

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SKECHERS U.S.A., INC.,  
"Petitioner"

v.

FAST IP, LLC,  
"Patent Owner"

---

U.S. Patent No. D1,037,641

Title:  
FOOTWEAR

**PETITION FOR *INTER PARTES* REVIEW  
OF U.S. DESIGN PATENT NO. D1,037,641**

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| EX1003         | Scott Frederick, "Under Armour UA Spine RPM Running Shoe 2012", Defy New York (published August 9, 2012) (available at least as of June 30, 2017) (" <b>Spine</b> ")                                    |
| EX1004         | Speedform Fortis 2, 360° Interactive Viewer with Stills (" <b>Speedform</b> ")                                                                                                                          |
| EX1005         | TheWongKicks, "The Asics Gel Kayano Trainer Gets a Knit Makeover", Weartesters (available at least as of January 13, 2017) (" <b>Trainer Knit</b> ")                                                    |
| EX1006         | Skechers and Martha Stewart release their first footwear collection, World Footwear (dated March 16, 2023)                                                                                              |
| EX1007         | Exhibit G to HFL Infringement Contentions, <i>Handsfree Labs Licensing, LLC, Fast Ip, LLC, And Kizik Design, LLC, v. Skechers U.S.A., INC.</i> , Case No. 2:25-cv-00744-JRG (E.D. Tex.)                 |
| EX1008         | Andre J. Veldmeijer, "Studies of Ancient Egyptian Footwear. Technological Aspects. Part XV. Leather Curled-Toe Ankle Shoes", PalArch's Journal of Archaeology of Egypt/Egyptology, (dated June 4, 2009) |
| EX1009         | Owen Humphreys, "These Boots Were Made for Romans", London Museum Blog (published April 29, 2020)                                                                                                       |
| EX1010         | Dario Radley, "Exploring the secrets of the Roman Empire's leather economy", Archaeology Magazine (dated December 14, 2025)                                                                             |
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| EX1016         | U.S. Patent No. 11,737,511                                                                                                                                                                              |
| EX1017         | U.S. Patent No. 10,973,279                                                                                                                                                                              |

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| EX1021         | Declaration of Mr. Angus Wardlaw, dated July 23, 2026                                                                                                                                                                                                      |
| EX1022         | Speedform Fortis 2 360° Interactive Viewer Screen Captures (background removed), captured on May 5, 2026                                                                                                                                                   |
| EX1023         | Declaration of Mina Cheng - UA Spine RPM Running Shoe 2012, dated July 16, 2026                                                                                                                                                                            |
| EX1024         | Video: Under Armour Spine RPM Running Shoe Review. YouTube (dated Aug 20, 2012)                                                                                                                                                                            |
| EX1025         | Screen capture of comments on Under Armour Spine RPM Running Shoe Review                                                                                                                                                                                   |
| EX1026         | Wear testers YouTube Subscriber Count                                                                                                                                                                                                                      |
| EX1027         | U.S. Patent No. D979,917                                                                                                                                                                                                                                   |
| EX1028         | U.S. Patent No. D987974                                                                                                                                                                                                                                    |
| EX1029         | U.S. Patent No. D993,602                                                                                                                                                                                                                                   |
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| EX1032         | Video: Under Armour Speedform Fortis 2 Running Shoe Quick Review                                                                                                                                                                                           |
| EX1033         | Listing for Speedform Fortis 2, available at <a href="https://www.backcountry.com/under-armour-speedform-fortis-2-running-shoe-mens">https://www.backcountry.com/under-armour-speedform-fortis-2-running-shoe-mens</a>                                     |
| EX1034         | Under Armour Spine RPM Review, available at <a href="https://sealgrinderpt.com/boots/under-armour-spine-rpm-review.html/">https://sealgrinderpt.com/boots/under-armour-spine-rpm-review.html/</a>                                                          |
| EX1035         | Diamond Perforated Sandwich Mesh Fabric Manufacturer, available at <a href="https://wovenupper.com/product/diamond-perforated-sandwich-mesh-fabric-manufacturer/">https://wovenupper.com/product/diamond-perforated-sandwich-mesh-fabric-manufacturer/</a> |

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| EX1036  | Jake Woolf, "The 8 Most Popular Sneakers of 2017", GQ (dated August 9, 2017)                                                                                                                                                                                                                                                                 |
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| EX1039  | Screen captures from EX1024, with time stamps                                                                                                                                                                                                                                                                                                |
| EX1040  | Complete Footwear Dictionary                                                                                                                                                                                                                                                                                                                 |
| EX1041  | Juan Martinez, "The Current Signature Shoe Athlete Takedown Model Guide", Sole Retriever                                                                                                                                                                                                                                                     |
| EX1042  | Richard Kuchinsky, "How to Design Cheaper (but better) Shoes", the Directive Collective                                                                                                                                                                                                                                                      |
| EX1043  | "How to Estimate Injection Molding Costs," Formlabs.com                                                                                                                                                                                                                                                                                      |
| EX1044  | Susan Ryder, "Step-by-Step Shoe Design and Development", Co-design Collaborative                                                                                                                                                                                                                                                             |
| EX1045  | Minh Vuong, "In Defense of the Takedown Model", SneakerFreaker                                                                                                                                                                                                                                                                               |
| EX1046  | Riley von Neisson, "Updated Perforated Shoes", TrendHunter.com (dated August 31, 2016)                                                                                                                                                                                                                                                       |
| EX1047  | Kai Frank, "The Heel Counter", framas                                                                                                                                                                                                                                                                                                        |
| EX1048  | Wade Motawi, "What's Inside Your Shoes? Shoe Reinforcements, shoemakersacadamy.com                                                                                                                                                                                                                                                           |
| EX1049  | "Nike Air Pegasus 31 Review", solereview (dated June 10, 2014)                                                                                                                                                                                                                                                                               |
| EX1050  | Nike Air Free 5.0 Review, solereview (dated May, 13 2014)                                                                                                                                                                                                                                                                                    |
| EX1051  | "Understanding Running Shoe Components", Running Warehouse                                                                                                                                                                                                                                                                                   |
| EX1052  | Interview: "Meet Vincent Chen: He Puts the "I" in Under Armour Innovation!" Runsociety.com (dated October 9, 2016)                                                                                                                                                                                                                           |
| EX1053  | Instagram Reel: Tknowell Machine Injection Molding                                                                                                                                                                                                                                                                                           |

| EXHIBIT | DESCRIPTION                                                                                                                                                                                                                             |
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| EX1054  | "Injection Molding in Footwear: How Does it Work?", JDI Plastics                                                                                                                                                                        |
| EX1055  | "How Injection Molding is Performed", OneMonroe                                                                                                                                                                                         |
| EX1056  | "What are the parts of a Mould called? A Guide to Injection Mold Components and Functions" Kintec Solution                                                                                                                              |
| EX1057  | Beyond the Sole: How Component Design Shapes Footwear Innovation", cobosrl                                                                                                                                                              |
| EX1058  | Diamond Jacquard Mesh for footwear<br><a href="https://www.mesh1978.com/jh11040-xsj-jacquard-nylon-diamond-mesh-for-sport-shoes-product/">https://www.mesh1978.com/jh11040-xsj-jacquard-nylon-diamond-mesh-for-sport-shoes-product/</a> |
| EX1059  | Search Disclosure Declaration of Caroline Radell, dated July 23, 2026                                                                                                                                                                   |

## THE CHALLENGED CLAIM

### (57) CLAIM

The ornamental design for footwear, as shown and described.

### DESCRIPTION

FIG. 1 is a left side view of footwear showing our new design;

FIG. 2 is a right side view thereof;

FIG. 3 is a rear view thereof; and,

FIG. 4 is a rear perspective view thereof.

Broken lines illustrate features of footwear that form no part of the claimed design. Front, top, and bottom views are omitted because such views would not illustrate any features of the claimed design.

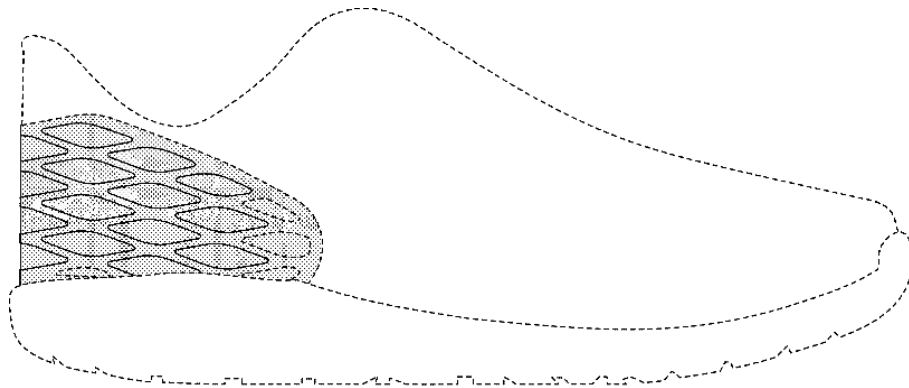


FIG. 1

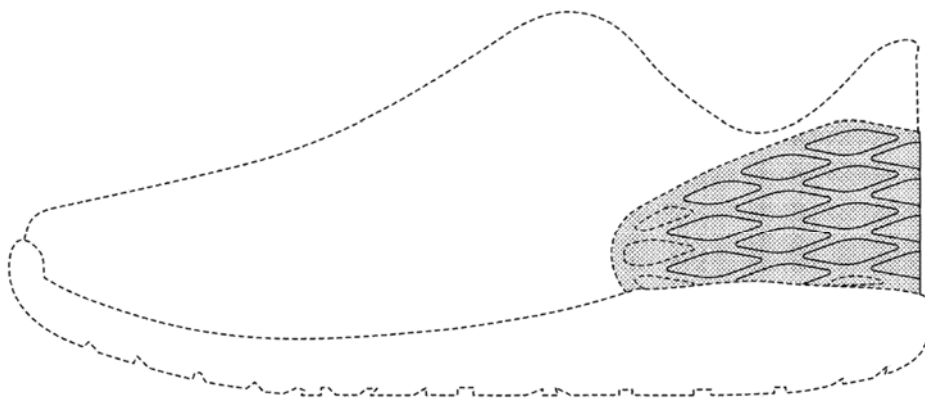


FIG. 2

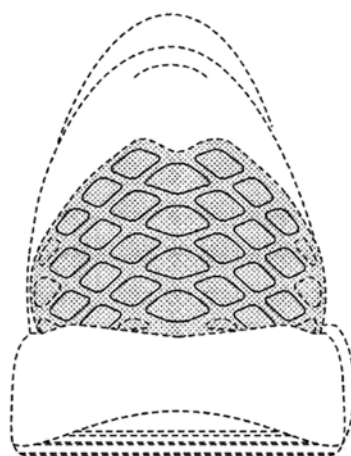


FIG. 3

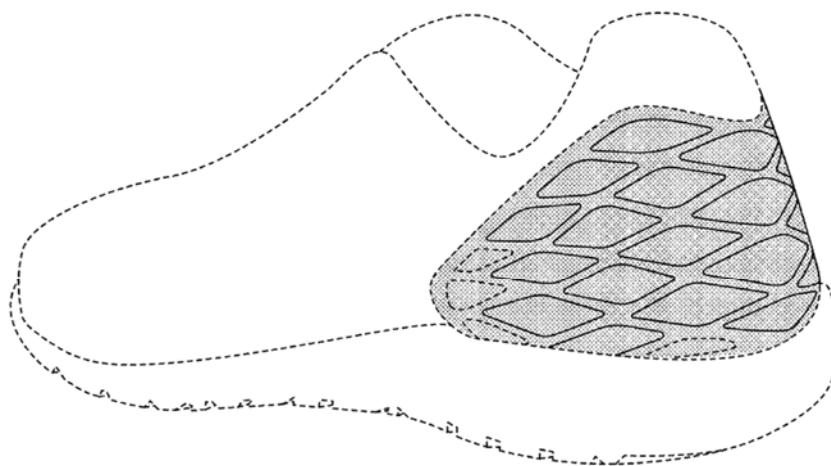


FIG. 4

Skechers U.S.A., Inc. ("Petitioner" or "Skechers") requests *inter partes* review of claim 1 (the "Claim") of U.S. Patent No. D1,037,641 ("the D'641 patent") (EX1001) pursuant to 35 U.S.C. §§ 311-19 and 37 C.F.R. §§ 42.1 *et seq.*

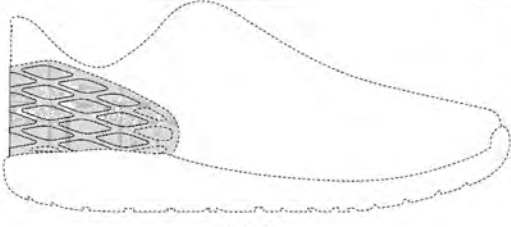
## **I. INTRODUCTION**

The D'641 patent is owned by FAST IP, LLC ("FAST IP"), a non-practicing patent monetization entity. FAST IP asserted the D'641 patent against Skechers in the Eastern District of Texas, in which it joined as plaintiffs a related shoe seller and licensee. Dkt. 44, No. 2:25-cv-00744-JRG (E.D. Tex.).

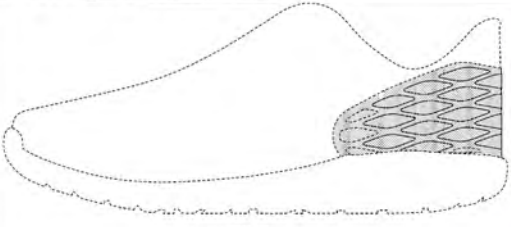
Skechers, which is headquartered in California, has been a leader in the footwear industry for over thirty years. FAST IP and the other plaintiffs in the underlying litigation were all created within the last ten years. Despite seeking to accuse thousands of Skechers shoe models of infringing the D'641 patent, plaintiffs contend that they themselves have never practiced the patent. *Id.*, Dkt. 52 at 2.

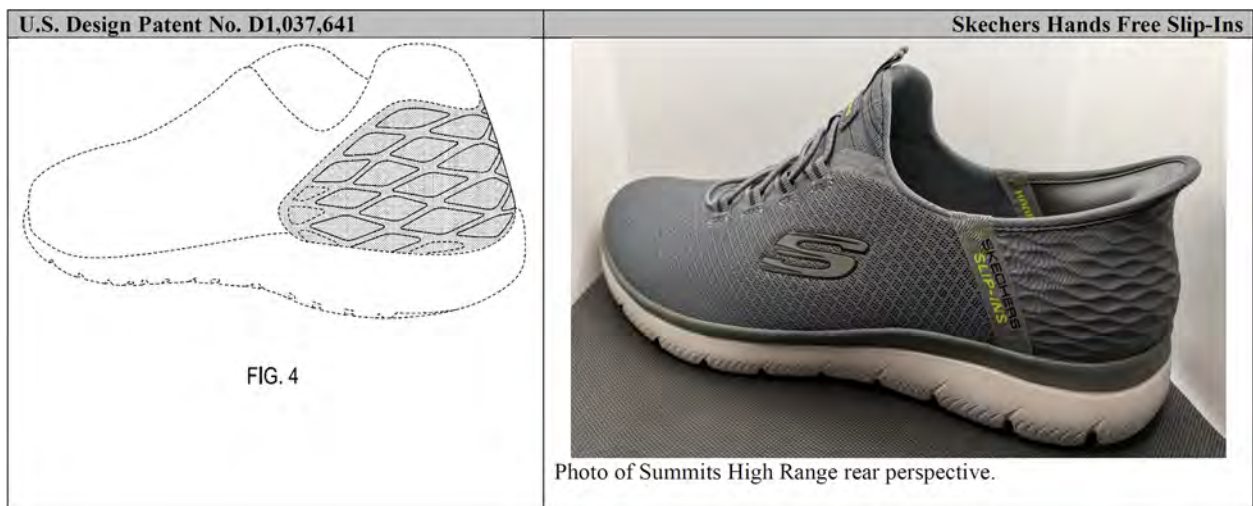
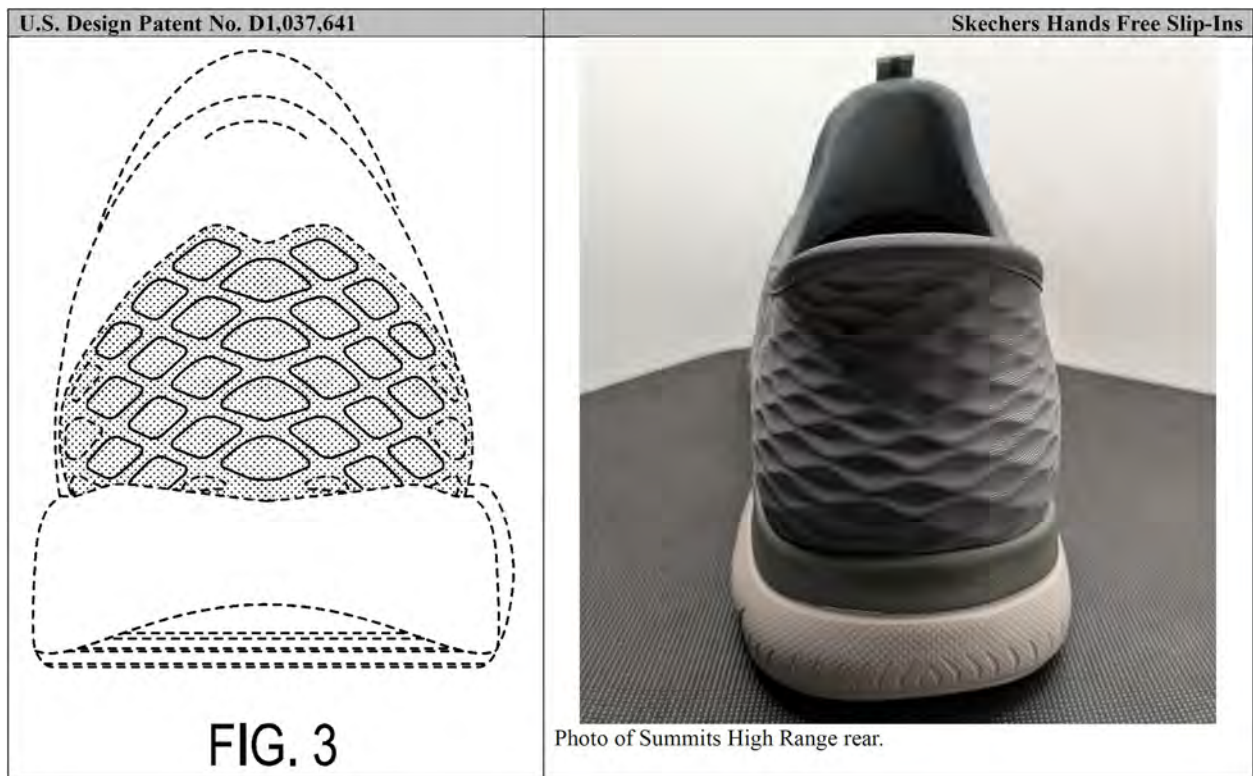
The D'641 patent is a design patent that issued on August 6, 2024, from a patent application filed on September 29, 2023. It purports to claim priority to utility patent applications dating back to December 19, 2019. However, the D'641 patent is not entitled to priority any earlier than its September 29, 2023 filing date. Under the correct priority date, Skechers' own earlier design patents (and Skechers shoes plaintiffs accuse of infringement, which practice those Skechers' design patents) are prior art to the D'641 patent.

