**EXHIBIT 562-6**
**Invalidity Claim Chart for U.S. Patent 9,060,562**

Japanese Patent Application Publication No. H3-3203 to Toshihiro Horii ("Horii") was filed on June 1, 1989, was published on January 14, 1991, anticipates or renders obvious the asserted claims of the U.S. Patent 9,060,562 ("the '562 patent") pursuant to at least pre-AIA 35 U.S.C. §102(a), 102(b), 102(e), 102(g), and/or 103 under the '562 patent's earliest possible priority date.

As set forth in the chart below, all asserted claims of the '562 patent are anticipated and/or obvious over Horii.[1]

The citations to portions of any reference in this chart are exemplary only. Defendant reserves the right to use the entirety of any reference described in other Exhibits to Section IV of Defendant's Preliminary Invalidity Contentions to show that the asserted claims are anticipated and/or obvious.

Defendant expressly reserves the right to supplement these contentions to add additional information showing that Horii invalidates the asserted claims of the '562 patent.

To the extent that any of the below claim limitations are found to not be expressly disclosed by the below reference, it is Defendant's contention that any such limitation would be obvious, either based the general knowledge of one of ordinary skill in the art or based on any of the art cited in Defendant's Preliminary Invalidity Contentions, which are incorporated herein by reference. In particular, as evidenced by the below and in Section IV of Defendant's Preliminary Invalidity Contentions, the '562 patent is merely a collection of prior art elements that fails to meet the statutory requirement of nonobviousness under § 103, and the factors delineated in *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398 (2007), weigh against a finding of nonobviousness.

For example, it would have been obvious to a person of ordinary skill in the art to combine the teaching of Horii with the teachings of the references charted as Exhibits 562-1 to 562-5 and 562-7 to 562-8 to Defendant's Preliminary Invalidity Contentions; such references are in the same field of art, and discuss various techniques and improvements that would have been known to yield predictable results when applied to the technology claimed in the '562 patent, and a person of ordinary skill therefore would have been motivated to so combine them in view of the disclosures therein.

[1] The excerpts cited herein are exemplary. For any claim limitation, Defendant may rely on excerpts cited for any other limitation and/or additional excerpts not set forth fully herein to the extent necessary to provide a more comprehensive explanation for a reference's disclosure of a limitation. Where an excerpt refers to or discusses a figure or figure items, that figure and any additional descriptions of that figure should be understood to be incorporated by reference as if set forth fully therein.

Skechers U.S.A. v. Nike, Inc.
IPR2025-00150
Patent No. 9,060,562
Ex. 2009

It is also Defendant's contention that one of ordinary skill in the art would find such limitation obvious for at least one or more of the following reasons: (1) the combination would unite old elements with no change in their respective function; (2) the combination would have been a predictable variation of a work in the same or a different field of endeavor; (3) the modification would have used a known technique to improve a similar device in the same way; (4) the modification was a known problem for which there was an obvious solution; (5) the modification would have been "obvious to try"; (6) the modification was known work in one field of endeavor that would have prompted variations of it for use in either the same or different field based on design incentives or other market forces; (7) there was an explicit teaching, suggestion, or motivation in the prior art for the modification.

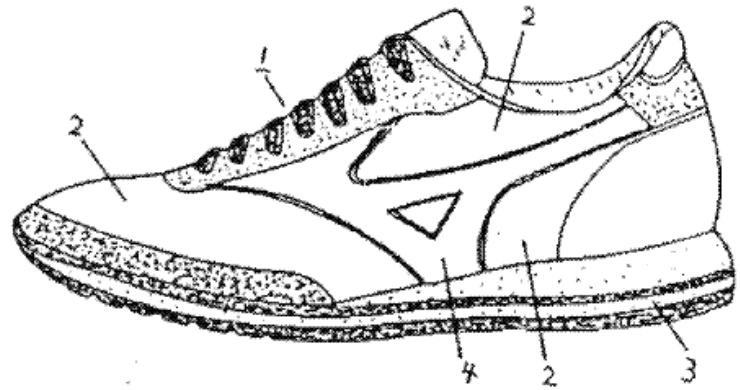
Except where specifically noted otherwise, this chart applies the apparent constructions of claim terms as used by Plaintiff in its Apparent Infringement Contentions;[2] such use, however, does not imply that Defendant adopts or agrees with Plaintiff's constructions in any way.

[2] Defendant notes that Nike did not serve infringement contentions on the date agreed to by the parties, namely, March 22, 2024. Defendant reserves all rights in light of this omission. In this document, Defendant responds to the purported infringement contentions appended to Nike's interrogatory responses served on March 1, 2024.

# PRIOR ART CLAIM CHART FOR U.S. PATENT NO. 9,060,562

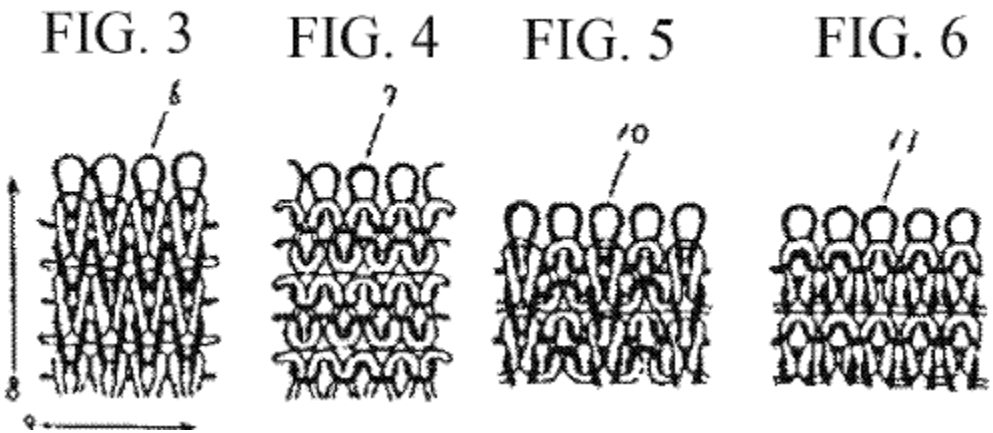
| ’562 Claims | Exemplary Citations to Japanese Pub. No. H3-3203 (Horii) |
|---|---|
| **1[pre].** A method of manufacturing a knitted component for an article of footwear, the method comprising: | To the extent that the preamble is considered limiting, Horii teaches (explicitly, implicitly, and inherently) and also renders obvious a method of manufacturing a knitted component for an article of footwear.<br><br>For example, see the following illustrative citation(s):<br><br>“What is claimed is:<br><br>1 A shoe using a fabric of a weft knit or a fabric of a multilayer structural knit of a circular knit as an upper member.<br><br>2 The shoe of claim 1, wherein an entirety of an upper is constituted by a single upper member of a weft knit or a circular knit.”<br><br>Horii, at 1.<br><br>“That is, it is a shoe whose characteristic feature is using a weft-knit fabric formed by a flat knitting machine or a fabric of a multilayer structural knit of a circular knit formed by a circular knitting machine as an upper member. It can also be a shoe wherein an upper member is constituted by a single fabric that is, for example, this circular knit of a fabric of a multilayer structural knit.”<br><br>Horii, at 4.<br><br>“In addition, it can also be a shoe whose upper is constituted by a single, circularly knit upper member of a multilayer structural knit. |

| | |
|---|---|
| | This enables characteristic features of the circularly knit fabric to be used to their full potential.<br><br>That is, in circular knitting, knit-fabric amounts can be manufactured at minimally necessary lot sizes. As such, unlike conventional taffeta, an uneconomical aspect of one lot being a large quantity such that fabric loss in high-mix low-volume production is high can be improved.<br><br>Moreover, in terms of, for example, the circularly knit fabric, knitting a tubular knit fabric of a necessary thickness and upper-portion length and cutting a portion of this tubular knit fabric can form a single piece of fabric of a necessary size. As such, as above, using the weft-knit or circularly knit fabric of the present invention is advantageous in high-mix low-volume production."<br><br>Horii, at 5.<br><br>"As illustrated in FIG. 1, a working example is a shoe 1 whose characteristic feature is using a fabric of a multilayer structural knit of a weft knit or a circular knit as an upper member 2.<br><br>"This can also be a shoe 1 whose characteristic feature is that an entirety of an upper is constituted by a single upper member 2 of a weft knit or a circular knit."<br><br>Horii, at 6.<br><br>"The present invention is a shoe whose upper member is constituted by a fabric of a circular knit or the like of a multilayer structural knit formed by a knitting machine such as a circular knitting machine."<br><br>Horii, at 9. |

| | |
|---|---|
| | FIG. 1<br>  <br> |
| **1[a].** knitting a portion of the knitted component defining an upper with a knitting machine, | Horii discloses (explicitly, implicitly, and inherently) knitting a portion of the knitted component defining an upper with a knitting machine:<br><br>For example, see the following illustrative citation(s):<br><br>"That is, it is a shoe whose characteristic feature is using a weft-knit fabric formed by a flat knitting machine or a fabric of a multilayer structural knit of a circular knit formed by a circular knitting machine as an upper member. It can also be a shoe wherein an upper member is constituted by a single fabric that is, for example, this circular knit of a fabric of a multilayer structural knit.<br><br>…<br><br>The present invention is a shoe using a weft-knit fabric formed by a flat knitting machine or a fabric of a multilayer structural knit of a circular knit formed by a circular knitting machine as an upper member."<br><br>Horii, at 4. |

| | |
|---|---|
| | "Working examples of the present invention are described based on drawings. As illustrated in FIG. 1, a working example is a shoe 1 whose characteristic feature is using a fabric of a multilayer structural knit of a weft knit or a circular knit as an upper member 2.<br><br>This can also be a shoe 1 whose characteristic feature is that an entirety of an upper is constituted by a single upper member 2 of a weft knit."<br><br>Horii, at 6.<br><br>"Moreover, using the upper member of the present invention enables small-lot production of high-mix low-volume products such as shoes. As such, knit fabrics of various knits can be used, and upper members of various colors can be prepared. This significantly improves freedom of design for the shoes per se compared to what is conventionally the case."<br><br>Horii, at 6.<br><br>"Moreover, as illustrated in FIG. 3 and FIG. 4, among weft knits, what is referred to as a plain stitch-this being in the form of a fabric 6 of knit stitches or a fabric 7 of purl stitches-can be used as the upper member 2. As such, a design of the shoe per se can be changed.<br><br>Note that to provide a heavy knit fabric, using a thick yam to form a wale 8, which is a vertical series of stitches, and a course 9, which is a horizontal series of stitches, enables an upper member 2 having more favorable cushioning to be made.<br><br>Furthermore, as illustrated in FIG. 5, using a rib-stitch fabric 10 can provide a well- fitting shoe that does not feel tight even to people having wide feet.<br><br>Moreover, as illustrated in FIG. 6, using a purl-stitch fabric 11 as the upper member can increase vertical-direction stretching. This is suitable for people having a high instep.<br><br>In addition, though not illustrated, using a tuck-stich upper member can produce a pattern or bumpiness. As such, a shoe that is also interesting in terms of design can be supplied. Moreover, an upper member of a float stitch, which forms a floating yam; a lace stitch, which forms openwork; a pile stitch, which forms a looped pile; or the like can be selected and used as appropriate. This further improves freedom of design for the shoe. A shoe having an |

| | |
|---|---|
| | interior member of a pile stitch affixed to an interior wall of the shoe is conventionally well-known. However, in the present invention, the upper member is constituted by only a fabric of a pile stitch. As such, a favorable breathability not found in a conventional shoe and cushioning from the thick pile fabric further improve comfort during wear.<br><br>Note that as one example of a material of the upper member of the present invention, to provide both strength and sweat absorbency, it is preferable to use a nylon or polyester water-absorbing material in both a surface and a reverse face and to use a nylon or polyester high-tenacity yam as a thread."<br><br>Horii, at 7-8.<br><br>"Moreover, using the upper member of the present invention enables small-lot production."<br><br>Horii, at 10.<br><br>"As such, appropriately combining and selecting between a weft knit and a circular knit enables upper members of various patterns and colors to be prepared. Accordingly, an effect is exhibited wherein a freedom of design of the shoe per se is significantly improved compared what is conventionally the case."<br><br>Horii, at 10. |



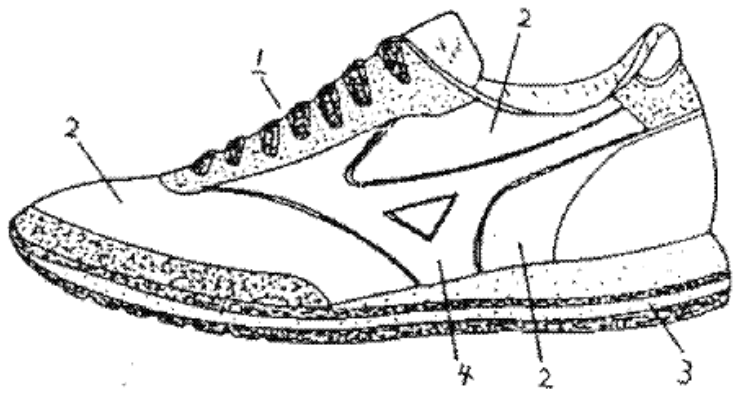

Horii, at Figs. 3-6, and associated text.

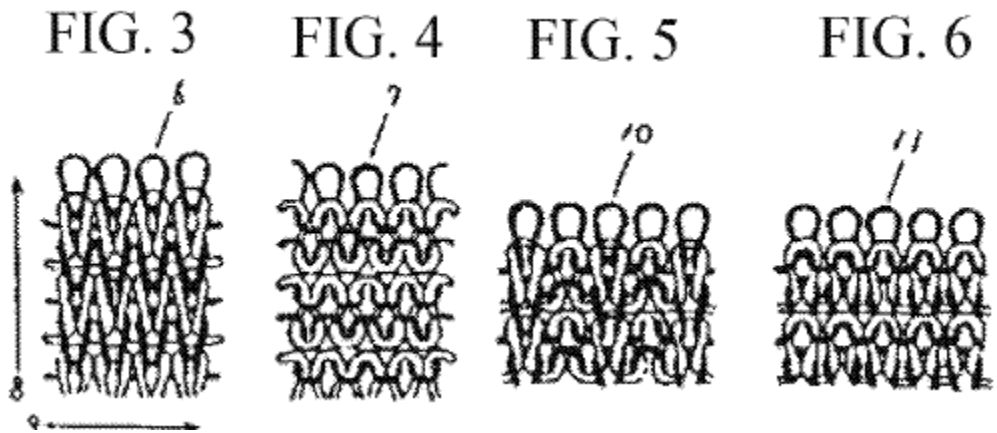
In addition, to the extent Nike contends that Horii does not disclose this claim element, it would have been obvious to a person of ordinary skill in the art ("POSITA") to modify Horii, such as by combining with the general knowledge and/or the teachings of the numerous prior art references that disclose this limitation, including, e.g., U.S. Patent No.s 8,490,299 (Dua '299), to arrive at this claim element. For instance, Dua '299 teaches knitting shoe uppers using flat knitting machines is advantageous:

7:36-51: "Although one or more yarns may be mechanically-manipulated by an individual to form knitted component 40 (i.e., knitted component 40 may be formed by hand), flat-knitting machines may provide an efficient manner of forming relatively large numbers of knitted component 40. The flat-knitting machines may also be utilized to vary the dimensions of knitted component 40 to form uppers 30 that are suitable for footwear with different sizes based on one or both of the length and width of a foot. Additionally, the flat-knitting machines may be utilized to vary the configuration of knitted component 40 to form uppers 30 that are suitable for both left and right feet. Various aspects of knitted component 40 may also be varied to provide a custom fit for individuals. Accordingly, the use of mechanical flat-knitting machines may provide an efficient manner of forming multiple knitted component 40 having different sizes and configurations."

| | |
|---|---|
| | A POSITA would have been motivated to combine these references for this limitation, because they are in the same field, they are aimed at solving the same perceived problems in the art, and the nature of the problem to be solved was the same. Known design incentives and market forces would have also motivated a POSITA to combine these references. Furthermore, a POSITA would understand that this limitation was a standard implementation and an obvious design choice. Such an implementation simply reflects one of a finite number of well-known techniques implemented in a predictable manner, to achieve well-known, predictable results. |
| **1[b].** the upper including a portion of at least one of an exterior surface of the knitted component and an opposite interior surface of the knitted component; and | Horii discloses (explicitly, implicitly, and inherently) an upper including a portion of at least one of an exterior surface of the knitted component and an opposite interior surface of the knitted component.<br><br>For example, see the following illustrative citation(s):<br><br>"That is, it is a shoe whose characteristic feature is using a weft-knit fabric formed by a flat knitting machine or a fabric of a multilayer structural knit of a circular knit formed by a circular knitting machine as an upper member. It can also be a shoe wherein an upper member is constituted by a single fabric that is, for example, this circular knit of a fabric of a multilayer structural knit.<br><br>…<br><br>The present invention is a shoe using a weft-knit fabric formed by a flat knitting machine or a<br><br>fabric of a multilayer structural knit of a circular knit formed by a circular knitting machine as an upper member."<br><br>Horii, at 4.<br><br>"Working examples of the present invention are described based on drawings. As illustrated in FIG. 1, a working example is a shoe 1 whose characteristic feature is using a fabric of a multilayer structural knit of a weft knit or a circular knit as an upper member 2. |

| | |
|---|---|
| | This can also be a shoe 1 whose characteristic feature is that an entirety of an upper is constituted by a single upper member 2 of a weft knit."<br><br>Horii, at 6.<br><br>"Moreover, using the upper member of the present invention enables small-lot production of high-mix low-volume products such as shoes. As such, knit fabrics of various knits can be used, and upper members of various colors can be prepared. This significantly improves freedom of design for the shoes per se compared to what is conventionally the case."<br><br>Horii, at 6.<br><br>"Moreover, as illustrated in FIG. 3 and FIG. 4, among weft knits, what is referred to as a plain stitch-this being in the form of a fabric 6 of knit stitches or a fabric 7 of purl stitches-can be used as the upper member 2. As such, a design of the shoe per se can be changed.<br><br>Note that to provide a heavy knit fabric, using a thick yam to form a wale 8, which is a vertical series of stitches, and a course 9, which is a horizontal series of stitches, enables an upper member 2 having more favorable cushioning to be made.<br><br>Furthermore, as illustrated in FIG. 5, using a rib-stitch fabric 10 can provide a well- fitting shoe that does not feel tight even to people having wide feet.<br><br>Moreover, as illustrated in FIG. 6, using a purl-stitch fabric 11 as the upper member can increase vertical-direction stretching. This is suitable for people having a high instep.<br><br>In addition, though not illustrated, using a tuck-stich upper member can produce a pattern or bumpiness. As such, a shoe that is also interesting in terms of design can be supplied. Moreover, an upper member of a float stitch, which forms a floating yam; a lace stitch, which forms openwork; a pile stitch, which forms a looped pile; or the like can be selected and used as appropriate. This further improves freedom of design for the shoe. A shoe having an interior member of a pile stitch affixed to an interior wall of the shoe is conventionally well-known. However, in the present invention, the upper member is constituted by only a fabric |

| | |
|---|---|
| | of a pile stitch. As such, a favorable breathability not found in a conventional shoe and cushioning from the thick pile fabric further improve comfort during wear.<br><br>Note that as one example of a material of the upper member of the present invention, to provide both strength and sweat absorbency, it is preferable to use a nylon or polyester water-absorbing material in both a surface and a reverse face and to use a nylon or polyester high-tenacity yam as a thread."<br><br>Horii, at 7-8.<br><br>"Moreover, using the upper member of the present invention enables small-lot production."<br><br>Horii, at 10.<br><br>"As such, appropriately combining and selecting between a weft knit and a circular knit enables upper members of various patterns and colors to be prepared. Accordingly, an effect is exhibited wherein a freedom of design of the shoe per se is significantly improved compared what is conventionally the case."<br><br>Horii, at 10.<br><br>FIG. 1<br>  |




Horii, at Figs. 2-6, and associated text.

