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Tommy John v. 0912139 B.C. Ltd.

Case No. IPR2024-01163 (’974 Patent)

Demonstratives Prepared for October 9, 2025, Hearing

Tommy John EX1012
Tommy John v. Pakage Apparel
IPR2024-01163

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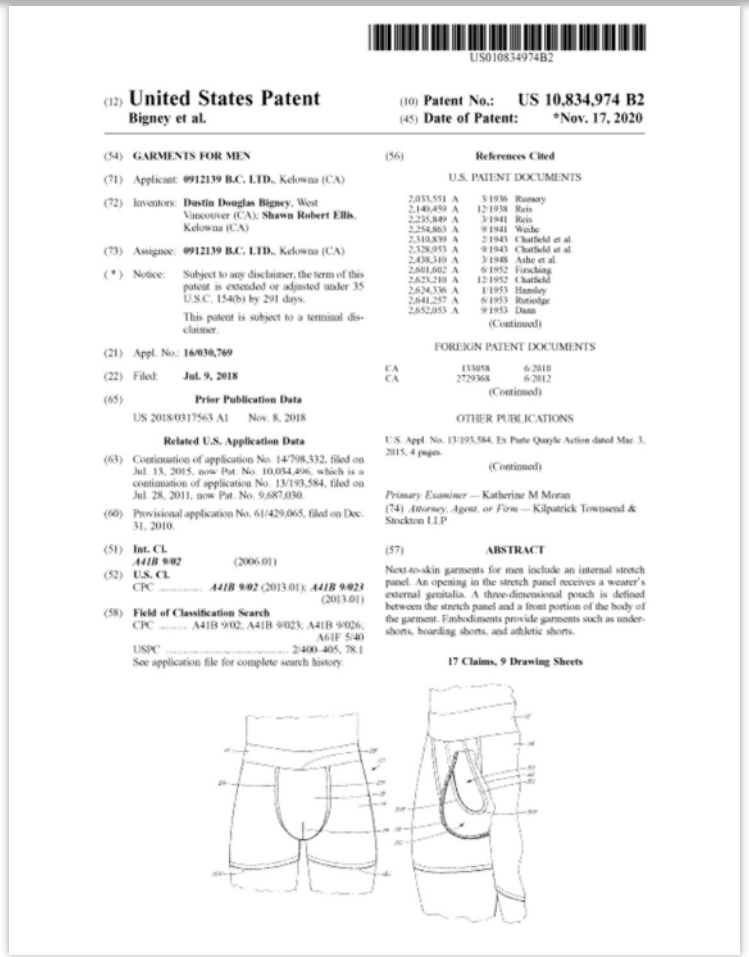
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Overview

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

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The Claimed Invention



US010834974B2

(12) **United States Patent**
Bigney et al.

(10) **Patent No.: US 10,834,974 B2**
(45) **Date of Patent: *Nov. 17, 2020**

(54) **GARMENTS FOR MEN**

(71) Applicant: **0912139 B.C. LTD.**, Kelowna (CA)

(72) Inventors: **Dustin Douglas Bigney**, West Vancouver (CA); **Shawn Robert Ellis**, Kelowna (CA)

(73) Assignee: **0912139 B.C. LTD.**, Kelowna (CA)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 291 days.

This patent is subject to a terminal disclaimer.

(21) Appl. No.: **16/030,769**

(22) Filed: **Jul. 9, 2018**

(65) **Prior Publication Data**

US 2018/0317563 A1 Nov. 8, 2018

Related U.S. Application Data

(63) Continuation of application No. 14/798,332, filed on Jul. 13, 2015, now Pat. No. 10,034,496, which is a continuation of application No. 13/193,584, filed on Jul. 28, 2011, now Pat. No. 9,687,030.

(60) Provisional application No. 61/429,065, filed on Dec. 31, 2010.

(51) **Int. Cl.**
A41B 9/02 (2006.01)

(52) **U.S. Cl.**
CPC ***A41B 9/02*** (2013.01); ***A41B 9/023*** (2013.01)

(58) **Field of Classification Search**
CPC A41B 9/02; A41B 9/023; A41B 9/026; A61F 5/40
USPC 2/400–405, 78.1
See application file for complete search history.

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(Continued)

Primary Examiner — Katherine M Moran
(74) *Attorney, Agent, or Firm* — Kilpatrick Townsend & Stockton LLP

(57) **ABSTRACT**

Next-to-skin garments for men include an internal stretch panel. An opening in the stretch panel receives a wearer's external genitalia. A three-dimensional pouch is defined between the stretch panel and a front portion of the body of the garment. Embodiments provide garments such as undershorts, boarding shorts, and athletic shorts.

17 Claims, 9 Drawing Sheets

- The ’974 patent is directed to a male garment with a pouch “defined between [a] stretch panel and the front of the garment.”

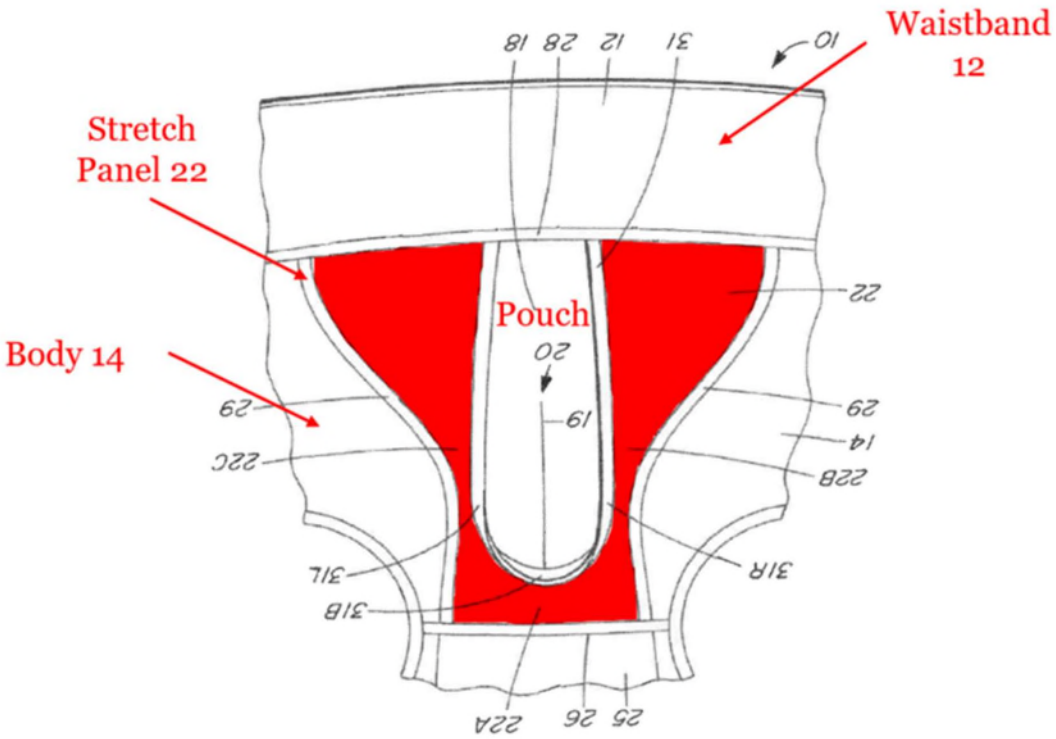
’974 Patent, 1:40-44

- The stretch panel, being elastic and attached to a front portion of the garment while stretched, “gather[s]” the material of the “front portion” and helps to form the pouch.

’974 Patent, Cl. 1, 6:10-41

Wagner Decl. (EX1005), ¶¶ 26-29, 47, 50, 53, 67, 79, 82, 118, 131, 136, 150-151, 153
Pet., 1, 5-7, 10-11, 24, 29, 31, 50-51, 62, 69-71

The Claimed Invention



’974 Patent, Fig. 4 (annotated)

What is claimed is:

1. A male garment comprising:

a body including a front portion and having leg openings for a wearer’s legs;

a waistband attached by a waistband seam at an upper edge of the body;

a stretch panel attached to the body inside the front portion, the stretch panel comprising a sheet of elastically resilient four-way stretch material having a top edge attached to the body at a top location, a bottom edge attached to the body at a bottom location, side edges attached to the body at side seams extending substantially continuously along either side of the front portion and an opening for receiving a wearer’s genitals;

the stretch panel being resiliently elastic both in a direction between the top edge and the bottom edge and in a direction between the side edges, the stretch panel having a length when unstretched smaller than a length measured along the front portion between the top and bottom locations and a width when unstretched smaller than a width measured along the front portion between the side seams such that the front portion is gathered from side-to-side and top-to-bottom by the stretch panel and defines a three-dimensional pouch between the stretch panel and the front portion for receiving the wearer’s genitals and holding the wearer’s genitals while the garment is being worn.

Pet., 1, 5

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The "Stretch Panel" in the '974 Patent

- The '974 patent teaches the stretch panel can be "various materials," including an "elasticized fabric."
- It does not require a particular construction for the stretch panel.
- The stretch panel can be "formed from a plurality of pieces of fabric seamed together."

Various materials may be used for stretch panel **22**. For example, stretch panel **22** may comprise an elasticized fabric. In one example embodiment the fabric comprises a cotton-Spandex™ blend. In one example embodiment the fabric comprises a woven blend of Modal™ and Spandex™. In an example embodiment, the blend comprises approximately 90% to 95% Modal™ and approximately 5% to 10% Spandex™. In another example embodiment, the blend comprises 93% Modal™ and 7% Spandex™.

'974 Patent, 5:20-28; *see also* 3:5-61

Stretch panel **22** may optionally be formed from a plurality of pieces of fabric seamed together. For example, stretch panel **22** may be formed from three pieces of fabric, two of which extend vertically along sides of opening **30** and one of which extends transversely across the bottom of opening **30**.

'974 Patent, 8:5-10; *see also* 7:43-8:4

Pet., 1, 5, 12-14; Pet. Reply, 5-7; Wagner Decl., ¶ 50

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The "Stretch Panel" in the '974 Patent

- The '974 patent describes that the stretch panel is "stretched" as it is attached to the front of the underwear.
- As a result, in its "relaxed, un-stretched condition," the stretch panel causes the front portion to be gathered together and thereby define a genital pouch.

> In some embodiments, stretch panel **22** is stretched in length only (i.e. in a direction perpendicular to waistband **12**) as it is being attached to front portion **18** during manufacture. In some embodiments, stretch panel **22** is stretched in both width and length (four-way stretch) relative to front portion **18** as it is being attached to front portion **18** during manufacture. Thus, in its relaxed, un-stretched, configuration stretch panel **22** both pulls side edges of front portion **18** toward one another at seams **29** and pulls top and bottom edges of front portion **18** toward one another at seams **26** and **28**. This, builds volume in pouch **20** especially when taken in combination with the shaping of front portion **18** (e.g. by front seam **19**) which makes front portion **18** non-flat.

