UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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LULULEMON USA INC.

Petitioner,

v.

NIKE, INC.

Patent Owner.

_____

Case IPR2023-01460

Patent 9,730,484

_____

DEPOSITION OF DR. CHRISTOPHER PASTORE

APPEARING REMOTELY

August 27, 2024

10:00 a.m.

Reported by: Eileen Mulvenna, CSR/RMR/CRR/RDR

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DIGITAL EVIDENCE GROUP

1730 M Street, NW, Suite 812

Washington, D.C. 20036

(202) 232-0646

Skechers EX1020
Skechers v Nike

1 POSITION of DR. CHRISTOPHER PASTORE, a
2 witness on behalf of Nike in the above-titled
3 action, held on Tuesday, August 27, 2024, commencing
4 at approximately 10:00 a.m., before Eileen Mulvenna,
5 CSR/RMR/CRR/RDR, Certified Shorthand Reporter,
6 Registered Merit Reporter, Certified Realtime
7 Reporter, Registered Diplomate Reporter, and Notary
8 Public of the State of New York.
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1 A P P E A R A N C E S:

2

3 BEN J. EVERTON, ESQUIRE

4 Attorneys for Petitioner

5 KNOBBE MARTENS OLSON & BEAR LLP

6 2040 Main Street, 14th Floor

7 Irvine, California 92614

8 949.760.0404

9 ben.everton@knobbe.com

10

11

12 LINDSEY STAUBACH, ESQUIRE

13 Attorneys for Patent Owner

14 Arnold & Porter

15 601 Massachusetts Ave, NW

16 Washington, DC 20001-3743

17 202.942.5000

18 lindsey.staubach@arnoldporter.com

19

20 ALSO PRESENT:

21 Henry Marte, Exhibit Technician

22

Skechers EX1020
Skechers v Nike

1 I N D E X

2 WITNESS EXAMINATION BY PAGE

3

4 DR. CHRISTOPHER PASTORE

5

6 MR. EVERTON 5

7

8 E X H I B I T S

9 PAGE

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11 Exhibit 2003 Previously marked 14

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1 THE REPORTER: Good morning, everyone.
2 Counsel, before we get started, can
3 you please state your appearance and whom you
4 represent.
5 MR. EVERTON: Benjamin Everton on
6 behalf of Lululemon U.S. Inc. the petitioner
7 from Knobbe Martens Olson & Bear.
8 MS. STAUBACH: Lindsey Staubach from
9 Arnold & Porter on behalf of patent owner
10 Nike.
11 DR. CHRISTOPHER PASTORE,
12 having been duly sworn by Eileen Mulvenna,
13 a Notary Public of the State of New York,
14 was examined and testified as follows:
15 EXAMINATION
16 BY MR. EVERTON:
17 Q. Good morning.
18 A. Good morning.
19 Q. Will you please state your name for
20 the record?
21 A. Christopher Pastore.
22 Q. Do you understand that this deposition

is for the IPR relating to U.S. Patent No. 9,730,484?

A. Yes, I do.

Q. And also for the record this is IPR No. 2023-01460; is that correct?

A. I'm not sure. I'd need to look at the document. I don't remember the IPR number.

Q. So do you refer to the -- to this patent as the '484 patent?

A. Yes, I do.

Q. So is it okay during this deposition if we continue to refer to the patent as the '484 patent?

A. Yes, it is.

Q. Have you ever been deposed before?

A. I have.

Q. Approximately how many times have you been deposed?

A. Perhaps a dozen.

Q. Is there any reason why you can't give truthful and accurate testimony today?

A. No. No, there's not.

1 Q. Are you on any medication?
2 A. Yes.
3 Q. Any medication that would affect your
4 testimony today?
5 A. No.
6 Q. Are you in good health?
7 A. Yes.
8 Q. So during this deposition, please let
9 me know if you don't understand my questions,
10 otherwise, I'll assume that you understand them.
11 Does that sound okay?
12 A. That sounds okay.
13 MS. STAUBACH: Ben, at the beginning
14 here, we just want to let you know that we
15 brought in some paper copies of Dr. Pastore's
16 declaration and the prior art and the '484
17 patent in case it's helpful for him to see it
18 in front of him instead of on the screen.
19 These are all clean copies of the IPR file
20 and have no hard copies.
21 MR. EVERTON: Okay.
22

1 BY MR. EVERTON:
2 Q. Throughout the deposition, let me know
3 if need to take a break, otherwise, I think we can
4 plan to take a break every hour or so.
5 Does that sound good?
6 A. That sounds good.
7 Q. What did you do to prepare for this
8 deposition?
9 A. I reviewed the related documents
10 including my declaration and, yeah. Review of
11 materials.
12 Q. Did you meet with anybody to prepare?
13 A. Yes.
14 Q. Who did you meet with?
15 A. Lindsey Staubach.
16 Q. For about how long did you meet with
17 your attorneys?
18 A. Golly, I suppose maybe an hour or two.
19 Q. Did you meet with anybody else other
20 than Lindsey?
21 A. Not from preparation for this
22 deposition, no.

