UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

HANDSFREE LABS LICENSING, LLC, ET AL.,	)	Civil Action No. 2:25-cv-00744-JRG
	)	
	)	JURY TRIAL DEMANDED
Plaintiffs,	)	
	)	
v.	)	
	)	
SKECHERS U.S.A., INC.,	)	
	)	
Defendant,		

SKECHERS U.S.A., INC.'S PRELIMINARY INVALIDITY CONTENTIONS

I. INTRODUCTION

Pursuant to P.R. 3-3, P.R. 3-4 and the Docket Control Order in the above-captioned case (Dkt. 47), Defendant Skechers U.S.A., Inc. provides these Preliminary Invalidity Contentions to Plaintiffs HandsFree Labs Licensing, LLC, FAST IP, LLC, and Kizik Design, LLC ("HFL" or "Plaintiffs") for the patents (the "Asserted Patents") and claims (the "Asserted Claims") identified as asserted in HFL's November 10, 2025 Infringement Contentions and the exhibits attached thereto.

A. Preliminary Statement

1. HFL's Infringement Contentions

These Preliminary Invalidity Contentions are provided without prejudice to any argument concerning the propriety or sufficiency of Plaintiffs' Infringement Contentions, which are deficient in multiple respects and in many instances lack sufficient information to understand the specific accused features and components and the alleged factual and evidentiary bases for Plaintiffs' infringement allegations. Among other things, the Infringement Contentions lack the specificity required by P.R. 3-1, fail to properly identify accused instrumentalities, and fail to adequately explain Plaintiffs' infringement theories for numerous limitations. Plaintiffs have prejudiced the Skechers ability to understand, for purposes of preparing these Preliminary Invalidity Contentions, what Plaintiffs allege to be the scope of the Asserted Claims or the Accused Products. Moreover, HFL has not adequately disclosed any doctrine of equivalents theory in its Infringement Contentions. In particular, HFL's contentions contain only a generic purported reservation of the rights to assert infringement under the doctrine of equivalents in the future:

> To the extent any element of any claim is not literally present in any Accused Functionality, HFL contends that each such element is present under the doctrine of equivalents. HFL reserves the right to supplement and/or amend its infringement contentions regarding the doctrine of equivalents in light of ongoing discovery and/or the Court's claim construction rulings.

HFL's Nov. 10, 2025 Infringement Contentions at 11. This is not a sufficiently articulated theory that Skechers can respond to in forming its defenses. *See* PR 3-1(d). Any attempt by HFL to present doctrine of equivalents arguments in the future would be severely prejudicial to Skechers. Accordingly, to the extent that HFL is later permitted by the Court to amend its Infringement Contentions to cure any deficiencies or to otherwise pursue any currently undisclosed theories, Skechers expressly reserves the right to supplement or amend these Preliminary Invalidity Contentions to address any such amendments.

2. Ongoing Discovery

These Preliminary Invalidity Contentions are based on Skechers current knowledge, understanding, and belief as to the facts and information available to it as of the date of these contentions. Skechers' investigation, including of prior art and grounds for invalidity, is ongoing, and additional discovery may require supplementation or amendment of these contentions. While Skechers has made a good-faith effort to provide a comprehensive list of prior art relevant to this case, discovery is ongoing, including from third-parties discussed herein, and Skechers reserves the right to modify or further supplement its prior art list and contentions at a later time with or based upon information that may be subsequently discovered from HFL or third parties. Furthermore, Skechers' invalidity positions will be the subject of expert testimony. Skechers bases these Preliminary Invalidity Contentions on its current knowledge and understanding of the Asserted Claims, Plaintiffs' Infringement Contentions, and the prior art, systems, and other facts and information available as of the date of these contentions.

Skechers reserves the right to supplement these Preliminary Invalidity Contentions, including, without limitation, by adding additional prior art and grounds of invalidity in accordance with the Federal Rules of Civil Procedure, the Local Rules, the Local Patent Rules, the Docket Control Order, Court order, or otherwise.

3. No Admissions

The claims of the Asserted Patents have not yet been construed. Skechers' Preliminary Invalidity Contentions are thus based in part on Plaintiffs' apparent claim construction positions that Plaintiffs have implied in their Infringement Contentions, to the extent such constructions are discernable. Skechers' Preliminary Invalidity Contentions thus may reflect alternative positions as to claim construction and scope, and comparisons of claim language to the prior art may be based on Plaintiffs' overbroad claim constructions and interpretations as implied in Plaintiffs' infringement contentions, which constructions and interpretations Skechers reserves the right to dispute. For example, Plaintiffs appear to incorrectly interpret numerous claim limitations in overbroad and sweeping ways in an attempt to read the claims on the Accused Products, which constructions if adopted would also make such claim limitations read on the prior art. By including prior art that anticipates or renders obvious claims based on Plaintiffs' apparent claim constructions or any other constructions, Skechers is not adopting Plaintiffs' claim constructions or any other constructions. Skechers' Preliminary Invalidity Contentions are made in a variety of alternatives and do not represent Skechers' agreement or view as to the meaning, definiteness, written description support for, or enablement of any claim or term. Further, to the extent that any of the prior art discloses the same or similar functionality or feature(s) of any of the Accused Products, Skechers reserves the right to argue that said feature or functionality does not practice any limitation of any of the asserted claims, and to argue, in the alternative, that if said feature or functionality is found to practice any limitation of any of the asserted claims, then the prior art reference teaches the limitation and that the claim is invalid. Nothing herein should be construed as an admission regarding infringement, claim construction, or the scope of any claim.

4. Claim Construction

Skechers reserves the right to supplement or otherwise amend these Preliminary Invalidity Contentions in response to any proposed claim constructions or alleged supporting evidence offered by Plaintiffs, any report from any expert witness for Plaintiffs regarding claim construction issues, any claim construction briefing filed by Plaintiffs, and any position taken by Plaintiffs concerning claim construction, infringement, or invalidity.

Skechers takes no position on any matter of claim construction in these Preliminary Invalidity Contentions. If any contention, allegation, position, or statement expressed herein is consistent with any explicit, apparent, or implied claim constructions in the Infringement Contentions, no inference should be drawn that the Skechers agrees with any of Plaintiffs' claim constructions. Any statement herein describing or tending to describe any claim element is provided solely for the purpose of understanding or applying the cited prior art. Skechers expressly reserves the right to (1) propose any claim construction Skechers considers appropriate, (2) contest any claim construction proposed by Plaintiffs, or (3) take positions with respect to claim construction issues that are inconsistent with, or even contradictory to, claim construction positions expressed or implied in these Preliminary Invalidity Contentions.

Prior art not included in these Preliminary Invalidity Contentions, whether or not now known to Skechers, may later become relevant depending on the claim constructions proposed by Skechers or Plaintiffs, or the Court's claim construction rulings. Skechers reserves all rights to supplement or modify the positions and information in these Preliminary Invalidity Contentions, including without limitation the prior art and grounds of invalidity set forth herein, pursuant to P.R. 3-6 after the Court has construed the Asserted Claims.

B. The Asserted Claims

According to their Infringement Contentions, Plaintiffs assert the following patents, claims, and priority dates:

Asserted Patent	Asserted Claims	Claimed Priority Date
11,633,006 (the "'006 Patent")	1	July 29, 2019
12,274,325 (the "'325 Patent")	1-9	July 29, 2019
11,871,811 (the "'811 Patent")	1-10, 12[1]	July 29, 2019
12,121,096 (the "'096 Patent")	13-21, 26-27	July 29, 2019
12,458,101 (the "'101 Patent")	7-12, 16-18	Nov. 12, 2009
12,471,660 (the "'660 Patent")	1-2, 6-9, 11-14, 15-16, 17-19[2]	July 29, 2019
D1,037,641 (the "D'641 Patent")	1	December 19, 2019

Each Asserted Claim of the Asserted Patents is invalid under one or more of at least 35 U.S.C. §§ 102, 103, and 112. Pursuant to the Local Patent Rules, Skechers does not provide contentions regarding any claims not asserted by Plaintiffs, but to the extent the Court permits Plaintiffs to assert additional claims in the future, Skechers reserves all rights to amend or supplement these Preliminary Invalidity Contentions or to otherwise disclose new or supplemental invalidity contentions regarding such claims. Further, as discovery is ongoing, Skechers reserves the right to amend, revise, or supplement the information provided herein, including by identifying, charting, or relying on additional references, should discovery yield additional information or references.

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[1] HFL purported to assert, in its Infringement Contentions, claim 12 of the '811 Patent. Claim 12 of the '811 Patent recites "The rapid-entry shoe of claim 10, wherein the plurality of elastic elements includes a longitudinal axis that conforms to a shape of a curvature of at least a portion of the upper." However, the claim language included in HFL's claim charts reads "The rapid-entry shoe of claim 10, wherein at least a portion of the plurality of elastic elements define at least a portion of the side portion of the upper," which is claim 13 of the '811 Patent. Accordingly, Skechers understands HFL to have asserted claim 13.

[2] HFL purported to chart, among others, claims 16, 17, 19, 20, and 21 of the '660 Patent. HFL's claim numbering was based on the allowed claims of the application that issued as the '660 Patent. Following issuance, the claim numbering changed. In particular, HFL's chart for claim 16 corresponds to claim 15 of the '660 Patent, for 17 corresponds to 16, for 19 corresponds to 17, 20 corresponds to 18, and 21 corresponds to 19.

C. Priority Dates

It is HFL's burden to show that the Asserted Claims are entitled to their claimed priority dates, and Skechers contends that HFL has failed to and cannot meet that burden.

"[F]or a claim in a later filed nonprovisional application to be entitled to the benefit of the filing date of the provisional application, the written description and drawing(s) (if any) of the provisional application must adequately support and enable the subject matter of the claim in the later filed nonprovisional application." MPEP 211.05(I)(A); *New Railhead Mfg., L.L.C. v. Vermeer Mfg. Co.*, 298 F.3d 1290, 1294 (Fed. Cir. 2002) ("[T]he specification of the provisional must 'contain a written description of the invention and the manner and process of making and using it, in such full, clear, concise, and exact terms,' 35 U.S.C. 112¶1, to enable an ordinarily skilled artisan to practice the invention claimed in the nonprovisional application."). Here, the '006, '325, '811, '096, and '660 Patents all claim priority to U.S. Provisional Patent Application No. 62/879,883. HFL has failed to show, and cannot show, that the Asserted Claims of the '006, '325, '811, '096, and '660 Patents are supported by this application. Similarly, the '101 Patent claims priority to U.S. Provisional Patent Application No. 61/260,621. HFL has failed to show, and cannot show, that the Asserted Claims of the '101 Patent are supported by this Application. Similarly, the D'641 Patent claims priority to PTC Application No. PCT/US2019/067437. HFL has failed to show, and cannot show, that the claim of the D'641 Patent is supported by this application.

Any reference to a "priority date" or "asserted priority date" in these Preliminary Invalidity Contentions refers to the priority dates alleged in Plaintiffs' Infringement Contentions. Reference to a "priority date" or an "asserted priority date" should not be construed to mean that Skechers agrees that any Asserted Claim is in fact entitled to such priority date, or that Plaintiffs have provided proper notice as to their contentions for a priority date. To the extent Plaintiffs allege that

any prior art relied on in these Preliminary Invalidity Contentions does not actually qualify as prior art to an Asserted Claim, Skechers reserves the right to rebut those allegations (e.g., by demonstrating an earlier critical date for the challenged prior art or a later priority date for a particular Asserted Patent or Asserted Claim). Likewise, to the extent Plaintiffs successfully establish an invention date before any of the prior-art references relied on by Skechers, then those references serve as evidence of obviousness, particularly, and/or contemporaneous invention by others.

D. Explanation of Prior Art Identifications and Citations Thereto

In these Preliminary Invalidity Contentions, Skechers identifies specific portions of prior art references that disclose the elements of the Asserted Claims. While Skechers has identified exemplary prior art references for each element, it does not necessarily identify every disclosure of the same element in each prior art reference. A person of ordinary skill in the art ("POSITA") would read a prior art reference as a whole and in the context of other publications, literature, and general knowledge in the field and would rely upon other information, including other publications and general scientific or engineering knowledge. Skechers therefore reserves the right to rely upon other unidentified portions of the prior art references and on other publications and prior art products and expert testimony to provide context and to aid understanding and interpretation of the identified portions of the prior art.

Skechers also reserves the right to rely upon (1) other portions of the cited prior art references, other publications, prior art products, and the testimony of experts to establish that the alleged inventions would have been obvious to a person of ordinary skill in the art, including on the basis of modifying or combining certain cited references; (2) all versions of a cited prior art publication (e.g., citations to an issued patent include the published patent application); (3)

admissions relating to prior art in the Asserted Patents or related patents, the prosecution history of the Asserted Patents or related patents, and other admissions or statements obtained during discovery; (4) foreign and domestic counterparts of any cited patents or published patent applications; (5) parent or provisional patents or ancestor patents or patent applications from which any of the patents or patent applications identified herein claim priority as continuation, divisional, or continuation-in-part applications.

Where Skechers identifies a particular figure in a prior art reference, the identification should be understood to encompass the caption and description of the figure as well as any text relating to the figure in the remainder of the prior art reference (e.g., for patent references, text in the specification and prosecution history). Similarly, where an identified portion of text refers to a figure or other material, the identification of the text should be understood to include the referenced figure or other material, and should further be understood to include all other references to such figure or other material in the prior art reference.

Skechers' identification of dates of publication, public use, sale, or other availability to the public are made based on currently available information and Skechers reserves the right to rely upon an earlier date should evidence supporting an earlier date be discovered.

All related prior art references that are themselves subparts or related documents of a broader set of documents, such as sections of a learned treatise or industry publication, should be considered a single prior art reference, as that is how a person of ordinary skill in the art would consider such related references.

II. PRIOR ART REFERENCES (P.R. 3-3(A))[3]

Skechers identifies the following prior art presently known to Skechers to anticipate or render obvious the Asserted Claims, as apparently construed or interpreted by HFL and to the best of Skechers' understanding, either expressly or inherently as understood by a person of ordinary skill in the art.[4]

Discovery is ongoing. If and when Skechers receives relevant information, it will timely supplement its invalidity contentions, as appropriate.

A. Prior Art Patents or Published Patent Applications

Number	Effective Filing Date	Issue/Publication Date
Chinese Design Patent No. 304936370 ("Wan")	6/4/2018	12/11/2018
Chinese Pub. No. 109393642 ("Hongren")	12/6/2019	3/1/2019
EM 003011501-0011 ("EM-Nike")	3/3/2016	9/9/2016
EM 003114537-0009 ("EM-Chiemsee")	5/6/2016	5/23/2016
EP No. 3,501,316 ("Hoying")	12/21/2018	6/26/2019
EU Design No. 003011501-0011 ("Nike")	3/3/2019	9/9/2016
German Utility Model 29809404 ("Ruloff")	5/13/1998	9/17/1998
Japanese Pub. No. 2004-236860 ("Kawase")	2/6/2003	8/26/2004
Japanese Pub. No. H11-127907 ("Koyama")	8/31/1997	5/18/1999
Japanese Pub. No. S64-8904 ("Aikawa")	6/30/1987	1/12/1989
Japanese Pub. No. WO2017/090195 ("Mikio")	11/27/2015	6/1/2017
Japanese Utility Model 3153220 ("Kim")	6/16/2009	8/27/2009
Japanese Utility Model 3212460 ("Takahashi")	5/31/2017	9/14/2017
Korean Pat. No. 10-2016091 ("Shin-091")	4/24/2019	8/29/2019

[3] To the extent one or more prior art patents, publications, or products are identified in the claim charts attached hereto but are not included in the tables and lists below, those prior art patents, publications, or products should also be considered as prior art.

[4] As set forth below, Skechers also contends that one or more limitations of the Asserted Claims are invalid as indefinite because the precise scope those limitations cannot be determined with reasonable certainty by a POSITA. Skechers' identification of prior art references that anticipate or render obvious the Asserted Claims is based on its best understanding of those terms as they have apparently been interpreted or construed by HFL in its Infringement Contentions.

Number	Effective Filing Date	Issue/Publication Date
Korean Pub. No. 10-2009-0093548 ("Lee")	2/29/2008	9/2/2009
Korean Pub. No. 2001-0105550 ("Baek")	5/16/2000	11/29/2001
Korean Pub. No. 20-2016-0002454 ("Shin-454")	1/5/2015	7/13/2016
Netherlands Pub. No. NL2000762C1 ("Snijders")	7/19/2007	1/20/2009
U.S. Pat. No. 1,018,652 ("Drechsler")	9/24/1910	2/27/1912
U.S. Pat. No. 1,686,175 ("Read")	8/11/1924	10/2/1928
U.S. Pat. No. 10,231,503 ("Greene")	1/12/2017	3/19/2019
U.S. Pat. No. 2,311,996 ("Parker")	11/28/1940	2/23/1943
U.S. Pat. No. 201,796 ("Dawes")	1/2/1878	3/26/1878
U.S. Pat. No. 287,312 ("Packard")	8/6/1883	10/23/1883
U.S. Pat. No. 3,693,270 ("Murray")	1/8/1971	9/26/1972
U.S. Pat. No. 3,972,136 ("Epstein")	2/28/1975	8/3/1976
U.S. Pat. No. 4,103,440 ("Lawrence")	8/15/1997	8/1/1978
U.S. Pat. No. 4,608,769 ("Sturlaugson")	9/28/1984	9/2/1986
U.S. Pat. No. 5,054,216 ("Lin-216")	4/19/1990	10/8/1991
U.S. Pat. No. 5,090,140 ("Sessa")	8/28/1989	2/25/1992
U.S. Pat. No. 5,189,814 ("Barma")	3/16/1990	3/2/1993
U.S. Pat. No. 5,430,961 ("Faulconer")	9/27/1991	7/11/1995
U.S. Pat. No. 5,946,825 ("Koh")	1/31/1997	9/7/1999
U.S. Pat. No. 7,877,901 ("Calderone")	5/3/2006	2/1/2011
U.S. Pat. No. 8,316,561 ("Jia")	10/10/2008	11/27/2012
U.S. Pat. No. 8,677,656 ("Nishiwaki")	9/30/20028	3/25/2014
U.S. Pat. No. 8,769,845 ("Lin-845")	1/18/2011	7/8/2014
U.S. Pat. No. 9,131,751 ("Koo-751")	5/13/2011	9/15/2015
U.S. Pat. No. 9,756,903 ("Koo-903")	5/13/2011	9/12/2017
U.S. Pat. No. 913,012 ("Jackson")	5/19/1908	2/23/1909
U.S. Pat. No. 12,029,276 ("Shin-276")	4/24/2019	7/9/2024
U.S. Pat. No. D301,657 ("Brown")	9/8/1987	6/20/1989
U.S. Pat. No. D404,194 ("Smith")	9/9/1996	1/19/1999
U.S. Pat. No. D496,152 ("Doxey")	11/19/2003	9/21/2004
U.S. Pat. No. D578,294 ("Mervar 1")	6/12/2008	10/14/2008
U.S. Pat. No. D579,186 ("Guichot")	6/3/2016	9/5/2017

Number	Effective Filing Date	Issue/Publication Date
U.S. Pat. No. D579,186 ("Mervar 2")	6/12/2008	10/28/2008
U.S. Pat. No. D687,622 ("Tzenos")	10/4/2012	8/13/2013
U.S. Pat. No. D690,091 ("Dombrow 1")	1/13/2012	9/24/2013
U.S. Pat. No. D690,092 ("Dombrow 2")	1/13/2012	9/24/2013
U.S. Pat. No. D796,832 ("Nethongkome")	12/22/2015	9/12/2017
U.S. Pat. No. D801,646 ("Townsend")	7/11/2015	11/7/2017
U.S. Pat. No. D856,653 ("Thompson")	7/21/2017	8/20/2019
U.S. Pat. No. D862,869 ("Simone")	12/1/2017	10/15/2019
U.S. Pat. No. D876,050 ("Eugene")	1/18/2018	2/25/2020
U.S. Pub. No. 2002/0066213 ("Wells")	1/22/2002	6/6/2002
U.S. Pub. No. 2002/0174568 ("Neiley")	4/30/2001	11/28/2002
U.S. Pub. No. 2006/003209 ("Kilgore")	8/11/2004	2/16/2006
U.S. Pub. No. 2008/0313929 ("Hoyt")	6/25/2007	12/25/2008
U.S. Pub. No. 2010/0319218 ("Auger")	6/22/2009	12/23/2010
U.S. Pub. No. 2012/0216422 ("Ikezawa")	11/16/2009	8/30/2012
U.S. Pub. No. 2013/0125420 ("Raghuprasad")	11/23/2011	5/23/2013
U.S. Pub. No. 2014/0259781 ("Sakai")	3/15/2013	9/18/2014
U.S. Pub. No. 2015/0013189 ("Hanak")	2/23/2013	1/15/2015
U.S. Pub. No. 2016/0007687 ("Surace")	7/9/2015	1/14/2016
U.S. Pub. No. 2017/0105485 ("Schenone")	10/16/2015	4/20/2017
U.S. Pub. No. 2017/0273404 ("Doenges")	6/12/2017	9/28/2017
U.S. Pub. No. 2020/0046066 ("DiFrancisco")	8/7/2019	2/13/2020
U.S. Pub. No. 2020/0068991 ("Steere")	8/30/2018	3/5/2020
U.S. Pub. No. 2020/0100560 ("Garcia")	9/28/2018	4/2/2020
WO 2009/089572 ("Somerville")	1/16/2008	7/23/2009
WO 2012/168956 ("Zago")	6/6/2011	12/13/2012
WO 2013/054358 ("Thaikattil")	10/12/2011	4/18/2013

Skechers may additionally rely upon the prosecution histories of the patents and patent applications listed above, as well as any related patents and patent applications and their prosecution histories. Such documents have substantially the same disclosures and the same

effective filing dates. Skechers may rely upon either document as evidence of the common disclosures.

B. Prior Art Products

The Asserted Claims, as apparently construed or interpreted by HFL and to the best of Skechers' understanding, are invalid based on public knowledge and uses or offers for sale or sales of products that are prior art under 35 U.S.C. § 102(a)(1). The following lists prior art products that invalidate the Asserted Claims under 35 U.S.C. § 102 and/or render the Asserted Claims obvious under 35 U.S.C. § 103, as apparently construed or interpreted by HFL and to the best of Skechers' understanding, and Skechers may rely upon all versions of the following prior art products commercially sold, offered for sale, publicly known or used before the priority dates of the Asserted Claims, including things as well as documents describing the same:

Product	Date of Public Use	Person or Entity Involved
ZX Flux	At least February 2017	Adidas
KT3	At least June 2018	Anta
Gel Nimbus 10	At least October 2011	Asics
Gel Nimbus 20	At least February 2018	Asics
Gel Delva	At least January 19, 2019	Asics
Gel Kayano 22	At least October 30, 2015	Asics
Gel Kayano 23	At least November 26, 2017	Asics
Gel Kayano Trainer Knit	At least March 3, 2017	Asics
Ultra Mid	At least October 21, 2011	Bogs Footwear
Launch 3	At least January 2016	Brooks
Adrenaline GTS 18	At least November 2017	Brooks
Ghost 12	At least July 1, 2019	Brooks
Chuck Taylor II All Star	At least January 1, 2019	Converse
Jungle Moc 2	At least January 2, 2019	Merrell
AirJordan 5 Retro	At least May 14, 2011	Nike

Kyrie 1	At least February 14, 2015	Nike
Kobe 11	At least August 31, 2016	Nike
Kobe Venomenon	At least January 3, 2015	Nike
Cloudsurfer	At least December 2018	On
Creeper	At least February 2017	Puma
Bikers	At least 2006	Skechers U.S.A., Inc.
Ultra Flex Bright Horizon (SN 12831 – Adults; SN 81553L – Kids)	At least February 2, 2018	Skechers U.S.A., Inc.
Bikers MC – Bellore (SN 49602)	At least February 28, 2019	Skechers U.S.A., Inc.
Glider Stretch Fit (SN 22722)	At least December 2016	Skechers U.S.A., Inc.
Summit Quick Lapse (SN 12985)	At least February 2019	Skechers U.S.A., Inc.
Glider - Electricity (SN 22708)	At least August 2015	Skechers U.S.A., Inc.
Flex Air Cooled Electra (SN 22877)	At least January 2016	Skechers U.S.A., Inc.
Stretch Fit Glider (SN 22718)	At least May 2015	Skechers U.S.A., Inc.
Empire - Sharp Thinking (SN 12418)	At least September 2017	Skechers U.S.A., Inc.
Flex Appeal 2.0 Mixed Media (SN 12903)	At least September 2017	Skechers U.S.A., Inc.
D'Lites (SN 11930)	At least May 2015	Skechers U.S.A., Inc.
Comfort / Serene / Lax (SN 4069)	At least 2002	Skechers U.S.A., Inc.
Comfort / Balladeer / Tenor (SN 4177)	At least 2002	Skechers U.S.A., Inc.
Comfort / Legends / Iliad (SN 4034)	At least 2002	Skechers U.S.A., Inc.
Don Juans (SN 4104)	At least 2002	Skechers U.S.A., Inc.
2012 Spine RPM	At least November 2012	Under Armour
Endure	At least December 2013	Under Armour
Speedform Gemini 3	At least January 2017	Under Armour
Micro G Neo Mantis	At least April 2014	Under Armour
Spine Rebel Storm	At least November 2012	Under Armour
Speedfit Hike	At least November 2014	Under Armour
Speedfit Hike Low	At least November 2015	Under Armour
Speedform Intake	At least February 2017	Under Armour
Zoom Vomero 5	At least November 11, 2011	Under Armour

On Cloud Runner	At least November 17, 2014	On
Ignite Netfit	At least November 2018	Puma

As understood by a person of ordinary skill in the art, product disclosures are often evidenced through materials describing real-world implementations, demonstrations, and uses of the products. Such materials—including presentations, blog posts, articles, documentation, videos, and similar materials, whether pre- or post-priority date—constitute evidence of how the disclosed products operated and were understood in the field. Skechers reserves the right to rely upon such materials, such as the exemplary documentation listed below, to illustrate or corroborate the disclosures of system and product references. Skechers further reserves the right to rely on such materials to establish the dates of public use of the products. Skechers further reserves the right to rely on physical samples of the products for any purpose, including as evidence of their disclosures, technical specifications, operations, and implementations, and any other purpose.

One or more witnesses from will testify that the products identified above were manufactured, sold, or offered for sale in the United States before the earliest priority date alleged by Plaintiffs. Moreover, one or more witnesses will testify regarding the features, technical specifications, and other aspects of the products identified above.

Skechers' positions with respect to these references are stated on information and belief, and are supported by the information and documents that will be produced by Skechers, HFL, or third parties. Because discovery is not complete, Skechers continues to investigate these products and other relevant products, including those used, sold, or offered for sale by HFL, third parties, and Skechers and will supplement these disclosures as appropriate.

C. Prior Art Publications

Title	Date of Publication	Author, Editor, and/or Publisher
Anta KT3 low Marvel	Jun. 28, 2018	Dunk Sneaker; YouTube
ANTA KT3 Low Performance Review	May 16, 2018	WearTesters
Asics Gel Kayano 22 Review	Nov. 26, 2017	Travis Trampe; RunningShoesGuru
Asics Gel Nimbus 20 Review	Feb. 8, 2018	Thomas Caughlan; RunningShoesGuru
ASICS Just Released Their Own Mid-Cut Knit Sneaker	Jan. 12, 2017	Patrick Johnson; Sneaker News
Asics Nimbus 10 Running Shoes Review	Oct. 21, 2011	Ruggero Loda; RunningShoesGuru
BOGS – Classic Ultra Mid Men	Nov. 5, 2014	Etrias; YouTube
BOGS – Mens Ultra Mid	Oct. 21, 2011	Planet Shoes; YouTube
Bogs Classic Ultra Mid 2 SKU:#7352041	Aug. 29, 2014	Shop Zappos; YouTube
Brooks Adrenaline GTS 18 - Running Shoe Overview	Oct. 27, 2017	Holabird Sports; YouTube
Brooks Adrenaline GTS 18 Review	May 2018	Matthew Klein; Doctors Of Running
Brooks Adrenaline GTS 18 Review	Dec. 4, 2018	Jon Ober; Running Shoes Guru
Brooks Adrenaline GTS 18 What are the Updates And Reviewed!	Oct. 23, 2017	Shea Winpigler; Holabird Sports
Brooks Ghost 12 Performance Review	July 12, 2019	Believe in the Run
Brooks Ghost 12 Shoe Review	Aug. 7, 2019	FueledByLolz
Brooks Launch 3 Review	Jan. 27, 2016	Lynn Clark; Running Shoes Guru
Brooks Running Ghost 12 Multi Tester Review- Ethereal Upper, More Down to Earth Ride	Jul. 11, 2018	Jeff Beck et al.; Road Trail Run
Designing, Cutting and Grading Boot and Shoe Patterns	1897	C. B. Hatfield
Fit ReviewFenty PumaRihanna VelvetCreepers	Jan. 2, 2017	PetitImpact
Footwear Design	2012	Aki Choklat

Handbook of Footwear Design and Manufacture	2013	A. Luximon; Woodhead Pub. Ltd.
How Shoes are Made	2018	Wade Motawi, Andrea Motawi
Klay Thompson Teams Up With the Avengers for the Anta KT3 Low 'Be A Champion'	Jun. 20, 2018	WearTesters
Knit it Up: Brands Weigh in On What Knit Uppers Have to Offer in Outdoor Styles.	Sept. 2018	Cara Griffin; Footwear Insight
Leaves from a Diary: Written While Serving in Co. E, 44 Mass., Dep't of No. Carolina, from September 1862 to June 1863	1878	John J. Wyeth
Merrell Jungle Moc 2.0	May 15, 2019	The House; YouTube
Merrell Jungle Moc 2.0 SKU: 9159034	Jan. 2, 2019	Shop Zappos; YouTube
Merrell Jungle Moc 2.0 SKU: 9159865	Jan. 3, 2019	Shop Zappos; YouTube
Neo-Tech Insulation	Aug. 15, 2014	BOGS Footwear; YouTube
Nike Zoom Vomero+5 Running Shoes Review	Nov. 11, 2011	Ruggero Loda; RunningShoesGuru
On Cloudsurfer (2018) Review	Jan. 13, 2019	Nick Harris-Fry; Coach
Puma Creepers Velvet Rihanna shoes	Feb. 1, 2017	Sneaker Man; YouTube
PUMA Introduces NETFIT Technology	May 6, 2017	Hypebeast
Puma Speed Ignite NetFit Performance Review	Jun. 8, 2017	Believe in the Run; YouTube
Review of the new ON CloudSurfer running shoes	Dec. 15, 2018	RunningForm; YouTube
Review: BOGS Ultra Mid Boot	Nov. 21, 2013	Richard Pestes; PezCycling News
Rihanna's Latest Fenty x PumaCreeper Is Here	Aug. 31, 2017	Channing Hargrove; Refinery29
Run Long and Light in the Asics GEL-Kayano 23!	Sept. 8, 2016	Fleet Feet
RunnerDude's Gear Review: Under Armour Spine RPM Running Shoe	Dec. 11, 212	RunnerDude's Blog
Shoe Material Design Guide	2018	Wade Motawi, Andrea Motawi
Shoe of the Week: Asics Kayano 22	Sept. 9, 2015	Charm City Run

Skechers Flat Knit Bungee Slip-On Sneakers - Sharp Thinking on QVC	May 21, 2017	QVC; YouTube
SKECHERS KIDS Ultra Flex - Bright Horizon 81553L (Little Kid-Big Kid)	Feb. 12, 2018	Shop Zappos; YouTube
Textbook of Footwear Manufacture	1953	J.R. Thornton, National Trade Press Ltd.
Textiles in Sport	2005	Rohan Shishoo; Woodhead Pub. Ltd.
The Book of the Feet: A History of Boots and Shoes	1847	J. Sparkes Hall
The Complete Footwear Dictionary, 2nd Edition	2000	William A. Rossi; Krieger Pub. Co.
The Science of Footwear	2013	Ravindra S. Goonetilleke; CRC Press

III. INVALIDITY UNDER 35 U.S.C. §§ 102 AND 103 (P.R. 3-3(B), (C))[5]

Individual bases for invalidity are provided below and in the attached claim charts. Each of the foregoing listed prior art documents, the underlying work, or the underlying apparatus or method qualifies as prior art under one or more sections of 35 U.S.C. § 102 or 35 U.S.C. § 103.

These Preliminary Invalidity Contentions are based on Skechers' present understanding of the Asserted Claims, the claim constructions Plaintiffs appear to be proposing in the Infringement Contentions, and the infringement theories Plaintiffs appear to be advancing based on the Infringement Contentions. As explained below and in the invalidity charts attached hereto, the Asserted Claims are invalid under 35 U.S.C. §§ 102 and/or 103, including under Plaintiffs' proposed claim constructions and apparent infringement theories. Skechers, however, expresses

[5] Each of utility-patent standards referenced herein to assess anticipation and obviousness under 35 U.S.C. §§ 102 and 103 are put forth in their design-patent equivalents as applicable to D'641. For example and without limitation, any reference to "claim limitations" refers to the overall appearance of the claimed design as depicted in D'641, and the accompanying claim charts encapsulate the overall visual impression of the claimed design as compared to the identified prior art under the ordinary observer standard. *See* 35 U.S.C. § 171; *see generally Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 668 (Fed. Cir. 2008).

no view in these Preliminary Invalidity Contentions as to the accuracy, correctness, or propriety of any of Plaintiffs' proposed claim constructions or apparent infringement theories. No inference should be drawn that the Skechers agrees with any of Plaintiffs' apparent claim construction theories or infringement theories, regardless of whether any contention, allegation, position, or statement expressed herein is consistent with any explicit, apparent, or implied claim constructions or infringement theory in the Infringement Contentions.

Although Skechers has identified exemplary citations for each prior art reference, these exemplary citations are solely for illustrative purposes and are not intended to be exhaustive, such that each and every disclosure in the same reference is not necessarily identified. Rather, in an effort to focus the issues, Skechers has generally cited representative portions of identified references, even where a reference may contain additional support for a particular claim element. In addition, POSITAs generally read a prior art reference as a whole and in the context of other publications and literature. Thus, to understand and interpret any specific statement or disclosure within a prior art reference, such persons would rely upon other information within the reference, along with other publications and their general scientific knowledge. Skechers may rely upon uncited portions of the prior art references and on other publications and expert testimony to provide context, and as aids to understanding and interpreting the portions that are cited. Skechers may also rely upon the prior art of record for any permissible purpose, including prior art discussed in the Asserted Patents' specifications, including to show that the Asserted Claims are anticipated or obvious, show the state of the art, show motivation to combine a reference with one or more other references, and to show the proper scope of the claims. Skechers may also rely upon uncited portions of the prior art references, other disclosed publications, and the testimony of experts to

establish that a POSITA would have been motivated to modify or combine certain of the cited references so as to render the claims obvious.

A. Anticipation

1. Introduction

The Asserted Claims are invalid as anticipated under 35 U.S.C. § 102 based on each of the prior art references identified above and in the included claim charts, which identify specific examples of where each limitation of the asserted claims is found in the prior art references, either expressly or inherently. As explained above, the cited portions of prior art references identified in the attached claim charts are exemplary only and representative of the content and teaching of the prior art references, and should be understood in the context of the reference as a whole and as they would be understood by a POSITA.

To the extent any item of prior art cited above is deemed not to disclose, explicitly or inherently, any limitation of an Asserted Claims, Skechers reserves the right to argue that any difference between that prior art and the limitation would have been either inherent to the art, or obvious, even if Skechers has not specifically stated that the art is to be combined with the knowledge of a POSITA.

Additionally, wherever a reference is identified as anticipating an Asserted Claim, Skechers reserves the right to further rely upon any other reference identified herein (1) to prove the reference contains an enabling disclosure; (2) to explain the meaning of a term used in the reference; (3) to show that a characteristic allegedly not disclosed in the reference is inherent; or (4) for any other applicable purpose. *See, e.g.*, M.P.E.P. § 2131.01; *Telemac Cellular Corp. v. Topp Telecom, Inc.*, 247 F.3d 1316, 1328 (Fed. Cir. 2001) ("[R]ecourse to extrinsic evidence is proper to determine whether a feature, while not explicitly discussed, is necessarily present in a reference."); *In re Baxter Travenol Labs.*, 952 F.2d 388, 390 (Fed. Cir. 1991) ("[E]xtrinsic

evidence may be considered when it is used to explain, but not expand, the meaning of a reference."); *Bristol-Myers Squibb Co. v. Ben Venue Lab'ys, Inc.*, 246 F.3d 1368, 1379 (Fed. Cir. 2001) ("Enablement of an anticipatory reference may be demonstrated by a later reference.").

