Information Disclosure Statement

Application No. 15/358,723 Attorney Docket No. 15571-1169/08-1313US77CON

EXAMINER INITIAL	Include name of author, title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	
	A230	US Patent 7347011 with markings dated August 19, 2013, dated August 19, 2013, in IPR2013-00067
	A231	Decision on Appeal dated August 19, 2013, in IPR2013-00067
	A232	Edward C. Frederick, Ph.D Deposition Transcript dated August 19, 2013, in IPR2013-00067
	A233	Raymond F. Tonkel Declaration dated August 19, 2013, in IPR2013-00067
	A234	Excerpts from Man-Made Fiber and Textile Dictionary dated August 19, 2013, in IPR2013-00067
	A235	R-H Websters Dictionary Excerpt dated August 19, 2013, in IPR2013-00067
	A236	Edward C. Frederick, Ph.D Deposition Errata Sheet dated August 29, 2013, in IPR2013-00067
	A237	Exhibit 2015 dated December 11, 2013, in IPR2013-00067
	A238	Exhibit 2016 dated December 11, 2013, in IPR2013-00067
	A239	Exhibit 2017 dated December 11, 2013, in IPR2013-00067
	A240	Exhibit 2018 dated December 11, 2013, in IPR2013-00067
	A241	Exhibit 2020 dated December 11, 2013, in IPR2013-00067
	A242	Exhibit 2021 dated December 11, 2013, in IPR2013-00067
	A243	Exhibit 2022 dated January 7, 2014, in IPR2013-00067
	A244	Exhibit 2023 dated January 7, 2014, in IPR2013-00067
	A245	Exhibit 3001 dated April 28, 2014, in IPR2013-00067
	A246	Exhibit 3002 dated April 28, 2014, in IPR2013-00067
	A247	Form PTO SB 42 dated November 28, 2012, in IPR2013-00067
	A248	Form PTO SB 42 dated November 12, 2013, in IPR2013-00067
	A249	Declaration of Edward Frederick, November 28, 2012.
	A250	Patent Owner's Trial Hearing Demonstratives, February 6, 2014.
	A251	United States Court of Appeals for the Federal Circuit, Appeal docketed. Date received: June 30, 2014.
	A252	Corrected Certified List from the United States Patent and Trademark Office; August 25, 2014.
	A253	MOTION of Appellant Nike, Inc. to Extend the Time to December 15, 2014 to File the Appellant/Petitioner's Principal Brief, September 17, 2014.
	A254	ORDER Granting Motion to Extend Time to File Appellant/Petitioner Principal Brief, September 18, 2014.
	A255	Certificate of Compliance With Fed. Cir. R. 17 (Agency) for Appellant Nike, Inc., September 23, 2014.
	A256	Certificate of Compliance With Fed. Cir. R. 17 (Agency) for Appellee Adidas AG, September 25, 2014.
	A257	TENDERED from Appellant Nike, Inc., Title: OPENING BRIEF, December 15, 2014.
	A258	BRIEF FILED for Appellant Nik, Inc., December 15, 2014.
	A259	MOTION of Director of the USPTO for Leave to Intervene, December 18, 2014.
	A260	MOTION of Appellee Adidas AG to Extend the Time to April 10, 2015 to File the Appellee/Respondent/Cross-Appellant's Principal Brief, December 18, 2015.
	A261	ORDER Granting Director's Motion for Leave to Intervene and Granting Motion to Extend Time to File Appellee's Response Brief, September 29, 2014.
	A262	TENDERED from Intervenor Lee. Title: INTERVENOR BRIEF, April 9, 2015.
	A263	BRIEF FILED for Intervenor Lee, April 9, 2015.
	A264	TENDERED from Appellee Adidas AG. Title: OPENING BRIEF, April 10, 2015.
	A265	BRIEF FILED for Appellee Adidas AG, April 10, 2015.
	A266	MOTION of Appellant Nike, Inc. to Extend the Time to May 27, 2015 at 11:59 pm to File the Reply Brief, April 13, 2015.
	A267	ORDER Granting Motion to Extend Time to File Reply Brief Filed by Appellant Nike, Inc., April 14, 2015.

Examiner Signature	/CAMERON A CARTER/	Date Considered	03/25/2017

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /C.A.C/

Information Disclosure Statement

Application No. 15/358,723 Attorney Docket No. 15571-1169/08-1313US77CON

EXAMINER INITIAL	Include name of author, title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	
	A268	TENDERED from Appellant Nike, Inc. Title: REPLY BRIEF, May 27, 2015.
	A269	REPLY BRIEF FILED for Appellant Nike, Inc., May 27, 2015.
	A270	TENDERED from Appellant Nike, Inc. Title: JOINT APPENDIX, June 8, 2015.
	A271	Statement of Compliance With Fed. Cir. R. 33 for Appellant Nike, Inc., Appellee, Adidas AG and Intervenor Lee, June 8, 2015.
	A272	APPENDIX FILED for Nike, Inc., June 8, 2015.
	A273	Citation of Supplemental Authority Pursuant to Fed. R. P. 28(j) for Appellant Nike, Inc., August 24, 2015.
	A274	MOTION of Intervenor Lee for Additional Time at Oral Argument, September 3, 2015.
	A275	ORDER Filed Granting Motion to Seek More Time for Argument Filed by Intervenor Lee, September 8, 2015.
	A276	OPINION and JUDGMENT filed, February 11, 2016.
	A277	CORRECTED OPINION AND JUDGMENT filed; February 11, 2016.
	A278	Mandate Issued to the United States Patent and Trademark Office, April 4, 2016.
	A279	ORDER-Conduct of Remand Proceeding, August 10, 2016.
	A280	Burall, P., "CoID Design Awards", *Design*, June 1969, 4 pages.
	A281	C.V. for Lenny M. Holden, 3 pages.
	A282	Textile Machinery-Knitting Machines-Nominal Diameters of Circular Machines, *International Standard*, ISO 8117, Second Edition, February 15, 2003, 6 pages.
	A283	Petition for Inter-Partes Review Under 35 U.S.C. §§ 311-319 and 37 C.F.R. § 42.100 et seq. (IPR2016-00920), filed April 19, 2016, 67 pages.
	A284	File History for U.S. Patent No. 8,042,288, filed April 19, 2016, as Exhibit 1002 in IPR2016-00920, 324 pages.
	A285	Declaration of Lenny M. Holden from the US Patent and Trademark Office Inter Partes Review IPR2016-00920 dated April 19, 2016, 166 pages.
	A286	Form PTO SB 42 dated April 19, 2016, in IPR2016-00920, 2 pages.
	A287	Notice of Filing Date accorded to Petition and Time for Filing Patent Owner Preliminary Response in IPR2016-00920 dated April 25, 2016, 4 pages.
	A288	Patent Owner's Mandatory Notices in IPR2016-00920 dated May 10, 2016, 5 pages.
	A289	Trial Instituted Document in IPR2016-00920 dated October 20, 2016, 8 pages.
	A290	Petition for Inter-Partes Review Under 35 U.S.C. §§ 311-319 and 37 C.F.R. § 42.100 et seq. (IPR2016-00921), filed April 19, 2016, 57 pages.
	A291	File History for U.S. Patent No. 7,814,598, filed April 19, 2016, as Exhibit 1002 in IPR2016-00921, 346 pages.
	A292	Declaration of Lenny M. Holden from the US Patent and Trademark Office Inter Partes Review IPR2016-00921 dated April 19, 2016, 154 pages.
	A293	Form PTO SB 42 dated April 19, 2016, in IPR2016-00921, 2 pages.
	A294	Notice of Filing Date accorded to Petition and Time for Filing Patent Owner Preliminary Response in IPR2016-00921 dated April 25, 2016, 4 pages.
	A295	Patent Owner's Mandatory Notices in IPR2016-00921 dated May 10, 2016, 5 pages.
	A296	Trial Instituted Document in IPR2016-00921 dated October 21, 2016, 24 pages.
	A297	Scheduling Order in IPR2016-00921 dated October 21, 2016, 9 pages.
	A298	Notice of Cross-Examination of Lenny M. Holden in IPR2016-00921 dated December 19, 2016, 3 pages.
	A299	Petition for Inter-Partes Review Under 35 U.S.C. §§ 311-319 and 37 C.F.R. § 42.100 et seq. (IPR2016-00922), filed April 19, 2016, 67 pages.
	A300	File History for U.S. Patent No. 8,266,749, filed April 19, 2016, as Exhibit 1002 in IPR2016-00922, 309 pages.
	A301	Declaration of Lenny M. Holden from the US Patent and Trademark Office Inter Partes Review IPR2016-00922 dated April 19, 2016, 154 pages.

Examiner Signature	/CAMERON A CARTER/	Date Considered	03/25/2017

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /C.A.C/

Information Disclosure Statement

Application No. 15/358,723 Attorney Docket No. 15571-1169/08-1313US77CON

EXAMINER INITIAL	Include name of author, title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	
	A302	Form PTO SB 42 dated April 19, 2016, in IPR2016-00922, 2 pages.
	A303	Notice of Filing Date accorded to Petition and Time for Filing Patent Owner Preliminary Response in IPR2016-00922 dated April 25, 2016, 4 pages.
	A304	Patent Owner's Mandatory Notices in IPR2016-00922 dated May 10, 2016, 5 pages.
	A305	Trial Instituted Document in IPR2016-00922 dated October 21, 2016, 24 pages.
	A306	Scheduling Order in IPR2016-00922 dated October 21, 2016, 9 pages.
	A307	Notice of Cross-Examination of Lenny M. Holden in IPR2016-00922 dated December 19, 2016, 3 pages.
	A308	Petition for Inter-Partes Review Under 35 U.S.C. §§ 311-319 and 37 C.F.R. § 42.100 et seq. (IPR2017-00263), filed November 14, 2016, 50 pages.
	A309	Declaration of Lenny M. Holden from the US Patent and Trademark Office Inter Partes Review IPR2017-00263 dated November 14, 2016, 82 pages.
	A310	Form PTO SB 42 dated November 14, 2016, in IPR2017-00263, 2 pages.
	A311	Patent Owner's Mandatory Notices in IPR2017-00263 dated December 5, 2016, 5 pages.
	A312	Notice of Filing Date accorded to Petition and Time for Filing Patent Owner Preliminary Response in IPR2017-00263 dated December 9, 2016, 5 pages.
	A313	Petition for Inter-Partes Review Under 35 U.S.C. §§ 311-319 and 37 C.F.R. § 42.100 et seq. (IPR2017-00264), filed November 14, 2016, 59 pages.
	A314	Declaration of Lenny M. Holden from the US Patent and Trademark Office Inter Partes Review IPR2017-00264 dated November 14, 2016, 106 pages.
	A315	Form PTO SB 42 dated November 14, 2016, in IPR2017-00264, 2 pages.
	A316	Patent Owner's Mandatory Notices in IPR2017-00264 dated December 5, 2016, 5 pages.
	A317	Notice of Filing Date accorded to Petition and Time for Filing Patent Owner Preliminary Response in IPR2017-00264 dated December 9, 2016, 5 pages.

1. PRIORITY INFORMATION:

☒ This application claims priority under 35 USC §120 to the following United States patent application(s): 14/503,514. In accordance with 37 CFR §1.98(d), copies of the references cited herein which were submitted to, or cited by, the office, in compliance with 37 CFR §1.98(a)-(c) in the earlier application are not provided herewith. The Examiner is directed to those references cited in all Information Disclosure Statements filed in the priority United States patent application(s) cited above in addition to the references cited herein.

2. CERTIFICATIONS: (CHECK ALL THAT APPLY)

A. Certifications For 37 CFR §1.97(c) or 37 CFR §1.97(d):

☐ Applicant hereby certifies pursuant to 37 CFR §1.97(e)(1) that each item of information in this Information Disclosure Statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this Information Disclosure Statement.

☐ Applicant hereby certifies pursuant to 37 CFR §1.97(e)(2) that no item of information contained in this Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the undersigned after making reasonable inquiry, no item of information contained in this Statement was known to any individual designated in 37 CFR §1.56(c), more than three months prior to the filing of this Information Disclosure Statement.

B. For Patent Term Adjustment Purposes:

☐ For purposes of 37 CFR §1.704(d)(i) or 37 CFR §1.704(d)(ii), Applicant hereby certifies that each item of information contained in this Information Disclosure Statement was first cited in any communication from

Examiner Signature	/CAMERON A CARTER/	Date Considered	03/25/2017

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /C.A.C/

a patent office in a counterpart foreign or international application or from the Office or is a communication that was issued by a patent office in a counterpart foreign or international application or by the Office, and that this communication was not received by any individual designated in 37 CFR §1.56(c) more than thirty days prior to the filing of this Information Disclosure Statement.

3. FEE INFORMATION: (CHECK IF FEE REQUIRED)

☐ Applicant has calculated a processing fee in the amount of _____ to be due under 37 CFR §1.17(p) in connection with the filing of this Information Disclosure Statement. Applicant authorizes charging the fee to Deposit Account _____.

☒ The Director is hereby authorized to charge any fee deficiency associated with the filing of this Information Disclosure Statement to Deposit Account 23-1925.

Pursuant to the undersigned attorney's obligation and duties under 37 CFR §§ 1.56 and 1.98(a)(3) and (c), either English language abstracts, partial translations, or full translations are included for patent documents which are not in English for the express purpose of providing a concise explanation of the references to the Patent and Trademark Office with the opportunity to evaluate the same. Applicant respectfully requests the Examiner's consideration of the above reference(s) and entry thereof into the record of this application.

By submitting this Statement, Applicant is attempting to fully comply with the duty of candor and good faith mandated by 37 CFR §1.56. As such, this Statement is not intended to constitute an admission that any of the enclosed references, or other information referred to therein, constitutes "prior art" or is otherwise "material to patentability," as that phrase is defined in 37 CFR §1.56(a).

Respectfully submitted,

January 19, 2017
Date

/Danielle C. Gillen/
Danielle C. Gillen (Reg. No. 68,197)

Examiner Signature	/CAMERON A CARTER/	Date Considered	03/25/2017

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /C.A.C/

CERTIFICATE OF EFS FILING UNDER 37 CFR §1.8

I hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office, Commissioner for Patents, via the EFS pursuant to 37 CFR §1.8 on the below date:

Date: February 15, 2017 Name: Danielle C. Gillen (Reg. No. 68,197) Signature: /Danielle C. Gillen

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)	Application Number	15/358,723
	Filing Date	November 22, 2016
	First Named Inventor	Bhupesh Dua et al.
	Art Unit	3765
	Confirmation Number	4188
	Examiner Name	Carter, Cameron A.
	Attorney Docket No.	15571-1169/08-1313US77CON

In accordance with the duty of disclosure, Applicant(s) hereby cites the following references:

OTHER ART – NON PATENT LITERATURE DOCUMENTS

EXAMINER INITIAL		Include name of author, title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.
	B1	Transcript of Declaration of Lenny M. Holden for Inter Partes Review IPR2016-00921 dated January 10, 2017, 226 pages, and submitted to the US Patent and Trademark Office on January 23, 2017 as Exhibit 2004 to the Patent Owner Response Under 37 C.F.R. § 42.120 dated January 23, 2017 for Inter Partes Review IPR2016-00921 and for Inter Partes Review IPR2016-00922.
	B2	Patent Owner Response Under 37 C.F.R. § 42.120 for Inter Partes Review IPR2016-00921 dated January 23, 2017, 64 pages.
	B3	Patent Owner Response Under 37 C.F.R. § 42.120 for Inter Partes Review IPR2016-00922 dated January 23, 2017, 66 pages.
	B4	Office Action in corresponding U.S. Application No. 14/503,514, dated February 13, 2017, 7 pages.

1. PRIORITY INFORMATION:

☐ This application claims priority under 35 USC §120 to the following United States patent application(s): _____. In accordance with 37 CFR §1.98(d), copies of the references cited herein which were submitted to, or cited by, the office, in compliance with 37 CFR §1.98(a)-(c) in the earlier application are not provided herewith. The Examiner is directed to those references cited in all Information Disclosure Statements filed in the priority United States patent application(s) cited above in addition to the references cited herein.

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B. For Patent Term Adjustment Purposes:

Examiner Signature	/CAMERON A CARTER/	Date Considered	03/25/2017

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /C.A.C/

Information Disclosure Statement

Application No. 15/358,723 Attorney Docket No. 15571-1169/08-1313US77CON

☒ For purposes of 37 CFR §1.704(d)(i) or 37 CFR §1.704(d)(ii), Applicant hereby certifies that each item of information contained in this Information Disclosure Statement was first cited in any communication from a patent office in a counterpart foreign or international application or from the Office or is a communication that was issued by a patent office in a counterpart foreign or international application or by the Office, and that this communication was not received by any individual designated in 37 CFR §1.56(c) more than thirty days prior to the filing of this Information Disclosure Statement.

3. FEE INFORMATION: (CHECK IF FEE REQUIRED)

☐ Applicant has calculated a processing fee in the amount of _____ to be due under 37 CFR §1.17(p) in connection with the filing of this Information Disclosure Statement. Applicant authorizes charging the fee to Deposit Account _____.

☒ The Director is hereby authorized to charge any fee deficiency associated with the filing of this Information Disclosure Statement to Deposit Account 23-1925.

Pursuant to the undersigned attorney's obligation and duties under 37 CFR §§ 1.56 and 1.98(a)(3) and (c), either English language abstracts, partial translations, or full translations are included for patent documents which are not in English for the express purpose of providing a concise explanation of the references to the Patent and Trademark Office with the opportunity to evaluate the same. Applicant respectfully requests the Examiner's consideration of the above reference(s) and entry thereof into the record of this application.

By submitting this Statement, Applicant is attempting to fully comply with the duty of candor and good faith mandated by 37 CFR §1.56. As such, this Statement is not intended to constitute an admission that any of the enclosed references, or other information referred to therein, constitutes "prior art" or is otherwise "material to patentability," as that phrase is defined in 37 CFR §1.56(a).

Respectfully submitted,

February 15, 2017 /Danielle C. Gillen/

Date Danielle C. Gillen (Reg. No. 68,197)

Examiner Signature		Date Considered	

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /C.A.C/

EAST Search History

EAST Search History (Prior Art)

Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
L2	3	(("8266749") or ("7347011") or ("7814598")).PN.	US-PGPUB; USPAT; USOCR; EPO; JPO	OR	OFF	2017/03/25 11:40
L3	1	("8266749").PN.	US-PGPUB; USPAT; USOCR; EPO; JPO	OR	OFF	2017/03/25 11:40
L4	1	("7347011").PN.	US-PGPUB; USPAT; USOCR; EPO; JPO	OR	OFF	2017/03/25 11:40
L5	1	("7814598").PN.	US-PGPUB; USPAT; USOCR; EPO; JPO	OR	OFF	2017/03/25 11:40
S1	164	(("2343390") or ("2608078") or ("2569764") or ("2314098") or ("2641004") or ("2440393") or ("4750339") or ("2147197") or ("6333105") or ("3583081") or ("4447967") or ("4813158") or ("4756098") or ("5345638") or ("4785558") or ("0601192") or ("1215198") or ("1597934") or ("1888172") or ("1902780") or ("1910251") or ("2001293") or ("2047724") or ("2330199") or ("2400692") or ("2586045") or ("2675631") or ("2994322") or ("3694940") or ("3704474") or ("3766566") or ("3778856") or ("3952427") or ("3972086") or ("4027402") or ("4031586") or ("4211806") or ("4232458") or ("4255949") or ("4258480") or ("4317292") or ("4373361") or ("4465448") or ("4607439") or ("4737396") or ("5031423") or ("5095720") or ("5117567") or ("5152025") or ("5192601") or ("5353524") or ("5461884") or ("5371957") or ("5511323") or ("5572860") or ("5575090") or ("5623840") or ("5729918") or ("5735145") or ("5746013") or ("5765296") or ("5884419") or ("5996189") or ("6029376") or ("6032387") or ("6052921") or ("6088936") or ("6151802") or ("6170175") or ("6308438") or ("6401364") or ("6558784") or ("6588237") or ("6754983") or ("6910288") or ("6922917") or ("6931762") or ("D517297") or ("7051460") or ("7056402") or ("7347011") or ("7441348") or ("7543397") or ("7568298") or	US-PGPUB; USPAT; USOCR; EPO; JPO	OR	OFF	2017/03/16 11:05

		("7682219") or ("8490299") or ("7814598") or ("8042288") or ("8266749") or ("4183156") or ("4219945") or ("5343639") or ("5353523") or ("20020148258") or ("20120255201") or ("20020078599") or ("20030126762") or ("20030191427") or ("20040118018") or ("20040181972") or ("2005115284") or ("20050193592") or ("20050273988") or ("20050284000") or ("20060059715") or ("20060162187") or ("200770022627") or ("20070180730") or ("20080017294") or ("20080078102") or ("20080110048") or ("20080189830") or ("20080313939") or ("20090068908") or ("20100051132") or ("20100514256") or ("20100170651") or ("20110030244") or ("20110078921") or ("20120255201") or ("20120159813") or ("2178941") or ("2150730") or ("6984596") or ("4354318") or ("20140150294") or ("9084449") or ("3984003") or ("4038840") or ("6330814") or ("6779369") or ("5345638")).PN.				
S2	2299	(36/50.1).CCLS.	US-PGPUB; USPAT; USOCR; EPO; JPO	OR	OFF	2017/03/21 17:43
S3	486	(36/83).CCLS.	US-PGPUB; USPAT; USOCR; EPO; JPO	OR	OFF	2017/03/21 17:43
S4	2350	((36/84) or (36/45) or (36/47) or (36/48)).CCLS.	US-PGPUB; USPAT; USOCR; EPO; JPO	OR	OFF	2017/03/21 17:43
S5	605	A43B1/04.cpc.	US-PGPUB; USPAT; USOCR; EPO; JPO	ADJ	OFF	2017/03/21 17:43
S6	1284	A43B23/0235,024,0245,04.cpc.	US-PGPUB; USPAT; USOCR; EPO; JPO	ADJ	OFF	2017/03/21 17:44
S7	8	(("5345638") or ("2701458") or ("6558784") or ("1888172") or ("5746013")).PN.	US-PGPUB; USPAT; USOCR; EPO; JPO	OR	OFF	2017/03/22 09:57
S8	1	("5345638").PN.	US-PGPUB; USPAT; USOCR;	OR	OFF	2017/03/24 16:03

			EPO; JPO			
S9	171	("0217467" | "0336214" | "0336913" | "0505298" | "0511942" | "0761520" | "1021819" | "1710043" | "1956969" | "2001962" | "2076285" | "2300155" | "3114213").PN. OR ("5345638").URPN.	US-PGPUB; USPAT; USOCR	ADJ	OFF	2017/03/24 16:03

EAST Search History (Interference)

< This search history is empty>

3/ 25/ 2017 11:55:30 AM
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UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

BIB DATA SHEET

CONFIRMATION NO. 4188

SERIAL NUMBER	FILING or 371(c) DATE RULE	CLASS	GROUP ART UNIT	ATTORNEY DOCKET NO.
15/358,723	11/22/2016	012	3765	15571-1169/08-1313US77CON

APPLICANTS
NIKE, Inc., Beaverton, OR;

INVENTORS
Bhupesh Dua, Portland, OR;
Edward N. Thomas, Portland, OR;

**** CONTINUING DATA ***************************
This application is a CON of 14/503,514 10/01/2014
which is a DIV of 14/079,748 11/14/2013 ABN
which is a CON of 13/413,233 03/06/2012 ABN
which is a CON of 13/236,742 09/20/2011 PAT 8266749
which is a CON of 12/879,517 09/10/2010 PAT 8042288
which is a CON of 12/032,995 02/18/2008 PAT 7814598
which is a DIV of 10/791,289 03/03/2004 PAT 7347011

**** FOREIGN APPLICATIONS ***************************

**** IF REQUIRED, FOREIGN FILING LICENSE GRANTED ****
11/30/2016

Foreign Priority claimed ☐ Yes ☑ No 35 USC 119(a-d) conditions met ☐ Yes ☑ No Verified and Acknowledged /CAMERON A CARTER/ Examiner's Signature	☐ Met after Allowance Initials	STATE OR COUNTRY	SHEETS DRAWINGS	TOTAL CLAIMS	INDEPENDENT CLAIMS
		OR	12	20	2

ADDRESS
NIKE, Inc./BGL
P.O. Box 10395
Chicago, IL 60610
UNITED STATES

TITLE
Article of Footwear Having A Textile Upper

FILING FEE RECEIVED		
1600	FEES: Authority has been given in Paper No._____ to charge/credit DEPOSIT ACCOUNT No._____ for following:	☐ All Fees ☐ 1.16 Fees (Filing) ☐ 1.17 Fees (Processing Ext. of time) ☐ 1.18 Fees (Issue) ☐ Other _____ ☐ Credit

Index of Claims	Application/Control No.	Applicant(s)/Patent Under Reexamination
	15358723	DUA ET AL.
	Examiner	**Art Unit**
	CAMERON A CARTER	3765

✓	Rejected	-	Cancelled	N	Non-Elected	A	Appeal
=	Allowed	÷	Restricted	I	Interference	O	Objected

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

CLAIM		DATE								
Final	Original	03/25/2017								
	1	-								
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	17	-								
	18	-								
	19	-								
	20	-								
	21	✓								
	22	✓								
	23	✓								
	24	✓								
	25	✓								
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	27	✓								
	28	✓								
	29	✓								
	30	✓								
	31	✓								
	32	✓								
	33	✓								
	34	✓								
	35	✓								
	36	✓								

Index of Claims	Application/Control No.	Applicant(s)/Patent Under Reexamination
	15358723	DUA ET AL.
	Examiner	Art Unit
	CAMERON A CARTER	3765

✓	Rejected	-	Cancelled	N	Non-Elected	A	Appeal
=	Allowed	÷	Restricted	I	Interference	O	Objected

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

CLAIM		DATE								
Final	Original	03/25/2017								
	37	✓								
	38	✓								
	39	✓								
	40	✓								

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	15358723	DUA ET AL.
	Examiner	Art Unit
	CAMERON A CARTER	3765

CPC- SEARCHED		
Symbol	Date	Examiner
A43B1/04; 23/0235, 024, 0245, 04	3/25/2017	CC

CPC COMBINATION SETS - SEARCHED		
Symbol	Date	Examiner

US CLASSIFICATION SEARCHED			
Class	Subclass	Date	Examiner
36	83, 84, 45, 48, 50.1, 47	3/25/2017	CC

SEARCH NOTES		
Search Notes	Date	Examiner
PLUS Search	3/25/2017	CC
Inventor's Search	3/25/2017	CC
EAST Search	3/25/2017	CC
Search of relevant classes and subclasses	3/25/2017	CC

INTERFERENCE SEARCH			
US Class/ CPC Symbol	US Subclass / CPC Group	Date	Examiner

/CAMERON A CARTER/ Examiner.Art Unit 3765	

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
15/358,723	11/22/2016	Bhupesh Dua	15571-1169/08-1313US77CON

CONFIRMATION NO. 4188

133691
NIKE, Inc./BGL
P.O. Box 10395
Chicago, IL 60610

PUBLICATION NOTICE



Title: Article of Footwear Having A Textile Upper

Publication No.US-2017-0071280-A1
Publication Date:03/16/2017

NOTICE OF PUBLICATION OF APPLICATION

The above-identified application will be electronically published as a patent application publication pursuant to 37 CFR 1.211, et seq. The patent application publication number and publication date are set forth above.

The publication may be accessed through the USPTO's publically available Searchable Databases via the Internet at www.uspto.gov. The direct link to access the publication is currently http://www.uspto.gov/patft/.

The publication process established by the Office does not provide for mailing a copy of the publication to applicant. A copy of the publication may be obtained from the Office upon payment of the appropriate fee set forth in 37 CFR 1.19(a)(1). Orders for copies of patent application publications are handled by the USPTO's Office of Public Records. The Office of Public Records can be reached by telephone at (571) 272-3150 or (800) 972-6382, by facsimile at (571) 273-3250, by mail addressed to the United States Patent and Trademark Office, Office of Public Records, Alexandria, VA 22313-1450 or via the Internet.

In addition, information on the status of the application, including the mailing date of Office actions and the dates of receipt of correspondence filed in the Office, may also be accessed via the Internet through the Patent Electronic Business Center at www.uspto.gov using the public side of the Patent Application Information and Retrieval (PAIR) system. The direct link to access this status information is currently http://pair.uspto.gov/. Prior to publication, such status information is confidential and may only be obtained by applicant using the private side of PAIR.

Further assistance in electronically accessing the publication, or about PAIR, is available by calling the Patent Electronic Business Center at 1-866-217-9197.

Office of Data Managment, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

CERTIFICATE OF EFS FILING UNDER 37 CFR §1.8

I hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office, Commissioner for Patents, via the EFS pursuant to 37 CFR §1.8 on the below date:

Date: February 15, 2017 Name: Danielle C. Gillen (Reg. No. 68,197) Signature: /Danielle C. Gillen

BLACK LOWE & GRAHAM PLLC

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Not for submission under 37 CFR 1.99)

Application Number	15/358,723
Filing Date	November 22, 2016
First Named Inventor	Bhupesh Dua et al.
Art Unit	3765
Confirmation Number	4188
Examiner Name	Carter, Cameron A.
Attorney Docket No.	15571-1169/08-1313US77CON

In accordance with the duty of disclosure, Applicant(s) hereby cites the following references:

OTHER ART – NON PATENT LITERATURE DOCUMENTS

EXAMINER INITIAL		Include name of author, title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.
	B1	Transcript of Declaration of Lenny M. Holden for Inter Partes Review IPR2016-00921 dated January 10, 2017, 226 pages, and submitted to the US Patent and Trademark Office on January 23, 2017 as Exhibit 2004 to the Patent Owner Response Under 37 C.F.R. § 42.120 dated January 23, 2017 for Inter Partes Review IPR2016-00921 and for Inter Partes Review IPR2016-00922.
	B2	Patent Owner Response Under 37 C.F.R. § 42.120 for Inter Partes Review IPR2016-00921 dated January 23, 2017, 64 pages.
	B3	Patent Owner Response Under 37 C.F.R. § 42.120 for Inter Partes Review IPR2016-00922 dated January 23, 2017, 66 pages.
	B4	Office Action in corresponding U.S. Application No. 14/503,514, dated February 13, 2017, 7 pages.

1. PRIORITY INFORMATION:

☐ This application claims priority under 35 USC §120 to the following United States patent application(s): _____. In accordance with 37 CFR §1.98(d), copies of the references cited herein which were submitted to, or cited by, the office, in compliance with 37 CFR §1.98(a)-(c) in the earlier application are not provided herewith. The Examiner is directed to those references cited in all Information Disclosure Statements filed in the priority United States patent application(s) cited above in addition to the references cited herein.

2. CERTIFICATIONS: (CHECK ALL THAT APPLY)

A. Certifications For 37 CFR §1.97(c) or 37 CFR §1.97(d):

☐ Applicant hereby certifies pursuant to 37 CFR §1.97(e)(1) that each item of information in this Information Disclosure Statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this Information Disclosure Statement.

☒ Applicant hereby certifies pursuant to 37 CFR §1.97(e)(2) that no item of information contained in this Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the undersigned after making reasonable inquiry, no item of information contained in this Statement was known to any individual designated in 37 CFR §1.56(c), more than three months prior to the filing of this Information Disclosure Statement.

B. For Patent Term Adjustment Purposes:

Examiner Signature		Date Considered	

☒ For purposes of 37 CFR §1.704(d)(i) or 37 CFR §1.704(d)(ii), Applicant hereby certifies that each item of information contained in this Information Disclosure Statement was first cited in any communication from a patent office in a counterpart foreign or international application or from the Office or is a communication that was issued by a patent office in a counterpart foreign or international application or by the Office, and that this communication was not received by any individual designated in 37 CFR §1.56(c) more than thirty days prior to the filing of this Information Disclosure Statement.

3. FEE INFORMATION: (CHECK IF FEE REQUIRED)

☐ Applicant has calculated a processing fee in the amount of _____ to be due under 37 CFR §1.17(p) in connection with the filing of this Information Disclosure Statement. Applicant authorizes charging the fee to Deposit Account _____.

☒ The Director is hereby authorized to charge any fee deficiency associated with the filing of this Information Disclosure Statement to Deposit Account 23-1925.

Pursuant to the undersigned attorney's obligation and duties under 37 CFR §§ 1.56 and 1.98(a)(3) and (c), either English language abstracts, partial translations, or full translations are included for patent documents which are not in English for the express purpose of providing a concise explanation of the references to the Patent and Trademark Office with the opportunity to evaluate the same. Applicant respectfully requests the Examiner's consideration of the above reference(s) and entry thereof into the record of this application.

By submitting this Statement, Applicant is attempting to fully comply with the duty of candor and good faith mandated by 37 CFR §1.56. As such, this Statement is not intended to constitute an admission that any of the enclosed references, or other information referred to therein, constitutes "prior art" or is otherwise "material to patentability," as that phrase is defined in 37 CFR §1.56(a).

Respectfully submitted,

February 15, 2017
Date

/Danielle C. Gillen/
Danielle C. Gillen (Reg. No. 68,197)

Examiner Signature		Date Considered	

CERTIFICATE OF EFS FILING UNDER 37 CFR §1.8

I hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office, Commissioner for Patents, via the EFS pursuant to 37 CFR §1.8 on the below date:

Date: February 15, 2017 Name: Danielle C. Gillen (Reg. No. 68,197) Signature: /Danielle C. Gillen/

BRINKS GILSON & LIONE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of:	Bhupesh Dua et al.		
Appln. No.:	15/358,723	Examiner:	Carter, Cameron A.
Filed:	November 22, 2016	Art Unit:	3765
For:	ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER	Conf. No.:	4188
Attorney Docket No.:	15571-1169/08-1313US77CON		

TRANSMITTAL

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Attached is/are:

☒ Transmittal Letter; Supplemental Information Disclosure Statement and References B1-B4.

Fee calculation:

☒ No additional fee is required.

☐ Per 37 CFR §1.27, ☐ Applicant is small entity ☐ Applicant is micro entity.

☐ An extension fee in an amount of $_____ for a _____-month extension of time under 37 CFR § 1.136(a).

☐ A petition or processing fee in an amount of $_____ under 37 CFR § 1.1_____(_____).

☐ An additional filing fee has been calculated as shown below:

					Fee		Small Entity Fee		Micro Entity Fee	
	Claims Remaining After Amendment		Highest No. Previously Paid	Present Extra	Rate	Add'l Fee	Rate	Add'l Fee	Rate	Add'l Fee
Total		Minus			x $ 80 =	$	x $ 40 =	$	x $20 =	$
Independent		Minus			x $420 =	$	x $210 =	$	x $105 =	$
First Presentation of Multiple Dep. Claim					+ $780 =	$	+ $390 =	$	+ $195 =	$
					Total	$	Total	$	Total	$

Fee payment:

☐ Please charge Deposit Account No. 23-1925 in the amount of $_____ for _____.

☐ Payment by credit card in the amount of $_____ (Form PTO-2038 is attached).
WARNING: Information on this form may become public. **Credit card information should not be included on this form.**

☒ The Director is hereby authorized to charge payment of any additional filing fees required under 37 CFR § 1.16 and any patent application processing fees under 37 CFR § 1.17 (including any extension fee required to ensure that this paper is timely filed), or to credit any overpayment, to Deposit Account No. 23-1925.

Respectfully submitted,

February 15, 2017
Date

/Danielle C. Gillen/
Danielle C. Gillen (Reg. No. 68,197)

Electronic Acknowledgement Receipt

EFS ID:	28360647
Application Number:	15358723
International Application Number:	
Confirmation Number:	4188
Title of Invention:	Article of Footwear Having A Textile Upper
First Named Inventor/Applicant Name:	Bhupesh Dua
Customer Number:	133691
Filer:	Danielle Cendrowski Gillen/Zachary Castillo
Filer Authorized By:	Danielle Cendrowski Gillen
Attorney Docket Number:	15571-1169/08-1313US77CON
Receipt Date:	15-FEB-2017
Filing Date:	22-NOV-2016
Time Stamp:	12:49:30
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Non Patent Literature	TranscriptHoldenDecIPR20160921.pdf	1045457 73a979f44fb2e46a562c6b017d8ec068b8482819	no	226

Warnings:

Information:					
2	Non Patent Literature	PatentOwnerResponsePR20160921.pdf	19511074 32b8b34160dc83391ab87d4a55d2132b342804ba	no	64
Warnings:					
Information:					
3	Non Patent Literature	PatentOwnerResponsePR20160922.pdf	20874501 c4e71112e7f2cd8979630562acaeaa9b71b8800e	no	66
Warnings:					
Information:					
4	Other Reference-Patent/App/Search documents	14503514OA021317.pdf	250561 8a064751e84f4ceaddf904f8c9fdf6c040ef2c07	no	7
Warnings:					
Information:					
5		15571-1169IDSPTO.pdf	177027 bd05b93805c8a636ed72d4ff0407488759d1528c	yes	3

	Multipart Description/PDF files in .zip description		
	Document Description	**Start**	**End**
	Information Disclosure Statement (IDS) Form (SB08)	2	3
	Miscellaneous Incoming Letter	1	1

Warnings:	
Information:	
Total Files Size (in bytes):	41858620

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

CERTIFICATE OF EFS FILING UNDER 37 CFR §1.8

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Date: January 19, 2017 Name: Danielle C. Gillen, Reg. No. 68,197 Signature: /Danielle C. Gillen/

BRINKS GILSON & LIONE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of:	Bhupesh Dua et al.		
Appln. No.:	15/358,723	Examiner:	Carter, Cameron A.
Filed:	November 22, 2016	Art Unit:	3765
For:	ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER	Conf. No.:	4188
Attorney Docket No.:	15571-1169/08-1313US77CON		

RESPONSE TO RESTRICTION/ELECTION REQUIREMENT

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Restriction/Election Requirement dated December 30, 2016, please consider the following remarks.

Amendments to the Claims begin on page 2 of this paper.

Remarks begin on page 6 of this paper.

AMENDMENTS TO THE CLAIMS

A complete listing of the claims proper claim identifiers is set forth below.

1-20. (Cancelled)

21. (Previously Presented) An upper for an article of footwear, the upper comprising:

a flat knit textile element comprising (1) flat knit edges free of surrounding textile structure such that the flat knit edges are not surrounded by textile structure from which the textile element must be removed and (2) a first knit strip having a first knit construction and a second knit strip having a second knit construction that is different from the first knit construction;

wherein the first knit strip and the second knit strip are positioned adjacent to each other along one or more of a lateral side and a medial side of the upper.

22. (Previously Presented) The upper of clam 21, wherein one or both of the first knit strip and the second knit strip comprises a plurality of knit strips.

23. (Previously Presented) The upper of claim 22, wherein the first and second knit strips alternate with one another along one or more of the lateral side and the medial side of the upper.

24. (Previously Presented) The upper of claim 22, wherein the flat knit textile element comprises at least two of the first knit strip and at least two of the second knit strip.

25. (Previously Presented) The upper of claim 21, wherein the first knit strip and the second knit strip extend along the lateral side of the upper from an instep region of the upper to an area proximate to a lower region of the upper.

26. (Previously Presented) The upper of claim 21, wherein the first knit strip and

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Skechers v Nike

the second knit strip extend along the medial side of the upper from an instep region of the upper to an area proximate to a lower region of the upper.

27. (Previously Presented) The upper of claim 21, wherein the first knit construction of the first knit strip comprises a smooth texture, and the second knit construction of the second knit strip comprises a rough texture.

28. (Previously Presented) The upper of claim 21, wherein the flat knit textile element further comprises a plurality of apertures in an instep region of the upper.

29. (Previously Presented) The upper of claim 21, wherein the first knit construction of the first knit strip comprises a higher degree of stretch than the second knit construction of the second knit strip.

30. (Previously Presented) The upper of claim 21, wherein the second knit construction of the second knit strip comprises a higher degree of stretch than the first knit construction of the first knit strip.

31. (Previously Presented) An upper for an article of footwear, the upper comprising:

a flat knit textile element comprising (1) flat knit edges free of surrounding textile structure such that the flat knit edges are not surrounded by textile structure from which the textile element must be removed and (2) a first knit strip formed from yarns of a first yarn type and a second knit strip formed from yarns of a second yarn type that is different from the first yarn type;

wherein the first knit strip and the second knit strip are positioned adjacent to each other along one or more of a lateral side and a medial side of the upper;

wherein one or both of the first knit strip and the second knit strip comprises a plurality of strips; and

wherein the first and second knit strips alternate with one another along one or more of the lateral side and the medial side of the upper.

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Skechers v Nike

32. (Previously Presented) The upper of claim 31, wherein the flat knit textile element comprises at least two of the first knit strip and at least two of the second knit strip.

33. (Previously Presented) The upper of claim 31, wherein the first knit strip and the second knit strip extend along the lateral side of the upper from an instep region of the upper to an area proximate to a lower region of the upper.

34. (Previously Presented) The upper of claim 31, wherein the first knit strip and the second knit strip extend along the medial side of the upper from an instep region of the upper to an area proximate to a lower region of the upper.

35. (Previously Presented) The upper of claim 31, wherein the first yarn type of the first knit strip comprises a smooth texture, and the second yarn type of the second knit strip comprises a rough texture.

36. (Previously Presented) The upper of claim 31, wherein the flat knit textile element further comprises a plurality of apertures in an instep region of the upper.

37. (Previously Presented) The upper of claim 31, wherein the first yarn type of the first knit strip comprises a higher degree of stretch than the second yarn type of the second knit strip.

38. (Previously Presented) The upper of claim 31, wherein the second yarn type of the second knit strip comprises a higher degree of stretch than the first yarn type of the first knit strip.

39. (Previously Presented) The upper of claim 31, wherein the first yarn type of the first knit strip comprises at least one of a higher biodegradability, moisture absorption, insulation, durability, and/or hydrophobicity than the second yarn type of

the second knit strip.

40. (Previously Presented) The upper of claim 31, wherein the first yarn type of the first knit strip comprises at least one of a higher strength, support, stiffness, recovery, fit and/or form than the second yarn type of the second knit strip.

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Skechers v Nike

Remarks

Claims 21-40 are pending. In response to the Restriction/Election Requirement, Applicant elects, without traverse, the species of "Embodiment IV – Figure 11," as characterized by the Examiner, that includes claims 21-40. Consideration and allowance of the application is respectfully requested.

Respectfully submitted,

Dated: January 19, 2017

/Danielle C. Gillen/
Danielle C. Gillen (Reg. No. 68,197)
Attorney for Applicant

BRINKS GILSON & LIONE
PO BOX 10395
CHICAGO, IL 60610
(312) 321-4200

Skechers EX1013-p. 726
Skechers v Nike

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Date: January 19, 2017 Name: Danielle C. Gillen (Reg. No. 68,197) Signature: /Danielle C. Gillen/

BRINKS GILSON & LIONE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of:	Bhupesh Dua et al.		
Appln. No.:	15/358,723	Examiner:	Carter, Cameron A.
Filed:	November 22, 2016	Art Unit:	3765
For:	ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER	Conf. No.:	4188
Attorney Docket No.:	15571-1169/08-1313US77CON		

INFORMATION DISCLOSURE STATEMENT

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

In accordance with the duty of disclosure, Applicant(s) hereby cites the following references:

US PATENT REFERENCES

EXAMINER INITIAL		DOCUMENT NUMBER Number-Kind Code (if known)	DATE	NAME
	A1	2,343,390	1944-03-07	Ushakoff
	A2	2,608,078	1952-08-26	Anderson
	A3	2,569,764	1951-10-02	Jonas
	A4	2,314,098	1943-03-16	McDonald
	A5	2,641,004	1953-06-09	Whiting et al.
	A6	2,440,393	1948-04-27	Clark
	A7	4,750,339	1988-06-14	Simpson et al.
	A8	2,147,197	1939-02-14	Glidden
	A9	6,333,105	2001-12-25	Tanaka et al.
	A10	3,583,081	1974-06-08	Hayashi
	A11	4,447,967	1984-05-15	Zaino
	A12	4,813,158	1989-03-21	Brown
	A13	4,756,098	1988-07-12	Boggia
	A14	5,345,638	1994-09-13	Nishida
	A15	4,785,558	1988-11-22	Shiomura
	A16	601,192	1898-03-22	Woodside
	A17	1,215,198	1917-02-06	Rothstein
	A18	1,597,934	1926-08-31	Stimpson
	A19	1,888,172	1932-11-15	Joha
	A20	1,902,780	1933-03-21	Holden et al.
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	A22	2,001,293	1935-05-14	Wilson
	A23	2,047,724	1936-07-14	Zuckerman
	A24	2,330,199	1943-09-28	Basch
	A25	2,400,692	1946-05-21	Herbert

Examiner Signature		Date Considered	

Skechers EX1013-p. 727
Skechers v Nike

EXAMINER INITIAL		DOCUMENT NUMBER Number-Kind Code (if known)	DATE	NAME
	A26	2,586,045	1952-02-19	Hoza
	A27	2,675,631	1954-04-20	Doughty
	A28	2,994,322	1961-08-01	Cullen et al.
	A29	3,694,940	1972-10-03	Stohr
	A30	3,704,474	1972-12-05	Winkler
	A31	3,766,566	1973-10-23	Tadakoro
	A32	3,778,856	1973-12-18	Christie et al.
	A33	3,952,427	1976-04-27	Von den Benken et al.
	A34	3,972,086	1976-08-03	Belli et al.
	A35	4,027,402	1977-06-07	Liu et al.
	A36	4,031,586	1977-06-28	Von den Benken et al.
	A37	4,211,806	1980-07-08	Civardi et al.
	A38	4,232,458	1980-11-11	Bartels
	A39	4,255,949	1981-03-17	Thorneburg
	A40	4,258,480	1981-03-31	Famolare, Jr.
	A41	4,317,292	1982-03-02	Melton
	A42	4,373,361	1983-02-15	Thorneburg
	A43	4,465,448	1984-08-14	Aldridge
	A44	4,607,439	1986-08-26	Harada
	A45	4,737,396	1988-04-12	Kamat
	A46	5,031,423	1991-07-16	Ikenaga
	A47	5,095,720	1992-03-17	Tibbals, Jr.
	A48	5,117,567	1992-06-02	Berger
	A49	5,152,025	1992-10-16	Hirmas
	A50	5,192,601	1993-03-09	Neisler
	A51	5,353,524	1994-10-11	Brier
	A52	5,461,884	1995-10-31	McCartney et al.
	A53	5,371,957	1994-12-13	Gaudio
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	A60	5,746,013	1998-05-05	Fay, Sr.
	A61	5,765,296	1998-06-16	Ludemann et al.
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	A64	6,029,376	2000-02-29	Cass
	A65	6,032,387	2000-03-07	Johnson
	A66	6,052,921	2000-04-25	Oreck
	A67	6,088,936	2000-07-18	Bahl
	A68	6,151,802	2000-11-28	Reynolds
	A69	6,170,175	2001-01-09	Funk
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	A254	ORDER Granting Motion to Extend Time to File Appellant/Petitioner Principal Brief, September 18, 2014.
	A255	Certificate of Compliance With Fed. Cir. R. 17 (Agency) for Appellant Nike, Inc., September 23, 2014.
	A256	Certificate of Compliance With Fed. Cir. R. 17 (Agency) for Appellee Adidas AG, September 25, 2014.
	A257	TENDERED from Appellant Nike, Inc., Title: OPENING BRIEF, December 15, 2014.
	A258	BRIEF FILED for Appellant Nik, Inc., December 15, 2014.
	A259	MOTION of Director of the USPTO for Leave to Intervene, December 18, 2014.
	A260	MOTION of Appellee Adidas AG to Extend the Time to April 10, 2015 to File the Appellee/Respondent/Cross-Appellant's Principal Brief, December 18, 2015.
	A261	ORDER Granting Director's Motion for Leave to Intervene and Granting Motion to Extend Time to File Appellee's Response Brief, September 29, 2014.
	A262	TENDERED from Intervenor Lee. Title: INTERVENOR BRIEF, April 9, 2015.
	A263	BRIEF FILED for Intervenor Lee, April 9, 2015.
	A264	TENDERED from Appellee Adidas AG. Title: OPENING BRIEF, April 10, 2015.
	A265	BRIEF FILED for Appellee Adidas AG, April 10, 2015.
	A266	MOTION of Appellant Nike, Inc. to Extend the Time to May 27, 2015 at 11:59 pm to File the Reply Brief, April 13, 2015.
	A267	ORDER Granting Motion to Extend Time to File Reply Brief Filed by Appellant Nike, Inc., April 14, 2015.

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	A271	Statement of Compliance With Fed. Cir. R. 33 for Appellant Nike, Inc., Appellee, Adidas AG and Intervenor Lee, June 8, 2015.
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	A282	Textile Machinery-Knitting Machines-Nominal Diameters of Circular Machines, *International Standard*, ISO 8117, Second Edition, February 15, 2003, 6 pages.
	A283	Petition for Inter-Partes Review Under 35 U.S.C. §§ 311-319 and 37 C.F.R. § 42.100 et seq. (IPR2016-00920), filed April 19, 2016, 67 pages.
	A284	File History for U.S. Patent No. 8,042,288, filed April 19, 2016, as Exhibit 1002 in IPR2016-00920, 324 pages.
	A285	Declaration of Lenny M. Holden from the US Patent and Trademark Office Inter Partes Review IPR2016-00920 dated April 19, 2016, 166 pages.
	A286	Form PTO SB 42 dated April 19, 2016, in IPR2016-00920, 2 pages.
	A287	Notice of Filing Date accorded to Petition and Time for Filing Patent Owner Preliminary Response in IPR2016-00920 dated April 25, 2016, 4 pages.
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	A289	Trial Instituted Document in IPR2016-00920 dated October 20, 2016, 8 pages.
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	A292	Declaration of Lenny M. Holden from the US Patent and Trademark Office Inter Partes Review IPR2016-00921 dated April 19, 2016, 154 pages.
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	A295	Patent Owner's Mandatory Notices in IPR2016-00921 dated May 10, 2016, 5 pages.
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	A297	Scheduling Order in IPR2016-00921 dated October 21, 2016, 9 pages.
	A298	Notice of Cross-Examination of Lenny M. Holden in IPR2016-00921 dated December 19, 2016, 3 pages.
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	A300	File History for U.S. Patent No. 8,266,749, filed April 19, 2016, as Exhibit 1002 in IPR2016-00922, 309 pages.
	A301	Declaration of Lenny M. Holden from the US Patent and Trademark Office Inter Partes Review IPR2016-00922 dated April 19, 2016, 154 pages.

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	A302	Form PTO SB 42 dated April 19, 2016, in IPR2016-00922, 2 pages.
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	A304	Patent Owner's Mandatory Notices in IPR2016-00922 dated May 10, 2016, 5 pages.
	A305	Trial Instituted Document in IPR2016-00922 dated October 21, 2016, 24 pages.
	A306	Scheduling Order in IPR2016-00922 dated October 21, 2016, 9 pages.
	A307	Notice of Cross-Examination of Lenny M. Holden in IPR2016-00922 dated December 19, 2016, 3 pages.
	A308	Petition for Inter-Partes Review Under 35 U.S.C. §§ 311-319 and 37 C.F.R. § 42.100 et seq. (IPR2017-00263), filed November 14, 2016, 50 pages.
	A309	Declaration of Lenny M. Holden from the US Patent and Trademark Office Inter Partes Review IPR2017-00263 dated November 14, 2016, 82 pages.
	A310	Form PTO SB 42 dated November 14, 2016, in IPR2017-00263, 2 pages.
	A311	Patent Owner's Mandatory Notices in IPR2017-00263 dated December 5, 2016, 5 pages.
	A312	Notice of Filing Date accorded to Petition and Time for Filing Patent Owner Preliminary Response in IPR2017-00263 dated December 9, 2016, 5 pages.
	A313	Petition for Inter-Partes Review Under 35 U.S.C. §§ 311-319 and 37 C.F.R. § 42.100 et seq. (IPR2017-00264), filed November 14, 2016, 59 pages.
	A314	Declaration of Lenny M. Holden from the US Patent and Trademark Office Inter Partes Review IPR2017-00264 dated November 14, 2016, 106 pages.
	A315	Form PTO SB 42 dated November 14, 2016, in IPR2017-00264, 2 pages.
	A316	Patent Owner's Mandatory Notices in IPR2017-00264 dated December 5, 2016, 5 pages.
	A317	Notice of Filing Date accorded to Petition and Time for Filing Patent Owner Preliminary Response in IPR2017-00264 dated December 9, 2016, 5 pages.

1. PRIORITY INFORMATION:

☒ This application claims priority under 35 USC §120 to the following United States patent application(s): 14/503,514. In accordance with 37 CFR §1.98(d), copies of the references cited herein which were submitted to, or cited by, the office, in compliance with 37 CFR §1.98(a)-(c) in the earlier application are not provided herewith. The Examiner is directed to those references cited in all Information Disclosure Statements filed in the priority United States patent application(s) cited above in addition to the references cited herein.

2. CERTIFICATIONS: (CHECK ALL THAT APPLY)

A. Certifications For 37 CFR §1.97(c) or 37 CFR §1.97(d):

☐ Applicant hereby certifies pursuant to 37 CFR §1.97(e)(1) that each item of information in this Information Disclosure Statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this Information Disclosure Statement.

☐ Applicant hereby certifies pursuant to 37 CFR §1.97(e)(2) that no item of information contained in this Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the undersigned after making reasonable inquiry, no item of information contained in this Statement was known to any individual designated in 37 CFR §1.56(c), more than three months prior to the filing of this Information Disclosure Statement.

B. For Patent Term Adjustment Purposes:

☐ For purposes of 37 CFR §1.704(d)(i) or 37 CFR §1.704(d)(ii), Applicant hereby certifies that each item of information contained in this Information Disclosure Statement was first cited in any communication from

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a patent office in a counterpart foreign or international application or from the Office or is a communication that was issued by a patent office in a counterpart foreign or international application or by the Office, and that this communication was not received by any individual designated in 37 CFR §1.56(c) more than thirty days prior to the filing of this Information Disclosure Statement.

3. FEE INFORMATION: (CHECK IF FEE REQUIRED)

☐ Applicant has calculated a processing fee in the amount of _____ to be due under 37 CFR §1.17(p) in connection with the filing of this Information Disclosure Statement. Applicant authorizes charging the fee to Deposit Account _____.

☒ The Director is hereby authorized to charge any fee deficiency associated with the filing of this Information Disclosure Statement to Deposit Account 23-1925.

Pursuant to the undersigned attorney's obligation and duties under 37 CFR §§ 1.56 and 1.98(a)(3) and (c), either English language abstracts, partial translations, or full translations are included for patent documents which are not in English for the express purpose of providing a concise explanation of the references to the Patent and Trademark Office with the opportunity to evaluate the same. Applicant respectfully requests the Examiner's consideration of the above reference(s) and entry thereof into the record of this application.

By submitting this Statement, Applicant is attempting to fully comply with the duty of candor and good faith mandated by 37 CFR §1.56. As such, this Statement is not intended to constitute an admission that any of the enclosed references, or other information referred to therein, constitutes "prior art" or is otherwise "material to patentability," as that phrase is defined in 37 CFR §1.56(a).

Respectfully submitted,

January 19, 2017
Date

/Danielle C. Gillen/
Danielle C. Gillen (Reg. No. 68,197)

Examiner Signature		Date Considered	

Electronic Acknowledgement Receipt

EFS ID:	28102636
Application Number:	15358723
International Application Number:	
Confirmation Number:	4188
Title of Invention:	Article of Footwear Having A Textile Upper
First Named Inventor/Applicant Name:	Bhupesh Dua
Customer Number:	133691
Filer:	Danielle Cendrowski Gillen/Elvia Salazar
Filer Authorized By:	Danielle Cendrowski Gillen
Attorney Docket Number:	15571-1169/08-1313US77CON
Receipt Date:	19-JAN-2017
Filing Date:	22-NOV-2016
Time Stamp:	11:15:11
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Transmittal Letter	155711169TransRespRR.pdf	146168 f916384b25a0e3e3948f2b79aa5015ee3ddfbad5	no	1

Warnings:

Information:					
2		155711169RespRR.pdf	104755 b58b9c858143a1e65ea259e17450b4c67a9733ab	yes	6

Multipart Description/PDF files in .zip description		
Document Description	**Start**	**End**
Response to Election / Restriction Filed	1	1
Claims	2	5
Applicant Arguments/Remarks Made in an Amendment	6	6

Warnings:					
Information:					
3	Information Disclosure Statement (IDS) Form (SB08)	155711169Ids.pdf	203804 97fe32880c81604d503f8965955c591e3c6db989	no	10
Warnings:					
Information:					
This is not an USPTO supplied IDS fillable form					

Total Files Size (in bytes):	454727

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

CERTIFICATE OF EFS FILING UNDER 37 CFR §1.8

I hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office, Commissioner for Patents, via the EFS pursuant to 37 CFR §1.8 on the below date:

Date: January 19, 2017 Name: Danielle C. Gillen (Reg. No. 68,197) Signature: /Danielle C. Gillen/

BRINKS GILSON & LIONE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of:	Bhupesh Dua et al.		
Appln. No.:	15/358,723	Examiner:	Carter, Cameron A.
Filed:	November 22, 2016	Art Unit:	3765
For:	ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER	Conf. No.:	4188
Attorney Docket No.:	15571-1169/08-1313US77CON		

TRANSMITTAL

Mail Stop Amendment
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Attached is/are:

☒ Response to Restriction/Election Requirement; Information Disclosure Statement.

Fee calculation:

☐ No additional fee is required.

☐ Per 37 CFR §1.27, ☐ Applicant is small entity ☐ Applicant is micro entity.

☐ An extension fee in an amount of $_____ for a _____-month extension of time under 37 CFR § 1.136(a).

☐ A petition or processing fee in an amount of $_____ under 37 CFR § 1.1_____(_____).

☐ An additional filing fee has been calculated as shown below:

					Fee		Small Entity Fee		Micro Entity Fee	
	Claims Remaining After Amendment		Highest No. Previously Paid	Present Extra	Rate	Add'l Fee	Rate	Add'l Fee	Rate	Add'l Fee
Total		Minus			x $ 80 =	$	x $ 40 =	$	x $20 =	$
Independent		Minus			x $420 =	$	x $210 =	$	x $105 =	$
First Presentation of Multiple Dep. Claim					+ $780 =	$	+ $390 =	$	+ $195 =	$
					Total	$	Total	$	Total	$

Fee payment:

☐ Please charge Deposit Account No. 23-1925 in the amount of $_____ for _____.

☐ Payment by credit card in the amount of $_____ (Form PTO-2038 is attached).
WARNING: Information on this form may become public. **Credit card information should not be included on this form.**

☒ The Director is hereby authorized to charge payment of any additional filing fees required under 37 CFR § 1.16 and any patent application processing fees under 37 CFR § 1.17 (including any extension fee required to ensure that this paper is timely filed), or to credit any overpayment, to Deposit Account No. 23-1925.

Respectfully submitted,

January 19, 2017
Date

/Danielle C. Gillen/
Danielle C. Gillen (Reg. No. 68,197)

PTO/SB/06 (09-11)
Approved for use through 1/31/2014. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PATENT APPLICATION FEE DETERMINATION RECORD Substitute for Form PTO-875	Application or Docket Number 15/358,723	Filing Date 11/22/2016	☐ To be Mailed

ENTITY: ☒ LARGE ☐ SMALL ☐ MICRO

APPLICATION AS FILED – PART I

	(Column 1)	(Column 2)		
FOR	NUMBER FILED	NUMBER EXTRA	RATE ($)	FEE ($)
☐ BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A	N/A	
☐ SEARCH FEE (37 CFR 1.16(k), (i), or (m))	N/A	N/A	N/A	
☐ EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A	N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =	*	X $ =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*	X $ =	
☐ APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is $310 ($155 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).			
☐ MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))				
* If the difference in column 1 is less than zero, enter "0" in column 2.			TOTAL	

APPLICATION AS AMENDED – PART II

		(Column 1)		(Column 2)	(Column 3)		
AMENDMENT	01/19/2017	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
	Total (37 CFR 1.16(i))	* 20	Minus	** 20	= 0	X $80 =	0
	Independent (37 CFR 1.16(h))	* 2	Minus	***3	= 0	X $420 =	0
	☐ Application Size Fee (37 CFR 1.16(s))						
	☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
						TOTAL ADD'L FEE	0

		(Column 1)		(Column 2)	(Column 3)		
AMENDMENT		CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
	Total (37 CFR 1.16(i))	*	Minus	**	=	X $ =	
	Independent (37 CFR 1.16(h))	*	Minus	***	=	X $ =	
	☐ Application Size Fee (37 CFR 1.16(s))						
	☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
						TOTAL ADD'L FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.

** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".

*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".

The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

LIE
BRENDA HINES

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/358,723	11/22/2016	Bhupesh Dua	15571-1169/08-1313US77CON	4188

133691 7590 12/30/2016

NIKE, Inc./BGL
P.O. Box 10395
Chicago, IL 60610

EXAMINER
CARTER, CAMERON A

ART UNIT	PAPER NUMBER
3765	

MAIL DATE	DELIVERY MODE
12/30/2016	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 15/358,723	Applicant(s) DUA ET AL.	
	Examiner Cameron A. Carter	Art Unit 3765	AIA (First Inventor to File) Status No

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11/22/2016*.

☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.

2a)☐ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on _____; the restriction requirement and election have been incorporated into this action.

4)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims*

5)☒ Claim(s) *21-40* is/are pending in the application.

5a) Of the above claim(s) _____ is/are withdrawn from consideration.

6)☐ Claim(s) _____ is/are allowed.

7)☐ Claim(s) _____ is/are rejected.

8)☐ Claim(s) _____ is/are objected to.

9)☒ Claim(s) *21-40* are subject to restriction and/or election requirement.

* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to PPHfeedback@uspto.gov.

Application Papers

10)☐ The specification is objected to by the Examiner.

11)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

Certified copies:

a)☐ All b)☐ Some** c)☐ None of the:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

** See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b) Paper No(s)/Mail Date _____.

3) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

4) ☐ Other: _____.

DETAILED ACTION

The present application is being examined under the pre-AIA first to invent provisions.

Election/Restrictions

Claim(s) 21 and 31 are generic to the following disclosed patentably distinct species:

- Embodiment I - Figures 1-8
- Embodiment II – Figure 9
- Embodiment III – Figure 10
- Embodiment IV – Figure 11
- Embodiment V – Figure 12
- Embodiment VI – Figures 13 and 14

The species are independent or distinct because as disclosed the different species have mutually exclusive characteristics for each identified species. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, or a single grouping of patentably indistinct species, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

There is a search and/or examination burden for the patentably distinct species as set forth above because at least the following reason(s) apply:

- The inventions have acquired a separate status in the art in view of the different classification.
- The inventions have acquired a separate status in the art due to their recognized divergent subject matter.

The inventions require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search strategies.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or a grouping of patentably indistinct species to be examined even though the requirement may be traversed (37 CFR 1.143) **and (ii) identification of the claims encompassing the elected species** or grouping of patentably indistinct species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species or grouping of patentably indistinct species.

Should applicant traverse on the ground that the species, or groupings of patentably indistinct species from which election is required, are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103 or pre-AIA 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

A telephone call was not made to Danielle Gillen on December 27, 2016 to request an oral election to the above restriction requirement, because of the complexity of the restriction requirement.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cameron A. Carter whose telephone number is (571)272-3290. The examiner can normally be reached on Monday-Friday 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Clinton T. Ostrup can be reached on 571-272-5559. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Cameron A. Carter/
Examiner, Art Unit 3765

/ANNA KINSAUL/
Primary Examiner, Art Unit 3765

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
15/358,723	11/22/2016	Bhupesh Dua	15571-1169/08-1313US77CON

CONFIRMATION NO. 4188

133691
NIKE, Inc./BGL
P.O. Box 10395
Chicago, IL 60610

POA ACCEPTANCE LETTER

OC000000087894910

Date Mailed: 12/14/2016

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 12/13/2016.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

Questions about the contents of this notice and the requirements it sets forth should be directed to the Office of Data Management, Application Assistance Unit, at **(571) 272-4000** or **(571) 272-4200** or **1-888-786-0101**.

/sleutchit/

PTO/AIA/80 (07-12)
Approved for use through 11/30/2014. OMB 0651-0035
U.S. Patent and Trademark Office; U.S DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

POWER OF ATTORNEY TO PROSECUTE APPLICATIONS BEFORE THE USPTO

I hereby revoke all previous powers of attorney given in the application identified in the attached statement under 37 CFR 3.73(c).

I hereby appoint:

☒ Practitioners associated with Customer Number: 133691

OR

☐ Practitioner(s) named below (if more than ten patent practitioners are to be named, then a customer number must be used).

Name	Registration Number	Name	Registration Number

As attorney(s) or agent(s) to represent the undersigned before the United States Patent and Trademark Office (USPTO) in connection with any and all patent applications assigned only to the undersigned according to the USPTO assignment records or assignments documents attached to this form in accordance with 37 CFR 3.73(c).

Please change the correspondence address for the application identified in the attached statement under 37 CFR 3.73(c) to:

☒ The address associated with Customer Number: 133691

OR

☐	Firm or Individual Name		
	Address		
	City	State	Zip
	Country		
	Telephone	Email	

Assignee Name and Address: NIKE, Inc., One Bowerman Drive, Beaverton, Oregon 97005-6453

A copy of this form, together with a statement under 37 CFR 3.73(c) (Form PTO/AIA/96 or equivalent) is required to be Filed in each application in which this form is used. The statement under 37 CFR 3.73(c) may be completed by one of The practitioners appointed in this form, and must identify the application in which this Power of Attorney is to be filed.

SIGNATURE of Assignee of Record

The individual whose signature and title is supplied below is authorized to act on behalf of the assignee

Signature	Tim Crean	Date	8/11/15
Name	Timothy J. Crean	Telephone	
Title	Attorny-in-Fact, NIKE, Inc.		

This collection of information is required by 37 CFR 1.31, 1.32 and 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PTO/AIA/96 (08-12)
Approved for use through 01/31/2013. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

STATEMENT UNDER 37 CFR 3.73(c)

Applicant/Patent Owner: NIKE, INC.

Application No./Patent No.: 15/358,723 Filed/Issue Date: November 22, 2016

Titled: Article of Footwear Having A Textile Upper

NIKE, INC., a corporation

(Name of Assignee) (Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that, for the patent application/patent identified above, it is (choose **one** of options 1, 2, 3 or 4 below):

1. ☑ The assignee of the entire right, title, and interest.

2. ☐ An assignee of less than the entire right, title, and interest (check applicable box):

   ☐ The extent (by percentage) of its ownership interest is _____%. Additional Statement(s) by the owners holding the balance of the interest must be submitted to account for 100% of the ownership interest.

   ☐ There are unspecified percentages of ownership. The other parties, including inventors, who together own the entire right, title and interest are:

   Additional Statement(s) by the owner(s) holding the balance of the interest must be submitted to account for the entire right, title, and interest.

3. ☐ The assignee of an undivided interest in the entirety (a complete assignment from one of the joint inventors was made). The other parties, including inventors, who together own the entire right, title, and interest are:

   Additional Statement(s) by the owner(s) holding the balance of the interest must be submitted to account for the entire right, title, and interest.

4. ☐ The recipient, via a court proceeding or the like (*e.g.*, bankruptcy, probate), of an undivided interest in the entirety (a complete transfer of ownership interest was made). The certified document(s) showing the transfer is attached.

The interest identified in option 1, 2 or 3 above (not option 4) is evidenced by either (choose **one** of options A or B below):

A. ☑ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel 040468, Frame 0058, or for which a copy thereof is attached.

B. ☐ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as follows:

   1. From: _____ To: _____

      The document was recorded in the United States Patent and Trademark Office at

      Reel _____, Frame _____, or for which a copy thereof is attached.

   2. From: _____ To: _____

      The document was recorded in the United States Patent and Trademark Office at

      Reel _____, Frame _____, or for which a copy thereof is attached.

This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PTO/AIA/96 (08-12)
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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

STATEMENT UNDER 37 CFR 3.73(c)

3. From: _____ To: _____

The document was recorded in the United States Patent and Trademark Office at

Reel _____, Frame _____, or for which a copy thereof is attached.

4. From: _____ To: _____

The document was recorded in the United States Patent and Trademark Office at

Reel _____, Frame _____, or for which a copy thereof is attached.

5. From: _____ To: _____

The document was recorded in the United States Patent and Trademark Office at

Reel _____, Frame _____, or for which a copy thereof is attached.

6. From: _____ To: _____

The document was recorded in the United States Patent and Trademark Office at

Reel _____, Frame _____, or for which a copy thereof is attached.

☐ Additional documents in the chain of title are listed on a supplemental sheet(s).

☑ As required by 37 CFR 3.73(c)(1)(i), the documentary evidence of the chain of title from the original owner to the assignee was, or concurrently is being, submitted for recordation pursuant to 37 CFR 3.11.

[NOTE: A separate copy (i.e., a true copy of the original assignment document(s)) must be submitted to Assignment Division in accordance with 37 CFR Part 3, to record the assignment in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

/Danielle C. Gillen/	December 13, 2016
Signature	Date
Danielle C. Gillen	68,197
Printed or Typed Name	Title or Registration Number

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

Electronic Acknowledgement Receipt

EFS ID:	27773937
Application Number:	15358723
International Application Number:	
Confirmation Number:	4188
Title of Invention:	Article of Footwear Having A Textile Upper
First Named Inventor/Applicant Name:	Bhupesh Dua
Customer Number:	133691
Filer:	Danielle Cendrowski Gillen/Elvia Salazar
Filer Authorized By:	Danielle Cendrowski Gillen
Attorney Docket Number:	15571-1169/08-1313US77CON
Receipt Date:	13-DEC-2016
Filing Date:	22-NOV-2016
Time Stamp:	12:47:39
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Transmittal Letter	155711169TransmPowerState.pdf	144770 cc2ba03e7872e8d9af9b77e8efc283b475424429	no	1

Warnings:

Information:					
2	Power of Attorney	155711169PowerState.pdf	183742 02bd6ff1fd4ea9c8a9ab5bb12e9f592e4ee7cdda	no	4
Warnings:					
Information:					
			Total Files Size (in bytes):	328512	

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

CERTIFICATE OF EFS FILING UNDER 37 CFR §1.8

I hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office, Commissioner for Patents, via the EFS pursuant to 37 CFR §1.8 on the below date:

Date: December 13, 2016 Name: Danielle C. Gillen (Reg. No. 68,197) Signature: /Danielle C. Gillen/

BRINKS GILSON & LIONE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of:	Bhupesh Dua et al.		
Appln. No.:	15/358,723	Examiner:	To be assigned
Filed:	November 22, 2016	Art Unit:	3765
For:	Article of Footwear Having A Textile Upper	Conf. No.:	4188
Attorney Docket No.:	15571-1169/08-1313US77CON		

TRANSMITTAL

Mail Stop Missing Parts
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Attached is/are:

☒ Power of Attorney and 37 CFR 3.73(c) Statement (4 pgs.).

Fee calculation:

☒ No additional fee is required.

☐ Per 37 CFR §1.27, ☐ Applicant is small entity ☐ Applicant is micro entity.

☐ An extension fee in an amount of $_____ for a _____-month extension of time under 37 CFR § 1.136(a).

☐ A petition or processing fee in an amount of $_____ under 37 CFR § 1.1_____(_____).

☐ An additional filing fee has been calculated as shown below:

					Fee		Small Entity Fee		Micro Entity Fee	
	Claims Remaining After Amendment		Highest No. Previously Paid	Present Extra	Rate	Add'l Fee	Rate	Add'l Fee	Rate	Add'l Fee
Total		Minus			x $ 80 =	$	x $ 40 =	$	x $20 =	$
Independent		Minus			x $420 =	$	x $210 =	$	x $105 =	$
First Presentation of Multiple Dep. Claim					+ $780 =	$	+ $390 =	$	+ $195 =	$
					Total	$	Total	$	Total	$

Fee payment:

☐ Please charge Deposit Account No. 23-1925 in the amount of $_____ for _____.

☐ Payment by credit card in the amount of $_____ (Form PTO-2038 is attached).
WARNING: Information on this form may become public. **Credit card information should not be included on this form.**

☒ The Director is hereby authorized to charge payment of any additional filing fees required under 37 CFR § 1.16 and any patent application processing fees under 37 CFR § 1.17 (including any extension fee required to ensure that this paper is timely filed), or to credit any overpayment, to Deposit Account No. 23-1925.

Respectfully submitted,

December 13, 2016
Date

/Danielle C. Gillen/
Danielle C. Gillen (Reg. No. 68,197)

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
15/358,723	11/22/2016	Bhupesh Dua	15571-1169/08-1313US77CON

CONFIRMATION NO. 4188

IMPROPER CPOA LETTER

133691
NIKE, Inc./BGL
P.O. Box 10395
Chicago, IL 60610

OC000000087833642

Date Mailed: 12/12/2016

NOTICE REGARDING POWER OF ATTORNEY

This is in response to the power of attorney filed 12/09/2016. The power of attorney in this application is not accepted for the reason(s) listed below:

- The power of attorney you provided did not comply with the power of attorney rules that became effective on June 25, 2004. See 37 CFR 1.32 and 69 Fed. Reg. 29865.

/ctuazon/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

CERTIFICATE OF EFS FILING UNDER 37 CFR §1.8

I hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office, Commissioner for Patents, via the EFS pursuant to 37 CFR §1.8 on the below date:

Date: December 9, 2016 Name: Danielle C. Gillen (Reg. No. 68,197) Signature: /Danielle C. Gillen/

BRINKS GILSON & LIONE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of:	Bhupesh Dua et al.		
Appln. No.:	15/358,723	Examiner:	To be assigned
Filed:	November 22, 2016	Art Unit:	3765
For:	Article of Footwear Having A Textile Upper	Conf. No.:	4188
Attorney Docket No.:	15571-1169/08-1313US77CON		

REQUEST FOR CORRECTION OF FILING RECEIPT

Mail Stop Missing Parts
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Attention: Application Processing Division
Customer Correction Branch

Dear Sir/Madam:

Applicant(s) requests the issuance of a corrected Filing Receipt (marked-up copy of Filing Receipt enclosed) for the above-referenced patent application, and in support of this request respectfully states:

Applicants noted on the transmittal for this application that a power of attorney was submitted in the prior application, U.S. Patent App. No. 14/503,514. A copy of the Application Transmittal is attached hereto.

The Commissioner is hereby authorized to charge any fees required to Deposit Account No. 23-1925.

Respectfully submitted,

December 9, 2016
Date

/Danielle C. Gillen/
Danielle C. Gillen Reg. No. 68,197
Attorney for Applicant(s)

BRINKS GILSON & LIONE
PO BOX 10395
CHICAGO, IL 60610
(312) 321-4200

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
15/358,723	11/22/2016	3765	1600	15571-1169/08-1313US77CON	20	2

CONFIRMATION NO. 4188

133691
NIKE, Inc./BGL
P.O. Box 10395
Chicago, IL 60610

FILING RECEIPT

OC000000087571330

Date Mailed: 12/02/2016

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Inventor(s)

Bhupesh Dua, Portland, OR;
Edward N. Thomas, Portland, OR;

Applicant(s)

NIKE, Inc., Beaverton, OR;

Assignment For Published Patent Application

NIKE, Inc., Beaverton, OR

Power of Attorney: None

Domestic Priority data as claimed by applicant

This application is a CON of 14/503,514 10/01/2014
which is a DIV of 14/079,748 11/14/2013 ABN
which is a CON of 13/413,233 03/06/2012 ABN
which is a CON of 13/236,742 09/20/2011 PAT 8266749
which is a CON of 12/879,517 09/10/2010 PAT 8042288
which is a CON of 12/032,995 02/18/2008 PAT 7814598
which is a DIV of 10/791,289 03/03/2004 PAT 7347011

Foreign Applications for which priority is claimed (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.) - None.
Foreign application information must be provided in an Application Data Sheet in order to constitute a claim to foreign priority. See 37 CFR 1.55 and 1.76.

Permission to Access Application via Priority Document Exchange: Yes

Permission to Access Search Results: Yes

Applicant may provide or rescind an authorization for access using Form PTO/SB/39 or Form PTO/SB/69 as appropriate.

If Required, Foreign Filing License Granted: 11/30/2016
The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 15/358,723**
Projected Publication Date: 03/16/2017
Non-Publication Request: No
Early Publication Request: No
Title

Article of Footwear Having A Textile Upper

Preliminary Class

066

Statement under 37 CFR 1.55 or 1.78 for AIA (First Inventor to File) Transition Applications: No

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific

countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4258).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
15/358,723	11/22/2016	3765	1600	15571-1169/08-1313US77CON	20	2

CONFIRMATION NO. 4188

133691
NIKE, Inc./BGL
P.O. Box 10395
Chicago, IL 60610

FILING RECEIPT

OC000000087571330

Date Mailed: 12/02/2016

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Inventor(s)

Bhupesh Dua, Portland, OR;
Edward N. Thomas, Portland, OR;

Applicant(s)

NIKE, Inc., Beaverton, OR;

Assignment For Published Patent Application

NIKE, Inc., Beaverton, OR

Power of Attorney: ~~None~~ The patent practitioners associated with Customer Number 133691

Domestic Priority data as claimed by applicant

This application is a CON of 14/503,514 10/01/2014
which is a DIV of 14/079,748 11/14/2013 ABN
which is a CON of 13/413,233 03/06/2012 ABN
which is a CON of 13/236,742 09/20/2011 PAT 8266749
which is a CON of 12/879,517 09/10/2010 PAT 8042288
which is a CON of 12/032,995 02/18/2008 PAT 7814598
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Permission to Access Search Results: Yes

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Projected Publication Date: 03/16/2017
Non-Publication Request: No
Early Publication Request: No
Title

Article of Footwear Having A Textile Upper

Preliminary Class

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Skechers EX1013-p. 762
Skechers v Nike

countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4258).

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This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

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technology, manufacture products, deliver services, and grow your business, visit http://www.SelectUSA.gov or call +1-202-482-6800.

CERTIFICATE OF EFS FILING

I hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office, Commissioner for Patents, via the EFS on the below date:

Date: November 22, 2016 Name: Danielle C. Gillen, Reg. No. 68,197 Signature: /Danielle C. Gillen/

BRINKS GILSON & LIONE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of: Bhupesh Dua and Edward N. Thomas

For: ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER

Attorney Docket No.: 15571-1169/08-1313US77CON

UTILITY PATENT APPLICATION TRANSMITTAL

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

1. TRANSMITTED HEREWITH: New application under 37 CFR §1.53(b), which is a:
   - ☒ Continuation,
   - ☐ Divisional, or
   - ☐ Continuation-in-Part (CIP)

   Under 37 CFR §1.53(b) of prior Application Serial No. 14/503,514.

   Prior application information: Examiner: Marie D. Bays Art Unit: 3765

   - ☒ Maintenance of copendency of prior application: A request for extension of time and the appropriate fee have been filed in the pending prior application (or are being filed in the prior application concurrently herewith) to extend the period for response until November 23, 2016.
   - ☐ Certified copy of priority document(s) has been filed in prior application no. _____.

   For Continuation or Divisional Applications only: The entire disclosure of the prior application, from which an oath or declaration is supplied as indicated below, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference.

2. ATTACHMENTS: The following application elements and other papers are attached:
   - ☒ Application Data Sheet. See 37 CFR § 1.76.
   - ☒ Specification, including title page, claims and Abstract: 26 pages)
   - ☒ Drawings (12 sheets)
   - ☐ Appendices: _____
   - ☒ Two (2) Declarations (signed by inventors):
     - ☐ newly-executed (original or copy)
     - ☒ copy from a prior application that was filed on or after September 16, 2012 (37 CFR §1.63(d))
   - ☐ English Translation Document:
     - ☐ is attached or ☐ has been filed in prior application no. _____.
   - ☒ Preliminary Amendment (Note: If a priority application was filed before March 16, 2013, consider whether this Preliminary Amendment should be filed after the application filing. Related application data required under 37 CFR §1.78, if any, appears in the Amendments to the Specification section of the Preliminary Amendment, including incorporations by reference.)
   - ☐ Petition to Suspend Prosecution for the Time Necessary to File an Amendment (New Application Filed Concurrently).
   - ☒ Power of Attorney (one (1)) page; ☐ by inventor ☒ by Company Officer).
     - ☐ A new power is attached.
     - ☐ The power appears in the original papers in the prior application.
     - ☒ The power doesn't appear in the original papers in the prior application, but was filed on September 11, 2015.
     - ☒ The power of attorney in the prior application is to: Customer No. 133691.

☒ Assignment to: NIKE, Inc.:

was previously recorded on May 5, 2008 at Reel 020900, Frame 0859.

☐ Information Disclosure Statement (_____ pages) and copies of references cited, if required.

☐ Nonpublication Request under 35 USC §122(b)(2)(B)(i).

☒ Other: Certification and Request for Prioritized Examination Under 37 CFR 1.102(e)

3. SMALL/MICRO ENTITY STATUS:

☐ Applicant is small entity (per 37 CFR §1.27).

☐ Applicant is micro entity (per 37 CFR §1.27).

☐ A small/micro entity statement was filed in prior application no. _____ and such status is still proper and desired.

☐ Small/micro entity status is no longer desired.

4. FEE CALCULATION (AFTER ENTRY OF ANY PRELIMINARY AMENDMENT(S) IN ITEM #2 ABOVE):

Claims as Filed	**Col. 1**	**Col. 2**	**Fee**		**Small Entity Fee**		**Micro Entity Fee**	
For	No. Filed	No. Extra	Rate	Fee	Rate	Fee	Rate	Fee
Basic Filing Fee			+$280=	$280	+$70=	$	+$70=	$
Total Claims	20-20	0	x$ 80=	$	x$ 40=	$	x$ 20=	$
Independent Claims	2-3	0	x$420=	$	x$210=	$	x$105=	$
Multiple Dependent Claims Present			+$780=	$	+$390=	$	+$195=	$
Utility Application Size Fee (see MPEP 607 Filing Fee)			No. of pages - 100 = *	x .75 = / 50 =	No. of pages - 100 = *	x .75 = / 50 =	No. of pages - 100 = *	x .75 = / 50 =
			x$400=	$	x$200=	$	x$100=	$
Search Fee			+$600=	$600	+$300=	$	+$150=	$
Examination Fee			+$720=	$720	+$360=	$	+$180=	$
Surcharge: Late Oath/Declaration (37 CFR 1.16(f))			+$140=	$	+$70=	$	+$35=	$
*If the difference is less than zero, enter "0" in col.2.			Total	$1600	Total	$	Total	$

☒ A petition or processing fee in the amount of $4,000.00 under 37 CFR § 1.17(c).

☒ A petition or processing fee in the amount of $140.00 under 37 CFR § 1.17(i)(1).

5. FEE PAYMENT:

☒ Please charge Deposit Account No. 23-1925 in the amount of $**5,740.00**, which includes the $1,600.00 patent application fees; $4,000.00 Track 1 fee [Request for Prioritized Examination] and $140.00 for the processing fee.

☒ The Director is hereby authorized to charge payment of the following fees or credit any overpayment to Deposit Account No. 23-1925.

☒ Any additional filing fees required under 37 CFR § 1.16.

☒ Any patent application processing fees under 37 CFR §1.17.

☒ The Director is hereby authorized to charge payment of the following fees during the pendency of this application or credit any overpayment to Deposit Account No. 23-1925.

☒ Any filing fees under 37 CFR § 1.16 for presentation of extra claims.

☒ Any patent application processing fees under 37 CFR § 1.17.

☒ The issue fee set in 37 CFR § 1.18 at or before mailing of the Notice of Allowance, pursuant to 37 CFR § 1.311(b).

6. CORRESPONDENCE ADDRESS: Please recognize the correspondence address for this application as the address associated with the following Customer Number:

Customer No.: 133691 - Nike

7. PLEASE DIRECT all telephonic communications to: Danielle C. Gillen (telephone: (312) 321-4200).

Respectfully submitted,

November 22, 2016
Date

/Danielle C. Gillen/
Danielle C. Gillen (Reg. No. 68,197)

Electronic Acknowledgement Receipt

EFS ID:	27747060
Application Number:	15358723
International Application Number:	
Confirmation Number:	4188
Title of Invention:	Article of Footwear Having A Textile Upper
First Named Inventor/Applicant Name:	Bhupesh Dua
Customer Number:	133691
Filer:	Danielle Cendrowski Gillen/Jesus Rodriguez
Filer Authorized By:	Danielle Cendrowski Gillen
Attorney Docket Number:	15571-1169/08-1313US77CON
Receipt Date:	09-DEC-2016
Filing Date:	22-NOV-2016
Time Stamp:	14:04:42
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Transmittal Letter	157111169TransReqCorrectFil.pdf	145274 0a1b85d4b0645fc205953063b1f496b47fb00203	no	1

Warnings:

Information:					
2	Request for Corrected Filing Receipt	157111169ReqCorrectFilRec.pdf	91101 f5a803cd8590ed5a71ff3a796043c32c91e144fb	no	1
Warnings:					
Information:					
3	Miscellaneous Incoming Letter	155711169CopyFilingRect.pdf	179463 8a5dda003a46d2a201c861739bbccb2e39808849	no	4
Warnings:					
Information:					
4	Miscellaneous Incoming Letter	157111169MarkedUpRec.pdf	210841 9c86bd96289bd3a6f50fdfc331d505f947b33f71	no	4
Warnings:					
Information:					
5	Transmittal Letter	155711169CopyAppTransmit.pdf	105786 f935c3125ec492f763220c0a853e4f18c0111a88	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	732465		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

CERTIFICATE OF EFS FILING UNDER 37 CFR §1.8

I hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office, Commissioner for Patents, via the EFS pursuant to 37 CFR §1.8 on the below date:

Date: December 9, 2016 Name: Danielle C. Gillen (Reg. No. 68,197) Signature: /Danielle C. Gillen/

BRINKS GILSON & LIONE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of:	Bhupesh Dua et al.		
Appln. No.:	15/358,723	Examiner:	To be assigned
Filed:	November 22, 2016	Art Unit:	3765
For:	Article of Footwear Having A Textile Upper	Conf. No.:	4188
Attorney Docket No.:	15571-1169/08-1313US77CON		

TRANSMITTAL

Mail Stop Missing Parts
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Attached is/are:

☒ Request For Correction Of Filing Receipt; Copy of Filing Receipt; Marked Up Copy of Filing Receipt; Copy of Utility Patent Application Transmittal.

Fee calculation:

☒ No additional fee is required.

☐ Per 37 CFR §1.27, ☐ Applicant is small entity ☐ Applicant is micro entity.

☐ An extension fee in an amount of $_____ for a _____-month extension of time under 37 CFR § 1.136(a).

☐ A petition or processing fee in an amount of $_____ under 37 CFR § 1.1_____(_____).

☐ An additional filing fee has been calculated as shown below:

					Fee		Small Entity Fee		Micro Entity Fee	
	Claims Remaining After Amendment		Highest No. Previously Paid	Present Extra	Rate	Add'l Fee	Rate	Add'l Fee	Rate	Add'l Fee
Total		Minus			x $ 80 =	$	x $ 40 =	$	x $20 =	$
Independent		Minus			x $420 =	$	x $210 =	$	x $105 =	$
First Presentation of Multiple Dep. Claim					+ $780 =	$	+ $390 =	$	+ $195 =	$
					Total	$	Total	$	Total	$

Fee payment:

☐ Please charge Deposit Account No. 23-1925 in the amount of $_____ for _____.

☐ Payment by credit card in the amount of $_____ (Form PTO-2038 is attached).
WARNING: Information on this form may become public. **Credit card information should not be included on this form.**

☒ The Director is hereby authorized to charge payment of any additional filing fees required under 37 CFR § 1.16 and any patent application processing fees under 37 CFR § 1.17 (including any extension fee required to ensure that this paper is timely filed), or to credit any overpayment, to Deposit Account No. 23-1925.

Respectfully submitted,

December 9, 2016
Date

/Danielle C. Gillen/
Danielle C. Gillen (Reg. No. 68,197)

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

NIKE, Inc./BGL
P.O. Box 10395
Chicago IL 60610

MAILED
DEC 05 2016
OFFICE OF PETITIONS

Doc Code: TRACK1.GRANT

Decision Granting Request for Prioritized Examination (Track I or After RCE)	Application No.: 15/358,723

1. THE REQUEST FILED November 22, 2016 IS **GRANTED.**

The above-identified application has met the requirements for prioritized examination

A. ☒ for an original nonprovisional application (Track I).
B. ☐ for an application undergoing continued examination (RCE).

2. **The above-identified application will undergo prioritized examination.** The application will be accorded special status throughout its entire course of prosecution until one of the following occurs:

A. filing a **petition for extension of time** to extend the time period for filing a reply;

B. filing an **amendment to amend the application to contain more than four independent claims, more than thirty total claims**, or a multiple dependent claim;

C. filing a **request for continued examination**;

D. filing a notice of appeal;

E. filing a request for suspension of action;

F. mailing of a notice of allowance;

G. mailing of a final Office action;

H. completion of examination as defined in 37 CFR 41.102; or

I. abandonment of the application.

Telephone inquiries with regard to this decision should be directed to Brian W. Brown at 571-272-5338.

/Brian W. Brown/
[*Signature*]

Petitions Examiner, Office of Petitions
(Title)

PATENT APPLICATION FEE DETERMINATION RECORD Substitute for Form PTO-875	Application or Docket Number 15/358,723

APPLICATION AS FILED - PART I

	(Column 1)	(Column 2)	SMALL ENTITY		OR	OTHER THAN SMALL ENTITY	
FOR	NUMBER FILED	NUMBER EXTRA	RATE($)	FEE($)		RATE($)	FEE($)
BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A	N/A			N/A	280
SEARCH FEE (37 CFR 1.16(k), (i), or (m))	N/A	N/A	N/A			N/A	600
EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A	N/A			N/A	720
TOTAL CLAIMS (37 CFR 1.16(i))	20 minus 20 =	*			OR	x 80 =	0.00
INDEPENDENT CLAIMS (37 CFR 1.16(h))	2 minus 3 =	*				x 420 =	0.00
APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is $310 ($155 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).						0.00
MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))							0.00
* If the difference in column 1 is less than zero, enter "0" in column 2.			TOTAL			TOTAL	1600

APPLICATION AS AMENDED - PART II

		(Column 1)		(Column 2)	(Column 3)	SMALL ENTITY		OR	OTHER THAN SMALL ENTITY	
		CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA	RATE($)	ADDITIONAL FEE($)		RATE($)	ADDITIONAL FEE($)
AMENDMENT A	Total (37 CFR 1.16(i))	*	Minus	**	=	x =		OR	x =	
	Independent (37 CFR 1.16(h))	*	Minus	***	=	x =		OR	x =	
	Application Size Fee (37 CFR 1.16(s))									
	FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))							OR		
						TOTAL ADD'L FEE		OR	TOTAL ADD'L FEE	

		(Column 1)		(Column 2)	(Column 3)					
		CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA	RATE($)	ADDITIONAL FEE($)		RATE($)	ADDITIONAL FEE($)
AMENDMENT B	Total (37 CFR 1.16(i))	*	Minus	**	=	x =		OR	x =	
	Independent (37 CFR 1.16(h))	*	Minus	***	=	x =		OR	x =	
	Application Size Fee (37 CFR 1.16(s))									
	FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))							OR		
						TOTAL ADD'L FEE		OR	TOTAL ADD'L FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.
** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".
*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".
The "Highest Number Previously Paid For" (Total or Independent) is the highest found in the appropriate box in column 1.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
15/358,723	11/22/2016	3765	1600	15571-1169/08-1313US77CON	20	2

CONFIRMATION NO. 4188

133691
NIKE, Inc./BGL
P.O. Box 10395
Chicago, IL 60610

FILING RECEIPT

OC000000087571330

Date Mailed: 12/02/2016

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Inventor(s)

Bhupesh Dua, Portland, OR;
Edward N. Thomas, Portland, OR;

Applicant(s)

NIKE, Inc., Beaverton, OR;

Assignment For Published Patent Application

NIKE, Inc., Beaverton, OR

Power of Attorney: None

Domestic Priority data as claimed by applicant

This application is a CON of 14/503,514 10/01/2014
which is a DIV of 14/079,748 11/14/2013 ABN
which is a CON of 13/413,233 03/06/2012 ABN
which is a CON of 13/236,742 09/20/2011 PAT 8266749
which is a CON of 12/879,517 09/10/2010 PAT 8042288
which is a CON of 12/032,995 02/18/2008 PAT 7814598
which is a DIV of 10/791,289 03/03/2004 PAT 7347011

Foreign Applications for which priority is claimed (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.) - None.
Foreign application information must be provided in an Application Data Sheet in order to constitute a claim to foreign priority. See 37 CFR 1.55 and 1.76.

Permission to Access Application via Priority Document Exchange: Yes

Permission to Access Search Results: Yes

Applicant may provide or rescind an authorization for access using Form PTO/SB/39 or Form PTO/SB/69 as appropriate.

If Required, Foreign Filing License Granted: 11/30/2016
The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 15/358,723**
Projected Publication Date: 03/16/2017
Non-Publication Request: No
Early Publication Request: No
Title

Article of Footwear Having A Textile Upper

Preliminary Class

066

Statement under 37 CFR 1.55 or 1.78 for AIA (First Inventor to File) Transition Applications: No

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific

Skechers EX1013-p. 773
Skechers v Nike

countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4258).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

SelectUSA

The United States represents the largest, most dynamic marketplace in the world and is an unparalleled location for business investment, innovation, and commercialization of new technologies. The U.S. offers tremendous resources and advantages for those who invest and manufacture goods here. Through SelectUSA, our nation works to promote and facilitate business investment. SelectUSA provides information assistance to the international investor community; serves as an ombudsman for existing and potential investors; advocates on behalf of U.S. cities, states, and regions competing for global investment; and counsels U.S. economic development organizations on investment attraction best practices. To learn more about why the United States is the best country in the world to develop

technology, manufacture products, deliver services, and grow your business, visit http://www.SelectUSA.gov or call +1-202-482-6800.

CERTIFICATE OF EFS FILING

I hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office, Commissioner for Patents, via the EFS on the below date:

Date: November 22, 2016 Name: Danielle C. Gillen, Reg. No. 68,197 Signature: /Danielle C. Gillen/

BRINKS GILSON & LIONE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of: Bhupesh Dua and Edward N. Thomas

For: ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER

Attorney Docket No.: 15571-1169/08-1313US77CON

UTILITY PATENT APPLICATION TRANSMITTAL

Commissioner for Patents
PO Box 1450
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   Under 37 CFR §1.53(b) of prior Application Serial No. 14/503,514.

   Prior application information: Examiner: Marie D. Bays Art Unit: 3765

   - ☒ Maintenance of copendency of prior application: A request for extension of time and the appropriate fee have been filed in the pending prior application (or are being filed in the prior application concurrently herewith) to extend the period for response until November 23, 2016.
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   For Continuation or Divisional Applications only: The entire disclosure of the prior application, from which an oath or declaration is supplied as indicated below, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference.

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☒ Assignment to: NIKE, Inc.:
was previously recorded on May 5, 2008 at Reel 020900, Frame 0859.

☐ Information Disclosure Statement (_____ pages) and copies of references cited, if required.

☐ Nonpublication Request under 35 USC §122(b)(2)(B)(i).

☒ Other: Certification and Request for Prioritized Examination Under 37 CFR 1.102(e)

3. SMALL/MICRO ENTITY STATUS:

☐ Applicant is small entity (per 37 CFR §1.27).

☐ Applicant is micro entity (per 37 CFR §1.27).

☐ A small/micro entity statement was filed in prior application no. _____ and such status is still proper and desired.

☐ Small/micro entity status is no longer desired.

4. FEE CALCULATION (AFTER ENTRY OF ANY PRELIMINARY AMENDMENT(S) IN ITEM #2 ABOVE):

Claims as Filed	**Col. 1**	**Col. 2**	**Fee**		**Small Entity Fee**		**Micro Entity Fee**	
For	No. Filed	No. Extra	Rate	Fee	Rate	Fee	Rate	Fee
Basic Filing Fee			+$280=	$280	+$70=	$	+$70=	$
Total Claims	20-20	0	x$ 80=	$	x$ 40=	$	x$ 20=	$
Independent Claims	2-3	0	x$420=	$	x$210=	$	x$105=	$
Multiple Dependent Claims Present			+$780=	$	+$390=	$	+$195=	$
Utility Application Size Fee (see MPEP 607 Filing Fee)			No. of pages - 100 = *	x .75 = / 50 =	No. of pages - 100 = *	x .75 = / 50 =	No. of pages - 100 = *	x .75 = / 50 =
			x$400=	$	x$200=	$	x$100=	$
Search Fee			+$600=	$600	+$300=	$	+$150=	$
Examination Fee			+$720=	$720	+$360=	$	+$180=	$
Surcharge: Late Oath/Declaration (37 CFR 1.16(f))			+$140=	$	+$70=	$	+$35=	$
*If the difference is less than zero, enter "0" in col.2.			Total	$1600	Total	$	Total	$

☒ A petition or processing fee in the amount of $4,000.00 under 37 CFR § 1.17(c).

☒ A petition or processing fee in the amount of $140.00 under 37 CFR § 1.17(i)(1).

5. FEE PAYMENT:

☒ Please charge Deposit Account No. 23-1925 in the amount of $**5,740.00**, which includes the $1,600.00 patent application fees; $4,000.00 Track 1 fee [Request for Prioritized Examination] and $140.00 for the processing fee.

☒ The Director is hereby authorized to charge payment of the following fees or credit any overpayment to Deposit Account No. 23-1925.

☒ Any additional filing fees required under 37 CFR § 1.16.

☒ Any patent application processing fees under 37 CFR §1.17.

☒ The Director is hereby authorized to charge payment of the following fees during the pendency of this application or credit any overpayment to Deposit Account No. 23-1925.

☒ Any filing fees under 37 CFR § 1.16 for presentation of extra claims.

☒ Any patent application processing fees under 37 CFR § 1.17.

☒ The issue fee set in 37 CFR § 1.18 at or before mailing of the Notice of Allowance, pursuant to 37 CFR § 1.311(b).

6. CORRESPONDENCE ADDRESS: Please recognize the correspondence address for this application as the address associated with the following Customer Number:

Customer No.: 133691 - Nike

7. PLEASE DIRECT all telephonic communications to: Danielle C. Gillen (telephone: (312) 321-4200).

Respectfully submitted,

November 22, 2016
Date

/Danielle C. Gillen/
Danielle C. Gillen (Reg. No. 68,197)

Doc Code: TRACK1.REQ
Document Description: TrackOne Request

PTO/AIA/424 (04-14)

CERTIFICATION AND REQUEST FOR PRIORITIZED EXAMINATION UNDER 37 CFR 1.102(e) (Page 1 of 1)

First Named Inventor:	DUA	Nonprovisional Application Number (if known):	To Be Assigned
Title of Invention:	Article of Footwear Having A Textile Upper		

APPLICANT HEREBY CERTIFIES THE FOLLOWING AND REQUESTS PRIORITIZED EXAMINATION FOR THE ABOVE-IDENTIFIED APPLICATION.

1. The processing fee set forth in 37 CFR 1.17(i)(1) and the prioritized examination fee set forth in 37 CFR 1.17(c) have been filed with the request. The publication fee requirement is met because that fee, set forth in 37 CFR 1.18(d), is currently $0. The basic filing fee, search fee, and examination fee are filed with the request or have been already been paid. I understand that any required excess claims fees or application size fee must be paid for the application.

2. I understand that the application may not contain, or be amended to contain, more than four independent claims, more than thirty total claims, or any multiple dependent claims, and that any request for an extension of time will cause an outstanding Track I request to be dismissed.

3. The applicable box is checked below:

I. ☑ Original Application (Track One) - Prioritized Examination under § 1.102(e)(1)

i. (a) The application is an original nonprovisional utility application filed under 35 U.S.C. 111(a). This certification and request is being filed with the utility application via EFS-Web.

---OR---

(b) The application is an original nonprovisional plant application filed under 35 U.S.C. 111(a). This certification and request is being filed with the plant application in paper.

ii. An executed inventor's oath or declaration under 37 CFR 1.63 or 37 CFR 1.64 for each inventor, **or** the application data sheet meeting the conditions specified in 37 CFR 1.53(f)(3)(i) is filed with the application.

II. ☐ Request for Continued Examination - Prioritized Examination under § 1.102(e)(2)

i. A request for continued examination has been filed with, or prior to, this form.
ii. If the application is a utility application, this certification and request is being filed via EFS-Web.
iii. The application is an original nonprovisional utility application filed under 35 U.S.C. 111(a), or is a national stage entry under 35 U.S.C. 371.
iv. This certification and request is being filed prior to the mailing of a first Office action responsive to the request for continued examination.
v. No prior request for continued examination has been granted prioritized examination status under 37 CFR 1.102(e)(2).

Signature /Danielle C. Gillen/	Date November 22, 2016
Name (Print/Typed) Danielle C. Gillen	Practitioner Registration Number 68,197

Note: *This form must be signed in accordance with 37 CFR 1.33. See 37 CFR 1.4(d) for signature requirements and certifications. Submit multiple forms if more than one signature is required.**

☑ *Total of 1 forms are submitted.

