

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NIKE, INC.,

Petitioner

v.

SHERRYWEAR LLC,

Patent Owner.

Case No. IPR2024-01126

U.S. Patent No. 10,219,550

PETITION FOR *INTER PARTES* REVIEW

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37 C.F.R. § 42.103	6
37 C.F.R. § 42.104	6, 7

EXHIBIT LIST PURSUANT TO 37 C.F.R § 42.63(E)

Exhibit No.	Description¹
NIKE-1001	Declaration of Joyce Baran
NIKE-1002	Resume of Joyce Baran
NIKE-1003	Certified U.S. Patent No. 9,295,288 (filed Nov. 18, 2013)
NIKE-1004	Certified Prosecution File History for U.S. Patent No. 9,295,288
NIKE-1005	RESERVED
NIKE-1006	Certified Prosecution File History for U.S. Patent No. 9,808,036
NIKE-1007	Certified U.S. Patent No. 10,219,550 (filed Aug. 17, 2017)
NIKE-1008	Certified Prosecution File History for U.S. Patent No. 10,219,550
NIKE-1009	RESERVED
NIKE-1010	RESERVED
NIKE-1011	RESERVED
NIKE-1012	RESERVED
NIKE-1013	RESERVED
NIKE-1014	RESERVED
NIKE-1015	RESERVED

¹ Descriptions are for convenience only and are not admissions or evidence.

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Exhibit No.	Description¹
NIKE-1016	RESERVED
NIKE-1017	RESERVED
NIKE-1018	RESERVED
NIKE-1019	U.S. Patent No. 3,518,998 (filed Feb. 8, 1968) (“Barg”)
NIKE-1020	U.S. Patent No. 2,920,628 (filed Oct. 7, 1958) (“York”)
NIKE-1021	U.S. Patent Application Publication No. 2014/0051331 (filed Aug. 20, 2012) (“Handras”)
NIKE-1022	U.S. Patent No. 7,753,759 (filed Sept. 29, 2008) (“Pintor”)
NIKE-1023	U.S. Patent Publication No. 2005/0037687(A1) (filed Aug. 12, 2003) (“Newman”)
NIKE-1024	U.S. Design Patent No. D597,279 (filed Oct. 26, 2008) (“Spillman”)
NIKE-1025	U.S. Design Patent No. D529,259 (filed Jan. 13, 2006) (“Faagau”)
NIKE-1026	EP211124(A1) (filed July 22, 1985) (“Vidai”) (Original)
NIKE-1027	EP211124(A1) (filed July 22, 1985) (“Vidai”) (Official Translation)
NIKE-1028	U.S. Patent Application Publication No. 2007/0298684 (filed June 21, 2006) (“Spagna”)
NIKE-1029	U.S. Design Patent No. 641,954 (filed Aug. 23, 2010) (“Glass”)
NIKE-1030	U.S. Patent Application Publication No. 2011/0223832 (filed Mar. 4, 2011) (“Rose”)

Exhibit No.	Description ¹
NIKE-1031	RESERVED
NIKE-1032	RESERVED
NIKE-1033	RESERVED
NIKE-1034	<i>Early Brassiere</i> , Google Arts & Culture, https://artsandculture.google.com/asset/early-brassiere/-gGoCcJIsFqA1g?hl=en .
NIKE-1035	Rebecca Unsworth, <i>Hands Deep in History: Pockets in Men and Women's Dress in Western Europe, c. 1480-1630</i> , THE COSTUME SOCIETY (Edinburgh Univ. Press 2017), https://www.euppublishing.com/doi/epub/10.3366/cost.2017.0022 .
NIKE-1036	Derek Gentile, <i>A comfortable convenience: County woman creates, patents the 'pocketbra'</i> , THE BERKSHIRE EAGLE (May 12, 2014), https://www.berkshireeagle.com/business/a-comfortable-convenience-county-woman-creates-patents-the-pocketbra/article_039dd3a3-29d7-58a7-aa5a-fd5dc171479f.html .
NIKE-1037	Kit-lun Yick et al., <i>Study of thermal–mechanical properties of polyurethane foam and the three-dimensional shape of molded bra cups</i> , 210 Journal of Materials Processing Technology at 116–21 (Aug. 2009)
NIKE-1038	RESERVED
NIKE-1039	RESERVED
NIKE-1040	RESERVED
NIKE-1041	RESERVED

Exhibit No.	Description¹
NIKE-1042	RESERVED
NIKE-1043	RESERVED
NIKE-1044	RESERVED
NIKE-1045	RESERVED
NIKE-1046	MA Litigation Docket No. 31 (Scheduling Order)
NIKE-1047	LegalMetric District Report Massachusetts District Court in Patent Cases January 2019 to January 2024
NIKE-1048	LegalMetric Individual Judge Report on Judge Leo Sorokin in Patent Cases June 2014 to April 2023
NIKE-1049	Appendix A to SherryWear’s Answers and Objections to Nike’s First Set of Interrogatories (Response to Interrogatory No. 5) (Mar. 29, 2024).
NIKE-1050	RESERVED
NIKE-1051	RESERVED
NIKE-1052	RESERVED

LISTING OF THE CHALLENGED CLAIMS

Limitation Identifier	Text of Claim
Independent Claim 1	
[1A]	“A pocket bra comprising:”
[1B]	“a strap assembly comprising a chest strap;”
[1C]	“and comprising left and right cups, each cup being an area to receive a breast of a wearer and having inside and outside surfaces,”
[1D]	“the strap assembly being attached to the cups whereby the strap assembly connects the cups to the wearer,”
[1E]	“each cup having upper, lower, interior body facing, and opposite exterior edges;”
[1F]	“a patch forming a pocket operatively associated with at least one of the left and right cups,”
[1G]	“the patch having an upper edge, a lower edge, and an exterior edge, the patch having inside and outside surfaces;”
[1H]	“the lower edge of the patch coupled to the bra adjacent to a lower edge of the at least one of the left and right cups, and the exterior edge of the patch coupled adjacent to the exterior edge of the at least one of the left and right cups, a pocket opening formed along the upper edge of the patch being unconnected to the at least one of the left and right cups;”
[1I]	“the pocket opening capable of repeated receiving and removal of an item when being worn by the wearer;”
[1J]	"and wherein the upper edge of the patch crosses over a surface of the cup to form the opening, the upper edge crossing such that the opening faces the interior edge of the at least one of the left and right cup to which it is attached."
Dependent Claim 2	
	“The pocket bra of claim 1”
[2A]	“wherein the patch is operatively associated with only one of the left and right cups.”
Dependent Claim 3	

Limitation Identifier	Text of Claim
	“The pocket bra of claim 1”
[3A]	“further comprising a non-padding item positioned in the pocket.”
Dependent Claim 4	
	“The pocket bra of claim 1”
[4A]	“wherein the lower edge of the patch is coupled adjacent to the bra by a stitching.”
Dependent Claim 5	
	“The pocket bra of claim 1”
[5A]	“wherein the exterior edge of the patch is coupled to the exterior edge of the at least one of the left and right cups by a stitching.”
Dependent Claim 6	
	“The pocket bra of claim 2”
[6A]	“further comprising a second patch forming a second pocket operatively associated with the other of the left and right cups.”
Dependent Claim 7	
	“The pocket bra of claim 1”
[7A]	“wherein the patch lower and exterior edges are aligned with the lower and exterior edges of the at least one of the left and right cups by a stitching, and wherein the stitching is along the lower and exterior edges of the patch.”
Independent Claim 8	
[8A]	“A pocket bra comprising:”
[8B]	“a strap assembly comprising a chest strap;”
[8C]	“and comprising left and right cups, each cup being an area to receive a breast of a wearer and having inside and outside surfaces,”
[8D]	“the strap assembly being attached to the cups whereby the strap assembly connects the cups to the wearer,”
[8E]	“each cup having upper, lower, interior body facing, and opposite exterior edges;”
[8F]	“a patch forming a pocket operatively associated with at least one of the left and right cups,”

Limitation Identifier	Text of Claim
[8G]	“the patch having an upper edge, a lower edge, and an exterior edge, the patch having inside and outside surfaces;”
[8H]	“the lower edge of the patch coupled to the bra adjacent to a lower edge of the at least one of the left and right cups, and the exterior edge of the patch coupled adjacent to the exterior edge of the at least one of the left and right cups, a pocket opening formed along the upper edge of the patch being unconnected to the at least one of the left and right cups;”
[8I]	“the pocket opening capable of repeated receiving and removal of an item when being worn by the wearer;”
[8J]	"and wherein the upper edge of the patch crosses over a surface of the cup to form the opening, the upper edge crossing such that the opening faces the interior edge of the at least one of the left and right cup to which it is attached."
Dependent Claim 9	
	“The pocket bra of claim 8”
[9A]	“wherein the patch is operatively associated with only one of the left and right cups.”
Dependent Claim 10	
	“The pocket bra of claim 8”
[10A]	“further comprising a non-padding item positioned in the pocket.”
Dependent Claim 11	
	“The pocket bra of claim 8”
[11A]	“wherein the lower edge of the patch is coupled adjacent to the bra by a stitching.”
Dependent Claim 12	
	“The pocket bra of claim 8”
[12A]	“wherein the exterior edge of the patch is coupled adjacent to the exterior edge of the at least one of the left and right cups by a stitching.”
Dependent Claim 13	
	“The pocket bra of claim 9”

Limitation Identifier	Text of Claim
[13A]	“further comprising a second patch forming a second pocket operatively associated with the other of the left and right cups.”
Dependent Claim 14	
	“The pocket bra of claim 8”
[14A]	“wherein the patch lower and exterior edges are aligned with the lower and exterior edges of the at least one of the left and right cups by a stitching, and wherein the stitching is along the lower and exterior edges of the patch.”

I. INTRODUCTION

Nike, Inc. (“Petitioner”) respectfully requests *inter partes* review (“IPR”) of claims 1–14 of U.S. Patent No. 10,219,550 (the “’550 Patent”) (NIKE-1007).

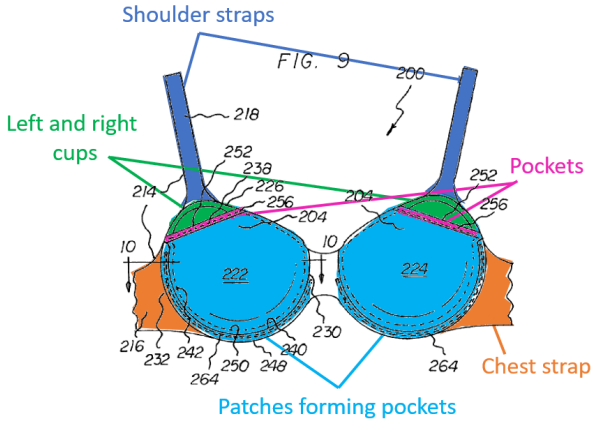
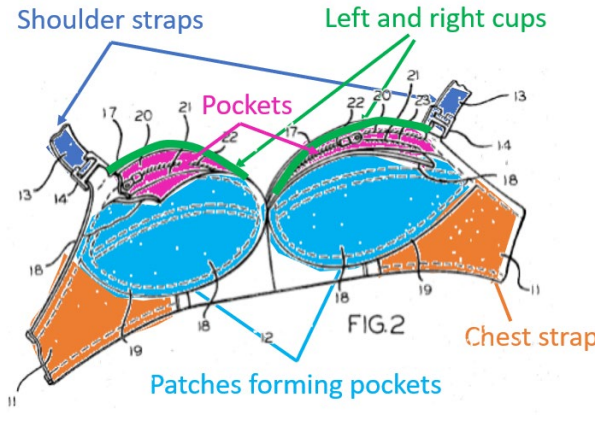
The ’550 claims a conventional bra with pockets on the cups for the storage of items. This is not novel: Bras and pockets have been known for *centuries*. For example, a bra excavated from a castle in Austria was estimated to date back to the late 14th to second half of the 15th century:



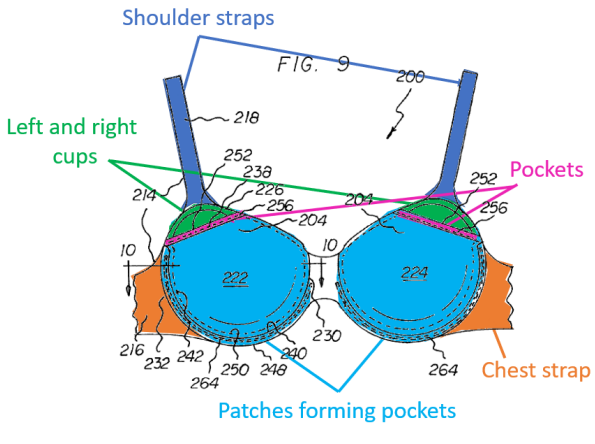
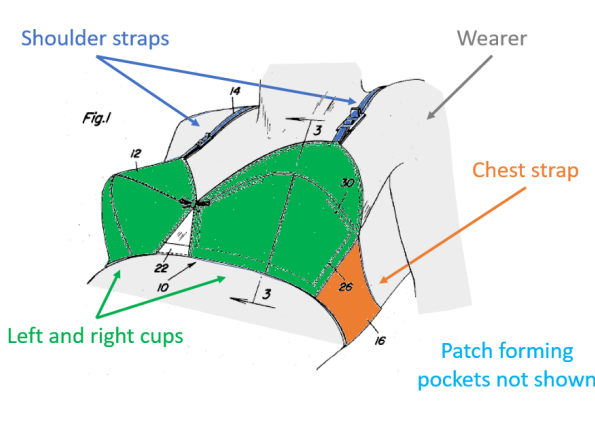
NIKE-1034.

Pockets and their use in clothing have similarly been long understood. Pockets on pants, shirts, jackets, and other clothing have been a universal feature of fashion for over a century. *See* NIKE-1035 at 148; NIKE-1001 ¶¶109–10. This includes the combination of bras with pockets: for decades, companies and individuals worldwide have designed and created bras with pockets so that women may conveniently carry items. NIKE-1001 ¶109. Indeed, U.S. Pat. Nos. 3,518,988 (“Barg”) (filed 1968) and 2,920,628 (“York”) (filed 1958) disclosed bras with pockets for that purpose decades before the ’550. NIKE-1019; NIKE-1020; *see also* NIKE-1022 (Pintor) (filed 2008) (bra with pocket on the breast cup); NIKE-1021 (Handras) (filed 2012) (bra with pockets on breast cups and chest strap); NIKE-1025 (Faagau) (filed 2006) (bra with pockets on the breast cups); NIKE-1023 (Newman) (filed 2003) (same); NIKE-1030 (Rose) (filed 2011) (same); NIKE-1024 (Spillman) (filed 2008) (same). Even PO agreed that bras with pockets were “pretty obvious” at the time of her alleged invention. NIKE-1036.

For example, Barg, filed in 1968, discloses a bra with a pocket on each breast cup and renders the ’550 obvious:

'550	Barg
 FIG. 9 Shoulder straps Left and right cups Pockets Chest strap Patches forming pockets	 FIG. 2 Shoulder straps Left and right cups Pockets Chest strap Patches forming pockets

NIKE-1003 at Fig. 9; NIKE-1019 at Fig. 2.² York and Handras similarly render the '550 obvious.

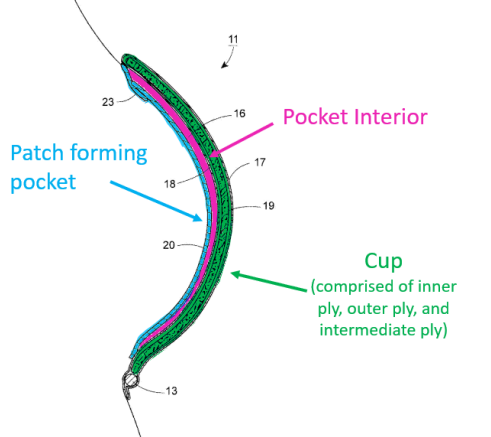
'550	York
 FIG. 9 Shoulder straps Left and right cups Pockets Chest strap Patches forming pockets	 Fig. 1 Shoulder straps Wearer Chest strap Left and right cups Patch forming pockets not shown

² All annotations are added, unless otherwise noted.

'550	York
	Fig 2 Shoulder straps Cup Pocket Patch forming pockets Chest strap Fig 3 Cup Pocket Patch forming pockets

NIKE-1003 at Fig. 9; NIKE-1020 at Figs. 1–3.

'550	Handras
FIG. 9 Shoulder straps Left and right cups Pockets Chest strap Patches forming pockets	

'550	Handras
	 The diagram illustrates a cross-section of a shoe sole. A curved patch, labeled 'Patch forming pocket' with a blue arrow, is positioned within the sole. This patch is associated with a 'Pocket Interior' (pink label) and a 'Cup' (green label). The cup is described as being 'comprised of inner ply, outer ply, and intermediate ply'. Various components are numbered: 11 (top edge), 13 (bottom edge), 16 (inner surface of the patch), 17 (outer surface of the patch), 18 (intermediate ply), 19 (outer ply), 20 (inner ply), and 23 (top edge of the sole).

NIKE-1003 at Fig. 9; NIKE-1021 at Figs. 1–2, 6.

II. MANDATORY NOTICES

Petitioner provides the following mandatory notices under 37 C.F.R. § 42.8.

A. 37 C.F.R. § 42.8(b)(1): Real Parties-in-Interest

The real party-in-interest is Nike, Inc.

B. 37 C.F.R. § 42.8(b)(2): Related Matters

The '550 is at issue in the following case:

- *SherryWear, LLC, v. Nike, Inc.*, No. 1:23-cv-11599 (D. Mass), filed July 17, 2023 (“the MA Litigation”).

C. 37 C.F.R. § 42.8(b)(3) & (4): Lead and Back-Up Counsel and Service Information

Lead Counsel	Back-Up Counsel
W. Todd Baker Reg. No. 45,265 todd.baker@kirkland.com <u>Postal and Hand-Delivery Address:</u>	Noah S. Frank Reg. No. 67,279 noah.frank@kirkland.com <u>Postal and Hand-Delivery Address:</u>

KIRKLAND & ELLIS LLP 1301 Pennsylvania Avenue, N.W. Washington, D.C. 20004 Telephone: (202) 389-5000 Facsimile: (202) 389-5200	KIRKLAND & ELLIS LLP 200 Clarendon Street Boston, MA 02116 Telephone: (617) 385-7500 Facsimile: (617) 385-7501
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Petitioner concurrently submits a Power of Attorney pursuant to 37 C.F.R. § 42.10(b) and consents to electronic service by email directed to the email address: Nike-SherryWear@kirkland.com.

III. PAYMENT OF FEES PURSUANT TO 37 C.F.R. § 42.103

Petitioner requests IPR of 14 claims. Any fees in connection with this Petition may be charged to Deposit Account No. 506092.

IV. CERTIFICATION OF STANDING UNDER 37 C.F.R. § 42.104

Petitioner certifies that the '550 Patent is available for IPR and that Petitioner is not barred or estopped from requesting IPR of the '550 on the grounds identified herein. This Petition is being filed within one year of service of a complaint against Petitioner in the MA Litigation and more than nine months after the '550 Patent's issuance.

V. OVERVIEW OF CHALLENGE AND RELIEF REQUESTED

Petitioner requests that all Challenged Claims be cancelled based on the grounds set forth below (37 C.F.R. §§ 42.104(b)(1)–(2)):

Claims	Unpatentable pursuant to 35 U.S.C. § 103 over Barg in view of Pintor
1–14	Unpatentable pursuant to 35 U.S.C. § 103 over York in view of Pintor
1–14	Unpatentable pursuant to 35 U.S.C. § 103 over Handras in view of Pintor
1–14	Unpatentable pursuant to 35 U.S.C. § 103 over Barg in view of Pintor

Pursuant to §42.104(b)(4), an explanation of how the claims are unpatentable is provided herein.

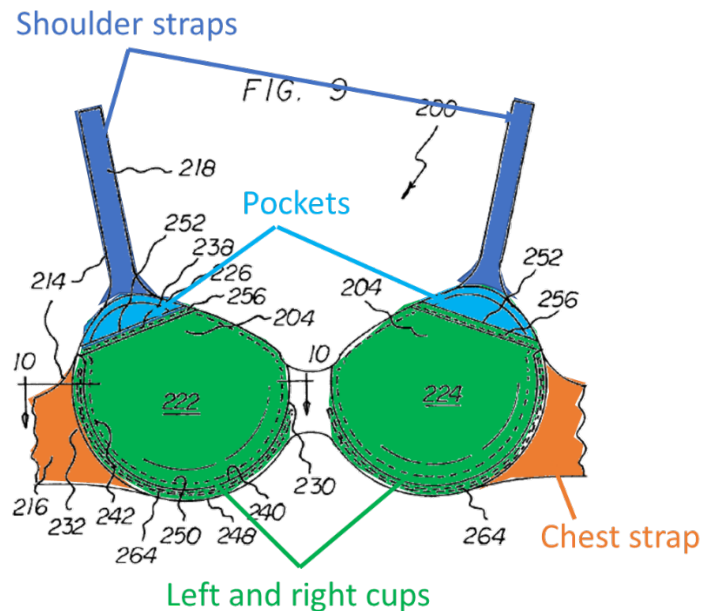
VI. SUMMARY OF THE '550 PATENT

A. Technical Overview of U.S. Patent No. 10,219,550

The '550 Patent issued on March 5, 2019, from the 15/679,206 Application filed on August 17, 2017. The '550 Patent purports to be a continuation-in-part of U.S. Patent No. 9,808,036 (“the '036 Patent”), which purports to be a continuation-in-part of U.S. Patent No. 9,295,288 (“the '288 Patent”), which purports to be a continuation-in-part of grandparent U.S. Patent No. 8,597,072 (“the '072 Patent”). The '072 Patent resulted from Application No. 13/066,822, filed April 26, 2011.

The '550 relates generally to a conventional bra with pockets on the cups. Specifically, the '550 claims a bra with “left and right cups” connected to the wearer via “a strap assembly” and “patch[es]” on at least one breast cup to form pockets

“capable of repeated receiving and removal of an item when being worn.” NIKE-1007 at Cl. 1.



NIKE-1003 at Fig. 9, Abstract. The disclosed patches are connected to the bra cups via stitching along the “lower, interior body facing and opposite exterior edges of each patch to the lower, interior body facing, and opposite exterior edges of an associated cup.” *Id.* By only sewing along the lower edges of the patch and bra cups, a pocket with “a linear opening . . . along the upper edge of each patch” is formed. *Id.*

During prosecution of the '550, the applicant filed terminal disclaimers to the '036 and '288 to overcome a double patenting rejection. *See* NIKE-1008 at 65 (Sep. 15, 2018 Terminal Disclaimer); *id.* at 53 (Mar. 22, 2018 Non-Final Rejection). During

prosecution of the parent '036, the applicant distinguished the claimed patch associated with at least one of the bra cups with other breast-cup pockets (i.e., patches) in the prior art used for insertion of a prosthetic breast pad. NIKE-1006 at 92-93 (November 21, 2016 Response to Non-Final Rejection). Specifically, the Examiner rejected the then-pending claims over U.S. Patent No. 4,699,144 to Sherwood. *See* NIKE-1006 at 71 (September 8, 2016 Non-Final Rejection). The Examiner explained that Sherwood discloses a patch provided on one of the inside or outside of the bra cup and that the patch forms a pocket capable of receiving an item therein. *Id.* In response, the applicant amended the independent claims to require an "opening capable of repeated receiving and removal of an item when being worn by the wearer" and to further require "the upper edge of the patch being offset from an upper edge of the cup." *Id.* at 86-88. In light of the claim amendments, applicant argued that the claimed pocket bra was distinct because:

Sherwood does not teach that the upper edge of the patch is offset from an upper edge of the cup as required by claims 1 and 8. Further, Sherwood teaches a front padding that is stitched in place: "It has been found that the breast pad 14 will retain its adjusted position even during prolonged periods of use and also discontinuous periods of use if it is affixed to the facing surface of the panel." *See id.* at 168–69.

Similarly, during prosecution of the grandparent '288, the applicant distinguished the claimed pockets from other breast-cup pockets in the prior art used

for insertion of bra padding. NIKE-1004 at 168 (Jan. 4, 2016 Response to Non-Final Rejection); *see also* NIKE-1023 (Newman). Specifically, the Examiner rejected the then-pending claims over Newman in view of Pintor. *See* NIKE-1004 at 147 (Oct. 2, 2015 Non-Final Rejection); *see also* NIKE-1023; NIKE-1022. The Examiner explained that Newman discloses a bra with pockets spanning the surface area of the cups for holding bra padding, and that Pintor discloses a bra with pockets on the breast cup for holding objects. *Id.* at 147–48. The Examiner argued that it would have been obvious to store the non-padding items disclosed by Pintor in the bra padding pocket disclosed by Newman. *Id.* In response, the applicant argued that the claimed bra was distinct because “Newman’s focus is singular and its pocket is specifically sized for the bra pad only,” whereas the ’288’s alleged invention is designed to hold the claimed objects—a handheld electronic device, keys, and pills—and not bra padding. *See id.* at 168–69. As discussed *infra* § VI.C., the Examiner overlooked how a POSA would have understood Pintor’s disclosures and what a POSA would have been motivated to do with them, especially in light of references like Barg, York, and Handras. By considering Pintor only in combination with Newman, the Examiner materially erred with respect to the patentability of the subject matter of the ’288 and the ’036.

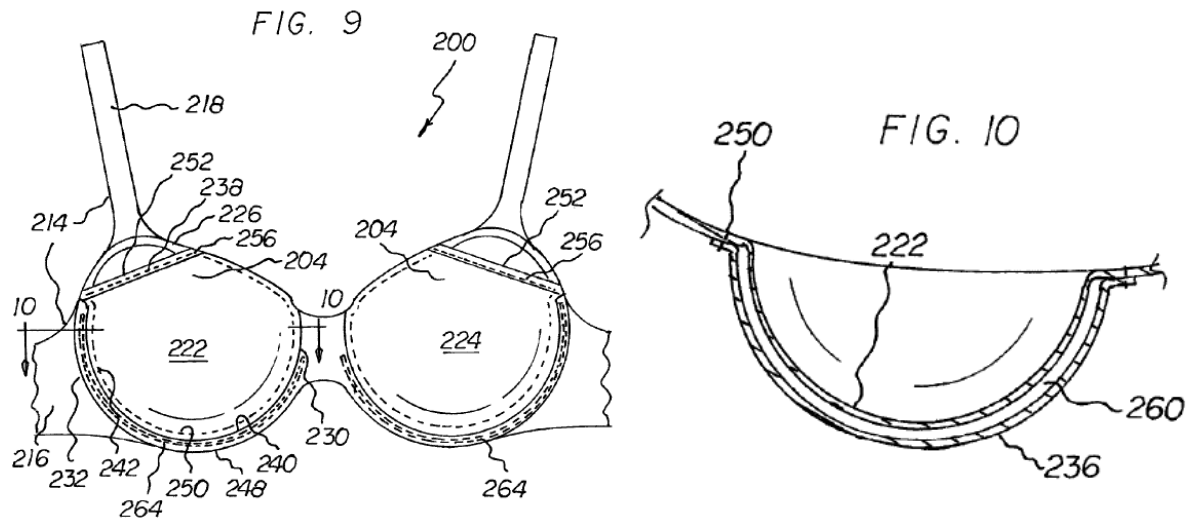
The '550 has 14 claims, all of which are challenged here. Barg, York, Pintor, and Handras are all directed toward storing personal items, such as handheld electronic devices, keys, and pills, and render the Challenged Claims obvious.

