

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. IPR2025-01395
Patent D768,969

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

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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 claim in this proceeding is for the ornamental design for a shoe midsole as shown in the solid lines of Figures 1-7 of D'969, reproduced below:

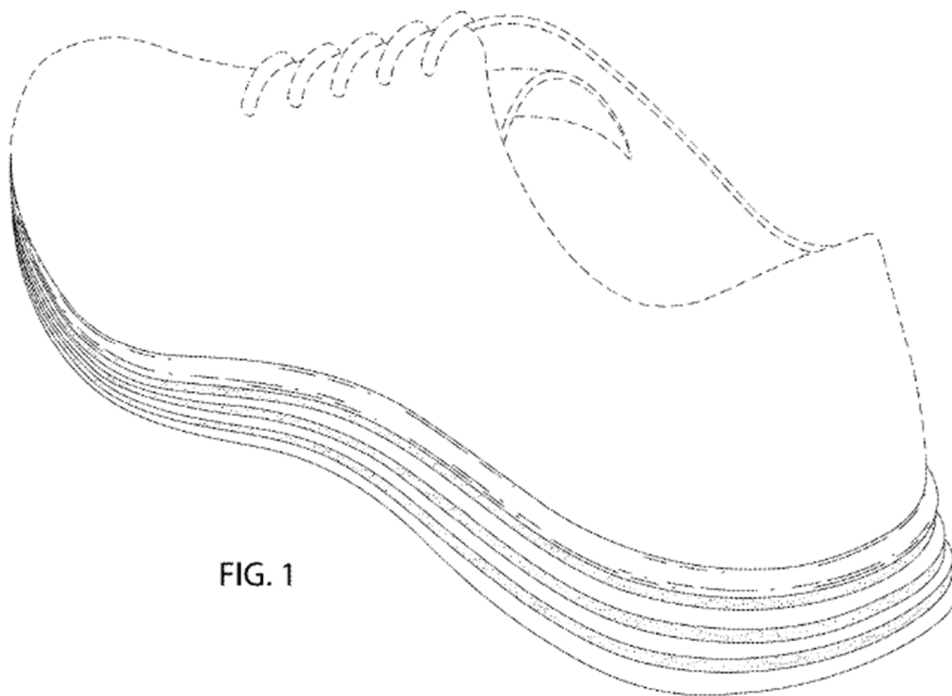


FIG. 1