'974 Patent, 6:28-41

Wagner Decl., ¶¶ 26-29, 47, 50, 53, 67, 79, 82, 118, 131, 136, 150-151, 153;
Pet., 1, 5-7, 10-11, 24, 29, 31, 50-51, 62, 69-71

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Invalidity Grounds

Ground	References
1	**Kitsch** (EX1007) in view of **Brocks** (EX1008) renders obvious claims 1-13, 15-16
2a	**Carrillo** (EX1010)* in view of **Brocks** (EX1008) renders obvious claims 1-9, 11, 13, 16
2b	**Carrillo** (EX1010) in view of **Brocks** (EX1008) and further in view of **Kitsch** (EX1007) renders obvious claims 10, 12, 15

* Certified translation

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Kitsch Overview

US 20080178369A1

(19) United States
(12) Patent Application Publication
Kitsch et al.
(10) Pub. No.: US 2008/0178369 A1
(43) Pub. Date: Jul. 31, 2008

(54) UNDERWEAR GARMENT FOR A MALE

(75) Inventors: William Trent Kitsch, Kelowna (CA); Craig Golinowski, Calgary (CA)

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(73) Assignee: SAXX APPAREL LTD.

(21) Appl. No.: 12/000,966

(22) Filed: Dec. 19, 2007

Related U.S. Applicati

(60) Provisional application No. 60 25, 2007.

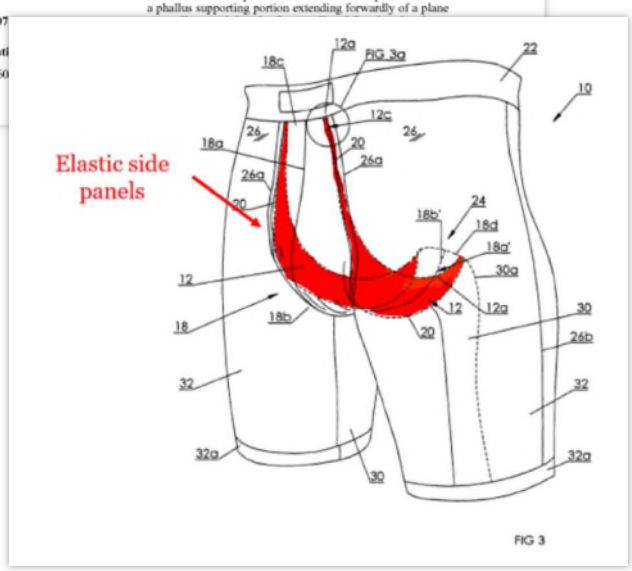
Publication Classification

(51) Int. Cl.
A41B 9/02 (2006.01)

(52) U.S. Cl. 2/405

(57) ABSTRACT

An underwear garment for use by a male, that is, a person having a penis and a scrotum, may be characterized as including a genital pouch and a pair of side panels collectively formed in a mid-section of a front wall depending from a waistband so as to bisect said front wall. The pouch may be pear-shaped when viewed from the front. A lower extremity of the pouch extends under and rearwardly of the front wall so as to form a perineum portion for covering rearwardly past the scrotum and to the perineum of the user. The pouch also has a phallus supporting portion extending forwardly of a plane



[0026] With reference to the accompanying drawings wherein similar characters of reference denote corresponding parts in each view, a conventional pair of so-called boxer style briefs **10** are modified in the present invention by adding interior side-panels **12**, preferably constructed of an elasticized breathable mesh fabric, for the purpose of isolating the genitalia, in particular scrotum **14** and phallus **16** (shown diagrammatically in dotted outline in FIG. **7**), into the pouch compartment **18**, thereby isolating the genitalia from contacting the inner thighs and legs of the user **8** wearing the briefs.

Kitsch, [0026]

Pet., 2-3, 8-22; Wagner Decl., ¶¶ 42-43, 45-63

Kitsch Overview

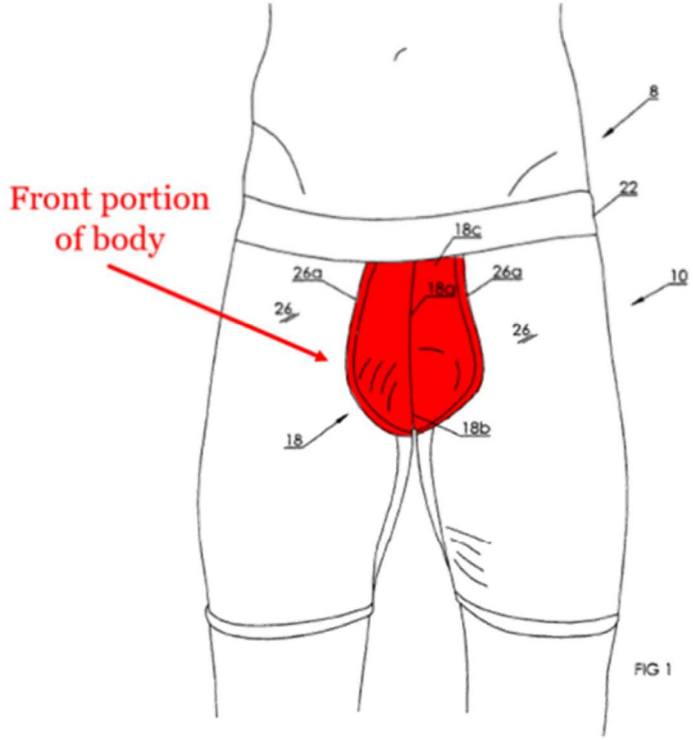
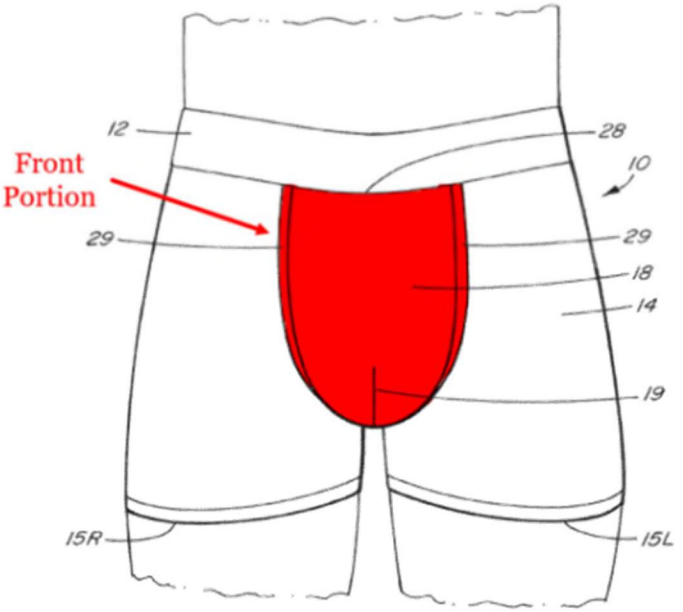
Kitsch, Fig. 1 (annotated)	'974, Fig. 2 (annotated)
	

FIG. 2

Pet., 11

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Carrillo Overview



(12) SOLICITUD INTERNACIONAL PUBLICADA EN VIRTUD DEL TRATADO DE COOPERACIÓN EN MATERIA DE PATENTES (PCT)

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Oficina internacional

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31 de Mayo de 2001 (31.05.2001)

PCT

(10) Número de Publicación Internacional
WO 01/37687 A1

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(21) Número de la solicitud internacional: PCT/ES00/00434

(22) Fecha de presentación internacional:
16 de Noviembre de 2000 (16.11.2000)

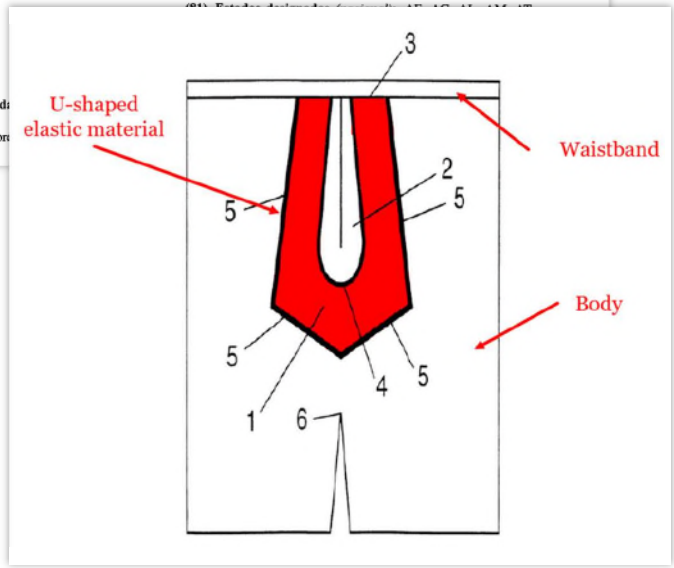
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(26) Idioma de publicación:

(30) Datos relativos a la priorid
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23 de Noviembr

(71) Solicitante e
(72) Inventor: GALIANA CARRILLO, Mauricio [ES/ES]; Calle Virgen Maria, 7-5°A-3, E-28007 Madrid (ES).

(74) Mandatario: TORO GORDILLO, Ignacio Maria; Calle Viriato, 56-1°-Izda., E-28010 Madrid (ES).



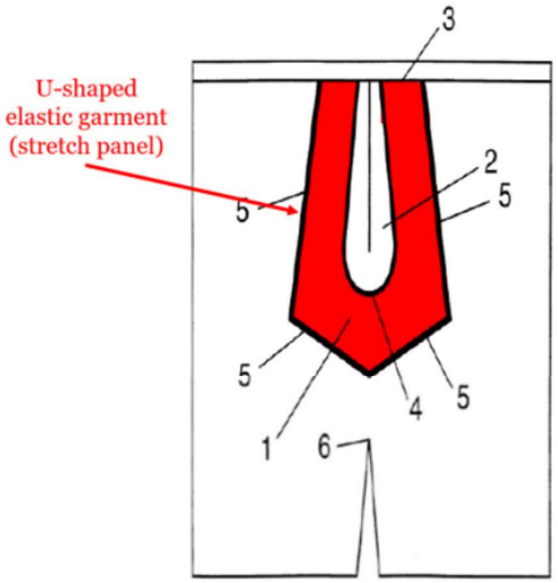
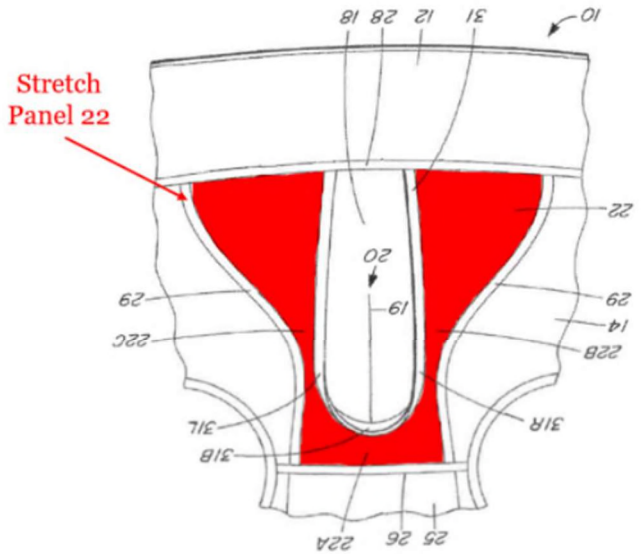
- Carrillo discloses male underwear with a "U-shaped elastic garment (1)" that has a "tear-shaped" opening and is attached to the inside of the front of the underwear.
- This elastic garment is "sewn to the inner front part of the underwear" so as to "gently pull [the genitals] forward" to achieve separation from the groin.

