

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 IPR2025-01395
Patent No. D768,969

PETITIONERS' REPLY TO PATENT OWNER'S RESPONSE

TABLE OF CONTENTS

I.	CLAIM CONSTRUCTION	1
A.	The Claim’s Overall Visual Impression.....	1
B.	PO’s Four New Features Do Not Impact the Overall Visual Impression	4
II.	D’969 IS ANTICIPATED (Grounds 1, 3, 5)	23
A.	C11947, C12652 Anticipate D’969 as Confirmed by PO’s Patent-Practicing OriginalGrand.....	23
B.	Nike Anticipates D’969.....	25
III.	D’969 IS RENDERED OBVIOUS (Grounds 2, 4, 6-9)	28
A.	Suitable Primary References	28
B.	DOSITA Would Have Been Motivated to Further Curve the Sole	30
C.	DOSITA Would Have Been Motivated to Further Round the Welt	34
D.	DOSITA Would Have Been Motivated to Apply Bilateral Symmetry to C12652 (Ground 4)	37
E.	Skechers in view of Nike (Ground 9)	38
IV.	PO’S OTHER ARGUMENTS ARE UNAVAILING.....	39
A.	Petitioners’ Annotated Figures Are Proper	39
B.	PO Has Not Demonstrated a Crowded Field	40
C.	Delgatty Applied the OB Test Correctly.....	41
V.	CONCLUSION.....	43

TABLE OF ABBREVIATIONS

Abbreviation	Description
D’969	U.S. Patent No. D768,969 (“D’969”) (Ex.1001)
D’969FH	File History of U.S. Application No. 29/542,318 (Ex.1002)
Claim / Challenged Claim	Claim 1 of D’969
DOSITA	Designer of Ordinary Skill in the Art
Litigation	District Court Litigation, <i>Cole Haan LLC v. Top Glory Trading Group Inc. et al.</i> , 2:25-cv-00176 (D.N.J.)
IPR	<i>Inter Partes</i> Review
OB	Ordinary Observer
Pet.	Petition for <i>Inter Partes</i> Review
Petitioners	Petitioners Top Glory Trading Group Inc. and DP Dream Pairs Inc. (collectively “Top Glory”)
PO	Patent Owner
POR	Patent Owner Response
POSITA	Person of Ordinary Skill in the Art
PTAB	Patent Trial and Appeal Board
SCOTUS	The Supreme Court of the United States of America
USPTO	United States Patent and Trademark Office

EXHIBIT LIST

Exhibit No.	Description
1001	U.S. Patent No. D768,969 (“D’969”)
1002	File History of U.S. Application No. 29/542,318 (“D’969FH”)
1003	Declaration of Mr. Grant Delgatty in Support of Petition for <i>Inter Partes</i> Review of U.S. Patent No. D768,969 (“Delgatty”)
1004	First Mina Ching Declaration on C11947
1005	Folder 002 to Exhibit B of Ex.1004 (C11947 Video)
1006	Second Mina Ching Declaration on C11947
1007	Image Captures of Ex.1005
1008	C11947 Screen Capture on July 23, 2025
1009	Recommended Videos on March 3, 2014, Wayback Machine Capture
1010	Mina Ching Declaration on C12652
1011	Folders 002-007 to Exhibit B to Ex.1010 (C12652 Images)
1012	Nike EUIPO Design Registration Certificate No. 002413161-0028, Certified Copy
1013	Excerpt of EUIPO REUD Bulletin No. 2014/046, March 10, 2014, Pages 1-2, 383-385
1014	Nike EUIPO Design Registration Application No. 002413161-0028, Large-Scale Images
1015	EUIPO Posting for Nike
1016	Mina Ching Declaration on Skechers

Exhibit No.	Description
1017	Folders 002-003 to Exhibit B to Ex.1016 (Skechers Images)
1018	Complaint for Patent Infringement in <i>Cole Haan LLC v. Top Glory Trading Group Inc. et al.</i> , 2:25-cv-00176 (D.N.J.)
1019	J.E. Miller, B.M. Nigg, W. Liu, D.J. Stefanyshyn & M.A. Nurse, Influence of Foot, Leg and Shoe Characteristics on Subjective Comfort, 21 Foot & Ankle Int'l 759, 759-67 (2000).
1020	Steve Gelsi, Striving for Balance, 37 Brandweek, no. 6, Feb. 5, 1996, at 17, available on Gale Academic OneFile.
1021	Paul Hekkert, Design Aesthetics: Principles of Pleasure in Design, 48 Psychol. Sci. 157, 163 (2006).
1022	Martyn R. Shorten, Running Shoe Design: Protection and Performance, in <i>Marathon Medicine</i> 162, 162-63 (2000).
1023	Amanda Holpuch, Netflix and YouTube Make Up Majority of U.S. Internet Traffic, New Report Shows, Guardian, Nov. 11, 2013.
1024	J. Seabrook, Streaming Dreams, New Yorker, Jan. 8, 2012.
1025	National Judicial Caseload Profile, 2024 (Overall and New Jersey)
1026	EUIPO Design Registration No. 002127563-0013
1027	Chinese Design Patent No. 201530359567
1028	Dorothy Koster Washburn & Donald Warren Crowe, <i>Symmetries of Culture: Theory and Practice of Plane Pattern Analysis</i> 33-34 (Univ. of Wash. Press 1988).
1029	Zlatina Kazlacheva, Symmetry in Nature and Symmetry in Fashion Design, Econ. Manag. Inf. Technol. EMIT, no. 1, 2013, 267-276.
1030	<i>Reserved</i>

Exhibit No.	Description
1031	Cole Haan LLC v. Top Glory Trading Group et al., 25-cv-00176-ES-SDA, Dkt. No. 54-1 (D.N.J. Oct. 1, 2025)
1032	Peter Lattman, Nike to Sell Cole Haan to Apax Partners for \$570 Million, N.Y. TIMES (Nov. 16, 2012, 10:20 AM)
1033	Declaration of Mr. Grant Delgatty in Support of Petitioner’s Reply to Patent Owner’s Response (“Delgatty-Reply”)
1034	Amended Complaint for Patent Infringement in <i>Cole Haan LLC v. Top Glory Trading Group Inc. et al.</i> , 2:25-cv-00176-ES-SDA, Dkt. No. 8 (D.N.J.)
1035	Factors Affecting Human Visual Behavior and Preference for Sneakers - An Eye-Tracking Study, <i>Frontiers in Psychology</i> (2022)
1036	Solereview Editors, Cole Haan OriginalGrand Wingtip Review (Mar. 19, 2022), https://www.solereview.com/cole-haan-originalgrand-wingtip-oxford-review
1037	Sneaker Freaker, Lunargrand Wingtip by Cole Haan (Nike Lunar) (Feb. 9, 2012), https://www.sneakerfreaker.com/news/lunargrand-wingtip-by-cole-haan-nike-lunar
1038	Matt Sebra, This Just In: The Evolution of the Cole Haan Wingtip (Feb. 16, 2012), https://www.gq.com/story/cole-haans-evolution
1039	Aaron Hope, Nike LunaRacer+ 3 – Vivid Blue – Volt – Black (Jan. 17, 2014), https://sneakernews.com/2014/01/19/nike-lunaracer-3-vivid-blue-volt-black
1040	Nightwing2302, Inside Access: The Story of Nike Lunarlon (Dec. 10, 2013), https://weartesters.com/inside-access-the-story-of-nike-lunarlon
1041	Cole Haan, OriginalGrand Wingtip Oxford (Style #W01559) (Feb. 7, 2016), https://web.archive.org/web/20160207184312/http://www.colehaan.com/dw/image/v2/AALO_PRD/on/demandware.static/-/Sites-

Exhibit No.	Description
	itemmaster_colehaan/default/dw2146376d/images/large/W01559_A.jpg?sw=2000
1042	Cole Haan, OriginalGrand Wingtip Oxford (Style #W01559) (Aug. 17, 2016), https://web.archive.org/web/20160817095530/http://www.colehaan.com/%C3%B8riginalgrand-wingtip-oxford-black/W01559.html
1043	Deepika Babu & Bruno Bordonì, Anatomy, Bony Pelvis and Lower Limb: Medial Longitudinal Arch of the Foot (Sept. 10, 2024), https://www.ncbi.nlm.nih.gov/books/NBK562289/?report=printable
1044	Science Insights, What Is Arch Support in Shoes and Why It Matters (May 3, 2026), https://scienceinsights.org/what-is-arch-support-in-shoes-and-why-it-matters
1045	BazaarVoice, Talking to Strangers: How Social Influences Millennials’ Shopping Decisions, https://web.archive.org/web/20151231021440/https://resources.bazaarvoicecampaigns.com/static/download/Bazaarvoice_Millennials_In_fographic.pdf
1046	Matt Powell, Sneakernomics: What’s Next For “Athleisure”? (Mar. 6, 2015), https://www.forbes.com/sites/mattpowell/2015/03/06/sneakernomics-whats-next-for-athleisure
1047	Dan-Dan Xu et al., A Study on Perception of Visual–Tactile and Color–Texture Features of Footwear Leather for Symmetric Shoes (July 22, 2023)
1048	Cole Haan, Men’s ØriginalGrand Remastered Wingtip Oxfords, https://www.colehaan.com/products/mens-originalgrand-remastered-wingtip-oxfords-c39599
1049	Cole Haan, Men’s ØriginalGrand Remastered Waterproof Chukka Boots, https://www.colehaan.com/products/mens-originalgrand-waterproof-chukka-boots-c38686