1 Q. Did you speak with anyone else about
2 this deposition?
3 A. No.
4 Q. Did you speak with anyone from Nike
5 about the deposition?
6 A. No, I did not.
7 Q. You mentioned that you reviewed your
8 declaration in preparation for the deposition. Did
9 you review any other documents?
10 A. Yes. I also reviewed '484 patent and
11 some of the alleged prior art.
12 Q. Are you aware that Nike has sued
13 Lululemon alleging infringement of this '484 patent
14 in the U.S. district court?
15 A. Yes, I am.
16 Q. Have you been retained by Nike to be
17 an expert in that case?
18 MS. STAUBACH: Objection to form.
19 THE WITNESS: Yes, I have.
20 BY MR. EVERTON:
21 Q. Okay. So in this IPR for the '484
22 patent, you've been retained by Nike to serve as an

1 expert witness and you have submitted an expert
2 declaration; correct?
3 A. Correct.
4 MS. STAUBACH: Objection to form.
5 THE WITNESS: Correct.
6 BY MR. EVERTON:
7 Q. Are there any other matters that
8 you've been retained by Nike to be an expert in?
9 A. Yes.
10 Q. What are those other matters?
11 A. Some related patent infringement
12 cases.
13 Q. So are those cases that involve
14 parties other than Lululemon?
15 A. Yes.
16 Q. And who are the other parties that
17 Nike has sued in cases that you're involved in as an
18 expert?
19 MS. STAUBACH: Objection, privilege.
20 I'm going to counsel Dr. Pastore not to
21 answer that.
22 THE WITNESS: I'm not going to answer

1 that.
2 BY MR. EVERTON:
3 Q. In your experience, have you ever
4 worked with shoe uppers?
5 A. Yes.
6 Q. When was that in your background?
7 A. In the 1990s, I was engaged by Adidas
8 to develop some textile shoe uppers for them.
9 Q. Did you design shoe uppers for Adidas
10 at that time?
11 A. Yes.
12 Q. When you say "textile shoe uppers,"
13 what materials were these uppers made from?
14 A. We were exploring primarily cotton and
15 polyester fibers.
16 Q. Were these uppers that you did for
17 Adidas knit?
18 A. No, we used a braiding process.
19 Q. What does that mean?
20 A. Braiding is a textile operation where
21 yarns are intertwined with each other to create a
22 fabric structure.

1 Q. How does that differ from knitting?
2 A. In the knitting process, yarns are
3 inter-looped with each other using a knitting
4 machine to create the knitted fabric.
5 Q. Other than those uppers that you
6 designed for Adidas in the 1990s, do you have any
7 other experience with shoe uppers?
8 A. There is, of course, the work I'm
9 doing for Nike now, but prior to that, no.
10 Q. And the work that you're doing for
11 Nike now, does that involve any designing of shoe
12 uppers?
13 A. No, it does not.
14 Q. In your experience, have you worked
15 with flat knitting machines?
16 A. Yes, I have.
17 Q. Have you ever flat knit a shoe upper?
18 A. No, I have not.
19 Q. What flat knitting machines have you
20 worked with and when?
21 A. I have worked with a range of flat
22 knitting machines from some very old manual devices

1 through Shima Seiki machines and Stoll machines. I
2 guess the first time I worked with flat knitting
3 machines would have been in the early 1980s.
4 Q. Have you had any experience with flat
5 knitting three-dimensional structures?
6 A. What do you mean by "three-dimensional
7 structures"?
8 Q. So in the context of this patent, the
9 '484 patent, it discusses three-dimensional
10 structures; is that correct?
11 A. They describe a knitted fabric that
12 has flat regions and a three-dimensional structure
13 adjoining those two flat regions, yes.
14 Q. When I'm talking about
15 three-dimensional structures, I'm talking in the
16 context of the '484 patent that describes those
17 three-dimensional structures. Do you understand
18 that?
19 A. Yes. I have never been involved in a
20 project that knits three-dimensional structure as it
21 comes off of the knitting machine.
22 Q. What do you mean by that a

1 three-dimensional structure as it comes off the
2 knitting machine?
3 A. I'm trying to tie it within the
4 context of the patent as you requested.
5 Q. What does that mean, three-dimensional
6 structure that comes off the flat knitting machine?
7 A. That means the three-dimensional
8 structure as part of this component is present while
9 the fabric is still on the knitting machine before
10 any further processing.
11 Q. So if we can turn to -- and I'll show
12 you Exhibit 2003. This is your declaration in this
13 IPR. We'll show it on the screen.
14 (Exhibit 2003, Previously marked.)
15 THE WITNESS: I also have a paper copy
16 in front of me.
17 BY MR. EVERTON:
18 Q. So is Exhibit 2003 a copy of your
19 declaration in this IPR proceeding for the '484
20 patent?
21 A. It appears to be.
22 Q. Sitting here today, are you aware of

1 any corrections that need to be made to your
2 declaration?
3 A. No, I'm not.
4 Q. If we turn to paragraph 12 of your
5 declaration, you'll see a heading there "Legal
6 Standards."
7 Do you see that?
8 A. Yes.
9 Q. So does your declaration here for the
10 '484 patent contain all the legal principles that
11 you considered for your analysis for the '484
12 patent?
13 A. Yes.
14 Q. And preparing your declaration for the
15 '484 patent, did you rely on any legal principles
16 that are not contained in your declaration?
17 MS. STAUBACH: Objection, form.
18 THE WITNESS: No, I do not.
19 BY MR. EVERTON:
20 Q. Now, turning to paragraph 18, do you
21 see about paragraph 18 where you say "level of
22 ordinary skill in the art"?

1 A. Yes.
2 Q. Does your declaration set forth your
3 entire opinion regarding the level of ordinary skill
4 in the art for the '484 patent?
5 A. Yes, as it says for the purpose of
6 this declaration I applied Lululemon's definition of
7 of person of ordinary skill in the art.
8 Q. Do you agree with Lululemon's level of
9 ordinary skill in the art?
10 A. I have no objections to it in the
11 context of this declaration.
12 Q. And you haven't proposed any different
13 level of ordinary skill in the art; correct?
14 A. Correct.
15 Q. Do you believe that you were a person
16 of skill in the art as of November 2006?
17 A. Yes, probably beyond ordinary skill
18 because of my experience and expertise.
19 Q. Okay. But you were at least a person
20 of ordinary skill in the art as of November 2006; is
21 that correct?
22 A. Yes, it is.