B. Effective Priority Date of the Challenged Claims

The '550 issued on March 5, 2019, from the 15/679,206 Application filed on August 17, 2017. The '550 purports to be a continuation-in-part of U.S. Patent No. 9,808,036 (“the '036”), which purports to be a continuation-in-part of U.S. Patent No. 9,295,288 (“the '288”), which purports to be a continuation-in-part of grandparent U.S. Patent No. 8,597,072 (“the '072”). Each of the patents claim priority of April 26, 2011, the filing date of the '072. The '072 resulted from Application No. 13/066,822, filed April 26, 2011.

Patent Owner (“PO”) admits that November 18, 2013 is the earliest priority date to which the '550's challenged claims are entitled. NIKE-1049; *Nat. Alternatives Int'l, Inc. v. Iancu*, 904 F.3d 1375, 1383 (Fed. Cir. 2018) (explaining that priority is assessed on a claim-by-claim basis for continuation-in-part applications, and that claims reciting new matter are not entitled to the parent application's earlier filing date). Indeed, the claims of the '550 require a “lower edge of the patch coupled to the bra adjacent to a lower edge of the at least one of the left and right cups, and the exterior edge of the patch coupled adjacent to the exterior edge of the at least one of the left and right cups.” NIKE-1007 at Cl. 1. PO

concedes that such limitation does not have purported disclosure prior to the '288, as illustrated by Figs. 9–10:



NIKE-1003 at Figs. 9–10; NIKE-1049.

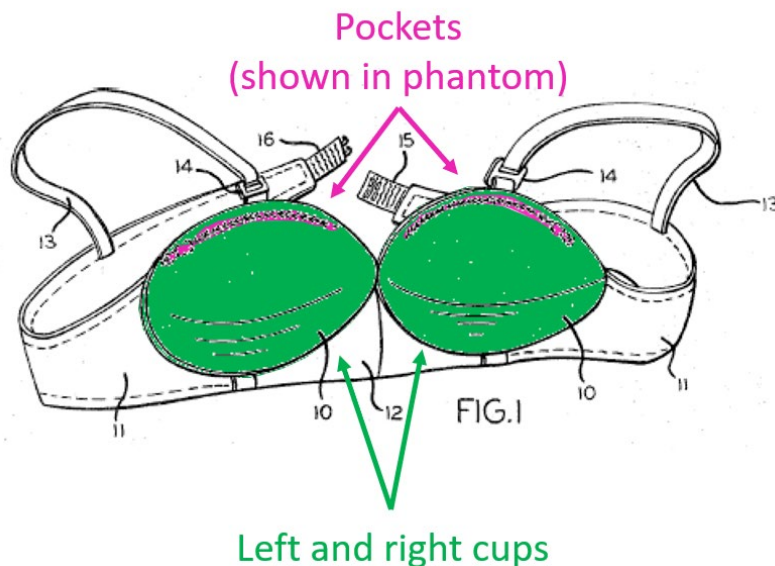
Such disclosure constitutes new matter, and is only entitled to priority of the filing date of the '288—November 18, 2013—as PO concedes. NIKE-1003 at Cover; *see also Regents of the Univ. of Minnesota v. Gilead Scis., Inc.*, 61 F.4th 1350, 1356 (Fed. Cir. 2023) (“each application in the chain ... must comply with the written description requirement” to be entitled to an earlier priority date); MPEP § 211.05; NIKE-1049.

VII. OVERVIEW OF THE PRIOR ART

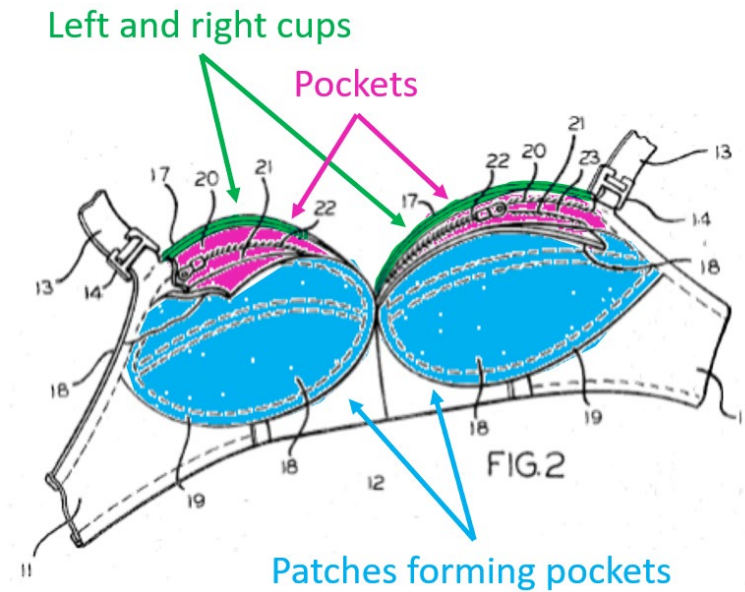
A. Barg

1. Overview of Barg

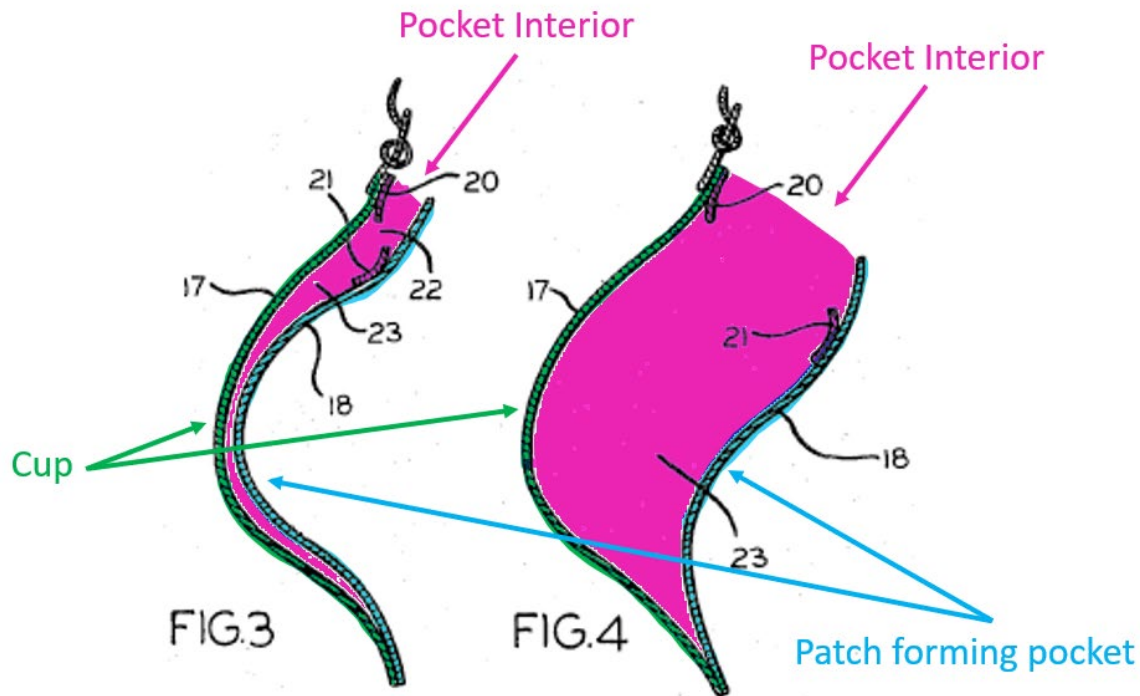
Barg issued on July 7, 1970 from U.S. Application Ser. No. 703,922 (filed on February 8, 1968), which is a continuation-in-part of Application Ser. No. 551,306 originally filed May 19, 1966. *See* NIKE-1019. Barg generally describes a conventional bra with pockets on the inside surfaces of the breast cups. *Id.* In addition to the conventional components of bra—left and right cups, a chest strap, and shoulder straps—Barg discloses “a pocket therein for storing valuables, or the like.” *Id.* at 1:19-20, 1:64–2:4. The pocket is formed by an “outer” and “inner” section of a breast cup pocket which are “attached to one another along the peripheral edge at the side and bottom areas . . . in any convenient and efficient manner.” *Id.* at 2:4-9. The pockets are on the inside surfaces of the breast cups with openings at the top of the cups:



Id. at Fig. 1 (illustrating “a perspective front view of a conventional brassiere”).



Id. at Fig. 2 (illustrating “a fragmentary perspective rear view of a brassiere, showing the hookless fastener closed at one side, and partially open on the other side, to form a pocket”).



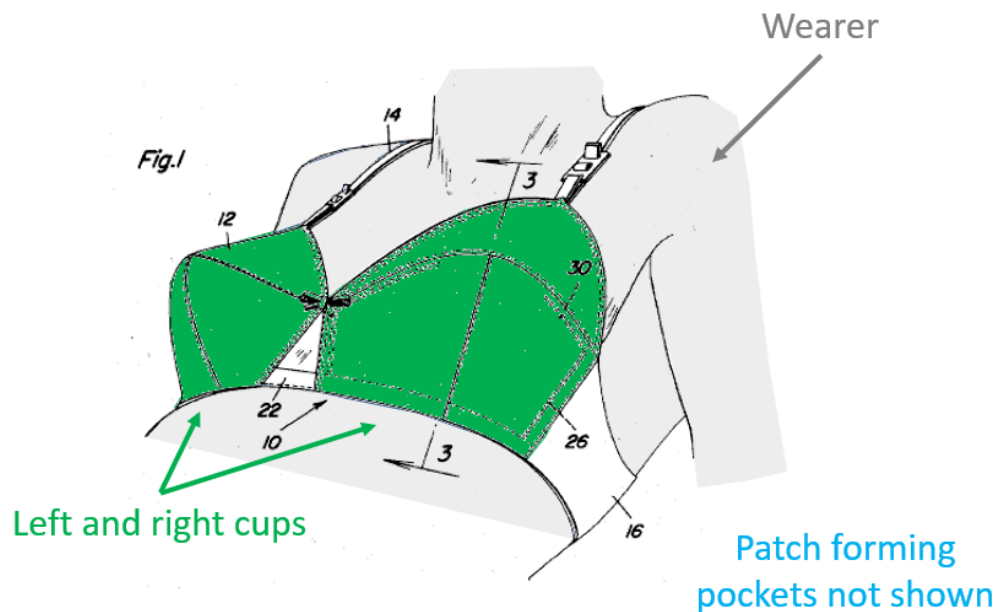
Id. at Figs. 3–4 (a “fragmentary cross-sectional view of the brassiere” illustrating the disclosed pocket).

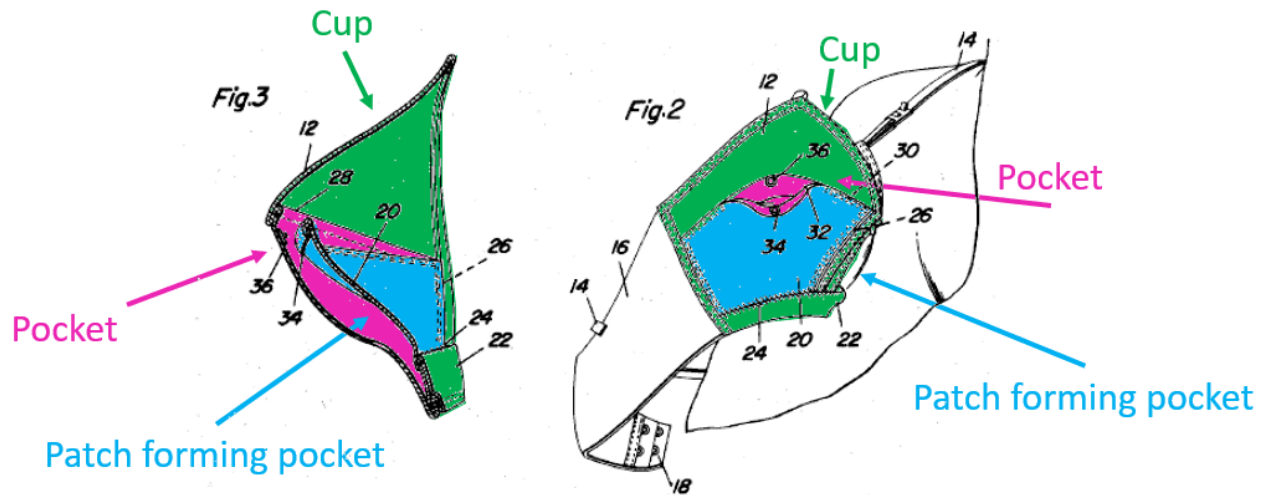
2. Barg Is Prior Art to the ’550 Patent

Barg is prior art to the ’550 under at least pre-AIA 35 U.S.C. §§ 102(b) or (e) and AIA 35 U.S.C. § 102(a). Barg is a U.S. Patent, filed February 8, 1968, and issued July 7, 1970, which is more than one year before the ’550’s earliest possible priority date. The ’550’s inventor is not named as an inventor on Barg. Barg was not considered during prosecution of the ’550.

York issued on January 12, 1960 from U.S. Patent Application Ser. No. 765,748, filed October 7, 1958. *See* NIKE-1020. York generally describes a

conventional bra with a pocket on the inner portion of one of the breast cups. *Id.* Specifically, York describes “a brassiere” with “a pocket on the interior lower surface of the usual breast cup for receiving valuable articles such as jewelry, money or the like.” *Id.* at 1:15–19. The bra comprises the “usual pair of breast cups 12 having shoulder straps 14 attached thereto along the top edge and a body encircling strap 16 extending rearwardly which strap is provided with the usual separable ends.” *Id.* at 1:48–51. As shown below, the pocket is created by “a pocket forming panel 20 having the lower edge thereof connected with the finished hem 22 at the lower edge of the cup 12 by stitching 24.” *Id.* at 2:1–3.





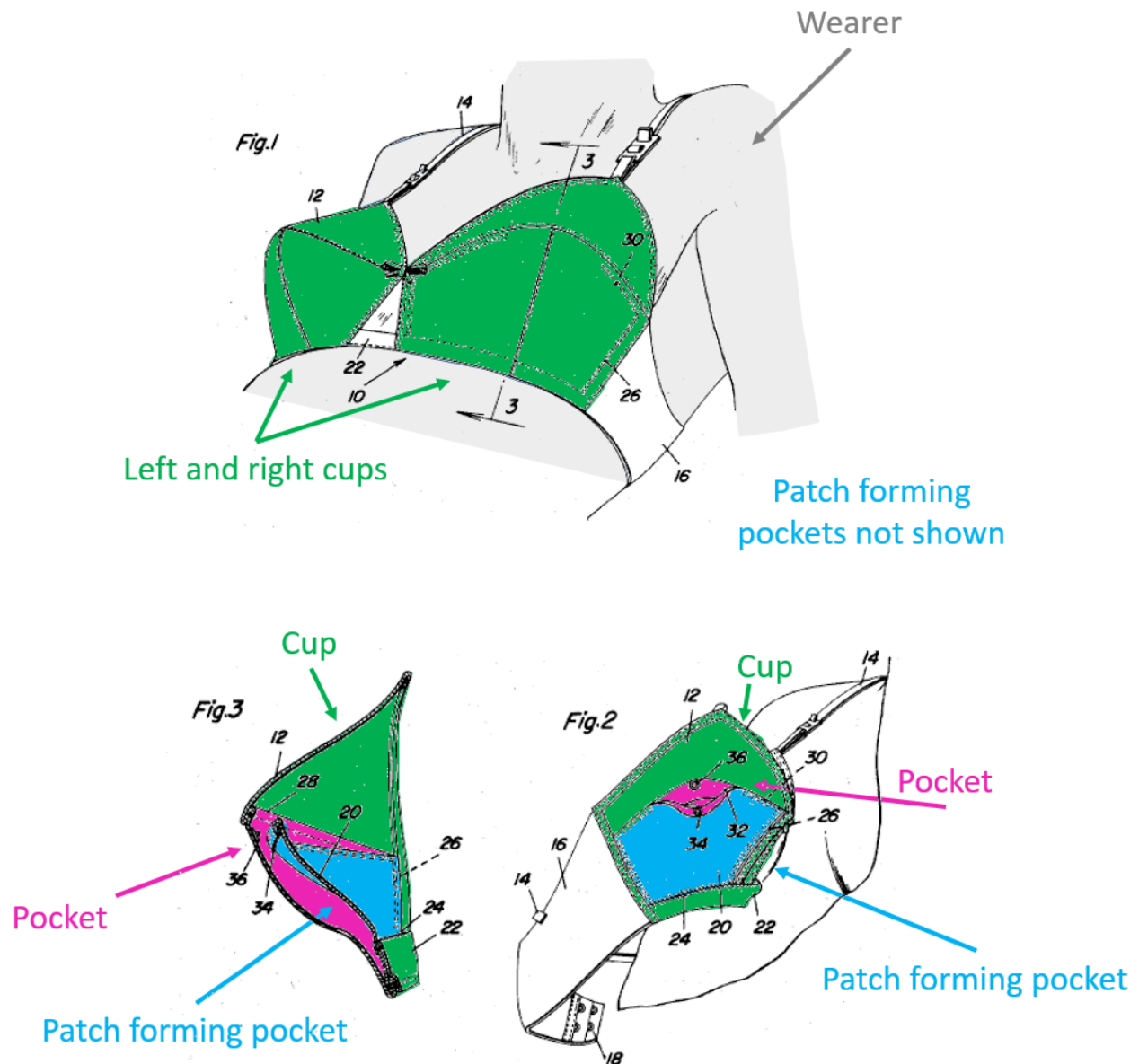
NIKE-1020 at Figs. 1–3.

B. York

1. Overview of York

York issued on January 12, 1960 from U.S. Patent Application Ser. No. 765,748, filed October 7, 1958. *See* NIKE-1020. York generally describes a conventional bra with a pocket on the inner portion of one of the breast cups. *Id.* Specifically, York describes “a brassiere” with “a pocket on the interior lower surface of the usual breast cup for receiving valuable articles such as jewelry, money or the like.” *Id.* at 1:15–19. The bra comprises the “usual pair of breast cups 12 having shoulder straps 14 attached thereto along the top edge and a body encircling strap 16 extending rearwardly which strap is provided with the usual separable ends.” *Id.* at 1:48–51. As shown below, the pocket is created by “a pocket forming

panel 20 having the lower edge thereof connected with the finished hem 22 at the lower edge of the cup 12 by stitching 24.” *Id.* at 2:1–3.



NIKE-1020 at Figs. 1–3.

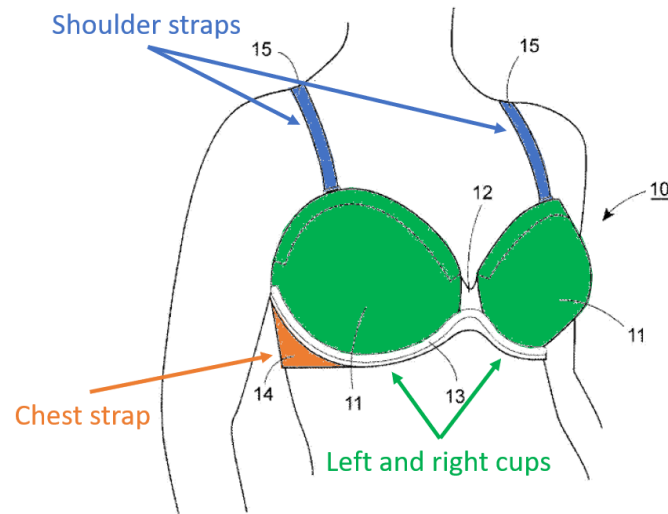
2. York Is Prior Art to the '550

York is prior art to the '550 under at least pre-AIA 35 U.S.C. §§ 102(b) or (e) and AIA 35 U.S.C. § 102(a). York is a U.S. Patent, filed October 7, 1958, and issued January 12, 1960, which is before the '550's earliest possible priority date. The '550's inventor is not a named inventor on York. York was not considered during prosecution of the '550.

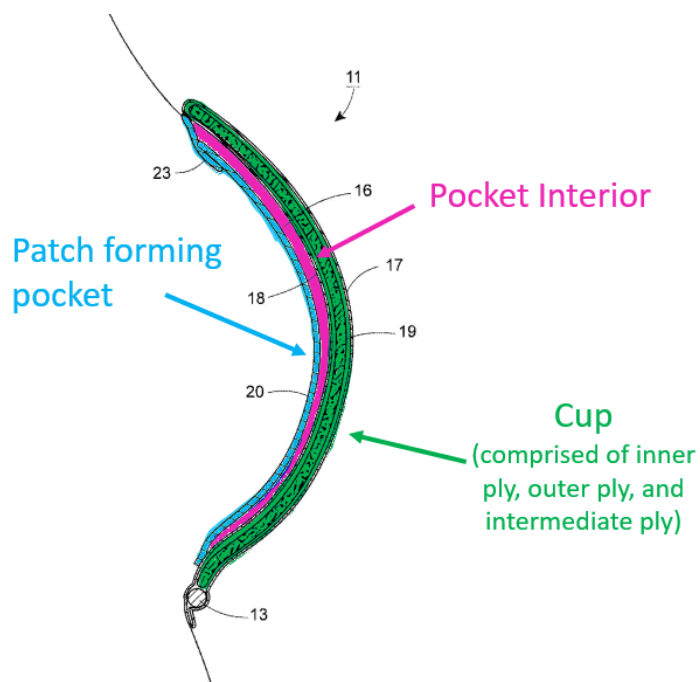
C. Handras

3. Overview of Handras

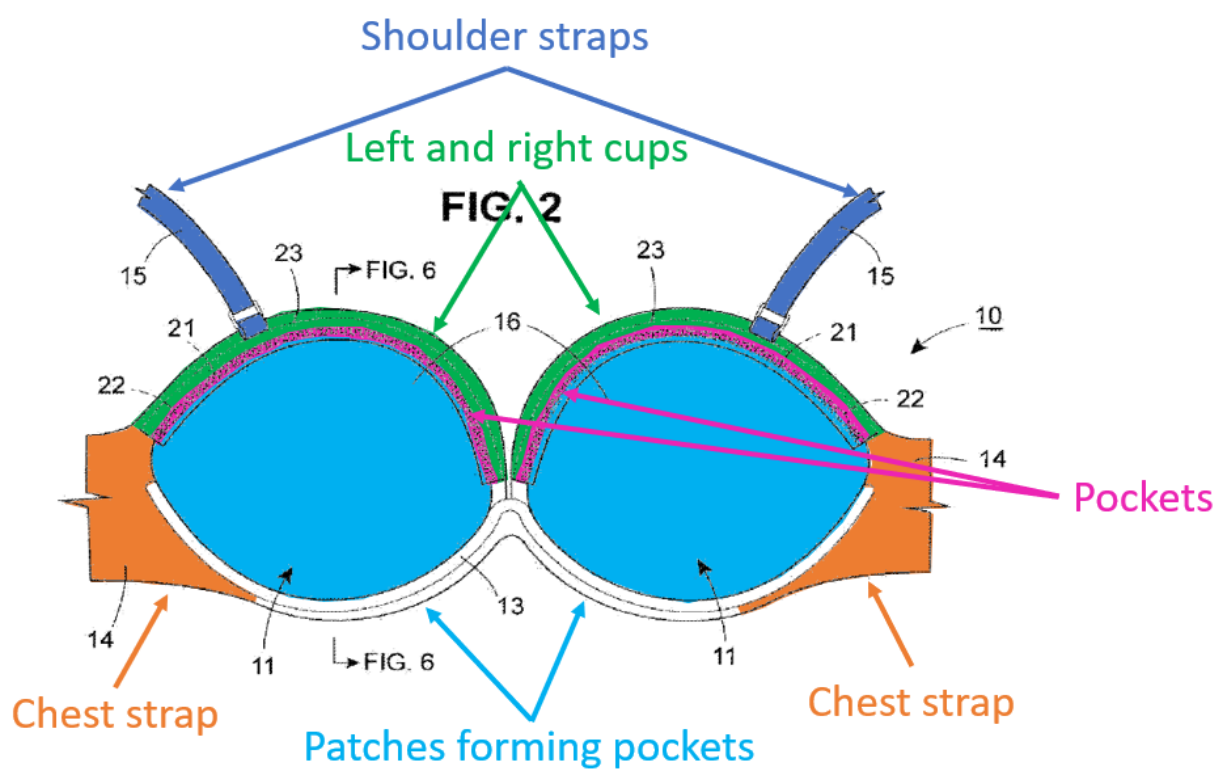
Handras is a U.S. Patent Application Publication of Application No. 13/589,599, filed originally on August 20, 2012. *See* NIKE-1021. Handras generally relates to a bra with pockets on the surface of the cups for storage of items. *Id.* Specifically, Handras discloses “a bra with one or more storage pockets.” *Id.* at [0001]. As illustrated below, the bra is comprised of “a pair of cups 11 . . . a pair of side panels 14 (only one of which is shown) that can be connected together at the back of the bra 10 in any conventional manner and a pair of shoulder straps 15.” *Id.* at [0020].



NIKE-1021 at Fig. 1. The cups are formed of three layers of material: an “outer ply” 17, an “inner ply” 18, and an “intermediate ply” 19 comprised of “resilient foam material.” *See id.* at [0022]. Further, “a fourth ply of material 20 is sewn or otherwise secured to the inner ply 18 in order to form the pocket 16 with an opening extending along the upper section of the cup.” *Id.*



NIKE-1021 at Fig. 6 (cross sectional profile of the cup).



NIKE-1021 at Fig. 2 (interior view of the cups with pockets).

Handras teaches the pocket holds items, including “credit cards, car keys, cell phones and the like.” *Id.* at [0002]. Handras contemplates adjusting the size of the pocket as desired, for example, “to snugly receive a cell phone.” *Id.* at [0025].

4. Handras Is Prior Art to the ’550

Handras is prior art to the ’550 under at least pre-AIA 35 U.S.C. §§ 102(b) or (e) and AIA 35 U.S.C. § 102(a). Handras is a U.S. Patent Application Publication, filed August 20, 2012, which is before the ’550’s November 18, 2013 earliest possible priority date. The ’550’s inventor is not named as an inventor on Handras. Handras was not considered during the prosecution of the ’550.

