

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TOP GLORY TRADING GROUP INC. AND
DP DREAM PAIRS, INC.,
Petitioners,

v.

COLE HAAN LLC,
Patent Owner.

Case No. IPR2025-01393
Patent 10,443,163

**PATENT OWNER'S REQUEST
FOR DISCRETIONARY DENIAL**

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
EXHIBITS	vi
CLAIM LISTING	ix
I. INTRODUCTION	1
II. PATENT OWNER’S SETTLED EXPECTATIONS SUPPORT DENIAL...	2
A. The ’163 Patent has been in force for six years without challenge despite Petitioners’ actual notice.....	2
B. Cole Haan continues to commercialize, mark, and assert the ’163 Patent in Petitioners’ particular technology space	4
III. DENIAL UNDER 35 U.S.C. § 325(D) IS APPROPRIATE	7
A. <i>Advanced Bionics</i> Step 1 (<i>BD</i> Factors (a), (b), and (d))	7
1. Petitioners’ “patentable weight” argument was considered during prosecution.....	7
2. The same or substantially similar “Dua” references were considered during prosecution	8
3. The combination of a knit upper with a separately processed upper was considered during prosecution.....	11
B. <i>Advanced Bionics</i> Step 2 (<i>BD</i> Factors (c), (e), and (f))	12
IV. THE <i>FINTIV</i> FACTORS SUPPORT DENIAL	13
A. Factor 1 (Stay of Litigation) favors denial.....	13
B. Factor 2 (Proximity of Trial Date) is outweighed by the considerations favoring denial.....	13
C. Factor 3 (Investment in Parallel Proceeding) and Factor 4 (Overlap of Issues) favor denial.....	14
D. Factor 5 (Identity of Parties) favors denial.	16
E. Factor 6 (Other Circumstances) favors denial.	16
V. OVERRELIANCE ON EXPERT TESTIMONY SUPPORTS DENIAL	16
A. Dua’256 contradicts Dr. Adanur’s “patentable weight” opinion.....	17
B. Dr. Adanur supplies missing limitations.....	18

VI.	OTHER CONSIDERATIONS SUPPORT DENIAL.....	19
A.	The Petition fails to meet the requirements of 37 C.F.R. § 42.104(b)	19
B.	Simplicity of the parallel litigation supports discretionary denial	20
VII.	CONCLUSION	20

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Adaptics Ltd. v. Perfect Co.</i> , IPR2018-01596, Paper 20 (P.T.A.B. Mar. 6, 2019).....	19
<i>Amgen Inc. v. Bristol-Myers Squibb Co.</i> , IPR2025-00601, Paper 9 (Director July 24, 2025).....	2
<i>Amneal Pharms., Inc. v. Nivagen Pharms., Inc.</i> , IPR2025-00731, Paper 15 (Director Sep. 3, 2025).....	15
<i>Apple Inc. v. Advanced Coding Techs. LLC</i> , IPR2025-00983, Paper 10 (Director Oct. 3, 2025).....	13
<i>Apple Inc. v. Fintiv, Inc.</i> , IPR2020-00019, Paper 11 (P.T.A.B. Mar. 20, 2020).....	1, 13, 16
<i>Arashi Vision (U.S.) LLC v. GoPro, Inc.</i> , IPR2024-01434, Paper 9 (P.T.A.B. Mar. 31, 2025).....	20
<i>Ascentcare Dental Prods., Inc. v. Solmetex, LLC</i> , IPR2025-01065, Paper 11 (Deputy Under Sec’y Oct. 17, 2025).....	13
<i>Belden Inc. v. Commscope, Inc. of N.C.</i> , IPR2025-00833, Paper 13 (Director Sep. 12, 2025) (also noting petitioner had knowledge of the patent since 2022)	6
<i>DataDome S.A. v. Arkose Labs Holdings, Inc.</i> , IPR2025-00693, Paper 14 (Director Aug. 14, 2025).....	3
<i>Geotab Inc v. Fractus, S.A.</i> , IPR2025-00928, Paper 11 (Director Sep. 12, 2025).....	4
<i>Hisense USA Corp. v. VideoLabs, Inc.</i> , IPR2025-00880, Paper 11 (Director Oct. 10, 2025).....	4, 5
<i>Intel Corp. v. Proxense LLC</i> , IPR2025-00327, Paper 12 (Director June 26, 2025)	6

<i>Interactive Commc’ns Int’l, Inc. v. Blackhawk Network Inc.,</i> IPR2024-00465, Paper 39 (Director Oct. 1, 2025).....	18
<i>Motorola Sols., Inc. v. Stellar, LLC,</i> IPR2024-01205, Paper 19 (P.T.A.B. Mar. 28, 2025).....	16
<i>Nokia of Am. Corp. v. Soto,</i> IPR2023-00682, Paper 26 (P.T.A.B. July 31, 2024).....	7
<i>OnePlus Tech. (Shenzhen) Co., Ltd. v. Pantech Corp.,</i> IPR2025-00783, Paper 12 (Director Sep. 12, 2025).....	13
<i>Samsung Elecs. Co., Ltd. v. Telcom Ventures LLC,</i> IPR2025-00957, Paper 12 (Director Oct. 10, 2025).....	13
<i>Samsung Elecs. Co., Ltd. v. W&Wsens Devices Inc.,</i> IPR2025-00995, Paper 17 (Director Oct. 17, 2025).....	2
<i>Samsung Elecs. Co. v. Wilus Inst. of Standards & Tech. Inc.,</i> IPR2025-00933, Paper 11 (Director Oct. 10, 2025).....	20
<i>Shenzhen Tuozhu Tech Co., Ltd. v. Stratasys, Inc.,</i> IPR2025-00531, Paper 10 (Director July 17, 2025).....	20
<i>Tesla, Inc. v. Intellectual Ventures II LLC,</i> IPR2025-00217, Paper 9 (Director June 13, 2025).....	20
<i>Yangtze Memory Techs. Co., Ltd. v. Micron Tech., Inc.,</i> IPR2025-00500, Paper 10 (Director Aug. 14, 2025).....	2

STATUTES

35 U.S.C. § 101	15, 16
35 U.S.C. § 102(a)(1).....	16
35 U.S.C. § 325(D)	7, 14

OTHER AUTHORITIES

37 C.F.R. 42.104(b)	19
37 C.F.R. § 42.4(a).....	7

37 C.F.R. § 42.104(b)	18, 19
-----------------------------	--------

EXHIBITS

Exhibit No.	Description
2001	Cole Haan Infringement Letter to Top Glory, dated July 19, 2022
2002	Cole Haan – Top Glory Settlement Agreement, dated November 15, 2022
2003	Cole Haan – Top Glory Correspondence, dated September 8, 2023 to January 24, 2024
2004	Complaint for Patent Infringement against operators of wearbreeze.co, filed February 6, 2025
2005	Petitioners’ Corporate Disclosure Statement, dated March 14, 2025
2006	Cole Haan’s Opposition to Petitioners’ Motion to Stay
2007	Bruno Marc sales webpage on Dream Pairs website, available at https://www.dreampairs.com/brand/bruno-marc
2008	Cole Haan’s Product Patent webpage, available at https://www.colehaan.com/Patents.html
2009	Declaration of Thomas Linko, dated November 12, 2025
2010	Cole Haan’s Product Patent webpage dated August 12, 2019 and Email Confirmation
2011	Cole Haan’s Product Patent webpage dated December 16, 2019 and Email Confirmation
2012	Cole Haan’s Product Patent webpage dated October 11, 2021 and Email Confirmation
2013	Julie Zerbo, <i>Protecting Fashion Designs: Not Only “What?” But “Who?”</i> , 6 Am. U. Bus. L. Rev. 595 (2017)
2014	Cole Haan’s About Us webpage, available at https://www.colehaan.com/about-us

