fees

If any fees are due in this application, whether or not associated with this filing, please charge any fees due to Deposit Account No. 19-0733.

LISTING OF THE CLAIMS

1. (Original) A method of manufacturing an article of footwear, the method comprising:
simultaneously knitting a textile element with a surrounding textile structure, the knitted textile element having at least one knitted texture that differs from a knitted texture in the surrounding knitted textile structure;
removing the knitted textile element from the surrounding knitted textile structure;
incorporating the knitted textile element into the article of footwear.
2. (Original) The method of claim 1, wherein simultaneously knitting a textile element with a surrounding textile structure includes simultaneously knitting a plurality of textile elements.
3. (Original) The method of claim 1, wherein simultaneously knitting a textile element with a surrounding textile includes knitting an outline of the knitted textile element.
4. (Original) The method of claim 3, wherein the outline has the shape and proportion of the knitted textile element.
5. (Original) The method of claim 1, wherein the knitted textile element has a substantially planar configuration upon removal from the surrounding knitted textile structure.
6. (Original) The method of claim 1, wherein the knitted textile element includes longitudinal edges formed when the knitted textile element is removed from the surrounding knitted textile structure.
7. (Original) The method of claim 6, wherein the longitudinal edges are joined together to define at least a portion of a void for receiving a foot.

8. (Original) The method of claim 1, wherein the knitted textile element has a plurality of different knitted textures formed by varying at least one of the stitch type and the yarn type.

9. (Original) The method of claim 1, wherein simultaneously knitting a textile element with a surrounding textile structure includes utilizing a wide-tube circular knitting machine.

10. (Original) The method of claim 1, wherein simultaneously knitting a textile element with a surrounding textile structure includes utilizing a jacquard double needle-bar raschel knitting machine.

11. (Original) The method of claim 1, wherein simultaneously knitting a textile element with a surrounding textile structure includes forming the knitted textile element to include a first area and a second area with a unitary construction, the first area being formed of a first stitch configuration, and the second area being formed of a second stitch configuration that is different from the first stitch configuration to impart varying textures to a surface of the knitted textile element.

12. (Original) The method of claim 1, wherein incorporating the knitted textile element into the article of footwear includes securing edges of the knitted textile element to form a seam that extends along a lower region of an upper and securing the upper to a sole structure.

13. (Original) A method of manufacturing an article of footwear, the method comprising:

knitting a first textile element and a second textile element simultaneously with knitting a surrounding textile structure, the first knitted textile element located within a first

portion of the knitted textile structure, the second knitted textile element located within a second portion of the knitted textile structure,

varying at least one of the types of stitches or the types of yarns in the knitted textile structure to impart a texture to the first and second knitted textile elements different from a texture of the knitted textile structure extending between the first and second portions;

removing the first and second knitted textile elements from the knitted textile structure;

incorporating at least one of the first and second knitted textile elements into the article of footwear.

14. (Original) The method of claim 13, wherein knitting a first textile knitted element simultaneously with a surrounding knitted textile structure includes knitting an outline of the first knitted textile element.

15. (Original) The method of claim 13, wherein the first and second textile knitted elements have substantially planar configurations upon removal from the surrounding knitted textile structure.

16. (Original) The method of claim 13, wherein the first knitted textile element includes longitudinal edges formed when the first knitted textile element is removed from the surrounding knitted textile structure.

17. (Original) The method of claim 16, wherein the longitudinal edges are joined together to define at least a portion of a void for receiving a foot.

18. (Original) The method of claim 16, wherein incorporating the first knitted textile element into the article of footwear includes securing the longitudinal edges of the first knitted textile element to form a seam that extends along a lower region of an upper.

19. (Original) The method of claim 13, wherein knitting the first and second knitted textile elements simultaneously with a surrounding knitted textile structure includes utilizing a wide-tube circular knitting machine.

20. (Original) The method of claim 13, wherein knitting the first and second textile knitted elements simultaneously with a surrounding knitted textile structure includes utilizing a jacquard double needle-bar raschel knitting machine.

21. (Original) The method of claim 13, wherein knitting the first knitted textile element simultaneously with a surrounding knitted textile structure includes forming the first knitted textile element to include a first area and a second area with a unitary construction, the first area being formed of a first stitch configuration, and the second area being formed of a second stitch configuration that is different from the first stitch configuration to impart varying textures to a surface of the first knitted textile element.

22. (Withdrawn) An article of footwear comprising:
an upper including a textile element simultaneously knitted with a surrounding textile structure, the knitted textile element having at least one knitted texture that differs from a knitted texture in the surrounding knitted textile structure, the knitted textile element being removed from the surrounding knitted textile structure; and
the upper secured to a sole structure.

REMARKS

Status of the Claims

Claims 1-22 are pending. Claim 22 stands withdrawn from consideration due to an earlier restriction requirement.

In the Office Action, the Examiner:

- rejected claims 1-8, 11-18 and 21 under 35 USC § 102(b) as being anticipated by Nishida (5,345,638);
- indicated that claims 9, 10, 19 and 20 would be allowed if rewritten in independent form; and
- indicated that the Terminal Disclaimer filed January 13, 2012 was proper.

Applicants acknowledge the Examiner's indication that claims 9, 10, 19 and 20 contain allowable subject matter.

Summary of Interview with Examiner

Applicants very sincerely thank Examiner Marie D. Patterson for the many courtesies extended to Applicants' representative, Jeanne M. Tanner, during the telephonic interview of April 10, 2012. Nishida's disclosure and claim 1 were discussed. Applicants believe that the following remarks are in keeping with the understanding of Nishida's disclosure achieved during the interview.

Rejections under 35 USC § 102(b)

Claims 1-8, 11-18 and 21 stand rejected under 35 USC § 102(b) as being anticipated by Nishida. Applicants traverse this rejection. Claims 1 and 13 are independent claims.

Claim 1, which is directed to a method of manufacturing an article of footwear, recites:

“simultaneously knitting a textile element with a surrounding textile structure, the knitted textile element having at least one knitted texture that differs from a knitted texture in the surrounding knitted textile structure.”

Claim 13 recites:

“knitting a first textile element and a second textile element simultaneously with knitting a surrounding textile structure, the first knitted textile element located within a first portion of the knitted textile structure, the second knitted textile element located within a second portion of the knitted textile structure”;
and
“varying at least one of the types of stitches or the types of yarns in the knitted textile structure to impart a texture to the first and second knitted textile elements different from a texture of the knitted textile structure extending between the first and second portions.”

The claims generally recite that a knitted textile element is simultaneously formed with a surrounding knitted textile structure and that the knitted textile element has a texture that differs from the texture of the simultaneously knitted surrounding structure.

As an initial matter, Applicants maintain their previously presented arguments that Nishida discloses that the backing 4 for the web of material 1 must be formed prior to the production of the layouts, and thus, that Nishida fails to disclose a knitted textile element *simultaneously* formed with a knitted textile structure, having a differing texture, during a knitting process.

In the Final Office Action, the Examiner has cited to Nishida’s disclosure at column 5, line 63 – column 6, line 2. Applicants submit that Nishida’s disclosure therein as to “changes of the type of weave or knit of individual areas” (even if, *arguendo*, this disclosure were to refer to the backing of Nishida) fails to disclose that the type of weave or knit is associated with any specificity to any particular area of Nishida’s backing. In other words, Nishida simply fails to disclose that its backing material has a first texture in an area associated with a textile element and a differing texture in an area surrounding the textile element. Thus, Nishida fails to disclose differing textures of any simultaneously knitted textile element and its simultaneously knitted surrounding textile structure.

As Nishida fails to disclose each and every element of claims 1 and 13, Applicants respectfully submit that claims 1-8, 11-18 and 21 are patentable over the cited reference and request that this rejection be withdrawn.

US Patent Appln. No.: 13/236,742
Response dated April 17, 2012
In Reply to Final Office Action dated February 1, 2012

Conclusion

Applicants believe that this application is in condition for allowance and respectfully request action to that effect. Should further information be needed, the Examiner is invited to contact the undersigned attorney by telephone.

Respectfully submitted,
BANNER & WITCOFF, LTD.

Dated: April 17, 2012

By: /Jeanne M. Tanner/
Jeanne M. Tanner
Reg. No. 45,156

28 State St., Suite 1800
Boston, MA 02109-1701
617-720-9600



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/236,742	09/20/2011	Bhupesh Dua	005127.01675	5214
22910 7590 04/13/2012 BANNER & WITCOFF, LTD. 28 STATE STREET SUITE 1800 BOSTON, MA 02109-1701			EXAMINER PATTERSON, MARIE D	
			ART UNIT	PAPER NUMBER
			3765	
			MAIL DATE	DELIVERY MODE
			04/13/2012	PAPER

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

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

<i>Applicant-Initiated Interview Summary</i>	Application No.		Applicant(s)	
	13/236,742		DUA ET AL.	
	Examiner		Art Unit	
	MARIE PATTERSON		3765	

All participants (applicant, applicant's representative, PTO personnel):

(1) MARIE PATTERSON. (3) _____.

(2) Jeanne Tanner. (4) _____.

Date of Interview: 10 April 2012.

Type: ☒ Telephonic ☐ Video Conference
 ☐ Personal [copy given to: ☐ applicant ☐ applicant's representative]

Exhibit shown or demonstration conducted: ☐ Yes ☒ No.
 If Yes, brief description: _____.

Issues Discussed ☐101 ☐112 ☒102 ☐103 ☐Others
 (For each of the checked box(es) above, please describe below the issue and detailed description of the discussion)

Claim(s) discussed: 1.

Identification of prior art discussed: Nishida 5345638.

Substance of Interview
 (For each issue discussed, provide a detailed description and indicate if agreement was reached. Some topics may include: identification or clarification of a reference or a portion thereof, claim interpretation, proposed amendments, arguments of any applied references etc...)

After further consideration and arguments it was clarified that Nishida may disclose a web of material having different textures, but there is no clear disclosure of the textures differing such that the textile element has a texture which is different that the texture of the surrounding textile structure and that the textile element and the surround structure are simultaneously knitted. Applicants' representative will clarify this in a request for reconsideration and the Examiner agrees that Nishida does not provide any clear disclosure of where the differing textures are located..

Applicant recordation instructions: The formal written reply to the last Office action must include the substance of the interview. (See MPEP section 713.04). If a reply to the last Office action has already been filed, applicant is given a non-extendable period of the longer of one month or thirty days from this interview date, or the mailing date of this interview summary form, whichever is later, to file a statement of the substance of the interview

Examiner recordation instructions: Examiners must summarize the substance of any interview of record. A complete and proper recordation of the substance of an interview should include the items listed in MPEP 713.04 for complete and proper recordation including the identification of the general thrust of each argument or issue discussed, a general indication of any other pertinent matters discussed regarding patentability and the general results or outcome of the interview, to include an indication as to whether or not agreement was reached on the issues raised.

☐ Attachment

	/Marie Patterson/ Primary 3765 4/10/12
--	--

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/236,742	09/20/2011	Bhupesh Dua	005127.01675	5214
22910 7590 02/01/2012 BANNER & WITCOFF, LTD. 28 STATE STREET SUITE 1800 BOSTON, MA 02109-1701			EXAMINER PATTERSON, MARIE D	
			ART UNIT	PAPER NUMBER
			3765	
			MAIL DATE	DELIVERY MODE
			02/01/2012 PAPER	

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

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

Office Action Summary	Application No. 13/236,742	Applicant(s) DUA ET AL.	
	Examiner MARIE PATTERSON	Art Unit 3765	

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

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

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

Status

1) ☒ Responsive to communication(s) filed on 13 January 2012.

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

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

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

Disposition of Claims

5) ☒ Claim(s) 1-22 is/are pending in the application.
5a) Of the above claim(s) 22 is/are withdrawn from consideration.

6) ☐ Claim(s) ____ is/are allowed.

7) ☒ Claim(s) 1-21 is/are rejected.

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

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

Application Papers

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

11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

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

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)	4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. ____
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) ☐ Notice of Informal Patent Application
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date ____	6) ☐ Other: ____

Election/Restrictions

1. Applicant's election of Group I in the reply filed on 11/28/11 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claim 22 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/28/11.

Claim Rejections - 35 USC § 102

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

A person shall be entitled to a patent unless –

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

4. Claims 1-8, 11-18, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Nishida (5345638).

Nishida shows a process for producing a shoe comprising simultaneously knitting a textile element (3) with a surrounding textile structure (1 and 4), the elements are removed from the surrounding textile and the longitudinal edges that are joined together (7 and 8) and a sole attached thereto (see figure 3) as claimed. In reference to different textures, yarns, stitches, Nishida teaches such for example in column 3 lines 15-25.

Allowable Subject Matter

5. Claims 9, 10, 19, and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Terminal Disclaimer

6. The terminal disclaimer filed on 1/13/12 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 7,814,598 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Response to Arguments

7. Applicant's arguments filed 1/13/12 have been fully considered but they are not persuasive.

In response to applicants' arguments directed towards Nishida, the claims require "simultaneously knitting a textile element with a surrounding textile structure" which Nishida does disclose as the web material (1 and/or 4) which includes the textile element (2) and surrounding structure (area of 1 around 2) is produced by knitting (column 3 lines 5-15 and column 5 line 63- column 6 line 2) and therefore since element 1 or 4 is a single knitted element it is inherently simultaneously knitted because it is a single element. In reference to the limitation of "the knitted textile element having at least one knitted texture that differs from a knitted texture in the surrounding knitted textile structure", see Nishida column 4 lines 31-38 states "In the production of web material....layout(s) 2 can be provided with an embroidery...." and in column 5 line 63-

column 6 line 2 which states “the webs of material being used can be produced by program-controlled web material production devices....with changes of the type of weave or knit of individual areas or controus, the type of fiber, or yarn and/or the color”. In reference to the limitation of “removing the knitted textile element from the surrounding knitted textile structure....” see column 4 lines 39-45 of Nishida.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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

1. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at www.uspto.gov.

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (571)273-8300 **(FORMAL FAXES ONLY)**. Please identify Examiner Marie Patterson of Art Unit 3765 at the top of your cover sheet.

Application/Control Number: 13/236,742

Page 5

Art Unit: 3765

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Patterson whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.

/Marie Patterson/
Primary Examiner
Art Unit 3765

Application Number 	Application/Control No.	Applicant(s)/Patent under Reexamination	
	13/236,742	DUA ET AL.	
Document Code - DISQ		Internal Document – DO NOT MAIL	

TERMINAL DISCLAIMER	☒ APPROVED	☐ DISAPPROVED
Date Filed : 1/13/12	This patent is subject to a Terminal Disclaimer	

Approved/Disapproved by:	
Felicia D. Roberts 7,814,598	

U.S. Patent and Trademark Office

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Patent Application of:	)	
	)	Examiner: Marie D. Patterson
Bhupesh DUA, et al.	)	
	)	Group Art Unit: 3765
Appln. No. 13/236,742	)	
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HAVING A TEXTILE UPPER	)	
	)	

RESPONSE TO OFFICE ACTION

Mail Stop – Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Office Action mailed December 12, 2011, Applicants submit the following:

A Listing of the Claims begins on page 2. No amendments have been made.

