

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SKECHERS U.S.A., INC.,

Petitioner,

v.

NIKE, INC.,

Patent Owner.

Case IPR2025-00141

Patent No. 8,266,749

**DECLARATION OF CHRISTOPHER M. PASTORE, PH.D., IN SUPPORT
OF NIKE, INC.'S PATENT OWNER'S RESPONSE**

Skechers U.S.A. v. Nike, Inc. IPR2025-00141 Patent No. 8,266,749 Ex. 2012
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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND AND EXPERIENCE	2
III.	COMPENSATION AND PRIOR TESTIMONY	3
IV.	MATERIALS CONSIDERED	4
V.	LEGAL STANDARDS	4
VI.	LEVEL OF ORDINARY SKILL IN THE ART	8
VII.	THE '749 PATENT	9
VIII.	CLAIM CONSTRUCTION	11
IX.	OVERVIEW OF THE PRIOR ART REFERENCES	11
	A. Orei	11
	B. Nishida	13
	C. Guenther	16
X.	GROUND 1A: OREI FAILS TO DISCLOSE OR RENDER OBVIOUS CLAIMS 1–6, 8, 10–16, 18, AND 20–21	18
XI.	GROUND 2A: NISHIDA FAILS TO DISCLOSE CLAIMS 1–8, 11-18, AND 21	25
XII.	GROUND 2A: NISHIDA DOES NOT DISCLOSE THAT THE KNITTED TEXTILE ELEMENT HAS A “SUBSTANTIALLY PLANAR CONFIGURATION UPON REMOVAL FROM THE SURROUNDING KNITTED TEXTILE STRUCTURE” AS RECITED IN CLAIMS 5 AND 15	35
XIII.	GROUND 2B: NISHIDA IN VIEW OF GUENTER DOES NOT RENDER OBVIOUS CLAIMS 1–8, 11–18, AND 21	37

I, Christopher M. Pastore, Ph.D., declare as follows:

I. INTRODUCTION

1. I have been retained by Nike (“Patent Owner”) as an independent expert in this *inter partes* review (“IPR”) proceeding before the Patent Trial and Appeal Board (“PTAB”), which I understand involves U.S. Patent No. 8,266,749 (“the ’749 Patent”). I am being compensated for my time at my usual consulting rate of \$300 per hour for my work associated with this matter. No part of my compensation is dependent on the outcome of this proceeding, and I have no other interest in this proceeding.

2. I understand that this proceeding involves Claims 1–21 (the “Challenged Claims”) of the ’749 Patent. I further understand that Petitioner Skechers U.S.A., Inc.. (“Skechers”) raises six grounds in the Petition for *Inter Partes* Review, including Grounds 1A, 2A, and 2B against the independent claims of the ’749 Patent, which are claims 1 and 13. Grounds 1A, 2A, and 2B rely on the following prior art references:

Reference	Exhibit
U.S. Patent No. 7,051,460 (“Orei”)	Ex. 1020
No. 5,345,638 (“Nishida”)	Ex. 1022
DE627,878 (“Guenther” or “Gunther”)	Ex. 1023

David J. Spencer, Knitting Technology: A Comprehensive Handbook and Practical Guide (3 rd 3d.) (Woodhead Publishing Limited, Cambridge, England 2001) (“Spencer”)	Ex. 1050
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3. For purposes of this declaration, I have been asked to provide my opinions in response to Grounds 1A, 2A, and 2B in Skechers’ Petition. I understand that Ground 1A challenges claims 1–6, 8, 10–16, 18, and 20–21 as rendered anticipated and/or obvious by Orei. Petition at 23. For Ground 1A, I understand that Skechers uses Spencer as background art in order to assert obviousness under Orei. Petition at 38. I understand that Ground 2A challenges claims 1–8, 11–18, and 21 as anticipated by Nishida. Petition at 23. And I understand that Ground 2B challenges claims 1–8, 11–18, 21 as obvious over Nishida in view of Guenther. *Id.* I understand that these are the only grounds challenging independent claims 1 and 13. My opinions for these grounds are set forth below.

II. BACKGROUND AND EXPERIENCE

4. My qualifications for forming the opinions set forth in this declaration are summarized in the following paragraphs and explained in more detail in my curriculum vitae which is attached Exhibit A to this report. Exhibit A also includes a list of my publications and research activities.

5. I am the Assistant Provost, Faculty Development in Classroom Pedagogy and Nexus Learning, and a Professor of Transdisciplinary Studies at

Thomas Jefferson University in Philadelphia, Pennsylvania. I am also an Honorary Research Professor in the Department of Clothing and Textiles at Durban University of Technology in Durban, South Africa.

6. I have a Ph.D. in Materials Science from Drexel University, where I wrote my thesis: A Processing Science Model for Three Dimensional Braiding. I have written or had my writings included in nearly twenty books related to textiles. I have nearly fifty refereed publications related to textiles. I have produced nearly ninety presentations and non-refereed publications on textiles and fabrics. I have won numerous awards related to my writings in and experience with textiles.

7. I have worked in textile and materials engineering and textile engineering since 1984. I have a broad range of experience in warp and weft knitting, computer modelling of textile structures, defects in fabrics, mechanical properties of textiles, 4D textiles, structural and textile composites, and three-dimensional weaving.

III. COMPENSATION AND PRIOR TESTIMONY

8. I have previously been qualified as an expert and admitted to testify about textile design, engineering, and manufacturing. Attached as Exhibit B is a list of cases in which I have provided testimony in the last five years. To the best of my knowledge, no court has ever excluded or prohibited me from providing trial testimony as an expert witness.

9. Although I am being compensated for my time at a rate of \$300 per hour for my work in this matter, the opinions herein are my own and I have no stake in the outcome of this matter. My compensation does not depend in any way on the outcome of the matter or my opinions.

IV. MATERIALS CONSIDERED

10. All my opinions are based on my knowledge and professional judgment, and the following documents that I considered:

- Skechers' Petition for *Inter Partes* Review of U.S. Patent No. 8,266,749;
- Exhibits 1001–1064; and
- all other materials discussed herein.

11. I reserve the right to amend or supplement the opinions provided in this declaration if trial is instituted.

V. LEGAL STANDARDS

12. I am not an attorney. For purposes of this Declaration, I have been informed by counsel about certain aspects of the law that are relevant to my opinions. My understanding of the law is summarized below.

13. I understand from counsel that in an *inter partes* review, claim terms should be construed “in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.” 37 C.F.R. § 42.100(b). I understand from counsel

that the ordinary and customary meaning is determined primarily in view of the patent's specification and prosecution history, but that extrinsic evidence such as dictionaries and treatises, as well as the opinions of persons of ordinary skill in the art ("POSITA"), may also be taken into account.

14. I understand from counsel that, in this *inter partes* review, Petitioner has the burden of proving that each challenged claim is unpatentable by a preponderance of the evidence. I understand that Skechers has challenged both independent claims of the '749 patent under an anticipation theory, and in the alternative, an obviousness theory.

15. I understand from counsel that, to anticipate a claim, a single prior art reference must disclose each and every element of the claim. I also understand that a prior art reference that does not expressly disclose an element may still be found to disclose the element by "inherency," but the party relying on an allegedly inherent disclosure must prove that the missing element is necessarily present in the reference, and that it would be recognized as such by a POSITA. I understand that even slight differences between a prior art reference and the claimed invention may make a showing of anticipation insufficient.

16. I understand from counsel that obviousness requires demonstrating that the differences between the subject matter of the patent and the prior art are such that the subject matter, as a whole, would have been obvious at the time the invention

to a POSITA. I understand that a patent claim is rendered obvious if it would have been obvious to a POSITA to combine the teachings of the prior art to yield the patent claim. I also understand that for a patent claim to be found obvious, all the elements/limitations of the patent claim must be found in teachings of one or more references that would have been combined by a POSITA with a reasonable expectation of success. I have been informed by counsel that a proper analysis of whether an invention is unpatentable for obviousness includes a review of the scope and content of the prior art, the differences between the patent claims at issue and the prior art, the level of ordinary skill in the field of the invention at the time of the invention, and other objective considerations.