2015	Lisa Wang, <i>The Copying of Independent Fashion Designers: Perils and Potential Remedies in a Post-Star Athletica World</i> , 75 Stan. L. Rev. 979 (2023)
2016	Petitioners' Invalidity Contentions served October 21, 2025
2017	Petitioners' Memorandum in Support of 12(b)(6) Motion to Dismiss
2018	PR Newswire's June 21, 2022, article announcing Miracle Miles Group's closing of Series A funding, available at https://www.prnewswire.com/news-releases/miracle-miles-group-inc-closes-100m-series-to-accelerate-growth-301571802.html
2019	U.S. Patent No. 10,333,768
2020	U.S. Patent No. 10,339,825
2021	U.S. Patent No. 10,475,737
2022	PR Newswire's August 30, 2024, article announcing Bruno Marc's Flex Oxford Collection Launch, available at https://www.prnewswire.com/news-releases/bruno-marc-launches-flex-oxford-collection-mens-oxfords-redefined-with-classic-elegance-and-sneaker-comfort-302234986.html
2023	Cole Haan's Opposition to Petitioners' Motion to Dismiss
2024	Petitioners' Reply in Support of 12(b)(6) Motion to Dismiss
2025	Judge Esther Salas 12(b)(6) Motion to Dismiss Pendency Statistics
2026	U.S. Patent No. 7,347,011 ("Dua'011")
2027	U.S. Patent No. 2,312,078 ("Cranell")
2028	Cole Haan's Men's Stitchlite webpage, available at https://www.colehaan.com/mens-stitchlite
2029	Bruno Marc's KnitFlex Sales webpage, available at https://www.brunomarc.com/search?keyword=knitflex
2030	Bruno Marc's MaxFlex Sales webpage, available at

	https://www.brunomarc.com/search?keyword=maxflex
2031	Dream Pairs' KnitFlex Sales webpage, available at https://www.dreampairs.com/search?keyword=knitflex
2032	Dream Pairs' MaxFlex Sales webpage, available at https://www.dreampairs.com/search?keyword=maxflex

CLAIM LISTING

The challenged claims in this proceeding are claims 1–28 of the '163 Patent, reproduced below:

Claim 1	
[1.pre]	A shoe comprising:
[1.a]	a knit upper;
[1.b]	a sole secured to the upper;
[1.c.i]	the knit upper having a knitted element, the knitted element being formed of a unitary one-piece construction during a knitting process on a knitting machine,
[1.c.ii]	the knitted element comprising a knitted upper heel region, a knitted upper lateral midfoot region, a knitted upper medial midfoot region, a knitted upper metatarsal region, a knitted upper lateral ball region, a knitted upper medial ball region, and a knitted upper toe region,
[1.c.iii]	the knitted upper metatarsal region including a knitted upper lateral metatarsal region and a knitted upper medial metatarsal region, the upper having a knitted upper lateral side region and a knitted upper medial side region, the upper lateral side region including the upper lateral midfoot region, the upper lateral metatarsal region and the upper lateral ball region, the upper medial side region including the upper medial midfoot region, the upper medial metatarsal region and the upper medial ball region,
[1.c.iv]	the upper toe region being seamlessly knitted with the upper medial and lateral ball regions during the knitting process, the upper medial and lateral ball regions being seamlessly knitted with the knitted upper metatarsal region during the knitting process, the knitted []upper metatarsal region being seamlessly knitted with the upper lateral and medial midfoot regions during the knitting process,
[1.c.v]	the knitted element including a wingtip pattern, the wingtip pattern being portions of at least the upper toe region, the upper lateral and medial ball regions, and the upper lateral and medial metatarsal regions;
[1.c.vi]	the knitted element comprising a first area of a first type of knit structure and a second area of a second type of knit structure, the second type of knit structure being different from the first type of knit structure, the first area having a rear boundary, the second area having a forward boundary, the rear boundary of the first area and the forward

	boundary of the second area being coincident and coextensive with each other and defining a boundary line between the first and second areas,
[1.c.vii]	the wingtip pattern comprising the boundary line, the boundary line having a medial boundary line and a lateral boundary line, the medial boundary line comprising a wing-shaped curved line having a medial side portion extending forward from at least the upper medial metatarsal region to the upper toe region and a central portion extending rearward from the upper toe region, the lateral boundary line comprising a wing-shaped curved line having a lateral side portion extending forward from at least the upper lateral metatarsal region to the upper toe region and a central portion extending rearward from the upper toe region, the rearwardly extending central portion of the medial boundary line converging toward the rearwardly extending central portion of the lateral boundary line.
Claim 2	
2	A shoe as set forth in claim 1 wherein the upper further comprises a throat, and wherein the apex points toward the throat.
Claim 3	
3	A shoe as set forth in claim 1 wherein the first type of knit structure is more tightly knit than the second type of knit structure.
Claim 4	
4	A shoe as set forth in claim 1 wherein the first type of knit structure is a jersey stitch knit and the second type of knit structure is a pointelle stitch knit.
Claim 5	
5	A shoe as set forth in claim 1 wherein the knitted element comprises covered spandex yarn and hot melt yarn, the hot melt yarn being knitted with the covered spandex yarn during the knitting process.
Claim 6	
6	A shoe as set forth in claim 5 wherein the hot melt yarns constitute at least 15% by mass of the knitted element.
Claim 7	
7	A shoe as set forth in claim 6 wherein the covered spandex yarn constitute at least 50% by mass of the knitted element.
Claim 8	
8	A shoe as set forth in claim 7 wherein the covered spandex yarn comprises polyester covered spandex yarn.
Claim 9	

9	A shoe as set forth in claim 8 wherein the knitted element further comprises stretch yarn, the stretch yarn constituting at least 5% by mass of the knitted element.
Claim 10	
10	A shoe as set forth in claim 5 wherein the covered spandex yarn has a linear density of between about 120 denier and about 180 denier, and wherein the hot melt yarn has a linear density of between about 80 denier and about 120 denier.
Claim 11	
11	A shoe as set forth in claim 1 wherein the knitted element comprises polyester yarn and hot melt yarn, the hot melt yarn being knitted with the polyester yarn during the knitting process.
Claim 12	
12	A shoe as set forth in claim 1 wherein the knitted element comprises hot melt yarn, the hot melt yarn constituting at least 15% by mass of the knitted element.
Claim 13	
[13.pre]	A shoe comprising:
[13.a]	a knit upper;
[13.b]	a sole secured to the upper;
[13.c.i]	the knit upper having a knitted element, the knitted element being formed of a unitary one-piece construction during a knitting process on a knitting machine,
[13.c.ii]	the knitted element comprising a knitted upper metatarsal region, a knitted upper lateral ball region, a knitted upper medial ball region, and a knitted upper toe region,
[13.c.iii]	the knitted upper metatarsal region including a knitted upper lateral metatarsal region and a knitted upper medial metatarsal region, the upper having a knitted upper lateral side region and a knitted upper medial side region, the upper lateral side region including the upper lateral metatarsal region and the upper lateral ball region, the upper medial side region including the upper medial metatarsal region and the upper medial ball region,
[13.c.iv]	the upper toe region being seamlessly knitted with the upper medial and lateral ball regions during the knitting process, the upper medial and lateral ball regions being seamlessly knitted with the knitted upper metatarsal region during the knitting process,
[13.c.v]	the knitted element including a wingtip pattern, the wingtip pattern being portions of at least the upper toe region, the upper lateral and

