

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

**Before the Honorable Monica Bhattacharyya
Administrative Law Judge**

In the Matter of

CERTAIN KNITTED FOOTWEAR

Investigation No. 337-TA-1289

UPDATED JOINT CLAIM CONSTRUCTION CHART

Pursuant to Your Honor's Ground Rules, Complainant Nike, Inc. ("Nike") and Respondents adidas AG, adidas North America, Inc., adidas America, Inc., and adidas International Trading AG (collectively, "adidas") submit this Updated Joint Claim Construction Chart.

A. AGREED CONSTRUCTIONS

Nike and adidas agree to the constructions in the table below.

	TERM (PATENT / CLAIMS)	AGREED CONSTRUCTION
1	a first area and a second area with a unitary construction ('749 / 21)	a textile element having a unitary construction and having a first area and a second area
2	unitary construction ('749 / 21) ('705 / 3)	configuration wherein portions of a textile element are not joined together by seams or other connections
3	unitary knit construction ('562 / 1) ('932 / 11)	formed as a one-piece element through a knitting process

	TERM (PATENT / CLAIMS)	AGREED CONSTRUCTION
4	thermally bonded (’932 / 11)	a securing technique between two elements that involves a softening or melting of a thermoplastic polymer material within at least one of the elements such that the materials of the elements are secured to each other when cooled

B. DISPUTED CONSTRUCTIONS

Nike and adidas dispute the constructions in the table below.

	TERM (PATENT / CLAIMS)	NIKE’S CONSTRUCTION	ADIDAS’S CONSTRUCTION
1	surrounding textile structure (’749 / 1, 13)	ordinary and customary meaning, <i>i.e.</i> , surrounding textile structure	the knitted material that differs from, and that abuts and surrounds, the edges of the single material textile element that forms the entirety of the knitted upper
2	cylindrical textile structure (’598 / 1)	ordinary and customary meaning, <i>i.e.</i> , cylindrical textile structure	the cylindrically shaped knitted textile material that differs from, and that abuts the edges of the single material textile element that forms the entirety of the knitted upper
3	textile structure having an outline of at least one textile element (’598 / 9, 14)	ordinary and customary meaning, <i>i.e.</i> , textile structure having an outline of at least one textile element	the knitted textile material that differs from, and that abuts the edges of the single material outline of the textile element that forms the entirety of the knitted upper
4	textile element (’749 / 1, 13) (’598 / 1, 9, 14)	ordinary and customary meaning, <i>i.e.</i> , textile element	the single material element that forms the entirety of the knitted upper

	TERM (PATENT / CLAIMS)	NIKE’S CONSTRUCTION	ADIDAS’S CONSTRUCTION
5	an outline of at least one textile element (’598 / 9, 14)	ordinary and customary meaning, <i>i.e.</i> , an outline of at least one textile element	the single material element that forms the entirety of the knitted upper and its outline
6	simultaneously knitting (’749 / 1, 13) ¹	ordinary and customary meaning, <i>i.e.</i> , simultaneously knitting	knitting at the same time during a single knitting process
7	removing the knitted textile element from the surrounding knitted textile structure (’749 / 1, 13)	ordinary and customary meaning, <i>i.e.</i> , removing the knitted textile element from the surrounding knitted textile structure	Indefinite
8	wherein simultaneously knitting a textile element with a surrounding textile includes knitting an outline of the knitted textile element (’749 / 3)	ordinary and customary meaning, <i>i.e.</i> , wherein simultaneously knitting a textile element with a surrounding textile includes knitting an outline of the knitted textile element	Indefinite
9	wherein the outline has the shape and proportion of the knitted textile element (’749 / 4)	ordinary and customary meaning, <i>i.e.</i> , wherein the outline has the shape and proportion of the knitted textile element	Indefinite
10	removing at least one textile element from the textile structure (’598 / 1)	ordinary and customary meaning, <i>i.e.</i> , removing at least one textile element from the textile structure	Indefinite

¹ adidas believes the construction of simultaneously knitting applies to both claim 1 and claim 13 of the ’749 patent given claim 1’s recitation of “simultaneously knitting” and claim 13’s recitation of “simultaneous with knitting.”

