UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

HANDSFREE LABS LICENSING, LLC, FAST IP, LLC, and KIZIK DESIGN, LLC, *Plaintiffs*, v. SKECHERS U.S.A., INC., *Defendant*.	Civil Action No. 2:25-cv-00744-JRG **JURY TRIAL DEMANDED**

PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO DISMISS
PLAINTIFFS' SECOND AMENDED COMPLAINT (DKT. 51)

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INTRODUCTION

Skechers' motion to dismiss repeatedly goes beyond the pleadings, introduces and relies on extrinsic evidence, makes unfounded logical leaps, and misconstrues the caselaw. It should be denied in full.[1]

First, HFL's '101 and '096 patent infringement claims are plausibly pled.[2] The Complaint specifically identifies each part of the shoes that meet the claim limitations. That is all that is required. Skechers' attempts to manufacture inconsistencies between the claims and Complaint rely on claim-construction arguments and inappropriate comparisons of the specifications to the accused products.

Second, HFL has sufficiently pled willfulness. For the five patents at-issue in Skechers' motion,[3] HFL pled both pre- and post-suit infringement, including facts and inferences of Skechers' knowledge. That should end the inquiry. It would be "premature at this early stage in the proceedings to distinguish between pre-suit and post-filing conduct" when there is no dispute that HFL adequately pled willfulness for at least some of the infringement period. *NetSocket, Inc. v. Cisco Sys., Inc.*, 2023 WL 11987208, at *2 (E.D. Tex. Aug. 25, 2023) (Gilstrap, J.) (making the statement in the context of inducement claims, but also denying dismissal of pre-suit willfulness) (citation omitted).

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[1] The Plaintiffs here are HandsFree Labs Licensing, LLC ("HFL Licensing"), FAST IP, LLC ("FAST IP"), and Kizik Design, LLC ("Kizik"). This opposition refers to them collectively as "Plaintiffs" or "HFL."

[2] These patents are U.S. Patent Nos. 12,458,101 ("'101") and 12,121,096 ("'096").

[3] The five patents that are the subject of Skechers' Motion related to willfulness are the '101 and '096 patents, as well as U.S. Patent Nos. 12,274,325 ("'325"); 11,871,811 ("'811"); and D1,037,641 ("'641"). Dkt. 51-5; Dkt. 51 at 26. The two other Asserted Patents are U.S. Patent Nos. 11,633,006 ("'006") and 12,471,660 ("'660"). Dkt. 44 ¶¶ 35, 45.

Third, HFL has sufficiently stated a claim for pre-suit damages. Skechers incorrectly characterizes the Complaint as implicating the marking statute. But the Complaint does not even claim that HFL has practiced the patents-in-suit; and courts have found allegations like these sufficient.

FACTUAL BACKGROUND

Summary of the Complaint (Dkt. 44)—Although the relevant facts are recited in the Second Amended Complaint, Dkt. 44, "Complaint," HFL highlights a few here. In the 2010s, HFL pioneered a new category of footwear: hands-free shoes. Dkt. 44 ¶ 3. It filed for patents related to this category, and the industry took notice. *Id.* ¶¶ 3–4. For example, Nike recognized HFL as a "pioneer in hands-free footwear technology," and entered a licensing partnership with HFL to utilize these patents. *Id.* ¶ 4. In contrast, Skechers did not invent its hands-free technology—or request a license from HFL—but instead used HFL's hands-free patented technology without HFL's permission. *Id.* ¶¶ 5–8. In 2019, Skechers repeatedly ordered HFL products to its headquarters, and in 2023, Skechers cited HFL patents and patent applications in its patent applications and patents. *Id.* ¶¶ 7, 9. With knowledge of HFL patents, Skechers infringed HFL patents on a massive scale. *Id.* ¶¶ 8, 10. The Complaint alleges infringement of seven HFL patents. *Id.* ¶¶ 50–78.

Summary of the Procedural History—HFL filed the original complaint on July 24, 2025. Dkt. 1. Skechers moved to dismiss on October 14 on infringement, willfulness, and damages grounds. Dkt. 16. In response, HFL filed a First Amended Complaint on November 4. Dkt. 24. That Complaint (*id.*) provided additional detail in response to Skechers' motion, dropped one design patent, and added the '101 patent and allowed U.S. Patent Applic. No. 18/371,414 ("'414

Application," which later issued into the asserted '660 patent, Dkt. 44-6).[4]

On November 10, HFL served its infringement contentions for all asserted patents, including the two patents that are the subject of Skechers' pending motion to dismiss on infringement grounds. Dkt. 51-1 ¶¶ 3–4; Dkt. 51-3; Dkt. 51-4. On November 18, Skechers moved to dismiss that Complaint, again on willfulness and damages and on different alleged flaws in the infringement allegations. Dkt. 30. HFL then sought to amend its Complaint to address Skechers' new non-infringement arguments, as well as substitute the now-issued '660 patent number for the '414 application. Dkt. 35-3; Dkt. 44-6 ('660) at cover page. After some extended back-and-forth, on December 10, the Court issued its initial Docket Control Order, which permitted amendments to the Complaint up until October 1, 2026 (so long as new patents are not added). Dkt. 37 at 4.[5] On December 19, HFL filed its Second Amended Complaint. Dkt. 44. Skechers again moved to dismiss on willfulness and damages, and on yet further alleged deficiencies in HFL's infringement

[4] The '414 application, which had received a notice of allowance, issued shortly after the First Amended Complaint was filed. *See* Dkt. 24 ¶ 43.

[5] Though not relevant to its motion, Skechers' suggestion that HFL is not permitted, as a matter of right under the Docket Control Order to amend its prior Complaint and moot a Rule 12(b)(6) motion to dismiss is without merit. Dkt. 51 at 3 n.1. Skechers is correct that Rule 15 provides that a party may amend its complaint once as a matter of course and that subsequent amendments may only be made with the parties' consent *or with the Court's leave*. *Id.* (citing citing Fed. R. Civ. P. 15(a)(1)(B) and 15(a)(2)). But that Rule makes no mention—whatsoever—of the amendments "moot[ing]" a motion to dismiss, as Skechers asserts. *Id.* That rule simply governs when amendments can be made. And here, the Docket Control Order *provides the requisite leave called for by Rule 15*: it provides that it is "not necessary to seek leave of Court to amend pleadings prior to" October 1, 2026, "unless the amendment seeks to assert additional patents." Dkt. 47 at 5. The *Synology* case cited by Skechers is inapposite. In that case, the dismissal motion was under Rule 12(b)(3) for improper venue—not under Rule 12(b)(6) for insufficient pleadings. *Symbology Innovations, LLC v. Valve Corp.*, 2024 WL 1889240, at *1–2 (E.D. Tex. Apr. 29, 2024). In that case, the parties—and the Court—agreed to allow venue discovery followed by briefing on the venue motion. *Id.* The amended complaints in that case did not address the venue issue, and the plaintiff just ignored the Court-ordered deadline to respond to the motion. The Court thus found that the motion needed to proceed.

allegations.