1 Q. Why did you believe that you are at
2 least at that level of a person of ordinary skill in
3 November of 2006?
4 A. For one thing, my job focused on
5 textile engineering, and I -- by 2006, I had had at
6 least 18 years working with textiles postgraduation
7 for many different applications including apparel
8 and footwear.
9 Q. By that time, November 2006, had you
10 done any work related to shoes other than the work
11 that you mentioned for Adidas in the 1990s?
12 A. I believe I did a couple of consulting
13 projects, small consulting projects involving shoes.
14 Q. Can you tell me any other details
15 regarding those consulting projects related to
16 shoes?
17 A. I remember one had something to do
18 with Speedo slippers and the wear of the fabric
19 upper. Another had to do with a separation of the
20 sole of the shoe from the upper of the shoe.
21 Q. Do you remember the company for that
22 second one that you mentioned?

1 A. No, I don't remember the company as I
2 sit here.
3 Q. When designing a shoe upper in the
4 November 2006 time period, is there a particular
5 starting point a person of skill would have used to
6 start their design?
7 MS. STAUBACH: Objection, form.
8 THE WITNESS: Designing a shoe upper
9 depends very much on the type of shoe and the
10 desired performance characteristics of the
11 shoe. So the starting point would be what
12 are the performance characteristics and
13 design characteristics desire for that upper.
14 BY MR. EVERTON:
15 Q. Would a person of skill at that time
16 in November 2006 have looked at the available other
17 designs for shoe uppers?
18 MS. STAUBACH: Objection, form.
19 THE WITNESS: Yes.
20 BY MR. EVERTON:
21 Q. In November 2006, were there knitted
22 shoe uppers?

1 A. Yes.
2 Q. And how were those knitted shoe uppers
3 made around that time frame of November 2006?
4 MS. STAUBACH: Objection, form.
5 THE WITNESS: Typically a piece of
6 knitted fabric would be cut from a large roll
7 of fabric and then stretched and conformed to
8 the shape of the upper.
9 BY MR. EVERTON:
10 Q. And what types of materials were used
11 for the knitting of those shoe uppers by
12 November 2006?
13 A. It would typically be cotton,
14 polyester and nylon. Perhaps polypropylene.
15 Q. Do you know which companies were using
16 knitted shoe uppers by November 2006?
17 A. As I sit here, I don't recall which
18 brands used which types of materials.
19 Q. And by November 2006, were there shoe
20 uppers that were made by a flat knitting process?
21 A. Flat knitting meaning flat weft
22 knitting in the context of the patent I suppose. I

1 believe that that would have been a standard
2 approach.
3 Q. Are you aware of which companies were
4 using flat knitting as a standard approach for
5 making shoe uppers by November 2006?
6 MS. STAUBACH: Objection, form.
7 THE WITNESS: No, I don't recall as I
8 sit here.
9 BY MR. EVERTON:
10 Q. Do you know whether Nike was making
11 shoe uppers by a flat knitting process by
12 November 2006?
13 A. I'm not certain. I don't remember the
14 specifics of what shoes were produced in which year
15 by Nike.
16 Q. Would a person of ordinary skill in
17 the art be familiar with flat knitting in
18 November 2006?
19 A. Yes.
20 Q. What would a person of ordinary skill
21 in the art know about flat knitting in
22 November 2006?

1 MS. STAUBACH: Objection, form.
2 THE WITNESS: A person of ordinary
3 skill in the art would be familiar with
4 circular weft knitting, flat weft knitting,
5 flat warp knitting because these are the
6 standard equipment used to produce knitted
7 materials.
8 BY MR. EVERTON:
9 Q. Would the person of ordinary skill be
10 familiar with any other type of flat knitting other
11 than the ones you've listed?
12 MS. STAUBACH: Objection, form.
13 THE WITNESS: I don't think so, no.
14 BY MR. EVERTON:
15 Q. Would a person of ordinary skill in
16 the art have experience in flat knitting
17 three-dimensional structures by November 2006?
18 A. And we're using the same definition of
19 three-dimensional structures as described in the
20 '484 patent. No, I would not expect they would.
21 Q. So in November 2006, a person of
22 ordinary skill would not have experience in flat

1 knitting three-dimensional structures; is that
2 correct?
3 A. That is correct.
4 Q. And you said that that's in the
5 context of three-dimensional structures in the '484
6 patent. So apart from that, would a person of
7 ordinary skill in the art have experience in flat
8 knitting any type of three-dimensional structure in
9 November 2006?
10 MS. STAUBACH: Objection, form.
11 THE WITNESS: The challenge is the
12 phrase "three-dimensional structures" can be
13 interpreted in many different ways. We could
14 even consider a piece of paper to be a
15 three-dimensional structure because it
16 literally has thickness; but, obviously, in
17 the context of the patent that wouldn't be
18 considered a three-dimensional structure.
19 So, yes, there were things called
20 three-dimensional knitted fabrics that were
21 very thick knitted fabrics but did not have
22 the same sense of a side with protruding

1 three-dimensional structure with another side
2 associated with it.
3 BY MR. EVERTON:
4 Q. Would a person of ordinary skill in
5 the art in November 2006 be aware of machines that
6 were able to flat knit three-dimensional structures?
7 A. Do you mean three-dimensional
8 structures in the context of the '484 patent?
9 Q. Yes.
10 A. They would have been familiar with the
11 machines but not in the use of those machines to
12 make such three-dimensional structures.
13 Q. And what are those machines, what are
14 those machines in November 2006 that have the
15 capability of making these flat knit
16 three-dimensional structures?
17 MS. STAUBACH: Objection, form.
18 THE WITNESS: Most of the -- at that
19 time modern computer-controlled weft knitting
20 machines were -- had the technological
21 capability to produce these structures.
22

1 BY MR. EVERTON:
2 Q. So are you saying that a person of
3 ordinary skill in the art, although they would have
4 been aware of these machines with the capabilities
5 to make these flat knit 3D structures, are you
6 saying that they just would not have known about
7 that capability to make three-dimensional
8 structures?
9 MS. STAUBACH: Objection, form.
10 THE WITNESS: I'm saying they would
11 not have known that it was possible to use
12 the technological capability to create these
13 three-dimensional structures associated with
14 the '484 patent.
15 BY MR. EVERTON:
16 Q. Prior to November 2006, it was
17 possible to use those known machines to flat knit
18 three-dimensional structures; is that correct?
19 MS. STAUBACH: Objection, form.
20 THE WITNESS: Yes, the tool existed,
21 but there would have been no knowledge of how
22 to use that tool.