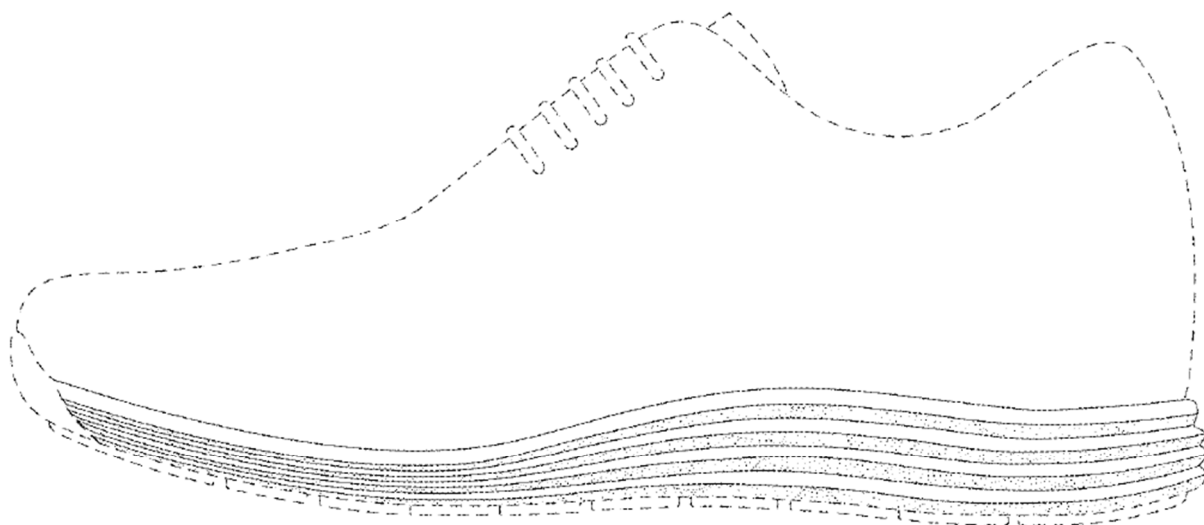


FIG. 2

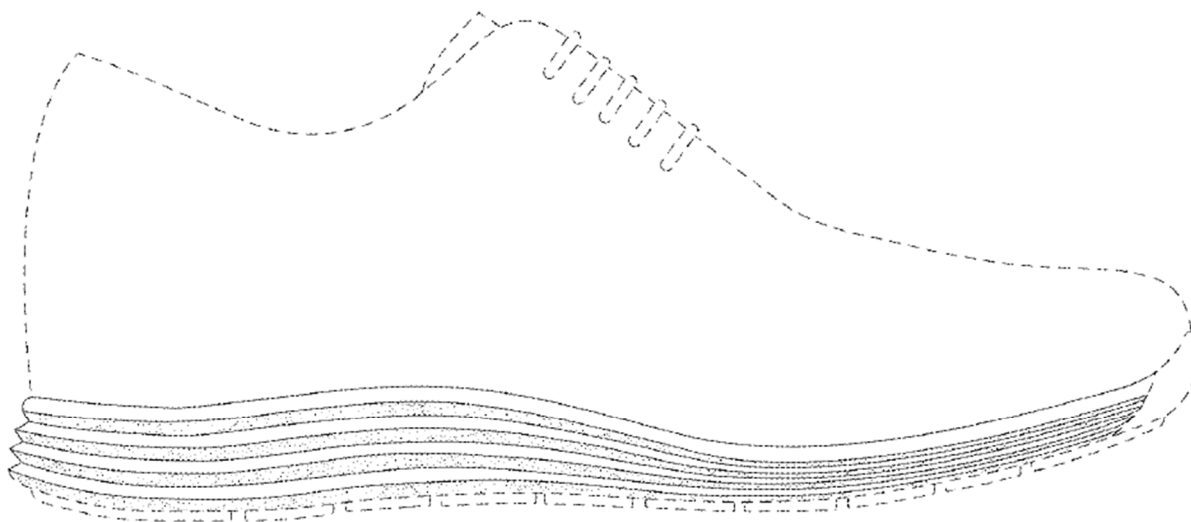


FIG. 3

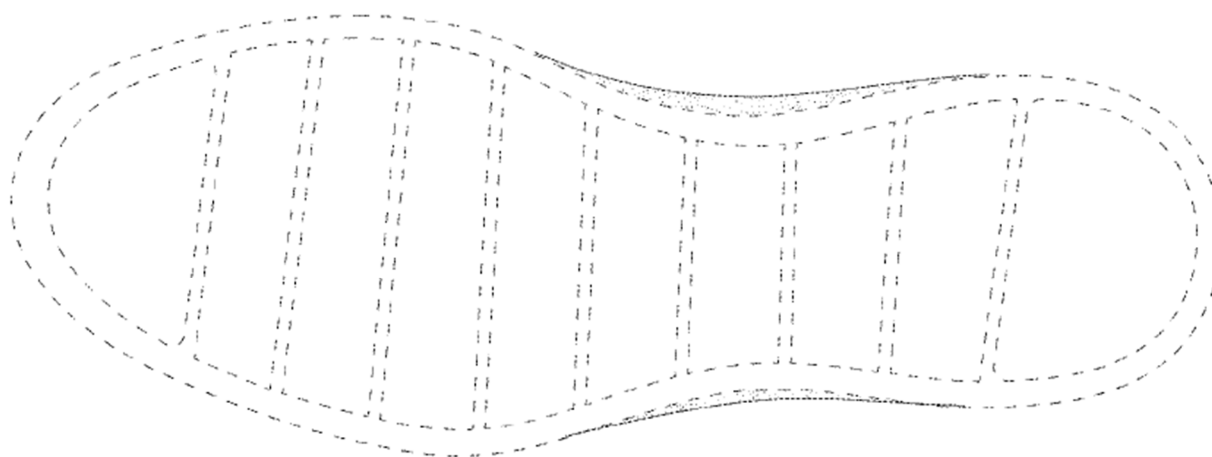


FIG. 4

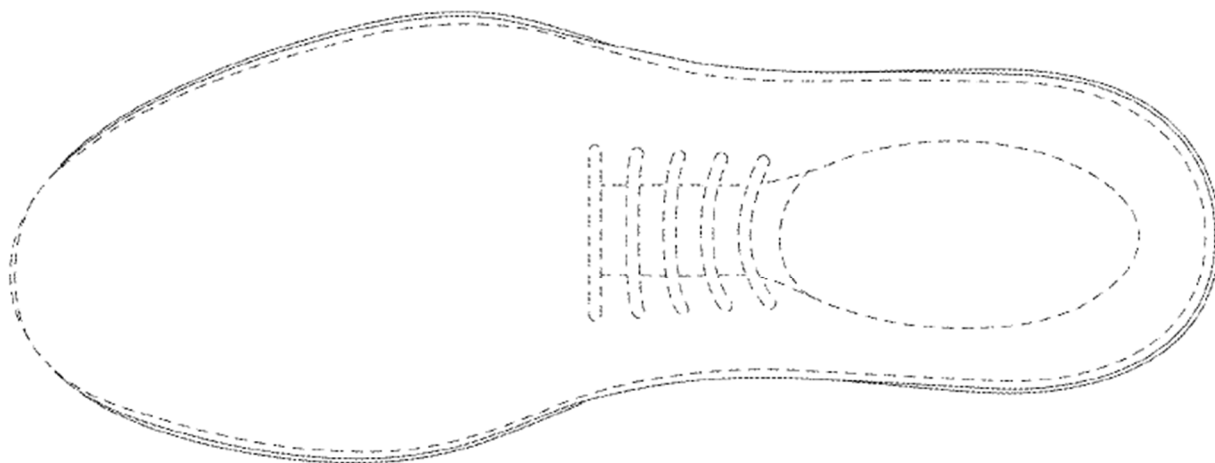


FIG. 5

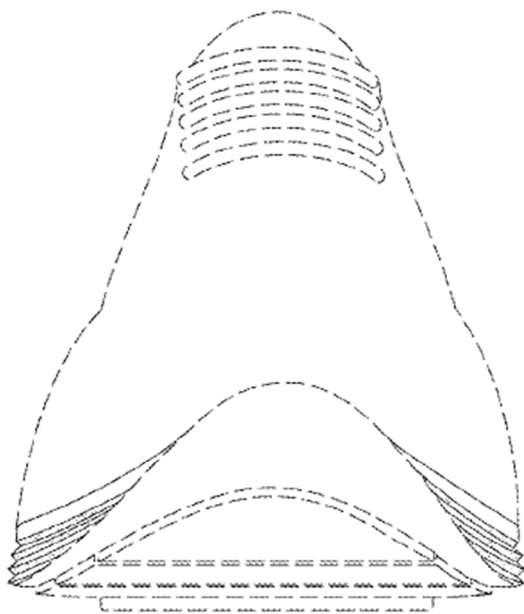


FIG. 6

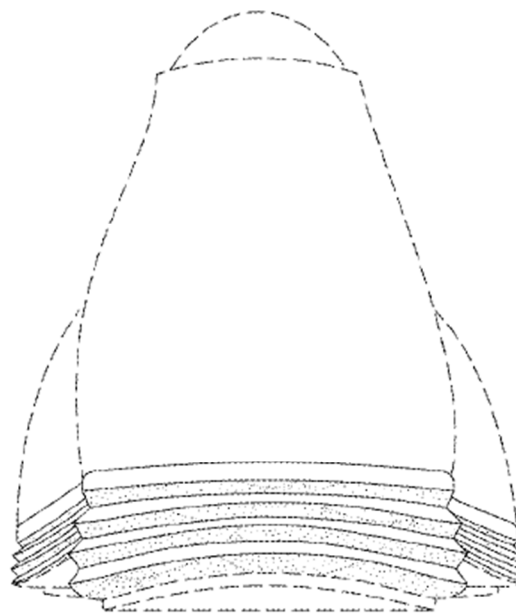


FIG. 7

I. INTRODUCTION

Cole Haan respectfully requests discretionary denial. First, Cole Haan developed strong settled expectations for D’969 in the more than nine years since the patent issued on October 18, 2016. Those settled expectations are evident through Cole Haan’s commercializing and marking D’969 in Petitioners’ technology space—*i.e.*, shoes. The industry has been on constructive notice of D’969 through Cole Haan’s marking as early as November 2016, and Petitioners had actual notice of Cole Haan’s patent portfolio for over three years—but there were no challenges to D’969’s validity until now.

