

EXHIBIT 636-2
Invalidity Claim Chart for U.S. Patent 9,510,636

U.S. Patent No. 7,774,956 by Bhupesh Dua and Edward Nathaniel Thomas (“Dua ’956”), which was filed on November 10, 2006 and issued on August 17, 2010, anticipates or renders obvious the asserted claims of the U.S. Patent 9,510,636 (“the ’636 patent”) pursuant to at least pre-AIA 35 U.S.C. §102(a), 102(b), 102(e), 102(g), and/or 103 under the ’636 patent’s earliest possible priority date.

As set forth in the chart below, all asserted claims of the ’636 patent are anticipated and/or obvious over Dua ’956.¹

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 V 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 Dua ’956 invalidates the asserted claims of the ’636 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 V of Defendant’s Preliminary Invalidity Contentions, the ’636 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 Dua ’956 with the teachings of the references charted as Exhibits 636-1 and 636-3 to 636-8 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 ’636 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.

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. 9,510,636

'636 Claims	Exemplary Citations to U.S. Patent No. 7,774,956 (Dua '956)
1[pre]. An article of footwear having an upper and a sole structure secured to the upper, the article of footwear incorporating a knitted component comprising:	To the extent that the preamble is considered limiting, Dua '956 teaches (explicitly, implicitly, and inherently) and also renders obvious an article of footwear having an upper and a sole structure secured to the upper, the article of footwear incorporating a knitted component. For example, see the following illustrative citation(s): 2:63-66: "Another example aspect of the invention relates to a method of manufacturing an article of footwear. The method includes steps of flat knitting a textile element and incorporating the textile element into the article of footwear."
1[a]. a portion of the knitted component defining the upper, 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, the interior surface defining a void for receiving a foot; and	Dua '956 discloses (explicitly, implicitly, and inherently) a knitted component, wherein a portion of the knitted component defines the upper, the upper including a portion of at least one of an exterior surface and an opposite interior surface of the knitted component, the interior surface defining a void for receiving a foot. For example, see the following illustrative citation(s): 3:7-13: "Yet another example structure according to this invention relates to an article of footwear having a knitted element that includes a foot-receiving portion and one or more straps formed of unitary construction with the foot-receiving portion. The foot-receiving portion defines a void for receiving the foot, and the strap or straps extend outward from one or more sides of the foot-receiving portion." 5:33-43: "Upper 30 defines a void within footwear 10 for receiving and securing the foot relative to sole structure 20. More particularly, the void is shaped to accommodate a foot and extends along the lateral side of the foot, along the medial side of the foot, over the foot, and under the foot. Access to the void is provided by an ankle opening 31 located in at least heel region 13. A lace 32 extends through various lace elements 33 and permits the wearer to modify dimensions of upper 30, thereby

	accommodating feet with varying proportions. Lace 32 also permits the wearer to loosen upper 30 and facilitate removal of the foot from the void.” 6:4-6: “Textile elements 40, 50, and 60 are depicted as forming portions of both an exterior surface and an opposite interior surface of footwear 10.” 6:55-58: “Center portion 62 is primarily located adjacent sole structure 20 (i.e., in an area extending under the foot) to form a lower portion of the void within upper 30.” 10:3-4: “In this configuration, central edge 76 may define an opening that permits the foot to enter and exit a void within upper 70.” Claim 7: “The article of footwear recited in claim 1, wherein the knitted element defines a void for receiving a foot of a wearer.” Claim 8: “The article of footwear recited in claim 1, wherein the knitted element defines at least a portion of an exterior surface of the upper, and the knitted element defines at least a portion of a void for receiving a foot of a wearer.” Figure 1 and associated text:
--	---

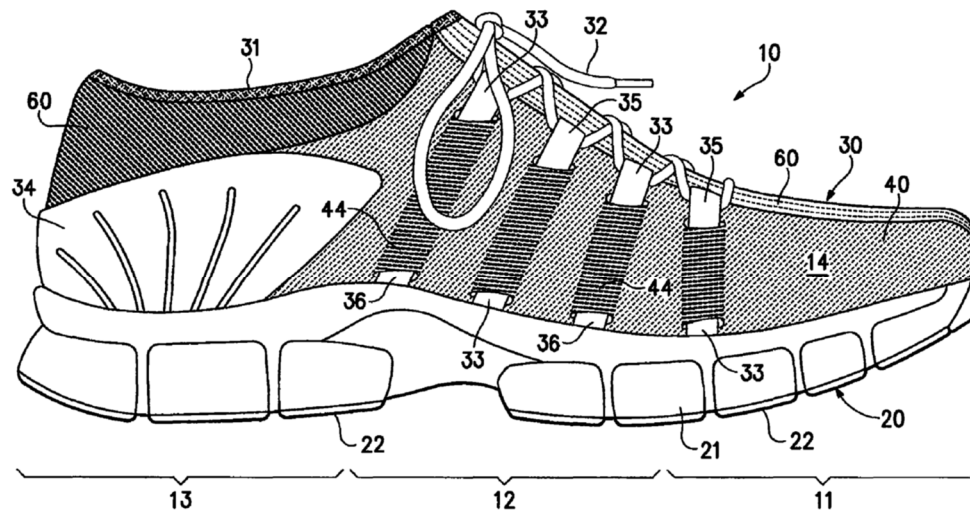


Figure 1

Figure 2 and associated text:

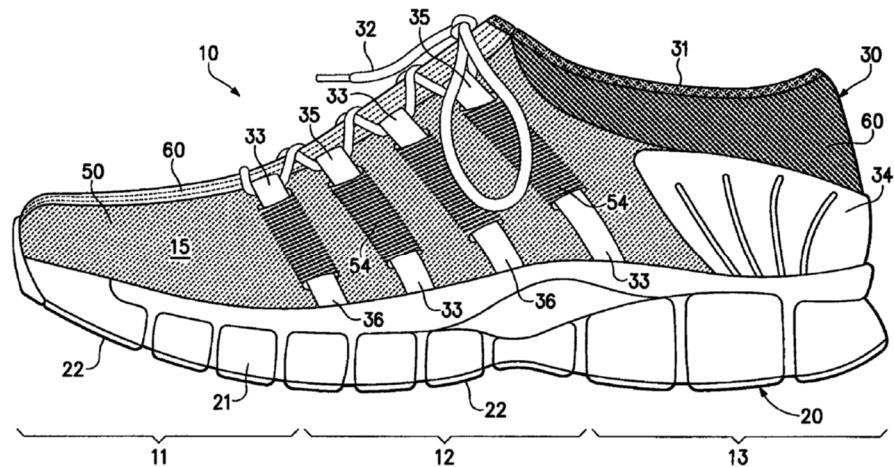


Figure 2

Figure 8C and associated text:

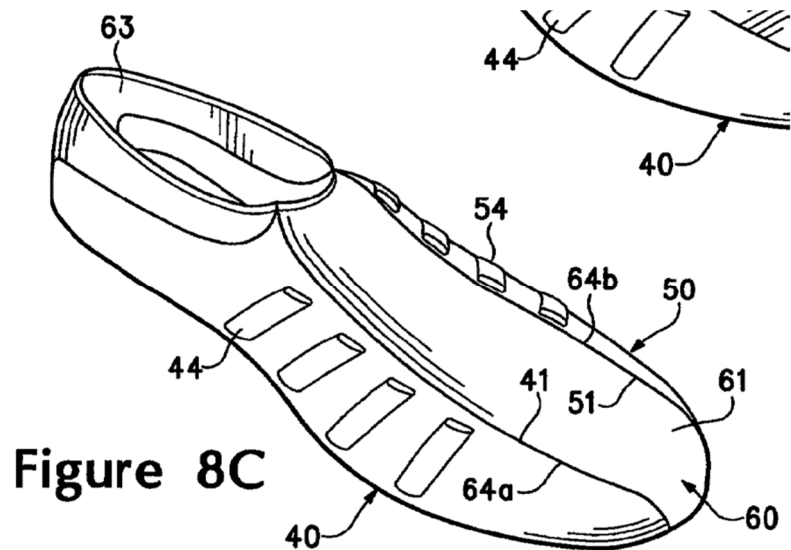


Figure 8C

	In addition, to the extent Nike contends that Dua '956 does not disclose this claim element, it would have been obvious to a POSITA to modify Dua '956, 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[b]. an integral knit tongue formed with the upper and extending through a throat area of the knitted component; and	Dua '956 discloses (explicitly, implicitly, and inherently) a knitted component including an integral knit tongue formed with the upper and extending through a throat area of the knitted component. For example, see the following illustrative citation(s): 6:46-55: "Central textile element 60 is depicted individually in FIG. 7 and includes a forward portion 61, a center portion 62, and a rearward portion 63 formed of unitary (i.e., one piece) construction. Forward portion 61 is primarily located in a throat area of footwear 10 (i.e., under lace 32) and has an elongate configuration defined by a lateral edge 64a and a medial edge 64b. As depicted in FIG. 3, and as described in greater detail below, at least a portion of lateral edge 64a is joined to lateral textile element 40 and at least a portion of medial edge 64b is joined to medial textile element 50." 9:5-11: "With reference to FIG. 8C, the assembly process continues by joining textile elements 40 and 50 to forward portion 61. More particularly, upper edge 41 of lateral textile element 40 is stitched to

lateral edge 64a of forward portion 61, and upper edge 51 of medial textile element 50 is stitched to medial edge 64b of forward portion 61.”

Moreover, the figures show an integral knit tongue joined to a forward portion of the throat area and 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.

Figure 7 and associated text:

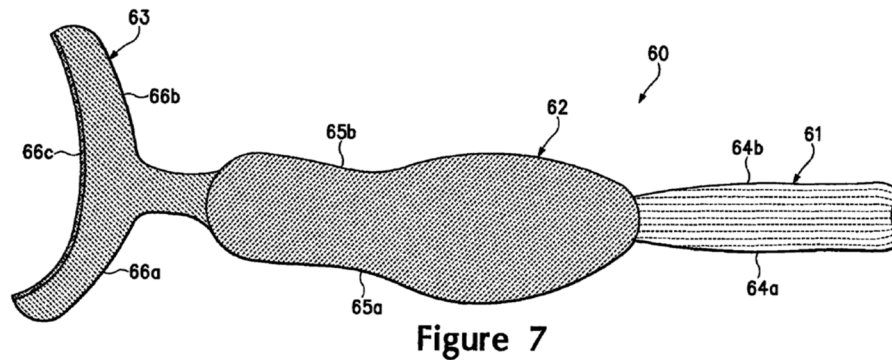


Figure 8C and associated text:

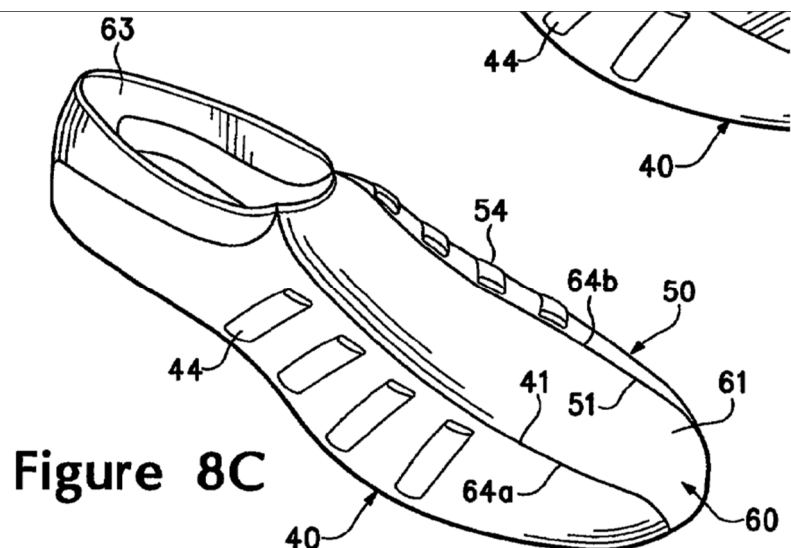


Figure 8C

In addition, to the extent Nike contends that Dua '956 does not disclose this claim element, it would have been obvious to a POSITA to modify Dua '956, 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 App. Pub. Nos. 2010/0077634 (“Bell”), and 2012/0233884 (“Greene”), to arrive at this claim element.

For instance, Bell teaches an integral knit tongue extending through the throat area of the upper.

[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.” [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:
--	--

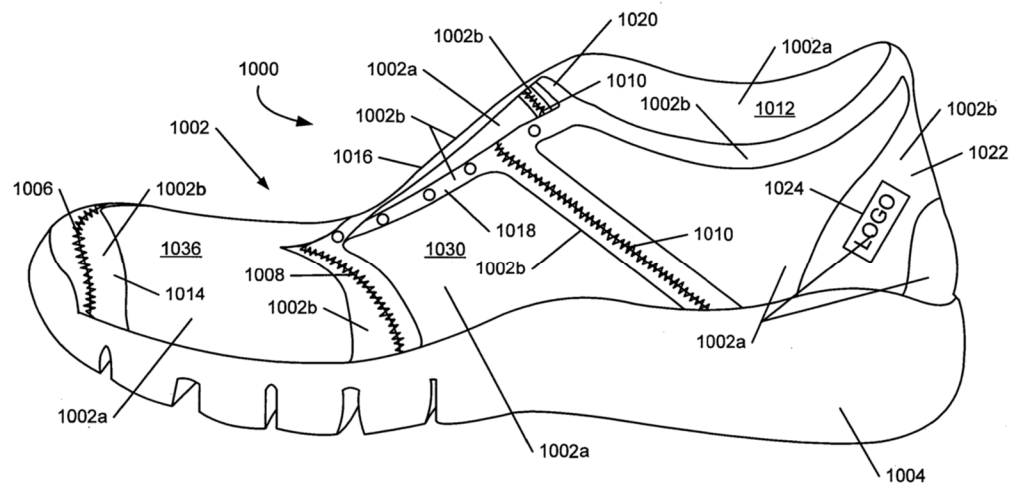


FIG. 10B

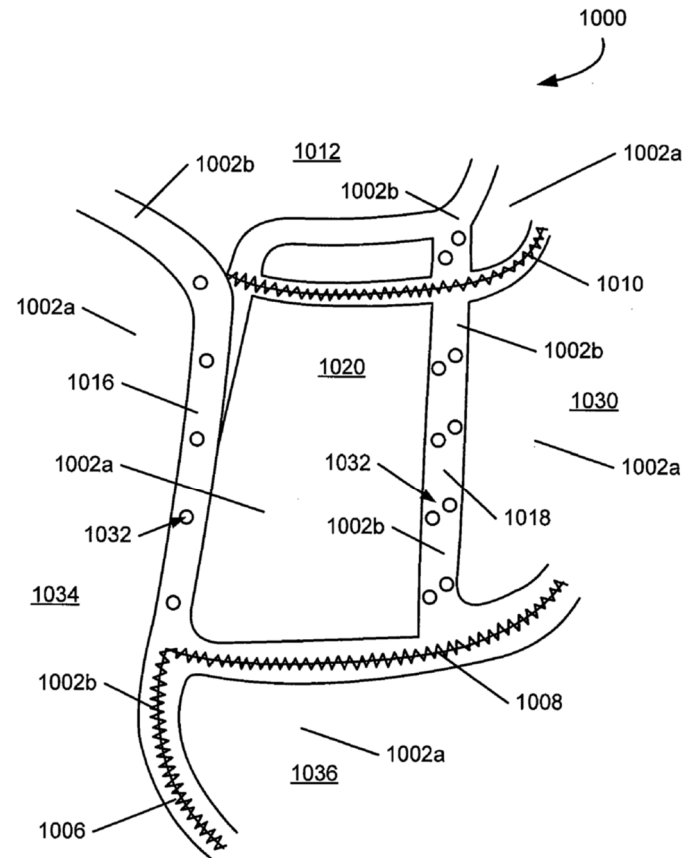


FIG. 10C

Greene similarly discloses an integral knit tongue that extends through the throat area of a shoe 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 knitting process 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.”

[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.”

[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.”