For background and context, FAST IP's infringement contentions claim chart for the D'641 patent, served in the underlying litigation, is reproduced in full below:

| U.S. Design Patent No. D1,037,641                                                                                           | Skechers Hands Free Slip-Ins                                                                                                                                                                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. The ornamental design for footwear, as shown and described.                                                              | Skechers makes and sells footwear exhibiting the ornamental design as shown and described. For instance, Skechers Hands Free Slip-Ins <sup>1</sup> such as Summits High Range models are footwear exhibiting the ornamental design of claim 1 as set forth below. |
|  <p data-bbox="427 789 472 810">FIG. 1</p> |  <p data-bbox="735 947 1133 972">Photo of Summits High Range medial side.</p>                                                                                                   |

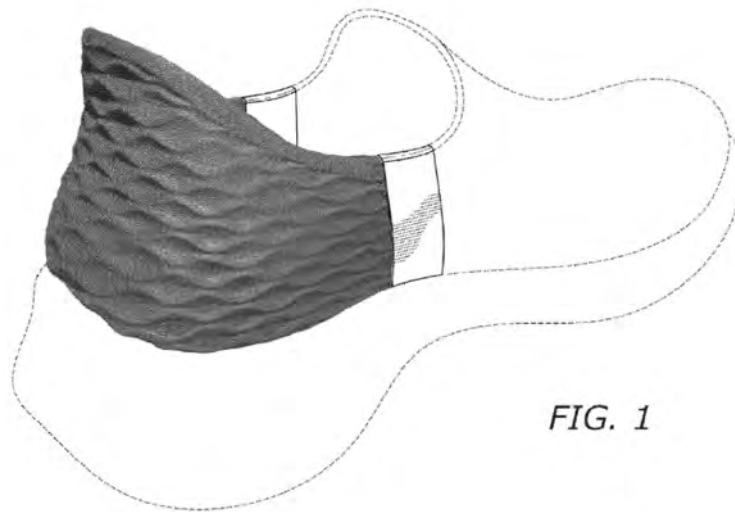
<sup>1</sup> On information and belief, the infringing Skechers Hands Free Slip-Ins design is implemented in many models that exhibit similar features. For instance, as discussed in HFL's Infringement Contentions Cover Pleading, for purposes of the asserted claims, the Summits – High Range model is representative of substantially similar looking models.

| U.S. Design Patent No. D1,037,641                                                                                               | Skechers Hands Free Slip-Ins                                                                                                                                         |
|---------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  <p data-bbox="427 1428 472 1449">FIG. 2</p> |  <p data-bbox="735 1577 1133 1602">Photo of Summits High Range lateral side.</p> |



EX1007. The Skechers shoe on the right is style number SN 232457, from its "Summits – High Range" line. Skechers first sold that shoe on October 25, 2022, nearly a year before the September 29, 2023 filing date of the D'641 patent. Moreover, of relevance to Grounds 1-2 herein, Skechers obtained its own earlier

design patents on the patterned heel design of the Skechers accused shoe shown above. See EX1002, EX1027-EX1030. For example, Figure 1 of U.S. Patent No. D,987,973, issued to Skechers inventor John Maxwell Weeks, is reproduced below:



EX1002 ("**Weeks**"), Fig.1.

Weeks issued on June 6, 2023, from an application filed on October 17, 2022. *Id.*, Title Page. Because Weeks issued before the D'641 patent's September 29, 2023 filing date, it is prior art under 35 U.S.C. § 102(a)(1) if the Board agrees with Skechers that the D'641 patent is not entitled to an earlier priority date.

In addition to its September 29, 2023 filing date, the D'641 patent purports to claim priority to a series of five (5) utility patent applications filed on dates ranging from December 2019 through August 2022. EX1014-EX1018. Those five patent applications each have the same set of identical figures. *Id.* However, FAST IP significantly altered the figures in its Application No. 29/903,995 filed on September

29, 2023, which issued as the D'641 patent ("the D'641 application").

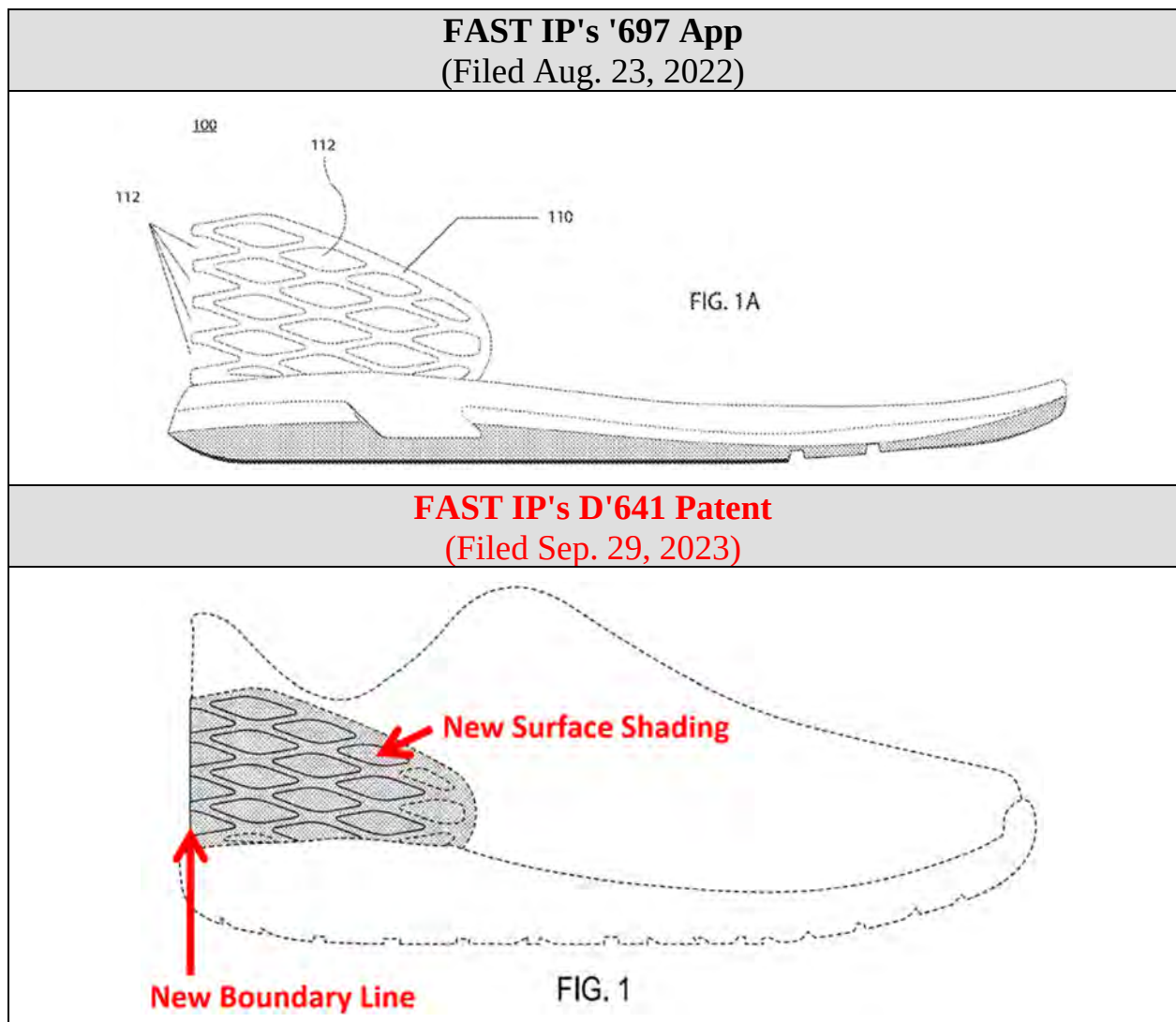
The timeline is telling:

- Dec. 19, 2019 – FAST IP files App. No. PCT/US2019/067437;
- Jun. 12, 2020 – FAST IP files App. No. 16/899,586 with same figures;
- Aug. 11, 2020 – FAST IP files App. No. 16/990,713 with same figures;
- Jan. 25, 2022 – FAST IP files App. No. 17/584,036 with same figures;
- Aug. 23, 2022 – FAST IP files App. No. 17/893,697 with same figures;
- Oct. 17, 2022 – Skechers files Weeks application;
- Oct. 25, 2022 – Skechers sells shoes practicing the Weeks inventions;
- Jun. 6, 2023 – Skechers is awarded the issued Weeks patent;
- Sep. 29, 2023 – FAST IP files D'641 application with **altered** figures;
- Aug. 6, 2024 – FAST IP receives the issued D'641 patent;
- Jul. 24, 2025 – FAST IP sues Skechers, asserting the D'641 patent.

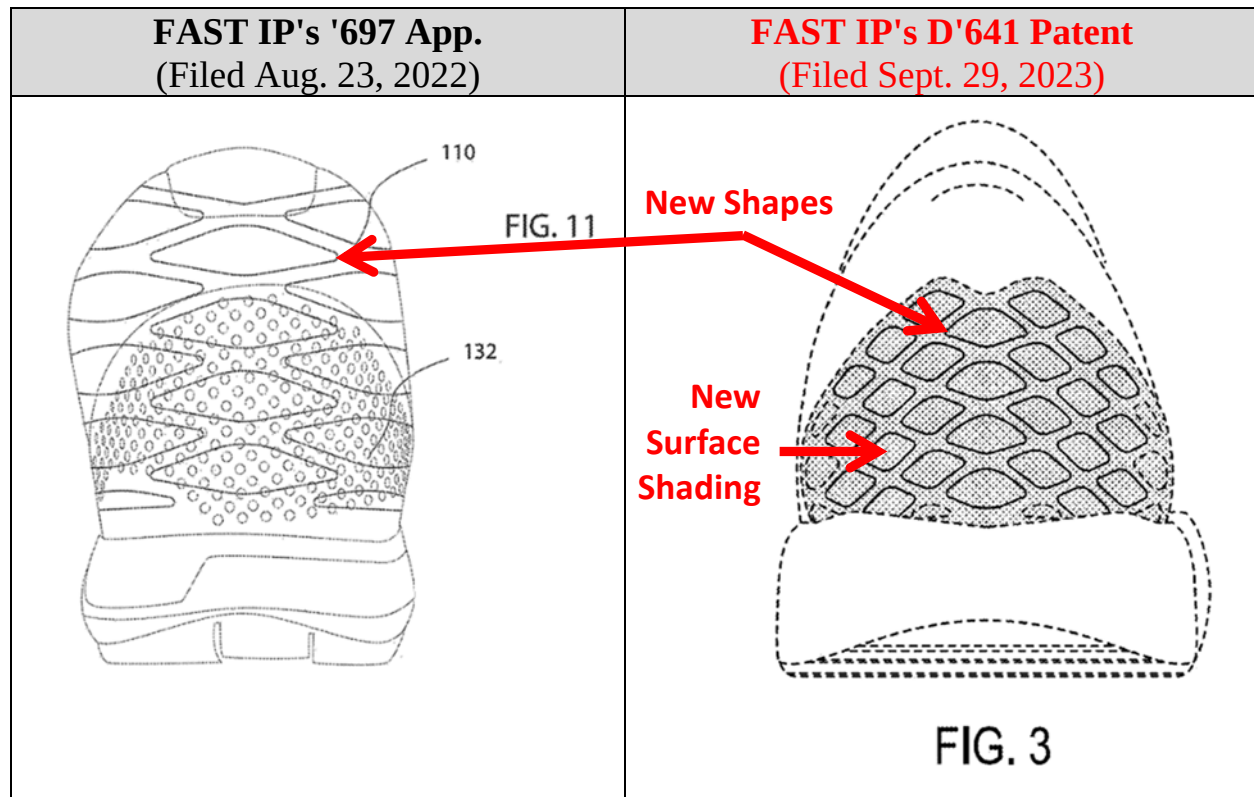
EX1001-EX1002, EX1006, EX1014-EX1018.

As all parent applications have identical figures, this Petition focuses on the most recent, Application 17/893,697, filed August 23, 2022 ("the '697 application"). EX1014. If the D'641 patent cannot claim priority to the '697 application, then Skechers' earlier-issued Weeks patent (and Skechers' accused shoes) are prior art.

There are fundamental differences between FAST IP's '697 application and the D'641 patent. Among other changes, FAST IP (i) added new solid boundary lines and surface shading, to indicate and claim a new material overlaying the entire lattice structure, and (ii) significantly altered the sizes and shapes, and thus appearance, of the diamond openings in the claimed lattice.



EX1014, Fig. 1A; EX1001, Fig. 1.