17. I understand from counsel that a showing of obviousness requires some articulated reasoning with a rational underpinning to support the combination of the references, i.e., a motivation to combine the references. I understand from counsel that in consideration of the issue of obviousness, it is important to identify whether a reason existed at the time of the invention that would have led a POSITA to combine elements of the references in a way that yielded the claimed invention. I further understand that a reference teaches away from the invention when it would have discouraged a POSITA from practicing the claimed invention, or when such a person would be led in a different direction than practicing the claimed invention.

18. I also understand from counsel that along with motivation to combine, petitioner must also show a POSITA would have reasonably expected to succeed in making the proposed prior art combination.

19. I understand from counsel that a claim may be considered unpatentable for obviousness for various reasons. Counsel informed me that the following exemplary rationales may support a finding of obviousness:

- combining prior art elements according to known methods to yield predictable results;
- simply substituting one known element for another to obtain predictable results;
- use of a known technique to improve similar devices in the same way;
- applying a known technique to a known device ready for improvement to yield predictable results;
- choosing from a finite number of identified, predictable solutions with a reasonable expectation of success;
- known work in a field that prompts variations in the work in the same or a different field that leads to predictable results; and
- some teaching, suggestion, or motivation in the prior art that would have led a POSITA to modify a prior art reference or combine multiple prior art references or teachings to arrive at the claimed invention.

VI. LEVEL OF ORDINARY SKILL IN THE ART

20. I understand from counsel that Skechers asserts a POSITA in the relevant field of the '749 Patent in March 2004 would have had at least a few years of experience in knit materials and knitting methods and machines that can be used in making footwear, or a bachelor's degree in textile-related sciences, engineering, or industrial product design, or equivalent academic or work experience, including in the footwear industry. Petition, 23-24; EX1002 at ¶68. I understand from counsel that Skechers also asserts a POSITA would have had at least a general understanding of general construction processes and materials used in the manufacturing process of fabric-based articles, and that for individuals with a lower educational level, a person could still be of ordinary skill in the art provided that person's working experience compensates for any such lower educational level, or vice versa. *See id.* For purposes of this declaration, I apply Skechers' definition of a POSITA.

21. In view of my experience and qualifications noted above, I am well positioned to opine as to what a POSITA at the time of the invention would have understood and done.

22. My opinions contained herein are from the perspective of a POSITA. My opinions reflect how a POSITA would have interpreted the claims, the prior art, and any available evidence.

23. My opinions are based on generally-accepted methodologies in the textile and knitting communities.

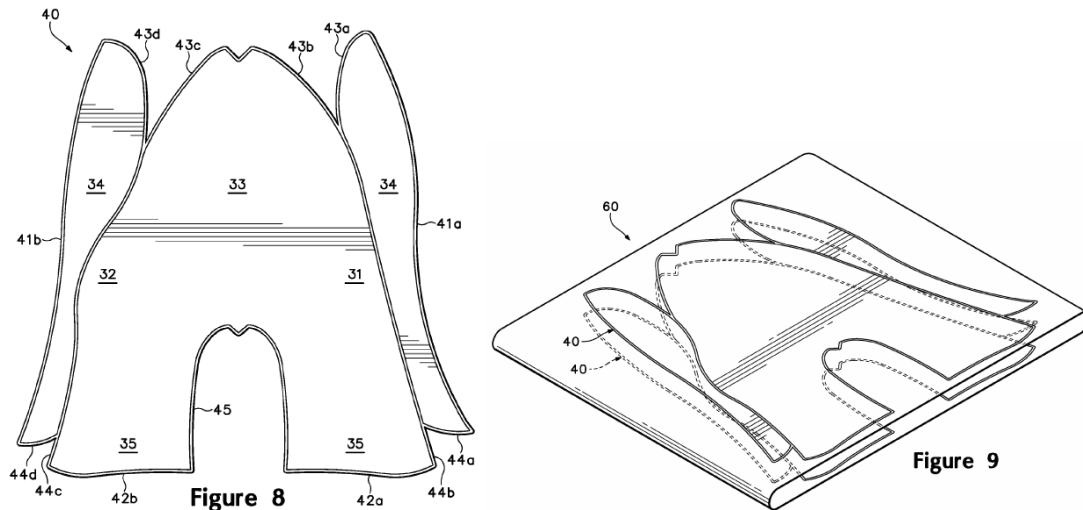
VII. THE '749 PATENT

24. The '749 patent relates to methods of manufacturing footwear by knitting textile uppers. Independent claims 1 and 13 of the '749 patent recite methods of knitting textile elements at the same time as a surrounding textile structure. *E.g.*, Ex. 1001 at 11:43–14:5. The knitted textile elements have at least one texture that is different from the texture of the surrounding textile structure. *Id.* The knitted textile elements are then removed from the surrounding textile structure and incorporated into articles of footwear. *E.g.*, *id.* at Figure 9, 7:38–9:4, 11:43–14:5.

25. The '749 patent further discloses that the textile element(s) and surrounding textile structure can be produced using warp knitting machines and weft knitting machines, including circular knitting machines. *E.g.*, Ex. 1001. at 7:9–8:8. The textile elements can be removed from the surrounding textile structure using “die-cutting, laser-cutting, or other conventional cutting operation[s].” *E.g.*, *id.* at 8:4–8.

26. The claimed methods provide many benefits over conventional methods of manufacturing footwear. The claimed methods increase efficiency by limiting the required number of suppliers, machinery, or different assembly line techniques to cut or otherwise prepare the material for incorporation into the

footwear. *E.g.*, Ex. 1001 at 3:4–25, 11:6–9. The claimed methods also reduce the number of steps in the manufacturing process and reduce the number of seams in the final footwear product. *Id.*



Figures 8 and 9 of the '749 patent

27. Figure 8 shows an example of a textile element with the general shape and form of a footwear upper. Figure 9 shows an example of a tube-shaped cylindrical textile structure “formed with a wide-tube circular knitting machine.” Ex. 1001 at 7:38–39. Figure 9 also shows that “the types of stitches vary throughout textile structure 60 so that a pattern is formed with the outline of textile element 40 . . . [and] differences in the stitches within textile structure 60 form an outline with the shape and proportions of textile element 40.” *E.g., id.* at 7:38–45.

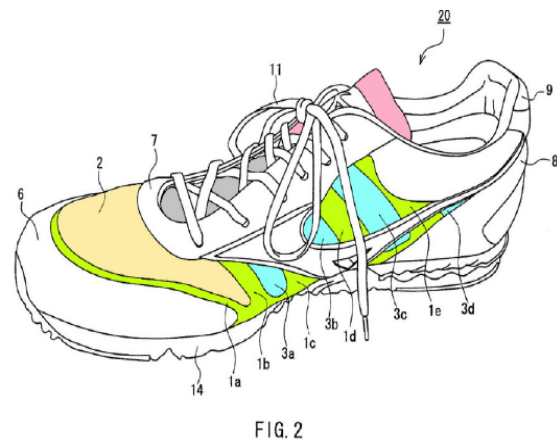
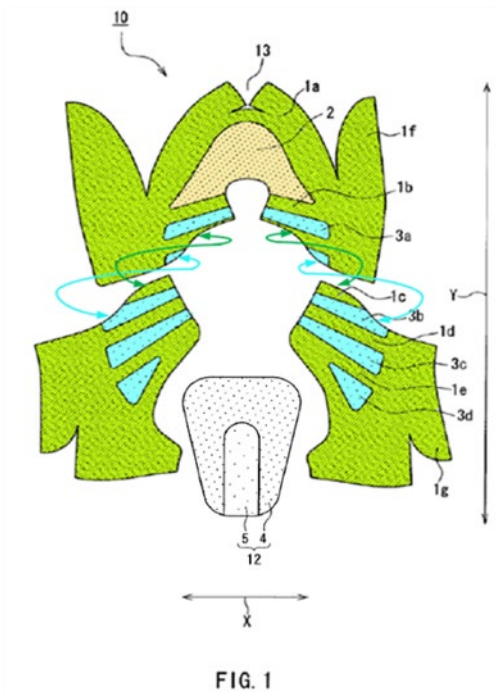
VIII. CLAIM CONSTRUCTION

28. For purposes of this declaration, I understand that all terms and phrases in the '749 patent claims have their ordinary and customary meanings and that no further construction is required. I reserve the right to offer opinions on any claim constructions that arise if this IPR is instituted.

