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

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I. HFL Sufficiently Pled Infringement for the '101 Patent

1. Skechers' argument (at 2) that "Plaintiffs do not deny" failing to "allege a plausible infringement theory" is characteristic of its brief.[1] HFL's opposition *explicitly* stated it "plausibly pled" infringement, Dkt. 52 at 1, and devoted almost three pages to explaining how it did so, *id.* at 5–7.

What *actually* cannot be denied is that HFL "need not prove its [infringement] case at the pleading stage." *Bot M8 LLC v. Sony Corp. of Am.*, 4 F.4th 1342, 1352 (Fed. Cir. 2021) (quotations omitted); *see also Longhorn Auto. Grp., LLC v. Mitsubishi Motors Corp.*, 2025 WL 3706950, at *3 (E.D. Tex. Dec. 22, 2025) (Gilstrap, J.) (a plaintiff's complaint needs less detail to state a claim than for less tangible inventions). But that is precisely what Skechers would require.

In its opening brief, Skechers admitted that the Court must accept the Complaint's allegations as true, as the law requires. *Lormand v. US Unwired, Inc.*, 565 F.3d 228, 232 (5th Cir. 2009) (must "accept all factual allegations" as true). For instance, it devoted the first five pages of its section on the '101 patent to arguments that the Complaint included "irreconcilable internal inconsistencies" resulting in HFL "plead[ing] itself out of court." Dkt. 51 at 7 (simplified); *id.* at 5–9. But now that HFL has demonstrated the many flaws in that argument, Dkt. 52 at 8–10, Skechers has switched to disputing whether sufficient facts were pled.

2. Skechers now contends (at 2) that its "central" argument concerning the "pivoted about an axis" limitation is in one-paragraph buried near the end of the section on the '101 patent: that the accused shoes supposedly do not meet the limitation because (1) they have no axis (instead, the flexing occurs across the shoes' "entire" soles), (2) prior shoes had the same designs, and (3)

[1] Skechers' reply is filled with unsupported—and absurd—characterizations, such as Plaintiffs supposedly "acknowledg[ing] that their infringement theory" is implausible, and not "disput[ing] that the SAC alleges an infringement theory…that is implausible on its face." Dkt. 53 at 2.

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the patent could not possibly cover these designs. *Compare* Dkt. 53 at 1–2 *with* Dkt. 51 at 12. These arguments violate two cardinal principles: (1) "all factual allegations in the complaint" must be accepted "as true," *Lormand*, 565 F.3d at 232; and (2) "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).

Indeed, the Complaint clearly alleges that the accused shoes include a portion that is "pivoted about an axis," including with supporting text and pictures. Dkt. 44 at ¶¶ 28, 72; *id.* at ¶¶ 25–26. Skechers' purported "central" argument inappropriately relies on attorney representations of fact to refute these allegations, including by arguing: (a) what was "typical" for "most shoes" (*a fact issue*);[2] (b) whether the accused shoes have an axis (*a fact issue*), or instead have none and flex along the "shoe's entire sole" (*a fact issue*); and (c) what the patent "intended to capture" (*a claim construction issue*). Dkt. 53 at 1–2. The Complaint—not Skechers' attorney arguments about prior shoes and how the accused shoe flexes—controls. Dkt. 44 at ¶¶ 28, 72; *id.* at ¶¶ 25–26.

Putting aside the improper fact disputes in the motion, Skechers also engages in improper claim construction. *See* Dkt. 52 at 10–11 (citing cases concerning claim construction). Skechers protests that it is not construing the claims and that HFL "tellingly" does not say what Skechers' construction is. Dkt. 53 at 2. But Skechers clearly has *some* construction in mind, arguing—*without a single citation*—what the patent was "intended to capture." *Id.* at 2.

Skechers' attempt to argue (at 2–3) that it does not need to reveal its claim construction is also flawed. In *OBD*, the Court did not suggest that claim construction is unnecessary to grant a motion to dismiss based on non-infringement. Instead, in those rare circumstances where dismissal

[2] This is actually an argument regarding the scope of the prior art, of which Skechers cites none.

is appropriate (e.g., where the claims cannot plausibly cover the device), the court may then "engage in claim construction…." *OBD Sensor Sols. LLC v. Track What Matters, L.L.C.*, 2023 WL 1827922, at *2 (E.D. Tex. Jan. 20, 2023), *report and recommendation adopted*, 2023 WL 1818268 (E.D. Tex. Feb. 8, 2023) (Gilstrap, J.).[3] But here, Skechers admits it does not offer a claim construction, Dkt. 53 at 2; instead, it seeks dismissal based on an unspecified one. And more critically, its plausibility theory is also based on *factual* arguments found in neither the Complaint nor any judicially noticed materials: e.g., how shoes before the patent "typically" operated; and whether there is an axis or instead flexing along the "shoe's entire sole." Dkt. 53 at 1–2.