Figure 34 and associated text:

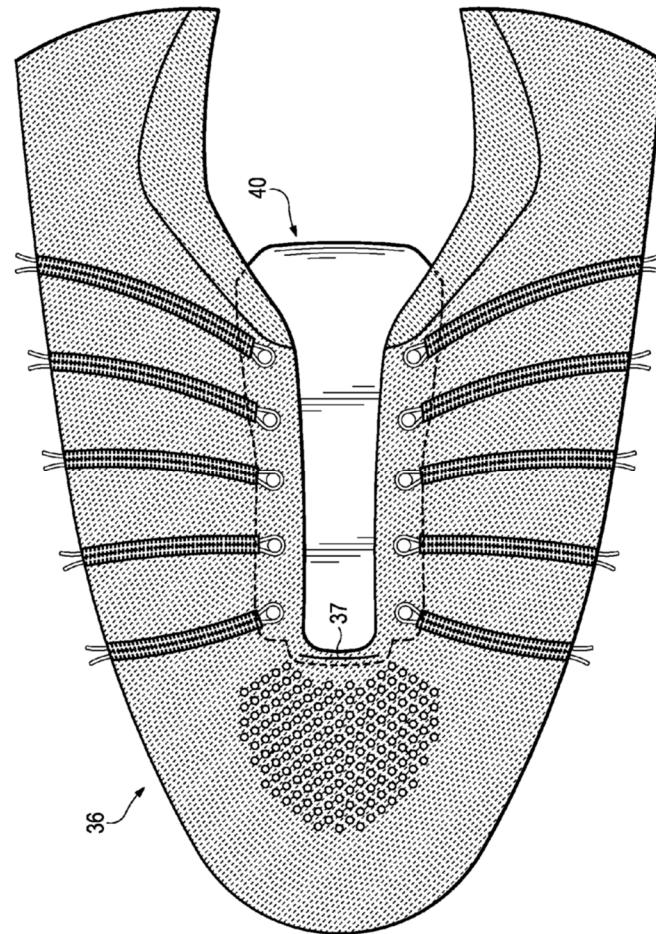


Figure 34

Moreover, a knitted shoe upper with an integral knit tongue formed with the upper and extending through a throat area of the knitted component was well-known in the art. *See, e.g.,* Sandy Black, *Knitwear in Fashion* (Thames & Hudson Inc., 2002) (“Knitwear in Fashion”):

1:

	Right Simone Memel, 'Hard Rope', 1994/95. Memel branched out from her fine arts and three-dimensional studies into the craft of shoemaking in order to express dichotomies and perceptions associated with male and female roles. Her first shoe project was a sock boot, combining sock and shoe, and she has since created many versions of one-off shoes using a range of knitted and other materials. Here hand-knitted string is used to simulate the toughness of rope in a classic wearable style outlined by the knit and purl stitches and the plaited edging. Below Ann-Louise Roswald, autumn/winter 1998/99. Capitalizing on her father's traditional clog-making business, Roswald was inspired to create matching clogs for her stylized floral printed knitwear. These were quickly taken up by Italian fashion house Marni for their winter 1999 collection, patterned to look like cowskin, and are now manufactured on a larger scale in Sweden.  <i>See also generally</i> Melliand International (September 2003). 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]. at least one raised element extending a height above the exterior surface of the knitted component,	Dua '956 discloses (explicitly, implicitly, and inherently) a knitted component including at least one raised element extending a height above the exterior surface of the knitted component. For example, see the following illustrative citation(s): 6:15-27: "Lateral textile element 40 is depicted individually in FIG. 5 and is formed of unitary (i.e., one-piece) construction through a flat knitting process. That is, a flat knitting process is utilized to

	mechanically manipulate one or more yarns in a manner that forms an upper edge 41, a lower edge 42, a rear edge 43, and four channels 44 in lateral textile element 40. As depicted in the cross-section of FIG. 4B, channels 44 are formed from two at least partially coextensive layers of the material forming lateral textile element 40, and the two layers are formed of unitary (i.e., one piece) construction through the flat knitting process. When viewed from the side of footwear 10, as in FIG. 1, channels 44 are oriented in a substantially vertical direction or are angled with respect to a vertical direction.” 6:28-44: “Medial textile element 50 is depicted individually in FIG. 6 and is similar in shape and configuration to lateral textile element 40. Accordingly, medial textile element 50 is formed of unitary (i.e., one-piece) construction through a flat knitting process. That is, a flat knitting process is utilized to mechanically manipulate one or more yarns in a manner that forms an upper edge 51, a lower edge 52, a rear edge 53, and four channels 54 in medial textile element 50. As depicted in the cross-section of FIG. 4B, channels 54 are formed from two at least partially coextensive layers of the material forming medial textile element 50, and the two layers are formed of unitary (i.e., one piece) construction through the flat knitting process. When viewed from the side of footwear 10, as in FIG. 2, channels 54 are oriented in a substantially vertical direction or are angled with respect to the vertical direction. Channels 54 are, therefore, similar in configuration and orientation to channels 44 of lateral textile element 40.” 7:34-39: “An advantage of flat knitting over various other types of knitting is that the flat knitting process may be utilized to form generally three-dimensional structures or structures wherein layers of material overlap each other (i.e., are at least partially coextensive) to form loops or other overlapping configurations, as with channels 44 and 54.” 9:18-21: “Each of loops 35 are positioned to extend outward from upper portions of channels 44 and 54, and central section 36 of lace elements 33 is positioned under and on the exterior of central textile element 60.” 9:31-38: “With reference to FIG. 9A, another configuration for lateral textile element 40 is depicted as having various lace loops 45 in place of channels 44 and lace elements 33. As discussed above, the flat knitting process may be utilized to form generally three-dimensional structures wherein layers of
--	---

	material overlap each other (i.e., are at least partially coextensive) to form loops or other overlapping configurations, as with channels 44 and 54.” 9:46-50: “Yet another configuration for lateral textile element 40 is depicted in FIG. 9B as having a pocket 46 in place of channels 44 and lace elements 33. Pocket 46 has an upper opening and is otherwise closed to permit small items (e.g., a key, identification, or change) to be secured within footwear 10.” 10:7-11: “Whereas side portions 72 are relatively flat in configuration, central portion 71 has a domed shape formed through the flat knitting process. That is, the flat knitting process forms central portion 71 to have a three-dimensional structure that is shaped to extend over the foot.” Figure 4B and associated text:
--	---

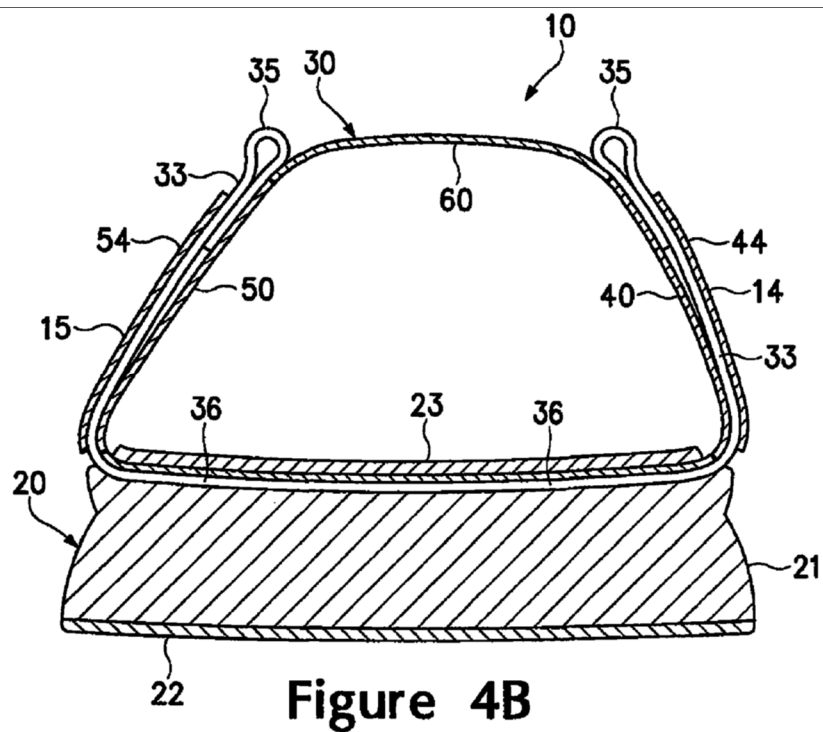


Figure 8C and associated text:

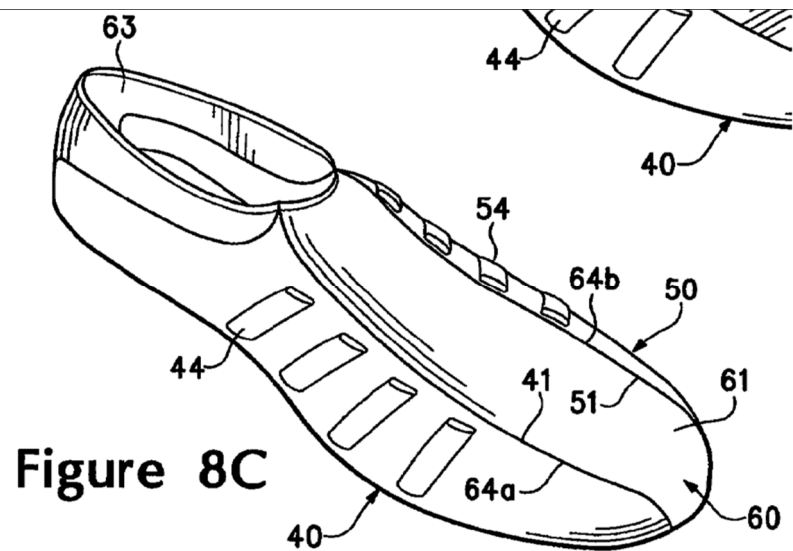


Figure 9A and associated text:

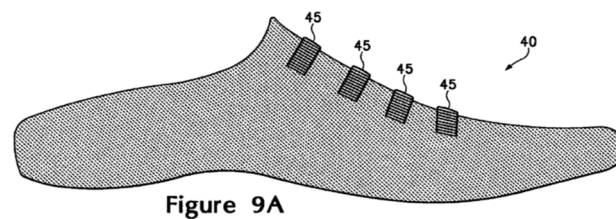


Figure 9B and associated text:

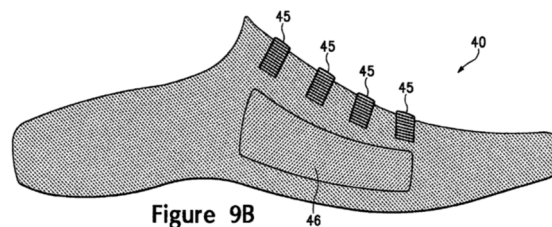


Figure 9B

Figure 10A and associated text:

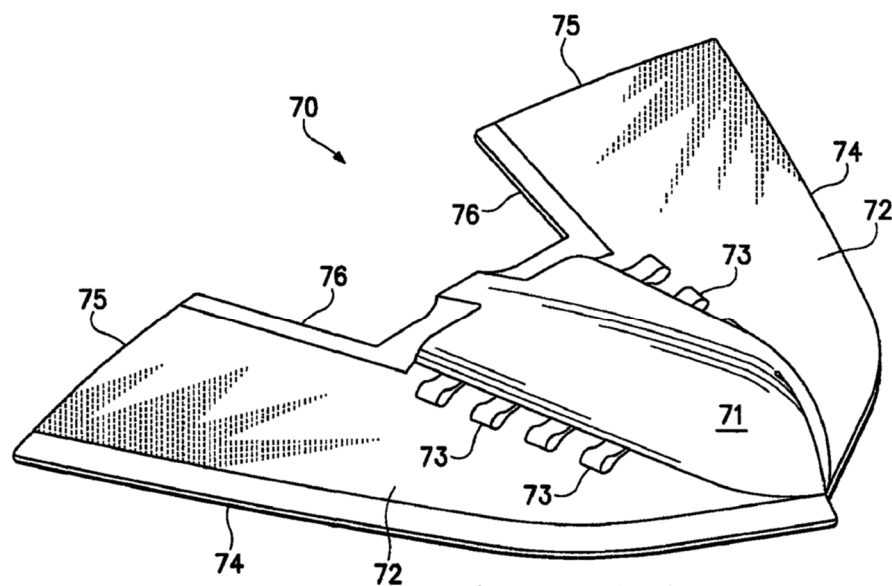


Figure 10A

Figure 10C and associated text:

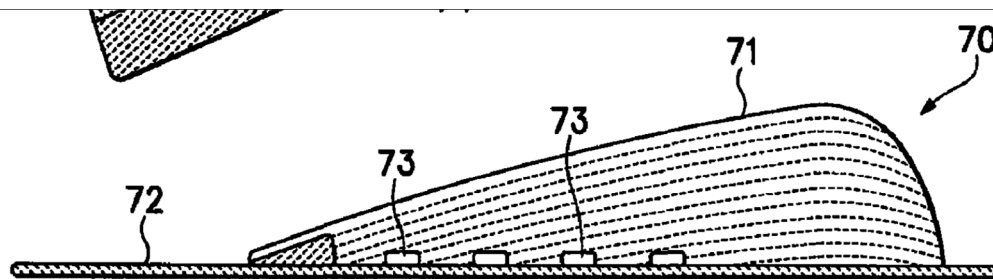


Figure 10C

To the extent Nike contends that Dua '956 does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Dua '956, 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.*, Bell, to arrive at this claim. For instance, Bell discloses at least one raised element extending a height above the exterior surface of the knitted component.

[0088]: “As mentioned above, a separate tongue member (made of the same or different materials from the remainder of the upper member) may be provided and attached to the upper construction without departing from this invention. 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**.”

Figure 10B and associated text:

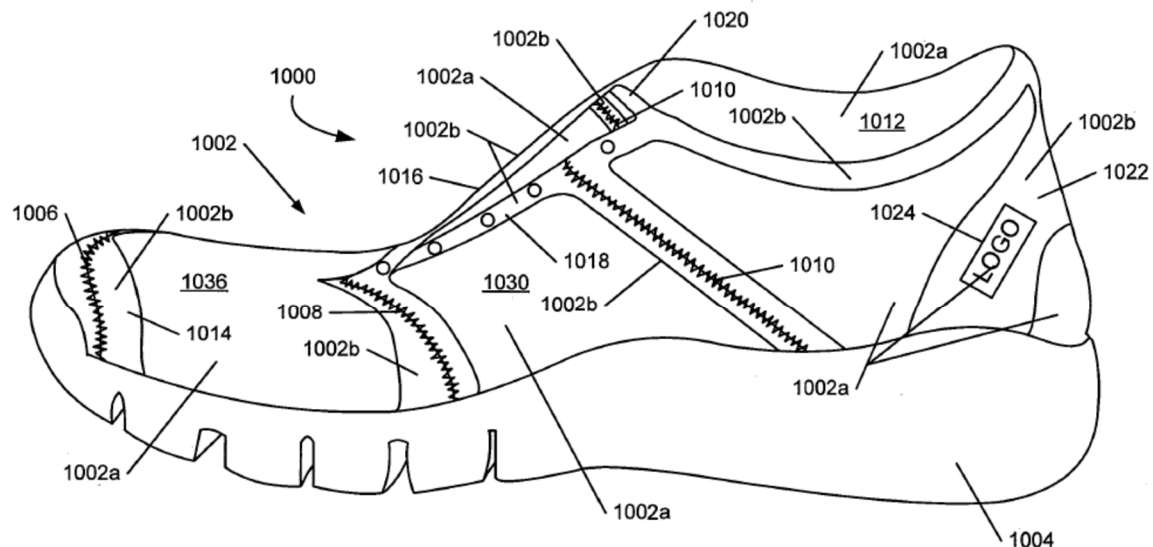


FIG. 10B

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[d]. wherein the integral knit tongue is joined to a forward portion of the throat area