RESPONSE TO STATEMENT OF ISSUES

1. **Skechers' Issue No. 1**—whether HFL failed to state a plausible claim for infringement of the '101 patent.

2. **Skechers' Issue No. 2**—Whether HFL failed to state a plausible claim for infringement of the '096 patent.

3. **Skechers' Issue No. 3**—Whether HFL failed to state any claim for pre-suit willful infringement of five of the seven Asserted Patents: the '101, '096, '325, '811, and '641 patents.

4. **Skechers' Issue No. 4**—Whether HFL failed to state any claim for pre-suit damages.

5. **Additional Issue**—In the unlikely event that the Court grants a partial dismissal on any issue, whether the dismissal should be with, or without, prejudice.

LEGAL STANDARD

"Motions to dismiss under Rule 12(b)(6) 'are viewed with disfavor and are rarely granted.'" *Lormand v. US Unwired, Inc.*, 565 F.3d 228, 232 (5th Cir. 2009) (citation omitted). To survive dismissal, a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The Court must "accept all factual allegations in the complaint as true" and "draw all reasonable inferences in the plaintiff's favor." *Lormand*, 565 F.3d at 232. "In considering a motion to dismiss for failure to state a claim, a district court must limit itself to the contents of the pleadings, including attachments thereto." *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000).

A "complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations." *Twombly*, 550 U.S. at 555. To survive a Rule 12(b)(6) motion in the context of a patent infringement claim, a plaintiff must allege facts sufficient to place "a potential infringer . . . on notice of what activity or device" the plaintiff accuses of infringement. *K-Tech*

Telecomms., Inc. v. Time Warner Cable, Inc., 714 F.3d 1277, 1284 (Fed. Cir. 2013); *see also Bot M8 LLC v. Sony Corp. of Am.*, 4 F.4th 1342, 1352 (Fed. Cir. 2021) (same); *Golden v. Apple Inc.*, 819 F. App'x 930, 930–31 (Fed. Cir. 2020) (holding that such claims "are subject to the pleading standards established by" *Twombly* and *Iqbal*).

ARGUMENT

I. Skechers' Motion to Dismiss Should Be Denied.

A. HFL Sufficiently Pled Infringement for the '101 and '096 Patents

It is well-established that a "plaintiff need not prove its [infringement] case at the pleading stage." *Bot M8*, 4 F.4th at 1352 (quotations omitted). It does not need "to plead infringement on an element-by-element basis," *id.*, and where—as here—an asserted patent is directed to a tangible invention (in contrast to software), a plaintiff's complaint needs less detail to state a claim than for less tangible inventions, *Longhorn Auto. Grp., LLC v. Mitsubishi Motors Corp.*, 2025 WL 3706950, at *3 (E.D. Tex. Dec. 22, 2025) (Gilstrap, J.).

Skechers' Motion ignores this law and inappropriately asks the Court to rule on the merits of its non-infringement defenses. Aside from inappropriately relying on claim construction arguments, Skechers' argument violates black-letter law by inappropriately comparing embodiments from the patents to the accused products.[6]

1. Skechers' Motion for the '101 Patent (Count VI) Should Be Denied

Although HFL was "not required to plead infringement on an element-by-element basis," *Bot M8*, 4 F.4th at 1352, the Complaint more than adequately alleges the claimed "pivoted"/"axis" element that Skechers contends, Dkt. 51 at 7, is missing.

[6] HFL raised this issue (in particular, the *Bot M8* law)—and most of the points raised below—in its December 9 opposition. Dkt. 35. Skechers' Motion ignores *Bot M8* and most of HFL's arguments. HFL objects to the extent Skechers has saved arguments until reply.

a. As an initial matter, the Complaint alleges that at least Claim 7 of the ’101 patent is infringed, and it summarizes the features of the infringing shoes. Dkt. 44 ¶ 72. In addition to specifically articulating the infringing features, the Complaint refers back to earlier descriptions of those features. *Id.* (pointing to ¶¶ 20–33 and Table 2).

Regarding the limitation that is the focus of Skechers’ motion—the “pivoted”/“axis” element—Claim 7 recites that “at least a portion of the rapid-entry shoe is **lowered and is pivoted about an axis** in response to the foot applying a pressure to the **upper portion** when the foot is inserted into the opening of the rapid-entry shoe.” Dkt. 44-5 (’101 patent) at 16:22–25. HFL’s Complaint properly, Dkt. 44 ¶¶ 25–26, identifies an elevated **upper portion** of the shoe (where the foot is inserted and applies pressure), as illustrated with the top green arrow shown below:

Dkt. 44 ¶ 25

It also describes how the accused shoes—in response to “pressure applied during insertion of a user’s foot”—effectuate “expansion of the flexible or elastic elements” as well as “**lowering and pivoting of one or more portions of the shoe, including one or more portions of the stabilizer**,” *id.* ¶¶ 27–28.

Paragraph 28 of the Complaint, Dkt. 44, provides even more details about the pivoting and axis, stating (emphasis added):

> 28. In addition, the shoes are configured so that, in response to foot insertion (which appl[ies] a pressure to an **upper portion of the shoe)**, there will be ***lowering and pivoting of one or more portions of the shoe, including one or more portions***

of the stabilizer. For example, in the illustration below this paragraph, the top two images are from a Skechers' marketing video of a Skechers Slip-in Ultra Flex 3.0. These depict different stages of a heel of a foot going into the shoe: the upper left shows a heel of a foot outside of the shoe, and the upper right shows the heel pushing down onto the shoe. The bottom figure superimposes these two figures and *illustrates how at least one portion of the shoe has* ***lowered and pivoted*** *(the green dashes represent a portion of the shoe on the top left; and red dashes represent the same portion of the shoe on the right).* ***Some or all of that highlighted portion—or a portion of the shoe that includes the highlighted portion—is pivoting along one or more axes, including at least an axis that is to the right of the highlighted portion (in the highlighted figure)***.

