

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
U.S. Patent No. 8,266,749

PETITIONER'S REPLY

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EX1041	Yanzhong Zhang, <i>Tensile Behaviour of Multilayer Knitted Fabric Composites with Different Stacking Configuration</i> , Applied Composite Materials 8: 27-295, 2001
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EX1078	Bryan A. Garner, Garner's Modern American Usage, Oxford University Press, 2003
EX1079	Webster's English Usage Guide
EX1080	Robert Hartwell Fiske, The Dictionary of Concise Writing 10,000 Alternatives to Wordy Phrases
EX1081	The New Oxford American Dictionary, Second Edition, Oxford University Press, 2005
EX1082	The Chambers Dictionary, 10 th Edition
EX1083	Cambridge Advanced Learner's Dictionary, Cambridge University Press
EX1084	Macmillan English Dictionary for Advanced Learners

I. INTRODUCTION

The '749 patent encompasses the old and well-known technique of cutting out a knitted article from a simultaneously knitted surrounding fabric. Indeed, Nike's expert was unable to identify any *new* teachings in the '749 patent for how to accomplish this technique, testifying instead that the '749 patent merely discloses that it is possible to do using existing knitting machines. *See* EX1070, 93:4-95:7 (Dr. Pastore explaining that a POSITA "reading the patent ... would learn it is possible" and "then they can pursue the details -- working with Santoni, for example -- to figure out how to make this happen" because "*being aware of the possibility is a big part of the teaching here.*");¹ *id.*, 70:17-71:20 ("It was known to use die-cutting and laser-cutting to remove a desired shape from a fabric.")). But, Orei and Nishida each had already disclosed that possibility and much more, including disclosing techniques for how to do so. As such, the broad claims of the '749 patent are unpatentable because they fail to recite any technique or feature which is distinguishable from the prior art and known techniques.

II. NIKE'S POSITION ON PROPOSED §42.108 IS INCORRECT AND PREMATURE

Nike argues incorrectly that Skechers' IPR must be terminated if proposed rules 37 C.F.R. §42.108(d)-(g) go into effect. Nike misreads the language of these

¹ Emphasis added throughout unless otherwise indicated.

proposed rules, and in particular the use of the word “maintained,” to suggest the proposed rules would apply *retroactively* to pending IPRs. But the proposed rules merely describe scenarios in which prospective IPRs might not be “maintained” following certain post-institution events, *i.e.*, terminating an IPR if, sometime after institution, the petitioner concurrently challenged validity in district court. That the proposed rules are directed only to *prospective* IPRs is buttressed by the fact that Sections 42.108(d)-(g), if enacted, would constitute substantive rather than interpretive rulemaking, and thus **cannot** have retroactive effect. *See, e.g., Fisher v. Aetna Life Insurance Co.*, 32 F.4th 124, 141-143 (2nd Cir. 2022); *City of Billings v. Transportation Security Admin.*, 153 F.4th 46, 52 (D.C. Cir. 2025). In any event, Nike’s argument is premature because the October 2025 “notice of proposed rulemaking ... is just a proposal. It has no current effect, and it cannot be reliably predicted what, if any, effect it will come to have.” *Apple Inc. v. Squires*, __ F.4th __, 2026 WL 406495, *4 (Fed. Cir. 2026).

III. DR. ADANUR’S ANALYSIS IS PROPER.

Nike contends that Dr. Adanur admitted that his analysis was informed by his review of documents from other proceedings involving the ’749 patent. POR, 19 (citing EX2010, 35:3–39:24). But Dr. Adanur admitted no such thing and Nike’s characterization of his testimony is flatly disingenuous. Dr. Adanur’s actual testimony shows that he reviewed the various exhibits cited in his declaration, some

of which included documents filed in other proceedings, but that he did *not* rely on such documents for his technical analysis.

Really, *I did not factor them in from a technical point of view*. You know, those are legal documents, I understand, the documents that we just opened, you asked me to open. Those are legal documents about the case, but, you know, my technical analysis is based on ... the time frame of 2004 and before from the point of view -- view of a POSITA.

EX2010, 44:8-18. Dr. Adanur further confirmed that his opinions are based on his independent analysis of the prior art. *See id.*, 146:21-24.

Nike also contends that Dr. Adanur relied on Nishida's "unrelated topics of weaving." POR, 19-20, 33-34. But in various instances, Nishida's broad teachings do apply equally to knitting, weaving, and embroidery. Consistent with that, the Petition's and Dr. Adanur's citation of Nishida at 4:47-55 was unrelated to any *knitting-specific* feature, but instead was in *partial* support of Nishida's use of computer-controlled processes to incorporate multiple yarns into a single, simultaneously-produced fabric. This was specifically in the context of the unfinished surface area 1.1 being constructed of "a lightweight material quality that is as simple and economical as possible." Pet., 80 (citing EX1022, 5:45-49); *see also* EX1002, ¶216. Notably, Nike does not contend that the related and also-cited passages at 2:12-20 and 5:45-49 are limited to weaving.

Regardless, consistent with the passage at 4:47-55, Nishida broadly discloses computer-controlled processes to produce a knitted web of material comprised of different types of yarns (EX1022, 5:63-6:2), which Dr. Pastore admits was known. *See* EX1070, 33:5-34:4 (known to use different yarns in different areas of a knitted structure), 88:3-89:7 (designer would use a computer to realize design goal).

Although Nike also takes issue with Dr. Adanur's consideration of Guenther in connection with Nishida's anticipation of the claims (POR, 20), there is nothing improper about considering extrinsic evidence to explain the meaning of an anticipatory reference. *See infra*, Section V.A.