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

Application Data Sheet 37 CFR 1.76	Attorney Docket Number	15571-1169/08-1313US77CON
	Application Number	
Title of Invention	Article of Footwear Having A Textile Upper	

The application data sheet is part of the provisional or nonprovisional application for which it is being submitted. The following form contains the bibliographic data arranged in a format specified by the United States Patent and Trademark Office as outlined in 37 CFR 1.76.
This document may be completed electronically and submitted to the Office in electronic format using the Electronic Filing System (EFS) or the document may be printed and included in a paper filed application.

Secrecy Order 37 CFR 5.2:

☐ Portions or all of the application associated with this Application Data Sheet may fall under a Secrecy Order pursuant to 37 CFR 5.2 (Paper filers only. Applications that fall under Secrecy Order may not be filed electronically.)

Inventor Information:

Inventor 1 Remove

Legal Name

Prefix	Given Name	Middle Name	Family Name	Suffix
	Bhupesh		Dua	

Residence Information (Select One) ● US Residency Non US Residency Active US Military Service

City	State/Province	Country of Residence
Portland	OR	US

Mailing Address of Inventor:

Address 1	c/o Nike, Inc.
Address 2	One Bowerman Drive

City	State/Province	Postal Code	Country
Beaverton	OR	97005-6453	US

Inventor 2 Remove

Legal Name

Prefix	Given Name	Middle Name	Family Name	Suffix
	Edward	N.	Thomas	

Residence Information (Select One) ◉ US Residency Non US Residency Active US Military Service

City	State/Province	Country of Residence
Portland	OR	US

Mailing Address of Inventor:

Address 1	c/o Nike, Inc.
Address 2	One Bowerman Drive

City	State/Province	Postal Code	Country
Beaverton	OR	97005-6453	US

All Inventors Must Be Listed - Additional Inventor Information blocks may be generated within this form by selecting the **Add** button. Add

Correspondence Information:

Enter either Customer Number or complete the Correspondence Information section below.
For further information see 37 CFR 1.33(a).

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Application Data Sheet 37 CFR 1.76	Attorney Docket Number	15571-1169/08-1313US77CON
	Application Number	
Title of Invention	Article of Footwear Having A Textile Upper	

☐ **An Address is being provided for the correspondence Information of this application.**

Customer Number	133691		
Email Address	officeactions@brinksgilson.com	Add Email	Remove Email

Application Information:

Title of the Invention	Article of Footwear Having A Textile Upper		
Attorney Docket Number	15571-1169/08-1313US77CON	**Small Entity Status Claimed**	☐
Application Type	Nonprovisional		
Subject Matter	Utility		
Total Number of Drawing Sheets (if any)	12	**Suggested Figure for Publication (if any)**	

Filing By Reference:

Only complete this section when filing an application by reference under 35 U.S.C. 111(c) and 37 CFR 1.57(a). Do not complete this section if application papers including a specification and any drawings are being filed. Any domestic benefit or foreign priority information must be provided in the appropriate section(s) below (i.e., "Domestic Benefit/National Stage Information" and "Foreign Priority Information").

For the purposes of a filing date under 37 CFR 1.53(b), the description and any drawings of the present application are replaced by this reference to the previously filed application, subject to conditions and requirements of 37 CFR 1.57(a).

Application number of the previously filed application	Filing date (YYYY-MM-DD)	Intellectual Property Authority or Country

Publication Information:

☐ Request Early Publication (Fee required at time of Request 37 CFR 1.219)

☐ **Request Not to Publish.** I hereby request that the attached application not be published under 35 U.S.C. 122(b) and certify that the invention disclosed in the attached application **has not and will not** be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication at eighteen months after filing.

Representative Information:

Representative information should be provided for all practitioners having a power of attorney in the application. Providing this information in the Application Data Sheet does not constitute a power of attorney in the application (see 37 CFR 1.32).
Either enter Customer Number or complete the Representative Name section below. If both sections are completed the customer Number will be used for the Representative Information during processing.

Please Select One:	● Customer Number	US Patent Practitioner	○ Limited Recognition (37 CFR 11.9)
Customer Number	133691		

Application Data Sheet 37 CFR 1.76	Attorney Docket Number	15571-1169/08-1313US77CON
	Application Number	
Title of Invention	Article of Footwear Having A Textile Upper	

Domestic Benefit/National Stage Information:

This section allows for the applicant to either claim benefit under 35 U.S.C. 119(e), 120, 121, 365(c), or 386(c) or indicate National Stage entry from a PCT application. Providing benefit claim information in the Application Data Sheet constitutes the specific reference required by 35 U.S.C. 119(e) or 120, and 37 CFR 1.78.
When referring to the current application, please leave the "Application Number" field blank.

Prior Application Status	Pending		Remove
Application Number	Continuity Type	Prior Application Number	Filing or 371(c) Date (YYYY-MM-DD)
	Continuation of	14503514	2014-10-01
Prior Application Status	Abandoned		Remove
Application Number	Continuity Type	Prior Application Number	Filing or 371(c) Date (YYYY-MM-DD)
14503514	Division of	14079748	2013-11-14
Prior Application Status	Abandoned		Remove
Application Number	Continuity Type	Prior Application Number	Filing or 371(c) Date (YYYY-MM-DD)
14079748	Continuation of	13413233	2012-03-06
Prior Application Status	Patented		Remove

Application Number	Continuity Type	Prior Application Number	Filing Date (YYYY-MM-DD)	Patent Number	Issue Date (YYYY-MM-DD)
13413233	Continuation of	13236742	2011-09-20	8266749	2012-09-18
Prior Application Status	Patented				Remove
13236742	Continuation of	12879517	2010-09-10	8042288	2011-10-25
Prior Application Status	Patented				Remove
12879517	Continuation of	12032995	2008-02-18	7814598	2010-10-19
Prior Application Status	Patented				Remove
12032995	Division of	10791289	2004-03-03	7347011	2008-03-25

Additional Domestic Benefit/National Stage Data may be generated within this form by selecting the **Add** button. Add

Foreign Priority Information:

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Application Data Sheet 37 CFR 1.76	Attorney Docket Number	15571-1169/08-1313US77CON
	Application Number	
Title of Invention	Article of Footwear Having A Textile Upper	

This section allows for the applicant to claim priority to a foreign application. Providing this information in the application data sheet constitutes the claim for priority as required by 35 U.S.C. 119(b) and 37 CFR 1.55. When priority is claimed to a foreign application that is eligible for retrieval under the priority document exchange program (PDX)[i] the information will be used by the Office to automatically attempt retrieval pursuant to 37 CFR 1.55(i)(1) and (2). Under the PDX program, applicant bears the ultimate responsibility for ensuring that a copy of the foreign application is received by the Office from the participating foreign intellectual property office, or a certified copy of the foreign priority application is filed, within the time period specified in 37 CFR 1.55(g)(1).

Remove

Application Number	Country[i]	Filing Date (YYYY-MM-DD)	Access Code[i] (if applicable)

Additional Foreign Priority Data may be generated within this form by selecting the **Add** button. Add

Statement under 37 CFR 1.55 or 1.78 for AIA (First Inventor to File) Transition Applications

☐ This application (1) claims priority to or the benefit of an application filed before March 16, 2013 and (2) also contains, or contained at any time, a claim to a claimed invention that has an effective filing date on or after March 16, 2013.
NOTE: By providing this statement under 37 CFR 1.55 or 1.78, this application, with a filing date on or after March 16, 2013, will be examined under the first inventor to file provisions of the AIA.

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Application Data Sheet 37 CFR 1.76	Attorney Docket Number	15571-1169/08-1313US77CON
	Application Number	
Title of Invention	Article of Footwear Having A Textile Upper	

Authorization or Opt-Out of Authorization to Permit Access:

When this Application Data Sheet is properly signed and filed with the application, applicant has provided written authority to permit a participating foreign intellectual property (IP) office access to the instant application-as-filed (see paragraph A in subsection 1 below) and the European Patent Office (EPO) access to any search results from the instant application (see paragraph B in subsection 1 below).

Should applicant choose not to provide an authorization identified in subsection 1 below, applicant **must opt-out** of the authorization by checking the corresponding box A or B or both in subsection 2 below.

NOTE: This section of the Application Data Sheet is **ONLY** reviewed and processed with the **INITIAL** filing of an application. After the initial filing of an application, an Application Data Sheet cannot be used to provide or rescind authorization for access by a foreign IP office(s). Instead, Form PTO/SB/39 or PTO/SB/69 must be used as appropriate.

1. Authorization to Permit Access by a Foreign Intellectual Property Office(s)

A. Priority Document Exchange (PDX) - Unless box A in subsection 2 (opt-out of authorization) is checked, the undersigned hereby **grants the USPTO authority** to provide the European Patent Office (EPO), the Japan Patent Office (JPO), the Korean Intellectual Property Office (KIPO), the State Intellectual Property Office of the People's Republic of China (SIPO), the World Intellectual Property Organization (WIPO), and any other foreign intellectual property office participating with the USPTO in a bilateral or multilateral priority document exchange agreement in which a foreign application claiming priority to the instant patent application is filed, access to: (1) the instant patent application-as-filed and its related bibliographic data, (2) any foreign or domestic application to which priority or benefit is claimed by the instant application and its related bibliographic data, and (3) the date of filing of this Authorization. See 37 CFR 1.14(h)(1).

B. Search Results from U.S. Application to EPO - Unless box B in subsection 2 (opt-out of authorization) is checked, the undersigned hereby **grants the USPTO authority** to provide the EPO access to the bibliographic data and search results from the instant patent application when a European patent application claiming priority to the instant patent application is filed. See 37 CFR 1.14(h)(2).

The applicant is reminded that the EPO's Rule 141(1) EPC (European Patent Convention) requires applicants to submit a copy of search results from the instant application without delay in a European patent application that claims priority to the instant application.

2. Opt-Out of Authorizations to Permit Access by a Foreign Intellectual Property Office(s)

☐ A. Applicant **DOES NOT** authorize the USPTO to permit a participating foreign IP office access to the instant application-as-filed. If this box is checked, the USPTO will not be providing a participating foreign IP office with any documents and information identified in subsection 1A above.

☐ B. Applicant **DOES NOT** authorize the USPTO to transmit to the EPO any search results from the instant patent application. If this box is checked, the USPTO will not be providing the EPO with search results from the instant application.

NOTE: Once the application has published or is otherwise publicly available, the USPTO may provide access to the application in accordance with 37 CFR 1.14.

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Application Data Sheet 37 CFR 1.76	Attorney Docket Number	15571-1169/08-1313US77CON
	Application Number	
Title of Invention	Article of Footwear Having A Textile Upper	

Applicant Information:

Providing assignment information in this section does not substitute for compliance with any requirement of part 3 of Title 37 of CFR to have an assignment recorded by the Office.

Applicant 1 — Remove

If the applicant is the inventor (or the remaining joint inventor or inventors under 37 CFR 1.45), this section should not be completed. The information to be provided in this section is the name and address of the legal representative who is the applicant under 37 CFR 1.43; or the name and address of the assignee, person to whom the inventor is under an obligation to assign the invention, or person who otherwise shows sufficient proprietary interest in the matter who is the applicant under 37 CFR 1.46. If the applicant is an applicant under 37 CFR 1.46 (assignee, person to whom the inventor is obligated to assign, or person who otherwise shows sufficient proprietary interest) together with one or more joint inventors, then the joint inventor or inventors who are also the applicant should be identified in this section.

Clear

● Assignee	Legal Representative under 35 U.S.C. 117	Joint Inventor
Person to whom the inventor is obligated to assign.	Person who shows sufficient proprietary interest	

If applicant is the legal representative, indicate the authority to file the patent application, the inventor is:

Name of the Deceased or Legally Incapacitated Inventor:

If the Applicant is an Organization check here. ☒

Organization Name	NIKE, Inc.		
Mailing Address Information For Applicant:			
Address 1	One Bowerman Drive		
Address 2			
City	Beaverton	**State/Province**	OR
Country	US	Postal Code	97005-6453
Phone Number		Fax Number	
Email Address			

Additional Applicant Data may be generated within this form by selecting the Add button. Add

Assignee Information including Non-Applicant Assignee Information:

Providing assignment information in this section does not substitute for compliance with any requirement of part 3 of Title 37 of CFR to have an assignment recorded by the Office.

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Application Data Sheet 37 CFR 1.76	Attorney Docket Number	15571-1169/08-1313US77CON
	Application Number	
Title of Invention	Article of Footwear Having A Textile Upper	

Assignee 1

Complete this section if assignee information, including non-applicant assignee information, is desired to be included on the patent application publication. An assignee-applicant identified in the "Applicant Information" section will appear on the patent application publication as an applicant. For an assignee-applicant, complete this section only if identification as an assignee is also desired on the patent application publication.

Remove

If the Assignee or Non-Applicant Assignee is an Organization check here. ☒

Organization Name	NIKE, Inc.

Mailing Address Information For Assignee including Non-Applicant Assignee:

Address 1	One Bowerman Drive		
Address 2			
City	Beaverton	**State/Province**	OR
Country i	US	Postal Code	97005-6453
Phone Number		Fax Number	
Email Address			

Additional Assignee or Non-Applicant Assignee Data may be generated within this form by selecting the Add button. Add

Signature:

Remove

NOTE: This Application Data Sheet must be signed in accordance with 37 CFR 1.33(b). **However, if this Application Data Sheet is submitted with the INITIAL filing of the application and either box A or B is not checked in subsection 2 of the "Authorization or Opt-Out of Authorization to Permit Access" section, then this form must also be signed in accordance with 37 CFR 1.14(c).**

This Application Data Sheet **must** be signed by a patent practitioner if one or more of the applicants is a **juristic entity** (e.g., corporation or association). If the applicant is two or more joint inventors, this form must be signed by a patent practitioner, **all** joint inventors who are the applicant, or one or more joint inventor-applicants who have been given power of attorney (e.g., see USPTO Form PTO/AIA/81) on behalf of **all** joint inventor-applicants.

See 37 CFR 1.4(d) for the manner of making signatures and certifications.

Signature	/Danielle C. Gillen/			Date (YYYY-MM-DD)	2016-11-22
First Name	Danielle C.	Last Name	Gillen	Registration Number	68197

Additional Signature may be generated within this form by selecting the Add button. Add

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Application Data Sheet 37 CFR 1.76	Attorney Docket Number	15571-1169/08-1313US77CON
	Application Number	
Title of Invention	Article of Footwear Having A Textile Upper	

This collection of information is required by 37 CFR 1.76. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 23 minutes to complete, including gathering, preparing, and submitting the completed application data sheet form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1 The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3 A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent CooperationTreaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

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DECLARATION (37 CFR 1.63) FOR UTILITY OR DESIGN APPLICATION USING AN APPLICATION DATA SHEET (37 CFR 1.76)

Title of Invention	An Article of Footwear Having a Textile Upper

As the below named inventor, I hereby declare that:

This declaration is directed to:

☐ The attached application, or

■ United States application or PCT international application number 14/079,748 filed on November 14, 2013.

The above-identified application was made or authorized to be made by me.

I believe that I am the original inventor or an original joint inventor of a claimed invention in the application.

I hereby acknowledge that any willful false statement made in this declaration is punishable under 18 U.S.C. 1001 by fine or imprisonment of not more than five (5) years, or both.

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LEGAL NAME OF INVENTOR

Inventor: Bhupesh Dua Date (Optional): APRIL 1, 2014

Signature: Bhupesh Dua

Note: An application data sheet (PTO/AIA/14 or equivalent), including naming the entire inventive entity, must accompany this form. Use an additional PTO/SB/AIA01 form for each additional inventor.

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☐ The attached application, or

☒ United States application or PCT international application number 14/079,748 filed on November 14, 2013.

The above-identified application was made or authorized to be made by me.

I believe that I am the original inventor or an original joint inventor of a claimed invention in the application.

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LEGAL NAME OF INVENTOR

Inventor: Edward N. Thomas Date (Optional): 04/17/2014

Signature: Edward N. Thomas

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Date: November 22, 2016 Name: Danielle C. Gillen, Reg. No. 68,197 Signature: /Danielle C. Gillen/

BRINKS GILSON & LIONE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of:	Bhupesh Dua et al.	
Appln. No.:	To Be Assigned	Examiner: TBD
Filed:	November 22, 2016	Art Unit: TBD
For:	ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER	Conf. No.: TBD
Attorney Docket No.: 15571-1169/08-1313US77CON		

PRELIMINARY AMENDMENT

Mail Stop Amendment
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir/Madam:

Please enter the following amendment.

Amendments to the Specification begin on page 2 of this paper.

Amendments to the Claims begin on page 3 of this paper.

Remarks begin on page 6 of this paper.

AMENDMENTS TO THE SPECIFICATION

Please amend the Specification as follows with underline for additions and strikethrough or double brackets [[ ]] for deletions:

CROSS-REFERENCE TO RELATED APPLICATIONS

[0001] This application is a continuation of and claims priority to U.S. patent application Ser. No. 14/503,514, filed October 1, 2014, which application is a [[division]] divisional of and claims priority to U.S. patent application Ser. No. 14/079,748, filed November 14, 2013, which application is a continuation of and claims priority to U.S. patent application Ser. No. 13/413,233, filed March 6, 2012, which application is a continuation application of and claims priority to U.S. patent application Ser. No. 13/236,742, filed Sep. 20, 2011, now U.S. Pat. No. 8,266,749, issued Sept. 18, 2012, which is a continuation application of and claims priority to U.S. patent application Ser. No. 12/879,517, filed Sep. 10, 2010, now U.S. Pat. No. 8,042,288, issued Oct. 25, 2011, which is a continuation application of and claims priority to U.S. patent application Ser. No. 12/032,995, filed Feb. 18, 2008, now U.S. Pat. No. 7,814,598, issued Oct. 19, 2010, which is a divisional application of and claims priority to U.S. patent application Ser. No. 10/791,289, filed Mar. 3, 2004, now U.S. Pat. No. 7,347,011, issued Mar. 25, 2008, each of which applications are being entirely incorporated herein by reference.

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AMENDMENTS TO THE CLAIMS

A complete listing of the claims proper claim identifiers is set forth below.

1-20. (Cancelled)

21. (New) An upper for an article of footwear, the upper comprising:

a flat knit textile element comprising (1) flat knit edges free of surrounding textile structure such that the flat knit edges are not surrounded by textile structure from which the textile element must be removed and (2) a first knit strip having a first knit construction and a second knit strip having a second knit construction that is different from the first knit construction;

wherein the first knit strip and the second knit strip are positioned adjacent to each other along one or more of a lateral side and a medial side of the upper.

22. (New) The upper of clam 21, wherein one or both of the first knit strip and the second knit strip comprises a plurality of knit strips.

23. (New) The upper of claim 22, wherein the first and second knit strips alternate with one another along one or more of the lateral side and the medial side of the upper.

24. (New) The upper of claim 22, wherein the flat knit textile element comprises at least two of the first knit strip and at least two of the second knit strip.

25. (New) The upper of claim 21, wherein the first knit strip and the second knit strip extend along the lateral side of the upper from an instep region of the upper to an area proximate to a lower region of the upper.

26. (New) The upper of claim 21, wherein the first knit strip and the second knit strip extend along the medial side of the upper from an instep region of the upper to an area proximate to a lower region of the upper.

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27. (New) The upper of claim 21, wherein the first knit construction of the first knit strip comprises a smooth texture, and the second knit construction of the second knit strip comprises a rough texture.

28. (New) The upper of claim 21, wherein the flat knit textile element further comprises a plurality of apertures in an instep region of the upper.

29. (New) The upper of claim 21, wherein the first knit construction of the first knit strip comprises a higher degree of stretch than the second knit construction of the second knit strip.

30. (New) The upper of claim 21, wherein the second knit construction of the second knit strip comprises a higher degree of stretch than the first knit construction of the first knit strip.

31. (New) An upper for an article of footwear, the upper comprising:

a flat knit textile element comprising (1) flat knit edges free of surrounding textile structure such that the flat knit edges are not surrounded by textile structure from which the textile element must be removed and (2) a first knit strip formed from yarns of a first yarn type and a second knit strip formed from yarns of a second yarn type that is different from the first yarn type;

wherein the first knit strip and the second knit strip are positioned adjacent to each other along one or more of a lateral side and a medial side of the upper;

wherein one or both of the first knit strip and the second knit strip comprises a plurality of strips; and

wherein the first and second knit strips alternate with one another along one or more of the lateral side and the medial side of the upper.

32. (New) The upper of claim 31, wherein the flat knit textile element comprises at least two of the first knit strip and at least two of the second knit strip.

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33. (New) The upper of claim 31, wherein the first knit strip and the second knit strip extend along the lateral side of the upper from an instep region of the upper to an area proximate to a lower region of the upper.

34. (New) The upper of claim 31, wherein the first knit strip and the second knit strip extend along the medial side of the upper from an instep region of the upper to an area proximate to a lower region of the upper.

35. (New) The upper of claim 31, wherein the first yarn type of the first knit strip comprises a smooth texture, and the second yarn type of the second knit strip comprises a rough texture.

36. (New) The upper of claim 31, wherein the flat knit textile element further comprises a plurality of apertures in an instep region of the upper.

37. (New) The upper of claim 31, wherein the first yarn type of the first knit strip comprises a higher degree of stretch than the second yarn type of the second knit strip.

38. (New) The upper of claim 31, wherein the second yarn type of the second knit strip comprises a higher degree of stretch than the first yarn type of the first knit strip.

39. (New) The upper of claim 31, wherein the first yarn type of the first knit strip comprises at least one of a higher biodegradability, moisture absorption, insulation, durability, and/or hydrophobicity than the second yarn type of the second knit strip.

40. (New) The upper of claim 31, wherein the first yarn type of the first knit strip comprises at least one of a higher strength, support, stiffness, recovery, fit and/or form than the second yarn type of the second knit strip.

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Remarks

In this Amendment, Applicant has cancelled claims 1-20 and added claims 21-40 which are fully supported by the Specification. Thus, no new matter has been introduced by the new claims. Consideration and allowance of the application is respectfully requested.

Respectfully submitted,

Dated: November 22, 2016

/Danielle C. Gillen/
Danielle C. Gillen (Reg. No. 68,197)
Attorney for Applicant

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Attorney Docket No. 15571-1169/08-1313US77CON

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
APPLICATION FOR UNITED STATES LETTERS PATENT

INVENTORS: Bhupesh Dua
Edward N. Thomas

TITLE: ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER

ATTORNEY: Danielle C. Gillen (Reg. No. 68,197)
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ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER

CROSS-REFERENCE TO RELATED APPLICATIONS

[0001] This application is a division of and claims priority to U.S. patent application Ser. No. 14/079,748, filed November 14, 2013, which application is a continuation of and claims priority to U.S. patent application Ser. No. 13/413,233, filed March 6, 2012, which application is a continuation application of and claims priority to U.S. patent application Ser. No. 13/236,742, filed Sep. 20, 2011, now U.S. Pat. No. 8,266,749, issued Sept. 18, 2012, which is a continuation application of and claims priority to U.S. patent application Ser. No. 12/879,517, filed Sep. 10, 2010, now U.S. Pat. No. 8,042,288, issued Oct. 25, 2011, which is a continuation application of and claims priority to U.S. patent application Ser. No. 12/032,995, filed Feb. 18, 2008, now U.S. Pat. No. 7,814,598, issued Oct. 19, 2010, which is a divisional application of and claims priority to U.S. patent application Ser. No. 10/791,289, filed Mar. 3, 2004, now U.S. Pat. No. 7,347,011, issued Mar. 25, 2008, each of which applications are being entirely incorporated herein by reference.

BACKGROUND

[0002] 1. Field of the Invention

[0003] The present invention relates to footwear. The invention concerns, more particularly, an article of footwear incorporating an upper that is at least partially formed from a textile material.

[0004] 2. Description of Background Art

[0005] Conventional articles of athletic footwear include two primary elements, an upper and a sole structure. The upper provides a covering for the foot that securely receives and positions the foot with respect to the sole structure. In addition, the upper may have a configuration that protects the foot and provides ventilation, thereby cooling the foot and removing perspiration. The sole structure is secured to a lower surface of the upper and is generally positioned between the foot and the ground. In addition to attenuating ground reaction forces and absorbing energy (i.e., imparting cushioning), the sole structure may provide

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traction and control potentially harmful foot motion, such as over pronation. Accordingly, the upper and the sole structure operate cooperatively to provide a comfortable structure that is suited for a wide variety of ambulatory activities, such as walking and running. The general features and configuration of the conventional upper are discussed in greater detail below.

[0006] The upper forms a void on the interior of the footwear for receiving the foot. The void has the general shape of the foot, and access to the void is provided by an ankle opening. Accordingly, the upper extends over the instep and toe areas of the foot, along the medial and lateral sides of the foot, and around the heel area of the foot. A lacing system is often incorporated into the upper to selectively increase the size of the ankle opening and permit the wearer to modify certain dimensions of the upper, particularly girth, to accommodate feet with varying proportions. In addition, the upper may include a tongue that extends under the lacing system to enhance the comfort of the footwear, and the upper may include a heel counter to limit movement of the heel.

[0007] Various materials may be utilized in manufacturing the upper. The upper of an article of athletic footwear, for example, may be formed from multiple material layers that include an exterior layer, an intermediate layer, and an interior layer. The materials forming the exterior layer of the upper may be selected based upon the properties of wear-resistance, flexibility, and air-permeability, for example. With regard to the exterior layer, the toe area and the heel area may be formed of leather, synthetic leather, or a rubber material to impart a relatively high degree of wear-resistance. Leather, synthetic leather, and rubber materials may not exhibit the desired degree of flexibility and air-permeability. Accordingly, various other areas of the exterior layer of the upper may be formed from a synthetic or natural textile. The exterior layer of the upper may be formed, therefore, from numerous material elements that each impart different properties to specific portions of the upper.

[0008] An intermediate layer of the upper may be formed from a lightweight polymer foam material that provides cushioning and protects the foot from objects that may contact the upper. Similarly, an interior layer of the upper

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may be formed of a moisture-wicking textile that removes perspiration from the area immediately surrounding the foot. In some articles of athletic footwear, the various layers may be joined with an adhesive, and stitching may be utilized to join elements within a single layer or to reinforce specific areas of the upper.

[0009] Although the materials selected for the upper vary significantly, textile materials often form at least a portion of the exterior layer and interior layer. A textile may be defined as any manufacture from fibers, filaments, or yarns characterized by flexibility, fineness, and a high ratio of length to thickness. Textiles generally fall into two categories. The first category includes textiles produced directly from webs of filaments or fibers by randomly interlocking to construct non-woven fabrics and felts. The second category includes textiles formed through a mechanical manipulation of yarn, thereby producing a woven fabric, for example.

[0010] Yarn is the raw material utilized to form textiles in the second category. In general, yarn is defined as an assembly having a substantial length and relatively small cross-section that is formed of at least one filament or a plurality of fibers. Fibers have a relatively short length and require spinning or twisting processes to produce a yarn of suitable length for use in textiles. Common examples of fibers are cotton and wool. Filaments, however, have an indefinite length and may merely be combined with other filaments to produce a yarn suitable for use in textiles. Modern filaments include a plurality of synthetic materials such as rayon, nylon, polyester, and polyacrylic, with silk being the primary, naturally-occurring exception. Yarn may be formed of a single filament, which is conventionally referred to as a monofilament yarn, or a plurality of individual filaments grouped together. Yarn may also include separate filaments formed of different materials, or the yarn may include filaments that are each formed of two or more different materials. Similar concepts also apply to yarns formed from fibers. Accordingly, yarns may have a variety of configurations that generally conform to the definition provided above.

[0011] The various techniques for mechanically manipulating yarn into a textile include interweaving, intertwining and twisting, and interlooping.

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Interweaving is the intersection of two yarns that cross and interweave at right angles to each other. The yarns utilized in interweaving are conventionally referred to as warp and weft. Intertwining and twisting encompasses procedures such as braiding and knotting where yarns intertwine with each other to form a textile. Interlooping involves the formation of a plurality of columns of intermeshed loops, with knitting being the most common method of interlooping.

[0012] The textiles utilized in footwear uppers generally provide a lightweight, air-permeable structure that is flexible and comfortably receives the foot. In order to impart other properties to the footwear, including durability and stretch-resistance, additional materials are commonly combined with the textile, including leather, synthetic leather, or rubber, for example. With regard to durability, U.S. Pat. No. 4,447,967 to Zaino discloses an upper formed of a textile material that has a polymer material injected into specific zones to reinforce the zones against abrasion or other forms of wear. Regarding stretch resistance, U.S. Pat. No. 4,813,158 to Brown and U.S. Pat. No. 4,756,098 to Boggia both disclose a substantially inextensible material that is secured to the upper, thereby limiting the degree of stretch in specific portions of the upper.

[0013] From the perspective of manufacturing, utilizing multiple materials to impart different properties to an article of footwear may be an inefficient practice. For example, the various materials utilized in a conventional upper are not generally obtained from a single supplier. Accordingly, a manufacturing facility must coordinate the receipt of specific quantities of materials with multiple suppliers that may have distinct business practices or may be located in different regions or countries. The various materials may also require additional machinery or different assembly line techniques to cut or otherwise prepare the material for incorporation into the footwear. In addition, incorporating separate materials into an upper may involve a plurality of distinct manufacturing steps requiring multiple individuals. Employing multiple materials, in addition to textiles, may also detract from the breathability of footwear. Leather, synthetic leather, or rubber, for example, are not generally permeable to air. Accordingly, positioning leather, synthetic leather, or rubber on the exterior of the upper may inhibit air flow through

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the upper, thereby increasing the amount of perspiration, water vapor, and heat trapped within the upper and around the foot.

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SUMMARY

[0014] The present invention is an upper for an article of footwear, the upper incorporating a textile element formed with a knitting machine, for example. In one aspect of the invention, the textile element has edges that are joined together to define at least a portion of a void for receiving a foot. In another aspect of the invention, the textile element has a first area and a second area of unitary construction. The first area is formed of a first stitch configuration, and the second area is formed of a second stitch configuration that is different from the first stitch configuration to impart varying textures to a surface of the textile element. The knitting machine may have a configuration that forms the textile element through either warp knitting or weft knitting.

[0015] Another aspect of the invention involves a method of manufacturing an article of footwear. The method includes a step of mechanically-manipulating a yarn with a circular knitting machine, for example, to form a cylindrical textile structure. In addition, the method involves removing at least one textile element from the textile structure, and incorporating the textile element into an upper of the article of footwear.

[0016] In another aspect of the invention, an article of footwear has an upper and a sole structure secured to the upper. The upper incorporates a textile element formed with a knitting machine. The textile element is removed from a textile structure that includes an outline of the textile element, and the textile element has edges that are joined together to define at least a portion of a void for receiving a foot.

[0017] The advantages and features of novelty characterizing the present invention are pointed out with particularity in the appended claims. To gain an improved understanding of the advantages and features of novelty, however, reference may be made to the following descriptive matter and accompanying drawings that describe and illustrate various embodiments and concepts related to the invention.

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BRIEF DESCRIPTION OF THE DRAWINGS

[0018] The foregoing Summary of the Invention, as well as the following Detailed Description of the Invention, will be better understood when read in conjunction with the accompanying drawings.

[0019] FIG. 1 is a lateral elevational view of an article of footwear having an upper in accordance with the present invention.

[0020] FIG. 2 is a lateral elevational view of the upper.

[0021] FIG. 3 is a top plan view of the upper.

[0022] FIG. 4 is a rear elevational view of the upper.

[0023] FIG. 5 is a bottom plan view of the upper.

[0024] FIG. 6 is a first cross-sectional view of the upper, as defined by section line 6-6 in FIG. 2.

[0025] FIG. 7 is a second cross-sectional view of the upper, as defined by section line 7-7 in FIG. 2.

[0026] FIG. 8 is a plan view of a textile element that forms at least a portion of the upper.

[0027] FIG. 9 is a perspective view of a textile structure that incorporates two of the textile element.

[0028] FIG. 10 is a plan view of another textile element.

[0029] FIG. 11 is a plan view of yet another textile element.

[0030] FIG. 12 is a lateral elevational view of another article of footwear having an upper in accordance with the present invention.

[0031] FIG. 13 is a lateral elevational view of yet another article of footwear having an upper in accordance with the present invention.

[0032] FIG. 14 is a cross-sectional view of the footwear depicted in FIG. 13, as defined by section line 14-14.

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Skechers v Nike

DETAILED DESCRIPTION

[0033] The following discussion and accompanying figures disclose an article of footwear 10 and a method of manufacturing footwear 10, or components thereof, in accordance with the present invention. Footwear 10 is depicted in the figures and discussed below as having a configuration that is suitable for athletic activities, particularly running. The concepts disclosed with respect to footwear 10 may, however, be applied to footwear styles that are specifically designed for a variety of other athletic activities, including basketball, baseball, football, soccer, walking, and hiking, for example, and may also be applied to various non-athletic footwear styles. Accordingly, one skilled in the relevant art will recognize that the concepts disclosed herein may be applied to a wide range of footwear styles and are not limited to the specific embodiments discussed below and depicted in the figures.

[0034] The primary elements of footwear 10 are depicted in FIG. 1 as being a sole structure 20 and an upper 30. Sole structure 20 is secured to a lower portion of upper 30 and provides a durable, wear-resistant component that imparts cushioning as footwear 10 impacts the ground. Upper 30 is at least partially formed from a textile element 40 that defines an interior void for comfortably receiving a foot and securing a position of the foot relative to sole structure 20. Various edges of textile element 40 are then secured together to form the shape of upper 30. In some embodiments, textile element 40 may form substantially all of upper 30, or textile element 40 may only be a portion of an upper.

[0035] Sole structure 20 has a generally conventional configuration that includes a midsole 21 and an outsole 22. Midsole 21 is secured to a lower portion of upper 30 and is formed of a polymer foam material, such as ethylvinylacetate or polyurethane. Accordingly, midsole 21 attenuates ground reaction forces and absorbs energy (i.e., provides cushioning) as sole structure 20 impacts the ground. To enhance the force attenuation and energy absorption characteristics of sole structure 20, midsole 21 may incorporate a fluid-filled bladder, as disclosed in U.S. Pat. Nos. 4,183,156 and 4,219,945 to Rudy. Alternately or in combination, midsole 21 may incorporate a plurality of discrete, columnar support elements, as

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disclosed in U.S. Pat. Nos. 5,343,639 and 5,353,523 to Kilgore et al. Outsole 22 is secured to a lower surface of midsole21 and may be formed from carbon black rubber compound to provide a durable, wear-resistant surface for engaging the ground. Outsole 22 may also incorporate a textured lower surface to enhance the fraction characteristics of footwear 10. In addition, footwear 10 may include an insole (not depicted), which is a relatively thin, cushioning member located within upper 30 and adjacent to a plantar surface of the foot for enhancing the comfort of footwear 10.

[0036] Sole structure 20 is described above as having the elements of a conventional sole structure for athletic footwear. Other footwear styles, including, dress shoes and boots, for example, may have other types of conventional sole structures specifically tailored for use with the respective types of footwear. In addition to a conventional configuration, however, sole structure 20 may also exhibit a unique, non-conventional structure. Accordingly, the particular configuration of sole structure 20 may vary significantly within the scope of the present invention to include a wide range of configurations, whether conventional or non-conventional.

[0037] Upper 30 is depicted in FIGS. 2-7 as having a lateral region 31, an opposite medial region 32, an instep region 33, a lower region 34, and a heel region 35. Lateral region 31 extends through a longitudinal length of footwear 10 and is generally configured to contact and cover a lateral side of the foot. Medial region 32 has a similar configuration that generally corresponds with a medial side of the foot. Instep region 33 is positioned between lateral region 31 and medial region 32, and instep region 33 extends over an instep area of the foot. Lower region 34 forms a bottom surface of upper 30 and also extends through the longitudinal length of footwear 10. Heel region 35 forms a rear portion of upper 30 and is generally configured to contact and cover a heel area of the foot. In addition, lateral region 31, medial region 32, instep region 33, and heel region 35 cooperatively define an ankle opening 36 for providing the foot with access to the void within upper 30.

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[0038] Upper 30 is at least partially formed from textile element 40, which forms regions 31-35, and may also include laces or other elements associated with a conventional upper for footwear. Textile element 40 is a single material element that is formed to exhibit a unitary (i.e., one-piece) construction, and textile element 40 is formed or otherwise shaped to extend around the foot. As depicted in FIGS. 2-7, textile element 40 forms both an exterior surface and an interior surface of upper 30. Textile element 40 may be formed as a part of a larger textile element. Textile element 40 is then removed from the larger textile element and various edges of textile element 40 are secured together to form the shape of upper 30. A plurality of seams 51-54 are formed, therefore, when joining the edges of the textile element. Seam 51 extends along the longitudinal length of lower region 34 and is centrally-located with respect to lateral region 31 and medial region 32. Seam 52 is also centrally-located and extends upward along heel region 35. A seam 53 is positioned in a forefoot area of upper 30 and joins a portion of lower region 34 with both of lateral region 31 and medial region 32. In addition, a seam 54 is positioned in a rear area of upper 30 and joins a portion of lower region 34 with heel region 35.

[0039] Textile element 40 exhibits the general shape depicted in FIG. 8 prior to the formation of seams 51-54. Following formation of seams 51-54, however, textile element 40 exhibits the shape of upper 30 depicted in FIGS. 2-7. Seams 51-54 are formed by securing various edges of textile element 40 together. More specifically, (1) seam 51 is formed by securing an edge 41a with an edge 41b; (2) seam 52 is formed by securing an edge 42a with an edge 42b; (3) a first portion of seam 53 is formed by securing an edge 43a with an edge 43b (4) a second portion of seam 53 is formed by securing an edge 43c with an edge 43d; (5) a first portion of seam 54 is formed by securing an edge 44a with an edge 44b; and (6) a second portion of seam 54 is formed by securing an edge 44c with an edge 44d. Referring to FIG. 8, the positions of regions 31-35 and ankle opening 36 are identified to provide a frame of reference relating to the various portions of textile element 40.

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[0040] In order to join edges 41a and 41b to form seam 51, textile element 40 is folded or otherwise overlapped such that edge41a is placed adjacent to edge 41b. Stitching, an adhesive, or heat bonding, for example, is then utilized to secure edge 41a and edge 41b. Textile element 40, as depicted in FIG. 8, has a generally planar configuration. Upon the formation of seam 51, however, one portion of textile element 40 overlaps the other portion of textile element 40. The volume between the overlapping portions effectively forms a portion of the void within upper 30 for receiving the foot.

[0041] The folding or overlapping of textile element 40 to form seam 51 places edge 42a adjacent to edge 42b, which facilitates the formation of seam 52. With reference to FIG. 8, an edge 45 forms a generally u-shaped area in textile element 40. Upon the joining of edges 42a and 42b to form seam 52, the u-shaped area becomes an aperture in textile element 40and effectively forms ankle opening 36. Each of edges 43a-43d and edges 44a-44d are formed from a generally v-shaped area of textile element 40. Accordingly, seams 53 and 54 may be formed by closing the v-shaped areas and securing the various edges together.

[0042] Following the formation of each of seams 51-54, the manufacturing of upper 30 is essentially complete. Various finishing steps may be performed, such as reinforcing ankle opening 36, for example. Upper 30 (i.e., textile element 40) is then secured to sole structure 20, with an adhesive, for example. The insole is then placed into the void within upper 30 and adjacent to lower region 34. In some embodiments, various reinforcing members may be added to the exterior or interior surface of upper 20 in order to limit the degree of stretch in upper 20 or provide enhanced wear-resistance. In addition, a lacing system may be added to provide adjustability.

[0043] Textile element 40 is a single material element with a unitary construction, as discussed above. As defined for purposes of the present invention, unitary construction is intended to express a configuration wherein portions of a textile element are not joined together by seams or other connections, as depicted with textile element 40 in FIG. 8. Although the various edges 41a-44d are joined

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together to form seams 51-54, the various portions of textile element 40 are formed as an unitary element without seams, as discussed below.

[0044] Textile element 40 is primarily formed from one or more yarns that are mechanically-manipulated through either an interweaving, intertwining and twisting, or interlooping process, for example. As discussed in the Background of the Invention section above, interweaving is the intersection of two yarns that cross and interweave at right angles to each other. The yarns utilized in interweaving are conventionally referred to as warp and weft. Intertwining and twisting encompasses procedures such as braiding and knotting where yarns intertwine with each other to form a textile. Interlooping involves the formation of a plurality of columns of intermeshed loops, with knitting being the most common method of interlooping. Textile element 40 may, therefore, be formed from one of these processes for manufacturing a textile.

[0045] A variety of mechanical processes have been developed to manufacture a textile. In general, the mechanical processes may be classified as either warp knitting or weft knitting. With regard to warp knitting, various specific sub-types that may be utilized to manufacture a textile include tricot, raschel, and double needle-bar raschel (which further includes jacquard double needle-bar raschel). With regard to weft knitting, various specific sub-types that may be utilized to manufacture a textile include circular knitting and flat knitting. Various types of circular knitting include sock knitting (narrow tube), body garment (seamless or wide tube), and jacquard.

[0046] Textile element 40 may be formed through any of the mechanical processes discussed above. Accordingly, textile element 40 may be formed on either a warp knitting machine or a weft knitting machine. One suitable knitting machine for forming textile element 40 is a wide-tube circular knit jacquard machine. Another suitable knitting machine for forming textile element 40 is a wide-tube circular knitting machine that is produced in the Lonati Group by Santoni S.p.A. of Italy under the SM8 TOP1 model number. This Santoni S.p.A. wide-tube circular knitting machine may form a textile structure having a diameter that ranges from 10 inches to 20 inches, with 8 feeds for each diameter. The machine exhibits

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a maximum 140 revolutions per minute for 10 inch diameters, and a maximum 120 revolutions per minute for 13 inch diameters. Furthermore, the machine gauge is variable between 16, 22, 24, 26, 28, and 32 needles per inch, and is suitable for various needle gauges ranging from 48 to 75.

[0047] A wide-tube circular knitting machine, as produced by Santoni S.p.A., forms a generally cylindrical textile structure and is capable of forming various types of stitches within a single textile structure. In general, the wide-tube circular knitting machine may be programmed to alter the design on the textile structure through needle selection. That is, the type of stitch that is formed at each location on the textile structure may be selected by programming the wide-tube circular knitting machine such that specific needles either accept or do not accept yarn at each stitch location. In this manner, various patterns, textures, or designs may be selectively and purposefully imparted to the textile structure.

[0048] An example of a textile structure 60 that may be formed with a wide-tube circular knitting machine is depicted in FIG. 9. Textile structure 60 has a generally cylindrical configuration, and the types of stitches vary throughout textile structure 60so that a pattern is formed with the outline of textile element 40. That is, differences in the stitches within textile structure 60 form an outline with the shape and proportions of textile element 40.

[0049] The Santoni S.p.A. wide-tube circular knitting machine may form a textile structure having a diameter that ranges from 10 inches to 16 inches, as discussed above. Assuming that textile structure 60 exhibits a diameter of 10 inches, then the circumference of textile structure 60 is approximately 31 inches. In many circumstances, the total width of textile element 40 will be approximately 12 inches, depending upon the size of footwear 10. The outlines for at least two textile elements 40 may, therefore, be formed on textile structure 60. Referring to FIG. 9, the outline of textile element 40 is depicted on a front portion of textile structure 60, and the outline of another textile element 40 is depicted on a rear portion of textile structure 60. Accordingly, a first textile element 40 and a second textile element 40 may be simultaneously formed in a single textile structure 60. As the diameter of textile element 60 is increased or the width of textile

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element 40 decreases, however, an even greater number of textile elements 40 may be outlined on textile structure 60.

[0050] Textile structure 60 may be formed with a wide-tube circular knitting machine, as discussed above. The types of stitches that form textile structure 60 may be varied to form an outline of one or more textile elements 40 on textile structure 60. That is, the wide-tube circular knitting machine may be programmed to form different types of stitches in textile structure 60 so as to outline one or more textile elements 40. Each textile element 40 is then removed from textile structure 60 with a die-cutting, laser-cutting, or other conventional cutting operation. Once textile element 40 is removed from textile structure 60, seams 51-54 may be formed and textile element 40 may be incorporated into footwear 10.

[0051] The yarn forming textile element 40 may be generally defined as an assembly having a substantial length and relatively small cross-section that is formed of at least one filament or a plurality of fibers. Fibers have a relatively short length and require spinning or twisting processes to produce a yarn of suitable length for use in an interlooping process. Common examples of fibers are cotton and wool. Filaments, however, have an indefinite length and may merely be combined with other filaments to produce a yarn suitable for use in an interlooping process. Modern filaments include a plurality of synthetic materials such as rayon, nylon, polyester, and acrylic, with silk being the primary, naturally-occurring exception. Yarn may be formed of a single filament (conventionally referred to as a monofilament yarn) or a plurality of individual filaments. Yarn may also be formed of separate filaments formed of different materials, or the yarn may be formed of filaments that are each formed of two or more different materials. Similar concepts also apply to yarns formed from fibers. Accordingly, yarns may have a variety of configurations within the scope of the present invention that generally conform to the definition provided above.

[0052] In order to provide the stretch and recovery properties to upper 30, and particularly textile element 40, a yarn that incorporates an elastane fiber may be utilized. Elastane fibers are available from E.I. duPont de Nemours

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Company under the LYCRA trademark. Such fibers may have the configuration of covered LYCRA, wherein the fiber includes a LYCRA core that is surrounded by a nylon sheath. One suitable yarn, for example, includes a 70 denier elastane core that is covered with nylon having a 2 ply, 80 denier, 92 filament structure. Other fibers or filaments exhibiting elastic properties may also be utilized.

[0053] As discussed above, a yarn that incorporates elastane fibers is suitable for textile element 40. A plurality of other yarns, whether elastic or inelastic, are also suitable for textile element 40. The characteristics of the yarn selected for textile element 40 depend primarily upon the materials that form the various filaments and fibers. Cotton, for example, provides a soft hand, natural aesthetics, and biodegradability. Elastane fibers, as discussed above, provide substantial stretch and recoverability. Rayon provides high luster and moisture absorption. Wool also provides high moisture absorption, in addition to insulating properties. Polytetrafluoroethylene coatings may provide a low friction contact between the textile and the skin. Nylon is a durable and abrasion-resistant material with high strength. Finally, polyester is a hydrophobic material that also provides relatively high durability. Accordingly, the materials comprising the yarn may be selected to impart a variety of physical properties to textile element 40, and the physical properties may include, for example, strength, stretch, support, stiffness, recovery, fit, and form.

[0054] Textile element 40 is depicted as having a generally smooth, non-varied stitch configuration. That is, similar stitches are utilized throughout textile element 40 to impart a common texture to the various portions of textile element 40. As discussed above, however, a wide-tube circular knitting machine is generally capable of forming various types of stitches within a single textile structure. The wide-tube circular knitting machine may, therefore, vary the stitches within textile element 40 to produce various patterns, designs, or textures, for example. Various types of stitches may also be formed with other types of knitting machines. With reference to FIG. 10, a textile element 40′ with the general shape of textile element 40 is depicted as having various areas with different textures. For example, a central area that corresponds with instep region 33 has a first

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texture 46′ that is generally smooth. In addition, textile element 40′ includes a second texture 47′ that is a plurality of longitudinal ribs. When incorporated into footwear 10, the ribs will extend longitudinally along lateral region 31 and medial region 32, and the ribs may extend into heel region 35. The ribs may be present for aesthetic purposes, or may affect the stretch properties of upper 20, for example. Accordingly, textile element 40′ exhibits areas with different textures in a single element of textile material.

[0055] Many conventional articles of footwear incorporate uppers with various material elements that each exhibit different properties. For example, a first material element may be smooth, and a second material element may be textured. The first and second material elements are then stitched together to form a portion of the conventional upper. Textile element 40′ also exhibits smooth and textured areas. In contrast with the conventional upper, however, first texture 46′ and second texture 47′ are incorporated into a single, unitary element of textile, rather than two separate elements that are stitched or otherwise joined together.

[0056] A textile structure 40″ is depicted in FIG. 11 and has the general shape of both textile element 40 and textile element 40′. Textile element 40″ includes areas with three different textures. A first texture 46″ is generally smooth and has the configuration of various strips that extends laterally across areas corresponding with lateral region 31, medial region 32, and instep region 33. Various portions of textile element 40″ also include a second texture 47″, which is generally rough in comparison with first texture 46″. In addition, the area of textile element 40″ corresponding with instep region 33 includes a third texture 48″. The different textures 46″-48″ are formed by merely varying the type of stitch formed by the wide-tube circular knitting machine at each location of textile element 40″. Textures 46″-48″ may exhibit aesthetic differences, or the differences may be structural. For example, the degree of stretch in areas with textures 46″-48″ may be different, or the wear resistance of the areas may vary depending upon the stitch utilized. The air-permeability of textile element 40″ may also vary in the different areas. Third texture 48″ is formed to include a plurality of apertures that extend through textile element 40″. The apertures may be formed by omitting

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stitches at specific locations during the wide-tube circular knitting process, and the apertures facilitate the transfer of air between the void within upper 20 and the area outside of upper 20. Accordingly, the various stitches formed in textile element 40″, or one of textile elements 40 or 40′, may be utilized to vary the texture, physical properties, or aesthetics of footwear 10 within a single, unitary element of material.

[0057] In addition to varying the stitch types to form textures 46′-47′ and 46″-48″, the type of yarn utilized in various areas of textile elements 40′ and 40″ may be changed to impart different properties. As discussed above, yarn may be formed from cotton, wool, elastane, rayon, nylon, and polyester, for example. Each of these yarn types may impart differing properties to the areas corresponding with textures 46′-47′ and 46″-48″. For example, elastane may be utilized to impart stretch, wool may be utilized for insulation, and nylon may be utilized for durability. Accordingly, different yarn types may be utilized to impart different properties. The types of knitting that may be utilized to form different zones with different properties (e.g., yarn characteristics, textures, etc.) may vary significantly to include the various warp knitting and weft knitting processes discussed earlier, such as tricot, raschel, double needle-bar raschel, circular knitting, and flat knitting, for example.

[0058] An article of footwear 110 is depicted in FIG. 12 and includes a sole structure 120 and an upper 130. Upper 130 includes a textile element 140 having the general configuration of textile element 40. As with textile element 40, textile element 140 forms both an exterior surface and an interior surface of upper 130. In addition, upper 130 includes a lace 131 and a plurality of elements 132-135 that also form a portion of the exterior surface. Lace 131 extends through a plurality of apertures formed in textile element 140. The apertures may be formed by omitting stitches at specific locations. Element 132 is positioned in a forefoot area of footwear 110 and may be formed of leather or rubber, for example, to provide additional wear-resistance. Element 133 extends around the ankle opening to reinforce and limit stretch in the area of the ankle opening. Element 134 extends around the heel region to counter movement of the

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heel and seat the heel above sole structure 120. Furthermore, elements 135 are substantially inextensible strips of material, such as leather or synthetic leather, that limit stretch on the lateral side of footwear 110. Whereas upper 30 was almost exclusively formed by textile element 40, upper 130 also includes lace 131 and elements 132-135. Accordingly, an upper in accordance with the present invention may incorporate a plurality of additional components.

[0059] Another article of footwear 210 is depicted in FIGS. 13-14 and includes a sole structure 220 and an upper 230. Upper 230 includes a textile element 240 that forms an interior layer. In addition, upper 230 includes an intermediate layer 250 and an exterior layer 260. As discussed in the Background of the Invention section above, the upper of a conventional article of footwear may be formed from multiple material layers that include an exterior layer, a intermediate layer, and an interior layer. The materials forming the exterior layer of the upper may be selected based upon the properties of wear-resistance, flexibility, and air-permeability, for example. The intermediate layer of the upper may be formed from a lightweight polymer foam material that provides cushioning and protects the foot from objects that may contact the upper. Similarly, an interior layer of the upper may be formed of a moisture-wicking textile that removes perspiration from the area immediately surrounding the foot.

[0060] Upper 230 has a configuration that is similar to the configuration of the conventional upper in that various material layers are utilized. In contrast with the conventional upper, however, the interior layer is formed of textile element 240, which is manufactured through the process discussed above. That is, textile element 240 is a single element of textile that forms the interior layer of upper 230. A benefit to utilizing textile element 240 for the interior layer is that textile element 240includes few seams that may contact the foot. In addition, the stitches utilized at various locations of textile element 240 may modify the texture of the interior surface of upper 230, thereby limiting the degree of slip that occurs between the foot and upper 230 or enhancing the air-permeability of upper 230 in specific locations.

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[0061] Various warp knitting or weft knitting processes may be utilized to form textile element 40, or the various other textile elements discussed above. An advantage of this process is that various stitches may be incorporated into specific locations of textile element 40 to modify the physical properties or aesthetics of textile element 40. Whereas a conventional upper includes various elements that stitched or adhesively joined, textile element 40 is a single, unitary element of material. From the perspective of manufacturing, utilizing multiple materials to impart different properties to an article of footwear may be an inefficient practice. By forming textile element 40 to be a single, unitary element of material, however, efficiency is increased in that upper 20 may include a single textile element, rather than numerous joined elements.

[0062] A variety of knitting processes may be utilized to form textile element 40, as discussed above. As a specific example, a jacquard double needle-bar raschel knitting machine may be utilized to form a flat textile structure, and may also be utilized to form the textile structure to have the configuration of a spacer mesh textile. Unlike textile structure 60, which exhibits a generally cylindrical configuration, the textile structure formed with the jacquard double needle-bar raschel knitting machine will have a flat configuration. Like textile structure 60, however, an outline of a textile element may be imparted to the textile structure formed with the jacquard double needle-bar raschel knitting machine. That is, differences in the stitches within the textile structure may form an outline with the shape and proportions of the intended textile element. Accordingly, the textile element may be removed from the textile structure and incorporated into footwear 10. In addition, the jacquard double needle-bar raschel knitting machine may be utilized to impart various textures, different properties, or different yarn types to the textile element. Similarly, other types of knitting, such as a flat knitting, may be utilized within the scope of the present invention to impart various textures, different properties, or different yarn types to the textile element.

[0063] The present invention is disclosed above and in the accompanying drawings with reference to a variety of embodiments. The purpose served by the disclosure, however, is to provide an example of the various

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features and concepts related to the invention, not to limit the scope of the invention. One skilled in the relevant art will recognize that numerous variations and modifications may be made to the embodiments described above without departing from the scope of the present invention, as defined by the appended claims.

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WHAT IS CLAIMED IS:

1. A method of manufacturing an article of footwear, the method comprising:

flat knitting a textile element having a shape of an upper in a planar configuration for the article of footwear, the knitted textile element including a plurality of flat knit edges defining the shape of the upper in the planar configuration, the flat knit edges being free of surrounding material from which the knitted textile element must be removed; and

incorporating the knitted textile element into the article of footwear.

2. The method according to claim 1, wherein the step of flat knitting the textile element further comprises:

knitting a lateral region;

knitting an opposite medial region;

knitting an instep region;

knitting a lower region; and

knitting a heel region.

3. The method according to claim 2, wherein the lateral region, the medial region, the instep region, the lower region, and the heel region are formed of unitary construction using at least one yarn.

4. The method according to claim 2, wherein the step of knitting the lower region includes a first flat knit edge and an opposite second flat knit edge.

5. The method according to claim 4, further comprising joining the first flat knit edge and the second flat knit edge to overlap portions of the knitted textile element and form a void within the upper for receiving a foot.

6. The method according to claim 2, wherein the step of knitting the heel region includes at least two flat knit edges.

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7. The method according to claim 6, further comprising joining the at least two flat knit edges in the heel region.

8. The method according to claim 2, further comprising:

knitting at least two different textures in areas disposed in one or more of the lateral region, the medial region, the instep region, the lower region, and the heel region of the knitted textile element.

9. The method according to claim 3, further comprising:

knitting at least one first area disposed in one of the lateral region, the medial region, the instep region, the lower region, and the heel region using a first stitch type; and

knitting at least one second area disposed in another one of the lateral region, the medial region, the instep region, the lower region, and the heel region using a second stitch type, wherein the first stitch type and the second stitch type are different.

10. The method according to claim 3, further comprising:

knitting at least one first area disposed in one of the lateral region, the medial region, the instep region, the lower region, and the heel region using a first type of yarn; and

knitting at least one second area disposed in another one of the lateral region, the medial region, the instep region, the lower region, and the heel region using a second type of yarn, wherein the first type of yarn and the second type of yarn are different.

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11. A method of manufacturing an article of footwear, the method comprising:

flat knitting a textile element having a shape of an upper in a planar configuration for the article of footwear, the knitted textile element including a plurality of flat knit edges defining the shape of the upper in the planar configuration, the flat knit edges being free of surrounding material from which the knitted textile element must be removed;

wherein the step of flat knitting the textile element comprises knitting at least a lateral region, an opposite medial region, an instep region, a lower region, and a heel region of unitary construction with each other to form a unitary element;

joining at least two of the plurality of flat knit edges together to form the upper having an interior void for receiving a foot; and

incorporating the knitted textile element having the shape of the upper into the article of footwear.

12. The method according to claim 11, wherein the step of flat knitting the textile element further comprises knitting flat knit edges including at least a first flat knit edge disposed along a first portion of the lower region of the knitted textile element, a second flat knit edge disposed along a second portion of the lower region of the knitted textile element, a third flat knit edge disposed along a first portion of the heel region and a fourth flat knit edge disposed along a second portion of the heel region.

13. The method according to claim 12, wherein the step of joining at least two of the plurality of flat knit edges together comprises joining at least the first flat knit edge and the second flat knit edge to form a first seam.

14. The method according to claim 13, wherein the step of joining at least two of the plurality of flat knit edges together further comprises joining at least the third flat knit edge and the fourth flat knit edge to form a second seam.

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15. The method according to claim 14, further comprising knitting a fifth flat knit edge between the first portion of the heel region and the second portion of the heel region to form a u-shaped area in the knitted textile element.

16. The method according to claim 15, wherein the step of joining the third flat knit edge and the fourth flat knit edge to form the second seam forms an ankle opening in the knitted textile element defined by the fifth flat knit edge.

17. The method according to claim 11, wherein the step of incorporating the knitted textile element having the shape of the upper into the article of footwear further comprises securing a sole structure to the lower region of the knitted textile element.

18. The method according to claim 11, wherein the knitted textile element forms portions of an exterior surface and an interior surface of the upper of the article of footwear.

19. The method according to claim 11, wherein the step of flat knitting the textile element further comprises:

knitting a first area disposed in one of the lateral region, the medial region, the instep region, the lower region, and the heel region of the knitted textile element with a first set of properties; and

knitting a second area disposed in another of the lateral region, the medial region, the instep region, the lower region, and the heel region of the knitted textile element with a second set of properties that is different from the first set of properties to impart varying characteristics to the textile element.

20. The method according to claim 19, wherein the first set of properties and the second set of properties are at least one of a stitch configuration and a yarn type.

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ABSTRACT

A method of manufacturing an article of footwear is disclosed. The footwear may include an upper and a sole structure. The upper incorporates a textile element with flat-knit edges that are joined together to define at least a portion of a void for receiving a foot. The textile element may also have a first area and a second area with a unitary construction. The first area is formed of a first stitch configuration, and the second area is formed of a second stitch configuration that is different from the first stitch configuration to impart varying textures to a surface of the textile element. Various warp knitting or weft knitting processes may be utilized to form the textile element.

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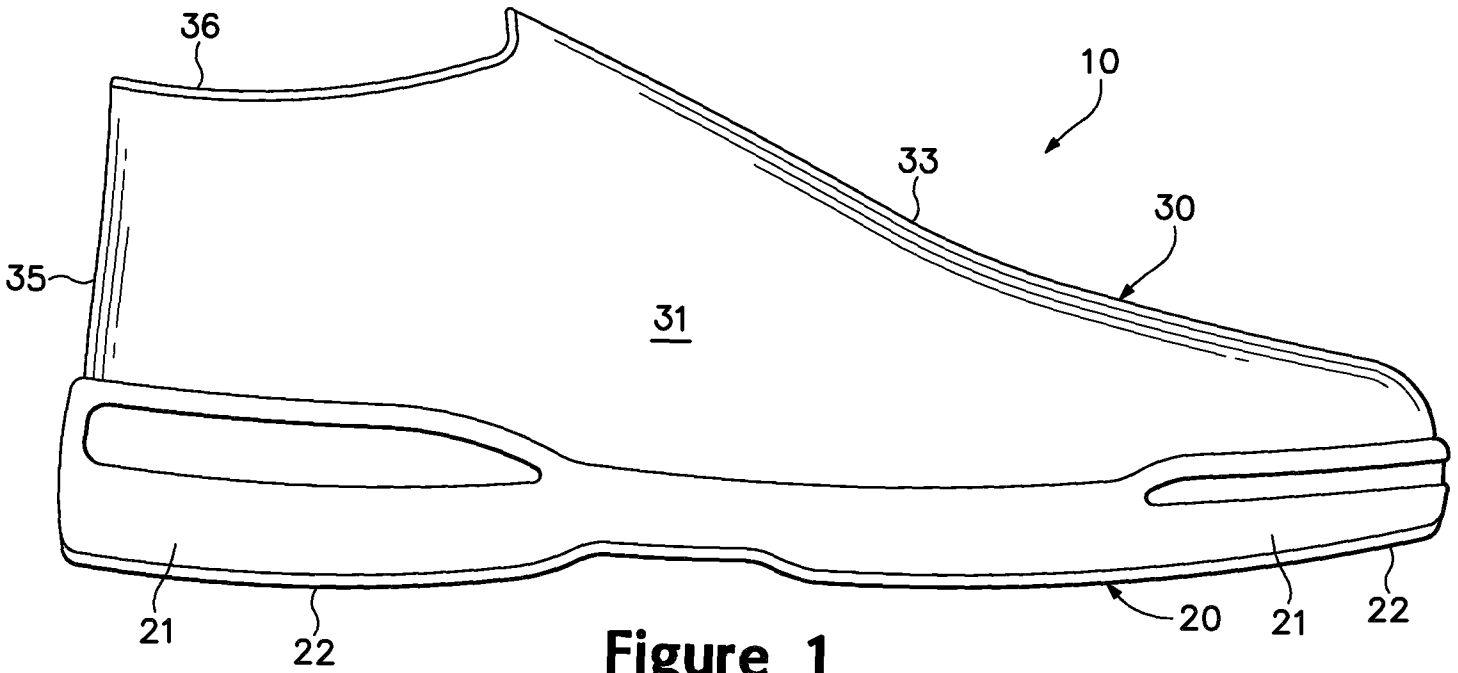


Figure 1

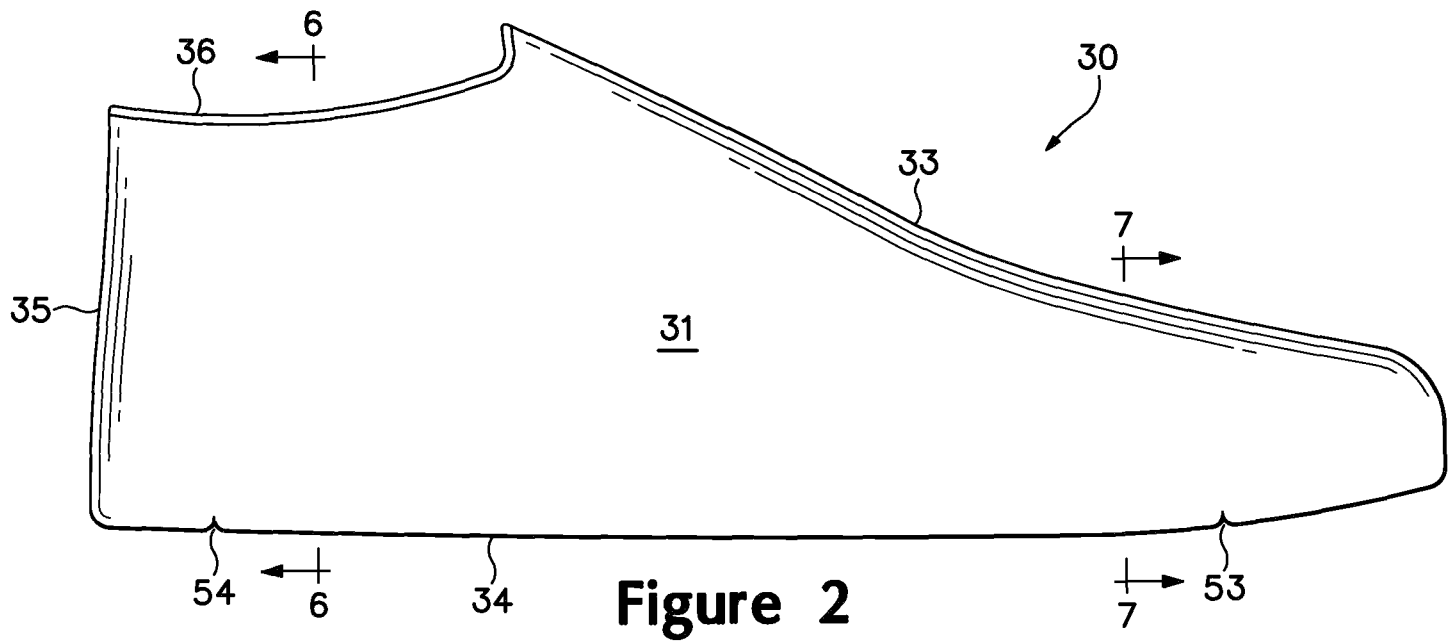


Figure 2

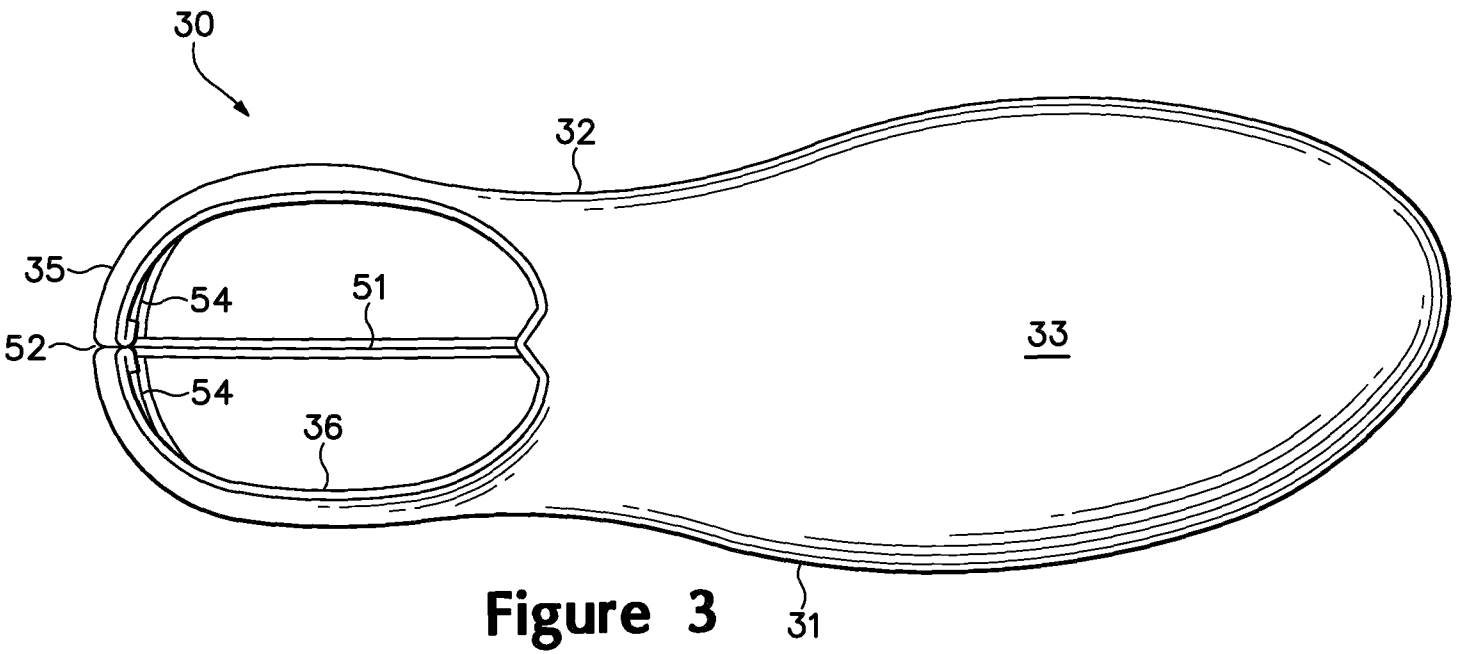


Figure 3

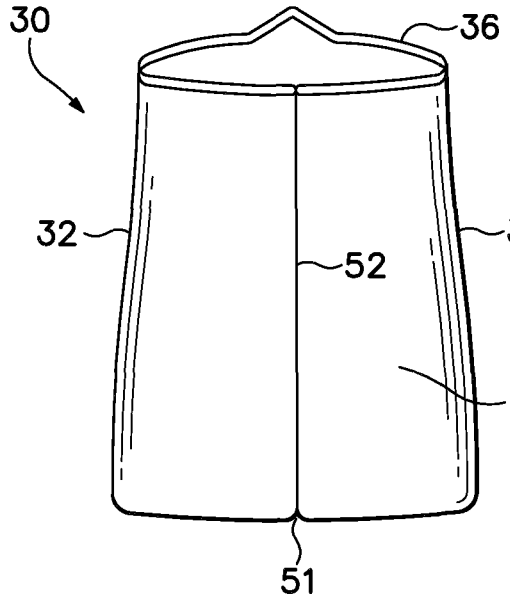


Figure 4

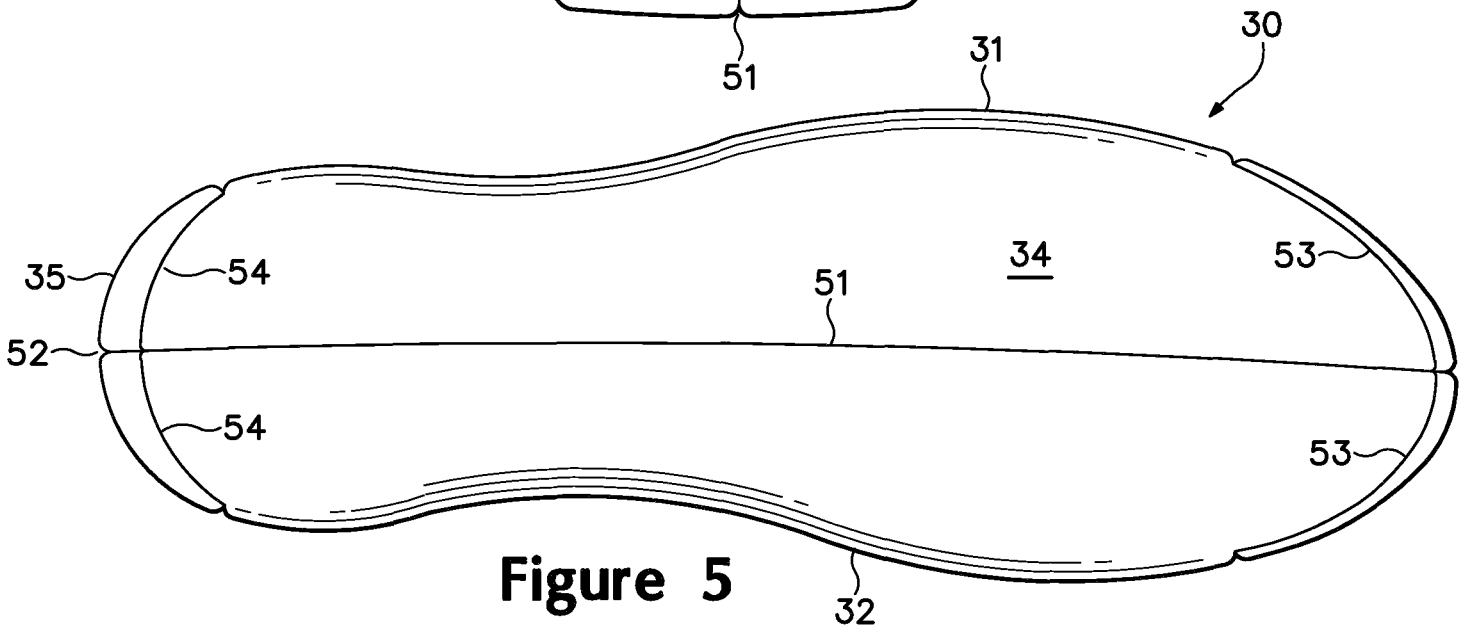


Figure 5

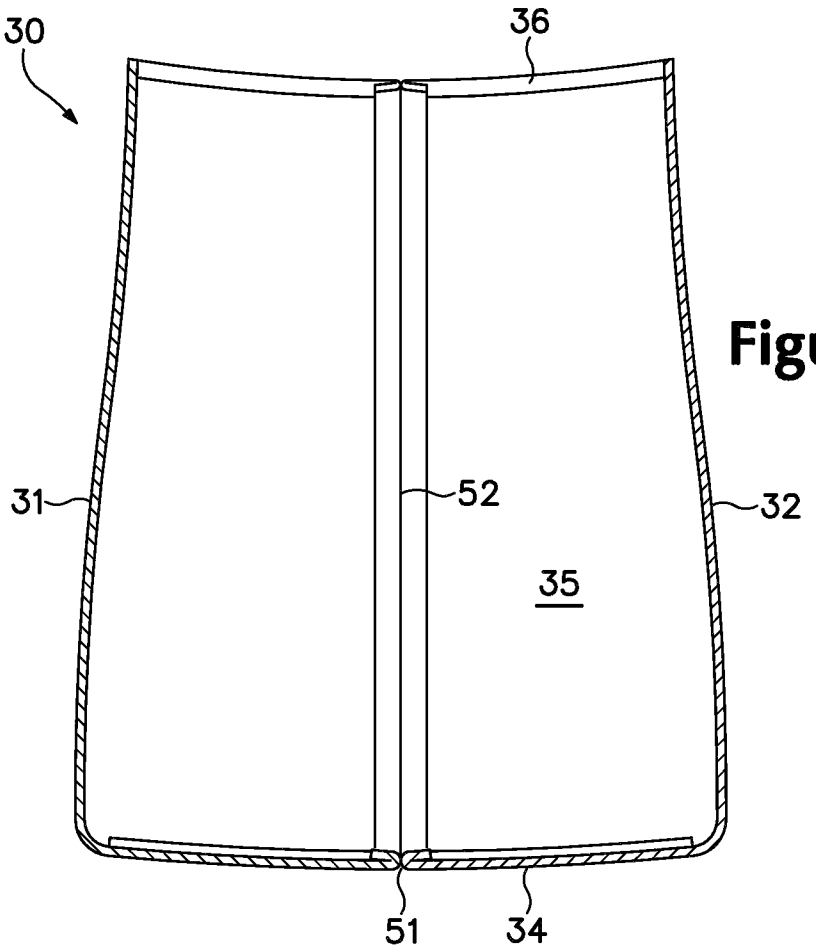


Figure 6

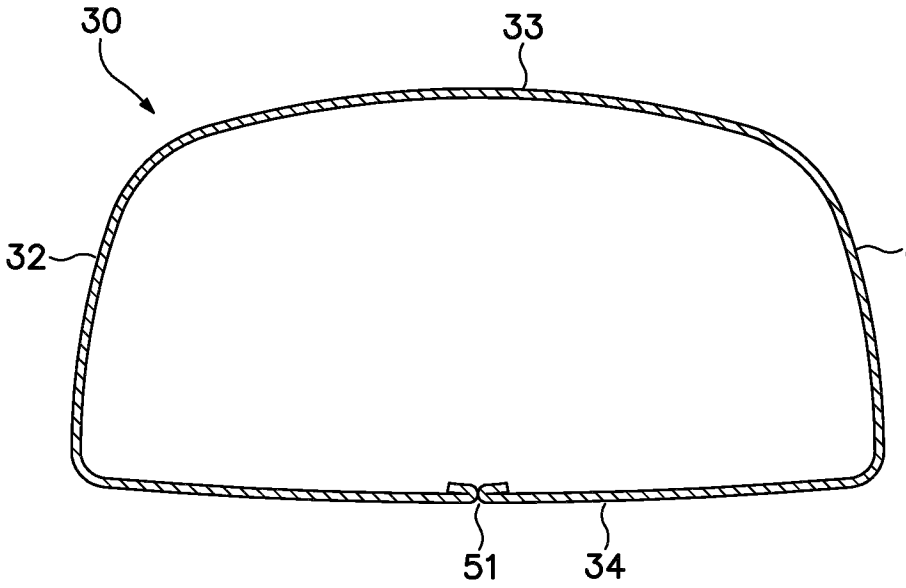


Figure 7

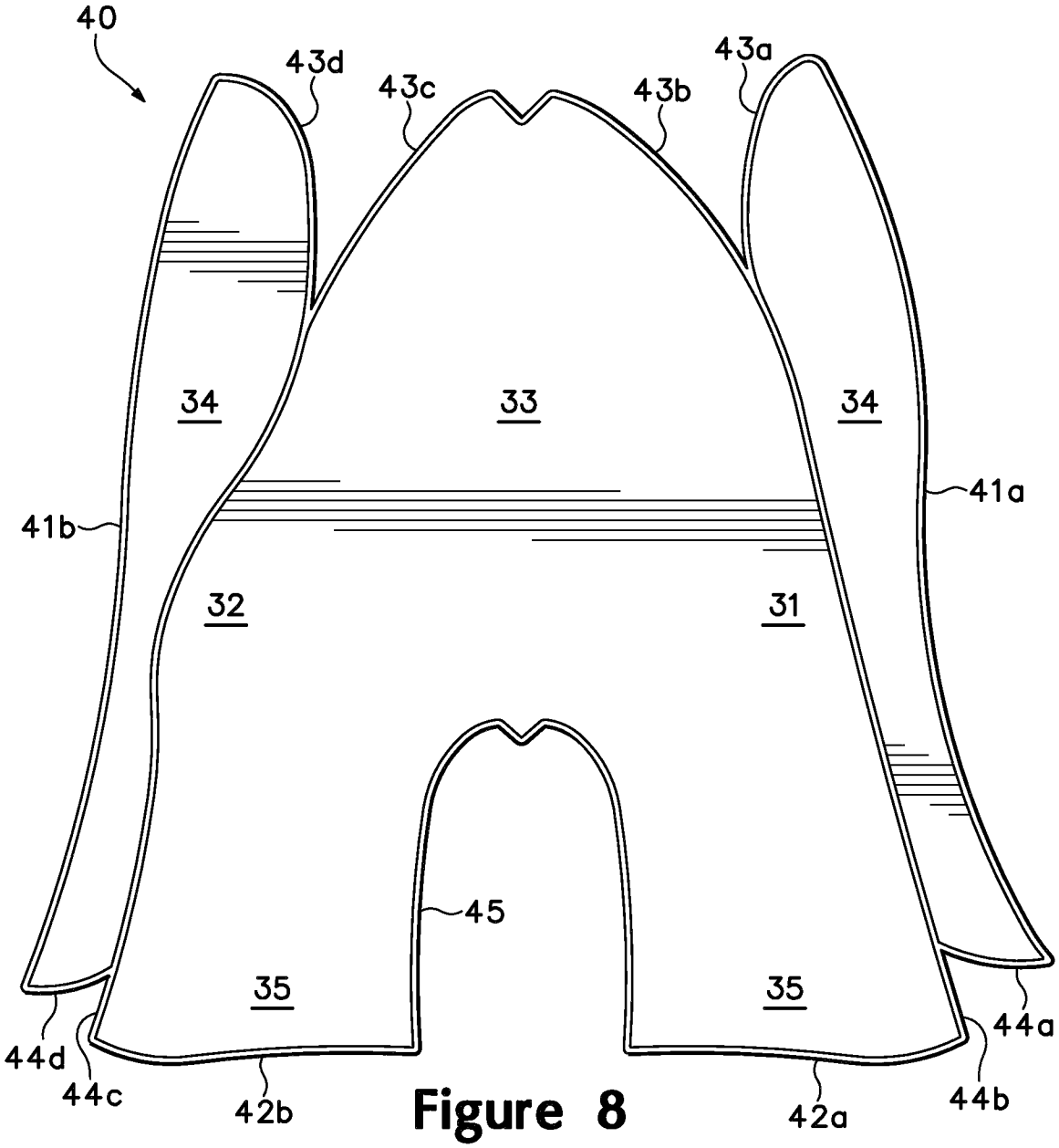

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43d
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Figure 8

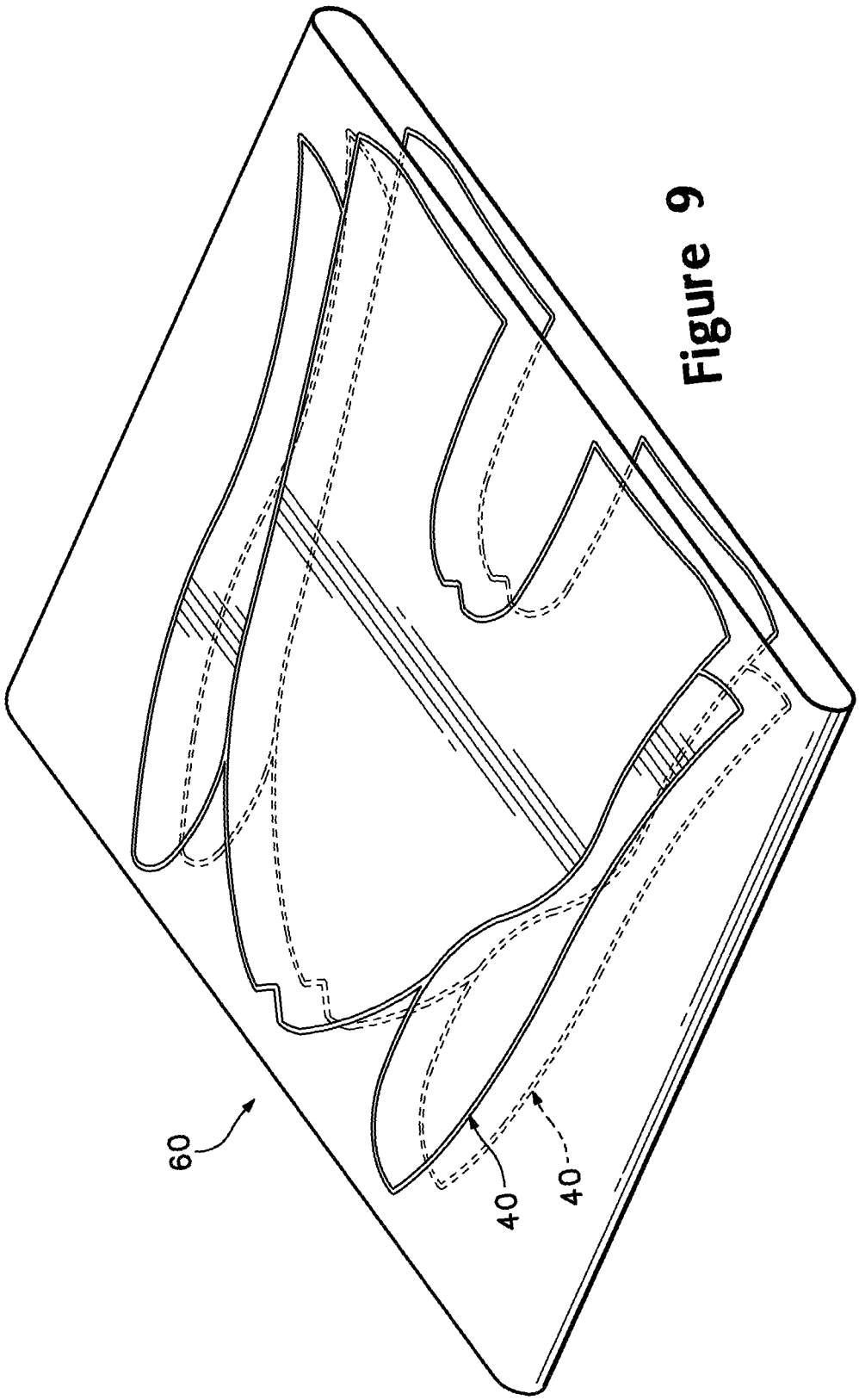


Figure 9

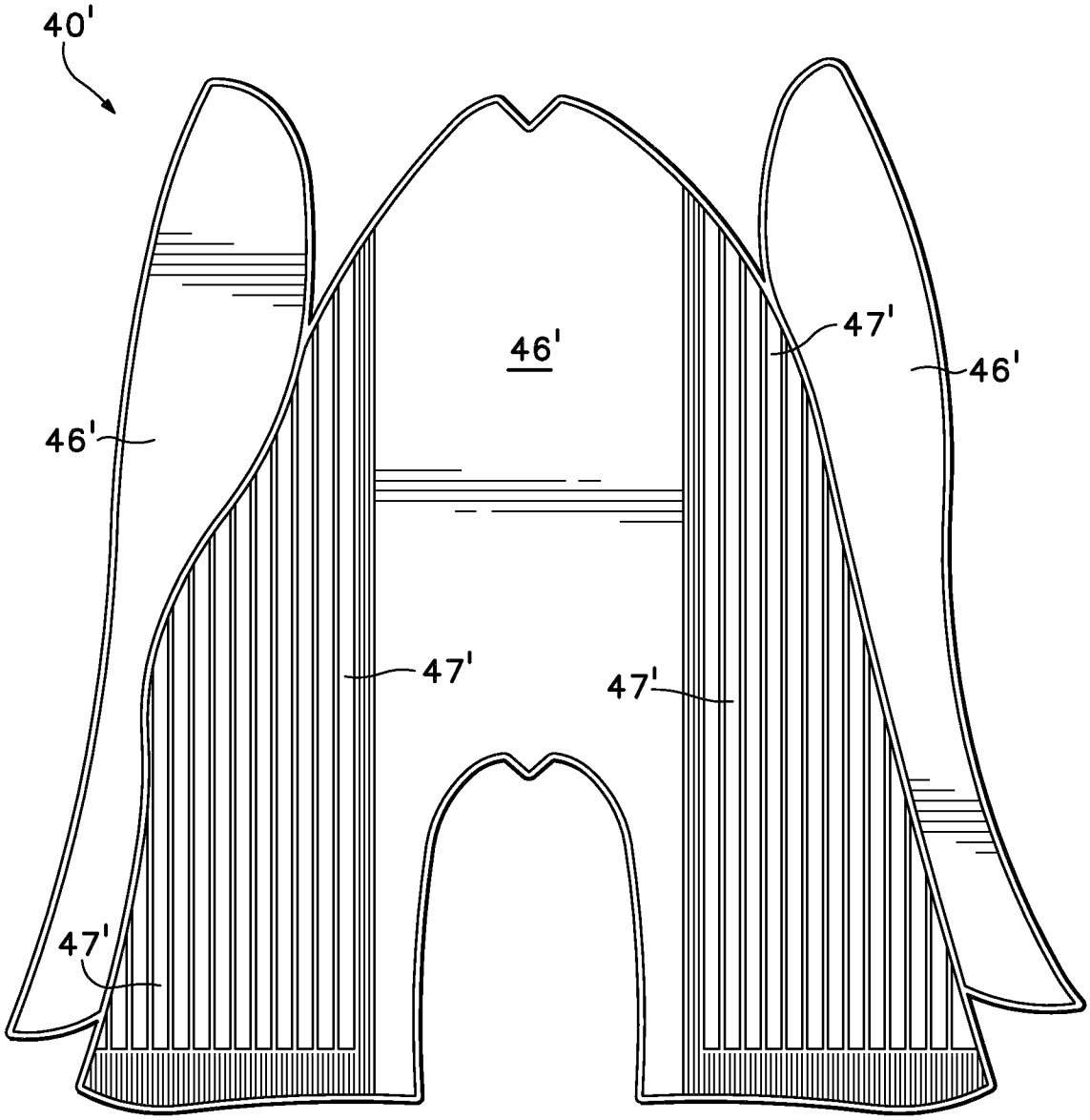


Figure 10

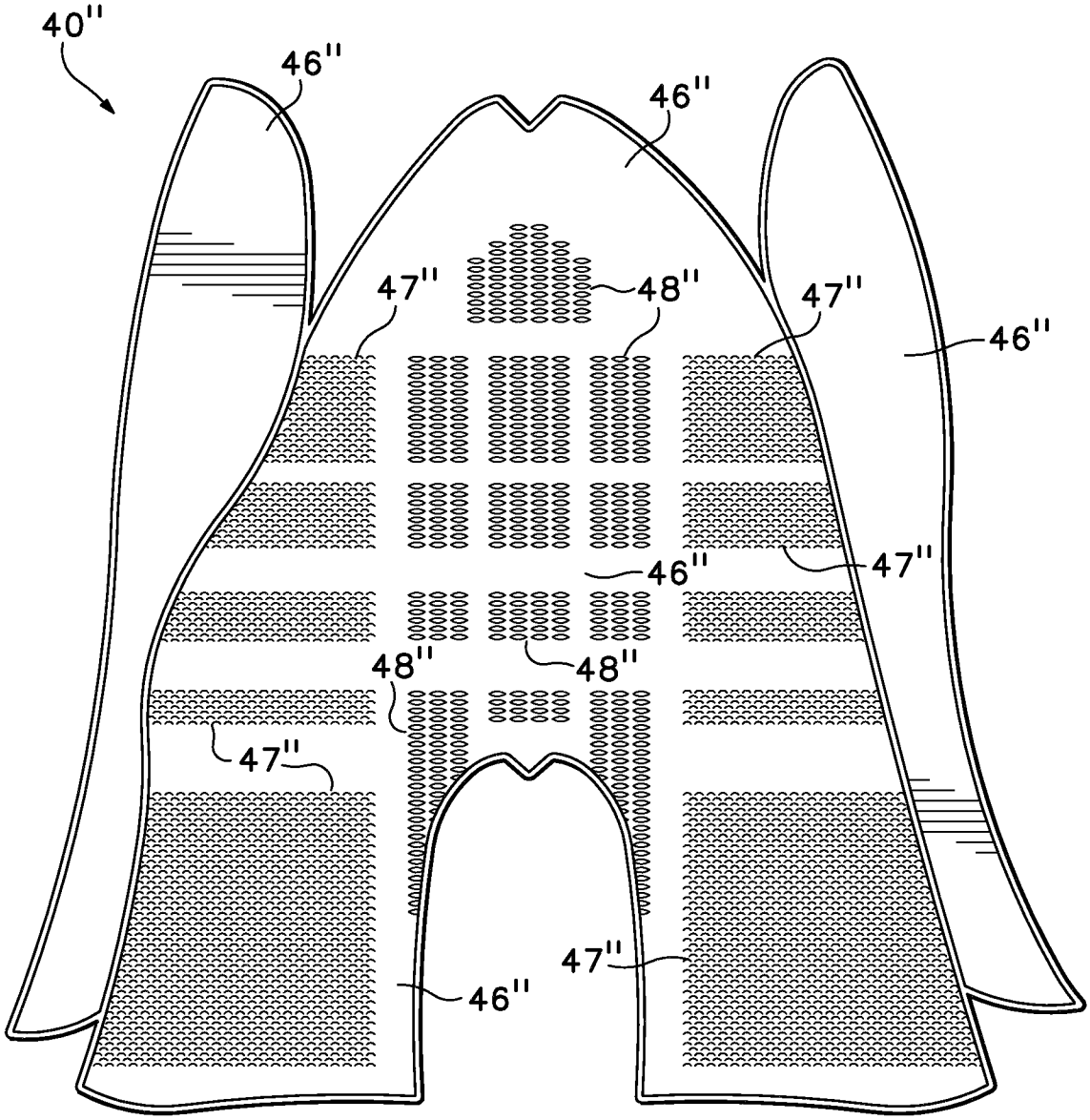


Figure 11

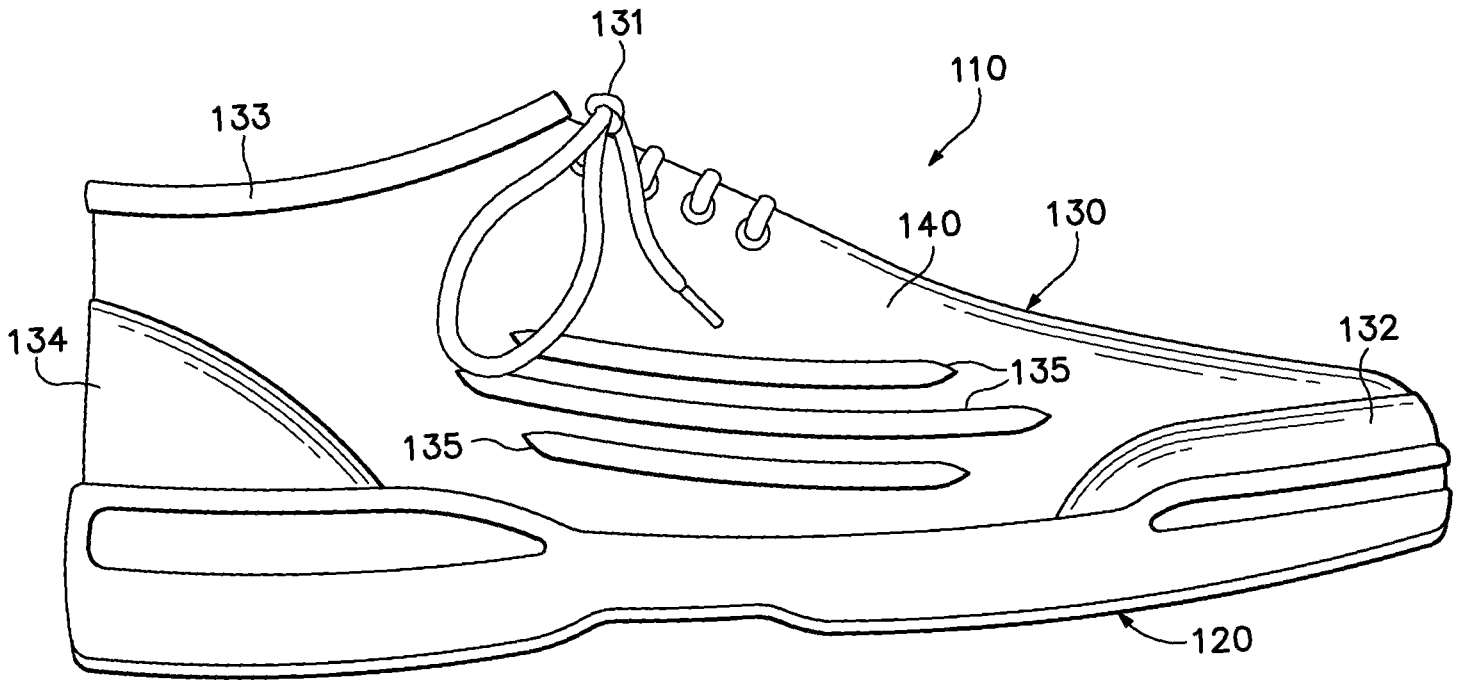


Figure 12

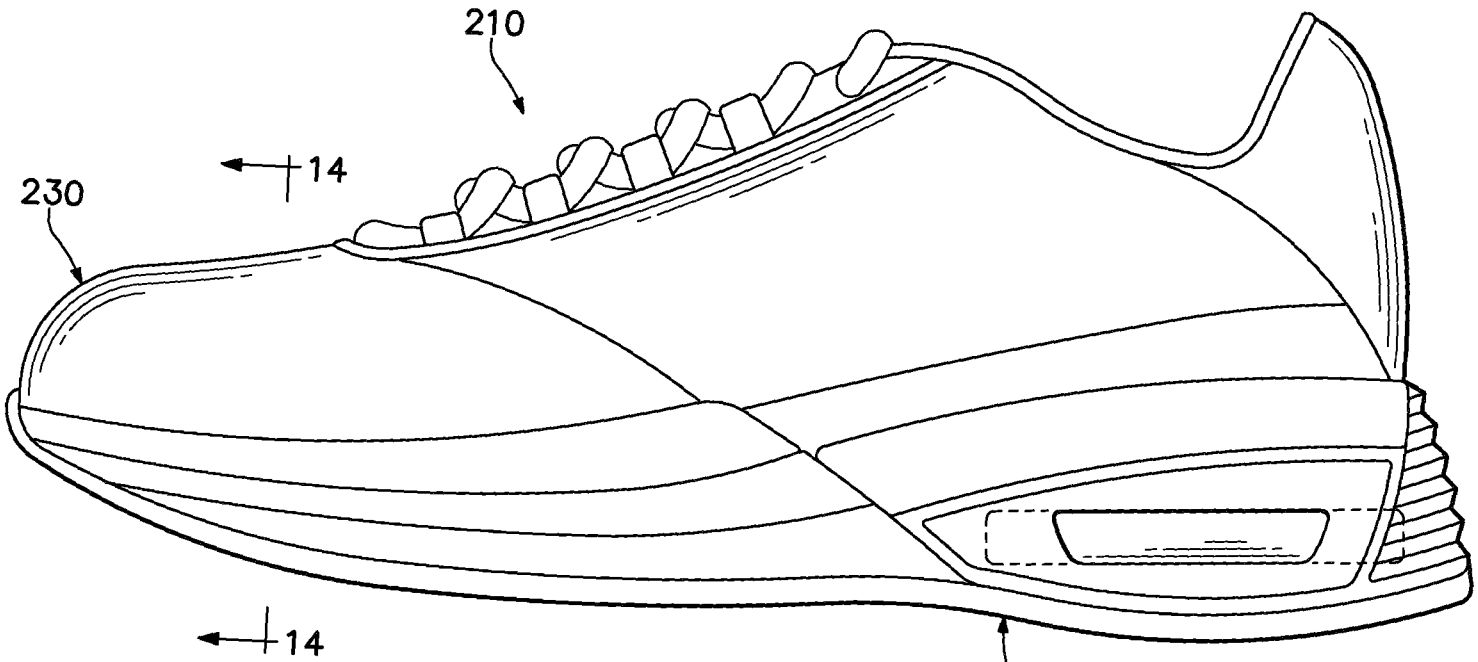


Figure 13

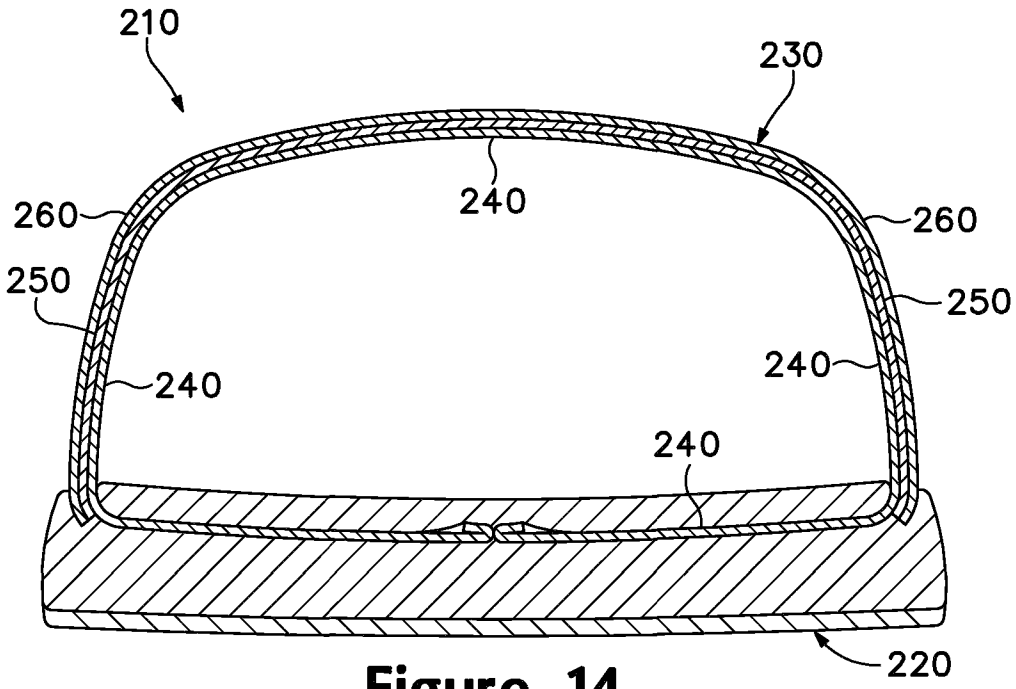


Figure 14

Electronic Patent Application Fee Transmittal

Application Number:	
Filing Date:	
Title of Invention:	ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER
First Named Inventor/Applicant Name:	Bhupesh Dua
Filer:	Danielle Cendrowski Gillen/Lori Peterson
Attorney Docket Number:	15571-1169/08-1313US77CON

Filed as Large Entity

Filing Fees for Track I Prioritized Examination - Nonprovisional Application under 35 USC 111(a)

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
UTILITY APPLICATION FILING	1011	1	280	280
UTILITY SEARCH FEE	1111	1	600	600
UTILITY EXAMINATION FEE	1311	1	720	720
REQUEST FOR PRIORITIZED EXAMINATION	1817	1	4000	4000
Pages:				
Claims:				
Miscellaneous-Filing:				
PROCESSING FEE, EXCEPT PROV. APPLS.	1830	1	140	140

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				
Miscellaneous:				
		Total in USD ($)		**5740**

Electronic Acknowledgement Receipt

EFS ID:	27584088
Application Number:	15358723
International Application Number:	
Confirmation Number:	4188
Title of Invention:	ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER
First Named Inventor/Applicant Name:	Bhupesh Dua
Customer Number:	133691
Filer:	Danielle Cendrowski Gillen/Laura Austing
Filer Authorized By:	Danielle Cendrowski Gillen
Attorney Docket Number:	15571-1169/08-1313US77CON
Receipt Date:	22-NOV-2016
Filing Date:	
Time Stamp:	14:56:57
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	DA
Payment was successfully received in RAM	$5740
RAM confirmation Number	112316INTEFSW00001389231925
Deposit Account	231925
Authorized User	Danielle Gillen

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37 CFR 1.16 (National application filing, search, and examination fees)

37 CFR 1.17 (Patent application and reexamination processing fees)

37 CFR 1.19 (Document supply fees)

37 CFR 1.20 (Post Issuance fees)

37 CFR 1.21 (Miscellaneous fees and charges)

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Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Transmittal of New Application	155711169AT.pdf	64036 2901233a84d28feb27f919ffa10a97d9501a4eff	no	2
Warnings:					
Information:					
2	TrackOne Request	155711169Track1.pdf	112568 a331033b0e942726747969dfe01d8a616b2101de	no	2
Warnings:					
Information:					
3	Application Data Sheet	155711169ADS.pdf	1829852 b2d8d1ada7bbe541c35e69cb33ab389262c1d933	no	9
Warnings:					
Information:					
4	Oath or Declaration filed	155711169DuaDec.pdf	121850 542e28884306f371e72d42e308a9f1838244b6b8	no	1
Warnings:					
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5	Oath or Declaration filed	155711169ThomasDec.pdf	121062 8fb3076e907893b006f07751d02c726ed929852e	no	1
Warnings:					
Information:					
6		155711169PA.pdf	46557 93a1ea4445510a12fbbf177608f387181b328c7a	yes	6
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	Document Description		**Start**	**End**	

	Preliminary Amendment		1	1	
	Specification		2	2	
	Claims		3	5	
	Applicant Arguments/Remarks Made in an Amendment		6	6	
Warnings:					
Information:					
7		155711169app.pdf	133438 f311fb9b794a752bded239875a52ac2486d7a7be	yes	26
	Multipart Description/PDF files in .zip description				
	Document Description		**Start**	**End**	
	Specification		1	21	
	Claims		22	25	
	Abstract		26	26	
Warnings:					
Information:					
8	Drawings-only black and white line drawings	155711169figs.pdf	213949 6b4a0248a8450909ff5c6b30a8460153476ecf6f	no	12
Warnings:					
Information:					
9	Fee Worksheet (SB06)	fee-info.pdf	38675 7d72d87bcc0cfa8c1c6bc1f394ff9cb163811459	no	2
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Information:					
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National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

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PATENT APPLICATION FEE DETERMINATION RECORD

Substitute for Form PTO-875

Application or Docket Number	Filing Date	☐ To be Mailed
15/358,723	11/22/2016	

ENTITY: ☒ LARGE ☐ SMALL ☐ MICRO

APPLICATION AS FILED – PART I

FOR	(Column 1) NUMBER FILED	(Column 2) NUMBER EXTRA	RATE ($)	FEE ($)
☐ BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A	N/A	
☐ SEARCH FEE (37 CFR 1.16(k), (i), or (m))	N/A	N/A	N/A	
☐ EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A	N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =	*	X $ =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*	X $ =	
☐ APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is $310 ($155 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).			
☐ MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))				
* If the difference in column 1 is less than zero, enter "0" in column 2.			TOTAL	

APPLICATION AS AMENDED – PART II

AMENDMENT	11/22/2016	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
	Total (37 CFR 1.16(i))	* 20	Minus	** 20	= 0	X $80 =	0
	Independent (37 CFR 1.16(h))	* 2	Minus	***3	= 0	X $420 =	0
	☐ Application Size Fee (37 CFR 1.16(s))						
	☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
						TOTAL ADD'L FEE	0

AMENDMENT		(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
	Total (37 CFR 1.16(i))	*	Minus	**	=	X $ =	
	Independent (37 CFR 1.16(h))	*	Minus	***	=	X $ =	
	☐ Application Size Fee (37 CFR 1.16(s))						
	☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
						TOTAL ADD'L FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.

** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".

*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".

The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

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MARY PEOPLES

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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adidas AG
Petitioner,

v.

NIKE, INC.
Patent Owner

Case IPR2017-00263
U.S. Patent No. 8,042,288

PATENT OWNER'S *CORRECTED* PRELIMINARY RESPONSE PURSUANT TO 37 C.F.R. § 42.107

[Patent Owner obtained Board authorization to file this Corrected Preliminary Response]

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Exhibit No.	Description
Exhibit 2001	adidas' Petition for *Inter Partes* Review of U.S. Patent 8,042,288, IPR2016-00920, Paper 1 (PTAB Apr. 19, 2016)
Exhibit 2002	Decision Denying *Inter Partes* Review, IPR2016-00920, Paper 6 (PTAB Oct. 20, 2016)
Exhibit 2003	adidas' Petition for *Inter Partes* Review of U.S. Patent 8,042,288, IPR2017-00264, Paper 1 (PTAB Nov. 14, 2016)

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Pursuant to 37 C.F.R. § 42.107, Patent Owner NIKE, Inc. ("NIKE") submits the following Corrected Preliminary Response to Petitioner adidas AG's ("adidas'") Petition for *Inter Partes* Review of claims 8 and 14-20 of U.S. Patent No. 8,042,288. NIKE obtained Board authorization to file this Corrected Preliminary Response on March 27, 2017.

I. INTRODUCTION

adidas' Petition should be rejected for three reasons. First, the Petition is a quintessential "second bite at the apple." The Board, in IPR2016-00920 ("the '920 IPR"), considered and denied *inter partes* review of the ***same*** claims, challenged by the ***same*** party, on the ***same*** grounds, and in view of the ***same*** prior art references. (Ex. 2001.) As a result, the Board should exercise its discretion to deny institution under 35 U.S.C. § 325(d).

Second, the Petition does not comply with 37 C.F.R. § 42.8(b)(2) and 35 U.S.C. § 312(a)(4) because adidas fails to identify in its mandatory notices all "related matters"—including the most closely related matter, the '920 IPR—which alone is grounds for denial of the Petition.

Third, the Petition should be rejected under 35 U.S.C. § 312(a)(3) because it suffers from the same deficiencies that led the Board to deny institution in the '920 IPR. adidas fails to identify with particularity the grounds and evidence that form the underlying basis of its patentability challenge. The uncertainties and vagaries

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in the Petition prevent the Board from conducting an informed evaluation of the asserted grounds and deprive NIKE of an appropriate basis to formulate a response.

II. INSTITUTION OF REVIEW SHOULD BE DENIED UNDER 35 U.S.C. § 325(d) BECAUSE THE PETITION IS AN IMPROPER "SECOND BITE AT THE APPLE"

A. Procedural Background

On April 19, 2016, adidas initiated the '920 IPR by filing a petition seeking *inter partes* review of claims 1–38 of the '288 patent. (Ex. 2001.) adidas asserted two grounds of obviousness under 35 U.S.C. § 103(a) as to all 38 claims, relying on a total of six prior art references: Nishida, Reed, Shiomura, Shepherd, Castello, and Fujiwara. (*Id.* at 7.)

On October 20, 2016, the Board rejected adidas' petition under 35 U.S.C. § 312(a)(3) because the petition "fail[ed] to identify 'with particularity' the grounds and evidence that form the underlying basis for adidas' patentability challenge." (Ex. 2002 at 5,7.) Specifically, adidas failed to describe which claimed features existed in each prior art reference, and the Board was "left to guess as to what limitations adidas seeks to supply from the teachings of each of the references that it cites as part of the proposed ground." (*Id.* at 6, 7.) The Board therefore declined to institute trial on either ground because the "noted uncertainties and vagaries arising from the Petition do not lend themselves to informed evaluation of the

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ground by the panel . . . [and] also deprive Nike of an appropriate basis for it to formulate a response to the Petition." (*Id.* at 5,7.)

Less than one month after the Board rejected adidas' petition in the '920 IPR, adidas filed two new petitions that together challenged, for a second time, claims 1–38 of the '288 patent. The instant petition challenges claims 8 and 14–20 (IPR2017-00263), and the other petition challenges claims 1–7, 9–13, and 21–38 (IPR2017-00264) (Ex. 2003). The Petition in the present proceeding seeks cancellation on a single ground that is entirely duplicative of the grounds raised and denied in the '920 IPR. (Pet. at 6; Ex. 2001 at 7.)

Illustration 1: Comparison of Asserted Grounds in adidas' Petitions

adidas' Petition in the '920 IPR			
Ground	**35 U.S.C.**	**Claims**	**References**
1	103(a)	1–38	Nishida, Reed, Shiomura, and Shepherd
2	103(a)	1–38	Nishida, Castello, Fujiwara, Shiomura, and Shepherd
adidas' Petition in this IPR			
Ground	**35 U.S.C.**	**Claims**	**References**
1	103(a)	8 and 14-20	Reed, Nishida, and Shiomura

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As compared to adidas' petition in the '920 IPR, the instant Petition does not identify any new prior art, challenge any new claims, or raise any new grounds or arguments.[1] (*Id.*)

B. The Board Routinely Rejects "Second Bite" Petitions Under 35 U.S.C. § 325(d)

Section 325(d) of Title 35 authorizes the Board to reject petitions for *inter partes* review that seek to reargue previously rejected positions:

> In determining whether to institute or order a proceeding under this chapter, chapter 30, or chapter 31, the Director may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office.

35 U.S.C. § 325(d). Recognizing "the importance of quiet title to patent owners to ensure continued investments resources," Congress gave the Patent Office this broad authority in order to prevent post-grant proceedings form being "used as

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[1] adidas' current and prior petitions both challenge claims 14 and 17 as obvious in view of Reed and Nishida (Pet. at 15, 29; Ex. 2001 at 13, 22, 25–26, 28); both petitions assert that the additional limitations of dependent claims 15, 16, and 19 are obvious in view of Nishida (Pet. at 27, 33; Ex. 2001 at 27, 22–24); both petitions assert that claim 18 is obvious in view of the combination of Reed, Nishida, and Shiomura (Pet. at 31; Ex. 2001 at 20; *see also* Ex. 2002 at 6 ("Shiomura and Shepherd are applied in parallel with one another apparently to account for the same additional claim features"); and both petitions assert that the additional limitations of claim 20 are rendered obvious by Reed (Pet. at 34; Ex. 2001 at 25). In each instance, adidas relies upon nearly identical portions of each prior art reference. (*Compare* Pet. at 15, 27, 29, 31, 33–34 *with* Ex. 2001 at 13, 20, 22–28.)

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tools for harassment or a means to prevent market entry through repeated litigation and administrative attacks on the validity of a patent." H.R. Rep. No. 112-98, pt. 1, at 48 (2011). In addition, allowing parties to reargue previously-rejected petitions "would frustrate the purpose of the section as providing quick and cost effective alternatives to litigation." *Id.*; *see also 10x Genomics, Inc.*, IPR2015-01157, 2015 WL 7304561 (PTAB Nov. 16, 2015) ("§ 325(d) reflects the fact that a petitioner is not entitled to unlimited challenges against a patent. Rather, our discretion under § 325(d) is guided by a balancing of the interests of the parties, the public, and the Board.... It is more efficient for the parties and the Board to address a matter once rather than twice.") (internal citations and quotations omitted).

In accordance with Congress' intent, the Board frequently rejects petitions under 35 U.S.C. § 325(d) where a petitioner asserts grounds, prior art, or arguments that are substantially similar to those previously presented to the Office. *E.g., HTC Corp. v. NFC Tech.*, IPR2015-00384, 2015 WL 4149068, at *7 (PTAB July 6, 2015) ("To the extent that the present Petition asserts grounds of the earlier Petition . . . institution on such grounds now would not ensure 'the just, speedy, and inexpensive resolution of every proceeding.'"). *Unilever v. Procter & Gamble Co.*, IPR2014-00628, 2014 WL 3588116, at *6 (PTAB Oct. 20, 2014) ("we are persuaded that our resources are better spent addressing matters other than

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Unilever's second attempt to raise a plurality of duplicative grounds against the same patent claims"). The Board is especially likely to reject "second bite" petitions filed by the same party, where the petitioner "simply presents arguments now that it could have made in [the prior proceeding], had it merely chosen to do so." *Samsung Elecs. v. Rembrandt Wireless Techs.*, IPR2015-00114, 2015 WL 410653, at *4 (PTAB Jan. 28, 2015); *see also Netapp Inc. v. Crossroad Sys.*, IPR2015-00777, 2015 WL 5244971, at *4 (PTAB Sept. 3, 2015) (same).

Importantly, the earlier and subsequently-filed petitions need not be identical to warrant rejection under 35 U.S.C. § 325(d). *Lower Drug Prices for Consumers, LLC v. Forest Labs Holdings, Ltd.*, IPR2016-00379, 2016 WL 6958131 (PTAB Oct. 19, 2016) ("§ 325(d) only requires that the arguments be substantially the same, and not identical."). For example, even where a petitioner asserts entirely different prior art references, but mounts substantially the same arguments, the Board denies *inter partes* review. *Unilever*, IPR2014-00628, 2014 WL 5388116, at *6 (denying *inter partes* review under § 325(d) because, although petitioner's first petition asserted anticipation by Bowser and Reid, its subsequent petition nonetheless raised "substantially the same arguments" in asserting anticipation by Cothran and Uchiyama); *see also Praxair Distrib., Inc. v. INO Therapeutics LLC*, IPR2016-00781, 2016 WL 5105519 (PTAB Aug. 25, 2016) (denying petition under § 325(d) because "Petitioner now advances the same or substantially the

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same arguments it presented in [the prior IPR] . . . Although Petitioner now relies on [two different references], its underlying argument—that the prior art taught or suggested the exclusion of neonates with LVD from iNO treatment—is essentially the same as that raised in [the prior IPR], and …it should have been aware of the [newly-cited] references when it filed the earlier Petition.").

Similarly, the Board denies *inter partes* review where a subsequent petition asserts the same prior art references against different claims or claim elements of the previously challenged patent. *E.g., Schrader-Bridgeport Int'l v. Wasica Finance GMBH & Blueare Finance AG*, IPR2015-00272, 2015 WL 3543108, at *3 (PTAB June 1, 2015) (denying *inter partes* review under § 325(d) where patent owner asserted the same references against different claim elements as compared to the earlier petition); *Apple, Inc. v. Aylus Networks, Inc.*, IPR2014-01566, 2015 WL 1870711, at *4 (PTAB Apr. 23, 2015) (denying *inter partes* review under § 325(d) where petitioner challenged an 11-claim subset of the 33 claims previously challenged on the same ground and with the same prior art).

The Board also denies *inter partes* review where it determines that the subsequent petition was intended only to correct defects identified by the Board in an earlier petition. *E.g., ZTE Corp. v. ContentGuard Holdings, Inc.*, Case IPR2013-00454, 2013 WL 12126100 (PTAB Sept. 25, 2013) ("[a] decision to institute review on some claims should not act as an entry ticket, and a how-to

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guide, for the same Petitioner . . . to challenge those claims which it unsuccessfully challenged in the first petition."). For example, the Board explained in *Netapp*, 2015 WL 5244971, at *4:

> "[T]he Petition in this proceeding was filed less than a month after our [decision in the prior proceeding]. The Petition makes clear that this case has been guided by, and has received the benefit of, seeing the decision addressing nearly identical grounds in the prior proceeding . . . Absent a good reason, a subsequently filed petition is not typically granted."

Id.

In particular, the Board has rejected numerous petitions that attempt to correct obviousness-related deficiencies identified by the Board in a prior petition, such as a petitioner's failure to adequately explain how one of ordinary skill would combine the cited references to render the claimed subject matter obvious. *E.g.*, *Samsung*, 2015 WL 410653. In *Samsung*, the Board explained:

> On its face, it is more efficient for the parties and the Board to address a matter once rather than twice. The sole difference between what Petitioner presents in this proceeding and what Petitioner presented in [the prior proceeding] is that the Petitioner now provides further reasoning in support of the same combination of prior art. Therefore, the "same prior art" was "previously presented" to the Board, with respect to the same claims.
>
> Petitioner is requesting, essentially, a second chance to challenge the claims. We, however, are not persuaded that a second chance would help "secure the just, speedy, and inexpensive resolution of every proceeding." 37 C.F.R. § 42.1(b). Permitting second chances in cases like this one

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> ties up the Board's limited resources; we must be mindful not only of this proceeding, but of "every proceeding."
>
> In this proceeding, however, we are not apprised of a reason that merits a second chance. Petitioner simply presents arguments now that it could have made in [the prior proceeding], had it merely chosen to do so.

Id. at *4 (internal citations omitted). *See also Zimmer Holdings, Inc. v. Bonutti Skeletal Innovations LLC*, IPR2014-01080, 2014 WL 5677247, at *4 (PTAB Oct. 31, 2014) (same). Similarly, the Board in *Butamax Adv. Biofuels LLC, v. Gevo Inc.*, IPR2014-00581, 2014 WL 5299385, at *6 (PTAB Oct. 14, 2014), rejected a petition under § 325(d) where petitioner attempted to correct an obviousness-related deficiency, explaining:

> [W]e observe that the obviousness grounds asserted in the present Petition are intended to 'squarely address the alleged deficiencies identified by the Board' in our Decision in the [prior petition]. In other words, the four obviousness grounds are second bites at the apple, which use our prior discussion as a roadmap to remedy Butamax's prior, deficient challenge. Allowing similar, serial challenges to the same patent, by the same petitioner, risks harassment of patent owners and frustration of Congress's intent in enacting the Leahy-Smith America Invents Act. . . . We, therefore, exercise our discretion under § 325(d) to deny institution of *inter partes* review on the four obviousness challenges.

Id.

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C. 35 U.S.C. § 325(d) Compels Denial of the Petition

The Petition is an improper "second bite at the apple." adidas does not assert any new prior art, challenge any new claims, raise any new grounds, or mount any new arguments. (Pet. at 6; Ex. 2001 at 7.) Instead, adidas' Petition challenges, for a second time, claims 8, and 14–20 of the '288 patent as obvious in view of Nishida, Reed, and Shimura. (*Id.*) As a result, the Petition should be denied under 35. U.S.C. § 325(d). *HTC Corp.*, 2015 WL 4149068, at *7 ("Here, Petitioner applies the same references by the same arguments against claim 13 in the present Petition that it applied against claim 13 in the earlier Petition. On that basis alone, we may exercise our discretion and decline to institute *inter partes* review under 35 U.S.C. § 325(d)"); *Square, Inc., v. Think Computer Corp.*, CBM2015-00067, 2015 WL 9898995, at *3 (PTAB July 2, 2015) (denying review under § 325(d) because "allowing almost identical challenges to the same claims, of the same patent, on the same statutory basis, by the same Petitioner, risks harassment of patent owners and frustration of Congress's intent in enacting the Leahy-Smith America Invents Act.").

adidas does not allege that its second challenge raises arguments that are meaningfully different from those asserted in the earlier petition. *Cont'l Auto. Sys., Inc. v. Wasica Finance GMBH & Bluearc Finance, AG*, IPR2014-01454, 2015 WL 674133, at *3 (PTAB Feb. 13, 2015) (rejecting second petition under §

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325(d) where petitioner "offer[ed] no persuasive explanation as to how the arguments regarding claim 4 presented in this proceeding differ from those presented in [the earlier proceeding] in a meaningful way."). Nor does adidas offer—as it would be required to do—any "persuasive explanation as to why these [allegedly new arguments] could not have been presented in [its earlier petition]." *Id.*

Instead, the Petition merely attempts to remedy the defects identified by the Board in the earlier petition, *i.e.*, adidas' failure to "identify with particularity the grounds and evidence that form the underlying basis for adidas' patentability challenge." (Ex. 2002 at 5.) Similar to the petitioner in *Samsung*, the "sole difference" between what adidas presents in this Petition and what adidas presented in the '920 IPR is that the adidas "now provides further reasoning in support of the same combination of prior art." 2015 WL 410653 at *4. In other words, adidas "simply presents arguments now that it could have made in [the '920 IPR], had it merely chosen to do so." *Id.* adidas should not be granted a second chance to present the same arguments to the Board, because "[a]bsent a good reason,"—which adidas has not provided—"a subsequently filed petition that only corrects defects identified by a Board decision in a prior petition is not typically granted." *Netapp*, 2015 WL 5244971, at *4; *Butamax*, 2014 WL 5299385, at *6.

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Accordingly, the Board should exercise its discretion to reject the Petition under 35 U.S.C. § 325(d).

III. INSTITUTION OF REVIEW SHOULD BE DENIED UNDER 35 U.S.C. § 312(a)(4) FOR FAILURE TO IDENTIFY ALL RELATED MATTERS

A petition for *inter partes* review "may only be considered if," among other things, "the petition provides such other information as the Director may require by regulation." 35 U.S.C. § 312(a)(4). The Director requires petitioners to include within the petition certain mandatory notices. 37 C.F.R. § 42.8(a)(1). Mandatory notices, in turn, must "[i]dentify any other judicial or administrative matter that would affect, or be affected by, a decision in the proceeding." 37 C.F.R. § 42.8(b)(2). Judicial matters include "actions involving the patent in federal court," while "administrative matters" include "every application and patent claiming, or which may claim, the benefit of the priority of the filing date of the party's involved patent or application as well as any *ex parte* and *inter partes* reexaminations for an involved patent." Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012).

Pursuant to 37 C.F.R. § 42.8(b)(2), adidas identifies three related patents and patent applications: U.S. Patent Nos. 7,814,598 ("'598 patent"), a parent of the '288 patent; U.S. Patent Nos. 7,347,011 ("'011 patent"), a grandparent of the '288 patent; and U.S. Patent No. 8,266,749 ("'749 patent"), a continuation of the '288

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patent. adidas also identifies one federal action, *NIKE, Inc. v. adidas AG*, No. 14-1719 (Fed. Cir.), and three *inter partes* review proceedings: IPR2013-00067, involving the '011 patent; IPR2016-00921, involving the '598 patent; and IPR2016-00922, involving the '749 patent. (Pet. at 1–2.)

adidas did not identify in the "Related Matters" section of its Petition, however, the two proceedings initiated by adidas involving the '288 patent: the '920 IPR, in which the Board denied institution of claims 1–38 of the '288 patent (Exs. 2001, 2002); and IPR2017-00264, the simultaneously filed companion to this petition in which adidas challenges claims 1–7, 9–13, and 21–38 of the '288 patent (Ex. 2003). In fact, adidas never once mentions the companion proceeding in its Petition. Nor has adidas filed an updated notice of related matters, or otherwise notified the Board of its improper omission.

adidas failure to comply with 37 C.F.R. § 42.8(b)(2), and thus 35 U.S.C. § 312(a)(4), warrants denial of the Petition. *Apple, Inc. v. Contentguard Holdings, Inc.*, IPR2015-00358, 2015 WL 9899010, at *4 (PTAB July 2, 2015) (denying petition on other grounds, but noting that "[t]he Petition's failure to comply with 37 C.F.R. § 42.8(b)(2), and thus also 35 U.S.C. § 312(a)(4), could be ground for denial of the Petition.") (citing *Reflectix, Inc. v. Promethian Insulation Tech. LLC*, IPR2015-00039, 2015 WL 1927414, at *9 (PTAB Apr. 24, 2015) (denying

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institution because petition did not comply with parallel requirement, under 35 U.S.C. § 312(a)(2), to identify all real parties-in-interest).)

IV. INSTITUTION OF REVIEW SHOULD BE DENIED UNDER 35 U.S.C. § 312(a)(3) FOR FAILURE TO IDENTIFY GROUNDS AND EVIDENCE WITH PARTICULARITY

As noted above, the Board rejected adidas' petition in the '920 IPR under 35 U.S.C. § 312(a)(3) because the petition "fail[ed] to identify 'with particularity' the grounds and evidence that form the underlying basis for adidas' patentability challenge." (Ex. 2002 at 5.) The Board identified two examples of adidas' failure to provide adequate particularity, both of which remain uncorrected in adidas' instant Petition. As a result, the Board should similarly reject the instant Petition under 35 U.S.C. § 312(a)(3).

The first deficiency identified by the Board relates to adidas' challenge of claim 1 (and thus its challenge of claim 14)[2], where adidas' "claim chart . . . spans four pages and constitutes bulk citation to large portions of both Nishida and Reed." (Ex. 2002 at 5.) adidas approach, the Board concluded, "does not provide meaningful 'particularity' sufficient for the panel to ascertain where, specifically, adidas identifies the limitations of the claim in the prior art." (*Id.*)

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[2] adidas' petition in the '920 IPR challenged claim 14 by referring to its challenge of claim 1 for elements 14A, 14B, 14C, and 14E, and to its challenge of claim 8 for element 14D. (Ex. 2001 at 25–26.)

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adidas' Petition in the instant proceeding suffers from the same deficiency. Except for one instance in which adidas shortens a citation by four lines (Ex. 2001 at 15 ("3:43–48" changed to "3:47–48"), every "bulk citation" in adidas' earlier challenge of claim 1 appears, unabridged, in adidas' instant Petition. (*Compare* Ex. 2001 at 13–18 *with* Pet at. 16–17, 20–21, 27, and 35–37.) In fact, adidas in many cases expands its citations or includes additional citations. (*E.g.*, *Compare* Ex. 2001 at 13 [Element 1A], *with* Pet. at 16 [Element 14A] (adding citation to 1:33–35, 1:39–47 and FIGS 1–3).) As a result, the Petition in the instant proceeding "does not provide meaningful 'particularity' sufficient for the panel to ascertain where, specifically, adidas identifies the limitations of the claim in the prior art." (*See* Ex. 2002 at 5.)

Second, the Board in the '920 IPR observed that adidas' petition failed to identify which claim limitations were absent from each prior art reference, and the extent to which adidas relied upon other references in support its obviousness challenge for those limitations. (Ex. 2002 at 6 ("The Petition does not provide adequate explanation as to what features adidas contends are absent from Nishida that it also must rely on content of Reed to meet the challenged claims" and "no explanation emerges as to how or why Shimura's and Shepherd's teachings are germane to claim 1") (*citing Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966)

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(obvious analysis must describe (1) the scope and content of the prior art and (2) any differences between the claimed subject matter and the prior art.).)

adidas' Petition in the instant proceeding suffers from the same deficiency. adidas' new "explanation" is comprised essentially of quotations copied from its claim charts and reproduced, redundantly, in the immediately preceding body of the petition. (*Compare* Ex. 2001 at 13–18 *with* Pet. at 15–27.) In addition, rather than explaining which claim elements are absent in each reference, adidas offers, in total, four sentences ambiguously suggesting that certain references may or may not "explicitly" disclose certain features. (Pet. at 16 ("[t]o the extent that Reed does not explicitly state that these features are present . . ."), 19 (same), 35 (same); Pet. at 14 ("While Shiomura does not explicitly reference using a circular knitting machine . . .").) As a result, the Petition in the instant proceeding, as in the '920 IPR, requires the Board and NIKE to "guess as to what limitations adidas seeks to supply from the teachings of each of the references that it cites as a part of the proposed ground." (Ex. 2002 at 6.)

In sum, adidas fails to correct the deficiencies that led the Board to reject adidas' petition in the '920 IPR. Here too, "the noted uncertainties and vagaries arising from [the Petition] do not lend themselves to informed evaluation of the ground by the panel . . . [and] deprive Nike of an appropriate basis for it to

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formulate a response to the Petition." As a result, the Board should reject the Petition under 35 U.S.C. § 312(a)(3).

V. CONCLUSION

As set forth above, NIKE respectfully requests that the Board deny institution of IPR2017-00263.

Date: March 27, 2017

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. § 42.24(d), NIKE hereby certifies, in accordance with and reliance on the word count provided by the word-processing system used to prepare this preliminary response, that the number of words in this paper is 3,883. Pursuant to 37 C.F.R. §42.24(d), this word count excludes the table of contents, table of authorities, certificate of service, and appendix of exhibits.

Dated: March 27, 2017

/s/ Christopher J. Renk
Christopher J. Renk
Banner & Witcoff, Ltd.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served on March 27, 2017, by Express Mail and email directed to the attorneys of record for Petitioner as follows:

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571-272-7822

Paper No. 6
Date Entered: October 20, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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adidas AG,
Petitioner,

v.

NIKE, INC.,
Patent Owner.

Case IPR2016-00920
Patent 8,042,288 B2

Before JOSIAH C. COCKS, MICHAEL J. FITZPATRICK, and JAMES B. ARPIN, *Administrative Patent Judges*.

COCKS, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

A. Background

Petitioner, adidas AG ("adidas"), filed a Petition to institute an *inter partes* review of claims 1–38 of U.S. Patent No. 8,042,288 B2 (Ex. 1001, "the '288 patent"). Paper 2 ("Pet."). Patent Owner, Nike, Inc. ("Nike"), filed no preliminary response.

An *inter partes* review may not be instituted unless the information presented in the Petition shows "there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." 35 U.S.C. § 314(a). For the reasons set forth below, we conclude that the information presented in the Petition does not establish a reasonable likelihood of success with respect to claims 1–38. We do not institute an *inter partes* review.

B. Related Matters

Both parties describe this *inter partes* review as being related to IPR2013-00067 involving U.S. Patent 7,347,011 B2. Pet. 1;[1] Paper 5, 2. Nike also identifies two additional *inter partes* review proceedings as related to the instant

[1] The Petition explains the following with respect to IPR2013-00067:

> The Board instituted *inter partes* review of claims 1–46 of the '011 patent (IPR2013-00067), and Nike requested cancellation of claims 1-46 and proposed substitute claims 47–50. The Board granted the motion to cancel, but denied the motion as to the substitute claims. Nike appealed the Board's decision to the Federal Circuit (Case No. 2014-1719). The Federal Circuit issued a decision on February 11, 2016, which affirmed-in-part, vacated-in-part, and remanded the case to the Board for further proceedings on secondary consideration and patentability of dependent claim 49.

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proceeding: (1) IPR2016-00921 involving U.S. Patent No. 7,814,598 B2; and (2) IPR2016-00922 involving U.S. Patent No. 8,266,749 B2. Paper 5, 2.

C. The '288 Patent

The '288 patent is titled "Article of Footwear Having a Textile Upper." Ex. 1001, Title. The '288 patent characterizes its disclosure as being directed to an "upper incorporating a textile element formed with a knitting machine." *Id.* at 3:27–29. Figures 1 and 8 of the '288 patent are reproduced below.

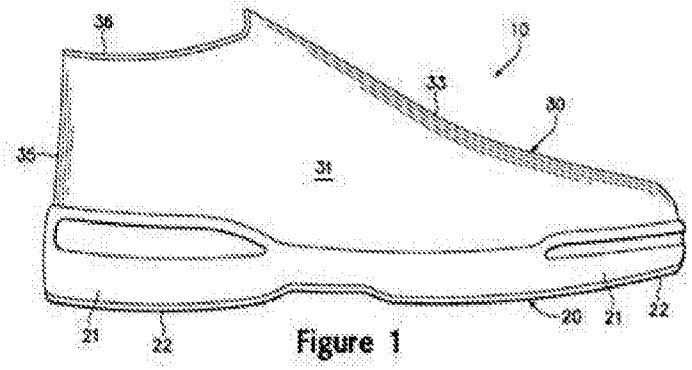


Figure 1

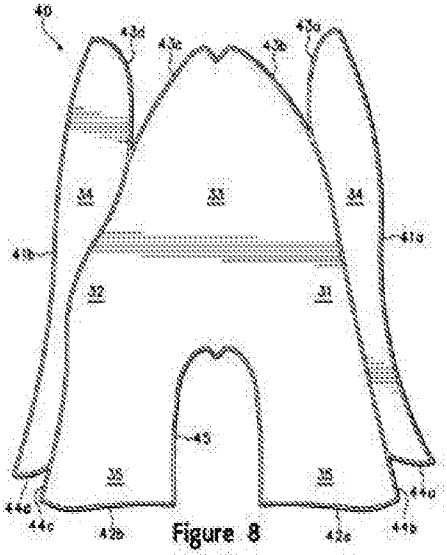


Figure 8

Figure 1 depicts "a lateral elevational view of an article of footwear having an upper." *Id.* at 4:1–2. Figure 8 depicts "a plan view of a textile element that forms at least a portion of the upper." *Id.* at 4:11–12. As shown in Figure 1, article of footwear 10 including sole structure 20 and upper 30. *Id.* at 4:43–44. Upper 30 is at least partially formed from textile element 40, which, as shown in Figure 8, forms regions 31–35, and "is a single material element that is formed to exhibit a unitary (i.e., one-piece) construction. *Id.* at 5:38–44.

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D. Illustrative Claims

Claims 1, 14, 21, 29, and 36 are independent. Claim 1 is illustrative and is reproduced below:

1. An article of footwear comprising:

an upper incorporating a circular-knitted textile element having a plurality of knit constructions, the circular-knitted textile element being removed from a circular-knitted textile structure, and further having longitudinal edges that are joined together to define at least a portion of a void for receiving a foot; and

a sole structure secured to the upper.

E. References Relied Upon

Reference	Date	Exhibit No.
U.S. Patent No. 3,985,003 to Reed ("Reed")	Oct. 1976	1006
U.S. Patent No. 4,038,840 to Castello ("Castello")	Aug. 1977	1007
U.S. Patent No. 6,330,814 B1 to Fjuiwara ("Fjuiwara")	Dec. 2001	1008
U.S. Patent 5,345,638 to Nishida ("Nishida")	Sep. 1994	1009
U.S. Patent No. 4,785,558 to Shiomura ("Shiomura")	Nov. 1988	1013
U.S. Patent No. 6,779,369 B2 to Shepherd ("Shepherd")	Aug. 2004	1014

F. The Alleged Grounds of Unpatentability

Adidas contends that claims 1–38 are patent are unpatentable under 35 U.S.C. § 103 on the following grounds:

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Reference(s)	Claims Challenged
Nishida, Reed, Shiomura, and Shepherd	1–38
Nishida, Castello, Fujiwara, Shiomura, and Shepherd	1–38

In support of the above-noted grounds, adidas relies on the declaration testimony of Mr. Lenny Holden (Ex. 1003).

II. ANALYSIS

A. Ground of Unpatentability Based on Nishida, Reed, Shimura, and Shepherd

We have reviewed the Petition in connection with the above-noted ground. For the reasons that follow, we are not satisfied that the Petition provides adequate explanation or is appropriately precise and specific in articulating the basis of the proposed ground to warrant institution of an *inter partes* review on that ground.

Pursuant to 35 U.S.C. § 312(a), a Petition may be considered only if it "identifies, in writing and with particularity each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim." Here, the fault in the Petition lies in its failure to identify "with particularity" the grounds and evidence that form the underlying basis for adidas's patentability challenge. For instance, with respect to claim 1, the claim chart offered to point out where the features of the claim are present in the prior art spans four pages and constitutes bulk citation to large portions of both Nishida and Reed. *See* Pet. 14–18. Such an approach does not provide meaningful "particularity" sufficient for the panel to ascertain where, specifically, adidas identifies the limitations of the claim in the prior art.

Furthermore, again in connection with claim 1, the Petition cites to portions of Nishida for all features of that claim, and also submits parallel citation in some cases to portions of Reed. The Petition does not provide adequate explanation as to what features adidas contends are absent from Nishida that it also must rely on content of Reed to meet the challenged claims. Moreover, the asserted ground is presented as being based on the content of all of Nishida, Reed, *Shimura and Shepherd*, yet, no explanation emerges as to how or why Shimura's and Shepherd's teachings are germane to claim 1. The Supreme Court has instructed that the obviousness analysis includes describing (1) the scope and content of the prior art and (2) any differences between the claimed subject matter and the prior art. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). Here, we generally are left to guess as to what limitations adidas seeks to supply from the teachings of each of the references that it cites as a part of the proposed ground.

Indeed, review of the entirety of the proposed ground tends to demonstrate that the teachings of Shimura and Shepherd may be pertinent in some fashion only to a small subset of the involved claims (i.e., claims 7, 18, 26, 34, and 38), rather than all claim 1–38 as has been alleged in the Petition. *See* Pet. 20. Further still, with respect to that small subset of claims, e.g., claim 7, Shiomura and Shepherd are applied in parallel with one another apparently to account for the same additional claim features. *See id.* at 21–22. Left unexplained, however, is why it is necessary that both of those references have made their way into the Petition. Are their teachings equivalent? Are they duplicative? On the record before us, it would seem that Shiomura and Shepherd are offered in the alternative to one another. To that end, adidas styles the involved challenge as a single "ground"; however, it is, possibly, multiple grounds premised instead on alternative teachings. Vagueness in the presentation of a ground does not benefit a petitioner.

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Pursuant to 37 C.F.R. § 42.108(b):

> At any time prior to the institution of *inter partes* review, the Board may deny some or all grounds for unpatentability for some of all of the challenged claims. Denial of a ground is a Board decision not to institute *inter partes* review on that ground.

The proposed ground based on Nishida, Reed, Shiomura, and Shepherd has the defects noted above in connection with all of the claims 1–38 on which adidas seeks *inter partes* review. The noted uncertainties and vagaries arising from the Petition do not lend themselves to informed evaluation of the ground by the panel. Those uncertainties and vagaries also deprive Nike of an appropriate basis for it to formulate a response to the Petition. Accordingly, we deny the ground and do not institute *inter partes* review based on that ground.

B. Ground of Unpatentability Based on Nishida, Castello, Fujiwara, Shiomura, and Shepherd

This ground fares no better than the ground discussed above. Indeed, its defects are, in fact, magnified. Here, Castello and Fujiwara, apparently, are cited together in lieu of the teachings of Reed. Yet, adidas does not articulate whether the teachings of Castello and Fujiwara are cumulative of one another, cumulative of Reed, or both. Once again, wholesale citation to large portions of the prior art without providing appropriate guidance as to where elements of the claims are found with particularity in those citations is not sufficient, here, to institute *inter partes* review. We conclude that the ground based on Nishida, Castello, Fujiwara, Shiomura, and Shepherd ground has similar deficiencies to those noted above. Therefore, we also deny this ground and do not institute *inter partes* review based on it.

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III. CONCLUSION

Having evaluated the Petition, we determine that adidas has not shown a reasonable likelihood of success in any of its challenges to claims 1–38 of the '288 patent.

IV. ORDERS

It is ORDERED that the Petition is *denied*, and no trial is instituted.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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adidas AG
Petitioner,

v.

NIKE, Inc.
Patent Owner

Case IPR2017-00263
Patent No. 8,042,288

PATENT OWNER'S MANDATORY NOTICES
PURSUANT TO 37 C.F.R. § 42.8(a)(2)

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Pursuant to 37 C.F.R. § 42.8(a)(2), Patent Owner Nike, Inc. ("NIKE") hereby submits the following mandatory notices in connection with Petitioner adidas AG's Petition for *Inter Partes* Review of claims 8 and 14-20 of U.S. Patent No. 8,042,288, Case No. IPR-2017-00263.

I. 37 C.F.R. § 42.8(b)(1): Real Party-In-Interest

The real party-in-interest is Nike, Inc.

II. 37 C.F.R. § 42.8(b)(2): Related Matters

NIKE identifies the following matters that may be deemed related pursuant to 37 C.F.R. § 42.8(b)(2):

- Petition for *Inter Partes* Review of U.S. Patent No. 7,347,011, Case No. IPR-2013-00067;
- Petition for *Inter Partes* Review of U.S. Patent No. 8,042,288, Case No. IPR-2016-00920;
- Petition for *Inter Partes* Review of U.S. Patent No. 7,814,598, Case No. IPR-2016-00921;
- Petition for *Inter Partes* Review of U.S. Patent No. 8,266,749, Case No. IPR-2016-00922; and
- Petition for *Inter Partes* Review of U.S. Patent No. 8,042,288, Case No. IPR-2017-00264.

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III. 37 C.F.R. § 42.8(b)(3): Lead and Back-Up Counsel

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CERTIFICATE OF SERVICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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adidas AG
Petitioner,

v.

NIKE, INC.
Patent Owner

Case IPR2017-00264
U.S. Patent No. 8,042,288

PATENT OWNER'S *CORRECTED* PRELIMINARY RESPONSE PURSUANT TO 37 C.F.R. § 42.107

[Patent Owner obtained Board authorization to file this Corrected Preliminary Response]

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Exhibit 2001	adidas' Petition for *Inter Partes* Review of U.S. Patent 8,042,288, IPR2016-00920, Paper 1 (PTAB Apr. 19, 2016)
Exhibit 2002	Decision Denying *Inter Partes* Review, IPR2016-00920, Paper 6 (PTAB Oct. 20, 2016)
Exhibit 2003	adidas' Petition for *Inter Partes* Review of U.S. Patent 8,042,288, IPR2017-00263, Paper 1 (PTAB Nov. 14, 2016)

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Pursuant to 37 C.F.R. § 42.107, Patent Owner NIKE, Inc. ("NIKE") submits the following Corrected Preliminary Response to Petitioner adidas AG's ("adidas'") Petition for *Inter Partes* Review of claims 1–7, 9–13, 21–38 of U.S. Patent No. 8,042,288. NIKE obtained Board authorization to file this Corrected Preliminary Response on March 27, 2017.

I. INTRODUCTION

adidas' Petition should be rejected for three reasons. First, the Petition is a quintessential "second bite at the apple." The Board, in IPR2016-00920 ("the '920 IPR"), considered and denied *inter partes* review of the ***same*** claims, challenged by the ***same*** party, raising the ***same*** arguments, and in view of the ***same*** prior art references. (Ex. 2001.) As a result, the Board should exercise its discretion to deny institution under 35 U.S.C. § 325(d).

Second, the Petition does not comply with 37 C.F.R. § 42.8(b)(2) and 35 U.S.C. § 312(a)(4) because adidas fails to identify in its mandatory notices all "related matters"—including the most closely related matter, the '920 IPR—which alone is grounds for denial of the Petition.

Third, the Petition should be rejected under 35 U.S.C. § 312(a)(3) because it suffers from the same deficiencies that led the Board to deny institution in the '920 IPR. adidas fails to identify with particularity the grounds and evidence that form the underlying basis of its patentability challenge. The uncertainties and vagaries

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in the Petition prevent the Board from conducting an informed evaluation of the asserted grounds and deprive NIKE of an appropriate basis to formulate a response.

II. INSTITUTION OF REVIEW SHOULD BE DENIED UNDER 35 U.S.C. § 325(d) BECAUSE THE PETITION IS AN IMPROPER "SECOND BITE AT THE APPLE"

A. Procedural Background

On April 19, 2016, adidas initiated the '920 IPR by filing a petition seeking *inter partes* review of claims 1–38 of the '288 patent. (Ex. 2001.) adidas asserted two grounds of obviousness under 35 U.S.C. § 103(a) as to all 38 claims, relying on a total of six prior art references: Nishida, Reed, Shiomura, Shepherd, Castello, and Fujiwara. (*Id.* at 7.)

On October 20, 2016, the Board rejected adidas' petition under 35 U.S.C. § 312(a)(3) because the petition "fail[ed] to identify 'with particularity' the grounds and evidence that form the underlying basis for adidas' patentability challenge." (Ex. 2002 at 5,7.) Specifically, adidas failed to describe which claimed features existed in each prior art reference, and the Board was "left to guess as to what limitations adidas seeks to supply from the teachings of each of the references that it cites as part of the proposed ground." (*Id.* at 6, 7.) The Board therefore declined to institute trial on either ground because the "noted uncertainties and vagaries arising from the Petition do not lend themselves to informed evaluation of the

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ground by the panel . . . [and] also deprive Nike of an appropriate basis for it to formulate a response to the Petition." (*Id.* at 5,7.)

Less than one month after the Board rejected adidas' petition in the '920 IPR, adidas filed two new petitions that together challenged, for a second time, claims 1–38 of the '288 patent. The instant petition challenges claims 1–7, 9–13, and 21–38 (IPR2017-00264), and the other petition challenges claims 8 and 14–20 (IPR2017-00263) (Ex. 2003). The Petition in the present proceeding seeks cancellation on two grounds that are entirely duplicative of the grounds raised and denied in the '920 IPR. (Pet. at 7; Ex. 2001 at 7.)

Illustration 1: Comparison of Asserted Grounds in adidas' Petitions

adidas' Petition in the '920 IPR			
Ground	**35 U.S.C.**	**Claims**	**References**
1	103(a)	1–38	Nishida, Reed, Shiomura, and Shepherd
2	103(a)	1–38	Nishida, Castello, Fujiwara, Shiomura, and Shepherd
adidas' Petition in this IPR			
Ground	**35 U.S.C.**	**Claims**	**References**
1	103(a)	1–7, 9–13, 21–38	Reed and Nishida
2	102(b)	36–38	Nishida

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The Petition's patentability challenge in Ground 1 is identical to its assertions in the '920 IPR.[1] While Ground 2 of the instant Petition may appear, on its face, distinct from those in the '920 IPR: adidas' less than two-page analysis of Ground 2 is comprised entirely of cross-references to its analysis of Ground 1, and is therefore nothing more than a repackaged presentation of the identical arguments previously raised by adidas.[2] Thus, as compared to adidas' petition in the '920

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[1] Comparing Ground 1 of the instant Petition to adidas' assertions in the '920 IPR: both petitions challenge claims 1, 7, 9, 13, 21, 23, 26–29, and 34–38 as obvious in view of Reed and Nishida (Pet. at 13, 25–27, 29–31, 34, 36, 39, 44; Ex. 2001 at 13, 20–21, 23, 24, 28, 30–32, 34–35); both petitions argue that the additional limitations of dependent claims 2–6, 10–12, 22, 24–25, and 31–33 are rendered obvious by Nishida (Pet. at 22–25, 28, 33, Ex. 2001 at 18–20, 24, 27); and both petitions argue that the additional limitations of dependent claim 30 are rendered obvious by Reed (Pet. at 38, Ex. 2001 at 32). In each instance, adidas relies upon nearly identical portions of each prior art reference. (*Compare* Pet. at 13, 22–31, 33–34, 36, 38–39, 44, *with* Ex. 2001 at 13, 18–21, 23, 24, 27–28, 30–32, 34–35.)

[2] The Petition's analysis of Ground 2, which pertains to claims 36–38, is comprised exclusively of cross-references to the Petition's analysis of claims 36–38 under Ground 1. (Pet. at 44–46 (**Claim 36**: "As a result, Section VII.A.4.xvii above describes how Nishida discloses all of the features of claim 36, and thus anticipates claim 36" and "*See* Section VII.A.4.xvii, claim [36-A-H] regarding Nishida"; **Claim 37**: "As discussed in Section VII.A.4.xviii above and VII.A.4.xvii above, Nishida discloses the feature of claim 37, and thus anticipates claim 37"; **Claim 38**: "As discussed in Section VII.A.4.vii above, Nishida discloses the feature of claim 38, and thus anticipates claim 38."). As noted in footnote 1, the Petition's analysis of Claims 36–38 under Ground 1 relies upon precisely the same portions of Reed and Nishida that adidas relied upon when challenging those claims as obvious in the '920 IPR (*Compare* Pet. at 13–22, 37, 39–44, *with* Ex. 2001 at 13–19, 31–32, 34–35).

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IPR, the instant Petition does not identify any new prior art, challenge any new claims, or raise any new arguments. (*Id.*)

B. The Board Routinely Rejects "Second Bite" Petitions Under 35 U.S.C. § 325(d)

Section 325(d) of Title 35 authorizes the Board to reject petitions for *inter partes* review that seek to reargue previously rejected positions:

> In determining whether to institute or order a proceeding under this chapter, chapter 30, or chapter 31, the Director may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office.

35 U.S.C. § 325(d). Recognizing "the importance of quiet title to patent owners to ensure continued investments resources," Congress gave the Patent Office this broad authority in order to prevent post-grant proceedings form being "used as tools for harassment or a means to prevent market entry through repeated litigation and administrative attacks on the validity of a patent." H.R. Rep. No. 112-98, pt. 1, at 48 (2011). In addition, allowing parties to reargue previously-rejected petitions "would frustrate the purpose of the section as providing quick and cost effective alternatives to litigation." *Id.*; *see also 10x Genomics, Inc.*, IPR2015-01157, 2015 WL 7304561 (PTAB Nov. 16, 2015) ("§ 325(d) reflects the fact that a petitioner is not entitled to unlimited challenges against a patent. Rather, our discretion under § 325(d) is guided by a balancing of the interests of the parties, the public, and the Board.... It is more efficient for the parties and the Board to

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address a matter once rather than twice.") (internal citations and quotations omitted).

In accordance with Congress' intent, the Board frequently rejects petitions under 35 U.S.C. § 325(d) where a petitioner asserts grounds, prior art, or arguments that are substantially similar to those previously presented to the Office. *E.g., HTC Corp. v. NFC Tech.*, IPR2015-00384, 2015 WL 4149068, at *7 (PTAB July 6, 2015) ("To the extent that the present Petition asserts grounds of the earlier Petition . . . institution on such grounds now would not ensure 'the just, speedy, and inexpensive resolution of every proceeding.'"). *Unilever v. Procter & Gamble Co.*, IPR2014-00628, 2014 WL 3588116, at *6 (PTAB Oct. 20, 2014) ("we are persuaded that our resources are better spent addressing matters other than Unilever's second attempt to raise a plurality of duplicative grounds against the same patent claims"). The Board is especially likely to reject "second bite" petitions filed by the same party, where the petitioner "simply presents arguments now that it could have made in [the prior proceeding], had it merely chosen to do so." *Samsung Elecs. v. Rembrandt Wireless Techs.*, IPR2015-00114, 2015 WL 410653, at *4 (PTAB Jan. 28, 2015); *see also Netapp Inc. v. Crossroad Sys.*, IPR2015-00777, 2015 WL 5244971, at *4 (PTAB Sept. 3, 2015) (same).

Importantly, the earlier and subsequently-filed petitions need not be identical to warrant rejection under 35 U.S.C. § 325(d). *Lower Drug Prices for Consumers,*

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LLC v. Forest Labs Holdings, Ltd., IPR2016-00379, 2016 WL 6958131 (PTAB Oct. 19, 2016) ("§ 325(d) only requires that the arguments be substantially the same, and not identical."). For example, even where a petitioner asserts entirely different prior art references, but mounts substantially the same arguments, the Board denies *inter partes* review. *Unilever*, 2014 WL 5388116, at *6 (denying *inter partes* review under § 325(d) because, although petitioner's first petition asserted anticipation by Bowser and Reid, its subsequent petition nonetheless raised "substantially the same arguments" in asserting anticipation by Cothran and Uchiyama); *see also Praxair Distrib., Inc. v. INO Therapeutics LLC*, IPR2016-00781, 2016 WL 5105519 (PTAB Aug. 25, 2016) (denying petition under § 325(d) because "Petitioner now advances the same or substantially the same arguments it presented in [the prior IPR] . . . Although Petitioner now relies on [two different references], its underlying argument—that the prior art taught or suggested the exclusion of neonates with LVD from iNO treatment—is essentially the same as that raised in [the prior IPR], and …it should have been aware of the [newly-cited] references when it filed the earlier Petition.").

Similarly, the Board denies *inter partes* review where a subsequent petition asserts the same prior art references against different claims or claim elements of the previously challenged patent. *E.g., Schrader-Bridgeport Int'l v. Wasica Finance GMBH & Blueare Finance AG*, IPR2015-00272, 2015 WL 3543108, at *3

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(PTAB June 1, 2015) (denying *inter partes* review under 35 U.S.C. § 325(d) where patent owner asserted the same references against different claim elements as compared to the earlier petition); *Apple, Inc. v. Aylus Networks, Inc.*, IPR2014-01566, 2015 WL 1870711, at *4 (PTAB Apr. 23, 2015) (denying *inter partes* review under § 325(d) where petitioner challenged an 11-claim subset of the 33 claims previously challenged on the same ground and with the same prior art).

The Board also denies *inter partes* review where it determines that the subsequent petition was intended only to correct defects identified by the Board in an earlier petition. *E.g., ZTE Corp. v. ContentGuard Holdings, Inc.*, Case IPR2013-00454, 2013 WL 12126100 (PTAB Sept. 25, 2013) ("A decision to institute review on some claims should not act as an entry ticket, and a how-to guide, for the same Petitioner . . . to challenge those claims which it unsuccessfully challenged in the first petition."). For example, the Board explained in *Netapp*, 2015 WL 5244971, at *4:

> "[T]he Petition in this proceeding was filed less than a month after our [decision in the prior proceeding]. The Petition makes clear that this case has been guided by, and has received the benefit of, seeing the decision addressing nearly identical grounds in the prior proceeding . . . Absent a good reason, a subsequently filed petition is not typically granted."

Id.

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In particular, the Board has rejected numerous petitions that attempt to correct obviousness-related deficiencies identified by the Board in a prior petition, such as a petitioner's failure to adequately explain how one of ordinary skill would combine the cited references to render the claimed subject matter obvious. *E.g.*, *Samsung*, 2015 WL 410653. In *Samsung*, the Board explained:

> On its face, it is more efficient for the parties and the Board to address a matter once rather than twice. The sole difference between what Petitioner presents in this proceeding and what Petitioner presented in [the prior proceeding] is that the Petitioner now provides further reasoning in support of the same combination of prior art. Therefore, the "same prior art" was "previously presented" to the Board, with respect to the same claims.
>
> Petitioner is requesting, essentially, a second chance to challenge the claims. We, however, are not persuaded that a second chance would help "secure the just, speedy, and inexpensive resolution of every proceeding." 37 C.F.R. § 42.1(b). Permitting second chances in cases like this one ties up the Board's limited resources; we must be mindful not only of this proceeding, but of "every proceeding."
>
> In this proceeding, however, we are not apprised of a reason that merits a second chance. Petitioner simply presents arguments now that it could have made in [the prior proceeding], had it merely chosen to do so.

Id. at *4 (internal citations omitted). *See also Zimmer Holdings, Inc. v. Bonutti Skeletal Innovations LLC*, IPR2014-01080, 2014 WL 5677247, at *4 (Oct. 31, 2014) (same). Similarly, the Board in *Butamax Adv. Biofuels LLC, v. Gevo Inc.*, IPR2014-00581, 2014 WL 5299385, at *6 (PTAB Oct. 14, 2014), rejected a

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petition under § 325(d) where petitioner attempted to correct an obviousness-related deficiency, explaining:

> [W]e observe that the obviousness grounds asserted in the present Petition are intended to 'squarely address the alleged deficiencies identified by the Board' in our Decision in the [prior petition]. In other words, the four obviousness grounds are second bites at the apple, which use our prior discussion as a roadmap to remedy Butamax's prior, deficient challenge. Allowing similar, serial challenges to the same patent, by the same petitioner, risks harassment of patent owners and frustration of Congress's intent in enacting the Leahy-Smith America Invents Act. . . . We, therefore, exercise our discretion under § 325(d) to deny institution of *inter partes* review on the four obviousness challenges.

Id.

C. 35 U.S.C. § 325(d) Compels Denial of the Petition

The Petition is an improper "second bite at the apple." adidas does not assert any new prior art, challenge any new claims, or mount any new arguments. (Pet. at 7; Ex. 2001 at 7.) Instead, adidas' Petition challenges, for a second time, claims 1–7, 9–13, and 21–38 of the '288 patent as obvious in view of Reed and Nishida; and then attempts to dress-up those arguments (exclusively through cross-reference) as a second "ground" of anticipation for claims 36–38. (*Id*; *see* footnotes 1–2 above.) As a result, because the Petition is comprised exclusively of the same arguments, challenging the same claims, and relying on the same prior art references, the Petition should be denied under 35. U.S.C. § 325(d). *HTC Corp.*,

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2015 WL 4149068, at *7 ("Here, Petitioner applies the same references by the same arguments against claim 13 in the present Petition that it applied against claim 13 in the earlier Petition. On that basis alone, we may exercise our discretion and decline to institute *inter partes* review under 35 U.S.C. § 325(d)"); *Butamax*, 2014 WL 5299385, at *6 ("Allowing similar, serial challenges to the same patent, by the same petitioner, risks harassment of patent owners and frustration of Congress's intent in enacting the [AIA].")

adidas does not allege that its second challenge raises arguments that are meaningfully different from those asserted in its earlier petition. *Cont'l Auto. Sys., Inc. v. Wasica Finance GMBH & Bluearc Finance, AG*, IPR2014-01454, 2015 WL 674133, at *3 (PTAB Feb. 13, 2015) (rejecting second petition under § 325(d) where petitioner "offer[ed] no persuasive explanation as to how the arguments regarding claim 4 presented in this proceeding differ from those presented in [the earlier proceeding] in a meaningful way."). Nor does adidas offer—as it would be required to do—any "persuasive explanation as to why these [allegedly new arguments] could not have been presented in [its earlier petition]." *Id.*

Instead, the Petition merely attempts to remedy the defects identified by the Board in the earlier petition, *i.e.*, adidas' failure to "identify with particularity the grounds and evidence that form the underlying basis for adidas' patentability challenge." (Ex. 2002 at 5.) Similar to the petitioner in *Samsung*, the "sole

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difference" between what adidas presents in this Petition and what adidas presented in the '920 IPR is that the adidas "now provides further reasoning in support of the same combination of prior art." 2015 WL 410653 at *4. In other words, adidas "simply presents arguments now that it could have made in [the '920 IPR], had it merely chosen to do so." *Id.* adidas should not be granted a second chance to present the same arguments to the Board, because "[a]bsent a good reason,"—which adidas has not provided—"a subsequently filed petition that only corrects defects identified by a Board decision in a prior petition is not typically granted." *Netapp*, 2015 WL 5244971, at *4; *Butamax*, 2014 WL 5299385, at *6. Accordingly, the Board should exercise its discretion to reject the Petition under 35 U.S.C. § 325(d).

III. INSTITUTION OF REVIEW SHOULD BE DENIED UNDER 35 U.S.C. § 312(a)(4) FOR FAILURE TO IDENTIFY ALL RELATED MATTERS

A petition for *inter partes* review "may only be considered if," among other things, "the petition provides such other information as the Director may require by regulation." 35 U.S.C. § 312(a)(4). The Director requires petitioners to include within the petition certain mandatory notices. 37 C.F.R. § 42.8(a)(1). Mandatory notices, in turn, must "[i]dentify any other judicial or administrative matter that would affect, or be affected by, a decision in the proceeding." 37 C.F.R. § 42.8(b)(2). Judicial matters include "actions involving the patent in federal court,"

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while "administrative matters" include "every application and patent claiming, or which may claim, the benefit of the priority of the filing date of the party's involved patent or application as well as any *ex parte* and *inter partes* reexaminations for an involved patent." Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012).

Pursuant to 37 C.F.R. § 42.8(b)(2), adidas identifies three related patents and patent applications: U.S. Patent Nos. 7,814,598 ("'598 patent"), a parent of the '288 patent; U.S. Patent Nos. 7,347,011 ("'011 patent"), a grandparent of the '288 patent; and U.S. Patent No. 8,266,749 ("'749 patent"), a continuation of the '288 patent. adidas also identifies one federal action, *NIKE, Inc. v. adidas AG*, No. 14-1719 (Fed. Cir.), and three *inter partes* review proceedings: IPR2013-00067, involving the '011 patent; IPR2016-00921, involving the '598 patent; and IPR2016-00922, involving the '749 patent. (Pet. at 1–2.)

adidas did not identify in the "Related Matters" section of its Petition, however, the two proceedings initiated by adidas involving the '288 patent: the '920 IPR, in which the Board denied institution of claims 1–38 of the '288 patent (Exs. 2001, 2002); and IPR2017-00263, the simultaneously filed companion to this petition in which adidas challenges claims 8 and 14–20 of the '288 patent (Ex. 2003). In fact, adidas never once mentions the companion proceeding in its

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Petition. Nor has adidas filed an updated notice of related matters, or otherwise notified the Board of its improper omission.

adidas failure to comply with 37 C.F.R. § 42.8(b)(2), and thus 35 U.S.C. § 312(a)(4), warrants denial of the Petition. *Apple, Inc. v. Contentguard Holdings, Inc.*, IPR2015-00358, 2015 WL 9899010, at *4 (PTAB July 2, 2015) (denying petition on other grounds, but noting that "[t]he Petition's failure to comply with 37 C.F.R. § 42.8(b)(2), and thus also 35 U.S.C. § 312(a)(4), could be ground for denial of the Petition.") (citing *Reflectix, Inc. v. Promethian Insulation Tech. LLC*, IPR2015-00039, 2015 WL 1927414, at *9 (PTAB Apr. 24, 2015) (denying institution because petition did not comply with parallel requirement, under 35 U.S.C. § 312(a)(2), to identify all real parties-in-interest).)

IV. INSTITUTION OF REVIEW SHOULD BE DENIED UNDER 35 U.S.C. § 312(a)(3) FOR FAILURE TO IDENTIFY GROUNDS AND EVIDENCE WITH PARTICULARITY

As noted above, the Board rejected adidas' petition in the '920 IPR under 35 U.S.C. § 312(a)(3) because the petition "fail[ed] to identify 'with particularity' the grounds and evidence that form the underlying basis for adidas' patentability challenge." (Ex. 2002 at 5.) The Board identified two examples of adidas' failure to provide adequate particularity, both of which remain uncorrected in adidas'

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instant Petition. As a result, the Board should similarly reject the instant Petition under 35 U.S.C. § 312(a)(3).

The first deficiency identified by the Board relates to adidas' challenge of claim 1, where adidas' "claim chart . . . spans four pages and constitutes bulk citation to large portions of both Nishida and Reed." (Ex. 2002 at 5.) adidas approach, the Board concluded, "does not provide meaningful 'particularity' sufficient for the panel to ascertain where, specifically, adidas identifies the limitations of the claim in the prior art." (*Id.*)

adidas' Petition in the instant proceeding suffers from the same deficiency. Except for one instance in which adidas shortens a citation by four lines (Ex. 2001 at 15 ("3:43–48" changed to "3:47–48"), every "bulk citation" in adidas' earlier challenge of claim 1 appears, unabridged, in adidas' instant Petition. (*Compare* Ex. 2001 at 13–18 *with* Pet at. 13–22.) In fact, adidas in many cases expands its citations or includes additional citations. (*E.g.*, *Compare* Ex. 2001 at 13 [Element 1A], *with* Pet. at 14 [Element 1A] (adding citation to 1:33–35, 1:39–47 and FIGS 1–3).) As a result, the Petition in the instant proceeding "does not provide meaningful 'particularity' sufficient for the panel to ascertain where, specifically, adidas identifies the limitations of the claim in the prior art." (*See* Ex. 2002 at 5.)

Second, the Board in the '920 IPR observed that adidas' petition failed to identify which claim limitations were absent from each prior art reference, and the

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Skechers v Nike

extent to which adidas relied upon other references in support its obviousness challenge for those limitations. (Ex. 2002 at 6 ("The Petition does not provide adequate explanation as to what features adidas contends are absent from Nishida that it also must rely on content of Reed to meet the challenged claims" and "no explanation emerges as to how or why Shimura's and Shepherd's teachings are germane to claim 1") (*citing Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966) (obvious analysis must describe (1) the scope and content of the prior art and (2) any differences between the claimed subject matter and the prior art.).)

adidas' Petition in the instant proceeding suffers from the same deficiency. adidas' new "explanation" is comprised essentially of quotations copied from its claim charts and reproduced, redundantly, in the immediately preceding body of the petition. (*Compare* Ex. 2001 at 13–18 *with* Pet. at 13–22.) In addition, rather than explaining which claim elements are absent in each reference, adidas offers, in total, four sentences ambiguously suggesting that certain references may or may not "explicitly" disclose certain features. (Pet. at 14 ("[t]o the extent that Reed does not explicitly state . . ."), 16 (same), 20 (same), 37 (same), 40 (same) Pet. at 14 ("While Shiomura does not explicitly reference using a circular knitting machine . . .").) As a result, the Petition in the instant proceeding, as in the '920 IPR, requires the Board and NIKE to "guess as to what limitations adidas seeks to

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supply from the teachings of each of the references that it cites as a part of the proposed ground." (Ex. 2002 at 6.)

In sum, adidas fails to correct the deficiencies that led the Board to reject adidas' petition in the '920 IPR. Here too, "the noted uncertainties and vagaries arising from [the Petition] do not lend themselves to informed evaluation of the ground by the panel . . . [and] deprive Nike of an appropriate basis for it to formulate a response to the Petition." As a result, the Board should reject the Petition under 35 U.S.C. § 312(a)(3).

V. CONCLUSION

As set forth above, NIKE respectfully requests that the Board deny institution of IPR2017-00264.

Date: March 27, 2017

Respectfully submitted,

/s/ Christopher J. Renk

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Skechers EX1013-p. 900
Skechers v Nike

CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. § 42.24(d), NIKE hereby certifies, in accordance with and reliance on the word count provided by the word-processing system used to prepare this preliminary response, that the number of words in this paper is 4,085. Pursuant to 37 C.F.R. §42.24(d), this word count excludes the table of contents, table of authorities, certificate of service, and appendix of exhibits.

Dated: March 27, 2017

/s/ Christopher J. Renk
Christopher J. Renk
Banner & Witcoff, Ltd.

Skechers EX1013-p. 901
Skechers v Nike

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served on March 27, 2017, by Express Mail and email directed to the attorneys of record for Petitioner as follows:

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Skechers EX1013-p. 902
Skechers v Nike

Electronic Acknowledgement Receipt

EFS ID:	29867446
Application Number:	15610089
International Application Number:	
Confirmation Number:	4757
Title of Invention:	ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER
First Named Inventor/Applicant Name:	BHUPESH DUA
Customer Number:	78342
Filer:	Elizabeth Ashley Lucas
Filer Authorized By:	
Attorney Docket Number:	NIKE.276100/081313US82CON
Receipt Date:	24-JUL-2017
Filing Date:	31-MAY-2017
Time Stamp:	19:26:54
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Transmittal Letter	276100_IDS_Cover_Letter.pdf	15812 b1b889159707e0f36ef66f09e808db56fdc05f99	no	1

Warnings:

Information:					
2	Information Disclosure Statement (IDS) Form (SB08)	276100_IDS_5.PDF	1035727 cee0a28c4671fbbc38c47b9107b2adb44e594a16	no	5
Warnings:					
Information:					
3	Non Patent Literature	276100_5_NPL_02_09092017_Patent_Owner_Prelim_Response_for_IPR2017_00263_and_IPR2017_00264.PDF	544265 190b16196726b3df9b9d9d41dc6791811f5fb581	no	68
Warnings:					
Information:					
4	Non Patent Literature	276100_5_NPL_04_Petition_IPR2017_00264_filed_11_14_16_on_3_9_17_as_Ex_2003_for_IPR2017_00263.pdf	224860 1d3c143ff7e9b568b3b7653ec2c828afa35dd50a	no	24
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Information:					
5	Non Patent Literature	276100_5_NPL_05_Patent_Owner_Prelim_Response_for_IPR2017_00263_dated_3_9_17.pdf	224860 1d3c143ff7e9b568b3b7653ec2c828afa35dd50a	no	24
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Information:					
6	Non Patent Literature	276100_5_NPL_07_Patent_Owner_Prelim_Response_for_IPR2017_00264_dated_3_9_17.pdf	224860 1d3c143ff7e9b568b3b7653ec2c828afa35dd50a	no	24
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Information:					
7	Non Patent Literature	276100_5_NPL_8_IPR2017_00263_filed_11_14_16_Patent_Owner_Prelim_Resp_3_9_17_for_IPR2017_00264.pdf	225888 d83d5ed3d76fe5262b25c3f0191727115e9f7ee0	no	24
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Information:					
8	Non Patent Literature	276100_5_NPL_10_Patent_Owner_Updated_Mandatory_Notice_for_IPR2017_00264_dated_3_28_17.pdf	89665 b4b832ba0b25162d2aba77bfcd337663eaefb27f	no	5
Warnings:					
Information:					

9	Non Patent Literature	276100_5_NPL_11_Office_Action_in_corresponding_US_Pat_Appln_15358723_dated_4_5_17.pdf	8790898 518042d51951f95ef057e88145baf86d5ea08daa	no	214
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Information:					
10	Non Patent Literature	276100_5_NPL_01_03272017_Patent_Owner_Corrected_Prelim_Response_for_IPR20170026 3.pdf	256604 c182999f56198991974b424f0bbcf73a50d970c1	no	24
Warnings:					
Information:					
11	Non Patent Literature	276100_5_NPL_03_03092017_Trial_Instituted_Doc_in_IPR2016_00920_submitted_to_USPTO_Ex_2002.pdf	3071077 e5f5f89413ffe2b57046b66bde8a05467232 24ce	no	8
Warnings:					
Information:					
12	Non Patent Literature	276100_5_NPL_06_Patent_Owner_Updated_Mandatory_Notice_for_IPR2017_00263_dated_3_28_17.pdf	904007 0bf6296c74e3f09439721c8d92b0edc069a4995a	no	5
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Information:					
13	Non Patent Literature	276100_5_NPL_09_Patent_Owner_Corrected_Prelim_Response_for_IPR2017_00264_dated_3_27_17.pdf	255774 3ca18651f6a9db809003420a50d2569c3fc3b9da	no	24
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		Total Files Size (in bytes):	15864297		

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New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.	:	15/610,089	Confirmation No. 4757
Inventor	:	Bhupesh Dua	
Applicants	:	NIKE, Inc.	
Filed	:	5/31/2017	
Title	:	ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER	
Group Art Unit	:	3765	
Examiner	:	Marie D. Bays	
Matter No.	:	NIKE.276100/08-1313US82CON	
Customer No.	:	78342	

VIA EFS – 7/24/2017

Mail Stop Amendment
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

IDS SUBMISSION

This correspondence is being submitted with an Information Disclosure Statement pursuant to 37 C.F.R. § 1.97. Due to the number of references, the IDS is separated into multiple forms. Accordingly, Applicant hereby submits IDS forms 1-11 as this IDS submission. Each IDS form corresponds to an IDS form filed in the Application No. 14/503,514 from which this pending application depends. Pursuant to 37 C.F.R. § 1.97(c)(2), Applicant submits herewith the fee set forth in § 1.17(g) for the IDS submission.

Respectfully submitted,

/ELIZABETH A. LUCAS/

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8298658
8298658 v1

Skechers EX1013-p. 907
Skechers v Nike

Doc code: IDS
Doc description: Information Disclosure Statement (IDS) Filed

PTO/SB/08a (03-15)
Approved for use through 07/31/2016. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Not for submission under 37 CFR 1.99)

Application Number	15610089
Filing Date	2017-05-31
First Named Inventor	BHUPESH DUA
Art Unit	3765
Examiner Name	MARIE D. BAYS
Attorney Docket Number	NIKE.276100/081313US82CON

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Examiner Initial*	Cite No	Patent Number	Kind Code[1]	Issue Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear
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INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)		
	Application Number	15610089
	Filing Date	2017-05-31
	First Named Inventor	BHUPESH DUA
	Art Unit	3765
	Examiner Name	MARIE D. BAYS
	Attorney Docket Number	NIKE.276100/081313US82CON

	1	Transcript of Declaration of Lenny M. Holden for Inter Partes Review IPR2016-00921 dated January 10, 2017, 226 pages, and submitted to the US Patent and Trademark Office on January 23, 2017 as Exhibit 2004 to the Patent Owner Response Under 37 C.F.R. § 42.120 dated January 23, 2017 for Inter Partes Review IPR2016-00921 and for Inter Partes Review IPR2016-00922.
	2	Patent Owner Response Under 37 C.F.R. § 42.120 for Inter Partes Review IPR2016-00921 dated January 23,2017, 64 pages.
	3	Patent Owner Response Under 37 C.F.R. § 42.120 for Inter Partes Review IPR2016-00922 dated January 23,2017, 66 pages.

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EXAMINER SIGNATURE

Examiner Signature		Date Considered	

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through a citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

[1] See Kind Codes of USPTO Patent Documents at www.USPTO.GOV or MPEP 901.04. [2] Enter office that issued the document, by the two-letter code (WIPO Standard ST.3). [3] For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. [4] Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. [5] Applicant is to place a check mark here if English language translation is attached.

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Not for submission under 37 CFR 1.99)

Application Number	15610089
Filing Date	2017-05-31
First Named Inventor	BHUPESH DUA
Art Unit	3765
Examiner Name	MARIE D. BAYS
Attorney Docket Number	NIKE.276100/081313US82CON

CERTIFICATION STATEMENT

Please see 37 CFR 1.97 and 1.98 to make the appropriate selection(s):

That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(1).

OR

☐ That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in 37 CFR 1.56(c) more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(2).

See attached certification statement.

☒ The fee set forth in 37 CFR 1.17 (p) has been submitted herewith.

☒ A certification statement is not submitted herewith.

SIGNATURE

A signature of the applicant or representative is required in accordance with CFR 1.33, 10.18. Please see CFR 1.4(d) for the form of the signature.

Signature	/ELIZABETH A. LUCAS/	Date (YYYY-MM-DD)	2017-07-24
Name/Print	Elizabeth A. Lucas	Registration Number	74247

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these record s.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

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7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

Electronic Acknowledgement Receipt

EFS ID:	29859120
Application Number:	15610089
International Application Number:	
Confirmation Number:	4757
Title of Invention:	ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER
First Named Inventor/Applicant Name:	BHUPESH DUA
Customer Number:	78342
Filer:	Elizabeth Ashley Lucas
Filer Authorized By:	
Attorney Docket Number:	NIKE.276100/081313US82CON
Receipt Date:	24-JUL-2017
Filing Date:	31-MAY-2017
Time Stamp:	19:28:26
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Non Patent Literature	276100_6_NPL_01_Transcipt_of_Declaration_of_Lenny_M_Holder_IPR2016_00921_and_IPR2016_00922.pdf	1080257 d4e09b802a83a849c64fcc365f8ea6f9c720f4f2	no	226

Warnings:

Information:					
2	Non Patent Literature	276100_6_NPL_02_Patent_Owner_Response_IPR2016_00921.pdf	19535962 218f1e2583a5ca9cf33e0b061820799ad2f06025	no	64
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Information:					
3	Non Patent Literature	276100_6_NPL_03_Patent_Owner_Response_IPR2016_00922.pdf	20900467 c42cfcf53e0ca74375790913e51f8b44799fd87b	no	66
Warnings:					
Information:					
4	Transmittal Letter	276100_IDS_Cover_Letter.pdf	15812 b1b889159707e0f36ef66f09e808db56fdc05f99	no	1
Warnings:					
Information:					
5	Information Disclosure Statement (IDS) Form (SB08)	276100_IDS_6.PDF	1035144 8d199b2c12afa1372050ca2de6fe6555be1046f0	no	4
Warnings:					
Information:					
A U.S. Patent Number Citation or a U.S. Publication Number Citation is required in the Information Disclosure Statement (IDS) form for autoloading of data into USPTO systems. You may remove the form to add the required data in order to correct the Informational Message if you are citing U.S. References. If you chose not to include U.S. References, the image of the form will be processed and be made available within the Image File Wrapper (IFW) system. However, no data will be extracted from this form. Any additional data such as Foreign Patent Documents or Non Patent Literature will be manually reviewed and keyed into USPTO systems.					
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National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

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EXHIBIT 2004

Transcript of the Deposition of Lenny M. Holden (January 10, 2017)

Patent No. 7,814,598

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE PATENT TRIAL AND APPEAL BOARD

_____

adidas AG

v.

NIKE, Inc.

_____

Case IPR2016-00921

_____

VIDEOTAPED DEPOSITION OF

LENNY HOLDEN

January 10, 2017

9:04 A.M.

1180 Peachtree Street, N.E.

Suite 2800

Atlanta, Georgia

Lee Ann Barnes, CCR-1852, RPR, CRR

Job No. CS2511696

Patent No. 7,814,598

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Also Present:

Terry Wetz, Videographer

Patent No. 7,814,598

INDEX OF EXAMINATION

WITNESS: LENNY HOLDEN

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By Mr. Harris	6

Patent No. 7,814,598

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Exhibit 1010	Knitting technology, a comprehensive handbook and practical guide, Third Edition, by David J. Spencer	76
Exhibit 2001	Patent Owner Nike, Inc.'s Notice of Cross-Examination of Lenny M. Holden	6
Exhibit 2002	Patent Owner Nike, Inc.'s Notice of Cross-Examination of Lenny M. Holden	6
Exhibit 2003	Decision, Institution of Inter Partes Review	13

(All exhibits were retained by Mr. Harris.)

Patent No. 7,814,598

Deposition of LENNY HOLDEN

January 10, 2017

(Reporter disclosure made pursuant to Article 8.B of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia.)

VIDEOGRAPHER: And we are on the record. The time is approximately 9:04 a.m. Today's date is January 10, 2017. This is the beginning of videotaped deposition of Mr. Lenny Holden.

Would counsel present please identify themselves and who they represent for the record.

MR. HARRIS: Michael Harris from Banner & Witcoff, and we represent the patent owner, Nike, Inc. And with me is Aaron Bowling, also of Banner & Witcoff.

MS. WILLIAMS: Tiffany Williams of Kilpatrick Townsend representing the requester, adidas. With me is my colleague, Wab Kadaba.

VIDEOGRAPHER: Thank you, Counsel.

Would the court reporter please swear the witness.

LENNY HOLDEN, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY-MR. HARRIS:

Q. Good morning.

A. Good morning.

Q. Mr. Holden, I am going to hand you two documents that we have marked Exhibit 2001 and Exhibit 2002.

(Exhibits 2001 and 2002 were marked for identification.)

THE WITNESS: Okay.

Q. (By Mr. Harris) And I'll represent for the record that Exhibit 2001 is Patent Owner Nike, Inc.'s Notice of Cross-examination of Lenny M. Holden --

A. Uh-huh (affirmative).

Q. -- in IPR No. 2016-00921.

A. Uh-huh (affirmative).

Q. And Exhibit 2002 is Patent Owner Nike, Inc.'s Notice of Cross-examination of Lenny M. Holden in IPR2016-00922.

A. Okay.

Q. Have you seen these documents before?

A. I believe these were in the overall deck

that I've been given to review.

Q. And you understand, Mr. Holden, that you're here today to testify in connection with these notices; correct?

A. Yes, I do.

Q. Thanks.

Okay. Mr. Holden, I'm handing you a binder --

A. Yes, sir.

Q. -- and in the binder, you'll see that we've included a number of documents that adidas has previously marked as exhibits in these IPRs.

And in particular, this -- this binder that I've handed you contains exhibits that adidas has marked in connection with IPR2016-00921. The binder contains Exhibits 1001 through 1006 and 1009 through 1012.

Do you see that?

A. I see that.

Q. Okay. So we wanted to give you this binder. We'll be talking about some or all of these exhibits today --

A. Okay.

Q. -- and we'll reference them by the numbers that adidas has assigned to those documents.

A. Okay.

Q. So, first, I would like you to turn to Exhibit 1003.

(Exhibit 1003 was previously marked for identification.)

Q. (By Mr. Harris) Mr. Holden, do you recognize the document that adidas has previously marked as Exhibit 1003?

A. This is my declaration.

Q. And you submitted this declaration in both IPR2016-00921 and IPR2016-00922 --

A. Uh-huh (affirmative).

Q. -- correct? Correct?

A. I would have to -- so are you saying this is the first or the -- the -- I'm sorry. I'm not understanding.

Q. Sure. Sure. I'll start over.

So the Exhibit 1003 --

A. Uh-huh (affirmative).

Q. -- that's in front of you --

A. Uh-huh (affirmative).

Q. -- is an exhibit that adidas marked in connection with IPR2016-00921; correct?

A. Okay. Agree with that.

Q. And you submitted the exact same

declaration in connection with IPR2016-00922 --

A. I understand now.

Q. -- correct?

A. Yes, I understand.

Q. That's correct.

Okay. I'd like you to turn to page 109 of your declaration marked Exhibit 1003.

MS. WILLIAMS: Counsel, for clarity, have we agreed that we're going to be referring to the exhibit pages as opposed to the document pages so the court reporter --

MR. HARRIS: Sure. Sure. It doesn't matter to me.

MS. WILLIAMS: Okay.

Q. (By Mr. Harris) Okay. So in that case, could you please turn to Exhibit -- page 113 of Exhibit 1003?

A. Okay.

Q. Do you see a signature on page 113 of Exhibit 1003?

A. Yes, I do, sir.

Q. Is that your signature?

A. Yes, it is, sir.

Q. Did you sign this declaration, Exhibit 1003, on April 19, 2016?

A. Yes, sir.

Q. I'd like to direct you to paragraph 209 of your exhibit -- I'm sorry. Let me start over.

I'd like to direct you to paragraph 209 of your declaration marked Exhibit 1003.

Do you see paragraph 209?

A. In the summary here on the same page?

Q. Uh-huh (affirmative).

A. Yes, I do.

Q. Paragraph 209 says, "I note that my analysis is continuing and that I may modify or supplement my conclusions as I receive additional information."

Do you see that?

A. Yes, I do.

Q. Since you signed your declaration marked Exhibit 1003 on April 19, 2016, have you supplemented your conclusions that are expressed in the declaration?

A. I have not.

Q. Since you signed your declaration marked Exhibit 1003 on April 19, 2016, have you modified your conclusions as expressed in the declaration?

A. I have not.

Q. Since you signed your declaration marked

Exhibit 1003 on April 19, 2016, have you received any additional information relevant to the opinions that you express in your declaration?

A. I'm not sure I understand your question.

Q. What don't you understand about the question?

A. So are you asking me -- can you rephrase that or restate it?

Q. Yeah. I'd be happy to -- to help you out on that.

A. Okay.

Q. Is there -- is there a part of the question that you didn't understand?

A. Why don't you just repeat the entire question.

Q. Sure.

Since you signed your declaration marked Exhibit 1003 on April 19, 2016, have you received any additional information relevant to the opinions that you express in your declaration?

A. Not that I can recall.

Q. Okay. Since you signed your declaration marked Exhibit 1003 on April 19, 2016, have you become aware of any information that is inconsistent with the opinions you express in the declaration?

A. No, I have not.

Q. Mr. Holden, did you author the declaration that's marked Exhibit 1003?

A. Yes.

Q. Did you personally write the declaration that is marked Exhibit 1003?

A. I worked with counsel one on one to basically give her a verbal description of my opinions and -- and my thoughts on the -- on these issues, and she did the actual typing of the document.

Q. Did you do any of the actual typing of the document that's marked Exhibit 1003?

A. I may have put into my own words some certain parts of it to give her, you know, a more clarified description, but basically I narrated through the document the -- the descriptions that were my own.

Q. Which paragraphs did you put into your own words to give your attorney a more clarifying description --

MS. WILLIAMS: Objection --

Q. (By Mr. Harris) -- of your opinion?

MS. WILLIAMS: -- work product.

MR. HARRIS: Are you instructing the

witness not to answer?

MS. WILLIAMS: No. I'm -- I'm just objecting -- objecting that I feel like we're getting into work product questions.

Q. (By Mr. Harris) Okay. You can answer.

A. The POSITA, the person of ordinary skill, I specifically spent a lot of time to -- to make sure to give in my own words.

Q. Other than the description of the person of ordinary skill in the art, were there any other sections that you put into your own words to give your attorney a more clarifying description?

MS. WILLIAMS: Same objection.

THE WITNESS: I do not recall the -- you know, any specifics of that, but I specifically recall the POSITA.

Q. (By Mr. Harris) Mr. Holden, I'm handing you a document that we have marked as Exhibit 2003.

(Exhibit 2003 was marked for identification.)

THE WITNESS: Okay.

MS. WILLIAMS: Thank you.

Q. (By Mr. Harris) And I'll represent for the record that Exhibit 2003 is the Patent Trial and Appeal Board's October 21, 2016, decision

instituting an inter partes review in IPR -- Case No. IPR2016-00921.

Mr. Holden, have you reviewed this document marked Exhibit 2003 before today?

A. Let me take a second to look through it real quickly just to --

Q. Take your time.

A. Yeah.

Yes, I have.

Q. Mr. Holden, I'd like to direct your attention to page 12 of Exhibit 2003.

A. Yes, sir.

Q. Actually, to be more specific, I want to direct your attention to pages 12 through 14, the section of Exhibit 2003 with the title "Reed."

Do you see that section of the decision?

A. So 12 through 13?

Q. 12 through 14.

A. 14. Okay. Yes.

Q. Mr. Holden, do you agree with the Patent Trial and Appeal Board's description of Reed on pages 12 through 14 of Exhibit 2003?

A. May I take a moment to read through, please?

Q. You may.

A. Okay. So --

Q. Would you like me to repeat the question?

A. You're asking me if I agree with this? Is that what you're --

Q. Let me repeat the question.

A. Yeah, please do.

Q. Mr. Holden, do you agree with the Patent Trial and Appeal Board's description of Reed on pages 12 through 14 of Exhibit 2003?

A. I have not been asked to opine about this particular judgment or render any opinion about that or give any written description about this.

I have looked at it. I understand the -- basically, the -- the -- the overview of what this is about, but I do not have an opinion about this particular -- I've not rendered an opinion.

Q. Is that it?

A. That's it.

Q. Okay. Mr. Holden, do you believe that any portion of the Patent Trial and Appeal Board's description of Reed on pages 12 through 14 of Exhibit 2003 is incorrect?

A. I have not studied it closely enough to render an opinion and I have not been asked to render an opinion about this, so all I can say is

that I have read through it and I generally understand what the -- the -- the text -- the -- the text. Is that not clear?

Q. I didn't know if you were finished.

A. Yeah, I'm finished there.

Q. When you say you've not studied it closely enough to render an opinion, what's the "it" that you're referring to?

A. I have not this -- studied this opinion enough to -- you know, and I'd want to go back over all relevant documents and -- and all relevant references if I was going to give an opinion, a written opinion, or to -- to give an opinion, which I have not been asked to do.

As I say, I have -- I have looked at it, I have looked at this document, but I have not been asked to -- to give any opinion about it.

Q. So I'm asking you right now --

A. Yes.

Q. -- to give me your opinion.

A. Generally, I can say that understanding what I have and -- and having read through this in a tertiary manner, I would say that I generally understand this and I see no -- nothing that jumps out at me as a -- as something I disagree with.

Q. Mr. Holden, have you studied the Reed reference?

A. I've read through Reed.

Q. Have you studied the reference?

A. I have studied it in the -- in the -- in the aspect of doing my declaration.

Q. And as you sit here today, you're not aware of any portion of the PTAB description of Reed on pages 12 through 14 of Exhibit 2003 that you believe is incorrect; correct?

A. PTAB, I'm not familiar with that -- that term.

Q. Patent Trial and Appeal Board.

A. Okay.

Q. I'll start over and ask it.

A. Okay.

Q. As you sit here today, you're not aware of any portion of the Patent Trial and Appeal Board's description of Reed on pages 12 through 14 of Exhibit 2003 that you believe is incorrect; is that true?

A. Again, I've not been asked to render an opinion about this conclusion or this -- this particular document.

I have read through it, and without enough

study to make a professional opinion, I would say that nothing jumped out at me about -- that was incorrect in this -- in this document.

Q. All right.

A. So for -- in this Reed portion.

Q. Thank you.

So I'd like to ask you the same question about Nishida.

A. Uh-huh (affirmative).

Q. The Patent Trial and Appeal Board describes Nishida on pages 14 through 16 of Exhibit 2003.

A. Can I take a moment to read through this?

Q. Yep. I was going to ask you to do that.

A. Oh. So please give me the reference again so that --

Q. Sure.

A. 14 --

Q. Pages 14 through 16 --

A. Okay. Got it.

Q. -- of Exhibit 2003.

A. And when you say "through 16," what portion of 16? All the way to the end or --

Q. The first two lines on 16.

A. Okay. I've read through this.

Q. Mr. Holden, do you believe that any portion of the Patent Trial and Appeal Board's description of Nishida on pages 14 through 16 of Exhibit 2003 is incorrect?

A. I have not been asked to opine about this particular -- again, the whole document, so in reading it at this moment -- and I have read through it before -- but I think there's a full context to this whole -- this description of Nishida, so I'm not -- I'm not sure what -- how to answer your question. I'm not sure that I understand what you're asking me.

Q. Well, I'm asking you if you think there's any portion of the Patent Trial and Appeal Board's description of Nishida on pages 14 through 16 that you believe is incorrect.

A. I think it's incomplete.

Q. Okay. Is there anything in here that's incorrect?

A. Incomplete.

Q. But not incorrect?

A. I think that it's incomplete. I think that's the best answer I can give. It's not -- I don't see that this -- to me, if I was looking at this document, it seems to be incomplete.

Q. Can you point me to anything -- any sentence on pages 14 --

A. Uh-huh (affirmative).

Q. -- through 16 in the Patent Trial and Appeal Board's description of Nishida that you believe is an incorrect statement?

A. No, I can't find any particular -- the -- the -- in the time that I've had to look at this, I don't see anything that jumps out at me.

But I would want -- if I was to render an opinion, I would want time enough to review it.

Q. You testified that you believe the Patent Trial and Appeal Board's description of Nishida on pages 14 to 16 of Exhibit 2003 is incomplete.

What were you referring to when you testified that it's incomplete?

A. Again, if I'm asked to -- to render an opinion about whether it's -- it's correct or incorrect, I would want to read the full text and -- to give it -- to make sure that I understand the full breadth of what this is opining on.

So I really feel a little uncomfortable to just look at part -- partial parts of a document and -- and render an opinion about whether it's complete or incomplete -- or, I mean, excuse me,

whether it's correct or incorrect.

Q. Right. So now I'm not asking you if you think it's correct or incorrect.

You testified that it was incomplete --

A. Yes.

Q. -- and I'm trying to figure out what you believed was missing from this description. You said it was incomplete.

So my question for you is: When you testified that the Patent Trial and Appeal Board's description of Nishida on pages 14 to 16 of Exhibit 2003 is incomplete, I'm wondering what you thought would have completed that description?

A. Well, I think the full reading of -- of Nishida's descriptions in -- in the patent -- and I would want to read through the -- the patent to make sure that they -- you know, that it lined up correctly with -- with that particular patent.

I mean, again, just reading it here at this moment, I do not see anything that jumps out at me that's incorrect or correct or -- but I feel like it's not a complete reading of -- of patent claims or -- or patent discussions in -- in Nishida. So...

Q. So is it fair to say there's more to Nishida than what the Patent Trial and Appeal Board

has described on pages 14 to 16 in Exhibit 2003?

A. It is not a complete description of all of the -- all of the claims that I was asked to opine on. So this is a portion of Nishida's -- I mean, it's basically -- from what I can see, it's a -- it's an excerpt of -- of that, but is it com- -- you know, is it -- is it a representation? I would have to go back to Nishida and look exactly to see.

And, number two, it is not all of Nishida. So that's why I say it's incomplete.

Q. All right. Very good. Thank you.

Okay. We're done with that exhibit --

A. Okay.

Q. -- for a while. You can set that aside.

Let's go back to the binder --

A. Yes, sir.

Q. -- and we're going to look at Exhibit 1004.

(Exhibit 1004 was previously marked for identification.)

THE WITNESS: Yes, sir.

Q. (By Mr. Harris) Mr. Holden, do you recognize the document that is marked Exhibit 1004?

A. I recognize this as my CV.

Q. And I take it this would have been your CV

as of April 2016 when you signed your declaration; is that correct?

A. Yes.

Q. Has your CV changed in any material way since April of 2016?

A. Yes. I updated my -- my document online on my website.

Q. How did you change your CV from what's shown in Exhibit 1004?

A. I would like to look at both of them side by side to give you an exact -- a description of what changed. Basically, I believe the -- the -- the major portions of the -- of this are similar.

Q. Can you recall as you sit here today any changes -- any specific changes that you've made to your CV?

A. There's one particular -- I believe I took off one of my employment records. I was advised that it makes me look too old.

Then also I believe that I changed some of the experience area to -- to -- to describe more of the footwear and -- and apparel that I worked with. But I -- I can't recall exactly.

Q. You don't recall any specifics?

A. I would want to look -- I -- the -- the

overall structure changed from one -- this document, older document, to what I have on my website right now. So that I can generally say. Specifically, I'd want to look at them both.

But I don't believe any -- obviously, the dates or any of the particular companies that are listed have changed. Again, I would like to look at my website or -- or a copy of that updated CV to do a comparison.

Q. As you sit here today, do you recall which employment record you removed from your CV because it makes you look too old?

A. Nordstrom, I believe, was removed. I'm not positive that it was, but...

Q. Other than changing the overall structure and potentially removing the Nordstrom's work experience, as you sit here today, do you recall any specific changes to your CV since April 2016 when you provided Exhibit 1004?

A. Yeah. I believe there was some verbiage that I changed at the beginning that was -- was a descriptor of my goals or my -- my intentions.

Q. Anything else?

A. Again, substantively, I don't believe -- or -- or cannot recall, I should say.

Q. Okay. So I'd like to direct you to page 1 of Exhibit 1004.

A. Uh-huh (affirmative).

Q. The first section of this CV is titled "Strengths."

A. Yeah.

Q. Do you see that?

Under "Strengths," you list executive management and then footwear and apparel operations.

Do you see that?

A. Yes, sir, I do.

Q. In this Exhibit 1004, you draw a distinction between footwear and apparel.

What's the difference between footwear and apparel?

A. There are more similarities than there are differences.

Q. Do you want me to repeat my question?

A. Please do.

Q. What are the differences between footwear and apparel?

A. And that's my answer, is there are more similarities than there are differences. Another answer would be shoes have an outsole.

Q. Are there any differences between footwear

and apparel other than the fact that shoes have an outsole?

A. And not all shoes have outsoles, so that's a generalized answer.

Again, there are more similarities between the apparel industry and the footwear industry than there are differences.

Q. Are there any differences, in your mind, between the term "footwear" and the term "apparel"?

A. Typically, "footwear" is a descriptor for something specifically that belongs to feet, but also garments or there are other terminology that is more inclusive because there are types of footwear, if you'll -- in quotes, that are even considered garments.

So, again, there are more similarities. They're -- they're considered separate industries, but, again, there are more -- in my mind there are more similarities, having worked with both products.

Q. So is it correct, then, in your mind there are no differences between footwear and apparel?

A. That was not my answer. My answer was there are more similarities than there are differences.

Q. Are there any differences between footwear

and apparel? I -- I understand that you think there are more similarities than differences.

A. Yes.

Q. My question is: Are there any differences between footwear and apparel?

MS. WILLIAMS: Objection. I believe he's already answered that question.

MR. HARRIS: He's not answered the question. He said there -- he thinks there are more similarities.

Q. (By Mr. Harris) I'm asking you: Are there any differences between footwear and apparel, in your mind?

A. There are differences, but some of those differences are also similarities.

Q. Okay. So let's talk about the differences that are also similarities.

A. Sure.

Q. What's a difference between footwear and apparel that is also a similarity?

A. Footwear, apparel, hats, accessories all use patterns. So that's -- that is a commonality.

Q. And it's also a difference?

A. And it's also a difference because the patterns are a difference. The patterns themselves

are different, in that a pattern for a certain part of the body will differ in its shape from a pattern that is made for a body or for a foot or for a hat or for -- but they're also almost exactly the same, in that they all use a pattern. They all start with a pattern.

Q. When you use the term "pattern," which you have used it several times now, what do you mean? What's a pattern?

A. Generally, a pattern is an outline.

Q. You mentioned earlier that in your declaration marked Exhibit 1003, you describe a person of ordinary skill in the art.

Do -- do you recall that testimony?

A. In -- in the --

Q. Let me ask it a different way.

A. Yes.

Q. In your declaration marked Exhibit 1003, you describe what you believe is a person of ordinary skill in the art; correct?

A. I did, yes.

Q. Do you believe that that person of ordinary skill in the art would define "pattern" the way that you have just defined "pattern," as an outline?

A. They may use a different descriptor, but the basic premise of a pattern is -- is an outline.

Q. What other descriptors may a person of ordinary skill in the art use to describe a pattern?

A. A representation of a -- hard to find a term other than "outline" -- that matches a body part or a template.

Q. Can you think of any other descriptors, other than the ones you've already identified, that a person of ordinary skill in the art would use to describe a pattern?

A. There are many, many ways to describe -- let me ask you a question back. Are you saying terminology or descriptive verbiage?

Q. You used the term "a person of ordinary skill in the art may use a different descriptor."

So what did you mean when you said, "A person of ordinary skill in the art may use a different descriptor"?

A. They certainly would probably not use the exact verbiage that I used, but there is, again, the premise of building a structure that will match to the template that is referencing to a body part.

Q. When you say "the premise of building a structure that will match to the template that is

referencing a body part," do you essentially mean an outline?

A. The "outline" is the most general term I can think of, but if you asked people from different -- from different countries or different skills, they may give you a different word for the same descriptor.

Q. Right.

Which -- it may be a different word, but at the end of the day, it's basically an outline; correct?

A. I believe the best -- the best general descriptor is an outline.

Q. Okay. So let's go back to the differences between footwear and apparel or -- well, I guess you testified the differences that are actually similarities.

So the first difference between footwear and apparel that's actually a similarity, in your mind, is patterns; correct?

A. Yes.

Q. What are the other differences between -- strike that.

What is another difference between footwear and apparel that, in your mind, is also a

similarity between footwear and apparel?

A. Garment patterns can be unisexual, as well as footwear patterns can be unisexual. In other words, a men's size can also be referenced to a woman's size in apparel, as well as footwear. So a men's size 9, a woman's size 7.

And conversely, if you're talking about a T-shirt or a shirt or some -- a blouse or some other type of apparel, they have unisexual descriptions or they can be used -- the patterns can be used unisexually in some cases.

Q. I just want to make sure I understand that, because it sounds like you're describing patterns again.

So is this -- is a second difference another pattern difference or is it --

A. It's a similarity, but it's -- it's -- what I'm describing is what are the -- what is that similarity, if I understood your question. So the unisexual patterns is a similarity.

Q. Okay. So as you sit here today, two differences that you can think of between footwear and apparel that are also similarities between footwear and apparel are: One, patterns, and, two, unisex patterns; correct?

A. Yes.

Q. Can you think of any other differences as you sit here today between footwear and apparel that are also similarities between footwear and apparel, other than patterns and unisex patterns?

A. Many.

Q. Okay. Give me a third difference between footwear and apparel --

A. Uh-huh (affirmative).

Q. -- that's also a similarity between footwear and apparel.

A. Apparel uses reinforcements and footwear uses reinforcements.

Q. So how is that a difference?

A. So this -- I make -- I work with a company that makes men's suits, and they have different types of reinforcements, different placement of reinforcements. They may call them different things.

But, essentially, there are -- and -- and for sure they'll call them somewhat different than a general reinforcement. They have a specific name or a specific designation for them.

But they are all, in general, the same, in that they're all basically reinforcements to a

pattern.

Q. How is a footwear reinforcement different than an apparel reinforcement?

A. I -- I real- -- there's -- there's so many variations to that question I really can't give you a succinct -- succinct singular answer.

Q. So you're unable to answer the question how is a footwear reinforcement different than an apparel reinforcement; correct?

A. There are many answers to that question.

Q. Give me one.

MS. WILLIAMS: I'm going to object to the -- that question.

THE WITNESS: So a reinforcement, from a technical perspective from a look perspective, and a technical perspective from a performance perspective.

Q. (By Mr. Harris) Okay. So your testimony is that one difference between a footwear reinforcement and an apparel reinforcement is, quote, a reinforcement from a technical perspective from a look perspective and a technical perspective from a performance perspective; is that correct?

A. Yes. But it's also a similarity, because you can have reinforcements in technical garments

and you can have reinforcements in garments that -- in -- in the case of men's shoulder pads that don't necessarily serve any purpose other than the look.

So I can give you examples either direction of technical performance and for -- from a visual look perspective.

Q. Have you ever designed an article of footwear that was intended to be worn on a part of a body other than the foot?

A. So if I understand, your question is you're saying is there a type of -- can you rephrase that again so I can make sure to answer it properly?

Q. Have you ever -- strike that.

Have you ever designed a product that you called a shoe that was intended to be worn on a body part other than the foot?

A. I have not personally designed those, but I have seen those.

Q. Okay. What have you seen that is called a shoe and it's not worn on the foot?

A. I've seen shoes that are also gloves that -- that -- that can be taken off your foot and put on your hand as a hand warmer.

Q. Where did you see a shoe, an article -- a product that was referred to as a shoe, that was

intended to be worn on a hand?

A. In Asia.

Q. When?

A. I don't recall the exact date.

Q. Generally, when did you see the shoe that was intended to be worn on a hand in Asia?

A. Probably five, ten years ago. But it wasn't shocking to me to see something like that.

Q. Have you ever seen a product in the U.S. that's referred to as a shoe and it's worn on a body part other than the foot?

A. I cannot recall off the top of my head.

Q. And before five to ten years ago, had you ever seen a product referred to as a shoe worn on a hand or any other body part other than the foot in China or Asia?

A. I've seen a over-type shoe that was also used to cover hands or to be attached to a piece of clothing.

Q. What is an over-type shoe?

A. An overshoe is something that you wear over your shoe. So -- and I'm not sure what the -- their -- the exact reference would be from a -- a marketing standpoint, but basically over your current footwear, you pull an overshoe over it to

protect it from weather.

Q. And you've seen an overshoe that was intended to be worn on a hand?

A. Yes.

Q. Where did you see that?

A. Asia.

Q. When?

A. Same -- probably the same time frame or --

Q. Five to ten years ago?

A. -- or older, yeah. Perhaps older.

Q. The overshoe that you saw in Asia roughly five to ten years ago, did it have an outsole?

A. It had something that could be construed as an outsole.

Q. What did the overshoe have that you saw five to ten years ago in Asia that could be construed as an outsole?

A. A bottom part to a pattern, basically a -- a -- so an upper with a bottom part.

Q. You also mentioned a product that you -- a separate product that you saw in Asia five to ten years ago that was called a shoe and was intended to be worn on a hand.

