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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

- - - - -X
SKECHERS :
U.S.A., INC., :
Petitioner, : Case No. IPR2025-00141
v. : U.S. Patent No. 8,266,749
NIKE, INC., :
Patent Owner. :
- - - - -X

Remote Deposition of:
CHRISTOPHER M. PASTORE, Ph.D.,
called for oral examination by counsel for the Patent
Owner, pursuant to notice, before Christina S. Hotsko,
RPR, CRR, CA CSR, of Veritext Legal Solutions, a Notary
Public in and for the District of Columbia, beginning at
10:01 a.m., Wednesday, March 4, 2026.

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A P P E A R A N C E S

On behalf of Petitioner:

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C O N T E N T S

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Counsel for Patent Owner	04
Counsel for Petitioner	142

PASTORE DEPOSITION EXHIBITS:	*	PAGE
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P R O C E E D I N G S

Whereupon,

CHRISTOPHER M. PASTORE, Ph.D.,
being first duly sworn or affirmed to testify to
the truth, the whole truth, and nothing but the
truth, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR PATENT OWNER
BY MR. LINDSAY:

Q. Could you please state your name, full
name, for the record.

A. Yes. It's Christopher Pastore.

Q. Dr. Pastore, this is a deposition for
IPR2025-00141 challenging the claims of U.S.
patent 8,266,749.

I may refer to this IPR as "this
proceeding," and is it okay -- you understand
what I mean?

A. Yes, I do.

Q. And I may refer to U.S. patent 8,266,749
as the '749 patent. And again, will you
understand which patent I'm referring to?

A. I will.

1 Q. You understand you've just taken an oath
2 to tell the truth; is that right?

3 A. Yes, I have.

4 Q. And you understand that this oath is of
5 the same force and effect as if it were given in
6 a court of law before a judge or a jury?

7 A. Yes, I do.

8 Q. And you understand that you'd be subject
9 to penalty for perjury for providing false or
10 misleading statements during your testimony here
11 today?

12 A. Yes, I do.

13 Q. Is there anything preventing you from
14 giving full and accurate answers today?

15 A. Not that I'm aware of.

16 Q. Is there any reason why you can't give me
17 your best testimony today?

18 A. I'm not quite sure what "best testimony"
19 means, but I will answer every question you ask
20 to the best of my ability.

21 Q. You're not under the influence or taking
22 any medication that might impair your ability to

1 give your best opinions today; is that right?

2 A. That is correct.

3 Q. So you also understand that, when you're
4 under oath, your counsel can't coach you or act
5 as an intermediary or interpret questions, help
6 you answer questions, things like that, right?

7 A. I understand that.

8 Q. And then you understand that also, unless
9 your counsel instructs you not to answer a
10 question in order to preserve privilege or
11 another category of protected confidential
12 information, that you have to answer the
13 question?

14 A. Yes, I do.

15 Q. Did you do anything to prepare for
16 today's deposition, Dr. Pastore?

17 A. Yes.

18 Q. And what did you do?

19 A. I reviewed my declaration, as well as
20 supporting documents that are listed in the
21 declaration.

22 Q. Did you meet with anyone?

1 A. Yes.

2 Q. And who did you meet with?

3 A. I met with Mr. Sebba.

4 Q. About how long did you meet with
5 Mr. Sebba?

6 A. Probably two or three hours. I don't
7 recall precisely.

8 Q. Did you meet with anybody else besides
9 Mr. Sebba?

10 A. No, I did not.

11 Q. Do you have any documents before you now?

12 A. Yes, I do.

13 Q. Can you please indicate for the record
14 which documents you have?

15 A. I have a printed copy of my declaration,
16 which I believe is Exhibit 2012.

17 I have a printed copy of Dr. Adanur's
18 deposition.

19 I have a printed copy of the Nishida
20 patent, '638.

21 I have a printed copy of the Orei -- I'm
22 not sure how to pronounce the inventor's name,

1 but I'm going to say Orei.

2 I have a printed copy of the Guenther
3 patent, that includes the German and the English
4 translation.

5 I have a printed copy of the petition for
6 the IPR.

7 I have a printed copy of Dr. Adanur's
8 declaration.

9 And I have a piece of paper that I put a
10 couple of minor notes on.

11 Q. Did you write these notes yourself?

12 A. I did.

13 Q. What is -- what are those pertaining to?

14 A. The notes pertain to some typographic
15 editorial errors I made in my declaration.

16 Q. Okay.

17 (Pastore Deposition Exhibit 2012 marked
18 for identification and attached to the
19 transcript.)

20 BY MR. LINDSAY:

21 Q. I've introduced your declaration into the
22 record. I know you have a physical copy there.

1 Let's go through your notes regarding the
2 errors that you identified, if you wouldn't mind.

3 A. Certainly.

4 I noted that, in paragraph 11, I added
5 the clause "if trial is instituted," but of
6 course, it was instituted and I had just copied
7 that from my previous declaration before it was
8 instituted.

9 In paragraph 28, I made the same error.
10 I kept the phrase "if this IPR is instituted"
11 although, as we know, the IPR was instituted.

12 Heading 13, between paragraphs 67 and 68,
13 I misspelled Guenther's name.

14 And in paragraph 73, I've got the same
15 sentence twice; that is, the sentence, "Doing so
16 would show that there is no motivation to combine
17 Nishida and Guenther. Sketchers and Dr. Adanur
18 did not endeavor to weigh those benefits lost or
19 [sic] gained. Doing so would show there is no
20 motivation to combine Nishida and Guenther.
21 Accordingly, there is no motivation ... to
22 combine Nishida with Guenther to modify the

1 backing in Nishida."

2 So it was just duplicative language that
3 should not have been there.

4 Q. Okay. Besides identifying those
5 typographical errors, is there anything else you
6 noted on the paper in front of you?

7 A. No. That's the entirety of the
8 notations.

9 Q. Okay. Great. I just introduced
10 Exhibit 2012 a moment ago.

11 You recognize the document as your
12 declaration that you submitted in this proceeding
13 for the '749 patent?

14 A. I don't have access to the digital, but
15 my -- Exhibit 2012 is my declaration.

16 Q. Yes. That's fine.

17 Okay. And can we look at paragraph 8?

18 A. Yes.

19 Q. Okay. So here it says, "Attached as
20 Exhibit B is a list of cases in which I have
21 provided testimony in the last five years."

22 Do you see that part?

1 A. I do.

2 Q. There's no Exhibit B to your declaration,
3 is there?

4 A. You know what? My printed copy does not
5 include the appendix. You are correct.

6 Q. Do you know why that may have been
7 omitted?

8 A. I do not know why. I did prepare
9 Exhibit B and I shared it with Mr. Sebba.

10 Q. Okay. That's fine.

11 MR. LINDSAY: I'm going to have to
12 introduce, then, a new exhibit to help this along
13 here, which you'll need to have access to Exhibit
14 Share to take a look at.

15 MR. SEBBA: Jonathan, if I may, if you
16 don't object, I will -- once you introduce it, I
17 will share my screen so Dr. Pastore can see it on
18 the screen here.

19 Is that -- are you comfortable with that?

20 MR. LINDSAY: Yeah. That seems fine.

21 MR. SEBBA: Okay. Thank you.

22 MR. LINDSAY: So while this is uploading,

1 I'll just note for the record that Exhibit 2012
2 that I previously introduced was autostamped
3 Exhibit 1, and I hadn't changed that to 2012 in
4 the system. But it should be 2012.

5 And what I'm introducing now would be
6 Exhibit 1, and we'll identify it in a second.

7 Well -- okay. It's not letting me
8 because it's already received an exhibit number.

9 MR. SEBBA: We'd be fine calling it
10 Exhibit 2, or if you want to start over at
11 Exhibit 100 or 101, either is fine with us.

12 MR. LINDSAY: Yeah, let's -- let me see.
13 Okay. I think I fixed it.

14 Dr. Pastore's declaration for this
15 proceeding, Exhibit 2012 -- is Exhibit 2012. And
16 then I introduced a new Exhibit 1, which is --
17 I'll let you pull it up there, Mike, and we can
18 talk about it.

19 (Pastore Deposition Exhibit 1 marked for
20 identification and attached to the
21 transcript.)

22 MR. SEBBA: I'm getting an alert that

1 sharing is not turned on. Oh, there we go.

2 Thank you.

3 Okay. Exhibit 1 is on the screen.

4 BY MR. LINDSAY:

5 Q. Okay. Dr. Pastore, do you recognize this
6 document?

7 A. It appears to be my declaration based on
8 the page that we're looking at here.

9 Q. Is this a declaration you submitted for a
10 different IPR relating to U.S. patent number
11 9,986,781?

12 A. That's what it says on the front. Yes.

13 MR. SEBBA: And -- I'm sorry. Just
14 quickly, before you ask another question, if
15 you'd like me to zoom, please let me know,
16 Dr. Pastore.

17 THE WITNESS: I'm sort of at the limit of
18 what I can read here, so one level up might be
19 nice.

20 MR. SEBBA: Okay.

21 THE WITNESS: Thank you.

22

1 BY MR. LINDSAY:

2 Q. So you recognize this document as a
3 declaration you submitted in IPR2025-00143?

4 A. Yes. That's what the cover page says.
5 Yes.

6 Q. Okay. If you'd like to go to page 51.

7 A. Okay.

8 Q. And is that your signature there,
9 Dr. Pastore?

10 A. That is my signature.

11 Q. Okay. So this document appears to be the
12 declaration you submitted in IPR2025-00143; is
13 that correct?

14 A. Yes, it is.

15 Q. Okay. And if it's okay, I'll just refer
16 to this as the '781 declaration.

17 A. That's fine.

18 Q. Referring to the last three numbers of
19 the patent that's at issue in that IPR?

20 A. I understand. Yes.

21 Q. Okay. Can you go to page 56, please? I
22 guess it's printed page -- apologies. Printed

1 page 53, or -- at the bottom it says -- yeah.
2 Okay.

3 Is this the beginning of your CV,
4 Dr. Pastore?

5 A. Yes. It appears to be.

6 Q. And can you thumb through it and tell me
7 if it appears to still be accurate?

8 A. Yes. It appears to be.

9 Q. What is your current employment?

10 A. I work for Thomas Jefferson University.

11 Q. Okay. And you also do some consulting
12 work that's not listed on your CV; is that
13 correct?

14 A. That is correct.

15 Q. What is the nature of that consulting
16 work?

17 A. It varies. It's generally about
18 providing information about textile engineering
19 to different clients.

20 Q. And the consulting work includes
21 consulting on legal matters such as this one?

22 A. Yes, it does.

1 Q. Okay. Can you go to page 86?

2 Can you tell me what this list consists
3 of?

4 A. This is a list of legal cases I've been
5 involved in for which I have prepared a report or
6 been deposed or been to trial.

7 Q. Is this an accurate list of cases in
8 which you've worked since 2020, it appears?

9 A. I believe so. I can't say for certain
10 off the top of my head, but at the time I
11 prepared it, I believed it was correct for the
12 previous five years from 2025, so from 2020 to
13 '25 of legal cases I had done some sort of
14 testimony in.

15 Q. So you believed this -- I mean, you
16 submitted this declaration in the '781 IPR.

17 Do you have any reason to believe it's
18 not accurate in this IPR?

19 A. I have no reason to believe that.

20 Q. Do you see the matter listed there that
21 says, In re: Matter of Certain Knitted Footwear?

22 A. Yes.

1 Q. Which company retained you for the In re:
2 Matter of Certain Knitted Footwear in 2022?

3 A. Honestly, I'm not certain at the moment.
4 My instincts are Nike, but I can't say that with
5 a hundred percent certainty.

6 Q. This is identified as an ITC matter.
7 Does that ring a bell? It's the only ITC matter
8 on the list.

9 A. Right, but it was four years ago. I
10 don't remember as I'm sitting here. I'd have to
11 go through my notes to find out.

12 Q. Okay. You think it could be Nike,
13 however?

14 A. Yes. I think it could be.

15 Q. So since 2022 -- we can leave that one
16 off because since not sure. But since 2022, how
17 many matters have you been engaged by Nike for?

18 A. Well, I guess that depends on how you
19 count it.

20 As you can see here, there's six
21 instances of Nike versus lululemon.

22 But from a consulting point of view, they

1 were all tied together, so I think of that as one
2 big project, Nike versus lululemon.

3 And of course, there's the issue that
4 we're addressing here today, Nike versus
5 Skechers.

6 Since 2022 -- again, I'm not sure if that
7 ITA was Nike or not, so I don't want to misspeak
8 on that point --

9 Q. All right. So --

10 A. -- in terms of testimony that I've
11 delivered.

12 Q. All right. And so in addition to this
13 proceeding, of course, there were a number of
14 other IPRs that you submitted declarations for,
15 including the one we're looking at now, the '781
16 patent.

17 A. Yes. Yeah.

18 Q. Do you recall how many different
19 declarations you submitted in connection with
20 your engagement by Nike with respect to Skechers'
21 IPRs?

22 A. Again, I would have to go back to my

1 notes. Obviously there's the two we've just
2 looked at today. I don't recall if there was a
3 third or not.

4 Q. Okay. Well, maybe I'll ask it a
5 different way.

6 How many matters have you been engaged
7 for by companies other than Nike since 2022?

8 A. Well, as you can see here, I was engaged
9 to look at the Watterson Construction versus
10 International Door and Good Sportsman Marketing
11 versus Rugged Cross Hunting Blinds.

12 Also, since then, that's not on this
13 list, I have been engaged to look at Albany
14 International versus Voith.

15 Q. I'm sorry. Can you repeat that last one
16 that's not on the list?

17 A. Albany International versus Voith,
18 V-o-i-t-h. German company.

19 Q. Is that a district court matter or an
20 IPR matter? Do you recall?

21 A. I don't recall, as I'm sitting here, what
22 the -- I get involved in the engineering

1 problems, and often I lose track of what the
2 actual legal framework is.

3 Q. Sure.

4 So these other cases on the list here,
5 the Good Sportsman Marketing, the Watterson
6 Construction case, were those patent cases?

7 A. Good Sportsman Marketing versus Rugged
8 Cross is an intellectual property case.

9 Watterson Construction versus
10 International Door was a product liability case.

11 Q. Okay. And so Good Sportsman was an
12 intellectual property case.

13 Do you recall if it was a patent case?
14 This is --

15 A. Yeah -- I'm sorry. Yes. It was a patent
16 case. I was not clear.

17 Q. And then how about the new case that you
18 just mentioned that's not on the list, the -- is
19 that a patent case?