Second, Petitioners repeat the same unpatentability arguments considered by the Examiner during prosecution under the guise of facially “new” references. But those references are merely cumulative of the art the Examiner considered.

Third, the *Fintiv* factors favor discretionary denial due to Petitioners’ decision to bring infringement issues directly to the district court through a motion to dismiss at the outset of the parallel litigation. This caused the parties and the court to spend significant time and resources on an issue normally reserved for trial and makes review of D’969 here an inefficient use of Board resources. 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 Patent Owner’s Preliminary

Response (“POPR”), the Petition has significant weaknesses on the merits.

Fourth, Petitioners over-rely on their expert’s oversimplified, conclusory descriptions and annotations of isolated features of the design instead of the claimed design itself as a whole in its analysis.

Finally, the simplicity of the parallel litigation further supports denial.

II. PATENT OWNER’S SETTLED EXPECTATIONS SUPPORT DENIAL

A. D’969 has been in force for over nine years without challenge despite Petitioners’ notice of Cole Haan’s patent portfolio and presence in the marketplace

Cole Haan’s settled expectations are especially strong—D’969 issued on October 18, 2016, and has been in force for over nine years, well beyond the six years the Director consistently recognizes as creating strong settled expectations. For example, in *OnePlus Technology (Shenzhen) Co., Ltd. v. Pantech Corporation*, the Director found strong settled expectations for patent owner’s patent in force for nine years tipped the balance in favor of discretionary denial despite no trial date in the parallel proceeding. IPR2025-00783, Paper 12 at 2 (Director Sept. 12, 2025). The Director explained “the Office is disinclined to disturb the strong settled expectations of the Patent Owner” absent persuasive reasoning why an IPR is an appropriate use of Board resources. *Id.* at 2-3. Similarly, in *Micron Technology, Inc. et al. v. Palisade Technologies, LLP*, the Director found patents in force for twelve and nine years created settled expectations for patent owner, tipping the balance in

favor of discretionary denial absent persuasive arguments on material error and despite unclear trial timing. IPR2025-01008, Paper 12 at 2 (Director Oct. 17, 2025).

Cole Haan’s settled expectations are particularly strong because Petitioners have had notice of Cole Haan, its designs, and its patent portfolio since at least 2022 through a series of assertion letters to Top Glory.¹ EX2001; EX2003. The Director has credited portfolio-level pre-suit notice as strengthening a patent owner’s settled expectations and favoring denial. *See Hisense USA Corp. v. VideoLabs, Inc.*, IPR2025-00880, Paper 11 at 2 (Director Oct. 10, 2025). Despite being on notice since at least July 2022, Petitioners did not challenge the validity of D’969 or any other patent in Cole Haan’s portfolio until now.

B. Cole Haan continues to commercialize and mark D’969 in Petitioners’ particular technology space

Cole Haan’s settled expectations are reinforced by its of commercialization

¹ Petitioner Dream Pairs was similarly on notice of Cole Haan’s portfolio including D’969 via its relationship with Top Glory. Both are wholly owned subsidiaries of Winsoar Corporation and Miracle Miles Group Inc., only the latter of which is listed as a real party-in-interest to the Petition. EX2005; Pet., 3. Both have the same principal place of business. EX2001; EX2040. Both sell the “Bruno Marc” shoes accused in Cole Haan’s letters. *Id.* at 1; EX2007. Mr. Brian Cao, the recipient of Cole Haan’s letter to Top Glory, is the owner of Dream Pairs. EX2018.

and marking with D’969, which the Director routinely treats as strong evidence supporting settled expectations. For example, in *Belden Inc. v. Commscope, Inc. of N.C.*, institution was denied when the invention had been commercialized for at least seven years, still on the market, and was marked. IPR2025-00833, Paper 13 at 2 (Director Sep. 12, 2025) (also noting petitioner knew of the patent since 2022); cf. *Intel Corp. v. Proxense LLC*, 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).

