

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SKECHERS U.S.A., INC.,
Petitioner,

v.

NIKE, INC.,
Patent Owner.

IPR2025-00142
Patent 9,730,484 B2

Before KEN B. BARRETT, CARL M. DeFRANCO, and
GEORGE R. HOSKINS, *Administrative Patent Judges*.

DeFRANCO, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314

Nike, Inc. is the owner of U.S. Patent No. 9,730,484 B2 (Ex. 1001, “the ’484 patent”). Skechers U.S.A., Inc. filed a petition requesting *inter partes* review of claims 1, 5–9, and 11–17 of the ’484 patent. Paper 1 (“Pet.”). Nike filed a preliminary response. Paper 6 (“Prelim. Resp.”). Per our authorization, Skechers filed a reply. Paper 7 (“Pet. Reply”). And Nike followed with a sur-reply. Paper 9 (“PO Sur-Reply”). Because Skechers demonstrates a reasonable likelihood that at least independent claims 1 and 11 of the ’484 patent are unpatentable, we institute *inter partes* review of all claims as challenged in the petition. *See* 35 U.S.C. § 314(a).

I. BACKGROUND

A. Related Matters

The ’484 patent is the subject of parallel litigation in several different forums:

- *Nike, Inc. v. Skechers U.S.A., Inc.*, No. 2:23-cv-09346 (C.D. Cal.) (case stayed pending *inter partes* review);
- *Nike, Inc. v. lululemon usa inc.*, No. 1:23-cv-00771 (S.D.N.Y.) (stipulated dismissal with prejudice as to ’484 patent); and
- *Nike, Inc. v. New Balance Athletics, Inc.*, No. 1:23-cv-12666 (D. Mass.) (motion to stay taken under advisement).

See Paper 6, 2.¹

Most notably, the ’484 patent was recently the subject of a Final Decision (Ex. 3001) in *lululemon usa inc. v. Nike, Inc.*, IPR2023-01460, Paper 36 (PTAB Mar. 21, 2025) (“the lululemon IPR”), where the Board

¹ The district court’s docket sheet was consulted to determine the status of each case. The parties should update the Board on any material events occurring in each case. *See* 37 C.F.R. § 42.8(a)(3).

determined that claims 1–19 of the '484 patent are unpatentable. That Final Decision is on appeal to the U.S. Court of Appeals for the Federal Circuit. *See id.*, Paper 37 (Notice of Appeal).

B. The '484 Patent

The '484 Patent is directed to a footwear “upper” that “includes a knitted element formed from at least one mechanically manipulated yarn” in a “flat knitting process.” Ex. 1001, 3:10–29, 4:28–32. The “[f]lat knitted element . . . can be formed directly in desired three dimensional shapes,” which provides the benefits of reducing costs, increasing flexibility, and eliminating seams and sewing. *Id.* at 4:49–60; *see also id.* at 7:56–57 (“the flat knitting process may be utilized to form generally three-dimensional structures”). “By selectively placing multiple different yarns and/or stitch patterns at multiple different locations in the overall structure during the knitting process, flat knitted products may have multiple different physical properties . . . at multiple different locations or zones within a single, unitary construction.” *Id.* at 4:60–5:1.

Figure 10A of the '484 Patent, reproduced below, shows an embodiment of the upper having a knitted element with a “three-dimensional structure formed through a flat knitting process.” *Id.* at 10:18–20.