Remarks begin on page 6.

General Authorization of Payment of Fees

If any fees are due in this application, whether or not associated with this filing, please charge any fees due to Deposit Account No. 19-0733.

LISTING OF THE CLAIMS

1. (Original) A method of manufacturing an article of footwear, the method comprising:
simultaneously knitting a textile element with a surrounding textile structure, the knitted textile element having at least one knitted texture that differs from a knitted texture in the surrounding knitted textile structure;
removing the knitted textile element from the surrounding knitted textile structure;
incorporating the knitted textile element into the article of footwear.
2. (Original) The method of claim 1, wherein simultaneously knitting a textile element with a surrounding textile structure includes simultaneously knitting a plurality of textile elements.
3. (Original) The method of claim 1, wherein simultaneously knitting a textile element with a surrounding textile includes knitting an outline of the knitted textile element.
4. (Original) The method of claim 3, wherein the outline has the shape and proportion of the knitted textile element.
5. (Original) The method of claim 1, wherein the knitted textile element has a substantially planar configuration upon removal from the surrounding knitted textile structure.
6. (Original) The method of claim 1, wherein the knitted textile element includes longitudinal edges formed when the knitted textile element is removed from the surrounding knitted textile structure.
7. (Original) The method of claim 6, wherein the longitudinal edges are joined together to define at least a portion of a void for receiving a foot.

8. (Original) The method of claim 1, wherein the knitted textile element has a plurality of different knitted textures formed by varying at least one of the stitch type and the yarn type.

9. (Original) The method of claim 1, wherein simultaneously knitting a textile element with a surrounding textile structure includes utilizing a wide-tube circular knitting machine.

10. (Original) The method of claim 1, wherein simultaneously knitting a textile element with a surrounding textile structure includes utilizing a jacquard double needle-bar raschel knitting machine.

11. (Original) The method of claim 1, wherein simultaneously knitting a textile element with a surrounding textile structure includes forming the knitted textile element to include a first area and a second area with a unitary construction, the first area being formed of a first stitch configuration, and the second area being formed of a second stitch configuration that is different from the first stitch configuration to impart varying textures to a surface of the knitted textile element.

12. (Original) The method of claim 1, wherein incorporating the knitted textile element into the article of footwear includes securing edges of the knitted textile element to form a seam that extends along a lower region of an upper and securing the upper to a sole structure.

13. (Original) A method of manufacturing an article of footwear, the method comprising:

knitting a first textile element and a second textile element simultaneously with knitting a surrounding textile structure, the first knitted textile element located within a first

portion of the knitted textile structure, the second knitted textile element located within a second portion of the knitted textile structure,

varying at least one of the types of stitches or the types of yarns in the knitted textile structure to impart a texture to the first and second knitted textile elements different from a texture of the knitted textile structure extending between the first and second portions;

removing the first and second knitted textile elements from the knitted textile structure;

incorporating at least one of the first and second knitted textile elements into the article of footwear.

14. (Original) The method of claim 13, wherein knitting a first textile knitted element simultaneously with a surrounding knitted textile structure includes knitting an outline of the first knitted textile element.

15. (Original) The method of claim 13, wherein the first and second textile knitted elements have substantially planar configurations upon removal from the surrounding knitted textile structure.

16. (Original) The method of claim 13, wherein the first knitted textile element includes longitudinal edges formed when the first knitted textile element is removed from the surrounding knitted textile structure.

17. (Original) The method of claim 16, wherein the longitudinal edges are joined together to define at least a portion of a void for receiving a foot.

18. (Original) The method of claim 16, wherein incorporating the first knitted textile element into the article of footwear includes securing the longitudinal edges of the first knitted textile element to form a seam that extends along a lower region of an upper.

19. (Original) The method of claim 13, wherein knitting the first and second knitted textile elements simultaneously with a surrounding knitted textile structure includes utilizing a wide-tube circular knitting machine.

20. (Original) The method of claim 13, wherein knitting the first and second textile knitted elements simultaneously with a surrounding knitted textile structure includes utilizing a jacquard double needle-bar raschel knitting machine.

21. (Original) The method of claim 13, wherein knitting the first knitted textile element simultaneously with a surrounding knitted textile structure includes forming the first knitted textile element to include a first area and a second area with a unitary construction, the first area being formed of a first stitch configuration, and the second area being formed of a second stitch configuration that is different from the first stitch configuration to impart varying textures to a surface of the first knitted textile element.

22. (Withdrawn) An article of footwear comprising:
an upper including a textile element simultaneously knitted with a surrounding textile structure, the knitted textile element having at least one knitted texture that differs from a knitted texture in the surrounding knitted textile structure, the knitted textile element being removed from the surrounding knitted textile structure; and
the upper secured to a sole structure.

REMARKS

Status of the Claims

Claims 1-22 are pending. Claim 22 was withdrawn from consideration due to an earlier restriction requirement.

In the Office Action, the Examiner:

- rejected claims 1-8, 11-18 and 21 under 35 USC § 102(b) as being anticipated by Nishida (5,345,638);
- rejected claims 1-21 on the ground of nonstatutory double patenting over claims 1-14 of US 7,814,598; and
- indicated that claims 9, 10, 19 and 20 would be allowed (if rewritten as independent claims) and subject to the filing of a proper Terminal Disclaimer.

Applicants acknowledge the Examiner's indication that claims 9, 10, 19 and 20 contain allowable subject matter.

Rejections under 35 USC § 102(b)

Claims 1-8, 11-18 and 21 stand rejected under 35 USC § 102(b) as being anticipated by Nishida. Applicants traverse this rejection. Claims 1 and 13 are independent claims.

Claim 1, which is directed to a method of manufacturing an article of footwear, recites:

“simultaneously knitting a textile element with a surrounding textile structure, the knitted textile element having at least one knitted texture that differs from a knitted texture in the surrounding knitted textile structure.”

Claim 13 recites:

“knitting a first textile element and a second textile element simultaneously with knitting a surrounding textile structure, the first knitted textile element located within a first portion of the knitted textile structure, the second knitted textile element located within a second portion of the knitted textile structure.”

The claims generally recite that a knitted textile element is simultaneously formed with a surrounding knitted textile structure. Referring for example to FIG. 9 of the instant

application, the knitted textile element corresponds to item 40 and the knitted textile structure corresponds to item 60. As the textile structure 60 is knitted, the knitted textile element 40 is also knitted. In other words, the textile structure 60 and the textile element 40 are knit at the same time during a single knitting process—they are “simultaneously formed.” As disclosed at col. 7, lines 41-48 of the instant application, as the textile structure 60 is knitted the types of stitches are varied so that a pattern is formed with the outline and/or with the shape and proportions of the textile element 40.

In contrast, Nishida fails to disclose a knitted textile element *simultaneously* formed with a knitted textile structure during a knitting process. Nishida discloses that layouts 2 are printed, embroidered, woven, or knitted onto a *pre-existing* backing material 4. Specifically, Nishida discloses that layouts 2 are produced by “a fabric printing process ... on the web of material and/or by a textile production process inside the web of material.” (Col. 2, lines 50-56.) Because Nishida teaches that layouts 2 may be produced by a “fabric printing process ... on the web of material,” Nishida necessarily teaches that the backing material for the web of material must be formed prior to the production of the layouts. In other words, the formation of Nishida’s backing material must precede the printing of the layouts thereupon.

With respect to the backing material, Nishida further discloses that “the web of material has a backing 4 that can be a conventionally used material ...” (col. 3, lines 13-15), and that “the web of material 1 is produced so that its surface areas 1.1, in which no layout(s) 2 or tongue(s) 40 are provided, consist of a lightweight material quality that is a simple and economical as possible. For example, these surface areas 1.1 can be produced like a gauze or with low to very low warp and/or filling gauge and/or, for example, by being thin-spun or the like” (col. 5, lines 45-52). In essence, Nishida discloses that the backing material 4, which includes the surface area 1.1 outside the layouts, is formed separately from the layouts 2 themselves.

Additionally, Nishida’s disclosure that layouts 2 may be produced “by a textile production process *inside* the web of material,” is not a disclosure that the layouts and the area surrounding the layouts are simultaneously formed. In fact, for example, embroidery, which could be considered a prime example of a “textile production process inside the web of material,” is specifically listed by Nishida as a process for forming a layout (see col. 5, lines

27-31). Embroidery is produced as a subsequent operation onto an existing backing material. In other words, the disclosure of a “textile production process inside the web of material” is not a disclosure that the layouts are simultaneously formed with the backing material 4 or the surrounding surface areas 1.1.

Thus, Nishida fails to disclose that the layouts are *simultaneously formed* with the backing material or the surrounding surface areas. Even further, Nishida fails to disclose that the layouts are *simultaneously knitted* with the backing material. Although, Nishida discloses that the backing material can be “a knitted fabric” (col. 3, lines 13-15), and that the layouts may be “knitted,” Nishida fails to disclose that these two processes occur simultaneously. Applicants note that processes that involve “knitting through” or “stitching through” a backing material, such as disclosed in US 4,144,727 to Duhl et al., titled “Knitted Malimo Type Fabric,” were known at the time of Nishida’s application. Thus, it is entirely in keeping with Nishida’s disclosure for a layout (knitted or otherwise) to be subsequently produced on an existing backing material (knitted or otherwise) using a Malimo-type process.

Thus, Nishida teaches that the layouts 2 are formed on the backing material of the web of material after the backing material has been formed, i.e., that the layouts are formed as a separate, subsequent, process to the formation of the backing material.

Nishida fails to disclose “simultaneously knitting a textile element with a surrounding textile structure,” as recited in claim 1, and Nishida fails to disclose “knitting a first textile element and a second textile element simultaneously with knitting a surrounding textile structure,” as recited in claim 13.

Thus, as Nishida fails to disclose or suggest each and every element of claims 1 and 13, Applicants respectfully submit that claims 1-8, 11-18 and 21 are patentable over the cited reference and request that this rejection be withdrawn.

Double Patenting

Claims 1-21 were rejected on the ground of nonstatutory double patenting over claims 1-14 of US 7,814,598. Applicants submit a Terminal Disclaimer herewith, thereby obviating this rejection.

US Patent Appln. No.: 13/236,742
Response dated January 13, 2012
In Reply to Office Action dated December 12, 2011

Conclusion

Applicants believe that this application is in condition for allowance and respectfully request action to that effect. Should further information be needed, the Examiner is invited to contact the undersigned attorney by telephone.

Respectfully submitted,
BANNER & WITCOFF, LTD.

Dated: January 13, 2012

By: /Jeanne M. Tanner/
Jeanne M. Tanner
Reg. No. 45,156

28 State St., Suite 1800
Boston, MA 02109-1701
617-720-9600

TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING REJECTION OVER A "PRIOR" PATENT	Docket Number (Optional) 005127.01675
In re Application of: Bhupesh Dua et al. Application No.: 13/236,742 Filed: September 20, 2011 For: An Article of Footwear Having a Textile Upper The owner*, <u>NIKE, Inc.</u>, of <u>100</u> percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of prior patent No. <u>7,814,598</u> as the term of said prior patent is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns. In making the above disclaimer, the owner does not disclaim the terminal part of the term of any patent granted on the instant application that would extend to the expiration date of the full statutory term of the prior patent, "as the term of said prior patent is presently shortened by any terminal disclaimer," in the event that said prior patent later: - expires for failure to pay a maintenance fee; - is held unenforceable; - is found invalid by a court of competent jurisdiction; - is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321; - has all claims canceled by a reexamination certificate; - is reissued; or - is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer. Check either box 1 or 2 below, if appropriate. 1. ☐ For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the business/organization. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon. 2. ☒ The undersigned is an attorney or agent of record. Reg. No. <u>45,156</u> <u>/Jeanne M. Tanner/</u> Signature <u>January 13, 2012</u> Date <u>Jeanne M. Tanner</u> Typed or printed name <u>617-720-9600</u> Telephone Number ☒ Terminal disclaimer fee under 37 CFR 1.20(d) included. WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038. *Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner). Form PTO/SB/96 may be used for making this certification. See MPEP § 324.	

This collection of information is required by 37 CFR 1.321. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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

Privacy Act Statement

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

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

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



UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/236,742	09/20/2011	Bhupesh Dua	005127.01675	5214
22910 7590 12/12/2011 BANNER & WITCOFF, LTD. 28 STATE STREET SUITE 1800 BOSTON, MA 02109-1701			EXAMINER PATTERSON, MARIE D	
			ART UNIT	PAPER NUMBER
			3765	
			MAIL DATE	DELIVERY MODE
			12/12/2011 PAPER	

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

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

Office Action Summary	Application No. 13/236,742	Applicant(s) DUA ET AL.	
	Examiner MARIE PATTERSON	Art Unit 3765	

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

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

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

Status

1) ☒ Responsive to communication(s) filed on 28 November 2011.

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

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

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

Disposition of Claims

5) ☒ Claim(s) 1-22 is/are pending in the application.

5a) Of the above claim(s) 22 is/are withdrawn from consideration.

6) ☐ Claim(s) ____ is/are allowed.

7) ☒ Claim(s) 1-21 is/are rejected.

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

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

Application Papers

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

11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

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

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)	4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. ____.
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) ☐ Notice of Informal Patent Application
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>10/19/11</u> .	6) ☐ Other: ____.

Election/Restrictions

1. Applicant's election of Group I in the reply filed on 11/28/11 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claim 22 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/28/11.

Claim Rejections - 35 USC § 102

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

A person shall be entitled to a patent unless –

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

4. Claims 1-8, 11-18, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Nishida (5345638).

Nishida shows a process for producing a shoe comprising simultaneously knitting a textile element (3) with a surrounding textile structure (1 and 4), the elements are removed from the surrounding textile and the longitudinal edges that are joined together (7 and 8) and a sole attached thereto (see figure 3) as claimed. In reference to different textures, yarns, stitches, Nishida teaches such for example in column 3 lines 15-25.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-21 are rejected on the ground of nonstatutory double patenting over claims 1-14 of U. S. Patent No. 7814598 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: both claim a method of knitting a textile, removing an element from the textile, the element having different textures, and incorporating such into footwear.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See MPEP § 804.

Allowable Subject Matter

7. Claims 9, 10, 19, and 20 would be allowed, subject to the filing of a proper Terminal Disclaimer.

1. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at www.uspto.gov.

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (571)273-8300 **(FORMAL FAXES ONLY)**. Please identify Examiner Marie Patterson of Art Unit 3765 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Patterson whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.

Application/Control Number: 13/236,742
Art Unit: 3765

Page 5

/Marie Patterson/
Primary Examiner
Art Unit 3765

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Patent Application of:	)	
	)	Examiner: Marie D. Patterson
Bhupesh DUA, et al.	)	
	)	Group Art Unit: 3765
Appln. No. 13/236,742	)	
	)	Confirmation No.: 5214
Filed: September 20, 2011	)	
	)	Attorney Docket No.: 005127.01675
For: ARTICLE OF FOOTWEAR	)	
HAVING A TEXTILE UPPER	)	
	)	

RESPONSE TO RESTRICTION REQUIREMENT

and

NOTICE OF NON-COMPLIANT AMENDMENT

Mail Stop – Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Restriction Requirement mailed November 9, 2011 and the Notice of Non-Compliant Amendment mailed November 21, 2011, Applicant submits the following:

Amendments to the Claims begin on page 2.