In addition, to the extent Nike contends that Horii does not disclose this claim element, the claim element would have been obvious to a POSITA to modify Horii, such as by combining with the general knowledge and/or the teachings of the numerous prior art references that disclose this limitation, including, e.g., Dua '299, to arrive at this claim element. For example, Dua '299 discloses that a knitted upper includes at least one of an exterior surface and an opposite interior surface.

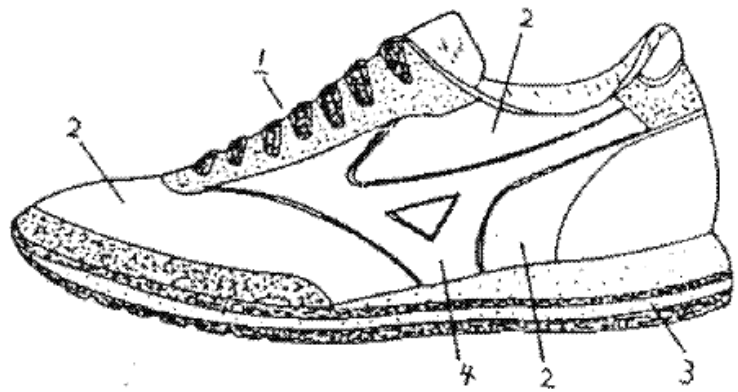
3:58-60: "In addition, knitted component 40 forms both an interior surface and an opposite exterior surface of upper 30."

9:39-40: "Knitted component 40 forms both an interior surface and an opposite exterior surface of upper 30."

A POSITA would have been motivated to combine these references for this limitation, because they are in the same field, they are aimed at solving the same perceived problems in the art, and the nature of the problem to be solved was the same. Known design incentives and market forces would have also motivated a POSITA to combine these references. Furthermore, a POSITA would understand that this limitation was a standard implementation and an obvious design choice. Such an

| | |
|---|---|
| | implementation simply reflects one of a finite number of well-known techniques implemented in a predictable manner, to achieve well-known, predictable results. |
| **1[c].** knitting an integral knit tongue that is of unitary knit construction with the upper with the knitting machine, the integral knit tongue extending through a throat area of the knitted component; and<br>wherein the integral knit tongue is joined by knitting with the knitting machine to: (1) a forward portion of the throat area, and (2) at least along a portion of both of a lateral side and a medial side of the throat area of the knitted component extending through a portion of a length of the throat area in a longitudinal direction from the forward portion to an ankle opening of the upper. | Horii discloses (explicitly, implicitly, and inherently) knitting an integral knit tongue that is of unitary knit construction with the upper with the knitting machine, the integral knit tongue extending through a throat area of the knitted component, wherein the integral knit tongue is joined by knitting with the knitting machine to: (1) a forward portion of the throat area, and (2) at least along a portion of both of a lateral side and a medial side of the throat area of the knitted component extending through a portion of a length of the throat area in a longitudinal direction from the forward portion to an ankle opening of the upper.<br><br>For example, see the following illustrative citation(s):<br><br>"What is claimed is:<br><br>1 A shoe using a fabric of a weft knit or a fabric of a multilayer structural knit of a circular knit as an upper member.<br><br>2 The shoe of claim 1, wherein an entirety of an upper is constituted by a single upper member of a weft knit or a circular knit."<br><br>Horii, at 1.<br><br>"That is, it is a shoe whose characteristic feature is using a weft-knit fabric formed by a flat knitting machine or a fabric of a multilayer structural knit of a circular knit formed by a circular knitting machine as an upper member. It can also be a shoe wherein an upper member is constituted by a single fabric that is, for example, this circular knit of a fabric of a multilayer structural knit."<br><br>Horii, at 4. |

| | |
|---|---|
| | "In addition, it can also be a shoe whose upper is constituted by a single, circularly knit upper member of a multilayer structural knit.<br><br>This enables characteristic features of the circularly knit fabric to be used to their full potential.<br><br>That is, in circular knitting, knit-fabric amounts can be manufactured at minimally necessary lot sizes. As such, unlike conventional taffeta, an uneconomical aspect of one lot being a large quantity such that fabric loss in high-mix low-volume production is high can be improved.<br><br>Moreover, in terms of, for example, the circularly knit fabric, knitting a tubular knit fabric of a necessary thickness and upper-portion length and cutting a portion of this tubular knit fabric can form a single piece of fabric of a necessary size. As such, as above, using the weft-knit or circularly knit fabric of the present invention is advantageous in high-mix low-volume production."<br><br>Horii, at 5.<br><br>"As illustrated in FIG. 1, a working example is a shoe 1 whose characteristic feature is using a fabric of a multilayer structural knit of a weft knit or a circular knit as an upper member 2.<br><br>"This can also be a shoe 1 whose characteristic feature is that an entirety of an upper is constituted by a single upper member 2 of a weft knit or a circular knit."<br><br>Horii, at 6.<br><br>"The present invention is a shoe whose upper member is constituted by a fabric of a circular knit or the like of a multilayer structural knit formed by a knitting machine such as a circular knitting machine."<br><br>Horii, at 9. |

| | |
|---|---|
| | "In addition, in the upper member of the present invention, a fabric of a weft knit or a single fabric of a circular knit of a multilayer structural knit can be used as the upper member."<br><br>Horii at 9-10.<br><br>FIG. 1<br>  <br><br><br>In addition, to the extent Nike contends that Horii does not disclose this claim element, it would have been obvious to a POSITA to modify Horii, such as by combining with the general knowledge and/or the teachings of the numerous prior art references that disclose this limitation, including, *e.g.*, Dua '299, U.S. Patent App. Pub. Nos. 2010/0077634 ("Bell"), and 2012/0233884 ("Greene"), to arrive at this claim element.<br><br>For instance, Dua '299 teaches knitting shoe uppers with an integral tongue using flat knitting machines is advantageous, thereby motivating a POSITA to knit Horii's upper including an integral knit tongue using knitting machine.<br><br>7:36-51: "Although one or more yarns may be mechanically-manipulated by an individual to form knitted component 40 (i.e., knitted component 40 may be formed by hand), flat-knitting machines may provide an efficient manner of forming relatively large numbers of knitted component 40. The |

| | |
|---|---|
| | flat-knitting machines may also be utilized to vary the dimensions of knitted component 40 to form uppers 30 that are suitable for footwear with different sizes based on one or both of the length and width of a foot. Additionally, the flat-knitting machines may be utilized to vary the configuration of knitted component 40 to form uppers 30 that are suitable for both left and right feet. Various aspects of knitted component 40 may also be varied to provide a custom fit for individuals. Accordingly, the use of mechanical flat-knitting machines may provide an efficient manner of forming multiple knitted component 40 having different sizes and configurations."<br><br>10:41-43: "The flat knitting process may also be utilized to form other elements, such as tongue 33, of unitary knit construction."<br><br>Moreover, Bell teaches knitting an integral knit tongue by joining the integral knit tongue to "(1) a forward portion of the throat area, and (2) at least along a portion of both of a lateral side and a medial side of the throat area of the knitted component extending through a portion of a length of the throat area in a longitudinal direction from the forward portion to an ankle opening of the upper."<br><br>[0056]: "FIG. 3 illustrates one example of an upper member 200 that may be produced in accordance with this invention. In this example structure, the upper member 200 constitutes a single piece that includes: a medial side and lace eyelet section 212, a lateral side and lace eyelet section 214, a toe portion 216, a rear heel portion 218, and footbed portions 220 and 222. Although not shown in FIG. 2 or 3, the upper construction may additionally include a tongue member, e.g., integrally formed as part of the one piece upper member 200 (e.g., extending from one of the eyelet sections 212 or 214 or from the toe portion 216), or separately formed (from the same upper material blank 202 or from a different blank or even a different upper material). The upper member 200 may be shaped and stitched in the necessary places (optionally along with a tongue part, as mentioned above) to provide a final upper construction. As one example in the illustrated upper member 200, edge 224 may be engaged with edge 226 when forming the upper construction. Various examples of seam formation features of the invention will be described in more detail below."<br><br>[0088]: "… Alternatively, if desired, a tongue member 1020 may be integrally formed as part of the upper member construction. As best illustrated in FIG. 10C, in this example structure 1000, the tongue member 1020 is integrally formed with at least a portion of the medial side 1030 of the upper construction. Specifically, the tongue member 1020 integrally extends from the medial side eyelet area 1018, and it is joined to the upper structure along seam 1008. In order to allow a conventional |

shoe lace to be engaged with the upper 1002, the medial side eyelet area 1018 includes two eyelet holes 1032 at each lace engagement location ( one in which the free end of the lace enters and one in which the free end of the lace exits), whereas the lateral side eyelet area 1016 includes a single eyelet hole 1032 at each lace engagement location. Alternatively, if desired, the tongue member 1020 could be integrally formed from the lateral side 1034 of the article of footwear 1000 or from the toe portion 1036 of the article of footwear 1000."

Figures 10B-10C and associated text:

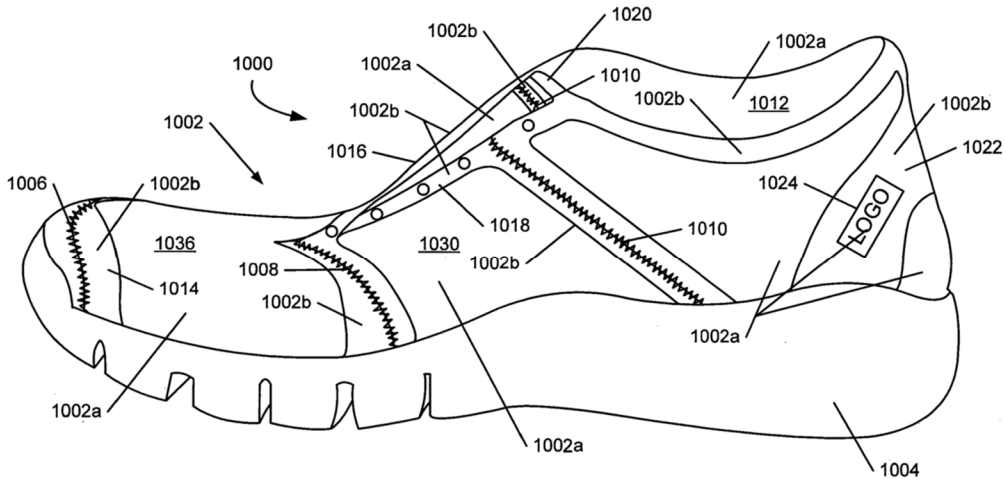



FIG. 10B

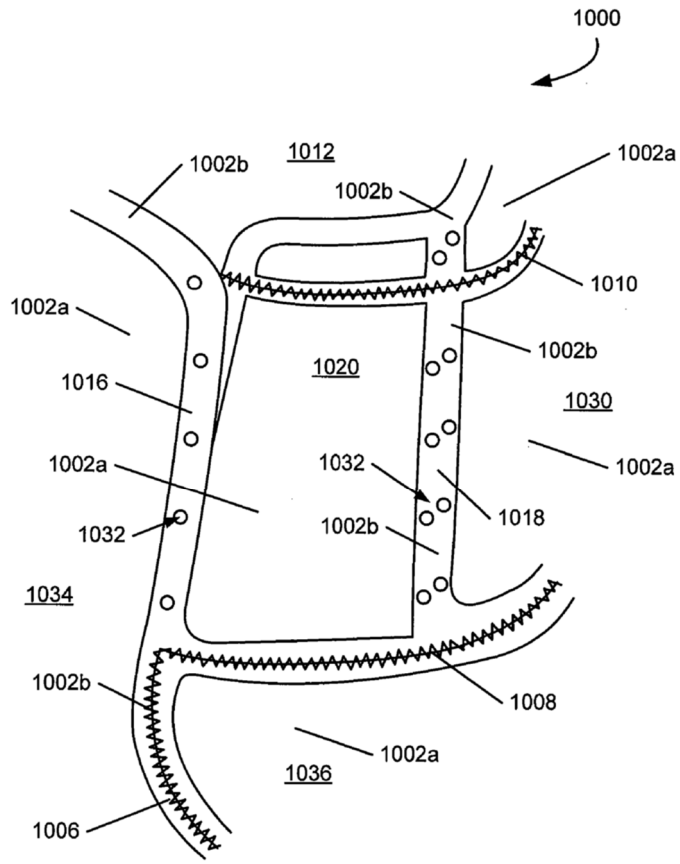



FIG. 10C

Greene also discloses knitting an integral knit tongue of unitary knit construction using a knitting machine and how the tongue is joined to the upper.

[0059]: "Whereas many conventional footwear tongues have a sheath formed from multiple textile elements or other material elements that are joined through stitching or bonding, for example, sheath

| | |
|---|---|
| | 41 is formed as a one-piece element through a knitting process, such as circular knitting or flat knitting. More particularly, sheath **41** is generally formed of unitary knit construction through the knitting process. As utilized herein, a knitted component such as sheath **41** is defined as being formed of '"unitary knit construction' when constructed as a one-piece knit element that is substantially free of additional stitching or bonding processes. That is, the knittingprocess substantially forms the various features and structures of sheath **41** without the need for significant additional manufacturing steps or processes. In some configurations, sheath **41** remains formed of unitary knit construction when first end **45** or second end **46** are closed through stitching or bonding in order to seal core **42** within sheath **41,** or when areas are trimmed following the knitting process. Additionally, sheath **41** remains formed of unitary knit construction when other minor elements (e.g., logos, trademarks, lace loops, care instruction and material placards) are added to tongue element **40** following the knitting process."<br><br>[0061]: "Tongue element 40 provides various advantages over conventional footwear tongues. For example, tongue element 40 enhances footwear comfort by incorporating few seams or other discontinuities in areas that contact the foot. As another example, tongue element 40 includes relatively few material elements. As discussed in the Background section above, by decreasing the number of material elements utilized in the upper, waste may be decreased while increasing the manufacturing efficiency and recyclability of the upper. To further enhance efficiency, forming sheath 41 through a knitting process limits the number of cutting operations or other processes that generally generate waste material, while allowing the creation of contours that are relatively difficult with stitch and turn methods."<br><br>[0064]: "… That is, knitting machines may be programmed to mechanically-manipulate the yam to form stitches that combine to impart any of the various shapes discussed above, as well as a variety of other shapes."<br><br>[0075]: "Circular knitting machines and flat knitting machines may be utilized to form an individual sheath 41. In order to enhance manufacturing efficiency, knitting machines may also be utilized to form a series of joined sheaths 41, as depicted in FIGS. 12A and 12B. That is, the knitting machines may form a single component that includes a plurality of sheaths 41…."<br><br>[0103]: "… For example, as depicted in FIGS. 32-34, tongue element 40 of upper 30 is secured to knitted component 36, which may be configured as set forth in U.S. patent application Ser. No. |

| | |
|---|---|
| | 12/338,726 to Dua, filed Dec. 18, 2008, which is herein incorporated by reference. Tongue element 40 may be secured to knitted component 36 by stitching 37. As a further example, as depicted in FIGS. 35-37, tongue element 140 of upper 30 is secured by stitching 37 to knitted component 36, which may be configured as set forth in U.S. patent application Ser. No. 13/048,514 to Huffa et al., filed Mar. 15, 2011, which is herein incorporated by reference."<br><br>Figure 34 and associated text: |

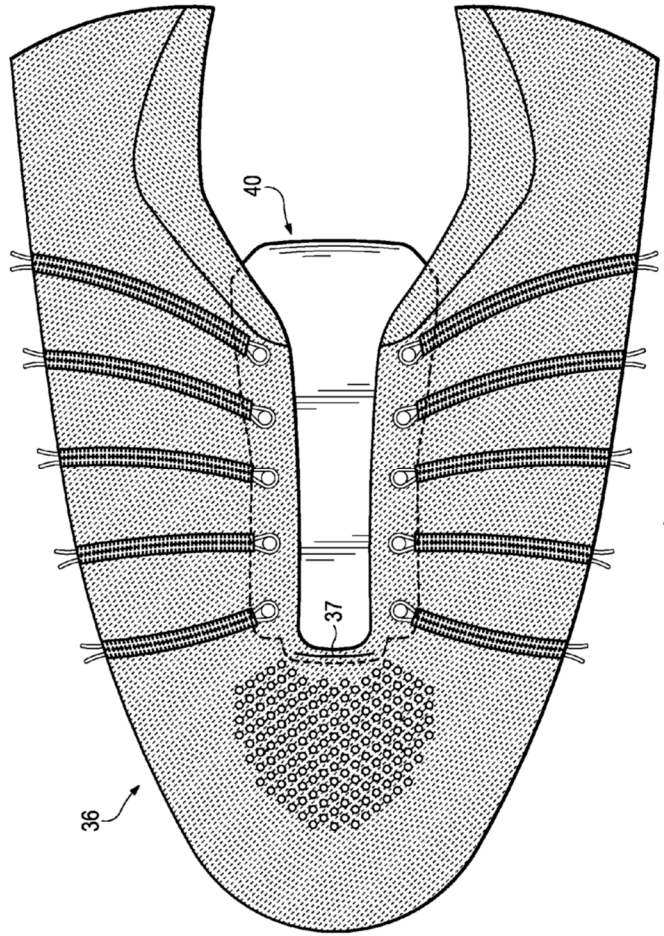


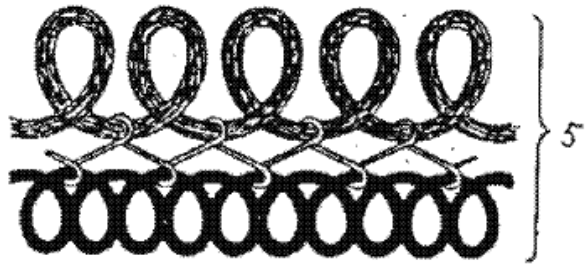
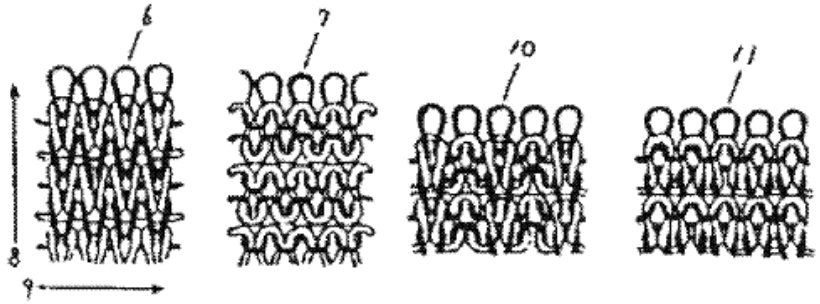