	medial ball regions, and the upper lateral and medial metatarsal regions;
[13.c.vi]	the knitted element comprising a first area of a first type of knit structure and a second area of a second type of knit structure, the second type of knit structure being different from the first type of knit structure, the first area having a rear boundary, the second area having a forward boundary, the rear boundary of the first area and the forward boundary of the second area being coincident and coextensive with each other and defining a boundary line between the first and second areas,
[13.c.vii]	the wingtip pattern comprising the boundary line, the boundary line having a medial boundary line and a lateral boundary line, the medial boundary line comprising a wing-shaped curved line having a medial side portion extending forward from at least the upper medial metatarsal region to the upper toe region and a central portion extending rearward from the upper toe region, the lateral boundary line comprising a wing-shaped curved line having a lateral side portion extending forward from at least the upper lateral metatarsal region to the upper toe region and a central portion extending rearward from the upper toe region, the rearwardly extending central portion of the medial boundary line converging toward the rearwardly extending central portion of the lateral boundary line.
Claim 14	
14	A shoe as set forth in claim 13 wherein the wingtip pattern comprises a medial line of broguing and a lateral line of broguing, the upper toe region, the upper lateral and medial ball regions, and the upper lateral and medial metatarsal regions collectively being knitted with the medial and lateral lines of broguing, the medial line of broguing comprising a wing-shaped curved line of holes having a medial side broguing portion extending forward from at least the upper medial metatarsal region to the upper toe region and a central broguing portion extending rearward from the upper toe region, the lateral line of broguing comprising a wing-shaped curved line of holes having a lateral side broguing portion extending forward from at least the upper lateral metatarsal region to the upper toe region and a central broguing portion extending rearward from the upper toe region, the rearwardly extending central broguing portion of the medial line of broguing converging toward the rearwardly extending central broguing portion of the lateral line of broguing.
Claim 15	

15	A shoe as set forth in claim 14 wherein the central broguing portions of the medial and lateral lines of broguing meet at a rearwardly pointing apex.
Claim 16	
16	A shoe as set forth in claim 13 wherein the first type of knit structure is a jersey stitch knit and the second type of knit structure is a pointelle stitch knit.
Claim 17	
17	A shoe as set forth in claim 13 wherein the first type of knit structure is more tightly knit than the second type of knit structure.
Claim 18	
[18.pre]	A method of manufacturing an upper for an article of footwear, the method comprising:
[18.a.i]	knitting with a knitting machine to form a knitted element of the upper such that the knitted element is of a unitary one-piece construction comprising
[18.a.ii]	a knitted upper heel region, a knitted upper lateral midfoot region, a knitted upper medial midfoot region, a knitted upper metatarsal region, a knitted upper lateral ball region, a knitted upper medial ball region, and a knitted upper toe region,
[18.a.iii]	the knitted upper metatarsal region including a knitted upper lateral metatarsal region and a knitted upper medial metatarsal region, the upper having a knitted upper lateral side region and a knitted upper medial side region, the upper lateral side region including the upper lateral midfoot region, the upper lateral metatarsal region and the upper lateral ball region, the upper medial side region including the upper medial midfoot region, the upper medial metatarsal region and the upper medial ball region,
[18.a.iv]	the upper toe region being seamlessly knitted with the upper medial and lateral ball regions during the knitting process, the upper medial and lateral ball regions being seamlessly knitted with the knitted upper metatarsal region during the knitting process, the knitted upper metatarsal region being seamlessly knitted with the upper lateral and medial midfoot regions during the knitting process,
[18.a.v]	the knitted element including a wingtip pattern, the wingtip pattern being portions of at least the upper toe region, the upper lateral and medial ball regions, and the upper lateral and medial metatarsal regions
[18.a.vi]	the knitted element comprising a first area of a first type of knit structure and a second area of a second type of knit structure, the second type of

	knit structure being different from the first type of knit structure, the first area having a rear boundary, the second area having a forward boundary, the rear boundary of the first area and the forward boundary of the second area being coincident and coextensive with each other and defining a boundary line between the first and second areas,
[18.a.vii]	the wingtip pattern comprising the boundary line, the boundary line having a medial boundary line and a lateral boundary line, the medial boundary line comprising a wing-shaped curved line having a medial side portion extending forward from at least the upper medial metatarsal region to the upper toe region and a central portion extending rearward from the upper toe region, the lateral boundary line comprising a wing-shaped curved line having a lateral side portion extending forward from at least the upper lateral metatarsal region to the upper toe region and a central portion extending rearward from the upper toe region, the rearwardly extending central portion of the medial boundary line converging toward the rearwardly extending central portion of the lateral boundary line;
[18.b]	the upper toe region being seamlessly knitted with the upper medial and lateral ball regions during the knitting step; the upper medial and lateral ball regions being seamlessly knitted with the knitted upper metatarsal region during the knitting step; the knitted upper metatarsal region being seamlessly knitted with the upper lateral and medial midfoot regions during the knitting step;
[18.c]	the first and second areas and the wingtip pattern being seamlessly knitted during the knitting step.
Claim 19	
19	A method as set forth in claim 18 wherein the knitted element includes a line of broguing adjacent the boundary line, the knitted element being knitted with the line of broguing during the knitting step.
Claim 20	
20	A method as set forth in claim 18 wherein the knitted element includes a medial line of broguing and a lateral line of broguing, the medial line of broguing being adjacent the medial boundary line, the lateral line of broguing being adjacent the lateral boundary line, the medial line of broguing comprising a curved line of holes, the lateral line of broguing comprising a curved line of holes, the knitted element being knitted with the medial and lateral lines of broguing during the knitting step.
Claim 21	
[21.pre]	A method of manufacturing an article of footwear having a knitted upper

	and a sole, the method comprising:
[21.a.i]	knitting with a knitting machine to form a knitted element of the upper such that the knitted element is of a unitary one-piece construction comprising
[21.a.ii]	a knitted upper heel region, a knitted upper lateral midfoot region, a knitted upper medial midfoot region, a knitted upper metatarsal region, a knitted upper lateral ball region, a knitted upper medial ball region, and a knitted upper toe region,
[21.a.iii]	the knitted upper metatarsal region including an upper lateral metatarsal region and an upper medial metatarsal region, the knitted element having an upper lateral side region and an upper medial side region, the upper lateral side region including the upper lateral midfoot region, the upper lateral metatarsal region and the upper lateral ball region, the upper medial side region including the upper medial midfoot region, the upper medial metatarsal region and the upper medial ball region,
[21.a.iv]	the knitted element comprising a first area of a jersey stitch knit and a second area of a pointelle stitch knit, the first area being at least in the upper toe region, the second area being at least in the upper lateral and medial metatarsal regions, the first area having a rear boundary, the second area having a forward boundary, the rear boundary of the first area and the forward boundary of the second area being coincident and coextensive with each other and defining a boundary line between the first and second areas;
[21.a.v]	attaching the sole to the upper;
[21.b]	the upper toe region being seamlessly knitted with the upper medial and lateral ball regions during the knitting step; the upper medial and lateral ball regions being seamlessly knitted with the knitted upper metatarsal region during the knitting step; the knitted upper metatarsal region being seamlessly knitted with the upper lateral and medial midfoot regions during the knitting step;
[21.c]	the first and second areas being knitted during the knitting step.
Claim 22	
22	A method as set forth in claim 21 wherein the knitted element includes a line of broguing adjacent the boundary line, the knitted element being knitted with the line of broguing during the knitting step.
Claim 23	
23	A method as set forth in claim 21 wherein the boundary line comprises a medial boundary line and a lateral boundary line, and wherein the knitted element includes a medial line of broguing and a lateral line of