Did that product have an outsole?

A. It had a bottom part to the pattern,

similar to -- so generally a footwear item, as I mentioned before, has an outsole or a sole of some kind so that it can be worn as footwear.

Q. So it had a bottom?

A. It has a bottom.

Q. It had a bottom surface of some sort?

A. There's some patterns, though, that -- that can be interchangeable, where you can take one pattern off the top of the shoe and use the same bottom. So there are footwear -- and I work with a company that made just footwear uppers to go with a bottom. So there are many types of upper patterns that were associated to a same bottom, and they could be removed and change the upper shoe design, shoe pattern.

Q. You're not talking about the shoe product that you saw in Asia --

A. I am not.

Q. -- that was intended to be worn on the hand?

A. I'm speaking generally of footwear.

Q. Okay. So let's go back to the differences and similarities between footwear and apparel.

You've now identified three differences between footwear and apparel that you also believe

are similarities.

My question for you is: Can you think of any differences between footwear and apparel that are not also similarities?

A. There are so many variations to footwear and apparel types of products that to make one example -- I'm sure I can think of an example where that would not be app- -- applicable.

Q. Can you -- as you sit here today --

A. Uh-huh (affirmative).

Q. -- can you think of one example where a footwear product is different than an apparel product?

A. Again, even if I say that the bottom is not part of -- is only for footwear, then I could show you footie pajamas which have bottoms on them and they're apparel.

Q. So the answer's no?

A. I really can't think of any particular example that would not have -- conversely have an exception to that rule.

Q. So I just want to clarify this -- this record.

So as you sit here today, Mr. Holden, you cannot think of a single difference between footwear

and apparel; correct?

A. I can think of more similarities than I can differences.

Q. As you sit here today, Mr. Holden, you cannot articulate a single difference between footwear and apparel that's not also a similarity; correct?

MR. KADABA: Objection to the characterization.

THE WITNESS: Can you restate the question?

MR. HARRIS: Can you read the question back, please?

(Whereupon, the record was read by the reporter as follows:

Question, "As you sit here today, Mr. Holden, you cannot articulate a single difference between footwear and apparel that's not also a similarity; correct?")

THE WITNESS: I cannot think of an example that is -- does not have a converse similarity or something that can be identified as a -- as not a similarity. So I cannot find an example that will also have another example that is very similar to it between footwear and

apparel.

Q. (By Mr. Harris) Okay. Going back to Exhibit 1004 --

A. Uh-huh (affirmative).

Q. -- under the "Strengths" section of your CV --

A. Uh-huh (affirmative).

Q. -- you list "Product Development."

A. Yes, sir.

Q. What is product development?

A. Product development is the con- -- the -- the process of concept and all the way through the process to a finished product. When I say "a finished product," I mean a confirmable, visual product.

Q. What's the beginning of the product development for a -- a product, just a generic product? What's the first step of product development?

A. The typical and -- there's also variations to this theme -- but the typical process is a marketing brief is passed to the product development team, which also would encompass the design team or would include the design team, and that marketing brief would describe a product to be developed.

And -- would you like me to go through the whole process or any particular -- I mean, that's generally how the process starts. I believe your question was how does the process start.

Q. Correct.

A. Okay. So I've answered that to your satisfaction.

Q. So the first step of product development is a marketing brief; correct?

A. Typically.

Q. What's the next step to product development after the marketing brief?

A. A review of the marketing brief.

Q. Actually, going back to the first step, marketing brief, who prepares the marketing brief?

A. Typically, it is -- and not solely, but typically it's done by a marketing team and a sales team working together, or potentially just the sales team, and the executive team typically is involved in that process.

Q. Okay. The second step of product development, you testified, is review of the marketing brief.

Who performs the review of the marketing brief?

A. I'll list some teams that could or could not be involved in this, but typically it would be the design team, the product development team, then the sourcing team, but could include -- this becomes a broader review, so many different people who are part of or other teams that are part of the product development group.

Q. Okay. So in the second step, the marketing brief is typically reviewed by the design team, the product development team, and the sourcing team; correct?

A. That is one example, but it may be a broader group than that.

Q. Okay. So in this example that you just gave us --

A. Uh-huh (affirmative).

Q. -- where the -- the marketing brief is reviewed by the design team, the product development team, and the sourcing team, what's the difference between the design team and the product development team?

A. So there are many ways companies are structured. So sometimes the design team reports to the marketing team; sometimes the design team reports to the development team; sometimes the

design team reports to the executive team; sometimes the design team is independent.

So there are many variations to the -- you know, to -- to how the -- what group they belong to or how they are directed or who's responsible for that particular design team. But generally speaking, the design team reviews the marketing brief.

Q. I understand that there may be variations to this, but in your example, you referred to a design team, a product development team, and a sourcing team.

So in your mind, there's some difference between a design team and a product development team; correct?

MS. WILLIAMS: Objection.

THE WITNESS: So as I stated, the design team could be part of the product development team or part of the marketing team, but the design team is a big factor in the marketing brief because they're the ones who design the product that matches the marketing brief.

Q. (By Mr. Harris) Okay. I think I understand what you're saying.

Is it fair to say -- I mean, putting aside

the reporting structure -- I don't care about where the design team reports --

A. Okay.

Q. -- all right? So -- so I'm not asking you about reporting structure --

A. Uh-huh (affirmative).

Q. -- or how it fits into the matrix of any given corporation.

Is it fair to say there's going to be a team that actually designs the product and then there's going to be a team that develops the product? Is that correct?

A. It's not necessarily true. Some designers may develop.

Q. Fair enough.

So you could have one team that both designs and develops; correct?

A. You could have one design person who designs and develops.

Q. Okay. Even better.

So you can have a single person that both designs and develops; correct?

A. You could have a team; you could have a single person.

Q. But the point is: There's a difference

between design and development; correct?

A. In the process, there is a phase that is a design phase and there's a phase -- so there's a phase for the design and there's a phase for development.

Q. What happens during the design phase?

A. Can you be more specific or --

Q. You -- you just testified that in the process, there's a design phase and a --

A. Yes.

Q. -- development phase.

A. Yes.

Q. I'm trying to understand what you were referring to as the design phase.

What did you have in mind when you said there's a design phase and a development phase?

A. When you build a timeline of your product, so any company will -- will have a kind of start and end point where they have to prepare their briefs and then they have to have that final product to be reviewed and accepted as the final outcome of that entire phase, and typically build in time for each team or each phase of the -- the product development to happen.

So that design phase, although they

overlap, so you may be designing at the same time you're developing and developing at the same time you're designing, but the design phase is specifically set to design a product, a time period for the designers to look at the marketplace and do some initial drawings, have those reviewed, come back, do that -- iterations and iterations and iterations.

Although that design process continues throughout the entire scope of -- of -- so it may be a discrete phase, but the design process continues throughout the entire cycle, including -- up to and including color.

Q. Okay. So if I understand you correctly, there's a design phase and then at some point there's a development phase, but the design may continue throughout the development phase --

A. Correct.

Q. -- correct?

Okay. Can you develop a product that hasn't been designed?

A. If I take -- if I say I have a design that is already completed and I want to develop it in a different way or in a different material or in a different -- with a different outsole, it may not be

necessary to go through the design phase and you may not need to necessarily go through the design phase.

Although design is not only drawing what will eventually become a pattern, but it's also color, materials --

Q. Okay. So -- so --

A. -- any part of it.

Q. -- what you're saying is if you start from some other product that had already been designed, you don't have to start that design for that product over again; correct?

MS. WILLIAMS: Objection.

THE WITNESS: That's a rough characterization, but it's --

Q. (By Mr. Harris) Okay. So --

A. -- the best I could answer your question.

Q. Sure. Sure.

So -- so putting aside, you know, starting from some other product that was previously designed, so that's not what I'm asking you about, can you develop a product that has not been designed?

A. Can you develop a product that has not been designed. There are always exceptions to rules in the -- in this industry, so I would say,

generally, there is a design phase and a design -- a time for a design and the designer weighs in in some way or another, but there are always exceptions to where you may not need to do a particular design.

So the answer to that question, I cannot be definitive, because there's always exceptions to the rules.

Q. Give me an example of an exception where you could develop a product that hasn't been designed.

A. In the apparel business, they develop product often that is saying, "I want this jacket, but I want it to have a wider lapel." So I don't need to draw this jacket with a wider lapel, all I need to do is put the wider lapel on it. That's an example.

Q. And you would not consider saying, "I want a wider lapel" to be a design?

A. You could consider doing that, but that's -- you asked me for an exception and that's an exception that I can give you.

Q. So in that exception that you just gave me, you do not consider the process of saying, "I want a wider lapel" to be the design phase; correct?

A. I'm not sure I understand that question.

Q. Well, in your hypothetical, you said that whoever this person is that wants a wider lapel said, "Hey, I'd like a wider lapel"; right? That's what you said.

A. Yes.

Q. Do you consider that part of the design process, saying, "Hey, I want a wider -- wider lapel"?

A. After you make the sample of this wider lapel garment, the design team or designer will want to see that particular garment. So the design team is always involved until final products are completed, so there will be a designer who would be involved in that process.

Q. So, then, it's not an example of developing a product without designing it first --

MS. WILLIAMS: Objection.

Q. (By Mr. Harris) -- correct?

A. I believe it's exactly an example of not designing it first, because the design existed of this jacket and the -- it was -- the brief said, "I want this jacket with a wider lapel." Nobody designed that, but somebody would -- would be involved in the design of that product as it goes through the entire process.

Q. So --

A. So there's always design involved. Design would weigh in throughout the whole product process and, as I stated before, all the way through to the end.

Q. So I just want to make sure I understand the -- the example that you gave, because I think I just heard you say that there was a design to begin with because you're starting with a preexisting jacket --

MS. WILLIAMS: Objection.

Q. (By Mr. Harris) -- correct?

A. I -- I'm afraid I'm -- now I'm lost in this conversation.

Q. Well, yeah. I'm lost, too, so let's start over because I'm lost with your hypothetical, too.

So give me an example -- and it can be the lapel example again because I don't understand it, but we can work through it -- so give me an example of developing a product that has not been designed.

A. So I think you're saying it's not part of the design phase and you're also saying it's never been designed --

Q. Correct --

A. -- ever in its -- in -- ever in -- in --

Q. Correct.

A. That is a very -- to me, that's a very strange hypothetical, so I would give you back another example.

I brought --

Q. Well, answer the question.

A. I can't. I really -- I don't feel comfortable to answer the question because -- let me -- my example to you would be if I brought back a style that was developed 20 years ago and I don't know where it came from. We -- we introduced it, we -- we ordered it, we shipped it, whatever we did with it. Where did it come from? I have no idea. Did somebody actually design it? I assume they did, but I don't have any clue where that particular shoe came from or that...

So to answer your question, your hypothetical, I -- I can think of ways that -- that would not let me answer that in a positive way and say there's -- there's no design or in a negative way to say that there -- there was a design at some point. I don't know. I wouldn't know. But I only know that there was a product that was made.

Q. Okay. Fair enough.

And that product that was made at some

point in time -- and you have no idea where it was made or how it was made -- if someone brought that product to you and said, "Develop a new similar product," you would not consider that prior product to be a starting design; correct?

A. That's different in -- in terminology. So if I said, "This is a notebook design. I don't know where it was designed, I don't know how it was designed, I don't know who designed it or -- but it is a design of a notebook. It is a design. It is a pattern of a notebook, but I don't know where it came from or who did it or when it was done."

Q. You would not consider that design?

A. It is a design.

Q. But it wouldn't be part of the design phase of a product?

A. You may take this design and recolor it and, you know, make some -- some material change; instead of black plastic, I want to use leather or something like that. That's an example of -- of where it may go through the design phase and that I have this marketing brief and I have a like product and it -- it -- everything goes -- has a design aspect to it. Whether it's a -- an existing design or something that is designed throughout the process

of development.

Q. Okay. So let's just clean this up.

Mr. Holden, is it true that everything has a design aspect to it?

A. I don't believe that's a correct answer to that question, yes or no, negative or positive, is a correct answer to that question.

Q. You testified that everything has a design aspect to it; correct?

A. Everything is a design. Everything ha- -- is a design to start with; okay? But, again, I don't know -- are you say- -- you're talking about is it being designed or is it designed? It has -- obviously, there -- it is a design that is existing, but I have no idea about where it came from.

Q. Yeah, right. But there's a design; correct?

A. It is a design.

Q. It is a design.

So -- and then you can -- you can develop --

A. The qualifier there --

Q. -- some variation of it?

A. -- to say there -- there has been a design prior to this being a design, I cannot answer

positively or negatively there -- because I don't know.

Q. So you're drawing a distinction between an existing design and doing design work; correct?

A. I'm -- you're asking me in the -- is something designed, if I -- if I understand your question.

Q. Here's my question: Are you drawing a distinction between an existing design and design work to create a new product?

A. And, again, I would say I -- there -- maybe there was design work that went into this design. I don't know, and it might not or may have been.

Is this a design? At the end of the day, a notebook is a design. It's like saying did somebody draw this pattern? It is -- there is a pattern, but I don't know how -- how it was developed, I don't know where it came from, I don't know if it was -- how it was developed or -- and how -- or when it was and how it was drawn. But I do know that there is one at the end of the day.

Q. Do -- you worked with a lot of different footwear companies; correct?

A. I've worked with six in -- under

employment or seven as -- also in sales, and I've done consulting for many companies and I also work on the operations side for companies.

Q. So in your experience, do footwear companies hire separate designers and developers?

A. Some do and some don't.

Q. Okay. So companies that hire separate designers and developers, for those companies, the designers and developers do the exact same thing?

A. So, typically, in almost any company that I've ever experienced, the designers work very closely between apparel and footwear and the developers also share information back and forth. And the reason being is if I'm developing clothing, that I hope that the shoes or the gloves or the hats will all form an ensemble of clothing.

Q. So do designers and developers -- for those companies that hire separate designers and developers, do the designers and developers have the exact same job description, in your experience?

A. I -- I would have to look at all their job descriptions, but...

Q. Do designers and developers, for those companies that hire separate designers and developers, do the designers and developers have the

exact same job responsibilities?

A. From the perspective that they go through the process to develop a product from this phase all the way to the final product phase, they're almost exactly the same.

Q. Why would a company hire a separate designer and a separate developer?

A. Typically, a designer is an artistic person and a developer is focused on the engineering and operational side of developing a product.

But I know designers who are VPs of some of the biggest shoe companies in the world and I know designers who are in- -- integrally involved in the development side and vice versa, I know developers -- I'm a -- I would consider myself a development person, but I've designed shoes.

Q. How many shoes have you designed?

A. Many.

Q. How many?

A. Under a thousand.

Q. Have you designed over 500 distinct shoe styles?

A. I've been doing this many years, so I can't really answer that question. But I would say probably not. Probably not that many. Maybe just

under that, but many.

Q. So you have designed somewhere between zero and 500 distinct shoes?

A. I have.

Q. How many shoes in your career have you developed?

A. Many thousands. Many, many thousands.

Q. Have you developed more than 2,000 shoes in your career?

A. Yes.

Q. Have you developed more than 2,000 distinct shoe styles in your career?

A. Absolutely.

Q. Have you developed more than 5,000 distinct shoe styles in your career?

A. This is, you know, a very difficult question for me to answer. I'd have to probably sit down and think of some algorithm to come up with an answer, but I would think yes.

Q. So, then, it's fair to say --

A. So I was responsible for all of the development in Asia for a billion-dollar company, footwear company. So I was responsible for many, many, many, many, many shoes.

Q. Okay. So you've developed many, many

thousands of shoes.

A. Many.

Q. You've designed somewhere between zero and 500.

A. (Witness nodded head affirmatively.)

Q. So is it fair to say that you have developed many, many, many more shoes than you have designed?

A. Yes.

Q. Okay. So for the shoes that you have designed, the zero to 500, whatever it is, somewhere in that range, did you design the entire shoe or do you design pieces or components of the shoe?

A. Clarify what you mean by "components."

Q. So let's -- I'll start over.

For the shoes that you have designed, did you design the entire shoe for all of them?

A. So that's not an easy question to answer, so -- because sometimes you design an upper and somebody puts a different bottom on it, somebody takes your -- the design and it's a collaborative process. So there's no -- I can't give a definitive answer.

Q. So in the zero to 500 shoes that you have designed, for how many of those, roughly, did you

design the outsole?

A. So are you saying singularly, just myself, or are you saying part of a team that developed something or somebody who was involved in or...

Q. I want to know --

A. Because --

Q. -- you personally contributed to the design of the outsole.

A. Many.

Q. Of the zero to 500, how many of them?

A. Many.

Q. More than 200?

A. I can't really give an accurate answer to that, but I would say many, many.

Q. Can you think of any instances where you designed a portion of a shoe other than the outsole?

A. Yes.

Q. Okay. Give me an example.

A. A portion of the shoe other than the outsole. I've designed uppers that went on different outsoles and also part of the design team that had input into many uppers that had outsoles that I was not necessarily involved in.

It's very hard to give a definitive answer to that question, because there are many products

where I might be involved in the design phase of one piece of the shoe and -- and not necessarily involved in the other.

Q. How many uppers -- just uppers -- how many uppers have you personally designed?

A. So I'm taking it when you say "designed," that you mean in part of the design process, or are you saying singularly designed?

Q. I'm asking you how many uppers you have personally designed by yourself.

A. Complete?

Q. Yes.

A. No -- no input from anybody else?

Q. Yes.

A. Few.

Q. The few uppers that you have personally designed by yourself, were any of them knitted uppers?

A. Uppers that -- that complete -- are you talking about in the knitting process?

Q. Yes.

A. None that I can recall.

Q. We've been going for a while now, so just a couple more questions and then we'll take a break so you can use the restroom.

Directing you to Exhibit 1004 --

A. Uh-huh (affirmative).

Q. -- your --

A. Uh-huh (affirmative).

Q. -- experience at -- is it FAN PLM --

A. Yes.

Q. -- or is it F-A-N? How do you pronounce it?

A. Either way. Footwear and Apparel Networks --

Q. Okay.

A. -- product line management.

Q. Oh, so FAN stands for Footwear and Apparel?

A. Yes.

Q. Is this your company, FAN --

A. No.

Q. -- P-L-M?

Whose company is that?

A. It is a company out of Canada, software company.

Q. So under that section of your CV in Exhibit 1004, you list some highlights of 2015.

A. Uh-huh (affirmative).

Q. The first highlight is, "Expert witness

for high-profile case, testified before ITC (International Trade Commission) in Washington DC."

A. Uh-huh (affirmative).

Q. Is that a patent case?

A. Trademark.

Q. Did you testify live at trial?

A. Yes.

Q. Are you sure?

A. Yes.

Q. The next highlight of 2015 is, "Assisted in product development and sourcing of Equestrienne products...."

A. Yes.

Q. Did that experience or that highlight relate in anywhere -- any way to footwear?

A. Yes.

Q. How so?

A. Horses' footwear.

Q. So horseshoes, you mean?

A. No. Horses wear footwear, amazingly enough if you're not familiar with it, don't have horses. So horses need protec- -- these are very expensive horses and they have to be protected when they are riding in arenas or -- or on trails. So...

Q. So you assisted with the product

development of those horse shoes for horses?

A. Yes.

Q. Who designed those shoes for horses?

A. The owner of the company and myself and an outside designer.

Q. Okay. The next highlight of 2015 is, "Consulted with large manufacturer and wholesaler in Testing Lab set up in China."

What kind of testing lab?

A. Footwear testing.

Q. What kind of testing were you doing?

A. Quality and -- and also performance.

MR. HARRIS: Okay. Let's take a short break.

VIDEOGRAPHER: Stand by, please.

We're off the record. The time is 10:36.

(Thereupon, there was an interruption in the proceedings.)

VIDEOGRAPHER: And we are back on the record. The time is 10:57.

You may continue.

Q. (By Mr. Harris) Mr. Holden, I'd like to direct your attention to Exhibit 1004 --

A. Yes.

Q. -- page 3.

A. Yes, sir.

Q. You list here on page 3 of Exhibit 1004 your litigation support experience.

A. Uh-huh (affirmative). Yes.

Q. Have you served as an expert witness or consultant in any litigation matters other than the three matters that you have listed on page 3 of Exhibit 1004?

A. Yes.

Q. How many matters, litigation matters, have you served as an expert are not listed on page 3 of Exhibit 1004?

A. As I can recall, one.

Q. When were you retained as an expert in that matter that's not listed on page 3 of Exhibit 1004?

A. A few weeks ago in -- in the beginning of December 2016, I believe.

Q. Is it a patent matter?

A. Design patent.

Q. And since you were just retained a few weeks ago, I take it you have not prepared an expert report for that matter?

A. All I did was research. I have not been asked to prepare an expert report.

Q. What's the subject matter of the design patent at issue, can you say generally?

A. Footwear.

Q. Is it an upper? The design patent at issue in that matter, is it an upper design?

A. Not only.

Q. You -- by that, you mean it's an upper and a midsole design?

A. You know, I really don't want to talk too much about it because I don't know the -- you know, I -- obviously I'm under some restriction as far as --

Q. Fair enough.

A. Yeah.

Q. Okay. So let's talk about the three that you have listed on page 3 of Exhibit --

A. Yes.

Q. -- 1004.

The first one is dated 11 -- or November 2011, and the case is UGG versus Bear Paw.

A. Yes.

Q. Is that case, the UGG versus Bear Paw case, is that a patent case?

A. All I was asked to do was, as it states, to dissect footwear and compare them between the two

companies and show the differences. So I never reviewed any patent information. I didn't review any -- I don't know if it was a design patent, I don't know -- all I was asked to do was just opine on the differences between the four.

Q. Did you -- in that case, the UGG versus Bear Paw case, were you asked to opine on differences between apparel products?

A. No, I was not.

Q. Did you sit for a deposition in the UGG versus Bear Paw case?

A. No, I did not.

Q. Did you testify at trial?

A. No, I did not.

Q. The next case listed on your CV on page 3 of Exhibit 1004 is Skechers versus Converse.

This is the ITC action that you testified about earlier?

A. Yes, sir.

Q. And then the final matter listed on page 3 is adidas versus Nike.

I'm assuming that's this matter; is that correct?

A. That's this matter.

Q. And you were retained by the Kilpatrick

firm in February of 2016 for this matter; is that correct?

A. I believe that's what I put on my CV, but I -- I believe that that is the date. I'm not exactly sure of the date. I did not check that.

Q. Mr. Holden, are you an expert on knitting technologies?

A. I'm an expert in footwear and apparel operations.

Q. Mr. Holden, are you an expert on knitting technologies?

A. Again, I'm an expert in footwear, which encompasses all different types of production processes.

Q. So I'm asking you if you're an expert on a certain process or a certain technology, and the technology's knitting. So I'll ask the question again because I don't think you've answered it.

Are you an expert on knitting technologies?

A. Yeah, I'm an expert on footwear and I'm also an expert in -- in apparel and footwear operations.

Q. But you're not an expert on knitting technologies; correct?

MS. WILLIAMS: Form.

THE WITNESS: I have knowledge of knitting technologies. I have knowledge of many different types of -- of textile products.

Q. (By Mr. Harris) Okay. That's not my question.

Do you consider yourself an expert on knitting technologies?

A. I'm an expert in materials generally.

Q. Okay. I'd like you to answer the question, Mr. Holden.

I understand that -- that you consider yourself an expert in footwear, but that's not my question; okay?

A. Uh-huh (affirmative).

Q. My question is: Do you consider yourself an expert on knitting technologies?

A. I am a person of knowledge of knitting and ordinary skills at the time this deposition was written, and I have a lot of experience with many texts and materials.

Q. But you don't consider yourself an expert on knitting technologies; correct?

A. I consider myself an expert in footwear.

Q. I'd like you to answer the question; okay?

A. Uh-huh (affirmative).

Q. You do not consider yourself an expert on knitting technologies; correct?

MS. WILLIAMS: Object to the form.

THE WITNESS: Again, I think I'm a person of ordinary knowledge in that subject. I consider myself an expert in footwear and apparel operations.

Q. (By Mr. Harris) You consider yourself a person of ordinary knowledge with respect to knitting technologies; correct?

A. I consider knitting to be one of the many types of materials that I've been exposed to over a 30-plus career, and I've looked at thousands of knitting applications and -- and machinery and factories. My primary expertise is footwear.

Q. Is your primary expertise knitting technologies?

A. My primary expertise is footwear and apparel operations.

Q. So it's not knitting technologies?

A. Knitting technologies is a -- is just one of the many things that footwear and apparel people are exposed to, and I have a very extensive knowledge of knitting technologies.

Q. Yes or no: Do you consider yourself to be an expert on knitting technologies?

A. So the only answer you want is a "yes" or "no" answer?

Q. I want to know if you consider yourself to be an expert on knitting technologies.

A. I'm not an expert in knitting technologies.

Q. Are you an expert on electronic knitting machines?

A. So I'd give the same, you know, answer that I've given before, in that I've been exposed to thousands of different types of knitting and technologies that relate to knitting and that I consider myself, in -- in this particular case, to be at least a person of ordinary skill in how to at least meet those definitions at the time of this -- this patent.

Q. Mr. Holden, have you ever personally programmed an electronic knitting machine?

A. No, I have not.

Q. Mr. Holden, have you ever personally operated an electronic knitting machine?

A. No, I have not.

Q. Mr. Holden, have you ever programmed a

electronic circular knitting machine?

A. Personally programmed? No, I have not.

Q. Mr. Holden, have you ever operated an electronic circular knitting machine?

A. No, I have not.

Q. Mr. Holden, have you ever operated an electronic circular double knitting machine?

A. No, I have not.

Q. Mr. Holden, have you ever programmed an electronic circular double knitting machine?

A. No, I have never programmed a electronic -- and I believe you said circular knitting machine?

Q. Circular double knitting machine.

A. No, I have not programmed it.

Q. Have you personally ever knitted a footwear upper on a circular knitting machine?

A. I have ob- -- I have observed that process --

Q. Have you ever --

A. -- in the past.

Q. Have you personally -- not observed, but have you personally ever knitted a footwear upper on a circular knitting machine?

A. So the answer to this and -- and previous

questions is that in -- in my footwear experience and doing the job of operating and working in operations of footwear and apparel companies, I do not, and they would not allow me to, run machinery in a factory that is doing any of the operations that -- that we have been discussing that you're asking me if I have personally done those jobs.

And my answer generally would be no, that I have not, but no -- and also with a caveat that I can't because they would not allow somebody from the outside to come in and run a machine and to program a machine and to do any of these types of operations.

And it is not the -- not my expectation, as a expert person in this -- in this business, to run or program or do any of the operations that I work with.

I understand how they work. I understand the capabilities and the evolving capabilities of any of these industries, but it would be dangerous and unacceptable for me to try to attempt to run machinery, to program machinery, to do any of those type of operations at manufacturers who do any of the technologies you mentioned before, but also any of the technologies that I work with.

So whether or not I have personally done those doesn't mean that I don't understand the nature, the capabilities, the -- the process itself.

Q. Mr. Holden, have you ever cut -- have you ever personally cut a knitted upper out of a -- a web of material and processed it into a finished shoe?

A. So, again, I would answer the same way that I answered the last question. I cannot -- I would not and cannot do tho- -- any of those type -- type of operations in a manufacturing facility.

Q. So the answer is no, you've never personally done that?

A. The answer is I would not be able to, as a purchaser of goods, walk into a factory of any kind and run the machinery. That's not acceptable, not safe, not a good idea to do, and they wouldn't allow me to do that.

Q. Okay. Great.

And, Mr. Holden, would the same be true for apparel?

A. I -- I would restate the same --

Q. So -- so let me -- we'll make it cleaner.

Isn't it correct, Mr. Holden, that you have never personally created an apparel knitted

product on an electronic knitting machine; correct?

MS. WILLIAMS: Object to form.

THE WITNESS: I cannot run a machine at a factory -- at any kind of manufacturing facility. It would be unacceptable.

Q. (By Mr. Harris) It would be unacceptable?

A. Dangerous.

Q. It would be dangerous?

A. It would be dangerous. It would be not allowed.

Q. So you've never done it?

A. I would say that nobody should and nobody could un- -- unless -- I don't believe that there's any way that you could do something like that.

Q. So who runs the machines?

A. People who are hired by the factory to run the machines and are under their care and responsibility, employees who work for those factories, can do those kinds of operations.

Q. So is it your opinion, Mr. Holden, that the only person that could possibly operate an electronic knitting machine is an employee of a factory that has electronic knitting machines?

MS. WILLIAMS: Objection.

THE WITNESS: Anybody who goes into a

factory that manufactures something here, Asia, Mexico, wherever it may be, will not, should not, cannot operate machinery in those types of facilities.

And not only the countries I mentioned, but I don't know of any country where they're going to allow you to run machinery in their factories. It's -- it's not something that you would see done and should not be done.

Q. (By Mr. Harris) And these knitting machines are only in factories; is that right?

A. What knitting machines?

Q. The knitting machines that you say you could not and should not operate.

A. There are knitting machines all -- in -- that are shown on display at -- at machine shows that I've seen. There are machines in factories. There are machines in large textile manufacturers. There's all different types of machines.

My point is that if you go to a factory -- any of my people who would work for me or any of the people I know or anybody who I would know as a consultant, does not go into factories and operate machinery.

Q. And you've never done that; correct?

A. I have never -- it's not allowed to do. You --

Q. So you've never done it?

A. -- cannot do that, running, operating machinery.

Q. Right. So you've never done it?

A. I don't do it.

Q. What is a knit interlock stitch?

A. What is a knit interlock stitch. So --

MS. WILLIAMS: Objection. Outside the scope.

THE WITNESS: -- I would refer to Spencer for that reference in -- in -- in that particular case.

Q. (By Mr. Harris) Okay. So I'd like to direct you to Exhibit 1010 that's in your binder.

(Exhibit 1010 was previously marked for identification.)

THE WITNESS: Uh-huh (affirmative).

Q. (By Mr. Harris) When you said you'd refer me to Spencer, is that what you're referring to?

A. Yes.

Q. Have you read Spencer?

A. I have read it and -- I've read through it, yes.

Q. When was the first time you read Spencer, which is marked as Exhibit 1010?

A. In the course of this case.

Q. So as you sit here right now, you can't describe to me what a knit interlock stitch is; is that correct?

A. And I don't believe --

MS. WILLIAMS: Objection.

THE WITNESS: Yeah. I don't believe that I was asked to opine on that particular issue. I have seen it in here. To give you a more proper description, I would refer to the text, as with any.

Q. (By Mr. Harris) So before you read Spencer in connection with this matter, were you familiar with the term "knit interlock stitch"?

A. No, I was --

MS. WILLIAMS: Objection.

THE WITNESS: Yeah. No, I was not.

Q. (By Mr. Harris) Mr. Holden, what is an interknitted stitch?

MS. WILLIAMS: Object to form.

THE WITNESS: So any of these references to types of stitch I may have heard in the course -- or been exposed to in the course of

over 30 years in working with footwear and apparel, but in this particular case, to give an exact answer, I would defer to the text, especially a text such as Spencer, which gives a very thorough and complete description of that particular process or that particular action.

Q. (By Mr. Harris) So besides pointing to Spencer, you can't, as you sit here right now, give me a definition of "interknitted stitch"; correct?

A. I cannot --

MS. WILLIAMS: Objection. Mischaracterizes.

THE WITNESS: To give you a more complete answer, I would want to refer to Spencer. But off the top of my head -- and I would -- you know, don't -- didn't memorize all of the types of -- of -- of stitch configurations or knitting configurations, so I can't give you an -- a -- a complete answer about that particular question.

Q. (By Mr. Harris) Can you tell me what a stitch configuration is?

A. In what context?

Q. In any context. Do you have in your mind

any definition of a stitch configuration?

MS. WILLIAMS: Objection.

THE WITNESS: I don't recall that that was part of my declaration or anything that I was asked to opine on, so...

Q. (By Mr. Harris) Okay. Do you understand what a knit configuration is?

A. I -- again, I would refer you to the text of a knit configuration. I generally have an understanding of what a knit configuration is, but I would refer to the text to get a more complete answer to that question.

Q. What's your general understanding of a knit configuration?

A. As it applies to almost any type of configuration, basically it is -- it relates to the design, possibly the outline, of how a process is applied.

Q. What is a non-interknitted stitch?

MS. WILLIAMS: Objection.

THE WITNESS: Again, I would refer to -- you know, for a complete answer to that question, I would refer to Spencer, because I don't have all of the definitions of all of these terminologies in my head. So to give you

a complete answer to that, I would refer to the text.

Q. (By Mr. Harris) Well, prior to you reading the Spencer text that's at Exhibit 1010 in connection with this matter, did you have in your mind a definition of non-interknitted stitch?

MS. WILLIAMS: Objection.

THE WITNESS: So I have been exposed over many years to many types of -- of processes and applications, and I am not necessarily familiar with all of the terminology used in all of those processes.

So I would refer, as -- as any person would want to do, to text that has a better and more complete description of exactly what you're asking about.

Q. (By Mr. Harris) Describe your exposure over the years to non-interknitted stitches.

A. I cannot specifically, without reviewing the text in Spencer, number one, and number two, I -- there may be a different definition of what that is in a -- in a different application. So I can't really give an answer.

Q. What's the texture of a non-interknitted stitch?

A. Again, I would refer you to Spen- -- my exp- -- with my experience, I'm sure I've probably been exposed to something like that, but I don't necessarily recall the exact information. I would want to refer to Spencer.

Q. What's the texture of an interknitted stitch?

A. Same answer that I just gave.

Q. What's the difference between weaving and knitting?

MS. WILLIAMS: Objection.

THE WITNESS: So in the -- in the same case, I've been exposed to weaving and knitting, but I would refer you to Spencer to give you a more complete and better answer. And that's the text that I refer to to learn and to understand some of the terminology, so that would be where I would -- would refer.

Q. (By Mr. Harris) Mr. Holden, I'd like to direct your attention to Exhibit 1003 in your binder.

A. Yes, sir.

Q. If you could turn to page -- exhibit page 6 of Exhibit 1003. In particular, I'd like you to look at paragraph 7 on page 6 of Exhibit 1003.

And in that paragraph, you state, "I have worked in almost every aspect of design, development, operations, commercialization, quality control, and supply chain."

My question for you is: Which aspects of design, development, operations, commercialization, quality control, and supply chain have you not worked in?

A. All of those.

Q. Well, you say in paragraph 7 that you've worked in almost every aspect; you don't say you have worked in every aspect.

A. I --

Q. So my question for you is: What were you carving out of this statement in paragraph 7?

A. So one thing that you learn in this industry is you don't know everything that there is to know, that there is always something that you have to learn.

I can't think of anything that I don't have experience with in on all of these areas. I've been responsible for them. I've directed them. I've been in charge of teams who did all of these. But that doesn't mean there's something out there in the world that I haven't done. I -- I represent

myself as a person who's still learning and still exper- -- that there are still experiences to get out there.

But I can say that there is no doubt that I have experience in directing, running, managing, responsible for all of these -- all of these processes or all of these aspects.

Q. So when you use the language "almost every aspect," you just use that because you're not sure if there's something out there that you don't have experience in; is that correct?

A. There may be a supply --

MS. WILLIAMS: Form. Objection.

THE WITNESS: Yeah. There may be a supply chain aspect that I haven't worked with, for example, or a, let's say, supply chain to a particular country or something like that that I haven't experienced. But, again, I cannot think of any -- any good examples of that.

Q. (By Mr. Harris) Okay. Turning to paragraph 10 on page 7 of Exhibit 1003 --

A. Okay.

Q. Paragraph 10, do you see that?

A. Yes.

Q. You state in paragraph 10 that you have

studied computerized stitching in China.

Do you see that?

A. Yes.

Q. Mr. Holden, when did you study computerized stitching in China?

A. Since 1989, something like that, '90 -- it was in the late '80s.

Q. When you say that you studied computerized stitching, what are you referring to as computerized stitching?

A. So all aspects of textiles and textile applications have technologies that have been developing over a period of time, and all of them are very interrelated as to what you're able to do with computer programming. Basically, it relates to what is the availability of computer programming.

So going back into the '80s, in the late '80s, looking at compu- -- computer programming -- excuse me -- computer programming, there has been a leap over years in what is able to be done with textile applications in -- in -- in a broad sense.

Q. So is it fair to say, then, when you say you've studied computerized stitching in China, you're referring to the study of computer programming?

MS. WILLIAMS: Objection.

THE WITNESS: The processes are directed by computer programming. So there are human hand processes and computerized processes and the development of computerized processes has evolved over a period of time and is -- has led to many new tech- -- technologies that are available with textiles.

Q. (By Mr. Harris) Mr. Holden, which computer programming languages are you proficient in?

A. I am not a writer of code, but in my -- over many years, I have developed operational processes that are based in and based around the availability of computer programming and -- and what those processes -- how they can be enhanced by computer programming. So I'm not a code writer.

Q. So if I understand you correctly, you, yourself, have never written a computer program; correct?

MS. WILLIAMS: Objection.

THE WITNESS: I have designed many computer programs based on the availability of the language since the early '90s.

Q. (By Mr. Harris) Okay. So the first

program that you designed, the first computer program that you designed in the early '90s, what language was that written in?

A. So it's -- that's a long time ago. I believe it was UNIX.

Q. How did you go about designing the computer program?

A. There is a -- there is a process, as we were discussing earlier, of product development, and there are the objects that are a part of that product development. So how many design briefs do I have? How many design products am I going to design? How many outsoles am I going to design? How many of these products and what materials are they going to use? What customer are they for? What country are they being made for? What -- what are -- what are all of the -- the aspects of that process and that cycle that you can track, monitor, manipulate through computer programming.

Q. So that's how you went about designing that computer program? Is that your answer?

A. It's a general answer.

Q. Okay. So what was your personal involvement in that process that you just described?

A. So can you be a little bit more specific

as like what you're asking?

Q. Yeah. I'm trying to figure out what you did, what you personally did, to design this UNIX program in the early '90s.

A. So throughout my career in the footwear industry, I have -- and working with apparel, as well, have been taking the process --

Q. Hold on.

A. Yes.

Q. I don't -- I don't want to know what you've generally done in your career. I'm asking you specifically about this UNIX program that you designed in the early '90s. I want to know what you did for this -- this program, UNIX program.

What did you do to design this UNIX program that you've testified about in the early 1990s?

A. I laid out the parameters of the program.

Q. And what were the parameters of the program, the UNIX program, that you helped design in the early '90s?

A. So to give a complete answer, I need to give a little bit more background and a little bit more -- because what I just explained to you is the starting -- you know, that's kind of base -- at the

base what I did.

So to understand that base, what that means, you need to understand the broader picture of product development or the -- the cycle, the entire cycle.

So, again, if you don't mind if I give a little broader description, is the -- what I have been doing over the years is developing software in -- in working with software coders, technicians, that manages the process.

So in those early days, we were using a UNIX computer that -- that was -- did Jurassic Park programming and that is now a coffee ta- -- coffee table stand. I mean, that -- that computer was the state of the art at that time and we were only able to do rudimentary planning and plotting of the process.

These days, we're able to do very deep and very wide and very broad design of the program's capabilities.

Q. So what were the parameters that you provided for the UNIX program in the early '90s?

A. That was the point I was getting to, is it's the process. So you're trying, basically, to code how that -- that very integrated and interval

process, based on the availability of the technology, to track, manipulate, quantify, overview that whole entire process.

Q. So the parameters that you provided for the UNIX program in the early '90s was an overview of the footwear process; is that correct?

A. With the technology available at that time.

Q. What was the ultimate function of that UNIX program?

A. Part of the program which I did not work on specifically was the design piece, which was all based on three-dimensional design at that time and, unfortunately, that was not the -- the -- the technology was not evolved. Later at Converse, we worked specifically with MIT on that technology, but in those days the technology basically was trying to manage the process of product development -- design product development and also there's a large component of that which has to do with cost.

Q. Did you work on the cost piece of the program?

A. The want of any software package is to design a product and project the cost, and so then you can understand, if I have this product, here's

my design, here's this product, how much is it going to cost, then you can decide am I making good decisions? Am I picking the right product? Maybe it's I'm overbuilding my product. Maybe I'm underestimating what the eventual cost would be. So it is -- it is always the want and it has always been the -- the -- the goal of software programs to get to that point.

We are at that point these days, but in the past, we were trying to -- so I don't recall the exact status of what it cost, but we were generally trying to capture that ear- -- as early on in the process as we could.

Q. So if I understand you correctly, a component of this UNIX program that you helped design in the -- in the '90s was directed to cost, a component was directed to design.

You worked on the cost piece, but not the design piece; correct?

A. I was the recipient of the data that was created by the design piece, and ultimately that design piece was not utilized, one, because the technology for the designers to use it was very cumbersome and they didn't -- they were not used to working with a stylus in those -- in that -- in that

environment -- I think designers are more used to it these days -- but also the technology was not at the point where -- basically, it was a two-dimensional product and they -- they were not able to create three-dimensional objects.

Q. How did the UNIX program that you helped design in the '90s relate to computerized stitching?

A. So I'm not sure how we got necessarily to this particular point. We're talking about computer programming in general.

The -- why I was looking at -- because of my knowledge of -- of programming or -- or limitations of technology, as with any footwear or apparel person, your want is to be able to project what's going to happen this season, next season, in future seasons, and what technologies -- so from a design perspective, you're looking at what is available in design and what is available from a computerized standpoint, because some of that has to do with what is available in the design aspect, and -- and also from the aspect of production processes that will potentially reduce cost or potentially reduce waste or potentially -- so you're always looking forward to try to figure out what are technologies coming down the line.

So you look at a lot of te- -- textile technologies that are being applied -- and -- and -- and this goes for outsole technology or rubber technology or injection molding or whatever it may be -- and try to project.

So outsole technology is basically done on computers in three-dimensional designs, and that has progressed since those early days and -- and from the time that I have been involved in the footwear industry.

Q. What's that have to do with computerized stitching?

A. That's -- it's all a part of the -- the technology that has -- that has grown over time, the capabilities of technology. It has everything, as far as I'm concerned, to do with technology.

Q. Well, what does -- how does that UNIX program account for computerized stitching?

A. It had nothing specifically to do with computerized stitching.

Q. Okay. So let's put that UNIX program --

A. Okay.

Q. -- aside for now. Let's go to the next program that you designed after the UNIX program.

What was that?

A. That was coded in -- and I have to think about the -- the name of the -- the software, but it was also a -- what we call product line management software. It's the same type of thing that I was talking about in the early '90s and -- and a thing that I continue to work on today, and it's commonly referred to as product line management.

Q. Okay. How did that product line management software or code that you helped design account for computerized stitching?

A. It has nothing specifically to do with computerized stitching.

Q. So let's -- let me try to short-circuit this.

Have you designed any computer programs that are specifically related to computerized stitching?

A. As with any process, so if you look at costing and you say, "I'm going to use a process or I'm not going to use a process," one cost is based on a process -- a Process A and the other cost is based on Process B.

So any costing software needs to look and say, "Hey, are you using A? Are you using B? Are you using C? Are you using D?"

Q. So computerized stitching might have been one of the variables that -- that would impact the ultimate cost?

A. Yeah, it's one --

Q. That's what you're saying; right?

A. I'm saying that processes have a cost associated with them, any process. Hand cut, dye cut, knife co- -- knife cut, laser cut, any kind of process has a cost associated to it, and any of those costs are a variable that you must account for if your costing is to be accurate.

Q. So I understand what you're saying. It's a variable that would impact the cost; right?

A. Yes.

Q. And the PLM software that you work on, there's a costing component to it. The costing component will take certain variables into account, but you wouldn't consider that PLM software to be computerized stitching software, would you?

A. No.

Q. Okay. All right. So have you personally designed computerized stitching software? Not PLM software that -- that takes into account a variable; I'm asking you a very specific question: Have you personally designed software that has an intended

purpose of computerized stitching?

A. I have personally not designed software that -- that has resulted in -- but -- I don't in manufacturing process work, but what I have done is manage people who help device programming for computerized processes.

Q. So I'd like to direct your attention to paragraph 12 --

A. Uh-huh (affirmative).

Q. -- on page --

A. We still --

Q. -- 7 --

A. Okay.

Q. -- of Exhibit 1003 --

A. Okay.

Q. -- paragraph 12 on page 7 of Exhibit 1003 and actually runs over onto page 4, as well.

That paragraph describes the materials that you considered in forming your opinions; correct?

A. Okay.

Q. Is that correct?

A. Yes.

Q. Did you consider any materials other than what is listed in paragraph 12 when forming your

opinions expressed in your declaration marked as Exhibit 1003?

A. Other than my experience or knowledge or background? So these are provided to me or that I found on my own? I'm not sure what -- what your question is. Can you restate it, please.

Q. Sure.

MR. HARRIS: Could you read the question back? Thank you.

(Whereupon, the record was read by the reporter as follows:

Question, "Did you consider any materials other than what is listed in paragraph 12 when forming your opinions expressed in your declaration marked as Exhibit 1003?")

THE WITNESS: Other than my footwear and apparel past experiences and -- and girth of experiences, these are the additional considerations.

Q. (By Mr. Harris) Okay. So paragraph 12 starts by saying, "In forming my opinions" --

A. Uh-huh (affirmative).

Q. -- "in addition to my knowledge and experience" --

A. Uh-huh (affirmative).

Q. -- "I have considered the following documents and things that I have obtained, or that have been provided to me."

A. Yes.

Q. All right. So other than the knowledge and experience that you reference in paragraph 12 and the documents and things that you list in paragraph 12, did you consider any materials when forming your opinions as expressed in Exhibit 1003?

A. This was as complete a list or representation that I could recall at the time.

Q. So as you sit here today, you're not aware of any other materials?

A. I'm not aware of any other materials.

Q. Staying in paragraph 12 --

A. Uh-huh (affirmative).

Q. -- on page 7, item 4 identifies, "Various papers, exhibits, and decisions in adidas AG v. Nike, Inc., IPR2013-00067."

Do you see that?

A. I'm not -- I'm not sure I'm looking at the right -- where -- where are you?

Q. Okay. Paragraph 12 on page 7.

A. Okay. Okay.

Q. Do you see item iv in paragraph 12?

A. Yes.

Q. Okay. Mr. Holden, which papers did you consider from IPR2013-0067 [sic] when forming your opinions as expressed in Exhibit 1003?

A. All that were provided to me.

Q. And which ones were those?

A. I don't have a -- a recollection of exactly off the top of my head.

Q. Mr. Holden, which exhibits from IPR2013-00067 did you consider when forming your opinions as expressed in Exhibit 1003?

A. All that were provided to me.

Q. And which ones were those?

A. I can't recall off the top of my head.

Q. Mr. Holden, which decisions in IPR2013-00067 did you consider when forming your opinions as expressed in Exhibit 1003?

A. All that were provided to me.

Q. And which ones were those?

A. I don't recall specifically.

Q. Mr. Holden, did you consider ADDY's expert declaration from IPR2013-00067 when forming your opinions as expressed in Exhibit 1003?

A. Can you point me to that document?

Q. Do you know if you considered that document?

A. I -- if it was provided to me, then I rec- -- then I have. If you can point me to it, then I can recognize it, have some recollection of it. Off the top of my head, I don't recall.

Q. So as you sit here today, you don't know if you reviewed the expert declaration that ADDY submitted in IPR2013-00067; correct?

A. That's a mischaracterization of -- what I said was if it was provided to me, then I have considered it and looked at it, and if you can point me to the document, then I can give you a -- a better answer.

Q. So as you sit here today, you don't know if any expert declarations from IPR2013-00067 were provided to you --

MS. WILLIAMS: Objection.

Q. (By Mr. Harris) -- for your consideration when forming your opinions in this matter?

A. Everything that was provided to me I reviewed. So if you're giving me a reference number, I -- I don't necessarily recall the number off the top of my head. If you're saying that there was a person who gave a declaration, I know of -- of

a person who gave a declaration, if that's what you're speaking to.

Q. Okay. What do you know about a person who gave a declaration in IPR2013-00067?

A. So I don't know by the reference number. I'm sorry. I just don't -- wouldn't recall that off the top of my head.

If you can refer to the name or show me a document, then I would be glad to give an answer.

Q. You testified that you know of a person who gave a declaration.

What person were you referring to?

A. Well, and I don't really -- I'm not sure what this reference number and -- and if you can tell me a person's name, then I can -- maybe I can referen- -- recognize what you're speaking of as far as somebody giving a declaration.

Q. So that didn't answer my question. Here's my question.

A. Uh-huh (affirmative).

Q. You testified that you know of a person who gave a declaration.

What's that person's name?

A. But I don't know what the reference number is that you're referring --

Q. I understand that. I'm asking you for the person's name.

A. That gave a declaration in this case? Well, again, how can I know -- it could be somebody who I've never seen the declaration of.

Q. You testified that you know of a person that gave a declaration.

A. Yes, I did.

Q. And you don't know which case it was for; correct?

A. I don't know which number -- I don't know the reference -- by the reference number.

Q. Okay.

A. I just don't.

Q. I'm not asking you if it was for that reference number. Now my question is: Who was the person that you had in mind when you said you know of a person that gave a declaration?

A. And you're saying that it was provided by adidas? Is that what you're saying?

Q. I'm not saying that. You testified that you know of a person that gave a declaration. I want to know who that person is.

A. Yeah. You -- if you -- if you can go back and -- and repeat your question from before, just so

I'm clear.

You said ADDY? Is that the term that you used, ADDY?

Q. Forget -- forget what -- the prior questions.

I have a very direct question for you right now, Mr. Holden, and you need to answer it.

You testified that you know of a person that gave a declaration. Who is that person?

A. I understand that you're trying to get an answer to this, but you made the reference to ADDY, so I assume that you mean adidas, adidas' declaration? I'm just trying to be clear about which declaration we're talking about and what --

Q. The declaration that you testified to. You said you know of a person who gave a declaration. I want to know who the person is.

A. Can you at least confirm to me --

Q. No. Answer the question.

A. So, okay. A declaration that is in -- that refers to this case?

Q. The declaration that you were referring to when you testified that you know of a person who gave a declaration. That's what I want to know.

Who is that person?

A. I think we're talking about -- I -- but -- I don't know, but I assume that we're talking about Ned Frederick.

Q. Okay. So when you authored paragraph 12 of your declaration, you said that you looked at various papers, exhibits, and decisions in adidas AG v. Nike, Inc., IPR2013-00067.

Is it now your testimony that you have no idea what IPR2013-00067 is?

A. It's -- so you're referring to a reference number? I mean, can you point me --

Q. A reference number in your declaration.

A. Right. I'm sure there are numbers in my declaration, but I -- I think -- I would like to be able to be referred to what -- what -- what you're specifically asking me about.

Again, I don't rec- -- and I don't know that I'm supposed to recall all of the numbers and reference numbers. I'm supposed to -- I should be able to recall what's in my declaration, but I don't know that I know every single number or every reference. So --

Q. Did you review a declaration from Ned Frederick?

A. Yes, I did.

Q. When did you review that declaration?

A. Within -- the first time, within the time frame of the -- the -- that I started working with Kilpatrick Townsend.

Q. What's your recollection of that declaration as you sit here today?

A. That it's a large document with -- with -- with -- you know, it's -- that's too inspecific a question for me to answer.

Q. Did you rely on Mr. Frederick's declaration to form your opinions in this matter?

A. I referred to his declaration as prior information about the -- what is in his declaration. So to inform myself about this case, I read through his declaration.

Q. So did you rely on his declaration in forming your opinion --

A. It was one of the many --

Q. -- as expressed in Exhibit 1003?

A. It was one of the many things that I considered and looked at and reviewed.

Q. Did you review Mr. Frederick's description of a person of ordinary skill in the art when forming your opinion as expressed in Exhibit 1003?

A. I reviewed it in detail to inform my take

or my view of a person of ordinary skill in the art.

Q. So when you reviewed Mr. Frederick's description of a person of ordinary skill in the art in detail, did you agree with Mr. Frederick's description of a person of ordinary skill in the art?

A. I don't disagree, but I -- I believe that I -- and as I did, stated in a description I think is -- is more to the way I would, in my language, to describe that. So I believe that that's Ned's opinion of a person of and what I put in my doc- -- declaration was my opinion. So that's my answer.

Q. Is there a difference between your opinion of a person of ordinary skill in the art and Ned's opinion of a person of ordinary skill in the art?

A. I think there are many similarities.

Q. That's not my question.

Is there a difference between your description of a person of ordinary skill in the art and Mr. Frederick's description of a person of ordinary skill in the art?

A. So are you speaking of the exact language?

Q. No.

A. I believe that I was saying from my point of view and expounding on that general -- my general

understanding of -- of that POSITA, and I informed myself by reading Ned's version and I agree with, in general, what Ned said in his declaration, but I would have said it differently and I would have used different language.

Q. So Ned's -- Mr. Frederick's description of a person of ordinary skill in the art is correct, in your opinion?

A. You know, I was not asked to give an opinion on Ned's description, but I informed myself by reading it.

I don't disagree with the general -- and I'm -- and I am -- was not asked to look at every word or every -- every -- you know, I read through it and considered it and used my language and my words and my opinion to drive what is in my declaration and description.

Q. Let me ask you this: Did you change the person of ordinary skill in the art at all from Mr. Frederick's description?

MS. WILLIAMS: Objection.

Q. (By Mr. Harris) Is it a different person of ordinary skill in the art in any way?

A. It's a hypothetical person, number one, so I don't think that's a -- a good question.

Q. Well, you had to identify a level of ordinary skill in the art; correct?

A. Yes.

Q. And is the level of ordinary skill in the art, in your opinion, the same as the level of ordinary skill in the art that Mr. Frederick described?

A. So I was not asked to compare --

Q. I'm asking you right now. You are being asked to compare.

A. Can I look at both of them in --

Q. And you said --

A. -- totality then?

Q. -- you reviewed them in detail.

A. I did --

Q. And I'm asking you: Is the level of --

A. -- but I was not --

Q. -- ordinary skill in the art the same -- your level of ordinary skill in the art that you described in your declaration, is it the same level of ordinary skill in the art that Mr. Frederick described in his?

A. You know, I think to give a complete answer, I'd like to put them both together and look at them and con- -- do a comparison/contrast. I was

not asked to do that. I was asked to inform myself by looking and I looked in detail at that because I think it is a --

Q. As you sit here today, you can't -- you can't answer that question, whether the level of ordinary skill that Mr. Frederick described is the exact same level of ordinary skill that you described; correct?

MS. WILLIAMS: Objection.

THE WITNESS: I wouldn't agree with that. I would not agree that -- or disagree. What I would say is that I -- I have not been asked to compare or to judge whether Ned's description was correct or incorrect. I was given that as an example of what Ned's opinion was in his own declaration. I took that information and used my own words, my own thoughts, to create the declaration that we're looking at right now, but I -- I'm not -- I'm not -- again, I was not asked to compare and contrast or to judge.

Q. (By Mr. Harris) I'm asking you if there are any inconsistencies between --

A. I'd like to look at both of them, then.

Q. Okay. So you can't answer the question without looking at both of them side by side;

correct?

MS. WILLIAMS: Objection.

THE WITNESS: I'm saying I won't unless I'm allowed to look at both of them, because you're asking me to say if there are any --

Q. (By Mr. Harris) So are you refusing to answer the question?

A. I'm not refusing to answer the question; I'm -- I'm asking for proper information to make a -- to render a judgment, because I think the -- the -- what you're asking me to do is say that something is somehow different or in some way --

Q. Here's my question: As you sit here today, can you, "yes" or "no," determine whether there are any inconsistencies between your description of a person of ordinary skill in the art and Mr. Frederick's description of a person -- person of ordinary skill in the art without comparing your two descriptions side by side?

A. I'm saying I don't feel comfortable because I don't have the information.

Q. My question is: Can you do it or not? And if the answer is "no," just say no and we'll move on.

Here's the question: As you sit here

today, "yes" or "no," can you determine whether there are any inconsistencies in your description of the person of ordinary skill in the art and Mr. Frederick's description of a person of ordinary skill in the art without comparing the two descriptions side by side? "Yes" or "no"?

A. So I -- I'd like to be clear about the affirmative and negative to this answer. So can I confirm -- can you explain -- just explain that again so I can give the proper --

Q. I don't know --

A. -- response?

Q. I don't know -- I've heard you testify that you would need to compare them side by side --

A. Yes.

Q. -- to tell me if there were any inconsistencies; right?

MS. WILLIAMS: Objection.

Q. (By Mr. Harris) And so I'm asking you: Is there any way for you to do that without comparing them side by side?

A. I would want to compare them side by side so --

Q. I understand that's what you want to do.

A. Yeah.

Q. My question is: Can you do it? Can you tell me if there are any inconsistencies between the two descriptions as you sit here right now, not looking at the descriptions?

A. No, I can't.

Q. Okay. So on page 4 of Exhibit 1003 --

A. Uh-huh (affirmative).

Q. -- after the YouTube links, URLs, do you see --

A. Uh-huh (affirmative).

Q. -- you represent you had discussions with adidas' external knitting consultant in March/April 2016?

A. Uh-huh (affirmative).

Q. Who is adidas' external knitting consultant that you had discussions with in March/April 2016?

A. So I only spoke to him by phone, and his name is -- the only name that I know is Florian.

Q. How do you spell Florian?

A. I'm not even exactly sure I can give you a proper spelling. I've spoken to him over the phone.

Q. Does Florian -- do you know Florian's last name?

A. No, I do not.

Q. Do you -- how many times have you talked to Florian in March/April 2016?

A. He had such a bad connection that unfortunately we had multiple conversations where we were not able to accomplish much in those discussions. I can't recall exactly how many times we talked, but I'm going to say two to three times, but I'm not -- and, again, our -- unfortunately, our conversations were affected by very poor cell reception.

Q. Were all two to three of the phone conversations that you had with Florian --

A. Florian.

Q. -- Florian in March/April 2016 affected by the poor reception?

A. Yes.

Q. Why did you -- strike that.

Did you call Florian or did Florian call you?

A. Well, we tried GoToMeeting, I think; we tried Skype; we tried cell phones, a number of different -- and I don't even remember which one worked. I don't recall -- I mean, I don't recall.

Q. Did you request to have a phone conference with Florian?

A. I discussed -- if you ask me to -- if you gave me a brief for a knitted shoe, then I would look to the manufacturing information on the Web. I would look to some kind of publication. I would look for a manufacturer, a -- you know, I would look for people of great knowledge and -- and current experience in any kind of industry, kind of -- textile application, wherever it may be.

So part of my due diligence would be to request to speak to somebody like Florian.

Q. So is it fair to say that you requested to speak to someone like Florian because you felt that there was some knowledge that you lacked to render your opinion?

A. I always need to do due diligence. Even if it's something that I made one year ago, five years ago, ten years ago, there's always new knowledge. There's always a -- a confirmation of knowledge that I have and need to update about certain aspects, find out what is going on in that industry, find out more detailed information.

Any -- any time that I have to or that I'm asked to or that -- within the course of my work, I need to do due diligence, and one of those things is always to look for people who are working in that

industry at that time right now or working on that particular type of material process, whatever it may be.

Q. So is that a "yes" or a "no"?

A. So the answer to your question is if you -- it is not a "yes" or "no." The answer to your question is if you ask me to make an injection molded shoe, I'm an injection molding expert, but I would still look to find somebody who is working in the industry today in -- in -- who has updated and clear information that confirms my understanding of the process and also gives me the most up-to-date information about what is going on in that industry.

Q. Did Florian confirm some understanding that you had about a process?

A. Definitely confirmed for me certain understandings I had of the knitting process.

Q. So what understanding did Florian confirm for you about the knitting process?

A. So was that a question? I'm sorry. Is that -- so can you please read that back to me or --

Q. Sure.

You testified that Florian definitely confirmed for you certain understandings that you had about the knitting process.

So my question is: Identify for us the understandings that Florian confirmed for you about the knitting process.

A. So there are specific questions and general questions that -- you know, how many pairs are made; how many -- you know, what is the machinery -- current machinery to -- to, you know, look at on the Web; maintenance; machine process control.

Q. Anything else?

A. Countries that are making. That's all I can think of right now.

Q. Countries that are making?

A. That are working with the knitting process.

Q. Okay. So the information that you can recall right now receiving from Florian is how many pairs are made?

A. Generally, yes.

Q. Current machinery to look at on the Web?

A. (Witness nodded head affirmatively.)

Q. Maintenance?

A. (Witness nodded head affirmatively.)

Q. Machine process control?

A. (Witness nodded head affirmatively.)

Q. And which countries are currently making knitted products?

A. Yes.

Q. Other than those five pieces of information or categories of information, did Florian share any information with you?

A. I cannot recall.

Q. So we're going to talk about each of those five.

A. Okay.

Q. So what did Florian tell you about how many pairs are made?

A. So I didn't get an exact answer to those questions because there's -- like anything, there are a multitude of different considerations to -- you know, based on the patterns and how you're laying them out on the -- the -- you know, the -- the -- the programming.

So I didn't get a definitive answer to those types of questions, just a general understanding of the process, how quickly it moves.

And I don't really -- didn't internalize any of the numbers, but basically, you know, approximate numbers as far as what you could make in an -- an hour.

Q. And -- and so when you asked him how many pairs are made, were you talking about how many pairs of knitted shoes are made?

A. Knitted uppers for -- knitted uppers.

Q. And -- and so were you asking him about how many pairs of knitted uppers are currently being made?

A. No, no. I was asking on a machine, on a -- how many -- basically, capacity question.

Q. So you asked -- I'm sorry, what was it, Falian?

A. Florian.

Q. Florian.

You asked Florian how many uppers -- how many knitted footwear uppers can be made on a machine?

A. General capacity questions. Because, you know, obviously when you talk about the sizes and the -- the height of the pattern, you are talking about dimensionally how many you can fit and -- and create in an amount of time.

So it wasn't specific to get a specific number, just a general understanding of, you know, how rapidly the machines are -- are able to produce uppers for footwear.

Q. What kind of machine did you ask him about?

A. So we did not discuss any particular machines, just generally knitting machines.

Q. Why did it matter to your opinion how many uppers could generally be made on a general knitting machine?

A. It goes back to my costing question and -- you know, or discussion we had about costing. So, you know, if you're going to use a particular -- if I have a general understanding of what a process will yield, then I can put it into my cost matrix. I can estimate the -- a cost. And at the end, that's what your desire is and also you can project capacity in a very general way.

Q. So projecting the current capacity of a general knitting machine you believe is relevant to the opinions that you expressed in Exhibit 1003?

A. It is updating and confir- -- it -- so please say that again, just to make sure --

Q. Sure.

A. -- I'm answering correctly.

Q. Did you base your opinions in Exhibit 1003 on your understanding of the current capacity of a general knitting machine?

A. So understanding the process, one of the major points of understanding a process is understanding the capacity which relates to the cost.

So in -- as part of my due diligence that I would do in any case that I was understanding, that is a very relevant factor. It may not be something that is necessarily related to this case, but it is very relevant in the understanding of the process itself.

In other words, if I'm at a machine and it makes something, how many does it make? That's a pretty relevant question.

Q. How is that relevant to whether the claims of --

A. It -- it's -- yeah --

Q. -- Nike's patents are obvious?

A. -- it's not necessarily relevant to the -- the patent itself, but it is relevant in -- in -- again, the process of how I do due diligence to understand one of that -- those factors when I am looking at any kind of process.

Q. Okay. So that's what I'm trying to figure out. I want to understand how --

A. Sure.

Q. -- this impacted your opinions in this case.

A. Perhaps not at all. I mean, in -- other than --

Q. Well, did it or did it not?

A. Again, it is -- it is like asking -- you know, if you are -- if you're evaluating something, a process, in my experience in the footwear industry, one of the main things that you always consider is the capacity. Not necessarily that it reflects on this particular case per se, but it is always a critical understanding of that process.

So I would inform myself of that as -- as one of the natural states of doing due diligence.

Q. So I still don't understand if this impacted your -- if it had any impact on your opinion or not.

A. It's just one of my -- one of the many things that I bring into the thought process.

Q. Okay. So, then, it's fair to say that your discussion with Florian about how many pairs of knitted uppers a current general knitting machine can make was one of the many factors that you considered in forming your opinion in this case; correct?

A. It's part of the formulation of understanding a process and opining on a process in -- and so I -- that was part of my considerations, one of many, many parts of the considerations.

Q. Okay. So the second thing that you and Florian talked about is the current machinery to look at on the Web.

A. Uh-huh (affirmative).

Q. What current machinery did Florian direct you to look at on the Web?

A. These are, I believe, listed in -- in some of these YouTube sites that I put as materials considered.

Q. And did you base your opinions, as expressed in Exhibit 1003, on what you saw in the YouTube URLs that you have listed in your exhibit?

A. One of the many things I considered.

Q. What did you and Florian discuss about maintenance?

A. So, again, if you're -- in my due diligence, if you -- say I have a piece of machinery that makes X and it makes Y amount a day, and the ma- -- the potential down time, the maintenance that I have to do while it's running, the -- you know,

what -- what are the main considerations when you're running a machine like that, the conditions that you run a machine like that all are part of my -- are part of my understanding and due diligence process.

Q. And what did Florian tell you about the maintenance of knitting machines?

A. That had to do with how machines are maintained, how often they have to change the spools, how much damage you have to the threads, how much cleaning you have to do during a day, how much -- you know, do you have to shut down the machines, blah, blah, blah, these many, many types of questions regarding machine and machine maintenance -- machine operations.

Q. What type of knitting machine was Florian describing when he was explaining the maintenance for that machine?

A. Circular and also some time we spent on flatbed, but also -- both circular and flatbed stitch -- knitting machines.

Q. Before you talked to Florian, did you have an understanding of how many pairs of knitted uppers could be made on a knitting machine?

A. So I have seen knitted footwear in the past. I don't recall how many -- you know, I

probably asked them at the time, as I would with anything, "How many pairs are you making of these a day?" I don't recall, it's been many years.

And I have seen the machinery at machine shows, but I don't recall that I've ever specifically asked, you know, how many pair -- even if I -- even if I did, I would have wanted more updated information.

Q. When was the first time you saw a knitting machine knitting an upper for footwear?

A. I can't be exactly sure of the date, but I believe it was early 2000s.

Q. And where did you see that knitting machine knitting an upper for footwear?

A. China.

Q. Whose factory was it in?

A. I can't remember.

Q. And what do you remember about the upper that was being knitted on the machine?

A. Yeah. It was, as I recall, a slipper and also I recall they were making a fashion boot, I believe, with it.

The -- the -- these -- this is the most recent reference, and I believe I have seen a circular -- a mach- -- a machine prior to that doing

slippers in Korea, but I just don't recall enough about it to really --

Q. Do you recall --

A. -- from memory.

Q. -- whether it was an electronic circular double knitting machine?

A. I don't recall or remember enough to make a -- a determination about that one.

Q. And you don't remember exactly when it was?

A. Don't recall exactly when it was. I -- in the course of a year, I would visit many, many, many types of factors, many, many places all over Asia.

Q. Do you recall what you thought when you saw a knit -- an upper being knitted on a knitting machine?

A. It was interesting enough to remember, for sure.

Q. What was interesting about it?

A. I had been aware that there were slippers and types of shoes made with knitting machines, but I was -- that is the most recent. I hadn't seen anything like that in years, so that was interesting.

Q. Okay. When you spoke with Florian, what

did you discuss related to machine process control?

A. That also has to do with the maintenance and the -- the -- you know, how -- it goes back to the same type of thing, how you are -- how many hours, how many -- how -- how often do you need to shut down, do your needles heat up, do your bobbins break, do your -- you know, in the weeds kind of information.

Q. And you relied on that information in forming your opinion in this matter; correct?

A. Again, it was part of the understanding of the process, which I would do in any due diligence.

Q. Well, you certainly didn't discard that information when forming your opinion, did you?

A. I certainly internalized the feedback that I got from him.

Q. So you did not discard the information -- intentionally discard the information --

A. Well --

Q. -- you received from Florian in forming --

A. -- it was in my head, so I'm not sure how to discard knowledge.

Q. And why did you ask Florian about which countries are making knitted uppers for footwear?

A. Curiosity.

Q. Did -- what -- what was Florian's response?

A. I may omit something from the -- the places that he mentioned to me, but I believe Italy, Germany, England, China, Brazil. I mean -- I mean, that's...

Q. Did he give you any details of the -- the type of footwear products that were being knitted in those countries?

A. I didn't ask for that information.

Q. Did you factor that information that Florian provided about the countries where knitted uppers were being made into your opinion which is expressed in Exhibit 1003?

A. Again, it was many things that I would bring into the -- the general understanding.

Q. What's Florian's background?

A. He's German. He speaks English, and as I know, he's a consultant to adidas. And that's about all I know.

Q. How long has Florian worked in the footwear industry?

A. I don't know.

Q. Is Florian a footwear expert?

A. He is a knitting expert, I believe.

Q. Is Florian a footwear expert?

A. I have no idea.

Q. Does Florian have the level of ordinary skill in the art that you have articulated in your declaration marked Exhibit 1003?

A. In my conversations with him, it -- certainly believe it -- that he has that kind of experience.

Q. But you don't know?

A. I can't confirm or, you know, give you any, you know, definitive answer to that, but I'll say that he was presented to me as someone of at least that skill. So I believe that and I also believe that he certainly understands what he is responsible to.

THE WITNESS: Are we getting ready for lunch here soon?

MR. HARRIS: Yes. Just a few more questions.

THE WITNESS: Sure.

Q. (By Mr. Harris) Does Florian have experience with merchandising in the footwear industry?

A. No idea.

Q. Does Florian have experience with design

in the footwear industry?

A. I have no idea.

Q. Does Florian have experience with product development in the footwear industry?

A. I have no idea.

Q. Does Florian have experience with commercialization in the footwear industry?

A. If you are using machinery, I would assume that he must have some commercialization experience.

Q. So you assume so?

A. I assume so.

Q. But you don't know so?

A. I don't know so.

I also, making that same kind of assumption, if he's working -- he -- he -- well, I'll leave it at that.

Q. Does Florian have an understanding of the product cycle for the process of designing, developing, and bringing a new product to market?

A. I believe he does, yeah.

Q. How do you know that?

A. Because he, in my discussions with him, seems to understand the -- that he is working within a team to deliver a product. So if you are doing that, you are necessarily aware of the cycle.

Q. So when you define a person of ordinary skill in the art --

A. Yeah.

Q. -- as -- as someone that has an understanding of the product cycle for the process of designing, developing, and bringing a new product to market, all you really mean is that there's someone that knows there's a team involved?

A. No. What I was alluding to was part of the process. So you may be a part of the team in the middle of the -- the process; you might be a part of the team in the beginning of the process; you may be a part of the team at the end of the process. But you certainly understand what is coming down the road towards you, what you're going to have to deal with in the middle, or what you're going to deal with at the beginning. So you're part of the cycle, so you understand what the cycle is.

Q. And you think Florian knows that complete cycle?

A. I believe he does.

Q. Based on your two to three conversations with him?

A. Yes. Yeah.

Q. And -- and not knowing anything about his

background?

A. And not knowing anything about his background -- specifically about his background.

But, again, if you are part of the process and you are involved in a process and -- that is involved in the cycle, then you know what's in the upstream and the downstream.

Q. Do you know if Florian prepared an expert declaration in connection with this -- this matter?

A. I don't know.

Q. How long were your two to three conver- -- phone conversations with Florian? I'm talking about minutes? Hours? If you can ballpark it.

A. Bad cell connection and -- and I -- you know, I would say an -- an hour.

Q. For the two to three conversations combined --

A. No. I would say --

Q. -- an hour?

A. -- they're -- probably were each an hour or more, yeah.

Q. Was anybody else on the phone or connection with you when you and Florian had your two- to three-hour -- -hour long conversations?

A. I believe that all or most of, Tiffany was

involved in those or listening in on those conversations.

MR. HARRIS: Okay. Let's take a break for lunch.

VIDEOGRAPHER: Stand by, please.

And we are off the record. The time is 12:33.

(Thereupon, there was an interruption in the proceedings.)

VIDEOGRAPHER: And we are back on the record. The time is 1:11.

You may continue.

Q. (By Mr. Harris) Mr. Holden, in Exhibit 103 [sic], which is your declaration --

A. Uh-huh (affirmative).

Q. -- on pages 9 through 15, you have a section that's titled "Legal Standards for Patentability." It's paragraphs 13 through 31 in Exhibit 103 [sic].

Do you see that section of your declaration?

A. I -- I guess. It's like paragraph 29 or 28?

Q. Starting with paragraph 13.

A. 13. Am I looking at the right thing? Oh,

okay.

Q. Okay. So is it correct, Mr. Holden, that paragraphs 13 through paragraph 31 of Exhibit 1003 provide the legal standards for patentability that you considered in expressing your opinions as expressed in Exhibit 1003?

A. Sure. Can I read through this?

Q. Sure.

A. And through where again? I'm sorry, I'm just getting confused by the pages. I'm sorry.

Q. Okay. Let's go with the paragraph numbers. Paragraph 13 through paragraph 31.

A. Okay. Great. Okay.

Okay.

Q. Mr. Holden, you just read paragraphs 13 through 31 --

A. Uh-huh (affirmative).

Q. -- of your declaration marked Exhibit 1003; correct?

A. Correct.

Q. Do paragraphs 13 through 31 of your declaration marked Exhibit 1003 describe the legal standards for patentability that you considered in expressing your opinions in this matter?

A. Yes.

Q. Did you consider any legal principles that are not summarized in paragraphs 13 to 31 of Exhibit 1003 when forming your opinions in this matter?

A. I would also say that -- 32 through 36, understanding and keeping in mind the theoretical position of ordinary art.

Q. Okay. Mr. Holden, did you consider any legal principles that are not summarized in paragraphs 13 through 36 of Exhibit 1003 when forming your opinions in this matter?

A. Can you describe "legal" or say that sentence again or -- or repeat the entire question just to make sure I'm clear?

Q. Sure.

In paragraph 13 of your declaration marked Exhibit 1003, you state that, quote: "I am relying upon certain legal principles that counsel has explained to me."

A. Yes.

Q. Do you see that?

A. Yes.

Q. When you said that you were relying upon certain legal principles that counsel has explained to you, what did you mean by "legal principles"?

A. I believe the section that you're speaking of, 13 through 36, I believe that's all, without looking at the full and complete document. But that seems to be a comprehensive list of...

Q. Okay. So -- so just so I'm clear, did you consider any legal principles that are not identified in paragraphs 13 through 36 of Exhibit 1003 when forming your opinions in this matter?

A. I relied on 13 through 36, and I don't believe, without looking at the rest of the document, that I -- I believe that that is the extent.

Q. If you relied on some other legal principle that is not identified in paragraphs 13 to 36 of Exhibit 1003, where would you find that legal principle in your declaration?

A. You know, without a complete reading of the declaration over again just to make sure, but I believe this is the comprehensive list.

Q. Okay. So -- so you're not aware of any --

A. I'm not aware of any.

Q. -- other legal principles that you were relying on or considered when you were forming your opinions other than what you've articulated in

paragraphs 13 through 36?

A. Again, without a complete and thorough reading to see the -- but I believe that is a comprehensive list.

Q. Mr. Holden, how long in months does the cycle of design and development for a new footwear product typically take?

A. Can you please read that question back to me?

(Whereupon, the record was read by the reporter as follows:

Question, "Mr. Holden, how long in months does the cycle of design and development for a new footwear product typically take?")

THE WITNESS: So anywhere from 24 to 18, but some can be shortened and some, depending on the complexity, may take longer. But companies would like to be in the 18 to 24 or less if possible.

Q. (By Mr. Harris) And how many decision points are there during that cycle of design and development for a new footwear product where the choice of upper materials are addressed?

A. So if -- it would be easier for me if I

list them out and think through them a little bit, if you don't mind.

Q. Sure.

A. So materials considered could be at the design phase, beginning of the development phase, design review, final design review, assignment, sample review, first -- first sample review, second sample review, color review, final line build.

And it will continue to be reviewed until final confirmation of the product. So in there is several more reviews that are done from a commercialization standpoint, but that's kind of out beyond -- a little bit beyond the development piece.

Q. So I counted ten.

A. Ten or more. I mean, sometimes less, depending on the company structure and -- and how they build their cycle, but that is fairly standard.

Q. Please pull up Exhibit 1006 in your binder.

(Exhibit 1006 was previously marked for identification.)

MS. WILLIAMS: I don't think we have that.

MR. HARRIS: Is there no --

MS. WILLIAMS: We have 1005 and then 1008.

THE WITNESS: I have it.

MS. WILLIAMS: Oh, you have it. I just don't have it. Okay.

MR. BOWLING: Here, I can give you. Here you go.

MS. WILLIAMS: Thank you.

Q. (By Mr. Harris) Mr. Holden --

A. Uh-huh (affirmative).

Q. -- Exhibit 1006 is a copy of U.S. Patent No. 3,985,003 to Reed --

A. Uh-huh (affirmative).

Q. -- correct?

A. Yes.

Q. Please turn to page 7 of Exhibit 1006.

A. Okay.

Q. Actually, before I ask that question, Mr. Holden, you have studied Exhibit 1006, the Reed patent, in connection with preparing your declaration marked Exhibit 1003; correct?

A. Yes, I have.

Q. Okay. So turning to page 7 of Exhibit 1006 --

A. Yes.

Q. -- in Column 1 of the patent --

A. Uh-huh (affirmative).

Q. -- do you see the "Background of the

Invention" section?

A. Yes.

Q. And it reads, "The present invention relates generally to knitted garments and more particularly to a garment which is preseamed and preformed on a circular knitting machine."

Do you see that language?

A. Yes.

Q. Mr. Holden, what does "preseamed and preformed on a circular knitting machine" mean in the context of the Reed patent marked Exhibit 1006?

A. Preseaming is a gar- -- in this particular case, in the Reed patent, is referring to a garment that is -- while it's being knitted, is seamed at the same -- in the same process.

Preformed on a circular stitching machine, I can only -- just by my reading of that is the layout of the pattern on the circular space allowable for patterns to be placed. That's my understanding.

But I haven't particularly looked at that word reference, so I would want to go back and see if "preformed" is used in any other place to give me a better understanding of how that might be used, but from the reading of that particular line.

Q. Was that term, "preformed," something that you considered when you were analyzing the Reed patent in forming your opinion in this matter?

A. The totality of the -- the patent is what I used to inform my declaration in regards to Reed.

Q. Under the "Summary of the Invention" section --

A. Uh-huh (affirmative).

Q. -- of the report, which is also on page 7 of Exhibit 1006 --

A. Uh-huh (affirmative).

Q. -- do you see the sentence that begins, "The resulting knitted structure will have two layers of single fabric knitted or seamed together in the shape of the desired garment wherein the anatomy of the user would fit between the single knitted fabrics instead of in the center of the tubes."

Do you see that sentence?

A. Yes.

Q. Does that sentence give you a better understanding of what "preseamed" and "preformed" means in the context of the Reed patent marked Exhibit 1006?

A. It is a piece of understand, but I don't

think it completely describes. I think the -- the totality of Reed does.

Q. So, Mr. Holden, I'd like you to read the -- read the Reed reference marked Exhibit 1006 --

A. Yes.

Q. -- so that you can have the totality of the reference in mind --

A. Okay.

Q. -- and then describe for us what is meant by "preseamed and preformed on a circular knitting machine."

A. Okay. Yes, sir.

Q. Okay. Mr. Holden, how long do you estimate you spent analyzing and reviewing the Reed reference when preparing your declaration in this matter?

A. In terms of hours?

Q. Hours --

A. Days?

Q. -- or days, whatever's easiest for you to quantify it. Just an estimate.

A. I don't know exactly, but many, many days, many hours, many -- many days that I've gone over it over -- over a period of time. Not the only fo- --

focus, but part of the focus. So hard for me to quantify.

Q. Okay. So you have reviewed Reed for many hours and days in preparing your declaration. You just reviewed Reed from cover to cover for another seven minutes.

And my question for you is: What does Reed mean when Reed says, "The present invention relates generally to a knitted -- to knitted garments and more particularly to a garment which is preseamed and preformed on a circular knitting machine."

A. Okay. So I believe that it talks about particularly preseamed and overall formed. "Preseamed" is one of the embodiments, but there are others, and "formed" and "preformed" and it also refers to "formed" I take in the context of a pattern that will be circular knit around the circumference of the -- the area available for knitting.

Q. So -- so let's break this up into two pieces.

A. Sure.

Q. What's the preseamed portion of a garment which is preseamed and preformed on a circular

knitting machine?

A. So preseaming is -- an example would be Figure 2, it seems to me, where they have a dress that is -- has an outline and then they are showing where it is preseamed, and that is part of the knitting process. It will be seamed along these and cut out here.

Q. So what is seamed together in the example that you're pointing to in Figure 2?

A. Preseamed?

Q. Yeah, what's preseamed in Figure 2 of the patent?

A. I believe that by this description, it is the area starting at the top of the garment, down to the bottom of the garment, and then the bottom of the garment is -- looks like it is cut. So this being a preseamed and then --

Q. What -- what --

A. -- the cut --

Q. -- what are you pointing to when you say "this being preseamed"?

A. This area starting at the top of the garment, which would be at the far left side, down to the -- the far right side of the top of the -- of the figure.

And then on the far right side where this is double lines -- it's showing double lines in that area that I just pointed out and then there's a singular line that goes across the bottom.

Q. Is that line labeled?

A. 24.

Q. So in Figure 2 of the Reed patent --

A. Uh-huh (affirmative).

Q. -- 24 is not a preseam?

A. I believe it to be a -- an outline.

Q. And the item labeled --

A. 22.

Q. -- 22 in Figure 2 of Reed is?

A. I believe it to be preseamed.

Q. Are two layers of material being preseamed together at line 22 in Figure 2?

A. I would have to go refer back to the patent to see how it refers specifically, but the -- the patent itself talks about a number of different embodiments for that -- the circular knitting process, including addition of preseaming.

Q. So is it accurate to say that preseaming is using the knitting machine to form a seam between two layers of fabric?

A. It is my understanding that -- and

depending on exactly the definition of "seam," but generally speaking.

Q. So let's look at page 7 of Exhibit 1006.

Do you see the section in Column 1 that is titled "Description of the Prior Art"?

A. Uh-huh (affirmative). Yes, I do.

Q. Would you read the first paragraph?

A. "The prospective Figure 1 is a prospective view of the tube" --

Q. No, you're -- you're at the wrong place.

A. Oh, I'm sorry. Go ahead. Say it again.

Q. Column 1 on page 7.

A. Oh, I'm sorry. Excuse me.

Q. Okay. So just to reset, we're -- we're on page 7 of Exhibit 1006 --

A. Yes.

Q. -- the section titled "Description of the Prior Art."

A. Got it. Excuse me.

Q. Would you read the first paragraph.

A. "Clothing in the garment industry is generally made by superimposing one fabric over another, cutting it into panels to conform to the shape of the individual according to current fashion, seaming along the outer edges of the panel

and attaching various parts, by stitching to form seams, until a complete garment is formed."

Q. Is that considered -- that description that you just read, would that be considered preseaming?

A. I don't believe it is a description of preseaming. I believe it is a prescrip- -- description of prior to preseaming.

Q. Right. This is the prior art that they're --

A. Yes.

Q. -- describing. It's not preseaming; right?

A. Right.

Q. And it's not preforming either. It's the prior art that they're describing.

A. I think that it -- to -- when you say "panels to conform to the shape of the individual."

Q. Well, it says cutting it into panels to conform.

A. So to me, it's the same thing.

Q. That would be forming. It wouldn't be preforming.

A. It would -- it -- prefor- -- I think it's preforming.

Q. It's not using a knitting machine to preform --

A. It is --

Q. -- is it?

A. -- not necessarily using a knitting to preform.

Q. Does this paragraph say that the -- that it's using a knitting machine to preform the garment?

A. Yeah. So --

Q. Hold on. Answer the question.

A. Okay. Please restate it.

Q. Does the paragraph that you just read on page 7 --

A. Uh-huh (affirmative).

Q. -- of Exhibit 1006 that reads, "Clothing in the garment industry is generally made by superimposing one fabric over another, cutting it into panels to conform to the shape of the individual according to current fashion, seaming along the outer edge of the -- edges of the panel and attaching various parts, by stitching to form seams, until a complete garment is formed," does that describe using a circular knitting machine to preform a garment?

A. I believe I answered that question already and said -- this described, "Clothing in the garment industry is generally...superimposing...." I believe that as prior art, so it does not describe circ- -- and preseaming. I don't -- I -- I believe that what they're talking about is -- so can you please restate your question? Because I think we have -- I'm having some confusion with this.

Q. Sure.

On page 7 of Exhibit 1006 --

A. Uh-huh (affirmative).

Q. -- the first sentence under the title "Description of the Prior Art" --

A. Uh-huh (affirmative).

Q. -- does that sentence describe using a circular knitting machine to preform a garment?

A. It doesn't describe any form of knitting.

Q. So the answer is "no"?

A. It -- no, the answer is it doesn't preclude or exclude or include --

Q. So the question isn't whether that sentence precludes it or excludes it.

The question is: Does that sentence describe using a circular knitting machine to preform a garment?

A. It doesn't exclude circular knitting.

Q. Did you hear my question?

A. Yes, sir.

Q. What was my question?

A. Your question was does it describe, and I don't believe it describes any method, so then it doesn't include. So that's my answer. It doesn't include circular stitching or it doesn't exclude circular stitching. It doesn't describe any.

Q. So that sentence, the first sentence under "Description of the Prior Art" on page 7 of 1006, does not describe using any knitting at all?

A. It doesn't describe using any -- any textile method at all, any textile dis- -- construction method at all.

Q. So if it describes no method of textile construction, isn't it correct that it does not describe using a circular knitting machine to preform a garment?

A. It does not describe that and it also, further, does not describe any.

Q. Okay. Thank you.

Under the "Summary of the Invention" on page 7 of Exhibit 106 [sic], the first sentence reads, "The present invention uses an electronic

circular double knitting machine...."

Do you see that?

A. Yes.

Q. What's an electronic circular double knitting machine? You're --

A. So specifically electronic circular double knitting machine? Is that the -- I'm sorry. Can you please restate your question?

Q. What is an electronic circular double knitting machine?

A. It's -- only thing you can tell by that particular excerpt of the sentence is that it's -- it's -- uses electricity.

Q. So you just read the Reed patent, correct --

A. Right.

Q. -- from cover to cover?

A. Yes.

Q. You studied Reed --

A. Yes.

Q. -- for many days --

A. Uh-huh (affirmative).

Q. -- and hours, and the only thing that you can tell me about an electronic circular double knitting machine is that it uses electricity?

A. You specifically asked me about the excerpt from that and I'm answering based on your question.

Q. Okay. So don't look at just that excerpt.

A. Okay.

Q. Think about Reed as a whole.

A. Yes.

Q. What is an electronic circular double knitting machine?

A. So I believe that -- that Reed talks about two, at least, versions of circular knitting machines, and I believe in this particular case, that this is a circular -- electronic circular knitting machine that's programmed, which I think is important, is -- is electronically programmed to follow a certain pattern.

Q. How is an electronic circular double knitting machine different than an electronic circular knitting machine?

A. Say that again.

Q. How is an electronic circular double knitting machine different than an electronic circular knitting machine?

A. One would have an inside -- a -- a -- concentric circles that would have an inside course

and an outside course, so it -- the double course as opposed to a singular course.

Q. What's a course?

A. The course would be the -- the cylin- -- the -- the path that the yarn, the material, the textile, travels to knit the fabric.

Q. You mentioned that you think Reed discloses two types of electronic circular double knitting machines.

A. It --

Q. What's the second type --

A. Yeah.

Q. -- that Reed discloses, in your opinion?

A. It alludes to a -- again, it alludes to a -- an -- a multiplicity of layers, so a concentric circle. You have an inside course and an outside course, and it also refers to just a singular course.

So I assume that it can be referring to one machine running both courses, so a two-course machine running both courses or a two-course machine only running one course or a single-course machine.

Q. How would you make a preseamed and preformed garment on a single-course machine?

A. I don't believe -- well, I have never

considered that particular point, so I'm not sure I can.

Q. Well, let me ask it this way, then: Isn't it correct that nowhere in your declaration marked Exhibit 1003 do you describe how you would make a preseamed and preformed garment on a single-course circular knitting machine?

MS. WILLIAMS: Objection.

THE WITNESS: I think -- I'm sorry. You have to repeat the question again.

MR. HARRIS: Could you repeat the question, please.

(Whereupon, the record was read by the reporter as follows:

Question, "Isn't it correct that nowhere in your declaration marked Exhibit 1003 do you describe how you would make a preseamed and preformed garment on a single-course circular knitting machine?")

THE WITNESS: I don't believe that I made reference to that in my declaration.

Q. (By Mr. Harris) And isn't it also true that nowhere in your declaration do you describe how a person of ordinary skill in the art would create a preseamed and preformed footwear upper on a circular

knitting machine?

MS. WILLIAMS: Objection.

THE WITNESS: I don't recall that there's any por- -- portion of that. Again, I was not asked to hypothesize on that particular point.

Q. (By Mr. Harris) Okay. Just so I'm clear, you weren't asked to offer an opinion on how a person of ordinary skill in the art would create a preseamed and preformed footwear upper on a circular knitting machine; correct?

A. I don't recall that I was asked that particular question.

Q. Thank you.

Going back to Exhibit 1006, which is the Reed patent, if I could direct your attention to page 7 --

A. Uh-huh (affirmative).

Q. -- Column 2 --

A. Okay.

Q. -- lines 6 through 14.

A. Okay.

Q. Okay. So the sentence beginning on page -- I'm sorry, on line 6 reads, "By varying the height of knitting butts of alternate knitting dial needles, the inner-concentric tube is knitted in a

non-ladder knit."

Do you see that sentence?

A. Yes.

Q. What does it mean to vary the height of knitting butts of alternate knitting dial needles?

MS. WILLIAMS: Object to the scope.

THE WITNESS: I don't know that I can give a complete answer on that. I would want to probably refer to Spencer to -- to make sure that -- my understanding of a particular terminology. So I don't know that I can give an answer.

Q. (By Mr. Harris) What is a non-ladder knit as described on page 7 of Exhibit 1006?

MS. WILLIAMS: Same objection.

THE WITNESS: Yeah, again, I would want to go back to Spencer to double check my understanding of -- of what...

Q. (By Mr. Harris) What would you be double checking? What is the understanding that you have right now that you would have to double check in Spencer?

A. I believe they're talking about the knitting configuration, and the -- I believe that they are referring -- again, I would want to go back

to Spencer to double check what that -- how that looks -- that figure looks.

Q. I'm not sure I followed you there.

What -- what knitting configuration do you think they're referring to as a non-ladder knit?

MS. WILLIAMS: Same objection.

THE WITNESS: Yeah. So as I understand, that is how they vary to create the inside and outside of a garment. So the -- but I'm not -- you know, I'm not exactly sure. I'd want to go back to Spencer to double check.

Q. (By Mr. Harris) Can you turn to page 8 of Exhibit 1006.

A. Uh-huh (affirmative).

Q. I direct your attention to Column 3 --

A. Uh-huh (affirmative).

Q. -- line 41 to 43. The sentence reads, "The most common method of making two-tube fabric is by alternating feeds method."

Do you see that sentence --

A. Yes.

Q. -- in Reed?

What is the alternating feeds method --

MS. WILLIAMS: Objection.

Q. (By Mr. Harris) -- as described in Reed

on page 8 of Exhibit 1006?

A. Again, I believe that -- that alludes to my understanding of the inner and outer knitting of the fabric, setting of the feeds so that the inner and the outer fabric are of a different setting.

Q. So other than the alternating feeds method, what are some other methods that you're aware of for making two-tube fabric?

A. I was not really asked to opine on that, so I really, you know, don't know that I've considered it.

Q. Okay. Can you look at Column 4 on page 8 of Exhibit 1006.

A. 4, 8?

Q. Column 4 on page 8 --

A. Yes.

Q. -- line 28, the sentence that begins, "The dial needles are programmed to alternate between short and long heighths so as to effect a non-ladder knit pattern or non-run pattern."

We've already talked about the non-ladder knit pattern.

A. Uh-huh (affirmative).

Q. What's a non-run pattern?

A. I --

MS. WILLIAMS: Object to the scope.

THE WITNESS: Yeah. I would go back to Spencer on that.

Q. (By Mr. Harris) So as you sit here right now, you don't know?

A. I -- I would want to confirm my understanding of that -- that.

Q. And what understanding would you be confirming in Spencer?

A. So as I understand, that's like a missed or hidden stitch, as I believe, but I would want to confirm that with Spencer.

Q. Okay. Could you turn to Exhibit 1009 in your binder.

A. Yes, sir.

(Exhibit 1009 was previously marked for identification.)

Q. (By Mr. Harris) Exhibit 1009 is U.S. Patent No. 5,345,638 to Nishida; correct?

A. Yes.

Q. Mr. Holden, you studied and analyzed the Nishida patent in Exhibit 1009 in preparing your opinions in this matter; correct?

A. Yes.

Q. Nishida does not teach a preseamed and

preformed garment created on a circular knitting machine; correct?

MS. WILLIAMS: Objection.

THE WITNESS: Nishida teaches a number of different options for manufacturing.

Q. (By Mr. Harris) Okay. Where does Nishida teach creating a preseamed and preformed footwear upper on a circular knitting machine?

MS. WILLIAMS: Objection.

THE WITNESS: It alludes to a -- to many different types of potential production methods and gives allusion to the knitting process.

Q. (By Mr. Harris) So it doesn't expressly disclose it, but it alludes to it? Is that what you're saying?

A. It alludes to the knitting process and it --

Q. So it alludes --

A. -- alludes to the -- the knitting process in -- in a way that I assume would be acceptable for circular knitting.

Q. Okay. So point to me specifically -- point to us where in Exhibit 1009 Nishida alludes to creating a preseamed and preformed knitted upper on a circular knitting machine.

A. No, I don't believe that I can specifically say anything that has the word "preseamed," but I'd like to take the same kind of time to --

Q. Sure.

A. -- go through this just to make sure.

Can I make a -- just a little note here so I can go back to these or -- can I write on this?

Q. Yeah, sure. We'll mark it as an exhibit, so go ahead and write on it.

A. Okay. It might be better to go to the claims in my -- also in -- in -- where I discuss claims in my declaration, where it refers to specific areas.

Q. Your -- your counsel can ask you questions if you -- if you guys want to do that afterwards on here.

But -- so my question for you is: Point me to where in Nishida, Exhibit 1009 --

A. Uh-huh (affirmative).

Q. -- Nishida teaches forming a -- or creating a knitted upper that is preseamed and preformed using a circular knitting machine.

A. Again, it talks about knitting. It does not specifically, but it alludes to, I believe, the

circular knitting process, and certainly the knitting process.

Q. Do you think that answered my question?

A. Yes.

Q. Okay. So my question was: Point me where -- to where in Nishida Nishida teaches forming a knitted upper that is preseamed and preformed using a circular knitting machine.

MS. WILLIAMS: Objection to the scope.

THE WITNESS: Yeah, so the -- in my reading of Nishida, it specifically talks about the possibilities of how to manufacture footwear using different -- in this general layout in a web of stitching into and onto a web of materials, which leads me to believe that they're talking and refer specifically to knitting and other -- other types of production.

So I believe that it is foreseeing or teaching that this is a method and here are the applications that you can use to achieve --

Q. (By Mr. Harris) Okay.

A. -- that result.

Q. Great.

So point me to column and line number in

Exhibit 1009 where Nishida teaches using a circular knitting machine to preform and preseam a knitted upper for footwear.

MS. WILLIAMS: Same objection.

THE WITNESS: Well, I don't see that they have preform and preseam, but, again, I -- I believe that there is allusion to the process of knitting, certainly circular knitting, but it does not use that specific language.

Q. (By Mr. Harris) Okay. Well, then point me to the allusion that you see in Exhibit 1009 --

A. Uh-huh (affirmative).

Q. -- that teaches using a circular knitting machine to preseam and preform a knitted footwear upper on a circular knitting machine.

A. So, again, I think you're adding a couple words, asking me the same pre- -- preseam and preform.

To me, "form" and "formed" and "preform" is all about patterns, because that's the form that any of these flat items will take, no matter whether they're made in a circular form, then they eventually become flat and then are form- -- are built to a form, a pattern. Okay?

So "form," "preform," "formed" are all

taking something in a flat state and, based on a pattern, become to that form or are -- are lasted, stitched, assembled, manipulated to match to that form.

Q. Do you remember what my question was?

A. Please restate it.

MR. HARRIS: Could you restate the question?

(Whereupon, the record was read by the reporter as follows:

Question, "Okay. Then point me to the allusion that you see in Exhibit 1009 that teaches using a circular knitting machine to preseam and preform a knitted footwear upper on a circular knitting machine.")

MS. WILLIAMS: Object to the form.

THE WITNESS: I don't believe that Nishida specifically uses that language.

Q. (By Mr. Harris) All right. Thanks.

So turning to page 6 of Nishida, Exhibit 1009 --

A. Uh-huh (affirmative).

Q. -- do you see the "Background of the Invention" section --

A. Uh-huh (affirmative).

Q. -- in Column 1?

A. Yes.

Q. Okay. It reads, "This invention relates to a process for the production of a shoe-shaped part using a web of material with a plurality of patterns in the form of the layout of a shoe upper, cutting out these layouts from the web of material and stitching the parts of the shoe upper to a top part...."

Do you see that?

A. Uh-huh (affirmative).

Q. What do you think Nishida means when it says it cuts out the layouts from the web of material and stitches the parts to a top part?

A. I think that in this particular case, that it is talking about a pattern that you are cutting out a web of materials, which can be done on a circular -- so I can point to Reed and show you that skirt, which is a pattern, in that circular outlay, which is the web of materials --

Q. I'm not asking you about Reed.

A. I understand, but that's --

Q. I'm asking you about Nishida.

A. -- my way of -- my way of illustrating my point.

Q. Does -- does Nishida reference Reed?

A. Nishida doesn't reference Reed in the text.

Q. Okay. So I'm asking you what Nishida means when Nishida says, "...cutting out [the] layouts from the web of material and stitching the parts of the shoe upper to a top part." What does that mean in Nishida?

A. So, okay, again, as you -- if you are doing the knitting process and you are knitting the outline and the patterns of the outline, the inside of the outline, into a circular web of materials, then that would be the pattern that you are cutting then out of a web of materials.

Q. Okay. So that's the first part?

A. Okay.

Q. And then the second part is "stitching the parts of the shoe upper to a top part."

What's that mean?

A. I think -- I'm not really clear exactly what that means, but I see that -- that it is then taking that and fastening related part to the sole edge of the cut-open outside edge of the assigned layout.

And in Nishida's patent -- in Nishida's

drawing, they have -- for example, the tongue is separate and would need to be restitched and the outsole, the -- excuse me, the -- the inside lining material would be -- have to be -- and cut out of the web of materials and then stitched together to create the inner lining that would then be attached to the sole. So that is how I would construe this reading through this.

Q. Well, so you just described the next part of the sentence, but the part of the --

A. Yeah.

Q. -- sentence that I was asking you about was "stitching the parts of the shoe upper to a top part," and I think I heard you testify that you're not exactly sure what that means.

A. I'm not exactly because it's not clearly descriptive, but my -- in -- in further reading of Nishida and looking at the patterns described, they have -- in this web, they have that -- the -- the sock, if you will, and the tongue separated.

So I assume that they're talking about, especially in the case of -- the sock has to be stitched, the heel has to be stitched, seamed.

Q. So that's your assumption?

A. That's my assumption in looking at this.

The -- it --

Q. So in the "Background of the Invention" section on page 6 of Exhibit 1009, the second paragraph begins, "A process according to this general type is known from German Patent No. 627 878."

Do you see that sentence?

A. Could you point me to that again? I'm sorry.

Q. Yeah. Page 6, Exhibit 109 [sic] --

A. Uh-huh (affirmative).

Q. -- the "Background of the Invention" section in Column 1, the second full paragraph reads, "A process according to this general type is known from German Patent No. 627 878."

Do you see that sentence?

A. Yes.

Q. Mr. Holden, did you review German Patent No. 627 878 when forming your opinions in this matter?

A. Initially I did, but I did not include that in my declaration and I don't -- I haven't looked at it recently.

Q. So you analyzed the German patent, but you did not identify it in your declaration as one of

the materials that you considered in forming your opinion; is that correct?

A. Let me -- please refresh my memory if -- if I did put in my -- if this 627 -- by just looking at these numbers, I -- I'm not sure that -- if I did or not. So may I --

MS. WILLIAMS: Counsel, I'm happy to stipulate that Mr. Holden was not provided with a copy of this.

MR. HARRIS: Okay. That makes it easier.

Q. (By Mr. Harris) So -- so just so the record is clear --

A. Yeah.

Q. -- Mr. Holden --

A. Yeah.

Q. -- you did not review German Patent No. 627 878 when forming your opinions in this matter; correct?

A. Yes. I would have put those in my declaration if I had reviewed them.

Q. On page 6 of Exhibit 1009 --

A. Uh-huh (affirmative).

Q. -- Column 1 of the Nishida reference --

A. Uh-huh (affirmative).

Q. -- do you see the "Summary of the

Invention" section?