Carrillo, Abstract, 2

Pet., 2, 47-60; Wagner Decl., ¶¶ 112, 114-133

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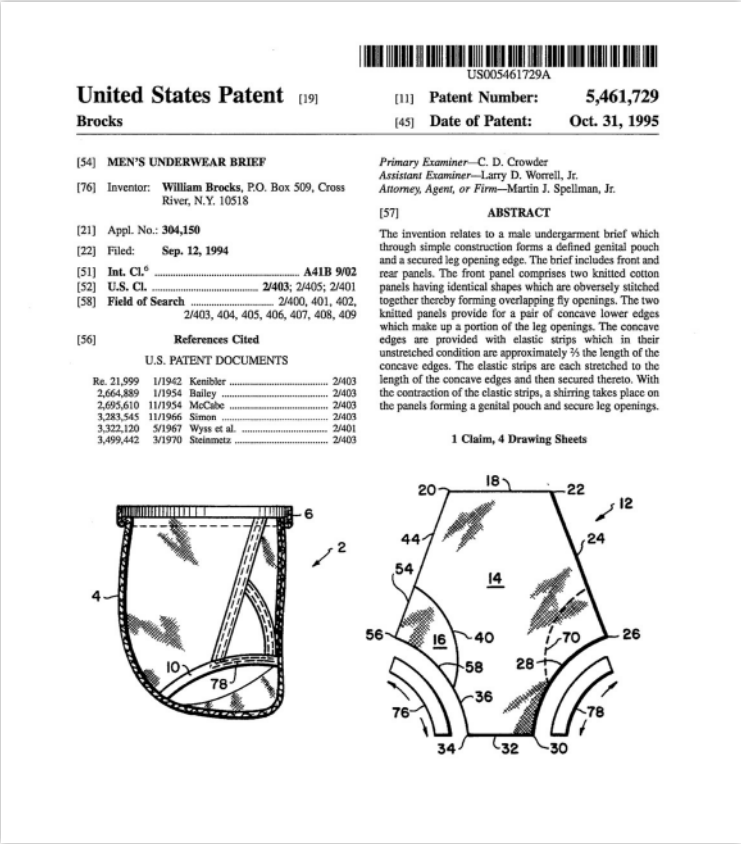
Carrillo Overview

Carrillo Fig.	'974 Fig. 4
	

Pet., 51

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Brocks Overview



US005461729A

United States Patent [19]
Brocks

[11] **Patent Number: 5,461,729**
[45] **Date of Patent: Oct. 31, 1995**

[54] **MEN'S UNDERWEAR BRIEF**

[76] Inventor: **William Brocks**, P.O. Box 509, Cross River, N.Y. 10518

[21] Appl. No.: **304,150**

[22] Filed: **Sep. 12, 1994**

[51] **Int. Cl.**[6] **A41B 9/02**
[52] **U.S. Cl.** **2/403**; 2/405; 2/401
[58] **Field of Search** 2/400, 401, 402, 2/403, 404, 405, 406, 407, 408, 409

[56] **References Cited**

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3,322,120	5/1967	Wyss et al.	2/401
3,499,442	3/1970	Steinmetz	2/403

Primary Examiner—C. D. Crowder
Assistant Examiner—Larry D. Worrell, Jr.
Attorney, Agent, or Firm—Martin J. Spellman, Jr.

[57] **ABSTRACT**

The invention relates to a male undergarment brief which through simple construction forms a defined genital pouch and a secured leg opening edge. The brief includes front and rear panels. The front panel comprises two knitted cotton panels having identical shapes which are obversely stitched together thereby forming overlapping fly openings. The two knitted panels provide for a pair of concave lower edges which make up a portion of the leg openings. The concave edges are provided with elastic strips which in their unstretched condition are approximately ⅔ the length of the concave edges. The elastic strips are each stretched to the length of the concave edges and then secured thereto. With the contraction of the elastic strips, a shirring takes place on the panels forming a genital pouch and secure leg openings.

1 Claim, 4 Drawing Sheets

- Brocks discloses men's underwear with a "defined genital pouch" created by attaching elastic material to a front portion while in a stretched condition:

> In accordance with the present invention, the concave leg opening arches of the assembled front panel are provided with elastic strips which in their unstretched condition are approximately two-thirds the length of each leg opening arch of the front panel. In assembling, the elastic strips are each stretched to the length of each of the concave leg opening arches of the front panel, causing the stitched material to be gathered together and thereby define a genital pouch in the form of shirring when the stretching force is released. The arches are then stretched to their usual size and stitched together with the back panel in the standard manner, defining the genital pouch.

Brocks, 2:5:16

Pet., 22-24, 60-63; Wagner Decl., ¶¶ 64-67, 134-136

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Kitsch Dispute 1
Whether Kitsch Discloses a "Stretch Panel" (Claim 1[c])

a stretch panel attached to the body inside the front portion, the stretch panel comprising a sheet of elasti-

Pet., 12-14; Pet. Reply, 4-7; Wagner Decl., ¶¶ 50-51

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

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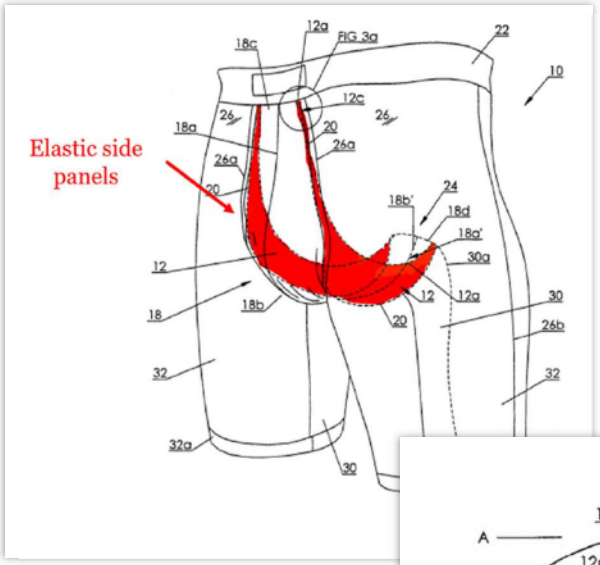
Kitsch Discloses the Claimed "Stretch Panel"

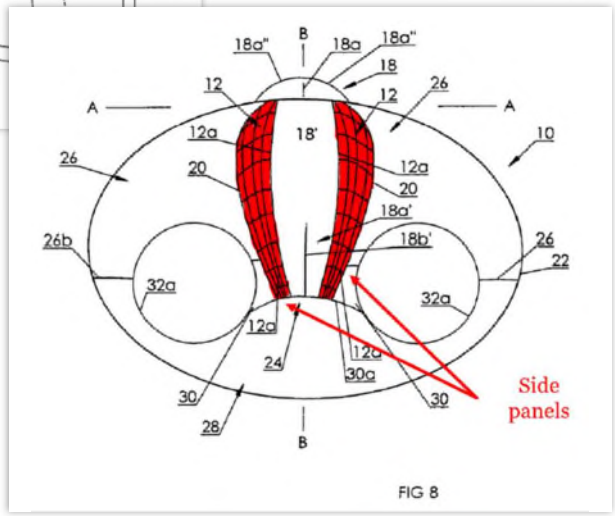
[0026] With reference to the accompanying drawings wherein similar characters of reference denote corresponding parts in each view, a conventional pair of so-called boxer style briefs **10** are modified in the present invention by adding interior side-panels **12**, preferably constructed of an elasticized breathable mesh fabric, for the purpose of isolating the genitalia, in particular scrotum **14** and phallus **16** (shown diagrammatically in dotted outline in FIG. **7**), into the pouch compartment **18**, thereby isolating the genitalia from contacting the inner thighs and legs of the user **8** wearing the briefs.

Kitsch, [0026]

[0030] The performance material used advantageously in the side panels of the present invention is a soft elasticized breathable mesh knit weave (in a so-called four-by-four stretch weave) containing 80% Nylon™ and 20% Spandex™. Pouch **18** may be of a material containing 82% poly-

Kitsch, [0030]



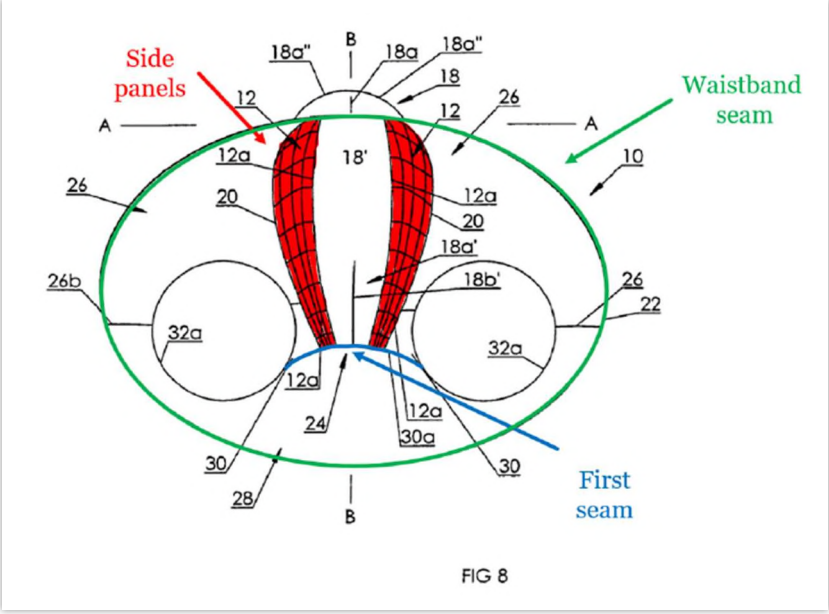


Pet., 12-14; Pet. Reply, 4-7; Wagner Decl., ¶¶ 50-51

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Kitsch Discloses the Claimed "Stretch Panel"

- Kitsch's side panels are "seamed together," as they are attached to the waistband seam and to common seam 30a.



the pouch compartment." (Kitsch, [0026]-[0027]; *see also* [0007]; Cls. 1-4, 8.) The side panels, seamed to the waistband and at seam 30a, "provide the intended isolating function… and support for the scrotum." (*Id.*, [0030].) As explained in the '974

Wagner Decl., ¶ 50

Q. We're looking at Figure 8. We're looking at the same figure. Where is the end of 12 attached to the end of 12, left and right? Where are they attached together?

A. It's on the same seam line. To me, that's attached together.

Q. So what you're saying is number 12 attaches to a seam? Number 12 don't attach to one another.

A. They attach on the same seam.

Q. They attach to a seam; is that fair?

A. They are seamed together.

Q. No, they are not stitched together; are they?

A. They are seamed together.

Wagner Depo. Tr. (EX1012), 65:6-18

Pet., 12-14, 33; Pet. Reply, 4-7; Wagner Decl., ¶¶ 50-51, 86

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

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Kitsch Discloses the Claimed "Stretch Panel"

PO argues Kitsch never uses the words "stretch panel":

> By contrast, and contrary to Petitioner's assertion and Ms. Wagner's opinion, Pet. at 12, EX1005 at ¶20, Kitsch does not disclose a stretch panel. EX2013, at ¶51. Indeed, the only instance of the word "stretch" in Kitsch is found describing a material. *Id.*; EX1007 at [0030]("a so-called four-by-four stretch weave").

POR, 29

> Q Is it your opinion that for a reference to disclose the stretch panel of claim 1[c], it would have to use the term "stretch panel" itself?
>
> A Yes.