20 A. Yes, it is.

21 Q. Okay. So for legal matters that involve
22 patents, what percentage of your work would you

1 say has been for Nike since 2022?

2 A. What percentage of my consulting work on
3 legal matters?

4 Q. Yes.

5 A. That's the question?

6 Q. On patent matters, sorry.

7 A. On patent matters? So what percentage of
8 my patent consulting work -- of all the work I've
9 done in the last four years, what percentage of
10 that time is associated with Nike?

11 It's substantial. It's probably at least
12 75 percent of that time.

13 Q. Okay. And is it fair to say that the
14 majority of your consulting work on legal matters
15 involve patents?

16 A. Yes. Yes. That is fair.

17 Q. Is it the vast majority of your legal
18 consulting work is on patent matters?

19 MR. SEBBA: Objection. Form.

20 THE WITNESS: I would say that the
21 Watterson Construction case was not a heavy lift
22 on my end. So I think the answer to your

1 question is yes.

2 BY MR. LINDSAY:

3 Q. What claim constructions did you apply in
4 your declaration for this proceeding, for the
5 '749?

6 A. Just wanting to confirm --

7 MR. LINDSAY: While you're looking that
8 up, Mike, you can take down the screen share for
9 now.

10 MR. SEBBA: Thanks.

11 THE WITNESS: As I recall, I only used
12 the ordinary and customary terms, no specific
13 claim construction.

14 BY MR. LINDSAY:

15 Q. What about for the term "surrounding
16 textile structure"? What is your understanding
17 of what that term means?

18 MR. SEBBA: Objection. Form.

19 THE WITNESS: My understanding is that
20 this references a textile structure that
21 surrounds a textile element.

22

1 BY MR. LINDSAY:

2 Q. Does that mean it encircles the textile
3 element completely?

4 A. Not necessarily. I would say that
5 "surrounding" means mostly or completely --

6 Q. So --

7 A. -- encircles the element.

8 Q. So is there some lower bound to
9 "surrounding"? So a majority? Or some other
10 lower bound that you would put on the
11 term "surrounding"?

12 MR. SEBBA: Objection. Form.

13 THE WITNESS: I don't think there is a
14 numerical answer to that question. I don't think
15 the patent expected one.

16 BY MR. LINDSAY:

17 Q. So for purposes of evaluating the scope
18 of the claims, as you did in connection with this
19 proceeding, what is your understanding of the
20 lower bound of the term "surrounding" with
21 respect to encircling the textile element?

22 MR. SEBBA: Objection. Form.

1 THE WITNESS: In my analysis, I never ran
2 into a situation where it was necessary to
3 quantify a lower bound of how much surrounding
4 was necessary.

5 BY MR. LINDSAY:

6 Q. And is that because the prior art at
7 issue here is completely surrounding the textile
8 elements?

9 A. In the cases relevant -- the literature
10 relevant to '749, it was either completely
11 surrounding or not surrounding at all. I don't
12 recall anything that had a partial surround that
13 I had to focus on.

14 Q. I see. So sitting here today, though, if
15 you had to look at the claims and determine what
16 a lower bound would be, what would be your
17 opinion on that?

18 MR. SEBBA: Objection. Form.

19 THE WITNESS: The patent never discusses
20 a numerical value. I think it would be, in the
21 view of the person of ordinary skill in the art,
22 if it felt that it was surrounded or not would be

1 an evaluation that would be performed in
2 reference to the specific item in question.

3 BY MR. LINDSAY:

4 Q. I see. So in your view, the scope of the
5 term "surrounding textile element" depends on
6 what the -- what it's being compared to?

7 MR. SEBBA: Objection. Asked and
8 answered.

9 THE WITNESS: I don't think that's what I
10 said. I think I said that the evaluation of
11 whether it was surrounded would be something a
12 person -- a person of ordinary skill in the art
13 would apply when looking at the particular item
14 in question.

15 BY MR. LINDSAY:

16 Q. Okay. Right. So item in question. So
17 that's what I was trying to figure out what
18 you -- what you meant.

19 Are you talking about a piece of prior
20 art? Are you talking about a product, like an
21 accused product?

22 What do you mean by item in question?

1 MR. SEBBA: Objection. Form.

2 THE WITNESS: I mean anything that might
3 be brought to the attention of someone to say, is
4 this textile element surrounded by a surrounding
5 textile structure? Whatever that might be,
6 whether it's prior art or an accused product, it
7 would be evaluated when it was brought to light.

8 BY MR. LINDSAY:

9 Q. So is it your opinion that it could have
10 different meanings, depending on what product or
11 prior art it's being evaluated against?

12 MR. SEBBA: Objection. Form.

13 THE WITNESS: No, I don't mean that. I
14 mean that the surrounding textile element must
15 completely or mostly surround and circle the
16 textile element.

17 Trying to put a number on that is
18 challenging because it would be difficult to say
19 what does a numerical value mean, how is it being
20 measured, what is the nature of the textile
21 element.

22 It would have to be evaluated

1 individually; unless it was, of course,
2 completely surrounded, then it would be obvious
3 what the answer is.

4 BY MR. LINDSAY:

5 Q. Okay. Who wrote your declaration for
6 this proceeding?

7 A. There was collaboration. Everything in
8 here is something that I either wrote or
9 discussed with Mr. Sebba to make sure that it
10 correctly communicated my intentions. So there's
11 some, of course, legal language that I'm not
12 familiar with, but it was a collaborative effort.

13 Q. Did you meet with anyone during the
14 preparation of your declaration?

15 MR. SEBBA: Just -- I'll caution you,
16 Dr. Pastore, you can answer the question but
17 don't disclose any privileged information.

18 THE WITNESS: Yes. That was part of a
19 collaboration process.

20 BY MR. LINDSAY:

21 Q. And who did you meet with during the
22 preparation of your declaration?

1 MR. SEBBA: Same caution.

2 THE WITNESS: I'm sorry, I have to ask
3 Mr. Sebba what constitutes privileged information
4 in this regard --

5 MR. LINDSAY: Well, he'll instruct you
6 not to answer, Dr. Pastore. If he doesn't
7 instruct you not to answer, then you have to
8 answer the question.

9 I don't believe --

10 MR. SEBBA: You can answer --

11 MR. LINDSAY: -- Mike, you instructed him
12 not to answer the question who he met with; is
13 that fair?

14 MR. SEBBA: That's correct.

15 Dr. Pastore, you can answer.

16 THE WITNESS: I met with Mr. Sebba during
17 the development of this.

18 I'm trying to remember the timeline, if
19 anyone else was involved, but definitely
20 Mr. Sebba.

21 BY MR. LINDSAY:

22 Q. And do you recall for about how long you

1 met with Mr. Sebba in the aggregate? If there
2 were multiple meetings, for example.

3 A. I do not recall.

4 Q. Okay. How much time would you estimate
5 you spent preparing and reviewing and finalizing
6 your declaration?

7 A. It was substantial. It was definitely at
8 least 20 hours, perhaps more. But I -- as I sit
9 here, I can't give you an accurate number.

10 Q. Do you recall making any modifications to
11 the declaration at any point to correct any
12 inaccuracies?

13 A. Yes.

14 Q. Do you recall what those modifications
15 were?

16 A. There were multiple back and forths with
17 this document that -- I don't remember exactly
18 what sentences or ideas or concepts were
19 modified, edited, et cetera.

20 Q. Do you recall if any of the if accuracies
21 that you modified related to an understanding or
22 an interpretation of the prior art at issue in

1 this proceeding?

2 MR. SEBBA: Objection. Form.

3 THE WITNESS: There was plenty of
4 discussion on clarification of the prior art and
5 how it was to be correctly interpreted.

6 BY MR. LINDSAY:

7 Q. Did any of your opinions on how the prior
8 art should be interpreted differ from
9 Mr. Sebba's?

10 MR. SEBBA: Objection. Form.

11 THE WITNESS: This report represents an
12 understanding, my understanding, of what the
13 prior art means, and nothing in here is something
14 that Mr. Sebba said, no, no, no, you're wrong.

15 BY MR. LINDSAY:

16 Q. Okay. So let's go to paragraph 20 of
17 your declaration, Exhibit 2012.

18 A. Okay.

19 Q. I'll give you a minute to review the
20 paragraph to refresh your recollection.

21 A. All right.

22 Yes.

1 Q. In this paragraph, you're recounting
2 essentially what Skechers contends is the level
3 of skill in the relevant field of the
4 '749 patent; is that right?

5 A. That is correct.

6 Q. Do you agree with Skechers' definition of
7 a person of ordinary skill in the art?

8 A. I have accepted their definition and
9 applied that to my analysis.

10 Q. Do you have any disagreement with that
11 definition?

12 MR. SEBBA: Objection. Form.

13 THE WITNESS: I probably would have
14 described it differently, but I had no difficulty
15 applying their definition.

16 BY MR. LINDSAY:

17 Q. What is the relevance of the date
18 March 2004?

19 A. As -- my understanding, that's the
20 priority date of the '749 patent.

21 Q. Would a person of ordinary skill in the
22 art, by March 2004, have been generally familiar

1 with warp knitting machines?

2 A. Yes.

3 Q. And what are the various types of
4 warp knitting machines with which a person of
5 ordinary skill in the art would have been
6 familiar?

7 A. Well, they would have been familiar with
8 most of what was available, including Raschel
9 machines, Tricot machines, even circular
10 warp knitting machines.

11 Q. And would a person of ordinary skill in
12 the art, by March 2004, have been generally
13 familiar with weft knitting machines?

14 A. Yes.

15 Q. And what are the various types of
16 weft knitting machines with which a person of
17 ordinary skill in the art would have been
18 familiar?

19 A. Well, there are circular weft knitting
20 machines, there are flatbed weft knitting
21 machines, and then there are variations on the
22 flatbed machines that are multi-needle bar,

1 multi -- sometimes called whole garment knitting
2 machines where there are often two pairs of
3 V-beds that interact together, as opposed to the
4 traditional two.

5 Q. By March of 2004, was it known to use
6 multiple types of yarn in a single warp knitting
7 process?

8 A. Yes. Yeah.

9 Q. And by March 2004, was it known to use
10 multiple types of yarn in a single weft knitting
11 process?

12 A. Yes.

13 Q. By March 2004, was it known that a person
14 of ordinary skill in the art could place
15 different types of yarns in different areas of a
16 knitted structure using a warp knitting machine?

17 MR. SEBBA: Objection. Form.

18 THE WITNESS: Yes.

19 BY MR. LINDSAY:

20 Q. And by March 2004, was it known that you
21 could place different yarns in different areas of
22 a knitted structure using a circular knitting

1 machine?

2 MR. SEBBA: Objection. Form.

3 THE WITNESS: Yarns in different areas?

4 Yes.

5 BY MR. LINDSAY:

6 Q. In your experience, when a company goes
7 out to buy a knitting machine, does the knitting
8 machine manufacturer typically come and install
9 the machine at a location and put it into
10 operation?

11 MR. SEBBA: Objection. Form.

12 THE WITNESS: That is very common.

13 BY MR. LINDSAY:

14 Q. And when a company buys a knitting
15 machine and wants to make, you know, knitted
16 articles on that machine, how does the company
17 typically go about learning how to use the
18 machine?

19 MR. SEBBA: Objection. Form.

20 THE WITNESS: Many of the manufacturers
21 offer training programs, and of course they have
22 user manuals that explain how the machine

1 operates.

2 BY MR. LINDSAY:

3 Q. I see.

4 The training programs, do those involve
5 in-person training, for example?

6 A. It's a possibility. Many of them have a
7 training program at their primary facility, but
8 it's also possible to pay them to come to site
9 and do training.

10 Q. I see.

11 And would that training involve learning
12 from the machine manufacturer how to use multiple
13 types of yarn in a single-knitting process, for
14 example?

15 MR. SEBBA: Objection. Form.

16 THE WITNESS: The training is typically
17 driven by what the client wants to know. So if
18 the client asks for that particular bit of
19 training, then the manufacturer would most likely
20 offer that training.

21 BY MR. LINDSAY:

22 Q. And would the same apply to a client who

1 wanted to learn how to use different types of
2 yarns in different areas of a knitted structure?
3 Would that training also be provided?

4 MR. SEBBA: Objection. Form.

5 THE WITNESS: I believe that one could
6 request that from a manufacturer.

7 BY MR. LINDSAY:

8 Q. What is the difference between
9 warp knitting and weft knitting?

10 A. In both cases, the machines produce loops
11 that are entangled with other loops, intertwined,
12 so to speak.

13 In a warp knitting machine, there are a
14 large number of parallel yarns that are going in
15 what's called the warp direction. And these
16 yarns are interlooped left and right with each
17 other.

18 In the case of the weft knitting machine,
19 a single yarn is used at a time, and the loops
20 are formed in the direction of product formation.
21 So loops are formed with the loops that were made
22 below it, as -- the product typically comes off

1 the bottom, so the knitted fabric is below, new
2 loops are formed at the top, and those new loops
3 are interlooped with the old loops beneath the
4 knitting needles.

5 Q. You mentioned the term "warp direction."
6 What does that mean?

7 A. Generally, we describe the warp direction
8 as the direction of fabric production. So the
9 fabric is produced as a large material that
10 typically gets rolled up, and the direction of
11 the fabric coming out of the machine is referred
12 to as the warp direction.

13 Q. So in the warp context, you mentioned
14 that yarns are interlooped left and right with
15 each other.

16 So is the warp direction in the direction
17 of the left and right interlooping?

18 A. No. It would be perpendicular to that.
19 These multiple parallel yarns that I mentioned
20 are considered warp yarns. Those yarns, before
21 looping, are parallel to the warp direction of
22 the fabric. The loops happen left and right,

1 which is perpendicular to that direction.

2 Q. Okay.

3 MR. LINDSAY: Okay. I'm going to
4 introduce another exhibit here.

5 (Pastore Deposition Exhibit 2 marked for
6 identification and attached to the
7 transcript.)

8 MR. LINDSAY: Okay. It should take a
9 minute, but it will pop up as Exhibit 2.

10 And when you have that, if you could --
11 if you could share that for Dr. Pastore, Mike.

12 MR. SEBBA: All right. It's being
13 shared. We're on the cover page.

14 Again, Dr. Pastore, let me know if you
15 would like me to zoom or scroll.

16 THE WITNESS: Okay.

17 BY MR. LINDSAY:

18 Q. Are you familiar with this publication?

19 A. I'm not certain. It doesn't ring a bell,
20 but I've read many textile books over the years.

21 Q. If you could look at page -- PDF page 6.

22 A. Could we...

1 Q. Yes. You've got it.

2 Is it correct to say that the date of
3 publication for Exhibit 2 is 2008?

4 A. That's what it says.

5 Q. And the title of this publication is,
6 "Advances in Apparel Production"?

7 A. Yes. That's what it says.

8 Q. If you could go to page 178. Printed
9 page number, not PDF number.

10 If it's easier to find it using the PDF
11 number, it's 196.

12 Dr. Pastore, we're looking at chapter 9
13 of this publication entitled, "Developments in
14 apparel knitting technology."