Skechers continues to miscite *Raylon*—this time, for the proposition that "'[c]laim construction is not needed." Dkt. 53 at 3. But in *Raylon* (which did not address a motion to dismiss) there was a *claim construction hearing*. *Raylon, LLC v. Complus Data Innovations, Inc.*, 700 F.3d 1361, 1365 (Fed. Cir. 2012). And the case was resolved based on a *rejection of plaintiff's* proposed *claim construction*. *Id.* at 1365, 1368. Skechers simply ignores this—and also HFL's description of why that case is not remotely similar. Dkt. 52 at 15. Aside from the fact that *Raylon* did not involve a motion to dismiss, HFL described in its opposition how the case involved a clearly-defined claim construction dispute—one in which the plaintiff's construction completely ignored explicit claim terms. *Id.* (citing *Raylon*, 700 F.3d at 1365, 1368).

3. Skechers' mischaracterization of HFL's opposition continues with its final flawed argument: that the Complaint offers a new theory of infringement effectively amending the infringement contentions. Dkt. 53 at 3–4. According to Skechers, HFL "avoid[ed]" discussing the issue and was "[u]nable to deny the facts," *id.*, because it annotated the figures in the Complaint

[3] *Ottah* is not to the contrary. *Ottah v. Fiat Chrysler*, 884 F.3d 1135, 1141–42 (Fed. Cir. 2018). In that case, the Federal Circuit engaged in claim construction. *Id.*

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with yellow boxes and red arrows like the ones in the infringement contentions, as illustrated below:

Dkt. 52 at 13

Skechers argues this is "telling," without explaining why. But as illustrated below, those red arrows and yellow boxes are the same as those used in the infringement contentions:

Dkt. 53 (Skechers' Reply) at 3

As explained in HFL's opposition, those yellow boxes and red arrows illustrate nothing more than what was already being described in the Complaint. Dkt. 52 at 12–14. The theory is not new. *Id.*

Finally, Skechers' reliance on the infringement contentions is improper because the Court "must limit itself to the contents" of the Complaint and its attachments. *Collins*, 224 F.3d at 498. Skechers' cases (at 4) do not deal with Rule 12(b)(6) motions to dismiss—and *Via Vadis* actually demonstrates how trivial Skechers' complaint is here. *Via Vadis, LLC v. Blizzard Ent., Inc.*, 2021 WL 9909457, at *1 (W.D. Tex. Apr. 27, 2021) (addressed motion to strike an exhibit to the Complaint; around the time of the infringement contentions, the parties' stipulated that "shifting"

involved data that "is copied," and five years later the plaintiffs attempted to change their theory to one where the shifting was "unrelated to any copymg [*sic*]"); *IDB Ventures, LLC v. Charlotte Russe Holdings, Inc.*, 360 F. Supp. 3d 541, 548 (E.D. Tex. 2018) (addressed whether leave should be granted to amend complaint).

II. HFL Sufficiently Pled Infringement for the '096 Patent

1. As detailed in HFL's opposition (at 16–17), Skechers' motion ignored the Complaint's description of the Swift Fit Delson's infringement. Dkt. 52 at 16–17. For that reason, Skechers' motion should be denied, and its new arguments on reply (Dkt. 53 at 4–5) about the shoe stricken and ignored.

2. Even if the new arguments are considered, Skechers' motion should still be denied because it ignores explicit allegations in the Complaint and instead relies on (a) the Court accepting Skechers' attorney arguments as evidence, (b) the Court accepting that evidence as "facts" that can overcome explicitly-pled allegations; and (c) misapplying the law to those "facts."

As to (a) and (b), Skechers' rote assertions (at 4–5) that certain "facts" alleged in its motion are undisputed is another misdirection. The *Complaint's* allegations must be accepted as true, *Lormand*, 565 F.3d at 232, not Skechers' attorney arguments (which cannot overcome the Complaint), *Collins*, 224 F.3d at 498. Here, Skechers argues (at 4) that dismissal is appropriate because the accused shoes do not include the claimed "second elastic element [that] does not extend to the top line of the upper." But the Complaint alleges the second elastic elements (the stretch laces) do ***not*** extend to the top line—and it includes pictures in support. Dkt. 44 ¶¶ 21, 63–64. Skechers' position (at 5–6)—that even though the shoe's elastic laces do not ordinarily extend to the topline, sometimes a user may stretch them there—improperly relies on attorney argument

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to contradict the Complaint's explicitly-pled facts.[4]

3. Moreover, even if all of Skechers' supposed "undisputed" facts were accepted as true, its motion should be denied because there still would be issues of fact and law precluding dismissal. Skechers (at 6) appears to dispute that the law 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). Its cases, however, are not to the contrary. Indeed, in *Ferguson* the Federal Circuit did not suggest that there were exceptions to this principle; instead, it merely found that the accused process did not even "sometimes accomplish[] the entire method of the claim." *Ferguson Beauregard/Logic Controls, Div. of Dover Resources, Inc. v. Mega Sys., LLC*, 350 F.3d 1327, 1346 (Fed. Cir. 2003).[5] Here, the Complaint unequivocally discloses accused products—such as the Swift Fit Delson—that have a configuration in which (1) the first and third elastic elements extend to the topline; and (2) the second elastic element does not so extend to the topline.