Figure 34

A POSITA would have been motivated to combine these references for this limitation, because they are in the same field, they are aimed at solving the same perceived problems in the art, and the nature of the problem to be solved was the same. Known design incentives and market forces would have also motivated a POSITA to combine these references. Furthermore, a POSITA would understand that this limitation was a standard implementation and an obvious design choice. Such an

| | |
|---|---|
| | implementation simply reflects one of a finite number of well-known techniques implemented in a predictable manner, to achieve well-known, predictable results. |
| **2.** The method recited in claim 1, further including a step of selecting the knitting machine to be a flat knitting machine. | As set forth above, Horii discloses (explicitly, implicitly, and inherently) and also renders obvious all of the elements of claim 1.<br><br>In addition, Horii discloses (explicitly, implicitly, and inherently) a step of selecting the knitting machine to be a flat knitting machine.<br><br>For example, see the following illustrative citation(s):<br><br>"That is, it is a shoe whose characteristic feature is using a weft-knit fabric formed by a flat knitting machine or a fabric of a multilayer structural knit of a circular knit formed by a circular knitting machine as an upper member." Horii at 4.<br><br>"The present invention is a shoe using a weft-knit fabric formed by a flat knitting machine or a fabric of a multilayer structural knit of a circular knit formed by a circular knitting machine as an upper member." Horii at 4.<br><br>To the extent Nike contends that Horii does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Horii, such as by combining with the general knowledge and/or the teachings of the numerous prior art references that disclose this limitation, including, *e.g.*, Dua '299, to arrive at this claim.<br><br>For instance, Dua '299 teaches knitting shoe uppers using flat knitting machines is advantageous, thereby motivating a POSITA to knit Horii's upper including an integral knit tongue using a flat knitting machine.<br><br>7:18-35: "An advantage to utilizing a flat knitting process to manufacture knitted component 40 is that each of the features discussed above may be imparted to knitted component 40 through the flat knitting process. That is, a flat knitting process may form knitted component 40 to have, for example, (a) various knit types that impart different properties to separate areas of upper 30, (b) various yam types that impart different properties to separate areas of upper 30, (c) knitted components with the configuration of overlapping knitted layers in tubes 42, (d) a material such as strand 43 that is laid into tubes 42, (e) knitted components with the configuration of overlapping knitted layers in collar 45, |

| | |
|---|---|
| | and (f) floating yarns between layers of knitted material in collar 45. Moreover, each of these features, as well as other features, may be incorporated into knitted component 40 through a single flat knitting process. As such, a flat knitting process may be utilized to substantially form upper 30 to have various properties and structural features that are advantageous to footwear 10."<br><br>7:36-51: "Although one or more yarns may be mechanically-manipulated by an individual to form knitted component 40 (i.e., knitted component 40 may be formed by hand), flat-knitting machines may provide an efficient manner of forming relatively large numbers of knitted component 40. The flat-knitting machines may also be utilized to vary the dimensions of knitted component 40 to form uppers 30 that are suitable for footwear with different sizes based on one or both of the length and width of a foot. Additionally, the flat-knitting machines may be utilized to vary the configuration of knitted component 40 to form uppers 30 that are suitable for both left and right feet. Various aspects of knitted component 40 may also be varied to provide a custom fit for individuals. Accordingly, the use of mechanical flat-knitting machines may provide an efficient manner of forming multiple knitted component 40 having different sizes and configurations."<br><br>10:41-43: "The flat knitting process may also be utilized to form other elements, such as tongue 33, of unitary knit construction."<br><br>A POSITA would have been motivated to combine these references for this limitation, because they are in the same field, they are aimed at solving the same perceived problems in the art, and the nature of the problem to be solved was the same. Known design incentives and market forces would have also motivated a POSITA to combine these references. Furthermore, a POSITA would understand that this limitation was a standard implementation and an obvious design choice. Such an implementation simply reflects one of a finite number of well-known techniques implemented in a predictable manner, to achieve well-known, predictable results. |
| **3.** The method recited in claim 1, wherein the step of knitting the integral knit tongue includes forming a course of the integral knit tongue to include at least one | As set forth above, Horii discloses (explicitly, implicitly, and inherently) and also renders obvious all of the elements of claim 1.<br><br>In addition, Horii discloses (explicitly, implicitly, and inherently) that the step of knitting the integral knit tongue includes forming a course of the integral knit tongue to include at least one common yarn with the upper. |

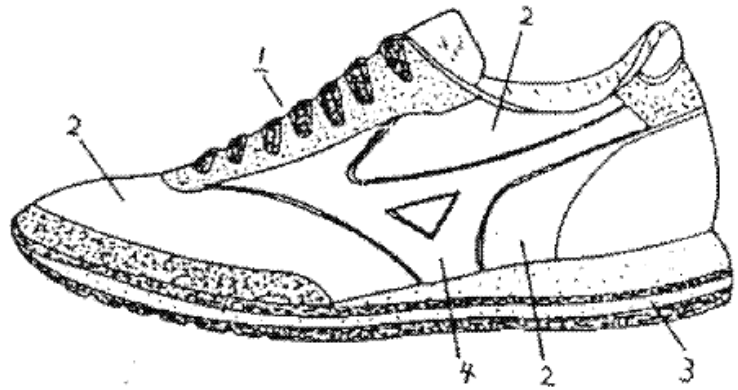
| | |
|---|---|
| common yarn with the upper. | For example, see the following illustrative citation(s):<br><br>"That is, it is a shoe whose characteristic feature is using a weft-knit fabric formed by a flat knitting machine or a fabric of a multilayer structural knit of a circular knit formed by a circular knitting machine as an upper member. It can also be a shoe wherein an upper member is constituted by a single fabric that is, for example, this circular knit of a fabric of a multilayer structural knit." Horii at 4.<br><br>"In addition, it can also be a shoe whose upper is constituted by a single, circularly knit upper member of a multilayer structural knit." Horii at 5.<br><br>"Moreover, in terms of, for example, the circularly knit fabric, knitting a tubular knit fabric of a necessary thickness and upper-portion length and cutting a portion of this tubular knit fabric can form a single piece of fabric of a necessary size." Horii at 5.<br><br>"Moreover, as illustrated in FIG. 3 and FIG. 4, among weft knits, what is referred to as a plain stitch-this being in the form of a fabric 6 of knit stitches or a fabric 7 of purl stitches-can be used as the upper member 2. As such, a design of the shoe per se can be changed. Note that to provide a heavy knit fabric, using a thick yarn to form a wale 8, which is a vertical series of stitches, and a course 9, which is a horizontal series of stitches, enables an upper member 2 having more favorable cushioning to be made." Horri at 7.<br><br>"As such, even a single piece of the fabric has an appropriate thickness and appropriate cushioning, and breathability is very favorable." Horii at 9. |

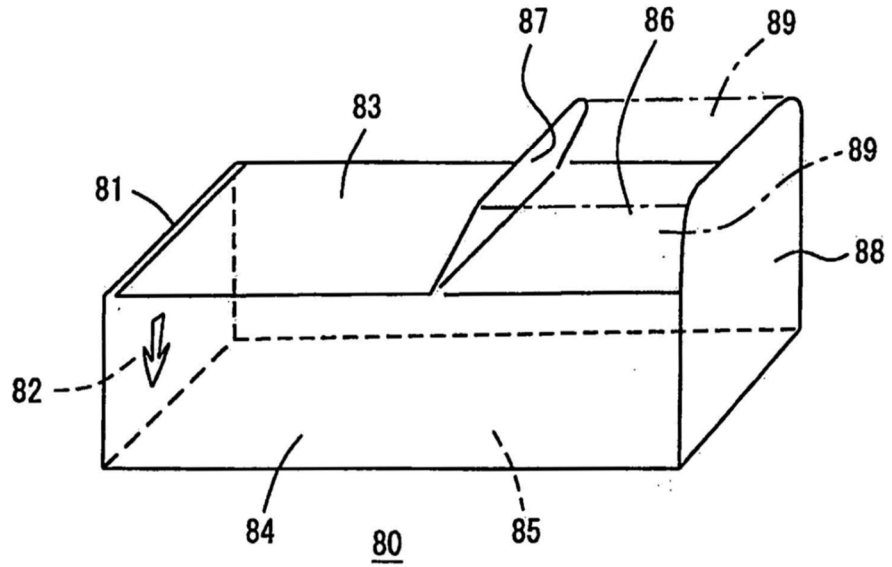
| | |
|---|---|
| | FIG. 2<br>  <br><br>FIG. 3 FIG. 4 FIG. 5 FIG. 6<br>  <br><br>Figs. 2-6 and associated text.<br><br>To the extent Nike contends that Horii does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Horii, such as by combining with the general knowledge and/or the teachings of the numerous prior art references that disclose this limitation, including, *e.g.*, U.S. Patent No. 5,345,638 (Nishida) and Greene, to arrive at this claim. For instance, Nishida teaches knitting a shoe tongue including at least one common yarn with the upper. |

| | |
|---|---|
| | 5:34-36: "Preferably, in each case, related tongues 40 are produced simultaneously with a layout 2 on same web of material 1."<br><br>5:37-40: "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."<br><br>Greene discloses the benefits of having an integral knit tongue that includes at least one common yarn with the upper, thereby motivating a POSITA to modify Horii to include this feature.<br><br>[0104]: "Moreover, a knit structure incorporated into an area of knitted component 36 may be substantially the same as a knit structure incorporated into tongue element 40 or tongue element 140, and a type of yarn incorporated into an area of knitted component 36 may be substantially the same as a type of yarn incorporated into tongue element 40 or tongue element 140. Utilizing common knit structures and types of yarn in knitted component 36 and either of tongue elements 40 and 140 provides an advantage of imparting uniform aesthetics, tactile properties, or both to various regions and the major components of upper 30. Accordingly, an area of knitted component 36 and an area of tongue element 40 or tongue element 140 may share one or more properties, such as color, softness, biodegradability, durability, abrasion resistance, strength, denier, loft, an aesthetic property, a stretch property, a recovery property, an insulating property, a hydrophobic property, or a thermobonding property, for example."<br><br>A POSITA would have been motivated to combine these references for this limitation, because they are in the same field, they are aimed at solving the same perceived problems in the art, and the nature of the problem to be solved was the same. Known design incentives and market forces would have also motivated a POSITA to combine these references. Furthermore, a POSITA would understand that this limitation was a standard implementation and an obvious design choice. Such an implementation simply reflects one of a finite number of well-known techniques implemented in a predictable manner, to achieve well-known, predictable results. |
| **4.** The method recited in claim 1, wherein the step of joining the integral knit tongue by knitting includes forming a | As set forth above, Horii discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 1. |

| | |
|---|---|
| course with the knitting machine that joins the integral knit tongue to the upper. | In addition, Horii discloses (explicitly, implicitly, and inherently) that the step of joining the integral knit tongue by knitting includes forming a course with the knitting machine that joins the integral knit tongue to the upper.<br><br>For example, see the following illustrative citation(s):<br><br>"What is claimed is:<br><br>1 A shoe using a fabric of a weft knit or a fabric of a multilayer structural knit of a circular knit as an upper member.<br><br>2 The shoe of claim 1, wherein an entirety of an upper is constituted by a single upper member of a weft knit or a circular knit."<br><br>Horii, at 1.<br><br>"That is, it is a shoe whose characteristic feature is using a weft-knit fabric formed by a flat knitting machine or a fabric of a multilayer structural knit of a circular knit formed by a circular knitting machine as an upper member. It can also be a shoe wherein an upper member is constituted by a single fabric that is, for example, this circular knit of a fabric of a multilayer structural knit."<br><br>Horii, at 4.<br><br>"In addition, it can also be a shoe whose upper is constituted by a single, circularly knit upper member of a multilayer structural knit.<br><br>This enables characteristic features of the circularly knit fabric to be used to their full potential. |

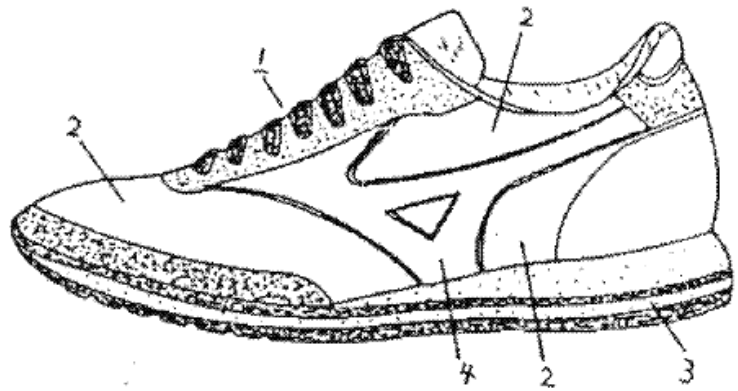
| | |
|---|---|
| | That is, in circular knitting, knit-fabric amounts can be manufactured at minimally necessary lot sizes. As such, unlike conventional taffeta, an uneconomical aspect of one lot being a large quantity such that fabric loss in high-mix low-volume production is high can be improved.<br><br>Moreover, in terms of, for example, the circularly knit fabric, knitting a tubular knit fabric of a necessary thickness and upper-portion length and cutting a portion of this tubular knit fabric can form a single piece of fabric of a necessary size. As such, as above, using the weft-knit or circularly knit fabric of the present invention is advantageous in high-mix low-volume production."<br><br>Horii, at 5.<br><br>"As illustrated in FIG. 1, a working example is a shoe 1 whose characteristic feature is using a fabric of a multilayer structural knit of a weft knit or a circular knit as an upper member 2.<br><br>"This can also be a shoe 1 whose characteristic feature is that an entirety of an upper is constituted by a single upper member 2 of a weft knit or a circular knit."<br><br>Horii, at 6.<br><br>"The present invention is a shoe whose upper member is constituted by a fabric of a circular knit or the like of a multilayer structural knit formed by a knitting machine such as a circular knitting machine."<br><br>Horii, at 9.<br><br>"In addition, in the upper member of the present invention, a fabric of a weft knit or a single fabric of a circular knit of a multilayer structural knit can be used as the upper member."<br><br>Horii at 9-10. |

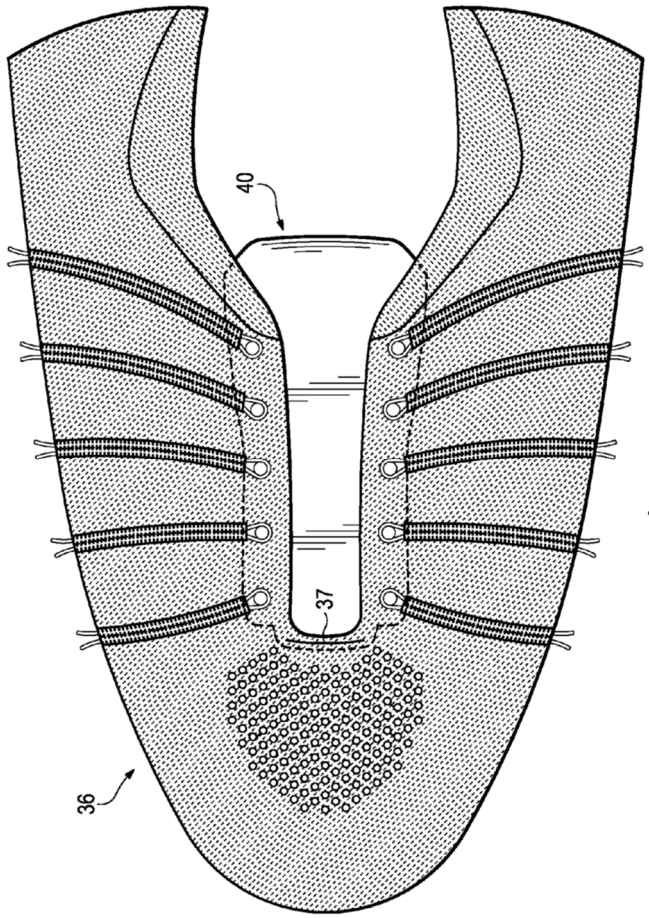
| | |
|---|---|
| | FIG. 1<br>  <br><br>In addition, to the extent Nike contends that Horii does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Horii, such as by combining with the general knowledge and/or the teachings of the numerous prior art references that disclose this limitation, including, e.g., U.S. Patent No. 9,675,134 ("Kosui"), EP2149629A1 ("Okamoto"), to arrive at this claim.<br><br>For example, Okamoto teaches that the step of joining the integral knit tongue by knitting includes forming a course with the knitting machine that joins the integral knit tongue to the upper.<br><br>[0031]: "Figs. 8 to 12 show a specific application example of the three-dimensional article, wherein the white arrow in each diagram indicates the direction of knitting. Fig. 8 shows seamlessly knitted footwear 80. Reference numeral 81 represents a stitch start line. For example, a bottom face 82 is knitted on the toe side, and then side faces 83 to 86 are knitted into cylinders. A surface 87 and other three surfaces are knitted individually in the middle of the cylinders. A surface 85 is knitted to have more stitch courses than surfaces 84, 86, to knit a heel 88, and then the surface 85 is joined with the surfaces 84, 86, whereby the footwear 80 is obtained. In Fig. 8, the toe side is provided with the stitch start line 81 and the bottom face 82, but the surface 85, for example, may be knitted as the bottom face." |

| | |
|---|---|
| | Figure 8 and associated text:<br><br>FIG. 8<br><br>  <br><br><br>*See generally* Kosui; *see also* Stoll Trend Collection 2002, 12, 22, 24 (showing a tongue structure having a common course with the rest of the knit fabric).<br><br>A POSITA would have been motivated to combine these references for this limitation, because they are in the same field, they are aimed at solving the same perceived problems in the art, and the nature of the problem to be solved was the same. Known design incentives and market forces would have also motivated a POSITA to combine these references. Furthermore, a POSITA would understand |

| | |
|---|---|
| | that this limitation was a standard implementation and an obvious design choice. Such an implementation simply reflects one of a finite number of well-known techniques implemented in a predictable manner, to achieve well-known, predictable results. |
| **5.** The method recited in claim 1, wherein the integral knit tongue comprises a partially integral portion and a free portion, the method further comprising:<br>knitting the partially integral portion with the knitting machine of unitary knit construction with the upper at the forward portion of the throat area and at least along the portion of both of the lateral side and the medial side of the throat area of the knitted component extending through the portion of the length of the throat area in the longitudinal direction; and<br>knitting the free portion with the knitting machines of unitary knit construction with the partially integral portion at a rearward portion of the integral knit tongue | As set forth above, Horii discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 1.<br><br>In addition, Horii discloses (explicitly, implicitly, and inherently) that the integral knit tongue comprises a partially integral portion and a free portion, and that the method further comprising knitting the partially integral portion with the knitting machine of unitary knit construction with the upper at the forward portion of the throat area and at least along the portion of both of the lateral side and the medial side of the throat area of the knitted component extending through the portion of the length of the throat area in the longitudinal direction; and knitting the free portion with the knitting machines of unitary knit construction with the partially integral portion at a rearward portion of the integral knit tongue and remaining unattached to the remaining portions of the knitted component.<br><br>For example, see the following illustrative citation(s):<br><br>"That is, it is a shoe whose characteristic feature is using a weft-knit fabric formed by a flat knitting machine or a fabric of a multilayer structural knit of a circular knit formed by a circular knitting machine as an upper member."<br><br>Horri at 4.<br><br>"Moreover, the multilayer structural knit can form an appropriate thickness that provides a sense of volume."<br><br>Horri at 4.<br><br>"In addition, it can also be a shoe whose upper is constituted by a single, circularly knit upper member of a multilayer structural knit. |