15 Do you see that?

16 A. I do see that.

17 Q. Have you heard of Dr. Jess Power?

18 A. The name is familiar to me. I don't
19 think I've met them personally.

20 Q. Okay. If you could go to page 182.
21 There's a section called section 9.2.3.

22 Do you see that?

1 A. Yes.

2 Q. What's the title of this subsection?

3 A. Warp knitting - common structures.

4 Q. Do you see the second paragraph there
5 starts, "Unlike weft knitting, where shaping the
6 selvedge is possible, it is only possible to knit
7 continuous widths in warp knitting."

8 Do you see that?

9 A. Yes.

10 Q. Do you agree with that statement that, in
11 warp knitting, it is possible to only knit
12 continuous widths?

13 A. It's not entirely true. It's -- I
14 understand the logic behind it, but it's not, in
15 the most formal sense, technically true.

16 Q. In 2008, which was the date of this
17 publication, was it true?

18 A. No, but it's understandable why the
19 author would write that.

20 Q. Okay. Why is it not technically true and
21 why would the author write that?

22 A. During the warp knitting process, as I

1 mentioned, there's multiple parallel warp yarns
2 that are knitted left and right with each other.
3 And you will not change the number of parallel
4 warp yarns during the knitting operation.

5 So if -- let's just say we had 20 warp
6 yarns, at every point in the structure, there
7 will be 20 warp yarns.

8 So from that point of view, the width
9 stayed the same, i.e., there are 20 yarns across
10 the width.

11 However, by changing the nature of the
12 loop formations -- you can make loops stretch
13 over one side or over another -- you can change
14 the density of the yarns locally so you can make
15 some changes in the width, which means the
16 selvedge would not necessarily be straight. You
17 could shape the selvedge by changing the
18 tightness of the stitches at different locations.

19 Q. I see. And why would she -- you said you
20 could understand why this author would have
21 written this sentence, that it's only possible to
22 knit continuous widths in warp knitting.

1 Why do you understand that to be
2 reasonable?

3 A. Because again, in my example of 20 warp
4 yarns -- it could be any number -- you always
5 have 20 yarns at any given position. So it
6 appears as though you would have the same width
7 if you just count how many yarns are across the
8 width.

9 But because loop structures can vary, you
10 can change the actual width even though the
11 number of yarns didn't change.

12 Q. Okay. You can take down the screen
13 share.

14 MR. LINDSAY: Okay. I'm going to
15 introduce another exhibit. This is Exhibit 1050
16 from the IPR. I'm not sure if that's one of the
17 ones you have available there or not.

18 THE WITNESS: I don't think so.

19 (Pastore Deposition Exhibit 1050 marked
20 for identification and attached to the
21 transcript.)

22 MR. LINDSAY: Okay. We'll put up on the

1 screen the first page.

2 MR. SEBBA: One moment, I'm loading it.
3 Are you marking it, Jonathan?

4 MR. LINDSAY: I was trying to.

5 MR. SEBBA: There we go.

6 MR. LINDSAY: Okay. It should come
7 through now.

8 BY MR. LINDSAY:

9 Q. Okay. Dr. Pastore, I've introduced
10 Exhibit 1050. You see the first page on the
11 screen there.

12 Are you familiar with this publication?

13 A. I am.

14 Q. And you -- in fact, you cited this book
15 yourself, I believe; is that right?

16 A. That is correct.

17 Q. Would you consider it to be a reference
18 that a person of ordinary skill in the art, in
19 2004, would have reasonably consulted?

20 A. Yes. It was a commonly read book.

21 Q. And if we can turn to page 50, printed
22 page 50. 73 PDF page if that's helpful.

1 A. Am I on the correct page?

2 Q. Yes. So there's a section 6.2.2 at the
3 very bottom there.

4 Do you see that?

5 A. Yes, I do.

6 Q. And the first sentence of section 6.2.2
7 of Exhibit 50 says, "Warp knitted fabric is
8 knitted at a" continuous -- sorry -- "constant
9 continuous width."

10 Do you see that part?

11 A. I do.

12 Q. Is that consistent with what we just read
13 from the other publication, Advances in Apparel
14 Production?

15 A. It's a similar statement, yes.

16 Q. And is the statement accurate?

17 A. Again, it's not technically correct, but
18 it's understandable and, for most applications,
19 would be correct.

20 It's the exact same logic about we'll
21 have the fixed number of warp yarns across the
22 width. So if we count the number of yarns, no

1 matter where on the fabric we look there will
2 always be the same number of yarns left to right.

3 But it is possible, through changing the
4 loop structure, to vary the actual resulting
5 fabric width even though the number of yarns
6 would be the same.

7 Q. So unless there is an indication that the
8 loop structure is being changed, would a person
9 of ordinary skill in the art assume that
10 warp knitting machines produce a constant
11 continuous width fabric?

12 MR. SEBBA: Objection. Form.

13 THE WITNESS: Clearly Spencer says that
14 warp knitted fabric makes a constant continuous
15 width.

16 BY MR. LINDSAY:

17 Q. Right. So I was referring to something
18 you said a moment ago where you said, for most
19 applications, that would be correct.

20 And so I guess my question was, given
21 that in most applications this would be correct,
22 is it fair to say that, unless there's an

1 indication that the loop structure is being
2 changed, would a person of ordinary skill in the
3 art reasonably assume that the warp knitting
4 machine is producing a constant continuous width
5 fabric?

6 MR. SEBBA: Objection. Form.

7 THE WITNESS: I believe that's true. It
8 would take some expertise to understand how to
9 change this, change the width.

10 BY MR. LINDSAY:

11 Q. Would a person of ordinary skill in
12 2004 -- not an expert, but a person of ordinary
13 skill in 2004 -- be able to or know how to change
14 the loop structure to vary the width of a
15 warp knitted fabric?

16 MR. SEBBA: Objection. Form.

17 THE WITNESS: I think our person of
18 ordinary skill in the art, as defined by
19 Skechers, might not have sufficient knowledge to
20 contradict that sentence in Spencer.

21 MR. LINDSAY: Okay. We've been going for
22 about an hour. This might be a good break point.

1 Can we take a break?

2 MR. SEBBA: Certainly.

3 MR. LINDSAY: Okay.

4 (A recess was taken.)

5 MR. SEBBA: We had got a laptop in for
6 Dr. Pastore so he could see the Exhibit Share,
7 but he said he actually preferred the large
8 screen. So that was a blank laptop with Zoom on
9 it; I've now moved it out of the way.

10 MR. LINDSAY: Okay. Thanks. I
11 appreciate that.

12 BY MR. LINDSAY:

13 Q. If we could put the same exhibit, 1050,
14 the Spencer publication. Let's see, page 303.
15 This would be the printed page 353 [sic] or PDF
16 326, whichever is easier.

17 MR. SEBBA: I'm sorry, I think you said a
18 couple different numbers there. Would you mind
19 clarifying for the record which pages you're
20 asking for.

21 MR. LINDSAY: Yeah. Printed page 303 is
22 on the screen right now showing figure 24.5.

1 MR. SEBBA: Yes.

2 BY MR. LINDSAY:

3 Q. Do you see that figure, Dr. Pastore?

4 A. Yes, I do.

5 Q. Can you walk me through your
6 understanding of the labeled components of this
7 figure to the best of your understanding?

8 A. Yeah. This looks like the cross-section
9 of a Raschel machine, a warp knitting machine.

10 The four circles we see at the top are
11 what we call beams. They're cylinders that have
12 yarns wrapped around them that feed parallel to
13 each other.

14 There are, of course, some tensioning
15 devices. I can't read what he's called out on
16 there.

17 THE WITNESS: Can we zoom in a little
18 bit, Mr. Sebba? There we go.

19 So it's showing us the tensioning rails,
20 just -- where the yarns coming off of the warp
21 beams are redirected to get them more aligned
22 with the machine.

1 He's pointing to, generally, the knitting
2 elements, which is where the needles are that
3 create the loops that interlock the yarns with
4 each other.

5 Fabric take-up rollers are a tensioning
6 system that pulls the material down from the loop
7 formation area so that we get a continuous
8 production of material.

9 And we've got a fabric roll, which is
10 where the knitted fabric is rolled up so that,
11 when it's done knitting, we have a form for it to
12 transport.

13 He's also shown us some of the drive
14 equipment in there that controls the knitting
15 process linked to the speed of the fabric roll
16 and the fabric take-up rollers.

17 BY MR. LINDSAY:

18 Q. Thank you.

19 So the fabric roll is the final knitted
20 product that is output by the machine?

21 A. That's right. It's a cylinder that has
22 knitted fabric wrapped around it like a roll of

1 tape.

2 Q. Okay. You can take down that exhibit.

3 MR. LINDSAY: Okay. I'm going to
4 introduce another exhibit.

5 (Pastore Deposition Exhibit 1027 marked
6 for identification and attached to the
7 transcript.)

8 MR. LINDSAY: So in a moment you should
9 see a new exhibit, 1027.

10 MR. SEBBA: I have it. I'm about to
11 share it.

12 BY MR. LINDSAY:

13 Q. So on page 1 of Exhibit 1027, there's a
14 knitting machine that's depicted there,
15 Dr. Pastore.

16 Do you see that?

17 A. Yes.

18 Q. What type of knitting machine is that?

19 A. Well, as you can see, it's labeled
20 underneath it: a double-needle bar Raschel.

21 Q. Is that structurally consistent with what
22 Spencer described on page 303, figure 24.5?

1 MR. SEBBA: Objection. Form.

2 THE WITNESS: It's difficult for me to
3 judge how many beams there are at the top from
4 this photograph, but it's going to be similar.
5 You'll notice that the fabric roll is up high,
6 whereas, in Spencer, the fabric roll was down at
7 the bottom of the machine.

8 But the primary concept is the same even
9 though the drawing is not identical.

10 BY MR. LINDSAY:

11 Q. Okay. You can take that down.

12 (Pastore Deposition Exhibit 3 marked for
13 identification and attached to the
14 transcript.)

15 MR. LINDSAY: I've just introduced a new
16 exhibit, Exhibit 3.

17 If you could share it when you get a --
18 when you receive it.

19 BY MR. LINDSAY:

20 Q. Now, Dr. Pastore, Exhibit 3, page 1,
21 which I introduced, is an annotated version of
22 that same image we just looked at of the machine

1 on page 1 of Exhibit 1027. So everything in red
2 has been added to that page 1 of Exhibit 1027.

3 Do you see that?

4 A. I do see that. I understand.

5 Q. Do you agree with the way that machine
6 has been annotated in terms of the different
7 parts that are shown?

8 A. Well, I -- there is a little funny
9 business there with the W/2 at the top on the
10 left warp beam and the right warp beam. That's
11 not necessarily true; that assumes there's no
12 difference between the yarn spacing and the
13 knitted fabric width. But conceptually, it's
14 generally in the right direction.

15 Q. Okay. So your point there is that the
16 beams don't need to be exactly half the width of
17 the fabric; they can be somewhat larger or
18 smaller?

19 A. Correct.

20 MR. SEBBA: Objection. Form.

21 THE WITNESS: Correct.

22 MR. LINDSAY: And is this -- okay. We

1 can take that down.

2 And then I'll introduce an exhibit.

3 (Pastore Deposition Exhibit 1029 marked
4 for identification and attached to the
5 transcript.)

6 MR. LINDSAY: So I introduced
7 Exhibit 1029. You should see it in a moment.

8 MR. SEBBA: There you go.

9 BY MR. LINDSAY:

10 Q. Page 1 of Exhibit 1029, Dr. Pastore, that
11 depicts a type of knitting machine; is that fair?

12 A. Appears to be a photograph of a
13 double-needle bar Raschel.

14 Q. And if we could go back to Exhibit 3 that
15 we were looking at a moment ago, page 2.

16 Is that the same image we were just
17 looking at on page 1 of Exhibit 1029 but with red
18 annotations added?

19 A. I believe it is. Yes.

20 Q. And other than your point about the
21 widths of the yarn beams not needing to be
22 exactly half of the width of the knitted fabric

1 that you made earlier, would you agree with the
2 rest of the annotations here?

3 MR. SEBBA: Objection. Form.

4 THE WITNESS: Yes. Those are warp beams.
5 That's a fabric formation zone. And there's the
6 knitted fabric that's taken up on the roll.

7 MR. LINDSAY: Okay. You can take that
8 down.

9 (Pastore Deposition Exhibit 1030 marked
10 for identification and attached to the
11 transcript.)

12 MR. LINDSAY: So I introduced
13 Exhibit 1030. And when you have it, if you could
14 go to page 3.

15 BY MR. LINDSAY:

16 Q. You see, Dr. Pastore, on Exhibit 1030,
17 page 3, there's a photograph of a knitting
18 machine, a Liba knitting machine.

19 Do you see that?

20 A. I see the image. Yes.

21 Q. Can you tell what kind of knitting
22 machine that is?

1 A. From this angle, I'm not sure. It's a
2 warp knitting machine. I can't tell you exactly
3 how many needle bars it has from this shot, but
4 it's a warp knitting machine.

5 Q. And how can you tell it's a warp knitting
6 machine?

7 A. Because of the warp beam at the top
8 that's being fed through parallel to each other,
9 and it appears that it's going through needle
10 bars and guide hooks and it's being taken up at
11 the bottom.

12 Q. Okay.

13 A. And it's also a Liba machine. Liba makes
14 warp knitting machines.

15 Q. Okay. If you could go to the next page,
16 page 4 of Exhibit 1030.

17 Do you see a photograph of another
18 knitting machine there?

19 A. I do.

20 Q. What type of knitting machine is this, if
21 you can tell?

22 A. Well, this is also a warp knitting

1 machine, as we can tell from the warp beams that
2 are positioned above and in front of the knitting
3 area.

4 Q. Okay. And you can take that down.

5 MR. LINDSAY: If we can put back up
6 Exhibit 3 that we previously introduced, page 3.

7 BY MR. LINDSAY:

8 Q. Do you agree this is the same photograph
9 from page 3 of Exhibit 1030 that we looked at a
10 moment ago, but with red annotations added?