1 BY MR. EVERTON:
2 Q. So are you saying that prior to
3 November 2006, no one had used the existing machines
4 to flat knit three-dimensional structures?
5 MS. STAUBACH: Objection, form.
6 THE WITNESS: I'm not saying that
7 nobody did. I'm saying that a person of
8 ordinary skill in the art would not know how
9 to do that.
10 BY MR. EVERTON:
11 Q. So maybe other specialists knew how to
12 use those machines to create three-dimensional
13 structures, but that would not have been widely
14 known to a person of ordinary skill in the art; is
15 that correct?
16 A. Correct. I imagine the patent holders
17 had achieved this prior to submitting the patent,
18 for example.
19 Q. Are you aware of anyone else who had
20 achieved this and created these three-dimensional
21 structures in a flat knitting process prior to
22 November 2006?

1 A. No, I'm not.
2 Q. I think you may have mentioned it, but
3 can you tell me the specific flat knitting machines
4 that a person of skill would have been aware of in
5 November 2006?
6 MS. STAUBACH: Objection, form.
7 THE WITNESS: Not by model numbers as
8 I sit here, but certainly a Stoll, S-T-O-L-L,
9 and Shima Seiki S-H-I-M-A S-E-I-K-I had
10 equipment that was capable of achieving this
11 goal.
12 BY MR. EVERTON:
13 Q. So by November 2006, both Stoll and
14 Shima Seiki had flat knitting machines that were
15 capable of forming flat knit structures that had
16 three-dimensional structures; is that correct?
17 A. Yes, and as described in the context
18 of the '484 patent.
19 Q. Are you aware of any other machines
20 that have this capability other than the Stoll and
21 the Shima Seiki machines?
22 A. Not as I sit here, no.

1 Q. Have you -- prior to November 2006,
2 did you have any experience with those machines that
3 had these capabilities?
4 A. Yes, I did.
5 Q. And when was the earliest that you had
6 experience with one of these machines that had the
7 three-dimensional capability?
8 A. Probably the first time I worked with
9 one of these at the time advanced machines would
10 have been in the late 1990s.
11 Q. So the Stoll and the Shima Seiki
12 machines that had these capabilities to flat knit
13 three-dimensional structures were available since
14 the 1990s; is that correct?
15 A. Yes.
16 Q. And what types of three-dimensional
17 structures were being made on these Stoll and Shima
18 Seiki machines prior to November 2006?
19 MS. STAUBACH: Objection, foundation.
20 THE WITNESS: This goes back to what
21 you mean by three-dimensional structures.
22 Without a clear understanding of that I'm not

1 sure I can answer your question.
2 BY MR. EVERTON:
3 Q. So what is your understanding of
4 three-dimensional structure in the context of the
5 '484 patent?
6 A. In the context of the '484 patent, I
7 understand it to be there's a side, there's a dome
8 three-dimensional structure that comes out above the
9 plane, there's another side associated with it. I
10 wasn't sure if you were using that same term in your
11 question.
12 Q. And so is it your opinion that in the
13 '484 patent the only three-dimensional structure
14 disclosed is one that has a side and a side and then
15 a protruding three-dimensional structure between
16 them?
17 A. I understand that the
18 three-dimensional structure helps us understand what
19 the claim's object is. The three-dimensional
20 structure's not the claim. That's an element of
21 what's claimed.
22 Q. Right. So I'm asking you in the

1 patent, context of the '484 patent, what are
2 three-dimensional structures and whether that is
3 limited to the single embodiment domed
4 three-dimensional structure with flat sides on
5 either side?
6 MS. STAUBACH: Objection, legal
7 conclusion.
8 THE WITNESS: I think I lost track of
9 the question at this point. If you wouldn't
10 mind repeating.
11 BY MR. EVERTON:
12 Q. So maybe it would be helpful if I ask
13 it this way: So in the context of the '484 patent,
14 what is a three-dimensional structure?
15 A. Three-dimensional structure is a
16 portion of the knitted material that extends above
17 the plane of the remainder of the object.
18 Q. Okay. And we were previously talking
19 about the machines that were available prior to
20 November 2006 that had capability of flat knitting
21 three-dimensional structures.
22 Do you recall that?

1 A. Yes.
2 Q. My question for you now is what were
3 the three-dimensional structures that were being
4 made with those machines prior to November 2006?
5 MS. STAUBACH: Objection, form.
6 THE WITNESS: I had never seen anybody
7 produce a three-dimensional structure as in
8 the context of the '484 patent prior to the
9 patent being released.
10 BY MR. EVERTON:
11 Q. But you have an understanding that
12 these flat knitting machines were capable of
13 creating three-dimensional structures prior to
14 November 2006; correct?
15 A. Correct.
16 Q. How do you know that? How do you know
17 that these machines were capable of creating
18 three-dimensional structures prior to November 2006?
19 A. Because I understand what those
20 machines are. Many of them are still in operation
21 today. So I understand those machines and how they
22 work. And they could realize the design of the '484

1 patent even before it was invented.
2 Q. But prior to November 2006, you had
3 not seen any three-dimensional structures that had
4 come from a flat knitting machine; is that correct?
5 A. No three-dimensional structures in the
6 context of the '484 patent, no, I have not seen any.
7 Q. Now, if we go to -- back to your
8 declaration, Exhibit 2003, paragraph 13. Does this
9 paragraph 13 set forth the legal standards that you
10 used for analyzing claim construction in this IPR?
11 A. That is one element of what I
12 understand about the aspects of the law that are
13 relevant to my opinion, yes.
14 Q. So in forming your opinions on claim
15 construction for the '484 patent, you applied the
16 ordinary and customary meaning as understood by a
17 person of ordinary skill; is that correct?
18 A. Yes. And, of course, the prosecution
19 history pertaining to the patent.
20 Q. Now, if we turn to paragraph 28 of
21 your declaration, if we -- if you could read the
22 first sentence there, paragraph 28, for the record?