D. Pintor

1. Overview of Pintor

Pintor issued on July 13, 2010, from U.S. Patent Application No. 12/240,408, filed September 29, 2008. *See* NIKE-1022. Pintor generally describes a bra with pockets on the inside surface of the breast cups. *Id.* Specifically, Pintor describes “a brassiere containing concealed pockets for concealing objects such as portable electronic devices, keys, toiletries, money and other valuables.” *Id.* at 4:59–61. As shown below, the bra is comprised of two breast cups, a “medial portion” joining the cups, as well as a “torso band” and “shoulder straps.” *Id.* at 5:25–36.

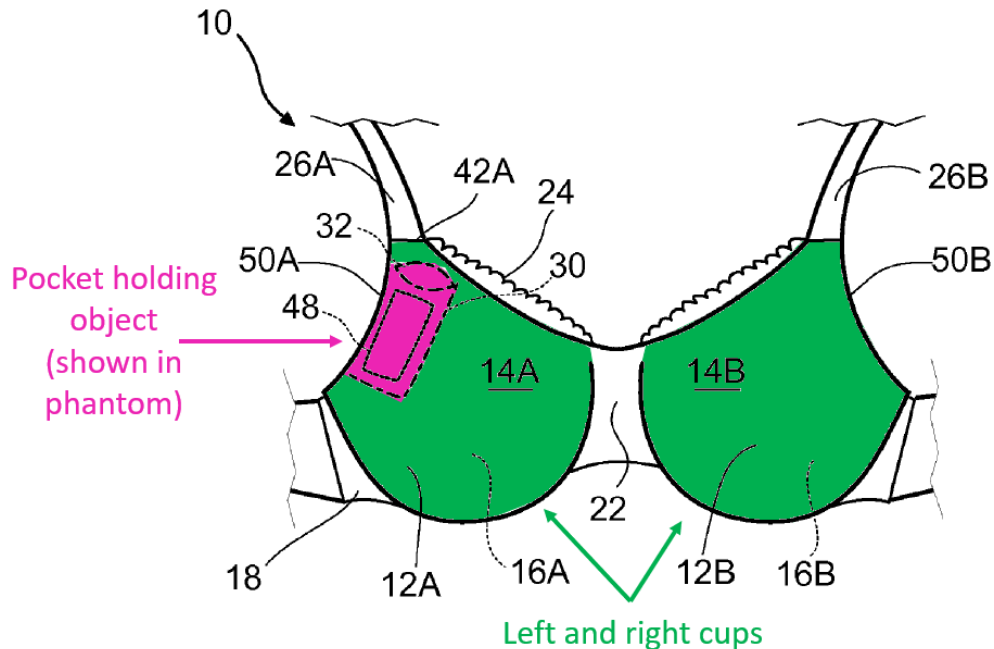


FIG. 3

NIKE-1022 at Fig. 3 (showing a conventional bra assembly with a pocket on the right cup). Further, the pocket (30) is “attached to the interior surface of the breast cover by any known means such as stitching.” *Id.* at 3:51–53. Pintor discloses that the cups and pockets may be formed of “elastomeric woven or nonwoven material, including spandex, materials comprising [Lycra], polyurethane, nylon, polyolefins, and the like.” *Id.* at 7:53–58.

2. Pintor Is Prior Art to the '288

Pintor is prior art to the '550 under pre-AIA 35 U.S.C. §§ 102(b) or (e) and AIA 35 U.S.C. § 102(a). Pintor is a U.S. Patent, filed September 29, 2008, and issued July 13, 2010, which is before the '550's earliest possible priority date. The

'550's inventor is not named as an inventor on Pintor. Pintor was not considered during prosecution of the '550.

VIII. LEVEL OF ORDINARY SKILL IN THE ART

A POSA at the relevant time would have had at least two years of experience working in the design and or/construction of women's exercise apparel, intimate apparel, and/or sports bras and bras, specifically. NIKE-1001 ¶155. Formal education in a relevant field, such as fashion and textile design, may compensate for less experience. *Id.* Ms. Baran was a POSA as of the '550's earliest possible priority date. *Id.* ¶156; NIKE-1002.

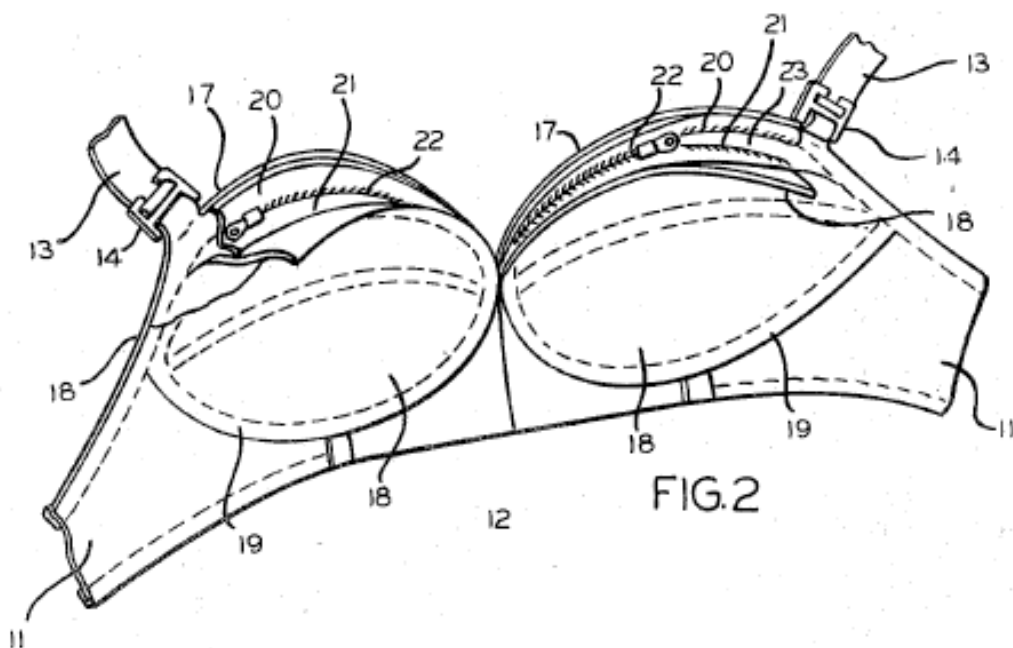
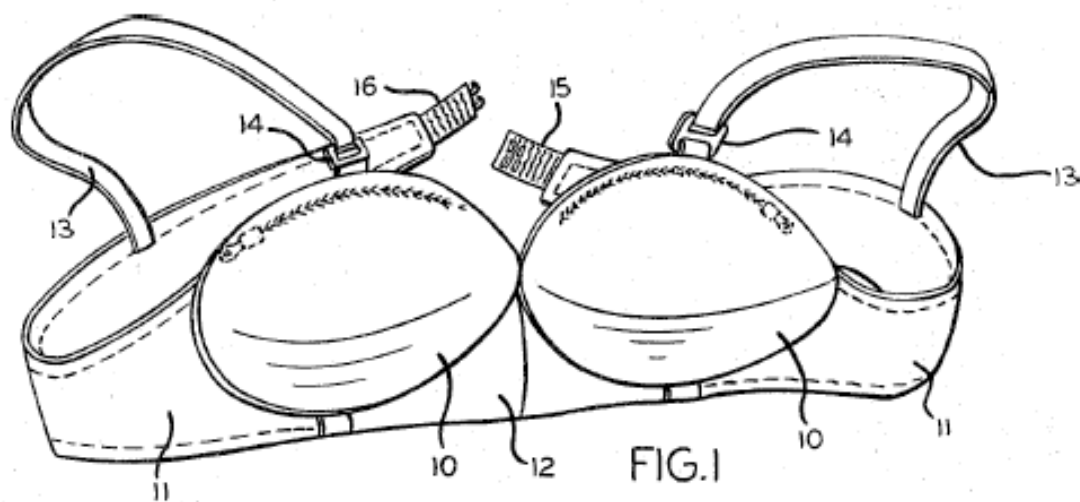
IX. SPECIFIC GROUNDS FOR THE PETITION

A. Ground 1: Claims 1–14 Are Unpatentable Over Barg in View of Pintor.

1. Claim 1

a. “A pocket bra comprising:” [1A]

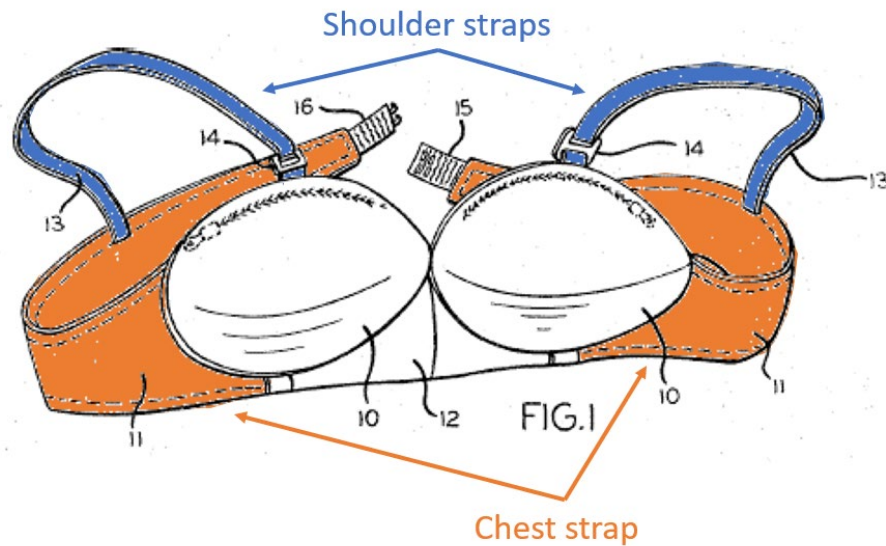
To the extent the preamble is limiting, Barg discloses this limitation. Barg discloses “a brassiere that has a pocket therein for storing valuables”:



NIKE-1019 at Figs. 1-2, 1:19-25.

b. “a strap assembly including a chest strap;” [1B]

Barg discloses a traditional bra with cups “supported by a *body portion shown as 11*,”³ *i.e.*, “chest strap.” NIKE-1019 at 1:65-2:2. Figure 1 illustrates the “body portion” chest strap and two conventional shoulder straps:

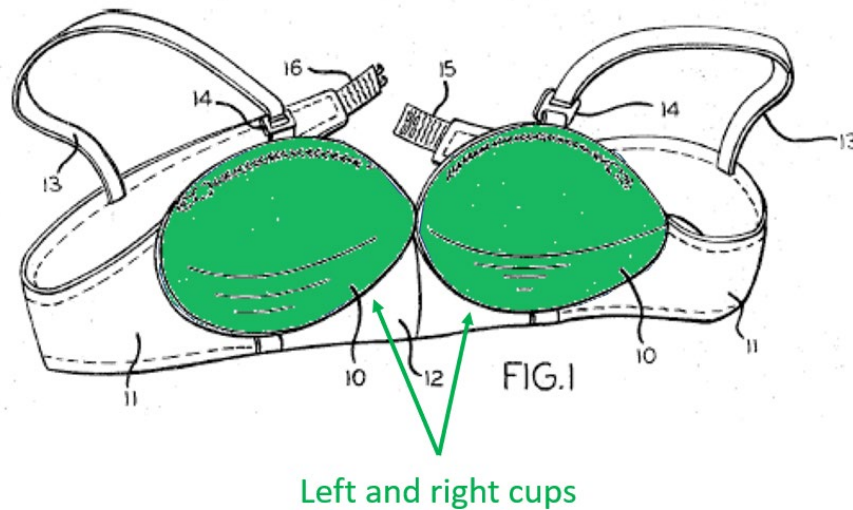


NIKE-1019 at Fig. 1.

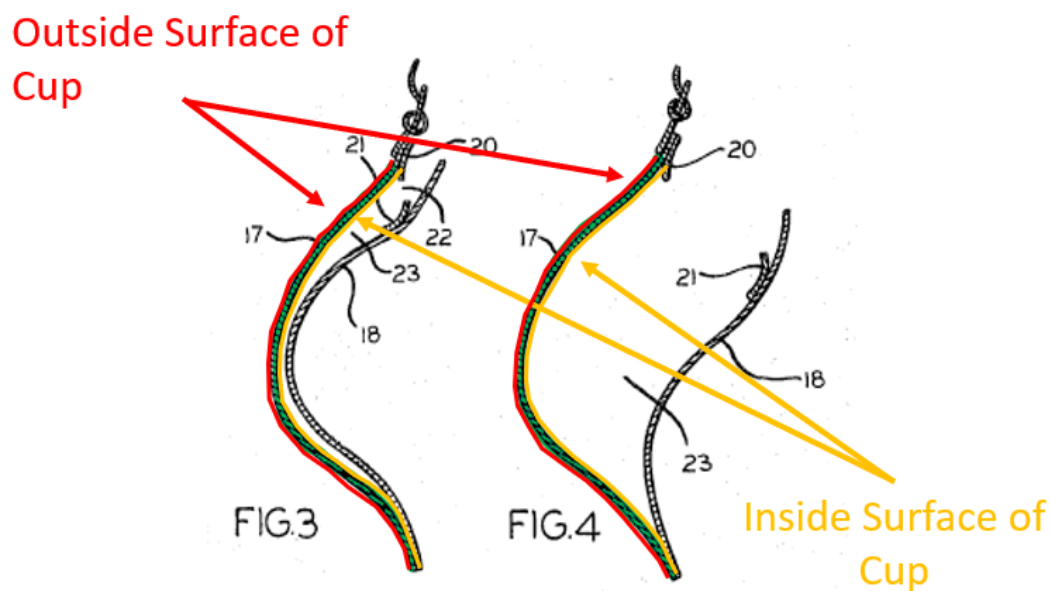
c. “and comprising left and right cups, each cup being an area to receive a breast of a wearer and having inside and outside surfaces,” [1C]

Barg discloses a bra with left and right cups:

³ All emphasis is added, unless otherwise noted.



NIKE-1019 at Fig. 1, 1:62-65 (disclosing “conventional breast cups [10]”). Barg teaches the cups “are substantially conical to fit the form, shape and contour of the breast.” *Id.* 1:78–79. A POSA would have understood these cups to necessarily have inside and outside surfaces to receive a breast of a wearer, as illustrated in Figures 3 and 4:



NIKE-1019 at Figs. 3–4; NIKE-1001 ¶503.

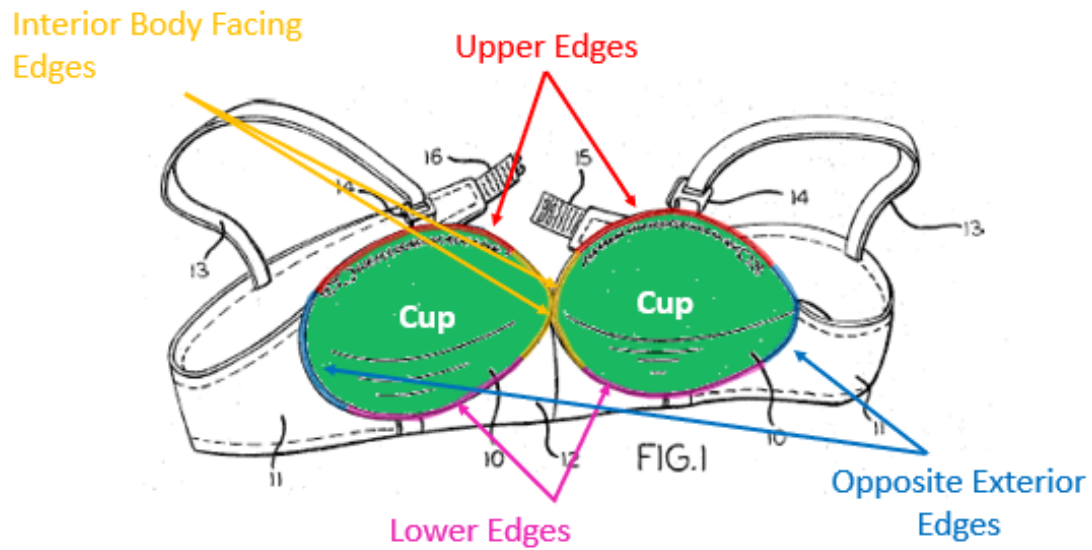
- d. **“the strap assembly being attached to the cups whereby the strap assembly connects the cups to the wearer,” [1D]**

As explained above, Barg discloses a “strap assembly” and “left and right cups.” *Supra* §§ IX.A.1.b, IX.A.1.c. To the extent the “whereby” clause should be provided patentable weight,⁴ Barg discloses that the strap assembly adheres the cups to a wearer. NIKE-1019 at 1:65–69 (“body portion 11 and the cups 10, may be constructed in any conventional manner, and are substantially conical to *fit the form, shape, and contour of the breast appendages* of the body.”). A POSA would have understood this to be the purpose of Barg’s “strap assembly.” NIKE-1001 ¶504.

- e. **“each cup having upper, lower, interior body facing, and opposite exterior edges;” [1E]**

Barg discloses cups with curved upper, lower, interior body facing, and opposite exterior edges:

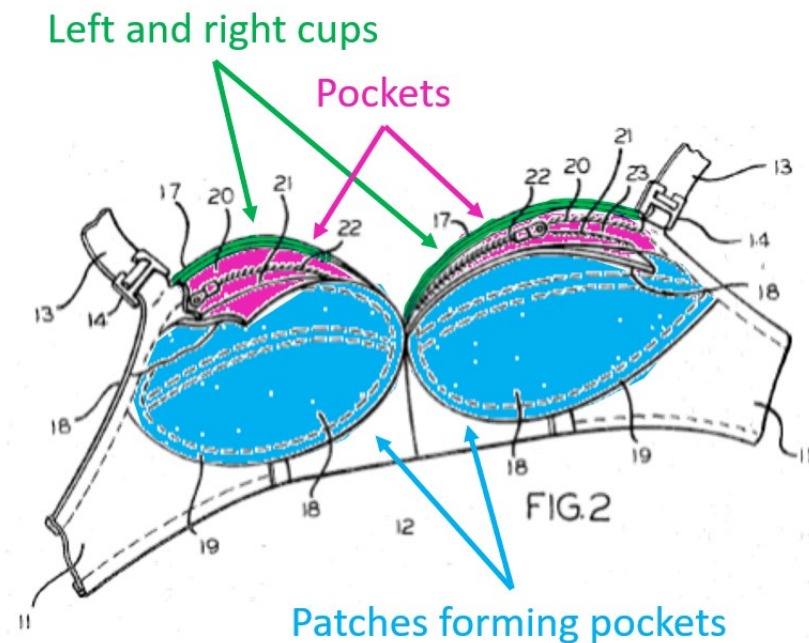
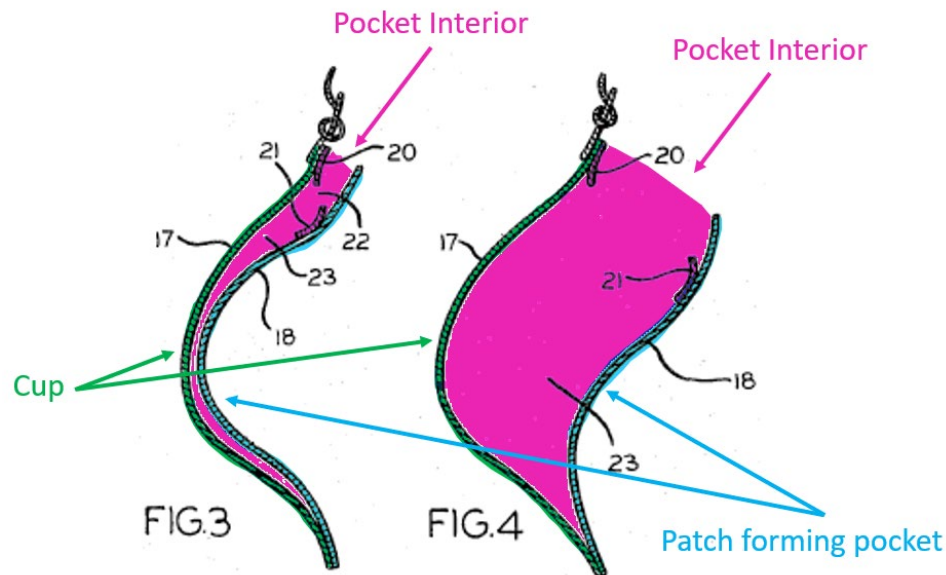
⁴ The Federal Circuit gives no weight to “whereby” clauses that simply express an intended result. *Minton v. Nat’l Ass’n of Sec. Dealers, Inc.*, 336 F.3d 1373, 1381 (Fed. Cir. 2003).



NIKE-1019 at Fig. 1.

- f. “a patch forming a pocket operatively associated with at least one of the left and right cups,” [1F]

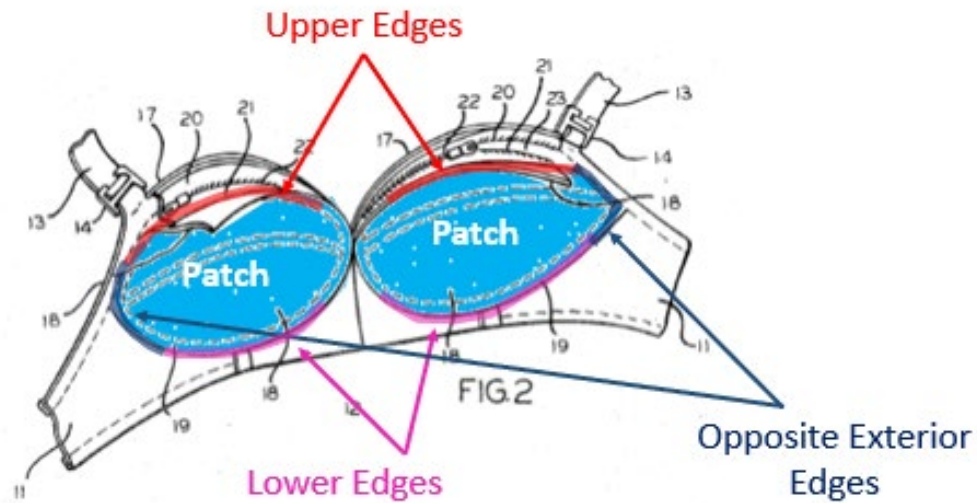
Barg discloses a “patch” (“inner section 18”) attached to the inner surface of the “outer section 17” of the bra cups (10) to create a pocket (23) associated with each cup:



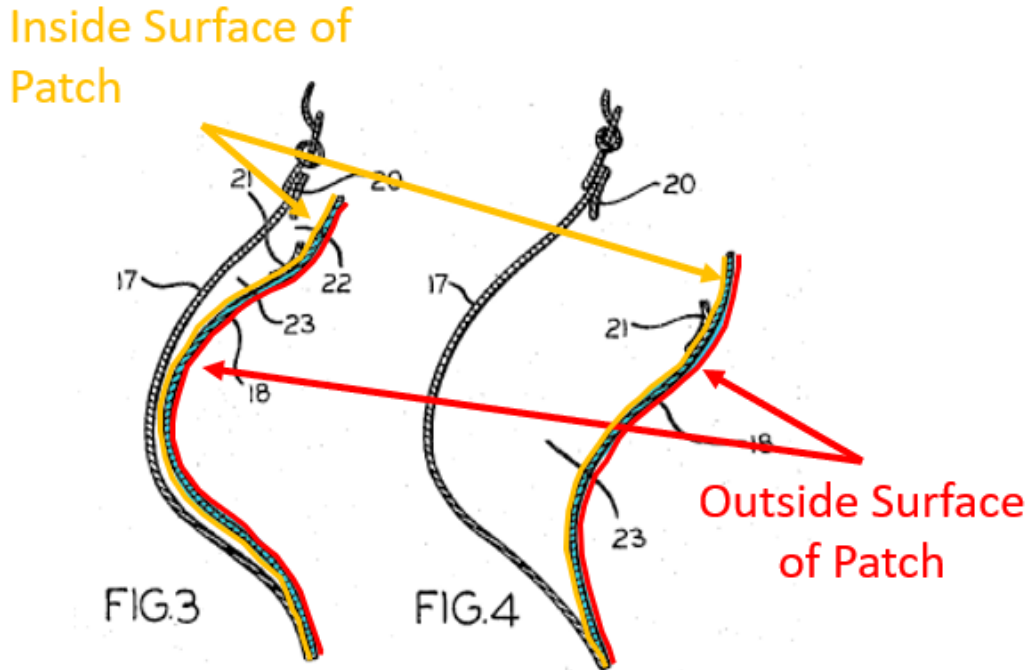
NIKE-1019 at 2:5-25, Figs. 2–4; NIKE-1001 ¶506. Alternatively, a POSA would have understood that “outer section 17” could be understood as the “patch,” while the “inner section 18” could be understood as the “cup,” such that the pockets are on the outside of the breast cups. NIKE-1001 ¶506.

- g. “the patch having an upper edge, a lower edge, and an exterior edge, the patch having inside and outside surfaces;” [1G]

Barg discloses a patch with an upper edge, a lower edge, and an exterior edge:



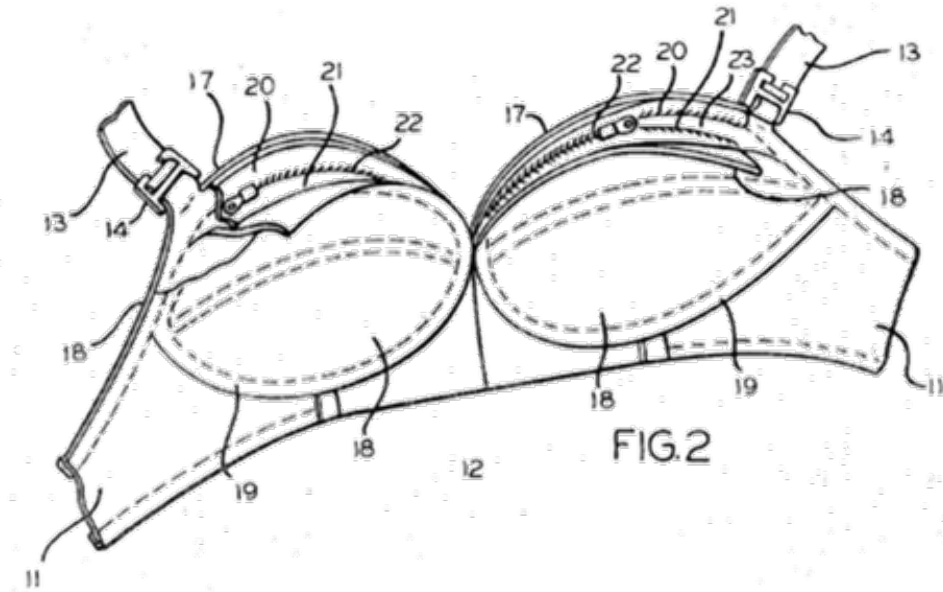
NIKE-1019 at Fig. 2, 2:5-10. Further, the patch has inside and outer surfaces.