Exhibit No.	Description
1050	Cole Haan, Men's ØriginalGrand Remastered Wingtip Oxfords, https://www.colehaan.com/products/mens-originalgrand-remastered-wingtip-oxfords-c39600
1051	Transcript of Lance Rake, Chongqing Qiulong Tech., et al. -v- Tanli Power Tech., et al.
1052	Merriam-Webster's Elementary Dictionary, <i>Undulating</i> (2009)
1053	Encyclopedia Britannica, <i>Fluting and Reeding</i> (Sept. 5, 2015), https://web.archive.org/web/20150905191329/https://www.britannica.com/technology/fluting-and-reeding
1054	Cole Haan, Original Grand Collection (Dec. 1, 2015), https://web.archive.org/web/20151201083310/http://www.colehaan.com/mens-originalgrand
1055	Cole Haan, Original Grand Collection (Mar. 13, 2016), https://web.archive.org/web/20160313195245/http://www.colehaan.com/mens-originalgrand
1056	Anatomy, Bony Pelvis and Lower Limb Arches of the Foot, Figure 4
1057	Declaration of Alexander Morozov in Support of Petitioners' Reply to Patent Owner's Response

Grounds 1-9 (“Grounds”) anticipate and render obvious the Claim. Pet., 47-49, 52, 65-66, 77-78, 82-84, 90-91; Ex.1003, ¶¶74-205; Ex.1033 (“Delgatty-Reply”), ¶¶11-102. PO’s Response (“POR”) does not identify any differences that would change the overall visual impression to an Ordinary Observer (“OB”). Instead, PO attacks terminology and annotations while ignoring actual designs.

PO’s alleged differences are belied both by its representations that its OriginalGrand shoes practice D’969 and by its district court (“Litigation”) infringement assertions—neither category includes the features PO now asserts are claim-defining. Because the same OB test governs anticipation and infringement, PO’s inconsistent positions confirm its newfound claim constructions are a desperate attempt to preserve validity in the face of invalidating art.

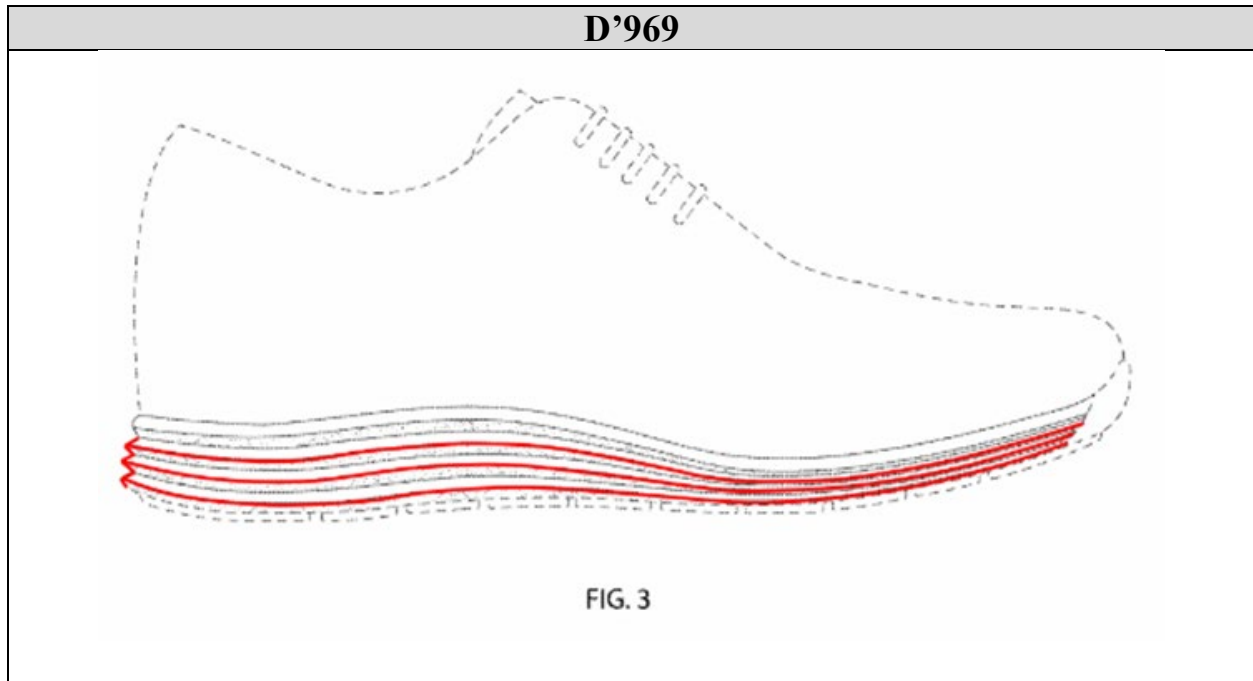
I. CLAIM CONSTRUCTION

A. The Claim’s Overall Visual Impression

The overall visual impression of D’969 is a soft, wave-like midsole design—the product of a rounded upper layer and three ridged-edge layers that compress and slope laterally along the midsole, with the stacked ridged layers. Pet., 26; Delgatty, ¶67. Each prior art reference—C11947, C12652, Nike, and Skechers—presents the same impression. Pet., 47-49, 62-63, 75-76, 87-91; Delgatty, ¶¶97-100, 129-131, 157-159, 191-205; Delgatty-Reply, ¶11.

The parties agree “[n]o words are necessary to compare D’969 to the prior art,” but verbal description may be “helpful to point out...various features.” POR, 1, 7 (quoting *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 680 (Fed. Cir. 2008)). Notably, two of five prior art references are PO’s products (C11947, C12652) and one is a patent publication from PO’s former owner (Nike). Ex.1004, 5; Ex.1010; Ex.1012. Delgatty-Reply, ¶¶12-13.

PO’s arguments challenge semantics rather than actual differences. *See* POR, 16-86. PO challenges Petitioners’ use of “wave-like” instead of “wavy” (POR, 27) and contends Petitioners “carefully selected ‘soft’ and ‘wave-like’...to make the D’969 design seem more like the prior art.” POR, 27; *see also* POR, 1, 3; Ex.2036, ¶¶120-121. But this is a dispute over terminology, not visual appearance. Petitioners’ description of “wave-like design” accounts for the undulating nature of the midsole—encompassing “rolling or undulating curves (i.e., peaks and valleys)” described by PO (POR, 10-11). Ex.1052 (defining “undulating” as “in a wavy or flowing way”). The overall visual impression is the same regardless of descriptor. Pet., 10-11, 14; Delgatty, ¶¶51-52; *see LKQ Corp. v. GM Glob. Tech. Operations LLC*, 102 F.4th 1280, 1299 (Fed. Cir. 2024) (en banc); Delgatty-Reply, ¶14.



PO's argument about Petitioners' use of "layer" rather than "flute" (POR, 28) is another argument about terminology, not visual appearance. Whether called "layers" or "flutes," the visual result is the same: stacked, ridged layers visible on the side of the midsole. Ex.1053 ("surfaces worked into a regular series of (vertical) concave grooves or convex ridges"); Delgatty-Reply, ¶15. An OB—a retail shoe consumer—would not assign significance to the manufacturing process that created the article. Pet., 20-21; Delgatty-Reply, ¶15. "The overall visual impression is that the design of this midsole has a layer effect to it," and "[r]idged-edged layers' is...more descriptive than...a 'flute' is." Delgatty-Transcript, 149:9-150:5; Delgatty, ¶59. PO's flute/layer argument asks the Board to import a manufacturing distinction into a purely ornamental claim—functional narrowing that design patent claims exclude. Pet., 50-51; Delgatty, ¶28; Delgatty-Reply, ¶15.