IX. OVERVIEW OF THE PRIOR ART REFERENCES

A. Orei

29. Orei is entitled "Light Weight Shoes." EX1020. Orei discloses the production of upper shoe patterns without a surrounding textile structure. *E.g.*, EX1020 at Figs. 1 & 5, 3:33-38, 1:58-2:3. Figures 1 and 5 in Orei, for example, show empty space between the shoe patterns, and nowhere does Orei discuss a surrounding textile structure, whether in terms of its production or its material. *Id.* I annotate Figure 1 with green, beige, and aqua colors to show shoe patterns with non-mesh structure part (A) 1a to 1e in green, mesh structure part (B) in beige, and mesh structure part (C) 3a and 3d in aqua. *Id.* at Fig. 1, 4:16-25, 4:37-39, 4:40-46.



Id. at Fig. 1 (annotated with colors and arrows). Orei discloses that parts A, B, and C are placed or disposed continuously (i.e., without gaps, adjacent to one another). *Id.* at 1:58-2:3, 3:33-38, 4:16-17, 5:56-58. I annotate Figure 1 with green and aqua arrows to show the shoe patterns having parts A to C were originally placed adjacent to one another in a fabric. *Id.* at Fig. 1, 3:33-38, 2:1-3. Specifically, the bottom two shoe patterns in green and aqua were joined with the corresponding green and aqua in the top shoe pattern. *Id.* For example, part (A) 1c and part (C) 3b on the bottom shoe patterns match up with the corresponding colored parts on the top shoe pattern in Figure 1. *Id.* When parts A, B, and C were originally joined, they formed “one continuous knitted fabric.” *Id.* Then, “paper patterns” were placed on top of the

continuous fabric to cut the shoe patterns having parts A, B, and C. *Id.* at 3:33-38 (“At least the parts A to C . . . disposed as one continuous knitted fabric. Thus, when the fabrics are cut together with paper pattern, a shoe can be formed, thus enabling the efficiency in the formation to be improved.”). Figure 1 shows empty space between the shoe patterns because they have been cut from the fabric in advance of forming the shoe. *Id.* at Fig. 1, 3:33-38. In sum, Orei teaches the production of upper shoe patterns, whereby parts are placed to form one continuous fabric, then shoe patterns are cut from the fabric by placing “paper patterns” on top of the fabric, after which “a shoe can be formed.” *Id.* at Fig. 1, 2:1-3, 3:33-38.

B. Nishida

30. Nishida is entitled “Process for Producing a Shoe-Shaped Part from a Web of Material and Resulting Shoe-Shaped Part.” EX1022. Nishida is directed to a method of manufacturing shoe components including a shoe upper and a connected sole portion. *Id.* at 1:40-47. Nishida discloses a method of manufacturing shoe parts by using a “web of material” for cutting out shoe patterns for use in footwear. *Id.* at 1:48-2:10.

31. Figure 1 (below) of Nishida shows a “web of material” at “1.” The “web of material” consists of two primary components: (i) shoe patterns in the form of a “layout 2” or a “tongue 40”; and (ii) a backing.

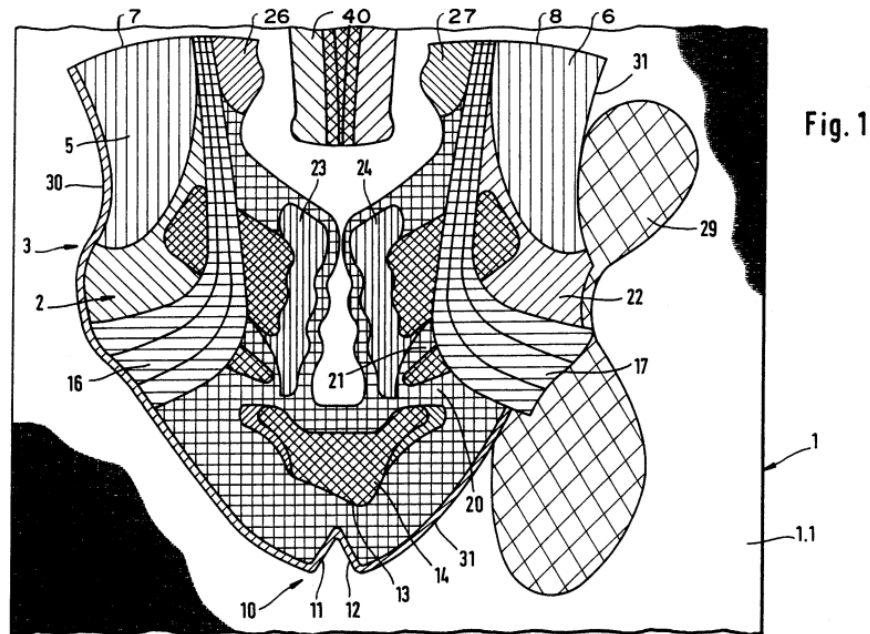


Figure 1 of Nishida

32. Figure 2 (below) of Nishida also shows the “web of material” at “1” having two primary components: “layouts 2” and a “backing 4.”

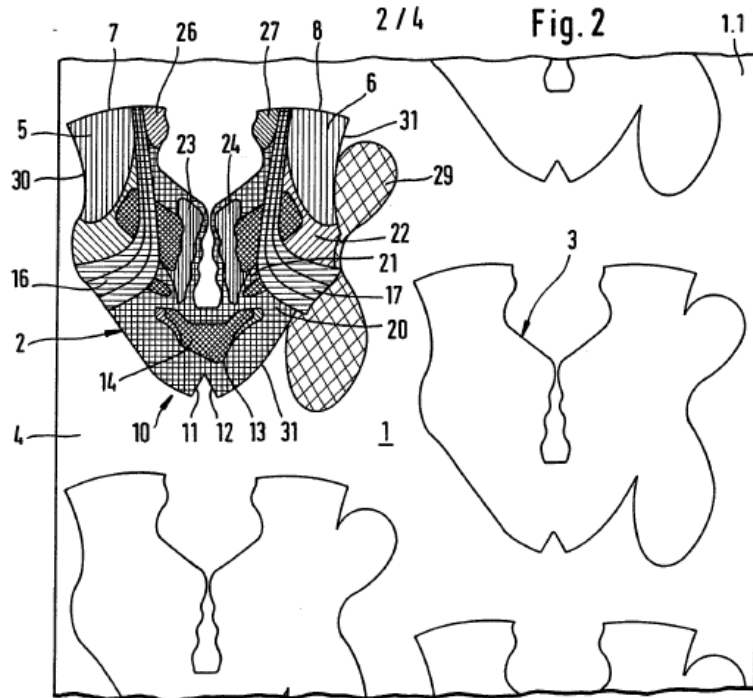


Figure 2 of Nishida

33. Nishida also discusses that the “web of material” includes (i) shoe patterns; and (ii) a backing. First, the web of material has shoe patterns: “[t]he web of material 1 can be provided with a single or with a plurality of layouts 2 of the shape of a shoe upper 3, as it is represented from the side, for example, in FIG. 3.” EX1022 at 3:9-12. Second, “[t]he web of material has a backing 4 that can be a conventionally used material formed, for example, of a warp and filling or a knitted fabric.” *Id.* at 3:13-15.