| | |
|---|---|
| and remaining unattached to the remaining portions of the knitted component. | This enables characteristic features of the circularly knit fabric to be used to their full potential.<br><br>That is, in circular knitting, knit-fabric amounts can be manufactured at minimally necessary lot sizes. As such, unlike conventional taffeta, an uneconomical aspect of one lot being a large quantity such that fabric loss in high-mix low-volume production is high can be improved.<br><br>Moreover, in terms of, for example, the circularly knit fabric, knitting a tubular knit fabric of a necessary thickness and upper-portion length and cutting a portion of this tubular knit fabric can form a single piece of fabric of a necessary size. As such, as above, using the weft-knit or circularly knit fabric of the present invention is advantageous in high-mix low-volume production."<br><br>Horii, at 5.<br><br>"As illustrated in FIG. 1, a working example is a shoe l whose characteristic feature is using a fabric of a multilayer structural knit of a weft knit or a circular knit as an upper member 2.<br>This can also be a shoe 1 whose characteristic feature is that an entirety of an upper is constituted by a single upper member 2 of a weft knit or a circular knit.<br>Moreover, adopting the configuration of the multilayer structural knit 5 in FIG. 2 can supply an upper member 2 whose thickness is comparatively easy to form and whose breathability and cushioning are also favorable."<br><br>Horri at 6-7.<br><br>"FIG. 1 is a perspective view illustrating one working example of a shoe of the present invention, FIG. 2 is a schematic view illustrating a multilayer structural knit of a circular knit of the present invention, FIGS. 3 to 6 are plan views illustrating working examples of other knit fabrics of an upper member of the present invention, and FIGS. 7 and 8 are perspective views illustrating conventionally well-known upper members. |

| | |
|---|---|
| | 1: Shoe, 2: Upper member, 3: Sole, 4.: Line member, 5: Multilayer structural knit, 6: Fabric of knit stitches, 7: Fabric of purl stitches, 8: Wale, 9: Course, 10: Rib-stitch fabric, 11: Purl-stitch fabric, 12: Taffeta fabric, 13: Sponge, 14: Upper member."<br><br>Horii at 11.<br><br>FIG. 1<br>  <br><br><br>To the extent that Nike contend that Horii does not disclose this claim, a POSITA would have been motivated before the earliest priority date to modify Horii, such as by combining with the general knowledge and/or the teachings of the numerous prior art references, including, e.g., Greene, to arrive at this claim. For example, Greene teaches knitting an integral knit tongue with a partially integral portion and a free portion.<br><br>[0056]: "Tongue element 40 is centrally-located in a throat area of upper 30 and extends from forefoot region 11 to heel region 13, as well as from lateral side 14 to medial side 15. Side areas of tongue element 40 are positioned adjacent to and in contact with the areas of layer 32 that form lace apertures 34, and a central area of tongue element 40 is in contact with lace 33 and may be exposed between areas of lace 33 that cross each other. In forefoot region 11, tongue element 40 is joined to layers 31 and 32, but a remainder of tongue element 40 is generally free or unsecured to other areas of |

| | |
|---|---|
| | upper 30. In heel region 13, tongue element 40 may protrude from the ankle opening formed by collar element 50."<br><br>Figure 34 and associated text:<br><br>  <br><br>Figure 34<br><br>Figure 37 and associated text: |

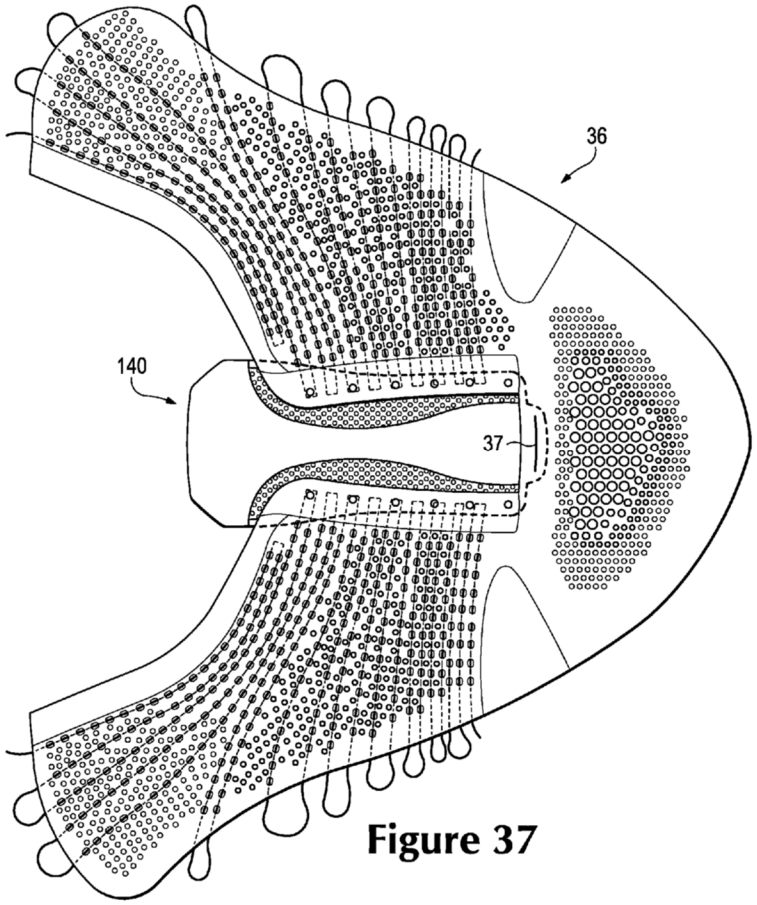
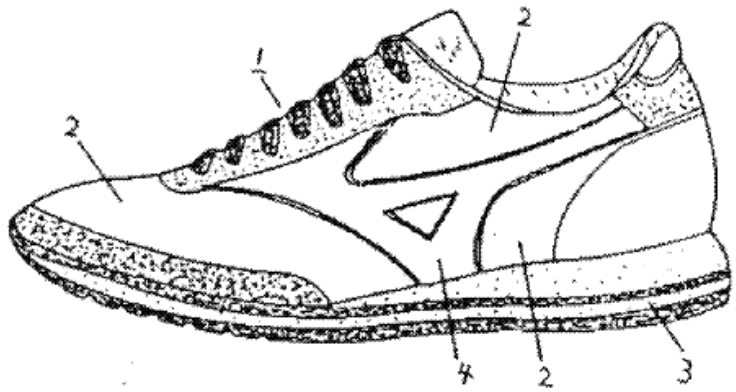



Figure 37

A POSITA would have been motivated to combine these references for this limitation, because they are in the same field, they are aimed at solving the same perceived problems in the art, and the nature of the problem to be solved was the same. Known design incentives and market forces would have also motivated a POSITA to combine these references. Furthermore, a POSITA would understand that this limitation was a standard implementation and an obvious design choice. Such an

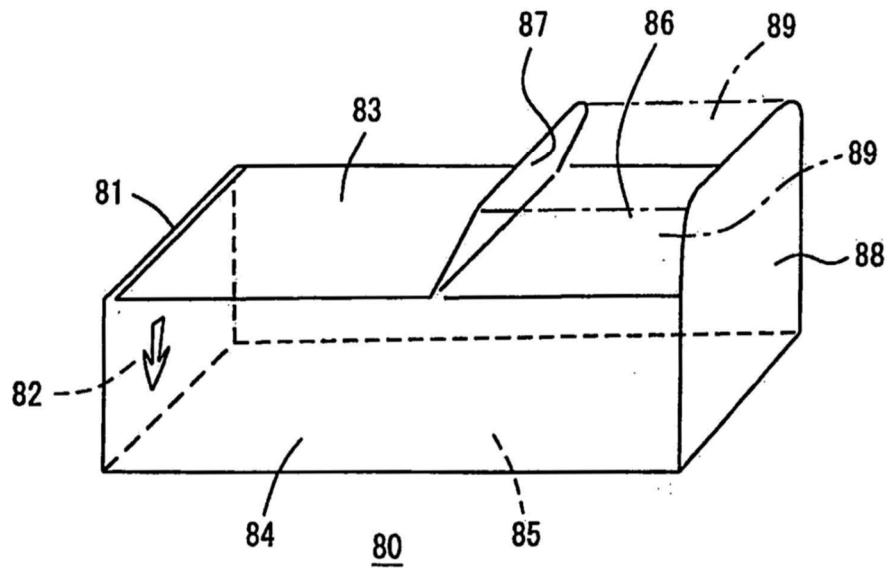
| | |
|---|---|
| | implementation simply reflects one of a finite number of well-known techniques implemented in a predictable manner, to achieve well-known, predictable results.<br><br>Moreover, applying Nike's apparent infringement theory, it would have been obvious to a POSITA to knit the partially integral portion with the knitting machine of unitary knit construction with the upper at the forward portion of the throat area and at least along the portion of both of the lateral side and the medial side of the throat area of the knitted component extending through the portion of the length of the throat area in the longitudinal direction and knit the free portion with the knitting machines of unitary knit construction with the partially integral portion at a rearward portion of the integral knit tongue and remaining unattached to the remaining portions of the knitted component. A POSITA would understand that this limitation was a standard implementation and an obvious design choice. Such an implementation simply reflects one of a finite number of well-known techniques implemented in a predictable manner, to achieve well-known, predictable results. |
| **6.** The method recited in claim 5, wherein the step of knitting the free portion further comprises:<br>knitting the free portion of the integral knit tongue with the knitting machine;<br>holding the free portion on needles of the knitting machine;<br>knitting a first portion of the upper with the knitting machine while the free portion is held on the needles, the first portion of the upper including at least the | As set forth above, Horii discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 5.<br><br>In addition, Horii discloses (explicitly, implicitly, and inherently) that the step of knitting the free portion further comprises knitting the free portion of the integral knit tongue with the knitting machine, holding the free portion on needles of the knitting machine, knitting a first portion of the upper with the knitting machine while the free portion is held on the needles, the first portion of the upper including at least the rearward portion of the integral knit tongue, joining the free portion to the integral knit tongue at the rearward portion, and knitting a second portion of the upper with the knitting machines.<br><br>For example, see the following illustrative citation(s):<br><br>"That is, it is a shoe whose characteristic feature is using a weft-knit fabric formed by a flat knitting machine or a fabric of a multilayer structural knit of a circular knit formed by a circular knitting machine as an upper member."<br><br>Horri at 4. |

| | |
|---|---|
| rearward portion of the integral knit tongue;<br>joining the free portion to the integral knit tongue at the rearward portion; and<br>knitting a second portion of the upper with the knitting machine. | "Moreover, the multilayer structural knit can form an appropriate thickness that provides a sense of volume."<br><br>Horri at 4.<br><br>"In addition, it can also be a shoe whose upper is constituted by a single, circularly knit upper member of a multilayer structural knit.<br><br>This enables characteristic features of the circularly knit fabric to be used to their full potential.<br><br>That is, in circular knitting, knit-fabric amounts can be manufactured at minimally necessary lot sizes. As such, unlike conventional taffeta, an uneconomical aspect of one lot being a large quantity such that fabric loss in high-mix low-volume production is high can be improved.<br><br>Moreover, in terms of, for example, the circularly knit fabric, knitting a tubular knit fabric of a necessary thickness and upper-portion length and cutting a portion of this tubular knit fabric can form a single piece of fabric of a necessary size. As such, as above, using the weft-knit or circularly knit fabric of the present invention is advantageous in high-mix low-volume production."<br><br>Horii, at 5.<br><br>"As illustrated in FIG. 1, a working example is a shoe l whose characteristic feature is using a fabric of a multilayer structural knit of a weft knit or a circular knit as an upper member 2.<br>This can also be a shoe 1 whose characteristic feature is that an entirety of an upper is constituted by a single upper member 2 of a weft knit or a circular knit.<br>Moreover, adopting the configuration of the multilayer structural knit 5 in FIG. 2 can supply an upper member 2 whose thickness is comparatively easy to form and whose breathability and cushioning are also favorable." |

| | |
|---|---|
| | Horri at 6-7.<br><br>"FIG. 1 is a perspective view illustrating one working example of a shoe of the present invention, FIG. 2 is a schematic view illustrating a multilayer structural knit of a circular knit of the present invention, FIGS. 3 to 6 are plan views illustrating working examples of other knit fabrics of an upper member of the present invention, and FIGS. 7 and 8 are perspective views illustrating conventionally well-known upper members.<br><br>1: Shoe, 2: Upper member, 3: Sole, 4.: Line member, 5: Multilayer structural knit, 6: Fabric of knit stitches, 7: Fabric of purl stitches, 8: Wale, 9: Course, 10: Rib-stitch fabric, 11: Purl-stitch fabric, 12: Taffeta fabric, 13: Sponge, 14: Upper member."<br><br>Horii at 11.<br><br>FIG. 1<br>  <br><br><br>To the extent Nike contends that Horii does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Horii such that knitting the free portion of the integral knit tongue would include the recited steps of "knitting the free portion of the integral knit tongue with the knitting machine," "holding the free portion on needles of the knitting machine," "knitting a first |

| | |
|---|---|
| | portion of the upper with the knitting machine while the free portion is held on the needles, the first portion of the upper including at least the rearward portion of the integral knit tongue," "joining the free portion to the integral knit tongue at the rearward portion," and "knitting a second portion of the upper with the knitting machine," such as by combining with the general knowledge and/or the teachings of the numerous prior art references.<br><br>For example, Okamoto teaches that various surfaces (including the integral tongue) are knitted individually and then joined with other surfaces to form a knitted shoe upper:<br><br>[0031]: "Figs. 8 to 12 show a specific application example of the three-dimensional article, wherein the white arrow in each diagram indicates the direction of knitting. Fig. 8 shows seamlessly knitted footwear 80. Reference numeral 81 represents a stitch start line. For example, a bottom face 82 is knitted on the toe side, and then side faces 83 to 86 are knitted into cylinders. A surface 87 and other three surfaces are knitted individually in the middle of the cylinders. A surface 85 is knitted to have more stitch courses than surfaces 84, 86, to knit a heel 88, and then the surface 85 is joined with the surfaces 84, 86, whereby the footwear 80 is obtained. In Fig. 8, the toe side is provided with the stitch start line 81 and the bottom face 82, but the surface 85, for example, may be knitted as the bottom face."<br><br>Figure 8 and associated text: |

FIG. 8




Similarly, Nishida teaches that a tongue is formed separately before being joined to the rest of the upper.

Claim 8: "Process according to claim 1, further comprising the step applying a tongue to the layout by at least one of stitching, gluing and lasting."

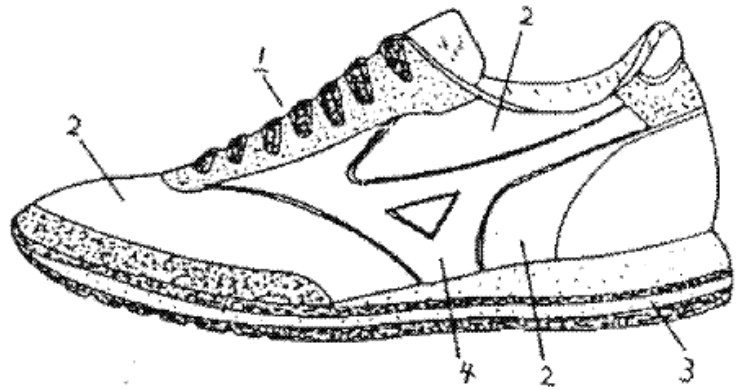
*See also* Greene:

| | |
|---|---|
| | [0056]: "Tongue element 40 is centrally-located in a throat area of upper 30 and extends from forefoot region 11 to heel region 13, as well as from lateral side 14 to medial side 15. Side areas of tongue element 40 are positioned adjacent to and in contact with the areas of layer 32 that form lace apertures 34, and a central area of tongue element 40 is in contact with lace 33 and may be exposed between areas of lace 33 that cross each other. In forefoot region 11, tongue element 40 is joined to layers 31 and 32, but a remainder of tongue element 40 is generally free or unsecured to other areas of upper 30. In heel region 13, tongue element 40 may protrude from the ankle opening formed by collar element 50."<br><br>Melliand International, Vol. 9, Sept. 2003:<br><br>p. 239: "The underlying knitting principle applied in the production of knit and wear articles is that of knitting with halved gauge, in which knitting takes place only on every second needle. As a result of the 1x1 needle selection, free needles remain in both needle beds which can be used for any optional transfer processes required for structural effects or narrowing operations."<br><br>David J. Spencer, Knitting Technology: A Comprehensive Handbook and Practical Guide (3rd ed., Technomic Publishing Co., Inc., 2003):<br><br>Section 16.4: "In addition to facilities for garment-length sequence knitting, weft knitting provides unique opportunities for width-wise shaping during knitting, with the sequence being initiated and co-ordinated from the same central control mechanism. The three methods of width shaping are: 1 varying the number of needles in action in the knitting width, 2 changing the knitting construction, and 3 altering the stitch length."<br><br>Section 16.4.1.: "Wale fashioning is the normal manner of shaping (symmetrically or asymmetrically) on straight bar frames (Figures 16.7 and 16.8). It involves the transfer of loops from one needle to another within the same needle bed, either transferring onto selvedge needles that are to start knitting (widening) or transferring from needles that are to cease knitting (narrowing)…."<br><br>A POSITA would have been motivated to combine these references for this limitation, because they are in the same field, they are aimed at solving the same perceived problems in the art, and the nature |

| | |
|---|---|
| | of the problem to be solved was the same. Known design incentives and market forces would have also motivated a POSITA to combine these references.<br><br>Moreover, applying Nike's apparent infringement theory, it would have been obvious to a POSITA to practice the recited steps to knit the free portion. A POSITA would understand that this limitation was a standard implementation and an obvious design choice. Such an implementation simply reflects one of a finite number of well-known techniques implemented in a predictable manner, to achieve well-known, predictable results. |
| **7.** The method recited in claim 6, wherein the step of knitting the first portion further comprises holding the free portion stationary with respect to a needle bed of the knitting machine during knitting of the first portion of the upper, and the first portion of the upper moving with respect to the free portion during knitting of the first portion of the upper;<br>wherein the step of joining the free portion includes forming a course with the knitting machine that joins the free portion to the integral knit tongue; and | As set forth above, Horii discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 6.<br><br>In addition, Horii discloses (explicitly, implicitly, and inherently) that the step of knitting the first portion further comprises holding the free portion stationary with respect to a needle bed of the knitting machine during knitting of the first portion of the upper, and the first portion of the upper moving with respect to the free portion during knitting of the first portion of the upper, wherein the step of joining the free portion includes forming a course with the knitting machine that joins the free portion to the integral knit tongue, and wherein the step of knitting the second portion further comprises moving the free portion and the upper together during knitting of the second portion of the upper.<br><br>For example, see the following illustrative citation(s):<br><br>"1 A shoe using a fabric of a weft knit or a fabric of a multilayer structural knit of a circular knit as an upper member.<br><br>2 The shoe of claim 1, wherein an entirety of an upper is constituted by a single upper member of a weft knit or a circular knit."<br><br>Horii, at 1.<br><br>"That is, it is a shoe whose characteristic feature is using a weft-knit fabric formed by a flat knitting machine or a fabric of a multilayer structural knit of a circular knit formed by a |

