UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NIKE, INC.

v.

SHERRYWEAR LLC,

Patent Owner.

IPR2024-01123; IPR2024-01125; IPR2024-01126; IPR2024-01122; IPR2024-01124; IPR2024-01128; IPR2024-01127; IPR2024-01129

U.S. Patent Nos. 9,295,288; 9,808,036; 10,219,550; 9,289,016; 9,723,878; 10,244,800; 10,219,551; 10,869,510

DECLARATION OF JOYCE BARAN UNDER 37 C.F.R. § 1.68 IN SUPPORT OF PETITION FOR *INTER PARTES* REVIEW OF U.S. Patent Nos. 9,295,288; 9,808,036; 10,219,550; 9,289,016; 9,723,878; 10,244,800; 10,219,551; 10,869,510.

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**All emphasis and figure annotations are added unless otherwise noted **

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

Exhibit No.	Description[1]
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	Certified U.S. Patent No. 9,808,036 (filed Feb. 17. 2016)
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	Certified U.S. Patent No. 9,289,016 (filed Feb. 5, 2015)
NIKE-1010	Certified Prosecution File History for U.S. Patent No. 9,289,016
NIKE-1011	Certified U.S. Patent No. 9,723,878 (filed Feb. 17, 2016)
NIKE-1012	Certified Prosecution File History for U.S. Patent No. 9,723,878
NIKE-1013	Certified U.S. Patent No. 10,244,800 (filed Jul. 12, 2017)
NIKE-1014	Certified Prosecution File History for U.S. Patent No. 10,244,800
NIKE-1015	Certified U.S. Patent No. 10,219,551 (filed Dec. 8, 2017)
NIKE-1016	Certified Prosecution File History for U.S. Patent No. 10,219,551

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

Exhibit No.	Description[1]
NIKE-1017	Certified U.S. Patent No. 10,869,510 (filed Jan. 29, 2019)
NIKE-1018	Certified Prosecution File History for U.S. Patent No. 10,869,510
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")
NIKE-1031	U.S. Patent No. 6,626,733 (filed Mar. 14, 2003) ("Knutson")
NIKE-1032	U.S. Patent Application Publication No. 2010/0000003 (filed May 5, 2009) ("O")

Exhibit No.	Description[1]
NIKE-1033	U.S. Patent No. 7,396,274 (filed May 16, 2006) ("Wiegmann")
NIKE-1034	*Early Brassiere*, Google Arts & Culture, https://artsandculture.google.com/asset/early-brassiere/-gGoCcJIsFqA1g?hl=en.
NIKE-1035	Rebecca Unsworth, *Hands Deep in History: Pockets in Men and Women's Dress in Western Europe, c. 1480-1630*, THE COSTUME SOCIETY (Edinburgh Univ. Press 2017), https://www.euppublishing.com/doi/epub/10.3366/cost.2017.0022.
NIKE-1036	Derek Gentile, *A comfortable convenience: County woman creates, patents the 'pocketbra'*, 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., *Study of thermal–mechanical properties of polyurethane foam and the three-dimensional shape of molded bra cups*, 210 Journal of Materials Processing Technology at 116–21 (Aug. 2009)
NIKE-1038	U.S. Patent No. 6,997,775 B2 (Feb. 14, 2006) ("Jagaric")
NIKE-1039	Dimity McDowell, *The Top Choices A women's guide to the best jog bras*, RUNNER'S WORLD (Oct. 20, 2010), https://www.runnersworld.com/gear/a20845828/sports-bra-reviews-for-runners/
NIKE-1040	MA Litigation, SherryWear's Infringement Contentions, '016 Swoosh Bra Infringement Claim Chart
NIKE-1041	MA Litigation, SherryWear's Infringement Contentions, '016 Swoosh Pocket Bra Infringement Claim Chart
NIKE-1042	MA Litigation, SherryWear's Infringement Contentions, '878 Swoosh Bra Infringement Claim Chart
NIKE-1043	MA Litigation, SherryWear's Infringement Contentions, '878 Swoosh Pocket Bra Infringement Claim Chart

Exhibit No.	Description[1]
NIKE-1044	MA Litigation, SherryWear's Infringement Contentions, '551 Swoosh Bra Infringement Claim Chart
NIKE-1045	MA Litigation, SherryWear's Infringement Contentions, '551 Swoosh Pocket Bra Infringement Claim Chart
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	U.S. Patent No. 8,597,072 (filed Apr. 26, 2011)
NIKE-1051	File History for U.S. Patent No. 8,597,072
NIKE-1052	Agathe B., *The Art of pocket design: How to create unique and stylish pockets*, COUTURE HACKER (Apr. 11, 2023), https://www.couture-hacker.com/blog/how-to-create-unique-and-stylish-pockets.

LISTING OF THE CHALLENGED CLAIMS

The ’288 Patent	
Limitation Identifier	**Text of Claim**
Independent Claim 1	
[1A]	“A bra pocket system combination comprising:”
[1B]	“a strap assembly including a chest strap and shoulder straps;”
[1C]	“left and right cups, each cup having inside and outside surfaces,”
[1D]	“the strap assembly being attached to the cups whereby the strap assembly adheres the cups to a wearer,”
[1E]	“each cup having curved upper, lower, interior body facing and opposite exterior edges;”
[1F]	“a patch forming a pocket operatively associated with each cup,”
[1G]	“each patch having a linear upper edge and curved lower, interior body facing, and opposite exterior edges, each patch having inside and outside surfaces;”
[1H]	“stitching coupling 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;”
[1I]	“a linear opening formed along the upper edge of each patch;”
[1J]	“at least one of a handheld electronic device, keys, and pills removably positioned within the pocket of at least one of the left and right cups; and”
[1K]	“wherein each patch curved lower interior body facing and opposite exterior edges are aligned with each curved lower interior body facing and opposite exterior edges, and wherein the stitching is along the curved lower interior body facing and opposite exterior edges of

The ’288 Patent	
Limitation Identifier	**Text of Claim**
	the patch, the linear upper edge of each patch crossing over a surface of the cup to form the linear opening.”
Dependent Claim 2	
	“The system set forth in claim 1”
[2A]	“wherein the cups and the patches form pockets, the cups being fabricated of a resilient closed cell polyurethane foam with a thickness of from 2 to 4 millimeters.”
Dependent Claim 3	
	“The system as set forth in claim 1”
[3A]	“wherein the cups and the patches form pockets, the patches being fabricated of an elastic fabric.”
Dependent Claim 4	
	“The system as set forth in claim 1”
[4A]	“and further including an under-wire coupled beneath each cup in a generally horizontal plane.”
Dependent Claim 11	
	“The system as set forth in claim 1”
[11A]	“wherein the linear opening is facing the upper interior edge to allow the at least one of the handheld electronic device, keys, and pills to be removably positioned within the pocket by entry adjacent to a shoulder of the user.”
Dependent Claim 12	
	“The system as set forth in claim 1”
[12A]	“further comprising a closure over the linear opening.”

The ’036 Patent	
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 interior body facing edge, and an opposite lower exterior edge, the patch having inside and outside surfaces;”
[1H]	“stitching coupling the lower interior body facing edge, and the opposite lower exterior edge of the patch to at least one of the lower, interior body facing, and opposite exterior edges of the at least one of the left and right cups, or the chest strap;”
[1I]	“an opening formed along the upper edge of the patch;”
[1J]	“the opening capable of repeated receiving and removal of an item when being worn by the wearer; and”
[1K]	“wherein the upper edge of the patch crosses over a surface of the cup to form the opening, the upper edge of the patch being offset from an upper edge of the cup. ”
Dependent Claim 2	

The ’036 Patent	
Limitation Identifier	**Text of Claim**
	“The pocket bra of claim 1”
[2A]	“wherein the stitching is along the lower interior body facing and opposite exterior edges of the patch.”
Dependent Claim 3	
	“A bra pocket system comprising the pocket bra of claim 1”
[3A]	“and further comprising a non-padding item removably positioned within the pocket of at least of the left and right cups.”
Dependent Claim 5	
	“The pocket bra of claim 1”
[5A]	“wherein the patch lower interior body facing and opposite exterior edges are aligned with the lower interior body facing and opposite exterior edges of the one of the left and right cups, and wherein the stitching is along the lower interior body facing and opposite exterior edges of the patch.”
Independent Claim 6	
[6A]	“A pocket bra comprising:”
[6B]	"a strap assembly comprising a chest strap;”
[6C]	“and comprising left and right cups, each cup being an area to receive a breast of a wearer and having inside and outside surfaces,”
[6D]	“the strap assembly being attached to the cups whereby the strap assembly connects the cups to the wearer,”
[6E]	“each cup having upper, lower, interior body facing, and opposite exterior edges;”
[6F]	“a patch forming a pocket operatively associated with at least one of the left and right cups,”

The ’036 Patent	
Limitation Identifier	**Text of Claim**
[6G]	“the patch having an upper edge, a lower interior body facing edge, and an opposite lower exterior edge, the patch having inside and outside surfaces;”
[6H]	“stitching coupling the lower interior body facing edge, and the opposite lower exterior edge of the patch to the lower, interior body facing, and opposite exterior edges of the at least one of the left and right cups;”
[6I]	“an opening formed along the upper edge of the patch;”
[6J]	“the opening capable of repeated receiving and removal of an item when being worn by the wearer; and”
[6K]	“wherein the upper edge of the patch crosses over a surface of the cup to form the opening, the upper edge of the patch crossing in such that the opening faces the interior body facing edge of the one of the left and right cup to which it is attached, the upper edge of the patch being offset from an upper edge of the cup.”
Independent Claim 7	
	“The pocket bra of claim 6”
[7A]	“wherein the stitching is along the lower interior body facing and opposite exterior edges of the patch.”
Independent Claim 8	
	“The pocket bra of claim 6”
[8A]	“and further comprising a non-padding item removably positioned within the pocket of at least one of the left and right cups.”
Independent Claim 9	
	“The pocket bra of claim 6”

The ’036 Patent	
Limitation Identifier	**Text of Claim**
[9A]	“wherein the patch lower interior body facing and opposite exterior edges are aligned with the lower interior body facing and opposite exterior edges of the one of the left and right cups, and wherein the stitching is along the lower interior body facing and opposite exterior edges of the patch.”
Independent Claim 10	
	“The pocket bra of claim 6”
[10A]	“further comprising a second patch forming a second pocket operatively associated with the other of the left and right cup.”
Independent Claim 18	
	“The pocket bra of claim 1”
[18A]	“further comprising a second patch forming a second pocket operatively associated with the other of the left and right cup further comprising a second patch forming a second pocket operatively associated with the other of the left and right cup.”

The ’550 Patent	
Limitation Identifier	**Text of Claim**
Independent Claim 1	
[1A]	“A pocket bra comprising:”
[1B]	“a strap assembly comprising a chest strap;”

The ’550 Patent	
Limitation Identifier	**Text of Claim**
[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	
	“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.”

The ’550 Patent	
Limitation Identifier	**Text of Claim**
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,”
[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 ’550 Patent	
Limitation Identifier	**Text of Claim**
	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”
[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

The ’550 Patent	
Limitation Identifier	**Text of Claim**
	cups by a stitching, and wherein the stitching is along the lower and exterior edges of the patch.”

The ’016 Patent	
Limitation Identifier	**Text of Claim**
Independent Claim 1	
[1A]	“A bra pocket system combination comprising:”
[1B]	“a strap assembly including a chest strap and shoulder straps;”
[1C]	“a left cup and a right cup, each cup having inside and outside surfaces,”
[1D]	“the strap assembly being attached to the cups whereby the strap assembly holds the cups to a wearer;”
[1E]	“a side patch on one of an inside or outside surface of each side of the chest strap adjacent to each of the left cup and right cup,”
[1F]	“the side patches having upper and lower edges along at least part of a length of the strap, and side edges,”
[1G]	“each side patch having stitching along the lower and side edges thus forming an upper opening at each side patch such that each side patch forms a pocket,”
[1H]	“and wherein each side pocket extends onto the adjacent cup, such that each pocket spans both a part of the chest strap and the adjacent cup.”
Dependent Claim 2	

The ’016 Patent	
Limitation Identifier	**Text of Claim**
	“The system as set forth in claim 1”
[2A]	“wherein the cups and the patches form pockets, the cups being fabricated of a resilient closed cell polyurethane foam with a thickness of from 2 to 4 millimeters.”
Dependent Claim 4	
	“The system as set forth in claim 1”
[4A]	“and further including a handheld electronic device, the handheld electronic device placed within one of the side pockets.”
Dependent Claim 7	
	“The system as set forth in claim 1”
[7A]	“wherein each side pocket further comprises a closure, the closure having a first part on the side of the chest strap, and a second part on the patch, the first part connectable to the second part to close the pocket.”

The ’878 Patent	
Limitation Identifier	**Text of Claim**
Independent Claim 1	
[1A]	“A pocketed bra assembly comprising:”
[1B]	“a strap assembly including a chest strap;”
[1C]	“a left cup and a right cup, each cup being an area to receive a breast of a wearer having inside and outside surfaces,”

The ’878 Patent	
Limitation Identifier	**Text of Claim**
[1D]	“the strap assembly being attached to the cups whereby the strap assembly holds the cups to a wearer,”
[1E]	“with the chest strap extending from the left cup towards the wearer’s back and extending from the right cup towards the wearer’s back;”
[1F]	“a side patch on one of an inside or outside surface of the chest strap adjacent to at least one of the left cup and right cups,”
[1G]	“the side patch having upper and lower edges along at least part of a length of the chest strap, and side edges,”
[1H]	“the side patch upper edge lying along a same edge line as at least a portion of a top edge of the chest strap,”
[1I]	“the side patch having stitching along the lower and side edges thus forming an upper opening such that the side patch forms a pocket,”
[1J]	“the upper opening capable of repeated receiving and removal of an item when being worn by the wearer; and”
[1K]	“an item removably positioned in the pocket.”
Dependent Claim 2	
	“The bra assembly of claim 1”
[2A]	“and further including a handheld electronic device, the handheld electronic device placed within the side pocket.”
Dependent Claim 3	
	“The bra assembly of claim 1”
[3A]	“wherein the strap assembly further comprises two shoulder straps,”

The ’878 Patent	
Limitation Identifier	**Text of Claim**
[3B]	“and a central area at a back of the strap assembly opposite to the left and right cups, the two shoulder straps and chest strap joining together at the central area,”
[3C]	“and further comprising a back pocket on the central area.”
Dependent Claim 4	
	“The bra assembly of claim 1”
[4A]	“wherein the side pocket further comprises a closure, the closure having a first part on the side of the chest strap, and a second part on the patch, the first part connectable to the second part to close the pocket.”
Dependent Claim 11	
	“The bra assembly of claim 4”
[11A]	“wherein the closure is a zipper.”
Dependent Claim 14	
	“The bra assembly of claim 1”
[14A]	“further comprising a central patch attached intermediate to the left and right cups, the central patch forming a central chamber pocket.”
Independent Claim 15	
[15A]	“A chest covering comprising:”
[15B]	“a strap assembly including a chest strap;”
[15C]	“a left cup and a right cup, each cup being an area to receive a breast of a wearer, and having inside and outside surfaces,
[15D]	“the strap assembly being attached to the cups whereby the strap assembly holds the cups to a wearer,”

The ’878 Patent	
Limitation Identifier	**Text of Claim**
[15E]	“with the chest strap extending from the left cup towards the wearer’s back and extending from the right cup towards the wearer’s back;”
[15F]	“a side patch on one of an inside or outside surface of the chest strap adjacent to at least one of the left cup and right cups,”
[15G]	“the side patch having upper and lower edges along at least part of a length of the chest strap, and side edges,”
[15H]	“the side patch upper edge lying along a same edge line as at least a portion of a top edge of the chest strap,”
[15I]	“the side patch having stitching along the lower and side edges thus forming an upper opening such that the side patch forms a pocket,”
	“the upper opening capable of repeated receiving and removal of an item when being worn by the wearer.”
Dependent Claim 17	
	“The bra assembly of claim 1”
[17A]	“wherein a front side edge of the side patch abuts an edge of the at least one of the left cup and the right cup, the pocket extending to the edge of the at least one of the left cup and the right cup.”

The ’800 Patent	
Limitation Identifier	**Text of Claim**
Independent Claim 1	
[1A]	“A pocket bra assembly comprising:”
[1B]	“a strap assembly including a chest strap and shoulder straps,”
[1C]	“the chest strap having a front portion configured to be positioned on a front of a user, and a back portion configured to be positioned on a back of the user,”
[1D]	“the shoulder straps each having a front portion configured to be positioned on the front of the user, and a back portion configured to be positioned on the back of the user;”
[1E]	“a bra portion, the bra portion configured to provide support and shape breasts of the user,”
[1F]	“the strap assembly being attached to the bra portion whereby the strap assembly holds the bra portion to the user, with the chest strap extending from a first side of the bra portion towards the user's back and extending from a second opposite side of the bra portion towards the user's back;”
[1G]	“a back pocket formed entirely of stretchable fabric positioned on the back portion of at least one of the chest strap and shoulder straps,”
[1H]	“the back pocket having an opening formed that is biased in a closed position at rest, providing access to a pocket interior;”
[1I]	“and an item positioned within the back pocket.”
Dependent Claim 2	
	“The pocket bra assembly of claim 1”

The ’800 Patent	
Limitation Identifier	**Text of Claim**
[2A]	“wherein the bra is a sports bra.”
Dependent Claim 3	
	“The pocket bra assembly of claim 1”
[3A]	“wherein the back pocket is positioned on the back portion of the chest strap.”
Dependent Claim 5	
	“The pocket bra assembly of claim 1”
[5A]	“wherein the back portion of each of the shoulder straps join together to form a central area, the back pocket positioned on the central area.”
Dependent Claim 7	
	“The pocket bra assembly of claim 1”
[7A]	“wherein the back pocket is formed by a patch connected to the back portion of the at least one of the chest strap and shoulder straps by stitching about a part of a perimeter of the patch, a gap in the stitching leaving a portion of the perimeter of the patch unattached, thereby forming an opening providing access to the pocket interior formed by the patch.”
Dependent Claim 10	
	“The pocket bra assembly of claim 7”
[10A]	“wherein the opening is formed adjacent to a top of the patch.”

The ’551 Patent	
Limitation Identifier	**Text of Claim**
Independent Claim 1	
[1A]	“A pocketed bra assembly comprising:”
[1B]	“a strap assembly including a chest strap;”
[1C]	“a left cup and a right cup, 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 holds the cups to a wearer, with the chest strap extending from the left cup towards the wearer's back and extending from the right cup towards the wearer's back;”
[1E]	“a side patch on one of an inside or outside surface of the chest strap adjacent to at least one of the left cup and right cups,”
[1F]	“an upper edge of the side patch lying along the same edge line as at least a portion of a top edge of the chest strap,”
[1G]	“the side patch forming an opening such that the side patch forms a pocket,”
[1H]	“the opening capable of repeated receiving and removal of an item when being worn by the wearer;”
[1I]	“and an item removably positioned in the pocket.”
Dependent Claim 2	
	“The pocketed bra assembly of claim 1”
[2A]	“wherein the side patch comprises upper and lower edges along at least part of a length of the chest strap, and side edges.”
Dependent Claim 3	

The ’551 Patent	
Limitation Identifier	**Text of Claim**
	“The pocketed bra assembly of claim 2”
[3A]	**“**further comprising stitching along the lower and side edges of the side patch.”
Dependent Claim 4	
	“The pocketed bra assembly of claim 3”
[4A]	**“**wherein the stitching forms an upper opening to the pocket between the upper edge of the side patch and the top edge of the chest strap.”
Dependent Claim 5	
	“The pocket bra assembly of claim 1”
[5A]	“wherein the opening is an upper opening.”
Dependent Claim 6	
	“The pocketed bra assembly of claim 1”
[6A]	“wherein the item removably positioned within the pocket is a handheld electronic device.”
Dependent Claim 7	
	“The pocketed bra assembly of claim 1”
[7A]	“wherein the strap assembly further comprises two shoulder straps,”
[7B]	“and a central area at a back of the strap assembly opposite to the left and right cups, the two shoulder straps and chest strap joining together at the central area,”
[7C]	“and further comprising a back pocket on the central area.”
Dependent Claim 8	
	“The pocketed bra assembly of claim 1”
[8A]	“wherein the side pocket further comprises a closure.”
Dependent Claim 12	
	“The pocketed bra assembly of claim 1”

The ’551 Patent	
Limitation Identifier	**Text of Claim**
[12A]	“wherein each side pocket extends onto the adjacent cup, such that each pocket spans both a part of the chest strap and a part of the adjacent cup.”
Dependent Claim 13	
	“The pocketed bra assembly of claim 1”
[13A]	“further comprising a second patch positioned on the chest strap, the second patch forming an opening such that the second side patch forms a pocket.”
Dependent Claim 15	
	“The pocketed bra assembly of claim 1”
[15A]	“wherein a front side edge of the patch abuts an edge of the at least one of the left cup and the right cup, the pocket extending to the edge of the at least one of the left cup and right cup.”
Independent Claim 16	
[16A]	“A chest covering comprising:”
[16B]	“a strap assembly including a chest strap;”
[16C]	“a left cup and a right cup, each cup being an area to receive a breast of a wearer and having inside and outside surfaces, the strap assembly being attached to the cups whereby the strap assembly holds the cups to a wearer, with the chest strap extending from the left cup towards the wearer's back and extending from the right cup towards the wearer's back;”
[16D]	“a side patch on one of an inside or outside surface of the chest strap adjacent to at least one of the left cup and right cups, the side patch having upper and lower edges along at least part of a length of the chest strap, and side edges,”
[16E]	“the side patch upper edge lying along a same edge line as at least a portion of a top edge of the chest strap,”
[16F]	“the side patch forming an opening such that the side patch forms a pocket,”
[16G]	“the opening capable of repeated receiving and removal of an item when being worn by the wearer;”
Dependent Claim 17	

The ’551 Patent	
Limitation Identifier	**Text of Claim**
	“The chest covering of claim 16”
[17A]	“wherein the opening is an upper opening.”
Dependent Claim 18	
	“The chest covering of claim 16”
[18A]	“further comprising stitching along the lower and side edges of the patch.”

The ’510 Patent	
Limitation Identifier	**Text of Claim**
Independent Claim 1	
[1A]	“A pocket bra comprising:”
[1B]	“a strap assembly including a chest strap and shoulder straps,”
[1C]	“the strap assembly joining the chest strap and shoulder straps at a central area adapted to be positioned on a back of a wearer when worn;”
[1D]	“a bra portion comprising left and right cups, each cup being an area to receive a breast of wearer, the strap assembly attached to the bra portion;”
[1E]	“and a back pocket formed entirely of stretchable fabric positioned on the central area,”
[1F]	“the back pocket having an opening that is biased in a closed position at rest.”
Dependent Claim 2	

The ’510 Patent	
Limitation Identifier	**Text of Claim**
	“The pocket bra of claim 1”
[2A]	“wherein the bra is a sports bra.”
Dependent Claim 4	
	“The pocketed bra of claim 1”
[4A]	**“**wherein the back pocket is formed by a patch connected to the back portion of the at least one of the chest strap and shoulder straps by stitching about a part of a perimeter of the patch, a gap in the stitching leaving a portion of the perimeter of the patch unattached, thereby forming the opening providing access to a pocket interior portion formed by the patch.”
Dependent Claim 5	
	“The pocket bra of claim 4”
[5A]	“further comprising an internal pocket connected about a perimeter of the opening, the internal pocket defining the pocket interior and formed such that it is positioned between the patch and the one of the back portion of the chest strap and the shoulder straps.”
Dependent Claim 7	
	“The pocket bra of claim 1”
[7A]	“wherein the opening is formed adjacent to a top of the patch.”
Dependent Claim 9	
	“The pocket bra of claim 1”
[9A]	“further comprising an item removably positioned in the back pocket.”
Dependent Claim 11	
	“The pocketed bra of claim 1”
[11A]	“wherein the opening provides access to a pocket interior.”

I. ENGAGEMENT

1. I have been retained by Nike, Inc. ("Nike") as an expert for the above-captioned *inter partes review* ("IPR") of U.S. Patent Nos. 9,295,288 (the "'288 Patent"); 9,808,036 (the "'036 Patent"); 10,219,550 (the "'550 Patent"); 9,289,016 (the "'016 Patent"); 9,723,878 (the "'878 Patent"); 10,244,800 (the "'800 Patent"); 10,219,551 (the "'551 Patent"); 10,869,510 (the "'510 Patent") (altogether the "Challenged Patents"). My employer, Joyce Baran Design LLC, currently charges my standard hourly rate of $630 per hour for my work in connection with this litigation. My compensation is not affected by the outcome of this matter in any way.

2. I have been asked to provide my opinions regarding whether the claims listed in the Appendix of Claims (the "Challenged Claims") would have been patentable over certain prior art to a person having ordinary skill in the art ("POSA") at the time of the alleged invention.

3. I am not an employee of Nike, Inc.

4. In reaching the opinions expressed in this declaration, I relied upon my education, training, knowledge, and experience in the relevant art, and have considered the viewpoint of a person having ordinary skill in the relevant art as of November 18, 2013.

5. All emphasis and figure annotations herein were added unless otherwise noted.

II. BACKGROUND AND QUALIFICATIONS

6. My credentials are set forth in full detail in my resume (NIKE-1002), incorporated here by reference, and summarized as follows: I have been the principal of Joyce Baran Design LLC ("JBD"), an intimate apparel research, development, marketing, and merchandising firm, since 2004. JBD develops intimate apparel from concept to customer, with a focus on lifestyle driven products. At the studio, I complete brand development for intimate apparel clients through research of technically appropriate fabrications, I design and develop prototypes, assess fit on industry models, grade sizing, cost and evaluate pricing, develop manufacturing tech packs, and introduce clients to manufacturing facilities, among other things. We also perform market analysis, prototypes, and fitting. Our product ranges from solution driven intimates, including any products worn close to the body, through technology from fibers to wearable electronics.

7. In 1964, I began working at Warnaco, initially as a fit model working with designers while attending Bridgeport Engineering Institute part time. During my time at Warnaco, I also worked as a costing engineer evaluating material usage and production efficiencies through profit and pricing; as an assistant to vice president of quality, where I gained exposure to fabric and product development in

relation to quality standards; and in private label product interpretation for retailers maintaining product integrity while controlling costs. While at Warnaco, I also apprenticed under three master designers in Bra and Shapewear design. During this time, I helped develop new products, learning pattern making in relationship to fabrications, fit, construction, and ultimately comfort for the wearer.

8. From 1976 to 1977, I left Warnaco to work part-time at Berger Brothers in New Haven, Connecticut. There, I specialized in working with mastectomy bras with pockets designed to hold prosthetic inserts.

9. Upon my return to Warnaco and until I left in 1986, I worked as a designer, creating commercially viable products with particular attention to fit. From 1986 to 1990, I was employed by Ithaca Industries as Director of Merchandising and Design where I created private label women's underwear for retailers including Sears, JC Penney, Walmart, Mercantile, and Belk. I used trend and market analysis on consumers, including fit and pricing expectations, to create my designs.

10. From 1990 to 2000, I was employed by Strouse Adler Co./Smoothie as Vice President of Merchandising and Design, where I developed various shape wear intimate apparel, including creating twice yearly new innovative collections for Market Week, along with presentations, catalogs, and marketing support. I appeared on national TV to promote marketing of Smoothie's "Does What Your Diet Doesn't"

collection of shapewear, including the Tummy Terminator, Waist Eliminator, and Body Reformer.

11. From 2000 to 2002, I was employed by Jockey International as Vice President of Merchandising and Design. At Jockey International, I developed the Liz Claiborne Intimate collection, which translated the aesthetic and life-style image of Liz Claiborne into bras and underwear. In that role, I worked with and visited factories in Asia gathering a hands-on knowledge of processes, fit interpretation, and quality.

12. From 2002 to 2004, I was employed by Warnaco Intimates as Vice President of Creative Design where I managed the process from research through concept to market in a structured timeline. I developed a number of distinct brands for Warnaco, such as a relaunch of Olga, as well as rebranding the Warnaco line. Many bras included inside support features such a sling for adaptability, and elastic adjustability for cup sizing.

13. Around 2007, I worked with Textronics, developing their Numetrex bra with a pocket on the bottom band to hold a heart monitor against the chest of a wearer, for transmission of health metrics to a device worn on the wrist, as shown below:

14. I have also been an intimate apparel spokeswoman since 1994, leading seminars, in-store events, corporate presentations and making television appearances. I work with the Stratford, CT school system, speaking on industry opportunities, necessary skills, and mentoring, and have received the "Youth as Resources Recognition" for this involvement. I have also taught as a guest designer at the Fashion Institute of Technology and have given presentations, such as "From Corsets to Consciousness" where I correlate my vintage to modern collection of lingerie to women's position in society throughout history. I also conduct an "Intimate Conversations with Joyce Baran" presentation where I de-mystify the

world of intimates by taking women through everything from dissecting bra design and sizing, to providing frank answers to their frustrations with lingerie.

15. I am also an inventor on several United States patents related to bras, including U.S. Patent No. 3,939,760, titled "Movement-Compensating Brassiere", issued April 13, 1976, and U.S. Patent Nos. 7,300,331 and 8,235,764, both titled "Brassiere Construction Using Multiple Layers of Fabric", issued November 27, 2007, and August 7, 2012, respectively.

16. I have served as an expert witness on multiple cases including patent cases in federal district courts, listed below:

- *Plew v. Ltd. Brands, Inc.*, No. 1:08-CV-3741 (S.D.N.Y. Apr. 21, 2008), for Victoria's Secret.
- *Chico's FAS, Inc. v. Wink Intimates et al*, No. 2:13-CV-00792 (M.D. Fla. Nov. 8, 2013), for Chico's.
- *Bragel Int'l. v. Charlotte Russe, Inc.*, No. 2:17-CV-7033 (C.D. Cal. Sept. 22, 2017), for Bragel International.
- *Magic Link Garment Ltd. v. ThirdLove, Inc.*, No. 4:18-CV-07366 (N.D. Cal. Dec. 6, 2018), for ThirdLove.

17. In forming the opinions expressed in this declaration, I relied upon my education and experience in the relevant field of the art and have considered the viewpoint of a POSA at the time of the alleged invention.

III. MATERIALS CONSIDERED

18. In connection with my work on this matter, I have reviewed and considered the materials cited herein and listed as exhibits starting on page xv of this declaration in forming my opinions.

19. I have generally reviewed and considered the Challenged Patents and their file histories; the Barg, York, Pintor, Handras, Vidai, Spagna, Rose, and Glass prior art references; and the materials listed in Petitioner's Exhibit List.

20. I have relied upon my training, knowledge, and experience in the relevant art.

21. My analysis of the materials relating to this proceeding is ongoing, and I will continue to review any new material as it is provided. This declaration represents only those opinions formed to date. I reserve the right to revise, supplement, or amend my opinions based on new information and on my continuing analysis of the materials referred to herein.

IV. UNDERSTANDING OF PATENT LAW

22. I am not an attorney. I have been informed, however, about several principles and standards of patent law, which I have used in developing my opinions expressed herein.

23. I understand that patent claims and the prior art are viewed through the eyes of a POSA. This concept refers to a hypothetical person trained in the relevant

technical field of a patent without possessing extraordinary or otherwise exceptional skill. Factors such as the educational level of those working in the field, the sophistication of the technology, the types of problems encountered in the art, the prior-art solutions to those problems, and the speed at which innovations are made may help to establish the level of skill in the art. The level of skill of the person of ordinary skill in the art is to be assessed at the time of the claimed invention.

24. I understand that in construing or interpreting a patent claim, the words of the claim are generally given their ordinary and customary meaning, which is the meaning that the words would have had to a person of ordinary skill in the art in question at the time of the invention. The person of ordinary skill in the art is deemed to read the claim term in the context of not only the particular claim in which the disputed term appears but also in the context of the entire patent, including the other claims and the specification, as well as the prosecution history of the patent.

25. Documents and materials, such as patents and publications, that qualify as prior art can be used to invalidate a patent claim as anticipated or as obvious. I am not offering an opinion about whether a document or material qualifies as prior art under the Patent Laws.

26. A claim is unpatentable if it is obvious. A patent claim is unpatentable as being obvious in view of prior art if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole

would have been obvious at the time the alleged invention was made to a POSA to which said subject matter pertains. I further understand that an obviousness analysis takes into consideration factual inquiries such as the level of ordinary skill in the art, the scope and content of the prior art, and the differences between the prior art and the patent claim.

27. A claim can be obvious in light of a single reference, without the need to combine references, if the elements of the claim that are not found explicitly or inherently in the reference can be supplied by the common sense of one of skill in the art. A claim may be obvious in view of a combination of two or more prior-art references.

28. The law has recognized several rationales for combining references and for modifying a reference as part of an obviousness analysis. These rationales include combining prior art elements according to known methods to yield predictable results, simple substitution of a known element for another to obtain predictable results, a predictable use of prior art elements in accordance with their established functions, applying a known technique to improve a known device (or process) and yield predictable results, and choosing from a finite number of known predictable solutions with a reasonable expectation of success. It is further my understanding that an obviousness analysis takes into consideration whether the

prior art provides a teaching, suggestion, or motivation to combine teachings of multiple prior art references to arrive at the patent claim.

29. A prior art reference must be analogous art to be considered in the obviousness analysis. This asks (1) whether the prior art is from the same field of endeavor, regardless of the problem addressed and (2) whether the reference is reasonably pertinent to the particular problem with which the inventor is involved.

30. Certain factors—often called "secondary considerations"—may support or rebut the obviousness of a claim. I understand that such secondary considerations include, among other things, commercial success of the alleged invention, skepticism of those having ordinary skill in the art at the time of the alleged invention, unexpected results of the alleged invention, any long-felt but unsolved need in the art that was satisfied by the alleged invention, the failure of others to make the alleged invention, praise of the alleged invention by those having ordinary skill in the art, and copying of the alleged invention by others in the field. I further understand that there must be a nexus—a connection—between any such secondary considerations and the alleged invention. I also understand that contemporaneous and independent invention by others is a secondary consideration tending to show obviousness.

31. I understand that, in an IPR, obviousness must be shown by the preponderance of the evidence. In other words, that the claims are more likely than not unpatentable.

V. SUMMARY OF THE CHALLENGED PATENTS

32. The Challenged Patents all relate generally to bras with pockets, with each patent directed to different placements of the pockets.

33. The Challenged Claims of the ’288, ’036, and ’550 Patents are directed to bras with pockets on the breast cups. The Challenged Claims of the ’016 Patent are directed to pockets on the chest strap, while the challenged claims of the ’800 and ’510 Patents are directed to pockets on the back of the bra. The challenged claims of the ’878 and ’551 Patents are directed to pockets on the chest strap and back of the bra.

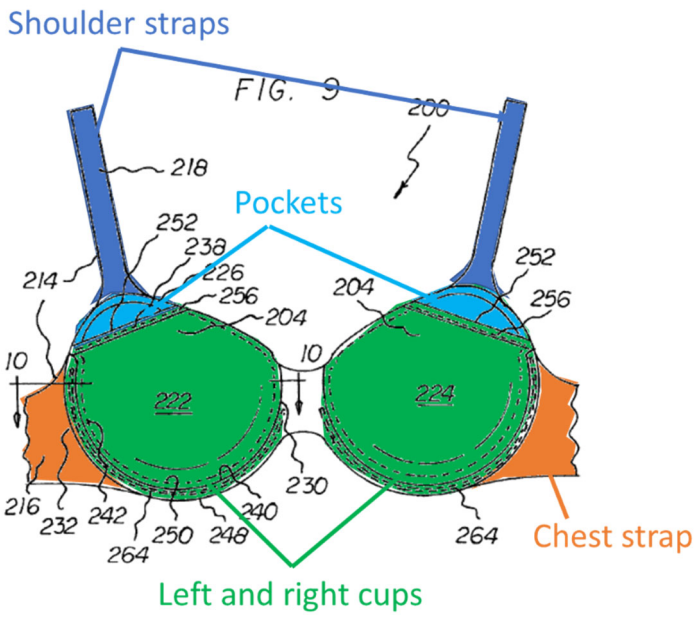
34. The Challenged Patents are family members, each purporting to be a continuation-in-part of U.S. Patent No. 8,597,072 (the “’072 Patent”), not challenged by Petitioners.

A. U.S. Patent No. 9,295,288

1. Overview of the ’288 Patent

35. The ’288 Patent issued on March 29, 2016, from U.S. Application No. 14/082,777, filed on November 18, 2013. The ’288 Patent purports to be a continuation-in-part of the ’072 Patent. The ’072 Patent resulted from Application No. 13/066,822, filed April 26, 2011.

36. The ’288 Patent relates generally to a conventional bra with pockets on the cups. Specifically, the ’288 Patent claims a bra with “left and right cups” adhered to the wearer via “a chest strap and shoulder straps” and “patch[es]” on each breast cup to form pockets for the purpose of holding “at least one of a handheld electronic device, keys, and pills.” NIKE-1003 at Cl. 1.



NIKE-1003 at Fig. 9, Abstract.

37. 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.*

38. During prosecution of the ’288 Patent, I understand the applicant distinguished the claimed pockets from other breast-cup pockets in the prior art used for insertion of bra padding. NIKE-1004 at 173 (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 151–52 (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 151–52. 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 from Newman because “Newman’s focus is singular and its pocket is specifically sized for the bra pad only,” whereas the ’288 Patent’s alleged invention is designed to hold the claimed objects—a handheld electronic device, keys, and pills—and not bra padding. *See id.* at 173–74.

39. The ’288 Patent has 17 claims. I understand only six of those claims—independent Claim 1 and dependent Claims 2, 3, 4, 11 and 12—are challenged here.

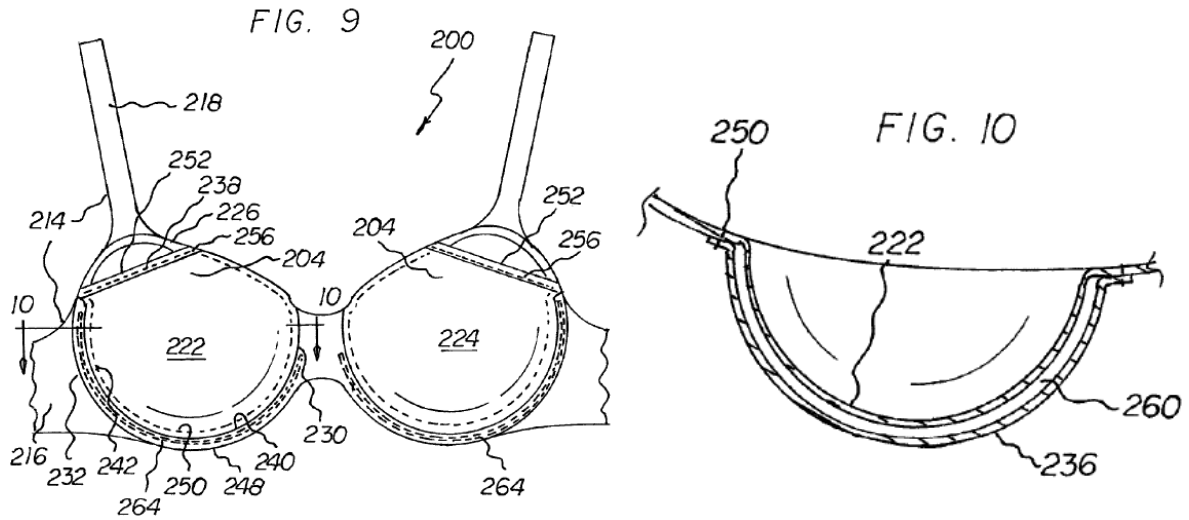
40. I understand Barg, York, Pintor, and Handras are all directed toward storing personal items, such as handheld electronic devices, keys, and pills, rather than padding, and render the Challenged Claims of the ’288 Patent obvious.

2. Effective Priority Date of the ’288 Patent’s Challenged Claims

41. I understand Petitioner disputes that any claim of the ’288 Patent is entitled to an effective priority date as early as April 26, 2011.

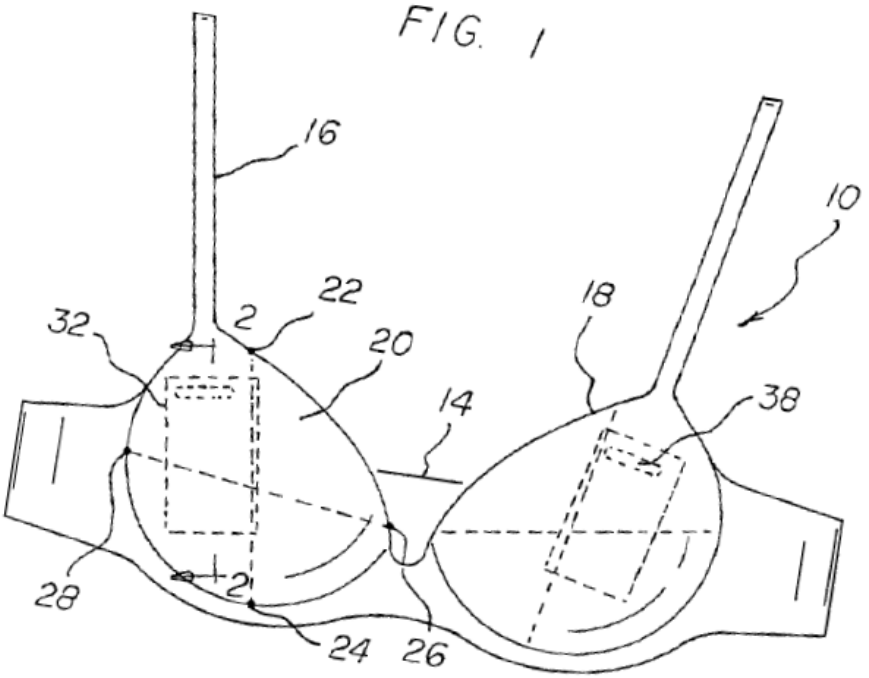
42. I understand the Patent Owner admitted that November 18, 2013 is the earliest priority date to which the ’288 Patent’s challenged claims are entitled. *See* NIKE-1049.

43. The claims of the ’288 Patent require “each patch [to have] a linear upper edge and curved lower, interior body facing, and opposite exterior edge,” such that the patches are “aligned” with the “lower, interior body facing, and opposite exterior edges of an associated cup.” NIKE-1003 at Cl. 1. And the applicant added Figures 9 and 10, purportedly disclosing this for first time in the ’288:



NIKE-1003 at Figs. 9–10.

44. This differs from the parent ’072 Patent, which discloses rectangular patches sewn to the surface of the cup, spanning a much smaller portion of the cup surface area. NIKE-1050 at Cl. 1, Fig. 1; NIKE-1051.



NIKE-1050 at Fig. 1 (showing rectangular patches 32 on the surface of each cup).

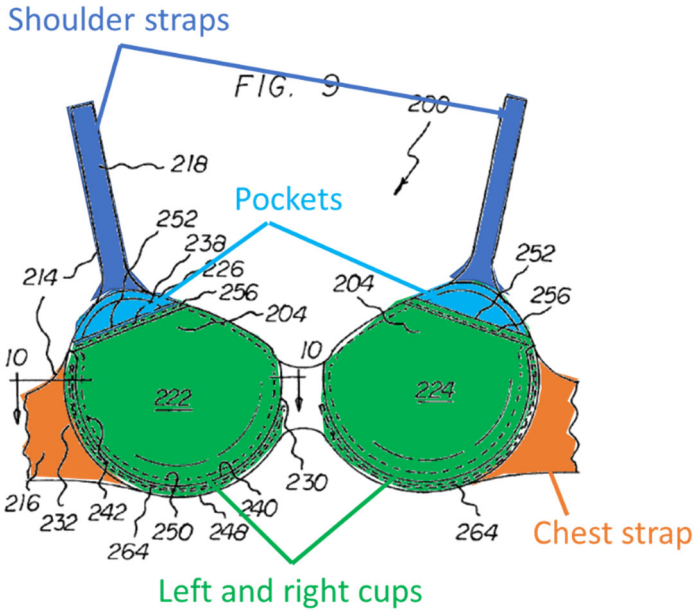
45. Thus, I understand such disclosure constitutes new matter, and is only entitled to priority of the filing date of the ’288 Patent—November 18, 2013. *See* NIKE-1003 at Cover.

B. U.S. Patent No. 9,808,036

1. Overview of the ’036 Patent

46. The ’036 Patent issued on November 7, 2017, from U.S. Application No. 15/045,606, filed on February 17, 2016. The ’036 Patent purports to be a continuation of the ’288 Patent.

47. The ’036 Patent relates generally to a conventional bra with pockets on the cups. Specifically, the ’036 Patent claims a bra with a “chest strap”, “left and right cups” and a “patch forming a pocket operatively associated with at least of the left and right cups.” An “upper edge of the patch being offset from an upper edge of the cup”. NIKE-1005 at Cl. 1.



NIKE-1005 at Fig. 9, Abstract.

48. The disclosed patches are connected to the bra cups via stitching which couples “the lower, interior and exterior edges of each patch to the lower, interior

and exterior edges of an associated cup." According to the '036 Patent, "[a] linear opening 252 is thus formed along the upper edge of each patch." *Id* at 4:66-5:2. It appears from Fig. 9 that the upper edge of the patch is offset from an upper edge of the cup.

49. During prosecution of the '036 Patent, 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 (bolding added).

50. As discussed prior in ¶ 38, during prosecution of the ’036’s parent patent—the ’288 Patent—the applicant distinguished the claimed pockets from other breast-cup pockets in the prior art used for insertion of *bra padding*. NIKE-1004 at 173; *see also* NIKE-1023.

51. The ’036 Patent has 21 claims. Eleven of those claims—independent Claims 1 and 6 and dependent Claims 2–5, 7–10, and 18—are challenged here. Barg, York, Pintor, and Handras are all directed toward storing personal items which can be repeatedly received and removed from the claimed opening of the patch and render the Challenged Claims of the ’036 Patent obvious.

2. Effective Priority Date of the ’036 Patent’s Challenged Claims

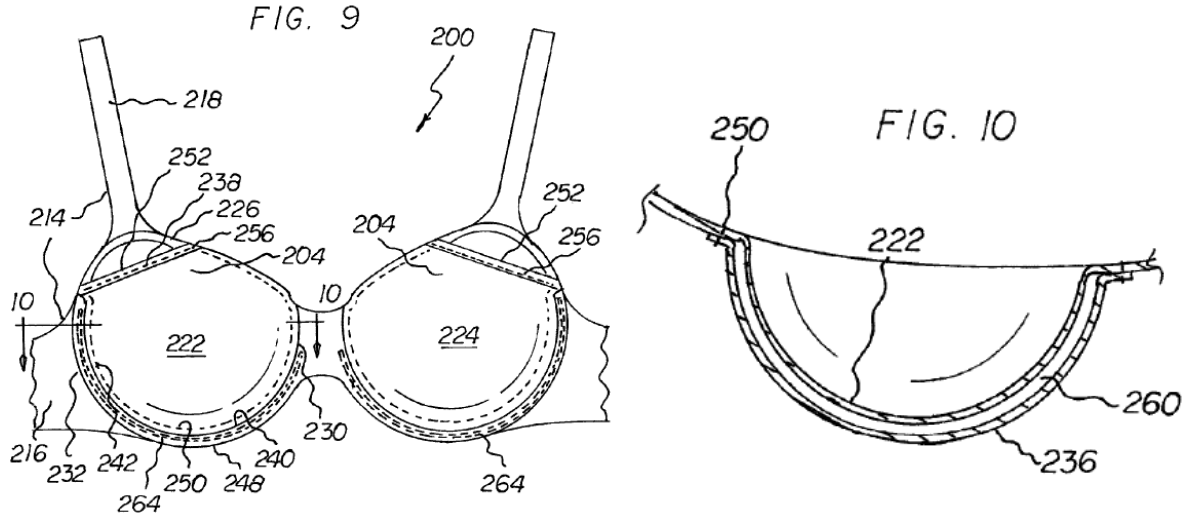
52. The ’036 Patent issued on November 7, 2017, from the ’606 Application filed on February 17, 2016. The ’036 Patent purports to be a continuation-in-part of the ’288 Patent, which purports to be a continuation-in-part of grandparent U.S. Patent No. 8,597,072 (“the ’072”). Each of the patents claim priority of April 26, 2011, the filing date of the ’072. The ’072 resulted from Application No. 13/066,822, filed April 26, 2011.

53. I understand that Patent Owner ("PO") has admitted that November 18, 2013 is the earliest priority date to which the '036 Patent's challenged claims are entitled. NIKE-1049.

54. I understand Petitioner disputes that any claim of the '036 Patent is entitled to an effective priority date as early as April 26, 2011.

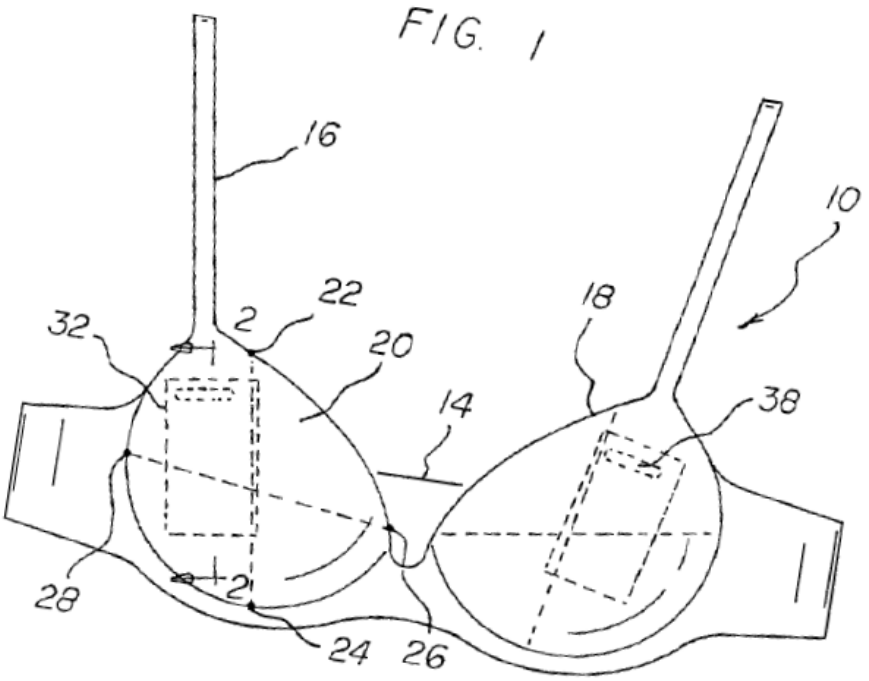
55. The claims of the '036 Patent require "stitching coupling the lower interior body facing edge, and the opposite lower exterior edge of the patch to at least one of the lower, interior body facing, and opposite exterior edges of the at least one of the left and right cups, or the chest strap." NIKE-1005 at Cl. 1.

56. And the applicant added Figures 9 and 10, purportedly disclosing this for first time in the '288 Patent:



NIKE-1003 at Figs. 9–10.

57. This differs from the parent ’072 Patent, which discloses rectangular patches sewn to the surface of the cup, rather than the edges of the cup, spanning a much smaller portion of the cup surface area. NIKE-1050 at Cl. 1, Fig. 1; NIKE-1051.



NIKE-1050 at Fig. 1 (showing rectangular patches 32 on the surface of each cup).

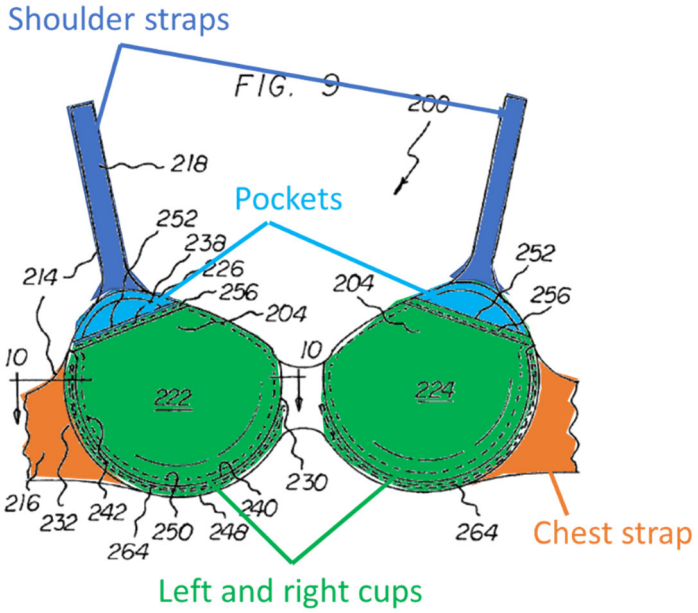
58. Thus, I understand such disclosure constitutes new matter, and is only entitled to priority of the filing date of the ’288 Patent—November 18, 2013. *See* NIKE-1003 at Cover.

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

1. Overview of the ’550 Patent

59. 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 the ’036 Patent, which purports to be a continuation-in-part of the ’288 Patent, which purports to be a continuation-in-part of the ’072 Patent.

60. The ’550 Patent relates generally to a conventional bra with pockets on the cups. Specifically, the ’550 Patent 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.

61. 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.*

62. During prosecution of the '550 Patent, the applicant filed terminal disclaimers to the '036 and '288 Patents to overcome a double patenting rejection. See NIKE-1008 at 69 (Sep. 15, 2018 Terminal Disclaimer), at 53 (Mar. 22, 2018 Non-Final Rejection).

63. As discussed in ¶¶ 38 and 49, during prosecution of the parent '036 Patent and grandparent '288 Patent, 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; NIKE-1004 at 173.

64. The '550 Patent 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 of the '550 Patent obvious.

2. Effective Priority Date of the ’550 Patent’s Challenged Claims

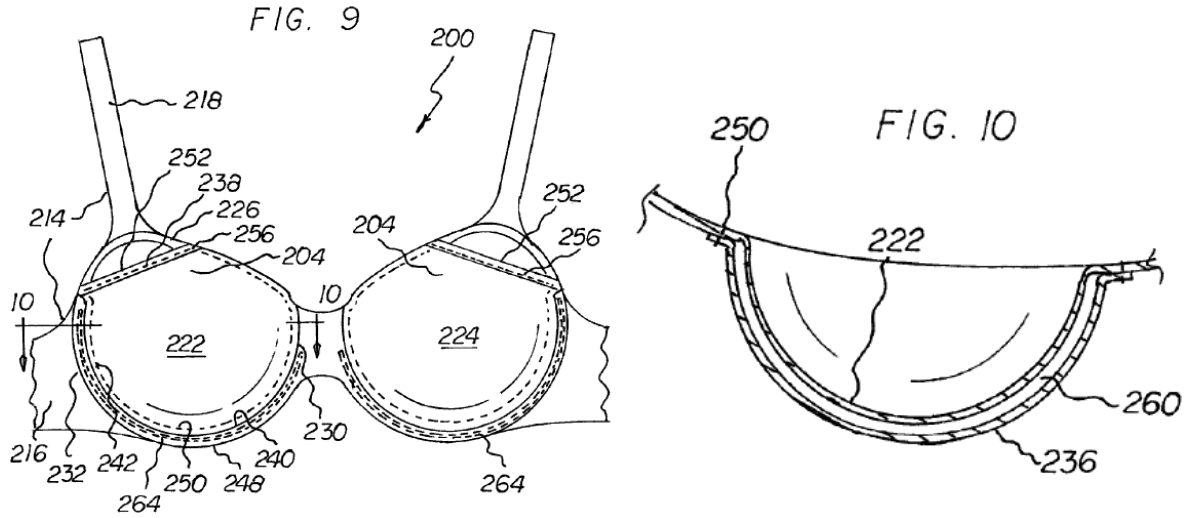
65. The ’550 Patent issued on March 5, 2019, from the 15/679,206 Application filed on August 17, 2017. The ’550 Patent purports to be a continuation-in-part of the ’036 Patent, which purports to be a continuation-in-part of the ’288 Patent, which purports to be a continuation-in-part of grandparent the ’072 Patent. The ’072 Patent resulted from Application No. 13/066,822, filed April 26, 2011. Each of the patents claim priority of April 26, 2011, the filing date of the ’072. For purposes of this proceeding only, the earliest effective priority date of the Challenged Claims of the ’550 Patent is April 26, 2011.

66. I understand that Patent Owner (“PO”) has admitted that November 18, 2013 is the earliest priority date to which the ’550 Patent’s challenged claims are entitled. NIKE-1049.

67. I understand Petitioner disputes that any claim of the ’550 Patent is entitled to an effective priority date as early as April 26, 2011.

68. The claims of the ’550 Patent 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.

69. I understand the Patent Owner concedes that such limitation does not have purported disclosure prior to the ’288 Patent, as illustrated by Figs. 9–10:



NIKE-1003 at Figs. 9–10; NIKE-1049.

70. Thus, I understand such disclosure constitutes new matter, and is only entitled to priority of the filing date of the ’288 Patent—November 18, 2013. *See* NIKE-1003 at Cover.

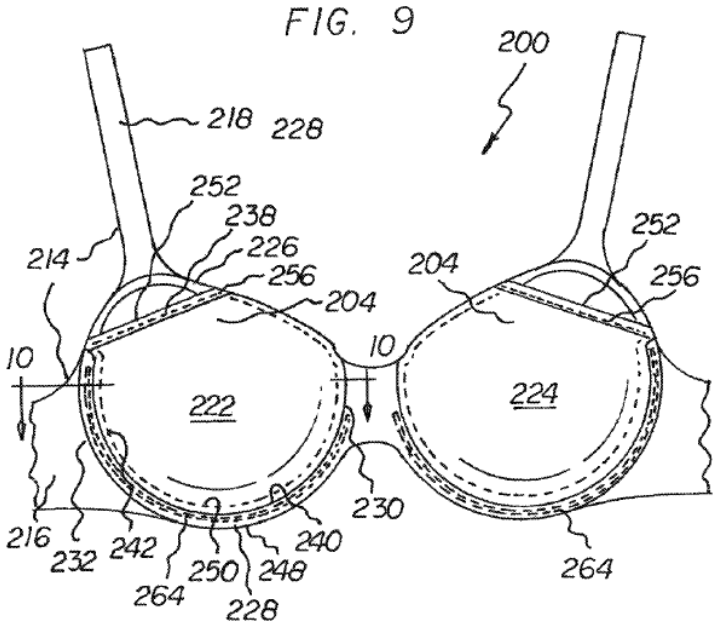
D. U.S. Patent No. 9,289,016

1. Overview of the ’016 Patent

71. The ’016 Patent issued on March 22, 2016, from U.S. Application No. 14/614,873, a continuation-in-part application filed on February 5, 2015. NIKE-1009 at Cover. The ’016 Patent purports to be a continuation-in-part of the ’288 Patent, which purports to be a continuation-in-part of the ’072 Patent.

72. The purported advantage of the claimed invention is “removably receiving a handheld electronic device while providing support and shape to the breasts of a wearer, the receiving and supporting and shaping being done in a safe, convenient and economical manner.” *Id.* at 1:8-11. Consistent with conventional

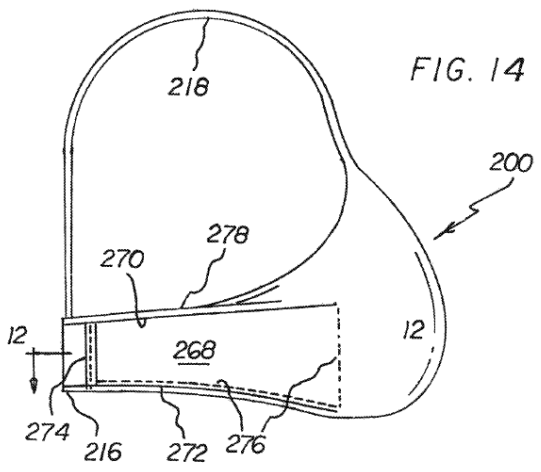
bra design, the claimed bra is comprised of "left and right cups" adhered to the wearer via "a chest strap and shoulder straps."

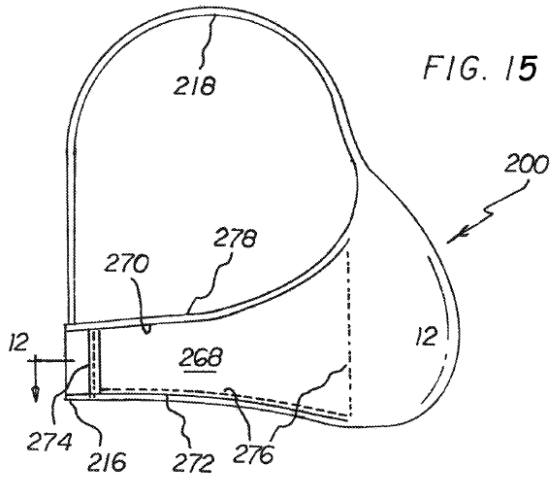


NIKE-1009 at Fig. 9.

73. While the '016 Patent as originally filed claimed pockets "operatively associated with each cup," *i.e.*, pockets 204 in Figure 9, those claims were rejected as anticipated by the prior art. *See* NIKE-1010 at 111–19 (May 22, 2015 Non-Final Rejection). The applicant amended the claims in response to that rejection to instead claim pockets on "each side of the chest strap adjacent to each of the [breast cups]," where "each side pocket extends onto the adjacent cup." NIKE-1010 at 133–34 (Aug. 24, 2015 Amendment in Response to Non-Final Rejection); *see also* NIKE-1009 at Cl. 1. In addition to amending the claims, the applicant added new language

to the specification similar to the new claim language, and two additional figures illustrating this new language:





NIKE-1009 at Figs. 14–15, at 5:57–61 ("In still a further embodiment, side pocket 268 may further extend at least partially into, over, or beneath the cup such that the pocket, and potentially the upper opening 278 span both part of the chest strap and part of the cup.").

74. The apparent reason for allowance of the '016 Patent is the inclusion of pockets on the side of a bra's chest strap that "extend onto" the cups.

75. The '016 Patent has 7 claims total. Only four of those claims—independent Claim 1, and dependent Claims 2, 4, and 7—are challenged here. Vidai, Pintor, and Handras are all directed toward storing personal items in a bra pocket and render the challenged claims of the '016 Patent obvious.

2. Effective Priority Date of the ’016 Patent’s Challenged Claims

76. I understand Petitioner disputes that any claim of the ’016 Patent is entitled to an effective priority date as early as April 26, 2011.

77. I understand the Patent Owner admitted that November 18, 2013 is the earliest priority date to which the ’016 Patent’s challenged claims are entitled. *See* NIKE-1049.

78. The claims of the ’016 Patent require “a side patch on one of an inside or outside surface of each side of the chest strap adjacent to each of the left cup and right cup.” NIKE-1009 at Cl. 1. The earliest purported disclosure of this is in the ’288 Patent, not the grandparent ’072 Patent. *See* NIKE-1003 at 5:9–11, Cl. 5, Figs. 11–12; NIKE-1050. In fact, the applicant added Figures 11 and 12 during prosecution of the ’288 Patent:

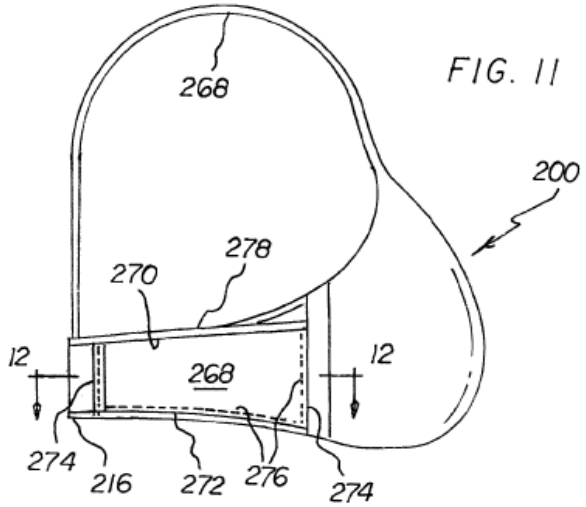


FIG. 11

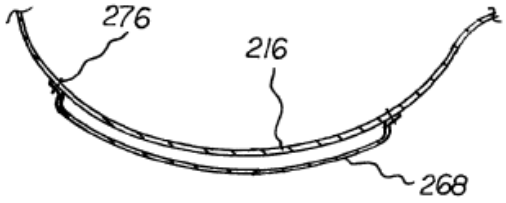


FIG. 12

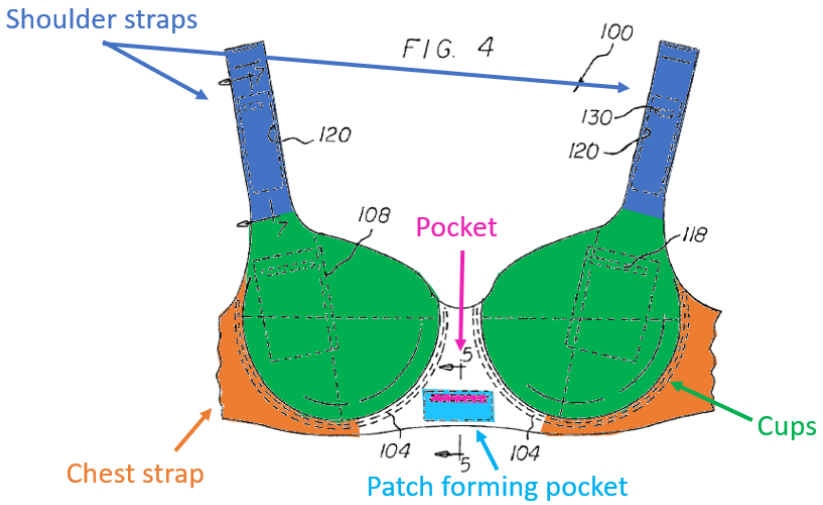
NIKE-1004 at Figs. 11–12; *see also* NIKE-1004; NIKE-1050; NIKE-1051.

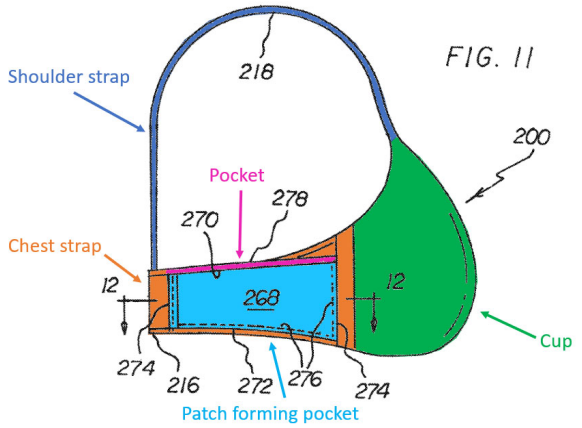
79. Thus, I understand such disclosure constitutes new matter, and is only entitled to priority of the filing date of the ’288 Patent—November 18, 2013. *See* NIKE-1003 at Cover.

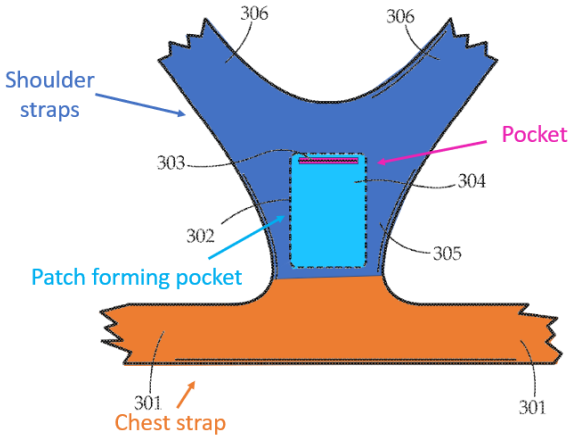
E. U.S. Patent No. 9,723,878

1. Overview of the ’878 Patent

80. The ’878 Patent issued on August 8, 2017 from U.S. Application No. 15/045,592 (the “’592 Application”), a continuation-in-part application filed on February 17, 2016. The ’878 Patent is directed towards a bra with pockets on the chest strap, on the back of the bra, and on the front surface of the bra intermediate the breast cups:







NIKE-1011 at Figs. 4, 11, 13.

81. The ’878 Patent has 17 claims. I understand eight of those claims—independent Claims 1 and 15, and dependent Claims 2–4, 11, 14, and 17—are challenged here. As shown below, Vidai and Handras disclose side pockets, and Spagna discloses pockets on the back of the bra and intermediate the bra cups, rendering the Challenged Claims of the ’878 Patent obvious.

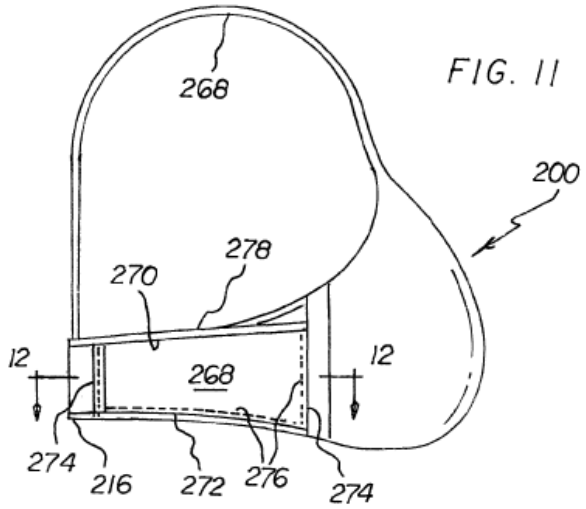
2. Effective Priority Date of the ’878 Patent’s Challenged Claims

82. I understand Petitioner disputes that any claim of the ’878 Patent is entitled to an effective priority date as early as April 26, 2011.

83. I understand the Patent Owner admitted that November 18, 2013 is the earliest priority date to which the ’878 Patent’s challenged claims are entitled. *See* NIKE-1049.

84. The claims of the ’878 Patent require a “a side patch on one of an inside or outside surface of the chest strap adjacent to at least one of the left cup and right

cups." NIKE-1011 at Cl. 1. The earliest purported disclosure of this is in the '288 Patent, not the grandparent '072 Patent. *See* NIKE-1003 at 5:9–11, Cl. 5, Figs. 11–12; NIKE-1012; NIKE-1050. In fact, the applicant added Figures 11 and 12 during prosecution of the '288:



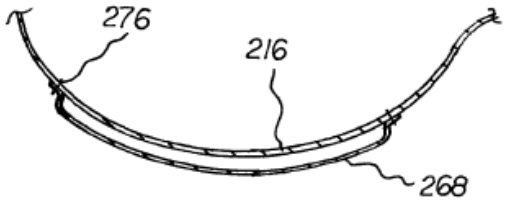


FIG. 12

NIKE-1004 at Figs. 11–12; *see also* NIKE-1004; NIKE-1050; NIKE-1051.

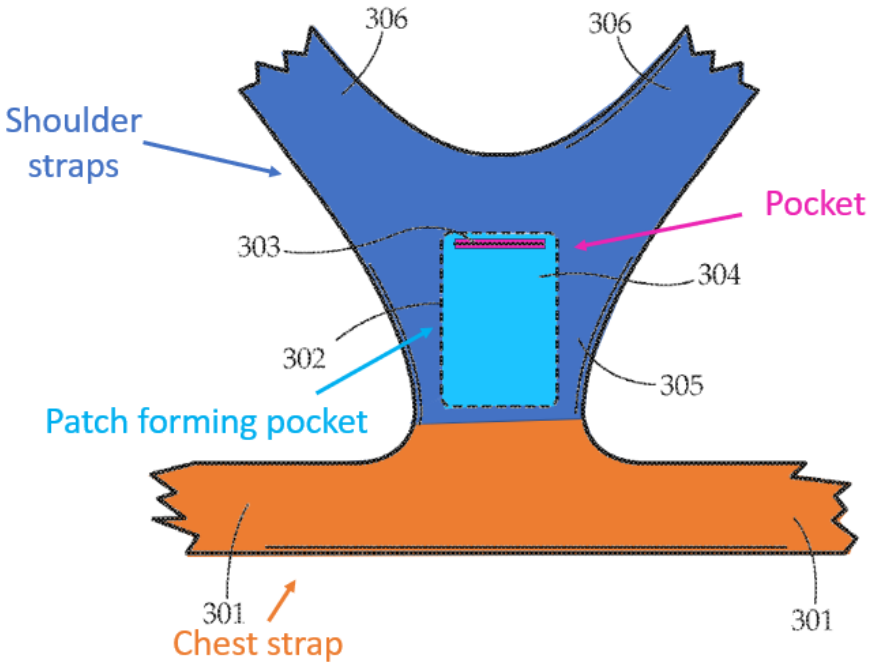
85. Thus, I understand such disclosure constitutes new matter, and is only entitled to priority of the filing date of the '288 Patent—November 18, 2013. *See* NIKE-1003 at Cover.

F. U.S. Patent No. 10,244,800

1. Overview of the '800 Patent

86. The '800 Patent issued on April 2, 2019, from U.S. Application No. 145/647,784 (the "'784 Application"), a continuation-in-part application filed on July 12, 2017. NIKE-1013. While the specification and most of the figures of the

’800 Patent disclose pockets on the breast cups and side of the chest strap, the claims are directed towards a bra with a back pocket, as illustrated below:



NIKE-1013 at Fig. 13.

87. Specifically, the ’800 Patent discloses the bra as comprising “a strap assembly including a chest strap and shoulder straps.” *Id.* at Cl. 1. Further, the strap assembly is connected to a “bra portion configured to provide support and shape” to the breasts of the wearer. *Id.* The claimed back pocket is formed of “stretchable fabric” and is “biased in a closed position at rest.” *Id.*

88. During prosecution of the ’800 Patent, the Examiner rejected the then-pending claims over prior art because:

> [I]t would have been obvious to one having ordinary skill in the art to modify the pocket structure of Knutson to construct the pocket as disclosed by O to allow for the storage of other items therein and to

> construct the pocket so that the opening is on the surface of the pocket allowing for ease in opening and closing the pocket so that items are secure within the pocket.

NIKE-1014 at 62 (Sept. 7, 2017 Non-Final Rejection), at 96 (Apr. 5, 2018 Final Rejection); *see also* NIKE-1031; NIKE-1032.

89. The applicant argued that the claimed invention was distinct from Knuston because unlike the pocket disclosed by Knuston—which is designed to stay open—the claimed pocket is designed to be "biased in the closed position at rest," which purportedly "serves to keep items held safe within the pocket during exercise." *See* NIKE-1014 at 81–83 (Dec. 21, 2017 Response to Non-Final Rejection), at 119–20 (Oct. 4, 2018 Response to Final Rejection).

90. The '800 Patent has 17 claims. Six of those claims—independent Claim 1 and dependent Claims 2, 3, 5, 7, and 10—are challenged here. As shown below, Spagna, Rose, and Glass all disclose back pockets that are "biased in the closed position at rest" and "keep items held safe within the pocket during exercise, rendering the Challenged Claims of the '800 Patent obvious.

2. Effective Priority Date of the '800 Patent's Challenged Claims

91. I understand Petitioner disputes that any claim of the '800 Patent is entitled to an effective priority date as early as April 26, 2011.

92. I understand the Patent Owner admitted that February 5, 2015 is the earliest priority date to which the ’800 Patent’s challenged claims are entitled. *See* NIKE-1049.

93. The claims of the ’800 Patent require “a back pocket formed entirely of stretchable fabric positioned on the back portion of at least one of the chest strap and shoulder straps.” NIKE-1013 at Cl. 1. The applicant added Figure 13, purportedly disclosing this for the first time in the ’016 Patent:

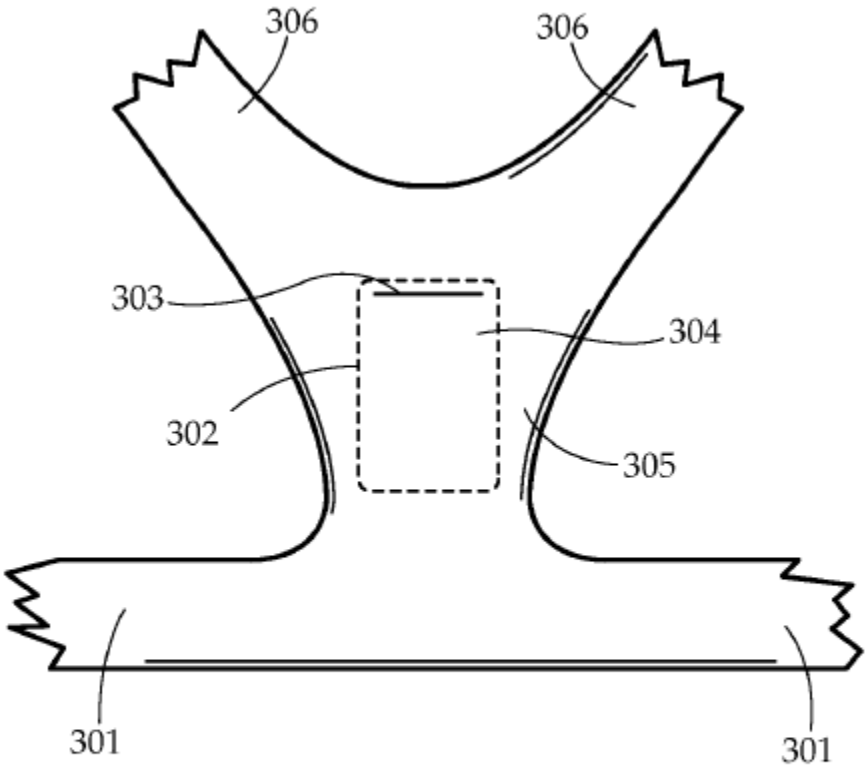


Fig. 13

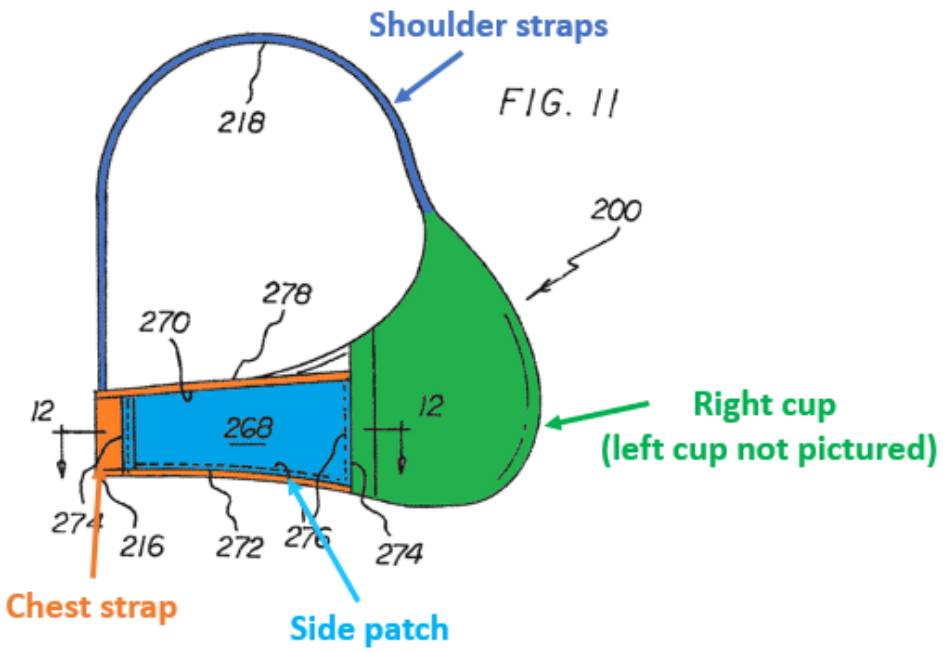
NIKE-1009 at Fig. 13.

94. I understand such disclosure constitutes new matter, and is at the earliest only enittled to the priority of the filing date of the ’016 Patent—February 5, 2015. *See* NIKE-1009 at Cover.

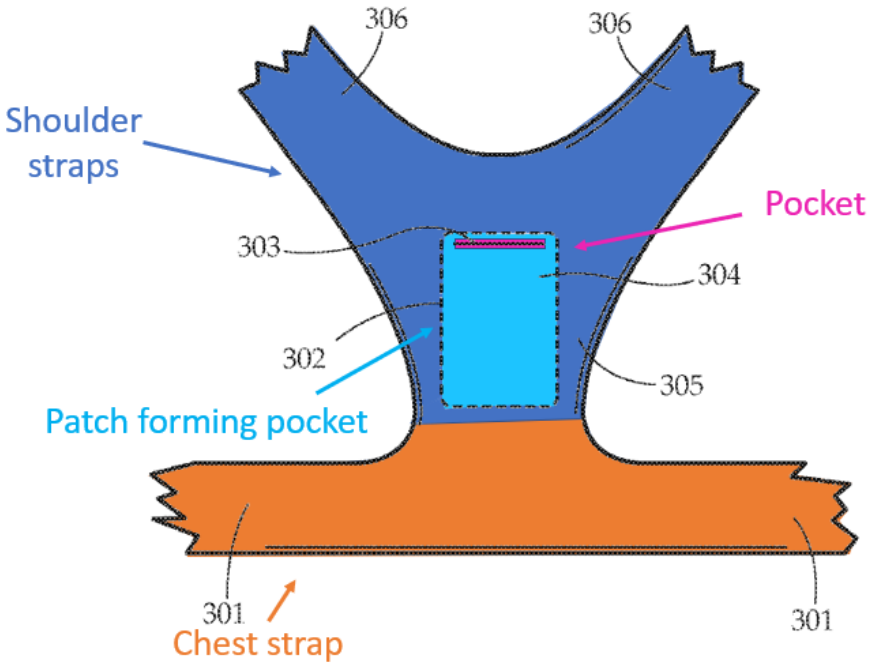
G. U.S. Patent No. 10,219,551

1. Overview of the ’551 Patent

95. The ’551 Patent issued on March 5, 2019, from U.S. Application No. 15/835,851, a continuation filed on December 8, 2017. The ’551 Patent relates generally to a bra with pockets on the chest strap and back. Specifically, the ’551 Patent claims a bra with “a left cup and a right cup” adhered to the wearer via “a chest strap” and “shoulder straps” and “side patch[es]” on the chest strap to form pockets for holding “an item.” NIKE-1003 at Cl. 1.:



NIKE-1015 at Fig. 11. The ’551 Patent’s claims are also directed towards a bra with a back pocket, as illustrated below:



NIKE-1017 at Fig. 13.

96. The ’551 Patent has 20 claims. Fourteen of those claims—independent Claims 1 and 16, and dependent Claims 2–8, 12, 13, 15, 17 and 18—are challenged here. As shown below, Vidai and Handras, in view of Spagna and/or Glass, disclose side and back pockets for holding items, rendering the Challenged Claims of the ’551 obvious.

2. Effective Priority Date of the ’551 Patent’s Challenged Claims

97. The ’551 Patent issued on March 5, 2019, from the ’851 Application filed on December 8, 2017. The ’551 Patent purports to be a continuation of the

’800 Patent, which purports to be a continuation-in-part the ’878 Patent, which purports to be a continuation in part of the ’016 Patent, which purports to be a continuation-in-part of the ’288 Patent, which purports to be a continuation-in-part of the ’072 Patent.

98. I understand Petitioner disputes that any claim of the ’551 Patent is entitled to an effective priority date as early as April 26, 2011.

99. I understand Patent Owner admits that February 5, 2015 is the earliest priority date to which the ’551 Patent’s challenged claims are entitled.

100. The claims of the ’800 Patent require “a back pocket formed entirely of stretchable fabric positioned on the back portion of at least one of the chest strap and shoulder straps.” NIKE-1013 at Cl. 1. The applicant added Figure 13, purportedly disclosing this for the first time in the ’016 Patent:

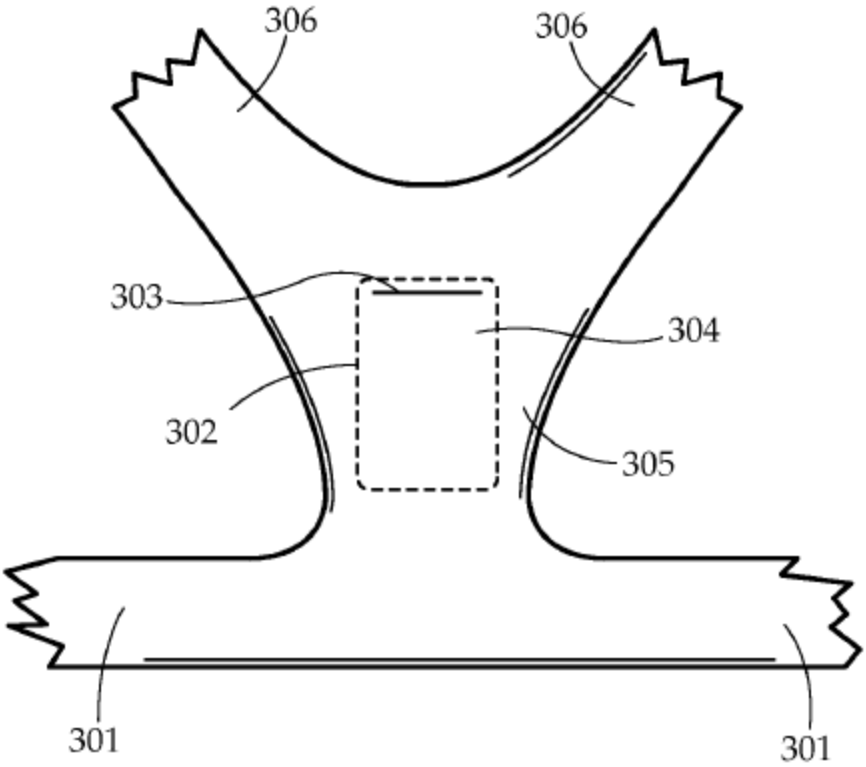


Fig. 13

NIKE-1009 at Fig. 13; NIKE-1016.

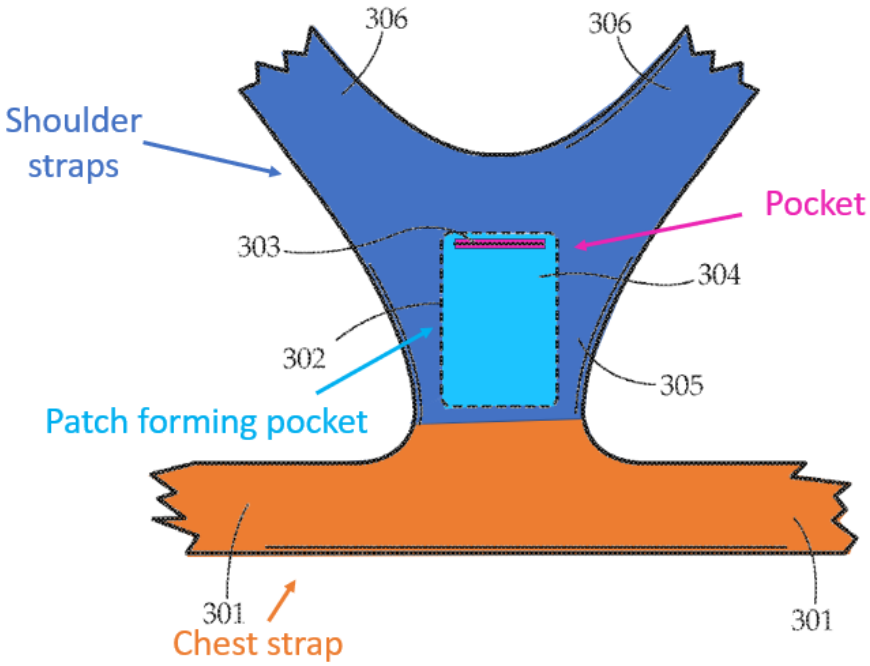
101. Thus, I understand such disclosure constitutes new matter, and the Challenged Claims are at the earliest only enittled to the filing date of the ’016 Patent—February 5, 2015. NIKE-1009 at Cover.

H. U.S. Patent No. 10,869,510

1. Overview of the ’510 Patent

102. The ’510 Patent issued on Dec. 22, 2020, from U.S. Application No. 16/260,246, a continuation filed on Jan. 29, 2019. While the specification and most

of the figures of the ’510 Patent disclose pockets on the breast cups and side of the chest strap, the claims are directed towards a bra with a back pocket, as illustrated below:



NIKE-1017 at Fig. 13.

103. Specifically, the ’510 Patent discloses the bra as comprising “a strap assembly including a chest strap and shoulder straps.” *Id.* at Cl. 1. Further, the strap assembly is connected to a “bra portion comprising left and right cups.” *Id.* The claimed back pocket is formed of “stretchable fabric” and is “biased in a closed position at rest.” *Id.*

104. The ’510 Patent has 16 claims. Seven of those claims—independent Claim 1 and dependent Claims 2, 4, 5, 7, 9, and 11—are challenged here. As shown below, Spagna, Rose, and Glass all disclose back pockets that are made of

"stretchable fabric" and are "biased in the closed position at rest," rendering the Challenged Claims obvious.

2. Effective Priority Date of the '510 Patent's Challenged Claims

105. I understand Petitioner disputes that any claim of the '510 Patent is entitled to an effective priority date as early as April 26, 2011.

106. I understand the Patent Owner admitted that February 5, 2015 is the earliest priority date to which the '510 Patent's challenged claims are entitled. *See* NIKE-1049.

107. The claims of the '510 Patent require "a back pocket formed entirely of stretchable fabric positioned on the central area." NIKE-1017 at Cl. 1. The applicant added Figure 13, purportedly disclosing this, for the first time in the '016 Patent:

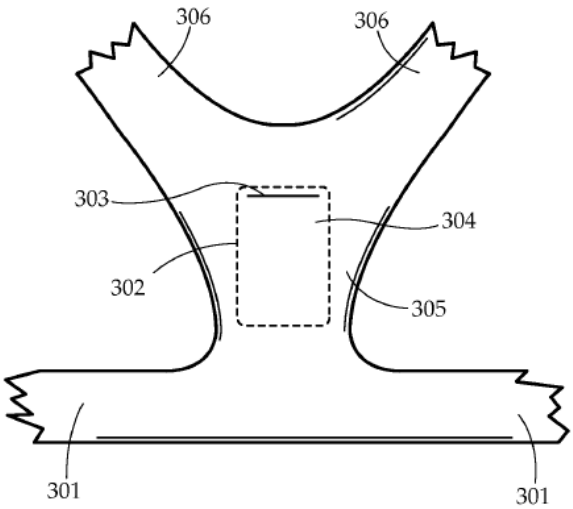


Fig. 13

NIKE-1009 at Fig. 13; NIKE-1018.

108. I understand such disclosure constitutes new matter, and is at the earliest only enittled to the priority of the filing date of the ’016 Patent—February 5, 2015. *See* NIKE-1009 at Cover.

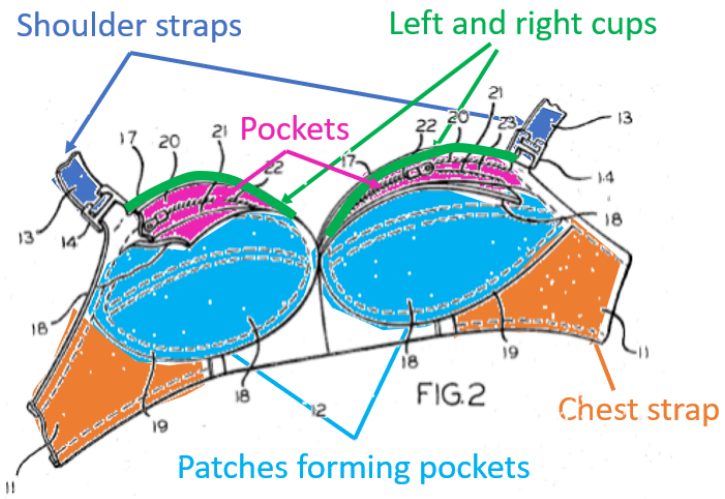
VI. OVERVIEW OF THE PRIOR ART

109. Both bras and pockets have been well-known in the art for many years before the alleged invention of the ’288 Patent and any of its child patents. Conventional bras, with two cups for the left and right breasts, shoulder straps, and a chest strap, have existed for centuries. NIKE-1034 (showing a bra excavated from a castle in Austria dated back to the late 14th to early 15th century).

110. Pockets have also been used in combination with clothing for centuries. *See* NIKE-1035 at 148. And for decades, companies and individuals worldwide have designed and created bras with pockets so that women may conveniently carry items. *See generally* NIKE-1019 (Barg) (prior art bra with pocket on the breast cups); NIKE-1020 (York) (prior art bra with pocket on the breast cup); NIKE-1022 (Pintor) (prior art bra with pocket on the breast cups); NIKE-1023 (Newman) (same); NIKE-1024 (Spillman) (same); NIKE-1025 (Faagau) (same); NIKE-1021 (Handras) (prior art bra with pockets on breast cups and chest strap); NIKE-1027 (Vidai) (prior art bra with pocket on the chest strap); NIKE-1028 (Spagna) (prior art bra with back pocket and pocket intermediate the breasts); NIKE-1030 (Rose) (prior

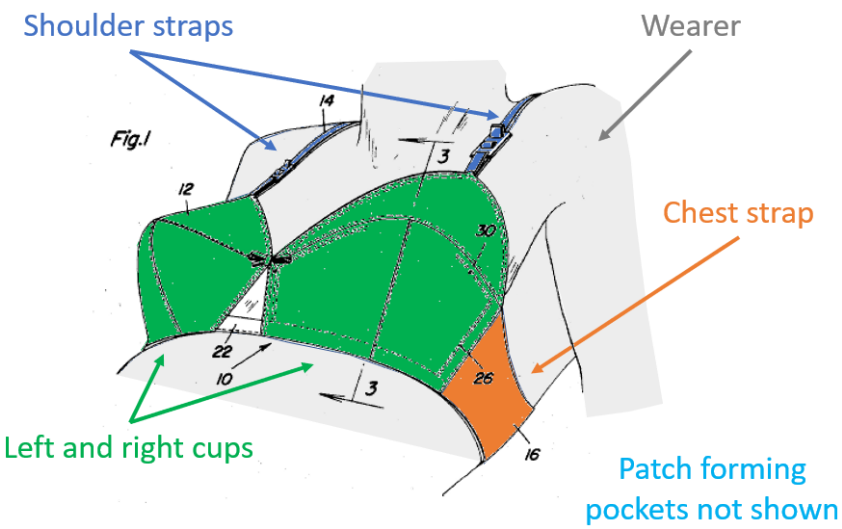
art with pockets on the cups, chest strap, and back); NIKE-1029 (Glass) (prior art bra with a back pocket).

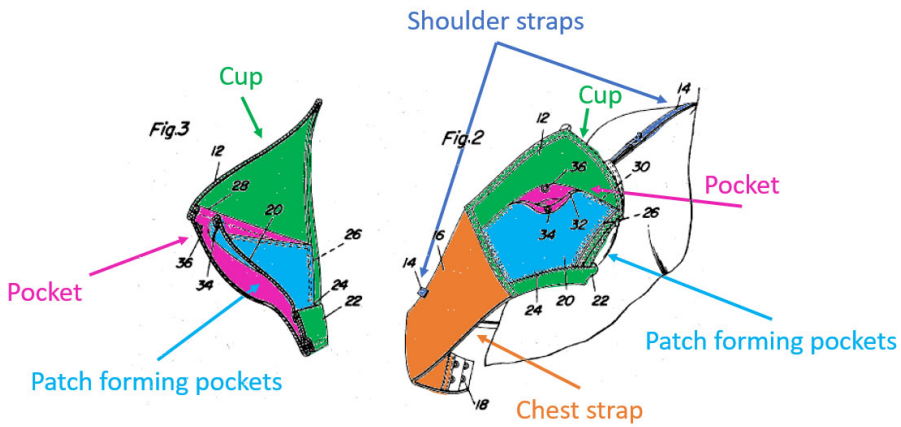
111. For example, Barg, filed in 1968; York, filed in 1958; and Handras, filed in 2012, all teach a bra with pockets on the cups:



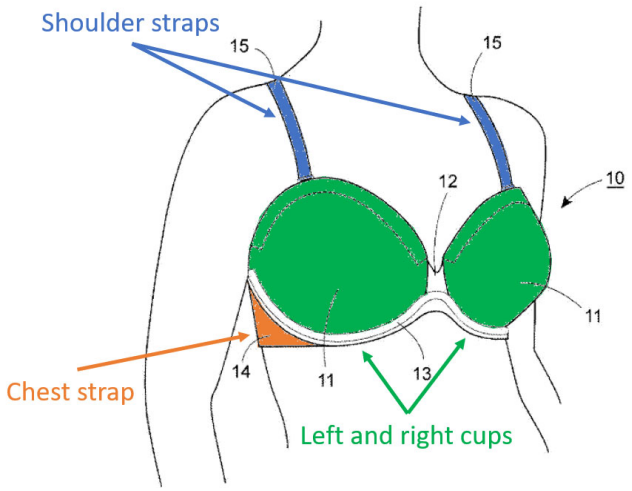
NIKE-1019 at Fig. 2.[2]

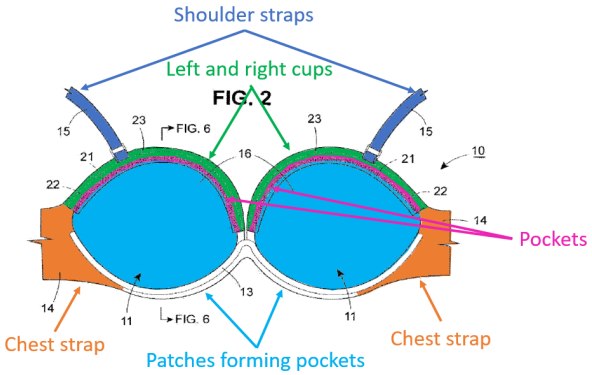
[2] All annotations in color are added, unless otherwise noted.

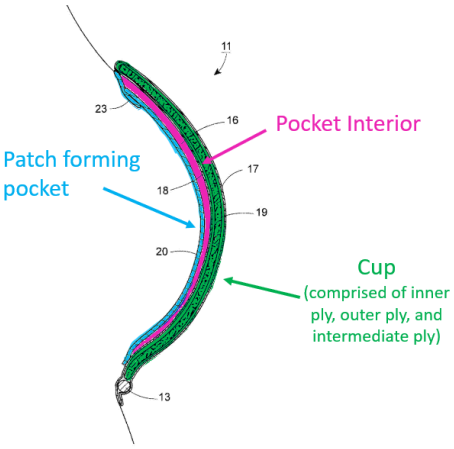




NIKE-1020 at Figs. 1–3.

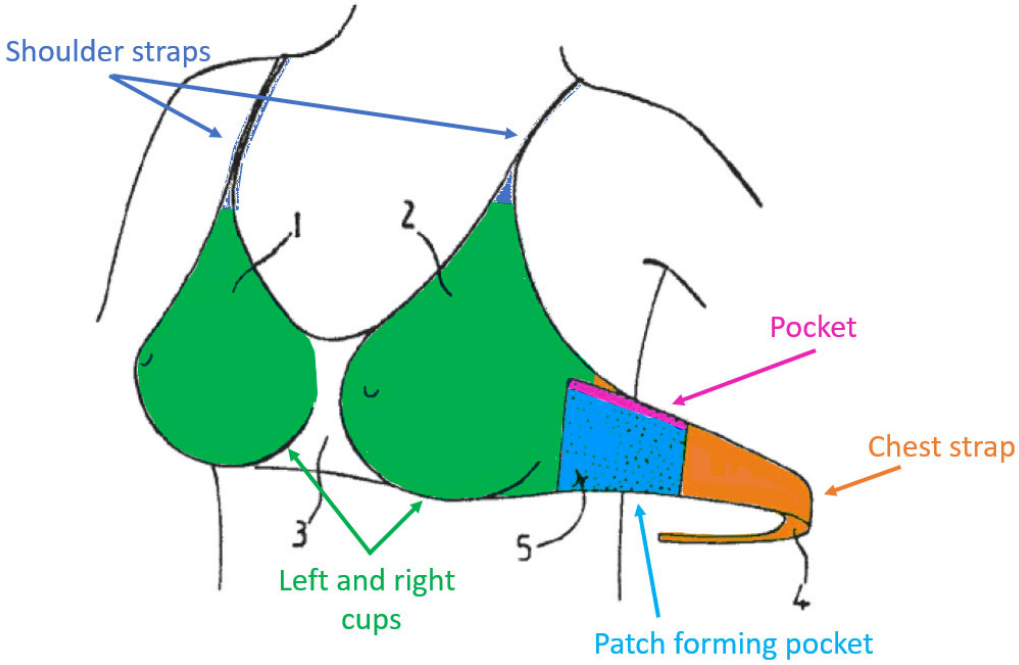




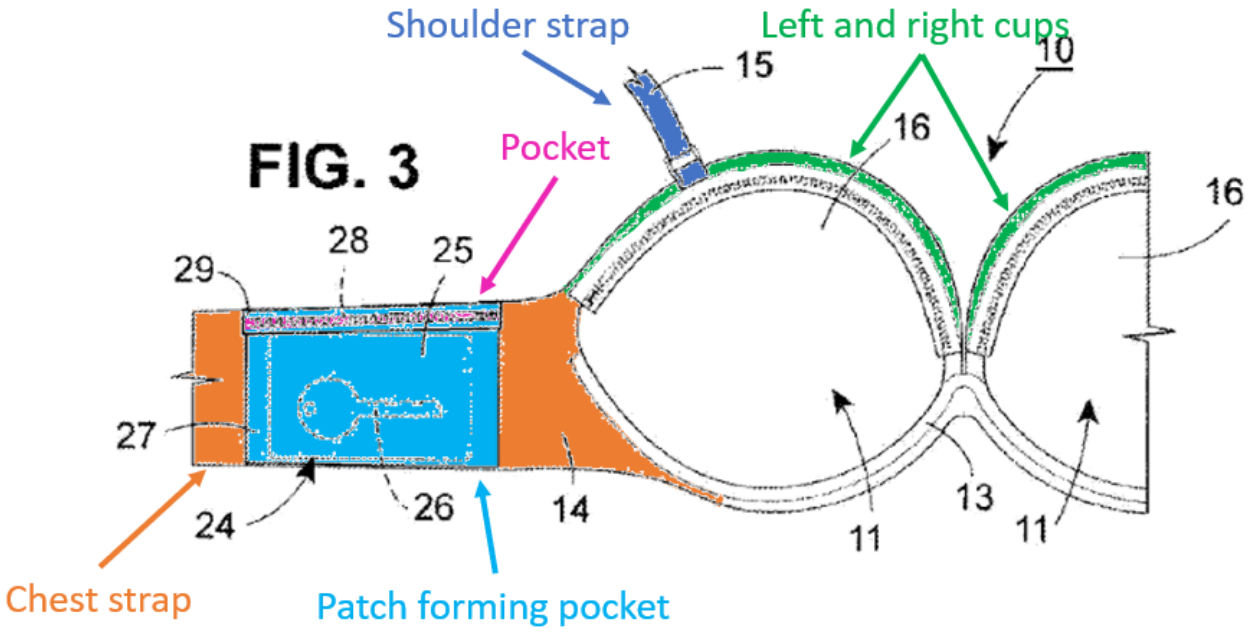


NIKE-1021 at Figs. 1–2, 6.

112. Handras, along with Vidai, filed in 1985, further discloses a bra with a pocket on the chest strap:

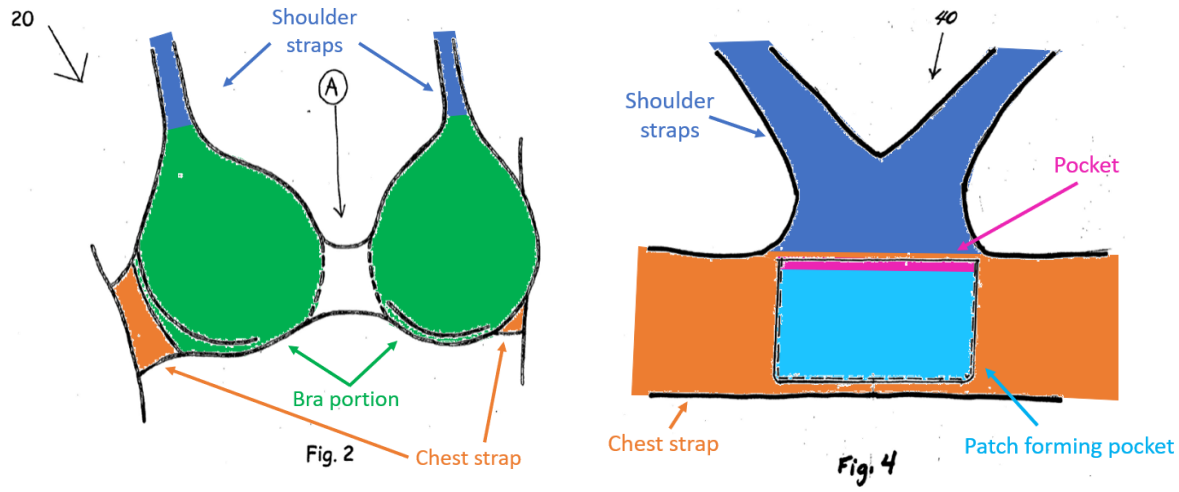


NIKE-1027 at Fig. 1.

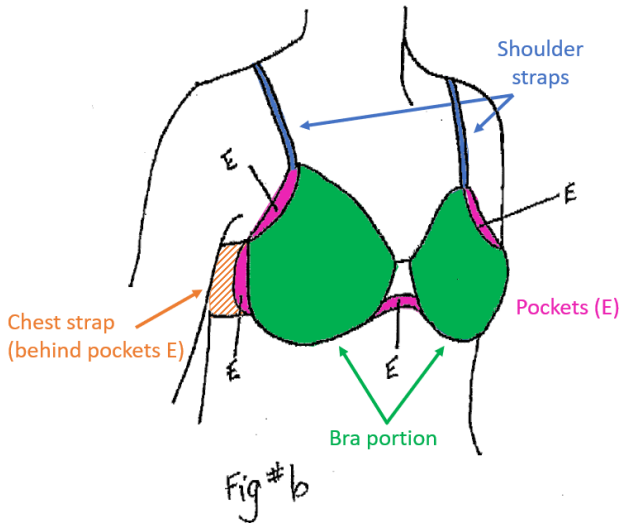


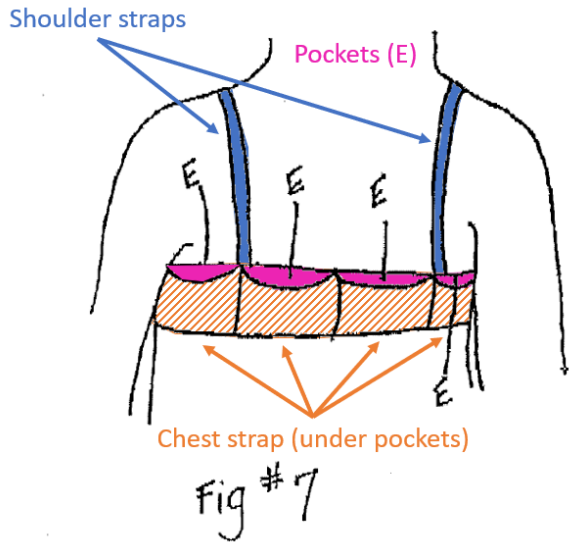
NIKE-1021 at Fig. 3.

113. Finally, Spagna, filed in 2006; Rose, filed in 2011; and Glass, filed in 2010, all disclose bras with back pockets:

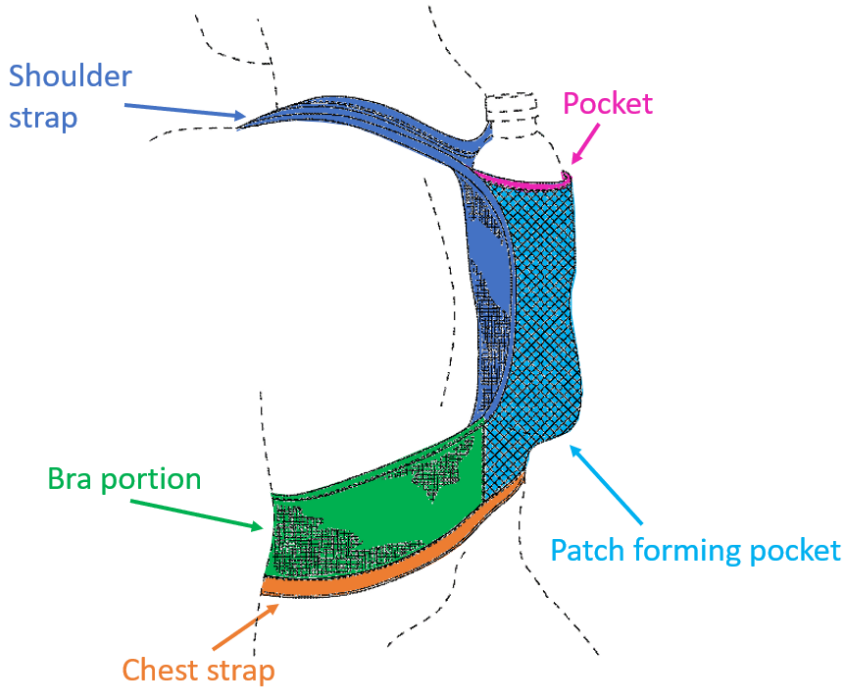


NIKE-1028 at Figs. 2, 4.





NIKE-1030 at Figs. 6–7.



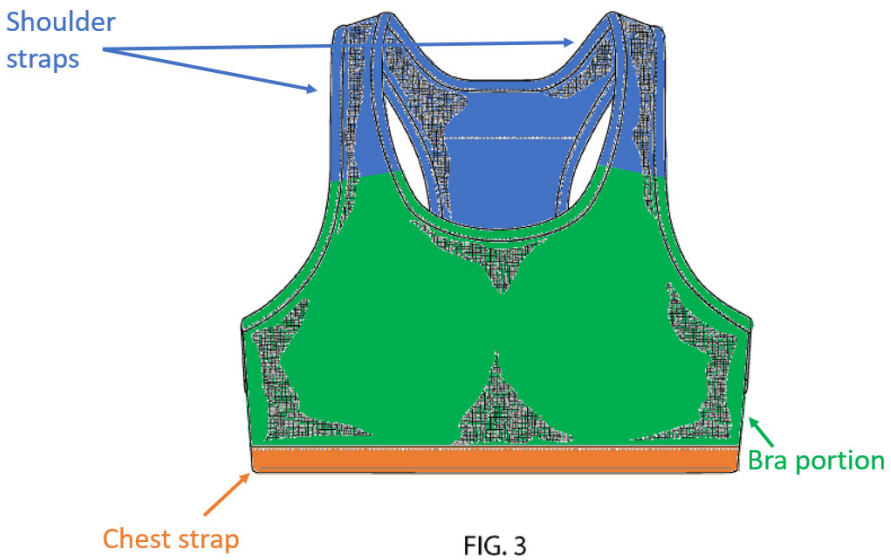


FIG. 3

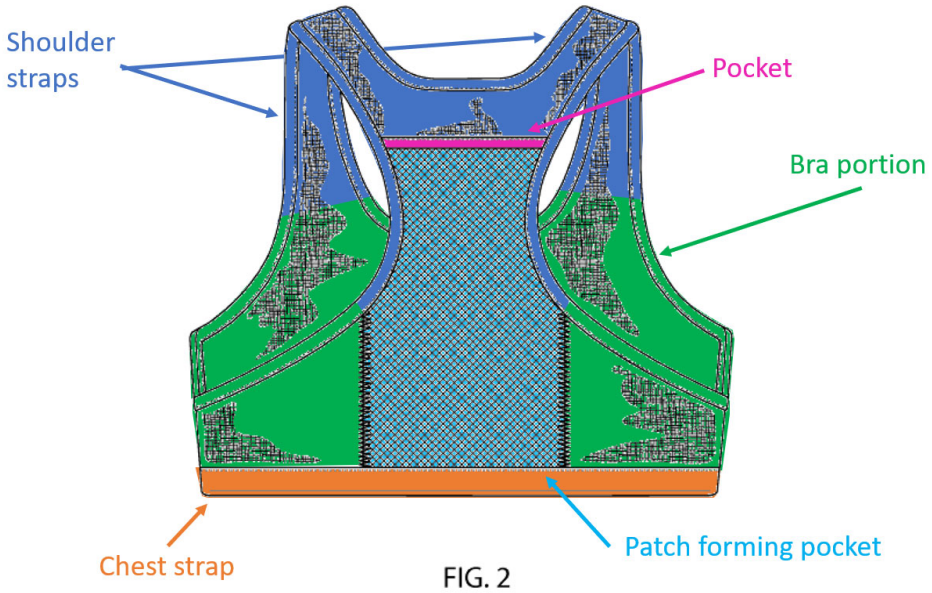


FIG. 2

NIKE-1029 at Figs. 1–3.

114. The ways in which bras, including bras with pockets, could be designed and constructed, have also been well known for decades. For example, there were a number of ways a skilled artisan knew they could attach two pieces of textile material together, including attaching pockets and patches to the surface of a

brassiere. These methods include, but are not limited to, stitching, gluing, use of adhesive interfacing, or the use of fasteners such as buttons or snaps. Methods like stitching have been known for centuries, and the other methods have been known for many decades.

115. Pockets have also been designed in all manner of shapes, including with edges of various shapes, well before the alleged invention. For example, a skilled artisan would have known that, when designing a pocket to be placed on the surface of bra cups, that the pocket edges could be linear or curved, depending on the desired appearance and function of the pocket. For instance, a skilled artisan could use a curved pocket design on bra cup with curvature in order to maximize the amount of storage space in the pocket. Alternatively, the artisan could choose a linear opening to ensure the interior pocket is not visible from an outer view of the bra, or to reduce the amount of storage space to secure stored items.

116. Pockets have also been designed in all manner of shapes, sizes, and placed in many different locations well before the alleged invention. A skilled artisan would have known that, when designing a pocket to be placed on the chest strap of a bra, that the pocket could exist solely on the surface of the chest strap, or could extend onto the surface of the breast cups. For instance, in trying to increase the amount of storage area in a side pocket, it would have been obvious to a POSA to extend the pocket onto the breast cup, increasing the pocket's surface area and

size. Doing so would also increase a user's accessibility to the pocket compared to extending the pocket in a rearward fashion, towards the wearer's back, which would be difficult for many wearers to reach. Such a design would further increase comfort for the wearer, because extension of the pocket onto the cup enables the wearer to access the pocket without uncomfortably twisting the wearer's body. As discussed in "The art of pocket design: How to create unique and stylish pockets," NIKE-1052, a POSA would have known that "[c]lassically, pockets are thought out in relation to the body and the placement of the arms. The goal was to have access to the inside of the pocket, without having to twist." *Id.* at 3.

117. Similarly, both resilient closed- and open-cell polyurethane were widely used in the manufacturing of bras, especially bra cups, years before alleged invention of the Challenged Patents. And it is my opinion a POSA would have known that polyurethane of a multitude of thicknesses can be implemented for different purposes. For example, thinner pieces of polyurethane foam can be used in t-shirt bras and other bras designed to support the breasts while providing a smooth and natural outward appearance. Alternatively, polyurethane padding of greater thicknesses can be used in pushup bras and other bras designed to support and lift the breasts for accentuated cleavage. At the time of the alleged invention, a skilled artisan would have known to adapt the thickness of the bra padding for the desired bra design. And it is my opinion a POSA at that time would have likely used

resilient closed-cell polyurethane foam because it was inexpensive and widely available.

A. Barg

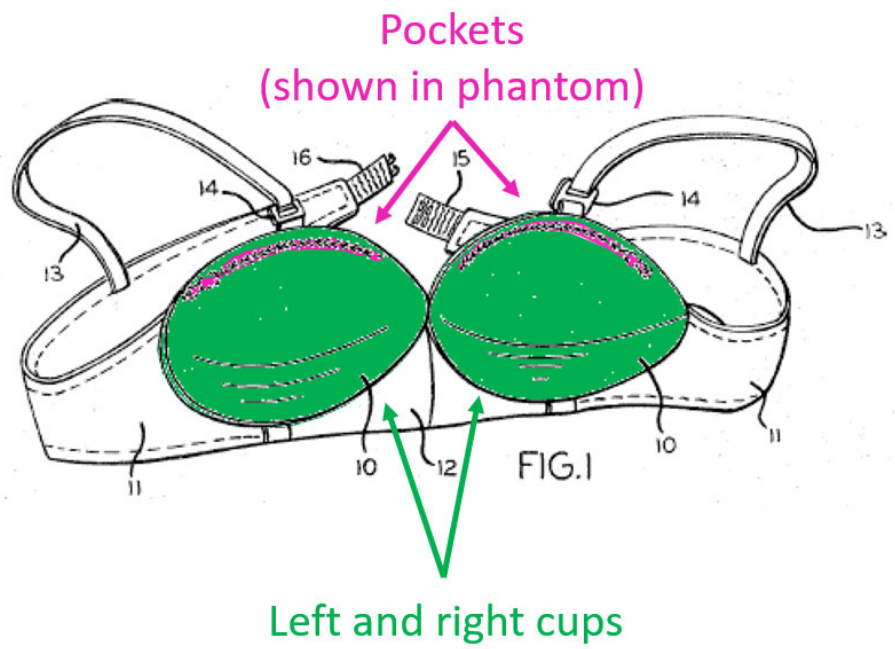
1. Overview of Barg

118. 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 relates to a conventional bra assembly with pockets on the inside surfaces of the breast cups. *Id.*

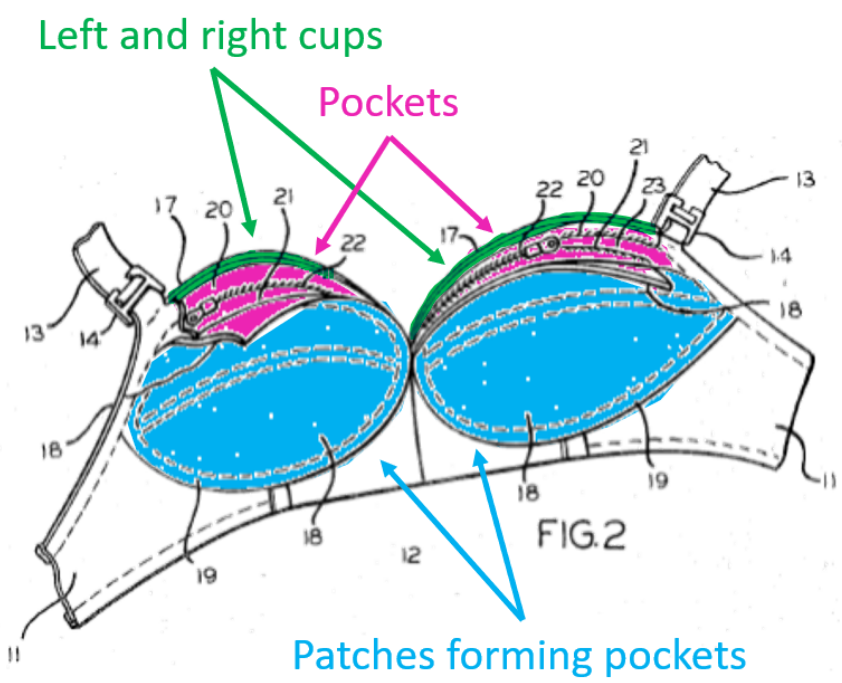
119. In addition to the conventional components of bra—left and right cups, a chest strap to adhere those cups to the wearer, and shoulder straps—Barg discloses "a pocket therein for storing valuables, or the like." *Id.* at 1:19-20, 1:64–2:4.

120. 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.

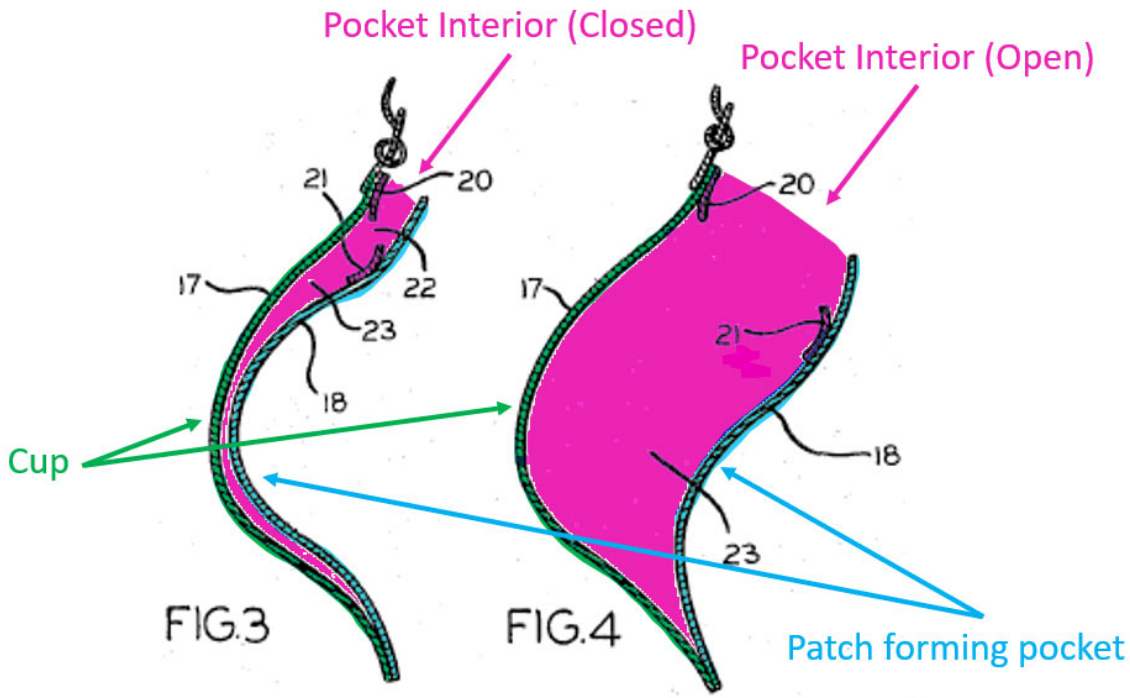
121. As shown from the figures below, the pockets are on the inside surfaces of the breast cups with openings at the top of the cups:



Id. at Fig. 1 (showing "a perspective front view of a conventional brassiere, showing the features constituting my invention; the hookless fastener near the upper edge is shown in phantom").



Id. at Fig. 2 (showing "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 (showing a "fragmentary cross-sectional view of the brassiere" that shows the outer and inner sections of the bra in closed and open configurations).

2. Barg Is Prior Art to the Challenged Patents

122. I understand that Barg is prior art to each of the Challenged Patents.

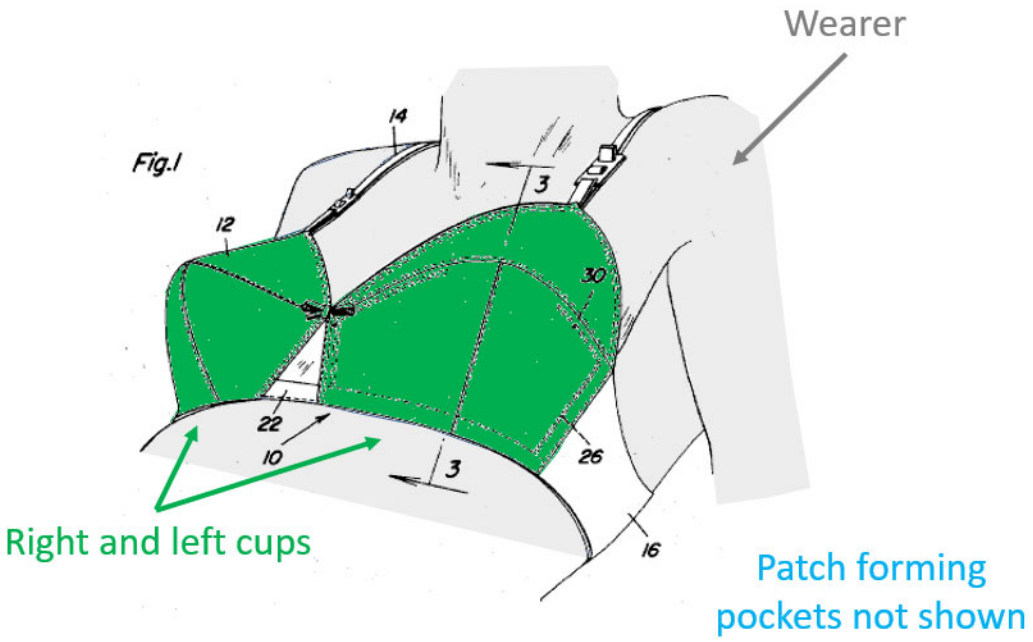
B. York

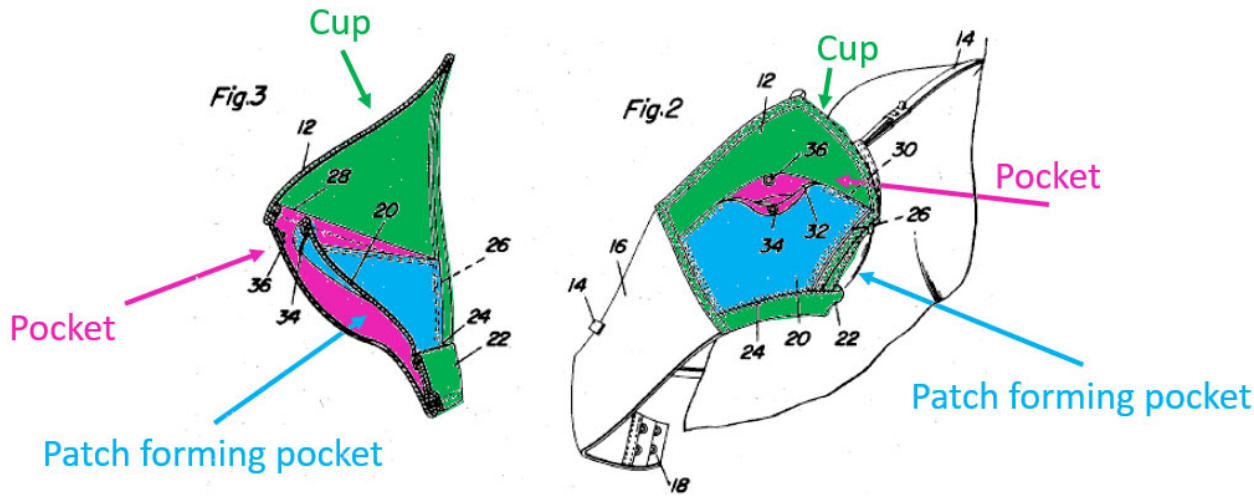
1. Overview of York

123. York issued on January 12, 1960 from U.S. Patent Application Ser. No. 765,748, filed October 7, 1958. *See* NIKE-1020. York relates to a conventional bra assembly with a pocket on the inner portion of one of the breast cups. *Id.*

124. 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 is comprised of 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.

125. 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 (showing a pocket formed by a patch on the surface of the bra cup (Fig. 1), an interior view of the cup, the top of the patch slightly peeled back to reveal the pocket interior (Fig. 2), and a cross-sectional view of the cup (Fig. 3)).

2. York Is Prior Art to the Challenged Patents

126. I understand that York is prior art to each of the Challenged Patents.

C. Pintor

1. Overview of Pintor

127. Pintor issued on July 13, 2010, from U.S. Patent Application No. 12/240,408, filed September 29, 2008. *See* NIKE-1022. Pintor relates to a bra with concealed pockets on the inside surface of the upper, outer edge of the breast cups for the storage of personal items. *Id.*

128. 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):

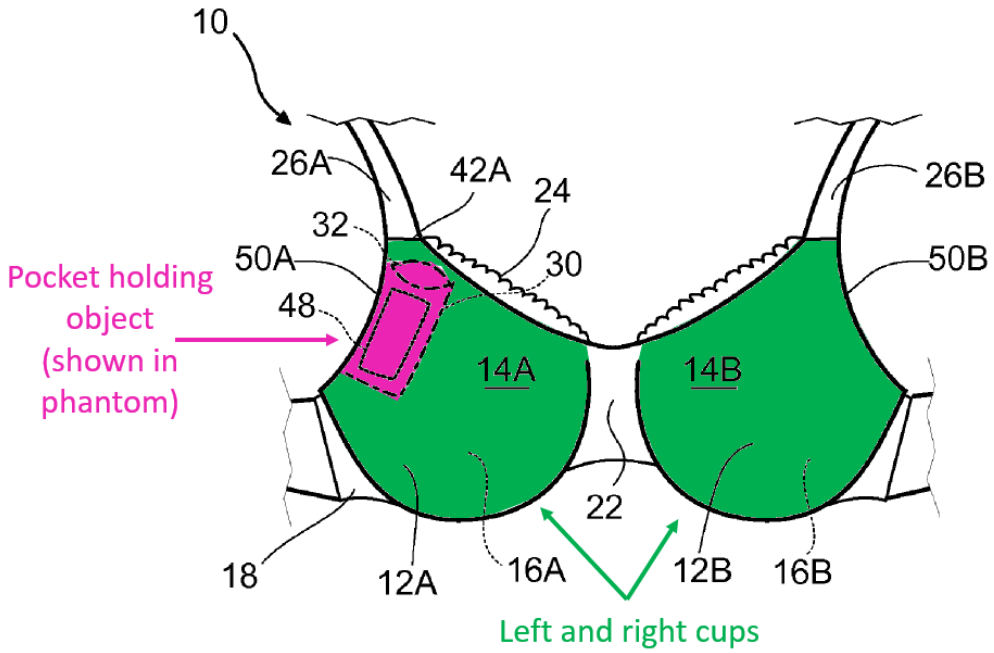


FIG. 3

NIKE-1022 at Fig. 3 (showing a conventional bra assembly with a pocket on the right cup).

129. Further, the pocket (30) is "attached to the interior surface of the breast cover by any known means such as stitching, thermal or ultrasonic welding, adhesives, etc." *Id*. at 3:51–54.

130. 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 Challenged Patents

131. I understand Pintor to be prior art to each of the Challenged Patents.

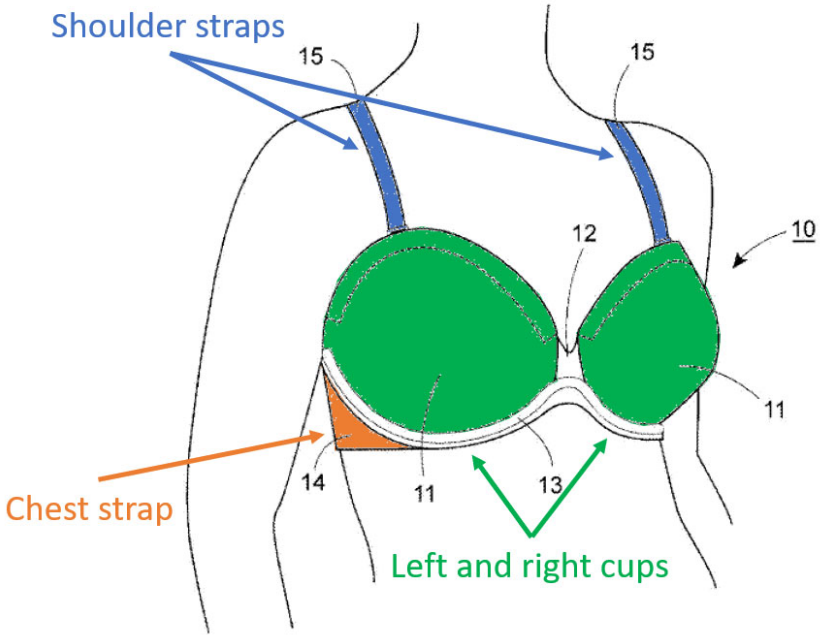
D. Handras

1. Overview of Handras

132. Handras is a U.S. Patent Application Publication of Application No. 13/589,599, filed originally on August 20, 2012. *See* NIKE-1021. Handras relates to a bra with pockets on the surface of the cups and on either side of the chest strap for storage of items. *Id.*

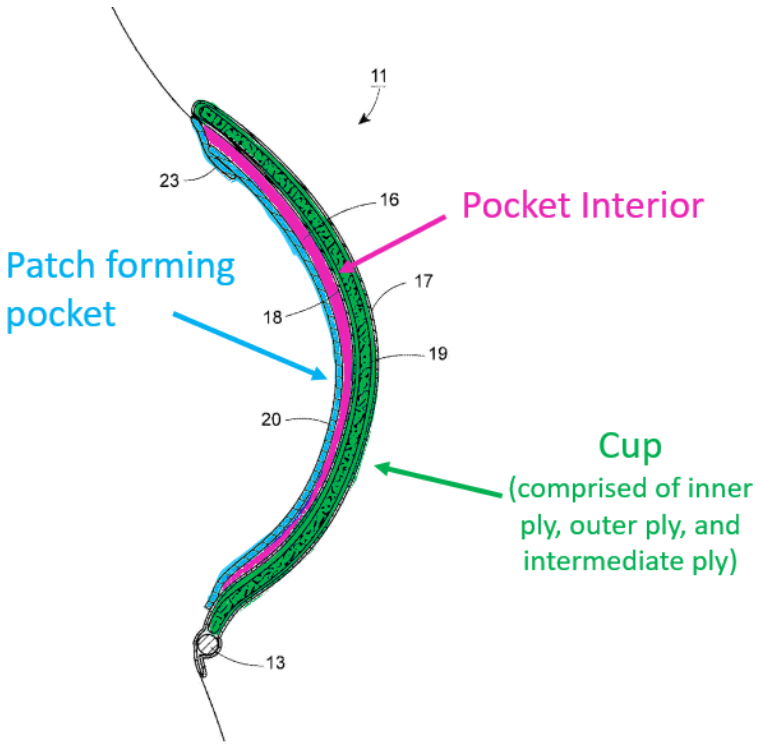
133. Specifically, Handras discloses "a bra with one or more storage pockets." *Id.* at [0001].