34. In Nishida, the “backing” “can be a conventionally used material” made of “simple, lightweight or inexpensive material quality.” *Id.* at 2:16-18, 3:13-15. The backing consists of a “material quality that is as simple and economical as possible.”

Id. at 5:45-55. By contrast, Nishida teaches that the shoe patterns (“layout 2” or “tongue 40”) consist of “necessary quality, thickness, multilayers or the like which correspond to the pattern.” *Id.* at 2:13-14.

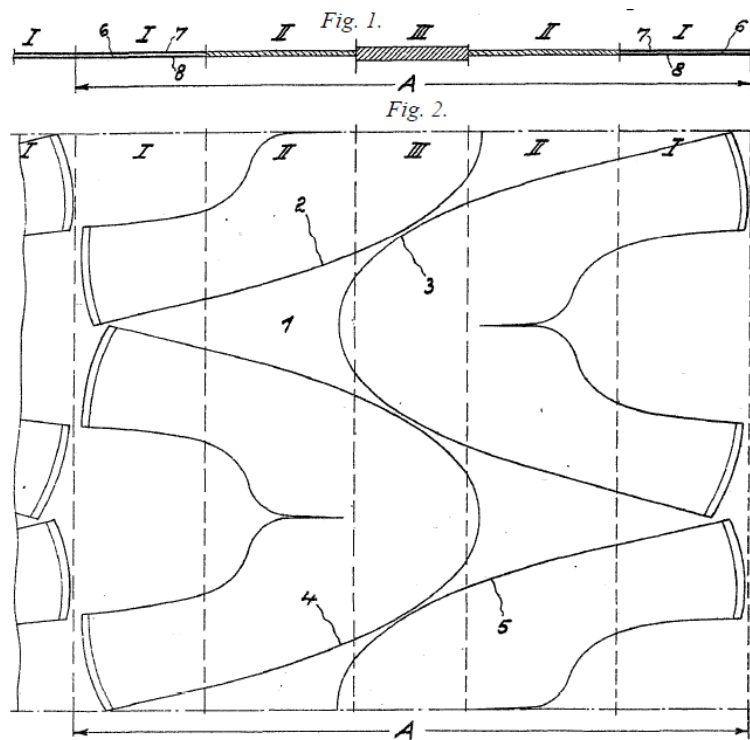
35. Nishida discloses that the backing preexists the production of the shoe patterns of the layouts and tongues. Nishida discloses that during production of the shoe patterns, the production process does not produce certain “unfinished surface areas” (shown at “1.1” in Figures 1 and 2 above). *Id.* at 2:16-20, 4:61-63, 5:45-55. In other words, the “unfinished surface areas” are free from any layouts or tongues, and the production process skips the “unfinished surface areas” when producing the shoe patterns. *Id.* But, these “unfinished surface areas” still have material, namely the simple, inexpensive material of the backing. *Id.* at 2:16-20, 3:13-15, 4:61-63, 5:45-55. Therefore, Nishida discloses that the material of backing preexisted the production process for the shoe patterns.

36. After layouts and/or tongues for the shoe patterns are produced on the web of material, the shoe patterns are cut from the backing and used in an article of footwear. EX1022 at 1:48-2:10.

C. Guenther

37. Guenther is German Patent No. 627 878 (EX1023), which is referenced in Nishida. EX1022 at 1:19-37, 2:2:22-26. Nishida explains that in Guenther “a web of material is produced so that it successively has three crosswise strips of different

weaves,” where U-shaped shoe patterns on these crosswise strips are cut out of the material to form a shoe. *Id.* The figures in Guenther show the U-shaped parts on the three crosswise strips of the web of material.



EX1023 at Figs. 1-2. Nishida, however, distinguishes Guenther’s web of material as wasteful and expensive because cutting the U-shaped parts from this web of material leaves expensive scraps of material. EX1022 at 2:22-26 (“the known material that has crosswise strips, the entire cutting waste, for example, consists of an expensive” material). By comparison, in Nishida, for “the process according to the invention, only just those parts of the web of material are produced in the necessary quality, thickness, multilayers or the like which correspond to the

pattern” and “the remaining area of the web of material in contrast can consist of a simple, lightweight or inexpensive material quality.” *Id.* at 2:11-22. As such, with Nishida’s method, when the shoe patterns are cut from the web of material, the leftover material is the “simple, lightweight and inexpensive material,” thereby minimizing “waste.” *Id.*

X. GROUND 1A: OREI FAILS TO DISCLOSE OR RENDER OBVIOUS CLAIMS 1–6, 8, 10–16, 18, AND 20–21

38. In my opinion, Orei fails to disclose or render obvious independent claims 1 and 13. Thus, Orei fails to disclose or render obvious any challenged claim in Ground 1A.

39. Orei does not disclose or render obvious “simultaneously” knitting a “textile element” with a “surrounding textile structure,” as recited in each of the independent claims, which are Claim 1 and Claim 13. Claim 1 recites “simultaneously knitting a textile element with a surrounding textile structure,” while Claim 13 recites “knitting a first textile element and a second textile element simultaneously with knitting a surrounding textile structure.” EX1001 at 11:45-46, 12:29-30.

40. Orei does not disclose a “surrounding textile structure,” as recited in the claim language. *E.g.*, EX1020 at Figs. 1 & 5, 3:33-38, 1:58-2:3. Skechers and Dr. Sabit Adanur do not identify any discussion in Orei on what the alleged

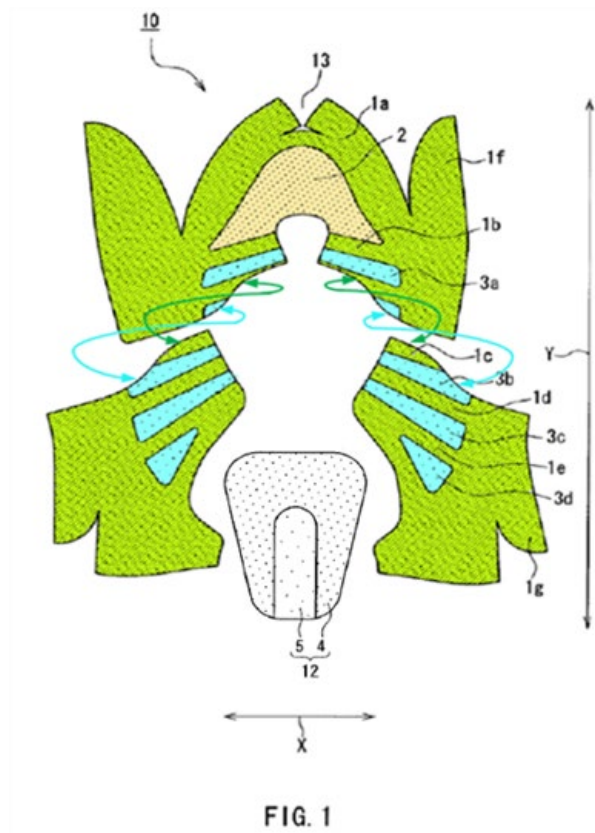
surrounding textile structure is, what material it consists of, or the timing of when any alleged surrounding textile structure is knitted. Petition at 34-38; EX1002 at ¶¶120-127. A POSITA would understand that Orei does not disclose a “surrounding textile structure,” much less any timing for knitting it.

41. Skechers and Dr. Adanur assert that Figures 1 and 5 disclose an alleged “surrounding textile structure.” Petition at 36-37; EX1002 at ¶¶59-60. These Figures, however, only show empty space surrounding the shoe patterns. EX1020 at Figs. 1, 5. There is no “surrounding textile structure” disclosed in Figures 1 and 5. *Id.* To argue a “surrounding textile structure,” Skechers and Dr. Adanur need to draw in an alleged “surrounding textile structure” by inserting a brown rectangle in the background. Petition at 36-37; EX1002 at ¶¶59-60.