Dua '956 discloses (explicitly, implicitly, and inherently) an integral knit tongue that is joined to a forward portion of the throat area and at least along a portion of a lateral side and a medial side of the

and at least along a portion of a lateral side and a medial side of the throat area of the knitted component extending from the forward portion to an ankle opening of the upper.	throat area of the knitted component extending from the forward portion to an ankle opening of the upper. For example, see the following illustrative citation(s): 6:46-55: “Central textile element 60 is depicted individually in FIG. 7 and includes a forward portion 61, a center portion 62, and a rearward portion 63 formed of unitary (i.e., one piece) construction. Forward portion 61 is primarily located in a throat area of footwear 10 (i.e., under lace 32) and has an elongate configuration defined by a lateral edge 64a and a medial edge 64b. As depicted in FIG. 3, and as described in greater detail below, at least a portion of lateral edge 64a is joined to lateral textile element 40 and at least a portion of medial edge 64b is joined to medial textile element 50.” 9:5-11: “With reference to FIG. 8C, the assembly process continues by joining textile elements 40 and 50 to forward portion 61. More particularly, upper edge 41 of lateral textile element 40 is stitched to lateral edge 64a of forward portion 61, and upper edge 51 of medial textile element 50 is stitched to medial edge 64b of forward portion 61.” Moreover, the figures show an integral knit tongue joined to a forward portion of the throat area and 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. Figure 7 and associated text:
--	---

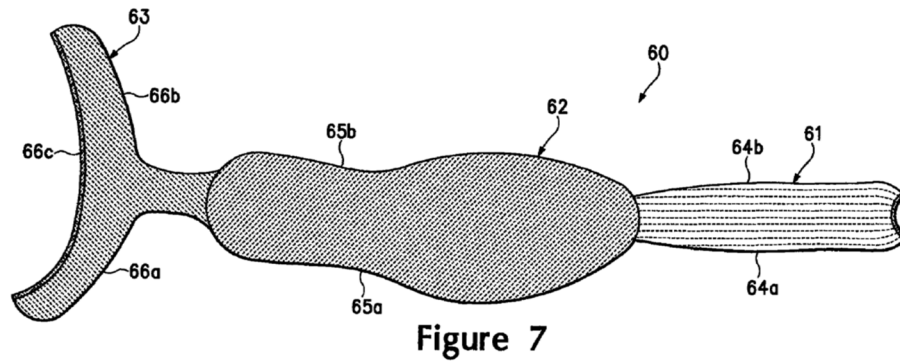
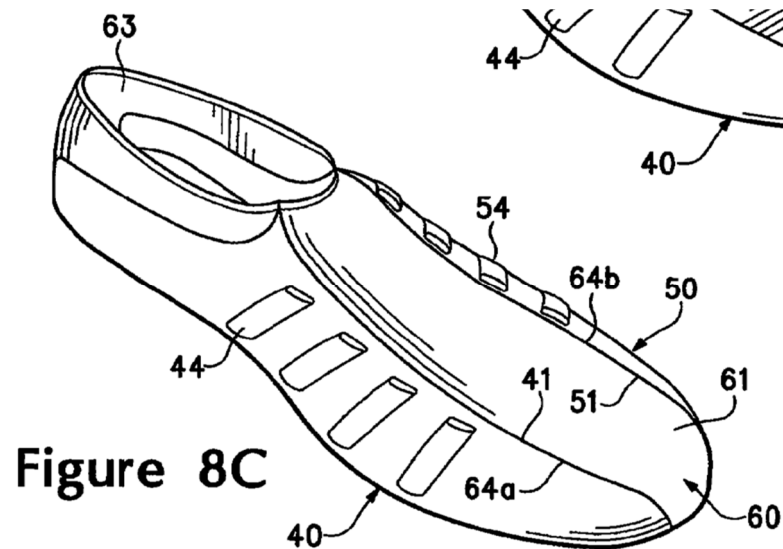


Figure 8C and associated text:



In addition, to the extent Nike contends that Dua '956 does not disclose this claim element, it would have been obvious to a POSITA to modify Dua '956, such as by combining with the general knowledge and/or the teachings of the numerous prior art references that disclose this limitation,

	including, <i>e.g.</i>, U.S. Patent App. Pub. Nos. 2010/0077634 (“Bell”), and 2012/0233884 (“Greene”), to arrive at this claim element. For instance, Bell teaches an integral knit tongue that is joined to a forward portion of the throat area and at least along a portion of a lateral side and a medial side of the throat area of the knitted component extending from the forward portion to an ankle opening. [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, <i>e.g.</i>, integrally formed as part of the one piece upper member 200 (<i>e.g.</i>, 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.” [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:
--	--

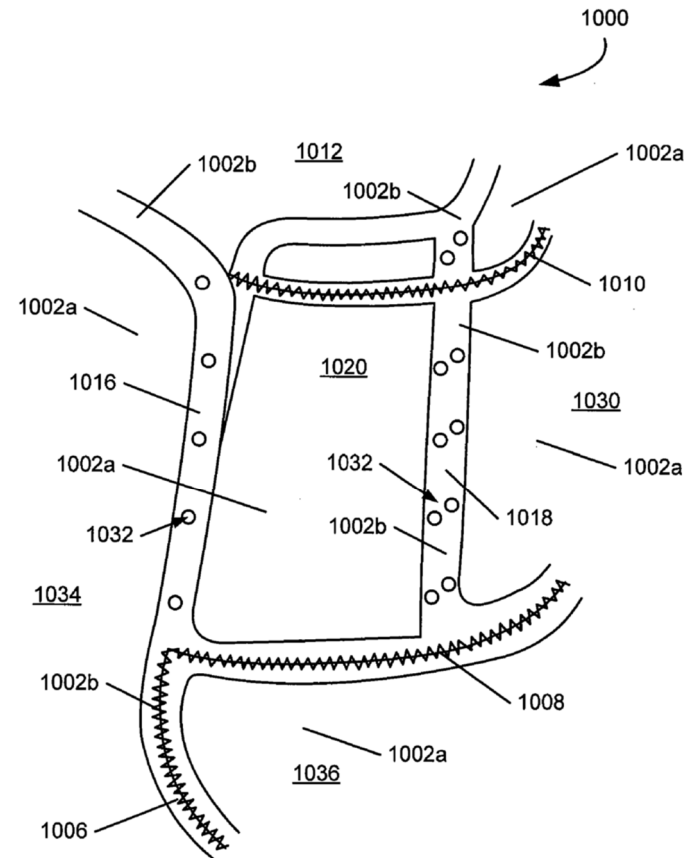


FIG. 10C

Greene also discloses an integral knit tongue 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 knitting process 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."

[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."

[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."

Figure 34 and associated text:

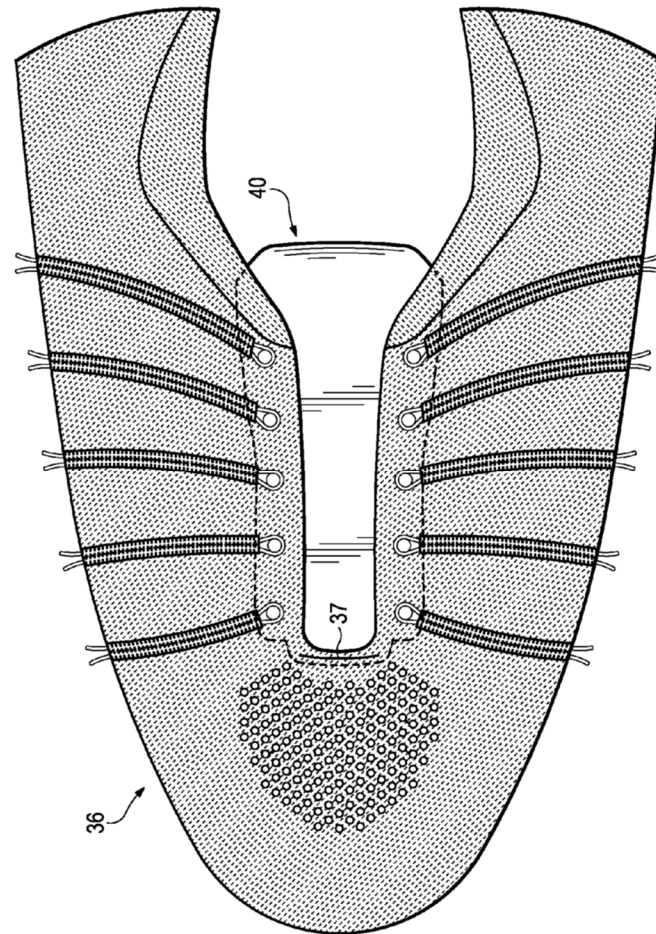


Figure 34

Moreover, Knitwear in Fashion discloses a shoe upper that has the integral knit tongue joined to a forward portion of the throat area and at least along a portion of a lateral side and a medial side of the throat area of the knitted component extending from the forward portion to an ankle opening of the upper:

	Moreover, a knitted shoe upper with an integral knit tongue formed with the upper and extending through a throat area of the knitted component was well-known in the art. 1: Right Simone Memel, 'Hard Rope', 1994/95. Memel branched out from her fine arts and three-dimensional studies into the craft of shoemaking in order to express dichotomies and perceptions associated with male and female roles. Her first shoe project was a sock boot, combining sock and shoe, and she has since created many versions of one-off shoes using a range of knitted and other materials. Here hand-knitted string is used to simulate the toughness of rope in a classic wearable style outlined by the knit and purl stitches and the plaited edging. Below Ann-Louise Roswald, autumn/winter 1998/99. Capitalizing on her father's traditional clog-making business, Roswald was inspired to create matching clogs for her stylized floral printed knitwear. These were quickly taken up by Italian fashion house Marni for their winter 1999 collection, patterned to look like cowskin, and are now manufactured on a larger scale in Sweden.  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 article of footwear recited in claim 1, wherein at least a portion of the integral	As set forth above, Dua '956 discloses (explicitly, implicitly, and inherently) and also renders obvious all of the elements of claim 1.

knit tongue and a portion of the upper include at least one course having a common yarn.	In addition, Dua '956 discloses (explicitly, implicitly, and inherently) that at least a portion of the integral knit tongue and a portion of the upper include at least one course having a common yarn. For example, see the following illustrative citation(s): 6:15-20: "Lateral textile element 40 is depicted individually in FIG. 5 and is formed of unitary (i.e., one-piece) construction through a flat knitting process. That is, a flat knitting process is utilized to mechanically manipulate one or more yarns in a manner that forms an upper edge 41, a lower edge 42, a rear edge 43, and four channels 44 in lateral textile element 40." 6:30-35: "Accordingly, medial textile element 50 is formed of unitary (i.e., one-piece) construction through a flat knitting process. That is, a flat knitting process is utilized to mechanically manipulate one or more yarns in a manner that forms an upper edge 51, a lower edge 52, a rear edge 53, and four channels 54 in medial textile element 50." 8:12-15: "In order to provide the stretch and recovery properties to upper 30, and particularly textile elements 40, 50, and 60, a yarn that incorporates an elastane fiber may be utilized." 8:23-25: "The characteristics of the yarn selected for textile elements 40, 50, and 60 depend primarily upon the materials that form the various filaments and fibers." Claim 1: "... the upper comprising: a knitted element formed from at least one yarn mechanically manipulated during a knitting process" To the extent Nike contends that Dua '956 does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Dua '956, 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 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."
---	---

	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.” Greene similarly discloses an integral knit tongue that includes at least one common yarn with the upper, thereby motivating a POSITA to modify Dua ’956 to include this feature. [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.” Moreover, Knitwear in Fashion discloses a knitted shoe upper wherein at least a portion of the integral knit tongue and a portion of the upper include at least one course having a common yarn: 1:
--	--

	Right Simone Memel, 'Hard Rope', 1994/95. Memel branched out from her fine arts and three-dimensional studies into the craft of shoemaking in order to express dichotomies and perceptions associated with male and female roles. Her first shoe project was a sock boot, combining sock and shoe, and she has since created many versions of one-off shoes using a range of knitted and other materials. Here hand-knitted string is used to simulate the toughness of rope in a classic wearable style outlined by the knit and purl stitches and the plaited edging. Below Ann-Louise Roswald, autumn/winter 1998/99. Capitalizing on her father's traditional clog-making business, Roswald was inspired to create matching clogs for her stylized floral printed knitwear. These were quickly taken up by Italian fashion house Marni for their winter 1999 collection, patterned to look like cowskin, and are now manufactured on a larger scale in Sweden.  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 article of footwear recited in claim 1, wherein at least a portion of the upper and a portion of the integral knit tongue are formed	As set forth above, Dua '956 discloses (explicitly, implicitly, and inherently) and also renders obvious all of the elements of claim 1. In addition, Dua '956 discloses (explicitly, implicitly, and inherently) that at least a portion of the upper and a portion of the integral knit tongue are formed from a common knit structure.

from a common knit structure.	For example, see the following illustrative citation(s): 4:39-49: “By selectively placing multiple different yarns and/or stitch patterns at multiple different locations in the overall structure during the knitting process, flat knitted products may have multiple different physical properties (e.g., different stretchability, different moisture management capabilities, etc.) at multiple different locations or zones within a single, unitary construction (e.g., different properties at different zones or locations within a single footwear structure). Additionally, flat knitting can be used to produce pockets, tunnels, or other layered structures in the final product.” 6:15-20: “Lateral textile element 40 is depicted individually in FIG. 5 and is formed of unitary (i.e., one-piece) construction through a flat knitting process. That is, a flat knitting process is utilized to mechanically manipulate one or more yarns in a manner that forms an upper edge 41, a lower edge 42, a rear edge 43, and four channels 44 in lateral textile element 40.” 6:30-35: “Accordingly, medial textile element 50 is formed of unitary (i.e., one-piece) construction through a flat knitting process. That is, a flat knitting process is utilized to mechanically manipulate one or more yarns in a manner that forms an upper edge 51, a lower edge 52, a rear edge 53, and four channels 54 in medial textile element 50.” To the extent Nike contends that Dua ’956 does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Dua ’956, such as by combining with the general knowledge and/or the teachings of the numerous prior art references that disclose this limitation, including, <i>e.g.</i>, Nishida and Greene, to arrive at this claim. For instance, Nishida teaches 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.” Claim 10: “Process according to claim 9, wherein said tongues are produced on the same web of material as the layouts and sole parts.” Greene:
--------------------------------------	---

[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.”

Moreover, Knitwear in Fashion discloses a knitted shoe upper wherein at least a portion of the upper and a portion of the integral knit tongue are formed from a common knit structure:

1:

Right Simone Memel, 'Hard Rope', 1994/95. Memel branched out from her fine arts and three-dimensional studies into the craft of shoemaking in order to express dichotomies and perceptions associated with male and female roles. Her first shoe project was a sock boot, combining sock and shoe, and she has since created many versions of one-off shoes using a range of knitted and other materials. Here hand-knitted string is used to simulate the toughness of rope in a classic wearable style outlined by the knit and purl stitches and the plaited edging.

Below Ann-Louise Roswald, autumn/winter 1998/99. Capitalizing on her father's traditional clog-making business, Roswald was inspired to create matching clogs for her stylized floral printed knitwear. These were quickly taken up by Italian fashion house Marni for their winter 1999 collection, patterned to look like cowskin, and are now manufactured on a larger scale in Sweden.



	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 article of footwear recited in claim 1, wherein the at least one raised element is formed of unitary knit construction with the upper and the integral knit tongue.	As set forth above, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 1. In addition, Dua '956 discloses (explicitly, implicitly, and inherently) that the at least one raised element is formed of unitary knit construction with the upper and the integral knit tongue. For example, see the following illustrative citation(s): 6:15-27: "Lateral textile element 40 is depicted individually in FIG. 5 and is formed of unitary (i.e., one-piece) construction through a flat knitting process. That is, a flat knitting process is utilized to mechanically manipulate one or more yarns in a manner that forms an upper edge 41, a lower edge 42, a rear edge 43, and four channels 44 in lateral textile element 40. As depicted in the cross-section of FIG. 4B, channels 44 are formed from two at least partially coextensive layers of the material forming lateral textile element 40, and the two layers are formed of unitary (i.e., one piece) construction through the flat knitting process. When viewed from the side of footwear 10, as in FIG. 1, channels 44 are oriented in a substantially vertical direction or are angled with respect to a vertical direction." 6:28-44: "Medial textile element 50 is depicted individually in FIG. 6 and is similar in shape and configuration to lateral textile element 40. Accordingly, medial textile element 50 is formed of unitary (i.e., one-piece) construction through a flat knitting process. That is, a flat knitting process is utilized to mechanically manipulate one or more yarns in a manner that forms an upper edge 51, a lower edge 52, a rear edge 53, and four channels 54 in medial textile element 50. As depicted in the cross-section of FIG. 4B, channels 54 are formed from two at least partially coextensive layers of the material forming medial textile element 50, and the two layers are formed of unitary (i.e., one piece) construction through the flat knitting process. When viewed from the side of footwear 10, as in FIG.