	broguing, the medial line of broguing being adjacent the medial boundary line, the lateral line of broguing being adjacent the lateral boundary line, the medial line of broguing comprising a curved line of holes, the lateral line of broguing comprising a curved line of holes.
Claim 24	
24	A method as set forth in claim 23 wherein the knitted element is knitted with the medial and lateral lines of broguing during the knitting step.
Claim 25	
25	A method as set forth in claim 24 wherein the upper is knitted during the knitting step with at least first and second yarns, the first yarn being of a hot melt yarn, the second yarn being of a yarn other than a hot melt yarn.
Claim 26	
[26.pre]	A method as set forth in claim 25 further comprising:
[26.a]	placing the upper around a last;
[26.b]	applying heat to the upper while the upper is around the last to cause the hot melt yarn to affix to the second yarn.
Claim 27	
27	A method as set forth in claim 21 wherein the knitted element further includes a knitted lateral eyestay area and a knitted medial eyestay area, the knitted upper lateral midfoot region including a knitted lateral midfoot area, the knitted upper medial midfoot region including a knitted medial midfoot area, and wherein broguing holes forming lines of broguing are between the lateral midfoot area and the lateral eyestay area and between the medial midfoot area and the medial eyestay area, wherein the knitted element is knitted with the broguing holes during the knitting step.
Claim 28	
28	A method as set forth in claim 21 wherein the knitted upper lateral midfoot region includes a knitted lateral midfoot area and the knitted upper medial midfoot region includes a knitted medial midfoot area, and wherein broguing holes forming lines of broguing are between the lateral midfoot area and the second area and between the medial midfoot area and the second area, wherein the knitted element is knitted with the broguing holes during the knitting step.

I. INTRODUCTION

Cole Haan respectfully requests discretionary denial. First, Cole Haan developed strong settled expectations for its '163 Patent in the six years since the patent issued on October 15, 2019. Those settled expectations are evident through Cole Haan's commercialization, marking, and assertion of the '163 Patent in Petitioners' technology space—i.e., shoes. Indeed, the industry has been on constructive notice of the '163 Patent through marking since December 2019, and Petitioners had actual notice of the '163 Patent for over three years—but no one challenged the patent's validity until now.

Second, Petitioners repeat the same unpatentability arguments considered during prosecution under the guise of facially “new” references. But the Examiner considered, and ultimately rejected, the same or substantially the same references, “patentable weight” argument, and motivations to combine presented here.

Third, the *Fintiv* factors favor discretionary denial because Petitioners have already raised their “patentable weight” argument in the parallel litigation, causing the parties to expend significant resources in two forums and rendering the Office's consideration duplicative. Furthermore, Petitioners' *Sotera* stipulation is meaningless because Petitioners raise cumulative, duplicative, and “unpublished” system art in their district court invalidity contentions. Moreover, and as will be shown in the POPR, the Petition has significant weaknesses on the merits.

Fourth, Petitioners over-rely on their expert's conclusory testimony to support their arguments. Dr. Adanur makes admissions that directly contradict his opinion that certain claim features are not entitled to patentable weight. He then alternatively gap-fills these features by drawing the missing claim features onto prior art figures and arguing—without any support—that it would have been obvious to try.

Finally, the Petition's excessive and unclear grounds and the simplicity of the parallel litigation further support discretionary denial.

II. PATENT OWNER'S SETTLED EXPECTATIONS SUPPORT DENIAL

A. The '163 Patent has been in force for six years without challenge despite Petitioners' actual notice

The Director has repeatedly and often found that a patent being in force at least six years creates settled expectations for the Patent Owner. *See, e.g., Samsung Elecs. Co., Ltd. v. W&Wsens Devices Inc.*, IPR2025-00995, Paper 17 at 2 (Director Oct. 17, 2025); *Yangtze Memory Techs. Co., Ltd. v. Micron Tech., Inc.*, IPR2025-00500, Paper 10 (Director Aug. 14, 2025); *Amgen Inc. v. Bristol-Myers Squibb Co.*, IPR2025-00601, Paper 9 at 2-3 (Director July 24, 2025).

Here, the '163 Patent has been in force for six years without challenge, creating strong settled expectations for Cole Haan. In *Yangtze Memory*, the Director found settled expectations for a patent issued *after* the '163 Patent, even where the parties were not engaged in a parallel proceeding. *Yangtze Memory*, IPR2025-00500, Paper 10 at 2; EX2021, (45).

Cole Haan's settled expectations are particularly strong here because Petitioners have had actual notice of the '163 Patent since July 2022 but waited over three years to challenge it. On July 19, 2022, Cole Haan sent a letter to Top Glory alleging infringement of several patents, including the '163 Patent. EX2001, 1–2. Instead of challenging the '163 Patent's validity, Top Glory settled with Cole Haan, ***giving up its ability to unilaterally challenge*** the '163 Patent, unless Cole Haan accused different products of infringement. EX2002, 2–4.

Even after Cole Haan accused other products in a September 8, 2023 letter, Top Glory did not challenge the '163 Patent's validity, though the settlement agreement allowed it. EX2003, 2–5. Top Glory acknowledged it could file an invalidation action against the '163 and '511 Patents but expressly chose not to do so, reinforcing Cole Haan's settled expectations. *Id.*, 46–47.¹

Dream Pairs was also on notice of the '163 Patent through its relationship with Top Glory. Both companies are wholly owned subsidiaries of Winsoar Corp. and Miracle Miles Group Inc. (the latter of which is listed as a real party-in-interest to

¹ Top Glory's "reliance on its own assessment of patents," EX2003, 6–12, 18, 60, 62, does not constitute "settled expectations," and Cole Haan never made any concessions of non-infringement. *DataDome S.A. v. Arkose Labs Holdings, Inc.*, IPR2025-00693, Paper 14 at 2–3 (Director Aug. 14, 2025).

the Petition) and sell the “Bruno Marc” shoes accused in Cole Haan’s letters. EX2001; EX2005; EX2007. Mr. Brian Cao, who received Cole Haan’s letter to Top Glory, owns Dream Pairs. EX2018, 2. Despite being on notice since at least July 2022, Dream Pairs did not challenge the validity of the ’163 Patent. Notably, although Top Glory’s agreement not to challenge the ’163 Patent does not apply to Dream Pairs. EX2002.

Petitioners’ failure to seek early review of the ’163 Patent after actual notice further supports Cole Haan’s settled expectations. The facts here are similar to *Geotab* and *Hisense* where institution was discretionarily denied. In *Geotab*, petitioner waited until April 2025 to challenge the patent despite patent owner’s infringement demand letter in October 2021. *Geotab Inc v. Fractus, S.A.*, IPR2025-00928, Paper 11 at 3 (Director Sep. 12, 2025). In *Hisense*, petitioner waited until May 2025 to challenge the patent despite patent owner’s notice of the portfolio as early as December 2022 followed by specific notice on June 2023. *Hisense USA Corp. v. VideoLabs, Inc.*, IPR2025-00880, Paper 11 at 2–3 (Director Oct. 10, 2025) (denying institution despite no trial date). As in these cases, Petitioners’ failure to seek early challenge despite notice for over three years weighs in favor of discretionary denial.

B. Cole Haan continues to commercialize, mark, and assert the ’163 Patent in Petitioners’ particular technology space

Cole Haan is a major player in the shoe industry, operating in the same technology space as Petitioners. It built its global brand recognition through

significant investments in the research, design, development, and marketing of its products. EX1018 ¶ 3. Founded in 1928, it now has over 500 stores in about 100 countries and obtained ongoing success by continuously innovating and pioneering new footwear categories. *Id.* ¶¶ 3–4; EX2014. Cole Haan currently holds over 200 U.S. patents on its shoes. EX2008.