42. Skechers and Dr. Adanur assert that Orei discloses the claimed “simultaneously knitting” because Orei discusses disposing or placing parts “continuously” or as a “continuous” fabric. Petition at 35-37; EX1020 at ¶¶123-125. But, a POSITA would understand that “continuously” or “continuous” in Orei do not relate to the timing of knitting, but instead to the physical location of where shoe parts are being placed or disposed. EX1020 at 3:33-38 (parts “disposed as one continuous knitted fabric”), 4:16-18 (parts “placed continuously”); 5:57-58 (parts “placed continuously”). Specifically, to a POSITA, “continuously” or “continuous” refer to having no gaps between the parts located on the fabric, whereby the parts

are continuously next to each other. *Id.* Dr. Adanur agreed in his deposition. EX2010 at 66:9–17. In particular, Orei discloses that at least parts A, B, and C are continuously adjacent to one another with no gaps. *Id.* at 3:34-36 (“At least the parts A to C of the double raschel warp knitted fabrics of the present invention are disposed as one continuous knitted fabric.”), 2:1-3 (“at least the parts A to C are disposed in one continuous knitted fabric”). Nowhere does Orei suggest to a POSITA that “continuously” refers to the timing of knitting, including “simultaneously knitting.”

43. To a POSITA, Figure 1 shows the shoe patterns after being cut individually, but where they were originally placed adjacent to one another to form one continuous fabric. I have annotated Figure 1 to explain this:



EX1020 at Fig. 1 (annotated with colors and arrows), 3:33-38, 2:1-3. First, I use the same color annotations as Skechers and Dr. Adanur use to identify parts A to C. Petition at 34-35 (citing EX1020 at 4:16-25, 4:37-39, 4:40-46); EX1002 at ¶¶121-122. Figure 1 above shows non-mesh structure part (A) 1a to 1e in green, mesh structure part (B) 2 in beige, and mesh structure part (C) 3a and 3d in aqua. EX1020 at Fig. 1, 4:16-25, 4:37-39, 4:40-46. Second, I annotate Figure 1 with green and aqua arrows to explain the shoe patterns having parts A to C were originally adjacent to one another. *Id.* at Fig. 1, 3:33-38, 2:1-3. Specifically, the bottom two shoe patterns with green and aqua parts were joined with the corresponding green and aqua parts

in the top shoe pattern to form “one continuous knitted fabric.” *Id.* For example, part (A) 1c and part (C) 3b in the bottom shoe patterns match up to the corresponding colored parts in the top shoe pattern in Figure 1 above. I understand that Dr. Adanur agreed that Parts A, B, and C line up. EX2010 at 66:9–17. Because the parts were originally placed adjacent to one another, they formed “one continuous knitted fabric.” *Id.* at Fig 1, 3:33-38; 2:1-3.

44. To a POSITA, Orei discloses using paper patterns to cut shoe patterns with at least parts A, B, and C from one continuous fabric. First, Orei discloses that the “[a]t least the parts A to C . . . are disposed as one continuous knitted fabric.” EX1020 at 3:33-36; *see also id.* at 2:2-3 (“at least the parts A to C are disposed in one continuous knitted fabric”). Here, a POSITA would understand that shoe patterns with parts A to C were joined together in one continuous fabric. Then, a POSITA would understand that Orei discloses that shoe patterns having parts A to C are cut from the one fabric by placing matching paper pattern on top of the fabric. *Id.* at 3:36-38 (“Thus, when the fabrics are cut together with paper pattern, a shoe can be formed, thus enabling the efficiency in the formation to be improved.”). A POSITA would understand that the paper patterns placed on top of the fabric would guide a person to cut the shoe patterns shown in Figure 1. As such, a POSITA would understand that Figure 1 shows shoe patterns after being cut with the matching paper patterns so that a shoe can be formed. *Id.* at Fig 1, 3:33-38.

45. To a POSITA, Figure 5 discloses “continuously” disposing or placing of parts directly next to one another without gaps. *Id.* at Fig. 5, 5:57-58. For example, a POSITA would understand Figure 5 shows that the curves of part 31 match up with the curves of the bottom part 32, showing the two patterns would be “continuously” adjacent to one another prior to cutting with the paper patterns in order to form the shoe. *Id.* at Fig. 5, 3:33-37 (“Thus, when the fabrics are cut together with paper pattern, a shoe can be formed.”). I annotate Figure 5 with red arrows to identify where the curves of the top part 31 match up with the curves of the bottom part 32.

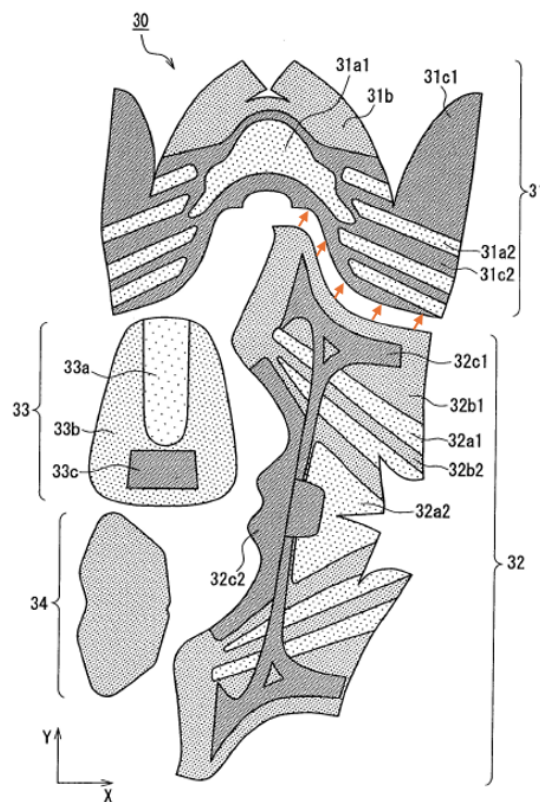


FIG. 5

46. Skechers and Dr. Adanur also assert that even if Orei does not disclose simultaneously knitting a textile element with a surrounding structure, it would have been obvious to do so. Petition at 38; EX1002 at ¶127. But, Skechers and Dr. Adanur rely on documentary evidence that does not disclose simultaneously knitting of a textile element with a surrounding structure. EX1002 at ¶127; Petition at 38 (quoting EX1050 (“Spencer”) at 363, which states that articles are “simultaneously knitted side-by-side across the needle bed”). This disclosure in Spencer concerns the knitting of “scarves.” EX1050 at 363. Spencer teaches a POSITA that individual scarves are knitted by having each “side-by-side across the needle bed.” A POSITA would understand that Spencer does not teach a surrounding textile structure. *Id.* For example, there are no waste scraps during the production of the scarves in Spencer. *Id.* Skechers and Dr. Adanur quotes “simultaneously knitted side-by-side” in Spencer, but this only refers to knitting multiple individual scarves at the same time by having each scarf side-by-side on the needle bed. *Id.*

47. Based on the foregoing, Skechers fails to show a reasonable likelihood that Orei anticipates or renders obvious any challenged claim in Ground 1A.

XI. GROUND 2A: NISHIDA FAILS TO DISCLOSE CLAIMS 1–8, 11-18, AND 21

48. In my opinion, Nishida fails to disclose all of the features of independent claims 1 and 13. Thus, Nishida fails to disclose any challenged claim in Ground 2A.

49. Nishida does not incorporate Guenther by reference. I understand from counsel that to incorporate another document by reference, “the host document must identify with detailed particularity what specific material it incorporates and clearly indicate where that material is found in the various documents” and that a “mere reference to another application, or patent, or publication is not an incorporation of anything therein.” Nishida does not incorporate Guenther by reference. Nishida instead states that there is a process “known” from Guenther. EX1022, 1:19–24. Nishida does not clearly indicate where that material is found in the various documents.