	TERM (PATENT / CLAIMS)	NIKE'S CONSTRUCTION	ADIDAS'S CONSTRUCTION
11	a textile structure having an outline of at least one textile element, removing the textile element from the textile structure ('598 / 9, 14)	ordinary and customary meaning, <i>i.e.</i> , a textile structure having an outline of at least one textile element, removing the textile element from the textile structure	Indefinite
12	flat knitting a textile element ('705 / 1, 11)	ordinary and customary meaning, <i>i.e.</i> , flat knitting a textile element	a textile element formed from flat weft knitting
13	flat knit textile element ('511 / 1, 15)	ordinary and customary meaning, <i>i.e.</i> , flat knit textile element	a textile element formed from flat weft knitting
14	flat knit edges being free of surrounding material ('705 / 1, 11)	<p>“flat knit edge” means an edge of a flat knit textile element, which is itself flat knit, e.g., which is not formed by cutting from a flat knit textile element</p> <p>the remainder of this phrase takes its ordinary and customary meaning, <i>i.e.</i>, [flat knit edges] being free of surrounding material</p>	<p>all edges of the upper are formed from flat weft knitting and finished without cutting</p> <p>As discussed at the <i>Markman</i> hearing, adidas agrees that “finished” can be replaced with “fully formed” in its proposed construction.</p>

	TERM (PATENT / CLAIMS)	NIKE'S CONSTRUCTION	ADIDAS'S CONSTRUCTION
15	flat knit edges free of surrounding textile structure ('511 / 1, 15)	<p>“flat knit edge” means an edge of a flat knit textile element, which is itself flat knit, e.g., which is not formed by cutting from a flat knit textile element</p> <p>the remainder of this phrase takes its ordinary and customary meaning, <i>i.e.</i>, [flat knit edges] free of surrounding textile structure</p>	<p>all edges of the upper are formed from flat weft knitting and finished without cutting</p> <p>As discussed at the <i>Markman</i> hearing, adidas agrees that “finished” can be replaced with “fully formed” in its proposed construction.</p>
16	curved flat knit edge ('511 / 1, 15)	<p>“flat knit edge” means an edge of a flat knit textile element, which is itself flat knit, e.g., which is not formed by cutting from a flat knit textile element</p> <p>the remainder of this phrase takes its ordinary and customary meaning, <i>i.e.</i>, curved [flat knit edge]</p>	<p>a curved edge formed from flat weft knitting such that the curved edge is finished without cutting</p> <p>As discussed at the <i>Markman</i> hearing, adidas agrees that “finished” can be replaced with “fully formed” in its proposed construction.</p>

	TERM (PATENT / CLAIMS)	NIKE'S CONSTRUCTION	ADIDAS'S CONSTRUCTION
17	<p>flat knitting a textile element having a shape of an upper in a planar configuration for the article of footwear, the knitted textile element comprising a plurality of flat knit edges defining the shape of the upper in the planar configuration, the flat knit edges being free of surrounding material from which the knitted textile element must be removed</p> <p>('705 / 1, 11)</p>	<p>“flat knit edge” means an edge of a flat knit textile element, which is itself flat knit, e.g., which is not formed by cutting from a flat knit textile element</p> <p>“flat knit edges being free of surrounding material from which the knitted textile element must be removed” means a knit to shape textile element formed by flat knitting, having flat knit edges</p> <p>the remainder of this phrase takes its ordinary and customary meaning, <i>i.e.</i>, flat knitting a textile element having a shape of an upper in a planar configuration for the article of footwear, the knitted textile element comprising a plurality of [flat knit edges] defining the shape of the upper in the planar configuration, the [flat knit edges being free of surrounding material from which the knitted textile element must be removed]</p>	<p>knitting to shape a textile element shaped as an upper when flat via flat weft knitting such that all edges of the upper are finished without cutting or removing</p> <p>As discussed at the <i>Markman</i> hearing, adidas agrees that “finished” can be replaced with “fully formed” in its proposed construction.</p>

	TERM (PATENT / CLAIMS)	NIKE'S CONSTRUCTION	ADIDAS'S CONSTRUCTION
18	<p>upper comprising a flat knit textile element comprising (1) flat knit edges free of surrounding textile structure such that the knit edges are not surrounded by textile structure from which the textile element must be removed</p> <p>('511 / 1, 15)</p>	<p>“flat knit edge” means an edge of a flat knit textile element, which is itself flat knit, e.g., which is not formed by cutting from a flat knit textile element</p> <p>“flat knit edges free of surrounding textile structure such that the knit edges are not surrounded by textile structure from which the textile element must be removed” means a knit to shape textile element formed by flat knitting, having flat knit edges</p> <p>the remainder of this phrase takes its ordinary and customary meaning, <i>i.e.</i>, upper comprising a flat knit textile element comprising (1) [flat knit edges free of surrounding textile structure such that the knit edges are not surrounded by textile structure from which the textile element must be removed]</p>	<p>a knit-to-shape upper formed from flat weft knitting such that all edges of the upper are finished without cutting or removing</p> <p>As discussed at the <i>Markman</i> hearing, adidas agrees that “finished” can be replaced with “fully formed” in its proposed construction.</p>