The Stitchlite shoes featuring the unique knit upper claimed in the '163 Patent that results in “breathability, flexibility, and a supportive-stretch fit” were launched in July 2016. EX2009, ¶ 6; EX2028. Since their launch, Cole Haan has sold over 4.5 million of these shoes in the United States. EX2009, ¶ 7. Cole Haan’s Stitchlite shoes have been continuously marked with the '163 Patent since December 2019, shortly after it issued. EX2008; EX2009, ¶¶ 2, 4, App’x A; EX2011.

The fashion industry, including Cole Haan’s shoes, is a major driver of commerce, generating approximately \$1.53 trillion globally (\$312 billion in the U.S. alone) in 2022 and employing over 75 million people worldwide as of 2018. EX2015, 3. Yet industry faces persistent issues with “design piracy” (widespread copying of fashion designs), made easier because “fashion designs have historically been afforded few intellectual property (IP) protections in the United States.” *Id.*, 5; *see also* EX2013, 3, 5–8. “[C]opying runs rampant throughout all segments of the industry,” where brands quickly and cheaply replicate trends and designs. EX2015, 5, 16; EX2013, 3, 5–8. Indeed, Petitioners’ accused shoes retail for less than half of

Cole Haan’s patented Stitchlite shoes. *Compare* EX2028 *with* EX2029 to EX2032.

Obtaining and asserting patents on its shoes has been a critical to thwarting copy-cats and maintaining Cole Haan’s longevity in the fashion industry. As discussed above, Cole Haan successfully asserted the ’163 Patent against Top Glory and swiftly asserted it against Petitioners again for other shoes less than five months after those shoes launched. EX2002; EX1018; EX2022. Cole Haan has asserted the ’163 Patent in another lawsuit, EX2004, and entered another settlement involving the ’163 Patent in October 2022. EX2009, ¶ 10.

Similar circumstances have warranted denial based on settled expectations. For example, in *Belden*, institution was denied because “the invention was commercialized at least seven years ago and is still on the market” and the commercial product was marked with the patent. *Belden Inc. v. Commscope, Inc. of N.C.*, IPR2025-00833, Paper 13 at 2 (Director Sep. 12, 2025) (also noting petitioner had knowledge of the patent since 2022); *cf. Intel Corp. v. Proxense LLC*, IPR2025-00327, Paper 12 at 2–3 (Director June 26, 2025) (stating that reasons for review several years post-issuance include failure to commercialize, assert, mark, license, or otherwise apply the patent in petitioner’s technology space).

Here, Cole Haan’s extensive commercialization efforts, marking, and assertion of the ’163 Patent over the past decade—in the same shoe industry in which Petitioners participate—create strong settled expectations.

III. DENIAL UNDER 35 U.S.C. § 325(D) IS APPROPRIATE

Section 325(d) authorizes the Director to decline institution if the challenge is based on “substantially the same prior art or arguments” previously presented to the Office. 35 U.S.C. § 325(d); *see also* 37 C.F.R. § 42.4(a). The *Advanced Bionics* framework and *Becton Dickinson* (“BD”) factors support discretionary denial here.

A. *Advanced Bionics* Step 1 (BD Factors (a), (b), and (d))

The Petition makes two main arguments: the “wingtip” and “broguing” limitations are (1) purely aesthetic and not entitled to “patentable weight,” and (2) would have been obvious over Dua or a combination of a unitary knit upper with a separately processed upper. Each of these arguments, and the same or substantially similar references on which they rely, was considered during prosecution.

1. Petitioners’ “patentable weight” argument was considered during prosecution

The ’163 Patent claims a “knit upper having a knitted element” that includes a “wingtip” pattern, first and second types of knit structures, and/or “broguing.” As discussed below in Section IV.C., Petitioners, citing *In re Seid* and *Crocs*, argue these limitations are “purely aesthetic” and should be ignored. However, during prosecution of the ’163 Patent’s parent, the ’511 Patent², the Examiner viewed these

² The ’163 Patent received only a double patenting rejection over the ’511 Patent. EX1002, 72–73. Thus, the ’511 Patent’s prosecution history is relevant here. *Nokia*

as obvious “design choice[s] ... to optimize the *aesthetic* appeal.”³ EX1012, 109.⁴ Cole Haan responded by distinguishing *In re Seid* (discussed in MPEP § 2144.04), arguing “the claimed knit pattern inherently *has the mechanical function* as it is incorporated in and forms a portion of the upper.” *Id.*, 133–39. The Examiner considered this argument and then allowed the claims.

2. The same or substantially similar “Dua” references were considered during prosecution

The Petition relies on three Dua references—Dua’256, Dua’762, Dua’288. During prosecution of the ’511 Patent, Dua’288 and a fourth Dua reference, Dua’011, were considered. EX1012, 108–13. Petitioners argue that its primary reference, Dua’256, differs from Dua’011 because Dua’011 does not incorporate by reference Dua’762 or Dua’288 or disclose a knitted dress shoe upper. Pet., 12. But, this argument fails because the Examiner expressly considered Dua’288, as shown in EX1012, 112–13. Moreover, Dua’288 teaches that its upper made from a “textile with fusible strands” can be applied to “dress shoes.” EX1006, Abstract, 4:1–7.

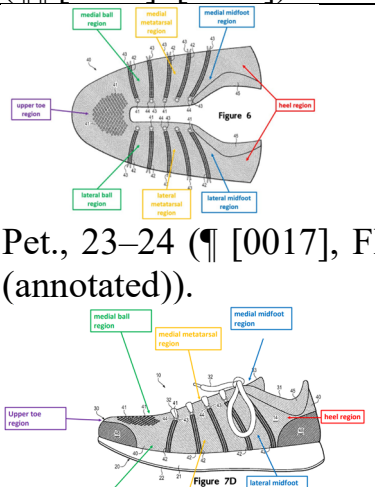
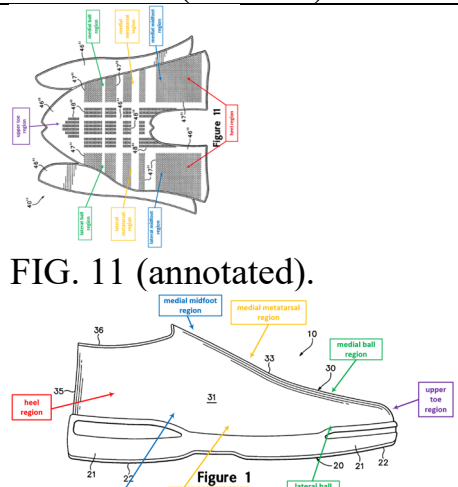
Petitioners’ claim that Dua’256 was not considered during prosecution is further undermined by its substantial similarities to Dua’011, which was not just

of Am. Corp. v. Soto, IPR2023-00682, Paper 26 at 20–21 (P.T.A.B. July 31, 2024).

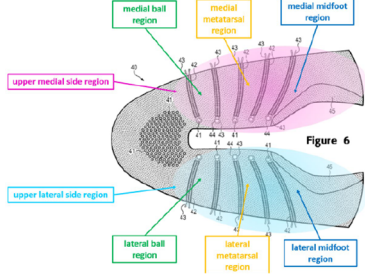
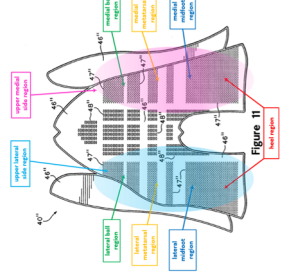
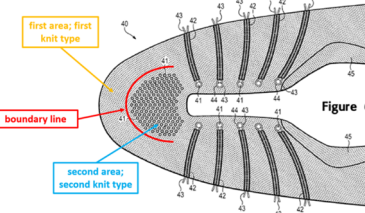
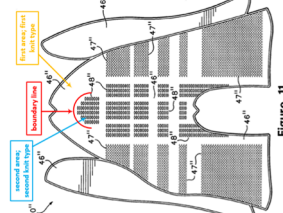
³ The ’511 and ’163 Patents had the same Examiner. EX1002, 70; EX1012, 70.