In describing how at least Claim 7 is infringed, the Complaint identifies this same configuration as meeting the "pivoted about an axis" limitation, noting that at least a portion of the shoe is lowered and "pivoted about an axis" in response to the foot insertion/pressure, and, "as described in ¶¶ 20–33 above, Skechers Hands Free Slip-Ins models include the claimed upper and heel structures including a **pivoting and lowering heel** structure and expanding flexible material in response to a user's foot applying pressure to the upper when being inserted into the opening of the shoe. *See, e.g.*, Table 2, supra." *Id.* ¶ 72.

These detailed descriptions of the infringement must be accepted as true and should end the inquiry. The allegations are more than sufficient to place Skechers on notice of what activities HFL accuses of infringement. *K-Tech*, 714 F.3d at 1284.

b. Skechers does not seriously dispute that the above allegations would normally suffice. So it manufactures an alleged inconsistency by arguing that *other portion*s of the Complaint supposedly "admit[] and show[] that the Accused Products do ***not*** meet this [pivoting] limitation and thus do not infringe the '101 Patent." Dkt. 51 at 7. According to Skechers, Plaintiffs have, therefore, pleaded "themselves out of court." *Id.* (citation and quotation omitted).

That is incorrect; there is no inconsistency between the "pivoting" or "axis" claim language and the pleading. Skechers relies on mixing and matching language from the Complaint for other patents with the language of these claims—and even attempts to redraft them. This is improper. *See Ortho-McNeil Pharm., Inc. v. Mylan Lab'ys, Inc.*, 520 F.3d 1358, 1362 (Fed. Cir. 2008) ("[C]ourts may not redraft claims").

For example, Skechers argues that the Complaint does not allege that the "*heel cup* of the Accused Products has any design feature that ***defines*** an 'axis'" given that the patent's claim (Claim 7) does not require that. *See* Dkt. 44-5 ('101) at 16:5–30. Claim 7 makes no mention of "heel cup" at all. More importantly, Claim 7 merely states "***a portion*** of the rapid-entry shoe is lowered and is pivoted ***about*** an axis." *Id.* at 16:22–26. Hence, the claim is not even requiring that the portion of the shoe that is lowered "***defines***" an axis; instead, the portion that is lowered is pivoted "about" an axis. *Id.*

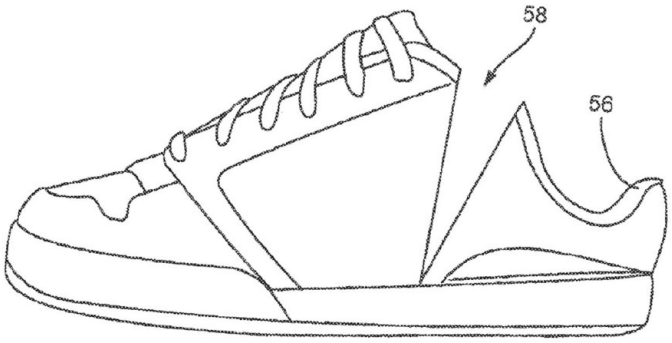
Skechers takes its manufactured premise and makes another logical leap, arguing that the Complaint describes a "'stabilizer portion' (heel cup) as having a construction that is precisely the

opposite of having a defined 'axis' of rotation." Dkt. 51 at 8.[7] But the portion of the Complaint quoted for support makes no mention of an "axis" and is consistent with the claims:

Limitation (Claim 7)	**Supposed Inconsistent Statement (all emphases in original)**	**Is Statement Actually Inconsistent?**
"wherein at least a portion of the rapid-entry shoe is lowered and is pivoted about an axis in response to the foot applying a pressure to the upper portion when the foot is inserted into the opening of the rapid-entry shoe"	A "*stabilizer portion*" includes "an elevated or upper portion extending from the rear of the shoe" and "a curvature between the lateral and medial sides and a flare portion which *acts as a shoehorn* (e.g., to direct a foot into a foot opening of the rapid-entry shoe). *The stabilizer may be formed of a continuous piece*." (Dkt. 51 at 8 (citing Dkt. 44 ¶ 25))).	**No**—no mention of an "axis"; this says nothing about whether "at least a portion of the shoe is lowered and is pivoted about an axis"
	"As depicted, the upper portion extends from the midportion and extends further rearward than the midportion." *Id.* (citing Dkt. 44 ¶ 25–27).	**No**—same comment as above
	"Further, *the stabilizer portion is sufficiently rigid to resist collapsing downward at the heel when a user inserts their foot*. Skechers Accused Products are designed such that pressure applied during insertion of a user's foot causes expansion of the flexible or elastic elements." *Id.* (citing Dkt. 44 ¶ 25–27).	**No**— same comment as above. Moreover, the last sentence in the quote *directly supports infringement of the limitation*.

The fact that a "stabilizer portion" may be "sufficiently" rigid to "resist collapsing" does not mean that it—or any other "portion"—of the shoe cannot also be lowered and pivoted about an axis. Indeed, an image from the '101 patent that Skechers relies on in its motion, *see* Dkt. 51 at 7, illustrates how this is possible:

[7] It should also be noted that the Complaint uses the phrase "heel cup" once. Dkt. 44 ¶ 31. There, the Complaint states that as "depicted and described above, these example elastic elements may form portions of the topline of the upper and may be separated by non-elastic portions of the upper (e.g., heel cup, tongue webbing, eyelet webbing, eyestay material, and tongue backing material)." *Id.*



Dkt. 44-5, Fig. 26

In this illustration, the "sufficient rigidity" of the back portion of item 56 is irrelevant to whether it is pivoting and moving downward (which it is doing). No amount of bolding, underlining, and italicizing language from the Complaint can overcome this flawed logic. As an example, think of a ceiling fan: it has rigid blades, yet those rigid blades still rotate about an axis.

c. Another critical flaw in Skechers' argument is that it relies on claim construction—and one that is improperly based on comparing select embodiments in the '101 patent to the accused footwear.[8] Indeed, Skechers begins its argument by devoting *three pages* to the patent's embodiments. *See id.* at 5–7, 13. Though it carefully avoids saying the phrase "claim construction," it is clearly attempting to show that the embodiments in the specification rule out infringement. This is an improper use of the specification at the motion to dismiss phase. Dkt. 35 at 8–9.