134. 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].

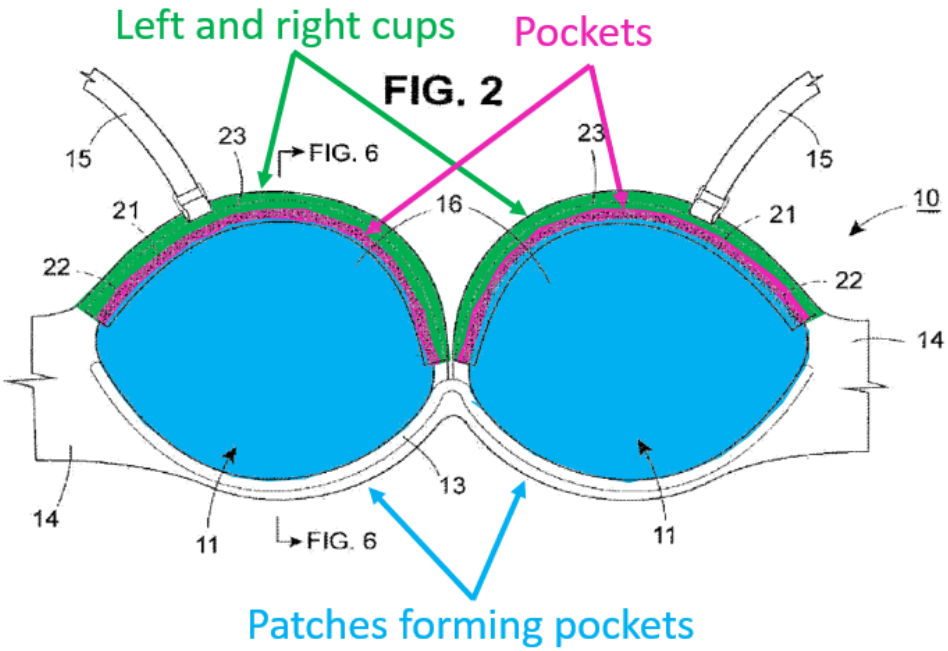


NIKE-1021 at Fig. 1.

135. 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.*

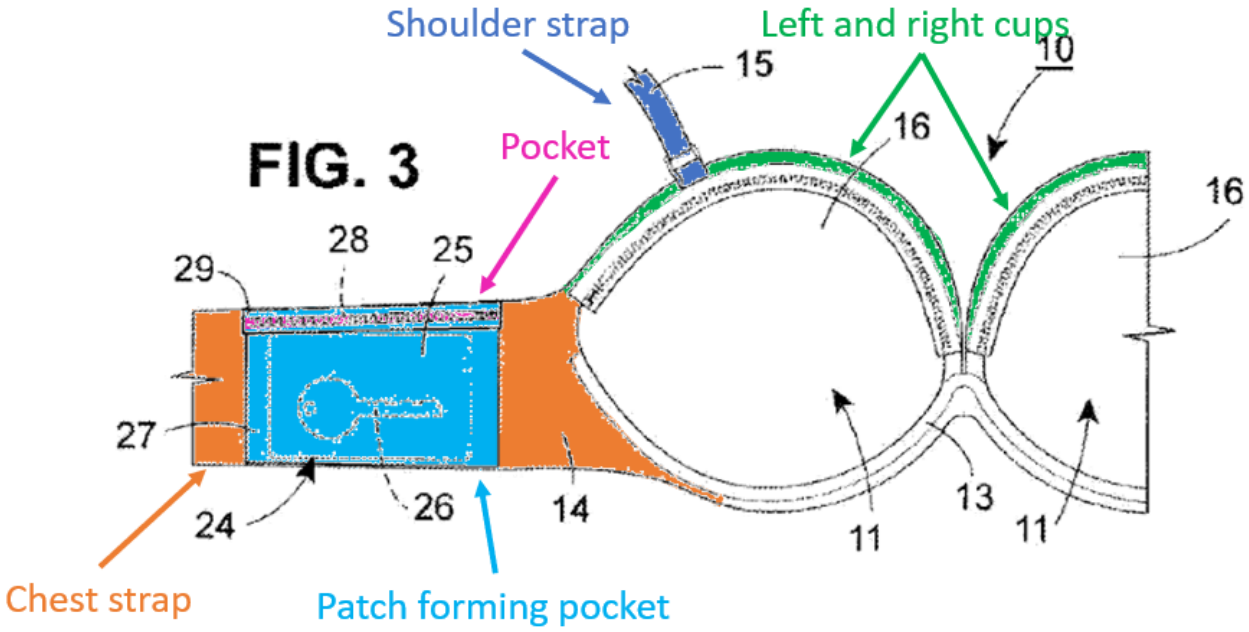


NIKE-1021 at Fig. 6 (showing a cross sectional profile of the cup).



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

136. Handras discloses that "each side panel of the bra may also have a zippered pocket on the inside." *Id.* at Abstract. The pocket is "formed by a panel 27 of fabric sewn or otherwise secured to the side panel 14." *Id.* at [0028], [0011].



NIKE-1021 at Fig. 3 (showing an interior view of the bra).

137. Handras discloses the use of the pocket for holding items, including "credit cards, car keys, cell phones and the like." *Id.* at [0002]. Handras also discloses the use of the side pocket specifically for "receiving a small item or items, such as a credit card and key." *Id.* at [0028] (numbers omitted).

138. Even though the pocket disclosed by Handras occupies the surface area of the breast cup, Handras contemplates reducing the size of the pocket, for example, "to snugly receive a cell phone." *Id.* at [0025]

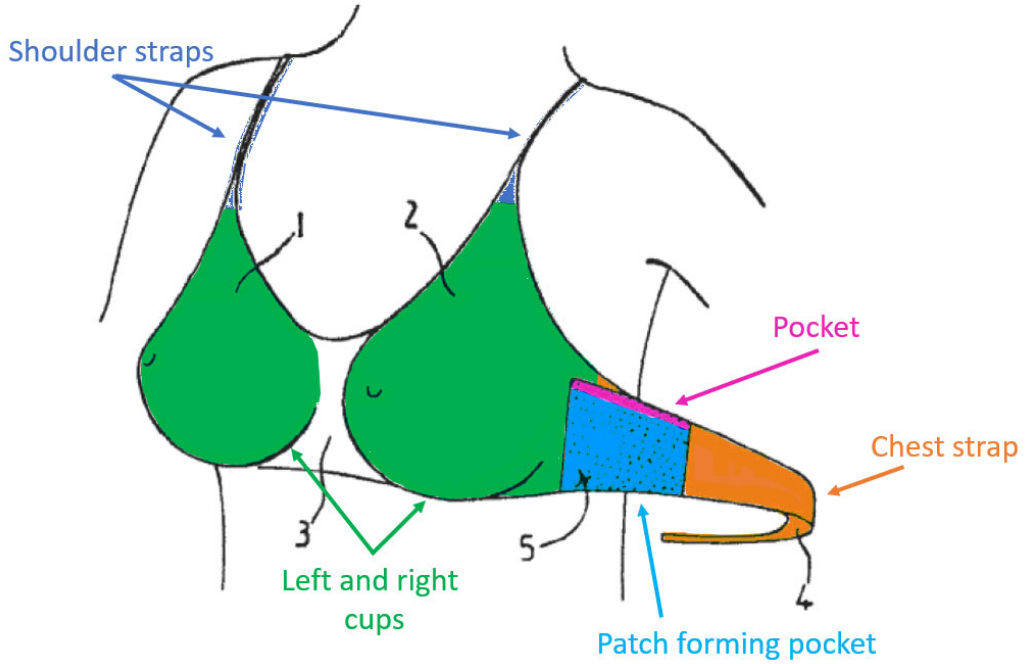
2. Handras Is Prior Art to the Challenged Patents

139. I understand Handras to be prior art to each of the Challenged Patents.

E. Vidai

1. Overview of Vidai

140. Vidai is a European Patent Application filed July 22, 1985, and published February 25, 1987. NIKE-1026; NIKE-1027. Vidai generally relates to a bra with side pockets. *See* NIKE-1027. As illustrated below, Vidai discloses a bra with breast cups, shoulder straps, and a chest strap encircling the torso of the wearer:



Id. at Fig. 1 (showing only the left side of the chest strap).

141. Additionally, Vidai discloses pockets formed on either side of the chest strap, under the arm of the wearer. *Id.* at 2:35-42. The pockets are formed "of a piece of fabric of which at least three edges are combined with the side strip by any

suitable means, in particular by sewing." *Id.* at 3:2-5. Vidai discloses the purpose of the pockets is to "hide valuable objects" that would normally keep within a woman's handbag during the day. *See id.* at 1:2-7.

2. Vidai Is Prior Art to the Challenged Patents

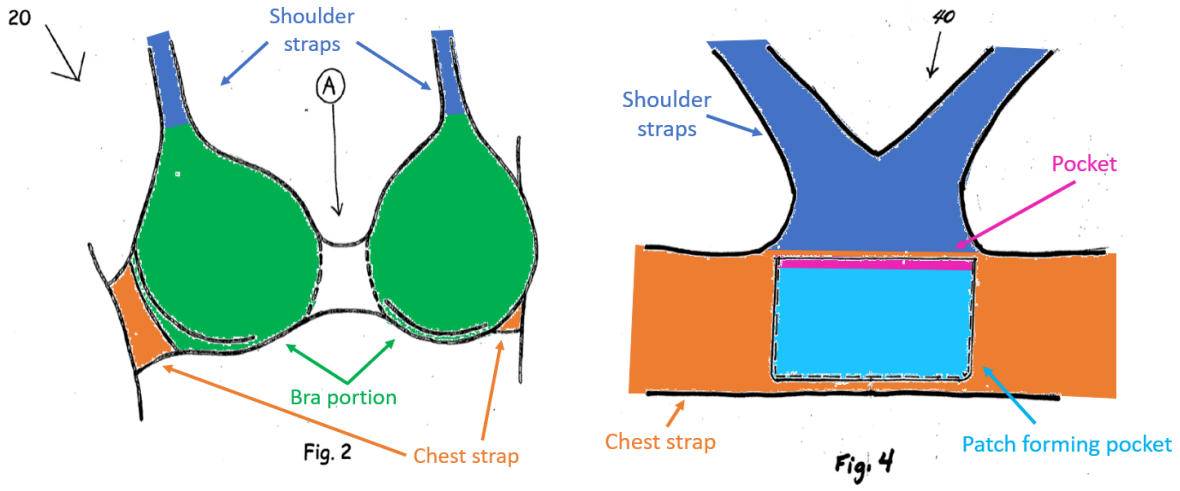
142. I understand that Vidai is prior art to each of the Challenged Patents.

F. Spagna

1. Overview of Spagna

143. Spagna published on December 27, 2007 from U.S. Application No. 11/473,007, originally filed June 21, 2006. *See* NIKE-1028. Spagna relates to a conventional bra with integrated pockets for the purpose of holding "an automated medication dispensing device." *Id.* at Abstract.

144. The brassiere illustrated in Spagna discloses a conventional racerback bra with left and right cups, a chest strap, and two shoulder straps that converge together where they meet the back portion of the chest strap:



NIKE-1028 at Figs. 2, 4 (showing a bra with a pocket on the back surface between the shoulder blades of the wearer (Fig. 4)).

145. Spagna further discloses a pocket on the backside of the bra for holding an automated medication dispensing device. *Id.* at [0020] ("an integrated pouch . . . is placed on the interior surface of the back of the brassiere").

146. Finally, Spagna discloses the importance of keeping the stored item "safely maintained, even while the wearer is active." *Id.* at Abstract, at [0006] ("modern women want and deserve to have it all. They want to run, play sports, and go to the gym."), at [0010] ("Using these embodiments of the invention, a woman may utilize an automated medication dispensing device while keeping the device safe from accidental damage and allowing the woman to be extraordinarily active, all the while reducing the outward appearance of the device.").

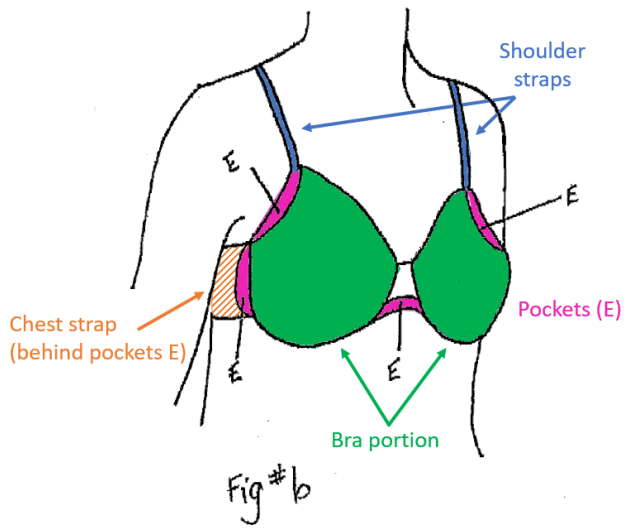
2. Spagna Is Prior Art to the Challenged Patents

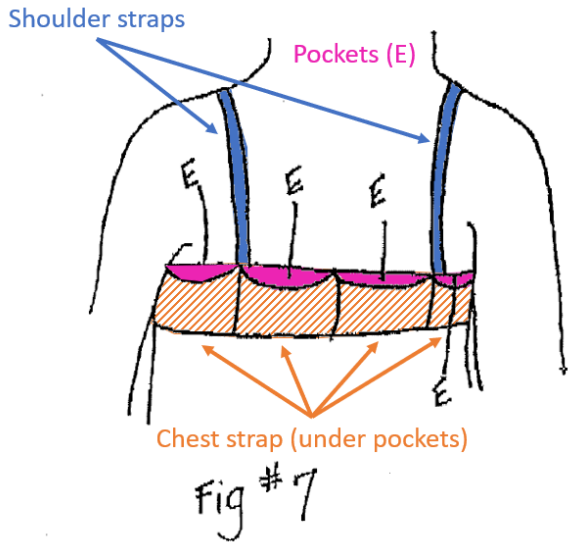
147. I understand that Spagna is prior art to each of the Challenged Patents.

G. Rose

1. Overview of Rose

148. Rose published on September 15, 2011 from U.S. Application No. 13/040,620, originally filed March 4, 2011. *See* NIKE-1030. Rose relates to a brassiere with a set of "clear latex pockets on the frontal portions of the breast cups and the back band of the brassiere." *Id.* at [0037].





NIKE-1030 at Figs. 6–7.

149. The pockets E have upper openings, *id.* at [0037], and are designed to hold "inserts made of, but not limited to, plastic [and] fabric" to change the outer appearance of the bra. *Id.*

2. Rose Is Prior Art to the Challenged Patents

150. I understand that Rose is prior art to each of the Challenged Patents.

H. Glass

1. Overview of Glass

151. Glass issued July 26, 2011 from U.S. Application No. 29/368,364, originally filed August 23, 2010. *See* NIKE-1029. Glass relates to a sports bra with a pocket on the back for holding a water bottle. *Id.*

152. As illustrated below, the bra disclosed by Glass is a traditional sports bra with a bra portion for receiving the breasts of the wearer, two shoulder straps

that join together in a racerback assembly, and a chest strap encircling the torso of the wearer:

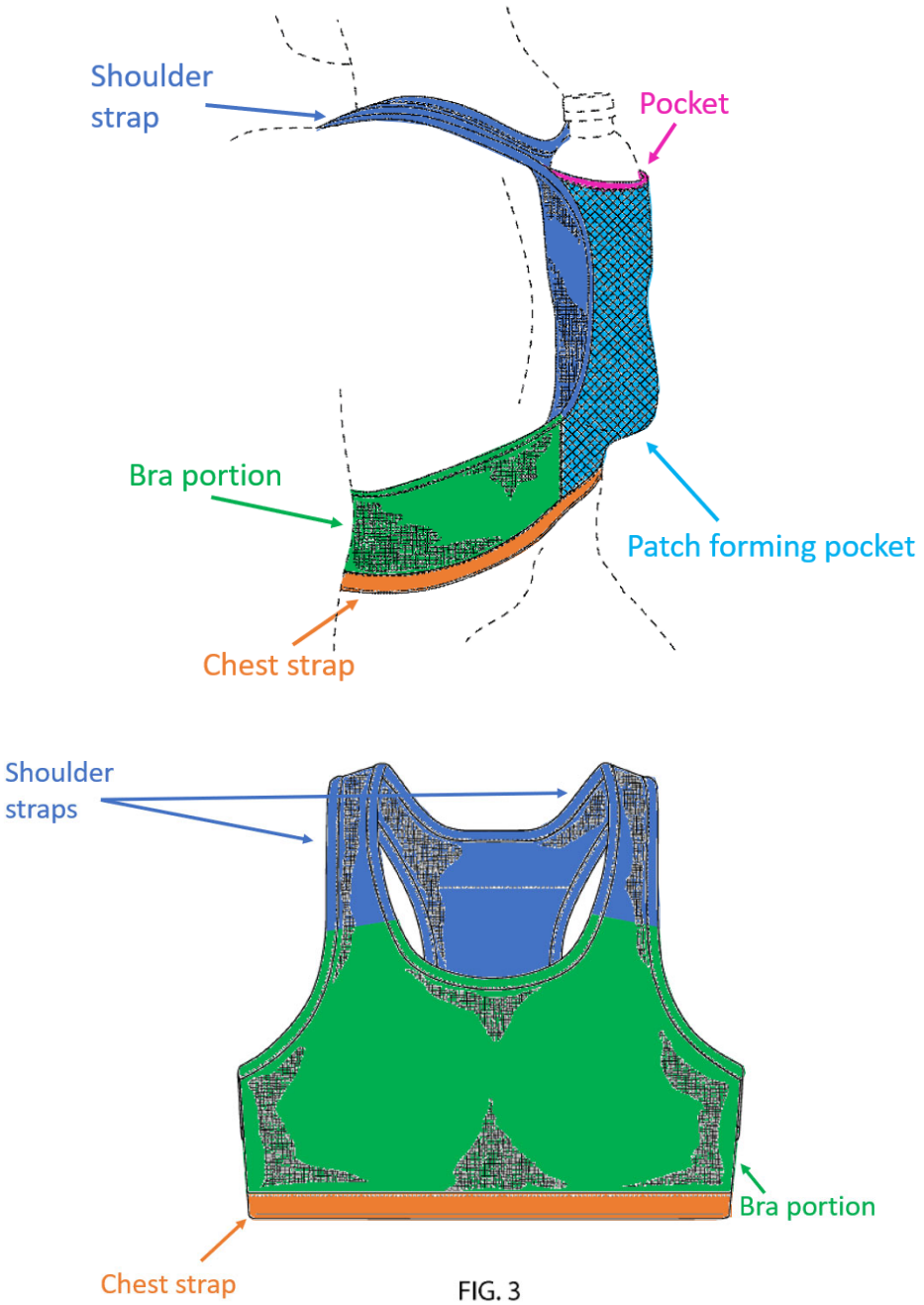
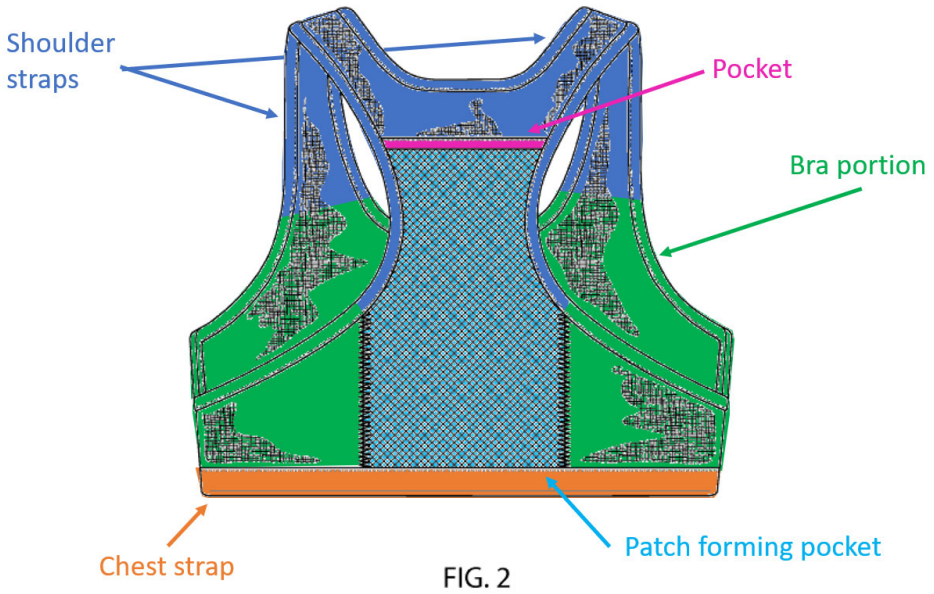


FIG. 3



Id. at Figs. 1–3.

2. Glass Is Prior Art to the Challenged Patents

153. I understand that Glass is prior art to each of the Challenged Patents.

VII. LEVEL OF ORDINARY SKILL IN THE ART

154. In rendering the opinions set forth in this declaration, I was asked to consider the patent claims and the prior art through the eyes of a POSA. I placed myself back in time to approximately 2013 and considered the factors set-forth above to determine what level of skill a POSA would have.

155. In my opinion, 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. It is also my opinion that formal education in a relevant field, such as fashion and textile design, may compensate for less experience.

156. I was a POSA as of November 18, 2013, the earliest possible priority date for any of the Challenged Patents.

157. I have applied this level of skill in arriving at my opinions in this declaration.

VIII. SPECIFIC GROUNDS FOR THE PETITION

A. The ’288 Patent

1. Ground 1: Claims 1–4 and 11–12 Are Unpatentable Over Barg in View of Pintor

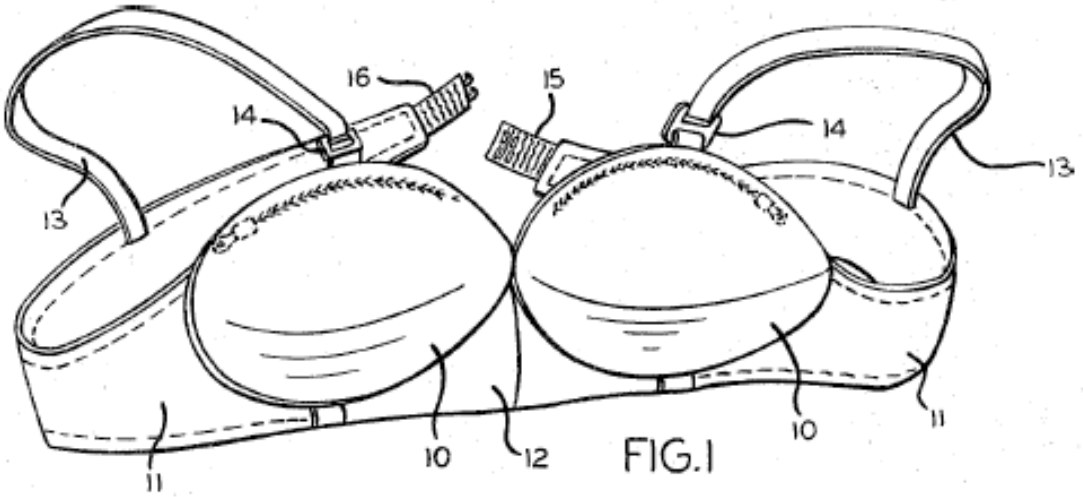
158. The discussion below provides my detailed analysis of how the prior art references invalidate the challenged claimed of the ’288 Patent.

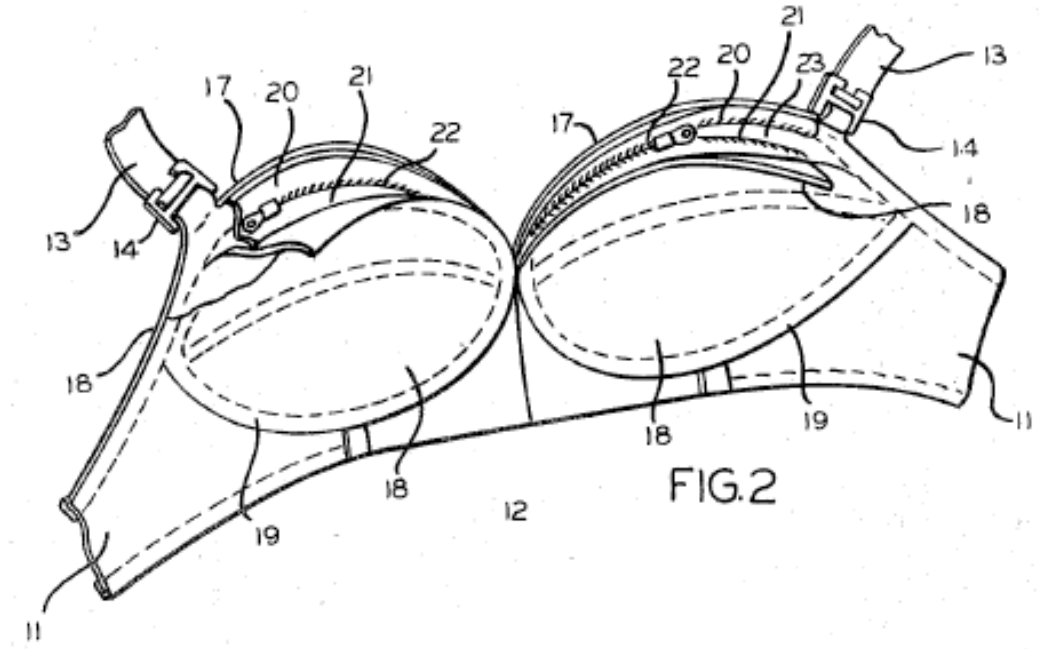
159. In my opinion, claims 1–4 and 11–12 are disclosed or rendered obvious by Barg in combination with Pintor.

i. Claim 1

a. *“A bra pocket system combination comprising:” limitation [1A]*

160. As illustrated below, Barg discloses “a brassiere that has a pocket therein for storing valuables, or the like.” NIKE-1019 at 1:19-20.





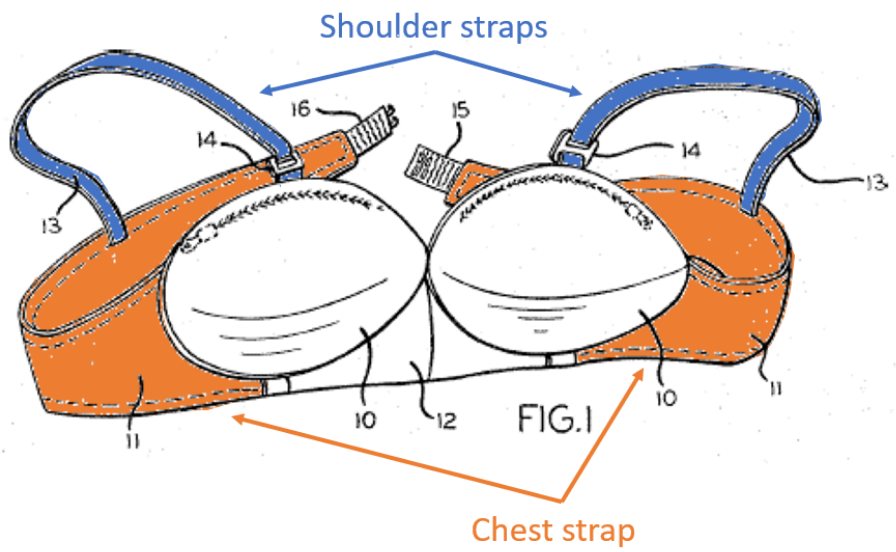
NIKE-1019 at Figs. 1–2; *see also id.* at 1:24-25 ("The prime object of my invention is to provide a brassiere equipped with a top opening to provide a pocket.").

161. In my opinion, Barg therefore discloses this limitation.

b. *"a strap assembly including a chest strap and shoulder straps;" limitation [1B]*

162. Barg discloses this limitation. *See* NIKE-1019 at 1:65-2:2. Specifically, Barg describes a traditional bra construction with cups "supported by a *body portion shown as 11*," *i.e.*, "chest strap," and "by *conventional shoulder straps 13*, which are shown adjustable." *Id.* at 1:65-2:2.

163. Figures 1 illustrates the "body portion" chest strap and the two conventional shoulder straps:

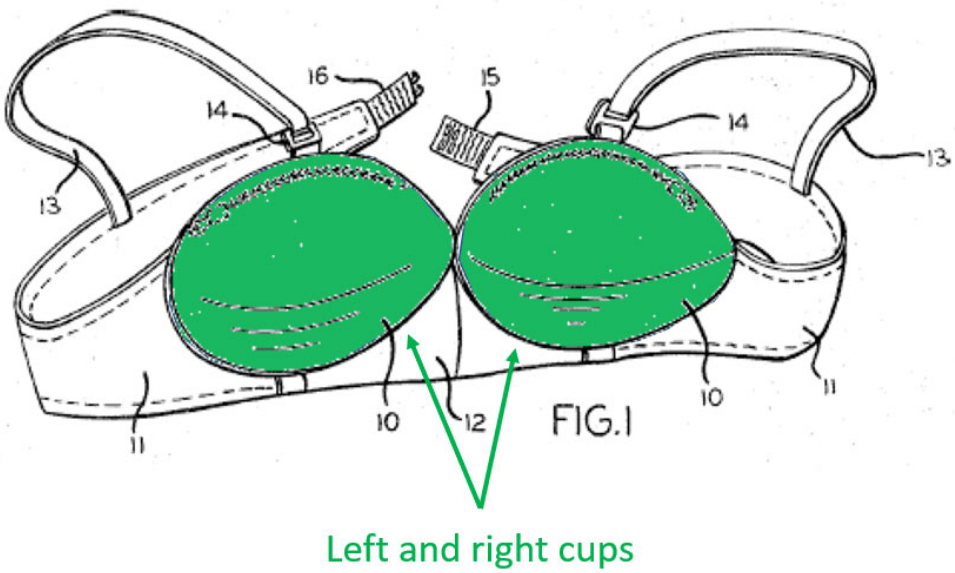


NIKE-1019 at Fig. 1.

164. In my opinion, Barg therefore discloses "a bra pocket system combination comprising."

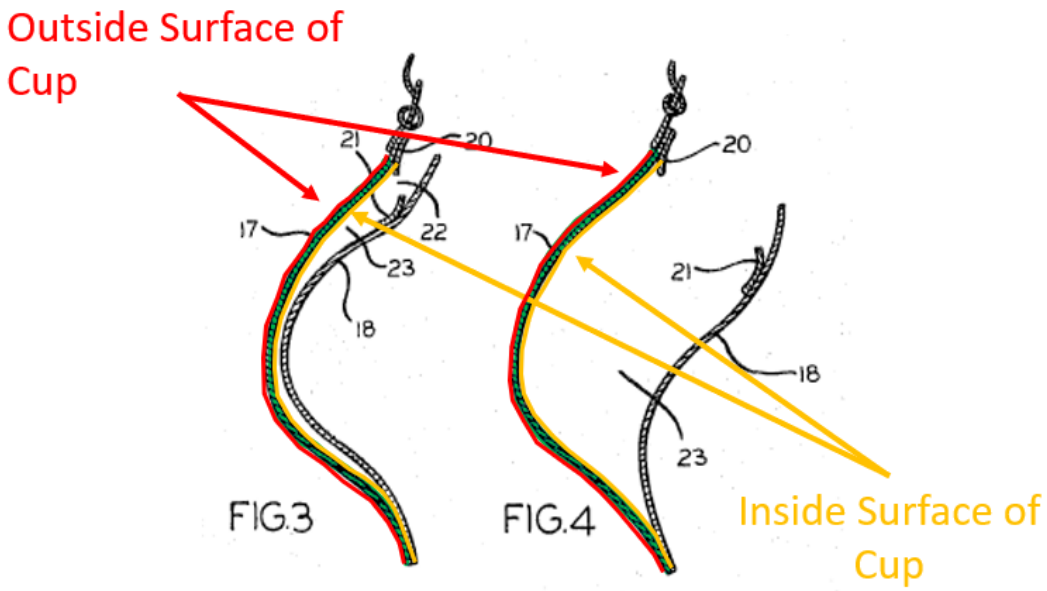
c. *"left and right cups, each cup having inside and outside surfaces," limitation [1C]*

165. Barg discloses this limitation. As illustrated in Figure 1 below, Barg discloses a bra with left and right cups:



NIKE-1019 at Fig. 1; *see also id.* at 1:62-65 (disclosing "conventional breast cups [10]").

166. In my opinion, a POSA would have understood these cups to necessarily have inside and outside surfaces. The inside and outside surfaces are illustrated in Figures 3 and 4:



NIKE-1019 at Figs. 3–4 (showing closed (left) and open (right) configurations of the pocket).

167. In my opinion, Barg therefore discloses "left and right cups, each cup having inside and outside surfaces."

d. *"the strap assembly being attached to the cups whereby the strap assembly adheres the cups to a wearer," limitation [1D]*

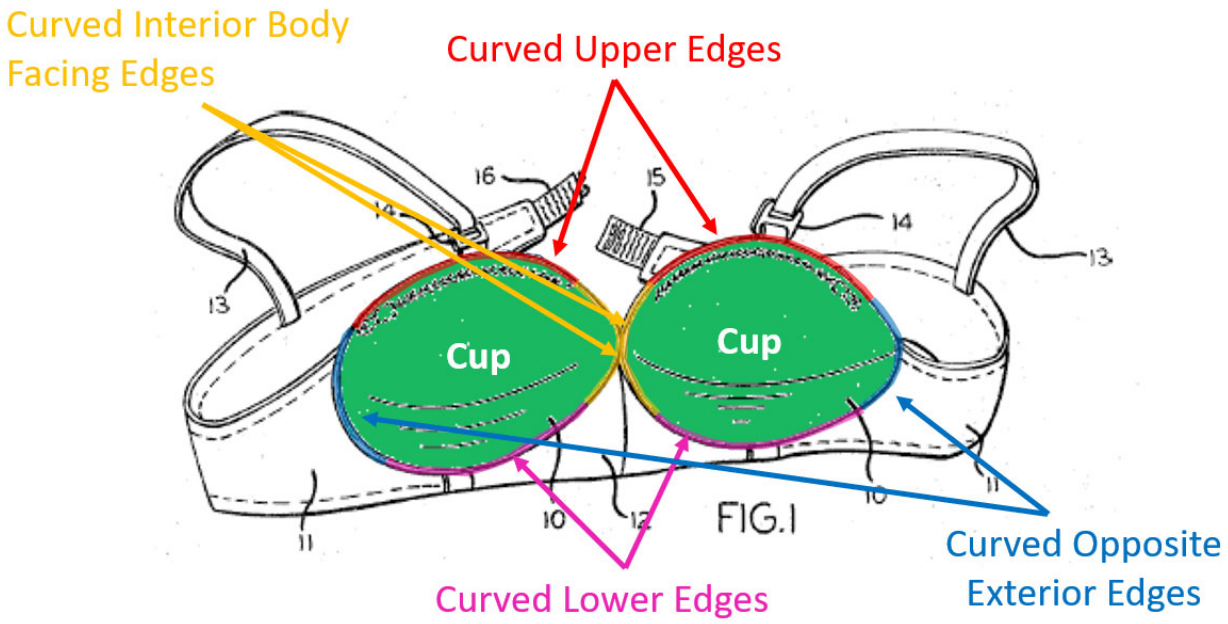
168. Barg discloses this limitation. As explained above with respect to Claim 1, limitations [1B] and [1C], Barg discloses a "strap assembly" and "left and right cups."

169. Barg also expressly discloses that the strap assembly adheres the cups to a wearer. NIKE-1019 at 1:65–70 ("This 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, and is supported by conventional shoulder straps."). It is my opinion a POSA would have understood this to be the purpose of Barg's "strap assembly."

170. In my opinion, Barg therefore discloses "the strap assembly being attached to the cups whereby the strap assembly adheres the cups to a wearer."

e. *"each cup having curved upper, lower, interior body facing and opposite exterior edges;" limitation [1E]*

171. Barg discloses this limitation. As illustrated below, Barg discloses cups with curved upper, lower, interior body facing, and opposite exterior edges.

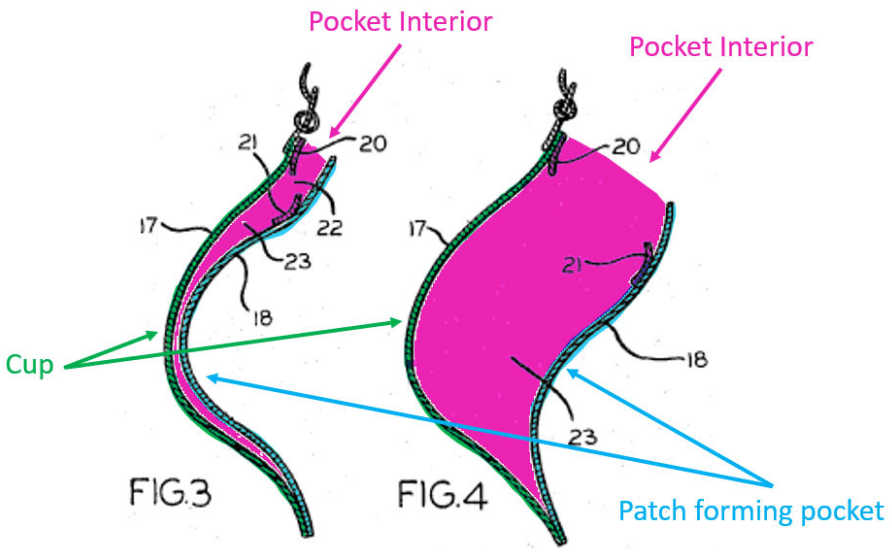


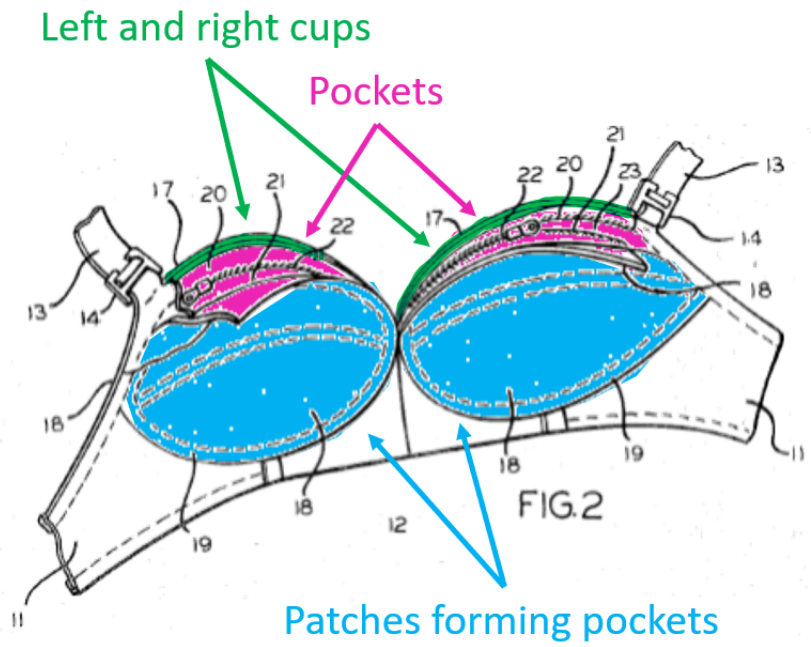
NIKE-1019 at Fig. 1.

172. In my opinion, Barg therefore discloses "each cup having curved upper, lower, interior body facing and opposite exterior edges."

f. *"a patch forming a pocket operatively associated with each cup," limitation [1F]*

173. Barg discloses a "patch forming a pocket operatively associated with each cup." Specifically, 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:





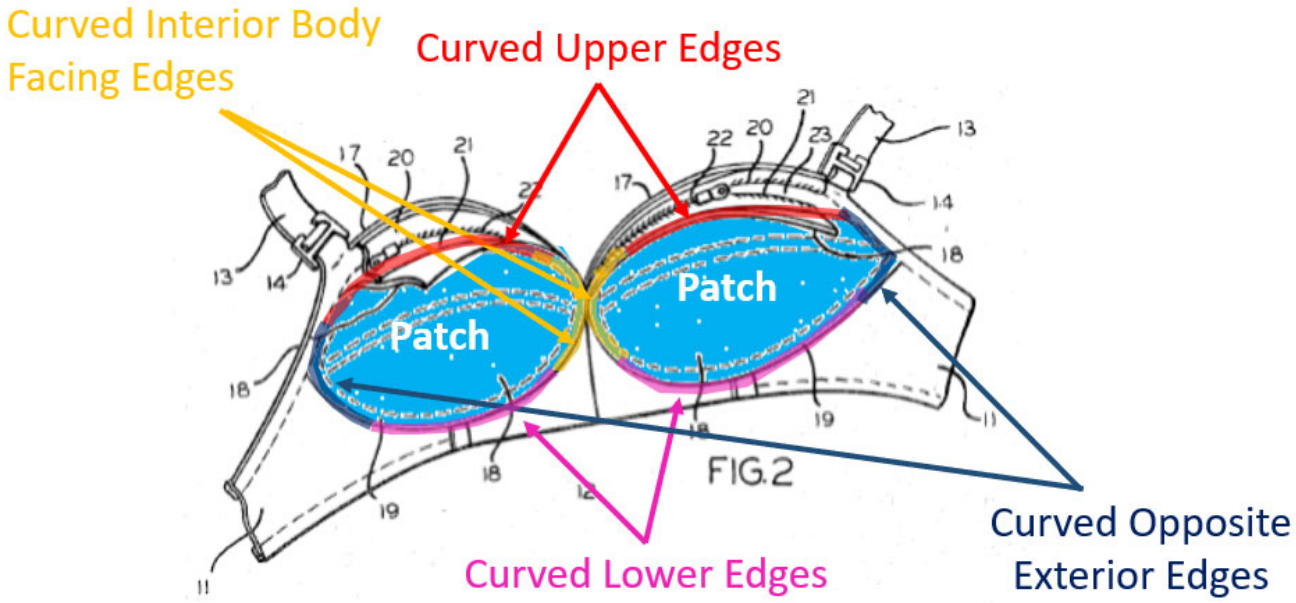
NIKE-1019 at 2:5-25, Figs. 2–4.

174. Alternatively, in my opinion, 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.

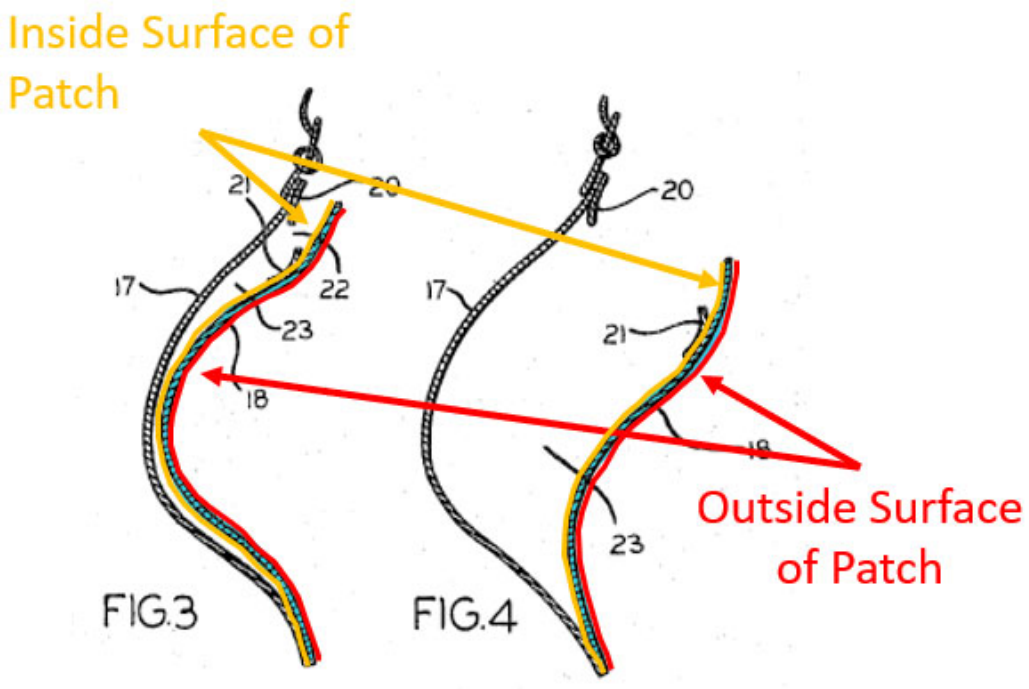
175. In my opinion, Barg therefore discloses "patch forming a pocket operatively associated with each cup."

g. ***"each patch having a linear upper edge and curved lower, interior body facing, and opposite exterior edges, each patch having inside and outside surfaces;" limitation [1G]***

176. Barg renders this limitation obvious. As illustrated below, Barg discloses a patch with "curved lower, interior body facing, and opposite exterior edges, each patch having inside and outside surfaces":



NIKE-1019 at Fig. 2, 2:5-10.



Id. at Figs. 3–4. It is my opinion a POSA would also have understood the patches to necessarily have inside and outside surfaces.

177. While Barg discloses a patch with a curved "upper edge," it is my opinion that it would have been obvious to a POSA, based on their own knowledge, that they could modify Barg's patch so that it would have a "linear upper edge."

178. Both bras and pockets have been long known in the art and in designing a bra with storage pockets, it is my opinion a POSA would have been motivated to look for known solutions in the art, such as the variety of bra designs, placements of the pockets, and pocket shapes. In my opinion, a POSA would have understood there to be a limited, known, number of edge designs for the patches. It is also my opinion a POSA would have further understood the degree of curvature of the edge of the patch to be a simple choice of design, as shown in the prior art. NIKE-1022

at 6:6–10 ("The shape of the [pocket opening] 32 is typically determined by the shape of the side 34D, which may be concave, as shown in FIG. 2, *or may be substantially straight, convex, or have any combination of curved or linear components defining an aesthetically pleasing design*."); NIKE-1025 at Fig. 2 (pockets with linear upper edges).

179. The '288 and its prosecution history do not describe the "upper edge" being "linear" as an allegedly novel or advantageous aspect of the purported invention. *See generally* NIKE-1003; NIKE-1004. Nor could they, as "straight" or "linear" pocket edges were well-known. NIKE-1022 at 6:6–10; NIKE-1025 at Fig. 2.

180. Even if this limitation would not have been obvious to a POSA based on their own knowledge, it is my opinion that Barg in combination with Pintor renders this limitation obvious. Pintor expressly discloses a patch on the breast cups with a "substantially straight" opening. NIKE-1022 at 6:6–10, Figs. 1–2, 4, 7. In my opinion, a POSA would have been motivated to make the top edge of the patch linear for secure holding of a rectangular item, such as an electronic device or rectangular key, ensuring the item is held snugly within. A linear upper edge would also help ensure the pocket's visibility is obscured by the cup, keeping the pocket and its contents hidden.

181. In my opinion, a POSA would also have had a very high expectation of success in making the top of Barg's patch linear. This is simple technology and bras with pockets with linear openings were well known. NIKE-1022 at 6:6–10; NIKE-1025 at Fig. 2. Moreover, it is my opinion a POSA would have known that the shape of the upper edge is merely a design choice and could be designed in a number of known ways, including straight.

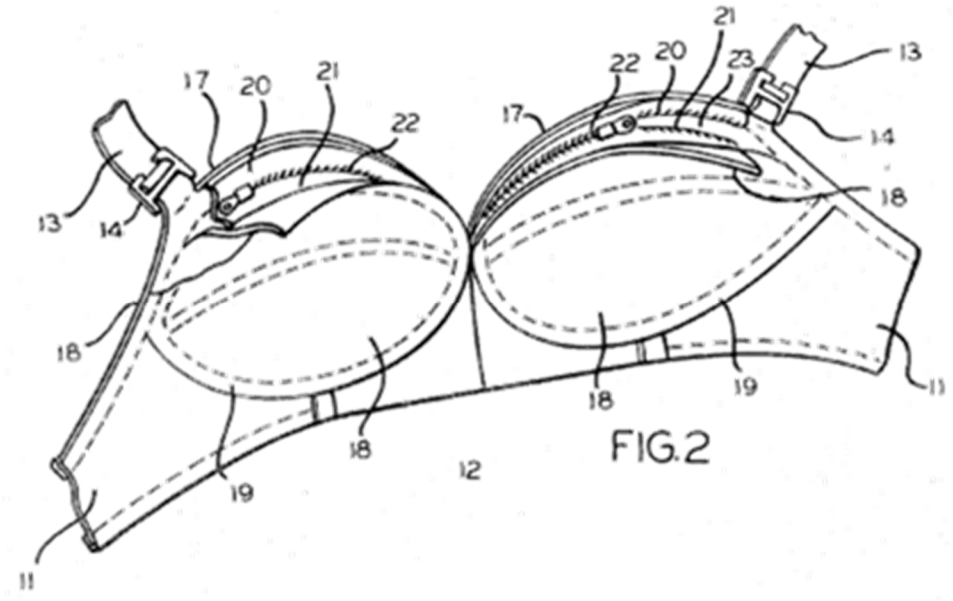
182. It is my opinion, therefore, that it would have been well within the abilities of a POSA to make such a routine modification and a POSA would have had a high expectation of success in doing so.

183. In my opinion, Barg therefore renders "each patch having a linear upper edge and curved lower, interior body facing, and opposite exterior edges, each patch having inside and outside surfaces" obvious.

h. *"stitching coupling 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;" limitation [1H]*

184. Barg discloses this limitation. Specifically, 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. In my opinion, a POSA would have understood stitching to be a common, convenient, and efficient method of attaching two pieces of fabric together.

185. Moreover, it is my opinion that a POSA would have understood the dashed lines in Figure 2, shown below, to disclose stitching, as dashed lines are commonly used in sewing patterns to denote where stitching should occur.



NIKE-1019 at Fig. 2.

186. Thus, it is my opinion a POSA would have understood that Barg discloses pockets formed by stitching the lower interior and exterior edges of a patch to the lower and exterior edges of a corresponding cup.

187. Even if not expressly disclosed by Barg, it is my opinion that it would have been obvious to a POSA to modify Barg to include stitching based on their own knowledge. As I mention above, a POSA would have understood stitching to be a well-known method by which pieces of fabric are attached together for clothing.

188. And even if it would not have been obvious to a POSA to modify Barg to include stitching based on their own knowledge, it would have been obvious in

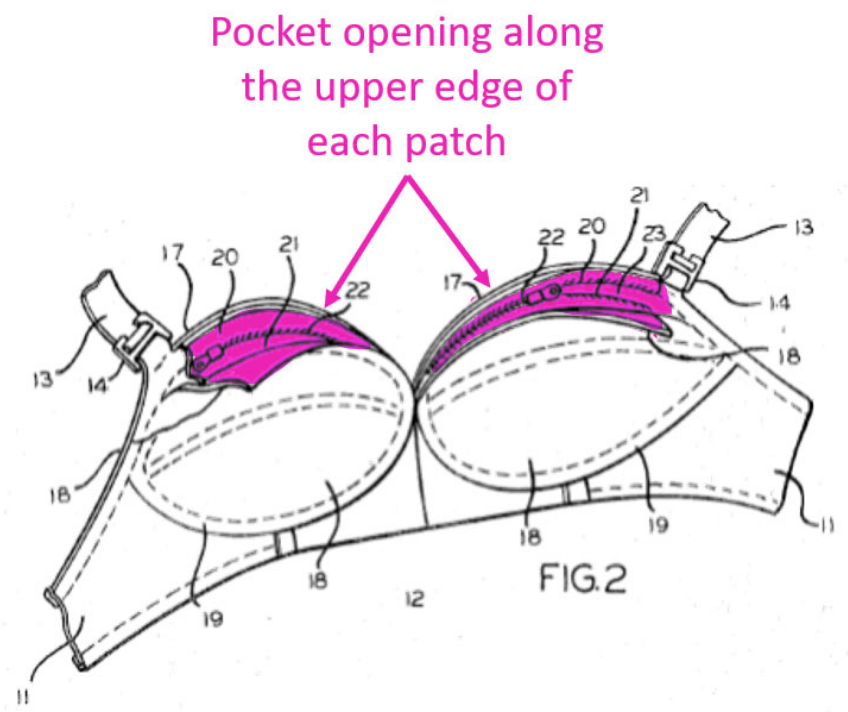
light of Pintor. Pintor expressly discloses a pocket "attached to the interior surface of the breast cover by any known means such as *stitching*." NIKE-1022 at 3:52–53.

189. It is also my opinion that 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. And 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.

190. It is therefore my opinion that this limitation is disclosed by Barg, or, at the very least, rendered obvious by Barg in view of Pintor or a POSA's knowledge.

i. *"a linear opening formed along the upper edge of each patch;" limitation [1I]*

191. Barg renders this limitation obvious. First, Barg expressly discloses that the openings are at the "upper edges" of each patch. NIKE-1019 at 2:22-25. The upper opening is further illustrated in Figure 2:



NIKE-1019 at Fig. 2, 2:22–25.

192. Barg also renders obvious a patch with a linear upper edge for the reasons explained above with respect to limitation [1G].[3] Namely, that it would have been obvious to a POSA to make such a routine modification (because linear upper edges were well known), and it would have been well within the abilities of a POSA to make such a modification. *See* Claim 1, limitation [1G] above. And, in my opinion, a POSA would have understood the shape of the pocket opening to be

---

[3] "each patch having a linear upper edge and curved lower, interior body facing, and opposite exterior edges, each patch having inside and outside surfaces."

determined by the shape of the patch edge. Thus, Barg also renders obvious a "linear" opening for the same reasons I explain above with respect to limitation [1G].

193. In my opinion, Barg renders obvious "a linear opening formed along the upper edge of each patch."

j. *"at least one of a handheld electronic device, keys, and pills removably positioned within the pocket of at least one of the left and right cups; and" limitation [1J]*

194. Barg discloses this limitation in my opinion. Barg discloses "a pocket therein for storing valuables, or the like." NIKE-1019 at 1:19–20. Handheld electronic devices, keys, and pills were certainly known "valuables, or the like" at the time of the '288's alleged invention. Thus, in my opinion, a POSA in 2013 would have understood "valuables" to include a wearer's personal belongings, including one of handheld electronic devices, keys, or pills, which is all that is required by the claims.

195. A POSA would further have understood the necessity of making these items "removably accessible" to the wearer while stored in the bra's pockets, so that the wearer is able to access, remove, and replace the stored valuable items from and into the pocket throughout the day. This is expressly taught by Barg, for example, which teaches that a "prime object of [its] invention" is to "produc[e] a pocket for valuables … that is easily accessible." NIKE-1019 at 1:36-44.

196. To the extent this limitation is not expressly or inherently disclosed, Barg renders it obvious. In my opinion, a POSA would have understood that the presence of a pocket necessarily implies the use of the pocket for temporarily holding items, such as one of a handheld electronic device, keys, and pills. In my opinion, a POSA would also have known that the use of handheld electronic devices was pervasive at the time of the alleged invention and would have known that a user would use the pockets to hold handheld electronic devices. *See* NIKE-1022 at 1:23–24 ("Cell phones, personal listening devices, and other mobile electronic devices have become popular in recent years."). Thus, it is my opinion that a POSA would have understood that because Barg teaches that its pockets are designed to hold "valuables," they would hold a "handheld electronic device," keys, or pills.

197. Alternatively, it would have been obvious to modify Barg in light of Pintor to include one of a handheld electronic device, keys, or pills stored in the pocket. Pintor expressly discloses a pocket associated with the cups "containing a concealed object," which Pintor explains includes "[c]ell phones, personal listening devices, and other mobile electronic devices," as well as "money, keys, credit cards, or other objects that women may wish to keep concealed." NIKE-1022 at 1:20-29, 6:44-53, Fig. 3. In my opinion, a POSA would have been motivated to combine Barg and Pintor for the reasons explained below in the section titled "Reasons to Combine Barg and Pintor." In summary, it is my opinion that a POSA would have

been motivated to design a bra that took advantage of the benefits provided by each of Barg and Pintor's bras, particularly in light of the commercial incentives to design bras that meet the preferences of different customers. It is also my opinion a POSA would have had a reasonable expectation of success in doing so, because both Barg and Pintor are bras, this is simple technology, and each element is performing its known function in known ways: an object removably stored in a pocket.

198. It is my opinion that "at least one of a handheld electronic device, keys, and pills removably positioned within the pocket of at least one of the left and right cups" is disclosed by Barg, or alternatively, rendered obvious by Barg in view of Pintor or a POSA's knowledge.

k. ***"wherein each patch curved lower interior body facing and opposite exterior edges are aligned with each curved lower interior body facing and opposite exterior edges, and wherein the stitching is along the curved lower interior body facing and opposite exterior edges of the patch, the linear upper edge of each patch crossing over a surface of the cup to form the linear opening" limitation [1K]***

199. Barg renders obvious this limitation. As previously discussed above with respect to Claim 1, limitations [1E][4] and [1G],[5] Barg discloses cups and patches with curved lower interior body facing and opposite exterior edges. Barg also discloses "stitching coupling 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," as explained above in limitation [1H].[6] Barg also discloses "stitching coupling 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," as explained above in Claim 1, limitation [1H].

200. In my opinion, a POSA would have understood that in such a configuration, the lower interior body facing and opposite exterior edges of the cups

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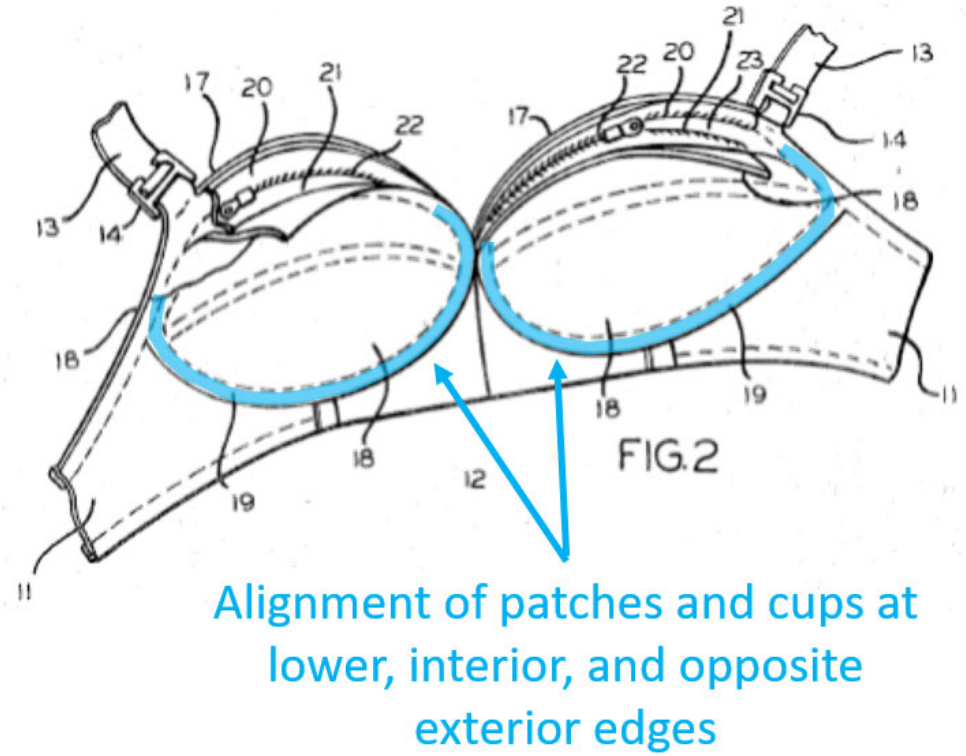
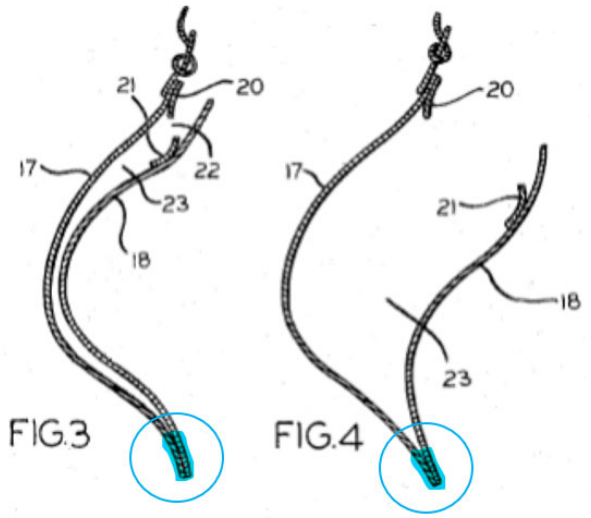
[4] "each cup having curved upper, lower, interior body facing and opposite exterior edges."

[5] "each patch having a linear upper edge and curved lower, interior body facing, and opposite exterior edges, each patch having inside and outside surfaces."

[6] "stitching coupling 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."

and patches are aligned. Barg says this explicitly, disclosing 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, and illustrates it in Figures 2-4:

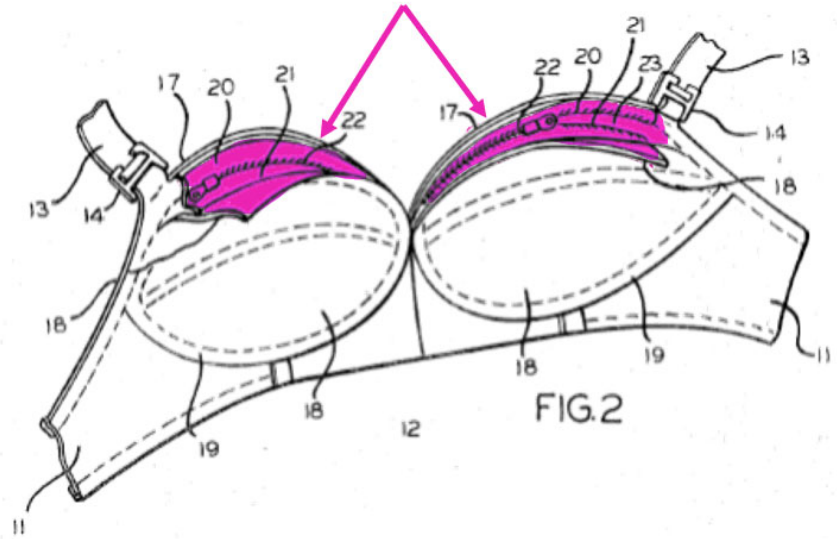




Alignment of patches and cups at lower edges

201. Additionally, Barg discloses that the "upper edges of the [breast cup] sections 17 and 18 form a pocket 23," with the opening at the upper edge of each pocket:

Pocket opening along the upper edge of each patch



NIKE-1019 at Fig. 2, 2:15-17. As illustrated above, the upper edges of each pocket-forming patch also "cross[] over" a surface of each bra cup.

202. Finally, Barg, alone or in combination, renders obvious a linear upper edge of each patch and pocket opening, as previously discussed in limitations [1G] and [1I].

203. It is my opinion that Barg therefore renders "wherein each patch curved lower interior body facing and opposite exterior edges are aligned with each curved lower interior body facing and opposite exterior edges, and wherein the stitching is along the curved lower interior body facing and opposite exterior edges of the patch, the linear upper edge of each patch crossing over a surface of the cup to form the linear opening" obvious.

ii. Claim 2

l. *"The system set forth in claim 1" limitation [Preamble]*

204. Barg discloses "[t]he system set forth in claim 1" for the reasons described above in claim 1.

m. *"wherein the cups and the patches form pockets, the cups being fabricated of a resilient closed cell polyurethane foam with a thickness of from 2 to 4 millimeters" limitation [2A]*

205. Barg in combination with the knowledge of a POSA renders this limitation obvious. As previously discussed with respect to Claim 1, limitation [1F], Barg discloses cups and patches forming pockets.

206. The use of resilient polyurethane, including closed cell polyurethane, of the claimed thickness in the construction of bras was well known in the art by the time of the alleged invention. *See* NIKE-1037 (2009) at 117 (molding of closed- and open-cell polyurethane foam for bra padding); NIKE-1038 (2004) at 7:3 (polyurethane for use in bra padding), at 6:4–5 (foam thickness of 3 mm), at 3:13, 4:59–64, 5:5 (using "resilient" thermoplastic foam material, including polyurethane foam, for use in bra cup manufacturing). As discussed in ¶ 117, resilient closed- and open-cell polyurethane are widely used in the manufacturing of bras, especially in bra cups. In my opinion, it would have been obvious to a POSA to try using such material on Barg, and a POSA would have been motivated to do so to increase comfort of the bra. It is also my opinion that a POSA would have understood resilient polyurethane foam to be a conventional component of bra cups because of its cost, availability, softness, and other tactile characteristics that make it ideal for bra manufacturing. NIKE-1037 at 117; NIKE-1038 at 7:3. Further, a POSA would have been motivated to use closed-cell polyurethane for long-lasting durability and maintaining the desired bra cup shape. It is my opinion that a POSA would therefore have been motivated to modify Barg to use resilient closed cell polyurethane for the cups.

207. It is also my opinion that a POSA would further have understood the thickness of the foam to be a result-effective variable, because users desire bra cups

that are thick enough to provide the desired support and shape to the breasts, but not so thick as to create discomfort or bulk. For example, polyurethane foams of a variety of thicknesses are used in the manufacturing of bras, with thinner foams used in t-shirt bras, and thicker foams exceeding 10 mm used in push up bras to displace the breasts from the bra and give a lifted appearance. In my opinion, a POSA would have been motivated to use polyurethane with the lower thickness of 2 to 4 mm in a pocket bra to ensure adequate room for the storage of items on the breast cup, rather than for additional padding. Thicknesses of 2 to 4 millimeters are desirable for meeting that goal. Further, thicknesses of 2 to 4 millimeters were known to be desirable in 2013. NIKE-1038 (2004) at 6:4–5 (disclosing a bra cup made of polyurethane with foam thickness ranging from 1–3 mm). It is my opinion that a POSA therefore would have had a high expectation of success in modifying Barg to include polyurethane cups with a thickness of 2 to 4 millimeters because such cups were known and, in any event, a POSA would know how to adjust the thickness to the desired level. NIKE-1037 at 117; NIKE-1038 at 6:4–5, 7:3, 1:48–57 (adjusting the thickness of the bra cup), 3:31–37 (bra cup formed of "flexible foam material" of "varying thickness"). Thus, it is my opinion 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.

208. In my opinion, even if this limitation would not have been obvious to a POSA based on their own knowledge, Barg in combination with Pintor renders this limitation obvious. Pintor expressly teaches the use of polyurethanes in bras with pockets, including for use on the pocket or "breast covers" (*i.e.*, cups). *See* NIKE-1022 at 7:53–60 ("The material of construction for the breast covers or other portions of the article of apparel may comprise an elastomeric woven or nonwomen material, including . . . polyurethane."), 3:5-16 (discussing polyurethane in the construction of the pocket). Pintor further teaches the cup formed of polyurethane "having a *resilient* shape." *Id.* at 4:28–30.

209. In my opinion, a POSA would have known that the polyurethane cups taught by Pintor would include closed cell polyurethane cups of a thickness of 2 to 4 millimeters, including for the reasons discussed in ¶ 117. *See* NIKE-1037 at 117; NIKE-1038 at 6:4–5. And I explain above, it is my opinion a POSA would have been motivated to use the polyurethane cups taught by Pintor in the bra disclosed by Barg because polyurethane was known to have characteristics ideal for bra manufacturing, including comfort, and would have had a high expectation of success in using closed cell polyurethane cups in the bra taught by Barg. A POSA would have been further motivated to combine Barg and Pintor, and would have had a reasonable expectation of success in doing so, for the reasons discussed below in the section titled "Reasons to Combine Barg and Pintor."

210. In my opinion, Barg and/or Barg in combination with Pintor renders "wherein the cups and the patches form pockets, the cups being fabricated of a resilient closed cell polyurethane foam with a thickness of from 2 to 4 millimeters" obvious.

iii. Claim 3

n. *"The system as set forth in claim 1" limitation [Preamble]*

211. Barg discloses "[t]he system set forth in claim 1" for the reasons described above in claim 1.

o. *"wherein the cups and the patches form pockets, the patches being fabricated of an elastic fabric" limitation [3A]*

212. Barg in combination with the knowledge of a POSA renders this limitation obvious. As previously discussed with respect to Claim 1, limitation [1F], Barg discloses cups and patches forming pockets.

213. It is my opinion a POSA would have understood the purpose of a pocket in a bra or other garment is to hold personal items. NIKE-1019 at 1:18-20 ("pocket … for storing valuables"); NIKE-1022 at 2:9-13 (disclosing bra with "pockets designed to hold cellular phones, personal listening devices, cosmetics, valuable items, medical objects, supplies, and other concealed objects securely"). It is also my opinion a POSA would have understood that personal items, which can be of a variety of shapes, may not easily conform to the shape of a rigid pocket. Thus, it is my opinion that a POSA would have found it obvious to manufacture the pocket

patch with an elastic material, such that the pocket may stretch or expand to accommodate the placement of items for storage.

214. Pockets comprised of elastic material were well-known and popular at the time of the alleged invention. *E.g.*, NIKE-1022 at 3:5–14 ("The pocket can be formed of an extensible material that can, for example, elastically deform . . . . Such materials can include woven or nonwoven fabrics comprising Spandex®, Lycra®, nylon, neoprene, polyurethanes, polyolefins, polyesters, wool, rayon, etc."); NIKE-1039 (nylon and Lycra blended sports bras). It is my opinion, therefore, a POSA would have understood that elastic could similarly be applied to the bra disclosed in Barg. Thus, it is also my opinion a POSA would have found it obvious to modify Barg based on their own knowledge.

215. In my opinion, even if this limitation would not have been obvious to a POSA based on their own knowledge, Barg in combination with Pintor renders this limitation obvious. Pintor teaches bras with pockets formed of "extensible material" to allow the pocket to "elastically deform." NIKE-1022 at 3:5–7. Pintor specifically lists "woven or nonwoven fabrics comprising Spandex®, Lycra®, nylon, neoprene, polyurethanes, polyolefins, polyesters, wool, rayon, etc." *Id.* at 3:12–14. Barg also teaches that elastic material is used in other parts of its bra. NIKE-1019 at 2:2–4.

216. It is my opinion that a POSA would have understood elastic materials as having characteristics ideal for bra manufacturing and wear, especially for use in

storage pockets because it would enable such pockets to hold items of varying shapes more easily. By contrast, it is my opinion a POSA would have known that using an inelastic material for the patches may limit a user's access to the pocket interior, as the opening would be rigid and would not stretch to allow entry of larger items or a user's hand.

217. Further, elastic materials would allow for stretch of the bra to accommodate the storage of goods on the breast cup while accommodating potential displacement from the breast from the storage of those items. Alternatively, the use of rigid materials may create excess and unnecessary bulk.

218. Thus, a POSA would have found it obvious to modify Barg to include elastic material based on their own knowledge or as expressly taught by Pintor.

219. It is my opinion a POSA would also have had a high expectation of success in using elastic materials for the patches taught by Barg because Pintor expressly teaches the use of elastic material for patches on bra cups. NIKE-1022 at, *e.g.*, Figs. 1–8 (disclosing bras with patches forming a pocket on the cups), 3:5–39 (teaching that the pocket may be formed by a patch attached to the bra cup and made of elastic material).

220. In my opinion, Barg and/or Barg in combination with Pintor renders "wherein the cups and the patches form pockets, the patches being fabricated of an elastic fabric" obvious.

iv. Claim 4

a. *"The system as set forth in claim 1" limitation [Preamble]*

221. Barg discloses "[t]he system set forth in claim 1" for the reasons described above in claim 1.

b. *"and further including an under-wire coupled beneath each cup in a generally horizontal plane" limitation [4A]*

222. In my opinion, Barg in combination with the knowledge of a POSA renders this limitation obvious. Bras with underwire were known and popular decades prior to 2013. NIKE-1022 at 6:57–60, 7:63–66; NIKE-1021 at [0020]. Therefore, it is my opinion it would have been obvious to a POSA to add an underwire to Barg, and a POSA would have been motivated to do so, because underwire bras tend to provide better lift, separation, shape, and support of the breasts than bras without such structure. Thus, in my opinion, it would have been obvious to a POSA to modify Barg based on their own knowledge to include an underwire.

223. Even if this limitation would not have been obvious to a POSA based on their own knowledge, Barg in combination with Pintor renders this limitation obvious. Pintor expressly discloses "many varieties of bras that may be used with the present invention," including "underwire bras." NIKE-1022 at 7:63–66, 6:57–58. As explained above, it is my opinion it would have been obvious to add an underwire to Barg, and a POSA would have been motivated to do so, because of the

additional lift, separation, shaping, and support underwires provide. In my opinion, a POSA would have had a high expectation of success in combining Pintor and Barg, as Pintor expressly teaches the use of underwires in bras with a breast cup pocket.

224. In my opinion, Barg therefore discloses "and further including an under-wire coupled beneath each cup in a generally horizontal plane."

v. Claim 11

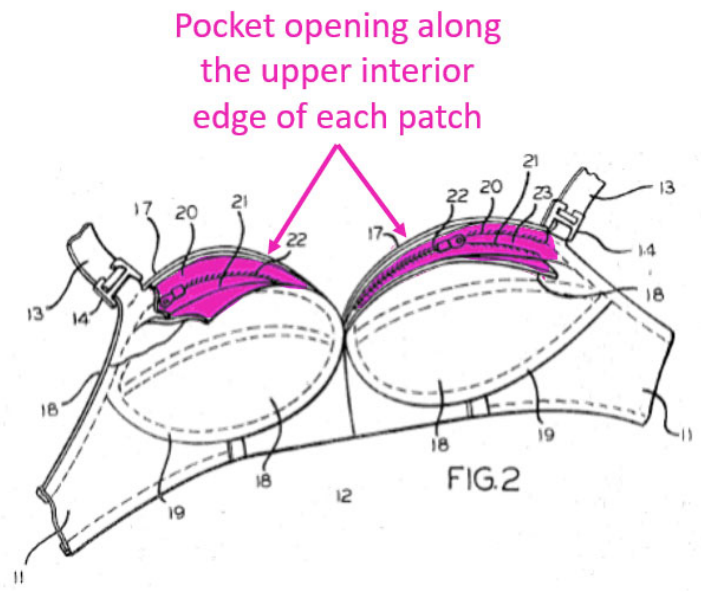
a. *"The system as set forth in claim 1" limitation [Preamble]*

225. In my opinion, Barg discloses "[t]he system set forth in claim 1" for the reasons described above in claim 1.

b. *"wherein the linear opening is facing the upper interior edge to allow the at least one of the handheld electronic device, keys, and pills to be removably positioned within the pocket by entry adjacent to a shoulder of the user" limitation [11A]*

226. Barg, either alone or in combination with Pintor, renders obvious this limitation. As I previously explained in connection with Claim 1, limitation [1I], Barg renders obvious a "linear opening." And as I discuss in Claim 1, limitation [1J], Barg discloses "at least one of the handheld electronic device, keys, and pills to be removably positioned within the pocket."

227. As illustrated in Figure 2 below, Barg discloses pockets whose upper openings face the upper interior edge and allow for item entry adjacent to the shoulder of the user:



NIKE-1019 at Fig. 2 (showing pocket openings formed along the upper interior edge of each cup, allowing for entry adjacent to the shoulder of the user).

228. It is therefore my opinion that Barg renders "wherein the linear opening is facing the upper interior edge to allow the at least one of the handheld electronic device, keys, and pills to be removably positioned within the pocket by entry adjacent to a shoulder of the user" obvious.

vi. Claim 12

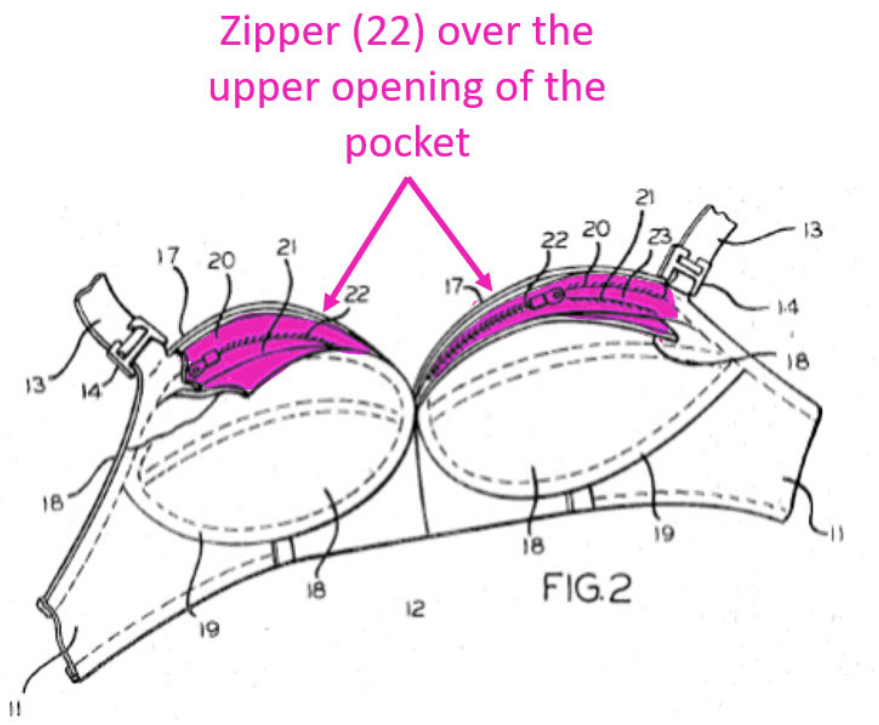
a. *"The system as set forth in claim 1" limitation [Preamble]*

229. Barg discloses "[t]he system set forth in claim 1" for the reasons described above in claim 1.

b. *"further comprising a closure over the linear opening" limitation [12A]*

230. Barg discloses this limitation. Barg discloses a "hookless fastener or zipper 22" for "means of fastening" the pocket closed. NIKE-1019 at 2:12–21;

1:26–28, 1:41–44, 1:45–59, Cl. 1–3. As discussed in Claim 1, limitation [1I], Barg in combination with a POSA's knowledge renders a linear opening obvious. As illustrated below, the zipper (22) closure is over the pocket opening:



NIKE-1019 at Fig. 2, 2:24–25.

231. In my opinion, Barg therefore discloses "further comprising a closure over the linear opening."

vii. Reasons to Combine Barg and Pintor

232. Barg and Pintor disclose all claimed features of the "pocket bra system," as shown above. Also, in my opinion, it would have been obvious to a POSA to simply combine the beneficial features of both bras, with the features taught by Barg and Pintor performing their same intended function.

233. Barg and Pintor each disclose inventions generally relating to bras with pockets for storage on the cups. In designing a bra with pockets, it is my opinion a POSA would have been motivated to look to the prior art references disclosing bras with pockets, such as Barg and Pintor, in order to select preferable elements from each disclosure to construct their desired pocketed bra. One advantage of Barg's bra is that it has large "easily accessible" pockets that are "no[t] conspicuous." NIKE-1019 at 1:24-45. At the same time, Pintor's bras contain more comfortable polyurethane cups, and have elastic pockets to hold objects more easily. NIKE-1022 at 3:5-19, 7:53-62. As a result, it is my opinion a POSA would have been motivated to design a bra that took advantage of the benefits provided by each of Barg and Pintor's bras.

234. It is my opinion a POSA also would have understood that bras are meant to serve a diverse population with differing preferences. For example, different customers prefer different levels of support, comfort, and pocket size. It would be commercially beneficial to provide consumers with a variety of options to meet those different preferences. The prior art expressly states that having "an aesthetically pleasing design" is an important consideration. NIKE-1022 at 6:6-10. Further, bras are meant to serve a variety of different functions—providing different levels of support and types of shaping to the breasts. In my opinion, a POSA therefore would have been motivated to design a variety of combinations of bras,

including those with the claimed features, so as to be able to provide options to a wide range of customers.

235. In my opinion, a POSA would have expected to have a high likelihood of success with this combination. Barg and Pintor are both bras with pockets on the cups for discreetly storing valuables while remaining "easily accessible." *E.g.*, NIKE-1019 at 1:34–35, 2:22–25, Figs. 1–4; NIKE-1022 at 2:4–17, 5:37–45, 6:19–30, Figs. 1–8. And each of the elements, for example, cups, pockets, stitching, would perform the same predictable function disclosed in the prior art. It is my opinion that any work needed to combine the elements taught by Barg and Pintor would therefore be nothing more than routine modifications well within the abilities of a POSA.

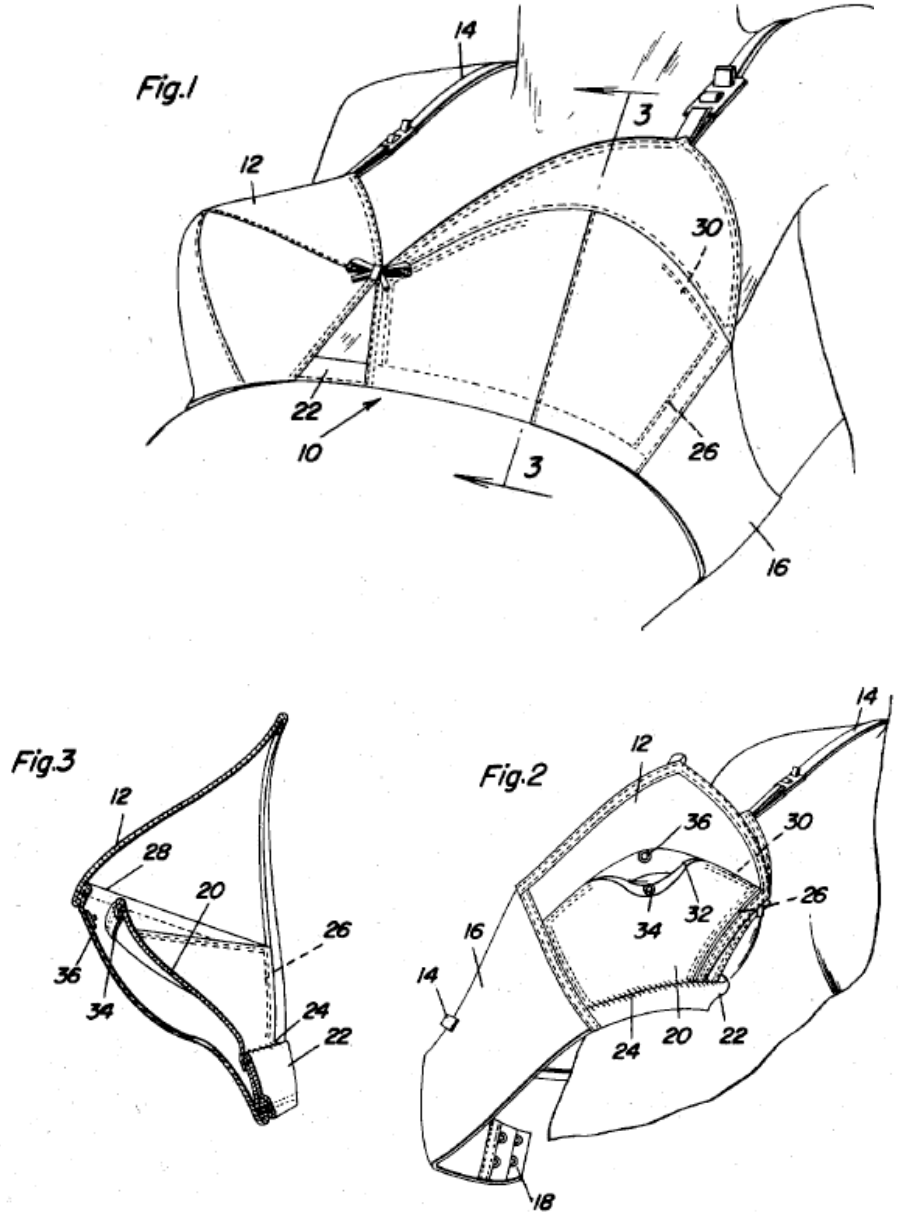
2. Ground 2: Claims 1–4 and 11–12 Are Unpatentable Over York in View of Pintor

236. In my opinion, claims 1–4 and 11–12 are disclosed or rendered obvious by York in combination with Pintor.

i. Claim 1

a. *"A bra pocket system combination comprising:" limitation [1A]*

237. York discloses this limitation. As illustrated below, 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.

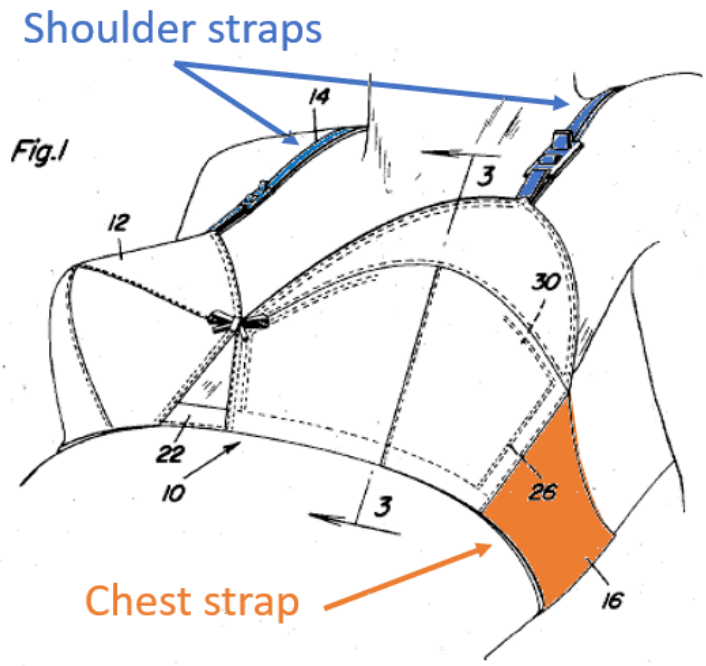


NIKE-1020 at Figs. 1–3 (showing a pocket formed by a patch on the bra cup).

238. In my opinion, York therefore discloses a "bra pocket system combination."

b. ***"a strap assembly including a chest strap and shoulder straps;" limitation [1B]***

239. York discloses this limitation. Specifically, 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 1:48–54. The chest strap and shoulder strap are illustrated in Figure 1, shown below:

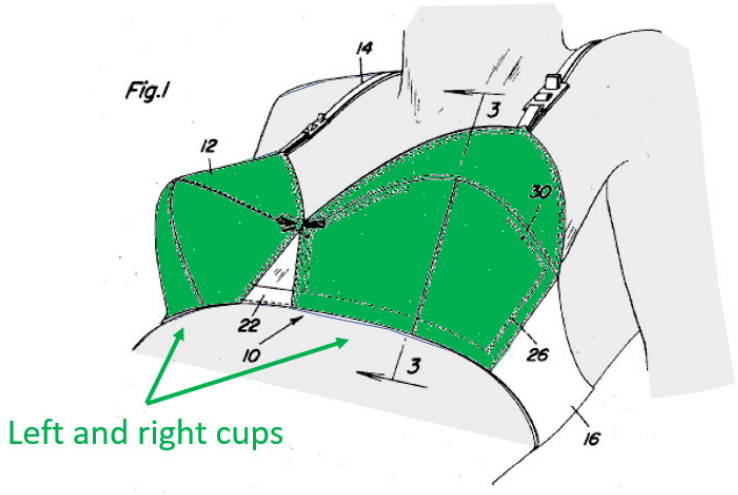


Id. at Fig. 1.

240. In my opinion, York therefore discloses "a strap assembly including a chest strap and shoulder straps."

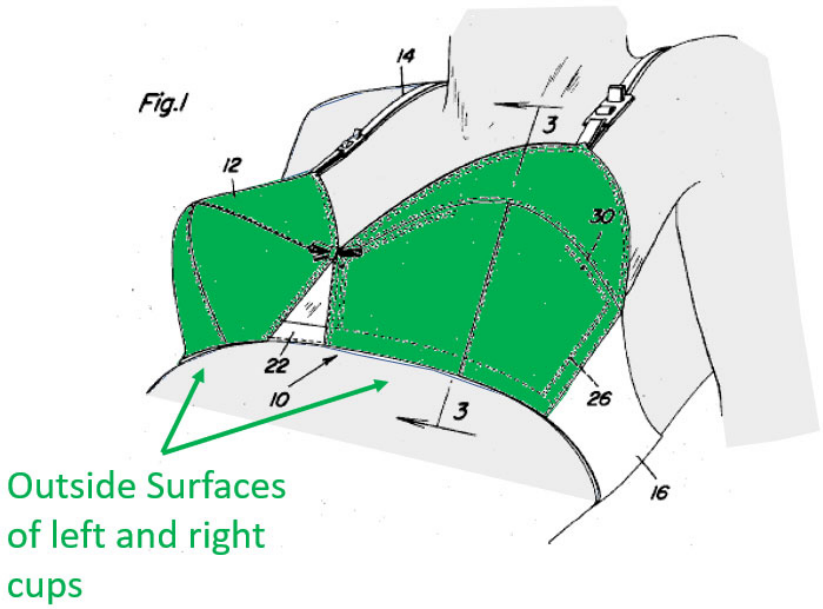
c. ***"left and right cups, each cup having inside and outside surfaces," limitation [1C]***

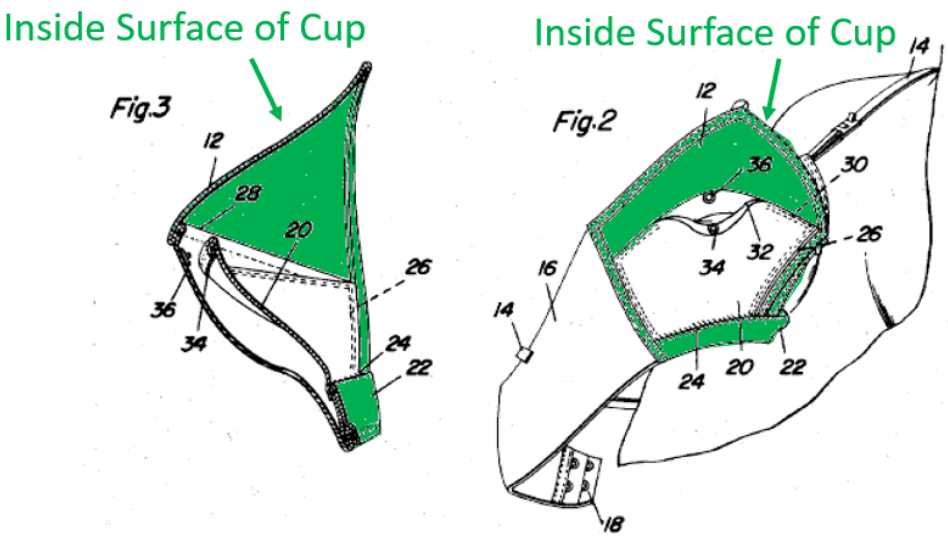
241. York discloses this limitation. As illustrated in Figure 1 below, York discloses a bra with left and right cups:



NIKE-1020 at Fig. 1, 1:46-52 (disclosing "a brassiere which includes the usual pair of breast cups 12").

242. Further, as illustrated in Figures 1 and 3 below, the cups have inside and outside surfaces:





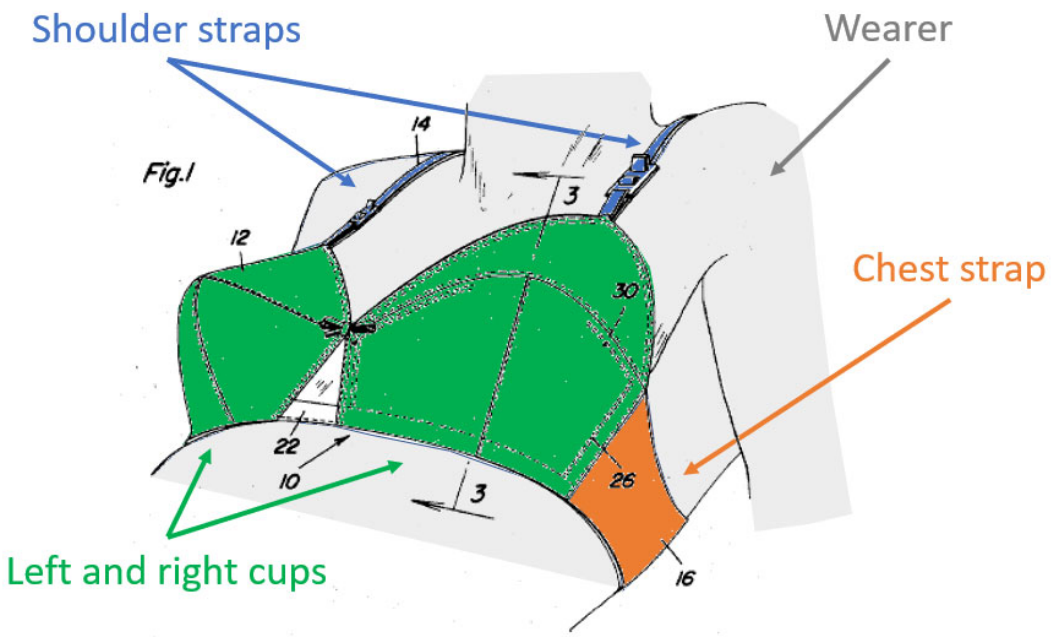
Id. at Figs. 1–3, 1:1-2:3 (describing the "interior surface" of the breast cups). In my opinion, a POSA would also have understood York's cups to necessarily have inside and outside surfaces.

243. In my opinion, York discloses "left and right cups, each cup having inside and outside surfaces."

d. ***"the strap assembly being attached to the cups whereby the strap assembly adheres the cups to a wearer," limitation [1D]***

244. York discloses this limitation. As explained above with respect to Claim 1, limitations [1B] and [1C], York discloses a "strap assembly" and "left and right cups." NIKE-1020 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).

245. Further, Figure 1 illustrates the disclosed strap assembly adhering the cups to a wearer:

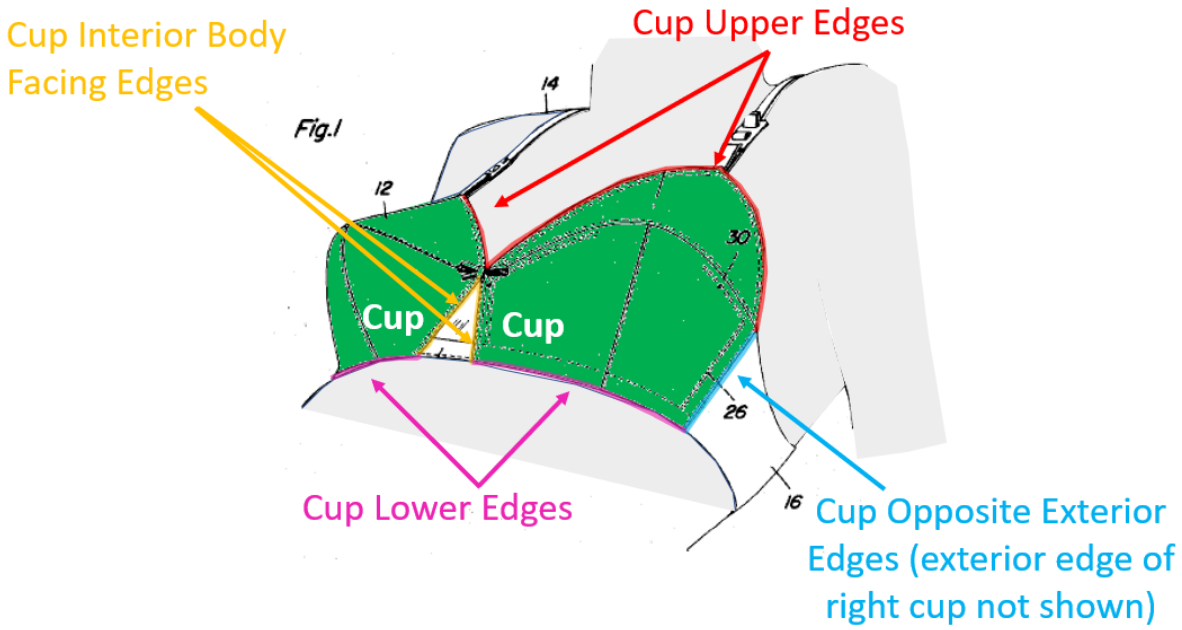


NIKE-1020 at Fig. 1.

246. In my opinion, York therefore discloses "the strap assembly being attached to the cups whereby the strap assembly adheres the cups to a wearer."

e. ***"each cup having curved upper, lower, interior body facing and opposite exterior edges;" limitation [1E]***

247. York renders obvious this limitation. As illustrated in the figures below, York discloses upper, lower, interior body facing, and opposite exterior edges of the cup:



NIKE-1020 at Fig. 1.

248. Further, York renders obvious that the edges of the cup be "curved." York explains that its "brassiere, which includes the usual pair of breast cups … is conventional and may be any of several commercially available types," such as bras with cups with curved edges. NIKE-1020 at 1:46-54. Cups with curved edges were widely known at the time of the alleged invention and it is my opinion a POSA would have been motivated to make the edges of a bra cup curved to match the curvature of the breasts. *See, e.g.,* NIKE-1019 (Barg), NIKE-1022 (Pintor); NIKE-1021

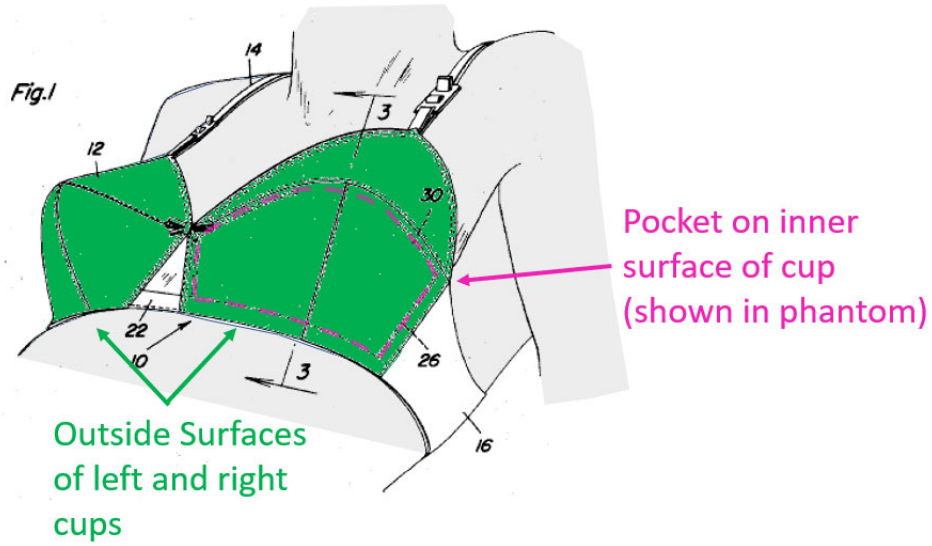
(Handras); NIKE-1025 (Faagau); NIKE-1023 (Newman); NIKE-1038 (Jagaric). Moreover, it is my opinion a POSA would have understood the shape of the bra cup to be a simple choice of design.

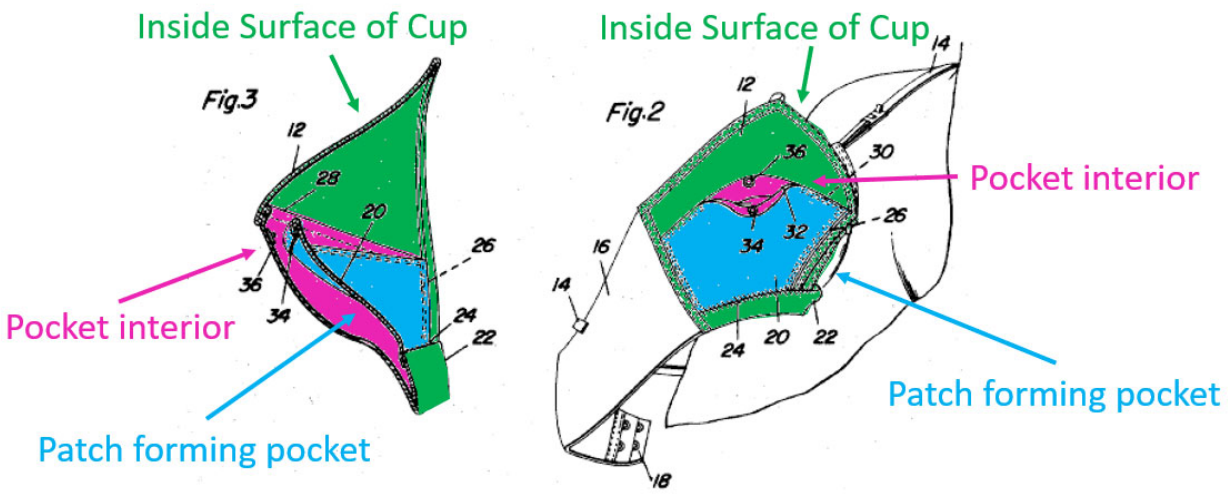
249. In my opinion, a POSA would also have had a high expectation of success in using curved edge cups because bras with such cups were well known in the art, and York expressly contemplates the use of any known bra, including bras with cups with curved edges.

250. In my opinion, York therefore renders obvious "each cup having curved upper, lower, interior body facing and opposite exterior edges."

f. *"a patch forming a pocket operatively associated with each cup," limitation [1F]*

251. 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:





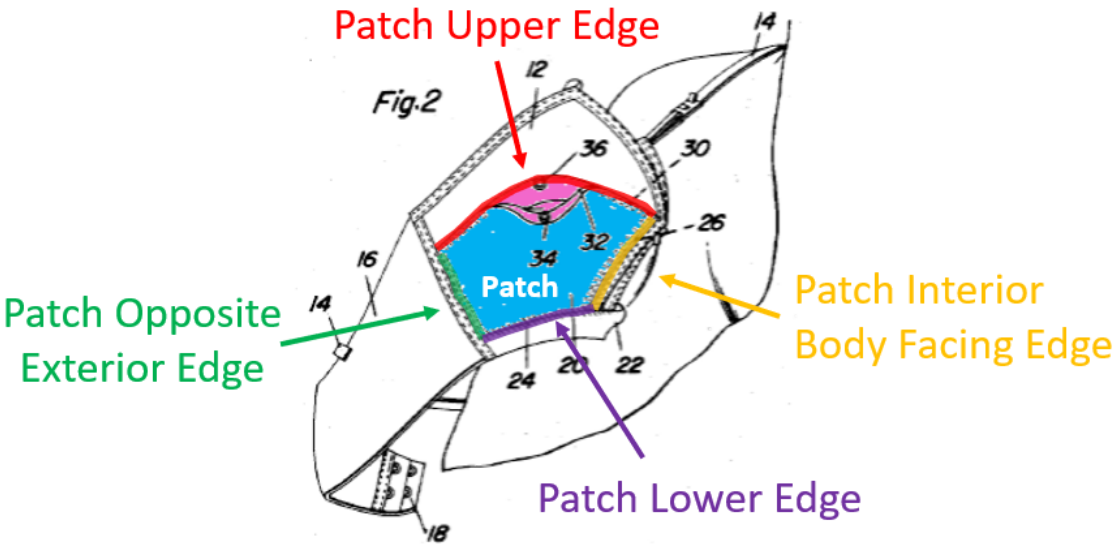
NIKE-1020 at Figs. 1–3 (showing a pocket formed by a patch on the surface of the bra cup from various perspectives), 1:54–2:23.

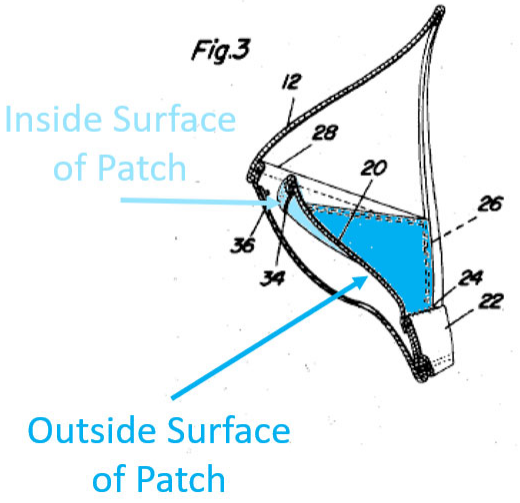
252. While York discloses a pocket on the "interior surface of one of the breast cups," NIKE-1020 at 1:54–2:23, it is my opinion it would have been obvious to include the expressly disclosed pocket on both cups. Nothing in York would discourage a POSA from including a pocket on each of the cups and a POSA would have been motivated to include a pocket on each cup in order to further its express goal of providing a place to store "valuable articles such as jewelry, money, or the like." *See generally* NIKE-1020. Thus, it is my opinion 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.

253. It is my opinion that York renders obvious "a patch forming a pocket operatively associated with each cup."

g. ***"each patch having a linear upper edge and curved lower, interior body facing, and opposite exterior edges, each patch having inside and outside surfaces;" limitation [1G]***

254. York renders this limitation obvious. As illustrated below, York discloses a patch with upper, lower, interior body facing, and opposite exterior edges, the patch having both inside and outside surfaces:





NIKE-1020 at Figs. 2–3. In my opinion, a POSA would also have understood the patches to necessarily have inside and outside surfaces.

255. While York discloses a patch with curved "upper edge," in my opinion, it would have also been obvious to a POSA, based on their own knowledge, that they could modify York's patch so that it would have a "linear upper edge." Both bras and pockets have been long known in the art and in designing a bra with storage pockets, it is my opinion a POSA would have been motivated to look for known solutions in the art, such as the variety of types of bra designs, placements of the pockets, and pocket shapes. In my opinion, a POSA would have understood there to be a finite number of edge designs for the patches, with each selection having a predictable outcome. It is also my opinion a POSA would have further understood the degree of curvature of the edge of the patch to be a simple choice of design, as the prior art makes clear. NIKE-1022 at 6:6–10 ("The shape of the [pocket opening] 32 is typically determined by the shape of the side 34D, which may be concave, as shown in FIG. 2, *or may be substantially straight, convex, or have any combination of curved or linear components defining an aesthetically pleasing design*."); NIKE-1025 at Fig. 2 (showing bra cups with curved upper edges, and pockets with linear upper edges).

256. I understand neither the '288 Patent, nor the prosecution history, describes the "upper edge" being "linear" as an allegedly novel aspect of its

purported invention. *See generally* NIKE-1003; NIKE-1004. Nor could they, as "straight" or "linear" pocket edges were well known. NIKE-1022 at 6:6–10; NIKE-1025 at Fig. 2.

257. In my opinion, even if this limitation would not have been obvious to a POSA based on their own knowledge, York in combination with Pintor renders this limitation obvious. Pintor expressly discloses a patch on the breast cups with a "substantially straight" opening. NIKE-1022 at 6:6–10, Figs. 1–2, 4, 7.

258. In my opinion, a POSA would have been motivated to make the top edge of the patch linear to securely hold a rectangular item, such as an electronic device or rectangular key, ensuring the item is held snugly within. A linear upper edge would also help ensure the pocket's visibility is obscured by the cup, keeping the existence of a pocket and its contents hidden.

259. Moreover, it is my opinion a POSA would have known that the shape of the upper edge is merely a design choice and could be designed in a number of known ways, including straight. It is my opinion that it therefore would have been well within the abilities of a POSA to make such a routine modification and a POSA would have had a high expectation of success in doing so. This is simple technology and bras with pockets with linear openings were well known in the art. NIKE-1022 at 6:6–10; NIKE-1025 at Fig. 2.

260. In my opinion, York therefore renders obvious "each patch having a linear upper edge and curved lower, interior body facing, and opposite exterior edges, each patch having inside and outside surfaces."

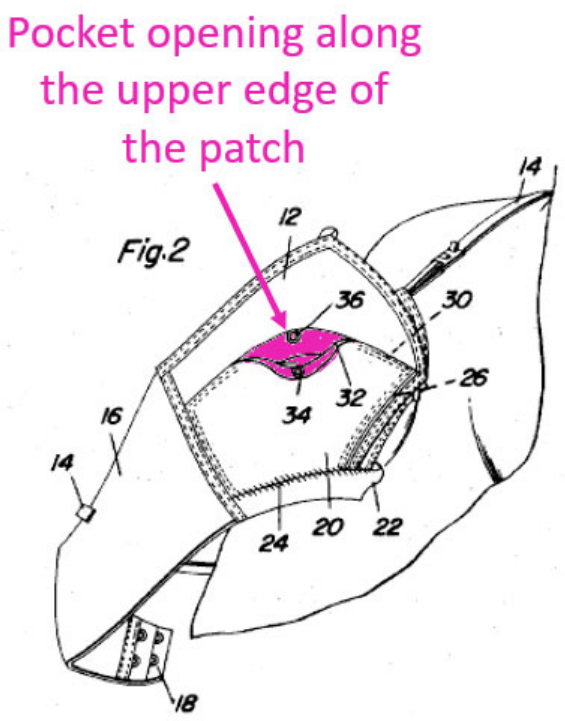
h. *"stitching coupling the lower, interior body facing and opposite exterior edges of each patch to the lower, interior body facing, and opposite exterior edges of an associated cup;" limitation [1H]*

261. York discloses this limitation. 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 stitching coupling the lower interior and exterior edges of the patch to the lower interior and exterior edges of an associated cup.

262. It is therefore my opinion that York discloses "stitching coupling 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."

i. *"a linear opening formed along the upper edge of each patch;" limitation [1I]*

263. York renders this limitation obvious. As discussed above with respect to Claim 1, limitation [1G], York discloses upper edges of the patch. As illustrated below, York discloses an opening along this upper edge:



NIKE-1020 at Fig. 2, 2:3-23 (discussing pocket opening).

264. And as I explain above with respect to Claim 1, limitation [1G], York renders obvious a patch with a linear upper edge. In my opinion, a POSA would have understood the shape of the pocket opening to be determined by the shape of the patch edge. Thus, York also renders obvious a "linear" opening for the same reasons.

265. It is my opinion that York renders obvious "a linear opening formed along the upper edge of each patch."

j. ***"at least one of a handheld electronic device, keys, and pills removably positioned within the pocket of at least one of the left and right cups; and" limitation [1J]***

266. York discloses this limitation. York discloses a pocket "for receiving valuable articles such as jewelry, money or the like." NIKE-1020 at 1:18–19, 2:17–20. In my opinion, a POSA in 2013 would have understood "valuables" to include a wearer's personal belongings, including one of a handheld electronic devices, keys, or pills, which is all that is required by the claims. In my opinion, a POSA would further have understood the necessity of making these items "removably accessible" to the wearer while stored in the bra's pockets, so that the wearer is able to access, remove, and replace the stored valuable items from and into the pocket throughout the day.

267. To the extent this limitation is not expressly or inherently disclosed, York renders it obvious. In my opinion, a POSA would have understood that the presence of a pocket necessarily implies the use of the pocket for temporarily holding items, such as one of a handheld electronic device, keys, and pills. It is my opinion a POSA would also have known that the use of handheld electronic devices was pervasive at the time of the alleged invention and would have known that a user would use the pockets to hold handheld electronic devices. *See* NIKE-1022 at 1:23–24 ("Cell phones, personal listening devices, and other mobile electronic devices have become popular in recent years."). Thus, it is my opinion it would have been obvious to a POSA that York's pockets—expressly designed to hold "valuables"—would hold one of a "handheld electronic device," keys, or pills.

268. Alternatively, it is my opinion it would have been obvious to modify York in light of Pintor to include one of a handheld electronic device, keys, or pills stored in the pocket. Pintor expressly discloses a pocket associated with the cups "containing a concealed object," which Pintor explains includes "[c]ell phones, personal listening devices, and other mobile electronic devices," as well as "money, keys, credit cards, or other objects that women may wish to keep concealed." NIKE-1022 at 1:20-29, 6:44-53, Fig. 3.

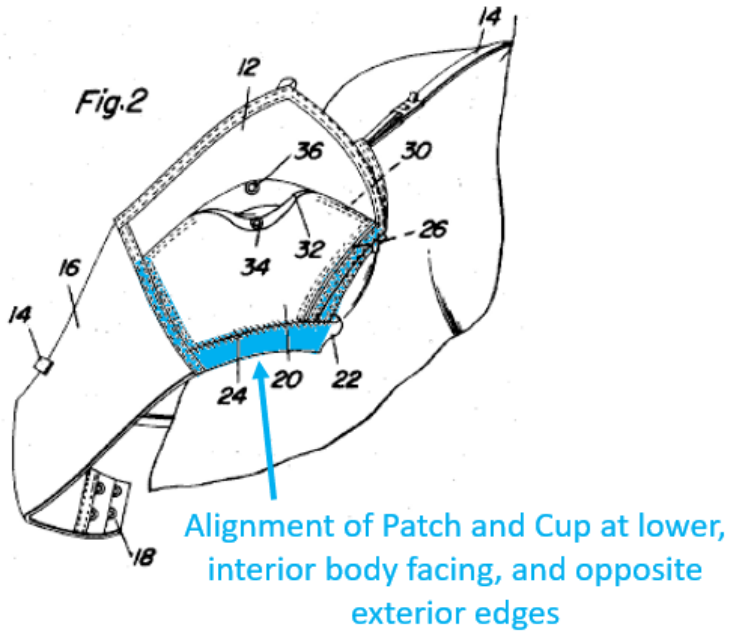
269. In my opinion, a POSA would have been motivated to combine Pintor and York for the reasons explained below. It is my opinion a POSA would have had a reasonable expectation of success in doing so, because both Pintor and York are bras, this is simple technology, and each element is performing its known function in known ways: an object removably stored in a pocket.

270. In my opinion, York renders obvious "at least one of a handheld electronic device, keys, and pills removably positioned within the pocket of at least one of the left and right cups."

k. ***"wherein each patch curved lower interior body facing and opposite exterior edges are aligned with each curved lower interior body facing and opposite exterior edges, and wherein the stitching is along the curved lower interior body facing and opposite exterior edges of the patch, the linear upper edge of each patch crossing over a surface of the cup to form the linear opening" limitation [1K]***

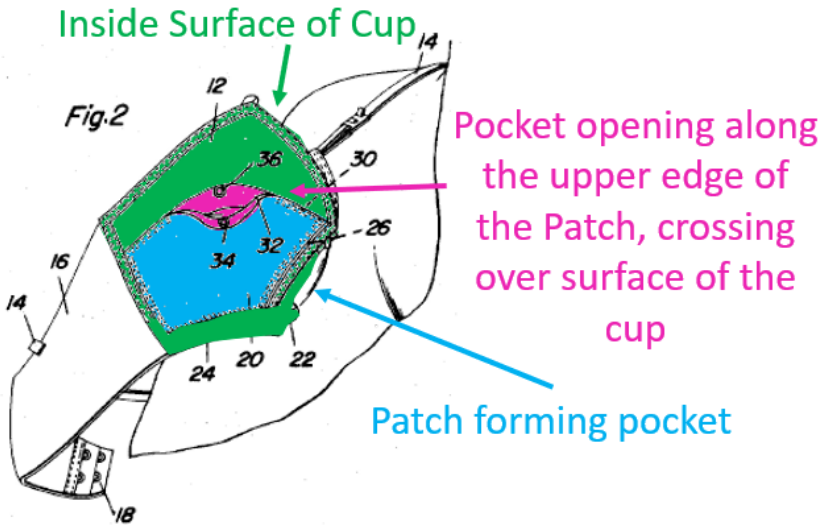
271. York renders obvious this limitation. As shown below, York discloses a "pocket forming panel 20 having the lower edge thereof connected with the finish

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.

272. Thus, York expressly discloses the edges of each patch aligned and stitched to the edges of each corresponding cup. Additionally, York discloses that the opening is along the "uppermost portion" of "the panel 20":



Id. at Fig. 2, 2:3-23.

273. As illustrated above, the upper edges of the pocket-forming patch also "cross[es] over" a surface of the bra cup. Finally, as I explain above with respect to Claim 1, limitations [1G] and [1I], York renders obvious including its patch on both pockets and a "linear upper edge."

274. In my opinion, York renders obvious "wherein each patch curved lower interior body facing and opposite exterior edges are aligned with each curved lower interior body facing and opposite exterior edges, and wherein the stitching is along the curved lower interior body facing and opposite exterior edges of the patch, the linear upper edge of each patch crossing over a surface of the cup to form the linear opening."

ii. Claim 2

a. *"The system set forth in claim 1" limitation [Preamble]*

275. In my opinion, York discloses "[t]he system set forth in claim 1" for the reasons described above in claim 1.

b. *"wherein the cups and the patches form pockets, the cups being fabricated of a resilient closed cell polyurethane foam with a thickness of from 2 to 4 millimeters" limitation [2A]*

276. York in combination with the knowledge of a POSA renders this limitation obvious. As I previously explain for Claim 1, limitation [1F], York discloses cups and patches forming pockets.

277. The use of resilient polyurethane, including closed cell polyurethane, of the claimed thickness in the construction of bras was well known in the art by the time of the alleged invention. *See* NIKE-1037 (2009) at 117 (molding of closed- and open-cell polyurethane foam for bra padding); NIKE-1038 (2004) at 7:3 (polyurethane for use in bra padding), at 6:4–5 (foam thickness of 3 mm), at 3:13, 4:59–64, 5:5 (using "resilient" thermoplastic foam material, including polyurethane foam, for use in bra cup manufacturing). As discussed in ¶ 117, resilient closed- and open-cell polyurethane are widely used in the manufacturing of bras, especially in bra cups. In my opinion, it would have been obvious to a POSA to try using such material on York, and a POSA would have been motivated to do so to increase comfort of the bra. It is also my opinion a POSA would have understood resilient polyurethane foam to be a conventional component of bra cups because of its cost, availability, softness, and other tactile characteristics that make it ideal for bra

manufacturing. NIKE-1037 at 117; NIKE-1038 at 7:3. Further, a POSA would have been motivated to use closed-cell polyurethane for long-lasting durability and maintaining the desired bra cup shape. It is my opinion that a POSA would therefore have been motivated to modify York to use resilient closed cell polyurethane for the cups.

278. It is also my opinion that a POSA would further have understood the thickness of the foam to be a result-effective variable, because users desire bra cups that are thick enough to provide the desired support and shape to the breasts, but not so thick as to create discomfort or bulk. For example, polyurethane foams of a variety of thicknesses are used in the manufacturing of bras, with thinner foams used in t-shirt bras, and thicker foams exceeding 10 mm used in push up bras to displace the breasts from the bra and give a lifted appearance. In my opinion, a POSA would have been motivated to use polyurethane with the lower thickness of 2 to 4 mm in a pocket bra to ensure adequate room for the storage of items on the breast cup, rather than for additional padding. Thicknesses of 2 to 4 millimeters are desirable for meeting that goal. Further, thicknesses of 2 to 4 millimeters were known to be desirable in 2013. NIKE-1038 (2004) at 6:4–5 (disclosing a bra cup made of polyurethane with foam thickness ranging from 1–3 mm). It is my opinion that a POSA therefore would have had a high expectation of success in modifying York to include polyurethane cups with a thickness of 2 to 4 millimeters because such cups

were known and, in any event, a POSA would know how to adjust the thickness to the desired level. NIKE-1037 at 117; NIKE-1038 at 6:4–5, 7:3, 1:48–57 (adjusting the thickness of the bra cup), 3:31–37 (bra cup formed of "flexible foam material" of "varying thickness"). Thus, it is my opinion 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.

279. In my opinion, even if this limitation would not have been obvious to a POSA based on their own knowledge, York in combination with Pintor renders this limitation obvious. Pintor expressly teaches the use of polyurethanes in bras with pockets, including for use on the pocket or "breast covers" (*i.e.*, cups). *See* NIKE-1022 at 7:53–60 ("The material of construction for the breast covers or other portions of the article of apparel may comprise an elastomeric woven or nonwomen material, including . . . polyurethane."), 3:5-16 (discussing polyurethane in the construction of the pocket). Pintor further teaches the cup formed of polyurethane "having a *resilient* shape." *Id.* at 4:28–30.

280. In my opinion, a POSA would have known that the polyurethane cups taught by Pintor would include closed cell polyurethane cups of a thickness of 2 to 4 millimeters, including for the reasons discussed in ¶ 117. *See* NIKE-1037 at 117; NIKE-1038 at 6:4–5. And as explained above, it is my opinion a POSA would have been motivated to use the polyurethane cups taught by Pintor in the bra disclosed by

York because polyurethane was known to have characteristics ideal for bra manufacturing, including comfort, and would have had a high expectation of success in using closed cell polyurethane cups in the bra taught by York. A POSA would have been further motivated to combine York and Pintor, and would have had a reasonable expectation of success in doing so, for the reasons I explain below in the section titled "Reasons to Combine York and Pintor."

281. It is my opinion that York and/or York in combination with Pintor render obvious "wherein the cups and the patches form pockets, the cups being fabricated of a resilient closed cell polyurethane foam with a thickness of from 2 to 4 millimeters."

iii. Claim 3

a. *"The system as set forth in claim 1" limitation [Preamble]*

282. In my opinion, York discloses "[t]he system set forth in claim 1" for the reasons described above in claim 1.

b. *"wherein the cups and the patches form pockets, the patches being fabricated of an elastic fabric" limitation [3A]*

283. York in combination with the knowledge of a POSA renders this limitation obvious. As I previously explain in Claim 1, limitation [1F], York discloses cups and patches forming pockets.

284. It is my opinion a POSA would have understood the purpose of a pocket in a bra or other garment is to hold personal items. NIKE-1020 at 1:17–19 ("a pocket

… for receiving valuable articles such as jewelry, money or the like."), at 29–30 ("a pocket incorporated into a brassiere which is simple, easy to install, well adapted for its intended purposes"); NIKE-1022 at 2:9-13 (disclosing bra with "pockets designed to hold cellular phones, personal listening devices, cosmetics, valuable items, medical objects, supplies, and other concealed objects securely"). It is also my opinion a POSA would have understood that the shape of such objects may not easily conform to the shape of a rigid pocket. Thus, it is my opinion that a POSA would have found it obvious to manufacture the pocket patch with an elastic material, such that the pocket may stretch or expand to accommodate the placement of items for storage.

285. Pockets comprised of elastic material were well-known and popular at the time of the alleged invention. *E.g.*, NIKE-1022 at 3:5–14 ("The pocket can be formed of an extensible material that can, for example, elastically deform . . . . Such materials can include woven or nonwoven fabrics comprising Spandex®, Lycra®, nylon, neoprene, polyurethanes, polyolefins, polyesters, wool, rayon, etc."); NIKE-1039 (nylon and Lycra blended sports bras). It is my opinion, therefore, a POSA would have understood that elastic could similarly be applied to the bra disclosed in York. Thus, it is also my opinion a POSA would have found it obvious to modify York based on their own knowledge.

286. In my opinion, even if this limitation would not have been obvious to a POSA based on their own knowledge, York in combination with Pintor renders this limitation obvious. Pintor teaches bras with pockets formed of "extensible material" to allow the pocket to "elastically deform." NIKE-1022 at 3:5–7. Pintor specifically lists "woven or nonwoven fabrics comprising Spandex®, Lycra®, nylon, neoprene, polyurethanes, polyolefins, polyesters, wool, rayon, etc." *Id.* at 3:12–14.

287. It is my opinion a POSA would have understood elastic materials as having characteristics ideal for bra manufacturing and wear, especially for use in storage pockets because it would enable such pockets to hold items more easily. By contrast, it is my opinion a POSA would have known that using an inelastic material for the patches may limit a user's access to the pocket interior, as the opening would be rigid and would not stretch to allow entry of larger items or a user's hand.

288. Further, elastic materials would allow for stretch of the bra to accommodate the storage of goods on the breast cup while accommodating potential displacement from the breast from the storage of those items. Alternatively, the use of rigid materials may create excess and unnecessary bulk.

289. Thus, it is my opinion, that a POSA would have been motivated to, at a minimum, try using elastic material for the patches taught by York, including because York expressly states the patch "may be constructed of any suitable material normally used in brassieres." NIKE-1020 at 2:20–23.

290. It is my opinion a POSA would also have had a high expectation of success in using elastic materials for the patches taught by York because York teaches that the patch "may be constructed of any suitable material normally used in brassieres," NIKE-1020 at 2:20–23, and Pintor expressly teaches the use of elastic material for patches on bra cups. NIKE-1022 at, *e.g.*, Figs. 1–8 (disclosing bras with patches forming a pocket on the cups), 3:5–39 (teaching that the pocket may be formed by a patch attached to the bra cup and made of elastic material).

291. In my opinion, York and/or York in combination with Pintor render obvious "wherein the cups and the patches form pockets, the patches being fabricated of an elastic fabric."

iv. Claim 4

a. *"The system as set forth in claim 1" limitation [Preamble]*

292. In my opinion, York discloses "[t]he system set forth in claim 1" for the reasons described above in claim 1.

b. *"and further including an under-wire coupled beneath each cup in a generally horizontal plane" limitation [4A]*

293. York in combination with the knowledge of a POSA renders this limitation obvious. Bras with underwire were known and popular decades prior to 2013. *See* NIKE-1022 at 6:57–60, 7:63–66; NIKE-1021 at [0020]. Therefore, it is my opinion it would have been obvious to a POSA to try adding an underwire to York. In my opinion, a POSA would have been motivated to do so, as underwire

bras tend to provide better lift, separation, shaping, and support to the breasts of a wearer than bras without such structure. Thus, in my opinion, it would have been obvious to a POSA to modify York based on their own knowledge to include an underwire.

294. Even if this limitation would not have been obvious to a POSA based on their own knowledge, York in combination with Pintor renders this limitation obvious. Pintor expressly discloses the invention of a pocketed bra with an underwire. NIKE-1022 at 7:63–66 ("Among the many varieties of bras that may be used with the present invention, underwire bras may be of any known kind and may include underwires comprising metal, plastic, or other materials."), 6:57–58 ("further having an underwire frame member beneath the breast"). As explained in the previous paragraph, it would have been obvious to try adding an underwire to York, and a POSA would have been motivated to do so, because of the additional lift, separation, shaping, and support underwires provide. In my opinion, a POSA would have had a high expectation of success in combining Pintor and York for the reasons I explain below in the section titled "Reasons to Combine York and Pintor," including because as Pintor expressly teaches the use of underwires in bras with a breast cup pocket.

295. In my opinion, York therefore discloses "further including an underwire coupled beneath each cup in a generally horizontal plane."

v. Claim 11

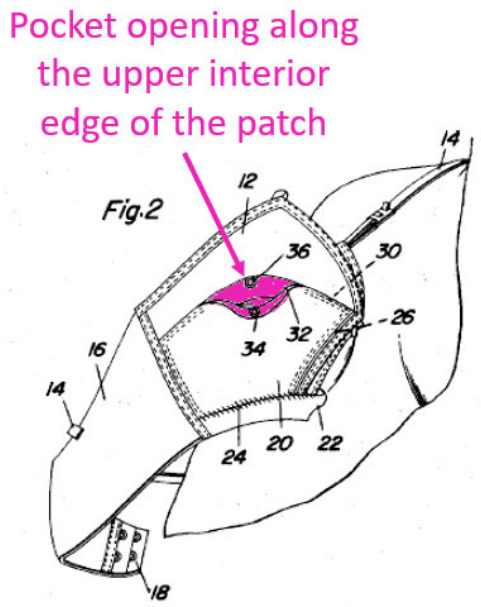
a. ***"The system as set forth in claim 1" limitation [Preamble]***

296. In my opinion, York discloses "[t]he system set forth in claim 1" for the reasons described above in claim 1.

b. ***"wherein the linear opening is facing the upper interior edge to allow the at least one of the handheld electronic device, keys, and pills to be removably positioned within the pocket by entry adjacent to a shoulder of the user" limitation [11A]***

297. York, either alone or in combination with Pintor, renders obvious this limitation. As I explain above for Claim 1, limitation [1I], York renders obvious a "linear opening." Further, as I discuss in Claim 1, limitation [1J], York discloses "at least one of the handheld electronic device, keys, and pills to be removably positioned within the pocket."

298. Further, as illustrated in Figure 2 below, York discloses pockets whose upper opening faces the upper interior edge and allow for item entry adjacent to the shoulder of the user:



NIKE-1020 at Fig. 2, 1:20-27, 1:54-2:23.

299. To the extent York does not expressly or inherently disclose an opening that is facing the upper interior edge, it is my opinion that it renders it obvious. York expressly discloses that the "object of the present invention is to provide a pocket" that allows "valuables … [to] be inserted" while making sure they are "retained in a safe and secure position." NIKE-1020 at 1:20-36, 2:17-23. In my opinion, it would have been obvious to a POSA to make the opening disclosed by York face the upper interior edge (to the extent not expressly disclosed) to further the goal of allowing easy insertion and removal of valuables. It is also my opinion a POSA would also understand that they could do so without undermining York's goal of making sure the valuables are "retained in a safe and secure position" because the opening,

including the "snap fastener" would otherwise remain unchanged. *See* NIKE-1020 at 2:11-23.

300. In my opinion, York discloses "wherein the linear opening is facing the upper interior edge to allow the at least one of the handheld electronic device, keys, and pills to be removably positioned within the pocket by entry adjacent to a shoulder of the user."

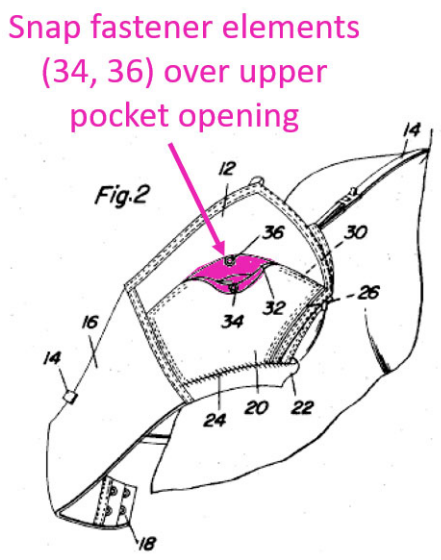
vi. Claim 12

a. *"The system as set forth in claim 1" limitation [Preamble]*

301. In my opinion, York discloses "[t]he system set forth in claim 1" for the reasons described above in claim 1.

b. *"further comprising a closure over the linear opening" limitation [12A]*

York discloses this limitation. York discloses "a snap fastener element . . . in the breast cup 12 thereby forming a closure for the pocket." NIKE-1020 at 2:11–15; Cl. 2. As discussed above with respect to Claim 1, limitation [1I], York in combination with a POSA's knowledge renders a linear opening obvious. As illustrated below, the snap fastener elements 34 and 36 are over the opening of the pocket:



NIKE-1020 at Fig. 2.

302. In my opinion, York therefore discloses "further comprising a closure over the linear opening."

vii. Reasons to Combine York and Pintor

303. York and Pintor disclose all claimed features of the "pocket bra system," as shown above. In my opinion, it would have been obvious to a POSA to simply combine the beneficial features of both bras, with the features taught by York and Pintor performing their same intended function.

304. York and Pintor each disclose inventions generally relating to bras with pockets for storage on the cups. In designing a bra with pockets, it is my opinion a POSA would have been motivated to look to the prior art references disclosing bras with pockets, such as York and Pintor, and select preferable elements from each disclosure to construct their desired pocketed bra. One advantage of York's bra is

that it has large pockets on the surface of the breast cup, aligned with the lower edges of the cups. NIKE-1020 at 2:1–7. At the same time, Pintor's bras contain more comfortable polyurethane cups, and have elastic pockets to hold objects more easily. NIKE-1022 at 3:5-19, 7:53-62. As a result, it is my opinion a POSA would have been motivated to design a bra that took advantage of the benefits provided by each of York and Pintor's bras.

