Doc code: IDS
Doc description: Information Disclosure Statement (IDS) Filed

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

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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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	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	/MARIE D BAYS/	Date Considered	08/01/2017

*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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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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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 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.

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 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.

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	Examiner Name	MARIE D. BAYS
	Attorney Docket Number	NIKE.276100/081313US82CON

	1	Declaration of Edward Frederick, November 28, 2012.	
	2	Patent Owner's Trial Hearing Demonstratives, February 6, 2014.	
	3	United States Court of Appeals for the Federal Circuit, Appeal docketed. Date received: June 30, 2014.	
	4	Corrected Certified List from the United States Patent and Trademark Office, August 25, 2014.	
	5	MOTION of Appellant Nike, Inc. to Extend the Time to December 15, 2014 to File the Appellant/Petitioner's Principal Brief, September 17, 2014.	
	6	ORDER Granting Motion to Extend Time to File Appellant/Petitioner Principal Brief, September 18, 2014.	
	7	Certificate of Compliance With Fed. Cir. R. 17 (Agency) for Appellant Nike, Inc., September 23, 2014.	
	8	Certificate of Compliance With Fed. Cir. R. 17 (Agency) for Appellee Adidas AG, September 25, 2014.	
	9	TENDERED from Appellant Nike, Inc., Title: OPENING BRIEF, December 15, 2014.	
	10	BRIEF FILED for Appellant Nik, Inc., December 15,2014.	
	11	MOTION of Director of the USPTO for Leave to Intervene, December 18, 2014.	

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	Attorney Docket Number	NIKE.276100/081313US82CON

	12	MOTION of Appellee Adidas AG to Extend the Time to April 1 0, 2015 to File the Appellee/Respondent/Cross-Appellant's Principal Brief, December 18, 2015.	
	13	ORDER Granting Director's Motion for Leave to Intervene and Granting Motion to Extend Time to File Appellee's Response Brief, September 29, 2014.	
	14	TENDERED from Intervenor Lee. Title: INTERVENOR BRIEF, April 9, 2015.	
	15	BRIEF FILED for Intervenor Lee, April 9, 2015.	
	16	TENDERED from Appellee Adidas AG. Title: OPENING BRIEF, April 10, 2015.	
	17	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	
	18	ORDER Granting Motion to Extend Time to File Reply Brief Filed by Appellant Nike, Inc., April14, 2015.	
	19	TENDERED from Appellant Nike, Inc. Title: REPLY BRIEF, May 27, 2015.	
	20	TENDERED from Appellant Nike, Inc. Title: JOINT APPENDIX, June 8, 2015.	
	21	Statement of Compliance With Fed. Cir. R. 33 for Appellant Nike, Inc., Appellee, Adidas AG and Intervenor Lee, June 8, 2015.	
	22	APPENDIX FILED for Nike, Inc., June 8, 2015.	

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	Attorney Docket Number	NIKE.276100/081313US82CON

	23	Citation of Supplemental Authority Pursuant to Fed. R. P. 280) for Appellant Nike, Inc., August 24, 2015.	
	24	MOTION of Intervenor Lee for Additional Time at Oral Argument, September 3, 2015.	
	25	ORDER Filed Granting Motion to Seek More Time for Argument Filed by Intervenor Lee, September 8, 2015.	
	26	OPINION and JUDGMENT filed, February 11, 2016.	
	27	CORRECTED OPINION AND JUDGMENT filed; February 11, 2016.	
	28	Mandate Issued to the United States Patent and Trademark Office, April 4, 2016.	
	29	Order-Conduct of Remand Proceeding, August 10, 2016.	

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Examiner Signature	/MARIE D BAYS/	Date Considered	08/01/2017

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Signature	/ELIZABETH A. LUCAS/	Date (YYYY-MM-DD)	2017-07-24
Name/Print	Elizabeth A. Lucas	Registration Number	74247

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Issue Classification	Application/Control No.	Applicant(s)/Patent Under Reexamination
	15610089	DUA ET AL.
	Examiner	**Art Unit**
	MARIE BAYS	3765

CPC						
Symbol					**Type**	**Version**
A43B		1	/	04	F	2013-01-01
D04B		21	/	207	I	2013-01-01
A43B		23	/	042	I	2013-01-01
A43B		23	/	0205	I	2013-01-01
A43B		7	/	085	I	2013-01-01
A43D		111	/	00	I	2013-01-01
D04B		1	/	102	I	2013-01-01
D04B		21	/	20	I	2013-01-01
D10B		2501	/	043	A	2013-01-01
A43B		23	/	0275	I	2013-01-01
A43B		23	/	0235	I	2013-01-01
A43B		23	/	0215	I	2013-01-01
A43B		23	/	021	I	2013-01-01
D04B		1	/	24	I	2013-01-01
A43B		23	/	028	I	2013-01-01
A43B		9	/	02	I	2013-01-01

CPC Combination Sets							
Symbol					**Type**	**Set**	**Ranking**	**Version**
			/					
			/					

NONE		**Total Claims Allowed:**	
(Assistant Examiner)	(Date)	20	
/MARIE BAYS/ Primary Examiner.Art Unit 3765	8/1/17	O.G. Print Claim(s)	O.G. Print Figure
(Primary Examiner)	(Date)	1	10

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US ORIGINAL CLASSIFICATION		INTERNATIONAL CLASSIFICATION										
CLASS	SUBCLASS	CLAIMED					NON-CLAIMED					
		A	4	3	B	1 / 04 (2006.01.01)						
CROSS REFERENCE(S)												
CLASS	SUBCLASS (ONE SUBCLASS PER BLOCK)											

NONE		**Total Claims Allowed:**	
(Assistant Examiner)	(Date)	20	
/MARIE BAYS/ Primary Examiner.Art Unit 3765	8/1/17	O.G. Print Claim(s)	O.G. Print Figure
(Primary Examiner)	(Date)	1	10

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

Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original
1	21	17	37												
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14	34														
15	35														
16	36														

NONE (Assistant Examiner)	(Date)	**Total Claims Allowed:** 20	
/MARIE BAYS/ Primary Examiner.Art Unit 3765 (Primary Examiner)	8/1/17 (Date)	O.G. Print Claim(s) 1	O.G. Print Figure 10

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
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CPC- SEARCHED		
Symbol	Date	Examiner
A43B 1/00, 1/02, 1/04, 23/00, 23/0205, 23/0265	8/1/17	/MB/

CPC COMBINATION SETS - SEARCHED		
Symbol	Date	Examiner

US CLASSIFICATION SEARCHED			
Class	Subclass	Date	Examiner
36	45, 47, 9R, 84	8/1/17	/MB/

* See search history printout included with this form or the SEARCH NOTES box below to determine the scope of the search.

SEARCH NOTES		
Search Notes	Date	Examiner
Consulted Parent applications	8/1/17	/MB/

INTERFERENCE SEARCH			
US Class/ CPC Symbol	US Subclass / CPC Group	Date	Examiner
A43B	1/04, 23/0205	8/1/17	/MB/

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	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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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						

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Examiner Initials*	Cite No	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc), date, pages(s), volume-issue number(s), publisher, city and/or country where published.	T5
	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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	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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	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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	Examiner Name	MARIE D. BAYS
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	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	/MARIE D BAYS/	Date Considered	08/01/2017

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[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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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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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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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

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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
	1	0761520		1904-05-31	Matthew	

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	1	20080110049		2008-05-15	Sokolowski et al.	
	2	20130239625		2013-09-19	Meir et al.	

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Examiner Initials*	Cite No	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc), date, pages(s), volume-issue number(s), publisher, city and/or country where published.	T[5]
	1	Patent Owner Preliminary Response Under 37 C.F.R. § 42.107 for Inter Partes Review IPR2017-00263 dated March 9, 2017, 24 pages.	
	2	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, and submitted to the US Patent and Trademark Office on March 9, 2017 as Exhibit 2001 to the Patent Owner Preliminary Response Under 37 C.F.R. § 42.107 dated March 9, 2017 for Inter Partes Review IPR2017-00263 and for Inter Partes Review I PR20 17-00264.	
	3	Trial Instituted Document in IPR2016-00920 dated October 20, 2016, 8 pages, and submitted to the US Patent and Trademark Office on March 9, 2017 as Exhibit 2002 to the Patent Owner Preliminary Response Under 37 C.F .R. § 42.107 dated March 9, 2017 for Inter Partes Review IPR2017-00263 and for Inter Partes Review I PR20 17-00264.	
	4	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, and submitted to the US Patent and Trademark Office on March 9, 2017 as Exhibit 2003 to the Patent Owner Preliminary Response Under 37 C.F .R. § 42.107 dated March 9, 2017 for Inter Partes Review IPR2017-00263.	
	5	Patent Owner Corrected Preliminary Response Under 37 C.F.R. § 42.107 for Inter Partes Review IPR2017-00263 dated March 27, 2017, 24 pages.	
	6	Patent Owner Updated Mandatory Notice Under 37 C.F.R. § 42.8 for Inter Partes Review IPR2017-00263 dated March 28, 2017, 5 pages.	
	7	Patent Owner Preliminary Response Under 37 C.F.R. § 42.107 for Inter Partes Review IPR2017-00264 dated March 9, 2017, 24 pages.	
	8	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, and submitted to the US Patent and Trademark Office on March 9, 2017 as Exhibit 2003 to the Patent Owner Preliminary Response Under 37 C.F .R. § 42.107 dated March 9, 2017 for Inter Partes Review IPR2017-00264.	
	9	Patent Owner Corrected Preliminary Response Under 37 C.F.R. § 42.107 for Inter Partes Review IPR2017-00264 dated March 27, 2017, 24 pages.	
	10	Patent Owner Updated Mandatory Notice Under 37 C.F.R. § 42.8 for Inter Partes Review IPR2017-00264 dated March 28, 2017, 5 pages.	

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	Attorney Docket Number	NIKE.276100/081313US82CON

	11	Office Action in corresponding U.S. Patent Application No. 15/358,723, dated April 5, 2017, 16 pages.

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EAST Search History

EAST Search History (Prior Art)

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	1	1910251		1933-05-23	Joha	
	2	1888172	A	1932-11-15	Joha	
	3	2147197	A	1939-02-14	Glidden	
	4	5345638	A	1994-09-13	Nishida	
	5	6401364	B1	2002-06-11	Burt	
	6	6931762	B1	2005-08-23	Dua	
	7	D517297	S	2006-03-21	Jones et al.	
	8	7051460	B2	2006-05-30	Orei et al.	

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	Attorney Docket Number	NIKE.276100/081313US82CON

	9	7347011	B2	2008-03-25	Dua et al.	
	10	8490299	B2	2013-07-23	Dua et al.	
	11	9084449	B2	2015-07-21	Bell et al.	
	12	2343390		1944-03-07	Ushakoff	
	13	2608078		1952-08-26	Anderson	
	14	2569764		1951-10-02	Jonas	
	15	2314098		1943-03-16	McDonald	
	16	2641004		1953-06-09	Whiting et al.	
	17	2440393		1949-04-27	Clark	
	18	4750339		1988-06-14	Simpson et al.	
	19	6333105		2001-12-25	Tanaka et al.	

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	20	3583081		1974-06-08	Hayashi	
	21	4447967		1984-05-15	Zaino	
	22	4813158		1989-03-21	Brown	
	23	4756098		1988-07-12	Boggia	
	24	4785558		1988-11-22	Shiomura	
	25	0601192		1898-03-22	Woodside	
	26	1215198		1917-02-06	Rothstein	
	27	1597934		1926-08-31	Stimpson	
	28	4354318		1982-10-19	Frederick et al.	
	29	1902780		1933-03-21	Holden et al.	
	30	2001293		1935-05-14	Wilson	

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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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Attorney Docket Number	NIKE.276100/081313US82CON

Examiner Initial*	Cite No	Publication Number	Kind Code[1]	Publication Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear
	1	20020078599	A1	2002-06-27	Delgorgue et al.	
	2	20020148258	A1	2002-10-17	Cole et al.	
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Attorney Docket Number	NIKE.276100/081313US82CON

Examiner Initial*	Cite No	Foreign Document Number[3]	Country Code[2] i	Kind Code[4]	Publication Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear	T[5]
	1	19728848	DE		1999-01-07	Kundert Werke Gmbh		
	2	0448714	EP		1991-10-02	Toray Industries		
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Examiner Initials*	Cite No	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc), date, pages(s), volume-issue number(s), publisher, city and/or country where published.	T5
	1	International Search Report and Written Opinion in connection with PCT/US2009/056795 mailed on April 20, 2010.	
	2	International Search Report and Written Opinion in connection with PCT/US2012/028576 mailed on October 1, 2012.	
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	5	International Preliminary Report on Patentability in connection with PCT/US2012/028534 mailed September 17, 2013.	

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	Examiner Name	MARIE D. BAYS
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	6	International Preliminary Report on Patentability in connection with PCT/US2012/028576 mailed September 17, 2013.	

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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).

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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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15610089	NOA	08/08/2017	NIKE.276100/081313US82CON
	1449	08/08/2017	NIKE.276100/081313US82CON
	1449	08/08/2017	NIKE.276100/081313US82CON
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
15/610,089	05/31/2017	3765	1600	NIKE.276100/08-1313US82CO	20	2

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Inventor(s)

BHUPESH DUA, Portland, OR;
EDWARD NATHANIEL THOMAS, Portland, OR;

Applicant(s)

NIKE, Inc., Beaverton, OR;

Power of Attorney: The patent practitioners associated with Customer Number 78342

Domestic Priority data as claimed by applicant

This application is a CON of 14/503,514 10/01/2014 PAT 9743705
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
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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

Skechers EX1013-p. 7404
Skechers v Nike

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

Projected Publication Date: 09/14/2017

Non-Publication Request: No

Early Publication Request: No

Title

ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER

Preliminary Class

012

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).

Skechers EX1013-p. 7405
Skechers v Nike

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

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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.

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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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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.

Skechers EX1013-p. 7406
Skechers v Nike

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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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
15/610,089	05/31/2017	BHUPESH DUA	NIKE.276100/08-1313US82CO

CONFIRMATION NO. 4757

78342
SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

37 CFR 1.48(f)
ACKNOWLEDGEMENT LETTER

OC000000093524508

Date Mailed: 08/18/2017

NOTICE OF ACCEPTANCE OF REQUEST UNDER 37 CFR 1.48(f)

This is in response to the applicant's request under 37 CFR 1.48(f) submitted on 07/28/2017.

The request under 37 CFR 1.48(f) to correct the inventorship, to correct or update the name of an inventor, or to correct the order of names of joint inventors is accepted.

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**.

/rmohamed/

Skechers EX1013-p. 7407
Skechers v Nike

To: IPDOCKET@SHB.COM,IPRCDKT@SHB.COM,nike_docketing@cardinal-ip.com
From: PAIR_eOfficeAction@uspto.gov
Cc: PAIR_eOfficeAction@uspto.gov
Subject: Private PAIR Correspondence Notification for Customer Number 78342

Aug 18, 2017 01:23:16 PM

Dear PAIR Customer:

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613
UNITED STATES

The following USPTO patent application(s) associated with your Customer Number, 78342 , have new outgoing correspondence. This correspondence is now available for viewing in Private PAIR.

The official date of notification of the outgoing correspondence will be indicated on the form PTOL-90 accompanying the correspondence.

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Application	Document	Mailroom Date	Attorney Docket No.
15610089	APP.FILE.REC	08/18/2017	NIKE.276100/08-1313US82CO
	R48.REQ.G	08/18/2017	NIKE.276100/08-1313US82CO

To view your correspondence online or update your email addresses, please visit us anytime at https://sportal.uspto.gov/secure/myportal/privatepair.

If you have any questions, please email the Electronic Business Center (EBC) at EBC@uspto.gov with 'e-Office Action' on the subject line or call 1-866-217-9197 during the following hours:

Monday - Friday 6:00 a.m. to 12:00 a.m.

Thank you for prompt attention to this notice,

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PATENT APPLICATION INFORMATION RETRIEVAL SYSTEM

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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
15/610,089	05/31/2017	BHUPESH DUA	NIKE.276100/08-1313US82CO

CONFIRMATION NO. 4757

78342
SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

PUBLICATION NOTICE



Title:ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER

Publication No.US-2017-0258172-A1
Publication Date:09/14/2017

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 Public Records Division. The Public Records Division 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, Public Records Division, 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 https://portal.uspto.gov/pair/PublicPair. Prior to publication, such status information is confidential and may only be obtained by applicant using the private side of PAIR.

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

Skechers EX1013-p. 7409
Skechers v Nike

To: IPDOCKET@SHB.COM,IPRCDKT@SHB.COM,nike_docketing@cardinal-ip.com
From: PAIR_eOfficeAction@uspto.gov
Cc: PAIR_eOfficeAction@uspto.gov
Subject: Private PAIR Correspondence Notification for Customer Number 78342

Sep 15, 2017 04:19:08 PM

Dear PAIR Customer:

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613
UNITED STATES

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Application	Document	Mailroom Date	Attorney Docket No.
15610089	NTC.PUB	09/14/2017	NIKE.276100/08-1313US82CO

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If you have any questions, please email the Electronic Business Center (EBC) at EBC@uspto.gov with 'e-Office Action' on the subject line or call 1-866-217-9197 during the following hours:

Monday - Friday 6:00 a.m. to 12:00 a.m.

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REQUEST FOR CONTINUED EXAMINATION(RCE)TRANSMITTAL
(Submitted Only via EFS-Web)

Application Number	15/610,089	Filing Date	2017-05-31	Docket Number (if applicable)	NIKE.276100	Art Unit	3765
First Named Inventor	BHUPESH DUA			Examiner Name	MARIE D. BAYS		

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application.
Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, to any international application that does not comply with the requirements of 35 U.S.C. 371, or to any design application. The Instruction Sheet for this form is located at WWW.USPTO.GOV.

SUBMISSION REQUIRED UNDER 37 CFR 1.114

Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

☐ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

- ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____
- ☐ Other _____

☒ Enclosed

- ☐ Amendment/Reply
- ☒ Information Disclosure Statement (IDS)
- ☐ Affidavit(s)/ Declaration(s)
- ☐ Other _____

MISCELLANEOUS

☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of months _____ (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)

☐ Other _____

FEES

The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

☒ The Director is hereby authorized to charge any underpayment of fees, or credit any overpayments, to Deposit Account No 192112

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

☒ Patent Practitioner Signature

Applicant Signature

PTO/SB/30EFS (07-14)
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Signature of Registered U.S. Patent Practitioner			
Signature	/ELIZABETH A. LUCAS/	Date (YYYY-MM-DD)	2017-09-25
Name	ELIZABETH A. LUCAS	Registration Number	74247

This collection of information is required by 37 CFR 1.114. 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.

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

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.

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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 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.

Skechers EX1013-p. 7413
Skechers v Nike

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	1841518		1932-01-19	Bellak	
	2	8069692	B2	2011-12-06	Chung et al.	
	3	6845284	B2	2005-01-18	Bingham et al.	
	4	5557527	A	1996-09-17	Kotaki et al.	
	5	5081854	A	1992-01-21	Lonati	
	6	4624115		1986-11-25	Safrit et al.	
	7	4438574		1984-03-27	Johnson	
	8	4172293		1979-10-30	Vistins	

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

	9	4151662		1979-05-01	Vistins	
	10	4057981		1977-11-15	Runac	
	11	3863272		1975-02-04	Guille	
	12	3769723		1973-11-06	Masterson et al.	
	13	2467237		1949-04-12	Sherman et al.	

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Examiner Initial*	Cite No	Publication Number	Kind Code[1]	Publication Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear
	1	20100287790	A1	2010-11-18	Sokolowski et al.	
	2	20060130359	A1	2006-06-22	Dua et al.	

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Examiner Initial*	Cite No	Foreign Document Number[3]	Country Code[2] i	Kind Code[4]	Publication Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear	T[5]

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 Initials*	Cite No	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc), date, pages(s), volume-issue number(s), publisher, city and/or country where published.	T[5]
	1	Pre-Interview First Office Action dated 08/16/2017 in U.S. Patent Application No. 15/664,587, 7 pages.	
	2	Pre-Interview First Office Action dated 08/16/2017 in US Application No. 15/646,835, 7 pages.	
	3	PreInterview First Office Action dated 08/16/2017 in US Application No. 15/650,499, 7 pages.	
	4	Preinterview First Office Action dated 08/17/2017 in US Application No. 15/664,650 7 pages.	
	5	Pre-Interview First Office Action dated 08/18/2017 in U.S. Patent Application No. 15/664,623, 9 pages.	
	6	Pre-Interview First Office Action dated 08/21/2017 in US Application No. 15/659,053, 7 pages.	
	7	Pre-Interview Office Action dated August 7, 2017 in U.S. Patent Application No. 15/650,488, 5 pages.	
	8	Decision Denying Petitioner's Request for Rehearing Under 37 C.F.R. § 42.71 for Inter Partes Review IPR2017-00263 and for Inter Partes Review IPR2017-0264, dated July 20, 2017, 12 pages.	

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

	9	Record of Oral Hearing for Inter Partes Review IPR2016-00921 and for Inter Partes Review IPR2016-00922, dated July 26, 2017, 74 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)	2017-09-25
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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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.

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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.

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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.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/664,587	07/31/2017	BHUPESH DUA	NIKE.276096/08-1313US78CO	9048

78342 7590 08/16/2017

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER
BAYS, MARIE D

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
08/16/2017	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPDOCKET@SHB.COM
IPRCDKT@SHB.COM
nike_docketing@cardinal-ip.com

First Action Interview Pilot Program Pre-Interview Communication	Application No. 15/664,587	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

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

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Status

1)☐ Responsive to communication(s) filed on _____.

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

Disposition of Claims

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

2a) Of the above claim(s) _____ is/are withdrawn from consideration.

3)☐ Claim(s) _____ is/are allowed.

4)☒ Claim(s) *21-40* is/are rejected.

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

6)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

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

8)☐ 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

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

a)☐ All b)☐ Some * c)☐ None of:

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.

Contact Information

Examiner's Telephone Number: (571)272-4559

Examiner's Typical Work Schedule: M-Th 6:30-4:00

Supervisor's Name: Khoa Huynh

Supervisor's Telephone Number: 571-272-4888

Attachment(s)	
1) ☒ Notice of References Cited (PTO-892)	3) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
2) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.	4) ☐ Other: _____.

Skechers EX1013-p. 7421
Skechers v Nike

First Action Interview Pilot Program Pre-Interview Communication	**Application No.** 15/664,587	**Applicant(s)** DUA ET AL.	
	Examiner MARIE BAYS	**Art Unit** 3765	**AIA (First Inventor to File) Status** No

Notification of Rejection(s) and/or Objection(s)

#	Claim(s)	Reference(s) (if applicable)	Rejection Statutory Basis	Brief Explanation of Rejection
	21-29	Bellak 1841518	35USC102	Shows flat knit upper (see figure 1) with strips (17 and 19) and apertures (inherently in all knitted elements).
	30-40	Bellak	35USC 103	Shows all but different yarns/stretch and sole
	30-34, and 36	Basch 2330199	35USC 103	Teaches strips of different property yarns (1, 2, 1')
	35-40	Joha 1910251	35USC103	Teaches attaching a sole (25) to a flat knit upper (2)

Expanded Discussion/Commentary		
		Double Patenting with 15/646835, 15/659053, 15/610089, 7347011, 15/664650

DATE: 11 August, 2017	/Marie Bays/ Primary Examiner Art Unit: 3765	

Notice of References Cited	Application/Control No. 15/664,587	Applicant(s)/Patent Under Reexamination DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	Page 1 of 2

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*	B	US-1,888,172 A	11-1932	JOHA ELMER N	A43B1/02	36/11
*	C	US-1,902,780 A	03-1933	HOLDEN ROGER M	D04B1/26	36/55
*	D	US-1,910,251 A	05-1933	JOHA ELMER N	D04B1/24	12/142S
*	E	US-2,047,724 A	07-1936	ZUCKERMAN LOUIS G	D04B1/24	36/11
*	F	US-2,330,199 A	09-1943	HOLMES BASCH OLIVE	D04B1/106	2/80
*	G	US-2,467,237 A	04-1949	SHERMAN ROY E	A43B1/04	12/114.6
*	H	US-3,769,723 A	11-1973	Masterson, deceased; William Charles	A43B5/02	36/128
*	I	US-3,863,272 A	02-1975	Guille; Robert	A41B11/007	12/142G
*	J	US-4,785,558 A	11-1988	Shiomura; Kazuhiko	A43B1/04	36/114
*	K	US-5,345,638 A	09-1994	Nishida; Mamoru	A41H3/08	12/146C
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Notice of References Cited	Application/Control No. 15/664,587	Applicant(s)/Patent Under Reexamination DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	Page 2 of 2

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*	C	US-6,931,762 B1	08-2005	Dua; Bhupesh	A43B1/04	12/142G
*	D	US-2005/0193592 A1	09-2005	Dua, Bhupesh	A43B1/04	36/45
*	E	US-7,347,011 B2	03-2008	Dua; Bhupesh	A43B1/04	36/10
*	F	US-7,814,598 B2	10-2010	Dua; Bhupesh	A43B1/04	12/146C
*	G	US-2010/0287790 A1	11-2010	Sokolowski; Susan L.	A43B23/0235	36/47
*	H	US-8,042,288 B2	10-2011	Dua; Bhupesh	A43B1/04	36/10
*	I	US-8,266,749 B2	09-2012	Dua; Bhupesh	A43B1/04	12/146C
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	Examiner MARIE BAYS	Art Unit 3765	Page 2 of 2

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/646,835	07/11/2017	BHUPESH DUA	NIKE.276099/08-1313US80CO	5903

78342 7590 08/16/2017

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER
BAYS, MARIE D

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
08/16/2017	ELECTRONIC

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nike_docketing@cardinal-ip.com

First Action Interview Pilot Program Pre-Interview Communication	Application No. 15/646,835	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

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Status

1)☐ Responsive to communication(s) filed on _____.

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

Disposition of Claims

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

2a) Of the above claim(s) _____ is/are withdrawn from consideration.

3)☐ Claim(s) _____ is/are allowed.

4)☒ Claim(s) *21-40* is/are rejected.

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

6)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

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

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

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Priority under 35 U.S.C. § 119

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

a)☐ All b)☐ Some * c)☐ None of:

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

Contact Information

Examiner's Telephone Number: (571)272-4559

Examiner's Typical Work Schedule: M-Th 6:30-4:00

Supervisor's Name: Khoa Huynh

Supervisor's Telephone Number: 571-272-4888

Attachment(s)	
1) ☒ Notice of References Cited (PTO-892)	3) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
2) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.	4) ☐ Other: _____.

First Action Interview Pilot Program Pre-Interview Communication	Application No. 15/646,835	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

Notification of Rejection(s) and/or Objection(s)

#	Claim(s)	Reference(s) (if applicable)	Rejection Statutory Basis	Brief Explanation of Rejection
	21-25, and 27-38	Basch 2330199	35USC102	Basch shown knit footwear with alternating strips/yarns 1, 1', 2.
	26, 39, and 40	Basch 2330199	35 USC 103	Either claims broad enough to read on Basch alone, or obvious to extend throughout sides.
	26, 39, and 40	Holden 1902780	35 USC 103	Modifying reference showing alternating ribs throughout the footwear.
	26, 39, and 40	Bellak 1841518	35USC 103	Modifying reference showing alternating ribs throughout the footwear

Expanded Discussion/Commentary

		Double Patenting rejections/objections with 15/610089, 15/650488, 15/664587, 15/650499, 15/6590533, and Patent 8042288

DATE:		
10 August, 2017	/Marie Bays/ Primary Examiner Art Unit: 3765	

Notice of References Cited	Application/Control No. 15/646,835	Applicant(s)/Patent Under Reexamination DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	Page 1 of 2

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	Examiner MARIE BAYS	Art Unit 3765	Page 2 of 2

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	CPC Classification	US Classification
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*	B	US-6,931,762 B1	08-2005	Dua; Bhupesh	A43B1/04	12/142G
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	K	US-				
	L	US-				
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*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
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Notice of References Cited	Application/Control No. 15/646,835	Applicant(s)/Patent Under Reexamination DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	Page 1 of 2

U.S. PATENT DOCUMENTS

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Notice of References Cited	Application/Control No. 15/646,835	Applicant(s)/Patent Under Reexamination DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	Page 2 of 2

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www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/650,499	07/14/2017	BHUPESH DUA	NIKE.278829/08-1313US98CO	5458

78342 7590 08/16/2017

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER
BAYS, MARIE D

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
08/16/2017	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPDOCKET@SHB.COM
IPRCDKT@SHB.COM
nike_docketing@cardinal-ip.com

Skechers EX1013-p. 7434
Skechers v Nike

First Action Interview Pilot Program Pre-Interview Communication	Application No. 15/650,499	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

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

THE SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE **ONE MONTH OR THIRTY (30) DAYS,** WHICHEVER IS LONGER, FROM THE MAILING OR NOTIFICATION DATE OF THIS COMMUNICATION.

This time period for reply is extendable under 37 CFR 1.136(a) for only ONE additional MONTH.

This communication constitutes notice under 37 CFR 1.136(a)(1)(i).

Applicant must, within the time period for reply, file: (1) A letter requesting not to have a first action interview; (2) A reply under 37 CFR 1.111 waiving the first action interview and First Action Interview Office Action; or (3) An Applicant Initiated Interview Request Form (PTOL-413A) electronically via EFS-Web, accompanied by a proposed amendment or arguments, and schedule the interview within 2 months from the filing of the request. A failure to respond to this communication will be treated as a request not to have an interview. If applicant waives the First Action Interview Office Action, the instant Pre-Interview Communication is deemed the first Office Action on the Merits. The next subsequent Office action may be made final if appropriate. See MPEP 706.07(a).

Status

1)☐ Responsive to communication(s) filed on _____.

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

Disposition of Claims

2)☒ Claim(s) *21-37* is/are pending in the application.

2a) Of the above claim(s) _____ is/are withdrawn from consideration.

3)☐ Claim(s) _____ is/are allowed.

4)☒ Claim(s) *21-37* is/are rejected.

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

6)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

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

8)☐ 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

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

a)☐ All b)☐ Some * c)☐ None of:

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.

Contact Information

Examiner's Telephone Number: (571)272-4559

Examiner's Typical Work Schedule: M-Th 6:30-4:00

Supervisor's Name: Khoa Huynh

Supervisor's Telephone Number: 571-272-4888

Attachment(s)	
1) ☒ Notice of References Cited (PTO-892)	3) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
2) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.	4) ☐ Other: _____.

First Action Interview Pilot Program Pre-Interview Communication	**Application No.** 15/650,499	**Applicant(s)** DUA ET AL.	
	Examiner MARIE BAYS	**Art Unit** 3765	**AIA (First Inventor to File) Status** No

Notification of Rejection(s) and/or Objection(s)

#	Claim(s)	Reference(s) (if applicable)	Rejection Statutory Basis	Brief Explanation of Rejection
	21-38	15/650488	Double Patenting	Obvious type double patenting

Expanded Discussion/Commentary

DATE: 11 August, 2017	/Marie Bays/ Primary Examiner Art Unit: 3765	

Notice of References Cited	Application/Control No. 15/650,499	Applicant(s)/Patent Under Reexamination DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	Page 1 of 2

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	Examiner MARIE BAYS	Art Unit 3765	Page 2 of 2

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	Examiner MARIE BAYS	Art Unit 3765	Page 1 of 2

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/664,650	07/31/2017	BHUPESH DUA	NIKE.276113/08-1313US95CO	8565

78342 7590 08/17/2017

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER
BAYS, MARIE D

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
08/17/2017	ELECTRONIC

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IPRCDKT@SHB.COM
nike_docketing@cardinal-ip.com

First Action Interview Pilot Program Pre-Interview Communication	Application No. 15/664,650	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

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

THE SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE **ONE MONTH OR THIRTY (30) DAYS,** WHICHEVER IS LONGER, FROM THE MAILING OR NOTIFICATION DATE OF THIS COMMUNICATION.

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Status

1)☐ Responsive to communication(s) filed on _____.

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

Disposition of Claims

2)☒ Claim(s) *21-38* is/are pending in the application.

2a) Of the above claim(s) _____ is/are withdrawn from consideration.

3)☐ Claim(s) _____ is/are allowed.

4)☒ Claim(s) *21-38* is/are rejected.

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

6)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

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

8)☐ 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

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

a)☐ All b)☐ Some * c)☐ None of:

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.

Contact Information

Examiner's Telephone Number: (571)272-4559

Examiner's Typical Work Schedule: M-Th 6:30-4:00

Supervisor's Name: Khoa Huynh

Supervisor's Telephone Number: 571-272-4888

Attachment(s)

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

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

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

4) ☐ Other: _____.

First Action Interview Pilot Program Pre-Interview Communication	**Application No.** 15/664,650	**Applicant(s)** DUA ET AL.	
	Examiner MARIE BAYS	**Art Unit** 3765	**AIA (First Inventor to File) Status** No

Notification of Rejection(s) and/or Objection(s)

#	Claim(s)	Reference(s) (if applicable)	Rejection Statutory Basis	Brief Explanation of Rejection
	21-38	Brier 5353524	35USC103	Shows a shoe comprising a knitted interior layer (10), an exterior layer (shown in figure 4 and/or 55/62) and an intermediate layer (60/61) except for exact method of making knitted layer.
	21-38	Joha 1910251	35 USC 103	teaches forming a knitted layer by flat knitting (page 1 lines73-95) and seams as claimed.
	21-38	Bellak 1841518	35 USC 103	teaches forming a knitted layer from a flat knit textile (figure 1) and seams (29 and 29').

Expanded Discussion/Commentary

		Double Patenting with 7347011,

DATE: 14 August, 2017	/Marie Bays/ Primary Examiner Art Unit: 3765	

Notice of References Cited	Application/Control No. 15/664,650	Applicant(s)/Patent Under Reexamination DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	Page 1 of 2

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	Examiner MARIE BAYS	Art Unit 3765	Page 2 of 2

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/664,623	07/31/2017	BHUPESH DUA	NIKE.276110/08-1313US92CO	7721

78342 7590 08/18/2017

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EXAMINER
BAYS, MARIE D

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
08/18/2017	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPDOCKET@SHB.COM
IPRCDKT@SHB.COM
nike_docketing@cardinal-ip.com

First Action Interview Pilot Program Pre-Interview Communication	Application No. 15/664,623	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

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

THE SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE **ONE MONTH OR THIRTY (30) DAYS,** WHICHEVER IS LONGER, FROM THE MAILING OR NOTIFICATION DATE OF THIS COMMUNICATION.

This time period for reply is extendable under 37 CFR 1.136(a) for only ONE additional MONTH.

This communication constitutes notice under 37 CFR 1.136(a)(1)(i).

Applicant must, within the time period for reply, file: (1) A letter requesting not to have a first action interview; (2) A reply under 37 CFR 1.111 waiving the first action interview and First Action Interview Office Action; or (3) An Applicant Initiated Interview Request Form (PTOL-413A) electronically via EFS-Web, accompanied by a proposed amendment or arguments, and schedule the interview within 2 months from the filing of the request. A failure to respond to this communication will be treated as a request not to have an interview. If applicant waives the First Action Interview Office Action, the instant Pre-Interview Communication is deemed the first Office Action on the Merits. The next subsequent Office action may be made final if appropriate. See MPEP 706.07(a).

Status

1)☐ Responsive to communication(s) filed on _____.

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

Disposition of Claims

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

2a) Of the above claim(s) _____ is/are withdrawn from consideration.

3)☐ Claim(s) _____ is/are allowed.

4)☒ Claim(s) *21-40* is/are rejected.

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

6)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

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

8)☐ 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

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

a)☐ All b)☐ Some * c)☐ None of:

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.

Contact Information

Examiner's Telephone Number: (571)272-4559

Examiner's Typical Work Schedule: M-Th 6:30-4:00

Supervisor's Name: Khoa Huynh

Supervisor's Telephone Number: 571-272-4888

Attachment(s)	
1) ☒ Notice of References Cited (PTO-892)	3) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
2) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.	4) ☐ Other: _____.

First Action Interview Pilot Program Pre-Interview Communication	Application No. 15/664,623	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

Notification of Rejection(s) and/or Objection(s)

#	Claim(s)	Reference(s) (if applicable)	Rejection Statutory Basis	Brief Explanation of Rejection
	21-40	Nishida 5345638	35USC103	Teaches method of providing a knit textile (1), cutting a footwear element (30) therefrom with a longitudinal seam (at 29.3 and 29.4) except for method of forming the knit textile.
	21-40	Reed 3985003	35USC103	Teaches circular knitting as a known method of forming a knit textile (10) with a pattern outline (22) as a method of providing a pattern cutline for making an element for forming a garment.

Expanded Discussion/Commentary

		The exact diameter of the circular knit textile structure is considered to be obvious in view of conventional circular knitting machines. It is noted that the range claimed in claim 36 does not appear to have basis in the original specification.
		Additionally cited references to Safrit (4624115), Lonati (5081854), and Bingham (6845284) teach that it is known to circular knit a textile with a pattern/outline therein and cutting along the outline to obtain an element for forming a garment. Footwear and shoe linings are considered to be "garments" and Nishida teaches that the method is known to cut a footwear element from a knitted textile element.
		Double Patenting 7814598

DATE: 15 August, 2017	/Marie Bays/ Primary Examiner Art Unit: 3765	

Notice of References Cited	Application/Control No. 15/664,623	Applicant(s)/Patent Under Reexamination DUA ET AL.	
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*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/659,053	07/25/2017	BHUPESH DUA	NIKE.276097/08-1313US79CO	4862

78342 7590 08/21/2017

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER	
BAYS, MARIE D	

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
08/21/2017	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPDOCKET@SHB.COM
IPRCDKT@SHB.COM
nike_docketing@cardinal-ip.com

First Action Interview Pilot Program Pre-Interview Communication	Application No. 15/659,053	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

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

THE SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE **ONE MONTH OR THIRTY (30) DAYS,** WHICHEVER IS LONGER, FROM THE MAILING OR NOTIFICATION DATE OF THIS COMMUNICATION.

This time period for reply is extendable under 37 CFR 1.136(a) for only ONE additional MONTH.

This communication constitutes notice under 37 CFR 1.136(a)(1)(i).

Applicant must, within the time period for reply, file: (1) A letter requesting not to have a first action interview; (2) A reply under 37 CFR 1.111 waiving the first action interview and First Action Interview Office Action; or (3) An Applicant Initiated Interview Request Form (PTOL-413A) electronically via EFS-Web, accompanied by a proposed amendment or arguments, and schedule the interview within 2 months from the filing of the request. A failure to respond to this communication will be treated as a request not to have an interview. If applicant waives the First Action Interview Office Action, the instant Pre-Interview Communication is deemed the first Office Action on the Merits. The next subsequent Office action may be made final if appropriate. See MPEP 706.07(a).

Status

1)☐ Responsive to communication(s) filed on _____.

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

Disposition of Claims

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

2a) Of the above claim(s) _____ is/are withdrawn from consideration.

3)☐ Claim(s) _____ is/are allowed.

4)☒ Claim(s) *21-40* is/are rejected.

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

6)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

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

8)☐ 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

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

a)☐ All b)☐ Some * c)☐ None of:

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.

Contact Information

Examiner's Telephone Number: (571)272-4559

Examiner's Typical Work Schedule: M-Th 6:30-4:00

Supervisor's Name: Khoa Huynh

Supervisor's Telephone Number: 571-272-4888

Attachment(s)	
1) ☒ Notice of References Cited (PTO-892)	3) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
2) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.	4) ☐ Other: _____.

Skechers EX1013-p. 7458
Skechers v Nike

First Action Interview Pilot Program Pre-Interview Communication	Application No. 15/659,053	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

Notification of Rejection(s) and/or Objection(s)

#	Claim(s)	Reference(s) (if applicable)	Rejection Statutory Basis	Brief Explanation of Rejection
	21-29	Bellak 1841518	35USC102	Alternating strrip (17 and 19) and apertures (holes inherently in knitted structures)
	21-31	Basch 2330199	35USC102	Alternating strips (1, 2, 1') and apertures (holes inherently in knitted structures)
	32-40	Bellak or Basch	35 USC 103	All shown except sole
	32-40	Throneburg 6308438	35USC103	Teaches a sole (60/54) attached to knitted uppers (12)

Expanded Discussion/Commentary

		Double Patenting 15/646835, 15/664587, 15/610089, 12/879517, 12/032995, 15/664623

DATE: 11 August, 2017	/Marie Bays/ Primary Examiner Art Unit: 3765	

Notice of References Cited	Application/Control No. 15/659,053	Applicant(s)/Patent Under Reexamination DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	Page 1 of 2

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	CPC Classification	US Classification
*	A	US-1,841,518 A	01-1932	HENRY BELLAK	D04B1/24	36/11
*	B	US-1,888,172 A	11-1932	JOHA ELMER N	A43B1/02	36/11
*	C	US-1,902,780 A	03-1933	HOLDEN ROGER M	D04B1/26	36/55
*	D	US-1,910,251 A	05-1933	JOHA ELMER N	D04B1/24	12/142S
*	E	US-2,047,724 A	07-1936	ZUCKERMAN LOUIS G	D04B1/24	36/11
*	F	US-2,330,199 A	09-1943	HOLMES BASCH OLIVE	D04B1/106	2/80
*	G	US-2,467,237 A	04-1949	SHERMAN ROY E	A43B1/04	12/114.6
*	H	US-3,769,723 A	11-1973	Masterson, deceased; William Charles	A43B5/02	36/128
*	I	US-3,863,272 A	02-1975	Guille; Robert	A41B11/007	12/142G
*	J	US-4,785,558 A	11-1988	Shiomura; Kazuhiko	A43B1/04	36/114
*	K	US-5,345,638 A	09-1994	Nishida; Mamoru	A41H3/08	12/146C
*	L	US-6,308,438 B1	10-2001	Throneburg; James L.	A43B1/02	36/11
*	M	US-6,558,784 B1	05-2003	Norton; Edward J.	A43B5/002	12/146C

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Notice of References Cited	Application/Control No. 15/659,053	Applicant(s)/Patent Under Reexamination DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	Page 2 of 2

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*	C	US-6,931,762 B1	08-2005	Dua; Bhupesh	A43B1/04	12/142G
*	D	US-2005/0193592 A1	09-2005	Dua, Bhupesh	A43B1/04	36/45
*	E	US-7,347,011 B2	03-2008	Dua; Bhupesh	A43B1/04	36/10
*	F	US-7,814,598 B2	10-2010	Dua; Bhupesh	A43B1/04	12/146C
*	G	US-2010/0287790 A1	11-2010	Sokolowski; Susan L.	A43B23/0235	36/47
*	H	US-8,042,288 B2	10-2011	Dua; Bhupesh	A43B1/04	36/10
*	I	US-8,266,749 B2	09-2012	Dua; Bhupesh	A43B1/04	12/146C
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	Examiner MARIE BAYS	Art Unit 3765	Page 1 of 2

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	Examiner MARIE BAYS	Art Unit 3765	Page 2 of 2

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/650,488	07/14/2017	BHUPESH DUA	NIKE.278828/081313US97CON	4090

78342 7590 08/07/2017

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER	
BAYS, MARIE D	

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
08/07/2017	ELECTRONIC

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nike_docketing@cardinal-ip.com

First Action Interview Pilot Program Pre-Interview Communication	Application No. 15/650,488	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

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Status

1)☐ Responsive to communication(s) filed on _____.

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

Disposition of Claims

2)☒ Claim(s) *21-36* is/are pending in the application.

2a) Of the above claim(s) _____ is/are withdrawn from consideration.

3)☐ Claim(s) _____ is/are allowed.

4)☒ Claim(s) *21-36* is/are rejected.

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

6)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

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

8)☐ 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

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

a)☐ All b)☐ Some * c)☐ None of:

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.

Contact Information

Examiner's Telephone Number: (571)272-4559

Examiner's Typical Work Schedule: M-Th 6:30-4:00

Supervisor's Name: Khoa Huynh

Supervisor's Telephone Number:

Attachment(s)	
1) ☒ Notice of References Cited (PTO-892)	3) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
2) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.	4) ☐ Other: _____.

Skechers EX1013-p. 7465
Skechers v Nike

First Action Interview Pilot Program Pre-Interview Communication	**Application No.** 15/650,488	**Applicant(s)** DUA ET AL.	
	Examiner MARIE BAYS	**Art Unit** 3765	**AIA (First Inventor to File) Status** No

Notification of Rejection(s) and/or Objection(s)

#	Claim(s)	Reference(s) (if applicable)	Rejection Statutory Basis	Brief Explanation of Rejection
	21-36	7347011	Obvious type Double Patenting	Claims directed towards flat knit (see cliams 15 and 68) and directed towards apertures formed by knitting stitch configurations see claims 19 and 26).
	21-36	6308438	Obvious type Double Patenting	Modifying reference for above. Showing of heel (68) and side (64) portions on a knitted upper (24).
	21-36	15/610089	Provisional Double Patenting	Claims directed towards flat knit upper with additional structures.

Expanded Discussion/Commentary

DATE: 02 August, 2017	/Marie Bays/ Primary Examiner Art Unit: 3765	

Notice of References Cited	Application/Control No. 15/650,488	Applicant(s)/Patent Under Reexamination DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	Page 1 of 1

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*	I	US-2006/0130359 A1	06-2006	Dua; Bhupesh	A43B1/04	36/9R
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Trials@uspto.gov
571-272-7822

Paper 11
Date Entered: July 20, 2017

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
Case IPR2017-00264
Patent 8,042,288 B2[1]

Before JOSIAH C. COCKS, MICHAEL J. FITZPATRICK, and JAMES B. ARPIN, Administrative Patent Judges.

ARPIN, *Administrative Patent Judge.*

DECISION
Denying Petitioner's Requests for Rehearing
37 C.F.R. § 42.71

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[1] This Decision applies to each of the listed cases. We exercise our discretion to issue one Decision to be docketed in each case. The parties are not authorized to use a multiple-case caption.

A. INTRODUCTION

On July 7, 2017, adidas AG ("Petitioner") filed Requests for Rehearing (IPR2017-00263, Paper 10, "'263 Req."; IPR2017-00264, Paper 10, "'264 Req.") of our June 7, 2017, Decisions (IPR2017-00263, Paper 9 "'263 Dec."; IPR2017-00264, Paper 9 "'264 Dec."), which denied institution of *inter partes* review of challenged claims of U.S. Patent No. 8,042,288 B2 ("the '288 patent").[2]

Petitioner argues that

> (1) in finding that the '263 IPR petition contains art *and* arguments that are "substantially the same" as those presented in the '920 IPR petition, the Board overlooks the fact that the petition features different grounds which rely on different base references, different combinations of secondary references, and provide markedly different arguments regarding obviousness,
>
> and
>
> (2) the decision represents an unreasonable judgment in weighing public interest and harassment factors because it ignores the fact that the subject matter of the challenged claims of the '288 patent *largely* overlaps other claims in the same family for which the Board already instituted review based on the same prior art.

'263 Req. 7–8 (emphases added); '264 Req. 7–8. We have considered Petitioner's Requests for Rehearing, and, for the reasons set forth below, Petitioner's Requests are *denied*.

---

[2] Petitioner raises substantially identical arguments in each of the Requests for Rehearing. Nevertheless, for purposes of clarity, we cite to relevant portions of the papers filed in each case throughout this Decision.

Skechers EX1013-p. 7470
Skechers v Nike

B. STANDARD OF REVIEW

Under 37 C.F.R. § 42.71(c), "[w]hen rehearing a decision on petition, a panel will review the decision for an abuse of discretion." "An abuse of discretion occurs if a decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment in weighing relevant factors." *Arnold P'ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004) (citing *In re Gartside,* 203 F.3d 1305, 1315–16 (Fed. Cir. 2000)). The request must identify, with specificity, all matters that the requesting party believes the Board misapprehended or overlooked. 37 C.F.R. § 42.71(d).

Nevertheless,

> [a] request for rehearing is not an opportunity merely to disagree with the panel's assessment of the arguments or weighing of the evidence, or to present new arguments or evidence. It is not an abuse of discretion to have performed an analysis or reached a conclusion with which Petitioner disagrees, and mere disagreement with the Board's analysis or conclusion is not a proper basis for rehearing.

Sophos, Inc. v. Finjan, Inc., Case IPR2015-01022, at 3–4 (PTAB Jan. 28, 2016) (Paper 9).

C. DISCUSSION

1. Discretion to Deny Petition Under 35 U.S.C. § 325(d)

a. The Same or Substantially the Same Prior Art

As Petitioner correctly notes, "Section 325(d) provides: 'In determining whether to institute or order a proceeding . . . the Director may take into account whether, and reject the petition or request because, the

Skechers EX1013-p. 7471
Skechers v Nike

same or substantially the same prior art *or* arguments previously were presented to the Office.'" '263 Req. 6 (emphasis added); *see* '264 Req. 5–6. In our Decisions exercising our discretion to deny Petitioner's Petitions in the captioned cases, we noted that, in the instant Petitions, "Petitioner challenges a subset of the claims challenged in IPR2016-00920 based on a subset of the references relied upon in the first ground asserted in IPR2016-00920." '263 Dec. 7 (citing IPR2017-00263, Paper 1, 6–7 ("'263 Pet.")); '264 Dec. 7. In particular, we noted that, in IPR2016-00920, Petitioner challenged claims 1–38 of the '288 patent as allegedly rendered obvious by the combined teachings of *Nishida*, *Reed*, *Shiomura*, and Shepherd; but, in IPR2017-00263, Petitioner is challenging claims 8 and 14–20 of the '288 patent as allegedly rendered obvious by the combined teachings of *Reed*, *Nishida*, and *Shiomura*. '263 Dec. 7; '264 Dec. 7. Thus, the same prior art presented in the instant Petitions was previously presented to the Office.

Petitioner argues that "[s]ubstantial evidence does not support the Board's finding that the art *and* arguments presented in the [Petitions of the above captioned cases] are substantially the same as those in the '920 IPR petition. To the contrary, the arguments are materially different with respect to the primary references and the obviousness combinations presented." '263 Req. 8 (emphasis added); '264 Req. 8. Nevertheless, our invocation of § 325(d) did not require that we determine that the same or substantially the same prior art *and* arguments presented in the instant Petitions previously were presented to the Office, but rather that the same or substantially the same prior art *or* arguments previously were presented to the Office. Thus, our exercise of discretion in denying of institution under 35 U.S.C. § 325(d)

Skechers EX1013-p. 7472
Skechers v Nike

is warranted by our finding that the same or substantially the same prior art had previously been presented to the Office.

b. The Same or Substantially the Same Prior Art and Arguments

Petitioner's identification of "primary" and "secondary" references and its application of the teachings of these references to the challenged claims are *arguments*. In particular, Petitioner argues that "by beginning with Reed as the primary reference instead of Nishida, the [person of ordinary skill in the art's (POSA's)] motivation to combine the references is *presented* differently." '263 Req. 11 (emphasis added); '264 Req. 10. As noted above, it was not necessary for us to determine whether those arguments also were the same or substantially the same as arguments previously presented to the Office. Nevertheless, to the extent that Petitioner contends that these arguments are not the same or substantially the same as its previous arguments because Petitioner relied on a different primary reference, the Board previously has held that the order in which art is applied in a utility application is not necessarily material. *See In re Bush*, 296 F.2d 491, 496 (CCPA 1961) ("where a rejection is predicated on two references each containing pertinent disclosure which has been pointed out to the applicant, we deem it to be of no significance, but merely a matter of exposition, that the rejection is stated to be on A in view of B instead of on B in view of A, or to term one reference primary and the other secondary.").

Here, for example, in the Petition in IPR2017-00263, Petitioner argues that:

Reed describes that the textile element is circular-knitted. (Ex.

Skechers EX1013-p. 7473
Skechers v Nike

> 1003, ¶89-90.) To the extent that Reed does not explicitly state that the circular-knitted textile element can be used to form an upper for an article of footwear, Nishida describes using conventional textile processes, such as weaving and/or knitting and/or embroidering, and program-controlled web of material production devices to form a textile structure with a single or a plurality of textile elements in the shape of a shoe upper. (Ex. 1003, ¶91-92.) The POSA would have understood that circular knitting is a conventional textile process. (Ex. 1003, ¶91.)

'263 Req. 10 (quoting IPR2017-00263, Paper 1, 16); *see* '264 Req. 10. However, but for the order, Petitioner asserted the combination of substantially the same teachings of Reed and Nishida in its Petition for IPR2016-00920. IPR2016-00920, Paper 1, 9–14. In particular, Petitioner relies on Nishida and/or Reed to demonstrate that these references are directed to articles of footwear (*id.* at 13–14 (claim chart citing to both Nishida and Reed) and that the references teach conventional textile processes, including circular knitting (*id.* at 11–12, 14–15 (a person of ordinary skill in the art would understand that Nishida's teachings of textile processes encompass Reed's specific teaching of circular knitting). Thus, we conclude that Petitioner's decision to apply less of the art and to apply the art in a different order in the instant Petitions presents arguments that are the same or substantially the same as those previously presented to the Office. *See In re Boyer*, 363 F.2d 455, 458 n.2 (CCPA 1966).

2. Additional Alleged Errors Warranting Rehearing

Petitioner alleges several additional errors warranting the grant of rehearing in the above-captioned cases. First, Petitioner alleges that, "due to vagueness in [Petitioner's] presentation" in the petition for IPR2016-00920,

Skechers EX1013-p. 7474
Skechers v Nike

we could not have substantively reviewed that petition. '263 Req. 11–12; '264 Req. 11–12. Thus, Petitioner contends that it has not sought to benefit from our previous review of its earlier petition in the instant Petitions and, instead, has chosen to challenge claims on different grounds. '263 Req. 12; '264 Req. 11–12. Nevertheless, Petitioner's decision to shift to alternative grounds for challenging patentability is itself a reaction to our rejection of the presentation in its earlier petition. '263 Req. 12; '264 Req. 11–12. As Petitioner explains, "Petitioner chose a different route in the '263 IPR petition, premised on a different ground that had already been deemed acceptable to the Board," in view of the rejection of the Petition in IPR2016-00920. '263 Req. 12; *see* '264 Req. 11–12. That route change, however, was guided by our decision denying institution in IPR2016-00920. Consequently, we remain persuaded that Petitioner's instant Petitions seek to benefit from our rejection of Petitioner's earlier petition. '263 Dec. 7–8; '264 Dec. 7–8.

Second, Petitioner argues that "the Board has repeatedly instituted *inter partes* review proceedings involving follow-on petitions under similar circumstances." '263 Req. 12; '264 Req. 12 (both citing *Arista Networks, Inc. v. Cisco Sys., Inc.*, Case IPR2016-00309 (PTAB June 11, 2016) (Paper 8) and *Arista Networks, Inc. v. Cisco Sys., Inc.*, Case IPR2015-00974 (PTAB Oct. 6, 2015) (Paper 7)). Initially, we note that none of the decisions cited by Petitioner is precedential. Further, despite their potential persuasive weight, we are not persuaded that any of the cited decisions is sufficiently similar to the circumstances presented in IPR2016-00920, IPR2017-00263, and IPR2017-00264. In particular, in the *Arista* cases, the petitioner's

Skechers EX1013-p. 7475
Skechers v Nike

second petition (IPR2016-00309) changed the basis of the challenge based on a particular reference, Amara, from anticipation to obviousness and added a new reference, CoreBuilder, to the references relied upon in its first petition (IPR2015-00974). '263 Req. 13; '264 Req. 13; *see Arista Networks, Inc. v. Cisco Sys., Inc.*, Case IPR2016- 00309, at 6–7 (PTAB June 11, 2016) (Paper 7). No such change of theory or addition of references occurred in the instant Petitions. Therefore, the circumstances in the *Arista* cases and in these cases are not sufficiently similar to persuade us to reach the same conclusion here that the Board reached in IPR2016-00309.