1 A. Do you mean read it aloud?
2 Q. Yes.
3 A. "I understand from counsel that the
4 Board adopted the parties' construction that the
5 'domed three-dimensional structure' of the
6 'flat-knitted element,' recited in independent
7 claims 1, 10 and 11 of the '484 patent must be
8 formed during a flat knitting process and not
9 afterward."
10 Q. So is this the construction that you
11 have adopted for your analysis in your declaration?
12 A. Yes.
13 Q. What does that mean, the part that
14 says "during a flat knitting process"?
15 A. It means that the domed
16 three-dimensional structure of the flat knitted
17 element associated with Claims 1, 10 and 11 has to
18 happen during the knitting process on the machine,
19 not by any secondary operations when fabric has been
20 removed from the machine.
21 Q. And to give some background or context
22 here, does flat knitting always involve a flat

1 knitting machine of some sort?
2 A. Yes.
3 Q. But you mentioned earlier that I think
4 there were maybe automatic machines versus other
5 older machines --
6 A. I mentioned --
7 MS. STAUBACH: Objection to form.
8 THE WITNESS: I mentioned computer
9 controlled, but those are computer controlled
10 flat knitting machines.
11 BY MR. EVERTON:
12 Q. And what other type of flat knitting
13 machines are there other than computer controlled?
14 A. There are manually controlled flat
15 knitting machines.
16 Q. That's the one that I recalled. So
17 there's manual and then the computer controlled. So
18 in your experience, how does the flat knitting
19 machine form the three-dimensional structure during
20 the flat knitting process?
21 MS. STAUBACH: Objection, form.
22 THE WITNESS: With the proper design

1 which is, of course, the key to all of this,
2 the way that the loops are formed during the
3 knitting process will result in the
4 three-dimensional structure revealing itself
5 as knitting occurs.
6 BY MR. EVERTON:
7 Q. What do you mean by the
8 three-dimensional structure revealing itself as
9 knitting occurs?
10 A. I mean that in the knitting process,
11 we have cones of yarn at the top of the machine and
12 we have fabric coming out of the bottom. And as the
13 fabric is being produced, we begin to see what it
14 is. And that's when the three-dimensionality is
15 apparent, when it actually is turned into a fabric
16 as opposed to when it's just yarns in a design.
17 Q. So are there different ways a flat
18 knitting machine can form the three-dimensional
19 structure?
20 MS. STAUBACH: Objection; form.
21 THE WITNESS: Within the context of
22 the '484 patent, it's clear how it is

1 achieved.
2 BY MR. EVERTON:
3 Q. And are there different ways then for
4 achieving that or are you saying that there's just a
5 single clear way that the '484 patent discloses for
6 achieving the three-dimensional structure?
7 MS. STAUBACH: Objection, form.
8 THE WITNESS: With the '484 patent
9 disclosures, there are different kinds of
10 three-dimensional structures, different
11 shapes, different colors that could be
12 achieved. So I suppose, yes, there are more
13 than one way to achieve the three-dimensional
14 structure with the teachings of the '484
15 patent.
16 BY MR. EVERTON:
17 Q. And you mentioned that the
18 three-dimensional structure is formed by the loops
19 in the machine. Can you explain that in more detail
20 how the loops and the machine is --
21 MS. STAUBACH: Objection.
22

BY MR. EVERTON:

Q. -- is able to form the 3D structure?

MS. STAUBACH: Objection, form.

THE WITNESS: Yes, in the patent -- I want to get the correct language from the '484 patent.

I thought I had it in my declaration, the description -- and it's not jumping to my eye -- of the method that is used in '484 patent; but in effect, it describes it by changing the yarns and changing the loop structure, we can generate the three-dimensional structure.

BY MR. EVERTON:

Q. So under this construction that you've adopted for the flat knitting process and during the flat knitting process, is the flat knitting process limited to what happens in the machine?

MS. STAUBACH: Objection, form.

THE WITNESS: The flat knitting process is where the yarn is converted into fabric. So that is the flat knitting

1 process. Yarn comes in one side and fabric
2 comes out the other.
3 BY MR. EVERTON:
4 Q. Okay. But is that then limited to
5 what happens in the machine?
6 MS. STAUBACH: Objection, form.
7 THE WITNESS: I don't think I
8 understand the question.
9 BY MR. EVERTON:
10 Q. So you're saying that the flat
11 knitting process is the transition from yarn to
12 fabric but I'm just trying to get more detail on
13 that. Is that all done by the machine or are there
14 other steps that are not done by the machine?
15 A. The flat knitting process is all done
16 by the flat knitting machine.
17 Q. So the three-dimensional structure
18 must be formed by the machine; is that correct?
19 A. Yes.
20 Q. Does the flat knitting machine knit in
21 three dimensions?
22 MS. STAUBACH: Objection, form.