B. PO's Four New Features Do Not Impact the Overall Visual Impression

The POR emphasizes four alleged design features of the Claim: (1) valley at the heel; (2) peak at midfoot; (3) speed of the central slope and changes in thickness; and (4) monolithic rounded upper (“New Features”). But these alleged differences are either not differences at all, or are precisely the kind of “minor variations in the shoe” that are “insufficient to preclude a finding of anticipation because they do not change the overall visual impression of the shoe.” *See Int’l Seaway Trading Corp. v. Walgreens Corp.*, 589 F.3d 1233, 1243 (Fed. Cir. 2009); Pet., 20, 47; Delgatty, ¶¶59, 98. The figures do not supply precise measurements, specific angles, manufacturing descriptions, or functional geometry. An OB—retail shoe consumer—does not measure inflection depths, curvature radii, slope, or thickness variations; the OB perceives the overall visual impression. Ex. 1035, 4-5; Pet., 20-21; Delgatty, ¶59. An OB would not notice these characteristics. *Id.* Delgatty-Reply, ¶¶16-18.

PO’s New Features are further undermined by PO’s conduct. PO’s marking of its “OriginalGrand” shoes with D’969 is an admission that those products “fall within the scope of the patent claims.” *Frolow v. Wilson Sporting Goods Co.*, 710 F.3d 1303, 1310 (Fed. Cir. 2013) (“marking is akin to a corporate officer admitting in a letter or at a deposition that the company’s product infringes a patent”). Similarly, PO’s Litigation infringement allegations accuse Petitioners’ shoes

(“Accused Shoe(s)”) of infringement—shoes that lack the New Features PO now claims are visually significant. Under the shared OB standard, claim scope cannot expand to capture PO’s marked products and Petitioners’ Litigation Accused Shoes while simultaneously contracting to exclude prior art before the Board. *Egyptian Goddess*, 543 F.3d at 678; *Int’l Seaway*, 589 F.3d at 1240. A party should not take inconsistent positions between Litigation and PTAB. *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 at 2, 5 (PTAB Nov. 3, 2025) (precedential); *Terumo BCT Inc. v. Haemonetics Corp.*, IPR2025-01374, Paper 20 at 2 (PTAB May 12, 2026) (informative).

1. *PO’s OriginalGrand and Litigation Assertions Contradict its New Features*

Despite PO’s admission that its OriginalGrand products practice D’969 (*see* Ex.2008), those shoes lack the four New Features PO now identifies as claim-defining. Delgatty-Reply, ¶¶19-21. PO identifies the full “OriginalGrand” line as practicing D’969. Ex.2008.¹

¹ While Ex.2009 cherry-picks OriginalGrand “Perforated” sub-line examples, Ex.2008 explains that D’969 covers the entire OriginalGrand line, consistent with Mr. Linko’s declaration that PO launched shoes with the claimed midsole design in November 2015, prior to the Perforated examples. Exs.1054-1055; Delgatty-Reply, ¶¶20-21.

The OriginalGrand is a continuation of PO's LunarGrand line from which two prior art references (C11947, C12652) originate. *E.g.*, Ex.1004, 5; Ex.1010, 5; Exs.1036-1039. LunarGrand combined PO's upper with Nike's Lunarlon sole. Ex.1040. Nike is from PO's former owner and related to Lunar shoes with Lunarlon. Ex.1012, Ex.1039. Collectively, all four primary references relate to the same body of work. Ex.1016; Ex.2014; Ex.1040; Delgatty-Reply, ¶21.

PO's claimed patent-practicing OriginalGrand shoes do not have the New Features. *Cf.* POR, 12-13, 28; *see* Delgatty-Reply, ¶¶22-23. Examples of PO's OriginalGrand shoes are depicted below:

OriginalGrand (Style #W01559) (Exs.1041-42)



OriginalGrand Remastered Wingtip Oxfords (Ex.1048)



OriginalGrand Remastered Waterproof Chukka Boots (Ex.1049)



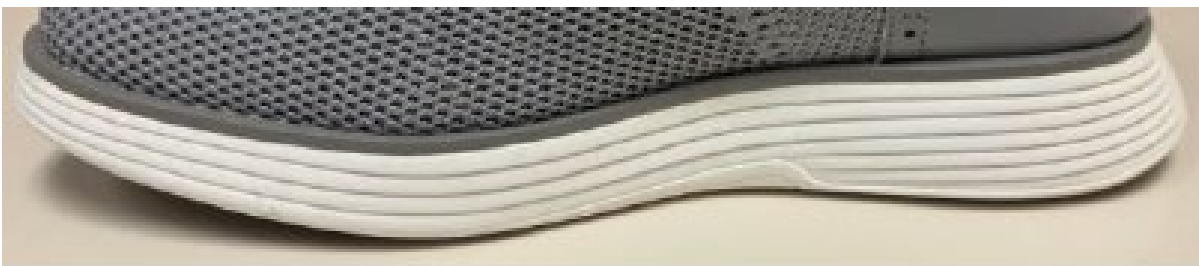
OriginalGrand Remastered Wingtip Oxfords (Ex.1050)



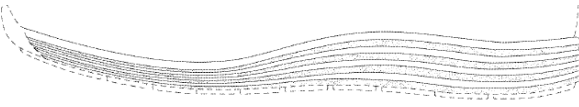
Delgatty-Reply, ¶23.

PO's infringement allegations are equally inconsistent. In its Litigation Complaint and corresponding claim charts, PO accused Petitioners' shoes of infringement—shoes that do not exhibit the New Features that PO now identifies as claim-defining. Ex.1034, 27-31; Delgatty-Reply, ¶24.

Ex.1034, 27, 29, 31 (“Accused Shoes”)



PO’s sudden pivot in claim scope—after accusing a broad set of shoes of infringement—is particularly egregious given that PO never disclosed its prior art during prosecution. PO’s position cannot be squared with its infringement allegations, Delgatty-Reply, ¶¶25-26:

Accused Shoes	D'969, Fig. 2 (solid lines)
	

Only when faced with prior art—including art from PO itself that was never disclosed during prosecution—does PO adopt a narrower understanding of D'969. PO does not address this inconsistency despite the Petition's discussion—waiving any response. *E.g.*, Pet., 44-46, 60-62, 74-75; Delgatty, ¶¶92, 123, 146; Delgatty-Reply, ¶27; Paper 20, at 11.

2. *New Feature 1: Heel Valley*

D'969 depicts, at most, a negligible inflection at the heel—not a claim-defining “valley.” Elevating this negligible contour into a distinguishing feature would require the Board to read precise geometric features into an ornamental design claim—the kind of measurement an OB does not perform. Pet., 20; POR, 8; Delgatty, ¶59; Delgatty-Reply, ¶¶28-29. To the extent any slight downward slope exists, it merely reinforces the overall wave-like flow of the midsole sidewall—a

characteristic equally present in each prior art reference. Pet., 43; Delgatty, ¶¶90; Delgatty-Reply, ¶¶28-29.

OriginalGrand Lacks A Heel Valley:



Ex.1041; Delgatty-Reply, ¶30; see I.B.1.

PO's Litigation Allegations Belie New Feature: The Accused Shoes contain no curvature in the heel section confirming any “heel valley,” in PO’s view, has no meaningful impact on the overall visual impression:



Ex.1034, 29; Delgatty-Reply, ¶31; *see* I.B.1.

3. *New Feature 2: Peak at Midfoot*

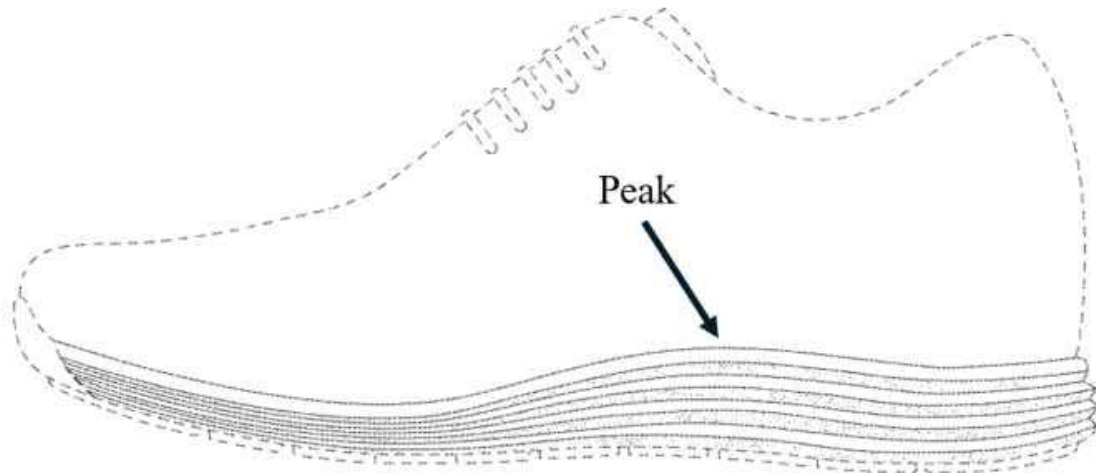


FIG. 2

POR, 31.