	2, channels 54 are oriented in a substantially vertical direction or are angled with respect to the vertical direction. Channels 54 are, therefore, similar in configuration and orientation to channels 44 of lateral textile element 40.” 7:34-39: “An advantage of flat knitting over various other types of knitting is that the flat knitting process may be utilized to form generally three-dimensional structures or structures wherein layers of material overlap each other (i.e., are at least partially coextensive) to form loops or other overlapping configurations, as with channels 44 and 54.” 9:18-21: “Each of loops 35 are positioned to extend outward from upper portions of channels 44 and 54, and central section 36 of lace elements 33 is positioned under and on the exterior of central textile element 60.” 9:31-38: “With reference to FIG. 9A, another configuration for lateral textile element 40 is depicted as having various lace loops 45 in place of channels 44 and lace elements 33. As discussed above, the flat knitting process may be utilized to form generally three-dimensional structures wherein layers of material overlap each other (i.e., are at least partially coextensive) to form loops or other overlapping configurations, as with channels 44 and 54.” 9:46-57: “Yet another configuration for lateral textile element 40 is depicted in FIG. 9B as having a pocket 46 in place of channels 44 and lace elements 33. Pocket 46 has an upper opening and is otherwise closed to permit small items (e.g., a key, identification, or change) to be secured within footwear 10. As with channels 44 and lace loops 45, pocket 46 is formed through the flat knitting process as a unitary construction with the textile element 40. If desired, a flap or other closure element may be provided to help secure items within the pocket 46 (optionally, the flap may be formed as part of the textile element 40 in the flat knitting process (e.g., as a unitary, one-piece structure therewith).” 10:7-11: “Whereas side portions 72 are relatively flat in configuration, central portion 71 has a domed shape formed through the flat knitting process. That is, the flat knitting process forms central portion 71 to have a three-dimensional structure that is shaped to extend over the foot.” Figure 4B and associated text:
--	---

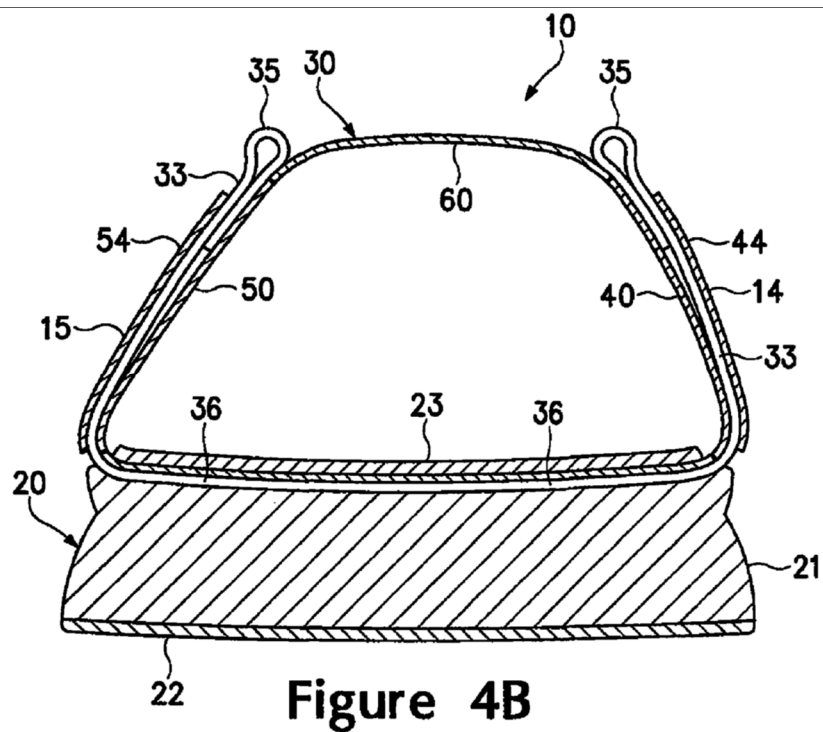


Figure 4B

Figure 8C and associated text:

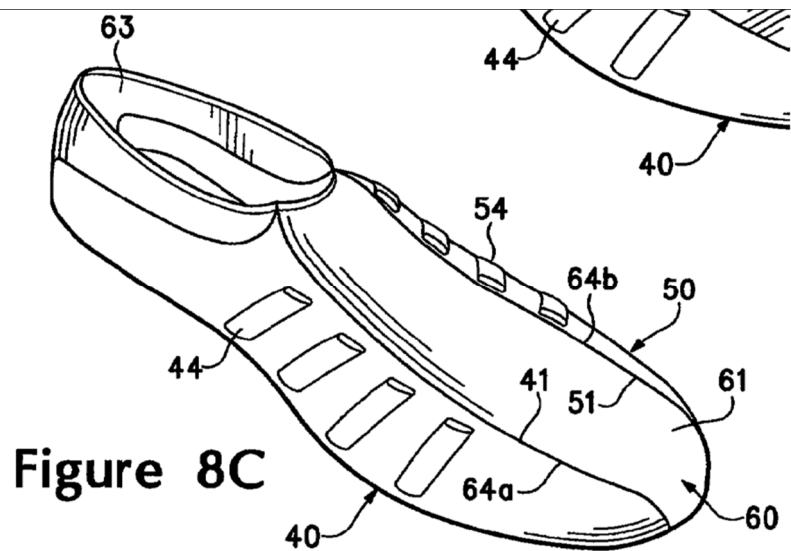


Figure 9A and associated text:

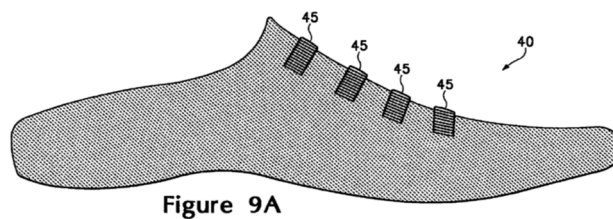


Figure 9B and associated text:

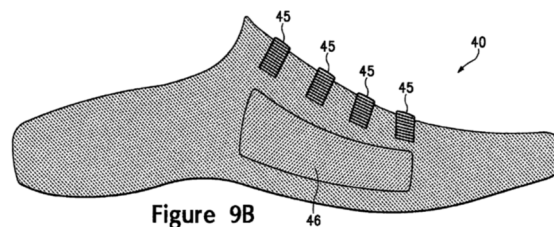


Figure 9B

Figure 10A and associated text:

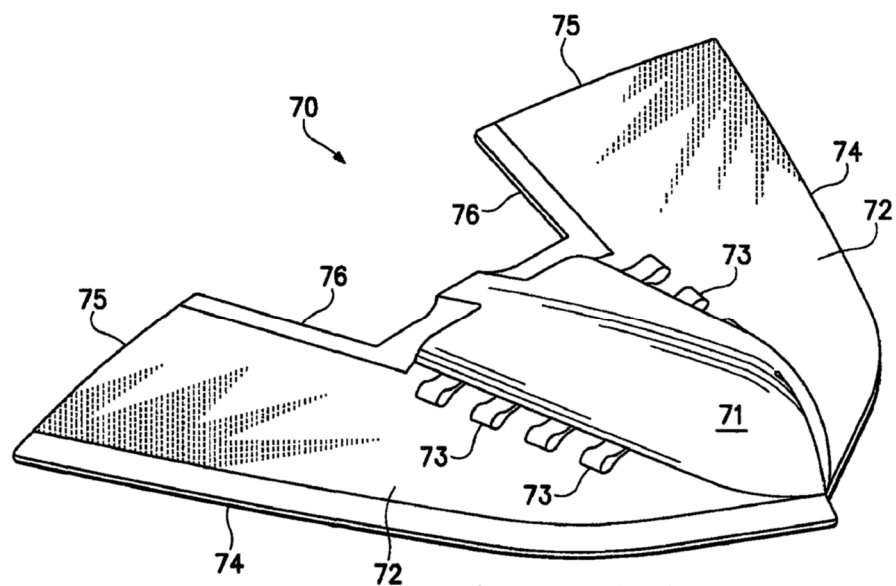


Figure 10A

Figure 10C and associated text:

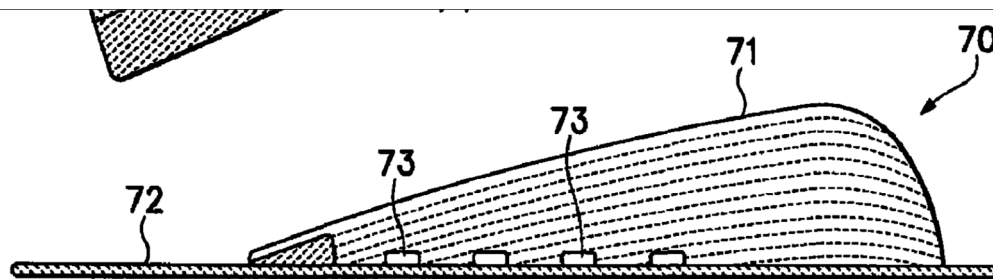


Figure 10C

To the extent Nike contends that Dua '956 does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Dua '956, 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.*, Bell, Greene and Huffa, to arrive at this claim. For instance, Bell discloses at least one raised element extending a height above the exterior surface of the knitted component.

[0088]: “As mentioned above, a separate tongue member (made of the same or different materials from the remainder of the upper member) may be provided and attached to the upper construction without departing from this invention. 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**.”

Figure 10B and associated text:

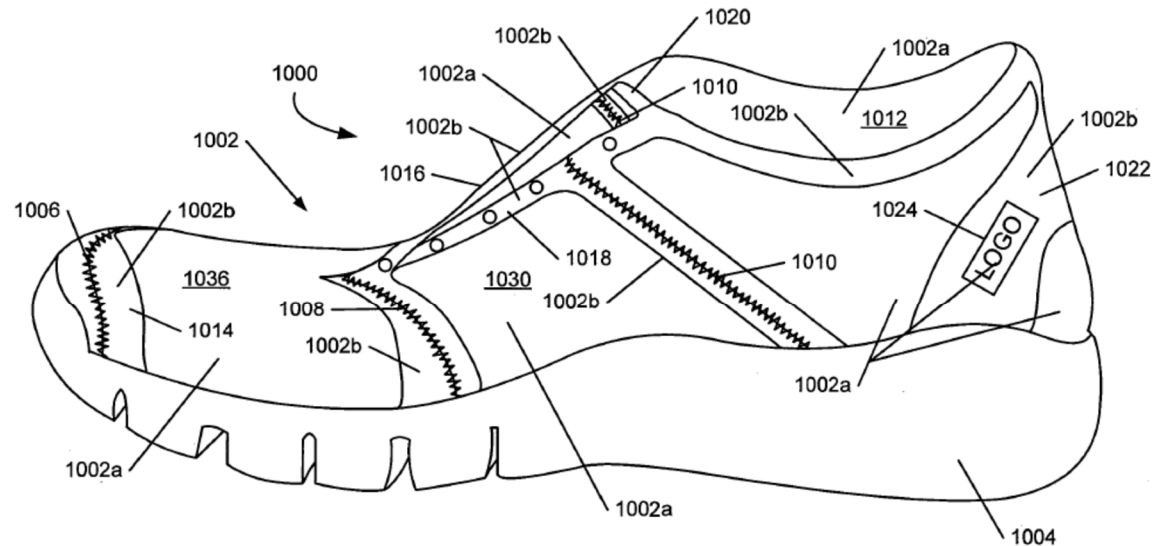


FIG. 10B

Moreover, Greene and Huffa also teach that elements added to a one-piece upper are also considered formed of unitary knit construction.

Greene, [0059]: "... 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.

Huffa, [0039]: "... Moreover, knitted component 130 remains formed of unitary knit construction when other elements (e.g., lace 122, tongue 124, logos, trademarks, placards with care instructions and material information) are added following the knitting process."

Knitwear in Fashion also discloses a knitted shoe upper wherein the at least one raised element is formed of unitary knit construction with the upper and the integral knit tongue.

	1: Right Simone Memel, 'Hard Rope', 1994/95. Memel branched out from her fine arts and three-dimensional studies into the craft of shoemaking in order to express dichotomies and perceptions associated with male and female roles. Her first shoe project was a sock boot, combining sock and shoe, and she has since created many versions of one-off shoes using a range of knitted and other materials. Here hand-knitted string is used to simulate the toughness of rope in a classic wearable style outlined by the knit and purl stitches and the plaited edging. Below Ann-Louise Roswald, autumn/winter 1998/99. Capitalizing on her father's traditional clog-making business, Roswald was inspired to create matching clogs for her stylized floral printed knitwear. These were quickly taken up by Italian fashion house Marni for their winter 1999 collection, patterned to look like cowskin, and are now manufactured on a larger scale in Sweden.  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 article of footwear recited in claim 4, wherein the knitted component includes at least two raised elements disposed on each of the lateral side and the	As set forth above, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 4. In addition, Dua '956 discloses (explicitly, implicitly, and inherently) that the knitted component includes at least two raised elements disposed on each of the lateral side and the medial side of the throat area of the upper and extending a height above the exterior surface of the knitted component

medial side of the throat area of the upper and extending a height above the exterior surface of the knitted component.	For example, see the following illustrative citation(s): 6:15-27: “Lateral textile element 40 is depicted individually in FIG. 5 and is formed of unitary (i.e., one-piece) construction through a flat knitting process. That is, a flat knitting process is utilized to mechanically manipulate one or more yarns in a manner that forms an upper edge 41, a lower edge 42, a rear edge 43, and four channels 44 in lateral textile element 40. As depicted in the cross-section of FIG. 4B, channels 44 are formed from two at least partially coextensive layers of the material forming lateral textile element 40, and the two layers are formed of unitary (i.e., one piece) construction through the flat knitting process. When viewed from the side of footwear 10, as in FIG. 1, channels 44 are oriented in a substantially vertical direction or are angled with respect to a vertical direction.” 6:28-44: “Medial textile element 50 is depicted individually in FIG. 6 and is similar in shape and configuration to lateral textile element 40. Accordingly, medial textile element 50 is formed of unitary (i.e., one-piece) construction through a flat knitting process. That is, a flat knitting process is utilized to mechanically manipulate one or more yarns in a manner that forms an upper edge 51, a lower edge 52, a rear edge 53, and four channels 54 in medial textile element 50. As depicted in the cross-section of FIG. 4B, channels 54 are formed from two at least partially coextensive layers of the material forming medial textile element 50, and the two layers are formed of unitary (i.e., one piece) construction through the flat knitting process. When viewed from the side of footwear 10, as in FIG. 2, channels 54 are oriented in a substantially vertical direction or are angled with respect to the vertical direction. Channels 54 are, therefore, similar in configuration and orientation to channels 44 of lateral textile element 40.” 7:34-39: “An advantage of flat knitting over various other types of knitting is that the flat knitting process may be utilized to form generally three-dimensional structures or structures wherein layers of material overlap each other (i.e., are at least partially coextensive) to form loops or other overlapping configurations, as with channels 44 and 54.” 9:18-21: “Each of loops 35 are positioned to extend outward from upper portions of channels 44 and 54, and central section 36 of lace elements 33 is positioned under and on the exterior of central textile element 60.”
--	--

	9:31-38: “With reference to FIG. 9A, another configuration for lateral textile element 40 is depicted as having various lace loops 45 in place of channels 44 and lace elements 33. As discussed above, the flat knitting process may be utilized to form generally three-dimensional structures wherein layers of material overlap each other (i.e., are at least partially coextensive) to form loops or other overlapping configurations, as with channels 44 and 54.” 9:46-57: “Yet another configuration for lateral textile element 40 is depicted in FIG. 9B as having a pocket 46 in place of channels 44 and lace elements 33. Pocket 46 has an upper opening and is otherwise closed to permit small items (e.g., a key, identification, or change) to be secured within footwear 10. As with channels 44 and lace loops 45, pocket 46 is formed through the flat knitting process as a unitary construction with the textile element 40. If desired, a flap or other closure element may be provided to help secure items within the pocket 46 (optionally, the flap may be formed as part of the textile element 40 in the flat knitting process (e.g., as a unitary, one-piece structure therewith).” 10:7-11: “Whereas side portions 72 are relatively flat in configuration, central portion 71 has a domed shape formed through the flat knitting process. That is, the flat knitting process forms central portion 71 to have a three-dimensional structure that is shaped to extend over the foot.” Figure 4B and associated text:
--	--