Indeed, the "general rule is that courts do not engage in claim construction at the pleadings stage unless it is clear that the claims cannot plausibly be construed to cover the accused instrumentalities." *OBD Sensor Sols. LLC v. Track What Matters, L.L.C.*, 2023 WL 1827922, at

[8] "The claims, not specification embodiments, define the scope of patent protection. The patentee is entitled to the full scope of his claims, and we will not limit him to his preferred embodiment or import a limitation from the specification into the claims." *Kara Tech., Inc. v. Stamps.com, Inc.*, 582 F.3d 1341, 1348 (Fed. Cir. 2009).

*2 (E.D. Tex. Jan. 20, 2023), *report and recommendation adopted*, 2023 WL 1818268 (E.D. Tex. Feb. 8, 2023) (Gilstrap, J.).

In *Nalco Co. v. Chem-Mod, LLC*, for instance, the Federal Circuit found that it was "not appropriate to resolve these [claim construction] disputes, or to determine whether the method claimed in the [asserted] patent should be confined to the preferred embodiment, on a Rule 12(b)(6) motion, without the benefit of claim construction." 883 F.3d 1337, 1350 (Fed. Cir. 2018); *see also In re Bill of Lading Transmission & Processing Sys. Pat. Litig.*, 681 F.3d 1323, 1343 n.13 (Fed. Cir. 2012) ("[T]o the extent the district court based its assessment of the 'reasonableness' of a given inference of infringement on a narrow construction of the patent's claims, claim construction at the pleading stage—with no claim construction processes undertaken—was inappropriate. We afford the claims their broadest possible construction at this stage of the proceedings." (citation omitted)).

Here, Skechers creates even further problems than in those cases—leaving it to the Court to divine what claim construction it is even advocating for. The Court should decline Skechers' invitation to conduct a claim construction (when one shouldn't occur in the first place) that improperly imports limitations into the claims.[9]

d. Skechers also superimposes lines over still photos from the Complaint to argue that the claim limitation cannot be met. Dkt. 51. But Skechers cites no support for the proposition that this extrinsic evidence (two still images that do not show the entire set of frames in a single example of someone putting on a shoe) can overcome the plain language in the Complaint. *See, e.g.*, Dkt. 44. HFL's allegations must be accepted as true; and reasonable inferences must flow in

[9] *Kara*, 582 F.3d at 1348 ("The claims, not specification embodiments, define the scope of patent protection. The patentee is entitled to the full scope of his claims, and we will not limit him to his preferred embodiment or import a limitation from the specification into the claims.").

Plaintiffs' favor. As illustrated above and below, HFL's Complaint explicitly states that a portion of a shoe pivots about an axis, *id.*, and it uses still frame photos to illustrate how, *id.* ¶ 28:

e. Perhaps recognizing the weakness of its motion in light of paragraph 28, Skechers offers another *ipse dixit* argument: that HFL has supposedly "abandon[ed]" its "original infringement theory in its earlier complaint, and that this "new" theory is "untimely." Dkt. 51 at 11. But aside from failing to explain what, exactly is "new" and what exactly was "abandoned," Skechers points to no law suggesting that this is a basis for dismissing a Complaint. *Id.*

Near the end of its argument on the '101 patent, Skechers appears to elaborate on this argument, citing to extrinsic evidence (HFL's infringement contentions). *Id.* at 15–16 (citing Dkt. 51-3). And it asks that the Court dismiss the Complaint because it is "an untimely and improper attempt by Plaintiffs' to amend their [November 10] infringement contentions." *Id.* at 15. As an initial matter, reliance on this extrinsic evidence is improper for a motion to dismiss. But even if that evidence could be properly considered, it would be unavailing.

According to Skechers, the infringement contentions state that there "is purportedly an 'axis' somewhere within the heel cup." Dkt. 51 at 15. But it points to no language stating this. Instead, Skechers appears to suggest (though it does not so state) that the boxes and arrows used in the figures are somehow inconsistent with the figures in the Complaint. *Id.* at 15–16; Dkt. 44 ¶ 28. If that is Skechers' point, it makes no sense. Yellow boxes and red arrows similar to the ones in the infringement contentions have been added to the reproduction below of the figures in paragraph 28 of the Complaint:

The claims describe what happens when a "foot appl[ies] pressure" to an "upper portion when the foot is inserted into the opening" of the shoe. Dkt. 44-5 ('101) at 16:22–25. The yellow box illustrates the foot applying that pressure to a portion of the shoe. The claim also recites that, in response to the foot pressure, "at least a portion of the rapid-entry shoe is lowered and is pivoted about an axis." *Id.* The red arrows in the top two figures above show the general direction that at least a portion of the shoe moves in response to the pressure. Those arrows are consistent with

what is illustrated in the bottom figure—which, as explained in paragraph 28 of the Complaint, superimposes the figures above it and illustrates how at least one portion of the shoe has lowered and pivoted (the green dashes represent a portion of the shoe on the top left; and red dashes represent the same portion of the shoe on the right). Dkt. 44 ¶ 28. Paragraph 28 further explains that some "or all of that highlighted portion—or a portion of the shoe that includes the highlighted portion—is pivoting along one or more axes, including at least an axis that is to the right of the highlighted portion (in the highlighted figure)." *Id.* There is nothing inconsistent with the red arrows and that explanation.[10]

f. Skechers continues with its claim-redraft, arguing that HFL does not allege that "the heel cup" has any feature that "***defines***" an "'axis' of rotation as required by Claim 7." Dkt. 51 at 11. In support, it again improperly compares disclosures in the '101 patent's specification (not the claim) with the allegations. And it again redrafts the Claim 7. As described above, the claim does not recite that a heel cup (or anything else) "***defines***" an axis; instead Claim 7 merely states "***a portion*** of the rapid-entry shoe is lowered and is pivoted ***about*** an axis." Dkt. 44-5, 16:22-–25 (emphasis added). And the Complaint alleges that that axis is located to the right of the dashed portion identified in the figure above. Dkt. 44 ¶ 28.