Third, Petitioner argues that "practically every recited feature of the challenged claims can be found in one or more claims of the '598, '749, and '011 patents, where the Board has instituted *inter partes* review." '263 Req. 14; '264 Req. 14. Thus, Petitioner contends that

> [b]y denying institution of the '288 patent, the Board gives insufficient weight to the public interest in having unpatentable claims canceled – a particularly appropriate factor where the Board has, in the context of the '921 and '922 IPRs, done much of the work needed to determine the unpatentability of these claims based on this combination of prior art that uses Reed as a primary reference.

'263 Req. 14–15; '264 Req. 14–15; *see* '263 Pet. 41–42; '264 Pet. 50–51. We disagree.

Initially, we note that, under the authority delegated to us by the Director,

> [we] may not authorize an inter partes review to be instituted unless [we] determine[] that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims

Skechers EX1013-p. 7476
Skechers v Nike

challenged in the petition.

35 U.S.C. § 314(a). Thus, we evaluate Petitioner's reasonable likelihood of prevailing in showing the unpatentability of challenged claims on a claim–by-claim basis, upon consideration of the arguments and evidence presented in the Petitions. A petitioner's arguments and evidence presented in other petitions with respect to other challenged claims of other patents is largely irrelevant to the institution decision in a different petition presenting different arguments and evidence for similar limitations in different challenged claims of a different patent.

Further, Petitioner argues that the public interest in having unpatentable claims cancelled should outweigh our concern over Patent Owner harassment. '263 Req. 14; '264 Req. 14–15. We remind Petitioner, however, that when determining whether to institute *inter partes* review, we determine if, consistent with Petitioner's burden and based first and foremost on the arguments and evidence presented by Petitioner, Petitioner has shown a reasonable likelihood of prevailing in showing the unpatentability of at least one claim. At the institution of review, we have made *no* final determination of unpatentability. *See, e.g., adidas AG v. Nike, Inc.*, Case IPR2016-00921, at 22 (PTAB Oct. 21, 2016) (Paper 6) ("At this stage of the proceeding, we have not made a final determination as to the patentability of any of these challenged claims or the construction of any claim term."). With regard to the instant Petitions, in denying institution, we concluded that, in accordance with the Congress's express grant of discretion to the Board, we would not entertain multiple petitions seeking institution of claims of a particular patent on similar grounds based on the same

Skechers EX1013-p. 7477
Skechers v Nike

references.

Finally, Petitioner argues that the pendency of other related petitions should outweigh our concern over the repetitive nature of Petitioner's challenges. '263 Req. 14–15; '264 Req. 14–15. In particular, Petitioner argues that "because 'the parties and the Board are already committed to reviewing the issues raised herein, and there is little additional burden to do so here' and 'it strikes us as inefficient, from a global perspective, for the Board to decide issues in [the related IPR proceeding] and for a district court to decide the same issues with respect to the [patent challenged in the follow-on petition].'" '263 Req. 14 (quoting *Polygroup Ltd. v. Willis Elec. Co., Ltd.*, Case IPR2016-00801, slip op. at 16 (PTAB Oct. 17, 2016) (Paper 8) ("*Polygroup*")); '264 Req. 15; *see* '263 Pet. 40; '264 Pet. 48–49.

Nevertheless, in *Polygroup*, the Board noted that "[i]n exercising our discretion under § 325(d), we take into account *numerous factors*, including the facts of each case, the burden on the parties and the Board, and the public interest." *Polygroup* at 16. Certainly, we considered that, among other factors, the parties and the panel already are committed to reviewing issues similar to those raised in the instant Petitions, and that, consequently, there may be less additional burden to do so here. *See* '263 Dec. 2; '264 Dec. 2; '263 Pet. 41–42; IPR2017-00264, Paper 1, 50–51. However, unlike the circumstances in IPR2014-01264 and IPR2016-00801, at issue in *Polygroup*, where different references were applied in each case, the earlier and instant Petitions at issue here involve the same references. *Compare* IPR2014-01264, Paper 1, 3–4 (asserting ten grounds of unpatentability challenging claims 1–15, each ground relying on either *Otto* or Smith, in

Skechers EX1013-p. 7478
Skechers v Nike

combination with one or more other references), *with* IPR2016-00801, Paper 2, 4 (asserting one ground of unpatentability challenging claims 1 and 7, relying on Miller in view of Pan, *Otto*, and Jumo). In the context of § 325(d), we found this distinction significant.

IV. ORDER

Accordingly, it is hereby:

ORDERED that Petitioner's Requests for Rehearing in IPR2017-00263 and IPR2017-00264 are *denied*.

Skechers EX1013-p. 7479
Skechers v Nike

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Skechers EX1013-p. 7480
Skechers v Nike

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IPR2016-00921, Paper No. 20
IPR2016-00922, Paper No. 20
July 26, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ADIDAS AG,
PETITIONER,

V.

NIKE, INC.,
PATENT OWNER.

Case IPR2016-00921 and IPR2016-00922
Patent 7,814,598 B2 and 8,226,749 B2

Record of Oral Hearing
Held: Wednesday, July 12th, 2017

BEFORE JOSIAH C. COCKS, MICHAEL J. FITZPATRICK, and JAMES B. ARPIN, Administrative Patent Judges.

ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER

The above-entitled matter came on for hearing on Wednesday, July 12th, 2017, commencing at 1:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia 22314.

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Skechers EX1013-p. 7482
Skechers v Nike

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Skechers EX1013-p. 7483
Skechers v Nike

PROCEEDINGS

JUDGE COCKS: Good afternoon. Welcome to the Board. We're here today for a consolidated oral argument in connection with two proceedings, IPR2016-00921 and IPR2016-00922 involving, respectively, Patent No. 7,814,598 and 8,266,749.

I am Judge Cocks. I am joined by Judges Arpin and Fitzpatrick. They are joining us remotely, so I would ask that when you address the panel, please step up to the podium microphone.

I'll just begin with introductions of counsel. Would counsel for the Petitioner please state their appearance today?

MS. WILLIAMS: Tiffany Williams --

JUDGE COCKS: Could you please step up to the microphone?

MS. WILLIAMS: Tiffany Williams, Kilpatrick Townsend, Petitioner.

JUDGE COCKS: All right. Thank you.

MR. STOCKWELL: Mitchell Stockwell, counsel for Petitioner, and also with me is my partner Mr. Kadaba, who is also counsel for the Petitioner.

Skechers EX1013-p. 7484
Skechers v Nike

JUDGE COCKS: All right. Thank you, Mr. Stockwell.

And would counsel for the Patent Owner please state their appearances?

MR. HARRIS: Thank you, Your Honor. I'm Michael Harris with Banner & Witcoff, for the Patent Owner, Nike, Inc. And also with me is Nike's Lead Counsel, Chris Renk, also from Banner & Witcoff; Aaron Bowling, from Banner & Witcoff.

And then we also have two representatives from Nike here today. The first is Brian Fogarty. Brian is the Senior Director of Global Intellectual Property Litigation at Nike.

And Mina Stricklin. Mina is Assistant General Counsel for Patents at Nike.

JUDGE COCKS: All right, thank you, Mr. Harris.

Now, as we set forth in the trial hearing order, each side has 45 minutes of argument time. The Petitioner bears the burden of showing unpatentability and will argue their case first.

The Patent Owner -- and may reserve rebuttal time. The Patent Owner will then argue their opposition, and we'll conclude with the Petitioner using any time they reserve.

So with that being said, either Ms. Williams or Mr. Stockwell, whenever you're ready, you may begin.

MR. STOCKWELL: Thank you, Your Honor. I would like to reserve 12 minutes for rebuttal time.

JUDGE COCKS: All right.

MR. STOCKWELL: I want to just start off, this is in our second slide, just as a reminder of what the claims and grounds at issue are.

The grounds, of course, are the same for both patents: The combination of Reed and Nishida. The Claims 1 through 13 are at issue for the '598, and then the Claims identified 1 through 9, 11 through 19, and 21 for the '749.

Once the combination has been made, I don't believe there's any dispute that that combination satisfied all the elements of the independent claims of the '598. The only dispute as to whether that combination satisfies the independent claims in the '749 revolves around simultaneous knitting elements.

And then there are a couple of dependent claims that explain the stitch configurations are changed to impart various textures, and the dependent claim dealing with the apertures that are formed in the knitted textile element that are in dispute. That is the limit of the dispute as to once the combination is made.

Skechers EX1013-p. 7486
Skechers v Nike

I want to sort of give a summary of where we see the disputes that have developed in the course of the trial, and if we could go to Slide 9 for that, this kind of lists the points.

First, level of ordinary skill in the art. I don't think the Board is faced with a substantial fact dispute over what the level of ordinary skill in the art is. Our expert, Mr. Holden, explained that it would be a few years during which the skilled artisan would gain knowledge of the process for footwear design, the materials used for upper construction, and the construction methods.

That's not disputed. I think the dispute is Nike characterizes that as a low level of skill in the art, and we dispute that characterization.

And we pointed out that the same general definition was given by an expert Nike had in an earlier IPR on the patent, and there was no contention or finding in that IPR that this was a low level of ordinary skill in the art.

The second issue is the scope and content of Reed and Nishida, and there are factual issues Nike has attempted to raise with respect to Reed and Nishida. For example, with respect to Reed, they argue that Reed is limited to a

Skechers EX1013-p. 7487
Skechers v Nike

pre-seaming embodiment that creates a finished pre-seamed garment.

With respect to Nishida, they say that Nishida knits only on a pre-existing backing. These factual points about what the art discloses are disputed, but we would say even if the Board accepted the contention, which it has not today, that Nishida knitted only on a pre-existing backing, it would not matter, because for that particular element, the simultaneous knitting element of the '749 patent, it's undisputed that Reed teaches it.

With respect to the finished pre-seamed garment argument that Nike makes, it's really an argument that seeks to attack the underlying motivations to combine Reed and Nishida. In other words, they say, well, because Reed talks about pre-seamed garments, that combination would be inoperable -- or not be as operable to fulfill Reed's objectives, and, therefore, the skilled artisan may not want to make the combination.

Again, we will show that that simply does not matter factually, given the scope of the claims. And it really leads us to this next point: The motivation to combine.

Skechers EX1013-p. 7488
Skechers v Nike

We set forth multiple grounds of motivation. Those specific grounds are not contested by Nike. As we go through that section on -- I plan to address the combination issues.

And finally, on the motivation and the combination issues, Nike has critiqued the weight of Mr. Holden's testimony, but I think the Board will notice when they review those critiques, none of them go to the substance of Mr. Holden's unrebutted testimony about the motivation to combine or how that combination meets the claimed elements. We thus think his testimony is entitled to substantial weight. It stands unrebutted.

I want to start on -- in terms of the substance about motivations to combine, if --

JUDGE COCKS: Counsel, I have one question for you there --

MR. STOCKWELL: Yes?

JUDGE COCKS: -- just to lay a framework.

You had said it does not matter if Reed is limited to pre-seamed connections. Is Reed limited to pre-seamed?

MR. STOCKWELL: No, Your Honor. Reed has two embodiments. There is an embodiment in which the garment is pre-seamed and completely finished just through making a cut.

Skechers EX1013-p. 7489
Skechers v Nike

There is an embodiment in which there are two panels of, for example, a dress that will have an outer layer, inner layer. Each of those panels are cut out, the edges are then -- post the cutting -- seamed together to create a three-dimensional garment to wear. So those are the two embodiments that we contend show Reed doesn't just disclose pre-seamed finished garments.

JUDGE COCKS: Okay.

MR. STOCKWELL: I want to come back to that point, because I think that's a critical point, but if you go to Slide 29, this lists our motivations to combine.

The reason Nike raises the Reed pre-seaming issue is they never directly attack these motivations. We gave three motivations: The fact that Reed's application was for all garments, including footwear items like ladies' stockings; that Nishida had a commensurately large scope in terms of the types of textile elements -- and our expert, Mr. Holden, explained that was motivation to take Reed and apply it to an upper.

We also pointed out that both Reed and Nishida used similar manufacturing techniques, the computerized knitting. There is usually a web or surrounding textile structure on

Skechers EX1013-p. 7490
Skechers v Nike

which the outline of the textile element is made and then knitted.

And we also pointed out, finally, that both Reed and Nishida are directed to trying to save cost and waste. Indeed, the Federal Circuit, at the bottom of the slide, you'll notice in the first IPR expressly found Nishida was directed to the problem of cost and waste reduction, which is one of the objects of the '598 patent.

Now, I raise these because none of these are challenged, and I want to delve a little bit into each of these before we go back to your question about Reed and pre-seaming.

If we could go to the next slide, 30, this is Mr. Holden's testimony. And he made a very common sense point as one of -- as an expert, and one who's worked with people of skill in the art, that said, look, Reed says, all garments. Garments are three-dimensional designs to go around a human -- piece of human anatomy.

Nishida -- the combination here is Reed, for all garments. Nishida shows a three-dimensional design for an upper, and he says, look, a skilled artisan would look at Reed's broad disclosure of all garments and apply that to

Skechers EX1013-p. 7491
Skechers v Nike

create also a three-dimensional footwear item of clothing that's going to go around human anatomy. That's a motivation for the skilled artisan.

And remember, his view of the skilled artisan is part of what they do is to look at other production processes and be familiar with that as they're going through the design process. This is unrebutted.

JUDGE COCKS: Well, just to be clear, is an upper a garment? Or are you saying that you would apply the teachings of a garment to an upper?

MR. STOCKWELL: Well, first off, I don't think anybody as defined a garment; right? But if garment is an item of clothing designed to cover a piece of human anatomy, absolutely an upper is a garment. It is designed to conform to the three-dimensional shape of my foot. So I would say yes.

I acknowledge that the legal question really is sort of the other way around, given the way Nike has framed it, as whether or not footwear includes the garment field. We would say it does.

The other motivation that, again, is undisputed is the point he made about Reed and Nishida both being aimed at

cost and waste reduction. That's set forth on Slide 31.

Slide 32, he pointed out how the methods of making these textile elements were very similar: The computerized knitting, the outlines on a broader framework. And that's important, because, as we said in our papers, and as reflected in Slide 33, the *KSR* says, look at other techniques.

Skilled artisans will look at other techniques to improve an existing one. Reed uses these techniques; says, all garments. The skilled artisan would look at Nishida and extend that to a footwear upper.

That is the point that is made, particularly in light of the very similar construction techniques in Nishida, which describes using conventional knitting techniques.

So none of -- as I said, none of these points are directly confronted by Nike, and I have a summary of what they did say instead. It's on Slide 34.

These are all the things they said in their brief, and I just want to march through these briefly before we get to the last two, which is what I think their arguments really boil down to: The Reed pre-seaming issue.

First, they say, well, would someone have been aware of the problem? This same argument was raised in

Skechers EX1013-p. 7493
Skechers v Nike

connection with the '011 parent patent. The Federal Circuit rejected the *Leo Pharmaceuticals* case applying to this instance in light of Nishida's express teaching of the problem: Saving costs and the inefficiencies associated with production processes. That is an express recognition in Nishida.

The Federal Circuit says, well, of course the problem was known. Nike tries to reframe the problem ordinarily, but that issue has already been passed on. I don't think they can really make headway with that.

They raise the issue of whether Reed is analogous art, and Your Honor's question about garments and clothing and what the purpose of clothing is, sort of comes directly into play, because there's two points: The field point -- is it a field? Is it part of the same field?

And we answered that yes, and we relied on Mr. Holden's testimony. I'm not going to go to the slide, but our Slide 41 recites his testimony on this, and he repeatedly testified -- and we identified this in our papers -- that there are more similarities between garments and footwear than there are differences.

He also explained in his declaration -- and this is

Skechers EX1013-p. 7494
Skechers v Nike

a well-known phenomenon -- that as the production processes -- as manufacturers sought to save costs in the garment and footwear industries, you saw the garment and footwear, those factories, move together. They moved to different countries, seeking lower-cost labor, but it was together because those processes are so interrelated, and that field is so interrelated.

And his own experience shows as much, given that he had testified he had worked on both garments and footwear. He even gave the example of pajamas with footies.

We also believe we've met the second part of the test that Reed is reasonably related to the problems of the '598 patent. It expressly talks about cost saving, as does -- and inefficiency, as does the '598 and '749.

The how and -- the why and the how, similarly, would combine, or be motivated to combine, Reed and Nishida. We address that with our three principal grounds for the combination. And again, I say we boil down to this Reed issue.

To get to that, Your Honor asked, you know, was that the only embodiment? If we could go to Slide 21, as I said, we contend there's two embodiments: There's the

Skechers EX1013-p. 7495
Skechers v Nike

pre-seamed, once-you-cut-it-out-it's finished; and then there's the lined garment, where you cut out one panel -- the front of, like, a skirt -- you cut out a second, and you have to seam them together.

So Slide 22 shows the finished garment embodiment and the text associated with it that Reed describes. So Reed shows, in Figure 1, a circular tube. There are three dresses outlined in that. He describes in the text quoted how you simply cut along the outside of the seams across the neck, and at the bottom you -- or on the inside of the seam.

That creates the opening for the person's waist and their feet to pass through, and as illustrated on the figure, once you finish that cut, the garment's finished. You can simply pull it on and wear it as a skirt.

But that's not the only embodiment that Reed teaches.

JUDGE ARPIN: Counsellor, the claims speak in terms of a textile element. What is the textile element in these two embodiments that you're discussing?

MR. STOCKWELL: The textile element -- so for example, in Slide 22, the textile element is the skirt itself. For example, you can describe it as either the front panel of

Skechers EX1013-p. 7496
Skechers v Nike

the skirt from the -- if you look at the edges there, that's the interconnected stitches to weave together the -- or knit together the two layers.

Similarly, you can look at the second embodiment where there are two panels that after you cut them out, you then seam them together to create a lined skirt, look at each of those as a textile element. Or once you attach them, you can look at a textile element.

I don't think the patent is restricted in how it defines a textile element. It's more the concept of when you're looking at the upper, can you describe a portion of the upper that has the features recited in the claims.

JUDGE ARPIN: Counsellor, it's my -- you know, having read the papers, I don't think that either you or the Patent Owners proposed a construction for textile element. Do we need to construe that term?

MR. STOCKWELL: Well, I would say it a little bit differently. I think both parties are in agreement that the ordinary meaning construction applies for terms that have not been proposed construction as to the two of which there is agreement because they arose out of the prior IPR.

And with respect to that, I would point out that

Skechers EX1013-p. 7497
Skechers v Nike

our expert applied that ordinary meaning, including of textile element, and found that these prior art references described the textile element with the features of the disputed claim elements.

So --

JUDGE ARPIN: Counsellor --

MR. STOCKWELL: -- I don't -- for my purposes, I don't feel the need to further define it. I'm not sure there is a claim construction dispute over what a textile element is.

JUDGE ARPIN: Counsellor, you said that your expert or your declarant applied a construction -- or applied the ordinary meaning. Did your declarant say what the ordinary meaning was?

MR. STOCKWELL: No --

JUDGE ARPIN: I think that's the problem with ordinary and customary meaning. If you just say ordinary and customary meaning and don't tell us what that meaning is, it's not very helpful.

MR. STOCKWELL: I -- first off, Your Honor, I will say the expert simply -- I believe his declaration simply recited that a term not construed, he would apply ordinary and

customary meaning.

Secondly, I agree that in a case where there is an O2 micro-type issue where people treat it as an ordinary meaning, but when you actually examine their arguments, they seem to be -- there seem to be a sub silentio claim construction dispute going on in the background, that it's not very helpful to say ordinary meaning. Your Honor, I don't see that happening here.

And if Your Honor would care to elaborate why there is a claim construction dispute over textile element, I'd be happy to try to formulate a response to that, but I'm not understanding that to be the dispute between the parties.

JUDGE ARPIN: Well, the issue then, Counsellor, is you've just said that both a seamed garment and a lined garment meet the -- or teach the textile element of the claim, and I'm trying to understand whether or not -- because I think this is part of what Patent Owner's arguing -- that a seamed element may not be a textile element.

So that's where I'm seeing that there is not necessarily a claim construction problem, but perhaps a problem of how this reference is read onto the claim language.

MR. STOCKWELL: Well, and I agree there may be that

Skechers EX1013-p. 7499
Skechers v Nike

kind of an argument, but I have not understood any of Patent Owner's arguments to raise a claim construction issue.

So to address Your Honor's point about application --

JUDGE ARPIN: Counsellor, one second before you go on. Let's clarify one other point. We construed two terms in the DI --

MR. STOCKWELL: Yes.

JUDGE ARPIN: -- and I do not see anywhere in the papers that either the Petitioner or the Patent Owner has contested those claim constructions. Is there no disagreement about those constructions?

MR. STOCKWELL: Not on Petitioner's part. And I'm not --

JUDGE ARPIN: And then it seems that there's also a claim construction issue about the word impart. I believe the Petitioner's proposed a construction for impart in its reply. Patent Owner didn't really provide a claim construction, but seems to dispute, again, the application of the reference to the claim language.

Is that your understanding?

MR. STOCKWELL: Yes and no. And what I mean by

that is, first, Petitioner's expert testified that textures can have a visual appearance, and we provided a reference for that proposition.

With respect to impart, we relied on the BRI construction of essentially it is the change in stitch configuration that gives the different textures. And I would submit that the Board itself in its institution decision, given the citation in italics that they provided in citing to the same portion of the specification, seem to have adopted that.

I have not seen Nike dispute the BRI construction that we have for impart or the Board's reliance on its own specification saying that if you change stitch configuration, you change the textures.

JUDGE ARPIN: Well, before you return to my question regarding the application of textile element to the Reed reference, are those the only three claim terms that have been formally disputed in this proceeding? The two in the DI, and the word impart?

MR. STOCKWELL: Well, except that we did have this issue bubble up about what a texture is. Our expert explained that a texture, to skilled artisans, also implies a visual

aspect. And they said that was incredulous testimony, and we pointed out in reply that, in fact, it's well-supported by the prior art, which talks about visual appearance also being part of texture, and therefore part of the ordinary meaning of texture.

So there is that fourth issue, which may be characterized either as a claim construction issue, or a credibility attack and response on Mr. Holden.

JUDGE ARPIN: But those are the four claim construction issues that have been formally addressed --

MR. STOCKWELL: Yes, sir.

JUDGE ARPIN: -- more or less, in this proceeding?

All right, if you'll please return to my question about the application of Reed to textile element, I'd appreciate it.

MR. STOCKWELL: Sure. So with the understanding that -- you really can't dispute that Reed has this other embodiment in which you cut out two panels of a skirt and sew them together to create the three-dimensional skirt.

If we could jump forward, Tiffany, to --

MS. WILLIAM: 46?

MR. STOCKWELL: -- 46. Yes, thank you.

So what Nike says is that pre-seams -- what I understand Nike's argument to be is that pre-seamed means no further work is done once you cut it out: Everything is finished.

But that can't be how Reed uses pre-seamed, because of the lined skirt embodiment. Moreover, for Reed's lined garment embodiment, the second embodiment where you cut the two panels together and then after that you seam them together, it's entirely consistent to use Reed to make an upper layout and stitch the edges together to surround the foot.

Just as Reed makes a post-cut seaming of a lined dress, so would a post-cut seaming of a shoe upper also be operable.

Second, the claims here are comprising claims, and the patent itself, the specification, talks about having multiple layers. So just as Reed creates a multi-layered garment from this lined garment section, so can one create a multi-layered upper that would still be within the scope of the claims.

Now, why is that important? Getting back to your textile element construction -- if we could jump to Slide 52,

Skechers EX1013-p. 7503
Skechers v Nike

please -- so this relates -- this slide relates to the 1C feature and also the 13D feature.

The 1C feature of the '749 patent essentially says, okay, the texture of the textile element has to be different from the surrounding textile structure element.

And 13D says that the texture of the textile structure, which is going to be between two textile elements, have to be different.

This is -- this goes back to your question about textile element. If you look on the right-hand side, we have correlated Figure 2A of Reed, which kind of shows the corner of the dress, with Figure 3, which shows the stitch configuration.

Figure 3 has a line through the center. That's the cut line. Everything to the right of that line is the dress. Everything to the left of that line is the surrounding textile structure. Okay?

Now, Your Honor asked how do I know what a textile element is? The dress is the textile element, and it includes both the blue stitching -- that's the inter-knitted stitching -- as well as the stitching directly to the right of it. That is the textile element. That is the application

that Mr. Holden testified to.

I'm not aware of a claim construction dispute or some argument that a textile element cannot be, you know, this portion of the garment that has a -- varying stitches. And in fact -- if you jump back to Slide 51, please -- if we look at the language of 1C, it says, the knitted textile element -- in this case, the dress or the upper -- having at least one knitted texture that differs from a knitted texture in the surrounding knitted textile structure.

So the claim defines the textile element by virtue of the presence of different textures from the surrounding textile structure. And it allows for the textile element to -- because of the recitation of, at least one, it allows for the textile element to have more than one knitted texture. Okay?

Now --

JUDGE ARPIN: Counsellor, are you then saying that only the seamed garment meets these limitations?

MR. STOCKWELL: I'm saying that either would meet these limitations. It does not matter. The issue of whether it's seamed or pre-seamed doesn't matter, because when you either -- when you cut out one panel and make a complete

dress, you're still going to have the textile element -- the dress or the shoe upper -- that has a pattern in the interior of the element -- a knit -- that is different from the interconnected stitching.

And part of that is because Reed shows that there is an outer layer and an inner layer. If we could jump back to Slide 50 -- the one I was on before -- 52? Sorry. I've got it.

So again, if we go back to the Figure 3, the blue stitches are the interconnected stitches. That -- those stitches will exist in either the lined garment embodiment or the completely finished embodiment. So it doesn't matter for matching this disclosure of Reed to Figure -- to the 1C element whether -- which embodiment you're looking at. It simply doesn't matter.

In both cases, there is a textile element -- that portion of the dress or shoe upper, if modified by Nishida -- that has these interconnecting stitches that tie together the outer and inner layers. And then it has these different stitches to the right of that, just regular knitted stitches. That was Mr. Holden's testimony.

I hope I've answered your question.

JUDGE ARPIN: Well, referring to the portion of Reed that's cited here in -- on page 50 -- or on Slide 52, isn't that, though, referring to the garment -- to the seamed garment? Lines -- column 5, line 67, through column 6, line 3?

Because I believe the discussion of the lined version is later on column 6 at lines 10 through 17.

MR. STOCKWELL: Yes. But remember -- if we jump back to Slide 23 for the moment -- remember that the seaming that's happening here is happening for two purposes.

So in the finished garment embodiment, the seam joins that -- the front panel and the back panel together. Okay? In the lined garment embodiment, remember, Reed says that outer tube, there's an exterior layer and an interior layer, so the seam that you see there, the red, that actually does two things.

There's actually two things going on. The non-red seam is tieing the outer later and the inner layer together. The red part is tieing the two panels together, so that you ultimately end up with a lined skirt.

And that is why I say no matter how you look at this, under either of these embodiments, you're still going to

have a knitted textile element that has a stitch configuration in one area that's different from another area and that is different from the surrounding textile structure, that space between those dresses.

JUDGE ARPIN: Counsellor, isn't the seam in the lined version applied after the two -- the inner and outer have been cut?

I'm looking at column 6, lines -- it looks like -- 13. And following on that column, it says, by providing the lining or interfacing already attached to the section -- or actually, I was reading a little bit above that.

It says, if the present process is used to perform an exterior decorative fabric having a lining or inner lining or interfacing attached thereto, the severed sections must be assembled and seamed by standard practices.

Is that the same thing as knitting with different textures?

MR. STOCKWELL: Well, again, there's sort of two -- first off, yes, but there's two things going on.

Remember -- and I agree. This is -- that's exactly what we show right here: The severed sections must be assembled and seamed by standard practices. That red is a

seaming that happens after you've cut them out. No question.

But over here, before you've cut them out, what you see in the circular knit, the edges are in fact seamed. That's what Reed says is pre-seamed, and that is that different interconnected stitch that exists.

JUDGE ARPIN: I thought the pre-seaming was done with -- to create garments immediately, rather than lined garment sections?

MR. STOCKWELL: I'm sorry?

JUDGE ARPIN: I thought that the pre-seaming was used to create a garment rather than a lined garment section.

MR. STOCKWELL: But it's used to do both. It's used -- the pre-seaming is used -- because it's the same pattern; right? And it depends one how you cut it whether or not you have a completely finished garment as opposed to two panels that you then want to sew together.

JUDGE ARPIN: Well, isn't that what's said -- what Reed says, though, in column 6? It says, after -- the severed sections must be assembled and seamed.

Now, I'm not saying that it's not necessarily the case that the pre-seamed version would show these multiple textures, but you just told me a few minutes ago that it was

Petitioner's position that both the pre-seamed and the lined garment sections accomplish this.

MR. STOCKWELL: I'm not quite sure the genesis of your question and what you're getting at. I mean, I think the way we have applied this, the application would apply whether or not you're looking at a completely pre-seamed finished garment or a pre-seamed in the sense that you have these two panels that you then, after you cut them out, you seam them together.

Either way, you end up with a garment that has different stitches.

JUDGE ARPIN: But, Counsellor, can you then link that to the claim language of Claims 1 and 13 of the '749 patent?

MR. STOCKWELL: Okay, well, that's what I thought I was doing with Slide 52. If you could go to Slide 52, please.

Bearing in mind -- so again, if you -- the blue there is the interconnected stitching. That interconnected stitching exists on either the pre-seamed completely finished garment, right, or on each of the two panels for the lined garment.

Either way, you have that blue interconnected

stitching, because remember what that is doing is Reed says there's two layers here: There's an outer and an inner layer. You have to connect the outer and inner layers.

So either way, Reed -- either embodiment of Reed meets the 1C feature.

I would also add that Reed discloses the 13D feature. Don't lose sight of the fact that here all we have to do is show within that circular knitting tube that there is a -- there's a knit structure, that's the beta that resides between the two dresses, one on the left, one on the right -- two uppers, one on the left, one on the right.

Also, Nishida discloses these features, 1C and 13D. And Slide 54, we point out Owner doesn't even really take issue with the fact that Nishida discloses those different textures. What they do is they dispute whether there's any clear disclosure of where the textures appear.

And if we look at Slide 55, this is what we pointed to. The Board found in its institution decision, that Nishida disclosed that by referring to this. No evidence has been put in to contract this point.

And in fact, Nishida says that that webbed structure, which we've identified as beta, is a low-warp gauzy

material. And our expert has testified and confirmed that that low-warp gauzy material is going to have a different texture than the upper, which we've identified as the alpha.

That meets the 1C and 13D feature. There's been no contradictory evidence put in by Nike to dispute this aspect of Nishida. They may have taken issue with the pre-seaming for Reed, but this point here remains undisputed.

JUDGE COCKS: Counsel, two points. One, we were looking at Slide 55, and you're into your rebuttal time. I know we've asked --

MR. STOCKWELL: Yes.

JUDGE COCKS: -- quite a few questions.

MR. STOCKWELL: I'm sorry, you --

JUDGE COCKS: We're into --

MR. STOCKWELL: I thought you had a question.

JUDGE COCKS: -- your rebuttal time. I know you may --

MR. STOCKWELL: I do want to just briefly discuss the to impart feature, and I want to do that by jumping to this Board's construction of what it means to impart, because I think when you gave your opinion, your institution decision -- this is on Slide 63 -- you explained and quoted and

italicized this portion of the specification: The different textures are formed by merely varying the type of stitch formed by the wide-tube circular knitting.

At Slide 62, we have the construction there. That is our ordinary meaning of construction. Once you have a different stitch configuration, that is what gives, or imparts, the different textures. Those inter-knitted stitch configurations in Reed is what Mr. Holden identified.

But I would not lose sight of the fact that Nishida -- if you could go to Slide 67 -- also expressly discloses this to impart feature. On the right-hand is the Nishida upper. There is a toe area, 14, and it is described as being different from the rest of the upper.

And look at the words that are used: Soft, elastic, net-like, woven or knitted structure.

Those are words describing the toe area having a different texture from the rest of the upper and that intermediate textile structure, which elsewhere Nishida describes as a gauze material.

And our expert relied on this aspect as well to show the to impart feature. And given that, and given that it is unrebutted, we believe we've met our burden on that claim

Skechers EX1013-p. 7513
Skechers v Nike

as well.

I'll rest on the papers with respect to the apertures, which Mr. Holden also testified about, particularly with this net-like structure that he relied on for Nishida.

Thank you.

JUDGE COCKS: All right thank you. You'll have nine minutes for rebuttal.

Please, Mr. Harris, go ahead.

MR. HARRIS: Good afternoon, Your Honors. Again, I'm Michael Harris for Patent Owner Nike, Inc. May I begin?

JUDGE COCKS: Yes, please.

MR. HARRIS: Thank you.

Petitioner has failed to carry its burden of proving that any of the claims, the challenged claims, are unpatentable for a number of reasons. Nike addresses those reasons in its written response to the petitions.

Today we plan to focus on a very specific failure of proof by Petitioner, and we're going to focus on this failure of proof because it applies across all of Petitioner's challenges, across all of the challenged claims in both patents.

So what is this failure of proof? We will show you

Skechers EX1013-p. 7514
Skechers v Nike

today that Petitioner has failed to produce any evidence that shows how a person of ordinary skill in the art would or could combine Reed and Nishida.

Petitioner has submitted thousands of pages of argument and exhibits. They submitted a 150-page plus declaration from their so-called expert, Mr. Holden. Mr. Holden sat for a full day of cross-examination.

And now we've heard Petitioner's counsel argue for the past half hour, with 80-some demonstrative slides, and nowhere in that record will you find any evidence of how a person of ordinary skill in the art could possibly combine the upper of Nishida with the circular knitting machine of Reed.

And this is significant because Reed and Nishida cannot be combined. They cannot be combined because the combination would render Reed inoperable for its intended purpose. We're going to show you that today.

Now, the Federal Circuit tells us in decisions like *In Re Gordon* and *Plas-Pak Industries*, that we cited in our response at pages 27 to 34 for response to the petition, the Federal Circuit tells us that a combination of prior art references that renders one of those references inoperable for its intended purpose cannot support a conclusion of

Skechers EX1013-p. 7515
Skechers v Nike

obviousness. And we're going to show you that that's the case here.

In short -- and we'll get to the details, because we think that Petitioner's counsel misrepresented some of the teachings of Reed, especially that second embodiment -- but in short, Reed is directed to a very specific purpose. The purpose of Reed is to pre-seam an upper -- excuse me, to pre-seam a garment on a double-circular knitting machine. And we'll talk about what that means.

Nishida teaches producing a layout of an upper and a related sole part on a pre-existing web of material. Now, importantly, that upper and related sole part cannot be pre-seamed on a double-circular knitting machine. It's impossible, and we're going to show you why.

So we're going to show you why that's impossible, but perhaps more importantly than that, we're also going to show you that Mr. Holden, Petitioner's expert, admitted during his cross-examination that he did not offer an opinion on how a person of ordinary skill in the art could possibly pre-seam the upper of Nishida on a double-circular knitting machine like Reed.

He didn't offer an opinion on it. He admitted he

wasn't asked to offer an opinion on it. There is no evidence on a how a person of ordinary skill in the art would do that. This is a failure of proof --

JUDGE ARPIN: Sorry, Counsellor, before you go on --

MR. HARRIS: Sure.

JUDGE ARPIN: -- just a question regarding the claims. Do the claims ever mention seamed or pre-seamed or unseamed?

MR. HARRIS: They do not.

JUDGE ARPIN: And I asked your colleague for Petitioner about the claim construction issues that are remaining in this case. There were two constructions made during the DI. Am I correct that Patent Owner did not contest those in its Patent Owner response?

MR. HARRIS: You are correct, Your Honor. We have not contested those constructions in our response.

JUDGE ARPIN: And there were two other claim construction issues that Petitioner's counsel pointed out. One was the impart language, and another possible one regarding texture. Do you agree that those are the remaining issues to be resolved --

Skechers EX1013-p. 7517
Skechers v Nike

MR. HARRIS: Well, I mean, certainly there are many --

JUDGE ARPIN: -- with respect to claim construction?

MR. HARRIS: Correct, yes. Yes.

JUDGE ARPIN: All right, thank you very much. I'm sorry to interrupt. Please continue.

MR. HARRIS: No worries.

Okay, so let's get started. And we want to start with a review of Reed and Nishida, because we think it's important that we all understand what those references actually teach.

And when we have that understanding, it will become apparent that you cannot pre-seam the upper of Nishida on the double-circular knitting machine of Reed.

Okay, so let's start with Reed, and we have Nike's Demonstrative Slide 10 on the screen, and this demonstrative slide shows Figure 1 of Reed.

So as I mentioned, Reed is directed to a very specific purpose, and that purpose is a pre-seamed garment. But what does that mean?

Reed teaches that his invention is to program a

double-circular knitting machine to knit two concentric tubes of material, an inner tube and an outer tube, and at the same time, the double-circular knitting machine is also programmed to stitch those two tubes together to form the outline of a garment and to stitch the garment together, to stitch the inner tube and the outer tube together.

And so let's look at Figure 1, the example that Petitioner's counsel talked about, the skirt example of Reed. The front of the skirt, or the back of the skirt, is knitted on one tube, the back of the skirt, or front of the skirt, is knitted on the other tube, and the double-circular knitting machines stitch the two tubes together to form the outline of the skirt and to form the seams of the skirt.

So when the machine is finished, you can cut or remove the skirt from the tube, and you have the two sides of the skirt, the front and the back, seamed together.

Now, Reed provides other examples, not just this skirt. There's a shirt example in Figure 4. There's a shorts example in Figure 5. There's a dress example in Figure 6.

And in all of those examples, you've got a portion of the garment on one tube, the -- a juxtaposed portion of the garment on another tube, and the machine stitches them

together. Pre-seamed. Machine does the seaming.

Now, Petitioner's counsel also talked about what it called the lined garment section embodiment. And I've put Petitioner's Slide 23 back on the screen, and this is where Petitioner talked about this, a skirt with a lining.

And importantly for this embodiment of Reed, Reed teaches that the front of the skirt and the lining, or the back of the skirt and the lining, are pre-seamed by the double-circular knitting machine.

So what's that mean? Even in this embodiment, the double-circular knitting machine of Reed is pre-seaming the garment. Now, sure, it will need to be attached --

JUDGE ARPIN: Sorry, Counsellor --

MR. HARRIS: -- to another section of a garment, but this section of the garment that comes off of the machine is pre-seamed.

JUDGE ARPIN: Counsellor, referring to Reed's column 6, beginning at line 10 -- this is the section I read to Petitioner's counsel -- it says, if the present process is used to perform an exterior decorative fabric having a lining or inner lining or interfacing attached thereto, the severed sections must be assembled and seamed by standard practices.

What does that mean with regard to the lined version? It seems as though you're cutting out two sections and then thereafter seaming them.

MR. HARRIS: Yes. And when you were talking with Petitioner's counsel about that particular language, it was in the context of the texture claim limitation. And Patent Owner absolutely agrees with you, Your Honor, that Petitioner relies on the -- what they call the finished garment embodiment to meet that imitation, not the language that you just read in column 6, lines 10 to 15 of Reed.

But to answer your question, what Reed teaches is pre-seaming a portion of the skirt. So the portion of the skirt that's pre-seamed is the front of the skirt and a lining, or a liner, or it could be the back of the skirt and a lining. That portion of the skirt is pre-seamed.

On one tube, you have the material for the front or back of the skirt. On the other tube, you have the lining material. And the double-circular knitting machine stitches them together in the outline of the garment and -- to create the seams of that portion of the garment.

So even in that embodiment, the garment that is the result of the knitting process of Reed is a pre-seamed

garment.

JUDGE COCKS: Well, Counsel, let me ask you, so in reference to standard practices of column 6 of Reed, is -- what are the standard practices? Are they pre-seaming? Are you saying that means pre-seaming?

MR. HARRIS: No.

JUDGE COCKS: Okay. Well, then what is it referring to there when it says, seamed by standard practice?

MR. HARRIS: Well, here's what I can tell you about that. There is no evidence in the record on what that means.

What I can -- I can tell you that Reed teaches pre-seaming, which is stitching together two juxtaposed portions of a garment on a double-circular knitting machine.

JUDGE COCKS: Okay. So that's all we should take from Reed?

MR. HARRIS: Well, that's what Reed teaches. And let's look at the rest of Reed. What else does Reed say?

So all the embodiments are for pre-seaming, stitching two juxtaposed portions of a garment together during the knitting process so that you don't have to do it afterward.

What else does Reed say? Well, let's look at --

this is Nike's Slide 7 -- the title of Reed. It's a pre-seamed and pre-formed knitted garment.

What does the abstract of Reed say? Reed says that, the invention is a knitted structure, and method of making same, which includes simultaneously knitting two concentric tubes and interconnecting the tubes by knitting to produce seams which define a garment of juxtaposed portions.

Nike's Slide 8. What's the background of the invention? Reed says his invention relates to a garment which is pre-seamed and pre-formed on a circular knitting machine.

What about the summary of the invention of Reed? Let's take a look at that. This is Reed, column 1, lines 58 to 66. Reed says his invention uses an electronic circular double knitting machine programmed to simultaneously knit two concentric tubes and additionally programmed to interconnect the two tubes by a knit interlock stitch to form the outline of a design of a garment.

The resulting knitted structure will have two layers of single fabric knitted or seamed together in the shape of the garment.

Column 2, Reed provides a number of objectives, and we've heard Petitioner's counsel talk about those objectives.

Well, what else does Reed say about the objectives? This is on Nike's Slide 11, and it's Reed at column 6, lines 18 to 21.

Reed says, the objects -- all the objects of his invention are obtained to produce in pre-formed and pre-seamed fabric.

So throughout this disclosure, throughout the Reed disclosure, Reed teaches that his invention is to pre-seam a garment on a double-circular knitting machine: Two juxtaposed panels stitched together to form the seams of a garment during the knitting process.

Okay, so that's Reed, but what does Nishida teach? Nishida teaches producing -- either by printing or knitting or weaving or somehow producing -- an outline, or a layout, for a footwear upper and its related sole part on a pre-existing web of material.

Now, for this issue that we're talking about right now, the inoperability of Reed, Nishida also teaches where and how its seams are formed.

So let's flip to Slide -- Nike's Slide 16, and on Nike's Slide 16 we have Figure 2 of Nishida as well as Figure 3. And the upper layout that is printed or produced on or in the web of material is labeled 2 in Figure 2, and the related

Skechers EX1013-p. 7524
Skechers v Nike

sole part is labeled 29.

So what does Nishida tell us about how this upper and related sole part is seamed? Well, Nishida says to seam this upper, you have to cut the upper and its related sole part out of the web of material. So you cut it out, and then you fold and shape and manipulate it, so that certain edges are aligned, and then you stitch those edges together to create the seams of the shoe of the upper.

Well, what edges or seams need to be aligned and stitched together to create the seams of this upper? Nishida tell us that. Nishida identifies three seams to create this upper.

First, at column 3, lines 31 to 33, Nishida explains first you cut out Layout 2 from the web of material, then the Edges 7 and 8 are stitched together, and a heel seam is formed.

So going back to Figure 2 of Nishida on Slide 16, Edges 7 and 8 have to be folded, shaped, manipulated so that they're aligned. After the upper's been produced in the web of material and cut from the web of material, 7 and 8 have to be shaped, folded, and aligned and then stitched together. That creates the first seam on the heel, the back of the shoe.

Next, at column 3, lines 37 to 39, Nishida teaches that, again, after we've cut this out of the layout and we've seamed 7 and 8 together, you fold and shape 11 and 12, Edges 11 and 12, and seam them together to create a toe seam.

And then finally, after you've created the heal seam and the toe seam, you fold the sole part, 29, underneath the upper and stitch or seam it to the perimeter of the upper. That's at column 2, lines 8 to 10, of Nishida.

Okay. So now we know what Reed discloses, and we know where the seams need to be formed in Nishida. So let's look at the combination of Reed and Nishida.

JUDGE ARPIN: Counsellor, before you do that, I believe when you were describing Reed you said that it teaches creating two concentric cylindrical textile structures, for lack of a better word, and then forming on those structures a pattern, and then seaming between the structures; is that correct?

MR. HARRIS: Not exactly, Your Honor. May I attempt to clarify?

JUDGE ARPIN: Certainly.

MR. HARRIS: Thank you.

So Reed teaches knitting two concentric tubes of

material: One inner, one outer. They're juxtaposed. Two tubes.

At the same time, the double-circular knitting machine of Reed stitches the two tubes together in the form of a garment. So if it's a skirt, the machine will stitch the two tubes together in the form of a skirt, and those stitches form the seams of the skirt. The stitches connect the front and the back of the skirt together; they create the seam of the skirt.

So when you cut or remove the skirt from the tubes of material, you've got the back of the skirt and the front of the skirt connected or seamed together.

Okay. So going back to the combination of Reed and Nishida --

JUDGE ARPIN: Counsellor, before you do that, then it's your understanding that a cylindrical textile structure is a single cylinder? Or can it be multiple? Because it refers to a cylindrical textile structure.

MR. HARRIS: I'm not sure I understand the question, Your Honor. Could you rephrase it?

JUDGE ARPIN: My question is we've just said that Reed creates two cylindrical structures: One inside of the

other; correct?

MR. HARRIS: It creates two tubes of material --

JUDGE COCKS: Is that --

MR. HARRIS: -- yes --

JUDGE COCKS: No, I'm sorry. Go ahead, please.

MR. HARRIS: I'm sorry. Reed creates two concentric tubes of material. It knits two concentric tubes of material.

JUDGE ARPIN: Okay. Is the claim language in any way limited to one cylindrical tube?

MR. HARRIS: So which claim are you referring to, Your Honor?

JUDGE ARPIN: Let's just start with Claim 1.

MR. HARRIS: Claim 1 of the?

JUDGE ARPIN: Of the '598 patent. That's the shortest one.

Simply put, can a cylindrical textile structure read on the two tubes of Reed?

MR. HARRIS: So if -- to answer the question, Reed does not teach or disclose what is in Claim 1 of the '598, but I'm not sure if that's your question.

If your question is --

Skechers EX1013-p. 7528
Skechers v Nike

JUDGE ARPIN: I'm just focusing on the single term in the first limitation of Claim 1 where it says, two -- manipulating yarn -- a yarn with a cylindrical knitting machine to form a cylindrical textile structure.

MR. HARRIS: Yes.

JUDGE ARPIN: Can that with be two concentric knitted tubes?

MR. HARRIS: Sure. Okay. I understand, Your Honor.

Yes. Yes, it could, but to the point that you made -- or to the question that you posed earlier to Petitioner's counsel, is Reed a -- or does Reed disclose a textile structure, we would submit, or Patent Owner would submit, that in the context of this prior art when Reed and Nishida are considered for all that they disclose, the garment of Reed is not a textile structure that is envisioned by the claims of this patent.

And why is that?

JUDGE ARPIN: Well, hold it for one second, Counsellor. I think what my question earlier to Petitioner's counsel was involving was the textile element, not the textile structure. Textile element, I understood Petitioner's counsel

to argue, was the garment or the lined garment. The textile structure is the knitted tube --

MR. HARRIS: Correct.

JUDGE ARPIN: -- or multiple knitted tubes.

MR. HARRIS: Correct. That's correct.

JUDGE ARPIN: And the -- we already have established that the claim does not discuss seaming at all; is that correct?

MR. HARRIS: Correct. The claims do not discuss seaming.

The reason that seaming is important, Your Honor, is that a person of ordinary skill in the art could not and would not combine Nishida and Reed, because it would render Reed inoperable for its intended purpose, because the whole purpose of Reed is to pre-seam a garment, and the garment of Nishida -- I'm sorry, the upper of Nishida cannot be pre-seamed.

And for that reason, a person of ordinary skill in the art could not and would not combine Reed and Nishida. That's where the seaming comes into play.

JUDGE ARPIN: Well, going to that point, does Nishida specify only a single layer of web and pattern?

MR. HARRIS: Yes. So Nishida teaches that it is a single web of material, a pre-existing web of material, and on that pre-existing web of material, or in that pre-existing web of material, you knit or produce or weave, somehow produce a layout for a shoe upper.

JUDGE ARPIN: So the layout is -- and the web, are those separate layers?

MR. HARRIS: It can be either. The layout can be produced on the web or inside the web.

JUDGE ARPIN: What is the difference between knitting a layout to a web and seaming a layout on a web?

MR. HARRIS: Well, for purposes of this issue that we're talking about right now, I don't think that there is a difference. Either way, regardless whether it's knitted or weaved or printed, that upper of Nishida cannot be pre-seamed on a double-circular knitting machine. It's impossible.

JUDGE ARPIN: Well, it can't be seamed to form an upper.

MR. HARRIS: It can't be pre-seamed at all.

JUDGE ARPIN: I'm saying can it be -- how is it attached to the web, is what I was trying to get it.

You -- we said that it could be knitted onto the

web, and I asked you what was the difference between knitting something onto the web and pre-seaming something to the web, and I think you just told me there wasn't a difference.

MR. HARRIS: Well, let me make it clear. That upper of Nishida cannot be pre-seamed. No portion of that upper of Nishida can be pre-seamed in a double-circular knitting machine.

JUDGE FITZPATRICK: Mr. Harris, can I jump in to make sure I understand your argument here? Is Reed -- is the value of Reed only -- is there only value in the teachings of Reed to make a garment that is radially symmetrical? That you can draw a line from top down, and it's pretty much radially symmetrical, and this shoe upper is not, and, therefore -- is that where your argument goes?

MR. HARRIS: Yeah. So the reason is -- it's close, but the reason that Nishida cannot be pre-seamed on the double-circular knitting machine of Reed -- and we've got Slide 23 up here to help demonstrate this -- but the way that Reed pre-seams a garment is to have a portion of the garment on one tube and a juxtaposed portion of the garment on the other tube, and then it can stitch them together in the knitting process, because it's just knitting in a circle.

So the front of a skirt, the back of a skirt, one on one tube, the other on the other tube, stitched together, juxtaposed. The front of the skirt and its lining.

But Nishida -- look at Nishida. If you move that upper and sole part, that layout, over onto the tubular structure of Reed and imagine putting that upper and sole part where the skirt is, the edges that need -- that Nishida says need to be connected, seamed together, to form the seams of that upper, are not juxtaposed.

They're not on opposite tubes of the circular knitting machine. 7 and 8 are on the same tube. 11 and 12 -- Edges 11 and 12 are on the same tube.

The sole part, 29, and the upper, 2, are on the same tube. They can't be pre-seamed by the machine. The only way to seam the edges of Nishida -- that Nishida says need to be seamed -- is to cut it out, fold it so that those edges, 7 and 8, 11 and 12, are aligned, and then you can seam them; you can stitch them together.

JUDGE FITZPATRICK: Could you turn to your slide --

JUDGE ARPIN: Would it -- sorry, one more.

JUDGE FITZPATRICK: Sorry, go ahead, Judge Arpin.

JUDGE ARPIN: Thank you.

Skechers EX1013-p. 7533
Skechers v Nike

Would it be fair to say that -- I mean, there is a design. I'm looking at your Slide 23, and I'm looking at, you know, the shaded, very heavily-labeled upper.

If we were to take the sole structure and put half of it on the other side, you could knit something, I think, that's practical to make an upper. You could knit something on a double-tubed circular machine; right?

But your argument, I believe, would still be that you couldn't do that in Reed because the whole point of having two tubes is so that you can do the seaming while you're knitting.

MR. HARRIS: While you're knitting; that's exactly right. That's the whole purpose of Reed. And if you don't do that -- and you can't do that with Nishida's upper -- then you've eviscerated the entire purpose of Reed.

And, look, let's look at what Petitioner's expert, Mr. Holden, said about how you would go about -- or how a person of ordinary skill in the art would go about pre-seaming the upper of Nishida on the double-circular knitting machine of Reed.

Okay. During Mr. Holden's cross-examination, we asked Mr. Holden, how would you do this? How would you

pre-seam an upper like Nishida on a double-circular knitting machine like Reed?

And he said, I don't know. I wasn't asked to give an opinion on that question. Let's look at his testimony.

This is Exhibit 2004 --

JUDGE FITZPATRICK: Does it matter which case that's from? Or maybe it'd be easier, is this in one of your slides?

MR. HARRIS: No, it's not. It's not in one of the slides. It's the same exhibit in both IPRs.

JUDGE FITZPATRICK: I'll pull it up.

MR. HARRIS: Sure. I'll give you a minute to pull it up, and I'll put it on the screen here while you're pulling that up. Again, it's Exhibit 2004, and we're going to go to page --

JUDGE FITZPATRICK: I have it.

MR. HARRIS: -- page 152. And we're going to start at line 22 of page 152 of Exhibit 2004.

Okay. So again, this is Mr. Holden's cross-examination:

Question: 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 pre-seamed and pre-formed footwear upper on a circular knitting machine?

Answer: I don't recall that there's any portion of that. Again, I was not asked to hypothesize on that particular point.

Question: Okay. Just so I'm clear: You were not asked to offer on opinion on how a person of ordinary skill in the art would create a pre-seamed and pre-formed footwear upper on a circular knitting machine; correct?

Answer: I don't recall that I was asked that particular question.

This is significant. Petitioner's expert was not even asked how a person of ordinary skill in the art could possibly combine the upper of Nishida with the circular knitting machine of Reed. Wasn't asked how to pre-seam the upper of Nishida on the circular knitting machine of Reed.

Now, we've heard Petitioner argue multiple times earlier this afternoon that Mr. Holden's testimony is unrebutted. But it was Petitioner's burden to prove unpatentability, not Nike's.

And on this point -- and we'll talk more about his opinions later -- but on this fundamental point to the

combination of Reed and Nishida, how would you make Nishida pre-seamed on a double-circular knitting machine of Reed, he wasn't even asked to answer the question; didn't offer an opinion. There was nothing for Nike to rebut. This is a complete failure of proof.

Okay. So we want to take a quick look at some of the other statements that Petitioner has made in its petitions and in replies and as well as here today on the combination of Reed and Nishida.

So first, let's go to -- we're going to go to Nike's Demonstrative Slide 21, and this is an excerpt from Petitioner's petition. This paragraph appears in both petitions, the '921 and the '922 petition.

And this is the only explanation that Petitioner gives in its petition for how a person of ordinary skill in the art would combine Reed and Nishida. And what do they say?

Petitioner says, 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.

That's it. They go on to cite some -- quote some language from *KSR*, but that's nothing more than a conclusory

statement. The type of conclusory statement that the Federal Circuit has repeatedly found is insufficient to support a finding of obviousness. And we cite a number of cases in our response for that proposition, such as the active video in this case.

Nowhere in this explanation does Petitioner explain how a person of ordinary skill in the art could or would pre-seam the upper of Nishida on the circular knitting machine of Reed.

Petitioner cites -- for this conclusory statement, Petitioner cites Exhibit 1003, which is Mr. Holden's declaration, paragraphs 136 and 137. So let's look to see if Mr. Holden had anything more to add to this conclusory statement.

We've reproduced those paragraphs of Mr. Holden's declaration on Slide 22, Nike's Slide 22.

In paragraphs 136 and 137, Mr. Holden merely parrots -- he copies verbatim -- the same conclusory statements that Petitioner made in its Petition. Nowhere in here does Mr. Holden or Petitioner explain how a person of ordinary skill in the art could possibly pre-seam the footwear upper of Nishida on the double-circular knitting machine of

Reed.

It does -- and it's not surprising that it's not here, because it's impossible. You can't do it, for the reasons we explained.

Okay. So we -- after Petitioner filed its petition, or petitions, we took Mr. Holden's cross-examination. He admitted that he didn't even consider this fundamental issue. We submitted our Patent Owner responses. We flagged this failure of proof, and Petitioner had an opportunity to respond.