11 MR. SEBBA: Objection. Form.

12 THE WITNESS: It could be. I don't have
13 a photographic memory, but it wouldn't surprise
14 me.

15 BY MR. LINDSAY:

16 Q. Would you like to go back to
17 Exhibit 1030, page 3? I just want you to be
18 comfortable answering the question.

19 A. Please.

20 Okay. And then back to our annotated
21 figure.

22 Yeah. Okay. It looks like the identical

1 photograph, just larger.

2 Q. Okay. And here again, with the --
3 understanding the exception that you made earlier
4 to your answer where the yarn beams don't need to
5 be exactly half the width of the fabric, do you
6 otherwise agree with the red annotations that
7 were added to this figure?

8 MR. SEBBA: Objection to form.

9 THE WITNESS: Yes. The warp beams, the
10 fabric formation area, and the fabric roll. Yes.
11 BY MR. LINDSAY:

12 Q. Okay. And then if we could go to the
13 next page of the same exhibit, Exhibit 3. So
14 this is page 4 of Exhibit 3.

15 Would you agree this is the same image
16 from page 4 of Exhibit 1030 that we looked at a
17 moment ago except with the red annotations added?

18 And feel free to go back and look at
19 page 4 of 1030 if you like --

20 A. I remember this photograph, and yes, this
21 appears to be the same photograph with
22 annotations.

1 Q. Okay. And regarding the added
2 annotations, do you have the same reservation
3 here where the yarn beam widths -- because there
4 are, I guess, six of them, they don't need to be
5 exactly one-sixth the width of the fabric, the
6 knitted fabric?

7 A. Correct.

8 MR. SEBBA: Objection. Form.

9 THE WITNESS: Correct.

10 BY MR. LINDSAY:

11 Q. Would you otherwise agree with the
12 annotations that have been added to Exhibit 1030,
13 page 4, which are reflected here on page 4 of
14 Exhibit 3?

15 MR. SEBBA: Objection. Form.

16 THE WITNESS: Yes.

17 BY MR. LINDSAY:

18 Q. Okay. And I guess just so we can circle
19 back on this point a little bit about the widths
20 of the yarn beams, how are the widths of the yarn
21 beams typically determined by the machine
22 manufacturer?

1 MR. SEBBA: Objection. Form.

2 THE WITNESS: The machine itself can
3 accept certain widths because of the physical
4 limitations of the machine, and the beams
5 typically will -- you can have sectional beams,
6 like we see here; you could have one large
7 beam -- that will occupy the width available to
8 the machine itself.

9 BY MR. LINDSAY:

10 Q. So is it common for the widths of the
11 beams to add up to be the same as the width of
12 the knitted fabric that's coming off of the
13 machine?

14 MR. SEBBA: Objection. Form.

15 THE WITNESS: It would depend entirely on
16 the type of knit structure that's being produced,
17 but it would be a reasonable first approximation
18 for a simple knitted structure.

19 BY MR. LINDSAY:

20 Q. I'm sorry, I didn't follow. It -- a
21 simple reasonable approximation for a knitted --
22 could you explain what --

1 A. Certainly.

2 I said a reasonable first approximation
3 for a simple knitted structure. So if I'm just
4 knitting sheet goods with no variation in
5 structure, no complexity to it, this is a
6 reasonable approximation.

7 Q. I see. And a minute ago you said sheet
8 goods, like s-h-e-e-t?

9 A. Correct. Sometimes called roll goods.
10 What I mean is a long continuous piece of fabric
11 that's the same everywhere from a global
12 perspective.

13 Q. Okay. You can take that down.

14 And back in the 2004 time frame, what
15 applications can you think of where the yarn
16 beams would not have a width -- would not have
17 widths that add up to the width of the knitted
18 fabric?

19 MR. SEBBA: Objection. Form.

20 THE WITNESS: If you're making a complex
21 structure, maybe some fancy lace, or maybe
22 experimenting with some new concepts in fabric

1 design, then you would have complex loop
2 structures that might tighten or loosen
3 individual regions of the fabric that could
4 affect the width.

5 MR. LINDSAY: Okay. I'm going to
6 introduce a new exhibit here.

7 (Pastore Deposition Exhibit 1001 marked
8 for identification and attached to the
9 transcript.)

10 MR. LINDSAY: You should see in a moment
11 Exhibit 1001.

12 MR. SEBBA: It should be up.

13 BY MR. LINDSAY:

14 Q. Do you recognize this document,
15 Dr. Pastore, Exhibit 1001?

16 A. It appears to be what we are calling the
17 '749 patent.

18 Q. Right. Can we take a look at figure 9?
19 Does figure 9 depict the surrounding
20 textile structure that's recited in claim 1?

21 MR. SEBBA: Objection. Form.

22 THE WITNESS: Yes, it does.

1 BY MR. LINDSAY:

2 Q. And is that labeled textile structure 60?

3 A. I don't recall what the 60 callout is. I
4 have to look at the figure description.

5 Q. Yeah. Feel free to -- and I don't know
6 if you have a physical copy there that might be
7 easier.

8 A. I can bring some down...

9 Q. Okay. I can help you, kind of.
10 So column 7 is -- about line 38 --

11 A. Let me zoom in. There we go.
12 So 60 refers to the textile structure.

13 Q. Okay. And is it your understanding that
14 that's the surrounding textile structure that's
15 recited in claim 1?

16 MR. SEBBA: Objection. Form.

17 THE WITNESS: I think 60 includes the
18 textile element and the surrounding textile
19 structure.

20 BY MR. LINDSAY:

21 Q. I see. So maybe we'll look at it this
22 way.

1 So what about the textile element 40? Is
2 that an example of the recited textile element
3 from claim 1?

4 A. Yes.

5 Q. Okay. And then textile element 40 has
6 some surrounding material that's not separately
7 given a reference number; is that right?

8 A. That's how I read this paragraph, yes.

9 Q. So it -- just so we can be on the same
10 page here about what the surrounding textile
11 structure is, is it fair to say that the textile
12 structure in figure 9 is everything that's not
13 the textile element 40?

14 A. The surrounding textile structure would
15 be everything that is not textile element 40.

16 Q. Okay. So with that as our common
17 understanding, is the surrounding textile
18 structure in figure 9 made from the same yarn as
19 the textile element 40?

20 And you can look at the
21 paragraph description. Obviously you can't tell
22 from the figure.

1 A. Right.

2 THE WITNESS: Can we go a little bit
3 more? Oh, we've got to move up. The next line.

4 I don't think that that instructs us in
5 whether different yarns are used in the
6 surrounding textile element from the textile
7 element.

8 It specifies that the loop structure is
9 different, but it doesn't specify about the
10 fiber.

11 We should scroll a little bit more just
12 to make sure I'm not missing something.

13 It seems that the discussion is all about
14 the textile element and the yarn types.

15 BY MR. LINDSAY:

16 Q. Sure. Okay.

17 So is it your understanding that the
18 '749 envisions that the textile element 40 could
19 be made from a different type of yarn than the
20 surrounding textile structure?

21 A. I believe that possibility exists in the
22 description.

1 Q. And could the surrounding textile
2 structure be made of a simple, inexpensive
3 material, as compared to the textile element 40,
4 consistent with the disclosure of the
5 '749 patent?

6 A. The surrounding textile structure could
7 be less expensive than the textile element, yes.
8 And should be.

9 Q. And why do you say it should be?

10 A. Because efficiency is one of the
11 objectives of this patent.

12 Q. And can you explain what you mean?

13 A. The idea here is to put most of the
14 effort just into the textile element. Most of
15 the material complexity, the knit structure
16 complexity just belongs to the textile element so
17 that you're not knitting a very complex structure
18 and throwing away some of that complex structure.

19 Q. I see. So you're saying the efficiency
20 is in the form of reducing the complexity and
21 cost of material that's ultimately not used?

22 A. Yes.

1 Q. Okay. So if the surrounding textile
2 structure is made of a simple and inexpensive
3 material, as compared to the textile element 40,
4 can they be knitted at the same time?

5 MR. SEBBA: Objection. Form.

6 THE WITNESS: Yes, within limitations.
7 It still has to be sturdy enough to withstand the
8 knitting process and to hold together during the
9 operation. So you couldn't go with the absolute
10 minimum structure. You'd never be able to knit
11 the material.

12 So you're not going to minimize the cost
13 in an absolute sense, but you'll minimize it
14 subject to the constraints of these are knitting
15 at the same time.

16 BY MR. LINDSAY:

17 Q. Sure. I wasn't suggesting that there's,
18 you know, some unstable material, for example,
19 that's used but -- so let me maybe rephrase.

20 If you're -- if you selected a more
21 cost-effective material for the surrounding
22 textile structure than you're using for the

1 textile element 40, can those structures be
2 knitted at the same time?

3 A. Potentially. It's going to depend on the
4 yarn size and the yarn tenacity so that when,
5 you're knitting the textile element, you're not
6 snapping the other yarns.

7 As you can see, the textile element has a
8 complex shape to it, so we don't want too much
9 distortion in the loop structures when we go from
10 one to the other.

11 So again, there are very clear
12 limitations of what's possible, but you could try
13 to use the least -- less expensive yarn in the
14 surrounding textile element.

15 Q. And is that something that a person of
16 ordinary skill in the art, in 2004, would have
17 been able to do?

18 MR. SEBBA: Objection. Form.

19 THE WITNESS: I think this took expertise
20 that goes above and beyond what a person of
21 ordinary skill in the art would know.

22

1 BY MR. LINDSAY:

2 Q. What do you mean by "this" took
3 expertise? What's "this"?

4 A. The description here. The patent. The
5 idea behind it.

6 Q. The idea behind -- I don't want to put
7 words in your mouth, but what do you mean by --
8 which part of the patent?

9 A. How a surrounding textile element could
10 be formed -- a surrounding textile structure can
11 be formed with a textile element so that
12 everything is coherent and manufacturable.

13 So picking the right kind of surrounding
14 textile structure to go with the desired textile
15 element.

16 Q. So is it your opinion that the ability to
17 knit surrounding textile structure simultaneously
18 with the textile element where those are
19 different types of yarn, that was something that
20 a person of ordinary skill in the art would not
21 have been able to do without the teachings of the
22 '749 patent?

1 A. Not in this particular application, no.

2 Q. What do you mean by "this particular
3 application"?

4 A. The idea of producing the knitted textile
5 element that would ultimately become a piece of
6 footwear.

7 Q. I see.

8 So how is this application where you have
9 a surrounding textile structure that could be
10 made from a less expensive material than the
11 textile element itself, how is that different
12 than other applications that are not related to a
13 shoe?

14 A. The complexity of the geometry and the
15 performance requirements.

16 Q. So the '749 patent mentions a type of
17 knitting machine, a Santoni circular knitting
18 machine, right?

19 A. Yes.

20 Q. And would that machine have been able to
21 knit a surrounding textile structure that's made
22 of a relatively simple and inexpensive material

1 at the same time that it was knitting the textile
2 element made of, you know, a higher quality
3 material?

4 MR. SEBBA: Objection. Form.

5 THE WITNESS: I believe so. Yes.

6 BY MR. LINDSAY:

7 Q. In 2004, do you know, is that the only
8 type of machine that would have been capable of
9 producing such a structure?

10 MR. SEBBA: Objection. Form.

11 THE WITNESS: I don't know with
12 certainty, no. Clearly, this machine was called
13 out by the inventor as one that does work. I
14 can't say for certain whether some others might
15 have had the same potential.

16 BY MR. LINDSAY:

17 Q. On column 8, lines 4 through 6 -- can you
18 take a look at that, please?

19 A. Yes.

20 Q. It says that "the textile element 40 is
21 removed from the textile structure 60 with a
22 die-cutting, laser-cutting, or other conventional

1 cutting operation."

2 Do you see that?

3 A. Yes.

4 Q. What other conventional cutting
5 operations would the patent be referring to
6 there?

7 A. Conventional cutting operations would
8 include, of course, scissors or a roller knife,
9 the ones that come to mind right away.

10 Q. Okay. And so were die-cutting and
11 laser-cutting also known techniques?

12 A. Yes.

13 Q. And it was -- it was known how to use
14 die-cutting or laser-cutting to remove a
15 surrounding knitted structure that would
16 ultimately be discarded?

17 MR. SEBBA: Objection to form.

18 THE WITNESS: It was known to use
19 die-cutting and laser-cutting to remove a desired
20 shape from a fabric. I don't know that the
21 concept of the surrounding textile structure in
22 this context would have been of mind to a person

1 of ordinary skill in the art.

2 BY MR. LINDSAY:

3 Q. What do you mean would have been of mind?

4 A. Traditionally, and in 2004, people were
5 not making textile elements intended to be
6 removed with minimal waste. They would be
7 working with roll goods and cutting out patterns
8 from materials, and they would use die-cuts and
9 laser-cuts and other conventional cutting
10 operations to remove a shape from a piece of
11 fabric, but not something as specific as this, a
12 textile element that is the entirety of the
13 valuable textile material.

14 Q. So -- I just want to see if I understand
15 what you mean.

16 So is it fair to say that it was known to
17 use die-cutting and laser-cutting to remove a
18 surrounding textile structure around pieces of
19 garments?

20 MR. SEBBA: Objection. Form.

21 THE WITNESS: I don't think that's a fair
22 way to phrase it. For example, I would take a

1 sheet of fabric, and I would cut out a pattern
2 for a garment. But I could have moved that a
3 little bit left, a little bit right, a little bit
4 front, a little bit back; I could have shifted
5 the fabric when I rolled it down.

6 So the part that I'm not using to produce
7 that garment wasn't a surrounding textile
8 structure until after the fact that the garment
9 element was removed. In other words, that
10 garment element, that textile element, didn't
11 exist as an element before it was cut. There's
12 no outline, as is part of the story here.

13 BY MR. LINDSAY:

14 Q. Okay. I think I understand.

15 But what about in a case where you're
16 making a fabric that is using different kinds of
17 yarn, which I think you said earlier was known
18 that you could make a fabric using multiple types
19 of yarn in different areas.

20 In that situation, wouldn't the textile
21 element that's going to ultimately be used be cut
22 out from some textile structure that's not used?

1 MR. SEBBA: Objection. Form.

2 THE WITNESS: What was typically done
3 with processes that created different regions
4 with different yarns would be to create patterns,
5 to create interesting visual or
6 performance-related patterns that varied
7 throughout the material, and still it would be
8 cut from a large sheet of material, not an
9 individual textile element being removed, but
10 rather a fabric that has different
11 characteristics in different locations would be
12 cut to make a garment.