Kahn Depo. Tr. (EX1011), 109:17-20

This misunderstands patent law:

> *C. Principles of Law*
>
> To show anticipation, each and every claim element, arranged as in the claim, must be found in a single prior art reference. *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359 (Fed. Cir. 2008). The prior art need not, however, use the same words as the claims in order to find anticipation. *In re Gleave*, 560 F.3d 1331, 1334 (Fed. Cir. 2009). To the contrary, it is permissible to take into account not only the literal teachings of the prior art reference, but also the inferences the skilled artisan would draw from the reference. *Eli Lilly and Co. v. Los Angeles Biomedical Res. Inst. at Harbor-UCLA Med. Ctr.*, 849 F.3d 1073, 1074–75 (Fed. Cir. 2017); *In re Preda*, 401 F.2d 825, 826 (CCPA 1968).

Neuvolution A/S v. Chemgene Holdings APS, IPR2017-01599, Paper 46 at 25 (PTAB Jan. 9, 2019)

POR, 28-29; Kahn Decl. (EX1013), ¶ 51
Pet. Reply, 5

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Kitsch Discloses the Claimed "Stretch Panel"

PO ARGUES:

- Kitsch's side panels are functionally different, in that the '974 patent's stretch panel "separates the genitalia from the body" and "keeps the genitalia in an enclosed pouch," while Kitsch's side panels allegedly do not.

BUT:

- Nothing in claim 1 requires that the genitals be kept separate from the body or enclosed in the pouch.
- In any case, Kitsch's side panels keep the genitalia in an enclosed pouch separate from the body:

[0006] The present invention provides a solution to the above by addressing the issues of scrotum independence from inner legs, and improved comfort and support. The underwear garment is designed using a specifically shaped breathable pouch which includes elasticized breathable wicking mesh material side panels to isolate the scrotum and phallus from the legs and which wick away moisture and provides superior comfort. Thus the undergarment of the present invention

Kitsch, [0006]

POR, 30-31
Pet. Reply, 7

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Kitsch Dispute 2
Whether Kitsch Discloses Elastically Resilient, Four-Way Stretch Material (Claims 1[d], 1[f])

a stretch panel attached to the body inside the front portion, the stretch panel comprising a sheet of elastically resilient four-way stretch material having a top

the stretch panel being resiliently elastic both in a direction between the top edge and the bottom edge and in a direction between the side edges, the stretch panel

Pet., 14-15, 20-21; Pet. Reply, 7-9, 10-11;Wagner Decl., ¶¶ 52-54, 61-62

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Kitsch Discloses "Elastically-Resilient Four-Way Stretch Material" (Claim 1[d])

[0030] The performance material used advantageously in the side panels of the present invention is a soft elasticized breathable mesh knit weave (in a so-called four-by-four stretch weave) containing 80% Nylon™ and 20% Spandex™. Pouch **18** may be of a material containing 82% poly-

Kitsch, [0030]

Kitsch's statement that its side panels are made from "soft elasticized breathable mesh knit weave (in a so-called four-by-four stretch weave)" is just another of way of saying that they are made from a knit mesh fabric that stretches in four directions. The four-by-four stretch weave means that the material is woven, for example, as a four yarns over four yarns configuration, or is knitted similarly to resemble this configuration, and produces a material that is mesh in appearance.

Wagner Decl., ¶ 54

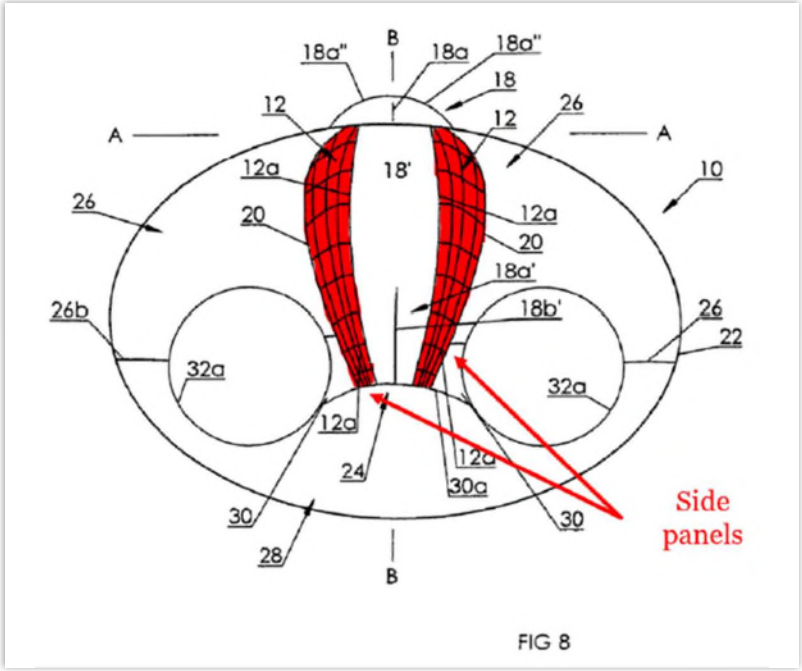


FIG 8

Pet., 14-15; Pet. Reply, 7-9; Wagner Decl., ¶¶ 52-54

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Kitsch Discloses "Elastically-Resilient Four-Way Stretch Material"

PO ARGUES:

- The '974 patent's stretch panel must be a "knit" fabric and "tricot" construction.

  POR, 34; Kahn Decl., ¶ 57

- "Four-way stretch can only [sic] achieved by a knit fabric," not woven.

  Kahn Depo. Tr., 126:17-18

- The '974 patent's stretch panel "stretches in the length and width equally."

  POR, 34; Kahn Decl., ¶ 57

BUT:

- Nowhere does the '974 patent use the term "knit," much less "tricot."

  Kahn Depo. Tr., 125:16-126:1

- Claim 14 recites that the stretch-panel is formed of "woven fabric."

  '974 Patent, Cl. 14

- Claim 2 recites that the stretch panel has "asymmetrical stretch characteristics."

  '974 Patent, Cl. 2

POR, 33-34; Kahn Decl., ¶ 57
Pet. Reply, 7-9

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Tommy John EX1012
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Kitsch Discloses "Elastically-Resilient Four-Way Stretch Material"

PO ARGUES:

- Kitsch focuses on "breathability," while the '974 patent focuses on "elasticity and comfort."
- The stretch in Kitsch's design is based on the use of Spandex.

BUT:

- These are not claim features, ***and*** they are commonalities between the prior art and patent—not differences.

Kitsch:

[0030] The performance material used advantageously in the side panels of the present invention is a soft elasticized breathable mesh knit weave (in a so-called four-by-four stretch weave) containing 80% Nylon™ and 20% Spandex™. Pouch **18** may be of a material containing 82% poly-

8% Spandex™ fabric. The material of the side panels and pouch provide the intended isolating function while improving comfort, airflow, and support for the scrotum. The mesh

'974 Patent:

the wearer's inner upper thighs. Stretch panel **22** is preferably made of or faced with a soft fabric that is comfortable against a wearer's skin. Stretch panel **22** is preferably made of a breathable fabric.

Various materials may be used for stretch panel **22**. For example, stretch panel **22** may comprise an elasticized fabric. In one example embodiment the fabric comprises a cotton-Spandex™ blend. In one example embodiment the

This invention relates to garments for men that include pouches to receive the wearer's genitalia. Such garments may provide enhanced comfort for the wearer.

'974 Patent, 3:67-4:3, 5:20-22, 2:30-32

POR, 33-34; Kahn Decl., ¶ 57
Pet. Reply, 7-9

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Kitsch's Side Panels Are "Resiliently Elastic" in Both Directions (Claim 1[f])

- Claim 1[f] recites that the stretch panel is "resiliently elastic both in a direction between the top edge and bottom edge and in a direction between the side edges."
- Kitsch's side panels are "resiliently elastic" in these directions (top-to-bottom and side-to-side) for the same reasons as with claim 1[c].
- That the side panels "mould" to the scrotum and allow for "resiliently supported relative movement" further confirms this.

cross-section of FIG. **5**. Those oppositely disposed convexities of course define an opposed facing pair of genitalia-supporting concavities **12***b* which, because of the flexibility and elasticity of the mesh side panel material, mould to gently conform to the shape of scrotum **14** in particular and allow for resiliently supported relative movement of the scrotum relative to the pubis and perineum **24** of user **8**, side panels **12** resiliently cradling and biasing the scrotum back into its naturally resting position symmetrically depending below the pubis and base of the penis **16**. As better seen in FIG. **3**, in one

Kitsch, [0029]

[0029].) For the side panel to "mould" to the shape of the scrotum and provide resilient support, it would need to stretch and resiliently contract in all directions so as to mold, or conform, to the shape of the scrotum. With the side panels "resiliently" supporting, cradling, and biasing the scrotum, they are resiliently elastic in a direction between the top waistband location and bottom perineum area location, and between the two side seams 20, to react to the relative movement of the scrotum.

Wagner Decl., ¶ 62

Pet., 20-21; Pet. Reply, 10-11; Wagner Decl., ¶¶ 61-62

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Kitsch Dispute 3

Whether Kitsch Discloses a "Top Edge," a "Bottom Edge," "Side Edges," and an "Opening" (Claim 1[e])

cally resilient four-way stretch material having a top edge attached to the body at a top location, a bottom edge attached to the body at a bottom location, side edges attached to the body at side seams extending substantially continuously along either side of the front portion and an opening for receiving a wearer's genitals;

Pet., 15-20; Pet. Reply, 9-10; Wagner Decl., ¶¶ 55-60

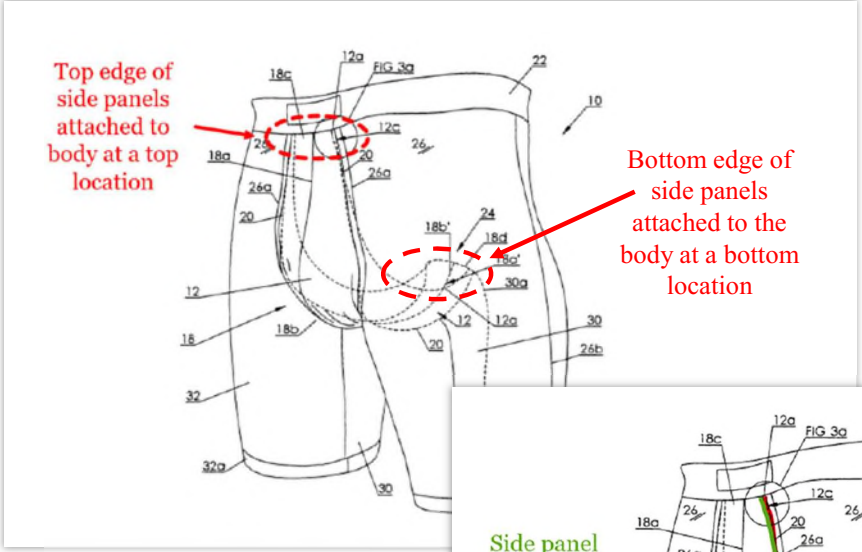
DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

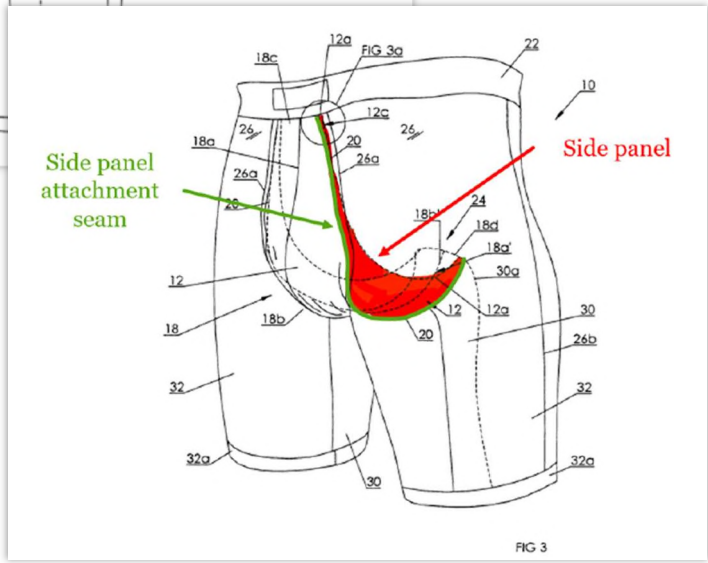
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Kitsch Discloses a "Top Edge," a "Bottom Edge," and "Side Edges"

- Kitsch discloses there are "upper ends 12c of side panels 12 where side panels 12 are stitched to the front walls 26 and waistband 22 of brief 10," and thus discloses a top edge.
- Kitsch's side panels each have a "bottom edge" attached at seam 30a near the perineum area 24.
- Kitsch's side panels have "side edges" attached at pouch seams 20.