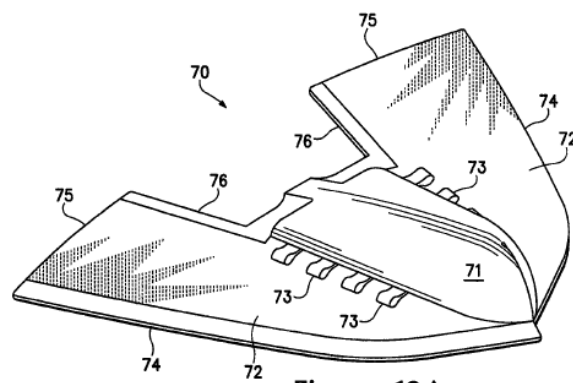


Figure 10A

As shown, upper 70 includes “a central portion 71” and “a pair of side portions 72.” *Id.* at 10:20–21. “[S]ide portions 72 are relatively flat,” while “central portion 71 has a domed shape formed through the flat knitting process.” *Id.* at 10:34–36. “When assembled into an article of footwear, central portion 71 extends over the foot, and side portions 72 wrap under the foot.” *Id.* at 10:23–25.

C. The Challenged Claims

Of the challenged claims, claims 1 and 11 are independent. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. An article of footwear comprising
an upper including a flat-knitted element formed from at least one yarn mechanically manipulated in a flat-knitting process, the flat-knitted element including a first layer having:
 - a central portion having a domed, three-dimensional structure configured for extending over the top of a foot;
 - a first side portion being formed of unitary construction with the central portion and extending from a first side of the central portion; and
 - a second side portion being formed of unitary construction with the central portion and extending from a second side opposite the first side of the central portion,the domed, three-dimensional structure shaped to extend above the plane of the first side portion and the second side portion when the flat-knitted element is in a flattened configuration.

Ex. 1001, 13:6–22 (line breaks added to first and last limitations for clarification). Independent claim 11 is directed to a “method of manufacturing an article of footwear” and recites essentially the same limitations as claim 1. *Id.* at 14:11–28.

D. The Asserted Challenges

Claims Challenged	35 U.S.C. §	Basis
1, 5–9, 11–17	103	Dua ² in view of Hong ³ and/or Choi ⁴
1, 5–9, 11–15	103	Yamamoto ⁵ in view of Choi
16, 17	103	Yamamoto in view of Choi and Dua

II. NIKE’S REQUEST FOR DISCRETIONARY DENIAL

A. Serial Petitions

Applying the Board’s precedential decision in *General Plastic*,⁶ Nike argues that we should discretionarily deny institution because Skechers purportedly waited to file its petition until after seeing the Board’s institution decision in the earlier lululemon IPR and is using it improperly as a “roadmap” to tailor its arguments here. *See* Prelim. Resp. 14–21; PO Sur-Reply 1–3. We disagree that Skechers’ purported road-mapping is a reason to discretionarily deny institution.

At the outset, we note the Office’s well-established policy that application of the *General Plastic* framework does not extend to serial petitions where the first and second petitioners are neither the same party nor have a “significant relationship.” *See Videndum Prod. Sols., Inc v. Rotolight*

² US 2005/0193592 A1, published Sep. 8, 2005 (Ex. 1014, “Dua”).

³ H. Hong, *The development of 3D shaped knitted fabrics for technical purposes on a flat knitting machine*, INDIAN JOURNAL OF FIBRE & TEXTILE RESEARCH, VOL. 19, PGS. 189–194 (Sep. 1994) (Ex. 1016, “Hong”).

⁴ W. Choi, *Three Dimensional Seamless Garment Knitting on V-Bed Flat Knitting Machines*, 4 J. TEXTILE AND APPAREL, TECH. AND MGMT., 1–33 (2005) (Ex. 1015, “Choi”).

⁵ JP 3118168 U, published Jan. 26, 2006 (Ex. 1017, “Yamamoto”).

⁶ *General Plastic Indus. Co. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 (PTAB Sept. 6, 2017) (precedential) (“*General Plastic*”).