305. It is also my opinion a POSA also would have understood that bras are meant to serve a diverse population with differing preferences. For example, different customers prefer different levels of support, comfort, and pocket size. It would be commercially beneficial to provide consumers with a variety of options to meet those different preferences. The prior art expressly states that having "an aesthetically pleasing design" is an important consideration. NIKE-1022 at 6:6-10. Further, bras are meant to serve a variety of different functions—providing different levels of support and types of shaping to the breasts. In my opinion, a POSA therefore would have been motivated to design a variety of combinations of bras, including those with the claimed features, so as to be able to provide options to a wide range of customers.

306. In my opinion, a POSA would have expected to have a high likelihood of success with this combination. York and Pintor are both bras with pockets on the cups for discreetly storing valuables while remaining "easily accessible." *E.g.*,

NIKE-1020 at 1:14–19, 1:28-31, 2:11–23, Figs. 1–3, Figs. 1–4; NIKE-1022 at 2:4–17, 5:37–45, 6:19–30, Figs. 1–8. And each of the features, *e.g.*, cups, pockets, stitching, would perform the same predictable function disclosed in the prior art. It is my opinion that any work needed to combine the elements taught by York and Pintor would therefore be nothing more than routine modifications well within the abilities of a POSA.

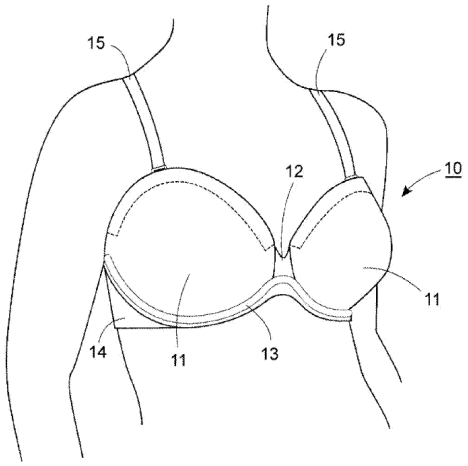
3. Ground 3: Claims 1–4 and 11–12 Are Unpatentable Over Handras in View of Pintor

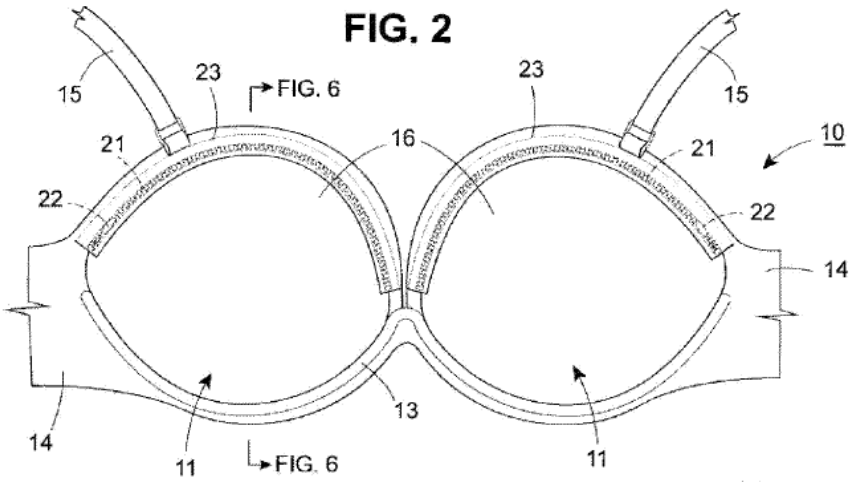
307. In my opinion, claims 1–4 and 11–12 are disclosed or rendered obvious by Handras in combination with Pintor.

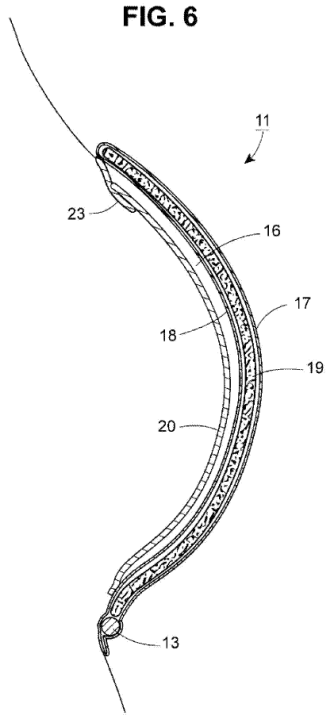
i. Claim 1

a. *"A bra pocket system combination comprising:" limitation [1A]*

308. Handras discloses this limitation. As illustrated below, Handras discloses "a bra with one or more storage pockets." NIKE-1021 at [0001].





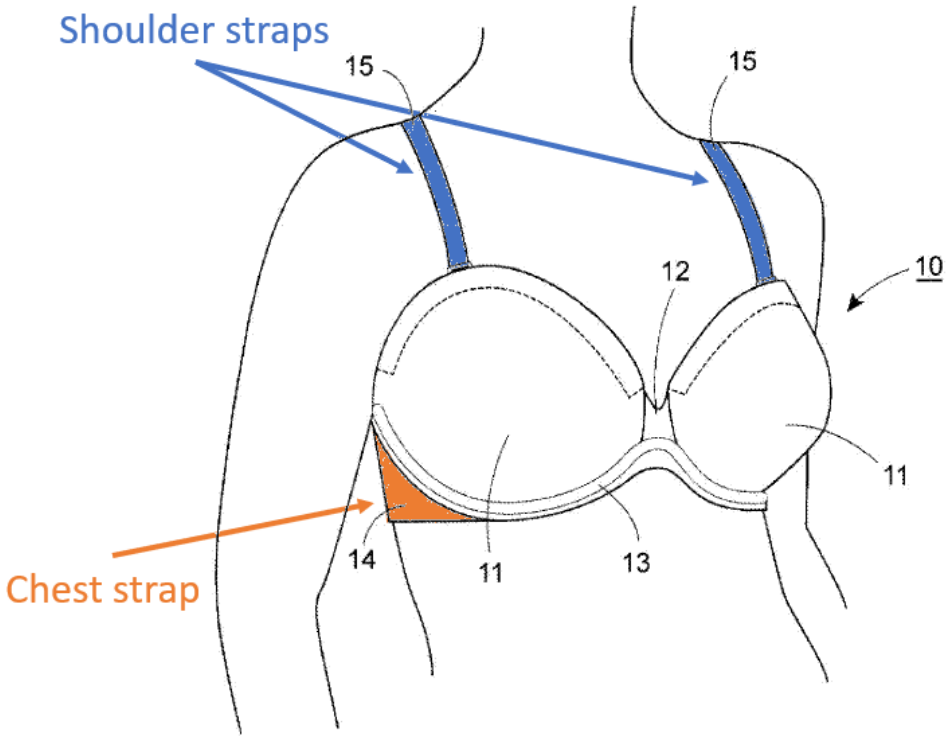


NIKE-1021 at Figs. 1–2, 6, at [0003] ("[i]t is an object of the invention to provide a pocket in a bra for receiving one or more items that is conveniently located for the wearer."), [0004] ("a concealed pocket in a bra for receiving one of [sic] more items.").

309. In my opinion, Handras therefore discloses a "bra pocket system combination comprising."

b. *"a strap assembly including a chest strap and shoulder straps;" limitation [1B]*

310. Handras discloses this limitation. As illustrated below, Handras describes a bra construction 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].

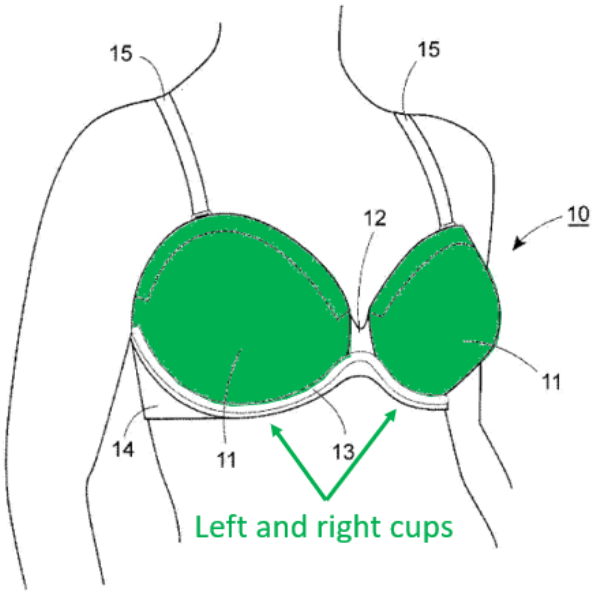


NIKE-1021 at Fig. 1.

311. In my opinion, Handras therefore discloses "a strap assembly including a chest strap and shoulder straps."

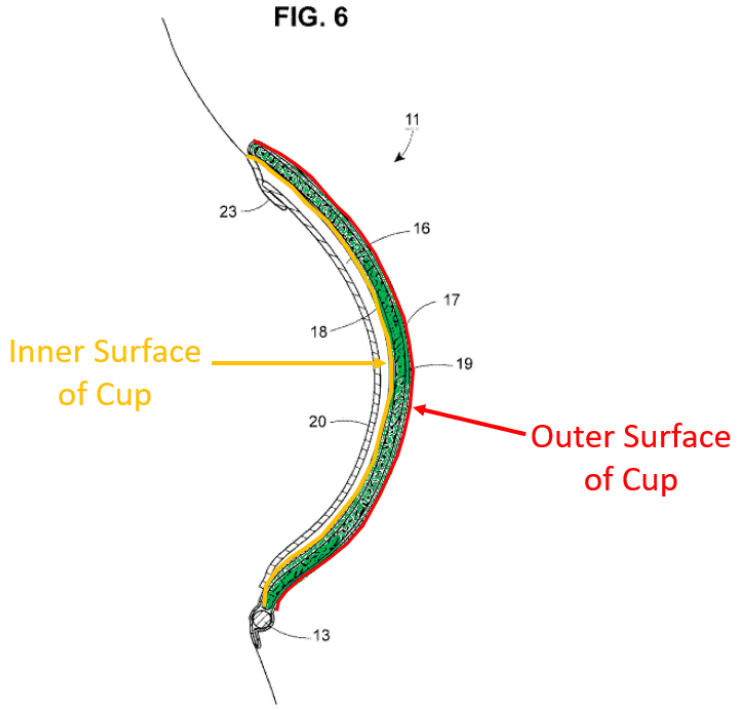
c. *"left and right cups, each cup having inside and outside surfaces," limitation [1C]*

312. Handras discloses this limitation. Handras discloses a bra having "a pair of cups" for the left and right breasts. NIKE-1021 at [0020].



Id. at Fig. 1, [0006] ("a bra comprised of a pair of cups"), [0011], [0029], Cl. 1, Cl. 6.

313. It is my opinion a POSA would understand these cups to necessarily have inside and outside surfaces. The inside and outside surfaces are illustrated in Figure 6:



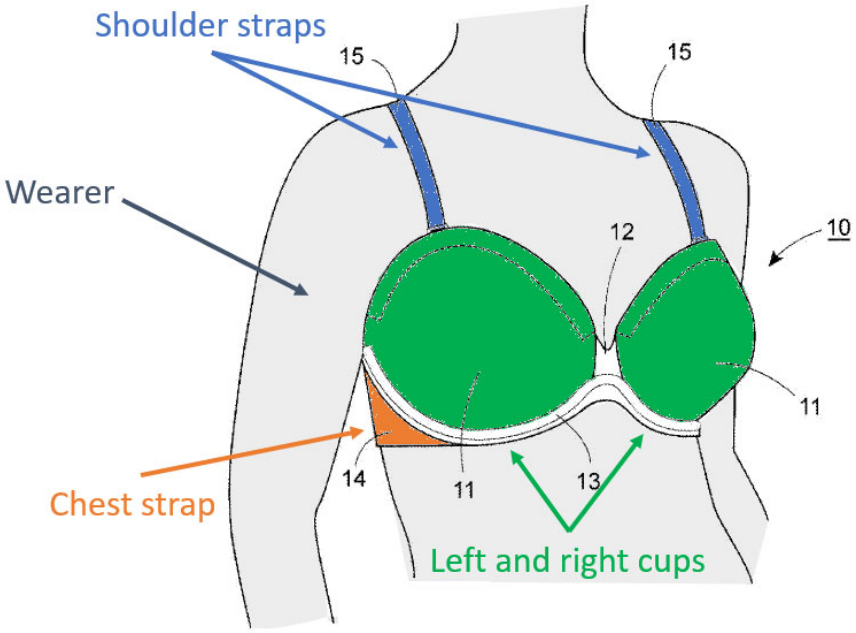
NIKE-1021 at Fig. 6, [0022] ("each cup 11 has an outer ply of material 17, an inner ply of material 18").

314. In my opinion, Handras discloses "left and right cups, each cup having inside and outside surfaces."

d. ***"the strap assembly being attached to the cups whereby the strap assembly adheres the cups to a wearer," limitation [1D]***

315. Handras discloses this limitation. As explained above in limitations [1B] and [1C], Handras discloses a "strap assembly" and "left and right cups."

316. Further, Figure 1 illustrates the disclosed strap assembly adhering the cups to the wearer:

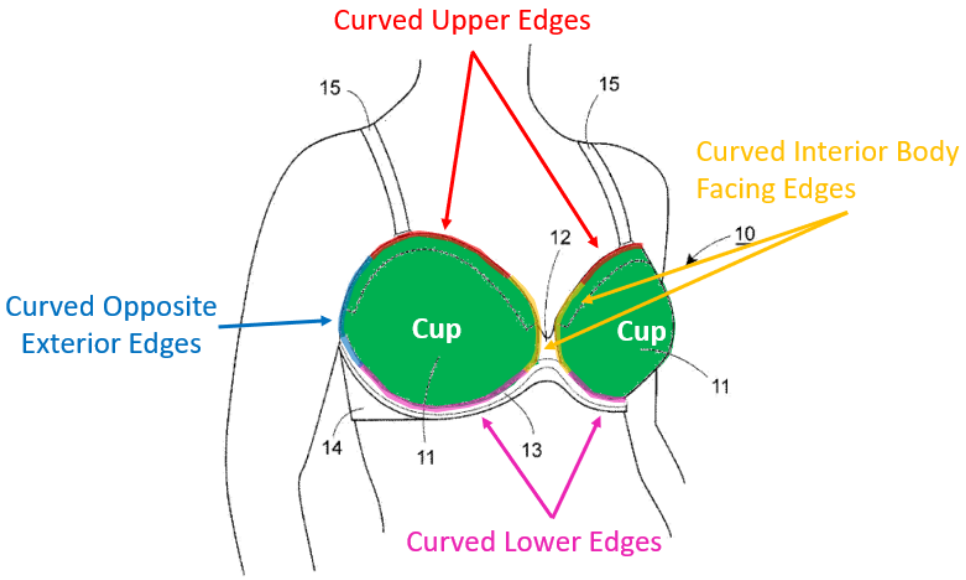


NIKE-1021 at Fig. 1.

317. In my opinion, Handras therefore discloses "the strap assembly being attached to the cups whereby the strap assembly adheres the cups to a wearer."

e. *"each cup having curved upper, lower, interior body facing and opposite exterior edges;" limitation [1E]*

318. Handras discloses this limitation. As illustrated below, Handras discloses cups with curved upper, lower, interior body facing, and opposite exterior edges.

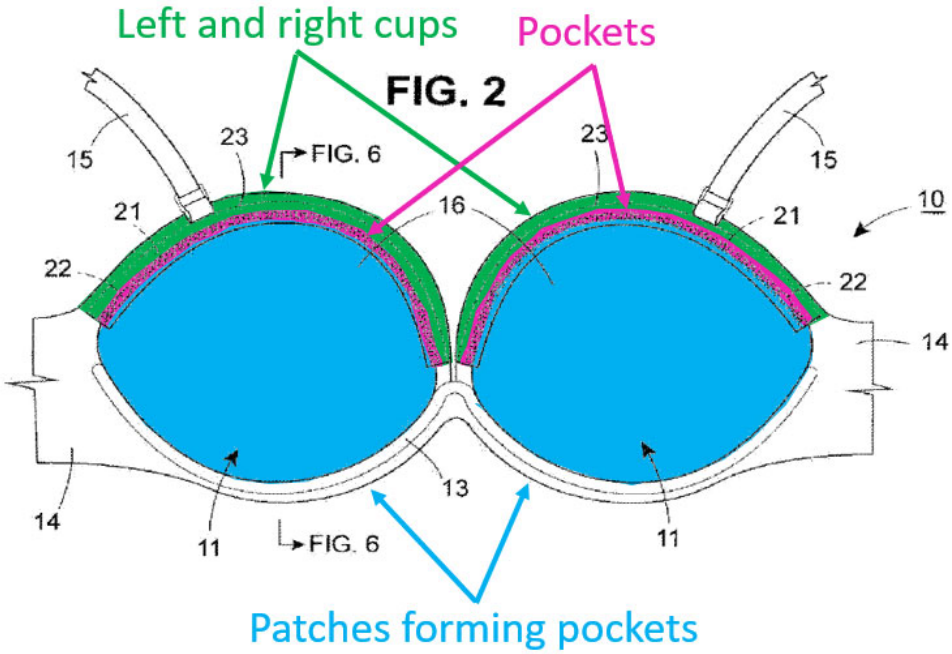


NIKE-1021 at Fig. 1.

319. In my opinion, Handras therefore discloses "each cup having curved upper, lower, interior body facing and opposite exterior edges."

f. *"a patch forming a pocket operatively associated with each cup," limitation [1F]*

320. Handras discloses this limitation. Handras discloses "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].


Left and right cups
Pockets
FIG. 2
15
23
FIG. 6
23
15
21
16
21
10
22
22
14
14
13
11
FIG. 6
11
Patches forming pockets

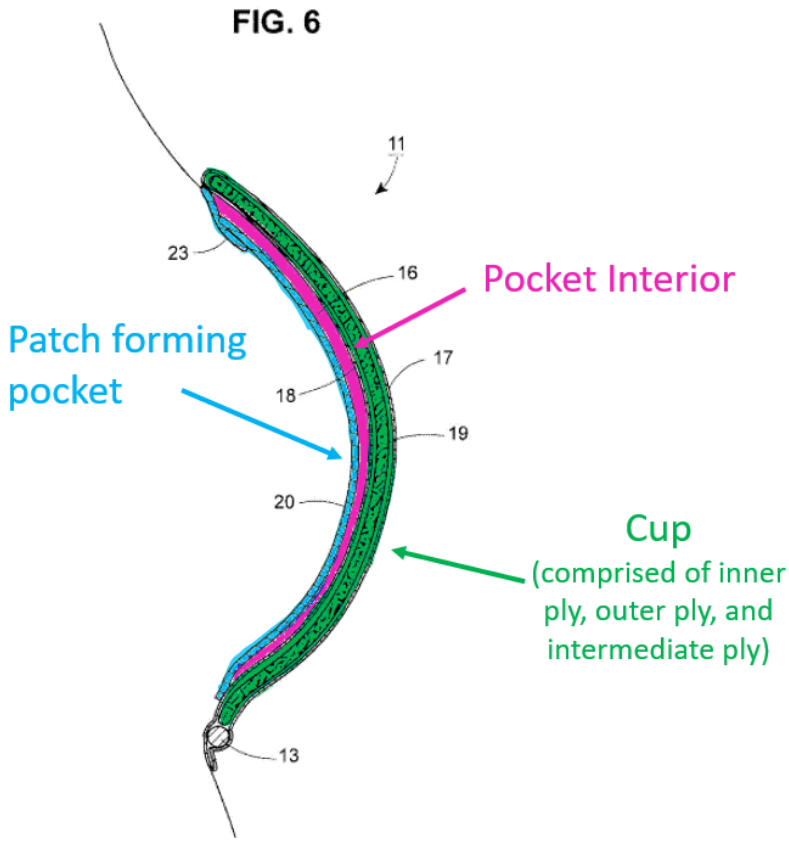


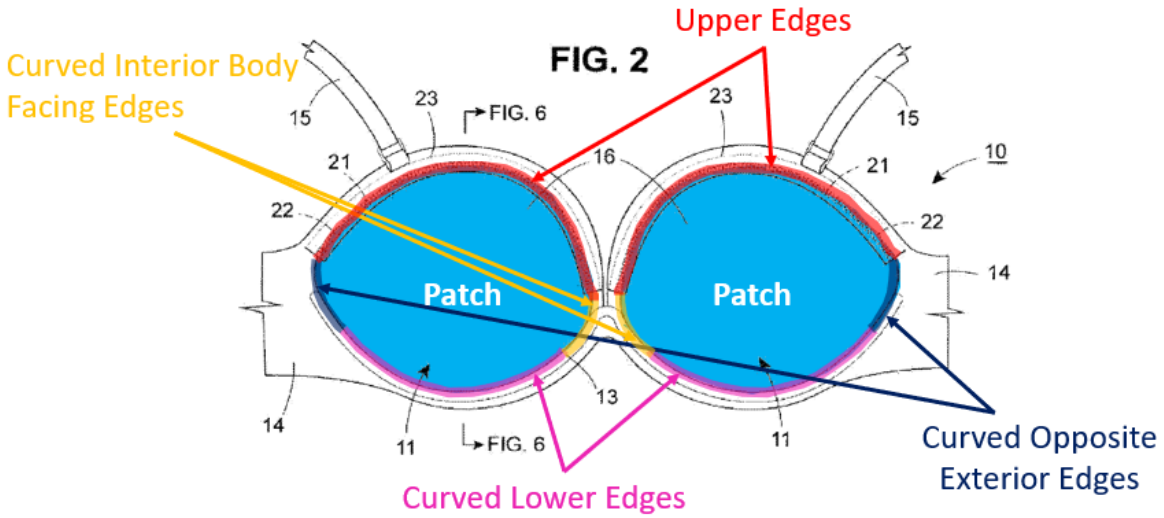
FIG. 6
11
23
16
Pocket Interior
Patch forming pocket
17
18
19
20
Cup
(comprised of inner ply, outer ply, and intermediate ply)
13

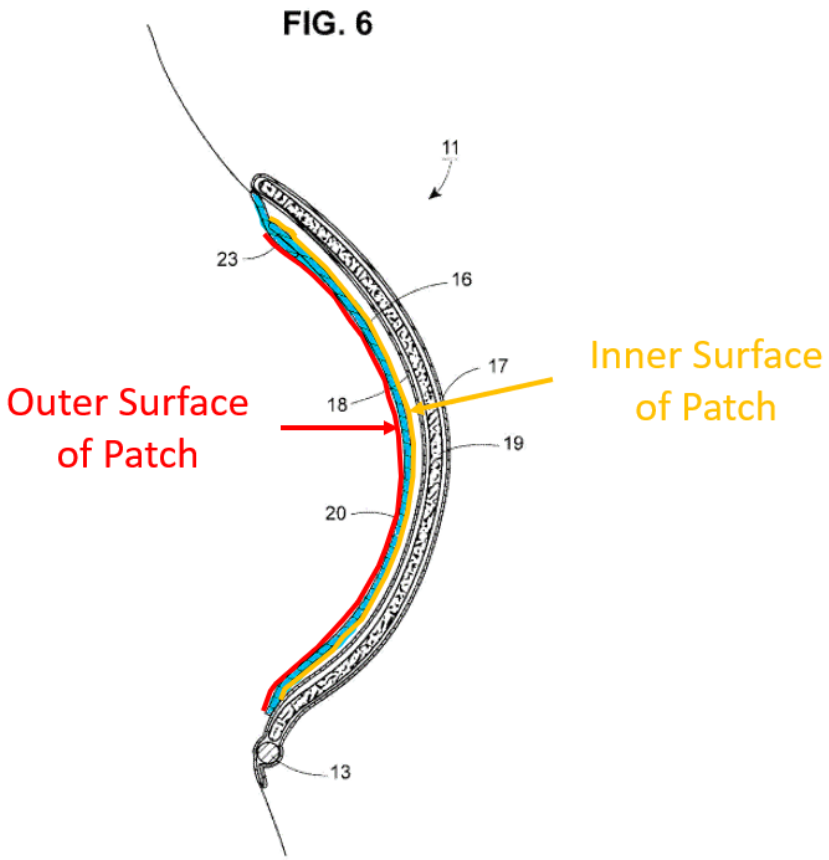
NIKE-1021 at Figs. 2, 6, at [0006] ("a pair of cups wherein each cup is of multi-ply construction with a built-in pocket."), [0007] ("a fourth ply of material is sewn or otherwise secured to the inner ply in order to form the built-in pocket with an opening extending along the upper section of the cup.").

321. It is my opinion that Handras renders obvious "a patch forming a pocket operatively associated with each cup."

g. *"each patch having a linear upper edge and curved lower, interior body facing, and opposite exterior edges, each patch having inside and outside surfaces;" limitation [1G]*

322. Handras renders this limitation obvious. As illustrated below, Handras discloses a patch with curved lower, interior body facing, and opposite exterior edges, each patch having inside and outside surfaces:





NIKE-1021 at Figs. 2, 6. It is my opinion a POSA would have understood the patches to necessarily have inside and outside surfaces.

323. While Handras discloses a patch with a curved "upper edge," for the same reasons I explain above in Claim 1, limitation [1G] with respect to Barg, it is my opinion it would have been obvious to a POSA, based on their own knowledge that they could modify Handras's patch so that it would have a "linear upper edge."

324. Both bras and pockets have been long known in the art and in designing a bra with storage pockets, it is my opinion a POSA would have been motivated to look for known solutions in the art, such as the variety of bra designs, placements of the pockets, and pocket shapes. In my opinion, a POSA would have understood

there to be a finite number of edge designs for the patches. It is also my opinion a POSA would have further understood the degree of curvature of the edge of the patch to be a simple choice of design, as the prior art makes clear. NIKE-1022 at 6:6–10 ("The shape of the [pocket opening] 32 is typically determined by the shape of the side 34D, which may be concave, as shown in FIG. 2, *or may be substantially straight, convex, or have any combination of curved or linear components defining an aesthetically pleasing design*."); NIKE-1025 at Fig. 2 (pockets with linear upper edges).

325. Neither the '288, nor the prosecution history, describes the "upper edge" being "linear" as an allegedly novel or advantageous aspect of the purported invention. *See generally* NIKE-1003; NIKE-1004. Nor could they, as "straight" or "linear" pocket edges were well-known. NIKE-1022 at 6:6–10; NIKE-1025 at Fig. 2.

326. Even if this limitation would not have been obvious to a POSA based on their own knowledge, it is my opinion that Handras in combination with Pintor renders this limitation obvious. Pintor expressly discloses a patch on the breast cups with a "substantially straight" opening. NIKE-1022 at 6:6–10, Figs. 1–2, 4, 7. Handras teaches that the pocket can be modified to accommodate the storage of particular items. NIKE-1021 at [0025]. A POSA would have been motivated to make the top edge of the patch linear for secure holding of a rectangular item, such

as an electronic device or rectangular key, ensuring the item is held snugly within. Further, a linear upper edge would also help ensure the pocket's visibility is obscured by the cup, keeping the pocket and its contents hidden.

327. It is my opinion a POSA would also have had a reasonable expectation of success in making the top of Handras's patch linear. This is simple technology and bras with pockets with linear openings were well known in the art. NIKE-1022 at 6:6–10; NIKE-1025 at Fig. 2. Moreover, it is my opinion a POSA would have known that the shape of the upper edge is merely a design choice and could be designed in a number of known ways, including straight.

328. It is my opinion that it therefore would have been well within the abilities of a POSA to make such a routine modification and a POSA would have had a high expectation of success in doing so.

329. In my opinion, Handras therefore renders obvious "each patch having a linear upper edge and curved lower, interior body facing, and opposite exterior edges, each patch having inside and outside surfaces."

h. *"stitching coupling 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;" limitation [1H]*

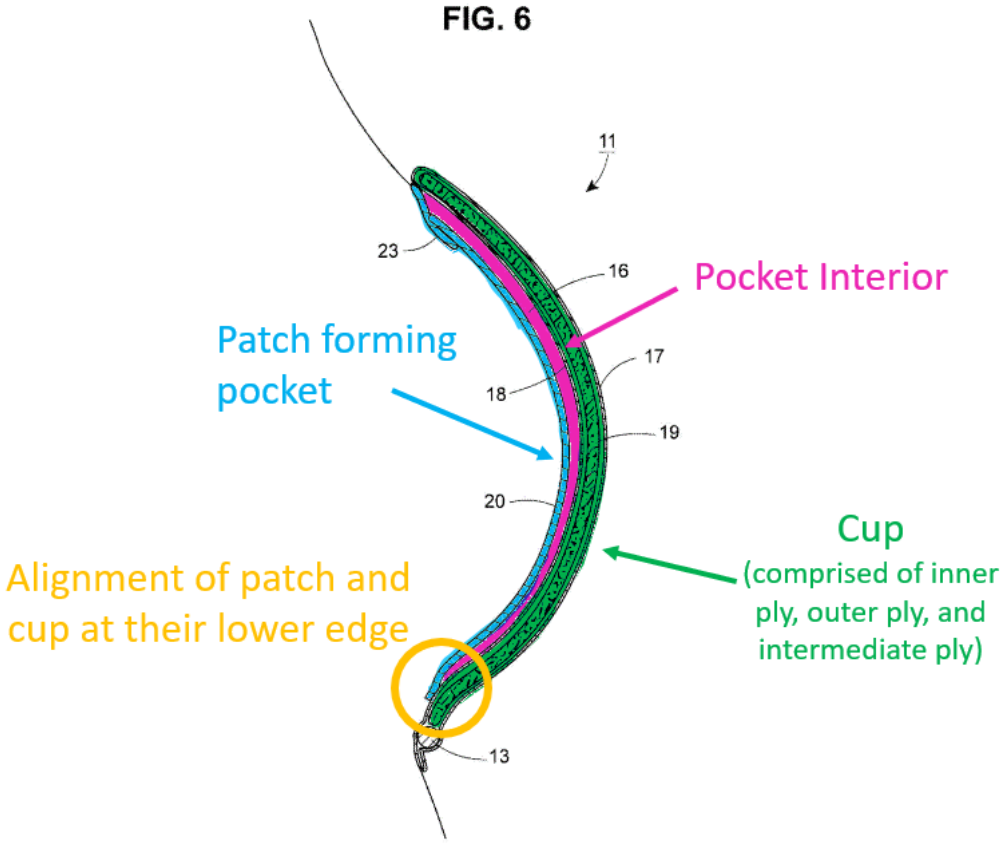
330. Handras discloses this limitation. Handras discloses each patch is "sewn" to each cup to form the pocket with an upper opening. *See* NIKE-1021 at [0022] ("a fourth ply of material 20 is sewn or otherwise secured to the inner ply 18

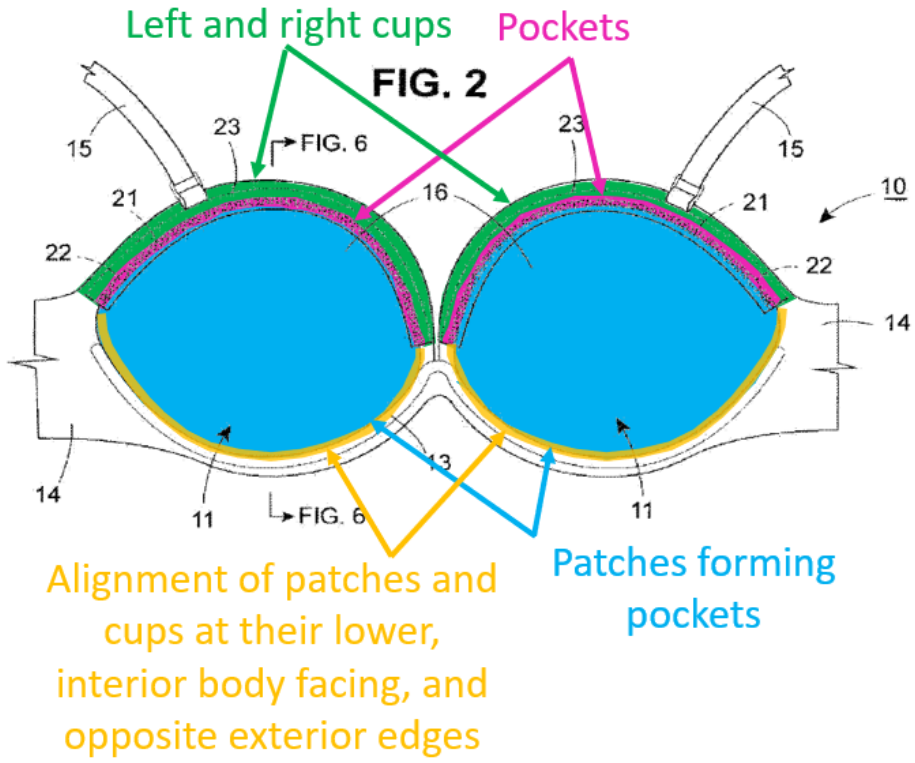
in order to form the pocket 16 with an opening extending along the upper section of the cup.”), [0007].

331. It is my opinion a POSA would have understood that a pocket with an upper opening could be formed by stitching along the lower and side edges of a patch. Handras describes the patch as a “fourth ply of material” sewn to the surface of the cup, NIKE-1021 at [0022], which, in my opinion, would have indicated to a POSA that the patch and cup are similar in size. This is confirmed by Handras’s disclosure that “each pocket 16 occupies a major faction of the back of a cup 11.” NIKE-1021 at [0025].

332. 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 their respective lower, interior body facing, and opposite exterior edges:

FIG. 6


11
23
16
Pocket Interior
Patch forming pocket
17
18
19
20
Cup
(comprised of inner ply, outer ply, and intermediate ply)
Alignment of patch and cup at their lower edge
13

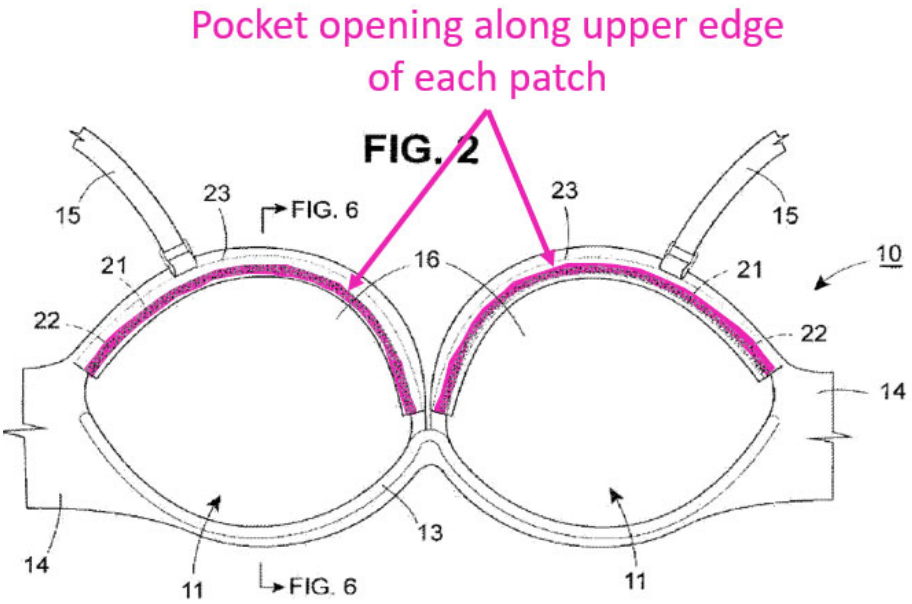

Left and right cups
Pockets
FIG. 2
15
23
FIG. 6
23
15
21
16
21
10
22
22
14
14
11
FIG. 6
13
11
Alignment of patches and cups at their lower, interior body facing, and opposite exterior edges
Patches forming pockets

NIKE-1021 at Figs. 2, 6

333. It is therefore my opinion that Handras discloses "stitching coupling 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."

i. *"a linear opening formed along the upper edge of each patch;" limitation [1I]*

334. Handras renders this limitation obvious. First, Handras expressly discloses that the openings are at the "upper edges" of each patch. NIKE-1021 at [0022] ("the pocket 16 with an opening extending along the upper section of the cup."). The upper opening is further illustrated in Figure 2:



NIKE-1021 at Fig. 2.

335. Handras also renders obvious a patch with a linear upper edge for the reasons explained above in limitation [1G]. And, in my opinion, a POSA would

have understood the shape of the pocket opening to be determined by the shape of the patch edge. Thus, Handras also renders obvious a "linear" opening for the same reasons I explain above for Claim 1, limitation [1G].

336. It is my opinion that Handras renders obvious "a linear opening formed along the upper edge of each patch."

j. ***"at least one of a handheld electronic device, keys, and pills removably positioned within the pocket of at least one of the left and right cups; and" limitation [1J]***

337. Handras discloses this limitation. Handras explicitly contemplates the use of the disclosed pocket "to hold items, such as, credit cards, car keys, cell phones and the like." NIKE-1021 at [0002]. A cell phone constitutes a "handheld electronic device."

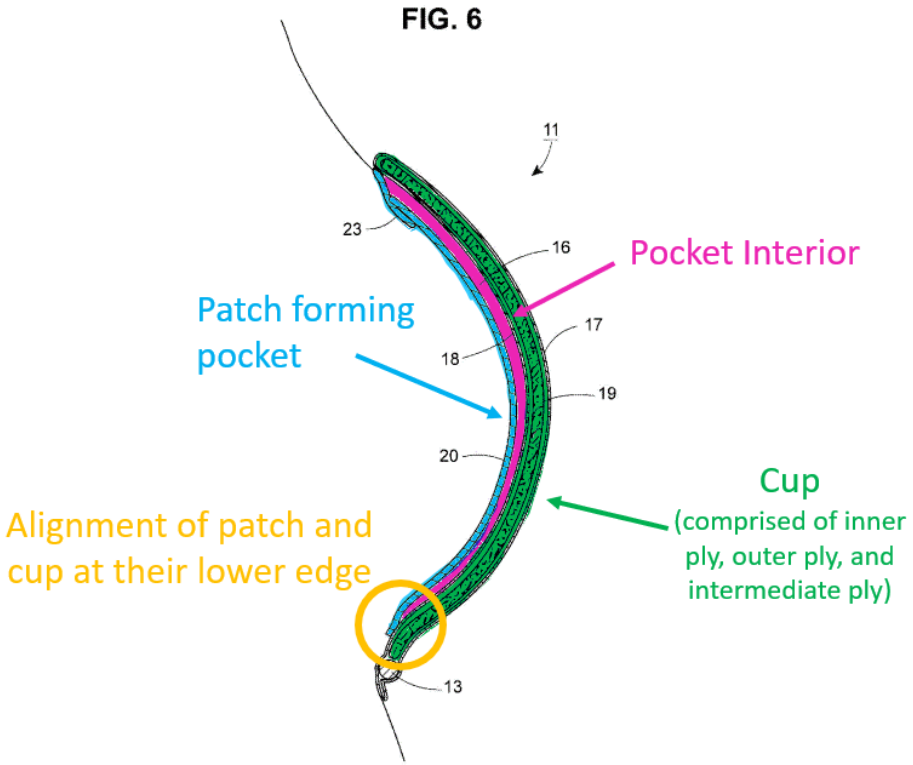
338. In my opinion, Handras discloses "at least one of a handheld electronic device, keys, and pills removably positioned within the pocket of at least one of the left and right cups."

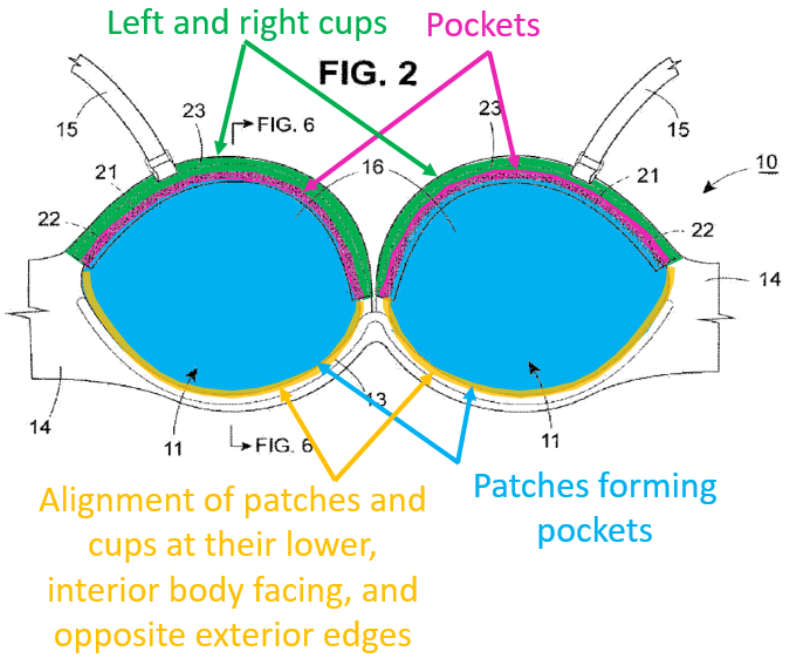
k. ***"wherein each patch curved lower interior body facing and opposite exterior edges are aligned with each curved lower interior body facing and opposite exterior edges, and wherein the stitching is along the curved lower interior body facing and opposite exterior edges of the patch, the linear upper edge of each patch crossing over a surface of the cup to form the linear opening" limitation [1K]***

339. Handras, either alone or in combination with Pintor, renders obvious this limitation. As I previously explain for Claim 1, limitations [1E] and [1G], Handras discloses cups and patches with curved lower interior body facing and

opposite exterior edges. Handras also discloses "stitching coupling 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," as explained above in limitation [1H].

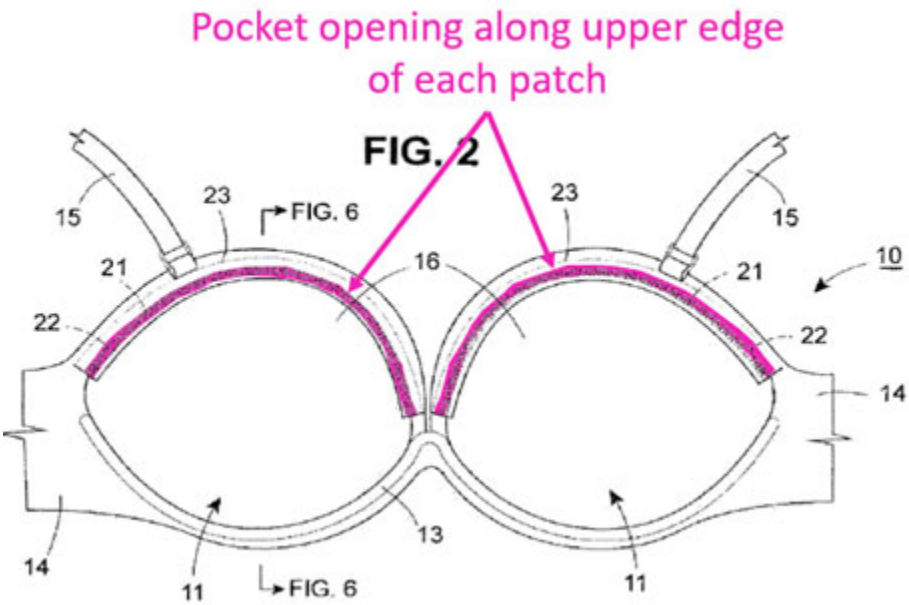
340. In my opinion, a POSA would have understood that in such a configuration, the lower interior body facing and opposite exterior edges of the cups and patches are aligned.





NIKE-1021 at Figs. 2, 6.

341. Additionally, as discussed in limitation [1I], Handras discloses a pocket with an upper opening:



NIKE-1021 at Fig. 2. As illustrated above, the upper edges of each pocket-forming patch also "cross[] over" a surface of each bra cup.

342. Finally, Handras, alone or in combination, renders obvious a linear upper edge of each patch and pocket opening, as for the reasons I explain above for Claim 1, limitations [1G] and [1I].

343. In my opinion, Handras renders obvious "wherein each patch curved lower interior body facing and opposite exterior edges are aligned with each curved lower interior body facing and opposite exterior edges, and wherein the stitching is along the curved lower interior body facing and opposite exterior edges of the patch, the linear upper edge of each patch crossing over a surface of the cup to form the linear opening."

ii. Claim 2

a. *"The system set forth in claim 1" limitation [Preamble]*

344. In my opinion, Handras discloses "[t]he system set forth in claim 1" for the reasons described above in claim 1.

b. *"wherein the cups and the patches form pockets, the cups being fabricated of a resilient closed cell polyurethane foam with a thickness of from 2 to 4 millimeters" limitation [2A]*

345. Handras in combination with the knowledge of a POSA renders this limitation obvious. As previously discussed with respect to Claim 1, limitation [1F], Handras discloses cups and patches forming pockets.

346. The use of resilient polyurethane, including closed cell polyurethane, of the claimed thickness in the construction of bras was well known in the art by the time of the alleged invention. *See* NIKE-1037 (2009) at 117 (molding of closed- and open-cell polyurethane foam for bra padding); NIKE-1038 (2004) at 7:3 (polyurethane for use in bra padding), at 6:4–5 (foam thickness of 3 mm), at 3:13, 4:59–64, 5:5 (using "resilient" thermoplastic foam material, including polyurethane foam, for use in bra cup manufacturing). As discussed in ¶ 117, resilient closed- and open-cell polyurethane are widely used in the manufacturing of bras, especially in bra cups. In my opinion, it would have been obvious to a POSA to try using such material on Handras, and a POSA would have been motivated to do so to increase comfort of the bra. Handras itself discloses the use of "resilient foam material" in the formation of the bra cup. NIKE-1037 at 117; NIKE-1038 at 7:3. Further, a POSA would have been motivated to use closed-cell polyurethane for long-lasting durability and maintaining the desired bra cup shape. It is my opinion that a POSA would therefore have been motivated to use such a material on Handras.

347. It is also my opinion that a POSA would further have understood the thickness of the foam to be a result-effective variable, because users desire bra cups that are thick enough to provide the desired support and shape to the breasts, but not so thick as to create discomfort or bulk. For example, polyurethane foams of a variety of thicknesses are used in the manufacturing of bras, with thinner foams used

in t-shirt bras, and thicker foams exceeding 10 mm used in push up bras to displace the breasts from the bra and give a lifted appearance. In my opinion, a POSA would have been motivated to use polyurethane with the lower thickness of 2 to 4 mm in a pocket bra to ensure adequate room for the storage of items on the breast cup, rather than for additional padding. Thicknesses of 2 to 4 millimeters are desirable for meeting that goal. Though Handras discloses foam of half an inch thick, *see* NIKE-1021 at [0026], thicknesses of 2 to 4 millimeters were known to be desirable in 2013. NIKE-1038 (2004) at 6:4–5 (disclosing a bra cup made of polyurethane with foam thickness ranging from 1–3 mm). It is my opinion that a POSA therefore would have had a high expectation of success in modifying Handras to include polyurethane cups with a thickness of 2 to 4 millimeters because such cups were known and, in any event, a POSA would know how to adjust the thickness to the desired level. NIKE-1037 at 117; NIKE-1038 at 6:4–5, 7:3, 1:48–57 (adjusting the thickness of the bra cup), 3:31–37 (bra cup formed of "flexible foam material" of "varying thickness"). Thus, it is my opinion 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.

348. In my opinion, even if this limitation would not have been obvious to a POSA based on their own knowledge, Handras in combination with Pintor renders this limitation obvious. Pintor expressly teaches the use of polyurethanes in bras

with pockets, including for use on the pocket or "breast covers" (*i.e.*, cups). *See* NIKE-1022 at 7:53–60 ("The material of construction for the breast covers or other portions of the article of apparel may comprise an elastomeric woven or nonwomen material, including . . . polyurethane."), 3:5-16 (discussing polyurethane in the construction of the pocket). Pintor further teaches the cup formed of polyurethane "having a *resilient* shape." *Id.* at 4: 28–30.

349. In my opinion, a POSA would have known that the polyurethane cups taught by Pintor would include closed cell polyurethane cups of a thickness of 2 to 4 millimeters, including for the reasons discussed in ¶ 117. *See* NIKE-1037 at 117; NIKE-1038 at 6:4–5. And as explained above, it is my opinion a POSA would have been motivated to use the polyurethane cups taught by Pintor in the bra disclosed by Handras because polyurethane was known to have characteristics ideal for bra manufacturing, including comfort, and would have had a high expectation of success in using closed cell polyurethane cups in the bra taught by Handras. A POSA would have been further motivated to combine Handras and Pintor, and would have had a reasonable expectation of success in doing so, for the reasons I explain below in the section titled "Reasons to Combine Handras and Pintor."

350. It is my opinion that Handras and/or Handras in combination with Pintor render obvious "wherein the cups and the patches form pockets, the cups

being fabricated of a resilient closed cell polyurethane foam with a thickness of from 2 to 4 millimeters."

iii. Claim 3

a. *"The system as set forth in claim 1" limitation [Preamble]*

351. In my opinion, Handras discloses "[t]he system set forth in claim 1" for the reasons described above in claim 1.

b. *"wherein the cups and the patches form pockets, the patches being fabricated of an elastic fabric" limitation [3A]*

352. Handras in combination with the knowledge of a POSA renders this limitation obvious. As previously discussed in Claim 1, limitation [1F] above, Handras discloses cups and patches forming pockets.

353. It is my opinion a POSA would have understood the purpose of a pocket in a bra or other garment is to hold personal items. NIKE-1021 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."), [0004] ("It is another object of the invention to provide a concealed pocket in a bra for receiving one of [sic] more items."), [0002] ("various types of bras have been fabricated with pockets or pouches in order to hold items, such as, credit cards, car keys, cell phones and the like."); NIKE-1022 at 2:9-13 (disclosing bra with "pockets designed to hold cellular phones, personal listening devices, cosmetics, valuable items, medical objects, supplies, and other concealed objects securely"). It is also my opinion a POSA would have

understood that the shape of such objects may not easily conform to the shape of a rigid pocket. Thus, it is my opinion that a POSA would have found it obvious to manufacture the pocket patch with an elastic material, such that the pocket may stretch or expand to accommodate the placement of items for storage.

354. Pockets comprised of elastic material were well-known and popular at the time of the alleged invention. *E.g.*, NIKE-1022 at 3:5–14 ("The pocket can be formed of an extensible material that can, for example, elastically deform . . . . Such materials can include woven or nonwoven fabrics comprising Spandex®, Lycra®, nylon, neoprene, polyurethanes, polyolefins, polyesters, wool, rayon, etc."); NIKE-1039 (nylon and Lycra blended sports bras). It is my opinion, therefore, a POSA would have understood that elastic could similarly be applied to the bra disclosed in Handras. Thus, it is also my opinion a POSA would have found it obvious to modify Handras based on their own knowledge.

355. In my opinion, even if this limitation would not have been obvious to a POSA based on their own knowledge, Handras in combination with Pintor renders this limitation obvious. Pintor teaches bras with pockets formed of "extensible material" to allow the pocket to "elastically deform." NIKE-1022 at 3:5–7. Pintor specifically lists "woven or nonwoven fabrics comprising Spandex®, Lycra®, nylon, neoprene, polyurethanes, polyolefins, polyesters, wool, rayon, etc." *Id.* at 3:12–14.

356. It is my opinion a POSA would have understood elastic materials as having characteristics ideal for bra manufacturing and wear, especially for use in storage pockets because it would enable such pockets to hold items more easily. By contrast, it is my opinion a POSA would have known that using an inelastic material for the patches may limit a user's access to the pocket interior, as the opening would be rigid and would not stretch to allow entry of larger items or a user's hand.

357. Further, elastic materials would allow for stretch of the bra to accommodate the storage of goods on the breast cup while accommodating potential displacement from the breast from the storage of those items. Alternatively, the use of rigid materials may create excess and unnecessary bulk.

358. Thus, a POSA would have found it obvious to modify Handras to include elastic material based on their own knowledge or as expressly taught by Pintor.

359. It is my opinion a POSA would also have had a high expectation of success in using elastic materials for the patches taught by Handras because Pintor expressly teaches the use of elastic material for patches on bra cups. NIKE-1022 at, *e.g.*, Figs. 1–8 (disclosing bras with patches forming a pocket on the cups), 3:5–39 (teaching that the pocket may be formed by a patch attached to the bra cup and made of elastic material).

360. In my opinion, Handras and/or Handras in combination with Pintor render obvious "wherein the cups and the patches form pockets, the patches being fabricated of an elastic fabric."

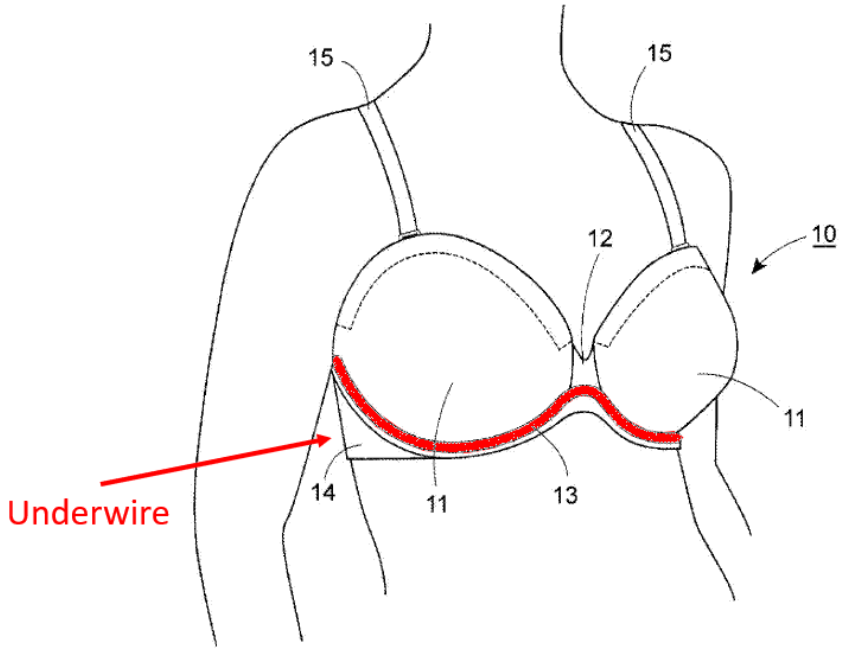
iv. Claim 4

a. *"The system as set forth in claim 1" limitation [Preamble]*

361. In my opinion, Handras discloses "[t]he system set forth in claim 1" for the reasons described above in claim 1.

b. *"and further including an under-wire coupled beneath each cup in a generally horizontal plane" limitation [4A]*

362. Handras discloses this limitation. Handras discloses "the bra 10 is of generally conventional structure and style for use as an everyday bra having . . . *an underwire* 13." NIKE-1021 at [0020]. As shown below, the underwire is positioned in a "generally horizontal plane" under the breasts and breast cups across the wearer's torso.



NIKE-1021 at Fig. 1.

363. In my opinion, Handras therefore discloses "further including an under-wire coupled beneath each cup in a generally horizontal plane."

v. Claim 11

a. ***"The system as set forth in claim 1" limitation [Preamble]***

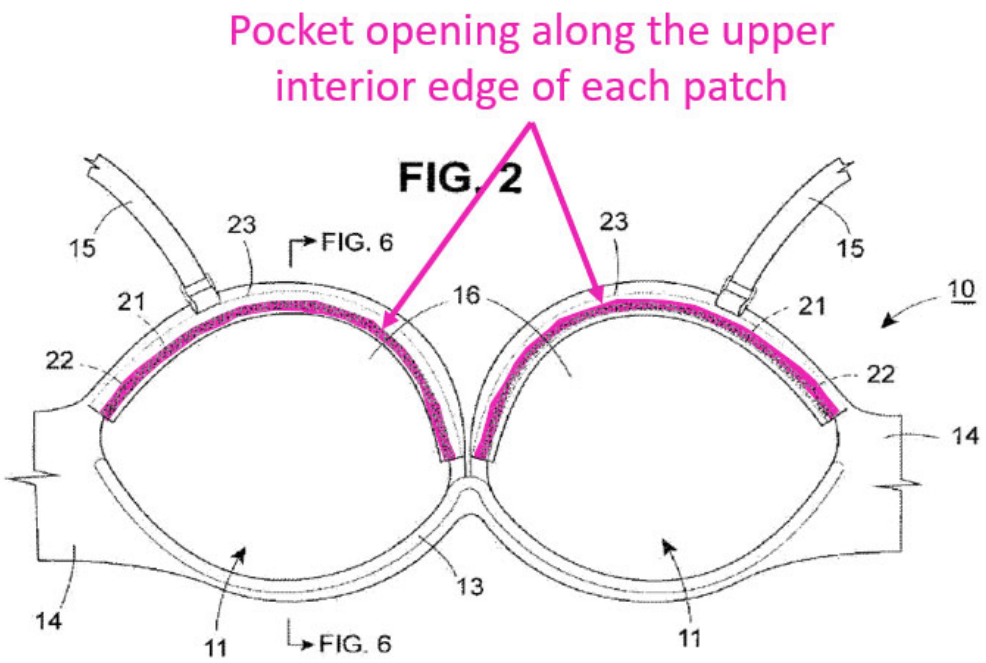
364. In my opinion, Handras discloses "[t]he system set forth in claim 1" for the reasons described above in claim 1.

b. ***"wherein the linear opening is facing the upper interior edge to allow the at least one of the handheld electronic device, keys, and pills to be removably positioned within the pocket by entry adjacent to a shoulder of the user" limitation [11A]***

365. Handras, either alone or in combination with Pintor, renders obvious this limitation. As previously discussed above for Claim 1, limitation [1I], Handras

renders obvious a "linear opening." Further, as discussed in limitation [1J] Handras discloses "at least one of the handheld electronic device, keys, and pills to be removably positioned within the pocket."

366. Further, as illustrated in Figure 2 below, Handras discloses pockets whose upper opening faces the upper interior edge and allow for item entry adjacent to the shoulder of the user:



NIKE-1021 at Fig. 2, [0007], [0010], [0022], [0024].

367. It is therefore my opinion that Handras renders "wherein the linear opening is facing the upper interior edge to allow the at least one of the handheld electronic device, keys, and pills to be removably positioned within the pocket by entry adjacent to a shoulder of the user," obvious.

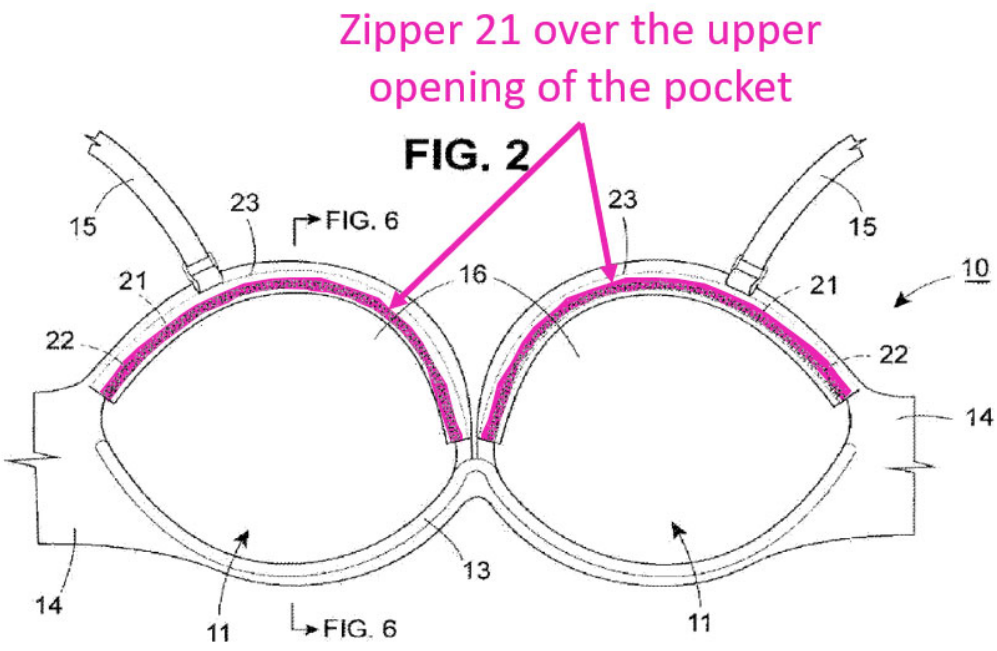
vi. Claim 12

a. *"The system as set forth in claim 1" limitation [Preamble]*

368. In my opinion, Handras discloses "[t]he system set forth in claim 1" for the reasons described above in claim 1.

b. *"further comprising a closure over the linear opening" limitation [12A]*

369. Handras discloses this limitation. Handras discloses "zippers for quick and easy access and closure [of the pocket]." NIKE-1021 at [0031], [0010], [0023]. For the reasons I explain above for Claim 1, limitation [1I], Handras in combination with a POSA's knowledge renders a linear opening obvious. As illustrated below, the zipper (21) closure is the pocket opening:



NIKE-1021 at Fig. 2.

370. In my opinion, Handras therefore discloses "further comprising a closure over the linear opening."

vii. Reasons to Combine Handras and Pintor

371. Handras and Pintor disclose all claimed features of the "pocket bra system," as shown above. Also, in my opinion, it would have been obvious to a POSA to simply combine the beneficial features of both bras, with the features taught by Handras and Pintor performing their same intended function.

372. Handras and Pintor each disclose inventions generally relating to bras with pockets for storage on the cups. In designing a bra with pockets, it is my opinion a POSA would have been motivated to look to the prior art references disclosing bras with pockets, such as Handras and Pintor, and select preferable elements from each disclosure to construct their desired pocketed bra. One advantage of Handras's bra is that it has large pockets on the surface of the breast cup, aligned with the lower edges of the cups. NIKE-1021 at [0025], Fig. 2. At the same time, Pintor's bras contain comfortable polyurethane cups, and have elastic pockets to hold objects more easily. NIKE-1022 at 3:5-19, 7:53-62. As a result, it is my opinion a POSA would have been motivated to design a bra that took advantage of the benefits provided by each of Handras and Pintor's bras.

373. It is my opinion a POSA also would have understood that bras are meant to serve a diverse population with differing preferences. For example,

different customers prefer different levels of support, comfort, and pocket size. It would be commercially beneficial to provide consumers with a variety of options to meet those different preferences. The prior art expressly states that having "an aesthetically pleasing design" is an important consideration. NIKE-1022 at 6:6-10. Further, bras are meant to serve a variety of different functions—providing different levels of support and types of shaping to the breasts. In my opinion, a POSA therefore would have been motivated to design a variety of combinations of bras, including those with the claimed features, so as to be able to provide options to a wide range of customers.

374. In my opinion, a POSA would have expected to have a high likelihood of success with this combination. Handras and Pintor are both bras with pockets on the cups for discreetly storing valuables while remaining "easily accessible." *E.g.*, NIKE-1021 at [0001], [0003], [0004], Figs. 1–6; NIKE-1022 at 2:4–17, 5:37–45, 6:19–30, Figs. 1–8. And each of the elements, *e.g.*, cups, pockets, stitching, would perform the same predictable function disclosed in the prior art. It is my opinion that any work needed to combine the elements taught by Handras and Pintor would therefore be nothing more than routine modifications well within the abilities of a POSA.

B. The ’036 Patent

1. Ground 1: Claims 1–3, 5–10 and 18 Are Unpatentable Over Barg in view of Pintor.

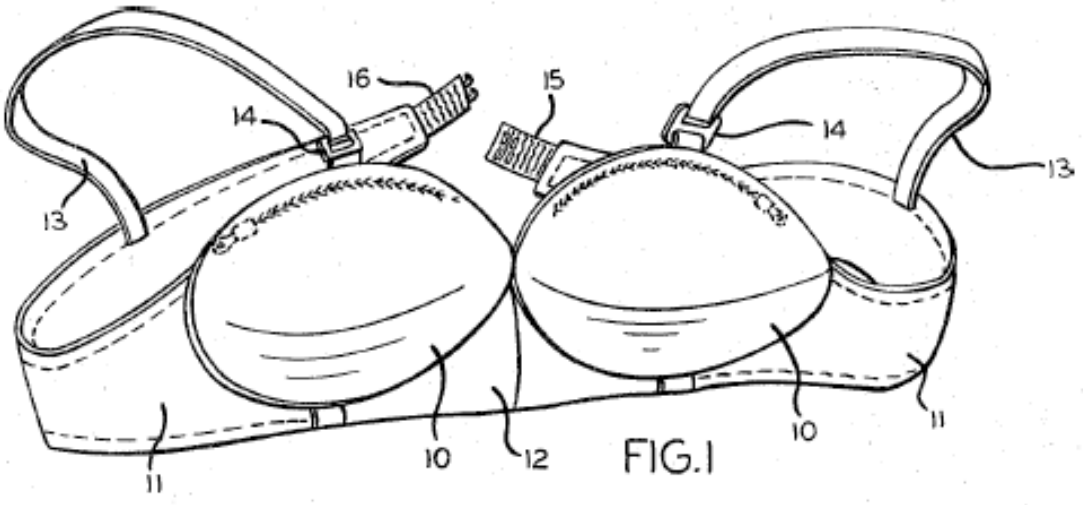
375. The discussion below provides my detailed analysis of how the prior art references invalidate the challenged claimed of the ’036 Patent.

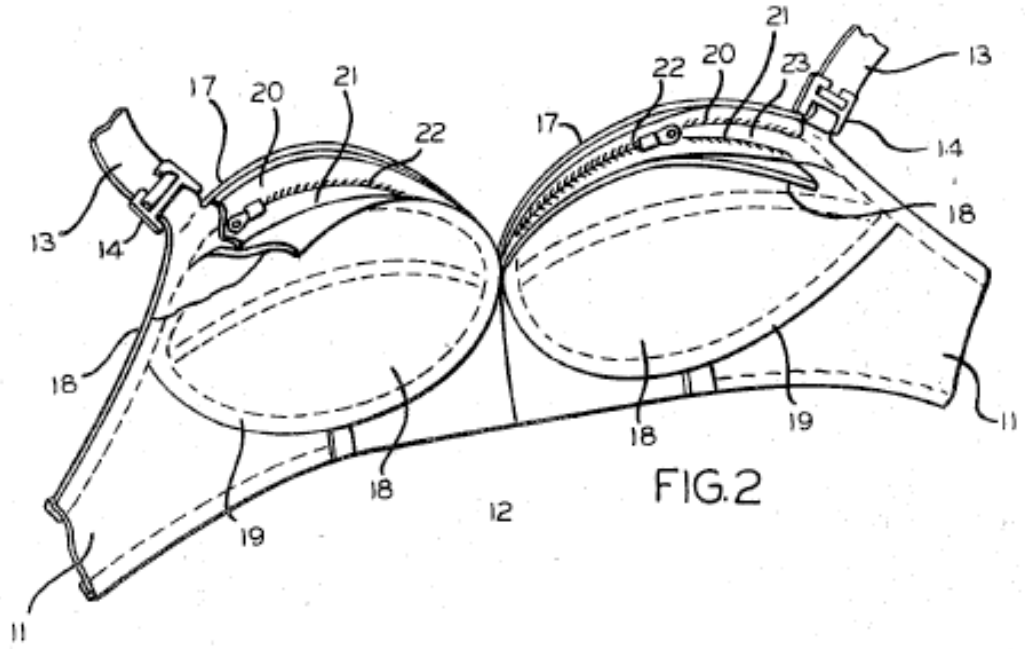
376. In my opinion, claims 1–3, 5–10 and 18 are disclosed or rendered obvious by Barg in combination with Pintor.

i. Claim 1

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

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

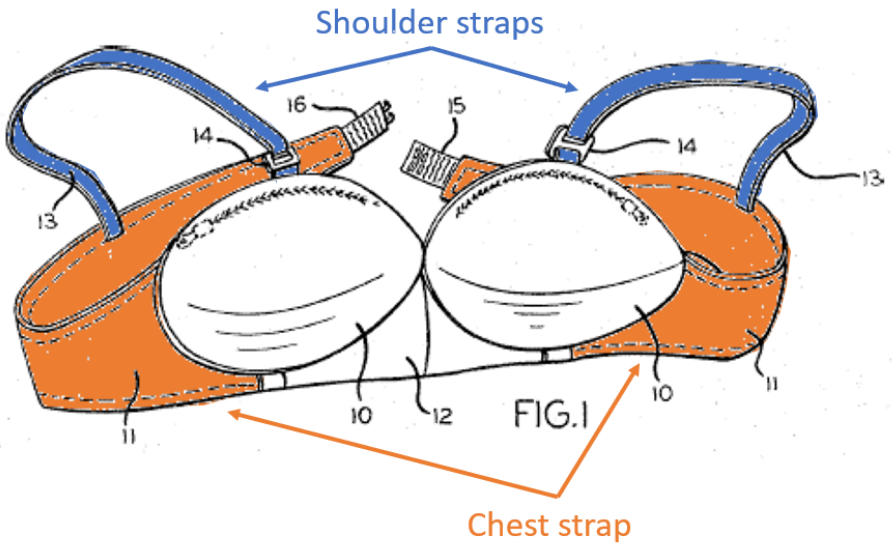




NIKE-1019 at Figs. 1–2, 1:19-25.

b. ***"a strap assembly comprising a chest strap;" limitation [1B]***

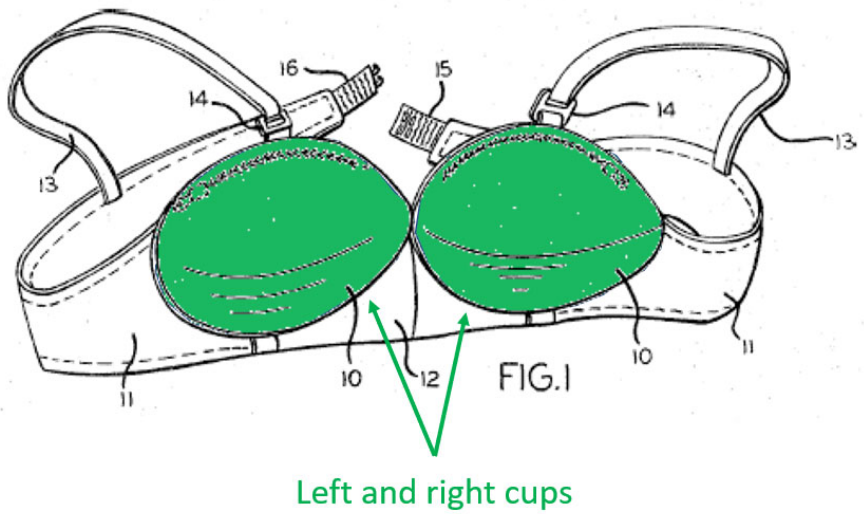
378. Barg discloses a traditional bra with cups "supported by a *body portion shown as 11*," *i.e.*, "chest strap". NIKE-1019 at 1:65–2:2. Figure 1 illustrates the "body portion" chest strap and the two conventional shoulder straps:



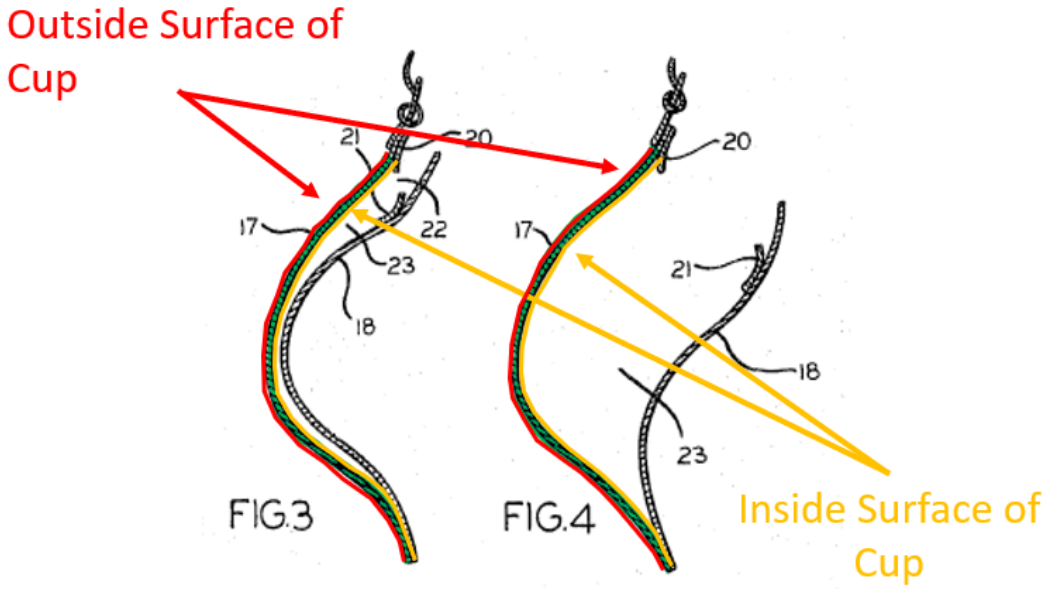
NIKE-1019 at Fig. 1.

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," limitation [1C]***

379. Barg discloses a bra with left and right cups:



NIKE-1019 at Fig. 1, 1:62–65 (disclosing "conventional breast cups [10]"). In my opinion, 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:



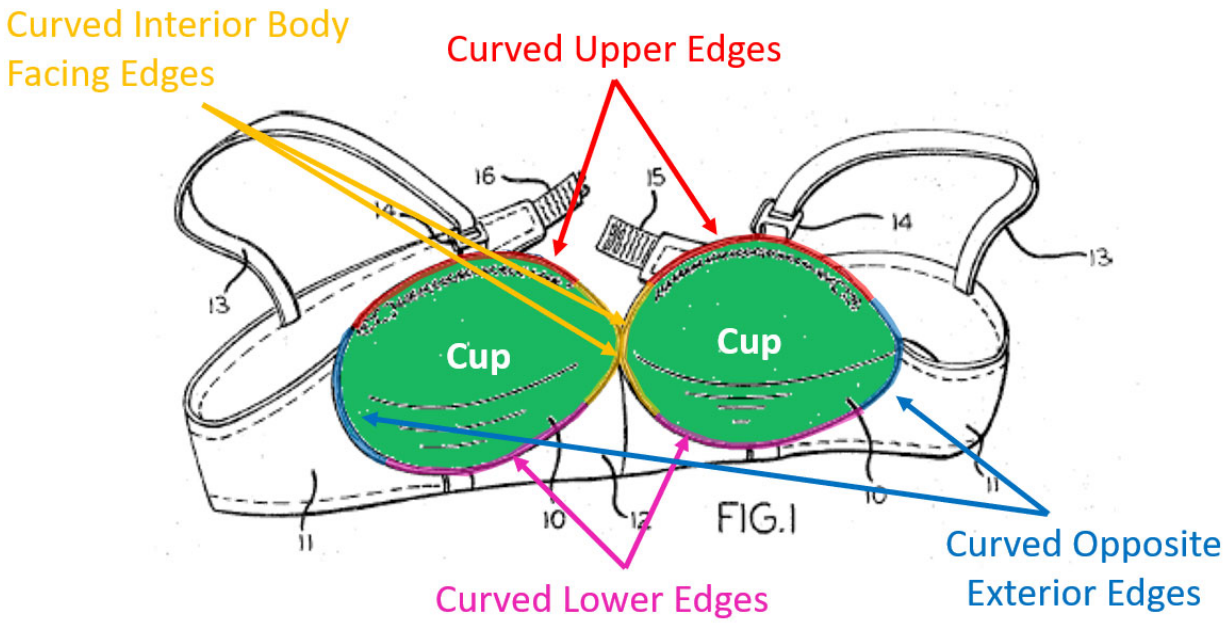
NIKE-1019 at Figs. 3–4.

d. *"the strap assembly being attached to the cups whereby the strap assembly connects the cups to the wearer," limitation [1D]*

380. As explained above in limitations [1B] and [1C], Barg discloses a "strap assembly" and "left and right cups." To the extent the "whereby" clause should be provided patentable weight, 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."). In my opinion, a POSA would have understood this to be the purpose of Barg's "strap assembly."

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

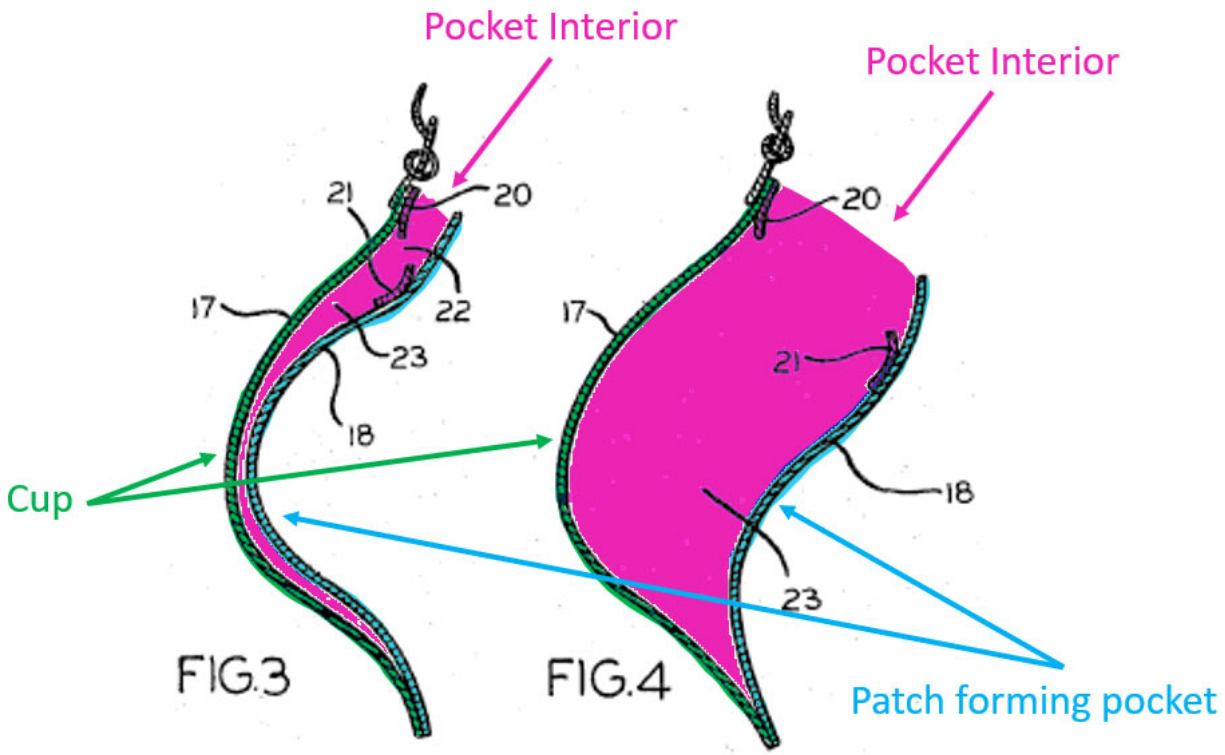
381. Barg discloses cups with curved upper, lower, interior body facing, and opposite exterior edges:

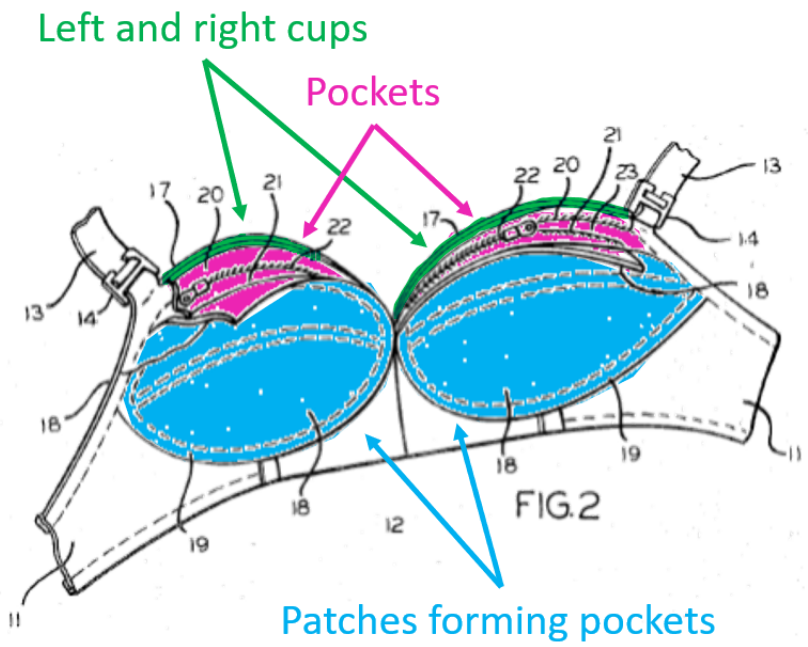


NIKE-1019 at Fig. 1.

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

382. 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:



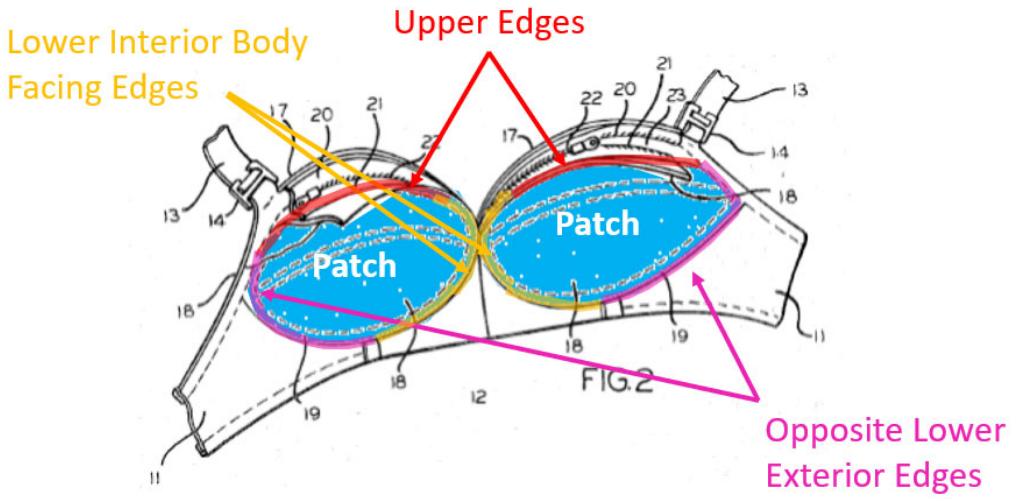


NIKE-1019 at 2:5-25, Figs. 2–4. Alternatively, in my opinion, a POSA would have understood that "outer section 17" would be understood as the "patch," while the

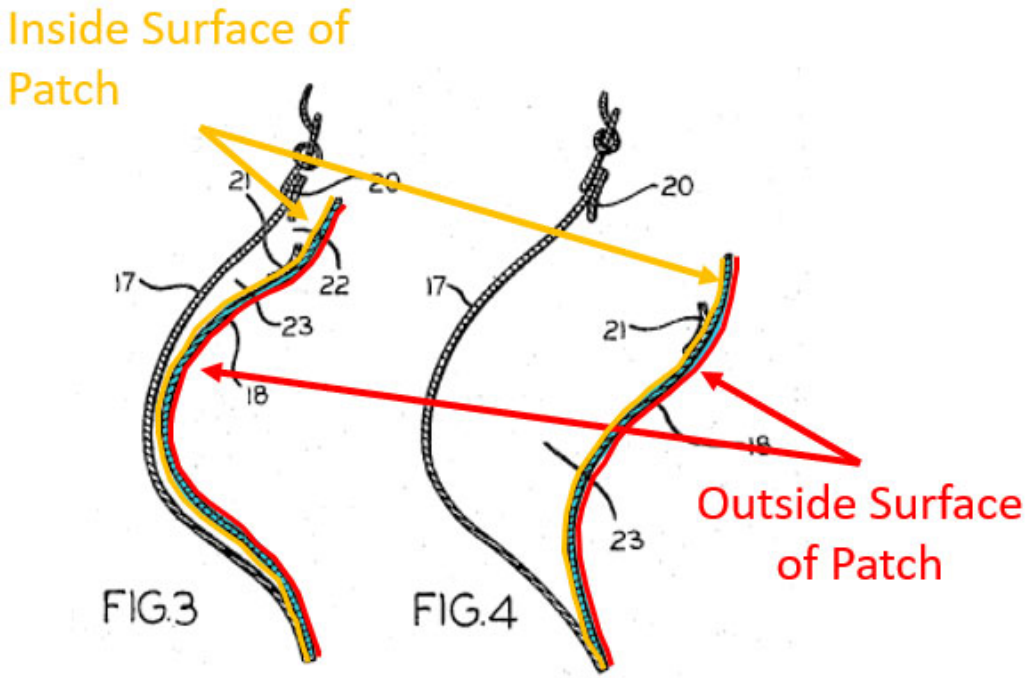
"inner section 18" would be understood as the "cup," such that the pockets are on the outside of the breast cups.

g. ***"the patch having an upper edge, a lower interior body facing edge, and an opposite lower exterior edge, the patch having inside and outside surfaces;" limitation [1G]***

383. Barg discloses a patch with an upper edge, a lower interior body facing edge, and an opposite lower exterior edge:



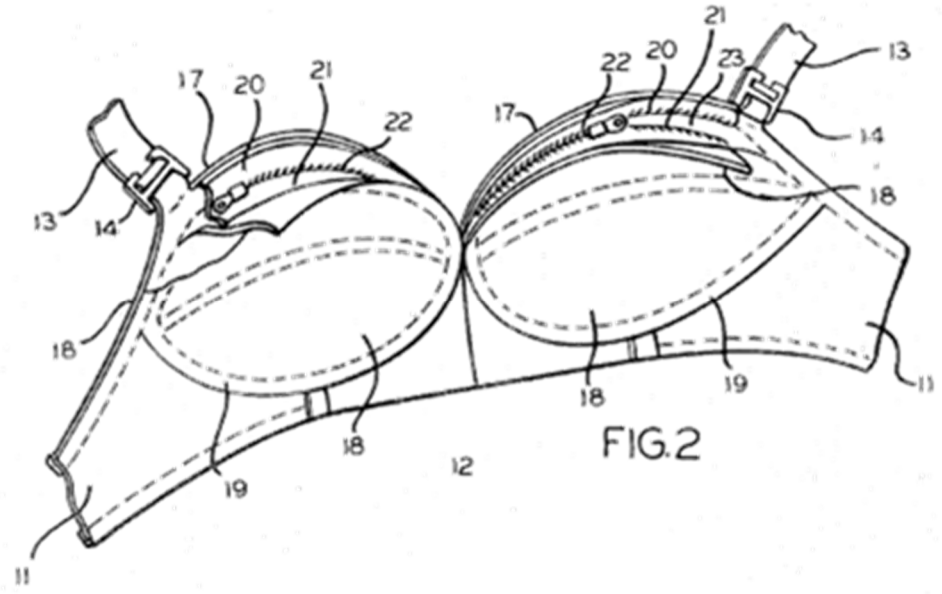
NIKE-1019 at Fig. 2, 2:5-10. Further, the patch has inside and outer surfaces.



Id. at Figs. 3–4.

h. ***"stitching coupling the lower interior body facing edge, and the opposite lower exterior edge of the patch to at least one of the lower, interior body facing, and opposite exterior edges of the at least one of the left and right cups, or the chest strap;" limitation [1H]***

384. 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. In my opinion, a POSA would have understood stitching to be a common, convenient, and efficient method of attaching two pieces of fabric together. Moreover, in my opinion, 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.



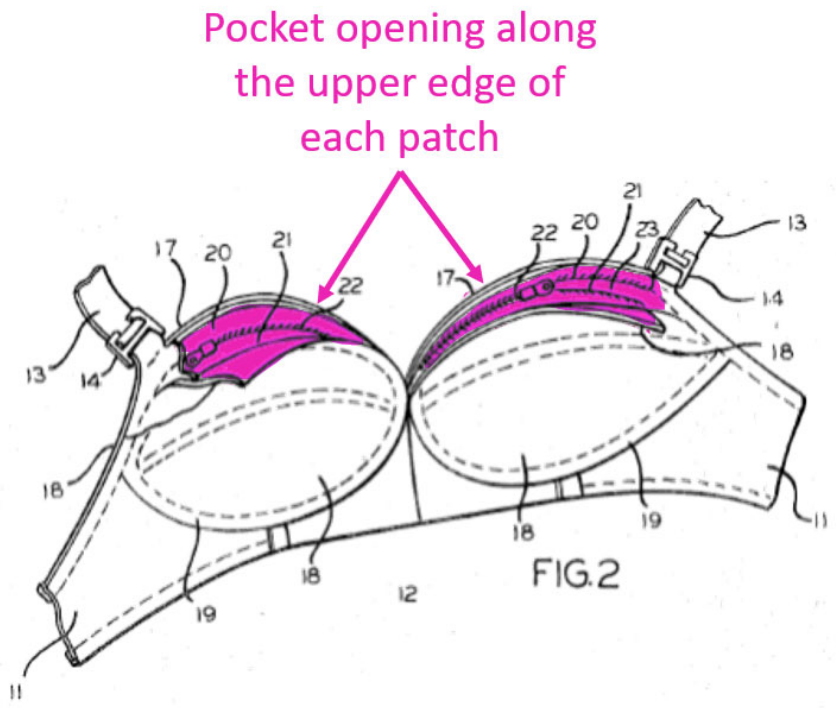
NIKE-1019 at Fig. 2. Thus, Barg discloses pockets formed by stitching the lower interior and exterior edges of a patch to the lower and exterior edges of a corresponding cup.

385. 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. First, stitching was a well-known method by which pieces of fabric are attached together for clothing. 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, in my opinion, 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. Further, in my opinion, 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.

i. *"an opening formed along the upper edge of the patch;" limitation [1I]*

386. Barg expressly discloses that the openings are at the "upper edges" of each patch:



NIKE-1019 at Fig. 2, 2:22–25.

j. *"the opening capable of repeated receiving and removal of an item when being worn by the wearer; and" limitation [1J]*

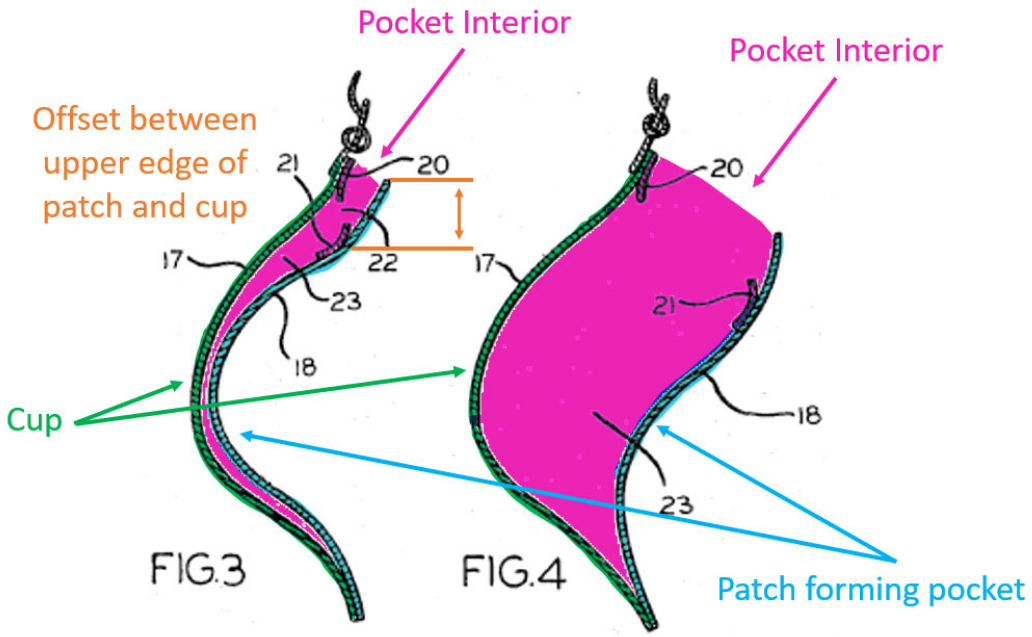
387. Barg discloses "a pocket therein for storing valuables, or the like." NIKE-1019 at 1:19–20. In my opinion, a POSA would have understood the necessity of making the opening capable of repeated receiving and removal of items so that the wearer is able to access, remove, and replace the stored valuable items

from and into the pocket throughout the day. Barg expressly teaches that a "prime object of [its] invention" is to "produc[e] a pocket for valuables … that is easily accessible." NIKE-1019 at 1:36-44.

388. To the extent this limitation is not expressly or inherently disclosed, Barg in combination with a POSA's knowledge and/or Pintor renders it obvious. In my opinion, a POSA would have understood that the presence of a pocket necessarily implies the use of the pocket for temporarily holding items. Pintor discloses a pocket on the cup "containing a concealed object," including "[c]ell phones, personal listening devices, and other mobile electronic devices," as well as "money, keys, credit cards, or other objects." NIKE-1022 at 1:20-28, 6:44-53, Fig. 3. Thus, in my opinion, it would have been obvious to a POSA that Barg's pockets—expressly designed for repeated receiving and removal of an item when the bra is being worn by the wearer.

k. ***"wherein the upper edge of the patch crosses over a surface of the cup to form the opening, the upper edge of the patch being offset from an upper edge of the cup." limitation [1K]***

389. The upper edges of Barg's patches cross over a surface of the cup to form the opening and are offset from an upper edge of the cup:



NIKE-1019 at Figs. 3–4.

ii. Claim 2

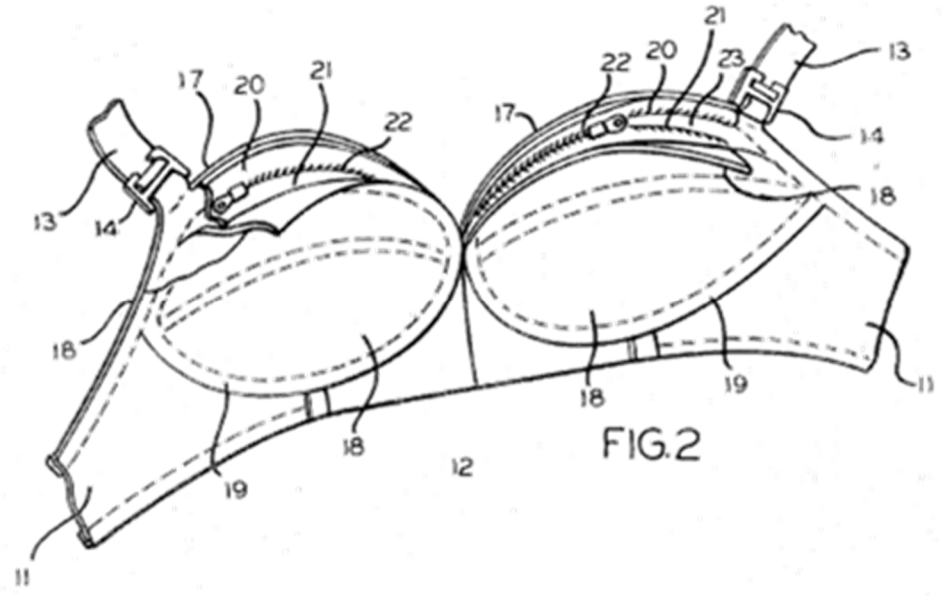
a. *"The pocket bra of claim 1" limitation [Preamble]*

390. In my opinion, Barg discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. *"wherein the stitching is along the lower interior body facing and opposite exterior edges of the patch." limitation [2A]*

391. 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. In my opinion, a POSA would have understood stitching to be a common, convenient, and efficient method of attaching two pieces of fabric together. Moreover, in my opinion, a POSA would have understood 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.



NIKE-1019 at Fig. 2. Thus, Barg discloses pockets formed by stitching the lower interior and exterior edges of a patch to the lower and exterior edges of a corresponding cup.

392. 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. First, stitching was a well-known method by which pieces of fabric are attached together for clothing. 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, in my opinion, 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. Further, 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.

iii. Claim 3

a. *"A bra pocket system comprising the pocket bra of claim 1" limitation [Preamble]*

393. In my opinion, Barg discloses "[a] bra pocket system comprising the pocket bra of claim 1" for the reasons described above in claim 1.

b. *"and further comprising a non-padding item removably positioned within the pocket of at least of the left and right cups." limitation [3A]*

394. Barg discloses "a pocket therein for storing valuables, or the like." NIKE-1019 at 1:19–20. In my opinion, a POSA would have understood "valuables" to be non-padding items, which is all that is required by claim 3. In my opinion, a POSA would have understood the necessity of making these items "removably positioned" within the bra's pockets, so that the wearer is able to access, remove, and replace the stored valuable items from and into the pocket throughout the day. Barg expressly teaches that a "prime object of [its] invention" is to "produc[e] a pocket for valuables … that is easily accessible." NIKE-1019 at 1:36–44.

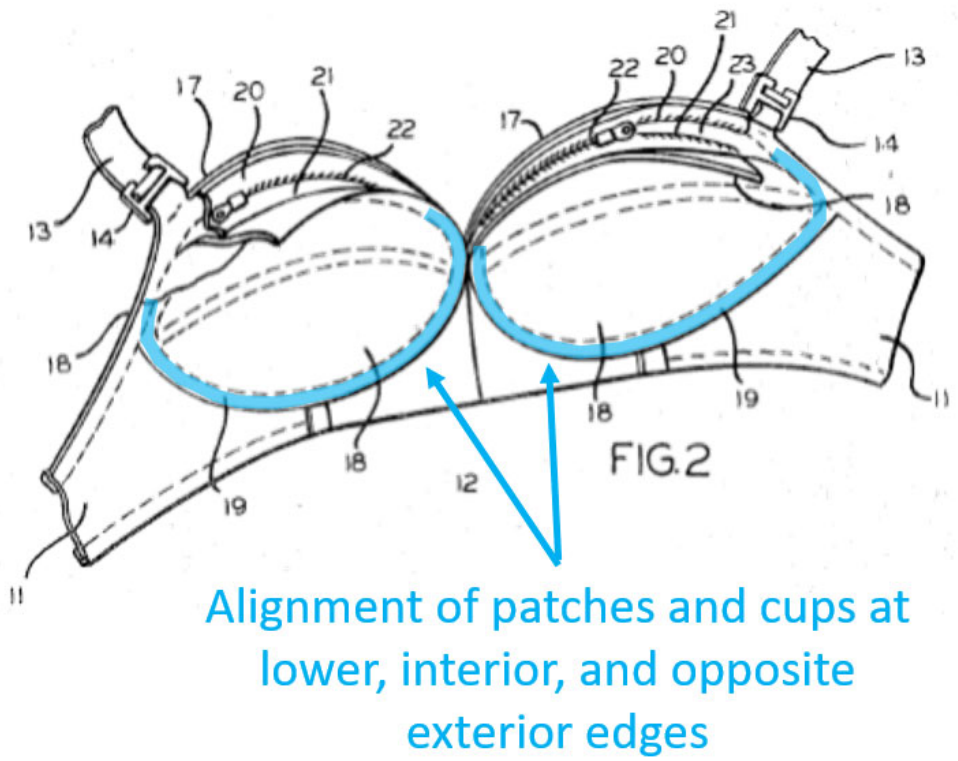
iv. Claim 5

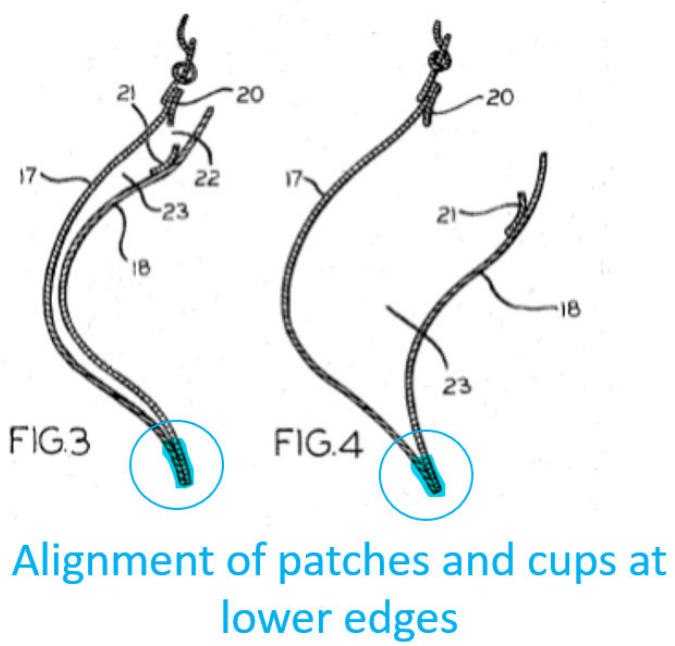
a. *"The pocket bra of claim 1" limitation [Preamble]*

395. In my opinion, Barg discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. ***"wherein the patch lower interior body facing and opposite exterior edges are aligned with the lower interior body facing and opposite exterior edges of the one of the left and right cups, and wherein the stitching is along the lower interior body facing and opposite exterior edges of the patch." limitation [5A]***

396. Barg, alone or in combination with Pintor, renders obvious this limitation. As previously discussed in limitations [1C], [1E], and [1H], Barg discloses cups and patches with curved lower interior body facing and opposite exterior edges, and "stitching coupling 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." 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*":





NIKE-1019 at 2:7–9, Figs. 2-4.

v. Claim 6

a. ***"A pocket bra" limitation [6A]***

397. Barg discloses "[a] pocket bra" for the reasons described above in limitation [1A].

b. ***"a strap assembly comprising a chest strap;" limitation [6B]***

398. Barg discloses "a strap assembly comprising a chest strap" for the reasons described above in limitation [1B].

c. ***"comprising left and right cups, each cup being an area to receive a breast of a wearer and having inside and outside surfaces," limitation [6C]***

399. Barg discloses "comprising left and right cups, each cup being an area to receive a breast of a wearer and having inside and outside surfaces" for the reasons described above in limitation [1C].

d. ***"the strap assembly being attached to the cups whereby the strap assembly connects the cups to the wearer," limitation [6D]***

400. Barg discloses "the strap assembly being attached to the cups whereby the strap assembly connects the cups to the wearer" for the reasons described above in limitation [1D].

e. ***"Each cup having upper, lower, interior body facing, and opposite exterior edges;" limitation [6E]***

401. Barg discloses "Each cup having upper, lower, interior body facing, and opposite exterior edges" for the reasons described above in limitation [1E].

f. ***"a patch forming a pocket operatively associated with at least one of the left and right cups," limitation [6F]***

402. Barg discloses "a patch forming a pocket operatively associated with at least one of the left and right cups" for the reasons described above in limitation [1F].

g. ***"the patch having an upper edge, a lower interior body facing edge, and an opposite lower exterior edge, the patch having inside and outside surfaces;" limitation [6G]***

403. Barg discloses "the patch having an upper edge, a lower interior body facing edge, and an opposite lower exterior edge, the patch having inside and outside surfaces" for the reasons described above in limitation [1G].

h. ***"stitching coupling the lower interior body facing edge, and the opposite lower exterior edge of the patch to the lower, interior body facing, and opposite exterior edges of the at least one of the left and right cups;" limitation [6H]***

404. Barg discloses "stitching coupling the lower interior body facing edge, and the opposite lower exterior edge of the patch to the lower, interior body facing, and opposite exterior edges of the at least one of the left and right cups" for the reasons described above in limitation [1H].

i. ***"an opening formed along the upper edge of the patch;" limitation [6I]***

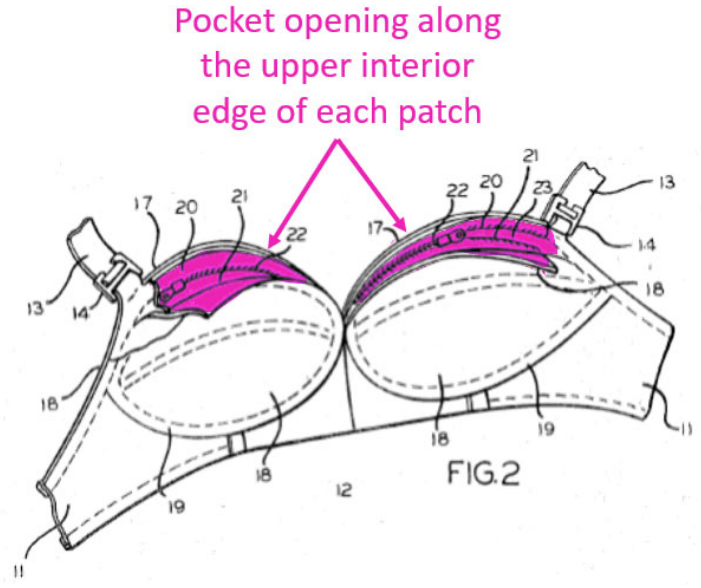
405. Barg discloses "an opening formed along the upper edge of the patch" for the reasons described above in limitation [1I].

j. ***"the opening capable of repeated receiving and removal of an item when being worn by the wearer; and" limitation [6J]***

406. Barg discloses "the opening capable of repeated receiving and removal of an item when being worn by the wearer" for the reasons described above in limitation [1J].

k. ***"wherein the upper edge of the patch crosses over a surface of the cup to form the opening, the upper edge of the patch crossing in such that the opening faces the interior body facing edge of the one of the left and right cup to which it is attached, the upper edge of the patch being offset from an upper edge of the cup." limitation [6K]***

407. Barg discloses "wherein the upper edge of the patch crosses over a surface of the cup to form the opening" and "the upper edge of the patch being offset from an upper edge of the cup" in limitation [1K]. Barg further discloses pockets whose openings face the upper interior edges of the pockets:



NIKE-1019 at Fig. 2.

vi. Claim 7

a. ***"The pocket bra of claim 6" limitation [Preamble]***

408. Barg discloses "[t]he pocket bra of claim 6" for the reasons described above in claim 6.

b. ***"wherein the stitching is along the lower interior body facing and opposite exterior edges of the patch." limitation [7A]***

409. Barg discloses "wherein the stitching is along the lower interior body facing and opposite exterior edges of the patch" for the reasons described above in claim 2.

vii. Claim 8

a. ***"The pocket bra of claim 6" limitation [Preamble]***

Barg discloses "[t]he pocket bra of claim 6" for the reasons described above in claim 6.

b. ***"and further comprising a non-padding item removably positioned within the pocket of at least one of the left and right cups." limitation [8A]***

Barg discloses "a non-padding item removably positioned within the pocket of at least one of the left and right cups" for the reasons described above in claim 3.

viii. Claim 9

a. ***"The pocket bra of claim 6" limitation [Preamble]***

Barg discloses "[t]he pocket bra of claim 6" for the reasons described above in claim 6.

b. ***"wherein the patch lower interior body facing and opposite exterior edges are aligned with the lower interior body facing and opposite exterior edges of the one of the left and right cups, and wherein the stitching is along the lower interior body facing and opposite exterior edges of the patch." limitation [9A]***

410. Barg discloses "wherein the patch lower interior body facing and opposite exterior edges are aligned with the lower interior body facing and opposite exterior edges of the one of the left and right cups, and wherein the stitching is along the lower interior body facing and opposite exterior edges of the patch" for the reasons described above in Claim 5.

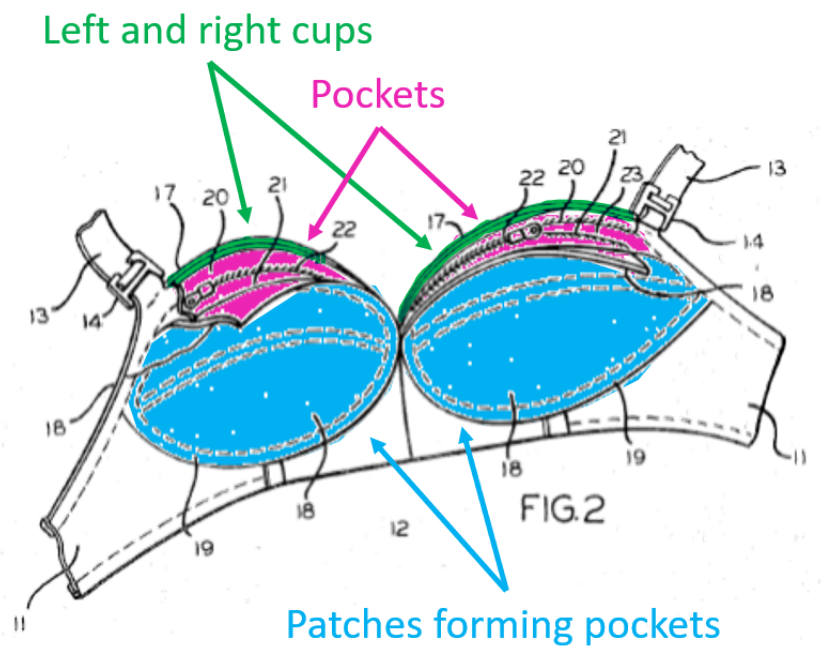
ix. Claim 10

a. *"The pocket bra of claim 6" limitation [Preamble]*

411. Barg discloses "[t]he pocket bra of claim 6" for the reasons described above in claim 6.

b. *"further comprising a second patch forming a second pocket operatively associated with the other of the left and right cup." limitation [10A]*

412. 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.

x. Claim 18

a. ***"The pocket bra of claim 1" limitation [Preamble]***

413. Barg discloses "[a] pocket bra of claim 1" for the reasons described above in claim 1.

b. ***"further comprising a second patch forming a second pocket operatively associated with the other of the left and right cup" limitation [18A]***

414. Barg discloses "a second patch forming a second pocket operatively associated with the other of the left and right cup" for the reasons described above in claim 10.

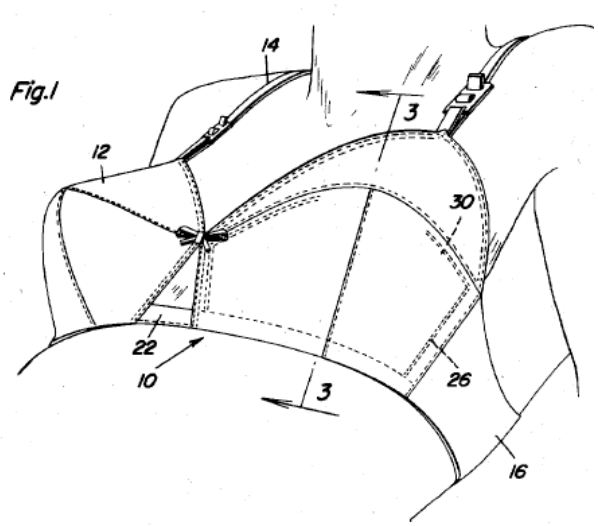
2. Ground 2: Claims 1-3, 5-10 and 18 Are Unpatentable Over York in view of Pintor.

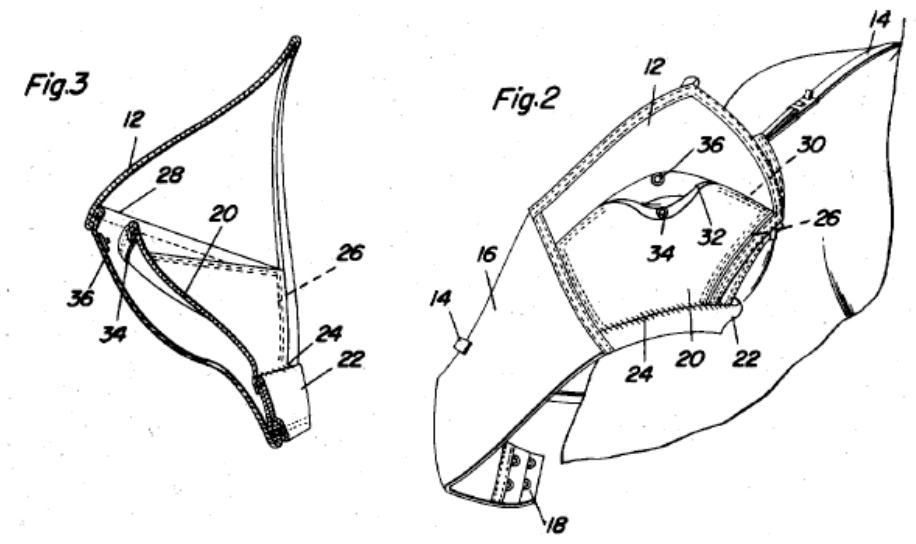
415. In my opinion, claims 1–3, 5–10 and 18 are disclosed or rendered obvious by York in combination with Pintor.

i. Claim 1

a. ***"A pocket bra comprising:" limitation [1A]***

416. 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.

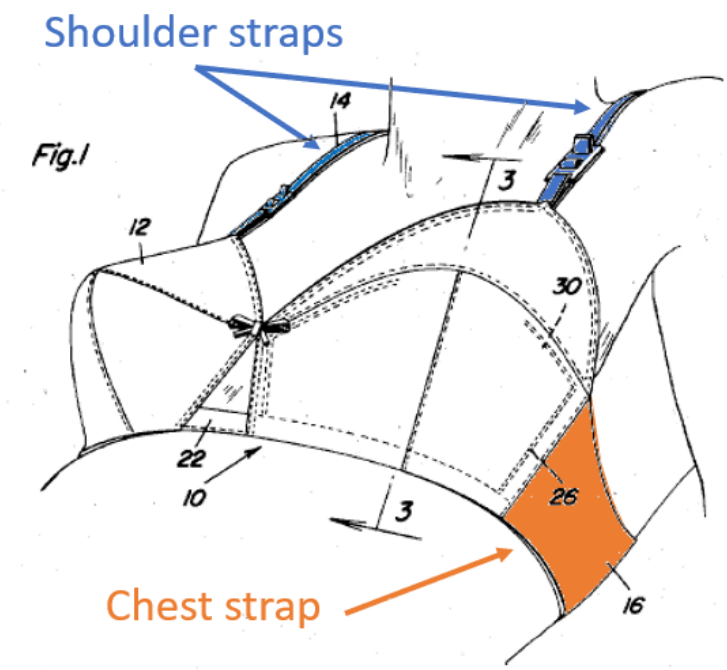




Id. at Figs. 1–3.

b. *"a strap assembly comprising a chest strap;" limitation [1B]*

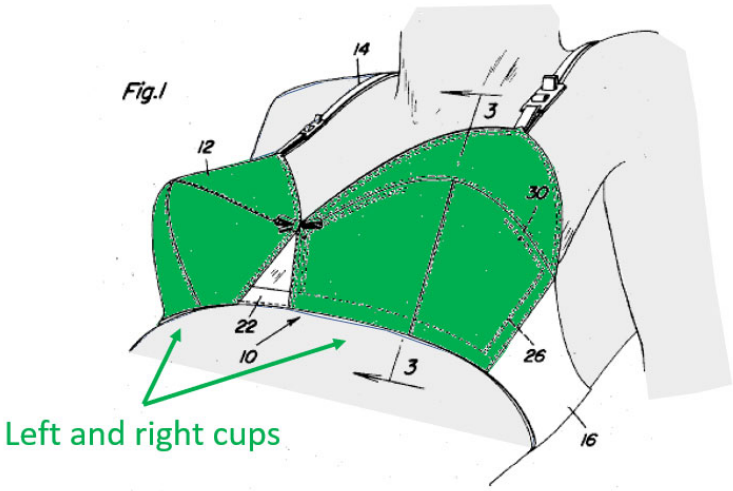
417. York discloses a "conventional" bra design with "the usual pair of breast cups 12 having shoulder straps 14 attached thereto along the top edge and *a body encircling strap 16 extending rearwardly which strap is provided with the usual separable ends such as indicated by the numeral 18*":



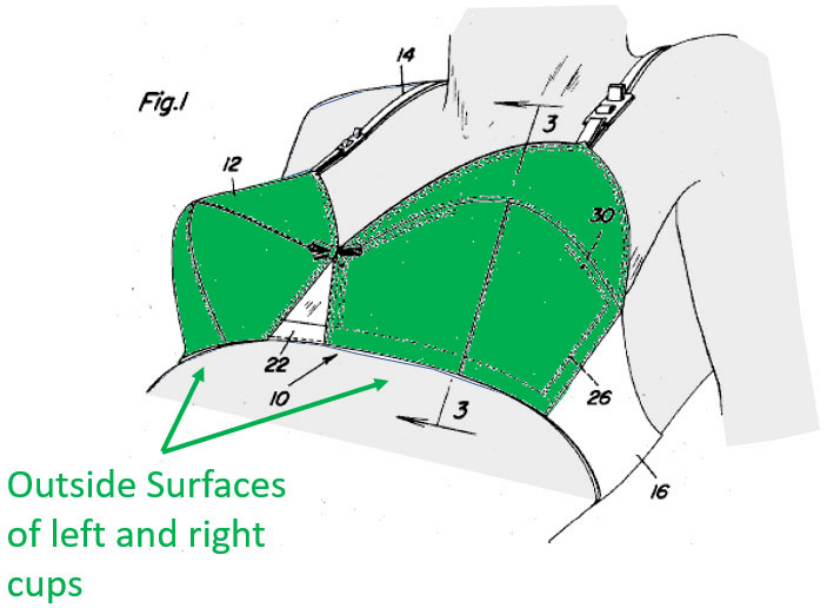
NIKE-1020 at 1:48–52, Fig. 1.

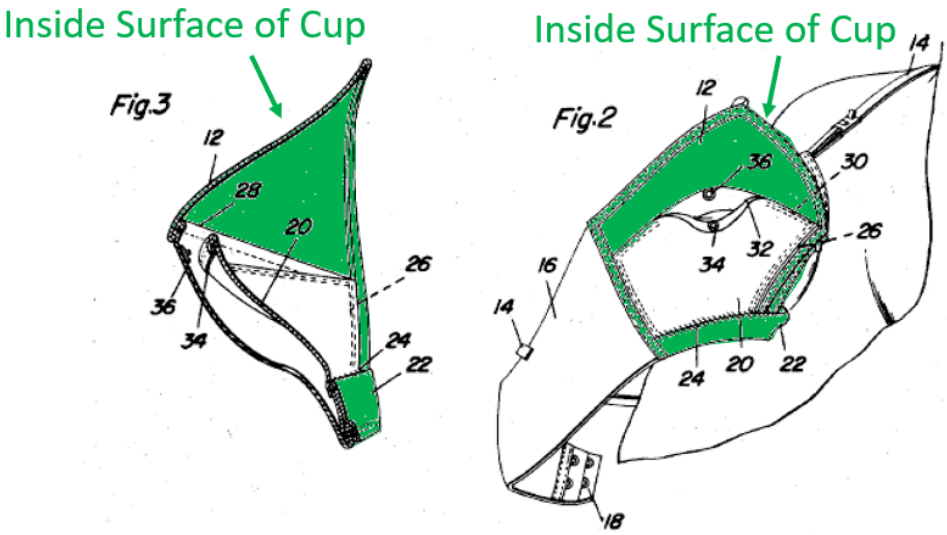
c. ***"comprising left and right cups, each cup being an area to receive a breast of a wearer and having inside and outside surfaces," limitation [1C]***

418. 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:

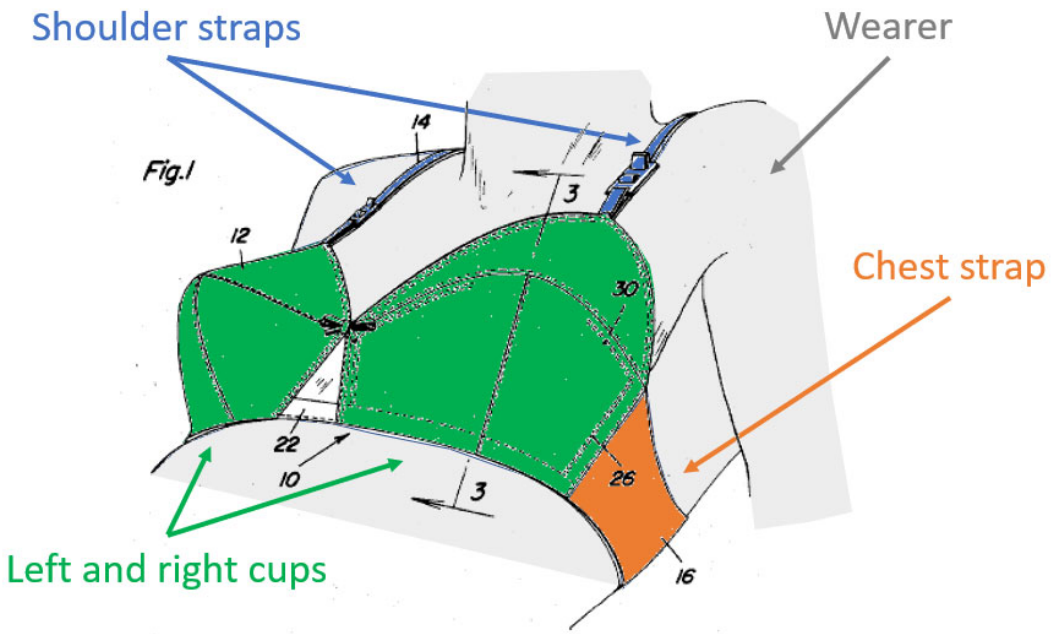




Id. at Figs. 1–3, 1:1-2:3 (describing the "interior surface" of the breast cups). In my opinion, a POSA would also have understood York's cups to necessarily have inside and outside surfaces.

d. *"the strap assembly being attached to the cups whereby the strap assembly connects the cups to the wearer," limitation [1D]*

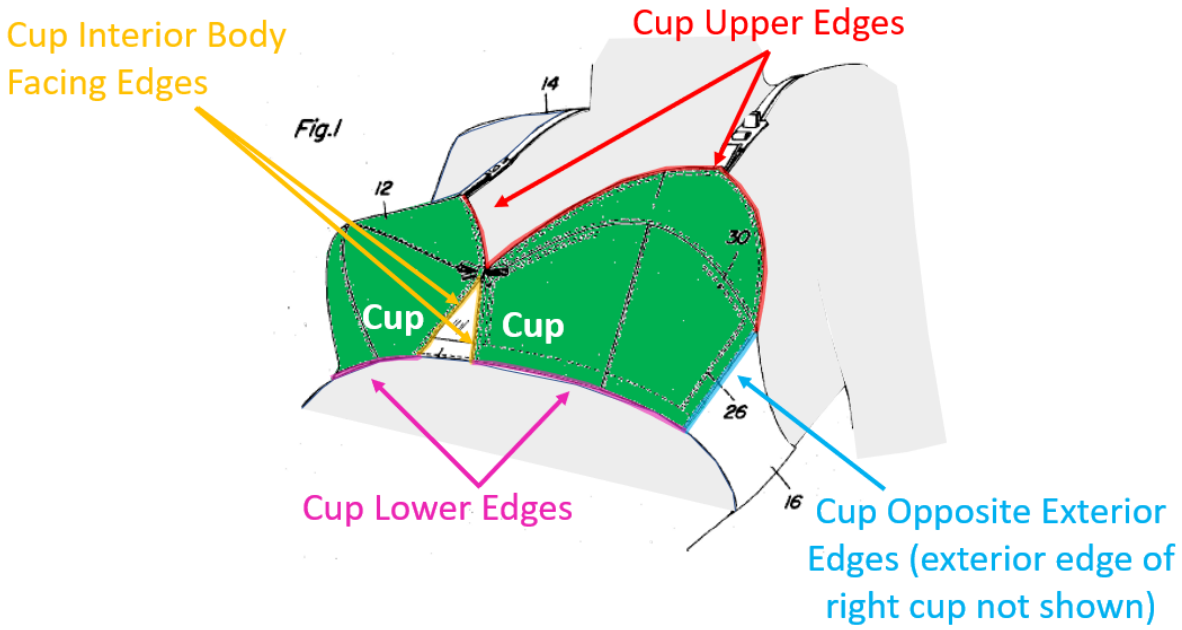
419. York discloses this limitation. As discussed above in limitations [1B] and [1C]. York discloses a "strap assembly" and "left and right cups." Further, to the extent the "whereby" clause should be provided patentable weight, Figure 1 illustrates the disclosed strap assembly adhering the cups to a wearer:



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;" limitation [1E]***

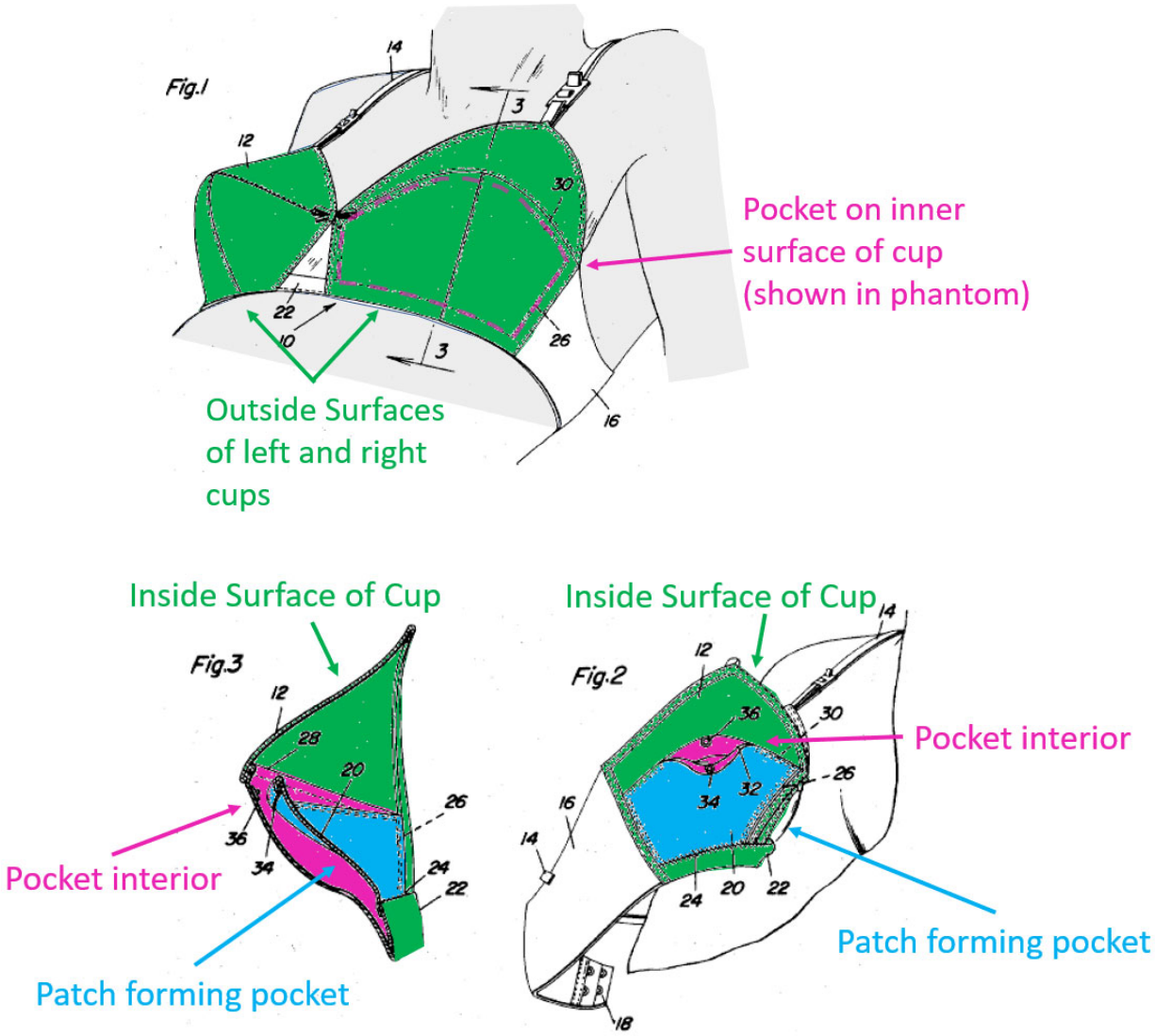
420. York renders obvious this limitation. York discloses upper, lower, interior body facing, and opposite exterior edges of the cup:



NIKE-1020 at Fig. 1.

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

421. 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:



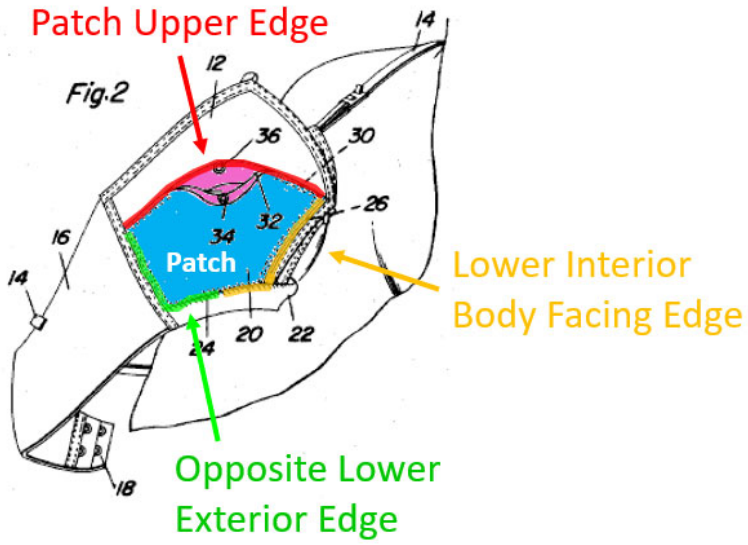
NIKE-1020 at Figs. 1–3, 1:54–2:23.

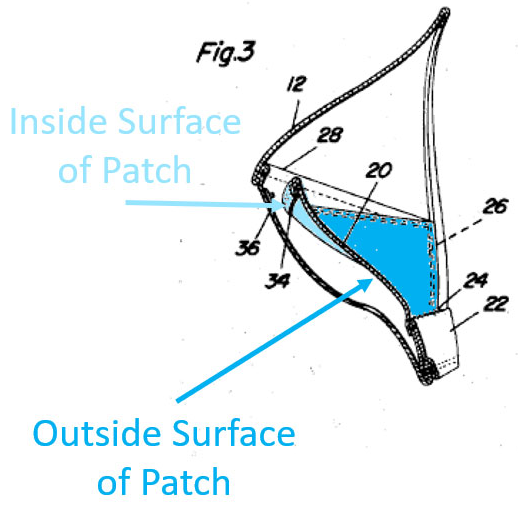
422. While York discloses a pocket on the "interior surface of one of the breast cups," NIKE-1020 at 1:54–2:23, it would have been obvious to include the expressly disclosed pocket on both cups. Nothing in York teaches away from the placement of a pocket on each of the cups, and in my opinion, a POSA 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. Thus, in my opinion, 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.

g. ***"the patch having an upper edge, a lower interior body facing edge, and an opposite lower exterior edge, the patch having inside and outside surfaces;" limitation [1G]***

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





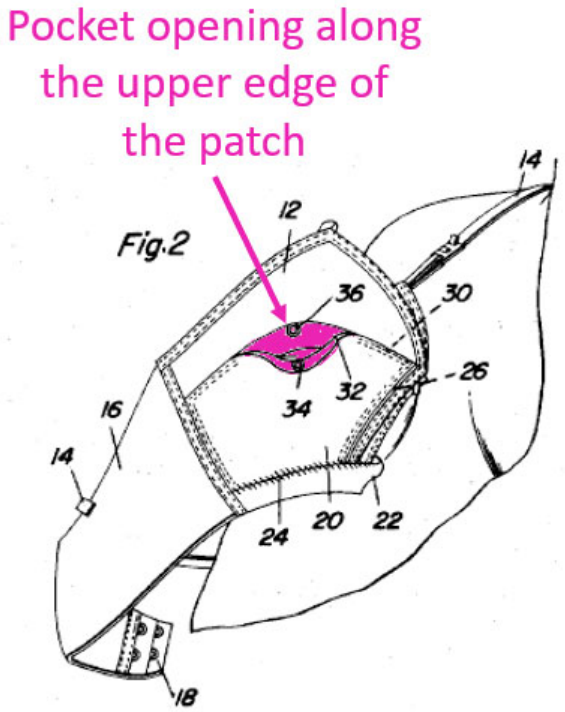
NIKE-1020 at Figs. 2–3. In my opinion, a POSA would have understood the patch to necessarily have inside and outside surfaces.

h. ***"stitching coupling the lower interior body facing edge, and the opposite lower exterior edge of the patch to at least one of the lower, interior body facing, and opposite exterior edges of the at least one of the left and right cups, or the chest strap;" limitation [1H]***

424. 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 stitching coupling the lower interior and exterior edges of the patch to the lower interior and exterior edges of an associated cup.

i. ***"an opening formed along the upper edge of the patch;" limitation [1I]***

425. York renders this limitation obvious. As previously discussed in limitation [1G], York discloses upper edges of the patch. York discloses an opening along this upper edge:



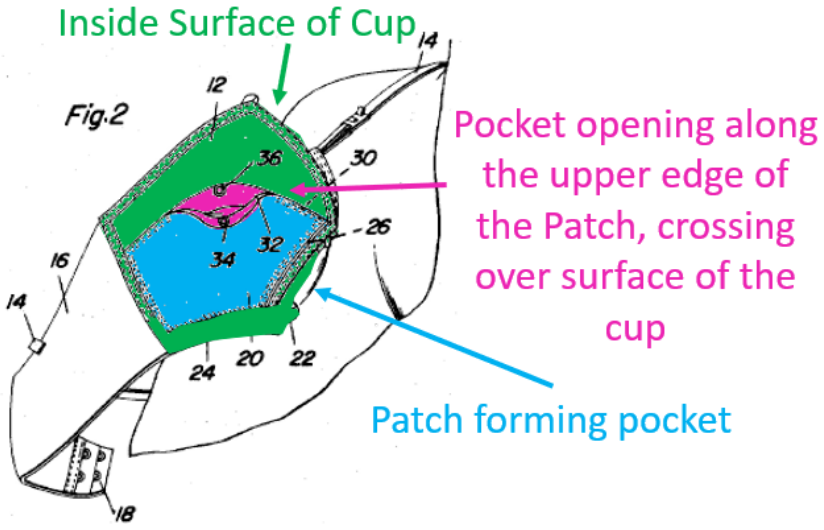
NIKE-1020 at Fig. 2, 2:3-23.

j. *"the opening capable of repeated receiving and removal of an item when being worn by the wearer; and" limitation [1J]*

426. York discloses a pocket "for receiving valuable articles such as jewelry, money or the like." NIKE-1020 at 1:18–19, 2:17–20. In my opinion, a POSA in 2013 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".