| | |
|---|---|
| wherein the step of knitting the second portion further comprises moving the free portion and the upper together during knitting of the second portion of the upper. | circular knitting machine as an upper member. It can also be a shoe wherein an upper member is constituted by a single fabric that is, for example, this circular knit of a fabric of a multilayer structural knit."<br><br>Horii, at 4.<br><br>"Moreover, the multilayer structural knit can form an appropriate thickness that provides a sense of volume."<br><br>Horri at 4.<br><br>"In addition, it can also be a shoe whose upper is constituted by a single, circularly knit upper member of a multilayer structural knit.<br><br>This enables characteristic features of the circularly knit fabric to be used to their full potential.<br><br>That is, in circular knitting, knit-fabric amounts can be manufactured at minimally necessary lot sizes. As such, unlike conventional taffeta, an uneconomical aspect of one lot being a large quantity such that fabric loss in high-mix low-volume production is high can be improved.<br><br>Moreover, in terms of, for example, the circularly knit fabric, knitting a tubular knit fabric of a necessary thickness and upper-portion length and cutting a portion of this tubular knit fabric can form a single piece of fabric of a necessary size. As such, as above, using the weft-knit or circularly knit fabric of the present invention is advantageous in high-mix low-volume production."<br><br>Horii, at 5.<br><br>"As illustrated in FIG. 1, a working example is a shoe l whose characteristic feature is using a fabric of a multilayer structural knit of a weft knit or a circular knit as an upper member 2. |

| | |
|---|---|
| | This can also be a shoe 1 whose characteristic feature is that an entirety of an upper is constituted by a single upper member 2 of a weft knit or a circular knit.<br>Moreover, adopting the configuration of the multilayer structural knit 5 in FIG. 2 can supply an upper member 2 whose thickness is comparatively easy to form and whose breathability and cushioning are also favorable."<br><br>Horri at 6-7.<br><br>"The present invention is a shoe whose upper member is constituted by a fabric of a circular knit or the like of a multilayer structural knit formed by a knitting machine such as a circular knitting machine."<br><br>Horii, at 9.<br><br>"FIG. 1 is a perspective view illustrating one working example of a shoe of the present invention, FIG. 2 is a schematic view illustrating a multilayer structural knit of a circular knit of the present invention, FIGS. 3 to 6 are plan views illustrating working examples of other knit fabrics of an upper member of the present invention, and FIGS. 7 and 8 are perspective views illustrating conventionally well-known upper members.<br><br>1: Shoe, 2: Upper member, 3: Sole, 4.: Line member, 5: Multilayer structural knit, 6: Fabric of knit stitches, 7: Fabric of purl stitches, 8: Wale, 9: Course, 10: Rib-stitch fabric, 11: Purl-stitch fabric, 12: Taffeta fabric, 13: Sponge, 14: Upper member."<br><br>Horii at 11. |

| | |
|---|---|
| | FIG. 1<br>  <br><br>Horii, Figure 1 and associated text.<br><br>To the extent Nike contends that Horii does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Horii such that knitting the first portion of the upper would include the recited steps of "holding the free portion stationary with respect to a needle bed of the knitting machine during knitting of the first portion of the upper, and the first portion of the upper moving with respect to the free portion during knitting of the first portion of the upper," joining the free portion by "forming a course with the knitting machine that joins the free portion to the integral knit tongue," "knitting the second portion [by] moving the free portion and the upper together during knitting of the second portion of the upper," such as by combining with the general knowledge and/or teachings in numerous prior art references, to arrive at this claim.<br><br>For example, Nishida teaches knitting a shoe tongue:<br><br>5:27-36: "Additionally, the tongue 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, |

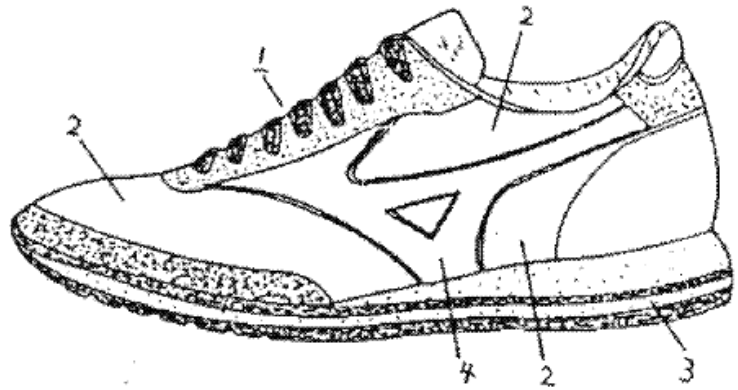
| | |
|---|---|
| | color or colors, patterns or the like. Preferably, in each case, related tongues 40 are produced simultaneously with a layout 2 on same web of material 1."<br><br>*See also* Greene:<br><br>[0056]: "Tongue element 40 is centrally-located in a throat area of upper 30 and extends from forefoot region 11 to heel region 13, as well as from lateral side 14 to medial side 15. Side areas of tongue element 40 are positioned adjacent to and in contact with the areas of layer 32 that form lace apertures 34, and a central area of tongue element 40 is in contact with lace 33 and may be exposed between areas of lace 33 that cross each other. In forefoot region 11, tongue element 40 is joined to layers 31 and 32, but a remainder of tongue element 40 is generally free or unsecured to other areas of upper 30. In heel region 13, tongue element 40 may protrude from the ankle opening formed by collar element 50."<br><br>Melliand International, Vol. 9, Sept. 2003:<br><br>p. 239: "The underlying knitting principle applied in the production of knit and wear articles is that of knitting with halved gauge, in which knitting takes place only on every second needle. As a result of the 1x1 needle selection, free needles remain in both needle beds which can be used for any optional transfer processes required for structural effects or narrowing operations."<br><br>David J. Spencer, Knitting Technology: A Comprehensive Handbook and Practical Guide (3rd ed., Technomic Publishing Co., Inc., 2003):<br><br>Section 16.4: "In addition to facilities for garment-length sequence knitting, weft knitting provides unique opportunities for width-wise shaping during knitting, with the sequence being initiated and co-ordinated from the same central control mechanism. The three methods of width shaping are: 1 **varying the number of needles in action in the knitting width**, 2 changing the knitting construction, and 3 altering the stitch length."<br><br>Section 16.4.1.: "Wale fashioning is the normal manner of shaping (symmetrically or asymmetrically) on straight bar frames (Figures 16.7 and 16.8). It involves the transfer of loops from one needle to |

| | |
|---|---|
| | another within the same needle bed, either transferring onto selvedge needles that are to start knitting (widening) or transferring from needles that are to cease knitting (narrowing)….”<br><br>A POSITA would have been motivated to combine these references for this limitation, because they are in the same field, they are aimed at solving the same perceived problems in the art, and the nature of the problem to be solved was the same. Known design incentives and market forces would have also motivated a POSITA to combine these references.<br><br>Moreover, applying Nike’s apparent infringement theory, it would have been obvious to a POSITA to practice the recited steps. A POSITA would understand that this limitation was a standard implementation and an obvious design choice. Such an implementation simply reflects one of a finite number of well-known techniques implemented in a predictable manner, to achieve well-known, predictable results. |
| **8[pre].** A method of manufacturing a knitted component for an article of footwear, the method comprising: | To the extent that the preamble is considered limiting, Horii discloses (explicitly, implicitly, and inherently) and also renders obvious a method of manufacturing a knitted component for an article of footwear.<br><br>*See supra* citations for Claim 1[pre]. |
| **8[a].** knitting a first portion of the knitted component defining an upper with a first feeder of a knitting machine, the upper including a portion of at least one of an exterior surface of the knitted component and an opposite interior surface of the knitted component; | Horii discloses (explicitly, implicitly, and inherently) knitting a first portion of the knitted component defining an upper with a first feeder of a knitting machine, the upper including a portion of at least one of an exterior surface of the knitted component and an opposite interior surface of the knitted component.<br><br>*See supra* discussions and citations in connection with Claim Elements 1[a] and 1[b]. |
| **8[b].** knitting a second portion of the knitted | Horii discloses (explicitly, implicitly, and inherently) knitting a second portion of the knitted component defining the upper with a second feeder of the knitting machine. |

| | |
|---|---|
| component defining the upper with a second feeder of the knitting machine; and | For example, see the following illustrative citation(s):<br><br>"That is, it is a shoe whose characteristic feature is using a weft-knit fabric formed by a flat knitting machine or a fabric of a multilayer structural knit of a circular knit formed by a circular knitting machine as an upper member."<br><br>Horri at 4.<br><br>"Moreover, the multilayer structural knit can form an appropriate thickness that provides a sense of volume."<br><br>Horri at 4.<br><br>"In addition, it can also be a shoe whose upper is constituted by a single, circularly knit upper member of a multilayer structural knit.<br><br>This enables characteristic features of the circularly knit fabric to be used to their full potential.<br><br>That is, in circular knitting, knit-fabric amounts can be manufactured at minimally necessary lot sizes. As such, unlike conventional taffeta, an uneconomical aspect of one lot being a large quantity such that fabric loss in high-mix low-volume production is high can be improved.<br><br>Moreover, in terms of, for example, the circularly knit fabric, knitting a tubular knit fabric of a necessary thickness and upper-portion length and cutting a portion of this tubular knit fabric can form a single piece of fabric of a necessary size. As such, as above, using the weft-knit or circularly knit fabric of the present invention is advantageous in high-mix low-volume production."<br><br>Horii, at 5. |

| | |
|---|---|
| | "As illustrated in FIG. 1, a working example is a shoe l whose characteristic feature is using a fabric of a multilayer structural knit of a weft knit or a circular knit as an upper member 2.<br>This can also be a shoe 1 whose characteristic feature is that an entirety of an upper is constituted by a single upper member 2 of a weft knit or a circular knit.<br>Moreover, adopting the configuration of the multilayer structural knit 5 in FIG. 2 can supply an upper member 2 whose thickness is comparatively easy to form and whose breathability and cushioning are also favorable."<br><br>Horri at 6-7.<br><br>"FIG. 1 is a perspective view illustrating one working example of a shoe of the present invention, FIG. 2 is a schematic view illustrating a multilayer structural knit of a circular knit of the present invention, FIGS. 3 to 6 are plan views illustrating working examples of other knit fabrics of an upper member of the present invention, and FIGS. 7 and 8 are perspective views illustrating conventionally well-known upper members.<br><br>1: Shoe, 2: Upper member, 3: Sole, 4.: Line member, 5: Multilayer structural knit, 6: Fabric of knit stitches, 7: Fabric of purl stitches, 8: Wale, 9: Course, 10: Rib-stitch fabric, 11: Purl-stitch fabric, 12: Taffeta fabric, 13: Sponge, 14: Upper member."<br><br>Horii at 11. |

FIG. 1




Horii, Figure 1 and associated text.

To the extent Nike contends that Horii does not disclose this claim element, applying Nike's apparent infringement theory, it would have been obvious to a POSITA to modify Horii, such as by combining with the general knowledge and/or the teachings of the numerous prior art references that disclose this limitation, including, e.g., Dua '299, to arrive at this claim element. For instance, Dua '299 teaches knitting shoe uppers using flat knitting machines:

7:38-40: "**flat-knitting machines** may provide an efficient manner of forming relatively large numbers of knitted component 40."

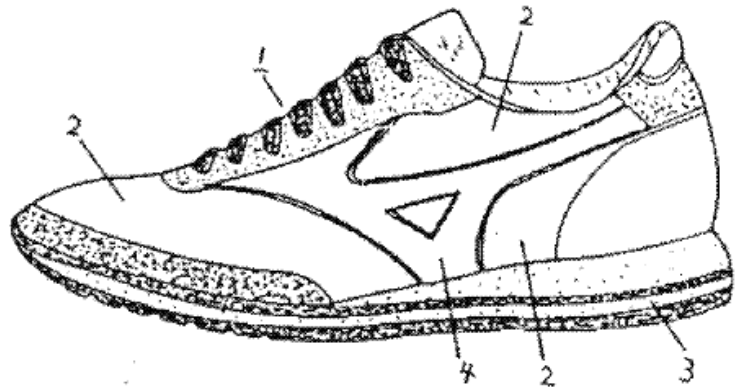
7:48-51: "Accordingly, the use of mechanical **flat-knitting machines** may provide an efficient manner of forming multiple knitted components 40 having different sizes and configurations."

Moreover, Huffa explains in great length how multiple feeders are used to knit a shoe upper. *See generally* Huffa.

A POSITA would have been motivated to combine these references for this limitation, because they are in the same field, they are aimed at solving the same perceived problems in the art, and the nature of the problem to be solved was the same. Known design incentives and market forces would have

| | |
|---|---|
| | also motivated a POSITA to combine these references. Furthermore, a POSITA would understand that this limitation was a standard implementation and an obvious design choice. Such an implementation simply reflects one of a finite number of well-known techniques implemented in a predictable manner, to achieve well-known, predictable results. |
| **8[c].** knitting an integral knit tongue that is of unitary knit construction with the upper with at least one of the first feeder and the second feeder of the knitting machine, the integral knit tongue extending through a throat area of the knitted component; and | Horii discloses (explicitly, implicitly, and inherently) knitting an integral knit tongue that is of unitary knit construction with the upper with at least one of the first feeder and the second feeder of the knitting machine, the integral knit tongue extending through a throat area of the knitted component.<br><br>For example, see the following illustrative citation(s):<br><br>"What is claimed is:<br><br>1 A shoe using a fabric of a weft knit or a fabric of a multilayer structural knit of a circular knit as an upper member.<br><br>2 The shoe of claim 1, wherein an entirety of an upper is constituted by a single upper member of a weft knit or a circular knit."<br><br>Horii, at 1.<br><br>"That is, it is a shoe whose characteristic feature is using a weft-knit fabric formed by a flat knitting machine or a fabric of a multilayer structural knit of a circular knit formed by a circular knitting machine as an upper member. It can also be a shoe wherein an upper member is constituted by a single fabric that is, for example, this circular knit of a fabric of a multilayer structural knit."<br><br>Horii, at 4.<br><br>"Moreover, the multilayer structural knit can form an appropriate thickness that provides a sense of volume." |

| | |
|---|---|
| | Horri at 4.<br><br>"In addition, it can also be a shoe whose upper is constituted by a single, circularly knit upper member of a multilayer structural knit.<br><br>This enables characteristic features of the circularly knit fabric to be used to their full potential.<br><br>That is, in circular knitting, knit-fabric amounts can be manufactured at minimally necessary lot sizes. As such, unlike conventional taffeta, an uneconomical aspect of one lot being a large quantity such that fabric loss in high-mix low-volume production is high can be improved.<br><br>Moreover, in terms of, for example, the circularly knit fabric, knitting a tubular knit fabric of a necessary thickness and upper-portion length and cutting a portion of this tubular knit fabric can form a single piece of fabric of a necessary size. As such, as above, using the weft-knit or circularly knit fabric of the present invention is advantageous in high-mix low-volume production."<br><br>Horii, at 5.<br><br>"As illustrated in FIG. 1, a working example is a shoe l whose characteristic feature is using a fabric of a multilayer structural knit of a weft knit or a circular knit as an upper member 2.<br>This can also be a shoe 1 whose characteristic feature is that an entirety of an upper is constituted by a single upper member 2 of a weft knit or a circular knit.<br>Moreover, adopting the configuration of the multilayer structural knit 5 in FIG. 2 can supply an upper member 2 whose thickness is comparatively easy to form and whose breathability and cushioning are also favorable."<br><br>Horri at 6-7. |

| | |
|---|---|
| | "FIG. 1 is a perspective view illustrating one working example of a shoe of the present invention, FIG. 2 is a schematic view illustrating a multilayer structural knit of a circular knit of the present invention, FIGS. 3 to 6 are plan views illustrating working examples of other knit fabrics of an upper member of the present invention, and FIGS. 7 and 8 are perspective views illustrating conventionally well-known upper members.<br><br>1: Shoe, 2: Upper member, 3: Sole, 4.: Line member, 5: Multilayer structural knit, 6: Fabric of knit stitches, 7: Fabric of purl stitches, 8: Wale, 9: Course, 10: Rib-stitch fabric, 11: Purl-stitch fabric, 12: Taffeta fabric, 13: Sponge, 14: Upper member."<br><br>Horii at 11.<br><br>FIG. 1<br>  <br><br><br>Horii, Figure 1 and associated text.<br><br>In addition, to the extent Horii does not disclose this claim element, it would have been obvious to a POSITA to modify Horii, such as by combining with the general knowledge and/or the teachings of the numerous prior art references that disclose this limitation, including, e.g., Dua '299 and Huffa, to arrive at this claim element. For instance, Dua '299 teaches knitting shoe uppers using flat knitting machines: |

| | |
|---|---|
| | 7:38-40: "**flat-knitting machines** may provide an efficient manner of forming relatively large numbers of knitted component 40."<br><br>7:48-51: "Accordingly, the use of mechanical **flat-knitting machines** may provide an efficient manner of forming multiple knitted components 40 having different sizes and configurations."<br><br>Moreover, Huffa explains in great length how multiple feeders are used to knit a shoe upper. *See generally* Huffa. It would have been obvious to a POSITA to use two feeders to knit an upper with an integral knit tongue.<br><br>A POSITA would have been motivated to combine these references for this limitation, because they are in the same field, they are aimed at solving the same perceived problems in the art, and the nature of the problem to be solved was the same. Known design incentives and market forces would have also motivated a POSITA to combine these references. Furthermore, a POSITA would understand that this limitation was a standard implementation and an obvious design choice. Such an implementation simply reflects one of a finite number of well-known techniques implemented in a predictable manner, to achieve well-known, predictable results.<br><br>*See also supra* discussions and citations in connection with Claim Element 1[c]. |
| **8[d].** wherein the integral knit tongue is joined by knitting with the knitting machine to: (1) a forward portion of the throat area, and (2) at least along a portion of both of a lateral side and a medial side of the throat area of the knitted component extending through a portion of a length of the throat area in a longitudinal | Horii discloses (explicitly, implicitly, and inherently) joining the integral knit tongue with the knitting machine to: (1) a forward portion of the throat area, and (2) at least along a portion of both of a lateral side and a medial side of the throat area of the knitted component extending through a portion of a length of the throat area in a longitudinal direction from the forward portion to an ankle opening of the upper.<br><br>*See supra* discussions and citations in connection with Claim Elements 1[c] and 1[d]. |