III. HFL Sufficiently Alleged Willful Infringement for the Five Patents that Are the Subject of Skechers' Motion ('101, '096, '325, '811, or '641)

1. Skechers continues its flawed "does-not-dispute" theme by arguing that HFL does not dispute there is a "complete absence" of allegations of pre-suit knowledge of the '101, '096, '325, '811, or '641 patents. Dkt. 53 at 6. That is incorrect. As HFL explained in its opposition, Dkt. 52 at 23–24, pre-suit willfulness (including knowledge), is pled and also can be inferred from the

[4] Skechers did not ask the Court to take judicial notice of any extrinsic evidence—nor could it have here.

[5] Skechers' other cases are no different. *See UltimatePointer, L.L.C. v. Nintendo Co., Ltd.*, 816 F.3d 816, 825 (Fed. Cir. 2016) (the accused "system does not infringe in *any* arrangement"); *Dynacore Holdings Corp. v. U.S. Philips Corp.*, 243 F. Supp. 2d 31, 41–42 (S.D.N.Y. 2003) (claim language that "*all*" data transmitted by "*each*" node are heard by "*all*" other nodes precluded claims from covering situation where nodes do not always hear the transmissions).

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totality of the circumstances alleged in HFL's Complaint, such as:

- HFL pioneered the hands-free shoe category, Dkt. 44 ¶¶ 3–4;
- Skechers' business model is copying the innovations of others, as evidenced by some of the evidence cited in the Complaint, *id.* ¶ 2;
- Skechers employees were "tasked with ***designing shoes with the infringing features while having knowledge of HFL's patent rights*** and the risk of infringement," *id.* ¶ 9 (emphasis added);
- Skechers monitored HFL's designs and patents, including by purchasing shoes from Kizik,[6] 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;[7]
- "With full knowledge of this and other HFL patents, Skechers has continued to make and sell infringing footwear," *id.* ¶ 8.

The Court must accept these allegations as true and "draw all reasonable inferences in the plaintiff's favor." *Lormand*, 565 F.3d at 232. And when that law is followed, the inferences from the totality of those allegations support that Skechers had "knowledge of HFL's patent rights" when it designed its shoes. Dkt. 44 ¶ 9.

Skechers ignores *Multimedia* (cited by HFL at Dkt. 52 at 24), where the Court gave weight to similar allegations. *Multimedia Techs. Pte. Ltd. v. LG Elecs. Inc.*, 2024 WL 1340360, at *3–4

[6] With respect to Skechers purchasing of Kizik shoes, Skechers (at 8) argues that there are no allegations that the shoes were marked with any of the patents that are the subject of Skechers' motion. But the point here is that Skechers is closely monitoring the Plaintiffs' new designs and IP.

[7] Skechers (at 8) correctly points out that the '006 patent is not the subject of its motion. Dkt. 53 at 8. But the point here is that this is an example of Skechers' monitoring of the patent portfolio. And, as noted above, three of the five patents Skechers challenges on pre-suit willfulness claim priority to the '006 patent.

(E.D. Tex. Mar. 1, 2024) (the Complaint's allegations of "knowledge based on [the defendant's] patent prosecution practices and [its] patent monitoring practices" should be given weight in finding "knowledge of the patents"), *report and recommendation adopted*, 2024 WL 1338080 (E.D. Tex. Mar. 28, 2024) (Gilstrap, J.). And Skechers (at 6, 8) continues to misapply *Touchstream* (and Skechers' other cited cases), where the plaintiff did not include the types of monitoring allegations that HFL alleges here. *Touchstream Techs., Inc. v. Altice USA, Inc.*, 2024 WL 1117930, at *3 (E.D. Tex. Mar. 14, 2024) (rejecting the plaintiff's inference argument because it "does not allege" the defendant "monitored" the plaintiff's "patent applications or portfolio").