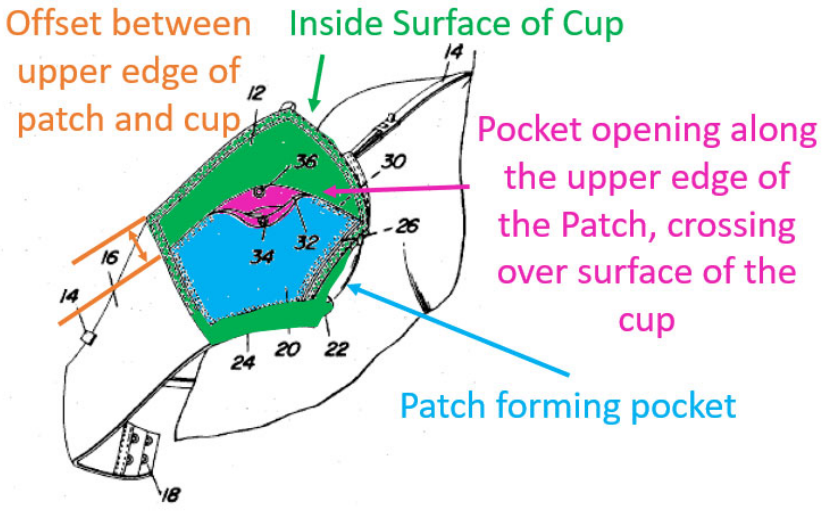
k. ***"wherein the upper edge of the patch crosses over a surface of the cup to form the opening, the upper edge of the patch being offset from an upper edge of the cup." limitation [1K]***

427. 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.

428. York further discloses that the edge of the patch is offset from an upper edge of the cup:



NIKE-1021 at Fig. 2.

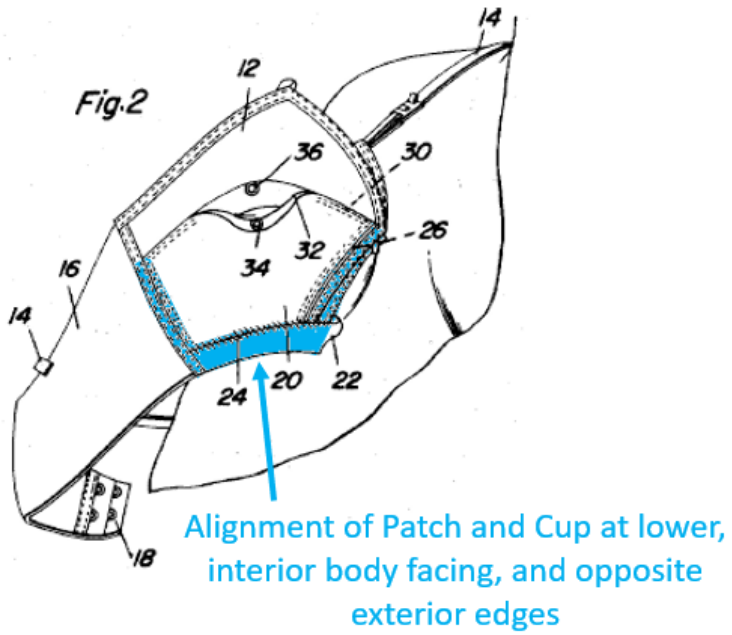
ii. Claim 2

a. *"The pocket bra of claim 1" limitation [Preamble]*

429. In my opinion, York discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. *"wherein the stitching is along the lower interior body facing and opposite exterior edges of the patch." limitation [2A]*

430. 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. Thus, York discloses the edges of each patch aligned and stitched to the edges of each corresponding cup.

iii. Claim 3

a. *"A bra pocket system comprising the pocket bra of claim 1" limitation [Preamble]*

431. In my opinion, York discloses "[a] bra pocket system comprising the pocket bra of claim 1" for the reasons described above in claim 1.

b. *"and further comprising a non-padding item removably positioned within the pocket of at least of the left and right cups." limitation [3A]*

432. York discloses a pocket "for receiving valuable articles such as jewelry, money or the like." NIKE-1020 at 1:18–19, 2:17–20. In my opinion, a POSA would have understood "valuable articles" to be non-padding items, which is all that is required by claim 3. In my opinion, a POSA would have understood the necessity

of making these items "removably positioned" within the bra's pockets, so that the wearer is able to access, remove, and replace the stored valuable articles from and into the pocket throughout the day.

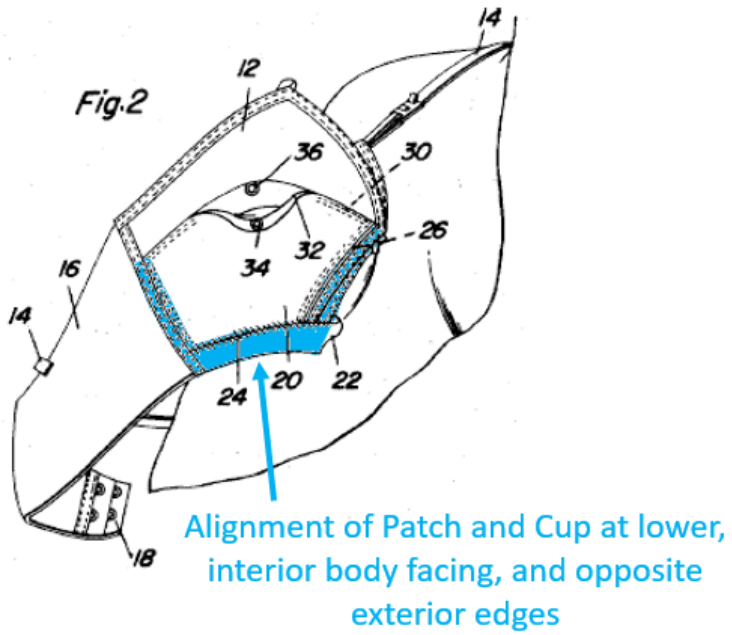
iv. Claim 5

a. *"The pocket bra of claim 1" limitation [Preamble]*

433. In my opinion, York discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. *"wherein the patch lower interior body facing and opposite exterior edges are aligned with the lower interior body facing and opposite exterior edges of the one of the left and right cups, and wherein the stitching is along the lower interior body facing and opposite exterior edges of the patch." limitation [5A]*

434. York renders obvious this limitation. 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. Thus, York discloses the edges of each patch aligned and stitched to the edges of each corresponding cup.

v. Claim 6

a. *"A pocket bra" limitation [6A]*

435. York discloses "[a] pocket bra" for the reasons described above in limitation [1A].

b. *"a strap assembly comprising a chest strap;" limitation [6B]*

436. York discloses "a strap assembly comprising a chest strap" for the reasons described above in limitation [1B].

c. *"left and right cups, each cup being an area to receive a breast of a wearer and having inside and outside surfaces," limitation [6C]*

437. York discloses "left and right cups, each cup being an area to receive a breast of a wearer and having inside and outside surfaces" for the reasons described above in limitation [1C].

d. ***"the strap assembly being attached to the cups whereby the strap assembly connects the cups to the wearer," limitation [6D]***

438. York discloses "the strap assembly being attached to the cups whereby the strap assembly connects the cups to the wearer" for the reasons described above in limitation [1D].

e. ***"each cup having upper, lower, interior body facing, and opposite exterior edges;" limitation [6E]***

439. York discloses "each cup having upper, lower, interior body facing, and opposite exterior edges" for the reasons described above in limitation [1E].

f. ***"a patch forming a pocket operatively associated with at least one of the left and right cups," limitation [6F]***

440. York discloses "a patch forming a pocket operatively associated with at least one of the left and right cups" for the reasons described above in limitation [1F].

g. ***"the patch having an upper edge, a lower interior body facing edge, and an opposite lower exterior edge, the patch having inside and outside surfaces;" limitation [6G]***

441. York discloses "the patch having an upper edge, a lower interior body facing edge, and an opposite lower exterior edge, the patch having inside and outside surfaces" for the reasons described above in limitation [1G].

h. ***"stitching coupling the lower interior body facing edge, and the opposite lower exterior edge of the patch to the lower, interior body facing, and opposite exterior edges of the at least one of the left and right cups;" limitation [6H]***

442. York discloses "stitching coupling the lower interior body facing edge, and the opposite lower exterior edge of the patch to the lower, interior body facing, and opposite exterior edges of the at least one of the left and right cups" for the reasons described above in limitation [1H].

i. ***"an opening formed along the upper edge of the patch;" limitation [6I]***

443. York discloses "an opening formed along the upper edge of the patch" for the reasons described above in limitation [1I].

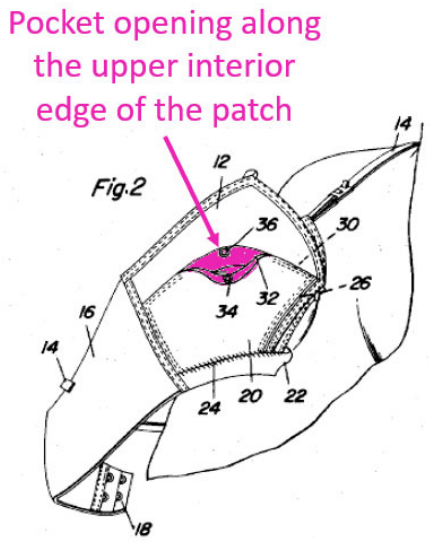
j. ***"the opening capable of repeated receiving and removal of an item when being worn by the wearer;" limitation [6J]***

444. York discloses "the opening capable of repeated receiving and removal of an item when being worn by the wearer" for the reasons described above in limitation [1J].

k. ***"wherein the upper edge of the patch crosses over a surface of the cup to form the opening, the upper edge of the patch crossing in such that the opening faces the interior body facing edge of the one of the left and right cup to which it is attached, the upper edge of the patch being offset from an upper edge of the cup." limitation [6K]***

445. York discloses "wherein the upper edge of the patch crosses over a surface of the cup to form the opening" and "the upper edge of the patch being offset from an upper edge of the cup" in limitation [1K]. Further, York discloses pockets

having an opening along the upper edge of the patch, the opening faces the interior body facing edge of the one of the left and right cup to which it is attached:



NIKE-1020 at Fig. 2, 1:20-27, 1:54-2:23.

vi. Claim 7

a. ***"The pocket bra of claim 6" limitation [Preamble]***

446. York discloses "[t]he pocket bra of claim 6" for the reasons described above in claim 6.

b. ***"wherein the stitching is along the lower interior body facing and opposite exterior edges of the patch." limitation [7A]***

447. York discloses "wherein the stitching is along the lower interior body facing and opposite exterior edges of the patch" for the reasons described above in claim 2.

vii. Claim 8

a. ***"The pocket bra of claim 6" limitation [Preamble]***

448. York discloses "[t]he pocket bra of claim 6" for the reasons described above in claim 6.

b. ***"a non-padding item removably positioned within the pocket of at least one of the left and right cups." limitation [8A]***

449. York discloses "a non-padding item removably positioned within the pocket of at least one of the left and right cups" for the reasons described above in claim 3.

viii. Claim 9

a. ***"The pocket bra of claim 6" limitation [Preamble]***

450. York discloses "[t]he pocket bra of claim 6" for the reasons described above in claim 6.

b. ***"wherein the patch lower interior body facing and opposite exterior edges are aligned with the lower interior body facing and opposite exterior edges of the one of the left and right cups, and wherein the stitching is along the lower interior body facing and opposite exterior edges of the patch." limitation [9A]***

451. York discloses "wherein the patch lower interior body facing and opposite exterior edges are aligned with the lower interior body facing and opposite exterior edges of the one of the left and right cups, and wherein the stitching is along the lower interior body facing and opposite exterior edges of the patch" for the reasons described above in claim 5.

ix. Claim 10

a. ***"The pocket bra of claim 6" limitation [Preamble]***

452. York discloses "[t]he pocket bra of claim 6" for the reasons described above in claim 6.

b. *"further comprising a second patch forming a second pocket operatively associated with the other of the left and right cup." limitation [10A]*

453. In my opinion, York renders obvious "a second patch forming a second pocket operatively associated with the other of the left and right cup". While York discloses a pocket on the "interior surface of one of the breast cups," NIKE-1020 at 1:54–2:23, in my opinion, it would have been obvious to include the expressly disclosed pocket on both cups. Nothing in York teaches away from the placement of a pocket on each of the cups, and in my opinion, 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. Thus, in my opinion, 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.

x. Claim 18

a. *"The pocket bra of claim 1" limitation [Preamble]*

454. York discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. *"further comprising a second patch forming a second pocket operatively associated with the other of the left and right cup" limitation [18A]*

455. Barg discloses "a second patch forming a second pocket operatively associated with the other of the left and right cup" for the reasons described above in claim 10.

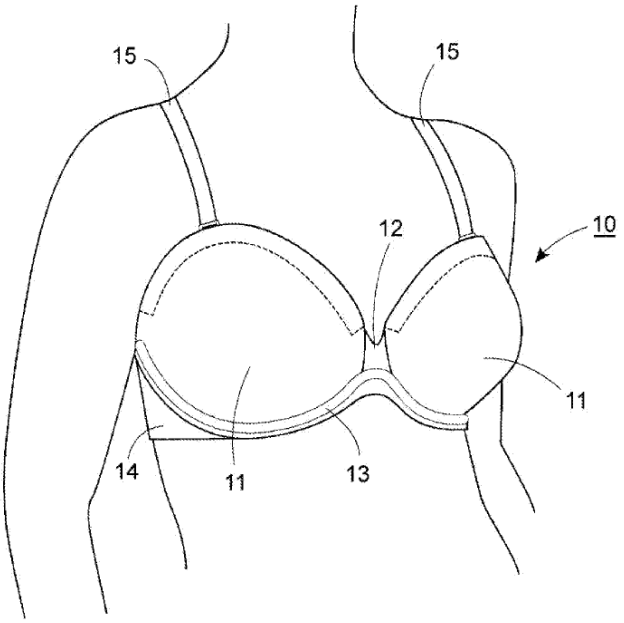
3. Ground 3: Claims 1-10 and 18 Are Unpatentable Over Handras in view of Pintor.

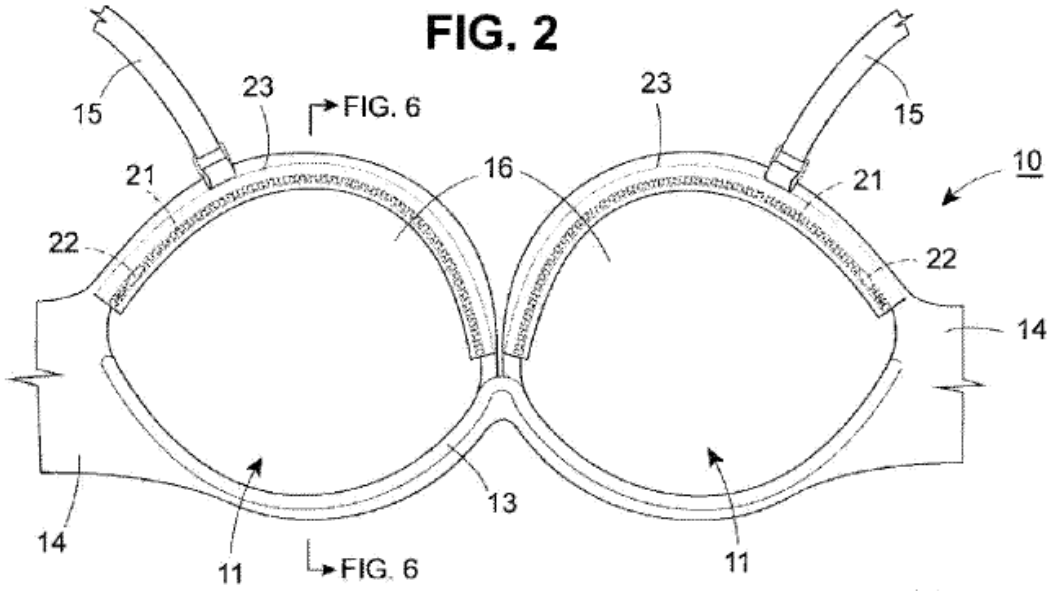
456. In my opinion, claims 1-10 and 18 are disclosed or rendered obvious by Handras in combination with Pintor.

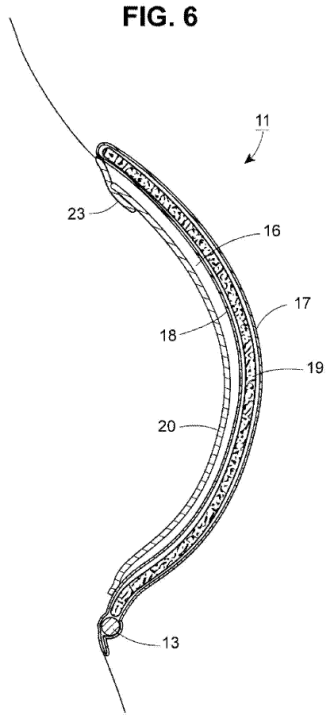
i. Claim 1

a. ***"A pocket bra comprising:" limitation [1A]***

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





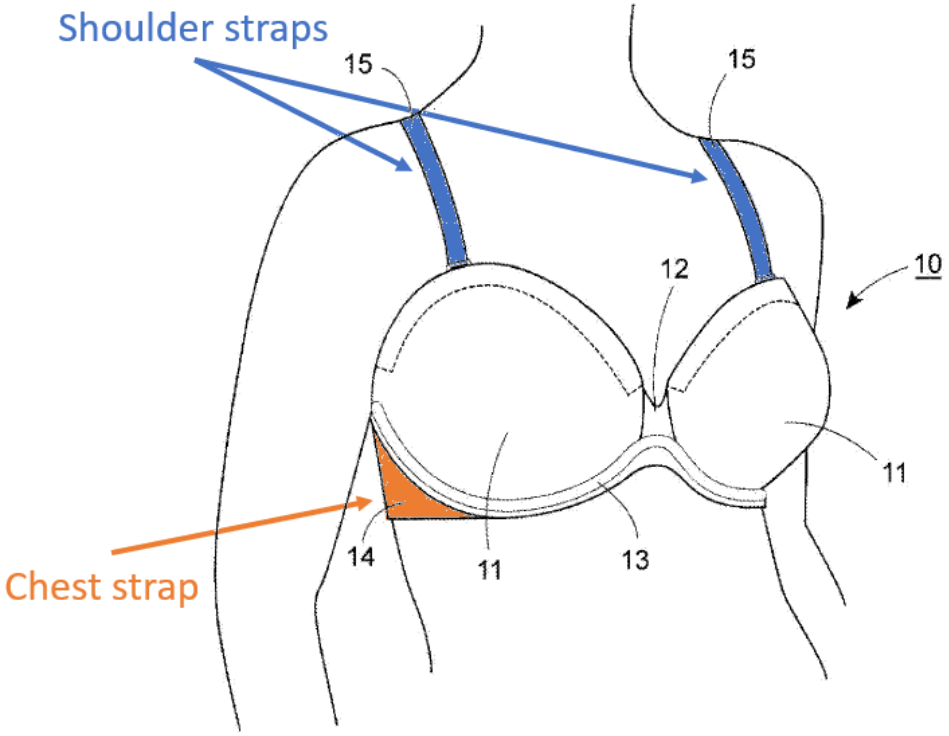


NIKE-1021 at Figs. 1–2, 6; at [0003] ("[i]t is an object of the invention to provide a pocket in a bra for receiving one or more items that is conveniently located for the

wearer."), at [0004] ("a concealed pocket in a bra for receiving one of [sic] more items.").

b. ***"a strap assembly comprising a chest strap;" limitation [1B]***

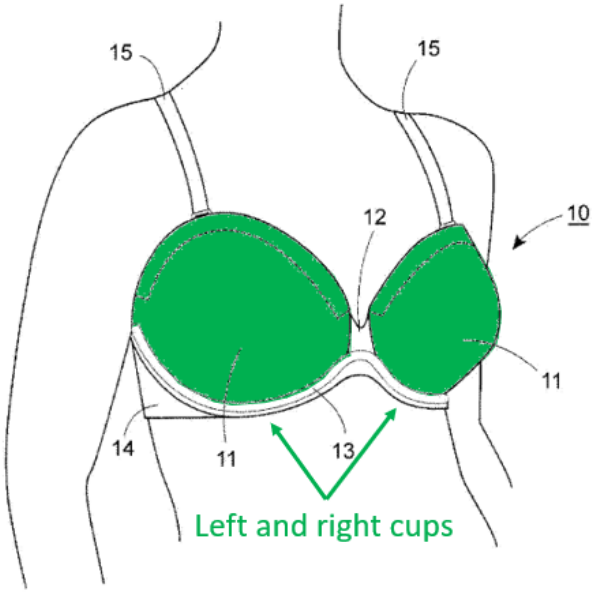
458. Handras discloses a traditional bra comprising of "a pair of cups 11 … a pair of side panels 14 (only one of which is shown) that can be connected together at the back of the bra 10 in any conventional manner and a pair of shoulder straps 15." NIKE-1021 at [0020].



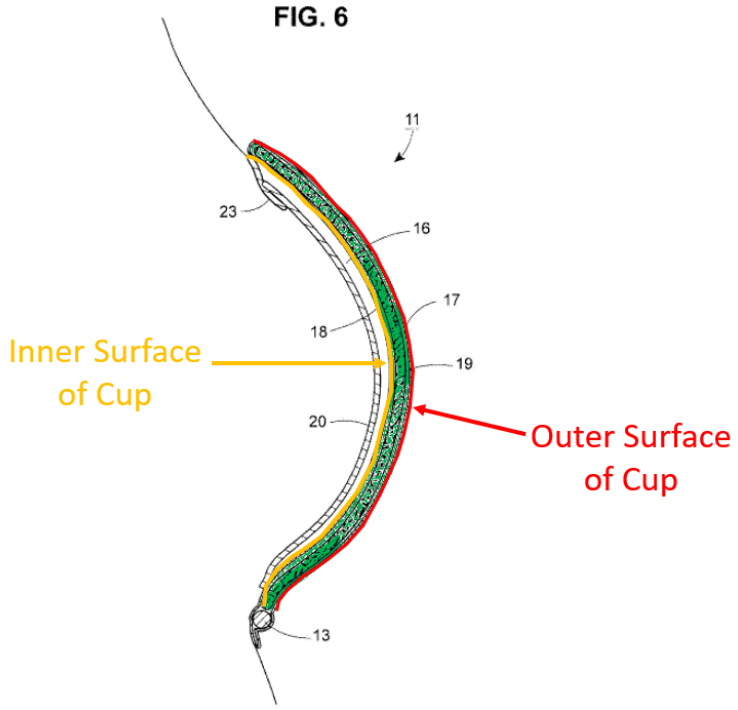
NIKE-1021 at Fig. 1.

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

459. Handras discloses a bra having "a pair of cups" for the left and right breasts. NIKE-1021 at [0020].



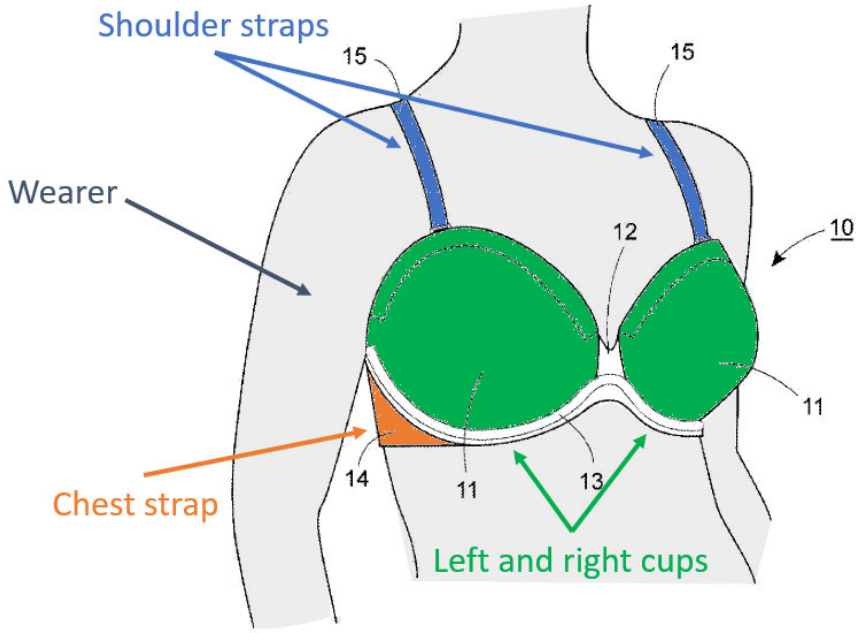
Id. at Fig. 1, [0006], [0011], [0029], Cl. 1, Cl. 6. In my opinion, a POSA would have understood these cups to necessarily have inside and outside surfaces. The inside and outside surfaces are illustrated in Figure 6:



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," limitation [1D]***

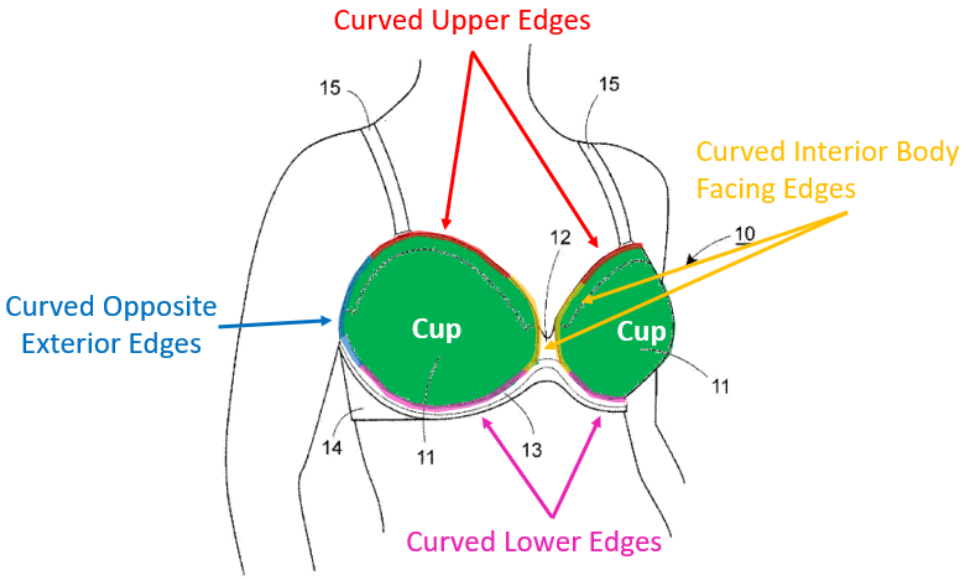
460. As explained above in limitations [1B] and [1C], Handras discloses a "strap assembly" attached to the "left and right cups." Further, to the extent the "whereby" clause should be provided patentable weight, Handras discloses the strap assembly adhering the cups to the wearer:



NIKE-1021 at Fig. 1.

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

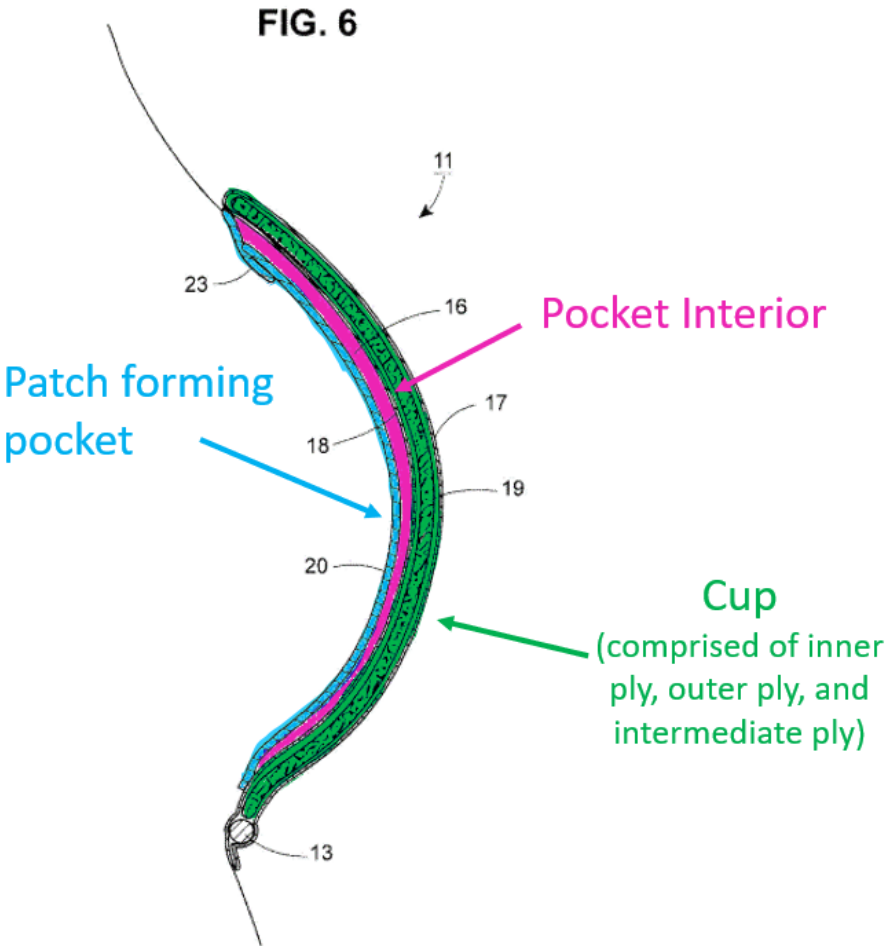
461. Handras discloses cups with curved upper, lower, interior body facing, and opposite exterior edges, as illustrated below:

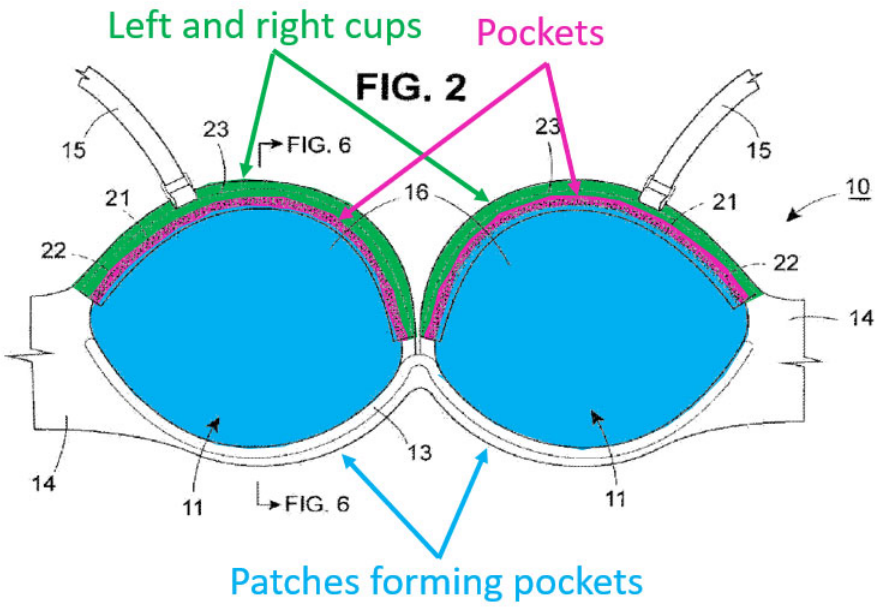


NIKE-1021 at Fig. 1.

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

462. 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].

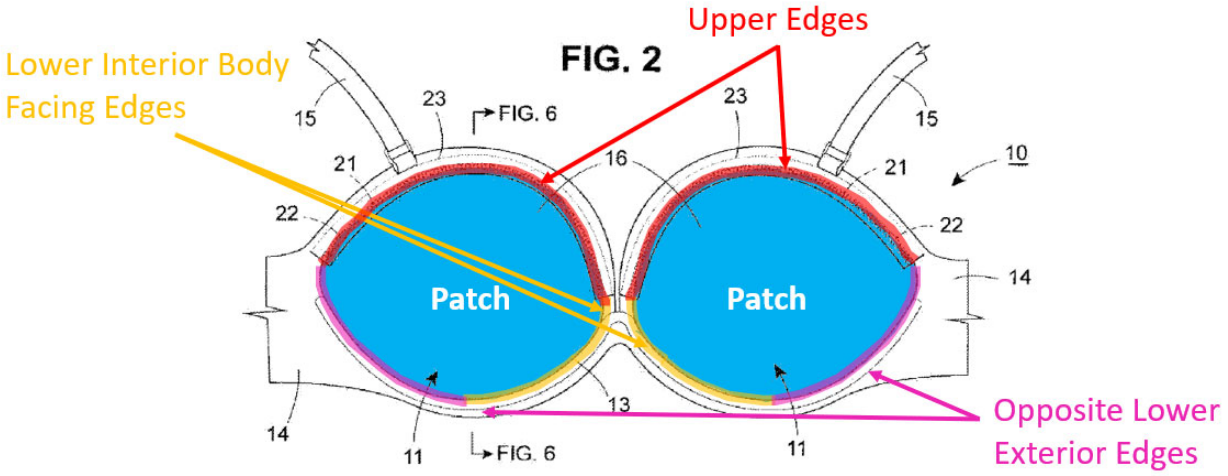


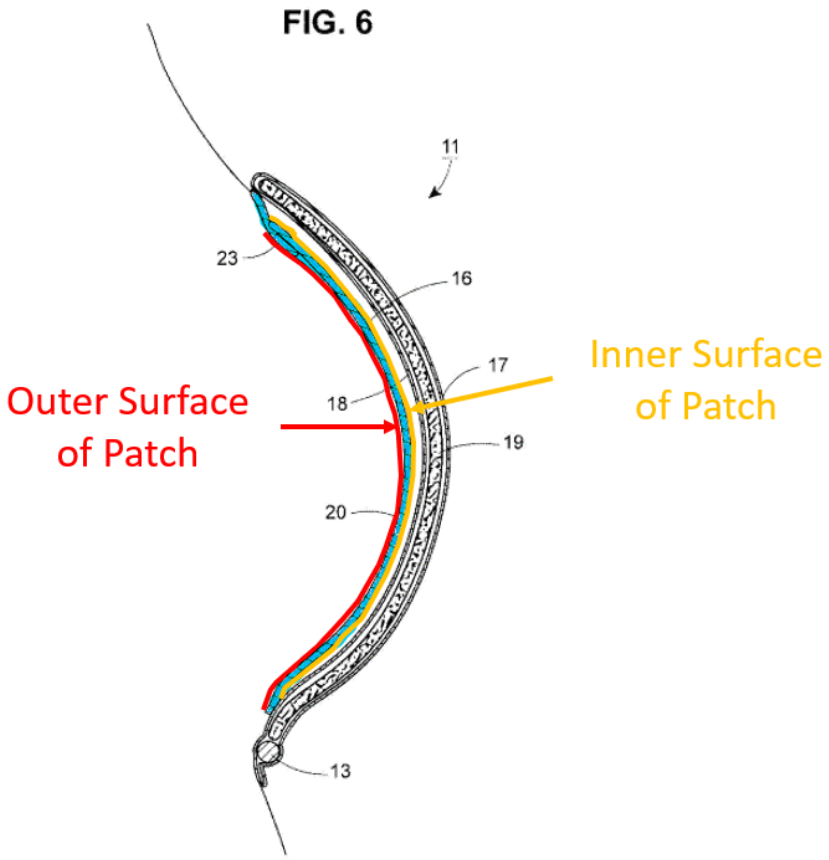


NIKE-1021 at Figs. 2, 6, [0006] ("a pair of cups wherein each cup is of multi-ply construction with a built-in pocket."), [0007] ("a fourth ply of material is sewn or otherwise secured to the inner ply in order to form the built-in pocket with an opening extending along the upper section of the cup.").

g. ***"the patch having an upper edge, a lower interior body facing edge, and an opposite lower exterior edge, the patch having inside and outside surfaces;" limitation [1G]***

463. Handras discloses a patch with curved lower, interior body facing, and opposite exterior edges, each patch having inside and outside surfaces:



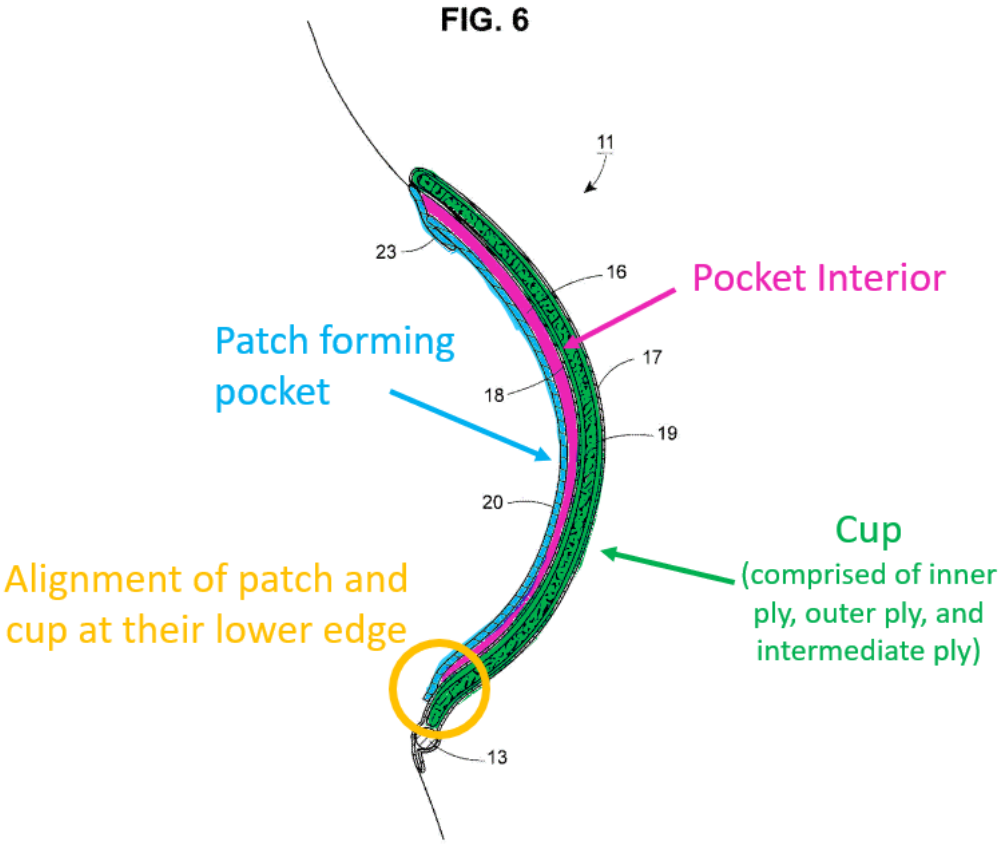


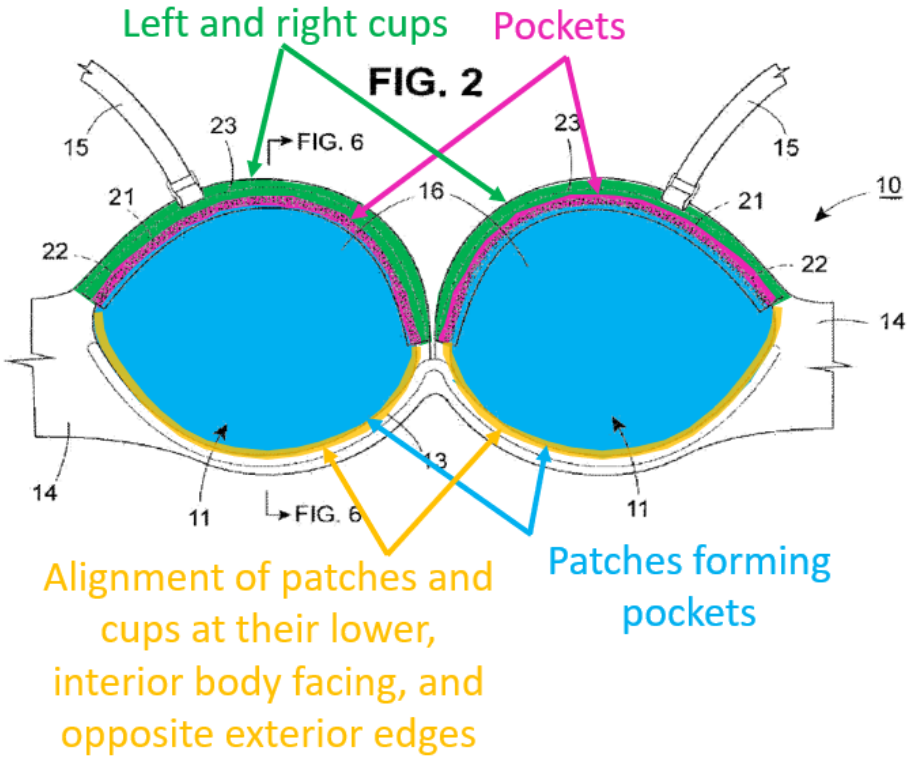
NIKE-1021 at Figs. 2, 6. In my opinion, a POSA would have understood the patches to necessarily have inside and outside surfaces.

h. ***"stitching coupling the lower interior body facing edge, and the opposite lower exterior edge of the patch to at least one of the lower, interior body facing, and opposite exterior edges of the at least one of the left and right cups, or the chest strap;" limitation [1H]***

464. 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]. In my opinion, 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. Handras describes the patch as a "fourth ply of material" sewn 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. This is confirmed by Handras's disclosure that "each pocket 16 occupies a major faction of the back of a cup 11." 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 their respective lower, interior body facing, and opposite exterior edges:

FIG. 6

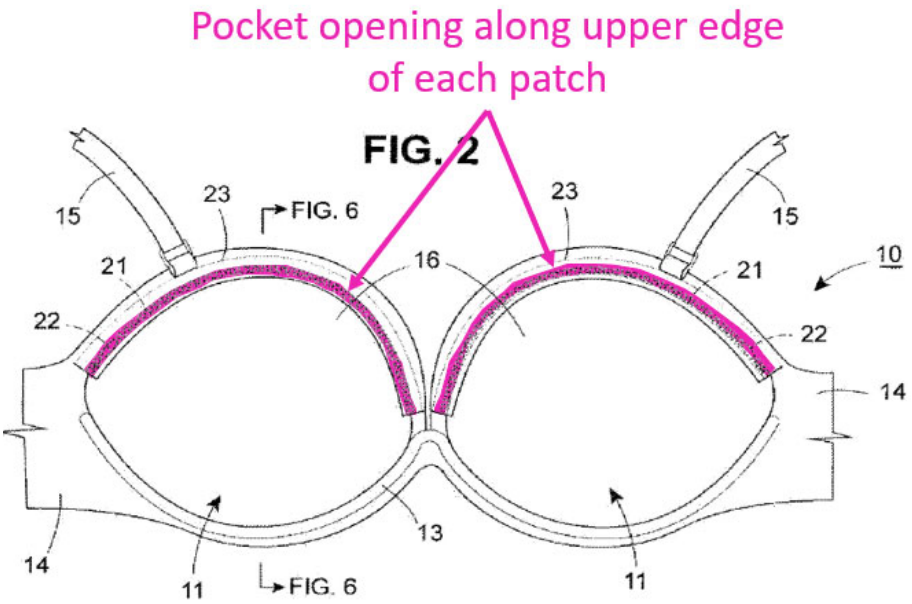

11
23
16
Pocket Interior
Patch forming pocket
17
18
19
20
Cup
(comprised of inner ply, outer ply, and intermediate ply)
Alignment of patch and cup at their lower edge
13


Left and right cups
Pockets
FIG. 2
15
23
FIG. 6
23
15
21
16
21
10
22
22
14
14
11
FIG. 6
13
11
Alignment of patches and cups at their lower, interior body facing, and opposite exterior edges
Patches forming pockets

NIKE-1021 at Figs. 2, 6.

i. *"an opening formed along the upper edge of the patch;" limitation [1I]*

465. In my opinion, Handras renders this limitation obvious. First, Handras discloses that the openings are 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.").

j. *"the opening capable of repeated receiving and removal of an item when being worn by the wearer; and" limitation [1J]*

466. Handras teaches using the pocket "to hold items, such as, credit cards, car keys, cell phones and the like." NIKE-1021 at [0002]. In my opinion, a POSA in 2013 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.

k. ***"wherein the upper edge of the patch crosses over a surface of the cup to form the opening, the upper edge of the patch being offset from an upper edge of the cup" limitation [1K]***

467. In my opinion, Handras renders obvious this limitation. Figure 2 of Handras illustrates that the openings are at the "upper edges" of each patch. While Handras discloses a patch with a curved "upper edge," for the same reasons discussed above in limitation [1G] in Barg, it would have been obvious to a POSA to modify Handras's patch so that it would have a "linear upper edge." Both bras and pockets have been long known in the art and in designing a bra with storage pockets, and in my opinion, a POSA would have been motivated to look for known solutions in the art, such as the variety of types of bra designs and pocket shapes. In my opinion, a POSA would have understood there to be a finite number of edge designs for the patches. Further, in my opinion, a POSA would have further understood the degree of curvature of the edge of the patch to be a simple choice of design, as the prior art makes clear. *See* NIKE-1022 at 6:6–10; NIKE-1025 at Fig. 2. Neither the '288, nor the prosecution history, describes the "upper edge" being "linear" as an allegedly novel or advantageous aspect of its purported invention. *See generally* NIKE-1003; NIKE-1004; *see* limitation [1G]. Nor could they, as "straight" or "linear" pocket edges were well known. NIKE-1022 at 6:6–10; NIKE-1025 at Fig. 2.

468. Handras teaches that the pocket can be modified to accommodate the storage of particular items. NIKE-1021 at [0025]. In my opinion, a POSA would have been motivated to make the top edge of the patch linear for secure holding of a rectangular item, such as an electronic device or rectangular key, ensuring the item is held snugly within. When designed with a linear top edge, the upper edges of the patched would necessarily be offset from the curved upper edged of the bra cups.

469. Moreover, in my opinion, a POSA would have known that the shape of the upper edge is a design choice and could be designed in a number of known ways, including straight. In my opinion it therefore would have been well within the abilities of a POSA to make such a routine modification and a POSA would have had a high expectation of success in doing so. This is simple technology and bras with pockets with linear openings were well known in the art. NIKE-1022 at 6:6–10; NIKE-1025 at Fig. 2.

ii. Claim 2

a. *"The pocket bra of claim 1" limitation [Preamble]*

470. Handras discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. *"wherein the stitching is along the lower interior body facing and opposite exterior edges of the patch." limitation [2A]*

471. 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]. In my opinion, a POSA would have understood that a pocket with an upper opening would be formed by stitching along the lower interior body facing and opposite exterior edges of a patch.

iii. Claim 3

a. *"A bra pocket system comprising the pocket bra of claim 1" limitation [Preamble]*

472. Handras discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. *"a non-padding item removably positioned within the pocket of at least of the left and right cups." limitation [3A]*

473. 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]. In my opinion, 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 removably positioned within Handras' pockets.

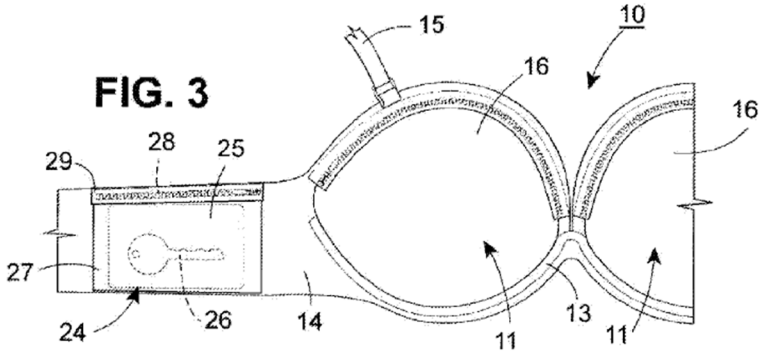
iv. Claim 4

a. *"A bra pocket system comprising the pocket bra of claim 1" limitation [Preamble]*

474. Handras discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. ***a side patch on at least one side of the chest strap, the side patch having upper and lower edges and side edges, the side patch attached to the at least one side of the chest strap, thus forming an upper opening at the side patch limitation [4A]***

475. Handras discloses a side patch 24 provided on the chest strap 14. The patch 24 has upper, lower, and side edges sewn to the chest strap 14.



v. Claim 5

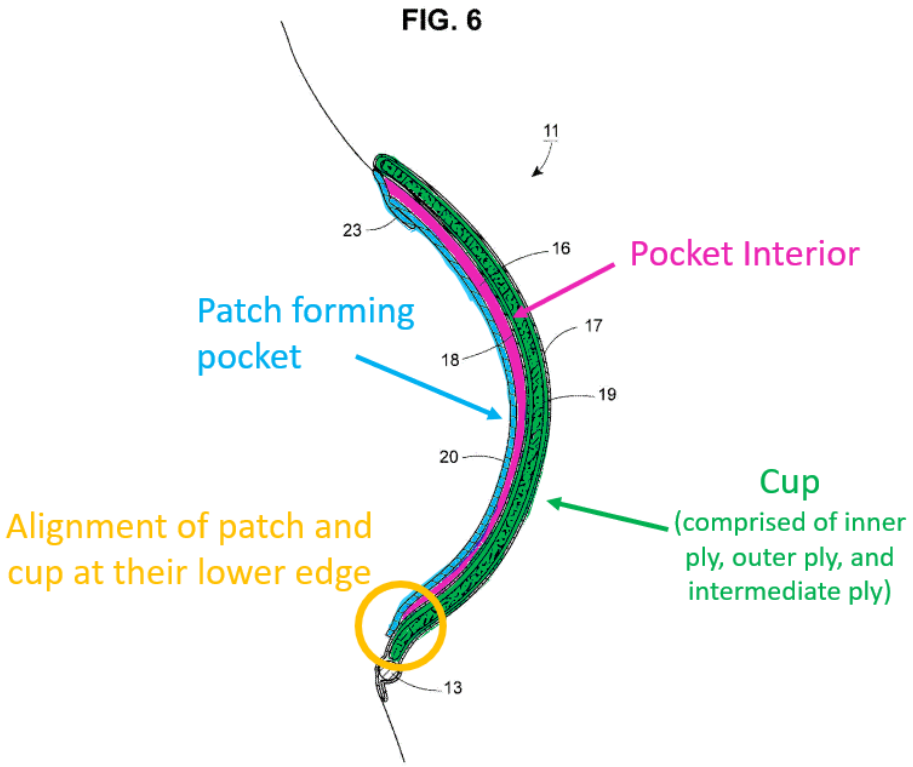
a. ***"The pocket bra of claim 1" limitation [Preamble]***

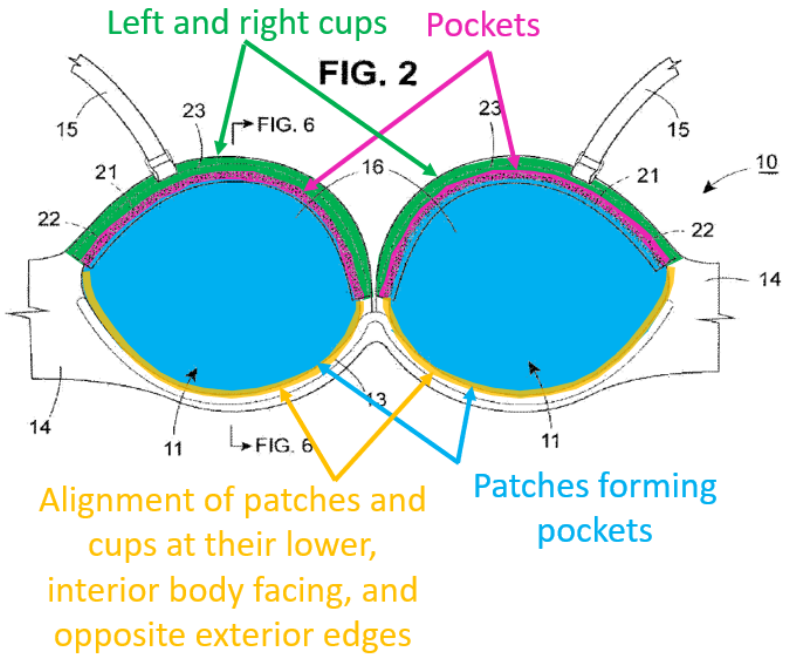
476. Handras discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. ***"wherein the patch lower interior body facing and opposite exterior edges are aligned with the lower interior body facing and opposite exterior edges of the one of the left and right cups, and wherein the stitching is along the lower interior body facing and opposite exterior edges of the patch." limitation [5A]***

477. Handras, either alone or in combination with Pintor, renders obvious this limitation. As previously discussed in limitations [1E] and [1G], Handras discloses cups and patches with curved lower interior body facing and opposite exterior edges. Handras also discloses and/or renders obvious "stitching coupling

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," as explained above in limitation [1H]. In my opinion, a POSA would have understood that in such a configuration, the lower interior body facing and opposite exterior edges of the cups and patches are aligned.





NIKE-1021 at Figs. 2, 6.

vi. Claim 6

a. ***"A pocket bra comprising" limitation [6A]***

478. Handras discloses "[a] pocket bra" for the reasons described above in limitation [1A].

b. ***"a strap assembly comprising a chest strap;" limitation [6B]***

479. Handras discloses "a strap assembly comprising a chest strap" for the reasons described above in limitation [1B].

c. ***"left and right cups, each cup being an area to receive a breast of a wearer and having inside and outside surfaces," limitation [6C]***

480. Handras discloses "left and right cups, each cup being an area to receive a breast of a wearer and having inside and outside surfaces" for the reasons described above in limitation [1C].

d. ***"the strap assembly being attached to the cups whereby the strap assembly connects the cups to the wearer," limitation [6D]***

481. Handras discloses "the strap assembly being attached to the cups whereby the strap assembly connects the cups to the wearer" for the reasons described above in limitation [1D].

e. ***"each cup having upper, lower, interior body facing, and opposite exterior edges;" limitation [6E]***

482. Handras discloses "each cup having upper, lower, interior body facing, and opposite exterior edges" for the reasons described above in limitation [1E].

f. ***"a patch forming a pocket operatively associated with at least one of the left and right cups," limitation [6F]***

483. Handras discloses "a patch forming a pocket operatively associated with at least one of the left and right cups" for the reasons described above in limitation [1F].

g. ***"the patch having an upper edge, a lower interior body facing edge, and an opposite lower exterior edge, the patch having inside and outside surfaces;" limitation [6G]***

484. Handras discloses "the patch having an upper edge, a lower interior body facing edge, and an opposite lower exterior edge, the patch having inside and outside surfaces" for the reasons described above in limitation [1G].

h. ***"stitching coupling the lower interior body facing edge, and the opposite lower exterior edge of the patch to the lower, interior body facing, and opposite exterior edges of the at least one of the left and right cups;" limitation [6H]***

485. Handras discloses "stitching coupling the lower interior body facing edge, and the opposite lower exterior edge of the patch to the lower, interior body facing, and opposite exterior edges of the at least one of the left and right cups" for the reasons described above in limitation [1H].

i. ***"an opening formed along the upper edge of the patch;" limitation [6I]***

486. Handras discloses "an opening formed along the upper edge of the patch" for the reasons described above in limitation [1I].

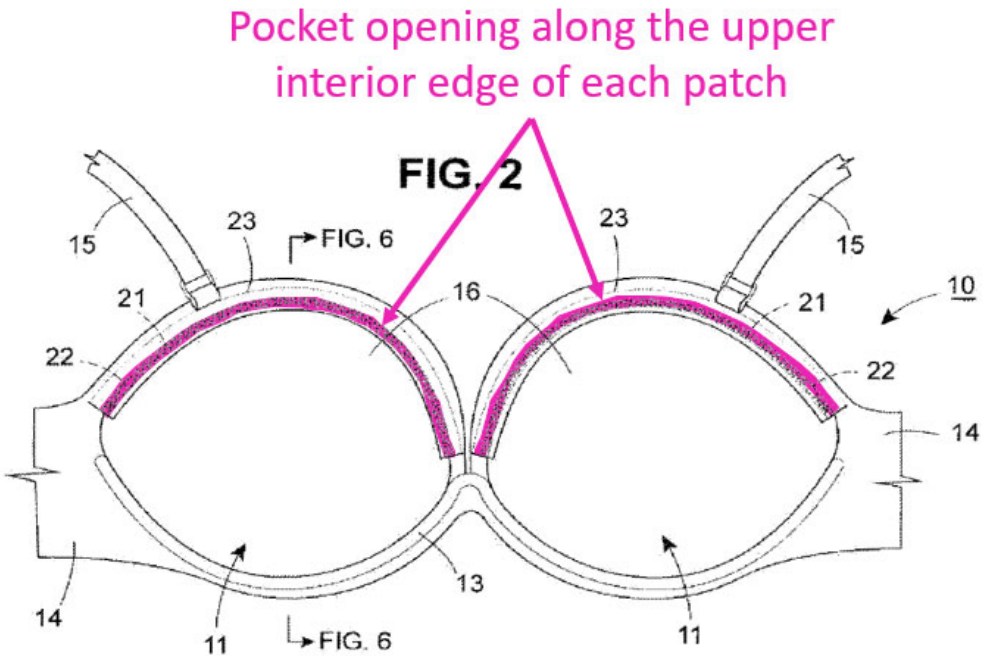
j. ***"the opening capable of repeated receiving and removal of an item when being worn by the wearer;" limitation [6J]***

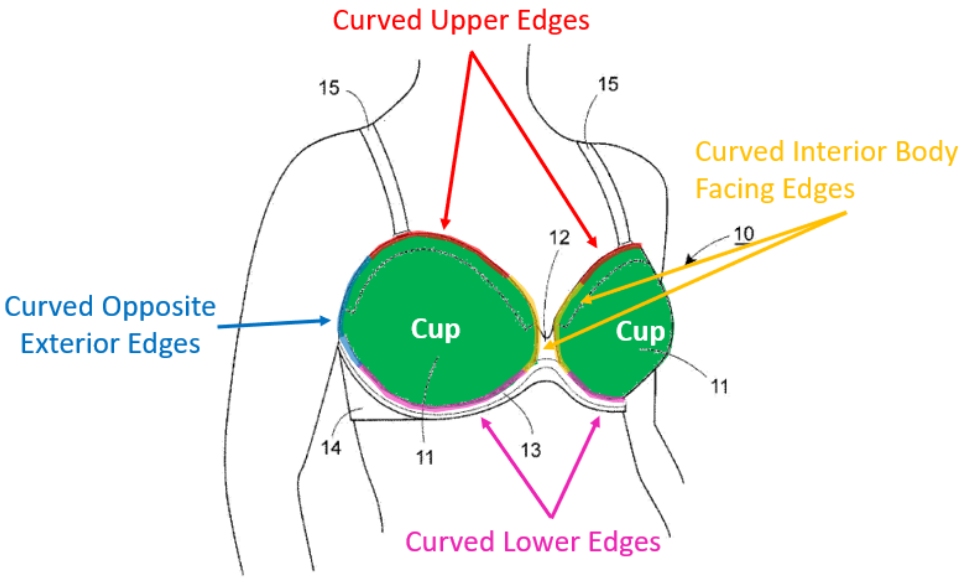
487. Handras discloses "the opening capable of repeated receiving and removal of an item when being worn by the wearer" for the reasons described above in limitation [1J].

k. ***"wherein the upper edge of the patch crosses over a surface of the cup to form the opening, the upper edge of the patch crossing in such that the opening faces the interior body facing edge of the one of the left and right cup to which it is attached, the upper edge of the patch being offset from an upper edge of the cup." limitation [6K]***

488. Handras discloses "wherein the upper edge of the patch crosses over a surface of the cup to form the opening" and renders obvious "the upper edge of the patch being offset from an upper edge of the cup" as discussed above in limitation

[1K]. Further, as illustrated below, Handras discloses pockets whose opening faces the interior body facing edge of both cups:





NIKE-1021 at Fig. 2, [0007], [0010], [0022], [0024].

vii. Claim 7

a. ***"The pocket bra of claim 6" limitation [Preamble]***

489. Handras discloses "[t]he pocket bra of claim 6" for the reasons described above in claim 6.

b. ***"wherein the stitching is along the lower interior body facing and opposite exterior edges of the patch." limitation [7A]***

490. Handras discloses "wherein the stitching is along the lower interior body facing and opposite exterior edges of the patch" for the reasons described above in claim 2.

viii. Claim 8

a. ***"The pocket bra of claim 6" limitation [Preamble]***

491. Handras discloses "[t]he pocket bra of claim 6" for the reasons described above in claim 6.

b. ***"a non-padding item removably positioned within the pocket of at least one of the left and right cups." limitation [8A]***

492. Handras discloses "a non-padding item removably positioned within the pocket of at least one of the left and right cups" for the reasons described above in claim 3.

ix. Claim 9

a. ***"The pocket bra of claim 6" limitation [Preamble]***

493. Handras discloses "[t]he pocket bra of claim 6" for the reasons described above in claim 6.

b. ***"wherein the patch lower interior body facing and opposite exterior edges are aligned with the lower interior body facing and opposite exterior edges of the one of the left and right cups, and wherein the stitching is along the lower interior body facing and opposite exterior edges of the patch." limitation [9A]***

494. Handras discloses "wherein the patch lower interior body facing and opposite exterior edges are aligned with the lower interior body facing and opposite exterior edges of the one of the left and right cups, and wherein the stitching is along the lower interior body facing and opposite exterior edges of the patch" for the reasons described above in claim 5.

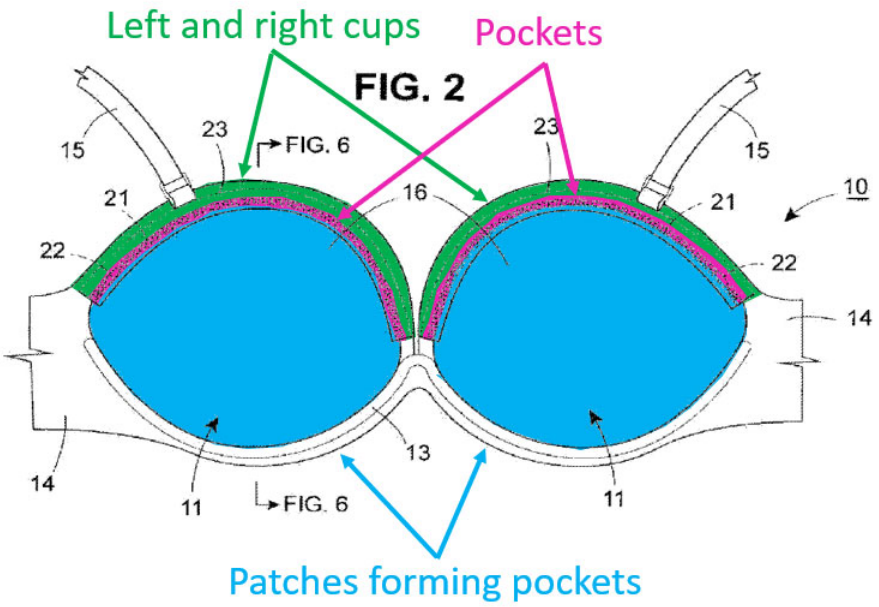
x. Claim 10

a. ***"The pocket bra of claim 6" limitation [Preamble]***

495. Handras discloses "[t]he pocket bra of claim 6" for the reasons described above in claim 6.

b. ***"a second patch forming a second pocket operatively associated with the other of the left and right cup." limitation [10A]***

496. Handras discloses a patch on both cups.



NIKE-1021 at Figs. 2, 6, [0006] ("a pair of cups wherein each cup is of multi-ply construction with a built-in pocket.").

xi. Claim 18

a. *"The pocket bra of claim 1" limitation [Preamble]*

497. Handras discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. *"a second patch forming a second pocket operatively associated with the other of the left and right cup" limitation [18A]*

498. Handras discloses "a second patch forming a second pocket operatively associated with the other of the left and right cup" for the reasons described above in claim 10.

C. The '550 Patent

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

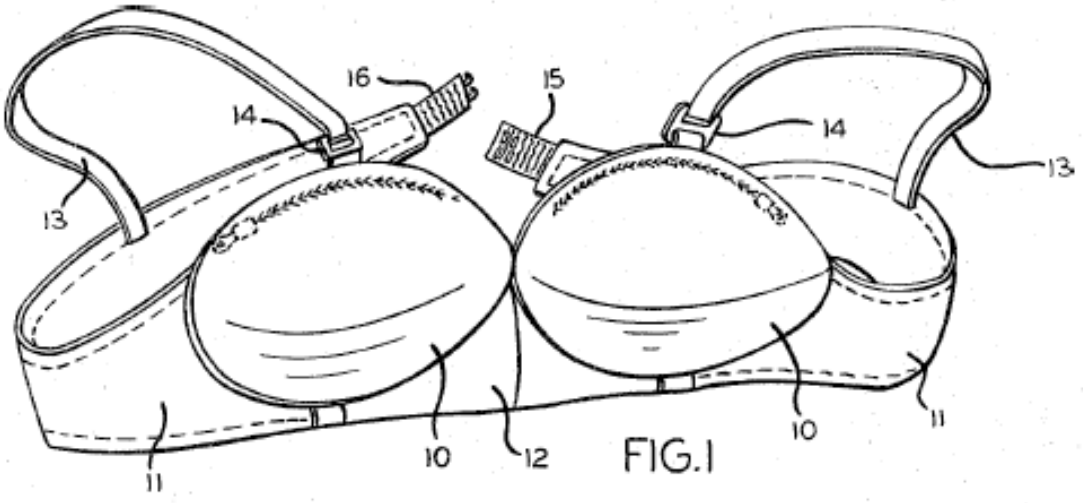
499. The discussion below provides my detailed analysis of how the prior art references invalidate the challenged claims of the ’550 Patent.

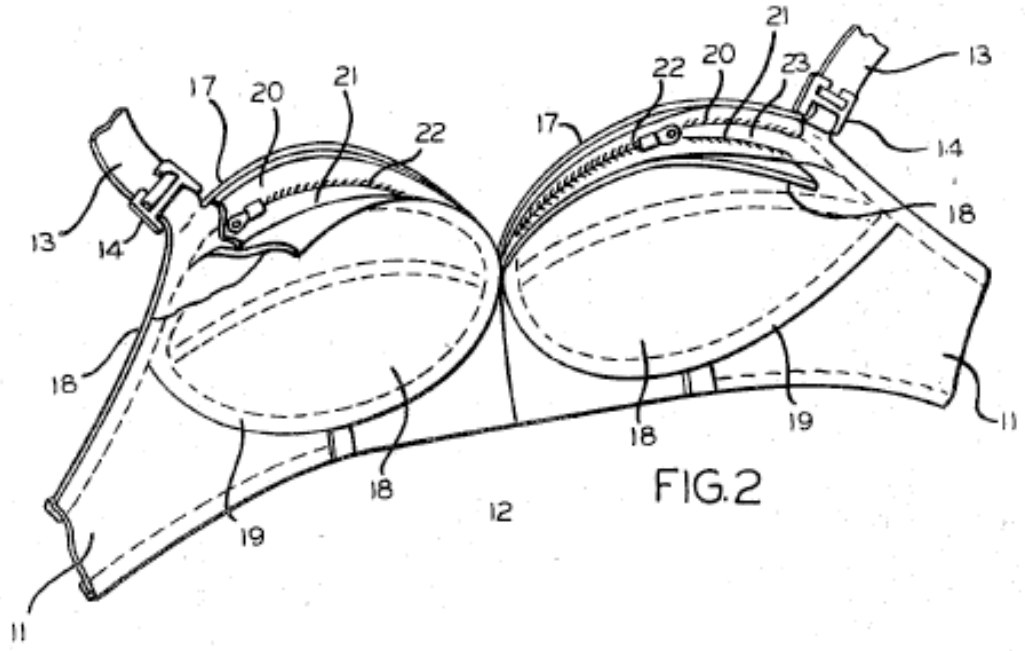
500. In my opinion, claims 1–14 are disclosed or rendered obvious by Barg in combination with Pintor.

i. Claim 1

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

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

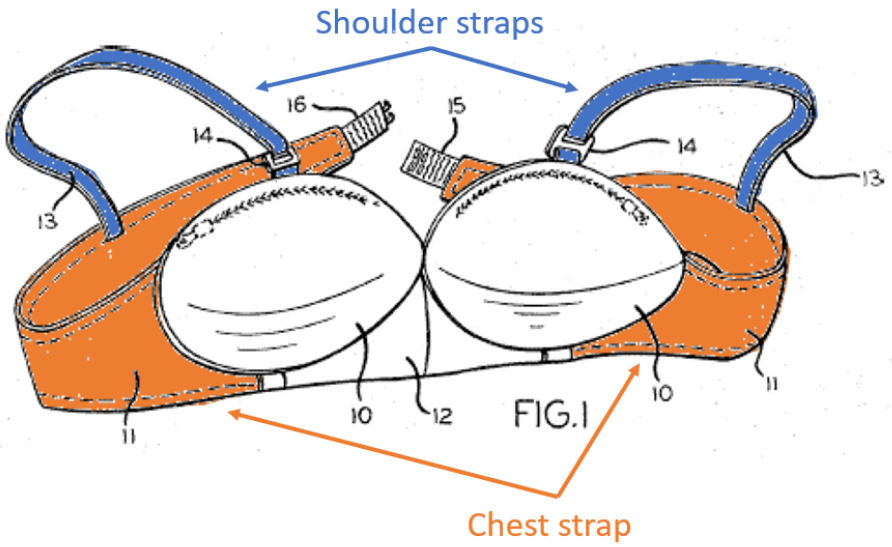




NIKE-1019 at Figs. 1–2, 1:19-25.

b. *"a strap assembly including a chest strap;" limitation [1B]*

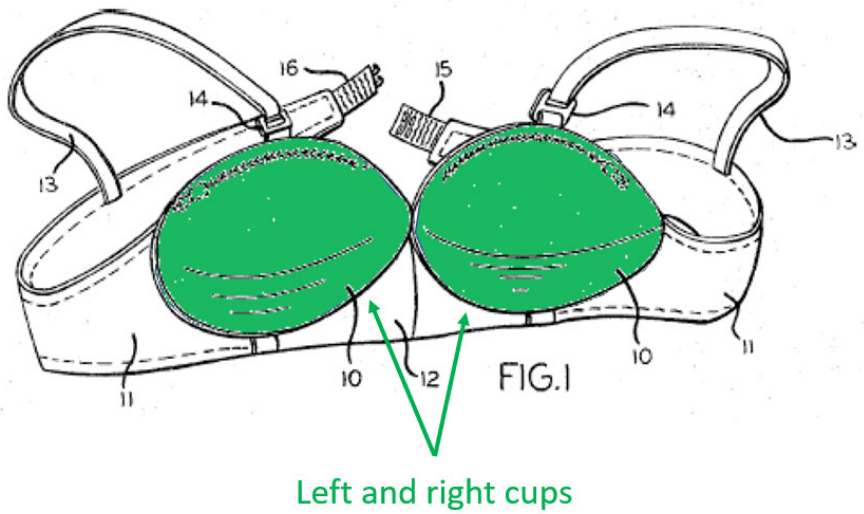
502. Barg discloses a traditional bra with cups "supported by a *body portion shown as 11*," *i.e.*, "chest strap." NIKE-1019 at 1:65-2:2. Figure 1 illustrates the "body portion" chest strap and two conventional shoulder straps:



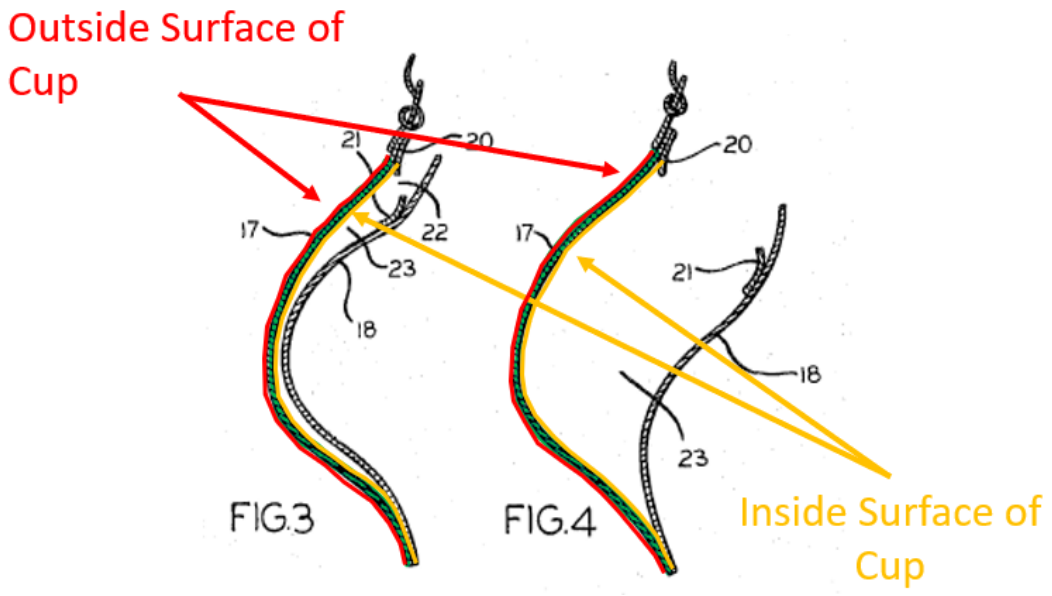
NIKE-1019 at Fig. 1.

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," limitation [1C]*

503. Barg discloses a bra with left and right cups:



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. In my opinion, 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:



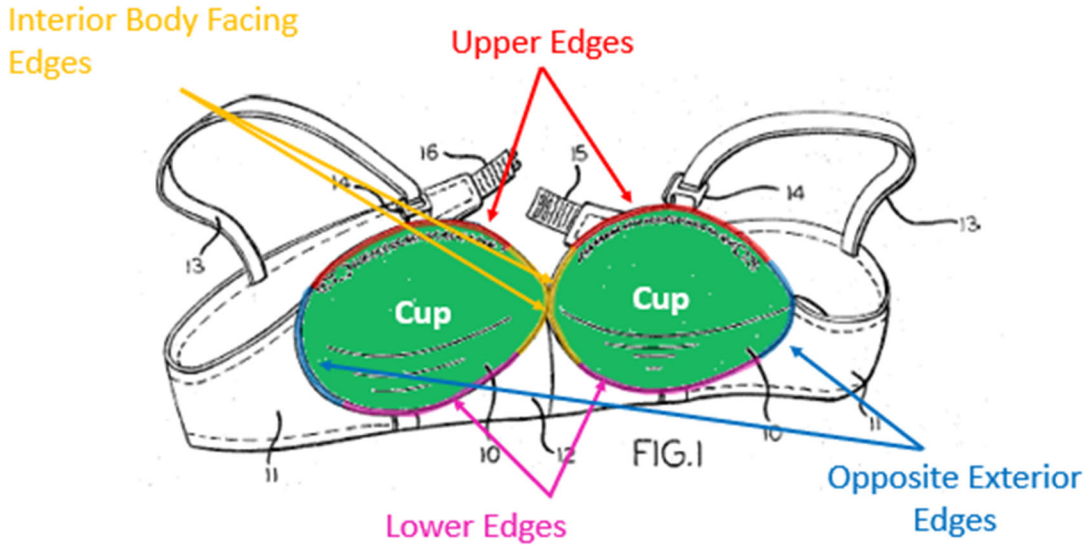
NIKE-1019 at Figs. 3–4.

d. ***"the strap assembly being attached to the cups whereby the strap assembly connects the cups to the wearer," limitation [1D]***

504. As explained above in limitations [1b] and [1c], Barg discloses a "strap assembly" and "left and right cups." To the extent the "whereby" clause should be provided patentable weight, 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."). In my opinion, a POSA would have understood this to be the purpose of Barg's "strap assembly."

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

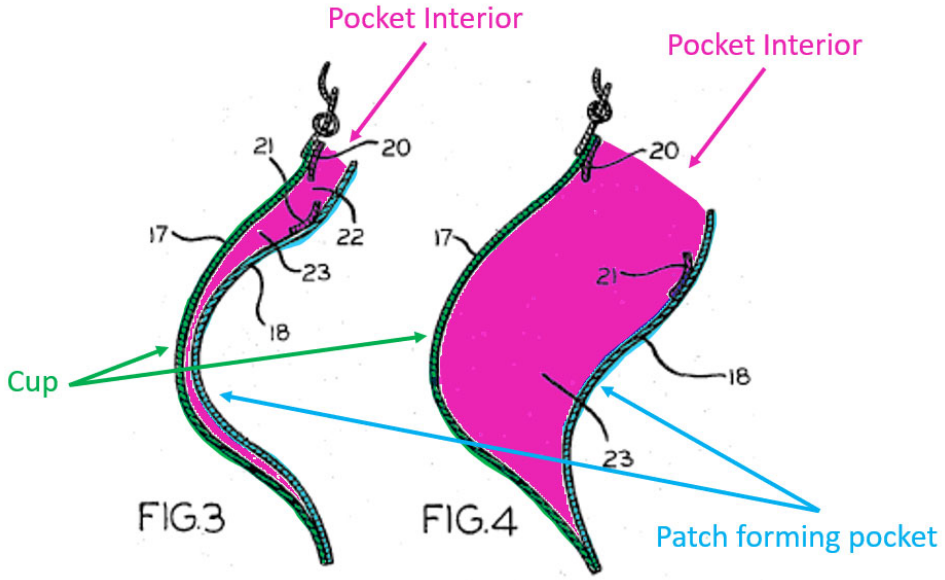
505. Barg discloses cups with curved upper, lower, interior body facing, and opposite exterior edges:

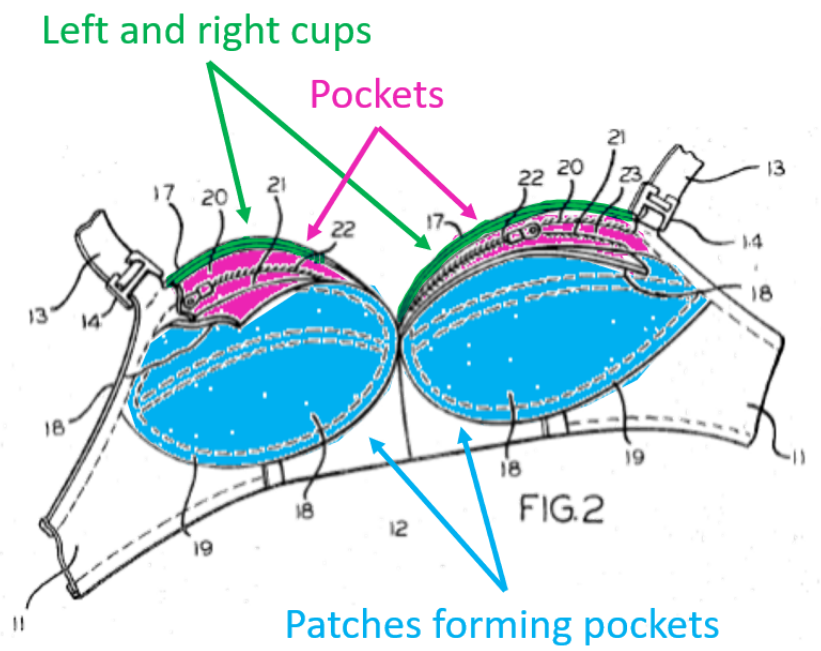


NIKE-1019 at Fig. 1.

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

506. 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:

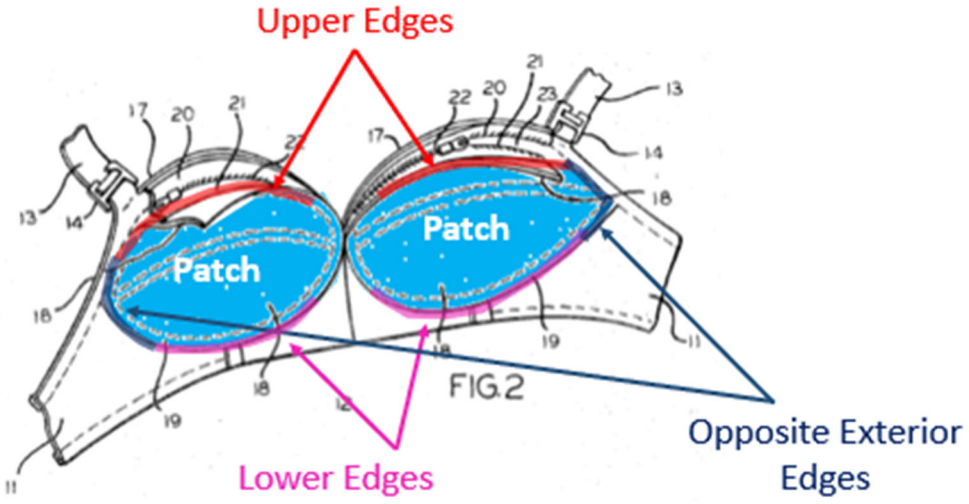




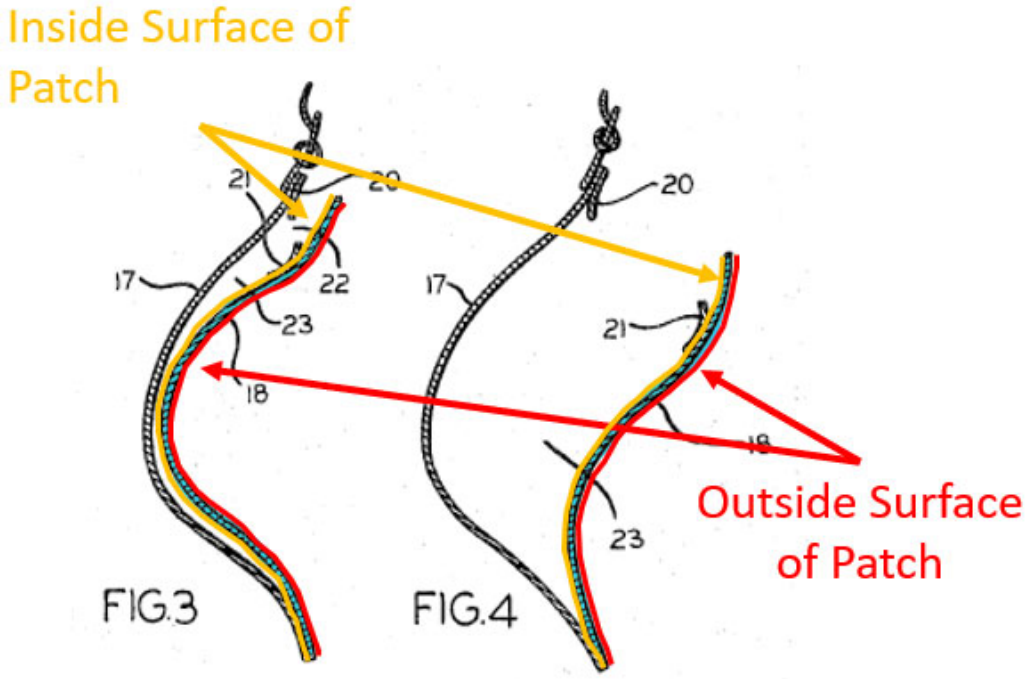
NIKE-1019 at 2:5-25, Figs. 2–4. Alternatively, in my opinion, a POSA would have understood that "outer section 17" could be understood as the "patch," while the "inner section 18" could be understood as the "cup," such that the pockets are on the outside of the breast cups.

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

507. 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.

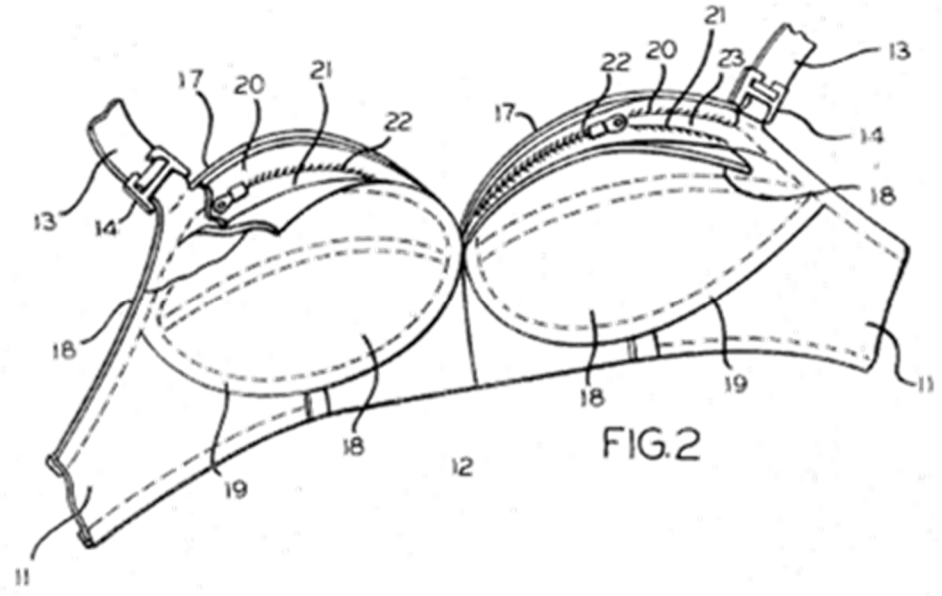


Id. at Figs. 3–4.

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;" limitation [1H]

508. 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.

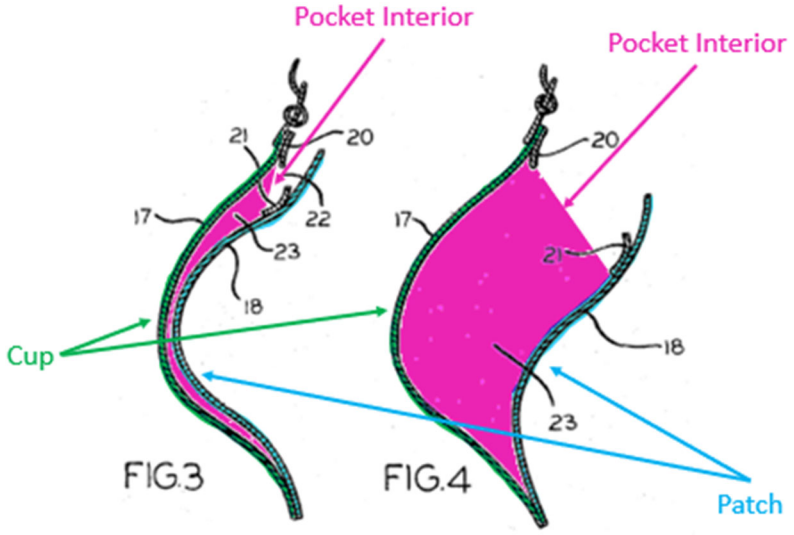
i. *"the pocket opening capable of repeated receiving and removal of an item when being worn by the wearer;" limitation [1I]*

509. Barg discloses "a pocket therein for storing valuables, or the like." NIKE-1019 at 1:19–20. In my opinion, 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. 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.")

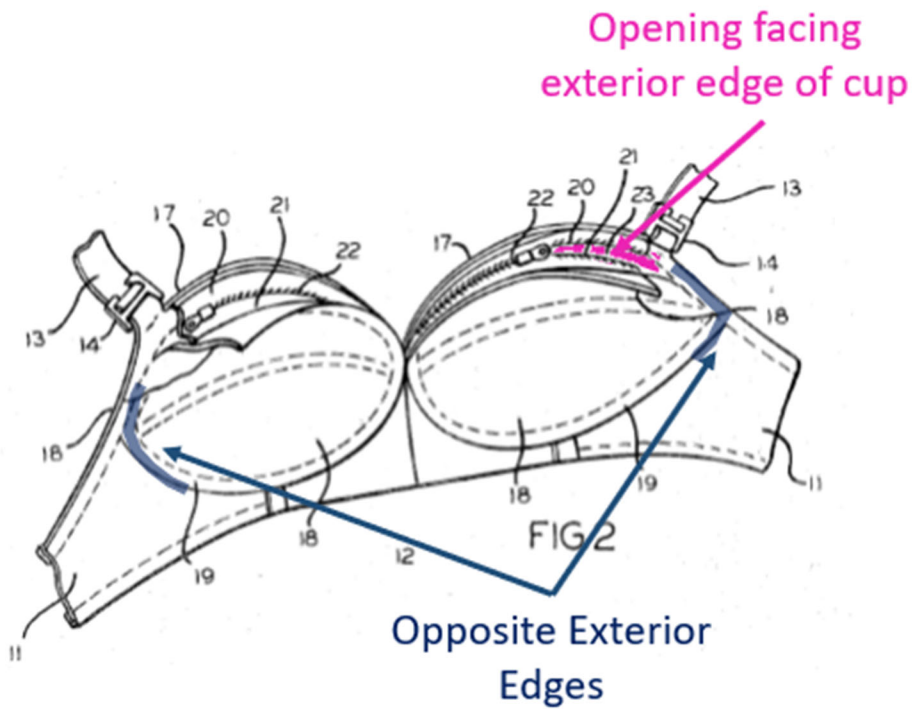
j. ***"and wherein the upper edge of the patch crosses over a surface of the cup to form the opening, the upper edge crossing such that the opening faces the exterior edge of the at least one of the left and right cup to which it is attached." limitation [1J]***

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



NIKE-1019 at Figs. 3 & 4.

511. 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.

ii. Claim 2

a. *"The pocket bra of claim 1" limitation [Preamble]*

512. Barg discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

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

513. As previously discussed in limitation [1F], Barg discloses "a patch forming a pocket operatively associated with at least one of the left and right cups." Barg discloses "a brassier equipped with *an* opening to provide *a* pocket." NIKE-1019 at 1:13–14.

514. To the extent this limitation is not expressly or inherently disclosed, in my opinion, 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. 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, in my opinion, a POSA would have been motivated to do so, at least, to reduce manufacturing costs and complexity. Further, in my opinion, 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.

iii. Claim 3

a. *"The pocket bra of claim 3" limitation [Preamble]*

515. Barg discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. *"further comprising a non-padding item positioned in the pocket." limitation [3A]*

516. 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.

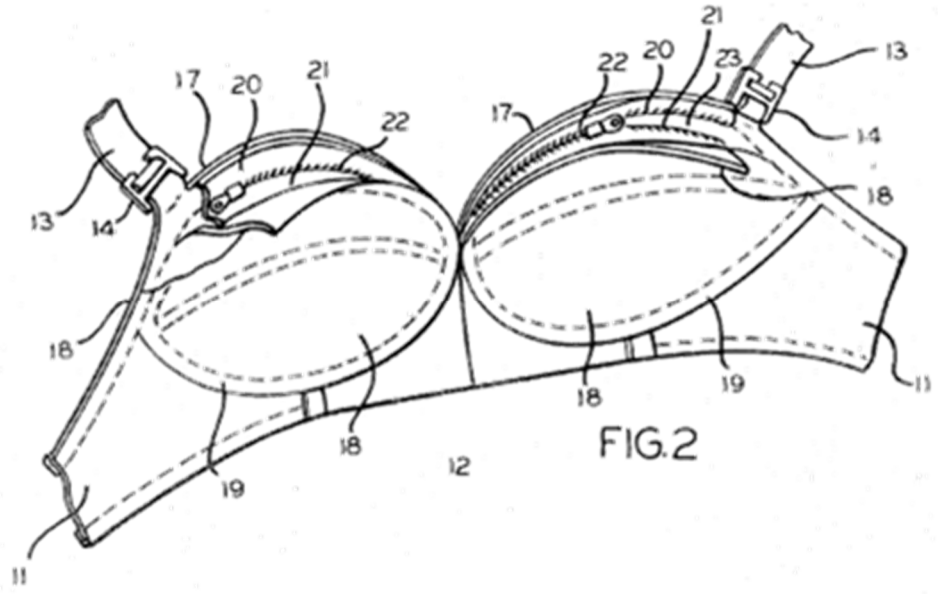
iv. Claim 4

a. *"The pocket bra of claim 1" limitation [Preamble]*

517. Barg discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

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

518. 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. 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.



NIKE-1019 at Fig. 2. Thus, Barg discloses that a lower edge of a patch that is coupled adjacent to the bra by a stitching.

519. Even if not expressly disclosed by Barg, in my opinion, 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. First, stitching was a well-known method by which pieces of fabric are attached together for clothing. 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, in my opinion, 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. Further, in my opinion, 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.

v. Claim 5

a. *"The pocket bra of claim 1" limitation [Preamble]*

520. Barg discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 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." limitation [5A]*

521. 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 could be coupled to the exterior edge of the at least one of the left and right cups by stitching for the reasons discussed above in limitation [4A].

522. Even if not expressly disclosed by Barg, as discussed above in limitation [4A], 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.

vi. Claim 6

a. *"The pocket bra of claim 2" limitation [Preamble]*

523. Barg discloses "[t]he pocket bra of claim 2" for the reasons described above in claim 2.

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

524. As described above in limitation [1F], Barg discloses "a second patch forming a second pocket operatively associated with the other of the left and right cups." NIKE-1019 at Figs. 1 & 2.

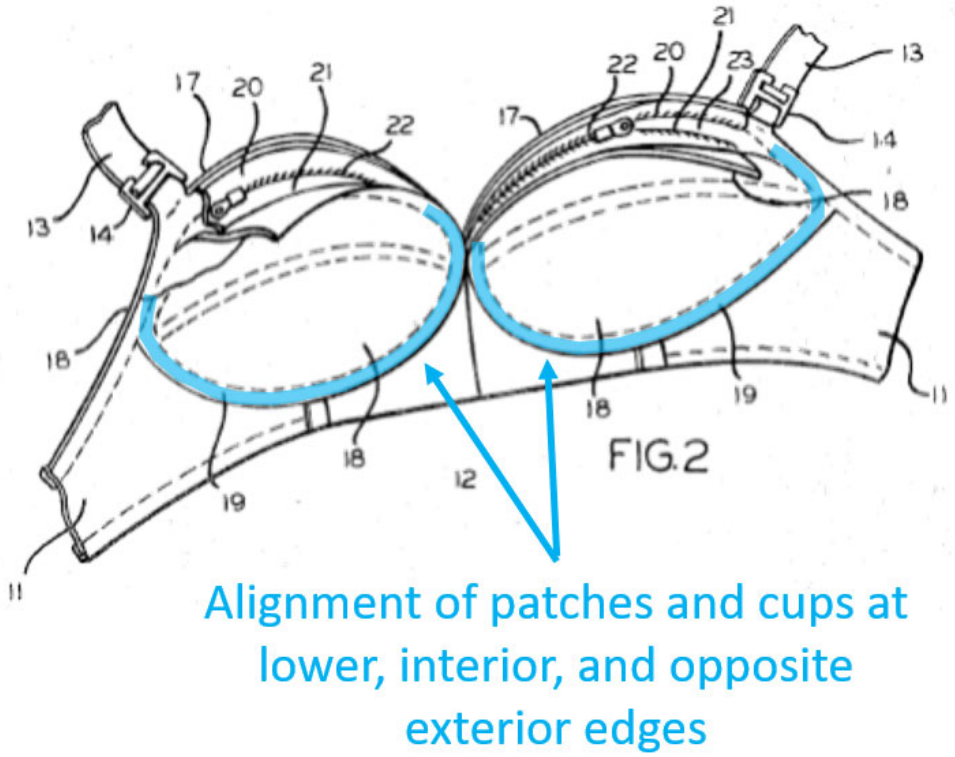
vii. Claim 7

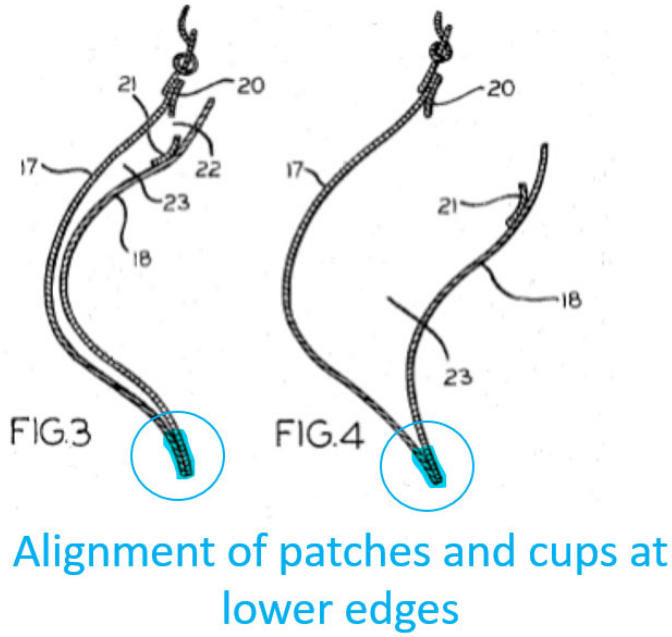
a. *"The pocket bra of claim 1" limitation [Preamble]*

525. In my opinion, Barg discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 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." limitation [7A]*

526. In my opinion, Barg, alone or in combination with Pintor, renders obvious this limitation. As previously discussed in limitations [1D] [1E], and [1H], Barg discloses cups and patches with lower and exterior edges, and "stitching [] along the lower and exterior edges of the patch." 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*":





NIKE-1019 at 2:7–9, Figs. 2-4.

viii. Claim 8

a. ***"A pocket bra comprising:" limitation [8A]***

527. This limitation is disclosed for the reasons discussed above in limitation [1A].

b. ***"a strap assembly including a chest strap," limitation [8B]***

528. This limitation is disclosed for the reasons discussed above in limitation [1B].

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," limitation [8C]***

529. This limitation is disclosed for the reasons discussed above in limitation [1C].

d. ***"the strap assembly being attached to the cups whereby the strap assembly connects the cups to the wearer," limitation [8D]***

530. This limitation is disclosed for the reasons discussed above in limitation [1D].

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

531. This limitation is disclosed for the reasons discussed above in limitation [1E].

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

532. This limitation is disclosed for the reasons discussed above in limitation [1F].

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

533. This limitation is disclosed for the reasons discussed above in limitation [1G].

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;" limitation [8H]***

534. This limitation is disclosed for the reasons discussed above in limitation [1H].

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

535. This limitation is disclosed for the reasons discussed above in limitation [1I].

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." limitation [8J]***

536. In my opinion, Barg in combination with the knowledge of a POSA renders this limitation obvious. As discussed above in limitation [1J], 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. In my opinion, 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. It would have been obvious to a POSA, in my opinion, 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. Further, in my opinion, POSA would have a high likelihood of success as reorienting a patch opening simply requires adjusting a known sewing technique. 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.

ix. Claim 9

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

537. In my opinion, Barg discloses this limitation for the reasons discussed above in claims 2 and 8.

x. Claim 10

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

538. In my opinion, Barg discloses this limitation for the reasons discussed above in claims 3 and 8.

xi. 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." limitation [11]***

539. In my opinion, Barg discloses this limitation for the reasons discussed above in claims 4 and 8.

xii. 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." limitation [12]***

540. In my opinion, Barg discloses this limitation for the reasons discussed above in claims 5 and 8.

xiii. 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." limitation [13]***

541. In my opinion, Barg discloses this limitation for the reasons discussed above in claims 6 and 9.

xiv. 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." limitation [14]***

542. In my opinion, Barg discloses this limitation for the reasons discussed above in claims 7 and 8.

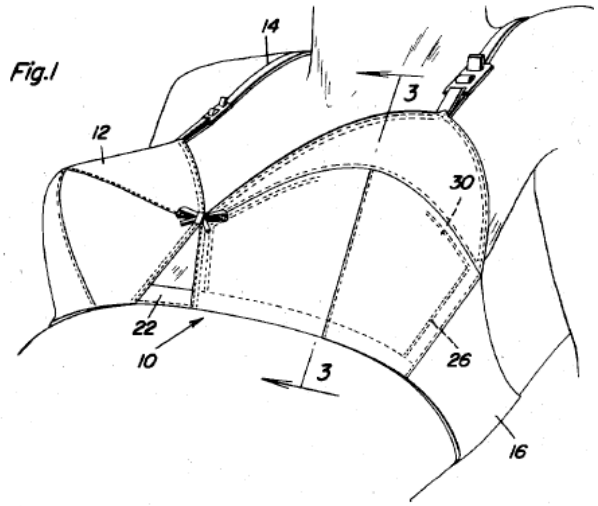
2. Ground 2: Claims 1–14 Are Unpatentable Over York in view of Pintor.

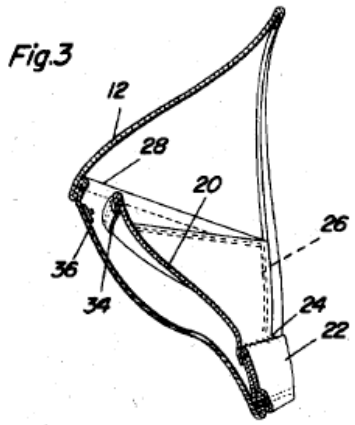
543. In my opinion, claims 1–14 are disclosed or rendered obvious by York in combination with Pintor.

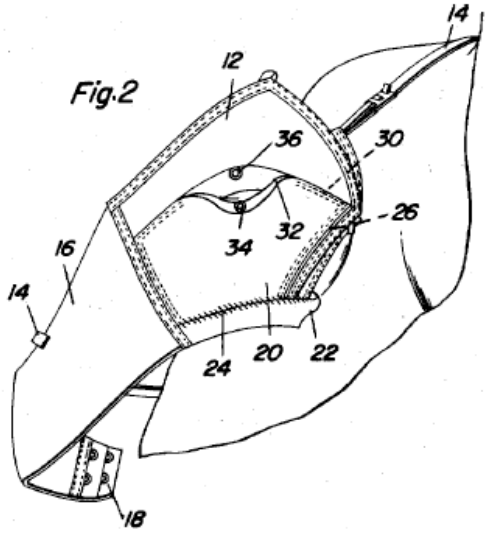
i. Claim 1

a. ***"A pocket bra comprising:" limitation [1A]***

544. 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.



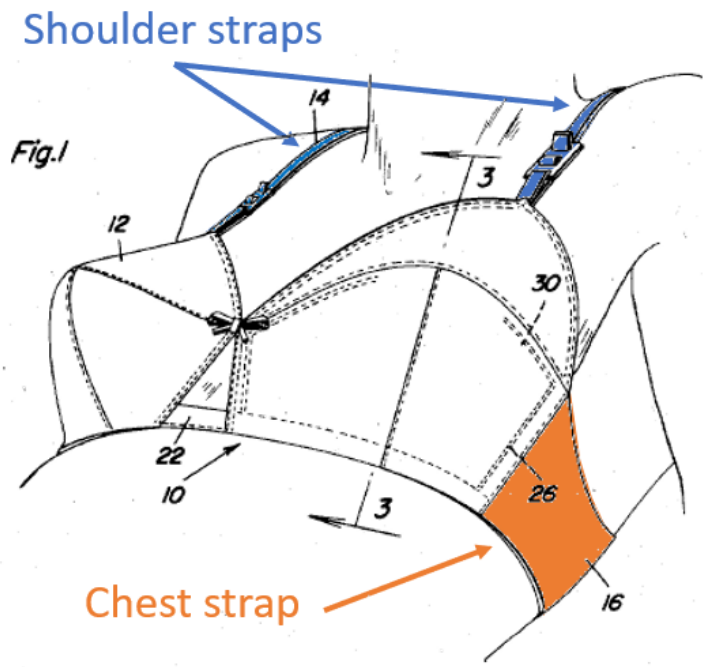




Id. at Figs. 1–3.

b. ***"a strap assembly including a chest strap," limitation [1B]***

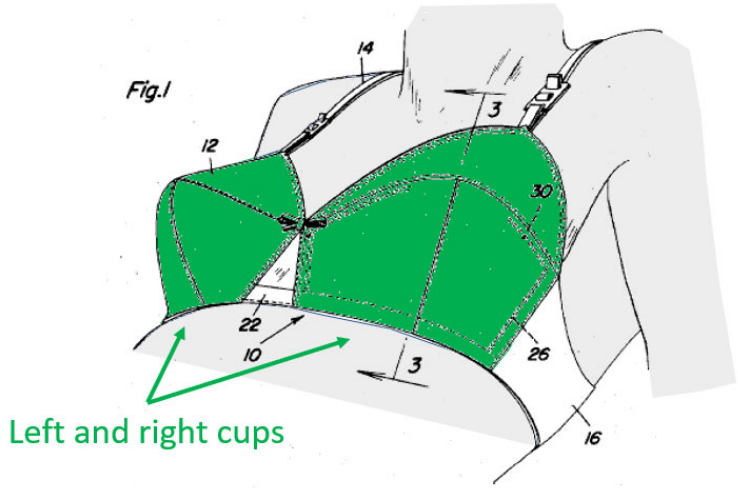
545. York discloses a "conventional" bra design with "the usual pair of breast cups 12 having shoulder straps 14 attached thereto along the top edge and *a body encircling strap 16 extending rearwardly which strap is provided with the usual separable ends such as indicated by the numeral 18*":



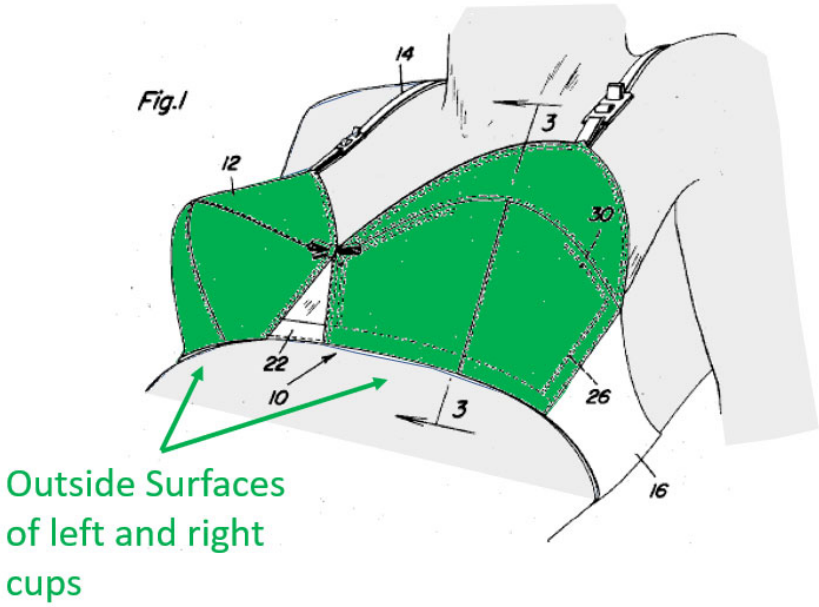
NIKE-1020 at 1:48–52, Fig. 1.

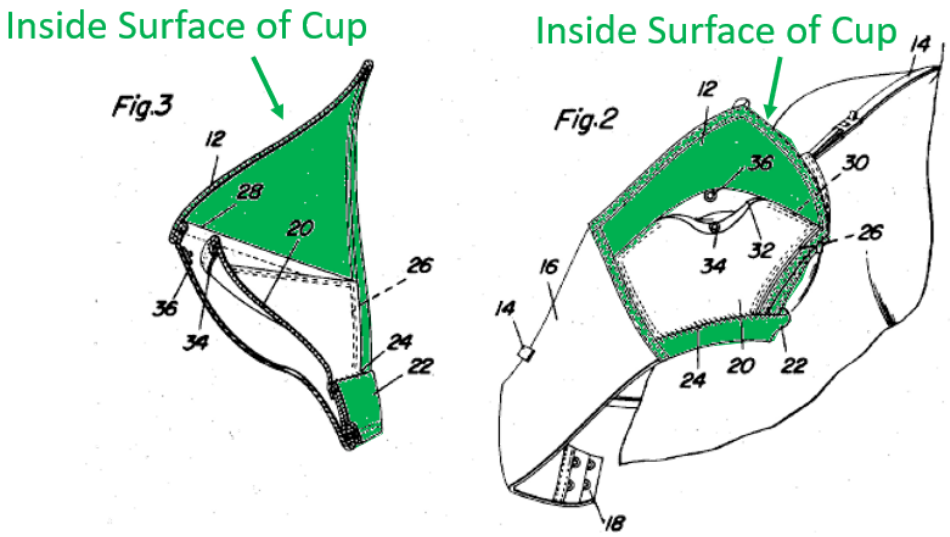
c. *"and comprising left and right cups, each cup being an area to receive a breast of a wearer and having inside and outside surfaces," limitation [1C]*

546. 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:

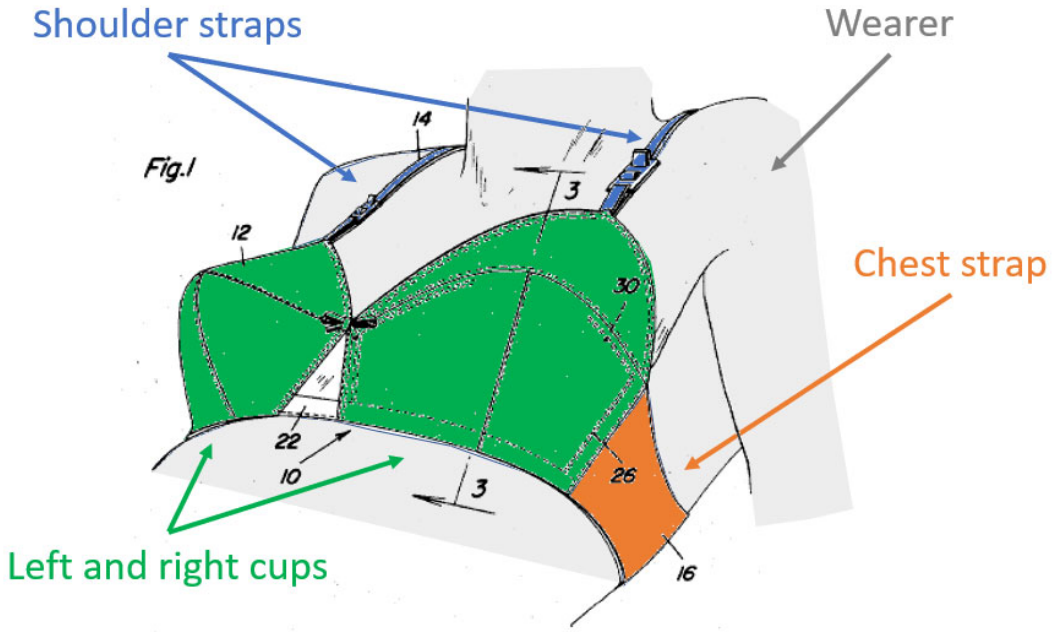




Id. at Figs. 1–3, 1:1-2:3 (describing the "interior surface" of the breast cups). In my opinion, a POSA would also have understood York's cups to necessarily have inside and outside surfaces.

d. ***"the strap assembly being attached to the cups whereby the strap assembly connects the cups to the wearer," limitation [1D]***

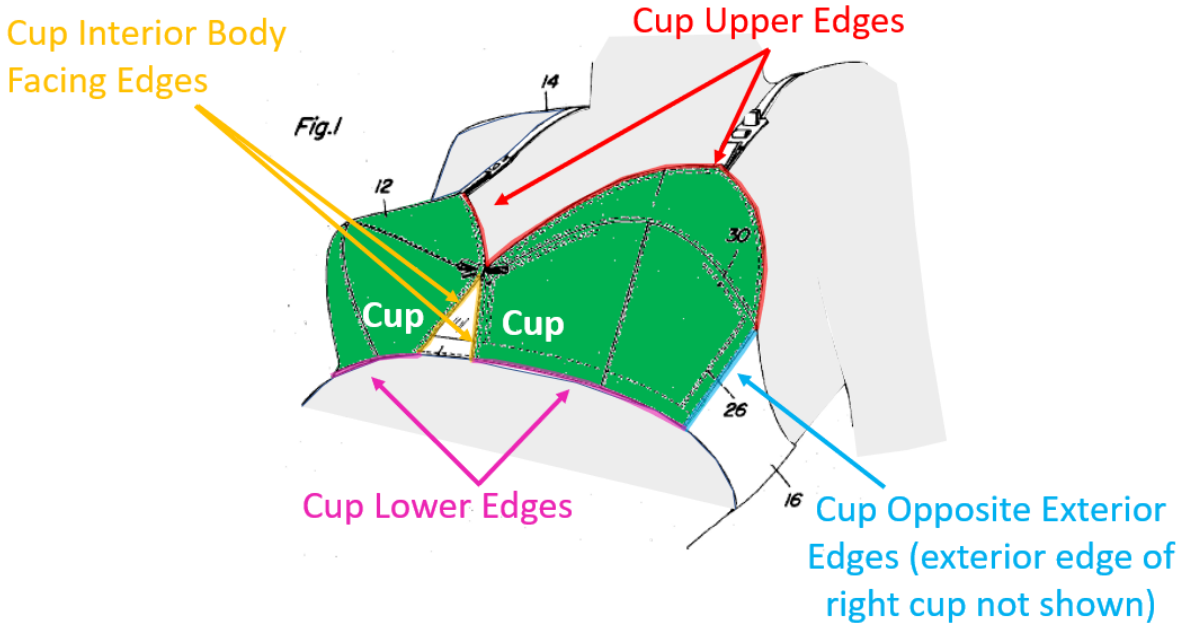
547. York discloses this limitation. As discussed above in limitations [1B] and [1C], York discloses a "strap assembly" and "left and right cups." Further, to the extent the "whereby" clause should be provided patentable weight, Figure 1 illustrates the disclosed strap assembly adhering the cups to a wearer:



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;" limitation [1E]*

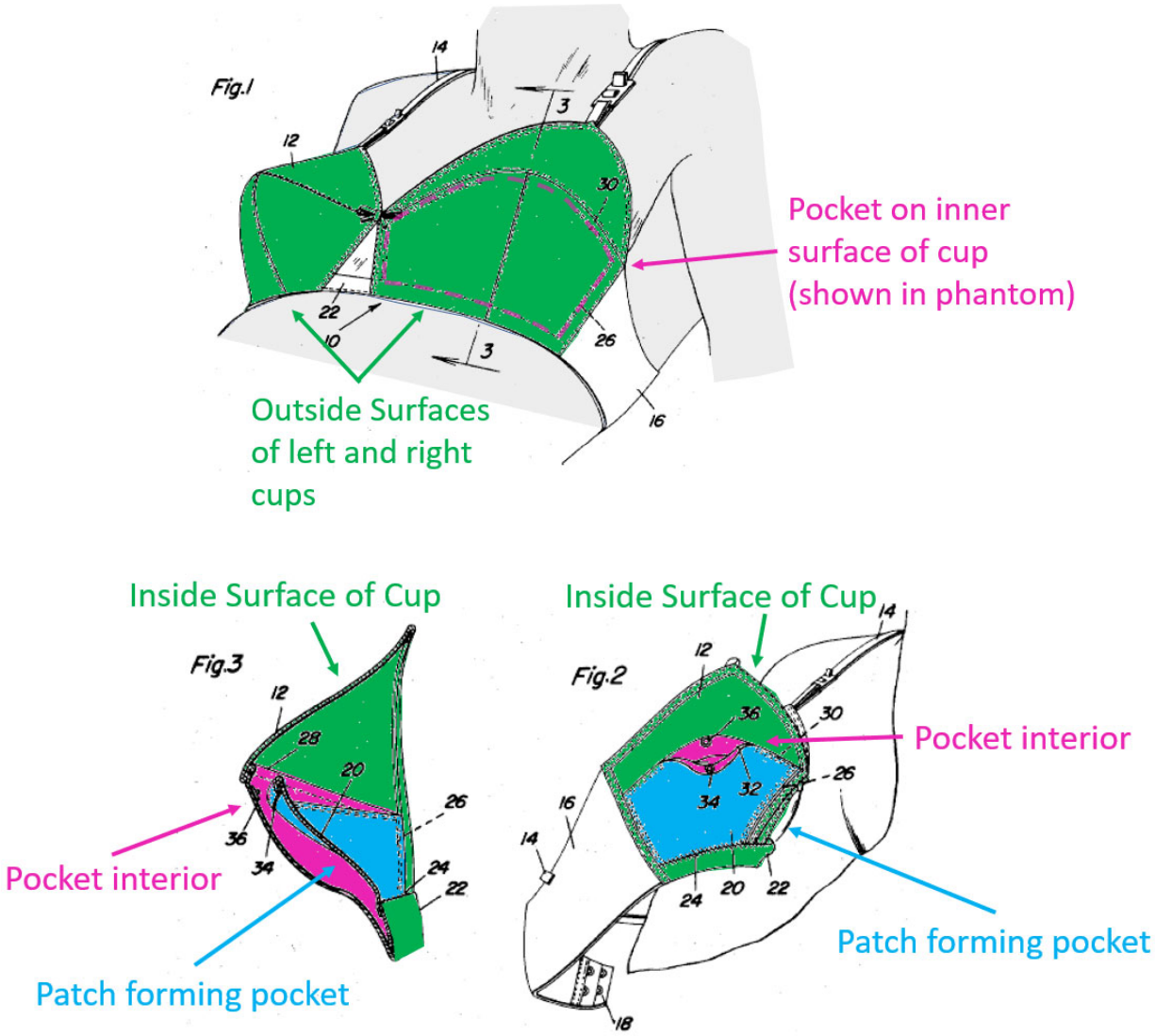
548. In my opinion, York renders this limitation obvious. York discloses upper, lower, interior body facing, and opposite exterior edges of the cup:



NIKE-1020 at Fig. 1. choice.

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

549. In my opinion, 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:



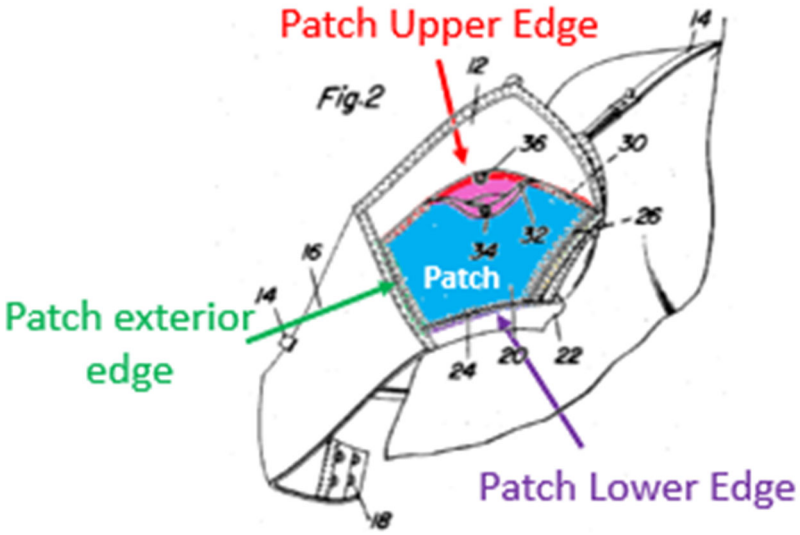
NIKE-1020 at Figs. 1–3, 1:54–2:23.

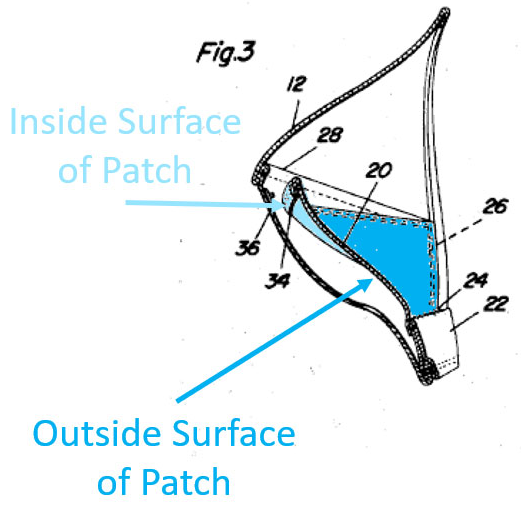
550. While York discloses a pocket on the "interior surface of one of the breast cups," NIKE-1020 at 1:54–2:23, it would have been obvious to include the expressly disclosed pocket on both cups. Nothing in York teaches away from the placement of a pocket on each of the cups, and, in my opinion, a POSA 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. Thus, in my opinion, 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.

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

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



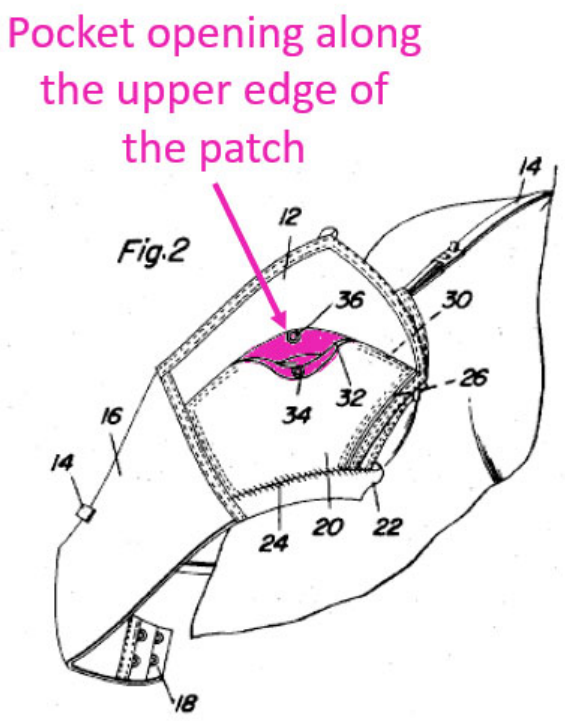


NIKE-1020 at Figs. 2–3. In my opinion, a POSA would have understood the patch to necessarily have inside and outside surfaces.

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;" limitation [1H]***

552. 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.

553. Further, as previously discussed in limitation [1G], York discloses upper edges of the patch. York discloses an opening along this upper edge:



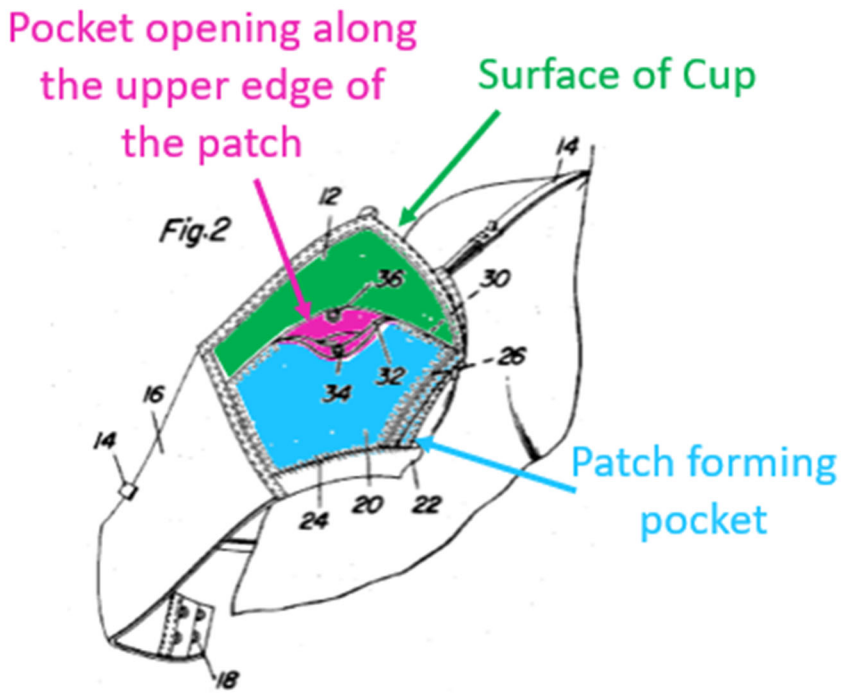
NIKE-1020 at Fig. 2, 2:3-23.

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

554. York discloses a pocket "for receiving valuable articles such as jewelry, money or the like." NIKE-1020 at 1:18–19, 2:17–20. In my opinion, 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".

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." limitation [1J]***

555. In my opinion, 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.

556. York teaches the pocket opening faces the upper edge of the cup to which it is attached. *See id*. In my opinion, 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. In my opinion, 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. As discussed in "The art of

pocket design: How to create unique and stylish pockets," NIKE-1052, a POSA would have known that "[c]lassically, pockets are thought out in relation to the body and the placement of the arms. The goal was to have access to the inside of the pocket, without having to twist." *Id.* at 3.

557. Further, in my opinion, a POSA would have a high likelihood of success as reorienting a patch opening simply requires adjusting a known sewing technique. Thus, in my opinion, 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.

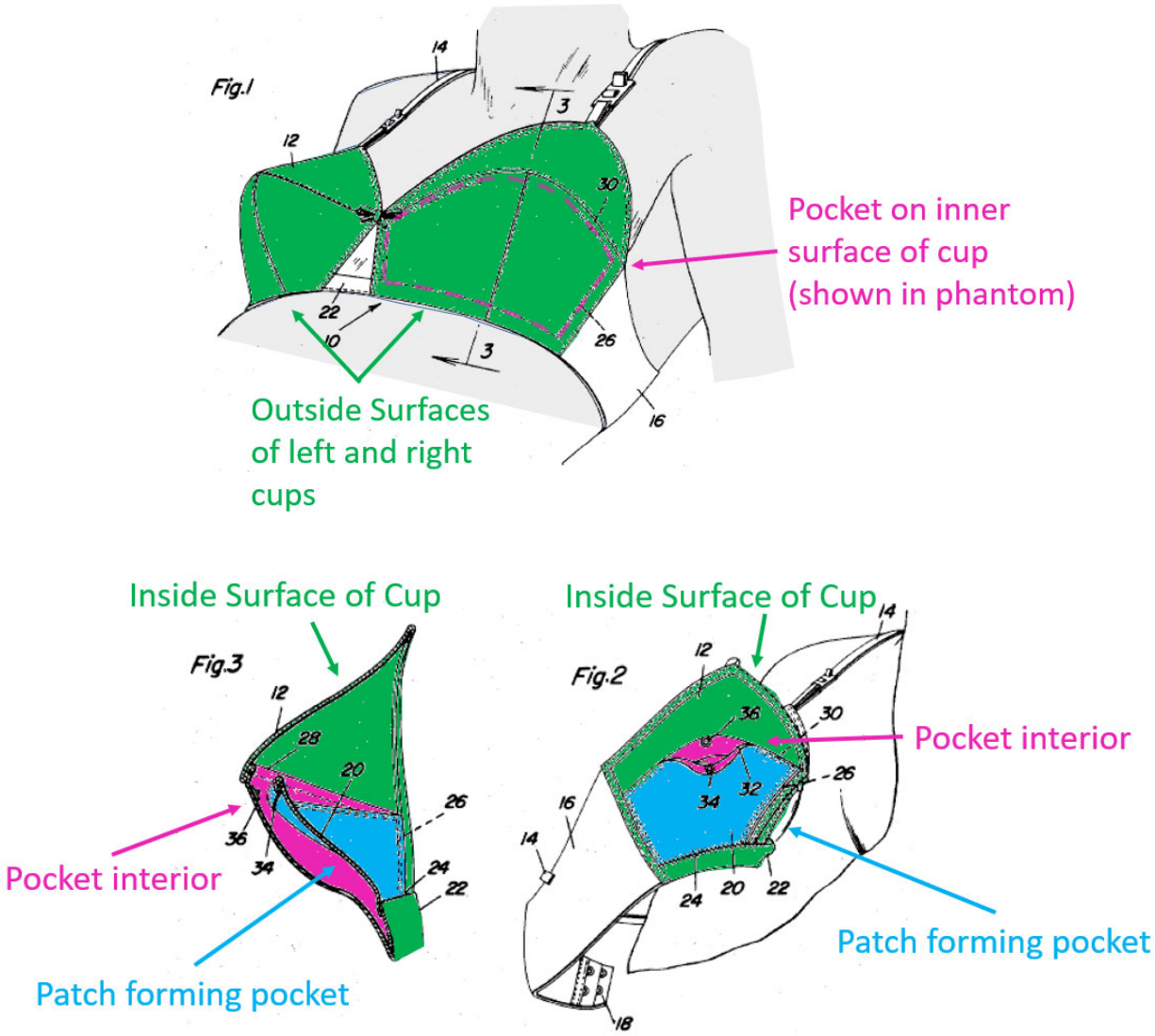
ii. Claim 2

a. *"The pocket bra of claim 1" limitation [Preamble]*

558. In my opinion, York discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

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

559. 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.

iii. Claim 3

a. ***"The pocket bra of claim 1" limitation [Preamble]***

560. In my opinion, York discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. ***"further comprising a non-padding item positioned in the pocket." limitation [3A]***

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

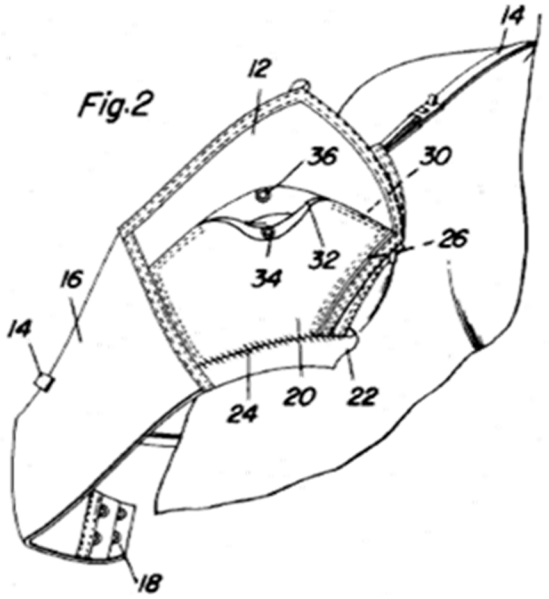
iv. Claim 4

a. *"The pocket bra of claim 1" limitation [Preamble]*

562. In my opinion, York discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

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

563. 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.

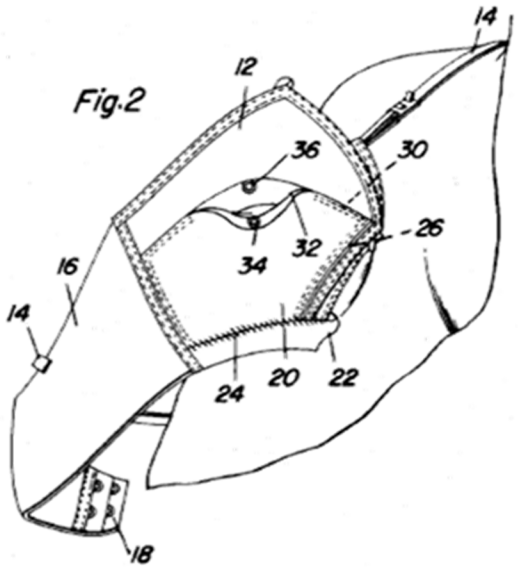
v. Claim 5

a. ***"The pocket bra of claim 1" limitation [Preamble]***

564. In my opinion, York discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 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." limitation [5A]***

565. 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.