2. Anticipation of the '006 Patent

The Asserted Claim of the '006 Patent, as apparently construed or interpreted by HFL and to the best of Skechers' understanding, is invalid as anticipated under 35 U.S.C. § 102 by at least each of the references addressed in the following charts:

Exhibit No.	Prior Art
006-1	Jungle Moc 2
006-2	Korean Pat. No. 10-2016091 ("Shin-091")
006-3	Chinese Pub. No. 109393642 ("Hongren")
006-4	Japanese Utility Model 3212460 ("Takahashi")
006-5	Japanese Utility Model 3153220 ("Kim")
006-6	Japanese Pub. No. WO2017/090195 ("Mikio")
006-7	U.S. Pat. No. 4,608,769 ("Sturlaugson")
006-8	U.S. Pat. No. 8,769,845 ("Lin-845")
006-9	EP No. 3,501,316 ("Hoying")
006-10	WO 2013/054358 ("Thaikattil")
006-11	WO 2012/168956 ("Zago")
006-12	Ultra Mid
006-13	Ultra Flex Bright Horizon (SN 12831 – Adults; SN 81553L – Kids)
006-14	U.S. Pub. No. 2020/0100560 ("Garcia")
006-15	U.S. Pub. No. 2020/0068991 ("Steere")
006-16	U.S. Pub. No. 2020/0046066 ("DiFrancisco")
006-17	U.S. Pub. No. 2017/0273404 ("Doenges")
006-18	U.S. Pub. No. 2017/0105485 ("Schenone")
006-19	U.S. Pub. No. 2016/0007687 ("Surace")
006-20	U.S. Pub. No. 2015/0013189 ("Hanak")
006-21	U.S. Pub. No. 2014/0259781 ("Sakai")
006-22	U.S. Pub. No. 2013/0125420 ("Raghuprasad")
006-23	U.S. Pub. No. 2012/0216422 ("Ikezawa")
006-24	U.S. Pub. No. 2010/0319218 ("Auger")
006-25	U.S. Pub. No. 2008/0313929 ("Hoyt")
006-26	U.S. Pub. No. 2006/003209 ("Kilgore")
006-27	U.S. Pub. No. 2002/0066213 ("Wells")
006-28	U.S. Pat. No. 913,012 ("Jackson")
006-29	U.S. Pat. No. 9,756,903 ("Koo-903")
006-30	U.S. Pat. No. 9,131,751 ("Koo-751")

Exhibit No.	Prior Art
006-31	U.S. Pat. No. 8,677,656 ("Nishiwaki")
006-32	U.S. Pat. No. 8,316,561 ("Jia")
006-33	U.S. Pat. No. 7,877,901 ("Calderone")
006-34	U.S. Pat. No. 5,946,825 ("Koh")
006-35	U.S. Pat. No. 5,189,814 ("Barma")
006-36	U.S. Pat. No. 5,090,140 ("Sessa")
006-38	U.S. Pat. No. 4,103,440 ("Lawrence")
006-39	U.S. Pat. No. 3,972,136 ("Epstein")
006-40	U.S. Pat. No. 3,693,270 ("Murray")
006-41	U.S. Pat. No. 287,312 ("Packard")
006-42	U.S. Pat. No. 201,796 ("Dawes")
006-43	U.S. Pat. No. 2,311,996 ("Parker")
006-44	U.S. Pat. No. 12,029,276 ("Shin-276")
006-45	U.S. Pat. No. 10,231,503 ("Greene")
006-46	U.S. Pat. No. 1,018,652 ("Drechsler")
006-47	Cloudsurfer
006-48	Summit Quick Lapse (SN 12985)
006-49	Stretch Fit Glider (SN 22718)
006-50	KT3
006-51	Korean Pub. No. 20-2016-0002454 ("Shin-454")
006-52	Japanese Pub. No. S64-8904 ("Aikawa")
006-53	Glider Stretch Fit (SN 22722)
006-54	Glider - Electricity (SN 22708)
006-55	Ghost 12
006-56	Gel Nimbus 20
006-57	Gel Nimbus 10
006-58	Flex Appeal 2.0 Mixed Media (SN 12903)
006-59	Flex Air Cooled Electra (SN 22877)
006-60	Empire - Sharp Thinking (SN 12418)
006-61	Don Juans (SN 4104)
006-62	D'Lites (SN 11930)
006-63	Creeper
006-64	Comfort / Serene / Lax (SN 4069)
006-65	Comfort / Legends / Iliad (SN 4034)
006-66	Comfort / Balladeer / Tenor (SN 4177)
006-67	Chuck Taylor II All Star
006-68	Bikers MC – Bellore (SN 49602)
006-69	Adrenaline GTS 18
006-70	Complete Footwear Dictionary
006-71	Bikers (SN 21426)

3. Anticipation of the '325 Patent

The Asserted Claims of the '325 Patent, as apparently construed or interpreted by HFL and to the best of Skechers' understanding, are invalid as anticipated under 35 U.S.C. § 102 by at least each of the references addressed in the following charts:

Exhibit No.	Prior Art
325-1	Jungle Moc 2
325-2	Korean Pat. No. 10-2016091 ("Shin-091")
325-3	Chinese Pub. No. 109393642 ("Hongren")
325-4	Japanese Utility Model 3212460 ("Takahashi")
325-5	Japanese Utility Model 3153220 ("Kim")
325-6	Japanese Pub. No. WO2017/090195 ("Mikio")
325-7	U.S. Pat. No. 4,608,769 ("Sturlaugson")
325-8	U.S. Pat. No. 8,769,845 ("Lin-845")
325-9	EP No. 3,501,316 ("Hoying")
325-10	WO 2013/054358 ("Thaikattil")
325-11	WO 2012/168956 ("Zago")
325-12	Ultra Mid
325-13	Ultra Flex Bright Horizon (SN 12831 – Adults; SN 81553L – Kids)
325-14	U.S. Pub. No. 2020/0100560 ("Garcia")
325-15	U.S. Pub. No. 2020/0068991 ("Steere")
325-16	U.S. Pub. No. 2020/0046066 ("DiFrancisco")
325-17	U.S. Pub. No. 2017/0273404 ("Doenges")
325-18	U.S. Pub. No. 2017/0105485 ("Schenone")
325-19	U.S. Pub. No. 2016/0007687 ("Surace")
325-20	U.S. Pub. No. 2015/0013189 ("Hanak")
325-21	U.S. Pub. No. 2014/0259781 ("Sakai")
325-22	U.S. Pub. No. 2013/0125420 ("Raghuprasad")
325-23	U.S. Pub. No. 2012/0216422 ("Ikezawa")
325-24	U.S. Pub. No. 2010/0319218 ("Auger")
325-25	U.S. Pub. No. 2008/0313929 ("Hoyt")
325-26	U.S. Pub. No. 2006/003209 ("Kilgore")
325-27	U.S. Pub. No. 2002/0066213 ("Wells")
325-28	U.S. Pat. No. 913,012 ("Jackson")
325-29	U.S. Pat. No. 9,756,903 ("Koo-903")
325-30	U.S. Pat. No. 9,131,751 ("Koo-751")
325-31	U.S. Pat. No. 8,677,656 ("Nishiwaki")
325-32	U.S. Pat. No. 8,316,561 ("Jia")
325-33	U.S. Pat. No. 7,877,901 ("Calderone")
325-34	U.S. Pat. No. 5,946,825 ("Koh")
325-35	U.S. Pat. No. 5,189,814 ("Barma")
325-36	U.S. Pat. No. 5,090,140 ("Sessa")

Exhibit No.	Prior Art
325-38	U.S. Pat. No. 4,103,440 ("Lawrence")
325-39	U.S. Pat. No. 3,972,136 ("Epstein")
325-40	U.S. Pat. No. 3,693,270 ("Murray")
325-41	U.S. Pat. No. 287,312 ("Packard")
325-42	U.S. Pat. No. 201,796 ("Dawes")
325-43	U.S. Pat. No. 2,311,996 ("Parker")
325-44	U.S. Pat. No. 12,029,276 ("Shin-276")
325-45	U.S. Pat. No. 10,231,503 ("Greene")
325-46	U.S. Pat. No. 1,018,652 ("Drechsler")
325-47	Cloudsurfer
325-48	Summit Quick Lapse (SN 12985)
325-49	Stretch Fit Glider (SN 22718)
325-50	KT3
325-51	Korean Pub. No. 20-2016-0002454 ("Shin-454")
325-52	Japanese Pub. No. S64-8904 ("Aikawa")
325-53	Glider Stretch Fit (SN 22722)
325-54	Glider - Electricity (SN 22708)
325-55	Ghost 12
325-56	Gel Nimbus 20
325-57	Gel Nimbus 10
325-58	Flex Appeal 2.0 Mixed Media (SN 12903)
325-59	Flex Air Cooled Electra (SN 22877)
325-60	Empire - Sharp Thinking (SN 12418)
325-61	Don Juans (SN 4104)
325-62	D'Lites (SN 11930)
325-63	Creeper
325-64	Comfort / Serene / Lax (SN 4069)
325-65	Comfort / Legends / Iliad (SN 4034)
325-66	Comfort / Balladeer / Tenor (SN 4177)
325-67	Chuck Taylor II All Star
325-68	Bikers MC – Bellore (SN 49602)
325-69	Adrenaline GTS 18
325-70	Complete Footwear Dictionary
325-71	Adidas ZX Flux
325-72	Vomero 5
325-73	Launch 3
325-74	Bikers (SN 21426)
325-75	EM 003011501-0011 ("EM-Nike")
325-76	EM 003114537-0009 ("EM-Chiemsee")

4. Anticipation of the '811 Patent

The Asserted Claims of the '811 Patent, as apparently construed or interpreted by HFL and to the best of Skechers' understanding, are invalid as anticipated under 35 U.S.C. § 102 by at least each of the references addressed in the following charts:

Exhibit No.	Prior Art
811-1	Jungle Moc 2
811-2	Chinese Pub. No. 109393642 ("Hongren")
811-3	Japanese Utility Model 3212460 ("Takahashi")
811-4	Japanese Utility Model 3153220 ("Kim")
811-5	Japanese Pub. No. WO2017/090195 ("Mikio")
811-6	U.S. Pat. No. 4,608,769 ("Sturlaugson")
811-7	U.S. Pat. No. 8,769,845 ("Lin-845")
811-8	EP No. 3,501,316 ("Hoying")
811-9	WO 2013/054358 ("Thaikattil")
811-10	WO 2012/168956 ("Zago")
811-11	Ultra Mid
811-12	Ultra Flex Bright Horizon (SN 12831 – Adults; SN 81553L – Kids)
811-13	U.S. Pub. No. 2020/0100560 ("Garcia")
811-14	U.S. Pub. No. 2020/0068991 ("Steere")
811-15	U.S. Pub. No. 2020/0046066 ("DiFrancisco")
811-16	U.S. Pub. No. 2017/0273404 ("Doenges")
811-17	U.S. Pub. No. 2017/0105485 ("Schenone")
811-18	U.S. Pub. No. 2016/0007687 ("Surace")
811-19	U.S. Pub. No. 2015/0013189 ("Hanak")
811-20	U.S. Pub. No. 2014/0259781 ("Sakai")
811-21	U.S. Pub. No. 2013/0125420 ("Raghuprasad")
811-22	U.S. Pub. No. 2012/0216422 ("Ikezawa")
811-23	U.S. Pub. No. 2010/0319218 ("Auger")
811-24	U.S. Pub. No. 2006/003209 ("Kilgore")
811-25	U.S. Pub. No. 2002/0066213 ("Wells")
811-26	U.S. Pat. No. 913,012 ("Jackson")
811-27	U.S. Pat. No. 9,756,903 ("Koo-903")
811-28	U.S. Pat. No. 9,131,751 ("Koo-751")
811-29	U.S. Pat. No. 8,677,656 ("Nishiwaki")
811-30	U.S. Pat. No. 8,316,561 ("Jia")
811-31	U.S. Pat. No. 7,877,901 ("Calderone")
811-32	U.S. Pat. No. 5,189,814 ("Barma")
811-33	U.S. Pat. No. 5,090,140 ("Sessa")
811-35	U.S. Pat. No. 4,103,440 ("Lawrence")
811-36	U.S. Pat. No. 3,972,136 ("Epstein")
811-37	U.S. Pat. No. 287,312 ("Packard")

Exhibit No.	Prior Art
811-38	U.S. Pat. No. 201,796 ("Dawes")
811-39	U.S. Pat. No. 2,311,996 ("Parker")
811-40	U.S. Pat. No. 10,231,503 ("Greene")
811-41	Summit Quick Lapse (SN 12985)
811-42	Stretch Fit Glider (SN 22718)
811-43	Korean Pub. No. 20-2016-0002454 ("Shin-454")
811-44	Japanese Pub. No. S64-8904 ("Aikawa")
811-45	Glider Stretch Fit (SN 22722)
811-46	Glider - Electricity (SN 22708)
811-47	Flex Appeal 2.0 Mixed Media (SN 12903)
811-48	Flex Air Cooled Electra (SN 22877)
811-49	Empire - Sharp Thinking (SN 12418)
811-50	Don Juans (SN 4104)
811-51	Comfort / Serene / Lax (SN 4069)
811-52	Comfort / Legends / Iliad (SN 4034)
811-53	Comfort / Balladeer / Tenor (SN 4177)
811-54	Chuck Taylor II All Star
811-55	Bikers MC – Bellore (SN 49602)
811-56	Complete Footwear Dictionary
811-57	Bikers (SN 21426)

5. Anticipation of the '096 Patent

The Asserted Claims of the '096 Patent, as apparently construed or interpreted by HFL and to the best of Skechers' understanding, are invalid as anticipated under 35 U.S.C. § 102 by at least each of the references addressed in the following charts:

Exhibit No.	Prior Art
096-1	Jungle Moc 2
096-2	Korean Pat. No. 10-2016091 ("Shin-091")
096-3	Chinese Pub. No. 109393642 ("Hongren")
096-4	Japanese Utility Model 3212460 ("Takahashi")
096-5	Japanese Utility Model 3153220 ("Kim")
096-6	Japanese Pub. No. WO2017/090195 ("Mikio")
096-7	U.S. Pat. No. 4,608,769 ("Sturlaugson")
096-8	U.S. Pat. No. 8,769,845 ("Lin-845")
096-9	EP No. 3,501,316 ("Hoying")
096-10	WO 2013/054358 ("Thaikattil")
096-11	WO 2012/168956 ("Zago")
096-12	Ultra Mid
096-13	Ultra Flex Bright Horizon (SN 12831 – Adults; SN 81553L – Kids)
096-14	U.S. Pub. No. 2020/0100560 ("Garcia")

Exhibit No.	Prior Art
096-15	U.S. Pub. No. 2020/0068991 ("Steere")
096-16	U.S. Pub. No. 2020/0046066 ("DiFrancisco")
096-17	U.S. Pub. No. 2017/0273404 ("Doenges")
096-18	U.S. Pub. No. 2017/0105485 ("Schenone")
096-19	U.S. Pub. No. 2016/0007687 ("Surace")
096-20	U.S. Pub. No. 2015/0013189 ("Hanak")
096-21	U.S. Pub. No. 2014/0259781 ("Sakai")
096-22	U.S. Pub. No. 2013/0125420 ("Raghuprasad")
096-23	U.S. Pub. No. 2012/0216422 ("Ikezawa")
096-24	U.S. Pub. No. 2010/0319218 ("Auger")
096-25	U.S. Pub. No. 2008/0313929 ("Hoyt")
096-26	U.S. Pub. No. 2006/003209 ("Kilgore")
096-27	U.S. Pub. No. 2002/0066213 ("Wells")
096-28	U.S. Pat. No. 913,012 ("Jackson")
096-29	U.S. Pat. No. 9,756,903 ("Koo-903")
096-30	U.S. Pat. No. 9,131,751 ("Koo-751")
096-31	U.S. Pat. No. 8,677,656 ("Nishiwaki")
096-32	U.S. Pat. No. 8,316,561 ("Jia")
096-33	U.S. Pat. No. 7,877,901 ("Calderone")
096-34	U.S. Pat. No. 5,946,825 ("Koh")
096-35	U.S. Pat. No. 5,189,814 ("Barma")
096-36	U.S. Pat. No. 5,090,140 ("Sessa")
096-38	U.S. Pat. No. 4,103,440 ("Lawrence")
096-39	U.S. Pat. No. 3,972,136 ("Epstein")
096-40	U.S. Pat. No. 3,693,270 ("Murray")
096-41	U.S. Pat. No. 287,312 ("Packard")
096-42	U.S. Pat. No. 201,796 ("Dawes")
096-43	U.S. Pat. No. 2,311,996 ("Parker")
096-44	U.S. Pat. No. 12,029,276 ("Shin-276")
096-45	U.S. Pat. No. 10,231,503 ("Greene")
096-46	U.S. Pat. No. 1,018,652 ("Drechsler")
096-47	Cloudsurfer
096-48	Summit Quick Lapse (SN 12985)
096-49	Stretch Fit Glider (SN 22718)
096-50	KT3
096-51	Korean Pub. No. 20-2016-0002454 ("Shin-454")
096-52	Japanese Pub. No. S64-8904 ("Aikawa")
096-53	Glider Stretch Fit (SN 22722)
096-54	Glider - Electricity (SN 22708)
096-55	Ghost 12
096-56	Gel Nimbus 20
096-57	Gel Nimbus 10
096-58	Flex Appeal 2.0 Mixed Media (SN 12903)
096-59	Flex Air Cooled Electra (SN 22877)

Exhibit No.	Prior Art
096-60	Empire - Sharp Thinking (SN 12418)
096-61	Don Juans (SN 4104)
096-62	D'Lites (SN 11930)
096-63	Creeper
096-64	Comfort / Serene / Lax (SN 4069)
096-65	Comfort / Legends / Iliad (SN 4034)
096-66	Comfort / Balladeer / Tenor (SN 4177)
096-67	Chuck Taylor II All Star
096-68	Bikers MC – Bellore (SN 49602)
096-69	Adrenaline GTS 18
096-70	Complete Footwear Dictionary
096-71	Bikers (SN 21426)

6. Anticipation of the '101 Patent

The Asserted Claims of the '101 Patent, as apparently construed or interpreted by HFL and to the best of Skechers' understanding, are invalid as anticipated under 35 U.S.C. § 102 by at least each of the references addressed in the following charts:

Exhibit No.	Prior Art
101-1	German Utility Model 29809404 ("Ruloff")
101-2	Japanese Pub. No. 2004-236860 ("Suminosuke")
101-3	Japanese Pub. No. H11-127907 ("Toyomo")
101-4	Korean Pub. No. 10-2009-0093548 ("Lee")
101-5	Korean Pub. No. 2001-0105550 ("Baek")
101-6	Japanese Utility Model 3153220 ("Kim")
101-7	U.S. Pat. No. 287,312 ("Packard")
101-8	U.S. Pat. No. 913,012 ("Jackson")
101-9	U.S. Pat. No. 1,686,175 ("Read")
101-10	WO 2009/089572 ("Somerville")
101-11	U.S. Pub. No. 2002/0174568 ("Neiley")
101-12	U.S. Pub. No. 2002/0066213 ("Wells")
101-13	U.S. Pat. No. 5,054,216 ("Lin-216")
101-14	Japanese Pub. No. S64-8904 ("Aikawa")
101-15	U.S. Pat. No. 3,693,270 ("Murray")
101-16	U.S. Pat. No. 4,608,769 ("Sturlaugson")
101-17	U.S. Pat. No. 2,311,996 ("Parker")
101-18	Complete Footwear Dictionary
101-19	U.S. Pat. No. 5,946,825 ("Koh")
101-20	Bikers (SN 21426)
101-21	Comfort / Serene / Lax (SN 4069)
101-22	Comfort / Balladeer / Tenor (SN 4177)

Exhibit No.	Prior Art
101-23	Comfort / Legends / Iliad (SN 4034)
101-24	Don Juans (SN 4104)
101-25	U.S. Pub. No. 2008/0313929 ("Hoyt")
101-26	Netherlands Pub. No. NL2000762C1 ("Snijders")

7. Anticipation of the '660 Patent

The Asserted Claims of the '660 Patent, as apparently construed or interpreted by HFL and to the best of Skechers' understanding, are invalid as anticipated under 35 U.S.C. § 102 by at least each of the references addressed in the following charts:

Exhibit No.	Prior Art
660-1	Jungle Moc 2
660-2	Korean Pat. No. 10-2016091 ("Shin-091")
660-3	Chinese Pub. No. 109393642 ("Hongren")
660-4	Japanese Utility Model 3212460 ("Takahashi")
660-5	Japanese Utility Model 3153220 ("Kim")
660-6	Japanese Pub. No. WO2017/090195 ("Mikio")
660-7	U.S. Pat. No. 4,608,769 ("Sturlaugson")
660-8	U.S. Pat. No. 8,769,845 ("Lin-845")
660-9	EP No. 3,501,316 ("Hoying")
660-10	WO 2013/054358 ("Thaikattil")
660-11	WO 2012/168956 ("Zago")
660-12	Ultra Mid
660-13	Ultra Flex Bright Horizon (SN 12831 – Adults; SN 81553L – Kids)
660-14	U.S. Pub. No. 2020/0100560 ("Garcia")
660-15	U.S. Pub. No. 2020/0068991 ("Steere")
660-16	U.S. Pub. No. 2020/0046066 ("DiFrancisco")
660-17	U.S. Pub. No. 2017/0273404 ("Doenges")
660-18	U.S. Pub. No. 2017/0105485 ("Schenone")
660-19	U.S. Pub. No. 2016/0007687 ("Surace")
660-20	U.S. Pub. No. 2015/0013189 ("Hanak")
660-21	U.S. Pub. No. 2014/0259781 ("Sakai")
660-22	U.S. Pub. No. 2013/0125420 ("Raghuprasad")
660-23	U.S. Pub. No. 2012/0216422 ("Ikezawa")
660-24	U.S. Pub. No. 2010/0319218 ("Auger")
660-25	U.S. Pub. No. 2008/0313929 ("Hoyt")
660-26	U.S. Pub. No. 2006/003209 ("Kilgore")
660-27	U.S. Pub. No. 2002/0066213 ("Wells")
660-28	U.S. Pat. No. 913,012 ("Jackson")
660-29	U.S. Pat. No. 9,756,903 ("Koo-903")
660-30	U.S. Pat. No. 9,131,751 ("Koo-751")

Exhibit No.	Prior Art
660-31	U.S. Pat. No. 8,677,656 ("Nishiwaki")
660-32	U.S. Pat. No. 8,316,561 ("Jia")
660-33	U.S. Pat. No. 7,877,901 ("Calderone")
660-34	U.S. Pat. No. 5,946,825 ("Koh")
660-35	U.S. Pat. No. 5,189,814 ("Barma")
660-36	U.S. Pat. No. 5,090,140 ("Sessa")
660-38	U.S. Pat. No. 4,103,440 ("Lawrence")
660-39	U.S. Pat. No. 3,972,136 ("Epstein")
660-40	U.S. Pat. No. 3,693,270 ("Murray")
660-41	U.S. Pat. No. 287,312 ("Packard")
660-42	U.S. Pat. No. 201,796 ("Dawes")
660-43	U.S. Pat. No. 2,311,996 ("Parker")
660-44	U.S. Pat. No. 12,029,276 ("Shin-276")
660-45	U.S. Pat. No. 10,231,503 ("Greene")
660-46	U.S. Pat. No. 1,018,652 ("Drechsler")
660-47	Cloudsurfer
660-48	Summit Quick Lapse (SN 12985)
660-49	Stretch Fit Glider (SN 22718)
660-50	KT3
660-51	Korean Pub. No. 20-2016-0002454 ("Shin-454")
660-52	Japanese Pub. No. S64-8904 ("Aikawa")
660-53	Glider Stretch Fit (SN 22722)
660-54	Glider - Electricity (SN 22708)
660-55	Ghost 12
660-56	Gel Nimbus 20
660-57	Gel Nimbus 10
660-58	Flex Appeal 2.0 Mixed Media (SN 12903)
660-59	Flex Air Cooled Electra (SN 22877)
660-60	Empire - Sharp Thinking (SN 12418)
660-61	Don Juans (SN 4104)
660-62	D'Lites (SN 11930)
660-63	Creeper
660-64	Comfort / Serene / Lax (SN 4069)
660-65	Comfort / Legends / Iliad (SN 4034)
660-66	Comfort / Balladeer / Tenor (SN 4177)
660-67	Chuck Taylor II All Star
660-68	Bikers MC – Bellore (SN 49602)
660-69	Adrenaline GTS 18
660-70	Complete Footwear Dictionary
660-71	Bikers (SN 21426)

8. Anticipation of the D'641 Patent

The Asserted Claim of the D'64 Patent, as apparently construed or interpreted by HFL and to the best of Skechers' understanding, is invalid as anticipated under 35 U.S.C. § 102 by at least each of the references addressed in the following charts:

Exhibit No.	Prior Art
D641-1	U.S. Pat. No. D301,657 ("Brown")
D641-2	U.S. Pat. No. D690,091 ("Dombrow 091")
D641-3	U.S. Pat. No. D690,092 ("Dombrow 092")
D641-4	U.S. Pat. No. D496,152 ("Doxey")
D641-5	EM 003011501-0011 ("EM-Nike")
D641-6	EM 003114537-0009 ("EM-Chiemsee")
D641-7	U.S. Pat. No. D796,160 ("Guichot")
D641-8	U.S. Pat. No. D841,964 ("Kaiserworth")
D641-9	U.S. Pat. No. D578,294 ("Mervar 1")
D641-10	U.S. Pat. No. D579,186 ("Mervar 2")
D641-11	U.S. Pat. No. D796,832 ("Nethongkome")
D641-12	U.S. Pat. No. D862,869 ("Simone")
D641-13	U.S. Pat. No. D404,194 ("Smith")
D641-14	U.S. Pat. No. D856,653 ("Thompson")
D641-15	U.S. Pat. No. D801,646 ("Townsend")
D641-16	U.S. Pat. No. D687,622 ("Tzenos")
D641-17	Chinese Design Patent No. 304936370 ("Wan")
D641-18	AirJordan 5 Retro
D641-19	Endure
D641-20	Gel Delva
D641-21	Gel Kayano 22[6]
D641-22	Gel Kayano 23
D641-23	Gel Kayano Trainer Knit
D641-24	Ignite Netfit
D641-25	Kyrie 1
D641-26	Kobe 11
D641-27	Kobe Venomenon
D641-28	Launch 3
D641-29	Micro G Neo Mantis
D641-30	On Cloud Runner
D641-31	Speedfit Hike
D641-32	Speedfit Hike Low
D641-33	Speedform Gemini 3
D641-34	Speedform Intake

[6] References throughout to "Gel Kayano" include both of Gel Kayano 22 and Gel Kayano 23.

Exhibit No.	Prior Art
D641-35	Spine Rebel Storm
D641-36	Spine RPM
D641-37	Vomero 5
D641-38	Stretch Fit Glider (SN 22718)
D641-39	U.S. Pat. No. D876,050 ("Eugene")
D641-40	U.S. Pub. No. 2017/0273404 ("Doenges")

B. Obviousness

1. Introduction

To the extent any limitation is deemed not to be exactly met by an item of prior art, any purported differences are such that the claimed subject matter as a whole would have been obvious to a person of ordinary skill in the art at the time of the alleged invention, based on the state of the art and knowledge of those skilled in the art. The item of prior art therefore renders the relevant claims invalid for obviousness under 35 U.S.C. § 103.

In addition, the references identified above render one or more Asserted Claims obvious when the references are read in combination with each other by a person of ordinary skill in the art. Each and every reference identified is also relevant to the state of the art at the time of the alleged invention. Any of the references disclosed above may be combined to render obvious (and therefore invalid) each of HFL's asserted claims. Skechers may rely upon a subset of the above identified references or all of the references identified above for purposes of obviousness depending on the Court's claim construction, positions taken by HFL during this litigation, and further investigation and discovery. Skechers may rely upon combinations with any reference in the attached claim charts and any of the other references disclosed herein, including combinations with any of the patents, publications or products identified herein as prior art.

In particular, for each limitation of the Asserted Claims that Plaintiffs contend is not met by a particular reference, Skechers contends that the limitation, and claim as a whole, is rendered

obvious under 35 U.S.C. § 103 based on the reference alone, or the reference in combination with any one or more of: (1) the knowledge of a POSITA at the time of the alleged invention; (2) any admitted prior art, as explained in the Asserted Patent or discussed in its file history or in the file history of any related patent; (3) any of the other prior art references identified herein; (4) any of the prior art references charted for the claim limitation in any Skechers Invalidity Chart; and/or (5) any of the prior art references identified as disclosing the claim limitation in Skechers' Invalidity Combinations Chart for the Asserted Patent. The specific combinations of prior art that Skechers contends render the Asserted Claims obvious are readily determinable as described herein, which is the most efficient manner of identifying the combinations in light of the fact that Plaintiff has asserted 57 claims across 7 patents, and Plaintiffs' Infringement Contentions are deficient in multiple respects as previously described herein. Additionally, Skechers' obviousness grounds for each dependent claim incorporate the obviousness grounds for the claim(s) from which the dependent claim depends, in addition to any obviousness grounds identified in the charts for the dependent claim.

Skechers does not yet have the benefit of Plaintiffs' positions on the prior art, including what (if any) elements they contend are missing in each prior art reference, whether Plaintiffs agree that a reference is in fact prior art, and whether Plaintiffs agree that a person of ordinary skill in the art would be motivated to combine specific references. Skechers reserves the right to supplement these obviousness positions (including identifying additional prior art combinations and the associated reasons to combine) as discovery in the case progresses, including expert discovery.

2. Obviousness and Motivations to Combine

A claimed invention is unpatentable "if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the

effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains." 35 U.S.C. § 103. No showing of a specific motivation to combine prior art is required to combine the references disclosed for any asserted patent in this document and in the attached charts, as each combination of art would have yielded expected results and at most would simply represent a known alternative to one of skill in the art. *See B/E Aerospace, Inc. v. C&D Zodiac, Inc.*, 962 F.3d 1373, 1379 (Fed. Cir. 2020) ("[W]e affirm the Board's conclusion that the challenged claims would have been obvious because modifying the Admitted Prior Art/Betts combination to include a second recess was nothing more than the predictable application of known technology."); *Intercontinental Great Brands LLC v. Kellogg N. Am. Co.*, 869 F.3d 1336, 1344 (Fed. Cir. 2017); *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 415 (2007) (rejecting the "rigid" application of the teaching, suggestion, or motivation to combine test, and instead applying an "expansive and flexible" approach). Indeed, the Supreme Court has held that a person of ordinary skill in the art is "a person of ordinary creativity, not an automaton" and "in many cases a POSITA will be able to fit the teachings of multiple patents together like pieces of a puzzle." *KSR*, 550 U.S. at 420-21. There are numerous rationales for finding a claim obvious, such as:

A. Combining prior art elements according to known methods to yield predictable results;

B. Simple substitution of one known element for another to obtain predictable results;

C. Use of known technique to improve similar devices (methods, or products) in the same way;

D. Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;

E. "Obvious to try" – choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;

F. Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art;

G. Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

MPEP § 2143; *KSR*, 550 U.S. at 415-421. One or more of these rationales apply in considering the obviousness of the Asserted Patents.

As explained more fully below, and in the claim charts included herewith, the combinations of the prior art references identified in these Preliminary Invalidity Contentions would have been obvious because these references would have been combined using: known methods to yield predictable results; known techniques in the same way; a simple substitution of one known, equivalent element for another to obtain predictable results; and/or a teaching, suggestion, or motivation in the prior art generally. *See Wyers v. Master Lock Co*., 616 F.3d 1231, 1241 (Fed. Cir. 2010) ("It is simply a matter of common sense that the sleeve used in Down, in a towing attachment quite similar to a hitch receiver/tow bar arrangement, could be combined with a barbell-shaped hitch pin lock in order to address the known problem of different aperture sizes in standard hitch receivers and the shelf-space problem experienced by retailers."); *Agrizap, Inc. v. Woodstream Corp*., 520 F.3d 1337, 1344 (Fed. Cir. 2008) ("The asserted claims simply substitute a resistive electrical switch for the mechanical pressure switch employed by the Gopher Zapper," which "is a textbook case of when the asserted claims involve a combination of familiar elements according to known methods that does no more than yield predictable results." (citation omitted)); *Ruiz v. A.B. Chance Co*., 357 F.3d 1270, 1276 (Fed. Cir. 2004) (affirming the district court's

finding of "a motivation to combine because the two references address precisely the same problem of underpinning existing structural foundations" even though the record "does not feature an express written teaching in the art to make this combination"); *see also Ecolab, Inc. v. FMC Corp.*, 569 F.3d 1335, 1350 (Fed. Cir. 2009); *Intercontinental Great Brands*, 869 F.3d at 1344.

In addition, it would have been obvious to try combining the prior art references identified above because there were only a finite number of predictable solutions and/or because known work in one field of endeavor prompted variations based on predictable design incentives and/or market forces either in the same field or a different one. *See ACCO Brands Corp. v. Fellowes, Inc*., 813 F.3d 1361, 1367 (Fed. Cir. 2016) ("The ordinary artisan would then be left with two design choices: he could place the thickness sensor either above the presence sensor in the feed, so that the paper contacts the thickness sensor before the presence sensor, or below so that the paper contacts it after. Each of these two design choices is an obvious combination of prior-art elements." (citing *KSR*, 550 U.S. at 421)); *Bayer Pharma AG v. Watson Labs.*, Inc., 874 F.3d 1316, 1329 (Fed. Cir. 2017) ("While a skilled artisan may have preferred a delayed-release formulation over the claimed immediate-release formulation, 'that the prior art as a whole suggests the desirability of a particular combination need not be supported by a finding that the prior art suggests that the combination claimed ... is the preferred, or most desirable, combination.'" (quoting *In re Fulton*, 391 F.3d 1195, 1200 (Fed. Cir. 2004)); *KSR*, 550 U.S. at 419-20. Further, the combinations of the prior art references identified above and in the claim charts would have been obvious because the combinations represent known potential options with a reasonable expectation of success. *See Wyers v. Master Lock Co*., 616 F.3d at 1242.

Additional evidence that there would have been a motivation to combine the prior art references identified above includes the interrelated teachings of multiple prior art references; the

effects of demands known to the design community or present in the marketplace; the existence of a known problem for which there was an obvious solution encompassed by the Asserted Claims; the existence of a known need or problem in the field of the endeavor at the time of the alleged inventions; and the background knowledge that would have been possessed by a person of ordinary skill in the art. *See KSR*, 550 U.S. at 401 ("When a work is available in one field, design incentives and other market forces can prompt variations of it, either in the same field or in another. If a person of ordinary skill in the art can implement a predictable variation, and would see the benefit of doing so, § 103 likely bars its patentability. Moreover, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill."); *Arctic Cat Inc. v. Bombardier Recreational Prod. Inc*., 876 F.3d 1350, 1359-61 (Fed. Cir. 2017); *Intercontinental Great Brands*, 869 F.3d at 1344; *Unwired Planet, LLC v. Google Inc*., 841 F.3d 995, 1003 (Fed. Cir. 2016); *Norgren Inc. v. Int'l Trade Comm'n*, 699 F.3d 1317, 1322-23 (Fed. Cir. 2012).

The motivation to combine the teachings of the prior art references disclosed herein is also found in the references themselves and in: (1) the nature of the problem being solved; (2) the express, implied and inherent teachings of the prior art; (3) the knowledge of POSITAs; (4) the predictable results obtained in combining the different elements of the prior art; (5) the predictable results obtained in simple substitution of one known element for another; (6) the use of a known technique to improve similar devices, methods, or products in the same way; (7) the predictable results obtained in applying a known technique to a known device, method, or product ready for improvement; (8) the finite number of identified predictable solutions that had a reasonable expectation of success; and (9) known work in various technological fields that could be applied

to the same or different technological fields based on design incentives or other market forces. Specific examples of such motivations to combine or modify are outlined below, but are solely exemplary and are not meant to be exhaustive.

The exemplary obviousness combinations set forth in these contentions reflect Skechers' present understanding of the potential scope of the claims that HFL appears to be advocating and should not be seen as Skechers' acquiescence to HFL's interpretation of the patent claims. Skechers reserves the right to amend or supplement these contentions regarding anticipation or obviousness of the asserted claims based on further information from HFL, the Court, other courts or decisionmakers in parallel proceedings, or any other source, including any changes HFL makes to its Infringement Contentions, information discovered during discovery, arguments made and positions taken by HFL in connection with the Asserted Patents or related patents in parallel proceedings (including in any post-grant review of the Asserted Patents or the prosecution of any patent or patent application related to the Asserted Patents), or a claim construction ruling by the Court. Skechers reserves the right to amend or supplement these contentions to assert different support for each asserted limitation, to cite different portions of each reference in support of any invalidity theory, to assert different combinations, or to identify different references, as necessary. HFL has not identified what elements or combinations it alleges were not known to a person of ordinary skill in the art. Therefore, for any claim limitation that HFL alleges is not disclosed in a particular prior art reference, Skechers reserves the right to assert that any such limitation is either inherent in the disclosed reference or obvious to a person of ordinary skill in the art at the time of the alleged invention in light of the same, or that the limitation is disclosed in another of the references disclosed above and, in combination, would have rendered the asserted claim obvious.

Each of these combinations would have been obvious to try for a person of ordinary skill in the art. In the field of the Asserted Patents, there was a design need or market pressure to solve a problem and there were a finite number of identified, predictable solutions. A person of ordinary skill in the art would have had good reason to pursue the known options within his or her technical grasp including combinations of the disclosures in the accompanying claim charts. Each of these combinations is also the combination of familiar elements according to known methods and yields predictable results. In the field of the Asserted Patents, a great deal of prior research and product designs were available and design incentives and other market forces would prompt variations of it. Further reasons to combine the references identified in the accompanying claim charts include the nature of the problem being solved, the express, implied, and inherent teachings of the prior art, and the knowledge of a person of ordinary skill in the art that such combinations would have yielded predictable results, and that such combinations would have represented known alternatives to a person of ordinary skill in the art. For each combination, there is a teaching, suggestion, and motivation to combine both in the references to be combined themselves, as well as in the art generally that was known to a person of ordinary skill in the art. In any event, each limitation of the Asserted Claims is, and would have been at the time of the alleged invention, a simple design choice representing a predictable variation within the skill of a person of ordinary skill in the art. Moreover, each limitation of the Asserted Claims was well known in the art, including well-known to persons of ordinary skill in the art.

Much of the art cited in these Preliminary Invalidity Contentions reflects common knowledge and the state of the art at the time of the earliest filing date of the Asserted Patents. Skechers may rely upon additional citations, references, expert testimony, and other material to provide context or aid in understanding the cited portions of the references and/or cited features of

the systems. Skechers may also rely upon expert testimony explaining relevant portions of references, relevant products or systems, and other discovery regarding these subject matters, and further may rely upon expert evidence demonstrating a POSITA's motivation to modify or combine references. Such facts and evidence are expert testimony and will be presented in the experts' reports according to the schedule of the Court. Skechers incorporates by reference its forthcoming expert reports and any testimony of its experts presented according to the Court's schedule. Additionally, Skechers may rely upon other portions of any prior art reference or other references relied on by the same authors or describing the same systems for purposes of explaining the background and general technical subject area of the reference.

3. Obviousness of the '006 Patent

To the extent Plaintiffs allege that any prior art reference does not expressly or inherently anticipate the Asserted Claim of the '006 Patent, the Asserted Claim is invalid as obvious under 35 U.S.C. § 103 as set forth in the charts included herewith for the '006 Patent, including the charts pertaining to particular references ("Invalidity Charts," Exhibits 006-1 to 006-71) and combinations of references ("Invalidity Combinations Chart," Exhibit 006-C). Skechers may assert obviousness based on any identified reference alone, or in a combination with any one or more of: (1) the knowledge of a POSITA at the time of the alleged invention; (2) any admitted prior art, as explained in the '006 Patent or discussed in its file history or in the file history of any related patent; (3) any of the prior art references identified in the present document (hereinafter "Cover Pleading"); (4) any of the prior art references charted in any Skechers Invalidity Chart; and/or (5) any of the prior art references charted in Skechers' Invalidity Combinations Chart for the '006 Patent (Exhibit 006-C).

The '006 Patent purports to address the user experience of footwear during donning, wearing, or doffing. *See*, *e.g.*, '006 Pat. 1:25-28 ("Whether due to inconvenience or inability,

donning and doffing of shoes, including tying or otherwise securing the same, may be undesirable and/or present difficulties to some individuals. The present disclosure addresses this need."). The '006 Patent makes clear that the entire field of footwear design and development is relevant, regardless of any particular shoe type or use case. *See id.* at 4:8-15 ("As used herein, a 'rapid-entry shoe' refers to an athleisure shoe, a casual shoe, a formal shoe, a dress shoe, a heel, a sports/athletic shoe (e.g., a tennis shoe, a golf shoe, a bowling shoe, a running shoe, a basketball shoe, a soccer shoe, a ballet shoe, etc.), a walking shoe, a sandal, a boot, or other suitable type of shoe. Additionally, a rapid-entry shoe can be sized and configured to be worn by men, women, or children."). Accordingly, a person of ordinary skill would have been motivated to combine references that disclose footwear with improved fit features, enhancements to wearing comfort, and innovations in donning and doffing, regardless of whether those references are nominally directed towards a specific type of shoe or footwear use case.