2. In any event, because Skechers does not challenge pre-suit willfulness for the '006 patent, nor post-suit willfulness for any of the patents, the issue of willfulness is already in the case, and 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, Inc. v. Cisco Sys., Inc.*, 2023 WL 11987208, at *2–3 (E.D. Tex. Aug. 25, 2023) (Gilstrap, J.).[8]

Ironically, Skechers suggests HFL misleadingly "cut this quote short to avoid mentioning inducement." Dkt. 53 at 7. It is Skechers, however, that omits key context. First, HFL's brief explicitly stated that this quote was made "in the context of inducement claims." Dkt. 52 at 22. Second, and more importantly, while that sentence in *NetSocket* included the phrase, "inducing infringement," the Court grouped its discussion of inducing infringement and willful infringement together (because both require knowledge of the patent). *NetSocket*, 2023 WL 11987208, at *2–3. Indeed, this Court was addressing—in the *same* section—the defendant's argument that the

[8] HFL repeatedly cited to this Court's *NetSocket* opinion in its December 9, 2025, Opposition to Skechers' previous (now moot) motion to dismiss. Dkt. 35 at 1, 13, 15. Skechers ignored the case in its current opening brief, Dkt. 51, saving its discussion of it for reply.

Complaint insufficiently pled "pre-suit knowledge of the Asserted Patents" for both inducing infringement and willful infringement. *Id.* at *2 (emphasis added). Its rationale—that it would be "premature at this early stage in the proceedings to distinguish between pre-suit and post-filing conduct"—applied to both issues. *Id.* at *2–3.

3. In sum, there is no dispute that HFL's Complaint asserts pre-suit willfulness for the five patents, including that Skechers had "knowledge of HFL's patent rights" when it designed its shoes. Dkt. 44 ¶ 9. Otherwise Skechers could not have even filed its motion. HFL also contends (as explained above) that there are a number of pre-suit facts giving rise to an inference of pre-suit knowledge. And it is undisputed that willfulness (at a minimum, post-suit) is in the case for all of the asserted patents. Factual issues such as *when* Skechers first knew of the patents—which is uniquely within Skechers' knowledge—should be left to sort out in discovery.[9]

IV. HFL Sufficiently Pled Damages

The Complaint does not include a single allegation that the patentee or a licensee made or sold a product covered by an asserted patent. Dkt. 44. Therefore, HFL's allegations that there "are no marking requirements that have not been complied with"[10] for the patents is sufficient. *See Altair Logix LLC v. Asus Computer Int'l*, 2019 WL 1117535, at *2–3 (N.D. Cal. Mar. 11, 2019); *see also 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").

Skechers disagrees; it relies on paragraph nine of the Complaint, which alleges, *inter alia*, that Skechers monitored and copied the look and feel of some Kizik products and messaging. Dkt.

[9] 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.

[10] Dkt. 44 ¶¶ 36, 38, 40, 42, 44, 46, 49.

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53 at 9 (citing Dkt. 44 ¶ 9). But that allegation is part of several other paragraphs demonstrating that Skechers has a history of copying, and that it closely monitors HFL's products and intellectual property—allegations HFL relies on to draw an inference that the monitoring also logically included the asserted patents. Most critically, if Skechers' view is that paragraph nine is alleging that HFL made products under the asserted patents, then Skechers never should have filed its motion based on marking, because ***that same paragraph also states that the same "Kizik products" were "marked in compliance with 35 U.S. Code § 287***…." *Id.* ¶ 9 (emphasis added).

Skechers (at 9-10) also completely ignores *Longhorn*, which found sufficient an allegation similar in the level of detail to the one here. *Longhorn*, 2025 WL 3706950, at *6 ("has at all times complied with the marking provisions of 35 U.S.C. § 287"). And its attempts to distinguish *Altair* and apply *VirtaMove* are flawed. Skechers does not dispute that *Altair* found allegations like those here to be sufficient. *Altair*, 2019 WL 1117535, at *2–3. And it does not dispute that in *VirtaMove* (which it relies on), the Court granted the motion to dismiss because, unlike here, the plaintiff pled "that its [product] practiced the patent." *VirtaMove, Corp. v. Hewlett Packard Enter. Co.*, 2024 WL 4519761, at *5 (E.D. Tex. Oct. 17, 2024) (Gilstrap, J.). Skechers attempts to shoehorn the Complaint here into *VirtaMove* by arguing that, although HFL may not have explicitly alleged that its products practiced the patents, the Complaint "suggests" they do. Dkt. 53 at 10. But again, if that is Skechers' interpretation, then it never should have filed this motion because the paragraph with that supposed "suggestion" also alleges that those ***same*** products were ***"marked in compliance with 35 U.S. Code § 287***…." Dkt. 44 ¶ 9 (emphasis added).

* * * *

HFL respectfully requests that the Court deny Skechers' Motion.

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Respectfully submitted,

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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: February 9, 2026

/s/ Ryan Dykal
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