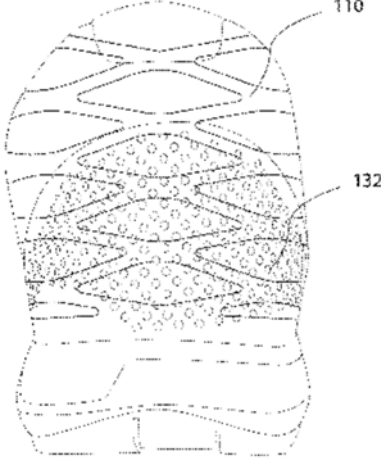
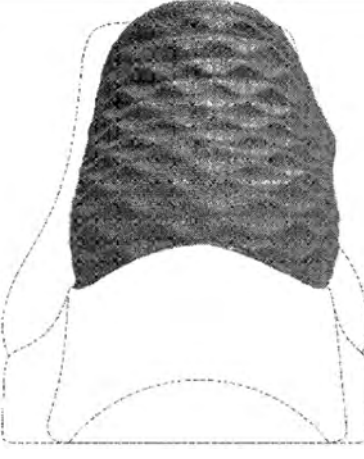
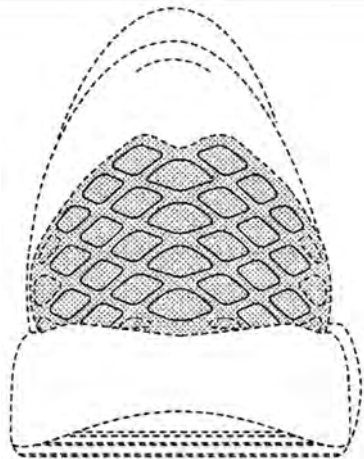


EX1014, Fig. 11; EX1001, Fig. 3.<sup>2</sup>

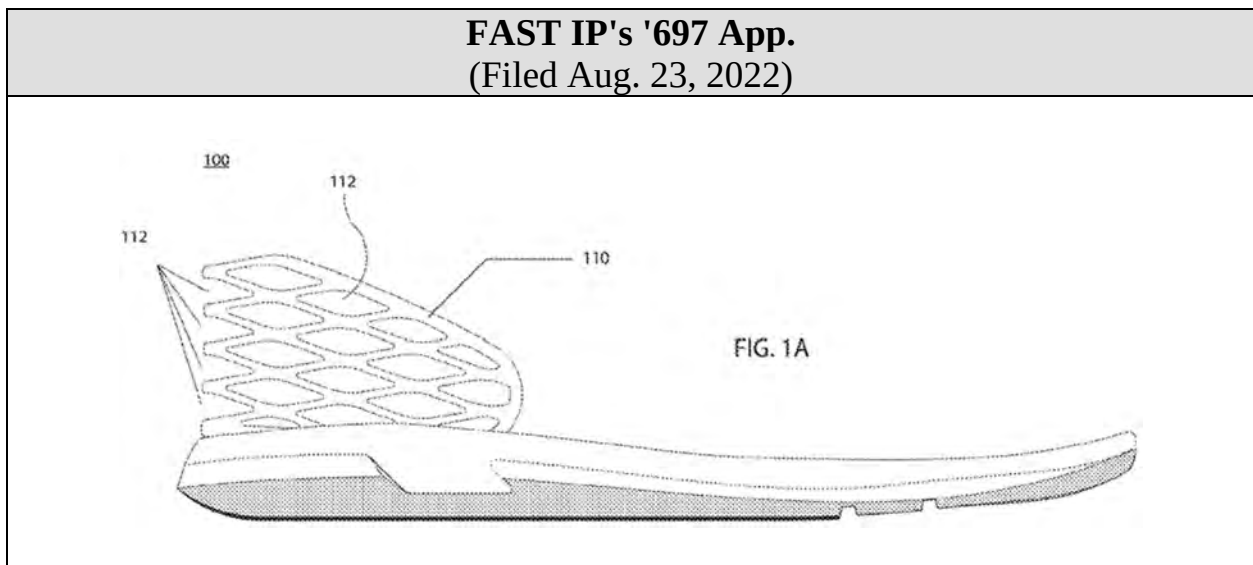
As reflected by the timeline above, FAST IP appears to have made these changes in an attempt to make its later-filed D'641 patent cover Skechers' earlier-launched products that embody the patented design of Skechers' earlier-issued Weeks patent—a design that Skechers created, to which FAST IP has no right:

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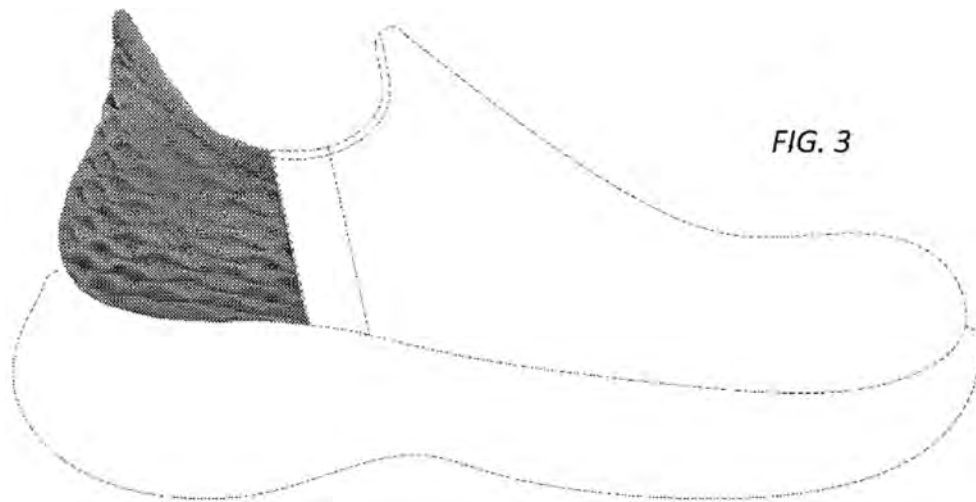
<sup>2</sup> All colored highlighting, text, and arrows in patent figures reproduced herein are annotations added by Petitioner.

| <b>FAST IP's '697 App.</b><br>(Filed Aug. 23, 2022)                                                                          | <b>Skechers' Weeks Patent</b><br>(Issued Jun. 6, 2023)                                                                      | <b>FAST IP's D'641 Patent</b><br>(Filed Sep. 29, 2023)                                                                          |
|------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
|  <p data-bbox="337 825 456 856">FIG. 11</p> |  <p data-bbox="760 825 862 856">FIG. 4</p> |  <p data-bbox="1172 825 1274 856">FIG. 3</p> |

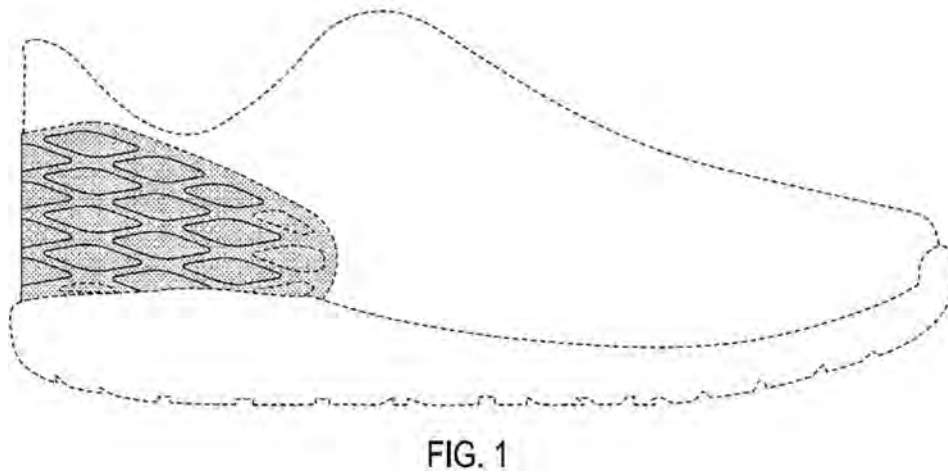
EX1014, Fig. 1; EX1002, Fig. 4; EX1001, Fig. 3.



**Skechers' Weeks Patent**  
(Issued Jun. 6, 2023)



**FAST IP's D'641 Patent**  
(Filed Sep. 29, 2023)



EX1001, Fig. 1A; EX1002, Fig. 3; EX1014, Fig. 1.

There is no inconsistency between Skechers' non-infringement position in the lawsuit and the invalidity Grounds asserted here. In the lawsuit, Skechers points to differences between its accused shoes and the D'641 patent that defeat infringement.

Consistent with this, Skechers does not assert anticipation here, but rather that Weeks in view of Under Armour's Spine RPM ("**Spine**") (EX1003), and/or further in view of Asics' Gel Kayano Trainer Knit ("**Trainer Knit**") (EX1005), renders the D'641 patent obvious. See Parts IX.A-B (Grounds 1-2). While Skechers' Weeks design differs from the D'641 patent, it would have been obvious to modify Weeks with features from Spine and/or Trainer Knit to create the same overall appearance as the D'641 patent design. See *Campbell Soup, Co. v. Gamon Plus, Inc.*, 10 F.4th 1268, 1275 (Fed. Cir. 2021).

Moreover, because Weeks is prior art to the D'641 patent, FAST IP cannot dispute invalidity in view of Grounds 1-2 without arguing inconsistent positions in the litigation and before the Board, contrary to PTAB authority.<sup>3</sup> FAST IP has accused the Weeks design of infringing the D'641 patent, so if Weeks is prior art, FAST IP has already in effect contended that Weeks anticipates the D'641 patent. *Knapp v. Morss*, 150 U.S. 221, 228 (1893) ("the rule is well established 'that which infringes, if later, would anticipate, if earlier'" (collecting cases). Having already

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<sup>3</sup> See *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 (Director Nov. 3, 2025) (precedential) ("The Board's claim construction rules are designed to ensure that the Board correctly construes claim terms and to minimize inconsistency in claim construction between forums.... That is not the case here, however, as petitioners continue to propose different claim constructions in the two forums. Allowing petitioners to continue this practice does not further the Office's goal of 'providing greater predictability and certainty in the patent system.'") (citing 83 Fed. Reg. 51,340, 51,342-43 (Oct. 11, 2018)).

alleged anticipation by Weeks, FAST IP cannot reasonably dispute that Weeks in view of additional references at minimum renders the D'641 patent obvious.

Additionally, even if the D'641 patent were given its earliest claimed priority date of December 19, 2019 (it should not be), it would still be invalid in view of the prior art. Simply put, the D'641 patent attempts to claim a shoe design with a lattice structure around the heel of the shoe's upper—a design that has been used in footwear for decades, if not centuries. *See, e.g.*, EX1008-EX1012.

For these and other reasons below, the Board should institute IPR.

## **II. MANDATORY NOTICES**

### **A. Notice of Real Party-In-Interest (37 C.F.R. § 42.8(b)(1))**

The real party-in-interest for this Petition is Skechers U.S.A., Inc. While Petitioner does not believe or concede that any other entity qualifies as a real party-in-interest, out of an abundance of caution, Petitioner also identifies the following entities as additional real parties-in-interest solely for this Petition, who will be bound by the outcome of this IPR to the same extent as Petitioner: Beach Acquisition Bidco LLC, Beach Acquisition Midco LLC, Beach Acquisition Holdco LLC, and Beach Acquisition Co Parent LLC.

### **B. Notice of Related Matters (37 C.F.R. § 42.8(b)(2))**

The D'641 patent is asserted in the litigation *Handsfree Labs Licensing, LLC v. Skechers U.S.A., INC.*, Case No. 2:25-cv-00744-JRG (E.D. Tex.). Petitioner has

also sought *inter partes* review of other patents owned by Patent Owner, namely U.S. Patent No. 11,633,006, which is the subject of IPR2026-00342, U.S. Patent No. 11,871,811, which is the subject of IPR2026-00343, U.S. Patent No. 12,274,325, which is the subject of IPR2026-00373, and U.S. Patent No. 12,121,096, the petition for which is being filed today.

**C. Designation of Lead And Back-Up Counsel (37 C.F.R. § 42.8(b)(3))**

Lead Counsel: Samuel K. Lu (Reg. No. 40,707)

Backup Counsel: Benjamin Hattenbach (Reg. No. 41,820)

Backup Counsel: Ian Washburn (*pro hac vice* to be requested)

Backup Counsel: Christopher Abernethy (*pro hac vice* to be requested)

Backup Counsel: Kamran Vakili (Reg. No. 64,825)

Backup Counsel: Aron Berger (*pro hac vice* to be requested)

Backup Counsel: Caroline Radell (*pro hac vice* to be requested)

Contact information for Lead and Backup Counsel is as follows:

Irell & Manella LLP  
1800 Avenue of the Stars, Suite 900  
Los Angeles, CA 90067-4276  
Telephone: (310) 277-1010  
Fax: (310) 203-7199

**D. Service Information (37 C.F.R. §42.8(b)(4))**

Please address all correspondence to lead counsel at the address above.

Petitioner consents to email service at: SkechersHFLIPRs@irell.com.

**E. Fees**

The Office is authorized to charge Deposit Account No. 09-0946 for any fees required.

**F. Grounds for Standing**

Petitioner certifies that the D'641 patent is eligible for IPR and that Petitioner is not barred or estopped from requesting this IPR.

**III. BACKGROUND**

**A. The D'641 Patent**

The sole claim of the D'641 patent recites "[t]he ornamental design for footwear, as shown and described." EX1001. The overall appearance of the design, captured in its entirety by the figures, is shown and described as follows:

"FIG. 1 is a left side view of footwear showing [the] design;"

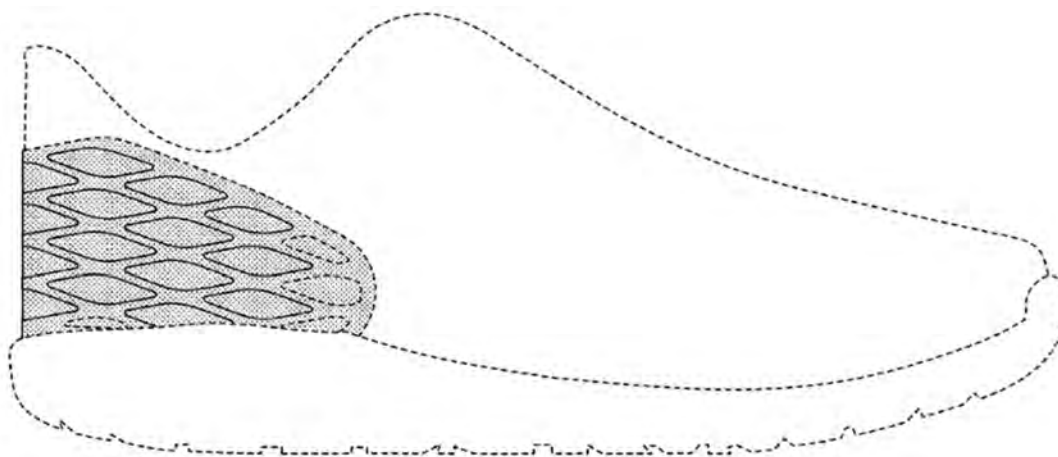


FIG. 1

"FIG. 2 is a right side view thereof;"

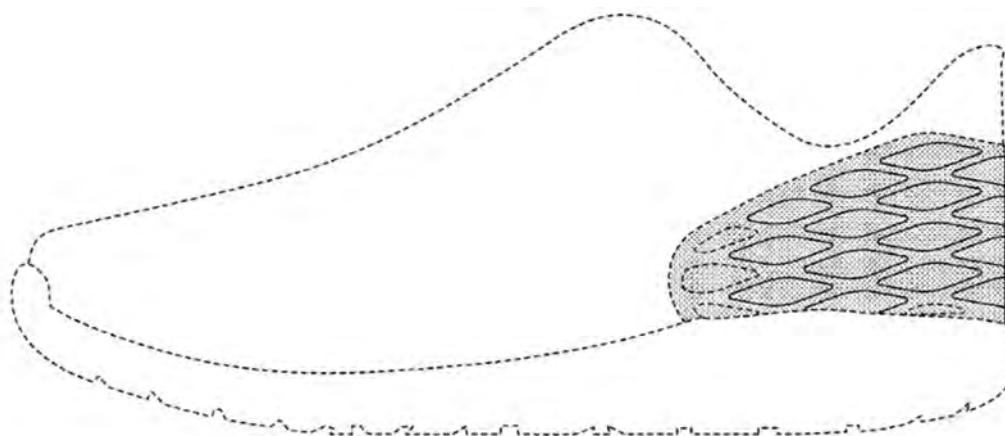


FIG. 2

"FIG. 3 is a rear view thereof; and,"

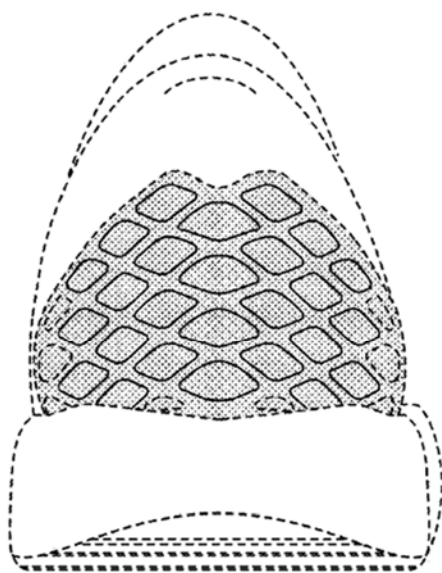


FIG. 3

"FIG. 4 is a rear perspective view thereof."