| | |
|---|---|
| direction from the forward portion to an ankle opening of the upper. | |
| **9.** The method recited in claim 8, wherein the step of knitting the first portion further comprises:<br>knitting the exterior surface of the first portion of the upper with the first feeder;<br>knitting the opposite interior surface of the first portion of the upper with the first feeder; and<br>knitting at least a portion of the integral knit tongue with the first feeder. | As set forth above, Horii discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 8.<br><br>In addition, Horii discloses (explicitly, implicitly, and inherently) that the step of knitting the first portion further comprises knitting the exterior surface of the first portion of the upper with the first feeder, knitting the opposite interior surface of the first portion of the upper with the first feeder, and knitting at least a portion of the integral knit tongue with the first feede..<br><br>For example, see the following illustrative citation(s):<br><br>"What is claimed is:<br><br>1 A shoe using a fabric of a weft knit or a fabric of a multilayer structural knit of a circular knit as an upper member.<br><br>2 The shoe of claim 1, wherein an entirety of an upper is constituted by a single upper member of a weft knit or a circular knit."<br><br>Horii, at 1.<br><br>"That is, it is a shoe whose characteristic feature is using a weft-knit fabric formed by a flat knitting machine or a fabric of a multilayer structural knit of a circular knit formed by a circular knitting machine as an upper member. It can also be a shoe wherein an upper member is constituted by a single fabric that is, for example, this circular knit of a fabric of a multilayer structural knit.<br><br>… |

| | |
|---|---|
| | The present invention is a shoe using a weft-knit fabric formed by a flat knitting machine or a fabric of a multilayer structural knit of a circular knit formed by a circular knitting machine as an upper member.<br><br>…<br><br>Moreover, the multilayer structural knit can form an appropriate thickness that provides a sense of volume."<br><br>Horii, at 4.<br><br>"Working examples of the present invention are described based on drawings. As illustrated in FIG. 1, a working example is a shoe 1 whose characteristic feature is using a fabric of a multilayer structural knit of a weft knit or a circular knit as an upper member 2.<br><br>This can also be a shoe 1 whose characteristic feature is that an entirety of an upper is constituted by a single upper member 2 of a weft knit."<br><br>Horii, at 6.<br><br>"Moreover, using the upper member of the present invention enables small-lot production of high-mix low-volume products such as shoes. As such, knit fabrics of various knits can be used, and upper members of various colors can be prepared. This significantly improves freedom of design for the shoes per se compared to what is conventionally the case."<br><br>Horii, at 6.<br><br>"Moreover, as illustrated in FIG. 3 and FIG. 4, among weft knits, what is referred to as a plain stitch-this being in the form of a fabric 6 of knit stitches or a fabric 7 of purl stitches-can be used as the upper member 2. As such, a design of the shoe per se can be changed.<br><br>Note that to provide a heavy knit fabric, using a thick yam to form a wale 8, which is a vertical series of stitches, and a course 9, which is a horizontal series of stitches, enables an upper member 2 having more favorable cushioning to be made. |

| | |
|---|---|
| | Furthermore, as illustrated in FIG. 5, using a rib-stitch fabric 10 can provide a well- fitting shoe that does not feel tight even to people having wide feet.<br><br>Moreover, as illustrated in FIG. 6, using a purl-stitch fabric 11 as the upper member can increase vertical-direction stretching. This is suitable for people having a high instep.<br><br>In addition, though not illustrated, using a tuck-stich upper member can produce a pattern or bumpiness. As such, a shoe that is also interesting in terms of design can be supplied. Moreover, an upper member of a float stitch, which forms a floating yam; a lace stitch, which forms openwork; a pile stitch, which forms a looped pile; or the like can be selected and used as appropriate. This further improves freedom of design for the shoe. A shoe having an interior member of a pile stitch affixed to an interior wall of the shoe is conventionally well-known. However, in the present invention, the upper member is constituted by only a fabric of a pile stitch. As such, a favorable breathability not found in a conventional shoe and cushioning from the thick pile fabric further improve comfort during wear.<br><br>Note that as one example of a material of the upper member of the present invention, to provide both strength and sweat absorbency, it is preferable to use a nylon or polyester water-absorbing material in both a surface and a reverse face and to use a nylon or polyester high-tenacity yam as a thread."<br><br>Horii, at 7-8.<br><br>"Moreover, using the upper member of the present invention enables small-lot production."<br><br>Horii, at 10.<br><br>"As such, appropriately combining and selecting between a weft knit and a circular knit enables upper members of various patterns and colors to be prepared. Accordingly, an effect is exhibited wherein a freedom of design of the shoe per se is significantly improved compared what is conventionally the case."<br><br>Horii, at 10. |

FIG. 1

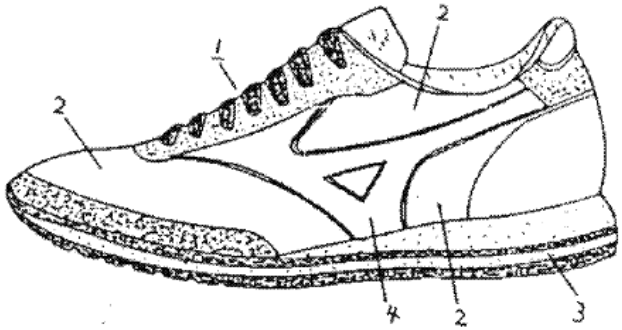



FIG. 2

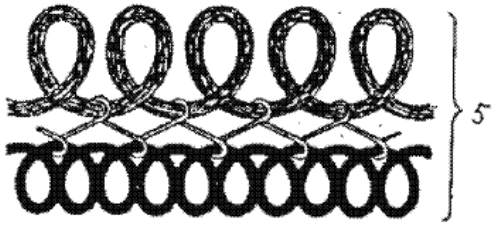
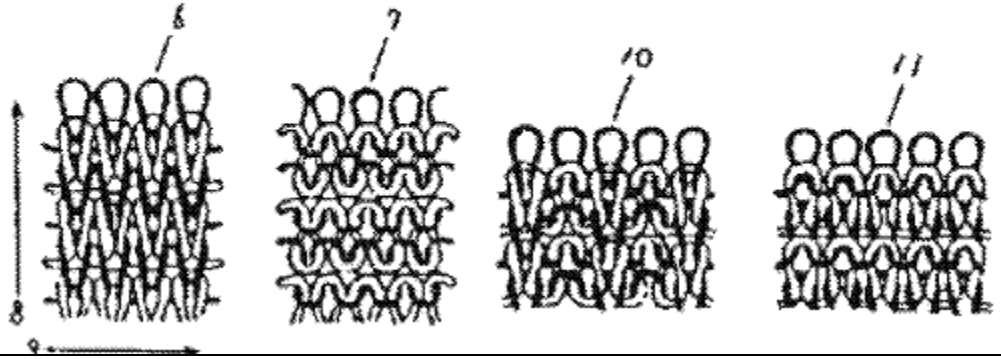



FIG. 3 FIG. 4 FIG. 5 FIG. 6



| | |
|---|---|
| | Horii, at Figs. 1-6, and associated text.<br><br>To the extent Nike contends that Horii does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Horii such that knitting the first portion of the upper would include the recited steps of "knitting the exterior surface of the first portion of the upper with the first feeder," "knitting the opposite interior surface of the first portion of the upper with the first feeder," and "knitting at least a portion of the integral knit tongue with the first feeder," such as by combining with the general knowledge and/or the teachings of the numerous prior art references, including, e.g., Huffa, to arrive at this claim.<br><br>A POSITA would have been motivated to combine these references for this limitation, because they are in the same field, they are aimed at solving the same perceived problems in the art, and the nature of the problem to be solved was the same. Known design incentives and market forces would have also motivated a POSITA to combine these references.<br><br>Moreover, applying Nike's apparent infringement theory, it would have been obvious to a POSITA to practice the recited steps. A POSITA would understand that this limitation was a standard implementation and an obvious design choice. Such an implementation simply reflects one of a finite number of well-known techniques implemented in a predictable manner, to achieve well-known, predictable results. |
| **10.** The method recited in claim 9, wherein the step of knitting the second portion further comprises:<br>knitting the exterior surface of the first portion of the upper with the second feeder;<br>knitting the opposite interior surface of the second portion of the | As set forth above, Horii discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 8.<br><br>In addition, Horii discloses (explicitly, implicitly, and inherently) that the step of knitting the second portion further comprises knitting the exterior surface of the first portion of the upper with the second feeder, knitting the opposite interior surface of the second portion of the upper with the second feeder, and knitting at least a portion of the integral knit tongue with the second feeder.<br><br>For example, see the following illustrative citation(s):<br><br>"What is claimed is:<br><br>1 A shoe using a fabric of a weft knit or a fabric of a multilayer structural knit of a circular knit as an upper member. |

| | |
|---|---|
| upper with the second feeder; and<br>knitting at least a portion of the integral knit tongue with the second feeder. | 2 The shoe of claim 1, wherein an entirety of an upper is constituted by a single upper member of a weft knit or a circular knit."<br><br>Horii, at 1.<br><br>"That is, it is a shoe whose characteristic feature is using a weft-knit fabric formed by a flat knitting machine or a fabric of a multilayer structural knit of a circular knit formed by a circular knitting machine as an upper member. It can also be a shoe wherein an upper member is constituted by a single fabric that is, for example, this circular knit of a fabric of a multilayer structural knit.<br><br>…<br><br>The present invention is a shoe using a weft-knit fabric formed by a flat knitting machine or a fabric of a multilayer structural knit of a circular knit formed by a circular knitting machine as an upper member.<br><br>…<br><br>Moreover, the multilayer structural knit can form an appropriate thickness that provides a sense of volume."<br><br>Horii, at 4.<br><br>"Working examples of the present invention are described based on drawings. As illustrated in FIG. 1, a working example is a shoe 1 whose characteristic feature is using a fabric of a multilayer structural knit of a weft knit or a circular knit as an upper member 2.<br><br>This can also be a shoe 1 whose characteristic feature is that an entirety of an upper is constituted by a single upper member 2 of a weft knit." |

| | |
|---|---|
| | Horii, at 6.<br><br>"Moreover, using the upper member of the present invention enables small-lot production of high-mix low-volume products such as shoes. As such, knit fabrics of various knits can be used, and upper members of various colors can be prepared. This significantly improves freedom of design for the shoes per se compared to what is conventionally the case."<br><br>Horii, at 6.<br><br>"Moreover, as illustrated in FIG. 3 and FIG. 4, among weft knits, what is referred to as a plain stitch-this being in the form of a fabric 6 of knit stitches or a fabric 7 of purl stitches-can be used as the upper member 2. As such, a design of the shoe per se can be changed.<br><br>Note that to provide a heavy knit fabric, using a thick yam to form a wale 8, which is a vertical series of stitches, and a course 9, which is a horizontal series of stitches, enables an upper member 2 having more favorable cushioning to be made.<br><br>Furthermore, as illustrated in FIG. 5, using a rib-stitch fabric 10 can provide a well- fitting shoe that does not feel tight even to people having wide feet.<br><br>Moreover, as illustrated in FIG. 6, using a purl-stitch fabric 11 as the upper member can increase vertical-direction stretching. This is suitable for people having a high instep.<br><br>In addition, though not illustrated, using a tuck-stich upper member can produce a pattern or bumpiness. As such, a shoe that is also interesting in terms of design can be supplied. Moreover, an upper member of a float stitch, which forms a floating yam; a lace stitch, which forms openwork; a pile stitch, which forms a looped pile; or the like can be selected and used as appropriate. This further improves freedom of design for the shoe. A shoe having an interior member of a pile stitch affixed to an interior wall of the shoe is conventionally well-known. However, in the present invention, the upper member is constituted by only a fabric of a pile stitch. As such, a favorable breathability not found in a conventional shoe and cushioning from the thick pile fabric further improve comfort during wear. |

| | |
|---|---|
| | Note that as one example of a material of the upper member of the present invention, to provide both strength and sweat absorbency, it is preferable to use a nylon or polyester water-absorbing material in both a surface and a reverse face and to use a nylon or polyester high-tenacity yam as a thread."<br><br>Horii, at 7-8.<br><br>"Moreover, using the upper member of the present invention enables small-lot production."<br><br>Horii, at 10.<br><br>"As such, appropriately combining and selecting between a weft knit and a circular knit enables upper members of various patterns and colors to be prepared. Accordingly, an effect is exhibited wherein a freedom of design of the shoe per se is significantly improved compared what is conventionally the case."<br><br>Horii, at 10. |

FIG. 1

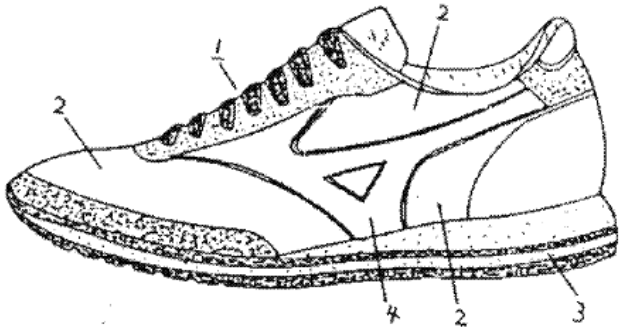



FIG. 2

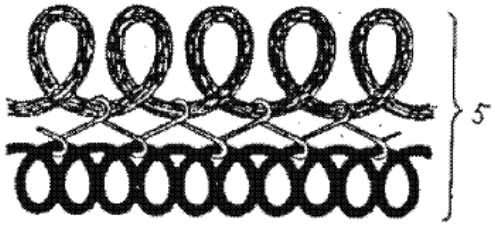
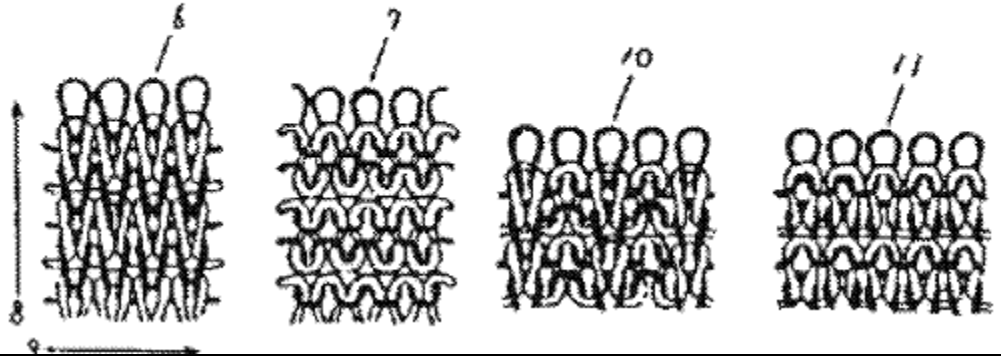
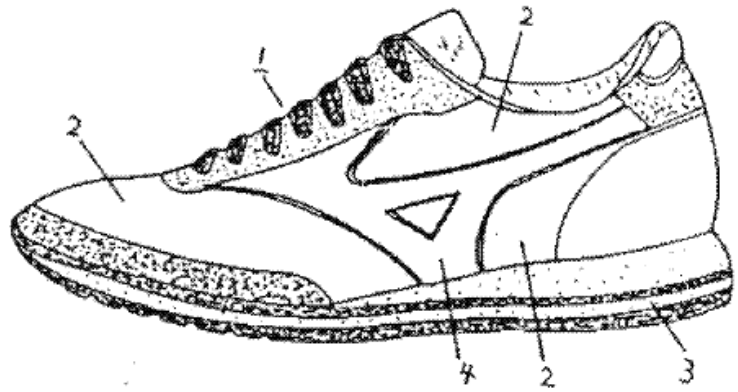



FIG. 3 FIG. 4 FIG. 5 FIG. 6



| | |
|---|---|
| | Horii, at Figs. 1-6, and associated text.<br><br>To the extent Nike contends that Horii does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Horii such that the step of knitting the second portion may further include "knitting the exterior surface of the first portion of the upper with the second feeder," "knitting the opposite interior surface of the second portion of the upper with the second feeder," and "knitting at least a portion of the integral knit tongue with the second feeder," such as by combining with the general knowledge and/or the teachings of the numerous prior art references, including, e.g., Huffa, to arrive at this claim.<br><br>A POSITA would have been motivated to combine these references for this limitation, because they are in the same field, they are aimed at solving the same perceived problems in the art, and the nature of the problem to be solved was the same. Known design incentives and market forces would have also motivated a POSITA to combine these references.<br><br>Moreover, applying Nike's apparent infringement theory, it would have been obvious to a POSITA to practice the recited steps. A POSITA would understand that this limitation was a standard implementation and an obvious design choice. Such an implementation simply reflects one of a finite number of well-known techniques implemented in a predictable manner, to achieve well-known, predictable results. |
| **11.** The method recited in claim 8, wherein the first portion of the upper is one of a medial side and a lateral side of the knitted component. | As set forth above, Horii discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 8.<br><br>In addition, Horii discloses (explicitly, implicitly, and inherently) that the first portion of the upper is one of a medial side and a lateral side of the knitted component.<br><br>For example, see the following illustrative citation(s):<br><br>"What is claimed is:<br><br>1 A shoe using a fabric of a weft knit or a fabric of a multilayer structural knit of a circular knit as an upper member. |

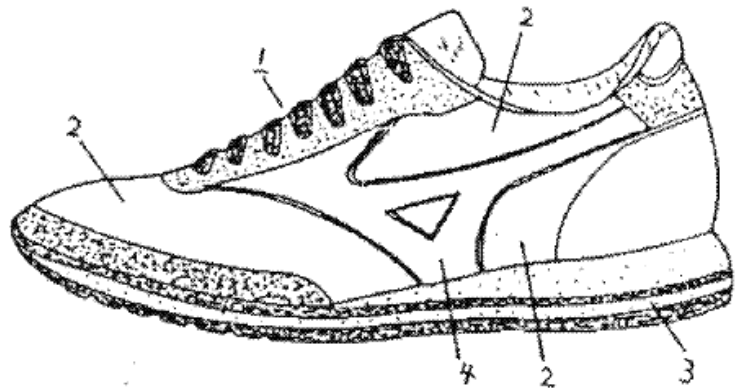
| | |
|---|---|
| | 2 The shoe of claim 1, wherein an entirety of an upper is constituted by a single upper member of a weft knit or a circular knit."<br><br>Horii, at 1.<br><br>"That is, it is a shoe whose characteristic feature is using a weft-knit fabric formed by a flat knitting machine or a fabric of a multilayer structural knit of a circular knit formed by a circular knitting machine as an upper member. It can also be a shoe wherein an upper member is constituted by a single fabric that is, for example, this circular knit of a fabric of a multilayer structural knit."<br><br>Horii, at 4.<br><br>"In addition, it can also be a shoe whose upper is constituted by a single, circularly knit upper member of a multilayer structural knit.<br><br>This enables characteristic features of the circularly knit fabric to be used to their full potential.<br><br>That is, in circular knitting, knit-fabric amounts can be manufactured at minimally necessary lot sizes. As such, unlike conventional taffeta, an uneconomical aspect of one lot being a large quantity such that fabric loss in high-mix low-volume production is high can be improved.<br><br>Moreover, in terms of, for example, the circularly knit fabric, knitting a tubular knit fabric of a necessary thickness and upper-portion length and cutting a portion of this tubular knit fabric can form a single piece of fabric of a necessary size. As such, as above, using the weft-knit or circularly knit fabric of the present invention is advantageous in high-mix low-volume production."<br><br>Horii, at 5. |