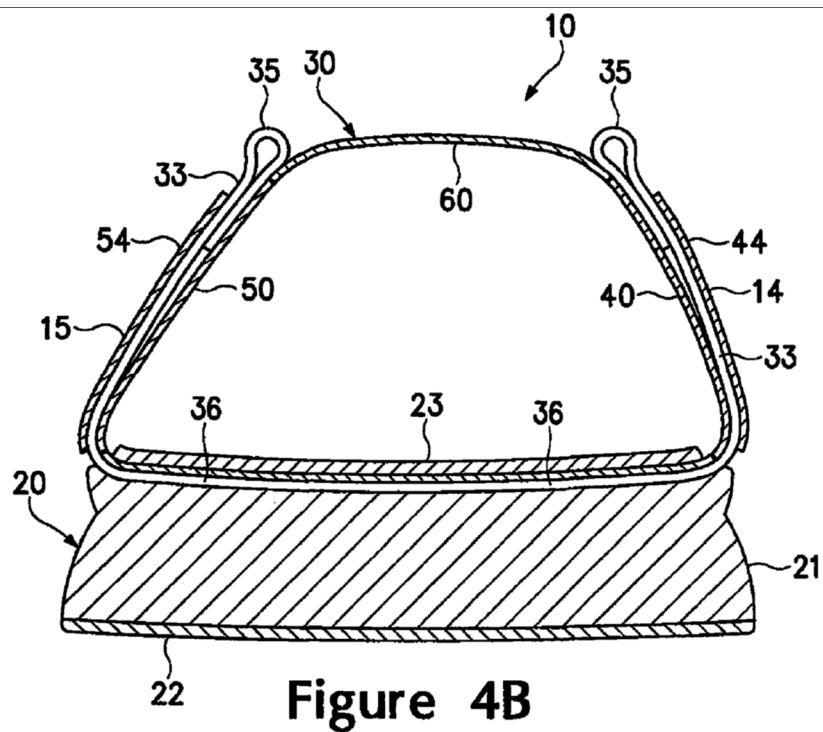


Figure 8C and associated text:

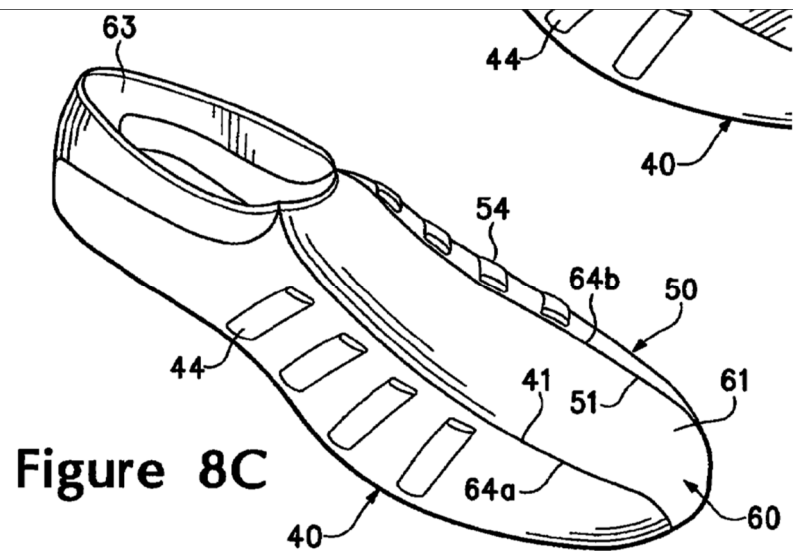


Figure 9A and associated text:

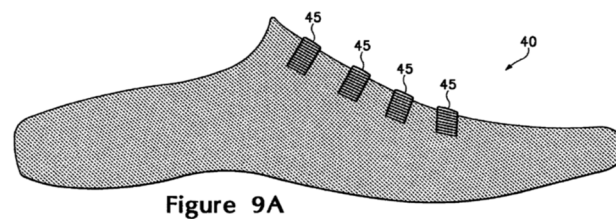


Figure 9B and associated text:

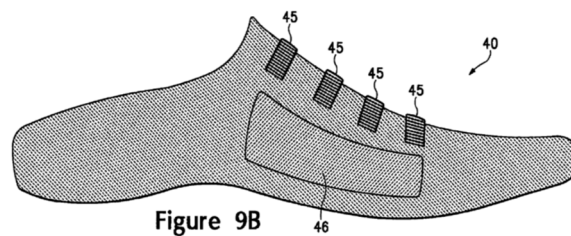


Figure 10A and associated text:

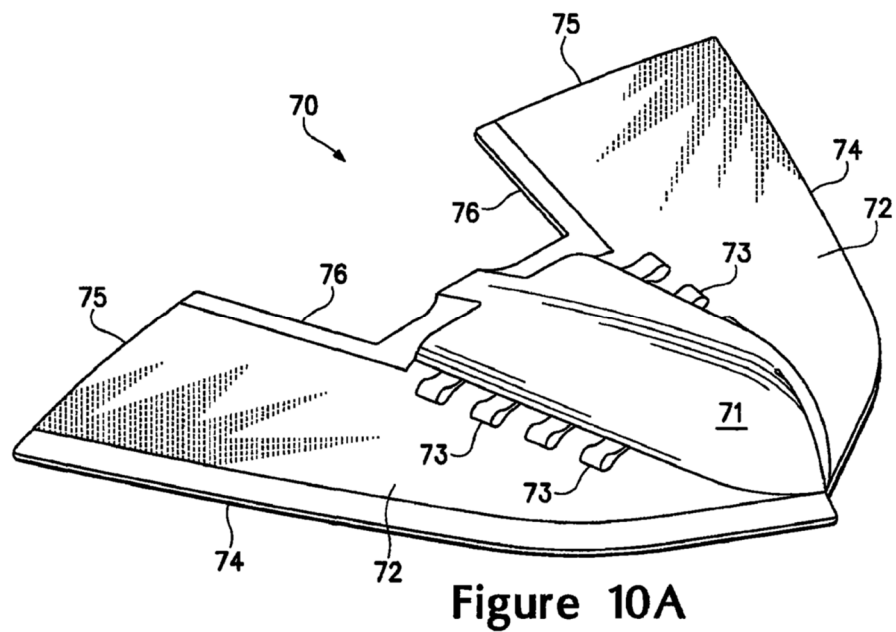


Figure 10C and associated text:

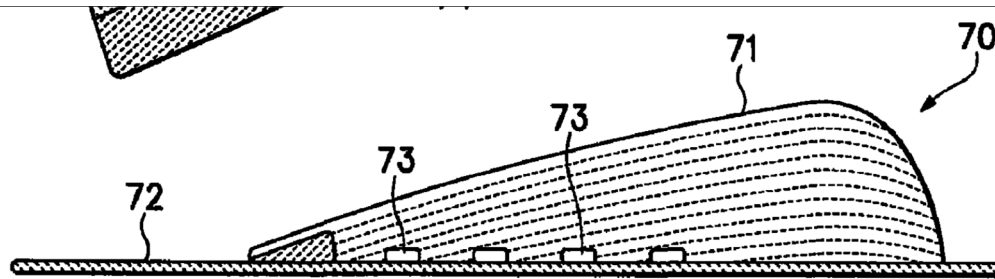


Figure 10C

To the extent Nike contends that Dua '956 does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Dua '956, 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.*, Bell, to arrive at this claim. For instance, Bell discloses a knitted component including at least two raised elements disposed on each of the lateral side and the medial side of the throat area of the upper and extending a height above the exterior surface of the knitted component.

[0088]: “As mentioned above, a separate tongue member (made of the same or different materials from the remainder of the upper member) may be provided and attached to the upper construction without departing from this invention. 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**.”

Figure 10B and associated text:

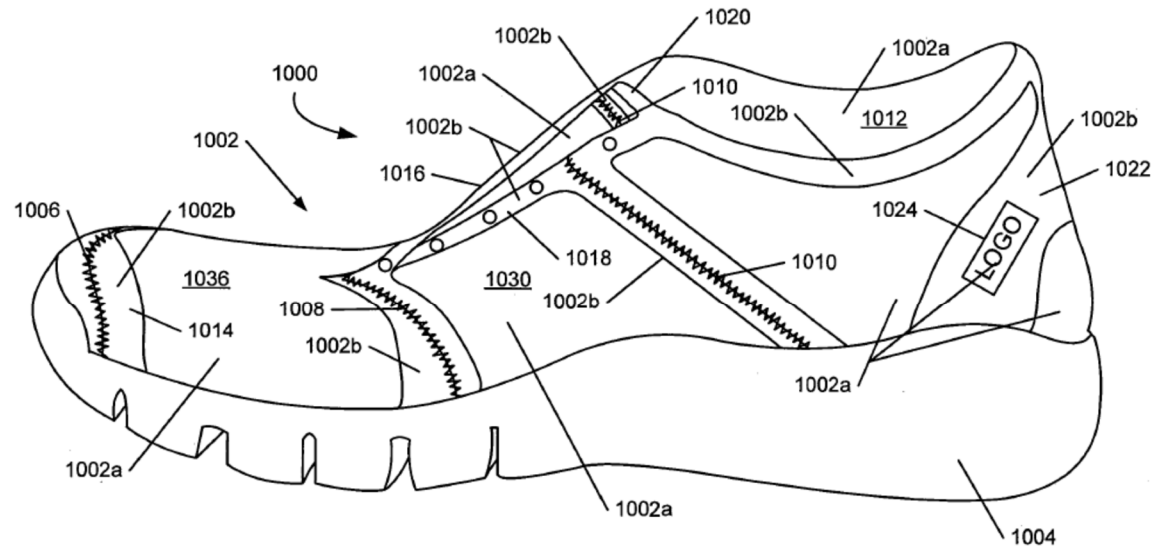


FIG. 10B

Moreover, Knitwear in Fashion discloses a knitted shoe upper wherein the knitted component includes at least two raised elements disposed on each of the lateral side and the medial side of the throat area of the upper and extending a height above the exterior surface of the knitted component.

1:

	Right Simone Memel, 'Hard Rope', 1994/95. Memel branched out from her fine arts and three-dimensional studies into the craft of shoemaking in order to express dichotomies and perceptions associated with male and female roles. Her first shoe project was a sock boot, combining sock and shoe, and she has since created many versions of one-off shoes using a range of knitted and other materials. Here hand-knitted string is used to simulate the toughness of rope in a classic wearable style outlined by the knit and purl stitches and the plaited edging. Below Ann-Louise Roswald, autumn/winter 1998/99. Capitalizing on her father's traditional clog-making business, Roswald was inspired to create matching clogs for her stylized floral printed knitwear. These were quickly taken up by Italian fashion house Marni for their winter 1999 collection, patterned to look like cowskin, and are now manufactured on a larger scale in Sweden.  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.
6. The article of footwear recited in claim 4, wherein the at least one raised element further comprises at least one lace aperture configured to receive a lace.	As set forth above, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 4. In addition, Dua '956 discloses (explicitly, implicitly, and inherently) that the at least one raised element further comprises at least one lace aperture configured to receive a lace. For example, see the following illustrative citation(s):

6:15-27: “Lateral textile element 40 is depicted individually in FIG. 5 and is formed of unitary (i.e., one-piece) construction through a flat knitting process. That is, a flat knitting process is utilized to mechanically manipulate one or more yarns in a manner that forms an upper edge 41, a lower edge 42, a rear edge 43, and **four channels 44** in lateral textile element 40. As depicted in the cross-section of FIG. 4B, channels 44 are formed from two at least partially coextensive layers of the material forming lateral textile element 40, and the two layers are formed of unitary (i.e., one piece) construction through the flat knitting process. When viewed from the side of footwear 10, as in FIG. 1, **channels 44 are oriented in a substantially vertical direction or are angled with respect to a vertical direction.**”

6:28-44: “Medial textile element 50 is depicted individually in FIG. 6 and is similar in shape and configuration to lateral textile element 40. Accordingly, medial textile element 50 is formed of unitary (i.e., one-piece) construction through a flat knitting process. That is, a flat knitting process is utilized to mechanically manipulate one or more yarns in a manner that forms an upper edge 51, a lower edge 52, a rear edge 53, and **four channels 54** in medial textile element 50. As depicted in the cross-section of FIG. 4B, channels 54 are formed from two at least partially coextensive layers of the material forming medial textile element 50, and the two layers are formed of unitary (i.e., one piece) construction through the flat knitting process. When viewed from the side of footwear 10, as in FIG. 2, **channels 54 are oriented in a substantially vertical direction or are angled with respect to the vertical direction.** Channels 54 are, therefore, similar in configuration and orientation to channels 44 of lateral textile element 40.”

7:34-39: “An advantage of flat knitting over various other types of knitting is that the flat knitting process may be utilized to form generally three-dimensional structures or structures wherein layers of material overlap each other (i.e., are at least partially coextensive) to form loops or other overlapping configurations, as with channels 44 and 54.”

9:18-21: “Each of loops 35 are positioned to extend outward from upper portions of channels 44 and 54, and central section 36 of lace elements 33 is positioned under and on the exterior of central textile element 60.”

9:31-38: “With reference to FIG. 9A, another configuration for lateral textile element 40 is depicted as having various lace loops 45 in place of channels 44 and lace elements 33. As discussed above, the flat knitting process may be utilized to form generally three-dimensional structures wherein layers of

	material overlap each other (i.e., are at least partially coextensive) to form loops or other overlapping configurations, as with channels 44 and 54.” 9:46-57: “Yet another configuration for lateral textile element 40 is depicted in FIG. 9B as having a pocket 46 in place of channels 44 and lace elements 33. Pocket 46 has an upper opening and is otherwise closed to permit small items (e.g., a key, identification, or change) to be secured within footwear 10. As with channels 44 and lace loops 45, pocket 46 is formed through the flat knitting process as a unitary construction with the textile element 40. If desired, a flap or other closure element may be provided to help secure items within the pocket 46 (optionally, the flap may be formed as part of the textile element 40 in the flat knitting process (e.g., as a unitary, one-piece structure therewith).” Figure 4B and associated text:
--	---

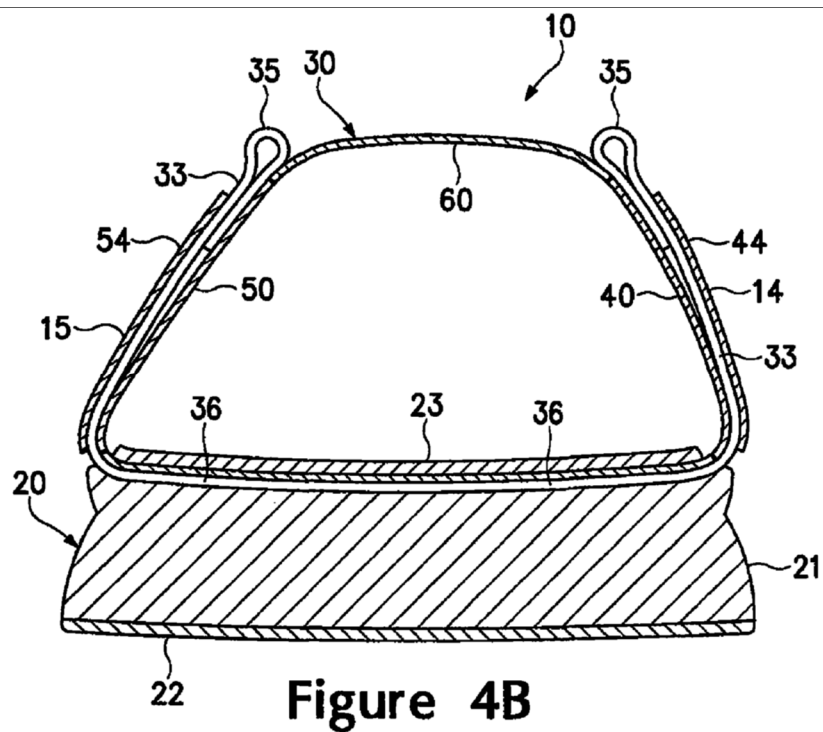


Figure 8C and associated text:

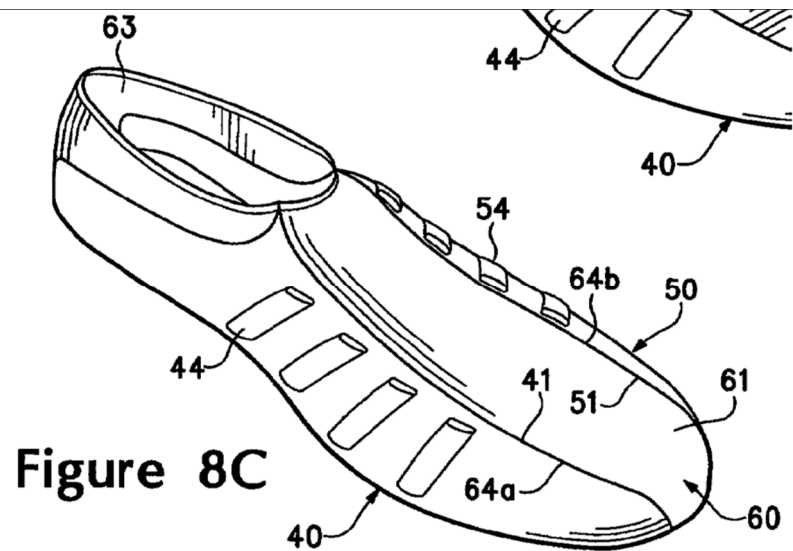


Figure 9A and associated text:

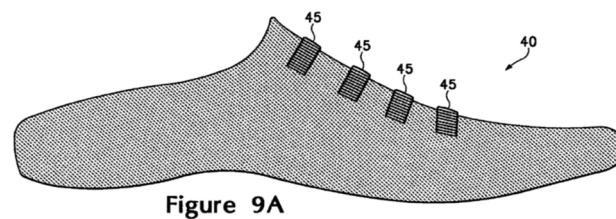
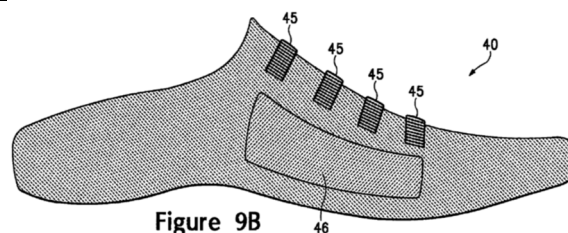


Figure 9B and associated text:



To the extent Nike contends that Dua '956 does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Dua '956, such as by combining with the general knowledge and/or the teachings of the numerous prior art references, to arrive at this claim. For instance, Bell discloses a knitted component including at least two raised elements disposed on each of the lateral side and the medial side of the throat area of the upper and extending a height above the exterior surface of the knitted component.

[0088]: “As mentioned above, a separate tongue member (made of the same or different materials from the remainder of the upper member) may be provided and attached to the upper construction without departing from this invention. 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**.”

Figure 10B and associated text:

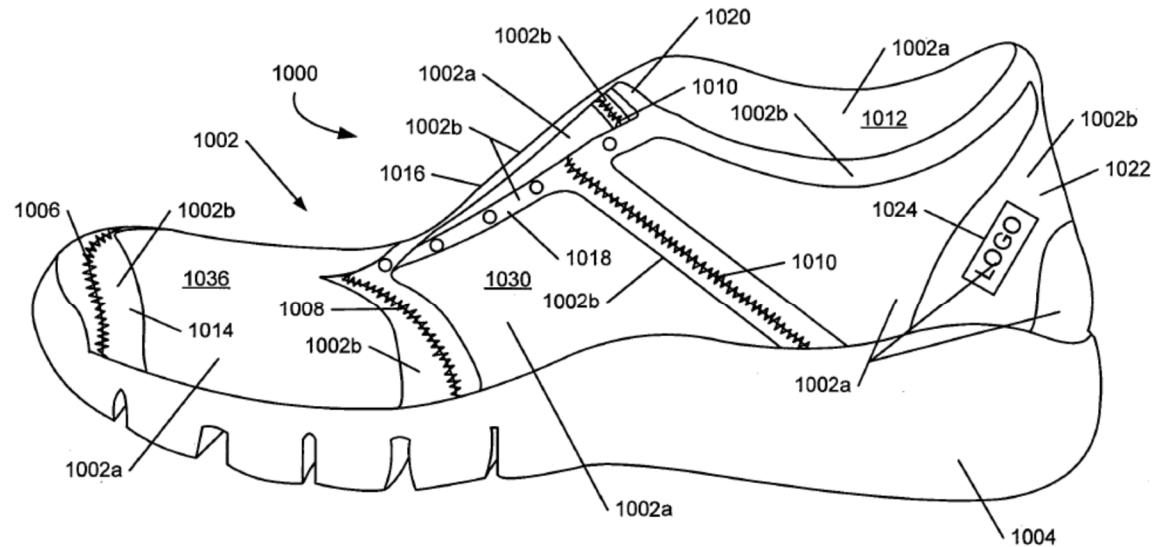


FIG. 10B

Moreover, Knitwear in Fashion discloses a knitted shoe upper wherein the at least one raised element further comprises at least one lace aperture configured to receive a lace.

1:

	Right Simone Memel, 'Hard Rope', 1994/95. Memel branched out from her fine arts and three-dimensional studies into the craft of shoemaking in order to express dichotomies and perceptions associated with male and female roles. Her first shoe project was a sock boot, combining sock and shoe, and she has since created many versions of one-off shoes using a range of knitted and other materials. Here hand-knitted string is used to simulate the toughness of rope in a classic wearable style outlined by the knit and purl stitches and the plaited edging. Below Ann-Louise Roswald, autumn/winter 1998/99. Capitalizing on her father's traditional clog-making business, Roswald was inspired to create matching clogs for her stylized floral printed knitwear. These were quickly taken up by Italian fashion house Marni for their winter 1999 collection, patterned to look like cowskin, and are now manufactured on a larger scale in Sweden.  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.
7. The article of footwear recited in claim 1, wherein the integral knit tongue comprises at least a partially integral portion and a free portion;	As set forth above, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 1. In addition, Dua '956 discloses (explicitly, implicitly, and inherently) that the integral knit tongue comprises at least a partially integral portion and a free portion; the partially integral portion being of unitary knit construction with the upper at the forward portion of the throat area and at least along the portion of the lateral side and the medial side of the throat area of the knitted component; and the free

the partially integral portion being of unitary knit construction with the upper at the forward portion of the throat area and at least along the portion of the lateral side and the medial side of the throat area of the knitted component; and the free portion being 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.

portion being 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.

For example, see the following illustrative citation(s):

Figure 9A and associated text:

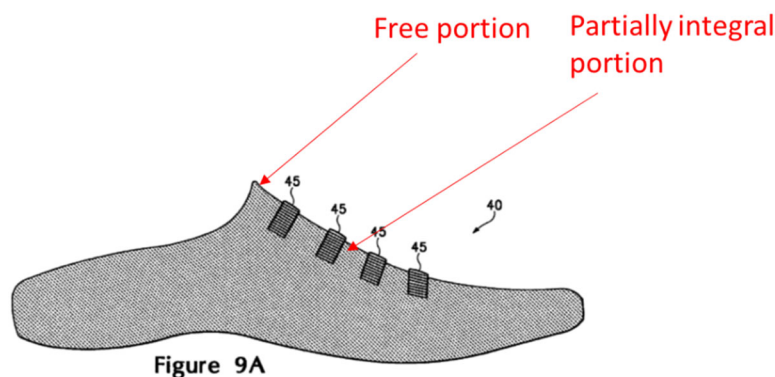
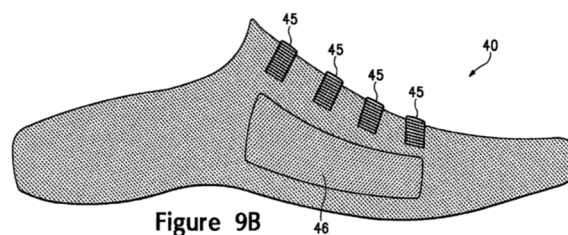


Figure 9B and associated text:



To the extent that Nike contends that Dua '956 does not disclose this claim, a POSITA would have been motivated before the earliest priority date to modify Dua '956, 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.

	[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.” Figure 34 and associated text:
--	--

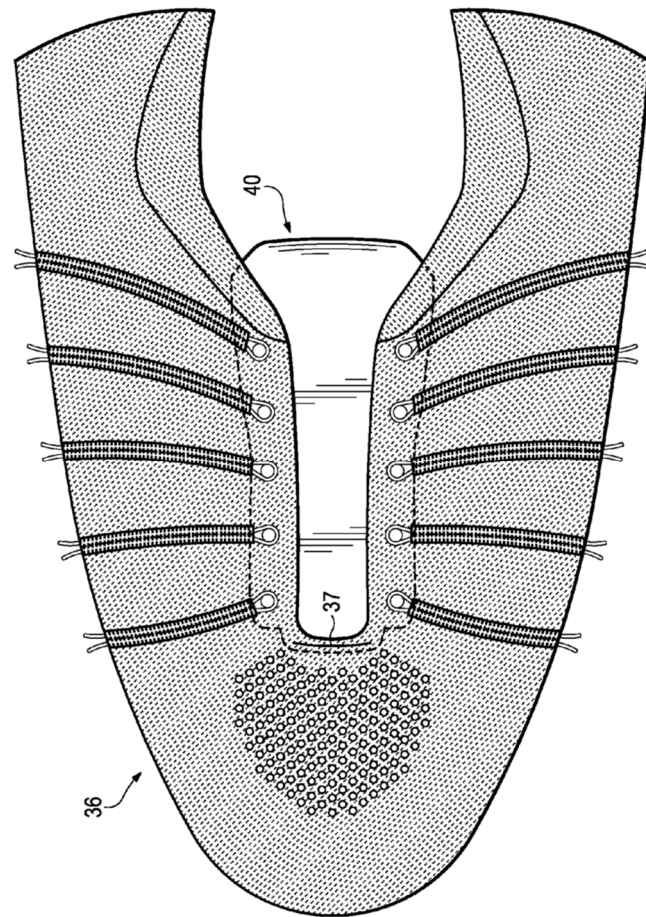


Figure 34

Figure 37 and associated text:

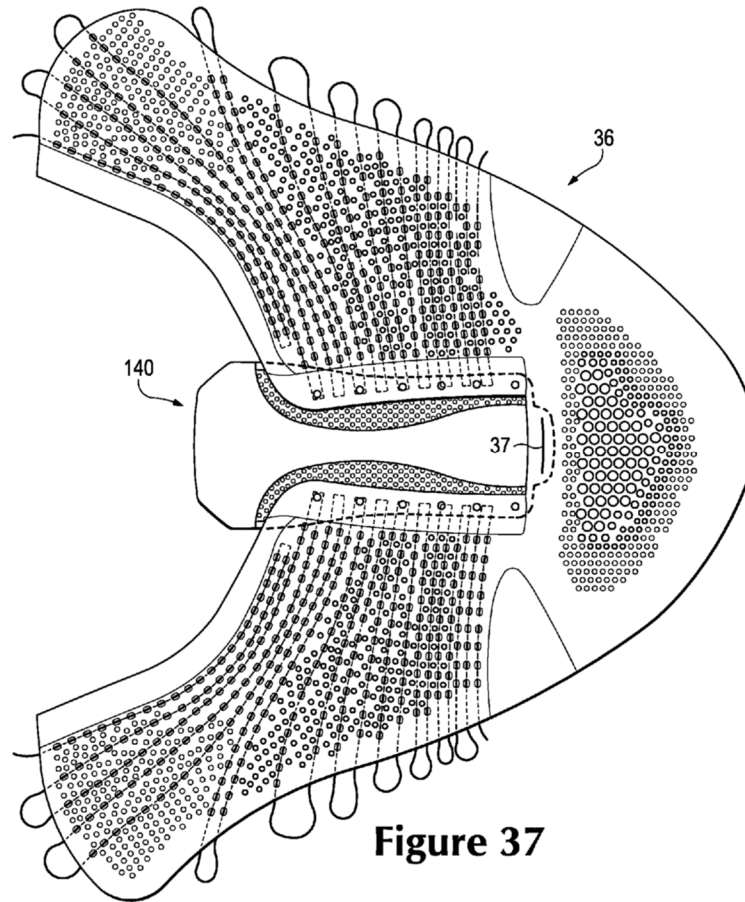


Figure 37

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. 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.
8. The article of footwear recited in claim 1, 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, Dua ’956 discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 1. In addition, Dua ’956 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. For example, see the following illustrative citation(s): Abstract: “... By selectively placing multiple different yarns and/or Stitch patterns at multiple different locations in the overall structure during the knitting process, flat knitted products may have multiple different physical properties (e.g., different stretchability, different moisture management capabilities, etc.) at multiple different locations or Zones within a single, unitary construction (e.g., different properties at different Zones or locations within a single footwear structure)....” 3:2-6: “In some configurations, the step of flat knitting may include forming a first area and a second area, with one or both of a stitch type and a yarn type of the first area being different than a stitch type and a yarn type of the second area.”

	4: 39-47: “By selectively placing multiple different yarns and/or stitch patterns at multiple different locations in the overall structure during the knitting process, flat knitted products may have multiple different physical properties (e.g., different stretchability, different moisture management capabilities, etc.) at multiple different locations or zones within a single, unitary construction (e.g., different properties at different zones or locations within a single footwear structure).” 7:43-52: “In addition, flat knitting may be utilized to form areas with different types of stitches and areas with different types of yarns.... Moreover, textile elements 40 and 50 may be formed from a less stretchable type of stitch than forward portion 61, and the yarn selected for textile elements 40 and 50 may be more wear-resistant than the yarn selected for forward portion 61.” 8:37-41: “Accordingly, the materials comprising the yarn may be selected to impart a variety of physical properties to textile elements 40, 50, and 60, and the physical properties may include, for example, strength, stretch, support, stiffness, recovery, fit, and form.” Claim 10: “The article of footwear recited in claim 1, wherein the at least one mechanically manipulated yarn includes a first yarn and a different second yarn, the first yarn being located in a first area of the upper, and the second yarn being located in a second area of the upper.” To the extent Nike contends that Dua ’956 does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Dua ’956, such as by combining with the general knowledge and/or the teachings of the numerous prior art references, including, e.g., Dua ’299, to arrive at this claim. <i>See, e.g.,</i> 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.” 4:30-59: “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 yarn and other aspects of the yarn may be selected to impart a variety of properties to separate areas of upper 30.” 10:27-32: “Portions of strobil 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.” 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. 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.
9. The article of footwear recited in claim 8, wherein the second type of yarn is an elastic yarn.	As set forth above, Dua ’956 discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 8.

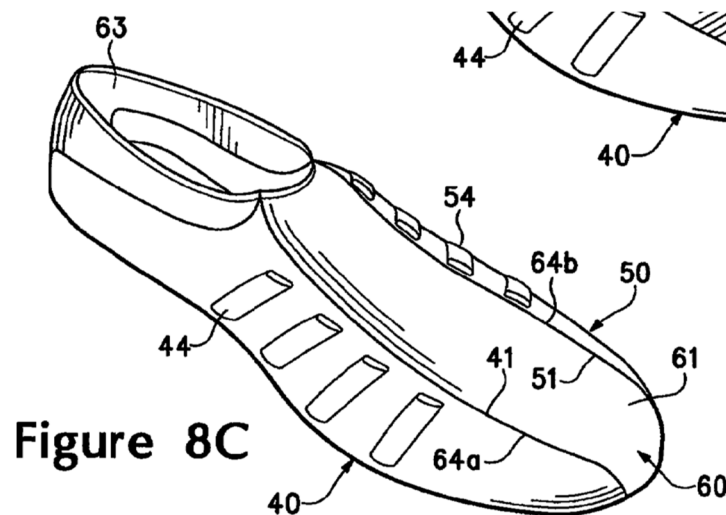
In addition, Dua '956 discloses (explicitly, implicitly, and inherently) that the second type of yarn is an elastic yarn.

For example, see the following illustrative citation(s):

7:49-52: "Moreover, textile elements 40 and 50 may be formed from a less stretchable type of stitch than forward portion 61, and the yarn selected for textile elements 40 and 50 may be more wear-resistant than the yarn selected for forward portion 61."