Id. at Figs. 3–4; NIKE-1001 ¶507.

- h. “the lower edge of the patch coupled to the bra adjacent to a lower edge of the at least one of the left and right cups, and the exterior edge of the patch coupled adjacent to the exterior edge of the at least one of the left and right cups, a pocket opening formed along the upper edge of the patch being unconnected to the at least one of the left and right cups;” [1H]

Barg discloses cups and patches “*attached to one another along the peripheral edge at the side and bottom areas ... in any convenient and efficient manner.*” NIKE-1019 at 2:7–9. Further, Barg discloses that “[t]he upper edges” of the cups and patches “form an area to form a pocket 23 when the hookless fastener 22 is opened.” *Id.* at 2:15–16.



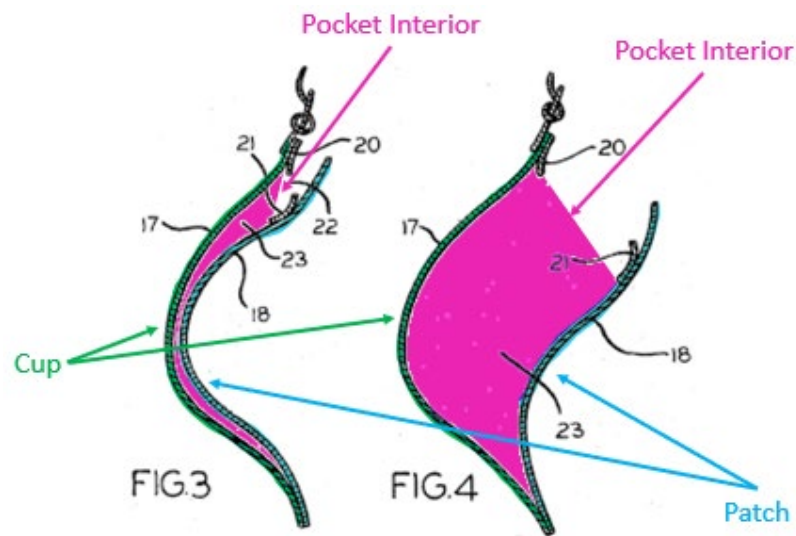
NIKE-1019 at Fig. 2.

- i. **“the pocket opening capable of repeated receiving and removal of an item when being worn by the wearer;”**
[11]

Barg discloses “a pocket therein for storing valuables, or the like.” NIKE-1019 at 1:19–20. A POSA would have understood the necessity of making the opening capable of repeated receiving and removal of items so that the wearer is able to access, remove, and replace the stored valuable items from and into the pocket throughout the day. *Id.* ¶111. Indeed, Barg expressly teaches that a “prime object of [its] invention” is to “produc[e] a pocket for valuables ... that is easily accessible” while in use by the wearer. NIKE-1019 at 1:36-44; *id.* at 2:17–21 (“The hookless fastener ...is concealed from view... so that it will not be noticeable in the general appearance of the brassier when in use and will not abut the skin of the wearer.”)

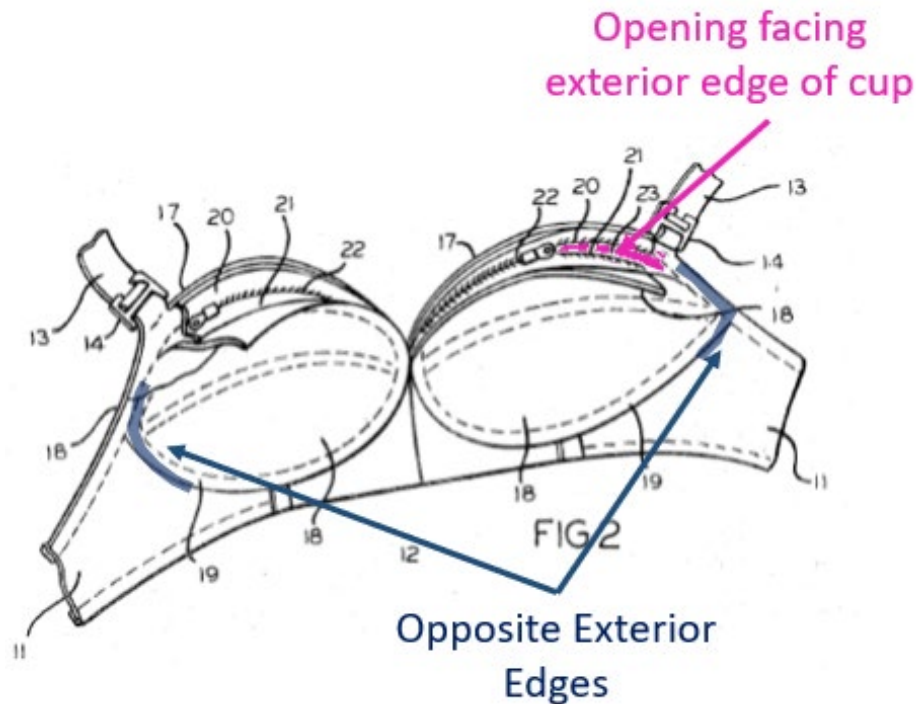
- j. “and wherein the upper edge of the patch crosses over a surface of the cup to form the opening, the upper edge crossing such that the opening faces the exterior edge of the at least one of the left and right cup to which it is attached.” [1J]

The upper edges of Barg’s patches cross over the surface of the cup to form the opening:



NIKE-1019 at Figs. 3 & 4.

NIKE-1019 at Figs. 3 & 4. Barg further teaches that the opening faces the exterior edge of at least one of the left and right cup to which it is attached:



NIKE-1019 at Fig. 2.

2. Claim 2

a. “The pocket bra of claim 1” [Preamble]

Barg discloses “[t]he pocket bra of claim 1” for the reasons described above.

Supra § IX.A.1.

b. “wherein the patch is operatively associated with only one of the left and right cups.” [2A]

As previously discussed, Barg discloses “a patch forming a pocket operatively associated with at least one of the left and right cups.” *Supra* § IX.A.1.f. Indeed Barg discloses “a brassier equipped with *an* opening to provide *a* pocket.” NIKE-1019 at 1:13–14.

To the extent this limitation is not expressly or inherently disclosed, Barg in combination with a POSA's knowledge renders it obvious. While Barg also teaches a bra with patches operatively associated with both the left and right cups, it would have been obvious to include the expressly disclosed pockets on only one cup. NIKE-1001 ¶514. Indeed, Pintor expressly teaches a patch operatively associated with only one of the left and right cups. *See id.* at Figs. 1 & 2; NIKE-1022 at 5:37–38 (“A pocket 30 is provided on the interior surface 16A of a first breast cover.”), Fig. 3. Nothing in Barg teaches away from the placement of a pocket on only one of the cups, and a POSITA would have been motivated to do so, at least, to reduce manufacturing costs and complexity. NIKE-1001 ¶514. Further, a POSA would have had a high expectation of success in doing so because Pintor expressly discloses a patch on only one bra cup, both Pintor and Barg are bras, and this is simple, well-known technology. NIKE-1001 ¶514; *Ethicon*, 2022 WL 1613188 at *4.

3. Claim 3

a. “The pocket bra of claim 3” [Preamble]

Barg discloses “[t]he pocket bra of claim 1” for the reasons described above. *Supra* § IX.A.1.

b. “further comprising a non-padding item positioned in the pocket.” [3A]

Barg discloses “a pocket therein for storing valuables, or the like.” NIKE-1019 at 1:19–20. A POSA would have understood “valuables” to be non-padding items and are intended to be positioned within Barg’s pockets. NIKE-1001 ¶516.

4. Claim 4

a. “The pocket bra of claim 1” [Preamble]

Barg discloses “[t]he pocket bra of claim 1” for the reasons described above. *Supra* § IX.A.1.

b. “wherein the lower edge of the patch is coupled adjacent to the bra by a stitching.” [4A]

Barg discloses cups and patches “*attached to one another along the peripheral edge at the side and bottom areas ... in any convenient and efficient manner.*” NIKE-1019 at 2:7–9. A POSA would have understood stitching to be a common, convenient, and efficient method of attaching two pieces of fabric together. NIKE-1001 ¶518. Moreover, a POSA would understand the dashed lines in Figure 2, shown below, to disclose stitching, as dashed lines are used in sewing patterns to denote where stitching should occur. *Id.*

Even if not expressly disclosed by Barg, it would have been obvious to a POSA to modify Barg to include stitching either based on their own knowledge and/or in light of Pintor. *Id.* ¶519. First, stitching was a well-known method by which pieces of fabric are attached together for clothing. *Id.* Moreover, Pintor expressly discloses a pocket “attached to the interior surface of the breast cover by any known means such as ***stitching***.” NIKE-1022 at 3:52–53. Second, it would have been obvious to try stitching on Barg, and a POSA would have been motivated to do so, because stitching is a simple, effective, well-known, and economical means of attaching pieces of fabric together. NIKE-1001 ¶519. A POSA would have had a high expectation of success in doing so because Pintor expressly discloses stitching

a pocket on a bra cup, both Pintor and Barg are bras, and this is simple, well-known technology. NIKE-1001 ¶519; *Ethicon*, 2022 WL 1613188 at *4.

5. Claim 5

a. “The pocket bra of claim 1” [Preamble]

Barg discloses “[t]he pocket bra of claim 1” for the reasons described above.

Supra § IX.A.1.

b. “wherein the exterior edge of the patch is coupled to the exterior edge of the at least one of the left and right cups by a stitching.” [5A]

Barg discloses cups and patches “*attached to one another along the peripheral edge at the side and bottom areas ... in any convenient and efficient manner.*” NIKE-1019 at 2:7–9. A POSA would have understood the exterior edge of the patch would be coupled to the exterior edge of the at least one of the left and right cups by stitching for the reasons discussed above. *Supra* § IX.A.4.

Even if not expressly disclosed by Barg, as discussed above it, would have been obvious to a POSA to modify Barg to include stitching either based on their own knowledge and/or in light of Pintor. *Supra* § IX.A.4.

6. Claim 6

a. “The pocket bra of claim 2” [Preamble]

Barg discloses “[t]he pocket bra of claim 2” for the reasons described above.

Supra § IX.A.5.

- b. “further comprising a second patch forming a second pocket operatively associated with the other of the left and right cups.” [6A]**

As described above, Barg discloses “a second patch forming a second pocket operatively associated with the other of the left and right cups.” *Supra* § IX.A.1.f; NIKE-1019 at Figs. 1 & 2.

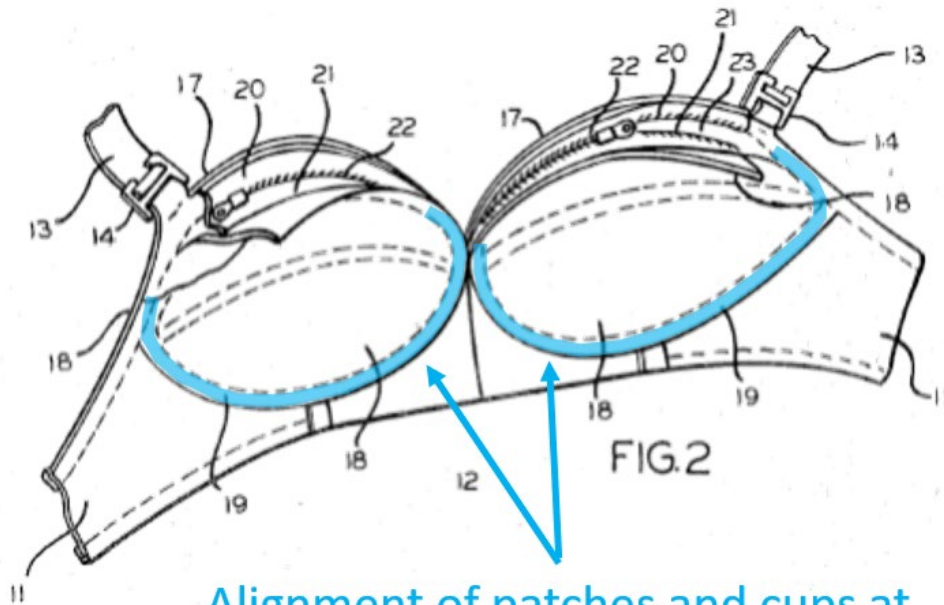
7. Claim 7

- a. “The pocket bra of claim 1” [Preamble]**

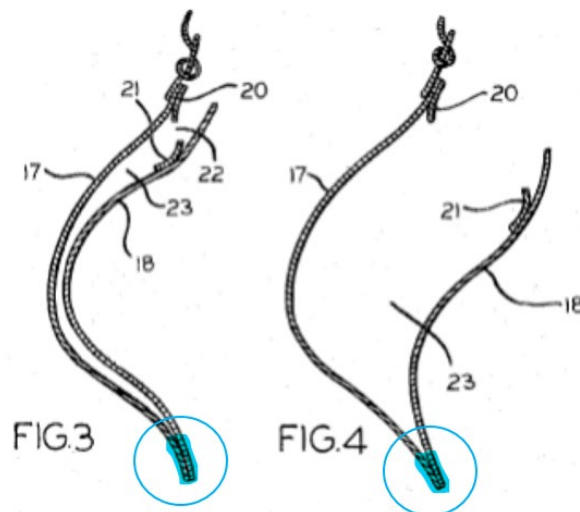
Barg discloses “[t]he pocket bra of claim 1” for the reasons described above. *Supra* § IX.A.1.

- b. “wherein the patch lower and exterior edges are aligned with the lower and exterior edges of the at least one of the left and right cups by a stitching, and wherein the stitching is along the lower and exterior edges of the patch.” [7A]**

Barg, alone or in combination with Pintor, renders obvious this limitation. As previously discussed, Barg discloses cups and patches with lower and exterior edges, and “stitching [] along the lower and exterior edges of the patch.” *See supra* §§ IX.A.1.e, IX.A.1.h, IX.A.4, IX.A.5. Barg further discloses cups and patches “*attached to one another along the peripheral edge at the side and bottom areas ... in any convenient and efficient manner*”:



Alignment of patches and cups at lower, interior, and opposite exterior edges



Alignment of patches and cups at lower edges

NIKE-1019 at 2:7–9, Figs. 2-4; NIKE-1001 ¶526.

8. Claim 8

a. “A pocket bra comprising:” [8A]

This limitation is disclosed for the reasons discussed above. *Supra* § IX.A.1.a.

b. “a strap assembly including a chest strap,” [8B]

This limitation is disclosed for the reasons discussed above. *Supra* § IX.A.1.b.

c. “and comprising left and right cups, each cup being an area to receive a breast of a wearer and having inside and outside surfaces,” [8C]

This limitation is disclosed for the reasons discussed above. *Supra* § IX.A.1.c.

d. “the strap assembly being attached to the cups whereby the strap assembly connects the cups to the wearer,” [8D]

This limitation is disclosed for the reasons discussed above. *Supra* § IX.A.1.d.

e. “ each cup having upper, lower, interior body facing, and opposite exterior edges;” [8E]

This limitation is disclosed for the reasons discussed above. *Supra* § IX.A.1.e.

f. “a patch forming a pocket operatively associated with at least one of the left and right cups,” [8F]

This limitation is disclosed for the reasons discussed above. *Supra* § IX.A.1.f.

g. “the patch having an upper edge, a lower edge, and an exterior edge, the patch having inside and outside surfaces;” [8G]

This limitation is disclosed for the reasons discussed above. *Supra* § IX.A.1.g.

- h. “the lower edge of the patch coupled to the bra adjacent to a lower edge of the at least one of the left and right cups, and the exterior edge of the patch coupled adjacent to the exterior edge of the at least one of the left and right cups, a pocket opening formed along the upper edge of the patch being unconnected to the at least one of the left and right cups;” [8H]**

This limitation is disclosed for the reasons discussed above. *Supra* § IX.A.1.h.

- i. “the pocket opening capable of repeated receiving and removal of an item when being worn by the wearer;” [8I]**

This limitation is disclosed for the reasons discussed above. *Supra* § IX.A.1.i.

- j. “and wherein the upper edge of the patch crosses over a surface of the cup to form the opening, the upper edge crossing such that the opening faces the interior edge of the at least one of the left and right cup to which it is attached.” [8J]**

Barg in combination with the knowledge of a POSA renders this limitation obvious. As discussed above, the upper edges of Barg’s patches cross over the surface of the cup to form an opening that faces the exterior edge of the cup to which it is attached. *Supra* § IX.A.1.j. A POSA would recognize from Barg that the orientation of the patch opening is simply a design choice and could just as easily be arranged such that the opening faces the interior edge of the cup. NIKE-1001 ¶536;

see Graham v. John Deere Co. of Kansas City, 383 U.S. 1, 26 (1966) (finding simply moving a components' location obvious where the resulting function was exactly the same). It would have been obvious to a POSA to modify Barg to face the patch opening toward the cup interior edge, and a POSA would have been motivated to do so, at least, to better protect the pocket contents. A POSA would have a high likelihood of success as reorienting a patch opening simply requires adjusting a known sewing technique. NIKE-1001 ¶536. Thus, a POSA would have found it obvious to modify Barg based on their own knowledge and would have had a high expectation of success in doing so. *Id.*

9. Claim 9

- a. “The pocket bra of claim 8 wherein the patch is operatively associated with only one of the left and right cups” [9].**

This limitation is disclosed for the reasons discussed above. *Supra* §§ IX.A.2, IX.A.8.

10. Claim 10

- a. “The pocket bra of claim 8 further comprising a non-padding item positioned in the pocket.” [10]**

This limitation is disclosed for the reasons discussed above. *Supra* §§ IX.A.3, IX.A.8.

11. Claim 11

- a. **“The pocket bra of claim 8 wherein the lower edge of the patch is coupled adjacent to the bra by a stitching.” [11]**

This limitation is disclosed for the reasons discussed above. *Supra* §§ IX.A.4, IX.A.8.

12.Claim 12

- a. **“The pocket bra of claim 8 wherein the exterior edge of the patch is coupled adjacent to the exterior edge of the at least one of the left and right cups by a stitching.” [12]**

This limitation is disclosed for the reasons discussed above. *Supra* §§ IX.A.5, IX.A.8.

13.Claim 13

- a. **“The pocket bra of claim 9 further comprising a second patch forming a second pocket operatively associated with the other of the left and right cups.” [13]**

This limitation is disclosed for the reasons discussed above. *Supra* §§ IX.A.6, IX.A.9.

14. Claim 14

- a. **“The pocket bra of claim 8 wherein the patch lower and exterior edges are aligned with the lower and exterior edges of the at least one of the left and right**

cups by a stitching, and wherein the stitching is along the lower and exterior edges of the patch.” [14]

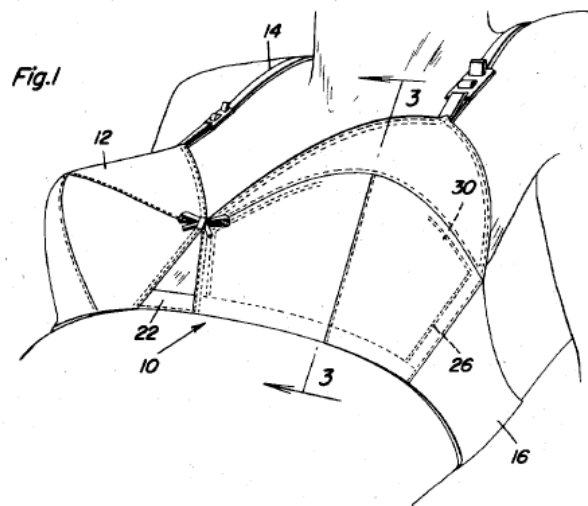
This limitation is disclosed for the reasons discussed above. *Supra* §§ IX.A.7, IX.A.8.

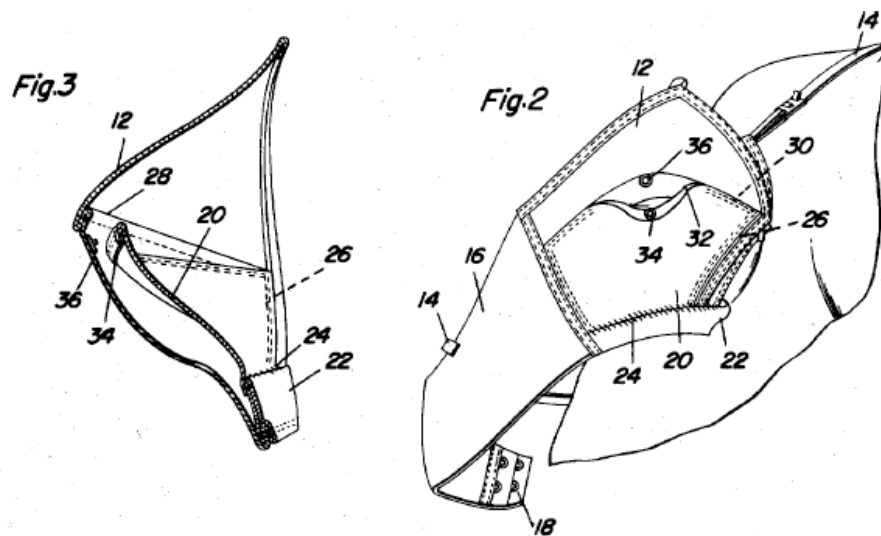
B. Ground 2: Claims 1–14 are Unpatentable Over York in view of Pintor.

1. Claim 1

a. “A pocket bra comprising:” [1A]

To the extent the preamble is limiting, York discloses “a brassiere in which is incorporated a pocket on the interior lower surface of the usual breast cup for receiving valuable articles such as jewelry, money, or the like.” NIKE-1020 at 1:15–19.

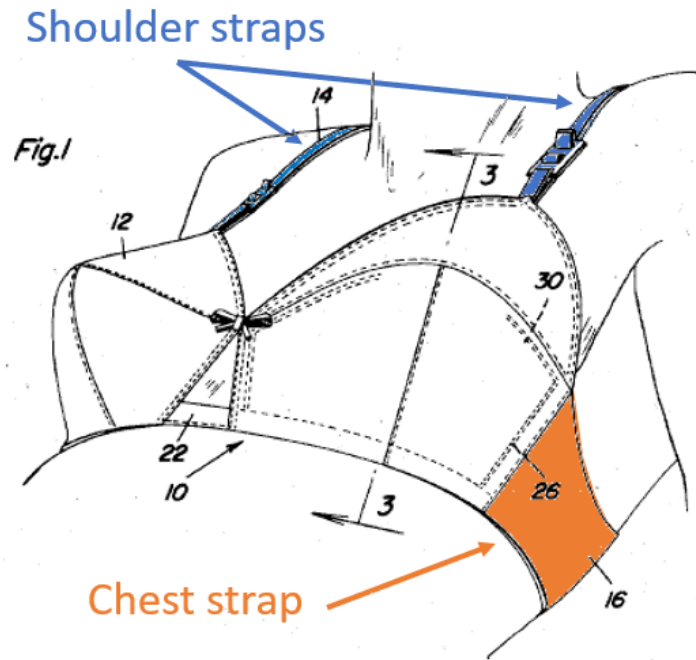




Id. at Figs. 1–3.

b. “a strap assembly including a chest strap,” [1B]

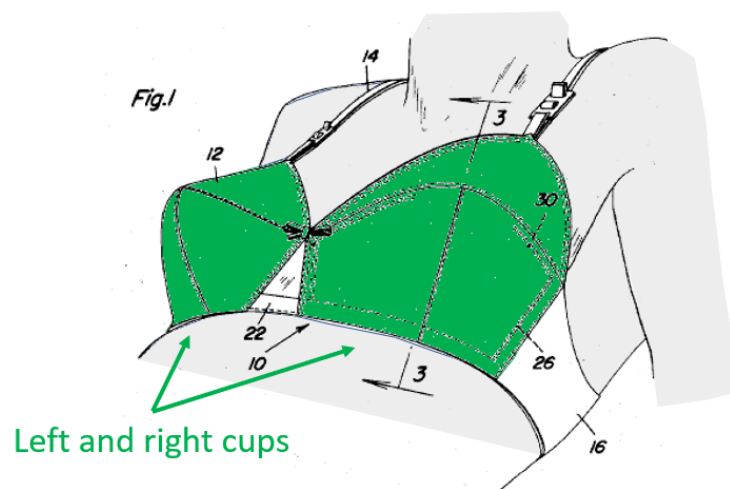
York discloses a “conventional” bra design with “the usual pair of breast cups 12 having shoulder straps 14 attached thereto along the top edge and *a body encircling strap 16 extending rearwardly which strap is provided with the usual separable ends such as indicated by the numeral 18*”:



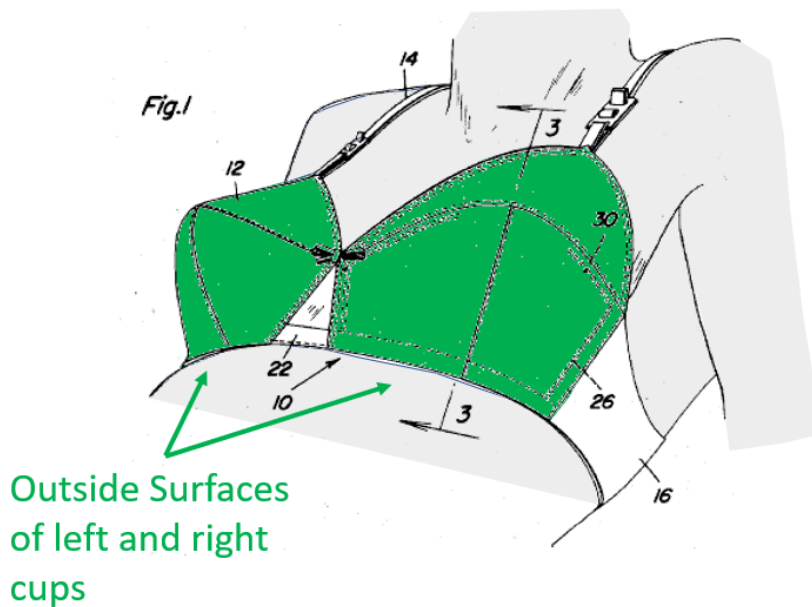
NIKE-1020 at 1:48–52, Fig. 1.