Kitsch, [0008], [0027]-[0029], [0037]-[0039], [0041]





Pet., 15-20; Pet. Reply, 9-10; Wagner Decl., ¶¶ 55-60

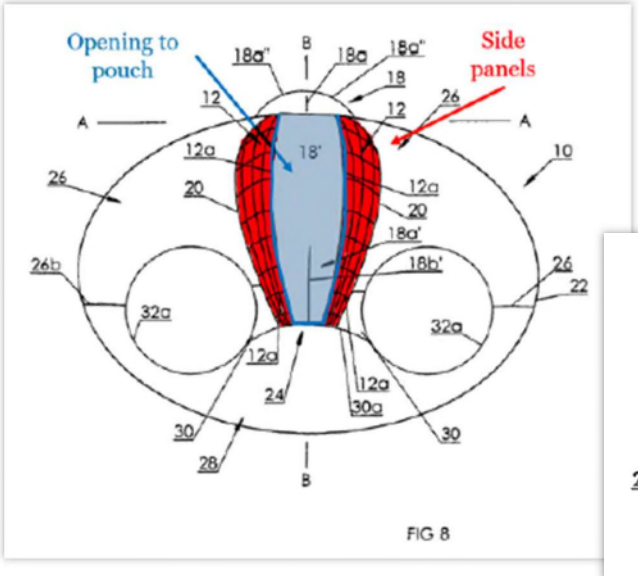
Tommy John EX1012
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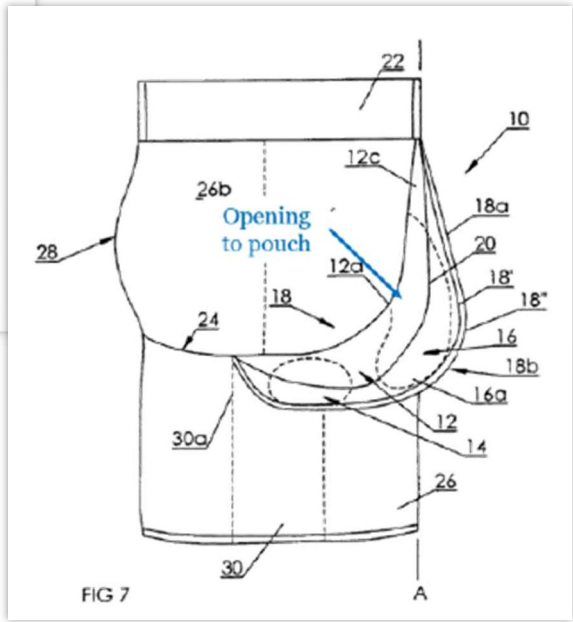
Kitsch Discloses an "Opening" to Receive the Wearer's Genitals

[0008] The side panels are a pair of laterally spaced apart, substantially parallel side panels forming upwardly from adjacent the perineum generally vertical extending scrotum fences towards the waistband. The side panels are spaced so as to snugly engage sides of the scrotum and to substantially completely cover over and support the sides of the scrotum and to extend upwardly into a fold along a lowermost aspect of the abdomen of the user formed between the scrotum and the inner thighs of the user so as to substantially entirely cover exposed thigh skin in the fold exposed for rubbing against scrotum skin in the fold.

[0026] With reference to the accompanying drawings wherein similar characters of reference denote corresponding parts in each view, a conventional pair of so-called boxer style briefs **10** are modified in the present invention by adding interior side-panels **12**, preferably constructed of an elasticized breathable mesh fabric, for the purpose of isolating the genitalia, in particular scrotum **14** and phallus **16** (shown diagrammatically in dotted outline in FIG. **7**), into the pouch compartment **18**, thereby isolating the genitalia from contacting the inner thighs and legs of the user **8** wearing the briefs.

Kitsch, [0008], [0026]





Pet., 15-20; Pet. Reply, 9-10; Wagner Decl., ¶¶ 55-60

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Kitsch Dispute 4
Whether Kitsch in View of Brocks Renders Obvious Claim 1[g]

a direction between the side edges, the stretch panel having a length when unstretched smaller than a length measured along the front portion between the top and bottom locations and a width when unstretched smaller than a width measured along the front portion between the side seams such that the front portion is gathered from side-to-side and top-to-bottom by the stretch panel and defines a three-dimensional pouch between the stretch panel and the front portion for receiving the wearer's genitals and holding the wearer's genitals while the garment is being worn.

Pet., 21-27; Pet. Reply, 11-13; Wagner Decl., ¶¶ 63-72

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

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Kitsch in View of Brocks Renders Obvious Claim 1[g]

- Brocks teaches its genital pouch is formed by attaching elastic strips ***in a stretched state*** to the front panel.
- This causes the "stitched material" to be "gathered together" and thereby form a "genital pouch."

In accordance with the present invention, the concave leg opening arches of the assembled front panel are provided with elastic strips which in their unstretched condition are approximately two-thirds the length of each leg opening arch of the front panel. In assembling, the elastic strips are each stretched to the length of each of the concave leg opening arches of the front panel, causing the stitched material to be gathered together and thereby define a genital pouch in the form of shirring when the stretching force is released. The arches are then stretched to their usual size and stitched together with the back panel in the standard manner, defining the genital pouch.

Brocks, 2:5-16

assembled section as shown in FIG. **2**. The elastic strips create a gathering and shirring forming a secure enclosure pouch for the male genitals as generally indicated in FIGS. **1** and **3**.

Brocks, 4:10-13

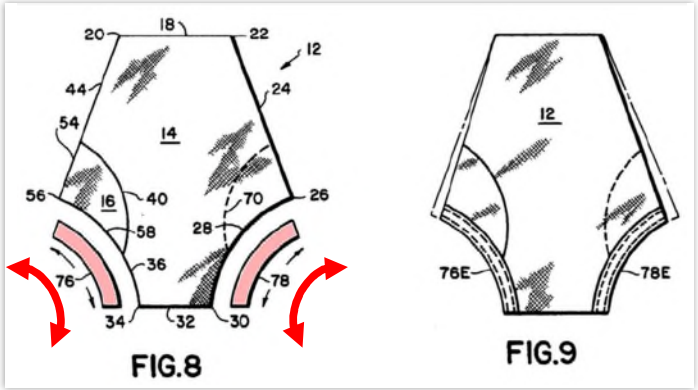
Pet., 21-27; Pet. Reply, 11-13; Wagner Decl., ¶¶ 63-72

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

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Kitsch in View of Brocks Renders Obvious Claim 1[g]

- As shown in Fig. 8, the elastic strips are stretched in a lengthwise and widthwise direction when being attached.
- The unstretched length and width of the strips are smaller than the length and width measured along the seams after attachment in a stretched state, as shown in Fig. 9.



Brocks, Figs. 8-9 (annotated)

In FIG. **8** elastic strips **76** and **78** are indicated with the arrows showing the direction of their stretch. The elastic **78** in its non-stretched condition is approximately two thirds of the length of the leg opening arches running between point **56** of the underlying panel **16** and point **34** of the overlying panel **14**, along the right leg opening, and similarly, the elastic **78** is stitched in its stretched condition along the arch **28** running between point **26** of under panel **16** and point **30** of the overlying panel **14**.

Brocks, 3:27-4:1

Pet., 21-27; Pet. Reply, 11-13; Wagner Decl., ¶¶ 63-72

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Kitsch in View of Brocks Renders Obvious Claim 1[g]

68. It would have been obvious to a POSITA to modify Kitsch to stitch Kitsch's elasticized side panels to the front panel 18 in a stretched condition, as taught by Brocks, in order to create a "***gathering*** and shirring ***forming a secure*** enclosure ***pouch*** for the male genitals." (Brocks, 3:27-4:14 (emphasis added).) Kitsch's side panels are elastic, like the elastic strips in Brocks, and could be similarly stretched before being attached at seams 20. Further, like the elastic strips in Brocks, the side panels in Kitsch are joined with a front panel along seams to create a pouch to support and enclose the wearer's genitals, and attaching them in a stretched state would help further define the pouch with sufficient volume for the wearer's genitals. (Kitsch, [0006]-[0009], [0026]-[0030], [0037]-[0039].)

Wagner Decl., ¶ 68

Obviousness Rationale:

- Attaching in a stretched state as taught by Brocks has "the benefits of the elastic material assisting in 'gathering' the material to which it is attached to form the pouch."
- "Such a modification would not require any additional materials."
- "[T]he side panels being attached in a stretched state and then being allowed to contract would add to the formation and supportive nature of the pouch."

Wagner Decl., ¶¶ 69-71

Pet., 21-27; Pet. Reply, 11-13; Wagner Decl., ¶¶ 63-72

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

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Carrillo Dispute 1
Whether Carrillo Discloses "Elastically Resilient Four-Way Stretch Material" (Claim 1[d])

portion, the stretch panel comprising a sheet of elasti-
cally resilient four-way stretch material having a top

Pet., 51-54; Pet. Reply, 13-14; Wagner Decl., ¶¶ 119-126

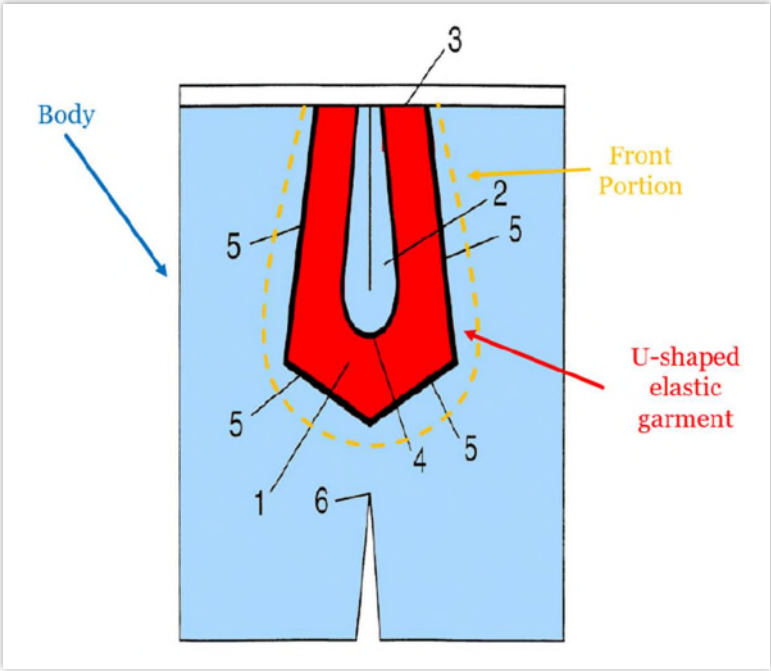
DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

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Carrillo Discloses Claim 1[d]

- Carrillo discloses a "***U-shaped elastic garment***" in male underwear which is:
  - made of elastic material;
  - shown as a single sheet;
  - sewn to the front part of the underwear and attached to the elastic of the waistband; and
  - provided to "gently pull [the intimate parts] forward."