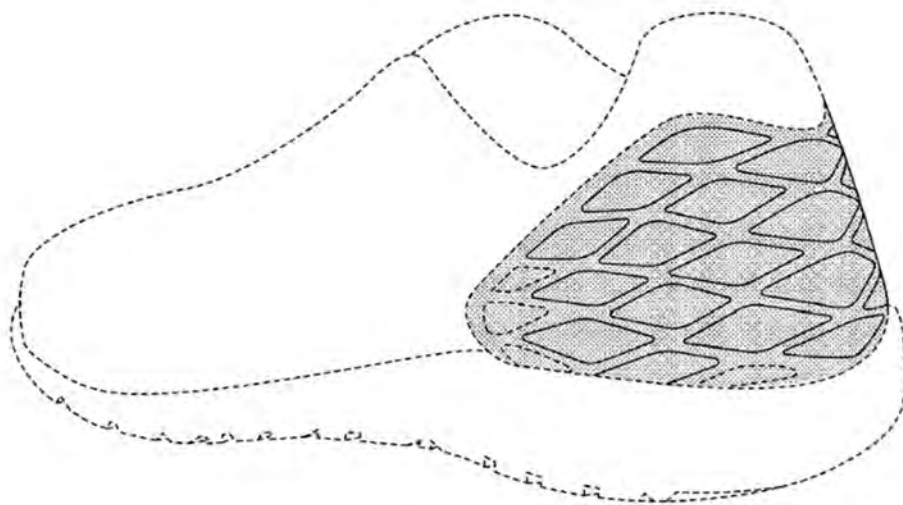
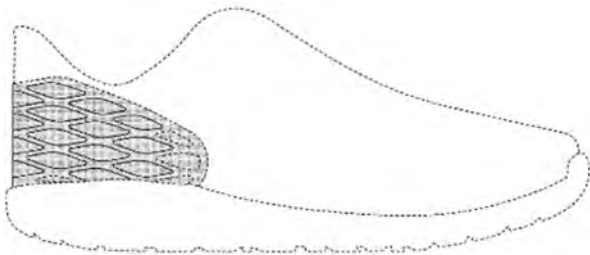
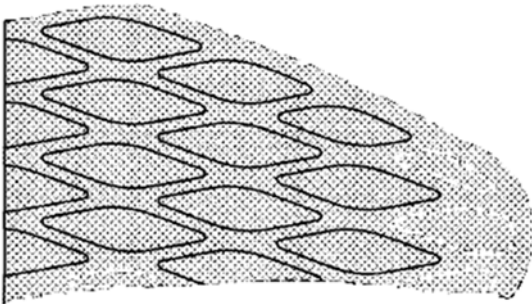
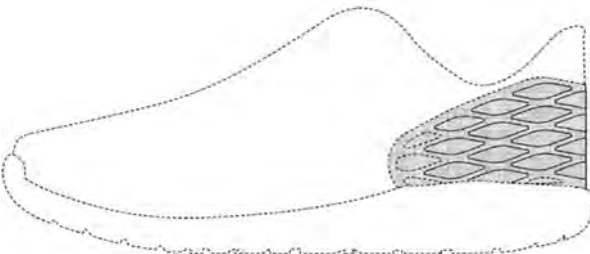
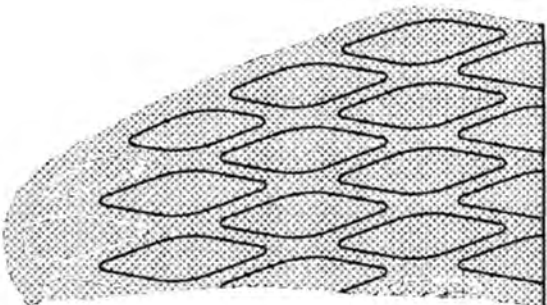


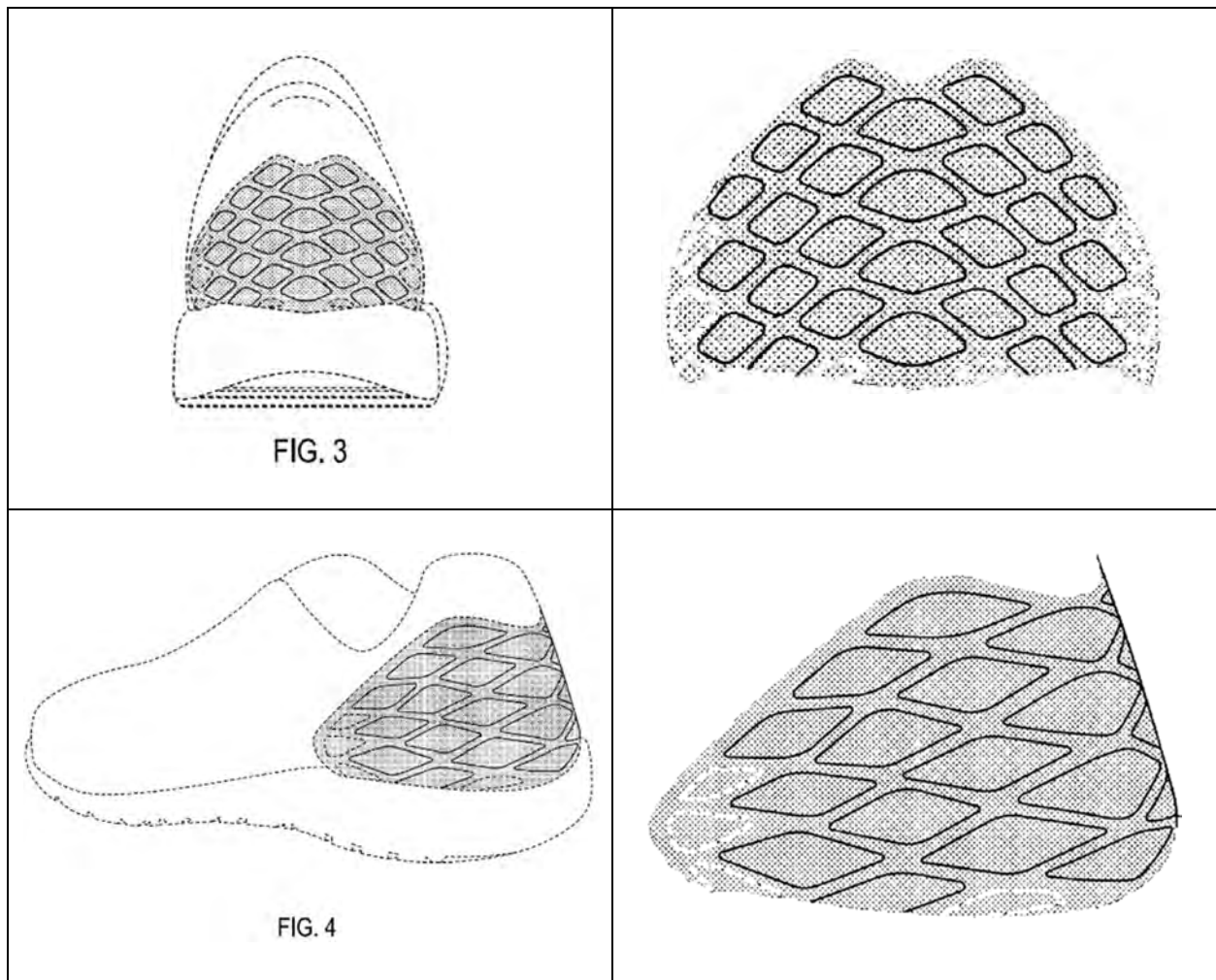
FIG. 4

EX1001, Description; Figs. 1-4.

The D'641 patent claims design features on the rear, left, and right sides of footwear, but does not claim any features on the front, top, or bottom. EX1001 ("Front, top, and bottom views are omitted because such views would not illustrate any features of the claimed design."); *see also KeyStone Retaining Wall Sys., Inc. v. Westrock, Inc.*, 997 F.2d 1444, 1451, (Fed.Cir.1993) ("generally concealed features are not proper bases for design patent protection").

The patent's figures include claimed features indicated by solid lines, and unclaimed features indicated by dashed lines. For clarity, below Petitioner has reproduced the figures on the left, and only the claimed features on the right:

| D'641 Patent                                                                                                                    | Claimed Features<br>(Dashed Lines Removed)                                           |
|---------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
|  <p data-bbox="467 1430 521 1455">FIG. 1</p> |  |
|  <p data-bbox="467 1850 521 1875">FIG. 2</p> |  |



EX1001, Figs. 1-4 (right versions edited by Petitioner).

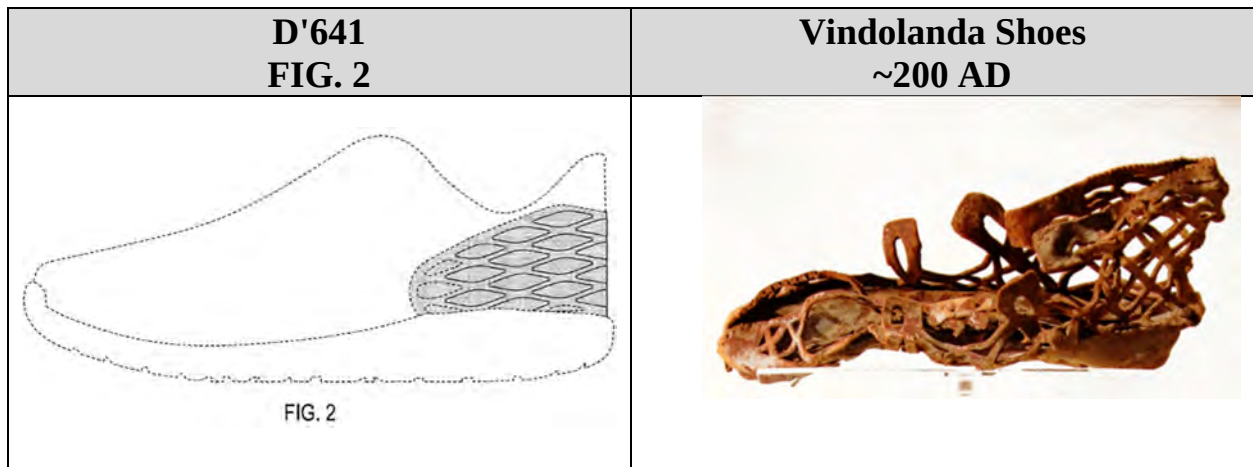
## **B. Field of Manufacture**

Footwear design dates back to ancient history, with designs including decorative elements since their inception. The basic concept of a diamond lattice pattern that surrounds the heel of an upper<sup>4</sup> has been known in the field for centuries.

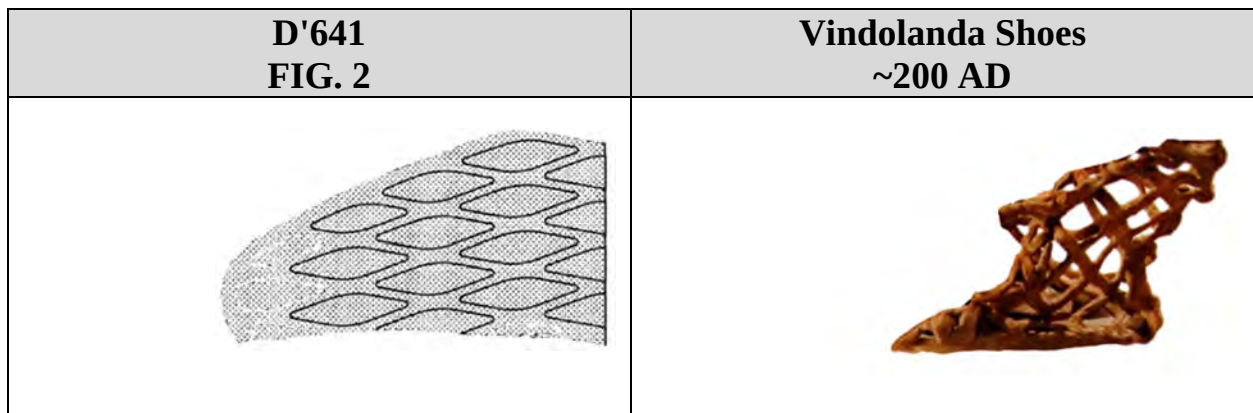
For example, the following shoe designs date from at least 70 AD:

---

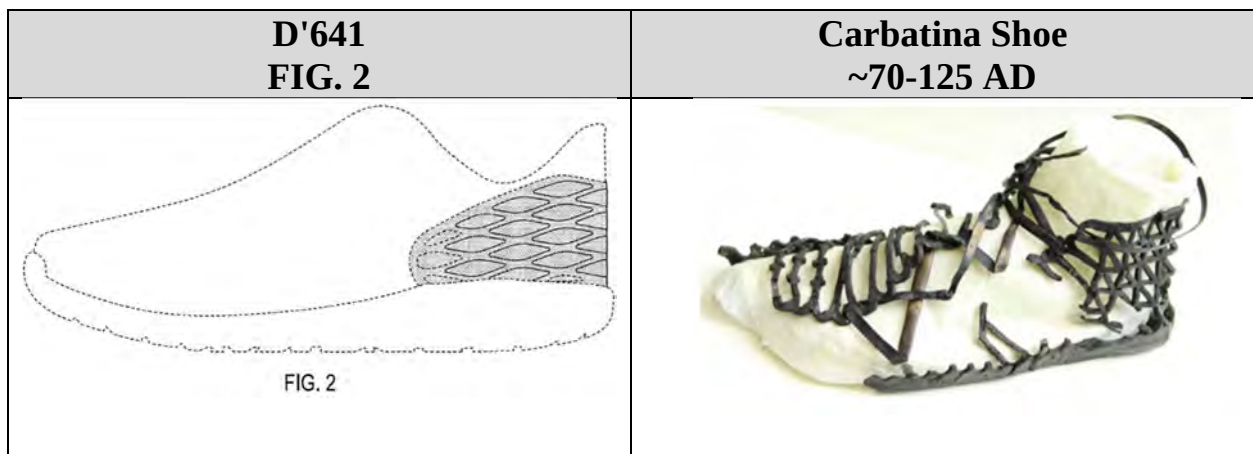
<sup>4</sup> See EX1040, 7 ("upper" includes "[a]ll the parts or sections (vamp, quarters, linings, etc.) above the shoe's sole").



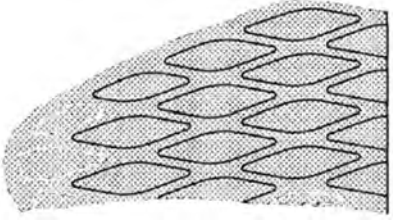
EX1001, Fig. 2; EX1010, 2.



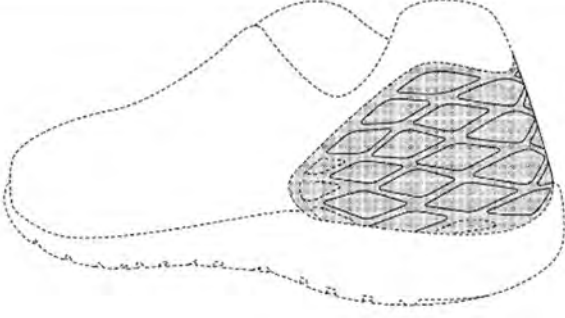
EX1001, Fig. 2; EX1010, 2 (both cropped and annotated with erasing).



EX1001, Fig. 2.; E1009, 1.<sup>5</sup>

| <b>D'641<br/>FIG. 2</b>                                                           | <b>Carbatina Shoe<br/>~70-125 AD</b>                                                |
|-----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
|  |  |

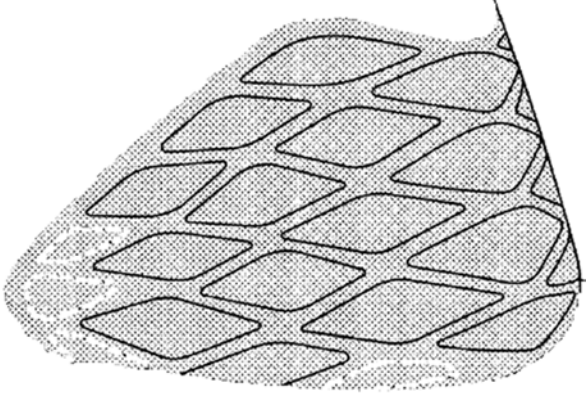
EX1001, Fig. 2; EX1009, 1 (both cropped and annotated with erasing).

| <b>D'641<br/>FIG. 4</b>                                                                           | <b>Schoes of Damendorf Man<br/>~135-335 AD</b>                                      |
|---------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
|  <p>FIG. 4</p> |  |

EX1001, Fig. 4.; EX1011, 1.

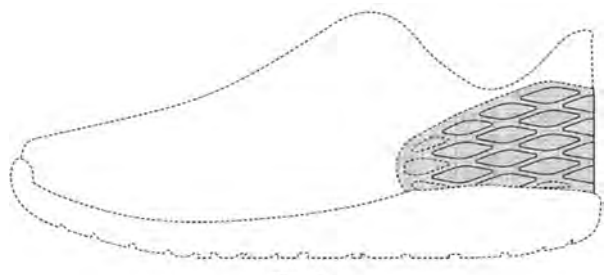
---

<sup>5</sup> These designs are described by scholars as serving ornamental purposes. See EX1009, 2 ("Despite their simplicity, carbatinae were often decorated with openwork heels and elaborate arrangements of loops.").

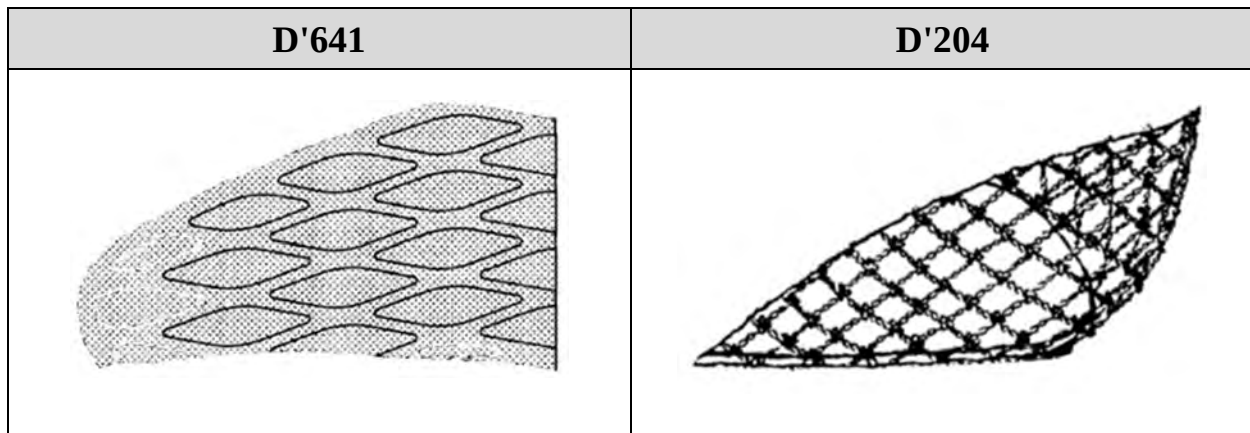
| CLAIMED FEATURES OF D'641<br>FIG. 4 (PERSPECTIVE VIEW)                            | SCHOES OF DAMENDORF MAN<br>DETAIL                                                  |
|-----------------------------------------------------------------------------------|------------------------------------------------------------------------------------|
|  |  |

EX1001, Fig. 4; EX1011, 1 (both cropped and annotated with erasing).