Did they present more evidence -- another declaration from Mr. Holden explaining how a person of ordinary skill in the art might pre-seam the upper of Nishida on Reed's machine? No.

Mr. Holden stated in his declaration that at some point he talked to Petitioner's knitting expert. So allegedly at some point Petitioner had a knitting expert. Did Petitioner have its knitting expert submit a declaration explaining how a person of ordinary skill in the art could possibly pre-seam Nishida on Reed? No.

What did Petitioner argue? This is on page 19 of Petitioner's reply brief in the '921 patent. Petitioner says,

without any evidence -- without any record evidence to support -- Petitioner says, well, a person of ordinary skill in the art would knit the upper of Nishida, the upper layout and its related sole part in Nishida, on both the inner and the outer tube and then cut those tubes out inside the seams, meaning they would remove -- completely remove the seams so you'd have two separate upper layouts.

Now, why in the world would a person of ordinary skill in the art seam two separate uppers together on a double-circular knitting machine only to un-seam them after the process is completed? We don't know. There's no record evidence. It doesn't make any sense.

Okay. So I want to finish my time talking a little bit about the level of ordinary skill in the art. Petitioner's counsel noted that they have defined the level of ordinary skill in the art as a person with a few years of experience in the footwear industry, and Petitioner's counsel also noted that, in a different IPR proceeding for a related patent, we, Patent Owner Nike, had a similar definition, a person of ordinary skill in the art has a few years' experience in the footwear industry.

So I think we agree, and there's no dispute on

that. The dispute really is whether that's a high level of ordinary skill in the art or a low level of ordinary skill in the art. And Patent Owner, we submit that it's a low level of ordinary skill in the art.

And as support for that, we don't think you need to look any further than the cross-examination testimony of Mr. Holden. Mr. Holden has 40 years of experience in the footwear industry, decades more experience than the person of ordinary skill in the art.

He's never knitted an upper. He's never operated a knitting machine. He's never programmed a knitting machine. He's never formed a knitted upper. He's never cut a knitted upper out of a web of material and stitched it together to form its seams.

He wasn't familiar with, essentially, any of the knitting technology and terminology in Reed and Nishida. He said he would only be familiar with that terminology by looking at the Spencer reference that Petitioner submitted in it's Exhibit 1010.

He said that he never looked at the Spencer reference until this proceeding 13 years after the priority date of the patent at issue.

Skechers EX1013-p. 7541
Skechers v Nike

This is a guy with 40 years of experience, and he knows nothing about how to knit an upper like Nishida on a double-circular knitting machine like Reed.

JUDGE COCKS: So, Counsel, I have a question. Assuming that's all correct, tie that into the low/high dichotomy.

MR. HARRIS: So he knows very little about knitting technology, how to knit a footwear upper, and he has 40 years of experience. A person with two or three years of experience is presumably going to know much less than Mr. Holden. So the level of ordinary skill in the art must be low.

If the level of ordinary skill in the art is high, then Mr. Holden isn't an expert. He doesn't know anything about knitting. He doesn't know how to knit -- he's never knitted an upper. That's not a high level of ordinary skill in the art.

JUDGE ARPIN: Counsellor, it's not that he's not an expert, it's whether or not he's a person of ordinary skill in the art or could testify as to what a person --

MR. HARRIS: Correct.

JUDGE ARPIN: -- of ordinary skill in the art would know.

Skechers EX1013-p. 7542
Skechers v Nike

I'm looking at his definition of a person of ordinary skill in the art at paragraph 34 of his declaration, and it also says that someone would understand a product cycle, someone would have reviewed the key milestone where upper material designs are reviewed, have knowledge of the available wide ranges of typical construction methods, comprehensive understanding of the range of material choices, as well as having a few years.

So how are we supposed to look at all of these specific things that a person should know in that few years of experience? How does that relate to whether it's high or low?

MR. HARRIS: Well, all that Mr. Holden says in that language that you just read is that the person would have some understanding of it. He doesn't say what that understanding would be. And he certainly doesn't say that that person would have any understanding of how to knit a footwear upper like Nishida on a circular knitting machine like Reed.

In fact, he was -- as we mentioned, he was never asked that question, was not asked to opine on it.

JUDGE ARPIN: Counsellor, does a person of ordinary skill in the art have to have all of the knowledge in their head, or are they allowed to consult other documents?

Skechers EX1013-p. 7543
Skechers v Nike

MR. HARRIS: Sure, they can consult other documents. But the point here is Mr. Holden didn't even know which documents to consult. He didn't know about the Spencer reference until 13 years after the priority date of the patents at issue here, and he only learned about it in the context of this proceeding.

JUDGE ARPIN: Is that just a specific reference that he was citing to, or was he saying that he would consult other references for the specific answers to questions that you asked?

MR. HARRIS: Every time we asked him what a term, a knitting term, meant, he said he would have to consult Spencer.

JUDGE ARPIN: Please continue.

MR. HARRIS: So, look, at the end of the day though, Your Honors, it does not matter whether the level of skill is high or low. And why is that? Because there's a failure of proof.

There is no evidence on how a person of ordinary skill in the art, whether it's a high or low level, there's no evidence on how that person could possibly pre-seam the upper of Nishida on the double-circular knitting machine of Reed.

And for this reason, and all the other reasons we've outlined in detail in our response, we submit that Petitioner's failed to carry this burden.

Thank you.

JUDGE COCKS: Thank you. Before you sit, down Judge Arpin or Judge Fitzpatrick, do you have any questions?

JUDGE ARPIN: No further questions.

JUDGE FITZPATRICK: I do not.

JUDGE COCKS: Thank you.

JUDGE FITZPATRICK: Thank you, Mr. Harris.

MR. HARRIS: Thank you.

MR. STOCKWELL: Can you pull up Slide 12?

JUDGE COCKS: All right. Mr. Stockwell, you have nine minutes.

MR. STOCKWELL: Yes, thank you.

So when I heard -- when I hear Patent Owner's counsel argue -- and they had Slide 23 of theirs, and they had a picture of Nishida and a picture of a circular knitting tube, and earlier he walked you through where you would seam the upper of Nishida together. Sort of you go through the toe and the heel to sort of create a three-dimensional object to circle around the foot.

Skechers EX1013-p. 7545
Skechers v Nike

And I just want to make sure we re-orient, because they are having a very narrow definition of pre-seaming in Reed where essentially they seem to look at pre-seaming as Reed's object is to be able to pull out a skirt, and because of the pre-seams that are built into the inner tube and the outer tube, once you make a cut, you can just lift the skirt up and wear it. You can just create that three-dimensional object.

But I want to relate back to the claims how the step of removing the textile element comes into play and look at the sequence here. It's a method of making footwear. You mechanically manipulate a yarn with the knitting machine to form a cylindrical textile structure with an outline.

You remove it from the textile structure. There's nothing here about whether you -- when you remove it, it's pre-seamed or un pre-seamed. There's no such language here.

But you've taken it away, and then you incorporate the textile element into an upper of the shoe. And the claims in the '749 are very similar in these respects.

So what the patent is talking about is, okay, in sort of real-world terms, you create that textile element, you cut it out, and then you stitch together -- as he explained --

Skechers EX1013-p. 7546
Skechers v Nike

kind of along the seam, the back seam of the foot, and along the toe. You sort of fold it up. Okay?

And the reason this is important is precisely because Reed shows exactly the same operations when it comes to a lined garment, like a skirt, where they had the front panel that was double-layer, cut out -- per the claim terms here, they create the textile element. It has all the elements of the claims. It has the different stitch configurations and structures and textures.

You remove that front panel from the textile structure. You incorporate it. If it's an article, the shoe, you take that panel out, and you stitch -- you fold it over and you stitch it together. You do that post-seaming, per conventional process. If it's a skirt, you stitch together the sides.

And Counsel seems to be arguing that a skilled artisan couldn't figure out how to do that: Just cut it out and stitch it up. And they also seem to be arguing that you can't create a pre-seamed complicated structure like an upper for a foot. The skilled artisan wouldn't know how to do that.

But remember, Reed says that its technique is for ladies' stockings. So their attorney argument is, well,

nobody can figure out how to pre-seam something as complicated as a three-dimensional structure of a foot, when Reed says, we can use this for ladies' stockings: The same foot shape as an upper.

JUDGE ARPIN: Counsellor, two questions. First -- this is a question I asked Patent Owner's counselor -- does Nishida teach multiple layers in its patent or its layouts?

MR. HARRIS: Absolutely. Let's go to Slide 47.

So this is the statement from Nishida. Optionally, in this case, the material can be woven or knitted in two or more layers.

Again, Counsel is making attorney argument that the skilled artisan wouldn't just create the upper with Reed's technique with two layers -- the inner and outer layer, the inner -- the outer circular tube and the inner circular tube -- cut along the outside, and then stitch together at the toes, stitch together at the heel so that you have an upper.

And Nishida tells skilled people, well, yeah, make two layers.

JUDGE ARPIN: Counsellor, my second question, before you go on, is does Reed teach any embodiment that uses only a single cylindrical knitted textile structure as opposed

to the concentric cylindrical textile structures?

MR. HARRIS: I am not aware of Reed teaching any embodiment where there's only a single cylindrical structure.

In fact, column 3, line 22 through 25, it does talk about that inner tube and the outer tube, and, I mean, I don't disagree with that aspect.

But what Reed shows is that, depending on where you make the cut -- and remember -- if we could go to Slide 49, please -- Reed's objects of the invention include more than pre-seaming. And look at object number 4. Still another object to provide a method for producing a plurality of garments formed about the circumference of a knitted tube.

So Reed shows those multiple skirts around the outline, and he also tells you that depending on where you cut, if you cut those garments out inside the seam, you end up with two pieces; right? So that fulfills the purpose of having a single-layer piece that you can use as a garment, and you can either stitch it together with another piece, wrap it around, whatever you want to do.

So Reed expressly teaches that you get -- you sort of get two pieces for the price of one, depending on where you cut. If you cut outside, you end up with the pre-seamed

portion.

JUDGE FITZPATRICK: If you want to cut inside, why just -- why even have the seam? Why not just have no seams and just cut?

MR. HARRIS: It doesn't -- Reed doesn't really explain that, and --

MS. WILLIAMS: It does.

MR. HARRIS: Oh, it does?

MS. WILLIAMS: Yeah. When you talked about inter-knitted.

MR. HARRIS: Oh, yes. At column 3, it says, the interconnected knitting not only forms the outline, but joins the inner so as to cut -- so as to create a seam.

And then it describes there further that depending on where you cut, you end up with these extra pieces. So the seam helps keep the two tubes together as you're knitting it together.

MS. WILLIAMS: It can also just be used an as outline.

MR. HARRIS: Yeah. And it says it can also be used as an outline.

JUDGE FITZPATRICK: And I have one unrelated

question, but it goes back a couple minutes. You mentioned stockings. Now, that doesn't currently -- that doesn't have much persuasive value to me, because stockings can be like tube socks that are radially symmetrical, or they could have a heel built into them.

Is there anything figure-wise or text-wise in Reed that lets us know that such stockings would be in the shape of a foot when they're not worn? You know, as opposed to just stretching to their shape when they are put on.

MR. HARRIS: I don't think -- no. I think the only reference there is there's a general reference to all types of garments, and it just sort of lists ladies' stockings and some other types there.

JUDGE COCKS: Counsel, you've got about a minute left.

MR. HARRIS: The other issue I want to just touch on is they said Nishida cannot be pre-seamed. Well, I've already pointed out the multiple layers that Nishida can have. The '598 also discloses multiple layers itself.

And this ignores that -- fundamentally what they seem to be saying is you have to pre-seam this, so that immediately as you cut it out, you can unfold it into this

three-dimensional object. And there is simply no teaching from Reed that that has to be the result of the pre-seaming process, because Reed, in fact, discloses that second embodiment.

It also ignores that the combination here is Reed, to make a shoe upper -- and given that Nishida says you can make a double or multi-layered upper, and given that the patent is not limited to having multiple layers, the fact that the upper made on the Reed machine will have multiple layers -- because it's been pre-seamed in that sense and then cut out and had post-stitching applied -- does not move this outside of the scope of the claims or render it inoperable.

JUDGE COCKS: Counsel, you're through your time.

MR. HARRIS: Thank you.

JUDGE COCKS: Thank you. Judge Arpin or Fitzpatrick, do you have any last questions?

JUDGE ARPIN: No, thank you, Judge Cocks.

JUDGE FITZPATRICK: I do not. Thank you, Mr. Stockwell.

MR. STOCKWELL: Thank you, Your Honor.

JUDGE COCKS: All right. Thank you.

We appreciate both sides' time today. The cases

are submitted, and we are adjourned. Thank you.

(Off the record at 2:38 p.m.)

Skechers EX1013-p. 7553
Skechers v Nike

CERTIFICATE OF SHORTHAND REPORTER

NOTARY PUBLIC

I, TASIANA T. BASDEKIS, Registered Professional Reporter and Notary Public, the officer before whom the foregoing hearing was taken, do hereby certify that the foregoing transcript is a true and correct record of the proceedings; that said proceedings were taken by me stenographically and thereafter reduced to typewriting under my supervision; and that I am neither counsel for or related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this DAY OF MONTH, YEAR.

My commission expires September 30, 2021.

_____

NOTARY PUBLIC IN AND FOR
THE COMMONWEALTH OF VIRGINIA

Electronic Patent Application Fee Transmittal

Application Number:	15610089
Filing Date:	31-May-2017
Title of Invention:	ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER
First Named Inventor/Applicant Name:	BHUPESH DUA
Filer:	Elizabeth Ashley Lucas/Cheryl Neeley
Attorney Docket Number:	NIKE.276100/08-1313US82CO

Filed as Large Entity

Filing Fees for Utility under 35 USC 111(a)

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

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Miscellaneous:				
RCE- 1st Request	1801	1	1200	1200
		Total in USD ($)		**1200**

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Application Number:	15610089
International Application Number:	
Confirmation Number:	4757
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First Named Inventor/Applicant Name:	BHUPESH DUA
Customer Number:	78342
Filer:	Elizabeth Ashley Lucas
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Warnings:					
Information:					
4	Non Patent Literature	276100_08162017_PREINTERVIEW_COMMUNICATION_15646835.pdf	226376 8ed4d5a04ec09ae677f5f392921fc6633d897b69	no	7
Warnings:					
Information:					
5	Non Patent Literature	276100_08162017_PREINTERVIEW_COMMUNICATION_15650499.pdf	220872 ba7a919c57f50dec1899aab8304413249b764271	no	7
Warnings:					
Information:					
6	Non Patent Literature	276100_08172017_PREINTERVIEW_COMMUNICATION_15664650.pdf	222726 39390d9376d168fb3d28b64a43d3dd1bad003ef5	no	7
Warnings:					
Information:					

7	Non Patent Literature	276100_08182017_PREINTERVIEW_COMMUNICATION_15664623.pdf	283105 71465952e9b45dd4a6f160b137b612dff85732c2	no	9
Warnings:					
Information:					
8	Non Patent Literature	276100_08212017_PREINTERVIEW_COMMUNICATION_15659053.pdf	225675 e4111ad9605ae2a4eafb8aef236c1302e29286fe	no	7
Warnings:					
Information:					
9	Non Patent Literature	276100_08072017_PREINTERVIEW_COMMUNICATION_15650488.pdf	164904 d9fd9dcb950841cdaf34db910f7c0ff4ed66676e	no	5
Warnings:					
Information:					
10	Non Patent Literature	276100_Decision_Denying_Request_for_Rehearing_IPR2017-00263_and_IPR2017-00264.pdf	5040398 7b9ad7489c579cf42486c24e00c284d3fd1e0def	no	12
Warnings:					
Information:					
11	Non Patent Literature	276100_Record_of_Oral_Hearing_IPR2016_00921_and_IPR2016_00922.pdf	25460031 18239bd1bbea8d93e7bf2497d7ba88e8cba545ff	no	74
Warnings:					
Information:					
12	Fee Worksheet (SB06)	fee-info.pdf	30712 6e76fb5fd0883f63fd86b22cd269fbd99896c9fd	no	2
Warnings:					
Information:					
			Total Files Size (in bytes):	34486667	

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.

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

NOTICE OF ALLOWANCE AND FEE(S) DUE

78342 7590 10/27/2017

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER
BAYS, MARIE D

ART UNIT	PAPER NUMBER
3765	

DATE MAILED: 10/27/2017

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/610,089	05/31/2017	BHUPESH DUA	NIKE.276100/08-1313US82CO	4757

TITLE OF INVENTION: ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER

APPLN. TYPE	ENTITY STATUS	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	UNDISCOUNTED	$960	$0	$0	$960	01/29/2018

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

HOW TO REPLY TO THIS NOTICE:

I. Review the ENTITY STATUS shown above. If the ENTITY STATUS is shown as SMALL or MICRO, verify whether entitlement to that entity status still applies.

If the ENTITY STATUS is the same as shown above, pay the TOTAL FEE(S) DUE shown above.

If the ENTITY STATUS is changed from that shown above, on PART B - FEE(S) TRANSMITTAL, complete section number 5 titled "Change in Entity Status (from status indicated above)".

For purposes of this notice, small entity fees are 1/2 the amount of undiscounted fees, and micro entity fees are 1/2 the amount of small entity fees.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Maintenance fees are due in utility patents issuing on applications filed on or after Dec. 12, 1980. It is patentee's responsibility to ensure timely payment of maintenance fees when due. More information is available at www.uspto.gov/PatentMaintenanceFees.

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: Mail **Mail Stop ISSUE FEE**
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
or Fax (571)-273-2885

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

78342 7590 10/27/2017
SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission
I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/610,089	05/31/2017	BHUPESH DUA	NIKE.276100/08-1313US82CO	4757

TITLE OF INVENTION: ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER

APPLN. TYPE	ENTITY STATUS	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	UNDISCOUNTED	$960	$0	$0	$960	01/29/2018

EXAMINER	ART UNIT	CLASS-SUBCLASS
BAYS, MARIE D	3765	012-14600C

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).
- ❑ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ❑ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list
(1) The names of up to 3 registered patent attorneys or agents OR, alternatively,
(2) The name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.
1 _____
2 _____
3 _____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE (B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent) : ❑ Individual ❑ Corporation or other private group entity ❑ Government

4a. The following fee(s) are submitted:
- ❑ Issue Fee
- ❑ Publication Fee (No small entity discount permitted)
- ❑ Advance Order - # of Copies _____

4b. Payment of Fee(s): **(Please first reapply any previously paid issue fee shown above)**
- ❑ A check is enclosed.
- ❑ Payment by credit card. Form PTO-2038 is attached.
- ❑ The director is hereby authorized to charge the required fee(s), any deficiency, or credits any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

5. **Change in Entity Status** (from status indicated above)
- ❑ Applicant certifying micro entity status. See 37 CFR 1.29 — NOTE: Absent a valid certification of Micro Entity Status (see forms PTO/SB/15A and 15B), issue fee payment in the micro entity amount will not be accepted at the risk of application abandonment.
- ❑ Applicant asserting small entity status. See 37 CFR 1.27 — NOTE: If the application was previously under micro entity status, checking this box will be taken to be a notification of loss of entitlement to micro entity status.
- ❑ Applicant changing to regular undiscounted fee status. — NOTE: Checking this box will be taken to be a notification of loss of entitlement to small or micro entity status, as applicable.

NOTE: This form must be signed in accordance with 37 CFR 1.31 and 1.33. See 37 CFR 1.4 for signature requirements and certifications.

Authorized Signature _____ Date _____

Typed or printed name _____ Registration No. _____

PTOL-85 Part B (10-13) Approved for use through 10/31/2013. OMB 0651-0033 U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Skechers EX1013 p. 7562
Skechers v Nike

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/610,089	05/31/2017	BHUPESH DUA	NIKE.276100/08-1313US82CO	4757

78342 7590 10/27/2017

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER	
BAYS, MARIE D	

ART UNIT	PAPER NUMBER
3765	

DATE MAILED: 10/27/2017

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
(Applications filed on or after May 29, 2000)

The Office has discontinued providing a Patent Term Adjustment (PTA) calculation with the Notice of Allowance.

Section 1(h)(2) of the AIA Technical Corrections Act amended 35 U.S.C. 154(b)(3)(B)(i) to eliminate the requirement that the Office provide a patent term adjustment determination with the notice of allowance. See Revisions to Patent Term Adjustment, 78 Fed. Reg. 19416, 19417 (Apr. 1, 2013). Therefore, the Office is no longer providing an initial patent term adjustment determination with the notice of allowance. The Office will continue to provide a patent term adjustment determination with the Issue Notification Letter that is mailed to applicant approximately three weeks prior to the issue date of the patent, and will include the patent term adjustment on the patent. Any request for reconsideration of the patent term adjustment determination (or reinstatement of patent term adjustment) should follow the process outlined in 37 CFR 1.705.

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

Skechers EX1013-p. 7563
Skechers v Nike

OMB Clearance and PRA Burden Statement for PTOL-85 Part B

The Paperwork Reduction Act (PRA) of 1995 requires Federal agencies to obtain Office of Management and Budget approval before requesting most types of information from the public. When OMB approves an agency request to collect information from the public, OMB (i) provides a valid OMB Control Number and expiration date for the agency to display on the instrument that will be used to collect the information and (ii) requires the agency to inform the public about the OMB Control Number's legal significance in accordance with 5 CFR 1320.5(b).

The information collected by PTOL-85 Part B is required by 37 CFR 1.311. 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, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450. 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.

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.

Notice of Allowability	Application No. 15/610,089	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	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--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to *RCE and IDS filed 9/25/17*.
   ☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on_____.
2. ☐ 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.
3. ☒ The allowed claim(s) is/are *21-40*. As a result of the allowed claim(s), 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.
4. ☐ 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)).

   * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
   ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

   Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☒ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____
3. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
4. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____ .
5. ☐ Examiner's Amendment/Comment
6. ☐ Examiner's Statement of Reasons for Allowance
7. ☐ Other _____.

/Marie Bays/
Primary Examiner
Art Unit: 3765

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
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.

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	1841518		1932-01-19	Bellak	
	2	8069692	B2	2011-12-06	Chung et al.	
	3	6845284	B2	2005-01-18	Bingham et al.	
	4	5557527	A	1996-09-17	Kotaki et al.	
	5	5081854	A	1992-01-21	Lonati	
	6	4624115		1986-11-25	Safrit et al.	
	7	4438574		1984-03-27	Johnson	
	8	4172293		1979-10-30	Vistins	

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /M.D.B/

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

	9	4151662		1979-05-01	Vistins	
	10	4057981		1977-11-15	Runac	
	11	3863272		1975-02-04	Guille	
	12	3769723		1973-11-06	Masterson et al.	
	13	2467237		1949-04-12	Sherman et al.	

If you wish to add additional U.S. Patent citation information please click the Add button. Add

U.S.PATENT APPLICATION PUBLICATIONS Remove

Examiner Initial*	Cite No	Publication Number	Kind Code[1]	Publication Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear
	1	20100287790	A1	2010-11-18	Sokolowski et al.	
	2	20060130359	A1	2006-06-22	Dua et al.	

If you wish to add additional U.S. Published Application citation information please click the Add button. Add

FOREIGN PATENT DOCUMENTS Remove

Examiner Initial*	Cite No	Foreign Document Number[3]	Country Code[2] i	Kind Code[4]	Publication Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear	T[5]

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /M.D.B/

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						

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NON-PATENT LITERATURE DOCUMENTS Remove

Examiner Initials*	Cite No	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc), date, pages(s), volume-issue number(s), publisher, city and/or country where published.	T[5]
	1	Pre-Interview First Office Action dated 08/16/2017 in U.S. Patent Application No. 15/664,587, 7 pages.	
	2	Pre-Interview First Office Action dated 08/16/2017 in US Application No. 15/646,835, 7 pages.	
	3	PreInterview First Office Action dated 08/16/2017 in US Application No. 15/650,499, 7 pages.	
	4	Preinterview First Office Action dated 08/17/2017 in US Application No. 15/664,650 7 pages.	
	5	Pre-Interview First Office Action dated 08/18/2017 in U.S. Patent Application No. 15/664,623, 9 pages.	
	6	Pre-Interview First Office Action dated 08/21/2017 in US Application No. 15/659,053, 7 pages.	
	7	Pre-Interview Office Action dated August 7, 2017 in U.S. Patent Application No. 15/650,488, 5 pages.	
	8	Decision Denying Petitioner's Request for Rehearing Under 37 C.F.R. § 42.71 for Inter Partes Review IPR2017-00263 and for Inter Partes Review IPR2017-0264, dated July 20, 2017, 12 pages.	

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /M.D.B/

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

	9	Record of Oral Hearing for Inter Partes Review IPR2016-00921 and for Inter Partes Review IPR2016-00922, dated July 26, 2017, 74 pages.	

If you wish to add additional non-patent literature document citation information please click the Add button Add

EXAMINER SIGNATURE

Examiner Signature	/MARIE D BAYS/	Date Considered	10/12/2017

*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.

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /M.D.B/

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)	2017-09-25
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.**

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /M.D.B/

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 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.

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 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.

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /M.D.B/

Issue Classification	Application/Control No.	Applicant(s)/Patent Under Reexamination
	15610089	DUA ET AL.
	Examiner	**Art Unit**
	MARIE BAYS	3765

CPC						
Symbol					**Type**	**Version**
A43B		1	/	04	F	2013-01-01
D04B		21	/	207	I	2013-01-01
A43B		23	/	042	I	2013-01-01
A43B		23	/	0205	I	2013-01-01
A43B		7	/	085	I	2013-01-01
A43D		111	/	00	I	2013-01-01
D04B		1	/	102	I	2013-01-01
D04B		21	/	20	I	2013-01-01
D10B		2501	/	043	A	2013-01-01
A43B		23	/	0275	I	2013-01-01
A43B		23	/	0235	I	2013-01-01
A43B		23	/	0215	I	2013-01-01
A43B		23	/	021	I	2013-01-01
D04B		1	/	24	I	2013-01-01
A43B		23	/	028	I	2013-01-01
A43B		9	/	02	I	2013-01-01

CPC Combination Sets							
Symbol					**Type**	**Set**	**Ranking**	**Version**
			/					
			/					

NONE (Assistant Examiner)	(Date)	**Total Claims Allowed:** 20	
/MARIE BAYS/ Primary Examiner.Art Unit 3765 (Primary Examiner)	10/13/17 (Date)	O.G. Print Claim(s) 1	O.G. Print Figure 10

Issue Classification	Application/Control No.	Applicant(s)/Patent Under Reexamination
	15610089	DUA ET AL.
	Examiner	**Art Unit**
	MARIE BAYS	3765

US ORIGINAL CLASSIFICATION		INTERNATIONAL CLASSIFICATION										
CLASS	SUBCLASS	CLAIMED					NON-CLAIMED					
		A	4	3	B	1 / 04 (2006.01.01)						
CROSS REFERENCE(S)												
CLASS	SUBCLASS (ONE SUBCLASS PER BLOCK)											

NONE		**Total Claims Allowed:**	
(Assistant Examiner)	(Date)	20	
/MARIE BAYS/ Primary Examiner.Art Unit 3765	10/13/17	O.G. Print Claim(s)	O.G. Print Figure
(Primary Examiner)	(Date)	1	10

Issue Classification	Application/Control No.	Applicant(s)/Patent Under Reexamination
	15610089	DUA ET AL.
	Examiner	**Art Unit**
	MARIE BAYS	3765

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

Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original
1	21	17	37												
2	22	18	38												
3	23	19	39												
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9	29														
10	30														
11	31														
12	32														
13	33														
14	34														
15	35														
16	36														

NONE		**Total Claims Allowed:**	
(Assistant Examiner)	(Date)	20	
/MARIE BAYS/ Primary Examiner.Art Unit 3765	10/13/17	O.G. Print Claim(s)	O.G. Print Figure
(Primary Examiner)	(Date)	1	10

EAST Search History

EAST Search History (Prior Art)

Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
L1	745	A43B1/04.cpc. or A43B23/0205.cpc.	US-PGPUB; USPAT	OR	OFF	2017/10/13 06:45

EAST Search History (Interference)

< This search history is empty>

10/ 13/ 2017 6:46:27 AM
C:\ Users\ mpatterson\ Documents\ EAST\ Workspaces\ knit.wsp

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	15610089	DUA ET AL.
	Examiner	Art Unit
	MARIE BAYS	3765

CPC- SEARCHED		
Symbol	Date	Examiner
A43B 1/00, 1/02, 1/04, 23/00, 23/0205, 23/0265	8/1/17	/MB/
update above	10/13/17	/MB/

CPC COMBINATION SETS - SEARCHED		
Symbol	Date	Examiner

US CLASSIFICATION SEARCHED			
Class	Subclass	Date	Examiner
36	45, 47, 9R, 84	8/1/17	/MB/
update	above	10/13/17	/MB/

* See search history printout included with this form or the SEARCH NOTES box below to determine the scope of the search.

SEARCH NOTES		
Search Notes	Date	Examiner
Consulted Parent and related applications	8/1/17	
update above	10/13/17	/MB/

INTERFERENCE SEARCH			
US Class/ CPC Symbol	US Subclass / CPC Group	Date	Examiner
A43B	1/04, 23/0205	8/1/17	/MB/

To: IPDOCKET@SHB.COM,IPRCDKT@SHB.COM,nike_docketing@cardinal-ip.com
From: PAIR_eOfficeAction@uspto.gov
Cc: PAIR_eOfficeAction@uspto.gov
Subject: Private PAIR Correspondence Notification for Customer Number 78342

Oct 27, 2017 04:57:47 AM

Dear PAIR Customer:

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613
UNITED STATES

The following USPTO patent application(s) associated with your Customer Number, 78342 , have new outgoing correspondence. This correspondence is now available for viewing in Private PAIR.

The official date of notification of the outgoing correspondence will be indicated on the form PTOL-90 accompanying the correspondence.

Disclaimer:
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Application	Document	Mailroom Date	Attorney Docket No.
15610089	NOA	10/27/2017	NIKE.276100/08-1313US82CO
	1449	10/27/2017	NIKE.276100/08-1313US82CO

To view your correspondence online or update your email addresses, please visit us anytime at https://sportal.uspto.gov/secure/myportal/privatepair.

If you have any questions, please email the Electronic Business Center (EBC) at EBC@uspto.gov with 'e-Office Action' on the subject line or call 1-866-217-9197 during the following hours:

Monday - Friday 6:00 a.m. to 12:00 a.m.

Thank you for prompt attention to this notice,

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT APPLICATION INFORMATION RETRIEVAL SYSTEM

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: Mail Mail Stop ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
or Fax (571)-273-2885

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

78342 7590 10/27/2017
SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission
I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

Cheryl D. Neeley	(Depositor's name)
/Cheryl D. Neeley/	(Signature)
11/15/2017 via EFS-Web	(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/610,089	05/31/2017	BHUPESH DUA	NIKE.276100/08-1313US82CO	4757

TITLE OF INVENTION: ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER

APPLN. TYPE	ENTITY STATUS	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	UNDISCOUNTED	$960	$0	$0	$960	01/29/2018

EXAMINER	ART UNIT	CLASS-SUBCLASS
BAYS, MARIE D	3765	012-14600C

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).
☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list
(1) The names of up to 3 registered patent attorneys or agents OR, alternatively,
(2) The name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1 Shook, Hardy & Bacon L.L.P.
2
3

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE: NIKE, Inc.

(B) RESIDENCE: (CITY and STATE OR COUNTRY): Beaverton, OR

Please check the appropriate assignee category or categories (will not be printed on the patent) : ☐ Individual ☒ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:
☒ Issue Fee
☐ Publication Fee (No small entity discount permitted)
☐ Advance Order - # of Copies _____

4b. Payment of Fee(s): **(Please first reapply any previously paid issue fee shown above)**
☐ A check is enclosed.
☒ Payment by credit card. [redacted].
☒ The director is hereby authorized to [redacted] credits any overpayment, to Deposit Account Number 19-2112 [redacted]

5. **Change in Entity Status** (from status indicated above)
☐ Applicant certifying micro entity status. See 37 CFR 1.29
NOTE: Absent a valid certification of Micro Entity Status (see forms PTO/SB/15A and 15B), issue fee payment in the micro entity amount will not be accepted at the risk of application abandonment.
☐ Applicant asserting small entity status. See 37 CFR 1.27
NOTE: If the application was previously under micro entity status, checking this box will be taken to be a notification of loss of entitlement to micro entity status.
☐ Applicant changing to regular undiscounted fee status.
NOTE: Checking this box will be taken to be a notification of loss of entitlement to small or micro entity status, as applicable.

NOTE: This form must be signed in accordance with 37 CFR 1.31 and 1.33. See 37 CFR 1.4 for signature requirements and certifications.

Authorized Signature /ELIZABETH A. LUCAS/ Date November 15, 2017
Typed or printed name Elizabeth A. Lucas Registration No. 74, 247

PTOL-85 Part B (10-13) Approved for use through 10/31/2013. OMB 0651-0033 U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Skechers EX1013 p. 7578
Skechers v Nike

Electronic Patent Application Fee Transmittal

Application Number:	15610089
Filing Date:	31-May-2017
Title of Invention:	ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER
First Named Inventor/Applicant Name:	BHUPESH DUA
Filer:	Elizabeth Ashley Lucas/Cheryl Neeley
Attorney Docket Number:	NIKE.276100/08-1313US82CO

Filed as Large Entity

Filing Fees for Utility under 35 USC 111(a)

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
UTILITY APPL ISSUE FEE	1501	1	960	960

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Extension-of-Time:				
Miscellaneous:				
			Total in USD ($)	**960**

Electronic Acknowledgement Receipt

EFS ID:	30963061
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/Cheryl Neeley
Filer Authorized By:	Elizabeth Ashley Lucas
Attorney Docket Number:	NIKE.276100/08-1313US82CO
Receipt Date:	15-NOV-2017
Filing Date:	31-MAY-2017
Time Stamp:	17:35:14
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	CARD
Payment was successfully received in RAM	$960
RAM confirmation Number	111617INTEFSW17363800
Deposit Account	
Authorized User	

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Issue Fee Payment (PTO-85B)	276100_Issue_Fee_Transmittal.PDF	344822 65abf1c5fa0a43e0cfdc1ccd96060d8d135d2859	no	1
Warnings:					
Information:					
2	Fee Worksheet (SB06)	fee-info.pdf	30849 fb3d92803c73aad18a770b9bdbdcc4174ffd54b4	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	375671		

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.

PTO/SB/30EFS (07-14)
Approved for use through 07/31/2016. 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 contains a valid OMB control number.

REQUEST FOR CONTINUED EXAMINATION(RCE)TRANSMITTAL
(Submitted Only via EFS-Web)

Application Number	15/610,089	Filing Date	2017-05-31	Docket Number (if applicable)	NIKE.276100	Art Unit	3765
First Named Inventor	BHUPESH DUA			Examiner Name	MARIE D. BAYS		

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application.
Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, to any international application that does not comply with the requirements of 35 U.S.C. 371, or to any design application. The Instruction Sheet for this form is located at WWW.USPTO.GOV.

SUBMISSION REQUIRED UNDER 37 CFR 1.114

Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

☐ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

- ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____
- ☐ Other _____

☒ Enclosed

- ☐ Amendment/Reply
- ☒ Information Disclosure Statement (IDS)
- ☐ Affidavit(s)/ Declaration(s)
- ☐ Other _____

MISCELLANEOUS

☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of months _____ (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)

☐ Other _____

FEES

The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

☒ The Director is hereby authorized to charge any underpayment of fees, or credit any overpayments, to Deposit Account No 192112

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

☒ Patent Practitioner Signature

Applicant Signature

PTO/SB/30EFS (07-14)
Approved for use through 07/31/2016. 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 contains a valid OMB control number.

Signature of Registered U.S. Patent Practitioner			
Signature	/ELIZABETH A. LUCAS/	Date (YYYY-MM-DD)	2017-11-16
Name	ELIZABETH A. LUCAS	Registration Number	74247

This collection of information is required by 37 CFR 1.114. 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.

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

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 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 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.

Skechers EX1013-p. 7585
Skechers v Nike

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/610,011	05/31/2017	BHUPESH DUA	NIKE.276103/08-1313US85CO	4154

78342 7590 09/01/2017

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER
BAYS, MARIE D

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
09/01/2017	ELECTRONIC

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

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Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPDOCKET@SHB.COM
IPRCDKT@SHB.COM
nike_docketing@cardinal-ip.com

First Action Interview Pilot Program Pre-Interview Communication	Application No. 15/610,011	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

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Status

1)☒ Responsive to communication(s) filed on *8/21/17*.

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

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2)☒ Claim(s) *21-37* is/are pending in the application.

2a) Of the above claim(s) _____ is/are withdrawn from consideration.

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Contact Information

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Examiner's Typical Work Schedule: M-Th 6:30-4:00

Supervisor's Name: Khoa Huynh

Supervisor's Telephone Number: 571-272-4888

Attachment(s)

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

2) ☒Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

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

4) ☐ Other: _____.

First Action Interview Pilot Program Pre-Interview Communication	Application No. 15/610,011	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

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Expanded Discussion/Commentary

		Obvious type double patenting with 15/650499, 15/650488, and 15/609971
		35 USC 112 second paragraph rejection for claim 29 "configured to counter movement is vague and indefinite.

DATE:	/Marie Bays/ Primary Examiner Art Unit: 3765	

Notice of References Cited	Application/Control No. 15/610,011	Applicant(s)/Patent Under Reexamination DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	Page 1 of 2

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*	E	US-RE18,804 E	04-1933	Name not available	D04B1/24	66/177
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*	K	US-2,586,045 A	02-1952	JOHN HOZA	A43B1/04	36/14
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*	M	US-3,583,081 A	06-1971	Hayashi	A43B1/14	36/45

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*	B	US-4,447,967 A	05-1984	Zaino; Luigi	A43B23/0235	36/45
*	C	US-4,785,558 A	11-1988	Shiomura; Kazuhiko	A43B1/04	36/114
*	D	US-5,345,638 A	09-1994	Nishida; Mamoru	A41H3/08	12/146C
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	L	US-				
	M	US-				

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/609,971	05/31/2017	BHUPESH DUA	NIKE.276102/08-1313US84CO	2707

78342 7590 09/07/2017

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INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER	
BAYS, MARIE D	

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	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

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Application Papers

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Supervisor's Name: Khoa Huynh

Supervisor's Telephone Number: 571-272-4888

Attachment(s)	
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First Action Interview Pilot Program Pre-Interview Communication	Application No. 15/609,971	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

Notification of Rejection(s) and/or Objection(s)

#	Claim(s)	Reference(s) (if applicable)	Rejection Statutory Basis	Brief Explanation of Rejection
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	25 and 34	Hayashi 3583081	35USC103	teaches a plurality of different length non textile strips (8).

Expanded Discussion/Commentary

		Obvious type double patenting with 15/650499 and 15/650488
		35USC 112 second paragraph rejection for claim 29 "configured to counter movement" is vagud and indefinite.

DATE: 28 August, 2017	/Marie Bays/ Primary Examiner Art Unit: 3765	

Notice of References Cited	Application/Control No. 15/609,971	Applicant(s)/Patent Under Reexamination DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	Page 1 of 2

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/684,608	08/23/2017	BHUPESH DUA	NIKE.276109/08-1313US91CO	6345

78342 7590 09/15/2017

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
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2555 GRAND BLVD.
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EXAMINER
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Skechers EX1013-p. 7596
Skechers v Nike

First Action Interview Pilot Program Pre-Interview Communication	Application No. 15/684,608	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

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2a) Of the above claim(s) _____ is/are withdrawn from consideration.

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Examiner's Typical Work Schedule: M-Th 6:30-4:00

Supervisor's Name: Khoa Huynh

Supervisor's Telephone Number: 5712724888

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Skechers EX1013-p. 7597
Skechers v Nike

First Action Interview Pilot Program Pre-Interview Communication	Application No. 15/684,608	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

Notification of Rejection(s) and/or Objection(s)

#	Claim(s)	Reference(s) (if applicable)	Rejection Statutory Basis	Brief Explanation of Rejection
	21-40	Nishida 5345638	35USC 103	Teaches method of providing a kint textile (1), cutting footwear elements (30) which longitudinal edges are aligned (see figure 2) therefrom with a longitudinal seam (29.3 and 29.4) except for the method of forming the knit textile.
	21-40	Reed 3985003	35USC 103	Teaches circular knitting as a known method of forming a knit textile (10) with a plurality of elements outlined (at 22) for forming a plurality of garments as a method of providing a sheet of knitted material for cutting an element therefrom.

Expanded Discussion/Commentary

		The exact diameter of the circular knit textile structure is considered to be obvious in view of conventional circular knitting machines.
		Cited references to Safrit (4624115), Lonati (5081854), and Bingham (6845284) teach that it is known to circular knit a textile with a pattern/outline therein for cutting along to obtain an element for forming a garment. Footwear is considered to be "garments" and Nichida teaches that the method is know to cut footwear elements from a knitted textile element.
		Obvious Double Patenting with Patent 7814598 and application 15/664623

DATE:	/Marie Bays/ Primary Examiner Art Unit: 3765	

Notice of References Cited	Application/Control No. 15/684,608	Applicant(s)/Patent Under Reexamination DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	Page 1 of 3

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	CPC Classification	US Classification
*	A	US-1,841,518 A	01-1932	HENRY BELLAK	D04B1/24	36/11
*	B	US-1,888,172 A	11-1932	JOHA ELMER N	A43B1/02	36/11
*	C	US-1,902,780 A	03-1933	HOLDEN ROGER M	D04B1/26	36/55
*	D	US-1,910,251 A	05-1933	JOHA ELMER N	D04B1/24	12/142S
*	E	US-2,047,724 A	07-1936	ZUCKERMAN LOUIS G	D04B1/24	36/11
*	F	US-2,330,199 A	09-1943	HOLMES BASCH OLIVE	D04B1/106	2/80
*	G	US-2,467,237 A	04-1949	SHERMAN ROY E	A43B1/04	12/114.6
*	H	US-3,863,272 A	02-1975	Guille; Robert	A41B11/007	12/142G
*	I	US-3,985,003 A	10-1976	Reed; Alfred J.	D04B9/42	2/115
*	J	US-4,057,981 A	11-1977	Runac; John J.	D04B1/26	66/185
*	K	US-4,151,662 A	05-1979	Vistins; Maris	A41D13/04	2/168
*	L	US-4,172,293 A	10-1979	Vistins; Maris	A41D13/04	156/280
*	M	US-4,624,115 A	11-1986	Safrit; Sam C.	A41B9/001	66/172R

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	CPC Classification
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NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
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*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

Notice of References Cited	Application/Control No. 15/684,608	Applicant(s)/Patent Under Reexamination DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	Page 2 of 3

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	CPC Classification	US Classification
*	A	US-4,785,558 A	11-1988	Shiomura; Kazuhiko	A43B1/04	36/114
*	B	US-5,081,854 A	01-1992	Lonati; Francesco	A41B9/00	2/402
*	C	US-5,345,638 A	09-1994	Nishida; Mamoru	A41H3/08	12/146C
*	D	US-5,353,524 A	10-1994	Brier; Daniel L.	A41B11/02	2/239
*	E	US-6,308,438 B1	10-2001	Throneburg; James L.	A43B1/02	36/11
*	F	US-6,558,784 B1	05-2003	Norton; Edward J.	A43B5/002	12/146C
*	G	US-6,845,284 B2	01-2005	Bingham; Geoffrey	D04B1/24	66/8
*	H	US-6,931,762 B1	08-2005	Dua; Bhupesh	A43B1/04	12/142G
*	I	US-2005/0193592 A1	09-2005	Dua, Bhupesh	A43B1/04	36/45
*	J	US-7,347,011 B2	03-2008	Dua; Bhupesh	A43B1/04	36/10
*	K	US-7,814,598 B2	10-2010	Dua; Bhupesh	A43B1/04	12/146C
*	L	US-8,042,288 B2	10-2011	Dua; Bhupesh	A43B1/04	36/10
*	M	US-8,069,692 B2	12-2011	Chung; Chi Leung	D04B1/16	66/172E

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
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Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

Notice of References Cited	Application/Control No. 15/684,608	Applicant(s)/Patent Under Reexamination DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	Page 3 of 3

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	CPC Classification	US Classification
*	A	US-8,266,749 B2	09-2012	Dua; Bhupesh	A43B1/04	12/146C
	B	US-				
	C	US-				
	D	US-				
	E	US-				
	F	US-				
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	K	US-				
	L	US-				
	M	US-				

FOREIGN PATENT DOCUMENTS

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Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/703,583	09/13/2017	BHUPESH DUA	NIKE.276111/081313US93CON	7176

78342 7590 10/20/2017

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER
BAYS, MARIE D

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
10/20/2017	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPDOCKET@SHB.COM
IPRCDKT@SHB.COM
nike_docketing@cardinal-ip.com

Skechers EX1013-p. 7602
Skechers v Nike

First Action Interview Pilot Program Pre-Interview Communication	Application No. 15/703,583	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

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

THE SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE **ONE MONTH OR THIRTY (30) DAYS,** WHICHEVER IS LONGER, FROM THE MAILING OR NOTIFICATION DATE OF THIS COMMUNICATION.

This time period for reply is extendable under 37 CFR 1.136(a) for only ONE additional MONTH.

This communication constitutes notice under 37 CFR 1.136(a)(1)(i).

Applicant must, within the time period for reply, file: (1) A letter requesting not to have a first action interview; (2) A reply under 37 CFR 1.111 waiving the first action interview and First Action Interview Office Action; or (3) An Applicant Initiated Interview Request Form (PTOL-413A) electronically via EFS-Web, accompanied by a proposed amendment or arguments, and schedule the interview within 2 months from the filing of the request. A failure to respond to this communication will be treated as a request not to have an interview. If applicant waives the First Action Interview Office Action, the instant Pre-Interview Communication is deemed the first Office Action on the Merits. The next subsequent Office action may be made final if appropriate. See MPEP 706.07(a).

Status

1)☐ Responsive to communication(s) filed on _____.

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

Disposition of Claims

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

2a) Of the above claim(s) _____ is/are withdrawn from consideration.

3)☐ Claim(s) _____ is/are allowed.

4)☒ Claim(s) *21-40* is/are rejected.

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

6)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

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

8)☐ 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

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

a)☐ All b)☐ Some * c)☐ None of:

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.

Contact Information

Examiner's Telephone Number: (571)272-4559

Examiner's Typical Work Schedule: M-Th 6:30-4:00

Supervisor's Name: Khoa Huynh

Supervisor's Telephone Number: 571-272-4888

Attachment(s)	
1) ☒Notice of References Cited (PTO-892)	3) ☐Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
2) ☒Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.	4) ☐ Other: _____.

Skechers EX1013-p. 7603
Skechers v Nike

First Action Interview Pilot Program Pre-Interview Communication	**Application No.** 15/703,583	**Applicant(s)** DUA ET AL.	
	Examiner MARIE BAYS	**Art Unit** 3765	**AIA (First Inventor to File) Status** No

Notification of Rejection(s) and/or Objection(s)

#	Claim(s)	Reference(s) (if applicable)	Rejection Statutory Basis	Brief Explanation of Rejection
	21-40	1888172 (Joha)	35 USC 103	Flat knit upper (10) with longitudinal edges which are attached (see figures 4 and 5 at 22), an additional element (29), a sole (25) except for specific distance between edges. Distance is considered within obvious/inherent range for footwear sizes.
	29, 30,39, 40	1841518 (Bellak)	35 USC 103	Modifying reference that teaches providing a flat knit upper with different yarns and/or constructions to provide areas with different properties.

Expanded Discussion/Commentary

		Obvious type double patenting with 7347011, 15/664650

DATE: 17 October, 2017	/Marie Bays/ Primary Examiner Art Unit: 3765	

Notice of References Cited	Application/Control No. 15/703,583	Applicant(s)/Patent Under Reexamination DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	CPC Classification	US Classification
*	A	US-1,841,518 A	01-1932	HENRY BELLAK	D04B1/24	36/11
*	B	US-1,888,172 A	11-1932	JOHA ELMER N	A43B1/02	36/11
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NON-PATENT DOCUMENTS

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*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

Notice of References Cited	Application/Control No. 15/703,583	Applicant(s)/Patent Under Reexamination DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	CPC Classification	US Classification
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FOREIGN PATENT DOCUMENTS

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UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/609,971	05/31/2017	BHUPESH DUA	NIKE.276102/08-1313US84CO	2707

78342 7590 09/29/2017

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER	
BAYS, MARIE D	

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
09/29/2017	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPDOCKET@SHB.COM
IPRCDKT@SHB.COM
nike_docketing@cardinal-ip.com

First Action Interview Office Action Summary	Application No. 15/609,971	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

The MAILING OR NOTIFICATION DATE of this communication appears on the cover sheet with the correspondence address.

THE SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE **TWO MONTHS** FROM THE MAILING OR NOTIFICATION DATE OF THIS COMMUNICATION.

This time period for reply is extendable under 37 CFR 1.136(a) for only TWO additional MONTHS.

☐ Applicant's request to not have a first-action interview is acknowledged (or the time period for reply set forth in the Pre-Interview Communication has expired and the Office did not receive any reply).

Status

1) ☒ Responsive to communication(s) filed on *8/21/17* and interview conducted on *9/21/17*.
   ☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.
2) ☐ 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

3) ☒ Claim(s) *21-37* is/are pending in the application.
   3a) Of the above claim(s) _____ is/are withdrawn from consideration.
4) ☐ Claim(s) _____ is/are allowed.
5) ☒ Claim(s) *21-37* is/are rejected.
6) ☐ Claim(s) _____ is/are objected to.
7) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

8) ☐ The specification is objected to by the Examiner.
9) ☐ 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

10) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   a) ☐ All b) ☐ Some * c) ☐ None of:
   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.

Contact Information

Examiner's Telephone Number: (571)272-4559

Examiner's Typical Work Schedule: M-Th 6:30-4:00

Supervisor's Name: Khoa Huynh

Supervisor's Telephone Number: 571-272-4888

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: _____.

First Action Interview Office Action Summary	Application No. 15/609,971	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

Notification of Rejection(s) and/or Objection(s)

#	Claim(s)	Reference(s) (if applicable)	Rejection Statutory Basis	Brief Explanation of Rejection
	21-25, 27-33, 36, and 37	Throneburg 6308438	35USC 102	knit textile (12) stitches oriented as claimed and non textile heel (68) and strip (64).
	34	Dua 2004/0118018	35USC103	teaches a plurality of non textile strips (134)
	25 and 34	Hayashi 3583081	35USC103	teaches a plurality of different length non textile strips (8).

Expanded Discussion/Commentary

		Obvious type double patenting with 15/650499 and 15/650488
		35USC 112 second paragraph rejection for claim 29 "configured to counter movement" is vagud and indefinite.

DATE: 21 September, 2017	/Marie Bays/ Primary Examiner Art Unit: 3765	

Applicant-Initiated Interview Summary	Application No.	Applicant(s)	
	15/609,971	DUA ET AL.	
	Examiner	Art Unit	
	MARIE BAYS	3765	

All participants (applicant, applicant's representative, PTO personnel):

(1) *MARIE BAYS*. (3)_____.

(2) *Elizabeth Lucas*. (4)_____.

Date of Interview: *21 September 2017*.

Type: ☒ Telephonic ☐ Video Conference
☐ Personal [copy given to: ☐ applicant ☐ applicant's representative]

Exhibit shown or demonstration conducted: ☐ Yes ☐ No.
If Yes, brief description: _____.

Issues Discussed ☐101 ☒112 ☒102 ☒103 ☐Others
(For each of the checked box(es) above, please describe below the issue and detailed description of the discussion)

Claim(s) discussed: *all of record*.

Identification of prior art discussed: *applied prior art*.

Substance of Interview
(For each issue discussed, provide a detailed description and indicate if agreement was reached. Some topics may include: identification or clarification of a reference or a portion thereof, claim interpretation, proposed amendments, arguments of any applied references etc...)

Applicants representative discussed amending the claims to include language directed towards the location/orientation of the strips which appears to overcome the "strips" shown by the prior art. Exact language will be further considered upon formal filing. Options to correct the 35 USC 112 issue were discussed. Exact Double Pateting rejections will be decided once claims are in allowable condition. .

Applicant recordation instructions: The formal written reply to the last Office action must include the substance of the interview. (See MPEP section 713.04). If a reply to the last Office action has already been filed, applicant is given a non-extendable period of the longer of one month or thirty days from this interview date, or the mailing date of this interview summary form, whichever is later, to file a statement of the substance of the interview

Examiner recordation instructions: Examiners must summarize the substance of any interview of record. A complete and proper recordation of the substance of an interview should include the items listed in MPEP 713.04 for complete and proper recordation including the identification of the general thrust of each argument or issue discussed, a general indication of any other pertinent matters discussed regarding patentability and the general results or outcome of the interview, to include an indication as to whether or not agreement was reached on the issues raised.

☐ Attachment

	/Marie Bays/ Primary 3765 9/21/17

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record
A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews
Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.
All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:
- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

1) A brief description of the nature of any exhibit shown or any demonstration conducted,
2) an identification of the claims discussed,
3) an identification of the specific prior art discussed,
4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
5) a brief identification of the general thrust of the principal arguments presented to the examiner,
   (The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
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Applicant-Initiated Interview Summary	Application No.	Applicant(s)	
	15/609,971	DUA ET AL.	
	Examiner	Art Unit	
	MARIE BAYS	3765	

All participants (applicant, applicant's representative, PTO personnel):

(1) *MARIE BAYS*. (3)_____.

(2) *Elizabeth Lucas*. (4)_____.

Date of Interview: *21 September 2017*.

Type: ☒ Telephonic ☐ Video Conference
☐ Personal [copy given to: ☐ applicant ☐ applicant's representative]

Exhibit shown or demonstration conducted: ☐ Yes ☐ No.
If Yes, brief description: _____.

Issues Discussed ☐101 ☒112 ☒102 ☒103 ☐Others
(For each of the checked box(es) above, please describe below the issue and detailed description of the discussion)

Claim(s) discussed: *all of record*.

Identification of prior art discussed: *applied prior art*.

Substance of Interview
(For each issue discussed, provide a detailed description and indicate if agreement was reached. Some topics may include: identification or clarification of a reference or a portion thereof, claim interpretation, proposed amendments, arguments of any applied references etc...)

Applicants representative discussed amending the claims to include language directed towards the location/orientation of the strips which appears to overcome the "strips" shown by the prior art. Exact language will be further considered upon formal filing. Options to correct the 35 USC 112 issue were discussed. Exact Double Pateting rejections will be decided once claims are in allowable condition. .

Applicant recordation instructions: The formal written reply to the last Office action must include the substance of the interview. (See MPEP section 713.04). If a reply to the last Office action has already been filed, applicant is given a non-extendable period of the longer of one month or thirty days from this interview date, or the mailing date of this interview summary form, whichever is later, to file a statement of the substance of the interview

Examiner recordation instructions: Examiners must summarize the substance of any interview of record. A complete and proper recordation of the substance of an interview should include the items listed in MPEP 713.04 for complete and proper recordation including the identification of the general thrust of each argument or issue discussed, a general indication of any other pertinent matters discussed regarding patentability and the general results or outcome of the interview, to include an indication as to whether or not agreement was reached on the issues raised.

☐ Attachment

	/Marie Bays/ Primary 3765 9/21/17

Summary of Record of Interview Requirements

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A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

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Paragraph (b)

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The Form provides for recordation of the following information:
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- Name of applicant
- Name of examiner
- Date of interview
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- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
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United States Patent and Trademark Office
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P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/664,650	07/31/2017	BHUPESH DUA	NIKE.276113/08-1313US95CO	8565

78342 7590 10/10/2017

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER
BAYS, MARIE D

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
10/10/2017	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPDOCKET@SHB.COM
IPRCDKT@SHB.COM
nike_docketing@cardinal-ip.com

First Action Interview Office Action Summary	Application No. 15/664,650	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

The MAILING OR NOTIFICATION DATE of this communication appears on the cover sheet with the correspondence address.