Relatedly, Skechers makes yet another argument on the merits (and inappropriate for a motion to dismiss): (1) that the images in the Complaint "strongly indicate[]" to Skechers that, though there could be an "axis," the axis is in the rubber sole, which Skechers argues is "typical for most shoes"; and (2) such a reading is contrary with the patent's *specification and embodiments*

[10] The arrow obviously is not indicating that the yellow-boxed portion of the shoe moves completely down to where the bottom portion of the arrows are. Indeed, the infringement contentions attached as an exhibit to Skechers' motion—and, in particular, the pictures in them—nowhere suggest that is the case. Dkt. 51-3 at 51, 78, 81. There is nothing "new" in the Complaint.

because (according to Skechers) the patent was concerned with enabling "'significant rearward motion.'" Dkt. 51 at 12 (quoting from the specification, but *not the claims*, Dkt. 44-5). To the extent Skechers believes its claim construction is correct, its factual interpretation is correct—and that those constructions and interpretations render the claim invalid in light of the "typical" shoe—it can make that argument in its invalidity contentions. They are improper for a motion to dismiss.

g. As part of its "Rule 11" saber-rattling, Skechers argues that these facts are "eerily similar to those in *Raylon, LLC v. Complus Data Innovations, Inc.*, 700 F.3d 1361 (Fed. Cir. 2012)." Dkt. 51 at 13. The facts are not even remotely similar. For one thing, *Raylon* did not involve a motion to dismiss—the decision occurred after a full claim construction. *See* 700 F.3d at 1365. For another, in *Raylon*, even though the limitation required a display that was "pivotally mounted *on said housing*," the plaintiff's claim construction did *not* require *any* pivoting with respect to "said housing." *Id.* at 1365, 1368 (emphasis added). Instead, it encompassed any display, "regardless of how it is mounted to the housing." *Id.* at 1368. According to the plaintiff, even if the display could not pivot in relation to the housing (as required by the plain language of the claim), the pivoting limitation could be met "when the user" lifts the display "relative to the *viewer's . . . angle of visual orientation*." *Id.* at 1365 (emphasis added). In other words, the plaintiff's construction was obviously flawed because it ignored that the pivoting referred to how the display was "*mounted on said housing*," not on whether the device's angle shifts when users pick it up. *Id.* Here, HFL does not allege there is pivoting due to someone picking up the shoe and looking at it from a different angle—it alleges pivoting within the shoe itself.

h. Finally, in the unlikely event that the Court believes that Plaintiffs' allegations are somehow contradictory, Plaintiffs respectfully request that they be treated as alternative pleadings, which Rule 8 specifically permits. *See VirtaMove, Corp. v. Hewlett Packard Enter. Co.*, 2024 WL

4519761, at *2 (E.D. Tex. Oct. 17, 2024) (Gilstrap, J.).

2. Skechers' Motion for the '096 Patent (Count IV) Should Be Denied

a. Skechers' arguments with respect to the '096 patent fail for similar reasons. Dkt. 51 at 17–24. HFL's Complaint alleges that Skechers infringes "at least claim 13" of the '096 patent; and it provides detailed descriptions of the "plurality of elastic elements" that Skechers' identifies as problematic. Dkt. 44 ¶¶ 63–65; *id.* ¶¶ 20–32. For example, paragraph 64 states (emphasis added):

> 64. For instance, as described above in ¶¶ 20–32, certain Skechers Hands Free Slip-Ins models including Swift Fit Delson and Glide-Step Pro feature at least *three elastic elements such as lateral and medial strips as well as stretch laces*. The Swift Fit Delson's *elastic gores, which are on the lateral and medial sides of each shoe, are elastic elements ("first" and "third") that extend to a top line of the upper that is proximate to the shoe's foot opening*. In contrast, *the elastic laces do not extend to that same top line*. For the Glide-Step Pro, paragraph 21 (above) shows elastic elements on the lateral and medial sides of the shoe. Those elastic elements extend to a top line of the upper that is proximate to the shoe's foot opening. Further, on information and belief, this functionality has been used by Skecher's during testing or marketing of the shoes. In contrast, the elastic laces do not extend to that same top line.

In paragraph 21, those three elastic elements are illustrated and described—such as for the Swift Fit Delson—as shown below (emphasis added):

Dkt. 44 ¶ 21	
Skechers Swift Fit Delson 	• Heel pillow with molded heel structure • At least *three elastic elements, including elastic gores on the lateral and medial sides of the shoe, and stretch laces* • Rigid structural elements

Those allegations put Skechers on notice of the activity alleged to infringe; and the allegations are plausibly pled. Skechers' Motion on the '096 patent should be denied. *See Bot M8*, 4 F.4th at 1352; *K-Tech*, 714 F.3d at 1284.

b. Critically, Skechers' Motion ignores this pled description of the Swift Fit Delson example. Instead, Skechers focuses on another example: the Glide Step Pro. Dkt. 51 at 20. With respect to the Swift Fit example (which Skechers ignores), HFL pled that the elastic elements on the sides of the show (the "first" and "third" elastic elements) "extend to a top line of the upper." Dkt. 44 ¶ 64. And that is precisely what is shown in the two above figures: elastic elements on

either side of the shoe that extend to the top line. *Id.* ¶ 21. There is no reference in the Complaint, *see* Dkt. 44, or anywhere else, to those elastic elements being stretched by hand, as Skechers argues with respect to the *other* example shoe, *see* Dkt. 51 at 22. As such, there is no dispute that Complaint identifies a plausibly pled example of infringement (for the Swift Fit Delson), and Skechers' Motion on the '096 patent should be denied on that basis alone.

c. Even if the sole infringing example in the Complaint was for the Glide Step Pro (the focus of Skechers' Motion), Skechers' Motion should still be denied because its arguments are flawed. Skechers' argument has a trifecta of problems: conducting claim construction in a motion to dismiss; relying on the specification to import unclaimed limitations; and relying on extrinsic evidence (November 10 infringement contentions). Dkt. 51 at 17–24.

As an initial matter, it is again telling that Skechers appears to have jettisoned its prior key claim-construction argument with respect to the Glide Step Pro—an argument Skechers claimed was so clear it merited dismissing the Complaint. Dkt. 30 at 17–20. HFL summarizes below the relevant portions of claim 13 and Skechers' prior argument because it provides useful context for Skechers' latest position.

Claim 13 of the '096 patent recites a plurality of elastic elements, including:

- First and third elastic elements, which "extend to the top line of the upper" (where the "top line" is "positioned proximate the foot opening"), Dkt. 44-4 ('096) at 12:41–42, 12:55–58; and
- A "second elastic element," which "does not extend to the top line of the upper" (where the "top line" is "positioned proximate he foot opening"), *id.* at 12:41–42, 12:57–58.