Diamond lattice patterns covering the heel and extending to the sides have remained common footwear features throughout modern history. For example, U.S. Patent No. D95,204 ("the D'204 patent") issued in 1935. EX1012. The tables below show (i) Figure 2 of the D'641 patent alongside the D'204 patent, and (ii) the claimed portion of Figure 2 alongside the analogous portion of the D'204 patent.

| D'641                                                                                                                           | D'204                                                                                |
|---------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
|  <p data-bbox="479 1711 544 1743">FIG. 2</p> |  |

EX1001, Fig. 2; EX1012 (rotated 45 degrees).

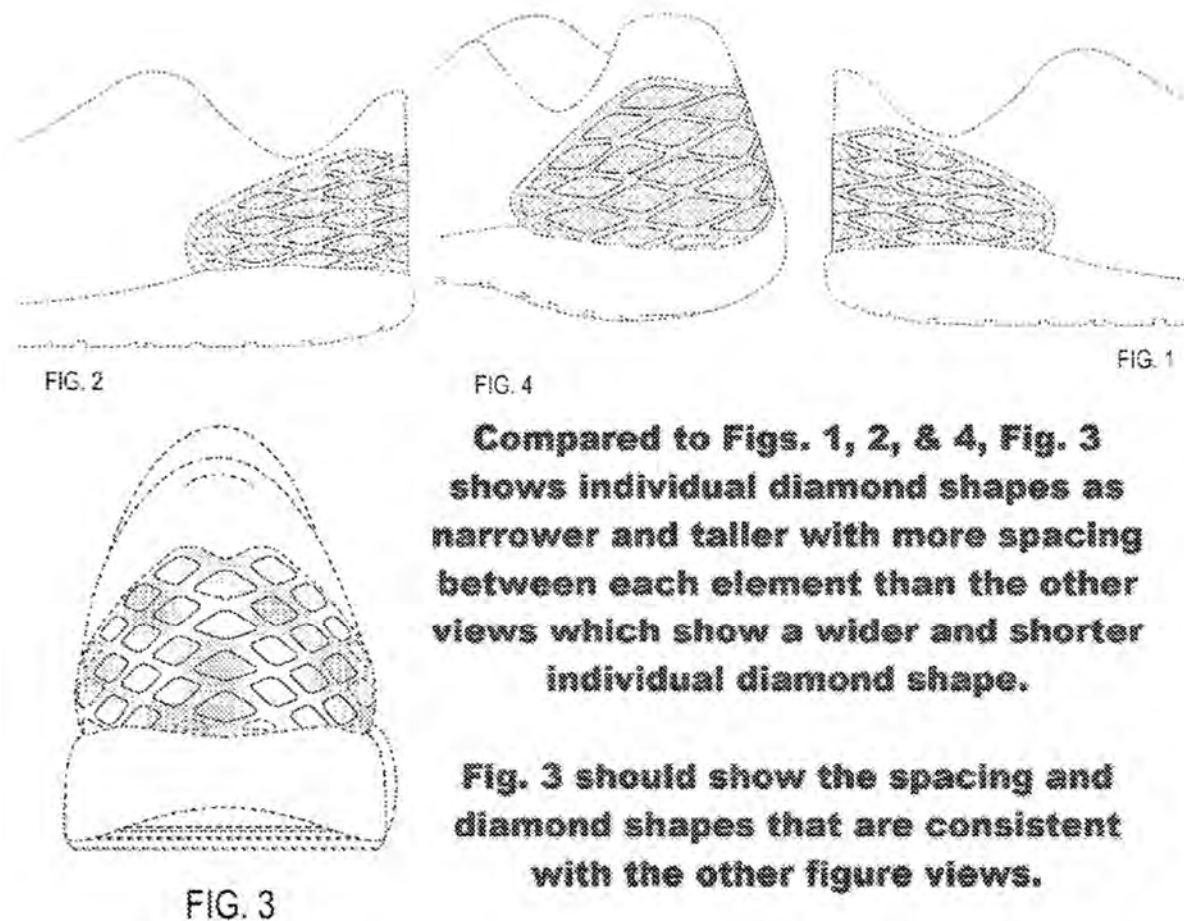


EX1001, Fig. 2; EX1012 (both cropped and annotated with erasing).

### **C. Prosecution History**

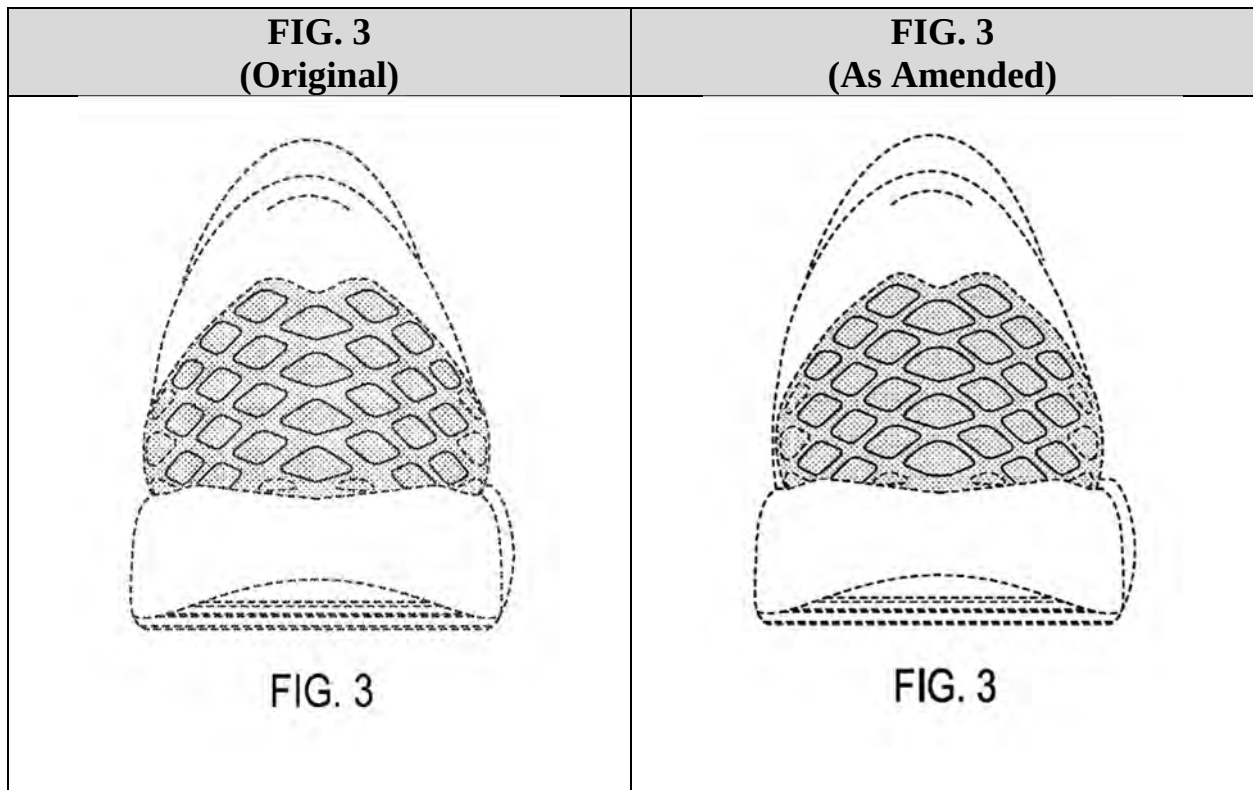
The application leading to the D'641 patent (Application 29/903,995) (the "Application") was filed on September 29, 2023 as an expedited application under 37 CFR 1.155. It was subject to a single Office Action dated May 10, 2024. The Examiner noted that the claimed design was "different in scope" from earlier-filed utility applications in the chain. EX1013 (Office Action Summary). Additionally, the Examiner objected to the drawing(s) based on an inconsistency between views. EX1013 (Office Action Summary). In particular, the Examiner objected that "the rear view shown in Figure 3 shows a slightly different configuration that is inconsistent with the design shown in the other figure views," explaining that "Figure 3 shows a lattice structure with diamond shapes that are more compressed in width and taller than shown in the other figure views. Also, there is more spacing between

the individual diamond shapes in Figure 3 than in the other figure views, which show the diamond shapes closer together."



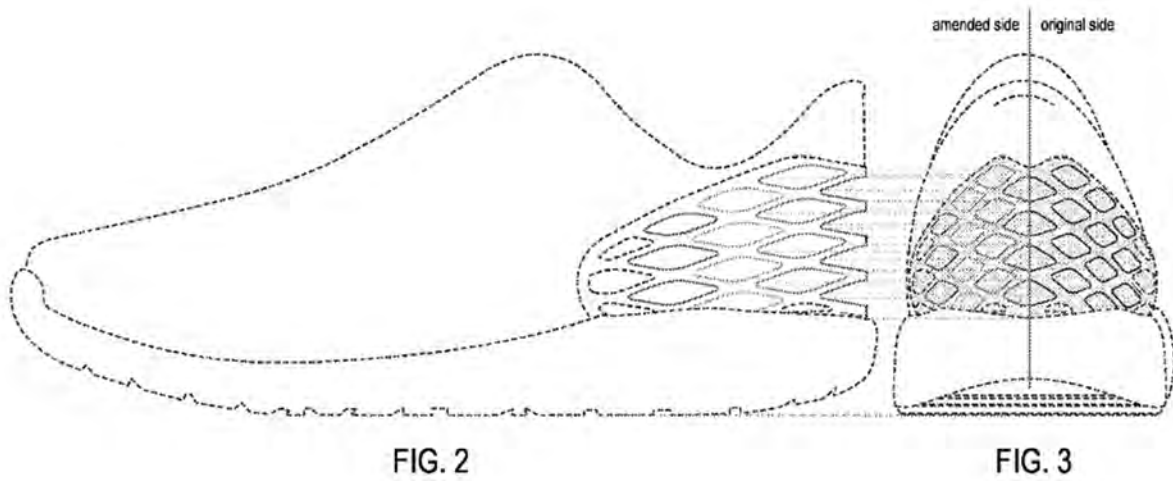
EX1013, 3.

In its June 12, 2024 Response, the Applicant submitted Replacement Drawing Sheets, with amendments to Figure 3:

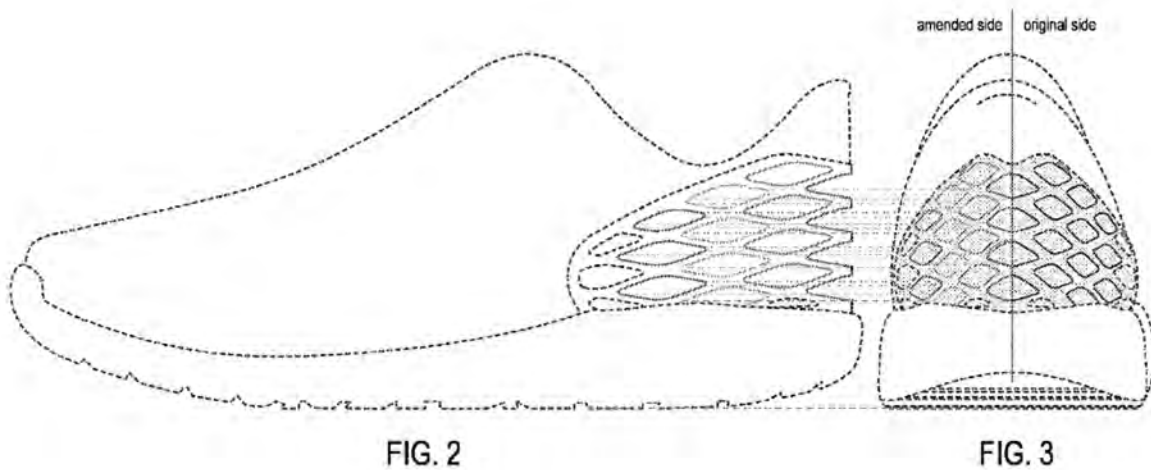


*Id.*, 19. The Applicant showed its amendments to Fig. 3 with the Annotated Sheets reproduced below, showing "diamond shapes moved closer together and curved more to make space smaller, and alignment lines included to show alignment of features," and stated that "Applicant has amended Fig. 3 to provide more consistency with the other views." *Id.*

Diamond shapes moved closer together and curved more to make spaces smaller, and alignment lines included to shown alignment of features.



Similar to previous page, but with alignment lines added for other diamond shapes.



*Id.*, 15-16. The Examiner subsequently issued a Notice of Allowance on June 20, 2024, without stating any reason for allowance. EX1013, 27-29.

#### **IV. LEVEL OF ORDINARY SKILL IN THE ART**

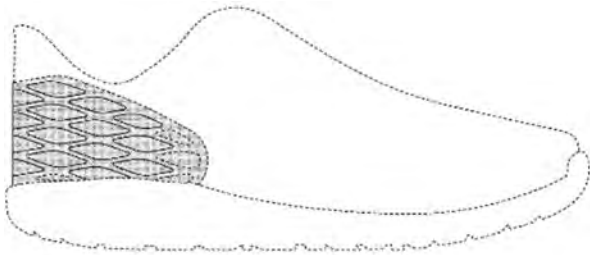
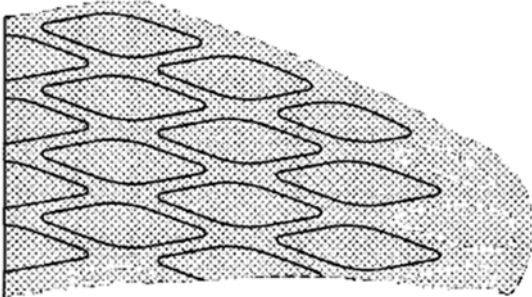
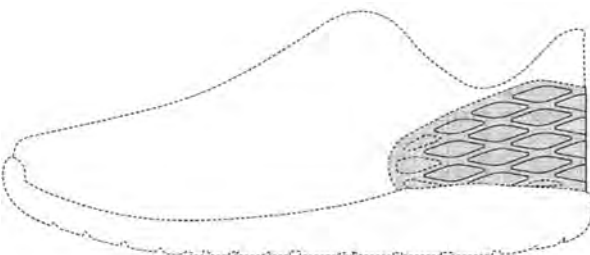
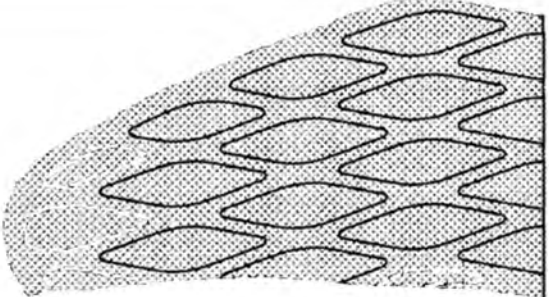
A designer of ordinary skill in the art ("DOSA") in the field of the D'641 patent in December 19, 2019 or September 29, 2023 would have had a bachelor's degree in industrial design or a related field and at least a few years of experience in designing shoes in collaboration with engineers and manufacturers, or equivalent academic and work experience. EX1021, ¶21.