A person of ordinary skill would have been motivated to combine the identified prior art references in a manner that would result in the subject matter claimed in the asserted claim of the '006 Patent because the references are in the same field and address the same technology, are directed to the same or similar design incentives or market pressures, and address the same or similar issues in the same or similar ways. *See, e.g.,*[7] Kim Abstract ("[Problem] To provide a shoe that can be easily put on and taken off by people who cannot bend down, such as elderly people, physically disabled people and pregnant women."); Shin-091 ¶ 1 ("The present invention relates

[7] Citations and motivations to combine provided hereunder are intended to provide examples of Skechers' contentions. Skechers reserves the right to rely upon (1) other portions of the cited references, (2) any other references identified herein, (3) other prior art references, (4) learned treatises and industry publications, (5) the background knowledge of a POSITA given the state of the art at the claimed priority date, and (6) expert testimony. Moreover, Skechers incorporates by reference the exemplary citations and motivations to combine identified in the sections for the other patents-in-suit.

to a functional footwear for easy wearing, and more particularly, to a functional footwear for easy wearing that can be easily worn by a wearer even without the wearer bending his or her lower back or using his or her hand when wearing the footwear."); Thaikattil 1:25-2:2 ("An object of this invention is to provide footwear that would still retain its semi flexible character but would resist buckling of the heel cap when the foot is inserted without the help of the hands. Another object of this invention is to propose an article of footwear provided with means for easy heel introduction into the heel cap - the foot being inserted with or without the help of the hands."); Jackson at p. 1, ln. 9-15 ("The present invention relates to an improved article of foot wear embodying a novel construction whereby the same may be easily and quickly placed in position upon the foot or removed therefrom and which has the further advantage of possessing a neat and attractive appearance."); Hongren ¶ 3 ("An object of the present invention is to provide a counter heel cup inserting device capable of easily achieving, when a user walks in shoes, a function of inserting into the shoes in 1 to 2 seconds, more facilitating put-on of the shoes, and further enhancing the convenience of putting on and taking off the shoes, while ensuring stability and comfort during walking."); Wells ¶ 1 ("The present invention relates to a shoe horn attachment for a shoe, in particular, to a shoe horn attachment that may easily be secured to a shoe and that, once fitted, guides the heel of a user as the user inserts a foot into the shoe. Such an attachment makes it easier for a user to put the shoe on, and also prevents damage to the shoe."); Sturlaugson 2:42-44 ("The present invention involves an improved shoe design which allows the wearer to easily step into the shoe while standing erect."); Epstein at 1:5-7 ("Generally speaking, this invention relates to all types of footwear constructions, and in particular, to shoes of the slip-on or blucher moccasin type."); Ikezawa ¶ 1 ("The present invention relates to a shoe with an improved fit property accommodating the movement of the heel during exercises including walking and running, and

more particularly to a shoe with an improved fit property accommodating the movement of the heel from foot-flat to take-off."); Sakai ¶ 5 ("An article of footwear is provided that has a resilient support structure located in the heel and vamp portions surrounding the foot opening so that the shoe retains its shape after the wearer's heel is inserted, without need to manually straighten either the heel portion or the vamp portion of the shoe."). As acknowledged or assumed in the background sections of these references, a person of ordinary skill would have been aware of the various needs and opportunities associated with slip-on footwear with improved fit features. Accordingly, a person of ordinary skill would have been motivated to consult these and other references, at least by virtue of the fact that they are all directed to among other things providing footwear with improved fit, ease of donning and doffing, and heel stability. A person of ordinary skill in the art would further appreciate that these references are concise descriptions of technology that the authors believed to be new or different, and would be motivated to combine their disclosure with other teachings in the field, as well as his or her background knowledge.

As another example, the prior art recognized numerous market pressures and design incentives favoring the development of shoes both incorporating elastic elements and stabilizer elements for easy entry into the shoe, such as the needs of persons who experience difficulty bending down, or the damage caused by the tendency of the rear portion of the shoe to bend or buckle inward when users don shoes. Sturlaugson, for example, teaches:

> A common problem present in most shoe designs, particularly Loafer-type designs, is that they do not permit the wearer to easily slip the shoe on and off while the wearer is standing. Attempts by a wearer, to put a shoe of a conventional design on while standing often cause the back (counter) and sides of the shoe to break down, making the shoe unattractive and uncomfortable. Further, the wearer's repeated attempts to put the shoe on while standing may cause the shoe leather to stretch so that the shoe no longer fits properly and, also, may destroy the finish of the shoe.

Sturlaugson at 1:9-19. *See also*, *e.g.*, Wells ¶ 2 ("The act of doing up the fastener requires the user to bend down, and this may be difficult for, for example, an elderly or disabled person. A lace-up

or buckle-up shoe is generally a very loose fit around the user's foot when it is not laced or buckled, so that it is dangerous to walk around with the fastening means not properly fastened."); Mikio ¶ 2 ("Generally, footwear includes types of footwear, such as business shoes and sneakers, which have a small shoe opening and require the untying and tying of shoelaces when putting them on or taking off, and types of footwear, such as loafers and slip-ons, which have a long, large opening and which can 30 be worn without shoelaces by using a shoehorn or by pulling up on a tag attached to the heel with a hand. In either case, bending over is required to put them on. This is a difficult motion for the elderly. A large shoe opening also makes it difficult for the foot to remain stable inside the footwear during walking. Therefore, footwear that has a small shoe opening and that can be put on without bending over has been proposed, featuring the following structures."); Kim ¶ 5 ("[I]t is necessary to hold the shoehorn body by hand when the heel is inserted into the shoe, and the user is required to bend down when putting on the shoe. Therefore, it is very inconvenient for users who cannot bend down, such as elderly people, physically disabled people and pregnant women. Furthermore, when taking off the shoe, the user bends down and pushes down the heel portion of the shoe to take off the shoe from the heel of the foot …. Therefore, also in this case, it is very inconvenient for users who cannot bend down, such as elderly people, physically disabled people and pregnant women."); Zago at 1 ("Putting on a shoe is an operation we learn when we are children and perform countless times in our lives. It is an apparently easy thing to do, but as we get older, it may become annoying and uncomfortable. Whether it is because of the weight we put on with age or improper lifestyles, or because of muscle pains due to a lack of body movement, the action of bending over to put on shoes is something we do every day, but is bothersome, which is true not only for the elderly."); Shin-091 ¶¶ 5-7 ("[T]here is a problem that the upper end of the heel counter is folded toward an inner side of the shoe or the wearer's foot is caught at the upper

end of the heel counter when the wearer wears the shoe. Accordingly, a shoe lace has been tightened and loosened, or fingers or an auxiliary tool such as a shoehorn have or has been used to facilitate wearing a shoe. However, in either of the above cases, there is an inconvenience because a wearer has to use his or her hand while bending the lower back or sitting. In particular, shoe wearing itself is not easy for patients who are not able to freely bend their lower back or use their hands."); Sessa 1:17-23 ("While shoe horns are handy when readily available, and serve to lengthen shoe life, they are too often not at the location where shoes are replaced onto the feet. Moreover, youngsters typically do not take the time or effort to locate or use them. Rather, they simply thrust their feet into the shoes, to the detriment of the shoe counter."); Thaikattil at 1:12-14 ("A common problem that is encountered when the foot is introduced without the help of the hands into foot tight footwear having a heel cap portion is the buckling of the semi flexible counter of the footwear on contact with the heel."); Hongren ¶ 2 ("When putting on or taking off ordinary shoes, it is usually necessary to tighten or loosen shoelaces or adjustment straps (hook-and-loop straps), or even to pull a woven heel strap of the shoe or use a shoehorn to assist in putting on the shoes, making the process of putting on and taking off quite troublesome."); Lin-845 at 1:11-29 ("Modem people are so busy in such a way that everything in living, including putting shoes on and taking them off, is requested to be done efficiently and conveniently. Therefore, many tools or skills that help putting on and taking off shoes are well developed. For example, when putting on a shoe that will cover widely the user's foot, some people have a habit of using a shoehorn or of pulling the tongue or the front of the shoe's top line for helping their foot in slipping into the shoe. When taking off a shoe, besides pulling, many people have a habit of treading on the counter at the rear of the shoe by the other foot so as to take off that shoe quickly. However, when taking any above-mentioned way, people will need to bend their backs and then touch the shoes or handle

shoehorns, which is not so convenient to busy people, not to mention people who can't bend their backs easily, such as old people, pregnant women, or patients with ankylosing spondylitis."); Sakai ¶¶ 2-3 ("Because of the way a loafer-type shoe is designed, the wearer often places pressure on the shoe back when slipping a foot into the shoe. This pressure can cause the shoe back to crumple under the wearer's heel, which in turn causes damage to the shoe and makes it more likely that the back portion will crumple in the future when the foot is inserted into the shoe…. Additionally, many people slip on regular closed heel shoes by leaving the laces untied or relatively loosely tied and forcibly inserting their foot so that they can easily slip their closed heel shoes on and off their feet without having to spend time tying their shoelaces or securing straps. Leaving laces untied or loosely tied detracts from the support provided by a shoe, and forcibly inserting the foot into the shoe can result in bending the heels down, causing the material forming the heels to deteriorate and lose support, ultimately destroying the shoes."). The nature of the problems to be solved—collapsing heel counters, deformation of the rear portion of the upper, or improved donning and doffing—would have led one of ordinary skill in the art to combine or modify references that disclose heel stabilizer elements with references that disclose elastic elements in the shoe upper, as such was a known technique yielding predictable results.

Indeed, the art had long recognized the advantages of incorporating elastic elements into the upper. Even in the 19th century, skilled artisans were well aware of the utility of incorporating elastic upper elements to ease entry and exit of the foot and to improve the wearing experience. For example, Hall explains:

> Shoes, to the contrary, and especially long-quartered ones, require a great effort from the muscles to be kept on, and this, when long applied, tires and weakens. The lace and button boots usually worn need not be described; they are very good and suitable to most feet, and, if cut well and lasted, properly, generally give comfort and satisfaction. The trouble, however, of lacing and unlacing, the tag coming off, the button breaking, or the shank hurting, the holes soon wearing out, and many

> other little annoyances, have all been experienced as *bores* by thousands who have worn that kind of boot. About ten years since I first thought of an elastic boot, that might possibly remedy in a great measure all these minor evils, and combine many advantages never possessed by any former boot…. After several experiments in wire and India-rub her, I succeeded in getting the exact elasticity required, and subsequent improvements in materials and workmanship, have combined to make the elastic boot the most perfect thing of its kind…. One of my earliest customers, a lady of great originality of thought and expression, first induced me to make it an article of universal sale, by saying: "These boots are the comfort of my life, if you were only to give them a sounding name-if you like, call them lazy boots and tum it into Greek-all the world will buy them, and you'll make your fortune…. The elastic clog is another improvement on the old mode of fastening with straps, buckles, and buttons; clogs on this principle are put on and taken off without any trouble or fastening, and by a very simple arrangement of a plush back, all chafing of the boot is avoided and great firmness secured, without a chance of their slopping.

Hall pg. 116-22; *see also id.* at p. 127-28 ("Travellers find these boots great comforts, they take up very little room in the portmanteau, are soon cleaned, and are on and off in an instant."); Hatfield pg. 67 ("The gore is shown by 'A.' There is no lacing to this shoe. It can be adapted to men's wear, or children's shoes, and is easy on the foot."). Footwear incorporating elastic elements, such as side gorings, were well known and conventional, with "Congress-gaiters" or "Congress boots" as one non-limiting example. *See, e.g.*, Packard 8-21; Rossi 18 ("congress. A low dress or comfort boot with leather upper an elastic gusset at the sides, usually with a pull strap in the back. Popular as a men's boot in the 19th and early 20th centuries. Sometimes known as a congress gaiter."); Wyeth pg. 6 ("We were rudely awakened and dragged from our bunks at six o'clock, very few being used to such early hours, except perhaps on 4th of July, and were expected to be on the parade ground before our eyes were fairly open. My advice is if you ever enlist again, start with buckle or congress boots, or none at all, don't wear laced ones. Why? Thereby hangs a tale. One man who wore laced boots was late, consequently had to fall in at the foot of the column. In a minute or two, around came the adjutant and some other officer, who wanted a man for guard. The man who was late at roll-call, was detailed of course. He went without a word; was posted on the

edge of a pond; his orders being—'Keep this water from being defiled, allow no privates to bathe here, let only the officers bathe *and the cooks draw water to cook with*.' The orders were fulfilled, but the poor guard was forgotten, and paced up and mostly down (as it was a pleasant grassy sward,) till eleven o'clock. That was his first experience of guard duty, and he always owed a grudge to the sergeant of that guard and his laced boots."). The contemporary Chelsea boot is another such example. *See*, *e.g.*, Choklat pg. 47 ("Chelsea boot: An ankle boot with side elastic gussets."). A person of ordinary skill in the art would have been motivated apply these known techniques to new footwear constructions for their predictable benefits of easier donning and doffing and improved wearing experience.

Developments in the art and competitive pressures would have also provided motivation to combine prior art in ways that would take advantage of those developments, such as ongoing innovation in biomechanics, smart textiles, elastomeric fabrics, cushioning elements, and other aspects of footwear. For instance, Shishoo explains:

> Design requirements of active and performance sportswear have produced designers with skills and knowledge in graphics, textiles and fashion to conceive aesthetically pleasing and ergonomically viable ranges which take advantage of the latest advances in functional and 'smart' textiles. Leading fashion designers have been quick to realize that the performance has actually become the aesthetics in sportswear. It is the fabrics and technology that set the trend. Incorporation of microfibres, breathable barrier fabrics, innovative stretch materials, intelligent textiles, interactive materials such as phase-change materials and shape-memory polymers, and wearable technology as a part of the functional design system in sportswear, will become routine in the product development process. The development of new materials and designs for sports footwear has created an extremely competitive market for footwear design. The needs of consumers for active sport and leisure are performance, protection and comfort related. The design concepts are based on biomechanical analysis related to the knowledge of foot morphology, anatomy and lower extremity mechanics. The use of lightweight, durable, and energy-absorbing and moisture/heat-regulating materials is becoming a critical factor for functional design in sports footwear. Microfibres, breathable membranes and coatings, moulded polyurethane, air cushions and various forms of gel capsule, elastomeric fabrics and phase-change materials (PCM) are becoming common features promoted in shoe design.

Shishoo at 5-6. Shishoo goes on to explain:

> The sportswear and sports footwear industry is one of the foremost innovators in the textile and clothing sector and has been a launch pad for many new ideas and concepts in material and product design…. We have been noticing a strong trend towards the combination of multi-functionality of materials and fashion in many items of sportswear and leisure clothing. The result has been the emergence of many different types of high-tech fabrics and garment designs with some remarkable performance properties. The sports clothing and footwear business have become very technically oriented, using highly functional textiles for specialized performances in different sports, e.g. good thermal properties for cold-weather sport; aero-dynamic properties for downhill skiing and swimming, breathable waterproofing for outdoor pursuits; strength and durability for sails. With the advent of intelligent textiles, functional design and wearable technology, innovative solutions have become the name of the game for the sportswear businesses. The performance sportswear of today has become a truly engineered product designed to fulfil the consumer's requirements of light weight, softness, injury-preventive, thermoregulatory, elastic, anti-microbial, durable, aesthetic, etc.

Id. at 7-8.

Moreover, the references teach familiar and complementary features selected from a set of known methods and techniques in the same field or endeavor used to improve similar devices in similar ways with predictable results. For example, a person of ordinary skill would have been motivated to incorporate an elastic element disposed at the side portion of the shoe that forms a portion of the shoe's topline and further extends to its sole, such that its expansion or deformation element enlarges the shoe's foot opening and contraction reduces its foot opening, and enables the shoe's forward portion to flex or pivot forward relative to its sole portion. The use of elastic upper elements was a known technique in footwear construction regularly selected by skilled artisans from a finite number of identified, predictable solutions for improved footwear fit properties and easier donning and doffing. For example, Hoying teaches:

> Zones on an upper may have predetermined characteristics to meet the needs of the user, desires of the designer, specifications of the developer and/or the requirements of a particular use. For example, zones may be defined to have a predetermined strength, elasticity, cushioning, permeability, water resistance, heat transfer capability, stiffness, and/or other desirable characteristics known in the art of shoe making.

Hoying ¶ 185. Hoying further explains:

> Areas of enhanced stretch may be found in all regions of the upper, for example, heel region 672 having collar zone 674, midfoot region 670 having instep zone 676, and forefoot region having vamp zone 678. Depending on the use of the shoe and/or the preferences of the wearer stretchability in various zones may vary. For example, as depicted in Fig. 24, vamp zone 678 and instep zone 676 may include multiple plies of an elastic yarn to provide stretch and/or recovery properties required. As the construction depicted in Fig. 24 is laceless, stretch and recovery properties of the instep zone and collar zone ensure proper fit of the shoe upper while allowing for entry of the foot.

Id. ¶ 383. A person of ordinary skill would have had a reasonable expectation of success in modifying and combining the references disclosed herein, at least because the use of elastic elements for improved footwear fit and donning and doffing was a known method in the art yielding predictable results and benefits. *See, e.g.*, Rossi pg. 73 ("Goring. A fabric woven with rubber threads to form an elastic material. Used in footwear in various applications. The main ones are as follows: Finger. Used mainly in high-front shoe styles. The goring is used between the lining and upper leather. Front. Concealed, with a top opening of not less than ¾ of an inch, applied at the shoe's throat or instep for a snug, clinging fit. Hidden. Hidden from view, such as the gore band over the instep and under the tongue on a loafer shoe. Side. Applied in V-shape or U-shape at the sides of the shoe."); Motawi, *Shoe Material Design Guide*, pg. 44 ("Aside from conventional woven or knit laces, there are many other ways to secure a shoe to your foot…. Of course, some shoes may not have any laces at all. The adjusting function may be Velcro straps or elastic goring."). Indeed, the prior art evidences ongoing innovation in the use of elastic elements in footwear construction for over a hundred years. *See, e.g.*, Rossi at 213 ("The pump received great impetus with the invention of elasticized goring in 1837 by J. Sparkes Hall, bootmaker to Queen Victoria. The new hug fit of the pump without benefit of fastenings delighted the queen and the pump rose rapidly in popularity."); Packard at ln. 49-54 ("The elastic gorings, united to the forward edges of the quarter, cause the latter to conform to the contour of the back of the foot, and so that

the quarter requires but little crimping or molding to adopt it to said contour."); Parker at p. 1, col. 1, ln. 45-52 ("The principal object of the present invention is to provide a shoe construction wherein the upper embodies elastically stretchable panels or gores and wherein the desired degree of elastic yield across the instep is assured without causing the top of the shoe to become loose during wear and without spoiling the fit at the ball and instep portions."). In particular, skilled artisans recognized the use of elastic upper elements in slip-on footwear to provide for easier donning and doffing, as well as improved footwear fit and securement. For example, Kim teaches:

> [W]hen putting on the shoe, the user first inserts, starting from the toes, the foot into the shoe, and then pushes the heel of the foot into the inside of the heel portion while sliding it along the heel guide portion. At this time, since the one pair of stretchable portions stretches, the opening of the shoe expands, and the heel can be easily placed at the inside of the heel portion. When shoes are taken off, using one foot to press the projecting portion of the other shoe and lifting up the other foot allows the other shoe to be taken off from the heel of the other foot. At this time, since the one pair of stretchable portions stretches, the opening of the shoe expands, allowing the shoe to be easily taken off.

Kim ¶ 8. Similarly, Steere teaches a variety of "fabric or knit material[s]," "elastic straps," "elastic inserts," and "lacing component[s]":

> As shown in the shoes 900 of FIG. 9, in other embodiments, the upper 910 may be made up of a fabric or knit material…. The fabric or knit material may be configured to be elastic such that it stretches around a user's foot in order to provide increased mobility and range of motion of the foot. The elasticity of the material may also allow the shoe to adequately grip the foot without the need for a lacing component. In some embodiments, a forefoot portion of the upper may be secured to the insole by elastic straps…. This forefoot portion of the upper may be secured to the insole of the shoe by elastic straps 1011 or other elastomeric elements that are stitched or otherwise permanently secured to the forefoot portion of the upper 1010 on one end and to the insole 1030 on the other end. In this way, the elastic may stretch to allow the forefoot of the upper 1010 to expand, e.g., in order for a wearer to fit their foot into the shoe. Once the wearer's foot is settled within the shoe, the elastic may contract, allowing the forefoot section of the upper 1010 to fit snugly against the wearer's foot…. In other embodiments, the lacing component 1100 may be in the form of elastic inserts placed in cut-outs in sections of the upper… These elastic inserts may allow the upper 1110 to stretch and the cavity 1150 to expand in order to fit a foot securely into the shoe. In other embodiments, a large rectangular elastic insert may be used, such that it extends across a midfoot portion of the upper from one lateral edge to the other.").

Steere ¶¶ 73-78. *See also, e.g.*, Lin-845 at 3:14-21 ("[D]uring aforesaid process of putting on or taking off the shoe 10, the elastic bands 24 can be stretched to enlarge the top line 29, so that the user can put on or take off the shoe 10 more smoothly. As a result, the shoe 10 is convenient for the user, especially for old people, pregnant women, or wounded people who can't bend their backs easily, to put on without bending his back and using his hand."); Sturlaugson at 2:1-8 ("A unique elastic gore is incorporated into Applicant's design …. This securing mechanism allows expansion of the shoe during entry and removal of the foot and causes the shoe to otherwise be in a recoiled configuration."); Takahashi ¶ 37 ("a pair of stretchable portions 13, 14 located on both the left side and the right side to allow the deformation of the upper 12"); Epstein at 1:51-57 ("At least a portion of at least one of said vamp portion means, plug means and securing means being formed of elastic material, the balance thereof being formed of an inner elastic material, whereby said elastic material imparts elastic stretchability to the forward portion of the foot wear construction to provide a foot-conforming fit."); Sakai ¶ 24 ("The shoe 10 also optionally includes elastic gore panels 40 disposed between the vamp portion 26 and the lateral and medial quarter portions 20. Each of the elastic gore panels 40 is preferably a generally triangular panel formed from a stretchable material. The gore panels 40 allow for additional stretch between the vamp portion 26 and the quarter portions 20, beneficially making the shoe 10 easier to put on and/or take off a wearer's foot.").

A person of ordinary skill would further have been motivated to include a stabilizer comprised of a rigid material at the rear portion of the shoe, comprising a base portion defining a closed cup extending completely between lateral and medial sides of the sole portion, and an elevated portion comprising a flare extending rearward to direct a foot into the shoe opening, wherein the curvature of the stabilizer extends progressively less between its lateral and medial

sides from the base portion toward the elevated portion. Stabilizers were a conventional, predictable feature of footwear design well before the claimed priority date of the '006 Patent and were regularly selected by skilled artisans to provide stability to the heel, reinforce the rear of the shoe, and to provide easy entry into the shoe. Given that such features had already been implemented in the prior art, a person of ordinary skill would have had a reasonable expectation of success in combining or modifying the above references. For example, Kim teaches:

> [A] heel guide portion is included which integrally projects from the upper end of the heel portion and curves in a slope to go backward as it goes upward, so when putting on the shoe, the user first inserts, starting from the toes, the foot into the shoe, and then pushes the heel of the foot into the inside of the heel portion while sliding it along the heel guide portion and, thereby allowing the user to easily put on the shoe without bending down.

Kim ¶ 13. *See also, e.g.*, Hongren ¶ 1 ("The present invention relates to a counter heel cup inserting device, and more particularly, to a counter heel cup inserting device capable of easily achieving, when walking in shoes, a function of inserting into the shoes in 1 to 2 seconds, facilitating put-on of the shoes, and further enhancing the convenience of putting on and taking off the shoes, while ensuring stability and comfort during walking."); Shin-091 ¶ 32 ("because the support member is formed of a hard material to prevent the heel counter from bending toward an inner side of the footwear due to an external force applied by the wearer, and the elastic member is elastically deformable forward and backward according to an external force applied by the user, the wearer can easily wear the footwear even without bending the lower back or using an auxiliary tool."); Doenges ¶ 57 ("As previously noted, the internal structural support member can be formed of any suitably rigid materials that can have a hardness (e.g., a Shore A hardness value) that is greater than any of the other fabric or foam layers within the fabric laminate forming portions of the upper. The support member/heel counter 420 can be flexible, semi-rigid or rigid and can be formed, e.g., from a suitable thermoplastic elastomer material such as EVA or PU so as to provide suitable

rearfoot stability, preventing injury and prolonging the life of the article of footwear."); Takahashi ¶ 26 ("In other words, by providing the heel portion with the counter that integrally has an inward-facing concave curved surface portion to support the person's heel, and providing the counter with the guide core portion that is used to maintain the shape of the guide portion, the ease of putting on a shoe can be further improved while maintaining the shape of the heel portion."); Lin-845 1:41-58 ("the present invention provides a shoe comprises an outsole, an upper that is attached on the outsole and has a counter and a collar extending upward from the counter and configured as a shoehorn, a supporting piece which is harder than the upper and attached to the counter and the collar of the upper, and a guiding piece which is harder than the upper and attached to an instep of the upper and having a part extending out of a top line of the upper. Since the supporting piece has a predetermined hardness and the collar is configured like a shoehorn, the rear of the upper is provided with a portion having a similar function to a shoehorn. The guiding piece is also useful for avoiding the instep from becoming crease and unsmooth. As a result, a user's foot is able to slide into the shoe along the aforesaid portion, so that the shoe is convenient for the user to put on without bending his back and using his hand."); Ikezawa ¶¶ 63-64 ("In a preferred embodiment of the present invention, a counter formed by a synthetic resin which is harder than the layered portion and which has a U-shaped horizontal cross section is secured to the outer skin, over an area from the back surface to medial and lateral side surfaces of the heel …. In such an embodiment, the hard U-shaped counter will not hinder the flexible cushioning material and the inner skin from conforming to the foot, and the hard counter helps the upper portion conform to the foot."); Stulaugson at 3:53-64 ("Shown more clearly in FIGS. 2 through 4 is a preferred form of the shoehorn shaped counter 6. It is constructed of a rigid material such as plastic, metal, stiffened leather or reinforced cardboard. Counter 6 is constructed so that it has a rear portion 20 which

conforms to the shape of the back of the shoe and two side portions 22 and 24 for reinforcing the shoe at the lateral heel portions of the quarter. Further, the counter has an upper portion 26 which angularly projects upward and outward from the shoe cavity 28 and which has a shape similar to that of a conventional heel-engaging shoehorn."); Thaikattil 1:12-15 ("A common problem that is encountered when the foot is introduced without the help of the hands into foot tight footwear having a heel cap portion is the buckling of the semi flexible counter of the footwear on contact with the heel. To overcome this disadvantage a rigid heel cap is provided in the prior art."). The prior art evidences ongoing innovation in the incorporation and construction of stabilizers in footwear construction for over a hundred years. *See, e.g.*, Rossi at 41 ("Counter. The stiffener or reinforcement at the back-part of the shoe to retain shoe shape and offer stability and support to the heel of the foot. The counter may range from soft to rigid."); Dawes at 1 ("My invention consists in providing a boot or shoe counter-stiffener with a tongue or projection to extend upward along the back seam, for the purpose of protecting the same and preventing the boot or shoe from breaking or cracking at that point."); Motawi, *Shoe Material Design Guide*, pg. 37 ("Reinforcements are quite often the hidden heroes inside of footwear that make a shoe design truly functional and practical. The internal reinforcements you select will allow your shoe to hold its shape, protect the foot, provide support, and stay together. The reinforcements are a significant factor in determining your shoes' performance, comfort, durability, and suitability for its designated task."). Moreover, skilled artisans were aware that wearers would often crush or distort the back of the shoe when attempting to don shoes without the use of hands, and given the nature of this problem, recognized that providing a rigid stabilizer at the rear of the shoe would have the predictable result of enable easier entry of the foot into the shoe without damaging the rear of shoe. *See, e.g.*, Wells ¶ 10 ("[U]se of the shoe horn attachment prevents the back of the upper of the shoe

from being distorted when the shoe is put on, and so prevents damage to the shoe."); Stulaugson at 2:46-50 ("[A] somewhat rigid shoehorn shaped counter is integrated with the quarter portion of the shoe to guide the wearer's foot while putting the shoe on and preventing the back of the shoe from being crushed down."). A person of ordinary skill would thus have been motivated to incorporate rigid stabilizers comprising a flare portion at the rear of the shoe to direct the foot into the foot opening, as seen in well-known prior art slip-on footwear constructions, such as the Merrell Jungle Moc 2 and BOGS Ultra Mid.

A person of ordinary skill would also have been motivated to configure the stabilizer such that it extended from within the sole portion, as this was a known technique used to improve heel stability in footwear. For example, Barma teaches that this configuration provides stability to the heel region of the footwear:

> A rigid heel counter 50 is coated with rubber cement and then placed on the heel portion of assembly 46. A shown in FIGS. 4-6, heel counter 50 is a generally cup-shaped, contoured body formed in a generally U-shaped configuration. Heel counter 50 comprises a counter body 52 having a curved spine 56 and integral curved sidewalls 59. Body 52 has an inwardly extending, U-shaped bottom flange 54. Sidewalls 59 taper forwardly the top edge thereof forming a smooth curve as shown in FIG. 6. Sidewalls 59 and spine 56 are also curved in the vertical direction and bulge outwardly. Flange 54 extends inwardly about 0.25 to 0.5 inch. The upper surface of flange 54 engages the bottom surface of insole 30 at the interface of insole 30 and lining 24. A counter 50 having this configuration advantageously supports the entire heel area of boot 10.

Barma at 4:19-34. Similarly, Lawrence teaches that this configuration allows the stabilizer to be "locked into position" further providing stability to the heel region:

> Said heel cup is constructed of a generally U-shaped, upstanding wall portion 60 and an arcuate flange 62, which flange extends horizontally inwardly from the bottom edge of said upstanding wall portion. A heel pocket 28 is formed by panel 66 and the inside surface of heel end portion 68 of upper 10. Said panel is attached to said heel end portion along arcuate upper edge 70 of said panel. Thus, an opening exists along the bottom edge of panel 66 to allow heel cup 26 to be upwardly received into heel pocket 64. Heel cup flange 62 is positioned between the top surface of sole tread portion 30 and the bottom surface of insole 24 so that said heel

> cup is locked into position by the combination of heel pocket 28 and the weight of the wearer bearing down on insole 24.

Lawrence at 6:14-29. *See also*, *e.g.*, Aikawa at p. 23 ("As shown in the examples depicted in FIG. 13 to FIG. 16, when a flap portion (14) is provided on the heel counter component (10), bonding or stitching the flap portion (14) to the midsole (5) improves the stability of the heel counter component (10), thereby eliminating the need for a heel stabilizer (7) to maintain heel stability and shortening the production process. As shown in the examples depicted in FIG. 17 and FIG.18, by providing a vertically extended portion (19) on the outsole (8), integrally forming the outsole (8) with the heel stabilizer (7), and then joining the vertically extended portion (19) to the lower outside of the heel counter component (10), the shoe production process can be shortened."). Moreover, the prior art is laden with examples of footwear constructions wherein the stabilizer extends from within the sole portion, and a person of ordinary skill would have recognized it as a known technique in the art of footwear construction. *See*, *e.g.*, Motawi, *Shoe Material Design Guide*, pgs. 130-76 (providing examples of numerous dissected shoe models with stabilizers partially located within the sole portion); Shishoo pg. 80, Fig. 5.4. This was well-understood, foundational, and a matter of common practice long before 2019, and a person of ordinary skill would have been motivated to combine the disclosures of these references, or modify other references based on their own background knowledge and common sense, to incorporate a stabilizer extending from within the sole portion.

A person of ordinary skill would further have been motivated to include a foam liner oriented concave toward the sole portion at the stabilizer. By 2019, the use of heel lining to improve foot retention and comfort was so foundational and well-established incorporating that incorporating such lining into hands-free footwear would be obvious to try for a person of ordinary skill. For example, Rossi teaches that it was common knowledge in the art to use a "heel liner"

located "around the inside back of the heel's counter, usually to prevent heel slippage." Rossi at 85. Such liners have frequently been included in prior art footwear constructions a known solution to provide for improved heel retention and/or cushioning and comfort to the user. *See, e.g.*, Drechsler ln. 36-51 ("My retainer consists of a strip of elastic material or tape 2 which is secured, preferably by stitching 3, at its upper edge to the inner face of the upper edge of the heel of the shoe…. When the shoe is on the foot, any tendency of the heel to rise out of the shoe will cause the free inner edge of the retainer to move farther away from the inner surface of the heel of the shoe and increase the area of the portion of the tape which engages the heel of the foot. On this account, my retainer has been found to be very efficient."); Hongren ¶ 25 ("[T]he counter heel cup cushion 1 of the present invention is arranged between the lining 23 and the upper 24 of the shoe 2, and the embedding portion 11 is clamped and fixed between the sole 21 and the insole 22 of the shoe 2. Therefore, when a user walks in shoes, a function of inserting into the shoes in 1 to 2 seconds can be easily achieved, facilitating put-on of the shoes, and more ensuring stability and comfort during walking."); Doenges ¶ 42 ("The one or more foam layers provided in the fabric laminate can comprise any suitable one or more type(s) of open and/or closed cell foam materials that provide adequate cushioning and comfort for the intended purpose. In particular, an open-celled, thermoplastic foam may be utilized. Some examples of types of foam materials suitable for use in forming the upper include, without limitation, polyolefins (e.g., polyethylene or polypropylene) foam materials, ethylene vinyl acetate (EVA) foam materials and polyurethane (PU) foam materials.); Schenone ¶ 18 ("In another aspect, the upper may have one or more heel padding regions. The one or more heel padding regions include one or more heel pads disposed beneath the inner material of the heel region. As such, enhanced padding may be provided to a wearer of the article of footwear."). Moreover, a person of ordinary skill would have been

motivated to use foam as a heel liner, which was a known material recognized as suitable for use as a heel liner. For example, Koh teaches:

> Briefly, apparatus of this invention is a cushion for use inside footwear having an interior for receiving a foot of a wearer. The cushion comprises a liner made of cushioning material. The liner is sized and shaped for reception on an interior surface of the footwear in a position for engaging the foot when the foot is inserted into the interior of the footwear for cushioning an interface between the foot and the interior surface of the footwear with which the liner is engaged…. The cushion comprises a layer made of compliant slow recovery foam having an initial thickness prior to use and a compressed thickness thinner than the initial thickness during use resulting from pressure applied to the cushion by the foot. The foam has a resiliency capable of restoring the cushion substantially to the initial thickness after the foot is withdrawn from the footwear and pressure is relieved from the cushion.

Koh at 1:48-2:4. *See also, e.g.*, Motawi, *How Shoes Are Made*, pg. 184 ("PU foam is also used to make tongue and collar foam."); Shin-454 ¶ 1 ("The present utility model relates to a back counter for shoes capable of thickness adjustment and original shape restoration. More specifically, urethane is injection-molded to a predetermined thickness on the back counter, and during urethane injection molding, a band-shaped contact protrusion is integrally formed on the inner upper end of the back counter to be in close contact with the heel, thereby closely attaching the back counter to the heel to prevent the shoe from slipping off during walking."); Kilgore ¶ 44 ("Collar 88 is preferably formed of a soft material such as foam, cloth, or an elastomer."); Greene at 1:55-63 ("A variety of material elements (e.g., textiles, polymer foam, polymer sheets, leather, synthetic leather) are conventionally utilized in manufacturing the upper. In athletic footwear, for example, the upper may have multiple layers that each include a variety of joined material elements. As examples, the material elements may be selected to impart stretch-resistance, wear-resistance, flexibility, air-permeability, compressibility, comfort, and moisture-wicking to different areas of the upper."); 11:25-27 ("Many conventional articles of footwear incorporate polymer foam elements or other compressible materials into a collar area."); Nishiwaki at 4:60-63 ("As shown in FIG. 4A, the upper 1 includes a cushion 15 made of a resin foam between a quarter 13 and a quarter

lining 14. Note that the quarter 13 and the quarter lining 14 may each be formed by a plurality of layers of fabric."). Indeed, skilled artisans recognized foam heel lining as a technique to improve the retention of a wearer's heel in slip on footwear, with the predictable results of providing comfort to the heel and securing the user's foot in the shoe during walking. For example, Murray teaches:

> An oversize boot makes walking difficult and running almost impossible because the foot is not held firmly within the boot and has considerable movement within the boot when the wearer is in motion. For convenience, "boots" are used throughout to designate all types of footwear such as firemen and sportsman boots, high and low shoes, loafers, slippers, and of all types of materials whether rubber, plastic, leather or cloth…. The present invention corrects these disadvantages by employing inward expanding sponge rubber inserts, secured to the inside surface of the boot to hold the foot firmly against the bottom of the boot. When running, the boot inserts do not permit the foot to move about within its confines but instead, causes the foot to cling to the sole. A feature of the present invention is the unitary nature of the inserts comprising a body of foam rubber or plastic covered with cloth, thereby permitting the inserts to be attached to ordinary boots and shoes to achieve a tight comfortable fit. Internal pads of sponge material are preferably enclosed in a fabric casing and secured to the inside surface of rubber boots or shoes. The construction permits the wearer to put his feet into the boots without strenuous effort. Also, the boots may be removed easily without using a zipper opening or shoe laces. While being worn, the wearer may run or take long walking steps without fear of losing the boots or of displacing the foot within the boot. The sponge inserts hold the foot in its proper place by forcing the foot into contact with the inner sole.

Murray at 1:10-47. *See also*, *e.g.*, Shin-454 ¶ 20 ("According to the present utility model, which is a back counter for shoes capable of thickness adjustment and original shape restoration configured as described above, urethane is injection-molded to a predetermined thickness on the back counter, and during urethane injection molding, a band-shaped contact protrusion is integrally formed on the inner upper end of the back counter to be in close contact with the heel, thereby closely attaching the back counter to the heel to prevent the shoe from slipping off during walking. Even if the back counter is deformed during the process of the user wearing the shoe, it is restored to its original shape by the restoring force of the urethane, thereby maintaining the shoe in its original shape and extending the shoe's lifespan."); Auger ¶ 42 ("In any of the embodiments, heel inserts

130, 131 include a cushioning member 160 for customizing the fit of footwear 100 and/or for improving overall footwear comfort. Cushioning member 160 is generally formed over and around at least part of second connector portion 150 and extends into heel region 114 of upper 104. Cushioning member 160 includes an outer surface 162, an inner surface 164, an upper edge 166, a lower edge 168, and sides 170, 172. Cushioning member 160 of u-shaped heel insert 154 may be vertically disposed within heel region 114 such that outer surface 162 of cushioning member 160 abuts against and generally conforms to the contours of inner surface 134 of heel counter 128 (FIG. 3). Likewise, cushioning member 160 of heel bucket insert 156 may be vertically disposed within heel region 114 but additionally may include a generally contoured and integrally formed horizontal component in the form of a heel bucket or cup 174 that is flush with a lower heel engaging area on upper surface 158 of insole 120 (FIGS. 4-5). Moreover, cushioning member 160 may have varying thicknesses so that different heel inserts 130, 131 are configured with different foam contours."); Shin-091 ¶ 65 ("Preferably, the elastic member 122 that is elastically deformable may be formed of a rubber material. In addition, the elastic member 122 may be formed of a high-elasticity material such as urethane having an elastic force."); Kilgore ¶ 44 ("Collar 88 is preferably formed of a soft material such as foam, cloth, or an elastomer."); Aikawa at p. 21 ("An elastic material (11) such as a foamed elastic synthetic resin improves the fit around the ankle in the upper heel portion and enhances comfort."); Ikezawa ¶ 86 ("The layered portions 20 and 29 each have a cushioning material 21 represented as a dotted area, layered with an inner skin and an outer skin 23, with the cushioning material 21 sandwiched therebetween. The cushioning material 21 may be, for example, a foamed resin or a foamed rubber as well as a non-woven fabric (felt), or the like, and serves to fit to the upper portion of the foot F (FIGS. 2 and 4) in the upper portion 2u and the lower portion 2d of the sub-upper 2."). Unsurprisingly, the prior art is laden with numerous

examples of foam liners at the stabilizer, oriented concave to the sole, as it is an obvious design choice and known method to provide improved heel retention and comfort to the heel. *See, e.g.*, Motawi, *Shoe Material Design Guide*, pgs. 130-76 (providing examples of numerous dissected shoe models with varying configurations of "collar foam" in conjunction with heel counters). Exemplary prior art footwear products with such configurations of foam lining include, without limitation, the Merrell Jungle Moc 2.0, the BOGS Ultra Mid, Skechers Ultra Flex Bright Horizon, Skechers Summit Quick Lapse, and Skechers Bikers MC – Bellore. Because the use of foam lining oriented concave toward the sole portion of a shoe was long-standing technique in the art with the predictable advantage of improved user comfort and heel securement/retention, a person of ordinary skill would have been motivated to include such lining in hands-free footwear and would have had a reasonable expectation of success in doing so.

These benefits, and others disclosed in the cited art references, would have motivated a person of ordinary skill to look to these references and incorporate their teachings in a manner that would result in the subject matter claimed in the asserted claim of the '006 Patent, as it would involve the combination of known prior art elements according to known methods to yield predictable benefits. As these features were already implemented in the prior art, a person of ordinary skill would have had a reasonable expectation of success in combining them, and would have recognized that there were no significant impediments to combining the elements and features from these references. It would have required only routine skill and little effort in terms of time, expense, or resources for a POSITA to apply these and other teachings to an article of footwear. A POSITA would, therefore, have found suggestion and motivation in the art and from his or her own knowledge as a skilled artisan to modify the foregoing and other references. Accordingly, because all the elements of the asserted claim of the '006 Patent were known in the prior art and

one of ordinary skill could have combined them, as claimed, by known methods with no change in their respective functions and nothing more than predictable results, the asserted claim of the '006 Patent is invalid as obvious.