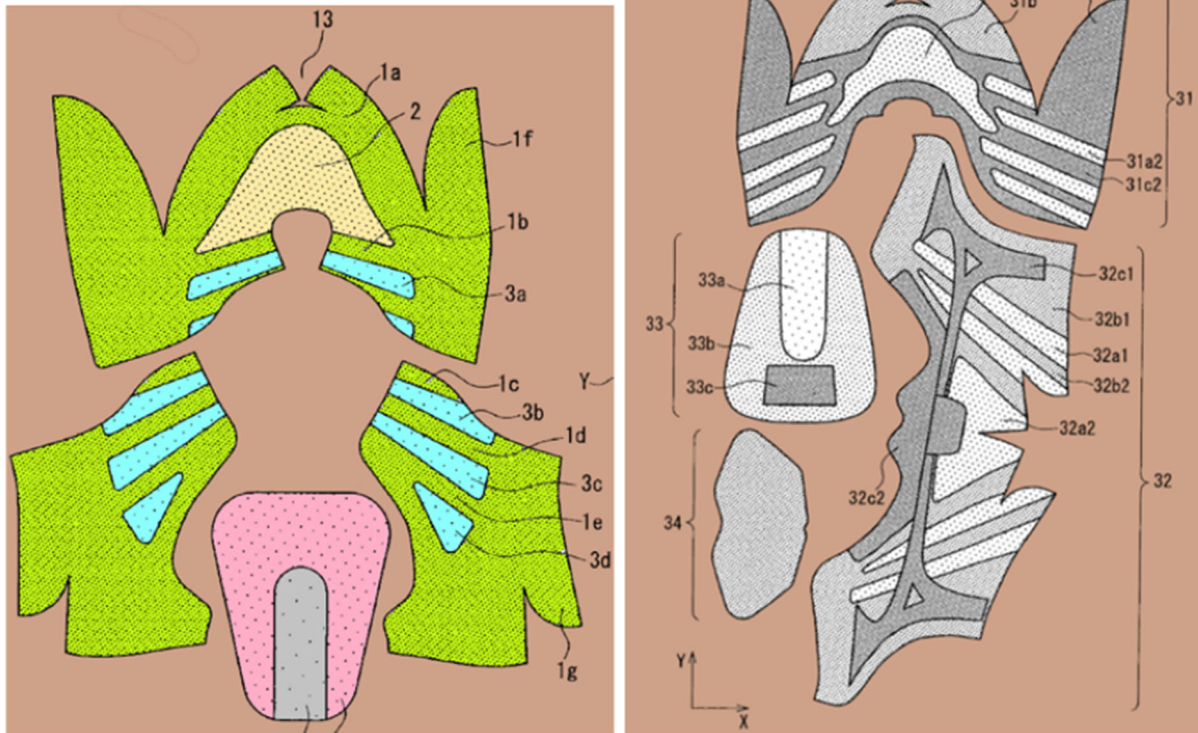
IV. GROUND 1A: CLAIMS 1-6, 8, 10-16, 18, AND 20-21 ARE ANTICIPATED, OR ALTERNATIVELY, OBVIOUS OVER OREI

A. Orei Simultaneously Knits Textile Elements With a Surrounding Textile Structure (Elements 1[a1] and 13[a1])

There is no dispute that Orei's knitted shoe parts (textile elements) are knitted simultaneously on the same piece of knitted fabric. EX1070, 130:6-132:1. Instead, Nike argues that Orei's figures "only show empty space surrounding the shoe patterns" and therefore does not disclose a "surrounding textile structure." POR, 21. Nike's theory is that Orei's numerous references to a "continuous knitted fabric" means its shoe parts A, B, and C are knitted adjacent to one another, and that the figures show those shoe parts *after* being cut apart. POR, 21-23. This argument fails for several independent reasons.

i. **Orei's Express Description of its Figures Contradicts Nike's Theory**

Nike's theory cannot explain away Orei's express descriptions of its own figures: "FIG. 1 shows a double raschel warp knitted fabric (thin melon-net fabric and back-woven half-net) used for a sport shoe according to one Example of the present invention." EX1020, 4:13-15. This is consistent with Orei's further disclosure that "[s]hoe patterns 10 matched to paper patterns are *placed continuously on one knitted fabric as shown in FIG. 1.*" EX1020, 4:16-17. Thus, Orei expressly discloses that Figure 1 depicts a *single* "knitted fabric" comprised of shoe patterns 10, not several pieces of fabric which had been cut apart, as Nike alleges. As such, Skechers' annotation of Figure 1 below merely reflects that which is already expressly stated in the Orei's description of the figures.



EX1020 (Orei), Figures 1 and 5 (surrounding textile structures annotated in brown)

Orei's textual disclosure of Figure 5 is consistent. Specifically, Orei describes Figure 5 as follows: "***In FIG. 5***, reference numeral 30 denotes a shoe pattern on knitted fabric. ***On one knitted fabric, respective parts are placed continuously.***" EX1020, 5:56-60. Again, Nike has no answer for Orei's express description of its figures.

Dr. Adanur explained the relationship between Orei's figures and their description, not only in his declaration (EX1002, ¶¶120, 123, 125), but also during cross-examination in which he identified various parts of Orei that confirmed the existence of a surrounding textile structure.

... And also, if you go to Column 4, line 16, it says:

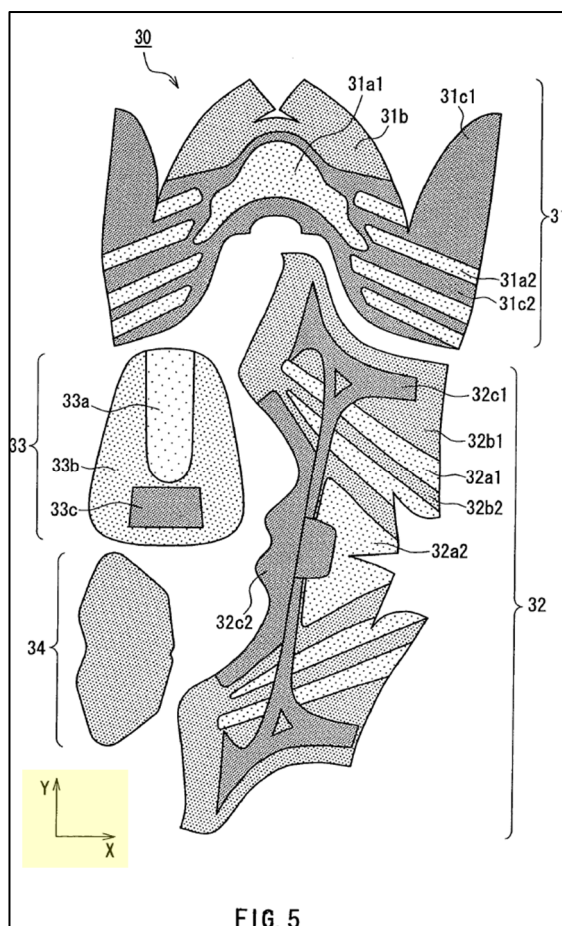
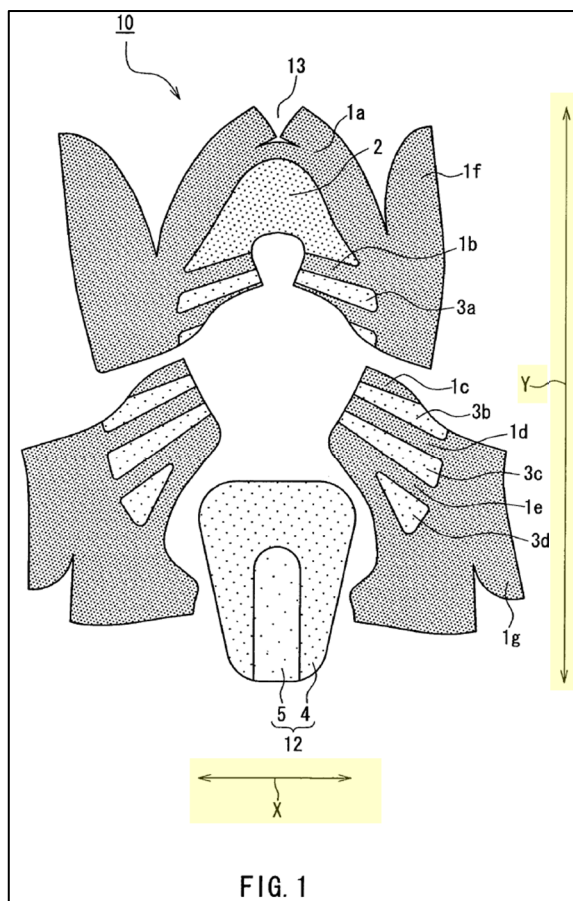
"Shoe patterns 10 matched to paper patterns are placed continuously on one knitted fabric as shown in FIG. 1."