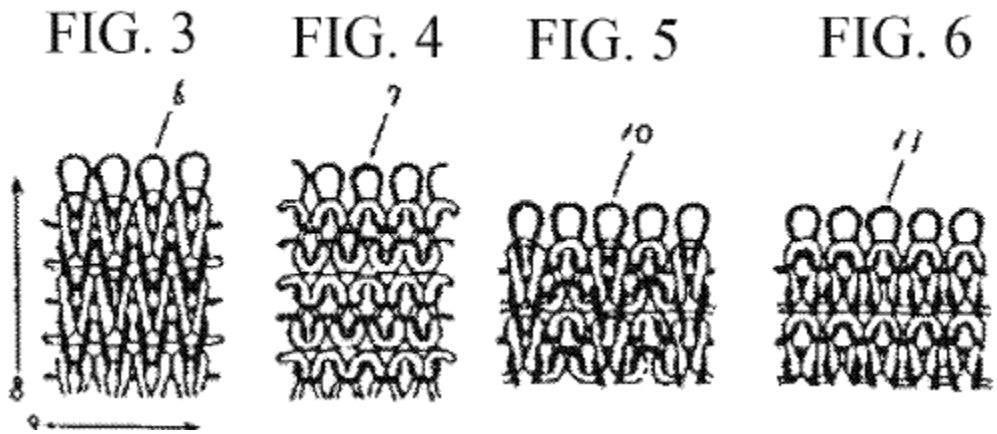
| | |
|---|---|
| | "As illustrated in FIG. 1, a working example is a shoe 1 whose characteristic feature is using a fabric of a multilayer structural knit of a weft knit or a circular knit as an upper member 2.<br><br>"This can also be a shoe 1 whose characteristic feature is that an entirety of an upper is constituted by a single upper member 2 of a weft knit or a circular knit."<br><br>Horii, at 6.<br><br>"The present invention is a shoe whose upper member is constituted by a fabric of a circular knit or the like of a multilayer structural knit formed by a knitting machine such as a circular knitting machine."<br><br>Horii, at 9.<br><br>FIG. 1<br>  <br><br>Horii, Figure 1 and associated text.<br><br>To the extent Nike contends that Horii does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Clark such that the first portion of the upper is one of a medial |

| | |
|---|---|
| | side and a lateral side of the knitted component, such as by combining with the general knowledge and/or the teachings of the numerous prior art references.<br><br>A POSITA would have been motivated to combine these references for this limitation, because they are in the same field, they are aimed at solving the same perceived problems in the art, and the nature of the problem to be solved was the same. Known design incentives and market forces would have also motivated a POSITA to combine these references.<br><br>Moreover, applying Nike's apparent infringement theory, this claim would have been obvious to a POSITA. A POSITA would understand that this limitation was a standard implementation and an obvious design choice. Such an implementation simply reflects one of a finite number of well-known techniques implemented in a predictable manner, to achieve well-known, predictable results. |
| **12.** The method recited in claim 8, wherein the step of knitting the integral knit tongue includes forming a course of the integral knit tongue to include at least one common yarn with the upper. | As set forth above, Horii discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 8.<br><br>In addition, Horii discloses (explicitly, implicitly, and inherently) that the step of knitting the integral knit tongue includes forming a course of the integral knit tongue to include at least one common yarn with the upper.<br><br>*See supra* discussions and citations in connection with Claim 3.<br><br>To the extent Nike contends that Horii does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Clark such that the step of knitting the integral knit tongue includes forming a course of the integral knit tongue to include at least one common yarn with the upper, such as by combining with the general knowledge and/or the teachings of the numerous prior art references. |
| **13.** The method recited in claim 12, further comprising forming at least one course of the first portion of the upper or the second portion of the upper with the | As set forth above, Horii discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 12.<br><br>In addition, Horii discloses (explicitly, implicitly, and inherently) forming at least one course of the first portion of the upper or the second portion of the upper with the knitting machine that is |

| | |
|---|---|
| knitting machine that is substantially continuous with at least one course of the integral knit tongue at the forward portion of the throat area of the upper. | substantially continuous with at least one course of the integral knit tongue at the forward portion of the throat area of the upper.<br><br>For example, see the following illustrative citation(s):<br><br>"That is, it is a shoe whose characteristic feature is using a weft-knit fabric formed by a flat knitting machine or a fabric of a multilayer structural knit of a circular knit formed by a circular knitting machine as an upper member. It can also be a shoe wherein an upper member is constituted by a single fabric that is, for example, this circular knit of a fabric of a multilayer structural knit.<br><br>…<br><br>The present invention is a shoe using a weft-knit fabric formed by a flat knitting machine or a<br><br>fabric of a multilayer structural knit of a circular knit formed by a circular knitting machine as an upper member."<br><br>Horii, at 4.<br><br>"Working examples of the present invention are described based on drawings. As illustrated in FIG. 1, a working example is a shoe 1 whose characteristic feature is using a fabric of a multilayer structural knit of a weft knit or a circular knit as an upper member 2.<br><br>This can also be a shoe 1 whose characteristic feature is that an entirety of an upper is constituted by a single upper member 2 of a weft knit."<br><br>Horii, at 6.<br><br>"Moreover, using the upper member of the present invention enables small-lot production of high-mix low-volume products such as shoes. As such, knit fabrics of various knits can be used, and upper members of various colors can be prepared. This significantly improves freedom of design for the shoes per se compared to what is conventionally the case." |

| | |
|---|---|
| | Horii, at 6.<br><br>"Moreover, as illustrated in FIG. 3 and FIG. 4, among weft knits, what is referred to as a plain stitch-this being in the form of a fabric 6 of knit stitches or a fabric 7 of purl stitches-can be used as the upper member 2. As such, a design of the shoe per se can be changed.<br><br>Note that to provide a heavy knit fabric, using a thick yam to form a wale 8, which is a vertical series of stitches, and a course 9, which is a horizontal series of stitches, enables an upper member 2 having more favorable cushioning to be made.<br><br>Furthermore, as illustrated in FIG. 5, using a rib-stitch fabric 10 can provide a well- fitting shoe that does not feel tight even to people having wide feet.<br><br>Moreover, as illustrated in FIG. 6, using a purl-stitch fabric 11 as the upper member can increase vertical-direction stretching. This is suitable for people having a high instep.<br><br>In addition, though not illustrated, using a tuck-stich upper member can produce a pattern or bumpiness. As such, a shoe that is also interesting in terms of design can be supplied. Moreover, an upper member of a float stitch, which forms a floating yam; a lace stitch, which forms openwork; a pile stitch, which forms a looped pile; or the like can be selected and used as appropriate. This further improves freedom of design for the shoe. A shoe having an interior member of a pile stitch affixed to an interior wall of the shoe is conventionally well-known. However, in the present invention, the upper member is constituted by only a fabric of a pile stitch. As such, a favorable breathability not found in a conventional shoe and cushioning from the thick pile fabric further improve comfort during wear.<br><br>Note that as one example of a material of the upper member of the present invention, to provide both strength and sweat absorbency, it is preferable to use a nylon or polyester water-absorbing material in both a surface and a reverse face and to use a nylon or polyester high-tenacity yam as a thread."<br><br>Horii, at 7-8.<br><br>"Moreover, using the upper member of the present invention enables small-lot production." |

| | |
|---|---|
| | Horii, at 10.<br><br>"As such, appropriately combining and selecting between a weft knit and a circular knit enables upper members of various patterns and colors to be prepared. Accordingly, an effect is exhibited wherein a freedom of design of the shoe per se is significantly improved compared what is conventionally the case."<br><br>Horii, at 10.<br><br>FIG. 1<br>  |




Horii, at Figs. 2-6, and associated text.

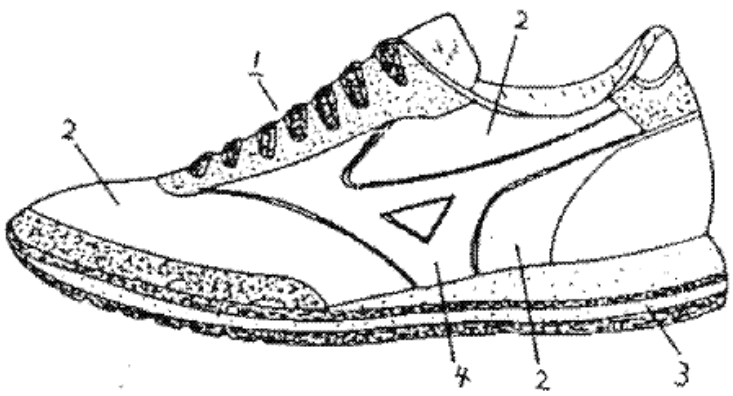
To the extent Nike contends that Horii does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Horii such that the method of manufacturing further comprises forming at least one course of the first portion of the upper or the second portion of the upper with the knitting machine that is substantially continuous with at least one course of the integral knit tongue at the forward portion of the throat area of the upper, such as by combining with the general knowledge and/or the teachings of the numerous prior art references, including, e.g., Huffa, to arrive at this claim.

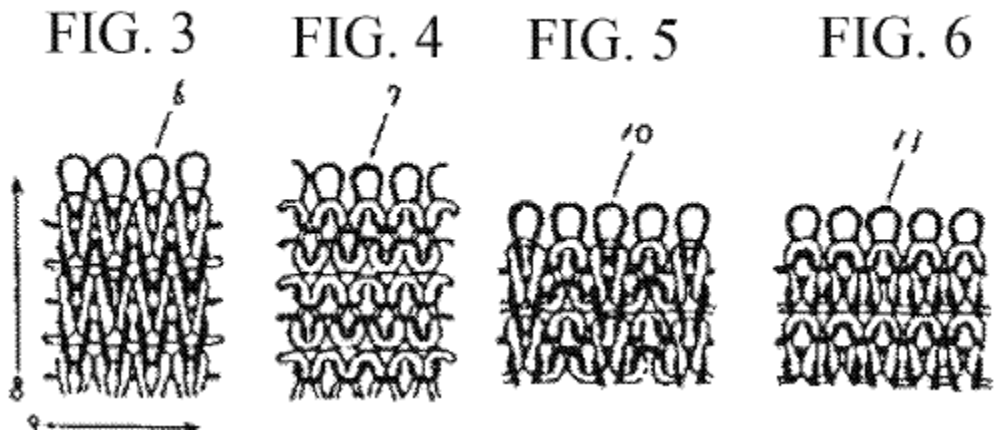
A POSITA would have been motivated to combine these references for this limitation, because they are in the same field, they are aimed at solving the same perceived problems in the art, and the nature of the problem to be solved was the same. Known design incentives and market forces would have also motivated a POSITA to combine these references.

Moreover, applying Nike's apparent infringement theory, this claim would have been obvious to a POSITA to practice the recited step. A POSITA would understand that this limitation was a standard implementation and an obvious design choice. Such an implementation simply reflects one of a finite number of well-known techniques implemented in a predictable manner, to achieve well-known, predictable results.

| | |
|---|---|
| **14.** The method recited in claim 12, further comprising:<br>forming at least one course of the first portion of the upper that is substantially continuous with at least one course of the integral knit tongue along the lateral side of the throat area of the upper; and<br>forming at least one course of the second portion of the upper that is substantially continuous with at least one course of the integral knit tongue along the medial side of the throat area of the upper. | As set forth above, Horii discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 12.<br><br>In addition, Horii discloses (explicitly, implicitly, and inherently) forming at least one course of the first portion of the upper that is substantially continuous with at least one course of the integral knit tongue along the lateral side of the throat area of the upper, and forming at least one course of the second portion of the upper that is substantially continuous with at least one course of the integral knit tongue along the medial side of the throat area of the upper.<br><br>For example, see the following illustrative citation(s):<br><br>"That is, it is a shoe whose characteristic feature is using a weft-knit fabric formed by a flat knitting machine or a fabric of a multilayer structural knit of a circular knit formed by a circular knitting machine as an upper member. It can also be a shoe wherein an upper member is constituted by a single fabric that is, for example, this circular knit of a fabric of a multilayer structural knit.<br><br>…<br><br>The present invention is a shoe using a weft-knit fabric formed by a flat knitting machine or a<br><br>fabric of a multilayer structural knit of a circular knit formed by a circular knitting machine as an upper member."<br><br>Horii, at 4.<br><br>"Working examples of the present invention are described based on drawings. As illustrated in FIG. 1, a working example is a shoe 1 whose characteristic feature is using a fabric of a multilayer structural knit of a weft knit or a circular knit as an upper member 2.<br><br>This can also be a shoe 1 whose characteristic feature is that an entirety of an upper is constituted by a single upper member 2 of a weft knit."<br><br>Horii, at 6. |

| | |
|---|---|
| | "Moreover, using the upper member of the present invention enables small-lot production of high-mix low-volume products such as shoes. As such, knit fabrics of various knits can be used, and upper members of various colors can be prepared. This significantly improves freedom of design for the shoes per se compared to what is conventionally the case."<br><br>Horii, at 6.<br><br>"Moreover, as illustrated in FIG. 3 and FIG. 4, among weft knits, what is referred to as a plain stitch-this being in the form of a fabric 6 of knit stitches or a fabric 7 of purl stitches-can be used as the upper member 2. As such, a design of the shoe per se can be changed.<br><br>Note that to provide a heavy knit fabric, using a thick yam to form a wale 8, which is a vertical series of stitches, and a course 9, which is a horizontal series of stitches, enables an upper member 2 having more favorable cushioning to be made.<br><br>Furthermore, as illustrated in FIG. 5, using a rib-stitch fabric 10 can provide a well- fitting shoe that does not feel tight even to people having wide feet.<br><br>Moreover, as illustrated in FIG. 6, using a purl-stitch fabric 11 as the upper member can increase vertical-direction stretching. This is suitable for people having a high instep.<br><br>In addition, though not illustrated, using a tuck-stich upper member can produce a pattern or bumpiness. As such, a shoe that is also interesting in terms of design can be supplied. Moreover, an upper member of a float stitch, which forms a floating yam; a lace stitch, which forms openwork; a pile stitch, which forms a looped pile; or the like can be selected and used as appropriate. This further improves freedom of design for the shoe. A shoe having an interior member of a pile stitch affixed to an interior wall of the shoe is conventionally well-known. However, in the present invention, the upper member is constituted by only a fabric of a pile stitch. As such, a favorable breathability not found in a conventional shoe and cushioning from the thick pile fabric further improve comfort during wear.<br><br>Note that as one example of a material of the upper member of the present invention, to provide both strength and sweat absorbency, it is preferable to use a nylon or polyester water- |

| | |
|---|---|
| | absorbing material in both a surface and a reverse face and to use a nylon or polyester high-tenacity yam as a thread."<br><br>Horii, at 7-8.<br><br>"Moreover, using the upper member of the present invention enables small-lot production."<br><br>Horii, at 10.<br><br>"As such, appropriately combining and selecting between a weft knit and a circular knit enables upper members of various patterns and colors to be prepared. Accordingly, an effect is exhibited wherein a freedom of design of the shoe per se is significantly improved compared what is conventionally the case."<br><br>Horii, at 10.<br><br>FIG. 1<br>  |




Horii, at Figs. 1, 2-6, and associated text.

To the extent Nike contends that Horii does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Horii such that the method of manufacturing further comprises forming at least one course of the first portion of the upper that is substantially continuous with at least one course of the integral knit tongue along the lateral side of the throat area of the upper; and forming at least one course of the second portion of the upper that is substantially continuous with at least one course of the integral knit tongue along the medial side of the throat area of the upper, such as by combining with the general knowledge and/or the teachings of the numerous prior art references, including, e.g., Huffa, to arrive at this claim.

A POSITA would have been motivated to combine these references for this limitation, because they are in the same field, they are aimed at solving the same perceived problems in the art, and the nature of the problem to be solved was the same. Known design incentives and market forces would have also motivated a POSITA to combine these references.

Moreover, applying Nike's apparent infringement theory, it would have been obvious to a POSITA to practice the recited steps. A POSITA would understand that this limitation was a standard implementation and an obvious design choice. Such an implementation simply reflects one of a finite

| | |
|---|---|
| | number of well-known techniques implemented in a predictable manner, to achieve well-known, predictable results. |
| **15.** The method recited in claim 8, wherein the integral knit tongue comprises a partially integral portion and a free portion, the method further comprising:<br>knitting the free portion of the integral knit tongue with at least one feeder of the knitting machine;<br>holding the free portion on needles of the knitting machine;<br>knitting the first portion of the upper with the first feeder of the knitting machine and knitting the second portion of the upper with the second feeder while the free portion is held on the needles, the first portion of the upper and the second portion of the upper including at least a rearward portion of the integral knit tongue; | As set forth above, Horii discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 8.<br><br>In addition, Horii discloses (explicitly, implicitly, and inherently) that the integral knit tongue comprises a partially integral portion and a free portion, and that the method further comprise knitting the free portion of the integral knit tongue with at least one feeder of the knitting machine, holding the free portion on needles of the knitting machine, knitting the first portion of the upper with the first feeder of the knitting machine and knitting the second portion of the upper with the second feeder while the free portion is held on the needles, the first portion of the upper and the second portion of the upper including at least a rearward portion of the integral knit tongue, joining the free portion to the integral knit tongue at the rearward portion, and resuming knitting the first portion of the upper with the first feeder of the knitting machine and resuming knitting the second portion of the upper with the second feeder of the knitting machine.<br><br>*See supra* citations for Claims 5-7.<br><br>To the extent Nike contends Horii does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Horii such that "the integral knit tongue comprises a partially integral portion and a free portion" and that the method of manufacturing further comprises "knitting the free portion of the integral knit tongue with at least one feeder of the knitting machine," "holding the free portion on needles of the knitting machine," "knitting the first portion of the upper with the first feeder of the knitting machine and knitting the second portion of the upper with the second feeder while the free portion is held on the needles, the first portion of the upper and the second portion of the upper including at least a rearward portion of the integral knit tongue, joining the free portion to the integral knit tongue at the rearward portion," and "resuming knitting the first portion of the upper with the first feeder of the knitting machine and resuming knitting the second portion of the upper with the second feeder of the knitting machine," such as by combining with the general knowledge and/or the teachings of the numerous prior art references, including, e.g., Huffa, to arrive at this claim.<br><br>A POSITA would have been motivated to combine these references for this limitation, because they are in the same field, they are aimed at solving the same perceived problems in the art, and the nature |