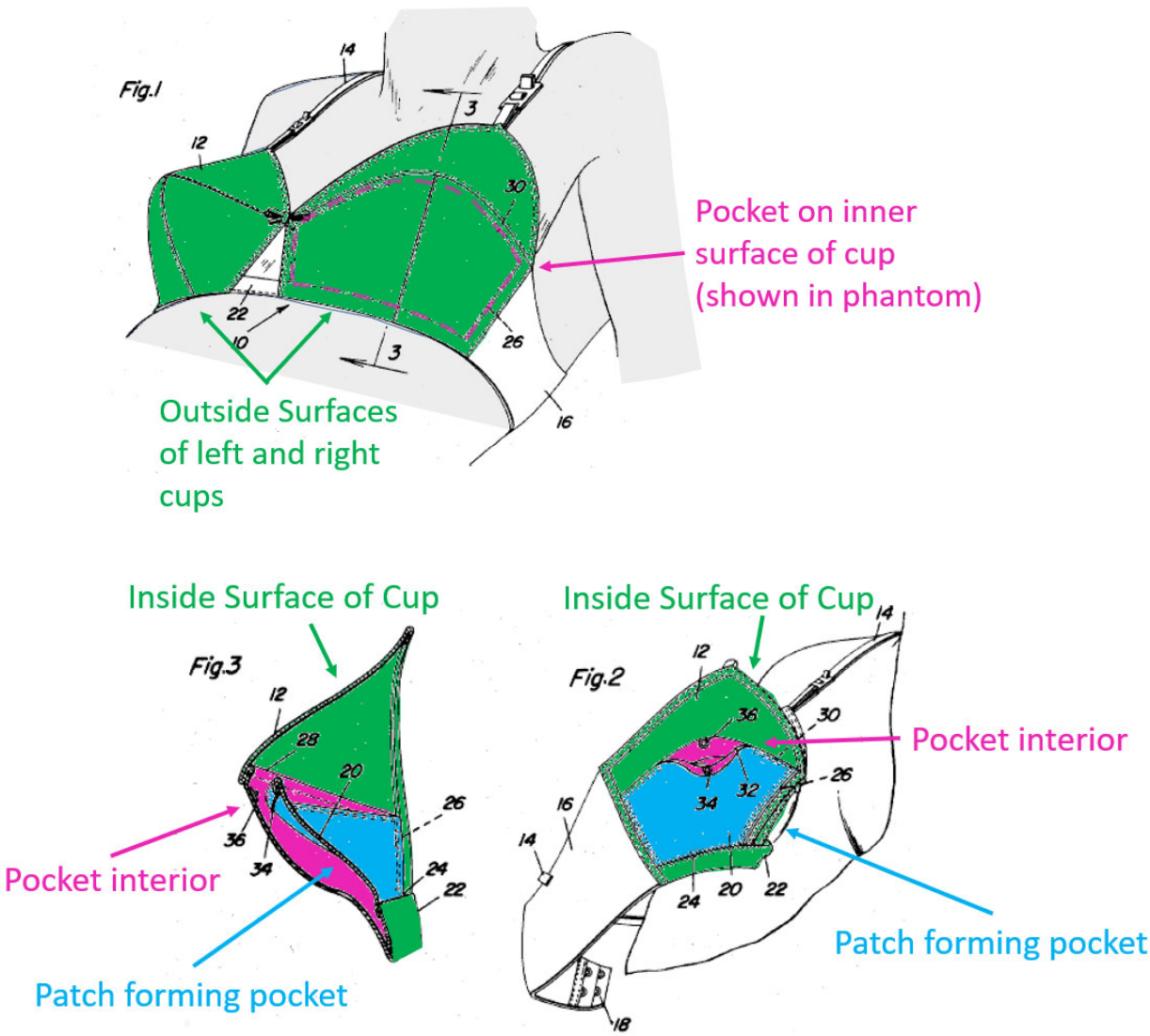
vi. Claim 6

a. ***"The pocket bra of claim 2" limitation [Preamble]***

566. In my opinion, York discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

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

567. In my opinion, 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.

568. While York discloses a pocket on the "interior surface of one of the breast cups," NIKE-1020 at 1:54–2:23, in my opinion, it would have been obvious to include the expressly disclosed pocket on both cups. Nothing in York teaches away from the placement of a pocket on each of the cups, and in my opinion, 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. Thus, in my opinion, 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.

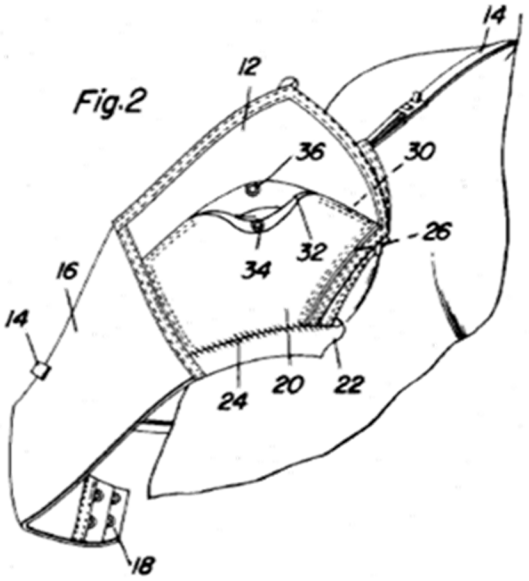
vii. Claim 7

a. *"The pocket bra of claim 1" limitation [Preamble]*

569. In my opinion, York discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 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." limitation [7A]*

570. In my opinion, 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.

viii. Claim 8

a. *"A pocket bra comprising:" limitation [8A]*

571. In my opinion, Barg discloses this limitation for the reasons discussed above in limitation [1A].

b. *"a strap assembly including a chest," limitation [8B]*

572. In my opinion, Barg discloses this limitation for the reasons discussed above in limitation [1B].

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," limitation [8C]*

573. In my opinion, Barg discloses this limitation for the reasons discussed above in limitation [1C].

d. ***"the strap assembly being attached to the cups whereby the strap assembly connects the cups to the wearer," limitation [8D]***

574. In my opinion, Barg discloses this limitation for the reasons discussed above in limitation [1D].

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

575. In my opinion, Barg discloses this limitation for the reasons discussed above in limitation [1E].

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

576. In my opinion, Barg discloses this limitation for the reasons discussed above in limitation [1F].

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

577. In my opinion, Barg discloses this limitation for the reasons discussed above in limitation [1G].

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;" limitation [8H]***

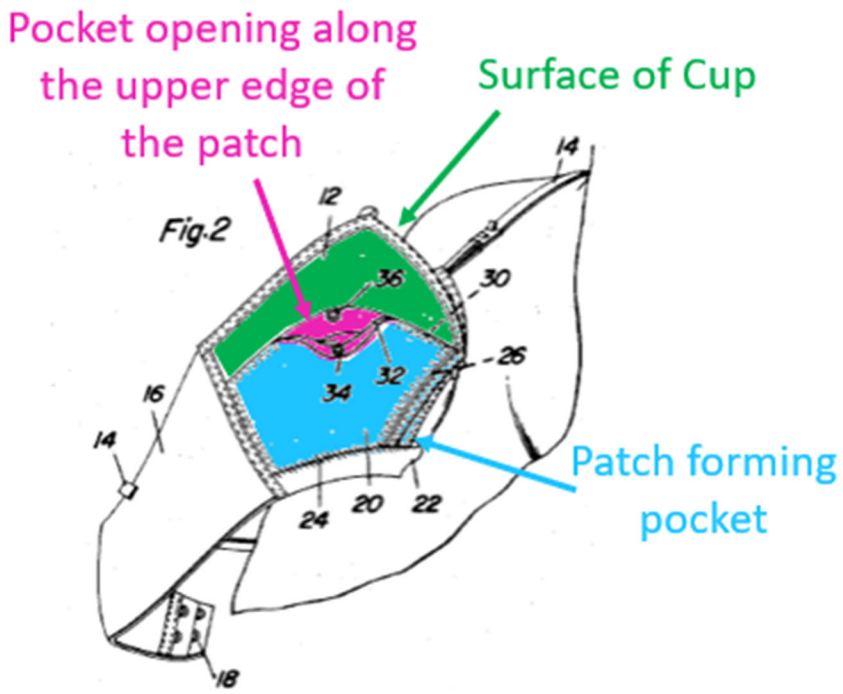
578. In my opinion, Barg discloses this limitation for the reasons discussed above in limitation [1H].

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

579. In my opinion, Barg discloses this limitation for the reasons discussed above in limitation [1I].

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." limitation [8J]***

580. In my opinion, 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. York teaches the pocket opening faces the upper edge of the cup to which it is attached. *See id*. In my opinion, 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. In my

opinion, 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. Further, in my opinion, a POSA would have a high likelihood of success as reorienting a patch opening simply requires adjusting a known sewing technique. Thus, in my opinion, 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.

ix. Claim 9

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

581. In my opinion, York discloses this limitation for the reasons discussed above in claims 2 and 8.

x. Claim 10

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

582. In my opinion, York discloses this limitation for the reasons discussed above in claims 3 and 8.

xi. 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." limitation [11]***

583. In my opinion, York discloses this limitation for the reasons discussed above in claims 4 and 8.

xii. 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." limitation [12]***

584. In my opinion, York discloses this limitation for the reasons discussed above in claims 5 and 8.

xiii. 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." limitation [13]***

585. In my opinion, York discloses this limitation for the reasons discussed above in claims 6 and 9.

xiv. 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." limitation [14]***

586. In my opinion, York discloses this limitation for the reasons discussed above in claims 7 and 8.

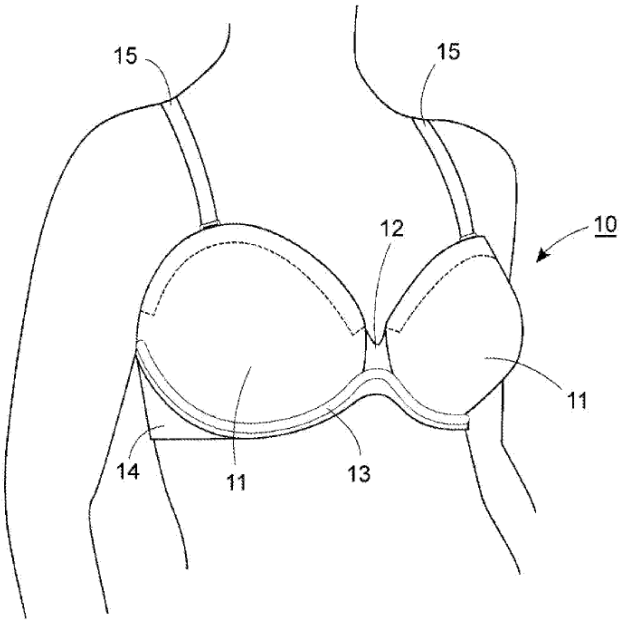
3. Ground 3: Claims 1–14 Are Unpatentable Over Handras in view of Pintor.

587. In my opinion, claims 1–14 are disclosed or rendered obvious by Handras in combination with Pintor.

i. Claim 1

a. ***"A pocket bra comprising:" limitation [1A]***

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



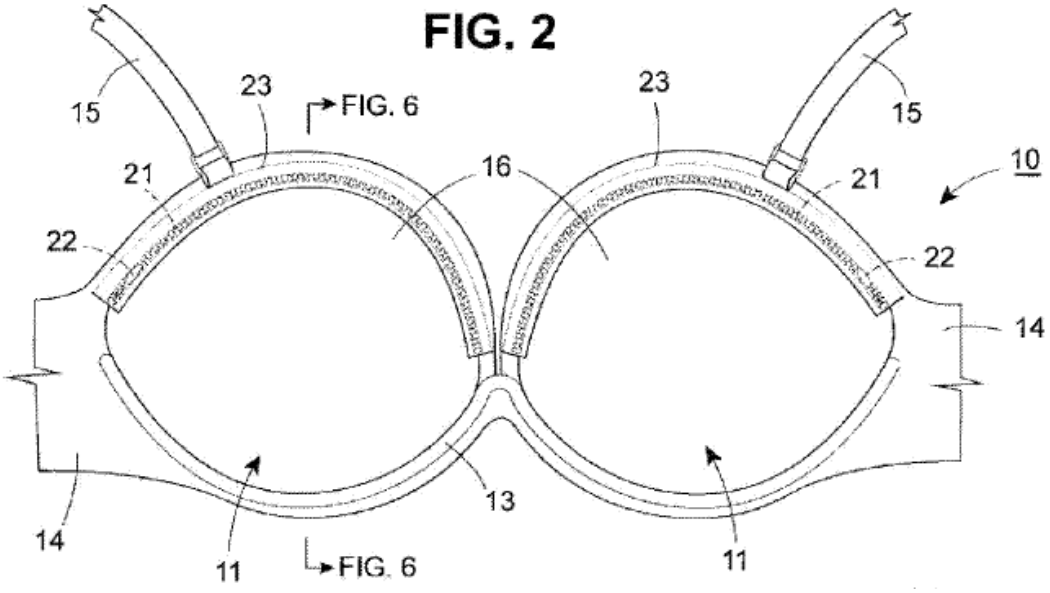
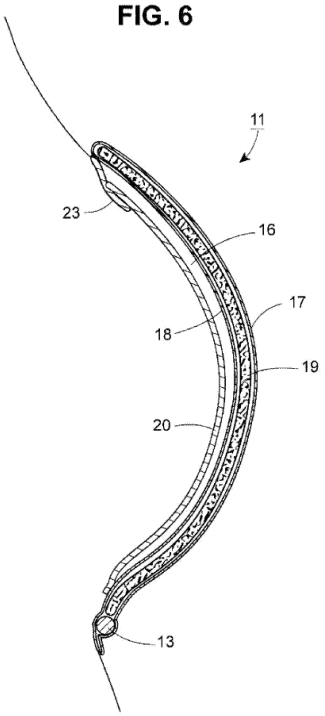


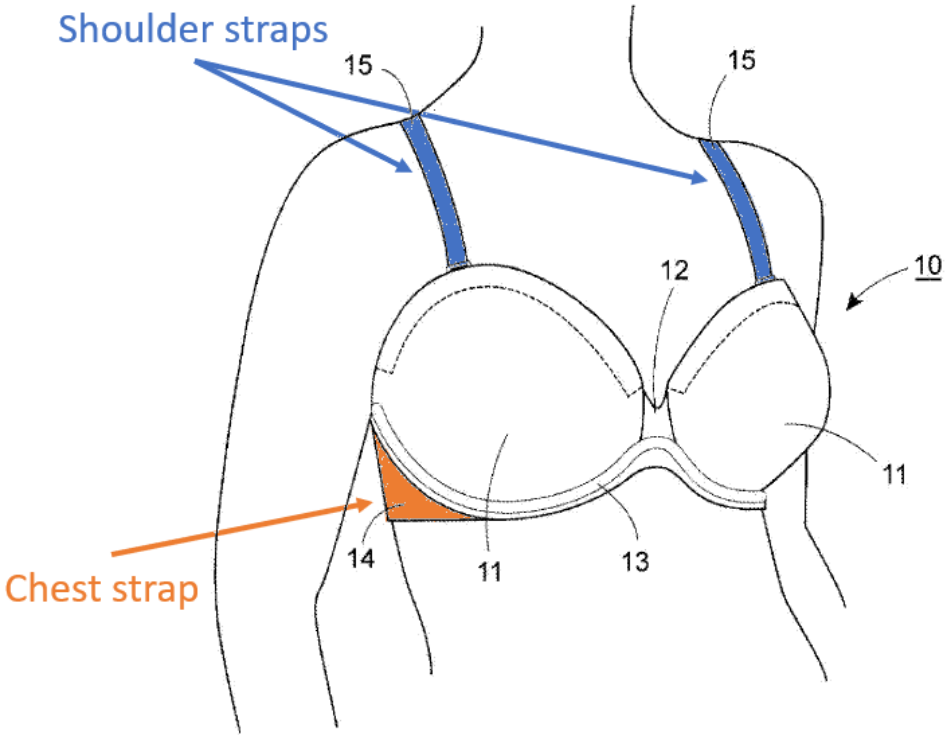
FIG. 6



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," limitation [1B]***

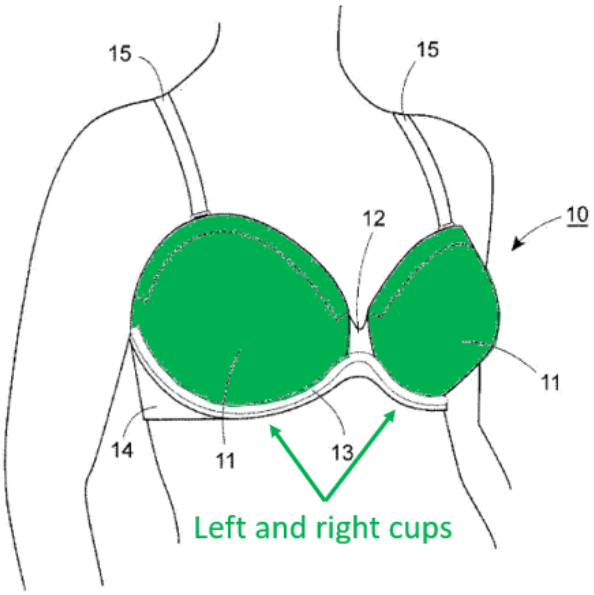
589. Handras discloses a traditional bra comprising of "a pair of cups 11 … a pair of side panels 14 (only one of which is shown) that can be connected together at the back of the bra 10 in any conventional manner and a pair of shoulder straps 15." NIKE-1021 at [0020].



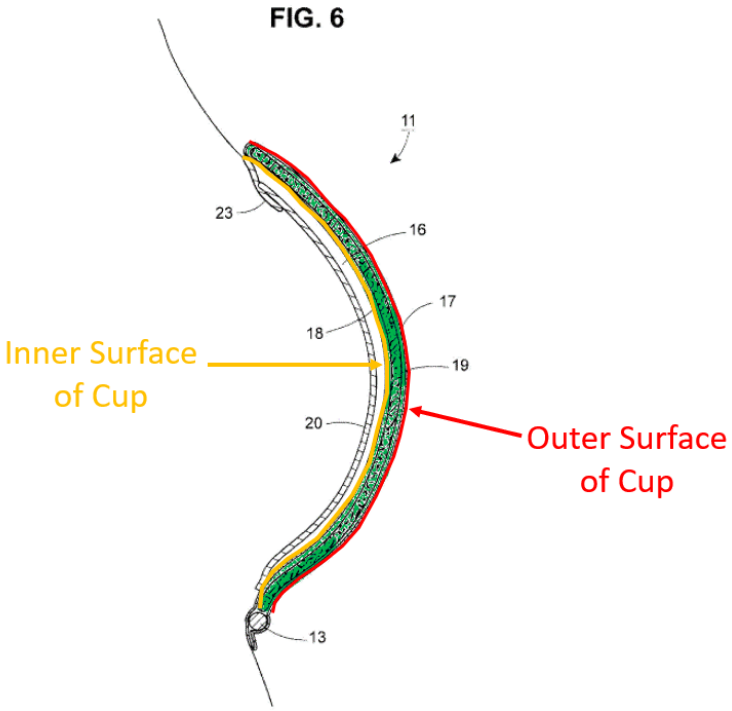
NIKE-1021 at Fig. 1.

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," limitation [1C]***

590. Handras discloses a bra having "a pair of cups" for the left and right breasts. NIKE-1021 at [0020].



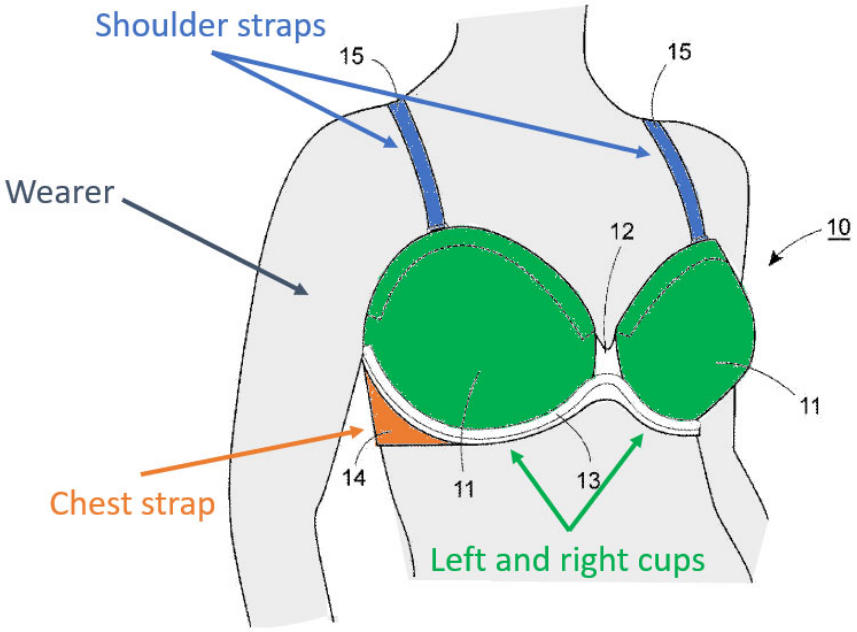
Id. at Fig. 1, [0006], [0011], [0029], Cl. 1, Cl. 6. In my opinion, a POSA would understand these cups to necessarily have inside and outside surfaces. The inside and outside surfaces are illustrated in Figure 6:



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," limitation [1D]***

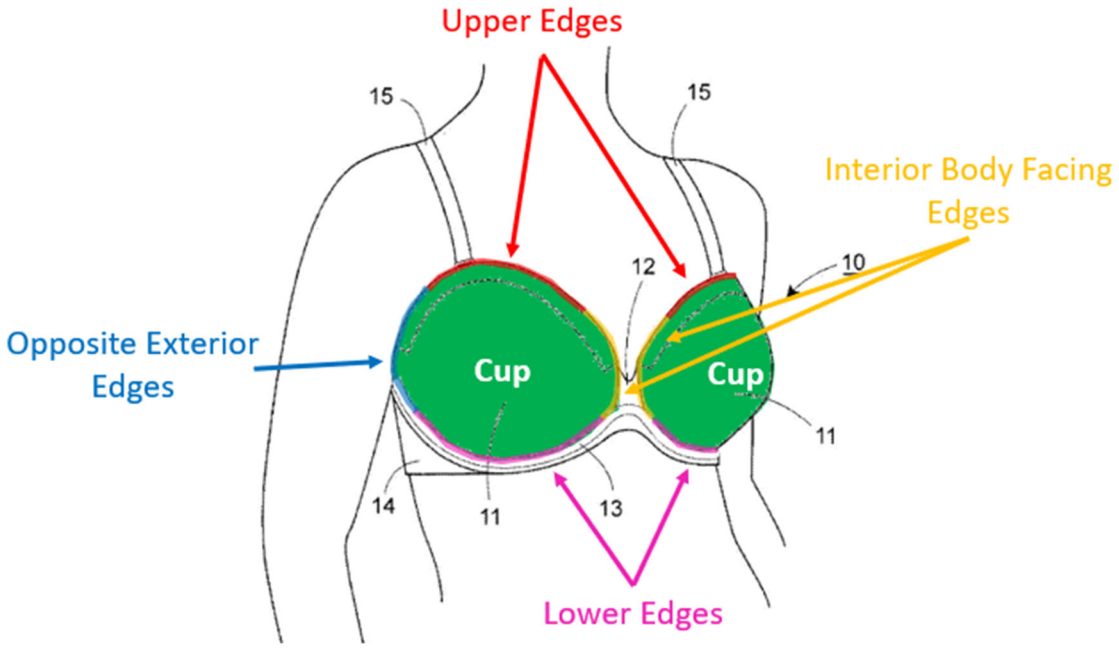
591. As explained above in limitations [1B] and [1C], Handras discloses a "strap assembly" attached to the "left and right cups." Further, to the extent the "whereby" clause should be provided patentable weight, Handras discloses the strap assembly adhering the cups to the wearer:



NIKE-1021 at Fig. 1.

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

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

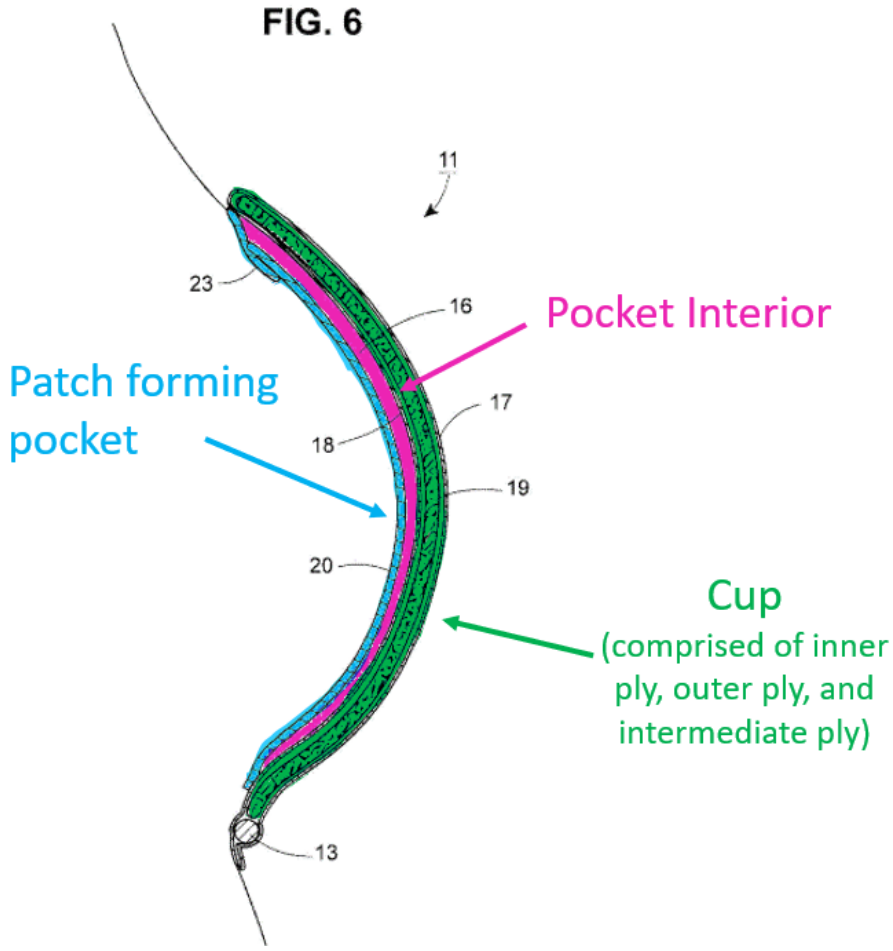


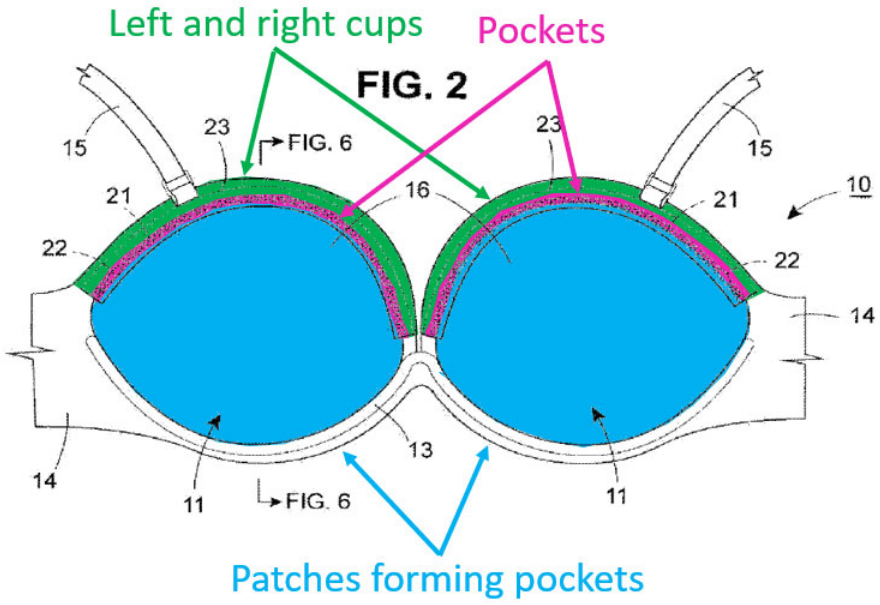
NIKE-1021 at Fig. 1.

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

593. 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].

FIG. 6

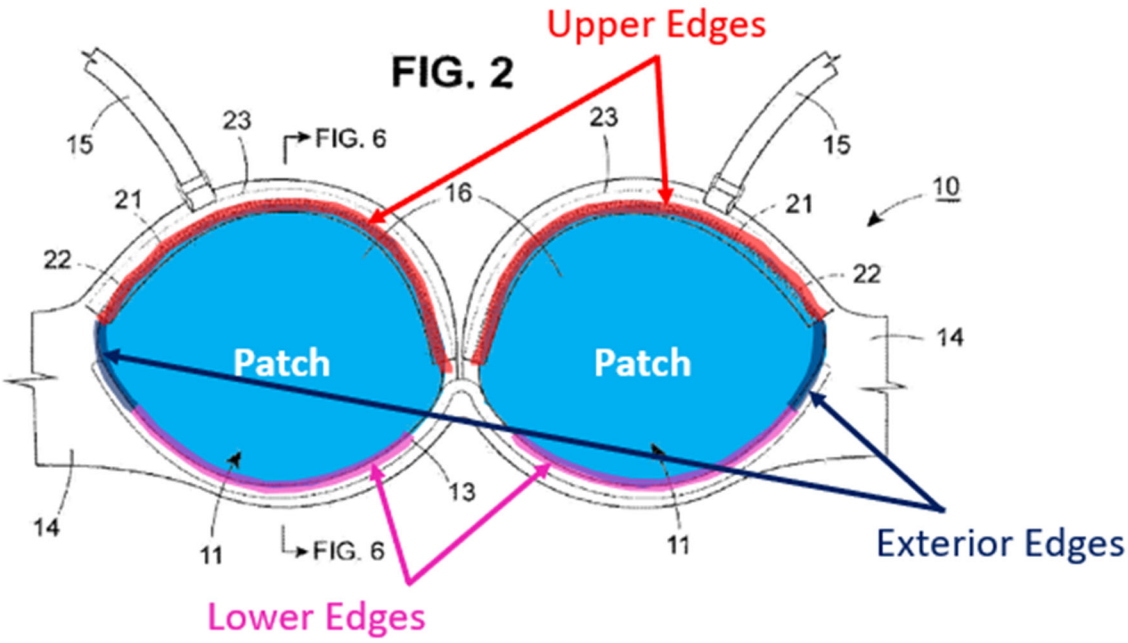

11
23
16
Pocket Interior
Patch forming pocket
17
18
19
20
Cup
(comprised of inner ply, outer ply, and intermediate ply)
13

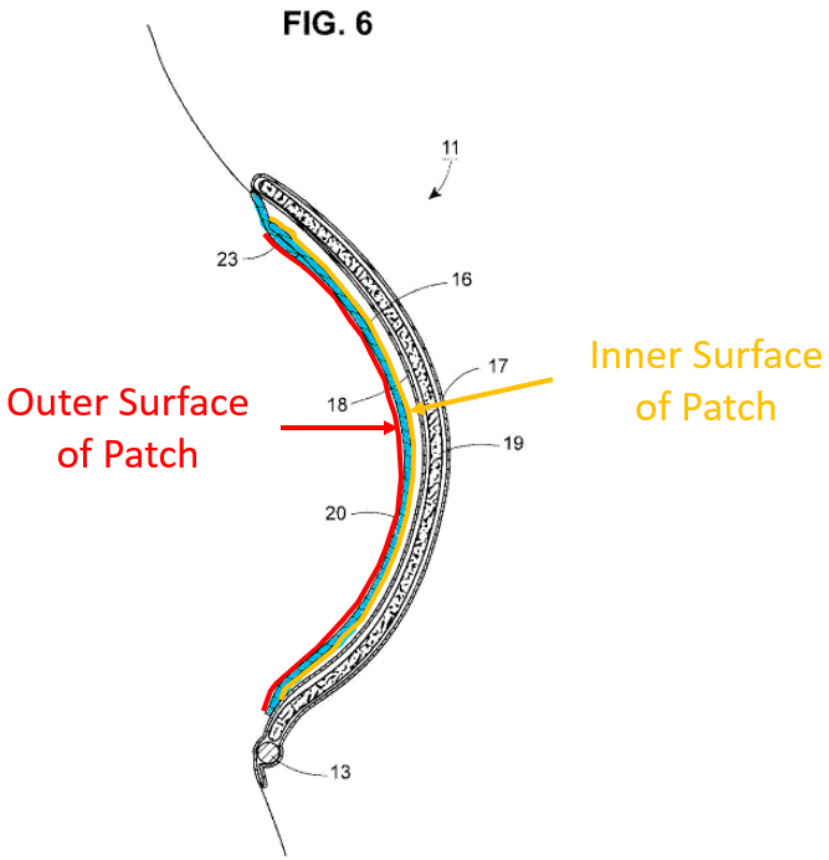

Left and right cups
Pockets
FIG. 2
15
23
FIG. 6
23
15
21
16
21
10
22
22
14
14
13
11
FIG. 6
11
Patches forming pockets

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.").

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

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



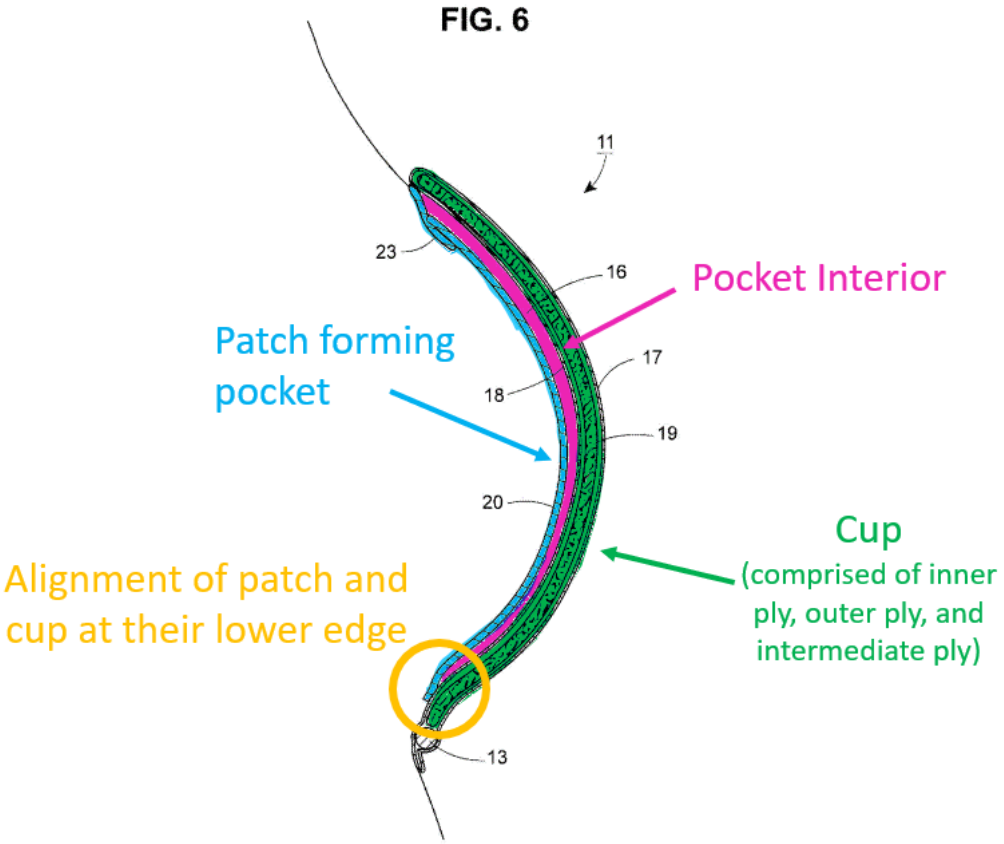


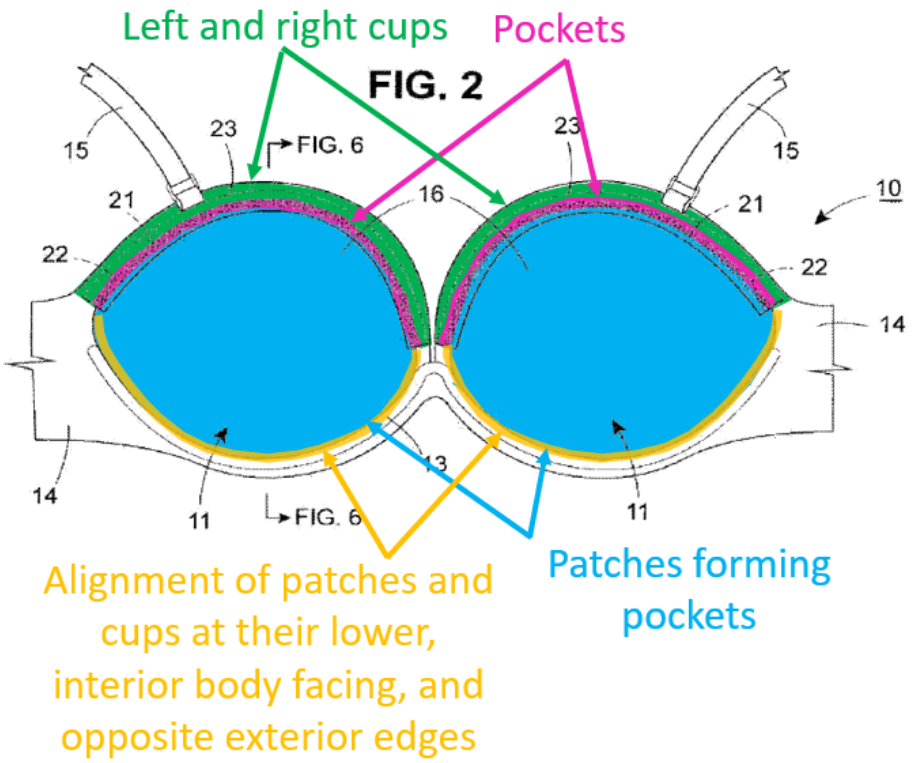
NIKE-1021 at Figs. 2, 6. In my opinion, a POSA would have understood the patches to necessarily have inside and outside surfaces.

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;" limitation [1H]***

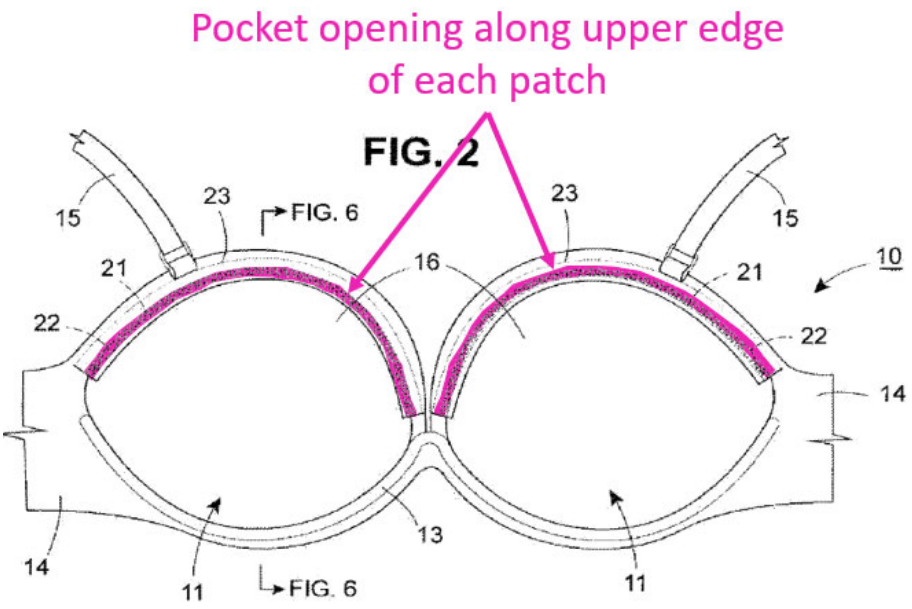
595. Handras discloses each patch is "secured" to each cup to form the pocket with an upper opening. *See* NIKE-1021 at [0022] ("a fourth ply of material 20 is sewn or otherwise secured to the inner ply 18 in order to form the pocket 16 with an opening extending along the upper section of the cup."), [0007]. In my

opinion, POSA would have understood that a pocket with an upper opening could be formed by coupling the lower and side edges of a patch and a cup. 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. This is confirmed by Handras's disclosure that "each pocket 16 occupies a major faction of the back of a cup 11." 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. Handras further discloses pocket openings at the "upper edges" of each patch:



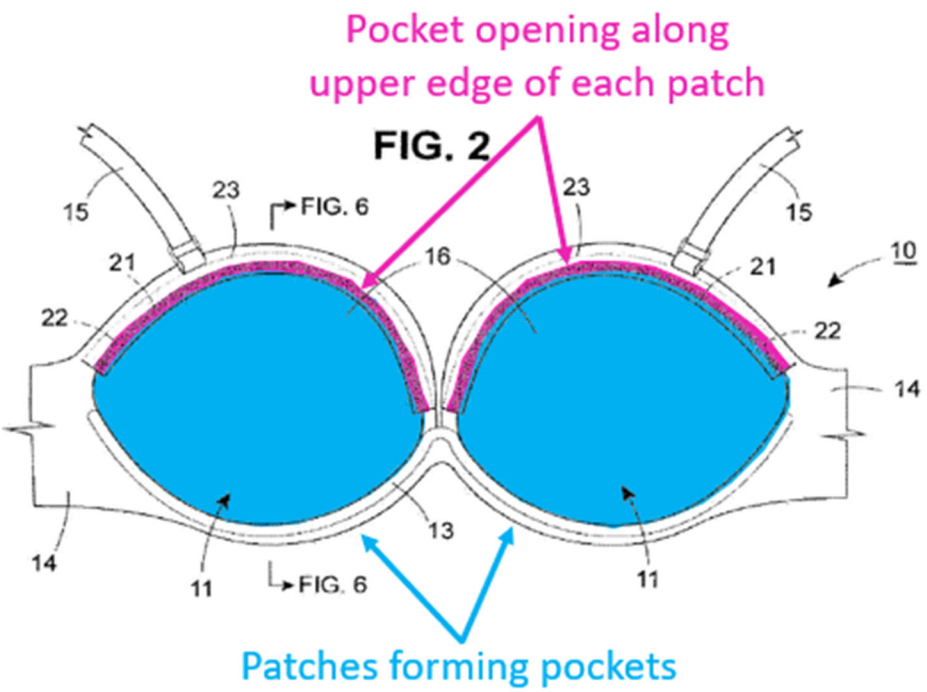
NIKE-1021 at Fig. 2, [0022] ("the pocket 16 with an opening extending along the upper section of the cup.").

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

596. Handras teaches using the pocket "to hold items, such as, credit cards, car keys, cell phones and the like." NIKE-1021 at [0002]. In my opinion, 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.

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." limitation [1J]***

597. In my opinion, 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].

598. Handras teaches the pocket opening faces the upper edge of the cup to which it is attached. *See id*. In my opinion, 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. In my opinion, 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. Further, in my opinion, a POSA would have a high likelihood of success as reorienting a patch opening simply requires adjusting a known sewing technique. Thus, in my opinion, 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.

ii. Claim2

a. *"The pocket bra of claim 1" limitation [Preamble]*

599. In my opinion, York discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

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

600. To the extent this limitation is not expressly or inherently disclosed, in my opinion, 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, in my opinion, it would have been obvious to include the expressly disclosed pockets on only one cup. Pintor expressly teaches a patch operatively associated with only one of the left and right cups. *See* i*d*. 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 in my opinion, a POSA would have been motivated to do so, at least, to reduce manufacturing costs and complexity. Further, in my opinion, 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.

iii. Claim 3

a. *"The pocket bra of claim 1" limitation [Preamble]*

601. Handras discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. *"further comprising a non-padding item positioned in the pocket." limitation [3A]*

602. 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]. In my opinion, 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.

iv. Claim 4

a. *"The pocket bra of claim 1" limitation [Preamble]*

603. Handras discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

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

604. 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]. In my opinion, a POSA would have understood that a pocket with an upper opening could be formed by coupling the lower edges of the patch and cup with stitching.

v. Claim 5

a. ***"The pocket bra of claim 1" limitation [Preamble]***

605. Handras discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 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." limitation [5A]***

606. 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]. In my opinion, a POSA would have understood that a pocket with an upper opening could be formed by coupling the exterior edges of the patch and cup with stitching.

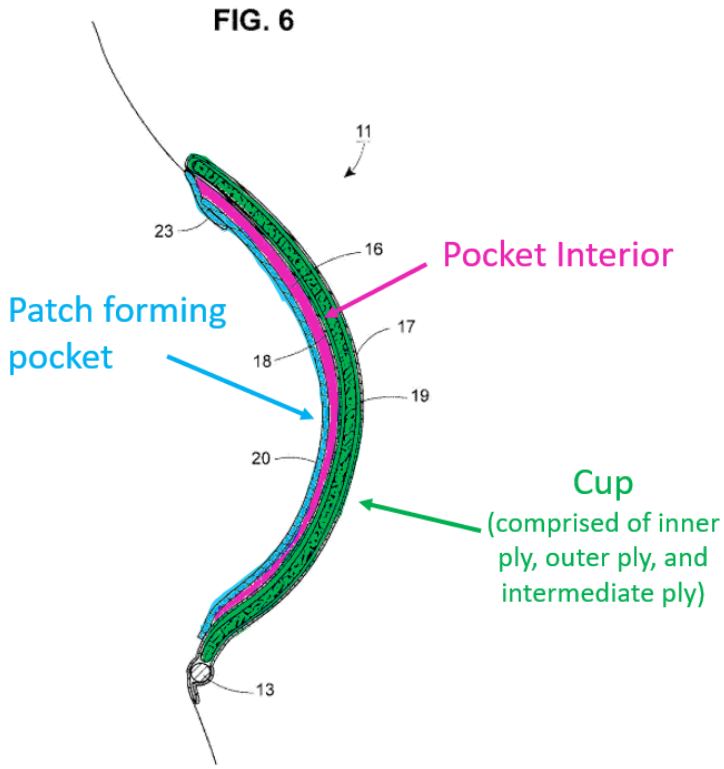
vi. Claim 6

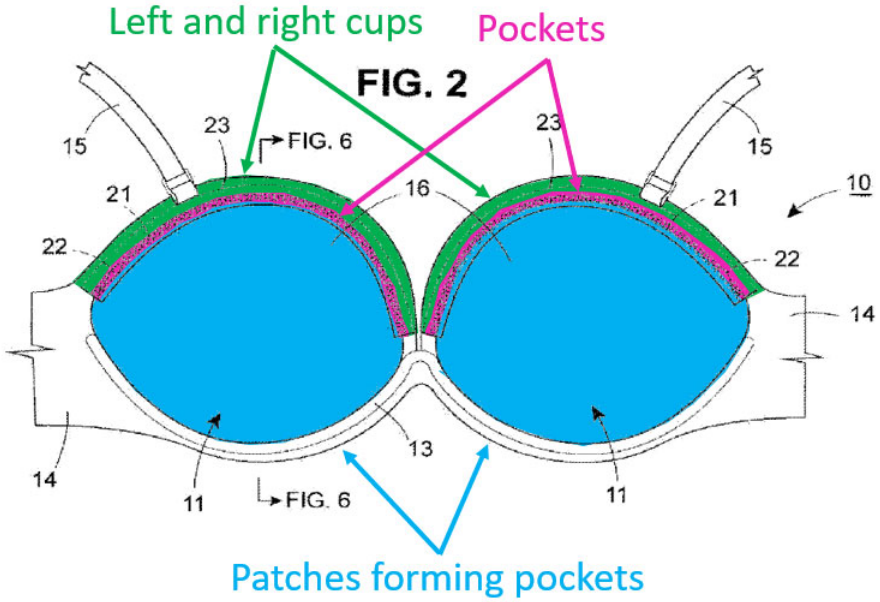
a. ***"The pocket bra of claim 2" limitation [Preamble]***

607. Handras discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

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

608. 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.”).

vii. Claim 7

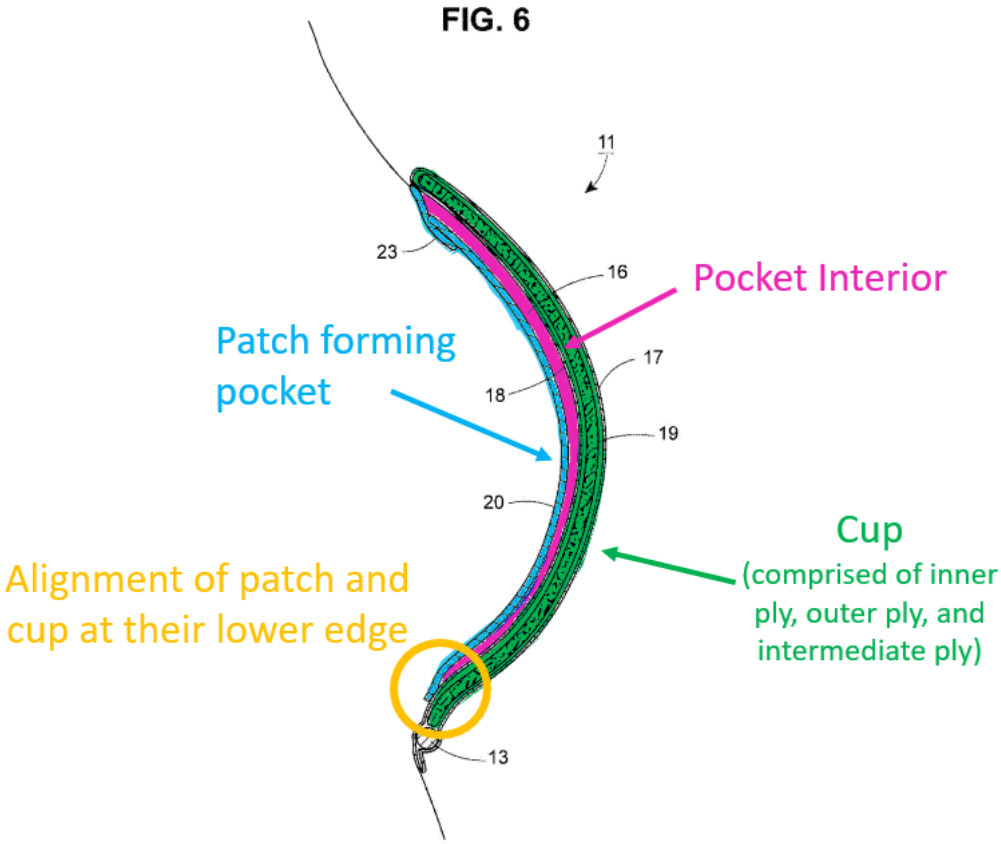
a. ***“The pocket bra of claim 1” limitation [Preamble]***

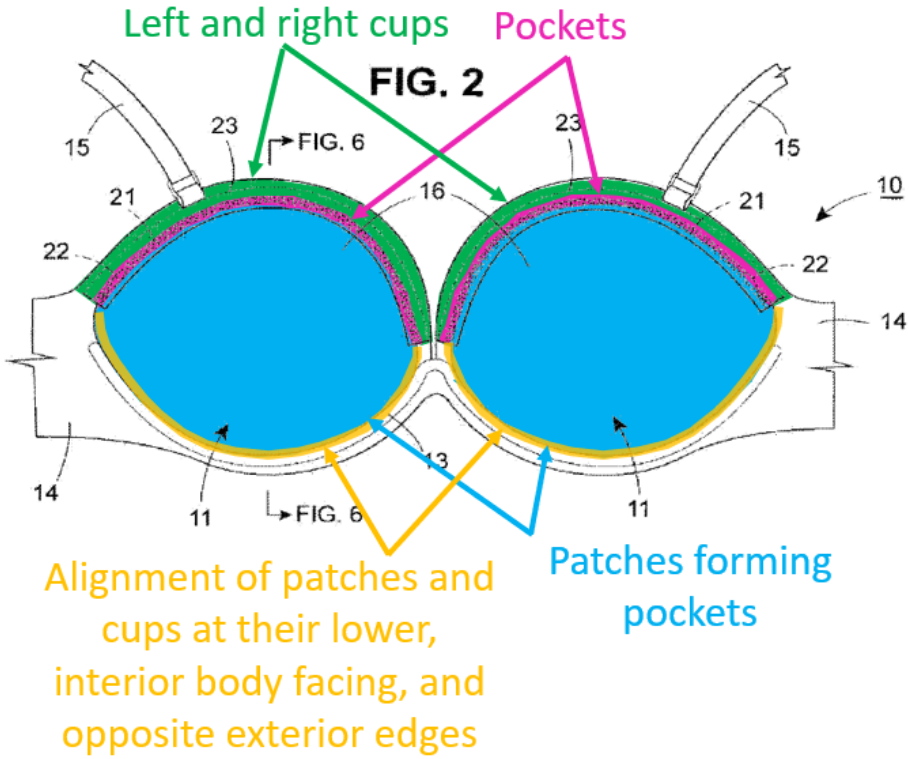
609. Handras discloses “[t]he pocket bra of claim 1” for the reasons described above in claim 1.

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.” limitation [7A]***

610. 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]. In my opinion, a POSA would have understood that a pocket with an upper opening could be formed by stitching along the lower and side edges of a patch.

FIG. 6


11
23
16
Pocket Interior
Patch forming pocket
17
18
19
20
Cup
(comprised of inner ply, outer ply, and intermediate ply)
Alignment of patch and cup at their lower edge
13


Left and right cups
Pockets
FIG. 2
15
23
FIG. 6
23
15
21
16
21
10
22
22
14
14
11
FIG. 6
13
11
Alignment of patches and cups at their lower, interior body facing, and opposite exterior edges
Patches forming pockets

NIKE-1021 at Figs. 2, 6.

viii. Claim 8

a. ***"A pocket bra comprising:" limitation [8A]***

611. In my opinion, Handras discloses this limitation for the reasons discussed above in limitation [1A].

b. ***"a strap assembly including a chest," limitation [8B]***

612. In my opinion, Handras discloses this limitation for the reasons discussed above in limitation [1B].

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," limitation [8C]***

613. In my opinion, Handras discloses this limitation for the reasons discussed above in limitation [1C].

d. ***"the strap assembly being attached to the cups whereby the strap assembly connects the cups to the wearer," limitation [8D]***

614. In my opinion, Handras discloses this limitation for the reasons discussed above in limitation [1D].

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

615. In my opinion, Handras discloses this limitation for the reasons discussed above in limitation [1E].

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

616. In my opinion, Handras discloses this limitation for the reasons discussed above in limitation [1F].

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

617. In my opinion, Handras discloses this limitation for the reasons discussed above in limitation [1G].

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;" limitation [8H]***

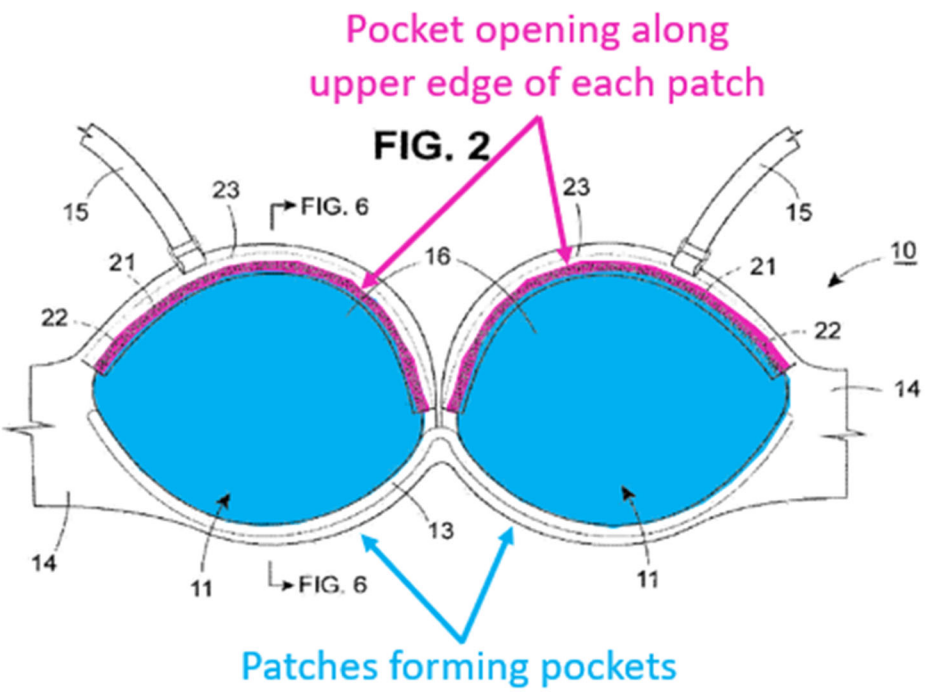
618. In my opinion, Handras discloses this limitation for the reasons discussed above in limitation [1H].

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

619. In my opinion, Handras discloses this limitation for the reasons discussed above in limitation [1I].

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." limitation [8J]***

620. In my opinion, 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].

621. Handras teaches the pocket opening faces the upper edge of the cup to which it is attached. *See id*. In my opinion, 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. In my opinion, 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. Further, in my opinion, a POSA would have a high likelihood of success as reorienting a patch opening simply requires adjusting a known sewing technique. Thus, in my opinion, 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.

ix. Claim 9

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

622. In my opinion, Handras discloses this limitation for the reasons discussed above in claims 2 and 8.

x. Claim 10

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

623. In my opinion, Handras discloses this limitation for the reasons discussed above in claims 3 and 8.

xi. 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." limitation [11]***

624. In my opinion, Handras discloses this limitation for the reasons discussed above in claims 4 and 8.

xii. 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." limitation [12]***

625. In my opinion, Handras discloses this limitation for the reasons discussed above in claims 5 and 8.

xiii. 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." limitation [13]***

626. In my opinion, Handras discloses this limitation for the reasons discussed above in claims 6 and 9.

xiv. 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." limitation [14]***

627. In my opinion, Handras discloses this limitation for the reasons discussed above in claims 7 and 8.

D. The '016 Patent

1. Ground 1: Claims 1, 2, 4 and 7 Are Unpatentable Over Vidai in View of Pintor

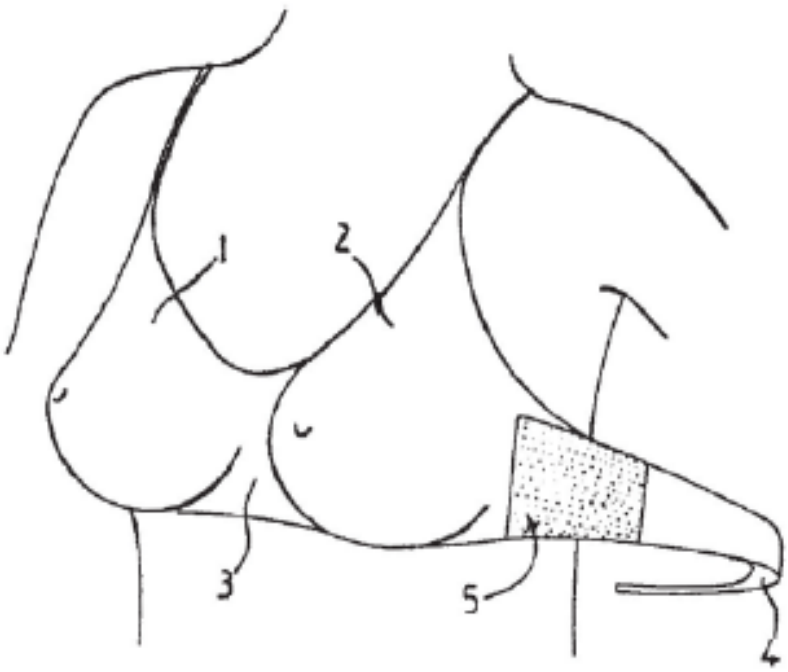
628. The discussion below provides my detailed analysis of how the prior art references invalidate the challenged claims of the '016 Patent.

629. In my opinion, claims 1, 2, 4, and 7 are disclosed or rendered obvious by Vidai in combination with Pintor.

i. Claim 1

a. ***"A bra pocket system combination comprising:" limitation [1A]***

630. Vidai discloses this limitation. Vidai discloses a bra designed to "hide valuables," having "at least one pocket placed on one of the side straps." NIKE-1027 at Abstract (numbers omitted).

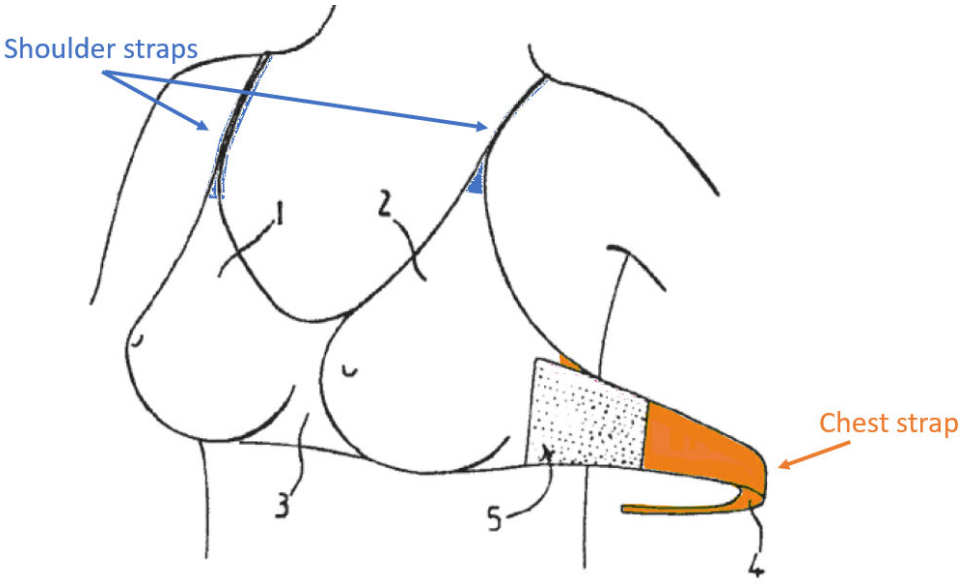


Id. at Fig. 1.

631. In my opinion, Vidai therefore discloses limitation [1A].

b. *"a strap assembly including a chest strap and shoulder straps;" limitation [1B]*

632. Vidai discloses this limitation. As illustrated below, Vidai discloses "[a] bra comprised of two cups, 1 and 2, connected together by a piece of fabric 3 of a varied same, and *two side strips 4 that extend each cup laterally and that are provided at their ends with means allowing them to be hooked*. *It may also have straps*." In my opinion, a POSA would have understood the mentioned "straps" to be "shoulder straps," as depicted in Figure 1.

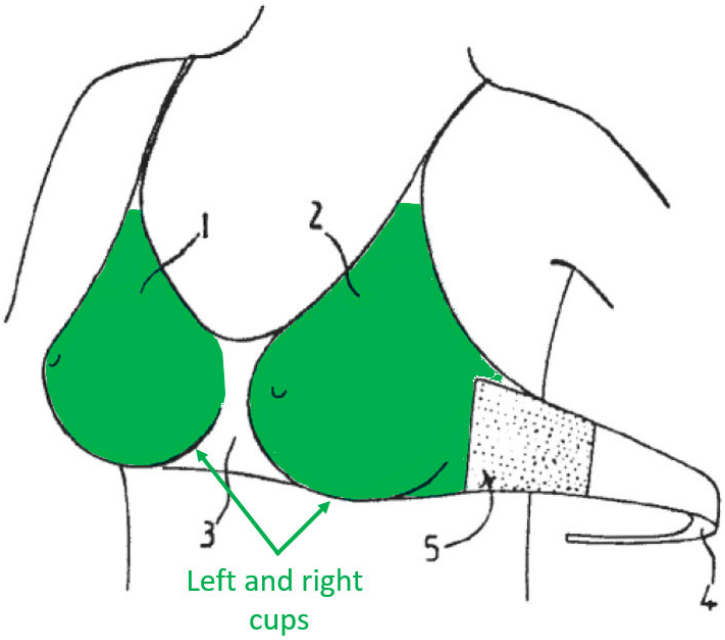


NIKE-1027 at Fig. 1, 2:28-32.

633. In my opinion, Vidai therefore discloses limitation [1B].

c. *"a left cup and a right cup, each cup having inside and outside surfaces," limitation [1C]*

634. Vidai discloses this limitation. As illustrated below, Vidai discloses "[a] bra comprised of *two cups, 1 and 2*, connected together by a piece of fabric 3 of a varied shape, and two side strips 4 that extend each cup laterally and that are provided at their ends with means allowing them to be hooked. It may also have straps."



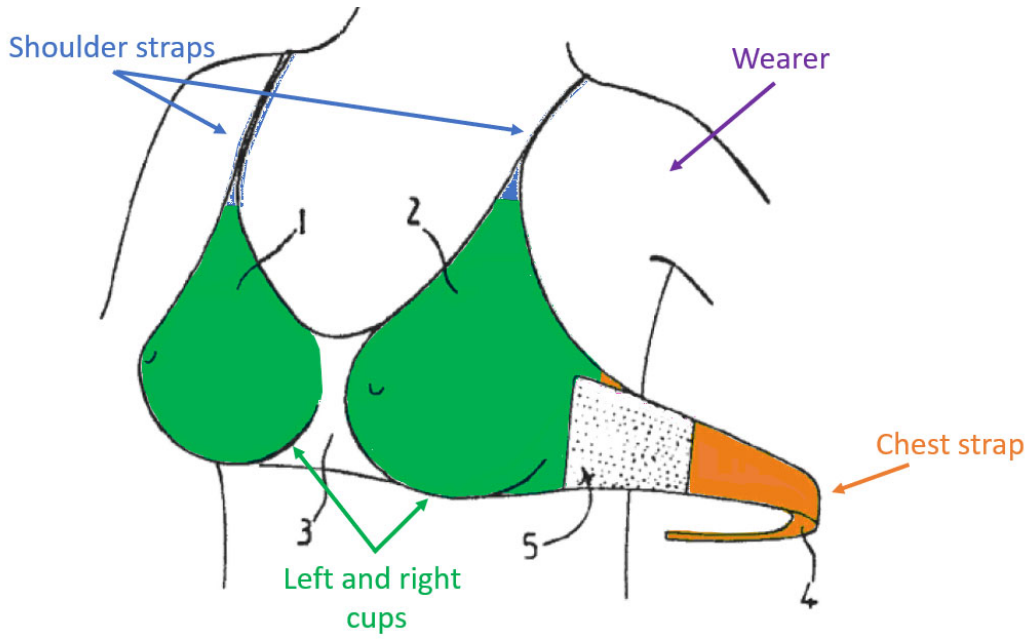
NIKE-1027 at Fig. 1, 2:28-32.

635. In my opinion, a POSA would have understood these cups to necessarily have inside and outside surfaces.

636. In my opinion, Vidai therefore discloses limitation [1C].

d. ***"the strap assembly being attached to the cups whereby the strap assembly holds the cups to a wearer;" limitation [1D]***

637. Vidai discloses this limitation. As explained above in limitations [1B] and [1C], Vidai discloses a "strap assembly" comprising a chest strap and shoulder straps that attaches to the "cups." Further, Vidai expressly discloses the strap assembly attached to the cups, adhering the cups to a wearer:

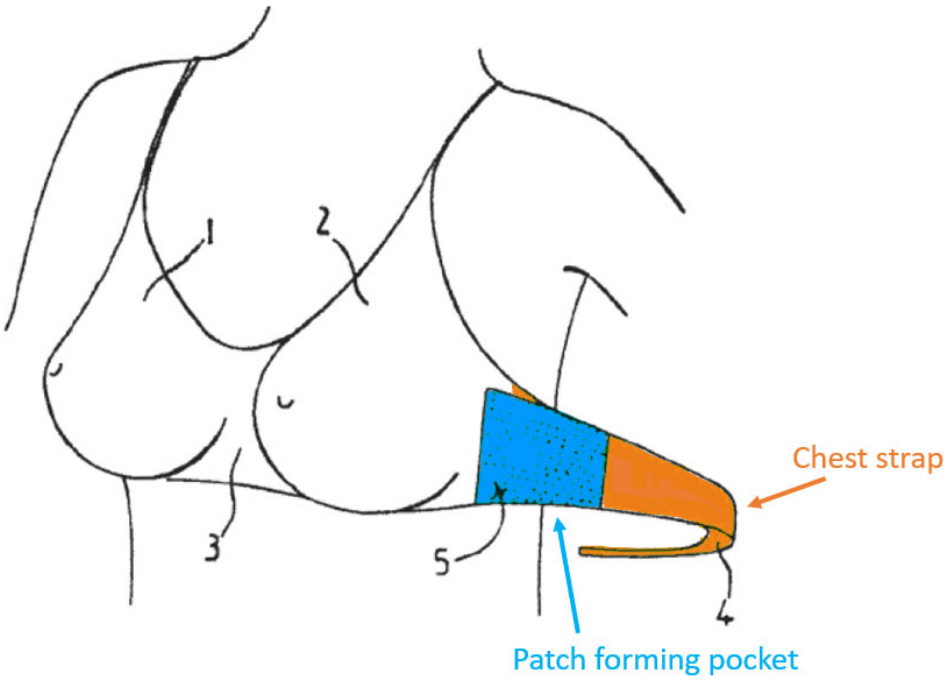


Id. at Fig. 1, 2:28-32 ("[a] bra comprised of two cups, 1 and 2, connected together by a piece of fabric 3 of a varied same, and two side strips 4 that extend each cup laterally and that are provided at their ends with means allowing them to be hooked. It may also have straps.").

638. In my opinion, Vidai therefore discloses limitation [1D].

e. *"a side patch on one of an inside or outside surface of each side of the chest strap adjacent to each of the left cup and right cup," limitation [1E]*

639. Vidai discloses this limitation. As illustrated below, Vidai discloses "at least one pocket 5 that is arranged on a side strip 4. Optionally, *each side strip 4 may include a pocket*."



NIKE-1027 at Fig. 1 (the rightmost side of the chest strap not shown), 2:37-39.

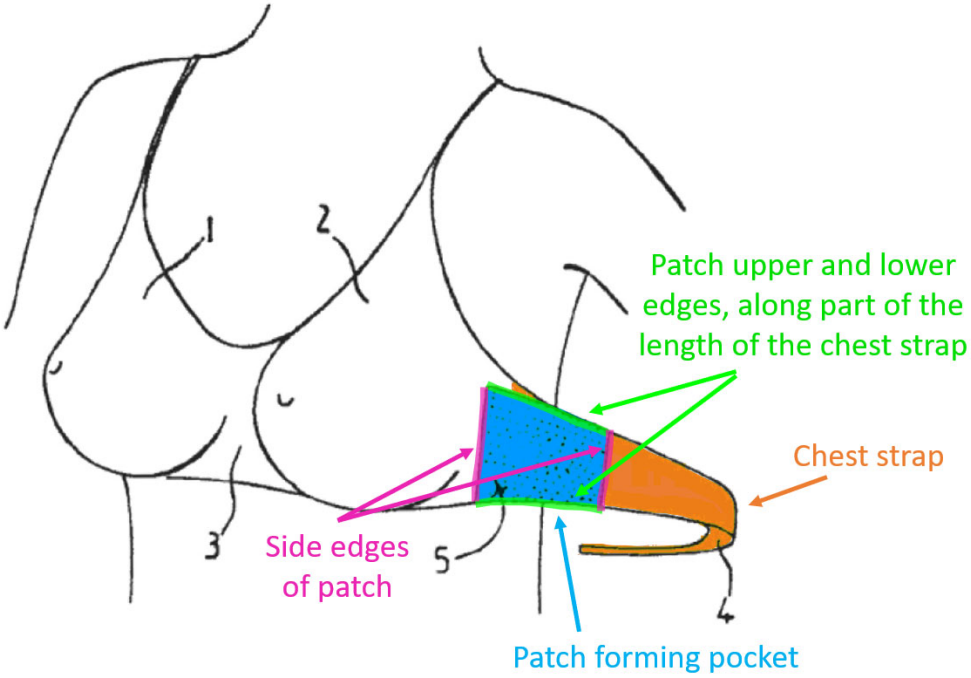
640. The pockets can be made of "piece[s] of fabric" sewn to the chest strap, *id.* at 3:2-3, and are "advantageously arranged on the part of the side strip 4 that is located substantially under the corresponding arm of the user." *Id.* at 2:40–42.

641. In my opinion, a POSA would have understood the portion "located substantially under the corresponding arm of the user" to be "adjacent" to the right or left cup of the bra assembly. Further, Vidai illustrates a pocket formed on the outside of the chest strap, as shown above.

642. In my opinion, Vidai therefore discloses limitation [1E].

f. ***"the side patches having upper and lower edges along at least part of a length of the strap, and side edges," limitation [1F]***

643. Vidai discloses this limitation. As illustrated below, the pocket is formed by a piece of fabric with upper and lower edges along the length of the strap, and side edges:



NIKE-1027 at Fig. 1.

644. Vidai discloses a pocket formed "of the side strip and of a piece of fabric of which at least three edges are combined with the side strip by any suitable means, in particular by sewing." *Id.* 3:2-5 (numbers omitted). Thus, it is my opinion a POSA would understand each patch to have edges along the length of the chest strap.

645. In my opinion, Vidai therefore discloses limitation [1F].

g. ***"each side patch having stitching along the lower and side edges thus forming an upper opening at each side patch such that each side patch forms a pocket," limitation [1G]***

646. Vidai discloses this limitation. Vidai discloses the pocket formed "of the side strip and of a piece of fabric of which at least three edges are combined with the side strip by any suitable means, in particular by sewing." NIKE-1027 at 3:2-5 (numbers omitted). Further, Vidai discloses that the pocket "can be opened either laterally or on its upper part." *Id.* 3:14-15. Finally, Vidai states "[t]he shape of this pocket is preferably rectangular." *Id.* at 19. It is my opinion a POSA would have understood a rectangular pocket with an upper opening to be sewn along its lower and side edges.

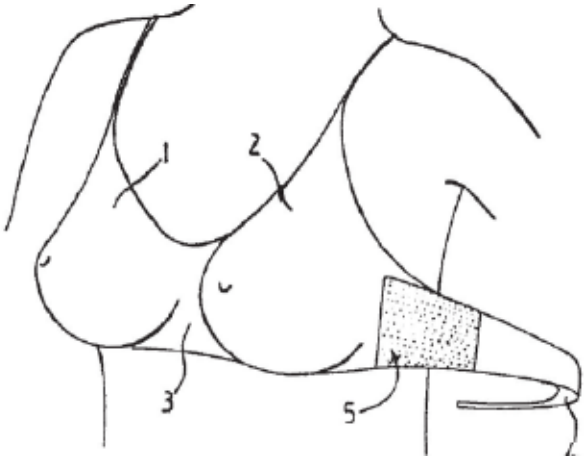
647. In my opinion, Vidai therefore discloses limitation [1G].

h. ***"and wherein each side pocket extends onto the adjacent cup, such that each pocket spans both a part of the chest strap and the adjacent cup." limitation [1H]***

648. Vidai discloses this limitation. I understand that in the MA Litigation, Patent Owner took the position that this limitation was met by the following bras:

See NIKE-1040 at 4 (left); NIKE-1041 at 4–5 (right).

649. Though I understand Petitioner does not agree that the products above meet this limitation, to the extent Patent Owner contends they do, so too does Vidai:



NIKE-1027 at Fig. 1.

650. Alternatively, should Patent Owner contend that this limitation requires greater extension onto the cups, Vidai renders this limitation obvious. Both bras and pockets have been long known in the art and in designing a bra with storage pockets, it is my opinion a POSA would have been motivated to look for known solutions in the art, such as the variety of types of bras designs, placements of pockets, methods of forming a pocket, and methods of adhering the pockets to the bra. Moreover, it is my opinion a POSA would have known that different pocket shapes, sizes, and placements have known benefits and drawbacks. Given this knowledge, it would have been obvious to a POSA in light of Vidai to slightly extend the length of the pocket onto the bra cup to increase the amount of storage in the pocket. Additionally,

it is my opinion a POSA would have found it obvious to extend the pocket towards the front of the bra onto the cups, rather than backwards towards the wearer's back, for ease of access to the pocket. Such a design would increase comfort for the wearer, because extension of the pocket onto the cup, as opposed to the wearer's back, enables the wearer to access the pocket without uncomfortably twisting the wearer's body. As discussed in "The art of pocket design: How to create unique and stylish pockets," NIKE-1052, a POSA would have known that "[c]lassically, pockets are thought out in relation to the body and the placement of the arms. The goal was to have access to the inside of the pocket, without having to twist." *Id.* at 3.

651. Though Vidai acknowledges that placement of pockets on the "external wall of one of the cups" is "not very aesthetic because it inevitably leads to the asymmetry of the cups," NIKE-1027 at 1:29-31, the extension of side pockets onto the side of the breast cup does not implicate the same concerns. In my opinion, a POSA would have known that designing a storage pocket extending onto the adjacent cup would not lead to asymmetry, as storage would occur on the periphery of the breast cup, and not on the outermost surface of the breast where storage of items may disrupt the breast's natural curvature. Moreover, Vidai discloses pockets on both sides of the bra, thus mitigating the asymmetry concern of having a pocket on only "one of the cups."

652. In my opinion, Vidai therefore discloses or renders obvious limitation [1H].

ii. Claim 2

a. *"The system as set forth in claim 1" limitation [Preamble]*

653. Vidai discloses "[t]he system set forth in claim 1" for the reasons described above in claim 1.

b. *"wherein the cups and the patches form pockets, the cups being fabricated of a resilient closed cell polyurethane foam with a thickness of from 2 to 4 millimeters" limitation [2A]*

654. Vidai in combination with the knowledge of a POSA renders this limitation obvious. As previously discussed in sections limitations [1A]–[1D], Vidai discloses a well-known bra assembly with left and right cups, a chest strap, and a shoulder strap assembly. Further, as previously discussed in limitation [1H], Vidai discloses "each side pocket extend[ing] onto the adjacent cup, such that each pocket spans both a part of the chest strap and the adjacent cup," such that the cups and patches form pockets under Patent Owner's construction.

655. While Vidai does not specify the material used for the cups, the use of resilient polyurethane, including closed cell polyurethane, of the claimed thickness in the construction of bra cups was well-known in the art by the time of the alleged invention. *See* NIKE-1037 (2009) at 117 (discussing molding of closed- and open-cell polyurethane foam for bra padding); NIKE-1038 (2004) at 7:3 (disclosing

polyurethane for use in bra padding), at 6:4–5 (disclosing a foam thickness of 3 mm), at 3:13, 4:59–64, 5:5 (disclosing the use of "resilient" thermoplastic foam material, including polyurethane foam, for use in bra cup manufacturing).

656. In my opinion, it would have been obvious to a POSA to try using such material on Vidai, and a POSA would have been motivated to do so to increase comfort of the bra. A POSA would have understood resilient polyurethane foam to be a conventional component of bra cups because of its cost, availability, softness, and other tactile characteristics that make it ideal for bra manufacturing. NIKE-1037 at 117; NIKE-1038 at 7:3. In my opinion, a POSA in 2013 would therefore have been motivated to modify Vidai to use resilient closed cell polyurethane for the cups.

657. It is my opinion a POSA would further have understood the thickness of the foam to be a result-effective variable, because users desire bra cups that are thick enough to provide the desired support and shape to the breasts, but not so thick as to create discomfort or bulk. For example, polyurethane foams of a variety of thicknesses are used in the manufacturing of bras, with thinner foams used in t-shirt bras, and thicker foams exceeding 10 mm used in push up bras to displace the breasts from the bra and give a lifted appearance. In my opinion, a POSA would have been motivated to use polyurethane with the lower thickness of 2 to 4 mm in a pocket bra to ensure adequate room for the storage of items on the breast cup, rather than for additional padding. Thicknesses of 2 to 4 millimeters are desirable for meeting that

goal. Further, thicknesses of 2 to 4 millimeters were known to be desirable in 2013. NIKE-1038 (2004) at 6:4–5 (disclosing a bra cup made of polyurethane with foam thickness ranging from 1–3 mm). It is therefore my opinion a POSA would have had a high expectation of success in modifying Vidai to include polyurethane cups with a thickness of 2 to 4 millimeters because such cups were known. Further, it is my opinion a POSA would have known how to adjust the thickness to the desired level. NIKE-1037 at 117; NIKE-1038 at 6:4–5, 7:3, 1:48–57 (discussing adjusting the thickness of the bra cup), 3:31–37 (discussing bra cup formed of "flexible foam material" of "varying thickness"). Thus, it is my opinion a POSA would have found it obvious to modify Vidai based on their own knowledge and would have had a high expectation of success in doing so.

658. Even if this limitation would not have been obvious to a POSA based on their own knowledge, Vidai in combination with Pintor renders this limitation obvious. Pintor expressly teaches the use of polyurethanes in bras with pockets, including for use on the pocket or "breast covers" (*i.e.*, cups). *See* NIKE-1022 at 7:53–60 ("The material of construction for the breast covers or other portions of the article of apparel may comprise an elastomeric woven or nonwomen material, including . . . polyurethane."), 3:5-16 (discussing polyurethane in the construction of the pocket). Pintor further teaches the cup formed of polyurethane "having a *resilient* shape." *Id.* at 4:28–30.

659. In my opinion, a POSA would have known that the polyurethane cups taught by Pintor would include closed cell polyurethane cups of the claimed thickness, because such bra cups were known in the art. *See* NIKE-1037 at 117 (discussing molding of closed- and open-cell polyurethane foam for bra padding); NIKE-1037 at 6: 4–5. And as explained above, it is my opinion a POSA would have been motivated to use the polyurethane cups taught by Pintor in the bra disclosed by Vidai because polyurethane was known to have characteristics ideal for bra manufacturing, including comfort, and would have had a high expectation of success in using closed cell polyurethane cups in the bra taught by Vidai.

660. It is my opinion that Vidai and/or Vidai in combination with Pintor renders obvious limitation [2A]

iii. Claim 4

a. *"The system as set forth in claim 1" limitation [Preamble]*

661. Vidai discloses "[t]he system set forth in claim 1" for the reasons described above in claim 1.

b. *"and further including a handheld electronic device, the handheld electronic device placed within one of the side pockets" limitation [4A]*

662. Vidai discloses this limitation. Vidai expressly discloses the use of the bra pocket for the storage of "valuable objects." NIKE-1027 at 1:2. Vidai further describes the use of the storage pocket to prevent theft of items that would normally be stored in a woman's handbag. *See id.* at 1:3-7.

663. In my opinion, a POSA reading Vidai in 2013 would have understood "valuable objects" to include a wearer's personal belongings, including a handheld electronic device, such as a cell phone at the time of the '016 Patent's alleged invention. It is further my opinion a POSA would understand a wearer's desire to prevent theft of any valuable objection, including a personal, handheld electronic device.

664. To the extent this limitation is not expressly or inherently disclosed, Vidai renders it obvious. In my opinion, a POSA would have understood that the presence of a pocket necessarily implies the use of the pocket for temporarily holding items, such as a handheld electronic device. A POSA would also know that the use of handheld electronic devices was pervasive at the time of the alleged invention (2013 at the earliest) and would know that a user would use the pockets to hold handheld electronic devices. *See* NIKE-1022 at 1:23–24 ("Cell phones, personal listening devices, and other mobile electronic devices have become popular in recent years."). Thus, it is my opinion it would have been obvious to a POSA that Vidai's pockets—expressly designed to hold "valuables"—could hold a "handheld electronic device."

665. Thus, it is my opinion that Vidai discloses limitation [4A].

iv. Claim 7

a. *"The system as set forth in claim 1" limitation [Preamble]*

666. Vidai discloses "[t]he system set forth in claim 1" for the reasons described above in claim 1.

b. *"wherein each side pocket further comprises a closure, the closure having a first part on the side of the chest strap, and a second part on the patch, the first part connectable to the second part to close the pocket" limitation [7A].*

667. Vidai discloses this limitation. Vidai discloses a closure for the pocket "done either by the natural tension created by the attachment of the side strips, or by any other means, such as a zipper or adhesive strips, for example." NIKE-1027 at 3:15–18. In my opinion, a POSA would have understood this disclosure to inherently disclose "the closure having a first part on the side of the chest strap, and a second part on the patch, the first part connectable to the second part to close the pocket," a zipper or similar closure mechanism must be configured to have two parts, each one secured to the opposite surface of the opening, in order to appropriately function as a closure.

668. Thus, it is my opinion that Vidai discloses limitation [7A].

v. Reasons to Combine Vidai with Pintor

669. Vidai and Pintor disclose all claimed features of the "pocket bra system," as shown above. Also, in my opinion, it would have been obvious to a POSA to simply combine the beneficial features of both bras, with the features taught by Vidai and Pintor performing their same intended function.

670. Vidai and Pintor each disclose inventions generally relating to bras with pockets for storage. In designing a bra with pockets, it is my opinion a POSA would have been motivated to look to the prior art references disclosing bras with pockets—including Vidai and Pintor specifically—and select preferable elements from each disclosure to construct their desired pocketed bra. One advantage of Vidai's bra is that it has pockets on the chest strap. *See* NIKE-1027 at Fig. 1, 2:1–11. At the same time, Pintor's bras contain more comfortable polyurethane cups. NIKE-1022 at 7:53-62. As a result, it is my opinion a POSA would have been motivated to design a bra that took advantage of the benefits provided by each of Vidai's and Pintor's bras.

671. It is my opinion a POSA also would have understood that bras are meant to serve a diverse population with differing preferences—such as support, comfort, and pocket size(s)—and that it would be commercially beneficial to provide consumers with a variety of options to meet those different preferences. The prior art expressly states that having "an aesthetically pleasing design" is an important consideration. NIKE-1022 at 6:6-10. Further, bras are meant to serve a variety of different functions—providing different levels of support and types of shaping to the breasts. In my opinion, a POSA therefore would have been motivated to design a variety of combinations of bras, including those with the claimed features, so as to be able to provide options to a wide range of customers.

672. In my opinion, a POSA would have expected to have a high likelihood of success with this combination. Vidai and Pintor are both bras with pockets for discreetly storing valuables while remaining easily accessible. *E.g.*, NIKE-1027 at Fig., 1:1–3, 2:1–11; 2:33–39; NIKE-1022 at 2:4–17, 5:37–45, 6:19–30, Figs. 1–8. And each of the elements—*e.g.*, cups for holding the wearer's breasts, pockets for storing items, and stitching for adhering the pockets to the bra—would perform the same predictable function disclosed in the prior art. It is my opinion that any work needed to combine the elements taught by Vidai and Pintor would therefore be nothing more than routine modifications well within the abilities of a POSA.

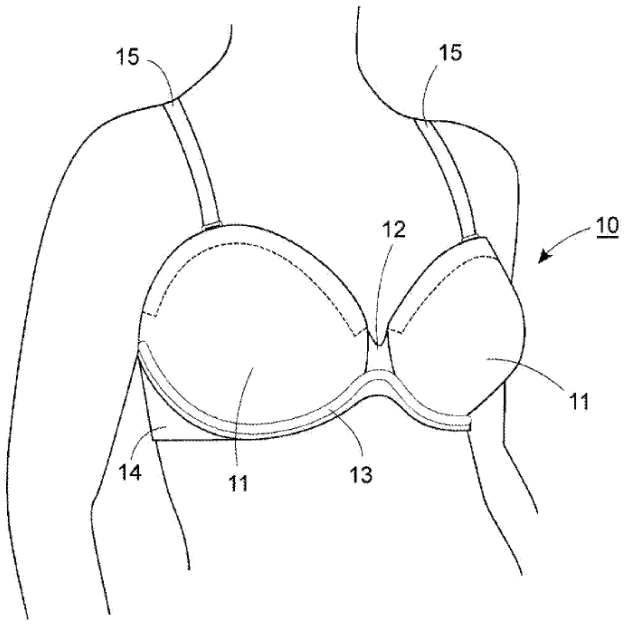
2. Ground 2: Claims 1, 2, 4, and 7 Are Unpatentable Over Handras in View of Pintor

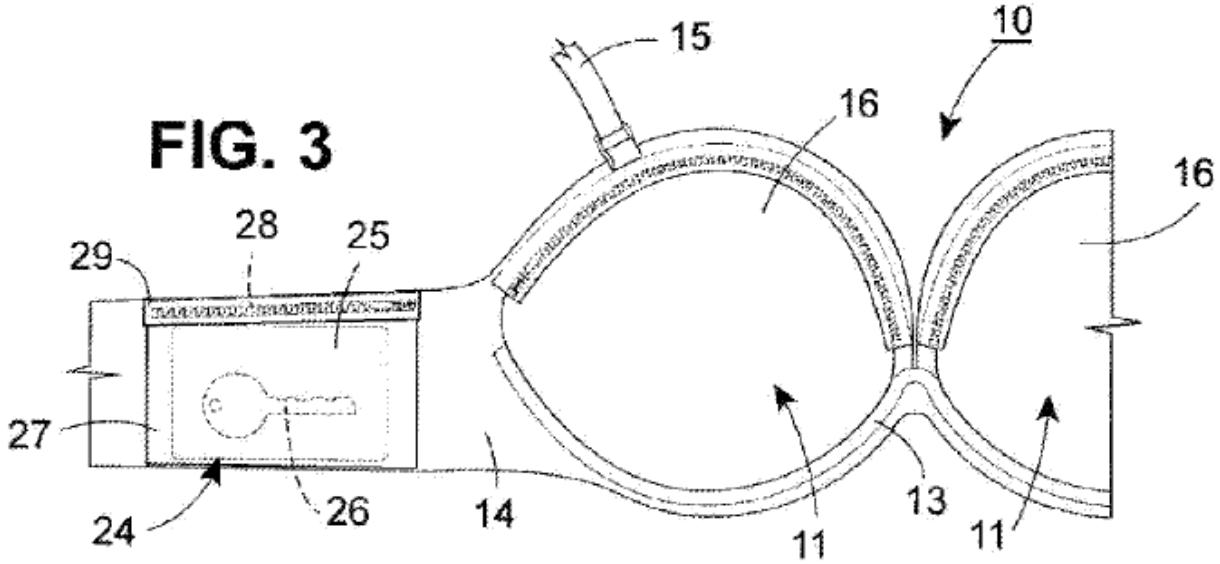
673. In my opinion, claims 1, 2, 4, and 7 are disclosed or rendered obvious by Handras in combination with Pintor.

i. Claim 1

a. *"A bra pocket system combination comprising:" limitation [1A]*

674. Handras discloses this limitation. Handras discloses "a bra with one or more storage pockets." NIKE-1021 at [0001].





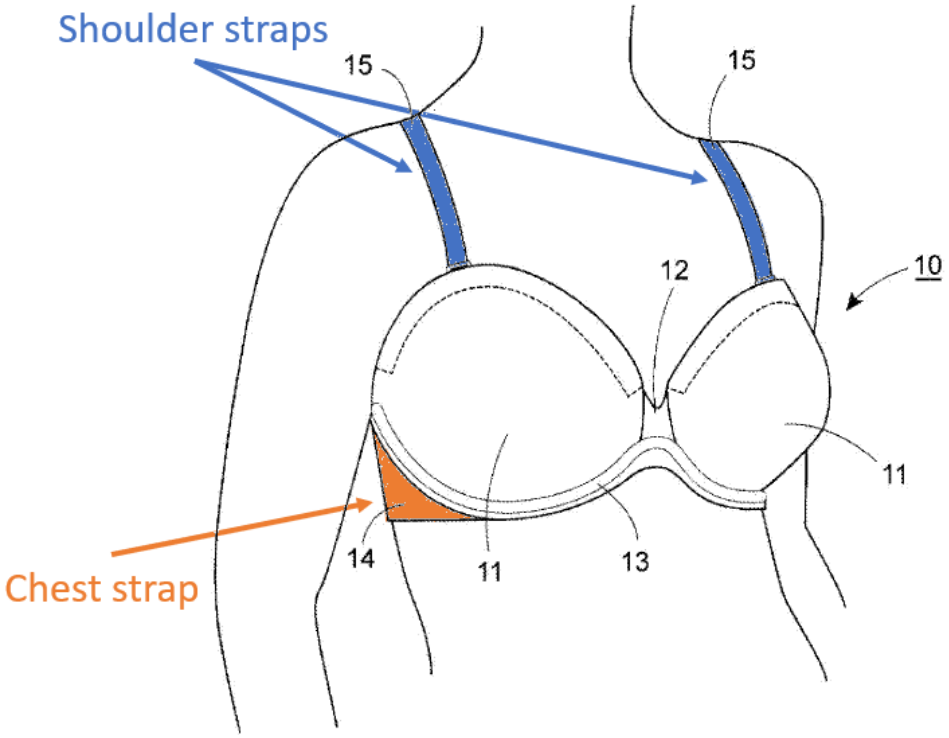
Id. at Figs 1, 3, at [0003] ("[i]t is an object of the invention to provide a pocket in a bra for receiving one or more items that is conveniently located for the wearer."), [0004] ("a concealed pocket in a bra for receiving one of [sic] more items."), Abstract ("Each side panel of the bra may also have a zippered pocket on the inside."), [0011] ("the bra is fabricated with at least one side panel that extends

laterally of the pair of cups and that is provided with a pouch for receiving a small item, such as a credit card.”).

675. It is therefore my opinion that Handras discloses limitation [1A].

b. *“a strap assembly including a chest strap and shoulder straps;” limitation [1B]*

676. Handras discloses this limitation. As illustrated below, Handras describes a traditional bra construction 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].

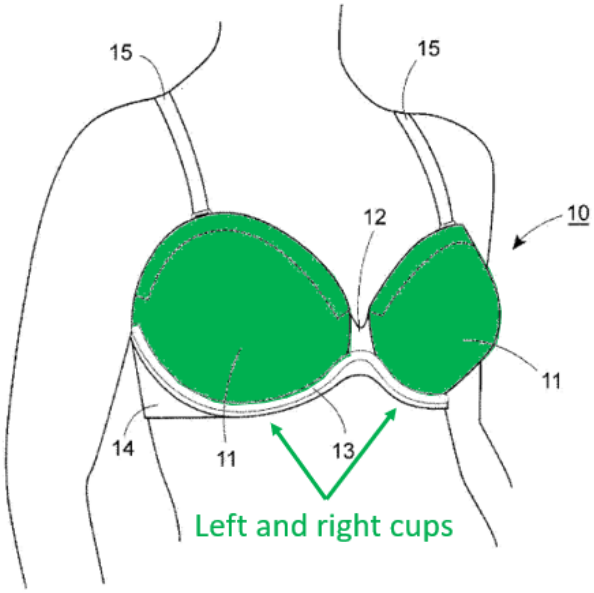


NIKE-1021 at Fig. 1.

677. It is therefore my opinion that Handras discloses limitation [1B].

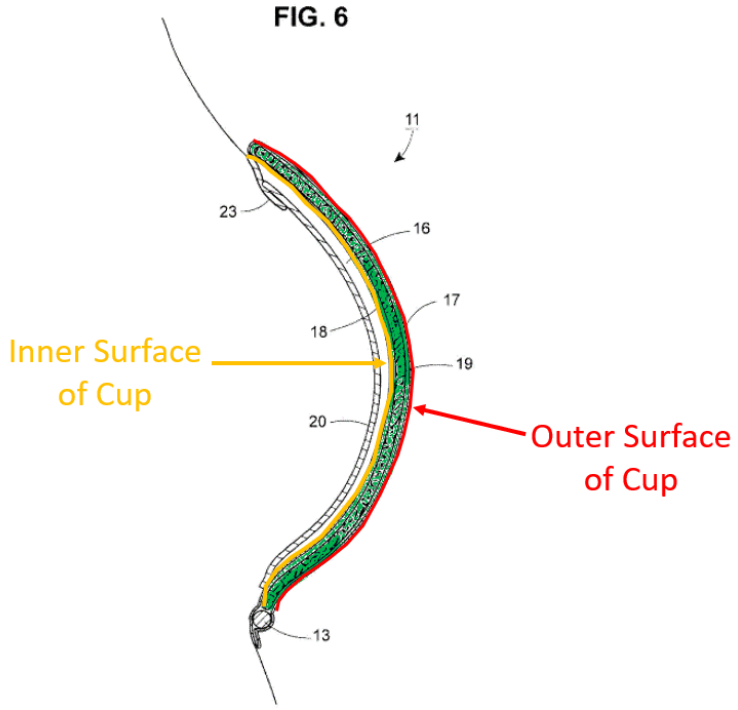
c. *"a left cup and a right cup, each cup having inside and outside surfaces," limitation [1C]*

678. Handras discloses this limitation. Handras discloses a bra having "a pair of cups" for the left and right breasts. NIKE-1021 at [0020].



Id. at Fig. 1, [0006] ("a bra comprised of a pair of cups"), [0011], [0029], Cl. 1, 6.

679. It is my opinion a POSA would have understood these cups to necessarily have inside and outside surfaces. The inside and outside surfaces are illustrated in Figure 6:

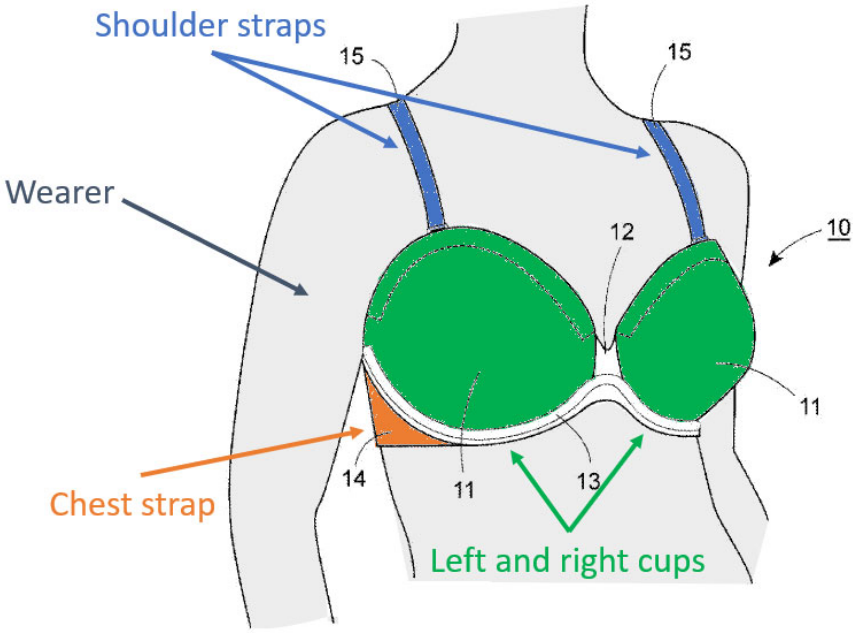


NIKE-1021 at Fig. 6, [0022] ("each cup 11 has an outer ply of material 17, an inner ply of material 18").

680. It is therefore my opinion that Handras discloses limitation [1C].

d. ***"the strap assembly being attached to the cups whereby the strap assembly holds the cups to a wearer;" limitation [1D]***

681. Handras discloses this limitation. As explained above in limitations [1B] and [1C], Handras discloses a "strap assembly" and "left and right cups." Figure 1 illustrates the disclosed strap assembly adhering the cups to the wearer:

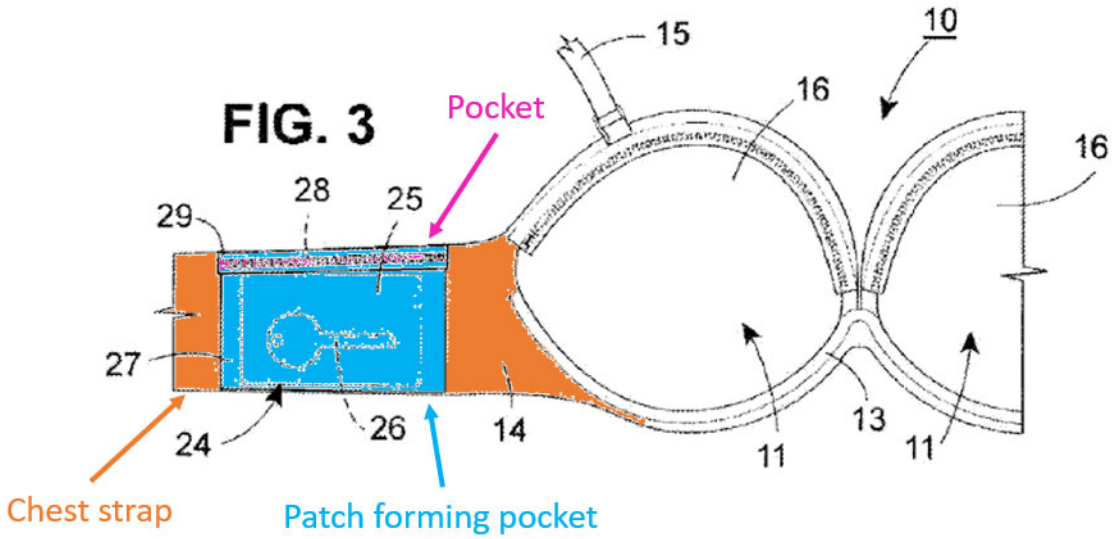


NIKE-1021 at Fig. 1.

682. It is therefore my opinion that Handras discloses limitation [1D].

e. *"a side patch on one of an inside or outside surface of each side of the chest strap adjacent to each of the left cup and right cup," limitation [1E]*

683. Handras discloses this limitation. Handras expressly discloses "each side panel 14 (only one of which is shown) of the bra 10 is provided with a pouch 24 for receiving a small item or items." NIKE-1021 at [0028]. Handras further discloses the pocket is formed by a patch. *Id.* (the pouch 24 is formed by a panel 27 of fabric sewn or otherwise secured to the side panel.")



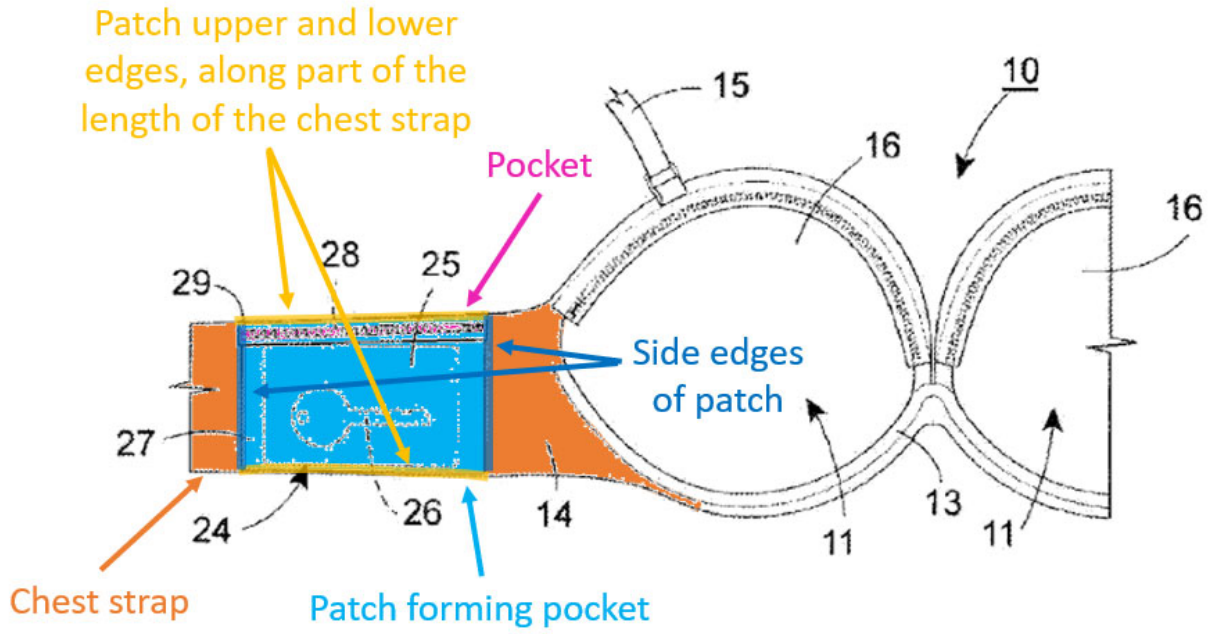
NIKE-1021 at Fig 3.

684. The patch is located on the inside of each side of the chest strap, adjacent to each of the left and right cups. *Id.* at Abstract ("*Each side panel* of the bra may also have a zippered pocket on the *inside*."), [0011] ("the bra is fabricated with at least one side panel that *extends laterally of the pair of cups* and that is provided with a pouch for receiving a small item.").

685. It is therefore my opinion that Handras discloses limitation [1E].

f. *"the side patches having upper and lower edges along at least part of a length of the strap, and side edges," limitation [1F]*

686. Handras discloses this limitation. As illustrated below, the upper and lower edges of the patch are along part of the length of the chest strap, and the patch has side edges:



NIKE-1021 at Fig 3.

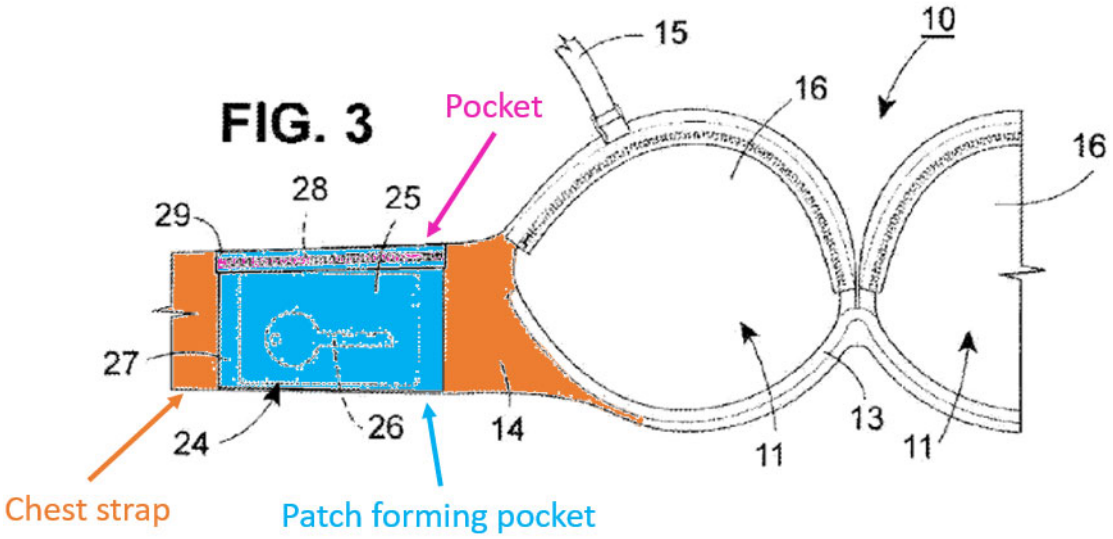
687. Handras discloses the patches "sewn or otherwise secured to the side panel," *i.e.*, "chest strap." *Id.* at [0028]. Thus, it is my opinion a POSA would have understood each patch to have edges along the length of the chest strap.

688. It is therefore my opinion that Handras discloses limitation [1F].

g. *"each side patch having stitching along the lower and side edges thus forming an upper opening at each side patch such that each side patch forms a pocket," limitation [1G]*

689. Handras discloses this limitation. Handras discloses the pocket formed "by a panel 27 of fabric sewn or otherwise secured to the side panel 14, a zipper 28, and a flap 29 for covering over the zipper." NIKE-1021 at [0028]. As illustrated

below, Handras discloses the pocket opening with a zipper along the upper edge of the rectangular patch:



NIKE-1021 at Fig. 3.

690. In my opinion, a POSA would have understood a rectangular pocket with an upper opening to be sewn along its lower and side edges.

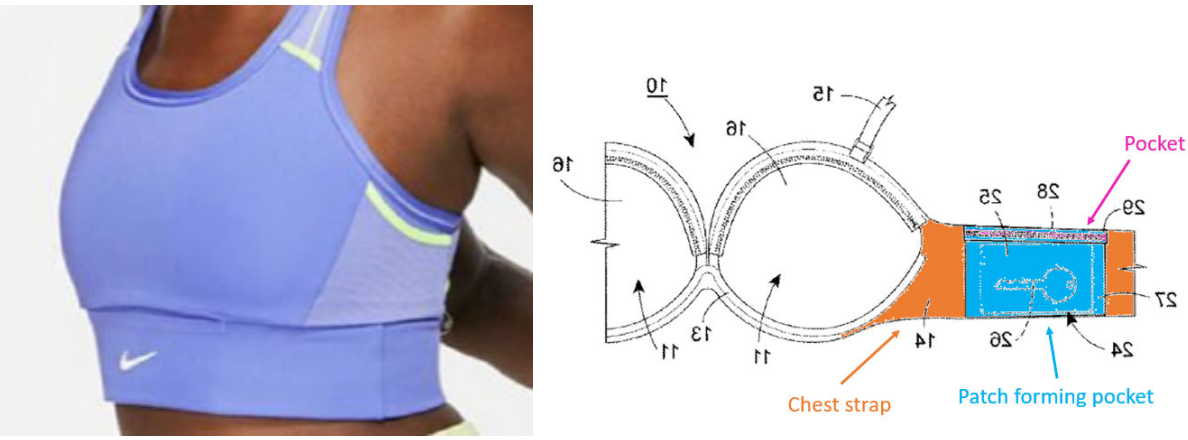
691. It is therefore my opinion that Handras discloses limitation [1G].

h. ***"and wherein each side pocket extends onto the adjacent cup, such that each pocket spans both a part of the chest strap and the adjacent cup." limitation [1H]***

692. Handras discloses this limitation. I understand that in the MA Litigation, Patent Owner took the position that this limitation was met by the following bras:

See NIKE-1040 at 4 (left); NIKE-1041 at 4–5 (right).

693. Though I understand Petitioner does not agree that the products above meet this limitation, to the extent Patent Owner contends they do, so too does Handras:



NIKE-1021 at Fig 5 (flipped horizontally).

694. Alternatively, should Patent Owner contend that this limitation requires greater extension onto the cups, Handras renders this limitation obvious. Both bras and pockets have been long known in the art and in designing a bra with storage pockets, in my opinion a POSA would have been motivated to look for known

solutions in the art, such as the variety of types of bras and their designs, placements of the pockets, methods of forming a pocket, and methods of adhering the pockets to the bra. Moreover, it is my opinion a POSA would have known that different pocket shapes, sizes, and placements have known benefits and drawbacks. Given this knowledge, it would have been obvious to a POSA in light of Handras to extend the length of the pocket onto some portion of the bra cup to increase the amount of storage in the pocket.

695. Additionally, a POSA would have found it obvious to extend the pocket towards the front of the bra onto the cups, rather than backwards towards the wearer's back, for the wearer's ease of access to the pocket. Such a design would increase comfort for the wearer, because extension of the pocket onto the cup enables the wearer to access the pocket without uncomfortably twisting the wearer's body. As discussed in "The art of pocket design: How to create unique and stylish pockets," NIKE-1052, a POSA would have known that "[c]lassically, pockets are thought out in relation to the body and the placement of the arms. The goal was to have access to the inside of the pocket, without having to twist." *Id.* at 3.

696. It is therefore my opinion that Handras discloses or renders obvious limitation [1H].

ii. Claim 2

a. *"The system as set forth in claim 1" limitation [Preamble]*

697. Handras discloses "[t]he system set forth in claim 1" for the reasons described above in claim 1.

b. *"wherein the cups and the patches form pockets, the cups being fabricated of a resilient closed cell polyurethane foam with a thickness of from 2 to 4 millimeters" limitation [2A]*

698. Handras in combination with the knowledge of a POSA renders this limitation obvious. As previously discussed in limitations [1A]–[1D], Handras discloses a well-known bra assembly with left and right cups, a chest strap, and a shoulder strap assembly. Further, as previously discussed in limitation [1H], Handras discloses "each side pocket extend[ing] onto the adjacent cup, such that each pocket spans both a part of the chest strap and the adjacent cup," such that the cups and patches form pockets under Patent Owner's construction.

699. The use of resilient closed cell polyurethane with a thickness of 2 to 4 millimeters was well known in the art by the time of the alleged invention. *See* NIKE-1037 (2009) at 117 (discussing molding of closed- and open-cell polyurethane foam for bra padding); NIKE-1038 (2004) at 7:3 (disclosing polyurethane for use in bra padding), at 6:4–5 (disclosing a foam thickness of 3 mm), at 3:13, 4:59–64, 5:5 (disclosing the use of "resilient" thermoplastic foam material, including polyurethane foam, for use in bra cup manufacturing).

700. In my opinion, it would have been obvious to a POSA to try using such material on Handras, and a POSA would have been motivated to do so to increase

comfort of the bra. A POSA would have understood resilient polyurethane foam to be a conventional component of bra cups because of its cost, availability, softness, and other tactile characteristics that make it ideal for bra manufacturing. NIKE-1037 at 117; NIKE-1038 at 7:3. In my opinion, a POSA in 2013 would therefore have been motivated to modify Vidai to use resilient closed cell polyurethane for the cups. Handras itself discloses the use of "resilient foam material" in the formation of the bra cup. NIKE-1021 at [0007], [0022], [0026].

701. It is my opinion a POSA would further have understood the thickness of the foam to be a result-effective variable, because users desire bra cups that are thick enough to provide the desired support and shape to the breasts, but not so thick as to create discomfort or bulk. For example, polyurethane foams of a variety of thicknesses are used in the manufacturing of bras, with thinner foams used in t-shirt bras, and thicker foams exceeding 10 mm used in push up bras to displace the breasts from the bra and give a lifted appearance. In my opinion, a POSA would have been motivated to use polyurethane with the lower thickness of 2 to 4 mm in a pocket bra to ensure adequate room for the storage of items on the breast cup, rather than for additional padding. Thicknesses of 2 to 4 millimeters are desirable for meeting that goal. Further, thicknesses of 2 to 4 millimeters were known to be desirable in 2013. NIKE-1038 (2004) at 6:4–5 (disclosing a bra cup made of polyurethane with foam thickness ranging from 1–3 mm). It is therefore my opinion a POSA would have

had a high expectation of success in modifying Handras to include polyurethane cups with a thickness of 2 to 4 millimeters because such cups were known. Further, it is my opinion a POSA would have known how to adjust the thickness to the desired level. NIKE-1037 at 117; NIKE-1038 at 6:4–5, 7:3, 1:48–57 (discussing adjusting the thickness of the bra cup), 3:31–37 (discussing bra cup formed of "flexible foam material" of "varying thickness"). Thus, it is my opinion 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.

702. Even if this limitation would not have been obvious to a POSA based on their own knowledge, Handras in combination with Pintor renders this limitation obvious. Pintor expressly teaches the use of polyurethanes in bras with pockets, including for use on the pocket or "breast covers" (*i.e.*, cups). *See* NIKE-1022 at 7:53–60 ("The material of construction for the breast covers or other portions of the article of apparel may comprise an elastomeric woven or nonwomen material, including . . . polyurethane."), 3:5-16 (discussing polyurethane in the construction of the pocket). Pintor further teaches the cup formed of polyurethane "having a *resilient* shape." *Id.* at 4:28–30.

703. In my opinion, a POSA would have known that the polyurethane cups taught by Pintor would include closed cell polyurethane cups of the claimed thickness, because such bra cups were known in the art. *See* NIKE-1037 at 117

(discussing molding of closed- and open-cell polyurethane foam for bra padding); NIKE-1037 at 6: 4–5. And as explained above, it is my opinion a POSA would have been motivated to use the polyurethane cups taught by Pintor in the bra disclosed by Handras because polyurethane was known to have characteristics ideal for bra manufacturing, including comfort, and would have had a high expectation of success in using closed cell polyurethane cups in the bra taught by Handras.

704. It is my opinion that Handras and/or Handras in combination with Pintor renders obvious limitation [2A].

iii. Claim 4

a. *"The system as set forth in claim 1" limitation [Preamble]*

705. Handras discloses "[t]he system set forth in claim 1" for the reasons described above in claim 1.

b. *"and further including a handheld electronic device, the handheld electronic device placed within one of the side pockets" limitation [4A]*

706. Handras discloses this limitation. Handras explicitly contemplates the use of bra pockets "to hold items, such as, credit cards, car keys, cell phones and the like." NIKE-1021 at [0002]. A cell phone is a "handheld electronic device." Further, Handras contemplates the storage of a "small item or items, such as a credit card and key" in the side pockets. NIKE-1021 at [0028] (numbers omitted). In my opinion, a POSA would have understood "small items" to include *handheld* electronic devices.

707. To the extent this limitation is not expressly or inherently disclosed, Handras renders it obvious. In my opinion, a POSA would have understood that the presence of a pocket necessarily implies the use of the pocket for removably holding items, such as a handheld electronic device. A POSA would also have known that the use of handheld electronic devices was pervasive at the time of the alleged invention (2013 at the earliest) and would know that a user would use the pockets to hold handheld electronic devices. *See* NIKE-1022 at 1:23–24 ("Cell phones, personal listening devices, and other mobile electronic devices have become popular in recent years."). Further, it is my opinion a POSA would have understood the size of the patch to be a simple choice of design. Thus, it is my opinion a POSA would have been motivated to increase or decrease the size of the patch on Handras to accommodate any valuable, including a handheld electronic device for its storage.

708. It would have been well within the abilities of a POSA to make such a routine modification changing the size of the patch, and it is my opinion a POSA would have had a high expectation of success in doing so. This is simple technology and bras with pockets of various sizes and shapes were well known in the art. Handras itself contemplates modifying the size of the bra's pockets to meet different storage needs. *See* NIKE-1021 at [0025]. Thus, in my opinion, it would be obvious to a POSA that Handras's pockets—expressly designed to hold "small item[s]"—could hold, or be modified to hold, a "handheld electronic device."

709. Thus, it is my opinion that Handras discloses or renders obvious limitation [4A].

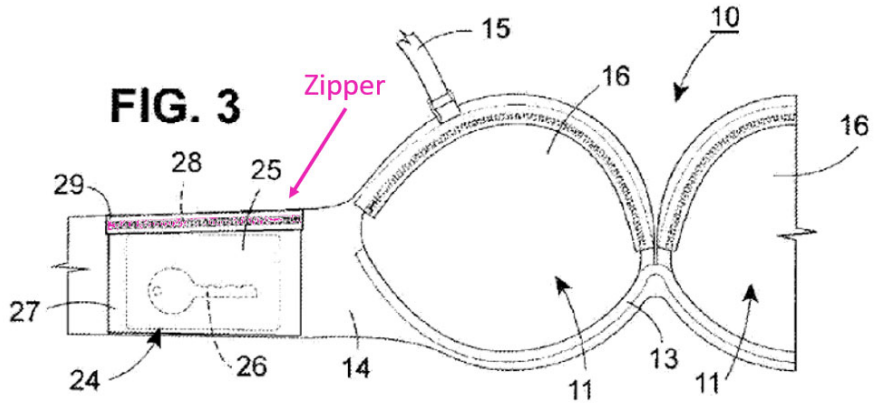
iv. Claim 7

a. *"The system as set forth in claim 1" limitation [Preamble]*

710. Handras discloses "[t]he system set forth in claim 1" for the reasons described above in claim 1.

b. *"wherein each side pocket further comprises a closure, the closure having a first part on the side of the chest strap, and a second part on the patch, the first part connectable to the second part to close the pocket" limitation [7A].*

711. Handras discloses this limitation. Handras discloses pockets "utilizing zippers for quick and easy access and closure." NIKE-1021 at [0031], [0011], [0028]. As illustrated below, the zipper 28 comprises a closure for the side pocket:



NIKE-1021 at Fig. 2.

712. Handras discloses the zipper closure having a first part on the side of the chest strap, and a second part on the patch, the first part connectable to the second part to close the pocket. *Id.* at [0028] ("the pouch 24 is formed by a panel 27 of fabric sewn or otherwise secured to the side panel 14, a zipper 28 and a flag 29 for covering over the zipper 28."). In my opinion, a POSA would have understood that a zipper or similar closure mechanism must be configured to have two parts, each one secured to the opposite surface of the opening, in order to appropriately function as a closure.

713. Thus, it is my opinion that Handras discloses limitation [7A]

v. Reasons to Combine Handras with Pintor

714. Handras and Pintor disclose all claimed features of the "pocket bra system," as shown above. Also, in my opinion, it would have been obvious to a POSA to simply combine the beneficial features of both bras, with the features taught by Handras and Pintor performing their same intended function.

715. Handras and Pintor each disclose inventions generally relating to bras with pockets for storage. In designing a bra with pockets, it is my opinion a POSA would have been motivated to look to the prior art references disclosing bras with pockets—including Handras and Pintor specifically—and select preferable elements from each disclosure to construct their desired pocketed bra. One advantage of Handras's bra is that it has pockets on the chest strap, in addition to pockets on the

breast cups. *See* NIKE-1021 at Abstract, Figs. 1–3, 6, at [0001], [0006], [0011]. At the same time, Pintor's bras contain comfortable polyurethane cups. NIKE-1022 at 7:53-62. As a result, it is my opinion a POSA would have been motivated to design a bra that took advantage of the benefits provided by each of Handras's and Pintor's bras.

716. It is my opinion a POSA also would have understood that bras are meant to serve a diverse population with differing preferences—such as support, comfort, and pocket size(s)—and that it would be commercially beneficial to provide consumers with a variety of options to meet those different preferences. The prior art expressly states that having "an aesthetically pleasing design" is an important consideration. NIKE-1022 at 6:6-10. Further, bras are meant to serve a variety of different functions—providing different levels of support and types of shaping to the breasts. In my opinion, a POSA therefore would have been motivated to design a variety of combinations of bras, including those with the claimed features, so as to be able to provide options to a wide range of customers.

717. In my opinion, a POSA would have expected to have a high likelihood of success with this combination. Handras and Pintor are both bras with pockets for discreetly storing valuables while remaining easily accessible. *E.g.*, NIKE-1021 at [0001], [0003], [0004], Figs. 1–6; NIKE-1022 at 2:4–17, 5:37–45, 6:19–30, Figs. 1–8. And each of the elements—*e.g.*, cups for holding the wearer's breasts, pockets

for storing items, and stitching for adhering the pockets to the bra—would perform the same predictable function disclosed in the prior art. It is my opinion that any work needed to combine the elements taught by Handras and Pintor would therefore be nothing more than routine modifications well within the abilities of a POSA.

E. The ’878 Patent

1. Ground 1: Claims 1–4, 11, 14, 15, and 17 Are Unpatentable Over Vidai in View of Spagna

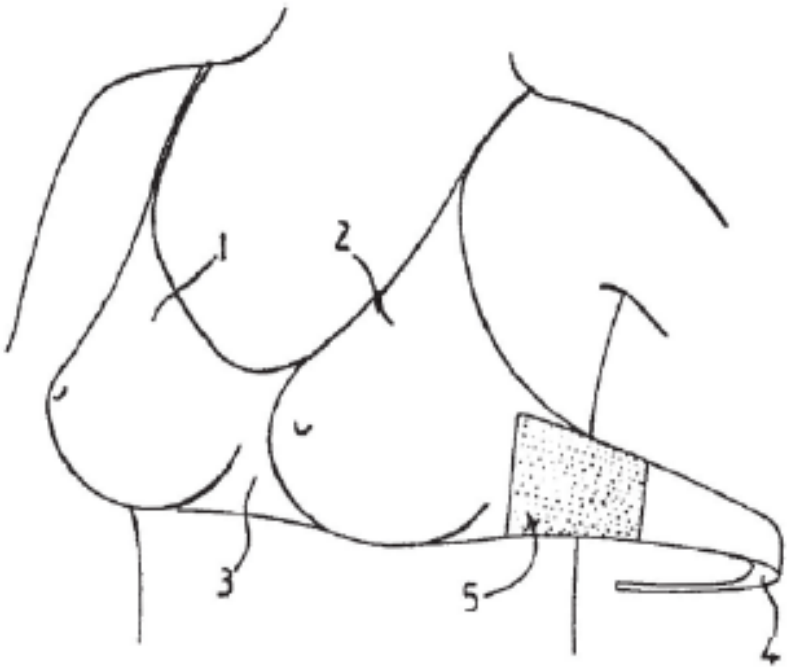
718. The discussion below provides my detailed analysis of how the prior art references invalidate the challenged claimed of the ’878 Patent.

719. In my opinion, claims 1–4, 11, 14, 15, and 17 are disclosed or rendered obvious by Vidai in combination with Spagna.

i. Claim 1

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

720. Vidai discloses this limitation. Vidai discloses a bra designed to “hide valuables,” having “at least one pocket placed on one of the side straps.” NIKE-1027 at Abstract (numbers omitted).

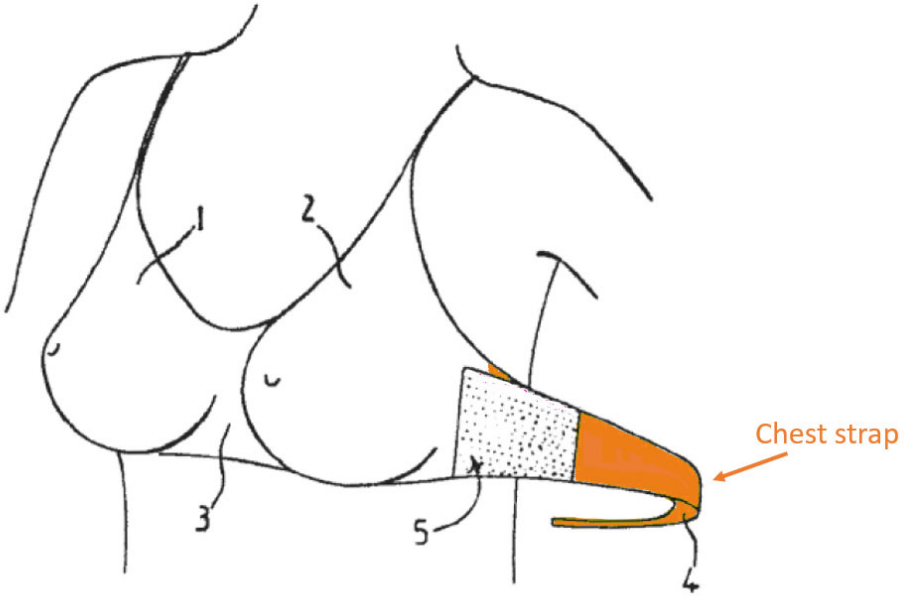


Id. at Fig. 1.

721. In my opinion, Vidai discloses limitation [1A].

b. *"a strap assembly including a chest strap;" limitation [1B]*

722. Vidai discloses this limitation. As illustrated below, Vidai discloses "[a] bra comprised of two cups, 1 and 2, connected together by a piece of fabric 3 of a varied same, and *two side strips 4 that extend each cup laterally and that are provided at their ends with means allowing them to be hooked*." NIKE-1027 at 2:28–32.

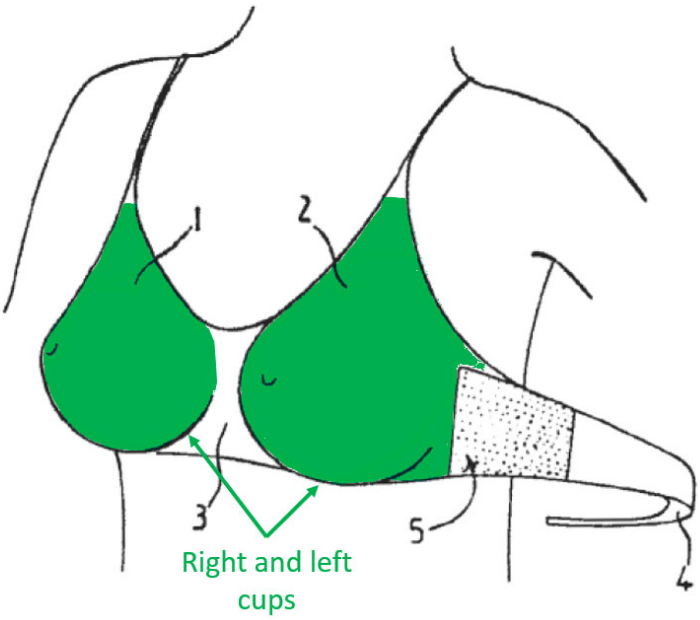


Id. at Fig. 1.

723. In my opinion, Vidai discloses limitation [1B].

c. *"a left cup and a right cup, each cup being an area to receive a breast of a wearer having inside and outside surfaces," limitation [1C]*

724. Vidai discloses this limitation. As illustrated below, Vidai discloses "[a] bra comprised of *two cups, 1 and 2*, connected together by a piece of fabric 3 of a varied shape, and two side strips 4 that extend each cup laterally and that are provided at their ends with means allowing them to be hooked." NIKE-1027 at 2:28–32.



NIKE-1027 at Fig. 1, 2:28-32.

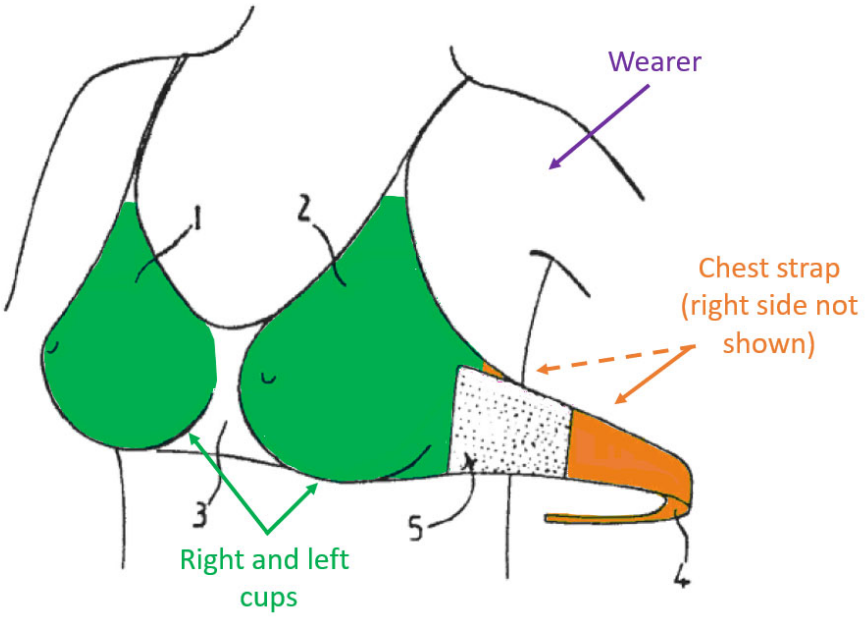
725. In my opinion, a POSA would have understood these cups to necessarily have outside and inside surfaces for receiving the breasts of the wearer, as illustrated above. *Id.*

726. In my opinion, Vidai discloses limitation [1C].

d. *"the strap assembly being attached to the cups whereby the strap assembly holds the cups to a wearer," limitation [1D]*

727. Vidai discloses this limitation. As explained above, Vidai discloses a "strap assembly" comprising a chest strap that attaches to the "cups."

728. Further, Vidai expressly discloses the strap assembly attached to the cups, adhering the cups to a wearer:

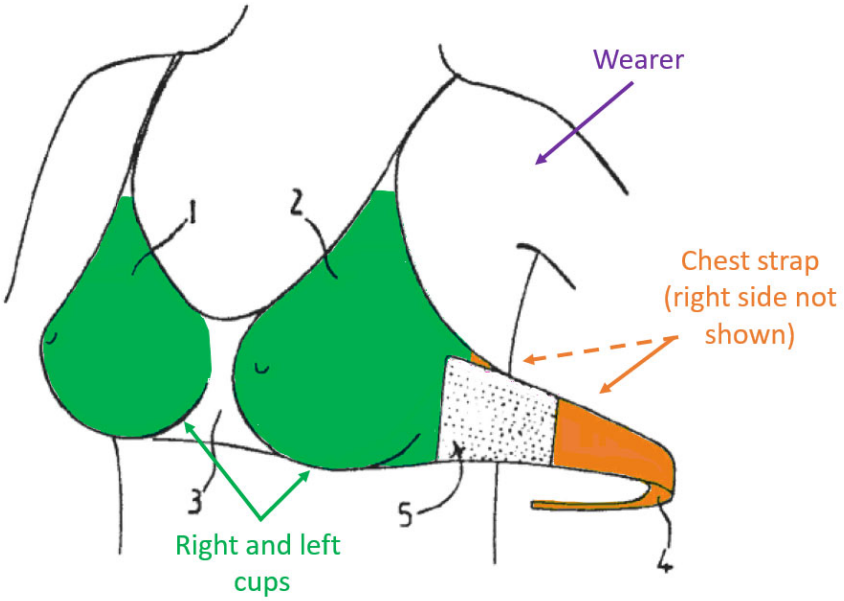


Id. at Fig. 1, 2:28-32 ("[a] bra comprised of two cups, 1 and 2, connected together by a piece of fabric 3 of a varied same, and two side strips 4 that extend each cup laterally and that are provided at their ends with means allowing them to be hooked. It may also have straps.").