Ltd., 2024 WL 1699478, at *3 (Vidal Apr. 19, 2024) (“*Videndum*”) (“Under USPTO policy and precedent, *General Plastic* has not been extended to any cases in which the first and second petitioners *do not have* a significant relationship.”); *Ford Motor Co. v. Neo Wireless LLC*, 2024 WL 1406441, at *4–5 (Vidal Mar. 22, 2024) (“*Ford*”) (explaining that *General Plastic*-based discretionary denial is not justified in the absence of a “significant relationship” between first and second petitioners regarding the challenged patent); *Cellco P’ship v. Gen. Access Sols., Ltd.*, 2023 WL 8651470, at *8 (PTAB Dec. 14, 2023) (finding that *General Plastic* factors 2–5 “bear little relevance” without a showing by patent owner of a significant relationship between serial petitioners).

Here, it is undisputed that Skechers was neither a party to the earlier lululemon IPR nor had ever before challenged the claims of the ’484 patent. Instead, in an attempt to demonstrate a significant relationship between Skechers and lululemon that might justify application of the *General Plastic* framework, Nike’s sole argument is that “Skechers created a relationship with lululemon by openly admitting that it used lululemon’s petition as a roadmap” and that “[t]his admitted roadmapping creates an implicit relationship between Skechers and lululemon.” PO Sur-Reply 2.

We reject the notion that “roadmapping” alone creates a significant relationship. As noted in *Videndum*, a second petitioner’s reliance on a first petitioner’s earlier-filed petition, “even ‘as a menu or road map,’ is *not sufficient* to create a significant relationship that favors denial under the first *General Plastic* factor.” *Videndum*, at *2 (emphasis added); *see also Ford*, at *2 (rejecting patent owner’s argument that Ford’s use of prior Volkswagen and Dell IPRs “as a roadmap for its Petition” was sufficient to

create “an ‘implicit’ relationship”). In other words, absent some evidence of a non-mandated⁷ collaboration between Skechers and lululemon (such as proof of a licensing or other technology-sharing agreement regarding the accused product), Skechers’ use of arguments and evidence similar to those in the earlier lululemon IPR does not create a significant relationship. Nor does it appear that Nike could reasonably establish such a relationship given that Skechers is a direct competitor of lululemon, was sued on an entirely different product than lululemon, and was not sued until after lululemon had already sought *inter partes* review of the challenged patent. *See* Pet. Reply 1–2 (citing Exs. 1065, 1066).

Also, because Nike fails to demonstrate a significant relationship between lululemon and Skechers under the first *General Plastic* factor, its application of the remaining *General Plastic* factors falls by the wayside. *See Videndum*, at *3 (explaining that where “the first and second petitioners are neither the same party, nor possess a significant relationship under *Valve*, *General Plastic* factor one necessarily outweighs the other *General Plastic* factors.”). Thus, absent any evidence indicating that Skechers and lululemon are the same party or have a significant relationship with regard to the challenged patent, we decline to discretionarily deny Skecher’s later petition in view of lululemon’s earlier petition.

B. Parallel District Court Litigation

Nike requests that we discretionarily deny institution under 35 U.S.C. § 314(a) in light of the parties’ parallel district court litigation. *See* Prelim.

⁷ “Under existing Office policy and precedent, the Board does not recognize a ‘significant relationship’ between parties having different accused products that merely engage in court-ordered pretrial coordination.” *Ford*, at *1.

Resp. 21–26. We decline. In doing so, we apply the Office’s recent guidance on the issue of discretionarily denying a petition in light of a parallel litigation, namely, *Guidance on USPTO’s Rescission of “Interim Procedure for Discretionary Denials in AIA-Post Grant Proceedings With Parallel District Court Litigation,”* U.S. PATENT AND TRADEMARK OFFICE (Mar. 24, 2025).⁸ That guidance, as the title suggests, rescinds the Office’s interim procedure on discretionary denials (dated June 21, 2022) and restores a “holistic analysis” that permits consideration of a number of factors as “part of a balanced assessment of all the relevant circumstances in the case, including the strength of the merits.” *See id.* at 3.