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 has 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.

Since November 2015, Cole Haan has commercialized several shoes with the midsole claimed in D’969. EX2009, ¶ 9. Examples include the Men’s OG Sport Perforated Trainer, the Men’s OriginalGrand Sport Perforated Sneaker, the Men’s OriginalGrand Perforated Sneaker, and the Women’s OriginalGrand Perforated Sneaker. *Id.*, ¶ 9, App’x B. Since their launch, Cole Haan has sold over 35,000 of

these shoes in the United States. *Id.*, ¶ 9. Cole Haan has marked these shoes with D’969 through its virtual marking website since December 2016, shortly after D’969’s issuance. *Id.*, ¶¶ 2, 8, App’x A; EX2008.

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. EX2013, 3. Yet the 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. EX2013, 5, 16; EX2013, 3, 5–8.

Obtaining and asserting patents on its shoes has been critical to thwarting copy-cats and maintaining Cole Haan’s longevity in the fashion industry. As discussed above, Cole Haan successfully asserted some of its patents against Top Glory and swiftly asserted additional patents, including D’969, against Petitioners again for other shoes less than five months after those shoes launched. EX2002; EX1018; EX2022. Cole Haan has another pending patent infringement lawsuit, EX2004, and entered another settlement involving some of its patents in October 2022, EX2009, ¶ 10.

Here, Cole Haan’s extensive commercialization efforts, marking, and assertion of its shoe patent portfolio 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))

Petitioners assert four references, C11947, C12652, Nike, and Skechers, then jump to the conclusion that such art and arguments are not the same or substantially the same, because these references were “never identified,” “considered,” or “used as a basis for a rejection” during prosecution. Pet., 16. But Petitioners conflate formal citation with actual consideration of the substantive teachings in each of these references. References need not “be identical or entirely cumulative, only [] substantially the same” to satisfy *Advanced Bionics*’ first prong. *Dropworks, Inc. v. The Univ. of Chicago*, IPR2021-00100, Paper 9 at 13-14 (P.T.A.B. May 14, 2021). Even if each of these references qualifies as a “printed publication” (which Patent Owner does not concede), the teachings of these references are the same or substantially similar to the art previously presented to the Office.

As illustrated in the tables below, which compare the overall visual appearances of the midsoles of the asserted references with a representative reference cited in D’969, the Examiner explicitly considered numerous design patents that teach midsole designs substantially similar to those disclosed in the asserted references:

Table 1.0

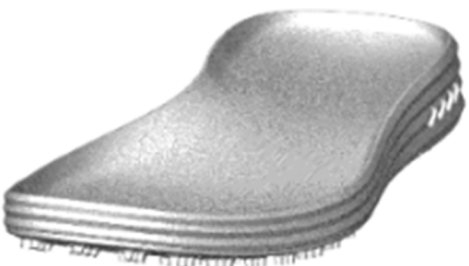
C11947	Representative Cited Prior Art (USD742107S1)
 Capture at 02.26.213	 FIG. 3
 Capture at 00.19.275	 FIG. 7
	 FIG. 5

Table 2.0

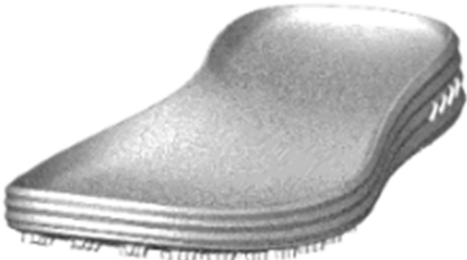
C12652	Representative Cited Prior Art (USD742107S1)
	 FIG. 3
	 FIG. 7
	 FIG. 5