729. In my opinion, Vidai discloses limitation [1D].

e. *"with the chest strap extending from the left cup towards the wearer's back and extending from the right cup towards the wearer's back;" limitation [1E]*

730. Vidai discloses this limitation. As illustrated below, Vidai discloses the chest strap extending from the left and right cups towards the wearer's back:

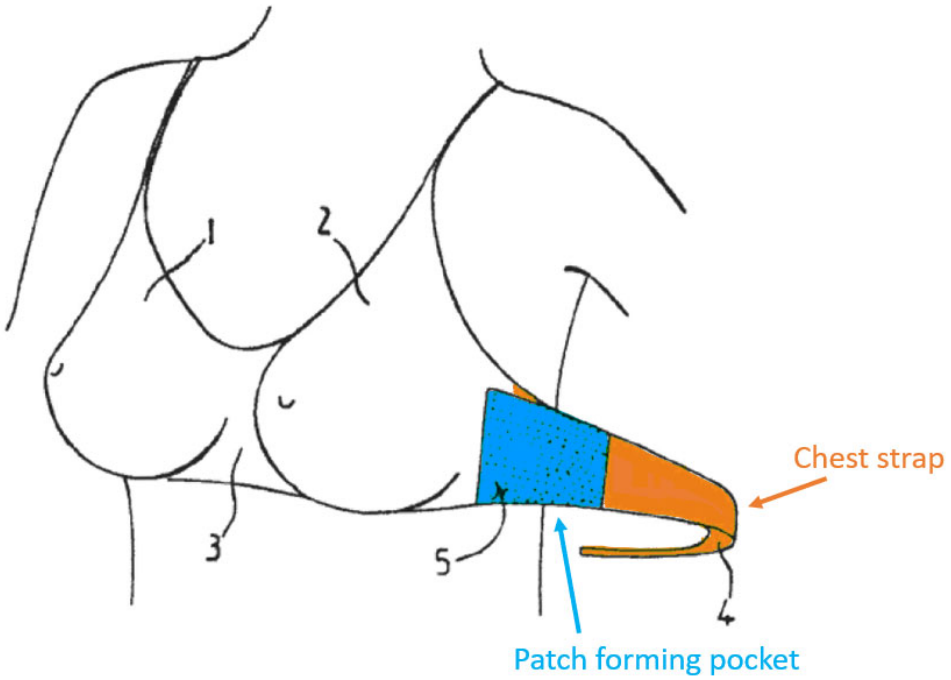


NIKE-1027 at Fig. 1; 2:29 – 31 ("two side strips 4 that extend each cup laterally and that are provided at their ends with means allowing them to be hooked.").

731. In my opinion, Vidai discloses limitation [1E].

f. ***"a side patch on one of an inside or outside surface of the chest strap adjacent to at least one of the left cup and right cups," limitation [1F]***

732. Vidai discloses this limitation. As illustrated below, Vidai discloses "at least one pocket 5 that is arranged on a side strip 4."



NIKE-1027 at Fig. 1 (the rightmost side of the chest strap not shown), 2:37-38.

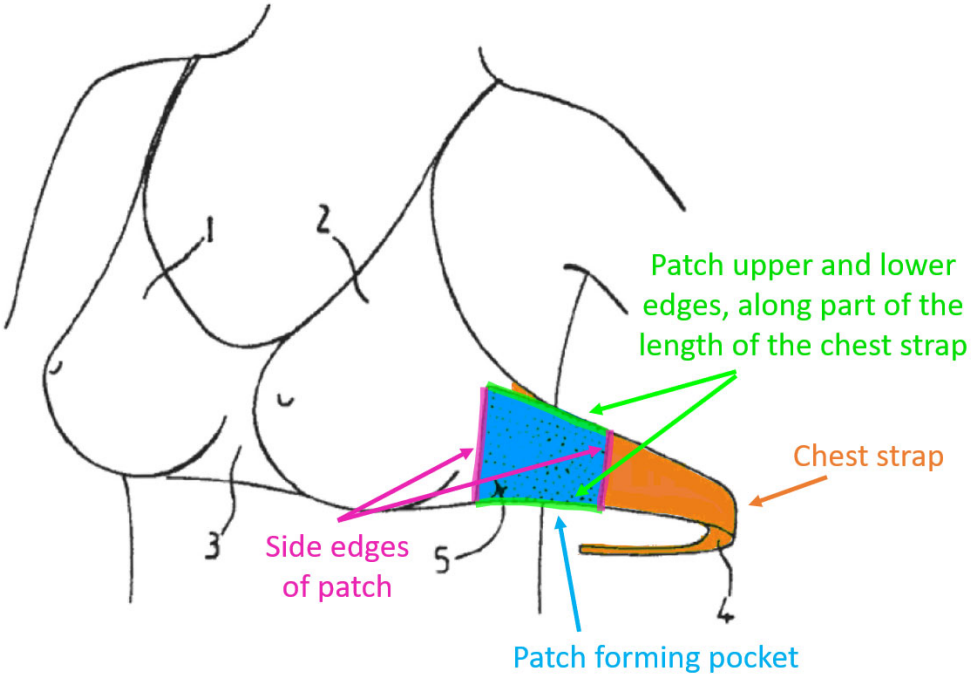
733. The pockets can be made of "piece[s] of fabric" sewn to the chest strap, *id.* at 3:2-3, and are "advantageously arranged on the part of the side strip 4 that is located substantially under the corresponding arm of the user." *Id.* at 2:40–42.

734. In my opinion, a POSA would have understood the portion "located substantially under the corresponding arm of the user" to be "adjacent" to the right or left cup of the bra assembly. Further, Vidai illustrates a pocket formed on the outside of the chest strap, as shown above.

735. In my opinion, Vidai discloses limitation [1F].

g. *"the side patch having upper and lower edges along at least part of a length of the chest strap, and side edges," limitation [1G]*

736. Vidai discloses this limitation. As illustrated below, the pocket is formed by a piece of fabric with upper and lower edges along the length of the strap, and side edges:



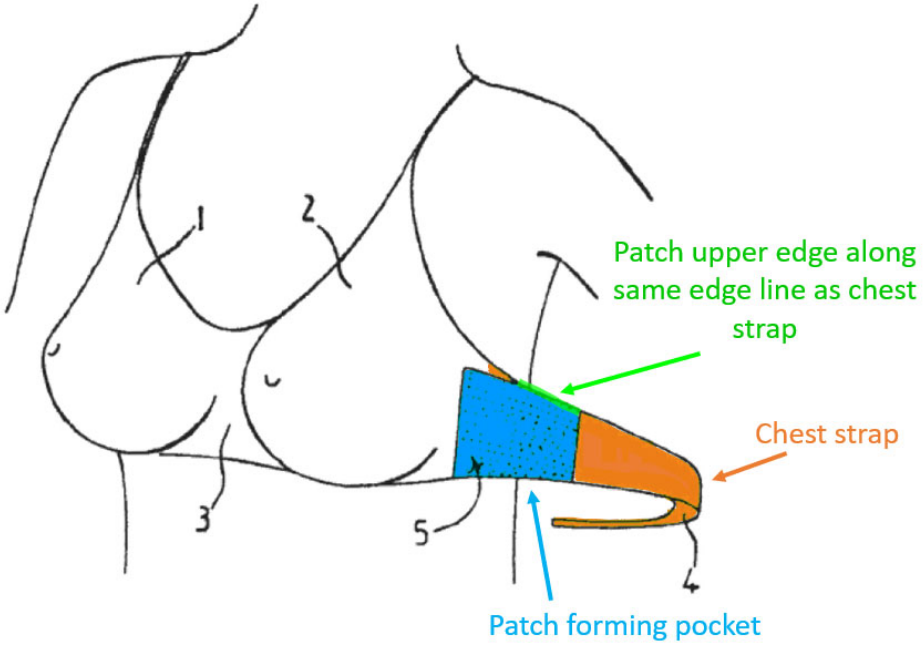
NIKE-1027 at Fig. 1.

737. Vidai discloses a pocket formed "of the side strip and of a piece of fabric of which at least three edges are combined with the side strip by any suitable means, in particular by sewing." *Id.* 3:2-5 (numbers omitted). Thus, it is my opinion a POSA would understand each patch to have edges along the length of the chest strap.

738. In my opinion, Vidai discloses limitation [1G].

h. ***"the side patch upper edge lying along a same edge line as at least a portion of a top edge of the chest strap," limitation [1H]***

739. Vidal discloses this limitation. As discussed previously with regard to limitation [1G], Vidai discloses the patch having edges along the length of the chest strap. As illustrated below, Vidai discloses "the side patch upper edge lying along a same edge line as at least a portion of a top edge of the chest strap":



NIKE-1027 at Fig. 1.

740. In my opinion, Vidai discloses limitation [1H].

i. *"the side patch having stitching along the lower and side edges thus forming an upper opening such that the side patch forms a pocket," limitation [1I]*

741. Vidai discloses this limitation. Vidai discloses the pocket formed "of the side strip and of a piece of fabric of which at least three edges are combined with the side strip by any suitable means, in particular by sewing." NIKE-1027 at 3:2-5 (numbers omitted).

742. Further, Vidai discloses that the pocket "can be opened either laterally or on its upper part." *Id.* 3:14-15.

743. Finally, Vidai states "[t]he shape of this pocket is preferably rectangular." *Id.* at 19. It is my opinion a POSA would have understood a rectangular pocket with an upper opening to be sewn along its lower and side edges.

744. In my opinion, Vidai discloses limitation [1I].

j. *"the upper opening capable of repeated receiving and removal of an item when being worn by the wearer; and" limitation [1J]*

745. Vidai discloses this limitation. Vidai expressly discloses the use of the bra pocket for the storage of "valuable objects such as, for example, bank notes, credit cards, or jewelry." NIKE-1027 at 1:2–3. Vidai further describes the use of the storage pocket to prevent theft of items that would normally be stored in a woman's handbag. *See id.* at 1:3-7.

746. It is my opinion a POSA would have understood the necessity of making the opening capable of receiving and removing items so that the wearer is able to access, remove, and replace the stored valuable items from and into the pocket throughout the day, similar to the function of a handbag.

747. To the extent this limitation is not expressly or inherently disclosed, Vidai renders it obvious. It is my opinion a POSA would have understood the presence of a pocket necessarily implies the use of the pocket for temporarily holding items. Thus, it is my opinion it would have been obvious to a POSA that Vidai's

pockets—expressly designed to hold "valuables"—would be "capable of repeated receiving and removal of an item when being worn by the wearer."

748. In my opinion, Vidai discloses or renders obvious limitation [1J].

k. *"an item removably positioned in the pocket." limitation [1K]*

749. Vidai discloses this limitation. As discussed with respect to limitation [1J], Vidai discloses the use of the pocket for holding items. Vidai expressly contemplates various items that could be placed within the pocket, including "bank notes, credit cards, and jewelry." NIKE-1027 at 1:3.

750. To the extent this limitation is not expressly or inherently disclosed, Vidai renders it obvious. It is my opinion a POSA would have understood the presence of a pocket necessarily implies the use of the pocket for temporarily holding items. Thus, it is my opinion it would have been obvious to a POSA that Vidai's pockets—expressly designed to hold "valuables"—would have an item removably positioned in the pocket.

751. In my opinion, Vidai discloses or renders obvious limitation [1K].

ii. Claim 2

a. *"The bra assembly of claim 1" limitation [Preamble]*

752. Vidai discloses "[t]he bra assembly of claim 1" for the reasons described above.

b. *"and further including a handheld electronic device, the handheld electronic device placed within the side pocket." limitation [2A]*

753. Vidai discloses this limitation. Vidai expressly discloses the use of the bra pocket for the storage of "valuable objects." NIKE-1027 at 1:2. Vidai further describes the use of the storage pocket to prevent theft of items that would normally be stored in a woman's handbag. *See id.* at 1:3-7.

754. It is my opinion a POSA reading Vidai in 2013 would have understood "valuable objects" to include a wearer's personal belongings, including a handheld electronic device, such as a cell phone at the time of the '878's alleged invention. It is also my opinion a POSA would understand a wearer's desire to prevent theft of any valuable objection, including a personal, handheld electronic device.

755. To the extent this limitation is not expressly or inherently disclosed, Vidai renders it obvious. In my opinion, a POSA would have understood that the presence of a pocket necessarily implies the use of the pocket for temporarily holding items, such as a handheld electronic device. It is also my opinion a POSA would know that the use of handheld electronic devices was pervasive in 2013 and would know that a user would use the pockets to hold handheld electronic devices. *See* NIKE-1022 at 1:23–24 ("Cell phones, personal listening devices, and other mobile electronic devices have become popular in recent years.").

756. Thus, it is my opinion it would have been obvious to a POSA that Vidai's pockets—expressly designed to hold "valuables"—could hold a "handheld electronic device."

757. In my opinion, Vidai discloses or renders obvious limitation [2A].

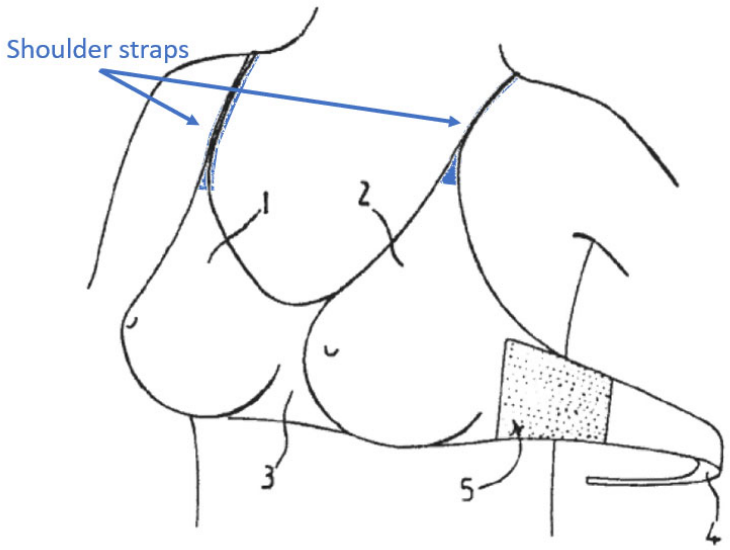
iii. Claim 3

a. *"The bra assembly of claim 1" limitation [Preamble]*

758. Vidai discloses "[t]he bra assembly of claim 1" for the reasons described above.

b. *"wherein the strap assembly further comprises two shoulder straps," limitation [3A]*

759. Vidai discloses this limitation. As illustrated below, Vidai discloses "[a] bra comprised of two cups, 1 and 2, connected together by a piece of fabric 3 of a varied same, and two side strips 4 that extend each cup laterally and that are provided at their ends with means allowing them to be hooked. *It may also have straps*." It is my opinion a POSA would have understood the mentioned "straps" to be "shoulder straps," as depicted in Figure 1.



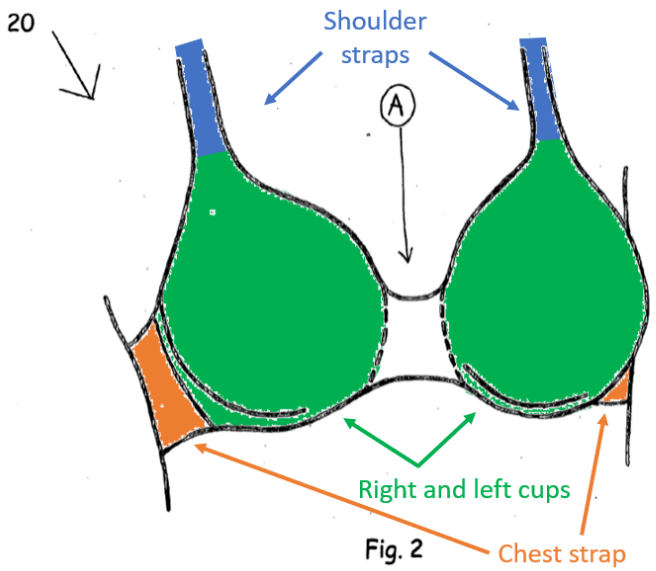
NIKE-1027 at Fig. 1, 2:28-32.

760. In my opinion, Vidai discloses limitation [3A].

c. *"and a central area at a back of the strap assembly opposite to the left and right cups, the two shoulder straps and chest strap joining together at the central area," limitation [3B]*

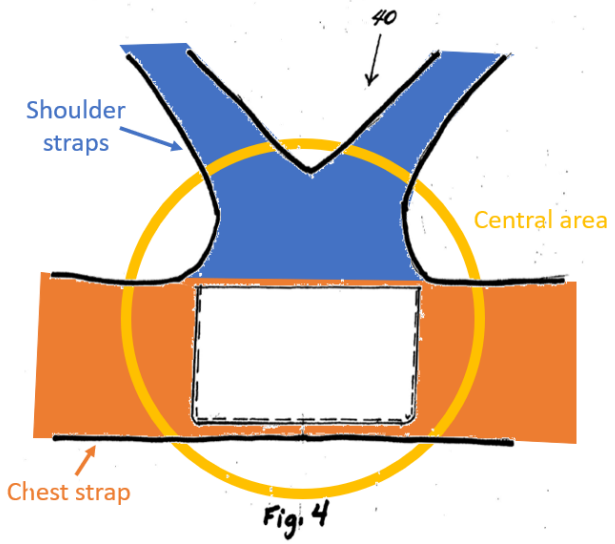
761. Vidai discloses this limitation. As previously discussed with respect to limitations [1B]–[1D] and [3A], Vidai discloses a conventional bra assembly comprised of cups, a chest strap, and shoulder straps. In a conventional bra assembly, it is my opinion a POSA would have understood the shoulder straps to join with the chest strap on the back of the wearer to provide additional support to the breast cups. In my opinion, a POSA would have understood this area where the shoulder and chest straps join to comprise the "central area."

762. Even if Vidai does not expressly or inherently disclose this limitation, Vidai in combination with Spagna renders this limitation obvious. Like Vidai, Spagna discloses a conventional bra assembly comprised of breast cups, shoulder straps, and a chest strap:



NIKE-1028 at Fig. 2, [0017]–[0020] (describing "brassiere 20").

763. Further, as illustrated below, Spagna discloses a central area on the back of the strap assembly, where the two shoulder straps and chest strap join together:



NIKE-1028 at Fig. 4, at [0009] (pocket "located at the center back of the women's brassiere."), at [0020].

764. It is my opinion a POSA would have been motivated to configure Vidai's strap assembly like that of Spagna because such configuration, sometimes known as a "racerback" configuration, is desireable for construction of sports bras, bras that clasps in the front, and bras designed to keep their straps hidden under tank tops. It would have been obvious to a POSA to apply the strap assembly of Spagna to Vidai, and a POSA would have had a high likelihood in success of doing so, including for the reasons discussed below.

765. In my opinion, Vidai, either alone or in combination with Spagna, discloses or renders obvious limitation [3B].

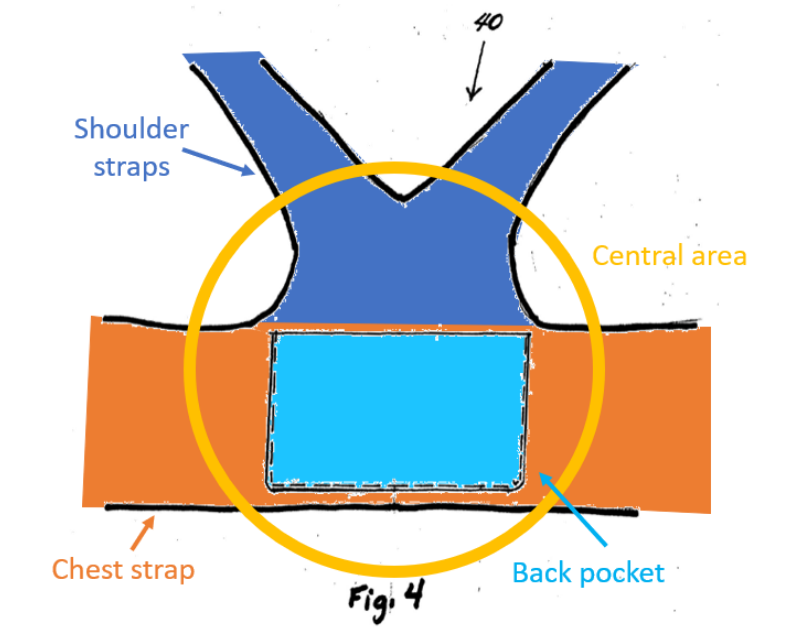
d. *"and further comprising a back pocket on the central area." limitation [3C]*

766. Vidai in combination with the knowledge of a POSA renders this limitation obvious. As discussed above with respect to Claim 1, Vidal discloses a pocket bra assembly with pockets on the chest strap.

767. Further, bras with pockets on the back surface were known in the art in 2013. *E.g.*, NIKE-1028 (2007) at Fig. 4, [0015], [0020]; NIKE-1029 (2011) at Description, Figs. 1–2; NIKE-1030 (2011) at [0037], Figs. 6–7; NIKE-1033 (2008) at Abstract, Figs. 1–5, 3:16–28. In designing a bra with pockets, it is my opinion it would have been obvious to a POSA to include a back pocket on the bra disclosed by Vidai. It is also my opinion a POSA would have been motivated to do so to

increase the amount of storage on the bra while avoiding "harm[ing] the aesthetics of the bra"—a stated goal of Vidai. NIKE-1027 at 2:44–45, 1:38.

768. Even if this limitation would not have been obvious to a POSA based on their own knowledge, Vidai in combination with Spagna renders this limitation obvious. As discussed with respect to claim [3B], Spagna discloses a "central area" on the back of the bra. Further, as illustrated below, Spagna discloses a back pocket on the central area:



NIKE-1028 at Fig. 4, at [0009] (pocket "located at the center back of the women's brassiere."), at [0020].

769. It is my opinion a POSA would have been motivated to include the pocket of Spagna on the bra disclosed by Vidai, including to increase the amount of storage space on the bra. In my opinion, it would have been obvious to a POSA to

add a back pocket to Vidai, and a POSA would have had a high likelihood in success of doing so, including for the reasons discussed below.

770. In my opinion, Vidai, either alone or in combination with Spagna, renders obvious limitation [3C].

iv. Claim 4

a. *"The bra assembly of claim 1" limitation [Preamble]*

771. Vidai discloses "[t]he bra assembly of claim 1" for the reasons described above.

b. *"wherein the side pocket further comprises a closure, the closure having a first part on the side of the chest strap, and a second part on the patch, the first part connectable to the second part to close the pocket." limitation [4A].*

772. Vidai discloses this limitation. Vidai discloses a closure for the pocket "done either by the natural tension created by the attachment of the side strips, or by any other means, such as a zipper or adhesive strips, for example." NIKE-1027 at 3:15–18. It is my opinion a POSA would have understood this disclosure to inherently disclose "the closure having a first part on the side of the chest strap, and a second part on the patch, the first part connectable to the second part to close the pocket," because a zipper or similar closure mechanism must be configured to have two parts, each one secured to the opposite surface of the opening, in order to appropriately function as a closure.

773. In my opinion, Vidai discloses limitation [4A].

v. Claim 11

a. *"The bra assembly of claim 4"*

774. Vidai discloses "[t]he bra assembly of claim 4" for the reasons described above.

b. *"wherein the closure is a zipper." limitation [11A].*

775. Vidai discloses this limitation. As discussed with respect to limitation [4A], Vidai expressly discloses the use of a zipper for the closure of the pocket. NIKE-1027 at 3:15–17 ("its closure . . . can be done either by the natural tension created by the attachment of the side strips, or by any other means, such as *a zipper*.").

776. In my opinion, Vidai discloses limitation [11A].

vi. Claim 14

a. *"The bra assembly of claim 1" limitation [Preamble]*

777. Vidai discloses "[t]he bra assembly of claim 1" for the reasons described above.

b. *"further comprising a central patch attached intermediate to the left and right cups, the central patch forming a central chamber pocket." limitation [14A]*

778. Vidai discloses this limitation. Vidai expressly contemplates a pocket "arranged longitudinally between the two cups." NIKE-1027 at 2:22–23. Though Vidal describes such pocket as "unattractive," such description is merely a design preference. NIKE-1027 at 2:25.

779. In my opinion, a POSA also would have understood that bras are meant to serve a diverse population with differing preferences, and that it would be commercially beneficial to provide consumers with a variety of options—including options of different pocket locations—to meet those different preferences.

780. Further, Vidai in combination with the knowledge of a POSA renders this limitation obvious. As discussed with respect to Claim 1, Vidal discloses a pocket bra assembly with pockets on the chest strap.

781. Bras with pockets intermediate the cups were known in the art in 2013. *E.g.*, NIKE-1028 (2007) at Fig. 3, [0014] ("FIG. 3 is an illustration of the interior of the front of the brassiere of FIG. 2 including an integrated pouch"), [0018]–[0019]; NIKE-1030 (2011) at Figs. 6–7, [0037]. In designing a bra with pockets, it is my opinion it would have been obvious to a POSA to include a pocket intermediate the breast cups on the bra disclosed by Vidai. It is also my opinion a POSA would have been motivated to do so to increase the amount of storage on the bra.

782. To the extent Vidai does not expressly or inherently disclose this limitation, Vidai in combination with Spagna renders this limitation obvious. As illustrated below, Spagna discloses a pocket positioned intermediate the left and right cups:

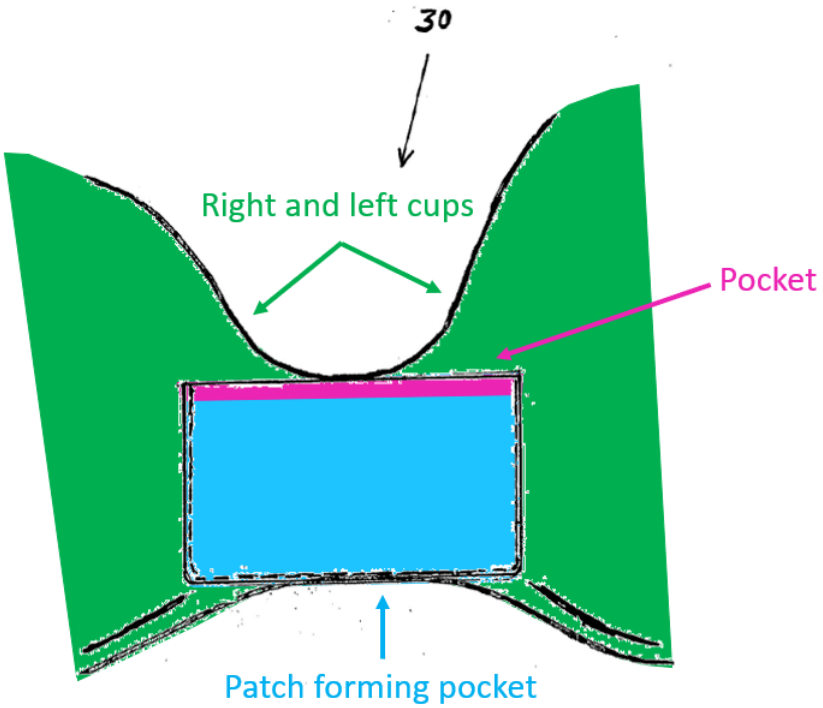


Fig. 3

NIKE-1028 at Fig. 3, [0014] ("FIG. 3 is an illustration of the interior of the front of the brassiere of FIG. 2 including an integrated pouch"), [0018]–[0019].

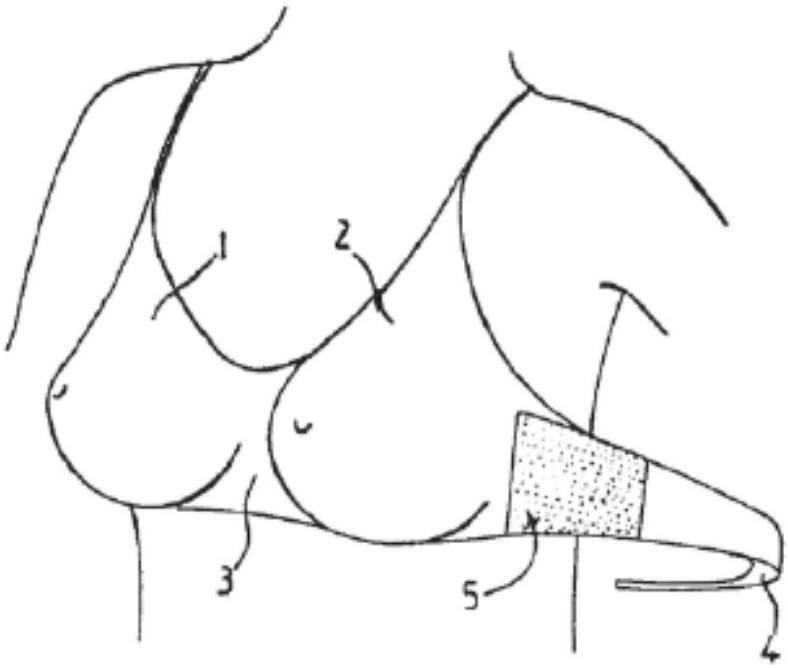
783. In my opinion, a POSA would have found it obvious to include the intermediate pocket of Spagna on the bra disclosed by Vidai, and a POSA would have been motivated to do so to increase the amount of storage space on the bra in an easily accessible location. It is my opinion a POSA would have had a high likelihood of success of doing so, including because Vidai and Spagna are both bras and this is simple technology, as further discussed below.

784. In my opinion, Vidai, either alone or in combination with Spagna, discloses or renders obvious limitation [14A].

vii. Claim 15

a. ***"A chest covering comprising:" limitation [15A]***

785. Vidai discloses this limitation. Vidai discloses a "chest covering." As illustrated below, Vidai discloses a bra worn on the chest of the wearer:



NIKE-1027 at Fig. 1.

786. In my opinion, Vidai discloses limitation [15A].

b. ***"a strap assembly including a chest strap;" limitation [15B]***

787. In my opinion, Vidai discloses this limitation for the reasons discussed above in limitation [1B].

c. ***"a left cup and a right cup, each cup being an area to receive a breast of a wearer, and having inside and outside surfaces," limitation [15C]***

788. In my opinion, Vidai discloses this limitation for the reasons discussed above in limitation [1C].

d. ***"the strap assembly being attached to the cups whereby the strap assembly holds the cups to a wearer," limitation [15D]***

789. In my opinion, Vidai discloses this limitation for the reasons discussed above in limitation [1D].

e. ***"with the chest strap extending from the left cup towards the wearer's back and extending from the right cup towards the wearer's back;" limitation [15E]***

790. In my opinion, Vidai discloses this limitation for the reasons discussed above in limitation [1E].

f. ***"a side patch on one of an inside or outside surface of the chest strap adjacent to at least one of the left cup and right cups," limitation [15F]***

791. In my opinion, Vidai discloses this limitation for the reasons discussed above in limitation [1F].

g. ***"the side patch having upper and lower edges along at least part of a length of the chest strap, and side edges," limitation [15G]***

792. In my opinion, Vidai discloses this limitation for the reasons discussed above in limitation [1G].

h. ***"the side patch upper edge lying along a same edge line as at least a portion of a top edge of the chest strap," limitation [15H]***

793. In my opinion, Vidai discloses this limitation for the reasons discussed above in limitation [1H].

i. ***"the side patch having stitching along the lower and side edges thus forming an upper opening such that the side patch forms a pocket," limitation [15I]***

794. In my opinion, Vidai discloses this limitation for the reasons discussed above in limitation [1I].

j. ***"the upper opening capable of repeated receiving and removal of an item when being worn by the wearer." limitation [15J]***

795. In my opinion, Vidai discloses this limitation for the reasons discussed above in limitation [15J].

viii. Claim 17

a. ***"The bra assembly of claim 1" limitation [Preamble]***

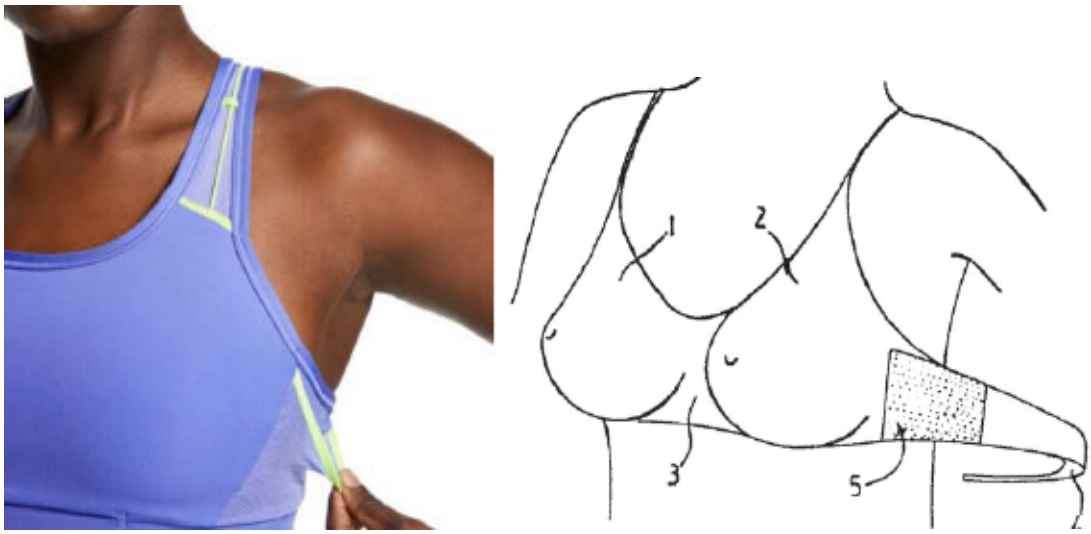
796. Vidai discloses "[t]he bra assembly of claim 1" for the reasons described above.

b. ***"wherein a front side edge of the side patch abuts an edge of the at least one of the left cup and the right cup, the pocket extending to the edge of the at least one of the left cup and the right cup." limitation [17A]***

797. Vidai discloses this limitation. I understand that in the MA Litigation, Patent Owner took the position that this limitation was met by the following bras:

See NIKE-1042 at 7–8 (left); NIKE-1043 at 7–8 (right).

798. Though I understand Petitioner does not agree that the products above meet this limitation, to the extent Patent Owner contends they do, so too does Vidai:



NIKE-1027 at Fig. 1.

799. Alternatively, should Patent Owner contend that this limitation is not disclosed by Vidai, Vidai renders this limitation obvious. Both bras and pockets have been long known in the art and in designing a bra with storage pockets, it is my

opinion a POSA would have been motivated to look for known solutions in the art, such as the variety of types of bras and their designs, pocket placements, methods of forming a pocket, and methods of adhering the pockets to the bra.

800. Moreover, it is my opinion a POSA would have known that different pocket shapes, sizes, and placements have known benefits and drawbacks. Given this knowledge, it is my opinion it would have been obvious to a POSA in light of Vidai to slightly extend the length of the pocket to abut the edge of a bra cup (or beyond the edge of the bra cup) to increase the amount of storage in the pocket. Additionally, in my opinion, a POSA would have found it obvious to extend the pocket towards the front of the bra onto the cups, rather than backwards towards the wearer's back, for ease of access to the pocket. Such a design would increase comfort for the wearer, because extension of the pocket toward the cup, as opposed to the wearer's back, enables the wearer to access the pocket without uncomfortably twisting the wearer's body. As discussed in "The art of pocket design: How to create unique and stylish pockets," NIKE-1052, a POSA would have known that "[c]lassically, pockets are thought out in relation to the body and the placement of the arms. The goal was to have access to the inside of the pocket, without having to twist." *Id.* at 3.

801. Though Vidai acknowledges that placement of pockets on the "external wall of one of the cups" is "not very aesthetic because it inevitably leads to the

asymmetry of the cups," NIKE-1027 at 1:29-31, the extension of side pockets to the edge of the breast cup does not implicate the same concerns. It is my opinion a POSA would have known that designing a storage pocket extending onto the adjacent cup would not lead to asymmetry, as storage would occur on the periphery of the breast cup, and not on the outermost surface of the breast where storage of items may disrupt the breast's natural curvature. Moreover, Vidai discloses pockets on both sides of the bra, thus mitigating the asymmetry concern of having a pocket on only "one of the cups."

802. In my opinion, Vidai discloses or renders obvious limitation [17A].

ix. Reasons to Combine Vidai and Spagna

803. Vidai and Spagna disclose all claimed features of the "pocket bra assembly," as discussed in the sections above. Also, in my opinion, it would have been obvious to a POSA to simply combine the beneficial features of both bras, with the features taught by Vidai and Spagna performing their same intended function.

804. Vidai and Spagna each disclose inventions generally relating to bras with pockets for storage. In designing a bra with pockets, it is my opinion a POSA would have been motivated to look to the prior art references disclosing bras with pockets—including Vidai and Spagna specifically—and select preferable elements from each disclosure to construct their desired pocketed bra. One advantage of Vidai's bra is that it has pockets on the chest strap. *See* NIKE-1027 at Fig. 1, 2:1–

11. At the same time, Spagna's bra includes pockets on the back of the bra assembly and intermediate the bra cups. NIKE-1028 at Abstract, Figs. 2–4, [0014]–[0015], [0017]–[0020]. As a result, it is my opinion a POSA would have been motivated to design a bra that took advantage of the benefits provided by each of Vidai's and Spagna's bras.

805. It is my opinion a POSA also would have understood that bras are meant to serve a diverse population with differing preferences—such as support, comfort, and pocket size(s)—and that it would be commercially beneficial to provide consumers with a variety of options to meet those different preferences. The prior art expressly considers the aesthetics of the bra. NIKE-1027 at 1:30, 37, 2:43–44. A POSA therefore would have been motivated to design a variety of combinations of bras, including those with the claimed features, so as to be able to provide options to a wide range of customers.

806. In my opinion, a POSA would have expected to have a high likelihood of success with this combination. Vidai and Spagna are both bras with pockets storing items. *E.g.*, NIKE-1027 at Abstract, Fig. 1, 2:28–39; NIKE-1028 at Abstract, Figs. 2–4, [0017]–[0020]. And each of the elements—*e.g.*, cups for holding the wearer's breasts, pockets for storing items, and stitching for adhering the pockets to the bra—would perform the same predictable function disclosed in the prior art. It is my opinion that any work needed to combine the elements taught by Vidai and

Spagna would therefore be nothing more than routine modifications well within the abilities of a POSA.

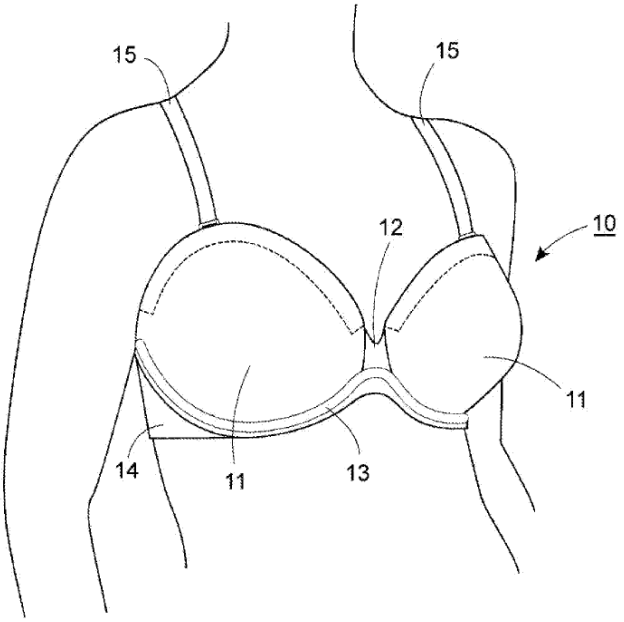
2. Ground 2: Claims 1–4, 11, 14, 15, and 17 Are Unpatentable Over Handras in View of Spagna

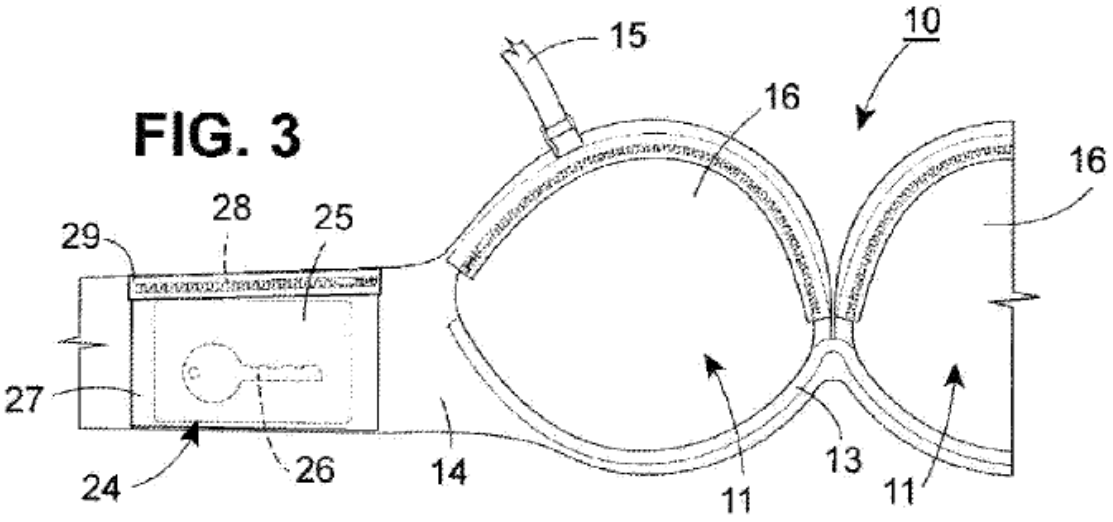
807. In my opinion, claims 1–4, 11, 14, 15, and 17 are disclosed or rendered obvious by Handras in combination with Spagna.

i. Claim 1

a. *"A pocket bra assembly comprising:" limitation [1A]*

808. Handras discloses this limitation. Handras discloses "a bra with one or more storage pockets." NIKE-1021 at [0001].





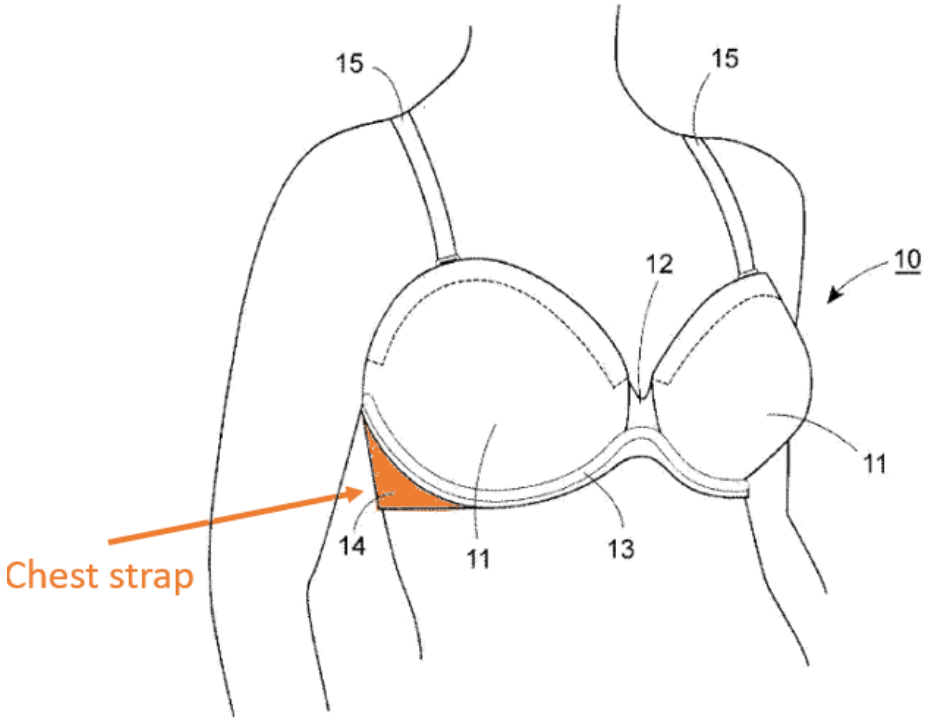
Id. at Figs 1, 3; at [0003] ("[i]t is an object of the invention to provide a pocket in a bra for receiving one or more items that is conveniently located for the wearer."), [0004] ("a concealed pocket in a bra for receiving one of [sic] more items."), Abstract ("Each side panel of the bra may also have a zippered pocket on the inside."), [0011] ("the bra is fabricated with at least one side panel that extends laterally of the pair of cups and that is provided with a pouch for receiving a small item, such as a credit card.")

809. In my opinion, Handras discloses limitation [1A].

b. *"a strap assembly including a chest strap;" limitation [1B]*

810. Handras discloses this limitation. As illustrated below, Handras describes a traditional bra construction 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].

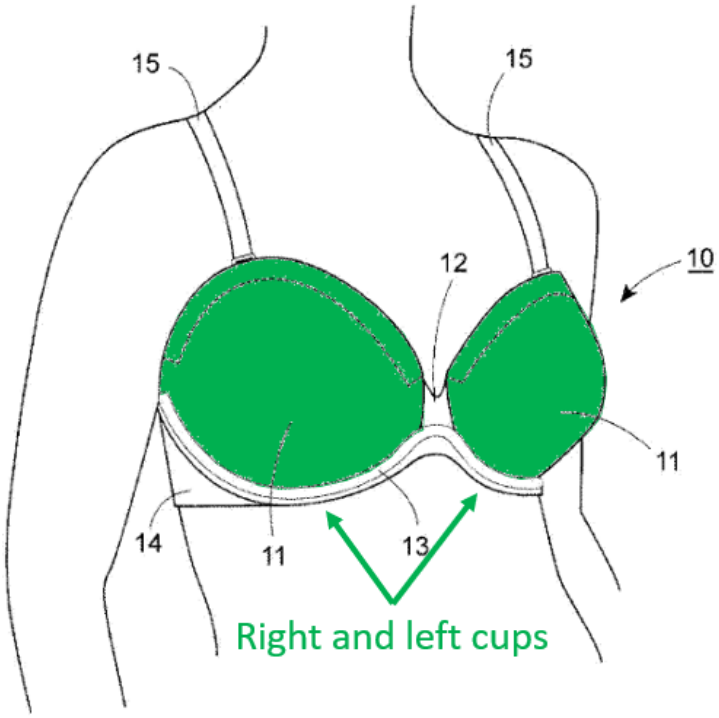


NIKE-1021 at Fig. 1.

811. In my opinion, Handras discloses limitation [1B].

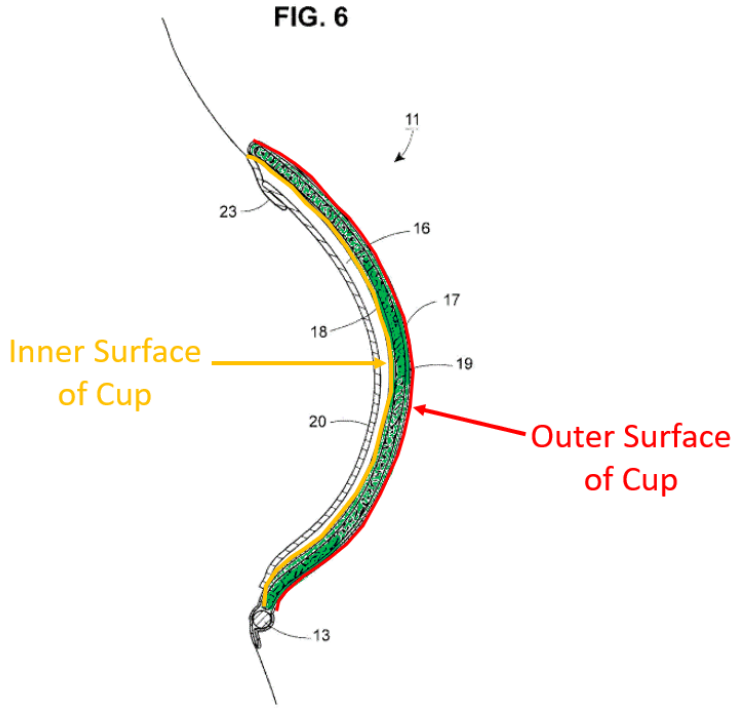
c. ***"a left cup and a right cup, each cup being an area to receive a breast of a wearer having inside and outside surfaces," limitation [1C]***

812. Handras discloses this limitation. Handras discloses a bra having "a pair of cups" for the left and right breasts. NIKE-1021 at [0020].



Id. at Fig. 1, [0006] ("a bra comprised of a pair of cups"), [0011], [0029], Cl. 1, 6.

813. In my opinion, a POSA would have understood these cups to necessarily have outside and inside surfaces for receiving the breast of a wearer. The inside and outside surfaces are illustrated below in Figure 6:

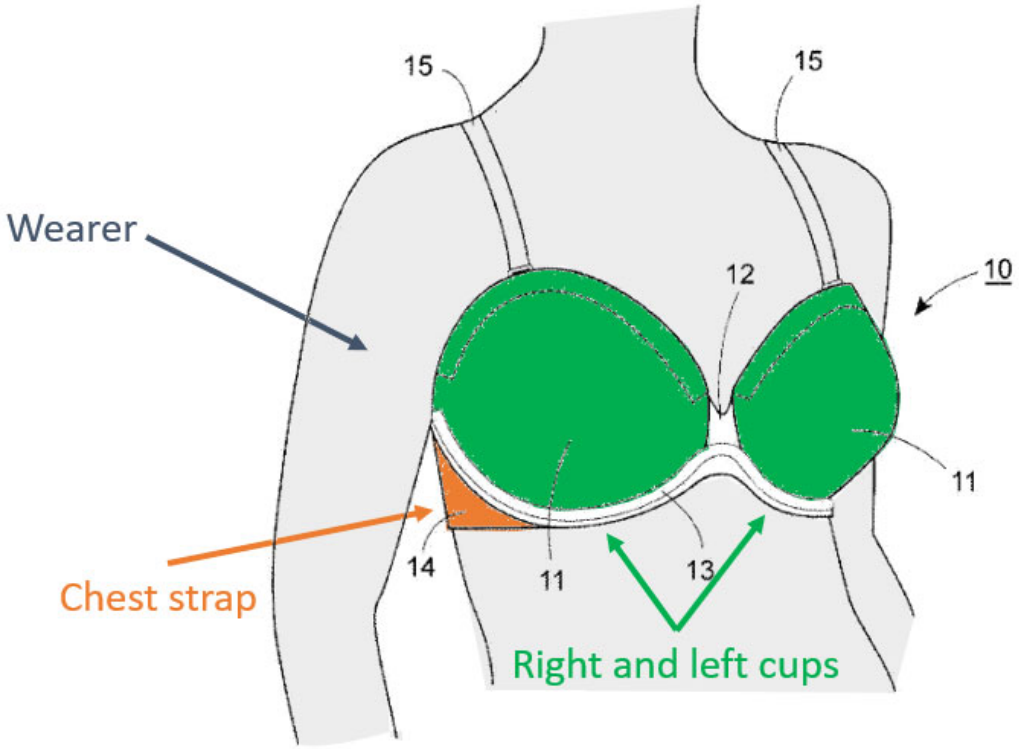


NIKE-1021 at Fig. 6, [0022] ("each cup 11 has an outer ply of material 17, an inner ply of material 18").

814. In my opinion, Handras discloses limitation [1C].

d. ***"the strap assembly being attached to the cups whereby the strap assembly holds the cups to a wearer," limitation [1D]***

815. Handras discloses this limitation. As explained above with respect to limitations [1B] and [1C], Handras discloses a "strap assembly" and "left and right cups." Further, Figure 1 illustrates the disclosed strap assembly adhering the cups to the wearer:

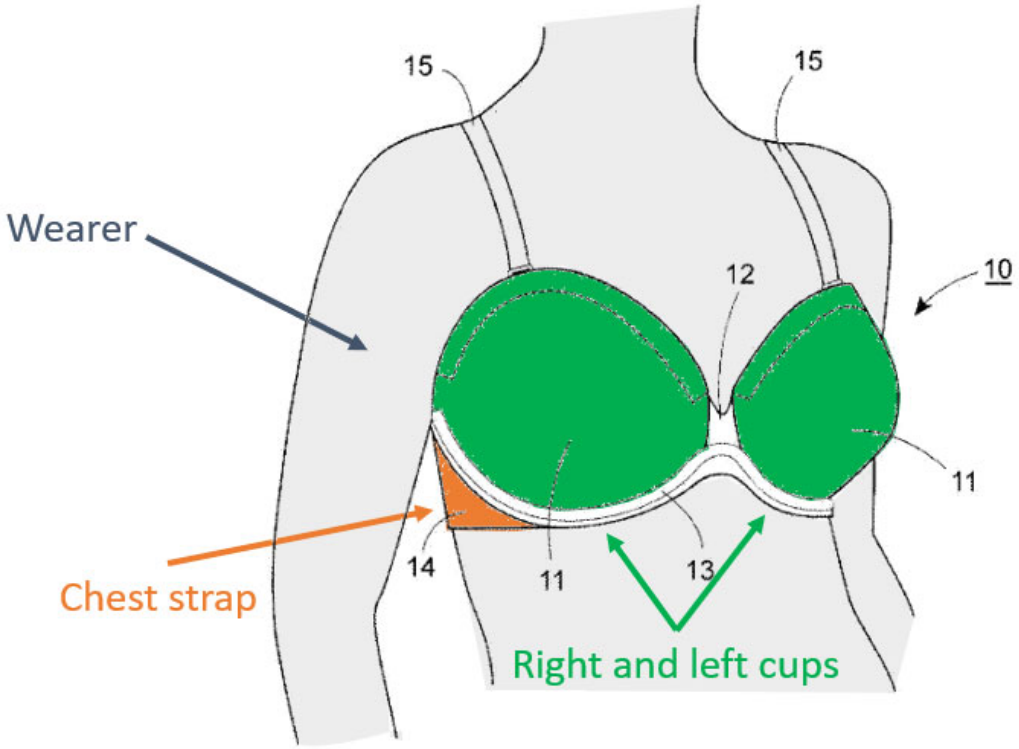


NIKE-1021 at Fig. 1.

816. In my opinion, Handras discloses limitation [1D].

e. *"with the chest strap extending from the left cup towards the wearer's back and extending from the right cup towards the wearer's back;" limitation [1E]*

817. Handras discloses this limitation. As discussed with respect to limitation [1B], Handras discloses a "chest strap." As shown below, the chest strap extends from the cups towards the wearer's back, where they are connected to adhere the bra assembly to the wearer. NIKE-1021 at [0020] ("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.").

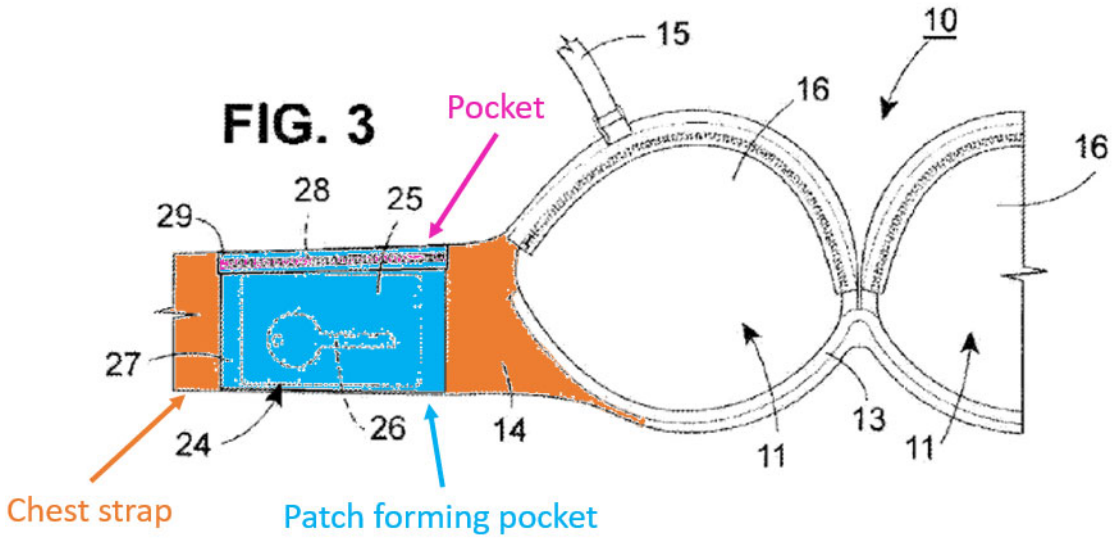


Id. at Fig. 1.

818. In my opinion, Handras discloses limitation [1E].

f. *"a side patch on one of an inside or outside surface of the chest strap adjacent to at least one of the left cup and right cups," limitation [1F]*

819. Handras discloses this limitation. Handras expressly discloses "each side panel 14 (only one of which is shown) of the bra 10 is provided with a pouch 24 for receiving a small item or items." NIKE-1021 at [0028]. Handras further discloses the pocket is formed by a patch. *Id.* (the pouch 24 is formed by a panel 27 of fabric sewn or otherwise secured to the side panel.")



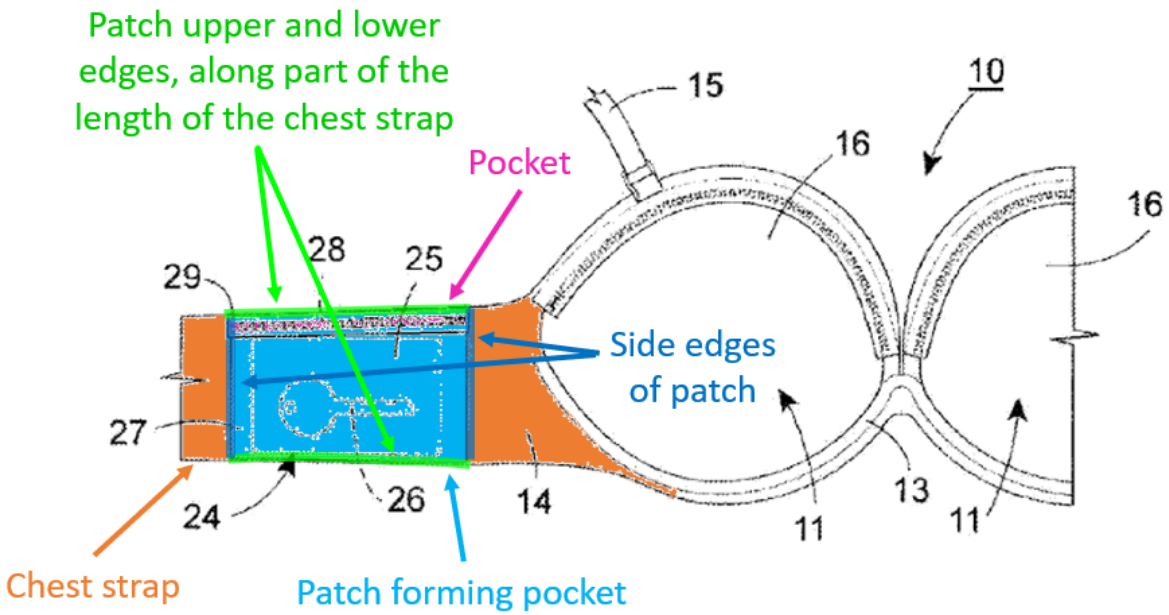
NIKE-1021 at Fig 3.

820. The patch is located on the inside of each side of the chest strap, adjacent to each of the left and right cups. *Id.* at Abstract ("*Each side panel* of the bra may also have a zippered pocket on the *inside*."), [0011] ("the bra is fabricated with at least one side panel that *extends laterally of the pair of cups* and that is provided with a pouch for receiving a small item.").

821. In my opinion, Handras discloses limitation [1F].

g. *"the side patch having upper and lower edges along at least part of a length of the chest strap, and side edges," limitation [1G]*

822. Handras discloses this limitation. As illustrated below, the upper and lower edges of the patch are along part of the length of the chest strap, and the patch has side edges:



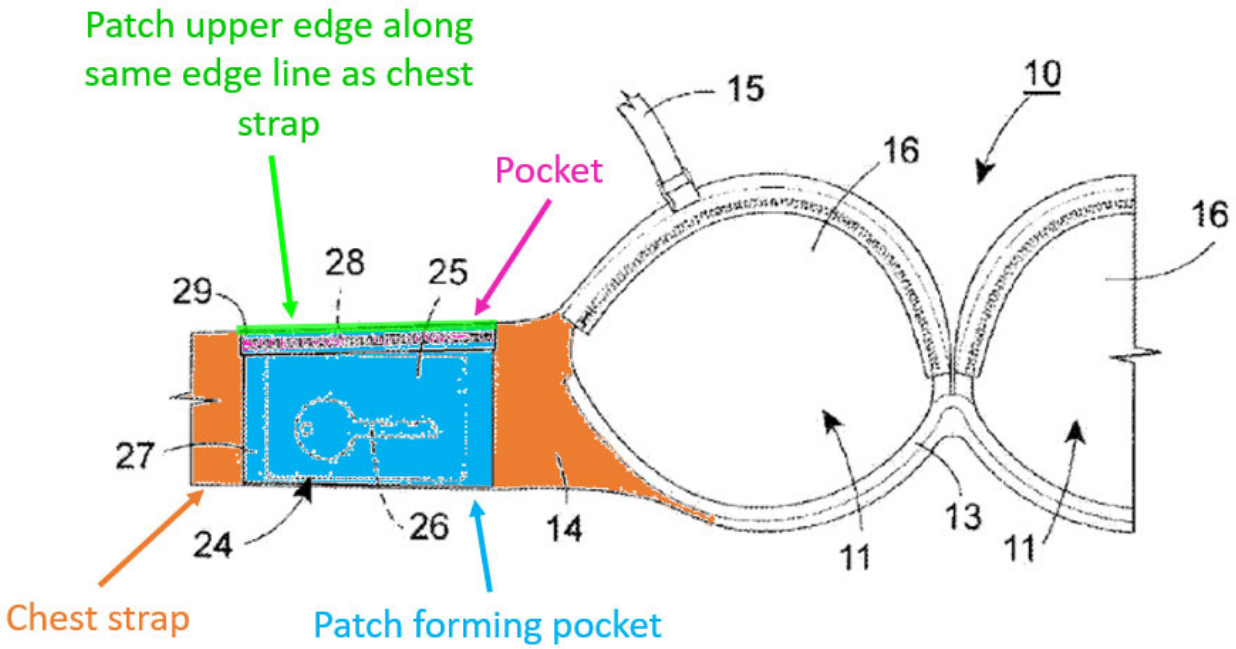
NIKE-1021 at Fig 3.

823. Handras discloses the patches "sewn or otherwise secured to the side panel," *i.e.*, "chest strap." *Id.* at [0028]. Thus, it is my opinion a POSA would have understood each patch to have edges along the length of the chest strap.

824. In my opinion, Handras discloses limitation [1G].

h. *"the side patch upper edge lying along a same edge line as at least a portion of a top edge of the chest strap," limitation [1H]*

825. Handras discloses this limitation. As discussed with respect to limitation [1G], Handras discloses the patch having edges along the length of the chest strap. As illustrated below, Handras discloses "the side patch upper edge lying along a same edge line as at least a portion of a top edge of the chest strap":

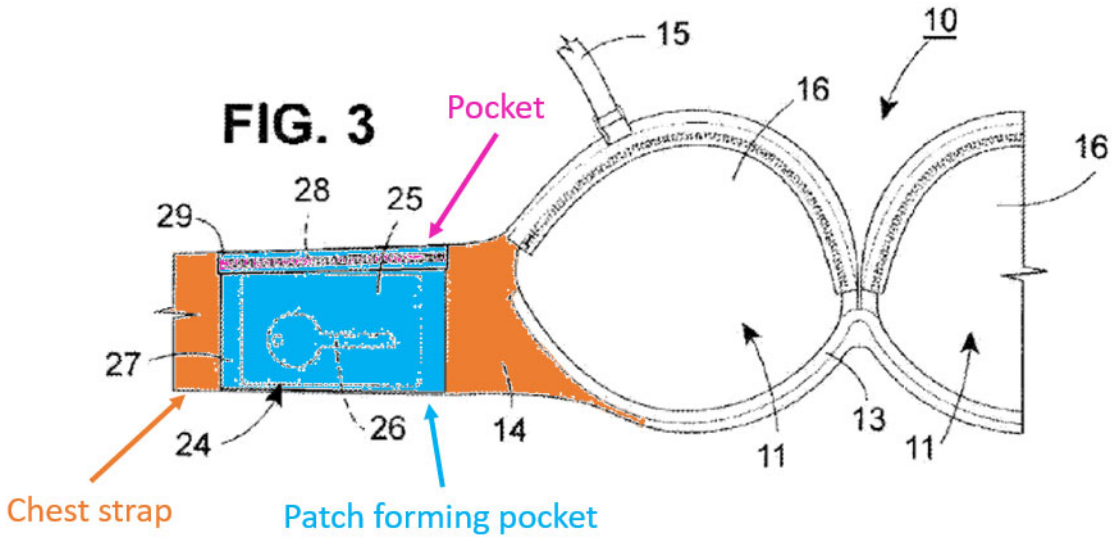


NIKE-1021 at Fig. 3.

826. In my opinion, Handras discloses limitation [1H].

i. ***"the side patch having stitching along the lower and side edges thus forming an upper opening such that the side patch forms a pocket," limitation [1I]***

827. Handras discloses this limitation. Handras discloses the pocket formed "by a panel 27 of fabric sewn or otherwise secured to the side panel 14, a zipper 28, and a flap 29 for covering over the zipper." NIKE-1021 at [0028]. As illustrated below, Handras discloses the pocket opening with a zipper along the upper edge of the rectangular patch:



NIKE-1021 at Fig. 3.

828. In my opinion, a POSA would have understood a rectangular pocket with an upper opening to be sewn along its lower and side edges.

829. In my opinion, Handras discloses limitation [1I].

j. *"the upper opening capable of repeated receiving and removal of an item when being worn by the wearer; and" limitation [1J]*

830. Handras discloses this limitation. Handras explicitly contemplates the use of bra pockets "to hold items, such as, credit cards, car keys, cell phones and the like." NIKE-1021 at [0002]. Further, Handras contemplates the storage of a "small item or items, such as a credit card and key" in the side pockets. *Id.* at [0028] (numbers omitted).

831. In my opinion, a POSA would have understood the necessity of making the opening capable of receiving and removing items so that the wearer is able to

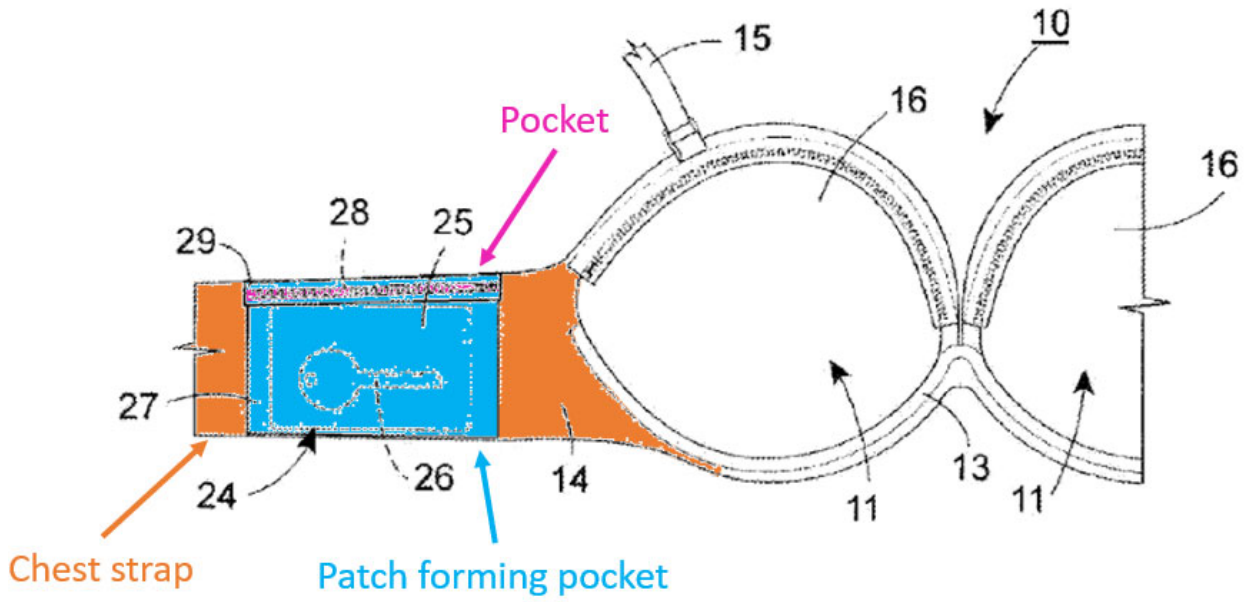
access, remove, and replace the stored items from and into the pocket throughout the day.

832. To the extent this limitation is not expressly or inherently disclosed, Handras renders it obvious. It is my opinion POSA would have understood the presence of a pocket necessarily implies the use of the pocket for temporarily holding items. Thus, it is my opinion it would have been obvious to a POSA that Handras's pockets—expressly designed to hold "items"—would be "capable of repeated receiving and removal of an item when being worn by the wearer."

833. In my opinion, Handras discloses limitation [1J].

k. *"an item removably positioned in the pocket." limitation [1K]*

834. Handras discloses this limitation. As discussed with respect to limitation [1J], Handras discloses the use of the pocket for holding items. Handras expressly contemplates various items that could be placed within the pocket, including a "credit card and key." NIKE-1021 at [0028]. The storage of such items is depicted below:



NIKE-1021 at Fig. 3, [0028] ("Referring to FIG.3, each side panel 14 (only one of which is shown) of the bra 10 is provided with a pouch 24 for receiving a small item or items, such as a *credit card 25 and key 26*.")

835. To the extent this limitation is not expressly or inherently disclosed, Handras renders it obvious. It is my opinion a POSA would have understood the presence of a pocket necessarily implies the use of the pocket for temporarily holding items. Thus, it is my opinion it would have been obvious to a POSA that Handras's pockets—expressly designed to hold "items"—would have an item removably positioned in the pocket.

836. In my opinion, Handras discloses limitation [1K].

ii. Claim 2

a. *"The bra assembly of claim 1" limitation [Preamble]*

837. Handras discloses "[t]he bra assembly of claim 1" for the reasons described above.

b. *"and further including a handheld electronic device, the handheld electronic device placed within the side pocket." limitation [2A]*

838. Handras discloses this limitation. Handras explicitly contemplates the use of bra pockets "to hold items, such as, credit cards, car keys, cell phones and the like." NIKE-1021 at [0002]. A cell phone is a "handheld electronic device." Further, Handras contemplates the storage of a "small item or items, such as a credit card and key" in the side pockets. NIKE-1021 at [0028] (numbers omitted). It is my opinion a POSA would have understood "small items" to include *handheld* electronic devices.

839. To the extent this limitation is not expressly or inherently disclosed, Handras renders it obvious. It is my opinion a POSA would have understood that the presence of a pocket necessarily implies the use of the pocket for removably holding items, such as a handheld electronic device. In my opinion, a POSA would also have known that the use of handheld electronic devices was pervasive in 2013 and would know that a user would use the pockets to hold handheld electronic devices. *See* NIKE-1022 at 1:23–24 ("Cell phones, personal listening devices, and other mobile electronic devices have become popular in recent years.").

840. Further, it is my opinion a POSA would have understood the size of the patch to be a simple choice of design. Thus, in my opinion, a POSA would have been motivated to increase or decrease the size of the patch on Handras to accommodate any valuable, including a handheld electronic device for its storage.

841. It is my opinion it would have been well within the abilities of a POSA to make such a routine modification changing the size of the patch, and a POSA would have had a high expectation of success in doing so. This is simple technology and bras with pockets of various sizes and shapes were well known in the art. Handras itself contemplates modifying the size of the bra's pockets to meet different storage needs. *See* NIKE-1021 at [0025]. Thus, in my opinion, it would be obvious to a POSA that Handras's pockets—expressly designed to hold "small item[s]"—could hold, or be modified to hold, a "handheld electronic device."

842. In my opinion, Handras discloses or renders obvious limitation [2A].

iii. Claim 3

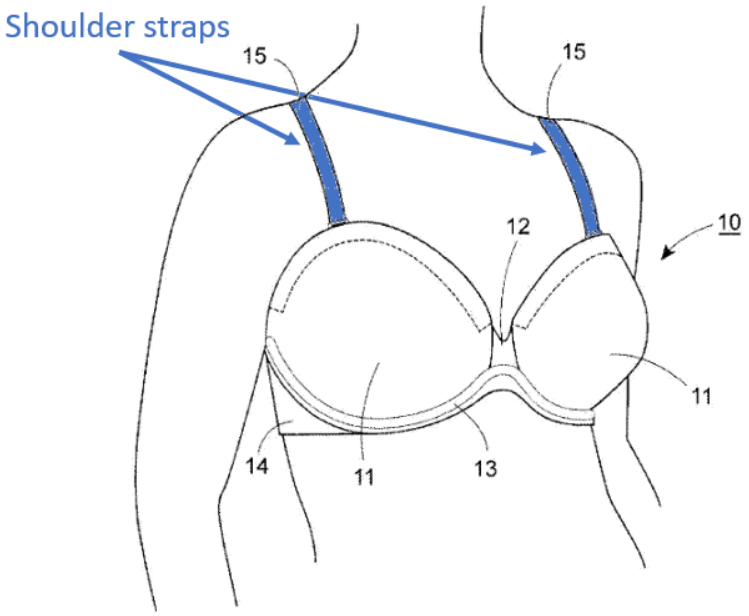
a. *"The bra assembly of claim 1" limitation [Preamble]*

843. Handras discloses "[t]he bra assembly of claim 1" for the reasons described above.

b. *"wherein the strap assembly further comprises two shoulder straps," limitation [3A]*

844. Handras discloses this limitation. As illustrated below, Handras describes a traditional bra construction 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.

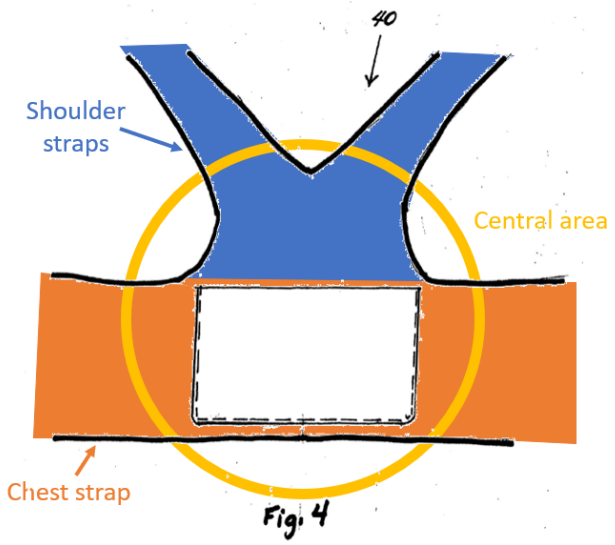
845. In my opinion, Handras discloses limitation [3A].

c. *"and a central area at a back of the strap assembly opposite to the left and right cups, the two shoulder straps and chest strap joining together at the central area," limitation [3B]*

846. Handras discloses this limitation. As previously discussed with respect to limitations [1B]–[1D] and [3A], Handras discloses a conventional bra assembly comprised of cups, a chest strap, and shoulder straps. In a conventional bra assembly, it is my opinion a POSA would have understood the shoulder straps to join with the chest strap on the back of the wearer to provide additional support to

the breast cups. In my opinion, a POSA would have understood this area where the shoulder and chest straps join to comprise the "central area."

847. Even if Handras does not expressly or inherently disclose this limitation, Handras in combination with Spagna renders this limitation obvious for the same reasons Vidai in combination with Spagna renders this limitation obvious. As illustrated below, Spagna discloses a central area on the back of the strap assembly, where the two shoulder straps and chest strap join together:



NIKE-1028 at Fig. 4, at [0009] (pocket "located at the center back of the women's brassiere."), at [0020].

848. It is my opinion a POSA would have been motivated to configure Handras's strap assembly like that of Spagna because such racerback configureation is desireable for construction of sports bras, bras that clasps in the front, and bras designed to keep their straps hidden under tank tops. In my opinion, it would have

been obvious to a POSA to apply the strap assembly of Spagna to Handras, and a POSA would have had a high likelihood in success of doing so.

849. In my opinion, Handras, alone or in combination with Spagna, discloses or renders obvious limitation [3B].

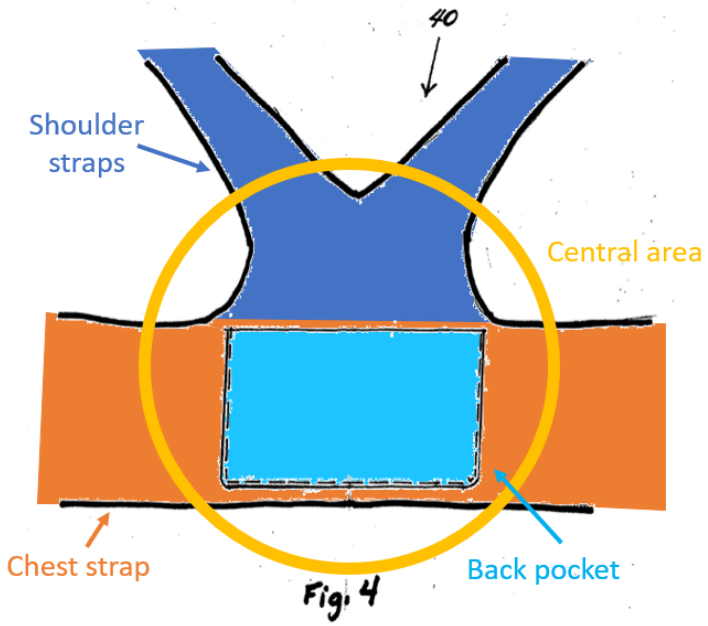
d. *"and further comprising a back pocket on the central area." limitation [3C]*

850. Handras in combination with the knowledge of a POSA renders this limitation obvious. As discussed with limitation [3B], Handras discloses a pocket bra assembly with pockets on the chest strap.

851. Bras with pockets on the back surface were known in the art in 2013. *E.g.*, NIKE-1028 (2007) at Fig. 4, [0015], [0020]; NIKE-1029 (2011) at Description, Figs. 1–2; NIKE-1030 (2011) at [0037], Figs. 6–7; NIKE-1033 (2008) at Abstract, Figs. 1–5, 3:16–28. In designing a bra with pockets, it is my opinion it would have been obvious to a POSA to include a back pocket on the bra disclosed by Handras. In my opinion, a POSA would have been motivated to do so to increase the amount of storage on the bra.

852. Even if this limitation would not have been obvious to a POSA based on their own knowledge, Handras in combination with Spagna renders this limitation obvious for the same reasons Vidai in combination with Spagna renders this limitation obvious. As discussed in limitation [3B], Spagna discloses a "central

area" on the back of the bra. Further, as illustrated below, Spagna discloses a back pocket on the central area:



NIKE-1028 at Fig. 4, at [0009] (pocket "located at the center back of the women's brassiere."), at [0020].

853. In my opinion, a POSA would have been motivated to include the pocket of Spagna on the bra disclosed by Handras, including to increase the amount of storage space on the bra. It is my opinion it would have been obvious to a POSA to add a back pocket to Handras, and a POSA would have had a high likelihood in success of doing so.

854. In my opinion, Handras, either alone or in combination with Spagna, renders obvious limitation [3C].

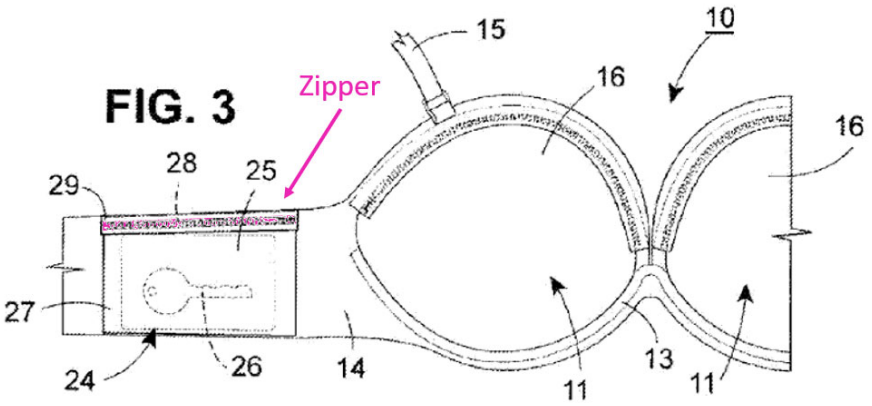
iv. Claim 4

a. ***"The bra assembly of claim 1" limitation [Preamble]***

855. Handras discloses "[t]he bra assembly of claim 1" for the reasons described above.

b. ***"wherein the side pocket further comprises a closure, the closure having a first part on the side of the chest strap, and a second part on the patch, the first part connectable to the second part to close the pocket." limitation [4A].***

856. Handras discloses this limitation. Handras discloses pockets "utilizing zippers for quick and easy access and closure." NIKE-1021 at [0031], [0011], [0028]. As illustrated below, the zipper 28 comprises a closure for the side pocket:



NIKE-1021 at Fig. 2.

857. Handras discloses the zipper closure having a first part on the side of the chest strap, and a second part on the patch, the first part connectable to the second part to close the pocket. *Id.* at [0028] ("the pouch 24 is formed by a panel 27 of

fabric sewn or otherwise secured to the side panel 14, a zipper 28 and a flag 29 for covering over the zipper 28.”).

858. It is my opinion POSA would have understood that a zipper or similar closure mechanism must be configured to have two parts, each one secured to the opposite surface of the opening, in order to appropriately function as a closure.

859. In my opinion, Handras discloses limitation [4A].

v. Claim 11

c. *“The bra assembly of claim 4”*

860. Handras discloses “[t]he bra assembly of claim 4” for the reasons described above.

d. *“wherein the closure is a zipper.” limitation [11A].*

861. Handras discloses this limitation. As discussed with respect to limitation [4A], Handras expressly discloses the use of a zipper for the closure of the pocket. NIKE-1021 at [0031] (“utilizing zippers for quick and easy access and closure.”), [0011], [0028].

862. In my opinion, Handras discloses limitation [11A].

vi. Claim 14

a. *“The bra assembly of claim 1” limitation [Preamble]*

863. Handras discloses “[t]he bra assembly of claim 1” for the reasons described above.

b. ***"further comprising a central patch attached intermediate to the left and right cups, the central patch forming a central chamber pocket." limitation [14A]***

864. Handras in combination with the knowledge of a POSA renders this limitation obvious. As discussed with respect to Claim 1, Handras discloses a pocket bra assembly with pockets on the chest strap.

865. Bras with pockets intermediate the cups were known in the art in 2013. *E.g.*, NIKE-1028 (2007) at Fig. 3, [0014] ("FIG. 3 is an illustration of the interior of the front of the brassiere of FIG. 2 including an integrated pouch"), [0018]–[0019]; NIKE-1030 (2011) at Figs. 6–7, [0037]. In designing a bra with pockets, it is my opinion it would have been obvious to a POSA to include a pocket intermediate the breast cups on the bra disclosed by Handras. In my opinion, a POSA would have been motivated to do so to increase the amount of storage on the bra.

866. Even if this limitation would not have been obvious to a POSA based on their own knowledge, Handras in combination with Spagna renders this limitation obvious. As illustrated below, Spagna discloses a pocket positioned intermediate the left and right cups:

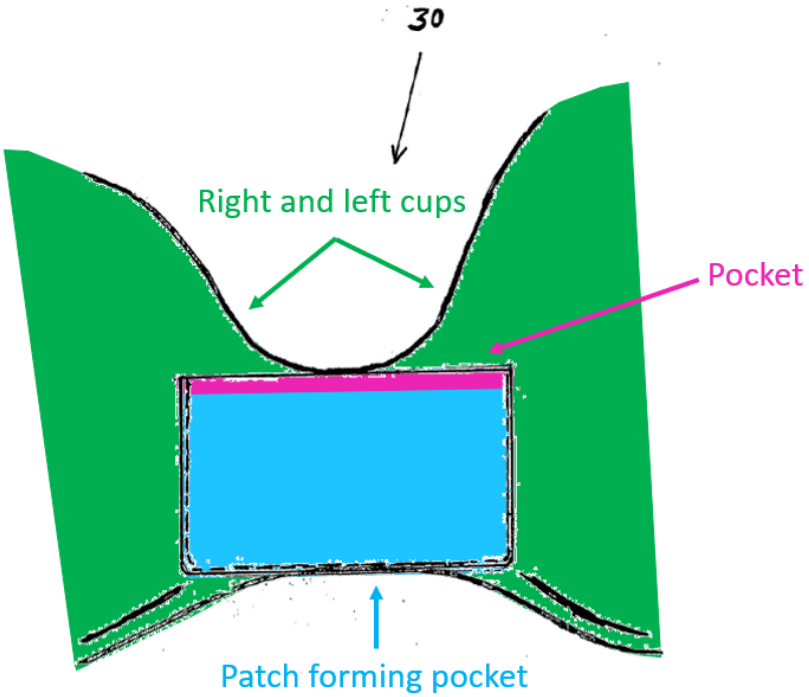


Fig. 3

NIKE-1028 at Fig. 3, [0014], [0018]–[0019].

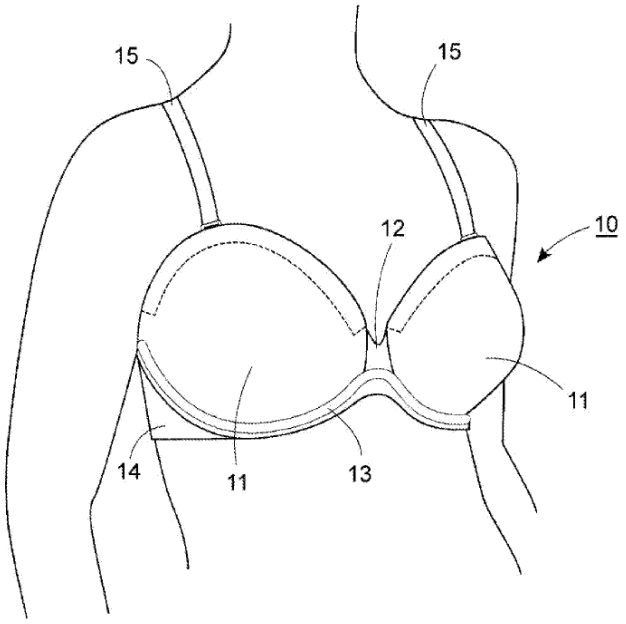
867. In my opinion, a POSA would have found it obvious to include the intermediate pocket of Spagna on the bra disclosed by Handras, and a POSA would have been motivated to do so to increase the amount of storage space on the bra in an easily accessible location. It is my opinion that a POSA would have had a high likelihood of success of doing so, including because Handras and Spagna are both bras and this is simple technology, as further discussed below.

868. In my opinion, Handras, either alone or in combination with Spagna, renders obvious limitation [14A].

vii. Claim 15

a. *"A chest covering comprising:" limitation [15A]*

869. Handras discloses a "chest covering." As illustrated below, Handras discloses a bra worn on the chest of the wearer:



NIKE-1021 at Fig. 1.

870. In my opinion, Handras discloses limitation [15A].

b. ***"a strap assembly including a chest strap;" limitation [15B]***

871. In my opinion, Handras discloses this limitation for the reasons discussed above in limitation [1B].

c. ***"a left cup and a right cup, each cup being an area to receive a breast of a wearer, and having inside and outside surfaces," limitation [15C]***

872. In my opinion, Handras discloses this limitation for the reasons discussed above in limitation [1C].

d. ***"the strap assembly being attached to the cups whereby the strap assembly holds the cups to a wearer," limitation [15D]***

873. In my opinion, Handras discloses this limitation for the reasons discussed above in limitation [1D].

e. ***"with the chest strap extending from the left cup towards the wearer's back and extending from the right cup towards the wearer's back;" limitation [15E]***

874. In my opinion, Handras discloses this limitation for the reasons discussed above in limitation [1E].

f. ***"a side patch on one of an inside or outside surface of the chest strap adjacent to at least one of the left cup and right cups," limitation [15F]***

875. In my opinion, Handras discloses this limitation for the reasons discussed above in limitation [1F].

g. ***"the side patch having upper and lower edges along at least part of a length of the chest strap, and side edges," limitation [15G]***

876. In my opinion, Handras discloses this limitation for the reasons discussed above in limitation [1G].

h. ***"the side patch upper edge lying along a same edge line as at least a portion of a top edge of the chest strap," limitation [15H]***

877. In my opinion, Handras discloses this limitation for the reasons discussed above in limitation [1H].

i. ***"the side patch having stitching along the lower and side edges thus forming an upper opening such that the side patch forms a pocket," limitation [15I]***

878. In my opinion, Handras discloses this limitation for the reasons discussed above in limitation [1I].

j. ***"the upper opening capable of repeated receiving and removal of an item when being worn by the wearer." limitation [15J]***

879. In my opinion, Handras discloses this limitation for the reasons discussed above in limitation [1J].

viii. Claim 17

k. ***"The bra assembly of claim 1" limitation [Preamble]***

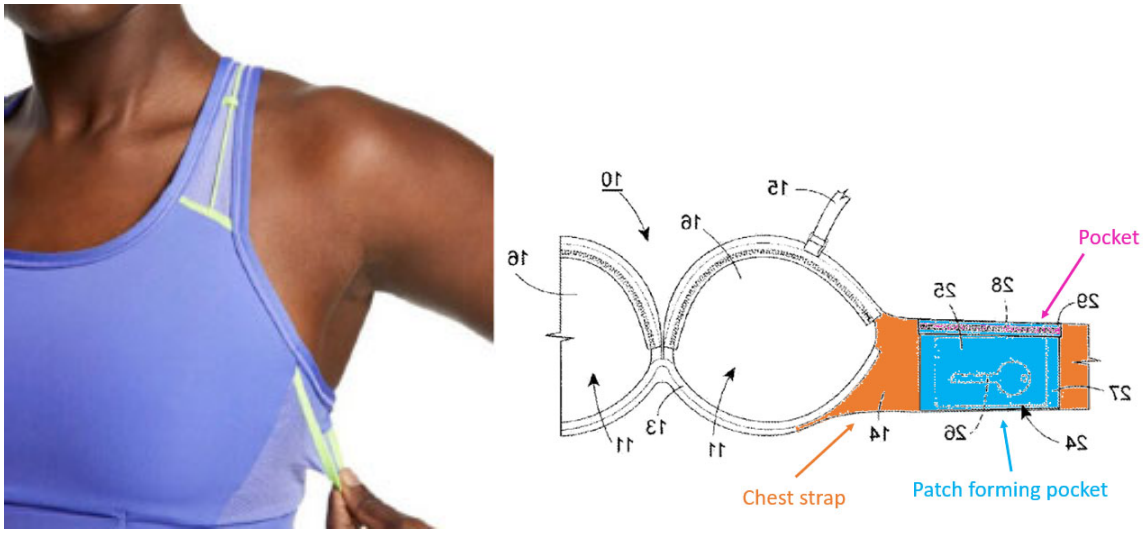
880. Handras discloses "[t]he bra assembly of claim 1" for the reasons described above.

l. ***"wherein a front side edge of the side patch abuts an edge of the at least one of the left cup and the right cup, the pocket extending to the edge of the at least one of the left cup and the right cup." limitation [17A]***

881. Handras discloses this limitation. I understand that in the MA Litigation, Patent Owner took the position that this limitation was met by the following bras:

See NIKE-1042 at 7–8 (left); NIKE-1043 at 7–8 (right).

882. Though I understand Petitioner does not agree that the products above meet this limitation, to the extent Patent Owner contends they do, so too does Vidai:



NIKE-1021 at Fig. 5 (flipped horizontally).

883. Alternatively, should Patent Owner contend that this limitation is not disclosed by Handras, Handras renders this limitation obvious. Both bras and pockets have been long known in the art and in designing a bra with storage pockets, it is my opinion a POSA would have been motivated to look for known solutions in the art, such as the variety of types of bras and their designs, pocket placements, methods of forming a pocket, and methods of adhering the pockets to the bra. Moreover, a POSA would have known that different pocket shapes, sizes, and placements have known benefits and drawbacks. Given this knowledge, it is my opinion it would have been obvious to a POSA in light of Handras to slightly extend the length of the pocket to abut the edge of a bra cup (or beyond the edge of the bra cup) to increase the amount of storage in the pocket. Additionally, it is my opinion

a POSA would have found it obvious to extend the pocket towards the front of the bra onto the cups, rather than backwards towards the wearer's back, for ease of access to the pocket. Such a design would increase comfort for the wearer, because extension of the pocket toward the cup, as opposed to the wearer's back, enables the wearer to access the pocket without uncomfortably twisting the wearer's body. As discussed in "The art of pocket design: How to create unique and stylish pockets," NIKE-1052, a POSA would have known that "[c]lassically, pockets are thought out in relation to the body and the placement of the arms. The goal was to have access to the inside of the pocket, without having to twist." *Id.* at 3.

884. In my opinion, Handras discloses or renders obvious limitation [17A].

ix. Reasons to Combine Handras and Spagna

885. Handras and Spagna disclose all claimed features of the "pocket bra assembly," as discussed in the sections above. Also, in my opinion, it would have been obvious to a POSA to simply combine the beneficial features of both bras, with the features taught by Handras and Spagna performing their same intended function.

886. Handras and Spagna each disclose inventions generally relating to bras with pockets for storage. In designing a bra with pockets, it is my opinion a POSA would have been motivated to look to the prior art references disclosing bras with pockets—including Handras and Spagna specifically—and select preferable elements from each disclosure to construct their desired pocketed bra. One

advantage of Handras's bra is that it has pockets on the side of the bra that are easily accessible to the wearer. NIKE-1021 at Fig. 3, Abstract, [0002], [0011], [0028]. At the same time, Spagna's bra includes pockets on the back of the bra assembly and intermediate the bra cups. NIKE-1028 at Abstract, Figs. 2–4, [0014]–[0015], [0017]–[0020]. As a result, it is my opinion a POSA would have been motivated to design a bra that took advantage of the benefits provided by each of Handras's and Spagna's bras.

887. It is my opinion a POSA also would have understood that bras are meant to serve a diverse population with differing preferences—such as support, comfort, and pocket size(s)—and that it would be commercially beneficial to provide consumers with a variety of options to meet those different preferences. It is my opinion a POSA therefore would have been motivated to design a variety of combinations of bras, including those with the claimed features, so as to be able to provide options to a wide range of customers.

888. In my opinion, a POSA would have expected to have a high likelihood of success with this combination. Handras and Spagna are both bras with pockets for discreetly storing valuables while those items remain easily accessible. *E.g.*, NIKE-1021 at [0001], [0003], [0004], Figs. 1–6; NIKE-1028 at Abstract, Figs. 2–4, [0014]–[0015], [0017]–[0020]. While Spagna discloses pockets on the back surface of the bra and intermediate the breast cups, *id.*, Handras discloses the addition of

pockets on the bra's chest strap. NIKE-1021 at Abstract, [0011], [0028], Figs. 3, 5. And each of the elements disclosed in each of Spagna and Handras—*e.g.*, cups, pockets, chest straps, stitching—would perform the same predictable function disclosed in the prior art. Any work needed to combine the elements taught by Handras and Spagna would therefore be nothing more than routine modifications well within the abilities of a POSA.

F. The '800 Patent

1. Ground 1: Claims 1, 2, 3, 5, 7, and 10 Are Unpatentable Over Spagna

889. The discussion below provides my detailed analysis of how the prior art references invalidate the challenged claims of the '800 Patent.

890. In my opinion, claims 1, 2, 3, 5, 7, and 10 are disclosed or rendered obvious by Spagna.

i. Claim 1

a. ***"A pocket bra assembly comprising:" limitation [1A]***

891. Spagna discloses this limitation. As illustrated in the figures below, Spagna discloses "an integrated pouch located in a woman's brassiere," *i.e.*, a pocket bra.

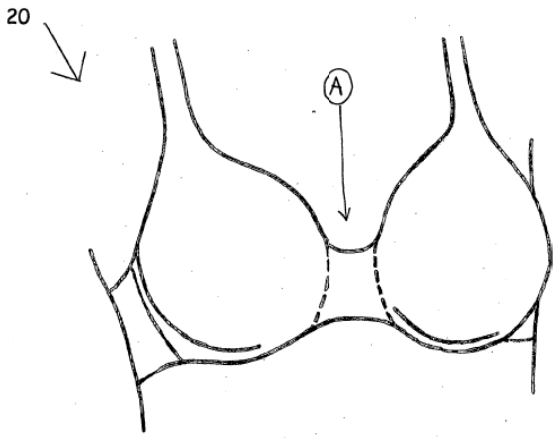


Fig. 2

NIKE-1028 at Abstract, Fig. 2 (showing bra assembly), at [0017]–[0020].

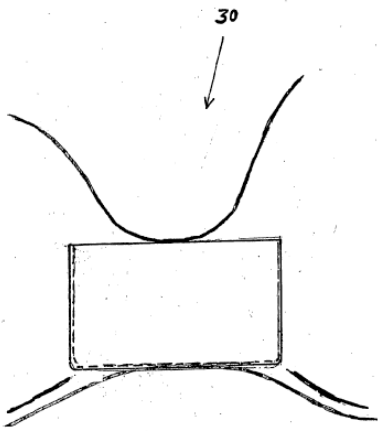


Fig. 3

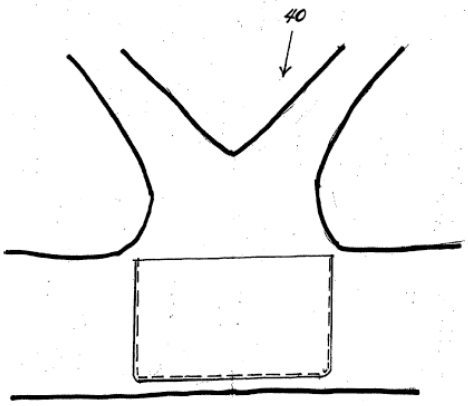


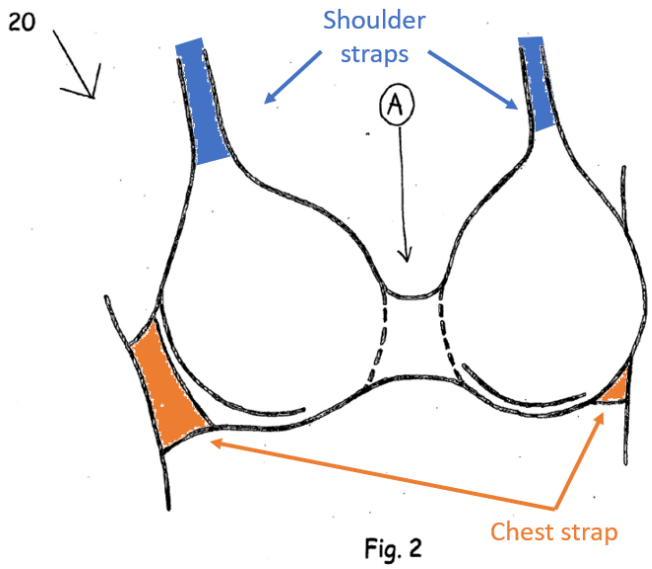
Fig. 4

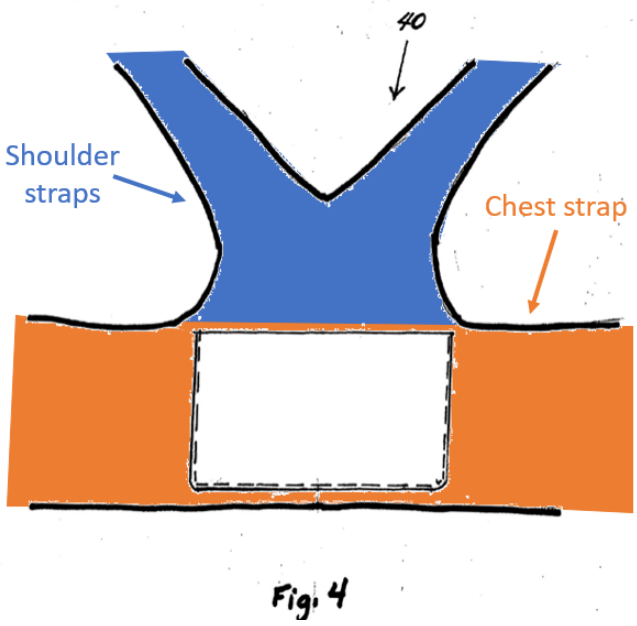
Id. at Figs. 3-4 (showing an "integrated pouch," or pocket, intermediate of the breast cups (Fig. 3), and on the back of the bra (Fig. 4)).

892. Thus, it is my opinion that Spagna discloses limitation [1A].

b. ***"a strap assembly including a chest strap and shoulder straps," limitation [1B]***

893. Spagna discloses this limitation. As shown below, Spagna discloses "a strap assembly" comprised of a chest strap and two shoulder straps:



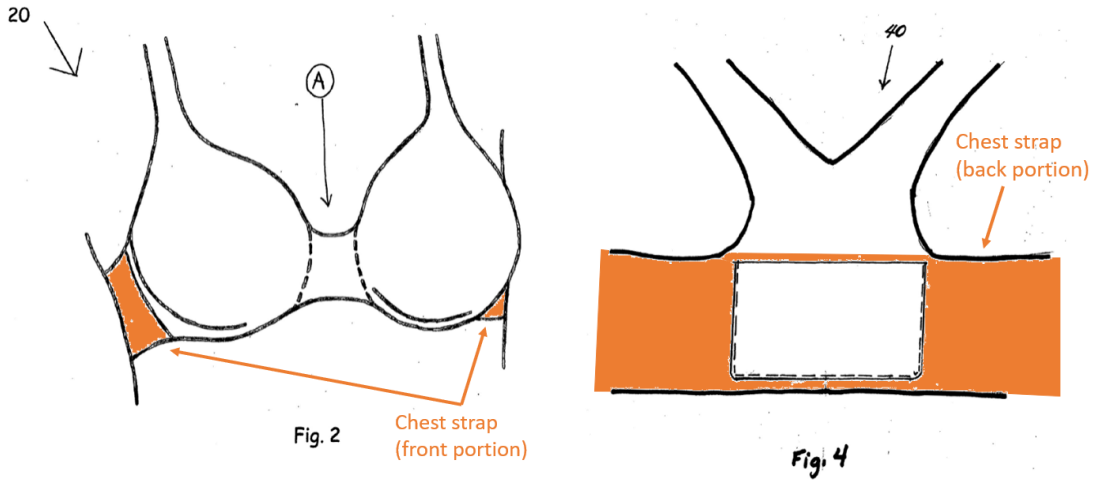


NIKE-1028 at Figs. 2, 4, at [0017]–[0020] (describing "brassiere 20").

894. Thus, it is my opinion that Spagna discloses limitation [1B].

c. ***"the chest strap having a front portion configured to be positioned on a front of a user, and a back portion configured to be positioned on a back of the user," limitation [1C]***

895. Spagna discloses this limitation. As illustrated below, Spagna discloses a conventional bra assembly including a chest strap, with a front portion connected to breast cups to be worn on the front of a user, and a back portion configured to be positioned on the back of a user:



NIKE-1028 at Figs. 2, 4, at [0017]–[0020] (describing "brassiere 20").

896. Thus, it is my opinion that Spagna discloses limitation [1C].

d. ***"the shoulder straps each having a front portion configured to be positioned on the front of the user, and a back portion configured to be positioned on the back of the user;" limitation [1D]***

897. Spagna discloses this limitation. As illustrated below, Spagna discloses a conventional bra assembly including shoulder straps, having a front portion connected to breast cups to be worn on the front of a user, and a back portion configured to be positioned on the back of a user:

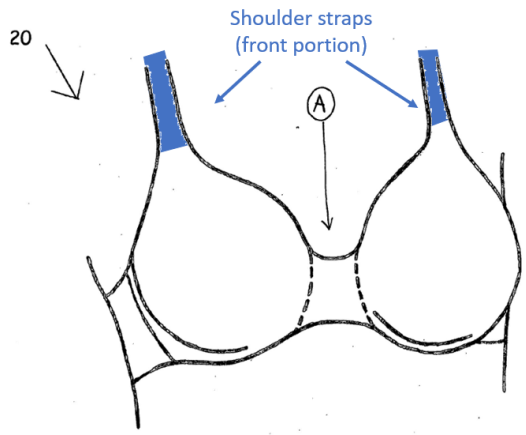


Fig. 2

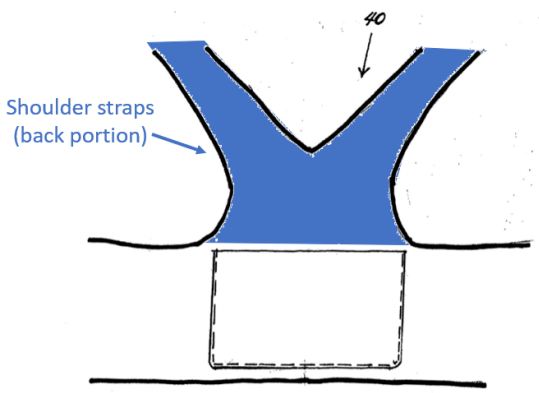


Fig. 4

NIKE-1028 at Figs. 2, 4, at [0017]–[0020] (describing "brassiere 20").

898. Thus, it is my opinion that Spagna discloses limitation [1D].

e. ***"a bra portion, the bra portion configured to provide support and shape breasts of the user," limitation [1E]***

899. Spagna discloses this limitation. As illustrated below, Spagna discloses a bra with left and right cups:

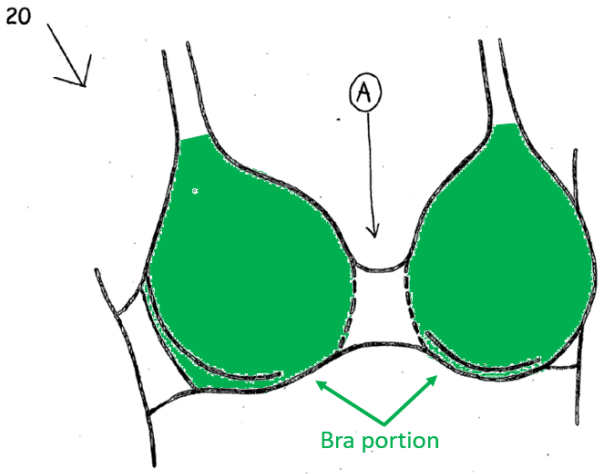


Fig. 2

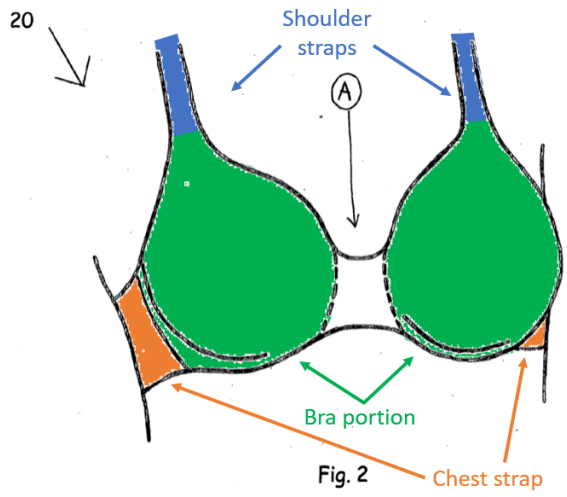
NIKE-1028 at Fig. 2.

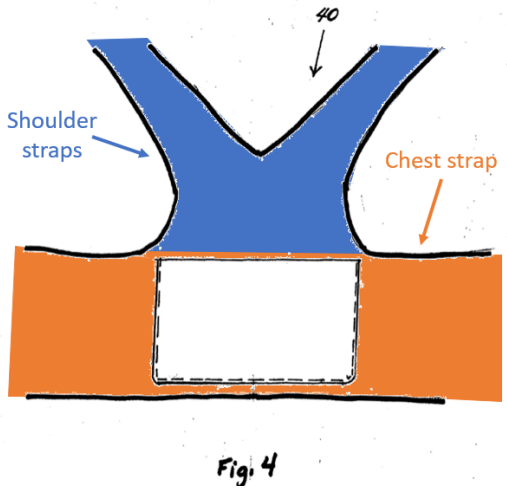
900. In my opinion, a POSA would have understood Spagna's cups to comprise a "bra portion" intended to "provide support and shape" to the wearer's breasts. NIKE-1028 at Abstract, at [0006] (goal to allow women "to run, play sports, and go to the gym … wear sexy evening wear and go dancing"), at [0017]–[0020] (describing "brassiere 20"). Barg also describes how its cups help provide a "smooth" outer appearance. NIKE-1019 at 1:31–33.

901. Thus, it is my opinion that Spagna discloses limitation [1E].

f. ***"the strap assembly being attached to the bra portion whereby the strap assembly holds the bra portion to the user, with the chest strap extending from a first side of the bra portion towards the user's back and extending from a second opposite side of the bra portion towards the user's back;" limitation [1F]***

902. Spagna discloses this limitation. As discussed in limitations [1B] and [1E], Spagna discloses a "bra portion" comprised of left and right cups, and a "strap assembly" comprised of a chest strap and two shoulder straps. As illustrated below, the strap assembly is attached to the breast cups, the chest strap extending from each side of the bra portion towards the back of the wearer:





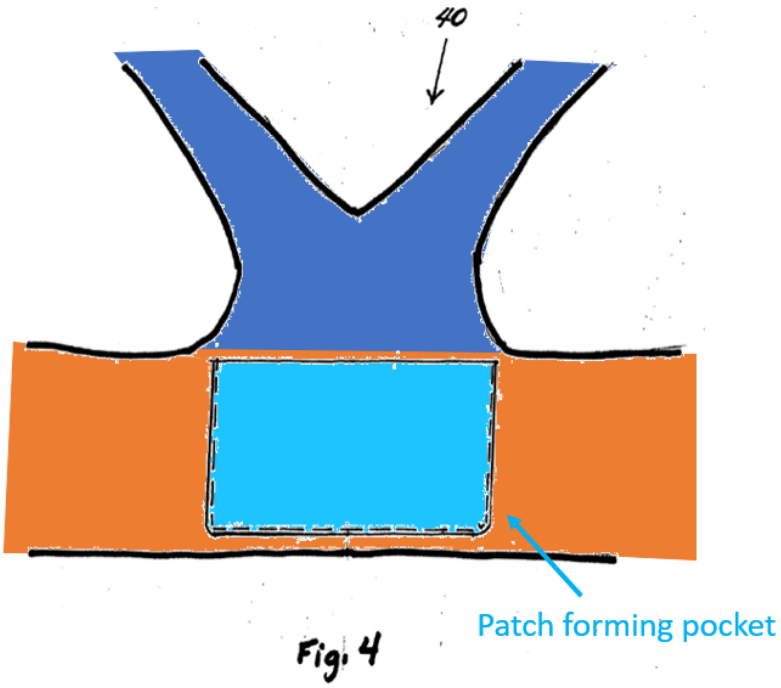
NIKE-1028 at Figs. 2, 4 (showing front (Fig. 2) and back (Fig. 4) of the bra assembly).

903. It is my opinion a POSA would understand the purpose of the strap assembly to be holding the cups, *i.e.*, "bra portion," to the wearer. This is expressly disclosed in Figure 2. NIKE-1028 at Fig. 2 (showing user wearing the disclosed bra).

904. Thus, it is my opinion that Spagna discloses limitation [1F].

g. ***"a back pocket formed entirely of stretchable fabric positioned on the back portion of at least one of the chest strap and shoulder straps," limitation [1G]***

905. Spagna discloses this limitation. As illustrated in Figure 4 below, Spagna discloses a pocket on the back portion of the chest strap of the bra assembly (NIKE-1028 at 2:[0020] ("an integrated pouch 40 . . . is placed on the interior surface of the back of the brassiere"):



NIKE-1028 at Fig. 4 (showing a pocket on the back portion of the bra where the chest strap and shoulder straps come together).

906. Further, Spagna indicates that the bra may be constructed of "traditional materials" such as "cotton, polyester, or synthetic and natural fiber blend." A POSA would have understood that polyester and other synthetic fabrics, such as spandex or elastane, can be "stretchable fabric," and therefore would understand that the pocket, in addition to the bra itself, could likewise be made out of stretchable material.

907. To the extent Patent Owner argues this limitation is not disclosed by Spagna, it would be obvious based on Spagna in combination with the knowledge of a POSA. Spagna specifically discloses that the purpose of a pocket on a bra or other garment is to hold personal items. NIKE-1028 at Abstract ("An apparatus for

holding an automated medication dispensing device includes an integrated pouch located in a woman's brassiere."), at [0002] ("the invention consists of a medication pump inserted into an integrated pouch of a personal undergarment."), at [0009] ("an automated medication dispensing device is adapted to produce a broad, flat profile and is inserted into a relatively large integrated pouch located at the center back of the women's brassiere.").

908. In my opinion, a POSA would have understood that the shape of such objects may not easily conform to the shape of a rigid pocket. Thus, in my opinion, a POSA would have found it obvious to manufacture the pocket with "stretchable" material, such that the pocket may stretch or expand to accommodate the placement of objects for storage.

909. Bras comprised of stretchable material were well-known and popular at the time of the alleged invention. *See e.g.*, NIKE-1022 at 3:5–14 ("The pocket can be formed of an extensible material that can, for example, elastically deform . . . . Such materials can include woven or nonwoven fabrics comprising Spandex®, Lycra®, nylon, neoprene, polyurethanes, polyolefins, polyesters, wool, rayon, etc."); *see also* NIKE-1039 (disclosing sports bras comprised of a blend of nylon and Lycra). And Spagna teaches that the "brassiere itself may be constructed of traditional materials such as cotton, polyester, or synthetic and natural fiber blend," which a POSA would understand would include "stretchable" fabric. NIKE-1028 at

[0017]. In my opinion, a POSA would have understood that stretchable fabric could similarly be applied to the bra pocket disclosed in Spagna. Thus, if not expressly disclosed, a POSA would have found it obvious to modify Spagna based on their own knowledge to include "a back pocket formed entirely of stretchable fabric."

910. Thus, it is my opinion that Spagna discloses or renders obvious limitation [1G].

h. ***"the back pocket having an opening formed that is biased in a closed position at rest, providing access to a pocket interior;" limitation [1H]***

911. Spagna discloses this limitation. As discussed above in limitation [1G], Spagna discloses a back pocket. Spagna discloses that its pocket is "for holding an automated medication dispensing device," indicating that the wearer has access to the pocket's interior in order to place such device in the pocket. NIKE-1028 at Abstract. In my opinion, a POSA would have understood the purpose of a pocket to be providing access to the interior for storage of items.

912. Further, Spagna discloses that the device "can be safely maintained [in the pocket], even while the wearer is active," NIKE-1028 at Abstract, which indicates to a POSA that the pocket is biased in a closed position at rest, to ensure the objects inside the pocket remain there. During prosecution, the Patent Owner asserted that the use of a pocket biased in a closed position is ideal for "keep[ing] items held safe within the pocket during exercise." *See* NIKE-1002 at 82, 119–20.

913. To the extent Patent Owner argues Spagna does not disclose this limitation, Spagna in combination with the knowledge of a POSA renders this limitation obvious. In my opinion, a POSA would have understood that designing the pocket to be biased in a closed position at rest would increase the likelihood that the device remains "safely maintained" in the pocket during physical activity. Additionally, pockets designed to remain closed at rest were known at the time of the alleged invention. NIKE-1033 at 3:22–23 (describing a pocket on the back side of an exercise shirt as "in a closed position unless stretched by the wearer for access."); *see also* NIKE-1032 at [0020] (Describing the advantage of a fastener mechanism designed for keeping the pocket closed as "prevent[ing] objects stored within [the pocket] from falling out of [the pocket] accidentally"). In my opinion, a POSA would have found it obvious to modify Spagna based on their own knowledge.

914. Thus, it is my opinion that Spagna discloses or renders obvious limitation [1H].

i. ***"and an item positioned within the back pocket." limitation [1I]***

915. Spagna discloses this limitation. Spagna discloses the purpose of the pocket is "for holding an automated medication dispensing device." NIKE-1028 at Abstract. And Spagna discloses that "the invention consists of a medication pump inserted into an integrated pouch of a personal undergarment. NIKE-1028 at [0002],

at [0009] ("an automated medication dispensing device is adapted to produce a broad, flat profile and is inserted into a relatively large integrated pouch located at the center back of the women's brassiere."). A POSA would have understood an "automated medication dispensing device" is an "item." Further, Spagna expressly claims the use of the back pocket for holding an item. NIKE-1028 at Claims 7–8.

ii. Claim 2

a. ***"The pocket bra assembly of claim 1" limitation [Preamble]***

916. Spagna discloses "[t]he pocket bra assembly of claim 1" for the reasons described above in claim 1.

b. ***"wherein the bra is a sports bra." limitation [2A]***

917. Spagna renders obvious this limitation. Spagna teaches that the item placed in the pocket is held safe "even while the wearer is active." NIKE-1028 at Abstract, at [0006] ("modern women want and deserve to have it all. They want to *run, play sports, and go to the gym*."), at [0010] ("Using these embodiments of the invention, a woman may utilize an automated medication dispensing device while keeping the device safe from accidental damage and *allowing the woman to be extraordinarily active*, all the while reducing the outward appearance of the device.").

918. In my opinion, a POSA would have understood that the bra is a sports bra to be worn during exercise. In my opinion, this understanding is further

supported by the racerback construction disclosed by Spagna, which, a POSA would have understood to be a popular configuration of sports bras.

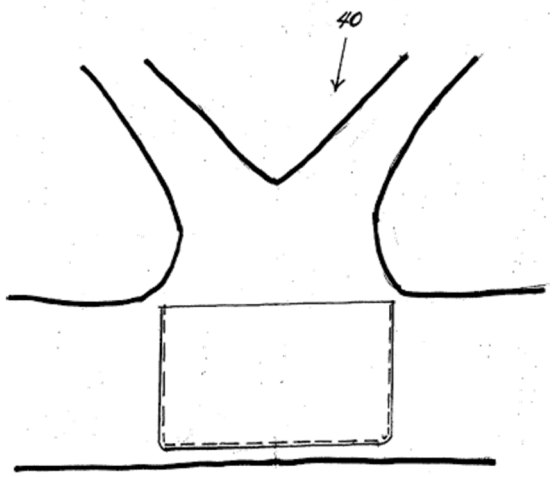


Fig. 4

NIKE-1028 at Fig. 4.

919. To the extent Patent Owner argues Spagna does not disclose this limitation, Spagna in combination with the knowledge of a POSA renders this limitation obvious. In my opinion, a POSA would have found it obvious to apply the invention of Spagna to a sports bra. As already discussed, Spagna discusses the use of the brassiere to keep the stored item "safe from accidental damage" while "allowing the woman to be extraordinarily active." NIKE-1028 at [0010]. Further, Spagna discusses activities such as "run[ning], play[ing] sports, and go[ing] to the gym." *Id.* at [0006]. In my opinion, a POSA would have been motivated to combine the invention of Spagna with a sports bra, which are designed for wear during physical activities like those described in Spagna.

920. Thus, it is my opinion that Spagna renders obvious limitation [2A].

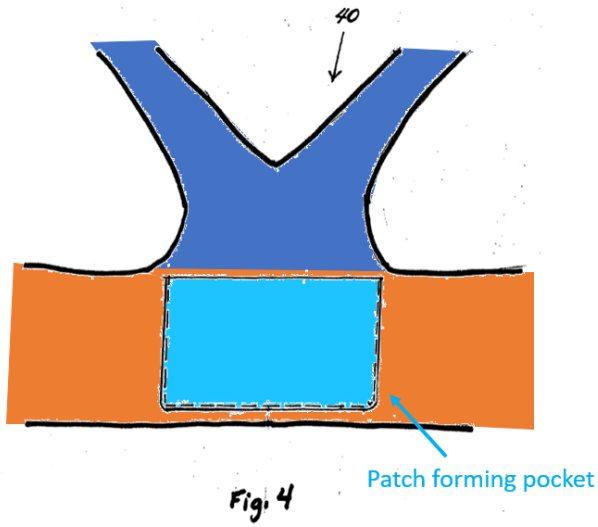
iii. Claim 3

a. ***"The pocket bra assembly of claim 1" limitation [Preamble]***

921. Spagna discloses "[t]he pocket bra assembly of claim 1" for the reasons described above in claim 1.

b. ***"wherein the back pocket is positioned on the back portion of the chest strap." limitation [3A]***

922. Spagna discloses this limitation. As previously discussed in limitation [1G], Spagna discloses a back pocket formed by a patch of material connected to the back portion of the chest strap of the bra assembly. NIKE-1028 at 2:[0020] ("an integrated pouch 40 . . . is placed on the interior surface of the back of the brassiere").



NIKE-1028 at Fig. 4 (showing a pocket on the back portion of the bra where the chest strap and shoulder straps come together).

923. Thus, it is my opinion that Spagna discloses limitation [3A].

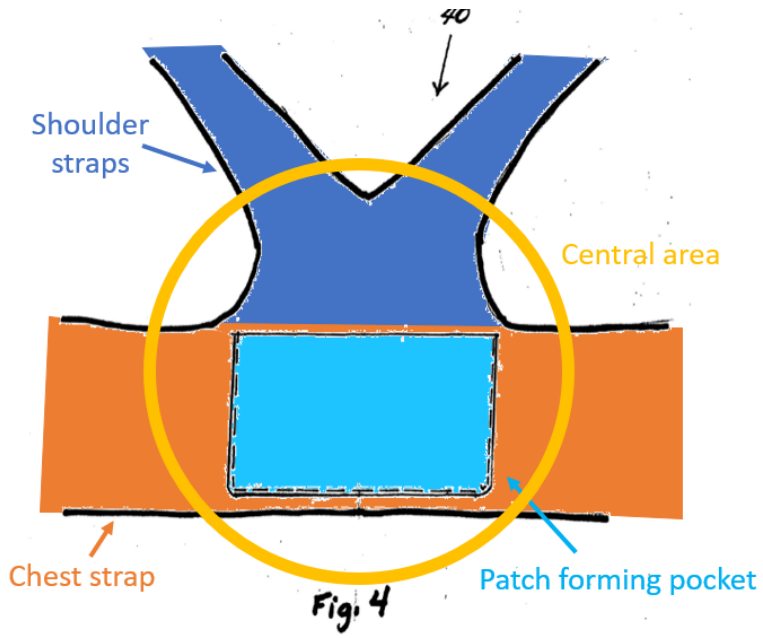
iv. Claim 5

a. ***"The pocket bra assembly of claim 1" limitation [Preamble]***

924. Spagna discloses "[t]he pocket bra assembly of claim 1" for the reasons described above in claim 1.

b. ***"wherein the back portion of each of the shoulder straps join together to form a central area, the back pocket positioned on the central area." limitation [5A]***

925. Spagna discloses this limitation. As illustrated below, Spagna discloses a bra with a pocket on the "central area" formed where the back portion of the shoulder straps join together:



NIKE-1028 at Fig. 4, at [0009] (pocket "located at the center back of the women's brassiere."), at [0020].

926. Thus, it is my opinion that Spagna discloses limitation [5A].

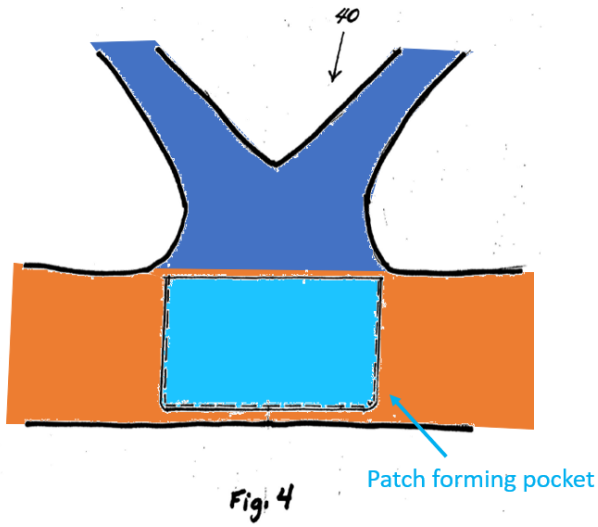
v. Claim 7

a. ***"The pocket bra assembly of claim 1" limitation [Preamble]***

927. Spagna discloses "[t]he pocket bra assembly of claim 1" for the reasons described above in claim 1.

b. ***"wherein the back pocket is formed by a patch connected to the back portion of the at least one of the chest strap and shoulder straps by stitching about a part of a perimeter of the patch, a gap in the stitching leaving a portion of the perimeter of the patch unattached, thereby forming an opening providing access to the pocket interior formed by the patch." limitation [7A]***

928. Spagna discloses this limitation. As previously discussed in limitation [1G], Spagna discloses a back pocket formed by a patch of material connected to the back portion of the chest strap of the bra assembly. NIKE-1028 at 2:[0020] ("an integrated pouch 40 . . . is placed on the interior surface of the back of the brassiere").



NIKE-1028 at Fig. 4 (showing a pocket on the back portion of the bra where the chest strap and shoulder straps come together).

929. Additionally, as already discussed herein in limitation [1H], Spagna discloses a pocket with access to the pocket's interior. Moreover, in my opinion, a POSA would understand the dashed lines in Figure 4, shown above, to disclose stitching, as dashed lines are used in sewing patterns to denote where stitching should occur. Further, in my opinion, a POSA would have understood stitching to be a common, convenient, and effective method of attaching two pieces of fabric together. Spagna also discloses that the pocket is stitched "about a part of a perimeter of the patch, a gap in the stitching leaving a portion of the perimeter of the patch unattached" in Figure 4. NIKE-1028 at Fig. 4. Thus, in my opinion, a POSA would have understood Spagna to disclose this limitation.

930. To the extent Patent Owner argues Spagna does not disclose this limitation, Spagna in combination with the knowledge of a POSA renders this limitation obvious. In designing a bra with storage pockets, it is my opinion a POSA would have been motivated to look for known solutions in the art, such as methods of adhering the pockets to the bra. In my opinion, a POSA would have understood stitching to be a well-known method by which pieces of fabric are attached together for clothing. *See*, *e.g.*, NIKE-1020 at 2:1–4 (disclosing a bra pocket formed 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. The panel is also secured to the side edges of the cup 12 by stitching 26."); NIKE-1022 at 3:52–53 (disclosing a

pocket "attached to the interior surface of the breast cover by any known means such as stitching.").

931. In my opinion, it would have been obvious to a POSA to attach the pocket in Spagna with stitching, and a POSA would have been motivated to do so because stitching is simple, effective, and inexpensive. In my opinion, it would have also been obvious to a POSA that a pocket could be formed by sewing only three edges of the rectangular patch to create access to the interior. Thus, a POSA would have found it obvious to modify Spagna based on their own knowledge.

932. Thus, it is my opinion that Spagna discloses or renders obvious limitation [7A].

vi. Claim 10

a. *"The pocket bra assembly of claim 7" limitation [Preamble]*

933. Spagna discloses "[t]he pocket bra assembly of claim 7" for the reasons described above in claim 7.

b. *"wherein the opening is formed adjacent to a top of the patch." limitation [10A]*

934. Spagna discloses this limitation. As shown below, Spagna discloses a pocket with an upper opening "adjacent to a top of the patch."

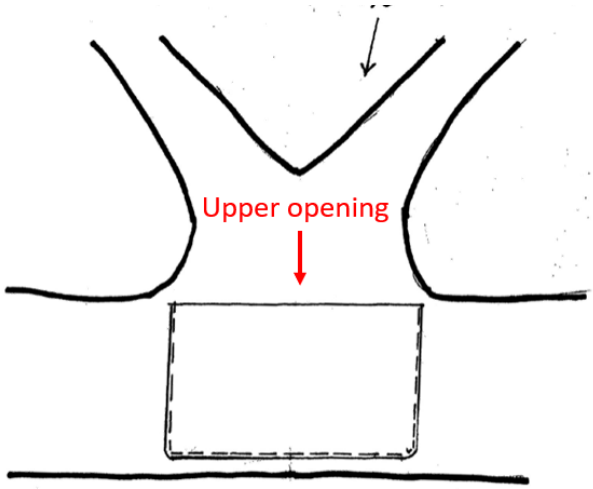


Fig. 4

NIKE-1028 at Fig. 4, at [0009], at [0020].

935. Thus, it is my opinion that Spagna discloses limitation [10A].

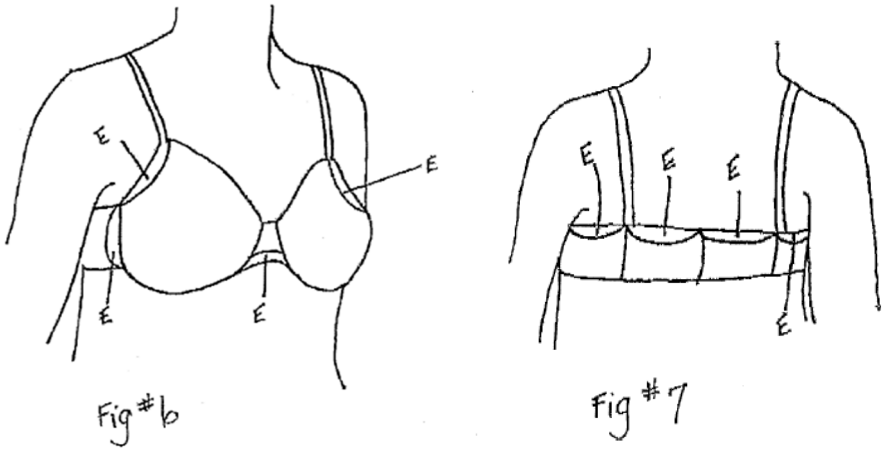
2. Ground 2: Claims 1, 2, 3, 5, 7, and 10 Are Unpatentable Over Rose

936. In my opinion, claims 1, 2, 3, 5, 7, and 10 are disclosed or rendered obvious by Rose.

i. Claim 1

a. *"A pocket bra assembly comprising:" limitation [1A]*

937. Rose discloses this limitation. As illustrated below, Rose discloses a bra with a series of pockets E:



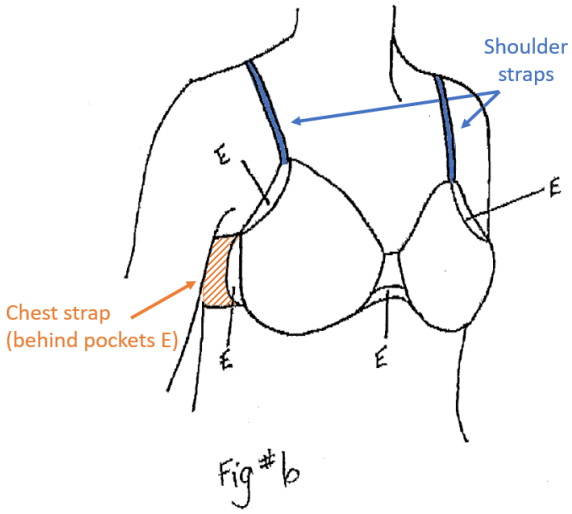
NIKE-1030 at Figs. 6–7, at [0012] ("The brassiere may have two breast cups and a back band, the two breast cups and the back band being assembled together in a conventional manner.").

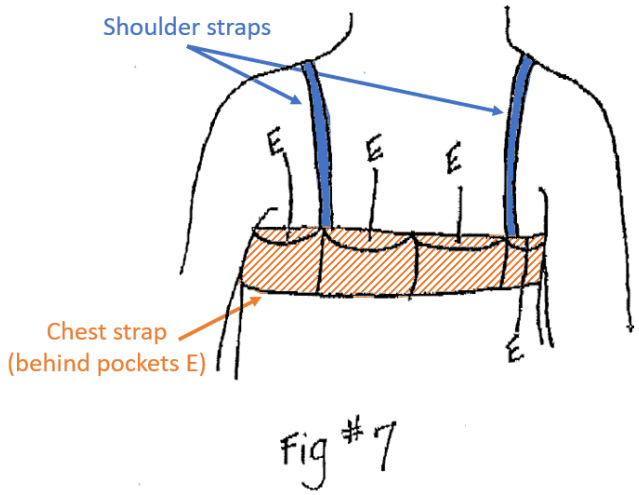
938. In one embodiment, "the bra is provided with clear latex pockets on the frontal portions of the breast cups and the back band of the brassiere." *Id.* at [0037].