Here, one factor stands out in our evaluation of Nike’s request for discretionary denial—the *Final Decision in the lululemon IPR*, where the Board already determined that the challenged claims are unpatentable over some of the same prior art being asserted here. *See* Ex. 3001, at 26–27. Nike never addresses that fact, despite having the opportunity to do so after Skechers brought it to Nike’s attention.⁹ *Compare* Pet. Reply 7 (discussing the impact of our Final Decision in the lululemon IPR), *with* PO Sur-Reply 1–7 (arguing only that Skechers “exploited the fulsome record from lululemon’s IPR2023-01460”). That failure by Nike is significant because the Final Decision in the lululemon IPR is indicative of not only the Board’s significant investment in evaluating the patentability of the challenged

⁸ Available at: https://www.uspto.gov/sites/default/files/documents/guidance_memo_on_interim_procedure_recission_20250324.pdf.

⁹ The Final Decision in the lululemon IPR was entered on March 21, 2025, Skechers’ reply was filed on April 4, 2025, and Nike’s Sur-Reply was filed on April 11, 2025.

claims, but also the substantial overlap of arguments and evidence between the lululemon IPR and this proceeding.

In particular, the Board has already performed a detailed analysis of the '484 patent, including construing the claim terms and applying two of the prior art references—Dua and Hong—that form the primary ground here. As such, the Board is much further along in understanding the challenged claims and the parties' dispute over their validity than the district court in the parallel litigation. And even if the Final Decision in the lululemon IPR is reversed or remanded on appeal, the Board's considerable experience with the relevant issues remains. Thus, the fact that the Board has already expended considerable time and resources in deciding the validity of the challenged claims, whereas the district court has not, weighs heavily in favor of institution.¹⁰ Indeed, in staying the parallel litigation, the district court expressly recognized the lack of any significant investment by the parties or the court—

- “[D]iscovery is still in the early stages.”
- “The parties . . . have not yet taken any depositions, any third party discovery, or any expert discovery. . . . Accordingly, this case remains in its early stages.”
- “Despite [the parties'] significant work [on claim construction], . . . there is more work ahead of the parties and the Court than behind.”

Ex. 1067, 3–4.

¹⁰ On the other hand, “where a *district court* already has found the challenged claims invalid, the efficiency and integrity of the patent system is best served by denying institution.” *Hulu, LLC v. Piranha Media Distribution, LLC*, 2025 WL 1144790, at *1 (Stewart Apr. 17, 2025) (Informative) (emphasis added).

Numerous other factors also weigh against discretionary denial of institution, the most notable being that—

(1) the district court has stayed the parallel litigation “at least pending institution decisions from the PTAB” (Ex. 1067, at 8);

(2) Nike admits that the district court’s trial date likely would not occur until “around June 2026,” which is no different than the projected date of a final decision here, and, moreover, is likely to get extended given the district court’s own statements (Prelim. Resp. 22);

(3) the district court recognized the Board has the potential to streamline the issues for the district court—“[I]f the PTAB were to find even some claims of some patents invalid, the decision would provide simplification.” (Ex. 1067, at 5);

(4) the district court expressly rejected Nike’s argument that Skechers engaged in “undue delay” in filing the instant petition—“Defendant complied with the statutory period, the Court does not strongly consider the timing factors here.” (Ex. 1067, at 7); and

(5) Skechers’ petition has compelling merit as shown by the substantial similarity of the parties’ arguments in this proceeding and the arguments addressed in the Final Decision in the lululemon IPR (*see* Ex. 3001, 7–20).¹¹

After considering all the above factors, we conclude that efficiency and integrity of the patent system are best served here by not deferring to the parallel district court litigation. As such, we will not exercise our discretion under 35 U.S.C. § 314(a) to deny institution.

¹¹ Indeed, if affirmed on appeal, the Board’s Final Decision in the lululemon IPR would most likely be dispositive of this proceeding.