- c. “and comprising left and right cups, each cup being an area to receive a breast of a wearer and having inside and outside surfaces,” [1C]

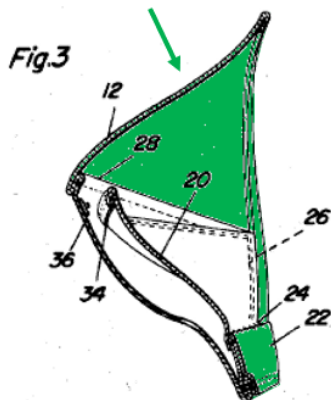
York discloses a bra with left and right cups:



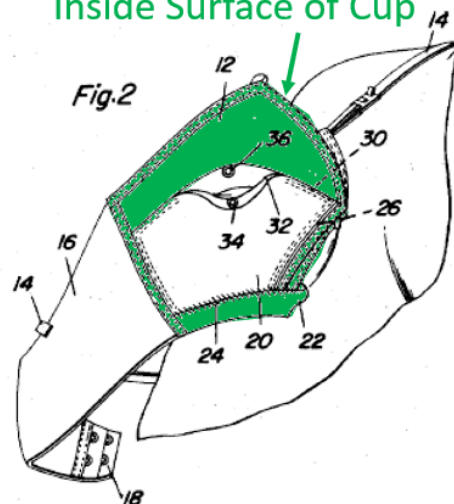
NIKE-1020 at Fig. 1, 1:46-52 (disclosing “a brassiere which includes the usual pair of breast cups 12”). Further, as illustrated in Figures 1 and 3 below, the cups have inside and outside surfaces:



Inside Surface of Cup



Inside Surface of Cup

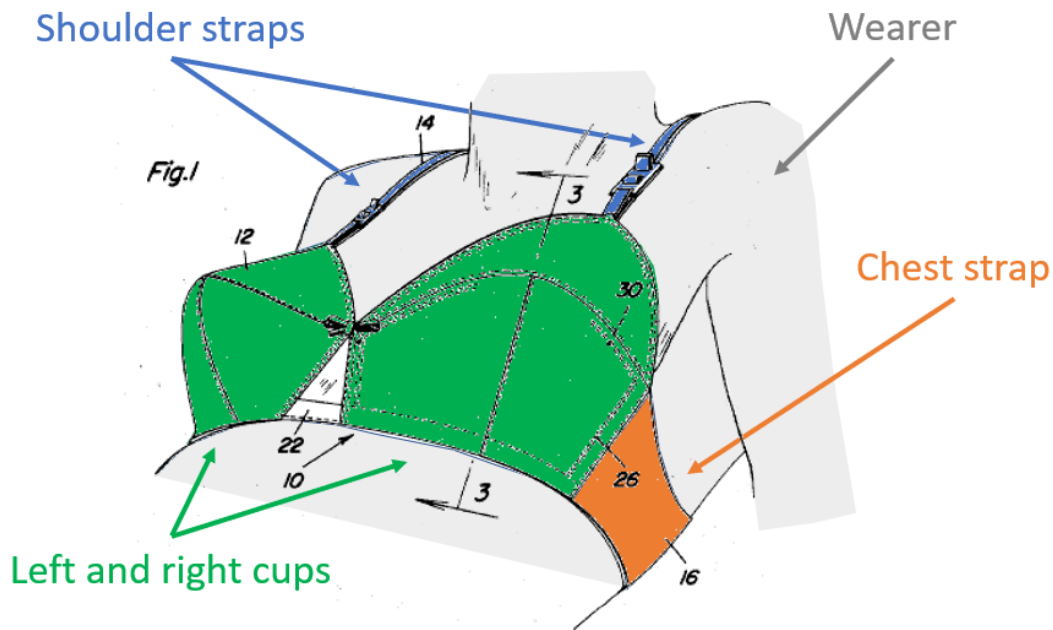


Id. at Figs. 1–3, 1:1-2:3 (describing the “interior surface” of the breast cups).

A POSA would also have understood York’s cups to necessarily have inside and outside surfaces. NIKE-1001 ¶546.

d. “the strap assembly being attached to the cups whereby the strap assembly connects the cups to the wearer,” [1D]

York discloses this limitation. York discloses a “strap assembly” and “left and right cups.” *Supra* §§ IX.B.1.b, IX.B.1.c. Further, to the extent the “whereby” clause should be provided patentable weight,⁵ Figure 1 illustrates the disclosed strap assembly adhering the cups to a wearer:

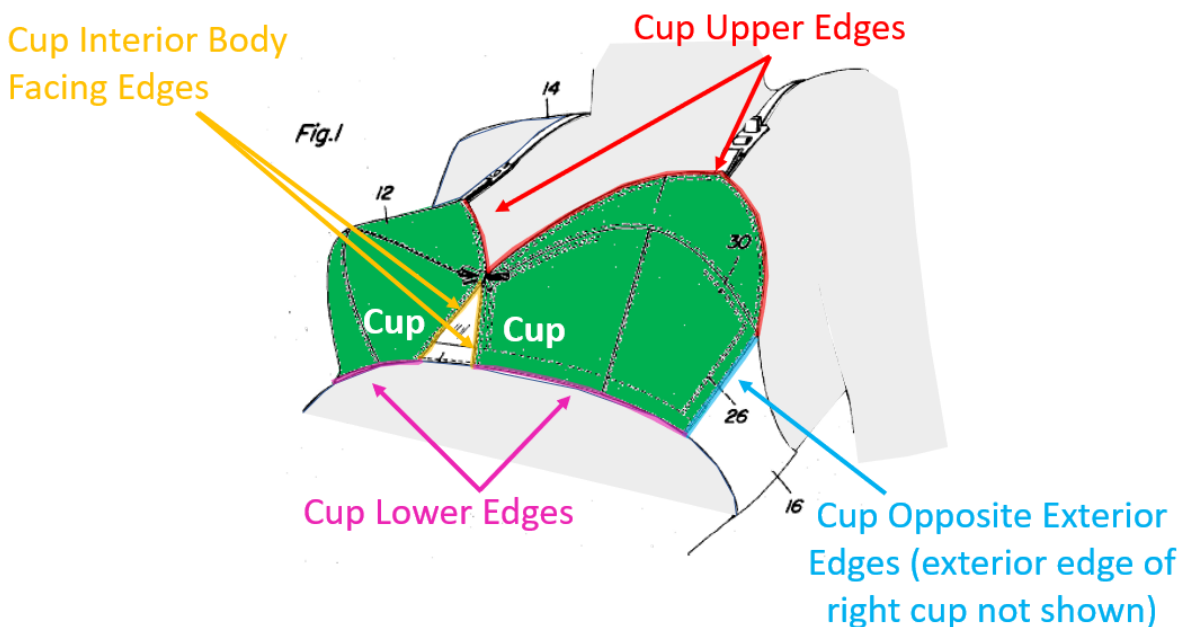


⁵ *Supra* note 4.

NIKE-1020 at Fig. 1, at 1:48–52 (“the usual pair of breast cups having *shoulder straps* attached thereto along the top edge and *a body encircling strap* extending rearwardly which strap is provided with the usual separable ends.”) (numbers omitted).

- e. “each cup having upper, lower, interior body facing, and opposite exterior edges;” [1E]

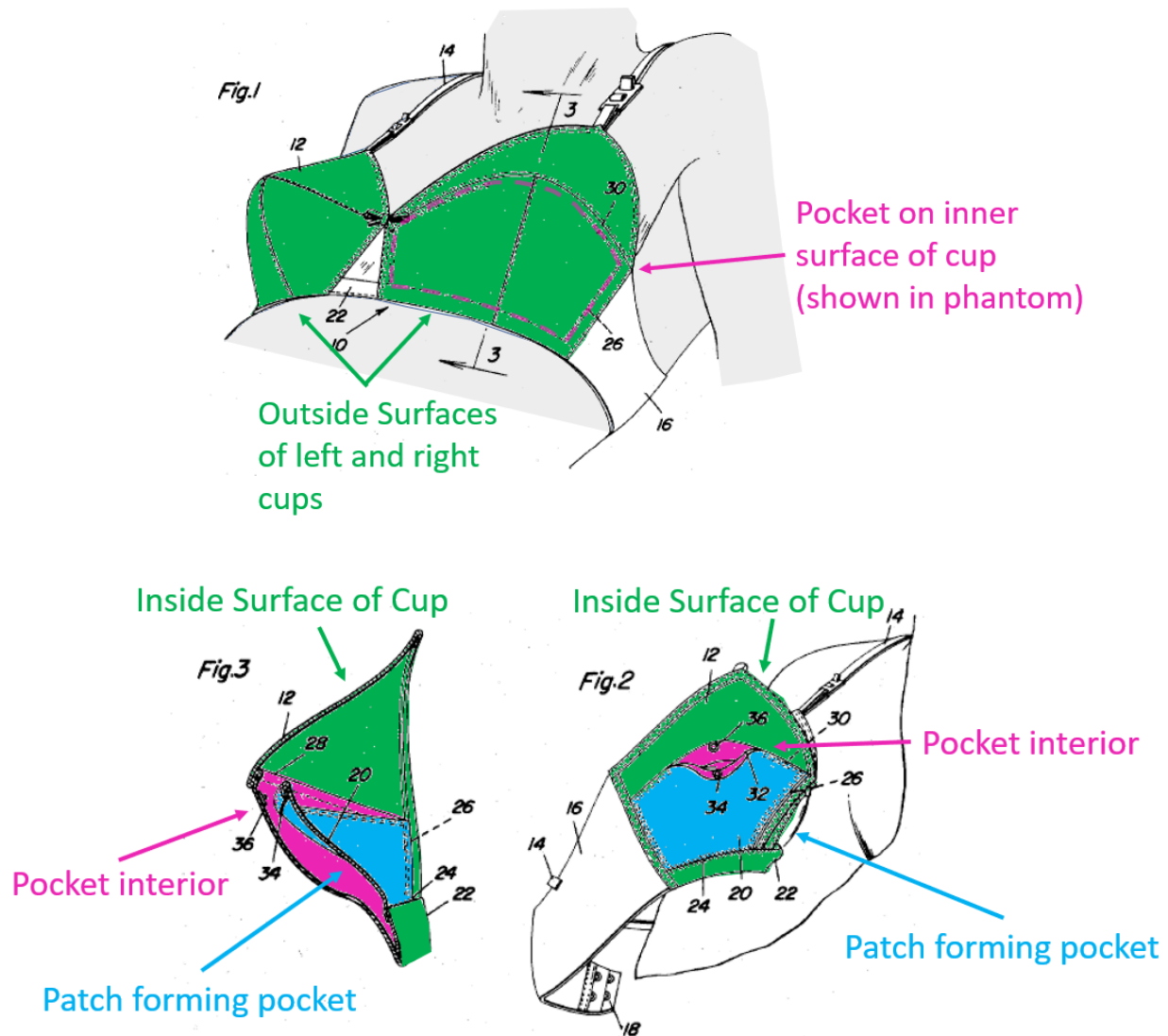
York renders obvious this limitation. York discloses upper, lower, interior body facing, and opposite exterior edges of the cup:



NIKE-1020 at Fig. 1. choice. See *Uber*, 957 F.3d at 1338–40 (citing *KSR*, 550 U.S. at 421); NIKE-1001 ¶548.

- f. “a patch forming a pocket operatively associated with at least one of the left and right cups,” [1F]

York renders obvious “a patch forming a pocket operatively associated with at least one of the left and right cups.” As illustrated below, York discloses “a pocket forming panel 20” attached to the bra cup to form a pocket:

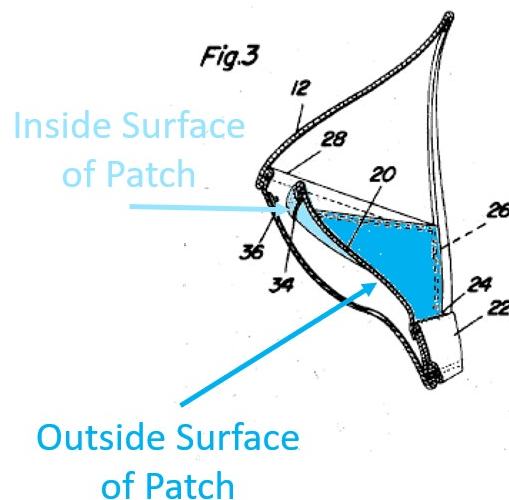
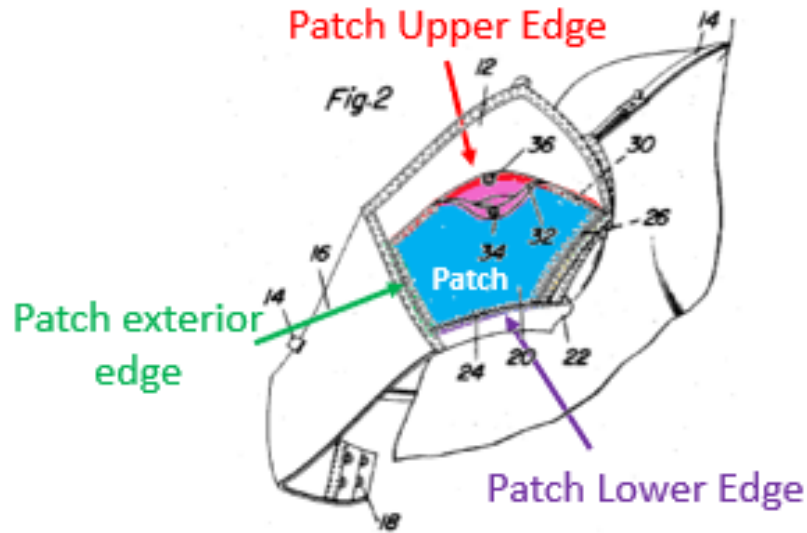


NIKE-1020 at Figs. 1–3, 1:54–2:23.

While York discloses a pocket on the “interior surface of one of the breast cups,” NIKE-1020 at 1:54–2:23, it would have been obvious to include the expressly disclosed pocket on both cups. NIKE-1001 ¶550. Nothing in York teaches away from the placement of a pocket on each of the cups and a POSA would have been motivated to include a pocket on each cup to further its goal of providing a place to store “valuable articles such as jewelry, money, or the like.” NIKE-1020 at 1:18–19; NIKE-1001 ¶550. Thus, it would have been obvious to a POSA to include such a pocket on both cups, including to increase the amount of storage space in the bra. NIKE-1001 ¶550.

- g. “the patch having an upper edge, a lower edge, and an exterior edge, the patch having inside and outside surfaces;” [1G]**

York renders this limitation obvious. York discloses a patch with upper, lower, and exterior edges, the patch having both inside and outside surfaces:



NIKE-1020 at Figs. 2–3. A POSA would have understood the patch to necessarily have inside and outside surfaces. NIKE-1001 ¶551.

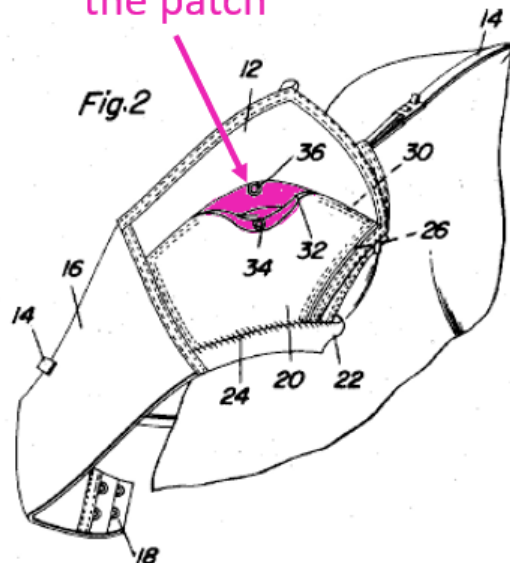
- h. “the lower edge of the patch coupled to the bra adjacent to a lower edge of the at least one of the left and right cups, and the exterior edge of the patch coupled adjacent to the exterior edge of the at least one of the left and right cups, a pocket opening formed along the upper edge of the patch being

unconnected to the at least one of the left and right cups;” [1H]

York discloses a “pocket forming panel 20 having the lower edge thereof connected with the finished hem 22 at the lower edge of the cup 12 by stitching 24. The panel is also secured to the side edges of the cup 12 by stitching 26.” NIKE-1020 at 2:1–4, Figs. 2–3. Thus, York discloses coupling the lower interior and exterior edges of the patch to the lower interior and exterior edges of an associated cup.

Further, as previously discussed, York discloses upper edges of the patch. *Supra* § IX.B.1.g. York discloses an opening along this upper edge:

**Pocket opening along
the upper edge of
the patch**



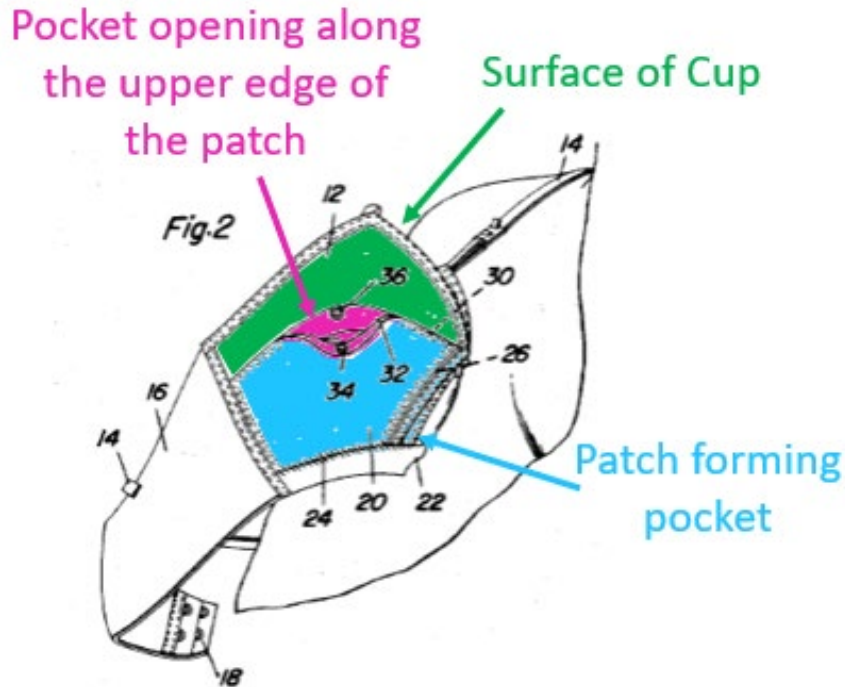
NIKE-1020 at Fig. 2, 2:3-23.

- i. **“the pocket opening capable of repeated receiving and removal of an item when being worn by the wearer;” [1I]**

York discloses a pocket “for receiving valuable articles such as jewelry, money or the like.” NIKE-1020 at 1:18–19, 2:17–20. A POSA in 2011 would have understood the necessity of making the opening capable of repeated receiving and removal of items so that the wearer is able to access, remove, and replace the “valuable articles”. NIKE-1001 ¶554.

- j. **“and wherein the upper edge of the patch crosses over a surface of the cup to form the opening, the upper edge crossing such that the opening faces the exterior edge of the at least one of the left and right cup to which it is attached.” [1J]**

York in combination with the knowledge of a POSA renders this limitation obvious. York discloses that the opening is along the “uppermost portion” of “the panel 20,” “crossing over” a surface of the bra cup:



Id. at Fig. 2, 2:3-23; NIKE-1001 ¶555. York teaches the pocket opening faces the upper edge of the cup to which it is attached. *See id.* A POSA would recognize from York that the orientation of the patch opening is simply a design choice and could just as easily be arranged such that the opening faces the exterior edge of the cup. NIKE-1001 ¶556; *see Graham*, 383 U.S. at 26. It would have been obvious to a POSA to modify York to face the patch opening toward the cup exterior edge, and a POSA would have been motivated to do so, at least, to make accessing the pocket easier for the wearer. NIKE-1001 ¶556. A POSA would have a high likelihood of success as reorienting a patch opening simply requires adjusting a known sewing technique. NIKE-1001 ¶557. Thus, a POSA would have found it obvious to modify

York based on their own knowledge and would have had a high expectation of success in doing so. *Id.*

2. Claim2

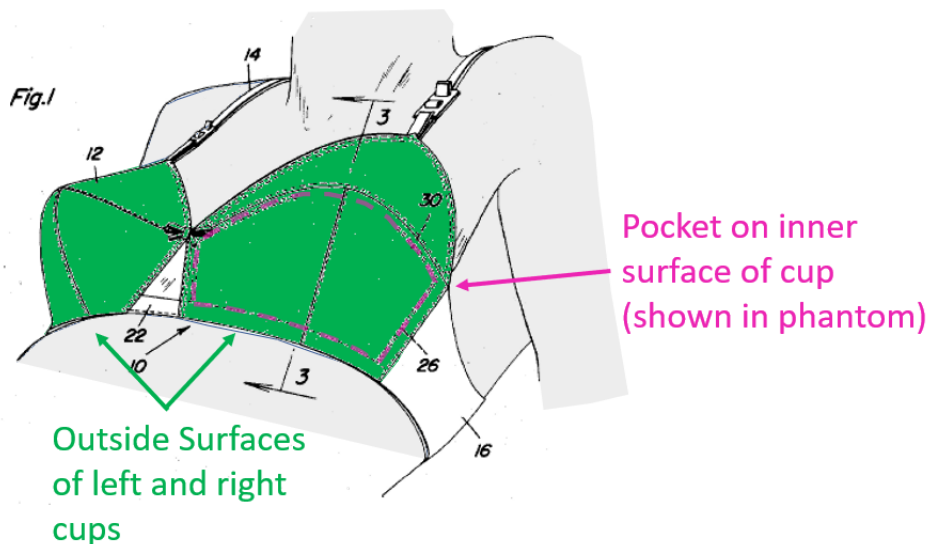
a. “The pocket bra of claim 1” [Preamble]

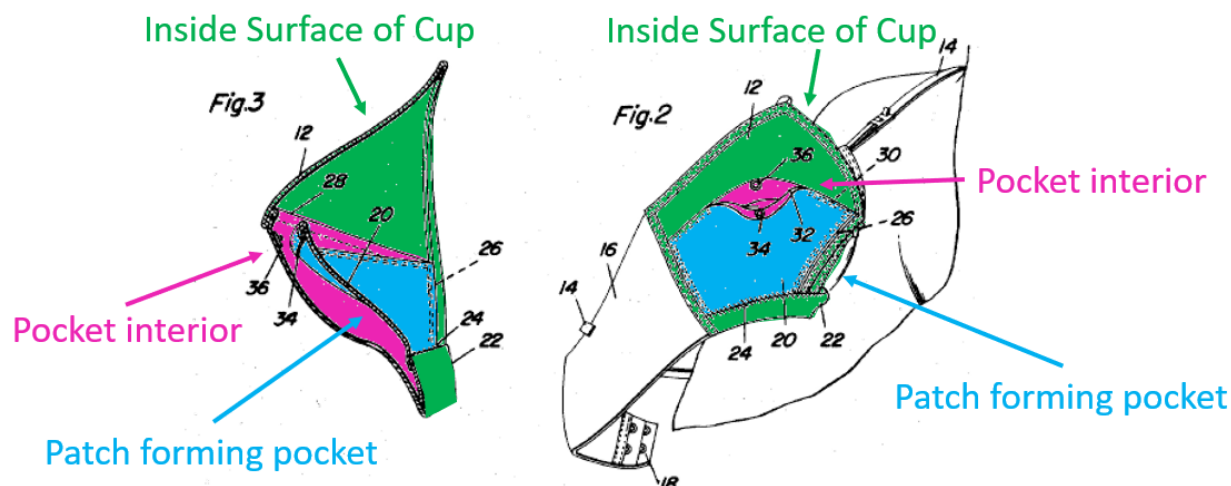
York discloses “[t]he pocket bra of claim 1” for the reasons described above.

Supra § IX.B.1.

b. “wherein the patch is operatively associated with only one of the left and right cups.” [2A]

York discloses “[t]he interior surface of one of the breast cups 12 is provided with a pocket forming panel”:





NIKE-1020 at Figs. 1–3, 1:54–2:23.

3. Claim 3

a. “The pocket bra of claim 1” [Preamble]

York discloses “[t]he pocket bra of claim 1” for the reasons described above.

Supra § IX.B.1.

b. “further comprising a non-padding item positioned in the pocket.” [3A]

York discloses a pocket “for receiving valuable articles such as jewelry, money or the like.” NIKE-1020 at 1:18–19, 2:17–20. A POSA would have understood “valuable articles” to be non-padding items and are intended to be positioned within York’s pockets. NIKE-1001 ¶561.

4. Claim 4

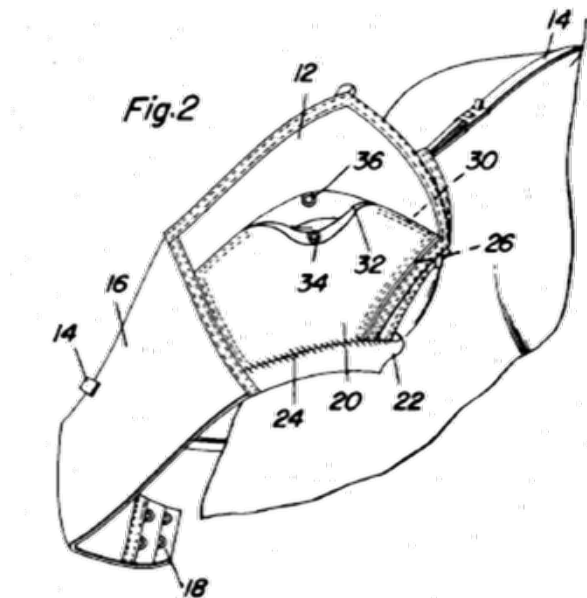
a. “The pocket bra of claim 1” [Preamble]

York discloses “[t]he pocket bra of claim 1” for the reasons described above.

Supra § IX.B.1.

b. “wherein the lower edge of the patch is coupled adjacent to the bra by a stitching.” [4A]

As shown below, York discloses a “pocket forming panel 20 having the lower edge thereof connected with the finish hem 22 at the lower edge of the cup 12 by stitching 24.” NIKE-1020 at 2:1–3.



Id. at Fig. 2.

5. Claim 5

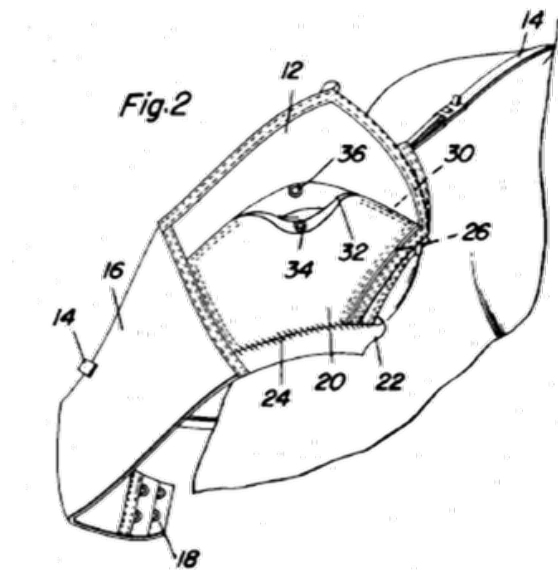
a. “The pocket bra of claim 1” [Preamble]

York discloses “[t]he pocket bra of claim 1” for the reasons described above.