A. Yes, sir.

Q. Do you see under "Summary of the Invention," it reads, "This object is achieved by the following process steps"?

A. Yes, sir.

Q. It continues, "In the production of a web of material, both the patterns or partial patterns in the form of layouts of the shoe upper and the patterns or partial patterns in the form of a sole part, are produced by a fabric printing process (which is generally well known in the textile industry) on the web of material...."

Now, that sentence continues and we'll talk about the continuation of that sentence next --

A. Uh-huh (affirmative).

Q. -- but I just want to focus on the part that we just read.

What does that mean to you in the context of the Nishida patent, the sentence that we just read?

A. Okay. So the web of material is the material itself and the printing process, I believe, is the outline, it's creating an outline.

And that is -- that outline, I believe, is

the web of materials again, which can either be a singular layer or a layer that is knitted and has multiple pieces to it and then you're cutting out based on that -- that -- the form or the pattern.

Q. Would you consider knitting to be a fabric printing process?

A. I would not, but then it also says "inside the web of materials." So when it's saying it's -- it's inside the web of materials, it literally means that -- that it is being done together. So that would lead me to believe that it is a -- it is -- it encompasses knitting.

Q. All right. Let -- let's try to clear this up.

So the rest of that sentence reads, "...and/or by a textile production process inside the web of material."

A. Yes.

Q. So knitting is a textile production process; correct?

A. Knitting is a textile production process.

Q. Knitting is not a fabric-printing process; correct?

A. Knitting is not a -- in my lexicon or my understanding of the lexicon, it is not a -- a

fabric process -- or a, excuse me, knitting process.

Q. And Nishida discloses some embodiments with fabric printing processes --

A. Yes.

Q. -- and other embodiments with textile production processes; correct?

A. That is correct. And one of those would be, I assume, knitting, and if you are knitting within the web of materials and you're creating an outline, it is -- the outline would then be the pattern, which again would be removed from the web of materials. And that's a description of how knitting would be done.

Q. Turn to page 7 of Exhibit 1009.

A. Okay.

Q. In Column 3 --

A. Uh-huh (affirmative).

Q. -- on page 7, Exhibit 1009 --

A. Yes.

Q. -- the Nishida reference, states -- it's the second full paragraph -- "Layout 2 is divided into different individual parts or areas, which differ from one another, such as by being of another material style...."

Do you see that sentence?

A. Yes.

Q. Mr. Holden, what is a material style in the context of the Nishida patent?

A. I'm not ex- -- exactly sure, but I would assume that that is the type, as well as style. But it could also mean design.

MR. HARRIS: Let's take a short break.

VIDEOGRAPHER: And we are off the record. The time is 2:25.

(Thereupon, there was an interruption in the proceedings.)

VIDEOGRAPHER: And we are back on the record. The time is 2:42.

You may continue, sir.

MR. HARRIS: Thank you.

Q. (By Mr. Harris) Mr. Holden, let's go back to your declaration --

A. Uh-huh (affirmative).

Q. -- Exhibit 1003.

A. Yes, sir.

Q. Please turn to paragraph 76.

A. Yes, sir.

Q. Did you just read paragraph 76?

A. Yes, sir.

Q. Okay. So you start that paragraph by

saying, "Over the next decade...."

Does that decade -- I'm assuming that refers to mid 1970s to mid 1980s; is that correct?

A. Yeah. It's been continuous, but, yes, I -- I believe that that would say, if it's referring to the previous paragraph, to '9 -- mid 1970s that that would mean over that next decade.

Q. Okay. So in paragraph 76 of Exhibit --

A. Uh-huh (affirmative).

Q. -- 1003, what developments in computerized knitting machines were you referring to in the mid 1970s to mid 1980s?

A. Yes. So going back to the discussion about computer technology, they -- computer technology in general was beginning to get -- and was continuing to get more specific about what you were able to program as far as the ability to do different types of embroideries, do different types of stitching, do different types of knitting, do different types of weaving, do different -- all different types of -- of textile, fabric, and manufacturing processes. The -- the -- there was a -- a lot of development from that 1970s through -- over the last few decades.

Q. Okay. So I'm asking you specifically:

What developments were you referring to in paragraph 76 when you said, "Over the next decade, the development of computerized knitting machines progressed in complexity to the point that the technology could be used to form a variety of knit configurations..."?

A. Yes. So that would be the control of the -- again, the -- the programming of the ability to create designs by being able to vary, and that -- that technology basically went from using print punch cards through to doing basic programming through to doing more complex manipulation of what was the ability of those types of machines.

Q. So, then, in paragraph 76, you're referring to improvements in computer programming, not necessarily improvements or developments in knitting machines themselves?

A. Well, as the -- as with all of technology as it relates to manufacturing, and specifically as it relates to knitting but also as it relates to embroideries or computerized stitching or whatever types of textile manufacturing, there were great leaps and bounds, and have been over the last decades, in what they're able to do with design and varying their ability to create designs.

Q. Please turn to paragraph 134 of Exhibit 1003.

A. Okay.

Q. The first sentence of paragraph 134 reads, "Additionally, Reed and Nishida are directed to reducing costs associated with producing textile elements using the latest advances in knitting technology."

My question is: What are the latest advances in knitting technology that Reed uses?

A. So in referring to the types of variation in the knitting process to create outlines or to create the preseaming to -- to create designs within the outline in the pattern, I believe that that is based on technology's capabilities and based on the ability to program those machines to create operations that vary the design, vary the patterns, vary the -- vary whatever may influence what you -- what you can do with that particular technology.

Q. What are the latest advances in knitting technology that Nishida uses?

A. Nishida alludes to -- and if you go down to 135, it talks about "...produced directly in the production of the web of material in the desired shoe size...."

So I believe that it is -- he is anticipating and talking about the ability to use the program control web of material production devices after one-time creation of the program. So I believe that alludes to creating, again, what I described as a pattern with designs inside the pattern inside a web of materials.

Q. Okay. Mr. Holden, please go to Exhibit 1001.

(Exhibit 1001 was previously marked for identification.)

THE WITNESS: Yes, sir.

Q. (By Mr. Harris) Exhibit 1001 is U.S. Patent No. 7,814,598.

A. Uh-huh (affirmative). Yes, sir.

Q. And that's the -- the Nike patent at issue in IPR 2016-00921.

Please turn to page 19 of Exhibit 1001.

A. Yes, sir.

Q. I'm going to read to you the first full sentence under Column 9 on page 19 of Exhibit 1001. It starts at line 3 of Column 9.

A. Yes.

Q. It says, "Various types of stitches may also be formed with other types of knitting

stitches -- knitting machines. With reference to Figure 10, a textile element 40 prime with the general shape of textile element 40 is depicted as having various areas with different textures. For example, a central area that corresponds with instep region 33 has a first texture 46 prime that is generally smooth. In addition, textile element 40 prime includes a second texture 47 prime that is a plurality of longitudinal ribs."

So that passage of Exhibit 1001 describes two textures, a generally smooth texture and a ribbed texture.

A. Uh-huh (affirmative).

Q. Do you see that?

A. Uh-huh (affirmative).

Q. Is "generally smooth" a texture, in your opinion, Mr. Holden?

A. Smooth can be described as a texture or a lack of texture.

Q. Is "ribbed" a texture?

A. A specific type of texture.

Q. So what does "texture" mean to you in the context of this patent marked Exhibit 1001?

A. So -- so I'm not sure what you're talking about, the context of this, please.

Q. Okay. Let me ask it this way: What does "texture" -- what does the term "texture" mean to a person of ordinary skill in the art for the '598 patent marked as Exhibit 1001?

A. So let me refer to my -- 8 -- I'm not sure in this context I still understand what -- "texture."

So texture can reflect a variance, so one texture to another texture, or it can describe a specific type of texture.

Q. Do you have an opinion on what "texture" would mean to a person of ordinary skill in the art in the context of the '598 patent marked as Exhibit 1001?

A. Yeah. So my understanding of this would be when you are having those courses, when you're having the variation in the needle configurations and it is varying the color or the -- the -- the creation of an outline or the creation of a pattern or the creation of whatever it may be within the outline, those would be varying types of textures.

Q. So different colors, in your opinion, are different textures?

A. Different colors could be part of different textures --

Q. That's not my question.

Are the colors red and black different textures?

A. If you use different yarns, they would be.

Q. What if you used the exact same yarn type, one in color red, one in color black.

Would they have different textures?

A. Depending on how they were knitted. So if they were knitted in a pattern and that was a different --

Q. Okay. So the colors by themselves are not different textures. You could knit the -- the yarns in a way that would create a texture, like smooth or ribbed.

A. Uh-huh (affirmative).

Q. The color wouldn't have anything to do with it; correct?

A. Specifically the color would not necessarily denote a texture.

Q. Can you feel a texture?

A. Not necessarily. Texture, in my opinion, also has something to do with patterns, because people perceive certain patterns to have depth and -- and texture to them.

Q. What do you mean when you say "people

perceive certain patterns to have depth...to them"?

A. So if you knit a pattern that has black and red together, people perceive that sometimes to have a texture to it, to be a somewhat rough texture, even though one could make the argument that it's smooth.

Q. So in your hypothetical, if you knitted a pattern that has black and red together, would that pattern have a texture, in your opinion?

A. It may or may not.

Q. How would you determine whether that pattern has a texture?

A. So in this case, if you are creating an outline and it's in red and it may be just a different yarn than the -- the other parts that are not creating that outline, people still could perceive a texture to that, even though it may or may not be, you know, smooth or rough or another type of texture.

Q. So it may or may not have a texture, but someone could potentially perceive it as having a texture is what you're saying; correct?

A. And it -- it calls out. So even in some -- if you look at a picture, sometimes you'll see variations in the color scheme. You'll feel --

you'll -- you'll perceive that there's a texture.

In an outline, sometimes you will see an outline, whether it's printed or woven or however that -- that outline may have been embroidered or however it may be -- it may be the in- -- to feel it may be a texture that is rough or is raised or lowered, but people perceive it to be different textures because of the fact that it's called -- calling out different areas.

Q. So in your example of a rough or raised texture that someone could perceive as not necessarily being raised or rough, does that material actually have a texture, in your opinion?

A. I serve marketing, so if marketing wants to market a texture, then that's -- then they can call it a texture. So...

Q. I'm not asking for marketing's opinion --

A. No, no.

Q. -- I'm asking for your opinion.

A. Here's my -- my answer, and I'm sorry to give a long answer to this, but some people want lightweight. People can't always perceive lightweight, but it -- it gives the impression of being lightweight but it may not be lightweight. People can actually only feel about an eighth of a

pound of -- of difference, but there will be a perception because it's minimalistic or something like that where it's lightweight in the case of texture or even color that gives the impression of a texture.

Q. So if -- if I may, I think you're testifying that your interpretation of texture in the context of the '598 patent is whether a person would perceive a texture, whether or not there's an actual texture there --

MS. WILLIAMS: Object to the form.

Q. (By Mr. Harris) -- is that correct?

A. I'm saying in general, texture -- and -- and I believe you asked my opinion about texture in general -- as it relates to this patent, I've described basically, you know, during -- in -- in 107 on my declaration an example of texture.

So -- but my opinion is that there are different perceptions of texture.

Q. So, hypothetically, I understand that you're testifying there could be different perceptions of texture.

A. (Witness nodded head affirmatively.)

Q. I'm going to ask you a very specific question --

A. Sure.

Q. -- not a hypothetical.

A. Sure.

Q. I'm going to ask you a question about the '598 patent --

A. Sure.

Q. -- that's marked as Exhibit 1001.

A. Uh-huh (affirmative).

Q. In the '598 patent, does the term "texture" refer to the perception of texture or does it refer to an actual texture?

A. Insomuch as it's saying that there is -- the patent is talking about the texture difference, I -- my -- my conclusion is basically that when you change -- even change color, that can change the impression of texture.

Q. Your opinion is that changing color changes the impression of texture?

A. Uh-huh (affirmative).

Q. Is it also your opinion that changing color changes texture? Not the impression of texture, but the actual text- -- texture itself.

A. I believe that if you're using a different yarn, that there's going to be a variation and that it will create a different texture.

Q. And how would you know that the texture's different? How would you test that?

MS. WILLIAMS: Object to the scope.

THE WITNESS: Yeah, I mean, I -- I really haven't in this particular case.

Let's talk about -- I can give you another example of leather softness. Okay? Leather softness, there's a -- a gauge that you can test the softness of leather, but in reality, that's people's impression or feel of that leather, which is the -- the -- the softness that is perceived.

So there are ways of testing the hardness or softness of a material, but, again, that texture is -- also can be denoted on a -- on -- if I'm looking at -- at a -- a pattern that goes from one color to another, it is giving the impression of a texture difference.

Q. (By Mr. Harris) Okay. So let me just try to summarize --

A. Yeah.

Q. -- that.

And -- and -- and I want to come back to the '598. I'm not talking about hypotheticals --

A. Yeah.

Q. -- okay?

So if I've understood your testimony correctly --

A. Uh-huh (affirmative). Uh-huh (affirmative).

Q. -- your position is that a person of ordinary skill in the art would consider the term "texture" in the '598 patent marked as Exhibit 1001 to refer to the actual te- -- texture and perception of texture?

A. I'd say that's my opinion, yes.

Q. All right. Thank you.

MR. HARRIS: So let's take a short break, because I think we're close to being finished --

MS. WILLIAMS: Okay.

MR. HARRIS: -- but I just want to go check on a few things.

VIDEOGRAPHER: Okay. We are off the record. The time is 3:11.

(Thereupon, there was an interruption in the proceedings.)

VIDEOGRAPHER: And we are back on the record. The time is 3:23.

MR. HARRIS: Thanks. So we don't have any

further questions pending any redirect that you do.

MS. WILLIAMS: I don't have any redirect.

MR. HARRIS: Okay. All right. So that's it.

So we'll have you review and sign the transcript --

THE WITNESS: Okay.

MR. HARRIS: -- in a couple days.

THE WITNESS: Okay. Very good.

MR. HARRIS: Thank you.

THE WITNESS: Thank you very much.

VIDEOGRAPHER: This concludes this videotaped deposition. The time is 3:23. We're off the record.

(Deposition concluded at 3:23 p.m.)

(Pursuant to Rule 30(e) of the Federal Rules of Civil Procedure and/or O.C.G.A. 9-11-30(e), signature of the witness has been reserved.)

Patent No. 7,814,598

C E R T I F I C A T E

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I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages represent a true, complete, and correct transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.



LEE ANN BARNES, CCR B-1852, RPR, CRR

Patent No. 7,814,598

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_____, 2017

To: Tiffany Williams, Esq.

Case Name: Adidas Ag v. Nike, Inc.

Veritext Reference Number: 2511696

Witness: Lenny M. Holden Deposition Date: 1/10/2017

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature at the bottom of the sheet notarized except in California where they are signing under penalty of perjury and forward the errata sheet back to us at the address shown above.

If the jurat is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,

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Encl.

cc: Michael J. Harris, Esq.

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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EXHIBIT 2004

VERITEXT LEGAL SOLUTIONS
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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adidas AG
Petitioner,

v.

NIKE, Inc.
Patent Owner

Case IPR2016-00921
Patent No. 7,814,598

PATENT OWNER RESPONSE UNDER 37 C.F.R. § 42.120

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EXHIBIT LIST

Ex. 2004 Transcript of the Deposition of Lenny M. Holden (January 10, 2017)

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Patent Owner NIKE, Inc. submits this response to the petition by adidas AG seeking an IPR of claims 1-13 of U.S. Patent No. 7,814,598 (Ex. 1001) as obvious over Reed (Ex. 1006) and Nishida (Ex. 1009).

I. INTRODUCTION

NIKE is a worldwide leader in the design and development of athletic footwear. Its foundational purpose is simple: to innovate. True to that purpose, NIKE spent years designing and developing the technology in the '598 patent and its family – technology that has revolutionized the footwear industry.

The '598 patent at issue here is directed to a method of manufacturing footwear. An article of footwear typically has two primary elements, an upper and a sole structure. The upper covers the foot. The sole structure is below the upper between the foot and the ground.

Before the '598 patent, footwear manufacturers made uppers by piecing together multiple different materials to impart different properties to different areas of the upper. This process often required sourcing materials from multiple suppliers, operating multiple machines, and coordinating multiple assembly line techniques, manufacturing steps, and individuals.

NIKE recognized that conventional method of making uppers was inefficient, and NIKE addressed those inefficiencies in the '598 patent and its family. The patent recites, among other things, mechanically-manipulating a yarn

with a circular knitting machine to form a cylindrical textile structure and removing at least one textile element (e.g., an upper) from the textile structure. The textile element (e.g., an upper) may have different areas formed of different stitch configurations to impart varying textures. The textile element (e.g., an upper) is incorporated into an upper of an article of footwear. In this way, the textile element (e.g., an upper) is formed of a single knitted material, but may have different textures or properties in different areas like a conventional upper made from multiple materials.

Instead of innovating like NIKE, Petitioner seeks a shortcut by challenging NIKE's patents. Petitioner does not dispute that the claims of the '598 patent are novel and not anticipated. Petitioner instead contends NIKE's claims would have been obvious to a person of ordinary skill.

Petitioner bases its obviousness challenge on the combination of two references that are very different from NIKE's invention. Reed is not directed to footwear, but rather to a specific type of garment made on a specific type of machine; namely, a garment made of two juxtaposed panels that are formed and seamed together during the knitting process on a circular double knitting machine. These garments include skirts, shirts, and dresses. Nishida is directed to a conventional method of making footwear uppers and related sole parts using multiple materials. The examiner analyzed Nishida during prosecution and

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allowed the claims of the '598 patent.

Because of the many differences between NIKE's claims and the prior art, Petitioner fails to carry its burden of proving unpatentability. First, Petitioner concedes the level of ordinary skill in the art at the time of the invention was low. Petitioner contends a person of ordinary skill had only "a few years of experience" in the footwear industry and did not have knitting experience, let alone experience using knitting technologies to create uppers. This low level of skill precludes Petitioner from proving obviousness in this case.

Second, Petitioner fails to properly analyze the full scope and content of the prior art. Petitioner ignores relevant disclosure in Reed and Nishida that is critical to the obviousness analysis. For example, Petitioner ignores that Reed is directed to preseamed garments and that Nishida is directed to printing or producing layouts of footwear uppers and related sole parts on a preexisting backing.

Third, Petitioner fails to show that a person of ordinary skill in the art would have been aware of the problem the '598 recognized and addressed. Petitioner's failure to provide any evidence on this point is underscored by the age of Reed and Nishida, and the passage of time between that prior art and the invention.

Fourth, Petitioner fails to shown that Reed is "analogous art" for purposes of its obviousness challenge. That is, even if a person of ordinary skill had been aware of the problem the '598 patent recognized and addressed, Petitioner has not

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shown that the person of ordinary skill would have looked to knitting technologies in other industries, such as Reed, to solve the problem.

Fifth, Petitioner fails to establish *why* a person of ordinary skill in the art would have been motivated to combine Reed and Nishida to derive the claimed subject matter with a reasonable expectation of success. Petitioner instead provides conclusory, and incorrect, arguments that Reed and Nishida are analogous art and directed to solving similar problems. But, even if that were true, it is not enough to establish a motivation to combine.

Sixth, Petitioner fails to show *how* a person of ordinary skill in the art would have combined Reed and Nishida. That is significant here because combining the teachings of Reed and Nishida would render Reed inoperable for its intended purpose of creating preseamed garments. Reed also teaches away from the combination. For these reasons, Petitioner cannot establish that a person of ordinary skill in the art would have been motivated to combine Reed and Nishida.

Seventh, Petitioner fails to address the differences between the prior art and the challenged claims. Even if a person of ordinary skill would have been motivated to combine Reed and Nishida, which is not the case, neither reference discloses certain limitations in some of the challenged claims.

In sum, Petitioner fails at carry its burden. NIKE requests that the Board enter a final written decision affirming the patentability of the challenged claims.

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II. OVERVIEW OF THE '598 PATENT

A. THE INVENTION IS DIRECTED TO A METHOD OF MANUFACTURING AN ARTICLE OF FOOTWEAR USING KNITTING TECHNOLOGY

The challenged claims are directed to methods of manufacturing an article of footwear. (Ex. 1001, 11:43-12:48.) Claim 1 is illustrative:

Claim 1 of the '598 Patent

1. A method of manufacturing an article of footwear, the method comprising steps of:

mechanically-manipulating a yarn with a circular knitting machine to form a cylindrical textile structure;

removing at least one textile element from the textile structure;

incorporating the textile element into an upper of the article of footwear.

B. THE INVENTION ADDRESSED INEFFICIENCIES WITH CONVENTIONAL METHODS OF MANUFACTURING THAT USED MULTIPLE MATERIALS TO CREATE FOOTWEAR UPPERS

Conventional methods of manufacturing footwear involve creating uppers out of multiple materials to impart different properties to different areas of the upper. (Ex. 1001, 1:54-3:2.) For example, the "toe area and the heel area [of the upper] may be formed of leather, synthetic leather, or a rubber material to impart a relatively high degree of wear-resistance." (*Id.*, 1:61-63.) The areas of the upper between the toe and heel areas "may be formed from a synthetic or natural textile" to impart "flexibility" or "air-permeability" to those areas. (*Id.*, 1:63-2:3.)

From the perspective of manufacturing, "utilizing multiple materials to impart different properties to an article of footwear may be an inefficient practice."

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(Ex. 1001, 3:3-5.) For example, the "various materials utilized in a conventional upper are not generally obtained from a single supplier." (*Id.*, 3:5-7.) A manufacturer, therefore, "must coordinate the receipt of specific quantities of materials with multiple suppliers that may have distinct business practices or may be located in different regions or countries." (*Id.*, 3:7-11.) The materials "may also require additional machinery or different assembly line techniques to cut or otherwise prepare the material for incorporation into the footwear," and "incorporating separate materials into an upper may involve a plurality of distinct manufacturing steps requiring multiple individuals." (*Id.*, 3:11-16.)

The '598 patent recognized and addressed these inefficiencies. (Ex. 1001, 11:43-12:48.) Figure 9 of the patent, reproduced below, shows an example of a cylindrical textile structure with knitted textile elements that have been formed by mechanically-manipulating a yarn with a circular knitting machine. (*Id.*, 4:13-14.)

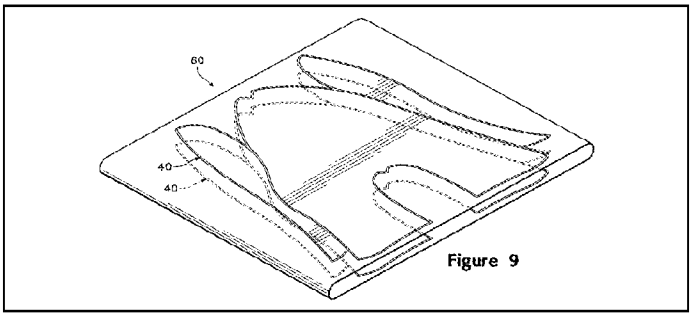


Figure 9

The knitted textile elements are labeled 40 and the surrounding knitted textile structure is labeled 60. (Ex. 1001, 7:38-8:8.) The "textile structure 60 has a generally cylindrical configuration" because it was knitted on a circular knitting

machine. (*Id.*, 7:40-41.) During the knitting process, the types of stitches may be varied throughout the textile structure "so that a pattern is formed with the outline of textile element 40." (*Id.*, 7:41-43.) The "differences in the stitches within textile structure 60 form an outline with the shape and proportions of textile element 40." (*Id.*, 7:43-45.) The knitted textile elements may also have a texture that differs from a texture in the surrounding knitted textile structure. (*Id.*)

After the circular knitting machine is finished knitting the textile elements and surrounding textile structure, the entire structure is removed from the machine. (Ex. 1001, 8:4-8.) Each textile element is then cut from the surrounding textile structure "with a die-cutting, laser-cutting, or other conventional cutting operation." (*Id.*) Figure 8 of the '598 patent, reproduced below, shows what a knitted textile element may look like after it has been knitted on the knitting machine and then cut from the surrounding textile structure. (*Id.*, 5:59-60.)

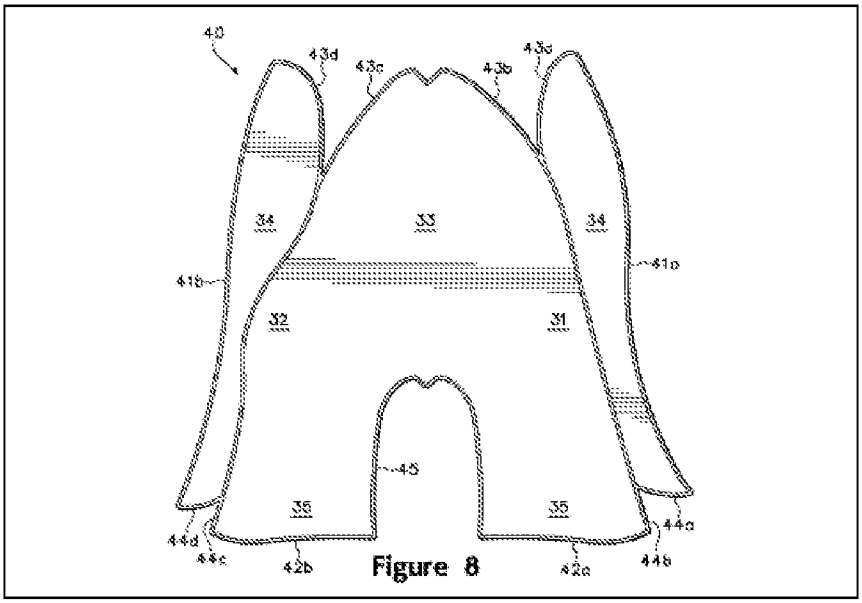


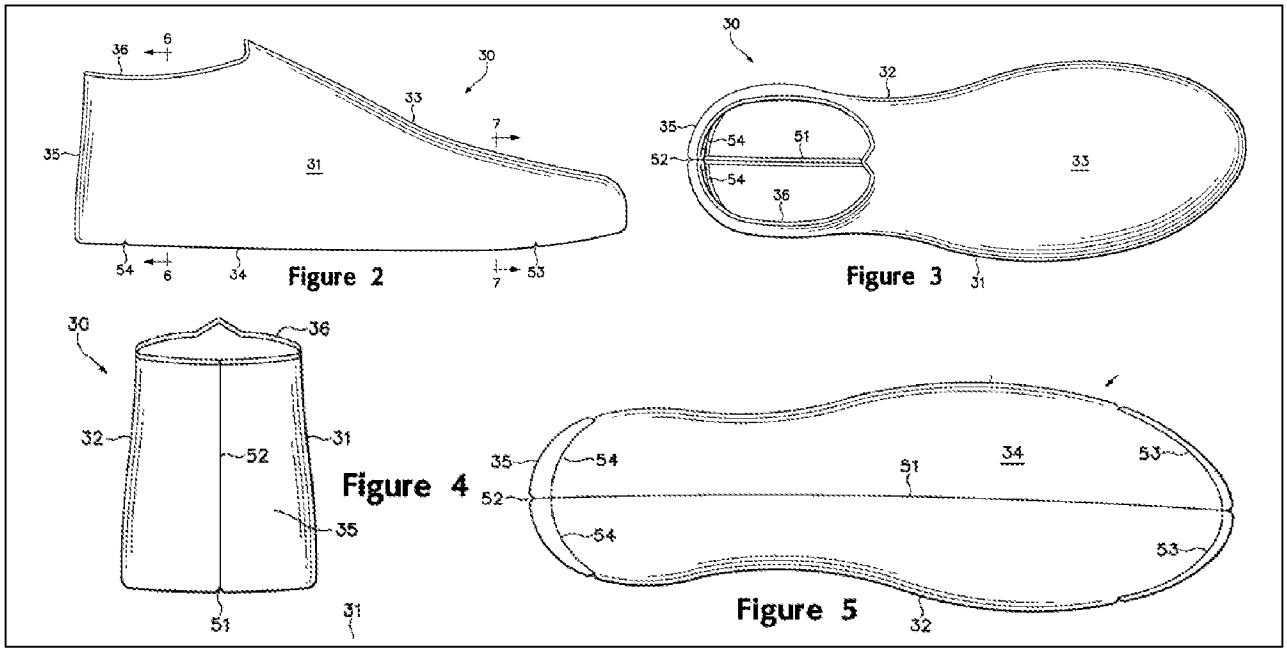
Figure 8

The "textile element 40 is a single material element that is formed to exhibit a unitary (*i.e.*, one-piece) construction, and textile element 40 is formed or otherwise shaped to extend around the foot." (Ex. 1001, 5:40-43.) The area of textile element labeled 32 is the lateral region of the upper, the area labeled 32 is the medial region, the area labeled 33 is the instep region, the area labeled 34 is the bottom surface, and the area labeled 35 is the heel region. (*Id.*, 5:21-36.)

The textile element may have a "generally planar configuration" after it is removed from the surrounding textile structure. (Ex. 1001, 6:13-14.) That is, the knitting machine does not fold or seam the edges of the textile element, labeled 41a-44d in Figure 8 above, to form an upper during the knitting process. (*Id.*, 5:40-43.) Rather, after the textile element is removed from the surrounding textile structure, the edges of the generally planar textile element must then be folded and seamed to form an upper. (*Id.*, 5:59-6:29.) In the example shown in Figure 8, edges 41a and 41b are folded or otherwise overlapped so that 41a is placed adjacent to 41b. (*Id.*, 6:9-11.) The edges 41a and 41b are then seamed together by, for example, "stitching, an adhesive, or heat bonding." (*Id.*, 6:11-13.) Similarly, edges 42a and 42b are folded and seamed together, edges 43a and 43b are folded and seamed together, edges 43c and 43d are folded and seamed together, edges 44a and 44b are folded and seamed together, and edges 44c and 44d are folded and seamed together. (*Id.*, 5:64-6:29.) Folding and joining these edges forms seams

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51-54, which are shown in Figures 2-5 of the '598 patent reproduced below. (*Id.*, 5:59-62.)



The knitted textile element, or upper, may also have different areas with different textures that may be formed by varying the type of stitch during the knitting process. (Ex. 1001, 9:29-10:7.) Additionally, the knitted textile element may have areas with apertures that are formed by omitting stitches at specific locations during the knitting process. (*Id.*) For example, Figure 11 of the '598 patent, reproduced below, shows a knitted textile element with at least three different areas with three different textures. (*Id.*, 9:31-32.) They include a first area with a first texture 46" that is generally smooth, a second area with a second texture 47" that is generally rough, and a third area with a third texture 48" that is different that the first and second textures. (*Id.*, 9:29-57.) The third texture also

includes a plurality of apertures that extend through the upper. (*Id.*, 9:47-53.)

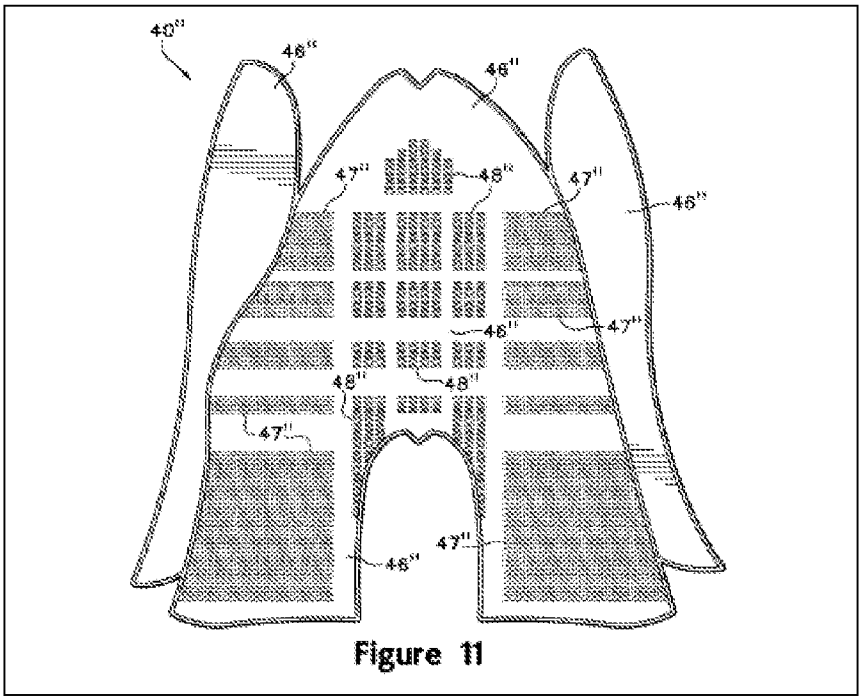


Figure 11

The manufacturing of the upper is essentially complete after the knitted textile element is removed from the surrounding textile structure and then seamed as described above. (Ex. 1001, 6:30-31.) The upper is formed of a single material but may still have different properties in different areas. (*Id.*) The upper may then be secured to a sole structure to complete the article of footwear. (*Id.*, 6:33-34.)

C. DURING PROSECUTION, THE EXAMINER CONSIDERED THE PRIOR ART THAT PETITIONER NOW RELIES ON IN ITS CHALLENGE

The examiner analyzed Nishida and the Chinese publication of Nishida (CN 1067566A) during prosecution of the '598 patent. (Ex. 1002, 314.) Petitioner acknowledges this fact at least three times in its petition. (Pet. 5, 11-12, 49-50.) Petitioner does not attempt to dispute, challenge, or rebut the examiner's findings

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regarding Nishida's disclosure. (*Id.*) Instead, Petitioner argues the examiner did not consider Nishida in combination with Reed. (*Id.*) That is technically true, but the examiner considered prior art knitting machines like Reed. The specification of the '598 patent itself describes prior art circular knitting machines. (Ex. 1001, 7:46-63.)

The examiner also analyzed Nishida in detail during prosecution of NIKE's U.S. Patent No. 8,266,749, which is a continuation of the '598 patent and currently at issue in Petitioner's IPR2016-00922. (*See* IPR2016-00922, Paper 9.) As NIKE explains in its response to that IPR petition, the examiner determined that Nishida discloses printing or producing layouts on a preexisting backing of material. (*Id.*)

III. PETITIONER FAILS TO CARRY ITS BURDEN OF PROVING THAT CLAIMS 1-13 ARE UNPATENTABLE

Petitioner has "the burden of proving a proposition of unpatentability by a preponderance of the evidence." 35 U.S.C. § 316(e). There are two distinct burdens of proof: a burden of persuasion and a burden of production. *In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1375-77 (Fed. Cir. 2016). Both burdens are on Petitioner and never shift to NIKE. *Id.* at 1376 (rejecting argument that burdens shift to patent owner once Board institutes IPR).

A. LEGAL STANDARD

A claim is obvious only "if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole

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would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." 35 U.S.C. § 103(a) (pre-AIA); *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The ultimate determination is a question of law, but it is based on underlying factual findings. *In re Nuvasive, Inc.*, 842 F.3d 1376, 1381 (Fed. Cir. 2016). The facts include (1) "the scope and content of the prior art," (2) "differences between the prior art and the claims at issue," (3) "the level of ordinary skill in the pertinent art," and (4) the presence of secondary considerations of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). Petitioner's arguments fail as to all of the *Graham* factors at issue here.

B. PETITIONER CONCEDES THE LEVEL OF ORDINARY SKILL IN THE ART AT THE TIME OF THE INVENTION WAS LOW

A determination of obviousness requires a finding of the level of ordinary skill in the art at the time of the invention. *Graham*, 383 U.S. at 17. The "level of skill in the art is a prism or lens through which … the Board views the prior art and the claimed invention." *Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001). This reference point prevents a factfinder from using its "own insight or, worse yet, hindsight, to gauge obviousness." *Id.*

To determine the level of ordinary skill, the Board considers various factors, including "1) the types of problems encountered in the art; 2) the prior art solutions to those problems; 3) the rapidity with which innovations are made; 4) the

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sophistication of the technology; and 5) the educational level of active workers in the field." *Ruiz v. A.B. Chance Co.*, 234 F.3d 654, 666–67 (Fed. Cir. 2000); *Wangs Alliance Corp. v. Koninklijke Philips N.V.*, IPR2015-01290, Paper 63, 13-16 (Nov. 23, 2016). It is more difficult to establish obviousness under a lower level of ordinary skill. *Kinetic Concepts, Inc. v. Smith & Nephew, Inc.*, 688 F.3d 1342, 1366 (Fed. Cir. 2012).

Petitioner fails to analyze the Board's factors or any other factors for determining the level of ordinary skill. (Pet. 8-9.) Petitioner instead provides a conclusory description of what it contends is the level of ordinary skill. (*Id.*; Ex. 1003 at ¶ 34.) In doing so, Petitioner concedes the level of ordinary skill was low, stating that a person of ordinary skill would have only "a few years of experience in the footwear industry." (*Id.*)

Petitioner describes the skills it contends a person with "a few years of experience" would possess, including an "understanding" of the product cycle for bringing a product to market, an "understanding that there are some key review milestones" during the product cycle when "upper material designs are reviewed," an "understanding" of "typical" construction methods, and an "understanding" of the "material choices" and "construction techniques and processes" used to create conventional shoes. (*Id.*) Absent from Petitioner's description is any knitting experience, let alone experience using knitting technologies to create knitted

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footwear uppers. (*Id.*)

Petitioner's alleged footwear expert, Mr. Holden, confirmed during his cross-examination that a person with just "a few years of experience in the footwear industry" would have no knitting experience. Mr. Holden, who has nearly forty years of experience in the footwear industry and who Petitioner contends has extraordinary skill in the art, testified that even today – thirteen years after the invention of the '598 patent – he has no meaningful knitting experience. For example, Mr. Holden admitted that he has never used knitting technologies to design or create knitted footwear uppers. (Ex. 2004, 60:16-22, 71:22-73:3, 73:23-74:14.) He admitted he has never operated or programmed a knitting machine. (Ex. 2004, 70:19-71-15.) He admitted he has never removed a knitted upper from a web of material and processed it into a shoe. (Ex. 2004, 73:4-18.) In fact, Mr. Holden testified he never would have been allowed to do any of those things because it would have been too "dangerous." (Ex. 2004, 71:25-72:25, 74:3-75:9.) If it was too "dangerous" for Mr. Holden with his nearly forty years of experience, a person with just a "few years of experience" would not have had any knitting experience, let alone experience using knitting technologies to create uppers.

In sum, the level of ordinary skill in the art at the time of the '598 patent was low. It is more difficult, therefore, for Petitioner to establish obviousness, and Petitioner cannot overcome that more difficult hurdle as discussed below.

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C. PETITIONER'S EXPERT DECLARATION SHOULD BE GIVEN NO WEIGHT

Mr. Holden's declaration should be given no weight for several reasons. First, Mr. Holden's declaration is no more than an "expertized" version of the petition. (Ex. 1003). He admitted during cross-examination that Petitioner's counsel wrote the declaration for him. (Ex. 2004, 12:5-11.) The declaration should be given no weight for this reason alone. *See, e.g.*, *InfoBionic, Inc. v. Braemar Manufacturing, LLC*, IPR2015-01704, Paper 11 (declaration that merely parrots petition given no weight).

Second, during cross-examination, Mr. Holden was unable to answer basic questions about the patent, the prior art, footwear, knitting technologies, and the declaration Petitioner's counsel prepared for him. For example, Mr. Holden used the term "stitch configuration," which is a claim term in the '598 patent, at least twenty times (excluding quotations) in his declaration, but during cross-examination he was unable to define the term. (Ex. 2004, 78:22 – 79:18; Ex. 1003, ¶¶ 42, 72, 81, 117, 119, 134, 148, 169, 181, 182, 201, 206.) Mr. Holden also states in his declaration that he "had discussions with [Petitioner's] external knitting consultant to confirm [his] understanding of certain stitch configurations," but during cross-examination he testified he did not discuss "stitch configurations" with the consultant. (Ex. 2004, 111:11–116:7; Ex. 1003, ¶ 81.) After being pressed to give a definition of "stitch configurations" during cross-examination,

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Mr. Holden offered the incoherent testimony that "as it applies to almost any type of configuration, basically it is -- it relates to the design, possibly the outline, of how a process is applied." (*Id.*, 78:22-79:18.)

Similarly, Mr. Holden was unable to explain during cross-examination what the term "texture" means in the context of the '598 patent even though he uses that term in his declaration. (Ex. 2004, 176:22 – 184:11.) After being pressed to give a definition, Mr. Holden testified that "texture" may mean "actual texture" or it may mean the "appearance of texture." (*Id.*) Mr. Holden even offered the incredible testimony that a color is texture in the context of the '598 patent. (*Id.*) Mr. Holden gave that testimony, despite the fact that Petitioner (and Mr. Holden by way of the declaration that Petitioner prepared for him) argued in the petition that "texture" should be given its "ordinary and customary meaning," which does not include "appearance of texture" or "color." (Pet. 7.)

Mr. Holden was also unable to define the terms "knit interlock stitch," "interknitted stitch," and "non-interknitted stitch," which are all terms Reed uses to describe his invention. (Ex. 2004, 76:8 – 81:18.) Mr. Holden testified that he was not even familiar with those terms until this proceeding, and that the only way he would know what they mean is if he looked them up in the Spencer reference marked as Exhibit 1010, which Mr. Holden read for the first time during this proceeding. (*Id.*) Because Mr. Holden is not familiar with "knit interlock stitches,"

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"interknitted stitches," and "non-interknitted stitches," he also testified that he does not know what textures those stitches provide. (Ex. 2004, 80:24 – 81:8.)

Mr. Holden also testified that he does not understand portions of Nishida's description of the invention disclosed in Nishida. (Ex. 2004, 162:19 – 168:2.) For example, Nishida states "this invention relates to a process for the production of a shoe shaped part using a web of material with a plurality of patterns in the form of the layout of a shoe upper, cutting out these layouts from the web of material and stitching the parts of the shoe upper to a top part . . . ." (Ex. 1009, 1:10-15.) Mr. Holden was asked during cross-examination what Nishida means when it says "cutting out these layouts from the web of material and stitching the parts of the shoe upper to a top part." (Ex. 2004, 163:3 – 168:2.) Mr. Holden testified that he is not "really clear exactly what that means" and then proceeded to testify that he "assumed" Nishida might be referring to stitching a "sock." (*Id.*)

Mr. Holden also testified that he did not review or analyze the patent that Nishida intended to improve upon. (Ex. 2004, 167:11-20.) Nishida states the "primary object of this invention is to further develop" the "process" for making shoe parts described in German Patent No. 627 878. (Ex. 1009, 1:10-46.) Mr. Holden did not review or analyze that patent. (Ex. 2004, 167:11-20.)

Mr. Holden was also unable to answer many other basic questions during cross-examination. For example, he was unable to describe the difference between

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weaving and knitting. (Ex. 2004, 81:9-18.) He was also unable to identify a single difference between footwear and apparel/garments. (*Id.*, 39:16 –40:1.)

In sum, Mr. Holden did not author his declaration and, during cross-examination, he was unable to answer basic questions about the declaration, the patent at issue, the prior art, footwear, and knitting technologies. Mr. Holden's declaration is not helpful, and it should be given no weight.

Petitioner may criticize NIKE for not submitting an expert declaration. But it is Petitioner's burden to prove unpatentability; it is not NIKE's burden to prove patentability. *Magnum Oil*, 829 F.3d at 1375–77. There is no reason to require NIKE to submit an expert declaration, particularly here where the '598 patent and the prior art references themselves confirm that Petitioner fails to carry its burden. *See, e.g., VirnetX Inc. v. Apple Inc.*, No. 2015-1934, 2016 WL 7174130, at *3 (Fed. Cir. Dec. 9, 2016) (rejecting argument that expert testimony is necessary for the PTAB to make findings regarding what a person of ordinary skill would have understood with respect to prior art references); *In Belden Inc. v. Berk–Tek LLC*, 805 F.3d 1064, 1079 (Fed. Cir. 2015) ("[n]o rule requires ... an expert [to] guid[e] the [PTAB] as to how it should read prior art" and PTAB "members, because of expertise, may more often find it easier to understand and soundly explain the teachings and suggestions of prior art without expert assistance."); *Shinn Fu Company of America, Inc., et al., v. The Tire Hanger Corporation*, IPR2015-

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00208, Paper 24 (April 22, 2016) (granting patent owner's motion to amend and finding proposed claims patentable where patent owner did not file an expert declaration, relying instead on express disclosures in the prior art and the challenged patent).

D. PETITIONER FAILS TO PROPERLY ANALYZE THE FULL SCOPE AND CONTENT OF THE PRIOR ART

All relevant teachings of a cited reference must be considered in determining what it fairly teaches to one having ordinary skill in the art. *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.*, 796 F.2d 443, 448 (Fed. Cir. 1986) ("It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one skilled in the art.") Petitioner, however, provides only a cursory discussion of Reed and Nishida that ignores critical disclosure of both references. (Pet. 10-12.) In doing so, Petitioner improperly fails to address the full scope and content of the prior art. Below NIKE provides the scope and content of Reed and Nishida.

1. Reed teaches using a circular double knitting machine to knit two juxtaposed panels of a garment and to seam them together during the knitting process

Reed states that his "***present invention*** relates generally to knitted garments and more particularly to a ***garment*** which is ***preseamed*** and preformed on a ***circular knitting machine***." (Ex. 1006, 1:8-11.) That description of the "present

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invention" limits the scope of Reed to preseamed garments made on circular knitting machines. *See, e.g., Pacing Techs., LLC v. Garmin Int'l, Inc.*, 778 F.3d 1021, 1024 (Fed. Cir. 2015) (if inventor describes the "present invention" as a whole, the scope of the invention is limited to what the inventor describes); *Regents of Univ. of Minn. v. AGA Med. Corp.*, 717 F.3d 929, 936 (Fed. Cir. 2013) (if inventor "describes the features of the 'present invention' as a whole," the inventor alerts the reader that "this description limits the scope of the invention").

The remainder of Reed's disclosure describes what he means by preseamed garments, and it confirms that Reed is limited to using a circular knitting machine to make preseamed garments. Reed explains that, in the prior art, "clothing in the garment industry is generally made by superimposing one fabric over another, cutting it into panels to conform to the shape of the individual according to current fashion, seaming along the outer edges of the panel and attaching various parts, by stitching to form seams, until a complete garment is formed." (Ex. 1006, 1:13-19.) Reed criticizes those conventional methods as inefficient uses of "time, cost and labor." (*Id.*; *see also id.*, 6:18-22.) Indeed, the conventional methods involved superimposing two preexisting panels of material, forming a garment into those preexisting panels, cutting the shaped garment from the two preexisting panels, and then seaming the two cutouts together to create the final garment. (*Id.*)

Reed's solution is to use a circular double knitting machine to create

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finished, or nearly finished, garments that are preseamed by the knitting machine during the knitting process. (Ex. 1006, 1:58-2:16.) The circular double knitting machine simultaneously knits two juxtaposed panels (*e.g.*, a front and back panel of a garment) and seams them together at their edges, all during the knitting process. (*Id.*; *see also id.*, 6:25-28.)

More specifically, Reed explains that his "present invention uses an electronic circular double knitting machine programmed to simultaneously knit two concentric tubes . . . and additionally programmed to interconnect the two concentric tubes by a knit interlock stitch to form the outline of the design of a garment." (Ex. 1006, 1:58-64.) The "resulting knitted structure will have two layers of single fabric knitted or seamed together in the shape of the desired garment wherein the anatomy of the user would fit between the single knitted fabrics." (*Id.*, 1:64-68.) The "garment has a first surface formed from portions of one tube and a second surface formed from a juxtaposed portion of the other tube." (*Id.*, 2:1-3.) The garment is then cut from the tube "and turned inside out if a hidden seam is desired." (*Id.*, 2:14-16.)

Figure 1 in Reed, reproduced below, shows an example of a knitted structure as "it would come off a circular double knit knitting machine" in accordance with his invention. (Ex. 1006, 2:66-68.) A circular double knitting machine is "a machine that has two separate sets of needles." (*Id.*, 3:36-41.) In other words, a

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circular double knitting machine knits two concentric tubes of material. (*Id.*)

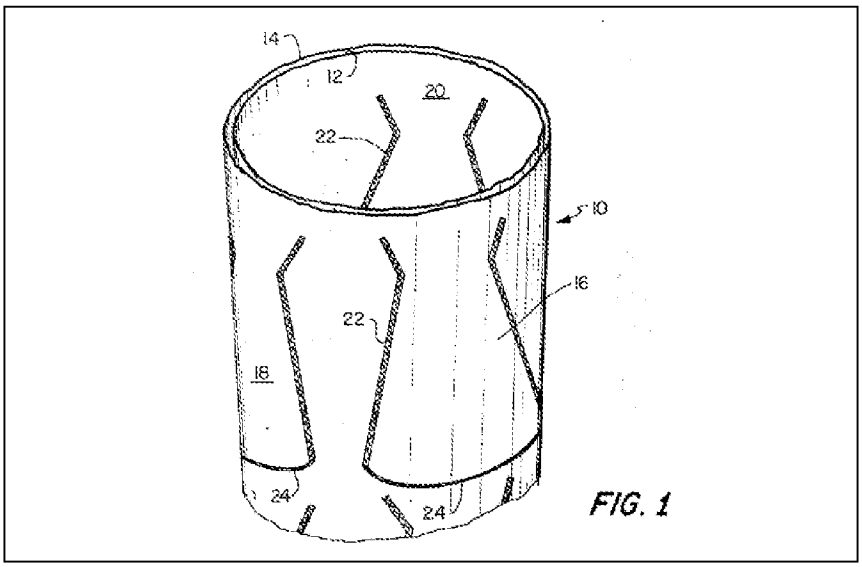


FIG. 1

The knitted structure, labeled 10, has an inner tube, labeled 12, and an outer tube, labeled 14. (*Id.*, 3:1-3.) The outer tube 14 is "concentric to, and encompasses, the inner tube 12." (*Id.*) The "tubes 12 and 14 are simultaneously knitted concentrically" on the circular double knit machine. (*Id.*, 3:3-5.)

In the example shown in Figure 1, the knitted structure 10 includes three garments which, for example, may be skirts 16, 18 and 20. (Ex. 1006, 3:5-7.) The "garments 16, 18 and 20 are outlined by a plurality of interconnecting knitted stitches 22 and 24" that the circular double knitting machine stitches during the knitting process. (*Id.*, 3:8-9.) The "interconnecting knitting 22 not only forms the outline 10 of the garments 16, 18 and 20, but joins the inner tube 12 to the outer tube 14 so as to create a seam." (*Id.*, 3:9-12.) That is, the skirts are preseamed by the circular double knitting machine during the knitting process. (*Id.*) In this way,

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"the knitted structure 10 includes (around its circumference) a plurality of finished garments which need only be severed from the structure 10 and turned inside out if a hidden seam is desired." (*Id.*, 3:15-19.)

Finally, Reed identifies a number of "objects of the invention," including providing "a method for preseaming and preforming knitted garments" and providing "a method of reducing the cost of manufacturing of garments by using the versatility of a computerized electronic knitting machine." (Ex. 1006, 2:19-40.) Reed states that all of his "objects of the invention" are "obtained" by producing "a preformed and preseamed fabric on a circular knitting machine so as to reduce time, cost and labor involved in making garments." (*Id.*, 6:18-22.)

2. Nishida teaches printing or producing layouts for footwear uppers and related sole parts on a preexisting backing of material

Nishida states that the "primary object of this invention is to further develop" the "previously known process" for making shoe parts described in German Patent No. 627 878 (the "German Patent"). (Ex. 1009, 1:10-46.) The German Patent teaches producing a web of material with successive strips of different weaves. (Ex. 1009, 1:20-22.) A first strip has a weave that is suitable for the counter-stiffener portion of a shoe upper. (Ex. 1009, 1:24-30.) A second strip has a weave that is suitable for the vamp and the side portions of a shoe upper. (Ex. 1009, 1:26-30.) A third strip has a weave that is suitable for the toe cap of a

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shoe upper. (Ex. 1009, 1:27-30.)

The German Patent then teaches printing patterns in the form of U-shaped layouts directly onto that preexisting web of material. (Ex. 1009, 1:22-24.) The U-shaped layouts are patterns of shoe uppers and they are printed onto the web of material in an arrangement such that the portions of the U-shaped layouts that correspond to the counter-stiffener are printed onto the first strips, the portions of the U-shaped layouts that correspond to the vamp and side portions are printed onto the second strips, and the portions of the U-shaped layouts that correspond to the toe cap are printed onto the third strips. (Ex. 1009, 1:27-30.) After the U-shaped layouts have been printed onto the preexisting web of material, the U-shaped parts are cut out, and then folded and seamed together to create an upper. (Ex. 1009, 1:34-37.) But, according to Nishida, the upper does not have a bottom surface, which Nishida refers to as the "related sole part." (*Id.*)

Nishida sought to address the German Patent's failure to produce the "related sole part." (Ex. 1009, 1:40-47.) Nishida states that "the primary object of this invention is to further develop this previously known process [described in the German Patent] ***so that a shoe upper, in many cases, can be configured together with the related sole part.***" (*Id.*)

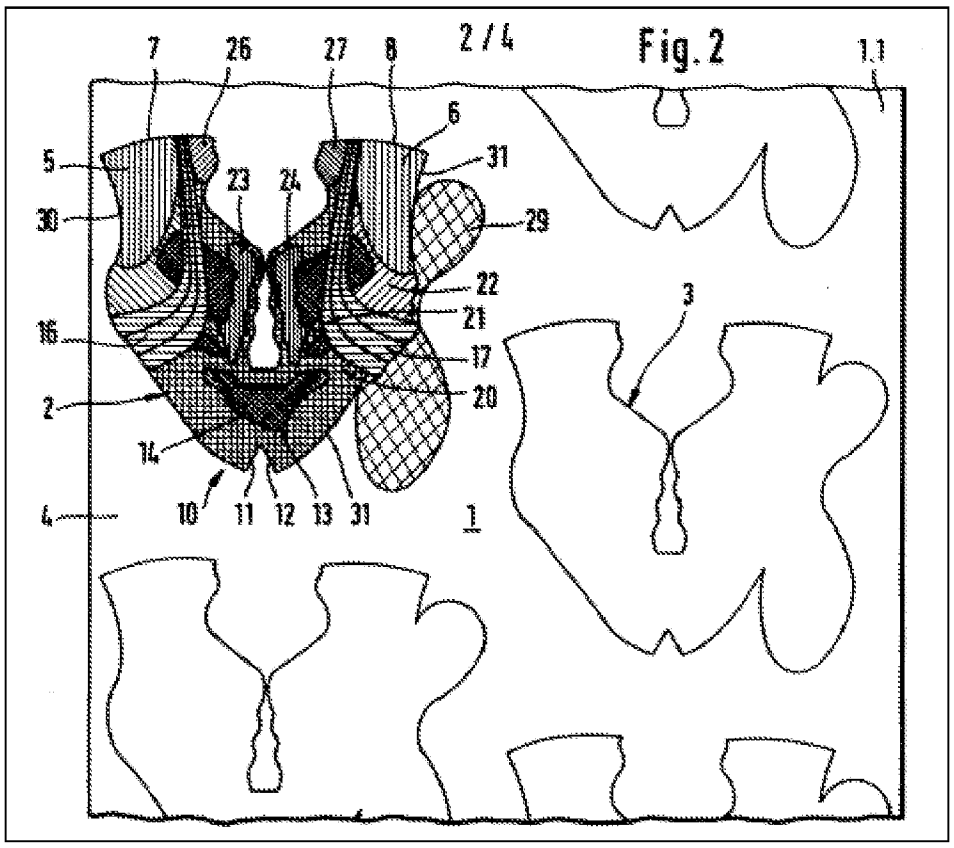
Nishida teaches achieving that objective by producing a web of material just like in the German Patent. (Ex. 1009, 1:48-2:53.) The web of material has two

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primary components – a preexisting backing and one or more layouts printed or produced on the backing. (*Id.*, 1:40-2:53 and 3:6-26.) The backing is formed prior to the production of the layouts. (*Id.*) The backing "can be a conventionally used material formed, for example, of a warp and filling or a knitted fabric." (Ex. 1009, 3:13-15.)

After the backing is formed, Nishida teaches printing or producing layouts on the preexisting backing, just like the German Patent. The layouts are printed (with a fabric printing process) or produced (with a textile production process) onto the preexisting backing. (*Id.*, 1:50-56; 2:20-26, 3:13-15, and 5:45-52.) Similar to the German Patent, the layouts may have different weave or knit types in different areas that correspond to different areas of the upper. (*Id.*) But, unlike the German Patent, the layouts may also have different weave or knit types in areas that correspond to "related sole parts." (*Id.*) That is, unlike the German Patent, each layout in Nishida has a "related sole part." (*Id.*, 1:57-59.) Figure 2 of Nishida, reproduced below, shows an example of the layouts printed or produced on a preexisting backing. (*Id.*, 2:59-60.) The "related sole part" is labeled 29. (*Id.*, 4:19-21.)

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The areas labeled 1.1 of the preexisting backing do not have layouts printed or produced on them, and they are formed of different materials than the portions of the preexisting backing where the layouts are printed or produced. (Ex. 1009, 3:13-15.) For example, the areas labeled 1.1 may "consist of a lightweight material quality that is a simple and economical as possible," such as "a gauze or with low to very low warp and/or filling gauge and/or, for example, by being thin-spun or the like." (*Id.*, 3:13-15 and 5:45-52.)

After the layouts are printed or produced on the preexisting backing, each upper and its related sole part is cut from the web of material. (*Id.*, 2:1-5.) They remain connected to each other as a cut-out unit. (*Id.*) The upper portion of the

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cut-out unit is first folded and seamed to create the upper. (*Id.*, 3:27-4:46.) The related sole part is then "stitched or basted to the free outside edge" of the upper. (*Id.*, 2:9-10 and 4:19-3.) That completed upper is "then brought into a gluing, injection or casting mold, in which a midsole and an outsole are molded by known measures." (*Id.*, 4:43-46.)

E. PETITIONER FAILS TO SHOW THAT A PERSON OF ORDINARY SKILL IN THE ART WOULD HAVE BEEN MOTIVATED TO COMBINE THE PRIOR ART

An obviousness determination requires "more than a mere showing that the prior art includes separate references covering each separate limitation in a claim." *Unigene Labs., Inc. v. Apotex, Inc.*, 655 F.3d 1352, 1360 (Fed. Cir. 2011). It requires the additional showing that a person of ordinary skill at the time of the invention would have selected and combined the prior art elements in the normal course of research and development to yield the claimed invention. *Id.*

Here, Petitioner must demonstrate that a person of ordinary skill in the art would have been motivated to combine the teachings of Reed and Nishida to derive the claimed subject matter with a reasonable expectation of success. *Procter & Gamble Co. v. Teva Pharms. USA, Inc.*, 566 F.3d 989, 994 (Fed. Cir. 2009); *Apotex Inc. v. Wyeth LLC*, IPR2014-00115, Paper 94 (Apr. 20, 2015). Mere "conclusory statements" are insufficient; "there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

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KSR, 550 U.S. at 418. Petitioner fails to make this required showing.

1. Petitioner fails to show a person of ordinary skill in the art would even have been aware of the problem the '598 patent addressed

Petitioner provides no evidence that a person of ordinary skill – with just a few years of experience in the footwear industry – would have been aware of the problem the '598 patent addressed. (Pet.) Persons of skill in the art cannot have tried and failed to solve a problem if they were never aware of the problem. *Leo Pharms. Prods., Ltd. v. Rea*, 726 F.3d 1346, 1356–57 (Fed. Cir. 2013).

That is the case here. The number of years that passed between the prior art and the '598 patent underscores that skilled artisans long failed to appreciate the problem. *Id.* In *Leo*, the Federal Circuit reversed a Board's obviousness determination because nothing in the cited prior art appreciated the problem the invention addressed. *Id.* at 1353. Because there was no prior recognition of the problem, there was no reason in the record why one of skill in the art would attempt to combine the cited prior art to arrive at the invention. *Id.* at 1354 ("Only after recognizing the existence of the problem would an artisan then turn to the prior art and attempt to develop [the solution].").

Similarly, the '749 patent recognized the problem of making footwear uppers from multiple materials. (Ex. 1001, 3:3-23.) But neither Reed nor Nishida recognized that problem. In 1975, nearly 30 years before the '749 patent, Reed

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addressed inefficiencies of seaming garments together after the knitting process. (Ex. 1006, 1:5-2:40.) Reed did not recognize any footwear-related problems, let alone problems with making uppers from multiple materials. (*Id.*) Over fifteen years later, in 1992, Nishida addressed the German Patent's failure to provide related sole parts. (Ex. 1009, 1:40-47.) Nishida did not, however, recognize a problem with making footwear uppers from multiple materials. Indeed, Nishida's solution is to make footwear uppers and related sole parts from multiple materials. (*Id.*, 1:48-2:53.) It was not until many years later, in 2004, that NIKE recognized and addressed the problem. (Ex. 1001.)

Petitioner has failed to establish that a person of ordinary skill in the art would have even recognized the problem the '598 patent addressed. Petitioner, therefore, fails to meet it burden of proving the challenged claims are obvious. *Leo Pharms*, 726 F.3d at 1356–57.

2. Petitioner fails to show that Reed is "analogous art" for purposes of an obviousness challenge

Even if a person of ordinary skill had recognized the problem, which is not the case, Petitioner fails to show that the person would look to Reed for solutions. To qualify as prior art for obviousness, a reference must be "analogous art." *K-TEC, Inc. v. Vita-Mix Corp.*, 696 F.3d 1364, 1375 (Fed. Cir. 2012). That means it must: (i) "be from the same field of [the inventor's] endeavor;" or (ii) "be reasonably pertinent to the particular problem with which the inventor is

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involved." *Id.* A reference is "reasonably pertinent" if it, as a result of its subject matter, "logically would have commended itself to an inventor's attention in considering his problem." *Id.* Reed fails to satisfy either condition.

First, Reed is not from the same field of endeavor as the '598 patent. The '598 patent is directed to footwear. (Ex. 1001.) Reed is not directed to footwear, but rather to preseamed garments. (Ex. 1006, 1:5-2:41.)

Second, Reed is not reasonably pertinent to the problem of the '598 patent. The '598 patent addressed the problem of conventional footwear made of multiple materials. (Ex. 1001, 3:3-5.) Reed addressed the problem of garments that are not seamed during the knitting process. (Ex. 1006, 1:5-2:41.) Given these differences, Reed would not have logically commended itself to the attention of a person of ordinary skill in the art, particularly given the low level of ordinary skill in the art. Indeed, Petitioner cannot show a person of ordinary skill, with no knitting experience, would have looked to Reed's knitting solutions for garments at least because Petitioner's own alleged footwear expert testified that he did not understand much of Reed and that it would have been too "dangerous" for him to create uppers on a knitting machine. If a person with nearly forty years of experience would not look to or understand Reed, a person with just a "few years" of experience certainly would not do so.

Petitioner, therefore, fails to meet it burden of proving the challenged claims

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are obvious. *See, e.g., In re Oetiker*, 977 F.2d 1443, 1447 (Fed. Cir. 1992) (reversing obviousness rejection where PTO relied on non-analogous art; "It has not been shown that a person of ordinary skill, seeking to solve a problem of fastening a hose clamp, would reasonably be expected or motivated to look to fasteners for garments. The combination of elements from non-analogous sources, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is insufficient to present a prima facie case of obviousness."); *In re Clay*, 966 F.2d 656, 658–59 (Fed. Cir. 1992) (PTO erred in finding prior art was within inventor's field of endeavor merely because both related to the petroleum industry, where the claimed invention operated in environments and conditions significantly different from the prior art; PTO further erred because the prior art was not reasonably pertinent to the problem the inventor solved, where the prior art and claimed invention were directed to different purposes, with the claimed invention directed to storage in a man-made dead space and the prior art directed to extraction in unconfined natural rock formations).

3. Petitioner fails to show *why* a person of ordinary skill in the art would have been motivated to combine Reed and Nishida

Petitioner's alleged rationale for combining Reed and Nishida is premised on a handful of conclusory assertions rather than articulated reasoning with rational underpinnings. (Pet. 12-14.) First, Petitioner argues that a person of ordinary skill

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would have been motivated to combine Reed and Nishida based on Reed's statements that its "present invention may be used to form all types of garments" and that conventional knitting machines were used to make "stockings." (*Id.*, 12.) In other words, Petitioner contends that a person of ordinary skill in the art would have interpreted those statements to mean that Reed may be used to create not just garments, but also footwear uppers, including the uppers taught by Nishida. (*Id.*) But Petitioner cherry-picks those statements from Reed out of context. In reality, Reed states that "circular knitting machines have been used to make tubular knitted ***garments***, such as ladies stockings, sweaters and other ***garments***." (Ex. 1006, 1:33-35.) Reed never refers to "stockings" as footwear, and Reed never suggests its invention could be used for anything other than a specific and limited type of garment—a preseamed garment. (Ex. 1006, 1:58-2:40.)

Moreover, even if Reed suggests to a person of ordinary skill in the art that his invention could be used to make footwear uppers, which he does not, Petitioner fails to explain why that would have motivated a person of ordinary skill in the art to combine Reed and Nishida. Petitioner's quoted snippets from Reed about his invention being used to form all types of "garments" and that conventional knitting machines are used to make "stockings" are nothing more than generic statements that bear no relation to any specific combination of prior art elements. (Ex. 1006, 1:33-35.) Those statements fail to explain or suggest why a person of ordinary

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skill in the art would have combined elements from Reed and Nishida in the way the claimed invention does, particularly given the low level of skill in the art with no knitting experience. *ActiveVideo Networks, Inc. v. Verizon Commc'ns, Inc.*, 694 F.3d 1312 (Fed. Cir. 2012); *Volkswagen v. Velocity Patent*, IPR2015-00275, 2015 WL 3543109 (PTAB, June 1, 2015).

Second, Petitioner argues that a person of ordinary skill in the art would have been motivated to combine Reed and Nishida because they are "analogous art." (Pet. 13.) But, even if Reed and Nishida are analogous art (Reed is not analogous art as explained above), that alone is not enough to show that a person of ordinary skill would have been motivated to combine them, particularly given the low level of skill in the art with no knitting experience. *See, e.g., Microsoft Corp. v. Secure Web Conference Corp.*, IPR2014-00745, Paper 12, at 14 (Sep. 29, 2014) (denying petition where petitioner failed to show motivation to combine and, at best, showed prior art was "analogous art"); *Shopkick v. Novitaz*, IPR2015-00279, 2015 WL 3826806 (PTAB, May 29, 2015) (just because the cited references are "analogous art" and share the "same design incentives" does not establish that it would have been obvious to combine their features).

Third, Petitioner argues that a person of ordinary skill in the art would have been motivated to combine Reed and Nishida because "both Reed and Nishida are directed to reducing costs associated with producing textile elements using the

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latest advances in knitting technology." (Pet. 13.) But even if that were true, "knowledge of a problem and motivation to solve it are entirely different from motivation to combine particular references to reach the particular claimed method." *Innogenetics, N.V. v. Abbott Labs.*, 512 F.3d 1363, 1373 (Fed. Cir. 2008); *Volkswagen*, IPR2015-00275, 2015 WL 3543109 at *8 (rejecting argument that person of ordinary skill in the art would have been motivated to combine references because they shared similar goals); *Shopkick*, IPR2015-00279, 2015 WL 3826806 at 2 (same).

In any event, to make this argument, Petitioner again cherry-picks the "objectives" of Reed and Nishida out of context. (Pet. 13.) Reed's and Nishida's objectives are very different when the references are analyzed in context. Reed provides five specific "objects of the invention," all of which are directed to creating preseamed garments. (Ex. 1006, 2:19-40.) Nishida, in contrast, states that its "primary object" is to "further develop" the process disclosed in the German Patent so that "a shoe upper . . . can be configured together with the related sole part." (Ex. 1009, 1:40-43.) Reed and Nishida are not directed to solving the same problems as each other, let alone the problem addressed by the '598 patent.

Thus, Petitioner fails to provide a substantive analysis and fact-based reason why a person of ordinary skill would have combined Reed and Nishida, particularly given the low level of skill in the art with no knitting experience. For

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this reason, Petitioner fails to meet it burden of proving obviousness.

4. Petitioner fails to show *how* a person of ordinary skill in the art would have combined Reed and Nishida

Petitioner not only fails to show *why* a person of ordinary skill in the art would have been motivated to combine Reed and Nishida, but Petitioner also fails to show *how* a person of ordinary skill in the art would have combined elements from Reed and Nishida in the way the claimed invention does. *ActiveVideo Networks,* 694 F.3d at 1312. That is, absent from Petitioner's argument is any explanation of how the teachings of Reed and Nishida might be combined to arrive at the claimed invention. (Pet. 12-14.) This is particularly true given the low level of skill in the art with no knitting experience.

Petitioner merely states, in conclusory fashion, that "in view of the substantial similarities between the methods described in Reed and Nishida, a person of ordinary skill in the relevant art would certainly have been motivated to modify Reed's method to include the additional features described by Nishida to produce a textile element for use in a shoe upper, as well as to produce a shoe incorporating such a textile element, as this is nothing more than combining 'prior art elements according to known methods to yield predictable results' and/or the '[u]se of known technique[s] to improve similar devices (methods, or products) in the same way.'" (Pet. 13-14.)

That contention raises many questions and answers none. For example,

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Petitioner does not explain how it contends a person of ordinary skill in the art would "modify Reed." (*Id.*) Petitioner does not explain what "additional features described by Nishida" it contends a person of ordinary skill would "modify Reed" to include. (*Id.*) Petitioner states it is "nothing more than combining prior art elements according to known methods to yield predictable results," yet Petitioner fails to identify what prior elements it contends a person of ordinary skill in the art would take from Reed and what prior elements it would take from Nishida. Petitioner also fails to explain what it contends is the "predictable result" that a person of ordinary skill would yield by combining elements of Reed and Nishida. (*Id.*) Similarly, Petitioner states the combination of Reed and Nishida is the "use of known techniques to improve similar devices (methods, or products) in the same way," but Petitioner does not explain what it contends is the "known technique" in Reed or Nishida, or what it contends is the "similar" device, method, or product in Reed of Nishida, or how it contends that similar device, method, or product is "improved" in the "same way" as Reed or Nishida. (*Id.*)

Petitioner fails to meet it burden of proving the challenged claims are obvious over Reed and Nishida for this additional reason. Indeed, Petitioner's failure to show *how* a person of ordinary skill in the art would have combined Reed and Nishida is particularly deficient in this case because, as discussed below, the combination of Reed and Nishida would render Reed inoperable for its intended

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purpose, and moreover, Reed teaches away from Nishida.

5. The combination of Reed and Nishida would render Reed inoperable for its intended purpose

Petitioner cannot show that a person of ordinary skill would have been motivated to combine Reed and Nishida because that combination would render Reed inoperable for its intended purpose. Prior art combinations that change the basic principles under which the prior art was designed to operate, or that render the prior art inoperable for its intended purpose, fail to support a conclusion of obviousness. *In re Gordon*, 733 F.2d 900, 902 (Fed. Cir. 1984) (finding no motivation to combine where the proposed modification would render the prior art being modified unsatisfactory for its intended purpose); *Plas-Pak Indus., Inc. v. Sulzer Mixpac AG*, 600 F. App'x 755, 758 (Fed. Cir. 2015) (same).

The *Plas-Pak* opinion is instructive. In that case, Plas–Pak filed a petition for *inter partes* reexamination against a patented method for dispensing multi-component paints with a spray nozzle. *Plas-Pak*, 600 F. App'x at 756. Plas-Pak challenged the patent as obvious based on a combination of references called Jacobsen and Hunter. *Id.* Jacobsen disclosed a system for dispensing fluid materials. *Id.* at 757. Hunter disclosed a spray nozzle. *Id.* Plas-Pak argued a person of ordinary skill would have been motivated to combine the references because it would have been "nothing more than predictable variation of prior art elements according to their established functions." *Id.* The Board rejected the

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argument and the Federal Circuit affirmed because combining the references would have rendered Jacobsen inoperable for its intended purpose. *Id.* at 759-760.

The Federal Circuit explained that Jacobsen's dispensing system has a "very specific function of dispensing fluid materials directly into surface cracks to minimize leakage." *Id.* at 759. The Federal Circuit explained that if Jacobsen is modified to include Hunter's spray nozzle, Jacobsen would no longer dispense fluid material directly into surface cracks, *i.e.*, Hunter's spray nozzle sprays a wide pattern as opposed to dispensing directly into a crack. *Id.* Plas–Pak argued that a person of ordinary skill would have understood that Jacobsen's dispensing system had applications beyond merely filling cracks. *Id.* The Federal Circuit rejected that argument because Jacobsen's specification repeatedly recites that its intended purpose is to fill cracks, including statements describing the "invention" as dispensing directly into cracks. *Id.* The Federal Circuit also explained that Jacobsen does not teach how a spray nozzle might accomplish the intended purpose of dispensing directly into cracks. *Id.* at 759-760. The Federal Circuit held, therefore, that a person of ordinary skill would not have been motivated to pursue the combination because modifying Jacobsen to accommodate the spray nozzle of Hunter would render Jacobsen inoperable for its intended purpose. *Id.*

Similarly, here, Reed has a "very specific function" of producing preseamed garments on a circular double knitting machines. (Ex. 1006, 1:8-11, 1:58-2:41.)

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Reed repeatedly recites its intended purpose, including statements describing the "present invention" as producing preseamed garments. (*Id.*) For example, Reed states the "present invention" relates to "a garment which is preseamed." (*Id.*, 1:8-11.) Reed also states that all of the "objects" of his invention are "obtained" by producing a "preseamed" garment. (*Id.*, 6:18-22.) Furthermore, Reed does not teach how a producing a garment that is not preseamed might accomplish his intended purpose of producing preseamed garments. (Ex. 1006.)

Nishida, however, teaches producing a layout for a footwear upper and related sole part that is not preseamed by a circular double knitting machine during the knitting process. (Ex. 1009, Abstract, 3:27-42, 4:19-30.) Nishida teaches producing a layout on a preexisting web of material, cutting the layout out of the web of material, shaping and folding the layout so that corresponding edges align, and then seaming those corresponding edges together to complete the upper and related sole. (*Id.*) Nishida's Abstract explains that the invention is directed to "the production of a shoe upper by [first] cutting out of the shoe upper in the form of a layout from a web of material, [and second] shaping of the shoe upper with connection of material parts of the layout with formation of seams." (*Id.*) Nishida's abstract continues that the "layout is [first] cut from the web as a unit with the sole part and [second] processed into a shoe part having an upper and sole part." (*Id.*) Figure 2 of Nishida, reproduced below, helps illustrate this point.

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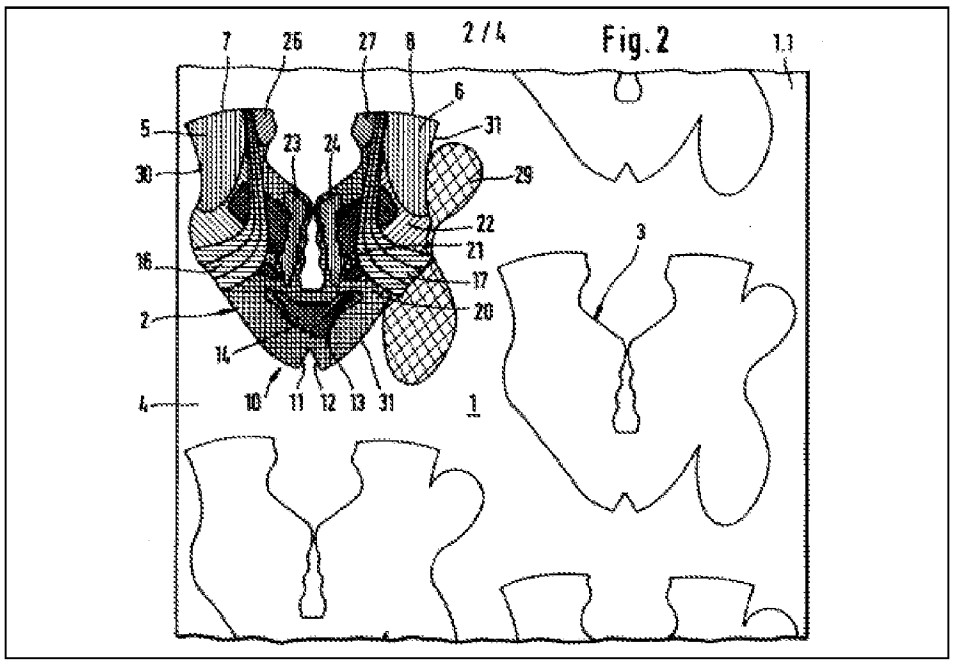


Figure 2 of Nishida shows a layout of shoe upper and related sole part, labeled 2, that has been printed or produced on a layout of material. (Ex. 1009, 1:5-12.) Figure 2 shows the layout as it would look after the production process has been completed. (*Id.*) The layout is next cut from the web of material. (*Id.*, 3:31-32.) The layout is then shaped and folded so that edges 7 and 8 are aligned and seamed together, edges 11 and 12 are aligned and seamed together, and sole part 29 is "folded" and seamed to the longitudinal edges of the upper. (Ex. 1009, 3:27-42 and 4:19-30.) The upper and related sole part are seamed together after the production process, not during the process of producing layout 2. (*Id.*)

Petitioner does not argue in its petition that the layout of Nishida may be preseamed during the production process. (Pet.) Mr. Holden also testified during

cross-examination that Nishida does not teach that its layout may be preseamed during the production process. (Ex. 2004, 160:24 – 162:18.)

Petitioner also does not explain in its petition how a footwear upper could even be preseamed on a circular double knitting machine. (Pet.) Nor could it do so because, as seen in Figure 2 of Nishida above, the edges that need to be seamed together are not aligned or juxtaposed and, thus, a circular double knitting machine could not seam those edges together during the knitting process. Mr. Holden testified that he did not even consider this issue. (Ex. 2004, 152:15 – 153:12.)

Thus, if Reed is modified to knit the layouts of Nishida, the result would be two layouts seamed together that would need to be cut from the surrounding textile, then separated from each other, and then each one would need to be shaped, folded, and seamed as described in Nishida. Simply put, the result of combining Reed and Nishida would not be a garment or a preseamed garment (assuming, *arguendo*, that footwear is a garment). Consequently, because modifying Reed to accommodate the layout of Nishida would render Reed inoperable for its intended purpose of producing a preseamed garment, a person of ordinary skill in the art would not have been motivated to pursue the combination. *Plas-Pak*, 600 F. App'x at 760; *In re Gordon*, 733 F.2d at 902; *Tec Air, Inc. v. Denso Mfg. Mich. Inc.*, 192 F.3d 1353, 1360 (Fed. Cir. 1999) (claims not obvious where the combination would render prior art inoperable for its intended purpose); *BMC*

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Med. Co. v. Resmed Ltd., IPR2014-01363, Paper 25 at 18 (Jan. 20, 2016) (same); *Wangs Alliance*, IPR2015-01290, Paper 63 (Nov. 23, 2016) (same). Petitioner fails to satisfy its burden of proving unpatentability for this additional reason.

6. Reed teaches away from combining it with Nishida

Petitioner cannot show that a person of ordinary skill would have been motivated to combine Reed and Nishida for the additional reason that Reed teaches away from combining it with Nishida. A reference teaches away "when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant." *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 567 F.3d 1314, 1327 (Fed. Cir. 2009). That is the case here as Reed teaches away from the layouts of Nishida that are not preseamed during the production process of the layouts.

The *DePuy* case is instructive. The challenged claim in that case was directed to a device for stabilizing spinal column segments with a rigid pedicle screw. *DePuy*, 567 F.3d at 1324-25. Medtronic argued the combination of prior art references, Puno and Anderson, achieved the rigid pedicle screw of the challenged claim. *Id.* at 1326. The district court rejected Medtronic's argument, finding instead that Puno teaches away from a rigid screw because "Puno warns that rigidity increases the likelihood that the screw will fail." *Id.* The district

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court, therefore, held "that Puno's teachings undermine the very reason Medtronic proffers as to why it would have been obvious to combine Puno and Anderson, viz., the creation of a rigid screw." *Id.* at 1327. The Federal Circuit affirmed on appeal, holding that the "district court correctly found that Puno, viewed against the backdrop of the collective teachings of the prior art, teaches away from a rigid pedicle screw . . ., such that a person of ordinary skill would have been deterred from combining Puno and Anderson." *Id.* at 1328.

Similarly, here, Petitioner combines the knitting process of Reed with the layouts of Nishida to allegedly produce a knitted element that is removed from a surrounding textile structure and then shaped, folded, and seamed to complete an article of footwear as provided in the challenged claims. (Pet.; Ex. 1001, 11:43-14:5.) But Reed teaches away from that combination by criticizing prior art methods of manufacturing garments that did not result in preseamed garments, explaining that the problem with the prior art methods is that they required the manufacturer to cut panels of a garment from larger textile and then seam the panels together to complete the garment. (Ex. 1006, 1:13-18.) Reed solves that problem by preseaming the panels of the garment together during the knitting process. (*Id.*, 1:8-11, 1:58-2:41.)

Nishida suffers from the same drawbacks that Reed identified with the prior art methods of manufacturing. (Ex. 1009, Abstract, 3:27-42, 4:19-30.) Nishida

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teaches producing a layout on a preexisting web of material, cutting the layout out of the web of material, shaping and folding the layout so that corresponding edges align, and then seaming those corresponding edges together to complete the upper and related sole. (*Id.*) Consequently, Reed, when viewed against the backdrop of the collective teachings of the prior art, teaches away from seaming textiles after the completion of the knitting or production process, as described in Nishida and as claimed in the '598 patent, such that a person of ordinary skill would have been deterred from combining Reed and Nishida. *DePuy*, 567 F.3d at 1328. Petitioner fails to satisfy its burden of proving unpatentability for this additional reason.

F. PETITIONER FAILS TO PROPERLY ANALYZE THE DIFFERENCES BETWEEN THE CLAIMED SUBJECT MATTER AND THE PRIOR ART

Petitioner must identify any alleged differences between the claimed subject matter and the prior art. *See Graham*, 383 U.S. at 17-18; *Travelocity.com L.P. v. Cronos Technologies, LLC*, Case CBM2014-00082, Paper 10, 19 (Sept. 15, 2014) (denying petition because petitioner failed to identify alleged differences between the claim subject matter and the prior art). Here, however, Petitioner does not identify with any specificity what limitations it contends are missing from Reed that a person of ordinary skill in the art would have modified Reed to supply or would have sought for in the teachings of Nishida. (Pet. 14-29.) It is insufficient for Petitioner to assert that each of the references teaches all of the limitations of the challenged claims "and then to leave it to [the Board] to apply the teachings for

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Petitioner to demonstrate its asserted grounds." *Travelocity.com*, Case CBM2014-00082, Paper 10. This is "especially true when Petitioner expressly forgoes asserting grounds of unpatentability based on the application of the cited references individually to the challenged claims," such as Petitioner did here. *Id.*

For this additional reason, Petitioner fails to satisfy its burden of proving the challenged claims are obvious over Reed and Nishida. *Id.*; *see also Apple Inc. v OpenTV, Inc.*, IPR2015-01031, 2015 WL 9899019, at *8 (Oct. 13, 2015) (denying obviousness challenge where petitioner failed to identify alleged differences between the claimed subject matter and the prior art); *Samsung Elecs. Co., Ltd., et al. v. Imperium (IP) Holdings*, IPR2015-01233, 2015 WL 9599164, at *9 (Dec. 1, 2015) (same). In any event, an analysis of the differences between the claimed subject matter and the prior art reveals that neither Reed nor Nishida discloses limitations of challenged claims, as NIKE explains further below.

1. Reed and Nishida do not disclose the claim limitation of first and second areas with a unitary construction formed of different stitch configurations to impart different textures

Claims 4 and 11 recite that "wherein the step of mechanically manipulating includes forming the textile element to include a first area and a second area with a unitary construction, the first area being formed of a first stitch configuration, and the second area being formed of a second stitch configuration that is different from the first stitch configuration to impart varying textures to a surface of the textile

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element." (Ex. 1001, 11:48-12:6 and 12:33-40.) Neither Reed nor Nishida discloses this limitation.

Petitioner incorrectly argues that Reed discloses this limitation in two ways. (Pet. 21-22.) First, Petitioner incorrectly relies on portions of Reed that explain the inner knitted tube and the outer knitted tube are stitched together with "interknitted" stitches to form the outline and seams of a garment. (Pet. 21 (citing Reed at 4:61-64, 5:3-18, 5:67-6:3, and Figs. 2, 2A, 3A-3E.) Those portions of Reed do not say anything about the texture of the knitted garment. (*Id.*) They do not provide that the knitted garment has first and second areas with a unitary construction formed of different stitch configurations to impart different textures. (*Id.*) They do not describe the texture of an "interknitted" stitch or a "non-interknitted" stitch. (*Id.*) They also do not provide that "interknitted" stitches are only used on the seams of the knitted garment and not anywhere else in the knitted garment. (*Id.*) Mr. Holden testified that he could not define or describe an "interknitted" stitch, let alone explain what texture the stitch provides. (Ex. 2004, 76:8 – 81:18.)

Second, Petitioner incorrectly relies on a portion of Reed that provides the inner knitted tube and the outer knitted tube may be formed of different materials. (Pet. 21-22 (citing Reed at 3:61-4:9.) That portion of Reed does not say anything

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about the stitch configurations or the textures of the knitted garment. (*Id.*) It is directed solely to the materials of the inner and outer tubes. (*Id.*) It states:

> If the two tubes 12 and 14 are knitted of ***two different fibers***, the knitted structure may form sections of a garment to be assembled in the regular manner. For example, the ***outside tube 14 may be a normal decorative fabric*** wherein ***the inner tube 12 may be formed of material such as lining***. By simultaneously knitting and interknitting the two layers, a step is saved by producing a section of garment which is prelined. Similarly, ***the layer 12 (instead of being lining) may be interfacing***, which is attached to the outside layer 14 and again saves a step in the manufacture of garments. ***Another example where two different fibers are used*** to make the inner and outer tubing would be in the foundation garment industry, where ***the inner fabric could be cotton or other soft fibers*** and ***the outer fabric would be lycra or elasticized yarns***.

(Ex. 1006, 3:61-4:9 (emphasis added.) In sum, Petitioner fails to cite any portion of Reed that provides the knitted garment of Reed has first and second areas with a unitary construction formed of different stitch configurations to impart different textures. (Pet. 21-22.)

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Petitioner also incorrectly argues that Nishida discloses this limitation in three ways. (Pet. 22.) But all of the portions of Nishida that Petitioner relies on are directed to varying materials, fibers, or yarns, not stitch configurations to impart different textures. (*Id.*) In short, Nishida teaches nothing more than the prior art method of using multiple materials to impart different properties – *i.e.*, the inefficient prior art method NIKE recognized and addressed with the '598 patent.

First, Petitioner incorrectly relies on the portion of Nishida that states, "in the embodiments according to FIGS. 1 and 2, with layout 2 on the web of material, areas 26 and 27 are produced in a configuration, color or style that is different from the other areas." (*Id.* (citing Nishida at 4:6-9, Abstract, 1:65-69, 2:40-45, 3:15-26, 3:47-48, 4:12-28, 4:48-55, 5:56-6:2.) The remainder of that except, which Petitioner ignores, states that "a heel counter 28, represented in FIG. 3, is applied on areas 26, 27 after formation of the initially described heel seam." (Ex. 1009, 4:9-11.) Thus, when read in context, that portion of Nishida does not disclose varying stitch configurations to impart varying textures. At most, that portion of Nishida, like the rest of Nishida, discloses varying materials, fibers, or yarns. (*Id.*)

Second, Petitioner incorrectly relies on the portion of Nishida that states "layout 2 is divided into different individual parts or areas, which differ from one another, such as by being of another material style and/or being different fibers or yarns, for example, from wool, wool with metal yarns, silks, silk with metal yarns,

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wool with plastic fibers or the like and/or by being formed of different colors, such as from fibers or yarns of different colors, including those of metals, or by different color prints, and/or by being differently designed fiber extrudates or fiber extrudate compositions, such as twisted, processed parallel or the like." (Pet. 22; Ex. 1009, 3:15-25.) Again, that portion of Nishida does not disclose varying stitch configurations to impart varying textures. (*Id.*) It discloses varying materials, fibers, or yarns like the rest of Nishida. (*Id.*)

Third, Petitioner incorrectly relies on portions of Nishida that provide for the use of different materials, fibers, or yarns in different areas of the upper to provide different properties. (Pet. 22; Ex. 1009, 3:43-52, 5:63-6:2, 6:1-31.) Again, those portions of Nishida do not disclose varying stitch configurations to impart varying textures. (*Id.*) They only disclose varying materials, fibers, or yarns, which is the prior art the '598 patent improved upon. (*Id.*)

Thus, Petitioner fails to identify any disclosure in Reed or Nishida that teaches "wherein the step of mechanically manipulating includes forming the textile element to include a first area and a second area with a unitary construction, the first area being formed of a first stitch configuration, and the second area being formed of a second stitch configuration that is different from the first stitch configuration to impart varying textures to a surface of the textile element."

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Petitioner fails to satisfy its burden of proving unpatentability of claims 4 and 11 for this additional reason.

2. Reed and Nishida do not disclose the claim limitation of forming apertures in the textile element during the knitting process

Claim 6 recites that "wherein the step of mechanically manipulating includes forming apertures in the textile element." (Ex. 1001, 12:10-12.) The '598 patent describes two types of "apertures." It describes an "aperture" that is formed in the knitted element during the knitting process (*i.e.*, during the step of mechanically manipulating a yarn with a circular knitting machine to form a cylindrical textile structure), for example by omitting stitches. (Ex. 1001, 9:46-53 and 10:15-18 ("The apertures may be formed by omitting stitches at specific locations.").) It also describes an "aperture" that is an "ankle opening" formed after the textile element is removed from the cylindrical textile structure and the edges of the textile element are seamed together to create an upper. (*Id.*, 6:24-25 ("Upon the joining of edges 42a and 42b to form seam 52, the u-shaped area becomes an aperture in textile element 40 and effectively forms ankle opening 36.").)

The ankle opening "aperture" is not formed in the textile element and it is not formed during the "step of mechanically manipulating a yarn with a circular knitting machine to form a cylindrical textile structure." (*Id.*) Thus, in the context of claim 6, the term "aperture" refers to an "aperture" formed in the knitted

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element during the knitting process (*i.e.*, during the step of mechanically manipulating a yarn with a circular knitting machine to form a cylindrical textile structure), for example by omitting stitches.

Petitioner incorrectly argues that Nishida discloses this limitation in three ways. (Pet. 26-27.) The portions of Nishida that Petitioner relies on, however, do not disclose forming apertures in the textile element, or layout, during the knitting process, for example by omitting stitches.

First, Petitioner incorrectly argues Nishida discloses this limitation because "the u-shaped area in the layout 2 forms an ankle opening 36 when formed into the shoe upper." (Pet. 26 (citing Nishida at FIGS 1-5).) Nishida does not disclose an "ankle opening 36." (Ex. 1009.) In any event, as Petitioner concedes, the "ankle opening" of Nishida is formed after the layout is cut from the web of material and shaped and seamed to create the upper. (Pet. 26; Ex. 1009, 3:31-32, 3:27-42, and 4:19-30.) It is not formed in the layout and it is not formed during the production process of the layout. (*Id.*) Thus, the "ankle opening" of Nishida is not an "aperture" as claimed in the '598 patent. (*Id.*)

Second, Petitioner incorrectly relies on the portion of Nishida that states the "type of production can, additionally, insure that the toe area 14 has a good air exchange capability. For example, this can be achieved by a net-like woven of knitted structure." (Pet. 26 (citing Nishida at 3:49-52, 3:43-52, 3:66-4:5, 6:25-31).)

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Nishida's "net-like" structure describes the textile itself, not the formation of apertures during the production process of the layout. (Ex. 1009, 3:43-52.) Nothing in that portion of Nishida, or any other portion, teaches the formation of apertures in the layout during the production process. *Id.*

In fact, Nishida does not disclose creating apertures in the layout during the production process, for purposes of air permeability or otherwise. Rather, it discusses different methods of facilitating air permeability:

> Since, generally, toe area 14 is designed to be relatively deformably soft or elastic, and optionally, also permeable to air, the web of material 1, in toe area 14, according to the present invention, is correspondingly designed by suitable selection of the weave pattern, knit pattern and/or the material used, such as, for example, Silk or plastic. The type of production can, additionally, insure that the toe area 14 has a good air exchange capability. For example, this can be achieved by a net-like woven or knitted structure.

(Ex. 1009, 3:43-52; *see also* 6:25-31) (claiming "weaving and knitting types being matched to differing requirements for materials of the shoe upper and sole part of a shoe in relation to properties thereof including at least one of the properties of absorptivity, air permeability, softness, extensibility, wear resistance, and

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appearance"). Nishida's disclosure of air permeability thus does not disclose the creation of apertures during the production process of the layout.

Third, Petitioner incorrectly argues that Nishida "describes lacing strips that may be layered over the net-like structure to reinforce that structure and holes formed in the lacing strips may be aligned with the existing holes in the net-like structure." (Pet. 26-27 (citing Nishida at 4:1-5 and 4:31-38).) In reality, that passage of Nishida teaches that the portions of the layout that serve as lacing areas can be made thicker than other portions of the web of material, for example by knitting multiple layers or adding a separate piece of embroidery. (*Id.*) It states:

> Optionally, in this case, the material can be woven or knitted in two or more layers or can be especially thick or additionally embroidered. Similarly, the lacing areas 23 and 24 can be made dimensionally stable in corresponding manner, especially if, for example, no additional trimmings, such as the lacing strips 25, shown in FIG. 3, are to be applied.

(Ex. 1009, 3:66-4:5.) That is entirely consistent with the remainder of Nishida's disclosure, which provides that the lacing areas of the layout would be punctured with holes for laces—the thickening provides stability so that the layout retains its integrity after being punctured. (*Id.*, 4:31-38.) For example, Nishida goes on to state that apertures that may be formed by piercing holes into the layout, with a

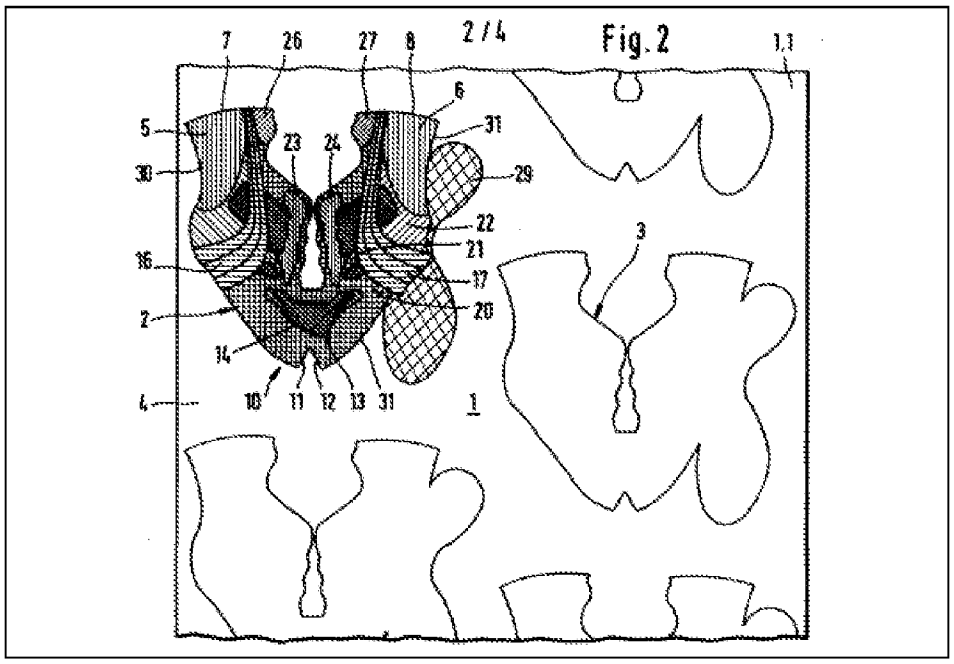
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separate piece of embroidery serving as a stencil to mark the locations on the upper to be pierced:

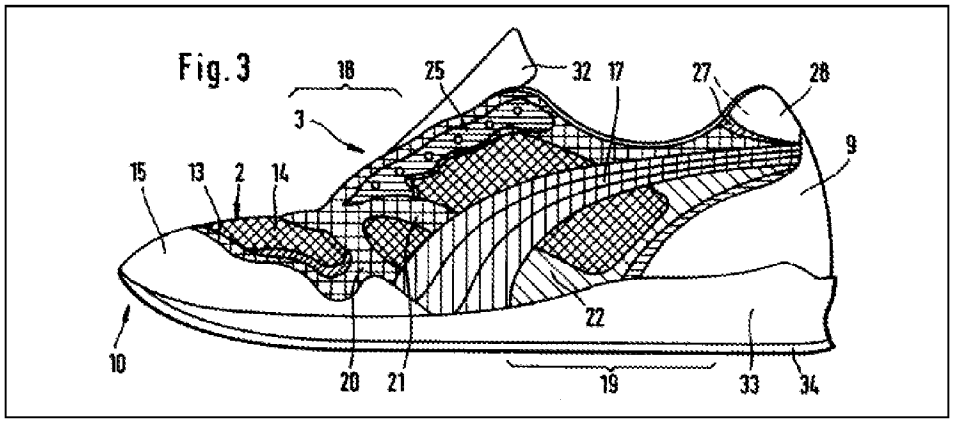
> after cutting out of layout(s) 2, layout(s) 2 can be provided with an embroidery, especially with an English embroidery (i.e., ***the type of embroidery by which a hole pattern is welded and which is commonly used for the sewing of button holes***), of a trademark or another mark or identification on suitable or preferred places.

(Ex. 1009, 4:31-38.)

As seen in Figure 2 of Nishida, reproduced below, lacing areas 23 and 24 do not have any apertures formed during the production process. The pattern of uppers (including the lacing areas) is knit into the unbroken textile web, and each upper must be individually cut out:



Meanwhile, lacing strips 25 are independent textiles, *i.e.*, they are not part of the layout depicted in Figure 2 above, but are "additional trimmings" that may be embroidered onto the layout after the layout is formed. (Ex. 1009, 4:3-5, 4:31-38.) These separate textiles contain holes which can be used as a stencil to identify the locations on the layout to be punctured, as seen in Figure 3:



Thus, Nishida contains no description or suggestion of forming apertures during the production process, such as by omitting stitches in the layout during the process of creating the layout. (*Id.*) Petitioner fails to satisfy its burden of proving unpatentability of claim 6 for this additional reason.

G. PETITIONER'S OBVIOUSNESS ARGUMENTS ARE IMPROPERLY TAINTED BY HINDSIGHT

Petitioner's challenge improperly looks at the prior art with the benefit of hindsight, attempting to use the '598 patent "as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." *In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992); accord

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Winner Int'l Royalty Corp. v. Wang, 11 F.Supp.2d 18, 24 (D.D.C. 1998) ("The standard of obviousness is not whether in hindsight, it seems elementary that someone would have combined ... certain elements in the prior art to form the invention in question."), *affd.*, 202 F.3d 1340 (Fed. Cir. 2000).

Petitioner's improper use of hindsight is seen, for example, in Petitioner's argument that Reed and Nishida disclose varying stitch configurations to impart varying textures. Neither Reed nor Nishida says a word about varying stitch configuration to impart different textures to different areas of a knitted textile. (Ex. 1006, Ex. 1009.) It is the '598 patent that teaches that. (Ex. 1001, 9:39-47.) Indeed, as the Board points out in its Institution Decision, Petitioner's obviousness challenge is based, in part, on the '598 patent's disclosure that different textures "are formed *by merely varying the type of stitch formed* by the wide-tube circular knitting machine at each location of the textile element." (Dec. 6 (emphasis in original).) It is improper for Petitioner to use that teaching of the '598 patent to guide its obviousness analysis.

Petitioner's improper use of hindsight is also highlighted by its attempt to define the problems Reed and Nishida sought to address in terms of the solution the '598 patent provided. For example, Petitioner argues that a person of ordinary skill in the art would have been motivated to combine Reed and Nishida because "both Reed and Nishida are directed to reducing costs associated with producing

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textile elements using the latest advances in knitting technology." (Pet. 13.) In reality, the problems Reed and Nishida sought to address are very different, with Reed addressing the problem of garments that are not preseamed and Nishida addressing the problem of the German Patent not disclosing both a layout for a shoe upper and a related sole part. *Insite Vision Inc. v. Sandoz, Inc.*, 783 F.3d 853, 859 (Fed. Cir. 2015) ("Defining the problem in terms of its solution reveals improper hindsight").

In sum, Petitioner fails to carry its burden of proving the challenged claims of the '598 patent are unpatentable over Reed and Nishida, particularly given the low level of ordinary skill in the art with no knitting experience. Petitioner's use of hindsight to attempt to piece together Reed and Nishida is improper and leads to reversible error. *In re NTP, Inc.*, 654 F.3d 1279, 1299 (Fed. Cir. 2011) (reversing obviousness determination where Board "relied on hindsight reasoning to piece together elements to arrive at the claimed invention").

IV. CONCLUSION

Petitioner has failed to prove that claims 1-13 of the '598 patent are unpatentable. NIKE requests that the Board enter a final written decision affirming the patentability of those claims.

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Date: January 23, 2017

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WORD COUNT CERTIFICATION

Pursuant to 37 C.F.R. § 42.24(d), I certify that this Response contains 13,028 words (excluding the table of contents, table of exhibits, this certificate, and the certificate of service), as determined by Microsoft Word.