50. In my opinion, Nishida does not disclose “simultaneously knitting a textile element with a surrounding textile structure,” as recited in Claim 1. Claim 13 similarly recites that a “first textile element” and a “second textile element” are simultaneously knitted with a “surrounding textile structure.” As I describe below, in my opinion, Nishida does not teach that a textile element that is *simultaneously*

knitted with a surrounding textile structure. At best, Nishida is silent on the timing of various procedures.

51. Nishida discloses a method of manufacturing shoe parts by using a “web of material” for cutting out shoe patterns for use in footwear. EX1022 at 1:48-2:10. In Figures 1 and 2, Nishida shows a “web of material” at “1.” *Id.* at Figs. 1-2. The “web of material” consists of two primary components: (i) shoe patterns in the form of a “layout 2” or a “tongue 40”; and (ii) a backing. *Id.* at Figs. 1-2, 3:5-15.

52. Nishida discloses that the web of material uses a backing. Specifically, the “web of material has a backing 4 that can be a conventionally used material formed, for example, of a warp and filling or a knitted fabric.” EX1022 at 3:13-15. That backing is made of “simple, lightweight or inexpensive material quality.” *Id.* at 2:16-18. Nishida teaches that the backing consists of a “material quality that is as simple and economical as possible.” *Id.* at 5:45-55. In comparison, the “layout” or “tongue” of the upper shoe patterns consist of “necessary quality, thickness, multilayers or the like which correspond to the pattern.” *Id.* at 2:13-14.

53. A POSITA would understand that the disclosed differential in quality between the backing and shoe patterns indicates that the shoe patterns are produced in a separate process from the production of the “simple and economical as possible” backing. *Id.* at 5:45-49.

54. Nishida does not disclose “simultaneously” knitting a “textile element” with a “surrounding textile structure.” Nishida discloses knitting a full sheet of backing in one operation, but not that knitting the shoe patterns would be part of that same operation. To argue the prior art discloses this claim limitation, Skechers points to the backing in Nishida as the claimed “surrounding textile structure” and points to the “layout” and/or “tongue” of the upper shoe patterns as the claimed “textile element.” But, in Nishida, the backing preexists the production of any “layout” or “tongue” of the upper shoe patterns, and is therefore knitted before any “layout” or “tongue.”

55. Nishida discloses that the backing preexists the production of shoe patterns. A POSITA would understand Nishida discloses that during production of the shoe patterns, the production process does not produce certain “unfinished surface areas” (shown at “1.1” in Figures 1 and 2 above). *Id.* at 2:16-20, 4:61-63, 5:45-55, Figs. 1-2. Nishida teaches that “the web of material 1 is produced so that its surface areas 1.1” have “no layout(s) 2 or tongue(s) 40.” *Id.* at 5:45-48. Nishida teaches that “[i]n Figs. 1 and 2, unfinished surface areas, which lie outside layouts 2 for shoe upper 3 or for tongue 40, are shown with position number 1.1.” *Id.* at 4:61-63. A POSITA would understand that there is no need to knit the “unfinished surface areas,” which merely “holds together only the [shoe] patterns.” *Id.* at 2:16-20. But despite the production process skipping the “unfinished surface areas” when

producing the shoe patterns, these “unfinished surface areas” still have material, namely the simple, inexpensive material of the backing. *Id.* at 2:16-20, 3:13-15, 4:61-63, 5:45-55. Therefore, a POSITA would understand that the backing material preexists the production process for the shoe patterns. As such, Nishida discloses to a POSITA that the backing is knitted earlier, where there is no “simultaneously knitting” of a shoe pattern, whether a layout or a tongue, with the backing. Claim 1 of Nishida also supports this understanding. Claim 1 recites “. . . modifying the overall construction of the web of material in the locations of the layouts relative to that in portions thereof where the layouts of the shoe upper and sole parts are produced by modifying the overall construction of the web of material in the locations of the layouts relative to that in portions thereof where the layouts of the shoe upper and the sole parts are not provided. . .” EX1022 at 6:17–23. A POSITA would understand that you cannot modify something in a specific location unless that something already exists. A POSITA would further understand that if the backing and patterns were formed simultaneously the process would be creating the construction, not modifying it in specific locations. Therefore, the backing must pre-exist the web of material.

56. Skechers and Dr. Sabit Adanur reference that Nishida discloses “a textile production process *inside* the web of material,” suggesting this discloses the claimed “simultaneously knitting.” Petition at 78; EX1002 at ¶215. This disclosure,

however, does not discuss any timing for the knitting, and does not disclose or suggest to a POSITA that there is a “simultaneous” knitting of the backing with the layouts and/or tongues. EX1022 at 1:50-56. Instead, a POSITA would understand that this disclosure refers to producing parts in multiple layers, where the layers in the middle are “inside” the web of material. Nishida teaches that “the material can be woven or knitted in *two or more layers*.” *Id.* at 3:66–68 (emphasis added); *see also id.* at 3:6-8 (“[i]n FIGS. 1 and 2, a web of material is identified by 1, and is produced by a conventional textile process, *tier example*, by weaving and/or knitting and/or embroidering.”) (emphasis added).¹ For example, in Figure 2, part 22 is “inside” the web of material because part 17 and/or part 8 are on top of part 22, while part 29 and/or the backing are underneath part 22. *Id.* at Fig. 2. A POSITA would understand that the figures and text of Nishida teach that the “web of material” includes all components, including the backing and all layers of the layouts. *Id.* at Figs 1-2, 3:5-15. As such, a POSITA would understand that the parts in the middle layers are embedded “inside” the “web of material.” *Id.* at Fig. 2, 3:6-8.

57. Skechers and Dr. Sabit Adanur also cite the Abstract in Nishida to suggest the Abstract discloses the claimed “simultaneously knitting” of the backing

¹ The Institution Decision contemplates that Nishida includes the word “tier” as a typographical error. ID at 22 n. 7. Even if it is, Nishida still teaches multiple layers. E.g., EX1022 at 2:3:66–68;

with the layouts. Petition at 80; EX1002 at ¶215. The Abstract states: “For this purpose, a web of material (1) is used to produce layouts (2) by different production measures, such as different styles, yarn material, color, material thickness, single layer or multilayer type of material or the like, at the same time with the production of web of material (1), and with a sole part attached to the layout.” EX1022 at Abstract. Each of the features listed: the different styles, material, color, and thicknesses, are part of the layout 2, not the backing 4. Nowhere does this disclosure mention the backing, much less the timing for producing the backing. *Id.* The Abstract discusses the “web of material.” *Id.* The backing is merely one component of the “web of material.” *Id.* at 3:5-15 (web of material contains backing and layouts). A POSITA would understand that the “web of material” includes all components, including all the layers of the shoe patterns along with the preexisting backing. *Id.* at Figs 1-2, 3:5-15. As such, a POSITA would understand that the “web of material” is only completed when all the layers of the layouts are completed on the backing. As such, a POSITA would understand the Abstract to be disclosing that the “web of material” is completed “at the same time” as when the layouts are completed. *Id.* at Abstract.

58. Skechers and Dr. Sabit Adanur also point to a disclosure of “one operation” in Nishida. Petition at 80; EX1002 at ¶216. Here, Nishida discloses “[t]he advantages of the previously described process according to the invention can be

seen especially in the fact that, with a **fully developed loom**, up to 7 different textile fibers or yarns, and the same number of colors, can be put in, especially woven in, the web of material in **one operation**. As already indicated, any sizes and different **upper designs** can be produced by computer-controlled programs, starting from corresponding basic patterns.” EX1022 at 4:45-55 (emphasis added). To a POSITA, this disclosure is only referring to the production of the “upper designs,” namely the layouts and the tongue, in “one operation.” *Id.* There is no discussion of the production of the backing. *Id.* A POSITA would understand that Nishida is discussing the production of a high quality material, namely a “fully developed” material having “7 different fibers,” in one operation. *Id.* There is no discussion of the “inexpensive” and “simple” material of the backing, where Nishida teaches should be of a material that is “as simple and economical as possible.” *Id.* at 3:13-15, 2:16-18, 5:45-55. Accordingly, the discussion of “one operation” in Nishida does not disclose the claimed “simultaneously knitting” of a surrounding textile structure (i.e., the backing) with a layout and/or a tongue. Dr. Adanur testified that this portion of the specification was discussing weaving, not knitting. I agree. Because it addresses weaving, it is not relevant to how footwear would be knit. I agree with Dr. Adanur that the “machines are different. The process is different. The fabric properties are different.” This testimony suggests that the textual basis previously

Dr. Adanur used to support a finding of “simultaneously knitting” in Nishida actually refers to a different technology altogether.