Supra § IX.B.1.

b. “wherein the exterior edge of the patch is coupled to the exterior edge of the at least one of the left and right cups by a stitching.” [5A]

As shown below, York discloses a “pocket forming panel 20 having the lower edge thereof connected with the finish hem 22 at the lower edge of the cup 12 by stitching 24. The panel is also secured to the side edges of the cup 12 by stitching 26.” NIKE-1020 at 2:1–4.



Id. at Fig. 2.

6. Claim 6

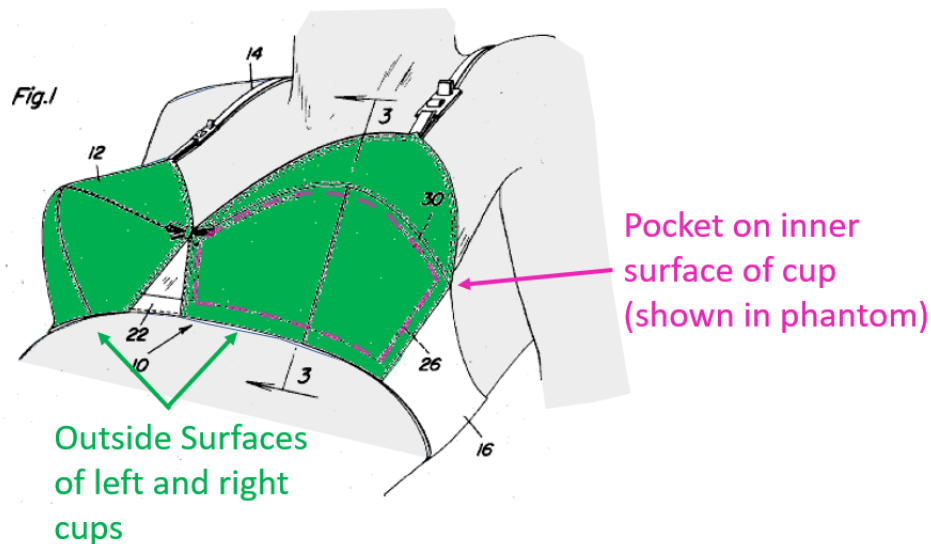
a. “The pocket bra of claim 2” [Preamble]

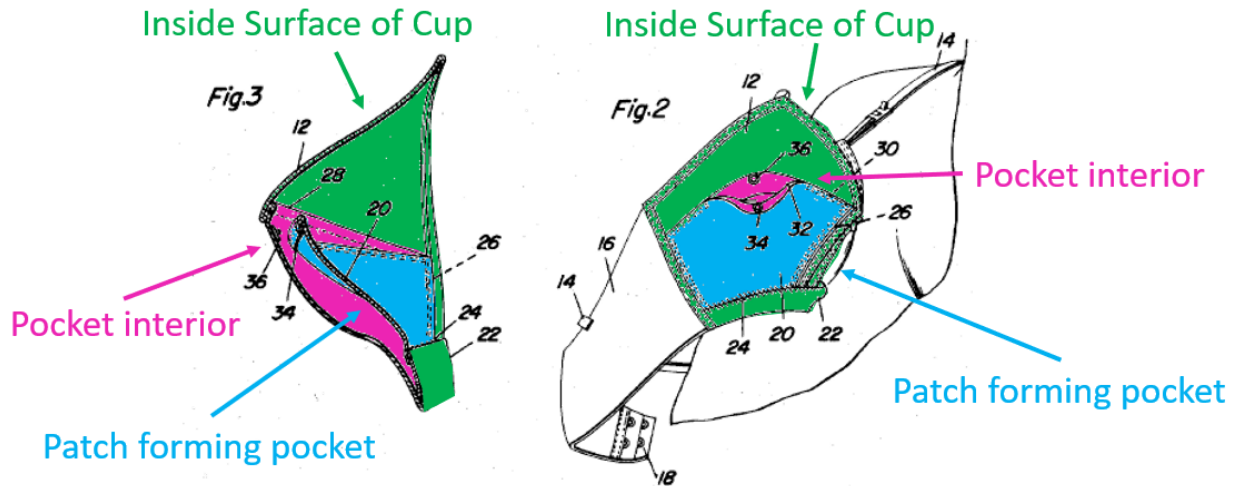
York discloses “[t]he pocket bra of claim 1” for the reasons described above.

Supra § IX.B.1.

b. “further comprising a second patch forming a second pocket operatively associated with the other of the left and right cups.” [6A]

York renders obvious “a patch forming a pocket operatively associated with each cup.” As illustrated below, York discloses “a pocket forming panel 20” attached to the bra cup to form a pocket:





NIKE-1020 at Figs. 1–3, 1:54–2:23.

While York discloses a pocket on the “interior surface of one of the breast cups,” NIKE-1020 at 1:54–2:23, it would have been obvious to include the expressly disclosed pocket on both cups. NIKE-1001 ¶568. Nothing in York teaches away from the placement of a pocket on each of the cups and a POSA would have been motivated to include a pocket on each cup to further its goal of providing a place to store “valuable articles such as jewelry, money, or the like.” NIKE-1020 at 1:18–19; NIKE-1001 ¶568. Thus, it would have been obvious to a POSA to include such a pocket on both cups, including to increase the amount of storage space in the bra. NIKE-1001 ¶568.

7. Claim 7

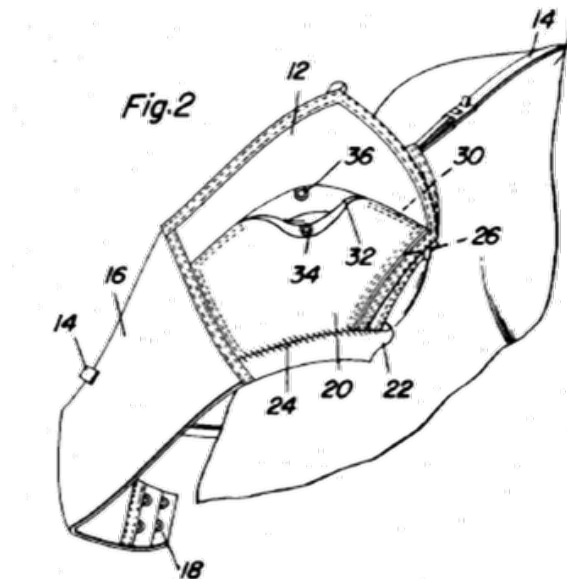
a. “The pocket bra of claim 1” [Preamble]

York discloses “[t]he pocket bra of claim 1” for the reasons described above.

Supra § IX.B.1.

b. “wherein the patch lower and exterior edges are aligned with the lower and exterior edges of the at least one of the left and right cups by a stitching, and wherein the stitching is along the lower and exterior edges of the patch.” [7A]

York discloses a “pocket forming panel 20 having the lower edge thereof connected with the finish hem 22 at the lower edge of the cup 12 by stitching 24. The panel is also secured to the side edges of the cup 12 by stitching 26.” NIKE-1020 at 2:1–4.



Id. at Fig. 2. Thus, York discloses the edges of each patch aligned and stitched to the lower and exterior edges of each corresponding cup. NIKE-1001 ¶570.

8. Claim 8

a. “A pocket bra comprising:” [8A]

This limitation is disclosed for the reasons discussed above. *Supra* § IX.B.1.a.

b. “a strap assembly including a chest,” [8B]

This limitation is disclosed for the reasons discussed above. *Supra* § IX.B.1.b.

c. “and comprising left and right cups, each cup being an area to receive a breast of a wearer and having inside and outside surfaces,” [8C]

This limitation is disclosed for the reasons discussed above. *Supra* § IX.B.1.c.

d. “the strap assembly being attached to the cups whereby the strap assembly connects the cups to the wearer,” [8D]

This limitation is disclosed for the reasons discussed above. *Supra* § IX.B.1.d.

e. “each cup having upper, lower, interior body facing, and opposite exterior edges;” [8E]

This limitation is disclosed for the reasons discussed above. *Supra* § IX.B.1.e.

f. “a patch forming a pocket operatively associated with at least one of the left and right cups,” [8F]

This limitation is disclosed for the reasons discussed above. *Supra* § IX.B.1.f.

g. “the patch having an upper edge, a lower edge, and an exterior edge, the patch having inside and outside surfaces;” [8G]

This limitation is disclosed for the reasons discussed above. *Supra* § IX.B.1.g.

- h. “the lower edge of the patch coupled to the bra adjacent to a lower edge of the at least one of the left and right cups, and the exterior edge of the patch coupled adjacent to the exterior edge of the at least one of the left and right cups, a pocket opening formed along the upper edge of the patch being unconnected to the at least one of the left and right cups;” [8H]**

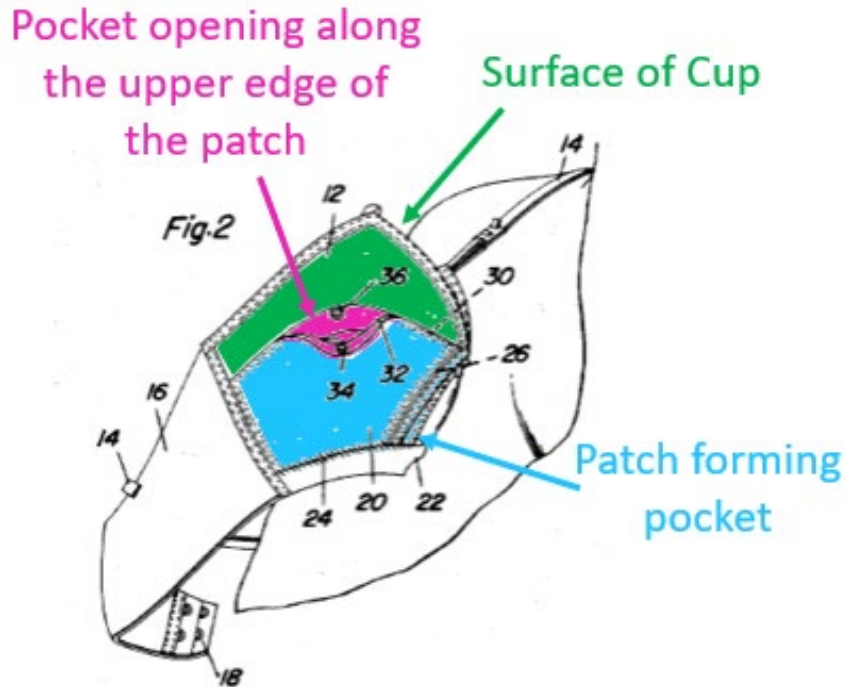
This limitation is disclosed for the reasons discussed above. *Supra* § IX.B.1.h.

- i. “the pocket opening capable of repeated receiving and removal of an item when being worn by the wearer;” [8I]**

This limitation is disclosed for the reasons discussed above. *Supra* § IX.B.1.i.

- j. “and wherein the upper edge of the patch crosses over a surface of the cup to form the opening, the upper edge crossing such that the opening faces the interior edge of the at least one of the left and right cup to which it is attached.” [8J]**

York in combination with the knowledge of a POSA renders this limitation obvious. York discloses that the opening is along the “uppermost portion” of “the panel 20,” “crossing over” a surface of the bra cup:



Id. at Fig. 2, 2:3-23; NIKE-1001 ¶580. York teaches the pocket opening faces the upper edge of the cup to which it is attached. *See id.* A POSA would recognize from York that the orientation of the patch opening is simply a design choice and could just as easily be arranged such that the opening faces the interior edge of the cup. NIKE-1001 ¶580; *see Graham*, 383 U.S. at 26. It would have been obvious to a POSA to modify York to face the patch opening toward the cup interior edge, and a POSA would have been motivated to do so, at least, to better protect the pocket contents. NIKE-1001 ¶580. A POSA would have a high likelihood of success as reorienting a patch opening simply requires adjusting a known sewing technique. *Id.* Thus, a POSA would have found it obvious to modify York based on their own knowledge and would have had a high expectation of success in doing so. *Id.*

9. Claim 9

- a. “The pocket bra of claim 8 wherein the patch is operatively associated with only one of the left and right cups” [9].**

This limitation is disclosed for the reasons discussed above. *Supra* §§ IX.B.2, IX.B.8.

10. Claim 10

- a. “The pocket bra of claim 1 further comprising a non-padding item positioned in the pocket.” [10]**

This limitation is disclosed for the reasons discussed above. *Supra* §§ IX.B.3, IX.B.8.

11. Claim 11

- a. “The pocket bra of claim 1 wherein the lower edge of the patch is coupled adjacent to the bra by a stitching.” [11]**

This limitation is disclosed for the reasons discussed above. *Supra* §§ IX.B.4, IX.B.8.

12.Claim 12

- a. “The pocket bra of claim 1 wherein the exterior edge of the patch is coupled adjacent to the exterior edge of the at least one of the left and right cups by a stitching.” [12]**

This limitation is disclosed for the reasons discussed above. *Supra* §§ IX.B.5, IX.B.8.

13.Claim 13

- a. “The pocket bra of claim 9 further comprising a second patch forming a second pocket operatively associated with the other of the left and right cups.” [13]**

This limitation is disclosed for the reasons discussed above. *Supra* §§ IX.B.6, IX.B.9.

14. Claim 14

- a. “The pocket bra of claim 1 wherein the patch lower and exterior edges are aligned with the lower and exterior edges of the at least one of the left and right cups by a stitching, and wherein the stitching is along the lower and exterior edges of the patch.” [14]**

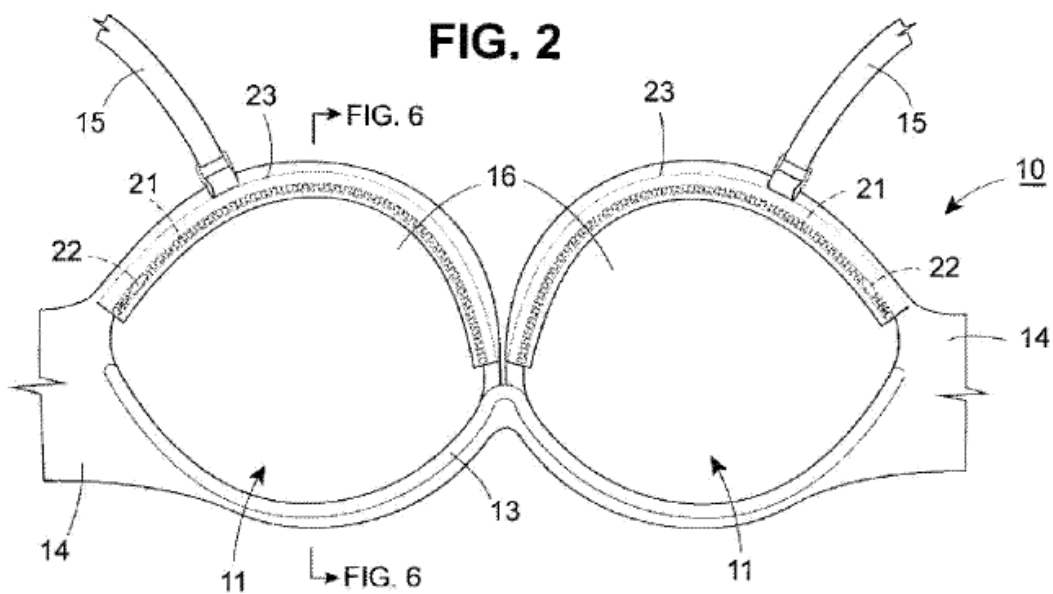
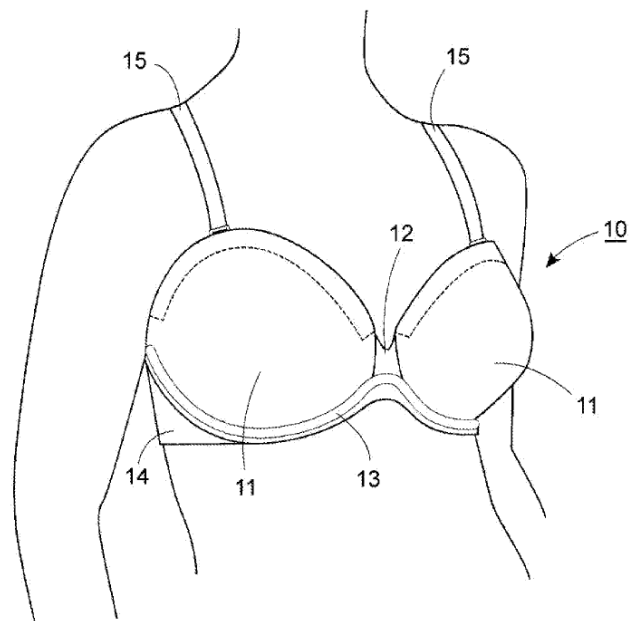
This limitation is disclosed for the reasons discussed above. *Supra* §§ IX.B.7, IX.B.8.

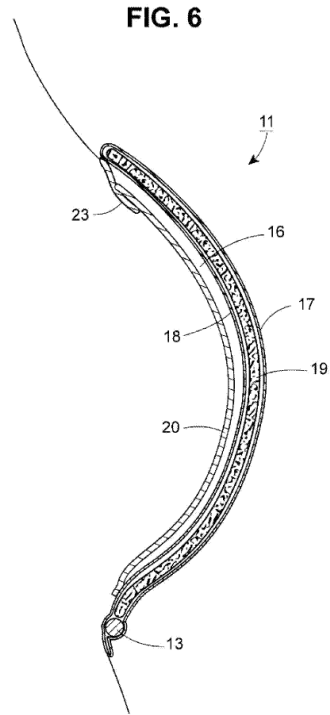
C. Ground 3: Claims 1–14 Are Unpatentable Over Handras in view of Pintor.

1. Claim 1

- a. “A pocket bra comprising:” [1A]**

To the extent the preamble is limiting, Handras discloses “a bra with one or more storage pockets.” NIKE-1021 at [0001].



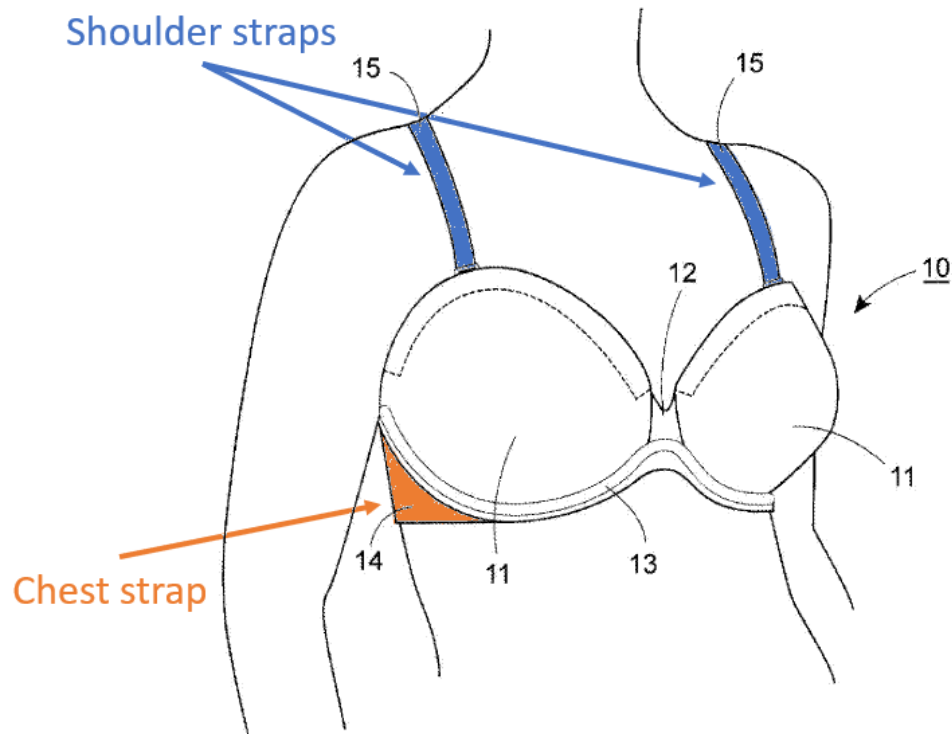


NIKE-1021 at Figs. 1–2, 6; at [0003] (“[i]t is an object of the invention to provide a pocket in a bra for receiving one or more items that is conveniently located for the wearer.”), at [0004] (“a concealed pocket in a bra for receiving one of [sic] more items.”).

b. “a strap assembly including a chest strap,” [1B]

Handras discloses a traditional bra comprising of “a pair of cups 11 ... a pair of side panels 14 (only one of which is shown) that can be connected together at the back of the bra 10 in any conventional manner and a pair of shoulder straps 15.”

NIKE-1021 at [0020].

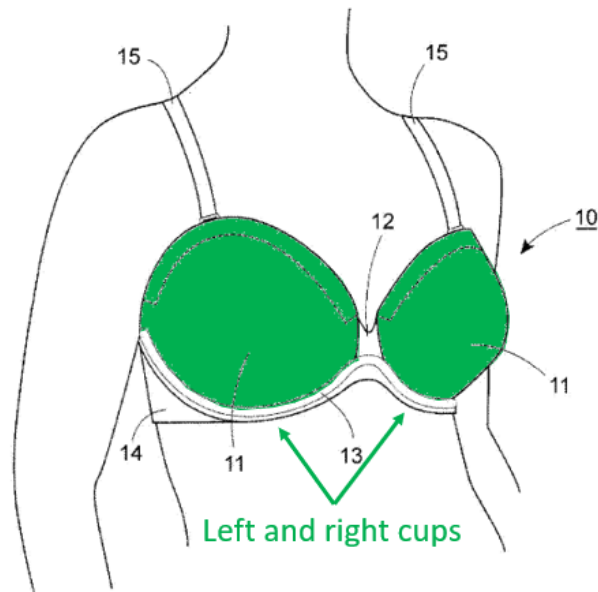


NIKE-1021 at Fig. 1.

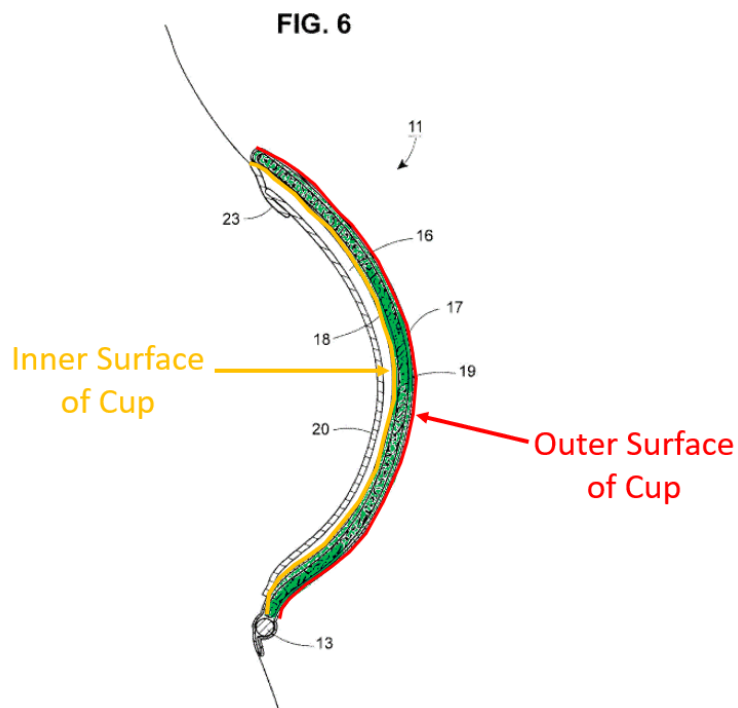
- c. “and comprising left and right cups, each cup being an area to receive a breast of a wearer and having inside and outside surfaces,” [1C]

Handras discloses a bra having “a pair of cups” for the left and right breasts.

NIKE-1021 at [0020].



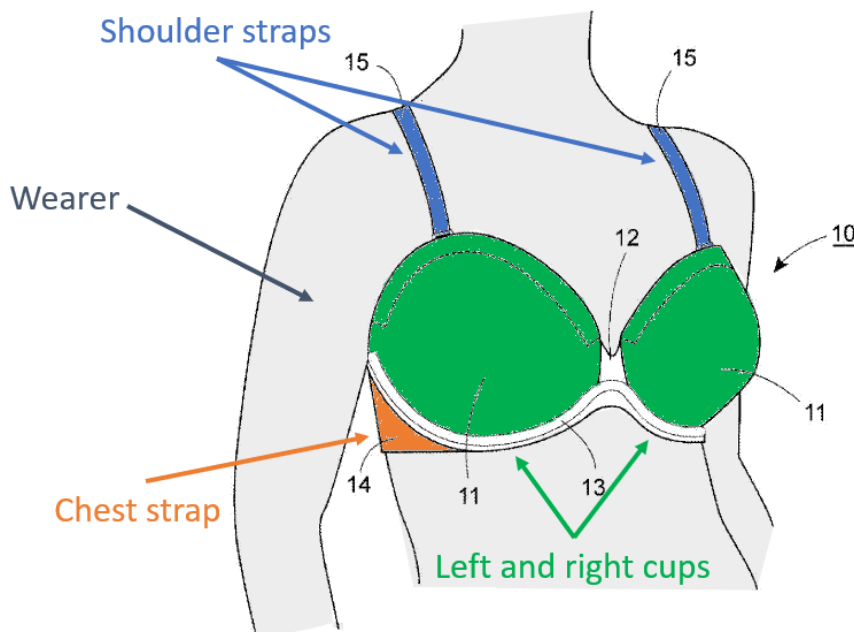
Id. at Fig. 1, [0006], [0011], [0029], Cl. 1, Cl. 6. A POSA would understand these cups to necessarily have inside and outside surfaces. NIKE-1001 at ¶590. Indeed, the inside and outside surfaces are illustrated in Figure 6:



NIKE-1021 at Fig. 6, [0022] (“each cup 11 has an outer ply of material 17, an inner ply of material 18”).

d. “the strap assembly being attached to the cups whereby the strap assembly connects the cups to the wearer,” [1D]

As explained above, Handras discloses a “strap assembly” attached to the “left and right cups.” *Supra* §§ IX.C.1.b, IX.C.1.c. Further, to the extent the “whereby” clause should be provided patentable weight,⁶ Handras discloses the strap assembly adhering the cups to the wearer:

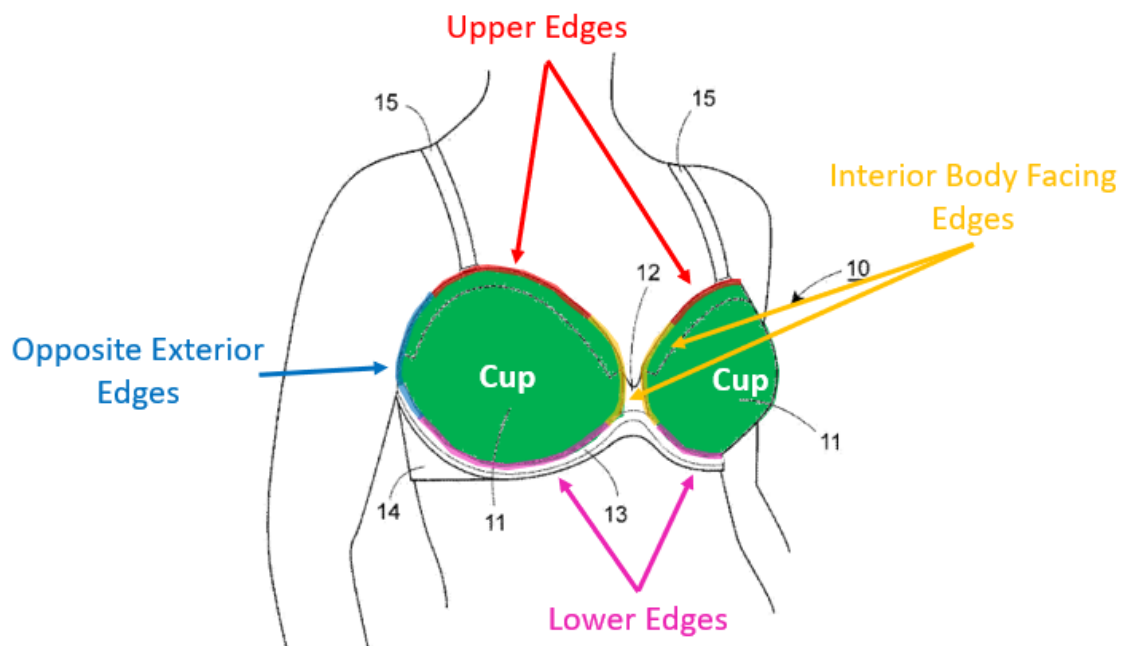


NIKE-1021 at Fig. 1.