⁴ Emphasis added unless indicated otherwise.

cited but relied upon and overcome. EX1012, 108–13. As shown below, Dua’011 discloses the same features that Petitioners now point to in Dua’256:

Claims ⁵	Petition’s Reliance on Dua’256 (EX1004)	Dua’011 (EX2026)
18.pre, 1.pre-1.b 13.pre-13.b 21.pre 21.a.v	“Article of <i>footwear</i> ” with “a <i>sole structure</i> and an <i>upper</i> ” “formed of a <i>knitted component</i> ” “manufactured through a <i>flat knitting process</i> .” Pet., 21 (¶¶ [0017], [0020], [0034]).	“ <i>footwear</i> ... [has] a <i>sole structure</i> 20 and an <i>upper</i> 30.” (4:40–41). “[T]extile element 40 ... formed on ... a warp <i>knitting machine</i> .” (7:12–14). “processes ... includ[ing] ... <i>flat knitting</i> .” (6:66–7:8)
21.pre, 21.a.v	“Article of <i>footwear</i> ,” such as “ <i>dress shoe</i> ,” with “ <i>sole structure secured to the upper</i> .” Pet., 36–37 (Abstract, ¶ [0015]).	“ <i>footwear</i> 10 ... applied to ... <i>dress shoes</i> .” (4:29–31, 5:9). “ <i>Sole structure</i> 20 is <i>secured</i> to a lower portion of <i>upper</i> 30.” (4:41–42).
18.a.i, c 1.c.i, 13.c.i, 21.a.i, c	“ <i>Knitted component 40</i> ” “formed of <i>unitary knit construction</i> ” using “ <i>knitting machines</i> ” via a “ <i>single</i> [] knitting process.” Pet., 22–23 (¶¶ [0035]–[0037]).	“ <i>Textile element 40</i> is a <i>single</i> material element that ... exhibit[s] a <i>unitary (i.e., one-piece) construction</i> .” (5:38–39). “a textile element formed with a <i>knitting machine</i> .” (3:21–22).
18.a.ii, 1.c.ii, 13.c.ii, 21.a.ii	 Pet., 23–24 (¶ [0017], FIG. 6 (annotated)). Pet., 24 (FIG. 7D (annotated)).	 FIG. 11 (annotated). FIG. 1 (annotated).

⁵ Cole Haan does not concede that Dua’256 discloses these limitations.

18.a.iii, 1.c.iii, 13.c.iii, 21.a.iii	 Pet., 25 (FIG. 6 (annotated)).	 FIG. 11 (annotated).
18.a.iv, b, c 1.c.iv, 13.c.iv, 21.b, c	“regions ... formed of unitary knit construction through the <i>flat knitting process</i> .” Pet., 26 (¶ [0035]).	“mechanical processes ... includ[ing] circular knitting and <i>flat knitting</i> .” (6:66–7:8).
18.a.v, vii, c 1.c.v, vii 13.c.v, vii 21.c	“ <i>various knit types</i> to impart <i>different properties</i> to separate areas of upper 30.” Pet., 26–27 (¶¶ [0022], [0035]). Patterns as “many <i>regions</i> of the upper.” Pet. 27 (¶ [0022], FIG. 7G).	“ <i>various stitches formed in textile element 40</i> ” ... may be utilized to <i>vary</i> the texture, <i>physical properties</i> ,...within...unitary element of material.” (9:60–64). “Textile element 40” includes ... lateral <i>region</i> 31, medial <i>region</i> 32, and instep <i>region</i> 33.” (9:38–42).
18.a.vi-vii 1.c.vi-vii 13.c.vi-vii 21.a.iv	“ <i>apertured</i> configuration” and “ <i>apertures</i> 41.” Pet., 18, 26-27, 30, 32, 34, 38, 39 (¶¶ [0022], [0035], FIG. 6).	“... a <i>plurality of apertures</i> that extend through textile element 40”.” (9:38–39, 55–60).
18.a.vi, 1.c.vi, 13.c.vi, 21.a.iv	“knit <i>density</i> .” Pet., 29-30, 38 (¶ [0044], FIG. 7D).	“ <i>various stitches formed in textile element 40</i> ” ... may be utilized to <i>vary</i> the texture, <i>physical properties</i> ...” (9:38–64).
18.a.vi-vii 1.c.vi-vii, 13.c.vi-vii, 21.a.iv	 Pet., 30 (FIG. 6 (annotated)).	 FIG. 11 (annotated).

Dua’256 even expressly incorporates disclosures of Dua’011 and Dua’762 regarding different knit types and properties that may be employed, further evidencing Dua’011’s similarity to both Dua’256 and Dua’762. As stated in

EX1004, ¶ [0022], Dua’256 references both Dua’011 and Dua’762 for “*[a]dditional examples of knitted components for footwear uppers that have areas with different knit types to impart different properties.*” See also Pet., 17 (relying on ¶ [0022] for knit types and properties). Thus, the Dua references in the Petition are not new.

3. The combination of a knit upper with a separately processed upper was considered during prosecution

During prosecution of the ’511 Patent, the Examiner noted that Dua’011’s textile element of unitary construction includes a knitted design pattern comprising different textures 46”, 47”, and 48” but not a “wingtip design.” EX1012, 109. The Examiner argued it would have been an obvious design choice to use a wingtip pattern, as shown in Crannell “to optimize the aesthetic appeal of the Dua’s shoes.” *Id.* Crannell describes a two-tone sport shoe with a raised imitation wingtip on the vamp, accomplished by heat pressing and dying. EX2027, 1:4–11, 2:20-45.

Cole Haan responded that (1) neither Dua’011 nor Crannell discloses seamlessly knitted regions forming the claimed wingtip pattern and (2) a person of ordinary skill would not combine Dua’011 and Crannell given the different manufacturing methods and material constructions (i.e., knit v. leather). EX1012, 133–39. The Examiner agreed and allowed the claims. *Id.*, 148–52.

Petitioners’ argument that it would be obvious to modify Dua’s knit upper having multiple knit patterns to include the “wingtip” and “broguing” limitations based on separately processed (e.g., leather) shoes of Flusser and Litke is the same

argument the Examiner raised and later withdrew. Flusser, like Cranell, describes a traditional leather upper with a possible wingtip design. *See* EX1007, 11. But Cole Haan already overcame the combination of Dua’s knit upper and a traditional leather upper like Flusser, and Petitioners offer no motivation to combine beyond “design choice,” which the Examiner already considered. Pet., 55.

Litke fares no better. It discloses *applying* or *forming* patterns onto materials, not seamlessly knitted regions that form the claimed wingtip pattern. EX1008, 6:16–21. Litke is akin to Cranell’s post-processing formation of the wingtip design, which Cole Haan has already shown is not combinable with Dua. EX1012, 133–52.

B. Advanced Bionics Step 2 (BD Factors (c), (e), and (f))

Petitioners must affirmatively show the Office committed material error in issuing the challenged patent but fail to do so. Instead, they offer a conclusory assertion that Examiner erred by giving patentable weight to ornamental features and not rejecting the claims over new references or combinations. Pet., 12. Petitioners do not explain how the Examiner’s consideration of Cole Haan’s distinction over *In re Seid* was improper⁶, nor do they identify any overlooked aspects of their “new” references or justify their § 103 combinations based on “aesthetic purposes” despite Examiner consideration of the same arguments. As explained in the POPR, the

⁶ Petitioners admit that such limitations are not purely ornamental. *See infra* § V.A.