13 BY MR. LINDSAY:

14 Q. In the context of knitting, what does
15 "simultaneously" mean that -- as recited in the
16 claims of the '749?

17 MR. SEBBA: Objection. Form.

18 THE WITNESS: Do you want me to just flip
19 to the claims there to make sure I've got the --
20 I haven't memorized -- I probably should have
21 memorized the claims, but I haven't.

22 So in claim 1, what the inventor is

1 describing is that there's a single knitting
2 operation, simultaneously knitting. The textile
3 element and the surrounding textile structures
4 are being formed in a single knit operation.

5 BY MR. LINDSAY:

6 Q. Okay. Does it mean that the textile
7 element comes into existence at the exact same
8 moment as the surrounding textile structure?

9 A. That's hard to say when it comes into
10 existence, but it would be during the same
11 knitting operation both the element and the
12 surrounding textile structure are formed.

13 Q. So is it fair to say, then, that
14 simultaneously knitting a textile element with
15 the surrounding textile structure means that
16 you're knitting a textile element in the course
17 of knitting that surrounding textile structure?

18 MR. SEBBA: Objection. Form.

19 THE WITNESS: It would mean that both of
20 them are produced during the same knit machine
21 operation. We hit the go button on the knitting
22 machine, and both of these materials are produced

1 coming out the end of the knitting machine.

2 BY MR. LINDSAY:

3 Q. So in the course of one knit machine
4 operation, both the textile element and the
5 surrounding textile element would be formed?

6 MR. SEBBA: Objection. Form.

7 THE WITNESS: Yes.

8 BY MR. LINDSAY:

9 Q. And that would mean -- that would satisfy
10 the claim limitation of simultaneously knitting
11 if, in the course of one knitting operation, both
12 the textile element and the surrounding textile
13 structure were formed?

14 MR. SEBBA: Objection. Form.

15 THE WITNESS: Yes.

16 MR. LINDSAY: Okay. You could take down
17 the Exhibit 1001.

18 (Pastore Deposition Exhibit 1022 marked
19 for identification and attached to the
20 transcript.)

21 MR. LINDSAY: Okay. I just introduced
22 Exhibit 1022. If you could put it on the screen

1 when you have it.

2 THE WITNESS: I believe that's the one we
3 already have.

4 MR. SEBBA: I was going to say, I believe
5 Dr. Pastore has that one.

6 MR. LINDSAY: Okay. That's fine.

7 THE WITNESS: That's the Nishida
8 '638 patent?

9 MR. LINDSAY: Yes.

10 BY MR. LINDSAY:

11 Q. Do you recognize this document?

12 A. Yes, I do.

13 Q. And what is your understanding of what
14 this document is?

15 A. This is a patent for process of producing
16 a shoe-shaped part from a web of material and
17 resulting shoe-shaped part.

18 Q. Okay. And you have your declaration
19 handy there as well, right?

20 A. I do.

21 Q. Can you open that up and take a look at
22 paragraph 65?

1 A. Yes.

2 Q. And I guess, even above that, there's a
3 heading for this section.

4 Do you see that? Ground 2A heading on
5 page 35?

6 A. Yes, I do.

7 Q. Is this section discussing Nishida in the
8 context of claims 5 and 15?

9 A. Correct.

10 Q. Okay. And you see there in paragraph 65
11 where it says, under the second romanette, it
12 says, "Nishida's disclosure that part 29 is
13 folded out of the unwound web part 2 into the
14 plane of the shoe sole."

15 Do you see that?

16 A. Yes.

17 Q. What is the unwound web part 2?

18 A. In this case -- excuse me, I wanted to
19 make sure that I get the correct references.

20 So I think web part 2 is a reference
21 to -- as we can see in figure 2 of Nishida, it
22 refers to a web of materials that consists of

1 multiple textiles being stacked and stitched
2 together, even printed and painted, on here.

3 So --

4 Q. So I guess my question --

5 A. -- removed from the backing, that becomes
6 the unwound web material.

7 Q. Okay. I guess my question is is where in
8 Nishida does it discuss unwound web part 2?

9 A. Let's see.

10 All right. I don't have the citation
11 here. It comes from Skechers' petition, but it's
12 a quote from Nishida.

13 I don't know if it would be faster for me
14 to look at the petition 91 and 92, and perhaps
15 they have the citation so I could find it
16 quicker.

17 That seems to be column 4, 22 to 26.

18 I'm not finding it immediately,
19 Mr. Lindsay. I would need a web search -- if I
20 was working digitally, I could probably do a
21 search and find where the phrase "folded out of
22 the unwound web part 2" is located.

1 Q. So -- yeah, I appreciate that. I guess
2 my question is not so much with the specific
3 discussion of how it's folded out, but the term
4 "unwound web part 2" I don't see in Exhibit 1022.
5 I see layouts 2.

6 And I guess my question is, could unwound
7 web part 2 be referring to the PCT version of
8 Nishida? I think you previously considered the
9 PCT version of Nishida in another proceeding.

10 Does that ring a bell?

11 A. Yeah, I'm a little -- so if unwound
12 doesn't exist in the '638, then I must have found
13 it from a different source.

14 Q. That's fine. Let me put another exhibit
15 in.

16 MR. LINDSAY: So this might help.
17 Introducing Exhibit 4 here in a second.

18 (Pastore Deposition Exhibit 4 marked for
19 identification and attached to the
20 transcript.)

21 MR. LINDSAY: And then when you have the
22 Exhibit 4, if you could take a look at it on

1 screen or on laptop, however you'd like.

2 MR. SEBBA: One moment.

3 MR. LINDSAY: So I stamped this as
4 Exhibit 4, but below the -- I hope -- below the,
5 yeah, the Exhibit 4 label you'll see another
6 label that says lululemon Exhibit 1005.

7 BY MR. LINDSAY:

8 Q. Do you see that part?

9 A. Yes.

10 Q. Do you recognize this document?

11 A. I do. Yes.

12 Q. So what is your understanding of
13 Exhibit 1005 from the lululemon IPR? Is that
14 materially the same as the Nishida Exhibit 1022
15 from this proceeding?

16 A. That is my understanding.

17 Q. And if you go to -- I suppose it appears
18 in a number of places, but maybe -- page 6, it
19 mentions multiple times unwound web part 2.

20 A. Yes.

21 Q. And that's the same term that you were
22 using in paragraph 65 of your declaration in this

1 proceeding, right?

2 A. Yes. I'm just -- I'm -- sorry, I'm a
3 little bit confused as to what I did wrong here
4 now because, in paragraph 65, I thought I was
5 quoting the petition of what the argument was
6 that Skechers and Dr. Adanur made. And it seems
7 that that unwound is not part of the petition
8 that I'm seeing -- it's certainly not on page 91
9 and 92.

10 Q. Right.

11 A. So I'm not sure how that slipped in
12 there.

13 Q. Okay. So -- well, I'm not trying to play
14 "gotcha."

15 Is it your understanding that, when you
16 discuss unwound web part 2, you're referring to
17 layout 2 of Exhibit 1022?

18 A. After they've been removed from the
19 backing.

20 Q. Yeah. I just mean the disclosure of
21 element 2, whatever that is --

22 A. Yes.

1 Q. -- in Exhibit 1022 -- I'll refer to that
2 as the U.S. version of Nishida, if that's okay --
3 is the same as the unwound web part 2 in the PCT
4 version of Nishida that was Exhibit 1005 in the
5 lululemon IPR.

6 A. Yes. I believe that's where the word
7 found its way into this report.

8 Q. Right. And is it your opinion that your
9 analysis here in paragraphs 65 and 66 that refers
10 to unwound web part 2 is still accurate because
11 the disclosure of the U.S. version of Nishida and
12 the PCT version of Nishida don't materially
13 differ?

14 MR. SEBBA: Objection. Form.

15 THE WITNESS: Yes. The use of the
16 word "unwound" is not relevant to the analysis.

17 BY MR. LINDSAY:

18 Q. Are you aware of any material differences
19 between the U.S. version of Nishida,
20 Exhibit 1022, and the PCT version of Nishida that
21 was Exhibit 1005 in the lululemon IPR, which I
22 introduced as Exhibit 4 here?

1 MR. SEBBA: Objection. Form.

2 THE WITNESS: Clearly there's some
3 linguistic differences between the two, but my
4 understanding is the invention is meant to be
5 identical.

6 MR. LINDSAY: Okay. Is this a good time
7 for another short break?

8 THE WITNESS: It is. I'm not sure where
9 you're located. I'm on the east coast right now,
10 and it's also approaching lunchtime, but I'm not
11 desperate for that.

12 MR. LINDSAY: Yeah. We can go off the
13 record, then.

14 (A recess was taken.)

15 BY MR. LINDSAY:

16 Q. Okay, Dr. Pastore. Let's take another
17 look at Nishida Exhibit 1022.

18 A. Okay.

19 Q. So Nishida uses the term "layouts 2."
20 Are those layouts 2 the shoe parts or
21 what end up being shoe parts?

22 A. Yes. My understanding is that layouts 2

1 will end up being the shoe parts.

2 Q. Okay. So you don't dispute that
3 layouts 2 or even tongue 40 are knitted textile
4 elements?

5 A. Nishida teaches us that they could be
6 woven and/or knitted and/or embroidered. So it's
7 possible they're knitted; it's possible they're
8 knitted and woven together. The layouts are
9 complex stacks of materials that are put on top
10 of the backing.

11 Q. Does Nishida disclose multiple examples
12 of shoe uppers?

13 A. You mean like figure 3?

14 Q. Well, yeah. I mean, well, let's start --
15 figure 1 versus figure 2.

16 Are those different examples of a shoe
17 upper?

18 A. There are differences in shading, but
19 figure 1 and 2 seem similar. Figure 4 seems
20 different. Figure 5 seems different.

21 Q. Okay. Let's slow down.

22 Figure 1 has a tongue 40.

1 Do you see that, at the -- I guess it's
2 on the left side of the page, which would be --

3 A. Yeah.

4 Q. -- the top of the figure.

5 A. Uh-huh.

6 Q. And does figure 2 have tongue 40?

7 A. Figure 2 does not show as tongue 40.

8 Q. Right. Okay. So is it fair to say that
9 figure 1 is a different example from figure 2?

10 A. There is a difference there. Yes.

11 Q. And how about figure 4? Is that a
12 different example?

13 A. Figure 4 is a different example. Yes.

14 Q. So figure 4 would be different than, say,
15 figures 1 and figures 2?

16 A. They appear to be. Yes.

17 Q. And how about figure 5? Is figure 5 a
18 different example?

19 A. Yes. Figure 5 is different from 1, 2,
20 and 4.

21 Q. So between figures 1, 2, 4, and 5, is it
22 fair to say that Nishida depicts what is

1 basically four different examples? Some
2 similarities, some differences?

3 A. Yes.

4 Q. Does Nishida identify the web of
5 material 1 in each of figures 1, 2, 4, and 5?

6 A. Yes.

7 Q. And does Nishida also disclose or show
8 structure 1.1 in each of figures 1, 2, 4, and 5,
9 each of the examples?

10 A. Yes.

11 Q. Does Nishida design its web of material
12 on a web of computer?

13 A. Nishida talks about how a computer can be
14 used for that, yes.

15 Q. So walk me through that. How would that
16 work?

17 A. My understanding of Nishida is that they
18 would use computer-controlled operations to
19 embroider a pattern into the backing, to weave a
20 piece that gets placed onto the backing, to knit
21 a piece that gets placed onto the backing, to
22 identify the proper sequence of different

1 materials that are going to be stacked up, things
2 of that nature.

3 Q. So there's a computer that's connected to
4 a knitting machine -- I meant more, you know,
5 generically like that -- and a fabric design is
6 programmed on the computer before the knitting
7 process begins.

8 A. Yes.

9 Q. Okay. And then to change the
10 construction of the fabric, a manufacturer would
11 then modify the design on the computer, which
12 would then provide the updated instructions to
13 the knitting machine?

14 A. Yes. If they wanted to change the
15 particular material that they were making, they
16 could change the yarn, they could change the
17 design and knit patterns.

18 Q. So in the context of Nishida, a user
19 would use the computer, if they wanted to, to
20 modify the overall construction of the web of
21 material, the way it's constructed, you know,
22 choose whatever design of the layouts they wanted

1 using the computer?

2 MR. SEBBA: Object to form.

3 THE WITNESS: I'm a little bit confused
4 what you mean by modifying. The designer would
5 identify what they want this web of materials to
6 be, and then they would use a computer to realize
7 their design goal.

8 BY MR. LINDSAY:

9 Q. Right. Yeah. I guess what I was
10 referring to is, in Nishida, you can take one of
11 the examples we were looking at, you know -- it
12 was programmed on the computer and then those
13 instructions would be provided to the machine.

14 If Nishida wanted to switch to modify the
15 overall construction for the web of material from
16 that example to a different example, would the
17 user then just use the computer, program the
18 computer with that, whatever modified
19 construction they wanted?

20 A. That's always a possibility. Nishida
21 makes it clear that we could be using different
22 materials. So if I wanted to change from having

1 one of my layers be knitted to having one of
2 those layers being woven, those are two
3 completely different machines, so I would be
4 dealing with two different computers to control
5 the production of the knitted part or the
6 production of the woven part.

7 Q. Okay. Yeah, that's a fair point.

8 So in the context of Nishida's, you know,
9 knitting disclosure, Nishida is disclosing, you
10 know, a knitted example of the shoe upper and
11 wants to modify that construction, would Nishida
12 then go to the computer, program whatever it
13 wants the overall construction of that web of
14 material to be, and then those updated
15 instructions would be then provided to the
16 knitting machine to produce the new overall --
17 you know, the new web of material?

18 A. So for -- figure 1, for example, just
19 arbitrarily picking, if 22 was a knitted piece of
20 fabric that goes on to the layout and the
21 designer decided that it should be a different
22 knitted material, they could make a new design by

1 going back to the computer or changing the yarn
2 and making a different piece of fabric that would
3 become layer 22 in figure 1. And they could use
4 a computer to assist in that process.

5 Q. And then once that -- I guess,
6 sequentially, so once that user has updated the
7 design on the computer, then the knitting machine
8 would start the knitting process to create that
9 design.

10 A. Yes.

11 Q. So if we could go -- let's go back to
12 Exhibit 1001, the '749 patent.

13 A. Okay. Give me a moment.

14 Q. Sure.

15 If I understood what you said earlier --
16 obviously correct me if I'm wrong. But I think
17 you said that a person of ordinary skill in the
18 time -- at the time would not know how to
19 simultaneously knit a knitted element with a
20 surrounding textile structure that would have
21 different yarns or construction, that that was
22 something new in the '749.