⁶ *Supra* note 4.

- e. **“each cup having upper, lower, interior body facing, and opposite exterior edges;” [1E]**

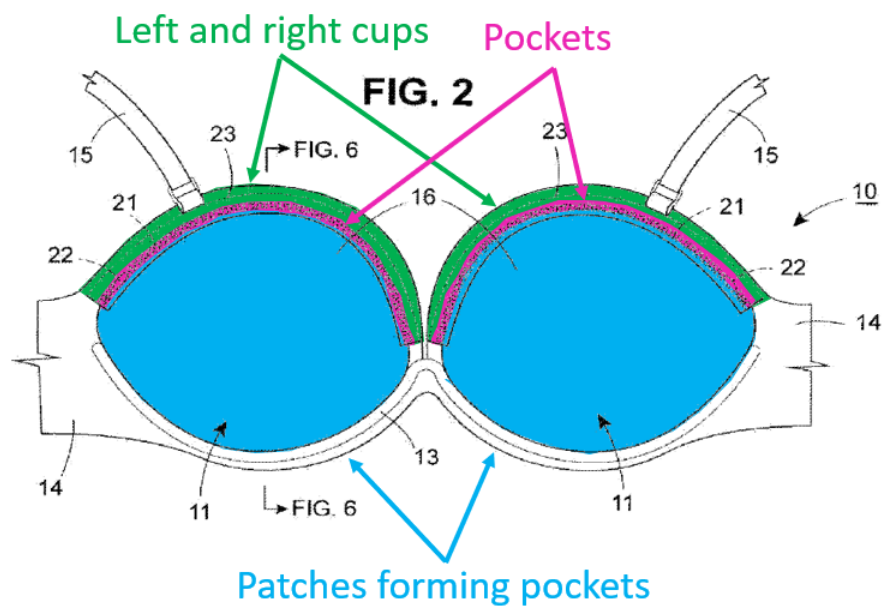
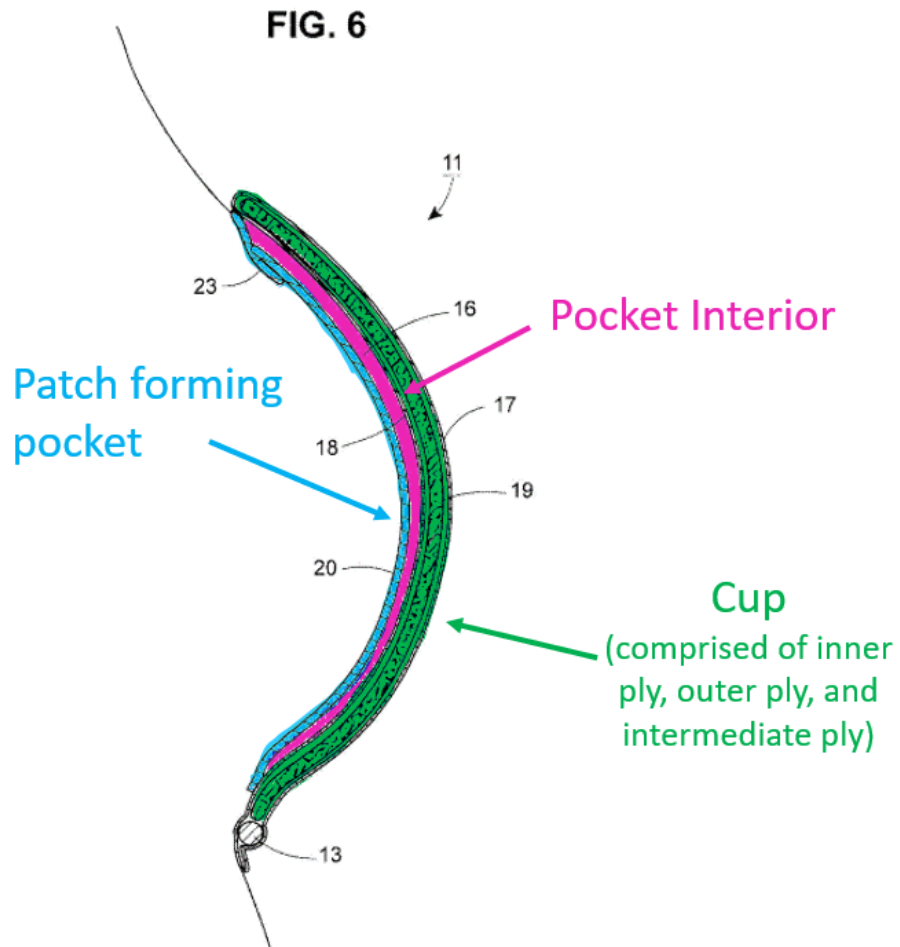
Handras discloses cups with curved upper, lower, interior body facing, and opposite exterior edges, as illustrated below:



NIKE-1021 at Fig. 1.

- f. **“a patch forming a pocket operatively associated with at least one of the left and right cups,” [1F]**

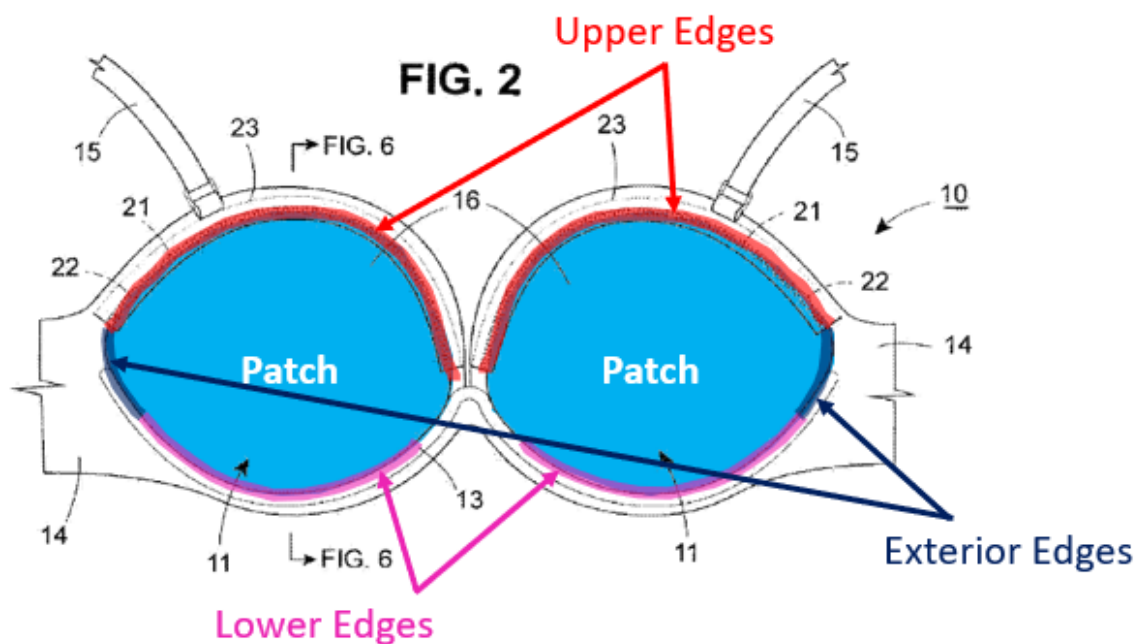
Handras discloses a “patch” (“fourth ply of material 20”) attached to the inner surface of each cup (“inner ply 18”) to create a pocket. NIKE-1021 at [0022].

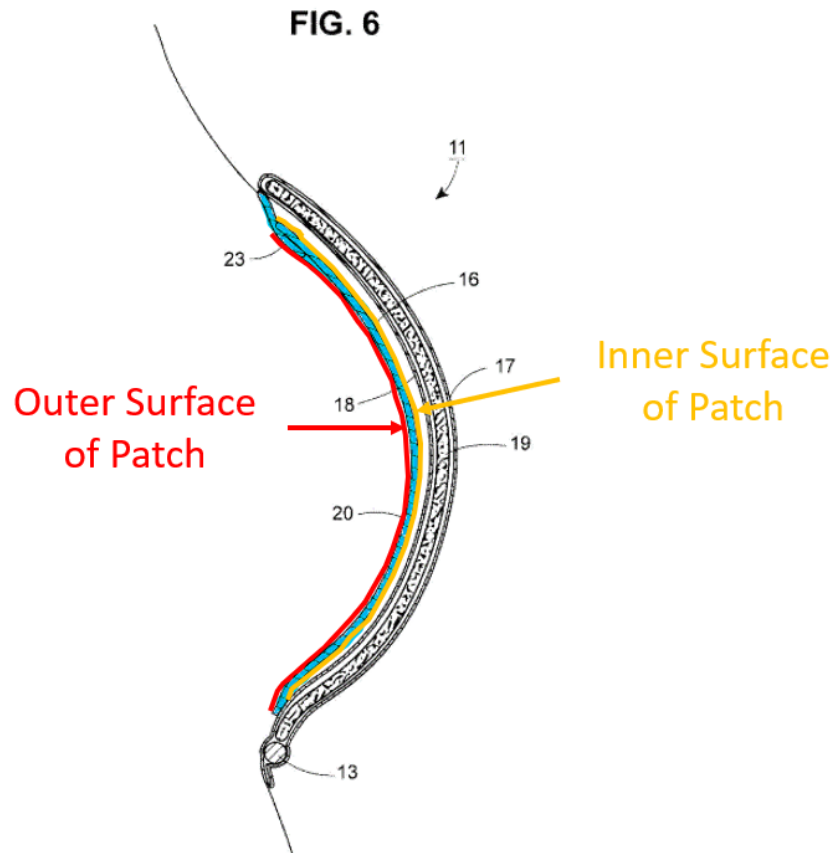


NIKE-1021 at Figs. 2, 6, [0006] (“a pair of cups wherein each cup is of multiply construction with a built-in pocket.”), [0007] (“a fourth ply of material is sewn or otherwise secured to the inner ply in order to form the built-in pocket with an opening extending along the upper section of the cup.”).

- g. “the patch having an upper edge, a lower edge, and an exterior edge, the patch having inside and outside surfaces;” [1G]

Handras discloses a patch with upper, lower, and exterior edges, each patch having inside and outside surfaces:



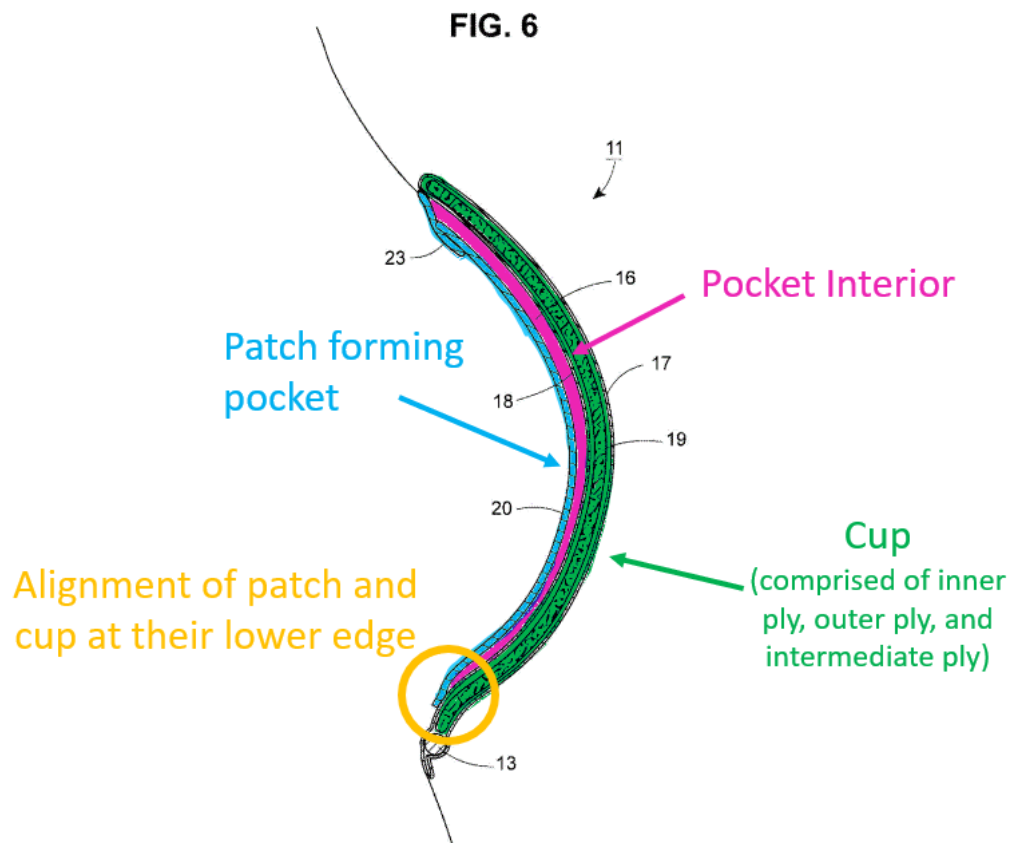


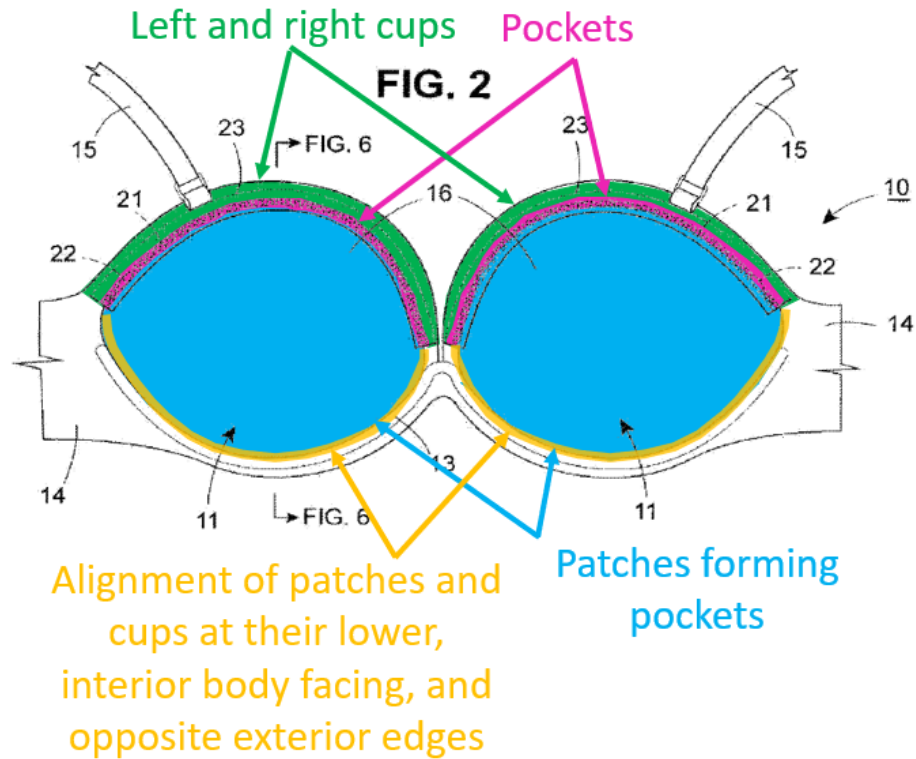
NIKE-1021 at Figs. 2, 6. A POSA would have understood the patches to necessarily have inside and outside surfaces. NIKE-1001 ¶593.

- h. “the lower edge of the patch coupled to the bra adjacent to a lower edge of the at least one of the left and right cups, and the exterior edge of the patch coupled adjacent to the exterior edge of the at least one of the left and right cups, a pocket opening formed along the upper edge of the patch being unconnected to the at least one of the left and right cups;” [1H]**

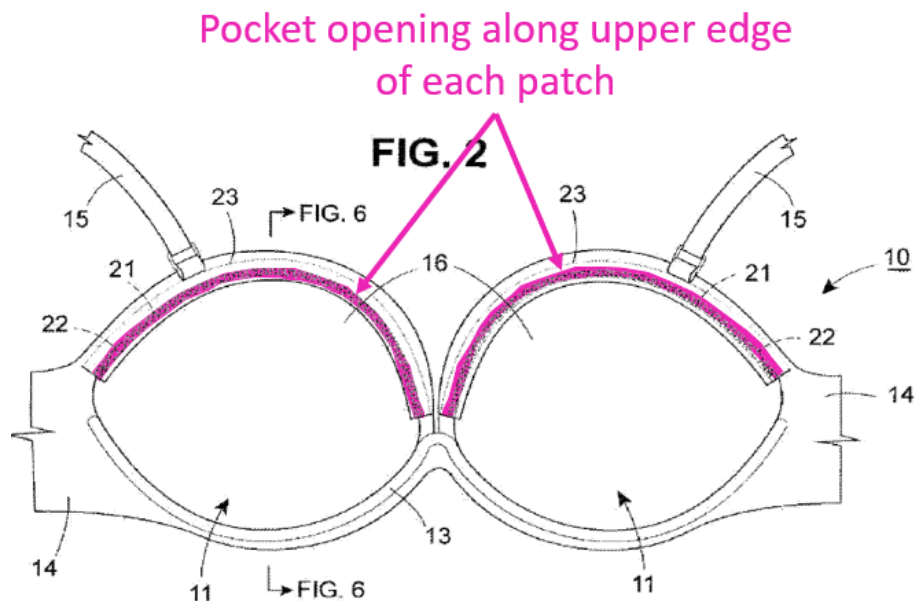
Handras discloses each patch is “secured” to each cup to form the pocket with an upper opening. *See* NIKE-1021 at [0022] (“a fourth ply of material 20 is sewn or

otherwise secured to the inner ply 18 in order to form the pocket 16 with an opening extending along the upper section of the cup.”), [0007]. A POSA would have understood that a pocket with an upper opening would be formed by coupling the lower and side edges of a patch and a cup. NIKE-1001 ¶595. Handras describes the patch as a “fourth ply of material” secured to the surface of the cup, NIKE-1021 at [0022], which would have indicated to a POSA that the patch and cup are similar in size. NIKE-1001 ¶595. This is confirmed by Handras’s disclosure that “each pocket 16 occupies a major fraction of the back of a cup 11.” *Id.*; NIKE-1021 at [0025]. As illustrated below, this “major fraction” spans almost the entire surface area of each cup, indicating that the similarly sized patches and cups are aligned at or near their respective lower and exterior edges:





NIKE-1021 at Figs. 2, 6; NIKE-1001 ¶595. Handras further discloses pocket openings at the “upper edges” of each patch:



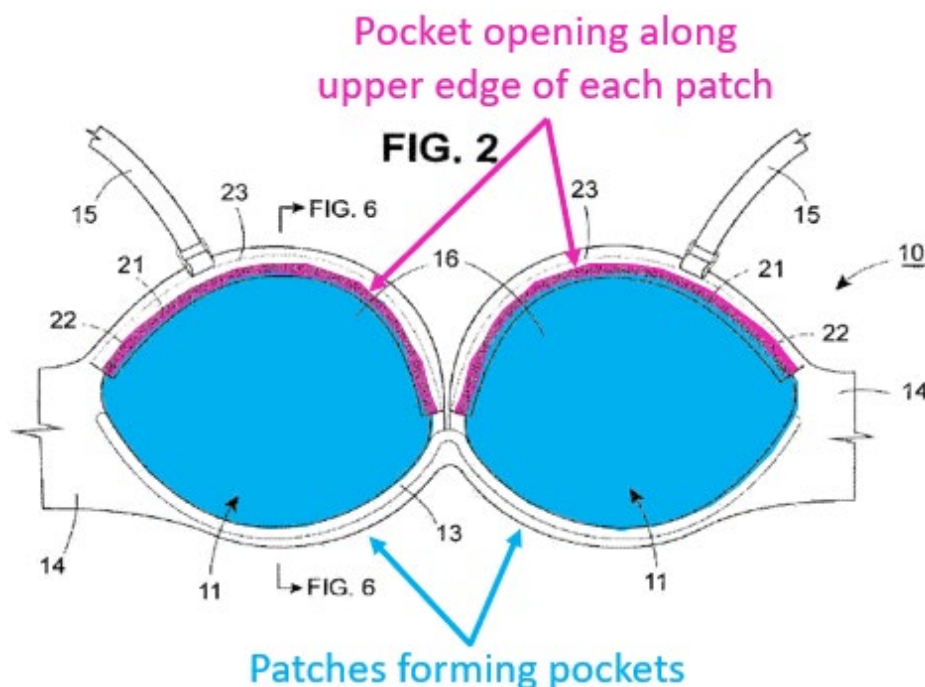
NIKE-1021 at Fig. 2, [0022] (“the pocket 16 with an opening extending along the upper section of the cup.”).

- i. **“the pocket opening capable of repeated receiving and removal of an item when being worn by the wearer;” [1I]**

Handras teaches using the pocket “to hold items, such as, credit cards, car keys, cell phones and the like.” NIKE-1021 at [0002]. A POSA in 2011 would have understood the necessity of making the opening capable of repeated receiving and removal of items so that the wearer is able to access, remove, and replace the items such as credit cards, car keys, cell phones and the like. NIKE-1001 ¶596.

- j. **“and wherein the upper edge of the patch crosses over a surface of the cup to form the opening, the upper edge crossing such that the opening faces the exterior edge of the at least one of the left and right cup to which it is attached.” [1J]**

Handras in combination with the knowledge of a POSA renders this limitation obvious. Handras discloses “an opening extending along the upper section of the cup”:



NIKE-1021 at Fig. 2, [0022].

Handras teaches the pocket opening faces the upper edge of the cup to which it is attached. *See id.* A POSA would recognize from Handras that the orientation of the patch opening is simply a design choice and could just as easily be arranged such that the opening faces the exterior edge of the cup. NIKE-1001 ¶598; *see Graham*, 383 U.S. at 26. It would have been obvious to a POSA to modify Handras to face the patch opening toward the cup exterior edge, and a POSA would have been motivated to do so, at least, to make accessing the pocket easier for the wearer. NIKE-1001 ¶598. A POSA would have a high likelihood of success as reorienting a patch opening simply requires adjusting a known sewing technique. *Id.* Thus, a

POSA would have found it obvious to modify Handras based on their own knowledge and would have had a high expectation of success in doing so. *Id.*

2. Claim2

a. “The pocket bra of claim 1” [Preamble]

York discloses “[t]he pocket bra of claim 1” for the reasons described above. *Supra* § IX.C.1.

b. “wherein the patch is operatively associated with only one of the left and right cups.” [2A]

To the extent this limitation is not expressly or inherently disclosed, Handras in combination with a POSA’s knowledge renders it obvious. While Handras teaches a bra with patches operatively associated with both the left and right cups, it would have been obvious to include the expressly disclosed pockets on only one cup. NIKE-1001 ¶600. Indeed, Pintor expressly teaches a patch operatively associated with only one of the left and right cups. *See id.* at Figs. 1 & 2; NIKE-1022 at 5:37–38 (“A pocket 30 is provided on the interior surface 16A of a first breast cover.”), Fig. 3. Nothing in Handras teaches away from the placement of a pocket on only one of the cups, and a POSITA would have been motivated to do so, at least, to reduce manufacturing costs and complexity. NIKE-1001 ¶600. Further, a POSA would have had a high expectation of success in doing so because Pintor expressly discloses a

patch on only one bra cup, both Pintor and Handras are bras, and this is simple, well-known technology. NIKE-1001 ¶600; *Ethicon*, 2022 WL 1613188 at *4.

3. Claim 3

a. “The pocket bra of claim 1” [Preamble]

Handras discloses “[t]he pocket bra of claim 1” for the reasons described above. *Supra* § IX.C.1.

b. “further comprising a non-padding item positioned in the pocket.” [3A]

Handras discloses this limitation because it teaches the use of the pocket “to hold items, such as, credit cards, car keys, cell phones and the like.” NIKE-1021 at [0002]. A POSA would have understood that these items do not constitute padding and that credit cards, car keys, cell phones and the like are intended to be positioned within Handras’s pockets. NIKE-1001 ¶602.

4. Claim 4

a. “The pocket bra of claim 1” [Preamble]

Handras discloses “[t]he pocket bra of claim 1” for the reasons described above. *Supra* § IX.C.1.

b. “wherein the lower edge of the patch is coupled adjacent to the bra by a stitching.” [4A]

Handras discloses each patch is “sewn” to each cup to form the pocket with an upper opening. *See* NIKE-1021 at [0022] (“a fourth ply of material 20 is sewn or

otherwise secured to the inner ply 18 in order to form the pocket 16 with an opening extending along the upper section of the cup.”), [0007]. A POSA would have understood that a pocket with an upper opening would be formed by coupling the lower edges of the patch and cup with stitching. NIKE-1001 ¶604.

5. Claim 5

a. “The pocket bra of claim 1” [Preamble]

Handras discloses “[t]he pocket bra of claim 1” for the reasons described above. *Supra* § IX.C.1.

b. “wherein the exterior edge of the patch is coupled to the exterior edge of the at least one of the left and right cups by a stitching.” [5A]

Handras discloses each patch is “sewn” to each cup to form the pocket with an upper opening. *See* NIKE-1021 at [0022] (“a fourth ply of material 20 is sewn or otherwise secured to the inner ply 18 in order to form the pocket 16 with an opening extending along the upper section of the cup.”), [0007]. A POSA would have understood that a pocket with an upper opening would be formed by coupling the exterior edges of the patch and cup with stitching. NIKE-1001 ¶606.