Examiner made the correct determination on each issue. The only new evidence (Dr. Adanur's declaration) further does not warrant reconsideration, because Dr. Adanur merely gap-fills Petitioners' deficient arguments, as detailed below. *See infra* § V.B.

IV. THE *FINTIV* FACTORS SUPPORT DENIAL

A. Factor 1 (Stay of Litigation) favors denial.

Although Petitioners recently moved to stay the parallel litigation, the district court's practice is to defer any stay until after institution. *See* EX2006, 8–13. Any assertion that a stay will be granted is entirely speculative, and discretionary denial is appropriate under this factor. *See Samsung Elecs. Co., Ltd. v. Telcom Ventures LLC*, IPR2025-00957, Paper 12 at 2 (Director Oct. 10, 2025).

B. Factor 2 (Proximity of Trial Date) is outweighed by the considerations favoring denial.

Although no trial date has been set in the parallel litigation, the Director routinely exercises discretion to deny institution despite even “favorable” trial timing where other factors, like those present here, make Board review an inappropriate use of resources. *See, e.g., Apple Inc. v. Advanced Coding Techs. LLC*, IPR2025-00983, Paper 10 at 2-3 (Director Oct. 3, 2025) (denial based on settled expectations from patent age and lack of material error); *OnePlus Tech. (Shenzhen) Co., Ltd. v. Pantech Corp.*, IPR2025-00783, Paper 12 at 2 (Director Sep. 12, 2025) (denial based on settled expectations from patent age); *Ascentcare Dental Prods., Inc. v. Solmetex, LLC*, IPR2025-01065, Paper 11 at 2 (Deputy Under Sec'y Oct. 17,

2025) (denial based on § 325(d) without showing of material error).

As in these prior proceedings, other considerations—namely, Cole Haan’s settled expectations (§ II) coupled with Petitioners’ repeat art and arguments without identifying any material error (§ III) and decision to advance their lead invalidity argument in the parallel litigation first (§ IV.C)—make review of the ’163 Patent an inefficient use of Board resources, despite no trial date being set.

C. Factor 3 (Investment in Parallel Proceeding) and Factor 4 (Overlap of Issues) favor denial.

Nearly eight months ago, Petitioners filed a still-pending motion to dismiss in the parallel litigation, arguing that the ’163 Patent is “invalid over prior art cited during prosecution” because Cole Haan “relied upon ... aesthetic features” that are “not entitled to patentable weight.” EX2017, 6. Petitioners’ motion necessitated extensive briefing from both parties.⁷ EX2017; EX2023; EX2024. Now, Petitioners inexplicably re-present the same “patentable weight” issue in this IPR, even though the parties and the court have already and will continue to expend substantial resources to resolve it in the parallel proceeding.⁸ *Compare* Pet., 15 (“in *Seid*, the

⁷ Briefing was complete on April 14, 2025, and the motion should be decided soon. On average, Judge Salas decides motions to dismiss within 7.9 months. EX2025.

⁸ Compounding this issue, Petitioners’ “patentable weight” argument is not properly before the Board because it is a Section 101 issue, as explained in the POPR.

court found ... the *limitations reciting the ‘shape and arrangement of the figure were ornamental and not entitled to patentable weight’* and “the Board has found *a claimed ‘three dimensional animal or character figure’ on a shoe is not entitled to patentable weight. Crocs*, 2014 WL 4181937, at *6”) with EX2017, 19 (“In *Seid*, ... [t]he court explained that the *limitations reciting the ‘shape and arrangement of the upper part of the body in [the claimed] figure...‘relate to ornamentation only’ and thus cannot ‘properly be relied on’ for patentability*” and “the USPTO found that the limitation of *a ‘three dimensional animal or character figure’ on a shoe is not entitled to patentable weight. Crocs*, 2014 WL 4181937, at *6.”).

Having already forced extensive briefing on this issue in their selected form, Petitioners now seek a second bite at the apple. But “where the Board essentially would be taking up the same preliminary issues as the district court, it is not an efficient use of Office resources to revisit substantially similar subject matter that has already been considered in the parallel proceeding.” *Amneal Pharms., Inc. v. Nivagen Pharms., Inc.*, IPR2025-00731, Paper 15 at 3 (Director Sep. 3, 2025).

Factor 4 further favors discretionary denial because Petitioners’ *Sotera* stipulation fails to reduce overlap. This IPR would not be a “true alternative” to the parallel litigation because Petitioners’ litigation invalidity arguments “are more expansive and include combinations of the prior art asserted in these proceedings with unpublished system prior art” that Petitioners’ *Sotera* stipulation does not moot.

See Motorola Sols., Inc. v. Stellar, LLC, IPR2024-01205, Paper 19 at 3–4 (P.T.A.B. Mar. 28, 2025); EX2016, 2–20. Most notably, Petitioners’ invalidity contentions rely on unpublished system alleged prior art—physical shoes—that cannot be asserted here. EX2016 at 19 (“Top Glory intends to rely upon certain product prior art under 35 U.S.C. § 102(a)(1).”). Petitioners’ *Sotera* stipulation also is undermined by Petitioners raising their “patentable weight” arguments in both forums.

D. Factor 5 (Identity of Parties) favors denial.

Because the “petitioner and the defendant in the parallel proceeding are the same party,” this factor favors denial. *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 13-14 (P.T.A.B. Mar. 20, 2020) (precedential); *see* Pet., 3; EX1018.

E. Factor 6 (Other Circumstances) favors denial.

Weak or even “closer call” merits favor denial, particularly when other factors favor denial. *Fintiv*, IPR2020-00019, Paper 11 at 15. Cole Haan will address the merits in its POPR that: (1) Petitioners’ “patentable weight” argument is based on 35 U.S.C. § 101 and not properly before the Board, *see* EX2016, 39–40; EX2017, 18–20; EX2024, 7–9; (2) the allegedly aesthetic/ornamental claim limitations *are* entitled to patentable weight, and (3) the gap-filling by Petitioners’ expert falls short.

V. OVERRELIANCE ON EXPERT TESTIMONY SUPPORTS DENIAL

The extent to which the Petition relies on expert testimony is an important factor in deciding whether to deny institution. Process Memo at 2.

A. Dua’256 contradicts Dr. Adanur’s “patentable weight” opinion

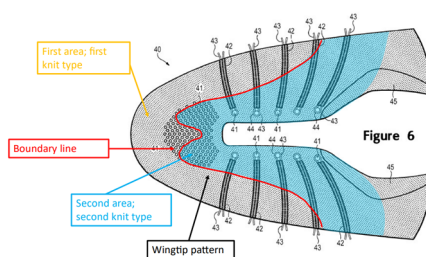
Dr. Adanur opines that the claimed “wingtip/broguing pattern” and “different knit structures in different areas” have “no structural or mechanical relationship with the claims” and are therefore not entitled to patentable weight. EX1003, ¶¶ 86–87. But this opinion is directly contradicted by Dua’256, including portions on which Dr. Adanur relies. For example, paragraph [0022] of Dua’256 (which Dr. Adanur repeatedly quotes, EX1003, ¶¶ 127, 134) discloses that “apertures” (which Dr. Adanur analogizes to wingtip/broguing pattern, *id.* at ¶ 142) “***impart[] greater permeability, which allows air to circulate within upper 30,***” and “***may increase both the flexibility and stretch of upper 30,***” EX1004, ¶ [0022]—i.e., structural and mechanical functions. Paragraph [0022] of Dua’256 similarly discloses that “knitted component 40” (on which Dr. Adanur relies as “knit structure[s],” EX1003, ¶ 134) has properties including “***permeability to liquids***, the directions in which knitted component 40 ***stretches or resists stretch, the stiffness*** of knitted component 40, and ***the compressibility*** of knitted component 40,” EX1004, ¶ [0022]—i.e., structural and mechanical functions. Dr. Adanur further admits that jersey “stretch[es] equally in both the lengthwise and crosswise directions” and that pointelle is “more breathable” than other knit structures. EX1003, ¶ 61. Indeed, Dr. Adanur’s justification for gap-filling the “pointelle” limitation is “the resulting improvements

to the *permeability* and *flexibility* of the upper.” *Id.*, ¶ 178; *infra* § V.B.⁹