THE SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE **TWO MONTHS** FROM THE MAILING OR NOTIFICATION DATE OF THIS COMMUNICATION.

This time period for reply is extendable under 37 CFR 1.136(a) for only TWO additional MONTHS.

☐ Applicant's request to not have a first-action interview is acknowledged (or the time period for reply set forth in the Pre-Interview Communication has expired and the Office did not receive any reply).

Status

1) ☒ Responsive to communication(s) filed on *9/18/17* and interview conducted on *10/3/17*.
   ☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.
2) ☐ 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

3) ☒ Claim(s) *21-38* is/are pending in the application.
   3a) Of the above claim(s) _____ is/are withdrawn from consideration.
4) ☐ Claim(s) _____ is/are allowed.
5) ☒ Claim(s) *21-38* is/are rejected.
6) ☐ Claim(s) _____ is/are objected to.
7) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

8) ☐ The specification is objected to by the Examiner.
9) ☐ 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

10) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   a) ☐ All b) ☐ Some * c) ☐ None of:
   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.

Contact Information

Examiner's Telephone Number: (571)272-4559

Examiner's Typical Work Schedule: M-Th 6:30-4:00

Supervisor's Name: Khoa Huynh

Supervisor's Telephone Number: 571-272-4888

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: _____.

First Action Interview Office Action Summary	Application No. 15/664,650	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

Notification of Rejection(s) and/or Objection(s)

#	Claim(s)	Reference(s) (if applicable)	Rejection Statutory Basis	Brief Explanation of Rejection
	21-38	Brier 5353524	35USC103	Shows a shoe comprising a knitted interior layer (10), an exterior layer (shown in figure 4 and/or 55/62) and an intermediate layer (60/61) except for exact method of making knitted layer.
	21-38	Joha 1910251	35 USC 103	teaches forming a knitted layer by flat knitting (page 1 lines73-95) and seams as claimed.
	21-38	Bellak 1841518	35 USC 103	teaches forming a knitted layer from a flat knit textile (figure 1) and seams (29 and 29').

Expanded Discussion/Commentary

		Double Patenting with 7347011,

DATE:	/Marie Bays/ Primary Examiner Art Unit: 3765	

Applicant-Initiated Interview Summary	Application No.	Applicant(s)	
	15/664,650	DUA ET AL.	
	Examiner	Art Unit	
	MARIE BAYS	3765	

All participants (applicant, applicant's representative, PTO personnel):

(1) *MARIE BAYS*. (3)_____.

(2) *Elizabeth Lucas*. (4)_____.

Date of Interview: *03 October 2017*.

Type: ☒ Telephonic ☐ Video Conference
☐ Personal [copy given to: ☐ applicant ☐ applicant's representative]

Exhibit shown or demonstration conducted: ☐ Yes ☐ No.
If Yes, brief description: _____.

Issues Discussed ☐101 ☐112 ☒102 ☒103 ☒Others
(For each of the checked box(es) above, please describe below the issue and detailed description of the discussion)

Claim(s) discussed: *all of record*.

Identification of prior art discussed: *allof record*.

Substance of Interview
(For each issue discussed, provide a detailed description and indicate if agreement was reached. Some topics may include: identification or clarification of a reference or a portion thereof, claim interpretation, proposed amendments, arguments of any applied references etc...)

Applicant discussed adding language directed towards the flat knit edges being curved/nonlinear/contoured to overcome the square/rectangular flat knit elements in the prior art. Such language appears to overcome the prior art of record, exact language will be further considered upon form filing and determination of exact Double Patenting issues will be determined at that time..

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☐ Attachment

	/Marie Bays/ Primary 3765

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/664,587	07/31/2017	BHUPESH DUA	NIKE.276096/08-1313US78CO	9048

78342 7590 10/12/2017

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER
BAYS, MARIE D

ART UNIT	PAPER NUMBER
3765	

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IPRCDKT@SHB.COM
nike_docketing@cardinal-ip.com

First Action Interview Office Action Summary	Application No. 15/664,587	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

The MAILING OR NOTIFICATION DATE of this communication appears on the cover sheet with the correspondence address.

THE SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE **TWO MONTHS** FROM THE MAILING OR NOTIFICATION DATE OF THIS COMMUNICATION.

This time period for reply is extendable under 37 CFR 1.136(a) for only TWO additional MONTHS.

☐ Applicant's request to not have a first-action interview is acknowledged (or the time period for reply set forth in the Pre-Interview Communication has expired and the Office did not receive any reply).

Status

1) ☐ Responsive to communication(s) filed on _____ and interview conducted on _____.
   ☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.
2) ☐ 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

3) ☒ Claim(s) *21-40* is/are pending in the application.
   3a) Of the above claim(s) _____ is/are withdrawn from consideration.
4) ☐ Claim(s) _____ is/are allowed.
5) ☒ Claim(s) *21-40* is/are rejected.
6) ☐ Claim(s) _____ is/are objected to.
7) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

8) ☐ The specification is objected to by the Examiner.
9) ☐ 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

10) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   a) ☐ All b) ☐ Some * c) ☐ None of:
      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.

Contact Information

Examiner's Telephone Number: (571)272-4559

Examiner's Typical Work Schedule: M-Th 6:30-4:00

Supervisor's Name: Khoa Huynh

Supervisor's Telephone Number: 571-272-4888

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: _____.

First Action Interview Office Action Summary	Application No. 15/664,587	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

Notification of Rejection(s) and/or Objection(s)

#	Claim(s)	Reference(s) (if applicable)	Rejection Statutory Basis	Brief Explanation of Rejection
	21-29	Bellak 1841518	35USC102	Bellak shows flat knit upper (figure 1) with strips (21 and 15, and/or at 23, also see page 1 column 2- page 2 column 1) with different properties and apertures (inherent in all knitted elements)
	30-40	Bellak	35USC103	Shows all but different yarns/stretch and sole
	30-34 and 36	Basch 2330199	35USC103	Teaches strips of different property yarns (1, 2, 1')
	35-40	Joha 1910251	35USC103	Teaches attaching a sole (25) to a flat knit upper (2)

Expanded Discussion/Commentary		
		Double Patenting with 15/646835, 15/659053, 15/610089, 7347011, 15/664650, Exact double patenting issues will be finally decided upon allowable claim language.

DATE: 21 September, 2017	/Marie Bays/ Primary Examiner Art Unit: 3765	

Applicant-Initiated Interview Summary	Application No.	Applicant(s)	
	15/664,587	DUA ET AL.	
	Examiner	Art Unit	
	MARIE BAYS	3765	

All participants (applicant, applicant's representative, PTO personnel):

(1) *MARIE BAYS*. (3)_____.

(2) *Elizabeth A. Lucas*. (4)_____.

Date of Interview: *21 September 2017*.

Type: ☒ Telephonic ☐ Video Conference
☐ Personal [copy given to: ☐ applicant ☐ applicant's representative]

Exhibit shown or demonstration conducted: ☐ Yes ☐ No.
If Yes, brief description: _____.

Issues Discussed ☐101 ☐112 ☒102 ☒103 ☐Others
(For each of the checked box(es) above, please describe below the issue and detailed description of the discussion)

Claim(s) discussed: *all of record*.

Identification of prior art discussed: *applied prior art*.

Substance of Interview
(For each issue discussed, provide a detailed description and indicate if agreement was reached. Some topics may include: identification or clarification of a reference or a portion thereof, claim interpretation, proposed amendments, arguments of any applied references etc...)

The Examiner suggested amending the claims to include language directed towards the location/orientation of the strips to be vertically extending from the sole to the instep area or similar language directed towards the location/orientation shown in figure 11. Exact double patening issues were discussed and the Examiner noted that she would tie applications that claimed an orientation/location of strips on a knitted upper as shown in figure 11 to one another. Exact language will be considered upon formal filing..

Applicant recordation instructions: The formal written reply to the last Office action must include the substance of the interview. (See MPEP section 713.04). If a reply to the last Office action has already been filed, applicant is given a non-extendable period of the longer of one month or thirty days from this interview date, or the mailing date of this interview summary form, whichever is later, to file a statement of the substance of the interview

Examiner recordation instructions: Examiners must summarize the substance of any interview of record. A complete and proper recordation of the substance of an interview should include the items listed in MPEP 713.04 for complete and proper recordation including the identification of the general thrust of each argument or issue discussed, a general indication of any other pertinent matters discussed regarding patentability and the general results or outcome of the interview, to include an indication as to whether or not agreement was reached on the issues raised.

☐ Attachment

/	/Marie Bays/ Primary 3765 9/21/17

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record
A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews
Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.
All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:
- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:
1) A brief description of the nature of any exhibit shown or any demonstration conducted,
2) an identification of the claims discussed,
3) an identification of the specific prior art discussed,
4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
5) a brief identification of the general thrust of the principal arguments presented to the examiner,
   (The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
6) a general indication of any other pertinent matters discussed, and
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Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Applicant-Initiated Interview Summary	Application No.	Applicant(s)	
	15/664,587	DUA ET AL.	
	Examiner	Art Unit	
	MARIE BAYS	3765	

All participants (applicant, applicant's representative, PTO personnel):

(1) *MARIE BAYS*. (3)_____.

(2) *Elizabeth A. Lucas*. (4)_____.

Date of Interview: *21 September 2017*.

Type: ☒ Telephonic ☐ Video Conference
☐ Personal [copy given to: ☐ applicant ☐ applicant's representative]

Exhibit shown or demonstration conducted: ☐ Yes ☐ No.
If Yes, brief description: _____.

Issues Discussed ☐101 ☐112 ☒102 ☒103 ☐Others
(For each of the checked box(es) above, please describe below the issue and detailed description of the discussion)

Claim(s) discussed: *all of record*.

Identification of prior art discussed: *applied prior art*.

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(For each issue discussed, provide a detailed description and indicate if agreement was reached. Some topics may include: identification or clarification of a reference or a portion thereof, claim interpretation, proposed amendments, arguments of any applied references etc...)

The Examiner suggested amending the claims to include language directed towards the location/orientation of the strips to be vertically extending from the sole to the instep area or similar language directed towards the location/orientation shown in figure 11. Exact double patening issues were discussed and the Examiner noted that she would tie applications that claimed an orientation/location of strips on a knitted upper as shown in figure 11 to one another. Exact language will be considered upon formal filing..

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☐ Attachment

/	/Marie Bays/ Primary 3765 9/21/17

Summary of Record of Interview Requirements

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Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

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
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www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/650,488	07/14/2017	BHUPESH DUA	NIKE.278828/081313US97CON	4090

78342 7590 10/13/2017

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER
BAYS, MARIE D

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
10/13/2017	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPDOCKET@SHB.COM
IPRCDKT@SHB.COM
nike_docketing@cardinal-ip.com

First Action Interview Office Action Summary	Application No. 15/650,488	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

The MAILING OR NOTIFICATION DATE of this communication appears on the cover sheet with the correspondence address.

THE SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE **TWO MONTHS** FROM THE MAILING OR NOTIFICATION DATE OF THIS COMMUNICATION.

This time period for reply is extendable under 37 CFR 1.136(a) for only TWO additional MONTHS.

☐ Applicant's request to not have a first-action interview is acknowledged (or the time period for reply set forth in the Pre-Interview Communication has expired and the Office did not receive any reply).

Status

1) ☒ Responsive to communication(s) filed on *9/7/17* and interview conducted on *10/3/17*.
   ☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.
2) ☐ 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

3) ☒ Claim(s) *21-36* is/are pending in the application.
   3a) Of the above claim(s) _____ is/are withdrawn from consideration.
4) ☐ Claim(s) _____ is/are allowed.
5) ☒ Claim(s) *21-36* is/are rejected.
6) ☐ Claim(s) _____ is/are objected to.
7) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

8) ☐ The specification is objected to by the Examiner.
9) ☐ 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

10) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   a) ☐ All b) ☐ Some * c) ☐ None of:
   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.

Contact Information

Examiner's Telephone Number: (571)272-4559

Examiner's Typical Work Schedule: M-Th 6:30-4:00

Supervisor's Name: Khoa Huynh

Supervisor's Telephone Number:

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: _____.

First Action Interview Office Action Summary	Application No. 15/650,488	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

Notification of Rejection(s) and/or Objection(s)

#	Claim(s)	Reference(s) (if applicable)	Rejection Statutory Basis	Brief Explanation of Rejection
	21-36	15/650499	Obvious type Double Patenting	Provisional double patenting rejection
				.
				.

Expanded Discussion/Commentary

DATE: 03 October, 2017	/Marie Bays/ Primary Examiner Art Unit: 3765	

Applicant-Initiated Interview Summary	Application No.	Applicant(s)	
	15/650,488	DUA ET AL.	
	Examiner	Art Unit	
	MARIE BAYS	3765	

All participants (applicant, applicant's representative, PTO personnel):

(1) *MARIE BAYS*. (3)_____.

(2) *Elizabeth Lucas*. (4)_____.

Date of Interview: *03 October 2017*.

Type: ☒ Telephonic ☐ Video Conference
☐ Personal [copy given to: ☐ applicant ☐ applicant's representative]

Exhibit shown or demonstration conducted: ☐ Yes ☒ No.
If Yes, brief description: _____.

Issues Discussed ☐101 ☐112 ☒102 ☒103 ☒Others
(For each of the checked box(es) above, please describe below the issue and detailed description of the discussion)

Claim(s) discussed: *all of record*.

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Substance of Interview
(For each issue discussed, provide a detailed description and indicate if agreement was reached. Some topics may include: identification or clarification of a reference or a portion thereof, claim interpretation, proposed amendments, arguments of any applied references etc...)

Applicant noted that independent claim 21 included language directed towards a plurality of apertures formed by omitting stitches in the forefoot region and in view of such the Examiner agreed that this feature overcomes the prior art references but that she would tie this application to the copending application which claims the same feature (15/650499) and that she would require a Terminal Disclaimer to overcome a provisional obvious type double patenting rejection..

Applicant recordation instructions: The formal written reply to the last Office action must include the substance of the interview. (See MPEP section 713.04). If a reply to the last Office action has already been filed, applicant is given a non-extendable period of the longer of one month or thirty days from this interview date, or the mailing date of this interview summary form, whichever is later, to file a statement of the substance of the interview

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☐ Attachment

	/Marie Bays/ Primary 3765

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It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

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   (The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
6) a general indication of any other pertinent matters discussed, and
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Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Applicant-Initiated Interview Summary	Application No.	Applicant(s)	
	15/650,488	DUA ET AL.	
	Examiner	Art Unit	
	MARIE BAYS	3765	

All participants (applicant, applicant's representative, PTO personnel):

(1) *MARIE BAYS*. (3)_____.

(2) *Elizabeth Lucas*. (4)_____.

Date of Interview: *03 October 2017*.

Type: ☒ Telephonic ☐ Video Conference
☐ Personal [copy given to: ☐ applicant ☐ applicant's representative]

Exhibit shown or demonstration conducted: ☐ Yes ☒ No.
If Yes, brief description: _____.

Issues Discussed ☐101 ☐112 ☒102 ☒103 ☒Others
(For each of the checked box(es) above, please describe below the issue and detailed description of the discussion)

Claim(s) discussed: *all of record*.

Identification of prior art discussed: *all of record*.

Substance of Interview
(For each issue discussed, provide a detailed description and indicate if agreement was reached. Some topics may include: identification or clarification of a reference or a portion thereof, claim interpretation, proposed amendments, arguments of any applied references etc...)

Applicant noted that independent claim 21 included language directed towards a plurality of apertures formed by omitting stitches in the forefoot region and in view of such the Examiner agreed that this feature overcomes the prior art references but that she would tie this application to the copending application which claims the same feature (15/650499) and that she would require a Terminal Disclaimer to overcome a provisional obvious type double patenting rejection..

Applicant recordation instructions: The formal written reply to the last Office action must include the substance of the interview. (See MPEP section 713.04). If a reply to the last Office action has already been filed, applicant is given a non-extendable period of the longer of one month or thirty days from this interview date, or the mailing date of this interview summary form, whichever is later, to file a statement of the substance of the interview

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☐ Attachment

	/Marie Bays/ Primary 3765

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record
A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews
Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

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- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
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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
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.

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Not for submission under 37 CFR 1.99)

Application Number	15650488
Filing Date	2017-07-14
First Named Inventor	BHUPESH DUA
Art Unit	3765
Examiner Name	MARIE D. BAYS
Attorney Docket Number	NIKE.278828/081313US97CON

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Examiner Initials*	Cite No	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc), date, pages(s), volume-issue number(s), publisher, city and/or country where published.	T[5]

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /M.D.B/

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Application Number	15650488
Filing Date	2017-07-14
First Named Inventor	BHUPESH DUA
Art Unit	3765
Examiner Name	MARIE D. BAYS
Attorney Docket Number	NIKE.278828/081313US97CON

	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.

If you wish to add additional non-patent literature document citation information please click the Add button Add

EXAMINER SIGNATURE

Examiner Signature	/MARIE D BAYS/	Date Considered	10/03/2017

*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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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Not for submission under 37 CFR 1.99)

Application Number	15650488
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First Named Inventor	BHUPESH DUA
Art Unit	3765
Examiner Name	MARIE D. BAYS
Attorney Docket Number	NIKE.278828/081313US97CON

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)	2017-08-28
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.**

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /M.D.B/

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.
15/650,499	07/14/2017	BHUPESH DUA	NIKE.278829/08-1313US98CO	5458

78342 7590 10/16/2017

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER
BAYS, MARIE D

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
10/16/2017	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPDOCKET@SHB.COM
IPRCDKT@SHB.COM
nike_docketing@cardinal-ip.com

First Action Interview Office Action Summary	Application No. 15/650,499	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

The MAILING OR NOTIFICATION DATE of this communication appears on the cover sheet with the correspondence address.

THE SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE **TWO MONTHS** FROM THE MAILING OR NOTIFICATION DATE OF THIS COMMUNICATION.

This time period for reply is extendable under 37 CFR 1.136(a) for only TWO additional MONTHS.

☐ Applicant's request to not have a first-action interview is acknowledged (or the time period for reply set forth in the Pre-Interview Communication has expired and the Office did not receive any reply).

Status

1) ☒ Responsive to communication(s) filed on *9/18/17* and interview conducted on *10/3/17*.
   ☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.
2) ☐ 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

3) ☒ Claim(s) *21-37* is/are pending in the application.
   3a) Of the above claim(s) _____ is/are withdrawn from consideration.
4) ☐ Claim(s) _____ is/are allowed.
5) ☒ Claim(s) *21-37* is/are rejected.
6) ☐ Claim(s) _____ is/are objected to.
7) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

8) ☐ The specification is objected to by the Examiner.
9) ☐ 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

10) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   a) ☐ All b) ☐ Some * c) ☐ None of:
   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.

Contact Information

Examiner's Telephone Number: (571)272-4559

Examiner's Typical Work Schedule: M-Th 6:30-4:00

Supervisor's Name: Khoa Huynh

Supervisor's Telephone Number: 571-272-4888

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: _____.

First Action Interview Office Action Summary	**Application No.** 15/650,499	**Applicant(s)** DUA ET AL.	
	Examiner MARIE BAYS	**Art Unit** 3765	**AIA (First Inventor to File) Status** No

Notification of Rejection(s) and/or Objection(s)

#	Claim(s)	Reference(s) (if applicable)	Rejection Statutory Basis	Brief Explanation of Rejection
	21-38	15/650488	Double Patenting	Obvious type double patenting

Expanded Discussion/Commentary

DATE:	/Marie Bays/ Primary Examiner Art Unit: 3765	

Applicant-Initiated Interview Summary	Application No.	Applicant(s)	
	15/650,499	DUA ET AL.	
	Examiner	Art Unit	
	MARIE BAYS	3765	

All participants (applicant, applicant's representative, PTO personnel):

(1) *MARIE BAYS*. (3)_____.

(2) *Elizabeth Lucas*. (4)_____.

Date of Interview: *03 October 2017*.

Type: ☒ Telephonic ☐ Video Conference
☐ Personal [copy given to: ☐ applicant ☐ applicant's representative]

Exhibit shown or demonstration conducted: ☐ Yes ☒ No.
If Yes, brief description: _____.

Issues Discussed ☐101 ☐112 ☒102 ☒103 ☒Others
(For each of the checked box(es) above, please describe below the issue and detailed description of the discussion)

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Substance of Interview
(For each issue discussed, provide a detailed description and indicate if agreement was reached. Some topics may include: identification or clarification of a reference or a portion thereof, claim interpretation, proposed amendments, arguments of any applied references etc...)

The Examiner confirmed that the only rejection present in this application would be the provisional obvious type double patenting with application 15/650488.

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	/Marie Bays/ Primary 3765 10/3/17

Applicant-Initiated Interview Summary	Application No.	Applicant(s)	
	15/650,499	DUA ET AL.	
	Examiner	Art Unit	
	MARIE BAYS	3765	

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Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews
Paragraph (b)

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- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
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A complete and proper recordation of the substance of any interview should include at least the following applicable items:

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UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/659,053	07/25/2017	BHUPESH DUA	NIKE.276097/081313US79CON	4862

78342 7590 10/18/2017

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER
BAYS, MARIE D

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
10/18/2017	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPDOCKET@SHB.COM
IPRCDKT@SHB.COM
nike_docketing@cardinal-ip.com

First Action Interview Office Action Summary	Application No. 15/659,053	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

The MAILING OR NOTIFICATION DATE of this communication appears on the cover sheet with the correspondence address.

THE SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE **TWO MONTHS** FROM THE MAILING OR NOTIFICATION DATE OF THIS COMMUNICATION.

This time period for reply is extendable under 37 CFR 1.136(a) for only TWO additional MONTHS.

☐ Applicant's request to not have a first-action interview is acknowledged (or the time period for reply set forth in the Pre-Interview Communication has expired and the Office did not receive any reply).

Status

1) ☒ Responsive to communication(s) filed on *9/21/17* and interview conducted on *10/11/17*.
   ☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.
2) ☐ 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

3) ☒ Claim(s) *21-40* is/are pending in the application.
   3a) Of the above claim(s) _____ is/are withdrawn from consideration.
4) ☐ Claim(s) _____ is/are allowed.
5) ☒ Claim(s) *21-40* is/are rejected.
6) ☐ Claim(s) _____ is/are objected to.
7) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

8) ☐ The specification is objected to by the Examiner.
9) ☐ 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

10) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   a) ☐ All b) ☐ Some * c) ☐ None of:
   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.

Contact Information

Examiner's Telephone Number: (571)272-4559

Examiner's Typical Work Schedule: M-Th 6:30-4:00

Supervisor's Name: Khoa Huynh

Supervisor's Telephone Number: 571-272-4888

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: _____.

First Action Interview Office Action Summary	Application No. 15/659,053	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

Notification of Rejection(s) and/or Objection(s)

#	Claim(s)	Reference(s) (if applicable)	Rejection Statutory Basis	Brief Explanation of Rejection
	21-29	Bellak 1841518	35USC102	Alternating strrip (17 and 19) and apertures (holes inherently in knitted structures)
	21-31	Basch 2330199	35USC102	Alternating strips (1, 2, 1') and apertures (holes inherently in knitted structures)
	32-40	Bellak or Basch	35 USC 103	All shown except sole
	32-40	Throneburg 6308438	35USC103	Teaches a sole (60/54) attached to knitted uppers (12)

Expanded Discussion/Commentary		
		Double Patenting 15/646835, 15/664587, 15/610089, 12/879517, 12/032995, 15/664623

DATE: 11 October, 2017	/Marie Bays/ Primary Examiner Art Unit: 3765	

Applicant-Initiated Interview Summary	Application No.	Applicant(s)	
	15/659,053	DUA ET AL.	
	Examiner	Art Unit	
	MARIE BAYS	3765	

All participants (applicant, applicant's representative, PTO personnel):

(1) *MARIE BAYS*. (3)_____.

(2) *Elizabeth Lucas*. (4)_____.

Date of Interview: *11 October 2017*.

Type: ☒ Telephonic ☐ Video Conference
☐ Personal [copy given to: ☐ applicant ☐ applicant's representative]

Exhibit shown or demonstration conducted: ☐ Yes ☐ No.
If Yes, brief description: _____.

Issues Discussed ☐101 ☐112 ☒102 ☒103 ☐Others
(For each of the checked box(es) above, please describe below the issue and detailed description of the discussion)

Claim(s) discussed: *all of record*.

Identification of prior art discussed: *all of record*.

Substance of Interview
(For each issue discussed, provide a detailed description and indicate if agreement was reached. Some topics may include: identification or clarification of a reference or a portion thereof, claim interpretation, proposed amendments, arguments of any applied references etc...)

Amending the claims to include language directed towards the orientation of the alternating strips to be vertically extending from the sole up to the top/instep of the shoe to overcome the orientation of the strips of the prior art was discussed. The Examiner agrees that adding language directed towards the orientation of the alternating strips appears to overcome the prior art. Double Patenting issues will be further considered upon formal filing of an amendment..

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☐ Attachment

	/Marie Bays/ Primary 3765

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	Examiner	Art Unit	
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P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/646,835	07/11/2017	BHUPESH DUA	NIKE.276099/08-1313US80CO	5903

78342 7590 10/18/2017

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER
BAYS, MARIE D

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
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IPDOCKET@SHB.COM
IPRCDKT@SHB.COM
nike_docketing@cardinal-ip.com

First Action Interview Office Action Summary	Application No. 15/646,835	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

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   a) ☐ All b) ☐ Some * c) ☐ None of:
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Contact Information

Examiner's Telephone Number: (571)272-4559

Examiner's Typical Work Schedule: M-Th 6:30-4:00

Supervisor's Name: Khoa Huynh

Supervisor's Telephone Number: 571-272-4888

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: _____.

First Action Interview Office Action Summary	Application No. 15/646,835	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

Notification of Rejection(s) and/or Objection(s)

#	Claim(s)	Reference(s) (if applicable)	Rejection Statutory Basis	Brief Explanation of Rejection
	21-25, and 27-38	Basch 2330199	35USC102	Basch shown knit footwear with alternating strips/yarns 1, 1', 2.
	26, 39, and 40	Basch 2330199	35 USC 103	Either claims broad enough to read on Basch alone, or obvious to extend throughout sides.
	26, 39, and 40	Holden 1902780	35 USC 103	Modifying reference showing alternating ribs throughout the footwear.
	26, 39, and 40	Bellak 1841518	35USC 103	Modifying reference showing alternating ribs throughout the footwear

Expanded Discussion/Commentary

		Double Patenting rejections/objections with 15/610089, 15/650488, 15/664587, 15/650499, 15/6590533, and Patent 8042288

DATE:	/Marie Bays/ Primary Examiner Art Unit: 3765	

Applicant-Initiated Interview Summary	Application No.	Applicant(s)	
	15/646,835	DUA ET AL.	
	Examiner	Art Unit	
	MARIE BAYS	3765	

All participants (applicant, applicant's representative, PTO personnel):

(1) *MARIE BAYS*. (3)_____.

(2) *Elizabeth Lucas*. (4)_____.

Date of Interview: *11 October 2017*.

Type: ☒ Telephonic ☐ Video Conference
☐ Personal [copy given to: ☐ applicant ☐ applicant's representative]

Exhibit shown or demonstration conducted: ☐ Yes ☒ No.
If Yes, brief description: _____.

Issues Discussed ☐101 ☐112 ☒102 ☒103 ☐Others
(For each of the checked box(es) above, please describe below the issue and detailed description of the discussion)

Claim(s) discussed: *all of record*.

Identification of prior art discussed: *all of record*.

Substance of Interview
(For each issue discussed, provide a detailed description and indicate if agreement was reached. Some topics may include: identification or clarification of a reference or a portion thereof, claim interpretation, proposed amendments, arguments of any applied references etc...)

Amending the claims to include language directed towards the orientation of the alternating strips to be vertically extending from the sole up to the top/instep of the shoe to overcome the orientation of the strips of the prior art was discussed. The Examiner agrees that adding language directed towards the orientation of the alternating strips appears to overcome the prior art. Double Patenting issues will be further considered upon formal filing of an amendment..

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Examiner recordation instructions: Examiners must summarize the substance of any interview of record. A complete and proper recordation of the substance of an interview should include the items listed in MPEP 713.04 for complete and proper recordation including the identification of the general thrust of each argument or issue discussed, a general indication of any other pertinent matters discussed regarding patentability and the general results or outcome of the interview, to include an indication as to whether or not agreement was reached on the issues raised.

☐ Attachment

	/Marie Bays Primary 3765

Summary of Record of Interview Requirements

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A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

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Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

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	Examiner	Art Unit	
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UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/664,623	07/31/2017	BHUPESH DUA	NIKE.276110/081313US92CON	7721

78342 7590 10/18/2017

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER
BAYS, MARIE D

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
10/18/2017	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPDOCKET@SHB.COM
IPRCDKT@SHB.COM
nike_docketing@cardinal-ip.com

First Action Interview Office Action Summary	Application No. 15/664,623	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

The MAILING OR NOTIFICATION DATE of this communication appears on the cover sheet with the correspondence address.

THE SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE **TWO MONTHS** FROM THE MAILING OR NOTIFICATION DATE OF THIS COMMUNICATION.

This time period for reply is extendable under 37 CFR 1.136(a) for only TWO additional MONTHS.

☐ Applicant's request to not have a first-action interview is acknowledged (or the time period for reply set forth in the Pre-Interview Communication has expired and the Office did not receive any reply).

Status

1) ☒ Responsive to communication(s) filed on *9/18/17* and interview conducted on *10/11/17*.
   ☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.
2) ☐ 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

3) ☒ Claim(s) *21-40* is/are pending in the application.
   3a) Of the above claim(s) _____ is/are withdrawn from consideration.
4) ☐ Claim(s) _____ is/are allowed.
5) ☒ Claim(s) *21-40* is/are rejected.
6) ☐ Claim(s) _____ is/are objected to.
7) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

8) ☐ The specification is objected to by the Examiner.
9) ☐ 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

10) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   a) ☐ All b) ☐ Some * c) ☐ None of:
   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.

Contact Information

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Examiner's Typical Work Schedule: M-Th 6:30-4:00

Supervisor's Name: Khoa Huynh

Supervisor's Telephone Number: 571-272-4888

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Notification of Rejection(s) and/or Objection(s)

#	Claim(s)	Reference(s) (if applicable)	Rejection Statutory Basis	Brief Explanation of Rejection
	21-40	Nishida 5345638	35USC103	Teaches method of providing a knit textile (1), cutting a footwear element (30) therefrom with a longitudinal seam (at 29.3 and 29.4) except for method of forming the knit textile.
	21-40	Reed 3985003	35USC103	Teaches circular knitting as a known method of forming a knit textile (10) with a pattern outline (22) as a method of providing a pattern cutline for making an element for forming a garment.

Expanded Discussion/Commentary

		The exact diameter of the circular knit textile structure is considered to be obvious in view of conventional circular knitting machines. It is noted that the range claimed in claim 36 does not appear to have basis in the original specification.
		Additionally cited references to Safrit (4624115), Lonati (5081854), and Bingham (6845284) teach that it is known to circular knit a textile with a pattern/outline therein and cutting along the outline to obtain an element for forming a garment. Footwear and shoe linings are considered to be "garments" and Nishida teaches that the method is known to cut a footwear element from a knitted textile element.
		Double Patenting 7814598

DATE: 11 October, 2017	/Marie Bays/ Primary Examiner Art Unit: 3765	

Applicant-Initiated Interview Summary	Application No.	Applicant(s)	
	15/664,623	DUA ET AL.	
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Amending the claims to incorporate language which would define the arrangement of the patterns of the uppers as shown in figure 9 was discussed to overcome the prior art. If language directed towards the arrangement is added which overcomes the prior art, the noted Double Patenting rejection would be overcome also. Exact language will be further considered upon formal filing..

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☐ Personal [copy given to: ☐ applicant ☐ applicant's representative]

Exhibit shown or demonstration conducted: ☐ Yes ☒ No.
If Yes, brief description: _____.

Issues Discussed ☐101 ☐112 ☒102 ☒103 ☐Others
(For each of the checked box(es) above, please describe below the issue and detailed description of the discussion)

Claim(s) discussed: *all of record*.

Identification of prior art discussed: *applied prior art*.

Substance of Interview
(For each issue discussed, provide a detailed description and indicate if agreement was reached. Some topics may include: identification or clarification of a reference or a portion thereof, claim interpretation, proposed amendments, arguments of any applied references etc...)

Amending the claims to incorporate language which would define the arrangement of the patterns of the uppers as shown in figure 9 was discussed to overcome the prior art. If language directed towards the arrangement is added which overcomes the prior art, the noted Double Patenting rejection would be overcome also. Exact language will be further considered upon formal filing..

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☐ Attachment

	/Marie Bays/ Primary 3765

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record
A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

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Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

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The Form provides for recordation of the following information:
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- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
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4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
5) a brief identification of the general thrust of the principal arguments presented to the examiner,
   (The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
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Examiner to Check for Accuracy

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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 NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/684,608	08/23/2017	BHUPESH DUA	NIKE.276109/08-1313US91CO	6345

78342 7590 11/14/2017

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER
BAYS, MARIE D

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
11/14/2017	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPDOCKET@SHB.COM
IPRCDKT@SHB.COM
nike_docketing@cardinal-ip.com

First Action Interview Office Action Summary	Application No. 15/684,608	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

The MAILING OR NOTIFICATION DATE of this communication appears on the cover sheet with the correspondence address.

THE SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE **TWO MONTHS** FROM THE MAILING OR NOTIFICATION DATE OF THIS COMMUNICATION.

This time period for reply is extendable under 37 CFR 1.136(a) for only TWO additional MONTHS.

☐ Applicant's request to not have a first-action interview is acknowledged (or the time period for reply set forth in the Pre-Interview Communication has expired and the Office did not receive any reply).

Status

1) ☐ Responsive to communication(s) filed on _____ and interview conducted on _____.
   ☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.
2) ☐ 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

3) ☒ Claim(s) *21-40* is/are pending in the application.
   3a) Of the above claim(s) _____ is/are withdrawn from consideration.
4) ☐ Claim(s) _____ is/are allowed.
5) ☒ Claim(s) *21-40* is/are rejected.
6) ☐ Claim(s) _____ is/are objected to.
7) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

8) ☐ The specification is objected to by the Examiner.
9) ☐ 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

10) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   a) ☐ All b) ☐ Some * c) ☐ None of:
      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.

Contact Information

Examiner's Telephone Number: (571)272-4559

Examiner's Typical Work Schedule: M-Th 6:30-4:00

Supervisor's Name: Khoa Huynh

Supervisor's Telephone Number: 5712724888

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: _____.

First Action Interview Office Action Summary	Application No. 15/684,608	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

Notification of Rejection(s) and/or Objection(s)

#	Claim(s)	Reference(s) (if applicable)	Rejection Statutory Basis	Brief Explanation of Rejection

Expanded Discussion/Commentary

		Obvious type Double Patenting with Patent 7814598 and application 15/664623

DATE:		
08 November, 2017	/Marie Bays/ Primary Examiner Art Unit: 3765	

Applicant-Initiated Interview Summary	Application No.	Applicant(s)	
	15/684,608	DUA ET AL.	
	Examiner	Art Unit	
	MARIE BAYS	3765	

All participants (applicant, applicant's representative, PTO personnel):

(1) *MARIE BAYS*. (3)_____.

(2) *Liz Lucas*. (4)_____.

Date of Interview: *08 November 2017*.

Type: ☒ Telephonic ☐ Video Conference
☐ Personal [copy given to: ☐ applicant ☐ applicant's representative]

Exhibit shown or demonstration conducted: ☐ Yes ☒ No.
If Yes, brief description: _____.

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Applicant informed the Examiner about the recent PTAB decisions in parent/related cases which found the combination of Reed and Nishida to be not combinable. In view of this , the rejection in this application is withdrawn. The claims appear to be in condition for allowance except for Double Patenting issues..

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United States Patent and Trademark Office
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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 10/27/2017

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

EXAMINER
CARTER, CAMERON A

ART UNIT	PAPER NUMBER
3765	

MAIL DATE	DELIVERY MODE
10/27/2017	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 3 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 *06/22/2017*.

☐ 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.

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

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* 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

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11)☒ The drawing(s) filed on *11/22/2016* 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.

Response to Amendment

Applicant's amendment filed June 22, 2017 has been received. Claims 21-40 are presented for examination.

Response to Arguments

Applicant's arguments, see Remarks, filed June 22, 2017, with respect to the rejection(s) of claim(s) 21-40 under Nishida and Dua have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Nishida and Hung.

With regard to Applicant's argument that the Patent Trial and Appeals Board has already made a decision on the term "flat knit textile element" and "flat knit edges" in a parent case, it should be noted that each case is examined on its own merits and previously prosecuted cases have no bearing on the examination of the current application.

Claim Rejections - 35 USC § 112

The following is a quotation of 35 U.S.C. 112(b):
(b) CONCLUSION.—The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor or a joint inventor regards as the invention.

The following is a quotation of 35 U.S.C. 112 (pre-AIA), second paragraph:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21-40 are rejected under 35 U.S.C. 112(b) or 35 U.S.C. 112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject

matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention.

Regarding claims 21 and 31, it is unclear what is meant by flat knit textile element and flat knit edges as both terms do not appear in the specification. As per Applicant's arguments, these seem to be more than just simple edges in a knitted structure. However, for the purposes of examination, flat knit textile element will be interpreted as a textile element constructed on a flatbed knitting machine, and flat knit edges will be interpreted as edges associated with a textile element formed on a flatbed knitting machine.

Regarding claim 40, it is unclear what is meant by and/or on line 3 and if the limitations that follow are part of the claimed invention or not.

Claims 22-30 and 32-39 are rejected as being dependent on an indefinite claim.

Claim Rejections - 35 USC § 103

The following is a quotation of pre-AIA 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102, 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. Patentability shall not be negatived by the manner in which the invention was made.

Claims 21-40, as best understood, are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Nishida (5,345,638) in view of Hung (6,482,492).

Regarding claim 21, Nishida discloses a flat knit textile element (1) comprising flat knit edges free of surrounding textile structure (5 and 6 of Figure 2) such that the flat knit edges are not surrounded by textile structure from which the textile element must be removed (Figure 2).

Nishida does not teach 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, or that 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.

Hung teaches a layered spacer mesh structure for shoe making.

Hung teaches a first knit strip (22 of Hung) having a first knit construction (Figure 4 of Hung) and a second knit strip (25 of Hung) having a second knit construction that is different from the first knit construction (Figure 4 of Hung), and that 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 (Figures 4 and 5 of Hung).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have added the first and second knit strips as taught by Figure 4 of Hung to the knitted upper of Nishida in order to grant the upper greater strength and stability.

Regarding claim 22, the combined upper of Nishida and Hung disclose the limitations of claim 21 above, including that one or both of the first knit strip (22 of Hung) and the second knit strip (25 of Hung) comprises a plurality of knit strips (Figure 4 of Hung).

Regarding claim 23, the combined upper of Nishida and Hung disclose the limitations of claim 22 above, including that the first and second knit strips (22 and 25 of Hung) alternate with one another along one or more of the lateral side and the medial side of the upper (Figures 4 and 5 of Hung).

Regarding claims 24, the combined upper of Nishida and Hung disclose the limitations of claim 22 above, including that the flat knit textile element (1 of Nishida) comprises at least two

of the first knit strip (22; Figure 4 of Hung) and at least two of the second knit strip (25; Figure 4 of Hung).

Regarding claims 25, the combined upper of Nishida and Hung disclose the limitations of claim 21 above, including that the first knit strip (22 of Hung) and the second knit strip (25 of Hung) extend along the lateral side of the upper (Figures 4 and 5 of Hung) from an instep region of the upper to an area proximate to a lower region of the upper (Figure 5 of Hung).

Regarding claim 26, the combined upper of Nishida and Hung disclose the limitations of claim 21 above, including that the first knit strip (22 of Hung) and the second knit strip (25 of Hung) 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 (Figure 5 of Hung).

Regarding claim 27, the combined upper of Nishida and Hung disclose the limitations of claim 21 above, including that the second knit construction of the second knit strip (25 of Hung) comprises a rough texture (rope or metallic bar material in Column 2, lines 22 and 23 of Hung).

Nishida and Hung do not teach that the first knit construction of the first knit strip comprises a smooth texture, however Hung does teach that the vamp comprises a plastic strip (Column 2, lines 4-7 of Hung).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a smoother plastic strip fiber for the first knit strip of the combined upper of Nishida and Dua and a rougher fiber for the second knit strip of the combined upper of Nishida and Dua to have provided a variety of different physical and mechanical properties to the article of footwear as taught by Column 2, lines 4-7 of Hung as well as Column 2, lines 22 and 23 of Hung, since it has been held that the selection of a known material based on

its suitability for its intended use supported a *prima facie* obviousness determination in *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945). See also *In re Leshin*, 277 F.2d 197, 125 USPQ 416 (CCPA 1960). MPEP 2144.07.

Regarding claim 28, the combined upper of Nishida and Hung disclose the limitations of claim 21 above, including that the flat knit textile element (1 of Nishida) further comprises a plurality of apertures (24 of Hung) in an instep region of the upper (Figures 4 and 5 of Hung).

Regarding claim 29, the combined upper of Nishida and Hung disclose the limitations of claim 21 above, including that the first knit construction of the first knit strip (22 of Hung) comprises a higher degree of stretch (plastic strip material in Column 2, lines 4-7 of Hung) than the second knit construction of the second knit strip (25; metallic bar material in Column 2, lines 22 and 23 of Hung).

Regarding claim 30, the combined upper of Nishida and Hung disclose the limitations of claim 21 above, including that the second knit construction of the second knit strip (25 of Hung) comprises a higher degree of stretch (flexible band material in Column 2, line 22 of Hung) than the first knit construction of the first knit strip (22; plastic strip material in Column 2, lines 4-7 of Hung).

Regarding claim 31, Nishida discloses a flat knit textile element (1) comprising flat knit edges free of surrounding textile structure (5 and 6 of Figure 2) such that the flat knit edges are not surrounded by textile structure from which the textile element must be removed (Figure 2).

Nishida does not teach a first knit strip having a first yarn type and a second knit strip having a second yarn type that is different from the first yarn type, or that 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, or that one or both of the first and second knit strip comprises a plurality of strips, or that 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.

Hung teaches a first knit strip (22 of Hung) having a first yarn type (material of Column 2, lines 4-7 and a second knit strip (22 of Hung) having a second yarn type (material of Column 2, lines 22-23 of Hung) that is different from the first yarn type, and that 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 (Figures 4 and 5 of Hung), and that one or both of the first and second knit strip comprises a plurality of strips (Figures 4 and 5 of Hung), and that 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 (Figures 4 and 5 of Hung).

Regarding claim 32, the combined upper of Nishida and Hung disclose the limitations of claim 31 above, including that the flat knit textile element (1 of Nishida) comprises at least two of the first knit strip (22; Figure 4 of Hung) and at least two of the second knit strip (25; Figure 4 of Hung).

Regarding claim 33, the combined upper of Nishida and Hung disclose the limitations of claim 31 above, including that the first knit strip (22 of Hung) and the second knit strip (25 of Hung) 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 (Figures 4 and 5 of Hung).

Regarding claim 34, the combined upper of Nishida and Hung disclose the limitations of claim 31 above, including that the first knit strip (22 of Hung) and the second knit strip (25 of

Hung) 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 (Figures 4 and 5 of Hung).

Regarding claim 35, the combined upper of Nishida and Hung disclose the limitations of claim 31 above, including that the second yarn type of the second knit strip (25 of Hung) comprises a rough texture (rope material of Column 2, line 22 of Hung).

Nishida and Hung do not teach that the first yarn type of the first knit strip comprises a smooth texture, however Hung does teach that the vamp comprises a plastic strip (Column 2, lines 4-7 of Hung).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a smoother plastic strip fiber for the first knit strip of the combined upper of Nishida and Dua and a rougher fiber for the second knit strip of the combined upper of Nishida and Dua to have provided a variety of different physical and mechanical properties to the article of footwear as taught by Column 2, lines 4-7 of Hung as well as Column 2, lines 22 and 23 of Hung, since it has been held that the selection of a known material based on its suitability for its intended use supported a *prima facie* obviousness determination in *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945). See also *In re Leshin*, 277 F.2d 197, 125 USPQ 416 (CCPA 1960). MPEP 2144.07.

Regarding claim 36, the combined upper of Nishida and Hung disclose the limitations of claim 31 above, including that the flat knit textile element (1 of Nishida) further comprises a plurality of apertures (24 of Hung) in an instep region of the upper (Figures 4 and 5 of Hung).

Regarding claim 37, the combined upper of Nishida and Hung disclose the limitations of claim 31 above, including that the first yarn type of the first knit strip (22 of Hung) comprises a

higher degree of stretch (plastic strip material in Column 2, lines 4-7 of Hung) than the second yarn type of the second knit strip (25; metallic bar material in Column 2, lines 22 and 23 of Hung).

Regarding claim 38, the combined upper of Nishida and Hung disclose the limitations of claim 31 above, including that the second yarn type of the second knit strip (25 of Hung) comprises a higher degree of stretch (flexible band material in Column 2, line 22 of Hung) than the first yarn type of the first knit strip (22; plastic strip material in Column 2, lines 4-7 of Hung).

Regarding claim 39, the combined upper of Nishida and Hung disclose the limitations of claim 31 above, including that the first yarn type of the first knit strip (22 of Hung) comprises higher durability (Column 2, lines 4-7 of Hung) than the second yarn type of the second knit strip (25 of Hung; Column 2, lines 22-23 of Hung). It is noted that the higher strength of the plastic strip of Hung would have higher durability than the foam plastic strip of the girder of Hung.

Regarding claim 40, the combined upper of Nishida and Hung disclose the limitations of claim 31 above, including that the first yarn type of the first knit strip (22 of Hung) comprises a higher strength (Column 2, lines 4-7 of Hung) than the second yarn type of the second knit strip (25; rope material of Column 2, line 22 of Hung). It is noted that the plastic strip material used in the construction of the vamp of Hung is solely to increase strength.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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.

Examiner interviews are available via telephone, in-person, and video conferencing using a USPTO supplied web-based collaboration tool. To schedule an interview, applicant is encouraged to use the USPTO Automated Interview Request (AIR) at http://www.uspto.gov/interviewpractice.

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

/NATHAN DURHAM/
Primary Examiner, Art Unit 3765

Notice of References Cited	Application/Control No. 15/358,723	Applicant(s)/Patent Under Reexamination DUA ET AL.	
	Examiner Cameron A. Carter	Art Unit 3765	Page 1 of 3

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	CPC Classification	US Classification
*	A	US-761,520 A	05-1904	Matthew, P.M.	B05D1/26	12/146C
*	B	US-1,888,172 A	11-1932	JOHA ELMER N	A43B1/02	36/11
*	C	US-1,956,969 A	05-1934	AYERS FRED L	A43B23/25	12/146C
*	D	US-2,147,197 A	02-1939	GLIDDEN ALFRED A	A43B1/02	36/3A
*	E	US-2,603,891 A	07-1952	GUSTAV COHN	A43B3/12	36/12
*	F	US-2,675,631 A	04-1954	CARR DOUGHTY JOHN	A43B1/04	36/12
*	G	US-3,114,213 A	12-1963	BOWERS PAUL E	A43B23/0245	112/427
*	H	US-4,255,949 A	03-1981	Thorneburg; James L.	A41B11/00	2/239
*	I	US-4,447,967 A	05-1984	Zaino; Luigi	A43B23/0235	36/45
*	J	US-4,785,558 A	11-1988	Shiomura; Kazuhiko	A43B1/04	36/114
*	K	US-4,813,158 A	03-1989	Brown; Paul D.	A43B5/00	36/114
*	L	US-5,345,638 A	09-1994	Nishida; Mamoru	A41H3/08	12/146C
*	M	US-5,604,997 A	02-1997	Dieter; William M.	A43B23/042	12/146C

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	CPC Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

Notice of References Cited	Application/Control No. 15/358,723	Applicant(s)/Patent Under Reexamination DUA ET AL.	
	Examiner Cameron A. Carter	Art Unit 3765	Page 2 of 3

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*	A	US-6,401,364 B1	06-2002	Burt; Igor	A43B1/00	36/3A
*	B	US-2002/0078599 A1	06-2002	Delgorgue, Gerald	A43B7/12	36/98
*	C	US-2002/0148258 A1	10-2002	Cole, Claire	A43B23/0255	66/202
*	D	US-6,482,492 B1	11-2002	Hung; Wen-Yau	A43B1/00	36/107
*	E	US-2004/0118018 A1	06-2004	Dua, Bhupesh	A43B1/04	36/45
*	F	US-6,931,762 B1	08-2005	Dua; Bhupesh	A43B1/04	12/142G
*	G	US-D517,297 S	03-2006	Jones; Martin John		D2/969
*	H	US-7,051,460 B2	05-2006	Orei; Takeshi	A43B1/00	36/3A
*	I	US-7,347,011 B2	03-2008	Dua; Bhupesh	A43B1/04	36/10
*	J	US-2008/0110049 A1	05-2008	Sokolowski; Susan L.	A43B1/04	36/50.1
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*	L	US-2011/0078921 A1	04-2011	Greene; Pamela S.	A43B1/04	36/47
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FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

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*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

Notice of References Cited	Application/Control No. 15/358,723	Applicant(s)/Patent Under Reexamination DUA ET AL.	
	Examiner Cameron A. Carter	Art Unit 3765	Page 3 of 3

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	CPC Classification	US Classification
*	A	US-8,490,299 B2	07-2013	Dua; Bhupesh	A43B1/04	36/45
*	B	US-2013/0239625 A1	09-2013	Meir; Adrian	A43B1/04	66/170
*	C	US-8,745,895 B2	06-2014	Sokolowski; Susan L.	A43B3/0031	36/50.1
*	D	US-9,084,449 B2	07-2015	Bell; Thomas G.	A43B1/04	1/1
	E	US-				
	F	US-				
	G	US-				
	H	US-				
	I	US-				
	J	US-				
	K	US-				
	L	US-				
	M	US-				

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
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NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
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*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/610,011	05/31/2017	BHUPESH DUA	NIKE.276103/08-1313US85CO	4154

78342 7590 11/16/2017

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER	
BAYS, MARIE D	

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
11/16/2017	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPDOCKET@SHB.COM
IPRCDKT@SHB.COM
nike_docketing@cardinal-ip.com

First Action Interview Office Action Summary	Application No. 15/610,011	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

The MAILING OR NOTIFICATION DATE of this communication appears on the cover sheet with the correspondence address.

THE SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE **TWO MONTHS** FROM THE MAILING OR NOTIFICATION DATE OF THIS COMMUNICATION.

This time period for reply is extendable under 37 CFR 1.136(a) for only TWO additional MONTHS.

☐ Applicant's request to not have a first-action interview is acknowledged (or the time period for reply set forth in the Pre-Interview Communication has expired and the Office did not receive any reply).

Status

1) ☒ Responsive to communication(s) filed on *10/2/17* and interview conducted on *11/8/17*.
   ☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.
2) ☐ 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

3) ☒ Claim(s) *21-37* is/are pending in the application.
   3a) Of the above claim(s) _____ is/are withdrawn from consideration.
4) ☐ Claim(s) _____ is/are allowed.
5) ☒ Claim(s) *21-37* is/are rejected.
6) ☐ Claim(s) _____ is/are objected to.
7) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

8) ☐ The specification is objected to by the Examiner.
9) ☐ 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

10) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   a) ☐ All b) ☐ Some * c) ☐ None of:
   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.

Contact Information

Examiner's Telephone Number: (571)272-4559

Examiner's Typical Work Schedule: M-Th 6:30-4:00

Supervisor's Name: Khoa Huynh

Supervisor's Telephone Number: 571-272-4888

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: _____.

First Action Interview Office Action Summary	Application No. 15/610,011	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

Notification of Rejection(s) and/or Objection(s)

#	Claim(s)	Reference(s) (if applicable)	Rejection Statutory Basis	Brief Explanation of Rejection
	21-25, 27-33, 36, and 37	Throneburg 6308438	35 USC 102	Knit textile (12) with knit stitched oriented as claimed and non textile heel (68) and strip (64).
	25 and 34	Hayashi 3583081	35 USC 103	teaches a plurality of different length non textile strips (8)

Expanded Discussion/Commentary

		Obvious type double patenting with 15/650499, 15/650488, 15/609971
		35 USC 112 second paragraph rejection for cliam 29 "configured to counter movement" is vague and indefinite.

DATE:		
08 November, 2017	/Marie Bays/ Primary Examiner Art Unit: 3765	

Applicant-Initiated Interview Summary	Application No.	Applicant(s)	
	15/610,011	DUA ET AL.	
	Examiner	Art Unit	
	MARIE BAYS	3765	

All participants (applicant, applicant's representative, PTO personnel):

(1) *MARIE BAYS*. (3)_____.

(2) *Liz Lucas*. (4)_____.

Date of Interview: *08 November 2017*.

Type: ☒ Telephonic ☐ Video Conference
☐ Personal [copy given to: ☐ applicant ☐ applicant's representative]

Exhibit shown or demonstration conducted: ☐ Yes ☒ No.
If Yes, brief description: _____.

Issues Discussed ☐101 ☐112 ☒102 ☒103 ☒Others
(For each of the checked box(es) above, please describe below the issue and detailed description of the discussion)

Claim(s) discussed: *all of record*.

Identification of prior art discussed: *applied prior art*.

Substance of Interview
(For each issue discussed, provide a detailed description and indicate if agreement was reached. Some topics may include: identification or clarification of a reference or a portion thereof, claim interpretation, proposed amendments, arguments of any applied references etc...)

Applicant proposed to amend the claims to include language directed towards the parallel orientation of the strips and the strips being spaced from one another. This appears to overcome the prior, exact language will be further considered upon formal filing. Doulbe Patenting issues will also be considered upon formal filing..

Applicant recordation instructions: The formal written reply to the last Office action must include the substance of the interview. (See MPEP section 713.04). If a reply to the last Office action has already been filed, applicant is given a non-extendable period of the longer of one month or thirty days from this interview date, or the mailing date of this interview summary form, whichever is later, to file a statement of the substance of the interview

Examiner recordation instructions: Examiners must summarize the substance of any interview of record. A complete and proper recordation of the substance of an interview should include the items listed in MPEP 713.04 for complete and proper recordation including the identification of the general thrust of each argument or issue discussed, a general indication of any other pertinent matters discussed regarding patentability and the general results or outcome of the interview, to include an indication as to whether or not agreement was reached on the issues raised.

☐ Attachment

	/Marie Bays/ Primary 3765

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record
A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews
Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.
All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:
- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

1) A brief description of the nature of any exhibit shown or any demonstration conducted,
2) an identification of the claims discussed,
3) an identification of the specific prior art discussed,
4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
5) a brief identification of the general thrust of the principal arguments presented to the examiner,
   (The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
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Applicant-Initiated Interview Summary	Application No.	Applicant(s)	
	15/610,011	DUA ET AL.	
	Examiner	Art Unit	
	MARIE BAYS	3765	

All participants (applicant, applicant's representative, PTO personnel):

(1) *MARIE BAYS*. (3)_____.

(2) *Liz Lucas*. (4)_____.

Date of Interview: *08 November 2017*.

Type: ☒ Telephonic ☐ Video Conference
☐ Personal [copy given to: ☐ applicant ☐ applicant's representative]

Exhibit shown or demonstration conducted: ☐ Yes ☒ No.
If Yes, brief description: _____.