Table 3.0

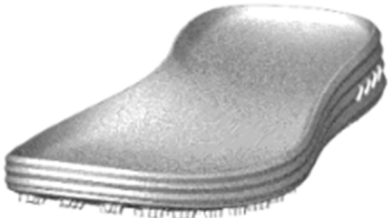
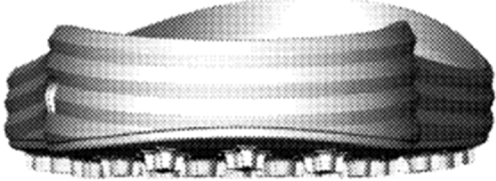
Nike	Representative Cited Prior Art (USD742107S1)
	 FIG. 3
	 FIG. 7
	 FIG. 5

Table 4.0

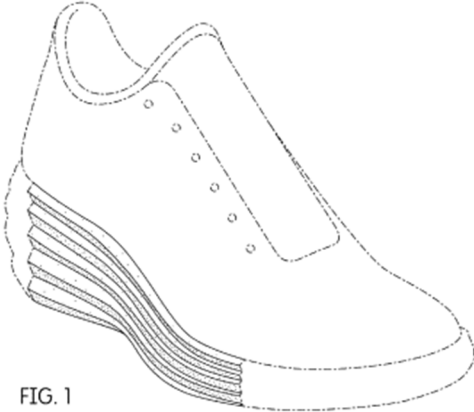
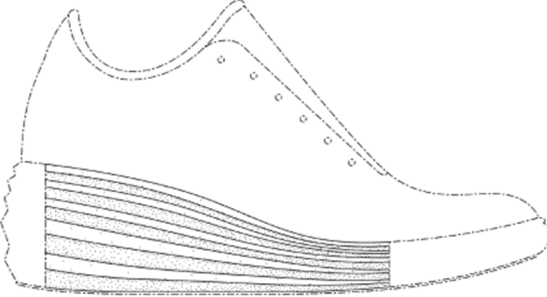
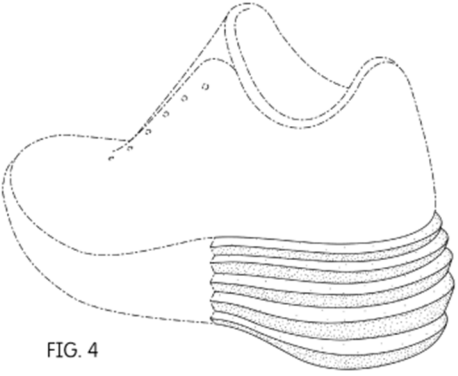
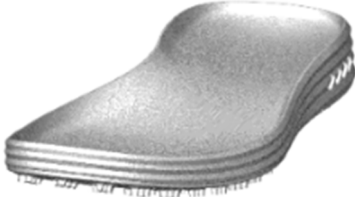
Nike	Representative Cited Prior Art (USD713626S and USD713625S)
	 FIG. 1 USD713626S
	 FIG. 2 USD713626S
	 FIG. 4 USD713625S

Table 5.0

Skechers	Representative Cited Prior Art (USD742107S1)
	 FIG. 3
	 FIG. 7

Petitioners argue that the asserted references alone or in combination disclose “[t]he claimed portions of the seven figures of D’969,” which “give an overall visual impression of a soft, wave-like midsole design.” Pet, 26. But, as shown above in Table 1.0, Table 2.0, Table 3.0, Table 4.0, and Table 5.0, the Examiner already considered these exact features in substantially similar references.

During the prosecution of D’969, the Examiner searched for prior art and considered sixty-nine prior art references to cite through his own diligence, including the above-referenced D742,107 Patent and D713,625 Patent. EX1002 at 55. Additionally, the Patent Owner submitted fifty-five references in Information Disclosure Statements throughout prosecution, including the D713,626 Patent.

EX1002 at 28, 30-32, 61-63, 86-91. The Examiner’s consideration of Applicant’s references was meticulous. In a Corrected Notice of Allowance, the Examiner remarked that all of Applicant’s supplemental references were also considered, except for one, which the Examiner struck out because it was a duplicate of the previously cited reference. *Id.* at 105-112.