Carrillo, Abstract, 1-2



Pet., 51-54; Pet. Reply, 13-14; Wagner Decl., ¶¶ 119-126

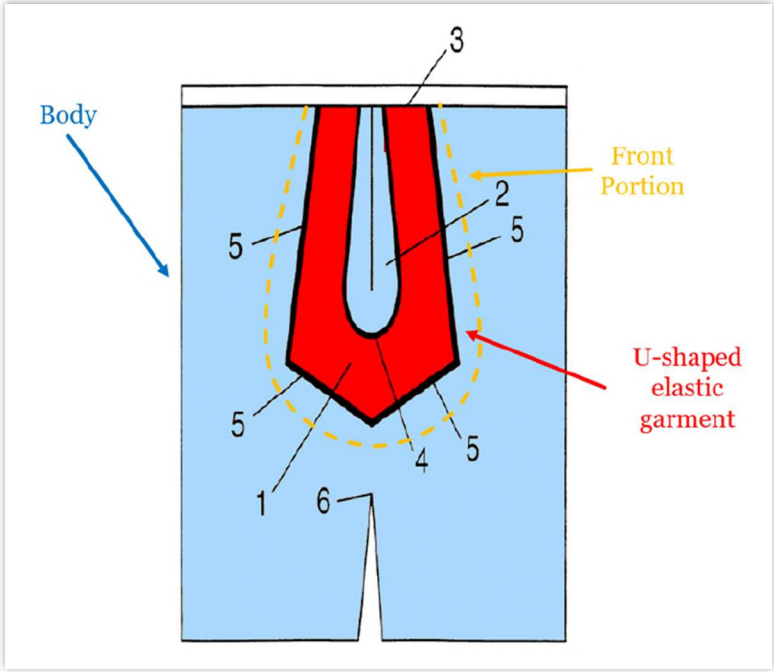
DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

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Carrillo Discloses Claim 1[d]

A POSITA would understand from these disclosures that Carrillo's elastic garment has four-way stretch (that is, stretches up and down and side to side). . .

- To accommodate "wearers of different sizes and body shapes," and "movement of the wearer."
- To prevent "bunching of the waistband" when the underwear is put on.
- So as to "not cause the underwear to rip or bunch as the front material stretches or is put under tension."
- To achieve its "purpose of providing sufficient separation" by gently pulling the intimate parts forward without "pinch[ing]" them.



Wagner Decl., ¶¶ 121-123, 125 (citing Carrillo, 1-3)

Pet., 51-54; Pet. Reply, 13-14; Wagner Decl., ¶¶ 119-126

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Tommy John EX1012
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Carrillo Dispute 2
Whether Carrillo in View of Brocks Renders Obvious Claim 1[g]

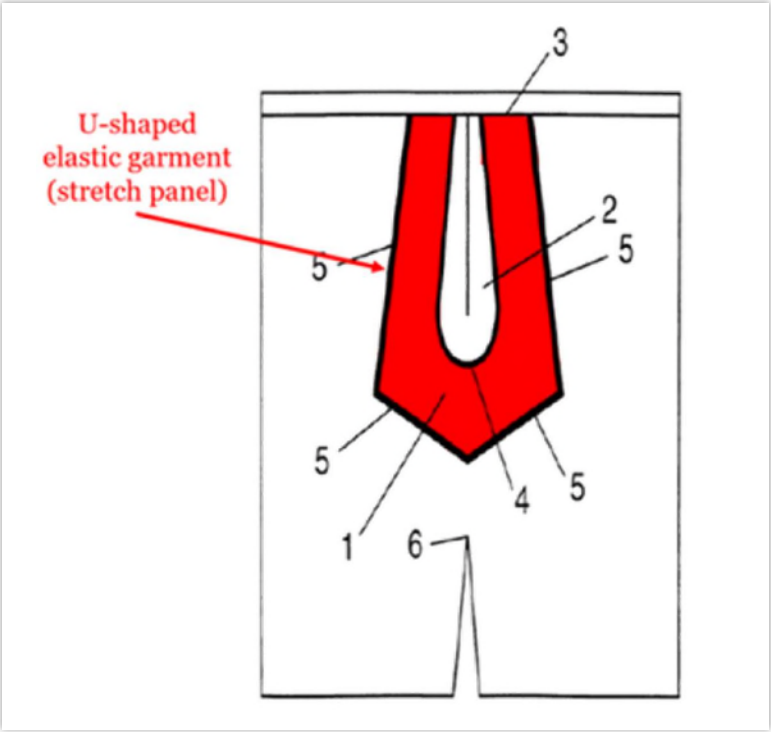
a direction between the side edges, the stretch panel having a length when unstretched smaller than a length measured along the front portion between the top and bottom locations and a width when unstretched smaller than a width measured along the front portion between the side seams such that the front portion is gathered from side-to-side and top-to-bottom by the stretch panel and defines a three-dimensional pouch between the stretch panel and the front portion for receiving the wearer's genitals and holding the wearer's genitals while the garment is being worn.

Pet., 60-66; Pet. Reply, 14-17; Wagner Decl., ¶¶ 133-141

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

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Carrillo in View of Brocks Renders Obvious Claim 1[g]



Carrillo, Fig. (annotated)

- Carrillo discloses its elastic garment includes (1) an opening into a pouch area and (2) allows a user to insert their genitals into the opening and have them be "pulled forward" into the pouch area, so that they are supported and separated from the groin area.

  Carrillo, Abstract, 2-3

- Brocks discloses a male undergarment that also includes a "genital pouch." The pouch is formed by attaching elastic strips to the underwear while stretched, to "create a gathering and shirring forming a secure enclosure pouch for the male genitals."

  Brocks, 2:5-21, 3:28-4:14, Figs. 8-9

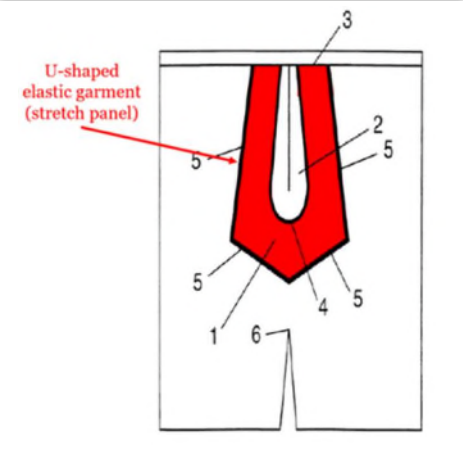
Pet., 60-66; Pet. Reply, 14-17; Wagner Decl., ¶¶ 133-141

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Carrillo in View of Brocks Renders Obvious Claim 1[g]

137. It would have been obvious to a POSITA to modify Carrillo to first stretch Carrillo's U-shaped elastic garment and to then sew it to the front part of the underwear in a stretched condition, as taught by Brocks, in order to create a "***gathering*** and shirring ***forming a secure*** enclosure ***pouch*** for the male genitals." (Brocks, 3:27-4:14 (emphasis added).) Carrillo's U-shaped elastic garment is elastic, like the elastic strips in Brocks, and could be similarly stretched before being sewn to the front part of the underwear along lines (5) as shown in the Figure:

Wagner Decl., ¶ 137



Carrillo, Fig. (annotated)

Obviousness Rationale:

- "[H]elp further define the pouch with sufficient volume for the wearer's genitals."
- "[W]ould not require any additional materials" but would "add[] to the gathering of the fabric to create the supportive pouch."
- "[W]ould further [the] cooperation of the elastic garment and front part of the underwear providing a pouch space into which the genitals can be 'pulled forward.'"

Wagner Decl., ¶¶ 137-139

Pet., 60-66; Pet. Reply, 14-17; Wagner Decl., ¶¶ 133-141

Carrillo in View of Brocks Renders Obvious Claim 1[g]

PO ARGUES:

- Carrillo does not disclose supporting the genitals from underneath.
- "Pulling on male genitals" as in Carrillo is different than the genital support in the '974 Patent.

BUT:

- Claim 1 does not require supporting genitals from underneath.
- The U-shaped elastic garment in Carrillo "gently pull[s]" the genitals "forward" when they are inserted into the opening, thus supporting them.

POR, 49-50; PO Sur-reply, 9
Pet. Reply, 15

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Carrillo in View of Brocks Renders Obvious Claim 1[g]

PO ARGUES:

- Carrillo does not have a pouch because its U-shaped garment is "essentially congruent" with the inside of the underwear and forms a "pocket," not a "pouch."

BUT:

- Carrillo never describes its U-shaped garment as "essentially congruent" to the underwear body and does not use the term "pocket."
- Carrillo describes a pouch between the U-shaped garment and front of the underwear:

> in the top block depending on the model. By introducing the testicles through said opening, the base of said opening is located between the testicles and the groin. The testicles tend to be separated towards the front due to the fact that the garment is sewn to the inner front part of the underpants, thereby reducing contact and direct friction between the testicles and the groin. Said garment can provide relief for many individuals who suffer from itching, eczema, rash. etc. caused by perspiration and friction.

Carrillo, Abstract

POR, 49
Pet. Reply, 14-15

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

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Carrillo in View of Brocks Renders Obvious Claim 1[g]

PO ARGUES:

- Carrillo does not disclose gathering the front portion to form a pouch or the claimed lengths of the stretch panel relative to the front portion because the "pocket" of Carrillo is "at best baggy when sewn to the underpants."

BUT:

- Carrillo's figure does not suggest that its U-shaped garment is "baggy," and it could not perform its stated function to "gently pull [the genitals] forward" to separate them from the wearer's body if it were baggy.
- Petitioner relies on Carrillo in view of Brocks for gathering the front portion to form a pouch and for the lengths of the stretch panel relative to the front portion—not Carrillo alone.

POR, 50-51;
Pet. Reply, 16

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

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Carrillo in View of Brocks Renders Obvious Claim 1[g]

PO ARGUES:

- Combining Carrillo and Brocks would result in underpants that "include an elastic garment (Carrillo) and a pouch created by elastic material surrounding leg openings (Brocks)."

BUT:

- The Petition never suggests incorporating Brocks' strips around the leg openings in Carrillo's underwear alongside the elastic garment . . .