One knitted fabric. ***So those patterns are placed on one knitted fabric. So they prove there is a surrounding fabric.***

EX2010, 56:12-17.²

Skechers' challenge is further supported by the fact that Orei describes the fabric of Figures 1 and 5 as being stretchable in X and Y directions which are labeled on each of Figures 1 and 5.

² While Nike attempts to mischaracterize Dr. Adanur's testimony about what "continuous"/"continuously" means in Orei (POR, 25), Dr. Adanur affirmatively testified that Orei's "physical shoe parts are knitted continuously with surrounding fabric between them as shown in the figures" and that Orei's shoe parts "are not touching" as they come off the machine. EX2010, 143:19-144:25.



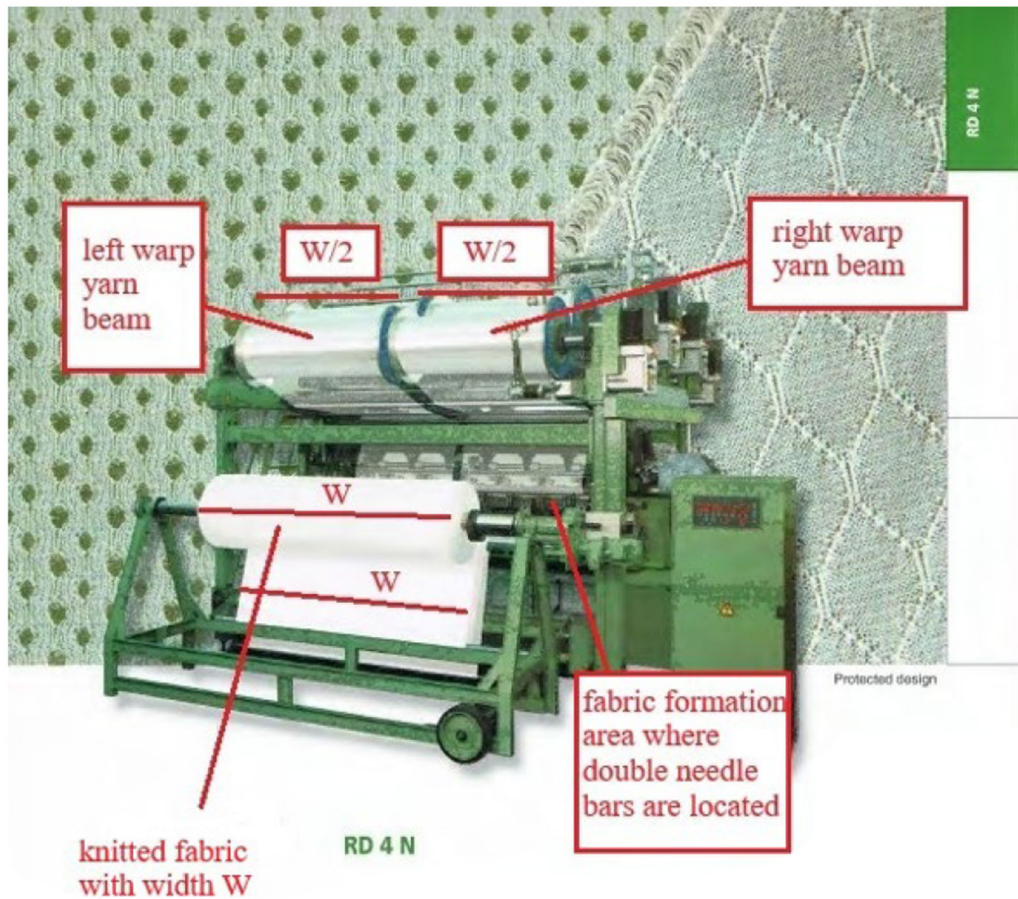
EX1020, FIGs. 1, 5; Pet., 35-37 (X axis and Y axis highlighted).

Specifically, Orei discloses that “FIG. 1 shows a double raschel warp knitted fabric,” and that “[t]his double raschel warp knitted fabric had a structure that is stretchable in the X direction and not stretchable in the Y direction.” EX1020, 4:14-16, 4:49-51. Orei discloses the same with respect to Figure 5. EX1020, 5:37-39, 6:2-4, 6:23-24. Thus, Orei’s disclosure of X and Y stretching is consistent with its descriptions of Figures 1 and 5 as depicting a single continuous fabric, and not with Nike’s theory that Figures 1 and 5 show shoe parts having “empty space in between.”

ii. **Orei's Description of its Figures Is Consistent With
How Warp Knitting Machines Operate**