Remarks begin on page 6.

In response to the Notice of Non-Compliant Amendment, Applicants have added a proper status identifier to claim 13.

General Authorization of Payment of Fees

If any fees are due in this application, whether or not associated with this filing, please charge any fees due to Deposit Account No. 19-0733.

AMENDMENTS TO THE CLAIMS

Please replace all previous listings of the claims with the following:

1. (Original) A method of manufacturing an article of footwear, the method comprising:
simultaneously knitting a textile element with a surrounding textile structure, the knitted textile element having at least one knitted texture that differs from a knitted texture in the surrounding knitted textile structure;
removing the knitted textile element from the surrounding knitted textile structure;
incorporating the knitted textile element into the article of footwear.
2. (Original) The method of claim 1, wherein simultaneously knitting a textile element with a surrounding textile structure includes simultaneously knitting a plurality of textile elements.
3. (Original) The method of claim 1, wherein simultaneously knitting a textile element with a surrounding textile includes knitting an outline of the knitted textile element.
4. (Original) The method of claim 3, wherein the outline has the shape and proportion of the knitted textile element.
5. (Original) The method of claim 1, wherein the knitted textile element has a substantially planar configuration upon removal from the surrounding knitted textile structure.
6. (Original) The method of claim 1, wherein the knitted textile element includes longitudinal edges formed when the knitted textile element is removed from the surrounding knitted textile structure.

7. (Original) The method of claim 6, wherein the longitudinal edges are joined together to define at least a portion of a void for receiving a foot.
8. (Original) The method of claim 1, wherein the knitted textile element has a plurality of different knitted textures formed by varying at least one of the stitch type and the yarn type.
9. (Original) The method of claim 1, wherein simultaneously knitting a textile element with a surrounding textile structure includes utilizing a wide-tube circular knitting machine.
10. (Original) The method of claim 1, wherein simultaneously knitting a textile element with a surrounding textile structure includes utilizing a jacquard double needle-bar raschel knitting machine.
11. (Original) The method of claim 1, wherein simultaneously knitting a textile element with a surrounding textile structure includes forming the knitted textile element to include a first area and a second area with a unitary construction, the first area being formed of a first stitch configuration, and the second area being formed of a second stitch configuration that is different from the first stitch configuration to impart varying textures to a surface of the knitted textile element.
12. (Original) The method of claim 1, wherein incorporating the knitted textile element into the article of footwear includes securing edges of the knitted textile element to form a seam that extends along a lower region of an upper and securing the upper to a sole structure.
13. (Original) A method of manufacturing an article of footwear, the method comprising:

knitting a first textile element and a second textile element simultaneously with knitting a surrounding textile structure, the first knitted textile element located within a first portion of the knitted textile structure, the second knitted textile element located within a second portion of the knitted textile structure,

varying at least one of the types of stitches or the types of yarns in the knitted textile structure to impart a texture to the first and second knitted textile elements different from a texture of the knitted textile structure extending between the first and second portions;

removing the first and second knitted textile elements from the knitted textile structure;

incorporating at least one of the first and second knitted textile elements into the article of footwear.

14. (Original) The method of claim 13, wherein knitting a first textile knitted element simultaneously with a surrounding knitted textile structure includes knitting an outline of the first knitted textile element.

15. (Original) The method of claim 13, wherein the first and second textile knitted elements have substantially planar configurations upon removal from the surrounding knitted textile structure.

16. (Original) The method of claim 13, wherein the first knitted textile element includes longitudinal edges formed when the first knitted textile element is removed from the surrounding knitted textile structure.

17. (Original) The method of claim 16, wherein the longitudinal edges are joined together to define at least a portion of a void for receiving a foot.

18. (Original) The method of claim 16, wherein incorporating the first knitted textile element into the article of footwear includes securing the longitudinal edges of the first knitted textile element to form a seam that extends along a lower region of an upper.

19. (Original) The method of claim 13, wherein knitting the first and second knitted textile elements simultaneously with a surrounding knitted textile structure includes utilizing a wide-tube circular knitting machine.

20. (Original) The method of claim 13, wherein knitting the first and second textile knitted elements simultaneously with a surrounding knitted textile structure includes utilizing a jacquard double needle-bar raschel knitting machine.

21. (Original) The method of claim 13, wherein knitting the first knitted textile element simultaneously with a surrounding knitted textile structure includes forming the first knitted textile element to include a first area and a second area with a unitary construction, the first area being formed of a first stitch configuration, and the second area being formed of a second stitch configuration that is different from the first stitch configuration to impart varying textures to a surface of the first knitted textile element.

22. (Withdrawn) An article of footwear comprising:
an upper including a textile element simultaneously knitted with a surrounding textile structure, the knitted textile element having at least one knitted texture that differs from a knitted texture in the surrounding knitted textile structure, the knitted textile element being removed from the surrounding knitted textile structure; and
the upper secured to a sole structure.

US Patent Appln. No.: 13/236,742
Response dated November 28, 2011
In Reply to Restriction Requirement dated November 9, 2011 and
Notice of Non-Compliant Amendment dated November 21, 2011

REMARKS

Status of the Claims:

Claims 1-22 are pending and subject to a restriction requirement. Claim 22 has been withdrawn from consideration.

Restriction Requirement:

In the Office Action, dated November 9, 2011, the Examiner presented a restriction requirement. Specifically, restriction to one of the following inventions was required under 35 USC 121:

Group I: claims 1-21, drawn to a method of making a footwear element, classified in class 12;

Group II: claim 22, drawn to an article of footwear, classified in class 36.

Applicant elects Group I: claims 1-21.

Applicant's elections are without prejudice or admission with respect to the Applicant's rights to re-file the withdrawn claims in a continuing or divisional application.

Applicant believes that these elections are fully responsive to the Office Action. If, however, further information is needed, the Examiner is invited to contact the undersigned attorney by telephone.

Respectfully submitted,
BANNER & WITCOFF, LTD.

Dated: November 28, 2011

By: / Jeanne M. Tanner/
Jeanne M. Tanner
Reg. No. 45,156

28 State St., Suite 1800
Boston, MA 02109-1701
617-720-9600



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22910 e 2011-11-21

BANNER & WITCOFF, LTD.
28 STATE STREET
SUITE 1800
BOSTON, MA 02109-1701

Paper No.

Application No.:	13/236,742 	Date Mailed:	2011-11-21
First Named Inventor:	Dua, Bhupesh,	Examiner:	PATTERSON, MARIE D
Attorney Docket No.:	005127.01675	Art Unit:	3765
Confirmation No.:	5214	Filing Date:	2011-09-20

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

Commissioner for Patents

PTO-90c (Rev.08-06)

Notice of Non-Compliant Amendment (37 CFR 1.121)	Application No. 13/236,742	Applicant(s) DUA ET AL.
		Art Unit 3600

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

The amendment document filed on 16 November, 2011 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
 - ☐ A. Amended paragraph(s) do not include markings.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☐ C. Other _____.
- ☐ 2. Abstract:
 - ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____.
- ☐ 3. Amendments to the drawings:
 - ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
 - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
 - ☐ C. Other _____.
- ☒ 4. Amendments to the claims:
 - ☐ A. A complete listing of all of the claims is not present.
 - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
 - ☒ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
 - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☒ E. Other: Claim 13 is missing a status identifier.
- ☐ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4): For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

- Applicant is given **no new time period if the non-compliant amendment is an** after-final amendment or an amendment filed after allowance, or a drawing submission (only) If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
- Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a Quayle action. If any of above boxes 1 to 4 are checked, the correction required is only the corrected section of the non-compliant amendment in compliance with 37 CFR 1.121.

Extensions of time are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

Failure to timely respond to this notice will result in:

- Abandonment** of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or
- Non-entry** of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

Legal Instruments Examiner (LIE), if applicable /YUVANNA CHAPHIV/ Telephone No: (571)272-9428

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Patent Application of:	)	
	)	Examiner: Marie D. Patterson
Bhupesh DUA, et al.	)	
	)	Group Art Unit: 3765
Appln. No. 13/236,742	)	
	)	Confirmation No.: 5214
Filed: September 20, 2011	)	
	)	Attorney Docket No.: 005127.01675
For: ARTICLE OF FOOTWEAR	)	
HAVING A TEXTILE UPPER	)	
	)	

RESPONSE TO RESTRICTION REQUIREMENT

Mail Stop – Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Restriction Requirement mailed November 9, 2011, Applicant submits the following:

Amendments to the Claims begin on page 2.

Remarks begin on page 6.

General Authorization of Payment of Fees

If any fees are due in this application, whether or not associated with this filing, please charge any fees due to Deposit Account No. 19-0733.

AMENDMENTS TO THE CLAIMS

Please replace all previous listings of the claims with the following:

1. (Original) A method of manufacturing an article of footwear, the method comprising:
simultaneously knitting a textile element with a surrounding textile structure, the knitted textile element having at least one knitted texture that differs from a knitted texture in the surrounding knitted textile structure;
removing the knitted textile element from the surrounding knitted textile structure;
incorporating the knitted textile element into the article of footwear.
2. (Original) The method of claim 1, wherein simultaneously knitting a textile element with a surrounding textile structure includes simultaneously knitting a plurality of textile elements.
3. (Original) The method of claim 1, wherein simultaneously knitting a textile element with a surrounding textile includes knitting an outline of the knitted textile element.
4. (Original) The method of claim 3, wherein the outline has the shape and proportion of the knitted textile element.
5. (Original) The method of claim 1, wherein the knitted textile element has a substantially planar configuration upon removal from the surrounding knitted textile structure.
6. (Original) The method of claim 1, wherein the knitted textile element includes longitudinal edges formed when the knitted textile element is removed from the surrounding knitted textile structure.

7. (Original) The method of claim 6, wherein the longitudinal edges are joined together to define at least a portion of a void for receiving a foot.
8. (Original) The method of claim 1, wherein the knitted textile element has a plurality of different knitted textures formed by varying at least one of the stitch type and the yarn type.
9. (Original) The method of claim 1, wherein simultaneously knitting a textile element with a surrounding textile structure includes utilizing a wide-tube circular knitting machine.
10. (Original) The method of claim 1, wherein simultaneously knitting a textile element with a surrounding textile structure includes utilizing a jacquard double needle-bar raschel knitting machine.
11. (Original) The method of claim 1, wherein simultaneously knitting a textile element with a surrounding textile structure includes forming the knitted textile element to include a first area and a second area with a unitary construction, the first area being formed of a first stitch configuration, and the second area being formed of a second stitch configuration that is different from the first stitch configuration to impart varying textures to a surface of the knitted textile element.
12. (Original) The method of claim 1, wherein incorporating the knitted textile element into the article of footwear includes securing edges of the knitted textile element to form a seam that extends along a lower region of an upper and securing the upper to a sole structure.
13. A method of manufacturing an article of footwear, the method comprising:
knitting a first textile element and a second textile element simultaneously with knitting a surrounding textile structure, the first knitted textile element located within a first

portion of the knitted textile structure, the second knitted textile element located within a second portion of the knitted textile structure,

varying at least one of the types of stitches or the types of yarns in the knitted textile structure to impart a texture to the first and second knitted textile elements different from a texture of the knitted textile structure extending between the first and second portions;

removing the first and second knitted textile elements from the knitted textile structure;

incorporating at least one of the first and second knitted textile elements into the article of footwear.

14. (Original) The method of claim 13, wherein knitting a first textile knitted element simultaneously with a surrounding knitted textile structure includes knitting an outline of the first knitted textile element.

15. (Original) The method of claim 13, wherein the first and second textile knitted elements have substantially planar configurations upon removal from the surrounding knitted textile structure.

16. (Original) The method of claim 13, wherein the first knitted textile element includes longitudinal edges formed when the first knitted textile element is removed from the surrounding knitted textile structure.

17. (Original) The method of claim 16, wherein the longitudinal edges are joined together to define at least a portion of a void for receiving a foot.

18. (Original) The method of claim 16, wherein incorporating the first knitted textile element into the article of footwear includes securing the longitudinal edges of the first knitted textile element to form a seam that extends along a lower region of an upper.

19. (Original) The method of claim 13, wherein knitting the first and second knitted textile elements simultaneously with a surrounding knitted textile structure includes utilizing a wide-tube circular knitting machine.

20. (Original) The method of claim 13, wherein knitting the first and second textile knitted elements simultaneously with a surrounding knitted textile structure includes utilizing a jacquard double needle-bar raschel knitting machine.

21. (Original) The method of claim 13, wherein knitting the first knitted textile element simultaneously with a surrounding knitted textile structure includes forming the first knitted textile element to include a first area and a second area with a unitary construction, the first area being formed of a first stitch configuration, and the second area being formed of a second stitch configuration that is different from the first stitch configuration to impart varying textures to a surface of the first knitted textile element.

22. (Withdrawn) An article of footwear comprising:
an upper including a textile element simultaneously knitted with a surrounding textile structure, the knitted textile element having at least one knitted texture that differs from a knitted texture in the surrounding knitted textile structure, the knitted textile element being removed from the surrounding knitted textile structure; and
the upper secured to a sole structure.

US Patent Appln. No.: 13/236,742
Response dated November 16, 2011
In Reply to the Restriction Requirement dated November 9, 2011

REMARKS

Status of the Claims:

Claims 1-22 are pending and subject to a restriction requirement. Claim 22 has been withdrawn from consideration.

Restriction Requirement:

In the Office Action, dated November 9, 2011, the Examiner presented a restriction requirement. Specifically, restriction to one of the following inventions was required under 35 USC 121:

Group I: claims 1-21, drawn to a method of making a footwear element, classified in class 12;

Group II: claim 22, drawn to an article of footwear, classified in class 36.

Applicant elects Group I: claims 1-21.

Applicant's elections are without prejudice or admission with respect to the Applicant's rights to re-file the withdrawn claims in a continuing or divisional application.

Applicant believes that these elections are fully responsive to the Office Action. If, however, further information is needed, the Examiner is invited to contact the undersigned attorney by telephone.

Respectfully submitted,
BANNER & WITCOFF, LTD.

Dated: November 16, 2011

By: / Jeanne M. Tanner/
Jeanne M. Tanner
Reg. No. 45,156

28 State St., Suite 1800
Boston, MA 02109-1701
617-720-9600



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/236,742	09/20/2011	Bhupesh Dua	005127.01675	5214
22910 7590 11/09/2011 BANNER & WITCOFF, LTD. 28 STATE STREET SUITE 1800 BOSTON, MA 02109-1701			EXAMINER PATTERSON, MARIE D	
			ART UNIT	PAPER NUMBER
			3765	
			MAIL DATE	DELIVERY MODE
			11/09/2011	PAPER

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

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

Office Action Summary	Application No. 13/236,742	Applicant(s) DUA ET AL.	
	Examiner MARIE PATTERSON	Art Unit 3765	

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

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

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

Status

1) ☐ Responsive to communication(s) filed on ____.