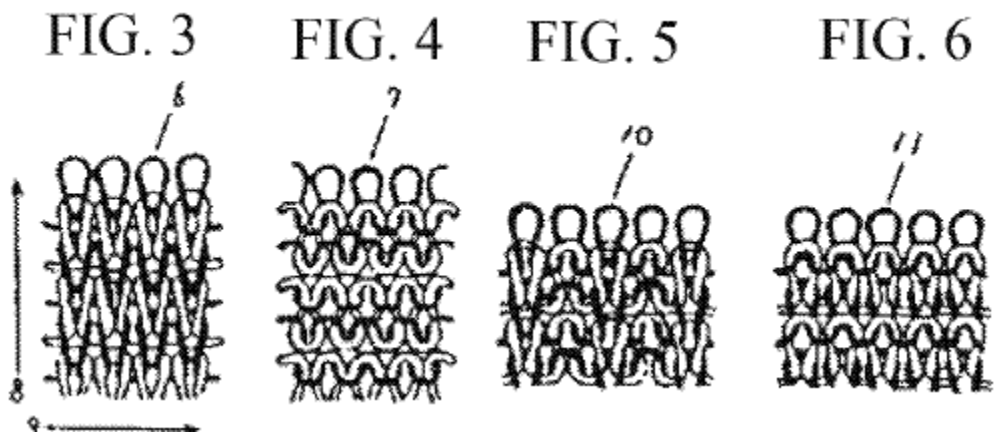
| | |
|---|---|
| joining the free portion to the integral knit tongue at the rearward portion; and<br>resuming knitting the first portion of the upper with the first feeder of the knitting machine and resuming knitting the second portion of the upper with the second feeder of the knitting machine. | of the problem to be solved was the same. Known design incentives and market forces would have also motivated a POSITA to combine these references.<br><br>Moreover, applying Nike's apparent infringement theory, it would have been obvious to a POSITA to practice the recited steps. A POSITA would understand that this limitation was a standard implementation and an obvious design choice. Such an implementation simply reflects one of a finite number of well-known techniques implemented in a predictable manner, to achieve well-known, predictable results. |
| **16[pre].** A method of manufacturing a knitted component for an article of footwear, the method comprising: | To the extent that the preamble is considered limiting, Horii discloses (explicitly, implicitly, and inherently) and also renders obvious a method of manufacturing a knitted component for an article of footwear.<br><br>*See supra* discussions and citations in connection with Claim Elements 1[pre] and 8[pre]. |
| **16[a].** knitting a first portion of the knitted component defining an upper with a first feeder of a knitting machine, the upper including a portion of at least one of an exterior surface of the knitted component and an opposite interior surface of the knitted component; | Horii discloses (explicitly, implicitly, and inherently) knitting a first portion of the knitted component defining an upper with a first feeder of a knitting machine, the upper including a portion of at least one of an exterior surface of the knitted component and an opposite interior surface of the knitted component.<br><br>*See supra* discussions and citations in connection with Claim Elements 1[a], 1[b], and 8[a]. |

| | |
|---|---|
| **16[b].** knitting a second portion of the knitted component defining the upper with a second feeder of the knitting machine; and | Horii discloses (explicitly, implicitly, and inherently) knitting a second portion of the knitted component defining the upper with a second feeder of the knitting machine.<br><br>*See supra* discussions and citations in connection with Claim Element 8[b]. |
| **16[c].** knitting an integral knit tongue that is of unitary knit construction with the upper with a third feeder of the knitting machine, the integral knit tongue extending through a throat area of the knitted component; and | Horii discloses (explicitly, implicitly, and inherently) knitting an integral knit tongue that is of unitary knit construction with the upper with a third feeder of the knitting machine, the integral knit tongue extending through a throat area of the knitted component.<br><br>*See supra* discussions and citations in connection with Claim Elements 1[c] and 8[c].<br><br>To the extent Horii does not disclose this claim element, it would have been obvious to a POSITA to modify Horii, such as by combining with the general knowledge and/or the teachings of the numerous prior art references that disclose this limitation, including, e.g., Dua '299 and Huffa, to arrive at this claim element. For instance, Dua '299 teaches knitting shoe uppers using flat knitting machines:<br><br>7:38-40: "**flat-knitting machines** may provide an efficient manner of forming relatively large numbers of knitted component 40."<br><br>7:48-51: "Accordingly, the use of mechanical **flat-knitting machines** may provide an efficient manner of forming multiple knitted components 40 having different sizes and configurations."<br><br>*See also generally* Huffa. For example, paragraph [0112] of Huffa describes Figure 24, which "depicts a configuration of knitting machine 200 that includes four combination feeders 220."<br><br>A POSITA would have been motivated to combine these references for this limitation, because they are in the same field, they are aimed at solving the same perceived problems in the art, and the nature of the problem to be solved was the same. Known design incentives and market forces would have also motivated a POSITA to combine these references. Furthermore, a POSITA would understand that this limitation was a standard implementation and an obvious design choice. Such an |

| | |
|---|---|
| | implementation simply reflects one of a finite number of well-known techniques implemented in a predictable manner, to achieve well-known, predictable results. |
| **16[d].** wherein the integral knit tongue is joined by knitting with the knitting machine to: (1) a forward portion of the throat area, and (2) at least along a portion of both of a lateral side and a medial side of the throat area of the knitted component extending through a portion of a length of the throat area in a longitudinal direction from the forward portion to an ankle opening of the upper. | Horii discloses (explicitly, implicitly, and inherently) joining the integral knit tongue with the knitting machine to: (1) a forward portion of the throat area, and (2) at least along a portion of both of a lateral side and a medial side of the throat area of the knitted component extending through a portion of a length of the throat area in a longitudinal direction from the forward portion to an ankle opening of the upper.<br><br>*See supra* discussions and citations in connection with Claim Elements 1[c] and 8[d]. |
| **17.** The method recited in claim 16, wherein the upper comprises a first type of yarn; and wherein the integral knit tongue comprises a second type of yarn, the second type of yarn being different from the first type of yarn. | As set forth above, Horii discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 16.<br><br>In addition, Horii discloses (explicitly, implicitly, and inherently) that the upper comprises a first type of yarn and that the integral knit tongue comprises a second type of yarn, the second type of yarn being different from the first type of yarn.<br><br>For example, see the following illustrative citation(s):<br><br>"That is, it is a shoe whose characteristic feature is using a weft-knit fabric formed by a flat knitting machine or a fabric of a multilayer structural knit of a circular knit formed by a circular knitting machine as an upper member. It can also be a shoe wherein an upper |

| | |
|---|---|
| | member is constituted by a single fabric that is, for example, this circular knit of a fabric of a multilayer structural knit."<br><br>Horii, at 4.<br><br>"Working examples of the present invention are described based on drawings. As illustrated in FIG. 1, a working example is a shoe 1 whose characteristic feature is using a fabric of a multilayer structural knit of a weft knit or a circular knit as an upper member 2.<br><br>This can also be a shoe 1 whose characteristic feature is that an entirety of an upper is constituted by a single upper member 2 of a weft knit."<br><br>Horii, at 6.<br><br>"Moreover, using the upper member of the present invention enables small-lot production of high-mix low-volume products such as shoes. As such, knit fabrics of various knits can be used, and upper members of various colors can be prepared. This significantly improves freedom of design for the shoes per se compared to what is conventionally the case."<br><br>Horii, at 6.<br><br>Moreover, as illustrated in FIG. 3 and FIG. 4, among weft knits, what is referred to as a plain stitch-this being in the form of a fabric 6 of knit stitches or a fabric 7 of purl stitches-can be used as the upper member 2. As such, a design of the shoe per se can be changed.<br><br>Note that to provide a heavy knit fabric, using a thick yam to form a wale 8, which is a vertical series of stitches, and a course 9, which is a horizontal series of stitches, enables an upper member 2 having more favorable cushioning to be made.<br><br>Furthermore, as illustrated in FIG. 5, using a rib-stitch fabric 10 can provide a well- fitting shoe that does not feel tight even to people having wide feet. |

| | |
|---|---|
| | Moreover, as illustrated in FIG. 6, using a purl-stitch fabric 11 as the upper member can increase vertical-direction stretching. This is suitable for people having a high instep.<br><br>In addition, though not illustrated, using a tuck-stich upper member can produce a pattern or bumpiness. As such, a shoe that is also interesting in terms of design can be supplied. Moreover, an upper member of a float stitch, which forms a floating yam; a lace stitch, which forms openwork; a pile stitch, which forms a looped pile; or the like can be selected and used as appropriate. This further improves freedom of design for the shoe. A shoe having an interior member of a pile stitch affixed to an interior wall of the shoe is conventionally well-known. However, in the present invention, the upper member is constituted by only a fabric of a pile stitch. As such, a favorable breathability not found in a conventional shoe and cushioning from the thick pile fabric further improve comfort during wear.<br><br>Note that as one example of a material of the upper member of the present invention, to provide both strength and sweat absorbency, it is preferable to use a nylon or polyester water-absorbing material in both a surface and a reverse face and to use a nylon or polyester high-tenacity yam as a thread."<br><br>Horii, at 7-8.<br><br>"Moreover, using the upper member of the present invention enables small-lot production."<br><br>Horii, at 10.<br><br>"As such, appropriately combining and selecting between a weft knit and a circular knit enables upper members of various patterns and colors to be prepared. Accordingly, an effect is exhibited wherein a freedom of design of the shoe per se is significantly improved compared what is conventionally the case."<br><br>Horii, at 10. |




Horii, at Figs. 3-6, and associated text.

To the extent Nike contends that Horii does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Horii, such as based on general knowledge and/or the teachings of the numerous prior art references, including, e.g., Dua '299, to arrive at this claim.

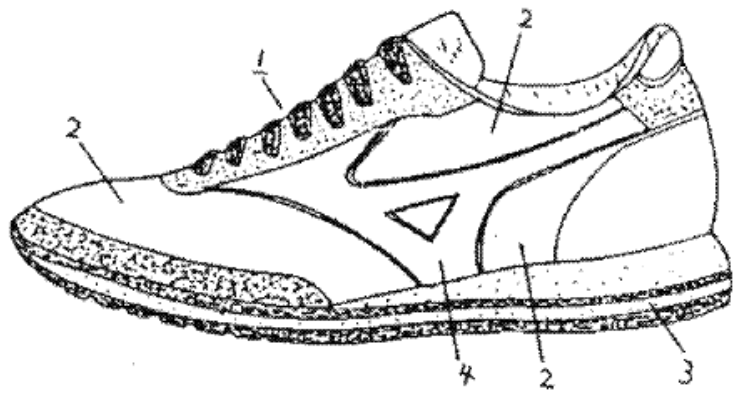
*See, e.g.*, Dua '299

2:8-10: "In some configurations, the knit type or yarn type may vary in different regions of the knitted component to impart different properties."

4:30-5: "Knitted component 40 may also incorporate various yarn types that impart different properties to separate areas of upper 30. Moreover, by combining various yarn types with various stitch types, knitted component 40 may impart a range of different properties to separate areas of upper 30. The properties that a particular type of yarn will impart to an area of knitted component 40 partially depend upon the materials that form the various filaments and fibers within the yarn. Cotton, for example, provides a soft hand, natural aesthetics, and biodegradability. Elastane and stretch polyester each provide substantial stretch and recoverability, with stretch polyester also providing recycleability. Rayon provides high luster and moisture absorption. Wool also provides high

| | |
|---|---|
| | moisture absorption, in addition to insulating properties. Nylon is a durable and abrasion-resistant material with high strength. Polyester is a hydrophobic material that also provides relatively high durability. In addition to materials, other aspects relating to the yarn may affect the properties of upper 30. For example, the yarn may be a monofilament yarn or a multifilament yarn. The yarn may also include separate filaments that are each formed of different materials. The yarn may also include filaments that are each formed of two or more different materials, such as a bicomponent yarn with filaments having a sheath-core configuration or two halves formed of different materials. Different degrees of twist and crimping, as well as different deniers, may affect the properties of upper 30 where the yarn is located. Accordingly, both the materials forming the yam and other aspects of the yarn may be selected to impart a variety of properties to separate areas of upper 30."<br><br>10:27-32: "Portions of strobel sock 23 or tongue 33 may also be formed through a flat knitting process to have a spacer-knit configuration. Moreover, a variety of yarns types may be utilized for areas of knitted component 40 having the spacer-knit configuration, including mono-filament yarns or textured yarns."<br><br>A POSITA would have been motivated to combine these references for this limitation, because they are in the same field, they are aimed at solving the same perceived problems in the art, and the nature of the problem to be solved was the same. Known design incentives and market forces would have also motivated a POSITA to combine these references.<br><br>Moreover, applying Nike's apparent infringement theory, this claim would have been obvious to a POSITA. A POSITA would understand that this limitation was a standard implementation and an obvious design choice. Such an implementation simply reflects one of a finite number of well-known techniques implemented in a predictable manner, to achieve well-known, predictable results. |
| **18.** The method recited in claim 17, wherein the second type of yarn is an elastic yarn. | As set forth above, Horii discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 17.<br><br>In addition, Horii discloses (explicitly, implicitly, and inherently) and renders obvious that the second type of yarn is an elastic yarn.<br><br>For example, see the following illustrative citation(s): |

| | |
|---|---|
| | "Moreover, as illustrated in FIG. 3 and FIG. 4, among weft knits, what is referred to as a plain stitch-this being in the form of a fabric 6 of knit stitches or a fabric 7 of purl stitches-can be used as the upper member 2. As such, a design of the shoe per se can be changed." Horii at 7.<br><br>"Moreover, as illustrated in FIG. 6, using a purl-stitch fabric 11 as the upper member can increase vertical-direction stretching. This is suitable for people having a high instep." Horii at 7.<br><br>"In addition, though not illustrated, using a tuck-stich upper member can produce a pattern or bumpiness. As such, a shoe that is also interesting in terms of design can be supplied. Moreover, an upper member of a float stitch, which forms a floating yam; a lace stitch, which forms openwork; a pile stitch, which forms a looped pile; or the like can be selected and used as appropriate. This further improves freedom of design for the shoe. A shoe having an interior member of a pile stitch affixed to an interior wall of the shoe is conventionally well-known. However, in the present invention, the upper member is constituted by only a fabric of a pile stitch. As such, a favorable breathability not found in a conventional shoe and cushioning from the thick pile fabric further improve comfort during wear." Horii at 8.<br><br>"The present invention is a shoe whose upper member is constituted by a fabric of a circular knit or the like of a multilayer structural knit formed by a knitting machine such as a circular knitting machine. As such, even a single piece of the fabric has an appropriate thickness and appropriate cushioning, and breathability is very favorable." Horii at 9.<br><br>"1: Shoe, 2: Upper member, 3: Sole, 4.: Line member, 5: Multilayer structural knit, 6: Fabric of knit stitches, 7: Fabric of purl stitches, 8: Wale, 9: Course, 10: Rib-stitch fabric, 11: Purl-stitch fabric, 12: Taffeta fabric, 13: Sponge, 14: Upper member." Horii at 11. |

| | |
|---|---|
| | FIG. 1<br>  <br><br>Horii, Figure 1 and associated text.<br><br>A POSITA would have been motivated to combine these references for this limitation, because they are in the same field, they are aimed at solving the same perceived problems in the art, and the nature of the problem to be solved was the same. Known design incentives and market forces would have also motivated a POSITA to combine these references.<br><br>Moreover, applying Nike's apparent infringement theory, this claim would have been obvious to a POSITA. A POSITA would understand that this limitation was a standard implementation and an obvious design choice. Such an implementation simply reflects one of a finite number of well-known techniques implemented in a predictable manner, to achieve well-known, predictable results. |
| **19.** The method recited in claim 16, wherein the step of knitting the integral knit tongue includes forming a course of the integral knit tongue to include at | As set forth above, Horii discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 16.<br><br>In addition, Horii discloses (explicitly, implicitly, and inherently) that the step of knitting the integral knit tongue includes forming a course of the integral knit tongue to include at least one common yarn with the upper. |

| | |
|---|---|
| least one common yarn with the upper. | *See supra* discussions and citations in connection with Claims 3 and 12.<br><br>To the extent Nike contends Horii does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Horii that the step of knitting the integral knit tongue includes forming a course of the integral knit tongue to include at least one common yarn with the upper, such as by combining with the general knowledge and/or the teachings of the numerous prior art references, to arrive at this claim. |
| **20.** The method recited in claim 19, further comprising forming at least one course of the first portion of the upper or the second portion of the upper with the knitting machine that is substantially continuous with at least one course of the integral knit tongue at the forward portion of the throat area of the upper. | As set forth above, Horii discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 19.<br><br>In addition, Horii discloses (explicitly, implicitly, and inherently) forming at least one course of the first portion of the upper or the second portion of the upper with the knitting machine that is substantially continuous with at least one course of the integral knit tongue at the forward portion of the throat area of the upper.<br><br>*See supra* discussions and citations in connection with Claim 13.<br><br>To the extent Nike contends that Horii does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Horii such that the step of knitting the integral knit tongue further includes forming at least one course of the first portion of the upper or the second portion of the upper with the knitting machine that is substantially continuous with at least one course of the integral knit tongue at the forward portion of the throat area of the upper, such as by combining with the general knowledge and/or the teachings of the numerous prior art references, to arrive at this claim. |
| **21.** The method recited in claim 19, further comprising:<br>forming at least one course of the first portion of the upper that is substantially continuous with at least one course | As set forth above, Horii discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 19.<br><br>In addition, Horii discloses (explicitly, implicitly, and inherently) forming at least one course of the first portion of the upper that is substantially continuous with at least one course of the integral knit tongue along the lateral side of the throat area of the upper, and forming at least one course of the |

| | |
|---|---|
| of the integral knit tongue along the lateral side of the throat area of the upper; and<br>forming at least one course of the second portion of the upper that is substantially continuous with at least one course of the integral knit tongue along the medial side of the throat area of the upper. | second portion of the upper that is substantially continuous with at least one course of the integral knit tongue along the medial side of the throat area of the upper.<br><br>*See supra* discussions and citations in connection with Claim 14.<br><br>To the extent Nike contends that Horii does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Horii such that the step of knitting the integral knit tongue further includes forming at least one course of the first portion of the upper that is substantially continuous with at least one course of the integral knit tongue along the lateral side of the throat area of the upper and forming at least one course of the second portion of the upper that is substantially continuous with at least one course of the integral knit tongue along the medial side of the throat area of the upper, such as by combining with the general knowledge and/or the teachings of the numerous prior art references, to arrive at this claim. |
| **22.** The method recited in claim 16, wherein the step of knitting the first portion further comprises:<br>knitting the exterior surface of the first portion of the upper with the first feeder; and<br>knitting the opposite interior surface of the first portion of the upper with the first feeder. | As set forth above, Horii discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 16.<br><br>In addition, Horii discloses (explicitly, implicitly, and inherently) that the step of knitting the first portion further comprises knitting the exterior surface of the first portion of the upper with the first feeder, and knitting the opposite interior surface of the first portion of the upper with the first feeder.<br><br>*See supra* discussions and citations in connection with Claim Elements 8[a] and 16[a].<br><br>To the extent Nike contends that Horii does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Horii such that the step of knitting the first portion further comprises knitting the exterior surface of the first portion of the upper with the first feeder and knitting the opposite interior surface of the first portion of the upper with the first feeder, such as by combining with the general knowledge and/or the teachings of the numerous prior art references, to arrive at this claim. |
| **23.** The method recited in claim 22, wherein the step of knitting the | As set forth above, Horii discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 22. |

| | |
|---|---|
| second portion further comprises:<br>knitting the exterior surface of the first portion of the upper with the second feeder;<br>knitting the opposite interior surface of the second portion of the upper with the second feeder. | In addition, Horii discloses (explicitly, implicitly, and inherently) that the step of knitting the second portion further comprises knitting the exterior surface of the first portion of the upper with the second feeder, and knitting the opposite interior surface of the second portion of the upper with the second feeder.<br><br>*See supra* discussions and citations in connection with Claim 10 and Claim Element 16[b].<br><br>To the extent Nike contends that Horii does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Horii such that the step of knitting the second portion further comprises knitting the exterior surface of the first portion of the upper with the second feeder and knitting the opposite interior surface of the second portion of the upper with the second feeder, such as by combining with the general knowledge and/or the teachings of the numerous prior art references, to arrive at this claim. |