Petitioners described the compression feature as “a generally linear heel section, a downwardly sloped midsection in which the ridged edges are compressed (i.e., decrease in height), and an upwardly sloped section towards the toe section with compressed ridged edges.” Pet., 25-26; Delgatty, ¶¶62-66. PO’s argument that this description “fails to acknowledge the prominent peak at the midfoot” (POR, 30) places undue weight on the location of the curve’s apex and does not alter the overall visual impression. *See* Delgatty-Reply, ¶¶32-33; *Contessa Food Prods., Inc. v. Conagra, Inc.*, 282 F.3d 1370, 1378 (Fed. Cir. 2002) (variations in individual features do not alter overall visual impression). Moreover, the anatomical foot naturally creates a midfoot peak:

Anatomical Foot



Ex. 1056. This is a functional characteristic that is not entitled to weight in a design patent. Exs.1043-1044; *Ethicon Endo-Surgery, Inc. v. Covidien, Inc.*, 796 F.3d 1312, 1315 (Fed. Cir. 2015) (“functional aspects of the claimed designs are properly excluded”); Delgatty-Reply, ¶¶32-33.

OriginalGrand Lacks A Midfoot Peak: instead, the highest point is located at the rear of the shoe:



Ex.1041; Delgatty-Reply, ¶34; see I.B.1.

PO's Litigation Allegations Belie New Feature: The Accused Shoes' peak is at the rearmost portion of the sole, not at midfoot—confirming that the midfoot peak is not a defining feature according to PO:



Ex.1034, 29; Delgatty-Reply, ¶35; *see* I.B.1.

4. *New Feature 3: Speed of Central Slope / Change in Thickness*

PO's slope and thickness metrics are at best a forensic observer's measurements—OB purchasing shoes does not perform such an analysis.² Delgatty-

² In an attempt to distract from the lack of differences between the designs, PO attacks Petitioners' expert because he "point[ed] to a picture" of the prior art after confirming "a minor difference in the sloping angle does not affect the design as a whole." *Cf.* POR 37; *see* Delgatty-Transcript, 234:6-8. PO's accusations that Petitioners' expert's opinion is "unsupported" and "conclusory" are baseless.

Reply, ¶36. OB test is deliberately non-technical. *Egyptian Goddess*, 543 F.3d at 675-78. The alleged slope and thickness are encompassed in the “wave” design because waves vary in slope and width. Even if noticed, “a minor difference in sloping angle does not affect the design as a whole.” Pet., 43, 58-59, 72-73; Delgatty, ¶¶121, 150, 163-64; *Int’l Seaway*, 589 F.3d at 1243 (requiring comparison of “significant differences,” “not minor or trivial differences that necessarily exist between any two designs that are not exact copies of one another”); Delgatty-Reply, ¶36.

Both experts agree that minor differences would not impact an OB’s purchasing decision. Delgatty-Reply, ¶36. PO’s expert admitted that “if we’re comparing two running shoes and they have a similar profile and they have a similar top line and they have similar other appearance features, **if one of them has a different stitch pattern or a different thing, it’s probably not gonna be a deal-breaker**” for an OB. Ex.1051, 98:7-99:7, 75:16-22, 76:19-24.

The contour of the midsole is functional and dictated by the anatomical foot. Pet., 76-77; Delgatty, ¶¶163-64. “[T]he main reason to have those different varying widths is more functional in the way that a shoe would be constructed.” Delgatty-Transcript, 204:14-18. Varying thickness at the heel versus the arch accommodates a foot’s arched shape. Delgatty-Reply, ¶37.

OriginalGrand Includes Sloping and Changes in Thickness: The OriginalGrand's midsole slopes downward to match the shape of an anatomical foot and compresses as part of that sloping; according to PO, this is sufficient to meet the Claim:



Ex.1041; Delgatty-Reply, ¶38; *see* I.B.1.

PO's Litigation Allegations Belie New Feature: The Accused Shoes exhibit a minor downward slope and no compression, confirming that in PO's view these characteristics are not visually significant to an OB:



Ex.1034, 27; Delgatty-Reply, ¶39; *see* I.B.1.

The Petition raised this inconsistency (Pet., 44-46, 60-62, 74-75; Delgatty, ¶¶91-95, ¶¶125-128, ¶¶154-156), and PO has not addressed it—waiving any response. Paper 20, at 11; Delgatty-Reply, ¶40.

5. *New Feature 4: Monolithic Rounded Upper Layer*

PO's assertions that the rounded upper must be monolithic, uniform in color and material, and seamless (POR, 11, 18, 28-31, 83-85) impose a level of precision incompatible with the OB analysis. An "OB would view a midsole from several feet away (not under high magnification) while considering a shoe for purchase, and any minor differences in the upper layer would be insubstantial from this viewpoint." Delgatty, ¶123. Even accepting PO's argument that an OB may enlarge images online (POR, 48), the wave-like, layered, compressing midsole impression remains at any viewing distance. Delgatty-Transcript, 62:1-21; 63:17-66:9; Delgatty-Reply, ¶41. The dominant visual impression is a visually distinct top boundary above the three ridged lower layers. Pet., 44-46; 60-62; Delgatty, ¶¶92, 123; Delgatty-Transcript, 145:7-17; Delgatty-Reply, ¶42.

While the parties agree that design claims are "limited to the article of manufacture identified in the claim" (POR, 45-46), that does not mean that article must be composed entirely of a single material. Delgatty-Reply, ¶42.

PO's argument that a uniform color and material are required by D'969 is improper because (1) D'969 does not claim any color, and (2) PO's alleged patent practicing OriginalGrands have different colors and non-uniform materials. *E.g.*, Ex.2014, 2. Claim 1 claims "a shoe midsole, as shown and described." No color or material is shown or described. MPEP 1503.02(V); Delgatty-Reply, ¶42. Surface shading does not limit the claim to "specific material." MPEP 1503.02(II); Delgatty-Reply, ¶42.

SurgiSil (POR, 45, 58) concerns a prior art reference in an entirely different *article of manufacture*—not a visible component of the same article. 14 F.4th 1380, 1382 (Fed. Cir. 2021). D'969 claims an ornamental appearance, not material composition. Delgatty-Reply, ¶43. That Delgatty stated a welt may be leather while the midsole is rubber is inapposite³—this is not a difference an OB would parse out. Pet., 20-21; Delgatty, ¶¶59, 108; Delgatty-Reply, ¶44. Indeed, PO concedes that the welt is part of the midsole's visual presentation. POR, 45 (recognizing Delgatty

³ The welt can be "a separate material that's attached very much like you would have a higher density foam attached to a lower density foam in a midsole." Delgatty-Transcript, 125:8-17. PO acknowledges the midsole extends beyond the footbed because "visible midsole walls often extend upward beyond the actual footbed or load-bearing platform." POR, 71-72; Ex.2036, ¶¶188-89.

stated that “welt can be attached to either the top perimeter edge of an outsole or the midsole” (citing Delgatty-Transcript, 106:1-18)); *see also* Delgatty-Transcript, 122:19-20; Ex.2008, 3 (PO identifying multiple welt patents under “Shoe Midsole”); Delgatty-Reply, ¶¶43-46.

The OriginalGrand Midsole Includes a Rounded Welt, with none of the elements PO now requires. It is not monolithic, uniform in color and material, or seamless:



Ex.1042.



Ex.1036 ("decorative...welt[]...glued to the midsole"); Delgatty-Reply, ¶47.

PO's Litigation Allegations Belie New Feature: PO's infringement allegations undermine its position that the Claim requires a monolithic, uniform-material rounded upper with a seamless transition to ridged layers. In its Litigation complaint, PO accuses the Accused Shoes, which feature an upper layer formed by a welt—component of a different color from the rest of the midsole and visible seam between the materials. *See* Ex.1034, 27-32; Pet., 44-46, 60-62; Delgatty, ¶¶92, 123.



Ex.1034, 28 (front, Accused Shoe)



Ex.1034, 28 (rear, Accused Shoe)

Delgatty-Reply, ¶48.

PO cannot argue that a non-monolithic welt of a different color satisfies the rounded upper layer for infringement in Litigation, but then argue that the prior art's welt is unsatisfactory before the Board. This inconsistency confirms PO's "monolithic rounded upper" argument should not be credited. Delgatty-Reply, ¶49.