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

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

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

Disposition of Claims

5) ☒ Claim(s) 1-22 is/are pending in the application.
 5a) Of the above claim(s) ____ is/are withdrawn from consideration.

6) ☐ Claim(s) ____ is/are allowed.

7) ☐ Claim(s) ____ is/are rejected.

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

9) ☒ Claim(s) 1-22 are subject to restriction and/or election requirement.

Application Papers

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

11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

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

Attachment(s)

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

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date ____.

4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date. ____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: ____.

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-21, drawn to a method of making a footwear element, classified in class 12, subclass 146C.
 - II. Claim 22, drawn to an article of footwear, classified in class 36, subclass 9R.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions of Group I and Group II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the footwear could be made from a textile made by a weaving machine, by hand, or any other method instead of the method claimed requiring a circular knitting machine.

Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and/or examination burden if restriction were not required because at least the following reason(s) apply: while the searches may overlap the search would be burdensome and longer because the examiner would need to search for each distinct inventions or variations. Furthermore, the search is only part of the examination process, the MPEP 803 states "If the search and examination of all the claims in an application can be made without serious burden". The examination of the application would be burdensome because the examiner would be required to apply art

and rejections to the additional claims directed towards each distinct and different invention.. It is noted that in claim 22 the phrase "simultaneously knitted with a surrounding textile structure...." is considered a recitation of product by process and a comparison of the recited process with the prior art processes does NOT serve to resolve the issue concerning patentability of the product. In re Fessman, 489 F2d 742, 180 U.S.P.Q. 324 (CCPA 1974). Whether a product is patentable depends on whether it is known in the art or it is obvious, and is not governed by whether the process by which it is made is patentable. In re Klug, 333 F2d 905, 142 U.S.P.Q. 161 (CCPA 1964). In an ex parte case, product-by-process claims are not construed as being limited to the product formed by the specific process recited. In re Hirao et al., 535 F2d 67, 190 U.S.P.Q. 15, see footnote 3 (CCPA 1976).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after

the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

1. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at www.uspto.gov.

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (571)273-8300 **(FORMAL FAXES ONLY)**. Please identify Examiner Marie Patterson of Art Unit 3765 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Patterson whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.

/Marie Patterson/
Primary Examiner
Art Unit 3765



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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO.	TOT CLAIMS	IND CLAIMS
13/236,742	09/20/2011	3728	1194	005127.01675	22	3

CONFIRMATION NO. 5214

FILING RECEIPT



OC000000050125833

22910
BANNER & WITCOFF, LTD.
28 STATE STREET
SUITE 1800
BOSTON, MA 02109-1701

Date Mailed: 09/30/2011

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

Bhupesh Dua, Portland, OR;
Edward Nathaniel Thomas, Portland, OR;

Assignment For Published Patent Application

NIKE, INC., Beaverton, OR

Power of Attorney: The patent practitioners associated with Customer Number 22909

Domestic Priority data as claimed by applicant

This application is a CON of 12/879,517 09/10/2010
which is a CON of 12/032,995 02/18/2008 PAT 7,814,598
which is a DIV of 10/791,289 03/03/2004 PAT 7,347,011

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see <http://www.uspto.gov> for more information.)

If Required, Foreign Filing License Granted: 09/29/2011

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 13/236,742**

Projected Publication Date: 01/12/2012

Non-Publication Request: No

Early Publication Request: No

Title

ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER

Preliminary Class

036

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at <http://www.uspto.gov/web/offices/pac/doc/general/index.html>.

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AN ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER

CROSS-REFERENCE TO RELATED APPLICATIONS

- [01] This U.S. Patent Application is a continuation application of and claims priority to U.S. Patent Application Serial No.: 12/879,517, filed September 10, 2010, which is a continuation application of and claims priority to U.S. Patent Application Serial No.: 12/032,995, filed February 18, 2008, which is a divisional application of and claims priority to U.S. Patent Application serial number 10/791,289, filed March 3, 2004, now U.S. Patent 7,347,011, issued March 25, 2008, each of which are being entirely incorporated herein by reference.

BACKGROUND OF THE INVENTION

Field of the Invention

- [02] The present invention relates to footwear. The invention concerns, more particularly, an article of footwear incorporating an upper that is at least partially formed from a textile material.

Description of Background Art

- [03] Conventional articles of athletic footwear include two primary elements, an upper and a sole structure. The upper provides a covering for the foot that securely receives and positions the foot with respect to the sole structure. In addition, the upper may have a configuration that protects the foot and provides ventilation, thereby cooling the foot and removing perspiration. The sole structure is secured to a lower surface of the upper and is generally positioned between the foot and the ground. In addition to attenuating ground reaction forces and absorbing energy (i.e., imparting cushioning), the sole structure may provide traction and control potentially harmful foot motion, such as over pronation. Accordingly, the upper and the sole structure operate cooperatively to provide a comfortable structure that is suited for a wide variety of ambulatory activities, such as walking and running. The general features and configuration of the conventional upper are discussed in greater detail below.

- [04] The upper forms a void on the interior of the footwear for receiving the foot. The void has the general shape of the foot, and access to the void is provided by an ankle opening. Accordingly, the upper extends over the instep and toe areas of the foot, along the medial and lateral sides of the foot, and around the heel area of the foot. A lacing system is often incorporated into the upper to selectively increase the size of the ankle opening and permit the wearer to modify certain dimensions of the upper, particularly girth, to accommodate feet with varying proportions. In addition, the upper may include a tongue that extends under the lacing system to enhance the comfort of the footwear, and the upper may include a heel counter to limit movement of the heel.
- [05] Various materials may be utilized in manufacturing the upper. The upper of an article of athletic footwear, for example, may be formed from multiple material layers that include an exterior layer, an intermediate layer, and an interior layer. The materials forming the exterior layer of the upper may be selected based upon the properties of wear-resistance, flexibility, and air-permeability, for example. With regard to the exterior layer, the toe area and the heel area may be formed of leather, synthetic leather, or a rubber material to impart a relatively high degree of wear-resistance. Leather, synthetic leather, and rubber materials may not exhibit the desired degree of flexibility and air-permeability. Accordingly, various other areas of the exterior layer of the upper may be formed from a synthetic or natural textile. The exterior layer of the upper may be formed, therefore, from numerous material elements that each impart different properties to specific portions of the upper.
- [06] An intermediate layer of the upper may be formed from a lightweight polymer foam material that provides cushioning and protects the foot from objects that may contact the upper. Similarly, an interior layer of the upper may be formed of a moisture-wicking textile that removes perspiration from the area immediately surrounding the foot. In some articles of athletic footwear, the various layers may be joined with an adhesive, and stitching may be utilized to join elements within a single layer or to reinforce specific areas of the upper.
- [07] Although the materials selected for the upper vary significantly, textile materials often form at least a portion of the exterior layer and interior layer. A textile may be defined as

any manufacture from fibers, filaments, or yarns characterized by flexibility, fineness, and a high ratio of length to thickness. Textiles generally fall into two categories. The first category includes textiles produced directly from webs of filaments or fibers by randomly interlocking to construct non-woven fabrics and felts. The second category includes textiles formed through a mechanical manipulation of yarn, thereby producing a woven fabric, for example.

- [08] Yarn is the raw material utilized to form textiles in the second category. In general, yarn is defined as an assembly having a substantial length and relatively small cross-section that is formed of at least one filament or a plurality of fibers. Fibers have a relatively short length and require spinning or twisting processes to produce a yarn of suitable length for use in textiles. Common examples of fibers are cotton and wool. Filaments, however, have an indefinite length and may merely be combined with other filaments to produce a yarn suitable for use in textiles. Modern filaments include a plurality of synthetic materials such as rayon, nylon, polyester, and polyacrylic, with silk being the primary, naturally-occurring exception. Yarn may be formed of a single filament, which is conventionally referred to as a monofilament yarn, or a plurality of individual filaments grouped together. Yarn may also include separate filaments formed of different materials, or the yarn may include filaments that are each formed of two or more different materials. Similar concepts also apply to yarns formed from fibers. Accordingly, yarns may have a variety of configurations that generally conform to the definition provided above.
- [09] The various techniques for mechanically manipulating yarn into a textile include interweaving, intertwining and twisting, and interlooping. Interweaving is the intersection of two yarns that cross and interweave at right angles to each other. The yarns utilized in interweaving are conventionally referred to as warp and weft. Intertwining and twisting encompasses procedures such as braiding and knotting where yarns intertwine with each other to form a textile. Interlooping involves the formation of a plurality of columns of intermeshed loops, with knitting being the most common method of interlooping.

- [10] The textiles utilized in footwear uppers generally provide a lightweight, air-permeable structure that is flexible and comfortably receives the foot. In order to impart other properties to the footwear, including durability and stretch-resistance, additional materials are commonly combined with the textile, including leather, synthetic leather, or rubber, for example. With regard to durability, U.S. Patent Number 4,447,967 to Zaino discloses an upper formed of a textile material that has a polymer material injected into specific zones to reinforce the zones against abrasion or other forms of wear. Regarding stretch resistance, U.S. Patent Numbers 4,813,158 to Brown and 4,756,098 to Boggia both disclose a substantially inextensible material that is secured to the upper, thereby limiting the degree of stretch in specific portions of the upper.
- [11] From the perspective of manufacturing, utilizing multiple materials to impart different properties to an article of footwear may be an inefficient practice. For example, the various materials utilized in a conventional upper are not generally obtained from a single supplier. Accordingly, a manufacturing facility must coordinate the receipt of specific quantities of materials with multiple suppliers that may have distinct business practices or may be located in different regions or countries. The various materials may also require additional machinery or different assembly line techniques to cut or otherwise prepare the material for incorporation into the footwear. In addition, incorporating separate materials into an upper may involve a plurality of distinct manufacturing steps requiring multiple individuals. Employing multiple materials, in addition to textiles, may also detract from the breathability of footwear. Leather, synthetic leather, or rubber, for example, are not generally permeable to air. Accordingly, positioning leather, synthetic leather, or rubber on the exterior of the upper may inhibit air flow through the upper, thereby increasing the amount of perspiration, water vapor, and heat trapped within the upper and around the foot.

SUMMARY OF THE INVENTION

- [12] The present invention is an upper for an article of footwear, the upper incorporating a textile element formed with a knitting machine, for example. In one aspect of the invention, the textile element has edges that are joined together to define at least a portion

of a void for receiving a foot. In another aspect of the invention, the textile element has a first area and a second area of unitary construction. The first area is formed of a first stitch configuration, and the second area is formed of a second stitch configuration that is different from the first stitch configuration to impart varying textures to a surface of the textile element. The knitting machine may have a configuration that forms the textile element through either warp knitting or weft knitting.

- [13] Another aspect of the invention involves a method of manufacturing an article of footwear. The method includes a step of mechanically-manipulating a yarn with a circular knitting machine, for example, to form a cylindrical textile structure. In addition, the method involves removing at least one textile element from the textile structure, and incorporating the textile element into an upper of the article of footwear.
- [14] In another aspect of the invention, an article of footwear has an upper and a sole structure secured to the upper. The upper incorporates a textile element formed with a knitting machine. The textile element is removed from a textile structure that includes an outline of the textile element, and the textile element has edges that are joined together to define at least a portion of a void for receiving a foot.
- [15] The advantages and features of novelty characterizing the present invention are pointed out with particularity in the appended claims. To gain an improved understanding of the advantages and features of novelty, however, reference may be made to the following descriptive matter and accompanying drawings that describe and illustrate various embodiments and concepts related to the invention.

DESCRIPTION OF THE DRAWINGS

- [16] The foregoing Summary of the Invention, as well as the following Detailed Description of the Invention, will be better understood when read in conjunction with the accompanying drawings.
- [17] Figure 1 is a lateral elevational view of an article of footwear having an upper in accordance with the present invention.

- [18] Figure 2 is a lateral elevational view of the upper.
- [19] Figure 3 is a top plan view of the upper.
- [20] Figure 4 is a rear elevational view of the upper.
- [21] Figure 5 is a bottom plan view of the upper.
- [22] Figure 6 is a first cross-sectional view of the upper, as defined by section line 6-6 in Figure 2.
- [23] Figure 7 is a second cross-sectional view of the upper, as defined by section line 7-7 in Figure 2.
- [24] Figure 8 is a plan view of a textile element that forms at least a portion of the upper.
- [25] Figure 9 is a perspective view of a textile structure that incorporates two of the textile element.
- [26] Figure 10 is a plan view of another textile element.
- [27] Figure 11 is a plan view of yet another textile element.
- [28] Figure 12 is a lateral elevational view of another article of footwear having an upper in accordance with the present invention.
- [29] Figure 13 is a lateral elevational view of yet another article of footwear having an upper in accordance with the present invention.
- [30] Figure 14 is a cross-sectional view of the footwear depicted in Figure 13, as defined by section line 14-14.

DETAILED DESCRIPTION OF THE INVENTION

- [31] The following discussion and accompanying figures disclose an article of footwear 10 and a method of manufacturing footwear 10, or components thereof, in accordance with the present invention. Footwear 10 is depicted in the figures and discussed below as

having a configuration that is suitable for athletic activities, particularly running. The concepts disclosed with respect to footwear 10 may, however, be applied to footwear styles that are specifically designed for a variety of other athletic activities, including basketball, baseball, football, soccer, walking, and hiking, for example, and may also be applied to various non-athletic footwear styles. Accordingly, one skilled in the relevant art will recognize that the concepts disclosed herein may be applied to a wide range of footwear styles and are not limited to the specific embodiments discussed below and depicted in the figures.

- [32] The primary elements of footwear 10 are depicted in Figure 1 as being a sole structure 20 and an upper 30. Sole structure 20 is secured to a lower portion of upper 30 and provides a durable, wear-resistant component that imparts cushioning as footwear 10 impacts the ground. Upper 30 is at least partially formed from a textile element 40 that defines an interior void for comfortably receiving a foot and securing a position of the foot relative to sole structure 20. Various edges of textile element 40 are then secured together to form the shape of upper 30. In some embodiments, textile element 40 may form substantially all of upper 30, or textile element 40 may only be a portion of an upper.
- [33] Sole structure 20 has a generally conventional configuration that includes a midsole 21 and an outsole 22. Midsole 21 is secured to a lower portion of upper 30 and is formed of a polymer foam material, such as ethylvinylacetate or polyurethane. Accordingly, midsole 21 attenuates ground reaction forces and absorbs energy (i.e., provides cushioning) as sole structure 20 impacts the ground. To enhance the force attenuation and energy absorption characteristics of sole structure 20, midsole 21 may incorporate a fluid-filled bladder, as disclosed in U.S. Patent Numbers 4,183,156 and 4,219,945 to Rudy. Alternately or in combination, midsole 21 may incorporate a plurality of discrete, columnar support elements, as disclosed in U.S. Patent Numbers 5,343,639 and 5,353,523 to Kilgore et al. Outsole 22 is secured to a lower surface of midsole 21 and may be formed from carbon black rubber compound to provide a durable, wear-resistant surface for engaging the ground. Outsole 22 may also incorporate a textured lower surface to enhance the traction characteristics of footwear 10. In addition, footwear 10 may include an insole (not depicted), which is a relatively thin, cushioning member

located within upper 30 and adjacent to a plantar surface of the foot for enhancing the comfort of footwear 10.