59. Skechers also points the Board’s statements in the *adidas IPR*. Petition at 77 (citing EX1019 at 29-30). In its decision, the Board points to the following disclosure in Nishida: “Additionally, the tongue 40, for example, according to FIG. 4, can be provided also in the course of producing the web of material 1 with different weave structures and/or weave patterns and/or embroideries or with one or with several prints or the like. On a web of material 1, different tongues 40 can be produced corresponding to a shoe shape and/or a shoe size both in shape, size, color or colors, patterns or the like. Preferably, in each case, related tongues 40 are produced simultaneously with a layout 2 on same web of material 1. . . . Preferably, each layout 2 has at least five, preferably more than ten, patterns and a tongue 40 has at least two, preferably at least three patterns produced or appearing, which are different from one another in each case.” EX1019 at 29-30 (citing EX1022 (Nishida) at 5:27-36, 41-44). A POSITA would understand that Nishida is discussing here the simultaneous knitting of only the “tongues 40” and “layout 2” shoe patterns. The disclosure only says the “tongues 40 are produced simultaneously with a layout 2.” EX1022 at 5:35-36. There is no discussion of the “backing” in Nishida, much less a discussion of the timing for knitting the backing. Accordingly, a POSITA would not

understand that this disclosure is teaching the simultaneous knitting of shoe patterns (i.e., layouts or tongues) with the backing in Nishida.

60. Skechers and Dr. Adanur assert that “Nishida’s backing 4 is a base for the web of material 1 similar to Guenther’s base layers, which is joined to other layers/threads during the knitting process.” Petition at 83; EX1002 at ¶222. I disagree. Nishida teaches that its backing is different than Guenther’s multi-layer base. In fact, Dr. Adanur testified that in knitting, Nishida’s “backing (4) “does not go under the layouts.” EX2010 at 103:21–104:1. He explained that while embroidery requires a pre-made backing that elements are placed on top of, knitting “doesn’t work that way.” 126:14–24. By stating the backing does not extend under the layout in a knitted embodiment, Dr. Adanur’s testimony appears to contradict the previous analogy that Nishida’s backing is structurally equivalent to Guenther’s “base layers” which extend across the entire web.

61. Nishida identifies Guenther’s base as using crosswise strips of different weaves consisting of multilayer material: “A process according to this general type is known from German Patent No. 627 878. There, **a web of material** is produced so that it successively **has three crosswise strips of different weaves**. . . . second crosswise strip is elastic and multilayered . . . crosswise strip for the counter-stiffener can be produced as a tubular material.” EX1022 at 1:19-33 (emphasis added).

62. Nishida then distinguishes the base material of the “invention” from Guenther’s base material of crosswise strips: “[b]y the process according to the *invention*, only just those parts of the web of material are produced in the necessary quality, thickness, multilayers or the like which correspond to the pattern or to an area of a pattern of the shoe upper or the related sole part. The remaining area of the web of material in contrast can consist of a *simple, lightweight or inexpensive material quality*, which holds together only the patterns or areas of such patterns in the web of material after their completion. The cutting waste accumulating with cutting out therefore represents a simple, lightweight and inexpensive material. *In contrast, with the known material that has crosswise strips, the entire cutting waste, for example, consists of an expensive tubular material, multilayer material or the like.*” EX1022 at 2:11-26 (emphasis added). A POSITA would understand that Nishida is contrasting its invention using a base material composed of “simple, lightweight or inexpensive material quality” with that of Guenther’s base material of “crosswise strips” consisting of expensive, multilayer material. *Id.* A POSITA would understand that Nishida uses a “simple, lightweight or inexpensive material” for the base of the web of material that merely “holds together” the shoe patterns. *Id.* A POSITA would understand that Nishida teaches that using its inexpensive base material helps to minimize “waste.” *Id.* Specifically, a POSITA would understand that when a person proceeds to cut out shoe patterns from the base in Guenther, it

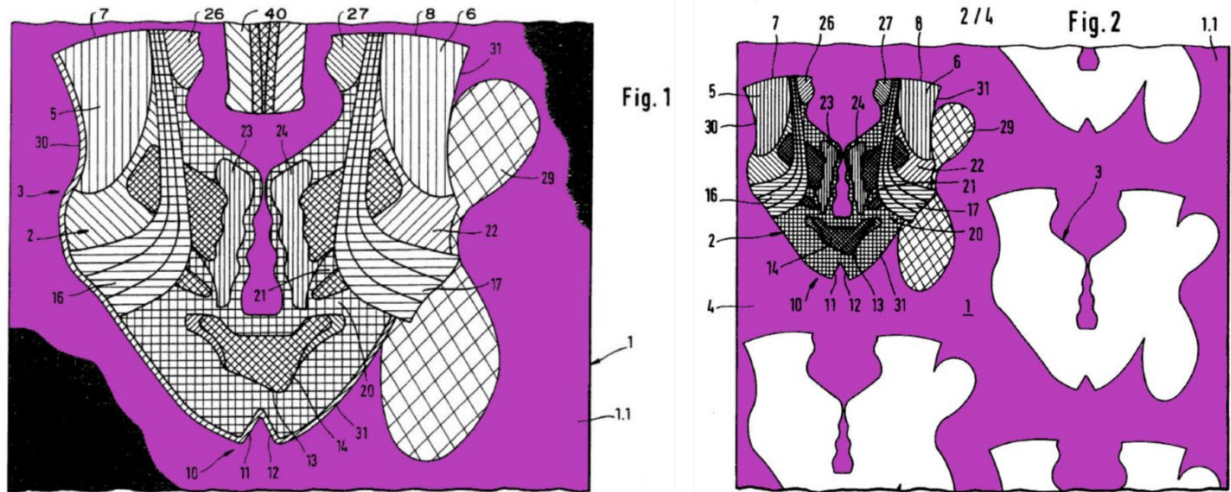
would leave scraps of material consisting of “expensive” material, but in Nishida, the scraps would consist of “inexpensive material quality.” *Id.*

63. Accordingly, a POSITA would understand Nishida’s base for the web of material is different than the multi-layered base in Guenther.

XII. GROUND 2A: NISHIDA DOES NOT DISCLOSE THAT THE KNITTED TEXTILE ELEMENT HAS A “SUBSTANTIALLY PLANAR CONFIGURATION UPON REMOVAL FROM THE SURROUNDING KNITTED TEXTILE STRUCTURE” AS RECITED IN CLAIMS 5 AND 15

64. In my opinion, Skechers fails to show Nishida discloses that the knitted textile element has a “substantially planar configuration” when removed from the surrounding knitted textile structure, as recited in dependent claims 5 and 15.

65. Skechers and Dr. Adanur conclude that Nishida’s pattern elements 2 are “substantially planar” upon removal based on two things: (i) Figures 1 and 2 of Nishida (Skechers’ annotated versions reproduced below); and (ii) Nishida’s disclosure that part 29 is “folded out of the unwound web part 2 into the plane of the shoe sole.” Petition at 91–92. In my opinion, neither of these show that pattern elements 2 are substantially planar upon removal from Nishida’s material web.