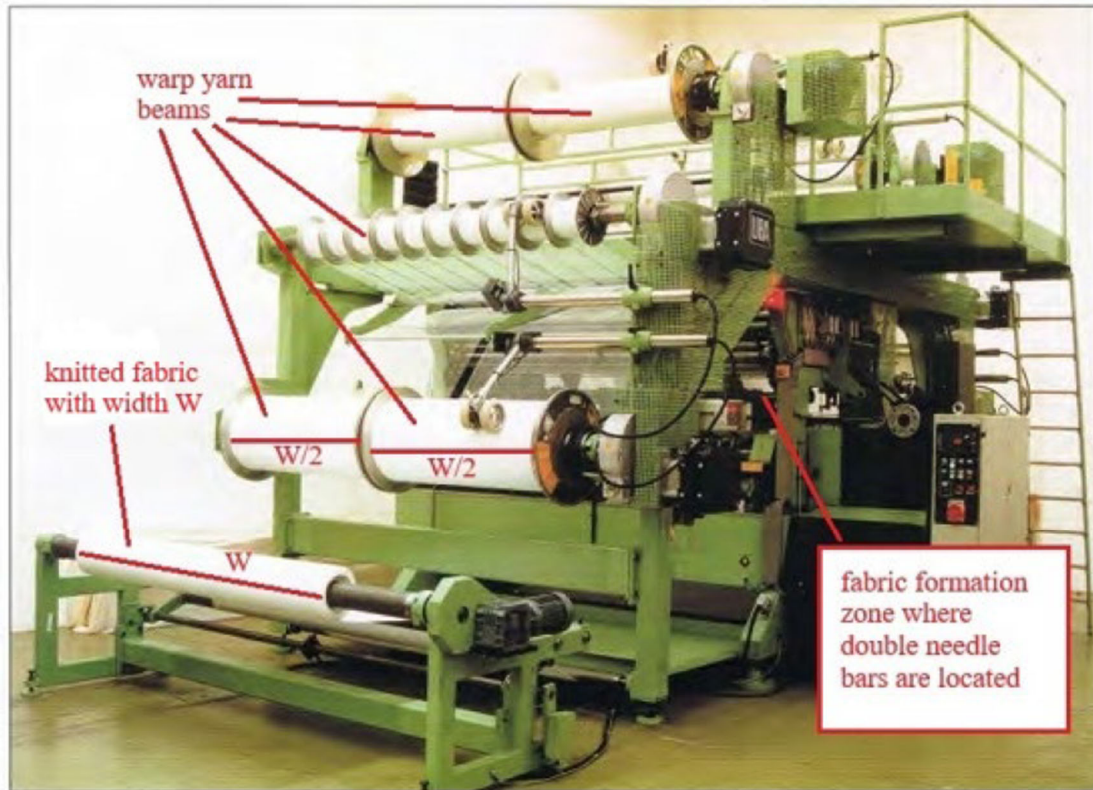
Orei's description of its figures as depicting a single continuous fabric having X and Y dimensions is precisely what a POSITA would expect given that Orei uses double raschel *warp* knitted fabric to construct its shoe. *See e.g.*, EX1020, 1:5-7, 2:23-24, 2:36-40, 4:13-15, 5:3-4, 5:37-39; EX1070, 32:3-1 (Pastore confirming raschel machines are warp knitting machines). As Dr. Adanur explained, "you cannot make those components [of FIG. 1] without a larger surrounding fabric on those double -- Raschel double needle bar machines. *You simply cannot do it.*" EX2010, 57:22-58:9. This is because warp knitting machines, of the type used by Orei, produce "a constant width fabric in a rectangular shape." EX2010, 54:12-24.

Referring to the picture of a double-needle bar raschel machines on page 1 of EX1027, Dr. Adanur explained that "there is that fabric with the fabric roll in the front and the width of the fabric roll is fixed on the machine. And that comes from the warp yarns on top of the machine, the width of the warp yarns, that is the width of the fabric." EX2010, 55:3-11.



EX1074, 1 (annotated version of EX1027, p.1, introduced as Ex. 3 during Pastore deposition).

And similarly, with respect to EX1029, Dr. Adanur explained that “there is also a double needle bar Raschel machine, and you can see the fabric -- again, the width of the fabric, the surrounding fabric is fixed. So that’s the only way to make those smaller pieces as part of that surrounding fabric.” EX2010, 55:15-21.



EX1074, 2 (annotated version of EX1029, p.1, introduced as Ex. 3 during Pastore deposition). Dr. Pastore agreed with the above added annotations, other than caveating that the yarn beams do not have to be exactly half the width W of the fabric. EX1070, 51:20-52:19, 53:14-54:6; *see also id.*, 54:12-58:16 (same for EX1074, 3-4 corresponding to annotated versions of EX1030, p. 3-4).

Further extrinsic evidence supports Dr. Adanur's testimony and demonstrates that a POSITA would understand that Orei's double raschel warp knitting produces a constant width fabric. *See* EX1071, 182 ("Unlike weft knitting, where shaping the selvedge is possible, ***it is only possible to knit continuous widths in warp knitting.***"); EX1072, 250; EX1073, 235. The Spencer reference, which Dr. Pastore

acknowledged as a “commonly read book,” also confirms that “[w]arp knitted fabric is knitted at a constant continuous width” EX1050, 50. Even Dr. Pastore agreed with Spencer’s statement about warp fabrics having a constant width “for most applications” and that “a person of ordinary skill in the art [would] reasonably assume that the warp knitting machine is producing a constant continuous width fabric.” EX1070, 44:6-19, 45:17-46:9; *see also id.*, 46:9-20 (Pastore further testifying that it would take “expertise” to change the width of a warp fabric and that a “person of ordinary skill in the art, as defined by Skechers, might not have sufficient knowledge to contradict that sentence [about continuous width warp fabrics] in Spencer”).

Therefore, the overwhelming weight of the evidence shows that a POSITA would understand that Orei’s Figures 1 and 5 depict a constant width fabric comprised of shoes parts with surrounding textile structure.

iii. Nike’s Theory Demonstrably Fails When Applied

Without evidence, Nike and Dr. Pastore contend that Orei’s shoe parts originally fit together in a continuous pattern without any surrounding textile structure. Nike and Dr. Pastore annotated Figure 1 with blue arrows to allegedly show how Orei’s shoe parts were originally connected. See below.