939. Thus, it is my opinion that Rose discloses limitation [1A].

b. *"a strap assembly including a chest strap and shoulder straps," limitation [1B]*

940. Rose discloses this limitation. As illustrated below, Rose discloses a "conventional" bra assembly with shoulder straps and "a back band." NIKE-1030 at [0012].



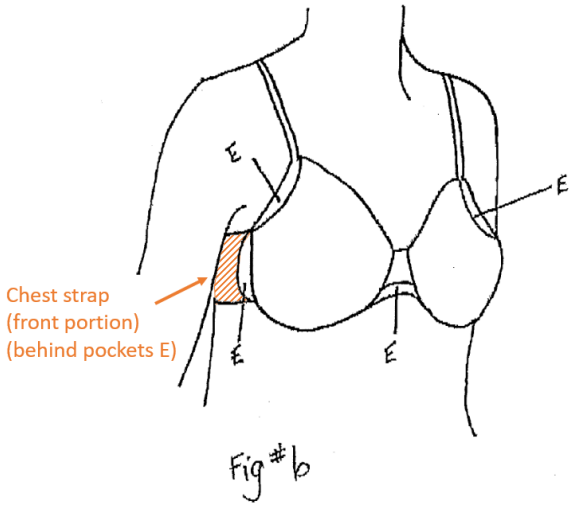


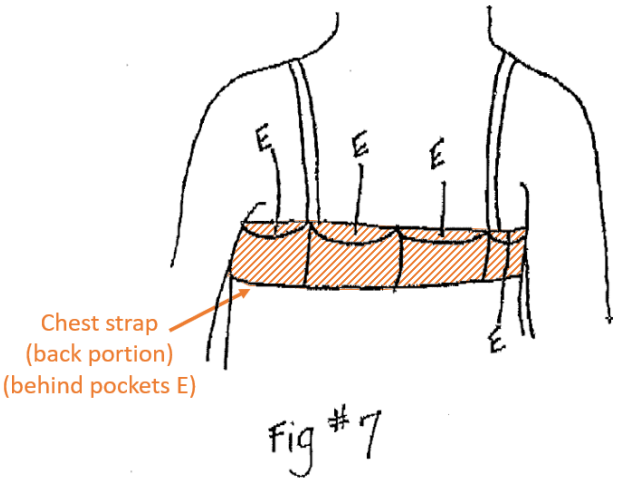
NIKE-1030 at Figs. 6–7 (showing bra with strap assembly shoulder straps and a back band which is covered with pockets E), at [0012] ("The brassiere may have two breast cups and a back band, the two breast cups and the *back band being assembled together in a conventional manner*."), at [0016] ("the brassiere set can be provided with shoulder straps that may be permanently or detachably connected to the brassiere by any known practical attachment means.").

941. Thus, it is my opinion that Rose discloses limitation [1B].

c. *"the chest strap having a front portion configured to be positioned on a front of a user, and a back portion configured to be positioned on a back of the user," limitation [1C]*

942. Rose discloses this limitation. As illustrated below, Rose discloses a conventional bra assembly including a chest strap, *i.e.*, "back band," with a front portion connected to breast cups to be worn on the front of a user, and a back portion configured to be positioned on the back of a user:



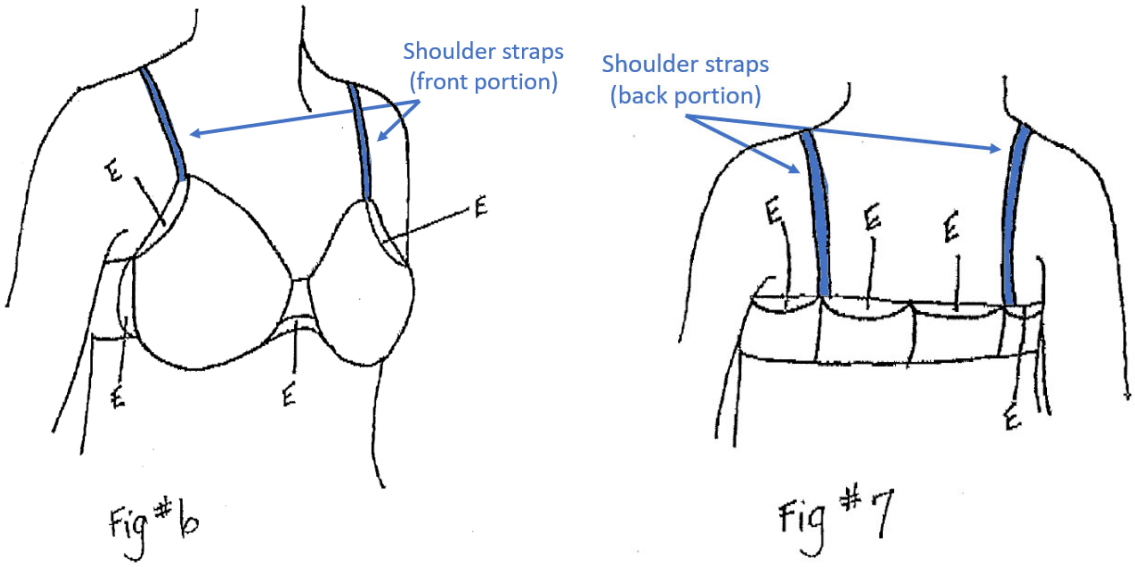


NIKE-1030 at Figs. 6–7 (showing front and back portions of the chest strap, which is covered with pockets E), at [0012] ("The brassiere may have two breast cups and a back band, the two breast cups and the back band being *assembled together in a conventional manner*.").

943. Thus, it is my opinion that Rose discloses limitation [1C].

d. *"the shoulder straps each having a front portion configured to be positioned on the front of the user, and a back portion configured to be positioned on the back of the user;" limitation [1D]*

944. Rose discloses this limitation. As illustrated below, Rose discloses a conventional bra assembly including shoulder straps, having a front portion connected to breast cups to be worn on the front of a user, and a back portion configured to be positioned on the back of a user:

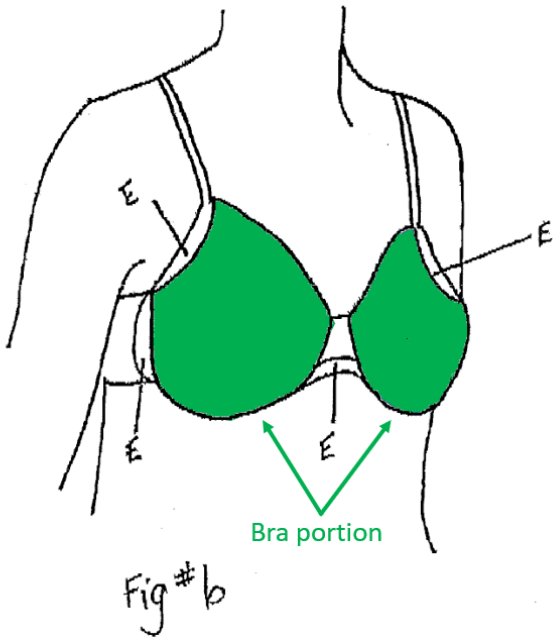


NIKE-1030 at Figs. 6–7, at [0016] ("the brassiere set can be provided with shoulder straps that may be permanently or detachably connected to the brassiere by any known practical attachment means.").

945. Thus, it is my opinion that Rose discloses limitation [1D].

e. *"a bra portion, the bra portion configured to provide support and shape breasts of the user," limitation [1E]*

946. Rose discloses this limitation. As illustrated below, Rose discloses a bra with left and right cups:



NIKE-1030 at Fig. 6, at [0012] ("The brassiere may have *two breast cups* and a back band, the two breast cups and the back band being assembled together in a conventional manner.").

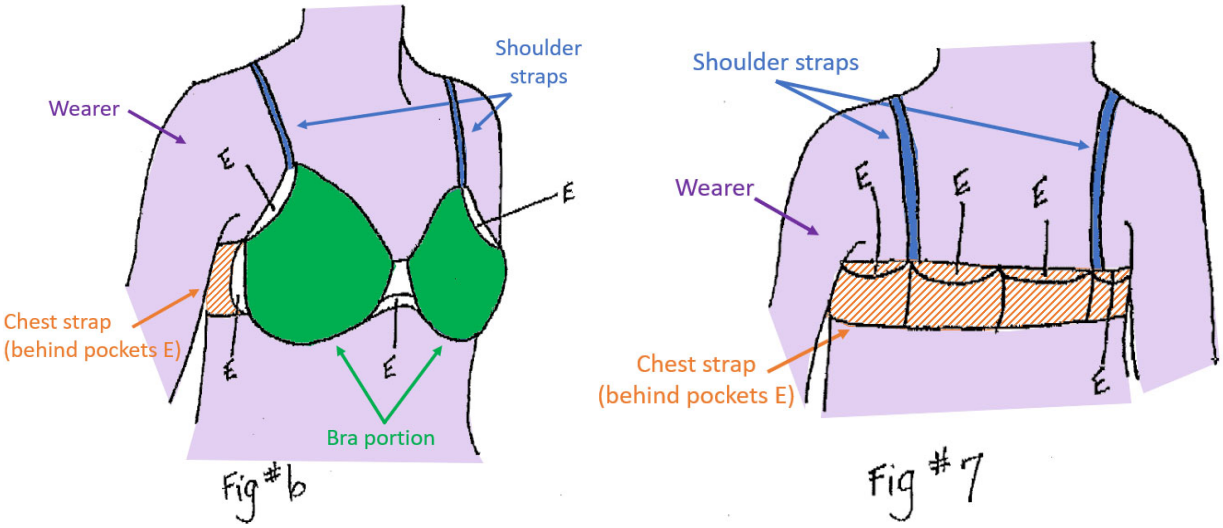
947. In my opinion, a POSA would have understood the cups to comprise a "bra portion" intended to "provide support and shape" to the wearer's breasts, as can be seen in Figure 6, above. *See also* NIKE-1019 at 1:36–39 (prior art a POSA would have been aware of describing breast cups "supported in various ways for the performance of their function."), 1:31–33 (referring to the "smooth" outer appearance of the breast cup.). Rose also describes how its bra is "purposed to cover and support a woman's breasts." NIKE-1030 at [0002], [0011]–[0014].

948. Thus, it is my opinion that Rose discloses limitation [1E].

f. ***"the strap assembly being attached to the bra portion whereby the strap assembly holds the bra portion to the user, with the chest strap extending***

from a first side of the bra portion towards the user's back and extending from a second opposite side of the bra portion towards the user's back;" limitation [1F]

949. Rose discloses this limitation. As previously discussed in limitations [1B] and [1E], Rose discloses a "bra portion" comprised of left and right cups, and a "strap assembly" comprised of a chest strap and two shoulder straps. As illustrated below, the strap assembly is attached to the breast cups, the chest strap extending from each side of the bra portion towards the back of the wearer:



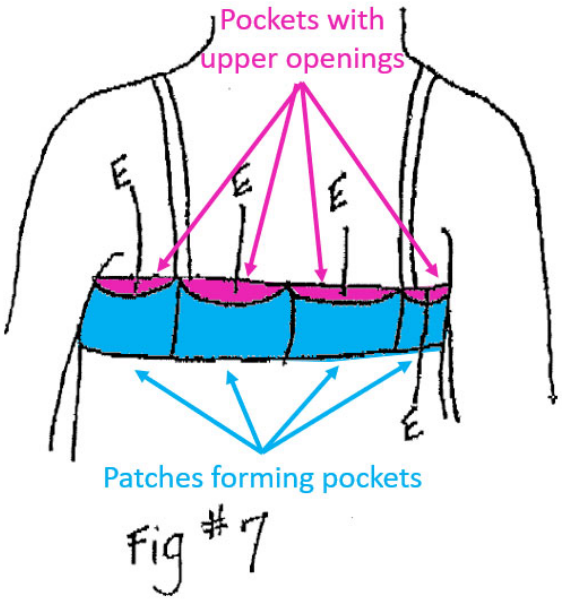
NIKE-1030 at Figs. 6–7 (showing front (Fig. 6) and back (Fig. 7) of the bra assembly), at [0012] ("The brassiere may have two breast cups and a back band, the two breast cups and the back band being *assembled together in a conventional manner*."), at [0016] ("the brassiere set can be provided with shoulder straps that may be permanently or detachably connected to the brassiere by any known practical attachment means.").

950. In my opinion, a POSA would understand the purpose of the strap assembly to be holding the cups, *i.e.*, "bra portion," to the wearer, as Rose expressly discloses. NIKE-1030 at Figs. 6–7 (disclosing user wearing the disclosed bra), at [0002], at [0003], at [0031], at [0033], at [0035].

951. Thus, it is my opinion that Rose discloses limitation [1F].

g. *"a back pocket formed entirely of stretchable fabric positioned on the back portion of at least one of the chest strap and shoulder straps," limitation [1G]*

952. Rose discloses this limitation. Rose discloses a bra "provided with *clear latex pockets* on . . . *the back band of the brassiere*." NIKE-1030 at [0037].



NIKE-1030 at Fig. 7.

953. In my opinion, a POSA would have understood latex to be a "stretchable" fabric.

954. Thus, it is my opinion that Rose discloses limitation [1G].

h. *"the back pocket having an opening formed that is biased in a closed position at rest, providing access to a pocket interior;" limitation [1H]*

955. Rose in combination with the knowledge of a POSA renders this limitation obvious. First, Rose discloses pockets with openings E to provide access to a pocket interior. NIKE-1030 at [0037] ("The pockets have slits E on the upper side as shown in FIG. 6 and FIG. 7. Various inserts made of, but not limited to, plastic, fabric, *can be inserted into the pockets through the openings E*."). In my opinion, a POSA would have understood that the purpose of a pocket is to provide access to the interior for storage of items.

956. Further, in designing a bra with storage pockets, it is my opinion a POSA would have been motivated to look for known solutions in the art, such as methods of keeping items stored in the pocket secure. Pockets designed to remain closed at rest were known long before the alleged invention. NIKE-1033 at 3:22–23 (describing a pocket on the back side of an exercise shirt as "in a closed position unless stretched by the wearer for access."); *see also* NIKE-1032 at [0020] (Describing the advantage of a fastener mechanism designed for keeping the pocket closed as "prevent[ing] objects stored within [the pocket] from falling out of [the pocket] accidentally"). Thus, a POSA would have found it obvious to modify Rose to make the pockets biased closed at rest based on their own knowledge and been motivated to do so to keep items stored in the pocket more secure.

957. Thus, it is my opinion that Rose discloses limitation [1H].

i. *"and an item positioned within the back pocket." limitation [1I]*

958. Rose discloses this limitation. Rose expressly teaches the use of the pockets to temporarily store "various inserts" made of plastic, fabric, or other materials, of various colors and patterns to change the outer appearance of the bra. NIKE-1030 at [0037] ("Various inserts made of, but not limited to, plastic, fabric, can be inserted into the pockets through the openings E. The inserts can be of different colours or patterns so as to change the appearance of the bra."). In my opinion, a POSA would understand that these inserts are "items."

959. Further, in my opinion, a POSA would understand that a user could place an item other than the claimed inserts in the pocket. A POSA would understand that the presence of a pocket necessarily implies access to the pocket interior for the temporary storage of items.

960. Thus, it is my opinion that Rose discloses limitation [1I].

ii. Claim 2

a. *"The pocket bra assembly of claim 1" limitation [Preamble]*

961. Rose discloses "[t]he pocket bra assembly of claim 1" for the reasons described above in claim 1.

b. *"wherein the bra is a sports bra." limitation [2A]*

962. Rose in combination with the knowledge of a POSA renders this limitation obvious. The purpose of the pockets disclosed in Rose is to provide means to "change the visual appearance of the brassiere." NIKE-1030 at [0012].

963. In my opinion, a POSA would have understood sports bras to have been popular at the time of invention. *See* NIKE-1039 (discussing "[t]op [c]hoices" of sports bras available on the market in 2010). In designing a bra with a customizable appearance, it is my opinion a POSA would have been motivated to try the invention of Rose on a sports bra, due to the popularity of sports bras and the perceived desire by consumers to customize their bras.

964. Further, it is my opinion a POSA would have understood that the pockets disclosed by Rose could be used to hold items for storage, rather than to change the outer appearance of the bra. Thus, a POSA would have been further motivated to try the invention of Rose on a sports bra in order to meet consumer demand for sports bras with pockets, allowing users to carry items like keys, pills, handheld electronic devices, credit cards, money, or other items while exercising.

965. Thus, it is my opinion that Rose renders obvious limitation [2A].

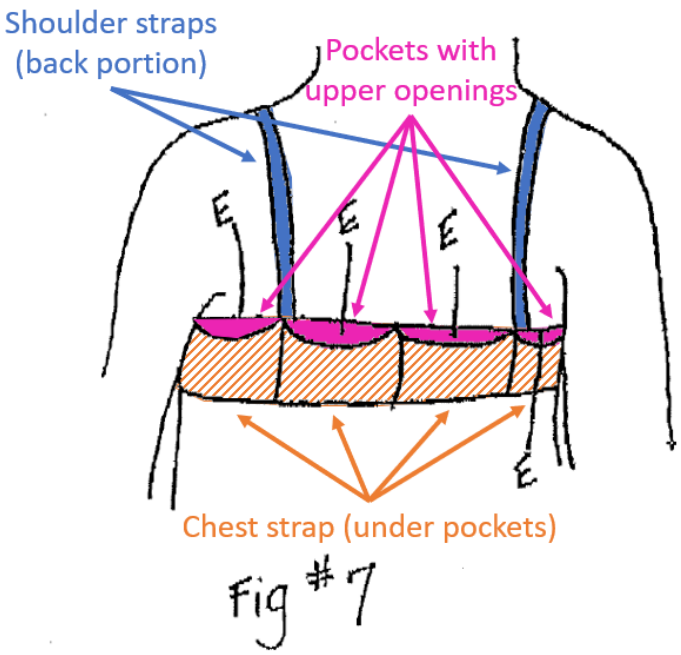
iii. Claim 3

a. *"The pocket bra assembly of claim 1" limitation [Preamble]*

966. Rose discloses "[t]he pocket bra assembly of claim 1" for the reasons described above in claim 1.

b. ***"wherein the back pocket is positioned on the back portion of the chest strap." limitation [3A]***

967. Rose discloses this limitation. As discussed in limitation [1G], Rose discloses a back pocket formed by a patch of material connected to the back portion of the chest strap of the bra assembly. NIKE-1030 at [0037] ("the bra is provided with clear latex pockets on … the back band of the brassiere.").



NIKE-1030 at Fig. 7.

968. Thus, it is my opinion that Rose discloses limitation [3A].

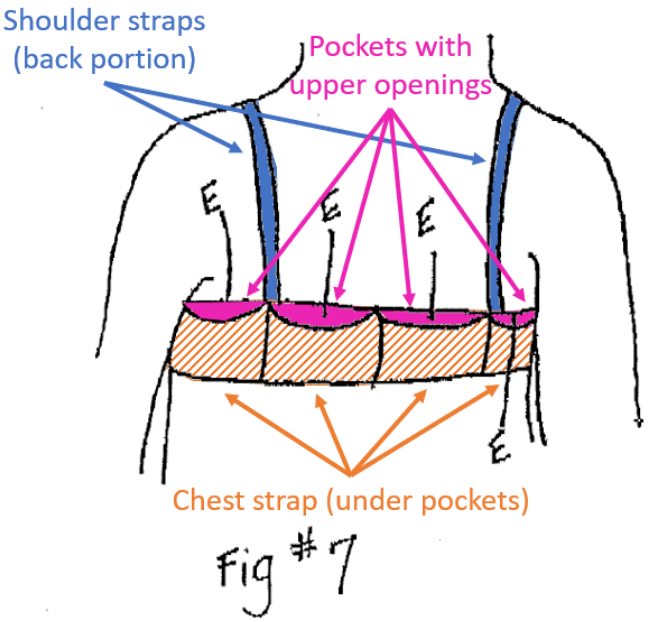
iv. Claim 5

a. ***"The pocket bra assembly of claim 1" limitation [Preamble]***

969. Rose discloses "[t]he pocket bra assembly of claim 1" for the reasons described above in claim 1.

b. ***"wherein the back portion of each of the shoulder straps join together to form a central area, the back pocket positioned on the central area." limitation [5A]***

970. Rose in combination with the knowledge of a POSA renders this limitation obvious. As illustrated below and discussed in limitations [1B] and [1G], Rose discloses a conventional bra assembly with chest and shoulder straps, and a series of pockets formed on the back of the chest strap:



NIKE-1030 at Fig. 7, at [0012] ("The brassiere may have two breast cups and a back band, the two breast cups and the back band being *assembled together in a conventional manner*."), at [0016] ("the brassiere set can be provided with shoulder straps that may be permanently or detachably connected to the brassiere by any known practical attachment means.").

971. As previously discussed, at the time of invention, it is my opinion a POSA would have been familiar with bras with shoulder straps configured to come together on the back of the user. NIKE-1028 at Fig. 4. In my opinion, a POSA would have understood this configuration of shoulder straps, known as a "racerback" configuration, to be popular in sports bras and bras with clasps in the front. A POSA would have also understood that bras of such configuration could be designed to include a back pocket. NIKE-1028 at Fig. 4. Thus, it is my opinion a POSA would have found it obvious to modify the invention of Rose to include straps that come together on the back.

972. A POSA would have been motivated to try Rose on bras with this configuration to meet the perceived desire by consumers to customize their bras and/or to have storage pockets in their bras. In my opinion, it would have been obvious to modify Rose to be a racerback, because some bra wearers prefer racerbacks.

973. Thus, it is my opinion that Rose renders obvious limitation [5A].

v. Claim 7

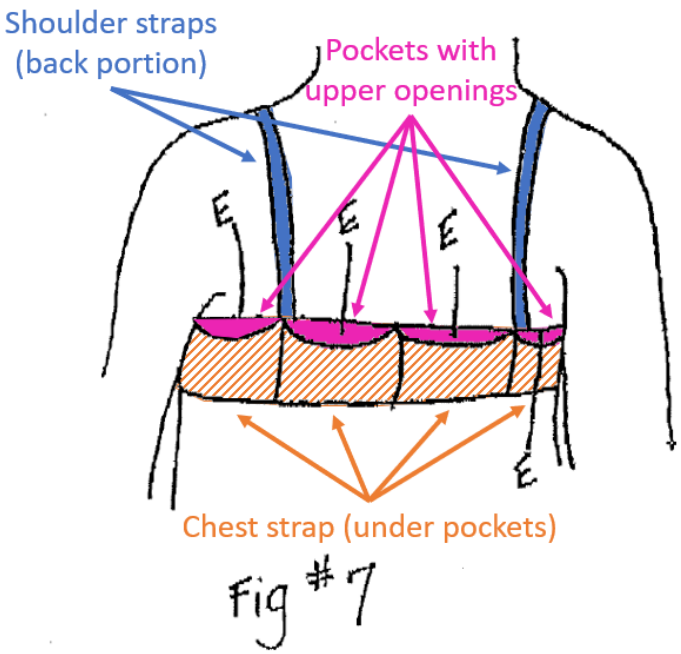
a. *"The pocket bra assembly of claim 1" limitation [Preamble]*

974. Rose discloses "[t]he pocket bra assembly of claim 1" for the reasons described above in claim 1.

b. *"wherein the back pocket is formed by a patch connected to the back portion of the at least one of the chest strap and shoulder straps by*

stitching about a part of a perimeter of the patch, a gap in the stitching leaving a portion of the perimeter of the patch unattached, thereby forming an opening providing access to the pocket interior formed by the patch." limitation [11A]

975. Rose discloses this limitation. As previously discussed in limitation [1G], Rose discloses a back pocket formed by a patch of material connected to the back portion of the chest strap of the bra assembly. NIKE-1030 at [0037] ("the bra is provided with clear latex pockets on … the back band of the brassiere.").



NIKE-1030 at Fig. 7.

976. Additionally, as already discussed in limitation [1H], Rose discloses a pocket having three closed sides and one open side on the top, allowing access to the pocket's interior. Further, it is my opinion a POSA would have understood stitching to be a common, convenient, and effective method of attaching two pieces of fabric

together, as has been done for centuries. It is my opinion it would have been obvious to a POSA that a pocket could be formed by sewing only three edges of the rectangular patch to create access to the interior. Thus, a POSA would have understood Rose to disclose this limitation.

977. To the extent Patent Owner argues Rose does not implicitly disclose this limitation, Rose in combination with the knowledge of a POSA renders this limitation obvious. In designing a bra with storage pockets, it is my opinion a POSA would have been motivated to look for known solutions in the art, such as methods of adhering the pockets to the bra. It is my opinion a POSA would have understood stitching to be a well-known method by which pieces of fabric are attached together for clothing. *See*, *e.g.*, NIKE-1020 at 2:1–4; NIKE-1022 at 3:52–53. It is my opinion it would have been obvious to a POSA to try attaching the pocket in Rose with stitching, and a POSA would have been motivated to do so because stitching is simple, effective, and inexpensive. Thus, it is my opinion a POSA would have found it obvious to modify Rose based on their own knowledge.

978. Thus, it is my opinion that Rose discloses or renders obvious limitation [7A].

vi. Claim 10

a. *"The pocket bra assembly of claim 7" limitation [Preamble]*

979. Rose discloses "[t]he pocket bra assembly of claim 7" for the reasons described above in claim 7.

b. *"wherein the opening is formed adjacent to a top of the patch." limitation [10A]*

980. Rose discloses this limitation. As illustrated below, Rose discloses pockets with openings at the top of each pocket-forming patch:

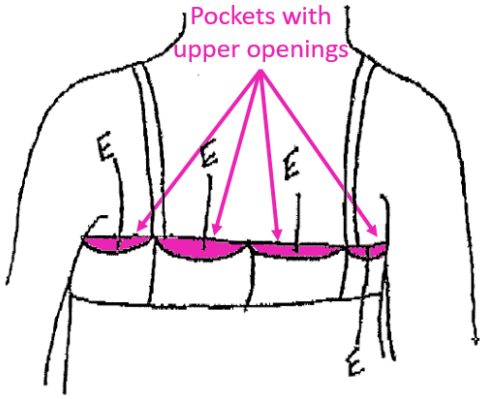


Fig #7

NIKE-1030 at Fig. 7, at [0037] ("The pockets have *slits E on the upper side* as shown in FIG. 6 and FIG. 7. Various inserts made of, but not limited to, plastic, fabric, can be inserted into the pockets through the *openings E*.").

981. Thus, it is my opinion that Rose discloses limitation [10A].

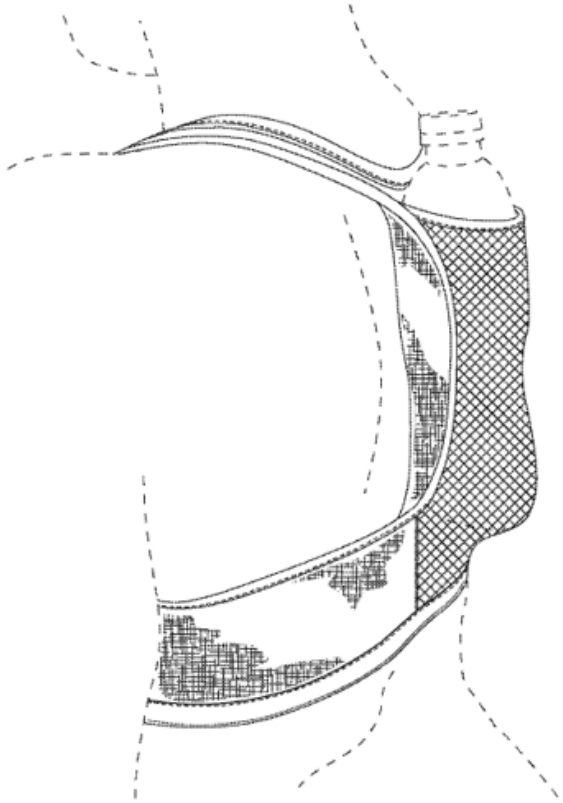
3. Ground 3: Claims 1, 2, 3, 5, 7, and 10 Are Unpatentable Over Glass

982. In my opinion, claims 1, 2, 3, 5, 7, and 10 are disclosed or rendered obvious by Glass.

i. Claim 1

a. ***"A pocket bra assembly comprising:" limitation [1A]***

983. Glass discloses this limitation. As illustrated below, Glass discloses a sports bra with a back pocket for storage of a water bottle:



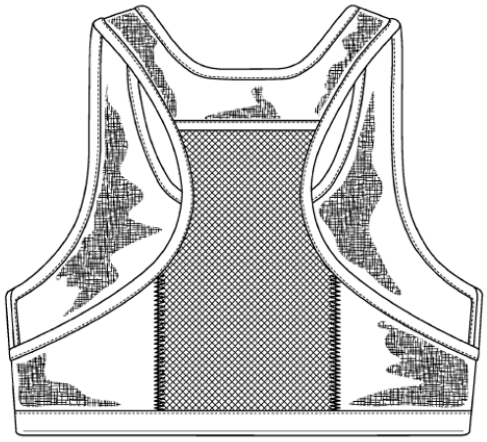


FIG. 2

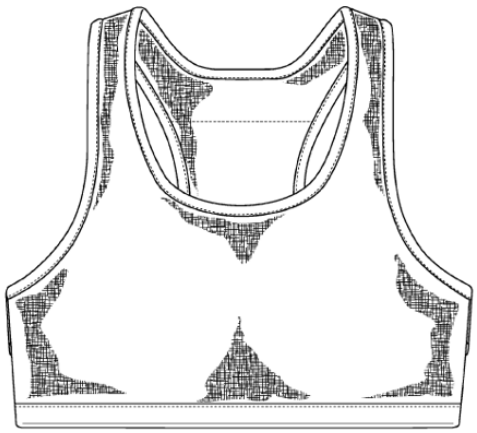


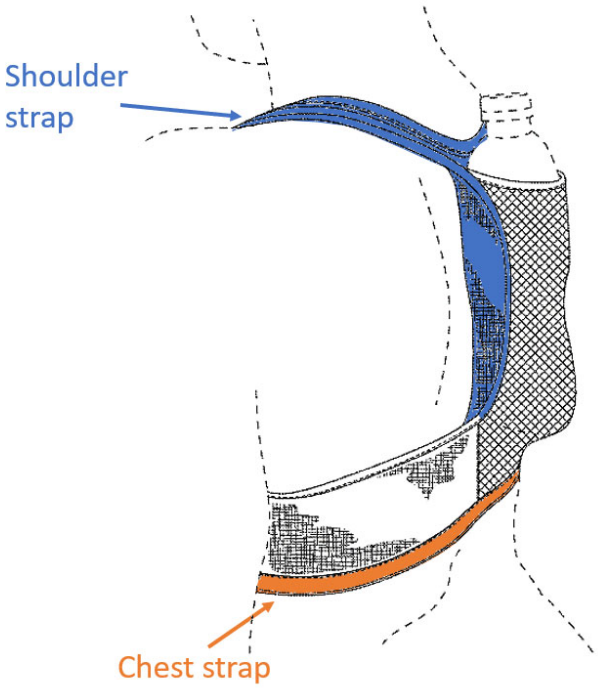
FIG. 3

NIKE-1029 at Figs. 1–3, at Title ("Sports Bra with Water Bottle Pocket on Back"), at Description ("FIG. 1 is a rear and left-side perspective view of the sports bra with water bottle pocket.").

984. Thus, it is my opinion that Glass discloses limitation [1A].

b. *"a strap assembly including a chest strap and shoulder straps," limitation [1B]*

985. Glass discloses this limitation. As illustrated below, Glass discloses a sports bra comprised of two shoulder straps and a chest strap:



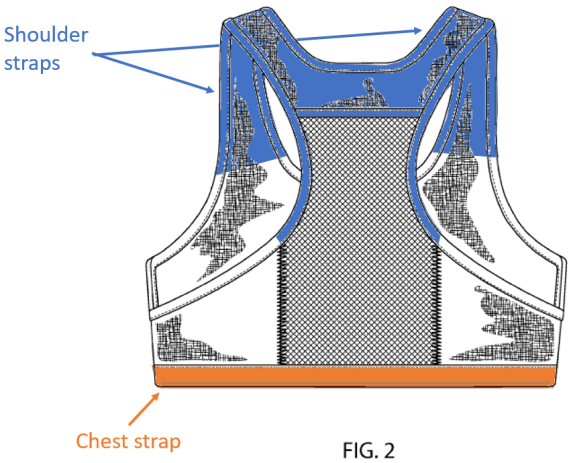


FIG. 2

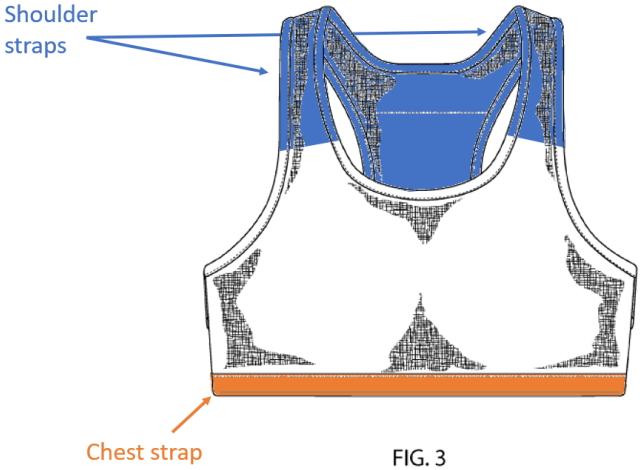


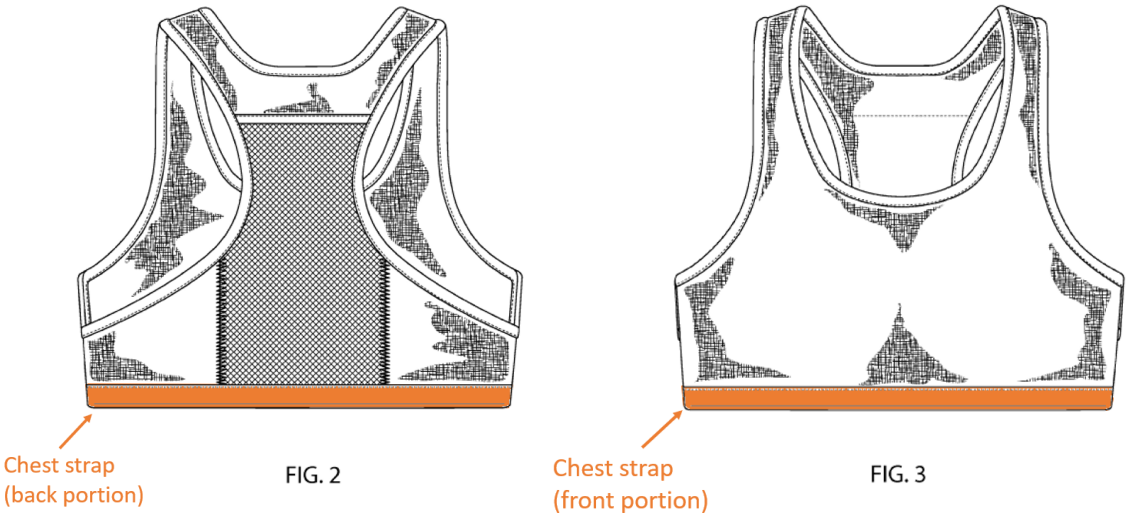
FIG. 3

NIKE-1029 at Figs. 1–3.

986. Thus, it is my opinion that Glass discloses limitation [1B].

c. ***"the chest strap having a front portion configured to be positioned on a front of a user, and a back portion configured to be positioned on a back of the user," limitation [1C]***

987. Glass discloses this limitation. As illustrated below, Glass discloses a sports bra with a chest strap having a front portion connected to the "bra portion" to be worn on the front of a user, and a back portion configured to be positioned on the back of a user:



NIKE-1029 at Figs. 2–3.

988. Thus, it is my opinion that Glass discloses limitation [1C].

d. ***"the shoulder straps each having a front portion configured to be positioned on the front of the user, and a back portion configured to be positioned on the back of the user;" limitation [1D]***

989. Glass discloses this limitation. As illustrated below, Glass discloses a sports bra with a chest strap having a front portion connected to the "bra portion" to be worn on the front of a user, and a back portion configured to be positioned on the back of a user:

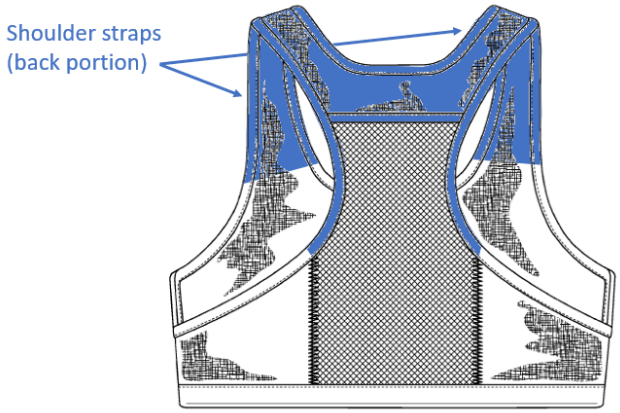


FIG. 2

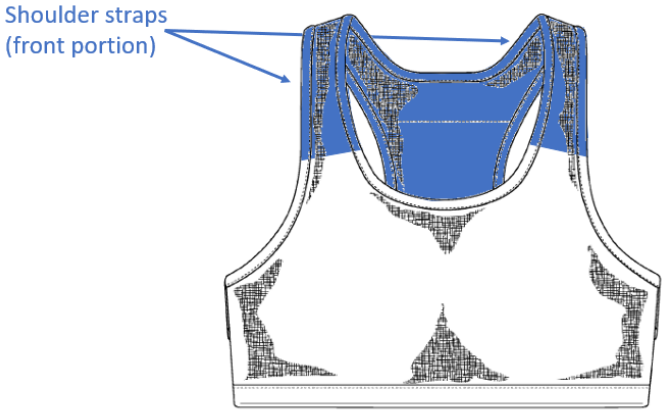


FIG. 3

NIKE-1029 at Figs. 2–3.

990. Thus, it is my opinion that Glass discloses limitation [1D].

e. ***"a bra portion, the bra portion configured to provide support and shape breasts of the user," limitation [1E]***

991. Glass discloses this limitation. As illustrated below, Glass discloses a sports bra with a "bra portion" configured for retaining the breasts of the wearer:

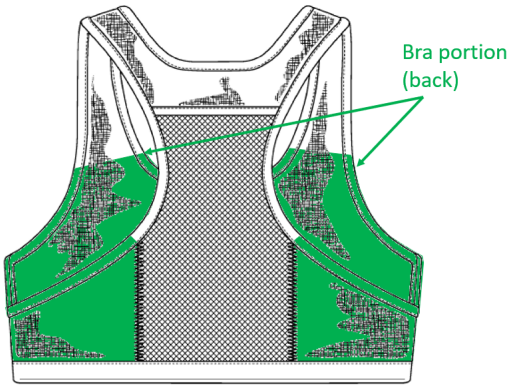


FIG. 2

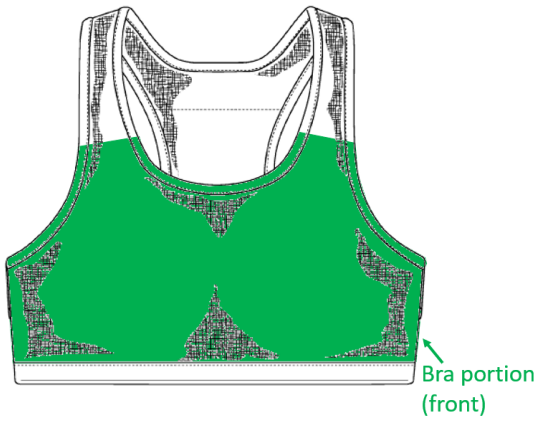
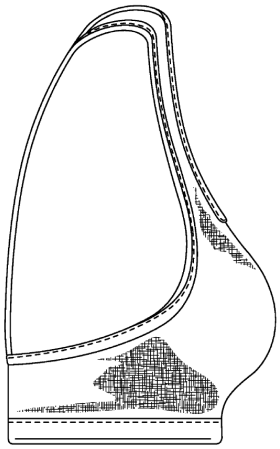


FIG. 3

NIKE-1029 at Figs. 2–3.

992. It is my opinion a POSA would have understood this "bra portion" to support and shape the breasts of the user, as illustrated by Figure 4:



NIKE-1029 at Fig. 4; *see also* NIKE-1019 at 1:36–39 (prior art POSA would have been aware of describing breast cups "supported in various ways for the performance of their function."), 1:31–33 (referring to the "smooth" outer appearance of the breast cup.).

993. Thus, it is my opinion that Glass discloses limitation [1E].

f. ***"the strap assembly being attached to the bra portion whereby the strap assembly holds the bra portion to the user, with the chest strap extending from a first side of the bra portion towards the user's back and extending from a second opposite side of the bra portion towards the user's back;" limitation [1F]***

994. Glass discloses this limitation. As discussed in limitations [1B] and [1E], Glass discloses a "bra portion" and a "strap assembly" comprised of a chest strap and two shoulder straps. As illustrated below, the strap assembly is attached to the breast cups, the chest strap extending from each side of the bra portion towards the back of the wearer:

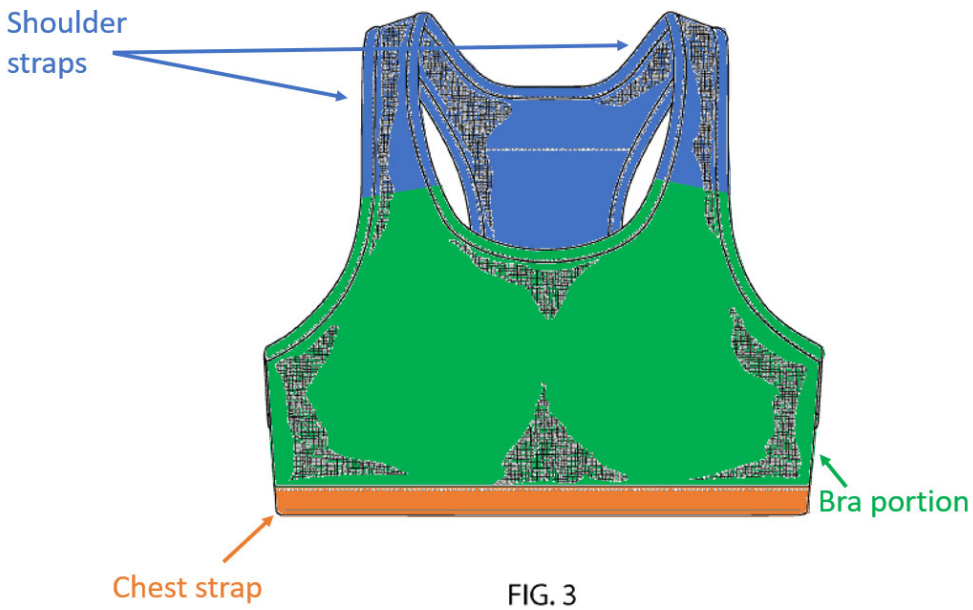
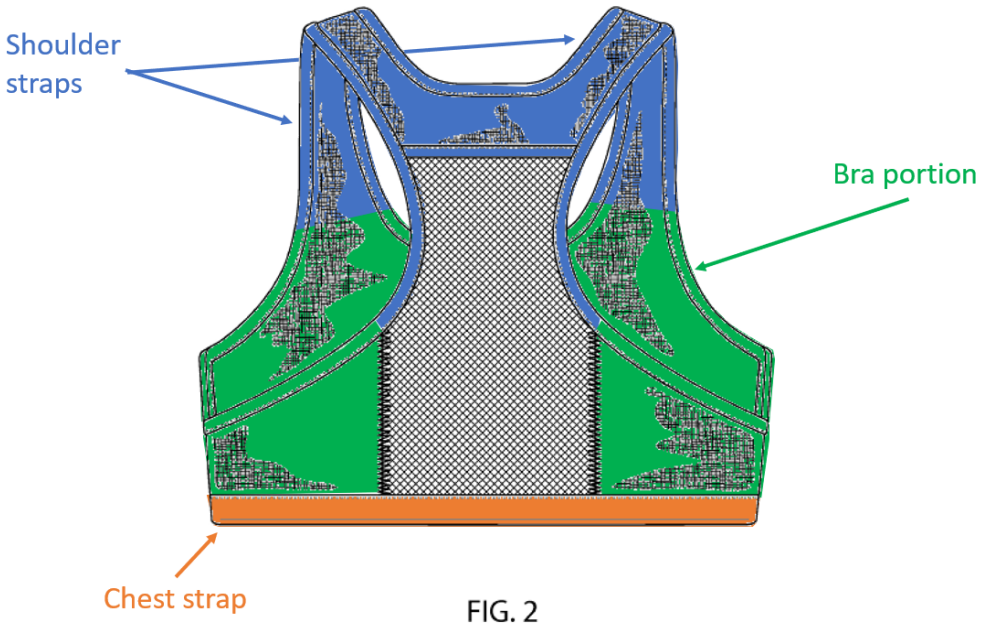
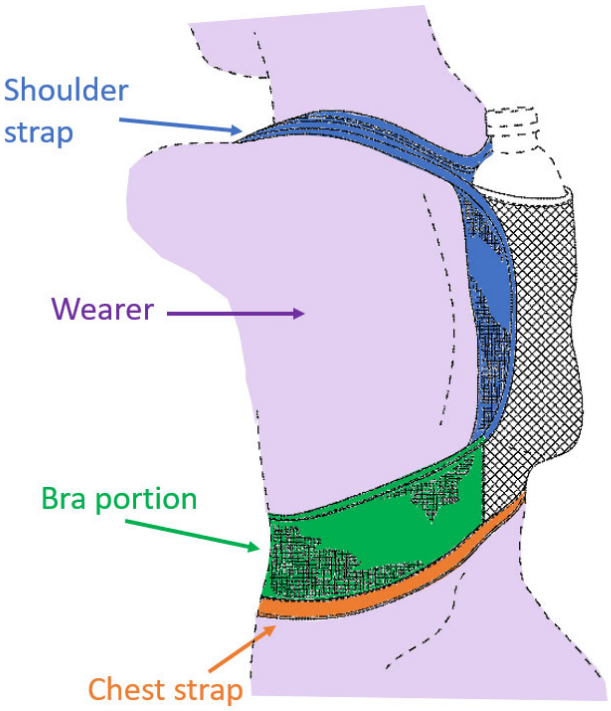


FIG. 3



NIKE-1029 at Figs. 2–3.

995. In my opinion, a POSA would understand the purpose of the strap assembly to be holding the "bra portion," to the wearer. Glass illustrates the claimed bra on the body of a wearer:

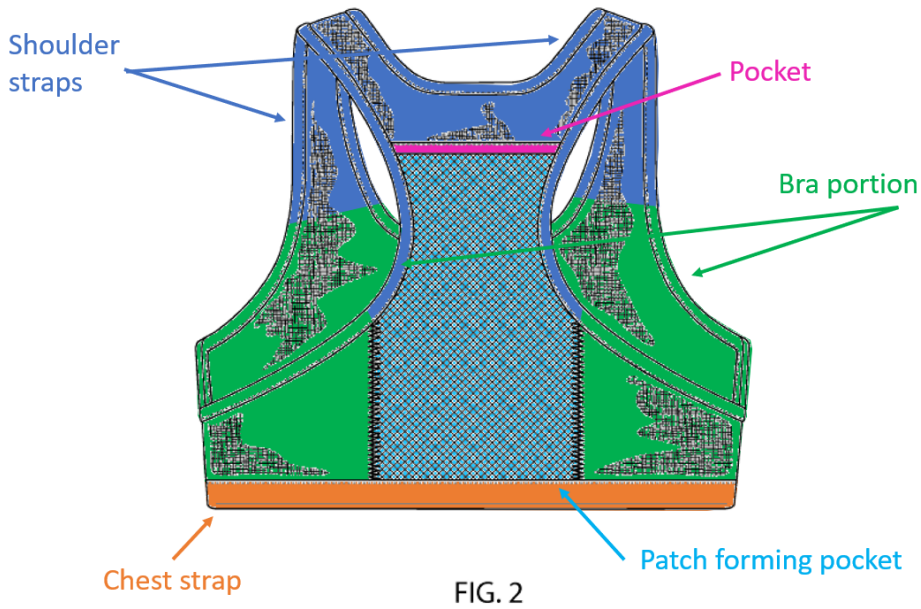


NIKE-1029 at Fig. 1, at Description ("The long-segmented broken lines showing a partial human figure . . . illustrate the environment in which the design is used.").

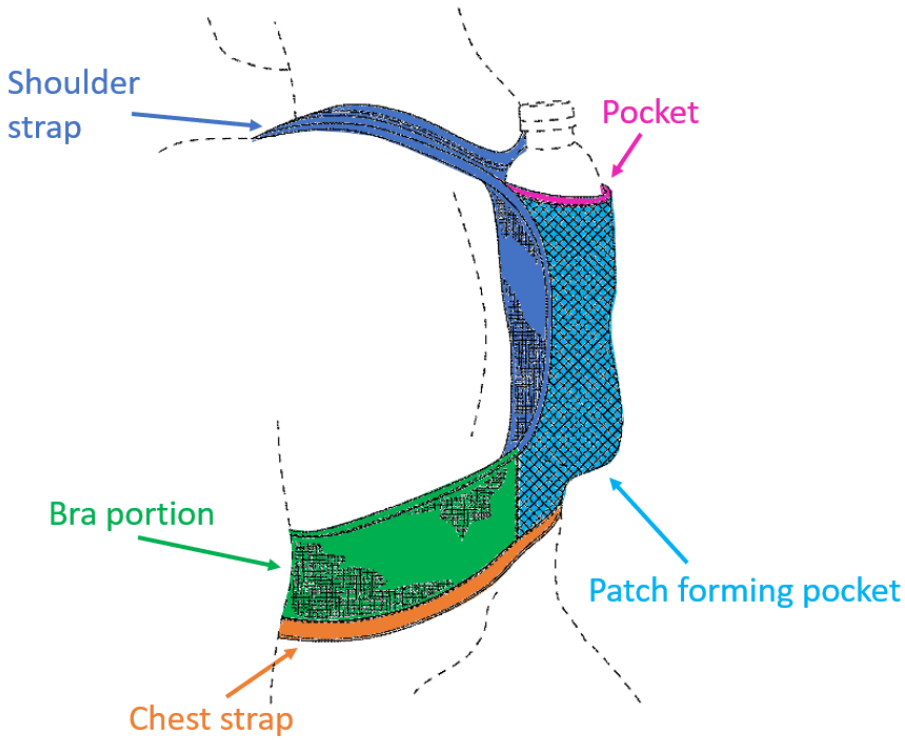
996. Thus, it is my opinion that Glass discloses limitation [1F].

g. ***"a back pocket formed entirely of stretchable fabric positioned on the back portion of at least one of the chest strap and shoulder straps," limitation [1G]***

997. Glass discloses this limitation. As illustrated below, Glass discloses a pocket on the back of the chest strap and the shoulder straps for holding a water bottle:



NIKE-1029 at Fig. 2. Further, Glass illustrates the pocket in both an open and closed configuration:



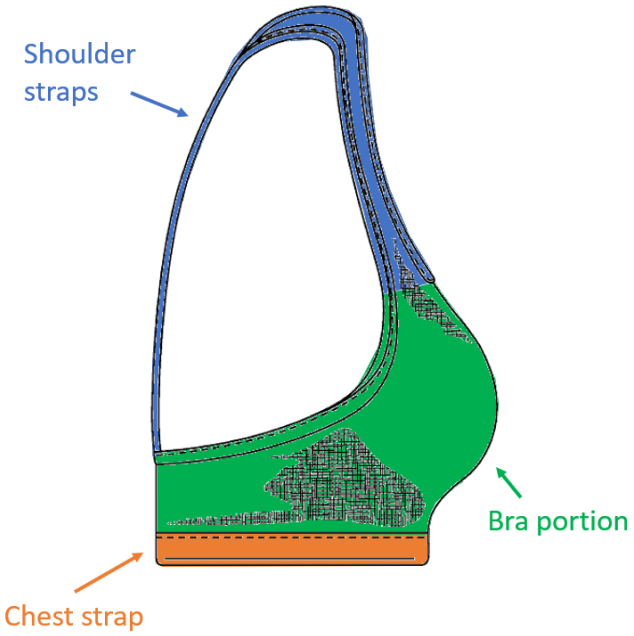


FIG. 4

NIKE-1029 at Figs. 1, 4 (Fig. 4 showing a side profile view of the claimed bra in a closed configuration).

998. As shown above, in the closed configuration, the pocket opening lies flat against the back surface of the bra. It is my opinion a POSA would have understood this to indicate the pocket is formed of "stretchable material" so the pocket opening can stretch to accommodate the storage of a water bottle.

999. To the extent Patent Owner argues this limitation is not expressly or implicitly disclosed by Glass, Glass in combination with the knowledge of a POSA renders this limitation obvious. In my opinion, a POSA would have understood the purpose of a pocket on a bra or other garment is to hold items, as Glass expressly discloses. NIKE-1029 at Title, at Fig. 1. A POSA would have understood that the shape of such objects may not easily conform to the shape of a rigid pocket. Thus,

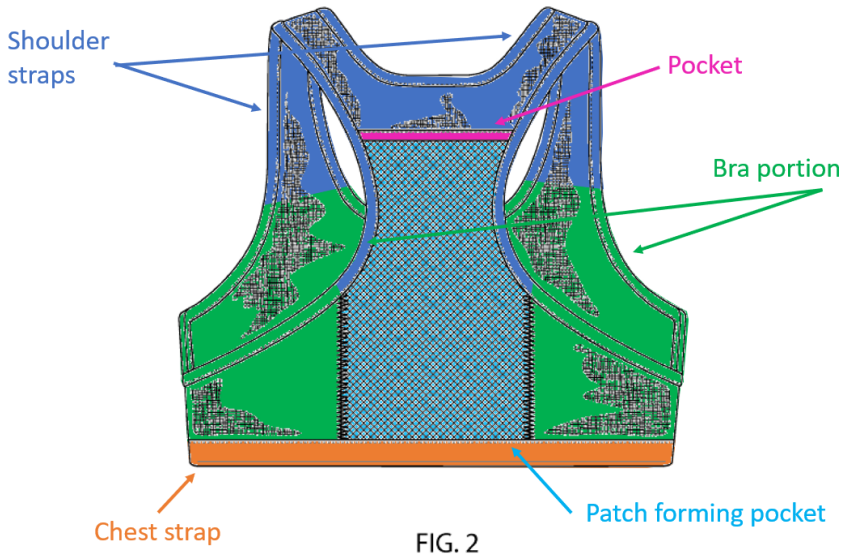
it is my opinion that a POSA would have found it obvious to manufacture the pocket patch with an elastic material, such that the pocket may stretch or expand to accommodate the placement of items for storage.

1000. Sports bras comprised of stretchable material were well-known and popular at the time of the alleged invention. *See e.g.*, NIKE-1022 at 3:5–14; *see also* NIKE-1039. It is my opinion a POSA would have understood that stretchable fabric could similarly be applied to the bra pocket disclosed in Glass. Thus, if not expressly disclosed, a POSA would have found it obvious to modify Glass based on their own knowledge to include "a back pocket formed entirely of stretchable fabric."

1001. Thus, it is my opinion that Glass discloses or renders obvious limitation [1G].

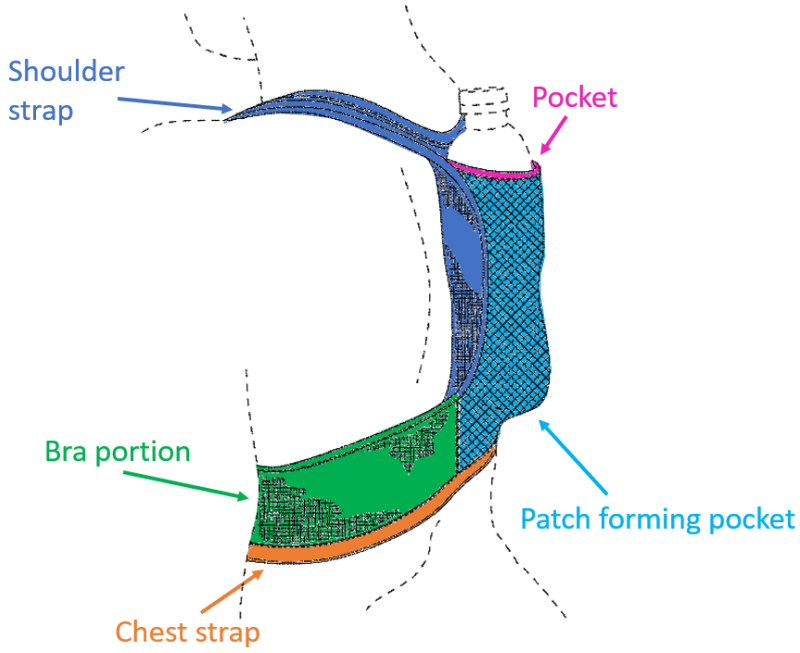
h. *"the back pocket having an opening formed that is biased in a closed position at rest, providing access to a pocket interior;" limitation [1H]*

1002. Glass discloses this limitation. As illustrated below, Glass discloses a back pocket providing access to a pocket interior for storage of a water bottle:



NIKE-1029 at Fig. 2.

1003. In my opinion, a POSA would have understood the purpose of a pocket to be providing access to the interior for storage of items. Further, Glass illustrates the pocket in both an open and closed configuration:



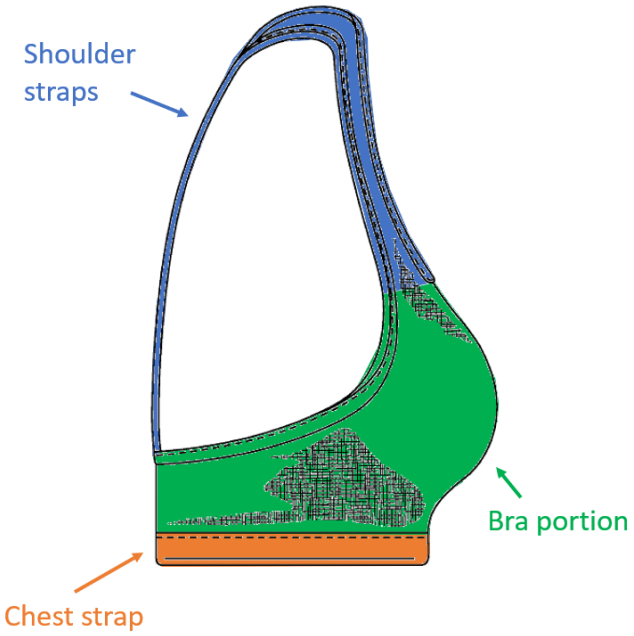


FIG. 4

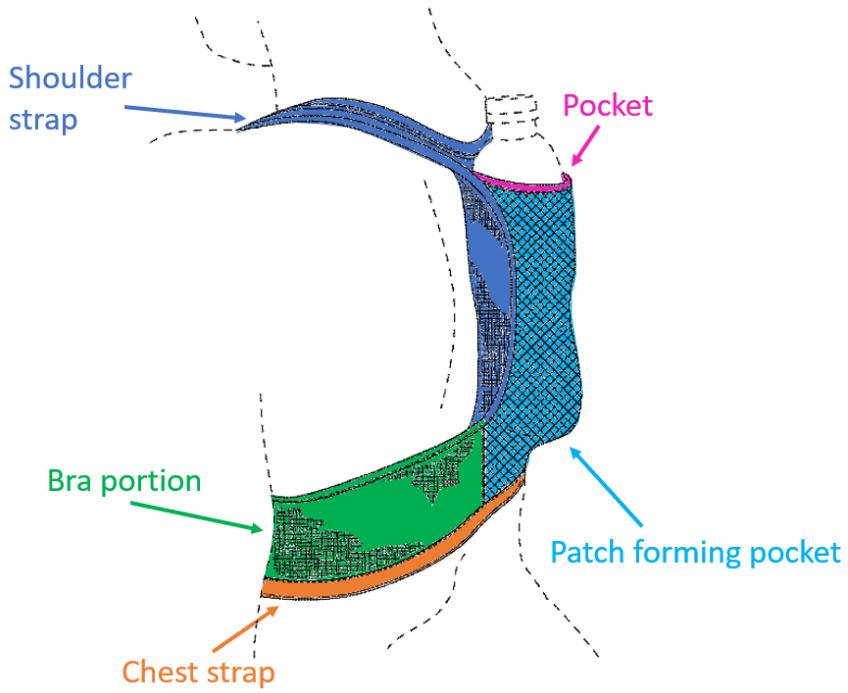
NIKE-1029 at Figs. 1, 4 (Fig. 4 showing a side profile view of the claimed bra in a closed configuration).

1004. As shown above, in the closed configuration, the pocket opening lies flat against the back surface of the bra. It is my opinion a POSA would have understood this to indicate the pocket is "biased in a closed position at rest" when it is not holding the intended water bottle.

1005. Thus, it is my opinion that Glass discloses limitation [1A].

i. *"and an item positioned within the back pocket." limitation [1I]*

1006. Glass discloses this limitation. As illustrated below, Glass discloses a water bottle positioned within the back pocket:



NIKE-1029 at Fig. 1, at Description ("The long-segmented broken lines showing . . . the top of a water bottle in FIG. 1.").

1007. It is my opinion a POSA would understand a water bottle to constitute an "item."

1008. Thus, it is my opinion that Glass discloses limitation [1I].

ii. Claim 2

a. *"The pocket bra assembly of claim 1" limitation [Preamble]*

1009. Glass discloses "[t]he pocket bra assembly of claim 1" for the reasons described above in claim 1.

b. *"wherein the bra is a sports bra." limitation [2A]*

1010. Glass discloses this limitation. Glass expressly discloses that it is a "sports bra." NIKE-1029 at Title ("Sports Bra with Water Bottle Pocket on Back"), Description ("sports bra with water bottle pocket"), Figs. 1–5.

1011. Thus, it is my opinion that Glass discloses limitation [2A].

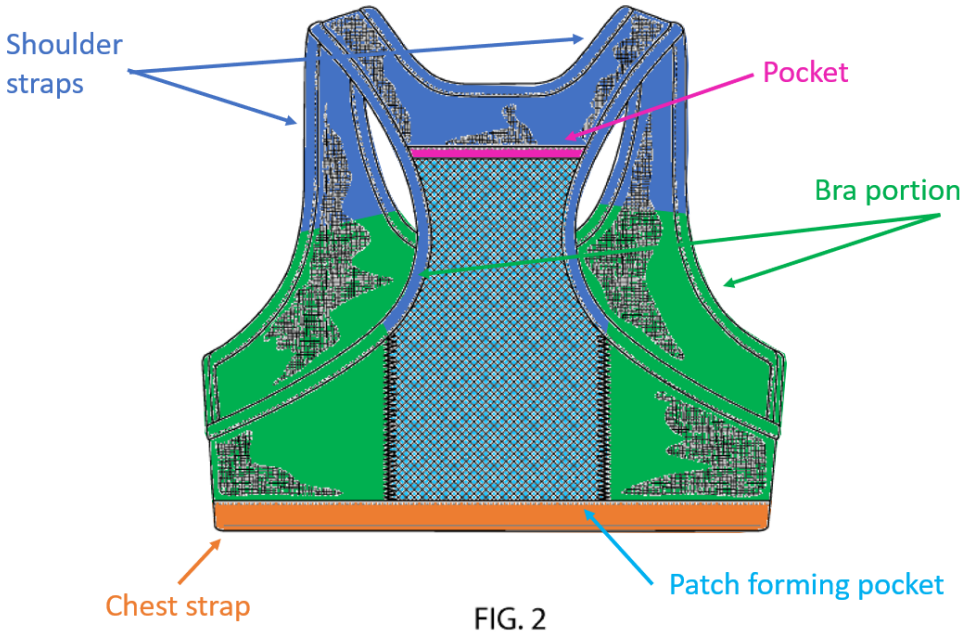
iii. Claim 3

a. *"The pocket bra assembly of claim 1" limitation [Preamble]*

1012. Glass discloses "[t]he pocket bra assembly of claim 1" for the reasons described above in claim 1.

b. *"wherein the back pocket is positioned on the back portion of the chest strap." limitation [3A]*

1013. Glass discloses this limitation. As discussed in limitation [1G], Glass discloses a pocket on the back of the chest strap for holding a water bottle:



NIKE-1029 at Fig. 2.

1014. Thus, it is my opinion that Glass discloses limitation [3A].

iv. Claim 5

a. *"The pocket bra assembly of claim 1" limitation [Preamble]*

1015. Glass discloses "[t]he pocket bra assembly of claim 1" for the reasons described above in claim 1.

b. *"wherein the back portion of each of the shoulder straps join together to form a central area, the back pocket positioned on the central area." limitation [5A]*

1016. Glass discloses this limitation. As illustrated below and discussed in limitations [1B] and [1G], Glass discloses a sports bra with strap assembly comprised of a chest strap and shoulder straps, and a pocket on the back of the strap assembly:

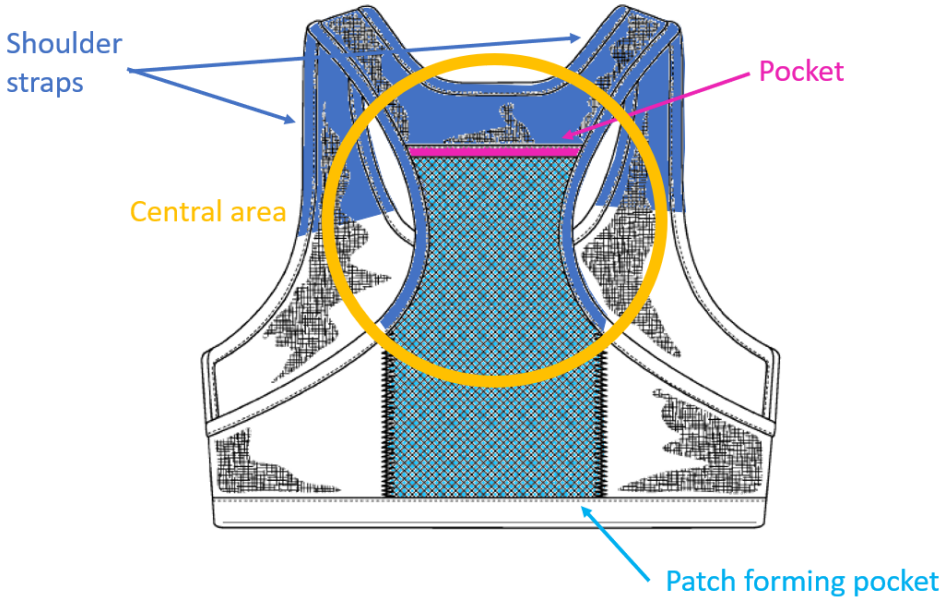


FIG. 2

NIKE-1029 at Fig. 2.

1017. As shown above, the back portion of the shoulder straps come together in a racerback configuration, forming a "central area" where the pocket and pocket opening are located.

1018. Thus, it is my opinion that Glass discloses limitation [5A].

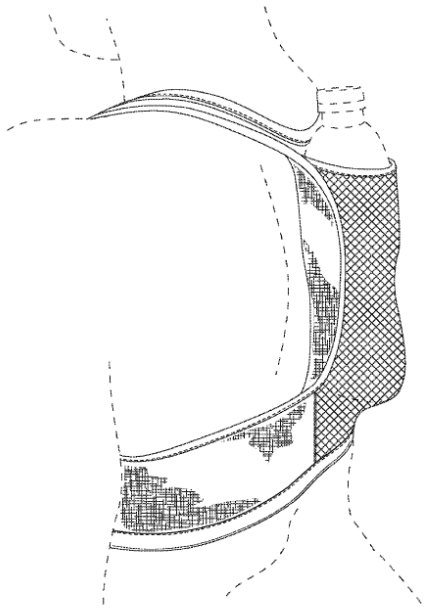
v. Claim 7

a. ***"The pocket bra assembly of claim 1" limitation [Preamble]***

1019. Glass discloses "[t]he pocket bra assembly of claim 1" for the reasons described above in claim 1.

b. ***"wherein the back pocket is formed by a patch connected to the back portion of the at least one of the chest strap and shoulder straps by stitching about a part of a perimeter of the patch, a gap in the stitching leaving a portion of the perimeter of the patch unattached, thereby forming an opening providing access to the pocket interior formed by the patch." limitation [11A]***

1020. Glass discloses this limitation. As illustrated below, Glass discloses the pocket formed by a patch of material connected to the back portion of the at least one of the chest strap and shoulder straps by stitching around the patch's perimeter, with a gap in the stitching leaving an upper opening with access to the pocket's interior:



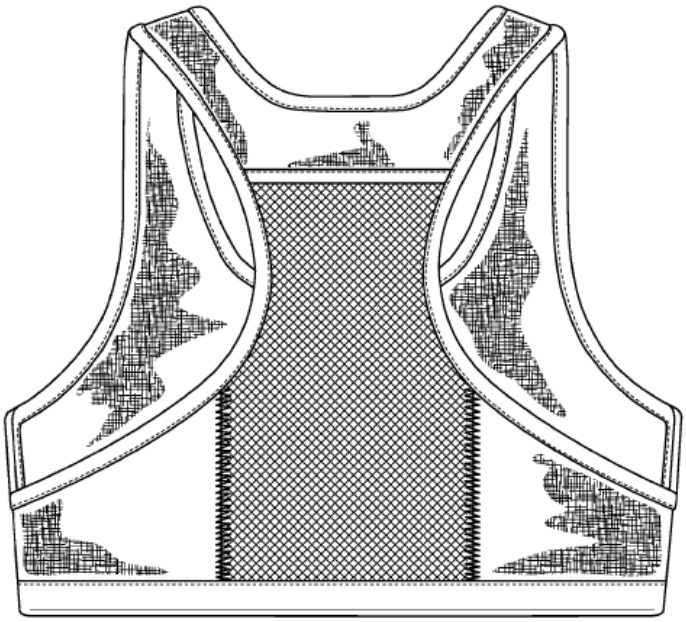


FIG. 2

NIKE-1029 at Figs. 1, 2; at Description ("The short-segmented broken lines represent stitching.").

1021. It is my opinion, a POSA would have understood the purpose of a pocket is to provide access to the interior for storage of items.

1022. Thus, it is my opinion that Glass discloses limitation [7A].

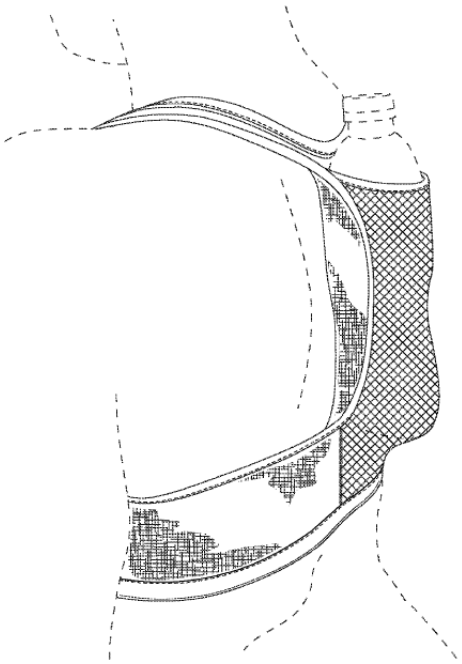
vi. Claim 10

a. *"The pocket bra assembly of claim 7" limitation [Preamble]*

1023. Glass discloses "[t]he pocket bra assembly of claim 7" for the reasons described above in claim 7.

b. *"wherein the opening is formed adjacent to a top of the patch." limitation [10A]*

1024. Glass discloses this limitation. As illustrated below, the pocket disclosed in Glass has an upper opening adjacent to the top of the patch:



NIKE-1029 at Fig. 1.

1025. Thus, it is my opinion that Glass discloses limitation [10A].

G. The ’551 Patent

1. Ground 1A as Claims 1–8, 12, 13, 15, 16, 17 and 18 Are Unpatentable Over Vidai; and Ground 1B as Claim 7 is Unpatentable Over Vidai in view of Spagna or Glass.

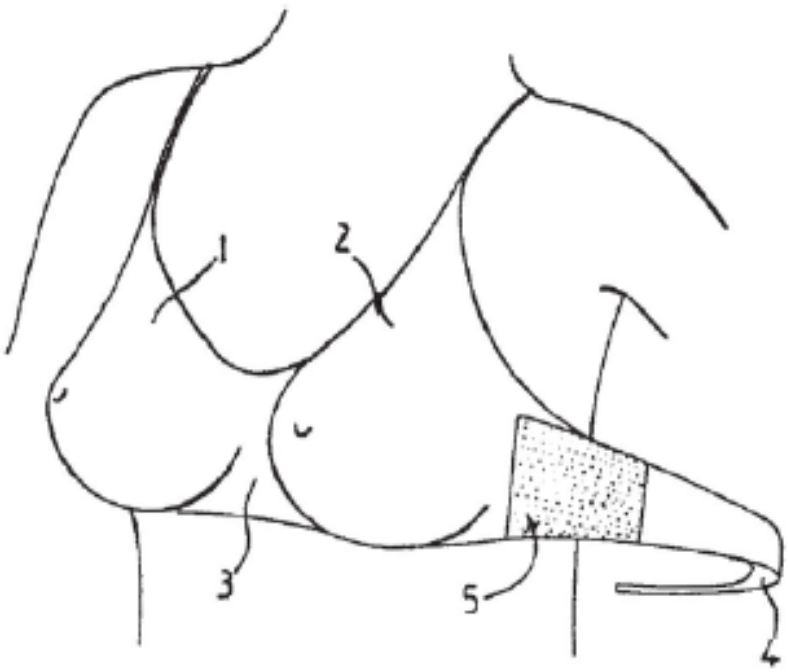
1026. The discussion below provides my detailed analysis of how the prior art references invalidate the challenged claims of the ’551 Patent.

1027. In my opinion, claims 1–8, 12, 13, 15, 16, 17 and 18 are unpatentable over Vidai, and claim 7 is unpatentable over Vidai in view of Spagna or Glass.

i. Claim 1

a. *“A pocketed bra assembly comprising:” limitation [1A]*

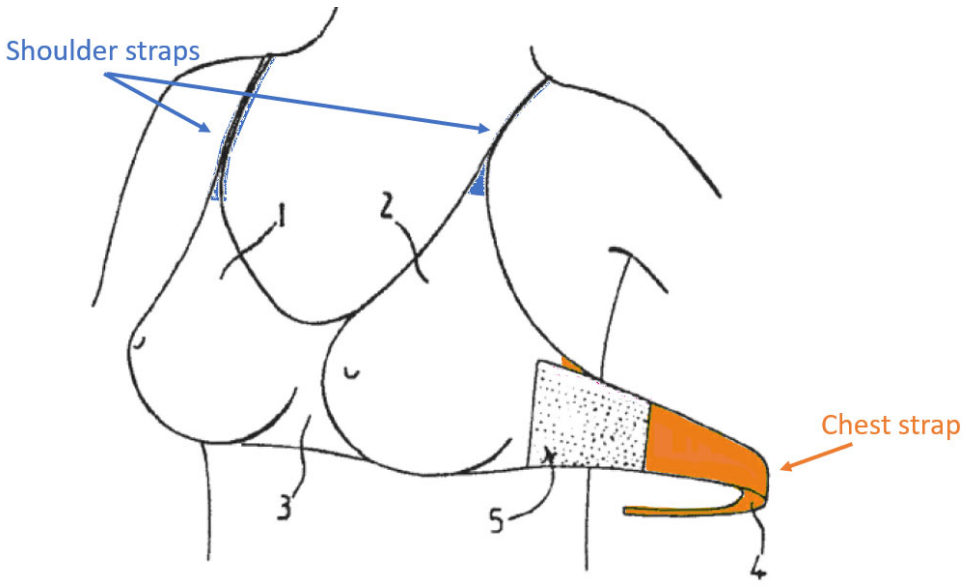
1028. To the extent the preamble is limiting, Vidai discloses this limitation. Vidai discloses a bra designed to “hide valuables,” having “at least one pocket placed on one of the side straps.” NIKE-1027 at Abstract.



Id. at Fig. 1.

b. ***"a strap assembly including a chest strap;" limitation [1B]***

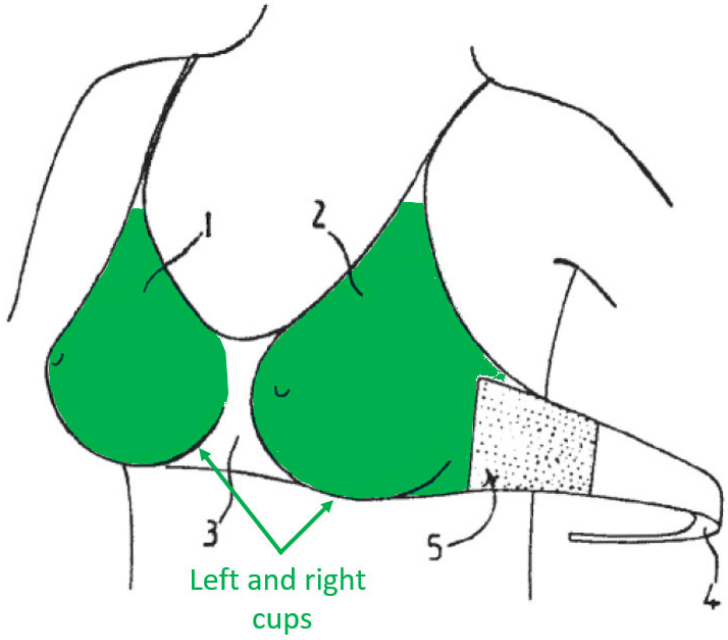
1029. Vidai discloses "[a] bra comprised of two cups, 1 and 2, connected together by a piece of fabric 3 of a varied same, and two side strips 4 that extend each cup laterally and that are provided at their ends with means allowing them to be hooked. It may also have straps," *i.e.*, "shoulder straps":



NIKE-1027 at Fig. 1, 2:28-32.

c. ***"a left cup and a right cup, each cup being an area to receive a breast of a wearer and having inside and outside surfaces," limitation [1C]***

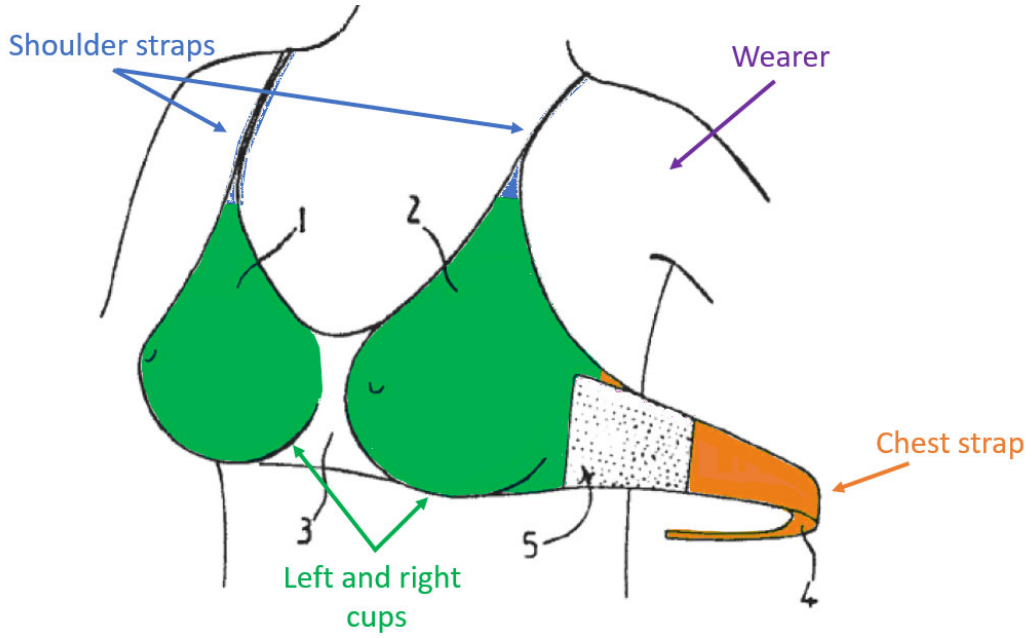
1030. Vidai discloses "[a] bra comprised of *two cups, 1 and 2*," each cup being an area to receive a breast of a wearer:



NIKE-1027 at Fig. 1, 2:28-32. In my opinion, a POSA would have understood these cups to necessarily have inside and outside surfaces.

d. ***"the strap assembly being attached to the cups whereby the strap assembly holds the cups to a wearer, with the chest strap extending from the left cup towards the wearer's back and extending from the right cup towards the wearer's back;" limitation [1D]***

1031. As explained above in limitations [1B] and [1C], Vidai discloses a "strap assembly" comprising a chest strap and shoulder straps that attaches to the "cups." Further, to the extent the "whereby" clause should be provided patentable weight, Vidai expressly discloses the strap assembly attached to the cups, adhering the cups to a wearer, and with the chest strap extending from the cups to the wearer's back:

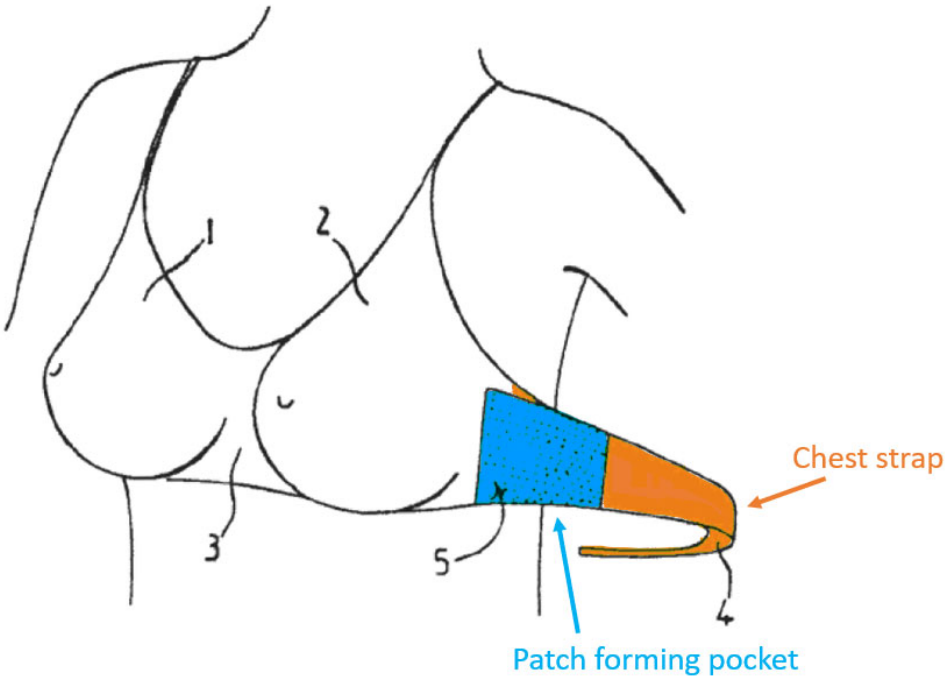


Id. at Fig. 1, 2:28-32 ("[a] bra comprised of two cups, 1 and 2, connected together by a piece of fabric 3 of a varied same, and two side strips 4 that extend each cup

laterally and that are provided at their ends with means allowing them to be hooked. It may also have straps.”).

e. *“a side patch on one of an inside or outside surface of the chest strap adjacent to at least one of the left cup and right cups,” limitation [1E]*

1032. Vidai discloses “*at least one pocket 5 that is arranged on a side strip 4. Optionally, each side strip 4 may include a pocket*”:

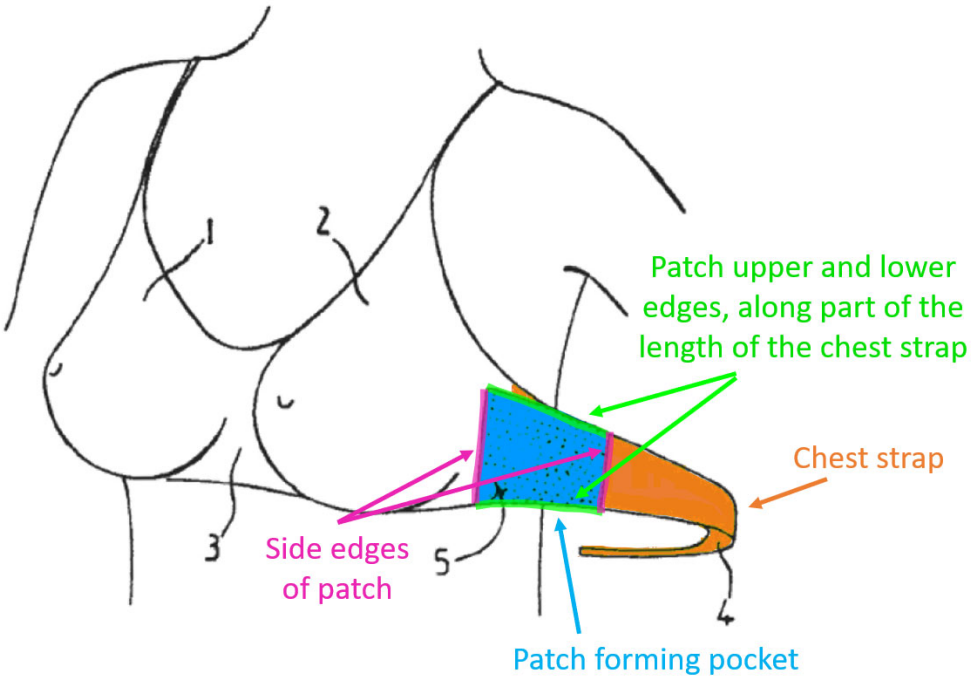


NIKE-1027 at Fig. 1, 2:37-39. The pockets can be made of “piece[s] of fabric” sewn to the chest strap, *id.* at 3:2-3, and are “advantageously arranged on the part of the side strip 4 that is located substantially under the corresponding arm of the user.” *Id.* at 2:40–42. In my opinion, a POSA would have understood the portion “located substantially under the corresponding arm of the user” to be “adjacent” to the right

or left cup of the bra assembly. Further, Vidai illustrates a pocket formed on the outside of the chest strap, as shown above.

f. ***"an upper edge of the side patch lying along the same edge line as at least a portion of a top edge of the chest strap," limitation [1F]***

1033. As illustrated below, the pocket is formed by a piece of fabric with upper and lower edges along the length of the strap, and side edges:



NIKE-1027 at Fig. 1. Vidai discloses a pocket formed "of the side strip and of a piece of fabric of which at least three edges are combined with the side strip by any suitable means, in particular by sewing." *Id.* 3:2-5 (numbers omitted). Thus, a POSA would understand each patch to have edges along the length of the chest strap.

g. ***"the side patch forming an opening such that the side patch forms a pocket," limitation [1G]***

1034. Vidai discloses the pocket formed "of the side strip and of a piece of fabric of which at least three edges are combined with the side strip by any suitable means, in particular by sewing." NIKE-1027 at 3:2-5 (numbers omitted). Further, Vidai discloses that the pocket "can be opened either laterally *or on its upper part*." *Id.* 3:14-15.

h. *"the opening capable of repeated receiving and removal of an item when being worn by the wearer;" limitation [1H]*

1035. Vidai discloses the use of the bra pocket for temporarily storing "valuable objects," such as "bank notes, credit cards, or jewelry" while traveling. NIKE-1027 at 1:2-7. Moreover, in my opinion, a POSA would have understood that such a pocket is necessarily designed for temporarily holding items. Thus, in my opinion, a POSA would have understood that Vidai's pockets—expressly designed to hold "valuables"—necessarily had openings "capable of repeated receiving and removal of an item" when worn.

i. *"and an item removably positioned in the pocket." limitation [1I]*

1036. As described above in limitations [1E] and [1H], Vidai discloses "a device for hiding valuable objects consisting of at least one pocket." NIKE-1027 at 2:5-8. Vidai also discloses that its pocket is for storing "valuable objects," such as "bank notes, credit cards, or jewelry," that would normally be stored in a woman's handbag while traveling. NIKE-1027 at 1:2-7.

1037. To the extent this limitation is not expressly or inherently disclosed, Vidai renders it obvious. In my opinion, POSA would have understood that the presence of a pocket necessarily implies the use of the pocket for temporarily holding items. Thus, it would have been obvious to a POSA to place an item in Vidai's pockets, which are expressly designed to hold "valuables."

ii. Claim 2

a. *"The pocketed bra assembly of claim 1" limitation [Preamble]*

1038. In my opinion, Vidai discloses "[t]he pocketed bra assembly of claim 1" for the reasons described above in claim 1.

b. *"wherein the side patch comprises upper and lower edges along at least part of a length of the chest strap, and side edges." limitation [2A]*

1039. In my opinion, Vidai discloses this limitation for the reasons described above for limitation [1F].

iii. Claim 3

a. *"The pocketed bra assembly of claim 2" limitation [Preamble]*

1040. In my opinion, Vidai discloses "[t]he pocketed bra assembly of claim 2" for the reasons described above in claim 2.

b. *"further comprising stitching along the lower and side edges of the side patch." limitation [3A]*

1041. Vidai discloses a pocket formed "of the side strip and of a piece of fabric of which at least three edges are combined with the side strip by any suitable means, *in particular by sewing*." NIKE-1027 3:2-5 (numbers omitted). Further,

Vidai discloses that the pocket "can be opened either laterally or on its upper part." *Id.* 3:14-15. Finally, Vidai states "[t]he shape of this pocket is preferably rectangular." *Id.* 3:19. In my opinion, a POSA would have understood a rectangular pocket with an upper opening to be sewn along its lower and side edges.

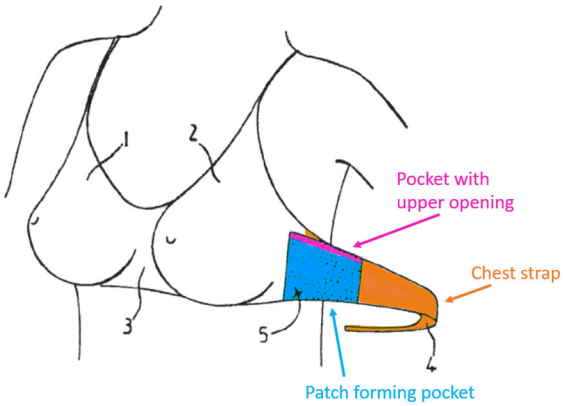
iv. Claim 4

a. *"The pocketed bra assembly of claim 3" limitation [Preamble]*

1042. In my opinion, Vidai discloses "[t]he pocketed bra assembly of claim 3" for the reasons described above in claim 3.

b. *"wherein the stitching forms an upper opening to the pocket between the upper edge of the side patch and the top edge of the chest strap." limitation [4A]*

1043. As described above in claims 1–3, Vidai discloses a pocket with an upper opening formed by stitching between the upper edge of the side patch and the top edge of the chest strap:



NIKE-1027 Fig. 1, 3:2-5 ("pocket …. of the side strip and of a piece of fabric of which at least three edges are combined with the side strip by any suitable means, in

particular by sewing."), 3:14-15 ("pocket … can be opened either laterally or on its upper part."), ("[t]he shape of this pocket is preferably rectangular."). *Id.* 3:19.

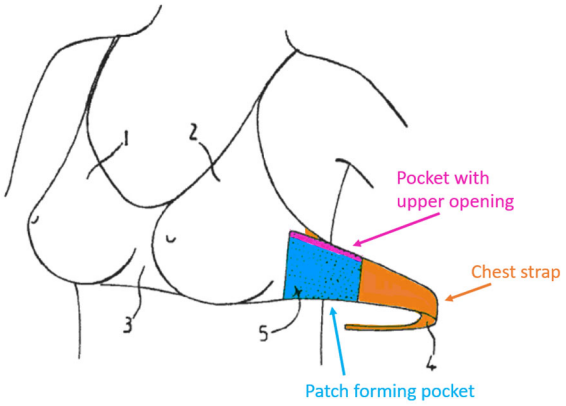
v. Claim 5

a. *"The pocketed bra assembly of claim 1" limitation [Preamble]*

1044. In my opinion, Vidai discloses "[t]he pocketed bra assembly of claim 1" for the reasons described above claim 1.

b. *"wherein the opening is an upper opening." limitation [5A]*

1045. As described above in claim 4, Vidai discloses a pocket with an upper opening:



NIKE-1027 Fig. 1, 3:2-5, 3:14-15 ("pocket … can be opened either laterally or on its upper part."), *Id.* 3:19.

vi. Claim 6

a. *"The pocketed bra assembly of claim 1" limitation [Preamble]*

1046. Vidai discloses "[t]he pocketed bra assembly of claim 1" for the reasons described above in claim 1.

b. *"wherein the item removably positioned within the pocket is a handheld electronic device." limitation [6A]*

1047. As described above in limitations [1E] and [1H], Vidai discloses "a device for hiding valuable objects consisting of at least one pocket." NIKE-1027 at 2:5-8. Vidai also discloses that its pocket is for storing "valuable objects," such as "bank notes, credit cards, or jewelry," that would normally be stored in a woman's handbag while traveling. NIKE-1027 at 1:2-7. Vidai further describes the use of the storage pocket to prevent theft of items that would normally be stored in a woman's handbag. *See id.* at 1:3-7. In my opinion, a POSA reading Vidai in 2013 would have understood "valuable objects" to include a wearer's personal belongings, including a handheld electronic device, such as a cell phone at the time of the '551's alleged invention. In my opinion, a POSA would further understand a wearer's desire to prevent theft of any valuable object, including a personal, handheld electronic device.

1048. To the extent this limitation is not expressly or inherently disclosed, Vidai renders it obvious. In my opinion, POSA would have understood that the presence of a pocket necessarily implies the use of the pocket for temporarily holding items, such as a handheld electronic device. A POSA would also know that the use of handheld electronic devices was pervasive at the time of the alleged invention (2013 at the earliest) and would know that a user would use the pockets to hold handheld electronic devices. *See* NIKE-1022 at 1:23–24 ("Cell phones, personal

listening devices, and other mobile electronic devices have become popular in recent years."). Thus, in my opinion, it would have been obvious to a POSA that Vidai's pockets—expressly designed to hold "valuables"—could hold a "handheld electronic device."

vii. Claim 7

a. *"The pocketed bra assembly of claim 1" limitation [Preamble]*

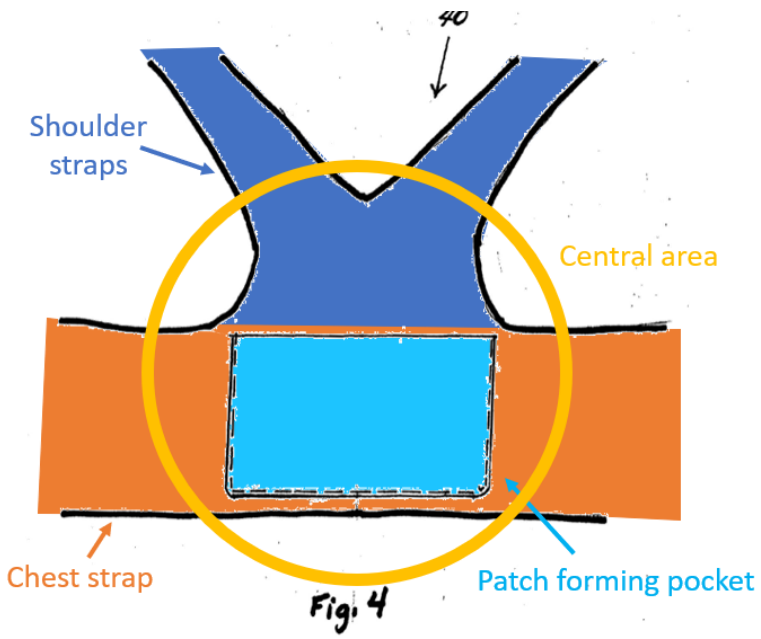
1049. In my opinion, Vidai discloses "[t]he pocketed bra assembly of claim 1" for the reasons described above in limitation [1A].

b. *"wherein the strap assembly further comprises two shoulder straps," limitation [7A]*

1050. In my opinion, Vidai discloses this limitation for the reasons described above for limitation [1B].

c. *"and a central area at a back of the strap assembly opposite to the left and right cups, the two shoulder straps and chest strap joining together at the central area," limitation [7B]*

1051. Vidai in combination with either Spagna or Glass renders this limitation obvious. Vidai discloses a strap assembly comprising a chest strap and two shoulder straps, as described above in limitation [1B]. Spagna discloses a "central area" formed where the back portion of the shoulder straps join together:



NIKE-1028 at Fig. 4, [0009] (pocket "located at the center back of the women's brassiere."), [0020]. Glass likewise discloses a "central area" on the back with a pocket:

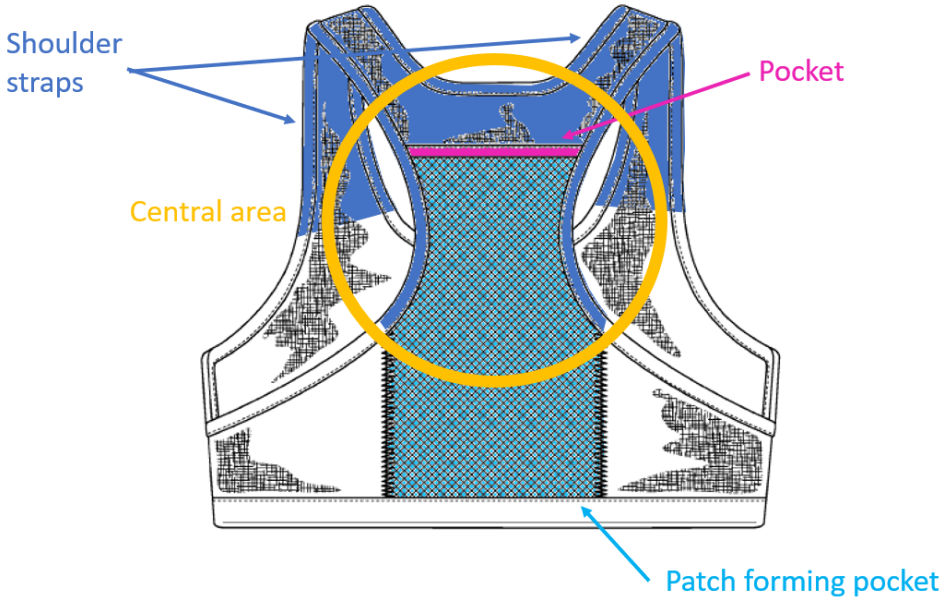


FIG. 2

NIKE-1029 at Fig. 2.

1052. In my opinion, a POSA would have found it obvious to modify the invention of Vidai to include straps that come together on the back, as taught by Spagna or Glass. A POSA would have understood this configuration of shoulder straps, sometimes known as a "racerback" configuration, to be popular in sports bras. In designing a bra with pockets, in my opinion, a POSA would have been motivated to look to the prior art references disclosing bras with pockets—including Vidai, Spagna, and Glass specifically—and select preferable elements from each disclosure to construct their desired pocketed bra. One advantage of Vidai's bra is that it has pockets on the side of the bra that are easily accessible to the wearer. NIKE-1027 at Fig. 1, 2:9–11. At the same time, Spagna and Glass's bras have an additional pocket on the back and appeal to customers interested in sports bras. NIKE-1029 at Title ("Sports Bra with Water Bottle Pocket on Back"), Description ("sports bra with water bottle pocket"), Figs. 1–5; NIKE-1028 at Abstract, [0006], [0010]. As a result, in my opinion, a POSA would have been motivated to design a bra that took advantage of the benefits provided by each of Vidai's and either Spagna or Glass's bras.

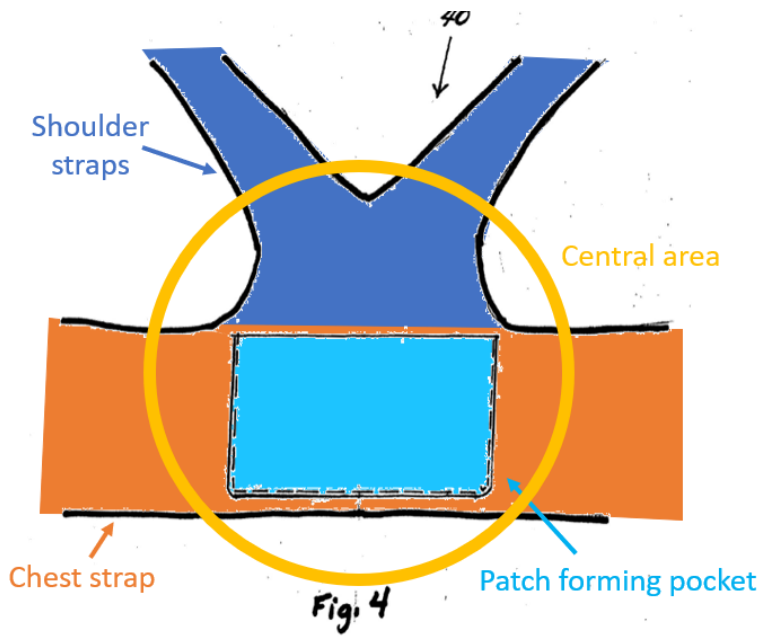
1053. Additionally, in my opinion, a POSA would have understood that bras are meant to serve a diverse population with differing preferences, and that it would

be commercially beneficial to provide consumers with a variety of options to meet those different preferences. The prior art expressly contemplates the bra's aesthetics. NIKE-1021 at [0005]. Further, bras are meant to serve a variety of different functions—providing different levels of support and types of shaping to the breasts. In my opinion, a POSA therefore would have been motivated to design a variety of combinations of bras, including those with the claimed features, so as to be able to provide options to a wide range of customers.

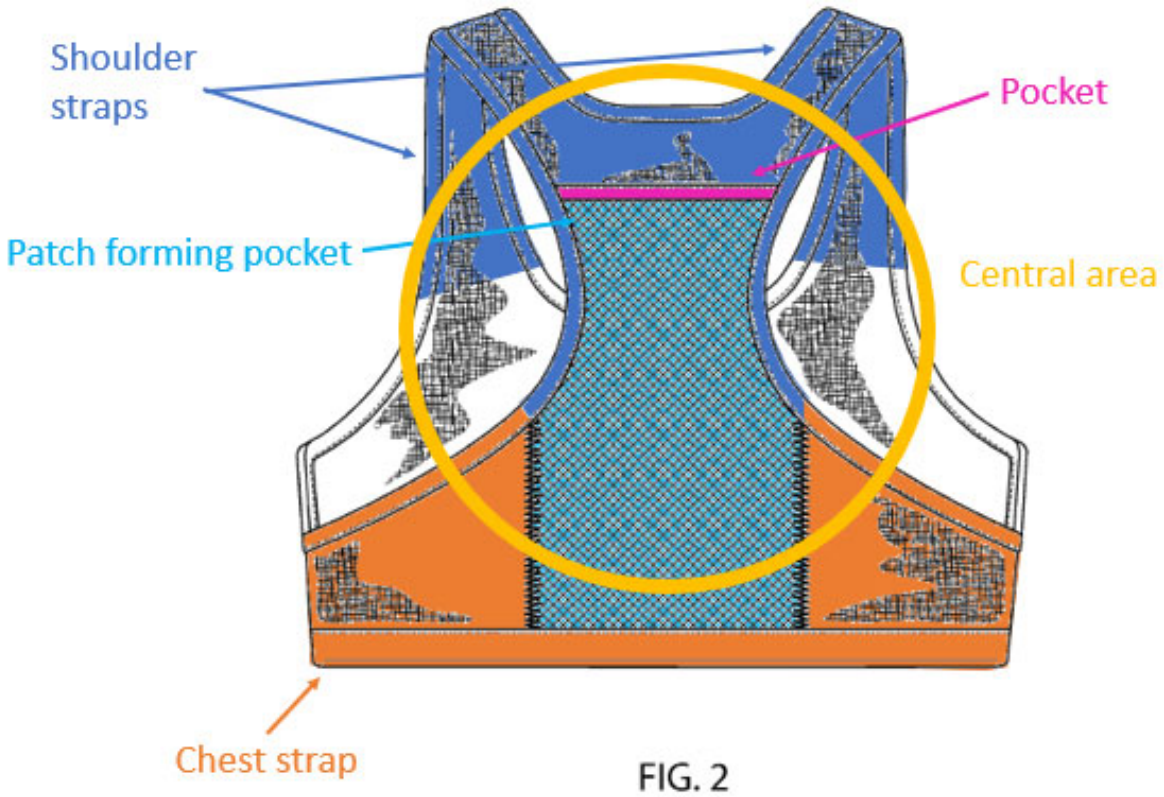
1054. In my opinion, a POSA would have expected to have a high likelihood of success with this combination. Vidai, Spagna, and Glass are all bras with pockets for storing valuables. *See* NIKE-1027 at Fig., 1:1–3, 2:1–11; 2:33–39; NIKE-1028 at Abstract, [0002], [0009]; NIKE-1029 at Fig. 1, Description. And each of the elements—*e.g.*, straps and pockets—would perform the same predictable function disclosed in the prior art. Any work needed to combine the elements taught by Vidai, Spagna, and Glass would therefore be nothing more than routine modifications well within the abilities of a POSA.

d. *"and further comprising a back pocket on the central area." limitation [7C]*

1055. As described above, Spagna discloses a "central area" formed where the back portion of the shoulder straps join together, with a pocket "located at the center back of the women's brassiere":



NIKE-1028 at Fig. 4, [0009], [0020]. Glass likewise discloses a "central area" on the back with a pocket:



NIKE-1029 at Fig. 2. And as described above, in my opinion, a POSA would have been motivated to modify Vidai to include the central area and back pocket taught by Spagna and Glass and would have had a high expectation of success in making the modification.

viii. Claim 8

a. *"The pocketed bra assembly of claim 1" limitation [Preamble]*

1056. In my opinion, Vidai discloses "[t]he pocketed bra assembly of claim 1" for the reasons described above in claim 1.

b. *"wherein the side pocket further comprises a closure." limitation [8A]*

1057. Vidai discloses a closure for the pocket "done either by the natural tension created by the attachment of the side strips, or by any other means, such as a zipper or adhesive strips, for example." NIKE-1027 at 3:15–18, 2:12-13.

ix. Claim 12

a. *"The pocketed bra assembly of claim 1" limitation [Preamble]*

1058. In my opinion, Vidai discloses "[t]he pocketed bra assembly of claim 1" for the reasons described above in claim 1.

b. *"wherein each side pocket extends onto the adjacent cup, such that each pocket spans both a part of the chest strap and a part of the adjacent cup." limitation [12A]*

1059. I understand that in the MA Litigation, Patent Owner took the position that this limitation was met by the following bras:

See NIKE-1044 at 7 (left); NIKE-1045 at 7 (right).

1060. Though I understand Petitioner does not agree that the products above meet this limitation, to the extent Patent Owner contends they do, so too does Vidai:

NIKE-1027 at Fig. 1. Alternatively, should Patent Owner contend that this limitation requires greater extension onto the cups (and therefore the products accused in the MA Litigation do not meet this limitation), Vidai renders this limitation obvious. Both bras and pockets have been long known in the art and in designing a bra with storage pockets, and in my opinion, a POSA would have been motivated to look for known solutions in the art, such as the variety of bra designs

and pocket placements. Moreover, a POSA would have known that different pocket shapes, sizes, and placements have known benefits and drawbacks. Given this knowledge, in my opinion, it would have been obvious to a POSA in light of Vidai to slightly extend the length of the pocket onto the bra cup to increase the amount of storage in the pocket. Additionally, a POSA would have found it obvious to extend the pocket towards the front of the bra onto the cups, rather than backwards towards the wearer's back, for ease of access to the pocket. Such a design would increase comfort for the wearer because extension of the pocket onto the cup, as opposed to the wearer's back, enables the wearer to access the pocket without uncomfortably twisting the wearer's body. As discussed in "The art of pocket design: How to create unique and stylish pockets," NIKE-1052, a POSA would have known that "[c]lassically, pockets are thought out in relation to the body and the placement of the arms. The goal was to have access to the inside of the pocket, without having to twist." *Id.* at 3.

1061. Though Vidai acknowledges that placement of pockets on the "external wall of one of the cups" is "not very aesthetic because it inevitably leads to the asymmetry of the cups," NIKE-1027 at 1:29-31, the extension of side pockets onto the side of the breast cup does not implicate the same concerns. In my opinion, a POSA would have known that designing a storage pocket extending onto the adjacent cup would not lead to asymmetry, as storage would occur on the periphery

of the breast cup, and not on the outermost surface of the breast where storage of items may disrupt the breast's natural curvature. Moreover, Vidai discloses pockets on both sides of the bra, thus mitigating the asymmetry concern of having a pocket on only "one of the cups."

x. Claim 13

a. *"The pocketed bra assembly of claim 1" limitation [Preamble]*

1062. In my opinion, Vidai discloses "[t]he pocketed bra assembly of claim 1" for the reasons described above in claim 1.

b. *"further comprising a second patch positioned on the chest strap, the second patch forming an opening such that the second side patch forms a pocket." limitation [13A]*

1063. As described above for limitation [1E], Vidai discloses a second patch on the chest strap forming an opening such that the second side patch forms a pocket.

xi. Claim 15

a. *"The pocketed bra assembly of claim 1" limitation [Preamble]*

1064. In my opinion, Vidai discloses "[t]he pocketed bra assembly of claim 1" for the reasons described above claim 1.

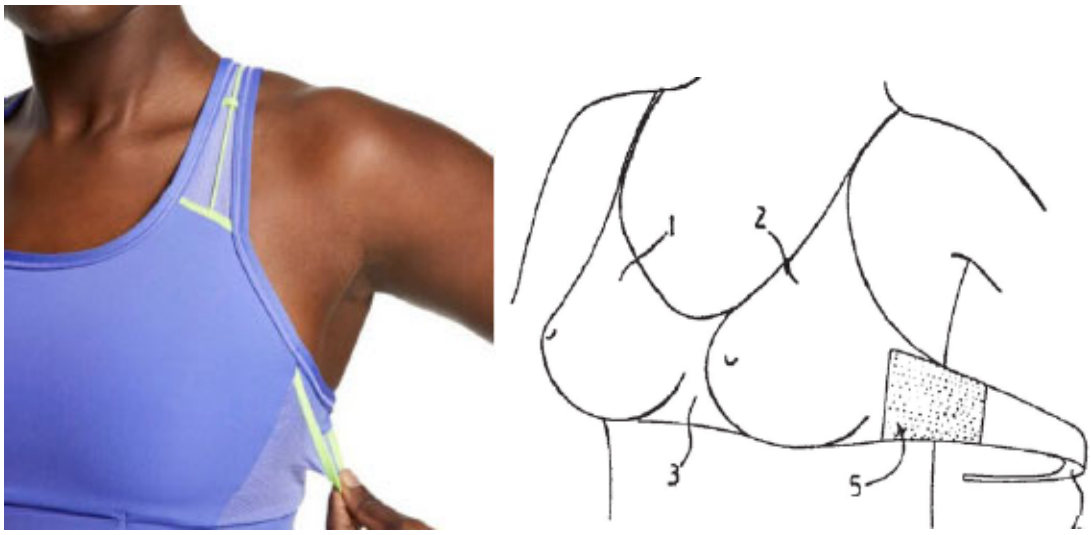
b. *"wherein a front side edge of the patch abuts an edge of the at least one of the left cup and the right cup, the pocket extending to the edge of the at least one of the left cup and right cup." limitation [15A]*

1065. As described above for limitation [12B], Vidai discloses side pockets that extend onto the adjacent cup, such that each pocket spans both a part of the chest strap and a part of the adjacent cup, under Patent Owner's apparent understanding.

Under Patent Owner's apparent understanding, those same products also disclose this limitation. In the MA Litigation, Patent Owner also took the position that this limitation was met by the following bras:

See NIKE-1042 at 7–8 (left); NIKE-1043 at 7–8 (right).

1066. Though Petitioner does not agree that the products above meet this limitation, to the extent Patent Owner contends they do, so too does Vidai:



NIKE-1027 at Fig. 1. Alternatively, should Patent Owner contend that this limitation is not disclosed by Vidai (and therefore the products accused in the MA Litigation do not meet this limitation), Vidai renders this limitation obvious. Both bras and pockets have been long known in the art and in designing a bra with storage pockets, and in my opinion, a POSA would have been motivated to look for known solutions in the art, such as the variety of types of bras and their designs, pocket placements, methods of forming a pocket, and methods of adhering the pockets to the bra. Moreover, in my opinion, a POSA would have known that different pocket shapes, sizes, and placements have known benefits and drawbacks. Given this knowledge, in my opinion, it would have been obvious to a POSA in light of Vidai to slightly extend the length of the pocket to abut the edge of a bra cup (or beyond the edge of the bra cup) to increase the amount of storage in the pocket. Additionally, a POSA would have found it obvious to extend the pocket towards the front of the bra onto the cups, rather than backwards towards the wearer's back, for ease of access to the pocket. Such a design would increase comfort for the wearer, because extension of the pocket toward the cup, as opposed to the wearer's back, enables the wearer to access the pocket without uncomfortably twisting the wearer's body. As discussed in "The art of pocket design: How to create unique and stylish pockets," NIKE-1052, a POSA would have known that "[c]lassically, pockets are

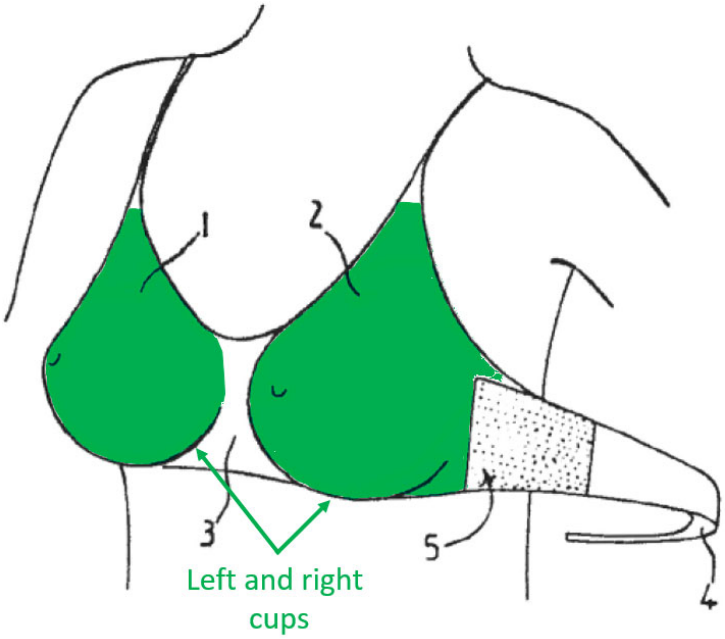
thought out in relation to the body and the placement of the arms. The goal was to have access to the inside of the pocket, without having to twist." *Id.* at 3.

1067. Though Vidai acknowledges that placement of pockets on the "external wall of one of the cups" is "not very aesthetic because it inevitably leads to the asymmetry of the cups," NIKE-1027 at 1:29-31, the extension of side pockets to the edge of the breast cup does not implicate the same concerns because it will not be on the "external wall" of the cups. Moreover, Vidai discloses pockets on both sides of the bra, thus mitigating the asymmetry concerns.

xii. Claim 16

a. *"A chest covering comprising:" limitation [16A]*

1068. To the extent the preamble is limiting, Vidai discloses this limitation. Vidai discloses "[a] *bra* comprised of two cups, 1 and 2":



NIKE-1027 at Fig. 1, 2:28-32.

b. ***"a strap assembly including a chest strap;" limitation [16B]***

1069. In my opinion, Vidai discloses this limitation for the reasons described above for limitation [1B].

c. ***"a left cup and a right cup, each cup being an area to receive a breast of a wearer and having inside and outside surfaces," limitation [16C]***

1070. In my opinion, Vidai discloses this limitation for the reasons described above for limitation [1C].

d. ***the strap assembly being attached to the cups whereby the strap assembly holds the cups to a wearer, with the chest strap extending from the left cup towards the wearer's back and extending from the right cup towards the wearer's back;" limitation [16D]***

1071. In my opinion, Vidai discloses this limitation for the reasons described above for limitation [1D].

e. ***"a side patch on one of an inside or outside surface of the chest strap adjacent to at least one of the left cup and right cups, the side patch having upper and lower edges along at least part of a length of the chest strap, and side edges," limitation [16E]***

1072. In my opinion, Vidai discloses this limitation for the reasons described above for limitation [1E] and [1F].

f. ***"the side patch upper edge lying along a same edge line as at least a portion of a top edge of the chest strap," limitation [16F]***

1073. In my opinion, Vidai discloses this limitation for the reasons described above for limitation [1F].

g. ***"the side patch forming an opening such that the side patch forms a pocket," limitation [16G]***

1074. In my opinion, Vidai discloses this limitation for the reasons described above for limitation [1G].

h. ***"the opening capable of repeated receiving and removal of an item when being worn by the wearer." limitation [16H]***

1075. In my opinion, Vidai discloses this limitation for the reasons described above for limitation [1H].

xiii. Claim 17

a. ***"The chest covering of claim 16" limitation [Preamble]***

1076. In my opinion, Vidai discloses "[t]he chest covering of claim 16" for the reasons described above in claim 16.

b. ***"wherein the opening is an upper opening." limitation [17A]***

1077. Vidai discloses this limitation for the reasons described above for claim 5.

xiv. Claim 18

a. ***"The chest covering of claim 16" limitation [Preamble]***

1078. Vidai discloses "[t]he chest covering of claim 16" for the reasons described above in claim 16.

b. ***"further comprising stitching along the lower and side edges of the patch." limitation [18A]***

1079. Vidai discloses this limitation for the reasons described above for claim 3.

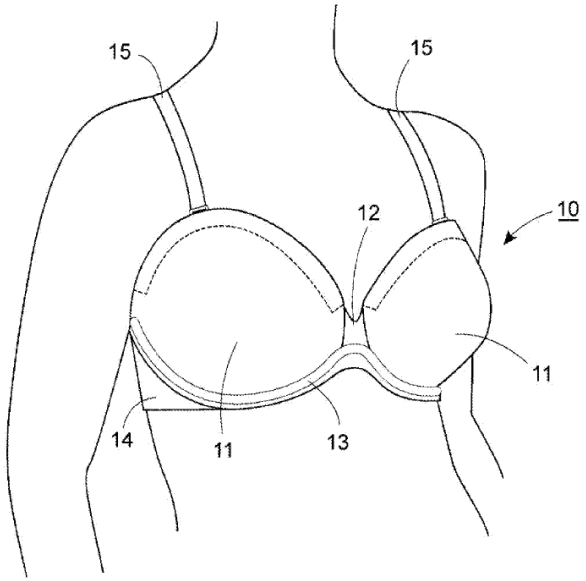
2. Ground 2A as Claims 1–8, 12, 13, 15, 16, 17 and 18 Are Unpatentable Over Handras; and Ground 2B as Claim 7 is Unpatentable Over Handras in view of Spagna or Glass.

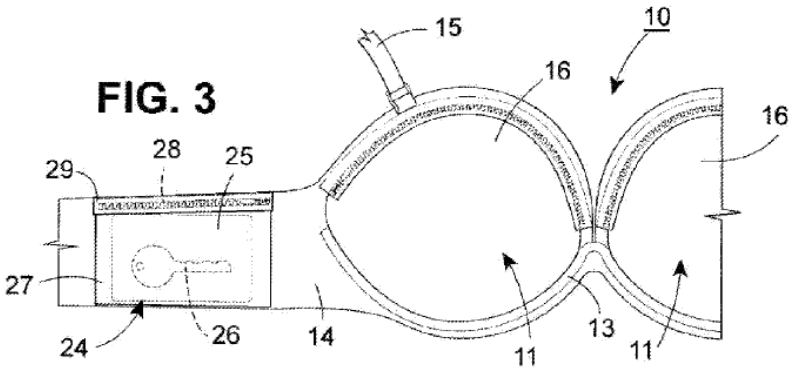
1080. In my opinion, claims 1–8, 12, 13, 15, 16, 17 and 18 are unpatentable over Handras, and claim 7 is unpatentable over Handras in view of Spagna or Glass.

i. Claim 1

a. *"A pocketed bra assembly comprising:" limitation [1A]*

1081. To the extent the preamble is limiting, Handras discloses this limitation. Handras discloses "a bra with one or more storage pockets":

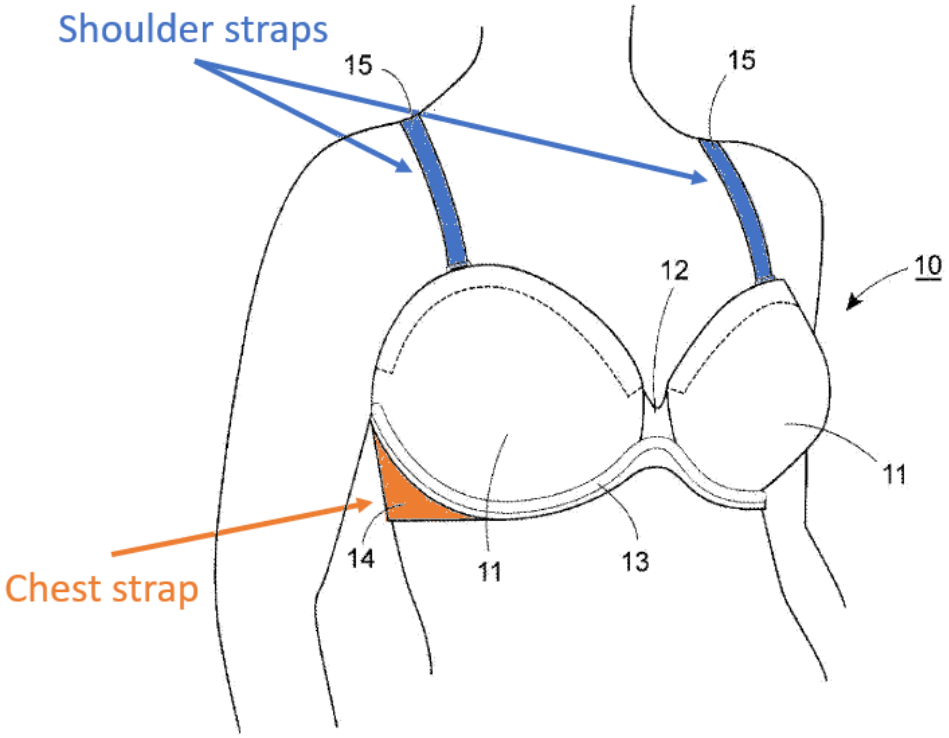




Id. at Figs 1, 3, [0001], [0003] ("[i]t is an object of the invention to provide a pocket in a bra for receiving one or more items that is conveniently located for the wearer."), [0004] ("a concealed pocket in a bra for receiving one of [sic] more items."), Abstract ("Each side panel of the bra may also have a zippered pocket on the inside."), [0011] ("the bra is fabricated with at least one side panel that extends laterally of the pair of cups and that is provided with a pouch for receiving a small item, such as a credit card.").

b. ***"a strap assembly including a chest strap;" limitation [1B]***

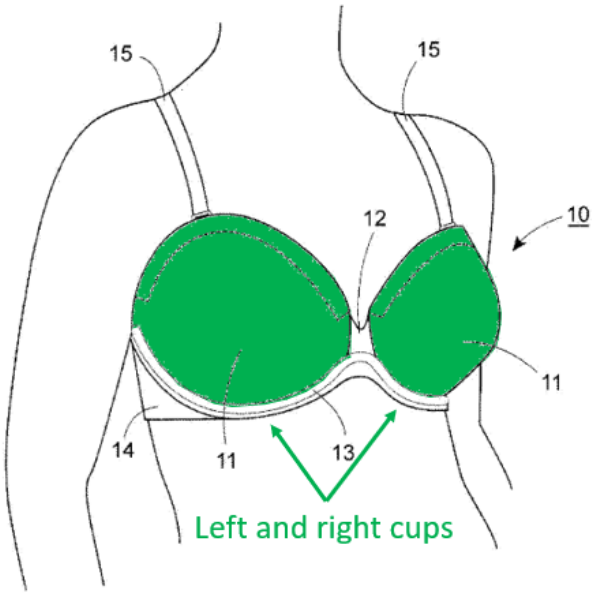
1082. Handras describes a bra comprising of "a pair of cups 11 … a pair of side panels 14 (only one of which is shown) that can be connected together at the back of the bra 10 in any conventional manner and a pair of shoulder straps 15":



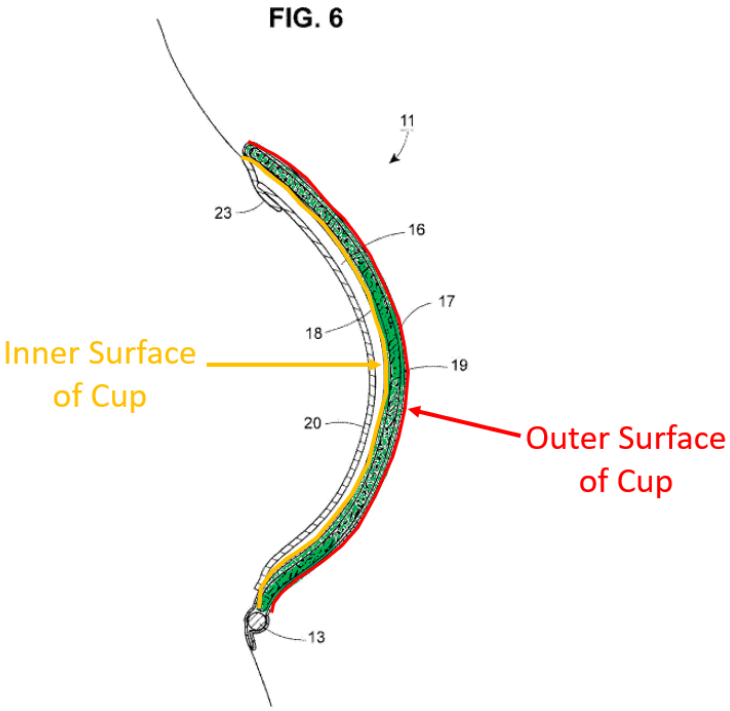
NIKE-1021 at Fig. 1, [0020].

c. ***"a left cup and a right cup, each cup being an area to receive a breast of a wearer and having inside and outside surfaces," limitation [1C]***

1083. Handras discloses a bra having "a pair of cups" for the left and right breasts:



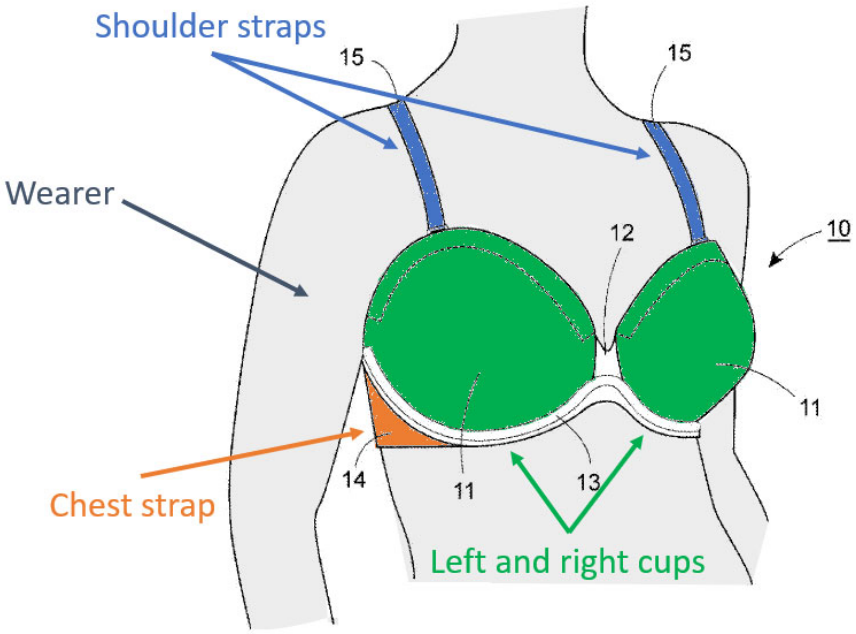
Id. at Fig. 1, [0006], [0011], [0020], [0029], Cl. 1, 6. A POSA would have understood these cups to necessarily have inside and outside surfaces, as illustrated in Figure 6:



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 holds the cups to a wearer, with the chest strap extending from the left cup towards the wearer's back and extending from the right cup towards the wearer's back;" limitation [1D]***

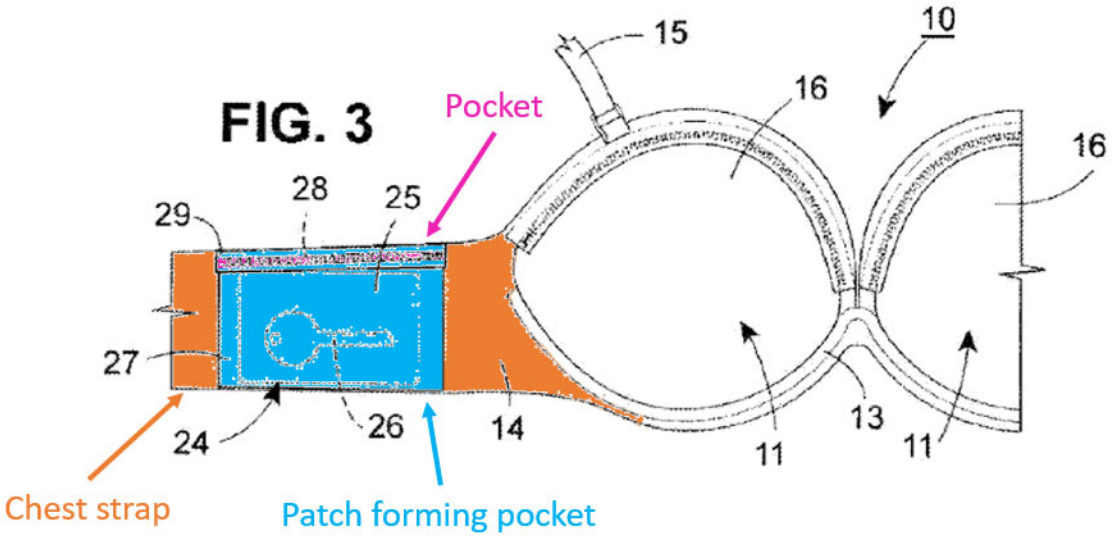
1084. As explained above in limitations [1B] and [1C], Handras discloses a "strap assembly" and "left and right cups." Further, to the extent the "whereby" clause should be provided patentable weight, Figure 1 illustrates the disclosed chest strap extending from the cups towards the wearer's back:



NIKE-1021 at Fig. 1.

e. ***"a side patch on one of an inside or outside surface of the chest strap adjacent to at least one of the left cup and right cups," limitation [1E]***

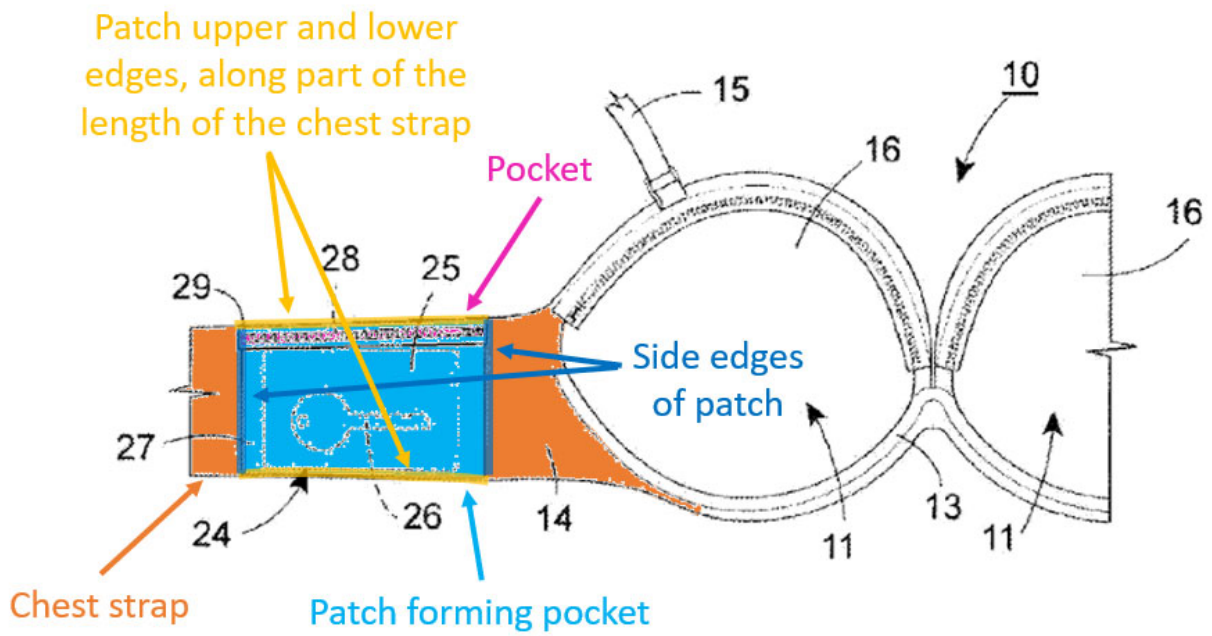
1085. Handras discloses "each side panel 14 (only one of which is shown) of the bra 10 is provided with a pouch 24 for receiving a small item or items." NIKE-1021 at [0028]. Handras further discloses the pocket is formed by a patch. *Id.* (the pouch 24 is formed by a panel 27 of fabric sewn or otherwise secured to the side panel.")