4. Obviousness of the '325 Patent

To the extent Plaintiffs allege that any prior art reference does not expressly or inherently anticipate the Asserted Claims of the '325 Patent, is the Asserted Claims are invalid as obvious under 35 U.S.C. § 103 as set forth in the charts included herewith for the '325 Patent, including the Invalidity Charts (Exhibits 325-1 to 325-76) and Invalidity Combinations Chart (Exhibit 325-C). Skechers may assert obviousness based on any identified reference alone, or in a combination with any one or more of: (1) the knowledge of a POSITA at the time of the alleged invention; (2) any admitted prior art, as explained in the '325 Patent or discussed in its file history or in the file history of any related patent; (3) any of the prior art references identified in this Cover Pleading; (4) any of the prior art references charted in any Skechers Invalidity Chart; and/or (5) any of the prior art references charted in Skechers' Invalidity Combinations Chart for the '325 Patent (Exhibit 325-C).

The '325 Patent purports to address the user experience of footwear during donning, wearing, or doffing. *See*, *e.g.*, '325 Pat. 1:25-28 ("Whether due to inconvenience or inability, donning and doffing of shoes, including tying or otherwise securing the same, may be undesirable and/or present difficulties to some individuals. The present disclosure addresses this need."). The '325 Patent makes clear that the entire field of footwear design and development is relevant, regardless of any particular shoe type or use case. *See id.* at 4:8-15 ("As used herein, a 'rapid-entry shoe' refers to an athleisure shoe, a casual shoe, a formal shoe, a dress shoe, a heel, a sports/athletic shoe (e.g., a tennis shoe, a golf shoe, a bowling shoe, a running shoe, a basketball shoe, a soccer shoe, a ballet shoe, etc.), a walking shoe, a sandal, a boot, or other suitable type of shoe. Additionally, a rapid-entry shoe can be sized and configured to be worn by men, women, or

children."). Accordingly, a person of ordinary skill would have been motivated to combine references that disclose footwear with improved fit features, enhancements to wearing comfort, and innovations in donning and doffing, regardless of whether those references are nominally directed towards a specific type of shoe or footwear use case.

A person of ordinary skill would have been motivated to combine the identified prior art references in a manner that would result in the subject matter claimed in the asserted claims of the '325 Patent because the references are in the same field and address the same technology, are directed to the same or similar design incentives or market pressures, and address the same or similar issues in the same or similar ways. *See, e.g.*,[8] Shin-091 ¶ 1 ("The present invention relates to a functional footwear for easy wearing, and more particularly, to a functional footwear for easy wearing that can be easily worn by a wearer even without the wearer bending his or her lower back or using his or her hand when wearing the footwear."); Sturlaugson 2:42-44 ("The present invention involves an improved shoe design which allows the wearer to easily step into the shoe while standing erect."); Kim Abstract ("[Problem] To provide a shoe that can be easily put on and taken off by people who cannot bend down, such as elderly people, physically disabled people and pregnant women."); Wells ¶ 1 ("The present invention relates to a shoe horn attachment for a shoe, in particular, to a shoe horn attachment that may easily be secured to a shoe and that, once fitted, guides the heel of a user as the user inserts a foot into the shoe. Such an attachment makes it easier for a user to put the shoe on, and also prevents damage to the shoe."); Thaikattil 1:25-2:2 ("An

[8] Citations and motivations to combine provided hereunder are intended to provide examples of Skechers' contentions. Skechers reserves the right to rely upon (1) other portions of the cited references, (2) any other references identified herein, (3) other prior art references, (4) learned treatises and industry publications, (5) the background knowledge of a POSITA given the state of the art at the claimed priority date, and (6) expert testimony. Moreover, Skechers incorporates by reference the exemplary citations and motivations to combine identified in the sections for the other patents-in-suit.

object of this invention is to provide footwear that would still retain its semi flexible character but would resist buckling of the heel cap when the foot is inserted without the help of the hands. Another object of this invention is to propose an article of footwear provided with means for easy heel introduction into the heel cap - the foot being inserted with or without the help of the hands."); Lin-845 1:7-9 ("The present invention relates generally to shoes and more particularly, to a shoe which can be put on and taken off conveniently."); Hongren ¶ 3 ("An object of the present invention is to provide a counter heel cup inserting device capable of easily achieving, when a user walks in shoes, a function of inserting into the shoes in 1 to 2 seconds, more facilitating put-on of the shoes, and further enhancing the convenience of putting on and taking off the shoes, while ensuring stability and comfort during walking."); Sakai ¶ 5 ("An article of footwear is provided that has a resilient support structure located in the heel and vamp portions surrounding the foot opening so that the shoe retains its shape after the wearer's heel is inserted, without need to manually straighten either the heel portion or the vamp portion of the shoe."). As acknowledged or assumed in the background sections of these references, a person of ordinary skill would have been aware of the various needs and opportunities associated with slip-on footwear with improved fit features. Accordingly, a person of ordinary skill would have been motivated to consult these and other references, at least by virtue of the fact that they are all directed to among other things providing footwear with improved fit, ease of donning and doffing, and heel stability. A person of skill in the art would further appreciate that these patents or patent applications are concise descriptions of technology that the authors believed to be new or different, and would be motivated to combine their disclosure with other teachings in the field, as well as his or her background knowledge.

Given the teachings of these and other prior art references, a person of ordinary skill would have readily appreciated the benefits of incorporating into hands-free footwear a stabilizer comprising a base portion proximate the sole and an elevated portion, wherein the base portion comprises medial and lateral portions extending to medial and lateral sides of the sole and forming a convex structure, wherein the elevated portion extends rearward from a rear portion of the convex structure and acts as a shoehorn, and wherein the elevated portion extends to a top collar of the shoe. For example, the prior art recognized numerous market pressures and design incentives favoring the development of shoes incorporating stabilizers with elevated portions extending rearward and acting as a shoehorn, such as the needs of persons who experience difficulty bending down, the damage and distortion caused by the rear portion of the shoe buckling inward when users attempt to insert their feet without using their hands, or simply the convenience in donning and doffing provided by such structures. For example, Wells teaches:

> Slip-on shoes eliminate the need for the user to bend down to do up a lace, buckle or other fastener. However, the user is still required to bend down while putting on the shoe, as it is necessary to guide the heel of the user's foot into the shoe. This may be done by inserting a suitable implement, for example a shoe horn, between the back of the user's heel and the upper of the shoe during the process of putting the shoe on; it may also be done by the user running a finger between the back of the user's heel and the upper of the shoe as the shoe is put on. If this is not done, the act of putting on the shoe tends to crush the back of the upper of the shoe, and doing this repeatedly will damage the shoe.

Wells ¶ 5. *See also, e.g.*, Kim ¶ 5 ("[I]t is necessary to hold the shoehorn body by hand when the heel is inserted into the shoe, and the user is required to bend down when putting on the shoe. Therefore, it is very inconvenient for users who cannot bend down, such as elderly people, physically disabled people and pregnant women. Furthermore, when taking off the shoe, the user bends down and pushes down the heel portion of the shoe to take off the shoe from the heel of the foot …. Therefore, also in this case, it is very inconvenient for users who cannot bend down, such as elderly people, physically disabled people and pregnant women."); Sturlaugson at 1:9-19 ("A

common problem present in most shoe designs, particularly Loafer-type designs, is that they do not permit the wearer to easily slip the shoe on and off while the wearer is standing. Attempts by a wearer, to put a shoe of a conventional design on while standing often cause the back (counter) and sides of the shoe to break down, making the shoe unattractive and uncomfortable. Further, the wearer's repeated attempts to put the shoe on while standing may cause the shoe leather to stretch so that the shoe no longer fits properly and, also, may destroy the finish of the shoe."); Sessa 1:17-23 ("While shoe horns are handy when readily available, and serve to lengthen shoe life, they are too often not at the location where shoes are replaced onto the feet. Moreover, youngsters typically do not take the time or effort to locate or use them. Rather, they simply thrust their feet into the shoes, to the detriment of the shoe counter."); Hongren ¶ 2 ("When putting on or taking off ordinary shoes, it is usually necessary to tighten or loosen shoelaces or adjustment straps (hook-and-loop straps), or even to pull a woven heel strap of the shoe or use a shoehorn to assist in putting on the shoes, making the process of putting on and taking off quite troublesome."); Lin-845 1:11-29 ("Modern people are so busy in such a way that everything in living, including putting shoes on and taking them off, is requested to be done efficiently and conveniently. Therefore, many tools or skills that help putting on and taking off shoes are well developed. For example, when putting on a shoe that will cover widely the user's foot, some people have a habit of using a shoehorn or of pulling the tongue or the front of the shoe's top line for helping their foot in slipping into the shoe. When taking off a shoe, besides pulling, many people have a habit of treading on the counter at the rear of the shoe by the other foot so as to take off that shoe quickly. However, when taking any above-mentioned way, people will need to bend their backs and then touch the shoes or handle shoehorns, which is not so convenient to busy people, not to mention people who can't bend their backs easily, such as old people, pregnant women, or patients with ankylosing spondylitis."); Sakai

¶¶ 2-3 ("Because of the way a loafer-type shoe is designed, the wearer often places pressure on the shoe back when slipping a foot into the shoe. This pressure can cause the shoe back to crumple under the wearer's heel, which in turn causes damage to the shoe and makes it more likely that the back portion will crumple in the future when the foot is inserted into the shoe…. Additionally, many people slip on regular closed heel shoes by leaving the laces untied or relatively loosely tied and forcibly inserting their foot so that they can easily slip their closed heel shoes on and off their feet without having to spend time tying their shoelaces or securing straps. Leaving laces untied or loosely tied detracts from the support provided by a shoe, and forcibly inserting the foot into the shoe can result in bending the heels down, causing the material forming the heels to deteriorate and lose support, ultimately destroying the shoes."); Shin-091 ¶¶ 5-7 ("[T]here is a problem that the upper end of the heel counter is folded toward an inner side of the shoe or the wearer's foot is caught at the upper end of the heel counter when the wearer wears the shoe. Accordingly, a shoe lace has been tightened and loosened, or fingers or an auxiliary tool such as a shoehorn have or has been used to facilitate wearing a shoe. However, in either of the above cases, there is an inconvenience because a wearer has to use his or her hand while bending the lower back or sitting. In particular, shoe wearing itself is not easy for patients who are not able to freely bend their lower back or use their hands."); Zago at 1 ("Putting on a shoe is an operation we learn when we are children and perform countless times in our lives. It is an apparently easy thing to do, but as we get older, it may become annoying and uncomfortable. Whether it is because of the weight we put on with age or improper lifestyles, or because of muscle pains due to a lack of body movement, the action of bending over to put on shoes is something we do every day, but is bothersome, which is true not only for the elderly."). Given the nature of the problems to be solved—improved donning and doffing of footwear and prevention of damage to the rear portion of the upper—a

person of ordinary skill in the art would have been motivated to incorporate these and other references disclosing stabilizer with an elevated portion extending rearward and acting as a shoe horn.

Moreover, the references teach complementary features selected from a set of known, familiar methods and techniques in the same field or endeavor used to improve similar devices in similar ways with predictable results. The use of stabilizers configured to function as a shoe horn was a known technique in footwear construction, regularly selected by skilled artisans from a finite number of identified, predictable solutions for improved footwear fit properties and easier donning and doffing. For example, Lin-845 teaches:

> It is an objective of the present invention to provide a shoe which can be put on and taken off conveniently. To attain the above objective, the present invention provides a shoe comprises an outsole, an upper that is attached on the outsole and has a counter and a collar extending upward from the counter and configured as a shoehorn, a supporting piece which is harder than the upper and attached to the counter and the collar of the upper, and a guiding piece which is harder than the upper and attached to an instep of the upper and having a part extending out of a top line of the upper. Since the supporting piece has a predetermined hardness and the collar is configured like a shoehorn, the rear of the upper is provided with a portion having a similar function to a shoehorn.

Lin-845 1:38-54. *See also, e.g., id.* 3:3-8 ("Because of the supporting piece 30 having a predetermined hardness and the collar 22 having a shape like a shoehorn, the rear of the upper 20 is provided with a portion that can be served as a shoehorn for helping the user's foot in slipping into the shoe 10 along that portion when the user puts on the aforesaid shoe 10."); Sturlaugson 2:42-52 ("The present invention involves an improved shoe design which allows the wearer to easily step into the shoe while standing erect…. [A] somewhat rigid shoehorn shaped counter is integrated with the quarter portion of the shoe to guide the wearer's foot while putting the shoe on and preventing the back of the shoe from being crushed down. The counter is designed in such a way that its shape and size can be varied to conform with the wearer's needs and the style of

shoe."), 5:24-30 ("The features include a shoe horn-shaped rigid member which is shaped to conform to the back of the shoe while the two side portions 22 and 24 thereof reinforce the lateral heel portions of the shoe quarter. This feature helps guide the foot upon insertion and prevents the counter from being inadvertently crushed as the wearer steps into the shoe."); Kim ¶ 13 ("[A] heel guide portion is included which integrally projects from the upper end of the heel portion and curves in a slope to go backward as it goes upward, so when putting on the shoe, the user first inserts, starting from the toes, the foot into the shoe, and then pushes the heel of the foot into the inside of the heel portion while sliding it along the heel guide portion and, thereby allowing the user to easily put on the shoe without bending down."); Hongren ¶ 1 ("The present invention relates to a counter heel cup inserting device, and more particularly, to a counter heel cup inserting device capable of easily achieving, when walking in shoes, a function of inserting into the shoes in 1 to 2 seconds, facilitating put-on of the shoes, and further enhancing the convenience of putting on and taking off the shoes, while ensuring stability and comfort during walking."); Shin-091 ¶¶ 89-94 ("Referring to FIGS. 11 and 12, in a heel counter 120 of a functional footwear for easy wearing, which is another embodiment of the present invention, an upper end of a support member 121 is bent toward an outer side. That is, an inclined section 121b that is formed to extend toward the outer side is provided on the upper end of the support member 121. The inclined section 121b increases an adhesive fore and allows an elastic member 122 to be coupled more effectively…. Simultaneously, the inclined section 121b has a form that is gradually inclined toward the outer side upward based on the upper end of the support member 121. Accordingly, the inclined section 121b may guide a wearing path to allow the wearer's foot to easily slide into and enter a wearing groove 150. In addition, preferably, the inclined section 121b may be formed up to an upper end of the heel counter to prevent the heel counter from being bent. Therefore, by the inclined section

121b preventing the upper end of the heel counter, that is, the portion coming into contact with the wearer's heel, from being bent, the wearer can easily wear the footwear."); Takahashi ¶ 26 ("In other words, by providing the heel portion with the counter that integrally has an inward-facing concave curved surface portion to support the person's heel, and providing the counter with the guide core portion that is used to maintain the shape of the guide portion, the ease of putting on a shoe can be further improved while maintaining the shape of the heel portion."). Accordingly, a person of ordinary skill would have had a reasonable expectation of success in modifying and combining the references disclosed herein, at least because the use of a stabilizer functioning as a shoe horn for improved donning and doffing was a known method in the art yielding predictable results and benefits.

A person of ordinary skill would further have been motivated to provide a foam liner coupled to the stabilizer between medial and lateral portions of the base portion of the stabilizer, at least a portion of the foam liner extending beyond at least one of the medial and lateral portions, oriented downward to the sole so as to retain a heel within the shoe's heel portion. Numerous references teach the use of lining, cushioning, and padding elements at and around the stabilizer to provide for user comfort and heel retention, and a person of ordinary skill would have been motivated to apply their teachings to improve similar devices. In particular, multiple references that disclose the use of integrated shoe horns, such as those described above, further teach the use of such lining to improve heel retention and comfort. Given the commonality of disclosure, a person of ordinary skill would have recognized the utility of incorporating such lining and would have had a reasonable expectation of success in doing so. *See, e.g.*, Takahashi ¶ 54 ("The inner surfaces of the sides 15, 16 and the heel portion 17 are provided with a lining (covering for inside surface) 25. The material and thickness of the lining 25 are set to have an appropriate cushioning

property. In this embodiment, two or more layers of cloth (inner surface skin), cushion body (e.g., sponge) or the like are used."); Sturlaugson 2:60-63 ("Finally, the lateral upper edges or collar of the shoe are rolled or rolled and padded to provide greater durability, increased comfort and guidance of the wearer's foot into the shoe."), 4:17-27 ("Referring back to FIGS. 1 and 2, rolled or rolled and padded edges 7 and 8 about the foot receiving opening are present to promote a snug fit while, at the same time, insuring that the top portion of the side wall of the shoe does not become stepped down and damaged while the shoe is being placed on the foot. These rolled edges can be constructed by rolling the leather over and stitching along the lower edge of the rolled portion. If desired, padding can be added to the pocket formed by rolling the edges over prior to stitching for greater comfort and durability."); Shin-091 ¶¶ 63-65 ("At this time, when the heel 11 of the wearer applies an external force F to the inner skin 130 as illustrated in FIG. 6, the elastic member 122 provided in the inner skin 130 is elastically deformed due to a pushing force of the heel 11. That is, the elastic member 122 is elastically deformed due to the external force F caused by the heel 11 coming into contact and is concavely recessed toward the outer side. Here, the outer side refers to the outside based on the wearing groove 150. Preferably, the elastic member 122 that is elastically deformable may be formed of a rubber material. In addition, the elastic member 122 may be formed of a high-elasticity material such as urethane having an elastic force."); Kim ¶ 27 ("As shown in FIG. 2, the heel portion 4 and the heel guide portion 4a are composed of a hard core material 9, a soft skin material 10 covering the outside of the core material 9, and a soft lining material 11 covering the inside of the core material 9."); Hongren ¶ 25 ("[T]he counter heel cup cushion 1 of the present invention is arranged between the lining 23 and the upper 24 of the shoe 2, and the embedding portion 11 is clamped and fixed between the sole 21 and the insole 22 of the shoe 2. Therefore, when a user walks in shoes, a function of inserting into the shoes in 1 to 2 seconds can

be easily achieved, facilitating put-on of the shoes, and more ensuring stability and comfort during walking.").

More generally, the use of heel lining to improve foot retention and comfort—and in particular, foam lining—was foundational and well-established as of 2019, and incorporating such lining into hands-free footwear would have been obvious to try for a person of ordinary skill. For example, even in the early 20th century, skilled artisans recognized the utility heel lining to secure the user's foot in the shoe:

> My retainer consists of a strip of elastic material or tape 2 which is secured, preferably by stitching 3, at its upper edge to the inner face of the upper edge of the heel of the shoe. The lower edge of the tape is free and the elasticity thereof causes it to stand inwardly at an angle to the heel of the shoe, as shown in Fig. 1. When the shoe is on the foot, any tendency of the heel to rise out of the shoe will cause the free inner edge of the retainer to move farther away from the inner surface of the heel of the shoe and increase the area of the portion of the tape which engages the heel of the foot. On this account, my retainer has been found to be very efficient.

Drechsler ln. 36-51. *See also*, *e.g.*, Rossi pg. 85 ("heel liner: A special lining around the inside back of the heel's counter, usually to prevent heel slippage."). Such liners have frequently been included in prior art footwear constructions a known solution to provide for improved heel retention and/or cushioning and comfort to the user. *See*, *e.g.*, Schenone ¶ 18 ("In another aspect, the upper may have one or more heel padding regions. The one or more heel padding regions include one or more heel pads disposed beneath the inner material of the heel region. As such, enhanced padding may be provided to a wearer of the article of footwear."). A person of ordinary skill would specifically have known to use foam as a heel liner, which was a material recognized as suitable for such use. For example, Murray teaches:

> An oversize boot makes walking difficult and running almost impossible because the foot is not held firmly within the boot and has considerable movement within the boot when the wearer is in motion. For convenience, "boots" are used throughout to designate all types of footwear such as firemen and sportsman boots, high and low shoes, loafers, slippers, and of all types of materials whether rubber, plastic, leather or cloth…. The present invention corrects these disadvantages by

> employing inward expanding sponge rubber inserts, secured to the inside surface of the boot to hold the foot firmly against the bottom of the boot. When running, the boot inserts do not permit the foot to move about within its confines but instead, causes the foot to cling to the sole. A feature of the present invention is the unitary nature of the inserts comprising a body of foam rubber or plastic covered with cloth, thereby permitting the inserts to be attached to ordinary boots and shoes to achieve a tight comfortable fit. Internal pads of sponge material are preferably enclosed in a fabric casing and secured to the inside surface of rubber boots or shoes. The construction permits the wearer to put his feet into the boots without strenuous effort. Also, the boots may be removed easily without using a zipper opening or shoe laces. While being worn, the wearer may run or take long walking steps without fear of losing the boots or of displacing the foot within the boot. The sponge inserts hold the foot in its proper place by forcing the foot into contact with the inner sole.

Murray at 1:10-47. *See also, e.g.*, Motawi, *How Shoes Are Made*, pg. 184 ("PU foam is also used to make tongue and collar foam."); Shin-454 ¶ 1 ("The present utility model relates to a back counter for shoes capable of thickness adjustment and original shape restoration. More specifically, urethane is injection-molded to a predetermined thickness on the back counter, and during urethane injection molding, a band-shaped contact protrusion is integrally formed on the inner upper end of the back counter to be in close contact with the heel, thereby closely attaching the back counter to the heel to prevent the shoe from slipping off during walking."); Kilgore ¶ 44 ("Collar 88 is preferably formed of a soft material such as foam, cloth, or an elastomer."); Greene at 1:55-63 ("A variety of material elements (e.g., textiles, polymer foam, polymer sheets, leather, synthetic leather) are conventionally utilized in manufacturing the upper. In athletic footwear, for example, the upper may have multiple layers that each include a variety of joined material elements. As examples, the material elements may be selected to impart stretch-resistance, wear-resistance, flexibility, air-permeability, compressibility, comfort, and moisture-wicking to different areas of the upper."); 11:25-27 ("Many conventional articles of footwear incorporate polymer foam elements or other compressible materials into a collar area."); Nishiwaki at 4:60-63 ("As shown in FIG. 4A, the upper 1 includes a cushion 15 made of a resin foam between a quarter

13 and a quarter lining 14. Note that the quarter 13 and the quarter lining 14 may each be formed by a plurality of layers of fabric."). Indeed, skilled artisans recognized foam heel lining as a technique to improve the retention of a wearer's heel in slip on footwear, with the predictable results of providing comfort to the heel and securing the user's foot in the shoe during walking. *See, e.g.*, Aikawa at p. 21 ("An elastic material (11) such as a foamed elastic synthetic resin improves the fit around the ankle in the upper heel portion and enhances comfort."); Auger ¶ 42 ("In any of the embodiments, heel inserts 130, 131 include a cushioning member 160 for customizing the fit of footwear 100 and/or for improving overall footwear comfort. Cushioning member 160 is generally formed over and around at least part of second connector portion 150 and extends into heel region 114 of upper 104. Cushioning member 160 includes an outer surface 162, an inner surface 164, an upper edge 166, a lower edge 168, and sides 170, 172. Cushioning member 160 of u-shaped heel insert 154 may be vertically disposed within heel region 114 such that outer surface 162 of cushioning member 160 abuts against and generally conforms to the contours of inner surface 134 of heel counter 128 (FIG. 3). Likewise, cushioning member 160 of heel bucket insert 156 may be vertically disposed within heel region 114 but additionally may include a generally contoured and integrally formed horizontal component in the form of a heel bucket or cup 174 that is flush with a lower heel engaging area on upper surface 158 of insole 120 (FIGS. 4-5). Moreover, cushioning member 160 may have varying thicknesses so that different heel inserts 130, 131 are configured with different foam contours."); Kilgore ¶ 44 ("Collar 88 is preferably formed of a soft material such as foam, cloth, or an elastomer."); Ikezawa ¶ 86 ("The layered portions 20 and 29 each have a cushioning material 21 represented as a dotted area, layered with an inner skin and an outer skin 23, with the cushioning material 21 sandwiched therebetween. The cushioning material 21 may be, for example, a foamed resin or a foamed rubber as well as a non-

woven fabric (felt), or the like, and serves to fit to the upper portion of the foot F (FIGS. 2 and 4) in the upper portion 2u and the lower portion 2d of the sub-upper 2."). Unsurprisingly, the prior art is laden with numerous examples of foam liners at the stabilizer, oriented concave to the sole, as it is an obvious design choice and known method to provide improved heel retention and comfort to the heel. *See*, *e.g.*, Motawi, *Shoe Material Design Guide*, pgs. 130-76 (providing examples of numerous dissected shoe models with varying configurations of "collar foam" in conjunction with heel counters). Exemplary prior art footwear products with such configurations of foam lining include, without limitation, the Anta KT3, the Merrell Jungle Moc 2.0, the BOGS Ultra Mid, Skechers Ultra Flex Bright Horizon, Skechers Summit Quick Lapse, and Skechers Bikers MC – Bellore. Because coupling foam lining to the stabilizer between the medial and lateral portions of the base portion, extending at least a portion of lining beyond at least one of the medial and lateral portions, and orienting the lining downward to toward the sole was a known technique to retain a heel within the shoe's heel portion and was used to improve similar devices in the same way, a person of ordinary skill would have been motivated include such lining in hands-free footwear and would have had a reasonable expectation of success in doing so.

A person of ordinary skill would further have been motivated to provide that the base portion of the stabilizer extends into the sole of the shoe. This was well-understood, foundational, and a matter of common practice long before 2019. For example, Motawi provides numerous examples of dissected shoe models with stabilizers partially located within the sole portion. Motawi, *Shoe Material Design Guide*, pg. 130-76. A person of ordinary skill would have understood that extending the base portion of the stabilizer into the sole portion would improve the stability of the heel region, as doing so was a known technique in the field. *See*, *e.g.*, Barma at 4:19-34 ("A rigid heel counter 50 is coated with rubber cement and then placed on the heel portion

of assembly 46. A shown in FIGS. 4-6, heel counter 50 is a generally cup-shaped, contoured body formed in a generally U-shaped configuration. Heel counter 50 comprises a counter body 52 having a curved spine 56 and integral curved sidewalls 59. Body 52 has an inwardly extending, U-shaped bottom flange 54. Sidewalls 59 taper forwardly the top edge thereof forming a smooth curve as shown in FIG. 6. Sidewalls 59 and spine 56 are also curved in the vertical direction and bulge outwardly. Flange 54 extends inwardly about 0.25 to 0.5 inch. The upper surface of flange 54 engages the bottom surface of insole 30 at the interface of insole 30 and lining 24. A counter 50 having this configuration advantageously supports the entire heel area of boot 10."); Lawrence at 6:14-29 ("Said heel cup is constructed of a generally U-shaped, upstanding wall portion 60 and an arcuate flange 62, which flange extends horizontally inwardly from the bottom edge of said upstanding wall portion. A heel pocket 28 is formed by panel 66 and the inside surface of heel end portion 68 of upper 10. Said panel is attached to said heel end portion along arcuate upper edge 70 of said panel. Thus, an opening exists along the bottom edge of panel 66 to allow heel cup 26 to be upwardly received into heel pocket 64. Heel cup flange 62 is positioned between the top surface of sole tread portion 30 and the bottom surface of insole 24 so that said heel cup is locked into position by the combination of heel pocket 28 and the weight of the wearer bearing down on insole 24."); Aikawa at p. 23 ("As shown in the examples depicted in FIG. 13 to FIG. 16, when a flap portion (14) is provided on the heel counter component (10), bonding or stitching the flap portion (14) to the midsole (5) improves the stability of the heel counter component (10), thereby eliminating the need for a heel stabilizer (7) to maintain heel stability and shortening the production process. As shown in the examples depicted in FIG. 17 and FIG.18, by providing a vertically extended portion (19) on the outsole (8), integrally forming the outsole (8) with the heel stabilizer (7), and then joining the vertically extended portion (19) to the lower outside of the heel counter

component (10), the shoe production process can be shortened."); Zago Figs. 1-3, Claim 1 ("An easily put on shoe with flexible heel and tongue, characterized in that it includes … a frame (4) located in the heel area, which is contoured three dimensionally and anatomically into an L shape according to the form of the heel"); Mikio ¶ 26 ("A rigid reinforcing member 9 made, for example, of a synthetic resin is provided inside the heel portion 8 at the rear end of the shoe opening 3 to maintain the shape of the heel portion 8, and is secured to the sole portion 2."); . Exemplary prior art footwear constructions wherein the base portion of the stabilizer is located within the sole include the BOGS Ultra Mid, Merrell Jungle Moc 2, Skechers Ultra Flex Bright Horizon, Skechers D'Lites, and others. A person of ordinary skill would have been motivated to combine the disclosures of these references, or modify other references based on their own background knowledge and common sense, to incorporate a stabilizer with a base portion extending into the sole, and would have had a reasonable expectation of success in doing so.

A person of ordinary skill would further have been motivated to include multiple different configurations of elastic elements in the upper, such as including an elastic element at the side portion of the upper and forward of the rear portion, forming a portion of the shoe's top collar with an elastic element, configuring the elastic element to enlarge the shoe's foot opening in response to the insertion of a user's foot, and configuring the elastic element to enable the forward portion of the shoe upper to flex relative to the shoe's sole. Including such elastic elements into slip-on footwear—including slip-on footwear with stabilizers configured to act as a shoe horn—was a known technique regularly used by those skilled in the art to improve similar products in the same way. For example, Kim teaches the incorporation of "stretchable portions" into rapid-entry footwear with a stabilizer acting as a shoe horn to permit easy entry and exit of the footwear:

> [W]hen putting on the shoe, the user first inserts, starting from the toes, the foot into the shoe, and then pushes the heel of the foot into the inside of the heel portion

> while sliding it along the heel guide portion. At this time, since the one pair of stretchable portions stretches, the opening of the shoe expands, and the heel can be easily placed at the inside of the heel portion. When shoes are taken off, using one foot to press the projecting portion of the other shoe and lifting up the other foot allows the other shoe to be taken off from the heel of the other foot. At this time, since the one pair of stretchable portions stretches, the opening of the shoe expands, allowing the shoe to be easily taken off.

Kim ¶ 8. *See also, e.g.*, *Sturlaugson* at 2:1-8 ("A unique elastic gore is incorporated into Applicant's design …. This securing mechanism allows expansion of the shoe during entry and removal of the foot and causes the shoe to otherwise be in a recoiled configuration."); Takahashi ¶ 37 ("a pair of stretchable portions 13, 14 located on both the left side and the right side to allow the deformation of the upper 12"); Lin-845 at 3:14-21 ("[D]uring aforesaid process of putting on or taking off the shoe 10, the elastic bands 24 can be stretched to enlarge the top line 29, so that the user can put on or take off the shoe 10 more smoothly. As a result, the shoe 10 is convenient for the user, especially for old people, pregnant women, or wounded people who can't bend their backs easily, to put on without bending his back and using his hand."); Zago pg. 1 ("In the invention dealt with herein, one of the most important goals is to prevent this from happening by creating a shoe with a stiff yet flexing heel, which puts itself easily on whether or not it has laces, and which is characterized by … along the sides of the upper - at least one joint made of elastic material, which extends and/or widens when the shoe is put on and increases the size of the mouth in the upper."). Sakai ¶ 24 ("The shoe 10 also optionally includes elastic gore panels 40 disposed between the vamp portion 26 and the lateral and medial quarter portions 20. Each of the elastic gore panels 40 is preferably a generally triangular panel formed from a stretchable material. The gore panels 40 allow for additional stretch between the vamp portion 26 and the quarter portions 20, beneficially making the shoe 10 easier to put on and/or take off a wearer's foot.").

More fundamentally, skilled artisans had long been aware of the utility of incorporating elastic upper elements to ease entry and exit of the foot and to improve the wearing experience. For example, Hall explains:

> Shoes, to the contrary, and especially long-quartered ones, require a great effort from the muscles to be kept on, and this, when long applied, tires and weakens. The lace and button boots usually worn need not be described; they are very good and suitable to most feet, and, if cut well and lasted, properly, generally give comfort and satisfaction. The trouble, however, of lacing and unlacing, the tag coming off, the button breaking, or the shank hurting, the holes soon wearing out, and many other little annoyances, have all been experienced as *bores* by thousands who have worn that kind of boot. About ten years since I first thought of an elastic boot, that might possibly remedy in a great measure all these minor evils, and combine many advantages never possessed by any former boot…. After several experiments in wire and India-rub her, I succeeded in getting the exact elasticity required, and subsequent improvements in materials and workmanship, have combined to make the elastic boot the most perfect thing of its kind…. One of my earliest customers, a lady of great originality of thought and expression, first induced me to make it an article of universal sale, by saying: "These boots are the comfort of my life, if you were only to give them a sounding name-if you like, call them lazy boots and tum it into Greek-all the world will buy them, and you'll make your fortune…. The elastic clog is another improvement on the old mode of fastening with straps, buckles, and buttons; clogs on this principle are put on and taken off without any trouble or fastening, and by a very simple arrangement of a plush back, all chafing of the boot is avoided and great firmness secured, without a chance of their slopping.

Hall pg. 116-22. *See also, e.g.*, Rossi at 213 ("The pump received great impetus with the invention of elasticized goring in 1837 by J. Sparkes Hall, bootmaker to Queen Victoria. The new hug fit of the pump without benefit of fastenings delighted the queen and the pump rose rapidly in popularity."). Well-known prior art footwear constructions, such as 19th century "Congress gaiters," *see, e.g.*, Packard at ln. 49-54 ("The elastic gorings, united to the forward edges of the quarter, cause the latter to conform to the contour of the back of the foot, and so that the quarter requires but little crimping or molding to adopt it to said contour."); Rossi 18 ("congress. A low dress or comfort boot with leather upper an elastic gusset at the sides, usually with a pull strap in the back. Popular as a men's boot in the 19th and early 20th centuries. Sometimes known as a

congress gaiter."), and more contemporary Chelsea boots, *see, e.g.*, Choklat pg. 47 ("Chelsea boot: An ankle boot with side elastic gussets."), show that a person of ordinary skill in the art would have had a reasonable expectation of success in incorporating similar elastic elements into new slip-on footwear constructions, such as by forming a side portion of the upper or a portion of the shoe's top collar out of an elastic element, configuring the elastic element to enlarge the shoe's foot opening in response to the insertion of a user's foot, and configuring the elastic element to enable the forward portion of the shoe upper to flex relative to the shoe's sole. A person of ordinary skill would have been motivated apply these known techniques to new footwear constructions for their predictable benefits of easier donning and doffing and improved wearing experience.

A person of ordinary skill would also have been motivated to include a lattice structure adjacent to the stabilizer, and to make the lattice structure visible on an outside surface of the shoe. A lattice structure on the stabilizer was a known and often-utilized design element in the prior art, and a person of ordinary skill would have been motivated to incorporate such a structure into hands-free footwear for functional, aesthetic, and other design-related considerations. *See, e.g.*, Thornton pg. 38 ("One of the oldest forms of decoration, used in ancient civilisations and still popular, is the 'cut-out'. Holes in an upper—circles, triangles, rectangles, squares, intricate patterns—seem to exert a fascination on designers. In some cases these holes serve a useful ventilating purpose as, for example, on summer shoes; in others the only possible reason is ornament."). For example, Doenges that "internal structural support members provided within the fabric laminate that forms the upper can be formed of any suitable type(s) materials that deform during the compression molding process and provide structural support for the upper at the location(s) in which the support members are provided once the material cools." Doenges ¶ 43. Doenges goes on to explain:

> The compression molding process can further include mold portions having patterned depressions and/or protrusions that, when forming the fabric laminate, define a corresponding "mirror image" pattern of depressions and/or protrusions along a surface of the fabric laminate that defines an exterior surface portion of the upper. This facilitates the formation of macrostructure (the heel curvature) and/or microstructures on inner and/or outer surfaces of the upper. For example, the heel cup 305 of the upper 105 can include an external surface pattern 170 that forms an uneven contour of indentations and/or raised ridges (e.g., a pattern 170 having generally concave depressions, such as polygonal or diamond shaped depressions). The pattern 170 can further be formed on the outer surface of the outer fabric layer 408 or, alternatively, on another layer formed over the outer fabric layer 408. For example, a further reinforcement layer 168 (shown in FIG. lA) can be provided (e.g., a plastic material layer) that includes the pattern 170 disposed on it.

Id. ¶ 62. *See also, e.g.*, Surace ¶¶ 82-3 ("Finally, reference is made to the possibility that textures are imprinted onto the inside and/or outside of selected non-textile components of an inventive shoe or worked into such components, for example, on the inside and/or outside of the heel cap or the ankle collar or different components made from, for example, (foamed) EVA or (foamed) PU. Such textures may, for example, comprise sundry structural elements, patterns, groove-or lattice-structures or combinations thereof. Moreover, such textures can be provided in a manner that they permit a microcirculation of air during wearing, which can increase the wearing comfort of the shoe."). Non-limiting examples of well-known shoes incorporating lattice structures adjacent to the stabilizer include, for example, Nike Zoom Vomero 5, Adidas ZX Flux, and Brooks Launch 3. Incorporating such lattice structures adjacent to the stabilizer and visible on an outside surface of hands-free footwear would have been an obvious matter of design choice.

These benefits, and others disclosed in the cited art references, would have motivated a person of ordinary skill to look to these references and incorporate their teachings in a manner that would result in the subject matter claimed in the asserted claims of the '325 Patent, as doing so would involve the combination of known prior art elements according to known methods to yield predictable benefits. As these features were already implemented in the prior art, a person of ordinary skill would have had a reasonable expectation of success in combining them, and would

have recognized that there were no significant impediments to combining the elements and features from these references. It would have required only routine skill and little effort in terms of time, expense, or resources for a POSITA to apply these and other teachings to an article of footwear. A POSITA would, therefore, have found suggestion and motivation in the art and from his or her own knowledge as a skilled artisan to modify the foregoing and other references. Accordingly, because all the elements of the asserted claims of the '325 Patent were known in the prior art and one of ordinary skill could have combined them, as claimed, by known methods with no change in their respective functions and nothing more than predictable results, the asserted claims of the '325 Patent are invalid as obvious.

5. Obviousness of the '811 Patent

To the extent Plaintiffs allege that any prior art reference does not expressly or inherently anticipate the Asserted Claims of the '811 Patent, the Asserted Claims are invalid as obvious under 35 U.S.C. § 103 as set forth in the chart the charts included herewith for the '811 Patent, including the Invalidity Charts (Exhibits 811-1 to 811-57) and Invalidity Combinations Chart (Exhibit 811-C). Skechers may assert obviousness based on any identified reference alone, or in a combination with any one or more of: (1) the knowledge of a POSITA at the time of the alleged invention; (2) any admitted prior art, as explained in the '811 Patent or discussed in its file history or in the file history of any related patent; (3) any of the prior art references identified in this Cover Pleading; (4) any of the prior art references charted in any Skechers Invalidity Chart; and/or (5) any of the prior art references charted in Skechers' Invalidity Combinations Chart for the '811 Patent (Exhibit 811-C).

The '811 Patent purports to address the user experience of footwear during donning, wearing, or doffing. *See*, *e.g.*, '811 Pat. 1:30-33 ("Whether due to inconvenience or inability, donning and doffing of shoes, including tying or otherwise securing the same, may be undesirable

and/or present difficulties to some individuals. The present disclosure addresses this need."). The '811 Patent makes clear that the entire field of footwear design and development is relevant, regardless of any particular shoe type or use case. *See id.* at 4:12-20 ("As used herein, a 'rapid-entry shoe' refers to an athleisure shoe, a casual shoe, a formal shoe, a dress shoe, a heel, a sports/athletic shoe (e.g., a tennis shoe, a golf shoe, a bowling shoe, a running shoe, a basketball shoe, a soccer shoe, a ballet shoe, etc.), a walking shoe, a sandal, a boot, or other suitable type of shoe. Additionally, a rapid-entry shoe can be sized and configured to be worn by men, women, or children."). Accordingly, a person of ordinary skill would have been motivated to combine references that disclose footwear with improved fit features, enhancements to wearing comfort, and innovations in donning and doffing, regardless of whether those references are nominally directed towards a specific type of shoe or footwear use case.