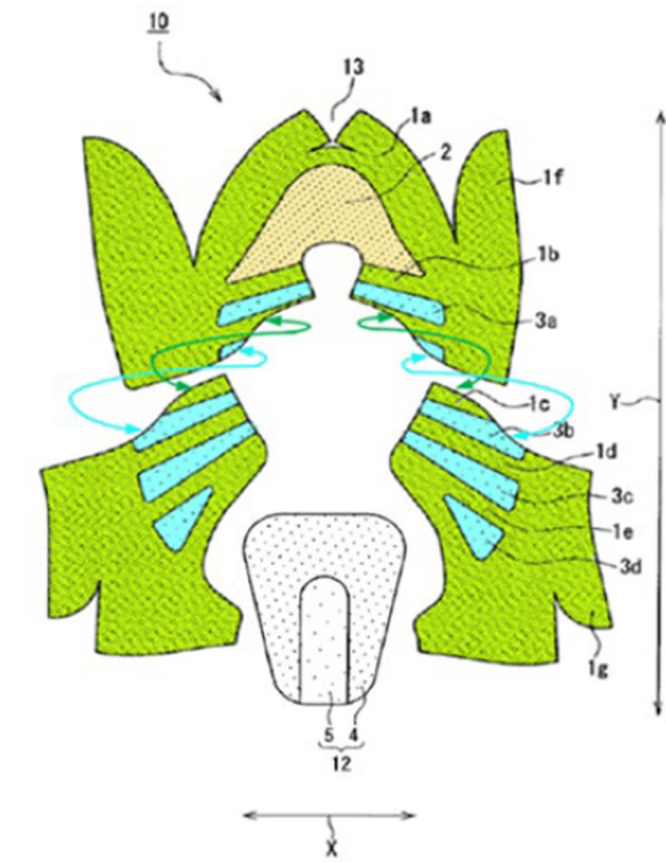
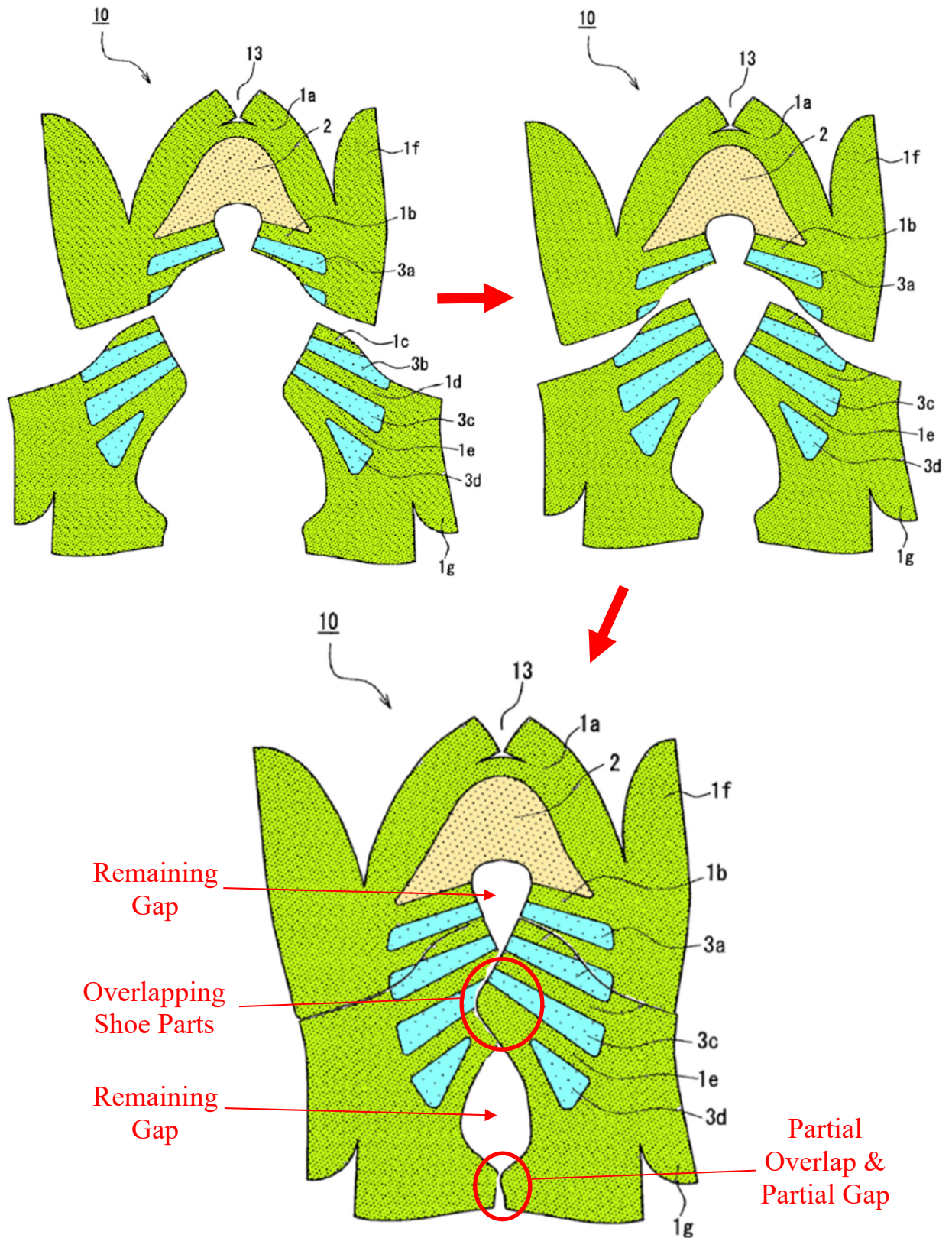


FIG. 1

POR, 22; EX2012, ¶43 (annotated with color; blue arrows added by Nike).

As a threshold matter, Nike's theory fails because it infers specific dimensions from patent drawings. But even if specific dimensions could be inferred from Orei's drawings (and no such inference is possible), Dr. Pastore confirmed that he did not test this theory. EX1070, 135:14-20, 139:19-140:3. This is not surprising because the theory is disproved by connecting Orei's shoe parts along the contoured edges using Nike's blue arrows above. As shown below, significant portions of the shoe parts overlap each other, while in other places significant gaps remain.



Nike's theory fares no better in the context of Figure 5. Moreover, connecting just two of the five depicted shoe parts along a single side, as Nike proposes (POR, 24), fails to account for the remaining shoe parts which Orei likewise discloses as being "placed continuously" on "one knitted fabric." EX1020, 5:56-60; EX1070, 131:1-132:1 (Dr. Pastore confirming Orei's shoe parts, including the tongue, are knitted simultaneously).

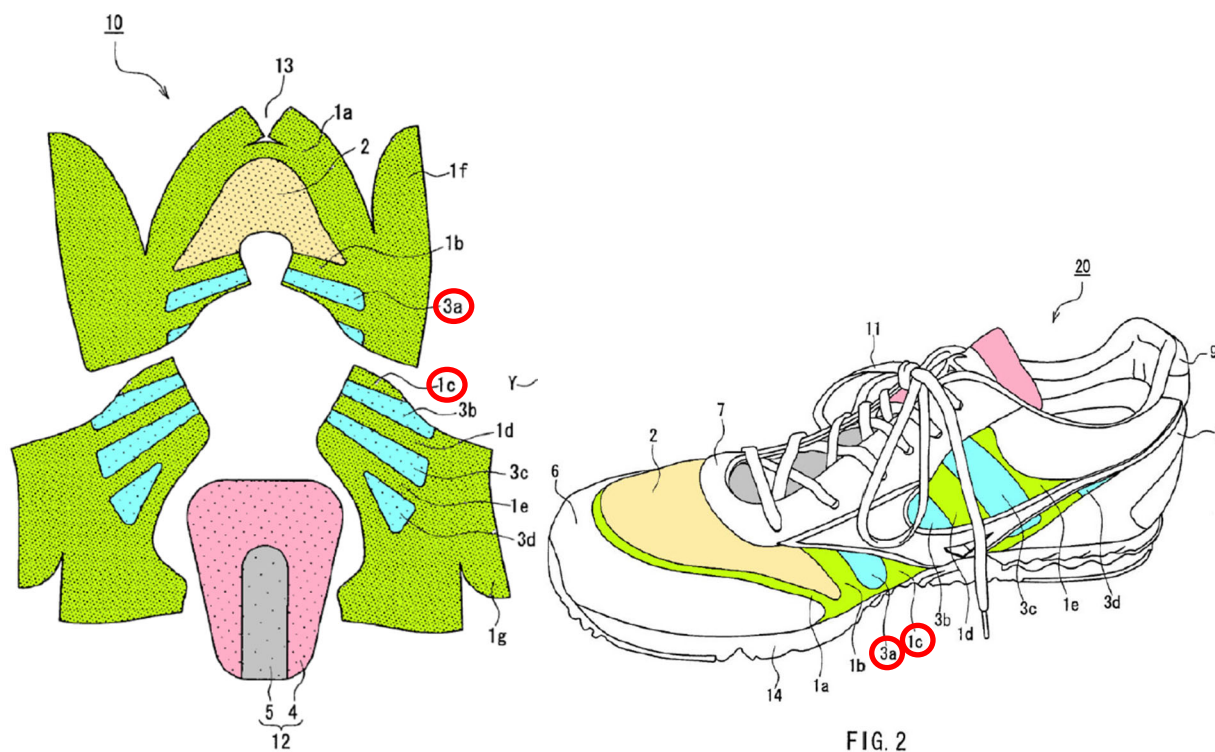
Thus, Dr. Pastore³ is demonstrably wrong when he contends that, in Orei, "'continuous' or 'continuously' refers to having no gaps between the parts located on the fabric." POR, 25 (citing EX2021, ¶45).