Issues Discussed ☐101 ☐112 ☒102 ☒103 ☒Others
(For each of the checked box(es) above, please describe below the issue and detailed description of the discussion)

Claim(s) discussed: *all of record*.

Identification of prior art discussed: *applied prior art*.

Substance of Interview
(For each issue discussed, provide a detailed description and indicate if agreement was reached. Some topics may include: identification or clarification of a reference or a portion thereof, claim interpretation, proposed amendments, arguments of any applied references etc...)

Applicant proposed to amend the claims to include language directed towards the parallel orientation of the strips and the strips being spaced from one another. This appears to overcome the prior, exact language will be further considered upon formal filing. Doulbe Patenting issues will also be considered upon formal filing..

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	/Marie Bays/ Primary 3765

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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

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.

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	6482492	B1	2002-11-19	Hung	
	2	1803554	A	1931-05-05	Knilans	
	3	RE18804	E	1933-04-25	Joha	

If you wish to add additional U.S. Patent citation information please click the Add button. Add

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Examiner Initial*	Cite No	Publication Number	Kind Code[1]	Publication Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear
	1					

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FOREIGN PATENT DOCUMENTS Remove

Examiner Initial*	Cite No	Foreign Document Number[3]	Country Code[2] i	Kind Code[4]	Publication Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear	T[5]
	1							

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

If you wish to add additional Foreign Patent Document citation information please click the Add button Add

NON-PATENT LITERATURE DOCUMENTS Remove

Examiner Initials*	Cite No	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc), date, pages(s), volume-issue number(s), publisher, city and/or country where published.	T[5]
	1	First Action Interview Preinterview Communication dated September 1, 2017 in U.S. Patent Application No. 15/610,011, 5 pages.	
	2	First Action Interview Preinterview Communication dated September 7, 2017 in U.S. Patent Application No. 15/609,971, 5 pages.	
	3	First Action Interview Preinterview Communication dated September 15, 2017 in U.S. Patent Application No. 15/684,608, 6 pages.	
	4	First Action Interview Preinterview Communication dated October 20, 2017 in U.S. Patent Application No. 15/703,583, 5 pages.	
	5	First Action Interview Office Action dated September 29, 2017 in U.S. Patent Application No. 15/609,971, 7 pages.	
	6	First Action Interview Office Action dated October 10, 2017 in U.S. Patent Application No. 15/664,650, 7 pages.	
	7	First Action Interview Office Action dated October 12, 2017 in U.S. Patent Application No. 15/664,587, 7 pages.	
	8	First Action Interview Office Action dated October 13, 2017 in U.S. Patent Application No. 15/650,488, 10 pages.	
	9	First Action Interview Office Action dated October 16, 2017 in U.S. Patent Application No. 15/650,499, 7 pages.	

INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)		
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	Filing Date	2017-05-31
	First Named Inventor	BHUPESH DUA
	Art Unit	3765
	Examiner Name	MARIE D. BAYS
	Attorney Docket Number	NIKE.276100/081313US82CON

	10	First Action Interview Office Action dated October 18, 2017 in U.S. Patent Application No. 15/659,053, 7 pages.	
	11	First Action Interview Office Action dated October 18, 2017 in U.S. Patent Application No. 15/646,835, 7 pages.	
	12	First Action Interview Office Action dated October 18, 2017 in U.S. Patent Application No. 15/664,623, 7 pages.	
	13	First Action Interview Office Action dated November 14, 2017 in U.S. Patent Application No. 15/684,608, 7 pages.	
	14	Office Action dated October 27, 2017 in U.S. Patent Application No. 15/358,723, 15 pages.	
	15	First Action Interview Office Action dated November 16, 2017 in U.S. Patent Application No. 15/610,011, 7 pages.	

If you wish to add additional non-patent literature document citation information please click the Add button Add

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)	2017-11-16
Name/Print	Elizabeth A. Lucas	Registration Number	74,247

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.**

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 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.

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 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.

Doc Code: PET.AUTO Document Description: Petition automatically granted by EFS-Web	PTO/SB/140 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**PETITION TO WITHDRAW AN APPLICATION FROM ISSUE AFTER PAYMENT OF THE ISSUE FEE UNDER 37 CFR 1.313(c)**
Application Number	15610089
Filing Date	31-May-2017
First Named Inventor	BHUPESH DUA
Art Unit	3765
Examiner Name	MARIE BAYS
Attorney Docket Number	NIKE.276100/08-1313US82CO
Title	ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER

An application may be withdrawn from issue for further action upon petition by the applicant. To request that the Office withdraw an application from issue, applicant must file a petition under this section including the fee set forth in § 1.17(h) and a showing of good and sufficient reasons why withdrawal of the application from issue is necessary.

APPLICANT HEREBY PETITIONS TO WITHDRAW THIS APPLICATION FROM ISSUE UNDER 37 CFR 1.313(c).

A grantable petition requires the following items:
(1) Petition fee; and
(2) One of the following reasons:
(a) Unpatentability of one or more claims, which must be accompanied by an unequivocal statement that one or more claims are unpatentable, an amendment to such claim or claims, and an explanation as to how the amendment causes such claim or claims to be patentable;
(b) Consideration of a request for continued examination in compliance with § 1.114 (for a utility or plant application only); or
(c) Express abandonment of the application. Such express abandonment may be in favor of a continuing application, but not a CPA under 37 CFR 1.53(d).

Petition Fee

◯	Small Entity
◯	Micro Entity
◉	Regular Undiscounted

Reason for withdrawal from issue

◯ One or more claims are unpatentable ◉ Consideration of a request for continued examination (RCE) (List of Required Documents and Fees) ◯ Applicant hereby expressly abandons the instant application (any attorney/agent signing for this reason must have power of attorney pursuant to 37 CFR 1.32(b)).
RCE request,submission, and fee. ☐ I certify, in accordance with 37 CFR 1.4(d)(4) that : The RCE request ,submission, and fee have already been filed in the above-identified application on ☒ Are attached.
THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES I certify, in accordance with 37 CFR 1.4(d)(4) that I am: ◉ An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application. ◯ An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity. ◯ A sole inventor ◯ A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors as evidenced by the power of attorney in the application ◯ A joint inventor; all of whom are signing this e-petition

Signature	/ELIZABETH A. LUCAS/
Name	Elizabeth A. Lucas
Registration Number	74247

Electronic Patent Application Fee Transmittal

Application Number:	15610089
Filing Date:	31-May-2017
Title of Invention:	ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER
First Named Inventor/Applicant Name:	BHUPESH DUA
Filer:	Elizabeth Ashley Lucas/Cheryl Neeley
Attorney Docket Number:	NIKE.276100/08-1313US82CO

Filed as Large Entity

Filing Fees for Utility under 35 USC 111(a)

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
PETITION FEE- 37 CFR 1.17(H) (GROUP III)	1464	1	140	140
RCE- 2ND AND SUBSEQUENT REQUEST	1820	1	1700	1700
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				
Miscellaneous:				
		Total in USD ($)		**1840**

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

Decision Date : November 16, 2017

In re Application of :

BHUPESH DUA

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 15610089

Filed : 31-May-2017

Attorney Docket No : NIKE.276100/08-1313US82CO

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed November 16, 2017, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid in this application cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being referred to Technology Center AU 3765 for processing of the request for continuing examination under 37 CFR 1.114 .

Office of Petitions

Electronic Acknowledgement Receipt

EFS ID:	30974147
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/Cheryl Neeley
Filer Authorized By:	Elizabeth Ashley Lucas
Attorney Docket Number:	NIKE.276100/08-1313US82CO
Receipt Date:	16-NOV-2017
Filing Date:	31-MAY-2017
Time Stamp:	17:25:06
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	CARD
Payment was successfully received in RAM	$1840
RAM confirmation Number	111717INTEFSW17250100
Deposit Account	
Authorized User	
The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:	

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Quick Path Information Disclosure Statement	276100_QPIDS_Certification_and_Request_for_Consideration.PDF	360086 934b88a5ce8b70ccebb939402e268956c55fcb90	no	2
Warnings:					
Information:					
2	Request for Continued Examination (RCE)	276100_RCE.PDF	1349873 a82eec38703fa84ad4b086c4fa21df01133d56dd	no	3
Warnings:					
Information:					
3	Other Reference-Patent/App/Search documents	276100_NPL01_09012017_PREINTERVIEW_COMMUNICATION_15610011.pdf	167941 fbc3464c6b370e1d1ce392ae51df012cf146b547	no	5
Warnings:					
Information:					
4	Other Reference-Patent/App/Search documents	276100_NPL02_09072017_PREINTERVIEW_COMMUNICATION_15609971.pdf	168600 11c22886768c34d20baf37afaeee40b29db36898	no	5
Warnings:					
Information:					
5	Other Reference-Patent/App/Search documents	276100_NPL03_09152017_PREINTERVIEW_COMMUNICATION_15684608.pdf	196938 3af8bc10e5c53edeb7fa30bf943dd5afb969d4ff	no	6
Warnings:					
Information:					
6	Other Reference-Patent/App/Search documents	276100_NPL04_10202017_PREINTERVIEW_COMMUNICATION_15703583.pdf	149754 b8ece669bd399d27d65fbcb87160ad7d3c2c4a5c	no	5
Warnings:					
Information:					

7	Other Reference-Patent/App/Search documents	276100_NPL05_09292017_FAI_OFFICE_ACTION_15609971.pdf	373096 8593b46ca21808018fadb4b1fe9cf972ab55700e	no	7
Warnings:					
Information:					
8	Other Reference-Patent/App/Search documents	276100_NPL06_10102017_FAI_OFFICE_ACTION_15664650.pdf	371474 4ddc7dd09794007897eea109498bcd9e0f24ae8c	no	7
Warnings:					
Information:					
9	Other Reference-Patent/App/Search documents	276100_NPL07_10122017_FAI_OFFICE_ACTION_15664587.pdf	379367 15b9b60f9b5e832ad4ec9c02cfc8c0f39fc90d1e	no	7
Warnings:					
Information:					
10	Other Reference-Patent/App/Search documents	276100_NPL08_10132017_FAI_OFFICE_ACTION_15650488.pdf	545018 528059bec069b730d25dcbe9a34ef00bfd6ba293	no	10
Warnings:					
Information:					
11	Other Reference-Patent/App/Search documents	276100_NPL09_10162017_FAI_OFFICE_ACTION_15650499.pdf	356015 c97c95fe2ac987532ac8f2454f49883a65330caf	no	7
Warnings:					
Information:					
12	Other Reference-Patent/App/Search documents	276100_NPL10_10182017_FAI_OFFICE_ACTION_15659053.pdf	374008 020b2af31704b8529cbde480c2c96f1662a7d32e	no	7
Warnings:					
Information:					
13	Other Reference-Patent/App/Search documents	276100_NPL11_10182017_FAI_OFFICE_ACTION_15646835.pdf	383446 3a386e98581d37b7563e1502f237aaca69a5bd39	no	7
Warnings:					
Information:					

14	Other Reference-Patent/App/Search documents	276100_NPL12_10182017_FAI_OFFICE_ACTION_15664623.pdf	379612 a1fc17f1d594d664e83efa9fc6b38c592dfb61e8	no	7
Warnings:					
Information:					
15	Other Reference-Patent/App/Search documents	276100_NPL13_11142017_FIRST_ACTION_INTERVIEW_OA_15684608.pdf	361868 6d5a8d491fc7e57b2b274c3e2fe1b9e58a25f515	no	7
Warnings:					
Information:					
16	Other Reference-Patent/App/Search documents	276100_NPL14_10272017_OFFICE_ACTION_15358723.pdf	534022 2965b6d965ed5dd6374983f10784de5f8d4b5792	no	15
Warnings:					
Information:					
17	Other Reference-Patent/App/Search documents	276100_NPL15_11162017_FIRST_ACTION_INTERVIEW_OA_15610011.pdf	368680 b566f2de0b7bb9db2856a282c9116fbb2458e49e	no	7
Warnings:					
Information:					
18	Information Disclosure Statement (IDS) Form (SB08)	276100_IDS.PDF	1035721 8dff406015ce1507e65fc91092876a79b273579f	no	5
Warnings:					
Information:					
19	Petition automatically granted by EFS	petition-request.pdf	31707 80346eb836857b92d3185c9b3dedb4bc69fa6088	no	2
Warnings:					
Information:					
20	Fee Worksheet (SB06)	fee-info.pdf	32514 bdd56fe4d98f5346c8e938847cb67eeff4a6c62d	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	7919740		

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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.

Doc Code: QPIDS.REQ
Document Description: Quick Path Information Disclosure Statement

PTO/SB/09 (12-16)

CERTIFICATION AND REQUEST FOR CONSIDERATION OF AN INFORMATION DISCLOSURE STATEMENT FILED AFTER PAYMENT OF THE ISSUE FEE UNDER THE QPIDS PILOT PROGRAM

Non-Provisional Application Number: 15/610,089	Filing Date: 2017-05-31
First Named Inventor: BHUPESH DUA	Title of Invention: Article of Footwear Having a Textile Upper

THE UNDERSIGNED HEREBY CERTIFIES AND REQUESTS THE FOLLOWING FOR THE ABOVE-IDENTIFIED APPLICATION.

1. Consideration is requested of the information disclosure statement (IDS) submitted herewith, which is being filed after payment of the issue fee.
2. Check the box next to the appropriate selection:

   ☐ Each item of information contained in the IDS 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 IDS. See 37 CFR 1.97(e)(1).

   OR

   ☑ No item of information contained in the IDS 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 IDS was known to any individual designated in 37 CFR 1.56(c) more than three months prior to the filing of the IDS. See 37 CFR 1.97(e)(2).

   OR

   ☐ See attached certification statement in compliance with 37 CFR 1.97(e).
3. Please charge the IDS fee set forth in 37 CFR 1.17(p) to Deposit Account No. 19-2112.
4. A Petition to Withdraw from Issue After Payment of the Issue Fee (37 CFR 1.313(c)(2)), including the petition fee set forth in 37 CFR 1.17(h), is submitted herewith as a **Web-based ePetition**.
   WARNING: Do not submit the petition as a follow-on paper via EFS-Web. Submit the petition as a Web-based ePetition by signing on to EFS-Web as a registered user, selecting the radio button next to "Existing application/patent," and then selecting the radio button next to "ePetition (for automatic processing and immediate grant, if all petitions requirements are met)." Failure to use the Web-based ePetition interface will result in automatic entry of the RCE.
5. A request for continued examination (RCE) under 37 CFR 1.114 and the RCE fee under 37 CFR 1.17(e) are submitted herewith.
6. The RCE will be treated as a "conditional" RCE. In the event the examiner determines that any item of information contained in the IDS necessitates the reopening of prosecution in the application, the undersigned understands that (i) the RCE will be processed and treated as an RCE under 37 CFR 1.114 and therefore (ii) the IDS fee under 37 CFR 1.17(p) will be returned in accordance with 37 CFR 1.97(b)(4). In the event that no item of information in the IDS necessitates reopening prosecution, the undersigned understands that the RCE will not be processed and the RCE fee under 37 CFR 1.17(e) will be returned.
7. This certification and request is being filed as a **Web-based ePetition** and is not accompanied by an amendment to the application. Inclusion of an amendment will result in automatic entry of the RCE.

Signature /ELIZABETH A. LUCAS/	Date 11/16/2017
Name (Print/Typed) Elizabeth A. Lucas	Practitioner Registration Number (If applicable) 74,247

Note: *Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below.**

☑ *Total of 1 forms are submitted.

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

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.

Document code: WFEE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/610,089	05/31/2017	BHUPESH DUA	NIKE.276100/08-1313US82CO	4757

78342 7590 12/08/2017

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER
BAYS, MARIE D

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
12/08/2017	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPDOCKET@SHB.COM
IPRCDKT@SHB.COM
nike_docketing@cardinal-ip.com

Notification of Reopening of Prosecution Due to Consideration of an Information Disclosure Statement Filed After Mailing of a Notice of Allowance	**Application No.** 15/610,089	**Applicant(s)** DUA ET AL.	
	Examiner MARIE BAYS	**Art Unit** 3765	

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

1. ☐ Information disclosure statement (IDS) filed on or before payment of the issue fee.*
   (a) One or more items of information contained in the IDS submitted on _____ has necessitated prosecution of the above-identified application to be reopened.
   (b) The application is withdrawn from issue.
   (c) The Notice of Allowability, PTOL-37, mailed by the Office on _____ is withdrawn.
   (d) An Office action will follow in due course.
   (e) If the issue fee has been submitted on or subsequent to the filing of the IDS, and the application is subsequently again found allowable, the applicant may request that the previously paid issue fee be reapplied toward the issue fee that is then due. See MPEP 1306.

   *Examiner Note: *Please (i) fill out your name and contact info below; (ii) post this notification to your Technology Center Director for signature; (iii) send a courtesy e-mail to your Director and Supervisory Patent Examiner (SPE); and, (iv) select "Quick Path IDS Reopen Prosecution" for the transaction in the OACS action naming menu.*

2. ☒ Information disclosure statement (IDS) filed after payment of the issue fee.*
   (a) One or more items of information contained in the IDS submitted on 16 November 2017 has necessitated prosecution of the above-identified application to be reopened.
   (b) The Request for Continued Examination (RCE) under 37 CFR 1.114 filed together with the IDS has been entered.
   (c) An Office action will follow in due course.

   * *Examiner Note: Please (i) fill out your name and contact info below; (ii) post this notification to your TC QPIDS POC for "approval" (visit http://ptoweb.uspto.gov/patents/pai/qpids.html for a listing of TC QPIDS POCs); (iii) send a courtesy e-mail to your TC QPIDS POC; and, (iv) select "Quick Path IDS Examiner-directed entry of RCE" for the transaction in the OACS action naming menu.*

3. ☐ Information disclosure statement (IDS) filed after payment of the issue fee – Quick Path IDS submission is non-compliant (e.g., the submission included an amendment to the application, the submission failed to provide an authorization to charge a deposit account and/or such account was insufficient for payment of the IDS fee, etc.).*
   (a) The Request for Continued Examination (RCE) under 37 CFR 1.114 filed together with the IDS has been automatically entered.
   (b) An Office action will follow in due course.

   * *Examiner Note Please (i) fill out your name and contact info below; (ii) post this notification to your TC QPIDS POC for "approval" (visit http://ptoweb.uspto.gov/patents/pai/qpids.html for a listing of TC QPIDS POCs); (iii) send a courtesy e-mail to your TC QPIDS POC; and, (iv) select "Quick Path IDS Examiner-directed entry of RCE" for the transaction in the OACS action naming menu.*

Telephone Contacts

Telephone inquiries with regard to this communication should be directed to Marier Bays at 571-272-4559. In his/her absence, calls may be directed to Khoa Huynh at 571-272-4888.

Attachment(s)

☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____

PTO/SB/08a (03-15)
Approved for use through 07/31/2016. OMB 0651-0031
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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	6482492	B1	2002-11-19	Hung	
	2	1803554	A	1931-05-05	Knilans	
	3	RE18804	E	1933-04-25	Joha	

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	1							

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /M.D.B/

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 Initials*	Cite No	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc), date, pages(s), volume-issue number(s), publisher, city and/or country where published.	T[5]
	1	First Action Interview Preinterview Communication dated September 1, 2017 in U.S. Patent Application No. 15/610,011, 5 pages.	
	2	First Action Interview Preinterview Communication dated September 7, 2017 in U.S. Patent Application No. 15/609,971, 5 pages.	
	3	First Action Interview Preinterview Communication dated September 15, 2017 in U.S. Patent Application No. 15/684,608, 6 pages.	
	4	First Action Interview Preinterview Communication dated October 20, 2017 in U.S. Patent Application No. 15/703,583, 5 pages.	
	5	First Action Interview Office Action dated September 29, 2017 in U.S. Patent Application No. 15/609,971, 7 pages.	
	6	First Action Interview Office Action dated October 10, 2017 in U.S. Patent Application No. 15/664,650, 7 pages.	
	7	First Action Interview Office Action dated October 12, 2017 in U.S. Patent Application No. 15/664,587, 7 pages.	
	8	First Action Interview Office Action dated October 13, 2017 in U.S. Patent Application No. 15/650,488, 10 pages.	
	9	First Action Interview Office Action dated October 16, 2017 in U.S. Patent Application No. 15/650,499, 7 pages.	

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /M.D.B/

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

	10	First Action Interview Office Action dated October 18, 2017 in U.S. Patent Application No. 15/659,053, 7 pages.	
	11	First Action Interview Office Action dated October 18, 2017 in U.S. Patent Application No. 15/646,835, 7 pages.	
	12	First Action Interview Office Action dated October 18, 2017 in U.S. Patent Application No. 15/664,623, 7 pages.	
	13	First Action Interview Office Action dated November 14, 2017 in U.S. Patent Application No. 15/684,608, 7 pages.	
	14	Office Action dated October 27, 2017 in U.S. Patent Application No. 15/358,723, 15 pages.	
	15	First Action Interview Office Action dated November 16, 2017 in U.S. Patent Application No. 15/610,011, 7 pages.	

If you wish to add additional non-patent literature document citation information please click the Add button Add

EXAMINER SIGNATURE

Examiner Signature	/MARIE D BAYS/	Date Considered	11/19/2017

*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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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)	2017-11-16
Name/Print	Elizabeth A. Lucas	Registration Number	74,247

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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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.

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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.

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).

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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 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.

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /M.D.B/

To: IPDOCKET@SHB.COM,IPRCDKT@SHB.COM,nike_docketing@cardinal-ip.com
From: PAIR_eOfficeAction@uspto.gov
Cc: PAIR_eOfficeAction@uspto.gov
Subject: Private PAIR Correspondence Notification for Customer Number 78342

Dec 09, 2017 08:23:13 AM

Dear PAIR Customer:

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613
UNITED STATES

The following USPTO patent application(s) associated with your Customer Number, 78342 , have new outgoing correspondence. This correspondence is now available for viewing in Private PAIR.

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Application	Document	Mailroom Date	Attorney Docket No.
15610089	Q.DEC.REOPEN	12/08/2017	NIKE.276100/08-1313US82CO
	1449	12/08/2017	NIKE.276100/08-1313US82CO

To view your correspondence online or update your email addresses, please visit us anytime at https://sportal.uspto.gov/secure/myportal/privatepair.

If you have any questions, please email the Electronic Business Center (EBC) at EBC@uspto.gov with 'e-Office Action' on the subject line or call 1-866-217-9197 during the following hours:

Monday - Friday 6:00 a.m. to 12:00 a.m.

Thank you for prompt attention to this notice,

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www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/610,089	05/31/2017	BHUPESH DUA	NIKE.276100/08-1313US82CO	4757

78342 7590 12/21/2017

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER
BAYS, MARIE D

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
12/21/2017	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPDOCKET@SHB.COM
IPRCDKT@SHB.COM
nike_docketing@cardinal-ip.com

Applicant-Initiated Interview Summary	Application No.	Applicant(s)	
	15/610,089	DUA ET AL.	
	Examiner	Art Unit	
	MARIE BAYS	3765	

All participants (applicant, applicant's representative, PTO personnel):

(1) *MARIE BAYS*. (3)_____.

(2) *Liz Lucas*. (4)_____.

Date of Interview: *18 December 2017*.

Type: ☒ Telephonic ☐ Video Conference
☐ Personal [copy given to: ☐ applicant ☐ applicant's representative]

Exhibit shown or demonstration conducted: ☐ Yes ☐ No.
If Yes, brief description: _____.

Issues Discussed ☐101 ☐112 ☒102 ☒103 ☐Others
(For each of the checked box(es) above, please describe below the issue and detailed description of the discussion)

Claim(s) discussed: *all of record*.

Identification of prior art discussed: *Holden*.

Substance of Interview
(For each issue discussed, provide a detailed description and indicate if agreement was reached. Some topics may include: identification or clarification of a reference or a portion thereof, claim interpretation, proposed amendments, arguments of any applied references etc...)

The Examiner noted that the reference to Holden shows ribs and that this reference was the cause for the entry of the RCE in the QPIDS filing. Further details will be given in the office action in response to the RCE entry..

Applicant recordation instructions: The formal written reply to the last Office action must include the substance of the interview. (See MPEP section 713.04). If a reply to the last Office action has already been filed, applicant is given a non-extendable period of the longer of one month or thirty days from this interview date, or the mailing date of this interview summary form, whichever is later, to file a statement of the substance of the interview

Examiner recordation instructions: Examiners must summarize the substance of any interview of record. A complete and proper recordation of the substance of an interview should include the items listed in MPEP 713.04 for complete and proper recordation including the identification of the general thrust of each argument or issue discussed, a general indication of any other pertinent matters discussed regarding patentability and the general results or outcome of the interview, to include an indication as to whether or not agreement was reached on the issues raised.

☐ Attachment

	/Marie Bays/ Primary 3765

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record
A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews
Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.
All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:
- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

1) A brief description of the nature of any exhibit shown or any demonstration conducted,
2) an identification of the claims discussed,
3) an identification of the specific prior art discussed,
4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
5) a brief identification of the general thrust of the principal arguments presented to the examiner,
   (The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
6) a general indication of any other pertinent matters discussed, and
7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

To: IPDOCKET@SHB.COM,IPRCDKT@SHB.COM,nike_docketing@cardinal-ip.com
From: PAIR_eOfficeAction@uspto.gov
Cc: PAIR_eOfficeAction@uspto.gov
Subject: Private PAIR Correspondence Notification for Customer Number 78342

Dec 21, 2017 03:49:49 AM

Dear PAIR Customer:

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Application	Document	Mailroom Date	Attorney Docket No.
15610089	INTV.SUM.APP	12/21/2017	NIKE.276100/08-1313US82CO

To view your correspondence online or update your email addresses, please visit us anytime at https://sportal.uspto.gov/secure/myportal/privatepair.

If you have any questions, please email the Electronic Business Center (EBC) at EBC@uspto.gov with 'e-Office Action' on the subject line or call 1-866-217-9197 during the following hours:

Monday - Friday 6:00 a.m. to 12:00 a.m.

Thank you for prompt attention to this notice,

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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	8745895	B2	2014-06-10	Sokolowski et al.	
	2	5604997	A	1997-02-25	Dieter	
	3	3114213	A	1963-12-17	Bowers	
	4	2603891	A	1952-07-22	Cohn	
	5	1956969	A	1934-05-01	Ayers	

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U.S.PATENT APPLICATION PUBLICATIONS Remove

Examiner Initial*	Cite No	Publication Number	Kind Code[1]	Publication Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear
	1					

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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

Examiner Initial*	Cite No	Foreign Document Number[3]	Country Code[2] i	Kind Code[4]	Publication Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear	T[5]
	1							

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NON-PATENT LITERATURE DOCUMENTS Remove

Examiner Initials*	Cite No	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc), date, pages(s), volume-issue number(s), publisher, city and/or country where published.	T[5]
	1	First Action Interview Preinterview Communication dated October 20, 2017 in U.S. Patent Application No. 15/703,394, 6 pages.	
	2	Final Written Decision dated October 19, 2017 in IPR2016-00921 in U.S. Patent 7,814,598, 49 pages.	
	3	Final Written Decision dated October 19, 2017 in IPR2016-00922 in U.S. Patent 8,266,749, 52 pages.	

If you wish to add additional non-patent literature document citation information please click the Add button Add

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)	2017-12-28
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.**

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 record s.

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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.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/703,394	09/13/2017	Bhupesh Dua	NIKE.276112/081313US94CON	1699

78342 7590 10/20/2017

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER
BAYS, MARIE D

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
10/20/2017	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPDOCKET@SHB.COM
IPRCDKT@SHB.COM
nike_docketing@cardinal-ip.com

Notice of References Cited	Application/Control No. 15/703,394	Applicant(s)/Patent Under Reexamination DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	CPC Classification	US Classification
*	A	US-5,345,638 A	09-1994	Nishida; Mamoru	A41H3/08	12/146C
	B	US-				
	C	US-				
	D	US-				
	E	US-				
	F	US-				
	G	US-				
	H	US-				
	I	US-				
	J	US-				
	K	US-				
	L	US-				
	M	US-				

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	CPC Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

First Action Interview Pilot Program Pre-Interview Communication	Application No. 15/703,394	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

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

THE SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE **ONE MONTH OR THIRTY (30) DAYS,** WHICHEVER IS LONGER, FROM THE MAILING OR NOTIFICATION DATE OF THIS COMMUNICATION.

This time period for reply is extendable under 37 CFR 1.136(a) for only ONE additional MONTH.

This communication constitutes notice under 37 CFR 1.136(a)(1)(i).

Applicant must, within the time period for reply, file: (1) A letter requesting not to have a first action interview; (2) A reply under 37 CFR 1.111 waiving the first action interview and First Action Interview Office Action; or (3) An Applicant Initiated Interview Request Form (PTOL-413A) electronically via EFS-Web, accompanied by a proposed amendment or arguments, and schedule the interview within 2 months from the filing of the request. A failure to respond to this communication will be treated as a request not to have an interview. If applicant waives the First Action Interview Office Action, the instant Pre-Interview Communication is deemed the first Office Action on the Merits. The next subsequent Office action may be made final if appropriate. See MPEP 706.07(a).

Status

1)☐ Responsive to communication(s) filed on _____.

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

Disposition of Claims

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

2a) Of the above claim(s) _____ is/are withdrawn from consideration.

3)☐ Claim(s) _____ is/are allowed.

4)☒ Claim(s) *21-40* is/are rejected.

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

6)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

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

8)☐ 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

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

a)☐ All b)☐ Some * c)☐ None of:

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.

Contact Information

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Attachment(s)	
1) ☒Notice of References Cited (PTO-892)	3) ☐Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
2) ☒Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.	4) ☐ Other: _____.

Skechers EX1013-p. 7731
Skechers v Nike

First Action Interview Pilot Program Pre-Interview Communication	Application No. 15/703,394	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	AIA (First Inventor to File) Status No

Notification of Rejection(s) and/or Objection(s)

#	Claim(s)	Reference(s) (if applicable)	Rejection Statutory Basis	Brief Explanation of Rejection
	21-40	5345638 Nishida	35 USC 103	shows a knit textile element with longitudinal edges (see figure 4) which are attached to form an upper. Teaches any size for upper (column 4 lines 52-55) and therefore the claimed distance of 12 inches would have been obvious.

Expanded Discussion/Commentary

		In reference to the lanugage directed towards "wide-tube circular-knitted", the claims are article claims and this phrase has been treated as a product by process limitation and the knit textile shown by Nishida is clearly capable of being formed by a wide-tube circular-knit machine.
		Obvious type double patenting with 12/879517 (8042288)

DATE: 17 October, 2017	/Marie Bays/ Primary Examiner Art Unit: 3765	

Notice of References Cited	Application/Control No. 15/703,394	Applicant(s)/Patent Under Reexamination DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	CPC Classification	US Classification
*	A	US-5,345,638 A	09-1994	Nishida; Mamoru	A41H3/08	12/146C
	B	US-				
	C	US-				
	D	US-				
	E	US-				
	F	US-				
	G	US-				
	H	US-				
	I	US-				
	J	US-				
	K	US-				
	L	US-				
	M	US-				

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	CPC Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

Trials@uspto.gov
571-272-7822

Paper 21
Entered: October 19, 2017

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 7,814,598 B2

Before JOSIAH C. COCKS, MICHAEL J. FITZPATRICK, and JAMES B. ARPIN, *Administrative Patent Judges.*

Opinion for the Board filed by *Administrative Patent Judge* ARPIN.

Opinion Concurring by *Administrative Patent Judge* FITZPATRICK.

ARPIN, *Administrative Patent Judge.*

FINAL WRITTEN DECISION

35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. BACKGROUND

adidas AG ("Petitioner") filed a Petition pursuant to 35 U.S.C. §§ 311–19 to institute an *inter partes* review of claims 1–13 of U.S. Patent No. 7,814,598 B2 (Ex. 1001, "the '598 patent").[1] Paper 1 ("Pet."). Nike, Inc. ("Patent Owner") did not file a Preliminary Response.[2] Applying the standard set forth in 35 U.S.C. § 314(a), which requires demonstration of a reasonable likelihood that Petitioner would prevail with respect to at least one challenged claim, we instituted an *inter partes* review of claims 1–13 of the '598 patent. Paper 6 ("Inst. Dec."), 22–23.

After institution, Patent Owner filed a Patent Owner Response to the Petition (Paper 9 ("PO Resp.")), and Petitioner replied (Paper 10 ("Reply")).[3] Each party requested an oral hearing (Papers 15 and 16); and

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[1] Petitioner identifies adidas International B.V.; adidas North America, Inc.; adidas America, Inc.; and adidas International, Inc., as real parties-in-interest. Pet. 1.

[2] Patent Owner identifies only itself, as a real party-in-interest. Paper 5, 2.

[3] Patent Owner filed objections to the admissibility of some of Petitioner's evidence. Paper 12. Petitioner served – and improperly filed – supplemental evidence in response to Patent Owner's objections. Paper 13; Ex. 1015; 37 C.F.R. § 42.64(c); *see* 37 C.F.R. § 42.64(b)(2) ("The party relying on evidence to which an objection is timely served may respond to the objection *by serving* supplemental evidence within ten business days of service of the objection." (emphasis added)); *GoPro, Inc. v. Contour IP Holding LLC*, Case IPR2015-01078, slip op. at 2–3 (PTAB Apr. 7, 2016) (Paper 40) ("If the supplemental evidence does not cure the objection and the opposing party files a motion to exclude, the submitting party may file the supplemental evidence with its opposition to the motion to exclude."). Ultimately, Patent Owner did not file a motion to exclude, and, therefore, Patent Owner did not preserve its objections. 37 C.F.R. § 42.64(c). Regardless, Exhibit 1015 is expunged because we did not authorize its filing.

Skechers EX1013-p. 7735
Skechers v Nike

we held a consolidated oral hearing with Case IPR2016-00922 on July 12, 2017. A transcript of that hearing is of record in this case. Paper 20 ("Tr.").

We have jurisdiction under 35 U.S.C. § 6, and this Final Written Decision, issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73, addresses issues and arguments raised during the review. For the reasons discussed below, we determine that Petitioner has not met its burden to prove, by a preponderance of the evidence, that claims 1–13 of the '598 patent are unpatentable on the ground upon which we instituted *inter partes* review.

A. The '598 Patent

The '598 patent is a divisional of U.S. Patent Application No. 10/791,289, filed on March 3, 2004, now issued as U.S. Patent No. 7,347,011 B2 ("the '011 patent") (Ex. 1001 at (62)) and relates to articles of footwear incorporating an upper that is at least partially formed from a textile material (*id.* at 1:18–21). Conventional articles of athletic footwear may include two primary elements: an upper and a sole structure. *Id.* at 1:23–26. The upper may form a void in the interior of the footwear for receiving a wearer's foot, and the upper may extend over the instep and toe areas, along the medial and lateral sides, and around the heel area of the wearer's foot. *Id.* at 1:41–46.

In particular, the Specification describes articles of footwear having an upper incorporating a knitted textile element and having a sole structure secured to the upper. *Id.* at 3:27–33. Methods for manufacturing an article of footwear include "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

Skechers EX1013-p. 7736
Skechers v Nike

textile structure, and incorporating the textile element into an upper of the article of footwear." *Id.* at 3:41–46.

Figure 9 of the '598 patent is reproduced below.

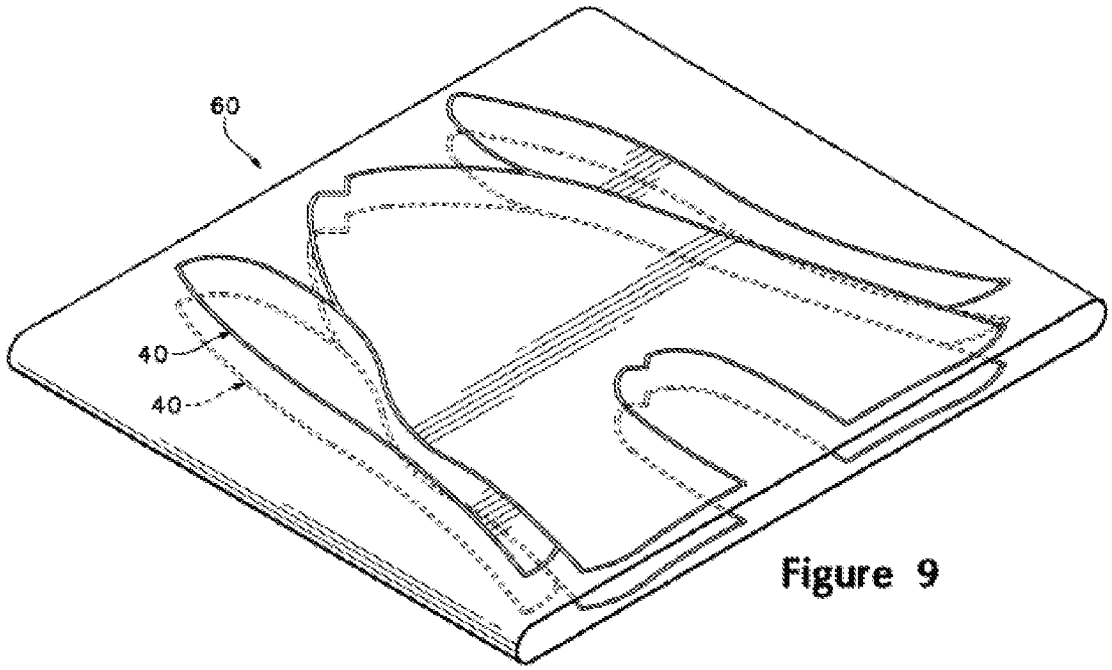


Figure 9

Figure 9 depicts textile structure 60 formed on a circular knitting machine. *Id.* at 7:48–51. For example,

> [a] 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.

Id. at 7:14–20. As discussed below, 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. *Id.* at 7:65–8:3. In particular, as depicted in Figure 9, the outlines for at least two textile elements 40 may be formed on textile structure 60. *Id.* at 7:53–54.

Skechers EX1013-p. 7737
Skechers v Nike

Figure 8 of the '598 patent is reproduced below.

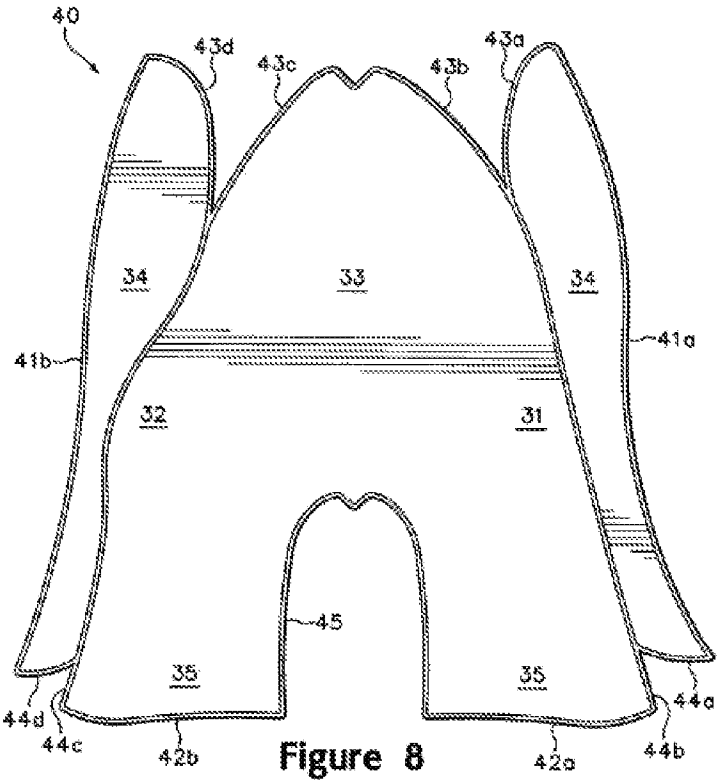


Figure 8

Figure 8 depicts an embodiment of an upper according to the '598 patent. *Id.* at 5:59–6:64. "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." *Id.* at 5:40–43; *see also id.* at Figs. 10 (depicting textile element 40′), 11 (depicting textile element 40″). In particular,

> 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 together to form seams 51-54,

> the various portions of textile element 40 are formed as [a] unitary element *without seams* . . . .

Id. at 6:41–50 (emphases added). Consequently, textile element 40 is formed, such that portions of the textile element are not joined together with seams or other connections. *Id.* at 5:40–43. Edges 41a–44d are joined together as shown in Figures 3–5 to form seams 51–54, thereby forming at least a portion of a void for receiving the foot. *Id.* at 6:41–50. In contrast, lateral region 31, medial region 32, instep region 33, lower regions 34, and heel regions 35 together have a unitary construction without seams (*id.* at 5:46–58, 6:47–50).

Figure 11 of the '598 patent is reproduced below.

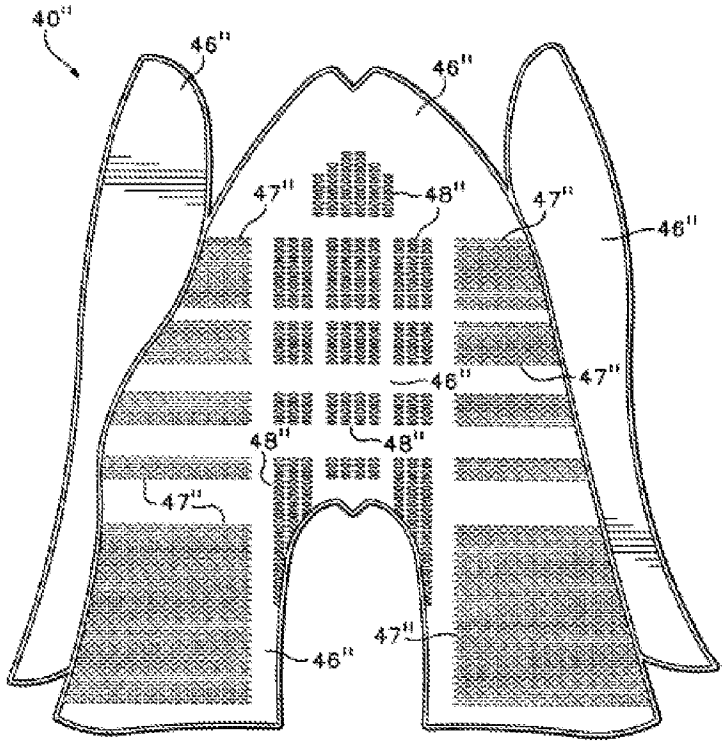


Figure 11

Figure 11 depicts another embodiment of an upper according to the '598 patent. *Id.* at 9:29–10:7. Textile element 40″ includes three different

areas with three different textures. *Id.* at 9:31–32. First texture 46″ is generally smooth and extends in strips across lateral region 31, medial region 32, and instep region 33 of the upper. *Id.* at 9:32–35. In addition, textile element 40″ includes second texture 47″ and third texture 48″. *Id.* at 9:35–39. Moreover, the Specification of the '598 patent describes that:

> 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. . . . The air-permeability of textile element 40″ may also vary in the different areas.

Id. at 9:39–47 (emphasis added).

B. Illustrative Claim

Claims 1 and 9 are independent, method claims. Claims 2–8 depend directly or indirectly from claim 1, and claims 10–13 depend directly or indirectly from claim 9. Claims 1 and 4 are illustrative of the claims at issue and are reproduced below:

> 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.
>
> 4. The method recited in claim 1, 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

Skechers EX1013-p. 7740
Skechers v Nike

> first stitch configuration to impart varying textures to a surface of the textile element.

Id. at 11:43–50 (claim 1), 11:58–12:6 (claim 4).

C. Related Proceedings

Neither party identifies any related litigation. Pet. 1; Paper 5, 2. As discussed above, the '598 patent is a divisional of the application that issued as the '011 patent, which is the subject of IPR2013-00067. Pet. 1. In that case, the panel instituted *inter partes* review of claims 1–46 of the '011 patent, and Patent Owner requested cancellation of claims 1–46 and proposed substitute claims 47–50 in a Motion to Amend. The panel granted Patent Owner's request to cancel claims 1–46, but denied Patent Owner's request as to the substitute claims. Patent Owner appealed the Board's decision to the U.S. Court of Appeals for the Federal Circuit (the "Federal Circuit"). The Federal Circuit issued a decision in Patent Owner's appeal on February 11, 2016, which affirmed-in-part and vacated-in-part the Board's decision, and remanded the case to the Board for further proceedings regarding the status of the substitute claims. *Nike, Inc. v. adidas AG*, 812 F.3d 1326, 1329 (Fed. Cir. 2016). The Federal Circuit issued its mandate in that case on April 4, 2016. In addition, Petitioner has requested *inter partes* review of claims of related patents in IPR2016-00920 (U.S. Patent No. 8,042,288 B2), institution denied, and IPR2016-00922 (U.S. Patent No. 8,266,749 B2), institution granted. Paper 5, 2.

D. Applied References and Declaration

Petitioner relies on the following references and declaration in support of its asserted ground of unpatentability:

Skechers EX1013-p. 7741
Skechers v Nike

Exhibit	References and Declaration
1003	Declaration of Mr. Lenny M. Holden
1006	U.S. Patent No. 3,985,003 to Reed, issued Oct. 12, 1976 ("Reed")
1009	U.S. Patent No. 5,345,638 to Nishida, issued Sept. 13, 1994 ("Nishida")
1010	David J. Spencer, *Knitting technology: a comprehensive handbook and practical guide*, 1–413 (2001) (3rd Ed., Woodhead Publ. Ltd.) ("Spencer")
1012	International Standard, *Textile machinery — Knitting machines — Nominal diameters of circular machines*, 1–6 (2003) (2nd Ed., ISO 8117:2003(E)) ("ISO 8117")

Pet. iv.

E. Instituted Ground of Unpatentability

We instituted review on the following ground of unpatentability:

References	Basis	Challenged Claims
Reed and Nishida	35 U.S.C. § 103(a)	1–13

Pet. 8.

II. ANALYSIS

A. Person of Ordinary Skill in the Art

Petitioner argues that a person of ordinary skill in the relevant art would have at least a few years of experience in the footwear industry, *a broad understanding of shoemaking*, and an understanding of (1) the product cycle for the process of designing, developing and bringing a new product to market; (2) milestones for reviewing upper material designs; (3) *the available and varied ranges of typical construction methods within a product cycle*; and (4) the functional requirements of footwear and the range of material choices available. Pet. 8–9 (citing Ex. 1003 ¶ 34). Patent Owner

Skechers EX1013-p. 7742
Skechers v Nike

contests Petitioner's assessment of the level of ordinary skill in the relevant art, but does not propose an alternative assessment. PO Resp. 12–14.

Initially, Patent Owner contends that Petitioner has failed to consider appropriate factors identified by our reviewing court and utilized by other panels to assess the level of ordinary skill in the art. *Id.* at 12–13. We agree with Petitioner that it is not necessary to consider every factor or to weigh the factors equally in order to assess the level of ordinary skill in the art. Reply 2 (quoting *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995)). Here, we may rely on Petitioner's declarant's testimony (Ex. 1003 ¶ 34) and the teachings of the prior art to evaluate Petitioner's assessment of the level of ordinary skill in the art. *Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001). In particular, Reed and Nishida identify the types of problems encountered in the art prior art solutions to these problems, and the sophistication of the technology. *E.g.*, Ex. 1006, 1:13–55; Ex. 1009, 1:10–36; *see, e.g.*, Ex. 1007, 1:8–32, 2:12–64; Ex. 1008, 1:11–54; Ex. 1010, 145–160; *see also* Ex. 1010, Preface ("The aim of this book is to combine in a single volume the fundamental principles of weft and warp knitting in such a manner that its contents are useful to readers in education, industry or commerce. It thus [fulfills] the long felt need for a comprehensive up-to-date textbook explaining this important sector of textile technology.").

Patent Owner contends that the level of ordinary skill in the art is "low" (PO Resp. 13), but it is not clear whether Patent Owner further contends that Petitioner's assessment is deficient because Petitioner fails to argue that a person possessing such a "low" level of ordinary skill in the art also would have "experience using knitting technologies to create knitted footwear uppers" (*id.* at 13–14) or whether the inclusion of such skill would

Skechers EX1013-p. 7743
Skechers v Nike

raise the "low" level of skill in the art (*id.* at 14). Alternatively, Patent Owner may merely be contending that Petitioner's declarant fails to qualify as a person of ordinary skill in the art. *Id.* at 14 ("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."); *see* Tr. 62:17–22. Patent Owner is not required to help us assess the level of ordinary skill in the art and does not do so here. *See* PO Resp. 18 ("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.").

In response to Patent Owner's contentions, Petitioner argues that the level of ordinary skill in the art is not low and that hands-on knitting experience is not required. Reply 2–3. Petitioner further argues Patent Owner has not required knitting experience in its previous assessment with respect to a related patent of the level of ordinary skill in the art. *Id.* (citing IPR2013-00067, Ex. 2010 ¶ 52). Based on the record before us and to the extent necessary, we again adopt Petitioner's assessment of a person of ordinary skill in the relevant art. Inst. Dec. 8 n.3.

B. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are construed according to their broadest reasonable interpretation in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b). Under that standard, claim terms are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249,

Skechers EX1013-p. 7744
Skechers v Nike

1257 (Fed. Cir. 2007). The following four claim terms are at issue in this proceeding.

1. "a first area and a second area with a unitary construction" (Claims 4 and 11)

Petitioner argues that the term "a first area and a second area with a unitary construction" means "a textile element having a unitary construction and having a first area and a second area." Pet. 7. As Petitioner notes, this is the construction that this panel gave to the same term appearing in the substitute claims of the '011 patent. *adidas AG v. Nike, Inc.*, Case IPR2013-00067, slip op. at 16–17 (PTAB Apr. 28, 2014) (Paper 60). We further note that the '598 patent's Specification provides that "[a]s 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." Ex. 1001, 6:41–46 (emphasis added); *see* IPR2013-00067, Ex. 1002, 6:41–46 (identical disclosure). The '011 patent and the '598 patent share the same Specification (apart from their claims), neither party contested our construction of this term in the appeal of our decision in the *inter partes* review of the claims of the '011 patent, and Patent Owner does not contest Petitioner's proposed construction of this term in this proceeding. Therefore, in view of the express definition of the phrase "unitary construction" in the Specification of the '598 patent, we adopt Petitioner's proposed construction for this term. *See* Tr. 20:5–13, 37:11–17.

2. "wide-tube circular knitting machine" (Claims 2 and 9)

We determine that the broadest reasonable interpretation of the term "wide-tube circular knitting machine" is "a circular knitting machine

Skechers EX1013-p. 7745
Skechers v Nike

forming body garment sized, tubular textile structures, including those having a diameter that ranges from 10 inches to 20 inches." *See* Inst. Dec. 10–11. Neither party contests this construction. *See* Tr. 20:5–13, 37:11–17.

3. "impart" (claims 4 and 11) and "texture" (claims 3, 4, 10, and 11)

During the course of the review, the parties raised issues regarding the construction of two additional terms that appear only in the challenged dependent claims. First, Petitioner argues that the term "impart" means "to give, convey, or grant from." Reply 21 (citing Ex. 1014).[4] Further, Petitioner argues that this definition is consistent with the use of the word "impart" in the Specification of the '598 patent. *E.g.*, Ex. 1001, Abstract, 1:30–35, 1:60–63, 1:65–2:3, 3:33–37, 7:35–37; *see* Tr. 21:4–14. Patent Owner does not propose an alternative construction for the term "impart." Further, neither party argues that the term "impart" carries special meaning in the relevant art. In fact, we find Spencer's use of the word "impart" in the handbook on knitting technology consistent with Petitioner's dictionary definition and the word's use in the Specification of the '598 patent. *See* Ex. 1010, 189. Thus, to the extent any construction of this term is necessary, we find that the broadest reasonable interpretation of the term "impart" is "to give, convey, or grant from." *See Summit 6, LLC v. Samsung Elecs. Co.*, 802 F.3d 1283, 1291 (Fed. Cir. 2015) ("[E]ach [term] is used in common

[4] Petitioner relies on a definition of "impart" from a current, on-line dictionary rather than from a dictionary contemporaneous with the effective filing date of the '598 patent. However, the record contains no suggestion that the relevant definition of "impart" has changed since the effective filing date of the '598 patent, and we determine that it has not. *See* RANDOM HOUSE WEBSTER'S COLLEGE DICTIONARY, 659 (2nd ed. 1999) (Ex. 3001) ("impart" means "to give; bestow").

Skechers EX1013-p. 7746
Skechers v Nike

parlance and has no special meaning in the art. Because the plain and ordinary meaning of the disputed claim language is clear, the district court did not err by declining to construe the claim term.").

Second, although Petitioner does not provide an express interpretation for the term "texture,"[5] Petitioner's declarant testifies "texture" "generally could be an actual texture or a perceived texture based on the arrangement of colors in a pattern." Reply 4 (citing Ex. 2004, 178:20–24; *see also id.* at 177:1–178:19, 178:25–184:11). Patent Owner disputes Mr. Holden's interpretation of "texture," which appears inconsistent with Spencer's discussion of texture. *See* Ex. 2004, 80:24–81:8. In particular, according to Spencer, "[c]olour is one of the five ingredients of fashion, the other four being style, silhouette, texture and pattern." Ex. 1010, 127. Thus, Spencer appears to distinguish between color and texture.

The Specification of the '598 patent does not define "texture," but contrasts between "smooth" and "textured" areas of a textile element. Ex. 1001, 9:23–24. Moreover, with respect to Figure 11, the Specification of the '598 patent explains that:

> 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

[5] A relevant dictionary definition of the word "texture" is "the characteristic structure of the threads, fibers, etc., that make up a textile fabric: *course texture*," "a rough or grainy surface quality," or "anything produced by weaving; woven fabric." Ex. 3001, 1351.

Skechers EX1013-p. 7747
Skechers v Nike

> 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.*

Id. at 39–57 (emphasis added). From this explanation, we understand that "texture," as used in the '598 patent, is distinguishable from the physical and aesthetic properties of a textile element. According to the recitations of claims 4 and 11, "texture" is produced as part of the step recited in claims 1 and 9 of "mechanically-manipulating a yarn with a circular knitting machine." *See* Ex. 1001, 11:45–46. Thus, to the extent any construction of this term is necessary, we find that the broadest reasonable interpretation of the term "texture" in the context of claims 4 and 11 is "a non-smooth surface formed by mechanically-manipulating a yarn with a circular knitting machine." Such a surface may be created by "varying the type of stitch formed by the wide-tube circular knitting machine at each location of textile element." *Id.* at 9:39–42.

4. Other Claim Terms

For purposes of this Final Written Decision, we discern no other claim terms that require express interpretation.

Skechers EX1013-p. 7748
Skechers v Nike

C. Obviousness over Reed and Nishida

1. Overview

Petitioner argues that claims 1–13 are unpatentable under 35 U.S.C. § 103(a) as obvious over the combined teachings of Reed and Nishida. To support its arguments, Petitioner provides a detailed mapping of limitations of the challenged claims to Reed and Nishida. Pet. 14–29. Petitioner also cites Mr. Holden's Declaration for support. *See* Ex. 1003 ¶¶ 92–130.

A patent claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter 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." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations, including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art;[6] and (4) objective evidence of nonobviousness, i.e., secondary considerations.[7] *See Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). On this record and for the reasons set forth below, we are not persuaded that Petitioner demonstrates by a preponderance of the evidence that claims 1–13 of the '598 patent are

[6] *See supra* Section II.A.; *see also* Ex. 1003 ¶ 36 ("Based on my experience, I have an understanding of the capabilities of the skilled person in this field, and my opinions are provided from the perspective of such a person.").

[7] The record lacks arguments or evidence of secondary considerations. *See generally* PO Resp.

unpatentable as rendered obvious over the combined teachings of Reed and Nishida.