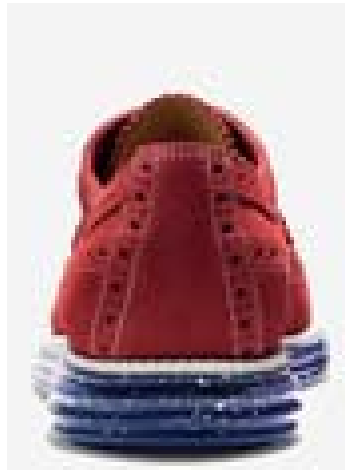
II. D'969 IS ANTICIPATED (Grounds 1, 3, 5)

Petitioners demonstrated that the Claim is anticipated by C11947, C12652, and Nike. Pet. 32-49, 52-63, 66-75; Delgatty, ¶¶77-100, 112-131, 141-159. PO's alleged design differences are either not differences at all, or do not meaningfully impact the overall visual impression. Delgatty-Reply, ¶50. The prior art discloses substantially the same, if not identical, design. *See Int'l Seaway*, 589 F.3d at 1243.

A. C11947, C12652 Anticipate D'969 as Confirmed by PO's Patent-Practicing OriginalGrand

PO's anticipation-based arguments for C11947 and C12652 rest entirely on its incorrect claim construction. *See* §I.B. The substantial similarity of C11947 and

C12652 is confirmed by PO's admission that its OriginalGrand shoes practice D'969. *Frolow*, 710 F.3d at 1310. The side-by-side comparison below reinforces that no meaningful distinction exists between the prior art and the claimed design:

ØriginalGrand (Exs.1041-1042)	C11947 (Ex.1005)	C12652 (Ex.1011)
		
		
		

Delgatty-Reply, ¶52.

C11947 and C12652's resemblance to D'969 (embodied as the OriginalGrand) is "deceptive to the extent that it would induce [an OB], giving such attention as a purchaser usually gives, to purchase an article having one design supposing it to be the other." *Door-Master Corp. v. Yorktowne, Inc.*, 256 F.3d 1308, 1312-13 (Fed. Cir. 2001); Ex. 1045; Delgatty-Reply, ¶¶53-63.

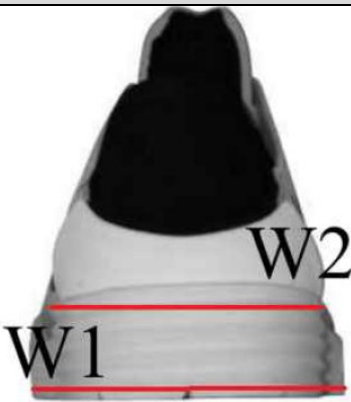
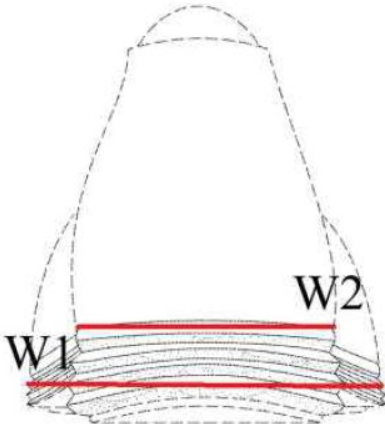
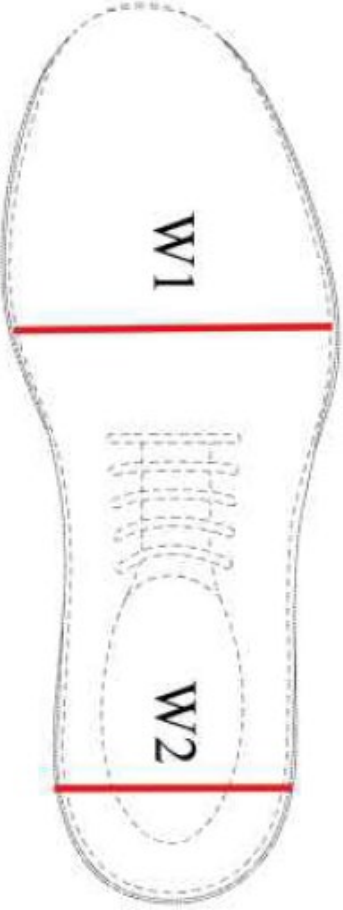
B. Nike Anticipates D'969

First, images of Nike plainly demonstrate more rounding on the uppermost layer, contrary to PO's argument that Nike's topmost layer is uniform with the remaining layers. Pet., 74; Delgatty, ¶¶151-152; Ex.1014. Delgatty-Reply, ¶64.



The uppermost layer of Nike is visually distinct—it does not terminate in the same sharp, ridged edge as the three lower layers. To the extent this distinction is less pronounced than in D'969, it is a minor difference that does not change the overall visual impression. Delgatty, ¶¶157-59. Delgatty-Reply, ¶65.

Second, PO attempts to dismiss the similarity with irrelevant width measurements “W1” and “W2”—measurements an OB would never undertake (Delgatty-Reply, ¶66)—while failing to reconcile these measurements with its infringement allegations. PO’s infringement allegations involve shoes where the relative forward width (W1) compared to the rear width (W2) is even smaller than Nike:

Nike (POR, 69)	Accused Shoe (Ex.1034, 27-28)	D'969 (POR, 69)
 A side view of a white and black Nike sneaker. Two horizontal red lines indicate width measurements: W1 is at the base of the sole, and W2 is at the level of the midsole.	 A side view of a brown and blue sneaker with a perforated upper. It features a white sole with horizontal ridges.	 A dashed line drawing of a shoe sole from a side perspective. Two horizontal red lines indicate width measurements: W1 is at the base, and W2 is at the level of the sole's structure. FIG. 7
 A top view of the same white and black Nike sneaker. Two horizontal red lines indicate width measurements: W1 is across the forefoot, and W2 is across the heel.	 A top view of the brown and blue sneaker, showing the perforated pattern on the upper and the blue interior lining.	 A dashed line drawing of a shoe sole from a top perspective. Two horizontal red lines indicate width measurements: W1 is across the forefoot, and W2 is across the heel.

The toe box of the Accused Shoes, as depicted in PO's Litigation Complaint images, is not even visible from the rear view, further demonstrating that the Accused Shoes do not exhibit the alleged disparity in widths PO uses to distinguish D'969 from Nike. Delgatty-Reply, ¶¶67-68.

III. D'969 IS RENDERED OBVIOUS (Grounds 2, 4, 6-9)

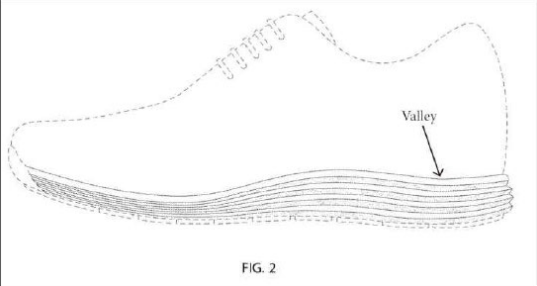
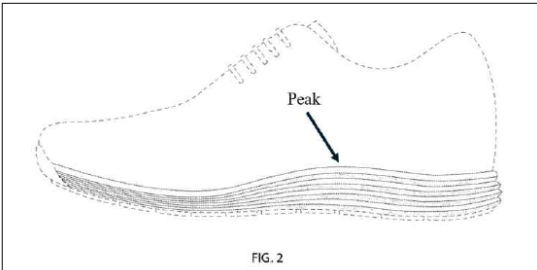
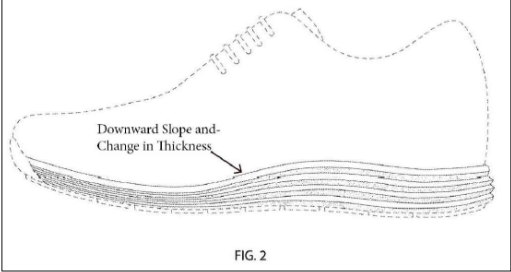
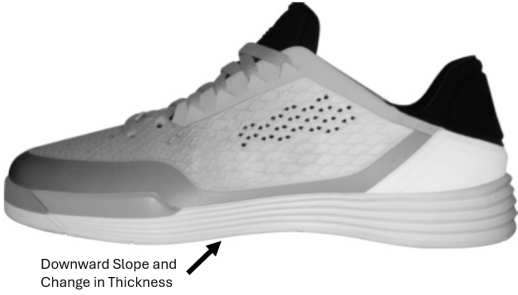
As explained in the Petition, the Claim is rendered obvious by C11947, C12652; Nike; C11947 in view of Nike; C12652 in view of Nike; and Skechers in view of Nike. Pet., 49-91; Delgatty, ¶¶77-205. PO's alleged design differences are either not differences at all, or do not meaningfully contribute to the overall visual impression. Delgatty-Reply, ¶69; *see* §I.B.