The Examiner carefully decided not to issue any § 102 or § 103 rejections in the prosecution of D’969, but did issue a Non-Final Office Action of March 1, 2016, outlining § 112 issues which Patent Owner overcame with amendments. *Id.* at 48-54. The above-referenced D742,107 Patent and D713,625 Patent were listed on form PTO-892 by the Examiner in this action and formally appear on the face of D’969 under the References Cited Section (56). In fact, in the Non-Final Office Action of March 1, 2016 (which also acknowledges the above-referenced D713,626 Patent), the Examiner notes that the “references cited but not applied, are considered cumulative art related to the claimed design.” *Id.* at 53. In short, the Examiner determined that D’969 was novel and not obvious over all references of record, including the D742,107 Patent, D713,625 Patent, and D713,625 Patent.

Any attempt by Petitioners to distinguish the asserted references over those cited in the prosecution by reducing them to Petitioners’ selective four “key” features—rounded upper layer, ridge layers, compressions, and pinched mid-section—would be fatal. *See, e.g.,* Pet., 25-26. The ordinary observer test for design

patents requires the fact finder to “compar[e] similarities in overall designs, not similarities of ornamental features in isolation.” *See Ethicon Endo-Surgery, Inc. v. Covidien, Inc.*, 796 F.3d 1312, 1335 (Fed Cir. 2015) (further holding that “[a]n element-by-element comparison, untethered from application of the ordinary observer inquiry to the overall design, is procedural error.”) (citations omitted).

Because the relevant teachings provide nothing more than previously presented overall designs, Petitioners’ newly asserted references are cumulative of at least these references relied upon by the Examiner during prosecution. *See Gardner Denver, Inc. v. Utex Indus., Inc.*, IPR2020-00333, Paper 12 at 13-14 (P.T.A.B. Aug. 5, 2020) (denying institution upon finding newly asserted references Kalsi and Kohl are no more relevant than references that were presented during prosecution); *Roku, Inc. v. Universal Elecs., Inc.*, IPR2019-01619, Paper 11 at 16-17 (P.T.A.B. Apr., 2, 2020) (denying institution upon finding newly applied Zetts was cumulative to previously presented Kim, even though Kim was not considered for the same limitation in reexamination); *Advanced Bionics*, Paper 6 at 13-19; *see also Evapco Dry Cooling, Inc. v. SPG Dry Cooling USA LLC*, IPR2021-00687, Paper 11 at 24-25 (P.T.A.B. Sep. 24, 2021) (finding a newly asserted reference not cited during prosecution was substantially the same as the references that were before the Examiner during prosecution). Petitioners fail step one.

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

Petitioners have the burden to affirmatively demonstrate that the Office committed material error in issuing the challenged patent, but Petitioners fail to do so. *See Tanklogix, LLC v. SitePro, Inc.*, IPR2025-00761, Paper 10 at 2–3 (Director Sep. 3, 2025) (citing *Ecto World LLC v. Rai Strategic Holdings, Inc.*, IPR2024-01280, Paper 13 at 5 (Director May 19, 2025) (precedential)).

Petitioners offer only a conclusory assertion that it was “error to allow the Claims because, *e.g.*, the Examiner failed to reject the Claim over references or combinations of references visually similar to D’969 and teaching a shoe design with a rounded upper layer and ridged edge layers compressing and sloping along different portions of the shoe’s edge.” Pet., 17 (emphasis omitted). Not only do Petitioners commit the same legal error by focusing on isolated features instead of the overall design, but they also fail to explain how these features differ materially from the art already considered.

Petitioners claim it is “difficult, if not impossible” to explain why the Examiner allowed the claims or how the Examiner might have treated their references. Pet., 16. This is hyperbole. The Examiner’s treatment of Petitioners’ substantially similar art is clear: the Examiner evaluated the substantially similar midsole designs above, found the claim indefinite, required clarification through amended drawings, and then allowed the claim after Applicant submitted amended drawings. The C11947, C12652, Nike, and Skechers references depict the same

overall design and would have been overcome by the same amended drawings.

Any additional evidence and facts presented in the Petition do not warrant reconsideration because the only additional evidence (Dr. Adanur's declaration) merely gap-fills Petitioners' deficient arguments, as detailed below. *See infra* § V. Because Petitioners present substantially the same art and arguments already considered during prosecution without demonstrating material error, discretionary denial under § 325(d) is appropriate.