	TERM (PATENT / CLAIMS)	NIKE’S CONSTRUCTION	ADIDAS’S CONSTRUCTION
19	knitting an integral knit tongue that is of unitary knit construction with the upper, the integral knit tongue extending through a throat area of the knitted component (’562 / 1)	“unitary knit construction” is an agreed construction (see Section A above) the remainder of this phrase takes its ordinary and customary meaning, <i>i.e.</i> , knitting an integral knit tongue that is of [unitary knit construction] with the upper, the integral knit tongue extending through a throat area of the knitted component	knitting a one-piece, seamless tongue that extends through a throat area and is joined without seams to portions of the upper “seamless” does not exclude post-processing seams.
20	wherein the integral knit tongue is joined by knitting with the knitting machine to: (1) a forward portion of the throat area, and (2) at least along a portion of both of a lateral side and a medial side of the throat area of the knitted component extending through a portion of a length of the throat area in a longitudinal direction from the forward portion to an ankle opening of the upper (’562 / 1)	ordinary and customary meaning, <i>i.e.</i> , wherein the integral knit tongue is joined by knitting with the knitting machine to: (1) a forward portion of the throat area, and (2) at least along a portion of both of a lateral side and a medial side of the throat area of the knitted component extending through a portion of a length of the throat area in a longitudinal direction from the forward portion to an ankle opening of the upper	the integral knit tongue is joined by knitting to the forward portion of the throat area and along at least a portion of both the lateral and medial sides of the throat area and extending only partially toward the ankle opening
21	throat area (’562 / 1)	ordinary and customary meaning, <i>i.e.</i> , throat area	Indefinite
22	forward portion of the throat area (’562 / 1)	ordinary and customary meaning, <i>i.e.</i> , forward portion of the throat area	Indefinite

	TERM (PATENT / CLAIMS)	NIKE'S CONSTRUCTION	ADIDAS'S CONSTRUCTION
23	a skin layer that is thermally bonded to the knitted component, the skin layer covering at least a portion of the foot part of the knitted component and forming a portion of an exterior surface of the upper, the skin layer being absent from the ankle part of the knitted component ('932 / 11)	ordinary and customary meaning, <i>i.e.</i> , a skin layer that is thermally bonded to the knitted component, the skin layer covering at least a portion of the foot part of the knitted component and forming a portion of an exterior surface of the upper, the skin layer being absent from the ankle part of the knitted component	a thin outer layer having one or more section(s), each section of which: is thermally bonded to the knitted component, covers at least a portion of the foot part of the knitted component, forms a portion of an exterior surface of the upper, and must be absent from the ankle part of the knitted component
24	(a) a foot part for covering at least a portion of a foot of a wearer and (b) an ankle part for covering at least a portion of an ankle of the wearer ('932 / 11)	ordinary and customary meaning, <i>i.e.</i> , (a) a foot part for covering at least a portion of a foot of a wearer and (b) an ankle part for covering at least a portion of an ankle of the wearer	a foot part that covers part of the wearer's foot and that ends below the bony prominences of a wearer's ankle and an ankle part that covers and extends above the bony prominences of the wearer's ankle
25	covering at least a portion of a foot of a wearer ('932 / 11)	ordinary and customary meaning, <i>i.e.</i> , covering at least a portion of a foot of a wearer	Indefinite
26	covering at least a portion of an ankle of the wearer ('932 / 11)	ordinary and customary meaning, <i>i.e.</i> , covering at least a portion of an ankle of the wearer	Indefinite
27	foot region ('932 / 12)	ordinary and customary meaning, <i>i.e.</i> , foot region	Indefinite
28	ankle region ('932 / 12)	ordinary and customary meaning, <i>i.e.</i> , ankle region	Indefinite

C. THE 8 TERMS FOR RESOLUTION IN THE *MARKMAN* PROCESS

The Parties briefed and argued at the *Markman* hearing the following eight terms that the Parties believe are amenable to resolution in the *Markman* hearing process and likely to be significant to resolving the Parties' dispute.

	TERM (PATENT / CLAIMS)	NIKE'S CONSTRUCTION	ADIDAS'S CONSTRUCTION
1	textile element ('749 / 1, 13) ('598 / 1, 9, 14)	ordinary and customary meaning, <i>i.e.</i> , textile element	the single material element that forms the entirety of the knitted upper
2	surrounding textile structure ('749 / 1, 13)	ordinary and customary meaning, <i>i.e.</i> , surrounding textile structure	the knitted material that differs from, and that abuts and surrounds, the edges of the single material textile element that forms the entirety of the knitted upper
3	flat knit edges being free of surrounding material ('705 / 1, 11)	<p>“flat knit edge” means an edge of a flat knit textile element, which is itself flat knit, e.g., which is not formed by cutting from a flat knit textile element</p> <p>the remainder of this phrase takes its ordinary and customary meaning, <i>i.e.</i>, [flat knit edges] being free of surrounding material</p>	<p>all edges of the upper are formed from flat weft knitting and finished without cutting</p> <p>As discussed at the <i>Markman</i> hearing, adidas agrees that “finished” can be replaced with “fully formed” in its proposed construction.</p>