Date: January 23, 2017

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CERTIFICATE OF SERVICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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adidas AG
Petitioner,

v.

NIKE, Inc.
Patent Owner

Case IPR2016-00922
Patent No. 8,266,749

PATENT OWNER RESPONSE UNDER 37 C.F.R. § 42.120

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EXHIBIT LIST

Ex. 2004 Transcript of the Deposition of Lenny M. Holden (January 10, 2017)

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Patent Owner NIKE, Inc. submits this response to the petition by adidas AG seeking an IPR of claims 1-9, 11-19, and 21 of U.S. Patent No. 8,266,749 (Ex. 1001) as obvious over Reed (Ex. 1006) and Nishida (Ex. 1009).

I. INTRODUCTION

NIKE is a worldwide leader in the design and development of athletic footwear. Its foundational purpose is simple: to innovate. True to that purpose, NIKE spent years designing and developing the technology in the '749 patent and its family – technology that has revolutionized the footwear industry.

The '749 patent at issue here is directed to a method of manufacturing footwear. An article of footwear typically has two primary elements, an upper and a sole structure. The upper covers the foot. The sole structure is below the upper between the foot and the ground.

Before the '749 patent, footwear manufacturers made uppers by piecing together multiple different materials to impart different properties to different areas of the upper. This process often required sourcing materials from multiple suppliers, operating multiple machines, and coordinating multiple assembly line techniques, manufacturing steps, and individuals.

NIKE recognized that conventional method of making uppers was inefficient, and NIKE addressed those inefficiencies in the '749 patent and its family. The patent recites, among other things, simultaneously knitting a textile

element (e.g., an upper) and a surrounding textile structure where the textile element has at least one texture that differs from the texture in the surrounding structure. The textile element (e.g., an upper) may also have different areas formed of different stitch configurations to impart varying textures. The textile element (e.g., an upper) is removed from the surrounding structure and incorporated into an article of footwear. In this way, the textile element (e.g., an upper) is formed of a single knitted material, but may have different textures or properties in different areas like a conventional upper made from multiple materials.

Instead of innovating like NIKE, Petitioner seeks a shortcut by challenging NIKE's patents. Petitioner does not dispute that the claims of the '749 patent are novel and not anticipated. Petitioner instead contends NIKE's claims would have been obvious to a person of ordinary skill.

Petitioner bases its obviousness challenge on the combination of two references that are very different from NIKE's invention. Reed is not directed to footwear, but rather to a specific type of garment made on a specific type of machine; namely, a garment made of two juxtaposed panels that are formed and seamed together during the knitting process on a circular double knitting machine. These garments include skirts, shirts, and dresses. Nishida is directed to a conventional method of making footwear uppers and related sole parts using multiple materials. The examiner analyzed Nishida during prosecution and

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allowed the claims of the '749 patent.

Because of the many differences between NIKE's claims and the prior art, Petitioner fails to carry its burden of proving unpatentability. First, Petitioner concedes the level of ordinary skill in the art at the time of the invention was low. Petitioner contends a person of ordinary skill had only "a few years of experience" in the footwear industry and did not have knitting experience, let alone experience using knitting technologies to create uppers. This low level of skill precludes Petitioner from proving obviousness in this case.

Second, Petitioner fails to properly analyze the full scope and content of the prior art. Petitioner ignores relevant disclosure in Reed and Nishida that is critical to the obviousness analysis. For example, Petitioner ignores that Reed is directed to preseamed garments and that Nishida is directed to printing or producing layouts of footwear uppers and related sole parts on a preexisting backing.

Third, Petitioner fails to show that a person of ordinary skill in the art would have been aware of the problem the '749 recognized and addressed. Petitioner's failure to provide any evidence on this point is underscored by the age of Reed and Nishida, and the passage of time between that prior art and the invention.

Fourth, Petitioner fails to shown that Reed is "analogous art" for purposes of its obviousness challenge. That is, even if a person of ordinary skill had been aware of the problem the '749 patent recognized and addressed, Petitioner has not

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shown that the person of ordinary skill would have looked to knitting technologies in other industries, such as Reed, to solve the problem.

Fifth, Petitioner fails to establish *why* a person of ordinary skill in the art would have been motivated to combine Reed and Nishida to derive the claimed subject matter with a reasonable expectation of success. Petitioner instead provides conclusory, and incorrect, arguments that Reed and Nishida are analogous art and directed to solving similar problems. But, even if that were true, it is not enough to establish a motivation to combine.

Sixth, Petitioner fails to show *how* a person of ordinary skill in the art would have combined Reed and Nishida. That is significant here because combining the teachings of Reed and Nishida would render Reed inoperable for its intended purpose of creating preseamed garments. Reed also teaches away from the combination. For these reasons, Petitioner cannot establish that a person of ordinary skill in the art would have been motivated to combine Reed and Nishida.

Seventh, Petitioner fails to address the differences between the prior art and the challenged claims. That is, even if a person of ordinary skill would have been motivated to combine Reed and Nishida, which is not the case, neither reference discloses certain limitations in all of the challenged claims.

In sum, Petitioner fails at carry its burden. NIKE requests that the Board enter a final written decision affirming the patentability of the challenged claims.

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II. OVERVIEW OF THE '749 PATENT

A. THE INVENTION IS DIRECTED TO A METHOD OF MANUFACTURING AN ARTICLE OF FOOTWEAR USING KNITTING TECHNOLOGY

The challenged claims are directed to methods of manufacturing an article of footwear. (Ex. 1001, 11:43-14:5.) Claim 1 is illustrative:

Claim 1 of the '749 Patent
1. A method of manufacturing an article of footwear, the method comprising: simultaneously knitting a textile element with a surrounding textile structure, the knitted textile element having at least one knitted texture that differs from a knitted texture in the surrounding knitted textile structure; removing the knitted textile element from the surrounding knitted textile structure; incorporating the knitted textile element into the article of footwear.

B. THE INVENTION ADDRESSED INEFFICIENCIES WITH CONVENTIONAL METHODS OF MANUFACTURING THAT USED MULTIPLE MATERIALS TO CREATE FOOTWEAR UPPERS

Conventional methods of manufacturing footwear involve creating uppers out of multiple materials to impart different properties to different areas of the upper. (Ex. 1001, 1:55-3:3.) For example, the "toe area and the heel area [of the upper] may be formed of leather, synthetic leather, or a rubber material to impart a relatively high degree of wear-resistance." (*Id.*, 1:62-64.) The areas of the upper between the toe and heel areas "may be formed from a synthetic or natural textile" to impart "flexibility" or "air-permeability" to those areas. (*Id.*, 1:64-2:4.)

From the perspective of manufacturing, "utilizing multiple materials to

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impart different properties to an article of footwear may be an inefficient practice." (Ex. 1001, 3:4-6.) For example, the "various materials utilized in a conventional upper are not generally obtained from a single supplier." (*Id.*, 3:6-8.) A manufacturer, therefore, "must coordinate the receipt of specific quantities of materials with multiple suppliers that may have distinct business practices or may be located in different regions or countries." (*Id.*, 3:8-12.) The materials "may also require additional machinery or different assembly line techniques to cut or otherwise prepare the material for incorporation into the footwear," and "incorporating separate materials into an upper may involve a plurality of distinct manufacturing steps requiring multiple individuals." (*Id.*, 3:12-17.)

The '749 patent recognized and addressed these inefficiencies. (Ex. 1001, 11:43-14:5.) Figure 9 of the patent, reproduced below, shows an example of knitted textile elements and a surrounding knitted textile structure that have been simultaneously knitted in accordance with the invention. (*Id.*, 4:13-14.)

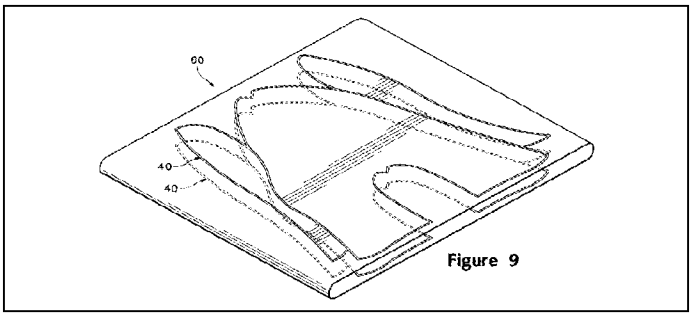


Figure 9

The knitted textile elements are labeled 40 and the surrounding knitted textile structure is labeled 60. (Ex. 1001, 7:38-8:8.) The "textile structure 60 has a

generally cylindrical configuration" because it was knitted on a circular knitting machine. (*Id.*, 7:40-41.) During the knitting process, the types of stitches may be varied throughout the textile structure "so that a pattern is formed with the outline of textile element 40." (*Id.*, 7:41-43.) The "differences in the stitches within textile structure 60 form an outline with the shape and proportions of textile element 40." (*Id.*, 7:43-45.) The knitted textile elements may also have a texture that differs from a texture in the surrounding knitted textile structure. (*Id.*)

After the circular knitting machine is finished knitting the textile elements and surrounding textile structure, the entire structure is removed from the machine. (Ex. 1001, 8:4-8.) Each textile element is then cut from the surrounding textile structure "with a die-cutting, laser-cutting, or other conventional cutting operation." (*Id.*) Figure 8 of the '749 patent, reproduced below, shows what a knitted textile element may look like after it has been knitted on the knitting machine and then cut from the surrounding textile structure. (*Id.*, 5:59-60.)

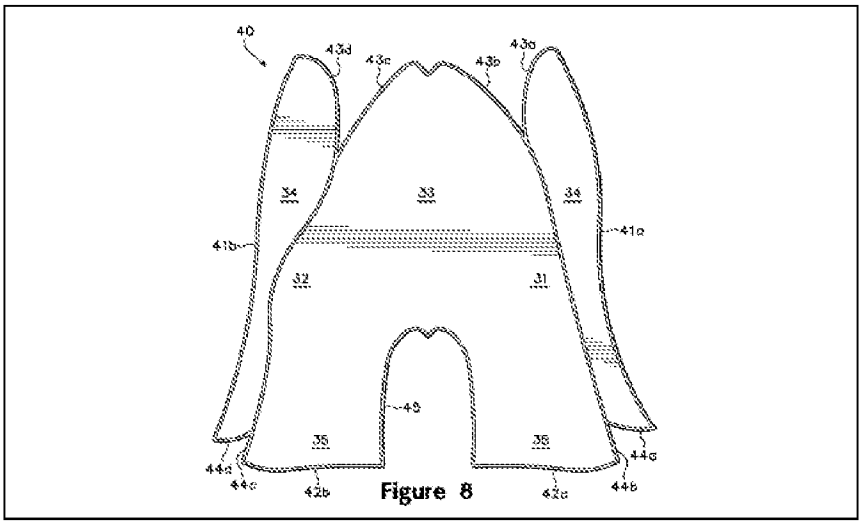


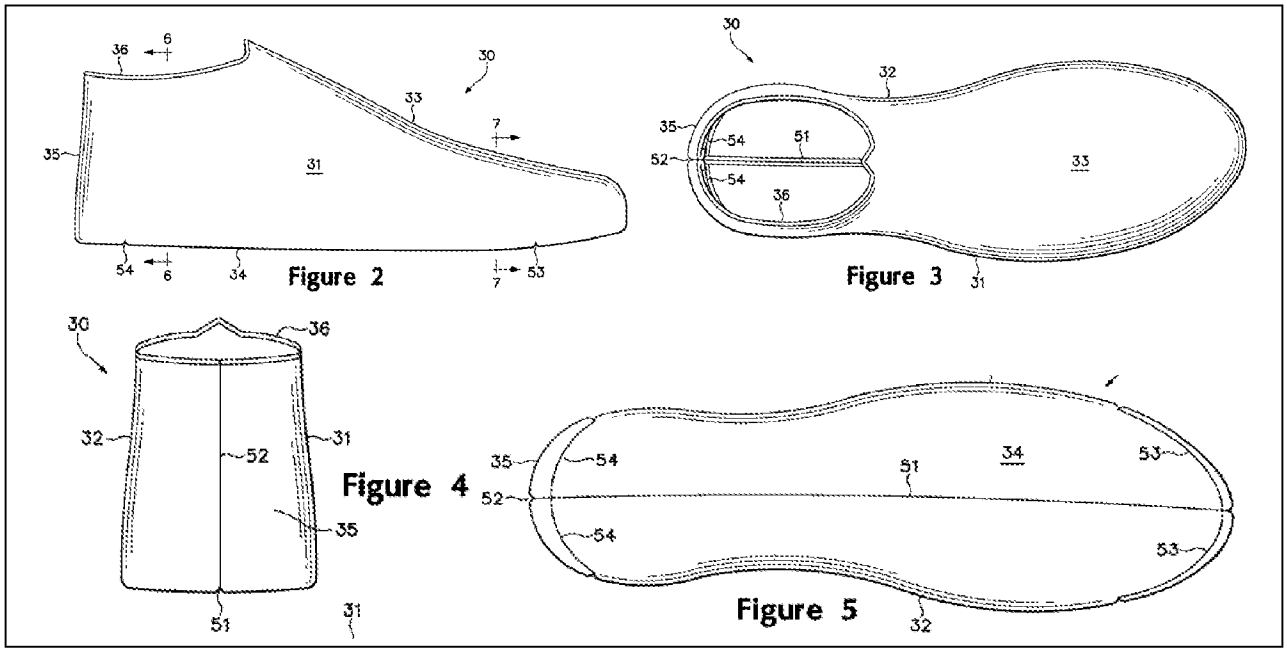
Figure 8

The "textile element 40 is a single material element that is formed to exhibit a unitary (*i.e.*, one-piece) construction, and textile element 40 is formed or otherwise shaped to extend around the foot." (Ex. 1001, 5:40-43.) The area of textile element labeled 32 is the lateral region of the upper, the area labeled 32 is the medial region, the area labeled 33 is the instep region, the area labeled 34 is the bottom surface, and the area labeled 35 is the heel region. (*Id.*, 5:21-36.)

The textile element may have a "generally planar configuration" after it is removed from the surrounding textile structure. (Ex. 1001, 6:13-14.) That is, the knitting machine does not fold or seam the edges of the textile element, labeled 41a-44d in Figure 8 above, to form an upper during the knitting process. (*Id.*, 5:40-43.) Rather, after the textile element is removed from the surrounding textile structure, the edges of the generally planar textile element must then be folded and seamed to form an upper. (*Id.*, 5:59-6:29.) In the example shown in Figure 8, edges 41a and 41b are folded or otherwise overlapped so that 41a is placed adjacent to 41b. (*Id.*, 6:9-11.) The edges 41a and 41b are then seamed together by, for example, "stitching, an adhesive, or heat bonding." (*Id.*, 6:11-13.) Similarly, edges 42a and 42b are folded and seamed together, edges 43a and 43b are folded and seamed together, edges 43c and 43d are folded and seamed together, edges 44a and 44b are folded and seamed together, and edges 44c and 44d are folded and seamed together. (*Id.*, 5:64-6:29.) Folding and joining these edges forms seams

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51-54, which are shown in Figures 2-5 of the '749 patent reproduced below. (*Id.*, 5:59-62.)



The knitted textile element, or upper, may also have different areas with different textures that may be formed by varying the type of stitch during the knitting process. (Ex. 1001, 9:29-10:7.) Additionally, the knitted textile element may have areas with apertures that are formed by omitting stitches at specific locations during the knitting process. (*Id.*) For example, Figure 11 of the '749 patent, reproduced below, shows a knitted textile element with at least three different areas with three different textures. (*Id.*, 9:31-32.) They include a first area with a first texture 46" that is generally smooth, a second area with a second texture 47" that is generally rough, and a third area with a third texture 48" that is different that the first and second textures. (*Id.*, 9:29-57.) The third texture also

includes a plurality of apertures that extend through the upper. (*Id.*, 9:47-53.)

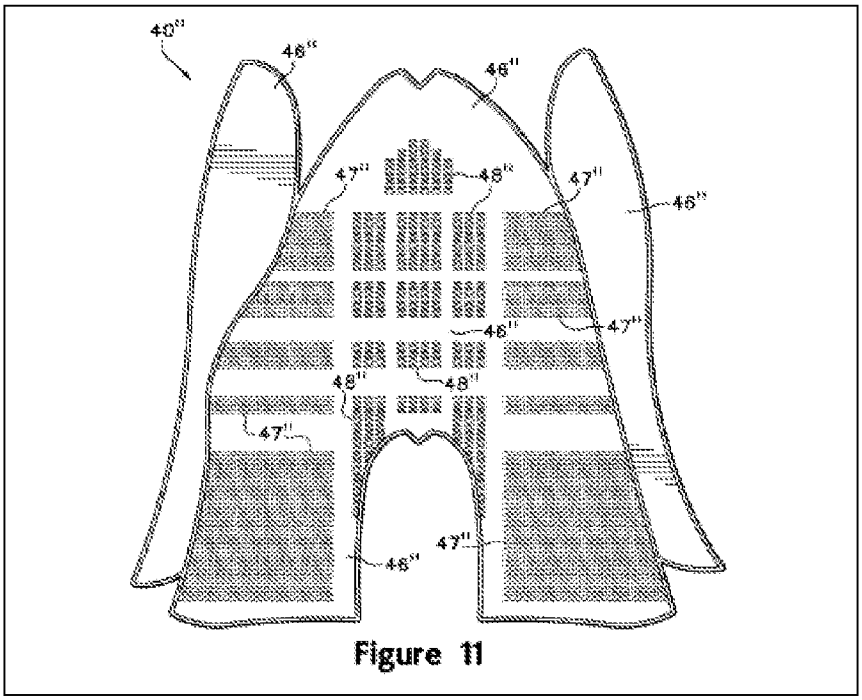


Figure 11

The manufacturing of the upper is essentially complete after the knitted textile element is removed from the surrounding textile structure and then seamed as described above. (Ex. 1001, 6:30-31.) The upper is formed of a single material but may still have different properties in different areas. (*Id.*) The upper may then be secured to a sole structure to complete the article of footwear. (*Id.*, 6:33-34.)

C. DURING PROSECUTION, THE EXAMINER CONSIDERED THE PRIOR ART THAT PETITIONER NOW RELIES ON IN ITS CHALLENGE

The examiner analyzed Nishida during prosecution of the '749 patent. (Ex. 1002, 237.) Petitioner acknowledges this fact at least three times in its petition. (Pet. 4-5, 11-12, 59-60.) Petitioner does not attempt to dispute, challenge, or rebut the examiner's findings regarding Nishida's disclosure. (*Id.*) Instead, Petitioner

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argues the examiner did not consider Nishida in combination with Reed. (*Id.*) That is technically true, but the examiner considered prior art knitting machines like Reed. The specification of the '749 patent itself describes prior art circular knitting machines. (Ex. 1001, 7:46-63.)

The examiner initially rejected claims 1-8, 11-18, and 21 as anticipated by Nishida. (Ex. 1002, 237.) The examiner based this rejection on her incorrect belief (which she later corrected) that Nishida discloses simultaneously knitting a textile element and a surrounding structure. (*Id.*) The examiner stated that "Nishida shows a process for producing a shoe comprising simultaneously knitting a textile element (3) with a surrounding textile structure (1 and 4), the elements are removed from the surrounding textile and the longitudinal edges that are joined together (7 and 8) and a sole attached thereto (see figure 3) as claimed." (*Id.*)

In response, NIKE corrected the examiner's misunderstanding of Nishida. (Ex. 1002, 258-260.) NIKE explained that "Nishida fails to disclose a knitted textile element *simultaneously* formed with a knitted textile structure during a knitting process." (*Id.*, 259 (emphasis in original).) Instead, "Nishida discloses that layouts 2 are printed, embroidered, woven, or knitted onto a *pre-existing* backing material 4." (*Id.* (emphasis in original).) Specifically, NIKE continued, "Nishida discloses that layouts 2 are produced by 'a fabric printing process ... on the web of material and/or by a textile production process inside the web of

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material.'" (*Id.* (citing Nishida at 2:50-56).) Because Nishida teaches that layouts 2 may be produced by a 'fabric printing process ... on the web of material,' Nishida necessarily teaches that the backing material for the web of material must be formed prior to the production of the layouts." (*Id.*) In other words, NIKE continued, "the formation of Nishida's backing material must precede the printing of the layouts thereupon." (*Id.*)

With respect to the "backing material," NIKE explained that "Nishida further discloses that 'the web of material has a backing 4 that can be a conventionally used material ...' and that 'the web of material 1 is produced so that its surface areas 1.1, in which no layout(s) 2 or tongue(s) 40 are provided, consist of a lightweight material quality that is a simple and economical as possible." (*Id.* (citing Nishida at 3:13-15).) NIKE explained Nishida provides that "these surface areas 1.1 can be produced like a gauze or with low to very low warp and/or filling gauge and/or, for example, by being thin-spun or the like." (*Id.* (citing Nishida at 5:45-52).) This means "Nishida discloses that the backing material 4, which includes the surface area 1.1 outside the layouts, is formed separately from the layouts 2 themselves." (*Id.*)

NIKE also explained the portion of Nishida that states the "layouts 2 may be produced 'by a textile production process inside the web of material.'" (*Id.*) NIKE explained that portion is "not a disclosure that the layouts and the area surrounding

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the layouts are simultaneously formed." (*Id.*) For example, NIKE continued, "embroidery, which could be considered a prime example of a 'textile production process inside the web of material,' is specifically listed by Nishida as a process for forming a layout." (*Id.*, 259-60 (citing Nishida at 5:27-31).) NIKE explained that "embroidery is produced as a subsequent operation onto an existing backing material." (*Id.*, 260.)

For all these reasons, NIKE explained to the examiner that "Nishida fails to disclose that the layouts are *simultaneously formed* with the backing material or the surrounding surface areas." (Ex. 1002, 260 (emphasis in original).) Even further, NIKE continued, "Nishida fails to disclose that the layouts are *simultaneously* ***knitted*** with the backing material." (*Id.* (emphasis in original).) That is, NIKE explained, "although Nishida discloses that the backing material can be 'a knitted fabric' and that the layouts may be 'knitted,' Nishida fails to disclose that these two processes occur simultaneously." (*Id.* (citing Nishida as 3:13-15).) NIKE further noted that "processes that involve 'knitting through' or 'stitching through' a backing material, such as disclosed in US 4,144,727 to Duhl et al., titled 'Knitted Malimo Type Fabric,' were known at the time of Nishida's application." (*Id.*) Thus, NIKE continued, "it is entirely in keeping with Nishida's disclosure for a layout (knitted or otherwise) to be subsequently produced on an existing backing material (knitted or otherwise) using a Malimo-type process." (*Id.*)

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The examiner and NIKE thereafter conducted an interview to discuss Nishida. (Ex. 1002, 278.) During the interview, the examiner acknowledged that her initial understanding of Nishida was incorrect. (*Id.*) The examiner stated in an interview summary, "[a]fter further consideration and arguments it was clarified that Nishida may disclose a web of material having different textures, but there is no clear disclosure of the textures differing such that the textile element has a texture which is different than the texture of the surrounding textile structure and that the textile element and the surround structure are simultaneously knitted." (*Id.*) The examiner further agreed that "Nishida does not provide any clear disclosure of where the differing textures are located." (*Id.*) The examiner asked NIKE to "clarify" this corrected understanding of Nishida in a request for reconsideration. (*Id.*)

NIKE submitted a request for reconsideration as directed. (Ex. 1002, 285-286.) NIKE first again explained that "Nishida discloses that the backing 4 for the web of material 1 must be formed prior to the production of the layouts," and thus, "Nishida fails to disclose a knitted textile element *simultaneously* formed with a knitted textile structure, having a differing texture, during a knitting process." (*Id.*, 286 (emphasis in original).)

NIKE then addressed an excerpt of Nishida that had initially confused the examiner; namely, the excerpt of Nishida that reads: "[a]s already indicated, the

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webs of material being used can be produced by program-controlled web material production devices whose programs can be matched almost at will according to the corresponding basic setting with deviations in size of the layouts of the individual shoe uppers or with changes of the type of weave or knit of individual areas or contours, the type of fiber or yarn and/or the color." (Ex. 1002, 286 (citing Nishida at 5:63-6:2.) NIKE explained that even if, *arguendo*, the disclosure "changes of the type of weave or knit of individual areas" refers to the backing of Nishida, that disclosure "fails to disclose that the type of weave or knit is associated with any specificity to any particular area of Nishida's backing." (*Id.*) In other words, NIKE continued, "Nishida simply fails to disclose that its backing material has a first texture in an area associated with a textile element and a differing texture in an area surrounding the textile element." (*Id.*) Thus, NIKE explained, "Nishida fails to disclose differing textures of any simultaneously knitted textile element and its simultaneously knitted surrounding textile structure." (*Id.*)

The examiner agreed with NIKE that Nishida fails to disclose at least these two limitations of the claims: (i) a textile element and a surrounding structure that are simultaneously knitted, and (ii) a textile element that has a texture different than the surrounding textile structure. (Ex. 1002, 278 and 295-296.) The examiner withdrew her rejection and allowed claims 1-8, 11-18 and 21 (and she had previously allowed claims 9, 10, 19, and 20). (*Id.*, 295-296.)

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III. PETITIONER FAILS TO CARRY ITS BURDEN OF PROVING THAT CLAIMS 1-9, 11-19, AND 21 ARE UNPATENTABLE

Petitioner has "the burden of proving a proposition of unpatentability by a preponderance of the evidence." 35 U.S.C. § 316(e). There are two distinct burdens of proof: a burden of persuasion and a burden of production. *In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1375-77 (Fed. Cir. 2016). Both burdens are on Petitioner and never shift to NIKE. *Id.* at 1376 (rejecting argument that burdens shift to patent owner once Board institutes IPR).

A. LEGAL STANDARD

A claim is obvious only "if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." 35 U.S.C. § 103(a) (pre-AIA); *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The ultimate determination is a question of law, but it is based on underlying factual findings. *In re Nuvasive, Inc.*, 842 F.3d 1376, 1381 (Fed. Cir. 2016). The facts include (1) "the scope and content of the prior art," (2) "differences between the prior art and the claims at issue," (3) "the level of ordinary skill in the pertinent art," and (4) the presence of secondary considerations of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). Petitioner's arguments fail as to all of the *Graham* factors at issue here.

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B. PETITIONER CONCEDES THE LEVEL OF ORDINARY SKILL IN THE ART AT THE TIME OF THE INVENTION WAS LOW

A determination of obviousness requires a finding of the level of ordinary skill in the art at the time of the invention. *Graham*, 383 U.S. at 17. The "level of skill in the art is a prism or lens through which … the Board views the prior art and the claimed invention." *Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001). This reference point prevents a factfinder from using its "own insight or, worse yet, hindsight, to gauge obviousness." *Id.*

To determine the level of ordinary skill, the Board considers various factors, including "1) the types of problems encountered in the art; 2) the prior art solutions to those problems; 3) the rapidity with which innovations are made; 4) the sophistication of the technology; and 5) the educational level of active workers in the field." *Ruiz v. A.B. Chance Co.*, 234 F.3d 654, 666–67 (Fed. Cir. 2000); *Wangs Alliance Corp. v. Koninklijke Philips N.V.*, IPR2015-01290, Paper 63, 13-16 (Nov. 23, 2016). It is more difficult to establish obviousness under a lower level of ordinary skill. *Kinetic Concepts, Inc. v. Smith & Nephew, Inc.*, 688 F.3d 1342, 1366 (Fed. Cir. 2012).

Petitioner fails to analyze the Board's factors or any other factors for determining the level of ordinary skill. (Pet. 8.) Petitioner instead provides a conclusory description of what it contends is the level of ordinary skill. (*Id.*; Ex. 1003 at ¶ 34.) In doing so, Petitioner concedes the level of ordinary skill was low,

stating that a person of ordinary skill would have only "a few years of experience in the footwear industry." (*Id.*)

Petitioner describes the skills it contends a person with "a few years of experience" would possess, including an "understanding" of the product cycle for bringing a product to market, an "understanding that there are some key review milestones" during the product cycle when "upper material designs are reviewed," an "understanding" of "typical" construction methods, and an "understanding" of the "material choices" and "construction techniques and processes" used to create conventional shoes. (*Id.*) Absent from Petitioner's description is any knitting experience, let alone experience using knitting technologies to create knitted footwear uppers. (*Id.*)

Petitioner's alleged footwear expert, Mr. Holden, confirmed during his cross-examination that a person with just "a few years of experience in the footwear industry" would have no knitting experience. Mr. Holden, who has nearly forty years of experience in the footwear industry and who Petitioner contends has extraordinary skill in the art, testified that even today – thirteen years after the invention of the '749 patent – he has no meaningful knitting experience. For example, Mr. Holden admitted that he has never used knitting technologies to design or create knitted footwear uppers. (Ex. 2004, 60:16-22, 71:22-73:3, 73:23-74:14.) He admitted he has never operated or programmed a knitting machine.

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(Ex. 2004, 70:19-71-15.) He admitted he has never removed a knitted upper from a web of material and processed it into a shoe. (Ex. 2004, 73:4-18.) In fact, Mr. Holden testified he never would have been allowed to do any of those things because it would have been too "dangerous." (Ex. 2004, 71:25-72:25, 74:3-75:9.) If it was too "dangerous" for Mr. Holden with his nearly forty years of experience, a person with just a "few years of experience" would not have had any knitting experience, let alone experience using knitting technologies to create uppers.

In sum, the level of ordinary skill in the art at the time of the '749 patent was low. It is more difficult, therefore, for Petitioner to establish obviousness, and Petitioner cannot overcome that more difficult hurdle as discussed below.

C. PETITIONER'S EXPERT DECLARATION SHOULD BE GIVEN NO WEIGHT

Mr. Holden's declaration should be given no weight for several reasons. First, Mr. Holden's declaration is no more than an "expertized" version of the petition. (Ex. 1003). He admitted during cross-examination that Petitioner's counsel wrote the declaration for him. (Ex. 2004, 12:5-11.) The declaration should be given no weight for this reason alone. *See, e.g.*, *InfoBionic, Inc. v. Braemar Manufacturing, LLC*, IPR2015-01704, Paper 11 (declaration that merely parrots petition given no weight).

Second, during cross-examination, Mr. Holden was unable to answer basic questions about the patent, the prior art, footwear, knitting technologies, and the

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declaration Petitioner's counsel prepared for him. For example, Mr. Holden used the term "stitch configuration," which is a claim term in the '749 patent, at least twenty times (excluding quotations) in his declaration, but during cross-examination he was unable to define the term. (Ex. 2004, 78:22 – 79:18; Ex. 1003, ¶¶ 42, 72, 81, 117, 119, 134, 148, 169, 181, 182, 201, 206.) Mr. Holden also states in his declaration that he "had discussions with [Petitioner's] external knitting consultant to confirm [his] understanding of certain stitch configurations," but during cross-examination he testified he did not discuss "stitch configurations" with the consultant. (Ex. 2004, 111:11–116:7; Ex. 1003, ¶ 81.) After being pressed to give a definition of "stitch configurations" during cross-examination, Mr. Holden offered the incoherent testimony that "as it applies to almost any type of configuration, basically it is -- it relates to the design, possibly the outline, of how a process is applied." (*Id.*, 78:22-79:18)

Similarly, Mr. Holden was unable to explain during cross-examination what the term "texture" means in the context of the '749 patent even though he uses that term in his declaration. (Ex. 2004, 176:22 – 184:11.) After being pressed to give a definition, Mr. Holden testified that "texture" may mean "actual texture" or it may mean the "appearance of texture." (*Id.*) Mr. Holden even offered the incredible testimony that a color is texture in the context of the '749 patent. (*Id.*) Mr. Holden gave that testimony, despite the fact that Petitioner (and Mr. Holden by

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way of the declaration that Petitioner prepared for him) argued in the petition that "texture" should be given its "ordinary and customary meaning," which does not include "appearance of texture" or "color." (Pet. 7.)

Mr. Holden was also unable to define the terms "knit interlock stitch," "interknitted stitch," and "non-interknitted stitch," which are all terms Reed uses to describe his invention. (Ex. 2004, 76:8 – 81:18.) Mr. Holden testified that he was not even familiar with those terms until this proceeding, and that the only way he would know what they mean is if he looked them up in the Spencer reference marked as Exhibit 1010, which Mr. Holden read for the first time during this proceeding. (*Id.*) Because Mr. Holden is not familiar with "knit interlock stitches," "interknitted stitches," and "non-interknitted stitches," he also testified that he does not know what textures those stitches provide. (Ex. 2004, 80:24 – 81:8.)

Mr. Holden also testified that he does not understand portions of Nishida's description of the invention disclosed in Nishida. (Ex. 2004, 162:19 – 168:2.) For example, Nishida states "this invention relates to a process for the production of a shoe shaped part using a web of material with a plurality of patterns in the form of the layout of a shoe upper, cutting out these layouts from the web of material and stitching the parts of the shoe upper to a top part . . . ." (Ex. 1009, 1:10-15.) Mr. Holden was asked during cross-examination what Nishida means when it says "cutting out these layouts from the web of material and stitching the parts of the

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shoe upper to a top part." (Ex. 2004, 163:3 – 168:2.) Mr. Holden testified that he is not "really clear exactly what that means" and then proceeded to testify that he "assumed" Nishida might be referring to stitching a "sock." (*Id.*)

Mr. Holden also testified that he did not review or analyze the patent that Nishida intended to improve upon. (Ex. 2004, 167:11-20.) Nishida states the "primary object of this invention is to further develop" the "process" for making shoe parts described in German Patent No. 627 878. (Ex. 1009, 1:10-46.) Mr. Holden did not review or analyze that patent. (Ex. 2004, 167:11-20.)

Mr. Holden was also unable to answer many other basic questions during cross-examination. For example, he was unable to describe the difference between weaving and knitting. (Ex. 2004, 81:9-18.) He was also unable to identify a single difference between footwear and apparel/garments. (*Id.*, 39:16 –40:1.)

In sum, Mr. Holden did not author his declaration and, during cross-examination, he was unable to answer basic questions about the declaration, the patent at issue, the prior art, footwear, and knitting technologies. Mr. Holden's declaration is not helpful, and it should be given no weight.

Petitioner may criticize NIKE for not submitting an expert declaration. But it is Petitioner's burden to prove unpatentability; it is not NIKE's burden to prove patentability. *Magnum Oil*, 829 F.3d at 1375–77. There is no reason to require NIKE to submit an expert declaration, particularly here where the '749 patent and

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the prior art references themselves confirm that Petitioner fails to carry its burden. *See, e.g., VirnetX Inc. v. Apple Inc.*, No. 2015-1934, 2016 WL 7174130, at *3 (Fed. Cir. Dec. 9, 2016) (rejecting argument that expert testimony is necessary for the PTAB to make findings regarding what a person of ordinary skill would have understood with respect to prior art references); *In Belden Inc. v. Berk–Tek LLC*, 805 F.3d 1064, 1079 (Fed. Cir. 2015) ("[n]o rule requires ... an expert [to] guid[e] the [PTAB] as to how it should read prior art" and PTAB "members, because of expertise, may more often find it easier to understand and soundly explain the teachings and suggestions of prior art without expert assistance."); *Shinn Fu Company of America, Inc., et al., v. The Tire Hanger Corporation*, IPR2015-00208, Paper 24 (April 22, 2016) (granting patent owner's motion to amend and finding proposed claims patentable where patent owner did not file an expert declaration, relying instead on express disclosures in the prior art and the challenged patent).

D. PETITIONER FAILS TO PROPERLY ANALYZE THE FULL SCOPE AND CONTENT OF THE PRIOR ART

All relevant teachings of a cited reference must be considered in determining what it fairly teaches to one having ordinary skill in the art. *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.*, 796 F.2d 443, 448 (Fed. Cir. 1986) ("It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position to the exclusion of

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other parts necessary to the full appreciation of what such reference fairly suggests to one skilled in the art.") Petitioner, however, provides only a cursory discussion of Reed and Nishida that ignores critical disclosure of both references. (Pet. 9-11.) In doing so, Petitioner improperly fails to address the full scope and content of the prior art. Below NIKE provides the scope and content of Reed and Nishida.

1. Reed teaches using a circular double knitting machine to knit two juxtaposed panels of a garment and to seam them together during the knitting process

Reed states that his "***present invention*** relates generally to knitted garments and more particularly to a ***garment*** which is ***preseamed*** and preformed on a ***circular knitting machine***." (Ex. 1006, 1:8-11.) That description of the "present invention" limits the scope of Reed to preseamed garments made on circular knitting machines. *See, e.g., Pacing Techs., LLC v. Garmin Int'l, Inc.*, 778 F.3d 1021, 1024 (Fed. Cir. 2015) (if inventor describes the "present invention" as a whole, the scope of the invention is limited to what the inventor describes); *Regents of Univ. of Minn. v. AGA Med. Corp.*, 717 F.3d 929, 936 (Fed. Cir. 2013) (if inventor "describes the features of the 'present invention' as a whole," the inventor alerts the reader that "this description limits the scope of the invention").

The remainder of Reed's disclosure describes what he means by preseamed garments, and it confirms that Reed is limited to using a circular knitting machine to make preseamed garments. Reed explains that, in the prior art, "clothing in the

garment industry is generally made by superimposing one fabric over another, cutting it into panels to conform to the shape of the individual according to current fashion, seaming along the outer edges of the panel and attaching various parts, by stitching to form seams, until a complete garment is formed." (Ex. 1006, 1:13-19.) Reed criticizes those conventional methods as inefficient uses of "time, cost and labor." (*Id.*; *see also id.*, 6:18-22.) Indeed, the conventional methods involved superimposing two preexisting panels of material, forming a garment into those preexisting panels, cutting the shaped garment from the two preexisting panels, and then seaming the two cutouts together to create the final garment. (*Id.*)

Reed's solution is to use a circular double knitting machine to create finished, or nearly finished, garments that are preseamed by the knitting machine during the knitting process. (Ex. 1006, 1:58-2:16.) The circular double knitting machine simultaneously knits two juxtaposed panels (*e.g.*, a front and back panel of a garment) and seams them together at their edges, all during the knitting process. (*Id.*; *see also id.*, 6:25-28.)

More specifically, Reed explains that his "present invention uses an electronic circular double knitting machine programmed to simultaneously knit two concentric tubes . . . and additionally programmed to interconnect the two concentric tubes by a knit interlock stitch to form the outline of the design of a garment." (Ex. 1006, 1:58-64.) The "resulting knitted structure will have two

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layers of single fabric knitted or seamed together in the shape of the desired garment wherein the anatomy of the user would fit between the single knitted fabrics." (*Id.*, 1:64-68.) The "garment has a first surface formed from portions of one tube and a second surface formed from a juxtaposed portion of the other tube." (*Id.*, 2:1-3.) The garment is then cut from the tube "and turned inside out if a hidden seam is desired." (*Id.*, 2:14-16.)

Figure 1 in Reed, reproduced below, shows an example of a knitted structure as "it would come off a circular double knit knitting machine" in accordance with his invention. (Ex. 1006, 2:66-68.) A circular double knitting machine is "a machine that has two separate sets of needles." (*Id.*, 3:36-41.) In other words, a circular double knitting machine knits two concentric tubes of material. (*Id.*)

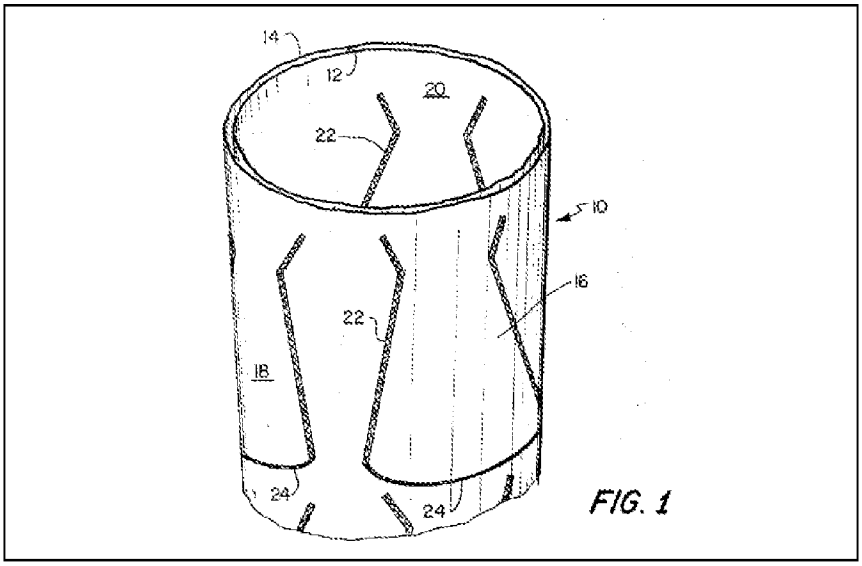


FIG. 1

The knitted structure, labeled 10, has an inner tube, labeled 12, and an outer tube, labeled 14. (*Id.*, 3:1-3.) The outer tube 14 is "concentric to, and

encompasses, the inner tube 12." (*Id.*) The "tubes 12 and 14 are simultaneously knitted concentrically" on the circular double knit machine. (*Id.*, 3:3-5.)

In the example shown in Figure 1, the knitted structure 10 includes three garments which, for example, may be skirts 16, 18 and 20. (Ex. 1006, 3:5-7.) The "garments 16, 18 and 20 are outlined by a plurality of interconnecting knitted stitches 22 and 24" that the circular double knitting machine stitches during the knitting process. (*Id.*, 3:8-9.) The "interconnecting knitting 22 not only forms the outline 10 of the garments 16, 18 and 20, but joins the inner tube 12 to the outer tube 14 so as to create a seam." (*Id.*, 3:9-12.) That is, the skirts are preseamed by the circular double knitting machine during the knitting process. (*Id.*) In this way, "the knitted structure 10 includes (around its circumference) a plurality of finished garments which need only be severed from the structure 10 and turned inside out if a hidden seam is desired." (*Id.*, 3:15-19.)

Finally, Reed identifies a number of "objects of the invention," including providing "a method for preseaming and preforming knitted garments" and providing "a method of reducing the cost of manufacturing of garments by using the versatility of a computerized electronic knitting machine." (Ex. 1006, 2:19-40.) Reed states that all of his "objects of the invention" are "obtained" by producing "a preformed and preseamed fabric on a circular knitting machine so as to reduce time, cost and labor involved in making garments." (*Id.*, 6:18-22.)

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2. Nishida teaches printing or producing layouts for footwear uppers and related sole parts on a preexisting backing of material

Nishida states that the "primary object of this invention is to further develop" the "previously known process" for making shoe parts described in German Patent No. 627 878 (the "German Patent"). (Ex. 1009, 1:10-46.) The German Patent teaches producing a web of material with successive strips of different weaves. (Ex. 1009, 1:20-22.) A first strip has a weave that is suitable for the counter-stiffener portion of a shoe upper. (Ex. 1009, 1:24-30.) A second strip has a weave that is suitable for the vamp and the side portions of a shoe upper. (Ex. 1009, 1:26-30.) A third strip has a weave that is suitable for the toe cap of a shoe upper. (Ex. 1009, 1:27-30.)

The German Patent then teaches printing patterns in the form of U-shaped layouts directly onto that preexisting web of material. (Ex. 1009, 1:22-24.) The U-shaped layouts are patterns of shoe uppers and they are printed onto the web of material in an arrangement such that the portions of the U-shaped layouts that correspond to the counter-stiffener are printed onto the first strips, the portions of the U-shaped layouts that correspond to the vamp and side portions are printed onto the second strips, and the portions of the U-shaped layouts that correspond to the toe cap are printed onto the third strips. (Ex. 1009, 1:27-30.) After the U-shaped layouts have been printed onto the preexisting web of material, the U-

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shaped parts are cut out, and then folded and seamed together to create an upper. (Ex. 1009, 1:34-37.) But, according to Nishida, the upper does not have a bottom surface, which Nishida refers to as the "related sole part." (*Id.*)

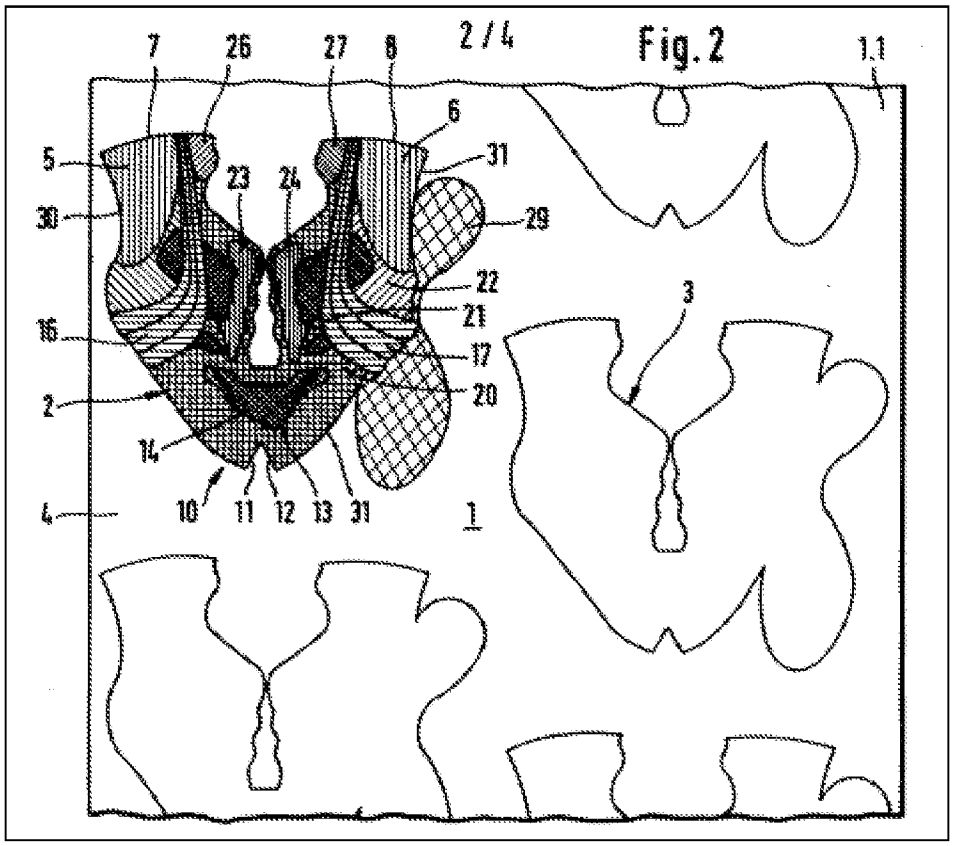
Nishida sought to address the German Patent's failure to produce the "related sole part." (Ex. 1009, 1:40-47.) Nishida states that "the primary object of this invention is to further develop this previously known process [described in the German Patent] ***so that a shoe upper, in many cases, can be configured together with the related sole part.***" (*Id.*)

Nishida teaches achieving that objective by producing a web of material just like in the German Patent. (Ex. 1009, 1:48-2:53.) The web of material has two primary components – a preexisting backing and one or more layouts printed or produced on the backing. (*Id.*, 1:40-2:53 and 3:6-26.) The backing is formed prior to the production of the layouts. (*Id.*) The backing "can be a conventionally used material formed, for example, of a warp and filling or a knitted fabric." (Ex. 1009, 3:13-15.)

After the backing is formed, Nishida teaches printing or producing layouts on the preexisting backing, just like the German Patent. The layouts are printed (with a fabric printing process) or produced (with a textile production process) onto the preexisting backing. (*Id.*, 1:50-56; 2:20-26, 3:13-15, and 5:45-52.) Similar to the German Patent, the layouts may have different weave or knit types in

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different areas that correspond to different areas of the upper. (*Id.*) But, unlike the German Patent, the layouts may also have different weave or knit types in areas that correspond to "related sole parts." (*Id.*) That is, unlike the German Patent, each layout in Nishida has a "related sole part." (*Id.*, 1:57-59.) Figure 2 of Nishida, reproduced below, shows an example of the layouts printed or produced on a preexisting backing. (*Id.*, 2:59-60.) The "related sole part" is labeled 29. (*Id.*, 4:19-21.)



The areas labeled 1.1 of the preexisting backing do not have layouts printed or produced on them, and they are formed of different materials than the portions of the preexisting backing where the layouts are printed or produced. (Ex. 1009,

3:13-15.) For example, the areas labeled 1.1 may "consist of a lightweight material quality that is a simple and economical as possible," such as "a gauze or with low to very low warp and/or filling gauge and/or, for example, by being thin-spun or the like." (*Id.*, 3:13-15 and 5:45-52.)

After the layouts are printed or produced on the preexisting backing, each upper and its related sole part is cut from the web of material. (*Id.*, 2:1-5.) They remain connected to each other as a cut-out unit. (*Id.*) The upper portion of the cut-out unit is first folded and seamed to create the upper. (*Id.*, 3:27-4:46.) The related sole part is then "stitched or basted to the free outside edge" of the upper. (*Id.*, 2:9-10 and 4:19-3.) That completed upper is "then brought into a gluing, injection or casting mold, in which a midsole and an outsole are molded by known measures." (*Id.*, 4:43-46.)

E. PETITIONER FAILS TO SHOW THAT A PERSON OF ORDINARY SKILL IN THE ART WOULD HAVE BEEN MOTIVATED TO COMBINE THE PRIOR ART

An obviousness determination requires "more than a mere showing that the prior art includes separate references covering each separate limitation in a claim." *Unigene Labs., Inc. v. Apotex, Inc.*, 655 F.3d 1352, 1360 (Fed. Cir. 2011). It requires the additional showing that a person of ordinary skill at the time of the invention would have selected and combined the prior art elements in the normal course of research and development to yield the claimed invention. *Id.*

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Here, Petitioner must demonstrate that a person of ordinary skill in the art would have been motivated to combine the teachings of Reed and Nishida to derive the claimed subject matter with a reasonable expectation of success. *Procter & Gamble Co. v. Teva Pharms. USA, Inc.*, 566 F.3d 989, 994 (Fed. Cir. 2009); *Apotex Inc. v. Wyeth LLC*, IPR2014-00115, Paper 94 (Apr. 20, 2015). Mere "conclusory statements" are insufficient; "there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR*, 550 U.S. at 418. Petitioner fails to make this required showing.

1. Petitioner fails to show a person of ordinary skill in the art would even have been aware of the problem the '749 patent addressed

Petitioner provides no evidence that a person of ordinary skill – with just a few years of experience in the footwear industry – would have been aware of the problem the '749 patent addressed. (Pet.) Persons of skill in the art cannot have tried and failed to solve a problem if they were never aware of the problem. *Leo Pharms. Prods., Ltd. v. Rea*, 726 F.3d 1346, 1356–57 (Fed. Cir. 2013).

That is the case here. The number of years that passed between the prior art and the '749 patent underscores that skilled artisans long failed to appreciate the problem. *Id.* In *Leo*, the Federal Circuit reversed a Board's obviousness determination because nothing in the cited prior art appreciated the problem the invention addressed. *Id.* at 1353. Because there was no prior recognition of the

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problem, there was no reason in the record why one of skill in the art would attempt to combine the cited prior art to arrive at the invention. *Id.* at 1354 ("Only after recognizing the existence of the problem would an artisan then turn to the prior art and attempt to develop [the solution].").

Similarly, the '749 patent recognized the problem of making footwear uppers from multiple materials. (Ex. 1001, 3:4-24.) But neither Reed nor Nishida recognized that problem. In 1975, nearly 30 years before the '749 patent, Reed addressed inefficiencies of seaming garments together after the knitting process. (Ex. 1006, 1:5-2:40.) Reed did not recognize any footwear-related problems, let alone problems with making uppers from multiple materials. (*Id.*) Over fifteen years later, in 1992, Nishida addressed the German Patent's failure to provide related sole parts. (Ex. 1009, 1:40-47.) Nishida did not, however, recognize a problem with making footwear uppers from multiple materials. Indeed, Nishida's solution is to make footwear uppers and related sole parts from multiple materials. (*Id.*, 1:48-2:53.) It was not until many years later, in 2004, that NIKE recognized and addressed the problem. (Ex. 1001.)

Petitioner has failed to establish that a person of ordinary skill in the art would have even recognized the problem the '749 patent addressed. Petitioner, therefore, fails to meet it burden of proving the challenged claims are obvious. *Leo Pharms*, 726 F.3d at 1356–57.

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2. Petitioner fails to show that Reed is "analogous art" for purposes of an obviousness challenge

Even if a person of ordinary skill had recognized the problem, which is not the case, Petitioner fails to show that the person would look to Reed for solutions. To qualify as prior art for obviousness, a reference must be "analogous art." *K-TEC, Inc. v. Vita-Mix Corp.*, 696 F.3d 1364, 1375 (Fed. Cir. 2012). That means it must: (i) "be from the same field of [the inventor's] endeavor;" or (ii) "be reasonably pertinent to the particular problem with which the inventor is involved." *Id.* A reference is "reasonably pertinent" if it, as a result of its subject matter, "logically would have commended itself to an inventor's attention in considering his problem." *Id.* Reed fails to satisfy either condition.

First, Reed is not from the same field of endeavor as the '749 patent. The '749 patent is directed to footwear. (Ex. 1001.) Reed is not directed to footwear, but rather to preseamed garments. (Ex. 1006, 1:5-2:41.)

Second, Reed is not reasonably pertinent to the problem of the '749 patent. The '749 patent addressed the problem of conventional footwear made of multiple materials. (Ex. 1001, 3:4-6.) Reed addressed the problem of garments that are not seamed during the knitting process. (Ex. 1006, 1:5-2:41.) Given these differences, Reed would not have logically commended itself to the attention of a person of ordinary skill in the art, particularly given the low level of ordinary skill in the art. Indeed, Petitioner cannot show a person of ordinary skill, with no knitting

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experience, would have looked to Reed's knitting solutions for garments at least because Petitioner's own alleged footwear expert testified that he did not understand much of Reed and that it would have been too "dangerous" for him to create uppers on a knitting machine. If a person with nearly forty years of experience would not look to or understand Reed, a person with just a "few years" of experience certainly would not do so.

Petitioner, therefore, fails to meet it burden of proving the challenged claims are obvious. *See, e.g., In re Oetiker*, 977 F.2d 1443, 1447 (Fed. Cir. 1992) (reversing obviousness rejection where PTO relied on non-analogous art; "It has not been shown that a person of ordinary skill, seeking to solve a problem of fastening a hose clamp, would reasonably be expected or motivated to look to fasteners for garments. The combination of elements from non-analogous sources, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is insufficient to present a prima facie case of obviousness."); *In re Clay*, 966 F.2d 656, 658–59 (Fed. Cir. 1992) (PTO erred in finding prior art was within inventor's field of endeavor merely because both related to the petroleum industry, where the claimed invention operated in environments and conditions significantly different from the prior art; PTO further erred because the prior art was not reasonably pertinent to the problem the inventor solved, where the prior art and claimed invention were directed to different purposes, with the claimed invention

directed to storage in a man-made dead space and the prior art directed to extraction in unconfined natural rock formations).

3. Petitioner fails to show *why* a person of ordinary skill in the art would have been motivated to combine Reed and Nishida

Petitioner's alleged rationale for combining Reed and Nishida is premised on a handful of conclusory assertions rather than articulated reasoning with rational underpinnings. (Pet. 12-13.) First, Petitioner argues that a person of ordinary skill would have been motivated to combine Reed and Nishida based on Reed's statements that its "present invention may be used to form all types of garments" and that conventional knitting machines were used to make "stockings." (*Id.*,12.) In other words, Petitioner contends that a person of ordinary skill in the art would have interpreted those statements to mean that Reed may be used to create not just garments, but also footwear uppers, including the uppers taught by Nishida. (*Id.*) But Petitioner cherry-picks those statements from Reed out of context. In reality, Reed states that "circular knitting machines have been used to make tubular knitted ***garments***, such as ladies stockings, sweaters and other ***garments***." (Ex. 1006, 1:33-35.) Reed never refers to "stockings" as footwear, and Reed never suggests its invention could be used for anything other than a specific and limited type of garment—a preseamed garment. (Ex. 1006, 1:58-2:40.)

Moreover, even if Reed suggests to a person of ordinary skill in the art that

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his invention could be used to make footwear uppers, which he does not, Petitioner fails to explain why that would have motivated a person of ordinary skill in the art to combine Reed and Nishida. Petitioner's quoted snippets from Reed about his invention being used to form all types of "garments" and that conventional knitting machines are used to make "stockings" are nothing more than generic statements that bear no relation to any specific combination of prior art elements. (Ex. 1006, 1:33-35.) Those statements fail to explain or suggest why a person of ordinary skill in the art would have combined elements from Reed and Nishida in the way the claimed invention does, particularly given the low level of skill in the art with no knitting experience. *ActiveVideo Networks, Inc. v. Verizon Commc'ns, Inc.*, 694 F.3d 1312 (Fed. Cir. 2012); *Volkswagen v. Velocity Patent*, IPR2015-00275, 2015 WL 3543109 (PTAB, June 1, 2015).

Second, Petitioner argues that a person of ordinary skill in the art would have been motivated to combine Reed and Nishida because they are "analogous art." (Pet. 12.) But, even if Reed and Nishida are analogous art (Reed is not analogous art as explained above), that alone is not enough to show that a person of ordinary skill would have been motivated to combine them, particularly given the low level of skill in the art with no knitting experience. *See, e.g.*, *Microsoft Corp. v. Secure Web Conference Corp.*, IPR2014-00745, Paper 12, at 14 (Sep. 29, 2014) (denying petition where petitioner failed to show motivation to combine and,

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at best, showed prior art was "analogous art"); *Shopkick v. Novitaz*, IPR2015-00279, 2015 WL 3826806 (PTAB, May 29, 2015) (just because the cited references are "analogous art" and share the "same design incentives" does not establish that it would have been obvious to combine their features).

Third, Petitioner argues that a person of ordinary skill in the art would have been motivated to combine Reed and Nishida because "both Reed and Nishida are directed to reducing costs associated with producing textile elements using the latest advances in knitting technology." (Pet. 13.) But even if that were true, "knowledge of a problem and motivation to solve it are entirely different from motivation to combine particular references to reach the particular claimed method." *Innogenetics, N.V. v. Abbott Labs.*, 512 F.3d 1363, 1373 (Fed. Cir. 2008); *Volkswagen*, IPR2015-00275, 2015 WL 3543109 at *8 (rejecting argument that person of ordinary skill in the art would have been motivated to combine references because they shared similar goals); *Shopkick*, IPR2015-00279, 2015 WL 3826806 at 2 (same).

In any event, to make this argument, Petitioner again cherry-picks the "objectives" of Reed and Nishida out of context. (Pet. 13.) Reed's and Nishida's objectives are very different when the references are analyzed in context. Reed provides five specific "objects of the invention," all of which are directed to creating preseamed garments. (Ex. 1006, 2:19-40.) Nishida, in contrast, states that

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its "primary object" is to "further develop" the process disclosed in the German Patent so that "a shoe upper . . . can be configured together with the related sole part." (Ex. 1009, 1:40-43.) Reed and Nishida are not directed to solving the same problems as each other, let alone the problem addressed by the '749 patent.

Thus, Petitioner fails to provide a substantive analysis and fact-based reason why a person of ordinary skill would have combined Reed and Nishida, particularly given the low level of skill in the art with no knitting experience. For this reason, Petitioner fails to meet it burden of proving obviousness.

4. Petitioner fails to show *how* a person of ordinary skill in the art would have combined Reed and Nishida

Petitioner not only fails to show *why* a person of ordinary skill in the art would have been motivated to combine Reed and Nishida, but Petitioner also fails to show *how* a person of ordinary skill in the art would have combined elements from Reed and Nishida in the way the claimed invention does. *ActiveVideo Networks,* 694 F.3d at 1312. That is, absent from Petitioner's argument is any explanation of how the teachings of Reed and Nishida might be combined to arrive at the claimed invention. (Pet. 12-13.) This is particularly true given the low level of skill in the art with no knitting experience.

Petitioner merely states, in conclusory fashion, that "in view of the substantial similarities between the methods described in Reed and Nishida, a person of ordinary skill in the relevant art would certainly have been motivated to

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modify Reed's method to include the additional features described by Nishida to produce a textile element for use in a shoe upper, as well as to produce a shoe incorporating such a textile element, as this is nothing more than combining 'prior art elements according to known methods to yield predictable results' and/or the '[u]se of known technique[s] to improve similar devices (methods, or products) in the same way.'" (Pet. 13.)

That contention raises many questions and answers none. For example, Petitioner does not explain how it contends a person of ordinary skill in the art would "modify Reed." (*Id.*) Petitioner does not explain what "additional features described by Nishida" it contends a person of ordinary skill would "modify Reed" to include. (*Id.*) Petitioner states it is "nothing more than combining prior art elements according to known methods to yield predictable results," yet Petitioner fails to identify what prior elements it contends a person of ordinary skill in the art would take from Reed and what prior elements it would take from Nishida. Petitioner also fails to explain what it contends is the "predictable result" that a person of ordinary skill would yield by combining elements of Reed and Nishida. (*Id.*) Similarly, Petitioner states the combination of Reed and Nishida is the "use of known techniques to improve similar devices (methods, or products) in the same way," but Petitioner does not explain what it contends is the "known technique" in Reed or Nishida, or what it contends is the "similar" device, method, or product in

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Reed of Nishida, or how it contends that similar device, method, or product is "improved" in the "same way" as Reed or Nishida. (*Id.*)

Petitioner fails to meet it burden of proving the challenged claims are obvious over Reed and Nishida for this additional reason. Indeed, Petitioner's failure to show *how* a person of ordinary skill in the art would have combined Reed and Nishida is particularly deficient in this case because, as discussed below, the combination of Reed and Nishida would render Reed inoperable for its intended purpose, and moreover, Reed teaches away from Nishida.

5. The combination of Reed and Nishida would render Reed inoperable for its intended purpose

Petitioner cannot show that a person of ordinary skill would have been motivated to combine Reed and Nishida because that combination would render Reed inoperable for its intended purpose. Prior art combinations that change the basic principles under which the prior art was designed to operate, or that render the prior art inoperable for its intended purpose, fail to support a conclusion of obviousness. *In re Gordon*, 733 F.2d 900, 902 (Fed. Cir. 1984) (finding no motivation to combine where the proposed modification would render the prior art being modified unsatisfactory for its intended purpose); *Plas-Pak Indus., Inc. v. Sulzer Mixpac AG*, 600 F. App'x 755, 758 (Fed. Cir. 2015) (same).

The *Plas-Pak* opinion is instructive. In that case, Plas–Pak filed a petition for *inter partes* reexamination against a patented method for dispensing multi-

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component paints with a spray nozzle. *Plas-Pak*, 600 F. App'x at 756. Plas-Pak challenged the patent as obvious based on a combination of references called Jacobsen and Hunter. *Id.* Jacobsen disclosed a system for dispensing fluid materials. *Id.* at 757. Hunter disclosed a spray nozzle. *Id.* Plas-Pak argued a person of ordinary skill would have been motivated to combine the references because it would have been "nothing more than predictable variation of prior art elements according to their established functions." *Id.* The Board rejected the argument and the Federal Circuit affirmed because combining the references would have rendered Jacobsen inoperable for its intended purpose. *Id.* at 759-760.

The Federal Circuit explained that Jacobsen's dispensing system has a "very specific function of dispensing fluid materials directly into surface cracks to minimize leakage." *Id.* at 759. The Federal Circuit explained that if Jacobsen is modified to include Hunter's spray nozzle, Jacobsen would no longer dispense fluid material directly into surface cracks, *i.e.*, Hunter's spray nozzle sprays a wide pattern as opposed to dispensing directly into a crack. *Id.* Plas–Pak argued that a person of ordinary skill would have understood that Jacobsen's dispensing system had applications beyond merely filling cracks. *Id.* The Federal Circuit rejected that argument because Jacobsen's specification repeatedly recites that its intended purpose is to fill cracks, including statements describing the "invention" as dispensing directly into cracks. *Id.* The Federal Circuit also explained that

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Jacobsen does not teach how a spray nozzle might accomplish the intended purpose of dispensing directly into cracks. *Id.* at 759-760. The Federal Circuit held, therefore, that a person of ordinary skill would not have been motivated to pursue the combination because modifying Jacobsen to accommodate the spray nozzle of Hunter would render Jacobsen inoperable for its intended purpose. *Id.*

Similarly, here, Reed has a "very specific function" of producing preseamed garments on a circular double knitting machines. (Ex. 1006, 1:8-11, 1:58-2:41.) Reed repeatedly recites its intended purpose, including statements describing the "present invention" as producing preseamed garments. (*Id.*) For example, Reed states the "present invention" relates to "a garment which is preseamed." (*Id.*,1:8-11.) Reed also states that all of the "objects" of his invention are "obtained" by producing a "preseamed" garment. (*Id.*, 6:18-22.) Furthermore, Reed does not teach how a producing a garment that is not preseamed might accomplish his intended purpose of producing preseamed garments. (Ex. 1006.)

Nishida, however, teaches producing a layout for a footwear upper and related sole part that is not preseamed by a circular double knitting machine during the knitting process. (Ex. 1009, Abstract, 3:27-42, 4:19-30.) Nishida teaches producing a layout on a preexisting web of material, cutting the layout out of the web of material, shaping and folding the layout so that corresponding edges align, and then seaming those corresponding edges together to complete the upper and

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related sole. (*Id.*) Nishida's Abstract explains that the invention is directed to "the production of a shoe upper by [first] cutting out of the shoe upper in the form of a layout from a web of material, [and second] shaping of the shoe upper with connection of material parts of the layout with formation of seams." (*Id.*) Nishida's abstract continues that the "layout is [first] cut from the web as a unit with the sole part and [second] processed into a shoe part having an upper and sole part." (*Id.*) Figure 2 of Nishida, reproduced below, helps illustrate this point.

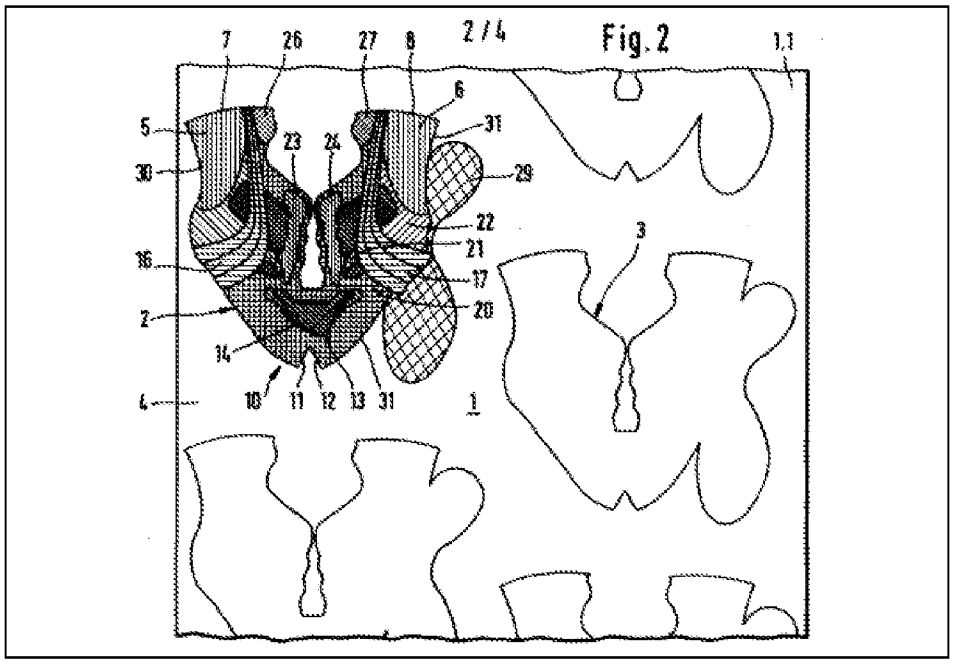


Figure 2 of Nishida shows a layout of shoe upper and related sole part, labeled 2, that has been printed or produced on a layout of material. (Ex. 1009, 1:5-12.) Figure 2 shows the layout as it would look after the production process has been completed. (*Id.*) The layout is next cut from the web of material. (*Id.*, 3:31-32.) The layout is then shaped and folded so that edges 7 and 8 are aligned

and seamed together, edges 11 and 12 are aligned and seamed together, and sole part 29 is "folded" and seamed to the longitudinal edges of the upper. (Ex. 1009, 3:27-42 and 4:19-30.) The upper and related sole part are seamed together after the production process, not during the process of producing layout 2. (*Id.*)

Petitioner does not argue in its petition that the layout of Nishida may be preseamed during the production process. (Pet.) Mr. Holden also testified during cross-examination that Nishida does not teach that its layout may be preseamed during the production process. (Ex. 2004, 160:24 – 162:18.)

Petitioner also does not explain in its petition how a footwear upper could even be preseamed on a circular double knitting machine. (Pet.) Nor could it do so because, as seen in Figure 2 of Nishida above, the edges that need to be seamed together are not aligned or juxtaposed and, thus, a circular double knitting machine could not seam those edges together during the knitting process. Mr. Holden testified that he did not even consider this issue. (Ex. 2004, 152:15 – 153:12.)

Thus, if Reed is modified to knit the layouts of Nishida, the result would be two layouts seamed together that would need to be cut from the surrounding textile, then separated from each other, and then each one would need to be shaped, folded, and seamed as described in Nishida. Simply put, the result of combining Reed and Nishida would not be a garment or a preseamed garment (assuming, *arguendo*, that footwear is a garment). Consequently, because modifying Reed to

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accommodate the layout of Nishida would render Reed inoperable for its intended purpose of producing a preseamed garment, a person of ordinary skill in the art would not have been motivated to pursue the combination. *Plas-Pak*, 600 F. App'x at 760; *In re Gordon*, 733 F.2d at 902; *Tec Air, Inc. v. Denso Mfg. Mich. Inc.*, 192 F.3d 1353, 1360 (Fed. Cir. 1999) (claims not obvious where the combination would render prior art inoperable for its intended purpose); *BMC Med. Co. v. Resmed Ltd.*, IPR2014-01363, Paper 25 at 18 (Jan. 20, 2016) (same); *Wangs Alliance*, IPR2015-01290, Paper 63 (Nov. 23, 2016) (same). Petitioner fails to satisfy its burden of proving unpatentability for this additional reason.

6. Reed teaches away from combining it with Nishida

Petitioner cannot show that a person of ordinary skill would have been motivated to combine Reed and Nishida for the additional reason that Reed teaches away from combining it with Nishida. A reference teaches away "when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant." *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 567 F.3d 1314, 1327 (Fed. Cir. 2009). That is the case here as Reed teaches away from the layouts of Nishida that are not preseamed during the production process of the layouts.

The *DePuy* case is instructive. The challenged claim in that case was directed to a device for stabilizing spinal column segments with a rigid pedicle screw. *DePuy*, 567 F.3d at 1324-25. Medtronic argued the combination of prior art references, Puno and Anderson, achieved the rigid pedicle screw of the challenged claim. *Id.* at 1326. The district court rejected Medtronic's argument, finding instead that Puno teaches away from a rigid screw because "Puno warns that rigidity increases the likelihood that the screw will fail." *Id.* The district court, therefore, held "that Puno's teachings undermine the very reason Medtronic proffers as to why it would have been obvious to combine Puno and Anderson, viz., the creation of a rigid screw." *Id.* at 1327. The Federal Circuit affirmed on appeal, holding that the "district court correctly found that Puno, viewed against the backdrop of the collective teachings of the prior art, teaches away from a rigid pedicle screw . . ., such that a person of ordinary skill would have been deterred from combining Puno and Anderson." *Id.* at 1328.

Similarly, here, Petitioner combines the knitting process of Reed with the layouts of Nishida to allegedly produce a knitted element that is removed from a surrounding textile structure and then shaped, folded, and seamed to complete an article of footwear as provided in the challenged claims. (Pet.; Ex. 1001, 11:43-14:5.) But Reed teaches away from that combination by criticizing prior art methods of manufacturing garments that did not result in preseamed garments,

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explaining that the problem with the prior art methods is that they required the manufacturer to cut panels of a garment from larger textile and then seam the panels together to complete the garment. (Ex. 1006, 1:13-18.) Reed solves that problem by preseaming the panels of the garment together during the knitting process. (*Id.*, 1:8-11, 1:58-2:41.)

Nishida suffers from the same drawbacks that Reed identified with the prior art methods of manufacturing. (Ex. 1009, Abstract, 3:27-42, 4:19-30.) Nishida teaches producing a layout on a preexisting web of material, cutting the layout out of the web of material, shaping and folding the layout so that corresponding edges align, and then seaming those corresponding edges together to complete the upper and related sole. (*Id.*) Consequently, Reed, when viewed against the backdrop of the collective teachings of the prior art, teaches away from seaming textiles after the completion of the knitting or production process, as described in Nishida and as claimed in the '749 patent, such that a person of ordinary skill would have been deterred from combining Reed and Nishida. *DePuy*, 567 F.3d at 1328. Petitioner fails to satisfy its burden of proving unpatentability for this additional reason.

F. PETITIONER FAILS TO PROPERLY ANALYZE THE DIFFERENCES BETWEEN THE CLAIMED SUBJECT MATTER AND THE PRIOR ART

Petitioner must identify any alleged differences between the claimed subject matter and the prior art. *See Graham*, 383 U.S. at 17-18; *Travelocity.com L.P. v. Cronos Technologies, LLC*, Case CBM2014-00082, Paper 10, 19 (Sept. 15, 2014)

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(denying petition because petitioner failed to identify alleged differences between the claim subject matter and the prior art). Here, however, Petitioner does not identify with any specificity what limitations it contends are missing from Reed that a person of ordinary skill in the art would have modified Reed to supply or would have sought for in the teachings of Nishida. (Pet. 13-32.) It is insufficient for Petitioner to assert that each of the references teaches all of the limitations of the challenged claims "and then to leave it to [the Board] to apply the teachings for Petitioner to demonstrate its asserted grounds." *Travelocity.com*, Case CBM2014-00082, Paper 10. This is "especially true when Petitioner expressly forgoes asserting grounds of unpatentability based on the application of the cited references individually to the challenged claims," such as Petitioner did here. *Id.*

For this additional reason, Petitioner fails to satisfy its burden of proving the challenged claims are obvious over Reed and Nishida. *Id.*; *see also Apple Inc. v OpenTV, Inc.*, IPR2015-01031, 2015 WL 9899019, at *8 (Oct. 13, 2015) (denying obviousness challenge where petitioner failed to identify alleged differences between the claimed subject matter and the prior art); *Samsung Elecs. Co., Ltd., et al. v. Imperium (IP) Holdings*, IPR2015-01233, 2015 WL 9599164, at *9 (Dec. 1, 2015) (same). In any event, an analysis of the differences between the claimed subject matter and the prior art reveals that neither Reed nor Nishida discloses limitations of the challenged claims, as NIKE explains further below.

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1. Reed and Nishida do not disclose the claim limitation of simultaneously knitting a textile element and a surrounding textile structure where the knitted textile element has a texture that differs from a texture in the surrounding knitted textile structure

The challenged claims all require simultaneously knitting a textile element with a surrounding textile structure where the knitted textile element has a texture that differs from a texture in the surrounding knitted textile structure. (Ex. 1001, 11-43-14:5.) Neither Reed nor Nishida discloses this limitation.

Petitioner splits this limitation into two parts, which it calls elements [1B] and [1C] for independent claim 1. (Pet. 14-18.) Petitioner identifies the first element, [1B] as "simultaneously knitting a textile element with a surrounding textile structure" and the second element, [1C], as "the knitted textile element having at least one knitted texture that differs from a knitted texture in the surrounding knitted textile structure." (*Id.*)

Reed does not disclose element [1C] of "the knitted textile element having at least one knitted texture that differs from a knitted texture in the surrounding knitted textile structure." Petitioner fails to cite any portion of Reed that provides the knitted garment of Reed has at least one knitted texture that differs from a knitted texture in the surrounding knitted textile structure. (Pet. 16-18.) Instead, Petitioner points only to portions of Reed that explain the inner knitted tube and the outer knitted tube are stitched together with "interknitted" stitches to form the

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outline and seams of a garment. (*Id.* (citing Reed, 4:61-64, 5:3-18, 5:67-6:3, and Figs. 2, 2A, 3A-3E.) Those portions of Reed do not say anything about the texture of the knitted garment or the texture of the surrounding knitted textile structure. (*Id.*) They do not provide that the knitted garment has at least one knitted texture that differs from a knitted texture in the surrounding knitted textile structure. (*Id.*) They do not describe the texture of an "interknitted" stitch or a "non-interknitted" stitch. (*Id.*) They also do not provide that "interknitted" stitches are only used in the knitted garment and not in the surrounding areas of the knitted structure. (*Id.*) Mr. Holden testified that he could not define or describe an "interknitted" stitch, let alone explain what texture the stitch provides. (Ex. 2004, 76:8 – 81:18.) In short, Petitioner fails to provide any evidence that shows Reed discloses a knitted element that has at least one knitted texture that differs from a knitted texture in a surrounding knitted textile structure.

Nishida does not teach either element [1B] or [1C] of claim 1. As the examiner explained during prosecution of the '749 patent, Nishida "may disclose a web of material having different textures, but there is no clear disclosure of the textures differing such that the textile element has a texture which is different than the texture of the surrounding textile structure and that the textile element and the surround structure are simultaneously knitted." (Ex. 1002, 278.) Furthermore, the

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examiner also explained that "Nishida does not provide any clear disclosure of where the differing textures are located." (*Id.*)

Petitioner does attempt to rebut the examiner's analysis of Nishida. (Pet. 14-18.) Instead, Petitioner relies on the same excerpts of Nishida that the examiner considered and determined do not teach the limitations of claim 1. (*Id.*) For example, Petitioner cites to the portions of Nishida that state "only just those parts of the web of material are produced in the necessary quality, thickness, multilayers or the like which correspond to the pattern or to an area of a pattern of the shoe upper or the related sole part" and "the remaining area of the web of material in contrast can consist of a simple, lightweight or inexpensive material quality, which holds together only the patterns or areas of such patterns in the web of material after their completion." (Pet. 17 (citing Ex. 1009, 2:12-20.) But those portions of Nishida support NIKE, not Petitioner, because they confirm that the layouts and surrounding areas of Nishida are separate materials not produced simultaneously. (*Id.*) They disclose that the portions of the web of material that correspond to layouts are made of a material with certain "quality, thickness, multilayers or the like" and that the surrounding areas are made of a different material that is "simple, lightweight or inexpensive." (*Id.*) Those portions of Nishida, as well as the remainder of Nishida, say nothing about the layouts being knitted simultaneously with a surrounding knitted textile structure. (*Id.*) They also do not provide that the

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layouts have at least one *knitted texture* that differs from a *knitted texture* in the surrounding knitted textile structure. (*Id.*)

Indeed, when Nishida is read in the context of its entire disclosure, Nishida discloses that its layouts are printed, embroidered, woven, or knitted onto a *pre-existing* backing material, just as the examiner found during prosecution. (Ex. 1009.) Petitioner's reliance on Nishida's statement that the "layouts 2 may be produced 'by a textile production process inside the web of material'" is misplaced. (Pet. 17; Ex. 1009, 1:50-56.) Petitioner relies on that statement out of context from the rest of the disclosure of Nishida. When read in context, that portion of Nishida does not provide that the layouts and the area surrounding the layouts are simultaneously formed, but rather it describes an embodiment where there are no surrounding areas at all because the layouts occupy the entire web of material. (Ex. 1009, 2:27-33.) Nishida states, "it is of further advantage in the process according to the present invention that the individual patterns or partial patterns already can be produced directly in the production of the web of material in the desired shoe size, by which the cutting waste can be still further limited, ***since the individual patterns or partial patterns in the provided size can directly adjoin one another***. (*Id.*)

Moreover, Nishida explains that "embroidery" is an example of a "textile production process inside the web of material." (Ex. 1009, 5:27-31.) As NIKE

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clarified for the examiner during prosecution, "embroidery is produced as a subsequent operation onto an existing backing material." (Ex. 1002, 260.) Thus, the disclosure of a "textile production process inside the web of material" is not a disclosure that the layouts are simultaneously formed with the backing material or the surrounding areas.

Finally, as NIKE explained during prosecution, Nishida fails to disclose that the layouts are simultaneously *knitted* with the backing material. That is, although Nishida discloses that the backing material can be "a knitted fabric" and that the layouts may be "knitted," Nishida never discloses that these two processes occur simultaneously. (Ex. 1009, 3:13-15.) The processes of "knitting through" or "stitching through" a preexisting knitted backing material was known at the time of Nishida, including at least the process disclosed in U.S. Patent No. 4,144,727 to Duhl. (Ex. 1002, 260.) Thus, it is entirely in keeping with Nishida's disclosure for a layout (knitted or not) to be subsequently produced on an existing backing material (knitted or not) using the type of known process disclosed in Duhl. (*Id.*)

For all the above reasons, Reed and Nishida fail to disclose the limitation of claim 1 and its dependent claims of simultaneously knitting a textile element with a surrounding textile structure where the knitted textile element has a texture that differs from a texture in the surrounding knitted textile structure. Petitioner incorporated and adopted the same arguments for the similar limitation in claim 13

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and its dependent claims, and those arguments similarly fail for the same reasons discussed above. Consequently, Petitioner fails to satisfy its burden of proving unpatentability of all the challenged claims for this additional reason.

2. Reed and Nishida do not disclose the claim limitation of first and second areas with a unitary construction formed of different stitch configurations to impart different textures

Claims 11 and 21 have an additional limitation that "wherein simultaneously knitting a textile element with a surrounding textile structure includes forming the knitted textile element to include a first area and a second area with a unitary construction, the first area being formed of a first stitch configuration, and the second area being formed of a second stitch configuration that is different from the first stitch configuration to impart varying textures to a surface of the knitted textile element." (Ex. 1001, 12:14-21 and 13:5-14:5.) Neither Reed nor Nishida discloses this limitation.

Petitioner incorrectly argues claims 11 and 21 are "substantially similar" to claim 8 and, thus, Petitioner adopts its arguments for claim 8 for claims 11 and 21. (Pet. 31.) Claim 8 is not "substantially similar" to claims 11 and 21 for purposes of Petitioner's challenge. For example, claim 8 requires that "the knitted textile element has a plurality of different knitted textures formed by varying ***at least one*** of the stitch type and ***the yarn type***." (Ex. 1001, 12:4-6.) Claims 11 and 21, in contrast, require a first area and a second are formed of different stitch

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configurations to impart varying textures, and they do not recite varying textures by varying ***yarn type***. (*Id.*, 12:14-21 and 13:5-14:5.) This is a significant in the context of Petitioner's arguments because Petitioner's support for arguing Reed and Nishida disclose claim 8 is nearly all directed to varying ***yarn type***, not stitch type. (Pet. 25-29.)

The only arguments that Petitioner makes for Reed and Nishida disclosing varying texture by varying stitch configuration are the same incorrect arguments Petitioner makes for claim 1. As already discussed above, Reed and Nishida do not teach varying textures by varying stitch configurations.

The remainder of Petitioner's arguments for claim 8 (and thus claims 11 and 21) are all directed to portions of Reed and Nishida that Petitioner argues disclose varying texture by varying ***yarn type***, not stitch configuration. (Pet. 25-29.) For example, Petitioner cites to the portion of Reed that discloses using different "fibers" for the inner knitted tube and the outer knitted tube. (Pet. 26; Ex. 1006, 3:61-4:9.) But that portion of Reed says nothing about varying stitch configurations in the knitted garment to impart varying textures. (*Id.*) Similarly, Petitioner points to the portion of Nishida that states "in the embodiment according to FIGS. 1 and 2, with layout 2 on the web of material 1, areas 26 and 27 are produced in a configuration, color or style, that is different from the other areas." (Pet. 26-27; Ex. 1009, 4:6-9.) The remainder of that except, which Petitioner

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ignores, states that "a heel counter 28, represented in FIG. 3, is applied on areas 26, 27 after formation of the initially described heel seam." (Ex. 1009, 4:9-11.) Thus, when read in context, that portion of Nishida does not disclose varying stitch configurations to impart varying textures. At most, that portion of Nishida, like the rest of Nishida, discloses varying materials, fibers, or yarns. (*Id.*)

Petitioner also relies on the portion of Nishida that states "layout 2 is divided into different individual parts or areas, which differ from one another, such as by being of another material style and/or being different fibers or yarns, for example, from wool, wool with metal yarns, silks, silk with metal yarns, wool with plastic fibers or the like and/or by being formed of different colors, such as from fibers or yarns of different colors, including those of metals, or by different color prints, and/or by being differently designed fiber extrudates or fiber extrudate compositions, such as twisted, processed parallel or the like." (Pet. 27; Ex. 1009, 3:15-25.) Again, that portion of Nishida does not disclose varying stitch configurations to impart varying textures. (*Id.*) Like the rest of Nishida, the excerpt discloses varying materials, fibers, or yarns. (*Id.*)

Thus, Petitioner fails to identify any disclosure in Reed or Nishida that teaches "simultaneously knitting a textile element with a surrounding textile structure includes forming the knitted textile element to include a first area and a second area with a unitary construction, the first area being formed of a first stitch

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configuration, and the second area being formed of a second stitch configuration that is different from the first stitch configuration to impart varying textures to a surface of the knitted textile element." Petitioner fails to satisfy its burden of proving unpatentability of claims 11 and 21 for this additional reason.

G. PETITIONER'S OBVIOUSNESS ARGUMENTS ARE IMPROPERLY TAINTED BY HINDSIGHT

Petitioner's challenge improperly looks at the prior art with the benefit of hindsight, attempting to use the '749 patent "as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." *In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992); accord *Winner Int'l Royalty Corp. v. Wang*, 11 F.Supp.2d 18, 24 (D.D.C. 1998) ("The standard of obviousness is not whether in hindsight, it seems elementary that someone would have combined ... certain elements in the prior art to form the invention in question."), *affd.*, 202 F.3d 1340 (Fed. Cir. 2000).

Petitioner's improper use of hindsight is seen, for example, in Petitioner's argument that Reed and Nishida disclose varying stitch configurations to impart varying textures. Neither Reed nor Nishida says a word about varying stitch configuration to impart different textures to different areas of a knitted textile. (Ex. 1006, Ex. 1009.) It is the '749 patent that teaches that. (Ex. 1001, 9:39-47.) Indeed, as the Board points out in its Institution Decision, Petitioner's obviousness challenge is based, in part, on the '749 patent's disclosure that different textures

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"are formed *by merely varying the type of stitch formed* by the wide-tube circular knitting machine at each location of the textile element." (Dec. 6 (emphasis in original).) It is improper for Petitioner to use that teaching of the '749 patent to guide its obviousness analysis.

Petitioner's improper use of hindsight is also highlighted by its attempt to define the problems Reed and Nishida sought to address in terms of the solution the '749 patent provided. For example, Petitioner argues that a person of ordinary skill in the art would have been motivated to combine Reed and Nishida because "both Reed and Nishida are directed to reducing costs associated with producing textile elements using the latest advances in knitting technology." (Pet. 13.) In reality, the problems Reed and Nishida sought to address are very different, with Reed addressing the problem of garments that are not preseamed and Nishida addressing the problem of the German Patent not disclosing both a layout for a shoe upper and a related sole part. *Insite Vision Inc. v. Sandoz, Inc.*, 783 F.3d 853, 859 (Fed. Cir. 2015) ("Defining the problem in terms of its solution reveals improper hindsight").

In sum, Petitioner fails to carry its burden of proving the challenged claims of the '749 patent are unpatentable over Reed and Nishida, particularly given the low level of ordinary skill in the art with no knitting experience. Petitioner's use of hindsight to attempt to piece together Reed and Nishida is improper and leads to

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reversible error. *In re NTP, Inc.*, 654 F.3d 1279, 1299 (Fed. Cir. 2011) (reversing obviousness determination where Board "relied on hindsight reasoning to piece together elements to arrive at the claimed invention").

IV. CONCLUSION

Petitioner has failed to prove that claims 1-9, 11-19, and 21 of the '749 patent are unpatentable. NIKE requests that the Board enter a final written decision affirming the patentability of those claims.

Date: January 23, 2017

Respectfully submitted,

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WORD COUNT CERTIFICATION

Pursuant to 37 C.F.R. § 42.24(d), I certify that this Response contains 13,952 words (excluding the table of contents, table of exhibits, this certificate, and the certificate of service), as determined by Microsoft Word.

Date: January 23, 2017

Respectfully submitted,

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Skechers v Nike

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served on January 23, 2017, by email directed to the attorneys of record for Petitioner as follows:

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.	:	15/610,089	Confirmation No. 4757
Inventor	:	Bhupesh Dua	
Applicants	:	NIKE, Inc.	
Filed	:	5/31/2017	
Title	:	ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER	
Group Art Unit	:	3765	
Examiner	:	Marie D. Bays	
Matter No.	:	NIKE.276100/08-1313US82CON	
Customer No.	:	78342	

VIA EFS – 7/24/2017

Mail Stop Amendment
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

IDS SUBMISSION

This correspondence is being submitted with an Information Disclosure Statement pursuant to 37 C.F.R. § 1.97. Due to the number of references, the IDS is separated into multiple forms. Accordingly, Applicant hereby submits IDS forms 1-11 as this IDS submission. Each IDS form corresponds to an IDS form filed in the Application No. 14/503,514 from which this pending application depends. Pursuant to 37 C.F.R. § 1.97(c)(2), Applicant submits herewith the fee set forth in § 1.17(g) for the IDS submission.

Respectfully submitted,

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PTO/SB/08a (03-15)
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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Not for submission under 37 CFR 1.99)

Application Number	15610089
Filing Date	2017-05-31
First Named Inventor	BHUPESH DUA
Art Unit	3765
Examiner Name	MARIE D. BAYS
Attorney Docket Number	NIKE.276100/081313US82CON

U.S.PATENTS Remove

Examiner Initial*	Cite No	Patent Number	Kind Code[1]	Issue Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear
	1	3985003		1976-10-12	Reed	
	2	4038840		1977-08-02	Castello	
	3	6330814		2001-12-18	Fujiwara	
	4	6779369		2004-08-24	Shepherd	

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	Application Number	15610089
	Filing Date	2017-05-31
	First Named Inventor	BHUPESH DUA
	Art Unit	3765
	Examiner Name	MARIE D. BAYS
	Attorney Docket Number	NIKE.276100/081313US82CON

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	1	Burall, P., "ColD Design Awards", Design, June 1969,4 pages.	
	2	C.V. for Lenny M. Holden, 3 pages.	
	3	Textile Machinery-Knitting Machines-Nominal Diameters of Circular Machines, International Standard, ISO 8117, Second Edition, February 15, 2003, 6 pages.	
	4	Petition for Inter-Partes Review Under 35 U.S. C. §§ 311-319 and 37 C.F.R. § 42.100 et seq. (IPR2016-00920), filed April19, 2016, 67 pages.	
	5	File History for U.S. Patent No. 8,042,288, filed April 19, 2016, as Exhibit 1002 in IPR2016-00920, 324 pages.	
	6	Declaration of Lenny M. Holden from the US Patent and Trademark Office Inter Partes Review IPR2016-00920 dated April19, 2016, 166 pages.	
	7	Form PTO SB 42 dated April19, 2016, in IPR2016-00920, 2 pages.	
	8	Notice of Filing Date accorded to Petition and Time for Filing Patent Owner Preliminary Response in IPR2016-00920 dated April 25, 2016, 4 pages.	

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	Examiner Name	MARIE D. BAYS
	Attorney Docket Number	NIKE.276100/081313US82CON

	9	Patent Owner's Mandatory Notices in IPR2016-00920 dated May 10, 2016, 5 pages.	
	10	Trial Instituted Document in IPR2016-00920 dated October 20, 2016, 8 pages.	
	11	Petition for Inter-Partes Review Under 35 U.S.C. §§ 311-319 and 37 C.F.R. § 42.100 et seq. (IPR2016-00921), filed April19, 2016, 57 pages.	
	12	File History for U.S. Patent No. 7,814,598, filed April19, 2016, as Exhibit 1002 in IPR2016-00921, 346 pages.	
	13	Declaration of Lenny M. Holden from the US Patent and Trademark Office Inter Partes Review IPR2016-00921 dated April19, 2016, 154 pages.	
	14	Form PTO SB 42 dated April19, 2016, in IPR2016-00921, 2 pages.	
	15	Notice of Filing Date accorded to Petition and Time for Filing Patent Owner Preliminary Response in IPR2016-00921 dated April 25, 2016, 4 pages.	
	16	Patent Owner's Mandatory Notices in IPR2016-00921 dated May 10, 2016, 5 pages.	
	17	Trial Instituted Document in IPR2016-00921 dated October 21, 2016, 24 pages.	
	18	Scheduling Order in IPR2016-00921 dated October 21, 2016, 9 pages.	
	19	Notice of Cross-Examination of Lenny M. Holden in IPR2016-00921 dated December 19, 2016, 3 pages.	

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	Examiner Name	MARIE D. BAYS
	Attorney Docket Number	NIKE.276100/081313US82CON

	20	Petition for Inter-Partes Review Under 35 U.S.C. §§ 311-319 and 37 C.F.R. § 42.100 et seq. (IPR2016-00922), filed April19, 2016,67 pages.	
	21	File History for U.S. Patent No. 8,266,749, filed April19, 2016, as Exhibit 1002 in IPR2016-00922, 309 pages.	
	22	Declaration of Lenny M. Holden from the US Patent and Trademark Office Inter Partes Review IPR2016-00922 dated April19, 2016, 154 pages.	
	23	Form PTO SB 42 dated April19, 2016, in IPR2016-00922, 2 pages.	
	24	Notice of Filing Date accorded to Petition and Time for Filing Patent Owner Preliminary Response in IPR2016-00922 dated April 25, 2016, 4 pages.	
	25	Patent Owner's Mandatory Notices in IPR2016-00922 dated May 10, 2016, 5 pages.	
	26	Trial Instituted Document in IPR2016-00922 dated October 21, 2016, 24 pages.	
	27	Scheduling Order in IPR2016-00922 dated October 21, 2016, 9 pages.	
	28	Notice of Cross-Examination of Lenny M. Holden in IPR2016-00922 dated December 19, 2016, 3 pages.	
	29	Petition for Inter-Partes Review Under 35 U.S.C. §§ 311-319 and 37 C.F.R. § 42.100 et seq. (IPR2017-00263), filed November 14,2016, 50 pages.	
	30	Declaration of Lenny M. Holden from the US Patent and Trademark Office Inter Partes Review IPR2017-00263 dated November 14,2016, 82 pages.	

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	First Named Inventor	BHUPESH DUA
	Art Unit	3765
	Examiner Name	MARIE D. BAYS
	Attorney Docket Number	NIKE.276100/081313US82CON

	31	Form PTO SB 42 dated November 14, 2016, in IPR2017 -00263, 2 pages.
	32	Patent Owner's Mandatory Notices in IPR2017-00263 dated December 5, 2016, 5 pages.
	33	Notice of Filing Date accorded to Petition and Time for Filing Patent Owner Preliminary Response in IPR2017-00263 dated December 9, 2016, 5 pages.
	34	Petition for Inter-Partes Review Under 35 U.S.C. §§ 311-319 and 37 C.F.R. § 42.100 et seq. (IPR2017-00264), filed November 14,2016, 59 pages.
	35	Declaration of Lenny M. Holden from the US Patent and Trademark Office Inter Partes Review IPR2017-00264 dated November 14,2016, 106 pages.
	36	Form PTO SB 42 dated November 14, 2016, in IPR2017 -00264, 2 pages.
	37	Patent Owner's Mandatory Notices in IPR2017-00264 dated December 5, 2016, 5 pages.
	38	Notice of Filing Date accorded to Petition and Time for Filing Patent Owner Preliminary Response in IPR2017-00264 dated December 9, 2016, 5 pages.

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EXAMINER SIGNATURE

Examiner Signature		Date Considered	

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through a citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

[1] See Kind Codes of USPTO Patent Documents at www.USPTO.GOV or MPEP 901.04. [2] Enter office that issued the document, by the two-letter code (WIPO Standard ST.3). [3] For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. [4] Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. [5] Applicant is to place a check mark here if English language translation is attached.

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(Not for submission under 37 CFR 1.99)

Application Number	15610089
Filing Date	2017-05-31
First Named Inventor	BHUPESH DUA
Art Unit	3765
Examiner Name	MARIE D. BAYS
Attorney Docket Number	NIKE.276100/081313US82CON

CERTIFICATION STATEMENT

Please see 37 CFR 1.97 and 1.98 to make the appropriate selection(s):

That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(1).

OR

☐ That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in 37 CFR 1.56(c) more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(2).

See attached certification statement.

☒ The fee set forth in 37 CFR 1.17 (p) has been submitted herewith.

☒ A certification statement is not submitted herewith.

SIGNATURE

A signature of the applicant or representative is required in accordance with CFR 1.33, 10.18. Please see CFR 1.4(d) for the form of the signature.

Signature	/ELIZABETH A. LUCAS/	Date (YYYY-MM-DD)	2017-07-24
Name/Print	Elizabeth A. Lucas	Registration Number	74247

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Design may be obtained from bookstalls at home and abroad or from the CoID. Yearly subscription: Britain 96s, overseas 80s or $10, post paid

DESIGN 246

246 June 1968

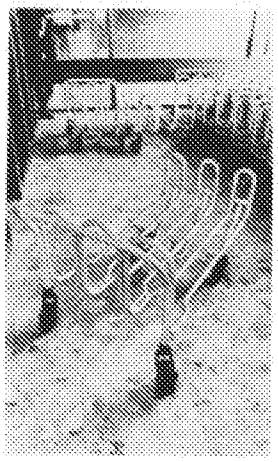
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Other contributors were John Burnett, Vivien Bird, Richard Cork, Michael Dower, Rae Grey, Finn Kennedy, Hans-Jürgen Lannowski, Diane Pilkington, Thomas Pickle, Patrick Purnell

In this issue

Design and management Dr L. Bruce Archer, whose article is a condensed version of a talk he gave to the SIAD, is reader in design methods and head of the Industrial Design (Engineering) Research Unit at the Royal College of Art. He originally trained as a pig and bull designer and spent 11 years on the production side in industry before taking up research and teaching.

Dr Archer has taught at the Central School of Art and Design, London, and the Hochschule für Gestaltung, Ulm. In 1961, he won the industrial prize for the best qualifying thesis for the Institution of Engineering Designers. In 1964 he received the Kaufmann International Design Award for his work on design method, and in 1965 he was awarded the first doctorate of the Royal College of Art. Today he is mainly concerned with management problems.



Heathrow This porter's baggage trolley is part of the equipment specially designed for the new Terminal 1 at Heathrow Airport by Conran Design Group. Manufactured by Mechanicraft Ltd, the trolleys are of bent mild steel tube dipped in yellow nylon, and they slot together very neatly when not in use to take up the minimum of space.

Cover The photograph, by Timothy Quallington, is of some of the 36 knitting heads of Wildt Mellor Bromley's 30-in. gauge double jersey jacquard circular knitting machine, which is one of this year's winners of CoID Design Awards for Capital Goods.

Next month

July DESIGN will give coverage to the D & AD graphics exhibition, with separate analyses of two house styles featured in this year's show and a third, by the same designers, from last year.

Other articles will discuss the experimental offices for the Civil Service at Kew, the pottery of Hans Coper, and the effect on design of mergers and takeovers between companies.

There will be a report on a small cruising yacht which backs up to the effect conflicting design factors of size, price, performance and accommodation, and another on the updating of a range of computers. The magazine's regular features will all appear as usual and will be augmented by a new one, on the lettering of interior design.

Leader

Competing in the world

"Every chief executive should constantly be polishing up his knowledge of the design of competing products in overseas markets – in Europe, the USA and elsewhere. It is vital, when coming to a business judgement, to know and care about what is happening in the world around us." These words from Sir Peter Runge's stimulating speech at the opening of the exhibition of work submitted for Royal Society of Arts Bursaries will no doubt be applauded by the manufacturers whose award-winning products are illustrated in this issue of DESIGN, for many of them have achieved excellent sales records in overseas markets.

Reviewing a wide range of the design problems facing management, Sir Peter Runge also emphasised the need for teamwork, for "the artist who cannot understand how it all works is just as bad as the technologist who doesn't care what it all looks like." In looking forward to the setting up of a national Design Council, to which the President of the Board of Trade had announced the Government's agreement in principle during the Budget debate in the Commons on 17 April, Sir Peter welcomed the joint initiative of the Council of Engineering Institutions and the CoID in recommending a unified organisation which would give greater emphasis to engineering design, since in 1966 three-quarters of all British exports comprised capital goods, machinery and equipment.

Great Britain's share of the world's exports of manufactured goods had dropped from 22 per cent before the war to 11 per cent now. In the United States there was last year a $600 000 drop in our cutlery exports and a $600 000 drop in our exports of hand tools. Could it be, Sir Peter asked, that the American buyer feels that German or Swedish tools may have a design edge over our own? The British designer today needed to work alongside his production and marketing colleagues so that together they could create products which served the needs of customers and took account of international conditions, by designs which allowed simple modifications to suit each particular market.

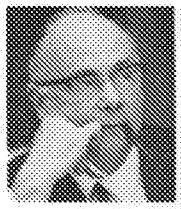
As chairman of the British National Export Council, Sir Peter Runge had no doubt of the part that design should play in management and, as as Federation of British Industries' report put it, some years ago: "An improvement in design is best introduced into a firm from the top" – a lesson which is amply proved by all those manufacturers who have won the 1968 CoID Design Awards.