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 denies institution, even when trial timing is “favorable,” 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 (6, 7, and 13 years) 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 (9 years)); *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).

IIIIAs 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 force the issue of infringement on the parties and the court early on in the parallel litigation (§§ IV.C, IV.D)—make review of D’969 an inefficient use of Board resources, despite no trial date being set.

C. Factor 3 (Investment in Parallel Proceeding) favors denial.

Nearly eight months ago, Petitioners moved to dismiss the complaint in the parallel litigation on the ground that the accused products do not infringe D’969. EX2017, 17. That motion required extensive briefing from both sides and has been fully briefed since April 14, 2025. EX2017; EX2023; EX2024. Based on Judge Salas’s historical time-to-decision average of 7.9 months for motions to dismiss, the Court will issue a ruling imminently. EX2025. Under *Fintiv* factor 3, the Board assesses “investment by the court and the parties” as of the institution decision, and that investment is not limited to invalidity issues. *Apple Inc. v. Fintiv, Inc.*, IPR2020-

00019, Paper 11 at 9-10 (P.T.A.B. Mar. 20, 2020) (precedential). Here, Petitioners chose to bring infringement issues directly to the district court early in the case, forcing the parties and the court to expend significant resources on a dispositive issue that is typically resolved at trial regarding the same patent. Proceeding with an IPR in parallel would duplicate efforts and expend Office resources while the district court resolves a case-dispositive issue that Petitioners themselves raised.

D. Factor 4 (Overlap of Issues) favors denial.

This factor 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, 43-47, App’x D. Most notably, Petitioners’ invalidity contentions rely on unpublished system alleged prior art—physical shoes—that cannot be asserted here. EX2016 at 43-44 (“Top Glory intends to rely upon the physical product for purposes of prior art under 35 U.S.C. § 102(a)(1).”). Thus, while relying on images or videos of the same shoes in this proceeding, Petitioners intend to use the physical products at trial, giving them a “second bite at the apple” and undermining the purpose of their stipulation. This duplication of effort and the risk

of inconsistent outcomes strongly tips this factor in favor of denial.

E. 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. *Fintiv*, IPR2020-00019, Paper 11 at 13-14; *see* Pet., 3; EX1018.

F. 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, in particular that Petitioners (1) ignore the overall visual appearance of the claimed design as required by the ordinary observer test; (2) misconstrue the design based on a selection of highly selective generic design concepts rather than addressing the features of the claimed design and the claimed design as a whole; (3) ignores prior art which would inform the ordinary observer’s impression of the claimed design as required by the ordinary observer test; (4) improperly reduce the claimed design to a verbal description that ignores, mischaracterizes, and downplays numerous visually distinctive features of the claimed design; and (5) gap-fill with expert testimony.

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. 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.

The Petition’s analysis of the D’969 design relies overwhelmingly on expert Delgatty’s verbal characterizations and annotated markups of the patent drawings, rather than on the overall visual impression of the claimed design itself. As explained in Part III.A., that approach is legally improper in a design patent case and underscores a failure to meet the particularity requirements of 37 C.F.R. § 42.104(b). Across Grounds 1–9, the Petition relies on Delgatty’s descriptions of his cherry-picked four highly selective “key features” (*i.e.*, “ridge layers”, “compressions,” “rounded upper layer,” “pinched midsection”) to map the asserted references to the claim. Pet., 39-52, 56-66, 69-84, 87-91.

The Petition compounds the error by relying on Delgatty’s annotated versions of the D’969 drawings, which include various coloring, tracing, and layer labeling to reduce the overall design to his four-feature schema, and then superimposing similarly annotated overlays onto prior art images. *Id.* By such inappropriate color demarcations and Petitioner’s imposed designated boundaries, the Petitioner is skewing the overall visual impression of the midsole into Petitioner-selected subparts instead of evaluating the midsole as a cohesive unit like that of an ordinary observer. Here, the Petition’s reliance on Delgatty’s description and annotations of the claim design displaces the figures of D’969 as the primary claim, turning the

analysis away from the claimed design's overall visual impression. The Board should reject Petitioners' attempt to substitute its expert's description of the design for the claimed design itself.

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.

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. 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,

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**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.

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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:

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