A person of ordinary skill would have been motivated to combine the identified prior art references in a manner that would result in the subject matter claimed in the asserted claims of the '811 Patent because the references are in the same field and address the same technology, are directed to the same or similar design incentives or market pressures, and address the same or similar issues in the same or similar ways. *See, e.g.*,[9] Lin-845 1:41-58 ("the present invention provides a shoe comprises an outsole, an upper that is attached on the outsole and has a counter and a collar extending upward from the counter and configured as a shoehorn, a supporting piece which is harder than the upper and attached to the counter and the collar of the upper, and a guiding

[9] Citations and motivations to combine provided hereunder are intended to provide examples of Skechers' contentions. Skechers reserves the right to rely upon (1) other portions of the cited references, (2) any other references identified herein, (3) other prior art references, (4) learned treatises and industry publications, (5) the background knowledge of a POSITA given the state of the art at the claimed priority date, and (6) expert testimony. Moreover, Skechers incorporates by reference the exemplary citations and motivations to combine identified in the sections for the other patents-in-suit.

piece which is harder than the upper and attached to an instep of the upper and having a part extending out of a top line of the upper. Since the supporting piece has a predetermined hardness and the collar is configured like a shoehorn, the rear of the upper is provided with a portion having a similar function to a shoehorn. The guiding piece is also useful for avoiding the instep from becoming crease and unsmooth. As a result, a user's foot is able to slide into the shoe along the aforesaid portion, so that the shoe is convenient for the user to put on without bending his back and using his hand."); Kim Abstract ("[Problem] To provide a shoe that can be easily put on and taken off by people who cannot bend down, such as elderly people, physically disabled people and pregnant women."); Hongren ¶ 3 ("An object of the present invention is to provide a counter heel cup inserting device capable of easily achieving, when a user walks in shoes, a function of inserting into the shoes in 1 to 2 seconds, more facilitating put-on of the shoes, and further enhancing the convenience of putting on and taking off the shoes, while ensuring stability and comfort during walking."); Thaikattil 1:25-2:2 ("An object of this invention is to provide footwear that would still retain its semi flexible character but would resist buckling of the heel cap when the foot is inserted without the help of the hands. Another object of this invention is to propose an article of footwear provided with means for easy heel introduction into the heel cap - the foot being inserted with or without the help of the hands."); Jackson at p. 1, ln. 9-15 ("The present invention relates to an improved article of foot wear embodying a novel construction whereby the same may be easily and quickly placed in position upon the foot or removed therefrom and which has the further advantage of possessing a neat and attractive appearance."); Wells ¶ 1 ("The present invention relates to a shoe horn attachment for a shoe, in particular, to a shoe horn attachment that may easily be secured to a shoe and that, once fitted, guides the heel of a user as the user inserts a foot into the shoe. Such an attachment makes it easier for a user to put the shoe on, and also prevents damage

to the shoe."); Sturlaugson 2:42-44 ("The present invention involves an improved shoe design which allows the wearer to easily step into the shoe while standing erect."); Epstein at 1:5-7 ("Generally speaking, this invention relates to all types of footwear constructions, and in particular, to shoes of the slip-on or blucher moccasin type."); Sakai ¶ 5 ("An article of footwear is provided that has a resilient support structure located in the heel and vamp portions surrounding the foot opening so that the shoe retains its shape after the wearer's heel is inserted, without need to manually straighten either the heel portion or the vamp portion of the shoe."). A person of ordinary skill would have been aware of the various needs and opportunities associated with slip-on footwear with improved fit features, and would have been motivated to consult these and other references, at least by virtue of the fact that they are all directed to among other things providing footwear with improved fit, ease of donning and doffing, and heel stability. A person of ordinary skill in the art would further appreciate that these patents or patent applications are concise descriptions of technology that the authors believed to be new or different, and would be motivated to combine their disclosure with other teachings in the field, as well as his or her background knowledge.

In particular, a person of ordinary skill would have been motivated to combine or modify references teaching the incorporation of stabilizers defining a unitary construction extending from the sole portion toward the rear portion of the foot opening with references disclosing a plurality of elastic elements including at least a first and second elastic element separated by a non-elastic portion of the upper, the plurality of elastic elements operable to reduce the foot opening when contracted and enlarge the foot opening when expanded. A person of ordinary skill would further have been motivated to include a plurality of elastic elements configured to facilitate flexion or pivoting of the forward portion of the upper, wherein the plurality of elastic elements includes first

and second elastic elements respectively defining first and second longitudinal axes, wherein the first and second longitudinal axes have different angles relative to a vertical axis. For example, the prior art recognized numerous market pressures and design incentives favoring the development of shoes both incorporating elastic elements and stabilizer elements for easy entry into the shoe, such as the needs of persons who experience difficulty bending down, or the damage caused by the tendency of the rear portion of the shoe to bend or buckle inward when users don shoes. Sturlaugson, for example, teaches:

> A common problem present in most shoe designs, particularly Loafer-type designs, is that they do not permit the wearer to easily slip the shoe on and off while the wearer is standing. Attempts by a wearer, to put a shoe of a conventional design on while standing often cause the back (counter) and sides of the shoe to break down, making the shoe unattractive and uncomfortable. Further, the wearer's repeated attempts to put the shoe on while standing may cause the shoe leather to stretch so that the shoe no longer fits properly and, also, may destroy the finish of the shoe.

Sturlaugson at 1:9-19. *See also, e.g.*, Kim ¶ 5 ("[I]t is necessary to hold the shoehorn body by hand when the heel is inserted into the shoe, and the user is required to bend down when putting on the shoe. Therefore, it is very inconvenient for users who cannot bend down, such as elderly people, physically disabled people and pregnant women. Furthermore, when taking off the shoe, the user bends down and pushes down the heel portion of the shoe to take off the shoe from the heel of the foot …. Therefore, also in this case, it is very inconvenient for users who cannot bend down, such as elderly people, physically disabled people and pregnant women."); Zago at 1 ("Putting on a shoe is an operation we learn when we are children and perform countless times in our lives. It is an apparently easy thing to do, but as we get older, it may become annoying and uncomfortable. Whether it is because of the weight we put on with age or improper lifestyles, or because of muscle pains due to a lack of body movement, the action of bending over to put on shoes is something we do every day, but is bothersome, which is true not only for the elderly."); Wells ¶ 2 ("The act of doing up the fastener requires the user to bend down, and this may be difficult for, for example, an

elderly or disabled person. A lace-up or buckle-up shoe is generally a very loose fit around the user's foot when it is not laced or buckled, so that it is dangerous to walk around with the fastening means not properly fastened."); Mikio ¶ 2 ("Generally, footwear includes types of footwear, such as business shoes and sneakers, which have a small shoe opening and require the untying and tying of shoelaces when putting them on or taking off, and types of footwear, such as loafers and slip-ons, which have a long, large opening and which can 30 be worn without shoelaces by using a shoehorn or by pulling up on a tag attached to the heel with a hand. In either case, bending over is required to put them on. This is a difficult motion for the elderly. A large shoe opening also makes it difficult for the foot to remain stable inside the footwear during walking. Therefore, footwear that has a small shoe opening and that can be put on without bending over has been proposed, featuring the following structures."); Thaikattil at 1:12-14 ("A common problem that is encountered when the foot is introduced without the help of the hands into foot tight footwear having a heel cap portion is the buckling of the semi flexible counter of the footwear on contact with the heel."); Hongren ¶ 2 ("When putting on or taking off ordinary shoes, it is usually necessary to tighten or loosen shoelaces or adjustment straps (hook-and-loop straps), or even to pull a woven heel strap of the shoe or use a shoehorn to assist in putting on the shoes, making the process of putting on and taking off quite troublesome."); Lin-845 at 1:11-29 ("Modem people are so busy in such a way that everything in living, including putting shoes on and taking them off, is requested to be done efficiently and conveniently. Therefore, many tools or skills that help putting on and taking off shoes are well developed. For example, when putting on a shoe that will cover widely the user's foot, some people have a habit of using a shoehorn or of pulling the tongue or the front of the shoe's top line for helping their foot in slipping into the shoe. When taking off a shoe, besides pulling, many people have a habit of treading on the counter at the rear of the shoe by the other

foot so as to take off that shoe quickly. However, when taking any above-mentioned way, people will need to bend their backs and then touch the shoes or handle shoehorns, which is not so convenient to busy people, not to mention people who can't bend their backs easily, such as old people, pregnant women, or patients with ankylosing spondylitis."); Sakai ¶¶ 2-3 ("Because of the way a loafer-type shoe is designed, the wearer often places pressure on the shoe back when slipping a foot into the shoe. This pressure can cause the shoe back to crumple under the wearer's heel, which in turn causes damage to the shoe and makes it more likely that the back portion will crumple in the future when the foot is inserted into the shoe…. Additionally, many people slip on regular closed heel shoes by leaving the laces untied or relatively loosely tied and forcibly inserting their foot so that they can easily slip their closed heel shoes on and off their feet without having to spend time tying their shoelaces or securing straps. Leaving laces untied or loosely tied detracts from the support provided by a shoe, and forcibly inserting the foot into the shoe can result in bending the heels down, causing the material forming the heels to deteriorate and lose support, ultimately destroying the shoes."). The nature of the problems to be solved—collapsing heel counters, deformation of the rear portion of the upper, or improved donning and doffing—would have led one of ordinary skill in the art to combine or modify references that disclose heel stabilizer elements with references that disclose elastic elements in the shoe upper, as such was a known technique yielding predictable results.

A person of ordinary skill would further have been motivated to utilize multiple different configurations of elastic elements in the upper, such as defining a portion of the foot opening with the first elastic element; defining a portion of the upper with the first elastic element; positioning the first elastic element at the side portion of the upper and the second elastic element at a forward portion of the upper; extending the second elastic element across a vamp of the upper; spacing the

second elastic element from the foot opening; or positioning the first elastic element on the shoe's lateral side and a third elastic element on the shoe's medial side. For instance, it was well known at the time of the alleged priority date of the '811 Patent that incorporating elastic elements at or around the tongue, laces, throat, vamp, and/or toe cap would ease donning and doffing, and further improve the fit and securement of the footwear. For example, Steere teaches:

> In some embodiments, a forefoot portion of the upper may be secured to the insole by elastic straps. As shown in FIG. 10, portions of the forefoot section of the upper 1010 may extend past and within a heel section of the upper on symmetrical lateral sides of the shoe. This forefoot portion of the upper may be secured to the insole of the shoe by elastic straps 1011 or other elastomeric elements that are stitched or otherwise permanently secured to the forefoot portion of the upper 1010 on one end and to the insole 1030 on the other end. In this way, the elastic may stretch to allow the forefoot of the upper 1010 to expand, e.g., in order for a wearer to fit their foot into the shoe. Once the wearer's foot is settled within the shoe, the elastic may contract, allowing the forefoot section of the upper 1010 to fit snugly against the wearer's foot.

Steere ¶ 74. *See also, e.g., id.* ¶ 78 ("In other embodiments, the lacing component 1100 may be in the form of elastic inserts placed in cut-outs in sections of the upper. Some embodiments may include two matching cut-outs placed on opposite sides of the upper 1110, near the edge of the cavity 1150 configured to receive a foot. These cut-outs may then be filled with an elastic material stitched to the upper 1110 along the edges. These elastic inserts may allow the upper 1110 to stretch and the cavity 1150 to expand in order to fit a foot securely into the shoe."). As another example, Jackson teaches:

> For the purposes of illustration the invention is shown as employed in connection with a low shoe embodying a sole 1 and an upper 2, the said upper being formed at its forward portion with the flaps 3 which are spread apart when the shoe is being placed in position upon the foot or removed therefrom, but which are held firmly and smoothly across the instep when the shoe is in use. The space between the flaps 3 is designed to be bridged by means of a tongue 4 which is of the usual construction.… Extending across the space between these flaps 3 are the elastic bands 7 which pass through the corresponding openings 6 upon opposite sides of the shoe. After passing through these openings the ends of the elastic bands 7 extend downwardly and rearwardly between the upper 2 and the lining 5 and have their extremities secured to strips 8 at the lower portion of the shoe…. It will thus be

> obvious that these elastic bands have a loose connection with the flaps 3 and normally tend to draw the said flaps together. However, by stretching the elastic bands the flaps can be readily spread apart when placing the shoe in position upon the foot or removing it therefrom. Attention may also be directed to the fact that these bands also extend around the instep of the foot and hold the shoe securely in position upon the foot.

Jackson at p. 1 ln. 42-81. *See also, e.g.*, Koo-903 at 6:1-15 ("elastic straps are used to pull or hold a shoe's tongue in a down (or at least lower) position. In certain embodiments, the aggregate tension provided by such elastic straps is strong enough (e.g., using a small number of wider and/or higher-tension straps or a larger number of narrower and/or somewhat lower-tension straps) to hold the shoe onto the wearer's foot. As a result, it can be possible for the wearer to slide his or her foot into the shoe without tying the shoelaces, or even to wear the shoe without shoelaces at all. Not only does this approach provide for greater convenience, but it also can provide the wearer with a means to make different kinds of fashion statements, e.g., wearing shoes with the laces untied or wearing shoes that have lace-up eyelets 24 but no laces through them."); Calderone at 1:49-60 ("The shoe is modified with a band that is connected to the left side and right side of the shoe upper and extends across the shoe forefoot opening. The band is positioned just forward of the ankle opening of the upper to allow for easy insertion of the wearer's foot into the shoe. With the wearer's foot inserted in the shoe, the band extends across the wearer's forefoot, thereby securely holding the shoe on the foot. In the preferred embodiment, the band has at least one elastic portion that allows the band to be stretched. This allows the left side and right side of the shoe upper and the shoe tongue to be separated from each other to provide ample room for insertion of the foot into the shoe."); Jia at 1:22-30 ("The present invention uses a particular configuration of intermediate stitches between eyelets and elastic connection to provide supplemental support for shoelaces. The intermediate stitches also called inter eyelet stitches provide connection between the shoe and a tongue for supplemental support. The elastic connection additionally provides

connection between the shoe and the tongue. The laces having received the stitch support can then be omitted, or styled in a variety of different configurations according to fashion requirements."), 2:53-58 ("the present configuration displays a pair of elastic connection 65 at the top of the tongue 30. The elastic connection is made of a strip of elastic material. The strip of elastic material may be a single strip passing from one side of the tongue to the other side underneath the label. Alternatively, the strip of elastic material could be made of a pair of strips"). It is thus unsurprising that numerous commercially successful footwear constructions incorporated such configurations, such as the Chuck Taylor II All Star, Skechers Ultra Flex Bright Horizon, Merrell Jungle Moc 2, Skechers Flex Air Cooled Electra, and Skechers Stretch Fit Glider. Given the breadth and depth of the art in this area, incorporating such elastic elements into slip-on footwear would have been obvious to try for a person having ordinary skill in the art, as these configurations of elastic elements were part of a finite number of identified, predictable solutions.

A person of ordinary skill would further have been motivated to include elastic elements with 2- and 4-way stretches. By 2019, such elastic elements were well-known, ordinary aspects of footwear construction, and would have been a matter of common knowledge to those of ordinary skill in the art. *See, e.g.*, Motawi, *Shoe Material Design Guide*, pg. 18 ("Spandex is the trade name for a synthetic polyurethane copolymer fiber known for its exceptional elasticity. Spandex by weight is stronger and more durable than natural rubber. This fiber has the remarkable ability to stretch more than 500% of its length, then return to shape. Spandex is often combined with other fibers to create fabrics with high strength and some elastic properties. Tongue gussets and binding fabric will often have spandex fibers. Due to it conforming stretchability, Spandex fabric makes for very smooth wrapped binding edges."); Shishoo pg. 49 ("Fibre and fabric innovation had gained momentum with the introduction of the elastomeric fibre, generically known as spandex,

in 1958, with DuPont's trade name `Lycra', historically adopted by the foundations industry to replace rubber and provided power, support, control and compression. From the beginning of the 1960s, Lycra was available in circular knit, power net (two-way stretch) and leno (one-way stretch."). Indeed, numerous references teach footwear constructions including either or both of elastic elements with a 2- or 4-way stretch, *see, e.g.*, Doenges ¶ 40 ("A fabric layer can further be formed of synthetic or natural leather or may even further comprise a plurality of layers (e.g., a plurality of layers comprising waterproof and breathable properties, such as fabric layers commercially available under the name GORETEX). The fabric layers can include elastomers that provide any suitable degree of stretch (e.g., two way stretch or four way stretch) at any one or more locations of the upper."); Hoying ¶ 31 ("For example, the stretchable portion may be provided by using a stretch fabric, e.g. 2-way or 4-way stretch, of a stretchable material such as elastane, e.g. LYCRA®, neoprene or the like. "), and multiple prior art footwear constructions also incorporated such elastic elements, *see, e.g.*, BOGS Ultra Mid, Skechers Ultra Flex Bright Horizon, Skechers Bikers. Accordingly, incorporation of elastic elements with either or both of a 2- or 4-way stretch would have been a simple matter of design choice well-with the knowledge of a person of ordinary skill in the art.

These benefits, and others disclosed in the cited art references, would have motivated a person of ordinary skill to look to these references and incorporate their teachings in a manner that would result in the subject matter claimed in the asserted claims of the '811 Patent, as it merely would involve the combination of known prior art elements according to known methods to yield predictable benefits. As these features were already implemented in the prior art, a person of ordinary skill would have had a reasonable expectation of success in combining them, and would have recognized that there were no significant impediments to combining the elements and features

from these references. It would have required only routine skill and little effort in terms of time, expense, or resources for a POSITA to apply these and other teachings to an article of footwear. A POSITA would, therefore, have found suggestion and motivation in the art and from his or her own knowledge as a skilled artisan to modify the foregoing and other references. Accordingly, because all the elements of the asserted claims of the '811 Patent were known in the prior art and one of ordinary skill could have combined them, as claimed, by known methods with no change in their respective functions and nothing more than predictable results, the asserted claims of the '811 Patent are invalid as obvious.

6. Obviousness of the '096 Patent

To the extent Plaintiffs allege that any prior art reference does not expressly or inherently anticipate the Asserted Claims of the '096 Patent, the Asserted Claims are invalid as obvious under 35 U.S.C. § 103 as set forth in the charts included herewith for the '096 Patent, including the Invalidity Charts (Exhibits 096-1 to 096-76) and Invalidity Combinations Chart (Exhibit 096-C). Skechers may assert obviousness based on any identified reference alone, or in a combination with any one or more of: (1) the knowledge of a POSITA at the time of the alleged invention; (2) any admitted prior art, as explained in the '096 Patent or discussed in its file history or in the file history of any related patent; (3) any of the prior art references identified in this Cover Pleading; (4) any of the prior art references charted in any Skechers Invalidity Chart; and/or (5) any of the prior art references charted in Skechers' Invalidity Combinations Chart for the '096 Patent (Exhibit 096-C).

The '096 Patent purports to address the user experience of footwear during donning, wearing, or doffing. *See*, *e.g.*, '096 Pat. 1:16-23 ("Whether due to inconvenience or inability, donning and doffing of shoes, including tying or otherwise securing the same, may be undesirable and/or present difficulties to some individuals. The present disclosure addresses this need."). The '096 Patent makes clear that the entire field of footwear design and development is relevant,

regardless of any particular shoe type or use case. *See id.* at 4:12-20 ("As used herein, a 'rapid-entry shoe' refers to an athleisure shoe, a casual shoe, a formal shoe, a dress shoe, a heel, a sports/athletic shoe (e.g., a tennis shoe, a golf shoe, a bowling shoe, a running shoe, a basketball shoe, a soccer shoe, a ballet shoe, etc.), a walking shoe, a sandal, a boot, or other suitable type of shoe. Additionally, a rapid-entry shoe can be sized and configured to be worn by men, women, or children."). Accordingly, a person of ordinary skill would have been motivated to combine references that disclose footwear with improved fit features, enhancements to wearing comfort, and innovations in donning and doffing, regardless of whether those references are nominally directed towards a specific type of shoe or footwear use case.

A person of ordinary skill would have been motivated to combine the identified prior art references in a manner that would result in the subject matter claimed in the asserted claims of the '096 Patent because the references are in the same field and address the same technology, are directed to the same or similar design incentives or market pressures, and address the same or similar issues in the same or similar ways. *See*, *e.g.*,[10] Lin-845 1:41-58 ("the present invention provides a shoe comprises an outsole, an upper that is attached on the outsole and has a counter and a collar extending upward from the counter and configured as a shoehorn, a supporting piece which is harder than the upper and attached to the counter and the collar of the upper, and a guiding piece which is harder than the upper and attached to an instep of the upper and having a part extending out of a top line of the upper. Since the supporting piece has a predetermined hardness

[10] Citations and motivations to combine provided hereunder are intended to provide examples of Skechers' contentions. Skechers reserves the right to rely upon (1) other portions of the cited references, (2) any other references identified herein, (3) other prior art references, (4) learned treatises and industry publications, (5) the background knowledge of a POSITA given the state of the art at the claimed priority date, and (6) expert testimony. Moreover, Skechers incorporates by reference the exemplary citations and motivations to combine identified in the sections for the other patents-in-suit.

and the collar is configured like a shoehorn, the rear of the upper is provided with a portion having a similar function to a shoehorn. The guiding piece is also useful for avoiding the instep from becoming crease and unsmooth. As a result, a user's foot is able to slide into the shoe along the aforesaid portion, so that the shoe is convenient for the user to put on without bending his back and using his hand."); Kim Abstract ("[Problem] To provide a shoe that can be easily put on and taken off by people who cannot bend down, such as elderly people, physically disabled people and pregnant women."); Hongren ¶ 3 ("An object of the present invention is to provide a counter heel cup inserting device capable of easily achieving, when a user walks in shoes, a function of inserting into the shoes in 1 to 2 seconds, more facilitating put-on of the shoes, and further enhancing the convenience of putting on and taking off the shoes, while ensuring stability and comfort during walking."); Thaikattil 1:25-2:2 ("An object of this invention is to provide footwear that would still retain its semi flexible character but would resist buckling of the heel cap when the foot is inserted without the help of the hands. Another object of this invention is to propose an article of footwear provided with means for easy heel introduction into the heel cap - the foot being inserted with or without the help of the hands."); Jackson at p. 1, ln. 9-15 ("The present invention relates to an improved article of foot wear embodying a novel construction whereby the same may be easily and quickly placed in position upon the foot or removed therefrom and which has the further advantage of possessing a neat and attractive appearance."); Wells ¶ 1 ("The present invention relates to a shoe horn attachment for a shoe, in particular, to a shoe horn attachment that may easily be secured to a shoe and that, once fitted, guides the heel of a user as the user inserts a foot into the shoe. Such an attachment makes it easier for a user to put the shoe on, and also prevents damage to the shoe."); Sturlaugson 2:42-44 ("The present invention involves an improved shoe design which allows the wearer to easily step into the shoe while standing erect."); Epstein at 1:5-7

("Generally speaking, this invention relates to all types of footwear constructions, and in particular, to shoes of the slip-on or blucher moccasin type."); Sakai ¶ 5 ("An article of footwear is provided that has a resilient support structure located in the heel and vamp portions surrounding the foot opening so that the shoe retains its shape after the wearer's heel is inserted, without need to manually straighten either the heel portion or the vamp portion of the shoe."). A person of ordinary skill would have appreciated that the references disclosed herein teach familiar and complementary features selected from a set of known methods and techniques in the same field or endeavor used to improve similar devices in similar ways with predictable results, and thus would have had a reasonable expectation of success in incorporating their teachings into handsfree footwear. Moreover, A person of ordinary skill would have been aware of the various needs and opportunities associated with slip-on footwear with improved fit features, and would have been motivated to consult these and other references, at least by virtue of the fact that they are all directed to among other things providing footwear with improved fit, ease of donning and doffing, and heel stability. A person of ordinary skill in the art would further appreciate that these patents or patent applications are concise descriptions of technology that the authors believed to be new or different, and would be motivated to combine their disclosure with other teachings in the field, as well as his or her background knowledge.

For example, a person of ordinary skill would have been motivated to incorporate into slip-on footwear a plurality of elastic elements configured to facilitate flexion or pivoting of the forward portion to the upper, where in the plurality includes a first elastic element extending toward the lateral side portion of the upper, a second elastic element that does not extend to the top line of the upper, and a third elastic element that extends toward the medial side portion of the upper. Similarly, a person of ordinary skill in the art would have been motivated to include other

configurations of the plurality of elastic elements, such as spacing the first and third elastic element apart from each other; extending the first and third elastic elements to the top line of the upper; coupling the tongue portion to at least one of the elastic elements; and extending at least one elastic element across the tongue portion, such that the curvilinear profile of the elastic member crosses the longitudinal axis of the tongue portion. Such configurations of elastic upper elements was were known techniques in footwear construction, and were regularly selected by skilled artisans from a finite number of identified, predictable solutions for improved footwear fit properties and easier donning and doffing. For example, Hoying teaches:

> Zones on an upper may have predetermined characteristics to meet the needs of the user, desires of the designer, specifications of the developer and/or the requirements of a particular use. For example, zones may be defined to have a predetermined strength, elasticity, cushioning, permeability, water resistance, heat transfer capability, stiffness, and/or other desirable characteristics known in the art of shoe making.

Hoying ¶ 185; *see also id.* ¶ 383 ("Areas of enhanced stretch may be found in all regions of the upper, for example, heel region 672 having collar zone 674, midfoot region 670 having instep zone 676, and forefoot region having vamp zone 678. Depending on the use of the shoe and/or the preferences of the wearer stretchability in various zones may vary. For example, as depicted in Fig. 24, vamp zone 678 and instep zone 676 may include multiple plies of an elastic yarn to provide stretch and/or recovery properties required. As the construction depicted in Fig. 24 is laceless, stretch and recovery properties of the instep zone and collar zone ensure proper fit of the shoe upper while allowing for entry of the foot."). A person of ordinary skill would have had a reasonable expectation of success in modifying and combining the references disclosed herein, at least because the use of elastic elements for improved footwear fit and donning and doffing was a known method in the art yielding predictable results and benefits. *See, e.g.*, Rossi pg. 73 ("Goring. A fabric woven with rubber threads to form an elastic material. Used in footwear in various

applications. The main ones are as follows: Finger. Used mainly in high-front shoe styles. The goring is used between the lining and upper leather. Front. Concealed, with a top opening of not less than ¾ of an inch, applied at the shoe's throat or instep for a snug, clinging fit. Hidden. Hidden from view, such as the gore band over the instep and under the tongue on a loafer shoe. Side. Applied in V-shape or U-shape at the sides of the shoe."); Motawi, *Shoe Material Design Guide*, pg. 44 ("Aside from conventional woven or knit laces, there are many other ways to secure a shoe to your foot…. Of course, some shoes may not have any laces at all. The adjusting function may be Velcro straps or elastic goring."). Indeed, the prior art evidences ongoing innovation in the use of elastic elements in footwear construction for over a hundred years. *See, e.g.*, Rossi at 213 ("The pump received great impetus with the invention of elasticized goring in 1837 by J. Sparkes Hall, bootmaker to Queen Victoria. The new hug fit of the pump without benefit of fastenings delighted the queen and the pump rose rapidly in popularity."); Packard at ln. 49-54 ("The elastic gorings, united to the forward edges of the quarter, cause the latter to conform to the contour of the back of the foot, and so that the quarter requires but little crimping or molding to adopt it to said contour."); Parker at p. 1, col. 1, ln. 45-52 ("The principal object of the present invention is to provide a shoe construction wherein the upper embodies elastically stretchable panels or gores and wherein the desired degree of elastic yield across the instep is assured without causing the top of the shoe to become loose during wear and without spoiling the fit at the ball and instep portions."). In particular, well before the alleged priority date of the '096 Patent, skilled artisans recognized that these configurations of elastic upper elements in slip-on footwear, such as incorporating elastic elements at or around the tongue, laces, throat, or vamp, would ease donning and doffing, and further improve the fit and securement of the footwear. For example, Steere teaches:

> In some embodiments, a forefoot portion of the upper may be secured to the insole by elastic straps. As shown in FIG. 10, portions of the forefoot section of the upper

> 1010 may extend past and within a heel section of the upper on symmetrical lateral sides of the shoe. This forefoot portion of the upper may be secured to the insole of the shoe by elastic straps 1011 or other elastomeric elements that are stitched or otherwise permanently secured to the forefoot portion of the upper 1010 on one end and to the insole 1030 on the other end. In this way, the elastic may stretch to allow the forefoot of the upper 1010 to expand, e.g., in order for a wearer to fit their foot into the shoe. Once the wearer's foot is settled within the shoe, the elastic may contract, allowing the forefoot section of the upper 1010 to fit snugly against the wearer's foot.

Steere ¶ 74. *See also, e.g., id.* ¶ 78 ("In other embodiments, the lacing component 1100 may be in the form of elastic inserts placed in cut-outs in sections of the upper. Some embodiments may include two matching cut-outs placed on opposite sides of the upper 1110, near the edge of the cavity 1150 configured to receive a foot. These cut-outs may then be filled with an elastic material stitched to the upper 1110 along the edges. These elastic inserts may allow the upper 1110 to stretch and the cavity 1150 to expand in order to fit a foot securely into the shoe."). Kim similarly teaches:

> [W]hen putting on the shoe, the user first inserts, starting from the toes, the foot into the shoe, and then pushes the heel of the foot into the inside of the heel portion while sliding it along the heel guide portion. At this time, since the one pair of stretchable portions stretches, the opening of the shoe expands, and the heel can be easily placed at the inside of the heel portion. When shoes are taken off, using one foot to press the projecting portion of the other shoe and lifting up the other foot allows the other shoe to be taken off from the heel of the other foot. At this time, since the one pair of stretchable portions stretches, the opening of the shoe expands, allowing the shoe to be easily taken off.

Kim ¶ 8. *See also, e.g.,* Koo-903 at 6:1-15 ("elastic straps are used to pull or hold a shoe's tongue in a down (or at least lower) position. In certain embodiments, the aggregate tension provided by such elastic straps is strong enough (e.g., using a small number of wider and/or higher-tension straps or a larger number of narrower and/or somewhat lower-tension straps) to hold the shoe onto the wearer's foot. As a result, it can be possible for the wearer to slide his or her foot into the shoe without tying the shoelaces, or even to wear the shoe without shoelaces at all. Not only does this approach provide for greater convenience, but it also can provide the wearer with a means to make

different kinds of fashion statements, e.g., wearing shoes with the laces untied or wearing shoes that have lace-up eyelets 24 but no laces through them."); Jackson at p. 1 ln. 42-81 ("For the purposes of illustration the invention is shown as employed in connection with a low shoe embodying a sole 1 and an upper 2, the said upper being formed at its forward portion with the flaps 3 which are spread apart when the shoe is being placed in position upon the foot or removed therefrom, but which are held firmly and smoothly across the instep when the shoe is in use. The space between the flaps 3 is designed to be bridged by means of a tongue 4 which is of the usual construction.… Extending across the space between these flaps 3 are the elastic bands 7 which pass through the corresponding openings 6 upon opposite sides of the shoe. After passing through these openings the ends of the elastic bands 7 extend downwardly and rearwardly between the upper 2 and the lining 5 and have their extremities secured to strips 8 at the lower portion of the shoe…. It will thus be obvious that these elastic bands have a loose connection with the flaps 3 and normally tend to draw the said flaps together. However, by stretching the elastic bands the flaps can be readily spread apart when placing the shoe in position upon the foot or removing it therefrom. Attention may also be directed to the fact that these bands also extend around the instep of the foot and hold the shoe securely in position upon the foot."); Calderone at 1:49-60 ("The shoe is modified with a band that is connected to the left side and right side of the shoe upper and extends across the shoe forefoot opening. The band is positioned just forward of the ankle opening of the upper to allow for easy insertion of the wearer's foot into the shoe. With the wearer's foot inserted in the shoe, the band extends across the wearer's forefoot, thereby securely holding the shoe on the foot. In the preferred embodiment, the band has at least one elastic portion that allows the band to be stretched. This allows the left side and right side of the shoe upper and the shoe tongue to be separated from each other to provide ample room for insertion of the foot into the

shoe."); Jia at 1:22-30 ("The present invention uses a particular configuration of intermediate stitches between eyelets and elastic connection to provide supplemental support for shoelaces. The intermediate stitches also called inter eyelet stitches provide connection between the shoe and a tongue for supplemental support. The elastic connection additionally provides connection between the shoe and the tongue. The laces having received the stitch support can then be omitted, or styled in a variety of different configurations according to fashion requirements."), 2:53-58 ("the present configuration displays a pair of elastic connection 65 at the top of the tongue 30. The elastic connection is made of a strip of elastic material. The strip of elastic material may be a single strip passing from one side of the tongue to the other side underneath the label. Alternatively, the strip of elastic material could be made of a pair of strips"). It is thus unsurprising that numerous commercially successful footwear constructions incorporated such configurations, such as the Chuck Taylor II All Star, Skechers Ultra Flex Bright Horizon, Merrell Jungle Moc 2, Skechers Flex Air Cooled Electra, and Skechers Stretch Fit Glider. Given the breadth and depth of the art in this area, incorporating such elastic elements into slip-on footwear would have been obvious to try for a person having ordinary skill in the art, as these configurations of elastic elements were part of a finite number of identified, predictable solutions. Moreover, given the competitive pressures of the footwear industry, a person of ordinary skill in the art would have been motivated to incorporate these configurations of elastic elements into various footwear constructions. See, e.g., Shishoo pg. 5-6 ("Design requirements of active and performance sportswear have produced designers with skills and knowledge in graphics, textiles and fashion to conceive aesthetically pleasing and ergonomically viable ranges which take advantage of the latest advances in functional and 'smart' textiles. Leading fashion designers have been quick to realize that the performance has actually become the aesthetics in sportswear. It is the fabrics and technology that set the trend.

Incorporation of microfibres, breathable barrier fabrics, innovative stretch materials, intelligent textiles, interactive materials such as phase-change materials and shape-memory polymers, and wearable technology as a part of the functional design system in sportswear, will become routine in the product development process. The development of new materials and designs for sports footwear has created an extremely competitive market for footwear design. The needs of consumers for active sport and leisure are performance, protection and comfort related. The design concepts are based on biomechanical analysis related to the knowledge of foot morphology, anatomy and lower extremity mechanics. The use of lightweight, durable, and energy-absorbing and moisture/heat-regulating materials is becoming a critical factor for functional design in sports footwear. Microfibres, breathable membranes and coatings, moulded polyurethane, air cushions and various forms of gel capsule, elastomeric fabrics and phase-change materials (PCM) are becoming common features promoted in shoe design.").

A person of ordinary skill would further have been motivated to include a stabilizer defining a unitary structure extending from the sole portion toward a rear portion of the foot opening, and would further be motivated to include a first portion having a concave profile facing toward the forward portion of the upper and a second portion having a convex profile facing toward the forward portion of the upper, the second portion positioned vertically higher than the first portion. Stabilizers with such features were a conventional, predictable feature of footwear design well before the claimed priority date of the '096 Patent and were regularly selected by skilled artisans to provide stability to the heel, reinforce the rear of the shoe, and to provide easy entry into the shoe without crushing or damaging the heel region of the shoe. Sturlaugson, for example, teaches:

> The present invention involves an improved shoe design which allows the wearer to easily step into the shoe while standing erect…. [A] somewhat rigid shoehorn

> shaped counter is integrated with the quarter portion of the shoe to guide the wearer's foot while putting the shoe on and preventing the back of the shoe from being crushed down. The counter is designed in such a way that its shape and size can be varied to conform with the wearer's needs and the style of shoe.

Sturlaugson 2:42-52. *See also, e.g., id.* at 3:53-64 ("Shown more clearly in FIGS. 2 through 4 is a preferred form of the shoehorn shaped counter 6. It is constructed of a rigid material such as plastic, metal, stiffened leather or reinforced cardboard. Counter 6 is constructed so that it has a rear portion 20 which conforms to the shape of the back of the shoe and two side portions 22 and 24 for reinforcing the shoe at the lateral heel portions of the quarter. Further, the counter has an upper portion 26 which angularly projects upward and outward from the shoe cavity 28 and which has a shape similar to that of a conventional heel-engaging shoehorn."), 5:24-30 ("The features include a shoe horn-shaped rigid member which is shaped to conform to the back of the shoe while the two side portions 22 and 24 thereof reinforce the lateral heel portions of the shoe quarter. This feature helps guide the foot upon insertion and prevents the counter from being inadvertently crushed as the wearer steps into the shoe."); Wells ¶ 10 ("[U]se of the shoe horn attachment prevents the back of the upper of the shoe from being distorted when the shoe is put on, and so prevents damage to the shoe."); Lin-845 at 1:38-54 ("It is an objective of the present invention to provide a shoe which can be put on and taken off conveniently. To attain the above objective, the present invention provides a shoe comprises an outsole, an upper that is attached on the outsole and has a counter and a collar extending upward from the counter and configured as a shoehorn, a supporting piece which is harder than the upper and attached to the counter and the collar of the upper, and a guiding piece which is harder than the upper and attached to an instep of the upper and having a part extending out of a top line of the upper. Since the supporting piece has a predetermined hardness and the collar is configured like a shoehorn, the rear of the upper is provided with a portion having a similar function to a shoehorn."), 3:3-8 ("Because of the

supporting piece 30 having a predetermined hardness and the collar 22 having a shape like a shoehorn, the rear of the upper 20 is provided with a portion that can be served as a shoehorn for helping the user's foot in slipping into the shoe 10 along that portion when the user puts on the aforesaid shoe 10."); Kim ¶ 13 ("[A] heel guide portion is included which integrally projects from the upper end of the heel portion and curves in a slope to go backward as it goes upward, so when putting on the shoe, the user first inserts, starting from the toes, the foot into the shoe, and then pushes the heel of the foot into the inside of the heel portion while sliding it along the heel guide portion and, thereby allowing the user to easily put on the shoe without bending down."); Hongren ¶ 1 ("The present invention relates to a counter heel cup inserting device, and more particularly, to a counter heel cup inserting device capable of easily achieving, when walking in shoes, a function of inserting into the shoes in 1 to 2 seconds, facilitating put-on of the shoes, and further enhancing the convenience of putting on and taking off the shoes, while ensuring stability and comfort during walking."); Takahashi ¶ 26 ("In other words, by providing the heel portion with the counter that integrally has an inward-facing concave curved surface portion to support the person's heel, and providing the counter with the guide core portion that is used to maintain the shape of the guide portion, the ease of putting on a shoe can be further improved while maintaining the shape of the heel portion."). A person of ordinary skill would have been motivated to combine or modify these and other references teaching the use of stabilizers to facilitate entry into slip-on footwear, as doing so would have been the simple application of a known technique to a known product ready for improvement to yield predictable results. Moreover, because such features had already been implemented in the prior art, a person of ordinary skill would have had a reasonable expectation of success in combining or modifying the above references.