iv. Nike's Theory Ignores the Obvious Reason for Matching Contours on Certain of Orei's Shoe Parts

Nike ignores the obvious and simple explanation for why Orei's shoe parts are illustrated as having a common contour along one side. As Dr. Adanur explained, the reason for the matching contour lines along *one side* of Orei's shoe parts is that those shoe parts end up being stitched together along that line when

³ This is not the first time Dr. Pastore has attempted to advance a theory based on junk science and without actual supporting evidence or reasoning. See EX1075, 26 (District Court excluding another one of Dr. Pastore's theories for Nike as being "junk science" which "isn't based on any source or literature whatsoever").

constructing the shoe. EX2010, 146:1-10. This is reflected in Orei's figures. See annotated figures below.



Dr. Pastore confirmed the matching contours adjacent to parts 1c and 3a from Figure 1 are joined together along those same contours in the fully assembled shoe of Figure 2. See EX1070, 124:15-126:8.

v. **Orei Anticipates the Claims Even if Nike's Theory Is True (Which It Is Not)**

Even if Orei's respective shoe parts could be connected in a continuous fashion without surrounding material *between* the parts (and as shown above, they cannot be), Orei would still anticipate the claims because Orei's shoe parts are irregularly-shaped and warp knitting machines of the type used by Orei produce constant width fabrics. See *supra*, Section IV.A.ii.

Notably, Nike does not argue that Orei's tongue parts are also originally connected to the other shoe parts. POR, 22 (failing to address tongue 12 in FIG. 1), 23-24 (failing to address parts 33, 34 in FIG. 5). This is fatal to Nike's theory because Dr. Pastore confirmed those tongue parts are also knitted simultaneously with the other shoe parts. EX1070, 131:1-132:1. Thus, Nike has not disputed that at least Orei's tongue parts have a surrounding textile structure, which alone satisfies Element 1[a1] even if Nike's theory were somehow correct (it is not).⁴

B. Even if Orei Did Not Expressly Disclose the “Simultaneous Knitting” Limitation, It Would Have Been Obvious

Skechers' alternative argument is based on general knowledge in the field, and what would have been obvious to a POSITA in possession of Orei. To that end, Dr. Adanur describes how it was generally known to knit textile elements simultaneously with surrounding textile structures. EX1002, ¶ 127.

i. Spencer Supports Obviousness

Spencer directly supports the obviousness of knitting Orei's shoe parts with a surrounding textile structure. Specifically, the passage cited by Dr. Adanur from

⁴ For Element 13[a1], the allegedly connected shoe parts would form a “first textile element” and Orei's simultaneously knit tongue would form a “second textile element,” with surrounding textile structure between and around such first and second textile elements.

Spencer broadly discloses that “[s]ome raschel double needle bed products are in the form of articles, a number of which can be simultaneously knitted side-by-side across the needle bed.” EX1050, 363⁵; EX1002, ¶127. Nike attempts to discredit this evidence by arguing there is no surrounding textile structure (POR, 26), which is factually incorrect and, in any event, misses the point about what Spencer would suggest to a POSITA in possession of Orei.

First, the production process disclosed in Spencer does have surrounding textile structure. Dr. Adanur explained that the scarfs being “side by side doesn’t mean that they are touching.” EX2010, 75:18-76:3. Moreover, the cited passage in Spencer states that “[e]ach scarf piece is separated from the next by *cutting through the centre of the fringe section* and seaming the cut ends to secure them.” EX1050, 363. Indeed, Dr. Adanur explained that “the *fringe section means that they’re not touching each other*. That’s why there is a fringe there.” EX2010, 76:22-77:5; *see also id.* 77:21-78:11.

In any event, Nike ignores the fact that Skechers’ obviousness argument is not based on a combination of Orei and Spencer, but on what Spencer would suggest to a POSITA in possession of Orei. Skechers’ obviousness argument is that, even if

⁵ Dr. Adanur corrected during his deposition that the original citation to Spencer at page 201 was an error and should be to page 363. EX2010, 74:2-5.

Orei does not disclose material between and around the individual knitted shoe parts (it does), it was well known to use raschel warp knitting machines of the same type Orei envisions to knit those shoe parts with knitted material between and around the shoe parts. *See* Pet., 38; EX1002, ¶127. For example, even if half the fringe section in Spencer is secured to a given scarf element by seaming, the other half of the fringe section is cut away. *See* EX1050, 363 (describing that each scarf piece “is separated from the next by *cutting through the centre of the fringe section.*”). Moreover, even if Spencer’s fringe sections are not discarded for the example of straight-edged scarf elements, that would not be the case with Orei’s irregularly-shaped shoe parts, which is the relevant structure at issue. As Dr. Adanur explained, “depending on the length of the fringe, that may be a waste area.” EX2010, 78:2-9. When the *general knowledge* in the art of knitting material between knitted textiles elements having a different texture, as evidenced by Spencer, is applied to Orei’s irregularly-shaped shoe parts, the result would be that Orei’s shoe parts (textile elements) are knitted simultaneously with a surrounding textile structure having a different texture. *See* Pet., 43-44.

ii. Dr. Adanur’s Additional Cited References Support Obviousness

Nike fails to address Dr. Adanur’s additional cited evidence supporting the obviousness of Elements 1[a1] and 13[a1]. Specifically, in the same paragraph of Dr. Adanur’s declaration discussing Spencer and the obviousness of Orei having a

surrounding textile structure, Dr. Adanur also cites to EX1027-EX1033, which include the raschel warp knitting machine documents that Dr. Adanur and Dr. Pastore testified about, as described above. *See supra*, Section IV.A.ii. Dr. Pastore confirmed EX1027, EX1029, and EX1030 evidence raschel warp knitting machines (the same type of machine used by Orei) that are structured to produce a knitted fabric having width W. EX1070, 51:20-58:16. Dr. Pastore also agreed that “a person of ordinary skill in the art would reasonably assume that the warp knitting machine produces a constant continuous width fabric.” EX1070, 44:6-19, 45:17-46:9. This evidence, which is separate and apart from Spencer, supports that such machines were known to “produce such fabric structures in which various sections with different properties could be placed close to each other and knitted simultaneously,” where “such fabric structures” refers to Orei’s shoe parts simultaneously knit with surrounding textile structure.” EX1002, ¶127. Dr. Adanur explains that it would have been obvious to use such a machine to “reduce the waste, increase yield and reduce manufacturing steps”; specifically, “there would be less seaming or joining of fabric pieces in the final product which would reduce the cost and manufacturing time.” *Id.*