Figures 1 and 2 of Nishida (annotated)

66. Nishida's Figures 1 and 2 show pattern elements 2 formed on material web base 4. Neither Figures 1 and 2, nor any other disclosure in Nishida, shows the pattern elements after removal from material web 1. In my opinion, the varying processes that Nishida describes for forming pattern elements 2 may impart a curl or three-dimensional structure to a removed pattern element such that it is not substantially planar. Further, in my opinion, Nishida's disclosure of folding sole portion 29 "into the plane of the shoe sole" has no bearing on whether the pattern element 2 is substantially planar upon removal from material web 1. Of course additional shaping processes could be performed on pattern element 2, but that does not impact the shape of the unwound web part after removal from the material web. Thus, Nishida does not disclose the additional limitations of claims 5 or 15. In fact, in his deposition, Dr. Adanur acknowledged that part of the disclosure Skechers relies on does not support its position. EX2010 at 134:3-9 ("Dr. Adanur: It doesn't

specifically say that but I mean, a POSITA would know that it is planar. Q. Is there something in column -- in that excerpt in column five, lines 14 to 26 that provides support for that? A. Not that I see.”). Once again, Dr. Adanur’s testimony contradicts his declaration. EX1002 at ¶243.

67. For at least these reasons, it is my opinion that Nishida fails to disclose claims 5 and 15.

XIII. GROUND 2B: NISHIDA IN VIEW OF GUENTER DOES NOT RENDER OBVIOUS CLAIMS 1–8, 11–18, AND 21

68. Skechers and Dr. Adanur assert that it would be obvious to modify the base (i.e., the backing) for the web of material in Nishida with Guenther’s multi-layer construction. Petition at 106-107; EX1002 at ¶¶289-290. But, Nishida expressly teaches a POSITA away from Guenther’s multi-layer construction for the base because it is too expensive and wasteful.

69. In the Background of the Invention, Nishida expressly identifies Guenther’s multi-layer construction. EX1022 at 1:19-34 (“A process according to this general type is known from German Patent No. 627 878. There, a web of material is produced so that it successively has three crosswise strips of different weaves. . . . The crosswise strips are produced so that the first strip is suitable for the counter-stiffener, the second strip for the vamp and the side portions, and the third strip for the toe cap.”). In the Summary of the Invention, Nishida then expressly

teaches a POSITA away from Guenther's multi-layer construction of crosswise strips because it is wasteful when cutting out shoe patterns, leaving expensive scraps of material. Nishida discloses that in its invention, its base material is simple, lightweight, and inexpensive. *Id.* at 2:11-21 ("By the process according to the invention, only just those parts of the web of material are produced in the necessary quality, thickness, multilayers or the like which correspond to the pattern or to an area of a pattern of the shoe upper or the related sole part. The remaining area of the web of material in contrast can consist of a simple, lightweight or inexpensive material quality, which holds together only the patterns or areas of such patterns in the web of material after their completion."). Dr. Adanur agreed that a skilled artisan in 2004 looking at Nishida and Günther would not use the multiple layers in Guenther in the method of Nishida. EX2010 at 128:4-8; *see also id.*, at 159:5-16. This is yet another instance of Dr. Adanur's testimony contradicting his declaration. EX1002 ¶¶290-291. Nishida discloses that its base material is only meant to hold together the shoe patterns, and that the simple, lightweight, and inexpensive base helps to cut waste when shoe patterns are cut out from the web of material. *Id.* at 20-22 ("The cutting waste accumulating with cutting out therefore represents a simple, lightweight and inexpensive material."). Nishida also expressly distinguishes the invention from the Guenther's multi-layer construction because Guenther's construction produces expensive scraps of material when cutting out shoe patterns.

Id. at 2:22-26 (“In contrast, with the known material that has crosswise strips, the entire cutting waste, for example, consists of an expensive tubular material, multilayer material or the like.”). Nishida does not state the waste is expensive because of the yarn. Instead it states it is expensive because it is “tubular” and “multilayer.” Dr. Adanur testified that in a knitting context, extending a backing layer underneath the shoe layouts would use “extra material” and would be a “waste of money” that a POSITA would avoid. EX2010 at 108:24–111:13. He limited the applicability of the multi-layer construction solely to embroidery or weaving. Nishida identifies structural complexity as the source of the expense that its invention seeks to avoid. A POSITA would see Guenther's multi-strip structure as “expensive” regardless of the fiber/yarn used. Based on these disclosures, there would be no motivation for a POSITA to combine Nishida with Guenther to modify the base material in Nishida. Dr. Adanur’s testimony shows that he agrees. EX2010 at 121:18–21; 128:4–8 (“Q: would a skilled artisan in 2004 looking at Nishida and Günther use the multiple layers in Günther in the method of Nishida only for knitting? A. No, not for knitting.”). Furthermore, a POSITA would understand that multilayer waste material is expensive. It costs extra because it is additional material. And it is material that costs more to manufacture.

70. Furthermore, as I noted above, Dr. Adanur testified that the specific passage in Nishida regarding “one operation” (4:47–52) “is focused on weaving,”

not knitting. EX2010 at 115:8–10. He further stated that weaving is distinct from knitting because “the machines are different,” the “process is different,” and the “fabric properties are different.” *Id.* at 115:11–15. This statement suggests that the textual basis that Dr. Adanur previously used to support a finding of “simultaneously knitting” in Nishida actually refers to a different technology altogether.

71. Skechers and Dr. Adanur further argue that “Nishida expressly discloses that its web of material 1 can be multilayered and that the use of ‘different fibers or yarns’ can be used for different parts of layouts 2.” Petition at 107; EX1002, ¶ 290. But as discussed above, the different fibers or yarns are used for the layouts of the shoe uppers, not the full web of material which includes the lightweight material. A POSITA would not be motivated to use Guenther’s multilayer approach. As I noted above, Dr. Adanur’s testimony that Nishida’s “backing (4) “does not go under the layouts,” and that that while embroidery requires a pre-made backing that elements are placed on top of, knitting “doesn't work that way” (EX2010 at 103:21–104:1; 126:14–24) contradict his previous analogy that Nishida’s backing is structurally equivalent to Guenther’s “base layers” which extend across the entire web.

72. Skechers and Dr. Adanur also argue that “Guenther’s multi-layer approach is known to improve strength while avoiding the drawbacks of single layer designs.” Petition at 107; EX1002, ¶ 290. But a POSITA looking at Nishida would

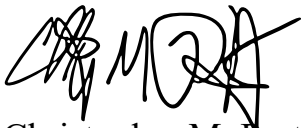
seek to make designs that “consist of a lightweight material quality that is as simple and economical as possible.” EX1022 at 2:14–21.

73. I understand from counsel that when a combination results in benefits lost and allegedly gained, those benefits must be “weighed against one another.” Skechers and Dr. Adanur did not endeavor to weigh these benefits lost and gained. Doing so would show that there is no motivation to combine Nishida and Guenther. Skechers and Dr. Adanur did not endeavor to weigh these benefits lost and gained. Doing so would show that there is no motivation to combine Nishida and Guenther. Accordingly, there is no motivation for a POSITA to combine Nishida with Guenther to modify the backing in Nishida.

74. Neither Skechers nor Dr. Adanur provide any evidence or argument on whether a POSITA would have had a reasonable expectation of success to modify the base material in Nishida with Guenther’s multi-layer construction. The base material in Nishida is a “conventionally used material” that is “as simple and as economical as possible.” *Id.* at 2:16-18, 3:13-15, 5:45-55. By contrast, Guenther’s multi-layer base is “produced so that it successively has three crosswise strips of different weaves.” *Id.* at 1:19-34. Neither Skechers nor Dr. Adanur set forth any evidence on whether or how a POSITA would have been able to modify the simple base material in Nishida with Guenther’s more complex base of three crosswise strips of different weaves.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Dated: December 23, 2025

A handwritten signature in black ink, appearing to read 'C. M. Pastore', with a stylized flourish at the end.

Christopher M. Pastore, Ph.D.