- [34] Sole structure 20 is described above as having the elements of a conventional sole structure for athletic footwear. Other footwear styles, including, dress shoes and boots, for example, may have other types of conventional sole structures specifically tailored for use with the respective types of footwear. In addition to a conventional configuration, however, sole structure 20 may also exhibit a unique, non-conventional structure. Accordingly, the particular configuration of sole structure 20 may vary significantly within the scope of the present invention to include a wide range of configurations, whether conventional or non-conventional.
- [35] Upper 30 is depicted in Figures 2-7 as having a lateral region 31, an opposite medial region 32, an instep region 33, a lower region 34, and a heel region 35. Lateral region 31 extends through a longitudinal length of footwear 10 and is generally configured to contact and cover a lateral side of the foot. Medial region 32 has a similar configuration that generally corresponds with a medial side of the foot. Instep region 33 is positioned between lateral region 31 and medial region 32, and instep region 33 extends over an instep area of the foot. Lower region 34 forms a bottom surface of upper 30 and also extends through the longitudinal length of footwear 10. Heel region 35 forms a rear portion of upper 30 and is generally configured to contact and cover a heel area of the foot. In addition, lateral region 31, medial region 32, instep region 33, and heel region 35 cooperatively define an ankle opening 36 for providing the foot with access to the void within upper 30.
- [36] Upper 30 is at least partially formed from textile element 40, which forms regions 31-35, and may also include laces or other elements associated with a conventional upper for footwear. Textile element 40 is a single material element that is formed to exhibit a unitary (i.e., one-piece) construction, and textile element 40 is formed or otherwise shaped to extend around the foot. As depicted in Figures 2-7, textile element 40 forms both an exterior surface and an interior surface of upper 30. Textile element 40 may be formed as a part of a larger textile element. Textile element 40 is then removed from the larger textile element and various edges of textile element 40 are secured together to form

the shape of upper 30. A plurality of seams 51-54 are formed, therefore, when joining the edges of the textile element. Seam 51 extends along the longitudinal length of lower region 34 and is centrally-located with respect to lateral region 31 and medial region 32. Seam 52 is also centrally-located and extends upward along heel region 35. A seam 53 is positioned in a forefoot area of upper 30 and joins a portion of lower region 34 with both of lateral region 31 and medial region 32. In addition, a seam 54 is positioned in a rear area of upper 30 and joins a portion of lower region 34 with heel region 35.

- [37] Textile element 40 exhibits the general shape depicted in Figure 8 prior to the formation of seams 51-54. Following formation of seams 51-54, however, textile element 40 exhibits the shape of upper 30 depicted in Figures 2-7. Seams 51-54 are formed by securing various edges of textile element 40 together. More specifically, (1) seam 51 is formed by securing an edge 41a with an edge 41b; (2) seam 52 is formed by securing an edge 42a with an edge 42b; (3) a first portion of seam 53 is formed by securing an edge 43a with an edge 43b (4) a second portion of seam 53 is formed by securing an edge 43c with an edge 43d; (5) a first portion of seam 54 is formed by securing an edge 44a with an edge 44b; and (6) a second portion of seam 54 is formed by securing an edge 44c with an edge 44d. Referring to Figure 8, the positions of regions 31-35 and ankle opening 36 are identified to provide a frame of reference relating to the various portions of textile element 40.
- [38] In order to join edges 41a and 41b to form seam 51, textile element 40 is folded or otherwise overlapped such that edge 41a is placed adjacent to edge 41b. Stitching, an adhesive, or heat bonding, for example, is then utilized to secure edge 41a and edge 41b. Textile element 40, as depicted in Figure 8, has a generally planar configuration. Upon the formation of seam 51, however, one portion of textile element 40 overlaps the other portion of textile element 40. The volume between the overlapping portions effectively forms a portion of the void within upper 30 for receiving the foot.
- [39] The folding or overlapping of textile element 40 to form seam 51 places edge 42a adjacent to edge 42b, which facilitates the formation of seam 52. With reference to Figure 8, an edge 45 forms a generally u-shaped area in textile element 40. Upon the joining of edges 42a and 42b to form seam 52, the u-shaped area becomes an aperture in

textile element 40 and effectively forms ankle opening 36. Each of edges 43a-43d and edges 44a-44d are formed from a generally v-shaped area of textile element 40. Accordingly, seams 53 and 54 may be formed by closing the v-shaped areas and securing the various edges together.

- [40] Following the formation of each of seams 51-54, the manufacturing of upper 30 is essentially complete. Various finishing steps may be performed, such as reinforcing ankle opening 36, for example. Upper 30 (i.e., textile element 40) is then secured to sole structure 20, with an adhesive, for example. The insole is then placed into the void within upper 30 and adjacent to lower region 34. In some embodiments, various reinforcing members may be added to the exterior or interior surface of upper 20 in order to limit the degree of stretch in upper 20 or provide enhanced wear-resistance. In addition, a lacing system may be added to provide adjustability.
- [41] Textile element 40 is a single material element with a unitary construction, as discussed above. As defined for purposes of the present invention, unitary construction is intended to express a configuration wherein portions of a textile element are not joined together by seams or other connections, as depicted with textile element 40 in Figure 8. Although the various edges 41a-44d are joined together to form seams 51-54, the various portions of textile element 40 are formed as an unitary element without seams, as discussed below.
- [42] Textile element 40 is primarily formed from one or more yarns that are mechanically-manipulated through either an interweaving, intertwining and twisting, or interlooping process, for example. As discussed in the Background of the Invention section above, interweaving is the intersection of two yarns that cross and interweave at right angles to each other. The yarns utilized in interweaving are conventionally referred to as warp and weft. Intertwining and twisting encompasses procedures such as braiding and knotting where yarns intertwine with each other to form a textile. Interlooping involves the formation of a plurality of columns of intermeshed loops, with knitting being the most common method of interlooping. Textile element 40 may, therefore, be formed from one of these processes for manufacturing a textile.

- [43] A variety of mechanical processes have been developed to manufacture a textile. In general, the mechanical processes may be classified as either warp knitting or weft knitting. With regard to warp knitting, various specific sub-types that may be utilized to manufacture a textile include tricot, raschel, and double needle-bar raschel (which further includes jacquard double needle-bar raschel). With regard to weft knitting, various specific sub-types that may be utilized to manufacture a textile include circular knitting and flat knitting. Various types of circular knitting include sock knitting (narrow tube), body garment (seamless or wide tube), and jacquard.
- [44] Textile element 40 may be formed through any of the mechanical processes discussed above. Accordingly, textile element 40 may be formed on either a warp knitting machine or a weft knitting machine. One suitable knitting machine for forming textile element 40 is a wide-tube circular knit jacquard machine. Another suitable knitting machine for forming textile element 40 is a wide-tube circular knitting machine that is produced in the Lonati Group by Santoni S.p.A. of Italy under the SM8 TOP1 model number. This Santoni S.p.A. wide-tube circular knitting machine may form a textile structure having a diameter that ranges from 10 inches to 20 inches, with 8 feeds for each diameter. The machine exhibits a maximum 140 revolutions per minute for 10 inch diameters, and a maximum 120 revolutions per minute for 13 inch diameters. Furthermore, the machine gauge is variable between 16, 22, 24, 26, 28, and 32 needles per inch, and is suitable for various needle gauges ranging from 48 to 75.
- [45] A wide-tube circular knitting machine, as produced by Santoni S.p.A., forms a generally cylindrical textile structure and is capable of forming various types of stitches within a single textile structure. In general, the wide-tube circular knitting machine may be programmed to alter the design on the textile structure through needle selection. That is, the type of stitch that is formed at each location on the textile structure may be selected by programming the wide-tube circular knitting machine such that specific needles either accept or do not accept yarn at each stitch location. In this manner, various patterns, textures, or designs may be selectively and purposefully imparted to the textile structure.
- [46] An example of a textile structure 60 that may be formed with a wide-tube circular knitting machine is depicted in Figure 9. Textile structure 60 has a generally cylindrical

configuration, and the types of stitches vary throughout textile structure 60 so that a pattern is formed with the outline of textile element 40. That is, differences in the stitches within textile structure 60 form an outline with the shape and proportions of textile element 40.

- [47] The Santoni S.p.A. wide-tube circular knitting machine may form a textile structure having a diameter that ranges from 10 inches to 16 inches, as discussed above. Assuming that textile structure 60 exhibits a diameter of 10 inches, then the circumference of textile structure 60 is approximately 31 inches. In many circumstances, the total width of textile element 40 will be approximately 12 inches, depending upon the size of footwear 10. The outlines for at least two textile elements 40 may, therefore, be formed on textile structure 60. Referring to Figure 9, the outline of textile element 40 is depicted on a front portion of textile structure 60, and the outline of another textile element 40 is depicted on a rear portion of textile structure 60. Accordingly, a first textile element 40 and a second textile element 40 may be simultaneously formed in a single textile structure 60. As the diameter of textile element 60 is increased or the width of textile element 40 decreases, however, an even greater number of textile elements 40 may be outlined on textile structure 60.
- [48] Textile structure 60 may be formed with a wide-tube circular knitting machine, as discussed above. The types of stitches that form textile structure 60 may be varied to form an outline of one or more textile elements 40 on textile structure 60. That is, the wide-tube circular knitting machine may be programmed to form different types of stitches in textile structure 60 so as to outline one or more textile elements 40. Each textile element 40 is then removed from textile structure 60 with a die-cutting, laser-cutting, or other conventional cutting operation. Once textile element 40 is removed from textile structure 60, seams 51-54 may be formed and textile element 40 may be incorporated into footwear 10.
- [49] The yarn forming textile element 40 may be generally defined as an assembly having a substantial length and relatively small cross-section that is formed of at least one filament or a plurality of fibers. Fibers have a relatively short length and require spinning or twisting processes to produce a yarn of suitable length for use in an interlooping process.

Common examples of fibers are cotton and wool. Filaments, however, have an indefinite length and may merely be combined with other filaments to produce a yarn suitable for use in an interlooping process. Modern filaments include a plurality of synthetic materials such as rayon, nylon, polyester, and acrylic, with silk being the primary, naturally-occurring exception. Yarn may be formed of a single filament (conventionally referred to as a monofilament yarn) or a plurality of individual filaments. Yarn may also be formed of separate filaments formed of different materials, or the yarn may be formed of filaments that are each formed of two or more different materials. Similar concepts also apply to yarns formed from fibers. Accordingly, yarns may have a variety of configurations within the scope of the present invention that generally conform to the definition provided above.

- [50] In order to provide the stretch and recovery properties to upper 30, and particularly textile element 40, a yarn that incorporates an elastane fiber may be utilized. Elastane fibers are available from E.I. duPont de Nemours Company under the LYCRA trademark. Such fibers may have the configuration of covered LYCRA, wherein the fiber includes a LYCRA core that is surrounded by a nylon sheath. One suitable yarn, for example, includes a 70 denier elastane core that is covered with nylon having a 2 ply, 80 denier, 92 filament structure. Other fibers or filaments exhibiting elastic properties may also be utilized.
- [51] As discussed above, a yarn that incorporates elastane fibers is suitable for textile element 40. A plurality of other yarns, whether elastic or inelastic, are also suitable for textile element 40. The characteristics of the yarn selected for textile element 40 depend primarily upon the materials that form the various filaments and fibers. Cotton, for example, provides a soft hand, natural aesthetics, and biodegradability. Elastane fibers, as discussed above, provide substantial stretch and recoverability. Rayon provides high luster and moisture absorption. Wool also provides high moisture absorption, in addition to insulating properties. Polytetrafluoroethylene coatings may provide a low friction contact between the textile and the skin. Nylon is a durable and abrasion-resistant material with high strength. Finally, polyester is a hydrophobic material that also provides relatively high durability. Accordingly, the materials comprising the yarn may

be selected to impart a variety of physical properties to textile element 40, and the physical properties may include, for example, strength, stretch, support, stiffness, recovery, fit, and form.

[52] Textile element 40 is depicted as having a generally smooth, non-varied stitch configuration. That is, similar stitches are utilized throughout textile element 40 to impart a common texture to the various portions of textile element 40. As discussed above, however, a wide-tube circular knitting machine is generally capable of forming various types of stitches within a single textile structure. The wide-tube circular knitting machine may, therefore, vary the stitches within textile element 40 to produce various patterns, designs, or textures, for example. Various types of stitches may also be formed with other types of knitting machines. With reference to Figure 10, a textile element 40' with the general shape of textile element 40 is depicted as having various areas with different textures. For example, a central area that corresponds with instep region 33 has a first texture 46' that is generally smooth. In addition, textile element 40' includes a second texture 47' that is a plurality of longitudinal ribs. When incorporated into footwear 10, the ribs will extend longitudinally along lateral region 31 and medial region 32, and the ribs may extend into heel region 35. The ribs may be present for aesthetic purposes, or may affect the stretch properties of upper 20, for example. Accordingly, textile element 40' exhibits areas with different textures in a single element of textile material.

[53] Many conventional articles of footwear incorporate uppers with various material elements that each exhibit different properties. For example, a first material element may be smooth, and a second material element may be textured. The first and second material elements are then stitched together to form a portion of the conventional upper. Textile element 40' also exhibits smooth and textured areas. In contrast with the conventional upper, however, first texture 46' and second texture 47' are incorporated into a single, unitary element of textile, rather than two separate elements that are stitched or otherwise joined together.

[54] A textile structure 40'' is depicted in Figure 11 and has the general shape of both textile element 40 and textile element 40'. Textile element 40'' includes areas with three

different textures. A first texture 46'' is generally smooth and has the configuration of various strips that extends laterally across areas corresponding with lateral region 31, medial region 32, and instep region 33. Various portions of textile element 40'' also include a second texture 47'', which is generally rough in comparison with first texture 46''. In addition, the area of textile element 40'' corresponding with instep region 33 includes a third texture 48''. The different textures 46''-48'' are formed by merely varying the type of stitch formed by the wide-tube circular knitting machine at each location of textile element 40''. Textures 46''-48'' may exhibit aesthetic differences, or the differences may be structural. For example, the degree of stretch in areas with textures 46''-48'' may be different, or the wear resistance of the areas may vary depending upon the stitch utilized. The air-permeability of textile element 40'' may also vary in the different areas. Third texture 48'' is formed to include a plurality of apertures that extend through textile element 40''. The apertures may be formed by omitting stitches at specific locations during the wide-tube circular knitting process, and the apertures facilitate the transfer of air between the void within upper 20 and the area outside of upper 20. Accordingly, the various stitches formed in textile element 40'', or one of textile elements 40 or 40', may be utilized to vary the texture, physical properties, or aesthetics of footwear 10 within a single, unitary element of material.