III. THRESHOLD FOR INSTITUTION

A. Level of Ordinary Skill in the Art

Skechers proposes that one skilled in the art would have had “at least a few years of experience in knit materials and knitting methods and machines that can be used in making footwear, or a bachelor’s degree in textile-related sciences, engineering, or industrial product design, or equivalent academic or work experience, including in the footwear industry” or “at least a general understanding of general construction processes and materials used in the manufacturing process of fabric-based articles.” Pet. 10 (citing Ex. 1002 ¶ 68). Nike agrees. *See* Prelim. Resp. 11 (“For purposes of this Preliminary Response, Nike applies Skechers’ definition of a person of ordinary skill in the art (‘POSITA’).” Accordingly, we adopt the level of ordinary skill in the art as proposed by Skechers.

B. Claim Construction

Skechers notes that “[d]uring the parallel litigation, the parties agreed that the term ‘central portion having a domed, three-dimensional structure’ means ‘central portion having a domed, three-dimensional structure formed *during the flat-knitting process, and not afterward*’” and that “in the *lululemon* IPR . . . the Board adopted [this] as its construction.” Pet. 11 (citing Ex. 1005, 2; Ex. 1021, 6) (emphasis added). Nike agrees with that construction. *See* Prelim. Resp. 11–12 (quoting Pet. 11). Thus, consistent with the parties’ agreement and the Board’s construction in the *lululemon* IPR, we construe the claimed “central portion having a domed, three-dimensional structure” as meaning it is formed during the knitting process, and not afterward.

Nike also proposes that we construe “article of footwear,” as recited in the claims, to exclude “hosiery, stockings, or socks.” Prelim. Resp. 12 (citing Ex. 2001 ¶¶ 27–28). Skechers has yet to weigh in on this issue. In any event, we see no need to construe that term at this preliminary stage, especially because Dua discloses “an article of footwear” even if that term excludes hosiery, stockings, and socks. *See* Ex. 1014 ¶¶ 2, 33 (disclosing an “article of footwear” that includes “a sole structure” and “an upper . . . formed from a textile element”).

Also, we note the Board’s prior construction of that same term in a different Nike patent in *New Balance Athletics, Inc. v. Nike, Inc.*, IPR2024-00778, Paper 10, at 12–14 (PTAB Sept. 26, 2024) (“the New Balance IPR”). There, the Board faulted New Balance for “not explain[ing] adequately why . . . a person of ordinary skill in the art would understand stockings to include a sole structure and an upper so as to be considered ‘an article of footwear’” (*id.* at 14), and agreed with Nike that “it is not apparent why Mills’s disclosure as to manufacturing stockings amounts to disclosure of manufacturing an ‘article of footwear’” (*id.* at 24). Here, should Nike maintain its proposed construction for “article of footwear” in opposition to Skechers’ Dua-based ground, we encourage the parties to address why the Board’s prior construction from the New Balance IPR should or should not be applied here.

C. Obviousness Over Dua, Hong, and/or Choi

Skechers challenges claims 1, 5–9, and 11–17 as unpatentable over Dua, Hong, and/or Choi. *See* Pet. 12–53. In the lululemon IPR, we determined that these same claims are unpatentable as obvious over Dua, Hong, and Lockwood. *See* Ex. 3001, at 26–27. While the Board’s Final

Decision in the lululemon IPR relied, in part, on Lockwood, the dispute there centered mainly on the proposed combination of Dua and Hong. *See id.* at 7–20. Likewise, Nike’s dispute with Skechers’ showing here focuses mainly on the proposed combination of Dua and Hong. *See* Prelim. Resp. 28–35. Indeed, Nike’s arguments here are essentially identical to the ones Nike made in the earlier lululemon IPR, namely, that the proposed combination “fails to teach or suggest knitting the ‘domed, three-dimensional structure’ *during the flat knitting process*,” and “further fails to teach or suggest knitting a ‘domed, three-dimensional structure’ ‘shaped to *extend above the plane* of the first side portion and the second side portion,”” both of which are recited in independent claims 1 and 11. *Id.* at 28 (emphases added). On the current record, those arguments are no more persuasive now than they were in the earlier lululemon IPR where the dispute also centered on the proposed combination of Dua and Hong. *See* Ex. 3001, at 7–20. Thus, much of the reasoning from the Board’s Final Decision in the lululemon IPR applies equally here to Nike’s attack on the same combination of Dua and Hong.