8:12-15: "In order to provide the stretch and recovery properties to upper 30, and particularly textile elements 40, 50, and 60, a yarn that incorporates an elastane fiber may be utilized."

Figure 8C and associated text:



To the extent Nike contends that Dua '956 does not disclose this claim, it would have been obvious to a POSITA at the relevant time to modify Dua '956, 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 that the integral tongue may include one region incorporating elastane to enhance stretch. 5:4-7: “Whereas one region may incorporate elastane to enhance stretch, the other region may incorporate nylon to enhance wear-resistance and durability.” 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. 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 article of footwear recited in claim 1, wherein the knitted component comprises at least two knit element layers, the at least two knit element layers including: a first knit element layer comprising a portion of the knitted component associated with the exterior surface; and a second knit element layer comprising a portion of the knitted component associated	As set forth above, Dua ’956 discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 1. In addition, Dua ’956 discloses (explicitly, implicitly, and inherently) that the knitted component comprises at least two knit element layers, the at least two knit element layers including: a first knit element layer comprising a portion of the knitted component associated with the exterior surface; and a second knit element layer comprising a portion of the knitted component associated with the interior surface; and wherein the second knit element layer further includes the integral knit tongue. For example, see the following illustrative citation(s): 2:5-8: “As another example, the knitted component may have a pair of at least partially coextensive knitted layers formed of unitary knit construction, and a plurality of floating yarns may extend between the knitted layers.” 2:54-62: “One example structure according to this invention relates to an article of footwear having an upper and a sole structure secured to the upper. The upper includes a knitted element formed from at least one mechanically manipulated yarn. The knitted element of this example structure has an area

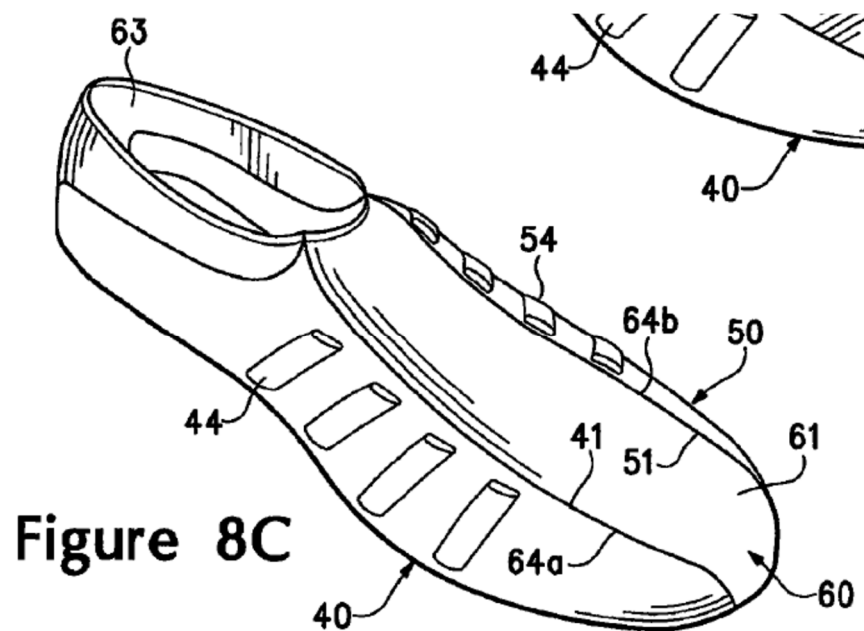
with the interior surface;
and
wherein the second knit
element layer further
includes the integral knit
tongue.

with a first layer and a coextensive second layer. The first layer is formed as a unitary construction with the second layer, and the second layer is joined to the first layer at opposite sides of the second layer.”

6:20-25: “As depicted in the cross-section of FIG. 4B, channels 44 are formed from two at least partially coextensive layers of the material forming lateral textile element 40, and the two layers are formed of unitary (i.e., one piece) construction through the flat knitting process.”

9:5-11: “With reference to FIG. 8C, the assembly process continues by joining textile elements 40 and 50 to forward portion 61. More particularly, upper edge 41 of lateral textile element 40 is stitched to lateral edge 64a of forward portion 61, and upper edge 51 of medial textile element 50 is stitched to medial edge 64b of forward portion 61.”

Figure 8C and associated text:



	To the extent Nike contends that Dua '956 does not disclose this claim, applying Nike's apparent infringement theory, it would have been obvious to a POSITA to modify Dua '956, such as by combining with the general knowledge and/or the teachings of the numerous prior art references that disclose this limitation to arrive at this claim. For instance, Huffa discloses the recited features. <i>See, e.g.,</i> [0003]: "... In athletic footwear, for example, the upper may have multiple layers that each include a variety of joined material elements...." [0006]: "Additionally, an article of footwear is disclosed below as having an upper that includes a first knitted layer, a second knitted layer, and a plurality of floating yarns. The first knitted layer forms at least a portion of an exterior surface of the upper. The second knitted layer is formed of unitary knit construction with the first knitted layer, and the second knitted layer is positioned adjacent to the first knitted layer and at least partially coextensive with the first knitted layer to define a tube between the first knitted layer and the second knitted layer...." [0039]: "... Moreover, knitted component 130 remains formed of unitary knit construction when other elements (e.g., lace 122, tongue 124, logos, trademarks, placards with care instructions and material information) are added following the knitting process." [0053]: "... Referring to FIG. 7E, the padded area is formed by two overlapping and at least partially coextensive knitted layers 140, which may be formed of unitary knit construction, and a plurality of floating yarns 141 extending between knitted layers 140...." Claim 30: "An article of footwear having an upper and a sole structure secured to the upper, the upper comprising: a first knitted layer that forms at least a portion of an exterior surface of the upper; a second knitted layer formed of unitary knit construction with the first knitted layer, the second knitted layer being positioned adjacent to the first knitted layer and at least partially coextensive with the first knitted layer to define a tube between the first knitted layer and the second knitted layer; and a plurality of floating yarns located within the tube and extending in a direction that is substantially parallel to the first knitted layer and the second knitted layer, wherein the first knitted layer and the second knitted layer are at least partially formed from a yarn that stretches at least one hundred percent."
--	---

	Moreover, Greene similarly discloses the recited features. <i>See, e.g.,</i> [0052]: "... portion of upper 30 is formed from various layers 31 and 32, as shown in FIGS. SA-SC. Whereas layer 31 forms a portion of an exterior surface of upper 30, layer 32 forms a portion of an interior surface of upper 30 (i.e., the surface defining the void within upper 30)." [0056]: "... 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." [0057]: "The primary components of tongue element 40, as depicted in FIGS. 6-9B, are a knitted sheath 41 and a compressible core 42...." [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...." [0092]: "Referring to FIGS. 5A and 5C, flanges 47 from tongue element 40 and flange 54 from collar element 50 are located between layers 31 and 32 and joined with at least one of layers 31 and 32...." [0093]: "When knitting collar-throat element 60, layers 61 and 62 and opposite sides of flange 64 may be knit symmetrically and of equal quality. When formed in this manner, collar-throat element 60 may be used on either lateral side 14 or medial side 15. That is, collar-throat element 60 may have a symmetrical aspect that allows it to be incorporated into either side of footwear 10, thereby reducing the types of elements that are manufactured for use in footwear 10." 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.
11. The article of footwear recited in claim 10, wherein at least a first portion of the first knit element layer and the second knit element layer are decoupled along the throat area of the knitted component.	As set forth above, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 10. In addition, Dua '956 discloses (explicitly, implicitly, and inherently) that at least a first portion of the first knit element layer and the second knit element layer are decoupled along the throat area of the knitted component. For example, see the following illustrative citation(s): 2:66-3:2: "The step of flat knitting may include forming an area of the textile. element with a first layer and a coextensive second layer. The two layers may be utilized to form a channel, for example." 6:20-25: "As depicted in the cross-section of FIG. 4B, channels 44 are formed from two at least partially coextensive layers of the material forming lateral textile element 40, and the two layers are formed of unitary (i.e., one piece) construction through the flat knitting process." 6:35-40: "As depicted in the cross-section of FIG. 4B, channels 54 are formed from two at least partially coextensive layers of the material forming medial textile element 50, and the two layers are formed of unitary (i.e., one piece) construction through the flat knitting process." Figure 4B and associated text:

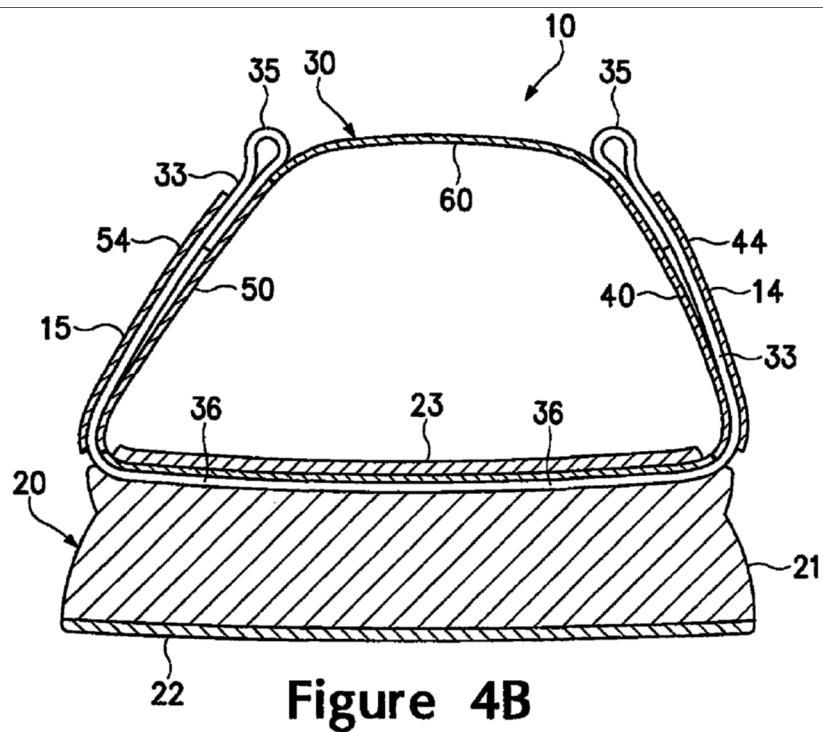


Figure 8C and associated text:

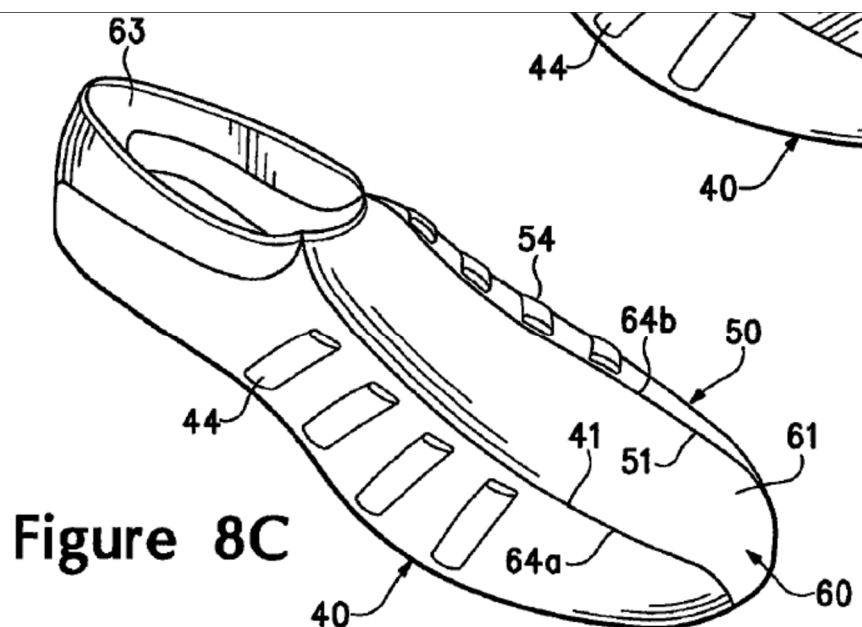


Figure 8C

To the extent Dua '956 does not disclose this claim, applying Nike's apparent infringement theory, it would have been obvious to a POSITA to modify Dua '956, 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., Greene, to arrive at this claim.

For example, see the following illustrative citation(s) in Greene:

[0089]: "... Whereas tongue area 81 may have the general configuration of tongue element 40, vamp area 82 may be a single layer of material, for example. When incorporated into footwear 10, as depicted in FIG. 25, vamp area 82 may form an interior lining. Moreover, a portion of vamp area 82 may be exposed through an aperture in layers 31 and 32. Although vamp area 82 may be formed to exhibit a single type of knit structure or may have various knit structures. For example, the area exposed through the aperture in layers 31 and 32 may define various apertures to enhance breathability."

Figures 5A-5B and associated text:

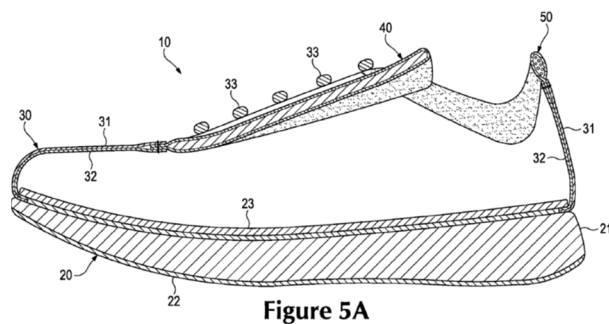


Figure 5A

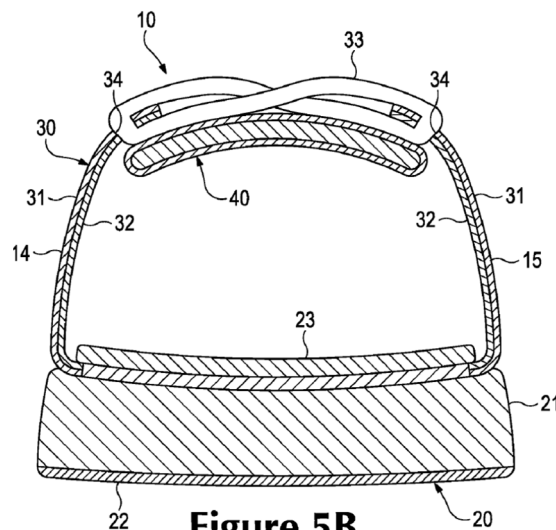


Figure 5B

Figure 25 and associated text:

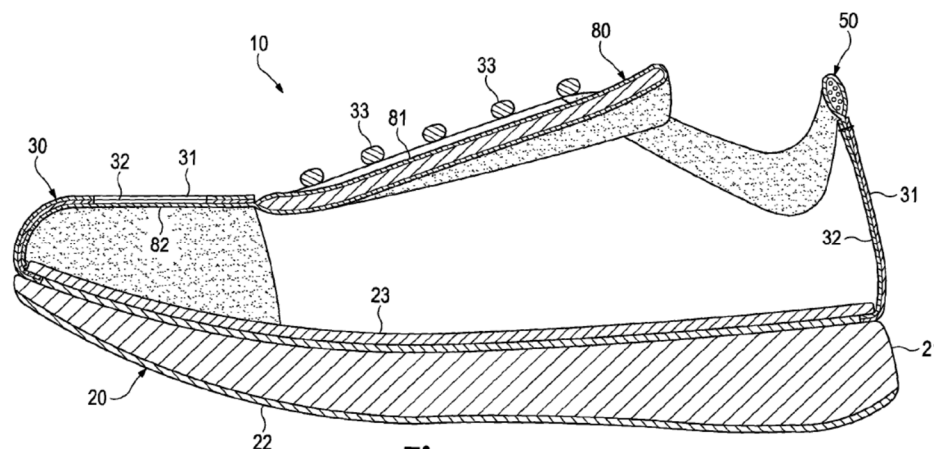


Figure 25

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.

12. The article of footwear recited in claim 11, wherein at least a second portion of the first knit element layer and the second knit element layer are joined along the throat area of the knitted component.

As set forth above, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 11.

In addition, Dua '956 discloses (explicitly, implicitly, and inherently) that at least a first portion of the first knit element layer and the second knit element layer are decoupled along the throat area of the knitted component.