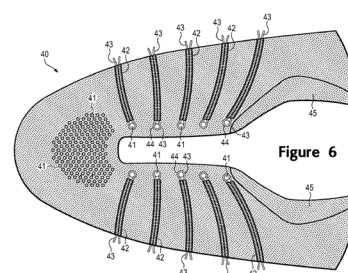
Dr. Adanur’s failure to acknowledge the structural and mechanical functions of the claim limitations while asserting those limitations are “purely aesthetic/ornamental” calls his credibility into question. *See Interactive Commc’ns Int’l, Inc. v. Blackhawk Network Inc.*, IPR2024-00465, Paper 39 at 3 (Director Oct. 1, 2025) (“The Board abused its discretion by improperly crediting expert testimony that has multiple material contradictions and that the Board found lacked credibility...”).

B. Dr. Adanur supplies missing limitations

The Office “will enforce and no longer waive the requirements of 37 C.F.R. § 42.104(b),” which means “general knowledge,” including expert testimony, “may not be used to supply a missing claim limitation.” July 31, 2025 Memo. Dr. Adanur admits the Dua references do not disclose the claimed “wingtip,” different “knit structure[s]” in the recited areas, and “broguing”, and then he gap-fills these missing limitations by drawing them himself:



Annotated FIG. 6 (EX1003, ¶¶ 135, 153)



Unannotated Dua'256 FIG. 6

⁹ Dr. Adanur admits pointelle is more flexible too. IPR2025-01392, EX1003, ¶ 162.

Although Dr. Adanur purports to rely on the teachings of Flusser and Litke, *see* EX1003, ¶¶ 130, 229–32, 262–65, he fails to explain how his added “wingtip”—which introduce apertures beyond the upper toe region, unlike Dua’256—are actually combinable with Dua’256’s tubes 42 with a reasonable expectation of success. *Id.* ¶¶ 130–32, 141, 142, 145, 211. This is particularly problematic because, as discussed above, Flusser and Litke relate to different manufacturing methods and different material constructions than Dua. Also contrary 37 C.F.R. § 42.104(b), Dr. Adanur relies solely on general knowledge to supply the claimed “pointelle stitch knit,” as the Dua references do not disclose this limitation. EX1003 ¶¶ 176–178. Dr. Adanur’s hindsight attempt to supply missing limitations should be rejected.

VI. OTHER CONSIDERATIONS SUPPORT DENIAL

Other “fact[s] [and] circumstance[s]” exist that Cole Haan “believes bears on the Director’s discretion.” Interim Director Discretionary Process I.A.

A. The Petition fails to meet the requirements of 37 C.F.R. § 42.104(b)

Petitioners’ “and/or” phrasing (“Dua’762/Dua’288”) collapses at least 20 distinct grounds into 10 purported grounds and fails to identify “with particularity” the evidence supporting each ground as required under 37 C.F.R. 42.104(b). *See Adaptics Ltd. v. Perfect Co.*, IPR2018-01596, Paper 20 at 18–21 (P.T.A.B. Mar. 6, 2019) (informative) (denying institution due to “catch-all” grounds with “and/or” conjunctions). Ground 2 (Dua’256 in view of Dua’762/ Dua’288) encompasses three

separate grounds: (1) Dua’256-Dua’762, (2) Dua’256-Dua’288, and (3) Dua’256-Dua’762-Dua’288. Grounds 4, 6, 8, and 10 similarly rely on “Dua’762/Dua’288.”

Moreover, Petitioners’ analysis conflates separate grounds and inconsistently cites between the three Dua references, often mid-paragraph or within a sentence. *See, e.g.*, Pet., 27 (switching from Dua’256 to Dua’762 without explanation); Pet., 42–43 (citing all three Dua references for single limitation). This unfocused approach unduly burdens the Board and Cole Haan. *See Arashi Vision (U.S.) LLC v. GoPro, Inc.*, IPR2024-01434, Paper 9 at 11 (P.T.A.B. Mar. 31, 2025).

B. Simplicity of the parallel litigation supports discretionary denial

The parallel litigation here is relatively simple: three related utility patents and one design patent. EX1018 ¶ 19. This contrasts sharply with cases warranting Board review. *See Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00217, Paper 9 (Director June 13, 2025) (11 patents, 9 families); *Shenzhen Tuozhu Tech Co., Ltd. v. Stratasys, Inc.*, IPR2025-00531, Paper 10 at 3 (Director July 17, 2025) (9 patents, 6 families); *Samsung Elecs. Co. v. Wilus Inst. of Standards & Tech. Inc.*, IPR2025-00933, Paper 11 at 3 (Director Oct. 10, 2025) (12 patents, 8 families).

VII. CONCLUSION

Cole Haan respectfully requests that the Director deny institution.

Dated: November 12, 2025

Respectfully submitted,

/Chad C. Walters/

Chad C. Walters

Reg. No. 48,022

BAKER BOTTS L.L.P.

2001 Ross Ave., Suite 900

Dallas, TX 75201-2980

Phone: (214) 953-6511

Fax: (214) 661-4511

chad.walters@bakerbotts.com

Lindsay Volpenhein Cutié

Reg. No. 75,474

Amy E. Bergeron

Reg. No. 76,974

BAKER BOTTS L.L.P.

910 Louisiana Street

Houston, TX 77002

Phone: (713) 229-1234

lindsay.cutie@bakerbotts.com

amy.bergeron@bakerbotts.com

Attorneys for Patent Owner

Cole Haan LLC

**CERTIFICATE OF COMPLIANCE WITH PAGE LIMITATION,
TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS**

1. This Brief complies with 20-page limit, excluding the parts exempted by 37 C.F.R. § 42.24(a).
2. This Petition complies with the general format requirements of 37 C.F.R. § 42.6(a) and has been prepared using Microsoft® Word in 14-point Times New Roman.

Dated: November 12, 2025

/Chad C. Walters/

Chad C. Walters

Reg. No. 48,022

BAKER BOTTS L.L.P.

2001 Ross Ave., Suite 900

Dallas, TX 75201-2980

Phone: (214) 953-6511

Fax: (214) 661-4511

chad.walters@bakerbotts.com

Lindsay Volpenhein Cutié

Reg. No. 75,474

Amy E. Bergeron

Reg. No. 76,974

BAKER BOTTS L.L.P.

910 Louisiana Street

Houston, TX 77002

Phone: (713) 229-1234

lindsay.cutie@bakerbotts.com

amy.bergeron@bakerbotts.com

Attorneys for Patent Owner

Cole Haan LLC

CERTIFICATE OF SERVICE

In accordance with 37 CFR § 42.6(e), the undersigned certifies that on November 12, 2025, a complete and entire copy of this Brief and all supporting exhibits were served on Petitioners via electronic mail to counsel for the Petitioners at the following addresses:

- CT-TopGlory-ColeHaan@sheppardmullin.com
- jdavis@sheppardmullin.com
- mshapiro@sheppardmullin.com
- nattalla@sheppardmullin.com

Dated: November 12, 2025

/Chad C. Walters/

Chad C. Walters (Reg. No. 48,022)

Attorney for Patent Owner
Cole Haan LLC