Because obviousness focuses on the design as a whole, Petitioners address PO's identified features in that context. Pet., 49-91; Delgatty, ¶¶77-205; Delgatty-Reply, ¶69. The more flexible standard set forth in *LKQ* after issuance of D'969 confirms the Claim is obvious. 102 F.4th at 1293-96; Paper 18.

A. Suitable Primary References

C11947, C12652, Nike, Skechers (the "Primaries"), and D'969 all disclose a wave-like midsole design that compresses and slopes around the foot. The dominant visual features—three stacked, ridged layers compressing from heel to toe and an upward toe section—are unmistakably present in **C11947, C12652, Nike**, and

Skechers. Pet., 36-46, 53-62, 66-75, 85-91; Delgatty, ¶¶83-100, ¶¶114-128, 142-167, 189-205; Delgatty-Reply, ¶70.

POR, 29, 31-32	Primary References
 FIG. 2	 C11947
 FIG. 2	 C12652
 FIG. 2	 Nike  Skechers

To the extent PO alleges slight variations between the Claim and the Primaries, such differences would have been obvious to a DOSITA for the reasons set forth in the Petition and below. Delgatty-Reply, ¶71.

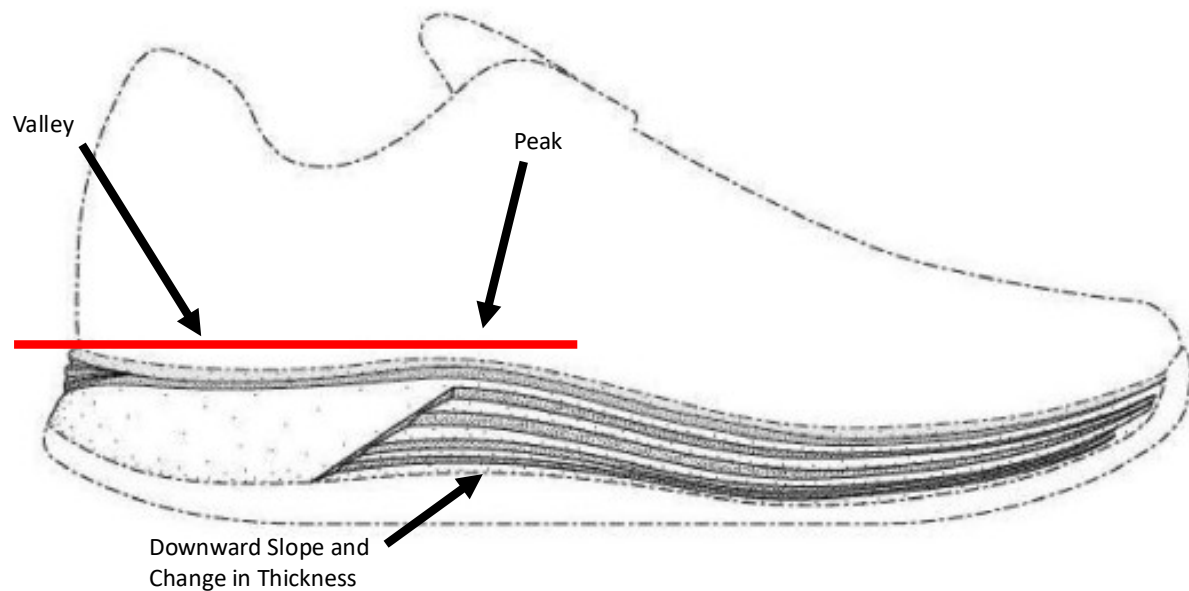
B. DOSITA Would Have Been Motivated to Further Curve the Sole

PO's claim construction requiring the New Features is incorrect. *See* §I. To the extent PO's incorrect claim construction positions are nonetheless adopted, PO's Litigation infringement allegations confirm that the Primaries are substantially similar to the Claim, and any minor variation would have been a straightforward design choice. Ex. 1046; Delgatty-Reply, ¶¶72-73.

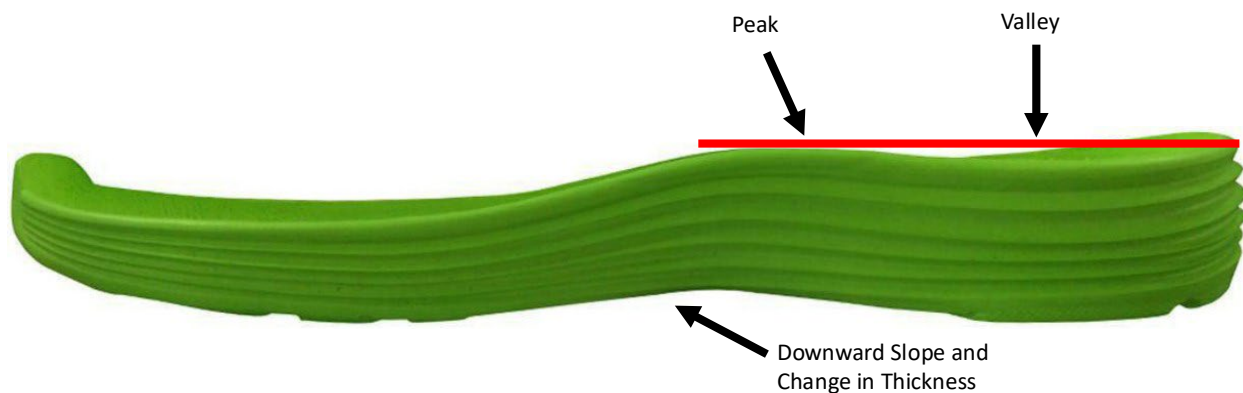
Even if PO argues the slope of any of the Primaries is substantially different from the alleged scope of the Claim, such slope variations are functional elements that account for the shape of the anatomical foot and are not entitled to design weight. Exs.1043-1044; Ex.1056; *Ethicon Endo-Surgery, Inc.*, 796 F.3d at 1336 (“underlying [functional] elements must be excluded from the scope of the design claims”); Delgatty-Reply, ¶74.

To the extent the design elements extend beyond the functional aspects, a DOSITA would have been motivated to modify the Primaries' curvature to be slightly curvier or flatter while maintaining the same overall wave-like visual impression. Curvier soles exhibiting the New Features were already well-known to DOSITAs. For example, Exhibits 1026–1027 were cited in the Petition for Ground

6 to establish that a curvier sole was well-known, supporting that a DOSITA would have found it obvious to vary the degree of Nike's midsole curvature to match the curvature of the sole. Pet., 77; Delgatty, ¶163; Delgatty-Reply, ¶75.



Ex.1026;⁴ Pet., 77; Delgatty, ¶163; Delgatty-Reply, ¶75.

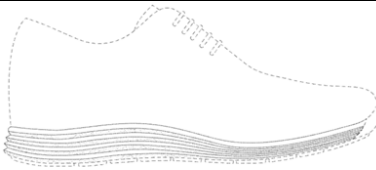


⁴ Contrary to POR 73, n.7 Ex.1026 is not substantially similar to Ex.2035 cited during prosecution, because Ex.1026 discloses the New Features identified by PO.

Ex.1027;⁵ Pet., 77; Delgatty, ¶163; Delgatty-Reply, ¶¶76-79.

To directly rebut PO’s arguments regarding the New Features, Petitioners apply these disclosures—showing a heel valley, midfoot peak, downward slope, and change in thickness—across all obviousness grounds. Petitioners could not have anticipated PO’s claim construction argument, because the Primaries (aside from Nike) already displayed far more curvature than PO’s apparent interpretation of the Claim in the Litigation. *See Axonics, Inc. v. Medtronic, Inc.*, 75 F.4th 1374, 1384 (Fed. Cir. 2023). By contrast, the Accused Shoes bear no discernible wave-like structure and far less curvature than even Nike:

⁵ Petitioners are not using Ex.1027 as statutory prior art. *Cf.* POR, 73 n.7. Ex.1027 was filed before the D’969 and thus demonstrates a DOSITA’s motivation to create an even curvier sole with the New Features and the state of the art before D’969 was filed. Ex.1027; Pet., 77; Delgatty, ¶163; Delgatty-Reply, ¶79; *see Disney Enters., Inc. v. Kappos*, 923 F. Supp. 2d 788, 801 (E.D. Va. 2013) (“evidence of the state of the art”); *Yeda Rsch. v. Mylan Pharms. Inc.*, 906 F.3d 1031, 1041-42 (Fed. Cir. 2018) (DOSITA’s motivations).