1 THE WITNESS: I'm not exactly sure
2 what you mean. Of course, the machine is a
3 three-dimensional object, but I suspect you
4 might mean three-dimensional in some
5 different sense.
6 BY MR. EVERTON:
7 Q. Yes.
8 So does the machine, the flat knitting
9 machine, knit a two-dimensional fabric that then
10 turns into a 3D structure or does the flat knitting
11 machine actually knit a 3D structure in the machine?
12 MS. STAUBACH: Objection, form.
13 THE WITNESS: The patent teaches us
14 that it is possible to use this flat knitting
15 machine to create the three-dimensional
16 structure.
17 BY MR. EVERTON:
18 Q. Right. And my question is, how does
19 the flat knitting machine create that
20 three-dimensional structure? Is it by first
21 creating a flat knit fabric or by creating the
22 structure itself three-dimensionally in the machine?

1 A. The three-dimensional structure is
2 what comes out of the knitting machine. There's no
3 additional operations necessary to get there.
4 Q. So is it like a 3D printer? Does the
5 flat knitting machine knit upward and downward to
6 create the 3D structures in the machine?
7 MS. STAUBACH: Objection to form.
8 THE WITNESS: No.
9 BY MR. EVERTON:
10 Q. So is the knitting within the flat
11 knitting machine two-dimensional in it knits a flat
12 fabric?
13 MS. STAUBACH: Objection, form.
14 THE WITNESS: It can be used that way,
15 but that's not what the '484 patent's
16 teaching.
17 BY MR. EVERTON:
18 Q. So how does the -- so how does the
19 '484 patent teachings differ from what I just
20 explained, knitting a two-dimensional fabric inside
21 the machine?
22 A. Knitting a planar simple

1 two-dimensional fabric is what the machines are
2 typically used for, 99 percent of all operations
3 seen today.
4 What the patent teaches us is that by
5 selectively modifying the yarns and the loop
6 structure, we can have the knitting machine produce
7 a three-dimensional structure. Maybe trying to
8 think where the -- our mutual confusion seems to be
9 coming into play here.
10 The knitting machine in effect -- if
11 we're going to be [inaudible] here and say that the
12 fabric is two-dimensional, of course, it's
13 three-dimensional -- it's called two-dimensional
14 because it's primarily planar.
15 The knitting machine produces
16 primarily a linear element because it just runs a
17 row of loops and then those loops are lowered from
18 the machine at which point they relax into their
19 shape. And it's as soon as they're released from
20 the needle before they're removed from the machine
21 that the three-dimensional structure appear.
22 Q. Okay. And that's what I was trying to

1 get at, was whether or not the three-dimensional
2 structure appears while the knitting is inside the
3 machine and being knit as opposed to as the fabric
4 comes out of the machine?
5 A. Well, that's --
6 MS. STAUBACH: Objection, form.
7 THE WITNESS: That's all part of the
8 knitting process. The knitting machine is
9 not just knitting needle. It's the feeders,
10 it's the tension there, it's the take-up
11 system, all of this is part of flat knitting
12 process.
13 BY MR. EVERTON:
14 Q. So inside the knitting machine, the
15 fabric is planar, but as that fabric comes out of
16 the flat knitting machine, it can assume a 3D
17 structure; is that how the process works?
18 MS. STAUBACH: Objection, form.
19 THE WITNESS: No, no. When we're
20 following the patent -- of course, the sides
21 are planar but the domed three-dimensional
22 structure is a domed three-dimensional

1 structure while it's still inside the
2 knitting machine.
3 BY MR. EVERTON:
4 Q. Okay. And so that's what this claim
5 limitation is requiring when it says during the flat
6 knitting process it's requiring that that domed
7 three-dimensional structure exists in its
8 three-dimensional shape within the flat knitting
9 machine; correct?
10 A. During the flat knitting process, yes.
11 Q. So that's different from a situation
12 where maybe the flat knitting machine knits a flat
13 fabric that has tension in it so that when it comes
14 out of the flat knitting machine, at that point it
15 assumes a three-dimensional structure; correct?
16 A. Certainly different than something
17 where I take the fabric from the flat knitting
18 machine and then I deform it into a shape.
19 Q. Right. But I'm talking about is there
20 a situation where within the flat knitting machine
21 the fabric can be flat knit in a way with the loops
22 such that when it comes out of the flat knitting

1 machine, it by itself assumes a three-dimensional
2 shape?
3 A. So you're proposing something that
4 does not have a three-dimensional shape in the
5 machine, but with no external forces, achieves a
6 three-dimensional shape outside of the machine?
7 Q. Yes.
8 A. I'm not familiar with any such type of
9 knitting operation.
10 Q. Okay. And that -- that would not be
11 covered by this claim limitation that requires the
12 three-dimensional structure to be formed during the
13 flat knitting process; correct?
14 A. As I understand your proposal, no.
15 Q. If we can go to paragraph 7 of your
16 declaration. The very last sentence there, you say,
17 "I have a broad range of experience and worked in
18 warp and weft knitting, computer modelling of
19 textile structures, defects in fabrics, mechanical
20 properties of textile, 4D textiles, structure and
21 textile composites, and three-dimensional weaving."
22 Is the three-dimensional weaving the

1 same as flat knitting three-dimensional structures?
2 A. No.
3 Q. What is the difference?
4 A. In this context, three-dimensional
5 weaving refers to creating woven fabrics that have
6 substantial thickness that may have complex
7 geometries to them, but primarily the substantial
8 thickness is the key element to three-dimensional
9 weaving.
10 Q. So they're entirely different
11 processes, the three-dimensional weaving and the
12 flat knitting of three-dimensional structures;
13 right?
14 A. Yes.
15 Q. So we've been going about an hour.
16 Would it be okay to take a quick break?
17 MS. STAUBACH: Sounds good.
18 THE WITNESS: Fine with me.
19 BY MR. EVERTON:
20 Q. So maybe meet back in ten minutes. Is
21 that okay?
22 MS. STAUBACH: That's --

1 THE WITNESS: Yes.
2 THE REPORTER: We're off the record.
3 (The time is 10:52 a.m.)
4 (Recess from the record.)
5 THE REPORTER: We are back on the
6 record.
7 (The time is 11:05 a.m.)
8 BY MR. EVERTON:
9 Q. If we can now turn to paragraph 26 of
10 your declaration, Exhibit 2003. So in this
11 paragraph 26, you say, "An embodiment of an upper
12 having a knitted element with a 'three-dimensional
13 structure formed through a flat knitting process' is
14 shown below in Figure 10A."
15 Do you see that?
16 A. Yes.
17 Q. So this is the embodiment in the '484
18 patent of Figures 10A and 10B; is that correct?
19 A. Yes.
20 Q. Do these figures illustrate the domed
21 three-dimensional structure of the '484 patent?
22 MS. STAUBACH: Objection, form.