2. Reed (Ex. 1006)

Reed is directed to a method of manufacturing a wearable item, which includes, among other things, mechanically manipulating a yarn with a circular-knitting machine to form a cylindrical textile structure (Ex. 1006, 2:22–25), textile elements located in different portions of the textile structure (*id.* at 2:29–31), removing the textile elements from the textile structure (*id.* at 3:12–19, 5:67–6:5), and incorporating the textile element(s) "to form *all types of garments* worn by men, women and children" (*id.* at 5:56–58 (emphasis added); *see id.* at 1:33–35).[8] In particular, Reed describes methods of making preseamed garments (*id.* at 3:8–21) or preseamed sections of a garment, which sections may be seamed together "by standard practices" to form a garment (*id.* at 6:10–17). As Reed explains,

> *From the preceding description of the preferred embodiments, it is evident that the objects of the invention are obtained to produce a preformed and preseamed fabric on a circular knitting machine so as to reduce time, cost and labor involved in making garments.* The types of program used to form the final product is to be varied with the imagination of the programmer, as well as the type of product which may be

[8] Patent Owner contends that Reed is not analogous art. PO Resp. 29–31. In particular, Patent Owner contends that Reed is not from the same field of endeavor as the challenged claims and that Reed's teachings are not reasonably pertinent to the particular problem with which the recited methods are involved. *Id.* at 29–30. Because Reed is directed to the manufacture of all types of garments, including footwear (Reply 12–14; *see* Ex. 1006, 1:33–44), and Reed is related directly to preparation of garments layouts from a knitted textile structure (Reply 14–15; *see* Ex. 1006, 2:29–35), we are persuaded that Reed is analogous art to the challenged claims.

> formed. The essence of the present invention is a garment formed of juxtaposed sections of simultaneously knitted, concentric tubes interconnected by knitting.

Id. at 6:18–28 (emphasis added).

Reed's Figure 1 is reproduced below.

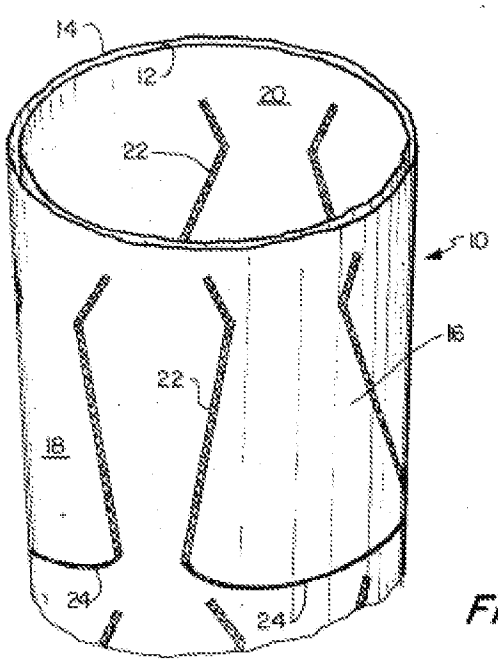


FIG. 1

Figure 1 depicts tubular knitted structure 10, such as that produced by a circular knitting machine. *Id.* at 2:66–3:1. Knitted structure 10 comprises inner tube 12 and outer tube 14, and

> [a]round the circumference of the knitted structure 10 are illustrated three garments which, for example, may be skirts 16, 18 and 20.[9]
>
> The garments 16, 18 and 20 are outlined by a plurality of interconnecting knitted stitches 22 and 24. *The interconnecting knitting 22 not only forms the outline of the garments 16, 18 and 20, but joins the inner tube 12 to the outer tube 14 so as to create a seam.* The interconnecting knitting 24 is merely to

[9] We are persuaded that "skirts" are "body garments." *See* Ex. 1003 ¶ 97.

> define the lower outline of the skirt upon which the pattern may be cut.

Id. at 3:1–15 (emphasis added).

Reed explains that the use of circular knitting machines in the garment industry historically was limited to making tubular, knitted garments, such as ladies stockings, sweaters, and other garments, wherein the entire knitted fabric was used as a unit to form one surface of a finished garment. Pet. 10–11 (citing Ex. 1006, 1:33–44; Ex. 1003 ¶ 94); *see supra* Section II.C.1. (note 6). Reed further teaches that "[c]omputer electronic knitting brought about the possibilities of making patterns and designs of up to three million stitches (previously approximately 50,000 was maximum). With this system, patterns and designs are possible that before could not be made." Ex. 1006, 1:50–55; *see* Ex. 1003 ¶ 95. Reed states that its method uses "an electronic circular double knitting machine" and that an "object of the [Reed] invention is to provide a method of reducing the cost of manufacturing of garments by using the versatility of a computerized electronic knitting machine." Ex. 1006, 1:58–59, 2:22–25, Figs 1–6; *see* Ex. 1003 ¶ 95. Further, Reed teaches that:

> If the present process is used to preform *an exterior decorative fabric having a lining or inner-lining or interfacing attached thereto*, the severed sections must be assembled and seamed by standard practices. By providing the lining or interfacing already attached to the section, a substantial amount of time is saved in measuring, marking and cutting the original fabric and lining or interlining as well as stitching them together.

Ex. 1006, 6:10–17 (emphasis added).

Skechers EX1013-p. 7752
Skechers v Nike

3. Nishida (Ex. 1009)

Nishida is directed to the production of a shoe upper by (1) cutting out a layout in the form of the shoe upper from a web of material and (2) shaping the shoe upper by connecting material parts of the layout by the formation of seams. *See* Ex. 1009, Abstract. By this process, such shoe uppers may be produced efficiently and in reduced time despite the many individual parts present or to be made visible. *Id.*

Figure 2 of Nishida is reproduced below.

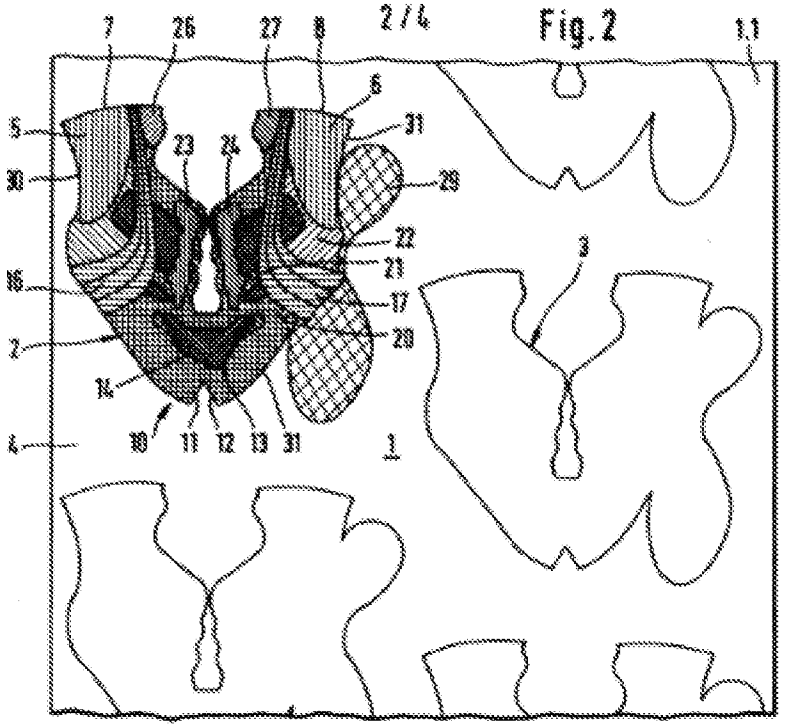


Figure 2 illustrates an embodiment of the upper layout according to Nishida. *Id.* at 3:6–12. Web of material 1 may include one or a plurality of layouts 2. Further, web of material 1 includes backing 4 that may be a knitted material, and different areas of layouts 2 may be formed by knitting different yarns or fibers on backing 4. *Id.* at 3:15–26, 5:63–6:2. Moreover, Nishida's web of

material 1 may be "knitted in two or more layers or can be especially thick or additionally embroidered." *Id.* at 3:66–4:1.

Consequently, web of material 1 may be used to produce layouts 2 by different production measures, such as different styles, yarn material, color, material thickness, number of layers of material, or the like, simultaneously with the production of web of material 1. *Id.*; *see id.*, Figs. 1, 2. Each layout 2, including a sole part, may be cut from web of material 1 as a unit and processed into an upper. *Id.* Nishida describes the manufacture of an article of footwear incorporating such an upper. *Id.* at 3:9–12, Fig. 3.

Figure 4 of Nishida is reproduced below.

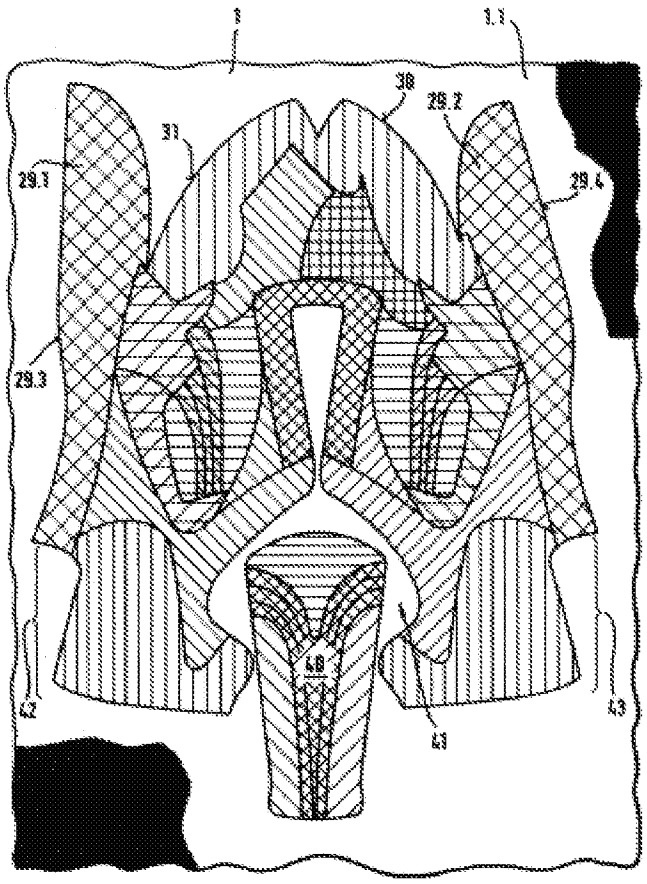


Fig. 4

Figure 4 depicts a section of web of material 1 with radially symmetric layout 2 having sole part sections 29.1 and 29.2 provided on opposite sides of the upper, as well as tongue 40. *Id.* at 2:64–66. Nishida sets forth the following in association with Figure 4:

> [T]ongue 40, for example, according to FIG. 4, can be provided also in the course of producing the web of material 1 with different weave structures and/or weave patterns and/or embroideries or with one or with several prints or the like. On a web of material 1, different tongues 40 can be produced corresponding to a shoe shape and/or a shoe size both in shape, size, color or colors, patterns or the like. Preferably, in each case, related tongues 40 are produced simultaneously with a layout 2 on same web of material 1.
>
> For optimum surface use of web of material 1, a tongue 40 can be produced in the open space 41 located between the two layout sections 42 and 43, which later form the rear of foot or heel-pan shoe part.
>
> Preferably, each layout 2 has at least five, preferably more than ten, patterns and a tongue 40 has at least two, preferably at least three patterns produced or appearing, which are different from one another in each case.

Id. at 5:27–44; *cf. id.*, Fig. 2 (reproduced above, depicting web of material 1 including layouts 2 without tongues). Thus, as depicted in Figure 4, tongues may be individual parts of an article of footware "produced separately and applied to the upper later" and are of a relatively simply, substantially rectangular shape. *See* Ex. 1009, 1:50–53 (describing the inclusion of a tongue in a *conventional* article of footware). Tongues and uppers may be taken from the same web of material or from different webs. *See id.* at 5:37–40.[10]

[10] Although we find that Nishida teaches layouts both of an upper and of a tongue, Petitioner does not argue that Nishida's tongue layouts separately

Skechers EX1013-p. 7755
Skechers v Nike

4. Petitioner's Arguments

Petitioner argues that Reed and Nishida teach or suggest all of the limitations of claims 1–13 of the '598 patent. Pet. 9–29. In particular, Petitioner argues that Reed and Nishida teach or suggest all of the limitations of each of independent claims 1 and 9. *Id.* at 14–16 (claim 1), 19–20 (claim 9).

a. Independent Claims 1 and 9

Independent claim 1 recites "[a] method of manufacturing an article of footwear." Ex. 1001, 11:43; *see also id.* at 12:21 (claim 9). Reed teaches that its circular knitting methods may be used to manufacture "all types of garments." Ex. 1006, 5:56–57. Although Reed specifically identifies stockings and hosiery (*id.* at 1:33–35, 5:57–58), e.g., footwear, as garments manufactured by circular knitting, Reed does not describe shoes expressly as "garments." Nishida also teaches that the webs of material depicted in its Figures 1 and 2 are "produced by a *conventional* textile process." Ex. 1009, 3:6–7 (emphasis added). Thus, we are persuaded that Petitioner has shown that Reed alone, as well as the combined teachings of Reed and Nishida, teach or suggest a method of manufacturing an article of footwear.

The method of claim 1 further comprises the step of "*mechanically-manipulating* a yarn with a circular knitting machine to form a cylindrical textile structure." Ex. 1001, 11:45–46 (emphasis added); *see also id.* at 12:23–25 (claim 9 reciting "a *wide-tube* circular knitting machine" (emphasis added)). Reed teaches the use of circular knitting machines,

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teach textile elements that may be incorporated into an article of footwear. *See* Pet. 16, 28; Ex. 1003 ¶ 86, App'x C (pg. 140).

Skechers EX1013-p. 7756
Skechers v Nike

including such machines as can produce body garments, such as skirts (*see id.* at Fig. 2), shirts and pants (*see id.* at Fig. 3), and dresses (*see id.* at Fig. 6), for men, women, and children (*id.* at 5:56–57). In view of our construction of the term "a wide-tube circular knitting machine" above (*see supra* Section II.B.2.; *see also* Ex. 1001, 7:6–8 (describing circular knitting machine capable of producing textile structures large enough for manufacturing "body garment[s]")), we are persuaded that Reed teaches not only a circular knitting machine, but also a wide-tube circular knitting machine. *See* Pet. 18 (claim 2 recites a "wide-tube circular knitting machine" and Petitioner relies solely on Reed to teach this limitation); Ex. 1003 ¶ 97.

The method of claim 1 further comprises the step of "removing at least one textile element from the textile structure." Ex. 1001, 11:47–48; *see also id.* at 12:26 (claim 9 recites "removing a textile element from the textile structure"). We are persuaded based on the evidence cited in the Petition that Petitioner has shown that the teachings of Reed or Nishida, alone or combined, teach or suggest this limitation of the independent claims. Pet. 16 (claim 1; citing, e.g., Ex. 1006, 3:12–19; Ex. 1009, 1:10–18); *id.* at 19–20 (claim 9); *see* Ex. 1003 ¶¶ 103–104.

Finally, the method of claim 1 comprises the step of "*incorporating* the textile element *into* an upper of the article of footwear." Ex. 1001, 11:49–50 (emphases added); *see id.* at 12:27–28 (claim 9). Petitioner relies solely on Nishida to supply this limitation, and argues that Nishida teaches this limitation of the independent claims. Pet. 16 (claim 1), 20 (claim 9); *see* Ex. 1003 ¶¶ 124–125. We agree.

Skechers EX1013-p. 7757
Skechers v Nike

Petitioner argues that a person of ordinary skill in the art would have had reason to combine the identified teachings of Reed and Nishida to achieve the methods recited in independent claims 1 and 9. Pet. 12–14. In particular, Petitioner argues that, because Reed teaches that its methods are applicable to "*all* types of garments" (Ex. 1006, 5:56–57 (emphasis added); *see* Ex. 1003 ¶ 131)), a person of ordinary skill in the art would have had reason to apply the teachings of Reed to the processes and shoe parts of Nishida. Pet. 13 (citing Ex. 1003 ¶ 133). Further, Petitioner argues that, because both Reed and Nishida teach the advantages of reducing cost through the use of computer-controlled knitting machines, a person of ordinary skill in the art would have had reason to combine their teachings. *Id.* (citing Ex. 1003 ¶¶ 134–135). Finally, Petitioner argues that a person of ordinary skill in the art would have had reason to apply Reed's methods for producing textile elements, from which to produce garments, to produce Nishida's shoe upper layouts. *Id.* at 13–14; *see KSR*, 550 U.S. at 417 ("[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.").

b. Dependent Claims 2–8 and 10–13

With respect to the challenged dependent claims, Petitioner argues that Reed teaches or suggests the additional limitations recited in claim 2 (Pet. 17–18; *see supra* Section II.B.2.); that Nishida teaches or suggests the additional limitations recited in claims 7, 8, 12, and 13 (*id.* at 28–29); and that that Reed and/or Nishida teaches or suggests the additional limitations

Skechers EX1013-p. 7758
Skechers v Nike

recited in claims 3–6,[11] 10, and 11 (*id.* at 18–28; *see supra* Section II.B.1.). Petitioner provides a detailed mapping of the limitations of each of these dependent claims onto the teachings of Reed and/or Nishida. *See* Ex. 1003, App'x A. Moreover, Petitioner argues that a person of ordinary skill in the relevant art would have had at least the same reasons to combine the teachings of Reed and Nishida to achieve the methods recited in these dependent claims, as that given for combining the teachings of Reed and Nishida to achieve the recited methods of the independent claims. *See id.* at 12–14.

Although we have reviewed the entirety of Petitioner's analysis and evidence for both the independent and dependent claims, we highlight the following specific evidence and arguments for emphasis. Claim 4 recites:

> The method recited in claim 1, 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.

Ex. 1001, 11:58–12:6 (emphasis added). Claim 11 depends from claim 9 and recites substantially the same limitations as claim 4. *Id.* at 12:33–40.

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[11] In particular, claim 6 recites the method of claim 1 "wherein the step of mechanically manipulating includes forming apertures in the textile element." Ex. 1001, 12:10–12. Although Patent Owner contends that Petitioner fails to demonstrate that Nishida teaches forming apertures by omitting stitches while knitting to form a net-like structure (*see* Pet. 26–28 (citing Ex. 1009, 4:1–5, 4:31–38); PO. Resp. 50–55; Reply 23–25), we are persuaded that Nishida teaches the formation of apertures and that forming apertures by omitting stiches was a well-known technique (*see* Ex. 1010, 57, 70, 172; Ex. 1003 ¶¶ 199, 200).

Skechers EX1013-p. 7759
Skechers v Nike

Petitioner argues that Reed teaches these limitations in two ways. Pet. 21. First, Petitioner argues that Reed teaches that the edges of the garments 16, 18, 20, depicted in Reed's Figure 1 (reproduced above) are formed by interknitted stitches and that the remainder of the garments 16, 18, 20 are formed by non-interknitted stitches. *Id.* (citing Ex. 1003 ¶ 115). Specifically, the seams or outlines of the garments 16, 18, 20 are formed with interknitted stitches (shown in X's and O's in Reed's Figure 2), which are formed by feeds 1, 2, 3, and 4 on needles 7, 9, 8, and 10, as shown in Reed's Figures 3B and 3D. Ex. 1006, 5:3–18, Figs. 3A–3E; *see* Ex. 1003 ¶ 115. Reed further teaches that "two feeds [i.e., feeds 1, 3 for the dial needles] are used for one course of the inner tube 12 and two feeds [i.e., feeds 2, 4 for the cylinder needles] are used for the outer tube 14." Ex. 1006, 4:61–64, Figs. 2, 2A, 3A–3E; *see id.* at 5:67–6:3; Ex. 1003 ¶¶ 115, 116. "Because the interknitted stitches are part of the garments 16, 18, 20, and the garments 16, 18, 20 also comprise areas that are only formed as part of the outer tube 14 or the inner tube 12, 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." Pet. 21 (citing Ex. 1003 ¶ 116). Thus, because the stitches create a texture different from the remainder of the textile element, Petitioner concludes that Reed teaches "a first area and a second area with a unitary construction."

Second, Petitioner also argues that Reed teaches "how the two layers 12, 14 themselves may be formed of different yarns or stitch configurations." Pet. 21 (citing Ex. 1003 ¶ 117).

> 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

Skechers EX1013-p. 7760
Skechers v Nike

> 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, 3:61–4:8; *see* Pet. 21–22; Ex. 1003 ¶ 117. Thus, Petitioner alternatively argues that the separate circular knitted tubes may be the first and second areas recited in claims 4 and 11.

Finally, Petitioner alternatively argues that Nishida teaches these limitations. Pet. 22. In particular, Nishida teaches 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)); *see id.* at Abstract; 1:65–69, 2:40–45, 3:15–26, 3:47–48, 4:12–28, 4:48–55, 5:56–6:2; Ex. 1003 ¶¶ 118, 119. Nishida further 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, for example, from wool, wool with metal yarns, silk, silk with metal yarns, wool with plastic fibers or the like . . . .

Ex. 1009, 3:15–25; *see* Ex. 1003 ¶ 121. Petitioner argues that Nishida's teachings achieve a textile element with multiple knit constructions. Pet. 22. Specifically, these varying constructions of Nishida's layout may achieve varying elasticity, air permeability, absorptivity, softness, extensibility, wear resistance, and appearance, which Petitioner argues teach the "varying

Skechers EX1013-p. 7761
Skechers v Nike

textures" recited in these claims. *Id.* (citing Ex. 1009, 3:43–52, 5:63–6:2, 6:1–31); *see* Ex. 1003 ¶¶ 120, 121. Thus, Petitioner argues that either Reed or Nishida teaches these limitations.

Although we have highlighted specific evidence and arguments for emphasis, we have reviewed the entirety of Petitioner's analysis and evidence for independent claims 1 and 9, as well for dependent claims 2–8 and 10–13, and the supporting testimony of Mr. Holden. As noted above, Petitioner relies on the same reasons to combine the teachings of Reed and Nishida for its challenges to each of claims 1–13 of the '598 patent. *See* Pet. 12–14.

5. *Patent Owner's Contentions*

Patent Owner raises seven separate contentions why Petitioner fails to demonstrate that the combined teachings of Reed and Nishida render any of claims 1–13 of the '598 patent unpatentable. *See* PO Resp. 3–4. Because we find certain of the Patent Owner's contentions persuasive and dispositive, we do not address each of Patent Owner's separate contentions.

a. Low Level of Ordinary Skill in the Art

Patent Owner contends that Petitioner's assessment of the level of ordinary skill in the art is conclusory and is not based on the factors that the Board has considered in determining the level of ordinary skill in the art. *Id.* at 12–13. We have addressed the appropriate assessment of the level of ordinary skill in the art above. *See supra* Section II.A. Whether the level of ordinary skill in the art is "low" or "high" may make it more or less difficult for Petitioner to demonstrate obviousness. PO Resp. 14 ("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. . . ."); *see Kinetic*

Skechers EX1013-p. 7762
Skechers v Nike

Concepts, Inc. v. Smith & Nephew, Inc., 688 F.3d 1342, 1366 (Fed. Cir. 2012) ("Because it is generally easier to establish obviousness under a higher level of ordinary skill in the art, we must assume that, in light of the jury's verdict, it adopted the lower level of skill proposed by S & N." (citation omitted)). However, a "low" relative level of skill alone cannot *prevent* Petitioner from demonstrating obviousness.

Here, only Petitioner – the party bearing the burden of persuasion – has proposed an assessment of the level of ordinary skill in the art. *See supra* Section II.A.; *but see* IPR2013-00067, Ex. 2010 ¶ 52 (Patent Owner proposed that a "POSITA . . . would have a few years of experience with design and development of footwear and knowledge of textiles used in such footwear"). For the reasons set forth above, we have adopted Petitioner's assessment. Further, as noted above, Petitioner's declarant testifies from the point of view of someone with the assessed level of skill, a level which the declarant exceeds. *See* Ex. 1003 ¶ 36; Ex. 1004. Thus, regardless whether the level of ordinary skill is deemed "low" or "high," we are not persuaded that the relative assessment of the level of ordinary skill in the art here affects our evaluation of Petitioner's arguments and evidence.

b. Weight Given to Declarant's Testimony

Patent Owner contends that Petitioner's declarant, Mr. Holden, did not author his declaration and, during cross-examination, Mr. Holden was unable to answer basic questions about the declaration, the patent at issue, the prior art, footwear, and knitting technologies. PO Resp. 15; *see* Ex. 2004, 12:2–18. Mr. Holden testified that "[he] 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

Skechers EX1013-p. 7763
Skechers v Nike

document." Reply 3 (quoting Ex. 2004, 12:7–11); *see* Ex. 2004, 12:12–13:16. Declarants often have assistance in authoring their declarations. *See Square, Inc. v. Think Computer Corp.*, Case CBM2014-00159, slip op. at 26–27 (PTAB Nov. 27, 2015) (Paper 47) ("the mechanics of declaration preparation is 'a waste of time, both for the witness and the Board'"). Mr. Holden was not required to be the sole author of his declaration. Rather, the relevant issue regarding the preparation of Mr. Holden's declaration is whether Mr. Holden adopted the content of his declaration as his own. Here, he has. *See* Ex. 1003 ¶¶ 3, 4, 209.

As Patent Owner suggests, we weigh Mr. Holden's declaration testimony in light of his testimony on cross-examination. Although Mr. Holden indicated that he was unable to define or was unfamiliar with certain terms during cross-examination, he did name references, including Spencer (Ex. 1010), that he could and would consult to obtain the answers to specific questions. Tr. 63:20–64:13. Moreover, Patent Owner's counsel acknowledged that persons of ordinary skill in the art (or declarants) do not have to have all of the knowledge relevant to their testimony in their heads and that they are allowed to consult references, as appropriate. *Id.* at 63:20–64:2. Although Patent Owner notes that Mr. Holden apparently was not aware of Spencer until this *inter partes* review (*see* Ex. 2004, 77:1–3; Tr. 64:1–6), his learning of and relying on a *new* reference alone is not sufficient reason to disregard, i.e., give *no* weight to, Mr. Holden's testimony. Further, the issue here is not whether Mr. Holden is a person of ordinary skill in the art, but rather whether his testimony is of value to the panel. *See* Tr. 64:15–18. Thus, as indicated in the discussion below, we determine the appropriate weight to give to Mr. Holden's testimony.

Skechers EX1013-p. 7764
Skechers v Nike

c. Failure to Explain How and Why a Person of Ordinary Skill in the Art Would Have Combined the Teachings of Reed and Nishida to Achieve the Recited Methods

Initially, Patent Owner contends that Petitioner fails to address the full scope and content of the prior art and ignores critical disclosure of both references. PO Resp. 19. In particular, Patent Owner notes that "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.'" *Id.* (quoting Ex. 1006, 1:8–11 (emphasis omitted)); *see* Tr. 36:3–9. Patent Owner contends that this description of Reed's "present invention" limits the scope of Reed to *preseamed* garments made on circular knitting machines. PO Resp. 19–20. Although this description may limit the scope of Reed's recited methods, the scope of Reed's teachings is broader than what Reed specifically refers to as the "present invention" (Ex. 1006, 1:8–11) and encompasses "the conventional methods involv[ing] 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" (PO Resp. 20 (citing Ex. 1006, 6:18–22)). *See* Reply 7 (quoting *In re Heck*, 699 F.2d 1331, 1332–33 (Fed. Cir. 1983) ("The use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain." (citation omitted))). Although Reed's teachings may be broader than preseamed garments and garment sections, Petitioner relies only on the embodiments of Reed's invention that are directed to preseamed garments *and* to preseamed

sections of garments. Pet. 14–15 (citing Ex. 1006, 1:58–64); Reply 6–8; *see* Tr. 9:17–10:7, 16:17–17:8, 25:17–26:21, 30:4–11.

With respect to Nishida, Patent Owner contends that Nishida's web of material has two primary components: a backing and one or more layouts printed on or produced in the backing. PO Resp. 24–25 (citing Ex. 1009, 1:40–2:53, 3:6–26). The backing may be formed prior to the production of the layouts. *Id.* Patent Owner notes that Nishida seeks to improve on previously known methods for producing layouts, such as those described in German Patent No. 627 878. *Id.* at 23. Nevertheless, the reference to the German patent is exemplary, and we do not interpret Nishida as limited to the methods described in the German Patent. *See* Ex. 1009, 1:39–46 ("to further develop this previously known process"); Reply 8.

After the backing is formed, Nishida teaches printing on or producing layouts in the backing. Ex. 1009, 3:13–15. The layouts are printed by a fabric printing process *onto* the backing or produced by a textile production process *inside* the backing. PO Resp. 25 (citing Ex. 1009, 1:50–56, 2:20–26, 3:13–15, 5:45–52); *see* Reply 9. "[T]he material can be woven or knitted in two or more layers or can be especially thick or additionally embroidered." Ex. 1009, 3:66–4:1.

As noted above, each of the embodiments of Reed, relied upon by Petitioner, describes the pre-seaming of garments or sections of garments *before* their removal from the cylindrical textile structure. The teachings of Nishida, relied upon by Petitioner, do not teach pre-seaming and, instead, teach the seaming of the upper layout *after* its removal from the web of material. Ex. 1009, 4:19–30 (Figs. 2 and 3), 5:3–26 (Figs. 4 and 5); *see* Pet. 28; PO Resp. 26–27; Tr. 45:2–46:8. Patent Owner contends that

Skechers EX1013-p. 7766
Skechers v Nike

Petitioner fails to explain why and how a person of ordinary skill in the art would combine the teachings of Reed and Nishida to achieve the recited methods of the challenged claims. PO Resp. 31–37. In particular, because Petitioner relies on the teachings of the embodiments of Reed which describe pre-seamed garments and pre-seamed sections of garments and because Nishida does not teach pre-seaming, Patent Owner contends that Petitioner has not shown why and how a person of ordinary skill in the art would combine the teachings of Reed and Nishida to achieve the recited methods of the challenged claims. For the following reasons, we agree.

i. Failure of Proof

Petitioner bears the burden of proving by a preponderance of the evidence that the challenged claims are unpatentable. This includes demonstrating by a preponderance of the evidence that a person of ordinary skill in the art would have had reason to combine the teachings of Reed and Nishida to achieve the methods recited in the challenged claims. As noted above, Petitioner argues that a person of ordinary skill in the art would have had at least three reasons to combine the teachings of Reed and Nishida to achieve the methods recited in the challenged claims. Pet. 12–14; *see* Tr. 10:12–11:12. First, Petitioner argues that, because Reed teaches that its methods are applicable to "*all* types of garments" (Ex. 1006, 5:56–57 (emphasis added); *see* Ex. 1003 ¶ 131), a person of ordinary skill in the art would have had reason to apply the teachings of Reed to the processes and shoe parts of Nishida. Pet. 13 (citing Ex. 1003 ¶ 133). Second, Petitioner argues that, because both Reed and Nishida teach the advantages of reducing cost through the use of computer-controlled knitting machines, a person of ordinary skill in the art would have had reason to combine their teachings.

Skechers EX1013-p. 7767
Skechers v Nike

Pet. 13 (citing Ex. 1003 ¶¶ 134–135). Third, Petitioner argues that a person of ordinary skill in the art would have had reason to apply Reed's methods for producing textile elements, from which to produce garments, to produce Nishida's shoe upper patterns. *Id.* at 13–14; *see KSR*, 550 U.S. at 417. However, none of these reasons or any other reason identified by Petitioner addresses the differences between Reed and Nishida, specifically pre-seaming.

Independent claims 1 and 9 do not mention seaming or pre-seaming expressly. *See* Ex. 1001, 11:43–50 (claim 1), 12:21–28 (claim 9). Further, Patent Owner acknowledged that at least independent claims 1 and 9 do not mention seaming or pre-seaming. Tr. 37:7–10. Claims 2, 3, 5–8, 10, 12, and 13 also do not mention seaming or pre-seaming expressly. *See* Ex. 1001, 11:51–57, 12:7–20, 12:29–32, 12:41–48. As we noted above, however, claims 4 and 11 recite "a unitary construction," which "is intended to express a configuration *wherein portions of a textile element are not joined together by seams or other connections*." *Id.* at 6:43–46. Thus, we interpret the limitations of claims 4 and 11 to recite a textile element having areas of different textures, but without seams. *See supra* Section II.B.1. Moreover, under principles of claim differentiation, we further are persuaded that the scope of challenged claims 1–3, 5–10, 12, and 13 is broad enough to encompass methods related to both pre-seamed and unseamed garments and garment sections. Nothing in the Specification (Ex. 1001) or in the prosecution history (Ex. 1002) of the '598 patent overcomes the presumptive scope of the independent claims arising from the doctrine of claim differentiation. *See Kraft Foods, Inc. v. Int'l Trading Co.*, 203 F.3d 1362, 1368 (Fed. Cir. 2000).

Skechers EX1013-p. 7768
Skechers v Nike

Neither Petitioner nor its declarant, Mr. Holden addresses the fact that each of the relied upon embodiments of Reed teaches pre-seaming and that none of the relied upon teachings of Nishida involves pre-seaming. PO Resp. 31–37; *see* Tr. 34:17–35:12; *see also* Ex. 2004, 161:5–163:19 (Mr. Holden was unable to identify teachings in Nishida directed to pre-seamed and preformed uppers). Moreover, during cross-examination, Mr. Holden acknowledged that he had not been asked to nor had he considered how the teachings of these references could be combined. In particular, the following colloquy occurred during Mr. Holden's deposition:

> 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.

Ex. 2004, 152:22–153:13; *see* Tr. 53:19–57:5.

In *ActiveVideo Networks, Inc. v. Verizon Communications, Inc.*, our reviewing court found that where "[t]he expert failed to explain how specific references could be combined, which combination(s) of elements in specific references would yield a predictable result, or how any specific combination would operate or read on the asserted claims," such testimony "is not

Skechers EX1013-p. 7769
Skechers v Nike

sufficient and is fraught with hindsight bias." 694 F.3d 1312, 1327 (Fed. Cir. 2012); *see* PO Resp. 55–57; Reply 25–26; *see also Hyundai Motor Co. v. Blitzsafe Texas, LLC*, Case IPR2016-01476, slip op. at 32 (PTAB Jan. 24, 2017) (Paper 12) ("A determination of obviousness cannot be reached where the record lacks 'explanation as to *how* or *why* the references would be combined to produce the claimed invention.'"; quoting *Trivascular, Inc. v. Samuels*, 812 F.3d 1056, 1066 (Fed. Cir. 2016)). Despite Mr. Holden's testimony that a person of ordinary skill in the art would have had reason to combine the teachings of Reed and Nishida to achieve the recited methods of the challenged claims (*see* Ex. 1003 ¶¶ 131–137), Mr. Holden's testimony during cross-examination makes clear that he did not perform the necessary analysis to support his conclusions. *See* 37 C.F.R. § 42.65(a).

Petitioner's evidence, and, in particular, Mr. Holden's testimony, is deficient with respect to the limitations recited in claims 4 and 11, in that it fails to offer any explanation why a person of ordinary skill in the art would combine the teachings of Reed and Nishida to achieve a method in which seams of the kind taught by Reed apparently are prohibited. Petitioner argues that Reed teaches the "a unitary construction" limitation of claims 4 and 11 either because the interconnecting stitches are a different texture from the rest of the garment or garment section or because the inner and outer circular knit materials may have different textures. Pet. 21–22. Thus, Mr. Holden testifies in support that Reed's interknitted stitches, i.e., the joining seams, teach textures different from the remainder of Reed's finished garments or garment sections (Ex. 1003 ¶¶ 115, 116) or that circular knit materials, although joined by seams, may have different textures (*id.* ¶ 117). These arguments and testimony seem inconsistent with Petitioner's position

Skechers EX1013-p. 7770
Skechers v Nike

that either the finished garments or garment sections are the "textile element" recited in the challenged claims and that, in claims 4 and 11, "the textile element [includes] a first area and a second area with *a unitary construction*." *See* Tr. 16:17–17:12. These apparent inconsistencies are not explained.

Alternatively, Petitioner argues (Pet. 22) and Mr. Holden testifies (Ex. 1003 ¶¶ 118–121) that the limitations of claims 4 and 11 are taught by Nishida. In particular, Mr. Holden testifies that Nishida describes 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***." *Id.* ¶ 118 (quoting Ex. 1009, 4:6–9 (emphasis added by declarant)). Mr. Holden concludes from his analysis of Nishida that "[a] person of ordinary skill in the art at least as of March 3, 2004 would have understood that Nishida's disclosure regarding varying the knit of individual areas would include having a substantially smooth texture in one area, and a rougher texture in another area." *Id.* ¶ 121. What Mr. Holden fails to explain, however, is how and why this teaching of Nishida is combined with the teachings of the relied upon embodiments of Reed to achieve the methods recited in claims 4 and 11. Petitioner and its declarant rely instead on the *general* arguments presented in connection with independent claims 1 and 9 regarding reasons to combine the teachings of Reed and Nishida. Pet. 12–14; Ex. 1003 ¶¶ 131–137. Given the language of the claims, our interpretation of that language, and the teachings of Reed and Nishida, we find Petitioner's arguments and evidence, especially Mr. Holden's testimony, insufficient and unpersuasive.

Skechers EX1013-p. 7771
Skechers v Nike

Consequently, having weighed Petitioner's evidence of reasons to combine the teachings of Reed and Nishida, noting the deficiencies in Mr. Holden's analysis in support of those reasons, we are not persuaded that Petitioner has demonstrated by a preponderance of the evidence that a person of ordinary skill in art would have had reason to combine the teachings of Reed and Nishida to achieve the methods recited in the challenged claims.

ii. Combined Teachings of Reed and Nishida Render Reed Inoperable for its Intended Purpose

As our reviewing court has explained,

> "obviousness is a question of law based on several underlying factual findings," including what a reference teaches, and whether proposed modifications would change a reference's "principle of operation." Where "a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield predictable results." { "pageset": "S74 *However, combinations that change the "basic principles under which the [prior art] as designed to operate,"* *or that render the prior art "inoperable for its intended purpose," may fail to support a conclusion of obviousness.*

Plas-Pak Industries, Inc. v. Sulzer Mixpac AG, 600 F. App'x 755, 757–758 (Fed. Cir. 2015) (citations omitted, emphasis added).

As noted above, we find that the fundamental purpose of Reed's methods is to produce pre-seamed, finished garments or sections of garments. *E.g.*, Ex. 1006, 1:58–64, 3:8–21, 5:67–6:17; *see supra* Section II.C.2. As Reed explains, "[t]he essence of the present invention is a garment formed of juxtaposed sections of simultaneously knitted, *concentric* tubes *interconnected* by knitting." Ex. 1006, 6:25–28 (emphases added). As

Skechers EX1013-p. 7772
Skechers v Nike

we also note above, the methods recited in challenged claims 1–3, 5–10, 12, and 13 do not specify whether or not the textile elements are pre-seamed. Thus, we interpret those claims broadly to cover both pre-seamed and unseamed textile elements.

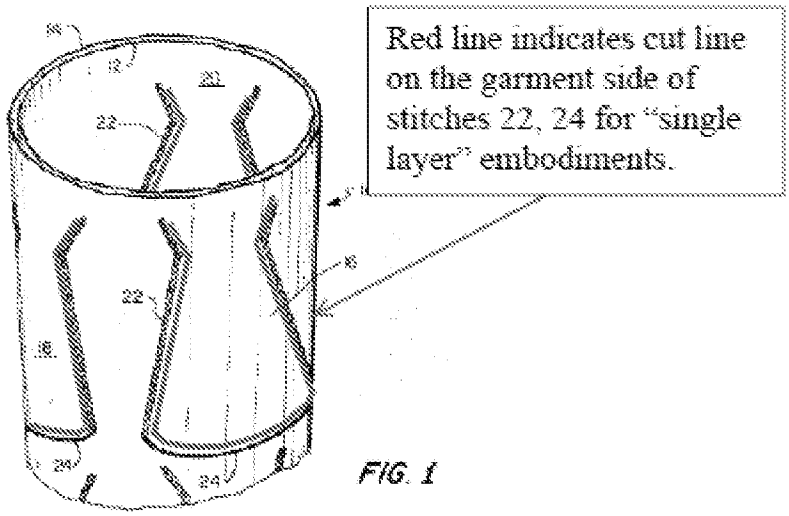
As discussed above, however, claims 4 and 11 are interpreted to describe "a unitary construction," which does not include seams. *See supra* Section II.B.1. Thus, "a unitary construction" does not appear to read on Reed's pre-seamed, finished garment or garment section. Further, Petitioner does not argue that, like Reed, Nishida teaches pre-seamed uppers or sections of uppers or tongues. Consequently, we determine that, relying on Nishida's teachings to supply the "unitary construction" limitation with respect to claims 4 and 11 in the context of the teachings of Reed, as Petitioner suggests (Pet. 22), would require the alteration of the principles of operation of Reed or would render Reed inoperable for its intended purpose.

In response to Patent Owner's contention that Petitioner's combination of the teachings of Reed and Nishida renders Reed inoperable for its intended purpose, Petitioner argues that a person of ordinary skill in the art would understand that

> [t]o produce two single-layer layouts, the POSITA would simply cut along the garment side of stitches 22, 24 (highlighted in red below) so that all seams remain with the surrounding tube material, and the two layouts are no longer connected to each other after removal from the tubes 12, 14.

Reply 18–19 (citing Ex. 1006, 3:9–15, 5:67–6:3; Ex. 1003 ¶¶ 103, 112). In particular, Petitioner produces the following annotated version of Reed's Figure 1.

Skechers EX1013-p. 7773
Skechers v Nike



Reply 19. Petitioner has annotated Reed's Figure 1 to add red lines indicating cut lines *on* the garment *inside* of stitches 22, 24. As depicted in annotated Figure 1, Petitioner argues that the finished garments or garment sections could be cut from the textile structure inside of the seams, as indicated by the red lines. *Id.* According to Petitioner, "[t]he two separated layouts are then processed *and seamed* along the edges, as described in both Reed and Nishida." *Id.* (emphasis added). Nevertheless, Petitioner provides no explanation of why a person of ordinary skill in the art would have reason to seam the garments or garment sections, only then to remove the seams, so that the garments or garment sections could be reseamed later. *Id.* at 18–19; *see* Tr. 59:21–60:12, 68:20–70:21.[12] We find these arguments contrary to the teachings of Reed and unpersuasive.

[12] Petitioner's counsel argue that Reed's seams may be used as an outline, but we do not find that Reed teaches that cuts are taught inside the outline to remove the seam from the garment section. Ex. 1006, 3:9–12 (Interconnected knitted stitches form *both* an outline and a seam joining the inner and outer tubes.); *see* Tr. 70:2–21. Cutting inside the seams of a finished garment would change a *finished* garment into an *unfinished* garment or a *seamed* garment section into an *unseamed* garment section and

Consequently, with respect to challenged claims 4 and 11, we find that Petitioner's proposed combination of the teachings of Reed and Nishida would render Reed either inoperable or unsuitable for its intended purpose. Thus, we are not persuaded that Petitioner has demonstrated by a preponderance of the evidence that a person of ordinary skill in art would have had reason to combine the teachings of Reed and Nishida to achieve the methods recited in challenged claims 4 and 11.

6. Summary

Based on our review of the arguments and evidence presented by each party, we conclude that Petitioner fails to demonstrate by a preponderance of the evidence that either of independent claims 1 and 9 is unpatentable as rendered obvious by the combined teachings of Reed and Nishida. Moreover, at least because Petitioner's arguments for the obviousness of dependent claims 2–8 and 10–13 over Reed and Nishida rely on the arguments and evidence presented with respect to independent claims 1 and 9, we also conclude that Petitioner fails to demonstrate by a preponderance of the evidence that any of the dependent claims is unpatentable as rendered obvious by the combined teachings of Reed and Nishida. We further determine that for the additional reasons set forth above, Petitioner fails to demonstrate by a preponderance of the evidence that claims 4 and 11 are rendered obvious by the combined teachings of Reed and Nishida.[13]

---

would appear entirely contrary to the teachings of Reed. *See* Ex. 1006, 3:15–21.

[13] Patent Owner also contends that Reed teaches away from its combination with Nishida (PO Resp. 42–44; *but see* Reply 19–20), in view of our determinations above, we need not reach this contention.

Skechers EX1013-p. 7775
Skechers v Nike

III. SUMMARY

We are not persuaded that Petitioner demonstrates by a preponderance of the evidence that any of claims 1–13 of the '598 patent is rendered obvious over the combined teachings of Reed and Nishida.

IV. ORDER

It is, therefore,

ORDERED that, pursuant to 35 U.S.C. § 318(a), Petitioner fails to demonstrate by a preponderance of the evidence that any of claims 1–13 is unpatentable as rendered obvious over the combined teachings of Reed and Nishida; and

FURTHER ORDERED that, because this is a Final Written Decision, parties to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

Skechers EX1013-p. 7776
Skechers v Nike

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Paper 21
Entered: October 19, 2017

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 7,814,598 B2

Before JOSIAH C. COCKS, MICHAEL J. FITZPATRICK, and JAMES B. ARPIN, *Administrative Patent Judges.*

FITZPATRICK, *Administrative Patent Judge*, concurring.

I concur with the majority's decision that Petitioner did not meet its burden under 35 U.S.C. § 318(a) to prove by a preponderance of the evidence that the challenged claims are unpatentable. I would reach that decision, however, merely for the reasons set forth below.

Reed did not invent circular knitting. Reed notes that "[c]ircular knitting machines have been used to make tubular, knitted garments, such as ladies' stockings, sweaters and other garments." Ex. 1006, 1:33–35. Reed explained further that "[i]n these tubular garments, the user's anatomy is in the center of the single tube." *Id.* at 1:35–37. Reed further explained that circular double knitting, in which two tubes or layers are simultaneously knitted, was also known in the prior art. *Id.* at 1:37–39 ("'Two tube,' 'double layer,' 'Bi-knit' and 'duo-fold' fabrics have been produced on circular knitting machines."). As with circular knit single-tube garments, the tubes of circular knit double-tube garments surrounded the anatomy of the user. *Id.* at 1:39–44.

What Reed invented was circular double knitting of garments in which "the anatomy of the user would fit between the single knitted fabrics instead of in the center of the tubes." *Id.* at 1:67–2:1. Figure 1 of Reed is reproduced below.

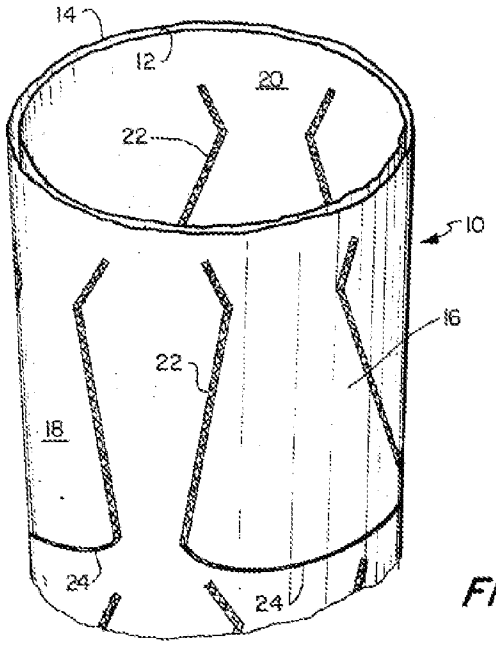


FIG. 1

Figure 1 of Reed, reproduced above, shows a doubled-layered tube of knitted structure 10 as it would come off a circular knitting machine in accordance with a preferred embodiment of Reed. *Id.* at 2:66–3:3. "[T]ubes 12 and 14 are simultaneously knitted concentrically on a circular double knit machine." *Id.* at 3:3–5. The tubes are stitched together along interconnecting knitting 22, thereby forming the outline of three skirts 16, 18, and 20 that are subsequently cut out from the knitted structure.[14] *Id.* at 3:8–21. Reed explains:

> [T]he knitted structure 10 includes (around its circumference) a plurality of finished garments [i.e., three skirts] which need only be severed from the structure 10 and turned inside out if a hidden seam is desired. Only a minimum amount of additional sewing is required to form hems and attach various decorative ornaments to complete a finished garment.

Id. at 3:15–21. Reed states that its invention "produce[s] a preformed and preseamed fabric on a circular knitting machine so as to reduce time, cost and labor involved in making garments." *Id.* at 6:20–22.

As stated in the majority opinion, Nishida is directed to the production of a shoe upper by (1) cutting out a layout in the form of the shoe upper from a web of material and (2) shaping the shoe upper by connecting material parts of the layout by the formation of seams. *See* Ex. 1009, Abstract; *see also id.* at Fig. 2 (illustrating layout of shoe upper on web of material).

Petitioner argues the following:

> Reed's explicit statement that "[t]he present invention may be used to form all types of garments worn by men, women and children" (Reed, 5:56–57) in combination with

[14] The tubes also are stitched together along interconnecting knitting 24, but that "is merely to define the lower outline of the skirt upon which the pattern may be cut." Ex. 1006, 3:12–15.

Skechers EX1013-p. 7779
Skechers v Nike

> Reed's explicit reference to the fact that footwear items, such as stockings, were conventionally knit with circular knitting machines (Reed, 1:33–44), would have suggested to a person of ordinary skill in the relevant art at least as of March 3, 2004, that Reed's process could be used to form all types of articles of clothing including footwear, particularly since clothing is understood to refer to all things that people wear to cover their bodies. (Ex. 1003, ¶131.)
>
> With this understanding, the skilled person would have been motivated to use Reed's process to produce textile elements for all types of clothing, including forming textile elements to be incorporated into footwear as described in Nishida. (Ex. 1003, ¶132.)
>
> With this understanding, the skilled person would have been motivated to use Reed's process to produce textile elements for all types of clothing, including forming textile elements to be incorporated into footwear as described in Nishida. (Ex. 1003, ¶132.)

Pet. 12–13.

Petitioner's reasons to combine the prior art teachings are not persuasive. It is true that Reed states that its invention "may be used to form all types of garments," but that does not mean Reed provides a reason to use it in forming any specific type of garment, let alone part of a shoe. Petitioner attempts to provide such a reason by relying, not on a stated purpose of Reed's invention (which is what Petitioner asserts in its obviousness challenge), but rather on what circular knitting machines traditionally had been used for prior to Reed's invention. *See* Pet. 12. More specifically, Petitioner relies on Reed's statement that, prior to Reed, circular knitting machines were used "to make tubular, knitted garments, such as ladies' *stockings*, sweaters and other garments." Ex. 1006, 1:33–35 (emphasis added); *see also* Pet. 12 (referring to "stockings" and citing

Skechers EX1013-p. 7780
Skechers v Nike

Ex. 1006, 1:33–44). Petitioner extrapolates Reed's reference to "stockings" to footwear and then further to an upper of a shoe. However, there is an evidentiary gap jumping from "stockings" to footwear and an additional evidentiary gap subsequently jumping from footwear generally to a shoe's upper specifically. The cited testimony of Petitioner's declarant does not fill those gaps. It is merely repetitive of the arguments block-quoted above. *Compare* Pet. 12–13, *with* Ex. 1003 ¶¶ 131–33.

Nor could I fill those gaps if I wanted. To summarize Reed, it: (1) acknowledges that circular knitting of tubular garments in which the anatomy is placed inside a resulting tube of knitted structure was known prior to Reed; and (2) describes its invention of double circular knitting garments in which the anatomy is placed between layers of the resulting tube. *See, e.g.*, Ex. 1006, 3:25–31. Nishida's upper (*see, e.g.*, Ex. 1009, Fig. 2) is neither a "tubular garment" that could be made using a pre-Reed circular knitting method (*see* Ex. 1006, 1:33–37) nor a garment that could be "produce[d as] a preformed and preseamed fabric on a circular knitting machine" using Reed's invented method (*see id.* at 6:20–22).

For these reasons, I concur with the majority's decision that Petitioner did not meet its burden under 35 U.S.C. § 318(a) to prove by a preponderance of the evidence that the challenged claims are unpatentable.

Skechers EX1013-p. 7781
Skechers v Nike

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Skechers EX1013-p. 7782
Skechers v Nike

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Paper 21
Entered: October 19, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

adidas AG,
Petitioner,

v.

NIKE, Inc.,
Patent Owner.

Case IPR2016-00922
Patent 8,266,749 B2

Before JOSIAH C. COCKS, MICHAEL J. FITZPATRICK, and JAMES B. ARPIN, *Administrative Patent Judges.*

Opinion for the Board filed by *Administrative Patent Judge* ARPIN.

Opinion Concurring by *Administrative Patent Judge* FITZPATRICK.

ARPIN, *Administrative Patent Judge.*

FINAL WRITTEN DECISION

35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. BACKGROUND

adidas AG ("Petitioner") filed a Petition pursuant to 35 U.S.C. §§ 311–319 to institute an *inter partes* review of claims 1–9, 11–19, and 21 of U.S. Patent No. 8,266,749 B2 (Ex. 1001, "the '749 patent").[1] Paper 2 ("Pet."). Nike, Inc. ("Patent Owner") did not file a Preliminary Response.[2] Applying the standard set forth in 35 U.S.C. § 314(a), which requires demonstration of a reasonable likelihood that Petitioner would prevail with respect to at least one challenged claim, we instituted an *inter partes* review of claims 1–9, 11–19, and 21 of the '749 patent. Paper 6 ("Inst. Dec."), 23.

After institution, Patent Owner filed a Patent Owner Response to the Petition (Paper 9 ("PO Resp.")), and Petitioner replied (Paper 10 ("Reply")).[3] Each party requested an oral hearing (Papers 15 and 16); and

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[1] Petitioner identifies adidas International B.V.; adidas North America, Inc.; adidas America, Inc.; and adidas International, Inc., as real parties-in-interest. Pet. 1.

[2] Patent Owner identifies only itself, as a real party-in-interest. Paper 5, 2.

[3] Patent Owner filed objections to the admissibility of some of Petitioner's evidence. Paper 12. Petitioner served – and improperly filed – supplemental evidence in response to Patent Owner's objections. Paper 13; Ex. 1015; 37 C.F.R. § 42.64(c); *see* 37 C.F.R. § 42.64(b)(2) ("The party relying on evidence to which an objection is timely served may respond to the objection *by serving* supplemental evidence within ten business days of service of the objection." (emphasis added)); *GoPro, Inc. v. Contour IP Holding LLC*, Case IPR2015-01078, slip op. at 2–3 (PTAB Apr. 7, 2016) (Paper 40) ("If the supplemental evidence does not cure the objection and the opposing party files a motion to exclude, the submitting party may file the supplemental evidence with its opposition to the motion to exclude."). Ultimately, Patent Owner did not file a motion to exclude, and, therefore, Patent Owner did not preserve its objections. 37 C.F.R. § 42.64(c). Regardless, Exhibit 1015 is expunged because we did not authorize its filing.

Skechers EX1013-p. 7784
Skechers v Nike

we held a consolidated oral hearing with Case IPR2016-00921 on July 12, 2017. A transcript of that hearing is of record in this case. Paper 20 ("Tr.").

We have jurisdiction under 35 U.S.C. § 6, and this Final Written Decision, issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73, addresses issues and arguments raised during the review. For the reasons discussed below, we determine that Petitioner has not met its burden to prove, by a preponderance of the evidence, that claims 1–9, 11–19, and 21 of the '749 patent are unpatentable on the ground upon which we instituted *inter partes* review.

A. The '749 Patent

The '749 patent claims priority from U.S. Patent Application No. 10/791,289, filed on March 3, 2004, now issued as U.S. Patent No. 7,347,011 B2 ("the '011 patent") (Ex. 1001 at (60)) and relates to articles of footwear incorporating an upper that is at least partially formed from a textile material (*id.* at 1:20–23). Conventional articles of athletic footwear may include two primary elements: an upper and a sole structure. *Id.* at 1:25–28. The upper may form a void in the interior of the footwear for receiving a wearer's foot, and the upper may extend over the instep and toe areas, along the medial and lateral sides, and around the heel area of the wearer's foot. *Id.* at 1:42–47.