A person of ordinary skill would further have been motivated to include a foam liner with concave profile facing toward the forward portion of the upper coupled to a rear portion of the upper and spaced between the sole portion and the top line of the upper. A person of ordinary skill would further have been motivated to incorporate various other configurations of the foam liner, such as positioning it at the rear portion of the upper extending toward the lateral and the medial side portions of the upper; positioning the liner adjacent to the convex profile of the stabilizer and extending forward along the upper; includes an upper surface on the foam liner that is sloped downward and forward where the it is configured to interface with a heel of a user; and including a portion of the foam liner extending forward and downward that is tapered from a wider portion toward the rear portion of the upper to a narrower portion toward the forward portion of the upper. Numerous references—including those directed to the use of stabilizers in conjunction with elastic elements to improve footwear donning and doffing—teach the use of lining, cushioning, and padding elements at and around the stabilizer to provide for user comfort and heel retention. *See, e.g.*, Takahashi ¶ 54 ("The inner surfaces of the sides 15, 16 and the heel portion 17 are provided with a lining (covering for inside surface) 25. The material and thickness of the lining 25 are set to have an appropriate cushioning property. In this embodiment, two or more layers of cloth (inner surface skin), cushion body (e.g., sponge) or the like are used."); Kim ¶ 27 ("As shown in FIG. 2, the heel portion 4 and the heel guide portion 4a are composed of a hard core material 9, a soft skin material 10 covering the outside of the core material 9, and a soft lining material 11 covering the inside of the core material 9."); Hongren ¶ 25 ("[T]he counter heel cup cushion 1 of the present invention is arranged between the lining 23 and the upper 24 of the shoe 2, and the embedding portion 11 is clamped and fixed between the sole 21 and the insole 22 of the shoe 2. Therefore, when a user walks in shoes, a function of inserting into the shoes in 1 to 2 seconds can be easily

achieved, facilitating put-on of the shoes, and more ensuring stability and comfort during walking."); Sturlaugson 2:60-63 ("Finally, the lateral upper edges or collar of the shoe are rolled or rolled and padded to provide greater durability, increased comfort and guidance of the wearer's foot into the shoe."), 4:17-27 ("Referring back to FIGS. 1 and 2, rolled or rolled and padded edges 7 and 8 about the foot receiving opening are present to promote a snug fit while, at the same time, insuring that the top portion of the side wall of the shoe does not become stepped down and damaged while the shoe is being placed on the foot. These rolled edges can be constructed by rolling the leather over and stitching along the lower edge of the rolled portion. If desired, padding can be added to the pocket formed by rolling the edges over prior to stitching for greater comfort and durability."); Shin-091 ¶¶ 63-65 ("At this time, when the heel 11 of the wearer applies an external force F to the inner skin 130 as illustrated in FIG. 6, the elastic member 122 provided in the inner skin 130 is elastically deformed due to a pushing force of the heel 11. That is, the elastic member 122 is elastically deformed due to the external force F caused by the heel 11 coming into contact and is concavely recessed toward the outer side. Here, the outer side refers to the outside based on the wearing groove 150. Preferably, the elastic member 122 that is elastically deformable may be formed of a rubber material. In addition, the elastic member 122 may be formed of a high-elasticity material such as urethane having an elastic force."). A person of ordinary skill would have been motivated to apply the teachings of these and other references to improve slip-on footwear incorporating elastic elements and stabilizers with a foam liner in the configurations described above, as doing so would have been a matter of routine design choices. Indeed, the use of heel lining to improve foot retention and comfort was so foundational and well-established incorporating that incorporating such lining into hands-free footwear would be obvious to try for a person of ordinary skill. For example, Rossi teaches that it was common knowledge in the art to

use a "heel liner" located "around the inside back of the heel's counter, usually to prevent heel slippage." Rossi at 85. Such liners have frequently been included in prior art footwear constructions a known solution to provide for improved heel retention and/or cushioning and comfort to the user. *See, e.g.*, Drechsler ln. 36-51 ("My retainer consists of a strip of elastic material or tape 2 which is secured, preferably by stitching 3, at its upper edge to the inner face of the upper edge of the heel of the shoe…. When the shoe is on the foot, any tendency of the heel to rise out of the shoe will cause the free inner edge of the retainer to move farther away from the inner surface of the heel of the shoe and increase the area of the portion of the tape which engages the heel of the foot. On this account, my retainer has been found to be very efficient."); Hongren ¶ 25 ("[T]he counter heel cup cushion 1 of the present invention is arranged between the lining 23 and the upper 24 of the shoe 2, and the embedding portion 11 is clamped and fixed between the sole 21 and the insole 22 of the shoe 2. Therefore, when a user walks in shoes, a function of inserting into the shoes in 1 to 2 seconds can be easily achieved, facilitating put-on of the shoes, and more ensuring stability and comfort during walking."); Doenges ¶ 42 ("The one or more foam layers provided in the fabric laminate can comprise any suitable one or more type(s) of open and/or closed cell foam materials that provide adequate cushioning and comfort for the intended purpose. In particular, an open-celled, thermoplastic foam may be utilized. Some examples of types of foam materials suitable for use in forming the upper include, without limitation, polyolefins (e.g., polyethylene or polypropylene) foam materials, ethylene vinyl acetate (EVA) foam materials and polyurethane (PU) foam materials.); Schenone ¶ 18 ("In another aspect, the upper may have one or more heel padding regions. The one or more heel padding regions include one or more heel pads disposed beneath the inner material of the heel region. As such, enhanced padding may be provided to a wearer of the article of footwear."). Moreover, a person of ordinary skill would have been

motivated to use foam as a heel liner, which was a known material recognized as suitable for use as a heel liner. For example, Koh teaches:

> Briefly, apparatus of this invention is a cushion for use inside footwear having an interior for receiving a foot of a wearer. The cushion comprises a liner made of cushioning material. The liner is sized and shaped for reception on an interior surface of the footwear in a position for engaging the foot when the foot is inserted into the interior of the footwear for cushioning an interface between the foot and the interior surface of the footwear with which the liner is engaged…. The cushion comprises a layer made of compliant slow recovery foam having an initial thickness prior to use and a compressed thickness thinner than the initial thickness during use resulting from pressure applied to the cushion by the foot. The foam has a resiliency capable of restoring the cushion substantially to the initial thickness after the foot is withdrawn from the footwear and pressure is relieved from the cushion.

Koh at 1:48-2:4. *See also*, *e.g.*, Motawi, *How Shoes Are Made*, pg. 184 ("PU foam is also used to make tongue and collar foam."); Shin-454 ¶ 1 ("The present utility model relates to a back counter for shoes capable of thickness adjustment and original shape restoration. More specifically, urethane is injection-molded to a predetermined thickness on the back counter, and during urethane injection molding, a band-shaped contact protrusion is integrally formed on the inner upper end of the back counter to be in close contact with the heel, thereby closely attaching the back counter to the heel to prevent the shoe from slipping off during walking."); Kilgore ¶ 44 ("Collar 88 is preferably formed of a soft material such as foam, cloth, or an elastomer."); Greene at 1:55-63 ("A variety of material elements (e.g., textiles, polymer foam, polymer sheets, leather, synthetic leather) are conventionally utilized in manufacturing the upper. In athletic footwear, for example, the upper may have multiple layers that each include a variety of joined material elements. As examples, the material elements may be selected to impart stretch-resistance, wear-resistance, flexibility, air-permeability, compressibility, comfort, and moisture-wicking to different areas of the upper."); 11:25-27 ("Many conventional articles of footwear incorporate polymer foam elements or other compressible materials into a collar area."); Nishiwaki at 4:60-63 ("As shown in FIG. 4A, the upper 1 includes a cushion 15 made of a resin foam between a quarter 13 and a quarter

lining 14. Note that the quarter 13 and the quarter lining 14 may each be formed by a plurality of layers of fabric."). Indeed, skilled artisans recognized foam heel lining as a technique to improve the retention of a wearer's heel in slip on footwear, with the predictable results of providing comfort to the heel and securing the user's foot in the shoe during walking. For example, Murray teaches:

> An oversize boot makes walking difficult and running almost impossible because the foot is not held firmly within the boot and has considerable movement within the boot when the wearer is in motion. For convenience, "boots" are used throughout to designate all types of footwear such as firemen and sportsman boots, high and low shoes, loafers, slippers, and of all types of materials whether rubber, plastic, leather or cloth…. The present invention corrects these disadvantages by employing inward expanding sponge rubber inserts, secured to the inside surface of the boot to hold the foot firmly against the bottom of the boot. When running, the boot inserts do not permit the foot to move about within its confines but instead, causes the foot to cling to the sole. A feature of the present invention is the unitary nature of the inserts comprising a body of foam rubber or plastic covered with cloth, thereby permitting the inserts to be attached to ordinary boots and shoes to achieve a tight comfortable fit. Internal pads of sponge material are preferably enclosed in a fabric casing and secured to the inside surface of rubber boots or shoes. The construction permits the wearer to put his feet into the boots without strenuous effort. Also, the boots may be removed easily without using a zipper opening or shoe laces. While being worn, the wearer may run or take long walking steps without fear of losing the boots or of displacing the foot within the boot. The sponge inserts hold the foot in its proper place by forcing the foot into contact with the inner sole.

Murray at 1:10-47. *See also, e.g.,* Shin-454 ¶ 20 ("According to the present utility model, which is a back counter for shoes capable of thickness adjustment and original shape restoration configured as described above, urethane is injection-molded to a predetermined thickness on the back counter, and during urethane injection molding, a band-shaped contact protrusion is integrally formed on the inner upper end of the back counter to be in close contact with the heel, thereby closely attaching the back counter to the heel to prevent the shoe from slipping off during walking. Even if the back counter is deformed during the process of the user wearing the shoe, it is restored to its original shape by the restoring force of the urethane, thereby maintaining the shoe in its original shape and extending the shoe's lifespan."); Auger ¶ 42 ("In any of the embodiments, heel

inserts 130, 131 include a cushioning member 160 for customizing the fit of footwear 100 and/or for improving overall footwear comfort. Cushioning member 160 is generally formed over and around at least part of second connector portion 150 and extends into heel region 114 of upper 104. Cushioning member 160 includes an outer surface 162, an inner surface 164, an upper edge 166, a lower edge 168, and sides 170, 172. Cushioning member 160 of u-shaped heel insert 154 may be vertically disposed within heel region 114 such that outer surface 162 of cushioning member 160 abuts against and generally conforms to the contours of inner surface 134 of heel counter 128 (FIG. 3). Likewise, cushioning member 160 of heel bucket insert 156 may be vertically disposed within heel region 114 but additionally may include a generally contoured and integrally formed horizontal component in the form of a heel bucket or cup 174 that is flush with a lower heel engaging area on upper surface 158 of insole 120 (FIGS. 4-5). Moreover, cushioning member 160 may have varying thicknesses so that different heel inserts 130, 131 are configured with different foam contours."); Shin-091 ¶ 65 ("Preferably, the elastic member 122 that is elastically deformable may be formed of a rubber material. In addition, the elastic member 122 may be formed of a high-elasticity material such as urethane having an elastic force."); Kilgore ¶ 44 ("Collar 88 is preferably formed of a soft material such as foam, cloth, or an elastomer."); Aikawa at p. 21 ("An elastic material (11) such as a foamed elastic synthetic resin improves the fit around the ankle in the upper heel portion and enhances comfort."); Ikezawa ¶ 86 ("The layered portions 20 and 29 each have a cushioning material 21 represented as a dotted area, layered with an inner skin and an outer skin 23, with the cushioning material 21 sandwiched therebetween. The cushioning material 21 may be, for example, a foamed resin or a foamed rubber as well as a non-woven fabric (felt), or the like, and serves to fit to the upper portion of the foot F (FIGS. 2 and 4) in the upper portion 2u and the lower portion 2d of the sub-upper 2."). Unsurprisingly, the prior art is laden with

numerous examples of foam liners at the stabilizer, oriented concave to the sole, as it is an obvious design choice and known method to provide improved heel retention and comfort to the heel. *See, e.g.*, Motawi, *Shoe Material Design Guide*, pgs. 130-76 (providing examples of numerous dissected shoe models with varying configurations of "collar foam" in conjunction with heel counters). Exemplary prior art footwear products with such configurations of foam lining include, without limitation, the Anta KT3, the Merrell Jungle Moc 2.0, the BOGS Ultra Mid, Skechers Ultra Flex Bright Horizon, Skechers Summit Quick Lapse, and Skechers Bikers MC – Bellore.

These benefits, and others disclosed in the cited art references, would have motivated a person of ordinary skill to look to these references and incorporate their teachings in a manner that would result in the subject matter claimed in the asserted claims of the '096 Patent, as it would involve the combination of known prior art elements according to known methods to yield predictable benefits. As these features were already implemented in the prior art, a person of ordinary skill would have had a reasonable expectation of success in combining them, and would have recognized that there were no significant impediments to combining the elements and features from these references. It would have required only routine skill and little effort in terms of time, expense, or resources for a POSITA to apply these and other teachings to an article of footwear. A POSITA would, therefore, have found suggestion and motivation in the art and from his or her own knowledge as a skilled artisan to modify the foregoing and other references. Accordingly, because all the elements of the asserted claims of the '096 Patent were known in the prior art and one of ordinary skill could have combined them, as claimed, by known methods with no change in their respective functions and nothing more than predictable results, the asserted claims of the '096 Patent are invalid as obvious.

7. Obviousness of the '101 Patent

To the extent Plaintiffs allege that any prior art reference does not expressly or inherently anticipate the Asserted Claims of the '101 Patent, the Asserted Claims are invalid as obvious under 35 U.S.C. § 103 as set forth in the charts included herewith for the '101 Patent, including the Invalidity Charts (Exhibits 101-1 to 101-26) and Invalidity Combinations Chart (Exhibit 101-C). Skechers may assert obviousness based on any identified reference alone, or in a combination with any one or more of: (1) the knowledge of a POSITA at the time of the alleged invention; (2) any admitted prior art, as explained in the '101 Patent or discussed in its file history or in the file history of any related patent; (3) any of the prior art references identified in this Cover Pleading; (4) any of the prior art references charted in any Skechers Invalidity Chart; and/or (5) any of the prior art references charted in Skechers' Invalidity Combinations Chart for the '101 Patent (Exhibit 101-C).

The '101 Patent purports to address the user experience of footwear during donning, wearing, or doffing. *See, e.g.*, '101 Pat. 1:31-44 ("The present invention relates to shoes, and more particularly to shoes providing features to enhance rapid entry of a user's foot into the shoes. Shoes come in a wide variety of shapes, sizes, functionalities, and purposes. While it is relatively easy to remove many types of shoes, it may not be so simple to put all such shoes back on again. Instead, many shoes require several steps to put the shoes on, including lacing and tying the shoes, using other fasteners, or the like, and such steps may include loosening and/or untying shoes that were not properly loosened or untied the last time the shoes were worn."). The '101 Patent makes clear that the entire field of footwear design and development is relevant, regardless of any particular shoe type or use case. *See id.* at 1:48-53 ("Implementation of the invention provides a rapid-entry shoe that allows the shoe to be rapidly entered and readied for wearing by the user. Implementation of the invention may be practiced with a wide variety of shoe types, enabling use of the invention with shoes of a wide variety of styles and functions."). Accordingly, a person of ordinary skill

would have been motivated to combine references that disclose footwear with improved fit features, enhancements to wearing comfort, and innovations in donning and doffing, regardless of whether those references are nominally directed towards a specific type of shoe or footwear use case.

A person of ordinary skill would have been motivated to combine the identified prior art references in a manner that would result in the subject matter claimed in the asserted claims of the '101 Patent because the references are in the same field and address the same technology, are directed to the same or similar design incentives or market pressures, and address the same or similar issues in the same or similar ways. *See, e.g.,*[11] Suminosuke Abstract ("[Problem] To provide footwear that can be put on while standing, without bending, squatting, or using the hands or a shoehorn, and that does not slip off or slide sideways once put on. To provide footwear that is easy to put on and safe for elderly people with physical disabilities. [Solution] A heel portion of the footwear, in which the sides, rear, and bottom are integrally separated from other portions, opens and closes while centered on the rear end of the footwear sole. When the foot is inserted, the heel portion closes with the sole pressed against the heel of the foot, forming the shape of ordinary footwear. "); Kim Abstract ("[Problem] To provide a shoe that can be easily put on and taken off by people who cannot bend down, such as elderly people, physically disabled people and pregnant women."); Wells ¶ 1 ("The present invention relates to a shoe horn attachment for a shoe, in particular, to a shoe horn attachment that may easily be secured to a shoe and that, once fitted,

[11] Citations and motivations to combine provided hereunder are intended to provide examples of Skechers' contentions. Skechers reserves the right to rely upon (1) other portions of the cited references, (2) any other references identified herein, (3) other prior art references, (4) learned treatises and industry publications, (5) the background knowledge of a POSITA given the state of the art at the claimed priority date, and (6) expert testimony. Moreover, Skechers incorporates by reference the exemplary citations and motivations to combine identified in the sections for the other patents-in-suit.

guides the heel of a user as the user inserts a foot into the shoe. Such an attachment makes it easier for a user to put the shoe on, and also prevents damage to the shoe."); Baek Abstract ("The present invention relates to footwear easy to put on. More specifically, the present invention relates to footwear that can be easily put on by providing an elastic member at the heel portion. The footwear easy to put on of the present invention comprises an elastic member that is coupled and installed at the heel portion of the footwear, descends by the pressure of a foot pressing thereon, and ascends by its own elastic force when the pressing force is released to restore the heel portion to its original position, and comprises a stretchable portion that prevents the outer skin of the footwear from being stretched and damaged when the elastic member descends. Accordingly, the footwear that is easy to put on of the present invention enables easy putting on without the inconvenience of loosening or tightening shoelaces."); Snijders at HFL0005648 ("By designing the heel cap of the shoe relatively flexibly near the attachment to the sole in accordance with the invention, a shoe is obtained in which the heel cap can tilt backwards relatively easily while the position of the rear part of the sole can remain virtually unchanged. The sole does not have to move in the direction of the collar, so that the passage between the sole and the collar increases. This makes it even easier to put on and take off the shoe. At the same time, the heel cap itself can be made relatively rigid, so that no concessions are required with regard to the support and stability requirements of the heel cap."); Tomoyo Abstract ("[Problem] To provide a shoe structure that makes it easier to put the shoe on and take the shoe off."); Lin-216 1:36-44 ("The primary object of the present invention is to provide a kind of leisure shoe, the backs of which may automatically recover an upright position and fit in contact with the user's heels after they are put on. A further object of the present invention is to provide a kind of leisure shoes the backs of which may fit and cover and attach to a user's heel upon receiving a downward force from the heel of a user, so that the user's

feet will not be unsteady and slip about in the shoes."); Read p. 1, ln. 1-11 ("This invention relates to footwear retainers of general applicability, but has its special field of usefulness as applied to use as an easily yieldable counter restorer. The primary object of the present invention is to provide a retainer or counter restorer of such nature that when applied to an article of footwear it will permit the user to insert his foot in the slipper or other device with a minimum of trouble and yet with assurance of the retention on the foot of the article."). As acknowledged or assumed in the background sections of these references, a person of ordinary skill would have been aware of the various needs and opportunities associated with slip-on footwear with improved fit features. Accordingly, a person of ordinary skill would have been motivated to consult these and other references, at least by virtue of the fact that they are all directed to among other things providing footwear with improved fit and ease of donning and doffing. A person of ordinary skill in the art would further appreciate that these references are concise descriptions of technology that the authors believed to be new or different, and would be motivated to combine their disclosure with other teachings in the field, as well as his or her background knowledge.

Given the teachings of these and other prior art references, a person of ordinary skill would have been motivated to provide a heel structure at the rear of slip-on footwear, the heel structure comprising a lower portion coupled to the sole and extending completely around the rear portion, a midportion integrally formed with and extending from the lower portion, and an upper portion extending from the midportion and extending further rearward than the midportion to direct a foot into an opening of the shoe, wherein at least a portion of the 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 shoe. A person of ordinary skill would further have been motivated to include various configurations of the heel structure, such as partially surrounding the rear portion

of the shoe with the heel structure; providing the axis proximal the sole of the shoe; or causing at least a portion of the heel structure to move down and back due to the pressure being applied to the upper portion. For example, the prior art recognized numerous market pressures and design incentives favoring the development of shoes incorporating such heel structures, including the needs of persons who experience difficulty bending down, the damage and distortion caused by the rear portion of the shoe buckling inward when users attempt to insert their feet without using their hands, the convenience in donning and doffing provided by such structures, or the safety provided by such heel structures over other slip-on constructions. For example, Baek teaches:

> In general, in footwear using laces or other fasteners, shoelaces are threaded through shoelace holes and bound, and a knot is finally formed. When entering indoors after taking off the footwear, the laces must be loosened one by one before removal, and upon exiting indoors, the footwear must be put on again and the laces tightened again to form a knot. This resulted in the drawback of making putting on footwear very cumbersome. In addition, due to the inconvenience of loosening shoelaces and forming knots, the footwear is often forcibly removed, which not only causes damage to the footwear but also injures the feet, and there was the disadvantage of requiring auxiliary means such as a shoehorn. Furthermore, due to such inconvenience, laces are often tied loosely during normal use, but in this case, problems such as the footwear easily slipping off occur. Moreover, in order to loosen and form the knot of the footwear, the person wearing the footwear must bend at the waist to loosen or form it, which was also a factor causing further inconvenience.

See also, *e.g.*, Suminosuke ¶¶ 4, 5 ("For elderly individuals with physical limitations, safe footwear is essential. However, bending over or squatting to put on shoes while using one's hands can be difficult. Safe footwear that can be put on while standing without using a shoehorn and that does not slip off or slip sideways while walking is desired. However, easy-to-wear sandals and slip-ons without heels can be dangerous. An object of the present invention is to provide footwear that can be put on while standing without bending, squatting, or using hands or a shoehorn, and which, once put on, secures the foot, eliminating concerns about slipping sideways or coming off while walking."); Kim ¶ 5 ("[I]t is necessary to hold the shoehorn body by hand when the heel is inserted

into the shoe, and the user is required to bend down when putting on the shoe. Therefore, it is very inconvenient for users who cannot bend down, such as elderly people, physically disabled people and pregnant women. Furthermore, when taking off the shoe, the user bends down and pushes down the heel portion of the shoe to take off the shoe from the heel of the foot …. Therefore, also in this case, it is very inconvenient for users who cannot bend down, such as elderly people, physically disabled people and pregnant women."); Lin-219 1:10-20 ("Athletic shoes and leisure shoes which are presently popular are extremely soft and are designed to provide users with convenience and comfort. However, such shoes with the above-mentioned structure do not permit users to conveniently and quickly put on the shoes. It is because the user's heel will step on and press down the back of the upper of a shoe when the shoes are put on and the back is so soft that it can not automatically recover its original position and shape without help from the user with his finger or with a shoe lifter."); Sturlaugson at 1:9-19 ("A common problem present in most shoe designs, particularly Loafer-type designs, is that they do not permit the wearer to easily slip the shoe on and off while the wearer is standing. Attempts by a wearer, to put a shoe of a conventional design on while standing often cause the back (counter) and sides of the shoe to break down, making the shoe unattractive and uncomfortable. Further, the wearer's repeated attempts to put the shoe on while standing may cause the shoe leather to stretch so that the shoe no longer fits properly and, also, may destroy the finish of the shoe."); Wells ¶ 2 ("The act of doing up the fastener requires the user to bend down, and this may be difficult for, for example, an elderly or disabled person. A lace-up or buckle-up shoe is generally a very loose fit around the user's foot when it is not laced or buckled, so that it is dangerous to walk around with the fastening means not properly fastened."); Tomoyo ¶¶ 1-3 ("[Technical Field of the Invention] The present invention relates to a shoe structure that makes it easier to put the shoe on and take the shoe off. [Prior Art] Usually, this type

of shoe has a fixed structure formed from an outer shell made of leather, synthetic leather, plant-based fibrous materials, or thin nonwoven fabric. [Problem to Be Solved by the Invention] Due to its structure, this type of shoe is difficult to put on and take off for individuals with injuries, illnesses, or weakened legs and hips who cannot bend their knees or other joints. This results in excessive strain on the entire foot, throwing off the body's center of gravity and causing a loss of balance, leading to a regrettable lack of safety.").

Moreover, the references teach complementary features selected from a set of known, familiar methods and techniques in the same field or endeavor used to improve similar devices in similar ways with predictable results. The use of heel structures that pivot about an axis and lower as the user inserts a foot into the footwear was a known technique in footwear construction, regularly selected by skilled artisans from a finite number of identified, predictable solutions for improved footwear fit properties and easier donning and doffing. *See, e.g.*, Wells ¶ 37 ("It can be seen that the heel 7 of the user's foot makes contact with the upper portion 2a of the shoe horn attachment 8. The shaping of the upper part 2a of the back of the attachment 8 means that the pressure exerted by the heel of the user's foot will cause the back part of the upper of the shoe to flex backwards slightly, making it easy for the user to insert their foot into the shoe and to clip their foot into the shoe horn attachment."); Snijders at HFL0005648 ("By designing the heel cap of the shoe relatively flexibly near the attachment to the sole in accordance with the invention, a shoe is obtained in which the heel cap can tilt backwards relatively easily while the position of the rear part of the sole can remain virtually unchanged. The sole does not have to move in the direction of the collar, so that the passage between the sole and the collar increases. This makes it even easier to put on and take off the shoe. At the same time, the heel cap itself can be made relatively rigid, so that no concessions are required with regard to the support and stability requirements of

the heel cap."); Baek pg. 3 ("When a user puts on the footwear (1) as described above, as shown in FIG. 2, first the foot presses the rear part of the footwear (1) while pushing the front part of the foot into the interior of the footwear (1). At this time, the elastic member (3) descends to allow the foot to easily advance forward, and the stretchable portion (5) at both sides of the center of the outer skin (4) extends and compensates for the portion tilted backward by the elastic member (3), thereby preventing damage to the outer skin (4). Then, when the foot completely advances forward, the rear heel of the foot that was pressing the elastic member (3) also advances forward, so the force pressing the elastic member (3) is eliminated, elastic force is exerted, and the elastic member (3) ascends."); Suminosuke ¶¶ 6 ("In order to solve the problem described above, the heel portion of the footwear of the present invention, which makes contact with four sides of the rear portion of the foot (both lateral sides, the rear side, and the sole side), is pivotally supported along an axis extending left and right at the rear end of the sole of the footwear, allowing rotation relative to the front securing portion of the footwear that secures the front portion of the foot to the sole."), 14 ("Because the heel portion of the footwear pivots open at the rear end of the sole portion of the footwear, putting on the footwear while standing requires no bending, squatting, or use of hands or a shoehorn. Once put on, the footwear is secured to the foot, eliminating concerns about sideways slippage or coming off while walking. While particularly suited for elderly individuals with physical limitations, the present invention can also serve as a convenient shoe for ordinary, healthy people."); Tomoyo ¶ 4 ("The object of the present invention is to provide a shoe with the following structure. When putting on the shoe, the heel base portion of the heel support platform, which usually makes contact with the heel, flips upward or the shoe heel portion is open. Therefore, when inserting a foot into the shoe, the wearer can place their toes inside while standing and without having to bend over. Also, the heel rests easily on the heel supporting platform of the shoe.

During walking, the heel portion is pressed down by body weight, enabling the foot to remain in close contact with the shoe interior for easier walking. When removing the shoe, lifting the heel of the foot causes the shoe heel portion to spring upward or to open due to its elasticity, allowing the wearer to easily slide their heel out and effortlessly free their foot from the shoe."); Lin-216 3:19-35 ("When a user extends his or her foot 50 into a leisure shoe of the present invention, his or her heel will initially press down the back 41 of the shoe as shown in FIG. 4; later, when the foot 50 completely extends into the show and steps down, the originally upwardly arched portion of the stretch element 20 as well as the elastic element 30 in the cavity 13 as shown in FIG. 5, and the heel 51 of the user, is completely received in the back 41 of the upper 40, the mid-front section 22 of the stretch element 20 having been stepped down will pull the mid-rear and the rear sections 23, 24 of the stretch element 20 to shift backward, that is, the rear section 24 will cause the back 41 to move upward to cover the heel 51 automatically. Thus, the back of a shoe may automatically recover its upright position after a foot is completely extended into the shoe without any other aids or movement."); Sturlaugson 2:42-52 ("The present invention involves an improved shoe design which allows the wearer to easily step into the shoe while standing erect…. [A] somewhat rigid shoehorn shaped counter is integrated with the quarter portion of the shoe to guide the wearer's foot while putting the shoe on and preventing the back of the shoe from being crushed down. The counter is designed in such a way that its shape and size can be varied to conform with the wearer's needs and the style of shoe."), 5:24-30 ("The features include a shoe horn-shaped rigid member which is shaped to conform to the back of the shoe while the two side portions 22 and 24 thereof reinforce the lateral heel portions of the shoe quarter. This feature helps guide the foot upon insertion and prevents the counter from being inadvertently crushed as the wearer steps into the shoe."); Kim ¶ 13 ("[A] heel guide portion is included which integrally projects from the upper

end of the heel portion and curves in a slope to go backward as it goes upward, so when putting on the shoe, the user first inserts, starting from the toes, the foot into the shoe, and then pushes the heel of the foot into the inside of the heel portion while sliding it along the heel guide portion and, thereby allowing the user to easily put on the shoe without bending down."). A person of ordinary skill in the art would have been motivated apply these known techniques to new footwear constructions for their predictable benefits of easier donning and doffing and improved wearing experience.

A person of ordinary skill would have been motivated to incorporate an upper comprising a flexible material that expands in response to the insertion of a foot, and would further have been motivated to provide such material in a slit on the upper and/or to form at least a portion of the topline of the shoe out of such material. The use of flexible upper materials, such as in the form of elastic gorings, was routine and well-understood long before 2009. *See, e.g.*, Rossi pg. 73 ("Goring. A fabric woven with rubber threads to form an elastic material. Used in footwear in various applications. The main ones are as follows: Finger. Used mainly in high-front shoe styles. The goring is used between the lining and upper leather. Front. Concealed, with a top opening of not less than ¾ of an inch, applied at the shoe's throat or instep for a snug, clinging fit. Hidden. Hidden from view, such as the gore band over the instep and under the tongue on a loafer shoe. Side. Applied in V-shape or U-shape at the sides of the shoe."). Even in the 19th century, skilled artisans were well aware of the utility of flexible materials into footwear to ease entry and exit of the foot and to improve the wearing experience. For example, Hall explains:

> Shoes, to the contrary, and especially long-quartered ones, require a great effort from the muscles to be kept on, and this, when long applied, tires and weakens. The lace and button boots usually worn need not be described; they are very good and suitable to most feet, and, if cut well and lasted, properly, generally give comfort and satisfaction. The trouble, however, of lacing and unlacing, the tag coming off, the button breaking, or the shank hurting, the holes soon wearing out, and many

> other little annoyances, have all been experienced as *bores* by thousands who have worn that kind of boot. About ten years since I first thought of an elastic boot, that might possibly remedy in a great measure all these minor evils, and combine many advantages never possessed by any former boot…. After several experiments in wire and India-rub her, I succeeded in getting the exact elasticity required, and subsequent improvements in materials and workmanship, have combined to make the elastic boot the most perfect thing of its kind…. One of my earliest customers, a lady of great originality of thought and expression, first induced me to make it an article of universal sale, by saying: "These boots are the comfort of my life, if you were only to give them a sounding name-if you like, call them lazy boots and tum it into Greek-all the world will buy them, and you'll make your fortune…. The elastic clog is another improvement on the old mode of fastening with straps, buckles, and buttons; clogs on this principle are put on and taken off without any trouble or fastening, and by a very simple arrangement of a plush back, all chafing of the boot is avoided and great firmness secured, without a chance of their slopping.

Hall pg. 116-22; *see also id.* at p. 127-28 ("Travellers find these boots great comforts, they take up very little room in the portmanteau, are soon cleaned, and are on and off in an instant."); Hatfield pg. 67 ("The gore is shown by 'A.' There is no lacing to this shoe. It can be adapted to men's wear, or children's shoes, and is easy on the foot."). "Congress-gaiters" or "Congress boots" are one non-limiting example of such shoes. *See, e.g.*, Packard 8-21; Rossi 18 ("congress. A low dress or comfort boot with leather upper an elastic gusset at the sides, usually with a pull strap in the back. Popular as a men's boot in the 19th and early 20th centuries. Sometimes known as a congress gaiter."); *see also* Thornton pg. 37 ("[A]bout 1860 the elastic-gusset boot, or 'spring-sided Jemima' became the fashionable boot not only for women, as described above, but also for men."); Parker at p. 1, col. 1, ln. 45-52 ("The principal object of the present invention is to provide a shoe construction wherein the upper embodies elastically stretchable panels or gores and wherein the desired degree of elastic yield across the instep is assured without causing the top of the shoe to become loose during wear and without spoiling the fit at the ball and instep portions."). A person of ordinary skill would have been motivated apply these known techniques to new footwear constructions for their predictable benefits of easier donning and doffing and improved wearing

experience. Indeed, long before 2009, skilled artisans recognized that such flexible materials were particularly useful for shoes incorporating heel structures that lower and pivot about an axis. *See, e.g.*, Suminoske ¶ 11 ("In this example, as shown in FIG. 3, the pulling direction of the spring is opposite to that of the example as shown in FIG. 1. Rubber cords 15 pull together and connect the front securing portion 2 and the movable heel portion 6a of the shoe. When inserting the foot, the wearer pulls the movable heel portion 6a backward against the pulling force of the rubber cords 15 to insert the foot."); Snijders at HFL0005651 ("By exerting a downward force with the foot 11 in the direction R of the sole 2a, the heel cap 5 tilts back slightly K, away from the collar 2. The elastic strips 9 hereby stretch, so that the passage between the heel cap 5 and the collar 2 widens and the foot 11 can slide into the shoe 1 relatively easily."); Baek pg. 3 ("When a user puts on the footwear (1) as described above, as shown in FIG. 2, first the foot presses the rear part of the footwear (1) while pushing the front part of the foot into the interior of the footwear (1). At this time, the elastic member (3) descends to allow the foot to easily advance forward, and the stretchable portion (5) at both sides of the center of the outer skin (4) extends and compensates for the portion tilted backward by the elastic member (3), thereby preventing damage to the outer skin (4)."); Kim ¶ 8 ("[W]hen putting on the shoe, the user first inserts, starting from the toes, the foot into the shoe, and then pushes the heel of the foot into the inside of the heel portion while sliding it along the heel guide portion. At this time, since the one pair of stretchable portions stretches, the opening of the shoe expands, and the heel can be easily placed at the inside of the heel portion. When shoes are taken off, using one foot to press the projecting portion of the other shoe and lifting up the other foot allows the other shoe to be taken off from the heel of the other foot. At this time, since the one pair of stretchable portions stretches, the opening of the shoe expands, allowing the shoe to be easily taken off."); Sturlaugson at 2:1-8 ("A unique elastic gore is

incorporated into Applicant's design …. This securing mechanism allows expansion of the shoe during entry and removal of the foot and causes the shoe to otherwise be in a recoiled configuration."). Incorporating such flexible upper material into slip-on footwear would have been obvious to try for a person having ordinary skill in the art, as it was part of a finite number of identified, predictable solutions for improved footwear fit and wearability.

A person of ordinary skill would further have been motivated to include a shoe cushioning component on at least a portion of the heel structure. Indeed, the '101 Patent itself states that "materials that serve to provide support and cushioning to the user's foot" were "known in the art." '101 Pat. 3:67-4:3. By 2009, shoe cushioning components at the heel structure were conventional, ordinary, and routine design choices for persons of ordinary skill in the art. *See, e.g.*, Shishoo pg. 73 ("Functional footwear design must follow certain rules," including that the "[t]opline of the shoe may need to be padded."). For example, Murray teaches:

> An oversize boot makes walking difficult and running almost impossible because the foot is not held firmly within the boot and has considerable movement within the boot when the wearer is in motion. For convenience, "boots" are used throughout to designate all types of footwear such as firemen and sportsman boots, high and low shoes, loafers, slippers, and of all types of materials whether rubber, plastic, leather or cloth…. The present invention corrects these disadvantages by employing inward expanding sponge rubber inserts, secured to the inside surface of the boot to hold the foot firmly against the bottom of the boot. When running, the boot inserts do not permit the foot to move about within its confines but instead, causes the foot to cling to the sole. A feature of the present invention is the unitary nature of the inserts comprising a body of foam rubber or plastic covered with cloth, thereby permitting the inserts to be attached to ordinary boots and shoes to achieve a tight comfortable fit. Internal pads of sponge material are preferably enclosed in a fabric casing and secured to the inside surface of rubber boots or shoes. The construction permits the wearer to put his feet into the boots without strenuous effort. Also, the boots may be removed easily without using a zipper opening or shoe laces. While being worn, the wearer may run or take long walking steps without fear of losing the boots or of displacing the foot within the boot. The sponge inserts hold the foot in its proper place by forcing the foot into contact with the inner sole.

Murray at 1:10-47. *See also, e.g.*, Sturlaugson 2:60-63 ("Finally, the lateral upper edges or collar of the shoe are rolled or rolled and padded to provide greater durability, increased comfort and guidance of the wearer's foot into the shoe."), 4:17-27 ("Referring back to FIGS. 1 and 2, rolled or rolled and padded edges 7 and 8 about the foot receiving opening are present to promote a snug fit while, at the same time, insuring that the top portion of the side wall of the shoe does not become stepped down and damaged while the shoe is being placed on the foot. These rolled edges can be constructed by rolling the leather over and stitching along the lower edge of the rolled portion. If desired, padding can be added to the pocket formed by rolling the edges over prior to stitching for greater comfort and durability."); Aikawa at p. 21 ("An elastic material (11) such as a foamed elastic synthetic resin improves the fit around the ankle in the upper heel portion and enhances comfort."); Koh at 1:48-2:4 ("Briefly, apparatus of this invention is a cushion for use inside footwear having an interior for receiving a foot of a wearer. The cushion comprises a liner made of cushioning material. The liner is sized and shaped for reception on an interior surface of the footwear in a position for engaging the foot when the foot is inserted into the interior of the footwear for cushioning an interface between the foot and the interior surface of the footwear with which the liner is engaged…. The cushion comprises a layer made of compliant slow recovery foam having an initial thickness prior to use and a compressed thickness thinner than the initial thickness during use resulting from pressure applied to the cushion by the foot. The foam has a resiliency capable of restoring the cushion substantially to the initial thickness after the foot is withdrawn from the footwear and pressure is relieved from the cushion."). Because the use of a cushioning component at the heel structure was long-standing technique in the art with the predictable advantage of improved user comfort and heel securement/retention, a person of

ordinary skill would have been motivated to include such lining in hands-free footwear and would have had a reasonable expectation of success in doing so.

These benefits, and others disclosed in the cited art references, would have motivated a person of ordinary skill to look to these references and incorporate their teachings, as it would involve the combination of known prior art elements according to known methods to yield predictable benefits. As these features were already implemented in the prior art, a person of ordinary skill would have had a reasonable expectation of success in combining them, and would have recognized that there were no significant impediments to combining the elements and features from these references. It would have required only routine skill and little effort in terms of time, expense, or resources for a POSITA to apply these and other teachings to an article of footwear. A POSITA would, therefore, have found suggestion and motivation in the art and from his or her own knowledge as a skilled artisan to modify the foregoing and other references. Accordingly, because all the elements of the asserted claims of the '101 Patent were known in the prior art and one of ordinary skill could have combined them, as claimed, by known methods with no change in their respective functions and nothing more than predictable results, the asserted claims of the '101 Patent are invalid as obvious.

The claims of the '101 Patent are further invalid for obviousness-type double patenting over at least U.S. Pat. 10,813,405 (the "'405 Patent") and/or U.S. Pat. 10,555,578 (the "'578 Patent"), which are both of the same family as the '101 Patent. "Obviousness-type double patenting is a judicially created doctrine that 'prohibit[s] a party from obtaining an extension of the right to exclude through claims in a later patent that are not patentably distinct from claims in a commonly owned earlier patent.'" *Pfizer, Inc. v. Teva Pharms. USA, Inc.*, 518 F.3d 1353, 1363 (Fed. Cir. 2008) (quoting *Eli Lilly & Co. v. Barr Labs., Inc.*, 251 F.3d 955, 967 (Fed.Cir.2001)); MPEP §

804 ("[N]onstatutory double patenting is based on a judicially created doctrine grounded in public policy so as to prevent the unjustified or improper timewise extension of the right to exclude granted by a patent" and "serves public policy interests by preventing the possibility of multiple suits against an accused infringer by different assignees of patents claiming patentably indistinct variations of the same invention."). The '101 Patent received a term extension under 35 U.S.C. § 154(b), and thus is set to expire after both the '405 and '578 Patents. However, the asserted claims of the '101 Patent are not patentably distinct from the claims of the '405 and '578 Patents because they would have been an obvious variation of the claims of the '405 and '578 Patents, and are thus invalid for nonstatutory double patenting. *See, e.g.*, '405 Pat. claim 6 (reciting a "deformable element" that "may be deformed by a downward opening force to open the shoe to permit rapid entry of the user's foot into the shoe"); '578 Pat. claims 9 (reciting an "upper further comprising a slit, wherein the slit opens to permit rapid entry of the user's foot into the shoe"), 10 ("wherein the slit comprises a piece of flexible material").