ColD Design Awards

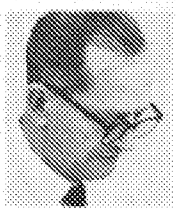
The judging panels are shown on this page, alongside their reports; on the following pages the award-winning products are illustrated, with descriptions by Paul Sarall.

Capital Goods report







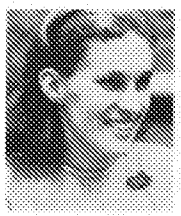
This year the judging panel for this section (see pages 34-51) has selected six products from the 210 submissions from manufacturers. Although drawn from widely different industries, the six award-winning products all depend for their success on combining technological innovation with an intelligent approach to design, including such factors as functional and economic improvements, good appearance, and operator control arrangements.

Submissions for the awards were invited from British manufacturers of industrial machinery of all types, including instruments, electronic and electrical equipment, scientific and medical equipment, and industrial and commercial road and rail transport. All products had to have been in service for at least a year to enable the judging panel to make full use of reports from users and from technical assessors, in addition to inspecting equipment personally.

Judges on the Capital Goods panel, top row, Matthew Hyde (chairman), chairman of the CoID's Scottish Committee and chairman and managing director of Matthew Hyde & Co; BGL Jackman, director of manufacturing the Rover Car Co Ltd; Noel Lander, of the industrial design consultancy Lander & Vaughan; and Ewan M'Ewen, vice-chairman (Engineering) Joseph Lucas; and chairman of the Design Improvement Committee; second row, Frank Height, reader in Industrial Design (Engineering) at the Royal College of Art; Dr R Conrad, assistant director of the Applied Psychology Research Unit, Medical Research Council; the late CE Mitchell, formerly director of research Brown Bros & Co; and Professor Dr Chadwick, director of the Engineering Design Centre at the University of Technology, Loughborough.

Consumer Goods report







The judges for the Consumer Goods section of this year's CoID Design Awards (see pages 52-65) have chosen 12 products from a wide range of industries. While recognising that the general improvement in design standards makes it increasingly difficult to select outstanding products in the industries which provide the backbone of domestic furnishings, the judges were pleased to be able to find exceptional examples from several areas of industry which have never before produced award-winners. Among these products are a car safety belt, an exhibition display system, high-fidelity audio equipment and a range of vinyl wall coverings.

The Consumer Goods awards were selected from the products recorded in the CoID's Design Index, the judges looking for items which showed marked progress combined with overall excellence. The judges took into consideration fitness for purpose, ease of use and maintenance, safety, suitability of materials, and soundness of construction, in addition to good appearance.

Consumer Goods judges, top, RE Sandbrook (chairman), Member of Council, CoID, and general secretary of the Association of Building Technicians; Mrs Hattie Austin-Smith, of the Austin-Smith:Lord Partnership; below, Gillian Packard, director of Gillian E Packard & Co; Siobhan Cowdrey, director general of the London Group of Building Centres; and Martin Grierson, freelance designer.

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Skechers v Nike

Knitting machine

The 8RJ-36 double jersey jacquard circular knitting machine is designed and made by Wildt Mellor Bromley Ltd, Leicester, a member of the Bentley Engineering group.

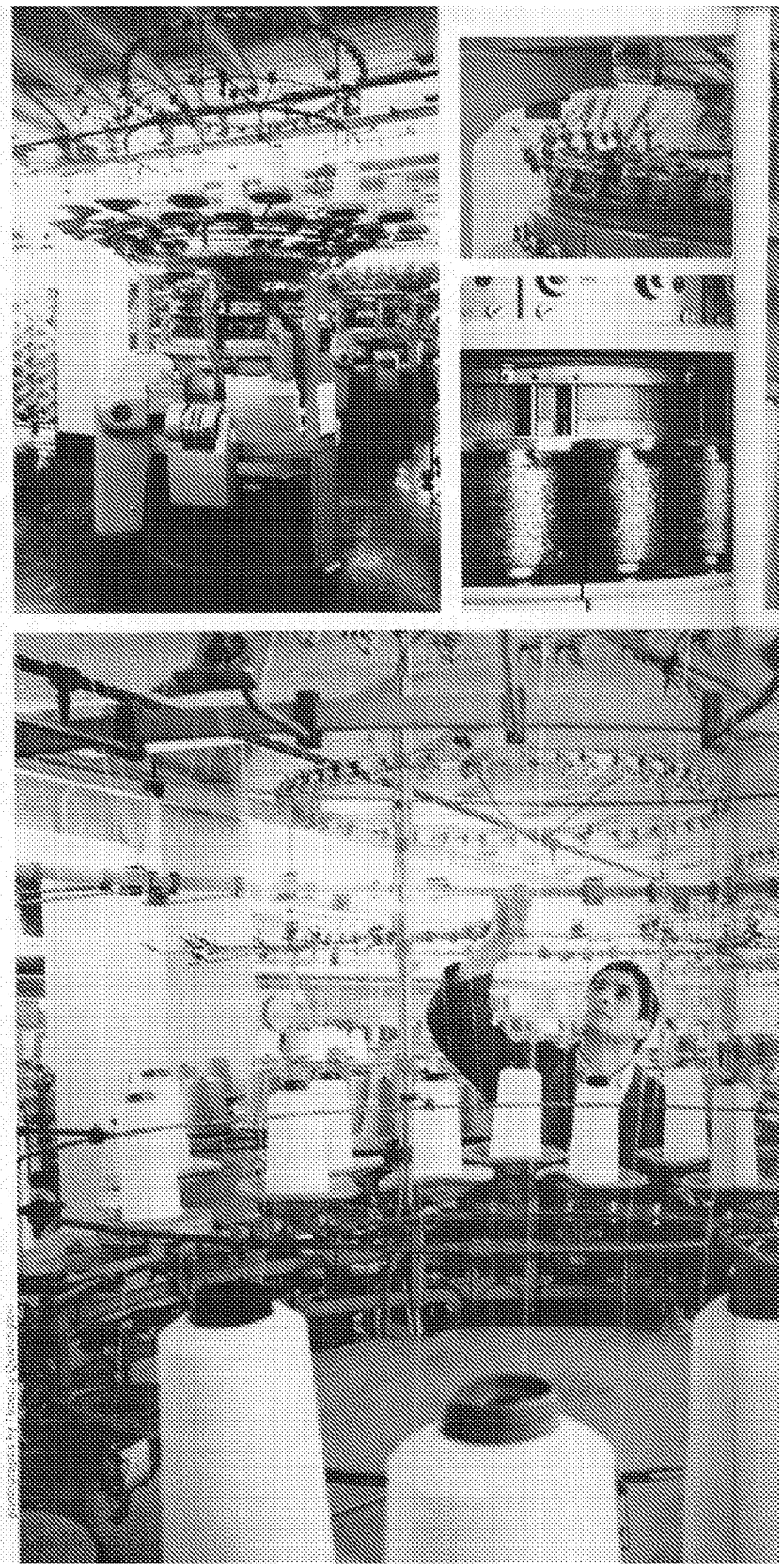
Success in industries which are undergoing rapid technological change usually requires innovation to be combined with a high overall standard of design, and it is therefore perhaps not surprising that, for the second year in succession, a textile machinery manufacturer has won a Cotid Design Award. This year the product chosen, like the Schlegg yarn-processing machine which won a 1968 Award, is also proving a world-seller.

The brief given to Wildt Mellor Bromley's design team for the *8RJ-36* was arrived at after consultation with major users throughout the world and following an evaluation of competitors: the aim was to design and build a machine which would meet the market needs for the next five to seven years. The brief specified a machine with a larger patterning area than ever before, with easier pattern changing, and offering an increased rate of production combined with the utmost versatility of stitch. It also had to be simple to operate and reliable enough for a 168-hour week in conditions throughout the world.

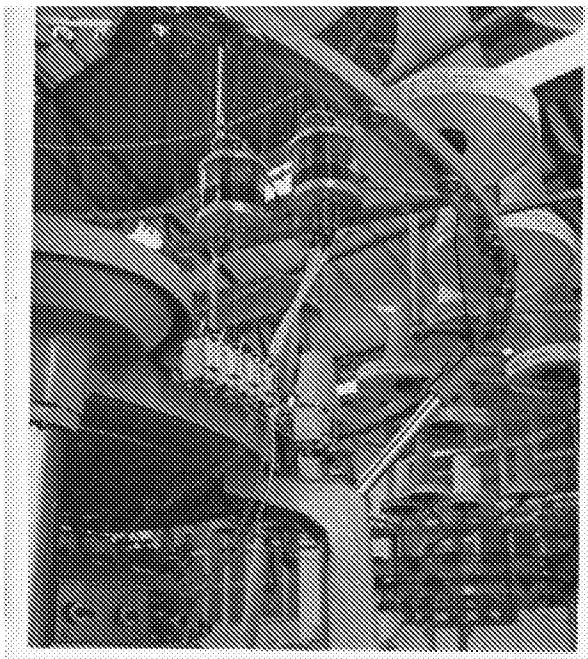
The machine was launched early in 1967, the first few months' deliveries being made exclusively to British factories to prove it before international launching at the Textile textile machinery exhibition in the autumn. At Basle the machine swept the board in its field and won more than £5 million orders in 10 days; now, although production has been increased by some 60 per cent, the output of *8RJ-36s* is already sold to the end of 1970, with export orders making up about 70 per cent of the total.

The *8RJ-36* knits a tube of cloth 30 inches in diameter at a rate of up to 118 yards of two-colour jacquard fabric for each eight-hour shift, assuming 85-percent efficient working and depending on the type of cloth being knitted. This represents a 45-percent increase in output over the previous model for a mere 25-percent price increase, compared with the previous model, the *8RJ-36* has 36 feeders instead of 24 and a maximum pattern width of 144 needles instead of 112. This particular width was chosen because it gives the machine not only the largest pattern area of any mechanically controlled machine in the world but also because it enables patterns designed to be knitted on competitors' 96 and 72-needle-wide machines to be knitted on the *8RJ-36*.

One of the major innovations introduced is a pattern-changing system which is so simple and fast that it makes the machine more economical for even relatively short lengths of cloth than cheaper and slower machines. Each of the 36 feeders is equipped with a patterning cartridge loaded with 16 pairs of discs, each of which itself carries 72 instructions controlling the selection of a particular needle on any one revolution of the machine, thus giving the maximum pattern area for the machine. If the pattern width required for a particular design is less than the maximum, fewer disc pairs are required to control it and



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The WRJ-36 looks complicated, but is in fact simple to operate. It is threaded up by hand, but with a special device for taking the yarn from the individual cones through the stop-motion unit at the top of the machine. Yarn then goes straight down to the knitting head, top left and on over, where it is fed into the machine to knit the pattern according to the programme set up on the pattern discs, centre left. The knitted fabric appears as a tube in the centre of the machine, far left, where it is tensioned over rollers and lit from the inside to illuminate the fabric so that it can be checked for flaws. From then on the fabric is either folded flat into a box or automatically rolled up under tension into a ball for manageability during future operations. The machine is equipped with automatic devices to prevent faulty fabric being produced. Each of its 36 knitting heads is protected by devices which stop the machine instantly and illuminate a small light bulb. Two of these operate to protect against breakages or lumps in the yarn and another is used to detect broken needles or faults at the knitting head. The maximum pattern area possible on the machine is 144 needles wide and 648 needles deep for a self-colour fabric, while the maximum area when knitting four colour fabric is 144 needles wide by 144 needles deep. There is a total of 1728 needles, in the 30-in diameter of the cylinder on a machine with 18 x 18 needles per inch.

the remainder can be used to carry one or more alternative patterns; a simple tape control device is used to carry instructions about which disc rows are to be used and for interrupting or lengthening a design. Patterns are pre-loaded onto the cartridges, and all 36 patterning cartridges can be changed in 45 minutes compared with the six to 12 hours required previously.

All the yarn-tensioning devices are marked numerically so that any setting can easily be repeated. Access to all parts of the machine has been considered: the yarn is always easy to reach and the tripod construction chosen for the frame enables easy removal of the finished fabric as well as allowing the operator to inspect it during running. The WRJ-36 is lubricated completely automatically and is equipped with safety guards interlocked to prevent its running if they are not in place; the guards covering the knitting heads are in clear acrylic sheet to allow inspection without stopping the machine.

Knitting machines are normally operated in groups of four, and the WRJ-36 has been designed so that more units can be fitted into a given area than in the past while retaining ease of access. One of several measures taken to simplify production of the machine and to keep costs down is the use of die-castings instead of machined parts wherever possible. To ensure reliability, each machine is tested for one month at the manufacturer's Leicester factory and is dispatched, complete with yarn cones and knitted fabric on the take-up roll, ready to run on the pattern specified by the customer as soon as it is delivered.

The company employs a fibre technologist to keep abreast of developments in this field and one innovation currently being worked on with ICI is the use of knitted fabrics for men's suits: a special WRJ-36 with 22 needles to the inch can produce 90 yards of suiting in eight hours, a rate so much faster than is possible with woven fabrics that it promises to revolutionise this section of the industry.

Some 10 per cent of Wildt Mellor Bromley's 2200-strong labour force are employed on design and research or in the drawing office. Also available to the firm are the services of a specialist company within the Bentley Engineering Group which works on advanced feasibility studies: this company was responsible for the development of a revolutionary system of electronic conversion of a fabric designer's pattern into patterning discs for the WRJ-36, a system which can produce an average of 10 patterns in a 40-hour week compared with the normal time of 20 hours for just one pattern. Overall design and research is controlled by Wildt Mellor Bromley's managing director, A H Widdowson (himself an engineer), through regular meetings with the company's technical director and chief designer and, when necessary, other specialists.

Also active at these meetings is the assistant managing director, J V E Hunt, who formerly worked in textile manufacturing and is now responsible for the company's marketing. For Wildt Mellor Bromley is essentially a market oriented company; "We are proud of our machines," says Mr Hunt, "but it is in our interest to promote knitted fabrics generally, for the more that are sold the more knitting capacity will be required. Thus we have gone out of our way to boost the new freedom which the extra-large pattern area of the WRJ-36 offers to the fabric designer, for this kind of facility can give a real shot in the arm to an industry that is essentially fashion conscious."

http://vads.ac.uk/diad/bres/pub/COID/246/47.jpg 3/2/2016
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Skechers v Nike

Lenny M. Holden

20 Somerset, Trabuco Canyon, CA 92679
lennyh40@yahoo.com / (949) 292-9538 cell

Strengths:
Executive Management, Footwear and Apparel Operations, Production & Supply Chain, Product Development, Technical Innovation, Sourcing, Purchasing and Demand Planning, Warehouse Integration, Quality Management and Standards, Supply Chain, Timeline Management, Shoe Making, Software Design

Experience:
10 years living in Asia, 6 years in Korea working on production and product development for Airwalk, 4 years in Taiwan as the General Manager of Product Development for Converse

- ➢ Footwear and Apparel Operations, Marketing, Sales Operations, Sourcing, Product Development, Mould Development, Technical Development, Patent Application and process, Biomechanical Research, Quality Management, Costing and Margin optimization, Logistics and Supply Chain
- ➢ Experienced in production in Korea, Taiwan, China, Indonesia, Malaysia, Vietnam, Brazil, Mexico, Macao, Spain, Italy, Thailand, Philippines

Footwear experience:
Skate Shoes, Basketball, Cross Training, Running, Tennis, Hiking, Sandals, Womens dress footwear, Mens Casual footwear, Golf, Kids shoes down to crib sizes, Snowboard Boots, Vulcanized, Cold Process, Injection molding

FAN PLM, Principal/LMH Footwear Consulting, LLC **October 2011- Current**

Operations Management - Sales, Operations, Design of Footwear and Apparel software.

- ➢ Software I helped develop that manages the development, merchandising, product line management, production, material library, pricing, and quality processes.
- Worked with Quiksilver/Roxy on the set up of their apparel management software, successfully launched May 2013.
- Worked with Mens Suit Manufacturer and wholesaler in the United States

Footwear Consulting services - Offering development and sourcing consulting services and providing expert witness services.
Highlights of 2015:

- Expert witness for high profile case, testified before ITC (International Trade Commission) in Washington DC
- Assisted in product development and sourcing of Equestrian products in Mexico, Taiwan, and Korea
- Consulted with large manufacturer and wholesaler in Testing Lab set-up in China
- Consulted on injection moulding sourcing for a surf bootie company

Sole Technology Inc. **January 2001 – October 2011**

VP Footwear Development and Production:
- Participated in growth from under 100 million to over 300 million in revenue:
  - ➢ Set up demand analysis and buying process
  - ➢ Maintained excellent delivery track record
  - ➢ Developed successful SMU, (special make up) programs
- Ran all footwear operations:
  - ➢ Opened Liaison office for R&D and Production in China
  - ➢ Worked with warehouse to manage inventory demand and volume of inbound product
  - ➢ Developed net based software for development, purchasing, and production
  - ➢ Established and managed Logistics Team
  - ➢ Established production in Vietnam
- Led industry through innovation:

- ➢ Opened first Biomechanics Laboratory for Action Sports, (Skate, Snowboarding, BMX)
- ➢ Led efforts to "green" production, (increased productivity, water based adhesion, material sustainability)
- ➢ Researched ideas for USA production, (production processes that would lead to USA production)

Converse Inc. **December 1994 – December 2000**

General Manager Footwear R&D Asian Operations
- ➢ Developed a technology used in 40% of footwear sales

Director of Footwear R&D Operations
- ➢ Ran US sample making and budgets for R&D operations

Sr. Developer Basketball
- ➢ Worked on the All Star 2000 basketball development

PONY USA Inc. **January 1994 - December 1994**

Director Footwear SMU Development and Sales
- ➢ Ran development and sales for SMUs

LA Gear Inc. **December 1990 – December 1993**

Director Footwear SMU Development
- ➢ Ran a 100 million dollar SMU program
- ➢ Designed software to run the development process

PLM Running/Tennis/Cross Training
- ➢ Designed the first shoe in the Cross Running line
- ➢ Developed the first "million pair" Cross Training program

Airwalk Inc. **(Items International – Parent Company)** **October 1983 – December 1989**

Director FW Operations
- ➢ Participated in the establishment of the Airwalk brand
- ➢ Set up liaison office and supervised all sourcing and QC
- ➢ Developed first samples for Airwalk
- ➢ Designed the first cold process skate shoe
- ➢ Developed first snowboots made in Asia
- ➢ Items International (parent company) developed womens dress footwear and supervised production and production quality

Nordstrom **October 1979 – October 1983**

Asst. Buyer Ladies shoes
Ladies Shoes Sales
- ➢ Member of the Pacesetter Club

US Patents Issued

Patent Number	Issued
7278226	10/9/2007
7832118	11/16/2010

8276296	7/6/2009
8640291	2/4/2014
7020988	4/4/2006

Litigation Support Experience

11/2011 Quinn Emanuel Urquhart & Sullivan, LLP
Case: Ugg vs. Bearpaw
Project: Dissected numerous Ugg and Bearpaw products to point out material, design, and manufacturing differences.
Status: Settled

3/2015 Irell & Manella LLP
Case: Skechers vs. Converse
Project: Wrote a document on the history of vulcanized shoe production, wrote two declarations, gave a deposition in Washington DC, testified at the ITC.
Status: Pending

2/2016 Kilpatrick Townsend & Stockton LLP
Case: Adidas vs. Nike
Project: Wrote declaration on patent claims being disputed
Status: Pending, work in process

INTERNATIONAL STANDARD

ISO 8117

Second edition
2003-02-15

Textile machinery — Knitting machines — Nominal diameters of circular machines

Matériel pour l'industrie textile — Machines à tricoter — Diamètres nominaux des machines circulaires

Reference number
ISO 8117:2003(E)

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Foreword

ISO (the International Organization for Standardization) is a worldwide federation of national standards bodies (ISO member bodies). The work of preparing International Standards is normally carried out through ISO technical committees. Each member body interested in a subject for which a technical committee has been established has the right to be represented on that committee. International organizations, governmental and non-governmental, in liaison with ISO, also take part in the work. ISO collaborates closely with the International Electrotechnical Commission (IEC) on all matters of electrotechnical standardization.

International Standards are drafted in accordance with the rules given in the ISO/IEC Directives, Part 2.

The main task of technical committees is to prepare International Standards. Draft International Standards adopted by the technical committees are circulated to the member bodies for voting. Publication as an International Standard requires approval by at least 75 % of the member bodies casting a vote.

Attention is drawn to the possibility that some of the elements of this document may be the subject of patent rights. ISO shall not be held responsible for identifying any or all such patent rights.

ISO 8117 was prepared by Technical Committee ISO/TC 72, *Textile machinery and machinery for dry-cleaning and industrial laundering*, Subcommittee SC 3, *Machinery for fabric manufacturing including preparatory machinery and accessories.*

This second edition cancels and replaces the first edition (ISO 8117:1986), which has been technically revised.

Textile machinery — Knitting machines — Nominal diameters of circular machines

1 Scope

This International Standard specifies the nominal diameters of circular knitting machines and the numerical designations corresponding to the size of the machines. It is applicable to small- and large-diameter circular knitting machines and to sinker machines.

2 Normative references

The following referenced documents are indispensable for the application of this document. For dated references, only the edition cited applies. For undated references, the latest edition of the referenced document (including any amendments) applies.

ISO 7839, *Textile machinery and accessories — Knitting machines — Classification and vocabulary*

ISO 8188, *Textile machinery and accessories — Pitches of knitting machine needles*

3 Nominal diameters and numerical designation

For classifications and the vocabulary of knitting machines, see ISO 7839; for needle pitches, see ISO 8188. Table 1 specifies the nominal diameter, in millimetres, and the numerical designation applicable to each machine size.

Table 1 — Circular knitting machines

Small circular knitting machines		Large circular knitting machines	
Nominal diameter	Designation	Nominal diameter	Designation
57	2 1/4	178	7
64	2 1/2	190	7 1/2
70	2 3/4	203	8
76	3	229	9
83	3 1/4	254	10
89	3 1/2	279	11
95	3 3/4	305	12
102	4	330	13
108	4 1/4	356	14
114	4 1/2	381	15
121	4 3/4	406	16
127	5	432	17
133	5 1/4	457	18
140	5 1/2	483	19
146	5 3/4	508	20
152	6	533	21
165	6 1/2	559	22
		584	23
		610	24
		635	25
		660	26
		711	28
		762	30
		(787)	(31)
		813	32
		(838)	(33)
		864	34
		914	36
		965	38
		1 016	40
		1 067	42
		1 118	44
		1 168	46
		1 219	48
		1 270	50
		1 321	52
		1 372	54
		1 422	56
		1 473	58
		1 524	60

Values shown in brackets should be avoided as far as possible.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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adidas AG
Petitioner

v.

Nike, Inc.
Patent Owner

Patent No. 8,042,288
Filing Date: September 10, 2010
Issue Date: October 25, 2011
Title: ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER

Inter Partes Review No. Unassigned

PETITION FOR *INTER PARTES* REVIEW
UNDER 35 U.S.C. §§ 311-319 AND 37 C.F.R. § 42.100 *ET SEQ.*

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1001	U.S. Patent No. 8,042,288 ("the '288 patent")
1002	File History for U.S. Patent No. 8,042,288 ("'288 file history")
1003	Declaration of Lenny Holden ("Holden Decl.")
1004	C.V. for Lenny Holden
1005	Form PTO-SB/42
1006	U.S. Patent No. 3,985,003 to Reed ("Reed")
1007	U.S. Patent No. 4,038,840 to Castello ("Castello")
1008	U.S. Patent No. 6,330,814 to Fujiwara ("Fujiwara")
1009	U.S. Patent No. 5,345,638 to Nishida ("Nishida")
1010	David J. Spencer, Knitting Technology: A Comprehensive Handbook and Practical Guide (Third Ed., Woodhead Publishing Ltd. 2001) ("Spencer")
1011	Paul Burall, "CoID Design Awards," Design, June 1969, pp. 46-47 ("Burall")
1012	ISO 8117:2003(E) Textile machinery - Knitting machines - Nominal diameters of circular machines ("ISO 8117")
1013	U.S. Patent No. 4,785,558 to Shiomura ("Shiomura")
1014	U.S. Patent No. 6,779,369 to Shepherd ("Shepherd")

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I. INTRODUCTION

Through counsel, real party in interest adidas AG ("Petitioner") hereby petitions for initiation of *inter partes* review of claims 1-38 of U.S. Patent No. 8,042,288 ("the '288 patent"), assigned to Nike, Inc. ("Patent Owner"). A copy of the '288 patent is attached as Exhibit 1001, and a copy of the prosecution history of the '288 patent is attached as Exhibit 1002.

II. MANDATORY NOTICES

A. Real Party in Interest

Petitioner, adidas AG, the ultimate parent of adidas International B.V., adidas North America, Inc., adidas America, Inc., and adidas International, Inc., is the real party-in-interest for the instant petition.

B. Related Matters

The '288 patent is a continuation application of U.S. Patent No. 7,814,598, which is a divisional application of U.S. Patent No. 7,347,011 ("the '011 patent"). The Board instituted *inter partes* review of claims 1-46 of the '011 patent (IPR2013-00067), and Nike requested cancellation of claims 1-46 and proposed substitute claims 47-50. The Board granted the motion to cancel, but denied the motion as to the substitute claims. Nike appealed the Board's decision to the Federal Circuit (Case No. 2014-1719). The Federal Circuit issued a decision on February 11, 2016, which affirmed-in-part, vacated-in-part, and remanded the case to the Board for further proceedings on secondary consideration and patentability of dependent claim 49.

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C. Fee

This petition for *inter partes* review of 38 claims of the '288 patent is accompanied by a fee payment of $35,800 which includes the $12,600 *inter partes* review request fee and the $23,200 *inter partes* review post-institution fee. *See* 37 C.F.R. § 312(a)(1) and 37 C.F.R. § 42.15(a) and 42.103. Petitioner further authorizes a debit from Deposit Account 20-1430 for whatever additional payment is necessary in granting this petition.

D. Designation of Lead Counsel and Request for Authorization

Lead Counsel	Back-Up Counsel
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E. Service Information

As identified in the attached Certificate of Service, a copy of the present petition, in its entirety, is being served to the address of the attorney or agent of record. Petitioner, adidas AG, may be served at its counsel, Kilpatrick Townsend & Stockton LLP, at the e-mail addresses indicated above.

F. Power of Attorney

A power of attorney with the designation of counsel is filed herewith in accordance with 37 C.F.R. § 42.10(b).

G. Standing

Petitioner certifies that the '288 patent is eligible for *inter partes* review and further certifies that Petitioner is not barred or otherwise estopped from requesting *inter partes* review challenging the identified claims on the grounds identified herein.

III. THE '288 PATENT

A. Priority Date of the '288 Patent

The '288 patent issued on October 25, 2011 from Application No. 12/879,517 ("the '517 application"), filed on September 10, 2010. The '288 patent purports to be a continuation of Application No. 12/032,995, filed on February 18, 2008, now U.S. Patent No. 7,814,598 ("the '598 patent"). The '598 patent purports to be a division of Application No. 10/791,289, filed on March 3, 2004, now U.S. Patent No. 7,347,011. Thus, the earliest possible effective filing date for purposes of 35 U.S.C. §§ 102(a) and 102(b) is March 3, 2004.

B. Brief Description of the '288 Patent and Summary of the Prosecution History

The '288 patent relates to an article of footwear having a textile upper. (Ex. 1001, 1:19-22). The '288 patent specifically teaches that the upper incorporates a textile element, which may be formed with a knitting machine. (*Id.*, 3:27-29).

The '517 application was filed on September 10, 2010, with claims 1-39.

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Original claims 1, 14, 22, 30, and 37 were directed to an article of footwear.

The PTO issued a first Office Action on the merits, rejecting claims 1-39 on the ground of nonstatutory double patenting over claims 1-46 of the '011 patent, and indicated that claims 1-39 would be allowed subject to the filing of a Proper Terminal Disclaimer over claims 1-46 of the '011 patent. (Ex. 1002, 3/4/2011 Office Action, pp. 2-3.) Applicants responded by submitting the necessary Terminal Disclaimer. (Ex. 1002, 3/25/2011 Response.)

The PTO then issued a non-final rejection of claims 1, 2, 7, 9-18, 20, 21, 30, 31, and 35-39 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,701,458 to Ducharme ("Ducharme"), and claims 8 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Ducharme in view of U.S. Patent No. 6,558,784 to Norton ("Norton"). (Ex. 1002, 4/4/2011 Office Action, pp. 2-3.) The Examiner indicated that claims 3-6 and 32-34 were allowable and that claims 22-29 were allowed. (*Id.*, at 3.)

Applicants responded by amending claims 1 and 30 to recite "longitudinal" edges; amending claim 14 to recite that "the upper includes an exterior layer, an intermediate layer, and an interior layer, and the circular-knitted textile element forms at least a portion of the interior layer"; and amending claim 37 to recite the knitted textile element "further having the edges joined together to form a seam extending from a heel area to a forefoot area of the footwear along a lower surface of the upper." (Ex. 1002, 5/16/2011 Response, pp. 2-9.) Applicants asserted that Ducharme

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lacks a longitudinal seam and that neither Ducharme nor Norton discloses that the circular-knitted textile element forms at least a portion of the interior layer. (*Id.*, at 11-12.)

The Examiner then allowed claims 1-18 and 20-39, now renumbered as claims 1-38. (Ex. 1002, 6/24/2011 Notice of Allowance.) Applicants transmitted the issue fee payment on September 22, 2011, and the '288 patent issued on October 25, 2011. (Ex. 1002, 9/22/2011 Issue Fee Payment.)

IV. CLAIM CONSTRUCTION

A claim subject to *inter partes* review ("IPR") is given its "broadest reasonable construction ["BRI"] in light of the specification of the patent in which it appears." 37 C.F.R. § 42.100(b). The words of the claim are, thus, given their plain meaning unless that meaning is inconsistent with the specification. *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989). Petitioner submits, for the purposes of the IPR only, that the majority of the claim terms are presumed to take on their broadest reasonable interpretation in view of the specification of the '288 patent.

A. "a first area and a second area with a unitary construction" (claim 14)

Claim 14 recites that the textile element includes "a first area and a second area with a unitary construction." As part of the IPR proceedings for the '011 patent, the Board construed this phrase to "require a textile element having a unitary construction *and* having a first area and a second area." *adidas AG v. Nike, Inc.*, IPR2013-00067,

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Paper No. 60, pp. 16-17, 2013 WL 8595550, at *7 (PTAB May 17, 2013). Because the '288 patent shares a common specification with the '011 patent and is a continuation of a division thereof, Petitioner requests that the Board construe the phrase in claim 14 to have the same meaning as its prior construction.

B. "the knitted textile element having a first area with a first unitary construction and a second area with a second unitary construction different from the first unitary construction" (claim 36)

Claim 36 recites "the knitted textile element having a first area with a first unitary construction and a second area with a second unitary construction different from the first unitary construction." As part of the IPR proceedings for the '011 patent, the Board construed this phrase to mean "two textile element areas, each having a unitary construction, but which areas may possess different structures, e.g., knit constructions or stitch configurations, resulting in different properties." *adidas AG v. Nike, Inc.*, IPR2013-00067, Paper No. 18, pp. 16-17, 2013 WL 8595550, at *7 (PTAB May 17, 2013). Because the '288 patent shares a common specification with the '011 patent and is a continuation of a division thereof, Petitioner requests that the Board construe the phrase in claim 36 to have the same meaning as its prior construction.

C. "wide-tube circular knitting machine" (claim 30)

Under the BRI standard, "wide-tube circular knitting machine" should be construed as: "a circular knitting machine with a nominal diameter of 7 inches or larger." The '288 patent uses "wide-tube circular knitting machine" to describe a

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Santoni S.p.A. wide-tube circular knitting machine having a diameter that ranges from 10 inches to 20 inches (7:15-21), but provides no other definition or explanation for what is meant by "wide-tube circular knitting machine." The use of "wide-tube circular knitting machine" in the '288 patent is consistent with ISO 8117, an international knitting standard from 2003, which specifies that any circular knitting machine with a nominal diameter of 178 mm (7 inches) or larger is categorized as a large (or wide-tube) circular knitting machine. (Ex. 1003, ¶ 98.)

Petitioner submits that the remaining claim terms should be accorded their ordinary and customary meaning as understood by one of ordinary skill in the art. *See* 77 Fed. Reg. 48700 (2012). Any claim constructions presented either implicitly or explicitly in this proceeding should not be viewed as a concession as to the proper scope of any claim term in any future litigation proceeding.

V. STATEMENT OF RELIEF REQUESTED

Pursuant to 37 C.F.R. § 42.104(b), Petitioner respectfully requests cancellation of claims 1-38 based on the following grounds:

Ground	35 U.S.C.	Claims	References
1	103(a)	1-38	Nishida, Reed, Shiomura, and Shepherd
2	103(a)	1-38	Nishida, Castello, Fujiwara, Shiomura, and Shepherd

Below is a discussion of why the challenged claims of the '288 patent are unpatentable under the statutory grounds raised, including claim charts specifying where each element of a challenged claim is met by the prior art. 37 C.F.R.

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§ 42.104(b)(4). The showing in these sections establishes a reasonable likelihood of prevailing as to each ground of invalidity with respect to the challenged claims as to that ground. This showing is supported by the Declaration of Lenny Holden ("Holden Decl.") (Ex. 1003).

VI. PERSON OF ORDINARY SKILL IN THE ART AT THE TIME OF THE '288 PATENT

A person of ordinary skill in the art ("POSA") for the '288 patent would have at least a few years of experience in the footwear industry, possibly with a focus in one specific area (such as merchandising, design, product development, commercialization, and/or manufacturing), but would also have a broader understanding of shoemaking in general, as all aspects are so interdependent on each other. A POSA would have an understanding of the product cycle for the process of designing, developing, and bringing a new product to market. He or she would also understand that there are some key review milestones where upper material designs are reviewed and considered, such as textiles, leathers, synthetics, or other types of materials used for upper construction. The POSA would have some understanding and knowledge of the available and varied ranges of typical construction methods within a product cycle. In addition, a POSA would have a basic knowledge of the functional requirements of footwear and a comprehensive understanding of the range of material choices, as well as construction techniques and processes used to create the various parts of a shoe and to assemble them in an effective manner. (Ex. 1003,

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¶34.)

VII. CLAIM-BY-CLAIM EXPLANATION OF GROUNDS

As detailed in the claim charts below, through the various identified prior art references or arguments, the majority of which were not before the Examiner during prosecution of the '288 patent and none of which were relied on by the Examiner to reject the claims of the '288 patent, all limitations of claims 1-38 of the '288 patent were well-known in the prior art. Regarding various combinations of prior art, the '288 patent claims merely recite the combination of "prior art elements according to known methods to yield predictable results" and/or the "[u]se of known technique[s] to improve similar devices (methods, or products) in the same way." *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417-22 (2007); MPEP § 2143 (A, C).

A. Ground 1: Obviousness of Claims 1-38 in View of Nishida, Reed, Shiomura, and Shepherd.

1. Nishida (Ex. 1009)

Nishida (Ex. 1009) issued on September 13, 1994, before the March 3, 2004 earliest possible priority date claimed by the '288 patent. Nishida thus is prior art under 35 U.S.C. § 102(b). Nishida was never applied or discussed by the Examiner during prosecution, but it was disclosed during prosecution of the '288 patent. Nishida explicitly describes features of claims 1-38 of the '288 patent. Nishida describes an article of footwear, which includes, among other things: an upper incorporating a knitted textile element formed unitarily with a surrounding textile

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structure, the knitted textile element being removed from the knitted textile structure, and a sole structure secured to the upper. (Ex. 1009, Abstract; 1:10-18; 1:40-2:5; 2:11-25; 2:34-37; 2:40-47; 3:6-26; 3:43-52; 3:59-4:5; 4:12-18; 4:25-60; 5:10-26; 5:64-65; FIGS. 1-3; Ex. 1003, ¶91, 93, 99-101, 105, 122.)

2. Reed (Ex. 1006)

Reed (Ex. 1006) issued on October 12, 1976, before the March 3, 2004 earliest possible priority date claimed by the '288 patent. Reed thus is prior art under 35 U.S.C. § 102(b). Reed was not cited during prosecution of the '288 patent and explicitly describes features of claims 1-38 of the '288 patent. Reed goes on to describe using a circular-knitting machine to knit one or more textile elements unitarily with a surrounding textile structure, the textile elements located in different portions of the textile structure; removing the textile element(s) from the textile structure; and incorporating the textile element(s) into any type of garment worn by men, women, and children, including stockings and hosiery. (Ex. 1006, Abstract; 1:58-64; 2:14-16; 2:22-31; 3:1-19; 3:58-60; 4:68-5:2; 5:56-57; 5:67-6:5; FIGS. 1, 2A, 2-6; Holden Decl. ¶92, 96-97, 103-104, 106.)

3. Shiomura (Ex. 1013)

Shiomura (Ex. 1013) issued on November 22, 1988, before the March 3, 2004 earliest possible priority date claimed by the '288 patent. Shiomura thus is prior art under 35 U.S.C. § 102(b). Shiomura was never applied or discussed by the Examiner during prosecution, but it was disclosed during prosecution of the '288 patent.

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Shiomura explicitly describes features of claims 1-38 of the '288 patent. Shiomura describes an athletic shoe upper formed of an outer knit fabric layer, an inner knit fabric layer parallel to and spaced apart from the outer knit fabric layer, and a number of crossing threads that are interknitted between the outer and inner knit fabric layers. (Ex. 1013, 2:8-9; 2:20-22; 2:27-35; 2:45-54; FIGS. 1-4; Ex. 1003, ¶132-133.)

4. Shepherd (Ex. 1014)

Shepherd (Ex. 1014) has an effective U.S. filing date of July 31, 2003, before the March 3, 2004 earliest possible priority date claimed by the '288 patent. Shepherd thus is prior art under 35 U.S.C. § 102(e). Shepherd was not cited during prosecution of the '288 patent and explicitly describes features of claims 1-38 of the '288 patent. Shepherd describes a spacer fabric with weft knitted front and back layers coupled together by a network of spacer yarns, which are formed on a circular knitting machine. (Ex. 1014, 4:62-5:5; 5:12-18, FIGS. 1-2; Ex. 1003, ¶134-135.)

5. The Combination of Nishida, Reed, Shiomura, and Shepherd

Nishida's explicit statements that a method of producing knitted textiles for shoe uppers can be performed with any "conventional textile process . . . " such as "weaving and/or knitting and/or embroidering" (Ex. 1009, 3:6-9) and that "the use of program-controlled, particularly computer-controlled, production devices is advantageous, so that style, color, design, size or the like can be varied at will" (Ex. 1009, 4:12-18) would have suggested to a POSA at least as of March 3, 2004, that

Nishida's method of making shoes with uppers formed of textile fabrics could be performed with any knitting machine having computerized or programmable single needle selection capabilities. Ex. 1003, ¶154.)

With this understanding, the POSA would have been motivated to form articles of footwear as described in Nishida using Reed's computer-controlled circular knitting machinery and resulting textile element, as such a design choice would have been predictable and well known to a . (Ex. 1003, ¶155.)

The POSA would have found Nishida' process of producing textile elements to be analogous art to Reed's process, as both are directed to methods of simultaneously forming textile elements within a surrounding textile structure using programmable and/or computerized single needle selection technology, removing the textile elements, and incorporating the textile elements into a wearable item. (Ex. 1003, ¶156.) Additionally, both Nishida and Reed are directed to reducing costs associated with producing textile elements using the latest advances in knitting technology. (Ex. 1003, ¶157-158.)

The POSA would have been motivated to look to Shiomura and Shepherd for suggestions regarding knitted textile structures that meet the performance characteristics for athletic shoes. (Ex. 1013, 1:6-9; 1:38-41; Ex. 1003, ¶159.) Shiomura describes providing an athletic shoe upper with a combination of suitable elasticity with high air permeability. (Ex. 1013, 1:6-9; 1:38-41; Ex. 1003, ¶159.) Shepherd describes how to make this multilayered knitted spacer fabric using computer-

controlled circular knitting machinery. (Ex. 1014, 4:53-7:47; Ex. 1003, ¶159.)

In view of the substantial similarities and overlap between Nishida, Reed, Shiomura, and Shepherd, a POSA would certainly have been motivated to modify Nishida's method to include the additional features described by Reed, Shiomura, and Shepherd to produce a textile element for use in a shoe upper, as well as to produce a shoe incorporating such a textile element, as this is nothing more than combining "prior art elements according to known methods to yield predictable results" and/or the "[u]se of known technique[s] to improve similar devices (methods, or products) in the same way." *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417-22 (2007); MPEP § 2143 (A, C); Ex. 1003, ¶160-161.) This is particularly the case where "[a] person of ordinary skill is also a person of ordinary creativity, not an automaton." *KSR*, 550 U.S. at 421.

6. Claim-by-Claim Analysis

i. Independent Claim 1

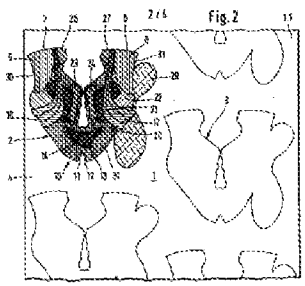
The chart below shows how Nishida and Reed disclose all of the limitations of claim 1, and thus render claim 1 obvious. (Ex. 1003, ¶91-93, 96-97, 99-106, 109-117, 118-119, 122.)

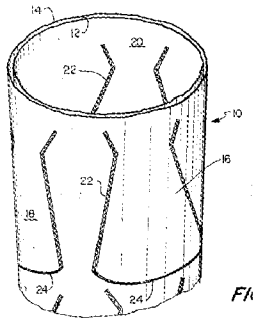
CLAIM	GROUND 1
[1A] An article of footwear comprising:	"This invention relates to a process for the production of a shoe shaped part . . . ." **Nishida**, 1:10-11; *see also* Abstract; 1:65-2:10; 2:26-33; 3:27-42; 4:19-30; 4:43-46; 5:3-26; 5:63-6:2. "Still another object is to provide a method for producing a plurality of garments formed about the circumference of a knitted tube."

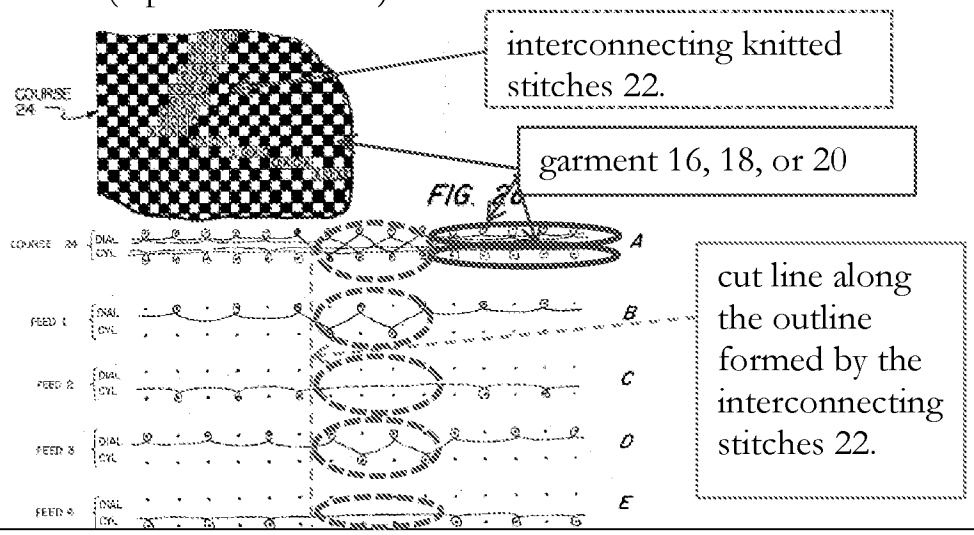
CLAIM	GROUND 1
	Reed, 2:29-31. "The present invention may be used to form all types of garments worn by men, women and children . . . ." **Reed**, 5:56-57.

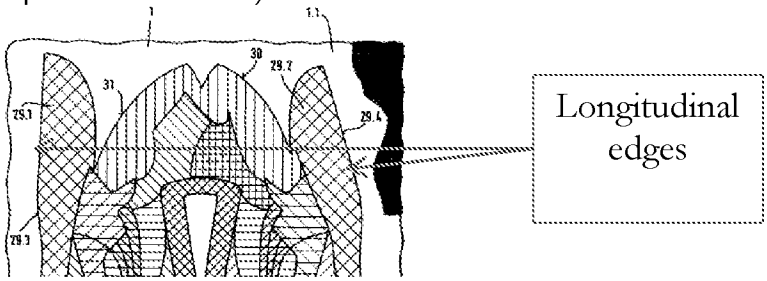
With respect to the [1B] limitation, Nishida states that "in the embodiment according to FIGS. 1 and 2, with layout 2 on the web of material 1, ***areas 26 and 27 are produced in a configuration***, color or style ***that is different from the other areas***." (Ex. 1009, 4:6-9 (emphasis added); Ex. 1003, ¶110-111.) The result is a textile element with multiple knit constructions. Nishida goes on to describe that these varying properties may include a varying elasticity, air permeability, absorptivity, softness, extensibility, wear resistance, and appearance. (Ex. 1003, ¶112-113.)

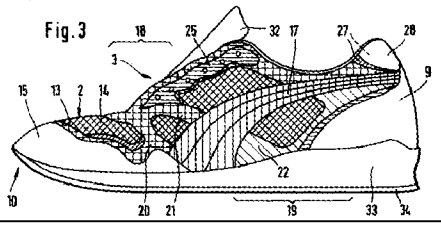
Reed similarly describes a circular-knitted textile element with a plurality of knit constructions in that the edges of the garments 16, 18, 20 are formed by interknitted stitches, whereas the remainder of the garments 16, 18, 20 are formed by non-interknitted stitches. (Ex. 1003, ¶115.) Thus, the garments 16, 18, 20 have a plurality of different knitted textures formed by varying at least one of the stitch type and the yarn type. (Ex. 1003, ¶116.) Reed also describes how the two layers 12, 14 themselves may be formed of different yarns or stitch configurations. (Ex. 1003, ¶117.)

CLAIM	GROUND 1
[1B] an upper incorporating a circular-knitted textile element having a plurality of knit	**<u>Circular-knitted textile element:</u>** "In FIGS. 1 and 2, a web of material is identified by 1, and is produced by a conventional textile process, for example, by weaving and/or knitting and/or embroidering." **Nishida**, 3:6-9; *see also* Abstract; 1:10-18; 1:47-2:5; 2:11-25; 2:40-47; 3:6-26; 3:43-52; 3:59- 

CLAIM	GROUND 1
constructions,	4:5; 4:12-18; 4:47-60; 5:64-65; FIGS. 1, 2 (reproduced at right). "As can be seen, ***any number of layouts 2 in the most varied configurations and/or designs as well as of different sizes can be produced on a single web of material 1***. For this purpose, above all, ***the use of program-controlled, particularly computer-controlled, production devices is advantageous***, so that style, color, design, size or the like can be varied at will." **Nishida**, 4:12-18 (emphasis added); *see also* Abstract; 1:40-2:5; 2:11-2:25; 2:40-54; 3:6-26; 3:43-4:9; 4:11-18; 4:47-55; 5:27-40; 5:45-6:2. "Another object of the present invention is to provide a method of reducing the cost of manufacturing of garments by using the versatility of a ***computerized electronic knitting machine***." **Reed**, 2:22-25 (emphasis added); *see also* 1:58-59; FIGS. 1-6. "The present invention uses an electronic circular double knitting machine programmed to ***simultaneously knit two concentric tubes***, one on the dial set of needles and a second on the cylinder set of needles and additionally programmed to interconnect the two concentric tubes by a knit interlock stitch ***to form the outline of the design of a garment***." **Reed**, 1:58-64 (emphasis added); FIG. 1 (reproduced at right); *see also* 3:5-7; 4:68-5:2.  **<u>Plurality of Knit Constructions:</u>** "Finally, in the embodiment according to FIGS. 1 and 2, with layout 2 on the web of material 1, ***areas 26 and 27 are produced in a configuration***, color or style ***that is different from the other areas***." **Nishida**, 4:6-9 (emphasis added); *see also* Abstract; 1:65-69; 2:40-45; 3:15-26; 3:43-48; 4:12-28; 4:48-55; 5:56-6:2. "[T]he layouts of the shoe upper and sole parts are ***produced by modifying the overall construction of the web of material*** in the locations of the layouts relative to that in portions thereof where the layouts of the shoe upper and the sole parts are not provided, ***using*** one of a ***different*** weaving and ***knitting type*** for the layouts

CLAIM	GROUND 1
	of the shoe upper than is used for producing the sole parts, said weaving and knitting types being matched to differing requirements for materials of the shoe upper and sole part of a shoe in relation to properties thereof including at least one of the properties of absorptivity,***air permeability***, ***softness***, ***extensibility***, wear resistance and appearance." **Nishida**, 6:1-31 (emphasis added); *see also* 5:63-6:2. "The knitted structure of course 24 of FIG. 2 formed by program 1 is illustrated in FIGS. 3A-3E. The inner knitting fabric formed on the dial needles are shown in FIG. 3A above the outer knitted fabric formed on the cylinder needles. Feed 1 (FIG. 3B) knits on dial needles 2, 4, 6, 8, 12, 14, etc. to form alternate stitches on the inner tube with feed 3 (FIG. 3D) on dial needles 1, 3, 5, 7, 9, 11, 13, 15, etc. stitches therebetween. The outer fabric is formed basically from an alternation of the cylinder needles using feeds 2 and 4 (FIGS. 3C and 3E, respectively). ***Interknitted stitches (shown as X's and O's in FIG. 2) are formed by feeds 1 and 3 on needles 7 and 9 and 8 and 10, respectively, as shown in FIGS. 3B and 3D. As can be seen in FIG. 3A, feeds 1 and 3 form part of the outer fabric at interconnecting stitches 7, 8, 9, and 10 of course 24 of FIG. 2.***" **Reed**, 5:3-18 (emphasis added); FIGS. 3A-3E. "[O]nce the knitted structure 10 is removed from the knitting machine, the individual garments may be severed by cutting along the outline formed by the interconnecting stitches represented by the X's and O's." **Reed**, 5:67-6:3; *see also* 3:61-4:49; 4:61-64; FIGS. 2, 2A (reproduced below), 3A-3E (reproduced below). 

CLAIM	GROUND 1
[1C] the circular-knitted textile element being removed from a circular-knitted textile structure, and	"This invention relates to a process for the production of a shoe shaped part using a web of material with a plurality of patterns in the form of the layout of a shoe upper, ***cutting out these layouts from the web of material*** and stitching the parts of the shoe upper to a top part, and fastening the related part of the sole to the edge area of the cut-open outside edge of the assigned layout and to a shoe shaped part produced according to this process." **Nishida**, 1:10-18 (emphasis added); *see also* Abstract; 1:65-2:10; 2:20-25; 2:30-33; 3:31-35; 4:31-43. "As indicated previously, once the knitted structure 10 is removed from the knitting machine, ***the individual garments may be servered [sic] by cutting along the outline*** formed by the interconnecting stitches represented by the X's and O's. If desired, the ***fabric may be cut with a hot knife*** so that the edges are fused together to add additional strength to the seams." **Reed**, 5:67-6:5 (emphasis added); *see also* Abstract; 2:14-16; 3:12-19; 5:67-6:5; FIGS. 2, 4-6.
[1D] further having longitudinal edges that are joined together to define at least a portion of a void for receiving a foot; and	"With the embodiment according to FIG. 4, a sole part section 29.1 that extends over the entire length of the sole is provided on outside contour 31 in the approximate form of a half of sole part 29, and a sole part section 29.2 which forms the remainder of sole part 29 is provided on the outside contour 30. Both sole part sections 29.1 and 29.2 complement each other to complete sole part 29. ***In this case, their outside contours 29.3 and 29.4 are connected with one another, for example stitched and/or glued and/or fused or the like, preferably by a longitudinal seam.***" **Nishida**, 5:3-13; FIG. 4 (reproduced below).  "[T]he sole part is formed of sole part sections which extend over the entire length of an insole to be formed and which are connected to outside contours of the layout of the shoe upper; and wherein outside edge portions of the sole part sections are fastened together, by producing a lengthwise seam, to form the sole part." **Nishida**, 6:47-54; *see also* 4:22-30; 6:5-41; FIGS. 3-4.

CLAIM	GROUND 1
[1E] a sole structure secured to the upper.	Nishida describes "***stitching parts of the layout*** of the cut-out unit on provided seams ***to form an upper of the shoe shaped part*** . . . ." **Nishida**, 6:36-38 (emphasis added). "Completed shoe upper 3 is then brought into a gluing, injection or casting mold, in which a midsole 33 and an outsole 34 are molded by known measures, as is represented in FIG. 3." **Nishida**, 4:43-46; *see also* Abstract; 1:40-47; 1:50-56; 1:60-2:5; 2:34-37; 2:40-45; 3:6-26; 3:46-48; 3:66-4:1; 4:13-18; 4:25-60; 5:10-26; FIG. 3 (reproduced at right). 

ii. Dependent Claim 2

The chart below shows how Nishida discloses the feature of claim 2, and thus renders claim 2 obvious. (Ex. 1003, ¶123.)

CLAIM	GROUND 1
[2] The article of footwear recited in claim 1, wherein the circular-knitted textile element forms at least a portion of a lateral side, a medial side, and an instep region of the upper.	"The individual parts or areas of shoe upper 3 can be representations of those areas on which a trimming, for example, a part resistant to wear, is applied. For example, ***areas 5 and 6*** are provided for applying ***an inside or outside heel counter 9*** (FIG. 3)." **Nishida**, 3:27-31 (emphasis added). "To reduce wear, a toe cap 15, represented in FIG. 3, can be applied, especially glued and/or stitched, on the front area, adjacent to front edge 13 of ***toe area 14***." **Nishida**, 3:39-42(emphasis added). "Areas 20, 21 and 22, identified in FIG. 3, ***running from instep area 18 to heel area 19*** . . . ." **Nishida**, 3:59-60 (emphasis added). *See also* **Nishida**, 3:15-4:46; 3:59-4:9; 5:3-8; FIGS. 1-5.

iii. Dependent Claims 3 and 31

Dependent claims 3 and 31 recite that "a pair of first edges that are joined to form a first seam extending longitudinally along a lower region of the upper." This limitation is substantially similar to element [1D]. As discussed in Section VII.A.6.i above with respect to element [1D], Nishida describes the features of claims 3 and 31,

and thus renders claims 3 and 31 obvious. (Ex. 1003, ¶118-119.)

iv. Dependent Claims 4 and 32

Claims 4 and 32 recite that "the edges include a pair of second edges that are joined to form a second seam extending along a heel region of the upper." The chart below shows how Nishida discloses the feature of claims 4 and 32, and thus renders claims 4 and 32 obvious. (Ex. 1003, ¶120.)

CLAIM	GROUND 1
[4] The article of footwear recited in claim 3, wherein the edges include a pair of second edges that are joined to form a second seam extending along a heel region of the upper.	"After cutting out layout 2 from the web of material 1, the edges 7 and 8 are stitched together and a heel seam thus is formed. Then, heel counter 9, represented in FIG. 3, is applied, for example, glued and/or stitched, to adjacent areas 5 and 6." **Nishida**, 3:31-36; *see also* 4:9-11; 6:5-41; FIGS. 2, 4.

v. Dependent Claim 5

Dependent claim 5 recites that the "second seam extends vertically." As discussed in Section VII.A.6.iv above, Nishida describes the feature of claim 5, and thus renders claim 5 obvious. (Ex. 1003, ¶120.)

vi. Dependent Claims 6, 22, and 33

Claims 6 and 33 recite that "wherein the edges include at least a pair of third edges that are joined to form a third seam extending through a forefoot area of the upper" Claim 22 similarly recites that the "footwear includes a third seam extending through the forefoot area of the upper." The chart below shows how Nishida

discloses the feature of claims 6, 22, and 33, and thus renders claims 6, 22, and 33 obvious. (Ex. 1003, ¶121.)

CLAIM	GROUND 1
[6] The article of footwear recited in claim 4, wherein the edges include at least a pair of third edges that are joined to form a third seam extending through a forefoot area of the upper.	"According to an advantageous further development of the invention, an individual part 29 in the form of an insole can be co-produced on layout 2 of shoe upper 3. After being cut out, this individual part 29 remains connected with layout 2, and after or during the shaping and fixing of shoe upper 3 from layout 2, part 29 is folded into the plane of the shoe sole and is fastened to the lower edge zone of the shoe upper 3. This lower edge zone is defined in layout 2 by outside contours 30 and 31, and the manner of its fastening can be, in a way known in the art, for example, by gluing, stitching, tacking or the like." **Nishida**, 4:19-30; FIG. 4; *see also* 3:37-42; 6:5-41; FIGS. 2, 4.

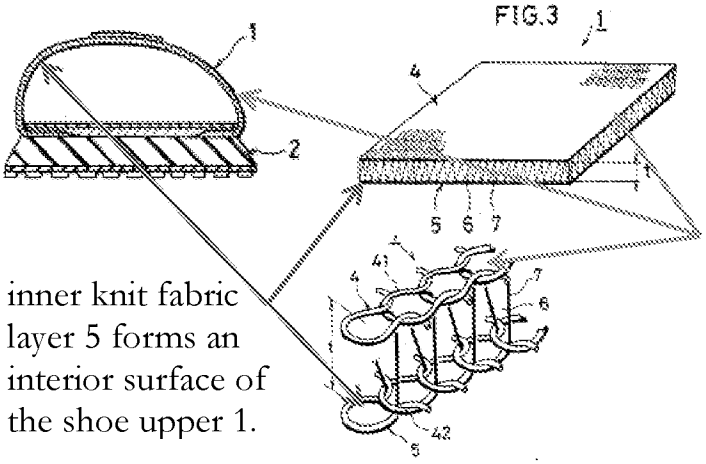
vii. Dependent Claims 7, 18, 26, 34, and 38

Dependent claims 7, 18, 26, 34, and 38 recite that the textile element "is ***one of*** an exterior layer, an intermediate layer, and an interior layer of the upper." The chart below shows how Nishida, Reed, Shiomura, and Shepherd disclose the features of claims 7, 18, 26, 34, and 38, and thus render claims 7, 18, 26, 34, and 38 obvious. (Ex. 1003, ¶126-135.)

First, the '288 patent explains that the only difference between the prior art multi-layered construction described in the Background Art of the '288 patent and the claimed invention is the use of the textile element as the inner layer. ('Ex. 1003, ¶126-128.) It would have been obvious to the POSA to replace the interior (or the exterior) fabric layer of a conventional multi-layered upper with a circular-knitted textile, such as the one collectively described in Nishida and Reed. (Ex. 1003, ¶129.)

Second, Shiomura replaces all three of the conventional upper layers with a new spacer fabric comprising three knitted layers. (Ex. 1003, ¶130-133.) Shepherd describes how the knitted layers of Shiomura may be knitted with a circular knitting machine. (Ex. 1003, ¶134-135.)

CLAIM	GROUND 1
[7] The article of footwear recited in claim 1, wherein the circular-knitted textile element is one of an exterior layer, an intermediate layer, and an interior layer of the upper.	**Conventional Multilayered Upper With Interior Circular-Knitted Textile Layer Substituted in Place of Interior Fabric Layer** "***Areas 20, 21 and 22*** **. . . *can be woven or knitted in two or more layers*** or can be especially thick or additionally embroidered." **Nishida**, 3:59-4:1 (emphasis added); *see also* Abstract; 1:40-2:5; 2:11-2:25; 2:40-54; 3:6-26; 3:43-4:9; 4:11-18; 4:47-55; 5:27-40; 5:45-6:2.) "[T]he outside tube 14 may be a normal decorative fabric ***wherein the inner tube 12 may be formed of a material such as lining***." **Reed**, 3:64-66; (emphasis added). Reed, Abstract; 1:58-64; 2:22-25; 2:29-31; 3:5-7; 3:58-60; 3:67-4:3; 4:68-5:2; FIG. 1. **Multilayered Upper With Spacer Fabric Comprising Multiple Circular-Knit Layers** "As shown in FIGS. 3 and 4, the shoe upper 1 comprises an outer knit fabric layer 4, an inner knit fabric layer 5 provided parallel to the outer knit fabric layer 4 through a space 6, and a number of crossing threads 7 which cross the space 6. The outer knit fabric layer 4 is knitted from a yarn 41 while the inner knit fabric layer 5 is knitted from a yarn 42. The crossing threads 7 are interknitted to be bound into the outer and inner knit fabric layers 4, 5." **Shiomura**, 2:27-35; FIG. 1; FIGS. 2-4 (reproduced below); *see also* 2:20-22; 2:45-54.

CLAIM	GROUND 1
	 inner knit fabric layer 5 forms an interior surface of the shoe upper 1. outer knit fabric layer 4 forms an exterior surface of the shoe upper 1. "Referring to FIGS. 1 and 2 of the accompanying drawings, the weft knitted flat jacquard spacer fabric 10 includes a ***weft knitted jacquard pattern front layer 11*** and a ***weft knitted plain back layer 12*** disposed parallel to one another at a predetermined spacing and coupled together by a network of spacer yarns 13 which are preferably firmer and more resilient than the yarns of the face and back layers." **Shepherd**, 5:12-18 (emphasis added); *see also* 4:62-55; FIGS. 1-2.

viii. Dependent Claim 8

Dependent claim 8 recites that "the upper includes an exterior layer, an intermediate layer, and an interior layer, and the circular-knitted textile element forms at least a portion of the interior layer." As discussed in Section VII.A.6.vii above, the combinations of (1) the conventional three-layered upper described in the '288 patent, Nishida, and Reed, and (2) Shiomura and Shepherd, respectively, describe these features of claim 8, and thus render claim 8 obvious. (Ex. 1003, ¶136-138.)

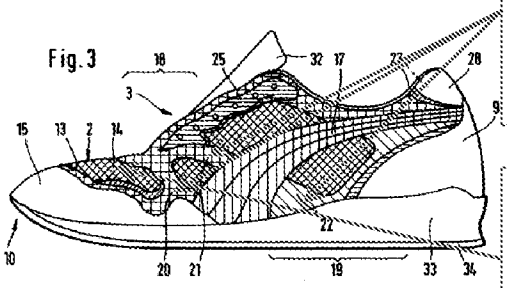
ix. Dependent Claims 9, 19, and 27

Claims 9, 19, and 27 recite that the textile element "forms at least a portion of both an interior surface and an exterior surface of the upper." The chart below shows

how Nishida and Reed disclose the features of claims 9, 19, and 27, and thus render claims 9, 19, and 27 obvious. (Ex. 1003, ¶146-148.)

Nishida describes that portions of the layouts 2 (such as areas 20, 21, 22, and toe area 14) are uncovered in the finished shoe and therefore form at least a portion of the exterior surface of the upper. (Ex. 1003, ¶146.)

Additionally, Reed discloses that the inner tube 12 may be formed as a lining, while the outer tube 12 may be formed as a normal decorative fabric. (Ex. 1003, ¶147.) It would have been obvious to the POSA at least as of March 3, 2004, that modifying Nishida's upper to incorporate the circular-knitted textile element of Reed would result in an upper with at least a portion of an interior surface formed by the inner tube 12 portion of Reed's circular-knitted textile and at least a portion of an exterior surface formed by Reed's circular-knitted outer tube 14 portion. (Ex. 1003, ¶148.)

CLAIM	GROUND 1
[9] The article of footwear recited in claim 1, wherein the circular-knitted textile element forms at least a portion of both an interior surface and an exterior surface of the upper.	**Nishida**, Abstract; 2:11-22; 2:37-39; 2:45-47; 3:6-15; 3:29-36; 3:39-42; 3:59-4:1; 4:9-11; FIG. 3; FIG. 3  Areas 20, 21, 22 of the layout 2 shown in the exterior view of the upper 3. Toe area 14 of the layout 2 shown in the exterior view of the upper 3. "[T]he outside tube 14 may be a normal decorative fabric ***wherein the inner tube 12 may be formed of a material such as lining***." **Reed**, 3:64-66; (emphasis added). Reed, Abstract; 1:58-64;

CLAIM	GROUND 1
	2:22-25; 2:29-31; 3:5-7; 3:58-60; 3:67-4:3; 4:68-5:2; FIG. 1.

x. Dependent Claims 10, 11, 12

Claim 10 recites that "at least one additional element is secured to the exterior surface and forms a portion of the exterior surface." Claim 11 adds that "the additional element secured to a forefoot area of the upper," and claim 12 adds that "the additional element is secured to a heel area of the upper." The chart below shows how Nishida discloses the features of claims 10, 11, and 12, and thus renders claims 10, 11, and 12 obvious. (Ex. 1003, ¶149.)

CLAIM	GROUND 1
[10] The article of footwear recited in claim 9, wherein at least one additional element is secured to the exterior surface and forms a portion of the exterior surface.	"The individual parts or areas of shoe upper 3 can be representations of those areas on which a trimming, for example, a part resistant to wear, is applied. For example, ***areas 5 and 6 are provided for applying*** an inside or ***outside heel counter 9*** (FIG. 3)." **Nishida**, 3:27-29 (emphasis added). "To reduce wear, ***a toe cap 15***, represented in FIG. 3, ***can be applied,*** especially glued and/or stitched, ***on the front area***, adjacent to front edge 13 of ***toe area 14***." **Nishida**, 3:39-42(emphasis added). *See also* **Nishida**, Abstract; 2:11-22; 2:37-39; 2:45-47; 3:6-15; 3:29-36; 3:6-15; 3:29-36; 3:39-42; 3:59-4:1; 4:9-11; FIG. 3.

xi. Dependent Claims 13, 20, and 35

Dependent claims 13, 20, and 35 recite that "the circular-knitted textile element forms an interior surface of the upper." As discussed in Section VII.A.6.vii above, the combinations of (1) the conventional three-layered upper described in the '288 patent, Nishida, and Reed and (2) Shiomura and Shepherd, respectively, describe these features of claims 13, 20, and 35, and thus render claims 13, 20, and 35 obvious. (Ex.

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1003, ¶139-141.)

In addition, as described in Section VII.A.6.ix above with respect to claims 9, 19, and 27, Reed discloses that the inner tube 12 may be formed as a lining, while the outer tube 12 may be formed as a normal decorative fabric. (Ex. 1003, ¶142.) It would have been obvious to the POSA at least as of March 3, 2004, that modifying Nishida's upper to incorporate the circular-knitted textile element of Reed would result in an upper with an interior surface formed by the inner tube 12 portion of Reed's circular-knitted textile. (Ex. 1003, ¶142.)

xii. Independent Claim 14

Independent claim 14 is similar to the combination of claims 1 and 8, wherein elements [14A], [14B], and [14E] are substantially identical to elements [1A], [1B], and [1E], respectively, and element [14D] is identical to claim 8.

CLAIM	GROUND 1
[14A] An article of footwear comprising:	***See* Section VII.A.6.i, claim 1A.**
[14B] an upper incorporating a circular-knitted textile element,	***See* Section VII.A.6.i, claim 1B.**

One difference is that [14C] recites a "circular-knitted textile element having a first area and a second area with a unitary construction, the first area being formed of a first stitch configuration, and the second area being formed of a second stitch configuration that is different from the first stitch configuration to impart varying properties to the circular-knitted textile element, wherein the varying properties are aesthetic or structural." This limitation is substantially similar to "a plurality of knit

constructions" in [1B], particularly in view of the Board's previous BRI construction of "a first area and a second area with a unitary construction" to "require a textile element having a unitary construction *and* having a first area and a second area." (Ex. 1003, ¶91-93, 96-97, 99-106, 109-117, 122, 136-138.)

CLAIM	GROUND 1
[14C] the circular-knitted textile element having a first area and a second area with a unitary construction, the first area being formed of a first stitch configuration, and the second area being formed of a second stitch configuration that is different from the first stitch configuration to impart varying properties to the circular-knitted textile element, wherein the varying properties are aesthetic or structural,	***See* Section VII.A.6.i, claim 1B.**
[14D] wherein the upper includes an exterior layer, an intermediate layer, and an interior layer, and the circular-knitted textile element forms at least a portion of the interior layer; and	***See* Section VII.A.6.i, claim 8.**
[14E] a sole structure secured to the upper.	***See* Section VII.A.6.i, claim 1E.**

xiii. Dependent Claims 15, 16, 24, 25

Claim 15 recites that "the first stitch configuration provides a substantially smooth texture to the first area, and the second stitch configuration provides a texture to the second area that is rougher than the smoother texture." Claim 16 adds that "the second stitch configuration forms a rib structure in the second area." Claim 24 similarly recites that "the knit constructions produce varying properties in the circular-knitted textile element including a varying elasticity of the circular-knitted textile element." Claim 25 similarly recites that "the knit constructions produce varying properties in the circular-knitted textile element including a varying air permeability of

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the circular-knitted textile element."

As discussed in Section VII.A.6.i above with respect to element [1B], Nishida and Reed describe a "textile element having a plurality of knit constructions." (Ex. 1003, ¶109-117.) More specifically, Nishida goes on to describe that these varying properties may include a varying elasticity, air permeability, absorptivity, softness, extensibility, wear resistance, and appearance. (Ex. 1009, 3:43-49; 5:63-6:2; 6:1-31; Ex. 1003, ¶112-113.) Nishida also states that "[l]ayout 2 is divided into different individual parts or areas, which differ from one another, such as by being of another material style and/or by being of different fibers or yarns . . . ." (Ex. 1009, 3:15-25; Ex. 1003, ¶113.)

The chart below shows how Nishida discloses the features of claims 15, 16, 24, and 25, and thus renders claims 15, 16, 24, and 25 obvious. (Ex. 1003, ¶110-113.)

A POSA at least as of March 3, 2004, would have understood Nishida's disclosure regarding a varying softness and the use of fibers or yarns with different textures (i.e., wool and silk) to divide layout 2 into different individual parts or areas to mean that the knit configuration in one area may have a smoother texture than a knit configuration in second area (claim 15). (Ex. 1003, ¶113.) Furthermore, a POSA at least as of March 3, 2004 would have understood Nishida's disclosure regarding a varying extensibility to mean that the knit configuration in the rougher area may have a rib structure (claim 16). (Ex. 1003, ¶113.)

CLAIM	GROUND 1
[15] The article of footwear recited in claim 14, wherein the first stitch configuration provides a substantially smooth texture to the first area, and the second stitch configuration provides a texture to the second area that is rougher than the smoother texture.	***See* Section VII.A.6.i, claim 1B.** "Since, generally, toe area 14 is designed to be relatively deformably ***soft*** or ***elastic***, and optionally, also ***permeable to air***, the web of material 1, in toe area 14, according to the present invention, is correspondingly designed by suitable selection of the weave pattern, ***knit pattern*** and/or the material used, such as, for example, Silk or plastic. The type of production can, additionally, ***insure that the toe area 14 has a good air exchange capability. For example, this can be achieved by a net-like woven or knitted structure."*** **Nishida**, 3:43-52 (emphasis added). "[T]he layouts of the shoe upper and sole parts are ***produced by modifying the overall construction of the web of material*** in the locations of the layouts relative to that in portions thereof where the layouts of the shoe upper and the sole parts are not provided, ***using*** one of a ***different*** weaving and ***knitting type*** for the layouts of the shoe upper than is used for producing the sole parts, said weaving and knitting types being matched to differing requirements for materials of the shoe upper and sole part of a shoe in relation to properties thereof including at least one of the properties of absorptivity, ***air permeability***, ***softness***, ***extensibility***, wear resistance and appearance." **Nishida**, 6:1-31(emphasis added); *see also* 5:63-6:2.

xiv. Dependent Claims 17, 23

Claim 17 recites that "at least one of the first stitch configuration and the second stitch configuration forms an aperture in the circular-knitted textile element." Claim 23 similarly recites that "at least one of the knit constructions forms an aperture in the circular-knitted textile element." The chart below shows how Nishida and Reed disclose the feature of claims 17 and 23, and thus render claims 17 and 23 obvious. (Ex. 1003, ¶150-153.) The '288 patent describes apertures in one of three ways. (Ex. 1003, ¶150.) With respect to the first type of "ankle opening" aperture, Nishida

discloses that the u-shaped area in the layout 2 forms an ankle opening 36 when formed into the shoe upper. (Ex. 1009, FIGS. 1-5.; Ex. 1003, ¶151.)

With respect to the second type of "air-permeability" apertures, Nishida discloses that the "type of production can, additionally, insure that the toe area 14 has a good air exchange capability. For example, this can be achieved by a ***net-like woven or knitted structure***." (Ex. 1009, 3:49-52 (emphasis added); *see also* 3:43-52; 3:66-4:5; 6:25-31; Ex. 1003, ¶152.)

With respect to the third type of "lace hole" apertures, Nishida describes lacing strips that may be layered over the net-like structure to reinforce that structure and holes formed in the lacing strips may be aligned with the existing holes in the net-like structure. (Ex. 1009, 4:1-5.; Ex. 1003, ¶153.)

CLAIM	GROUND 1
[17] The article of footwear recited in claim 14, wherein at least one of the first stitch configuration and the second stitch configuration forms an aperture in the circular-knitted textile element.	Nishida discloses that the u-shaped area in the layout 2 forms an ankle opening 36 when formed into the shoe upper. *See* **Nishida**, FIGS. 1-5. "Since, generally, toe area 14 is designed to be relatively deformably soft or elastic, and optionally, also permeable to air, the web of material 1, in toe area 14, according to the present invention, is correspondingly designed by suitable selection of the weave pattern, knit pattern and/or the material used, such as, for example, Silk or plastic. The type of production can, additionally, insure that the toe area 14 has a good air exchange capability. **For example, this can be achieved by a net-like woven or knitted structure**." **Nishida**, 3:43-52 (emphasis added); *see also* 3:66-4:5; 6:25-31. Nishida also describes lacing strips that may be layered over the net-like structure to reinforce that structure and holes formed in the lacing strips may be aligned with the existing holes in the net-

CLAIM	GROUND 1
	like structure. **Nishida**, 4:1-5.

xv. Independent Claim 21

Independent claim 21 is substantially similar to the combination of claims 1, 3, and 4, wherein elements [21A], [21B], [21C], and [21E] are substantially identical to elements [1A], [1B], [1D], and [1E], and element [14D] is the same as claims 3, 4, and 5. (Ex. 1003, ¶91-93, 96-97, 99-104, 109-117, 118-120, 122.)

CLAIM	GROUND 1
[21A] An article of footwear comprising:	***See* Section VII.A.6.i, claim 1A.**
[21B] an upper incorporating a circular-knitted textile element having a plurality of knit constructions, and	***See* Section VII.A.6.i, claim 1B.**
[21C] further having edges that are joined together to form seams and define at least one portion of a void for receiving a foot,	***See* Section VII.A.6.i, claim 1D.**
[21D] the seams including a first seam and a second seam, the first seam extending from a heel area to a forefoot area of the footwear along a lower surface of the upper, and the second seam extending vertically in the heel area; and	***See* Sections VII.A.6.iii, claim 3, VII.A.6.iv, claim 4, and VII.A.6.v, claim 5.**
[21E] a sole structure secured to the upper.	***See* Section VII.A.6.i, claim 1E.**

xvi. Dependent Claim 28

Dependent claim 28 recites that "the circular-knitted textile element forms an interior surface of the upper, and at least one additional textile element form an exterior surface of the footwear." As discussed in Section VII.A.6.vii above, the (1) conventional three-layered upper described in the '288 patent, Nishida, and Reed and (2) Shiomura and Shepherd, respectively, describe these features of claim 28, and thus render claim 28 obvious. (Ex. 1003, ¶143-145.)

xvii. Independent Claim 29

Independent claim 29 is substantially similar to claim 1, wherein elements [29A], [29B], [29D], [29F], and [29G] are identical to elements [1A], [1B], [1C], [1D], and [1E], respectively.

CLAIM	GROUND 1
[29A] An article of footwear comprising:	***See* Section VII.A.6.i, claim 1A.**
[29B] an upper incorporating a circular-knitted textile element having a plurality of knit constructions,	***See* Section VII.A.6.i, claim 1B.**

One difference is that [29C] recites that "the circular-knitted textile element is formed with a knitting machine." However, as described in Section VII.A.6.i above, Nishida and Reed both describe the use of knitting machines to form the textile elements extensively. (Ex. 1003, ¶93, 96-97, 99-104.)

CLAIM	GROUND 1
[29C] wherein the circular-knitted textile element is formed with a knitting machine,	***See* Section VII.A.6.i, claim 1B.**
[29D] the circular-knitted element being removed from a circular-knitted textile structure	***See* Section VII.A.6.i, claim 1C.**

In addition, [29E] recites an "outline of the circular-knitted textile element."

CLAIM	GROUND 1
[29E] that includes an outline of the circular-knitted textile element	"[I]n the production of a web of material, both ***the patterns or partial patterns in the form of layouts of the shoe upper*** and the patterns or partial patterns in the form of a sole part, ***are produced by*** a fabric printing process (which is generally well known in the textile industry) on the web of material and/or by ***a textile production process inside the web of material***. . . ." **Nishida**, 1:50-56 (emphasis added); *see also* Abstract; 1:10-18; 1:40-47; 1:50-2:47; 4:13-18; 4:47-60;

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CLAIM	GROUND 1
	5:63-6:2; FIGS. 1-2. "The garments 16, 18 and 20 are ***outlined*** by a plurality of interconnecting knitted stitches 22 and 24." **Reed**, 3:8-9 (emphasis added). "The outline seam 24 is formed from two sets of X's and O's which are offset in the wale axes by four wales. The degree of wale offset ***to form the desired outline*** is a matter of design and thus not critical." **Reed**, 4:42-45 (emphasis added); *see also* 5:67-6:3 (emphasis added).
[29F] having longitudinal edges that are joined together to define at least a portion of a void for receiving a foot; and	***See* Section VII.A.6.i, claim 1D.**
[29G] a sole structure secured to the upper.	***See* Section VII.A.6.i, claim 1E.**

xviii. Dependent Claim 30

As described in Section VII.A.6.xvii above, claim 29 is rendered obvious by Nishida and Reed. Claim 30 adds a product-by-process limitation that should not receive patentable weight. "If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe,* 777 F.2d 695, 698 (Fed. Cir. 1985) (citations omitted); MPEP § 2113. The chart below shows how Reed discloses the feature of claim 30, and thus renders claim 30 obvious. (Ex. 1003, ¶98.)

Reed identifies "[a]n example of a ***circular knitting machine*** which will produce knitted structure 10 is Model 9RJ36 made by Wildt, Mellor, Bromley, Ltd. of Leicester, England." (Ex. 1006, 3:58-60.) As Mr. Holden explains, Reed uses his

knitting machine and technique to make a plurality of "skirts 16, 18, and 20" "[a]round the circumference of the knitted structure 10." (Ex. 1006, 3:5-7; Ex. 1003, ¶98.) That fact alone would inform a POSA at least as of March 3, 2004, that the circumference of the circular knitted tube must be at least large enough to accommodate the width of three skirts, and would certainly require a circumference larger than 22 inches. (Ex. 1003, ¶98.) The POSA would also have understood that a circular knitting machine having a circumference of at least 22 inches (i.e., a nominal diameter of at least 7 inches) is a wide-tube circular knitting machine. (Ex. 1003, ¶98.)

Hence, the POSA would thus have recognized that wide-tube circular knitting machines were used to make Reed's garments and would understand that the Model 9RJ36 was one such example. (Ex. 1003, ¶98.) Indeed, the POSA at least as of March 3, 2004, would have been aware of the 9RJ36, and would have known that it had a diameter of 30 inches, as evidenced by Burall (Ex. 1011). (Ex. 1003, ¶98.)

CLAIM	GROUND 1
[30] The article of footwear recited in claim 29, wherein the circular-knitted textile element has a structure formed by a wide-tube circular knitting machine.	"An example of a ***circular knitting machine*** which will produce knitted structure 10 is Model 9RJ36 made by Wildt, Mellor, Bromley, Ltd. of Leicester, England." **Reed**, 3:58-60 (emphasis added); *see also* Abstract; 1:58-64. "Around the circumference of the knitted structure 10 are illustrated three garments which, for example, may be skirts 16, 18, 20." **Reed**, 3:5-7; FIGS. 1-2.

xix. Independent Claim 36

Independent claim 36 is substantially similar to claims 1, 4, and [29E], wherein elements [36A], [36B], [36D], and [36H] are substantially similar to elements [1A], [1B], [1C], and [1E], respectively, [36E] is substantially similar to [29E]; and [36G] is substantially similar to claim 4.

CLAIM	GROUND 1
[36A] An article of footwear comprising:	***See* Section VII.A.6.i, claim 1A.**
[36B] an upper incorporating a knitted textile element,	***See* Section VII.A.6.i, claim 1B.**

One difference is that [36C] recites that "the knitted textile element is formed unitarily with a knitted textile structure." However, as described in Section VII.A.6.i above, Nishida and Reed both describe forming textile elements unitarily with a knitted textile structure. (Ex. 1003, ¶99-104.)

CLAIM	GROUND 1
[36C] wherein the knitted textile element is formed unitarily with a knitted textile structure,	***See* Section VII.A.6.i, claim 1B.**
[36D] the knitted textile element being removed from the knitted textile structure	***See* Section VII.A.6.i, claim 1C.**
[36E] that includes an outline of the knitted textile element to form edges,	***See* Section VII.A.6.xvii, claim 29E.**

In addition, [36F] recites a "circular-knitted textile element having a first area and a second area with a unitary construction, the first area being formed of a first stitch configuration, and the second area being formed of a second stitch configuration that is different from the first stitch configuration to impart varying properties to the circular-knitted textile element, wherein the varying properties are

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aesthetic or structural." This limitation is substantially similar to "a plurality of knit constructions" in [1B], particularly in view of the Board's previous BRI construction of "a first area and a second area with a unitary construction" to "require a textile element having a unitary construction *and* having a first area and a second area."

CLAIM	GROUND 1
[36F] the knitted textile element having a first area with a first unitary construction and a second area with a second unitary construction different from the first unitary construction, the first area having a first set of properties, and the second area having a second set of properties that is different from the first set of properties to impart varying characteristics to the textile element,	***See* Section VII.A.6.i, claim 1B.**
[36G] and further having the edges joined together to form a seam extending from a heel area to a forefoot area of the footwear along a lower surface of the upper; and	***See* Section VII.A.6.iv, claim 4.**
[36H] a sole structure secured to the upper.	***See* Section VII.A.6.i, claim 1E.**

xx. Dependent Claim 37

As discussed in Section VII.A.6.i above with respect to [1B], Nishida and Reed describe that "the first set of properties and the second set of properties are at least one of a stitch configuration and a yarn type." (Ex. 1003, ¶109-117.)

B. Ground 2: Obviousness of Claims 1-38 in View of Nishida, Castello, Fujiwara, Shiomura, and Shepherd.

1. Nishida (Ex. 1009)

See Section VII.A.1 above. (Ex. 1003, ¶171, 174, 180-181, 187, 208.)

2. Castello (Ex. 1007)

Castello (Ex. 1007) issued on August 2, 1977, before the March 3, 2004 earliest possible priority date claimed by the '288 patent. Castello thus is prior art under 35

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U.S.C. § 102(b). Castello was not cited during prosecution of the '288 patent and explicitly describes features of claims 1-38 of the '288 patent. Castello explains that with the advent of single needle selection that is controlled with programmable patterns, a variety of features can be combined on a single circular machine and knit simultaneously. (Castello (Ex. 1007), 1:39-53; 2:12-21; 3:35-44.) (Ex. 1003, ¶66, 176.) Castello describes using a circular-knitting machine to knit one or more textile elements unitarily with a surrounding textile structure, the textile elements located in different portions of the textile structure; removing the textile element(s) from the textile structure; and incorporating the textile element(s) into shirts worn by men, women, and children. (Ex. 1007, Abstract; 1:35-2:21; 2:42-52; 3:34-5:44; 6:35-58; 7:1-9; 7:23-25; 8:17-19; FIGS. 1, 2A, 2-5; Ex. 1003, ¶172, 176, 183-184, 188.)

3. Fujiwara (Ex. 1008)

Fujiwara (Ex. 1008) issued on December 18, 2001, before the March 3, 2004 earliest possible priority date claimed by the '288 patent. Fujiwara thus is prior art under 35 U.S.C. § 102(b). Fujiwara was not cited during prosecution of the '288 patent and explicitly describes features of claims 1-38 of the '288 patent

Fujiwara likewise describes using a circular-knitting machine to knit one or more textile elements unitarily with a surrounding textile structure, the textile elements located in different portions of the textile structure; removing the textile element(s) from the textile structure; and incorporating the textile element(s) into garments worn by men, women, and children. (Ex. 1008, 1:58-3:18; 3:45-48; 3:59-5:11;

5:42-6:62; 7:21-37; FIGS. 1, 4, 6, 7; Ex. 1003, ¶173, 177, 185-186, 189.)

4. Shiomura (Ex. 1013)

See Section VII.A.3 above. (Ex. 1003, ¶218-219.)

5. Shepherd (Ex. 1014)

Shepherd is described in Section VII.A.4 above. (Ex. 1003, ¶220-221.)

6. The Combination of Nishida, Castello, Fujiwara, Shiomura, and Shepherd

Nishida's explicit statements that a method of producing knitted textiles for shoe uppers can be performed with any "conventional textile process . . . " such as "weaving and/or knitting and/or embroidering" (Ex. 1009, 3:6-9) and that "the use of program-controlled, particularly computer-controlled, production devices is advantageous, so that style, color, design, size or the like can be varied at will" (Ex. 1009, 4:12-18) would have suggested to a POSA at least as of March 3, 2004 that Nishida's method of making shoes with uppers formed of textile fabrics could be performed with any knitting machine having computerized or programmable single needle selection capabilities. (Ex. 1003, ¶245.)

With this understanding, the POSA would have been motivated to form articles of footwear as described in Nishida using Castello's program-controlled circular knitting machinery and resulting textile element, as well as Fujiwara's circular knitting machinery with "computer controlled pattern control mechanism" and resulting textile element, as such a design choice would have been predictable and well known to a POSA. (Ex. 1003, ¶246.)

The POSA would have found Nishida's process of producing textile elements to be analogous art to Castello's and Fujiwara's processes, as all three processes are directed to methods of simultaneously forming textile elements within a surrounding textile structure using programmable and/or computerized single needle selection technology, removing the textile elements, and incorporating the textile elements into a wearable item. (Ex. 1003, ¶247.)

Additionally, Nishida, Castello, and Fujiwara are all directed to reducing costs associated with producing textile elements using the latest advances in knitting technology of the time of each reference. (Ex. 1003, ¶248-250.) Castello's method provides that "[t]he present invention resides in a novel method of fabricating knitted collars on circular knitting machines which results in a far greater production capability at resulting cost savings over that presently possible on flat machines." (Ex. 1003, ¶248.) Fujiwara also identifies that "sewing is a bottleneck from the view point of increase in an production efficiency as well as of decrease in a production cost" such that "there has heretofore been a strong requirement as to a development in a garment making by which any sewing is not necessary." (Ex. 1003, ¶249.) Nishida likewise states that a "process is used by which such shoe uppers can be produced in a timesaving and efficient manner" with "only a small number of individual parts that have to be produced separately and applied to the upper later" over conventional methods that generate expensive cutting waste. (Ex. 1003, ¶250.) The POSA would have found that Castello, Nishida, and Fujiwara are directed to solving a similar

problem: expensive and time consuming production of textile components. (Ex. 1003, ¶250.)

The POSA would also have been motivated to look to Shiomura and Shepherd for suggestions regarding knitted textile structures that meet the performance characteristics for athletic shoes. (Ex. 1013, 1:6-9; 1:38-41; Ex. 1003, ¶251.) Shiomura describes providing an athletic shoe upper with a combination of suitable elasticity with high air permeability. (Ex. 1013, 1:6-9; 1:38-41; Ex. 1003, ¶251.) Shepherd describes how to make this multilayered knitted spacer fabric using computer-controlled circular knitting machinery. (Ex. 1014, 4:53-7:47; Ex. 1003, ¶251.)

In view of the substantial similarities and overlap between Nishida, Castello, Fujiwara, Shiomura, and Shepherd, a POSA would certainly have been motivated to modify Nishida's method to include the additional features described by Castello, Fujiwara, Shiomura, and Shepherd to produce a textile element for use in a shoe upper, as well as to produce a shoe incorporating such a textile element, as this is nothing more than combining "prior art elements according to known methods to yield predictable results" and/or the "[u]se of known technique[s] to improve similar devices (methods, or products) in the same way." *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417-22 (2007); MPEP § 2143 (A, C); Ex. 1003, ¶252-253.) This is particularly the case where "[a] person of ordinary skill is also a person of ordinary creativity, not an automaton." *KSR*, 550 U.S. at 421.

7. Claim-by-Claim Analysis

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i. Independent Claim 1

The chart below shows how Nishida, Castello, and Fujiwara disclose all of the limitations of claim 1, and thus render claim 1 obvious. (Ex. 1003, ¶171-174, 176-177, 180-189, 193-203, 204-205, 208.)

CLAIM	GROUND 2
[1A] An article of footwear comprising:	***See* Section VII.A.6.i, claim 1A regarding Nishida.** "The present invention resides in a novel method of fabricating knitted collars on circular knitting machines . . . ." **Castello**, 1:39-40; *see also* Abstract; 1:35-2:4; 3:34-4:10; 4:22-5:44; 6:35-58; 7:1-5; FIGS. 1, 2A, 2-5. "FIG. 1 illustrates schematically a formation of a circular knitted fabric as a first embodiment of the present invention, from which fabric a garment such as a sweater is obtained without necessitating any subsequent sewing process." **Fujiwara,** 3:45-48; *see also* 1:58-3:18; 3:59-4:65.

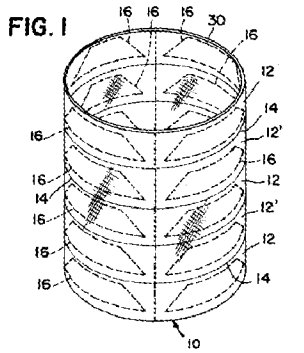
With respect to the [1B] limitation, as discussed in Section VII.A.6.i above, Nishida describes the features of [1B]. (Ex. 1003, ¶194-197.)

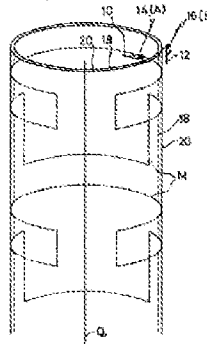
Castello additionally describes that "[a]s illustrated in the graph 18 (FIG. 5), the collars 16 may be knitted with "an integral knitted fold crease 24, knitted sewing guide marks 26, 28, mock fashion marks 22 and any desired Jacquard color designs (not illustrated) . . . . ***The fashion marks 22 may be knitted in conventional manner spaced apart in any desired stitch pattern, such as by Jacquard patterns***." (Ex. 1007, 4:23-32; *see also* 3:51-58; 4:32-33; 5:35-44; FIG. 5; Ex. 1003, ¶198-199.) Castello also points out that "the top and bottom edges 30, 32 of each layer 12, 12' are finished . . . ." (Ex. 1007, 4:4-10; *see also* 1:43-49; 1:54-68; 2:12-21; 2:42-52; 3:34-58; 4:34-5:7;

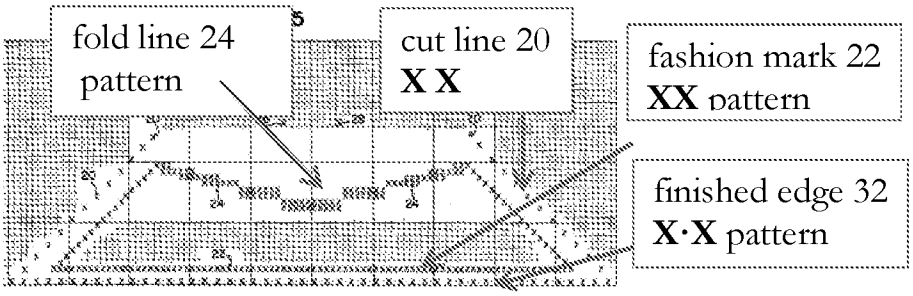
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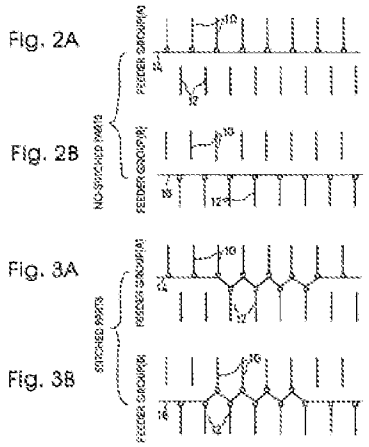
5:13-17; FIG. 5; Ex. 1003, ¶200-201.) These different stitch configurations around the collar 16 are illustrated in guide 18 (FIG. 5). (Ex. 1007, FIG. 5; Ex. 1003, ¶202.)

Fujiwara describes that the outline M of the garment is formed with interknitted stitches (as shown in FIGS. 3A and 3B), and that these interknitted stitches may be a jacquard, birds eye, eyelet, ***circular rib***, or interlock stitch configuration, whereas the non-interknitted portions of each layers 18, 20 comprises a ***plain stitch configuration***. (Ex. 1008, 5:42-56; 5:57-6:7; 7:21-24; Ex. 1003, ¶203.)

CLAIM	GROUND 2
[1B] an upper incorporating a circular-knitted textile element having a plurality of knit constructions,	**Circular-knitted textile element:** ***See* Section VII.A.6.i, claim 1B regarding Nishida.** "In utilizing the method of the present invention, circular machines having either Jacquard cards, or pattern wheels or drums or any other known suitable mechanical means of needle selection can be used. For purposes of illustration, a Jacquard type machine with cards, such as a TJI or Links and Links machine will be described." **Castello**, 1:43-49. "After a suitable sketch has been prepared on the graph paper showing the desired collar shape, design, color, mock fashion marks, etc., knitting machine cards (or some equivalent system) are then punched or otherwise prepared in conventional manner and set up on the machine to thereby automatically control the machine stitches to knit the tubular cloth 10 with the layers 12, 12', the separating threads 14 and the collar construction 16 knitted therein." **Castello**, 3:59-67; *see also* 3:34-45; 3:68-4:55; 5:18-44; FIG. 1 (reproduced at right); FIG. 2.  "In other words, it is desirable that the circular knitting machine is the one that, at each thread feeding position, is provided with a computer controlled pattern control mechanism. Namely, for

CLAIM	GROUND 2
	practicing the present invention, it is desirable that the circular knitting machine is of a so-called double knitting type by which an independent needle selection control is obtained at each thread feeder not only for the cylinder needles but also for the dial needles. Such a type of a circular knitting machine is, for example, available from Fukuhara Industrial Trading Co., Ltd., Osaka, Japan under the trade name of V-LEC4D." **Fujiwara**, 4:12-21. "According to the present invention, the circular knitted fabric is constructed by an inner and outer layers, which are separate with each other and which are knitted by the dial and cylinder needles, respectively. The inner and outer layers are, along an outline of an article or a garment, connected with each other by using a stitching construction using both of the dial and cylinder needles." **Fujiwara**, 2:31-37; *see also* 1:58-3:18; 4:66-5:7; FIGS. 1, 4 (reproduced below); FIGS. 6, 7.  **<u>Plurality of Knit Constructions:</u>** ***See* Section VII.A.6.i, claim 1B regarding Nishida.** "[A]s seen in FIG. 5, a graph 18 is first laid out in accordance with practices well known to those skilled in the art to show features such as peripheral knitted cutting guide lines 20, knitted fashion marks 22, knitted neck fold lines 24 and knitted guide marks 26, 28. The guide marks 26, 28 serve as guides to aid sewing machine operators when the collar is being affixed to the remainder of the garment." **Castello**, 3:51-58; FIG. 5 (reproduced below). "[A] collar construction 16 can be produced on a single circular knitting machine having an integral knitted fold crease 24, knitted sewing guide marks 26, 28, mock fashion marks 22 and any desired Jacquard color designs (not illustrated) . . . . ***The fashion marks 22 may be knitted in conventional manner spaced apart in any desired stitch pattern, such as by Jacquard patterns***. The fashion marks 22 may be knit continuously about the periphery of the collar." **Castello**, 4:23-33 (emphasis added); FIG. 5. "[M]ore or fewer fashion marks 22 can be provided, ***more or fewer collar***

CLAIM	GROUND 2
	fold marks 24 (knitted as reversed jersey) can be knit, ***more or fewer stripes, various colors, patterns (not illustrated)*** can be programmed into the circular knitting machine." **Castello**, 5:35-44 (emphasis added); FIG. 5. "[T]he top and bottom edges 30, 32 of each layer 12, 12' are finished, knitted edges which remain after separation of the layers by pulling the draw threads 14 and can serve as the top and bottom edges respectively, 30', 32' of each individual collar 16 without further sewing or other operations." **Castello**, 4:4-10; FIG. 5. "[C]ircular neck fold line 24 of jersey stitches . . . create[s] a collar that lays naturally on the back of the neck without 'hiking' up or down to thereby enhance the beauty and utility of the collar. The fold 24 remains permanent even after washing or dry cleaning inasmuch as it is knitted directly into the fabric and thus reduces pressing costs in the finished garment." **Castello**, 4:53-63; *see also* 1:43-49; 1:54-68; 2:12-21; 2:42-52; 3:34-58; 4:34-5:7; 5:13-17.  "FIGS. 2A and 2B illustrate, in a course direction, schematically, knitting diagrams at yarn feeders in groups A and B, respectively at the non-stitched part of the fabric. At the yarn feeder in the group A in FIG. 2A, . . . the ***fabric is of basically a plain stitch***, wherein the cylinder needle 12 does not take part in knitting operation. Similarly, at the yarn feeder in the group B in FIG. 2B, . . .***the fabric is, also, of basically a plain stitch*** (tenjiku), wherein the cylinder needle 10 does not take part in knitting operation. Thus***, a separate structure is obtained between the inner and outer layers 18 and 20***." **Fujiwara,** 5:42-56 (emphasis added) FIGS. 2A, 2B (reproduced below). "FIGS. 3A and 3B illustrate schematically in a course direction knitting diagrams at yarn feeders in groups A and B, respectively at the stitched part of the fabric. At the yarn feeder in the group A, . .

CLAIM	GROUND 2
	. ***the integrated fabric is of a so-called rib stitch*** in a rib stitch arrangement between the dial and cylinder needles 10 and 12. However, in a jacquard arrangement (not shown) of the dial and cylinder needles 10 and 12, ***it is possible that another desired stitching, such as birds eye, eyelet, circular rib or interlock may be employed***. **Fujiwara**, 5:57-6:1 (emphasis added); FIGS. 3A, 3B (reproduced at right); *see also* 6:2-7; 6:43-62. 
[1C] the circular-knitted textile element being removed from a circular-knitted textile structure, and	***See* Section VII.A.6.i, claim 1C regarding Nishida.** "After the tubular cloth 10 has been knit by the machine (not shown), the draw threads 14 are pulled to separate the cloth into a plurality of individual layers 12, 12'. The layers are then cut along the knitted cut guide lines 20 to produce a plurality of individual collars 16, each having cut sides 38, 40." **Castello**, 3:67-4:4; *see also* 4:38-45; 4:67-5:17. "As a result, when the fabric is cut outwardly along the outline while the stitched parts are at least partially left, a garment can be obtained, which has a front and back bodies, which are connected along the outline M." **Fujiwara**, 5:7-11; *see also* 1:58-3:18; 6:12-42; 7:21-37.
[1D] further having longitudinal edges that are joined together to define at least a portion of a void for receiving a foot; and	***See* Section VII.A.6.i, claim 1D regarding Nishida.**
[1E] a sole structure	***See* Section VII.A.6.i, claim 1E.**

CLAIM	GROUND 2
secured to the upper.	

ii. Dependent Claim 2

See Section 0 above. (Ex. 1003, ¶209.)

iii. Dependent Claims 3 and 31

See Section VII.A.6.iii above. (Ex. 1003, ¶204-205.)

iv. Dependent Claims 4 and 32

See Section VII.A.6.iv above. (Ex. 1003, ¶206.)

v. Dependent Claim 5

See Section VII.A.6.v above. (Ex. 1003, ¶206.)

vi. Dependent Claims 6, 22, and 33

See Section VII.A.6.vi above. (Ex. 1003, ¶207.)

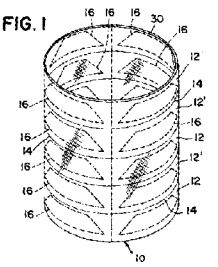
vii. Dependent Claims 7, 18, 26, 34, and 38

Dependent claims 7, 18, 26, 34, and 38 recite that the textile element "is ***one of*** an exterior layer, an intermediate layer, and an interior layer of the upper." The chart below shows how Nishida, Castello, Fujiwara, Shiomura, and Shepherd disclose the features of claims 7, 18, 26, 34, and 38, and thus render claims 7, 18, 26, 34, and 38 obvious. (Ex. 1003, ¶212-221.)

As discussed in Section VII.A.6.vii above, the '288 patent explains that the only difference between the well-known prior art multi-layered construction described in the Background Art of the '288 patent and the claimed invention is the use of the textile element as the inner layer. (Ex. 1003, ¶212-214.) It would have been obvious to the POSA at least as of March 3, 2004, to replace the interior (or the exterior) fabric

layer of a conventional multi-layered upper with a circular-knitted textile, such as the one collectively described in Nishida and Castello. (Ex. 1003, ¶215.)