	TERM (PATENT / CLAIMS)	NIKE'S CONSTRUCTION	ADIDAS'S CONSTRUCTION
4	<p>upper comprising a flat knit textile element comprising (1) flat knit edges free of surrounding textile structure such that the knit edges are not surrounded by textile structure from which the textile element must be removed</p> <p>('511 / 1, 15)</p>	<p>“flat knit edge” means an edge of a flat knit textile element, which is itself flat knit, e.g., which is not formed by cutting from a flat knit textile element</p> <p>“flat knit edges free of surrounding textile structure such that the knit edges are not surrounded by textile structure from which the textile element must be removed” means a knit to shape textile element formed by flat knitting, having flat knit edges</p> <p>the remainder of this phrase takes its ordinary and customary meaning, <i>i.e.</i>, upper comprising a flat knit textile element comprising (1) [flat knit edges free of surrounding textile structure such that the knit edges are not surrounded by textile structure from which the textile element must be removed]</p>	<p>a knit-to-shape upper formed from flat weft knitting such that all edges of the upper are finished without cutting or removing</p> <p>As discussed during the <i>Markman</i> hearing, adidas agrees that “finished” can be replaced with “fully formed” in its proposed construction. As also discussed at the <i>Markman</i> hearing,</p>

	TERM (PATENT / CLAIMS)	NIKE’S CONSTRUCTION	ADIDAS’S CONSTRUCTION
5	knitting an integral knit tongue that is of unitary knit construction with the upper, the integral knit tongue extending through a throat area of the knitted component (’562 / 1)	“unitary knit construction” is an agreed construction (see Section A above) the remainder of this phrase takes its ordinary and customary meaning, <i>i.e.</i> , knitting an integral knit tongue that is of [unitary knit construction] with the upper, the integral knit tongue extending through a throat area of the knitted component	knitting a one-piece, seamless tongue that extends through a throat area and is joined without seams to portions of the upper “seamless” does not exclude post-processing seams.
6	wherein the integral knit tongue is joined by knitting with the knitting machine to: (1) a forward portion of the throat area, and (2) at least along a portion of both of a lateral side and a medial side of the throat area of the knitted component extending through a portion of a length of the throat area in a longitudinal direction from the forward portion to an ankle opening of the upper (’562 / 1)	ordinary and customary meaning, <i>i.e.</i> , wherein the integral knit tongue is joined by knitting with the knitting machine to: (1) a forward portion of the throat area, and (2) at least along a portion of both of a lateral side and a medial side of the throat area of the knitted component extending through a portion of a length of the throat area in a longitudinal direction from the forward portion to an ankle opening of the upper	the integral knit tongue is joined by knitting to the forward portion of the throat area and along at least a portion of both the lateral and medial sides of the throat area and extending only partially toward the ankle opening
7	(a) a foot part for covering at least a portion of a foot of a wearer and (b) an ankle part for covering at least a portion of an ankle of the wearer (’932 / 11)	ordinary and customary meaning, <i>i.e.</i> , (a) a foot part for covering at least a portion of a foot of a wearer and (b) an ankle part for covering at least a portion of an ankle of the wearer	a foot part that covers part of the wearer’s foot and that ends below the bony prominences of a wearer’s ankle and an ankle part that covers and extends above the bony prominences of the wearer’s ankle

	TERM (PATENT / CLAIMS)	NIKE'S CONSTRUCTION	ADIDAS'S CONSTRUCTION
8	<p>a skin layer that is thermally bonded to the knitted component, the skin layer covering at least a portion of the foot part of the knitted component and forming a portion of an exterior surface of the upper, the skin layer being absent from the ankle part of the knitted component</p> <p>('932 / 11)</p>	<p>ordinary and customary meaning, <i>i.e.</i>, a skin layer that is thermally bonded to the knitted component, the skin layer covering at least a portion of the foot part of the knitted component and forming a portion of an exterior surface of the upper, the skin layer being absent from the ankle part of the knitted component</p>	<p>a thin outer layer having one or more section(s), each section of which: is thermally bonded to the knitted component, covers at least a portion of the foot part of the knitted component, forms a portion of an exterior surface of the upper, and must be absent from the ankle part of the knitted component</p>

Dated: May 24, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Sherri Mills, hereby certify that on May 24, 2022, a copy of **UPDATED JOINT CLAIM CONSTRUCTION CHART** was served upon the following parties as indicated:

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/s/ Sherri Mills
Sherri Mills