137. It would have been obvious to a POSITA to modify Carrillo to first stretch Carrillo's U-shaped elastic garment and to then sew it to the front part of the underwear in a stretched condition, as taught by Brocks, in order to create a "***gathering*** and shirring ***forming a secure*** enclosure ***pouch*** for the male genitals." (Brocks, 3:27-4:14 (emphasis added).) Carrillo's U-shaped elastic garment is elastic, like the elastic strips in Brocks, and could be similarly stretched before being sewn to the front part of the underwear along lines (5) as shown in the Figure:

Wagner Decl., ¶ 137

POR, 52-56; PO Sur-reply, 9-10
Pet. Reply, 16-17

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Other Disputes

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Claim 2 – "Asymmetrical Stretch Characteristics"

- Claim 2 recites "wherein the stretch panel has *asymmetrical stretch characteristics* such that the stretch panel stretches more easily in a direction parallel to the waistband and less easily in a direction at right angles to the waistband."
- Kitsch-Brocks and Carrillo-Brocks renders obvious Claim 2.
- Specifically, Brocks discloses that material used in underwear can have asymmetrical stretch characteristics, such that it stretches more easily "along the lateral axis" (i.e., parallel to the waistband) and less easily "along the longitudinal or the vertical axis" (i.e., at right angles to the waistband).

> Men's briefs are pretty much a standard commodity on the market being sold by many companies. All generally employ the same standard construction having overlapping cotton double panels in the front to define the fly opening; the front panel being joined to the rear panels and then a unifying waistband stitched to the joined panel units. The usual material employed is a cotton knitted material having stretch along the lateral axis and having very little stretch along the longitudinal or the vertical axis.

Brocks, 1:22-31

Pet., 27-29, 66-69; Pet. Reply, 18; Wagner Decl., ¶¶ 73-78, 142-149

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Claim 2 – "Asymmetrical Stretch Characteristics"

75. It would have been obvious to apply this teaching of using material with asymmetrical stretch to the stretch panel of Kitsch, which as discussed is sewn to an underwear garment including at the waistband. For example, when a user pulls on and stretches the waistband to put on Kitsch's underwear, the stretch panel would need to stretch in that direction at least as much as the waistband and body of the underwear, or else the underwear would risk tearing. For example, if the stretch

Wagner Decl., ¶ 75

76. Similarly, as taught by Brocks, the material for the stretch panel would not need to stretch as much in a direction perpendicular to the waistband, as the fabric of the underwear itself does not stretch as much in that direction and there is less of a risk of, for example, tearing. That is, when underwear is put on, the

Wagner Decl., ¶ 76

Obviousness Rationale:

- Asymmetrical stretch would "help accommodate the forces placed on the underwear by the wearer … and would have ensured the stretch panel would not prevent the body material from stretching."
- Applying Brocks' teaching "would have been a simple, well-known way to implement or construct the four-by-four stretch weave side panels as disclosed in Kitsch."
- The stretch panel would continue to function as before, only now the wearer could stretch the underwear more in the lateral direction.

Wagner Decl., ¶¶ 77-78

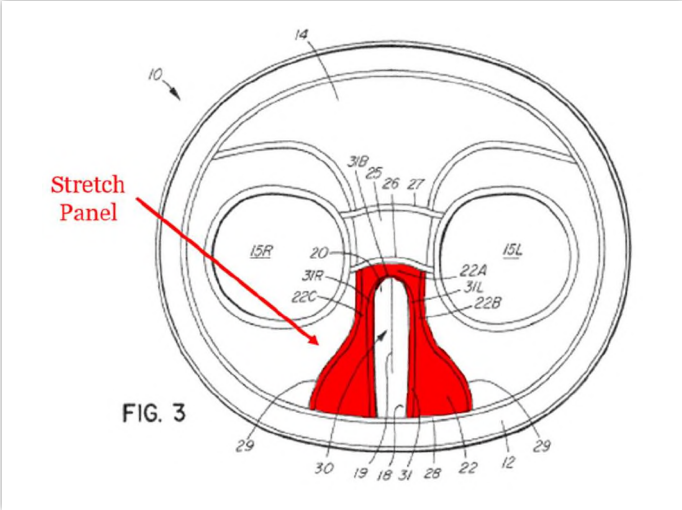
Pet., 27-29, 66-69; Pet. Reply at 18; Wagner Decl.,¶¶ 73-78, 142-149

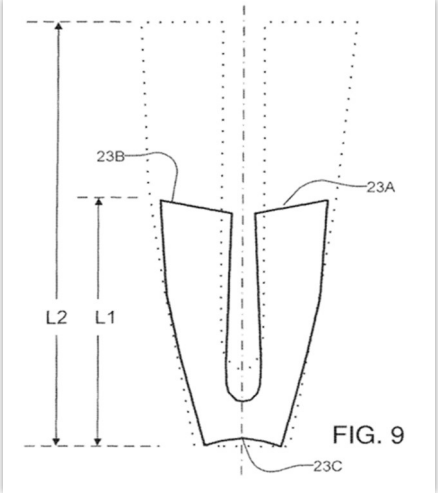
DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

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Claims 3, 16 – "Rectangular" Stretch Panel

- Claims 3 and 16 recite that the stretch panel is "rectangular" and that the opening is "U-shaped" (claim 3) or has a "rounded bottom edge" (claim 16).
- PO does not dispute Carrillo discloses these elements, but argues that Kitsch's side panels are "not rectangular" and lack an opening between them.
- The '974 patent discloses that for the stretch panel to be rectangular, it need only have sides that are "generally straight" and "generally perpendicular" to the waistband:





'974 Patent, Figs. 3, 9

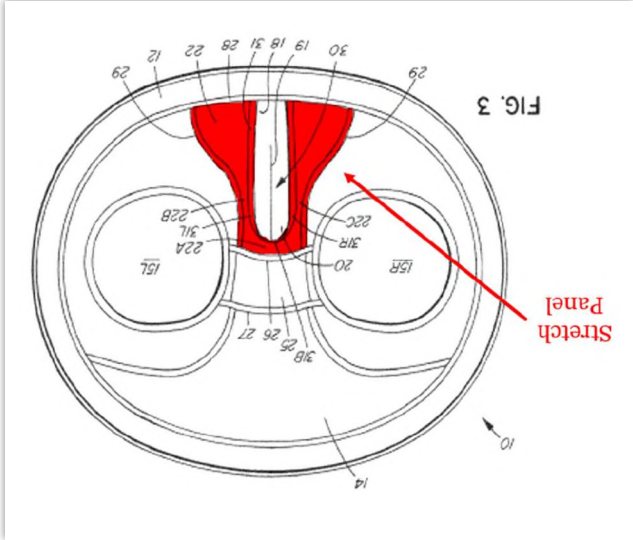
Pet., 29-30, 45-47, 69-70, 82-83; POR, 57-58, 65
Pet. Reply, 18-19, 24-25; Wagner Decl.,¶¶ 79-80, 108, 150-151, 169

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Claims 3, 16 – "Rectangular" Stretch Panel

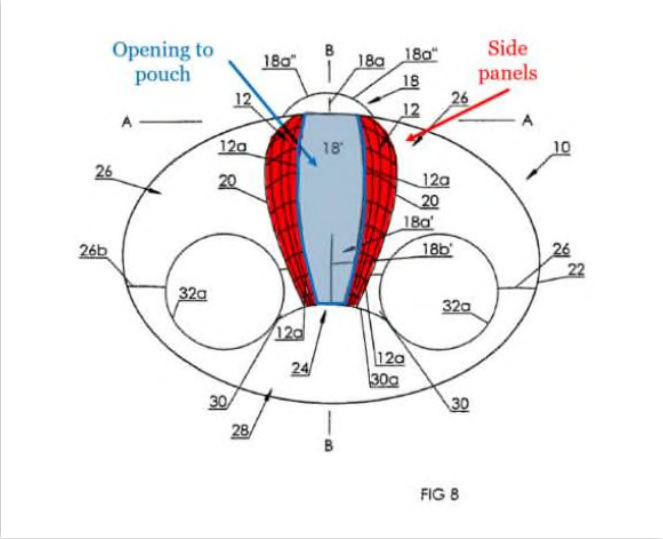
- Kitsch's side panels are rectangular and have an opening just like the '974 patent:

'974 Patent

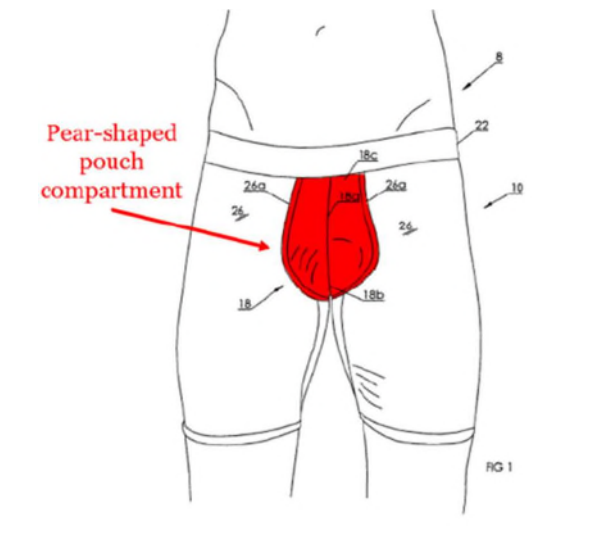


'974 Patent, Fig 3 (inverted)

Kitsch



Kitsch, Fig 8



Kitsch, Fig. 1

POR, 57-58, 65; Pet., 20, 29-30, 45-47, 69-70, 82-83
Pet. Reply, 18-19, 24-25; Wagner Decl.,¶¶ 79-80, 108, 150-151, 169

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Claims 4-5 – Stretch of 30%

- Claims 4-5 recite that the stretch panel has "at least 30%" stretch.
- Kitsch-Brocks and Carrillo-Brocks render obvious Claims 4-5.
- It would have been obvious to use a stretch panel having at least 30% stretch, as taught by Brocks, for Kitsch's side panels or Carrillo's U-shaped garment, in order to gather the fabric to form a pouch with sufficient volume.

$$\text{'974 Patent "Stretch"} = \frac{\text{(Stretched length – Unstretched length)}}{\text{Unstretched length}}$$

'974 Patent, 5:37-45

In accordance with the present invention, the concave leg opening arches of the assembled front panel are provided with elastic strips which in their unstretched condition are approximately two-thirds the length of each leg opening arch of the front panel. In assembling, the elastic strips are each stretched to the length of each of the concave leg opening arches of the front panel, causing the stitched material to be gathered together and thereby define a genital pouch in the form of shirring when the stretching force is released. The arches are then stretched to their usual size and

Brocks, 2:5-14

$$\text{Brocks "Stretch"} = \frac{(100 - 66.\overline{6})}{66.\overline{6}} = 50\%$$

Pet., 30-35, 70-78; Pet. Reply, 19; Wagner Decl., ¶¶ 81-88, 152-158

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Claim 8 – Opening with a Width in Excess of 2 cm

- The opening in the lateral spacing between the side panels allows them to "isolate the phallus and scrotum into the pouch compartment."