These benefits, and others disclosed in the cited art references, would have motivated a person of ordinary skill to look to these references and incorporate their teachings in a manner that would result in the subject matter claimed in the asserted claims of the '101 Patent, as it would involve the combination of known prior art elements according to known methods to yield predictable benefits. As these features were already implemented in the prior art, a person of ordinary skill would have had a reasonable expectation of success in combining them, and would have recognized that there were no significant impediments to combining the elements and features from these references. It would have required only routine skill and little effort in terms of time, expense, or resources for a POSITA to apply these and other teachings to an article of footwear. A POSITA would, therefore, have found suggestion and motivation in the art and from his or her

own knowledge as a skilled artisan to modify the foregoing and other references. Accordingly, because all the elements of the asserted claims of the '101 Patent were known in the prior art and one of ordinary skill could have combined them, as claimed, by known methods with no change in their respective functions and nothing more than predictable results, the asserted claims of the '101 Patent are invalid as obvious.

8. Obviousness of the '660 Patent

To the extent Plaintiffs allege that any prior art reference does not expressly or inherently anticipate the Asserted Claims of the '660 Patent, the Asserted Claims are invalid as obvious under 35 U.S.C. § 103 as set forth in the charts included herewith for the '660 Patent, including the Invalidity Charts (Exhibits 660-1 to 660-71) and Invalidity Combinations Chart (Exhibit 660-C). Skechers may assert obviousness based on any identified reference alone, or in a combination with any one or more of: (1) the knowledge of a POSITA at the time of the alleged invention; (2) any admitted prior art, as explained in the '660 Patent or discussed in its file history or in the file history of any related patent; (3) any of the prior art references identified in this Cover Pleading; (4) any of the prior art references charted in any Skechers Invalidity Chart; and/or (5) any of the prior art references charted in Skechers' Invalidity Combinations Chart for the '660 Patent (Exhibit 660-C).

The '660 Patent purports to address the user experience of footwear during donning, wearing, or doffing. *See, e.g.*, '660 Pat. 1:30-33 ("Whether due to inconvenience or inability, donning and doffing of shoes, including tying or otherwise securing the same, may be undesirable and/or present difficulties to some individuals. The present disclosure addresses this need."). The '660 Patent makes clear that the entire field of footwear design and development is relevant, regardless of any particular shoe type or use case. *See id.* at 4:12-20 ("As used herein, a 'rapid-entry shoe' refers to an athleisure shoe, a casual shoe, a formal shoe, a dress shoe, a heel, a sports/athletic shoe (e.g., a tennis shoe, a golf shoe, a bowling shoe, a running shoe, a basketball

shoe, a soccer shoe, a ballet shoe, etc.), a walking shoe, a sandal, a boot, or other suitable type of shoe. Additionally, a rapid-entry shoe can be sized and configured to be worn by men, women, or children."). Accordingly, a person of ordinary skill would have been motivated to combine references that disclose footwear with improved fit features, enhancements to wearing comfort, and innovations in donning and doffing, regardless of whether those references are nominally directed towards a specific type of shoe or footwear use case.

A person of ordinary skill would have been motivated to combine the identified prior art references in a manner that would result in the subject matter claimed in the asserted claims of the '660 Patent because the references are in the same field and address the same technology, are directed to the same or similar design incentives or market pressures, and address the same or similar issues in the same or similar ways. *See*, *e.g.*,[12] Lin-845 1:41-58 ("the present invention provides a shoe comprises an outsole, an upper that is attached on the outsole and has a counter and a collar extending upward from the counter and configured as a shoehorn, a supporting piece which is harder than the upper and attached to the counter and the collar of the upper, and a guiding piece which is harder than the upper and attached to an instep of the upper and having a part extending out of a top line of the upper. Since the supporting piece has a predetermined hardness and the collar is configured like a shoehorn, the rear of the upper is provided with a portion having a similar function to a shoehorn. The guiding piece is also useful for avoiding the instep from becoming crease and unsmooth. As a result, a user's foot is able to slide into the shoe along the

[12] Citations and motivations to combine provided hereunder are intended to provide examples of Skechers' contentions. Skechers reserves the right to rely upon (1) other portions of the cited references, (2) any other references identified herein, (3) other prior art references, (4) learned treatises and industry publications, (5) the background knowledge of a POSITA given the state of the art at the claimed priority date, and (6) expert testimony. Moreover, Skechers incorporates by reference the exemplary citations and motivations to combine identified in the sections for the other patents-in-suit.

aforesaid portion, so that the shoe is convenient for the user to put on without bending his back and using his hand."); Kim Abstract ("[Problem] To provide a shoe that can be easily put on and taken off by people who cannot bend down, such as elderly people, physically disabled people and pregnant women."); Hongren ¶ 3 ("An object of the present invention is to provide a counter heel cup inserting device capable of easily achieving, when a user walks in shoes, a function of inserting into the shoes in 1 to 2 seconds, more facilitating put-on of the shoes, and further enhancing the convenience of putting on and taking off the shoes, while ensuring stability and comfort during walking."); Thaikattil 1:25-2:2 ("An object of this invention is to provide footwear that would still retain its semi flexible character but would resist buckling of the heel cap when the foot is inserted without the help of the hands. Another object of this invention is to propose an article of footwear provided with means for easy heel introduction into the heel cap - the foot being inserted with or without the help of the hands."); Jackson at p. 1, ln. 9-15 ("The present invention relates to an improved article of foot wear embodying a novel construction whereby the same may be easily and quickly placed in position upon the foot or removed therefrom and which has the further advantage of possessing a neat and attractive appearance."); Wells ¶ 1 ("The present invention relates to a shoe horn attachment for a shoe, in particular, to a shoe horn attachment that may easily be secured to a shoe and that, once fitted, guides the heel of a user as the user inserts a foot into the shoe. Such an attachment makes it easier for a user to put the shoe on, and also prevents damage to the shoe."); Sturlaugson 2:42-44 ("The present invention involves an improved shoe design which allows the wearer to easily step into the shoe while standing erect."). A person of ordinary skill would have been aware of the various needs and opportunities associated with slip-on footwear with improved fit features, and would have been motivated to consult these and other references, at least by virtue of the fact that they are all directed to among other things providing

footwear with improved fit, ease of donning and doffing, and heel stability. A person of ordinary skill in the art would further appreciate that these patents or patent applications are concise descriptions of technology that the authors believed to be new or different, and would be motivated to combine their disclosure with other teachings in the field, as well as his or her background knowledge.

In particular, a person of ordinary skill would have been motivated to include a stabilizer defining a single, unitary structure extending from the sole portion toward a rear portion of the foot opening, configured to support a rear portion of the upper during insertion of a foot through the foot opening and into the foot cavity, with a base portion and an elevated portion with an inflection point therebetween and respectively having a concave and convex profile toward the forward portion of the upper. A person of ordinary skill would further have been motivated to include various configurations of the stabilizer, such as providing a rear profile having a serpentine shape across at least a portion of the base portion and the elevated portion, and including concave and convex shapes toward the front of the shoe; providing a flare extending rearward to direct a foot into the foot opening; and configuring the stabilizer to impede movement of the stabilizer during insertion of a foot into the shoe. Stabilizers with such features were a conventional and well-known feature of footwear design well before the claimed priority date of the '660 Patent and were regularly selected by skilled artisans to provide stability to the heel, reinforce the rear of the shoe, and to provide easy entry into the shoe without crushing or damaging the heel region of the shoe. Sturlaugson, for example, teaches:

> The present invention involves an improved shoe design which allows the wearer to easily step into the shoe while standing erect…. [A] somewhat rigid shoehorn shaped counter is integrated with the quarter portion of the shoe to guide the wearer's foot while putting the shoe on and preventing the back of the shoe from being crushed down. The counter is designed in such a way that its shape and size can be varied to conform with the wearer's needs and the style of shoe.

Sturlaugson 2:42-52. *See also*, *e.g.*, *id.* at 3:53-64 ("Shown more clearly in FIGS. 2 through 4 is a preferred form of the shoehorn shaped counter 6. It is constructed of a rigid material such as plastic, metal, stiffened leather or reinforced cardboard. Counter 6 is constructed so that it has a rear portion 20 which conforms to the shape of the back of the shoe and two side portions 22 and 24 for reinforcing the shoe at the lateral heel portions of the quarter. Further, the counter has an upper portion 26 which angularly projects upward and outward from the shoe cavity 28 and which has a shape similar to that of a conventional heel-engaging shoehorn."), 5:24-30 ("The features include a shoe horn-shaped rigid member which is shaped to conform to the back of the shoe while the two side portions 22 and 24 thereof reinforce the lateral heel portions of the shoe quarter. This feature helps guide the foot upon insertion and prevents the counter from being inadvertently crushed as the wearer steps into the shoe."); Wells ¶ 10 ("[U]se of the shoe horn attachment prevents the back of the upper of the shoe from being distorted when the shoe is put on, and so prevents damage to the shoe."); Lin-845 at 1:38-54 ("It is an objective of the present invention to provide a shoe which can be put on and taken off conveniently. To attain the above objective, the present invention provides a shoe comprises an outsole, an upper that is attached on the outsole and has a counter and a collar extending upward from the counter and configured as a shoehorn, a supporting piece which is harder than the upper and attached to the counter and the collar of the upper, and a guiding piece which is harder than the upper and attached to an instep of the upper and having a part extending out of a top line of the upper. Since the supporting piece has a predetermined hardness and the collar is configured like a shoehorn, the rear of the upper is provided with a portion having a similar function to a shoehorn."), 3:3-8 ("Because of the supporting piece 30 having a predetermined hardness and the collar 22 having a shape like a shoehorn, the rear of the upper 20 is provided with a portion that can be served as a shoehorn for

helping the user's foot in slipping into the shoe 10 along that portion when the user puts on the aforesaid shoe 10."); Kim ¶ 13 ("[A] heel guide portion is included which integrally projects from the upper end of the heel portion and curves in a slope to go backward as it goes upward, so when putting on the shoe, the user first inserts, starting from the toes, the foot into the shoe, and then pushes the heel of the foot into the inside of the heel portion while sliding it along the heel guide portion and, thereby allowing the user to easily put on the shoe without bending down."); Hongren ¶ 1 ("The present invention relates to a counter heel cup inserting device, and more particularly, to a counter heel cup inserting device capable of easily achieving, when walking in shoes, a function of inserting into the shoes in 1 to 2 seconds, facilitating put-on of the shoes, and further enhancing the convenience of putting on and taking off the shoes, while ensuring stability and comfort during walking."); Shin-091 ¶¶ 89-94 ("Referring to FIGS. 11 and 12, in a heel counter 120 of a functional footwear for easy wearing, which is another embodiment of the present invention, an upper end of a support member 121 is bent toward an outer side. That is, an inclined section 121b that is formed to extend toward the outer side is provided on the upper end of the support member 121. The inclined section 121b increases an adhesive fore and allows an elastic member 122 to be coupled more effectively…. Simultaneously, the inclined section 121b has a form that is gradually inclined toward the outer side upward based on the upper end of the support member 121. Accordingly, the inclined section 121b may guide a wearing path to allow the wearer's foot to easily slide into and enter a wearing groove 150. In addition, preferably, the inclined section 121b may be formed up to an upper end of the heel counter to prevent the heel counter from being bent. Therefore, by the inclined section 121b preventing the upper end of the heel counter, that is, the portion coming into contact with the wearer's heel, from being bent, the wearer can easily wear the footwear."); Takahashi ¶ 26 ("In other words, by providing the heel portion with the counter that integrally has

an inward-facing concave curved surface portion to support the person's heel, and providing the counter with the guide core portion that is used to maintain the shape of the guide portion, the ease of putting on a shoe can be further improved while maintaining the shape of the heel portion."). A person of ordinary skill would have been motivated to combine or modify these and other references teaching the use of stabilizers to facilitate entry into slip-on footwear, as doing so would have been the simple application of a known technique to a known product ready for improvement to yield predictable results. Moreover, because such features had already been implemented in the prior art, a person of ordinary skill would have had a reasonable expectation of success in combining or modifying the above references.

A person of ordinary skill would further have been motivated to include a base portion in the stabilizer that extends into the sole portion such that an uppermost portion of the sole portion is vertically higher than a lowermost portion of the base portion. A person of ordinary skill in the art would have recognized this configuration as a known solution to provide increased stability to the heel portion. For example, Lawrence teaches providing a base portion of the stabilizer that extends into the sole portion allows the stabilizer to be "locked into position" further providing stability to the heel region:

> Said heel cup is constructed of a generally U-shaped, upstanding wall portion 60 and an arcuate flange 62, which flange extends horizontally inwardly from the bottom edge of said upstanding wall portion. A heel pocket 28 is formed by panel 66 and the inside surface of heel end portion 68 of upper 10. Said panel is attached to said heel end portion along arcuate upper edge 70 of said panel. Thus, an opening exists along the bottom edge of panel 66 to allow heel cup 26 to be upwardly received into heel pocket 64. Heel cup flange 62 is positioned between the top surface of sole tread portion 30 and the bottom surface of insole 24 so that said heel cup is locked into position by the combination of heel pocket 28 and the weight of the wearer bearing down on insole 24.

Lawrence at 6:14-29. *See also, e.g.*, Aikawa at p. 23 ("As shown in the examples depicted in FIG. 13 to FIG. 16, when a flap portion (14) is provided on the heel counter component (10), bonding

or stitching the flap portion (14) to the midsole (5) improves the stability of the heel counter component (10), thereby eliminating the need for a heel stabilizer (7) to maintain heel stability and shortening the production process. As shown in the examples depicted in FIG. 17 and FIG.18, by providing a vertically extended portion (19) on the outsole (8), integrally forming the outsole (8) with the heel stabilizer (7), and then joining the vertically extended portion (19) to the lower outside of the heel counter component (10), the shoe production process can be shortened."); Barma at 4:19-34 ("A rigid heel counter 50 is coated with rubber cement and then placed on the heel portion of assembly 46. A shown in FIGS. 4-6, heel counter 50 is a generally cup-shaped, contoured body formed in a generally U-shaped configuration. Heel counter 50 comprises a counter body 52 having a curved spine 56 and integral curved sidewalls 59. Body 52 has an inwardly extending, U-shaped bottom flange 54. Sidewalls 59 taper forwardly the top edge thereof forming a smooth curve as shown in FIG. 6. Sidewalls 59 and spine 56 are also curved in the vertical direction and bulge outwardly. Flange 54 extends inwardly about 0.25 to 0.5 inch. The upper surface of flange 54 engages the bottom surface of insole 30 at the interface of insole 30 and lining 24. A counter 50 having this configuration advantageously supports the entire heel area of boot 10."). This was well-understood, foundational, and a matter of common practice long before 2019, and a person of ordinary skill would have been motivated to combine the disclosures of these references, or modify other references based on their own background knowledge and common sense, to incorporate a stabilizer with a base portion extending into the sole portion. Unsurprisingly, the prior art is laden with examples of such footwear constructions, and a person of ordinary skill would have recognized it as a known technique in the art of footwear construction. *See, e.g.*, Motawi, *Shoe Material Design Guide*, pgs. 130-76 (providing examples of numerous dissected shoe models with stabilizers with a base portion extending into the sole portion).

A person of ordinary skill would further have been motivated to position the rearward most portion of the stabilizer longitudinally forward of a rearmost portion of the sole portion. Skilled artisans recognized that locating the stabilizer longitudinally forward of a rearmost portion of the sole provided users of hands-free footwear with a convenient method of kicking off their footwear without getting their other foot caught on the stabilizer. For example, Kim teaches:

> The shoe of claim 1 is a shoe having a sole portion, an instep portion covering the upper surface side and lateral surface sides of the instep of a foot, and a heel portion covering the outside of the heel of the foot, where the shoe includes a heel guide portion integrally projecting from the upper end of the heel portion and curving in a slope to go backward as it goes upward, a projecting portion formed at the rear of the sole portion to make it easy to take off the shoe, projecting outward, and having an upward-facing surface 2b for getting caught by engagement, and at least one pair of stretchable portions provided at the boundary between the instep portion and the heel portion or in the vicinity thereof…. When shoes are taken off, using one foot to press the projecting portion of the other shoe and lifting up the other foot allows the other shoe to be taken off from the heel of the other foot. At this time, since the one pair of stretchable portions stretches, the opening of the shoe expands, allowing the shoe to be easily taken off.

Kim ¶¶ 7-8. *See also, e.g., id.* ¶ 14 ("A projecting portion is included which is formed at the rear of the sole portion to make it easy to take off the shoe, projects outward and has an upward-facing surface for getting caught by engagement, so when shoes are taken off, using one foot to press the upward-facing surface for getting caught of the projecting portion of the other shoe and lifting up the other foot allows the user to easily take off the other shoe from the heel of the other foot without bending down."); Lin-845 at 2:62-65 ("The outsole 50 is similar to those of conventional shoes, but the outsole 50 has a treadable protrusion 52 at the rear end of the outsole 50, so that the user can take the shoe 10 off his one foot by the other foot treading on the treadable protrusion 52."); 3:11-14 ("To take off the shoe 10 quickly, the user can tread on the treadable protrusion 52 of the outsole 50 and make his instep slide out of the shoe 10 along the guiding portion 44 of the guiding piece 40."). A person of ordinary skill would thus have been motivated to position the rearward most portion of the stabilizer longitudinally forward of a rearmost portion of the sole portion, as

doing so was an obvious design choice with the predictable effect of ensuring easy doffing of footwear.

A person of ordinary skill would further have been motivated to include a liner configured to provide for either one of retention of a user's heel and comfort for the user's heel, such as a foam liner coupled to the stabilizer between its medial and lateral portions, extending beyond at least one of the medial lateral portions, and oriented downward toward the sole portion. A person of ordinary skill would further have been motivated to include other configurations of a foam liner, such as extending the foam liner from the stabilizer along at least a portion of the side portion of the upper and extending it forward and downward at an angle greater than 0 and less than 90 degrees relative to the sole portion or positioning the foam liner against the stabilizer at a position vertically higher than the inflection point. By 2019, the use of heel lining to improve foot retention and comfort was so foundational and well-established incorporating that incorporating such lining into hands-free footwear would be obvious to try for a person of ordinary skill. For example, Rossi teaches that it was common knowledge in the art to use a "heel liner" located "around the inside back of the heel's counter, usually to prevent heel slippage." Rossi at 85. Such liners have frequently been included in prior art footwear constructions a known solution to provide for improved heel retention and/or cushioning and comfort to the user. *See, e.g.*, Drechsler ln. 36-51 ("My retainer consists of a strip of elastic material or tape 2 which is secured, preferably by stitching 3, at its upper edge to the inner face of the upper edge of the heel of the shoe…. When the shoe is on the foot, any tendency of the heel to rise out of the shoe will cause the free inner edge of the retainer to move farther away from the inner surface of the heel of the shoe and increase the area of the portion of the tape which engages the heel of the foot. On this account, my retainer has been found to be very efficient."); Hongren ¶ 25 ("[T]he counter heel cup cushion 1 of the

present invention is arranged between the lining 23 and the upper 24 of the shoe 2, and the embedding portion 11 is clamped and fixed between the sole 21 and the insole 22 of the shoe 2. Therefore, when a user walks in shoes, a function of inserting into the shoes in 1 to 2 seconds can be easily achieved, facilitating put-on of the shoes, and more ensuring stability and comfort during walking."); Doenges ¶ 42 ("The one or more foam layers provided in the fabric laminate can comprise any suitable one or more type(s) of open and/or closed cell foam materials that provide adequate cushioning and comfort for the intended purpose. In particular, an open-celled, thermoplastic foam may be utilized. Some examples of types of foam materials suitable for use in forming the upper include, without limitation, polyolefins (e.g., polyethylene or polypropylene) foam materials, ethylene vinyl acetate (EVA) foam materials and polyurethane (PU) foam materials.); Schenone ¶ 18 ("In another aspect, the upper may have one or more heel padding regions. The one or more heel padding regions include one or more heel pads disposed beneath the inner material of the heel region. As such, enhanced padding may be provided to a wearer of the article of footwear."). Moreover, a person of ordinary skill would have been motivated to use foam as a heel liner, which was a known material recognized as suitable for use as a heel liner. For example, Koh teaches:

> Briefly, apparatus of this invention is a cushion for use inside footwear having an interior for receiving a foot of a wearer. The cushion comprises a liner made of cushioning material. The liner is sized and shaped for reception on an interior surface of the footwear in a position for engaging the foot when the foot is inserted into the interior of the footwear for cushioning an interface between the foot and the interior surface of the footwear with which the liner is engaged…. The cushion comprises a layer made of compliant slow recovery foam having an initial thickness prior to use and a compressed thickness thinner than the initial thickness during use resulting from pressure applied to the cushion by the foot. The foam has a resiliency capable of restoring the cushion substantially to the initial thickness after the foot is withdrawn from the footwear and pressure is relieved from the cushion.

Koh at 1:48-2:4. *See also, e.g.*, Motawi, *How Shoes Are Made*, pg. 184 ("PU foam is also used to make tongue and collar foam."); Shin-454 ¶ 1 ("The present utility model relates to a back counter

for shoes capable of thickness adjustment and original shape restoration. More specifically, urethane is injection-molded to a predetermined thickness on the back counter, and during urethane injection molding, a band-shaped contact protrusion is integrally formed on the inner upper end of the back counter to be in close contact with the heel, thereby closely attaching the back counter to the heel to prevent the shoe from slipping off during walking."); Kilgore ¶ 44 ("Collar 88 is preferably formed of a soft material such as foam, cloth, or an elastomer."); Greene at 1:55-63 ("A variety of material elements (e.g., textiles, polymer foam, polymer sheets, leather, synthetic leather) are conventionally utilized in manufacturing the upper. In athletic footwear, for example, the upper may have multiple layers that each include a variety of joined material elements. As examples, the material elements may be selected to impart stretch-resistance, wear-resistance, flexibility, air-permeability, compressibility, comfort, and moisture-wicking to different areas of the upper."); 11:25-27 ("Many conventional articles of footwear incorporate polymer foam elements or other compressible materials into a collar area."); Nishiwaki at 4:60-63 ("As shown in FIG. 4A, the upper 1 includes a cushion 15 made of a resin foam between a quarter 13 and a quarter lining 14. Note that the quarter 13 and the quarter lining 14 may each be formed by a plurality of layers of fabric."). Indeed, skilled artisans recognized foam heel lining as a technique to improve the retention of a wearer's heel in slip on footwear, with the predictable results of providing comfort to the heel and securing the user's foot in the shoe during walking. For example, Murray teaches:

> An oversize boot makes walking difficult and running almost impossible because the foot is not held firmly within the boot and has considerable movement within the boot when the wearer is in motion. For convenience, "boots" are used throughout to designate all types of footwear such as firemen and sportsman boots, high and low shoes, loafers, slippers, and of all types of materials whether rubber, plastic, leather or cloth…. The present invention corrects these disadvantages by employing inward expanding sponge rubber inserts, secured to the inside surface of the boot to hold the foot firmly against the bottom of the boot. When running, the boot inserts do not permit the foot to move about within its confines but instead, causes the foot to cling to the sole. A feature of the present invention is the unitary

> nature of the inserts comprising a body of foam rubber or plastic covered with cloth, thereby permitting the inserts to be attached to ordinary boots and shoes to achieve a tight comfortable fit. Internal pads of sponge material are preferably enclosed in a fabric casing and secured to the inside surface of rubber boots or shoes. The construction permits the wearer to put his feet into the boots without strenuous effort. Also, the boots may be removed easily without using a zipper opening or shoe laces. While being worn, the wearer may run or take long walking steps without fear of losing the boots or of displacing the foot within the boot. The sponge inserts hold the foot in its proper place by forcing the foot into contact with the inner sole.

Murray at 1:10-47. *See also*, *e.g.*, Shin-454 ¶ 20 ("According to the present utility model, which is a back counter for shoes capable of thickness adjustment and original shape restoration configured as described above, urethane is injection-molded to a predetermined thickness on the back counter, and during urethane injection molding, a band-shaped contact protrusion is integrally formed on the inner upper end of the back counter to be in close contact with the heel, thereby closely attaching the back counter to the heel to prevent the shoe from slipping off during walking. Even if the back counter is deformed during the process of the user wearing the shoe, it is restored to its original shape by the restoring force of the urethane, thereby maintaining the shoe in its original shape and extending the shoe's lifespan."); Auger ¶ 42 ("In any of the embodiments, heel inserts 130, 131 include a cushioning member 160 for customizing the fit of footwear 100 and/or for improving overall footwear comfort. Cushioning member 160 is generally formed over and around at least part of second connector portion 150 and extends into heel region 114 of upper 104. Cushioning member 160 includes an outer surface 162, an inner surface 164, an upper edge 166, a lower edge 168, and sides 170, 172. Cushioning member 160 of u-shaped heel insert 154 may be vertically disposed within heel region 114 such that outer surface 162 of cushioning member 160 abuts against and generally conforms to the contours of inner surface 134 of heel counter 128 (FIG. 3). Likewise, cushioning member 160 of heel bucket insert 156 may be vertically disposed within heel region 114 but additionally may include a generally contoured and integrally formed

horizontal component in the form of a heel bucket or cup 174 that is flush with a lower heel engaging area on upper surface 158 of insole 120 (FIGS. 4-5). Moreover, cushioning member 160 may have varying thicknesses so that different heel inserts 130, 131 are configured with different foam contours."); Shin-091 ¶ 65 ("Preferably, the elastic member 122 that is elastically deformable may be formed of a rubber material. In addition, the elastic member 122 may be formed of a high-elasticity material such as urethane having an elastic force."); Kilgore ¶ 44 ("Collar 88 is preferably formed of a soft material such as foam, cloth, or an elastomer."); Aikawa at p. 21 ("An elastic material (11) such as a foamed elastic synthetic resin improves the fit around the ankle in the upper heel portion and enhances comfort."); Ikezawa ¶ 86 ("The layered portions 20 and 29 each have a cushioning material 21 represented as a dotted area, layered with an inner skin and an outer skin 23, with the cushioning material 21 sandwiched therebetween. The cushioning material 21 may be, for example, a foamed resin or a foamed rubber as well as a non-woven fabric (felt), or the like, and serves to fit to the upper portion of the foot F (FIGS. 2 and 4) in the upper portion 2u and the lower portion 2d of the sub-upper 2."). Unsurprisingly, the prior art is laden with numerous examples of foam liners at the stabilizer, oriented downward to the sole, as it is an obvious design choice and known method to provide improved heel retention and comfort to the heel. *See, e.g.*, Motawi, *Shoe Material Design Guide*, pgs. 130-76 (providing examples of numerous dissected shoe models with varying configurations of "collar foam" in conjunction with heel counters). Exemplary prior art footwear products with such configurations of foam lining include, without limitation, the Merrell Jungle Moc 2.0, the BOGS Ultra Mid, Skechers Ultra Flex Bright Horizon, Skechers Summit Quick Lapse, and Skechers Bikers MC – Bellore. Because the use of foam lining oriented concave toward the sole portion of a shoe was long-standing technique in the art with the predictable advantage of improved user comfort and heel securement/retention, a person of

ordinary skill would have been motivated to include such lining in hands-free footwear and would have had a reasonable expectation of success in doing so.

A person of ordinary skill would further have been motivated to include an elastic element in the upper configured to enlarge the foot opening when expanded and operable to reduce the foot opening when contracted. Including such elastic elements into slip-on footwear—particularly slip-on footwear with stabilizers configured to act as a shoe horn—was a known technique regularly used by those skilled in the art to improve similar products in the same way. For example, Kim teaches the incorporation of "stretchable portions" into rapid-entry footwear with a stabilizer acting as a shoe horn to permit easy entry and exit of the footwear:

> [W]hen putting on the shoe, the user first inserts, starting from the toes, the foot into the shoe, and then pushes the heel of the foot into the inside of the heel portion while sliding it along the heel guide portion. At this time, since the one pair of stretchable portions stretches, the opening of the shoe expands, and the heel can be easily placed at the inside of the heel portion. When shoes are taken off, using one foot to press the projecting portion of the other shoe and lifting up the other foot allows the other shoe to be taken off from the heel of the other foot. At this time, since the one pair of stretchable portions stretches, the opening of the shoe expands, allowing the shoe to be easily taken off.

Kim ¶ 8. *See also*, *e.g.*, *Sturlaugson* at 2:1-8 ("A unique elastic gore is incorporated into Applicant's design …. This securing mechanism allows expansion of the shoe during entry and removal of the foot and causes the shoe to otherwise be in a recoiled configuration."); Takahashi ¶ 37 ("a pair of stretchable portions 13, 14 located on both the left side and the right side to allow the deformation of the upper 12"); Lin-845 at 3:14-21 ("[D]uring aforesaid process of putting on or taking off the shoe 10, the elastic bands 24 can be stretched to enlarge the top line 29, so that the user can put on or take off the shoe 10 more smoothly. As a result, the shoe 10 is convenient for the user, especially for old people, pregnant women, or wounded people who can't bend their backs easily, to put on without bending his back and using his hand."); Zago pg. 1 ("In the invention dealt with herein, one of the most important goals is to prevent this from happening by creating a shoe with a stiff

yet flexing heel, which puts itself easily on whether or not it has laces, and which is characterized by … along the sides of the upper - at least one joint made of elastic material, which extends and/or widens when the shoe is put on and increases the size of the mouth in the upper."). Sakai ¶ 24 ("The shoe 10 also optionally includes elastic gore panels 40 disposed between the vamp portion 26 and the lateral and medial quarter portions 20. Each of the elastic gore panels 40 is preferably a generally triangular panel formed from a stretchable material. The gore panels 40 allow for additional stretch between the vamp portion 26 and the quarter portions 20, beneficially making the shoe 10 easier to put on and/or take off a wearer's foot."). In addition to elastic bands and gore panels located at the sides of the shoe, skilled artisans would have been aware of numerous other configurations of elastic elements to facilitate expansion and contraction of the foot opening. For instance, it was well known at the time of the alleged priority date of the '660 Patent that incorporating elastic elements at or around the tongue, laces, throat, vamp, and/or toe cap would ease donning and doffing, and further improve the fit and securement of the footwear. For example, Steere teaches:

> In some embodiments, a forefoot portion of the upper may be secured to the insole by elastic straps. As shown in FIG. 10, portions of the forefoot section of the upper 1010 may extend past and within a heel section of the upper on symmetrical lateral sides of the shoe. This forefoot portion of the upper may be secured to the insole of the shoe by elastic straps 1011 or other elastomeric elements that are stitched or otherwise permanently secured to the forefoot portion of the upper 1010 on one end and to the insole 1030 on the other end. In this way, the elastic may stretch to allow the forefoot of the upper 1010 to expand, e.g., in order for a wearer to fit their foot into the shoe. Once the wearer's foot is settled within the shoe, the elastic may contract, allowing the forefoot section of the upper 1010 to fit snugly against the wearer's foot.

Steere ¶ 74. *See also, e.g., id.* ¶ 78 ("In other embodiments, the lacing component 1100 may be in the form of elastic inserts placed in cut-outs in sections of the upper. Some embodiments may include two matching cut-outs placed on opposite sides of the upper 1110, near the edge of the cavity 1150 configured to receive a foot. These cut-outs may then be filled with an elastic material

stitched to the upper 1110 along the edges. These elastic inserts may allow the upper 1110 to stretch and the cavity 1150 to expand in order to fit a foot securely into the shoe.").

More fundamentally, skilled artisans had long been aware of the utility of incorporating elastic upper elements to ease entry and exit of the foot and to improve the wearing experience. For example, Hall explains:

> Shoes, to the contrary, and especially long-quartered ones, require a great effort from the muscles to be kept on, and this, when long applied, tires and weakens. The lace and button boots usually worn need not be described; they are very good and suitable to most feet, and, if cut well and lasted, properly, generally give comfort and satisfaction. The trouble, however, of lacing and unlacing, the tag coming off, the button breaking, or the shank hurting, the holes soon wearing out, and many other little annoyances, have all been experienced as *bores* by thousands who have worn that kind of boot. About ten years since I first thought of an elastic boot, that might possibly remedy in a great measure all these minor evils, and combine many advantages never possessed by any former boot…. After several experiments in wire and India-rub her, I succeeded in getting the exact elasticity required, and subsequent improvements in materials and workmanship, have combined to make the elastic boot the most perfect thing of its kind…. One of my earliest customers, a lady of great originality of thought and expression, first induced me to make it an article of universal sale, by saying: "These boots are the comfort of my life, if you were only to give them a sounding name-if you like, call them lazy boots and tum it into Greek-all the world will buy them, and you'll make your fortune…. The elastic clog is another improvement on the old mode of fastening with straps, buckles, and buttons; clogs on this principle are put on and taken off without any trouble or fastening, and by a very simple arrangement of a plush back, all chafing of the boot is avoided and great firmness secured, without a chance of their slopping.

Hall pg. 116-22. *See also*, *e.g.*, Rossi at 213 ("The pump received great impetus with the invention of elasticized goring in 1837 by J. Sparkes Hall, bootmaker to Queen Victoria. The new hug fit of the pump without benefit of fastenings delighted the queen and the pump rose rapidly in popularity."). Well-known prior art footwear constructions, such as 19th century "Congress gaiters," *see*, *e.g.*, Rossi 18 ("congress. A low dress or comfort boot with leather upper an elastic gusset at the sides, usually with a pull strap in the back. Popular as a men's boot in the 19th and early 20th centuries. Sometimes known as a congress gaiter."); Packard at ln. 49-54 ("The elastic

gorings, united to the forward edges of the quarter, cause the latter to conform to the contour of the back of the foot, and so that the quarter requires but little crimping or molding to adopt it to said contour."), and more contemporary Chelsea boots, *see*, *e.g.*, Choklat pg. 47 ("Chelsea boot: An ankle boot with side elastic gussets."), show that a person of ordinary skill in the art would have had a reasonable expectation of success in incorporating similar elastic elements into new slip-on footwear constructions, such as by forming a side portion of the upper or a portion of the shoe's top collar out of an elastic element, configuring the elastic element to enlarge the shoe's foot opening in response to the insertion of a user's foot, and configuring the elastic element to enable the forward portion of the shoe upper to flex relative to the shoe's sole. A person of ordinary skill would have been motivated apply these known techniques to new footwear constructions for their predictable benefits of easier donning and doffing and improved wearing experience.

These benefits, and others disclosed in the cited art references, would have motivated a person of ordinary skill to look to these references and incorporate their teachings in a manner that would result in the subject matter claimed in the asserted claims of the '660 Patent, as it would involve the combination of known prior art elements according to known methods to yield predictable benefits. As these features were already implemented in the prior art, a person of ordinary skill would have had a reasonable expectation of success in combining them, and would have recognized that there were no significant impediments to combining the elements and features from these references. It would have required only routine skill and little effort in terms of time, expense, or resources for a POSITA to apply these and other teachings to an article of footwear. A POSITA would, therefore, have found suggestion and motivation in the art and from his or her own knowledge as a skilled artisan to modify the foregoing and other references. Accordingly, because all the elements of the asserted claims of the '660 Patent were known in the prior art and

one of ordinary skill could have combined them, as claimed, by known methods with no change in their respective functions and nothing more than predictable results, the asserted claims of the '660 Patent are invalid as obvious.

9. Obviousness of the D'641 Patent

To the extent Plaintiffs allege that any prior art reference does not expressly or inherently anticipate the Asserted Claim of the D'641 Patent, the Asserted Claim is invalid as obvious under 35 U.S.C. § 103 as set forth in the charts included herewith for the D'641 Patent, including the Invalidity Charts (Exhibits D641-1 to D641-40) and Invalidity Combinations Chart (Exhibit D'641-C). Skechers may assert obviousness based on any identified reference alone, or in a combination with any one or more of: (1) the knowledge of a person of ordinary skill in the field to which the claimed design pertains; (2) any admitted prior art, as explained in the D'641 Patent or discussed in its file history or in the file history of any related patent; (3) any of the prior art references identified in this Cover Pleading; (4) any of the prior art references charted for the overall visual appearance, including all ornamental features, claimed in all figures of the claimed design in any Skechers Invalidity Chart; and/or (5) any of the prior art references identified as embodying any ornamental features of the claimed design in Skechers' Invalidity Combinations Chart for the D'641 Patent.

A person of ordinary skill in the field to which the claimed design pertains would have been motivated to modify each of the foregoing prior art references, and/or to combine them with any one or more of the foregoing, to create a design substantially the same in overall visual appearance as the claimed design. The references cited herein are all articles from the same field of endeavor as the claimed ornamental design. The D'641 Patent claims an ornamental design for footwear, and each prior art reference cited herein discloses an ornamental design for footwear. For example, the article of footwear depicted in the D'41 Patent identifies the intended application

of the claimed design to an article such as a sneaker, tennis shoe, or athletic shoe. That intended environment would have led a person of ordinary skill to look to sneaker designs in the prior art when developing the claimed ornamental appearance, including the placement and scale of the design relative to the sneaker or athletic shoe, the material and construction constraints (*e.g.*, seams, curvature, and overlays), and any other elements of sneaker and footwear design that shape the resulting overall visual impression.

A person of ordinary skill would have been motivated to combine any of the exemplary prior art references disclosed herein with any one or more of the foregoing exemplary prior art references, including at least because combining with any of these exemplary prior art references would have included, for example and without limitation: (a) combining features of designs strikingly similar in overall appearance; (b) combining ornamental features that are commonplace to an ordinary designer in the field to which the claimed design pertains; (c) combining work from one field of endeavor that prompts variations of it for use in either the same field or a different one based on design incentives or other market forces that are predictable to a designer in the field to which the claimed design pertains; and/or (d) applying some teaching suggestion, or motivation in the prior art that would have led an ordinary designer in the field to combine teachings of the prior art to create the same overall visual appearance as the claimed design. A person of ordinary skill would have been motivated modify the visually dominant features of the prior art references cited herein to create a design with the overall visual impression created by the claimed design.