In particular, the Specification describes articles of footwear having an upper incorporating a knitted textile element and having a sole structure secured to the upper. *Id.* at 3:27–33. Methods for manufacturing an article of footwear include "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

Skechers EX1013-p. 7785
Skechers v Nike

textile structure, and incorporating the textile element into an upper of the article of footwear." *Id.* at 3:41–46.

Figure 9 of the '749 patent is reproduced below.

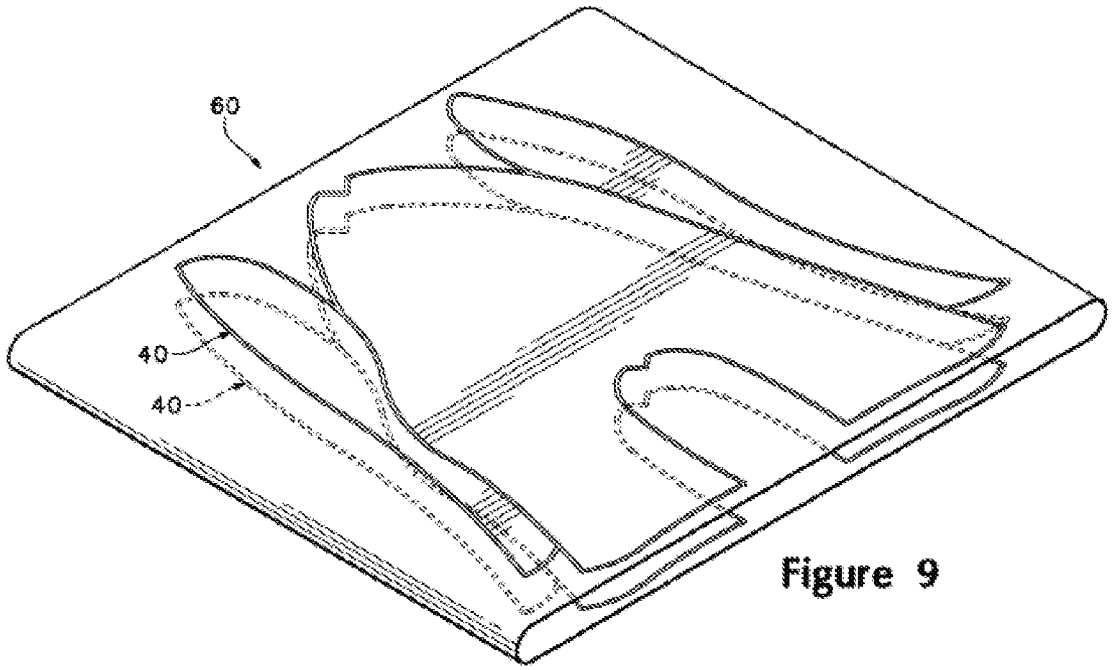


Figure 9

Figure 9 depicts textile structure 60 formed on a circular knitting machine. *Id.* at 7:38–39. For example,

> [a] 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.

Id. at 7:14–20. As discussed below, 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. *Id.* at 7:64–8:3. In particular, as depicted in Figure 9, the outlines for at least two textile elements 40 may be formed on textile structure 60. *Id.* at 7:53–54.

Skechers EX1013-p. 7786
Skechers v Nike

Figure 8 of the '749 patent is reproduced below.

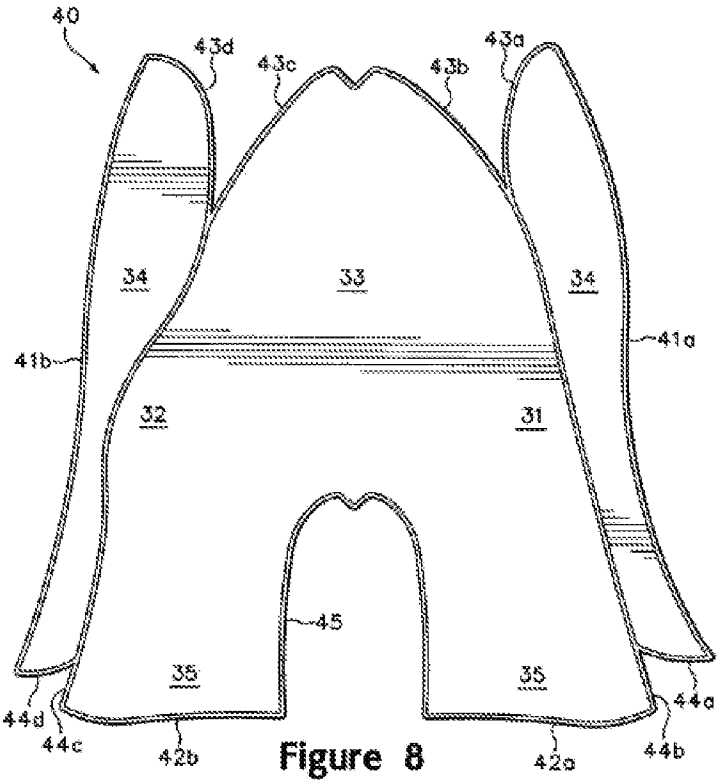


Figure 8

Figure 8 depicts an embodiment of an upper according to the '749 patent. *Id.* at 5:59–6:64. "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." *Id.* at 5:40–43; *see also id.* at Figs. 10 (depicting textile element 40′), 11 (depicting textile element 40″). In particular,

> 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 together to form seams 51-54,

Skechers EX1013-p. 7787
Skechers v Nike

> the various portions of textile element 40 are formed as [a] unitary element *without seams* . . . .

Id. at 6:41–50 (emphases added). Consequently, textile element 40 is formed, such that portions of the textile element are not joined together with seams or other connections. *Id.* at 5:40–43. Edges 41a–44d are joined together as shown in Figures 3–5 to form seams 51–54, thereby forming at least a portion of a void for receiving the foot. *Id.* at 6:41–50. In contrast, lateral region 31, medial region 32, instep region 33, lower regions 34, and heel regions 35 together have a unitary construction without seams (*id.* at 5:46–58, 6:47–50). Referring to Figure 9,

> 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.

Id. at 7:58–63 (emphasis added).

Figure 11 of the '749 patent is reproduced below.

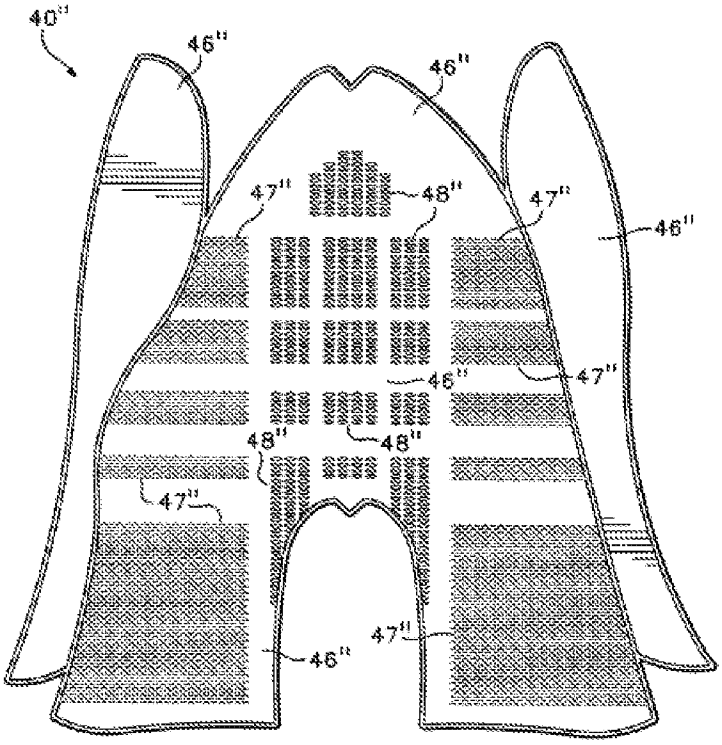


Figure 11

Figure 11 depicts another embodiment of an upper according to the '749 patent. *Id.* at 9:29–10:7. Textile element 40″ includes three different areas with three different textures. *Id.* at 9:31–32. First texture 46″ is generally smooth and extends in strips across lateral region 31, medial region 32, and instep region 33 of the upper. *Id.* at 9:32–35. In addition, textile element 40″ includes second texture 47″ and third texture 48″. *Id.* at 9:32–35. Moreover, the Specification of the '749 patent describes that:

> 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. . . . The air-permeability of textile element 40″ may also vary in the different areas.

Id. at 9:39–47 (emphasis added).

Skechers EX1013-p. 7789
Skechers v Nike

B. Illustrative Claim

Claims 1 and 13 are independent, method claims. Claims 2–9, 11, and 12 depend directly or indirectly from claim 1, and claims 14–19 and 21 depend directly or indirectly from claim 13. Claims 1 and 11 are illustrative of the claims at issue and are reproduced below:

> 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.
>
> 11. The method of claim 1, 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.

Id. at 11:43–52 (claim 1), 12:14–21 (claim 11).

C. Related Proceedings

Neither party identifies any related litigation. Pet. 1; Paper 5, 2. As discussed above, the '749 patent is a continuation of the application that issued as the '011 patent, which is the subject of IPR2013-00067. Pet. 1. In that case, the panel instituted *inter partes* review of claims 1–46 of the '011 patent, and Patent Owner requested cancellation of claims 1–46 and

Skechers EX1013-p. 7790
Skechers v Nike

proposed substitute claims 47–50 in a Motion to Amend. The panel granted Patent Owner's request to cancel claims 1–46, but denied Patent Owner's request as to the substitute claims. Patent Owner appealed the Board's decision to the U.S. Court of Appeals for the Federal Circuit (the "Federal Circuit"). The Federal Circuit issued a decision in Patent Owner's appeal on February 11, 2016, which affirmed-in-part and vacated-in-part the Board's decision, and remanded the case to the Board for further proceedings regarding the status of the substitute claims. *Nike, Inc. v. adidas AG*, 812 F.3d 1326, 1329 (Fed. Cir. 2016). The Federal Circuit issued its mandate in that case on April 4, 2016. In addition, Petitioner has requested *inter partes* review of claims of related patents in IPR2016-00920 (U.S. Patent No. 8,042,288 B2), institution denied, and IPR2016-00921 (U.S. Patent No. 8,266,749 B2), institution granted. Paper 5, 2.

D. Applied References and Declaration

Petitioner relies on the following references and declaration in support of its asserted ground of unpatentability:

Exhibit	References and Declaration
1003	Declaration of Mr. Lenny M. Holden
1006	U.S. Patent No. 3,985,003 to Reed, issued Oct. 12, 1976 ("Reed")
1009	U.S. Patent No. 5,345,638 to Nishida, issued Sept. 13, 1994 ("Nishida")
1010	David J. Spencer, *Knitting technology: a comprehensive handbook and practical guide*, 1–413 (2001) (3rd Ed., Woodhead Publ. Ltd.) ("Spencer")
1012	International Standard, *Textile machinery — Knitting machines — Nominal diameters of circular machines*, 1–6 (2003) (2nd Ed., ISO 8117:2003(E)) ("ISO 8117")

Pet. iv.

Skechers EX1013-p. 7791
Skechers v Nike

E. Instituted Ground of Unpatentability

We instituted review on the following ground of unpatentability:

References	Basis	Challenged Claims
Reed and Nishida	35 U.S.C. § 103(a)	1–9, 11–19, and 21

Pet. 7.

II. ANALYSIS

A. Person of Ordinary Skill in the Art

Petitioner argues that a person of ordinary skill in the relevant art would have at least a few years of experience in the footwear industry, *a broad understanding of shoemaking*, and an understanding of (1) the product cycle for the process of designing, developing and bringing a new product to market; (2) milestones for reviewing upper material designs; (3) *the available and varied ranges of typical construction methods within a product cycle*; and (4) the functional requirements of footwear and the range of material choices available. Pet. 8 (citing Ex. 1003 ¶ 34). Patent Owner contests Petitioner's assessment of the level of ordinary skill in the relevant art, but does not propose an alternative assessment. PO Resp. 17–19.

Initially, Patent Owner contends that Petitioner has failed to consider appropriate factors identified by our reviewing court and utilized by other panels to assess the level of ordinary skill in the art. *Id.* at 17–18. We agree with Petitioner that it is not necessary to consider every factor or to weigh the factors equally in order to assess the level of ordinary skill in the art. Reply 2 (quoting *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995)). Here, we may rely on Petitioner's declarant's testimony (Ex. 1003 ¶ 34) and the teachings of the prior art to evaluate Petitioner's assessment of the level

Skechers EX1013-p. 7792
Skechers v Nike

of ordinary skill in the art. *Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001). In particular, Reed and Nishida identify the types of problems encountered in the art prior art solutions to these problems, and the sophistication of the technology. *E.g.*, Ex. 1006, 1:13–55; Ex. 1009, 1:10–36; *see, e.g.*, Ex. 1007, 1:8–32, 2:12–64; Ex. 1008, 1:11–54; Ex. 1010, 145–160; *see also* Ex. 1010, Preface ("The aim of this book is to combine in a single volume the fundamental principles of weft and warp knitting in such a manner that its contents are useful to readers in education, industry or commerce. It thus [fulfills] the long felt need for a comprehensive up-to-date textbook explaining this important sector of textile technology.").

Patent Owner contends that the level of ordinary skill in the art is "low" (PO Resp. 17–18), but it is not clear whether Patent Owner further contends that Petitioner's assessment is deficient because Petitioner fails to argue that a person possessing such a "low" level of ordinary skill in the art also would have "experience using knitting technologies to create knitted footwear uppers" (*id.* at 18–19) or whether the inclusion of such skill would raise the "low" level of skill in the art (*id.* at 19). Alternatively, Patent Owner may merely be contending that Petitioner's declarant fails to qualify as a person of ordinary skill in the art. *Id.* at 19 ("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."); *see* Tr. 62:17–22. Patent Owner is not required to help us assess the level of ordinary skill in the art and does not do so here. *See* PO Resp. 22 ("Petitioner may criticize NIKE for not submitting an expert declaration.

Skechers EX1013-p. 7793
Skechers v Nike

But it is Petitioner's burden to prove unpatentability; it is not NIKE's burden to prove patentability.").

In response to Patent Owner's contentions, Petitioner argues that the level of ordinary skill in the art is not low and that hands-on knitting experience is not required. Reply 2–3. Petitioner further argues Patent Owner has not required knitting experience in its previous assessment with respect to a related patent of the level of ordinary skill in the art. *Id.* at 2 (citing IPR2013-00067, Ex. 2010 ¶ 52). Based on the record before us and to the extent necessary, we again adopt Petitioner's assessment of a person of ordinary skill in the relevant art. Inst. Dec. 8 n.3.

B. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are construed according to their broadest reasonable interpretation in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b). Under that standard, claim terms are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). The following four claim terms are at issue in this proceeding.

1. "a first area and a second area with a unitary construction" (Claims 11 and 21)

Petitioner argues that the term "a first area and a second area with a unitary construction" means "a textile element having a unitary construction and having a first area and a second area." Pet. 6. As Petitioner notes, this is the construction that this panel gave to the same term appearing in the substitute claims of the '011 patent. *adidas AG v. Nike, Inc.*, Case IPR2013-

Skechers EX1013-p. 7794
Skechers v Nike

00067, slip op. at 16–17 (PTAB Apr. 28, 2014) (Paper 60). We further note that the '749 patent's Specification provides that "[a]s 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." Ex. 1001, 6:42–46 (emphasis added); *see* IPR2013-00067, Ex. 1002, 6:41–46 (identical disclosure). The '011 patent and the '749 patent share the same Specification (apart from their claims), neither party contested our construction of this term in the appeal of our decision in the *inter partes* review of the claims of the '011 patent, and Patent Owner does not contest Petitioner's proposed construction of this term in this proceeding. Therefore, in view of the express definition of the phrase "unitary construction" in the Specification of the '749 patent, we adopt Petitioner's proposed construction as the broadest reasonable interpretation for this term. *See* Tr. 20:5–13, 37:11–17.

2. "wide-tube circular knitting machine" (Claims 9 and 19)

We determine that the broadest reasonable interpretation of the term "wide-tube circular knitting machine" is "a circular knitting machine forming body garment sized, tubular textile structures, including those having a diameter that ranges from 10 inches to 20 inches." *See* Inst. Dec. 9–11. Neither party contests this construction. *See* Tr. 20:5–13, 37:11–17.

3. "impart" (claims 11 and 21) and "texture" (claims 8, 11, and 21)

During the course of the review, the parties raised issues regarding the construction of two additional terms that appear only in the challenged dependent claims. First, Petitioner argues that the term "impart" means "to

Skechers EX1013-p. 7795
Skechers v Nike

give, convey, or grant from." Reply 24 (citing Ex. 1014).[4] Further, Petitioner argues that this definition is consistent with the use of the word "impart" in the Specification of the '749 patent. *E.g.*, Ex. 1001, Abstract, 1:30–35, 1:60–63, 1:65–2:3, 3:33–37, 7:35–37; *see* Tr. 21:4–14. Patent Owner does not propose an alternative construction for the term "impart." Further, neither party argues that the term "impart" carries special meaning in the relevant art. In fact, we find Spencer's use of the word "impart" in the handbook on knitting technology consistent with Petitioner's dictionary definition and the word's use in the Specification of the '749 patent. *See* Ex. 1010, 189. Thus, to the extent any construction of this term is necessary, we find that the broadest reasonable interpretation of the term "impart" is "to give, convey, or grant from." *See Summit 6, LLC v. Samsung Elecs. Co.*, 802 F.3d 1283, 1291 (Fed. Cir. 2015) ("[E]ach [term] is used in common parlance and has no special meaning in the art. Because the plain and ordinary meaning of the disputed claim language is clear, the district court did not err by declining to construe the claim term.").

Second, although Petitioner does not provide an express interpretation for the term "texture,"[5] Petitioner's declarant testifies "texture" "generally

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[4] Petitioner relies on a definition of "impart" from a current, on-line dictionary rather than from a dictionary contemporaneous with the effective filing date of the '749 patent. However, the record contains no suggestion that the relevant definition of "impart" has changed since the effective filing date of the '749 patent, and we determine that it has not. *See* RANDOM HOUSE WEBSTER'S COLLEGE DICTIONARY, 659 (2nd ed. 1999) (Ex. 3001) ("impart" means "to give; bestow").

[5] A relevant dictionary definition of the word "texture" is "the characteristic structure of the threads, fibers, etc., that make up a textile fabric: *course texture*," "a rough or grainy surface quality," or "anything produced by weaving; woven fabric." Ex. 3001, 1351.

could be an actual texture or a perceived texture based on the arrangement of colors in a pattern." Reply 4–5 (citing Ex. 2004, 178:20–24; *see also id.* at 177:1–178:19, 178:25–184:11). Patent Owner disputes Mr. Holden's interpretation of "texture," which appears inconsistent with Spencer's discussion of texture. *See* Ex. 2004, 80:24–81:8. In particular, according to Spencer, "[c]olour is one of the five ingredients of fashion, the other four being style, silhouette, *texture* and pattern." Ex. 1010, 127 (emphasis added). Thus, Spencer appears to distinguish between color and texture.

The Specification of the '749 patent does not define "texture," but contrasts between "smooth" and "textured" areas of a textile element. Ex. 1001, 9:23–24. Moreover, with respect to Figure 11, the Specification of the '749 patent explains that:

> 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.*

Id. at 9:39–57 (emphasis added). From this explanation, we understand that "texture," as used in the '749 patent, is distinguishable from the physical and

Skechers EX1013-p. 7797
Skechers v Nike

aesthetic properties of a textile element. According to the recitations of claims 11 and 21, "texture" is produced as part of the step recited in claims 1 and 13 of "simultaneously knitting a textile element with a surrounding textile structure." *See* Ex. 1001, 11:45–46. Thus, to the extent any construction of this term is necessary, we find that the broadest reasonable interpretation of the term "texture" in the context of claims 11 and 21 is "a non-smooth surface formed while simultaneously knitting a textile element with a surrounding textile structure." Such a surface may be created by "varying the type of stitch formed by the wide-tube circular knitting machine at each location of textile element." *Id.* at 9:39–42.

4. Other Claim Terms

For purposes of this Final Written Decision, we discern no other claim terms that require express interpretation.

C. Obviousness over Reed and Nishida

1. Overview

Petitioner argues that claims 1–9, 11–19, and 21 are unpatentable under 35 U.S.C. § 103(a) as obvious over the combined teachings of Reed and Nishida. To support its arguments, Petitioner provides a detailed mapping of limitations of the challenged claims to Reed and Nishida. Pet. 13–32. Petitioner also cites Mr. Holden's Declaration for support. *See* Ex. 1003 ¶¶ 91–138.

A patent claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter 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

Skechers EX1013-p. 7798
Skechers v Nike

subject matter pertains." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations, including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art;[6] and (4) objective evidence of nonobviousness, *i.e.*, secondary considerations.[7] *See Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). On this record and for the reasons set forth below, we are not persuaded that Petitioner demonstrates by a preponderance of the evidence that claims 1–9, 11–19, and 21 of the '749 patent are unpatentable as rendered obvious over the combined teachings of Reed and Nishida.

2. Reed (Ex. 1006)

Reed is directed to a method of manufacturing a wearable item, which includes, among other things, simultaneously knitting two concentric tubes with a circular-knitting machine to form a cylindrical textile structure (Ex. 1006, Abstract, 1:58–64, 2:22–25, 3:3–5), textile elements located in different portions of the textile structure (*id.* at 2:29–31), removing the textile elements from the textile structure (*id.* at 3:12–19, 5:67–6:5), and incorporating the textile element(s) "to form *all types of garments* worn by men, women and children" (*id.* at 5:56–58 (emphasis added); *see id.* at 1:33–

[6] *See supra* Section II.A.; *see also* Ex. 1003 ¶ 36 ("Based on my experience, I have an understanding of the capabilities of the skilled person in this field, and my opinions are provided from the perspective of such a person.").

[7] The record lacks arguments or evidence of secondary considerations. *See generally* PO Resp.

Skechers EX1013-p. 7799
Skechers v Nike

35).[8] In particular, Reed describes methods of making preseamed garments (*id.* at 3:8–21) or preseamed sections of a garment, which sections may be seamed together "by standard practices" to form a garment (*id.* at 6:10–17). As Reed explains,

> *From the preceding description of the preferred embodiments, it is evident that the objects of the invention are obtained to produce a preformed and preseamed fabric on a circular knitting machine so as to reduce time, cost and labor involved in making garments.* The types of program used to form the final product is to be varied with the imagination of the programmer, as well as the type of product which may be formed. The essence of the present invention is a garment formed of juxtaposed sections of simultaneously knitted, concentric tubes interconnected by knitting.

Id. at 6:18–28 (emphasis added).

Reed's Figure 1 is reproduced below.

[8] Patent Owner contends that Reed is not analogous art. PO Resp. 34–36. In particular, Patent Owner contends that Reed is not from the same field of endeavor as the challenged claims and that Reed's teachings are not reasonably pertinent to the particular problem with which the recited methods are involved. *Id.* at 34–35. Because Reed is directed to the manufacture of all types of garments, including footwear (Reply 12–13; *see* Ex. 1006, 1:33–44), and Reed is related directly to preparation of garments layouts from a knitted textile structure (Reply 14–15; *see* Ex. 1006, 2:29–35), we are persuaded that Reed is analogous art to the challenged claims.

Skechers EX1013-p. 7800
Skechers v Nike

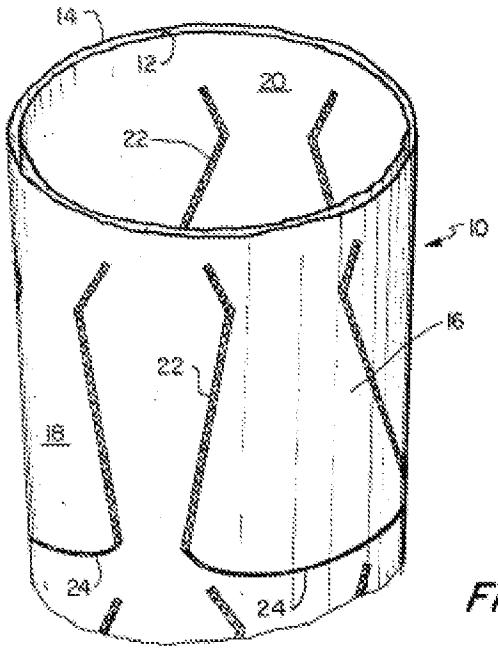


FIG. 1

Figure 1 depicts tubular knitted structure 10, such as that produced by a circular knitting machine. *Id.* at 2:66–3:1. Knitted structure 10 comprises inner tube 12 and outer tube 14, and

> [a]round the circumference of the knitted structure 10 are illustrated three garments which, for example, may be skirts 16, 18 and 20.[9]
>
> The garments 16, 18 and 20 are outlined by a plurality of interconnecting knitted stitches 22 and 24. *The interconnecting knitting 22 not only forms the outline of the garments 16, 18 and 20, but joins the inner tube 12 to the outer tube 14 so as to create a seam.* The interconnecting knitting 24 is merely to define the lower outline of the skirt upon which the pattern may be cut.

Id. at 3:1–15 (emphasis added).

Reed explains that the use of circular knitting machines in the garment industry historically was limited to making tubular, knitted garments, such

[9] We are persuaded that "skirts" are "body garments." *See* Ex. 1003 ¶ 97.

Skechers EX1013-p. 7801
Skechers v Nike

as ladies stockings, sweaters, and other garments, wherein the entire knitted fabric was used as a unit to form one surface of a finished garment. Pet. 10–11 (citing Ex. 1006, 1:33–44; Ex. 1003 ¶ 94); *see supra* Section II.C.1. (note 6). Reed further teaches that "[c]omputer electronic knitting brought about the possibilities of making patterns and designs of up to three million stitches (previously approximately 50,000 was maximum). With this system, patterns and designs are possible that before could not be made." Ex. 1006, 1:50–55; *see* Ex. 1003 ¶ 95. Reed states that its method uses "an electronic circular double knitting machine" and that an "object of the [Reed] invention is to provide a method of reducing the cost of manufacturing of garments by using the versatility of a computerized electronic knitting machine." Ex. 1006, 1:58–59, 2:22–25, Figs 1–6; *see* Ex. 1003 ¶ 95. Further, Reed teaches that:

> If the present process is used to preform *an exterior decorative fabric having a lining or inner-lining or interfacing attached thereto*, the severed sections must be assembled and seamed by standard practices. By providing the lining or interfacing already attached to the section, a substantial amount of time is saved in measuring, marking and cutting the original fabric and lining or interlining as well as stitching them together.

Ex. 1006, 6:10–17 (emphasis added).

3. Nishida (Ex. 1009)

Nishida is directed to the production of a shoe upper by (1) cutting out a layout in the form of the shoe upper from a web of material and (2) shaping the shoe upper by connecting material parts of the layout by the formation of seams. *See* Ex. 1009, Abstract. By this process, such shoe

Skechers EX1013-p. 7802
Skechers v Nike

uppers may be produced efficiently and in reduced time despite the many individual parts present or to be made visible. *Id.*

Figure 2 of Nishida is reproduced below.

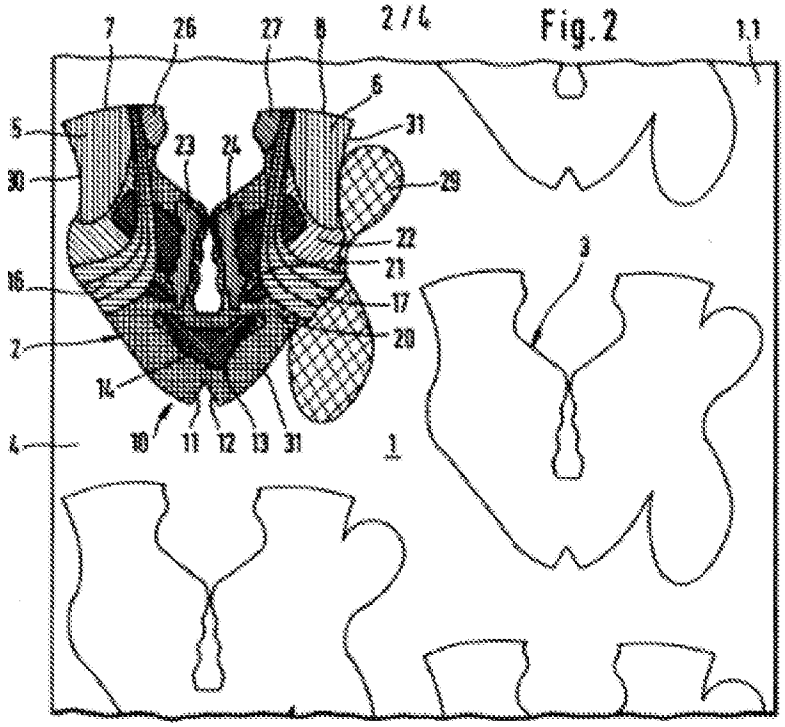


Figure 2 illustrates an embodiment of the upper layout according to Nishida. *Id.* at 3:6–12. Web of material 1 may include one or a plurality of layouts 2. Further, web of material 1 includes backing 4 that may be a knitted material, and different areas of layouts 2 may be formed by knitting different yarns or fibers on backing 4. *Id.* at 3:15–26, 5:63–6:2. Moreover, Nishida's web of material 1 may be "knitted in two or more layers or can be especially thick or additionally embroidered." *Id.* at 3:66–4:1.

Consequently, web of material 1 may be used to produce layouts 2 by different production measures, such as different styles, yarn material, color, material thickness, number of layers of material, or the like, simultaneously with the production of web of material 1. *Id.*; *see id.*, Figs. 1, 2. Each

layout 2, including a sole part, may be cut from web of material 1 as a unit and processed into an upper. *Id.* Nishida describes the manufacture of an article of footwear incorporating such an upper. *Id.* at 3:9–12, Fig. 3.

Figure 4 of Nishida is reproduced below.

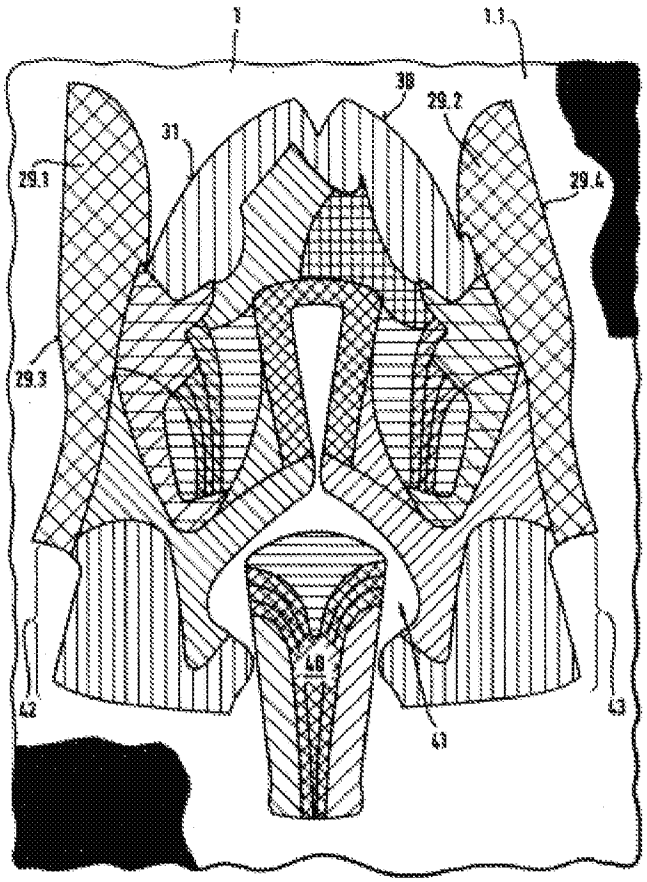


Fig. 4

Figure 4 depicts a section of web of material 1 with radially symmetric layout 2 having sole part sections 29.1 and 29.2 provided on opposite sides of the upper, as well as tongue 40. *Id.* at 2:64–66. Nishida sets forth the following in association with Figure 4:

> [T]ongue 40, for example, according to FIG. 4, can be provided also in the course of producing the web of material 1 with different weave structures and/or weave patterns and/or

> embroideries or with one or with several prints or the like. On a web of material 1, different tongues 40 can be produced corresponding to a shoe shape and/or a shoe size both in shape, size, color or colors, patterns or the like. Preferably, in each case, related tongues 40 are produced simultaneously with a layout 2 on same web of material 1.
>
> For optimum surface use of web of material 1, a tongue 40 can be produced in the open space 41 located between the two layout sections 42 and 43, which later form the rear of foot or heel-pan shoe part.
>
> Preferably, each layout 2 has at least five, preferably more than ten, patterns and a tongue 40 has at least two, preferably at least three patterns produced or appearing, which are different from one another in each case.

Id. at 5:27–44; *cf. id.*, Fig. 2 (reproduced above, depicting web of material 1 including layouts 2 without tongues). Thus, as depicted in Figure 4, tongues may be individual parts of an article of footware "produced separately and applied to the upper later" and are of a relatively simply, substantially rectangular shape. *See* Ex. 1009, 1:50–53 (describing the inclusion of a tongue in a *conventional* article of footware). Tongues and uppers may be taken from the same web of material or from different webs. *See id.* at 5:37–40.[10]

4. Petitioner's Arguments

Petitioner argues that Reed and Nishida teach or suggest all of the limitations of claims 1–9, 11–19, and 21 of the '749 patent. Pet. 9–32. In particular, Petitioner argues that Reed and Nishida teach or suggest all of the

[10] Although we find that Nishida teaches layouts both of an upper and of a tongue, Petitioner does not argue that Nishida's tongue layouts separately teach textile elements that may be incorporated into an article of footwear. *See* Pet. 16, 28; Ex. 1003 ¶ 86, App'x C (pg. 140).

Skechers EX1013-p. 7805
Skechers v Nike

limitations of each of independent claims 1 and 13. *Id.* at 13–19 (claim 1), 20–21 (claim 13).

a. Independent Claims 1 and 13

Independent claim 1 recites "[a] method of manufacturing an article of footwear." Ex. 1001, 11:43; *see also id.* at 12:27 (claim 13). Reed teaches that its circular knitting methods may be used to manufacture "all types of garments." Ex. 1006, 5:56–57. Although Reed specifically identifies stockings and hosiery (*id.* at 1:33–35, 5:57–58), *e.g.*, footwear, as garments manufactured by circular knitting, Reed does not describe shoes expressly as "garments." Nishida also teaches that the webs of material depicted in its Figures 1 and 2 are "produced by a *conventional* textile process." Ex. 1009, 3:6–7 (emphasis added). Thus, we are persuaded that Petitioner has shown that Reed alone, as well as the combined teachings of Reed and Nishida, teach or suggest a method of manufacturing an article of footwear.

The method of claim 1 further comprises the step of "*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." Ex. 1001, 11:45–48 (emphasis added). Similarly, claim 13 recites:

> knitting a first textile element and a second textile element *simultaneously* with knitting a surrounding textile structure, the first knitted textile element located within a first portion of the knitted textile structure, the second knitted textile element located within a second portion of the knitted textile structure,
>
> varying at least one of the types of stitches or the types of yarns in the knitted textile structure to impart a texture to the first and second knitted textile elements different from a texture

Skechers EX1013-p. 7806
Skechers v Nike

> of the knitted textile structure extending between the first and second portions

Id. at 12:29–39 (emphasis added).

Reed teaches simultaneously knitting textile elements, including producing body garments, such as skirts (*see* Ex. 1006 Fig. 2), shirts and pants (*see id.* at Fig. 3), and dresses (*see id.* at Fig. 6), for men, women, and children (*id.* at 5:56–57) with a surrounding textile structure. Pet. 14–15. Reed further teaches simultaneously knitting textile elements, including sections of garments having "an exterior decorative fabric having a lining or inner-lining or interfacing attached thereto." Ex. 1006, 6:10–12. As noted above, Reed teaches that computerized knitting processes made possible numerous stitch varieties. *See id.* at 1:50–59; Ex. 1003 ¶ 95. Nishida also supplies this limitation. Pet. 14–15. Nishida's Figure 2, reproduced above (*see supra* Section II.C.3.) depicts textile elements, such as layouts 2, with a surrounding textile structure, such as web of material 1.

Pet. 15–16; *see* Ex. 1009, 3:15–26. Moreover, as noted above,

> *[T]ongue 40, for example, according to FIG. 4, can be provided also in the course of producing the web of material 1 with different weave structures and/or weave patterns and/or embroideries or with one or with several prints or the like. On a web of material 1, different tongues 40 can be produced corresponding to a shoe shape and/or a shoe size both in shape, size, color or colors, patterns or the like.* Preferably, in each case, related tongues 40 are produced simultaneously with a layout 2 on same web of material 1.
>
> . . .
>
> Preferably, each layout 2 has at least five, preferably more than ten, patterns and a tongue 40 has at least two, preferably at least three patterns produced or appearing, which are different from one another in each case.

Skechers EX1013-p. 7807
Skechers v Nike

Ex. 1009, 5:27–36, 41–44 (emphasis added). Thus, we determine that either Reed or Nishida teaches "simultaneously knitting a textile element with a surrounding textile structure" and "the first knitted textile element located within a first portion of the knitted textile structure," as recited in independent claims 1 and 13, respectively.

With regard to the second part of this limitation of claims 1 and 13, which Petitioner refers to as limitations 1C and 13C, Petitioner argues that:

> Reed describes using different types of stitches or yarns to impart a knitted texture to the textile element(s) that is different from a knitted texture in the surrounding textile structure. For example, Reed describes 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. . . . *Because the interknitted stitches are part of the garments 16, 18, 20, they form a texture in the garments that is different from the texture in the surrounding textile structure.*

Pet. 16 (emphasis added; citing Ex. 1006, 5:3–18; Ex. 1003 ¶¶ 108, 109); *see* Ex. 1006, 6:10–17 (describing the knitting of garment sections). Similarly, Petitioner argues that Nishida teaches that

> "*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 shoe part.* 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 (emphasis added; quoting Ex. 1009, 2:12–20; citing Ex. 1003 ¶¶ 110–111); *see* Ex.1009, 5:27–44 (describing the knitting of various tongues). We determine that either Reed or Nishida teaches this second part of the limitations of independent claims 1 and 13.

Skechers EX1013-p. 7808
Skechers v Nike

The method of claim 1 further comprises the step of "removing the knitted textile element from the surrounding knitted textile structure." Ex. 1001, 11:49–50; *see also id.* at 12:40–41 (claim 13 recites "removing the first and second knitted textile element from the knitted textile structure"). We are persuaded based on the evidence cited in the Petition that Petitioner has shown that the teachings of Reed or Nishida, alone or in combination, teach or suggest this limitation of the independent claims. Pet. 18 (claim 1; citing, *e.g.*, Ex. 1006, 3:12–19; Ex. 1009, 1:10–18); *id.* at 21 (claim 13); *see* Ex. 1003 ¶¶ 103–104.

Finally, the method of claim 1 comprises the step of "*incorporating* the knitted textile element *into* the article of footwear." Ex. 1001, 11:51–52 (emphases added); *see id.* at 12:42–43 (claim 13). Petitioner relies solely on Nishida to supply this limitation, and argues that Nishida teaches this limitation of the independent claims. Pet. 16 (claim 1), 20 (claim 13); *see* Ex. 1003 ¶ 126. We agree.

Petitioner argues that a person of ordinary skill in the art would have had reason to combine the identified teachings of Reed and Nishida to achieve the methods recited in independent claims 1 and 13. Pet. 11–13. In particular, Petitioner argues that, because Reed teaches that its methods are applicable to "*all* types of garments" (Ex. 1006, 5:56–57 (emphasis added); *see* Ex. 1003 ¶ 131), a person of ordinary skill in the art would have had reason to apply the teachings of Reed to the processes and shoe parts of Nishida. Pet. 12 (citing Ex. 1003 ¶ 133). Further, Petitioner argues that, because both Reed and Nishida teach the advantages of reducing cost through the use of computer-controlled knitting machines, a person of ordinary skill in the art would have had reason to combine their teachings.

Skechers EX1013-p. 7809
Skechers v Nike

Id. at 13 (citing Ex. 1003 ¶¶ 134–135). Finally, Petitioner argues that a person of ordinary skill in the art would have had reason to apply Reed's methods for producing textile elements, from which to produce garments, to produce Nishida's shoe upper layouts. *Id.*; *see KSR*, 550 U.S. at 417 ("[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.").

b. Dependent Claims 2–9, 11, 12, 14–19, and 21

With respect to the challenged dependent claims, Petitioner argues that Reed teaches or suggests the additional limitations recited in claims 9 and 19 (Pet. 29–31; *see supra* Section II.B.2.); that Nishida teaches or suggests the additional limitations recited in claims 7, 12, 17, and 18 (Pet. 25, 31–32); and that that Reed and/or Nishida teaches or suggests the additional limitations recited in claims 2–6, 8, 11, 14–16, and 21 (Pet. 19, 21–29, 31; *see supra* Section II.B.1.). Petitioner provides a detailed mapping of the limitations of each of these dependent claims onto the teachings of Reed and/or Nishida. *See* Ex. 1003, App'x A. Moreover, Petitioner argues that a person of ordinary skill in the relevant art would have had at least the same reason to combine the teachings of Reed and Nishida to achieve the methods recited in these dependent claims, as that given for combining the teachings of Reed and Nishida to achieve the recited methods of the independent claims. *See* Pet. 11–13.

Although we have reviewed the entirety of Petitioner's analysis and evidence for both the independent and dependent claims, we highlight the following specific evidence and arguments for emphasis. Claim 11 recites:

Skechers EX1013-p. 7810
Skechers v Nike

> The method of claim 1, 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 (emphasis added). Claim 21 depends from claim 13 and recites substantially the same limitations as claim 11. *Id.* at 13:5–14:5.

Petitioner argues that Reed teaches these limitations in two ways. Pet. 31. First, Petitioner argues that Reed teaches that the edges of the garments 16, 18, 20, depicted in Reed's Figure 1 (reproduced above) are formed by interknitted stitches and that the remainder of the garments 16, 18, 20 are formed by non-interknitted stitches. *Id.* at 25 (citing Ex. 1003 ¶¶ 115, 116 with respect to the limitations of claim 8). Specifically, the seams or outlines of the garments 16, 18, 20 are formed with interknitted stitches (shown in X's and O's in Reed's Figure 2), which are formed by feeds 1, 2, 3, and 4 on needles 7, 9, 8, and 10, as shown in Reed's Figures 3B and 3D. Ex. 1006, 5:3–18, Figs. 3A–3E; *see* Ex. 1003 ¶ 115. Reed further teaches that "two feeds[, *i.e.*, feeds 1, 3 for the dial needles] are used for one course of the inner tube 12 and two feeds[, *i.e.*, feeds 2, 4 for the cylinder needles] are used for the outer tube 14." Ex. 1006, 4:61–64, Figs. 2, 2A, 3A–3E; *see id.* at 5:67–6:3; Ex. 1003 ¶¶ 115, 116. Thus, because the stitches create a texture different from the remainder of the textile element, Petitioner concludes that Reed teaches "a first area and a second area with a unitary construction."

Second, Petitioner also argues that Reed teaches "how the two layers 12, 14 themselves may be formed of different yarns or stitch

Skechers EX1013-p. 7811
Skechers v Nike

configurations." Pet. 26 (citing Ex. 1003 ¶ 117). In particular, Reed describes the following:

> 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, 3:61–4:8; *see* Pet. 26, 31; Ex. 1003 ¶ 117. Taking into account the above-noted description, Petitioner alternatively argues that Reed's separate circular knitted tubes may be the first and second areas recited in claims 11 and 21.

Finally, Petitioner alternatively argues that Nishida also teaches the limitation of "a first area and a second area with a unitary construction." Pet. 26–27, 31. In particular, Nishida teaches 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); *see id.* at Abstract, 1:65–69, 2:40–45, 3:15–26, 3:47–48, 4:12–28, 4:48–55, 5:56–6:2; Ex. 1003 ¶¶ 118, 119. Nishida further 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, for

Skechers EX1013-p. 7812
Skechers v Nike

> example, from wool, wool with metal yarns, silk, silk with metal yarns, wool with plastic fibers or the like . . . .

Ex. 1009, 3:15–25; *see* Ex. 1003 ¶ 121. Petitioner argues that Nishida's teachings achieve a textile element with multiple knit constructions. Pet. 27. Specifically, these varying constructions of Nishida's layout may achieve varying elasticity, air permeability, absorptivity, softness, extensibility, wear resistance, and appearance, which Petitioner argues teach the "varying textures" recited in these claims. *Id.* (citing Ex. 1009, 3:43–52, 5:63–6:2, 6:1–31); *see* Ex. 1003 ¶¶ 120, 121. Thus, Petitioner argues that either Reed or Nishida teaches the above-noted limitation. Petitioner, however, does not specifically address the limitation's requirement that the knitted textile element is formed to include a first area and a second area "with a unitary construction" or how Reed and/or Nishida teaches "a unitary construction." *See* Pet. 31; *see also supra* Section II.B.1. (construing "a first area and a second area with a unitary construction" (Claims 11 and 21)).

Although we have highlighted specific evidence and arguments for emphasis, we have reviewed the entirety of Petitioner's analysis and evidence for independent claims 1 and 13, as well for dependent claims 2–9, 11, 12, 14–19, and 21, and the supporting testimony of Mr. Holden. As noted above, Petitioner relies on the same reasons to combine the teachings of Reed and Nishida for its challenges to each of claims 1–9, 11–19, and 21 of the '749 patent. *See* Pet. 11–13.

5. *Patent Owner's Contentions*

Patent Owner raises seven separate contentions why Petitioner fails to demonstrate that the combined teachings of Reed and Nishida render any of claims 1–9, 11–19, and 21 of the '749 patent unpatentable. *See* PO

Skechers EX1013-p. 7813
Skechers v Nike

Resp. 2–4. Because we find certain of the Patent Owner's contentions persuasive and dispositive, we do not address each of Patent Owner's separate contentions.

a. Low Level of Ordinary Skill in the Art

Patent Owner contends that Petitioner's assessment of the level of ordinary skill in the art is conclusory and is not based on the factors that the Board has considered in determining the level of ordinary skill in the art. *Id.* at 17–19. We have addressed the appropriate assessment of the level of ordinary skill in the art above. *See supra* Section II.A. Whether the level of ordinary skill in the art is "low" or "high" may make it more or less difficult for Petitioner to demonstrate obviousness. PO Resp. 19 ("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. . . ."); *see Kinetic Concepts, Inc. v. Smith & Nephew, Inc.*, 688 F.3d 1342, 1366 (Fed. Cir. 2012) ("Because it is generally easier to establish obviousness under a higher level of ordinary skill in the art, we must assume that, in light of the jury's verdict, it adopted the lower level of skill proposed by S & N." (citation omitted)). However, a "low" relative level of skill alone cannot *prevent* Petitioner from demonstrating obviousness.

Here, only Petitioner – the party bearing the burden of persuasion – has proposed an assessment of the level of ordinary skill in the art. *See supra* Section II.A.; *but see* IPR2013-00067, Ex. 2010 ¶ 52 (Patent Owner proposed that a "POSITA . . . would have a few years of experience with design and development of footwear and knowledge of textiles used in such footwear"). For the reasons set forth above, we have adopted Petitioner's assessment. Further, as noted above, Petitioner's declarant testifies from the

Skechers EX1013-p. 7814
Skechers v Nike

point of view of someone with the assessed level of skill, a level which the declarant exceeds. *See* Ex. 1003 ¶ 36; Ex. 1004. Thus, regardless whether the level of ordinary skill is deemed "low" or "high," we are not persuaded that the relative assessment of the level of ordinary skill in the art here affects our evaluation of Petitioner's arguments and evidence.

b. Weight Given to Declarant's Testimony

Patent Owner contends that Petitioner's declarant, Mr. Holden, did not author his declaration and, during cross-examination, Mr. Holden was unable to answer basic questions about the declaration, the patent at issue, the prior art, footwear, and knitting technologies. PO Resp. 19; *see* Ex. 2004, 12:2–18. Mr. Holden testified that "[he] 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." Reply 3 (quoting Ex. 2004, 12:7–11); *see* Ex. 2004, 12:12–13:16. Declarants often have assistance in authoring their declarations. *See Square, Inc. v. Think Computer Corp.*, Case CBM2014-00159, slip op. at 26–27 (PTAB Nov. 27, 2015) (Paper 47) ("the mechanics of declaration preparation is 'a waste of time, both for the witness and the Board'"). Mr. Holden was not required to be the sole author of his declaration. Rather, the relevant issue regarding the preparation of Mr. Holden's declaration is whether Mr. Holden adopted the content of his declaration as his own. Here, he has. *See* Ex. 1003 ¶¶ 3, 4, 209.

As Patent Owner suggests, we weigh Mr. Holden's declaration testimony in light of his testimony on cross-examination. Although Mr. Holden indicated that he was unable to define or was unfamiliar with certain terms during cross-examination, he did name references, including

Skechers EX1013-p. 7815
Skechers v Nike

Spencer (Ex. 1010), that he could and would consult to obtain the answers to specific questions. Tr. 63:20–64:13. Moreover, Patent Owner's counsel acknowledged that persons of ordinary skill in the art (or declarants) do not have to have all of the knowledge relevant to their testimony in their heads and that they are allowed to consult references, as appropriate. *Id.* at 63:20–64:2. Although Patent Owner notes that Mr. Holden apparently was not aware of Spencer until this *inter partes* review (*see* Ex. 2004, 77:1–3; Tr. 64:1–6), his learning of and relying on a *new* reference alone is not sufficient reason to disregard, *i.e.*, give *no* weight to, Mr. Holden's testimony. Further, the issue here is not whether Mr. Holden is a person of ordinary skill in the art, but rather whether his testimony is of value to the panel. *See* Tr. 64:15–18. Thus, as indicated in the discussion below, we determine the appropriate weight to give to Mr. Holden's testimony.

c. Failure to Explain How and Why a Person of Ordinary Skill in the Art Would Have Combined the Teachings of Reed and Nishida to Achieve the Recited Methods

Initially, Patent Owner contends that Petitioner fails to address the full scope and content of the prior art and ignores critical disclosure of both references. PO Resp. 24. In particular, Patent Owner notes that "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.'" *Id.* (quoting Ex. 1006, 1:8–11 (emphasis omitted)); *see* Tr. 36:3–9. Patent Owner contends that this description of Reed's "present invention" limits the scope of Reed to *preseamed* garments made on circular knitting machines. PO Resp. 24–25. Although this description may limit the scope of Reed's recited methods, the scope of Reed's teachings is broader than what Reed specifically refers to as the "present invention"

Skechers EX1013-p. 7816
Skechers v Nike

(Ex. 1006, 1:8–11) and encompasses "the conventional methods involv[ing] 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" (PO Resp. 25 (citing Ex. 1006, 6:18–22)). *See* Reply 7 (quoting *In re Heck*, 699 F.2d 1331, 1332–33 (Fed. Cir. 1983) ("The use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain." (citation omitted))). Although Reed's teachings may be broader than preseamed garments and sections garments, Petitioner relies only on the embodiments of Reed's invention that are directed to preseamed garments *and* to preseamed sections of garments. Pet. 14 (citing Ex. 1006, 1:58–64); Reply 6–8; *see* Tr. 9:17–10:7, 16:17–17:8, 25:17–26:21, 30:4–11.

With respect to Nishida, Patent Owner contends that Nishida's web of material has two primary components: a backing and one or more layouts printed on or produced in the backing. PO Resp. 28–29 (citing Ex. 1009, 1:40–2:53, 3:6–26). The backing may be formed prior to the production of the layouts. *Id.* Patent Owner notes that Nishida seeks to improve on previously known methods for producing layouts, such as those described in German Patent No. 627 878. *Id.* at 28. Nevertheless, the reference to the German patent is exemplary, and we do not interpret Nishida as limited to the methods described in the German Patent. *See* Ex. 1009, 1:39–46 ("to further develop this previously known process"); Reply 8.

After the backing is formed, Nishida teaches printing on or producing layouts in the backing. Ex. 1009, 3:13–15. The layouts are printed by a

Skechers EX1013-p. 7817
Skechers v Nike

fabric printing process *onto* the backing or produced by a textile production process *inside* the backing. PO Resp. 29 (citing Ex. 1009, 1:50–56, 2:20–26, 3:13–15, 5:45–52); *see* Reply 9. "[T]he material can be woven or knitted in two or more layers or can be especially thick or additionally embroidered." Ex. 1009, 3:66–4:1.

As noted above, each of the embodiments of Reed, relied upon by Petitioner, describes the pre-seaming of garments or sections of garments *before* their removal from the cylindrical textile structure. The teachings of Nishida relied upon by Petitioner, do not teach pre-seaming and, instead, teach the seaming of the upper layout *after* its removal from the web of material. Ex. 1009, 4:19–30 (Figs. 2 and 3), 5:3–26 (Figs. 4 and 5); *see* Pet. 24; PO Resp. 31; Tr. 45:2–46:8. Patent Owner contends that Petitioner fails to explain why and how a person of ordinary skill in the art would combine the teachings of Reed and Nishida to achieve the recited methods of the challenged claims. PO Resp. 36–41. In particular, because Petitioner relies on the teachings of the embodiments of Reed which describe pre-seamed garments and pre-seamed sections of garments and because Nishida does not teach pre-seaming, Patent Owner contends that Petitioner has not shown why and how a person of ordinary skill in the art would combine the teachings of Reed and Nishida to achieve the recited methods of the challenged claims. For the following reasons, we agree.

i. Failure of Proof

Petitioner bears the burden of proving by a preponderance of the evidence that the challenged claims are unpatentable. This includes demonstrating by a preponderance of the evidence that a person of ordinary skill in the art would have had reason to combine the teachings of Reed and

Skechers EX1013-p. 7818
Skechers v Nike

Nishida to achieve the methods recited in the challenged claims. As noted above, Petitioner argues that a person of ordinary skill in the art would have had at least three reasons to combine the teachings of Reed and Nishida to achieve the methods recited in the challenged claims. Pet. 11–13; *see* Tr. 10:12–11:12. First, Petitioner argues that, because Reed teaches that its methods are applicable to "*all* types of garments" (Ex. 1006, 5:56–57 (emphasis added); *see* Ex. 1003 ¶ 131), a person of ordinary skill in the art would have had reason to apply the teachings of Reed to the processes and shoe parts of Nishida. Pet. 12 (citing Ex. 1003 ¶ 133). Second, Petitioner argues that, because both Reed and Nishida teach the advantages of reducing cost through the use of computer-controlled knitting machines, a person of ordinary skill in the art would have had reason to combine their teachings. *Id.* at 13 (citing Ex. 1003 ¶¶ 134–135). Third, Petitioner argues that a person of ordinary skill in the art would have had reason to apply Reed's methods for producing textile elements, from which to produce garments, to produce Nishida's shoe upper patterns. *Id.*; *see KSR*, 550 U.S. at 417. However, none of these reasons or any other reason identified by Petitioner addresses the differences between Reed and Nishida, specifically pre-seaming.