In Skechers' November 18 motion, Dkt. 30 at 17–19, Skechers argued that HFL pleaded itself "out of court" by pointing to a "second elastic element"—elastic laces—that supposedly did

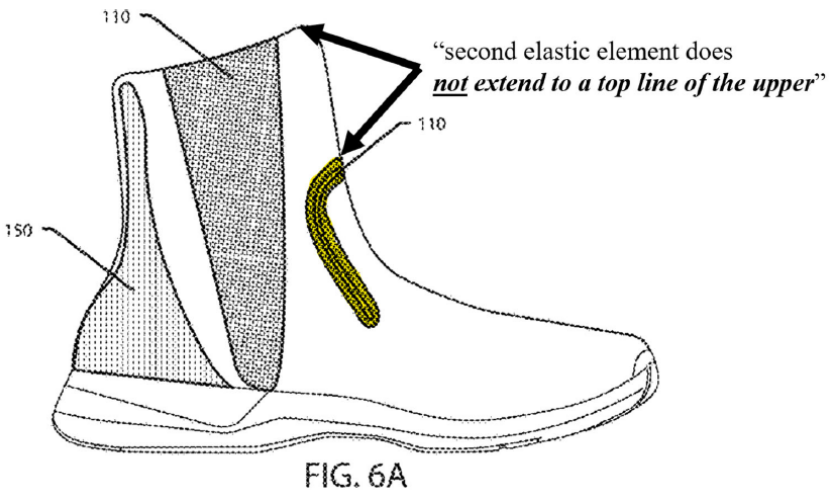
not meet that latter limitation because the laces supposedly *do* extend to a top line,[11] which Skechers highlighted in green (as illustrated below):

Dkt. 30 at 21 (highlighting added by Skechers)

But as Skechers pointed out in its December 9 opposition, that argument made no sense, was based on a misquoting of claim 13[12]—and a misreading of the specification. Dkt. 30 at 11–12. In particular, Skechers provided no support for construing the "top line" to include the portion of the shoe over the tongue and under the laces. As noted above, claim 13 explicitly recites that the top line is "*positioned proximate the foot opening*," which suggests this construction is incorrect. Dkt. 44-4 ('096 patent) at 12:41–42 (emphasis added). And Skechers' own labeling of Figure 6A of the '096 patent shows that Skechers understands the top line does not continue to extend along that mid-portion of the show; Skechers labeled the figure to show the "top line" was proximate to the shoe opening:

[11] The limitation recites that the second elastic element "does *not* extend to the top line of the upper." Dkt. 44-4 ('096) at 12:57–58.

[12] Here and in its November 18 motions, Skechers misquotes the claim language. The claim recites that the second elastic element "does not extend to ***the*** top line of the upper," Dkt. 44-4 at 12:57–58 (emphasis added), not "does not extend to ***a*** top line of the upper," per Skechers' briefs, Dkt. 30 at 21; Dkt. 51 at 20. The word "the" is important, because it makes clear that this portion of the claim is referring to the same "top line" as introduced earlier in the claim (*i.e.*, "a top line positioned proximate the foot opening").



Dkt. 30 at 16 (annotations added by Skechers)

Skechers appears to have moved on from that flawed construction to another (albeit one related to the same limitation). Skechers does not dispute that, for the Glide Step Pro, the Complaint adequately pleaded the limitation reciting the first and third elastic elements "extend to the top line of the upper" (where the "top line" is "positioned proximate the foot opening"). Dkt. 44-4 ('096) at 12:41–42, 12:55–57; *see* Dkt. 51 at 22. For that limitation, the Complaint provides the following illustrative support, Dkt. 44 ¶ 21:

Dkt. 44 ¶ 21	
<u>Skechers Glide Step Pro</u> 	• Heel pillow with molded heel structure • Mesh upper with synthetic hotmelt overlays • At least three elastic elements, including on the lateral and medial sides of the shoe (e.g., as illustrated in the bottom two figures in the cell to the left), and stretch laces • Rigid structural elements https://www.skechers.com/skechers-slip-ins-glide-step-pro/150420_MULT.html

And at paragraph 64, the Complaint also alleges that, for the elastic elements on the sides of the shoe (the "first" and "third" elements), "[t]hose elastic elements extend to a top line of the upper that is proximate to the shoe's foot opening. Further, on information and belief, this functionality has been used by Skecher's during testing or marketing of the shoes. In contrast, the elastic laces do not extend to that same top line." Dkt. 44 ¶ 64. Hence, the Complaint alleges that the first and third elastic elements extend to the top line—for example, during testing and marketing of the shoes—whereas the second elastic elements (the stretch laces) do not extend to the top line. *Id.* ¶ 63–64. This is precisely what is recited in the claims. Dkt. 44-4 ('096) at 12:50–58.

Nevertheless, according to Skechers this somehow amounts so Plaintiffs "'plead[ing] themselves out of court.'" Dkt. 51 at 20 (citation omitted). Skechers argues that the infringement theory for why the first and third elastic elements "extend to the top line" is that a user can stretch the tongue by hand, thus causing the elastic gore on the sides to reach the top line. *Id.* at 22. On that point, what the Complaint states is that the functionality "has been used by Skecher's during testing or marketing of the shoes." Dkt. 44 ¶ 64.

In contrast to that allegation, however, the Complaint makes no mention of stretching *the elastic laces* to the top line. In fact, it states: "In contrast, the elastic laces do *not* extend to that same top line." *Id.* (emphasis added). Skechers' attorney argument that the "user can clearly" stretch the elastic laces to reach the topline, Dkt. 51 at 23, goes outside the pleadings and cannot form the basis for a motion to dismiss, *see Collins*, 224 F.3d at 498.