The obviousness inquiry for design patents "focuses on the visual impression of the claimed design as a whole and not on selected individual features." *LKQ Corp. v. GM Glob. Tech. Operations LLC*, 102 F.4th 1280, 1299 (Fed. Cir. 2024). Nonetheless, the overall visual impression of a claimed design is best described by its visually dominant features. *See, e.g.*, *Egyptian Goddess,*

Inc. v. Swisa, Inc., 543 F.3d 665, 682–83 (Fed. Cir. 2008); *Minka Lighting, Inc. v. Craftmade Int'l Inc.*, 2001 WL 1012685 (N.D. Tex. Aug. 20, 2001) ("[T]he Federal Circuit indicated that a reasonably detailed description of the various ornamental features of the claimed design and their interrelationships was appropriate in order to properly evoke, in words, a visual image of the overall appearance."). Examples of visually dominant features characterizing the appearance of the D'641 Patent include, but are not limited to: (a) a geometric pattern comprising longitudinal four-cornered shapes (b) with narrow spacing in between each shape, forming a narrow cross pattern in the negative space between each longitudinal four-cornered shape comprising the geometric pattern (c) the pattern being on a discrete section of a shoe upper (c) that section delineated by a material component.[13]

Ordinary design incentives and market preferences would each motivate a person of ordinary skill to create a design substantially the same in overall visual appearance as the claimed design in light of the prior art. In general, the field of footwear design, particularly sneaker and athletic shoe design, is highly crowded and competitive,[14] and continued success is heavily

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[13] These descriptions of the dominant features characterizing the overall visual appearance of the claimed design, and all description of and reference to those dominant visual features, are exemplary and not intended to be limiting. Claim construction has yet to occur, and Skechers' present interpretations of the claimed design are thus based in part on Plaintiffs' apparent claim construction positions that Plaintiffs have implied in their infringement contentions, to the extent such constructions are discernable. As a result comparisons of claimed ornamental features to the prior art herein may be based on Plaintiffs' overbroad claim constructions and interpretations as implied in Plaintiffs' infringement contentions, which constructions and interpretations Skechers reserves the right to dispute. For example, Plaintiffs appear to incorrectly interpret numerous features of the claimed designs in overbroad and sweeping ways in an attempt to read on the Accused Products. By way of specific example, Plaintiffs appear to contend that the overall appearance of the design, as understood and exemplified from a back perspective view, is not limited to shapes comprising the pattern on the back and/or sides of the upper. Thus, comparisons of the claimed ornamental features to the prior art herein may be based on Plaintiffs' perceived construction that this boundary is not a dominant feature of the claimed design.

[14] *See*, *e.g.*, Luximon pg. 255 ("The global footwear market is very competitive and uneven, with some key players and some smaller players, comprising designers, marketers, manufacturers and

influenced by consumer trends. Industry players cite to changing design trends and consumer preferences as a rationale for design decisions, noting in financial disclosures that "changing design trends and consumer preferences, affect the demand for [] products" and "that "failure to respond [to footwear fashion industry trends] in a timely and adequate manner could have a material adverse effect on [] sales and profitability."[15]

A person of ordinary skill would have been further motivated by the compatibility of the prior art with common design trends. For example, a person of ordinary skill would have been motivated to modify the precise shape and spacing of a geometric patten on a patterned section of a shoe upper in light of commonplace design trends and market demands surrounding similar shapes and patterns. Geometric pattern comprising longitudinal four-cornered shapes with narrow spacing in between each shape, forming a narrow cross pattern in the negative space between each longitudinal four-cornered shape, were commonplace and well-known in footwear design at the time of the claimed design. These patterns result in part from material considerations that influence the overall appearance of an article of footwear, such as knit and mesh uppers. For example, an article from 2018 on the proliferation of knit uppers in the footwear industry features at least two shoes whose overall appearance is visually dominated by such longitudinal four-cornered shapes.[16]

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retailers, all competing for a share.");
https://www.sec.gov/Archives/edgar/data/850209/000114420415019391/v403865_10k.htm.
(FootLocker citing to the fact that "the retail athletic footwear and apparel business is highly competitive" as a risk factor in their 10K).

[15] *See* https://www.sec.gov/Archives/edgar/data/320187/000032018725000047/nke-20250531.htm.

[16] https://www.footwearinsight.com/2018/sep-oct/knit-it-up.html.

OUTDOOR

Knit it Up

Brands Weigh in On What Knit Uppers Have to Offer in Outdoor Styles.

A person of ordinary skill would also have been motivated to modify a longitudinal geometric pattern described herein to achieve a predictable variation in appearance. As evidenced by the above, placement of these patterns in various discrete areas of the upper was common in the field of footwear design. In the above example, the shoe on the right contains the pattern only to the lateral midfoot region while the shoe on the left expands the pattern from the midfoot region into the toe bed. Thus, a person of ordinary skill would have been motivated to place the above-described geometric pattern in various positions relative to the upper.

Additionally, and/or in the alternative, a person of ordinary skill would have been motivated to modify the ornamental appearance of the pattern to achieve a predictable variation in appearance. Such predictability would arise from each of the minor variants known in the art and the knowledge held by a footwear designer of ordinary skill as to how placement of a design relative to different areas of the foot modifies the overall appearance of the design. For example, a person of ordinary skill would have been aware of the modifications to a design that would be necessary to conform the design with the placement on the heel of a sneaker or athletic shoe, as basic pattern designs are commonly adapted to conform with the shape of a heel. In addition, similar designs are commonly adapted based on material considerations, such as the knit uppers

described above. As another example, a longitudinal geometric pattern on a heel is commonly constructed from a more rigid material. For example, the Nike Zoom Vomero 5, released in 2011,[17] features a longitudinal lattice shape on the back of the heel, extending onto the back third of the lateral and medial sides of the upper, the ornamental appearance of which is modified by the material used to form the pattern.

Changes to a shape, texture, and/or layer imposed onto a sneaker or athletic shoe in light of changing design trends is extremely common and well-known in the footwear design industry. In fact, it is common practice for shoe models, including the above-described Nike Zoom Vomero 5, to be re-released or released as new models with minor variants based on market demand.[18]

Other shoes highly similar in overall appearance to the claimed design have been the subject of these re-releases, ranging from new models of an underlying base model to the replication of an older model. For example, Ascis' Gel Kayano series was originally released in 1993, and the brand regularly re-releases new models with slight variations in design, color, and

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[17] *See, e.g.*, https://www.sneakerfreaker.com/features/nike-vomero-zoom-vomero-5-brief-history-explained-next-big-sneaker.

[18] *See e.g.*, https://www.gq.com/story/air-jordan-11-cool-grey-release; https://www.sneakerfreaker.com/features/nike-vomero-zoom-vomero-5-brief-history-explained-next-big-sneaker ("Big sneaker brands love to reference their archive and resurrect older models through a lifestyle lens.").

texture aligned with market demands.[19] These modifications regularly pertain to geometric patterns similar to that embodied in the claimed design, the positioning of these patterns relative to the heel portion of a sneaker upper, and the shape of the component comprising the geometric pattern. Indeed, modifications to this precise effect can be seen in models of Asics' Gel Kayano sneakers released consecutively. As compared to its predecessor, the 2017 Gel Kayano similarly comprised a longitudinal geometric pattern placed on the heel section of the upper, delineated from the rest of the upper by a material component, but varied slightly in that (i) the longitudinal four-cornered shapes were reduced in size and spaced further apart and (ii) the delineated section extended onto the medial and lateral sides of the upper.[20]

Each of the designs in the prior art would be readily modifiable, whether on their own or in light of features on a closely related shoe, to encapsulate the overall appearance of the claimed design. For example, a person of ordinary skill would have been motivated to modify a patterned element wrapping around the heel of an upper to incorporate, and/or to combine patterned elements that were well known in the field of footwear design. A person of ordinary skill would have been aware of myriad variants on such a design concept, and would understand that any variant could

[19] *See* https://www.sneakerfreaker.com/features/breaking-down-the-asics-gel-kayano-series-differences-explained (discussing the proliferation of the ASICS GEL-Kayano 14, originally released in 2008, in the 2020s "thanks to the volume of high-profile collaborations and crisp GR editions.").
[20] *See, e.g.*, https://weartesters.com/asics-gel-kayano-trainer-knit-makeover/.

be utilized depending on the desired visual effect. For example, a person of ordinary skill would have been motivated to rotate a longitudinal lattice pattern to form a latitudinal lattice pattern. For another example, a person of ordinary skill would have been motivated to modify the precise size, spacing, and shape of each individual element within the pattern based on their desired visual effect.

A person of ordinary skill in the field to which the claimed design pertains would have thus been motivated to modify each of the exemplary prior art references disclosed herein and/or to combine them with any one or more of the foregoing to create a design substantially the same in overall visual appearance as the claimed design. Accordingly, the asserted claim of the D'641 Patent is invalid as obvious.

IV. INVALIDITY UNDER 35 U.S.C. § 112 (P.R. 3-3(C))

As set forth below, Skechers contends that the Asserted Claims are invalid under 35 U.S.C. § 112 for (1) indefiniteness, (2) failure to satisfy the enablement requirement, and (3) failure to satisfy the written description requirement.

Skechers Preliminary Invalidity Contentions identified in this section are made in the alternative and do not constitute, and should not be interpreted as, admissions (1) regarding the construction or scope of the Asserted Claim or (2) that the Asserted Claim would not have been anticipated or obvious in light of the prior art.

Plaintiffs have not yet provided any proposed claim constructions for any of the terms or phrases that Skechers anticipates will be in dispute. Skechers, therefore, cannot provide a complete list of § 112 defenses because Skechers does not know whether Plaintiffs will proffer a construction for certain terms and phrases that is broader than, or inconsistent with, the construction that would be supportable by the disclosure set forth in the specification. Skechers

offers these contentions without prejudice to any position it may ultimately take as to any claim construction issues. Accordingly, Skechers reserves the right to supplement, amend, and/or modify these disclosures as discovery progresses.

A. Legal Background Regarding Enablement, Written Description, and Definiteness

Enablement: "The specification shall contain a written description of the invention … in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same[.]" AIA 35 U.S.C. § 112(a), pre-AIA 35 U.S.C. § 112 ¶ 1. To satisfy the enablement requirement, the disclosure "must teach those skilled in the art how to make and use the full scope of the claimed invention without 'undue experimentation.'" *Genentech, Inc. v. Novo Nordisk A/S*, 108 F.3d 1361, 1366 (Fed. Cir. 1997); *MagSil Corp. v. Hitachi Glob. Storage Techs., Inc.*, 687 F.3d 1377, 1381 (Fed. Cir. 2012); *Sitrick v. Dreamworks, LLC*, 516 F.3d 993, 999 (Fed. Cir. 2008). If a specification teaches away from a substantial portion of the claim or does not enable the full scope of the claim, the claim is invalid as indefinite. *AK Steel Corp. v. Sollac*, 344 F.3d 1234 (Fed. Cir. 2003); *see also MagSil*, 687 F.3d at 1383-84. A variety of factors are relevant to whether the disclosure of the specification requires undue experimentation, including "(1) the quantity of experimentation necessary, (2) the amount of direction or guidance presented, (3) the presence or absence of working examples, (4) the nature of the invention, (5) the state of the prior art, (6) the relative skill of those in the art, (7) the predictability or unpredictability of the art, and (8) the breadth of the claims." *ALZA Corp. v. Andrx Pharms., LLC*, 603 F.3d 935, 940 (Fed. Cir. 2010) (quoting *In re Wands*, 858 F.2d 731, 737 (Fed. Cir. 1988). But if "there is no disclosure of any specific starting material or of any of the condition under which a process can be carried out, undue experimentation is required." *Id*. at 941

(quoting *Auto. Tech. Int'l, Inc. v. BMW of N. Am., Inc.*, 501 F.3d 1274, 1283-84 (Fed. Cir. 2007). In the design patent context, "the indefiniteness and enablement inquiries are similar and can be assessed together." *In re Maatita*, 900 F.3d 1369, 1375 (Fed. Cir. 2018).

Written Description: "The specification shall contain a written description of the invention[.]" AIA 35 U.S.C. § 112(a), pre-AIA 35 U.S.C. § 112 ¶ 1. "To satisfy the written description requirement, a patent applicant must convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention." *ICU Medical Inc. v. Alaris Medical Systems, Inc.*, 558 F.3d 1368, 1377 (Fed. Cir. 2009) (internal quotation marks and citations omitted); *see also Synthes USA, LLC v. Spinal Kinetics, Inc.*, 734 F.3d 1332, 1340 (Fed. Cir. 2013). "The test [for written description support] requires an objective inquiry into the four corners of the specification from the perspective of a POSITA. Based on that inquiry, the specification must describe an invention understandable to that skilled artisan and show that the inventor actually invented the invention claimed." *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc). The specification must describe the claimed invention in sufficient detail so that a POSITA can recognize what is claimed. "The appearance of mere indistinct words in a specification or a claim, even an original claim, does not necessarily satisfy that requirement." *Univ. of Rochester v. G.D. Searle & Co.*, 358 F.3d 916, 923 (Fed. Cir. 2004) (internal quotation marks and citations omitted); *see also Nuvo Pharms. (Ireland) Designated Activity Co. v. Dr. Reddy's Labs. Inc.*, 923 F.3d 1368, 1380 (Fed. Cir. 2019) ("We have expressly rejected the 'argument that the written description requirement … is necessarily met as a matter of law because the claim language appears *in ipsis verbis* in the specification.'") (quoting *Enzo Biochem, Inc. v. Gen-Probe Inc.*, 323 F.3d 956, 968 (Fed. Cir. 2002)). This requirement is not satisfied by a disclosure that "would render the claimed invention obvious" to a POSTIA. *ICU*

Med., Inc. v. Alaris Med. Sys., Inc., 558 F.3d 1368, 1377 (Fed. Cir. 2009). In the design patent context, a "visual disclosure may be inadequate—and its associated claim indefinite—if it includes multiple, internally inconsistent drawings." *In re Maatita*, 900 F.3d 1369, 1375 (Fed. Cir. 2018).

Definiteness: "The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor or a joint inventor regards as the invention." AIA 35 U.S.C. § 112(b), pre-AIA 35 U.S.C. § 112 ¶ 2. "[A] patent is invalid for indefiniteness if its claims, read in light of the patent's specification and prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120, 2124 (2014). The definiteness requirement requires that the claim must set forth what the applicant regards as the invention, and do so with sufficient particularity and definiteness. *Allen Eng'g Corp. v. Bartell Indus.*, 299 F.3d 1336, 1348 (Fed. Cir. 2002). Where it would be apparent to one of skill in the art, based on the patent specification, that the "invention" set forth in a claim is not what the patent applicant regarded as the invention, the claim is invalid. *Id*. In the design patent context, a "visual disclosure may be inadequate—and its associated claim indefinite—if it includes multiple, internally inconsistent drawings." *In re Maatita*, 900 F.3d 1369, 1375 (Fed. Cir. 2018).

B. The Asserted Claims Are Invalid Under 35 U.S.C. § 112

Based on Skechers' present understanding of the Asserted Claim and HFL's apparent interpretation of these claims as reflected in its Infringement Contentions, the Asserted Claims are invalid for failure to satisfy the requirements of § 112 for at least the following reasons: (1) the specifications lack a written description of the alleged invention; (2) the specifications do not enable the Asserted Claims; and/or (3) one or more of the Asserted Claims fail to specify the scope of the claimed inventions with reasonable particularity.

Each asserted claim of the '325 Patent is invalid as not containing a written description of the invention, in such full, clear, concise and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the alleged invention. Moreover, based on Skechers' present understanding of HFL's Infringement Contentions, each of the asserted claims in which these claim terms/phrases appear lack written description because the specification of the '325 Patent demonstrates that the patentee neither conceived of nor demonstrated possession

Specifically, the Asserted Claims fail to meet the written description requirement for at least the terms identified below because the alleged inventions claimed therein, and of the manner and process of making and using them, are not sufficiently described in the specifications of the Asserted Patents and the specifications of the Asserted Patents do not adequately convey to those skilled in the art that the inventors had possession of all that HFL now contends the claims cover as of the filing date. Moreover, the Asserted Claims additionally fail to meet the enablement requirement because the specification fails to provide sufficient disclosure to enable a person of ordinary skill in the art to which it pertains, or with which it is most nearly connected, to implement the full scope of the claim without undue experimentation. Moreover, based on Skechers present understanding of the Asserted Claims and HFL's apparent interpretation of these claims as reflected in its Infringement Contentions, the Asserted Claims fail to satisfy the definiteness requirement because the precise scope of at least the phrases listed below (or terms contained therein) cannot be determined with reasonable certainty by a POSITA, even when reading the claims in light of the specification and prosecution history.

Skechers reserves the right to modify, amend, and supplement its Preliminary Invalidity Contentions relating to § 112 as the case progresses, including, for example, in response to terms

identified by HFL during the claim construction process, amendments to HFL's Infringement Contentions, and any claim construction order(s) entered by the Court.

1. The '006 Patent

The Asserted Claim of the '006 Patent is invalid for failing to meet the requirements of § 112 for at least the following reasons:

Claim(s)	Term	Grounds
1	a sole portion and an upper, the upper comprising a rear portion, a forward portion, and a side portion, the side portion extending between the rear portion and the forward portion	Indefiniteness
1	an elastic element disposed at the side portion	Indefiniteness, Written Description, Enablement
1	the elastic element extending to and forming a portion of a topline of the rapid-entry shoe	Indefiniteness, Enablement, Written Description
1	a stabilizer disposed at the rear portion and extending from within the sole portion, the stabilizer comprising a base portion at least partially within the sole portion and an elevated portion	Indefiniteness
1	the elevated portion of the stabilizer comprises a flare portion extending rearward to direct a foot into a foot opening of the rapid-entry shoe	Written Description, Enablement, Indefiniteness
1	wherein expansion or deformation of the elastic element enlarges the foot opening of the rapid-entry shoe, and wherein contraction of the elastic element reduces the foot opening of the rapid-entry shoe	Written Description, Enablement, Indefiniteness
1	wherein the stabilizer is comprised of a rigid material such that the rear portion of the upper at which the stabilizer is disposed is configured to resist downward collapse	Enablement, Indefiniteness
1	foam liner oriented concave toward the sole portion	Written Description, Enablement
1	wherein the elastic element is configured to enable the forward portion of the rapid-entry shoe to flex and/or pivot forward relative to the sole portion	Indefiniteness

2. The '325 Patent

The Asserted Claims of the '325 Patent are invalid for failing to meet the requirements of § 112 for at least the following reasons:

Claim(s)[21]	Term	Grounds
1	a stabilizer provided at a rear portion of the sole and comprised of a rigid material	Indefiniteness, Enablement
1	the base portion is proximate the sole	Indefiniteness
1	a lateral portion extending from a lateral side of the sole to a midportion of the base portion; and a medial portion extending from the midportion of the base portion to a medial side of the sole	Indefiniteness
1	wherein the lateral portion of the base portion, the midportion of the base portion and the medial portion of the base portion form a convex structure	Indefiniteness, Written Description
1	the elevated portion extends rearward from a rear portion of the convex structure and acts as a shoehorn	Indefiniteness
1	a foam liner coupled to the stabilizer between the medial portion of the base portion and the lateral portion of the base portion along the convex structure, at least a portion of the foam liner extending beyond at least one of the medial portion of the base portion and the lateral portion of the base portion and oriented downward toward the sole such that the foam liner acts to retain a heel within the heel portion of the rapid-entry shoe	Written Description, Enablement, Indefiniteness
2	the base portion of the stabilizer extends into the sole	Indefiniteness
3	the elevated portion of the stabilizer extends to a top collar of the upper of the rapid-entry shoe	Written Description, Enablement, Indefiniteness
4	an elastic element disposed on a side portion of the upper and forward relative to the rear portion	Indefiniteness, Enablement, Written Description

[21] Applies to all claims from which the identified claims depend, regardless of whether explicitly listed.

Claim(s)[21]	Term	Grounds
5	the upper defines a foot opening and wherein the elastic element enlarges the foot opening of the rapid-entry shoe in response to a foot being inserted into the opening and contacting at least a portion of the upper	Indefiniteness
6	the elastic element forms at least a portion of a top collar of the upper of the rapid-entry shoe.	Indefiniteness
7	the elastic element enables a forward portion of the upper to flex relative to the sole of the rapid-entry shoe	Indefiniteness
8	a lattice structure adjacent the stabilizer	Written Description, Enablement, Indefiniteness
9	the lattice structure is visible on an outside surface of the rapid-entry shoe	Written Description, Enablement, Indefiniteness

3. The '811 Patent

The Asserted Claims of the '811 Patent are invalid for failing to meet the requirements of § 112 for at least the following reasons:

Claim(s)	Term	Grounds
1, 10	an upper coupled to the sole portion and including a rear portion, a side portion, and a forward portion	Indefiniteness
1, 10	a stabilizer defining a unitary structure extending from the sole portion toward a rear portion of the foot opening	Indefinite
1	a plurality of elastic elements positioned forward of the rear portion of the upper	Indefiniteness, Written Description, Enablement
1	the plurality of elastic elements operable to enlarge the foot opening when expanded and operable to reduce the foot opening when contracted	Indefiniteness
1	the first and second elastic elements being separated by a non-elastic portion of the upper	Indefiniteness
2	the first elastic element is positioned at the side portion of the upper and the second elastic element is positioned at a forward portion of the upper	Indefiniteness

Claim(s)	Term	Grounds
3	first elastic portion defines a portion of the foot opening	Indefiniteness, Written Description
4	the first elastic element defines at least a portion of the upper.	Indefiniteness
5	the second elastic element extends across a vamp of the upper.	Indefiniteness
6	the second elastic element is spaced from the foot opening.	Indefiniteness
7	the elastic element includes third elastic element	Indefiniteness
10	a plurality of elastic elements positioned along at least a portion of the upper, the elastic element configured to facilitate at least one of flexion and pivoting of the forward portion of the upper relative to the sole portion	Indefiniteness
10	wherein the plurality of elastic elements includes a first elastic element defining a first longitudinal axis and a second elastic element defining a second longitudinal axis, wherein the first longitudinal axis defines a first angle relative to a vertical axis and the second longitudinal axis defines a second angle relative to the vertical axis, wherein the first angle and the second angle are different	Indefiniteness
13	at least a portion of the plurality of elastic elements define at least a portion of the side portion of the upper	Indefiniteness

4. The '096 Patent

The Asserted Claims of the '096 Patent are invalid for failing to meet the requirements of § 112 for at least the following reasons:

Claim(s)	Term	Grounds
13	an upper coupled to the sole portion and including a rear portion, a lateral side portion, a medial side portion, and a forward portion, the upper defining a foot opening, the upper defining a top line positioned proximate the foot opening	Indefiniteness

Claim(s)	Term	Grounds
13	a stabilizer defining a unitary structure extending from the sole portion toward a rear portion of the foot opening	Indefiniteness
13, 21	a plurality of elastic elements positioned along at least a portion of the upper, the plurality of elastic elements configured to facilitate at least one of flexion and pivoting of the forward portion of the upper relative to the sole portion	Indefiniteness, Enablement, Written Description
13	the first elastic element and the third elastic element extending toward the lateral side portion and the medial side portion, respectively, wherein the first elastic element and the third elastic element extend to the top line of the upper, and wherein the second elastic element does not extend to the top line of the upper	Indefiniteness
13	a foam liner coupled to a rear portion of the upper and spaced from the sole portion	Written Description, Indefiniteness
14	wherein the first elastic element and the third elastic element are spaced apart from each other	Indefiniteness
15	wherein the foam liner is positioned at the rear portion of the upper extending toward a side portion of the upper	Indefiniteness, Written Description
16	wherein the side portion of the upper includes a lateral side portion and a medial side portion, wherein the foam liner extends toward the lateral side portion and the medial side portion	Indefiniteness, Written Description
17	wherein the foam liner includes a first portion positioned at the rear portion of the upper adjacent to the convex profile and a second portion extending forward along the upper toward the forward portion of the upper	Indefiniteness, Written Description
18	wherein the foam liner includes an upper surface, wherein the upper surface of the foam liner is sloped downward and forward where the foam liner is configured to interface with a heel of a user	Indefiniteness, Written Description

Claim(s)	Term	Grounds
21	an upper coupled to the sole portion and including a rear portion, a side portion, and a forward portion, the upper defining a foot opening	Indefiniteness
21	the first elastic element and the third elastic element extend to a top line of the upper, and the second elastic element is spaced from the top line of the upper	Indefiniteness
21	wherein the forward portion defines a tongue portion, wherein the tongue portion is coupled to at least one of the elastic elements and wherein at least a portion of at least one of the elastic elements extends across the tongue portion	Indefiniteness, Written Description
26	the first elastic element is spaced from the third elastic element	Indefiniteness
27	the tongue portion defines a longitudinal axis substantially directed toward a front portion of the rapid-entry shoe, wherein the curvilinear profile of the elastic member crosses the longitudinal axis of the tongue portion	Written Description, Indefiniteness

5. The '101 Patent

The Asserted Claims of the '101 Patent are invalid for failing to meet the requirements of § 112 for at least the following reasons:

Claim(s)	Term	Grounds
7	an upper comprising a flexible material	Indefiniteness, Enablement, Written Description
7	a heel structure provided in a rear portion of the rapid-entry shoe	Indefiniteness, Written Description
7	a lower portion coupled to a sole of the rapid-entry shoe and extending completely around the rear portion	Indefiniteness
7	a midportion integrally formed with, and extending from, the lower portion such that the midportion and the lower portion form a single continuous piece and define abutting and non-overlapping regions, the midportion extending completely around the rear portion	Indefiniteness

Claim(s)	Term	Grounds
7	an upper portion extending from the midportion and extending further rearward than the midportion wherein the upper portion directs a foot into an opening of the rapid-entry shoe;	Indefiniteness
7	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	Indefiniteness
7	wherein the flexible material is expanded in response to the foot applying the pressure to the upper portion when the foot is inserted into the opening of the rapid-entry shoe	Indefiniteness
9	the heel structure at least partially surrounds the rear portion of the rapid-entry shoe	Indefiniteness
10	a shoe cushioning component provided on at least a portion of the heel structure	Indefiniteness, Written Description
11	wherein the axis is proximal to the sole of the rapid-entry shoe	Indefiniteness
12	the pressure being applied to the upper portion causes at least a portion of the heel structure to move down and back	Indefiniteness
16	an upper comprising a flexible material and defining an opening of the rapid-entry shoe	Indefiniteness, Enablement, Written Description
16	a heel structure disposed at a rear portion of the rapid-entry shoe and extending from the sole	Indefiniteness
16	a third portion extending upward from the second portion and extending rearward to an extent greater than the second portion, the third portion allowing the heel structure to at least partially move downward or pivot about an axis of rotation proximal to the sole in response to a foot being inserted into the opening of the rapid-entry shoe	Indefiniteness
16	the flexible material transitions from a non-expanded state to an expanded state in response to the foot being inserted into the opening of the rapid-entry shoe	Indefiniteness
17	the flexible material forms at least a portion of a topline of the rapid-entry shoe	Indefiniteness, Written Description

Claim(s)	Term	Grounds
18	a downward force being applied to the third portion causes at least a portion of the heel structure to move down and back	Indefiniteness

6. The '660 Patent

The Asserted Claims of the '660 Patent are invalid for failing to meet the requirements of § 112 for at least the following reasons:

Claim(s)	Term	Grounds
1, 16, 18	an upper coupled to the sole portion and including a rear portion, a side portion, and a forward portion, the upper defining a foot opening	Indefiniteness
1	the upper including an elastic element configured to enlarge the foot opening when expanded and operable to reduce the foot opening when contracted	Indefiniteness
1	a stabilizer defining a unitary structure extending from the sole portion toward a rear portion of the foot opening, the stabilizer configured to support a rear portion of the upper during insertion of a foot through the foot opening and into the foot cavity	Indefiniteness
1	a foam liner coupled to the stabilizer between a medial portion of the stabilizer and a lateral portion of the stabilizer, at least a portion of the foam liner extending beyond at least one of the medial portion and the lateral portion of the stabilizer	Indefiniteness, Enablement, Written Description
2	the stabilizer is a single, unitary structure	Indefiniteness
6	the stabilizer includes a base portion and an elevated portion, the base portion coupled to the sole portion and including a concave profile adjacent to the rear portion of the upper, the concave profile facing toward the forward portion of the upper and extending from the sole portion toward the elevated portion, wherein the stabilizer includes an inflection point between the base portion and the elevated portion	Indefiniteness, Written Description, Enablement
7	the inflection point defines a position at which the stabilizer transitions between the stabilizer having the concave profile and a convex profile, wherein the concave profile is defined within a vertical plane, the vertical plane extending longitudinally between the forward portion and the rear portion of the upper, the	Indefiniteness, Written Description, Enablement

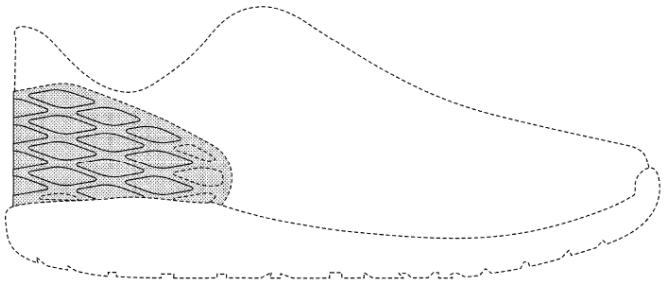
Claim(s)	Term	Grounds
	concave profile extending along at least a portion of the base portion of the stabilizer, the convex profile of the stabilizer defined within the vertical plane along at least a portion of the elevated portion, the convex profile being adjacent to the rear portion of the upper and facing toward the forward portion of the upper	
8	The rapid-entry shoe of claim 1, wherein the stabilizer has a rear profile having a serpentine shape along at least a portion of a base portion and at least a portion of an elevated portion.	Written Description, Enablement, Indefiniteness
9	The rapid-entry shoe of claim 8, wherein the base portion includes a concave shape toward the front of the rapid-entry shoe along the serpentine shape, and the elevated portion includes a convex shape toward the front of the rapid-entry shoe toward the front of the rapid-entry shoe.	Written Description, Enablement, Indefiniteness
11	the stabilizer includes a liner configured to provide for either one of retention of a user's heel and comfort for the user's heel	Indefiniteness, Written Description, Enablement
12	the base portion extends into the sole portion such that an uppermost portion of the sole portion is vertically higher than a lowermost portion of the base portion	Indefiniteness
13	a rearward most portion of the stabilizer is positioned longitudinally forward of a rearward most portion of the sole portion	Indefiniteness, Written Description, Enablement
14	the stabilizer includes a flare extending rearward from an elevated portion of the stabilizer, the flare configured to direct a foot into the foot opening during entry	Indefiniteness, Written Description, Enablement
15	the stiff material of stabilizer is configured to impede movement of the stabilizer during insertion of a foot into the rapid-entry shoe	Indefiniteness, Written Description, Enablement
16	a stabilizer embedded within the rear portion of the upper and defining a unitary structure extending from the sole portion toward a rear portion of the foot opening, the stabilizer being configured to support a rear portion of the upper	Indefiniteness, Written Description, Enablement
16	the stabilizer defining a base portion and an elevated portion having an inflection point therebetween, the base portion extending from the inflection point toward the sole portion and the elevated portion	Indefiniteness, Written Description, Enablement

Claim(s)	Term	Grounds
	extending from the inflection point toward a top of the stabilizer, wherein, when viewing a cross-section of the rapid-entry shoe from a side of the rapid-entry shoe, the base portion of the stabilizer has a concave profile facing toward the front portion of the upper and the elevated portion has a convex profile facing toward the front portion of the upper	
16	a foam liner positioned adjacent to the stabilizer, the foam liner extending from the stabilizer forward along at least a portion of the side portion of the upper, the foam liner extending forward and downward at an angle greater than zero and less than 90 degrees relative to the sole portion.	Indefiniteness, Written Description, Enablement
17	the stabilizer includes a flare proximal the elevated portion configured to direct a foot into the foot opening	Indefiniteness, Written Description, Enablement
18	a means for stabilizing a rear portion of the upper and including a base portion and an elevated portion and defining a unitary structure coupled to the sole portion toward a rear portion of the foot opening, the means for stabilizing configured to support a rear portion of the upper, wherein the means for stabilizing is configured to prevent downward collapse of the rear portion of the upper such that a heel of a user slides downward toward the sole portion relative to the means for stabilizing as the foot is inserted into the rapid-entry shoe	Indefiniteness, Written Description, Enablement
18	the means for stabilizing includes a concave profile adjacent to the rear portion of the upper, the concave profile facing toward the forward portion of the upper and extending from the sole portion toward the elevated portion, wherein the means for stabilizing includes an inflection point between the base portion and the elevated portion, wherein the inflection point defines a position at which the means for stabilizing transitions between the means for stabilizing having the concave profile and a convex profile, wherein the concave profile is defined within a vertical plane, the vertical plane extending longitudinally between the forward portion and the rear portion of the upper, the concave profile extending along at least a portion of the base portion of the means for stabilizing, the convex profile of the means for stabilizing defined	Indefiniteness, Written Description, Enablement

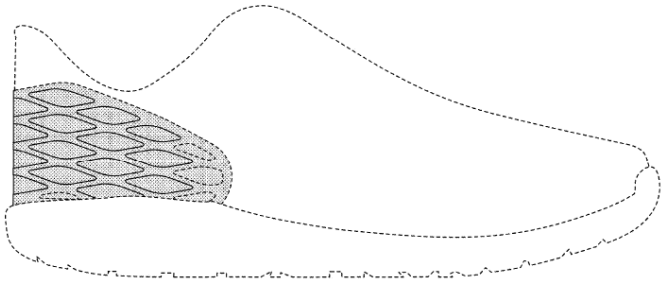
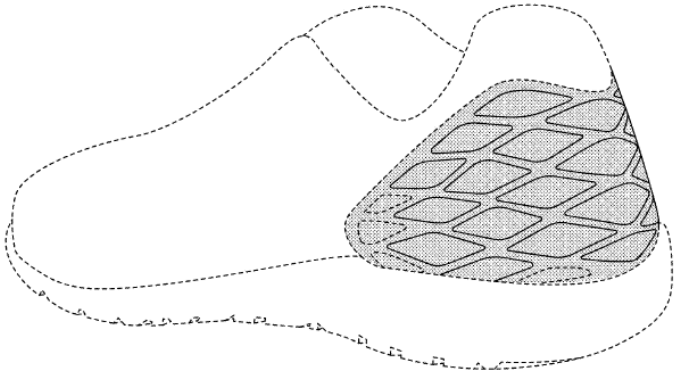
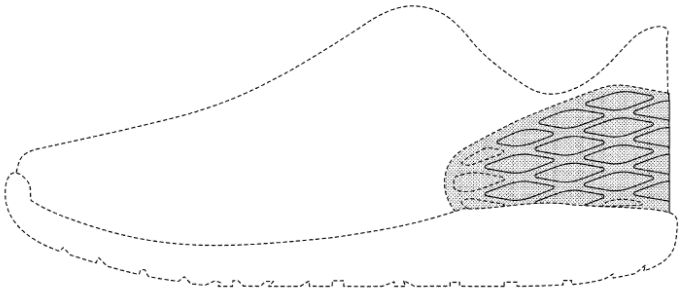
Claim(s)	Term	Grounds
	within the vertical plane along at least a portion of the elevated portion, the convex profile being adjacent to the rear portion of the upper and facing toward the forward portion of the upper	
18	a means for enlarging the foot opening by expansion and for reducing the foot opening by contraction	Indefinite
18	a foam liner coupled to the means for stabilizing between a medial portion and a lateral portion of the means for stabilizing along a concave profile, at least a portion of the foam liner extending beyond at least one of the medial portion and the lateral portion of the means for stabilizing	Indefiniteness, Written Description, Enablement
19	the foam liner is positioned against the stabilizer at a position vertically higher than the inflection point	Indefiniteness, Written Description, Enablement

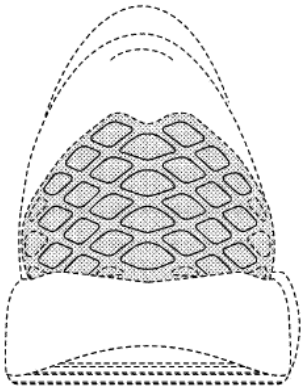
7. <u>The D'641 Patent</u>

The Asserted Claim of the D'641 Patent are invalid for failing to meet the requirements of § 112 for at least the following reasons.

Claim(s)	Term	Grounds
1	The ornamental design for footwear, as shown and described.  FIG. 1 FIG. 1 is a left side view of footwear showing our new design;	Indefiniteness, Written Description, Enablement. The drawings fail to inform those of skill in the art, viewing the design as would an ordinary observer, about the scope of the claimed design with reasonable certainty, including due to ambiguous line conventions, inconsistent views, unclear boundaries between claimed and unclaimed subject matter, and/or insufficient

Claim(s)	Term	Grounds
		disclosure of three-dimensional appearance. For example and without limitation, the drawings do not clearly define the scope of the claimed design as the boundary between the claimed design and the exemplary environment is unclear. For example, each of the figures (exemplified here by FIG 1.) use broken lines to depict portions of the article that are not claimed, yet the shading and contouring appears to delineate an outer boundary of the claimed design that tracks exactly along those broken lines. This inconsistency render ambiguous whether the boundary indicated by the broken lines is excluded (as the broken lines indicate) or included (as the shading suggests).

Claim(s)	Term	Grounds
1	 FIG. 1 FIG. 1 is a left side view of footwear showing our new design;  FIG. 4 FIG. 4 is a rear perspective view thereof.	Indefiniteness, Written Description, Enablement. The geometry of the patten in the back-perspective view is irregular while the geometry of the pattern in the side view is regular.
1	 FIG. 2 FIG. 2 is a right side view thereof;	The rear view of the claimed design is inconsistent with the back-perspective view in that the geometric shapes comprising the lattice pattern are rounded and non-longitudinal. Moreover, the center-line of the geometric shapes is inconsistent. While the back view discloses a center line, defined by the

Claim(s)	Term	Grounds
	 FIG. 3 FIG. 3 is a rear view thereof; and,	midline of an m-curve, wherein the center line bisects the geometric pattern element, the perspective view discloses a center line that does not intercept the pattern elements and bisects a gap between patterned elements:

V. INVALIDITY UNDER 35 U.S.C. § 171

"To be patentable, a design must be 'primarily ornamental.'" MPEP 1504(c)(1). Design patents on "primarily functional rather than ornamental designs are invalid." *Ethicon Endo-Surgery, Inc. v. Covidien, Inc*., 796 F.3d 1312, 1328 (Fed. Cir. 2015) ("If a particular design is essential to the use of an article, it cannot be the subject of a design patent. We have found designs to be essential to the use of an article when the claimed design is 'dictated by' the use or purpose of the article."). "[F]or a design to be ornamental within the requirements of 35 U.S.C. 171, it must be 'created for the purpose of ornamenting.'" MPEP 1505.01(c) (quoting *In re Carletti*, 328 F.2d 1020, 1022 (CCPA 1964)). A variety of factors are relevant to whether a patented design is dictated by functional considerations, including "whether the protected design represents the best design; whether alternative designs would adversely affect the utility of the specified article; whether there are any concomitant utility patents; whether the advertising touts particular features of the design as having specific utility; and whether there are any elements in the design or an overall appearance clearly not dictated by function." *Berry Sterling Corp. v. Pescor Plastics, Inc.*, 122 F.3d 1452, 1456 (Fed. Cir. 1997).

The D'641 Patent is invalid under 35 U.S.C. § 171 because the claimed design is dictated by functional considerations, including but not limited to structural support rather than ornamental choice. For example, the claimed design is dictated by a lattice structure for heel support. Geometric elements arranged in a lattice pattern on the back of a heel are commonly known in the art as a mechanism for support of a heel. For example:

> The compression molding process can further include mold portions having patterned depressions and/or protrusions that, when forming the fabric laminate, define a corresponding "mirror image" pattern of depressions and/or protrusions along a surface of the fabric laminate that defines an exterior surface portion of the upper. This facilitates the formation of macrostructure (the heel curvature) and/or microstructures on inner and/or outer surfaces of the upper. For example, the heel cup 305 of the upper 105 can include an external surface pattern 170 that forms an uneven contour of indentations and/or raised ridges (e.g., a pattern 170 having generally concave depressions, such as polygonal or diamond shaped depressions). The pattern 170 can further be formed on the outer surface of the outer fabric layer 408 or, alternatively, on another layer formed over the outer fabric layer 408. For example, a further reinforcement layer 168 (shown in FIG. lA) can be provided (e.g., a plastic material layer) that includes the pattern 170 disposed on it.

Doenges ¶ 62. To the extent it is ornamental, the claimed design is an obvious or trivial variation of functional or industry-standard constraints.

VI. DOCUMENT PRODUCTION

Concurrently herewith, Skechers is producing documents as required under P.R. 3-4.

Dated: March 2, 2026

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing instrument was served or delivered electronically via email, to all counsel of record, on March 2, 2026.

/s/ Aron Berger
Aron Berger