- [55] In addition to varying the stitch types to form textures 46'-47' and 46''-48'', the type of yarn utilized in various areas of textile elements 40' and 40'' may be changed to impart different properties. As discussed above, yarn may be formed from cotton, wool, elastane, rayon, nylon, and polyester, for example. Each of these yarn types may impart differing properties to the areas corresponding with textures 46'-47' and 46''-48''. For example, elastane may be utilized to impart stretch, wool may be utilized for insulation, and nylon may be utilized for durability. Accordingly, different yarn types may be utilized to impart different properties. The types of knitting that may be utilized to form different zones with different properties (e.g., yarn characteristics, textures, etc.) may vary significantly to include the various warp knitting and weft knitting processes discussed earlier, such as tricot, raschel, double needle-bar raschel, circular knitting, and flat knitting, for example.

- [56] An article of footwear 110 is depicted in Figure 12 and includes a sole structure 120 and an upper 130. Upper 130 includes a textile element 140 having the general configuration of textile element 40. As with textile element 40, textile element 140 forms both an exterior surface and an interior surface of upper 130. In addition, upper 130 includes a lace 131 and a plurality of elements 132-135 that also form a portion of the exterior surface. Lace 131 extends through a plurality of apertures formed in textile element 140. The apertures may be formed by omitting stitches at specific locations. Element 132 is positioned in a forefoot area of footwear 110 and may be formed of leather or rubber, for example, to provide additional wear-resistance. Element 133 extends around the ankle opening to reinforce and limit stretch in the area of the ankle opening. Element 134 extends around the heel region to counter movement of the heel and seat the heel above sole structure 120. Furthermore, elements 135 are substantially inextensible strips of material, such as leather or synthetic leather, that limit stretch on the lateral side of footwear 110. Whereas upper 30 was almost exclusively formed by textile element 40, upper 130 also includes lace 131 and elements 132-135. Accordingly, an upper in accordance with the present invention may incorporate a plurality of additional components.
- [57] Another article of footwear 210 is depicted in Figures 13-14 and includes a sole structure 220 and an upper 230. Upper 230 includes a textile element 240 that forms an interior layer. In addition, upper 230 includes an intermediate layer 250 and an exterior layer 260. As discussed in the Background of the Invention section above, the upper of a conventional article of footwear may be formed from multiple material layers that include an exterior layer, an intermediate layer, and an interior layer. The materials forming the exterior layer of the upper may be selected based upon the properties of wear-resistance, flexibility, and air-permeability, for example. The intermediate layer of the upper may be formed from a lightweight polymer foam material that provides cushioning and protects the foot from objects that may contact the upper. Similarly, an interior layer of the upper may be formed of a moisture-wicking textile that removes perspiration from the area immediately surrounding the foot.

- [58] Upper 230 has a configuration that is similar to the configuration of the conventional upper in that various material layers are utilized. In contrast with the conventional upper, however, the interior layer is formed of textile element 240, which is manufactured through the process discussed above. That is, textile element 240 is a single element of textile that forms the interior layer of upper 230. A benefit to utilizing textile element 240 for the interior layer is that textile element 240 includes few seams that may contact the foot. In addition, the stitches utilized at various locations of textile element 240 may modify the texture of the interior surface of upper 230, thereby limiting the degree of slip that occurs between the foot and upper 230 or enhancing the air-permeability of upper 230 in specific locations.
- [59] Various warp knitting or weft knitting processes may be utilized to form textile element 40, or the various other textile elements discussed above. An advantage of this process is that various stitches may be incorporated into specific locations of textile element 40 to modify the physical properties or aesthetics of textile element 40. Whereas a conventional upper includes various elements that stitched or adhesively joined, textile element 40 is a single, unitary element of material. From the perspective of manufacturing, utilizing multiple materials to impart different properties to an article of footwear may be an inefficient practice. By forming textile element 40 to be a single, unitary element of material, however, efficiency is increased in that upper 20 may include a single textile element, rather than numerous joined elements.
- [60] A variety of knitting processes may be utilized to form textile element 40, as discussed above. As a specific example, a jacquard double needle-bar raschel knitting machine may be utilized to form a flat textile structure, and may also be utilized to form the textile structure to have the configuration of a spacer mesh textile. Unlike textile structure 60, which exhibits a generally cylindrical configuration, the textile structure formed with the jacquard double needle-bar raschel knitting machine will have a flat configuration. Like textile structure 60, however, an outline of a textile element may be imparted to the textile structure formed with the jacquard double needle-bar raschel knitting machine. That is, differences in the stitches within the textile structure may form an outline with the shape and proportions of the intended textile element. Accordingly, the textile

element may be removed from the textile structure and incorporated into footwear 10. In addition, the jacquard double needle-bar raschel knitting machine may be utilized to impart various textures, different properties, or different yarn types to the textile element. Similarly, other types of knitting, such as a flat knitting, may be utilized within the scope of the present invention to impart various textures, different properties, or different yarn types to the textile element.

- [61] The present invention is disclosed above and in the accompanying drawings with reference to a variety of embodiments. The purpose served by the disclosure, however, is to provide an example of the various features and concepts related to the invention, not to limit the scope of the invention. One skilled in the relevant art will recognize that numerous variations and modifications may be made to the embodiments described above without departing from the scope of the present invention, as defined by the appended claims.

CLAIMS

We claim:

1. A method of manufacturing an article of footwear, the method comprising:
simultaneously knitting a textile element with a surrounding textile structure, the knitted textile element having at least one knitted texture that differs from a knitted texture in the surrounding knitted textile structure;
removing the knitted textile element from the surrounding knitted textile structure;
incorporating the knitted textile element into the article of footwear.
2. The method of claim 1, wherein simultaneously knitting a textile element with a surrounding textile structure includes simultaneously knitting a plurality of textile elements.
3. The method of claim 1, wherein simultaneously knitting a textile element with a surrounding textile includes knitting an outline of the knitted textile element.
4. The method of claim 3, wherein the outline has the shape and proportion of the knitted textile element.
5. The method of claim 1, wherein the knitted textile element has a substantially planar configuration upon removal from the surrounding knitted textile structure.
6. The method of claim 1, wherein the knitted textile element includes longitudinal edges formed when the knitted textile element is removed from the surrounding knitted textile structure.
7. The method of claim 6, wherein the longitudinal edges are joined together to define at least a portion of a void for receiving a foot.
8. The method of claim 1, wherein the knitted textile element has a plurality of different knitted textures formed by varying at least one of the stitch type and the yarn type.

9. The method of claim 1, wherein simultaneously knitting a textile element with a surrounding textile structure includes utilizing a wide-tube circular knitting machine.

10. The method of claim 1, wherein simultaneously knitting a textile element with a surrounding textile structure includes utilizing a jacquard double needle-bar raschel knitting machine.

11. The method of claim 1, wherein simultaneously knitting a textile element with a surrounding textile structure includes forming the knitted textile element to include a first area and a second area with a unitary construction, the first area being formed of a first stitch configuration, and the second area being formed of a second stitch configuration that is different from the first stitch configuration to impart varying textures to a surface of the knitted textile element.

12. The method of claim 1, wherein incorporating the knitted textile element into the article of footwear includes securing edges of the knitted textile element to form a seam that extends along a lower region of an upper and securing the upper to a sole structure.

13. A method of manufacturing an article of footwear, the method comprising:

knitting a first textile element and a second textile element simultaneously with knitting a surrounding textile structure, the first knitted textile element located within a first portion of the knitted textile structure, the second knitted textile element located within a second portion of the knitted textile structure,

varying at least one of the types of stitches or the types of yarns in the knitted textile structure to impart a texture to the first and second knitted textile elements different from a texture of the knitted textile structure extending between the first and second portions;

removing the first and second knitted textile elements from the knitted textile structure;

incorporating at least one of the first and second knitted textile elements into the article of footwear.

14. The method of claim 13, wherein knitting a first textile knitted element simultaneously with a surrounding knitted textile structure includes knitting an outline of the first knitted textile element.
15. The method of claim 13, wherein the first and second textile knitted elements have substantially planar configurations upon removal from the surrounding knitted textile structure.
16. The method of claim 13, wherein the first knitted textile element includes longitudinal edges formed when the first knitted textile element is removed from the surrounding knitted textile structure.
17. The method of claim 16, wherein the longitudinal edges are joined together to define at least a portion of a void for receiving a foot.
18. The method of claim 16, wherein incorporating the first knitted textile element into the article of footwear includes securing the longitudinal edges of the first knitted textile element to form a seam that extends along a lower region of an upper.
19. The method of claim 13, wherein knitting the first and second knitted textile elements simultaneously with a surrounding knitted textile structure includes utilizing a wide-tube circular knitting machine.
20. The method of claim 13, wherein knitting the first and second textile knitted elements simultaneously with a surrounding knitted textile structure includes utilizing a jacquard double needle-bar raschel knitting machine.
21. The method of claim 13, wherein knitting the first knitted textile element simultaneously with a surrounding knitted textile structure includes forming the first knitted textile element to include a first area and a second area with a unitary construction, the first area being formed of a first stitch configuration, and the second area being formed of a second stitch configuration that is different from the first stitch configuration to impart varying textures to a surface of the first knitted textile element.

22. An article of footwear comprising:

an upper including a textile element simultaneously knitted with a surrounding textile structure, the knitted textile element having at least one knitted texture that differs from a knitted texture in the surrounding knitted textile structure, the knitted textile element being removed from the surrounding knitted textile structure; and

the upper secured to a sole structure.

AN ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER**ABSTRACT OF THE DISCLOSURE**

An article of footwear and a method of manufacturing the article of footwear are disclosed. The footwear may include an upper and a sole structure. The upper incorporates a textile element with edges that are joined together to define at least a portion of a void for receiving a foot. The textile element may also have a first area and a second area with a unitary construction. The first area is formed of a first stitch configuration, and the second area is formed of a second stitch configuration that is different from the first stitch configuration to impart varying textures to a surface of the textile element. Various warp knitting or weft knitting processes may be utilized to form the textile element.