Independent claims 1 and 13 do not mention seaming or pre-seaming expressly. *See* Ex. 1001, 11:43–52 (claim 1), 12:27–43 (claim 13). Further, Patent Owner acknowledged that at least independent claims 1 and 13 do not mention seaming or pre-seaming. Tr. 37:7–10. Claims 2–9, 11, 12, 14–19, and 21 also do not mention seaming or pre-seaming expressly. *See* Ex. 1001, 11:51–57, 12:7–20, 12:29–32, 12:41–48. As we noted above, however, claims 11 and 21 recite "a unitary construction," which "is intended to express a configuration *wherein portions of a textile element are*

Skechers EX1013-p. 7819
Skechers v Nike

not joined together by seams or other connections." *Id.* at 6:42–46. Thus, we interpret the limitations of claims 11 and 21 to recite a textile element having areas of different textures, but without seams. *See supra* Section II.B.1. Moreover, under principles of claim differentiation, we further are persuaded that the scope of challenged claims 1–9 and 12–19 is broad enough to encompass methods related to both pre-seamed and unseamed garments and garment sections. Nothing in the Specification (Ex. 1001) or in the prosecution history (Ex. 1002) of the '749 patent overcomes the presumptive scope of the independent claims arising from the doctrine of claim differentiation. *See Kraft Foods, Inc. v. Int'l Trading Co.*, 203 F.3d 1362, 1368 (Fed. Cir. 2000).

Neither Petitioner nor its declarant, Mr. Holden addresses the fact that each of the relied upon embodiments of Reed teaches pre-seaming and that none of the relied upon teachings of Nishida involves pre-seaming. PO Resp. 36–41; *see* Tr. 34:17–35:12; *see also* Ex. 2004, 161:5–163:19 (Mr. Holden was unable to identify teachings in Nishida directed to pre-seamed and preformed uppers). Moreover, during cross-examination, Mr. Holden acknowledged that he had not been asked to nor had he considered how the teachings of these references could be combined. In particular, the following colloquy occurred during Mr. Holden's deposition:

> 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.

Skechers EX1013-p. 7820
Skechers v Nike

> 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.

Ex. 2004, 152:22–153:13; *see* Tr. 53:19–57:5.

In *ActiveVideo Networks, Inc. v. Verizon Communications, Inc.*, our reviewing court found that where "[t]he expert failed to explain how specific references could be combined, which combination(s) of elements in specific references would yield a predictable result, or how any specific combination would operate or read on the asserted claims," such testimony "is not sufficient and is fraught with hindsight bias." 694 F.3d 1312, 1327 (Fed. Cir. 2012); *see* PO Resp. 58–60; Reply 27; *see also Hyundai Motor Co. v. Blitzsafe Texas, LLC*, Case IPR2016-01476, slip op. at 32 (PTAB Jan. 24, 2017) (Paper 12) ("A determination of obviousness cannot be reached where the record lacks 'explanation as to *how* or *why* the references would be combined to produce the claimed invention.'"; quoting *Trivascular, Inc. v. Samuels*, 812 F.3d 1056, 1066 (Fed. Cir. 2016)). Despite Mr. Holden's testimony that a person of ordinary skill in the art would have had reason to combine the teachings of Reed and Nishida to achieve the recited methods of the challenged claims (*see* Ex. 1003 ¶¶ 131–137), Mr. Holden's testimony during cross-examination makes clear that he did not perform the necessary analysis to support his conclusions. *See* 37 C.F.R. § 42.65(a).

Petitioner's evidence, and, in particular, Mr. Holden's testimony, is deficient with respect to the limitations recited in claims 11 and 21, in that it fails to offer any explanation why a person of ordinary skill in the art would

Skechers EX1013-p. 7821
Skechers v Nike

combine the teachings of Reed and Nishida to achieve a method in which seams of the kind taught by Reed apparently are prohibited. Petitioner argues that Reed teaches the "a unitary construction" limitation of claims 11 and 21 either because the interconnecting stitches are a different texture from the rest of the garment or garment section or because the inner and outer circular knit materials may have different textures. Pet. 25–29, 31. Thus, Mr. Holden testifies in support that Reed's interknitted stitches, i.e., the joining seams, teach textures different from the remainder of Reed's finished garments or garment sections (Ex. 1003 ¶¶ 114–116) or that circular knit materials, although joined by seams, may have different textures (*id.* ¶ 117). These arguments and testimony seem inconsistent with Petitioner's position that *either* the finished garments *or* garment sections are the "textile element" recited in the challenged claims and that, in claims 11 and 21,

> the knitted textile element [is formed] 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.

Pet. 19–20, 25–29, 31 (emphasis added); *see* Tr. 16:17–17:12. These apparent inconsistencies are not explained.

Alternatively, Petitioner argues (Pet. 26–29, 31) and Mr. Holden testifies (Ex. 1003 ¶¶ 118–121) that the limitations of claims 11 and 21 are taught by Nishida. In particular, Mr. Holden testifies that Nishida describes 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***." *Id.* ¶ 118 (quoting Ex. 1009, 4:6–9 (emphasis added by declarant)). Mr. Holden concludes from his

Skechers EX1013-p. 7822
Skechers v Nike

analysis of Nishida that "[a] person of ordinary skill in the art at least as of March 3, 2004 would have understood that Nishida's disclosure regarding varying the knit of individual areas would include having a substantially smooth texture in one area, and a rougher texture in another area." *Id.* ¶ 121. What Mr. Holden fails to explain, however, is how and why this teaching of Nishida is combined with the teachings of the relied upon embodiments of Reed to achieve the methods recited in claims 11 and 21. Petitioner and its declarant rely instead on the *general* arguments presented in connection with independent claims 1 and 13 regarding reasons to combine the teachings of Reed and Nishida. Pet. 11–13; Ex. 1003 ¶¶ 131–137. Given the language of the claims, our interpretation of that language, and the teachings of Reed and Nishida, we find Petitioner's arguments and evidence, especially Mr. Holden's testimony, insufficient and unpersuasive.

Consequently, having weighed Petitioner's evidence of reasons to combine the teachings of Reed and Nishida, noting the deficiencies in Mr. Holden's analysis in support of those reasons, we are not persuaded that Petitioner has demonstrated by a preponderance of the evidence that a person of ordinary skill in art would have had reason to combine the teachings of Reed and Nishida to achieve the methods recited in the challenged claims.

ii. Combined Teachings of Reed and Nishida Render Reed Inoperable for its Intended Purpose

As our reviewing court has explained,

> "obviousness is a question of law based on several underlying factual findings," including what a reference teaches, and whether proposed modifications would change a reference's "principle of operation." Where "a patent claims a structure already known in the prior art that is altered by the mere

Skechers EX1013-p. 7823
Skechers v Nike

> substitution of one element for another known in the field, the combination must do more than yield predictable results." { "pageset": "S74 *However, combinations that change the "basic principles under which the [prior art] as designed to operate,"* *or that render the prior art "inoperable for its intended purpose," may fail to support a conclusion of obviousness.*

Plas-Pak Industries, Inc. v. Sulzer Mixpac AG, 600 F. App'x 755, 757–758 (Fed. Cir. 2015) (citations omitted, emphasis added).

As noted above, we find that the fundamental purpose of Reed's methods is to produce pre-seamed, finished garments or sections of garments. *E.g.*, Ex. 1006, 1:58–64, 3:8–21, 5:67–6:17; *see supra* Section II.C.2. As Reed explains, "[t]he essence of the present invention is a garment formed of juxtaposed sections of simultaneously knitted, *concentric* tubes *interconnected* by knitting." Ex. 1006, 6:25–28 (emphases added). As we also note above, the methods recited in challenged claims 1–9 and 12–19 do not specify whether or not the textile elements are pre-seamed. Thus, we interpret those claims broadly to cover both pre-seamed and unseamed textile elements.

As discussed above, however, claims 11 and 21 are interpreted to describe "a unitary construction," which does not include seams. *See supra* Section II.B.1. Thus, "a unitary construction" does not appear to read on Reed's pre-seamed, finished garment or garment section. Further, Petitioner does not argue that, like Reed, Nishida teaches pre-seamed uppers or sections of uppers or tongues. Consequently, we determine that, relying on Nishida's teachings to supply the "unitary construction" limitation with respect to claims 11 and 21 in the context of the teachings of Reed, as Petitioner suggests (Pet. 26–29, 31), would require the alteration of the

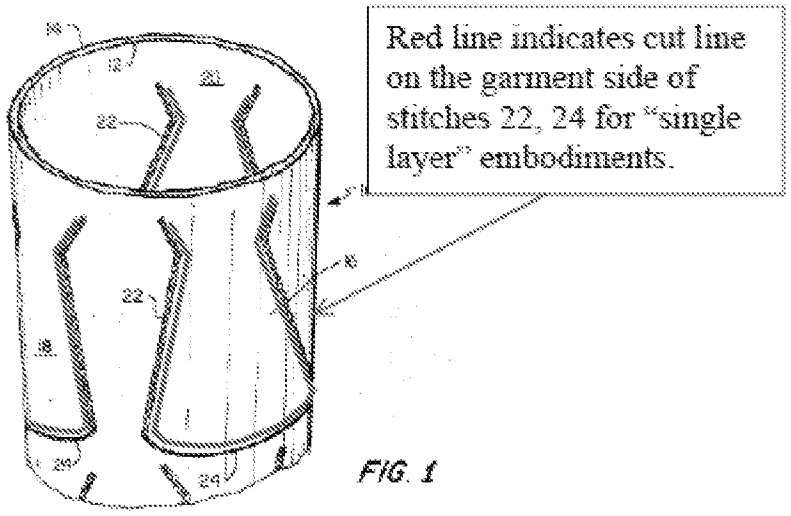
Skechers EX1013-p. 7824
Skechers v Nike

principles of operation of Reed or would render Reed inoperable for its intended purpose.

In response to Patent Owner's contention that Petitioner's combination of the teachings of Reed and Nishida renders Reed inoperable for its intended purpose, Petitioner argues that a person of ordinary skill in the art would understand that

> [t]o produce two single-layer layouts, the POSITA would simply cut along the garment side of stitches 22, 24 (highlighted in red below) so that all seams remain with the surrounding tube material, and the two layouts are no longer connected to each other after removal from the tubes 12, 14.

Reply 18–19 (citing Ex. 1006, 3:9–15, 5:67–6:3; Ex. 1003 ¶¶ 103, 112). In particular, Petitioner produces the following annotated version of Reed's Figure 1.



Reply 19. Petitioner has annotated Reed's Figure 1 to add red lines indicating cut lines *on* the garment *inside* of stitches 22, 24. As depicted in annotated Figure 1, Petitioner argues that the finished garments or garment sections could be cut from the textile structure inside of the seams, as indicated by the red lines. *Id.* According to Petitioner, "[t]he two separated

layouts are then processed *and seamed* along the edges, as described in both Reed and Nishida." *Id.* (emphasis added). Nevertheless, Petitioner provides no explanation of why a person of ordinary skill in the art would have reason to seam the garments or garment sections, only then to remove the seams, so that the garments or garment sections could be reseamed later. *Id.* at 18–19; *see* Tr. 59:21–60:12, 68:20–70:21.[11] We find these arguments contrary to the teachings of Reed and unpersuasive.

Consequently, with respect to challenged claims 11 and 21, we find that Petitioner's proposed combination of the teachings of Reed and Nishida would render Reed either inoperable or unsuitable for its intended purpose. Thus, we are not persuaded that Petitioner has demonstrated by a preponderance of the evidence that a person of ordinary skill in art would have had reason to combine the teachings of Reed and Nishida to achieve the methods recited in challenged claims 11 and 21.

6. Summary

Based on our review of the arguments and evidence presented by each party, we conclude that Petitioner fails to demonstrate by a preponderance of the evidence that either of independent claims 1 and 13 is unpatentable as rendered obvious by the combined teachings of Reed and Nishida.

---

[11] Petitioner's counsel argue that Reed's seams may be used as an outline, but we do not find that Reed teaches that cuts are taught inside the outline to remove the seam from the garment section. Ex. 1006, 3:9–12 (*Interconnected* knitted stitches form *both* an outline and a seam joining the inner and outer tubes.); *see* Tr. 70:2–21. Cutting inside the seams of a finished garment would change a *finished* garment into an *unfinished* garment or a *seamed* garment section into an *unseamed* garment section and would appear entirely contrary to the teachings of Reed. *See* Ex. 1006, 3:15–21.

Skechers EX1013-p. 7826
Skechers v Nike

Moreover, at least because Petitioner's arguments for the obviousness of dependent claims 2–9, 11, 12, 14–19, and 21 over Reed and Nishida rely on the arguments and evidence presented with respect to independent claims 1 and 13, we also conclude that Petitioner fails to demonstrate by a preponderance of the evidence that any of the dependent claims is unpatentable as rendered obvious by the combined teachings of Reed and Nishida. We further determine that for the additional reasons set forth above, Petitioner fails to demonstrate by a preponderance of the evidence that claims 11 and 21 are rendered obvious by the combined teachings of Reed and Nishida.[12]

III. SUMMARY

We are not persuaded that Petitioner demonstrates by a preponderance of the evidence that any of claims 1–9, 11–19, and 21 of the '749 patent is rendered obvious over the combined teachings of Reed and Nishida.

IV. ORDER

It is, therefore,

ORDERED that, pursuant to 35 U.S.C. § 318(a), Petitioner fails to demonstrate by a preponderance of the evidence that any of claims 1–9, 11–19, and 21 is unpatentable as rendered obvious over the combined teachings of Reed and Nishida; and

FURTHER ORDERED that, because this is a Final Written Decision, parties to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

---

[12] Patent Owner also contends that Reed teaches away from its combination with Nishida (PO Resp. 46–48; *but see* Reply 19–20), in view of our determinations above, we need not reach this contention.

Skechers EX1013-p. 7827
Skechers v Nike

Trials@uspto.gov
571-272-7822

Paper 21
Entered: October 19, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

adidas AG,
Petitioner,

v.

NIKE, Inc.,
Patent Owner.

Case IPR2016-00922
Patent 8,266,749 B2

Before JOSIAH C. COCKS, MICHAEL J. FITZPATRICK, and JAMES B. ARPIN, *Administrative Patent Judges.*

FITZPATRICK, *Administrative Patent Judge*, concurring.

I concur with the majority's decision that Petitioner did not meet its burden under 35 U.S.C. § 318(a) to prove by a preponderance of the evidence that the challenged claims are unpatentable. I would reach that decision, however, merely for the reasons set forth below.

Reed did not invent circular knitting. Reed notes that "[c]ircular knitting machines have been used to make tubular, knitted garments, such as ladies' stockings, sweaters and other garments." Ex. 1006, 1:33–35. Reed explained further that "[i]n these tubular garments, the user's anatomy is in the center of the single tube." *Id.* at 1:35–37. Reed further explained that circular double knitting, in which two tubes or layers are simultaneously knitted, was also known in the prior art. *Id.* at 1:37–39 ("'Two tube,' 'double layer,' 'Bi-knit' and 'duo-fold' fabrics have been produced on circular knitting machines."). As with circular knit single-tube garments, the tubes of circular knit double-tube garments surrounded the anatomy of the user. *Id.* at 1:39–44.

What Reed invented was circular double knitting of garments in which "the anatomy of the user would fit between the single knitted fabrics instead of in the center of the tubes." *Id.* at 1:67–2:1. Figure 1 of Reed is reproduced below.

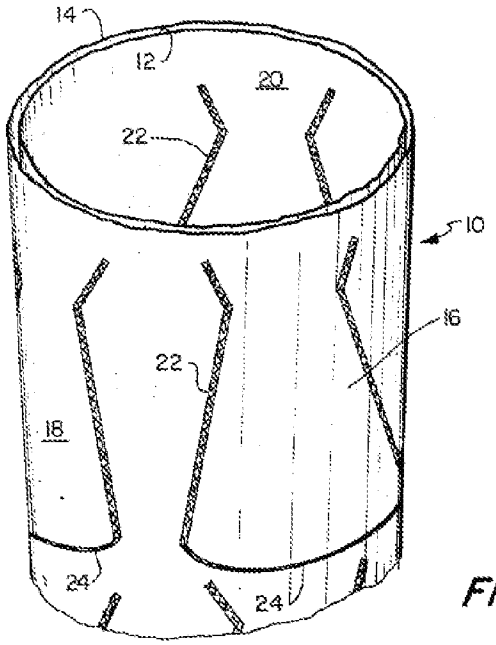


FIG. 1

Figure 1 of Reed, reproduced above, shows a doubled-layered tube of knitted structure 10 as it would come off a circular knitting machine in accordance with a preferred embodiment of Reed. *Id.* at 2:66–3:3. "[T]ubes 12 and 14 are simultaneously knitted concentrically on a circular double knit machine." *Id.* at 3:3–5. The tubes are stitched together along interconnecting knitting 22, thereby forming the outline of three skirts 16, 18, and 20 that are subsequently cut out from the knitted structure.[13] *Id.* at 3:8–21. Reed explains:

> [T]he knitted structure 10 includes (around its circumference) a plurality of finished garments [i.e., three skirts] which need only be severed from the structure 10 and turned inside out if a hidden seam is desired. Only a minimum amount of additional sewing is required to form hems and attach various decorative ornaments to complete a finished garment.

Id. at 3:15–21. Reed states that its invention "produce[s] a preformed and preseamed fabric on a circular knitting machine so as to reduce time, cost and labor involved in making garments." *Id.* at 6:20–22.

As stated in the majority opinion, Nishida is directed to the production of a shoe upper by (1) cutting out a layout in the form of the shoe upper from a web of material and (2) shaping the shoe upper by connecting material parts of the layout by the formation of seams. *See* Ex. 1009, Abstract; *see also id.* at Fig. 2 (illustrating layout of shoe upper on web of material).

Petitioner argues the following:

> Reed's explicit statement that "[t]he present invention may be used to form all types of garments worn by men, women and children" (Ex. 1006, 5:56–57) in combination with

[13] The tubes also are stitched together along interconnecting knitting 24, but that "is merely to define the lower outline of the skirt upon which the pattern may be cut." Ex. 1006, 3:12–15.

Skechers EX1013-p. 7830
Skechers v Nike

> Reed's explicit reference to the fact that footwear items, such as stockings, were conventionally knit with circular knitting machines (Ex. 1006, 1:33–44), would have suggested to a person of ordinary skill in the relevant art at least as of March 3, 2004, that Reed's process could be used to form all types of articles of clothing including footwear, particularly since "clothing" is understood to refer to all things that people wear to cover their bodies. (Ex. 1003, ¶131.) Specifically, the skilled person would have understood Reed's reference to "all types of garments" to include tops, pants, shorts, skirts, dresses, suits, outerwear, underwear, footwear, headwear, nightwear, swimwear, and accessories (such as headbands, scarves, bandanas, handkerchiefs, neckties, gloves, cummerbunds, etc.). (Ex. 1003, ¶131.)
>
> With this understanding, the skilled person would have been motivated to use Reed's process to produce textile elements for all types of clothing, including forming textile elements to be incorporated into footwear as described in Nishida. (Ex. 1003, ¶132.)
>
> The skilled person would have found Nishida's process of manufacturing 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, ¶133.)

Pet. 11–12.

Petitioner's reasons to combine the prior art teachings are not persuasive. It is true that Reed states that its invention "may be used to form all types of garments" (Ex. 1006, 5:56–57), but that does not mean Reed provides a reason to use it in forming any specific type of garment, let alone part of a shoe. Petitioner attempts to provide such a reason by relying, not on a stated purpose of Reed's invention (which is what Petitioner asserts in

Skechers EX1013-p. 7831
Skechers v Nike

its obviousness challenge), but rather on what circular knitting machines traditionally had been used for prior to Reed's invention. *See* Pet. 12. More specifically, Petitioner relies on Reed's statement that, prior to Reed, circular knitting machines were used "to make tubular, knitted garments, such as ladies' *stockings*, sweaters and other garments." Ex. 1006, 1:33–35 (emphasis added); *see also* Pet. 12 (referring to "stockings" and citing Ex. 1006, 1:33–44). Petitioner extrapolates Reed's reference to "stockings" to footwear and then further to an upper of a shoe. However, there is an evidentiary gap jumping from "stockings" to footwear and an additional evidentiary gap subsequently jumping from footwear generally to a shoe's upper specifically. The cited testimony of Petitioner's declarant does not fill those gaps. It is merely repetitive of the arguments block-quoted above. *Compare* Pet. 11–12, *with* Ex. 1003 ¶¶ 131–33.

Nor could I fill those gaps if I wanted. To summarize, Reed (1) acknowledges that circular knitting of tubular garments in which the anatomy is placed inside a resulting tube of knitted structure was known prior to Reed; and (2) describes its invention of double circular knitting garments in which the anatomy is placed between layers of the resulting tube. *See, e.g.*, Ex. 1006, 3:25–31. Nishida's upper (*see, e.g.*, Ex. 1009, Fig. 2) is neither a "tubular garment" that could be made using a pre-Reed circular knitting method (*see* Ex. 1006, 1:33–37) nor a garment that could be "produce[d as] a preformed and preseamed fabric on a circular knitting machine" using Reed's invented circular knitting method (*see id.* at 6:20–22).

Skechers EX1013-p. 7832
Skechers v Nike

For these reasons, I concur with the majority's decision that Petitioner did not meet its burden under 35 U.S.C. § 318(a) to prove by a preponderance of the evidence that the challenged claims are unpatentable.

Skechers EX1013-p. 7833
Skechers v Nike

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Skechers EX1013-p. 7834
Skechers v Nike

Electronic Acknowledgement Receipt

EFS ID:	31344251
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/Traci Burke
Filer Authorized By:	Elizabeth Ashley Lucas
Attorney Docket Number:	NIKE.276100/08-1313US82CO
Receipt Date:	28-DEC-2017
Filing Date:	31-MAY-2017
Time Stamp:	10:25:52
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	Information Disclosure Statement (IDS) Form (SB08)	276100_IDS.PDF	1035317 3b46a1a9981ffb33c8cc67f6942dc3d3f16e0f57	no	4

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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.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/610,089	05/31/2017	BHUPESH DUA	NIKE.276100/08-1313US82CO	4757

78342 7590 01/17/2018

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER
BAYS, MARIE D

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
01/17/2018	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPDOCKET@SHB.COM
IPRCDKT@SHB.COM
nike_docketing@cardinal-ip.com

Office Action Summary	Application No. 15/610,089	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	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 *3* 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 *11/16/17*.

☐ 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) *21-40* is/are rejected.

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

9)☐ Claim(s) _____ 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: _____.

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

Claim Rejections - 35 USC § 103

2. The following is a quotation of pre-AIA 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102, 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. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 21-40 is/are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Bellak (1841518) in view of Holden (1902780).

Bellak shows an article of footwear comprising a flat knit textile element (figure 1) with a knitted pattern (see figures 3 and 6) extending along the sides of the upper substantially as claimed except for the exact knitted pattern. Holden teaches a knitted pattern comprising a plurality of longitudinally extending ribs (see lines 53-75 and shown in figures 4 and 6 for an upper in footwear. It would have been obvious to use the knitted pattern taught by Holden in the article of footwear of Bellak to provide an upper which closely fits the shape of a last/foot and to reduce wrinkles.

In reference to claim 40, Holden teaches attaching a knitted textile upper to a sole (6). It would have been obvious to provide a sole as taught by Holden in the footwear of Bellak to increase the durability of the footwear.

4. 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). Other useful information can be obtained at the PTO Home Page at www.uspto.gov.

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at *(571)273-8300* **(FORMAL FAXES ONLY)**. Please identify Examiner Marie Bays of Art Unit 3765 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Bays whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.

/Marie Bays/
Primary Examiner
Art Unit 3765

Notice of References Cited	Application/Control No. 15/610,089	Applicant(s)/Patent Under Reexamination DUA ET AL.	
	Examiner MARIE BAYS	Art Unit 3765	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	CPC Classification	US Classification
*	A	US-1,902,780 A	03-1933	HOLDEN ROGER M	D04B1/26	36/55
*	B	US-2,047,724 A	07-1936	ZUCKERMAN LOUIS G	D04B1/24	36/11
*	C	US-1,888,172 A	11-1932	JOHA ELMER N	A43B1/02	36/11
*	D	US-1,841,518 A	01-1932	HENRY BELLAK	D04B1/24	36/11
*	E	US-1,910,251 A	05-1933	JOHA ELMER N	D04B1/24	12/142S
*	F	US-2,330,199 A	09-1943	HOLMES BASCH OLIVE	D04B1/106	2/80
	G	US-				
	H	US-				
	I	US-				
	J	US-				
	K	US-				
	L	US-				
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FOREIGN PATENT DOCUMENTS

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	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	15610089	DUA ET AL.
	Examiner	Art Unit
	MARIE BAYS	3765

CPC- SEARCHED		
Symbol	Date	Examiner
A43B 1/00, 1/02, 1/04, 23/00, 23/0205, 23/0265	8/1/17	/MB/
update above	10/13/17	/MB/
update above	1/9/18	/MB/

CPC COMBINATION SETS - SEARCHED		
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US CLASSIFICATION SEARCHED			
Class	Subclass	Date	Examiner
36	45, 47, 9R, 84	8/1/17	/MB/
update	above	10/13/17	/MB/
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SEARCH NOTES		
Search Notes	Date	Examiner
Consulted Parent and related applications	8/1/17	
update above	10/13/17	/MB/
update above	1/9/18	/MB/

INTERFERENCE SEARCH			
US Class/ CPC Symbol	US Subclass / CPC Group	Date	Examiner
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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
	1	8745895	B2	2014-06-10	Sokolowski et al.	
	2	5604997	A	1997-02-25	Dieter	
	3	3114213	A	1963-12-17	Bowers	
	4	2603891	A	1952-07-22	Cohn	
	5	1956969	A	1934-05-01	Ayers	

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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

Examiner Initial*	Cite No	Foreign Document Number[3]	Country Code[2] i	Kind Code[4]	Publication Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear	T[5]
	1							

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Examiner Initials*	Cite No	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc), date, pages(s), volume-issue number(s), publisher, city and/or country where published.	T[5]
	1	First Action Interview Preinterview Communication dated October 20, 2017 in U.S. Patent Application No. 15/703,394, 6 pages.	
	2	Final Written Decision dated October 19, 2017 in IPR2016-00921 in U.S. Patent 7,814,598, 49 pages.	
	3	Final Written Decision dated October 19, 2017 in IPR2016-00922 in U.S. Patent 8,266,749, 52 pages.	

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EXAMINER SIGNATURE

Examiner Signature	/MARIE D BAYS/	Date Considered	01/09/2018

*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.

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /M.D.B/

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)	2017-12-28
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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From: PAIR_eOfficeAction@uspto.gov
Cc: PAIR_eOfficeAction@uspto.gov
Subject: Private PAIR Correspondence Notification for Customer Number 78342

Jan 17, 2018 04:01:48 AM

Dear PAIR Customer:

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613
UNITED STATES

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Application	Document	Mailroom Date	Attorney Docket No.
15610089	CTNF	01/17/2018	NIKE.276100/08-1313US82CO
	892	01/17/2018	NIKE.276100/08-1313US82CO
	1449	01/17/2018	NIKE.276100/08-1313US82CO

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PATENT APPLICATION INFORMATION RETRIEVAL SYSTEM

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.	:	15/610,089	Confirmation No. 4757
Inventor	:	Bhupesh Dua	
Applicant	:	NIKE, Inc.	
Filed	:	05/31/2017	
Title	:	ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER	
Group Art Unit	:	3765	
Examiner	:	Marie D. Bays	
Atty. Matter No.	:	NIKE.276100/08-1313US82CON	
Customer No.	:	78342	

VIA EFS-WEB – February 23, 2018

Mail Stop Amendment
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

RESPONSE

In response to the Non-Final Office Action mailed January 17, 2018, please consider the following:

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

Summary of Examiner Interview: begins on page 6 of this paper.

Remarks: begin on page 7 of this paper.

Amendments to the Claims:

This listing of claims will replace all prior versions, and listings, of claims in the application:

Listing of Claims:

1-20. (Cancelled)

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

a flat knit textile element having: (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 plurality of ribs integrally knitted into the flat knit textile element;

wherein one or more ribs extend longitudinally along one or more of a lateral side and a medial side of the upper, the one or more ribs extending from the forefoot region toward the heel region and terminating in one of the midfoot region or the heel region.

22. (Currently Amended) The upper of claim 21, wherein the one or more ribs ~~extend into a~~terminate in the heel region of the upper.

23. (Previously Presented) The upper of claim 21, wherein the one or more ribs affect stretch properties of the upper.

24. (Previously Presented) The upper of claim 21, wherein the one or more ribs extending longitudinally comprises ribs spaced apart from an area adjacent an instep region of the upper to an area adjacent a lower region of the upper.

25. (Previously Presented) The upper of claim 24, wherein the lower region of the upper comprises a bottom surface of the upper.

26. (Previously Presented) The upper of claim 24, wherein the ribs are spaced apart at a uniform distance from the area adjacent the instep region to the area adjacent the lower region.

27. (Previously Presented) The upper of claim 21, wherein the one or more ribs are adjacent one or more regions having a smooth texture.

28. (Cancelled)

29. (Previously Presented) The upper of claim 21, wherein the one or more ribs includes one or more ribs extending longitudinally along the lateral side and one or more ribs extending longitudinally along the medial side.

30. (Previously Presented) The upper of claim 29, wherein the one or more ribs extending along the lateral side mirror the one or more ribs extending longitudinally along the medial side.

31. (Previously Presented) The upper of claim 21, wherein the one or more ribs comprise ribs of varying lengths.

32. (Currently Amended) An article of footwear comprising:

an upper comprising:

a flat knit textile element having: (1) flat knit edges free of surrounding textile structure such that the flat knit edges are not surrounded by textile structure

Skechers EX1013-p. 7851
Skechers v Nike

from which the textile element must be removed, and (2) a plurality of ribs integrally knitted into the flat knit textile element,

wherein the plurality of ribs include one or more ribs extending longitudinally along a lateral side and one or more ribs extending longitudinally along a medial side of the upper, wherein the one or more ribs on the lateral side and the one or more ribs on the medial side extend from the forefoot region toward the heel region and terminate in one of the midfoot region or the heel region.

33. (Currently Amended) The article of footwear of claim 32, wherein the one or more ribs on the lateral side and the one or more ribs on the medial side ~~extend into a~~ terminate in the heel region of the upper.

34. (Previously Presented) The article of footwear of claim 32, wherein the one or more ribs on the lateral side and the one or more ribs on the medial side affect stretch properties of the upper.

35. (Previously Presented) The article of footwear of claim 32, wherein the one or more ribs on the lateral side and the one or more ribs on the medial side each comprise ribs spaced apart from an area adjacent an instep region of the upper to an area adjacent a lower region of the upper.

36. (Previously Presented) The article of footwear of claim 35, wherein the ribs are spaced apart at a uniform distance.

37. (Previously Presented) The article of footwear of claim 32, wherein the one or more ribs on the lateral side and the one or more ribs on the medial side are adjacent one or more regions having a smooth texture.

38. (Cancelled)

39. (Previously Presented) The article of footwear of claim 32, wherein the one or more ribs on the lateral side and the one or more ribs on the medial side comprise ribs of varying lengths.

40. (Previously Presented) The article of footwear of claim 32 further comprising a sole structure secured to the upper.

41. (New) The upper of claim 21, wherein the one or more ribs comprise a plurality of ribs, at least one rib terminating in the heel region and at least one rib terminating in the midfoot region.

42. (New) The article of footwear of claim 32, wherein at least the one or more ribs on the lateral side comprise a plurality of ribs, at least one rib terminating in the heel region and at least one rib terminating in the midfoot region.

SUMMARY OF EXAMINER INTERVIEW

Applicant would like to thank Examiner Bays for granting an interview on December 18, 2017. During the interview, Examiner Bays explained that prosecution was reopened in light of the Holden reference.

REMARKS

Applicant has received and reviewed the Office Action dated January 18, 2018. Claims 21-22 and 32-33 been amended; claims 28 and 38 have been cancelled; and new claims 41 and 42 have been added. Care has been exercised to introduce no new matter. Applicant respectfully requests reconsideration of the present Application in view of the above amendments and the following remarks.

Rejections based on 35 U.S.C. § 103

Claims 21-40 were rejected under pre-AIA 35 U.S.C. § 103(a) as being ostensibly unpatentable over U.S. Patent No. 1,841,518 to Bellak (hereinafter "Bellak") in view of U.S. Patent No. 1,902,780 to Holden (hereinafter "Holden). Applicant respectfully submits that the combination of Bellak and Holden do not render obvious claims 21-27, 29-37, and 39-40 as well as new claims 41-42 at least because Bellak and Holden fail to teach or suggest ribs extending longitudinally from the forefoot region toward the heel region and terminating in one of the midfoot region or the heel region.[1]

Amended independent claim 21 recite, in part, "wherein one or more ribs extend longitudinally along one or more of a lateral side and a medial side of the upper, ***the one or more ribs extending from the forefoot region toward the heel region and terminating in one of the midfoot region or the heel region***. Amended independent claim 32 recites similar language.

In contrast, Bellak and Holden describe footwear that either does not have longitudinal ribs or with ribs that do not terminate in one of the midfoot or the heel region. Bellak, for example, discloses a knitted strip of fabric with the edges gathered together to form a

[1] Because claims 28 and 38 are cancelled herein, the rejection of those claims are moot.

"bag-like knitted article" to slip over a foot or shoe. *Bellak*, at 1:14-26. The fabric in Bellak is described as "the so-called ribbed type comprising a plurality of projecting bands 17 and intermediate hollows 19." *Id.* at 2:71-74. As illustrated in Figure 6 below, the bands and hollows (identified as 17 and 19 in Figure 1, also below) extend along the lateral or medial side in a diagonal or vertical orientation up towards the ankle opening.

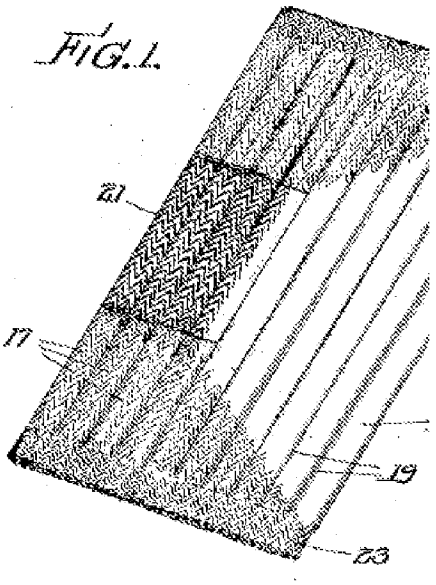


Fig. 1 of Bellak

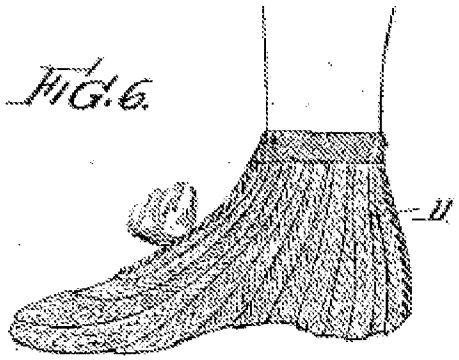


Fig. 6 of Bellak

The Office seems to agree that Bellak does not teach or suggest longitudinally extending ribs because, in rejecting the claims, the Office relies on Holden, instead of Bellak, for allegedly describing longitudinal ribs. *Non-Final Office Action dated Jan. 17, 2018*, at p. 2. Holden, however, describes rib stitches being used in combination with tuck stitches in a portion of a knitted boot lining to form the arc of the knitted lining forming the transition between a foot-covering region and an ankle-covering region. *See Holden*, at 2:53-76. Accordingly, as shown in Figure 4 of Holden (reproduced below), the rib stitches in Holden extend through the entire footwear, extending from the toe region or the bottom portion up towards the ankle opening. As

such, Holden does not teach one or more ribs extending from the forefoot region toward the heel region and terminating in one of the midfoot region or the heel region. Further, because the rib stitches are used in combination with tuck stitches to create the arc extending into the ankle region, Holden cannot be modified to teach or suggest ribs terminating in one or more of the midfoot region or the heel region.

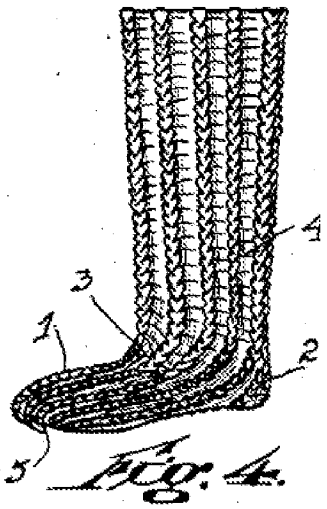


Fig. 4 of Holden

Accordingly, for at least these reasons, the references fail to teach or suggest all the elements of independent claims 21 and 32. Because claims 22-27, 29-31, 33-37, and 39-40 depend from either claim 21 or 32, these dependent claims are allowable for at least the same reasons. Therefore, Applicant respectfully requests that the rejection of claims 21-27, 29-37, and 39-40 under § 103 be withdrawn. Further, because new claims 41 and 42 depend from claims 21 and 32, respectively, they should be found allowable over the cited references for at least the same reasons.

CONCLUSION

For at least the reasons stated above, claims 21-27, 29-37, and 39-42 are now in condition for allowance. Applicant respectfully requests withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned – 816-559-2282 or elucas@shb.com (such communication via email is expressly allowed) – to resolve the same. It is believed that no fee is due; however, the Commissioner is authorized to charge any amount required to Deposit Account No. 19-2112 with reference to Attorney Matter No. NIKE.276100/08-1313US82CON.

Respectfully submitted,

/ELIZABETH A. LUCAS/

Elizabeth A. Lucas
Reg. No. 74,247

EAL/lm/reb
SHOOK, HARDY & BACON L.L.P.
2555 Grand Boulevard
Kansas City, MO 64108-2613
Phone: 816-559-2282
Fax: 816-421-5547

Electronic Acknowledgement Receipt

EFS ID:	31873030
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/Ryan Brown
Filer Authorized By:	Elizabeth Ashley Lucas
Attorney Docket Number:	NIKE.276100/08-1313US82CO
Receipt Date:	23-FEB-2018
Filing Date:	31-MAY-2017
Time Stamp:	15:27:38
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	Amendment/Req. Reconsideration-After Non-Final Reject	276100_US_RESPONSE_TO_OA_1_17_2018.pdf	100269 a9650ee8c06d9c6e8777c7160497385c1c6934db	no	10

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PATENT APPLICATION FEE DETERMINATION RECORD Substitute for Form PTO-875	Application or Docket Number 15/610,089	Filing Date 05/31/2017	☐ To be Mailed

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 **02/23/2018**

	(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 $100 =	0
Independent (37 CFR 1.16(h))	* 2	Minus	***3	= 0	X $460 =	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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NOTICE OF ALLOWANCE AND FEE(S) DUE

78342 7590 04/20/2018

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

EXAMINER
BAYS, MARIE D

ART UNIT	PAPER NUMBER
3765	

DATE MAILED: 04/20/2018

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/610,089	05/31/2017	BHUPESH DUA	NIKE.276100/08-1313US82CO	4757

TITLE OF INVENTION: ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER

APPLN. TYPE	ENTITY STATUS	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	UNDISCOUNTED	$1000	$0	$960	$1000	07/20/2018

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

HOW TO REPLY TO THIS NOTICE:

I. Review the ENTITY STATUS shown above. If the ENTITY STATUS is shown as SMALL or MICRO, verify whether entitlement to that entity status still applies.

If the ENTITY STATUS is the same as shown above, pay the TOTAL FEE(S) DUE shown above.

If the ENTITY STATUS is changed from that shown above, on PART B - FEE(S) TRANSMITTAL, complete section number 5 titled "Change in Entity Status (from status indicated above)".

For purposes of this notice, small entity fees are 1/2 the amount of undiscounted fees, and micro entity fees are 1/2 the amount of small entity fees.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Maintenance fees are due in utility patents issuing on applications filed on or after Dec. 12, 1980. It is patentee's responsibility to ensure timely payment of maintenance fees when due. More information is available at www.uspto.gov/PatentMaintenanceFees.

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: Mail **Mail Stop ISSUE FEE**
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
or Fax (571)-273-2885

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

78342 7590 04/20/2018
SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission
I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/610,089	05/31/2017	BHUPESH DUA	NIKE.276100/08-1313US82CO	4757

TITLE OF INVENTION: ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER

APPLN. TYPE	ENTITY STATUS	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	UNDISCOUNTED	$1000	$0	$960	$1000	07/20/2018

EXAMINER	ART UNIT	CLASS-SUBCLASS
BAYS, MARIE D	3765	012-14600C

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).
- ❑ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ❑ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list
(1) The names of up to 3 registered patent attorneys or agents OR, alternatively,
(2) The name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.
1 _____
2 _____
3 _____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE (B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent) : ❑ Individual ❑ Corporation or other private group entity ❑ Government

4a. The following fee(s) are submitted:
- ❑ Issue Fee
- ❑ Publication Fee (No small entity discount permitted)
- ❑ Advance Order - # of Copies _____

4b. Payment of Fee(s): **(Please first reapply any previously paid issue fee shown above)**
- ❑ A check is enclosed.
- ❑ Payment by credit card. Form PTO-2038 is attached.
- ❑ The director is hereby authorized to charge the required fee(s), any deficiency, or credits any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

5. **Change in Entity Status** (from status indicated above)
- ❑ Applicant certifying micro entity status. See 37 CFR 1.29 — NOTE: Absent a valid certification of Micro Entity Status (see forms PTO/SB/15A and 15B), issue fee payment in the micro entity amount will not be accepted at the risk of application abandonment.
- ❑ Applicant asserting small entity status. See 37 CFR 1.27 — NOTE: If the application was previously under micro entity status, checking this box will be taken to be a notification of loss of entitlement to micro entity status.
- ❑ Applicant changing to regular undiscounted fee status. — NOTE: Checking this box will be taken to be a notification of loss of entitlement to small or micro entity status, as applicable.

NOTE: This form must be signed in accordance with 37 CFR 1.31 and 1.33. See 37 CFR 1.4 for signature requirements and certifications.

Authorized Signature _____ Date _____

Typed or printed name _____ Registration No. _____

PTOL-85 Part B (10-13) Approved for use through 10/31/2013. OMB 0651-0033 U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Skechers EX1013 p. 7863
Skechers v Nike

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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P.O. Box 1450
Alexandria, Virginia 22313-1450
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KANSAS CITY, MO 64108-2613

EXAMINER	
BAYS, MARIE D	

ART UNIT	PAPER NUMBER
3765	

DATE MAILED: 04/20/2018

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
(Applications filed on or after May 29, 2000)

The Office has discontinued providing a Patent Term Adjustment (PTA) calculation with the Notice of Allowance.

Section 1(h)(2) of the AIA Technical Corrections Act amended 35 U.S.C. 154(b)(3)(B)(i) to eliminate the requirement that the Office provide a patent term adjustment determination with the notice of allowance. See Revisions to Patent Term Adjustment, 78 Fed. Reg. 19416, 19417 (Apr. 1, 2013). Therefore, the Office is no longer providing an initial patent term adjustment determination with the notice of allowance. The Office will continue to provide a patent term adjustment determination with the Issue Notification Letter that is mailed to applicant approximately three weeks prior to the issue date of the patent, and will include the patent term adjustment on the patent. Any request for reconsideration of the patent term adjustment determination (or reinstatement of patent term adjustment) should follow the process outlined in 37 CFR 1.705.

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

Skechers EX1013-p. 7864
Skechers v Nike

OMB Clearance and PRA Burden Statement for PTOL-85 Part B

The Paperwork Reduction Act (PRA) of 1995 requires Federal agencies to obtain Office of Management and Budget approval before requesting most types of information from the public. When OMB approves an agency request to collect information from the public, OMB (i) provides a valid OMB Control Number and expiration date for the agency to display on the instrument that will be used to collect the information and (ii) requires the agency to inform the public about the OMB Control Number's legal significance in accordance with 5 CFR 1320.5(b).

The information collected by PTOL-85 Part B is required by 37 CFR 1.311. 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, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450. 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.

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.

Notice of Allowability	Application No. 15/610,089	Applicant(s) DUA ET AL.	
	Examiner MARIE BAYS	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--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to *amendment filed 2/23/18*.
   ☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on_____.
2. ☐ 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.
3. ☒ The allowed claim(s) is/are *21-27, 29-37, and 39-42*. As a result of the allowed claim(s), 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.
4. ☐ 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)).

   * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
   ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

   Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____
3. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
4. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____ .
5. ☐ Examiner's Amendment/Comment
6. ☐ Examiner's Statement of Reasons for Allowance
7. ☐ Other _____.

/Marie Bays/
Primary Examiner
Art Unit: 3765

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	15610089	DUA ET AL.
	Examiner	Art Unit
	MARIE BAYS	3765

CPC- SEARCHED		
Symbol	Date	Examiner
A43B 1/00, 1/02, 1/04, 23/00, 23/0205, 23/0265	8/1/17	/MB/
update above	10/13/17	/MB/
update above	1/9/18	/MB/
update above	4/1/18	/MB/

CPC COMBINATION SETS - SEARCHED		
Symbol	Date	Examiner

US CLASSIFICATION SEARCHED			
Class	Subclass	Date	Examiner
36	45, 47, 9R, 84	8/1/17	/MB/
update	above	10/13/17	/MB/
update	above	1/9/18	/MB/
update	above	4/1/18	/MB/

* See search history printout included with this form or the SEARCH NOTES box below to determine the scope of the search.

SEARCH NOTES		
Search Notes	Date	Examiner
Consulted Parent and related applications	8/1/17	/MB/
update above	10/13/17	/MB/
update above	1/9/18	/MB/
update above	4/1/18	/MB/

INTERFERENCE SEARCH

US Class/ CPC Symbol	US Subclass / CPC Group	Date	Examiner
A43B	1/04, 23/0205	8/1/17	/MB/
update	above	4/1/18	/MB/

EAST Search History

EAST Search History (Prior Art)

Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
L1	834	a43b1/04.cpc. or a43b23/0205.cpc.	US-PGPUB; USPAT	OR	OFF	2018/04/01 10:32

EAST Search History (Interference)

< This search history is empty>

4/ 1/ 2018 10:33:08 AM
C:\ Users\ mpatterson\ Documents\ EAST\ Workspaces\ knit.wsp

Issue Classification	Application/Control No.	Applicant(s)/Patent Under Reexamination
	15610089	DUA ET AL.
	Examiner	**Art Unit**
	MARIE BAYS	3765

CPC						
Symbol					**Type**	**Version**
A43B		1	/	04	F	2013-01-01
D04B		21	/	207	I	2013-01-01
A43B		23	/	042	I	2013-01-01
A43B		23	/	0205	I	2013-01-01
A43B		7	/	085	I	2013-01-01
A43D		111	/	00	I	2013-01-01
D04B		1	/	102	I	2013-01-01
D04B		21	/	20	I	2013-01-01
D10B		2501	/	043	A	2013-01-01
A43B		23	/	0275	I	2013-01-01
A43B		23	/	0235	I	2013-01-01
A43B		23	/	0215	I	2013-01-01
A43B		23	/	021	I	2013-01-01
D04B		1	/	24	I	2013-01-01
A43B		23	/	028	I	2013-01-01
A43B		9	/	02	I	2013-01-01

CPC Combination Sets							
Symbol					**Type**	**Set**	**Ranking**	**Version**
			/					
			/					

NONE (Assistant Examiner)	(Date)	**Total Claims Allowed:** 20	
/MARIE BAYS/ Primary Examiner.Art Unit 3765 (Primary Examiner)	4/1/18 (Date)	O.G. Print Claim(s) 1	O.G. Print Figure 10

Issue Classification	Application/Control No.	Applicant(s)/Patent Under Reexamination
	15610089	DUA ET AL.
	Examiner	**Art Unit**
	MARIE BAYS	3765

US ORIGINAL CLASSIFICATION		INTERNATIONAL CLASSIFICATION										
CLASS	SUBCLASS	CLAIMED					NON-CLAIMED					
		A	4	3	B	1 / 04 (2006.01.01)						
CROSS REFERENCE(S)												
CLASS	SUBCLASS (ONE SUBCLASS PER BLOCK)											

NONE		**Total Claims Allowed:**	
(Assistant Examiner)	(Date)	20	
/MARIE BAYS/ Primary Examiner.Art Unit 3765	4/1/18	O.G. Print Claim(s)	O.G. Print Figure
(Primary Examiner)	(Date)	1	10

Issue Classification	Application/Control No.	Applicant(s)/Patent Under Reexamination
	15610089	DUA ET AL.
	Examiner	**Art Unit**
	MARIE BAYS	3765

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

Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original
1	21	17	37												
2	22	18	42												
3	23	19	39												
4	24	20	40												
5	25														
6	26														
7	27														
8	41														
9	29														
10	30														
11	31														
12	32														
13	33														
14	34														
15	35														
16	36														

NONE		**Total Claims Allowed:**	
(Assistant Examiner)	(Date)	20	
/MARIE BAYS/ Primary Examiner.Art Unit 3765	4/1/18	O.G. Print Claim(s)	O.G. Print Figure
(Primary Examiner)	(Date)	1	10

To: IPDOCKET@SHB.COM,IPRCDKT@SHB.COM,nike_docketing@cardinal-ip.com
From: PAIR_eOfficeAction@uspto.gov
Cc: PAIR_eOfficeAction@uspto.gov
Subject: Private PAIR Correspondence Notification for Customer Number 78342

Apr 20, 2018 03:49:21 AM

Dear PAIR Customer:

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY, MO 64108-2613
UNITED STATES

The following USPTO patent application(s) associated with your Customer Number, 78342 , have new outgoing correspondence. This correspondence is now available for viewing in Private PAIR.

The official date of notification of the outgoing correspondence will be indicated on the form PTOL-90 accompanying the correspondence.

Disclaimer:
The list of documents shown below is provided as a courtesy and is not part of the official file wrapper. The content of the images shown in PAIR is the official record.

Application	Document	Mailroom Date	Attorney Docket No.
15610089	NOA	04/20/2018	NIKE.276100/08-1313US82CO

To view your correspondence online or update your email addresses, please visit us anytime at https://sportal.uspto.gov/secure/myportal/privatepair.

If you have any questions, please email the Electronic Business Center (EBC) at EBC@uspto.gov with 'e-Office Action' on the subject line or call 1-866-217-9197 during the following hours:

Monday - Friday 6:00 a.m. to 12:00 a.m.

Thank you for prompt attention to this notice,

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT APPLICATION INFORMATION RETRIEVAL SYSTEM



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TO COMMISSIONER FOR PATENTS

PHONE

FAX 1-571-273-2885

Elizabeth A. Lucas

2555 Grand Blvd.
Kansas City
Missouri 64108-2613
816.474.6550
816.559.2282 DD
816.421.5547 Fax
elucas@shb.com

MAIL STOP ISSUE FEE

FROM ELIZABETH A. LUCAS

IT # 19091

MATTER # NIKE.276100

Pages Transmitted 2

DATE APRIL 26, 2018

Original Document will not follow.

If you experience any problems, please call 816.474.6550 extension 11517.

fax

REGARDING:

U.S. Application No. 15/610,089
Attorney Docket No. NIKE.276100/08-1313US82CON

Attached is a completed Part B – Fee(s) Issue Fee Transmittal form.

The attached Issue Fee Transmittal hereby authorizes the Director to charge the required fee(s) to Deposit Account Number 19-2112 and is being transmitted via fax to 1-571-273-2885 addressed to the Commissioner for Patents – Attention **Mail Stop ISSUE FEE** – this 26th day of April, 2018.

Respectfully submitted,

/ELIZABETH A. LUCAS/

Elizabeth A. Lucas
Reg. No. 74,247

Confidentiality Notice: The documents accompanying this telecopy transmission contain confidential information belonging to the sender which is legally privileged. The information is intended only for the use of the individual(s) or entity(ies) named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone to arrange for return of the original documents to us.

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OPAP AKIMA-S APR 26 2018 PATENT & TRADEMARK OFFICE

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: Mail Mail Stop ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
or Fax (571)-273-2885

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

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Cheryl D. Neeley	(Depositor's name)
/Cheryl D. Neeley/	(Signature)
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/610,089	05/31/2017	BHUPESH DUA	NIKE.276100/08-1313US82CO	4757

TITLE OF INVENTION: ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER

APPLN. TYPE	ENTITY STATUS	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	UNDISCOUNTED	$1000	$0	$960	$1000	07/20/2018

04/27/2018 CCHAU2 00000047 192112 15610089

EXAMINER	ART UNIT	CLASS-SUBCLASS
BAYS, MARIE D	3765	012-14600C

01 FC:1501 40.00 DA 960.00 OP

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☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

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(1) The names of up to 3 registered patent attorneys or agents OR, alternatively,
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1 Shook, Hardy & Bacon L.L.P.
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(B) RESIDENCE: (CITY and STATE OR COUNTRY): Beaverton, OR

Adjustment date: 04/27/2018 CCHAU2
11/16/2017 INTEFSH 00004732 15610089
01 FC:1501 960.00 OP

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☒ Corporation or other private group entity ☐ Government

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Authorized Signature /ELIZABETH A. LUCAS/ Date April 26, 2018
Typed or printed name Elizabeth A. Lucas Registration No. 74,247

PTOL-85 Part B (10-13) Approved for use through 10/31/2013. OMB 0651-0033 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

PAGE 2/2 * RCVD AT 4/26/2018 4:46:00 PM [Eastern Daylight Time] * SVR:W-PTOFAX-003/11 * DNIS:2732885 * CSID:8164215547 * DURATION (mm-ss):01-07

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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	23	20080078102		2008-04-03	Kilgore et al.	
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Change(s) applied to document, /C.L./ 8/25/2017	30	20120255201		10/2012 ~~2012-09-20~~	~~Huffa et al.~~ Little	
	31	20120159813		2012-06-28	Dua et al.	

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Application Number	15610089
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First Named Inventor	BHUPESH DUA
Art Unit	3765
Examiner Name	MARIE D. BAYS
Attorney Docket Number	NIKE.276100/081313US82CON

Change(s) applied to document, /C.L./ 8/25/2017	20	3583081		1971 ~~1974~~-06-08	Hayashi	
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	Examiner Name	MARIE D. BAYS
	Attorney Docket Number	NIKE.276100/081313US82CON

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Change(s) applied to document,
/C.L./
8/2[illegible]

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)		
	Application Number	15610089
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	First Named Inventor	BHUPESH DUA
	Art Unit	3765
	Examiner Name	MARIE D. BAYS
	Attorney Docket Number	NIKE.276100/081313US82CON

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Change(s) applied
to document,
/D.H.P./
8/25/2017

ARTICLE OF FOOTWEAR HAVING A TEXTILE UPPER

CROSS-REFERENCE TO RELATED APPLICATIONS

[0001] This application having attorney docket number NIKE.276100/081313US82CON (15/610089) and entitled "Article of Footwear Having A Textile Upper" a is a continuation of and claims priority to U.S. Patent Application No. 14/503,514, filed October 1, 2014, which is a division of and claims priority to U.S. Patent Application No. 14/079,748, filed November 14, 2013, which is a continuation of and claims priority to U.S. Patent Application No. 13/413,233, filed March 6, 2012, which is a continuation application of and claims priority to U.S. Patent Application 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 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 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 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] 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.

Skechers EX1013-p. 7880
Skechers v Nike

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APPLICATION NO.	ISSUE DATE	PATENT NO.	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/610,089	06/05/2018	9986781	NIKE.276100/08-1313US82CO	4757

78342 7590 05/16/2018

SHOOK, HARDY & BACON L.L.P.
(NIKE, INC.)
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ISSUE NOTIFICATION

The projected patent number and issue date are specified above.

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
(application filed on or after May 29, 2000)

The Patent Term Adjustment is 0 day(s). Any patent to issue from the above-identified application will include an indication of the adjustment on the front page.

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

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APPLICANT(s) (Please see PAIR WEB site http://pair.uspto.gov for additional applicants):

NIKE, Inc., Beaverton, OR;
BHUPESH DUA, Portland, OR;
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