1 Is that -- did I understand that
2 correctly?

3 MR. SEBBA: Object to form.

4 THE WITNESS: Partially. I said that a
5 person of ordinary skill in the art wouldn't
6 be -- wouldn't necessarily have the expertise to
7 know how to make a knitted textile element that
8 would become a piece of footwear and
9 simultaneously knit that with a surrounding
10 textile element -- textile structure, sorry.
11 They wouldn't know how to make the footwear
12 textile element with the surrounding textile
13 structure that could be produced in a production
14 level.

15 BY MR. LINDSAY:

16 Q. Okay. And so the '749 provides the
17 teachings of how to do that; is that right?

18 MR. SEBBA: Object to form.

19 THE WITNESS: Yes.

20 BY MR. LINDSAY:

21 Q. Can you tell me where those teachings
22 are?

1 A. Well, generally the patent.

2 Q. No, I follow. So -- maybe an example is
3 helpful.

4 So the patent talks about the Santoni
5 machine, the circular knitting machine that can
6 be used to create the invention that we talked
7 about earlier --

8 A. Yes --

9 Q. -- right?

10 A. -- column 7 maybe. I forgot.

11 Q. Yes. Column 7.

12 So Santoni machines were known and
13 available commercially before the '749 patent; is
14 that right?

15 A. Yes.

16 Q. So if I'm a person of ordinary skill in
17 the art in possession of a Santoni circular
18 knitting machine, and I want to create the
19 invention, particularly one in which there's a
20 piece of footwear that's simultaneously knit with
21 surrounding textile element -- textile structure,
22 I should say, where does the '749 patent tell me

1 how to do that on a Santoni machine?

2 MR. SEBBA: Objection. Form.

3 THE WITNESS: Again, I think the patent
4 itself explains how to accomplish this goal with
5 the textile element and the surrounding textile
6 structure and gives an example that it's possible
7 to achieve this on a Santoni.

8 BY MR. LINDSAY:

9 Q. Right. And so you see that doesn't
10 really quite answer the question.

11 I'm trying to find out exactly where in
12 the '749 patent it is providing information that
13 I, as a -- let's say a hypothetical person of
14 interest, person of ordinary skill in the art,
15 doesn't have in order to create the invention.

16 A. Ah --

17 MR. SEBBA: Objection. Asked and
18 answered.

19 THE WITNESS: I think what you're
20 thinking of here is that a person of ordinary
21 skill in the art would not know that this was
22 something possible, but then, reading the patent,

1 they would learn it is possible. And once they
2 recognize that the possibility exists, then they
3 can pursue the details -- working with Santoni,
4 for example -- to figure out how to make this
5 happen for their particular design.

6 So being aware of the possibility is a
7 big part of the teaching here.

8 BY MR. LINDSAY:

9 Q. Okay. So if a person became aware of the
10 possibility through whatever means, the technique
11 for how to create the claimed invention would be
12 something that Santoni could implement or teach
13 that person how to implement in order to create
14 the claimed invention?

15 MR. SEBBA: Objection. Form.

16 THE WITNESS: I believe in this instance
17 the inventor worked with Santoni and taught
18 Santoni how to do it; and therefore, Santoni,
19 could teach others.

20 BY MR. LINDSAY:

21 Q. Interesting. So the inventors taught
22 Santoni how to use the machine to create the

1 claimed invention; is that right?

2 A. I wasn't present, so I can't give a full
3 analysis, but my understanding is it would have
4 been a collaborative effort, but driven by the
5 inventor.

6 Q. And so this was something that, before
7 the '749 patent, wasn't publicly known; it was
8 something collaborative between the inventors and
9 Santoni?

10 MR. SEBBA: Objection. Form.

11 THE WITNESS: I can't say that for
12 certain, but I understand that this was a
13 difficult process to realize and there were
14 exploration of multiple ways to achieve it before
15 it was actually realized.

16 BY MR. LINDSAY:

17 Q. Do you know if Santoni contributed to the
18 development of the process that was used?

19 A. No, I do not know.

20 Q. After the '749 patent was filed, could
21 anybody in possession of a Santoni machine create
22 the claimed invention?

1 MR. SEBBA: Objection. Form.

2 THE WITNESS: That's difficult to say.

3 The principle and the potential would exist once
4 the patent is published. It's still not a
5 trivial process to accomplish, so it would depend
6 on the skill of the individual who owned the
7 Santoni machine, whether they could adapt the
8 teachings of the patent to their equipment or
9 not.

10 BY MR. LINDSAY:

11 Q. Okay. That's fair.

12 So if they were, you know, a company with
13 expertise in knitting, could they use a Santoni
14 circular knitting machine once they read the
15 '749 patent and create the claimed invention?

16 MR. SEBBA: Objection to form.

17 THE WITNESS: I think someone of skill,
18 with the proper equipment, could indeed copy the
19 claimed invention.

20 BY MR. LINDSAY:

21 Q. How about somebody of, you know, just
22 ordinary skill in the art, as Skechers has kind

1 of defined that person for purposes of this IPR?
2 Would that person be able to use a Santoni
3 machine without any help, just the
4 '749 disclosure, and create the claimed
5 invention?

6 MR. SEBBA: Objection to form.

7 THE WITNESS: I think that, because of
8 the existence of the '749 patent, person of
9 ordinary skill in the art would be emboldened to
10 think they could accomplish it, because it's been
11 demonstrated through the patent that this could
12 work. And if they had the diligence to explore
13 this possibility, I think they could.

14 BY MR. LINDSAY:

15 Q. So tell me a little bit about the idea of
16 exploring diligence.

17 What would they have to do?

18 MR. SEBBA: Objection. Form.

19 THE WITNESS: I'm trying to communicate
20 that it's not trivial, that there is still a lot
21 of skill and craft associated with this
22 invention. But knowing that it's possible often

1 opens the eyes of the textile person of ordinary
2 skill in the art that this is possible. So if
3 it's something highly desirable to them, they
4 would put in the effort necessary to realize it
5 and copy the patent.

6 BY MR. LINDSAY:

7 Q. So they would have to program the machine
8 to be able to knit the textile elements and the
9 surrounding textile structures simultaneously as
10 part of that?

11 A. Yes. And choose the correct yarns and
12 yarn tensioning and tensioning -- takedown
13 tension device.

14 Q. How would they learn how to program the
15 machine to simultaneously knit the textile
16 element and the surrounding textile structure?

17 MR. SEBBA: Objection to form.

18 THE WITNESS: They would learn this from
19 their experience knitting. They know how to
20 knit. They've been shown that this can be
21 produced. So they would use their knowledge of
22 knitting plus their knowledge that this new idea

1 is possible and, through exploration, could get
2 to the similar result.

3 BY MR. LINDSAY:

4 Q. Besides identifying the possibility that
5 this is -- this can be done on a Santoni machine,
6 is there any other teaching in the '749 patent
7 that a person of ordinary skill in the art would
8 need in order to produce the claimed invention?

9 MR. SEBBA: Objection. Form.

10 THE WITNESS: Well, the entire content of
11 the patent that describes the process and the
12 motivations and the goals would be important.
13 The fact that it could be realized on a Santoni
14 machine is just one specific implementation of
15 it.

16 But the patent itself teaches that this
17 is a possibility, here's why one would do it,
18 here's what one can achieve.

19 BY MR. LINDSAY:

20 Q. Does the '749 patent teach a person of
21 ordinary skill in the art how to program a
22 knitting machine to achieve the claimed

1 invention?

2 A. No. There's no specific knitting machine
3 instructions provided.

4 Q. Does the '749 patent disclose any general
5 knitting techniques that aren't otherwise known
6 that need to be used to achieve the claimed
7 invention?

8 MR. SEBBA: Objection. Form.

9 THE WITNESS: Yes. It talks about
10 creating the outline, about having the knitted
11 element, about having the surrounding textile
12 structure, and about having the different
13 textures and properties and yarns that go into
14 the textile element.

15 BY MR. LINDSAY:

16 Q. Did the inventors of the '749 patent
17 invent knitting outlines?

18 A. In the context of a textile element, yes,
19 for a footwear application.

20 Q. What about in other applications? Have
21 you ever seen the use of an outline on a knitted
22 piece of fabric?

1 A. Not in this context. I mean, certainly
2 shapes can be generated, but it's only an
3 outline in the context of this patent when it's
4 defining the textile element.

5 Q. What is the outline in the context of
6 this patent?

7 A. It is a framework that establishes where
8 the textile element differs from the surrounding
9 textile structure. It's a way to inform next
10 operation, how to remove the textile element from
11 the surrounding textile structure.

12 Q. So is the outline visible?

13 MR. SEBBA: Objection. Form.

14 THE WITNESS: The outline should have
15 some visible component to it so that the person
16 can identify the textile element with the fabric
17 is removed from the knitting machine.

18 BY MR. LINDSAY:

19 Q. Is it outline a separate structure, or is
20 it just a border along which the textile element
21 and the surrounding textile structure are
22 defined?

1 A. It's not necessarily a border, but it is
2 a way to demarcate the difference between the
3 textile element and the surrounding textile
4 structure.

5 Q. I guess if we were having to figure out
6 if a structure has an outline or not, a knitted
7 structure, how would you do that? What would you
8 look for?

9 A. I'd look for visual information that
10 allows me to extract the textile element from the
11 surrounding textile structure correctly.

12 Q. So could that just be something like a
13 change in knitted structure or the yarn that's
14 used?

15 MR. SEBBA: Objection. Form.

16 THE WITNESS: It could be.

17 BY MR. LINDSAY:

18 Q. In a lace fabric, are there outlines?

19 MR. SEBBA: Objection. Form.

20 THE WITNESS: I don't think lace fabrics
21 would be considered to have outlines, no.

22

1 BY MR. LINDSAY:

2 Q. And why not?

3 A. Because you're producing lace. It is
4 what it is. It's not a textile element that
5 needs to be removed from the surrounding textile
6 structure.

7 Q. So is the purpose of the outline, then,
8 to show where the surrounding material ends and
9 the textile element begins?

10 MR. SEBBA: Objection. Form.

11 THE WITNESS: It's to allow the next
12 operator to know how to distinguish between the
13 textile element and the surrounding textile
14 structure for the purposes of removing it from
15 the textile structure.

16 BY MR. LINDSAY:

17 Q. Is there any physical limitation on that,
18 or you could use anything including just the
19 change in yarn as the outline?

20 A. I believe you could use a change in yarn
21 to provide an outline.

22 Q. So in claim 5 and 15, he uses the term

1 "substantially planar."

2 Do you see that?

3 A. Yes.

4 Q. Does the term "substantially planar" in
5 claims 5 and 15 require the knitted elements to
6 sit perfectly flat after being removed from the
7 surrounding textile structure?

8 MR. SEBBA: Objection. Form.

9 THE WITNESS: My understanding is
10 substantially allows some leeway, not requiring
11 perfectly planar.

12 BY MR. LINDSAY:

13 Q. What would cause a knitted textile
14 element, which is otherwise planar when it comes
15 off the knitting machine, to cease to be planar
16 when it's removed from the surrounding structure?

17 A. During knitting, it would be relatively
18 planar because of the tension applied on the end
19 of the roll.

20 When it's removed from a surrounding
21 textile structure, it's possible is that stored
22 energy inside the textile element was greater

1 than the stored energy in the surrounding textile
2 structure, and so the element could retract, curl
3 up. It's something that happens during knitting.
4 If you don't knit under tension, knit materials
5 like the curl. And if you make complex shapes in
6 there, you're even more likely to generate some
7 sort of curl and bending and -- during the -- not
8 during -- in the resulting fabric.

9 Q. So is it -- I'm trying to understand.

10 So is it knitting under tension that
11 creates the stored energy, which is released when
12 the textile element is removed, or is the lack of
13 knitting under tension? I'm just trying to
14 understand.

15 A. Well, knitting happens under tension.

16 Q. Okay.

17 A. When the loop structures vary or if, for
18 example -- even if we just take an ordinary -- a
19 very plain jersey knit, the loops are asymmetric
20 front to back, face to back. So when the tension
21 is released, the yarns want to relax. And since
22 there is a thickness to the knitted structure, it

1 results in a curvature as some of the loops were
2 under tension, some of the loops were under
3 compression.

4 If you have a very complex structure,
5 liked a knitted textile element, you're changing
6 loop density, you're changing the face-to-back
7 knit structure. If it's not carefully designed,
8 it will have a tendency to curl.

9 Q. And how do you carefully design it to
10 avoid curling, then?

11 A. Well, that could be done through proper
12 knit geometry arrangements, making sure that the
13 tensions balance out across the width of the
14 element, making sure that the face-to-back loop
15 structure is symmetrical so that there's no
16 built-in bending as a result of relaxed tension.

17 Q. Would a textile manufacturer generally
18 want to avoid curling?

19 MR. SEBBA: Objection. Form.

20 THE WITNESS: A traditional textile
21 manufacturer will take the knitted fabric and
22 they will stabilize it under heat so that the

1 curling goes away. So they know that they're
2 going to curling. It's just a natural part of
3 knitting. But then, through a heat-setting
4 operation, they can stabilize it so it doesn't
5 matter anymore; the curling goes away. They're
6 not thinking about knitted textile elements.

7 BY MR. LINDSAY:

8 Q. So I guess in your example, though, you
9 were describing some techniques that could be
10 used to avoid curling --

11 A. Remove curling.

12 Q. Sorry?

13 A. To remove curling, not avoid it. With
14 the heat operations, post-process operations.

15 Q. No, no. Before that, you said something
16 about using proper knit geometry arrangements to
17 make sure tensions are balanced out.

18 A. Yes.

19 Q. So I guess I was thinking about in that
20 context. If you use proper knit arrangements and
21 you make sure the tensions are balanced out, then
22 you wouldn't have substantial curling; is that

1 correct?

2 A. In the element itself. Of course, in the
3 whole textile structure, the simple knit between
4 the elements, the surrounding textile structure,
5 might curl compared to the knitted textile
6 element, and so your fabric could be lumpy.

7 But claim 5 says that -- here's an
8 example where you design it so once you remove
9 the textile element, it doesn't -- it's
10 substantially planar. It doesn't have that curl
11 to it.

12 Q. Okay. And then using -- so that's
13 achieved using, you described, specific knit
14 geometries that balance out those tensions.

15 A. Yes.

16 Q. And those techniques to balance out
17 tensions, those were known by a person of
18 ordinary skill in the art how to do that?

19 MR. SEBBA: Objection. Form.

20 THE WITNESS: It's not something that is
21 ordinarily taught because, again, in the
22 traditional textile operations, you would process

1 it to get rid of the curl anyway.