V. GROUND 2A: CLAIMS 1-8, 11-18, AND 21 ARE ANTICIPATED BY NISHIDA

A. Ground 2A Does Not Rely on Guenther for Anticipation

While Nike takes issue with Dr. Adanur's discussion of Guenther, Federal Circuit precedent is clear: in the context of anticipation, "extrinsic evidence may be considered when it is used to explain, but not expand, the meaning of a reference." *In re Baxter Travenol Labs.*, 952 F.2d 388, 390 (Fed. Cir. 1991) (citing *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565, 1576–77 (Fed. Cir. 1991)). This is what Dr. Adanur did—use Guenther for the limited purpose of understanding Nishida's "backing 4" used in the example of Figure 2. *See infra*, Section V.B (discussing Nishida's backing 4). *See* EX1002, ¶222; Pet., 83. *See also* *Aylo Freesites Ltd. v. Wellcomemat, LLC*, Case No. IPR2024-00710, Paper 41 at 25-26 (P.T.A.B. Aug. 26, 2025) (relying on expert testimony and corroborating prior art reference that an anticipatory reference's disclosure of "encoded in PHP" would be understood by a POSITA to refer to server-side script).

In any event, Dr. Adanur's analysis of Nishida for Elements 1[a1] and 13[a1] isn't limited to Figure 2, but is expressly based on Nishida's complete teachings, including Figures 1 and 4 which do not include the "backing 4" of Figure 2. *See* EX1002, ¶¶213-216, 271; *see also* Pet., 77-80, 100-101. Nike does not explain how Dr. Adanur's analysis of Nishida's broader teachings, including of Figures 1 and 4, could be impacted by considering what a POSITA would understand from Guenther

about the “backing 4” used in the example Nishida presents in Figure 2. *See infra*, Section V.B (explaining why Nishida’s use of a backing is limited to the example of Figure 2 when weaving or embroidering)

B. Nishida’s Backing Is Limited to the Example of Figure 2 And Used for Weaving and Embroidery, Not Knitting

Nike attempts to limit Nishida’s broad disclosures based on the example of a shoe upper in Figure 2 and a single mention of a “backing” in the specification. POR, 29. But Nishida’s disclosure encompasses producing its web 1 using various textile production processes, including “[for] example, by weaving and/or knitting and/or embroidering,”⁶ as Dr. Adanur confirmed. EX1022, 3:6-9; EX2010, 105:9-12. And none of Nishida’s other examples include a backing. EX1022, Figures 1, 4, or 5 (no backing); EX2010, 99:11-14; IPR2024-00460, Paper 30 at 20 (“We disagree with Patent Owner’s implied argument that Nishida discloses *only* a two-step method using multiple production processes and involving a pre-existing material base.”)

⁶ The phrase “tier example” is a typographical error of “for example.” EX2010, 101:17-102:3. This is confirmed by the PCT version of Nishida (WO92/22223), which uses the abbreviation “*e.g.*” before the same corresponding passage. EX1076, 5. Nike has represented to the Board that WO92/22223 is “virtually identical” to the Nishida (EX1022) relied on here. Paper 6 (POPR), 6, n.1; *see also* IPR2024-00460, POR at 6. Dr. Pastore agrees. EX1070, 83:18-84:5.

(original emphasis included). Nishida's decision to omit the "backing" in all other figures is significant because Dr. Pastore agreed that Figures 1, 2, 4, and 5 depict four "different examples" of shoe uppers. *See* EX1070, 85:11-87:3.

Even in the example of Figure 2, Nishida's backing 4 is used only for weaving and embroidery processes, not for knitting, as Dr. Adanur explained. *See* EX2010, 102:4-106:22 (Dr. Adanur explaining that a separate backing is used for embroidery and weaving, but not knitting). In fact, Dr. Adanur confirmed there would be no separate backing in Figure 2 if Nishida's knitting process were used.

Q. If you are knitting, what is shown in Figure 2, what can 4 be other than a backing?

A. It -- it can be 1, same as 1.

Q. And when you say 'same as 1,' what do you mean by that?

A. So 1 and 4 would be referring to the *same piece, same fabric*.

EX2010, 103:9-17; *see also id.*, 102:4-102:25. In this fashion, Nishida's "backing" does not extend under the layout when knitted, as Dr. Adanur testified, because the backing and the layout are one in the same. POR, 36-37.

Finally, Nike quotes Nishida to argue that the "backing is made of 'simple, lightweight or inexpensive material quality,'" but that quoted passage refers to "surface area 1.1," not backing 4. EX1022, 5:45-52.

C. Nishida Simultaneously Knits Textile Elements With a Surrounding Textile Structure (Elements 1[a1] and 13[a1])

Nike contends that Nishida does not disclose the “simultaneous knitting” limitation because “[a]t best, Nishida is silent on the timing of various procedures.” POR, 26-27. Not so. Nishida contains express disclosure which Nike simply ignores.

For example, Nishida’s Abstract established that its layouts/tongue are knitted simultaneously with the surrounding textile structure 1.1. See EX1011, Abstract (“Abstract (“[A] web of material (1) is used to produce layouts (2) by different production measures ... *at the same time* with the production of web of material (1)”). Nike’s only response for Nishida’s Abstract is that it does not mention the backing, so “[i]t does not indicate that the full web 1 or the backing 4 are made at the same time as the layout 2.” POR, 32-33. That the Abstract does not mention a backing does not diminish the challenge, but actually strengthens the argument that the backing is but an optional feature.

Moreover, the notion that the Abstract describes something less than “the full web 1” is contradicted by the express language of the Abstract itself, which describes the “production of a shoe upper ... from a web of material,” and then goes on to disclose that “[f]or this purpose, a web of material (1) is used to produce layouts (2) ... at the same time with the production of web of material (1)” EX1022, Abstract.

Nishida contains additional express disclosure that contradicts Nike's argument, including:

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.

EX1022, 5:27-36; Pet., 85 (citing EX1022, 5:27-56).

The yellow highlighted text above confirms that Nishida's disclosure encompasses producing the tongue 40 at the same time as the web 1. See EX1078-EX1084 (establishing general meaning of "in the course of" is "during" or "while"). Dr. Pastore also confirmed that "knitting a textile element *in the course of* knitting that surrounding textile structure" would "mean that both of them are produced during the same knit machine operation." EX1070, 75:13-76:15.