NIKE-1021 at Fig 3. The patch is located on the inside of each side of the chest strap, adjacent to each of the left and right cups. *Id.* at Abstract ("*Each side panel* of the bra may also have a zippered pocket on the *inside*."), [0011] ("the bra is fabricated with at least one side panel that *extends laterally of the pair of cups* and that is provided with a pouch for receiving a small item.").

f. *"an upper edge of the side patch lying along the same edge line as at least a portion of a top edge of the chest strap," limitation [1F]*

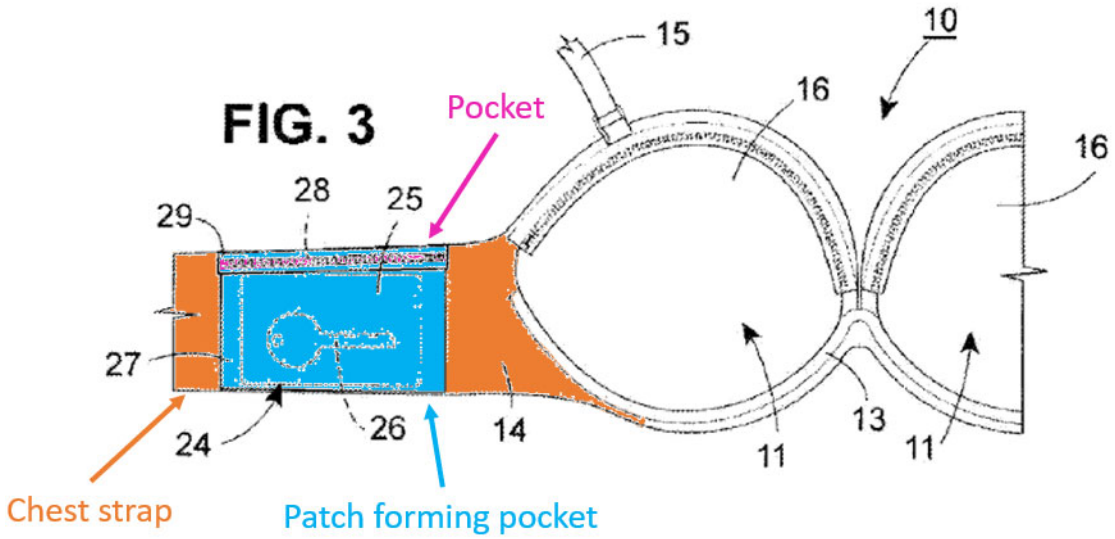
1086. As illustrated below, the upper and lower edges of the patch are along part of the length of the chest strap, and the patch has side edges:



NIKE-1021 at Fig 3. Handras discloses the patches "sewn or otherwise secured to the side panel," *i.e.*, "chest strap." *Id.* at [0028]. Thus, in my opinion, a POSA would have understood each patch to have edges along the length of the chest strap.

g. *"the side patch forming an opening such that the side patch forms a pocket," limitation [1G]*

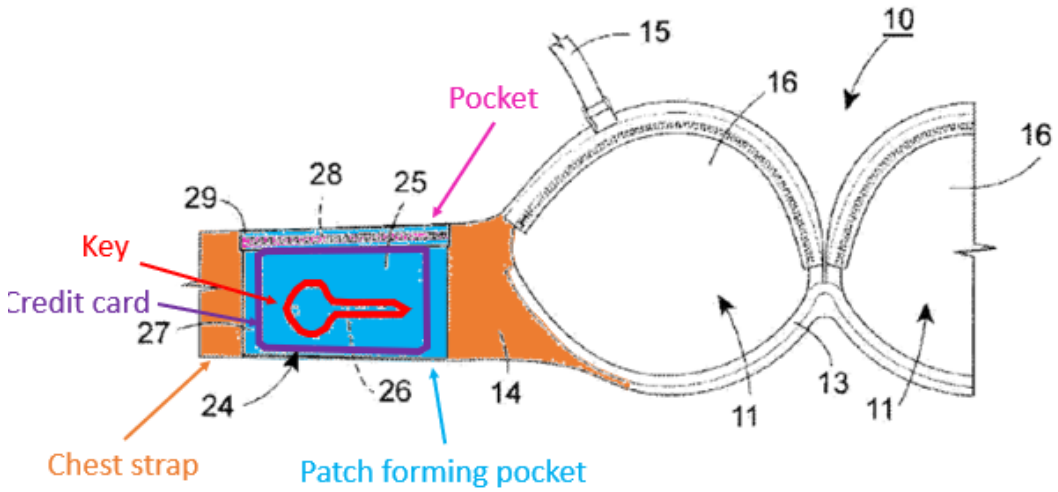
1087. Handras discloses the pocket opening with a zipper along the upper edge of the rectangular patch:



NIKE-1021 at Fig. 3, [0028] (the pocket formed "by a panel 27 of fabric sewn or otherwise secured to the side panel 14, a zipper 28, and a flap 29 for covering over the zipper."). In my opinion, a POSA would have understood a rectangular pocket with an upper opening to be sewn along its lower and side edges.

h. ***"the opening capable of repeated receiving and removal of an item when being worn by the wearer;" limitation [1H]***

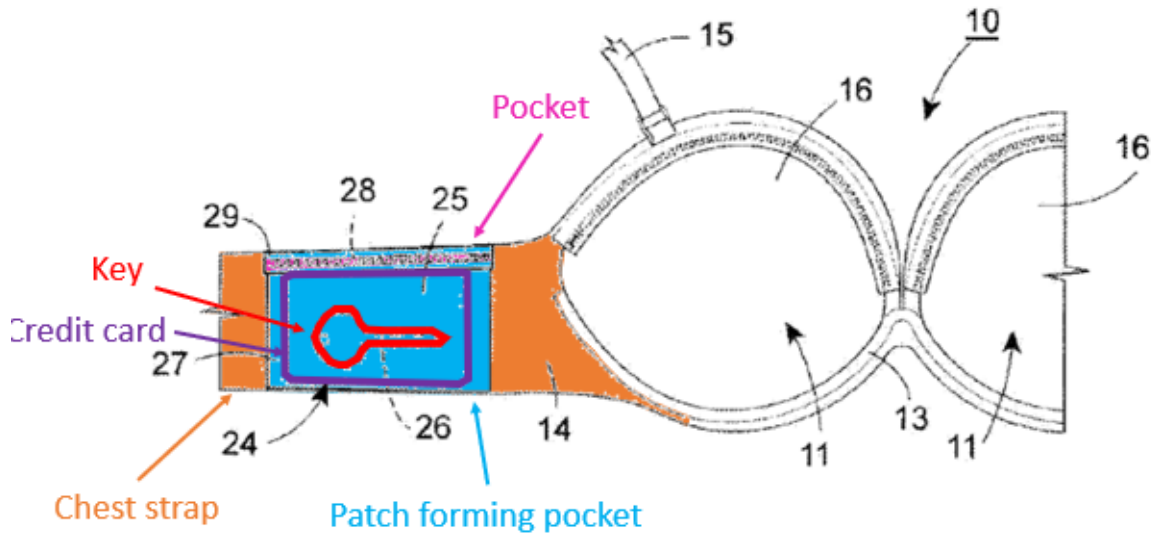
1088. Handras contemplates the use of bra pockets "to hold items, such as, credit cards, car keys, cell phones and the like":



NIKE-1021 at Fig. 3, [0002], [0028]. Moreover, a POSA would have understood that such a pocket is necessarily designed for temporarily holding items. Thus, in my opinion, a POSA would have understood that Vidai's pockets—designed with a "zipper"—necessarily had openings "capable of repeated receiving and removal of an item" when worn.

i. *"and an item removably positioned in the pocket." limitation [1I]*

1089. Handras discloses "a small item or items, such as a credit card 25 and key 26" removably positioned in the pocket:



NIKE-1021 at Fig. 3, [0002], [0028].

ii. Claim 2

a. *"The pocketed bra assembly of claim 1" limitation [Preamble]*

1090. In my opinion, Handras discloses "[t]he pocketed bra assembly of claim 1" for the reasons described above in claim 1.

b. *"wherein the side patch comprises upper and lower edges along at least part of a length of the chest strap, and side edges." limitation [2A]*

1091. In my opinion, Handras discloses this limitation for the reasons described above for limitation [1F].

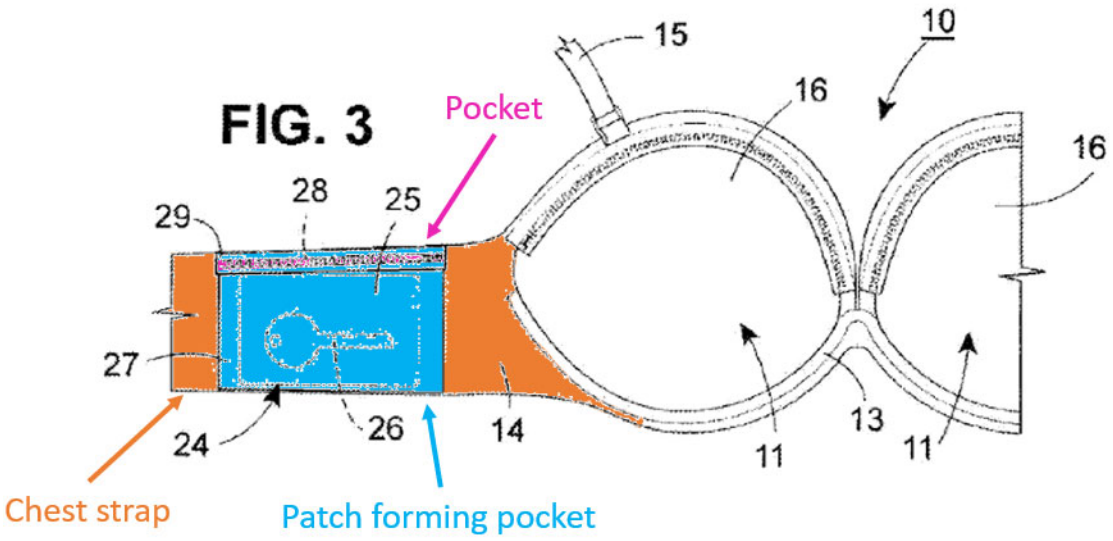
iii. Claim 3

a. *"The pocketed bra assembly of claim 2" limitation [Preamble]*

1092. In my opinion, Handras discloses "[t]he pocketed bra assembly of claim 2" for the reasons described above in claim 2.

b. ***"further comprising stitching along the lower and side edges of the side patch." limitation [3A]***

1093. Handras discloses the pocket formed "by a panel 27 of fabric *sewn* or otherwise secured to the side panel 14, a zipper 28, and a flap 29 for covering over the zipper." NIKE-1021 at [0028]. As illustrated below, Handras discloses the pocket opening with a zipper along the upper edge of the rectangular patch:



NIKE-1021 at Fig. 3. In my opinion, a POSA would have understood a rectangular pocket with an upper opening to be sewn along its lower and side edges.

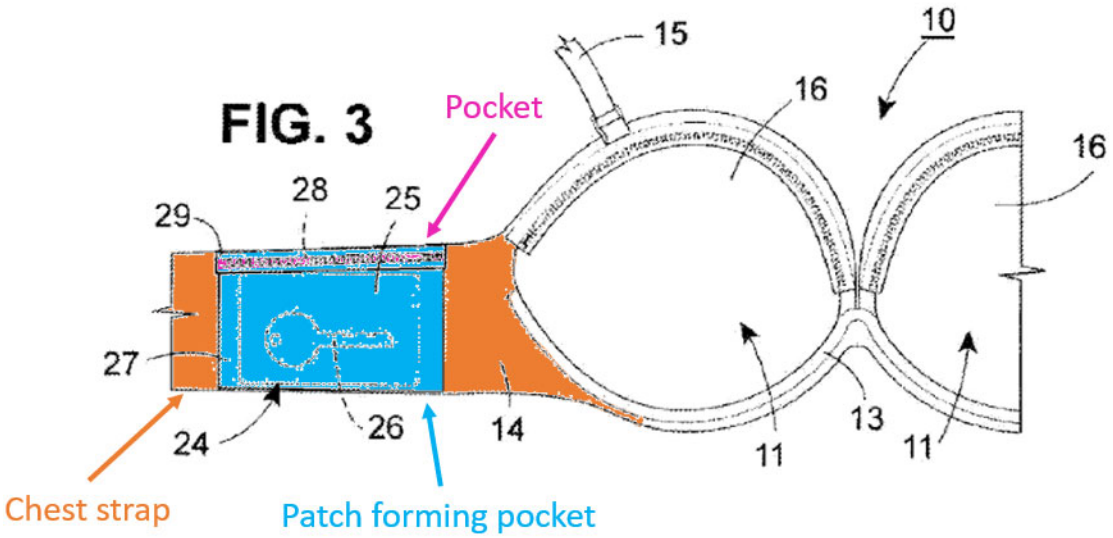
iv. Claim 4

a. ***"The pocketed bra assembly of claim 3" limitation [Preamble]***

1094. In my opinion, Handras discloses "[t]he pocketed bra assembly of claim 3" for the reasons described above in claim 3.

b. ***"wherein the stitching forms an upper opening to the pocket between the upper edge of the side patch and the top edge of the chest strap." limitation [4A]***

1095. As described above in limitation [1F], and claims 2 and 3, Handras discloses a pocket with an upper opening formed by stitching between the upper edge of the side patch and the top edge of the chest strap:



NIKE-1021 at Fig. 3, [0028].

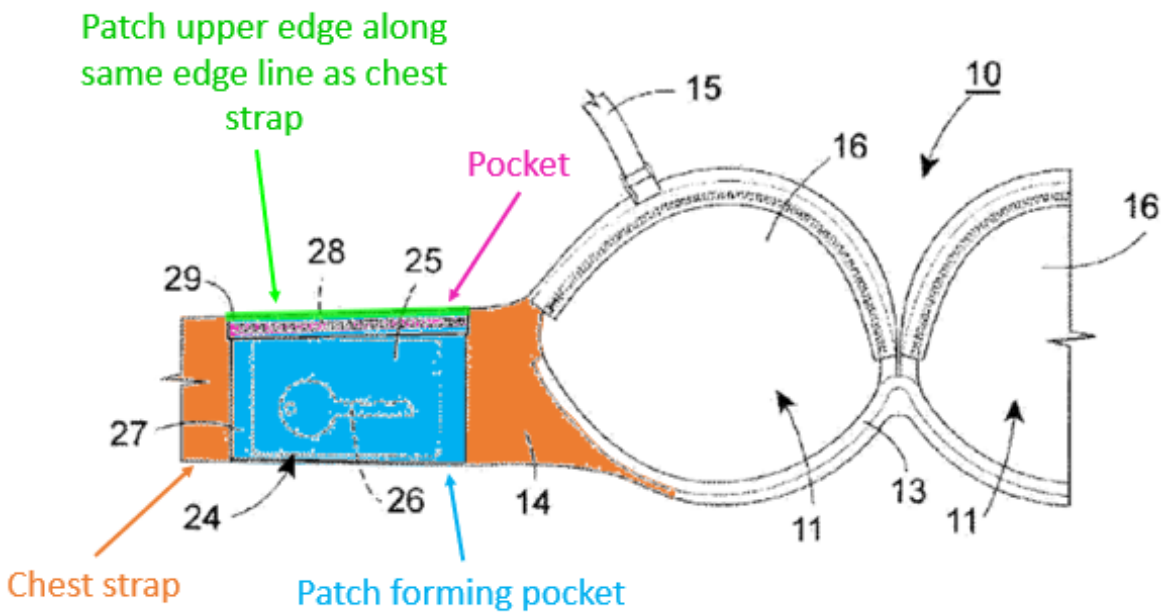
v. Claim 5

a. *"The pocketed bra assembly of claim 1" limitation [Preamble]*

1096. In my opinion, Handras discloses "[t]he pocketed bra assembly of claim 1" for the reasons described above in claim 1.

b. *"wherein the opening is an upper opening." limitation [5A]*

1097. In my opinion, as described above in limitation [1F], and claims 2 and 3, Handras discloses a pocket with an upper opening:



NIKE-1021 at Fig. 3, [0028].

vi. Claim 6

a. *"The pocketed bra assembly of claim 1" limitation [Preamble]*

1098. In my opinion, Handras discloses "[t]he pocketed bra assembly of claim 1" for the reasons described above in claim 1.

b. *"wherein the item removably positioned within the pocket is a handheld electronic device." limitation [6A]*

1099. Handras explicitly contemplates the use of bra pockets "to hold items, such as, credit cards, car keys, cell phones and the like." NIKE-1021 at [0002]. A cell phone is a "handheld electronic device." Further, Handras contemplates the storage of a "small item or items, such as a credit card and key" in the side pockets. NIKE-1021 at [0028] (numbers omitted). In my opinion, a POSA would have understood "small items" to include *handheld* electronic devices.

1100. To the extent this limitation is not expressly or inherently disclosed, Handras renders it obvious. In my opinion, a POSA would have understood that the presence of a pocket necessarily implies the use of the pocket for removably holding items, such as a handheld electronic device. A POSA would also have known that the use of handheld electronic devices was pervasive at the time of the alleged invention (2013 at the earliest) and would know that a user would use the pockets to hold handheld electronic devices. NIKE-1022 at 1:23–24 ("Cell phones, personal listening devices, and other mobile electronic devices have become popular in recent years."). Further, in my opinion, a POSA would have understood the size of the patch to be a simple choice of design. Thus, in my opinion, a POSA would have been motivated to increase or decrease the size of the patch on Handras to accommodate any valuable, including a handheld electronic device for its storage. It would have been well within the abilities of a POSA to make such a routine modification changing the size of the patch, and in my opinion, a POSA would have had a high expectation of success in doing so. This is simple technology and bras with pockets of various sizes and shapes were well known in the art. Handras itself contemplates modifying the size of the bra's pockets to meet different storage needs. NIKE-1021 at [0025]. Thus, in my opinion, it would be obvious to a POSA that Handras's pockets—expressly designed to hold "small item[s]"—could hold, or be modified to hold, a "handheld electronic device."

vii. Claim 7

a. ***"The pocketed bra assembly of claim 1" limitation [Preamble]***

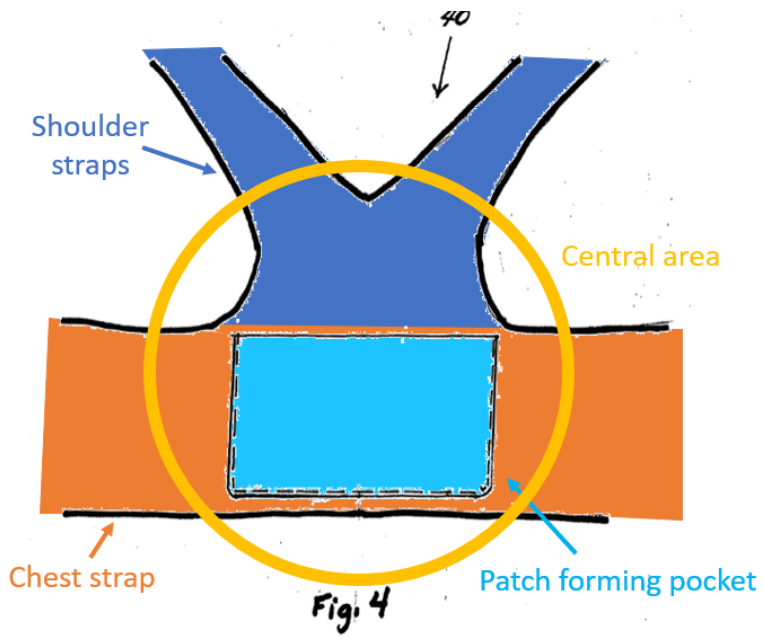
1101. In my opinion, Handras discloses "[t]he pocketed bra assembly of claim 1" for the reasons described above in claim 1.

b. ***"wherein the strap assembly further comprises two shoulder straps," limitation [7A]***

1102. In my opinion, Handras discloses this limitation for the reasons described above for limitation [1B].

c. ***"and a central area at a back of the strap assembly opposite to the left and right cups, the two shoulder straps and chest strap joining together at the central area," limitation [7B]***

1103. Handras in combination with either Spagna or Glass renders this limitation obvious. Handras discloses a strap assembly comprising a chest strap and two shoulder straps, as described above in limitation [1B]. Spagna discloses a "central area" formed where the back portion of the shoulder straps join together:



NIKE-1028 at Fig. 4, [0009] (pocket "located at the center back of the women's brassiere."), [0020]. Glass likewise discloses a "central area" on the back with a pocket:

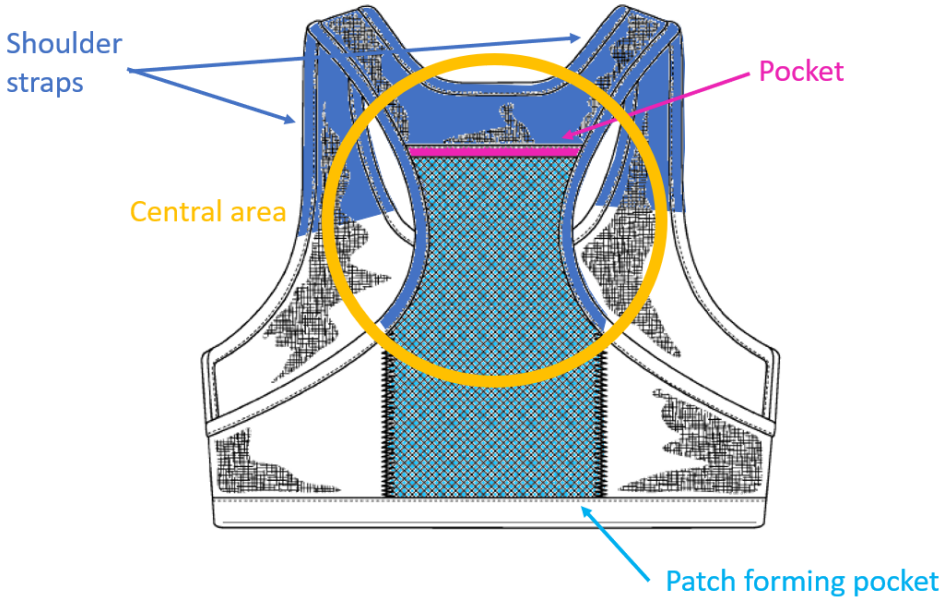


FIG. 2

NIKE-1029 at Fig. 2.

1104. In my opinion, a POSA would have found it obvious to modify the invention of Handras to include straps that come together on the back, as taught by Spagna or Glass. A POSA would have understood this configuration of shoulder straps, sometimes known as a "racerback" configuration, to be popular in sports bras. In designing a bra with pockets, in my opinion, a POSA would have been motivated to look to the prior art references disclosing bras with pockets—including Handras, Spagna, and Glass specifically—and select preferable elements from each disclosure to construct their desired pocketed bra. One advantage of Handras's bra is that it has pockets on the side of the bra that are easily accessible to the wearer. NIKE-1021 at Fig. 3, Abstract, [0002], [0011], [0028]. At the same time, Spagna and Glass's bras have an additional pocket on the back and appeal to customers interested in sports bras. NIKE-1029 at Title ("Sports Bra with Water Bottle Pocket on Back"), Description ("sports bra with water bottle pocket"), Figs. 1–5; NIKE-1028 at Abstract, [0006], [0010]. As a result, in my opinion, a POSA would have been motivated to design a bra that took advantage of the benefits provided by each of Handras's and either Spagna or Glass's bras.

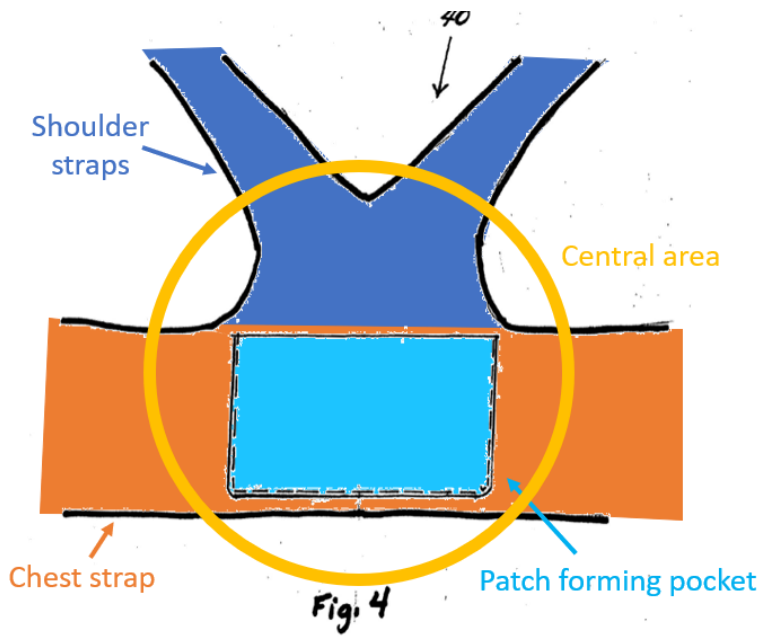
1105. Additionally, in my opinion, a POSA would have understood that bras are meant to serve a diverse population with differing preferences, and that it would

be commercially beneficial to provide consumers with a variety of options to meet those different preferences. The prior art expressly contemplates the bra's aesthetics. NIKE-1021 at [0005]. Further, bras are meant to serve a variety of different functions—providing different levels of support and types of shaping to the breasts. In my opinion, POSA therefore would have been motivated to design a variety of combinations of bras, including those with the claimed features, so as to be able to provide options to a wide range of customers.

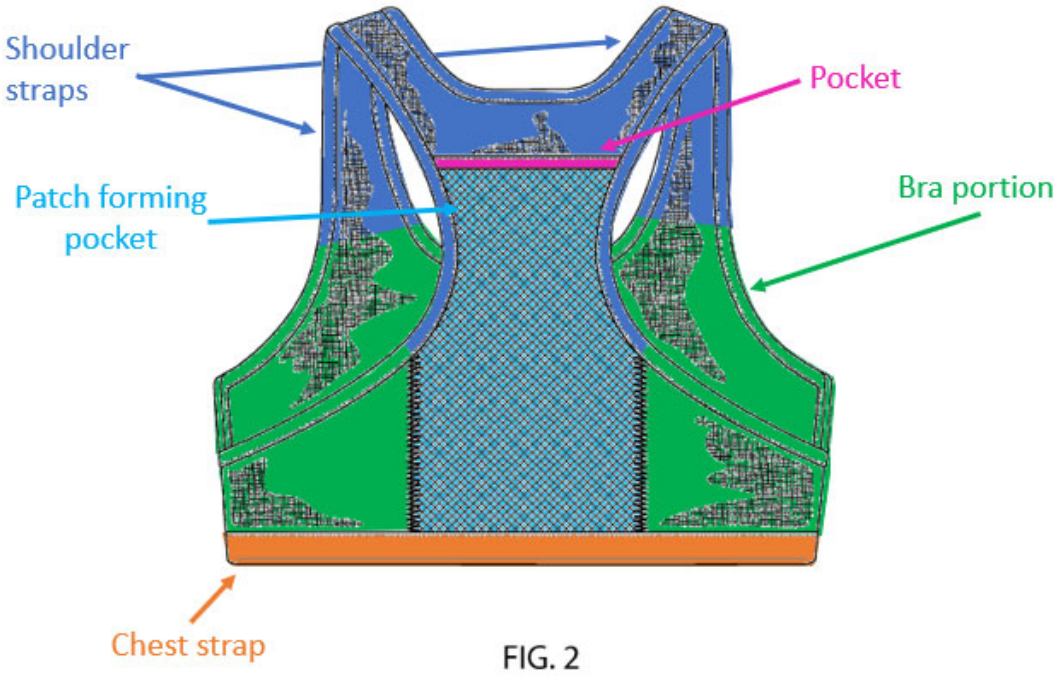
1106. In my opinion, a POSA would have expected to have a high likelihood of success with this combination. Handras, Spagna, and Glass are all bras with pockets for storing valuables. *See* NIKE-1021 at Fig. 3, Abstract, [0002], [0011], [0028]; NIKE-1028 at Abstract, [0002], [0009]; NIKE-1029 at Fig. 1, Description. And each of the elements—*e.g.*, straps and pockets—would perform the same predictable function disclosed in the prior art. Any work needed to combine the elements taught by Handras, Spagna, and Glass would therefore be nothing more than routine modifications well within the abilities of a POSA, in my opinion.

d. *"and further comprising a back pocket on the central area." limitation [7C]*

1107. As described above, Spagna discloses a "central area" formed where the back portion of the shoulder straps join together, with a pocket "located at the center back of the women's brassiere":



NIKE-1028 at Fig. 4, [0009], [0020]. Glass likewise discloses a "central area" on the back with a pocket:



NIKE-1029 at Fig. 2. And as described above in limitation [7C], in my opinion, a POSA would have been motivated to modify Handras to include the central area and back pocket taught by Spagna and Glass and would have had a high expectation of success in making the modification.

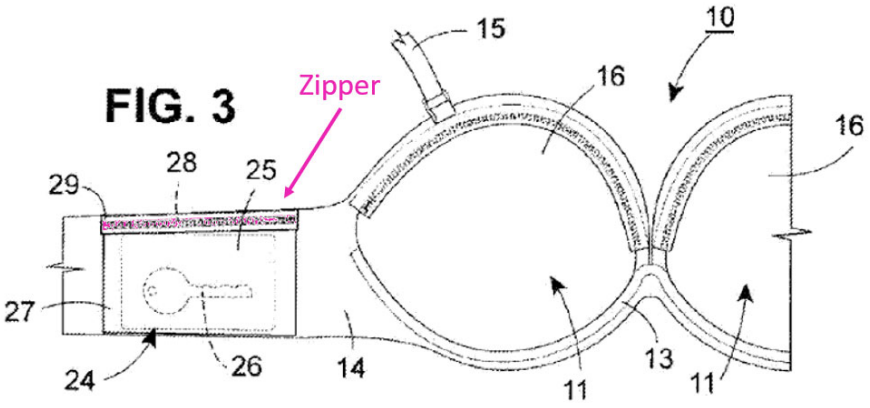
viii. Claim 8

a. *"The pocketed bra assembly of claim 1" limitation [Preamble]*

1108. In my opinion, Handras discloses "[t]he pocketed bra assembly of claim 1" for the reasons described above in claim 1.

b. *"wherein the side pocket further comprises a closure." limitation [8A]*

1109. Handras discloses pockets "utilizing zippers for quick and easy access and closure." NIKE-1021 at [0031], [0011], [0028]. As illustrated below, the zipper 28 comprises a closure for the side pocket:



NIKE-1021 at Fig. 2, [0028] ("the pouch 24 is formed by a panel 27 of fabric sewn or otherwise secured to the side panel 14, a zipper 28 and a flag 29 for covering over the zipper 28.").

ix. Claim 12

a. *"The pocketed bra assembly of claim 1" limitation [Preamble]*

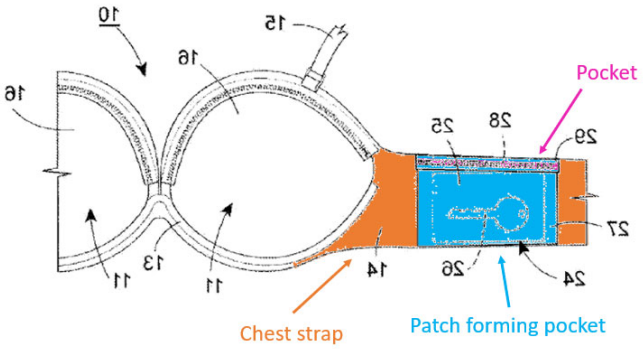
1110. In my opinion, Handras discloses "[t]he pocketed bra assembly of claim 1" for the reasons described above in claim 1.

b. *"wherein each side pocket extends onto the adjacent cup, such that each pocket spans both a part of the chest strap and a part of the adjacent cup." limitation [12A]*

1111. I understand that in the MA Litigation, Patent Owner took the position that this limitation was met by the following bras:

See NIKE-1044 at 7 (left); NIKE-1045 at 7 (right).

1112. Though I understand Petitioner does not agree that the products above meet this limitation, to the extent Patent Owner contends they do, so too does Handras:



NIKE-1021 at Fig 5 (flipped horizontally). Alternatively, should Patent Owner contend that this limitation requires greater extension onto the cups (and therefore the products accused in the MA Litigation do not meet this limitation), Handras renders this limitation obvious. Both bras and pockets have been long known in the art and in designing a bra with storage pockets, in my opinion, a POSA would have been motivated to look for known solutions in the art, such as the variety of types of bras and their designs, placements of the pockets, methods of forming a pocket, and methods of adhering the pockets to the bra. Moreover, a POSA would have known that different pocket shapes, sizes, and placements have known benefits and drawbacks. Given this knowledge, it would have been obvious to a POSA in light of Handras to extend the length of the pocket onto some portion of the bra cup to increase the amount of storage in the pocket. Additionally, in my opinion, a POSA would have found it obvious to extend the pocket towards the front of the bra onto the cups, rather than backwards towards the wearer's back, for the wearer's ease of access to the pocket. Such a design would increase comfort

for the wearer, because extension of the pocket onto the cup enables the wearer to access the pocket without uncomfortably twisting the wearer's body. As discussed in "The art of pocket design: How to create unique and stylish pockets," NIKE-1052, a POSA would have known that "[c]lassically, pockets are thought out in relation to the body and the placement of the arms. The goal was to have access to the inside of the pocket, without having to twist." *Id.* at 3.

x. Claim 13

a. *"The pocketed bra assembly of claim 1" limitation [Preamble]*

1113. In my opinion, Handras discloses "[t]he pocketed bra assembly of claim 1" for the reasons described above in claim 1.

b. *"further comprising a second patch positioned on the chest strap, the second patch forming an opening such that the second side patch forms a pocket." limitation [13A]*

1114. In my opinion, as described above for limitation [1E], Handras discloses a second patch on the chest strap forming an opening such that the second side patch forms a pocket.

xi. Claim 15

a. *"The pocketed bra assembly of claim 1" limitation [Preamble]*

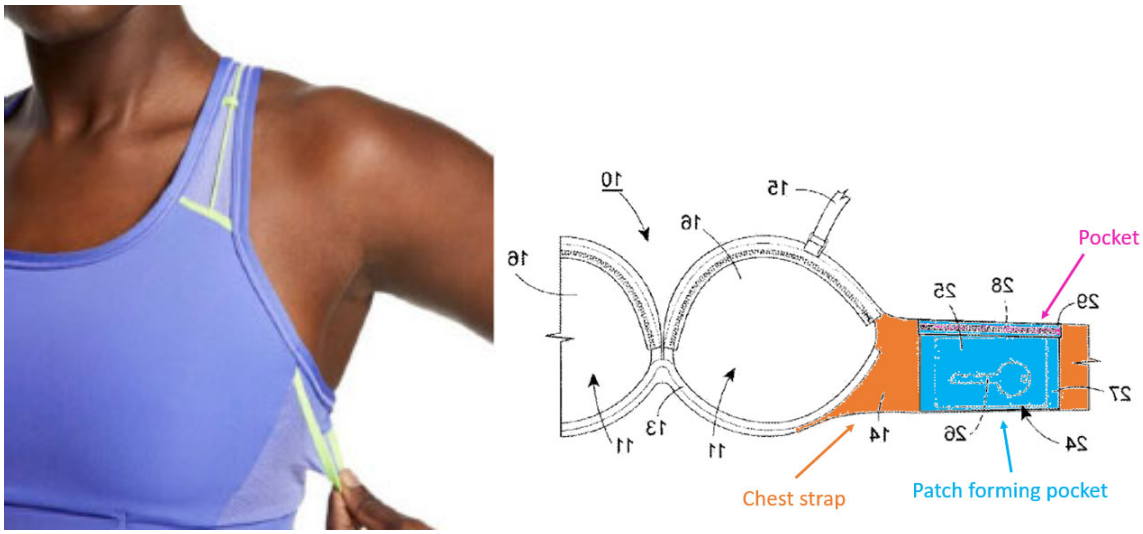
1115. In my opinion, Handras discloses "[t]he pocketed bra assembly of claim 1" for the reasons described above in claim 1.

b. *"wherein a front side edge of the patch abuts an edge of the at least one of the left cup and the right cup, the pocket extending to the edge of the at least one of the left cup and right cup." limitation [15A]*

1116. As described above for limitation [12B], Vidai discloses side pockets that extend onto the adjacent cup, such that each pocket spans both a part of the chest strap and a part of the adjacent cup, under Patent Owner's apparent understanding. In my opinion, under Patent Owner's apparent understanding, those same products also disclose this limitation. In the MA Litigation, Patent Owner also took the position that this limitation was met by the following bras:

See NIKE-1042 at 7–8 (left); NIKE-1043 at 7–8 (right).

1117. Though Petitioner does not agree that the products above meet this limitation, to the extent Patent Owner contends they do, so too does Handras:



NIKE-1021 at Fig. 5 (flipped horizontally).

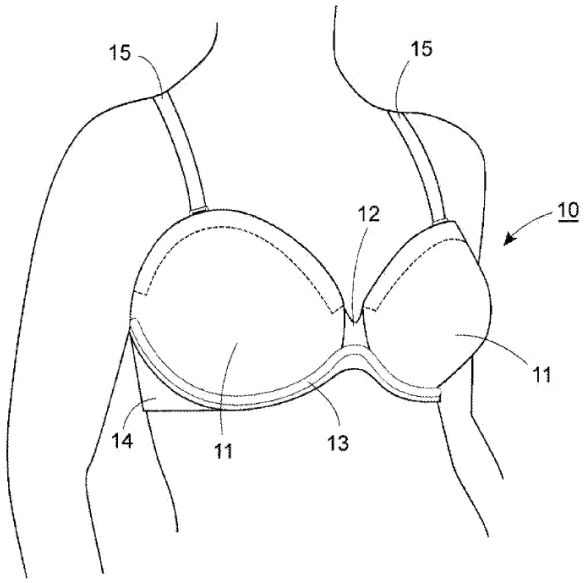
1118. Alternatively, should Patent Owner contend that this limitation is not disclosed by Handras (and therefore the products accused in the MA Litigation do not meet this limitation), in my opinion, Handras renders this limitation obvious. Both bras and pockets have been long known in the art and in designing a bra with storage pockets, and in my opinion, a POSA would have been motivated to look for known solutions in the art, such as the variety of types of bras and their designs, pocket placements, methods of forming a pocket, and methods of adhering the pockets to the bra. Moreover, in my opinion, a POSA would have known that different pocket shapes, sizes, and placements have known benefits and drawbacks. Given this knowledge, it would have been obvious to a POSA in light of Handras to slightly extend the length of the pocket to abut the edge of a bra cup (or beyond the edge of the bra cup) to increase the amount of storage in the pocket. Additionally, in my opinion, a POSA would have found it obvious to extend the pocket towards

the front of the bra onto the cups, rather than backwards towards the wearer's back, for ease of access to the pocket. Such a design would increase comfort for the wearer, because extension of the pocket toward the cup, as opposed to the wearer's back, enables the wearer to access the pocket without uncomfortably twisting the wearer's body. As discussed in "The art of pocket design: How to create unique and stylish pockets," NIKE-1052, a POSA would have known that "[c]lassically, pockets are thought out in relation to the body and the placement of the arms. The goal was to have access to the inside of the pocket, without having to twist." *Id.* at 3.

xii. Claim 16

a. *"A chest covering comprising:" limitation [16A]*

1119. To the extent the preamble is limiting, Handras discloses this limitation. Handras discloses "a bra with one or more storage pockets":



NIKE-1021 at Fig. 1, [0001].

b. ***"a strap assembly including a chest strap;" limitation [16B]***

1120. Handras discloses this limitation for the reasons described above for limitation [1B].

c. ***"a left cup and a right cup, each cup being an area to receive a breast of a wearer and having inside and outside surfaces," limitation [16C]***

1121. Handras discloses this limitation for the reasons described above for limitation [1C].

d. ***the strap assembly being attached to the cups whereby the strap assembly holds the cups to a wearer, with the chest strap extending from the left cup towards the wearer's back and extending from the right cup towards the wearer's back;" limitation [16D]***

1122. Handras discloses this limitation for the reasons described above for limitation [1D].

e. ***"a side patch on one of an inside or outside surface of the chest strap adjacent to at least one of the left cup and right cups, the side patch having upper and lower edges along at least part of a length of the chest strap, and side edges," limitation [16E]***

1123. In my opinion, Handras discloses this limitation for the reasons described above for limitations [1E] and [1F].

f. ***"the side patch upper edge lying along a same edge line as at least a portion of a top edge of the chest strap," limitation [16F]***

1124. In my opinion, Handras discloses this limitation for the reasons described above for limitation [1F].

g. ***"the side patch forming an opening such that the side patch forms a pocket," limitation [16G]***

1125. In my opinion, Handras discloses this limitation for the reasons described above for limitation [1G].

h. ***"the opening capable of repeated receiving and removal of an item when being worn by the wearer." limitation [16H]***

1126. In my opinion, Handras discloses this limitation for the reasons described above for limitation [1H].

xiii. Claim 17

a. ***"The chest covering of claim 16" limitation [Preamble]***

1127. In my opinion, Handras discloses "[t]he chest covering of claim 16" for the reasons described above in claim 16.

b. ***"wherein the opening is an upper opening." limitation [17A]***

1128. In my opinion, Handras discloses this limitation for the reasons described above for claim 5.

xiv. Claim 18

a. ***"The chest covering of claim 16" limitation [Preamble]***

1129. In my opinion, Handras discloses "[t]he chest covering of claim 16" for the reasons described above in claim 16.

b. ***"further comprising stitching along the lower and side edges of the patch." limitation [18A]***

1130. In my opinion, Handras discloses this limitation for the reasons described above for claim 3.

H. The ’510 Patent

1. Ground 1: Claims 1, 2, 4, 5, 7, 9 and 11 Are Unpatentable Over Spagna.

1131. The discussion below provides my detailed analysis of how the prior art references invalidate the challenged claims of the ’510 Patent.

1132. In my opinion, claims 1, 2, 4, 5, 7, 9 and 11 are unpatentable over Spagna.

i. Claim 1

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

1133. To the extent the preamble is limiting, Spagna discloses this limitation. As illustrated in the figures below, Spagna describes “an integrated pouch located in a woman’s brassiere.”

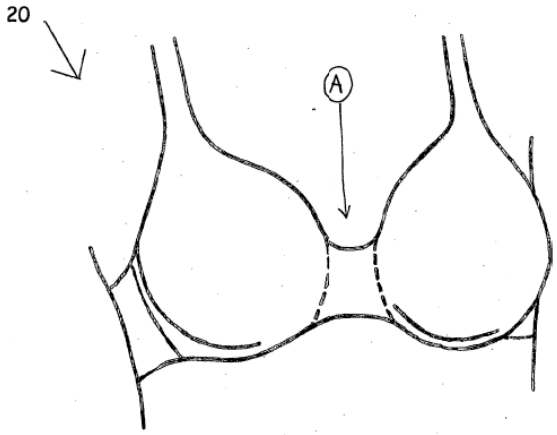


Fig. 2

NIKE-1028 at Abstract, Fig. 2 (showing bra assembly), at [0017]–[0020].

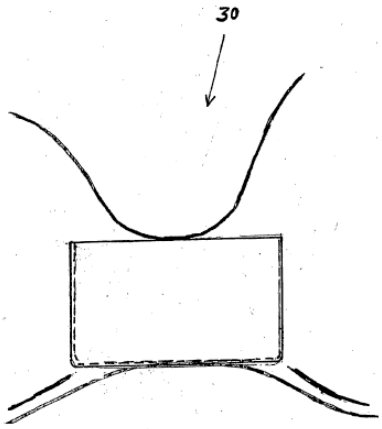


Fig. 3

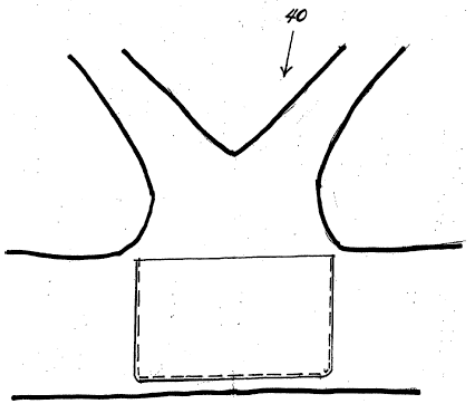


Fig. 4

Id. at Figs. 3-4 (showing an "integrated pouch," or pocket, intermediate of the breast cups (Fig. 3), and on the back of the bra (Fig. 4)).

b. ***"a strap assembly including a chest strap and shoulder straps," limitation [1B]***

1134. As illustrated below, Spagna discloses "a strap assembly" comprised of a chest strap and two shoulder straps:

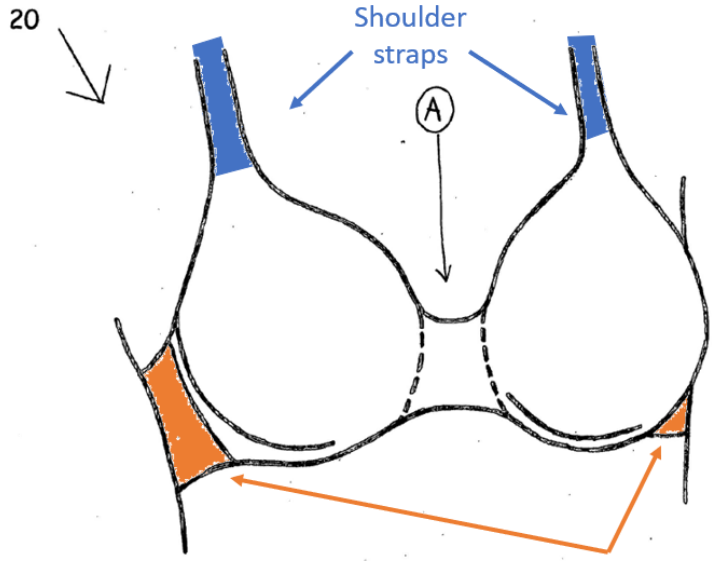
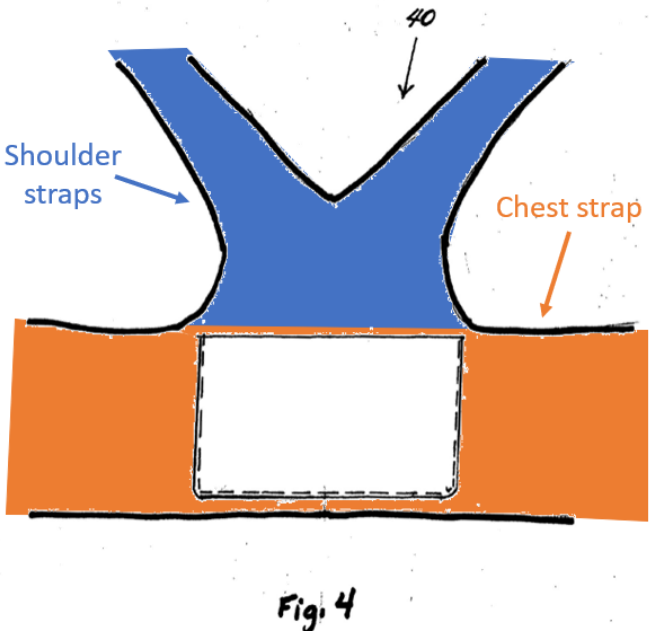


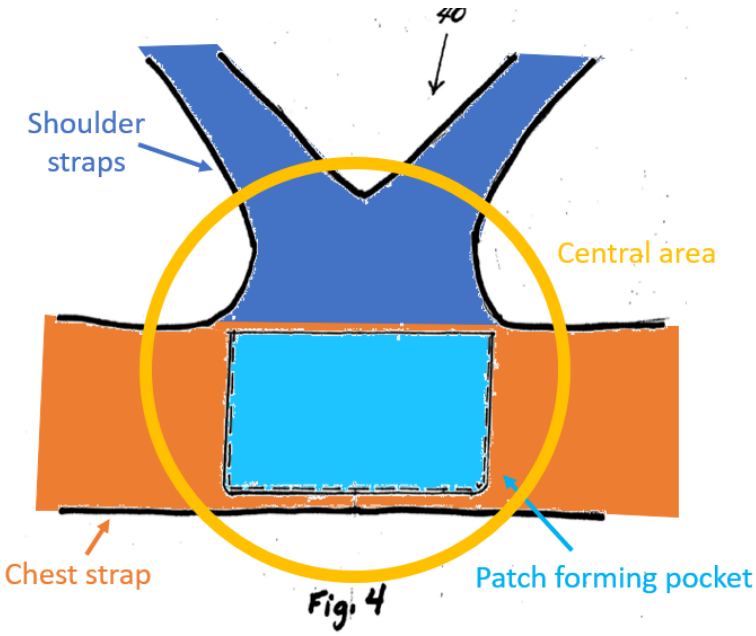
Fig. 2



NIKE-1028 at Figs. 2, 4, at [0017]–[0020] (describing "brassiere 20").

c. ***"the strap assembly joining the chest strap and shoulder straps at a central area adapted to be positioned on a back of a wearer when worn;" limitation [1C]***

1135. As illustrated below, Spagna discloses a "central area" formed where the back portion of the shoulder straps and chest strap join together:



NIKE-1028 at Fig. 4, at [0009] (pocket "located at the ***center back*** of the women's brassiere."), at [0020].

d. ***"a bra portion comprising left and right cups, each cup being an area to receive a breast of wearer, the strap assembly attached to the bra portion;" limitation [1D]***

1136. Spagna discloses "a bra portion comprising left and right cups, each cup being an area to receive a breast of wearer":

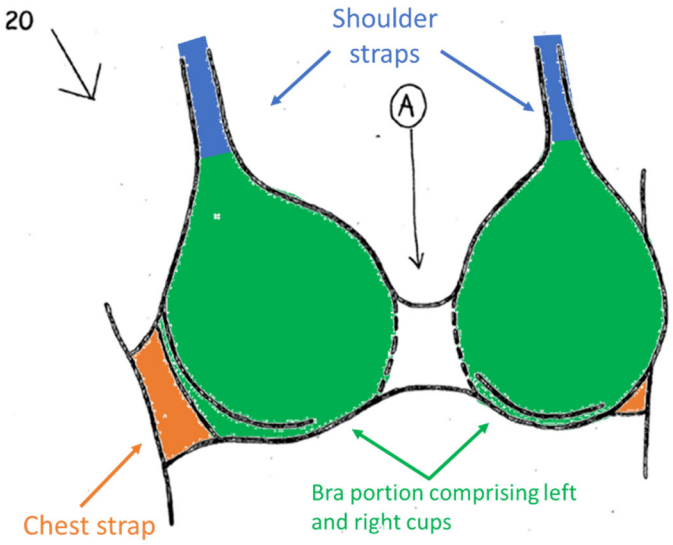
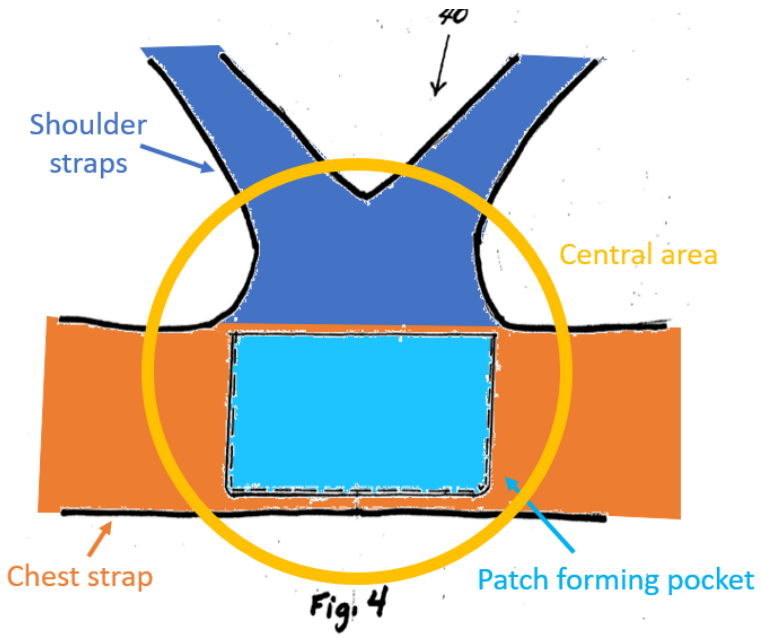


Fig. 2

NIKE-1028 at Fig. 2, [0017]–[0020] (describing "brassiere 20"). As shown above, Spagna's "strap assembly" (chest strap and shoulder straps) are attached to the bra portion.

e. ***"and a back pocket formed entirely of stretchable fabric positioned on the central area," limitation [1E]***

1137. As illustrated in Figure 4 below, Spagna discloses a pocket on the central area:



NIKE-1028 at Fig. 4, at [0009] (pocket "located at the center back of the women's brassiere."), at [0020]. Spagna also discloses that the bra may be constructed of "traditional materials" such as "cotton, polyester, or synthetic and natural fiber blend." In my opinion, a POSA would have understood that the pocket, in addition to the bra itself, could likewise be made of stretchable material. I in my opinion, a POSA would have understood that polyester and other synthetic fabrics, such as spandex or elastane, can be "stretchable fabric."

1138. To the extent Patent Owner argues this limitation is not disclosed by Spagna, in my opinion, Spagna in combination with the knowledge of a POSA renders this limitation obvious. Spagna expressly discloses that the purpose of a pocket on a bra or other garment is to hold personal items. NIKE-1028 at Abstract

("An apparatus for holding an automated medication dispensing device includes an integrated pouch located in a woman's brassiere."), at [0002] ("the invention consists of a medication pump inserted into an integrated pouch of a personal undergarment."), at [0009] ("an automated medication dispensing device is adapted to produce a broad, flat profile and is inserted into a relatively large integrated pouch located at the center back of the women's brassiere."). In my opinion, a POSA would have understood that the shape of such objects may not easily conform to the shape of a rigid pocket. Thus, in my opinion, a POSA would have found it obvious to manufacture the pocket with "stretchable" material, such that the pocket may stretch or expand to accommodate the placement of objects for storage. Bras comprised of stretchable material were well-known and popular at the time of the alleged invention. *See e.g.*, NIKE-1022 at 3:5–14 ("The pocket can be formed of an extensible material that can, for example, elastically deform . . . . Such materials can include woven or nonwoven fabrics comprising Spandex®, Lycra®, nylon, neoprene, polyurethanes, polyolefins, polyesters, wool, rayon, etc."); *see also* NIKE-1039 (disclosing sports bras comprised of a blend of nylon and Lycra). And Spagna teaches that the "brassiere itself may be constructed of traditional materials such as cotton, polyester, or synthetic and natural fiber blend," which a POSA would have understood would include "stretchable" fabric. NIKE-1028 at [0017]. In my opinion, a POSA would have understood that stretchable fabric could similarly be

applied to the bra pocket disclosed in Spagna. Thus, if not expressly disclosed (it is), in my opinion, a POSA would have found it obvious to modify Spagna based on their own knowledge to include "a back pocket formed entirely of stretchable fabric."

f. *"the back pocket having an opening that is biased in a closed position at rest." limitation [1F]*

1139. As discussed above, Spagna discloses a back pocket. Spagna discloses that its pocket is "for holding an automated medication dispensing device," indicating that the wearer has access to the pocket's interior in order to place such device in the pocket. NIKE-1028 at Abstract. In my opinion, a POSA would have understood the purpose of a pocket to be providing access to the interior for storage of items. Further, Spagna discloses that the device "can be safely maintained [in the pocket], even while the wearer is active," NIKE-1028 at Abstract, indicating to a POSA that the pocket is biased in a closed position at rest, to ensure the objects inside the pocket remain there. The Patent Owner asserted during prosecution of the related '800, that the use of a pocket biased in a closed position is ideal for "keep[ing] items held safe within the pocket during exercise." *See* NIKE-1014 at 82, 119–20.

1140. To the extent Patent Owner argues Spagna does not disclose this limitation, in my opinion, Spagna in combination with the knowledge of a POSA renders this limitation obvious. In my opinion, a POSA would have understood that designing the pocket to be biased in a closed position at rest would increase the

likelihood that the device remains "safely maintained" in the pocket during physical activity. Pockets designed to remain closed at rest were known at the time of the alleged invention. NIKE-1033 at 3:22–23 (describing a pocket on the back side of an exercise shirt as "in a closed position unless stretched by the wearer for access."); *see also* NIKE-1032 at [0020] (Describing the advantage of a fastener mechanism designed for keeping the pocket closed as "prevent[ing] objects stored within [the pocket] from falling out of [the pocket] accidentally"). Thus, in my opinion, a POSA would have found it obvious to modify Spagna based on their own knowledge.

ii. Claim 2

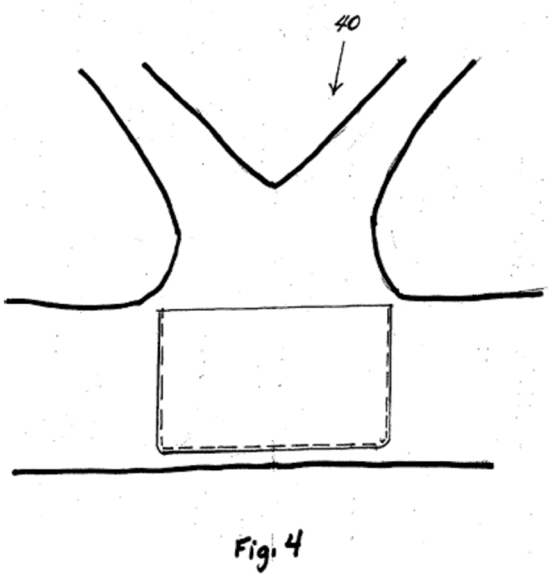
a. *"The pocket bra of claim 1" limitation [Preamble]*

1141. In my opinion, Spagna discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. *"wherein the bra is a sports bra." limitation [2A]*

1142. Spagna renders obvious this limitation. Spagna teaches that the item placed in the pocket is held safe "even while the wearer is active." NIKE-1028 at Abstract, at [0006] ("modern women want and deserve to have it all. They want to *run, play sports, and go to the gym*."), at [0010] ("Using these embodiments of the invention, a woman may utilize an automated medication dispensing device while keeping the device safe from accidental damage and *allowing the woman to be extraordinarily active*, all the while reducing the outward appearance of the

device."). In my opinion, a POSA would have understood that the bra is a sports bra to be worn during exercise. This understanding is further supported by the racerback construction disclosed by Spagna, which a POSA would have understood to be a popular configuration of sports bras.



NIKE-1028 at Fig. 4.

1143. To the extent Patent Owner argues Spagna does not disclose this limitation, in my opinion, Spagna in combination with the knowledge of a POSA renders this limitation obvious. A POSA would have found it obvious to apply the invention of Spagna to a sports bra. As already discussed, Spagna discusses the use of the brassiere to keep the stored item "safe from accidental damage" while "allowing the woman to be extraordinarily active." NIKE-1028 at [0010]. Further, Spagna discusses activities such as "run[ning], play[ing] sports, and go[ing] to the gym." *Id.* at [0006]. In my opinion, a POSA would have been motivated to combine

the invention of Spagna with a sports bra, which are designed for wear during physical activities like those described in Spagna.

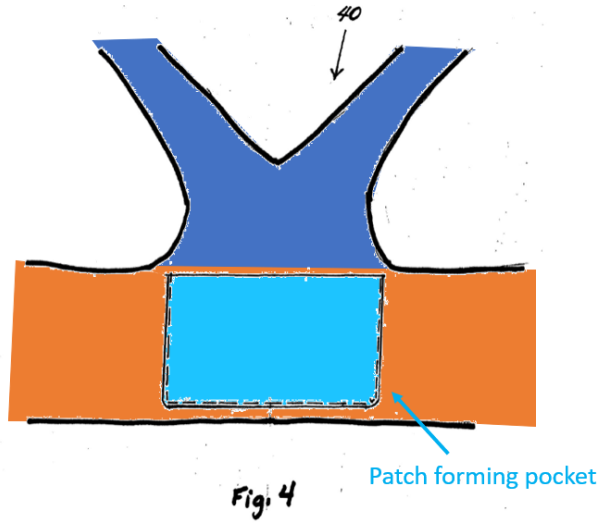
iii. Claim 4

a. ***"The pocket bra of claim 1" limitation [Preamble]***

1144. In my opinion, Spagna discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. ***"wherein the back pocket is formed by a patch connected to the back portion of the at least one of the chest strap and shoulder straps by stitching about a part of a perimeter of the patch, a gap in the stitching leaving a portion of the perimeter of the patch unattached, thereby forming the opening providing access to a pocket interior portion formed by the patch." limitation [3A]***

1145. As previously discussed above in limitation [1E], Spagna discloses a back pocket formed by a patch of material connected to the back portion of the chest strap. NIKE-1028 at 2:[0020] ("an integrated pouch 40 . . . is placed on the interior surface of the back of the brassiere").



NIKE-1028 at Fig. 4 (showing a pocket on the back portion of the bra where the chest strap and shoulder straps come together). Additionally, as already discussed, Spagna discloses a pocket with access to the pocket's interior.

1146. In my opinion, a POSA would have understood the dashed lines in Figure 4, shown above, to disclose stitching, as dashed lines are used in sewing patterns to denote where stitching should occur. Further, in my opinion, a POSA would have understood stitching to be a common, convenient, and effective method of attaching two pieces of fabric together. Spagna also discloses that the pocket is stitched "about a part of a perimeter of the patch, a gap in the stitching leaving a portion of the perimeter of the patch unattached" in Figure 4. NIKE-1028 at Fig. 4. Thus, in my opinion, a POSA would have understood Spagna to disclose this limitation.

1147. To the extent Patent Owner argues Spagna does not disclose this limitation, in my opinion, Spagna in combination with the knowledge of a POSA renders this limitation obvious. In designing a bra with storage pockets, a POSA would have been motivated to look for known solutions in the art, such as methods of adhering the pockets to the bra. A POSA would have understood stitching to be a well-known method by which pieces of fabric are attached together for clothing. *See*, *e.g.*, NIKE-1020 at 2:1–4 (disclosing a bra pocket formed 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. The panel is also secured to the side edges of the cup 12 by stitching 26."); NIKE-1022 at 3:52–53 (disclosing a pocket "attached to the interior surface of the breast cover by any known means such as stitching."). In my opinion, it would have been obvious to a POSA to try attaching the pocket in Spagna with stitching, and a POSA would have been motivated to do so because stitching is simple, effective, and inexpensive. It would have also been obvious to a POSA that a pocket could be formed by sewing only three edges of the rectangular patch to create access to the interior. Thus, in my opinion, a POSA would have found it obvious to modify Spagna based on their own knowledge.

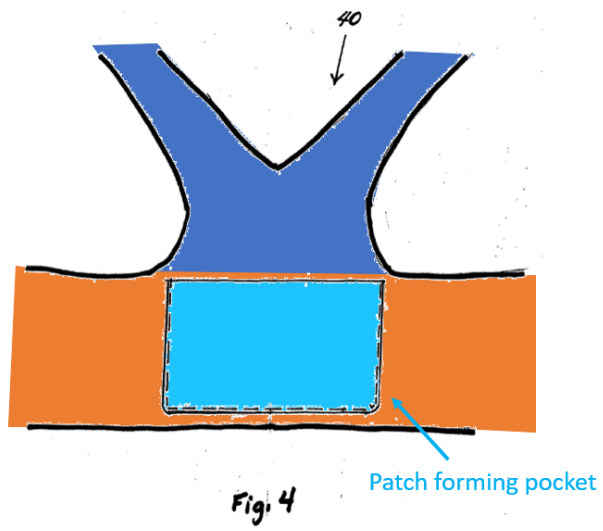
iv. Claim 5

a. ***"The pocket bra of claim 4" limitation [Preamble]***

1148. In my opinion, Spagna discloses "[t]he pocket bra of claim 4" for the reasons described above in claim 4.

b. ***"further comprising an internal pocket connected about a perimeter of the opening, the internal pocket defining the pocket interior and formed such that it is positioned between the patch and the one of the back portion of the chest strap and the shoulder straps." limitation [5A]***

1149. As previously discussed in limitation [1E], Spagna discloses an "an integrated pouch . . . placed on the interior surface of the back of the" chest strap:



NIKE-1028 at Fig. 4 (showing a pocket on the back portion of the bra where the chest strap and shoulder straps come together), [0008]–[0009], [0020]. This "integrated pouch" includes an internal pocket formed between the patch and the back of the chest strap, as shown above. *Id.* Moreover, the internal pocket is necessarily connected about the perimeter of the opening.

v. Claim 7

a. *"The pocket bra of claim 1" limitation [Preamble]*

1150. In my opinion, Spagna discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. *"wherein the opening is formed adjacent to a top of the patch." limitation [7A]*

1151. Spagna discloses a pocket with an upper opening "adjacent to a top of the patch."

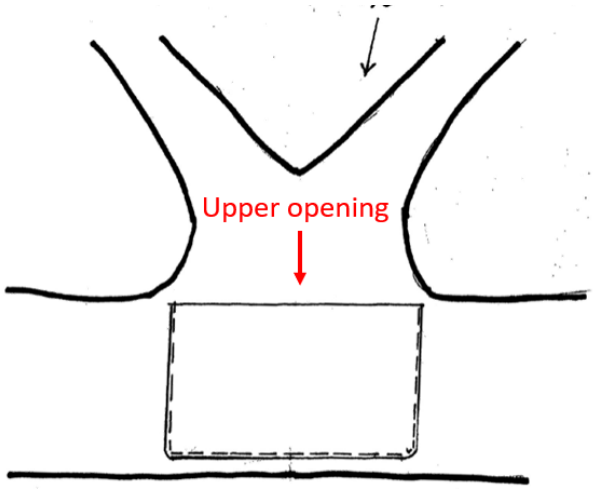


Fig. 4

NIKE-1028 at Fig. 4, at [0009], at [0020].

vi. Claim 9

a. *"The pocket bra of claim 1" limitation [Preamble]*

1152. In my opinion, Spagna discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. *"further comprising an item removably positioned in the back pocket." limitation [9A]*

1153. Spagna discloses the purpose of the pocket is "for holding an automated medication dispensing device." NIKE-1028 at Abstract. And Spagna discloses that "the invention consists of a medication pump inserted into an integrated pouch of a personal undergarment. NIKE-1028 at [0002], at [0009] ("an automated medication dispensing device is adapted to produce a broad, flat profile and is inserted into a relatively large integrated pouch located at the center back of the women's

brassiere."). In my opinion, a POSA would have understood an "automated medication dispensing device" to comprise an "item." Further, Spagna expressly claims the use of the back pocket for holding an item. NIKE-1028 at Claims 7–8.

vii. Claim 11

a. *"The pocket bra of claim 1" limitation [Preamble]*

1154. Spagna discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. *"wherein the opening provides access to a pocket interior." limitation [11A]*

1155. Spagna discloses a pocket with an upper opening "adjacent to a top of the patch."

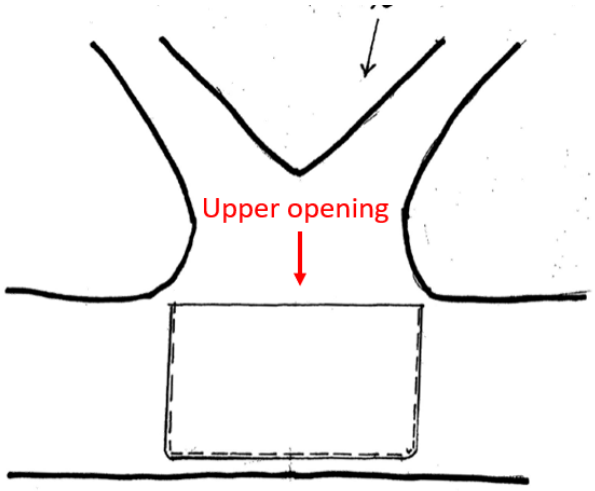


Fig. 4

NIKE-1028 at Fig. 4, at [0009], at [0020]. The opening necessarily "provides access to a pocket interior," as Spagna discloses that "the invention consists of a medication

pump inserted into an integrated pouch of a personal undergarment." NIKE-1028 at [0002], at [0009] ("an automated medication dispensing device is adapted to produce a broad, flat profile and is inserted into a relatively large integrated pouch located at the center back of the women's brassiere."), Abstract.

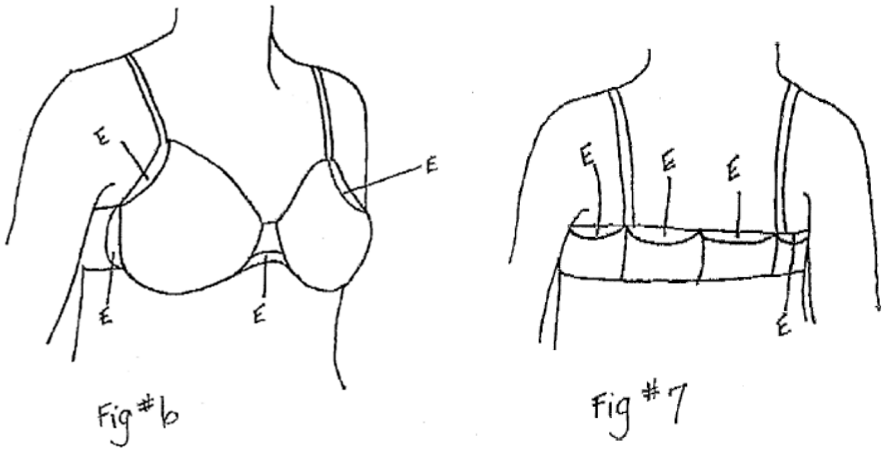
2. Ground 2: Claims 1, 2, 4, 5, 7, 9 and 11 Are Unpatentable Over Rose.

1156. In my opinion, claims 1, 2, 4, 5, 7, 9 and 11 are unpatentable over Rose.

i. Claim 1

a. *"A pocket bra comprising:" limitation [1A]*

1157. To the extent the preamble is limiting, Rose discloses this limitation. As illustrated below, Rose discloses a bra with a series of pockets E:

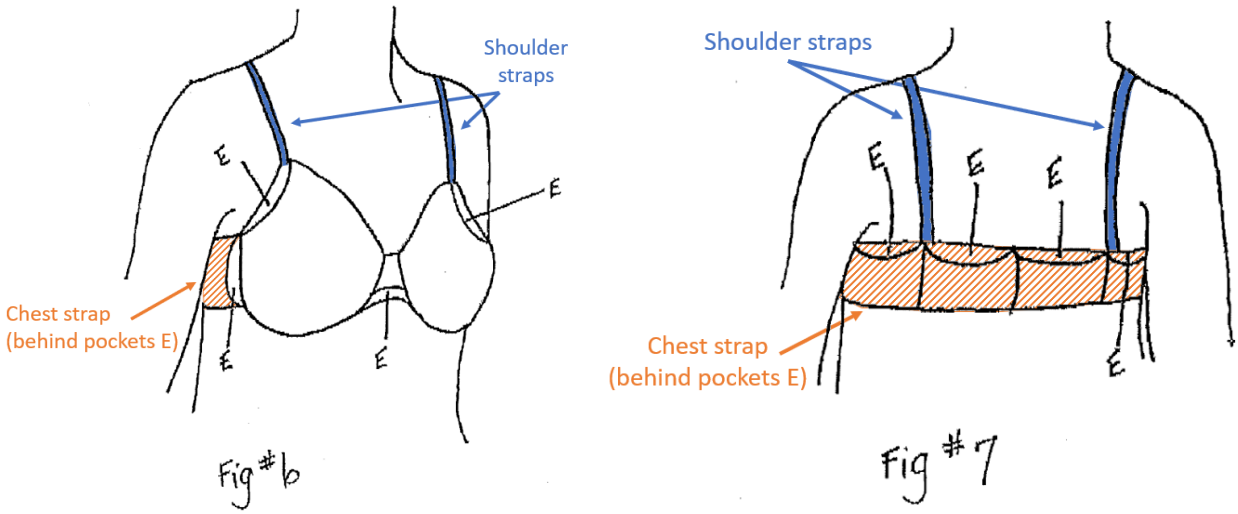


NIKE-1030 at Figs. 6–7, at [0012] ("The brassiere may have two breast cups and a back band, the two breast cups and the back band being assembled together in a conventional manner."). In one embodiment, "the bra is provided with clear latex

pockets on the frontal portions of the breast cups and the back band of the brassiere." *Id.* at [0037].

b. *"a strap assembly including a chest strap and shoulder straps," limitation [1B]*

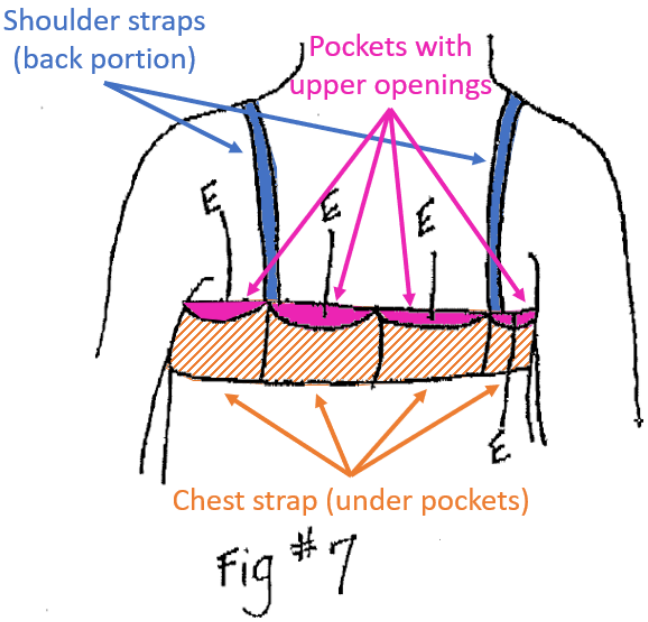
1158. As illustrated below, Rose discloses a bra with shoulder straps and "a back band," *i.e.*, chest strap:



NIKE-1030 at Figs. 6–7 (showing bra with strap assembly shoulder straps and a back band which is covered with pockets E), at [0012] ("The brassiere may have two breast cups and a back band, the two breast cups and the ***back band being assembled together in a conventional manner***."), at [0016] ("the brassiere set can be provided with shoulder straps that may be permanently or detachably connected to the brassiere by any known practical attachment means.").

c. *"the strap assembly joining the chest strap and shoulder straps at a central area adapted to be positioned on a back of a wearer when worn;" limitation [1C]*

1159. In my opinion, Rose in combination with the knowledge of a POSA renders this limitation obvious. Rose discloses a bra with chest and shoulder straps, and a series of pockets formed on the back of the chest strap:

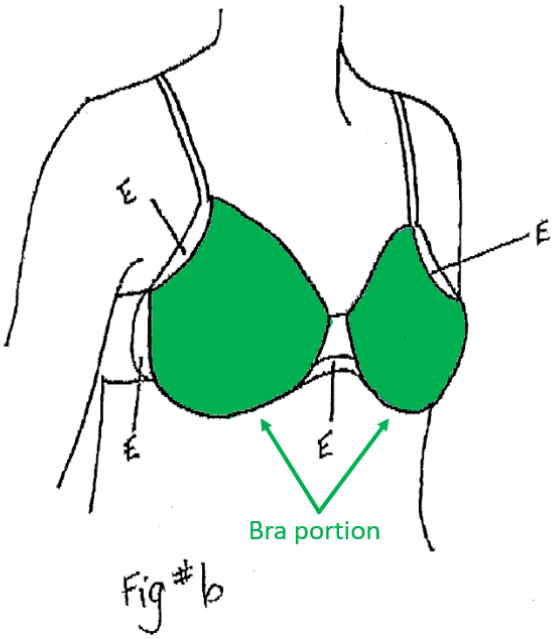


NIKE-1030 at Fig. 7, at [0012] ("The brassiere may have two breast cups and a back band, the two breast cups and the back band being ***assembled together in a conventional manner***."), at [0016] ("the brassiere set can be provided with shoulder straps that may be permanently or detachably connected to the brassiere by any known practical attachment means."). At the time of invention, in my opinion, a POSA would have been familiar with bras with shoulder straps configured to come together on the back of the user. NIKE-1028 at Fig. 4. A POSA would have understood this configuration of shoulder straps, sometimes known as a "racerback" configuration, to be popular in sports bras and bras with clasps in the front. In my

opinion, a POSA would have also understood that bras of such configuration could be designed to include a back pocket. *See* Ground 1 above; NIKE-1028 at Fig. 4. Thus, in my opinion, a POSA would have found it obvious to modify the invention of Rose to include straps that come together on the back. In my opinion, a POSA would have been motivated to try Rose on bras with this configuration to meet the perceived desire by consumers to customize their bras and/or to have storage pockets in their bras.

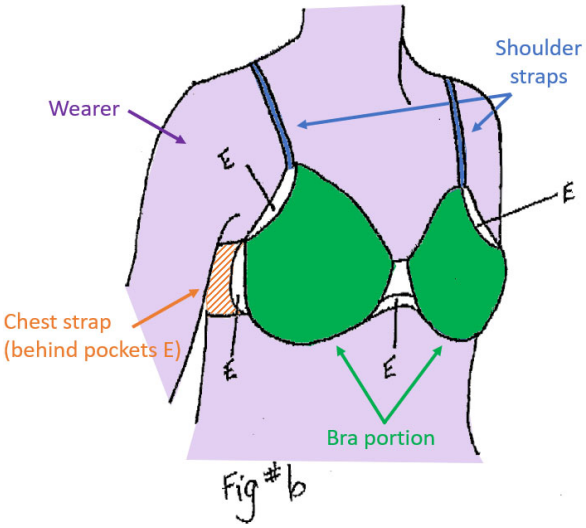
d. ***"a bra portion comprising left and right cups, each cup being an area to receive a breast of wearer, the strap assembly attached to the bra portion;" limitation [1D]***

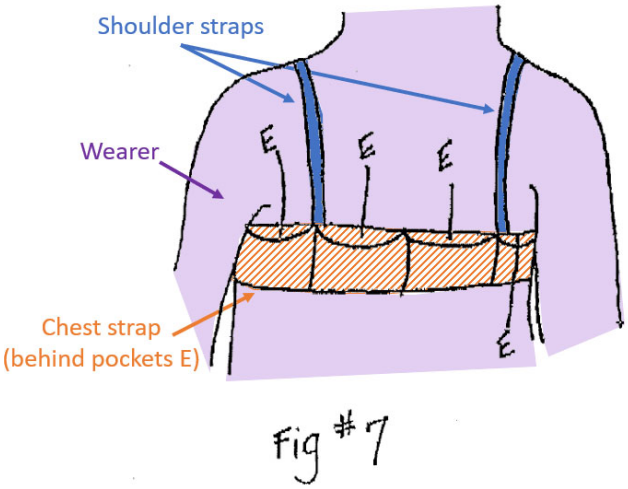
1160. Rose discloses "a bra portion comprising left and right cups":



NIKE-1030 at Fig. 6, at [0012] ("The brassiere may have ***two breast cups*** and a back band, the two breast cups and the back band being assembled together in a

conventional manner."). Rose further discloses that the strap assembly is attached to the bra portion:

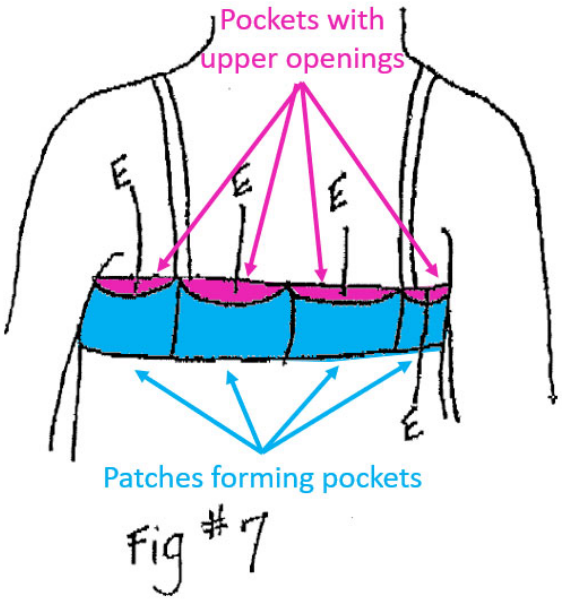




NIKE-1030 at Figs. 6–7 (showing front (Fig. 6) and back (Fig. 7) of the bra assembly), at [0012] ("The brassiere may have two breast cups and a back band, the two breast cups and the back band being ***assembled together in a conventional manner***."), at [0016] ("the brassiere set can be provided with shoulder straps that may be permanently or detachably connected to the brassiere by any known practical attachment means.").

e. *"and a back pocket formed entirely of stretchable fabric positioned on the central area," limitation [1E]*

1161. Rose discloses a bra "provided with *clear latex pockets* on . . . *the back band of the brassiere*":



NIKE-1030 at Fig. 7, [0037]. In my opinion, a POSA would have understood latex to be a "stretchable" fabric. And as explained above in limitation [1C], a POSA would have found it obvious to modify the invention of Rose to include straps that come together on the back to form a central area such that the back pocket is on the central area.

f. *"the back pocket having an opening that is biased in a closed position at rest." limitation [1F]*

1162. In my opinion, Rose in combination with the knowledge of a POSA renders this limitation obvious. First, Rose discloses pockets with openings E to provide access to a pocket interior. NIKE-1030 at [0037] ("The pockets have slits E on the upper side as shown in FIG. 6 and FIG. 7. Various inserts made of, but not limited to, plastic, fabric, *can be inserted into the pockets through the openings E*.").

In my opinion, a POSA would have understood the purpose of a pocket is to provide access to the interior for storage of items.

1163. Further, in designing a bra with storage pockets, in my opinion, a POSA would have been motivated to look for known solutions in the art, such as methods of keeping items stored in the pocket secure. Pockets designed to remain closed at rest were known long before the alleged invention. NIKE-1033 at 3:22–23 (describing a pocket on the back side of an exercise shirt as "in a closed position unless stretched by the wearer for access."); *see also* NIKE-1032 at [0020] (Describing the advantage of a fastener mechanism designed for keeping the pocket closed as "prevent[ing] objects stored within [the pocket] from falling out of [the pocket] accidentally"). Thus, in my opinion, a POSA would have found it obvious to modify Rose to make the pockets biased in a closed position at rest based on their own knowledge and been motivated to do so to keep items stored in the pocket more secure.

ii. Claim 2

a. *"The pocket bra of claim 1" limitation [Preamble]*

1164. In my opinion, Rose discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. *"wherein the bra is a sports bra." limitation [2A]*

1165. In my opinion, Rose in combination with the knowledge of a POSA renders this limitation obvious. The purpose of the pockets disclosed in Rose is to provide means to "change the visual appearance of the brassiere." NIKE-1030 at [0012]. In my opinion, a POSA would have understood sports bras to have been popular at the time of invention. *See* NIKE-1039 (discussing "[t]op [c]hoices" of sports bras available on the market in 2010). In designing a bra with a customizable appearance, a POSA would have been motivated to try the invention of Rose on a sports bra, due to the popularity of sports bras and the perceived desire by consumers to customize their bras. Further, in my opinion, a POSA would have understood that the pockets disclosed by Rose could be used to hold items for storage, rather than to change the outer appearance of the bra. Thus, a POSA would have been further motivated to try the invention of Rose on a sports bra in order to meet consumer demand for sports bras with pockets, allowing users to carry items like keys, pills, handheld electronic devices, credit cards, money, or other items while exercising.

iii. Claim 4

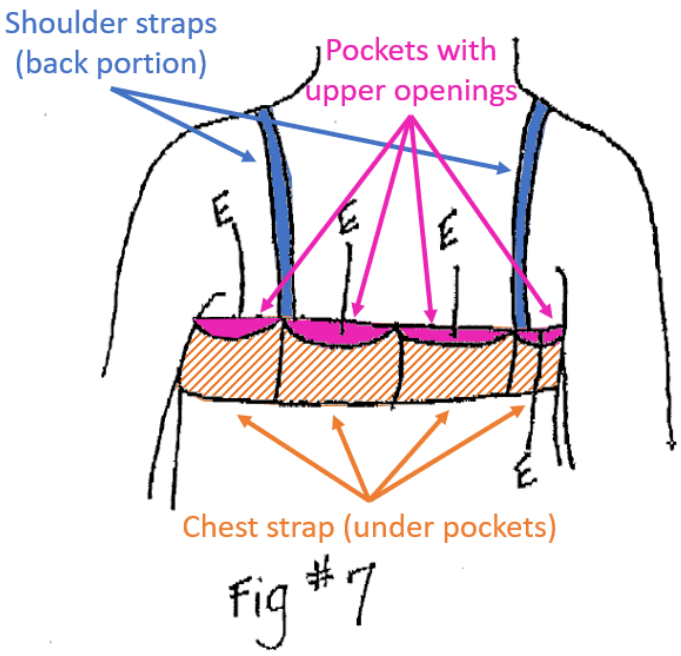
a. *"The pocket bra of claim 1" limitation [Preamble]*

1166. Rose discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. *"wherein the back pocket is formed by a patch connected to the back portion of the at least one of the chest strap and shoulder straps by stitching about a part of a perimeter of the patch, a gap in the stitching leaving a portion of the perimeter of the patch unattached, thereby*

forming the opening providing access to a pocket interior portion formed by the patch." limitation [3A]

1167. As discussed in limitation [1E], Rose discloses "clear latex pockets on … the back band of the brassiere":



NIKE-1030 at Fig. 7, [0037]. Rose also discloses a pocket having three closed sides and one open side on the top, allowing access to the pocket's interior. *Id.* Further, in my opinion, a POSA would have understood stitching to be a common, convenient, and effective method of attaching two pieces of fabric together, as has been done for centuries. It would have also been obvious to a POSA that a pocket could be formed by sewing only three edges of the rectangular patch to create access to the interior. Thus, in my opinion, a POSA would have understood Rose to disclose this limitation.

1168. To the extent Patent Owner argues Rose does not implicitly disclose this limitation, in my opinion, Rose in combination with the knowledge of a POSA renders this limitation obvious. In designing a bra with storage pockets, in my opinion, a POSA would have been motivated to look for known solutions in the art, such as methods of adhering the pockets to the bra. In my opinion, a POSA would have understood stitching to be a well-known method by which pieces of fabric are attached together for clothing. *E.g.*, NIKE-1020 at 2:1–4; NIKE-1022 at 3:52–53. It would have been obvious to a POSA to try attaching the pocket in Rose with stitching, and a POSA would have been motivated to do so because stitching is simple, effective, and inexpensive. Thus, in my opinion, a POSA would have found it obvious to modify Rose based on their own knowledge.

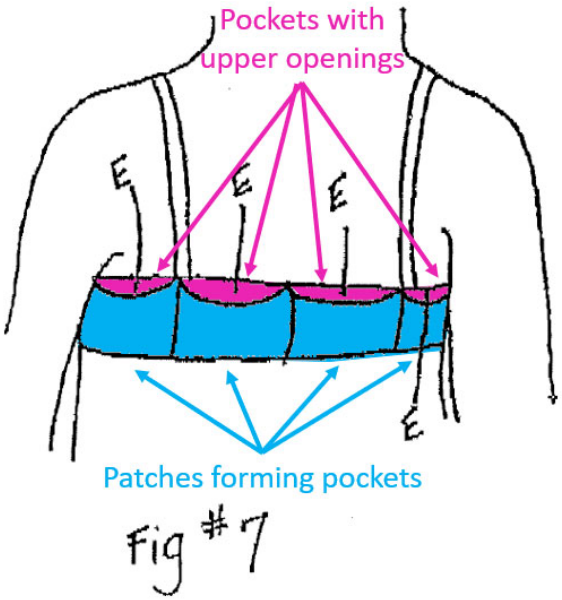
iv. Claim 5

a. *"The pocket bra of claim 4" limitation [Preamble]*

1169. Rose discloses "[t]he pocket bra of claim 4" for the reasons described above in claim 4.

b. *"further comprising an internal pocket connected about a perimeter of the opening, the internal pocket defining the pocket interior and formed such that it is positioned between the patch and the one of the back portion of the chest strap and the shoulder straps." limitation [5A]*

1170. As previously discussed in limitation [1E], Rose discloses a bra "provided with *clear latex pockets* on . . . *the back band of the brassiere*":



NIKE-1030 at Fig. 7, [0037]. Each of these "clear latex pockets" includes an internal pocket formed between the patch and the back of the chest strap, as shown above. *Id.* Moreover, the internal pocket is necessarily connected about the perimeter of the opening.

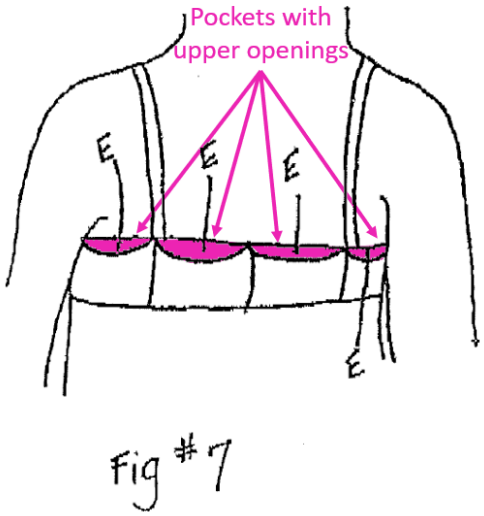
v. Claim 7

a. *"The pocket bra of claim 1" limitation [Preamble]*

1171. In my opinion, Rose discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. *"wherein the opening is formed adjacent to a top of the patch." limitation [7A]*

1172. Rose discloses pockets with openings adjacent to the top of each pocket-forming patch:



NIKE-1030 at Fig. 7, at [0037] ("The pockets have ***slits E on the upper side*** as shown in FIG. 6 and FIG. 7.").

vi. Claim 9

a. *"The pocket bra of claim 1" limitation [Preamble]*

1173. In my opinion, Rose discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. *"further comprising an item removably positioned in the back pocket." limitation [9A]*

1174. Rose expressly teaches the use of the pockets to temporarily store "various inserts" made of plastic, fabric, or other materials, of various colors and patterns to change the outer appearance of the bra. NIKE-1030 at [0037] ("Various inserts made of, but not limited to, plastic, fabric, can be inserted into the pockets through the openings E. The inserts can be of different colours or patterns so as to change the appearance of the bra."). Further, in my opinion, a POSA would have

understood that a user could place an item other than the claimed inserts in the pocket. A POSA would have understood that the presence of a pocket necessarily implies access to the pocket interior for the temporary storage of items.

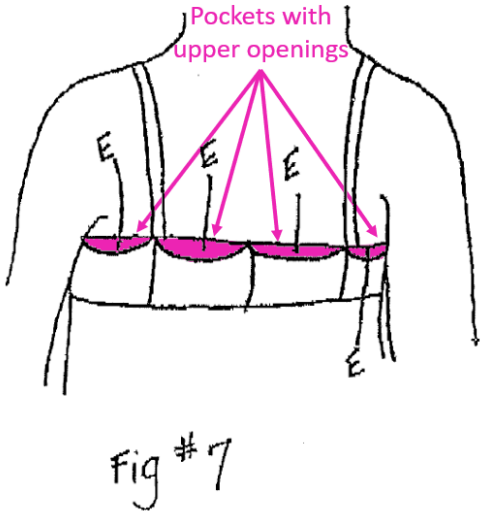
vii. Claim 11

a. *"The pocket bra of claim 1" limitation [Preamble]*

1175. In my opinion, Rose discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. *"wherein the opening provides access to a pocket interior." limitation [11A]*

1176. Rose discloses pockets with openings adjacent to the top of each pocket-forming patch:



NIKE-1030 at Fig. 7, at [0037] ("The pockets have ***slits E on the upper side*** as shown in FIG. 6 and FIG. 7."). The opening necessarily "provides access to a pocket interior," as Rose discloses that "Various inserts made of, but not limited to, plastic,

fabric, can be inserted into the pockets through the openings E." NIKE-1030 at [0037].

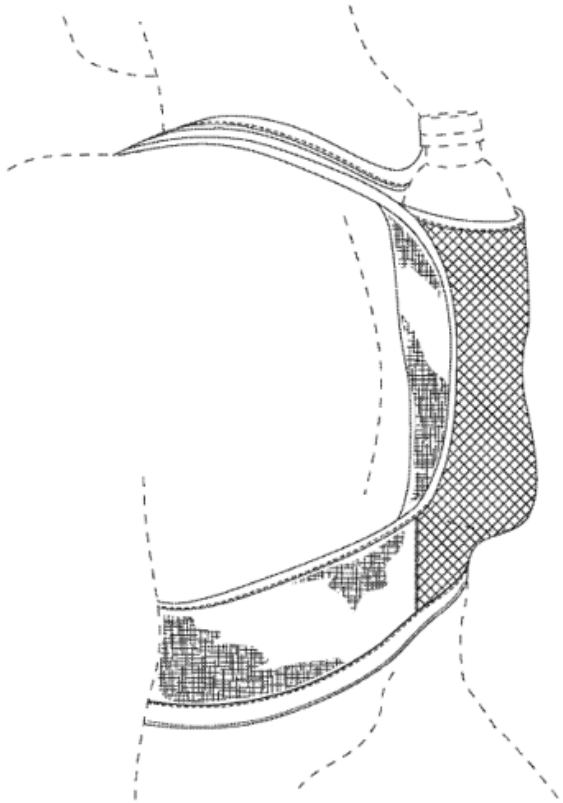
3. Ground 3: Claims 1, 2, 4, 5, 7, 9 and 11 Are Unpatentable Over Glass.

1177. In my opinion, claims 1, 2, 4, 5, 7, 9 and 11 are unpatentable over Glass.

i. Claim 1

a. *"A pocket bra comprising:" limitation [1A]*

1178. To the extent the preamble is limiting, Glass discloses this limitation. As illustrated below, Glass discloses a sports bra with a back pocket for storage of a water bottle:



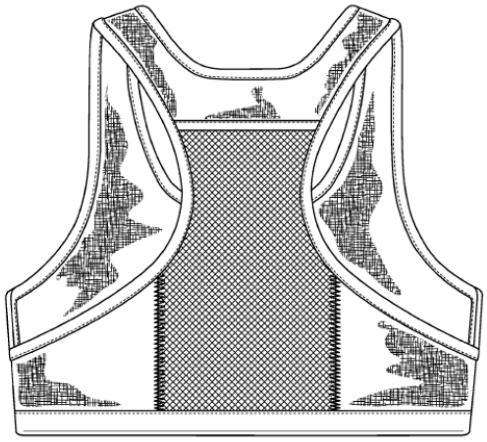


FIG. 2

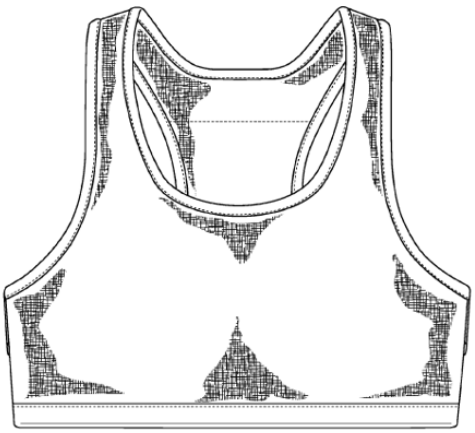
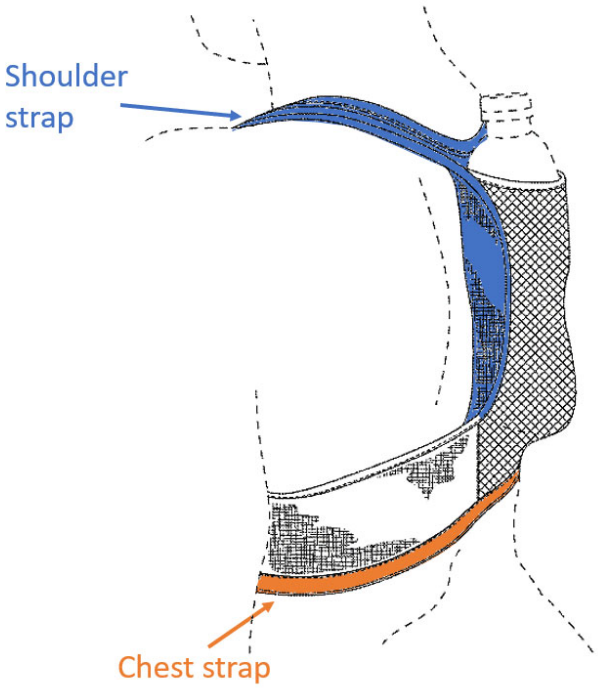


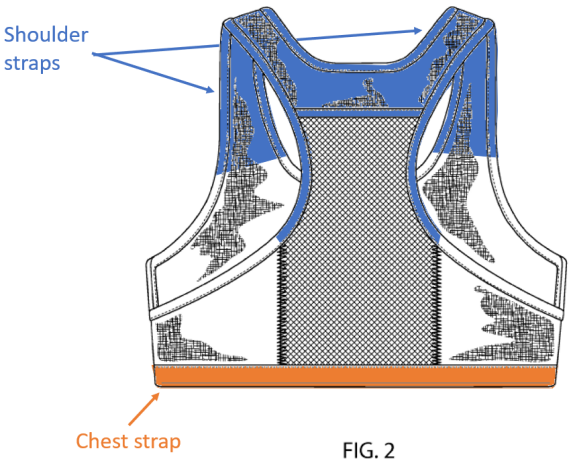
FIG. 3

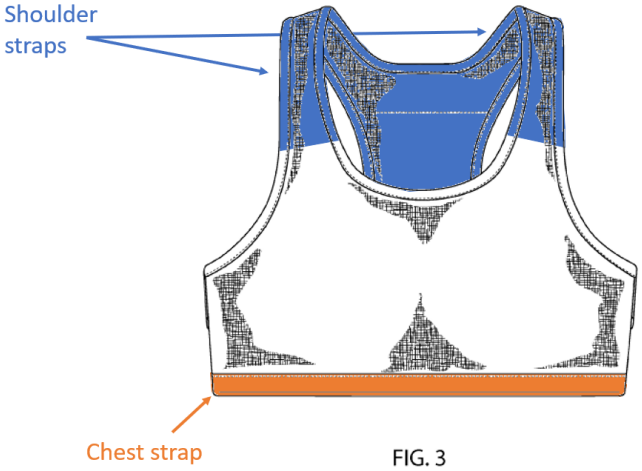
NIKE-1029 at Figs. 1–3, at Title ("Sports Bra with Water Bottle Pocket on Back"), at Description ("FIG. 1 is a rear and left-side perspective view of the sports bra with water bottle pocket.").

b. ***"a strap assembly including a chest strap and shoulder straps," limitation [1B]***

1179. As illustrated below, Glass discloses a sports bra comprised of two shoulder straps and a chest strap:



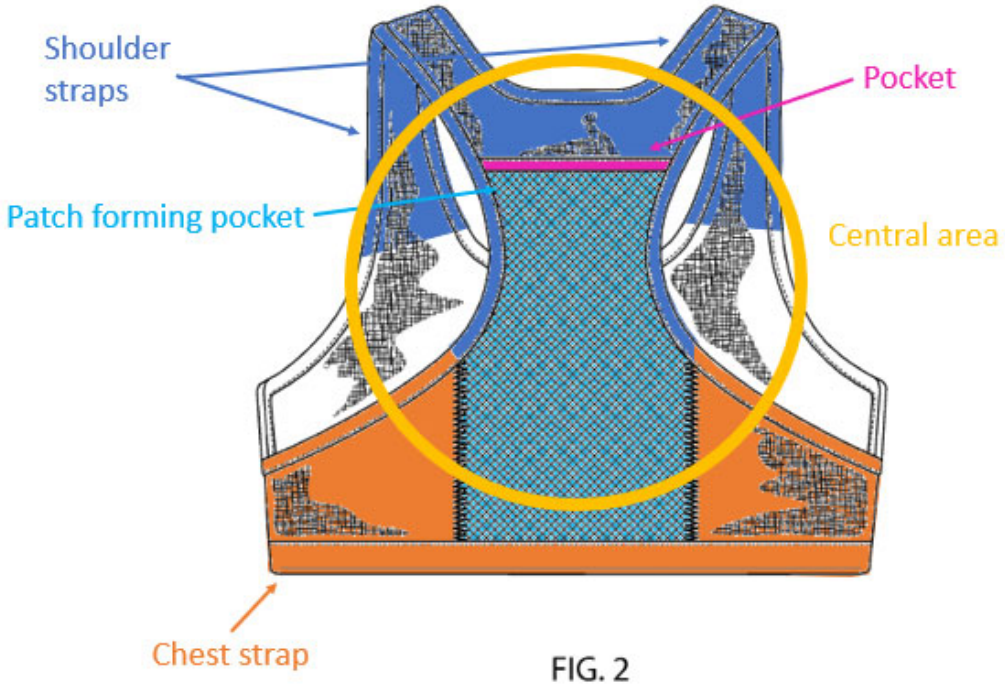




NIKE-1029 at Figs. 1–3.

c. ***"the strap assembly joining the chest strap and shoulder straps at a central area adapted to be positioned on a back of a wearer when worn;" limitation [1C]***

1180. Glass discloses a sports bra with a strap assembly comprised of a chest strap and shoulder straps, and a pocket on the back of the strap assembly:



NIKE-1029 at Fig. 2. As shown above, the back portion of the shoulder straps come together in a racerback configuration, forming a "central area" where the pocket and pocket opening are located. *Id.*

d. ***"a bra portion comprising left and right cups, each cup being an area to receive a breast of wearer, the strap assembly attached to the bra portion;" limitation [1D]***

1181. Glass discloses a sports bra with a "bra portion" configured to receive the breasts of the wearer:

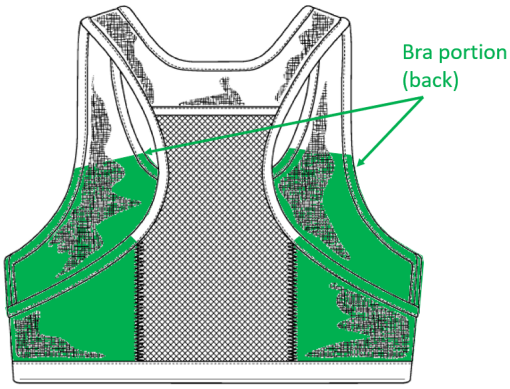


FIG. 2

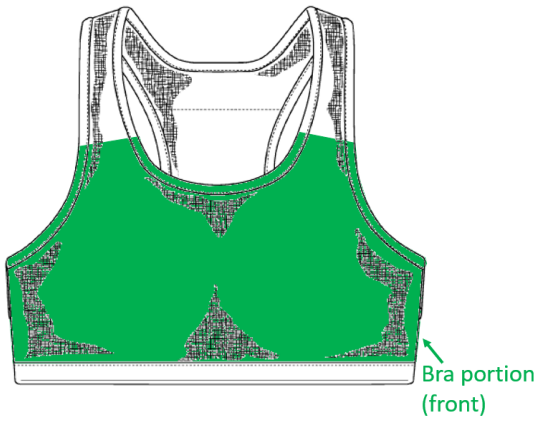
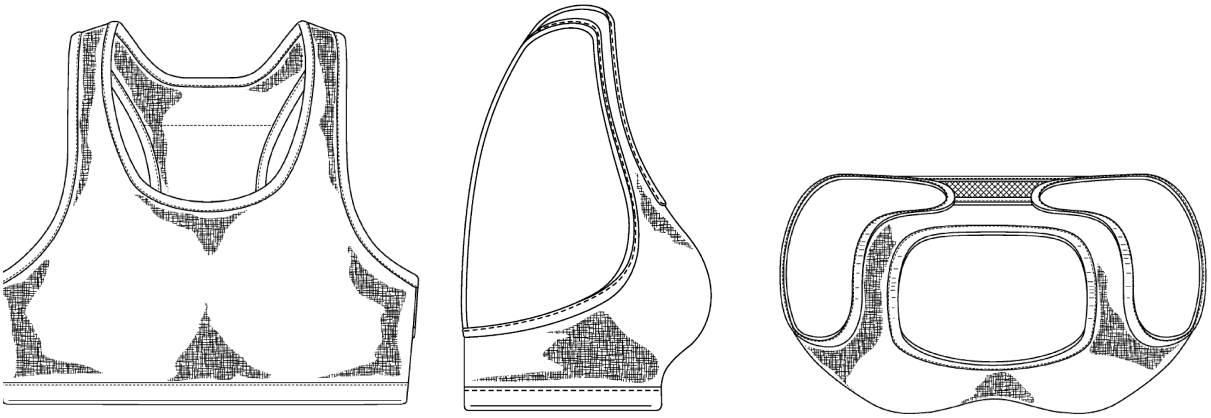


FIG. 3

NIKE-1029 at Figs. 2–3. Moreover, as can be seen in Figures 3–5 below, Glass's bra portion comprises distinct left and right cups:



Id. at Figs. 3–5.

1182. Alternatively, in my opinion, it would have been obvious to a POSA to modify Glass to include left and right cups. Glass discloses a sports bra and sports bras with left and right cups were well known at the time of the alleged invention. NIKE-1028 at Fig. 2, [0017]–[0020]. A POSA would have been motivated to modify Glass to include left and right cups to increase the support and comfort of the bra. Moreover, including left and right cups can help give a more natural

appearance and shape, which some consumers prefer. In my opinion, a POSA would have had a high expectation of success in such a modification because this is simple technology, left and right cups were known in sports bras, and they would be performing their known function.

e. ***"and a back pocket formed entirely of stretchable fabric positioned on the central area," limitation [1E]***

1183. Glass discloses a pocket on the central area for holding a water bottle:

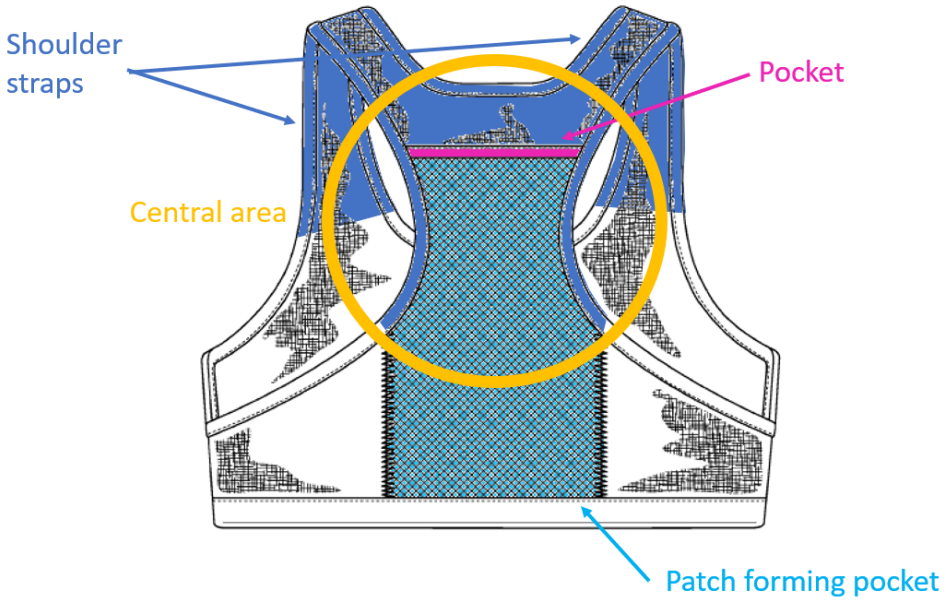


FIG. 2

NIKE-1029 at Fig. 2. Further, Glass illustrates the pocket in both an open and closed configuration:

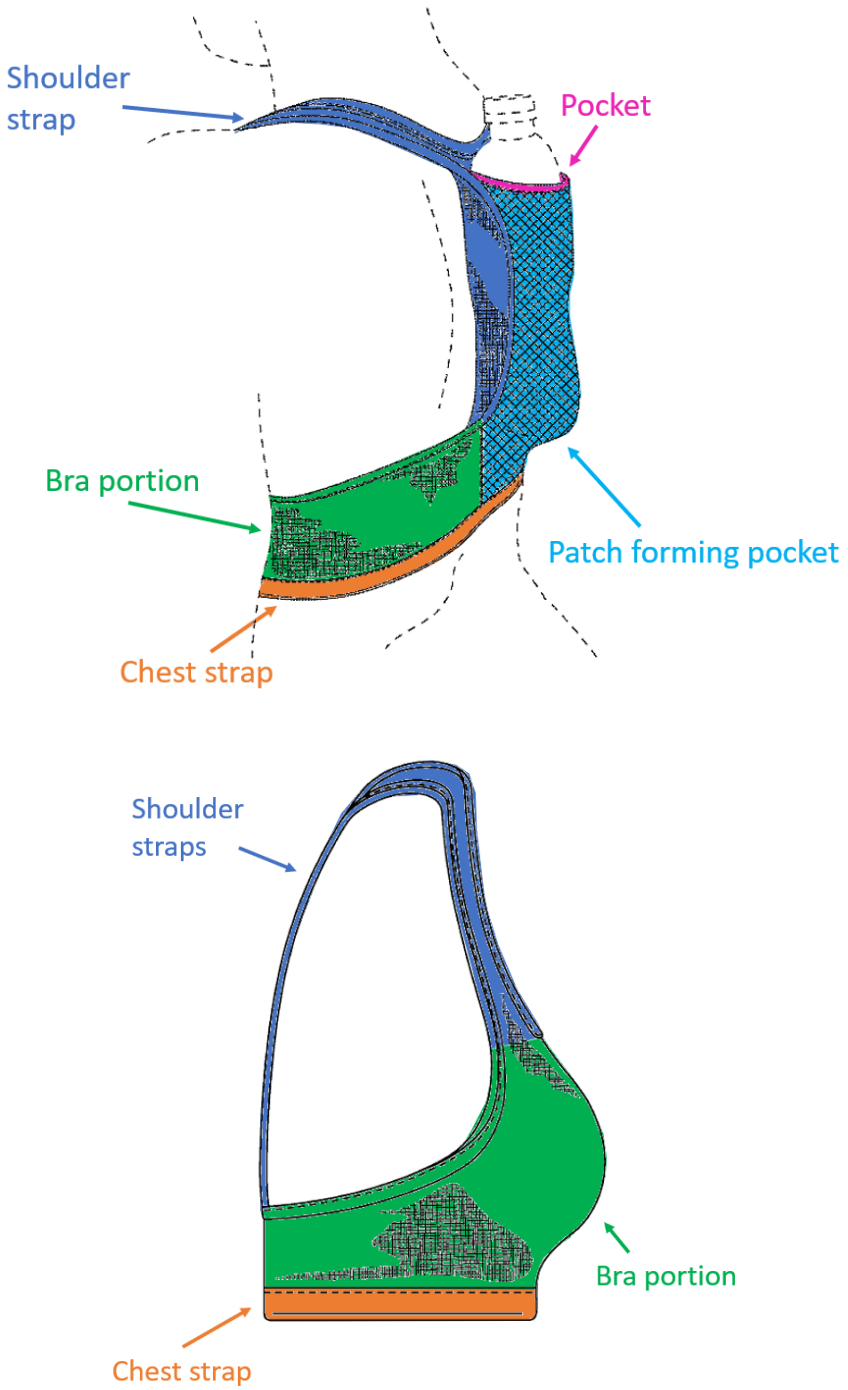


FIG. 4

NIKE-1029 at Figs. 1, 4 (Fig. 4 showing a side profile view of the claimed bra in a closed configuration). As shown above, in the closed configuration, the pocket opening lies flat against the back surface of the bra. *Id.* In my opinion, a POSA

would have understood this to indicate the pocket is formed of "stretchable material" so the pocket opening can stretch to accommodate the storage of a water bottle.

1184. To the extent Patent Owner argues this limitation is not expressly or implicitly disclosed by Glass, in my opinion, Glass in combination with the knowledge of a POSA renders this limitation obvious. In my opinion, a POSA would have understood the purpose of a pocket on a bra or other garment is to hold items, as Glass expressly discloses. NIKE-1029 at Title, at Fig. 1. A POSA would have understood that the shape of such objects may not easily conform to the shape of a rigid bra. Thus, in my opinion, a POSA would have found it obvious to manufacture the pocket with "stretchable" material, such that the pocket may stretch or expand to accommodate the placement of objects for storage. Sports bras comprised of stretchable material were well-known and popular at the time of the alleged invention. *See e.g.*, NIKE-1022 at 3:5–14; *see also* NIKE-1039. In my opinion, a POSA would have understood that stretchable fabric could similarly be applied to the bra pocket disclosed in Glass. Thus, if not expressly disclosed (it is), in my opinion, a POSA would have found it obvious to modify Glass based on their own knowledge to include "a back pocket formed entirely of stretchable fabric."

f. *"the back pocket having an opening that is biased in a closed position at rest." limitation [1F]*

1185. Glass illustrates the back pocket in both an open and closed configuration:

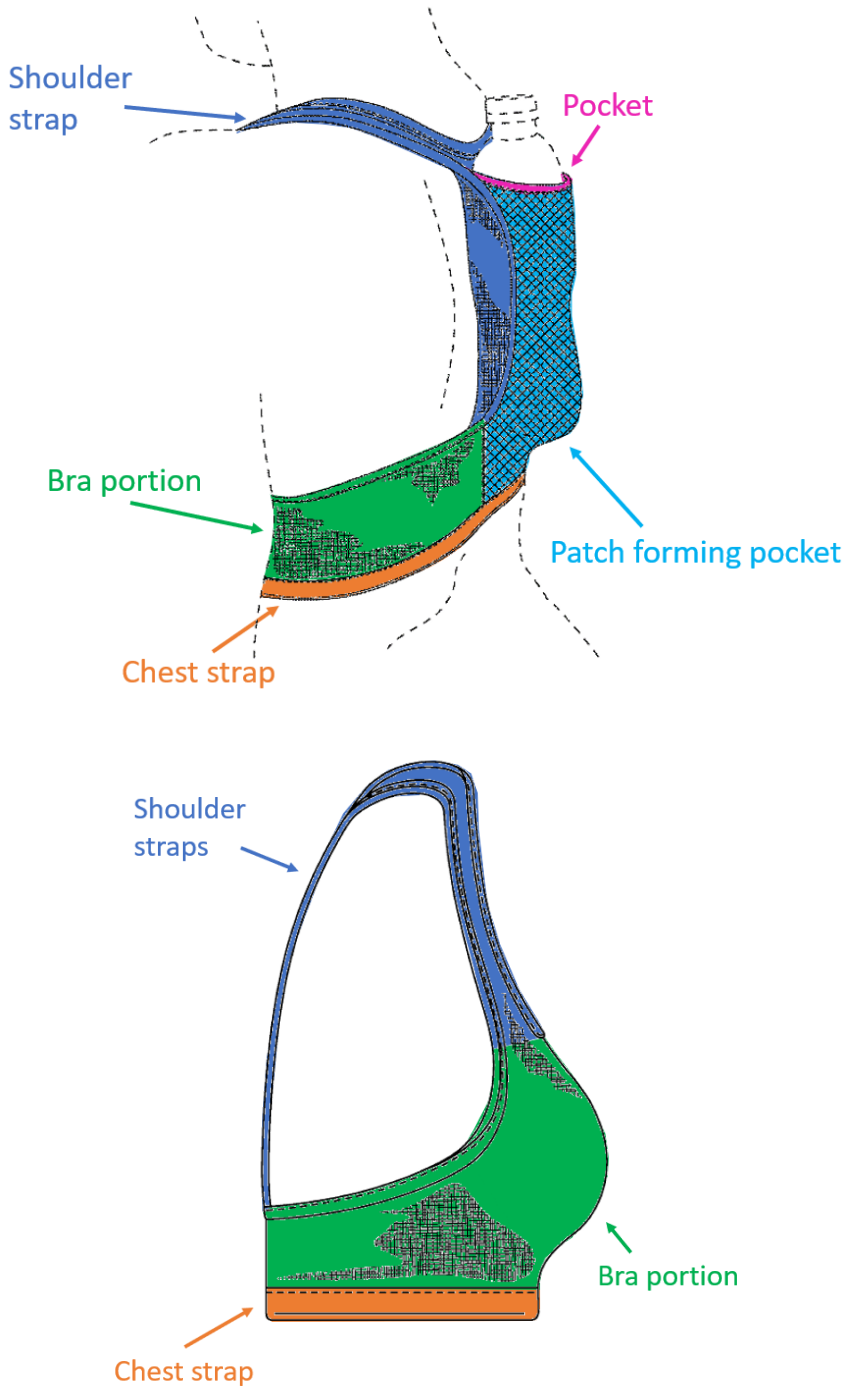


FIG. 4

NIKE-1029 at Figs. 1, 4 (Fig. 4 showing a side profile view of the claimed bra in a closed configuration). As shown above, in the closed configuration, the pocket opening lies flat against the back surface of the bra. *Id.* In my opinion, a POSA

would have understood this to indicate the pocket is "biased in a closed position at rest."

ii. Claim 2

a. *"The pocket bra of claim 1" limitation [Preamble]*

1186. In my opinion, Glass discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. *"wherein the bra is a sports bra." limitation [2A]*

1187. Glass discloses that it is a "sports bra." NIKE-1029 at Title ("Sports Bra with Water Bottle Pocket on Back"), Description ("sports bra with water bottle pocket"), Figs. 1–5.

iii. Claim 4

a. *"The pocket bra of claim 1" limitation [Preamble]*

1188. In my opinion, Glass discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. *"wherein the back pocket is formed by a patch connected to the back portion of the at least one of the chest strap and shoulder straps by stitching about a part of a perimeter of the patch, a gap in the stitching leaving a portion of the perimeter of the patch unattached, thereby forming the opening providing access to a pocket interior portion formed by the patch." limitation [3A]*

1189. Glass discloses the pocket formed by a patch of material connected to the back portion of the at least one of the chest strap and shoulder straps by stitching

around the patch's perimeter, with a gap in the stitching leaving an upper opening with access to the pocket's interior:

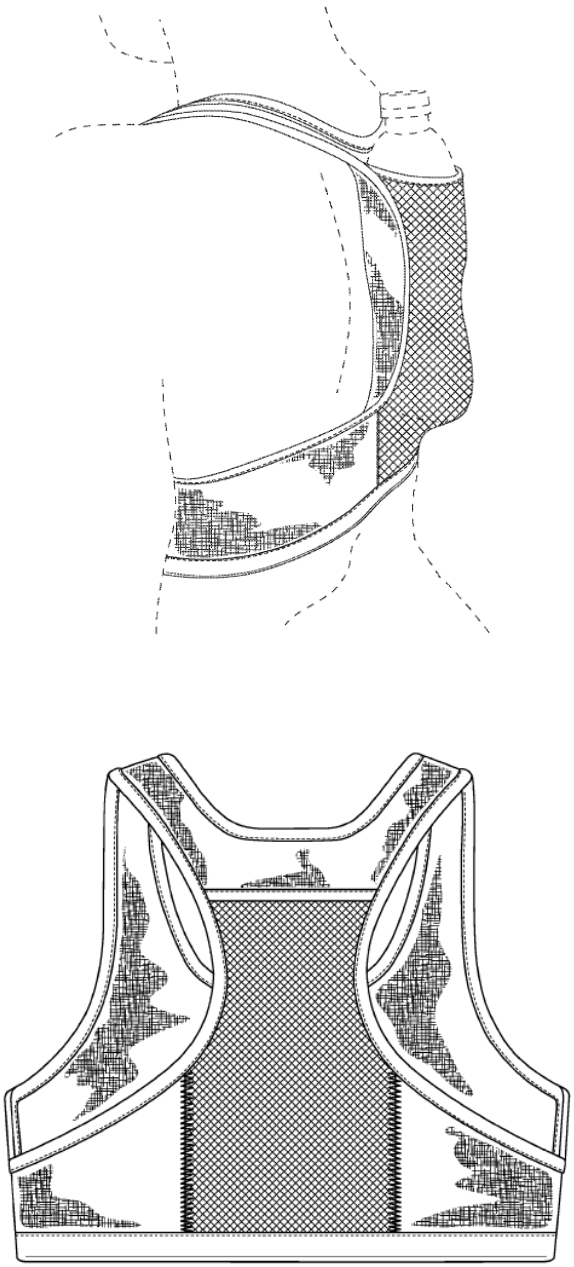


FIG. 2

NIKE-1029 at Figs. 1, 2; at Description ("The short-segmented broken lines represent stitching."). In my opinion, a POSA would have understood the purpose

of a pocket is to provide access to the interior for storage of items, as Glass illustrates with the water bottle.

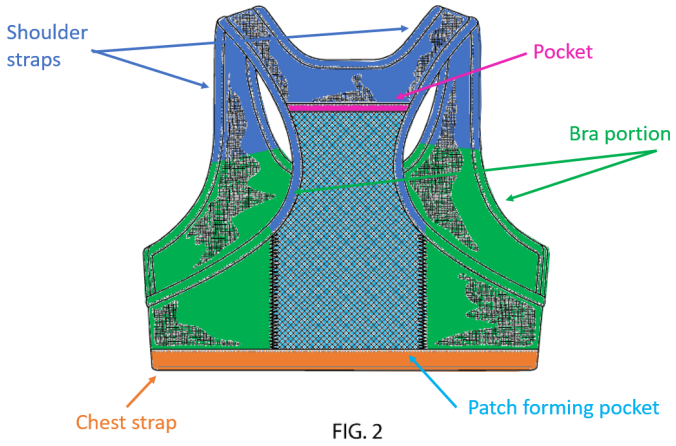
iv. Claim 5

a. *"The pocket bra of claim 4" limitation [Preamble]*

1190. In my opinion, Glass discloses "[t]he pocket bra of claim 4" for the reasons described above in claim 4.

b. *"further comprising an internal pocket connected about a perimeter of the opening, the internal pocket defining the pocket interior and formed such that it is positioned between the patch and the one of the back portion of the chest strap and the shoulder straps." limitation [5A]*

1191. As previously discussed in limitation [1E], Glass discloses a bra with a back pocket formed by a patch on the back portion of the chest strap:



NIKE-1029 at Fig. 2. The back pocket includes an internal pocket formed between the patch and the back of the chest strap, as shown above. *Id.* Moreover, the internal pocket is necessarily connected about the perimeter of the opening.

1192. Alternatively, in my opinion, it would have been obvious to modify Glass such that "the internal pocket … is positioned between the patch and the one of the back portion of the chest strap and the shoulder straps," by extending the patch slightly lower so it extends further onto the chest strap. In my opinion, a POSA would have been motivated to make such a modification to increase the size of the patch and would have had a high expectation of success in doing so because this would have been a simple modification with a predictable result: a slightly larger pocket.

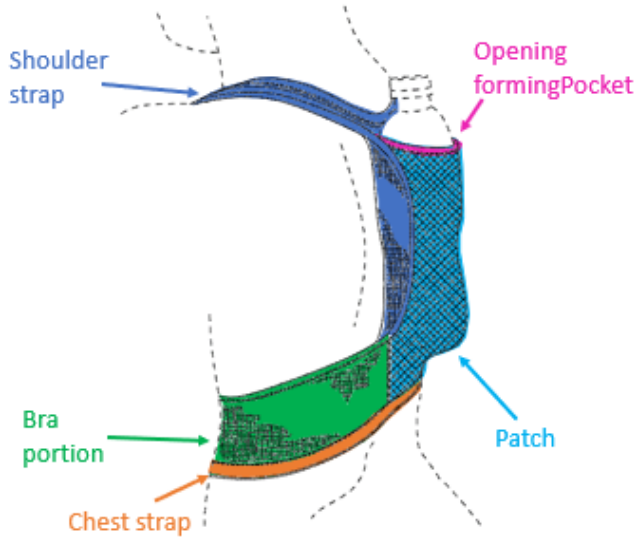
v. Claim 7

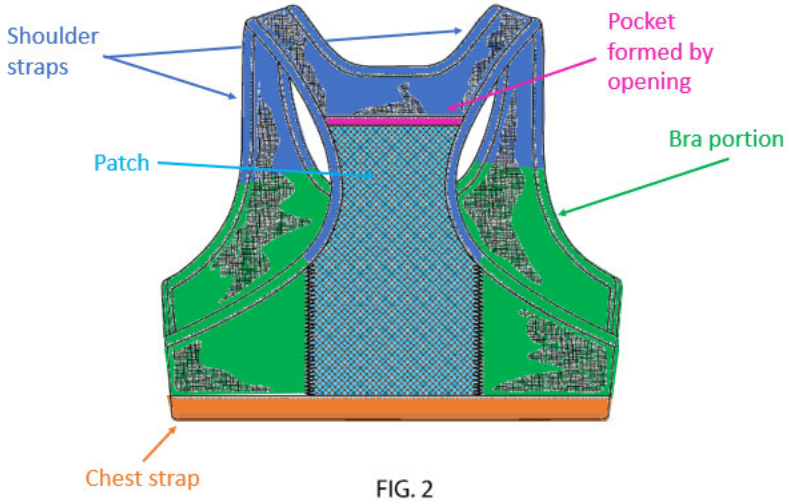
a. *"The pocket bra of claim 1" limitation [Preamble]*

1193. In my opinion, Glass discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. *"wherein the opening is formed adjacent to a top of the patch." limitation [7A]*

1194. The pocket disclosed in Glass has an upper opening adjacent to the top of the patch:





NIKE-1029 at Figs. 1–2.

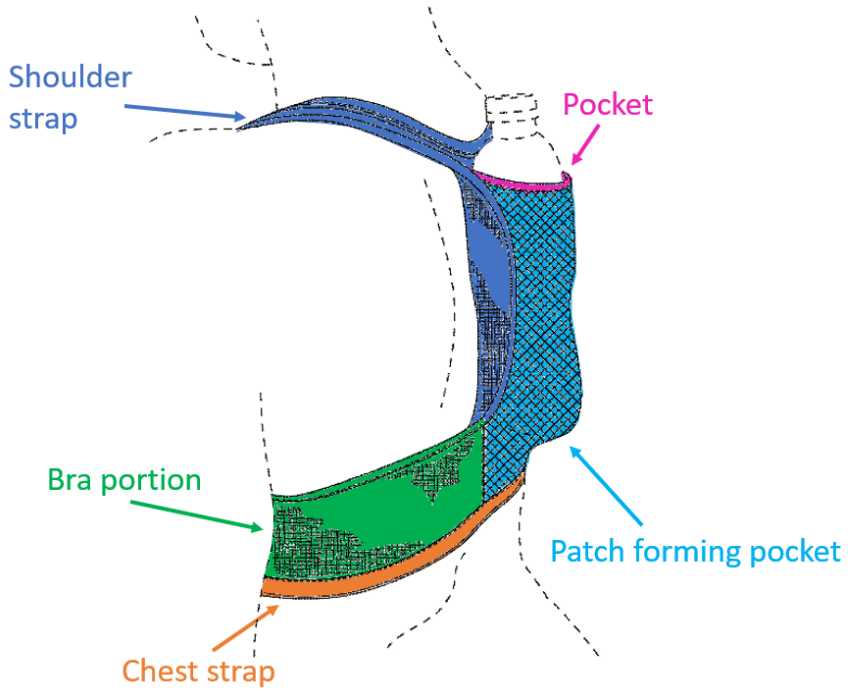
vi. Claim 9

a. *"The pocket bra of claim 1" limitation [Preamble]*

1195. In my opinion, Glass discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. *"further comprising an item removably positioned in the back pocket." limitation [9A]*

1196. Glass discloses a water bottle positioned within the back pocket:



NIKE-1029 at Fig. 1, at Description ("The long-segmented broken lines showing . . . the top of a water bottle in FIG. 1.").

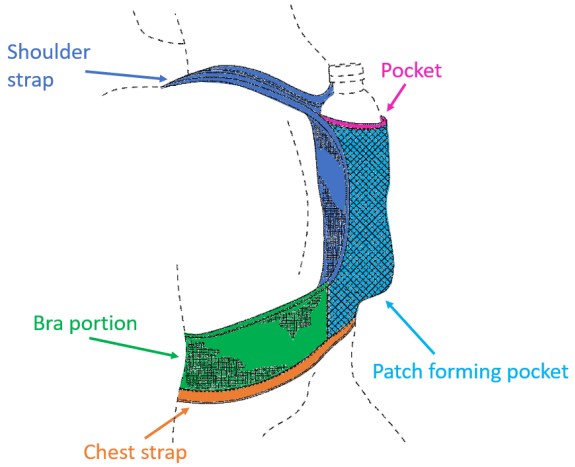
vii. Claim 11

a. *"The pocket bra of claim 1" limitation [Preamble]*

1197. In my opinion, Glass discloses "[t]he pocket bra of claim 1" for the reasons described above in claim 1.

b. *"wherein the opening provides access to a pocket interior." limitation [11A]*

1198. Glass discloses a pocket with an opening adjacent to the top of each pocket-forming patch:



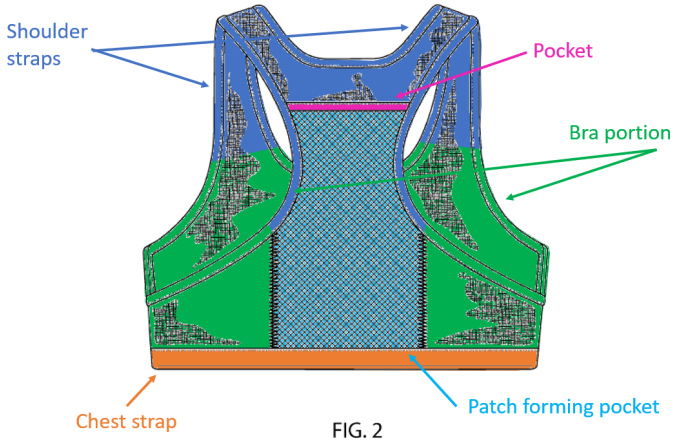


FIG. 2

NIKE-1029 at Figs. 1–2. The opening necessarily "provides access to a pocket interior," as Glass teaches the use of the pocket for the storage and removal of a water bottle. NIKE-1029 at Figs. 1–4, Description.

I. Secondary Considerations

1199. I am currently unaware of any secondary considerations that have a nexus to the claimed inventions of the Challenged Patents that would overcome the Petition's showing of obviousness. For example, I am not aware of any evidence of commercial success of the alleged invention, skepticism of those having ordinary

skill in the art at the time of the alleged invention, unexpected results of the alleged invention, any long-felt but unsolved need in the art that was satisfied by the alleged invention, the failure of others to make the alleged invention, praise of the alleged invention by those having ordinary skill in the art, or copying of the alleged invention by others in the field, much less where there is a nexus or connection between such a factor and the alleged invention. Moreover, I understand that simultaneous invention of the same thing by multiple inventors is an indicator of obviousness. As discussed in section VI, the field of prior art is saturated with bras with pockets, making the alleged inventions of the Challenged Patents hardly "born of necessity." NIKE-1036 at 2. If Patent Owner identifies any evidence of secondary considerations of non-obviousness, I reserve the right to respond.

IX. CONCLUSION

1200. For the foregoing reasons, it is my opinion that the Challenged Claims of the Challenged Patents are not patentable.

I, Joyce Baran, hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that all statements made of my own knowledge are true and that all statements made on information and believe are believed to be true. I understand that willful false statements are punishable by fine or imprisonment or both. 18. U.S.C. § 1001.

Date: July 17, 2024

Respectfully Submitted,

Joyce Baran