To the extent the Board’s Final Decision relied in part on Lockwood, it was mainly for teaching the disputed limitation reciting that the domed structure is “shaped to extend above the plane” of the side portions. *See* Ex. 3001, at 19–20. Here, for teaching that same limitation, Skechers instead relies on Dua as “formed in accordance with the teachings of Hong and/or Choi.” *See* Pet. 36–37. In particular, Skechers submits a rendition of Dua’s figure “after being modified per Hong and/or Choi to have a domed, three-dimensional central portion.” *Id.* (annotating Dua’s Figure 8 to depict the modification).

On the current record, Skechers persuades us that one skilled in the art reasonably would have understood that Dua, *as modified by Hong and Choi*, results in a knitted element having a dome shape flanked by flat side portions. *See* Ex. 1002 ¶¶ 131–132. Indeed, the underlying premise of Hong and Choi is the integration of three-dimensional structures, such as dome and tubular shapes, with an otherwise two-dimensional, i.e., flat, structure. *See* Exs. 1015, 1016. Nike’s argument to the contrary improperly focuses on the references individually to the exclusion of what one skilled in the art would have understood from the combination of their teachings as a whole. *See* Prelim. Resp. 38–39 (attacking Hong), 39–40 (attacking Choi).

We also note that Skechers’ reliance on Choi serves to bolster what is already taught by Hong, namely, the formation of a three-dimensional structure on a flat knitting machine “without any post sewing or linking process.” *See* Pet. 26. Indeed, Nike appears to admit as much. *See* Prelim. Resp. 35 (“Nike does not dispute that Choi creates three-dimensional garments *during a knitting process*.” (emphasis added)). That said, Nike does fault Choi for failing to teach “forming a ‘domed’ structure.” Prelim. Resp. 35. But Nike misunderstands Skechers’ reasoning with respect to the proposed combination’s disclosure of that feature. Skechers relies on Dua and Hong, not solely Choi, for teaching formation of the claimed “domed” structure during a flat knitting process. *See* Pet. 22–24, 26–27. Thus, we reject Nike’s argument to the contrary.

For the above reasons, including the Board’s reasoning in the prior lululemon IPR, we find that Skechers demonstrates a reasonable likelihood that at least claims 1 and 11 are unpatentable as obvious over the combined

teachings of Dua, Hong, and/or Choi. Thus, Skechers meets the threshold for institution.

D. Skechers' Other Challenges

Because Skechers' challenge based on the combination of Dua, Hong, and/or Choi already satisfies the threshold for institution, we see no need at this stage to further address Skechers' remaining challenges that rely additionally on Yamamoto. *See* Pet. 53, 84. Instead, further analysis of those challenges is best left for trial after full development of the record.

IV. CONCLUSION

For the above reasons, we determine that the information presented in lululemon's Petition demonstrates a reasonable likelihood that at least claims 1 and 11 of the '484 patent are unpatentable as obvious over Dua, Hong, and/or Choi. And because "[e]qual treatment of claims and grounds for institution purposes has pervasive support in *SAS*," we institute on all the claims as challenged in the Petition. *See* 37 C.F.R. § 42.108(a), (c); *PGS Geophysical AS v. Iancu*, 891 F.3d 1354, 1360 (Fed. Cir. 2018) (citing *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1359–60 (2018)).

V. ORDER

Accordingly, it is:

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review of claims 1, 5–9, and 11–17 of the '484 patent is *instituted*; and

FURTHER ORDERED that, pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4(b), notice is hereby given of the institution of trial, which will commence on the entry date of this Decision.

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