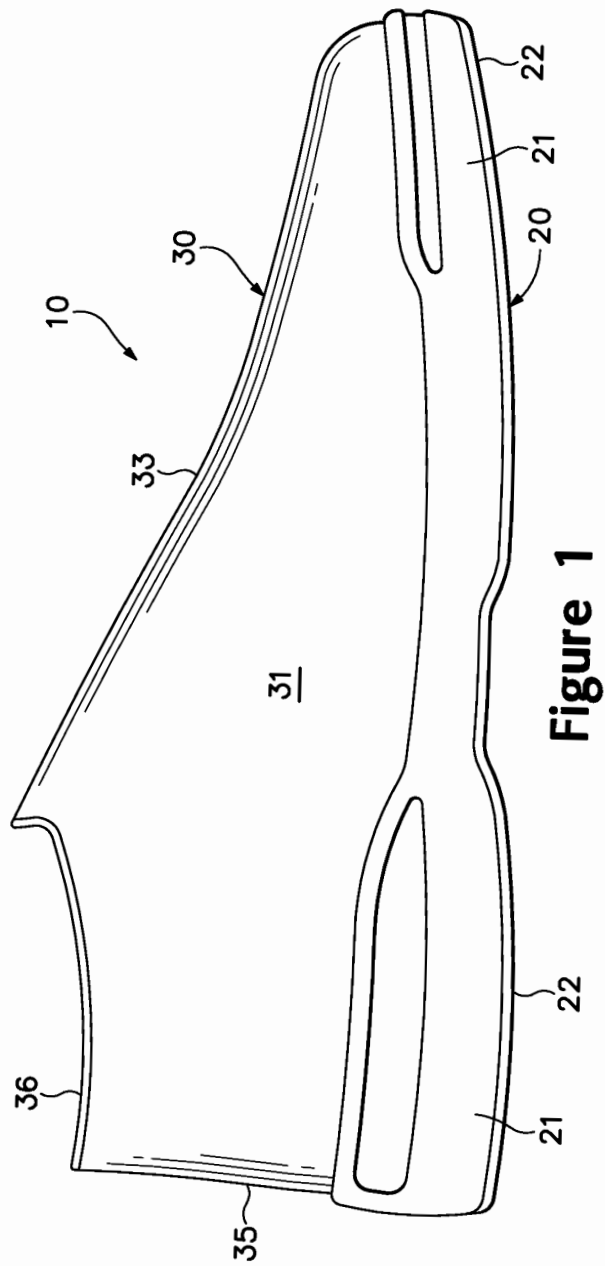


Figure 1

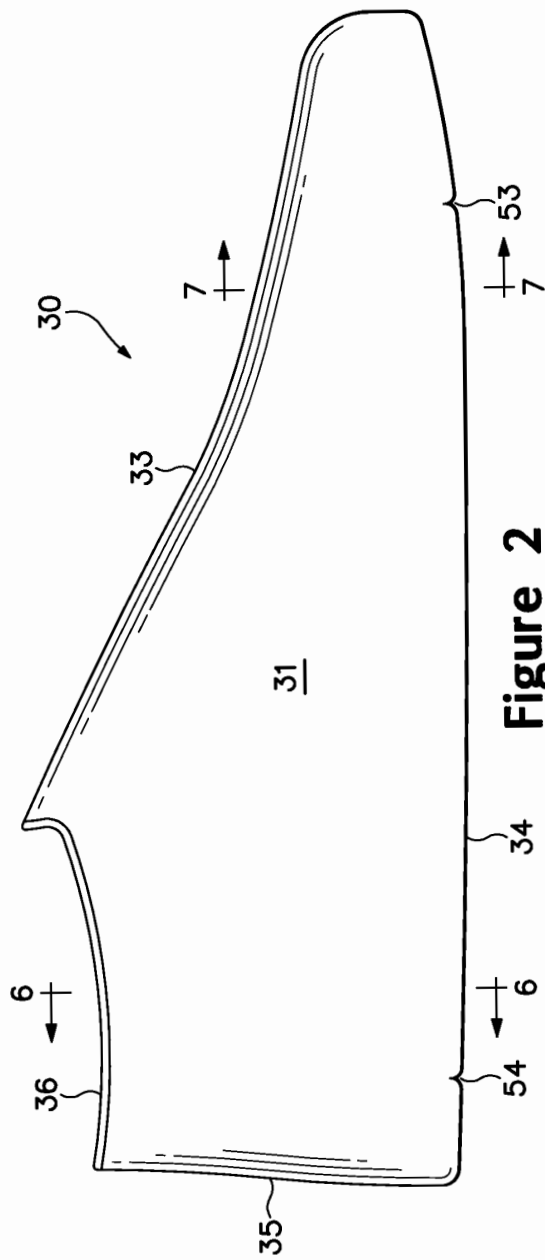


Figure 2

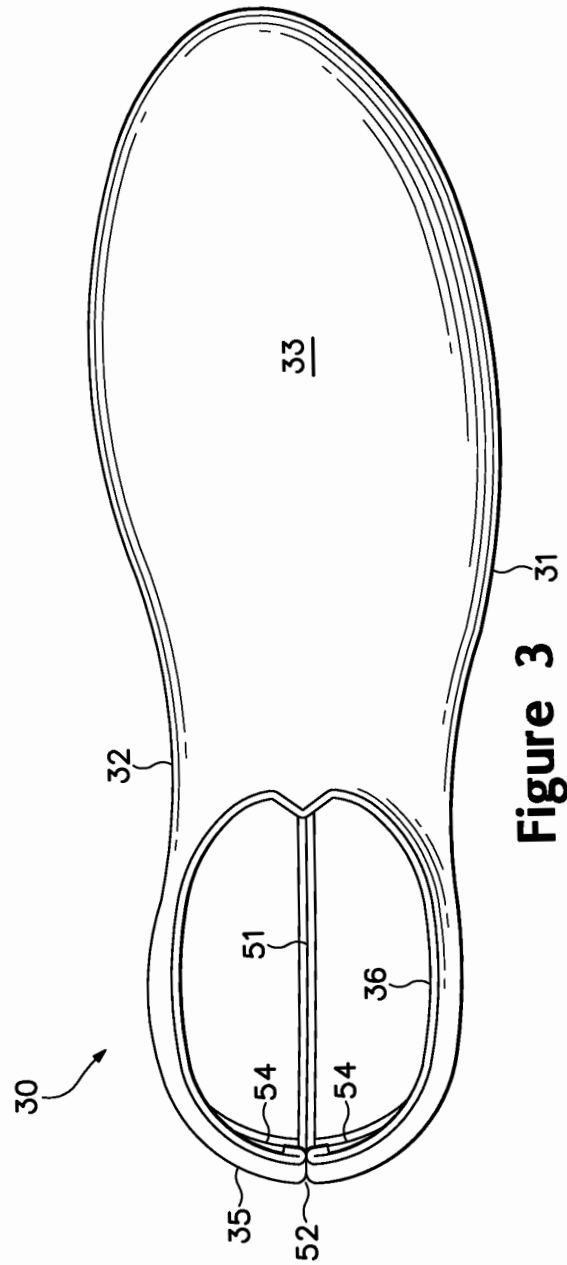
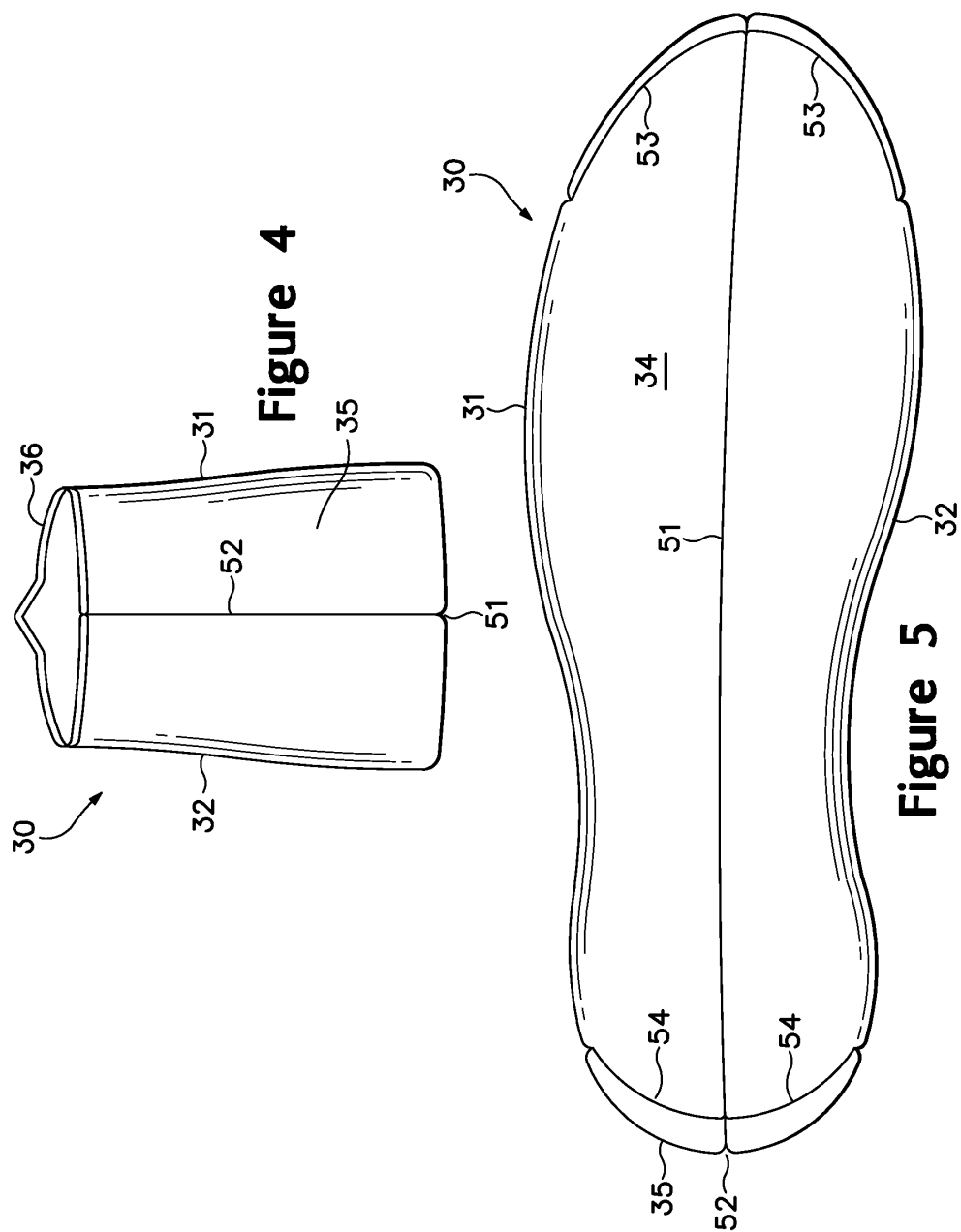


Figure 3



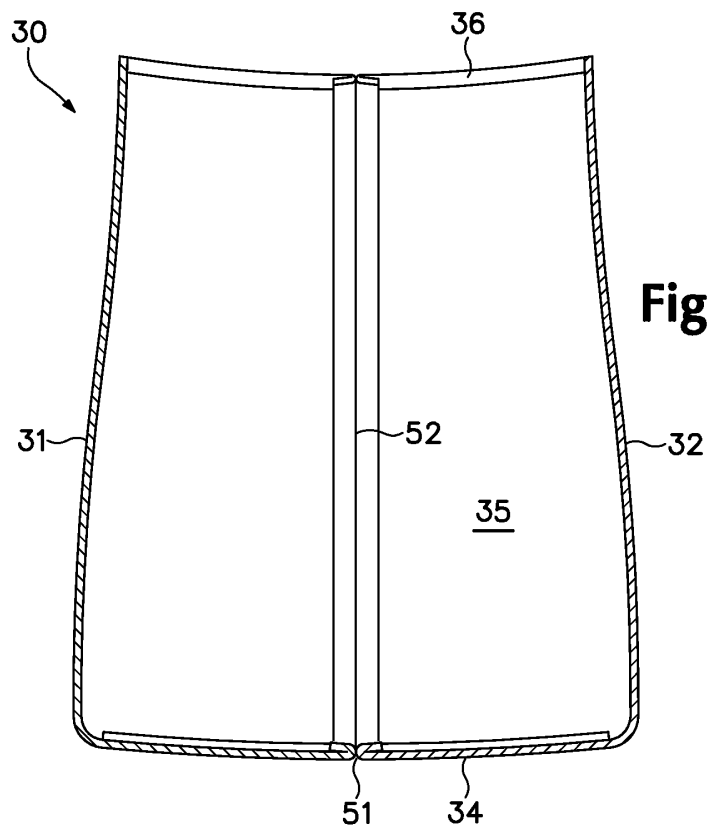


Figure 6

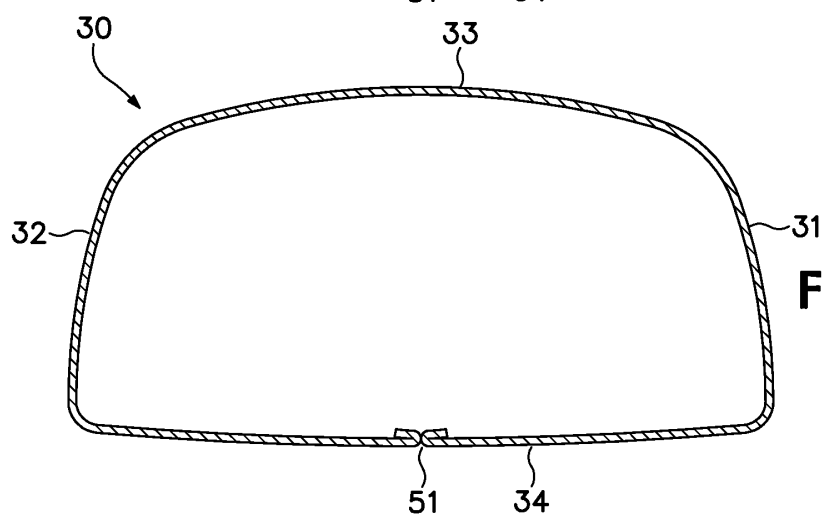
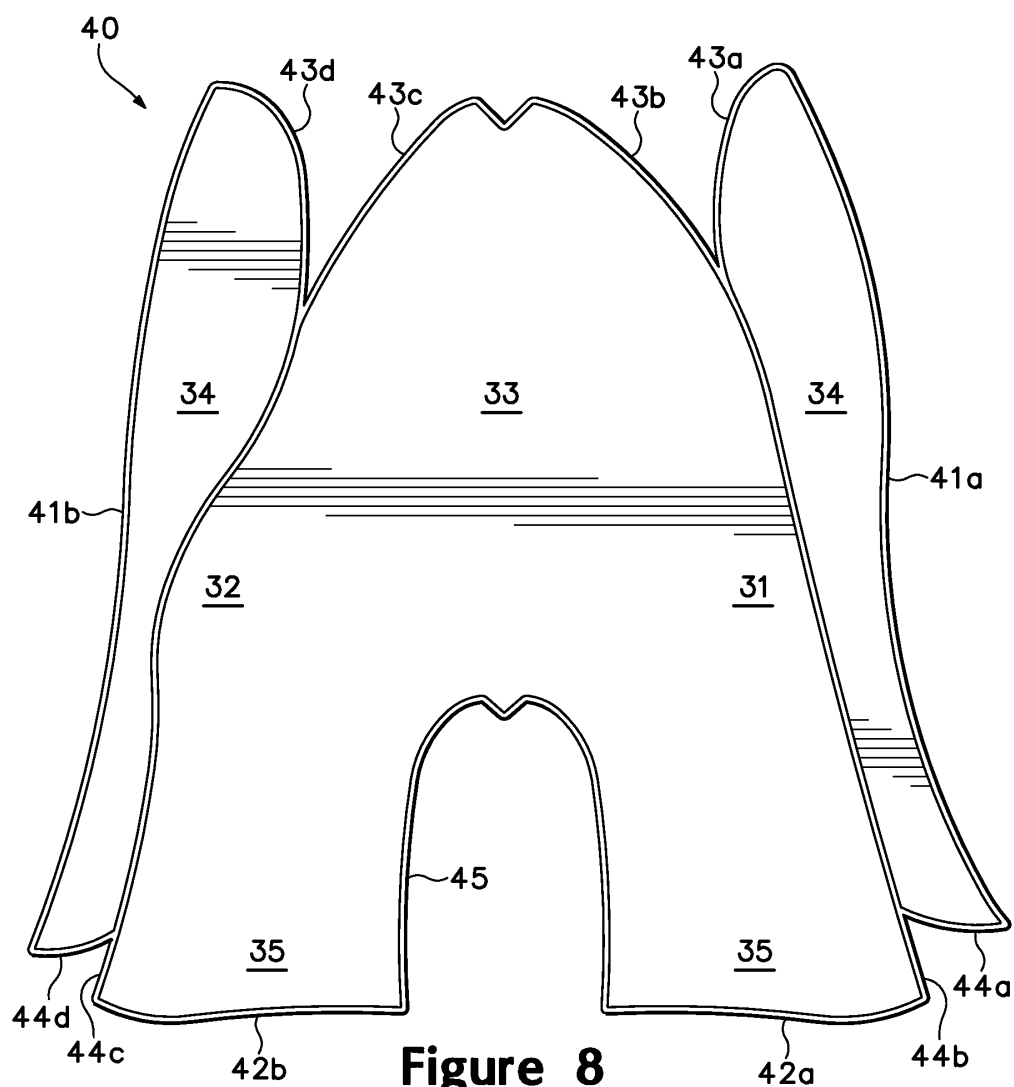