2 So I don't know that that would be
3 something well known. It would have to be
4 studied and learned.

5 BY MR. LINDSAY:

6 Q. So does the '749 patent, then, tell us
7 how to do that tension balancing?

8 MR. SEBBA: Objection. Form.

9 THE WITNESS: I don't think there are any
10 examples of how you would knit the structure so
11 it doesn't curl, just the instruction that it's
12 possible. In addition to everything else you've
13 learned, it's possible to make one where the
14 removed textile element is substantially planar.
15 So it just opens up the door to possibility.

16 MR. LINDSAY: Okay. I'm introducing a
17 new exhibit. You could take that exhibit down.

18 (Pastore Deposition Exhibit 1023 marked
19 for identification and attached to the
20 transcript.)

21 MR. LINDSAY: Okay. I've added
22 Exhibit 1023. This is the Guenther reference.

1 BY MR. LINDSAY:

2 Q. I think you said earlier you had it in
3 printed-ut form.

4 A. I might. I have 1024 which includes -- I
5 think this is the one that includes the German
6 and the English translation together.

7 Q. That's fine.

8 Can you take a look at figure 3?

9 A. Yes.

10 Q. Is that depicting a multilayer fabric?

11 A. That is depicting a multilayer woven
12 fabric. Yes.

13 Q. Would you say that's a type of spacer
14 fabric?

15 A. I mean, this is really more like the type
16 of fabric that you'd use to make a velvet, but I
17 think you could -- it could fall into the class
18 of spacer fabrics.

19 Q. And a person of ordinary skill in the art
20 in 2004 would know about spacer fabrics?

21 A. Yes.

22 Q. And what is, I guess -- what is a spacer

1 fabric?

2 A. Spacer fabric is a fabric that has --
3 generally, a spacer fabric is a knitted structure
4 that has two distinct surfaces and a monofilament
5 yarn that passes back and forth between surfaces,
6 keeping them spread apart.

7 So we end up with something that has
8 substantial thickness but it has a smooth textile
9 surface on either side.

10 Q. Okay. Take a look at -- go back to
11 Exhibit 1050, which is the Spencer reference.

12 A. Okay.

13 Q. And looking at page 363, printed
14 page 363.

15 MR. SEBBA: I guess it's 386? I think
16 we're 23 off.

17 MR. LINDSAY: Yeah.

18 BY MR. LINDSAY:

19 Q. So you see the section 29.5.3 titled,
20 "Length-sequenced articles" there?

21 A. Yes.

22 Q. Can you take a look at the last

1 paragraph, the last short paragraph there? I'll
2 let you just read through it. And then also the
3 first sentence, I should have mentioned, as well,
4 to kind of set our context.

5 It says, "Some Raschel double-needle bed
6 products are in the form of articles, a number of
7 which can be simultaneously knitted side by side
8 across the needle bed."

9 Do you see that part?

10 A. Yes.

11 Q. Okay. Anyway, so my question was going
12 to be about the fringe sections that are
13 referenced in the last paragraph there of section
14 29.5.3.

15 Are those sections knitted simultaneously
16 with the scarf elements?

17 A. "The scarf fabric is knitted as a
18 continuous strip of double-faced fabric with the
19 fringe sections composed of two-wale wide strips,
20 each unconnected by underlaps to its neighbour."

21 Okay. Can you repeat your question now?
22 I'm sorry. I got distracted by reading it.

1 Q. Sure. No problem.

2 So are the fringe sections that are
3 mentioned in the last paragraph of section 29.5.3
4 of Exhibit 1050, are those knitted simultaneously
5 with the scarf elements?

6 A. They are part of the scarf. So from that
7 perspective, if we wanted to consider a scarf to
8 be an element, these fringes are part of the
9 scarf, so yes.

10 Q. So the fringe sections and the scarfs, or
11 scarf elements, would be knitted simultaneously,
12 as it says in the first sentence, in a
13 side-by-side fashion?

14 A. Yeah. Well, as I understand this, what
15 they're knitting is a fabric that -- the scarf
16 will have fringe, then a knitted solid section,
17 and then fringe. And that will be a scarf that
18 is cut out, and then they stitch up the ends of
19 the fringes so that they don't unravel.

20 Q. Right. So I guess if you could scroll up
21 a little bit. Do you see the first sentence of
22 29.5.3? Okay. Yeah.

1 These articles are all -- there's a
2 number of them that are knitted side by side
3 across the needle bed, and they're knitted --

4 A. Yeah, you could have three --

5 Q. -- simultaneous -

6 A. -- four, five scarves running side by
7 side, or you could -- you could have more, and it
8 would just be a waste of the machine to only knit
9 one scarf at a time.

10 So yes, you could knit these side by side
11 so the machine is knitting them all at the same
12 time. The fringes represent the top and the
13 bottom of the scarf as they're knitted.

14 Q. Okay. And I guess my question isn't that
15 controversial. It's just that it's doing the
16 knitting of the scarves and the fringe section
17 all at the same time, one knitting operation.

18 A. The way you're wording it makes it sound
19 like you're visualizing something different than
20 I am.

21 The scarf itself, one scarf, has fringe,
22 nonfringe, fringe. Top, middle, bottom. It's

1 all a scarf. The fringe section is part of the
2 scarf. That's where I'm a little bit confused
3 what you mean as simultaneous with the scarf
4 because it is part of the scarf.

5 But when it's knitting the fringe, it's
6 not knitting the main body of the scarf; and when
7 it's knitting the main body of the scarf, it's
8 not knitting the fringe.

9 Q. I think we're saying the same thing. I
10 guess my -- I was just wanting to clarify if it's
11 your understanding that the scarf and the fringes
12 are all knitted as part of the same knitting
13 process?

14 MR. SEBBA: Objection. Form.

15 THE WITNESS: I think so, I'm just
16 resisting the notion that the fringe is different
17 than the scarf because the fringe is part of the
18 scarf.

19 BY MR. LINDSAY:

20 Q. Okay. So I'll rephrase.

21 Is it your understanding that the scarf,
22 including its fringes, are all knitted

1 simultaneously in a side-by-side fashion across
2 the needle bed?

3 MR. SEBBA: Objection to form.

4 THE WITNESS: Yes, with the clarity that
5 it could be a single scarf. It doesn't need to
6 be multiple scarves knitted simultaneously.
7 Spencer is emphasizing that you could to save
8 money. But it could be a single scarf. It would
9 still have the fringes and the scarf and the
10 fringe. But otherwise, yes.

11 BY MR. LINDSAY:

12 Q. Okay. And then going back to that last
13 paragraph, it says, "unconnected by underlaps to
14 its neighbour."

15 What does that mean?

16 A. That means that each of these two-wale
17 wide strips the fringe -- each fringe element is
18 not connected to the next element. So that it
19 really is fringe like you see on the end of a
20 scarf. You have multiple fingers, if you will,
21 that are not interconnected so that the fringe
22 looks like fringe.

1 Q. So are we talking about vertically -- the
2 fringe is at the top -- let's say if you're
3 envisioning the way a product like this, a scarf,
4 comes off, there's a fringe, a middle section,
5 and then a fringe, and together, that's a scarf.

6 A. Yes.

7 Q. Okay. And then when it says neighbour,
8 is that referring to a scarf that's next to that
9 scarf across the bed or vertically coming out of
10 the machine next?

11 A. Oh. My understanding, from -- because
12 he's describing the fringe sections composed of
13 two-wale wide strips, he's describing the fringe
14 section of an individual scarf. In the fringe
15 section, there are going to be multiple two-wale
16 wide strips, and they are not connected to their
17 neighbours. So each of those fringes can move
18 freely.

19 Q. Okay. But I guess are those fringes --
20 so let's say you're doing multiple scarves --

21 A. Okay.

22 Q. -- not the example where you have one

1 scarf.

2 A. Uh-huh.

3 Q. Are the fringes between the multiple
4 scarves that are --

5 A. Oh, no. There's absolutely nothing
6 between the side-by-side scarves.

7 Q. Okay. That's what --

8 A. There are multiple independent scarves
9 happening at the same time --

10 Q. Okay.

11 A. -- that have no connection.

12 Q. Okay. And so those are just cut apart --

13 A. No --

14 Q. -- presumably.

15 A. -- they're never together. There's no
16 knitting that happens between the two scarves, so
17 you don't need to cut them apart side by side.

18 Q. Oh. So what does it mean by
19 simultaneously knitted side by side across the
20 needle bed?

21 A. It means, instead of making the one
22 10-inch scarf, I'm going to make ten 10-inch

1 scarves at the same time over a hundred-inch
2 machine.

3 Q. Right.

4 A. So I'm going to do the same thing and
5 repeat it and repeat it and repeat it. But the
6 knitting machine is set up so that there is no
7 interknitting amongst the scarves. Each scarf is
8 just knit by itself.

9 Q. Oh. Well, what's between -- is there
10 anything between -- is there a connecting
11 material between the scarves, then?

12 A. No. There's just space. That's
13 something that's easy to do on a warp knitting
14 machine.

15 Q. Okay. So then the sentence -- the next
16 sentence in that last paragraph says, "Each scarf
17 piece is separated from the next by cutting
18 through the center of the fringe and seaming the
19 cut ends to secure them."

20 A. Yes.

21 Q. So I guess I'm still a little confused.
22 If you're trying to create -- the fringe it's

1 talking about here is the fringe at the end,
2 right? Or, like, the end of a scarf --

3 A. Uh-huh.

4 Q. -- how is that being -- is that what's
5 being seamed and cut to secure those ends?

6 A. Yes. Again, imagine the instance where I
7 just have one scarf at a time. I'll have fringe,
8 body, fringe; fringe, body, fringe; fringe, body
9 fringe as many times as I could possibly produce
10 it. Then I cut through the middle of the fringe
11 area to separate the first scarf from the second
12 scarf. And where I cut the fringe, that becomes
13 the fringe of the scarf. And a little seaming
14 happens to make sure they don't unravel.

15 Q. Okay. But you would maintain the kind of
16 fringe -- you know, the individual pieces of
17 fabric that make it look like a fringe, I
18 guess --

19 A. Yes.

20 Q. -- that wouldn't be seamed away?

21 MR. SEBBA: Objection. Form.

22 THE WITNESS: Maybe I'll knit four inches

1 of frim -- frim -- 4 inches of fringe, cut
2 through the center so I have 2 inches of fringe
3 on the bottom one. I'll seam up the ends of
4 those, and I'll have 2 inches of fringe on the
5 top one. I'll seam up the ends of those.

6 BY MR. LINDSAY:

7 Q. Okay.

8 A. It's a very efficient method for making
9 scarves where there's no waste.

10 Q. Okay. Okay. Yeah, I see.

11 Okay. I want to go back to your
12 declaration, Exhibit 1012.

13 A. Okay. 2012.

14 Q. 2012. And I'm looking at page 12.

15 A. Okay.

16 Q. And figure 1 and figure 2, annotated
17 versions of those -- of the Orei reference.

18 A. Yes.

19 Q. Are we on the same page?

20 A. Yes.

21 Q. Let's see.

22 So towards the bottom of that page,

1 you're describing I think the various parts of
2 Orei. And it starts the sentence, "For example,
3 part (A) 1c."

4 Do you see that?

5 A. Yes.

6 Q. And it says, "and part (C) 3b on the
7 bottom shoe patterns match up with the
8 corresponding colored parts on the top shoe
9 pattern in figure 1."

10 A. Yes.

11 Q. When you say matches up with the
12 corresponding colored parts on the top shoe
13 pattern, is that the part of the top shoe pattern
14 that's adjacent to the blue part labeled 3a? So
15 that would be, you know, the top blue arrow --

16 A. Yes.

17 Q. -- in your annotated figure 1 --

18 A. Uh-huh.

19 Q. -- that's point to just below what Orei
20 labels as 3a.

21 A. Yes. Well, I think the top arrow is
22 pointing the green sections together, and the

1 arrow underneath that is connecting the cyan
2 sections together.

3 Q. Okay. Fair.

4 So I guess what -- I'm trying to just
5 make sure I understand. So when you're saying
6 that the shoe patterns match up, the patterns are
7 matching up along the parts where the blue -- or
8 I think you called it cyan -- arrows are pointing
9 to in the top section and in the bottom right
10 section.

11 A. Yeah.

12 MR. SEBBA: Objection. Form.

13 THE WITNESS: Yes.

14 BY MR. LINDSAY:

15 Q. Okay. So if we look over at figure 2 on
16 that same page, that's the fully assembled shoe
17 of Orei; is that your understanding?

18 A. Right.

19 Q. Okay. And I guess I also see 1c and 3b
20 labeled there as well.

21 A. Yes.

22 Q. Is that the same 1c and 3b from figure 1

1 that we were just talking about?

2 A. That's my understanding. Yes.

3 Q. Okay. And then I guess there's also a 3a
4 in figure 2.

5 A. Yes.

6 Q. And I guess the same question: Is that
7 the same 3a that we just talked about as being
8 adjacent to the parts, the lower parts, 1c and
9 3b?

10 A. 3a is the light blue strip that's near
11 the surface that connects.

12 Q. Okay. Right. So I guess I'm just trying
13 to make sure we're all on the same page, that the
14 parts that are labeled 1c, 3b, 3a in figure 2 are
15 the same parts that are labeled the same, 1c, 3b,
16 and then 3a, in figure 1.

17 A. With just one distinction. One of them
18 is showing the right side and the other one is
19 showing the left side, but I think it's
20 understood to be symmetrical.

21 Q. Okay. Yeah. I see that.

22 Okay. So is it the case that part 1c and

1 3b from the bottom shoe patterns in figure 1,
2 those end up matching up with the same
3 corresponding parts of the top shoe pattern both
4 before cutting and also after the shoe is
5 assembled.

6 MR. SEBBA: Objection. Form.

7 THE WITNESS: Yes. That's my
8 understanding.

9 BY MR. LINDSAY:

10 Q. Okay. And why do you believe that would
11 be the case?

12 A. From reading Orei and from this
13 illustration itself, which is calling out those
14 same patterns and looking at figure 1 and
15 figure 2 together, it becomes clear that those
16 left and right elements are going to be placed
17 next to the top element, the bottom of the top
18 element, and in a way that those strips,
19 geometrically, makes sense.

20 And Orei tells us that they're going to
21 be placed continuously, so there's not going to
22 be any gaps between them when we place them.

1 So that leads me to the conclusion that
2 those represent the shoe on the right.

3 Q. Okay. So -- right. And then -- so the
4 shoe parts that have the matching contours in
5 figure 1, those end up being stitched or, you
6 know, somehow joined together in the final shoe
7 along those same matching contours?