D'969	Prior Art	Accused Shoes (Ex.1034, 31)
 FIG. 3	 C11947	
 FIG. 3	 C12652	
 FIG. 3	 Nike	
 FIG. 3	 Skechers	

Pet., 77; Delgatty, ¶164; Delgatty-Reply, ¶80.

A DOSITA would have been aware of curvier midsoles, as demonstrated by Exhibits 1026-1027 and would have been motivated to apply those designs to accommodate different foot types and heel heights, and differing consumer impressions regarding the comfort and support provided by the midsole. Delgatty, ¶¶163-164; Exs. 1026-27; Pet., 76-77; Delgatty-Reply, ¶81. For example, a DOSITA

would have been motivated to accentuate the appearance of support provided by the midsole by exaggerating the curvature to suggest a highly supportive design. Delgatty-Reply, ¶81.

A DOSITA would have also found it obvious to try a finite number of predictable alternatives—placing peaks of the midsole at the toe, arch, and/or heel—and adjusting the slope between those peaks to either follow the contour of the anatomical foot or depart from it. *LKQ*, 102 F.4th at 1292-94; Pet., 89-90; Delgatty, ¶195; Delgatty-Reply, ¶81.

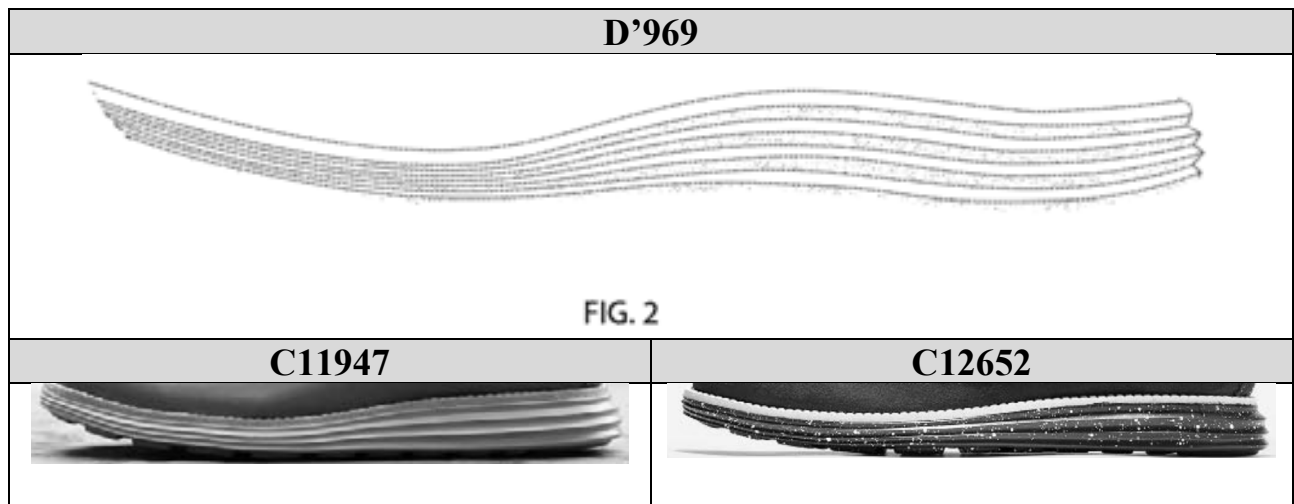
A DOSITA “would have found slightly changing the sloping of the midsole to be trivial” with a reasonable expectation of success. Delgatty, ¶163; Pet., 77; Delgatty-Reply, ¶81. PO’s expert confirmed a DOSITA would have had the freedom to modify the external midsole curvature independent of the footbed, because the midsole does not need to “align with the internal footbed.” Ex.2036, ¶188; Delgatty-Reply, ¶81.

C. DOSITA Would Have Been Motivated to Further Round the Welt

PO argues that the roundedness of the upper element in the Primaries is a meaningful distinction from D’969. POR, 47-48. This alleged distinction is irrelevant for the reasons discussed in §§I–II. Even so, and to the extent this alleged distinction has any relevance, a DOSITA would have found it obvious to further round the welt. Pet., 51; Delgatty, ¶107; Delgatty-Reply, ¶82.

Modifying the already more rounded layer would be a straightforward design change motivated by creating further continuity between the welt and rubber materials. *Id.* Indeed, DOSITA “would have found softening of the curve of the upper layer of the midsole to be trivial.” Delgatty-Transcript, 262:17-263:6; Delgatty-Reply, ¶82.

PO’s argument that the welt is “intended to stand out” (POR, 76-77) unjustifiably equates a DOSITA’s motivation with PO’s unclaimed color choices for its prior art shoes. This is particularly evident when the colors of C11947 and C12652 are removed, as demonstrated by the grayscale images below:



A DOSITA’s motivation is assessed from the perspective of an ordinary designer, not PO. PO even concedes that different types of welts “give the impression of a traditional welt.” POR, 85; Delgatty-Reply, ¶¶83-84.

PO argues that a DOSITA would not have been motivated to remove the welt because doing so would alter the shoe’s aesthetic character. *E.g.*, POR, 76-78.

However, while Delgatty testified that an OB “would not know the difference” between a molded and attached welt; a DOSITA, by contrast, “would be able to achieve [the targeted] overall visual appearance in both.” Delgatty-Transcript, 130:4-22; Pet., 23; Delgatty, ¶57; Delgatty-Reply, ¶85. For example, a DOSITA aiming to create an aesthetic that is slightly more formal may incorporate the welt, while a DOSITA aiming to create a more casual midsole may remove it. Ex. 1046; Delgatty-Reply, ¶85.

Even taking PO’s assumptions as true, the tradeoff PO identifies—welt for “more expensive” appearance versus removal for a “more streamlined” aesthetic—confirms a DOSITA would have been motivated to explore both alternatives. The existence of a binary (i.e., finite) design option is evidence of limited alternatives to try. *LKQ*, 102 F.4th at 1296; Delgatty-Transcript, 132:9-133:18; Delgatty-Reply, ¶86.

PO’s Nike brand awareness argument (POR, 86) misses the mark. Nike’s reputation speaks to design appeal, not against obviousness. Pet., 76-91; Delgatty, ¶¶160-167. Nike discloses a rounded upper layer on a layered/fluted midsole—a known design choice in the relevant art. Pet., 66-69, 82; Delgatty, ¶143, 177. The similarity in appearances provides a motivation to combine. *Sealy Tech., LLC v. SSB Mfg. Co.*, 825 F. App’x 801, 806 (Fed. Cir. 2020). Moreover, PO’s LunarGrand shoes (including C11947 and C12652) and Nike’s Lunaracer both used Nike

Lunarlon. *E.g.*, Exs.1037-1040. A DOSITA would have understood the connection between Nike's athletic shoes, and Nike's ownership of Cole Haan, and would have been motivated to apply the interrelated designs to arrive at the Claim. *Id.*; Ex.1046; Delgatty-Reply, ¶¶87-89.

D. DOSITA Would Have Been Motivated to Apply Bilateral Symmetry to C12652 (Ground 4)

A DOSITA would have found it obvious to continue C12652's design from the lateral side to the medial side for bilateral symmetry. Pet., 63-65; Exs. 1028, 1029; Delgatty, ¶136; Delgatty-Reply, ¶¶90.

A DOSITA's default assumption in midsole design is symmetry. Pet., 63-65; Delgatty, ¶136; Ex.1028, 8 ("Western preference for bi-lateral mirror reflection"); Ex.1029, 2; Ex.2036, ¶66 ("We prefer balanced, symmetrical arrangements and organized structures in visual design."); Delgatty-Transcript, 291:22-292:3 (DOSITA "would assume [midsoles] would be symmetrical"). A DOSITA working from the lateral view of C12652 would assume the medial side mirrors it. *Id.*; Delgatty-Reply, ¶¶91-92.

PO's reliance on *In re Gordon* is misplaced, because "the prior art...suggested the desirability of the modification." 733 F.2d 900, 902 (Fed. Cir. 1984). Here,

bilateral symmetry is desirable in the field. *See* Exs.1028-1029, Ex.1047; Delgatty-Reply, ¶¶91-92.⁶

PO is incorrect that Exs.1028-1029 do not relate to shoe design. These references concern design principles a DOSITA would apply. DOSITA must “read[] the prior art in context” taking into account “the background knowledge possessed.” *Randall Mfg. v. Rea*, 733 F.3d 1355, 1362 (Fed. Cir. 2013); *In re Carlson*, 983 F.2d 1032, 1039 (Fed. Cir. 1992) (finding “the *expected* design configuration is one of symmetry”). Delgatty-Reply, ¶¶91-92.