As discussed in Section VII.A.6.vii above, Shiomura and Shepherd collectively describe a multilayered upper with spacer fabric comprising multiple circular-knit layers, in which an inner circular-knit fabric layer 5 forms an interior surface of the upper. (Ex. 1003, ¶216-221.)

CLAIM	GROUND 2
[7] The article of footwear recited in claim 1, wherein the circular-knitted textile element is one of an exterior layer, an intermediate layer, and an interior layer of the upper.	**Conventional Multilayered Upper With Interior Circular-Knitted Textile Layer Substituted in Place of Interior Fabric Layer** "***Areas 20, 21 and 22*** **. . . *can be woven or knitted in two or more layers*** or can be especially thick or additionally embroidered." **Nishida**, 3:59-4:1 (emphasis added); *see also* Abstract; 1:40-2:5; 2:11-2:25; 2:40-54; 3:6-26; 3:43-4:9; 4:11-18; 4:47-55; 5:27-40; 5:45-6:2.) Castello describes that the collars are knitted as single layers so that the same layer forms the interior and exterior surface. *See* **Castello**, FIG. 1 (reproduced at right).  **Multilayered Upper With Spacer Fabric Comprising Multiple Circular-Knit Layers** ***See*** **Section VII.A.6.vii, claim 7 regarding Shiomura and Shepherd.**

viii. Dependent Claim 8

Dependent claim 8 recites that "the upper includes an exterior layer, an intermediate layer, and an interior layer, and the circular-knitted textile element forms at least a portion of the interior layer." As discussed in Section VII.B.7.vii above, the

combinations of (1) the conventional three-layered upper described in the '288 patent, Nishida, and Castello, and (2) Shiomura and Shepherd, respectively, describe these features of claim 8, and thus render claim 8 obvious. (Ex. 1003, ¶222-225.)

ix. Dependent Claims 9, 19, and 27

See Section VII.A.6.ix above regarding Nishida. (Ex. 1003, ¶234.)

As discussed in Section VII.B.7.i above, Castello additionally describes that the collars are knitted as single layers so that the same layer forms the interior and exterior surface when combined with Nishida's upper. (*See* Castello, FIG. 1 (showing that the collars are visible in the layer from both the outside and inside views); Ex. 1003, ¶235.) It would have been obvious to the POSA at least as of March 3, 2004, that modifying Nishida's upper to incorporate the circular-knitted textile element of Castello would result in an upper having at least a portion of an interior surface and at least a portion of an exterior surface formed by Castello's circular-knitted textile. (Ex. 1003, ¶236.)

x. Dependent Claims 10, 11, 12

See Section VII.A.6.x above. (Ex. 1003, ¶237.)

xi. Dependent Claims 13, 20, and 35

Dependent claims 13, 20, and 35 recite that "the circular-knitted textile element forms an interior surface of the upper." As discussed in Section VII.B.7.vii above, the combinations of (1) the conventional three-layered upper described in the '288 patent, Nishida, and Castello and (2) Shiomura and Shepherd, respectively, describe these

features of claims 13, 20, and 35, and thus render claims 13, 20, and 35 obvious. (Ex. 1003, ¶226-228.)

As discussed in Section VII.B.7.ix above, Castello describes that the collars are knitted as single layers so that the same layer forms the interior and exterior surface. (*See* Castello, FIG. 1; Ex. 1003, ¶229.)

It would have been obvious to the POSA at least as of March 3, 2004, that modifying Nishida's upper to incorporate the circular-knitted textile element of Castello would result in an upper having an interior surface formed by Castello's circular-knitted textile. (Ex. 1003, ¶230.)

xii. Independent Claim 14

As discussed in Section VII.A.6.xii above, independent claim 14 is similar to the combination of claims 1 and 8. The chart below shows how Nishida, Castello, Fujiwara, Shiomura, and Shepherd disclose the features of claim 14, and thus render claim 14 obvious. (Ex. 1003, ¶171-174, 176-177, 180-189, 193-203, 208, 222-225.)

CLAIM	GROUND 2
[14A] An article of footwear comprising:	***See* Section VII.B.7.i, claim 1A.**
[14B] an upper incorporating a circular-knitted textile element,	***See* Section VII.B.7.i, claim 1B.**
[14C] the circular-knitted textile element having a first area and a second area with a unitary construction, the first area being formed of a first stitch configuration, and the second area being formed of a second stitch configuration that is different from the first stitch configuration to impart varying properties to the circular-knitted textile element, wherein the varying	***See* Section VII.B.7.i, claim 1B.**

CLAIM	GROUND 2
properties are aesthetic or structural,	
[14D] wherein the upper includes an exterior layer, an intermediate layer, and an interior layer, and the circular-knitted textile element forms at least a portion of the interior layer; and	***See* Section VII.B.7.viii, claim 8.**
[14E] a sole structure secured to the upper.	***See* Section VII.B.7.i, claim 1E.**

xiii. Dependent Claims 15, 16, 24, 25

Claim 15 recites that "the first stitch configuration provides a substantially smooth texture to the first area, and the second stitch configuration provides a texture to the second area that is rougher than the smoother texture." Claim 16 adds that "the second stitch configuration forms a rib structure in the second area." Claim 24 similarly recites that "the knit constructions produce varying properties in the circular-knitted textile element including a varying elasticity of the circular-knitted textile element." Claim 25 similarly recites that "the knit constructions produce varying properties in the circular-knitted textile element including a varying air permeability of the circular-knitted textile element."

As discussed in Section VII.B.7.i above with respect to claim 1[B], Nishida, Castello, and Fujiwara describe a "textile element having a plurality of knit constructions." (Ex. 1003, ¶193-203.) As discussed in Section VII.A.6.xiii above, Nishida describes the features of claims 15, 16, 24, and 25. (Ex. 1003, ¶193-197.)

Fujiwara likewise describes that the outline M of the garment is formed with interknitted stitches (as shown in FIGS. 3A and 3B), and that these interknitted

stitches may be a jacquard, birds eye, eyelet, ***circular rib***, or interlock stitch configuration, whereas the non-interknitted portions of each layers 18, 20 comprises a ***plain stitch configuration***. (Ex. 1008, 5:42-56; 5:57-6:7; 7:21-24; Ex. 1003, ¶203.) In other words, the non-interknitted portions have a substantially smooth texture, and the interknitted portions have a rougher texture (claim 15) and/or a rib structure (claim 16). (Ex. 1003, ¶203.)

CLAIM	GROUND 2
[15] The article of footwear recited in claim 14, wherein the first stitch configuration provides a substantially smooth texture to the first area, and the second stitch configuration provides a texture to the second area that is rougher than the smoother texture.	***See* Section VII.A.6.xiii above, claim 15.** "FIGS. 2A and 2B illustrate, in a course direction, schematically, knitting diagrams at yarn feeders in groups A and B, respectively at the non-stitched part of the fabric. At the yarn feeder in the group A in FIG. 2A, . . . the ***fabric is of basically a plain stitch***, wherein the cylinder needle 12 does not take part in knitting operation. Similarly, at the yarn feeder in the group B in FIG. 2B, . . .***the fabric is, also, of basically a plain stitch*** (tenjiku), wherein the cylinder needle 10 does not take part in knitting operation. Thus, a separate structure is obtained between the inner and outer layers 18 and 20." **Fujiwara,** 5:42-56 (emphasis added) FIGS. 2A, 2B (reproduced below). "FIGS. 3A and 3B illustrate schematically in a course direction knitting diagrams at yarn feeders in groups A and B, respectively at the stitched part of the fabric. At the yarn feeder in the group A, . . . the ***integrated fabric*** is of a so-called rib stitch in a rib stitch arrangement between the dial and cylinder needles 10 and 12. However, in a jacquard arrangement (not shown) of the dial and cylinder needles 10 and 12, ***it is possible that another desired stitching, such as*** birds eye, eyelet, ***circular rib*** or interlock ***may be employed***." **Fujiwara**, 5:57-6:1 (emphasis added); FIGS. 3A, 3B (reproduced below); see also 6:2-7; 6:43-62; 7:21-24.

xiv. Dependent Claims 17, 23

Claim 17 recites that "at least one of the first stitch configuration and the

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second stitch configuration forms an aperture in the circular-knitted textile element." Claim 23 similarly recites that "at least one of the knit constructions forms an aperture in the circular-knitted textile element." As discussed in Section VII.A.6.xiv above, Nishida discloses forming "apertures" in the textile element according to each use of the term in the '288 patent. (Ex. 1003, ¶238-241.)

Furthermore, Fujiwara describes forming apertures by omitting stitches at specific locations, such as is described by the '598 patent as the mechanism for forming the "air permeability" and the "lace hole" apertures. (Ex. 1003, ¶242-244.) For example, Fujiwara suggests that the interknitted stitches that form the outline M of the textile element may be formed with a birds eye or eyelet stitching. (Ex. 1003, ¶244.)

As Mr. Holden explains, a POSA at least as of March 3, 2004, would have understood that a birds eye stitch configuration includes float stitches, which leave yarn floating freely on the reverse side of the held loop, thereby resulting in an aperture formed by omitting stitches in each location where a float stitch is applied. The configuration of a birds eye stitch is explained in Spencer. (Ex. 1003, ¶243-244.)

CLAIM	GROUND 2
[17] The article of footwear recited in claim 14, wherein at least one of the first stitch configuration and the second	***See* Section VII.A.6.xiv, claim 17 regarding Nishida.** "FIGS. 3A and 3B illustrate schematically in a course direction knitting diagrams at yarn feeders in groups A and B, respectively at the stitched part of the fabric. At the yarn feeder in the group A, the yarn 14 is subjected to a knitting by both of the dial and cylinder needles 10 and 12, so that the inner and outer layers 18 and 20 are integrated. In the example shown in FIG. 3A, the

CLAIM	GROUND 2
stitch configuration forms an aperture in the circular-knitted textile element.	***integrated fabric*** is of a so-called rib stitch in a rib stitch arrangement between the dial and cylinder needles 10 and 12. However, in a jacquard arrangement (not shown) of the dial and cylinder needles 10 and 12, ***it is possible that another desired stitching, such as birds eye, eyelet,*** circular rib or interlock ***may be employed***. In the similar way, at the yarn feeder in the group B in FIG. 3B, the yarn 16 is subjected to a knitting by both of the dial and cylinder needles 10 and 12, so that the inner and outer layers 18 and 20 are integrated. Similarly***, any of stitching such as bird's eye, eyelet***, circular rib or interlock ***may also be employed***." **Fujiwara**, 5:57-6:7 (emphasis added); FIGS. 3A, 3B (reproduced below); see also 6:43-62; 7:21-24.

xv. Independent Claim 21

As discussed in Section VII.A.6.xv above, independent claim 21 is substantially similar to the combination of claims 1, 3, 4, and 5. The chart below shows how Nishida, Castello, and Fujiwara disclose the features of claim 21, and thus render claim 21 obvious. (Ex. 1003, ¶171-174, 176-177, 180-186, 193-203, 204-206, 208.)

CLAIM	GROUND 2
[21A] An article of footwear comprising:	***See*** **Section VII.B.7.xiv, claim 1A.**
[21B] an upper incorporating a circular-knitted textile element having a plurality of knit constructions, and	***See*** **Section VII.B.7.xiv, claim 1B.**
[21C] further having edges that are joined together to form seams and define at least one portion of a void for receiving a foot,	***See*** **Section VII.B.7.xiv, claim 1D.**
[21D] the seams including a first seam and a second seam, the first seam extending from a heel area to a forefoot area of the footwear along a lower surface of the upper, and the second seam extending vertically in the heel area; and	***See*** **Sections VII.B.7.iii, claim 3, VII.B.7.iv, claim 4, and VII.B.7.v, claim 5.**
[21E] a sole structure secured to the upper.	***See*** **Section VII.B.7.xiv, claim**

CLAIM	GROUND 2
	1E.

xvi. Dependent Claim 28

As discussed in Section VII.B.7.vii above, the combinations of (1) the conventional three-layered upper described in the '288 patent, Nishida, and Castello, and (2) Shiomura and Shepherd, respectively, describe these features of claim 28, and thus render claim 28 obvious. (Ex. 1003, ¶231-233.)

xvii. Independent Claim 29

As discussed in Section VII.A.6.xvii above, independent claim 29 is substantially similar to claim 1. The chart below shows how Nishida, Castello, and Fujiwara disclose the features of claim 29, and thus render claim 29 obvious. (Ex. 1003, ¶171-174, 176-177, 180-205, 208.)

Specifically, Nishida, Castello, and Fujiwara describe knitting an outline of the knitted textile element in the textile structure, in which the outline has the shape and proportion of the knitted textile element. (Ex. 1003, ¶190-192.)

CLAIM	GROUND 2
[29A] An article of footwear comprising:	***See* Section VII.B.7.i, claim 1A.**
[29B] an upper incorporating a circular-knitted textile element having a plurality of knit constructions,	***See* Section VII.B.7.i, claim 1B.**
[29C] wherein the circular-knitted textile element is	***See* Section VII.B.7.i, claim 1B.**

CLAIM	GROUND 2
formed with a knitting machine,	
[29D] the circular-knitted element being removed from a circular-knitted textile structure	***See* Section VII.B.7.i, claim 1C.**
[29E] that includes an outline of the circular-knitted textile element	***See* Section VII.A.6.xvii, claim 29E regarding Nishida.** "The method of the present invention also eliminates the need for patterns for use when cutting inasmuch as knitting cutting guide lines 20 are knit directly into the tubular knitted cloth 10 during the knitting operation. The only cutting required is along the sides 38, 40 of the collar which have the cutting guide lines 20 already knit directly in the fabric. Mock fashion marks 22 can be knit along the sides 38, 40 and the bottom edge 32' of the collar in any desired design or pattern by employing conventional knitting procedures. The bottom edge 32' of the collar need not be additionally sewn inasmuch as this is a knitted finished edge which remains after pulling the draw thread 14 and so requires no additional operations." **Castello**, 4:38-52; *see also* 1:68; 2:45-50; 3:50-58; 4:2-4; 4:11-12; 4:22-33; 4:67-5:17; 5:35-44; FIG. 5. "In FIG. 1, a closed phantom line M indicates, in a very schematic manner, an outline of a sweater as a garment wherein one of the inner and outer layers 18 and 20 becomes one side (front body) of the sweater while the other of the inner and outer layers 18 and 20 becomes the other side (back body) of the sweater. Along the outline M of a necessary width, the inner and outer tubular layers 18 and 20 are connected or stitched with each other, so that the both of the layers 18 and 20 are integrated." **Fujiwara**, 4:66-5:7; *see also* 2:34-37; 3:62-4:5; 5:20-41; 6:12-22; 7:21-32; FIGS. 1, 4, 6, 7.
[29F] having longitudinal edges that are joined together to define at least a portion of a	***See* Section VII.B.7.i, claim 1D.**

CLAIM	GROUND 2
void for receiving a foot; and	
[29G] a sole structure secured to the upper.	***See* Section VII.B.7.i, claim 1E.**

xviii. Dependent Claim 30

See Section VII.A.6.xviii above regarding the product-by-process aspect of claim 30. Furthermore, the chart below shows how Castello discloses the feature of claim 30, and thus render claim 30 obvious. (Ex. 1003, ¶178-179.)

Castello states "[r]eferring again to FIG. 5, I show a sketch which may be employed in conjunction with an ***eight-cut*** L.H. circular machine having 64 levers per automat. Assuming twelve automats, the machine could be programmed to knit three collar constructions 16 per layer 12. In the illustration shown, ***768 needles*** would be employed less approximately 10 needles on each side of the gate on automats one and twelve." (Ex. 1007, 5:18-25 (emphasis added); *see also* Abstract; 1:35-53; 1:47-64; 3:34-39; 4:23-38; Ex. 1003, ¶178.)

As Mr. Holden explains, the POSA at least as of March 3, 2004, would have understood how to calculate the diameter of the L.H. circular knitting machine based on the explicit information provided by Castello. (Ex. 1003, ¶179.) Hence, the POSA would have understood from Castello's description that the L.H. circular knitting machine has eight needles per inch (according to the meaning of eight-cut) and 768 needles total around the circumference, thus resulting in a total circumference of 96 inches (calculated by dividing the total needles by the needles per inch). (Ex. 1003,

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¶179.) Since diameter is equal to the circumference divided by π, the nominal diameter is equal to 30.55 inches. (Ex. 1003, ¶179.) The POSA would also have understood that a circular knitting machine having a nominal diameter of 30.55 inches is a wide-tube circular knitting machine. (Ex. 1003, ¶179.) Therefore, the POSA would thus have recognized that wide-tube circular knitting machines were used to make Castello's collars and would understand that the L.H. circular knitting machine was one such example. (Ex. 1003, ¶179.)

CLAIM	GROUND 2
[30] The article of footwear recited in claim 29, wherein the circular-knitted textile element has a structure formed by a wide-tube circular knitting machine.	"Referring again to FIG. 5, I show a sketch which may be employed in conjunction with an ***eight-cut*** L.H. circular machine having 64 levers per automat. Assuming twelve automats, the machine could be programmed to knit three collar constructions 16 per layer 12. In the illustration shown, ***768 needles*** would be employed less approximately 10 needles on each side of the gate on automats one and twelve." **Castello**, 5:18-25 (emphasis added); *see also* Abstract; 1:35-53; 1:47-64; 3:34-39; 4:23-38.

xix. Independent Claim 36

As discussed in Section VII.A.6.xix above, independent claim 36 is substantially similar to claims 1, 4, and [29E]. The chart below shows how Nishida, Castello, and Fujiwara disclose the features of claim 36, and render claim 36 obvious. (Ex. 1003, ¶171-174, 176-177, 180-189, 190-205, 208.)

CLAIM	GROUND 2
[36A] An article of footwear comprising:	***See* Section VII.B.7.i, claim 1A.**
[36B] an upper incorporating a knitted textile element,	***See* Section**

CLAIM	GROUND 2
	VII.B.7.i, claim 1B.
[36C] wherein the knitted textile element is formed unitarily with a knitted textile structure,	***See* Section VII.B.7.i, claim 1B.**
[36D] the knitted textile element being removed from the knitted textile structure	***See* Section VII.B.7.i, claim 1C.**
[36E] that includes an outline of the knitted textile element to form edges,	***See* Section VII.B.7.xvii, claim 29E.**
[36F] the knitted textile element having a first area with a first unitary construction and a second area with a second unitary construction different from the first unitary construction, the first area having a first set of properties, and the second area having a second set of properties that is different from the first set of properties to impart varying characteristics to the textile element,	***See* Section VII.B.7.i, claim 1B.**
[36G] and further having the edges joined together to form a seam extending from a heel area to a forefoot area of the footwear along a lower surface of the upper; and	***See* Section VII.B.7.iv, claim 4.**
[36H] a sole structure secured to the upper.	***See* Section VII.B.7.i, claim 1E.**

xx. Dependent Claim 37

As discussed in Section VII.B.7.i above with respect to claim 1B, Nishida, Castello, and Fujiwara describe that "the first set of properties and the second set of properties are at least one of a stitch configuration and a yarn type." (Ex. 1003, ¶193-203.)

VIII. EVEN IF CONSIDERED, SECONDARY CONSIDERATIONS FAIL TO OVERCOME THE EVIDENCE OF OBVIOUSNESS.

The Board has repeatedly held that, at the institution phase, evidence of secondary considerations presented by the Patent Owner should be addressed in a trial where the parties may develop, and the Board may consider, a full record. *See, e.g., 10X Genomics Inc. v. Univ. of Chicago*, IPR2015–01162, Paper No. 14 at 22 (PTAB Nov.

16, 2015); *Petroleum Geo-Servs Inc. v. WesternGeco LLC*, IPR2014-01477, Paper No. 18 at 32 (PTAB Mar. 17, 2015); *Crocs Inc. v. Pollivalks Inc.*, IPR2014-00424, Paper No. 8 at 16, 2014 WL 4181938, at *9 (PTAB Aug. 20, 2014) ("We reiterate ... that such secondary considerations are better considered in the context of a trial when the ultimate determination of obviousness is made."). That is the appropriate course here given that "the inventions represent[ ] no more than 'the predictable use of prior art elements according to their established functions,'" and, thus, any "secondary considerations are inadequate to establish nonobviousness as a matter of law." *Wyers v. Master Lock Co.*, 616 F.3d 1231, 1246 (Fed. Cir. 2010) (quoting *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 417 (2007)).

Petitioner nonetheless preliminarily addresses alleged secondary considerations that Patent Owner may argue, but reserves the right to respond to any arguments asserted by the Patent Owner in this proceeding. Specifically, in connection with a prior review of the related '011 patent, Patent Owner argued that a proposed amended claim 47 satisfied a long felt need for reducing waste because it claimed a textile element with "flat knit edges" that were not cut or removed from surrounding textile structure. *See Nike, Inc. v. adidas AG*, CA No. 14-1719, slip op. at 19 & 32-33 (Fed. Cir. Feb. 11, 2016).

"For objective [evidence of secondary considerations] to be accorded substantial weight, its proponent must establish a nexus between the evidence and the merits of the claimed invention." *Wyers*, 616 F.3d at 1246 (quoting *In re GPAC Inc.*, 57

F.3d 1573, 1580 (Fed.Cir.1995)) (internal quotation marks omitted). Unlike in the proposed amended claim in the '011 patent, there is no claim to a textile element with "flat knit edges" or other claim elements that could, even conceivably, connect the challenged claims to any purported long felt need for reducing cutting waste in the '288 patent. That is a critical difference because "[w]here the offered secondary consideration actually results from something other than what is both claimed and novel in the claim, there is no nexus to the merits of the claimed invention." *In re Huai-Hung Kao*, 639 F.3d 1057, 1068 (Fed. Cir. 2011). No such evidence of nexus exists and, to the contrary, the claims here demonstrates that cutting waste will be generated. For example, the majority of the '288 patent claims expressly recite that "the knitted textile element being removed from a knitted textile structure." Thus, to form a shoe upper, will require removing the element from the surrounding structure, thus creating waste and, likewise, describing a feature already present in Nishida. In short, the claims here demonstrate an absence of cost and material savings, rather than satisfaction of any purported long felt need.

IX. THE PROPOSED REJECTIONS RAISE NEW ISSUES IN WHICH PETITIONER WILL LIKELY PREVAIL.

Patent Owner may urge, incorrectly, that the Board should exercise its discretion under 35 U.S.C. 325(d) to deny institution one or more grounds. Indeed, that was the ground Patent Owner articulated in opposing the petition filed concerning the related '011 patent, during prosecution of which Nishida was cited by

the examiner. *adidas AG v. Nike, Inc.*, IPR2013-00067, Paper No. 12, 2013 WL 8595550, at *9 (PTAB May 17, 2013). The Board appropriately rejected that argument, finding Petitioner had "present[ed] different arguments and new supporting evidence that were not before the Examiner." *See id.*, Paper No. 18. Ultimately, the original claims 1-46 challenged in the petition were canceled. *Nike, Inc. v. adidas AG*, 2016 WL 537609, *2 (Fed. Cir. Feb. 11, 2016).

As to both Grounds, the examiner did not consider Reed, Castello, or Fujiwara at all, much less the obviousness of combining Nishida with Reed and/or with Castello and Fujiwara, or the rationales and evidence adidas provides the Board. Likewise, as described, Reed's, Castello's, and Fujiwara's disclosure of multiple other elements would have rendered the claims obvious in view of Nishida's teaching of forming textile elements for articles of footwear.

In view of the foregoing, it is respectfully submitted that there is a reasonable likelihood that Petitioner would prevail with respect to at least one of claims 1-38 challenged in this petition. Accordingly, the Board is requested to grant this petition and to initiate an *inter partes* review, find claims 1-38 unpatentable and cancel these claims, rendering them null, void and otherwise unenforceable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.8(e) and 42.105(b), the undersigned certifies that on April 19, 2016, a complete and entire copy of this Petition for *Inter Partes* Review was served via USPS Priority Express Mail, costs prepaid, to the Patent Owner by serving the correspondence address of record as follows:

NIKE, Inc./BGL
P.O. Box 10395
Chicago, IL 60610

As a courtesy, the undersigned certifies that on April 19, 2016, a complete and entire copy of this Petition for *Inter Partes* Review was served via USPS Priority Express Mail, costs prepaid, upon the following:

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Dated: April 19, 2016

By: /s/ Mitchell G. Stockwell
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Lead Counsel for Petitioner

PTO/SB/14 (07-07)
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Application Data Sheet 37 CFR 1.76	Attorney Docket Number	005127.01568
	Application Number	
Title of Invention	AN ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER	

The application data sheet is part of the provisional or nonprovisional application for which it is being submitted. The following form contains the bibliographic data arranged in a format specified by the United States Patent and Trademark Office as outlined in 37 CFR 1.76.
This document may be completed electronically and submitted to the Office in electronic format using the Electronic Filing System (EFS) or the document may be printed and included in a paper filed application.

Secrecy Order 37 CFR 5.2

☐ Portions or all of the application associated with this Application Data Sheet may fall under a Secrecy Order pursuant to 37 CFR 5.2 (Paper filers only. Applications that fall under Secrecy Order may not be filed electronically.)

Applicant Information:

Applicant 1 Remove

Applicant Authority ◉ Inventor ○ Legal Representative under 35 U.S.C. 117 ○ Party of Interest under 35 U.S.C. 118

Prefix	Given Name	Middle Name	Family Name	Suffix
	Bhupesh		Dua	

Residence Information (Select One) ◉ US Residency ○ Non US Residency ○ Active US Military Service

City	Portland	State/Province	OR	Country of Residence i	US

Citizenship under 37 CFR 1.41(b) i: US

Mailing Address of Applicant:

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Applicant 2 Remove

Applicant Authority ◉ Inventor ○ Legal Representative under 35 U.S.C. 117 ○ Party of Interest under 35 U.S.C. 118

Prefix	Given Name	Middle Name	Family Name	Suffix
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Citizenship under 37 CFR 1.41(b) i: US

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Application Data Sheet 37 CFR 1.76	Attorney Docket Number	005127.01568
	Application Number	
Title of Invention	AN ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER	

☐ An Address is being provided for the correspondence Information of this application.			
Customer Number	22910		
Email Address	jtanner@bannerwitcoff.com	Add Email	Remove Email

Application Information:

Title of the Invention	AN ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER		
Attorney Docket Number	005127.01568	**Small Entity Status Claimed**	☐
Application Type	Nonprovisional		
Subject Matter	Utility		
Suggested Class (if any)		**Sub Class (if any)**	
Suggested Technology Center (if any)			
Total Number of Drawing Sheets (if any)	12	**Suggested Figure for Publication (if any)**	9

Publication Information:

☐ Request Early Publication (Fee required at time of Request 37 CFR 1.219)

☐ **Request Not to Publish.** I hereby request that the attached application not be published under 35 U.S.C. 122(b) and certify that the invention disclosed in the attached application **has not and will not** be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication at eighteen months after filing.

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Prior Application Status	Pending		Remove
Application Number	Continuity Type	Prior Application Number	Filing Date (YYYY-MM-DD)
	Continuation of	12032995	2008-02-18
Prior Application Status	Patented		Remove

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Application Data Sheet 37 CFR 1.76	Attorney Docket Number	005127.01568
	Application Number	
Title of Invention	AN ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER	

Application Number	Continuity Type	Prior Application Number	Filing Date (YYYY-MM-DD)	Patent Number	Issue Date (YYYY-MM-DD)
12032995	Division of	10791289	2004-03-03	7347011	2008-03-25

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Application Number	Country [i]	Parent Filing Date (YYYY-MM-DD)	Priority Claimed
			○ Yes ◉ No

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Assignee 1 Remove

If the Assignee is an Organization check here. ☒

Organization Name	NIKE, Inc.		
Mailing Address Information:			
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Country [i]	US	Postal Code	97005-6453
Phone Number		Fax Number	
Email Address			

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Signature	/Jeanne M. Tanner/			Date (YYYY-MM-DD)	2010-09-10
First Name	Jeanne M.	Last Name	Tanner	Registration Number	45156

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Application Data Sheet 37 CFR 1.76	Attorney Docket Number	005127.01568
	Application Number	
Title of Invention	AN ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER	

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AN ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER

CROSS-REFERENCE TO RELATED APPLICATIONS

[01] This U.S. Patent Application is a continuation application of and claims priority to co-pending U.S. Patent Application serial number 10/791,289, filed February 18, 2008, which is a divisional application of and claims priority to U.S. Patent Application serial number 10/791,289, filed March 3, 2004, now U.S. Patent 7,347,011, issued March 25, 2008, each of which are being entirely incorporated herein by reference.

BACKGROUND OF THE INVENTION

Field of the Invention

[02] The present invention relates to footwear. The invention concerns, more particularly, an article of footwear incorporating an upper that is at least partially formed from a textile material.

Description of Background Art

[03] Conventional articles of athletic footwear include two primary elements, an upper and a sole structure. The upper provides a covering for the foot that securely receives and positions the foot with respect to the sole structure. In addition, the upper may have a configuration that protects the foot and provides ventilation, thereby cooling the foot and removing perspiration. The sole structure is secured to a lower surface of the upper and is generally positioned between the foot and the ground. In addition to attenuating ground reaction forces and absorbing energy (i.e., imparting cushioning), the sole structure may provide traction and control potentially harmful foot motion, such as over pronation. Accordingly, the upper and the sole structure operate cooperatively to provide a comfortable structure that is suited for a wide variety of ambulatory activities, such as walking and running. The general features and configuration of the conventional upper are discussed in greater detail below.

[04] The upper forms a void on the interior of the footwear for receiving the foot. The void has the general shape of the foot, and access to the void is provided by an ankle opening.

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Accordingly, the upper extends over the instep and toe areas of the foot, along the medial and lateral sides of the foot, and around the heel area of the foot. A lacing system is often incorporated into the upper to selectively increase the size of the ankle opening and permit the wearer to modify certain dimensions of the upper, particularly girth, to accommodate feet with varying proportions. In addition, the upper may include a tongue that extends under the lacing system to enhance the comfort of the footwear, and the upper may include a heel counter to limit movement of the heel.

[05] Various materials may be utilized in manufacturing the upper. The upper of an article of athletic footwear, for example, may be formed from multiple material layers that include an exterior layer, an intermediate layer, and an interior layer. The materials forming the exterior layer of the upper may be selected based upon the properties of wear-resistance, flexibility, and air-permeability, for example. With regard to the exterior layer, the toe area and the heel area may be formed of leather, synthetic leather, or a rubber material to impart a relatively high degree of wear-resistance. Leather, synthetic leather, and rubber materials may not exhibit the desired degree of flexibility and air-permeability. Accordingly, various other areas of the exterior layer of the upper may be formed from a synthetic or natural textile. The exterior layer of the upper may be formed, therefore, from numerous material elements that each impart different properties to specific portions of the upper.

[06] An intermediate layer of the upper may be formed from a lightweight polymer foam material that provides cushioning and protects the foot from objects that may contact the upper. Similarly, an interior layer of the upper may be formed of a moisture-wicking textile that removes perspiration from the area immediately surrounding the foot. In some articles of athletic footwear, the various layers may be joined with an adhesive, and stitching may be utilized to join elements within a single layer or to reinforce specific areas of the upper.

[07] Although the materials selected for the upper vary significantly, textile materials often form at least a portion of the exterior layer and interior layer. A textile may be defined as any manufacture from fibers, filaments, or yarns characterized by flexibility, fineness,

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and a high ratio of length to thickness. Textiles generally fall into two categories. The first category includes textiles produced directly from webs of filaments or fibers by randomly interlocking to construct non-woven fabrics and felts. The second category includes textiles formed through a mechanical manipulation of yarn, thereby producing a woven fabric, for example.

[08] Yarn is the raw material utilized to form textiles in the second category. In general, yarn is defined as an assembly having a substantial length and relatively small cross-section that is formed of at least one filament or a plurality of fibers. Fibers have a relatively short length and require spinning or twisting processes to produce a yarn of suitable length for use in textiles. Common examples of fibers are cotton and wool. Filaments, however, have an indefinite length and may merely be combined with other filaments to produce a yarn suitable for use in textiles. Modern filaments include a plurality of synthetic materials such as rayon, nylon, polyester, and polyacrylic, with silk being the primary, naturally-occurring exception. Yarn may be formed of a single filament, which is conventionally referred to as a monofilament yarn, or a plurality of individual filaments grouped together. Yarn may also include separate filaments formed of different materials, or the yarn may include filaments that are each formed of two or more different materials. Similar concepts also apply to yarns formed from fibers. Accordingly, yarns may have a variety of configurations that generally conform to the definition provided above.

[09] The various techniques for mechanically manipulating yarn into a textile include interweaving, intertwining and twisting, and interlooping. Interweaving is the intersection of two yarns that cross and interweave at right angles to each other. The yarns utilized in interweaving are conventionally referred to as warp and weft. Intertwining and twisting encompasses procedures such as braiding and knotting where yarns intertwine with each other to form a textile. Interlooping involves the formation of a plurality of columns of intermeshed loops, with knitting being the most common method of interlooping.

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[10] The textiles utilized in footwear uppers generally provide a lightweight, air-permeable structure that is flexible and comfortably receives the foot. In order to impart other properties to the footwear, including durability and stretch-resistance, additional materials are commonly combined with the textile, including leather, synthetic leather, or rubber, for example. With regard to durability, U.S. Patent Number 4,447,967 to Zaino discloses an upper formed of a textile material that has a polymer material injected into specific zones to reinforce the zones against abrasion or other forms of wear. Regarding stretch resistance, U.S. Patent Numbers 4,813,158 to Brown and 4,756,098 to Boggia both disclose a substantially inextensible material that is secured to the upper, thereby limiting the degree of stretch in specific portions of the upper.

[11] From the perspective of manufacturing, utilizing multiple materials to impart different properties to an article of footwear may be an inefficient practice. For example, the various materials utilized in a conventional upper are not generally obtained from a single supplier. Accordingly, a manufacturing facility must coordinate the receipt of specific quantities of materials with multiple suppliers that may have distinct business practices or may be located in different regions or countries. The various materials may also require additional machinery or different assembly line techniques to cut or otherwise prepare the material for incorporation into the footwear. In addition, incorporating separate materials into an upper may involve a plurality of distinct manufacturing steps requiring multiple individuals. Employing multiple materials, in addition to textiles, may also detract from the breathability of footwear. Leather, synthetic leather, or rubber, for example, are not generally permeable to air. Accordingly, positioning leather, synthetic leather, or rubber on the exterior of the upper may inhibit air flow through the upper, thereby increasing the amount of perspiration, water vapor, and heat trapped within the upper and around the foot.

SUMMARY OF THE INVENTION

[12] The present invention is an upper for an article of footwear, the upper incorporating a textile element formed with a knitting machine, for example. In one aspect of the invention, the textile element has edges that are joined together to define at least a portion

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of a void for receiving a foot. In another aspect of the invention, the textile element has a first area and a second area of unitary construction. The first area is formed of a first stitch configuration, and the second area is formed of a second stitch configuration that is different from the first stitch configuration to impart varying textures to a surface of the textile element. The knitting machine may have a configuration that forms the textile element through either warp knitting or weft knitting.

[13] Another aspect of the invention involves a method of manufacturing an article of footwear. The method includes a step of mechanically-manipulating a yarn with a circular knitting machine, for example, to form a cylindrical textile structure. In addition, the method involves removing at least one textile element from the textile structure, and incorporating the textile element into an upper of the article of footwear.

[14] In another aspect of the invention, an article of footwear has an upper and a sole structure secured to the upper. The upper incorporates a textile element formed with a knitting machine. The textile element is removed from a textile structure that includes an outline of the textile element, and the textile element has edges that are joined together to define at least a portion of a void for receiving a foot.

[15] The advantages and features of novelty characterizing the present invention are pointed out with particularity in the appended claims. To gain an improved understanding of the advantages and features of novelty, however, reference may be made to the following descriptive matter and accompanying drawings that describe and illustrate various embodiments and concepts related to the invention.

DESCRIPTION OF THE DRAWINGS

[16] The foregoing Summary of the Invention, as well as the following Detailed Description of the Invention, will be better understood when read in conjunction with the accompanying drawings.

[17] Figure 1 is a lateral elevational view of an article of footwear having an upper in accordance with the present invention.

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[18] Figure 2 is a lateral elevational view of the upper.

[19] Figure 3 is a top plan view of the upper.

[20] Figure 4 is a rear elevational view of the upper.

[21] Figure 5 is a bottom plan view of the upper.

[22] Figure 6 is a first cross-sectional view of the upper, as defined by section line 6-6 in Figure 2.

[23] Figure 7 is a second cross-sectional view of the upper, as defined by section line 7-7 in Figure 2.

[24] Figure 8 is a plan view of a textile element that forms at least a portion of the upper.

[25] Figure 9 is a perspective view of a textile structure that incorporates two of the textile element.

[26] Figure 10 is a plan view of another textile element.

[27] Figure 11 is a plan view of yet another textile element.

[28] Figure 12 is a lateral elevational view of another article of footwear having an upper in accordance with the present invention.

[29] Figure 13 is a lateral elevational view of yet another article of footwear having an upper in accordance with the present invention.

[30] Figure 14 is a cross-sectional view of the footwear depicted in Figure 13, as defined by section line 14-14.

DETAILED DESCRIPTION OF THE INVENTION

[31] The following discussion and accompanying figures disclose an article of footwear 10 and a method of manufacturing footwear 10, or components thereof, in accordance with

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the present invention. Footwear 10 is depicted in the figures and discussed below as having a configuration that is suitable for athletic activities, particularly running. The concepts disclosed with respect to footwear 10 may, however, be applied to footwear styles that are specifically designed for a variety of other athletic activities, including basketball, baseball, football, soccer, walking, and hiking, for example, and may also be applied to various non-athletic footwear styles. Accordingly, one skilled in the relevant art will recognize that the concepts disclosed herein may be applied to a wide range of footwear styles and are not limited to the specific embodiments discussed below and depicted in the figures.

[32] The primary elements of footwear 10 are depicted in Figure 1 as being a sole structure 20 and an upper 30. Sole structure 20 is secured to a lower portion of upper 30 and provides a durable, wear-resistant component that imparts cushioning as footwear 10 impacts the ground. Upper 30 is at least partially formed from a textile element 40 that defines an interior void for comfortably receiving a foot and securing a position of the foot relative to sole structure 20. Various edges of textile element 40 are then secured together to form the shape of upper 30. In some embodiments, textile element 40 may form substantially all of upper 30, or textile element 40 may only be a portion of an upper.

[33] Sole structure 20 has a generally conventional configuration that includes a midsole 21 and an outsole 22. Midsole 21 is secured to a lower portion of upper 30 and is formed of a polymer foam material, such as ethylvinylacetate or polyurethane. Accordingly, midsole 21 attenuates ground reaction forces and absorbs energy (i.e., provides cushioning) as sole structure 20 impacts the ground. To enhance the force attenuation and energy absorption characteristics of sole structure 20, midsole 21 may incorporate a fluid-filled bladder, as disclosed in U.S. Patent Numbers 4,183,156 and 4,219,945 to Rudy. Alternately or in combination, midsole 21 may incorporate a plurality of discrete, columnar support elements, as disclosed in U.S. Patent Numbers 5,343,639 and 5,353,523 to Kilgore et al. Outsole 22 is secured to a lower surface of midsole 21 and may be formed from carbon black rubber compound to provide a durable, wear-resistant surface for engaging the ground. Outsole 22 may also incorporate a textured lower surface to enhance the traction characteristics of footwear 10. In addition, footwear 10

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may include an insole (not depicted), which is a relatively thin, cushioning member located within upper 30 and adjacent to a plantar surface of the foot for enhancing the comfort of footwear 10.

[34] Sole structure 20 is described above as having the elements of a conventional sole structure for athletic footwear. Other footwear styles, including, dress shoes and boots, for example, may have other types of conventional sole structures specifically tailored for use with the respective types of footwear. In addition to a conventional configuration, however, sole structure 20 may also exhibit a unique, non-conventional structure. Accordingly, the particular configuration of sole structure 20 may vary significantly within the scope of the present invention to include a wide range of configurations, whether conventional or non-conventional.

[35] Upper 30 is depicted in Figures 2-7 as having a lateral region 31, an opposite medial region 32, an instep region 33, a lower region 34, and a heel region 35. Lateral region 31 extends through a longitudinal length of footwear 10 and is generally configured to contact and cover a lateral side of the foot. Medial region 32 has a similar configuration that generally corresponds with a medial side of the foot. Instep region 33 is positioned between lateral region 31 and medial region 32, and instep region 33 extends over an instep area of the foot. Lower region 34 forms a bottom surface of upper 30 and also extends through the longitudinal length of footwear 10. Heel region 35 forms a rear portion of upper 30 and is generally configured to contact and cover a heel area of the foot. In addition, lateral region 31, medial region 32, instep region 33, and heel region 35 cooperatively define an ankle opening 36 for providing the foot with access to the void within upper 30.

[36] Upper 30 is at least partially formed from textile element 40, which forms regions 31-35, and may also include laces or other elements associated with a conventional upper for footwear. Textile element 40 is a single material element that is formed to exhibit a unitary (i.e., one-piece) construction, and textile element 40 is formed or otherwise shaped to extend around the foot. As depicted in Figures 2-7, textile element 40 forms both an exterior surface and an interior surface of upper 30. Textile element 40 may be

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formed as a part of a larger textile element. Textile element 40 is then removed from the larger textile element and various edges of textile element 40 are secured together to form the shape of upper 30. A plurality of seams 51-54 are formed, therefore, when joining the edges of the textile element. Seam 51 extends along the longitudinal length of lower region 34 and is centrally-located with respect to lateral region 31 and medial region 32. Seam 52 is also centrally-located and extends upward along heel region 35. A seam 53 is positioned in a forefoot area of upper 30 and joins a portion of lower region 34 with both of lateral region 31 and medial region 32. In addition, a seam 54 is positioned in a rear area of upper 30 and joins a portion of lower region 34 with heel region 35.

[37] Textile element 40 exhibits the general shape depicted in Figure 8 prior to the formation of seams 51-54. Following formation of seams 51-54, however, textile element 40 exhibits the shape of upper 30 depicted in Figures 2-7. Seams 51-54 are formed by securing various edges of textile element 40 together. More specifically, (1) seam 51 is formed by securing an edge 41a with an edge 41b; (2) seam 52 is formed by securing an edge 42a with an edge 42b; (3) a first portion of seam 53 is formed by securing an edge 43a with an edge 43b (4) a second portion of seam 53 is formed by securing an edge 43c with an edge 43d; (5) a first portion of seam 54 is formed by securing an edge 44a with an edge 44b; and (6) a second portion of seam 54 is formed by securing an edge 44c with an edge 44d. Referring to Figure 8, the positions of regions 31-35 and ankle opening 36 are identified to provide a frame of reference relating to the various portions of textile element 40.

[38] In order to join edges 41a and 41b to form seam 51, textile element 40 is folded or otherwise overlapped such that edge 41a is placed adjacent to edge 41b. Stitching, an adhesive, or heat bonding, for example, is then utilized to secure edge 41a and edge 41b. Textile element 40, as depicted in Figure 8, has a generally planar configuration. Upon the formation of seam 51, however, one portion of textile element 40 overlaps the other portion of textile element 40. The volume between the overlapping portions effectively forms a portion of the void within upper 30 for receiving the foot.

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[39] The folding or overlapping of textile element 40 to form seam 51 places edge 42a adjacent to edge 42b, which facilitates the formation of seam 52. With reference to Figure 8, an edge 45 forms a generally u-shaped area in textile element 40. Upon the joining of edges 42a and 42b to form seam 52, the u-shaped area becomes an aperture in textile element 40 and effectively forms ankle opening 36. Each of edges 43a-43d and edges 44a-44d are formed from a generally v-shaped area of textile element 40. Accordingly, seams 53 and 54 may be formed by closing the v-shaped areas and securing the various edges together.

[40] Following the formation of each of seams 51-54, the manufacturing of upper 30 is essentially complete. Various finishing steps may be performed, such as reinforcing ankle opening 36, for example. Upper 30 (i.e., textile element 40) is then secured to sole structure 20, with an adhesive, for example. The insole is then placed into the void within upper 30 and adjacent to lower region 34. In some embodiments, various reinforcing members may be added to the exterior or interior surface of upper 20 in order to limit the degree of stretch in upper 20 or provide enhanced wear-resistance. In addition, a lacing system may be added to provide adjustability.

[41] Textile element 40 is a single material element with a unitary construction, as discussed above. As defined for purposes of the present invention, unitary construction is intended to express a configuration wherein portions of a textile element are not joined together by seams or other connections, as depicted with textile element 40 in Figure 8. Although the various edges 41a-44d are joined together to form seams 51-54, the various portions of textile element 40 are formed as an unitary element without seams, as discussed below.

[42] Textile element 40 is primarily formed from one or more yarns that are mechanically-manipulated through either an interweaving, intertwining and twisting, or interlooping process, for example. As discussed in the Background of the Invention section above, interweaving is the intersection of two yarns that cross and interweave at right angles to each other. The yarns utilized in interweaving are conventionally referred to as warp and weft. Intertwining and twisting encompasses procedures such as braiding and knotting where yarns intertwine with each other to form a textile. Interlooping involves the

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formation of a plurality of columns of intermeshed loops, with knitting being the most common method of interlooping. Textile element 40 may, therefore, be formed from one of these processes for manufacturing a textile.

[43] A variety of mechanical processes have been developed to manufacture a textile. In general, the mechanical processes may be classified as either warp knitting or weft knitting. With regard to warp knitting, various specific sub-types that may be utilized to manufacture a textile include tricot, raschel, and double needle-bar raschel (which further includes jacquard double needle-bar raschel). With regard to weft knitting, various specific sub-types that may be utilized to manufacture a textile include circular knitting and flat knitting. Various types of circular knitting include sock knitting (narrow tube), body garment (seamless or wide tube), and jacquard.

[44] Textile element 40 may be formed through any of the mechanical processes discussed above. Accordingly, textile element 40 may be formed on either a warp knitting machine or a weft knitting machine. One suitable knitting machine for forming textile element 40 is a wide-tube circular knit jacquard machine. Another suitable knitting machine for forming textile element 40 is a wide-tube circular knitting machine that is produced in the Lonati Group by Santoni S.p.A. of Italy under the SM8 TOP1 model number. This Santoni S.p.A. wide-tube circular knitting machine may form a textile structure having a diameter that ranges from 10 inches to 20 inches, with 8 feeds for each diameter. The machine exhibits a maximum 140 revolutions per minute for 10 inch diameters, and a maximum 120 revolutions per minute for 13 inch diameters. Furthermore, the machine gauge is variable between 16, 22, 24, 26, 28, and 32 needles per inch, and is suitable for various needle gauges ranging from 48 to 75.

[45] A wide-tube circular knitting machine, as produced by Santoni S.p.A., forms a generally cylindrical textile structure and is capable of forming various types of stitches within a single textile structure. In general, the wide-tube circular knitting machine may be programmed to alter the design on the textile structure through needle selection. That is, the type of stitch that is formed at each location on the textile structure may be selected by programming the wide-tube circular knitting machine such that specific needles either

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accept or do not accept yarn at each stitch location. In this manner, various patterns, textures, or designs may be selectively and purposefully imparted to the textile structure.

[46] An example of a textile structure 60 that may be formed with a wide-tube circular knitting machine is depicted in Figure 9. Textile structure 60 has a generally cylindrical configuration, and the types of stitches vary throughout textile structure 60 so that a pattern is formed with the outline of textile element 40. That is, differences in the stitches within textile structure 60 form an outline with the shape and proportions of textile element 40.

[47] The Santoni S.p.A. wide-tube circular knitting machine may form a textile structure having a diameter that ranges from 10 inches to 16 inches, as discussed above. Assuming that textile structure 60 exhibits a diameter of 10 inches, then the circumference of textile structure 60 is approximately 31 inches. In many circumstances, the total width of textile element 40 will be approximately 12 inches, depending upon the size of footwear 10. The outlines for at least two textile elements 40 may, therefore, be formed on textile structure 60. Referring to Figure 9, the outline of textile element 40 is depicted on a front portion of textile structure 60, and the outline of another textile element 40 is depicted on a rear portion of textile structure 60. Accordingly, a first textile element 40 and a second textile element 40 may be simultaneously formed in a single textile structure 60. As the diameter of textile element 60 is increased or the width of textile element 40 decreases, however, an even greater number of textile elements 40 may be outlined on textile structure 60.

[48] Textile structure 60 may be formed with a wide-tube circular knitting machine, as discussed above. The types of stitches that form textile structure 60 may be varied to form an outline of one or more textile elements 40 on textile structure 60. That is, the wide-tube circular knitting machine may be programmed to form different types of stitches in textile structure 60 so as to outline one or more textile elements 40. Each textile element 40 is then removed from textile structure 60 with a die-cutting, laser-cutting, or other conventional cutting operation. Once textile element 40 is removed

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from textile structure 60, seams 51-54 may be formed and textile element 40 may be incorporated into footwear 10.

[49] The yarn forming textile element 40 may be generally defined as an assembly having a substantial length and relatively small cross-section that is formed of at least one filament or a plurality of fibers. Fibers have a relatively short length and require spinning or twisting processes to produce a yarn of suitable length for use in an interlooping process. Common examples of fibers are cotton and wool. Filaments, however, have an indefinite length and may merely be combined with other filaments to produce a yarn suitable for use in an interlooping process. Modern filaments include a plurality of synthetic materials such as rayon, nylon, polyester, and acrylic, with silk being the primary, naturally-occurring exception. Yarn may be formed of a single filament (conventionally referred to as a monofilament yarn) or a plurality of individual filaments. Yarn may also be formed of separate filaments formed of different materials, or the yarn may be formed of filaments that are each formed of two or more different materials. Similar concepts also apply to yarns formed from fibers. Accordingly, yarns may have a variety of configurations within the scope of the present invention that generally conform to the definition provided above.

[50] In order to provide the stretch and recovery properties to upper 30, and particularly textile element 40, a yarn that incorporates an elastane fiber may be utilized. Elastane fibers are available from E.I. duPont de Nemours Company under the LYCRA trademark. Such fibers may have the configuration of covered LYCRA, wherein the fiber includes a LYCRA core that is surrounded by a nylon sheath. One suitable yarn, for example, includes a 70 denier elastane core that is covered with nylon having a 2 ply, 80 denier, 92 filament structure. Other fibers or filaments exhibiting elastic properties may also be utilized.

[51] As discussed above, a yarn that incorporates elastane fibers is suitable for textile element 40. A plurality of other yarns, whether elastic or inelastic, are also suitable for textile element 40. The characteristics of the yarn selected for textile element 40 depend primarily upon the materials that form the various filaments and fibers. Cotton, for

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example, provides a soft hand, natural aesthetics, and biodegradability. Elastane fibers, as discussed above, provide substantial stretch and recoverability. Rayon provides high luster and moisture absorption. Wool also provides high moisture absorption, in addition to insulating properties. Polytetrafluoroethylene coatings may provide a low friction contact between the textile and the skin. Nylon is a durable and abrasion-resistant material with high strength. Finally, polyester is a hydrophobic material that also provides relatively high durability. Accordingly, the materials comprising the yarn may be selected to impart a variety of physical properties to textile element 40, and the physical properties may include, for example, strength, stretch, support, stiffness, recovery, fit, and form.

[52] Textile element 40 is depicted as having a generally smooth, non-varied stitch configuration. That is, similar stitches are utilized throughout textile element 40 to impart a common texture to the various portions of textile element 40. As discussed above, however, a wide-tube circular knitting machine is generally capable of forming various types of stitches within a single textile structure. The wide-tube circular knitting machine may, therefore, vary the stitches within textile element 40 to produce various patterns, designs, or textures, for example. Various types of stitches may also be formed with other types of knitting machines. With reference to Figure 10, a textile element 40' with the general shape of textile element 40 is depicted as having various areas with different textures. For example, a central area that corresponds with instep region 33 has a first texture 46' that is generally smooth. In addition, textile element 40' includes a second texture 47' that is a plurality of longitudinal ribs. When incorporated into footwear 10, the ribs will extend longitudinally along lateral region 31 and medial region 32, and the ribs may extend into heel region 35. The ribs may be present for aesthetic purposes, or may affect the stretch properties of upper 20, for example. Accordingly, textile element 40' exhibits areas with different textures in a single element of textile material.

[53] Many conventional articles of footwear incorporate uppers with various material elements that each exhibit different properties. For example, a first material element may be smooth, and a second material element may be textured. The first and second material

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elements are then stitched together to form a portion of the conventional upper. Textile element 40' also exhibits smooth and textured areas. In contrast with the conventional upper, however, first texture 46' and second texture 47' are incorporated into a single, unitary element of textile, rather than two separate elements that are stitched or otherwise joined together.

[54] A textile structure 40" is depicted in Figure 11 and has the general shape of both textile element 40 and textile element 40'. Textile element 40" includes areas with three different textures. A first texture 46" is generally smooth and has the configuration of various strips that extends laterally across areas corresponding with lateral region 31, medial region 32, and instep region 33. Various portions of textile element 40" also include a second texture 47", which is generally rough in comparison with first texture 46". In addition, the area of textile element 40" corresponding with instep region 33 includes a third texture 48". The different textures 46"-48" are formed by merely varying the type of stitch formed by the wide-tube circular knitting machine at each location of textile element 40". Textures 46"-48" may exhibit aesthetic differences, or the differences may be structural. For example, the degree of stretch in areas with textures 46"-48" may be different, or the wear resistance of the areas may vary depending upon the stitch utilized. The air-permeability of textile element 40" may also vary in the different areas. Third texture 48" is formed to include a plurality of apertures that extend through textile element 40". The apertures may be formed by omitting stitches at specific locations during the wide-tube circular knitting process, and the apertures facilitate the transfer of air between the void within upper 20 and the area outside of upper 20. Accordingly, the various stitches formed in textile element 40", or one of textile elements 40 or 40', may be utilized to vary the texture, physical properties, or aesthetics of footwear 10 within a single, unitary element of material.

[55] In addition to varying the stitch types to form textures 46'-47' and 46"-48", the type of yarn utilized in various areas of textile elements 40' and 40" may be changed to impart different properties. As discussed above, yarn may be formed from cotton, wool, elastane, rayon, nylon, and polyester, for example. Each of these yarn types may impart differing properties to the areas corresponding with textures 46'-47' and 46"-48". For

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example, elastane may be utilized to impart stretch, wool may be utilized for insulation, and nylon may be utilized for durability. Accordingly, different yarn types may be utilized to impart different properties. The types of knitting that may be utilized to form different zones with different properties (e.g., yarn characteristics, textures, etc.) may vary significantly to include the various warp knitting and weft knitting processes discussed earlier, such as tricot, raschel, double needle-bar raschel, circular knitting, and flat knitting, for example.

[56] An article of footwear 110 is depicted in Figure 12 and includes a sole structure 120 and an upper 130. Upper 130 includes a textile element 140 having the general configuration of textile element 40. As with textile element 40, textile element 140 forms both an exterior surface and an interior surface of upper 130. In addition, upper 130 includes a lace 131 and a plurality of elements 132-135 that also form a portion of the exterior surface. Lace 131 extends through a plurality of apertures formed in textile element 140. The apertures may be formed by omitting stitches at specific locations. Element 132 is positioned in a forefoot area of footwear 110 and may be formed of leather or rubber, for example, to provide additional wear-resistance. Element 133 extends around the ankle opening to reinforce and limit stretch in the area of the ankle opening. Element 134 extends around the heel region to counter movement of the heel and seat the heel above sole structure 120. Furthermore, elements 135 are substantially inextensible strips of material, such as leather or synthetic leather, that limit stretch on the lateral side of footwear 110. Whereas upper 30 was almost exclusively formed by textile element 40, upper 130 also includes lace 131 and elements 132-135. Accordingly, an upper in accordance with the present invention may incorporate a plurality of additional components.

[57] Another article of footwear 210 is depicted in Figures 13-14 and includes a sole structure 220 and an upper 230. Upper 230 includes a textile element 240 that forms an interior layer. In addition, upper 230 includes an intermediate layer 250 and an exterior layer 260. As discussed in the Background of the Invention section above, the upper of a conventional article of footwear may be formed from multiple material layers that include an exterior layer, a intermediate layer, and an interior layer. The materials forming the

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exterior layer of the upper may be selected based upon the properties of wear-resistance, flexibility, and air-permeability, for example. The intermediate layer of the upper may be formed from a lightweight polymer foam material that provides cushioning and protects the foot from objects that may contact the upper. Similarly, an interior layer of the upper may be formed of a moisture-wicking textile that removes perspiration from the area immediately surrounding the foot.

[58] Upper 230 has a configuration that is similar to the configuration of the conventional upper in that various material layers are utilized. In contrast with the conventional upper, however, the interior layer is formed of textile element 240, which is manufactured through the process discussed above. That is, textile element 240 is a single element of textile that forms the interior layer of upper 230. A benefit to utilizing textile element 240 for the interior layer is that textile element 240 includes few seams that may contact the foot. In addition, the stitches utilized at various locations of textile element 240 may modify the texture of the interior surface of upper 230, thereby limiting the degree of slip that occurs between the foot and upper 230 or enhancing the air-permeability of upper 230 in specific locations.

[59] Various warp knitting or weft knitting processes may be utilized to form textile element 40, or the various other textile elements discussed above. An advantage of this process is that various stitches may be incorporated into specific locations of textile element 40 to modify the physical properties or aesthetics of textile element 40. Whereas a conventional upper includes various elements that stitched or adhesively joined, textile element 40 is a single, unitary element of material. From the perspective of manufacturing, utilizing multiple materials to impart different properties to an article of footwear may be an inefficient practice. By forming textile element 40 to be a single, unitary element of material, however, efficiency is increased in that upper 20 may include a single textile element, rather than numerous joined elements.

[60] A variety of knitting processes may be utilized to form textile element 40, as discussed above. As a specific example, a jacquard double needle-bar raschel knitting machine may be utilized to form a flat textile structure, and may also be utilized to form the textile

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structure to have the configuration of a spacer mesh textile. Unlike textile structure 60, which exhibits a generally cylindrical configuration, the textile structure formed with the jacquard double needle-bar raschel knitting machine will have a flat configuration. Like textile structure 60, however, an outline of a textile element may be imparted to the textile structure formed with the jacquard double needle-bar raschel knitting machine. That is, differences in the stitches within the textile structure may form an outline with the shape and proportions of the intended textile element. Accordingly, the textile element may be removed from the textile structure and incorporated into footwear 10. In addition, the jacquard double needle-bar raschel knitting machine may be utilized to impart various textures, different properties, or different yarn types to the textile element. Similarly, other types of knitting, such as a flat knitting, may be utilized within the scope of the present invention to impart various textures, different properties, or different yarn types to the textile element.

[61] The present invention is disclosed above and in the accompanying drawings with reference to a variety of embodiments. The purpose served by the disclosure, however, is to provide an example of the various features and concepts related to the invention, not to limit the scope of the invention. One skilled in the relevant art will recognize that numerous variations and modifications may be made to the embodiments described above without departing from the scope of the present invention, as defined by the appended claims.

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CLAIMS

1. An article of footwear comprising:

an upper incorporating a circular-knitted textile element having a plurality of knit constructions, the circular-knitted textile element being removed from a circular-knitted textile structure, and further having edges that are joined together to define at least a portion of a void for receiving a foot; and

a sole structure secured to the upper.

2. The article of footwear recited in claim 1, wherein the circular-knitted textile element forms at least a portion of a lateral side, a medial side, and an instep region of the upper.

3. The article of footwear recited in claim 1, wherein the edges include a pair of first edges that are joined to form a first seam extending longitudinally along a lower region of the upper.

4. The article of footwear recited in claim 3, wherein the edges include a pair of second edges that are joined to form a second seam extending along a heel region of the upper.

5. The article of footwear recited in claim 4, wherein the second seam extends vertically.

6. The article of footwear recited in claim 4, wherein the edges include at least a pair of third edges that are joined to form a third seam extending through a forefoot area of the upper.

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7. The article of footwear recited in claim 1, wherein the circular-knitted textile element is one of an exterior layer, an intermediate layer, and an interior layer of the upper.

8. The article of footwear recited in claim 1, wherein the upper includes an exterior layer, an intermediate layer, and an interior layer, and the circular-knitted textile element forms at least a portion of the interior layer.

9. The article of footwear recited in claim 1, wherein the circular-knitted textile element forms at least a portion of both an interior surface and an exterior surface of the upper.

10. The article of footwear recited in claim 9, wherein at least one additional element is secured to the exterior surface and forms a portion of the exterior surface.

11. The article of footwear recited in claim 10, wherein the additional element is secured to a forefoot area of the upper.

12. The article of footwear recited in claim 10, wherein the additional element is secured to a heel area of the upper.

13. The article of footwear recited in claim 1, wherein the circular-knitted textile element forms an interior surface of the upper.

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14. An article of footwear comprising:

an upper incorporating a circular-knitted textile element, the circular-knitted textile element having a first area and a second area with a unitary construction, the first area being formed of a first stitch configuration, and the second area being formed of a second stitch configuration that is different from the first stitch configuration to impart varying properties to the circular-knitted textile element, wherein the varying properties are aesthetic or structural; and

a sole structure secured to the upper.

15. The article of footwear recited in claim 14, wherein the first stitch configuration provides a substantially smooth texture to the first area, and the second stitch configuration provides a texture to the second area that is rougher than the smooth texture.

16. The article of footwear recited in claim 15, wherein the second stitch configuration forms a rib structure in the second area.

17. The article of footwear recited in claim 14, wherein at least one of the first stitch configuration and the second stitch configuration forms an aperture in the circular-knitted textile element.

18. The article of footwear recited in claim 14, wherein the circular-knitted textile element is one of an exterior layer, an intermediate layer, and an interior layer of the upper.

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19. The article of footwear recited in claim 14, wherein the upper includes an exterior layer, an intermediate layer, and an interior layer, and the circular-knitted textile element forms at least a portion of the interior layer.

20. The article of footwear recited in claim 14, wherein the circular-knitted textile element forms at least a portion of both an interior surface and an exterior surface of the upper.

21. The article of footwear recited in claim 14, wherein the circular-knitted textile element forms an interior surface of the upper.

22. An article of footwear comprising:

an upper incorporating a circular-knitted textile element having a plurality of knit constructions, and further having edges that are joined together to form seams and define at least a portion of a void for receiving a foot, the seams including a first seam and a second seam, the first seam extending from a heel area to a forefoot area of the footwear along a lower surface of the upper, and the second seam extending vertically in the heel area; and

a sole structure secured to the upper.

23. The article of footwear recited in claim 22, wherein the footwear includes a third seam extending through the forefoot area of the upper.

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24. The article of footwear recited in claim 22, wherein at least one of the knit constructions forms an aperture in the circular-knitted textile element.

25. The article of footwear recited in claim 22, wherein the knit constructions produce varying properties in the circular-knitted textile element including a varying elasticity of the circular-knitted textile element.

26. The article of footwear recited in claim 22, wherein the knit constructions produce varying properties in the circular-knitted textile element including a varying air permeability of the circular-knitted textile element.

27. The article of footwear recited in claim 22, wherein the circular-knitted textile element is one of an exterior layer, an intermediate layer, and an interior layer of the upper.

28. The article of footwear recited in claim 22, wherein the circular-knitted textile element forms at least a portion of both an interior surface and an exterior surface of the upper.

29. The article of footwear recited in claim 22, wherein the circular-knitted textile element forms an interior surface of the footwear, and at least one additional textile element forms an exterior surface of the footwear.

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30. An article of footwear comprising:

an upper incorporating a circular-knitted textile element having a plurality of knit constructions, wherein the circular-knitted textile element is formed with a knitting machine, the circular-knitted textile element being removed from a circular-knitted textile structure that includes an outline of the circular-knitted textile element, and the circular-knitted textile element having edges that are joined together to define at least a portion of a void for receiving a foot; and

a sole structure secured to the upper.

31. The article of footwear recited in claim 30, wherein the circular-knitted textile element has a structure formed by a wide-tube circular knitting machine.

32. The article of footwear recited in claim 30, wherein the edges include a pair of first edges that are joined to form a first seam extending longitudinally along a lower region of the upper.

33. The article of footwear recited in claim 32, wherein the edges include a pair of second edges that are joined to form a second seam extending along a heel region of the upper.

34. The article of footwear recited in claim 33, wherein the edges include at least a pair of third edges that are joined to form a second seam extending through a forefoot area of the upper.

35. The article of footwear recited in claim 30, wherein the circular-knitted textile element is one of an exterior layer, an intermediate layer, and an interior layer of the upper.

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36. The article of footwear recited in claim 30, wherein the circular-knitted textile element forms an interior surface of the upper.

37. An article of footwear comprising:

an upper incorporating a knitted textile element, wherein the knitted textile element is formed unitarily with a knitted textile structure, the knitted textile element being removed from the knitted textile structure that includes an outline of the knitted textile element, the knitted textile element having a first area with a first unitary construction and a second area with a second unitary construction different from the first unitary construction, the first area having a first set of properties, and the second area having a second set of properties that is different from the first set of properties to impart varying characteristics to the textile element; and

a sole structure secured to the upper.

38. The article of footwear recited in claim 37, wherein the first set of properties and the second set of properties are at least one of a stitch configuration and a yarn type.

39. The article of footwear recited in claim 37, wherein the knitted textile element is one of an exterior layer, an intermediate layer, and an interior layer of the upper.

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AN ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER

ABSTRACT OF THE DISCLOSURE

An article of footwear and a method of manufacturing the article of footwear are disclosed. The footwear may include an upper and a sole structure. The upper incorporates a textile element with edges that are joined together to define at least a portion of a void for receiving a foot. The textile element may also have a first area and a second area with a unitary construction. The first area is formed of a first stitch configuration, and the second area is formed of a second stitch configuration that is different from the first stitch configuration to impart varying textures to a surface of the textile element. Various warp knitting or weft knitting processes may be utilized to form the textile element.

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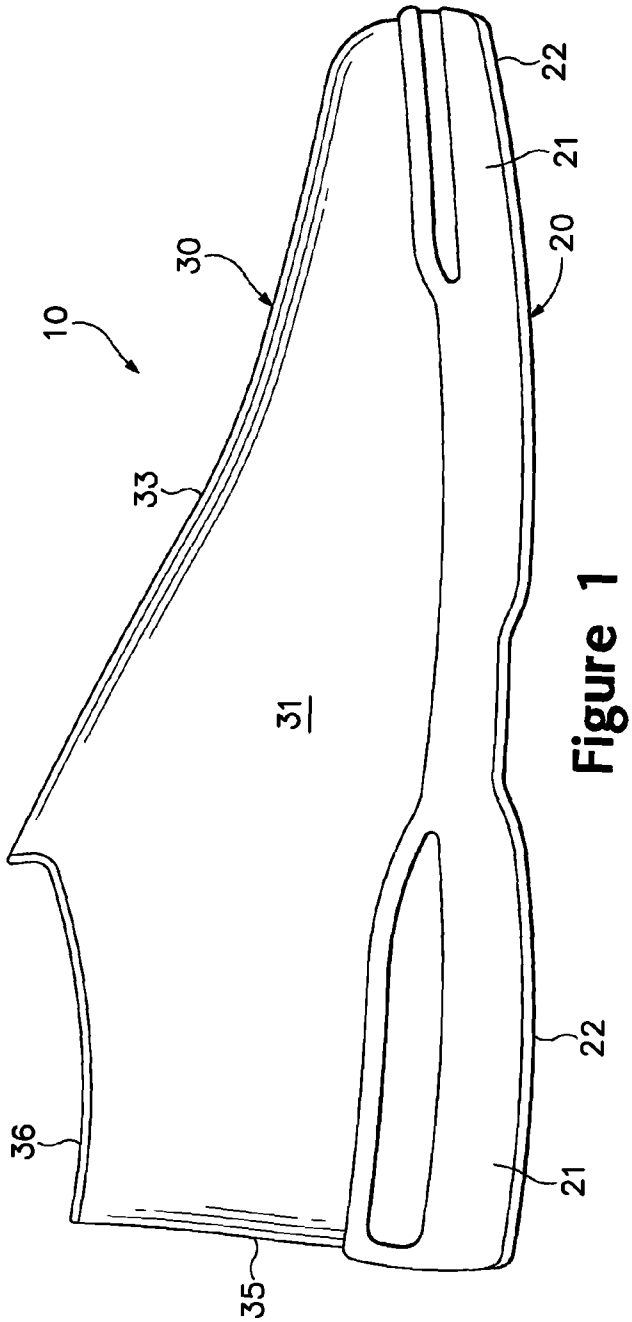


Figure 1

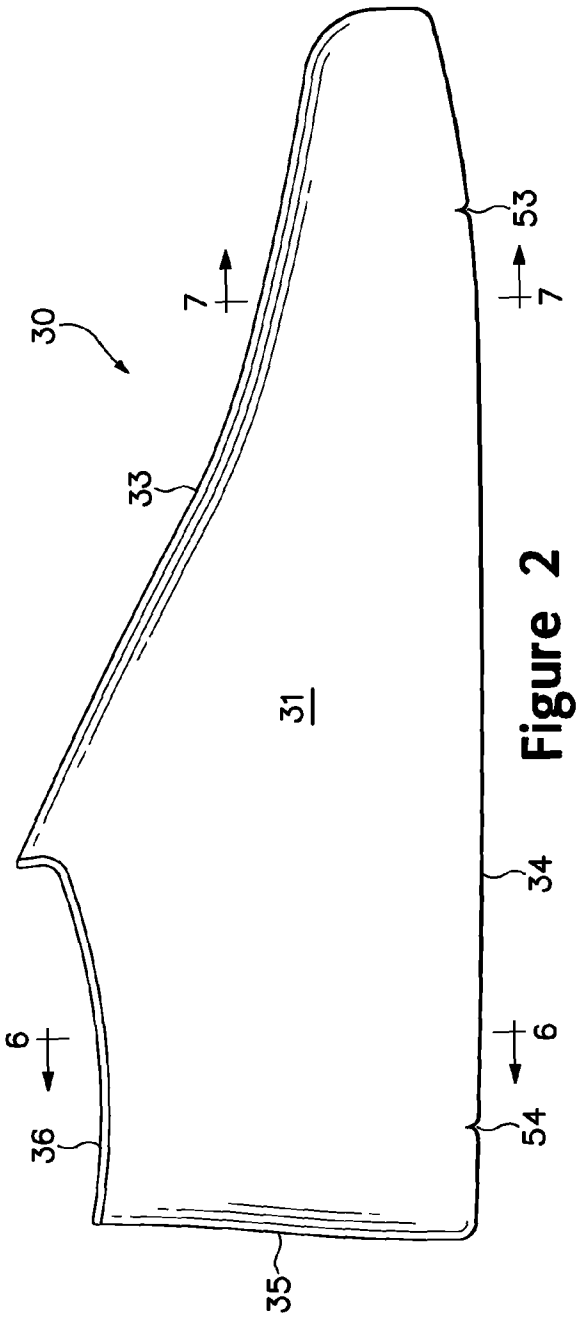


Figure 2

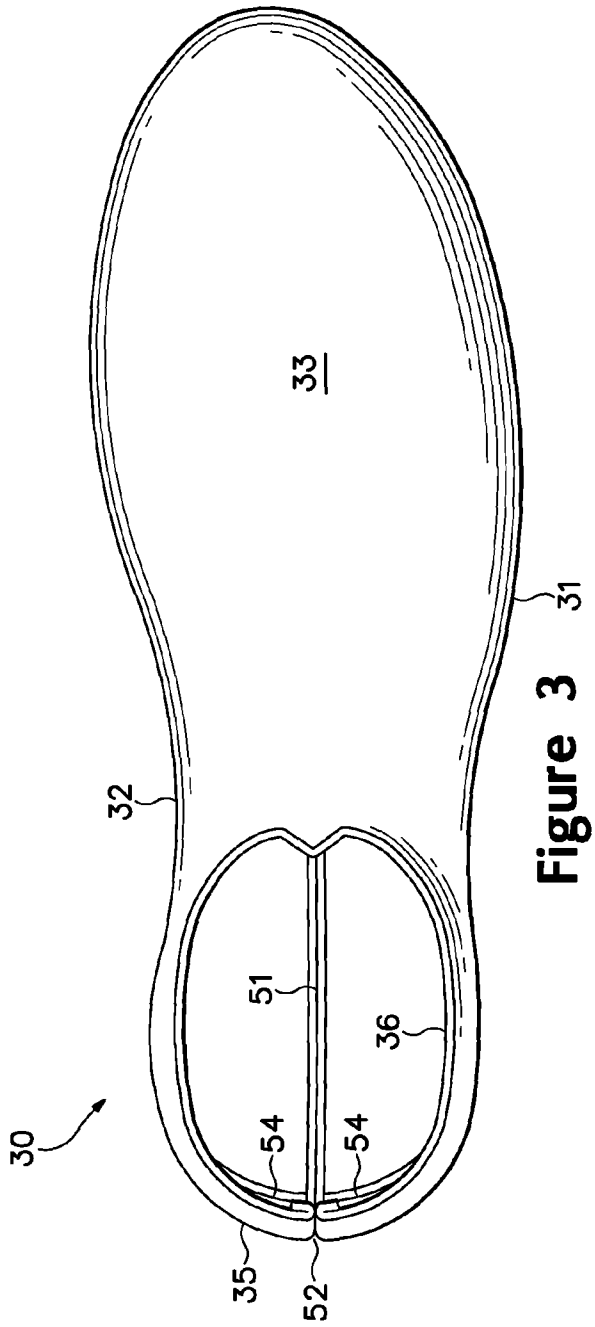


Figure 3

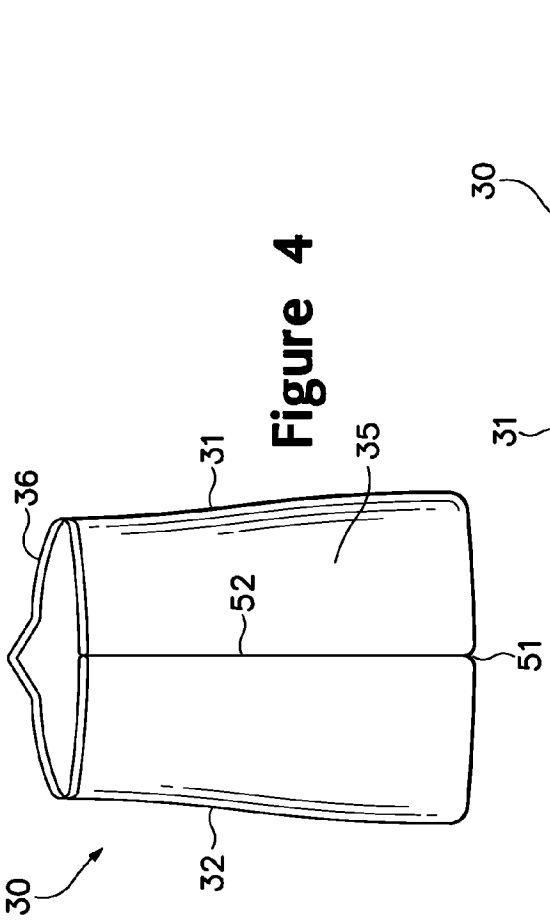


Figure 4

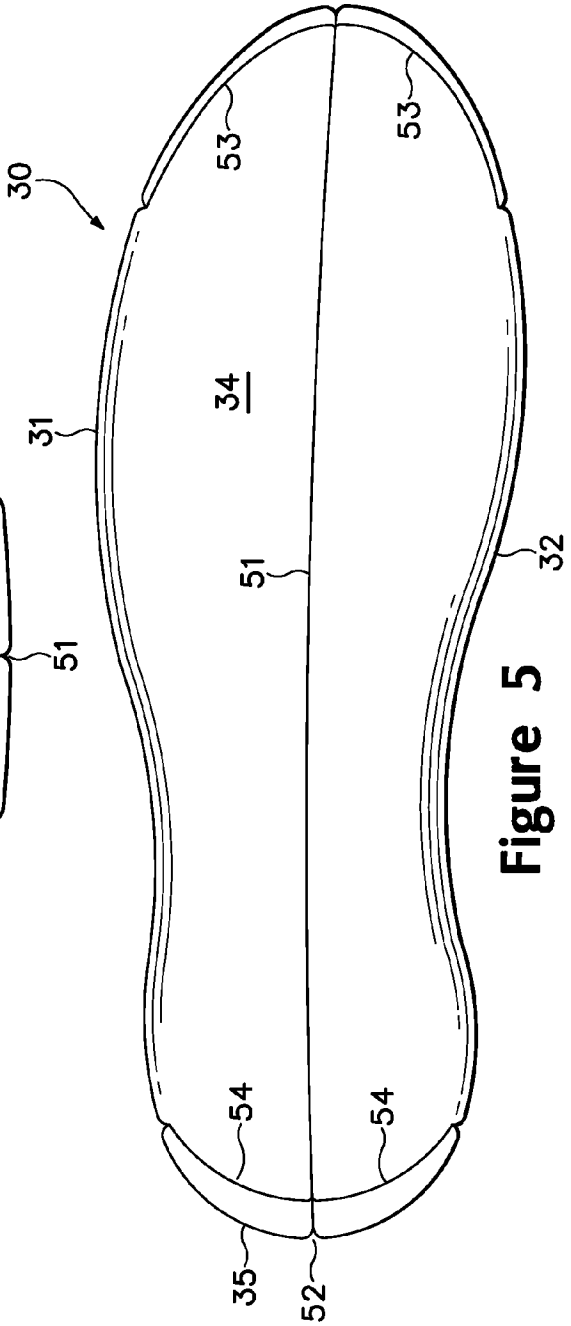


Figure 5

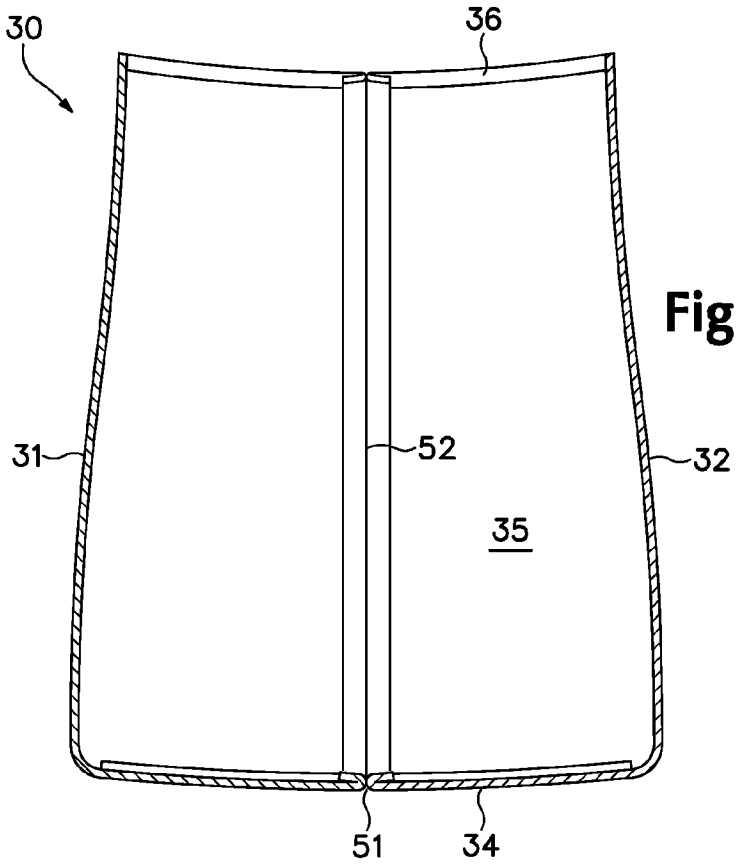


Figure 6

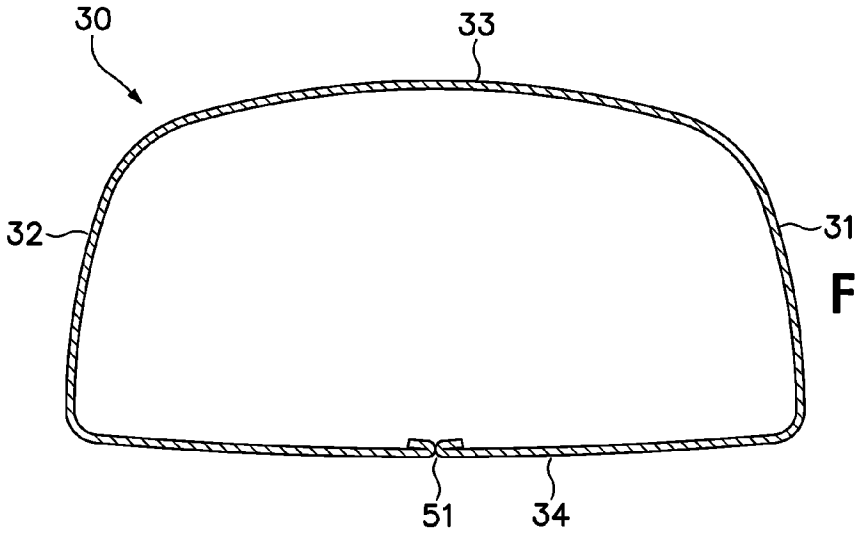


Figure 7

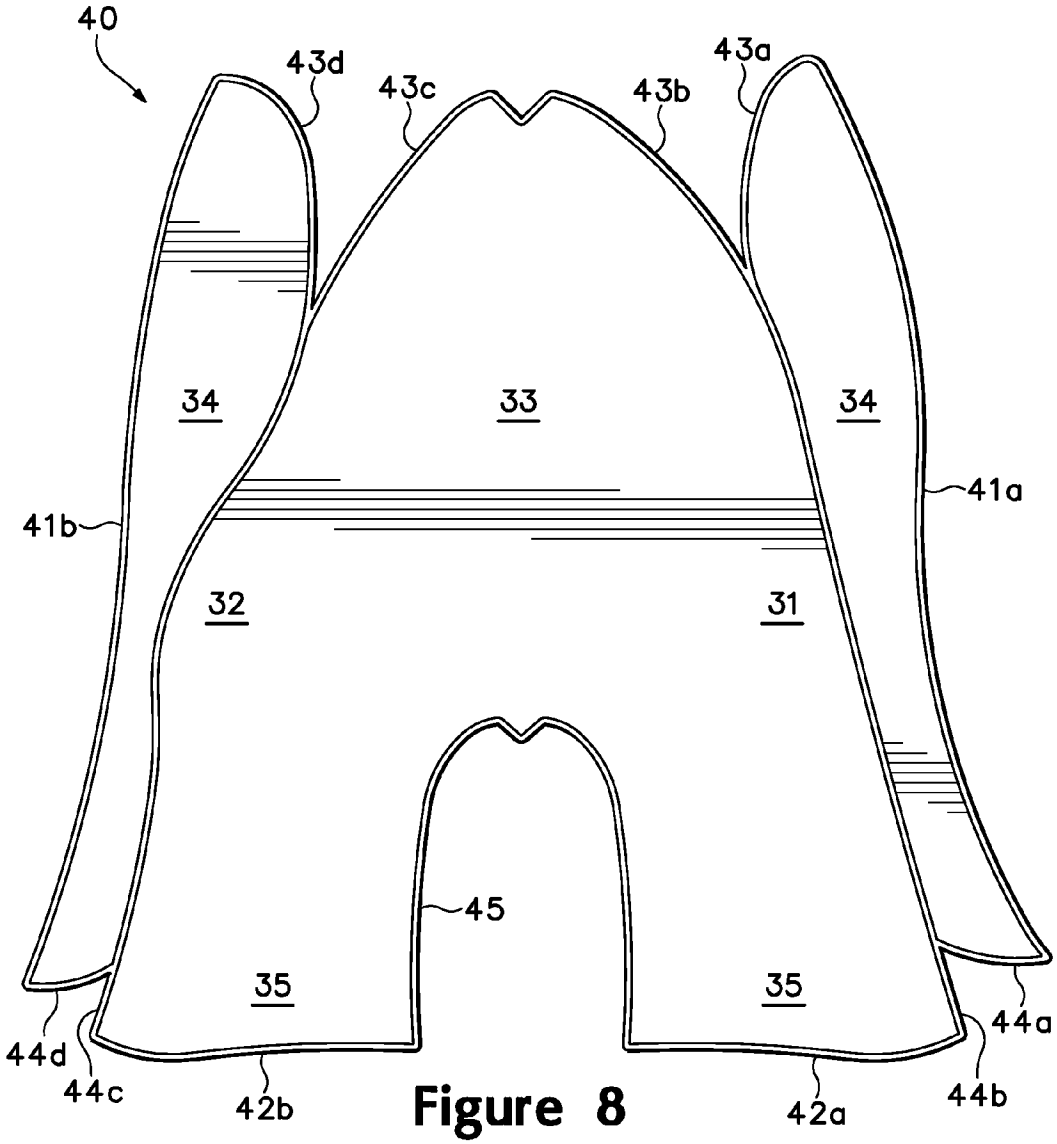

40
43d
43c
43b
43a
34
33
34
41b
41a
32
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45
35
35
44d
44c
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42a
44b
44a

Figure 8

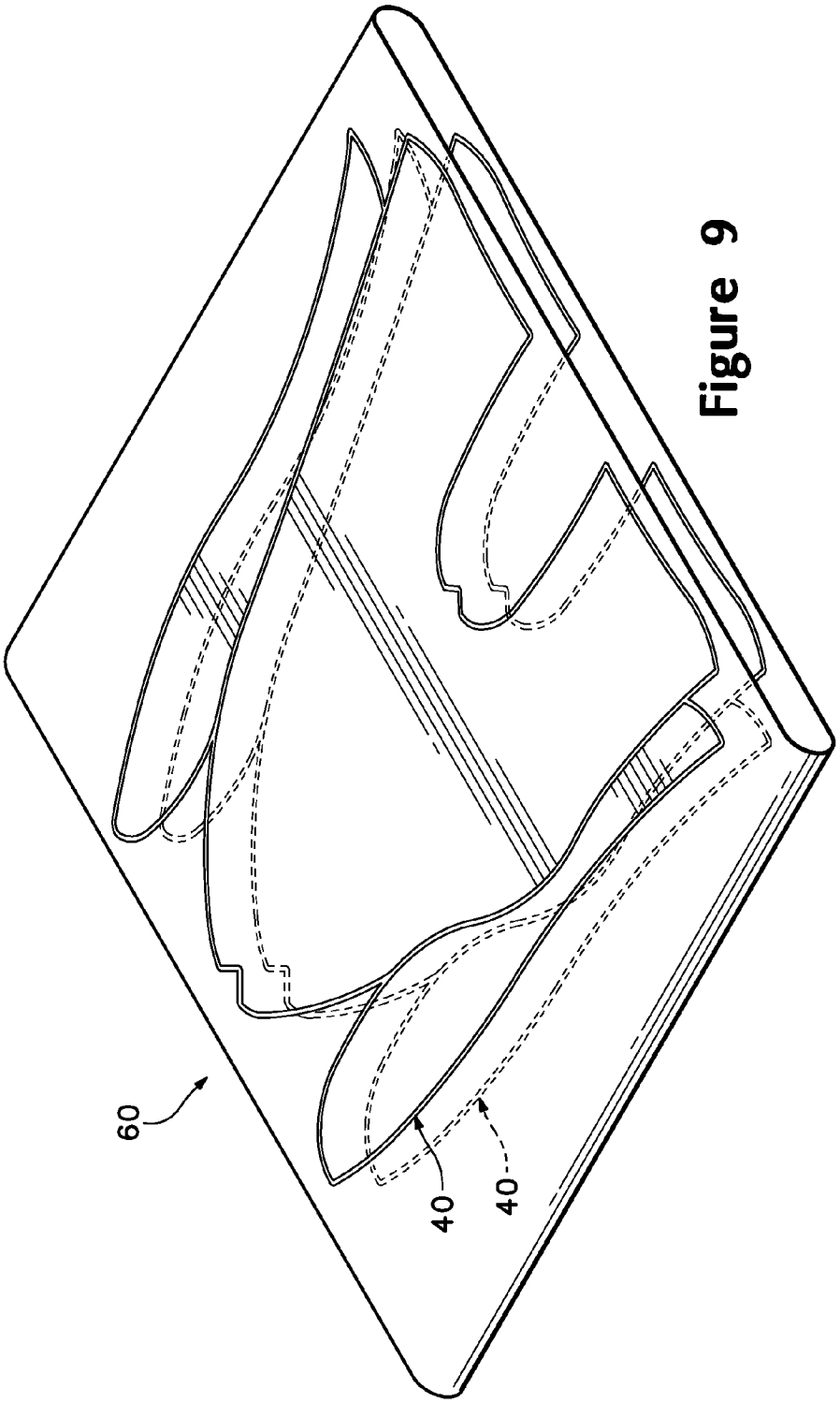


Figure 9

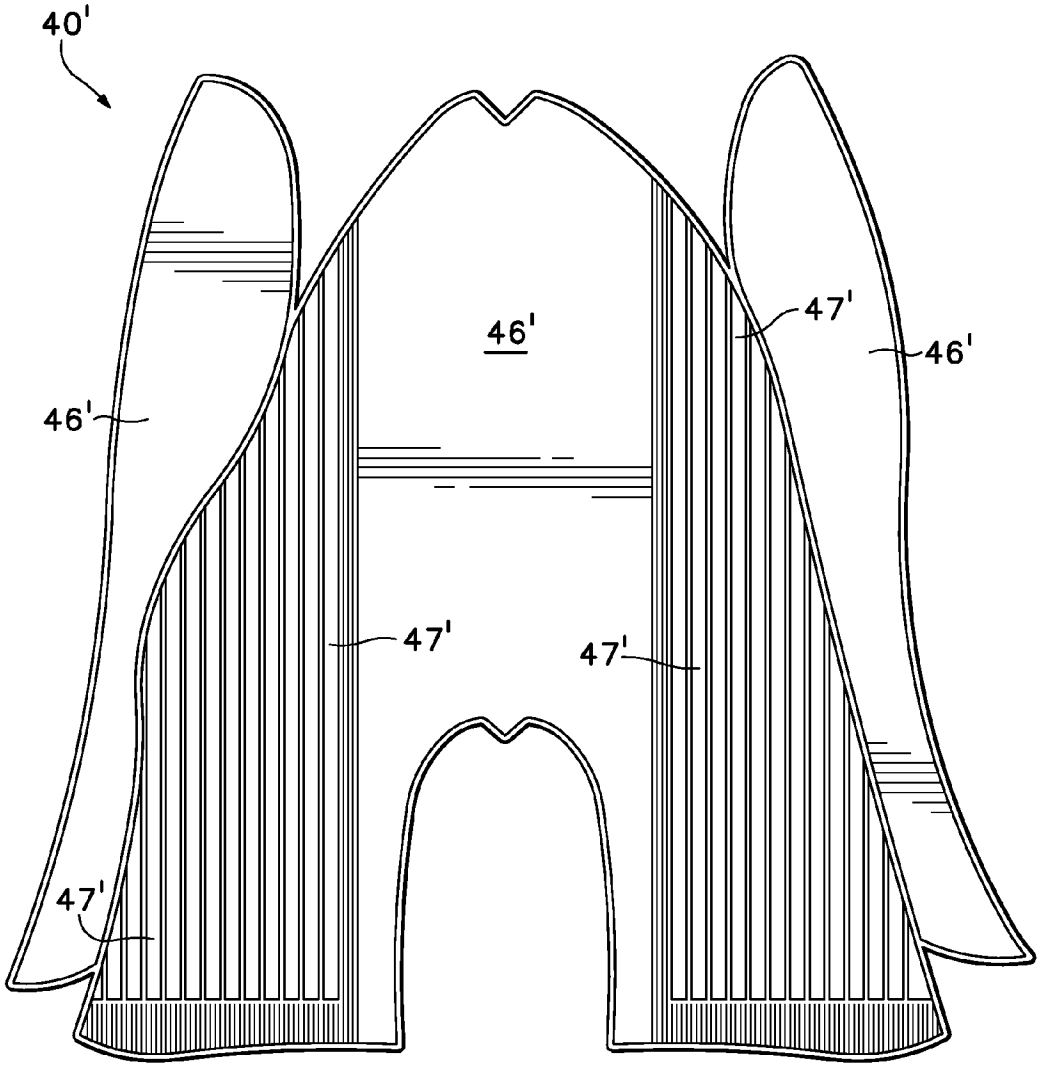


Figure 10

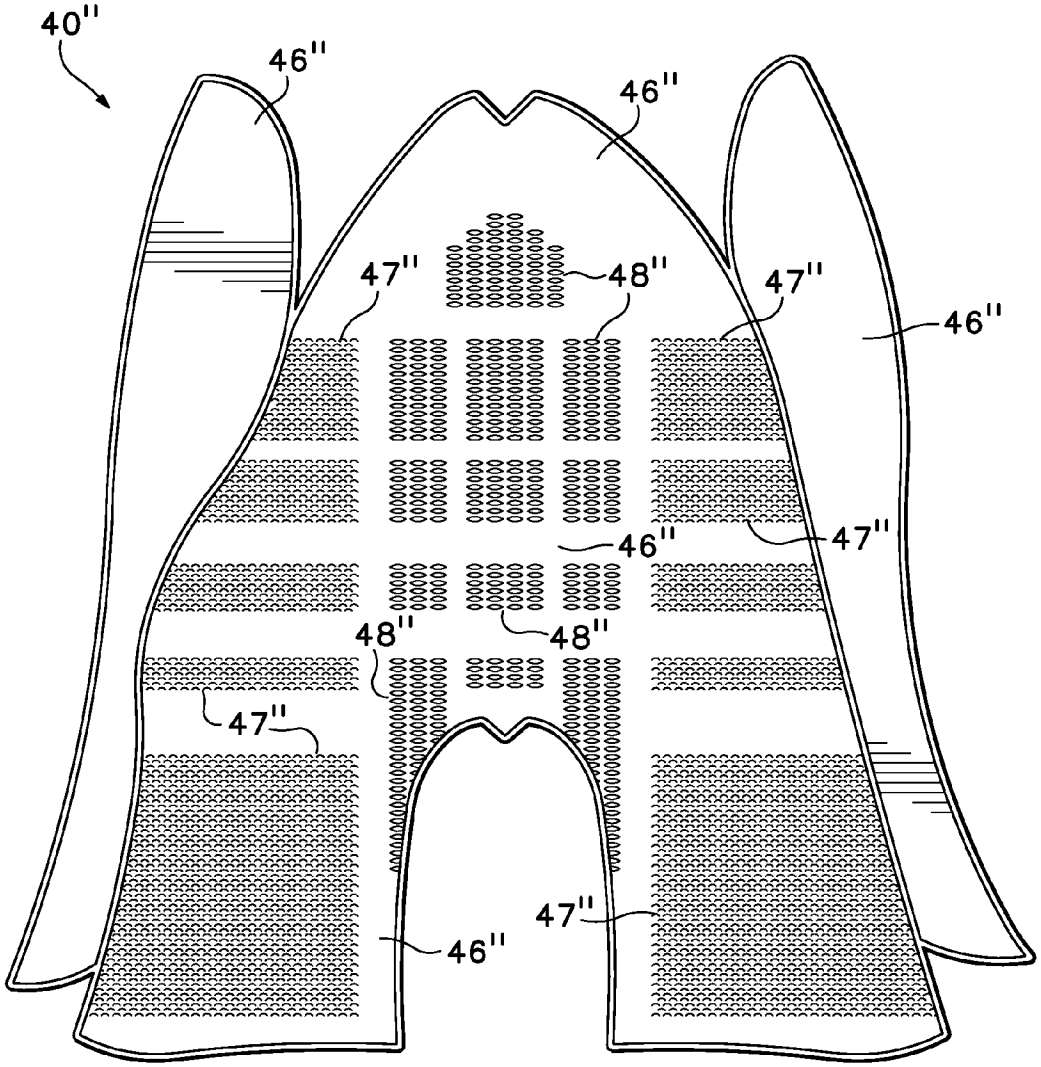


Figure 11

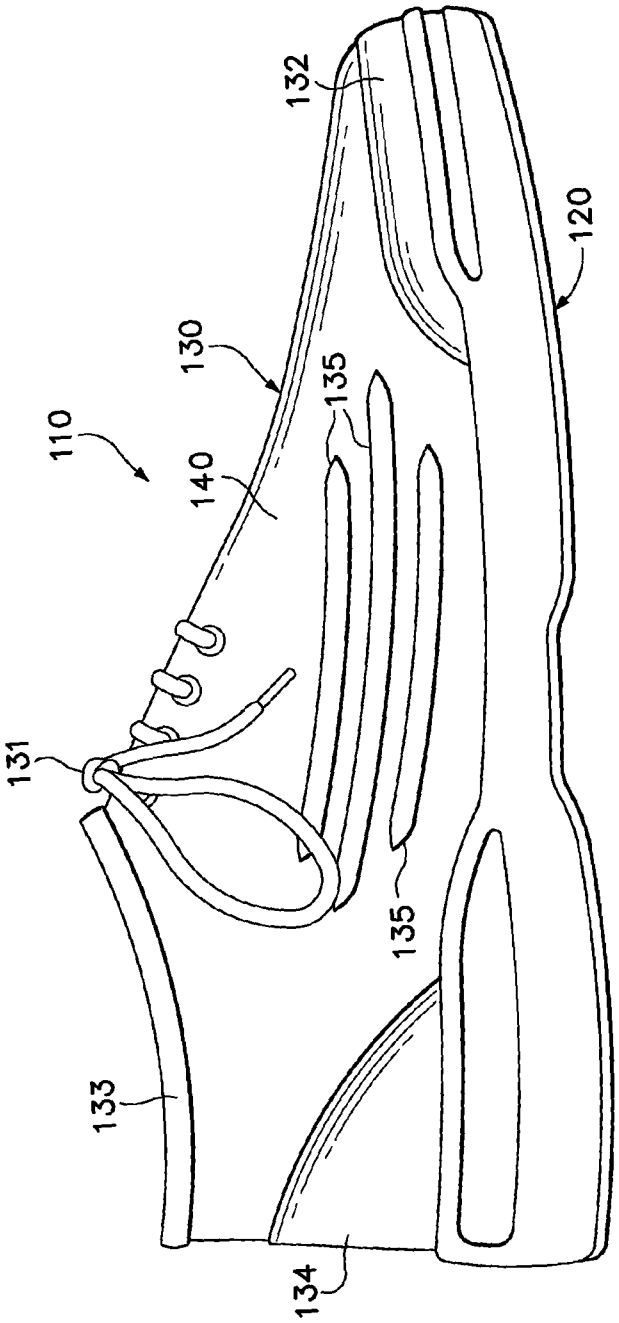


Figure 12

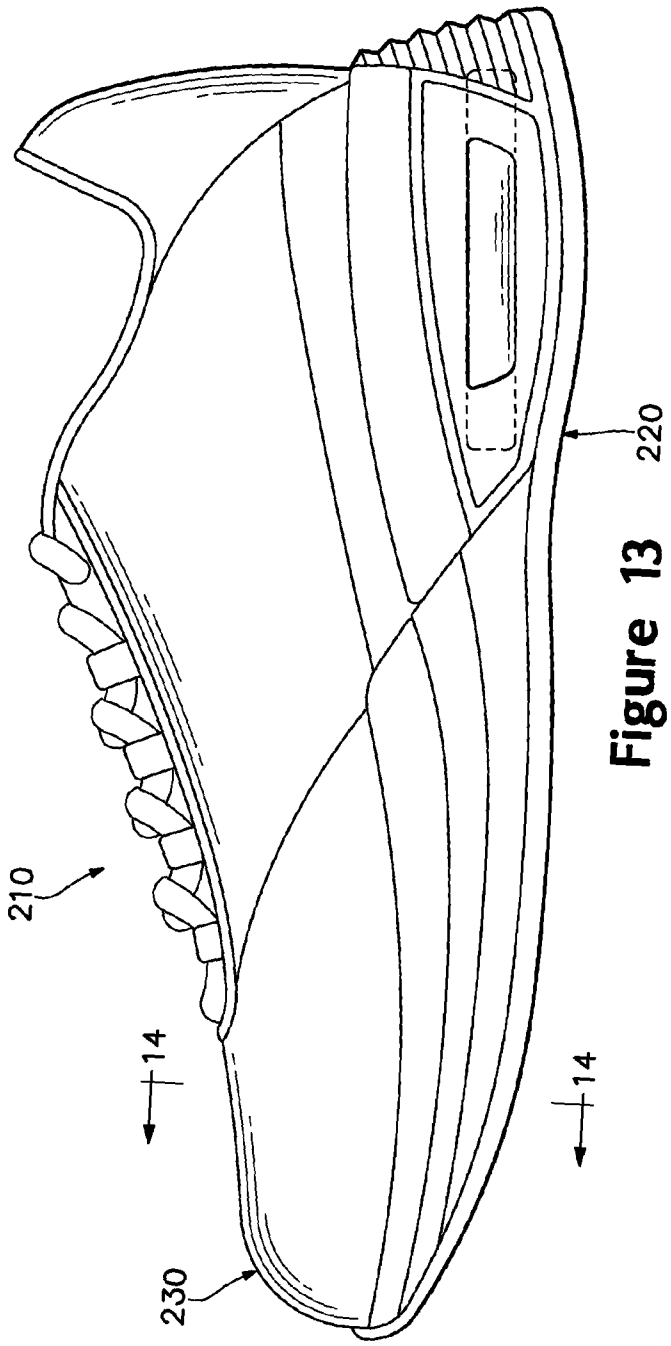


Figure 13

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