Figure 7

**Figure 8**

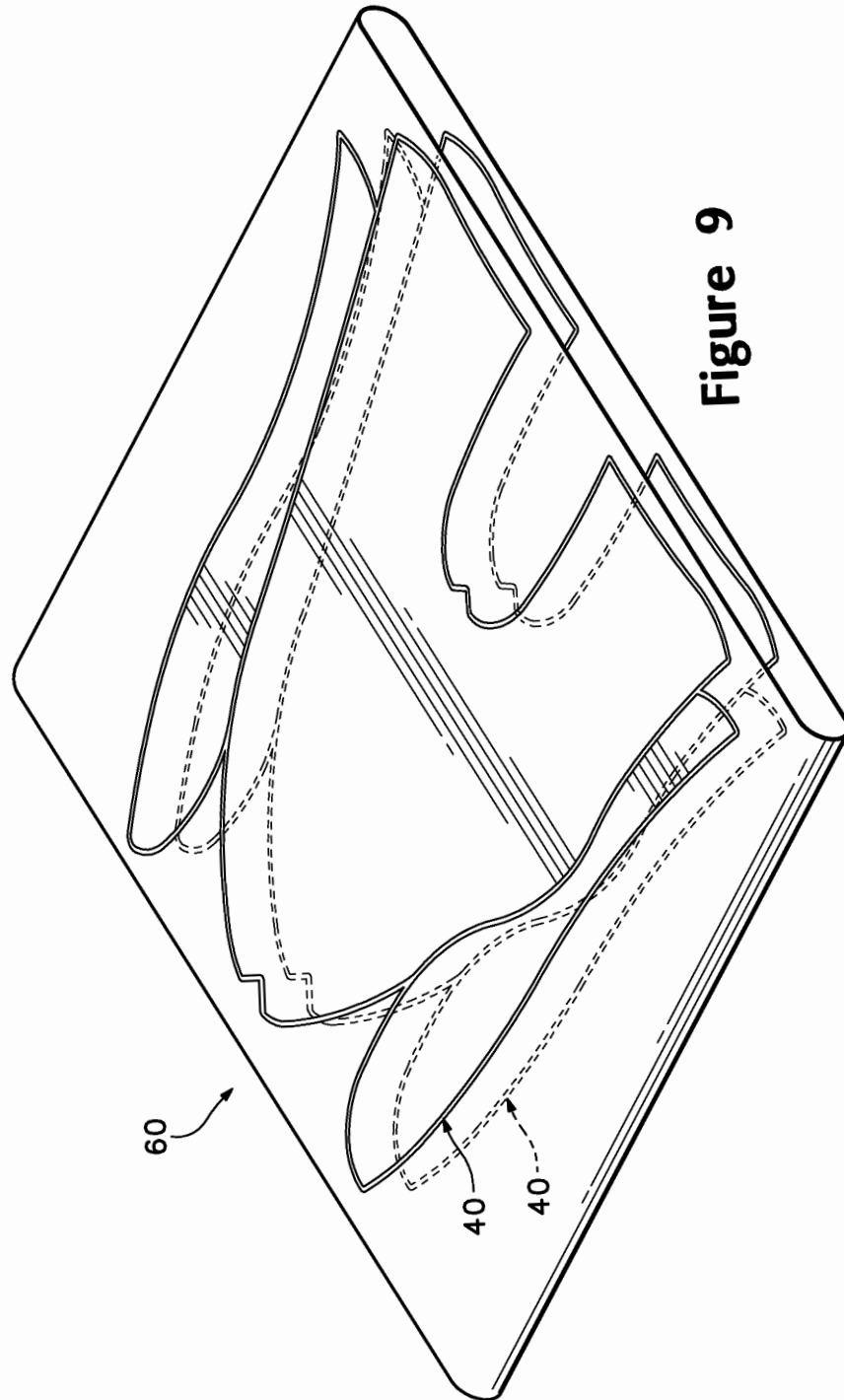


Figure 9

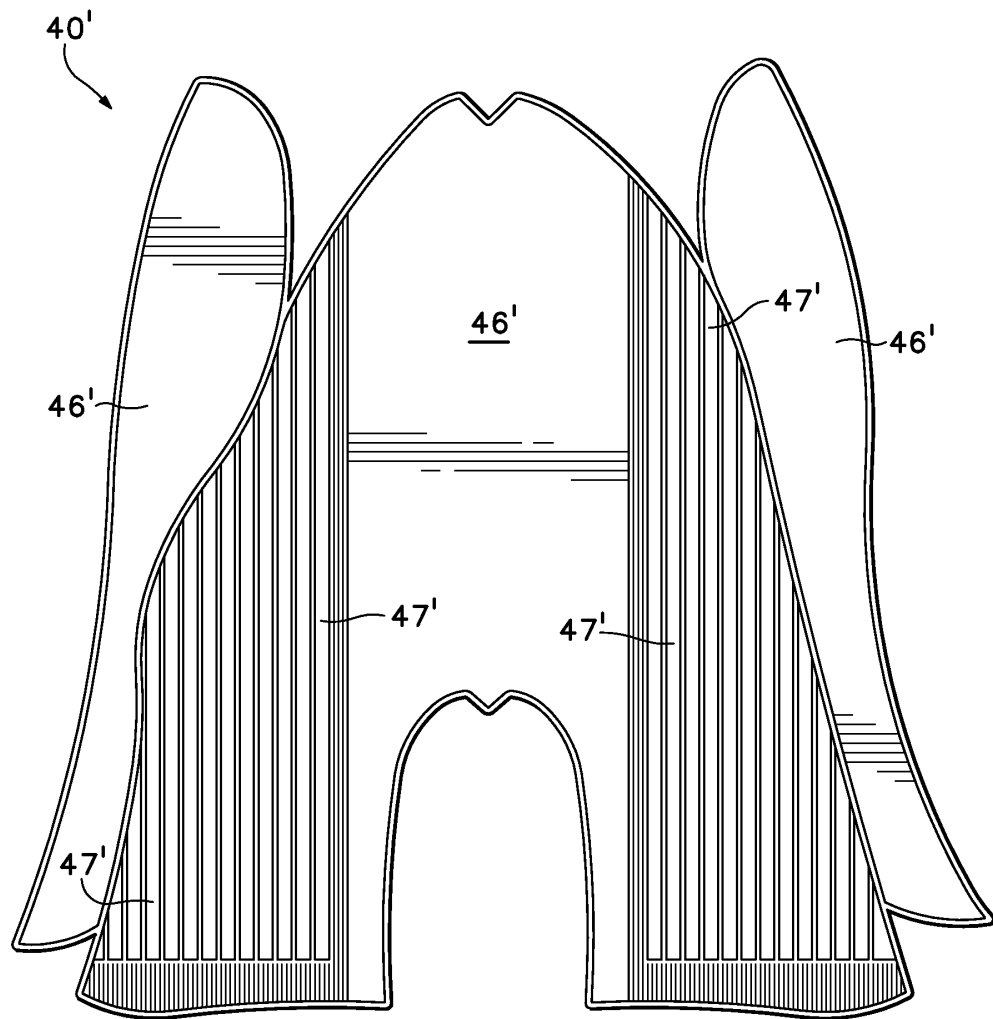


Figure 10

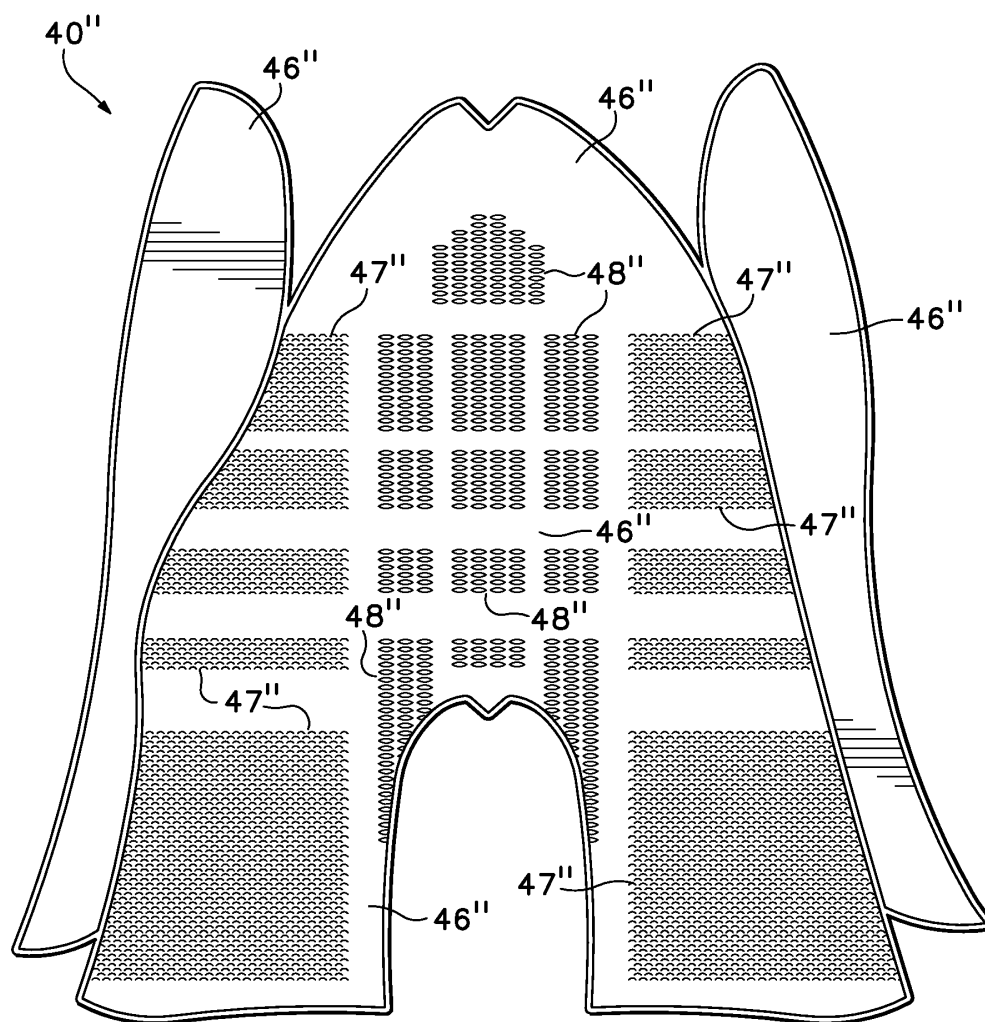
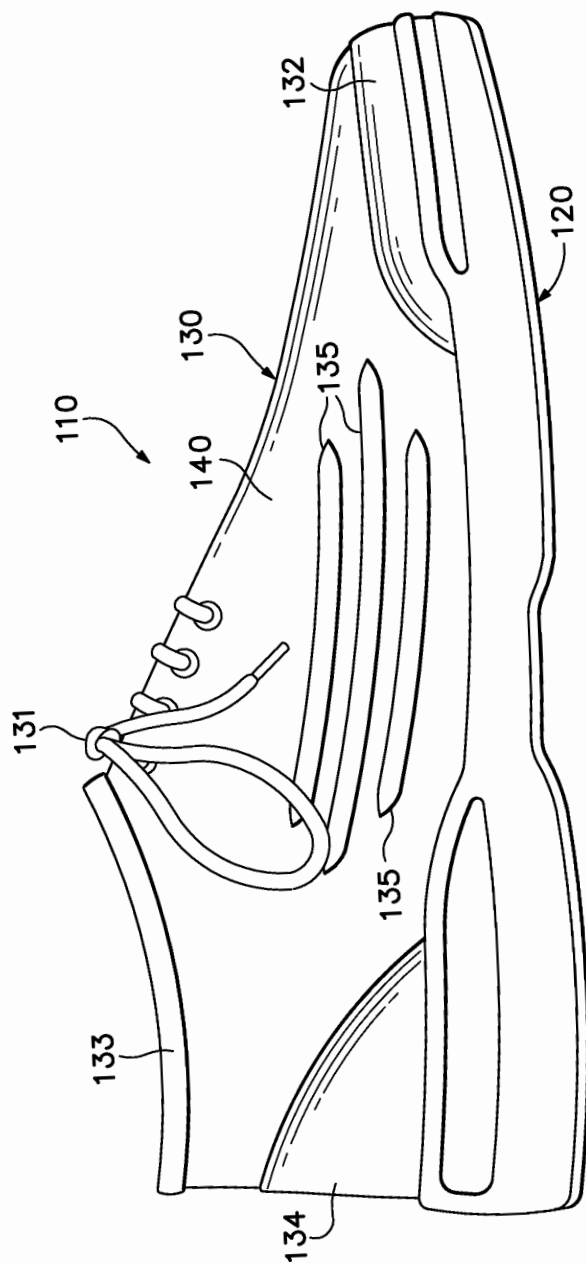


Figure 11

**Figure 12**

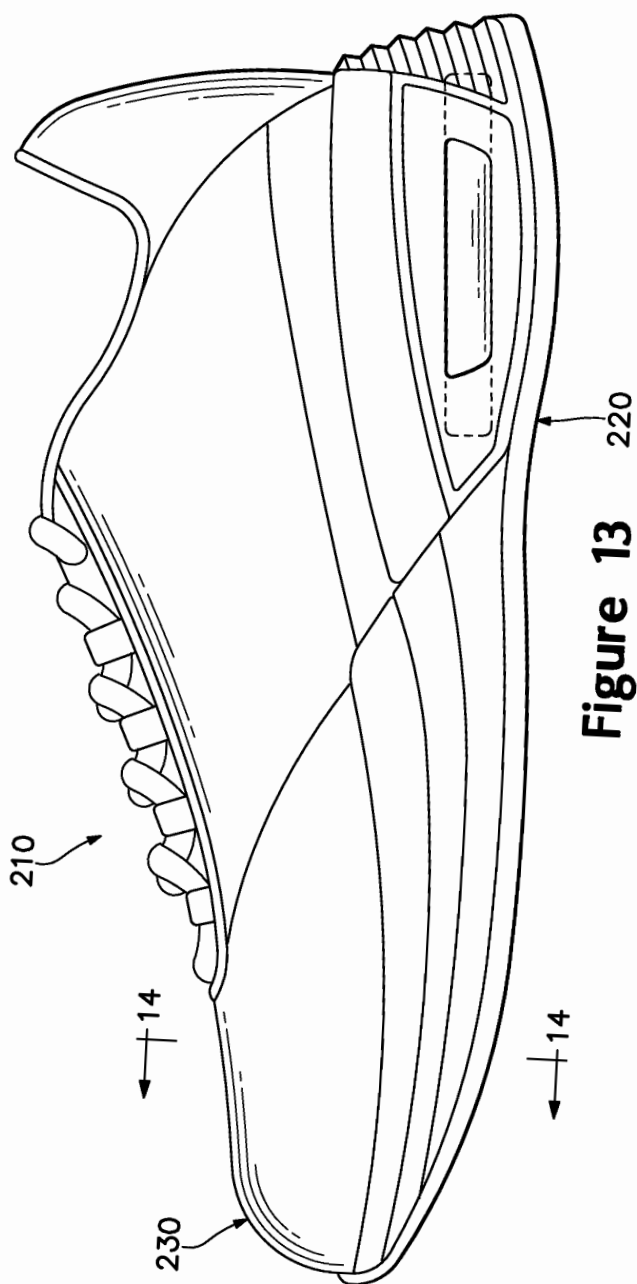


Figure 13

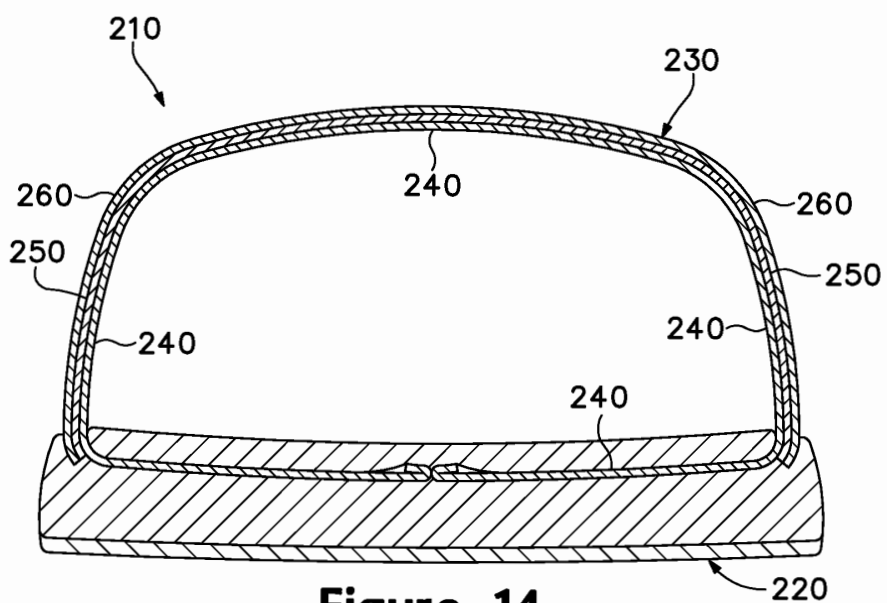


Figure 14