8 A. Yes.

9 Q. And is that because that's how the shoe
10 parts are -- those are how they're stitched or
11 otherwise joined together during the shoe
12 assembly process?

13 A. It's what Orei tells us to do, to place
14 them continuously.

15 Q. Yeah. I mean, in the final shoe on the
16 right -- I guess my question is that those shoe
17 parts that have the matching contours, they end
18 up being stitched or otherwise joined together in
19 the final shoe along those same kind of matching
20 contours.

21 A. Yes. Somehow they're joined together.

22 Q. And that's just along the same contoured

1 lines they would be joined together is what
2 I'm -- I guess I'm trying to confirm?

3 MR. SEBBA: Objection. Form.

4 THE WITNESS: Yes. That's my
5 understanding. You can't see it on figure 2
6 because that upper layer -- whatever -- the
7 rubber or the leather piece is hiding that
8 surface, but yes.

9 BY MR. LINDSAY:

10 Q. Okay. So the various shoe parts in
11 figure 1 of Orei, are those knitted
12 simultaneously?

13 A. My understanding is this is one piece of
14 fabric that then is cut with some paper
15 templates.

16 Q. And that would include, like, the --
17 element 12 in figure 1, along with the other
18 parts that are annotated with color? Those would
19 all be knitted simultaneously on the same --

20 MR. SEBBA: Objection. Form.

21 THE WITNESS: Element 12, which I guess
22 is the tongue, it's not clear when that knitting

1 operation would take place. Figure 1 is showing
2 us the pieces that are going to be made into a
3 shoe.

4 BY MR. LINDSAY:

5 Q. Okay. But the other parts that are
6 annotated are knitted simultaneously. The other
7 parts that are annotated in color in figure 1
8 here on page 12, those would be knitted
9 simultaneously.

10 A. Yeah. We're told it was one continuous
11 knitted fabric. Yes.

12 Q. And I guess I was going to ask you about
13 figure 5 of Orei as well, so maybe we can look at
14 that.

15 A. Are you looking at where I reference it
16 in my report or in the Orei patent?

17 Q. We can just look at the Orei patent.

18 A. Okay. I have that here.

19 Q. So figure 5 here. Which parts are
20 knitted simultaneously?

21 MR. SEBBA: Objection. Form.

22 THE WITNESS: It's my understanding that

1 parts 31 and 32 were knitted as one continuous
2 fabric.

3 BY MR. LINDSAY:

4 Q. Okay. And how about parts 33 and 34?

5 A. I don't think they were specified.

6 Q. So let's take a look at maybe column 5.
7 Example 3 discusses figure 5.

8 Let me know when you're there.

9 A. Yes.

10 Q. And you see the second paragraph says,
11 "In figure 5, reference numeral 30, denotes a
12 shoe pattern on knitted fabric."

13 A. Yes.

14 Q. Okay. So figure 5 is showing us figure
15 30. You see at the top of figure 5 -- if you
16 want to flip back.

17 A. Right.

18 Q. And it's saying that's the shoe pattern.

19 A. Yeah. So --

20 Q. And --

21 A. And the tongue and the heel piece would
22 be part of that same piece of fabric.

1 Q. Okay. So the -- parts 31, 32, 33, and
2 34, it's your understanding, would be knitted
3 simultaneously on the same fabric.

4 MR. SEBBA: Objection. Form.

5 THE WITNESS: Yes. I believe that is
6 going to be one continuous fabric.

7 BY MR. LINDSAY:

8 Q. Okay. And then maybe we can go back to
9 figure 1 just to see what the spec says.

10 Figure 1 is showing shoe pattern 10,
11 which is talked about on column 4.

12 A. Uh-huh.

13 Q. And I think line 16 or so says, "Shoe
14 pattern 10 matched to paper patterns are placed
15 continuously on one knitted fabric as shown in
16 figure 1."

17 A. Yes.

18 Q. So is this consistent with figure 5,
19 where the tongue is being knitted simultaneously
20 with the other shoe parts?

21 MR. SEBBA: Objection. Form.

22 THE WITNESS: I suppose the tongue is

1 being produced at the same time as the shoe.

2 BY MR. LINDSAY:

3 Q. Okay. And then so paragraph 43 of your
4 declaration. I want to ask you about your --

5 A. Yes.

6 Q. Your theory that -- so if I understand,
7 is it your theory that Orei's shoe parts were
8 originally placed adjacent to one another on one
9 continuous fabric, and then they're cut out of
10 that fabric; is that right?

11 MR. SEBBA: Objection. Form.

12 THE WITNESS: Yes.

13 BY MR. LINDSAY:

14 Q. Okay. And is that because you believe
15 Orei's shoe parts fit together -- can fit
16 together in one continuous pattern?

17 A. Orei --

18 MR. SEBBA: Objection. Form.

19 THE WITNESS: Orei tells us that they
20 formed one continuous knitted fabric. So to be
21 one continuous knitted fabric, they must have
22 been one continuous knitted fabric, no gaps

1 between them.

2 And then Orei also tells us that paper
3 patterns are used to cut them out.

4 BY MR. LINDSAY:

5 Q. Did you -- looking at the figures, did
6 you test that theory to see if Orei's shoe parts
7 actually can fit together?

8 A. I'm not sure what you mean by that.

9 Q. Well, if I understand, your theory is
10 that those shapes in figure 1, for example, all
11 fit together with no material in between.

12 A. It appears that way. I mean, I do
13 understand that patent drawings are not meant to
14 be to scale, but they do appear to have the same
15 curvatures there, and the shapes of those little
16 strips make sense when they're put together.

17 Q. So did you -- I guess what I'm asking is,
18 did you test the theory by seeing if Orei's shoe
19 parts actually fit together other than having,
20 you know, one side that has a common contour?

21 A. Well, that's difficult because I don't
22 know what kind of tension the knit fabric was on

1 at the time it was knit, which is probably why --
2 I struggled for a long time trying to understand
3 why he used these paper patterns to cut this one
4 continuous fabric. And then I realized that,
5 perhaps during knitted, it was in a distorted
6 form, and then when it was -- so that it could
7 become a three-dimensional shoe later. So in the
8 distorted form, it was cut. Then it snapped back
9 into a relaxed state, and then it could be formed
10 into a three-dimensional shape.

11 Q. And does Orei talk about that at all?

12 A. No. Orei just tells us that he's going
13 to cut these with paper patterns and doesn't
14 explain why.

15 MR. SEBBA: We've been going about an
16 hour. Is now a good time for a break? Or a
17 little over an hour, I guess.

18 MR. LINDSAY: Actually, we're pretty
19 close -- I'm pretty close.

20 MR. SEBBA: Oh, okay.

21 MR. LINDSAY: So if you'll just indulge
22 me a few more minutes.

1 THE WITNESS: That's fine.

2 MR. SEBBA: Okay.

3 BY MR. LINDSAY:

4 Q. So what is your understanding of what it
5 means to cut with a paper pattern?

6 A. My understanding is, much like a tailor
7 or a seamstress would do, paper patterns are
8 attached to the knitted fabric and then cut along
9 the borders of those paper patterns.

10 Q. Okay. So going back, I just -- I guess I
11 just wanted to understand what you -- what went
12 into your theory about Orei's shoe parts being
13 continuous and then cut out from each other.

14 Is it fair to say that you didn't try to
15 fit Orei's shoe parts together to see if they
16 really fit?

17 MR. SEBBA: Objection to form.

18 THE WITNESS: Correct. Because I don't
19 know what the original shape of the fabric was
20 before these things were cut.

21 BY MR. LINDSAY:

22 Q. So you're saying we can't infer anything

1 from the shape of the patterns from the
2 figures -- figure 1 and figure 5, for example?

3 A. Well, we can infer some things. Like the
4 shape of that contour line appears to be the
5 same. But what I don't know is, for example,
6 that top toe portion, when it was knitted, was it
7 under tension and it was actually spread apart so
8 that the second section would be easier to knit,
9 and then, when it was cut, it relaxed, it snapped
10 back together, for example.

11 Q. Well --

12 A. I just don't know.

13 Q. At least along the contour side, would
14 you expect that that shape didn't undergo any
15 change due to tension after it's cut out?

16 A. The curves look similar. But again, I
17 know that drawings aren't meant to be to scale.
18 So what I really went with is that the strips
19 have a curious gap in them, instead of being a
20 complete rectangle in each part, there's -- not
21 rectangle, but a quadrilateral -- there's parts
22 of quadrilateral in the top and then another part

1 of the quadrilateral in the bottom, which seems
2 like a poor decision to make if they were not one
3 continuous fabric to begin with.

4 And the curve of the contour seems very
5 similar.

6 Q. And the shape of those rectangles or
7 quadrilaterals, those seem to match up as well?

8 A. They do seem to match up as well. Yes.

9 Q. Would that suggest to you --

10 A. And --

11 Q. Sorry, go ahead.

12 A. And the reason I went that way is that
13 we're told it was knitted as one continuous
14 fabric. So there must not have been any gaps
15 when it was knitted.

16 Q. Right. And then -- now, in this image
17 on -- in figure 1, and I guess the same for
18 figure 5, those quadrilaterals still seem to have
19 the same shape, or at least matching shapes.

20 A. Yes.

21 Q. Okay. And I guess my only point was,
22 does that suggest that maybe the fabrics that

1 have been cut out, they don't really undergo much
2 change in shape, as a result of tensioning or
3 otherwise, because we wouldn't expect them to
4 have the same matching shapes after they're cut
5 out as they had before they were cut out?

6 A. No. Because if, as I said, maybe this
7 thing was under tension when it was knitted,
8 those contours would appear differently under the
9 tension fabric, but they still would match after
10 I cut them, even though it may be a -- contracted
11 or expanded or something. If they were the same
12 when they were under tension, they would also be
13 the same when the tension is removed, even though
14 they might be different shapes.

15 Q. Okay. So I think I understand what
16 you're saying. So you're saying that what we see
17 in figure 1 is representative of the shapes of
18 the parts after they're cut out. We don't know
19 if they were the same before they were cut out,
20 but we do know that, whatever they were, they
21 matched as well.

22 A. Yes.

1 Q. Okay. I think I get you.

2 So -- okay.

3 Do you cite to any evidence in your
4 declaration or do you have any basis to support
5 your position that Orei's shoe parts would
6 undergo any sort of tensioning change after they
7 were cut out?

8 A. No. And it's not an essential part of
9 the argument, so I did not explore that. Just
10 explaining to you why I didn't worry about how do
11 they fit together precisely as drawn in the
12 patent.

13 Q. Do you think they would fit together in a
14 continuous pattern, as shown in the drawings, if
15 you tried to make them match up?

16 MR. SEBBA: Objection. Form.

17 THE WITNESS: I'm not certain.

18 BY MR. LINDSAY:

19 Q. But you didn't -- did you try to see if
20 they would match up?

21 A. You mean like cut out the shapes and try
22 to put them back together as they're drawn in the

1 patent?

2 Q. That might be one way.

3 A. I did not do that.

4 Q. Do you think it would have been helpful
5 to your theory if you had done that and it showed
6 that they did, in fact, match and support your
7 theory?

8 MR. SEBBA: Objection. Form.

9 THE WITNESS: I think I would be
10 criticized for assuming the drawing was meant to
11 be to scale when patent drawings are not meant to
12 be to scale. So...

13 BY MR. LINDSAY:

14 Q. So -- but you're relying on the drawings'
15 scale with respect to the contour that match up.

16 So you're okay with the drawings being to
17 scale for that purpose?

18 MR. SEBBA: Objection. Form.

19 THE WITNESS: I never said they were
20 exactly the same. I said they appear to be the
21 same. And it is consistent with the idea that
22 we're going to use these paper patterns to cut

1 things and then put them back together again,
2 and consistent with figure 2.

3 BY MR. LINDSAY:

4 Q. Besides the contour that you had the blue
5 arrows to in your declaration, is there anything
6 else in the figures that supports your theory
7 that these were originally all one continuous
8 pattern and then cut out?

9 MR. SEBBA: Objection. Form.

10 THE WITNESS: Other than that, it's
11 primarily the language in the patent.

12 BY MR. LINDSAY:

13 Q. And that language is, again?

14 A. That they were formed of one continuous
15 knitted fabric.

16 Q. Okay.

17 MR. LINDSAY: Okay. We can go off the
18 record.

19 (Discussion off the record.)

20 BY MR. LINDSAY:

21 Q. Dr. Pastore, did you discuss your
22 testimony with anyone during any of our breaks

1 today?

2 A. No, I did not.

3 Q. Okay.

4 MR. LINDSAY: I have no further
5 questions.

6 MR. SEBBA: Thank you. I just have a
7 couple of questions.

8 EXAMINATION BY COUNSEL FOR PETITIONER
9 BY MR. SEBBA:

10 Q. Dr. Pastore, do you recall earlier today
11 we testified -- excuse me -- you testified about
12 Santoni?

13 A. Yes. I spoke about Santoni.

14 Q. Are you aware of anyone from Nike working
15 with Santoni before March of 2004?

16 A. No. I was speculating, but no, I'm not
17 aware of it.

18 Q. All right.

19 MR. SEBBA: No further questions.

20 MR. LINDSAY: Okay. No questions. I
21 think we're good.

22 MR. SEBBA: Excellent.

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(Whereupon at 2:01 p.m., the remote
deposition of CHRISTOPHER M.
PASTORE, Ph.D. was concluded.)

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CERTIFICATE OF NOTARY PUBLIC

I, CHRISTINA S. HOTSKO, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in stenotypy and thereafter reduced to typewriting under my direction; that said statement is a true record of the proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this statement was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



CHRISTINA S. HOTSKO
Notary Public in and for the
District of Columbia

My commission expires:
1 January 2027

1 JONATHAN M. LINDSAY, ESQUIRE

2 jlindsay@irell.com

3 March 9, 2026

4 RE: Skechers U.S.A, Inc. v. Nike, Inc.

5 3/4/2026, Christopher M Pastore , Ph.D., (#7932938).

6 The above-referenced transcript has been
7 completed by Veritext Legal Solutions and
8 review of the transcript is being handled as follows:

9 — Per CA State Code (CCP 2025.520 (a)-(e)) - Contact Veritext
10 to schedule a time to review the original transcript at
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22 Counsel - Original transcript to be released for signature
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24 — Signature Waived - Reading & Signature was waived at the
25 time of the deposition.

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4 below, notating the page and line number of the corrections.
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7 appearing counsel within the period of time determined at
8 the deposition or provided by the Federal Rules.

9
10 xx Federal R&S Not Requested - Reading & Signature was not
11 requested before the completion of the deposition.

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