For example, see the following illustrative citation(s):

	2:66-3:2: “The step of flat knitting may include forming an area of the textile element with a first layer and a coextensive second layer. The two layers may be utilized to form a channel, for example.” 6:20-25: “As depicted in the cross-section of FIG. 4B, channels 44 are formed from two at least partially coextensive layers of the material forming lateral textile element 40, and the two layers are formed of unitary (i.e., one piece) construction through the flat knitting process.” 6:35-40: “As depicted in the cross-section of FIG. 4B, channels 54 are formed from two at least partially coextensive layers of the material forming medial textile element 50, and the two layers are formed of unitary (i.e., one piece) construction through the flat knitting process.” 9:15-21: “With reference to FIG. 8D, lace elements 33 are positioned to extend through channels 44 and 54 and also extend under center portion 62 of central textile element 60. Each of loops 35 are positioned to extend outward from upper portions of channels 44 and 54, and central section 36 of lace elements 33 is positioned under and on the exterior of central textile element 60.” Figure 4B and associated text:
--	--

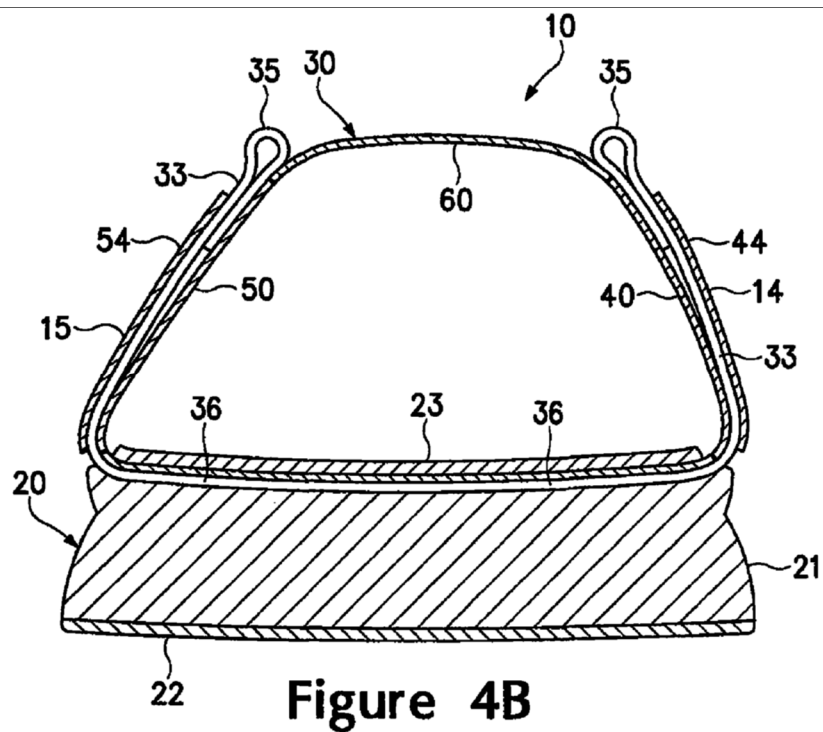
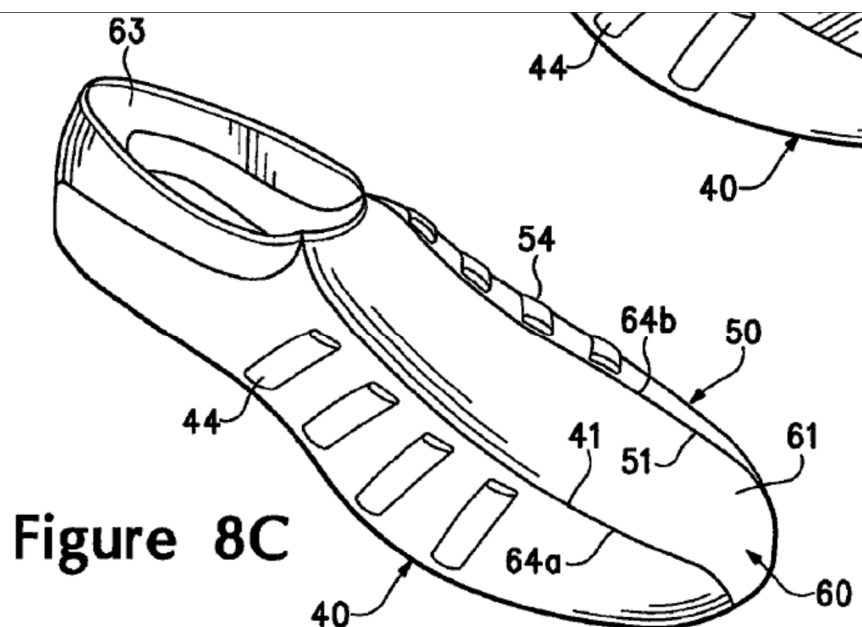


Figure 8C and associated text:



To the extent Dua '956 does not disclose this claim, applying Nike's apparent infringement theory, it would have been obvious to a POSITA to modify Dua '956, 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., Greene, to arrive at this claim.

For example, see the following illustrative citation(s) in Greene:

[0089]: "... Whereas tongue area 81 may have the general configuration of tongue element 40, vamp area 82 may be a single layer of material, for example. When incorporated into footwear 10, as depicted in FIG. 25, vamp area 82 may form an interior lining. Moreover, a portion of vamp area 82 may be exposed through an aperture in layers 31 and 32. Although vamp area 82 may be formed to exhibit a single type of knit structure or may have various knit structures. For example, the area exposed through the aperture in layers 31 and 32 may define various apertures to enhance breathability."

Figure 25 and associated text:

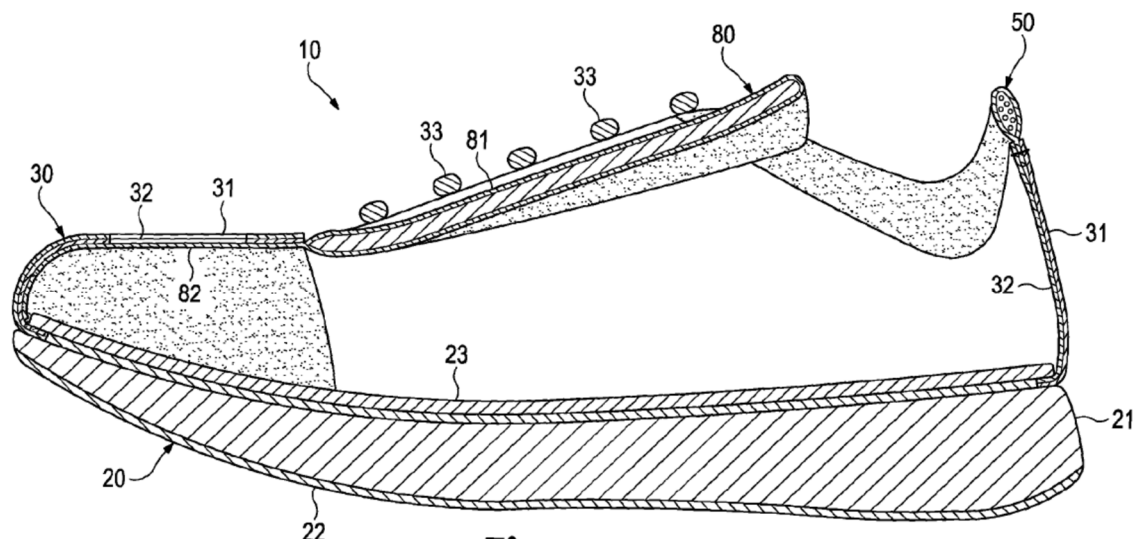


Figure 25

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.

13[pre]. A knitted component for an article of footwear, the knitted component comprising:

To the extent that the preamble is considered limiting, Dua '956 teaches (explicitly, implicitly, and inherently) and also renders obvious a knitted component for an article of footwear.

See supra discussions and citations in connections with Claim Element 1[pre].

13[a]. a portion of the knitted component defining an upper, 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, the interior surface configured to define a void for receiving a foot; and	Dua '956 discloses (explicitly, implicitly, and inherently) and also renders obvious a knitted component, wherein a portion of the knitted component defines the upper, the upper including a portion of at least one of an exterior surface and an opposite interior surface of the knitted component, the interior surface configured to define a void for receiving a foot. <i>See supra</i> discussions and citations in connections with Claim Element 1[a].
13[b]. an integral knit tongue with the upper and extending through a throat area of the knitted component; and	Dua '956 discloses (explicitly, implicitly, and inherently) and also renders obvious a knitted component, wherein the knitted component includes an integral knit tongue with the upper and extending through a throat area of the knitted component. <i>See supra</i> discussions and citations in connections with Claim Element 1[b].
13[c]. at least one raised element having at least one lace aperture configured to receive a lace,	Dua '956 discloses (explicitly, implicitly, and inherently) and also renders obvious a knitted component, wherein the knitted component includes at least one raised element having at least one lace aperture configured to receive a lace. <i>See supra</i> discussions and citations in connections with Claim Element 1[c] and Claim 6.
13[d]. wherein the integral knit tongue is joined to a forward portion of the throat area and at least along a portion of a lateral side and a medial side of the	Dua '956 discloses (explicitly, implicitly, and inherently) and also renders obvious that the integral knit tongue is joined to a forward portion of the throat area and at least along a portion of a lateral side and a medial side of the throat area of the knitted component extending from the forward portion to an ankle opening of the upper. <i>See supra</i> discussions and citations in connections with Claim Element 1[d].

throat area of the knitted component extending from the forward portion to an ankle opening of the upper.	
14. The knitted component recited in claim 13, wherein at least a portion of the integral knit tongue and a portion of the upper include at least one course having a common yarn.	As set forth above, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 13. In addition, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious that at least a portion of the integral knit tongue and a portion of the upper include at least one course having a common yarn. <i>See supra</i> discussions and citations in connections with Claim 2.
15. The knitted component recited in claim 13, wherein at least a portion of the upper and a portion of the integral knit tongue are formed from a common knit structure.	As set forth above, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 13. In addition, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious that at least a portion of the upper and a portion of the integral knit tongue are formed from a common knit structure. <i>See supra</i> discussions and citations in connections with Claim 3.
16. The knitted component recited in claim 13, wherein the at least one raised element is formed of unitary knit construction with the upper and the integral knit tongue.	As set forth above, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 13. In addition, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious that the at least one raised element is formed of unitary knit construction with the upper and the integral knit tongue. <i>See supra</i> discussions and citations in connections with Claim 4.

17. The knitted component recited in claim 16, comprising at least two raised elements disposed on each of a lateral side and a medial side of the upper and extending a height above the exterior surface of the knitted component.	As set forth above, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 16. In addition, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious that at least two raised elements disposed on each of a lateral side and a medial side of the upper and extending a height above the exterior surface of the knitted component. <i>See supra</i> discussions and citations in connections with Claim 5.
18. The knitted component recited in claim 13, wherein the integral knit tongue comprises at least a partially integral portion and a free portion; the partially integral portion being of unitary knit construction with the upper at the forward portion of the throat area and at least along the portion of the lateral side and the medial side of the throat area of the knitted component; and the free portion being of unitary knit construction with the partially integral portion at a rearward portion of the integral knit tongue and	As set forth above, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 13. In addition, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious that the integral knit tongue comprises at least a partially integral portion and a free portion; the partially integral portion being of unitary knit construction with the upper at the forward portion of the throat area and at least along the portion of the lateral side and the medial side of the throat area of the knitted component; and the free portion being 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. <i>See supra</i> discussions and citations in connections with Claim 7.

remaining unattached to the remaining portions of the knitted component.	
19. The knitted component recited in claim 13, 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, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 13. In addition, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious that 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. <i>See supra</i> discussions and citations in connections with Claim 8.
20. The knitted component recited in claim 19, wherein the second type of yarn is an elastic yarn.	As set forth above, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 19. In addition, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious that the second type of yarn is an elastic yarn. <i>See supra</i> discussions and citations in connections with Claim 9.
21. A knitted component for an article of footwear, the knitted component comprising:	To the extent that the preamble is considered limiting, Dua '956 teaches (explicitly, implicitly, and inherently) and also renders obvious a knitted component for an article of footwear. <i>See supra</i> discussions and citations in connections with Claim Elements 1[pre] and 13[pre].
21[a]. an upper and an integral knit tongue formed of unitary knit construction with the upper and extending	Dua '956 discloses (explicitly, implicitly, and inherently) and also renders obvious a knitted component, wherein the knitted component includes an upper and an integral knit tongue formed of unitary knit construction with the upper and extending through a throat area of the knitted component. <i>See supra</i> discussions and citations in connections with Claim Elements 1[a] and 1[b].

through a throat area of the knitted component;	
21[b]. the knitted component comprising at least two knit element layers, including: a first knit element layer comprising a portion of an exterior surface of the knitted component; and a second knit element layer comprising a portion of an interior surface of the knitted component, the interior Surface disposed opposite to the exterior surface and the interior surface being configured to define a void for receiving a foot; and	Dua '956 discloses (explicitly, implicitly, and inherently) and also renders obvious a knitted component, wherein the knitted component includes at least two knit element layers, including: a first knit element layer comprising a portion of an exterior surface of the knitted component; and a second knit element layer comprising a portion of an interior surface of the knitted component, the interior surface disposed opposite to the exterior surface and the interior surface being configured to define a void for receiving a foot. <i>See supra</i> discussions and citations in connections with Claim Elements 1[a] and Claim 10.
21[c]. wherein the integral knit tongue is joined to a forward portion of the throat area and at least along a portion of a lateral side and a medial side of the throat area of the knitted component extending from the forward portion to an ankle opening of the upper.	Dua '956 discloses (explicitly, implicitly, and inherently) and also renders obvious that the integral knit tongue is joined to a forward portion of the throat area and at least along a portion of a lateral side and a medial side of the throat area of the knitted component extending from the forward portion to an ankle opening of the upper. <i>See supra</i> discussions and citations in connections with Claim Elements 1[d].

22. The knitted component recited in claim 21, wherein the second knit element comprises the integral knit tongue.	As set forth above, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 21. In addition, Dua '956 discloses (explicitly, implicitly, and inherently) and also renders obvious that second knit element comprises the integral knit tongue. <i>See supra</i> discussions and citations in connections with Claim 10.
23. The knitted component recited in claim 21, wherein at least a first portion of the first knit element layer and the second knit element layer are decoupled along the throat area of the knitted component.	As set forth above, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 21. In addition, Dua '956 discloses (explicitly, implicitly, and inherently) and also renders obvious that at least a first portion of the first knit element layer and the second knit element layer are decoupled along the throat area of the knitted component. <i>See supra</i> discussions and citations in connections with Claim 11.
24. The knitted component recited in claim 23, wherein at least a second portion of the first knit element layer and the second knit element layer are joined along the throat area of the knitted component.	As set forth above, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 23. In addition, Dua '956 discloses (explicitly, implicitly, and inherently) and also renders obvious that at least a second portion of the first knit element layer and the second knit element layer are joined along the throat area of the knitted component. <i>See supra</i> discussions and citations in connections with Claim 12.
25. The knitted component recited in claim 21, wherein at least a portion of the integral knit tongue and	As set forth above, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 21.

a portion of the upper include at least one course having a common yarn.	In addition, Dua '956 discloses (explicitly, implicitly, and inherently) and also renders obvious that at least a portion of the integral knit tongue and a portion of the upper include at least one course having a common yarn. <i>See supra</i> discussions and citations in connections with Claim 2.
26. The knitted component recited in claim 21, further comprising at least one raised element that is formed of unitary knit construction with the upper and the integral knit tongue.	As set forth above, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 21. In addition, Dua '956 discloses (explicitly, implicitly, and inherently) and also renders obvious that the knitted component further includes at least one raised element that is formed of unitary knit construction with the upper and the integral knit tongue. <i>See supra</i> discussions and citations in connections with Claim 4.
27. The knitted component recited in claim 26, wherein the first knit element layer comprises the at least one raised element.	As set forth above, Dua '956 discloses (explicitly, implicitly, and inherently) and renders obvious all of the elements of claim 26. In addition, Dua '956 discloses (explicitly, implicitly, and inherently) and also renders obvious that the first knit element layer comprises the at least one raised element. <i>See supra</i> discussions and citations in connections with Claim Element 1[c] and Claim 10.