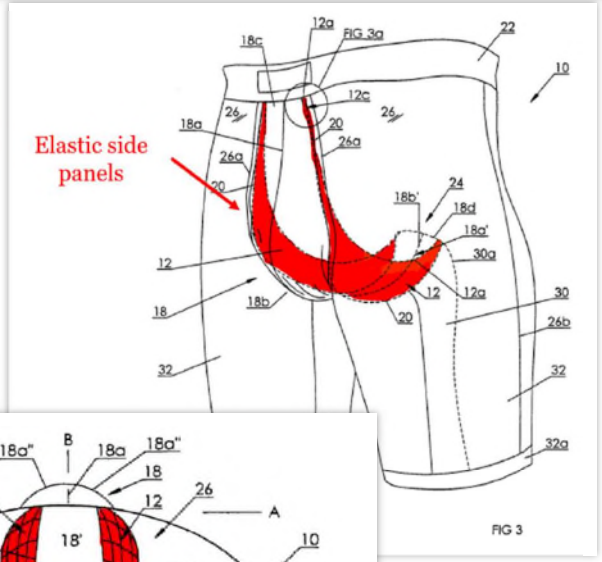
  Wagner Dec., ¶ 91 (citing Kitsch, [0026], Figs. 3, 7-8)

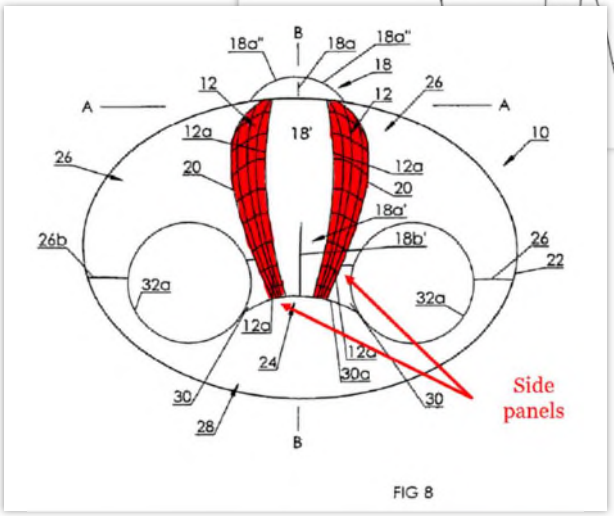
- The "width from the lateral exterior side seams 26a" on either side of the opening "optimizes a maximal volume" of the pouch.

  Kitsch, [0036]

- Thus, a POSITA would understand from Kitsch that the "opening between the side panels would have a width in excess of 2cm" to allow a wearer to "insert their genitals into the pouch," with the pouch having enough "volume."

  Wagner Decl., ¶ 91 (citing Kitsch, [0036])





Pet., 35-36; Wagner Decl., ¶ 91

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Claim 8 – Opening with a Width in Excess of 2 cm

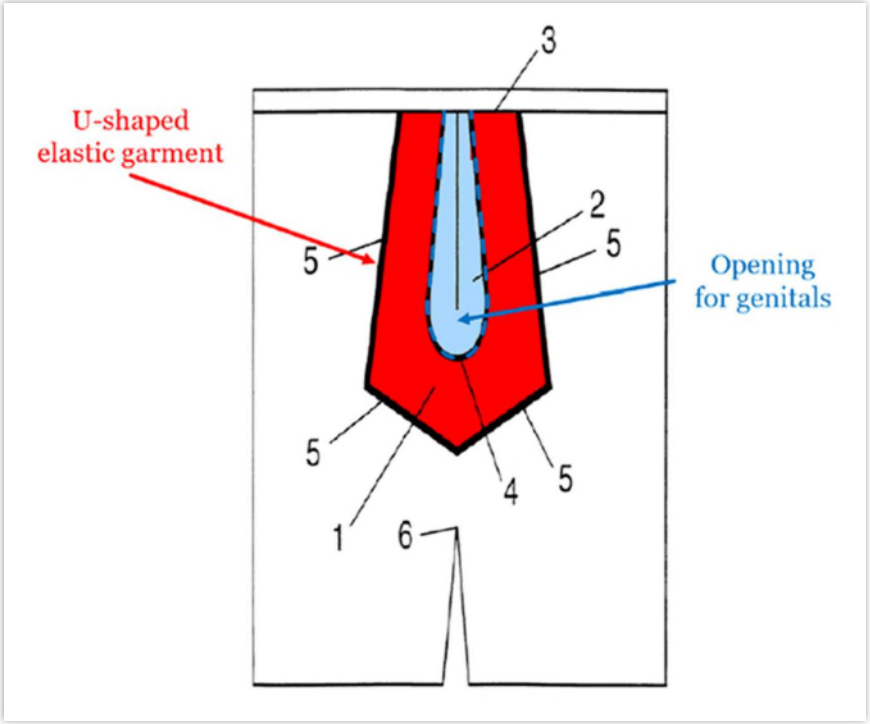
- Carrillo likewise discloses to a POSITA that its opening has a width in excess of 2 cm.

- The wearer introduces the "intimate parts through the opening," and they are then "gently pulled" forward.

Carrillo, 2

- If the opening was not at least 2 cm, then the "wearer would be unable to insert their genitals," and the genitals may be "pushed back against the groin" or pinched, which Carrillo seeks to avoid.

Wagner Decl., ¶ 161 (citing Carrillo, Fig., Abstract, 2-3)



Pet., 76-77; Wagner Decl., ¶ 161

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Other Dependent Claims

- For the remaining dependent claims, PO raises the same arguments as before. These arguments all fail for the reasons discussed.
  - **Claims 6, 7, 13** – Kitsch-Brocks and Carrillo-Brocks "fail to render obvious Claim 1, so they fail to render Claim 6, Claim 7 or Claim 13 obvious." POR, 59.
  - **Claim 9** – "Kitsch does not disclose a stretch panel … Carrillo does not include a pouch … The opening taught by Carrillo is not suited to supporting the wearer's genitalia." POR, 60-61.
  - **Claim 10** – "Kitsch and Brocks fail to render obvious Claim 1, so they fail to render Claim 10 obvious … [T]here is no basis for combining Carrillo with Brocks or Kitsch with Brocks." POR, 61-62.
  - **Claim 11** – "Brocks does not disclose a stretch panel, nor does Brocks disclose an opening … Kitsch does not disclose a stretch panel with an opening … [A] wearer of Carrillo's undergarment will need to physically manipulate his phallus … due at least in part to the bagginess." POR, 62-63.
  - **Claim 12** – "Kitsch discloses side panels … There is no stretch panel … [T]here is no basis for combining Carrillo with Brocks or Kitsch with Brocks." POR, 63-64.
  - **Claim 15** – "Kitsch and Brocks fail to render obvious Claim 1, so they fail to render Claim 15 obvious … [T]here is no basis for combining Carrillo with Brocks or Kitsch with Brocks." POR, 64.

POR, 59-64; Pet. Reply, 20-24

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Expert Credibility

PO's Claim	Ms. Wagner's Testimony
• Ms. Wagner is a "hired gun to invalidate patents" (POR, 22)	Q. Have you ever been engaged to defend the patentability against an IPR challenge? A. You mean invalidity? Q. Yes. A. Yes. Q. This case here? A. This case here and Nike versus Adidas. Q. Right. So you're on the invalidity side, correct, in both of those cases? A. Yeah. Correct. — Wagner Depo. Tr., 39:11-23
• Ms. Wagner was given "all of the colorized figures in her declaration" by Petitioner (POR, 22)	Q. So did Jack -- he's a lawyer with Hogan Lovells; right? A. Uh-huh. Q. Is it fair to say he did all the coloring for you in all of the -- A. Yes. We talked about it and he put that together. — Wagner Depo. Tr., 120:3-9

POR, 22-26; Pet. Reply, 2-4

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Expert Credibility

PO's Claim	Ms. Wagner's Testimony	
• Ms. Wagner was unable to describe the invention in the '974 (POR, 23)	Q. What's your understanding of the patent? There is a lot of patents out there of men's underwear. What's your understanding of the 974? What does it cover? A. It's men's underwear that's constructed in a specific way. Q. To do what? A. To hold a man's genitals.	Wagner Depo. Tr., 21:25-22:7
• Ms. Wagner "did not know if Kitsch disclosed a stretch panel" (POR, 23)	Q. Do you know one way or the other why stretch panel is in there? A. Kitsch cites that a material made of containing Spandex is in there, which means -- which means it would be stretch. And the panels are made of that fabric.	Wagner Depo. Tr., 21:25-22:7
• Ms. Wagner "did not know if Kitsch disclosed an 'opening'" (POR, 23)	Q. Does Kitsch describe anywhere that the space between the side panels is an opening? ... THE WITNESS: Sorry. Figure 8 shows an opening.	Wagner Depo. Tr., 52:15-19

POR, 22-26; Pet. Reply, 2-4

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Expert Credibility

PO's Claim	Ms. Wagner's Testimony	
• Ms. Wagner "did not know if Brocks included side panels" (POR, 23)	Q. And then Brocks doesn't have a stretch panel like the side panels in Kitsch; right? Let me ask it a different way. Are there side panels in Brocks? A. No.	Wagner Depo. Tr., 90:15-18
• Ms. Wagner "had no idea whether Carrillo included a pouch" (POR, 23)	Q. Do you know where the word pouch is in the Carrillo patent? A. It's very short. So, no, it doesn't say pouch but it infers pouch just by the way it is constructed. Q. Interesting. Where is the pouch? A. The pouch is between number 1 in the under pants. Q. Just because someone has sewn something to the inside of underwear it becomes a pouch? A. If there is an opening and number 2 is the opening. Yes. Q. So number 2 creates the pouch? A. Number 1 creates the pouch sewn to the undergarment. So Carrillo says underwear. So it's the hygienic elastic garment number 1 sewn to underwear.	Wagner Depo. Tr., 105:10-23

POR, 22-26; Pet. Reply, 2-4

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Expert Credibility

PO's Claim	Ms. Wagner's Testimony
• Ms. Wagner selectively deleted claim language in her analysis (POR, 25) Q. You're missing a lot, aren't you? You're missing side-to-side and top-to-bottom in your quoted claim language; aren't you? A. That's your opinion. I think I covered it. Wagner Depo. Tr., 96:4-7	72. Thus, in sum and as explained, Kitsch as modified by Brocks discloses that the front portion is gathered from side-to-side and top-to-bottom by the stretch panel and defines a three-dimensional pouch between the stretch panel and front portion for receiving and holding the wearer's genitals. That is, by stretching the Wagner Decl., ¶ 72

POR, 22-26; Pet. Reply, 2-4

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Expert Credibility

PO's Claim

- Ms. Wagner "used ellipses to fundamentally alter the nature of Petitioner's references" (POR, 26)

references. In describing Kitsch, for example, Ms. Wagner ends her quotation with "isolating the genitalia…" EX1005, at 20. These ellipses cut off an important descriptor in Kitsch: "…isolating the genitalia **from contacting the inner thighs and legs of the user wearing the briefs.**" EX1007, at 2. When asked about this,

Ms. Wagner's Testimony

Q. Why? Why didn't you put the rest of it, thereby isolating the genitalia from --

A. Because I didn't think it was necessary.

Wagner Depo. Tr., 56:20-22

the pouch compartment." (Kitsch, [0026]-[0027]; *see also* [0007]; Cls. 1-4, 8.) The side panels, seamed to the waistband and at seam 30a, "provide the intended isolating function… and support for the scrotum." (*Id.*, [0030].) As explained in the '974 Patent, the stretch panel may be formed from a single piece of fabric or, like in Kitsch, "from a plurality of pieces of fabric[.]" ('974, 8:5-10; *see also* cl. 14.) In

Wagner Decl., ¶ 50

POR, 22-26; Pet. Reply, 2-4

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