1 THE WITNESS: Yes.
2 BY MR. EVERTON:
3 Q. So is this structure shown in
4 Figure 10A formed during a flat knitting process?
5 A. Yes, it's described as a
6 three-dimensional structure formed through a flat
7 knitting process.
8 Q. Can you walk me through that process?
9 What is the first step in that flat knitting process
10 to achieve this upper shown in Figure 10A?
11 A. The first step would be the design of
12 the object primarily focusing on how to selectively
13 place multiple different yarns and/or stitch
14 patterns in multiple different locations in the
15 structure during the process. Once that design has
16 been achieved, then we realize it during the flat
17 knitting process. We change the yarns, we change
18 the stitch patterns as necessary to allow this domed
19 shape to form during knitting.
20 Q. And so walk me through -- how does the
21 machine achieve this three-dimensional dome shape?
22 MS. STAUBACH: Objection, form.

1 THE WITNESS: The machine doesn't
2 achieve the shape. The knit does by having
3 different size yarns and different stitch
4 patterns in different areas, the knit will
5 naturally take on this domed
6 three-dimensional structure with the
7 adjoining sides.
8 BY MR. EVERTON:
9 Q. So as the machine is doing the flat
10 knitting process, how does it knit those portions
11 that are shown as the domed three-dimensional
12 structure in the center of the upper?
13 MS. STAUBACH: Objection, form.
14 THE WITNESS: Well, it would depend on
15 the specific design that the designer is
16 using to get this part. There would be
17 different yarns or knit structures in
18 different regions of the knitted fabric and
19 the knitting machine will realize that design
20 plane. It will apply the correct yarns to
21 the correct regions and it will apply the
22 correct stitch patterns to the correct

1 locations, and when that occurs, the fabric
2 will take on this form of its own. The
3 knitting machine is not forming the
4 three-dimensionality. The knit design is
5 creating the three-dimensionality.
6 BY MR. EVERTON:
7 Q. And a person of ordinary skill in the
8 art would have known how to program the machine and
9 select the yarns to achieve this type of a
10 three-dimensional structure as shown in Figure 10A?
11 A. I'm not aware of anybody having come
12 up with this idea to create this three-dimensional
13 structure dome structure before. Without the idea,
14 you would not know how to achieve it.
15 Q. So a person of skill in the art in
16 November 2006 would not have known how to program
17 the flat knitting machine to achieve a
18 three-dimensional dome structure like this?
19 MS. STAUBACH: Objection to form.
20 THE WITNESS: Correct.
21 BY MR. EVERTON:
22 Q. So looking at Figure 10A here and the

1 shape, what does this -- so first of all, is this
2 the shape that comes off of the flat knitting
3 machine as shown in Figure 10A?
4 MS. STAUBACH: Objection, form.
5 THE WITNESS: It appears to be the way
6 that's described. This is the
7 three-dimensional structure form for a flat
8 knitting process., obviously this is an
9 embodiment, but, yes, it appears to be.
10 BY MR. EVERTON:
11 Q. How does it look when it comes off of
12 the machine? Does it look like this as shown in
13 Figure 10A as it comes off of the flat knitting
14 machine?
15 A. Obviously, this is a highly idealized
16 illustration for the purposes of communicating the
17 different elements of the object; but generally
18 speaking, you could make something that looks very
19 much like this.
20 Q. So when it comes off of the machine,
21 it's not flattened, it already has its
22 three-dimensional shape with the domed portion in

1 the center; is that correct?
2 A. Correct, that's the intent of the
3 patent.
4 Q. So within the flat knitting machine,
5 does that three-dimensional dome structure already
6 exist in its three-dimensional shape?
7 MS. STAUBACH: Objection, form.
8 THE WITNESS: Yes, there will be a
9 piece of fabric that looks something like
10 this illustration inside the knitting machine
11 before you take it out.
12 BY MR. EVERTON:
13 Q. So as it is being knit inside the flat
14 knitting machine, the upper already has the 3D shape
15 shown in Figure 10A; is that correct?
16 MS. STAUBACH: Objection, form.
17 THE WITNESS: Yeah, I'm not entirely
18 sure what you mean by as it's being knit.
19 It's knitted one course at a time, but this
20 three-dimensional shape will be what's inside
21 the knitting machine before it's taken out.
22

1 BY MR. EVERTON:
2 Q. So before it comes off of the knitting
3 machine, it will already have this three-dimensional
4 shape with the domed portion protruding upward from
5 the plane of the side portions; is that correct?
6 A. Correct.
7 Q. And is that what is required by the
8 claim limitation that the three-dimensional
9 structure be formed during the flat knitting
10 process?
11 A. That is my understanding.
12 Q. And that would be in contrast to
13 something where you had a planar fabric article that
14 comes off the machine flat but as it comes off the
15 machine assumes a three-dimensional shape; correct?
16 MS. STAUBACH: Objection.
17 THE WITNESS: Or is -- if there's some
18 secondary operation applied to it, correct.
19 BY MR. EVERTON:
20 Q. I'm still trying to understand the
21 process within the flat knitting machine that
22 achieves this three-dimensional dome structure and

1 how that would differ from something like a 3D
2 printer that would be printing in three dimensions
3 and form a three-dimensional shape that way.
4 MS. STAUBACH: Objection, form.
5 THE WITNESS: The knitting process
6 forms loops of yarns and this patent teaches
7 us that we can design the yarn choice as well
8 as the stitch pattern so that when the knit
9 is formed, it becomes three-dimensional. 3D
10 printer deposits lines of plastic if it's
11 tracing an object in section at a time to
12 create a three-dimensional object. So
13 they're very different operations.
14 BY MR. EVERTON:
15 Q. Yeah. So in the flat knitting
16 process, as the knitting is going row by row, are
17 those rows already forming the three-dimensional
18 shape and protruding three dimensionally within
19 that --
20 MS. STAUBACH: Objection.
21 BY MR. EVERTON:
22 Q. -- within the flat knitting process?