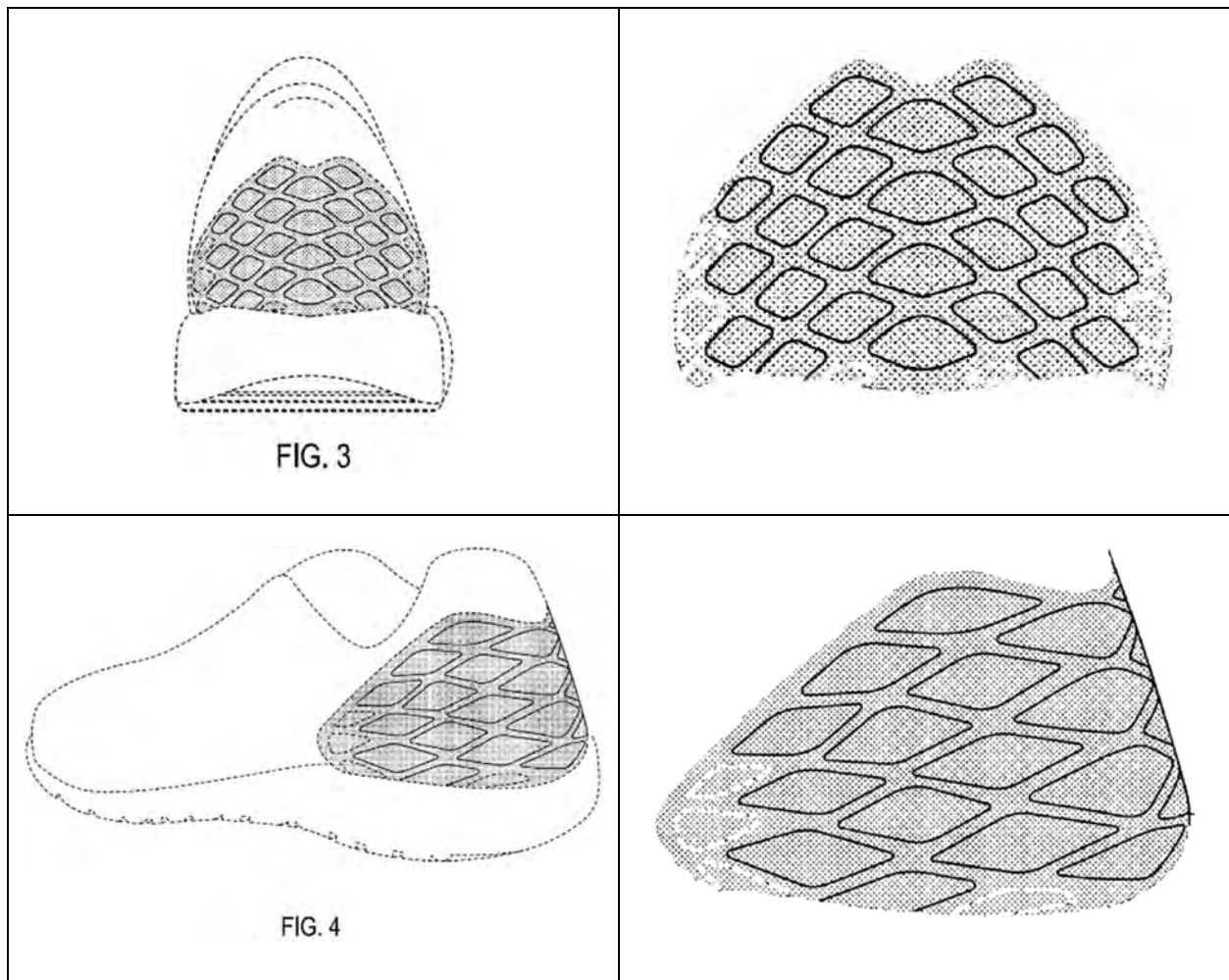
This Petition does not turn on the definition of ordinary skill. The challenged design is invalid under any reasonable definition of a DOSA.

#### **V. CLAIM CONSTRUCTION**

Petitioner submits no issue herein requires the claimed design to be verbally construed. *See Crocs, Inc. v ITC*, 598 F.3d 1294, 1303 (Fed. Cir. 2010) ("[A]s a rule, the illustration in the drawing views is its own best description.") (quoting MPEP § 1503.01 (8th ed. 2006)). Any description below is thus solely to explain "various features of the claimed design as they relate to the accused design and the prior art" in order to assist the Board in evaluating this Petition. *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 680 (Fed. Cir. 2008) ("[A] court may find it helpful to point out, either for a jury or in the case of a bench trial by way of describing the court's own analysis, various features of the claimed design as they relate to the accused design and the prior art.").

A design patent's claim is defined by its drawings—and only the solid lines therein. See *Door-Master Corp. v. Yorktowne, Inc.*, 256 F.3d 1308, 1313 (Fed. Cir. 2001) (specification stating that broken lines "form no part of the claimed design" was relevant to claim scope); 37 C.F.R. §1.152. The D'641 patent's sole claim reads: "The ornamental design for footwear, as shown and described." EX1001. It also states that "[b]roken lines illustrate features of footwear that form no part of the claimed design." *Id.* Accordingly, the sole claim of the D'641 patent is directed to the ornamental aspects of the design depicted in the figures in solid lines. For clarity, below Petitioner has reproduced the patent's figures, along with edited versions in which Petitioner has removed the dashed lines to highlight the claimed features:

| D'641 Patent                                                                                                                    | D'641 Patent Claimed Features<br>(Dashed Lines Removed)                              |
|---------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
|  <p data-bbox="467 1472 521 1497">FIG. 1</p> |  |
|  <p data-bbox="467 1833 521 1858">FIG. 2</p> |  |



EX1001, Figs. 1-4 (versions on right edited by Petitioner).

While design patents do not provide "a detailed verbal description of the claimed design," it can be "helpful to point out ... various features of the claimed design as they relate to the accused design and the prior art." *Egyptian Goddess*, 543 F.3d at 679-80. The D'641 patent's solid lines encompass the following key features:

**(1) Patterned Element On Heel:** The D'641 patent discloses a patterned element on the heel of a footwear upper. This is plainly visible in the figures.

**(2) Lattice Structure With Diamond Shaped Openings:** As is plainly visible in the figures, and as the Examiner noted during prosecution, "[t]he claimed design consists of a lattice-like structure at the heel of the footwear made of wide diamond shaped openings." EX1013, 11; *see also id.*, 12 ("Figure 3 shows a lattice structure with diamond shapes ...."). The Applicant did not dispute the Examiner's description. EX1013, 21-26. For clarity, below Petitioner highlighted the claimed lattice structure with diamond openings in **blue**:

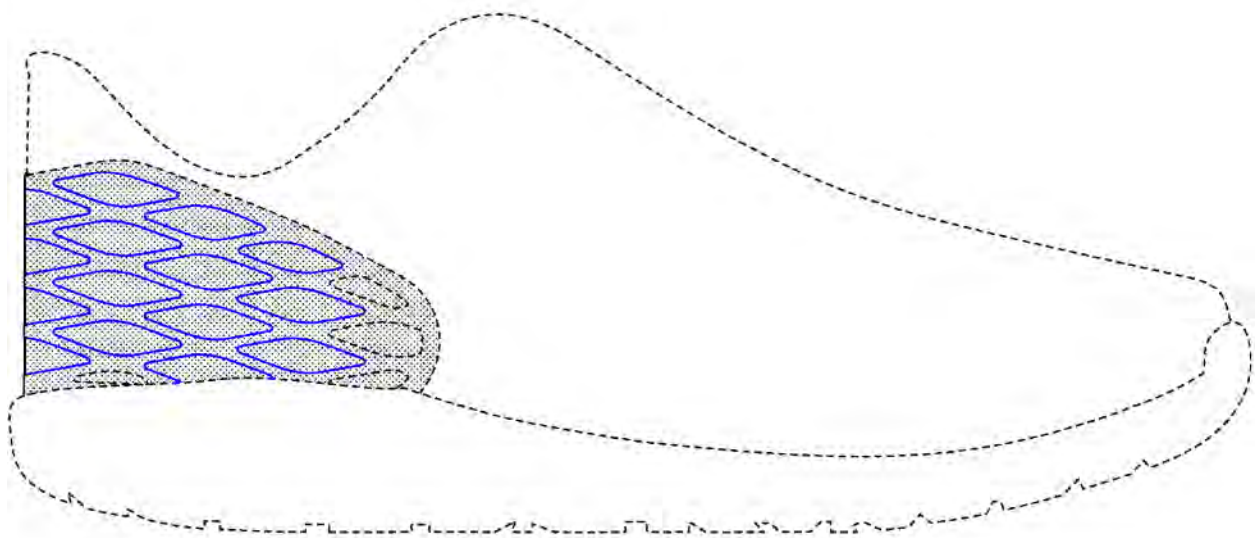


FIG. 1

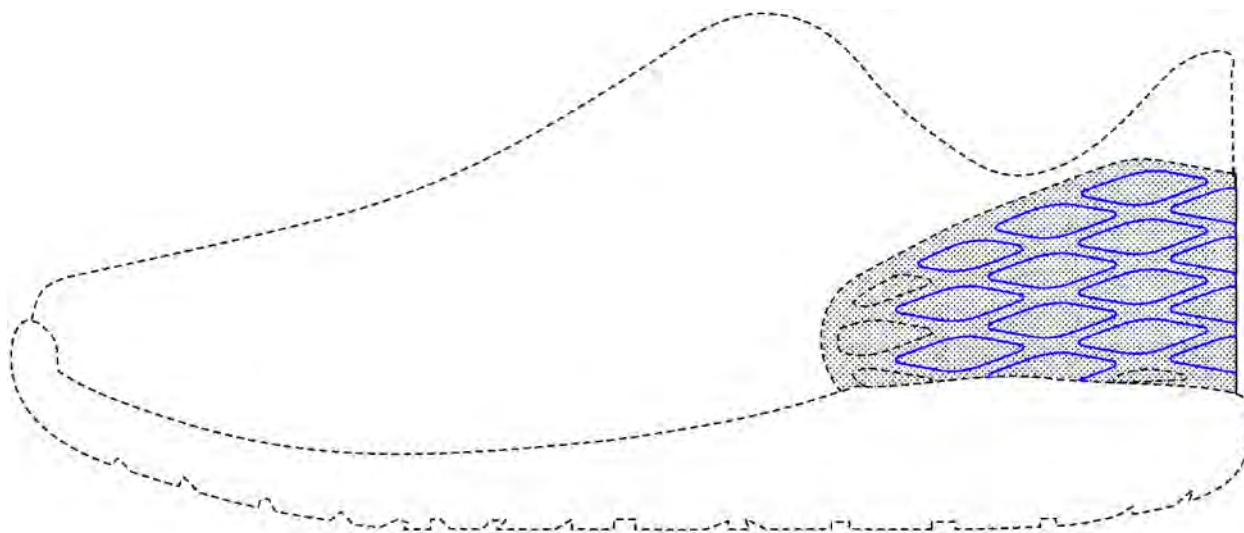


FIG. 2

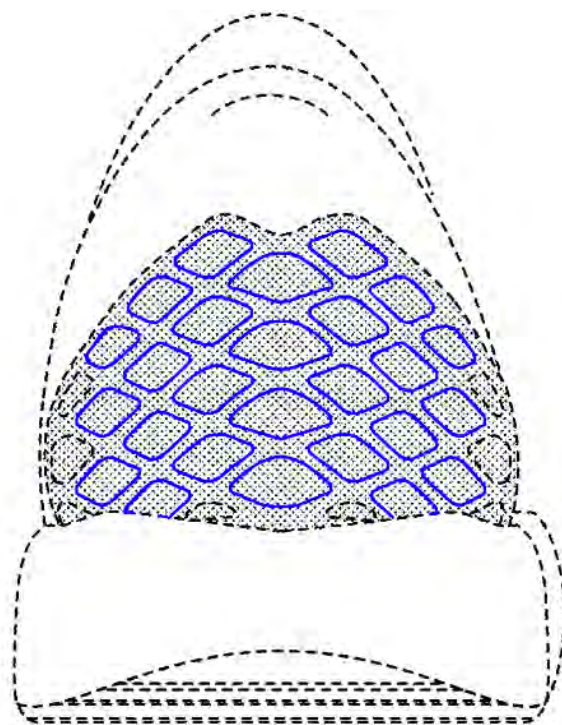


FIG. 3

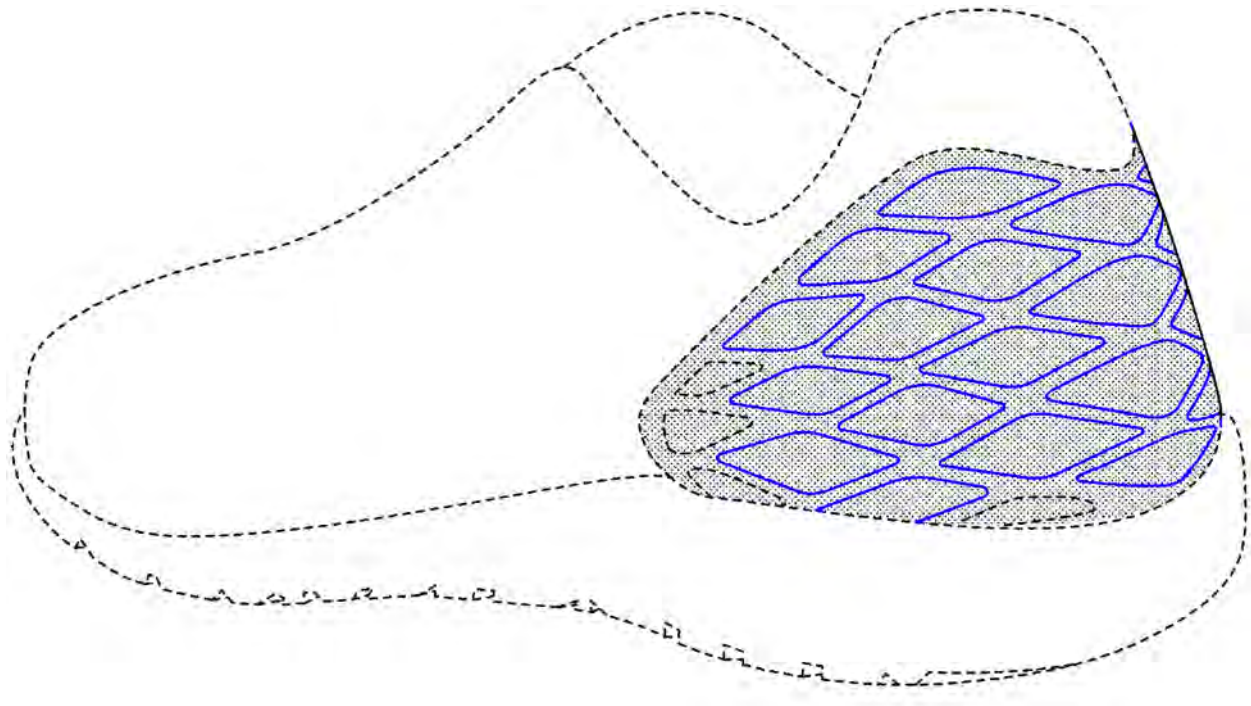


FIG. 4

EX1001, Figs. 1-4.

(3) **Material Overlaying The Entire Lattice Structure, Rendering Its Outer Surface Substantially Flat:** As the D'641 patent's figures indicate with a *shaded area* and *solid boundary lines*, the patent claims a material overlaying the entire lattice structure in a manner that renders the outer surface of the claimed area substantially flat. Below Petitioner has highlighted the claimed material overlaying the lattice structure in **green**, as indicated by the shaded area and solid boundary lines:

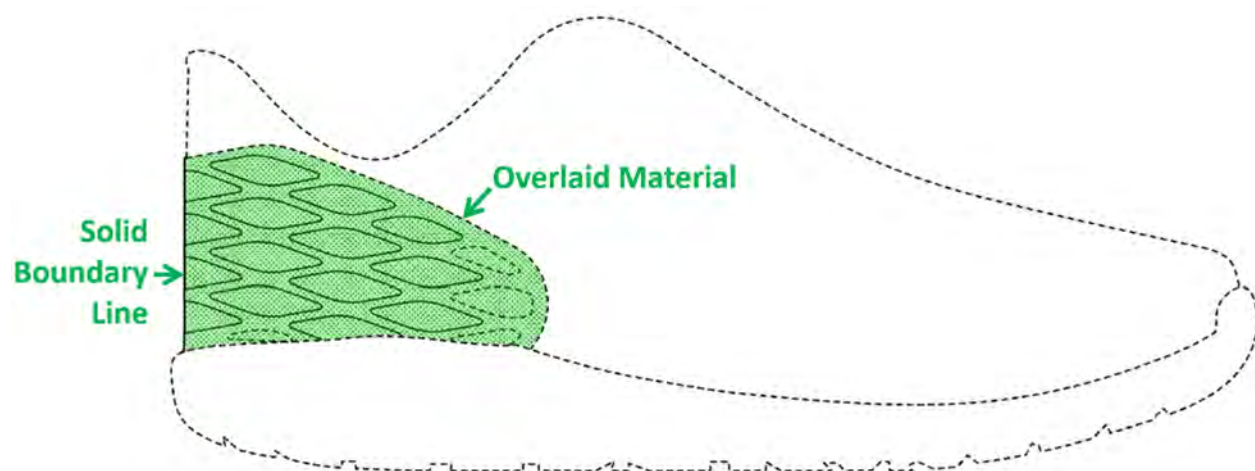


FIG. 1

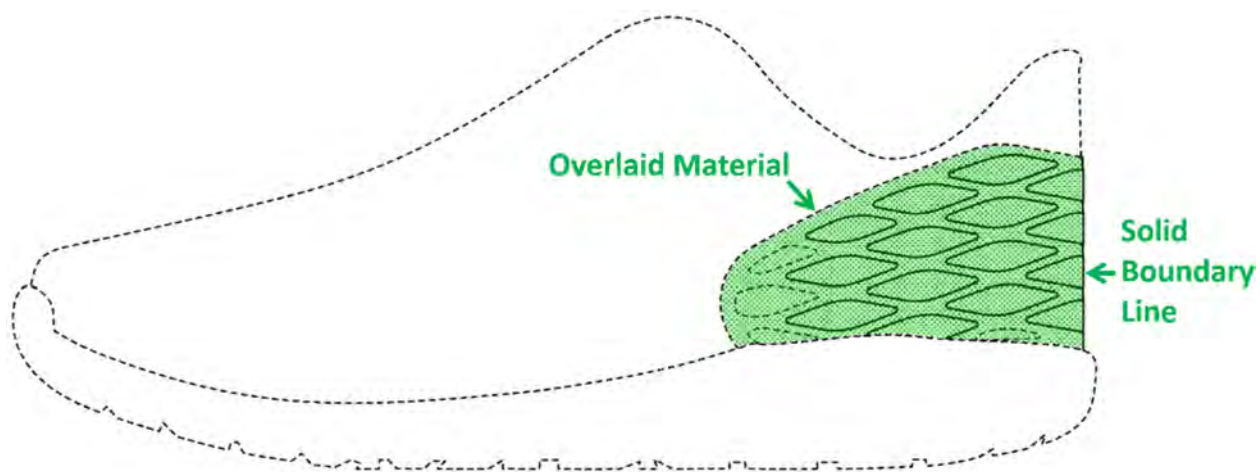


FIG. 2

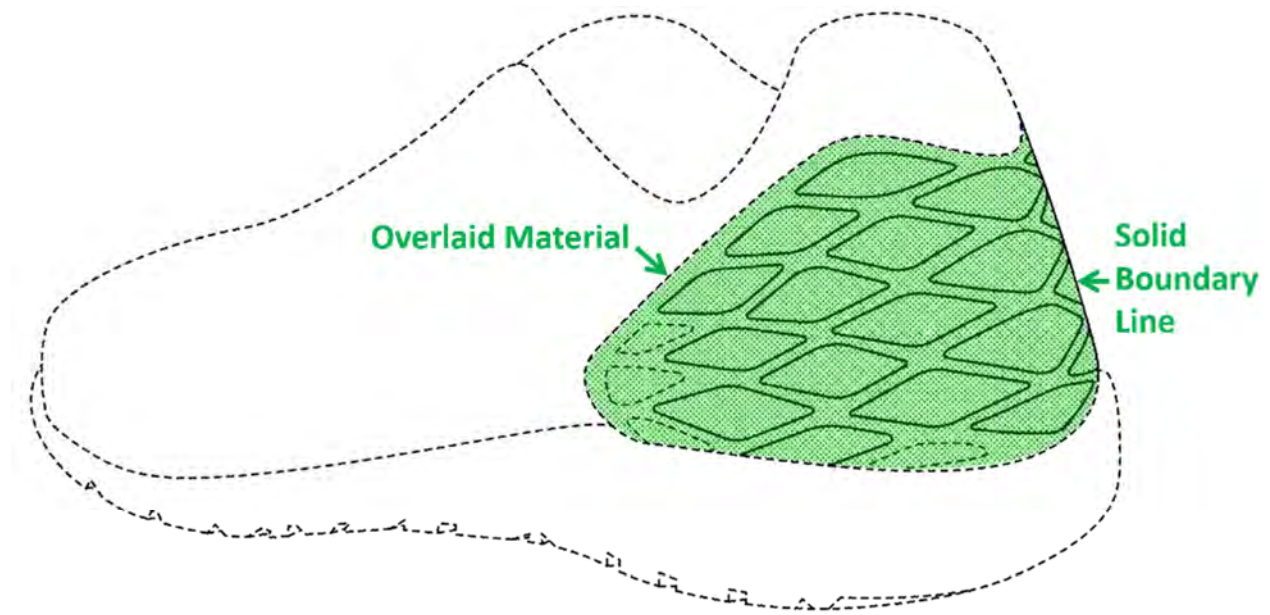


FIG. 4

EX1001, Figs. 1-2, 4. As shown, the Applicant included solid boundary lines that bridge the gaps across the diamond shaped openings of the lattice. These boundary lines make clear that the shaded area is a material overlaying the lattice structure, rendering the outer surface of the claimed area substantially flat. EX1021, ¶¶34-39.

## VI. CHALLENGE AND RELIEF REQUESTED

The following references are pertinent to the grounds of unpatentability explained below:

### A. Prior Art Patents and Printed Publications

1. John Maxwell Weeks, U.S. Patent No. D,987,973 (Filed October 17, 2022; issued June 6, 2023) ("**Weeks**") (EX1002).
2. Under Armour 1273942, *Speedform Fortis 2, 360° Interactive Viewer*

(published April 29, 2017) ("**Speedform**") (EX1004).

3. Under Armour 1233584, *Under Armour UA Spine RPM Running Shoe 2012* (published August 9, 2012) (available at least as of June 30, 2017) ("**Spine**") (EX1003).

4. Asics H705N, *The Asics Gel Kayano Trainer Gets a Knit Makeover* (published January 13, 2017) ("**Trainer Knit**") (EX1005).

Skechers' Weeks patent issued on June 6, 2023, before the September 29, 2023 filing date of the application that issued as the D'641 patent. Weeks thus is prior art under 35 U.S.C. § 102(a)(1) if the Board agrees that the D'641 patent cannot claim priority before its September 29, 2023 filing date. Priority is discussed in Part VIII.

Speedform, Spine, and Trainer Knit were published over a year before the D'641 patent's December 19, 2019 earliest claimed priority date and thus are prior art under 35 U.S.C. § 102(a)(1), regardless of which priority date applies.

## **B. Grounds**

The D'641 patent's claim is unpatentable. The asserted grounds are:

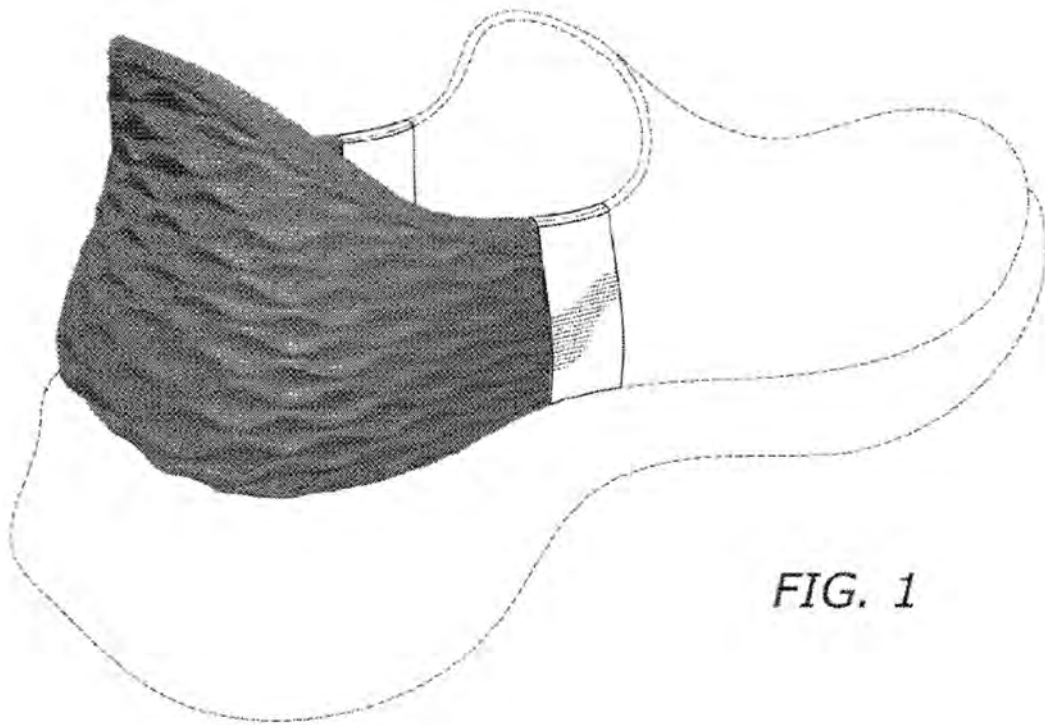
- **Ground 1:** Under its correct priority date, D'641 is obvious over **Weeks** in view of **Spine**
- **Ground 2:** Under its correct priority date, D'641 is obvious over **Weeks** in view of **Spine** and **Trainer Knit**
- **Ground 3:** D'641 is obvious over **Speedform** in view of **Spine**

- **Ground 4:** D'641 is obvious over **Speedform** in view of **Spine** and **Trainer Knit**

## VII. OVERVIEW OF THE PRIOR ART

### A. Overview of Weeks (EX1002)

Skechers' Weeks patent is a design patent titled "Shoe Upper," and it claims "[t]he ornamental design for a shoe upper, as shown and described" in the patent's figures. EX1002, Title & Claim. Its four figures are reproduced below:



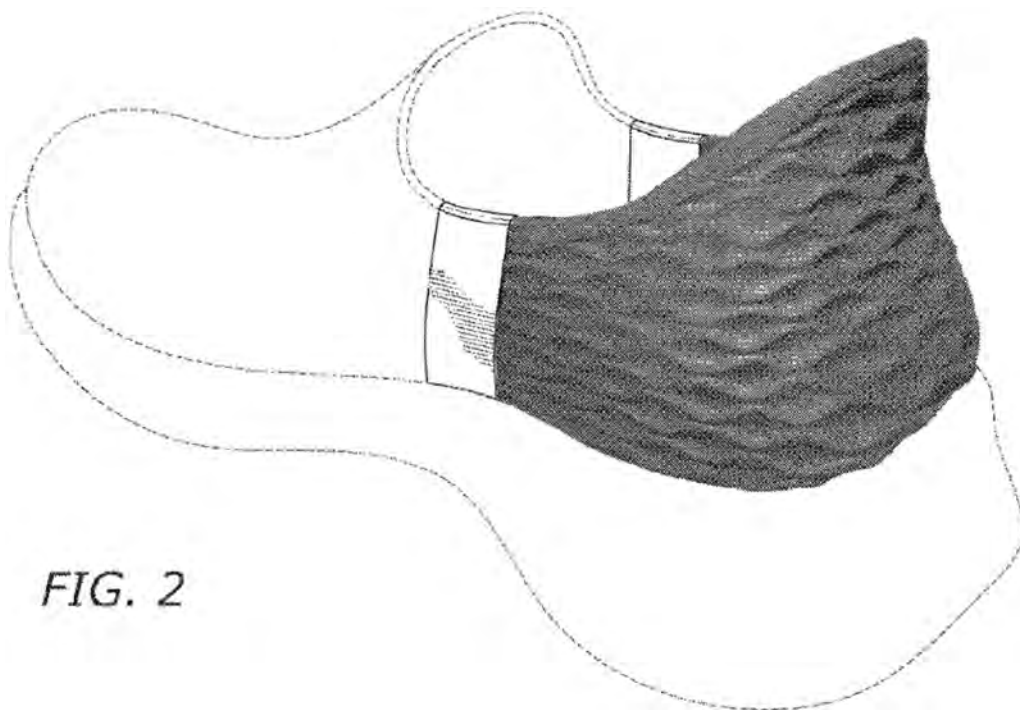


*FIG. 2*

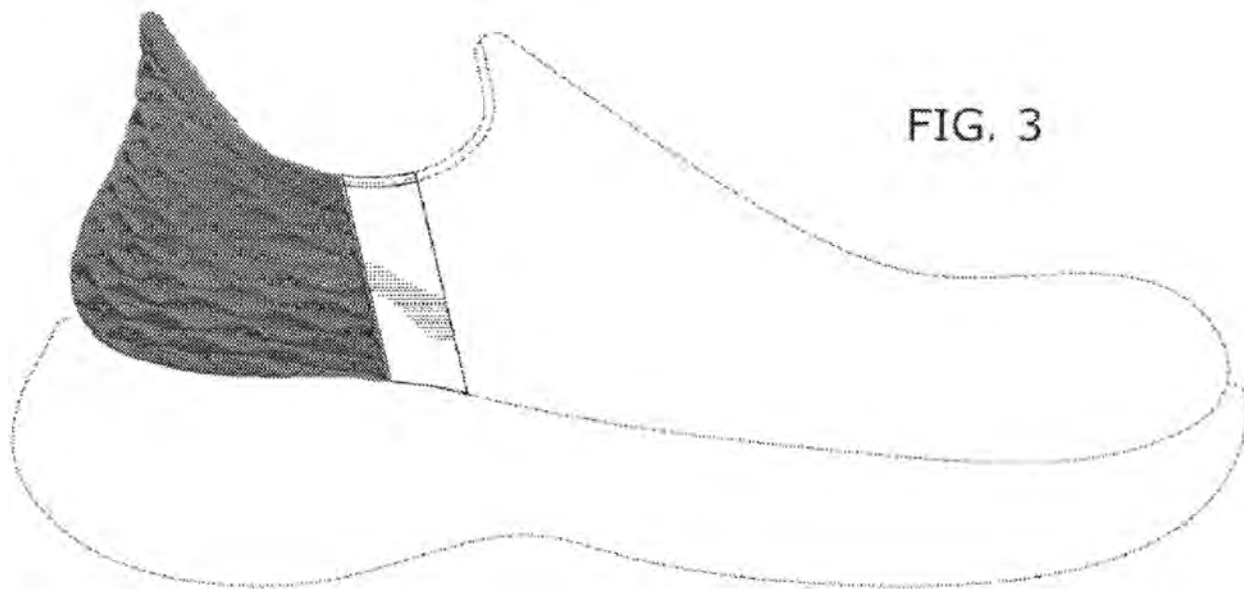


*FIG. 3*

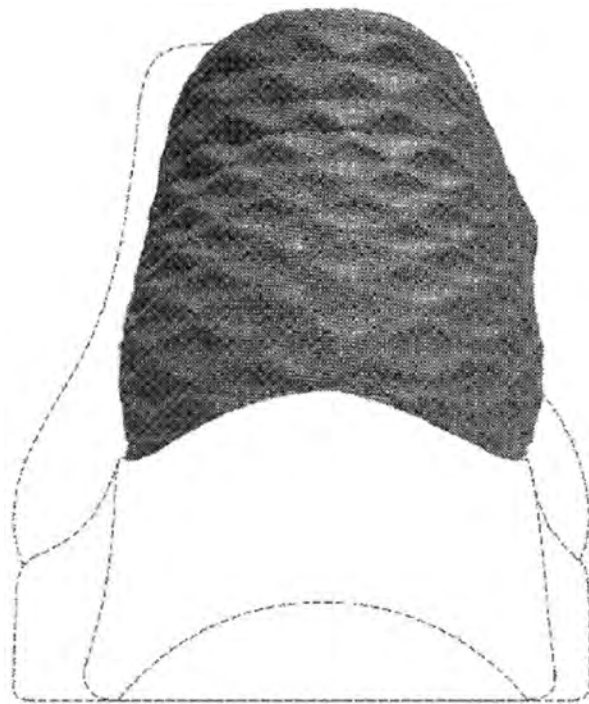


*FIG. 4*

EX1002, Figs. 1-4.

As discussed above, Weeks claims the ornamental design embodied by the Skechers shoes that FAST IP has accused of infringing the D'641 patent in the underlying lawsuit. See EX1007 (FAST IP's Infringement Contentions).

Weeks issued on June 6, 2023, from an application filed on October 17, 2022. EX1002, Title Page. As Weeks issued before the September 29, 2023 filing date of Application No. 29/903,995 that issued as the D'641 patent, Weeks is prior art to the D'641 patent under 35 U.S.C. § 102(a)(1) if the Board agrees that the D'641 patent is not entitled to any priority date earlier than its September 29, 2023 filing date. Priority is discussed in detail in Part VIII below.

**B. Overview of Speedform (EX1004)**

An Under Armour Speedform publication was publicly available on Under Armour's website at least as early as April 29, 2017, more than one year before the D'641 patent's earliest claimed priority date of December 19, 2019. EX1004 (Speedform Fortis 2, 360° Interactive Viewer); EX1020 (Declaration of Mina Cheng - Asics Gel-Kayano + Under Armour Speedform). As the Speedform publication was published more than a year before the D'641 patent's December 19, 2019 earliest claimed priority date, it is prior art to the D'641 patent under 35 U.S.C. § 102(a)(1).

The 2017 Speedform product page comprises a high-resolution interactive 360° viewer, navigable and adjustable by a viewing user such that the Speedform design is viewable from all angles, including a left-side view, a right-side view, a rear view, and a perspective view, among others. EX1004, EX1022. Four exemplary screenshots taken from the 360° viewer are reproduced below:





EX1004, 2-3. The Federal Circuit has held that archived product webpages are printed publications. *See Centripetal Networks, LLC v. Keysight Techs., Inc.*, No. 2024-2246, 2026 WL 904575 at \*3 (Fed. Cir. Apr. 2, 2026) ("The Board's determination that IPUG was publicly accessible was supported by substantial evidence. Specifically, the record includes an archived version of the webpage housing IPUG dated before the '526 patent's priority date.").

Further, the Board has noted in particular that webpages featuring interactive 360° product viewers constitute a single printed publication. *See MacSports, Inc. v. Idea Nuevo, Inc.*, IPR2018-01006, Paper 6, at 8–9, 14 (P.T.A.B. Nov. 13, 2018) (finding webpage featuring multiple images of a product constituted a single printed publication when "all [] images would be presented to, or accessible to, a person viewing Petitioner's [product] upon that person's selection of the 360-view icon appearing on [a webpage]").

The public accessibility of websites known in the art, published before a patent's priority date, is similarly well-established. *See Jazz Pharms., Inc. v. Amneal Pharms., LLC*, 895 F.3d 1347, 1358 (Fed. Cir. 2018) ("ACA materials were available on a public FDA website for at least two months before the critical date of the patents in suit. As with the breadth of dissemination, the length of time the ACA materials were available supports the Board's public accessibility finding."); *Voter Verified, Inc. v. Premier Election Solutions, Inc.*, 698 F.3d 1374, 1381 (Fed. Cir.