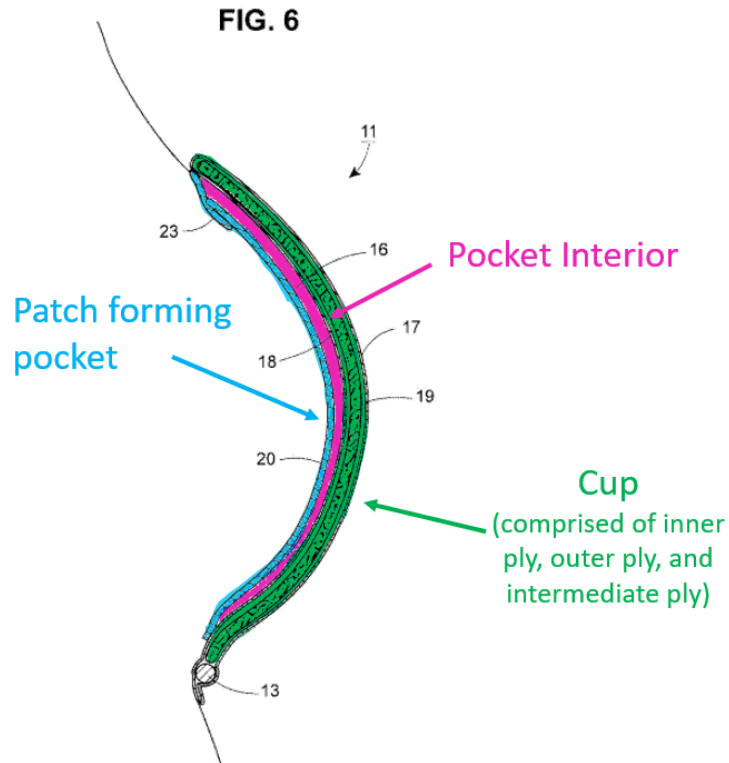
6. Claim 6

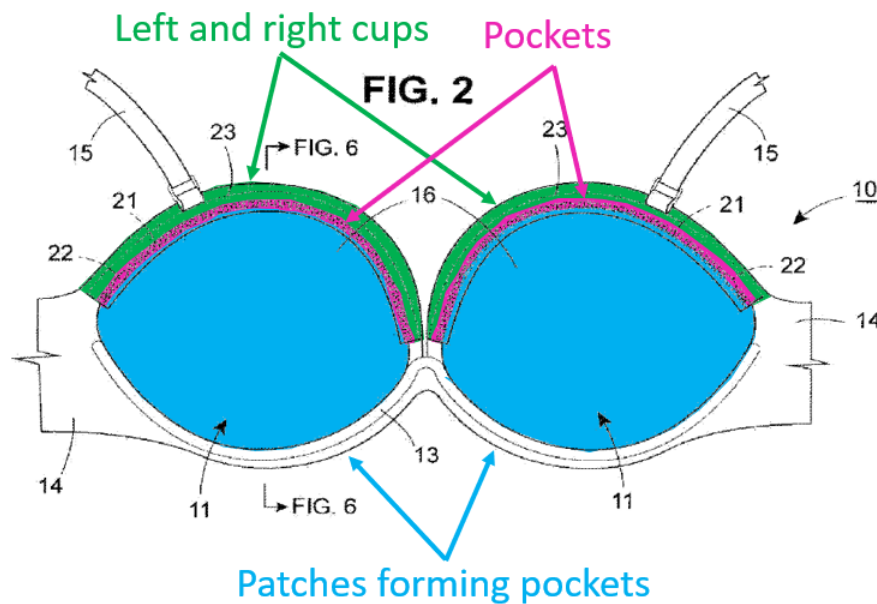
a. “The pocket bra of claim 2” [Preamble]

Handras discloses “[t]he pocket bra of claim 1” for the reasons described above. *Supra* § IX.C.1.

- b. “further comprising a second patch forming a second pocket operatively associated with the other of the left and right cups.” [6A]

Handras discloses a “patch” (“fourth ply of material 20”) attached to the inner surface of each cup (“inner ply 18”) to create a pocket. NIKE-1021 at [0022].





NIKE-1021 at Figs. 2, 6, [0006] (“a pair of cups wherein each cup is of multi-ply construction with a built-in pocket.”), [0007] (“a fourth ply of material is sewn or otherwise secured to the inner ply in order to form the built-in pocket with an opening extending along the upper section of the cup.”).

7. Claim 7

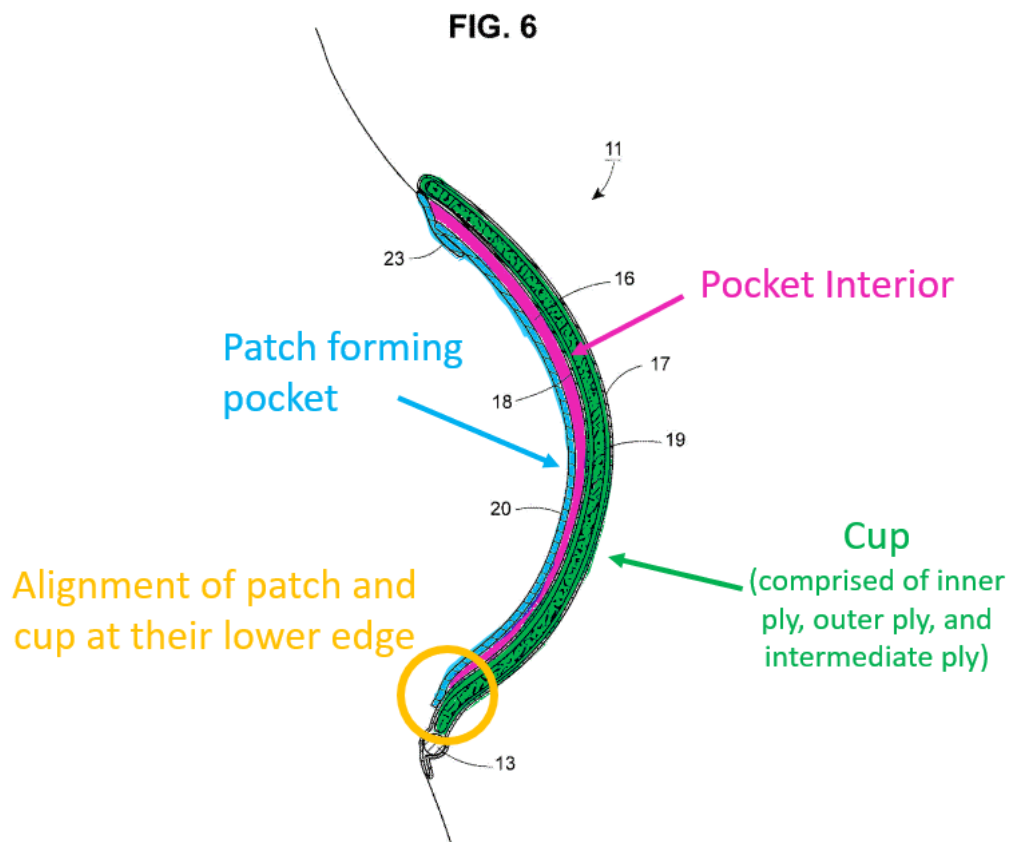
a. “The pocket bra of claim 1” [Preamble]

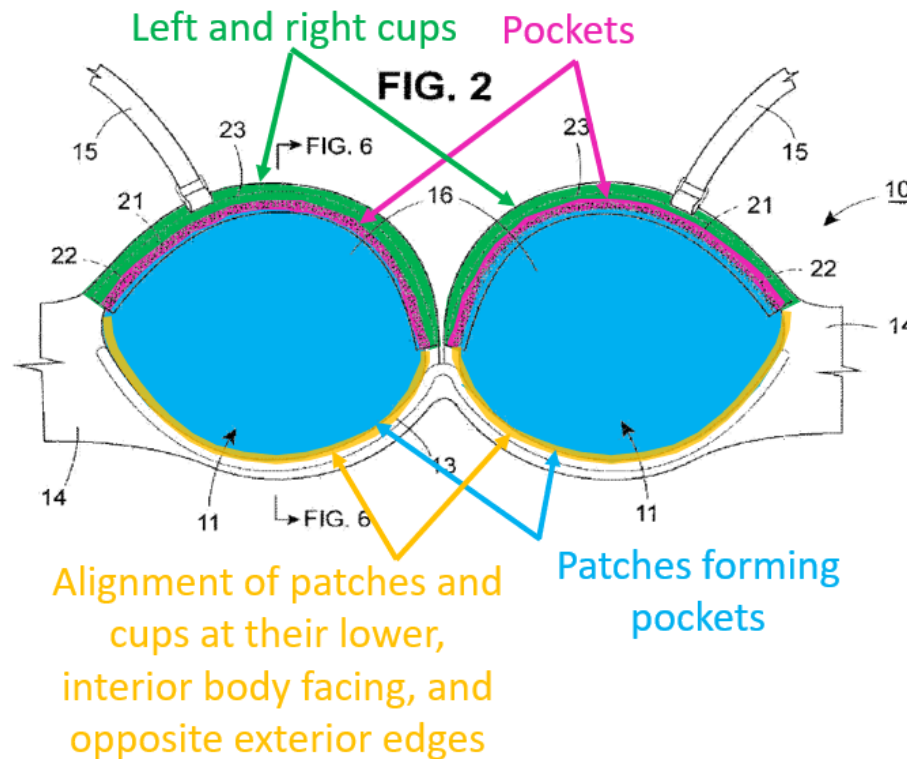
Handras discloses “[t]he pocket bra of claim 1” for the reasons described above. *Supra* § IX.C.1.

b. “wherein the patch lower and exterior edges are aligned with the lower and exterior edges of the at least one of the left and right cups by a stitching, and wherein the

stitching is along the lower and exterior edges of the patch.” [7A]

Handras discloses each patch is “sewn” to each cup to form the pocket with an upper opening. See NIKE-1021 at [0022] (“a fourth ply of material 20 is sewn or otherwise secured to the inner ply 18 in order to form the pocket 16 with an opening extending along the upper section of the cup.”), [0007]. A POSA would have understood that a pocket with an upper opening would be formed by stitching along the lower and side edges of a patch. NIKE-1001 ¶610.





NIKE-1021 at Figs. 2, 6; NIKE-1001 ¶610.

8. Claim 8

a. “A pocket bra comprising:” [8A]

This limitation is disclosed for the reasons discussed above. *Supra* § IX.C.1.a.

b. “a strap assembly including a chest,” [8B]

This limitation is disclosed for the reasons discussed above. *Supra* § IX.C.1.b.

c. “and comprising left and right cups, each cup being an area to receive a breast of a wearer and having inside and outside surfaces,” [8C]

This limitation is disclosed for the reasons discussed above. *Supra* § IX.C.1.c.

- d. “the strap assembly being attached to the cups whereby the strap assembly connects the cups to the wearer,” [8D]**

This limitation is disclosed for the reasons discussed above. *Supra* § IX.C.1.d.

- e. “ each cup having upper, lower, interior body facing, and opposite exterior edges;” [8E]**

This limitation is disclosed for the reasons discussed above. *Supra* § IX.C.1.e.

- f. “a patch forming a pocket operatively associated with at least one of the left and right cups,” [8F]**

This limitation is disclosed for the reasons discussed above. *Supra* § IX.C.1.f.

- g. “the patch having an upper edge, a lower edge, and an exterior edge, the patch having inside and outside surfaces;” [8G]**

This limitation is disclosed for the reasons discussed above. *Supra* § IX.C.1.g.

- h. “the lower edge of the patch coupled to the bra adjacent to a lower edge of the at least one of the left and right cups, and the exterior edge of the patch coupled adjacent to the exterior edge of the at least one of the left and right cups, a pocket opening formed along the upper edge of the patch being unconnected to the at least one of the left and right cups;” [8H]**

This limitation is disclosed for the reasons discussed above. *Supra* § IX.C.1.h.

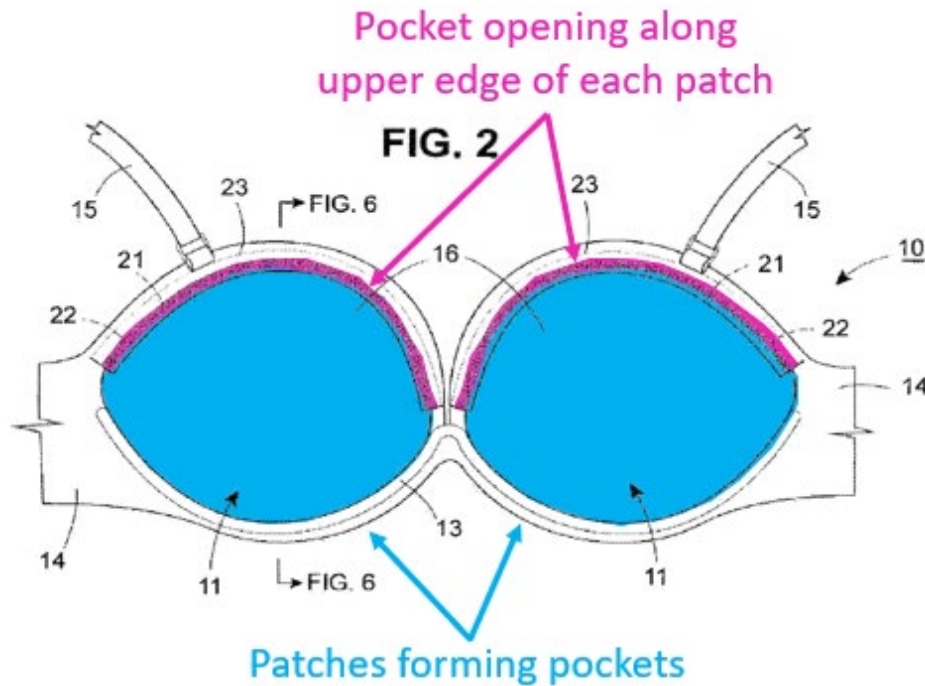
- i. “the pocket opening capable of repeated receiving and removal of an item when being worn by the wearer;” [8I]**

This limitation is disclosed for the reasons discussed above. *Supra* § IX.C.1.i.

- j. “and wherein the upper edge of the patch crosses over a surface of the cup to form the opening, the upper edge crossing such that the opening faces the interior edge of**

the at least one of the left and right cup to which it is attached.” [8J]

Handras in combination with the knowledge of a POSA renders this limitation obvious. Handras discloses “an opening extending along the upper section of the cup”:



NIKE-1021 at Fig. 2, [0022].

Handras teaches the pocket opening faces the upper edge of the cup to which it is attached. *See id.* A POSA would recognize from Handras that the orientation of the patch opening is simply a design choice and could just as easily be arranged such that the opening faces the interior edge of the cup. NIKE-1001 ¶621; *see Graham*, 383 U.S. at 26. It would have been obvious to a POSA to modify Handras to face the patch opening toward the cup interior edge, and a POSA would have been

motivated to do so, at least, to better protect the pocket contents. NIKE-1001 ¶621. A POSA would have a high likelihood of success as reorienting a patch opening simply requires adjusting a known sewing technique. *Id.* Thus, a POSA would have found it obvious to modify Handras based on their own knowledge and would have had a high expectation of success in doing so. *Id.*

9. Claim 9

- a. “The pocket bra of claim 8 wherein the patch is operatively associated with only one of the left and right cups” [9].**

This limitation is disclosed for the reasons discussed above. *Supra* §§ IX.C.2, IX.C.8.

10. Claim 10

- a. “The pocket bra of claim 1 further comprising a non-padding item positioned in the pocket.” [10]**

This limitation is disclosed for the reasons discussed above. *Supra* §§ IX.C.3, IX.C.8.

11. Claim 11

- a. “The pocket bra of claim 1 wherein the lower edge of the patch is coupled adjacent to the bra by a stitching.” [11]**

This limitation is disclosed for the reasons discussed above. *Supra* §§ IX.C.4, IX.C.8.

12.Claim 12

- a. **“The pocket bra of claim 1 wherein the exterior edge of the patch is coupled adjacent to the exterior edge of the at least one of the left and right cups by a stitching.” [12]**

This limitation is disclosed for the reasons discussed above. *Supra* §§ IX.C.5, IX.C.8.

13.Claim 13

- a. **“The pocket bra of claim 9 further comprising a second patch forming a second pocket operatively associated with the other of the left and right cups.” [13]**

This limitation is disclosed for the reasons discussed above. *Supra* §§ IX.C.6, IX.C.9.

14. Claim 14

- a. **“The pocket bra of claim 1 wherein the patch lower and exterior edges are aligned with the lower and exterior edges of the at least one of the left and right cups by a stitching, and wherein the stitching is along the lower and exterior edges of the patch.” [14]**

This limitation is disclosed for the reasons discussed above. *Supra* §§ IX.C.7, IX.C.8.

D. Secondary Considerations

Petitioner is unaware of any secondary considerations that have a nexus to the claimed inventions that would overcome the Petition’s showing of obviousness.

Indeed, the sheer number of “[i]ndependently made, simultaneous inventions, made within a comparatively short space of time, are persuasive” “indicia of *obviousness*.” *Geo. M. Martin Co. v. Alliance Machine Sys. Int’l LLC*, 618 F.3d 1294, 1304–1305 (Fed. Cir. 2010) (quotations omitted). As demonstrated *supra* § I, VII, the prior art is saturated with bras with pockets, making the alleged invention of the ’550 hardly “born of necessity.” NIKE-1036 at 2. If PO identifies any evidence of secondary considerations, Petitioner reserves the right to respond.

X. THERE IS NO SOUND BASIS FOR A DISCRETIONARY DENIAL

A. Board Should Not Decline Institution Pursuant to 35 U.S.C. § 314(a)

The *Fintiv* factors favor institution. *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019 Paper 11, 6 (P.T.A.B. Mar. 20, 2020) (precedential).

1. Institution Will Enable at Least a Partial Stay in the MA Litigation

There are eight patents, including the ’550, asserted against Petitioner in the MA Litigation. Petitioner is filing an *inter partes review* petition for each of the asserted patents on every asserted claim, in addition to non-asserted claims. Institution would enable the Board to resolve an issue of patentability with respect to the ’550 and would relieve the District Court of the need to continue with the ’550 in the MA Litigation. Petitioner will likely move to stay the MA Litigation at least insofar as it relates to the ’550, and likely every asserted patent, and the opportunity

for such simplification increases the likelihood that the Court will grant a stay in view of IPR institution.

2. The Schedule in the MA Litigation

The Final Written Decision (FWD) here will likely come before the trial in the MA Litigation. As of the filing of this Petition, the Court has not yet set a date for trial. On average, in the District of Massachusetts, from January 2019 to January 2024, there were 42.3 months from the filing of a patent lawsuit to trial. NIKE-1047 at 19. For Judge Sorokin, the Judge presiding over the MA Litigation, the average time is approximately 41.8 months. NIKE-1048 at 11. Estimating 40 months to trial, the MA Litigation would go to trial November 2026.

The time of the institution decision in this proceeding (estimated January 2025) and the FWD (estimated in January 2026) are therefore likely to occur before any trial in the MA Litigation.

3. Investment by the Court and the Parties in the MA Litigation

The Parties and the District Court have invested limited resources in the MA Litigation. Fact discovery is still in the early stages; no depositions have occurred and the Court has only just held a *Markman* Hearing. See NIKE-1046; *Sony Mobile Communications Ab v. Mullor Et Al*, IPR2021-00663, Paper 17 at 19 (P.T.A.B. June 10, 2021) (agreeing that *Fintiv* Factor 3 weighed in favor of institution where the

parallel district court proceeding was in its “very early stages” because the scheduled *Markman* proceeding had not yet taken place and no depositions had been noticed). Moreover, this Petition is timely and Petitioner has not run afoul of the time bar under 35 U.S.C. §315(b) for Petitions filed more than one year after the service of a district court complaint. *See* 35 U.S.C. §315(b); *Oticon Med. AB v. Cochlear Ltd*, IPR2019-00975, Paper 15 at 22–24 (P.T.A.B. Oct. 16, 2019) (precedential).

4. Overlap Between Issues Raised in This Petition and in the Parallel Proceeding

While there is overlap between the issues raised in this Petition and in the MA Litigation, the Challenged Claims include claims not asserted in the MA Litigation (e.g., claim 4), and the FWD in this proceeding is likely to issue before trial in the MA Litigation. Thus, Petitioner will be estopped from arguing grounds raised or that could reasonably have been raised in the IPR. 35 U.S.C. § 315(e)(2). Thus, this factor weighs against a discretionary denial.

5. Same Parties

While there is overlap between the parties here and the MA Litigation, this factor alone is not determinative. *E.g.*, *NanoCelect Biomedical, Inc. v. Cytonome/ST, LLC*, IPR2020-00551, Paper 19 at 2–25 (P.T.A.B. Aug. 27, 2020). Institution would provide an efficient alternative to litigation and permit the Board to resolve questions of patentability.

6. Other Circumstances Support Institution

As shown above, the merits of this Petition are strong. Where “Petitioner has set forth a reasonably strong case for the obviousness of most challenged claims,” this factor weighs *against* the Board exercising its discretion under §314(a). *Sand Revolution II, LLC v. Cont’l Intermodal Grp. Trucking LLC*, IPR2019-01393, Paper 24 at 13 (P.T.A.B. Jun. 16, 2020) (informative).

Thus, the Board should decline to exercise its discretion under §314(a).

B. Board Should Not Decline Institution Pursuant to 35 U.S.C. § 325(d)

Under the two-step test set forth in *Advanced Bionics*, the Board should not deny this Petition under §325(d). *Advanced Bionics, LLC v. Med-El Elektromedizinische Geräte GMBH*, IPR2019-01469, Paper No. 6 at 8 (P.T.A.B. Feb. 13, 2020) (precedential).

Under the first step, none of the grounds here involve the same or substantially the same prior art or arguments previously before the PTO. First, the primary references Barg, York, and Handras were not considered during the prosecution of the ’550. *See* NIKE-1004. Barg, York, and Handras alone disclose or render obvious Challenged Claim 1. Where Petitioner meets its burden with respect to one claim, the Board must institute *inter partes* review as to all challenged claims. *See SAS Inst., Inc. v. Iancu*, 138 S. Ct. at 1359–60.

In addition, though Pintor was considered by the Examiner during prosecution of the grandparent '288, it was considered only as a secondary reference to Newman. *See* NIKE-1004 at 147 (Oct. 2, 2015 Non-Final Rejection); *see id.* at 168 (Jan. 4, 2016 Response to Non-Final Rejection). Unlike Barg, York, and Handras—which are explicitly directed to bras designed to store personal belongings—Newman is directed to a bra with pockets designed to hold bra padding or prosthesis. *See* NIKE-1023 at [0020]; NIKE-1004 at 147; *id.* at 168. The Examiner did not consider Pintor in combination with prior art as pertinent as Barg, York, and Handras. Thus, the grounds here do not involve the same or substantially the same prior art or arguments. *See Oticon*, IPR2019-00975, Paper No. 15 at 16–18 (grounds did not involve the same or substantially the same prior art or arguments where the petitioner relied on the same primary reference considered in prosecution, but with the addition of a secondary reference not previously considered); *Becton, Dickinson & Co. v. B. Braun Melsungen AG*, IPR2017-01586, Paper No. 8 at 17–18 (Dec. 15, 2017) (precedential as to § III.C.5, first paragraph) (“the extent of the overlap between the arguments made during examination and the manner in which [p]etitioner relies on the prior art” is a non-exclusive factor for determining whether the petition relies on the same or substantially the same art or arguments).

While the Board need not reach the second step, this step too demonstrates that denial is inappropriate. In allowing the grandparent '288 over Pintor, the Examiner materially erred with respect to the patentability of the Challenged Claims. *Advanced Bionics*, IPR2019-01469, Paper No. 6 at 7–8. Pintor alone teaches a bra with a pocket on the breast cup for storage of personal items, including “portable electronic devices” and keys. NIKE-1020 at 1:23-29, 4:14-21, 4:57-63. As explained *supra* § VII.A, the Examiner allowed the grandparent '288 over Newman in view of Pintor after the applicant distinguished Newman’s invention for holding bra padding from the grandparent '288’s alleged invention for holding personal items, including a cell phone, but the applicant failed to distinguish the claimed invention from Pintor. NIKE-1004 at 168–69. And though the Examiner acknowledged Pintor’s disclosure of a handheld electronic device stored in a bra pocket, NIKE-1004 at 148, by looking at Pintor only as a secondary reference to Newman, the Examiner failed to appreciate several other aspects of the grandparent '288 disclosed by Pintor. For example, as discussed *supra* § VI.C.1, Pintor discloses a bra with left and right cups, shoulder straps, and a chest strap. NIKE-1022 at Fig. 3. Further, Pintor discloses a pocket attached to the inner surface of one of the bra cups for storage of personal items. *See* NIKE-1022 at 1:23–28. Pintor additionally discloses the bra cups comprised of polyurethane and the pockets made of elastic

material, *supra* §§ IX.A.2, IX.A.3, IX.B.2, IX.B.3, IX.C.2, IX.C.3, as well as stitching coupling the pocket to the bra's interior surface. NIKE-1022 at 3:51–53. The Examiner overlooked how a POSA would have understood Pintor's disclosures of stitching, polyurethane, elastic material, and use of the pocket for holding of non-padding items, and what a POSA would have been motivated to do with them, especially in combination with Barg, York, or Handras. Thus, the Examiner's errors are material to patentability, and there should be no discretionary denial under § 325(d). *Satco Products, Inc. v. Seoul Semiconductor Co., Ltd*, IPR2020-00410, Paper 8 at 26–30 (PTAB Aug. 10, 2020) (finding Office erred where there was no indication the examiner considered Petitioner's arguments with respect to a previously-considered reference); *see also Advanced Bionics*, IPR2019-01469, Paper No. 6 at 8 n. 6.

XI. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Board institute IPR and cancel all Challenged Claims.

Petition for *Inter Partes* Review of U.S. Patent No. 10,219,550

Date: July 17, 2024

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CERTIFICATION OF COMPLIANCE

This Petition complies with the word count limitation of 37 C.F.R. § 42.24(a)(1) because, according to the word processing system used to prepare this document, the Petition contains 12,923 words, excluding the cover page, signature block, the exhibit list, and the parts of the Petition exempted by 37 C.F.R. § 42.24(a)(1).

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CERTIFICATE OF SERVICE

In compliance with 37 C.F.R. §§ 42.105, 42.6(e), the undersigned hereby certifies that a copy of the foregoing Petition was sent on July 17, 2024, via Federal Express® directed to the Patent Owner at the correspondence address of record:

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A courtesy copy was also served by electronic mail on PO's counsel of record in the following related matter:

SherryWear, LLC v. Nike, Inc., Case No. 1:23-cv-11599 (D. Mass.)

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