1 MS. STAUBACH: Objection to form.
2 THE WITNESS: Three-dimensionality is
3 achieved by the selective placement of
4 different yarns as well as stitch patterns.
5 The full three-dimensionality is realized
6 when the entire piece is made, but it's
7 becoming three-dimensional every time that
8 selective loop formation is made during the
9 knitting process.
10 BY MR. EVERTON:
11 Q. So with each row, it's becoming
12 three-dimensional at least in that portion where
13 it's desired to be a three-dimensional structure;
14 correct?
15 A. Yes, but the entire piece works
16 together to create the three-dimensional nature of
17 it.
18 Q. What do you mean by that the entire
19 piece works together?
20 A. I mean you can't -- you wouldn't just
21 knit 71 by itself. It would not be the same as
22 knitting all of Figure 10A here. It is all of the

1 knit structures and yarn selection working together
2 that creates the three-dimensionality.
3 Q. So it's your understanding that in the
4 '484 patent, this embodiment of Figure 10A, this
5 upper that's shown comes off of the flat knitting
6 machine in this finalized form as shown in
7 Figure 10A; is that correct?
8 MS. STAUBACH: Objection, form.
9 THE WITNESS: Yes, for the most part.
10 There'll be a trailing thread and a leading
11 thread somewhere, but generally speaking,
12 yes.
13 BY MR. EVERTON:
14 Q. If we look at paragraph 28 of your
15 declaration and we can read the last sentence of
16 paragraph 28. You say, "I understand from counsel
17 that all other terms and phrases in the '484 patent
18 claims are to be given their ordinary and customary
19 meanings, with no further construction."
20 Do you see that?
21 A. Yes.
22 Q. So you've not done any other claim

1 construction analysis for this '484 patent; correct?
2 MS. STAUBACH: Objection, form.
3 THE WITNESS: I understand that the
4 board adoption was what's stated in the first
5 paragraph and no further.
6 BY MR. EVERTON:
7 Q. You haven't construed any other claim
8 terms; correct?
9 A. Other than in the sense that everyone
10 construes terms as part of being human, no, not in
11 any formal sense.
12 Q. And you referred to in your
13 declaration the term "knit to shape."
14 Do you have an understanding of what
15 that means, "knit to shape"?
16 A. Yes.
17 Q. What does knit to shape mean?
18 A. Knit to shape on one hand is another
19 way of saying fully fashioned. It's a way of
20 producing an object, particularly a garment, off of
21 the knitting machine so that a minimum amount of
22 finishing is needed before it's a complete garment.

1 Q. And articles that are knit to shape,
2 could those include two-dimensional shapes?
3 A. Yes, some of the early knit to shape
4 fully fashioned things were like knitting a
5 triangle.
6 Q. And articles that are knit to shape,
7 could those include articles that include 3D
8 structures?
9 MS. STAUBACH: Objection, form.
10 THE WITNESS: Not in the same context
11 as the patent, no.
12 BY MR. EVERTON:
13 Q. Why is that?
14 A. The knit to shape is trying to achieve
15 a goal. The classic example is knitting a sweater.
16 Once the sweater is produced as a flat sweater, the
17 point is that there's no additional seaming or
18 finishing needed other than a couple of yarns need
19 to be tucked away. That's the point of fully
20 fashioned or knit to shape.
21 Q. So it's your opinion that knit to
22 shape articles cannot include three-dimensional

1 structures?
2 MS. STAUBACH: Objection, form.
3 THE WITNESS: No, I -- that's not my
4 opinion. I don't think that's what I said.
5 BY MR. EVERTON:
6 Q. Okay. So there are some knit to shape
7 articles that could include three-dimensional
8 structures; correct?
9 A. It's within the realm of knit to
10 shape. The broadest definition of it we could
11 include something like this patented object with the
12 domed three-dimensional structure. It could be
13 considered a form of knit to shape.
14 Q. Then if we go back -- we're looking at
15 paragraph 28 here in your declaration. And I
16 believe we already read the first sentence
17 discussing the board's construction that the domed
18 three-dimensional structure of the flat knitted
19 element must be formed during a flat knitting
20 process. Do you see that?
21 A. Yes.
22 Q. Is it your opinion that that

1 construction is correct?
2 A. I understand that is the board's
3 construction, so, therefore, by definition it is
4 correct.
5 Q. You don't have any opinions that this
6 construction would be incorrect in the context of
7 the '484 patent?
8 A. No, my understanding is that the
9 board's construction is the construction.
10 Q. Okay. I don't have any further
11 questions.
12 MS. STAUBACH: All right. We'd like
13 to take a ten-minute break and come back.
14 MR. EVERTON: Okay.
15 THE REPORTER: We're off the record.
16 (The time is 11:24 a.m.)
17 (Recess from the record.)
18 THE REPORTER: Okay. We're back on
19 the record.
20 (The time is 11:27 a.m.)
21 MS. STAUBACH: We have no questions
22 for the witness.

1 THE REPORTER: Okay. That concludes
2 the deposition.
3 MR. EVERTON: All right. Thank you.
4 (The examination concluded. The time
5 is 11:27 a.m.)
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