E. Skechers in view of Nike (Ground 9)

The available views of Skechers are sufficient to establish visual similarity, despite PO’s contention that “there are too many aspects of Skechers that are not

⁶ PO’s reference to Nike’s asymmetry does not undermine a DOSITA’s motivation. While Delgatty agreed the lateral and medial sides of Nike were “[n]ot completely” symmetrical, he stated that they “have very minimal differences, [and] the overall impression that they both have is that they are symmetrical.” Delgatty-Transcript, 293:7-13. And simply because one prior art reference deviates from complete bilateral symmetry does not take away from the fact that bilateral symmetry is both desirable and typical. Delgatty-Reply ¶92.

adequately disclosed in the images submitted.”⁷ POR, 78; Pet., 84-91; Delgatty, ¶¶187-205; Delgatty-Reply, ¶93. Obviousness does not require a single reference to disclose all claimed aspects. *In re Zweiman*, 25 F. App’x 937, 940 (Fed. Cir. 2001) (utility patent); *LKQ*, 102 F.4th at 1298. Skechers in view of Nike renders D’969 obvious for the reasons in §§III.A-C. Delgatty-Reply, ¶93.

IV. PO’S OTHER ARGUMENTS ARE UNAVAILING

A. Petitioners’ Annotated Figures Are Proper

PO’s annotations arguments (POR, 26-27) try to distract from the merits. The annotations are expressly described as exemplary (Pet., n.1), and the unannotated materials are in the exhibits. PO’s citation to IPR2024-01434, Paper 9 is inapposite: there is no blanket prohibition against annotations. Delgatty-Reply, ¶94.

Petitioners’ use of color-coded annotations is consistent with Gestalt principles PO’s expert invokes. “Emergence” supports Petitioners’ approach: annotations demonstrate how the features, taken together, create the same impression in both D’969 and prior art. Ex.2036, ¶¶63-69; Delgatty-Reply, ¶95. Delgatty explained he was “breaking the midsole up into areas to focus on” to streamline the verbal description, while addressing the overall visual impression as

⁷ PO simultaneously argues that one cannot make a comparison between Skechers and D’969 due to lack of visuals, but then performs such a comparison. POR, 82.

a whole. Delgatty-Transcript, 247:6-248:5; 54:15-55:2; Delgatty-Reply, ¶¶95-96. PO's expert similarly annotated D'969 and the prior art with labels and color-coded features. Ex.2036, ¶¶82, 79, 103, 107, 109; Delgatty-Reply, ¶16. PO cannot rely on annotated comparisons in its expert's declaration while arguing Petitioners' cannot. Delgatty-Reply, ¶¶95-96.

B. PO Has Not Demonstrated a Crowded Field

PO's assertion that shoe midsole design is a crowded field is unsupported. Unlike *A&A Glob. Imports, Inc. v. Lerman Container Corp.*, IPR2024-01138, Paper 7 at 28 (PTAB Jan. 22, 2025), where the Board accepted a crowded field only after petitioner *conceded* the point and patent owner offered supporting evidence, Petitioners do not concede here, nor does PO show support. Delgatty-Reply, ¶97.

PO's seven prior art references from the face of D'969—three of which are sole structures rather than midsoles—and the conclusory testimony of its expert falls far below the showing in *LKQ* where the Board was unpersuaded that vehicle fender design was a crowded art despite twenty-two design patents. *LKQ Corp. v. GM Glob. Tech. Operations LLC*, IPR2020-00064, Paper 39, 10-11 (PTAB Apr. 15, 2021). As the Board recognized, “[t]he ‘crowded art’ concept is highly fact dependent.” *Id.* at 10. PO's showing is deficient. Delgatty-Reply, ¶98.

A crowded field requires “many examples of *similar prior art designs*” such that “differences...not noticeable in the abstract can become significant.” *Egyptian*

Goddess, 543 F.3d at 676-78. Rather than attempt to show that the seven references are similar, PO and Mr. Rake reprint the seven references identified on the face of D’969 (Rake, ¶51) without any analysis of whether these designs are similar to each other or any attempt to identify allegedly significant differences that would have otherwise been unnoticeable. Indeed, several of these publications do not even disclose a full midsole design. PO does not explain how these references constitute “similar prior art.” *Egyptian Goddess*, 543 F.3d at 676-678; Delgatty-Reply, ¶98.

PO’s remaining evidence fares no better. PO cites Delgatty’s testimony that “there’s thousands of shoes on the market at any given time” as an acknowledgment that the field is crowded. POR, 36. But Delgatty testified that thousands of shoes exist, not that any such designs are similar to each other. Delgatty-Transcript, 246:4-247:1; Delgatty-Reply, ¶98. Differences become significant only between “similar prior art designs.” *Egyptian Goddess*, 543 F.3d at 676-678. PO’s evidence does not make this showing; PO cannot avail itself of this principle. Delgatty-Reply, ¶98.

C. Delgatty Applied the OB Test Correctly

PO argues that Delgatty misunderstands the OB (POR, 35-37), yet PO “does not dispute” the OB as a retail consumer. POR, 8. The OB need not be an expert in shoe design—“familiarity” with prior art means general exposure to the field. *Egyptian Goddess*, 543 F.3d at 675. As Delgatty confirmed, the OB would be familiar with “a good amount” of shoes and “would not understand very small,

insignificant differences between one shoe and another.” Delgatty-Transcript, 67:30-68:11; 70:4-8; Delgatty-Reply, ¶99. This is precisely the OB described in *Egyptian Goddess* and is consistent with PO’s definition. 543 F.3d at 665-78.

PO incorrectly conflates a three-way comparison for infringement with the anticipation analysis. POR, 17; Delgatty-Reply, ¶100. A three-way comparison “is not a test for determining validity, but is designed solely as a test of infringement.” *Egyptian Goddess*, 543 F.3d at 676-79.

Further, PO relies on the “crowded field” principle to argue that “differences in small details will have more weight” (POR, 37), but the alleged “small details” here require forensic measurement to detect. Pet., 45; Delgatty, ¶92; Delgatty-Reply, ¶101. “Exaggerated importance to small differences...relating to an insignificant feature” is irrelevant. *Egyptian Goddess*, 543 F.3d at 678. As explained in §IV.B, the evidence does not show a “crowded field.” Delgatty-Reply, ¶¶101-102.⁸

⁸ PO seemingly attempts to argue that “sneaker freaks” should be the OB, but PO waived this argument by adopting Petitioners’ definition. POR, 35-36. Regardless, this is incorrect. Delgatty-Reply, ¶102.

V. CONCLUSION

The prior art presented in the Petition's Grounds anticipates and renders obvious the Claim. The Claim should be found unpatentable.

Dated: August 11, 2026

Respectfully submitted,

By: /James L. Davis, Jr./

Name: James L. Davis, Jr.

Registration No. 57,325

**SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP**

Lead Counsel for Petitioners

CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. §42.24(c) and (d), the undersigned hereby certifies that this Petitioner's Reply to Patent Owner's Response complies with the type-volume limitation of 37 CFR §42.24(c) because, exclusive of the exempted portions, it contains 5,593 words, including figures, as counted by the word processing program used to prepare the paper.

Dated: August 11, 2026

By: /James L. Davis, Jr./
Name: James L. Davis, Jr.
Registration No. 57,325
Lead Counsel for Petitioners

CERTIFICATE OF SERVICE

In accordance with 37 C.F.R. §42.6(e), I hereby certify that on August 11, 2026, I caused a true and correct copy of the foregoing Petitioners' Reply to Patent Owner's Response and supporting exhibits to be served to the following attorneys of record for the Patent Owner listed below:

Lead Counsel	Backup Counsel
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 DLTopGloryvColeHaanIPRs@bakerbotts.com	Lindsay Volpenhein Cutié Reg. No. 75,474 Baker Botts L.L.P. 910 Louisiana Street Houston, TX 77002 Phone: (713) 229-1476 Fax: (713) 229-7776 lindsay.cutie@bakerbotts.com Amy E. Bergeron Reg. No. 76,974 Baker Botts L.L.P. 910 Louisiana Street Houston, TX 77002 Phone: (713) 229-1610 Fax: (713) 229-7910 amy.bergeron@bakerbotts.com

Dated: August 11, 2026

By: /James L. Davis, Jr./
Name: James L. Davis, Jr.
Registration No. 57,325
Lead Counsel for Petitioners