Meanwhile, the aqua highlighted text above confirms that the tongue 40 similarly is preferably knitted at the same time as the layout 2 on the same web 1. Therefore, Nishida's disclosure clearly encompasses producing textile elements (both layouts 2 and tongue 40) simultaneously with the web of material 1, where the

web 1 comprises the surrounding textile structure (unfinished surface area 1.1); EX1022, 5:45-49 (“[T]he web of material 1 is produced so that *its* surface areas 1.1 ... consist of a lightweight material quality that is as simple and economical as possible.”); Pet, 77 (identifying layout(s) 2 and tongue 40 as knitted “textile elements” and unfinished surface area 1.1 as a “surrounding textile structure”). Dr. Adanur confirmed this reading. EX2010, 94:1-4. Nishida is also consistent with how a POSITA would understand knitting machines operate. EX2010, 96:2-9.

Furthermore, the Summary of Invention discloses that “*in the production of a web of material*, both the *patterns or partial patterns in the form of layouts* of the shoe upper and the patterns or partial patterns in the form of a sole part, *are produced* by a fabric printing process (which is generally well known in the textile industry) on the web of material and/or *by a textile production process inside web of material*.” EX1022, 1:50-56; Pet., 78; EX1002, ¶215. This passage is substantially similar to claim 1 of the PCT version of Nishida (*compare* EX1076, Claim 1), which the Board previously found discloses the “simultaneously knitting” limitation. *See* IPR2024-00460, Paper 30 at 22 (“We find that Nishida’s claim language discloses the recited, ‘simultaneously knitting a textile element with a surrounding textile structure.’”).

Regarding Nike’s argument that claim 1 of Nishida (EX1022) somehow supports its argument that Nishida does not satisfy the “simultaneously knitting”

limitation, that argument is both legally and factually incorrect. As a matter of law, “[a] reference must be considered for everything that it teaches, not simply the described invention or a preferred embodiment.” *In re Applied Materials, Inc.*, 692 F.3d 1289, 1298 (Fed. Cir. 2012) (citations omitted); *see also Messerschmidt v. U.S.*, 14 F.3d 613, at *1 (Fed. Cir. 1993) (“A prior art reference must be considered for all that it teaches and not just for the particular invention it describes or claims.” (citation omitted)); *In re Heck*, 699 F.2d 1331, 1332-33 (Fed. Cir. 1983) (“The use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned.” (citation omitted)).

Nike’s reading of Nishida’s claim 1 is also factually incorrect. When Nishida’s claim 1 describes “modifying the overall construction of the web of material in the locations of the layouts,” a POSITA would recognize that such modifications represent a computer-implemented design of the overall web of material (hence the reference to modifying the “*overall* construction of the web of material” in claim 1), which necessarily occurs prior to the knitting process. *See* EX1022, 4:12-18 (describing “computer-controlled” production “so that ***style, color, design, size or the like can be varied at will.***”); EX1070, 88:3-17, 90:8-91:10 (Pastore testifying that the overall design is programmed or updated on a computer ***before*** the knitting process begins).

Also fatal to Nike's position that Nishida requires a separate backing that is not simultaneously knitted with the textile element is the fact that Dr. Pastore, in a prior IPR that also involved the '749 patent and Nishida, admitted that Nishida's uppers "are not always required to be multilayered." EX1077, 34:10-15.

D. Nishida Anticipates Claims 5 and 15

Nike does not dispute that Nishida's textile elements are substantially planar prior to removal from the surrounding textile structure. Moreover, Nike also provides no evidence that removal of such textile elements would *necessarily* alter their preexisting substantially planar state. While Dr. Pastore states that "[n]either Figures 1 and 2, nor any other disclosure in Nishida, *shows* the pattern elements after removal from material web 1" (EX2012, ¶66), Dr. Pastore does not affirmatively opine that the cut-out pattern elements in Nishida would in fact cease to be substantially planar. At best, Dr. Pastore only opines, *without evidence or reasoning*, that "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." *Id.*; EX1070, 105:13-106:3 (Pastore testifying that "*it's possible*" the energy in the textile element is greater than in the surrounding textile structure "so the element *could* retract, curl up."). Even then, Dr. Pastore confirmed that "substantially" in claims 5 and 15 "allows some leeway, not requiring perfectly planar." EX1070, 105:4-11.

Furthermore, Nike has no response to Dr. Adanur's explanation that (1) "[u]nless specific techniques are used to impart a three-dimensional shape, textile structures (woven, knitted, braided, nonwoven) made on commercially available fabric manufacturing machines would be planar," (2) "there is no suggestion in Nishida that any specific techniques are used to impart a three-dimensional shape," and (3) "because the surrounding material is a lightweight material ('like a gauze'), ... the surrounding material would not be altering the shape of Nishida's textile elements, depicted as planar in the figures above." EX1002, ¶244. From that, Dr. Adanur concludes that Nishida's textile elements would "maintain their pre-existing planar configuration." *Id.*

Finally, Nike mischaracterizes Dr. Adanur's testimony as being inconsistent with his declaration. POR, 39. But Dr. Adanur was clear in the cited testimony that he was referring to the state of the upper "*after* it is formed into the shoe upper," (EX2010, 132:18-21), while immediately thereafter specifying that "[b]efore it is formed into the shoe upper, it is planar, of course." EX2010, 132:21-22.

VI. GROUND 2B: MOTIVATION TO COMBINE

Guenther's multi-layer construction and Nishida's improvement of using a lightweight and less expensive *surrounding* material are not mutually exclusive. *See* EX1022, 2:11-21 (describing shoe parts as having "necessary quality, thickness,

multilayers or the like” and surrounding materials as “lightweight or inexpensive”); Abstract (describing layouts as “single layer or multilayer type of material”).

Moreover, during his deposition, Dr. Adanur was asked if he was “aware of a reason that a skilled artisan looking at Nishida in 2004 would add the extra layers of fabric disclosed in Günther if they’re working in knitting” and, consistent with his declaration, Dr. Adanur testified that “if you want extra strength in the structure, then a second layer *always* provides that.” EX2010, 124:24-125:7, 126:10-13; EX1002, ¶290. Dr. Adanur’s later testimony cited in the POR was not in the context of what would have been obvious when extra strength was desired, which is the basis for the proposed combination.

VII. CONCLUSION

For the reasons above and in the Petition, the claims of the ’749 patent are unpatentable.

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CERTIFICATE OF WORD COUNT

I hereby certify, pursuant to 37 C.F.R. § 42.24, that the petition contains 5595 words, excluding the words in the table of contents, exhibit list, claim listing, mandatory notices under § 42.8, this certificate of word count, and the certificate of service. The word count is based on the word count of the Microsoft Word program used to prepare the petition.

Dated: March 25, 2026

/Jonathan Lindsay/
Jonathan Lindsay

CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. section 42.6, that on March 25, 2026, a complete copy of the foregoing documents **PETITIONER'S REPLY** and **EXHIBITS 1070-1084** were served upon the following, by ELECTRONIC MAIL:

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