But even if one could go outside the Complaint, and even if the factual statement by Skechers is accepted as true, its argument would still fail. "It is well settled that an accused device that 'sometimes, but not always, embodies a claim[] nonetheless infringes.'" *Broadcom Corp. v.*

Emulex Corp., 732 F.3d 1325, 1333 (Fed. Cir. 2013) (citation omitted). Therefore, so long as there are some instances where (1) the first and third elastic elements do extend to the topline (as alleged in the Complaint), and (2) the second elastic element does not so extend (as alleged in the Complaint), there is infringement. The fact that in some instances the shoes could be manipulated to not embody the claim (as a result of the elastic lace stretching) does not mean the shoes do not infringe. *See id.*

B. HFL Sufficiently Alleges Willful Infringement for the Five Patents that Are the Subject of Skechers' Motion

1. HFL pleads willful infringement, alleges that Skechers has been on notice of its infringement since at least the time of the Complaint, and alleges that Skechers has willfully infringed. Dkt. 44 ¶¶ 10, 56, 60, 65, 69, 73. Notably, Skechers does *not* challenge HFL's claims for post-suit willful infringement. Dkt. 51 at 24–27; Dkt. 51-5. That should end the inquiry. The issue of willfulness is in the case for all seven patents—including the five subjects to Skechers' Motion.[13] It would be "premature at this early stage in the proceedings to distinguish between pre-suit and post-filing conduct" when there is no dispute that HFL adequately pled willfulness for at least some of the infringement period. *See NetSocket*, 2023 WL 11987208, at *2–3 (making the statement in the context of inducement claims, but also denying dismissal of pre-suit willfulness) (Gilstrap, J.);[14] *BillJCo, LLC v. Cisco Sys., Inc.*, 2021 WL 6618529, at *6, *8 (E.D. Tex. Nov. 30, 2021) (Gilstrap, J.). Factual issues such as *when* Skechers first knew of the patents—which is

[13] HFL asserts willful infringement of seven patents. Skechers, however, does not seek to dismiss willfulness in its entirety for *any* of those patents. Its motion does not challenge HFL's willfulness allegations for the asserted '006 and '660 patents. Dkt. 51 at 24–25, 27; Dkt. 51-5. And with respect to the remaining five patents, ('101, '096, '325, '811, and '641), the motion is limited to "pre-suit"—not post-suit—willful infringement damages. Dkt. 51-5; Dkt. 51 at 27.

[14] HFL repeatedly cited to this Court's *NetSocket* opinion in its December 9, 2025, Opposition to Skechers' previous (not moot) motion to dismiss. Dkt. 35 at 1, 13, 15. Skechers ignored the case in its current motion, Dkt. 51—presumably saving its discussion of the case for its reply.

uniquely within Skechers' knowledge—should be left to sort out in discovery.[15]

2. Indeed, as Skechers concedes, HFL's Complaint seeks pre-suit willfulness for the five patents put at issue in the Motion based on HFL's knowledge of HFL's patents. Dkt. 51 at 24; Dkt. 44 ¶¶ 8–10, 56, 60, 65, 69, 73. It is not a situation, therefore, where HFL has admitted "that it did not intend to seek pre-suit claims or based on the complete absence of allegations of pre-suit knowledge in the complaint." *NetSocket*, 2023 WL 11987208, at *3 (denying dismissal of pre-suit willfulness claims); *see also BillJCo*, 2021 WL 6618529, at *6, *8.

3. Relatedly, Skechers' effort to put a date restriction on the willfulness claims ignores the pre-suit willful-infringement allegations. In support of its allegations of pre-suit willfulness and knowledge, Dkt. 44, HFL details how Skechers has monitored HFL, its intellectual property, and its history of copying. For example, the Complaint alleges that:

- Skechers' business model is copying the innovations of others, as evidenced by some of the evidence cited in the Complaint, *id.* ¶ 2;
- HFL pioneered the hands-free shoe category, *id.* ¶¶ 3–4;
- Skechers monitored HFL's designs and patents, including by purchasing shoes from Kizik, having its employees design shoes with knowledge of HFL's patent rights, and copying advertising phrases, *id.* ¶ 9;
- Skechers monitored HFL's patent applications; "HFL patents and patent applications are cited in several Skechers patent applications and patents," including the asserted '006 patent (which is not the subject of Skechers' motion), and to which three of the five patents for which Skechers challenge HFL's willfulness allegations claim priority, namely, the '096, '325, and '811 patents), *id.* ¶ 7;
- "With full knowledge of this and other patents, Skechers has continued to make and sell infringing footwear," *id.* ¶ 8.

[15] Skechers has thus far taken an unduly rigid view of its discovery obligations. If the Court were to rule in Skechers' favor on this motion, HFL expects this will continue, resulting in unnecessary motion practice related to discovery into Skechers' pre-suit knowledge.

In short, even if the Court were inclined in some cases to carve out portions of the willful infringement claims, in this case it should not because of these allegations collectively support pre-suit willfulness. *See, e.g.*, *Multimedia Techs. Pte. Ltd. v. LG Elecs. Inc.*, 2024 WL 1340360, at *4 (E.D. Tex. Mar. 1, 2024) (finding allegations of specific patent prosecution activities sufficient to support willful infringement claims), *report and recommendation adopted*, 2024 WL 1338080 (E.D. Tex. Mar. 28, 2024) (Gilstrap, J.).

4. The Court should follow its opinions in *NetSocket* and *BillJCo*, which are more applicable here than Skechers' cases. *NetSocket*, 2023 WL 11987208, at *2–3; *BillJCo*, 2021 WL 6618529, at *6, *8. For example, in *NXP USA Inc. v. MediaTek Inc.*, the Court found that there was "a total absence of facts in the Complaint" because the plaintiff had *only* pled post-suit knowledge. 2022 WL 799071, at *3 (E.D. Tex. Mar. 15, 2022). And in *Touchstream Techs., Inc. v. Altice USA, Inc.*, the plaintiff did not allege any concrete, pre-suit conduct, and instead tried to impute knowledge of asserted patents issuing from not-yet-filed, future applications. 2024 WL 1117930, at *3 (E.D. Tex. Mar. 14, 2024). Indeed, there were no allegations of any monitoring being done by the defendant. *Id.* But as described above, HFL alleges pre-suit conduct, including monitoring.

The Court should decline Skechers' invitation to "premature[ly]" "distinguish between pre-suit and post-filing conduct"—particularly where, like here, HFL explicitly alleges pre-suit willfulness. *See NetSocket*, 2023 WL 11987208, at *2–3; *BillJCo*, 2021 WL 6618529, at *6, *8.

C. HFL Sufficiently Pled Damages

As with the pre-suit willfulness allegations, the Court should deny Skechers' attempt to segregate pre- vs. post-suit damages at this stage.

1. For one thing, HFL seeks "an award of damages sufficient to compensate" it for infringement, Dkt. 44 at 27—and there is no dispute that under the law HFL is entitled to such

damages ("no . . . less than a reasonable royalty"), 35 U.S.C. § 284. The issue of how much those damages will be—and how long back the damages period goes—will be a fact issue to be decided later.

2. More importantly, to the extent it is appropriate to carve out certain damages in this case, the Complaint adequately pleads entitlement to past damages. Under 35 U.S.C. § 287, "a patentee who makes or sells a patented article cannot recover damages unless the patentee satisfies the notice requirements of section 287(a)." *VirtaMove, Corp.*, 2024 WL 4519761, at *2 (Gilstrap, J.) (citing *Arctic Cat Inc. v. Bombardier Recreational Prod. Inc.*, 876 F.3d 1350, 1365–66 (Fed. Cir. 2017)). In other words, for pre-suit damages for a particular patent, § 287 only comes into play if there was a requisite manufacturer or sale of an article practicing the patent.

But here, there is no allegation in the Amended Complaint that the patentee or a licensee made or sold a patented article, Dkt. 44, so there is no need to allege that anything was marked. *See In re Mobile Telecommunications Techs., LLC v. Mobile Telecommunications Techs., LLC*, 2017 WL 1053099, at *6 (D. Del. Mar. 20, 2017). To the extent Skechers through discovery believes marking was required for some products, it will bear the "initial burden of production to articulate the products it believes are unmarked 'patented articles' subject to § 287." *Arctic Cat*, 876 F.3d at 1368.

3. Moreover, the Complaint repeatedly alleges that there "are no marking requirements that have not been complied with" for the patents. Dkt. 44 ¶¶ 36, 38, 40, 42, 44, 46, 49. This allegation was held to be sufficient in *Altair Logix LLC v. Asus Computer Int'l*, 2019 WL 1117535, at *2–3 (N.D. Cal. Mar. 11, 2019). And the allegation is not materially different (in degree of detail) from the type of pleading that this Court recently found sufficient. *See Longhorn*, 2025 WL 3706950, at *6 (denying dismissal of pre-suit damages because the plaintiff pled that it "has at all

times complied with the marking provisions of 35 U.S.C. § 287").

4. In Skechers' key case from this Court, *see* Dkt. 51 at 28–29, the defendant made the "contradictory allegation[]" that it actually made and sold patented articles yet had no duty to mark them. *See VirtaMove*, 2024 WL 4519761, at *2. It was because of that former allegation—that the plaintiff's product "practiced the patent"—that this Court distinguished *Altair*. *Id.* at *5. But there is no such allegation here.

* * *

In short, *Altair*, *Longhorn*, and *In re Mobile*, all support denial of Skechers' motion with respect to pre-suit damages.

II. There Should Be No Dismissal With Prejudice

Skechers' motion should be denied, but in the unlikely event any aspect of it is granted, the dismissal should not be with prejudice. "Dismissal with prejudice is 'an extreme sanction that deprives a litigant of the opportunity to pursue his claim.'" *Commc'n Techs., Inc. v. Samsung Elecs. Am., Inc.*, 2025 WL 1538745, at *3 (E.D. Tex. May 29, 2025) (Gilstrap, J.) (quoting *Bullard v. Burlington Northern Santa Fe Ry. Co.*, 368 Fed. App'x 574, 582 (5th Cir. 2010)).

Although HFL has previously amended its Complaint, this Court has not ruled on Skechers' motion—and therefore has not identified any areas it suggests are in need of correction. HFL believes that its current Complaint both addresses Skechers' alleged deficiencies—and more than suffices under the law. Indeed, cases such as *Altair*, *Longhorn*, and *In re Mobile* (and others) demonstrate that HFL's pleadings are sufficient under the law. To the extent the Court disagrees, it should grant leave to amend. *See United States v. Team Fin., L.L.C.*, 2019 WL 3943958, at *8 (E.D. Tex. Aug. 21, 2019) (Gilstrap, J.) (citing *U.S. ex rel. Adrian v. Regents of Univ. of California*, 363 F.3d 398, 403 (5th Cir. 2004) for the proposition that leave to amend should be granted before dismissing with prejudice).

And, with respect to willfulness, because underlying facts related to willfulness are uniquely in the possession of Skechers (and, indeed, are likely in confidential communications that have not yet been produced), the Court should not dismiss with prejudice because HFL should be permitted to uncover relevant information during discovery on the issue (and amend the Complaint to conform to that evidence, in the event the Court dismisses pre-suit willfulness).

III. HFL Objects to Consideration of the Declaration and Exhibits Attached to Skechers' Motion

Although the declaration and exhibits attached to Skechers' motion, Dkt. 51-1–51-4, should not make any difference to the merits of the motion, HFL nevertheless objects to their consideration.[16] "In considering a motion to dismiss for failure to state a claim, a district court must limit itself to the contents of the pleadings, including attachments thereto." *Collins*, 224 F.3d at 498.

CONCLUSION

HFL respectfully requests that the Court deny Skechers' Motion.

Respectfully submitted,

Dated: January 26, 2026

/s/ Ryan Dykal

Ryan Dykal (60905 MO)
Eric Maurer (458100 DC)
Gina A. Rossman (*pro hac vice* pending)
Katrina Redmon (*pro hac vice* forthcoming)
BOIES SCHILLER FLEXNER LLP
1401 New York Ave NW
Washington, DC 20005
Telephone: 202-237-2727
Facsimile: 202-237-6131
rdykal@bsfllp.com
emaurer@bsfllp.com
grossman@bsfllp.com
kredmon@bsfllp.com

Melissa R. Smith
Texas Bar No. 24001351
GILLAM & SMITH, LLP
303 South Washington Avenue
Marshall, Texas 75670
Telephone: (903) 934-8450
Facsimile: (903) 934-9257
Email: melissa@gillamsmithlaw.com

[16] To the extent that Skechers cites to or attaches any additional extrinsic evidence in its Reply, HFL similarly objects.

David Boies (*pro hac vice*)
BOIES SCHILLER FLEXNER LLP
333 Main Street
Armonk, New York 10504
Telephone: 914-749-8201
dboies@bsfllp.com

Joshua Schiller (*pro hac vice* forthcoming)
BOIES SCHILLER FLEXNER LLP
55 Hudson Yards, 20th Floor
New York, New York 10001
Telephone: 212-446-2300
jjschiller@bsfllp.com

Counsel for Plaintiffs HandsFree Labs Licensing, LLC, FAST IP, LLC, and Kizik Design, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on this date.

Dated: January 26, 2026

/s/ Ryan Dykal
Ryan Dykal