2012) ("[A] person of ordinary skill interested in [the relevant subject matter] would have been independently aware of [the website]" and "such an interested researcher would have found [the reference] using that website's own search functions and applying reasonable diligence."); *Kyocera Wireless Corp. v. Int'l Trade Comm'n*, 545 F.3d 1340 (Fed. Cir. 2008) (a reference that is "disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence, can locate it," is publicly accessible).

Under Armour is a prominent footwear designer that is well-known for their running shoe and sneaker designs. See EX1021, ¶68. A person interested in footwear design would have been independently aware of UnderArmour.com and could access Speedform with basic search functions and reasonable diligence. *Id.*

### **C. Overview of Spine (EX1003)**

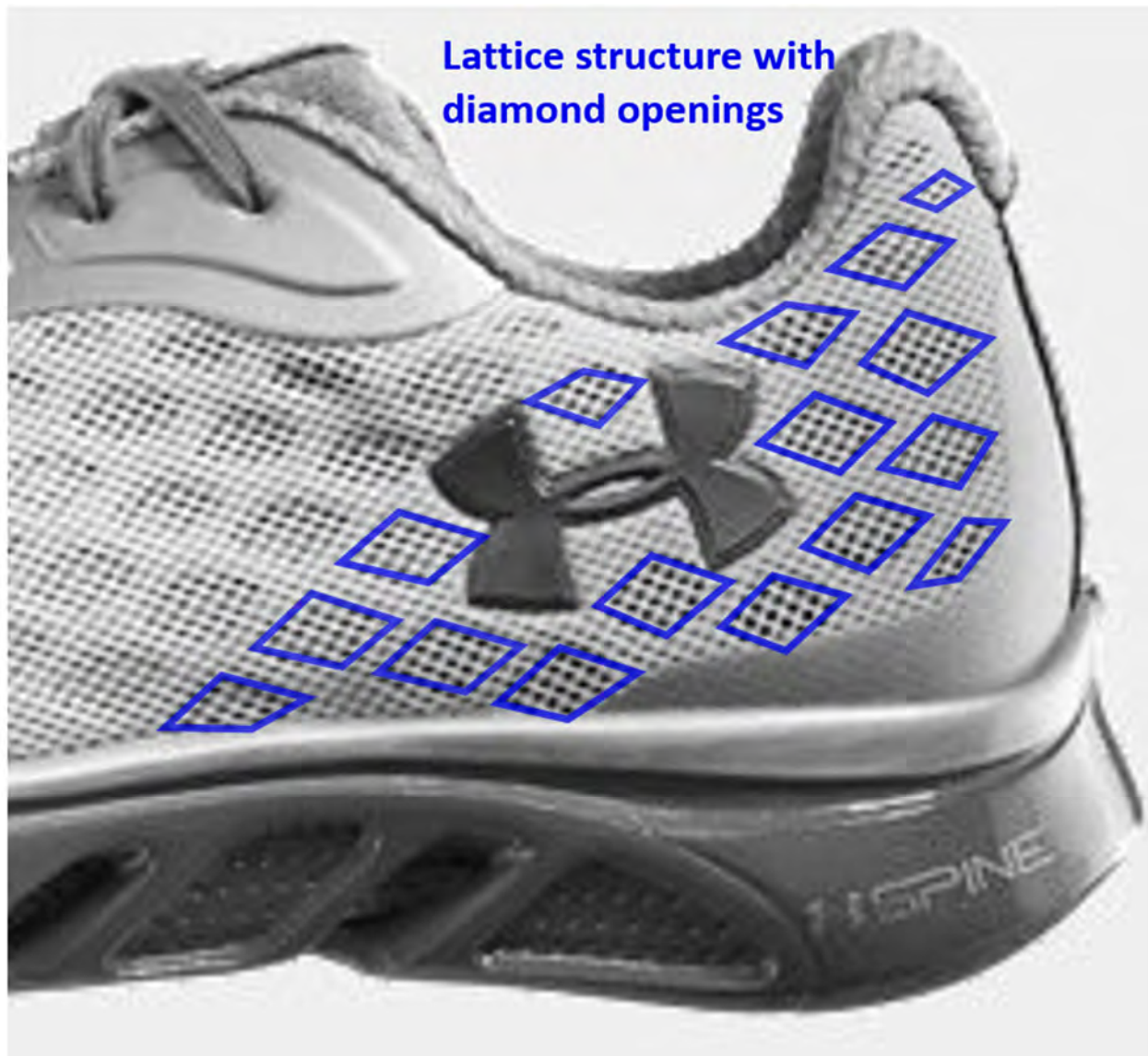
The printed publication *Under Armour UA Spine RPM Running Shoe 2012* is an article written by Scott Frederick describing and showing pictures of Under Armour's Spine shoe (Style No. 1233584), which article has been publicly available on the website <https://www.defynewyork.com/2012/08/09/under-armour-ua-spine-rpm-running-shoe-2012> since at least June 30, 2017. EX1003; EX1023 (Declaration of Mina Cheng – UA Spine RPM Running Shoe 2012). As the Spine publication was published more than a year before the D'641 patent's December 19, 2019 earliest claimed priority date, it is prior art under 35 U.S.C. § 102(a)(1).

The Spine publication discloses the overall appearance of Under Armour's Spine shoe, including in the image reproduced below:



EX1003, 4.

As shown, the Spine printed publication depicts a shoe comprising a ***lattice structure with diamond openings***, including at the heel. For clarity, Petitioner has annotated the foregoing image below to highlight several example diamond shaped openings of the lattice structure in **blue**:



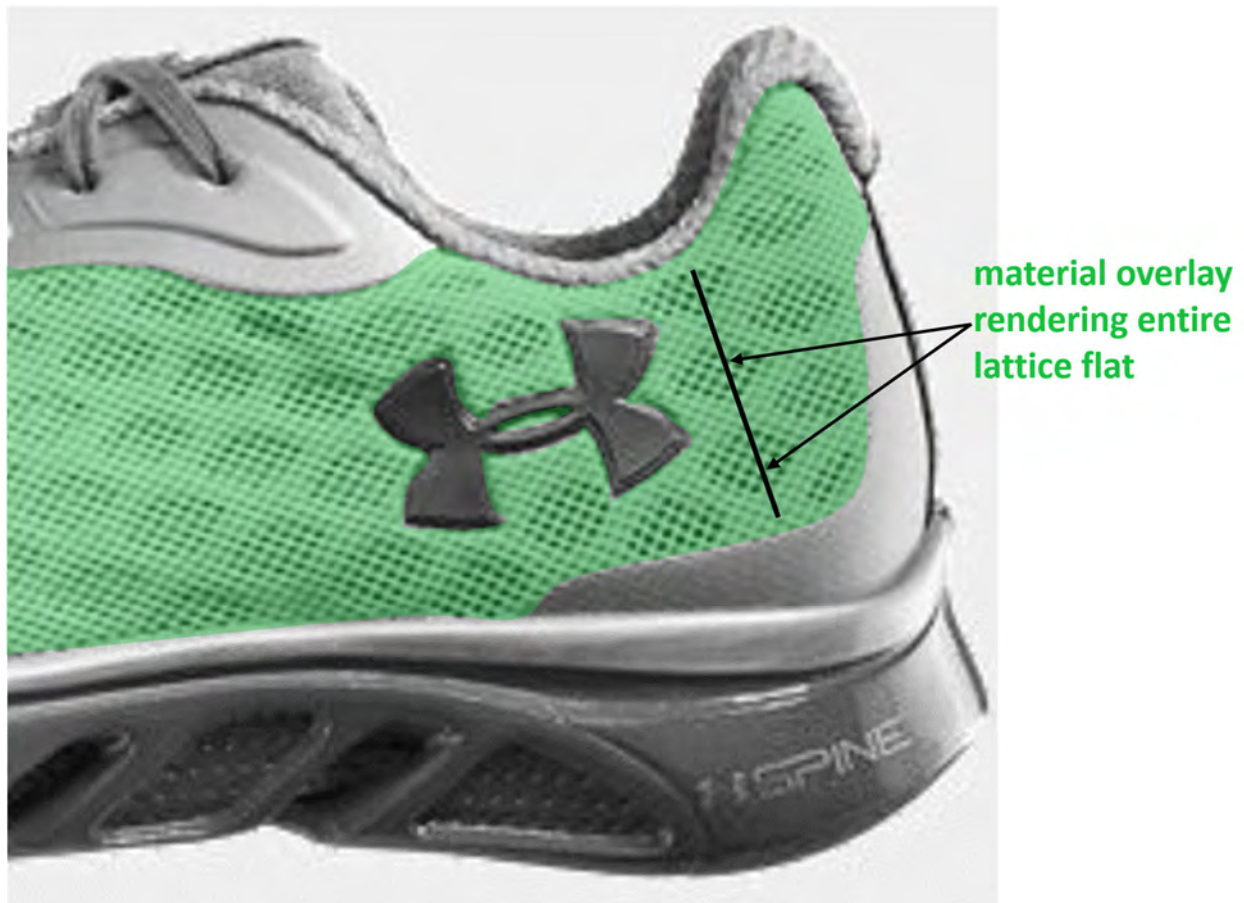
EX1003, 4 (cropped, converted to greyscale, and annotated with blue markings).

As also shown, the Spine printed publication further depicts a ***material overlaying the entire lattice structure, rendering its outer surface substantially flat.***

This is visible in its pictures; in addition, the product page for the Spine shoe describes the material overlaying the lattice structure as a "Breathable mesh" fabric.

EX1003, 4; EX1031, 5. Further, as shown in the provided picture, the breathable

mesh fabric bridges the gaps across the diamond shaped openings of the lattice structure, thereby rendering the outer surface of the shoe substantially flat, as illustrated below in **green**:



EX1003, 4 (cropped, converted to greyscale, and annotated with green and black markings).

The Spine Publication was verifiably available to the public at least as early as June 30, 2017, and there is evidence indicating that it was available several years prior to that date; the above-described article's current URL lists its publication date as August 9, 2012, and verbally describes the Spine RPM shoe. See EX1003,

[www.defynewyork.com/2012/08/09/under-armour-ua-spine-rpm-running-shoe-](http://www.defynewyork.com/2012/08/09/under-armour-ua-spine-rpm-running-shoe-2012/)

[2012/](http://www.defynewyork.com/2012/08/09/under-armour-ua-spine-rpm-running-shoe-2012/). The availability of other widely accessible printed publications disclosing Under Armour's Spine shoe (Style No. 1233584)<sup>6</sup> further corroborates the public availability of Spine in years prior to 2017.

For example, since at least August 20, 2012, videos disclosing Under Armour's Spine shoe have been publicly available on YouTube, with no access restrictions. *See, e.g.,* <https://www.youtube.com/watch?v=9cxJoqjIBO0>. The following are screenshots from the foregoing YouTube video:



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<sup>6</sup> *See* EX1031 (product page for UA Spine RPM, Style No. 1233584, published on April 14, 2014).



EX1024, EX1039 (screenshots).

The above YouTube page also shows the video's August 20, 2012 publication date, that the video has over 16,000 views, and that many user comments regarding the video are timestamped thirteen years ago, long before the D'641 patent's December 19, 2019 earliest claimed priority date. *Id.* A person interested in footwear design, including running and sports shoe design, would have been independently aware of DeFY New York and able to find the Spine publication

through reasonable diligence. This is so at least because DeFY is a well-established, prominent footwear archive, as is evidenced by its substantial social media following—*e.g.*, DeFY New York has 271K followers on Instagram. A DOSA interested in footwear design thus would have known of DeFY and would have been able to access the Spine printed publication exercising reasonable diligence. See *Voter Verified*, 698 F.3d at 1380 (finding that "all content published in the Risks Digest (including the Benson article) became available worldwide on the internet through the website <http://catless.ncl.ac.uk/Risks> [more than a year prior to the critical date] evidenced public accessibility").

**D. Overview of Trainer Knit (EX1005)**

The printed publication *The Asics Gel-Kayano Trainer Gets a Knit Makeover* is an article describing the Asics Gel-Kayano Trainer Knit Shoe (Style No. H705N) that has been publicly available on <https://weartesters.com/asics-gel-kayano-trainer-knit-makeover/> at least since January 13, 2017. EX1005; EX1020. As the Trainer Knit publication was published more than a year before the D'641 patent's December 19, 2019 earliest claimed priority date, it is prior art under 35 U.S.C. § 102(a)(1).

The images in the Trainer Knit publication disclosing the overall appearance of the Trainer Knit shoe are reproduced below:



EX1005, 3-4.

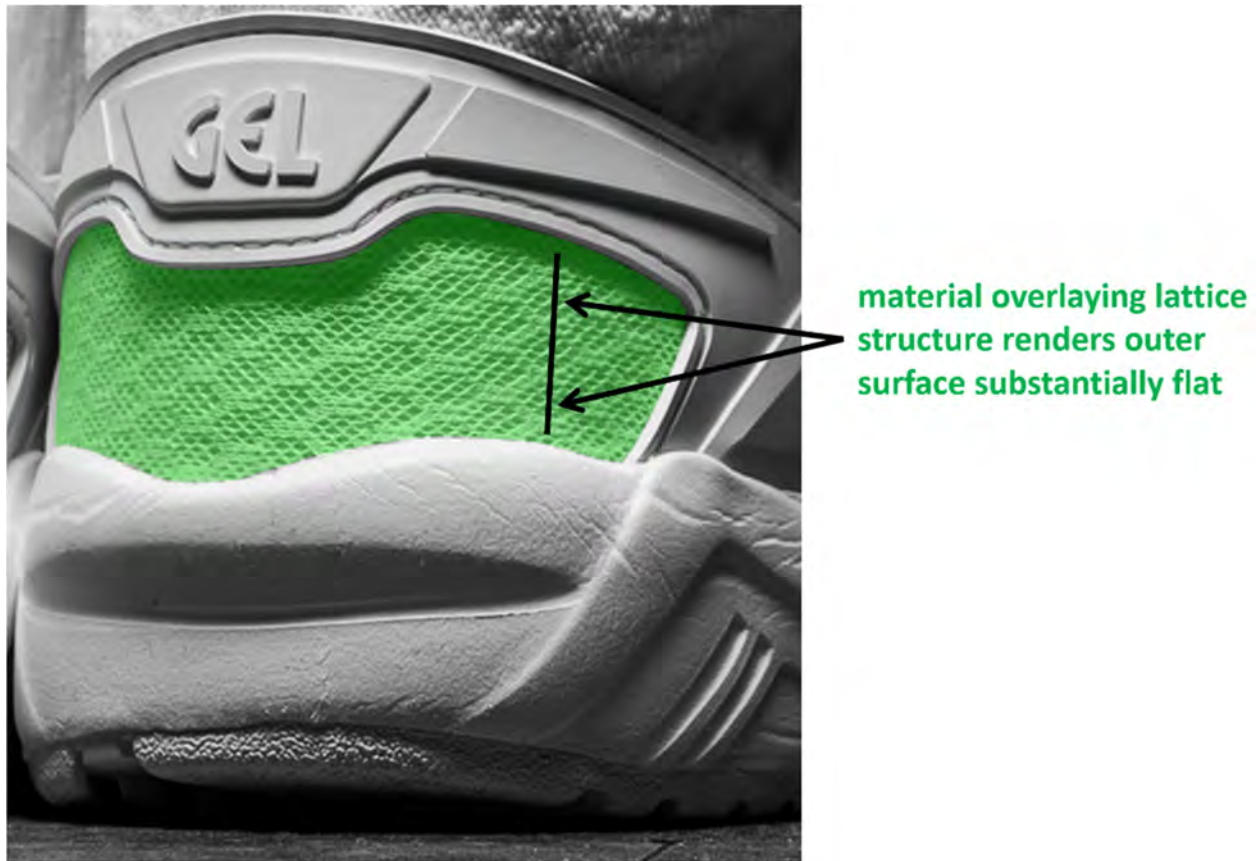
As shown, the Trainer Knit publication depicts a shoe design comprising a *lattice structure with hexagon shaped openings*. Below Petitioner has annotated the image to highlight example hexagon openings of the lattice structure in **blue**:

**lattice structure with hexagon shaped openings**



EX1005, 4 (cropped, annotated with blue markings).

As also shown, the Trainer Knit publication further depicts a ***material overlaying the lattice structure that renders its outer surface substantially flat***. As shown, the mesh fabric bridges the gaps across the openings of the lattice, rendering the outer surface of the shoe substantially flat, as illustrated below in **green**:



EX1005, 4 (cropped, annotated with green color and black line/arrows).

The Trainer Knit publication also depicts a solid boundary line on the heel that bridges the gaps across the hexagon openings of the lattice, the boundary created by a material overlaying the lattice that renders its outer surface substantially flat. In other words, the substantially flat heel-edge is formed by the material overlay.



EX1005, 3 (cropped, annotated with green color and markings).

Trainer Knit was accessible to persons of ordinary skill interested in the relevant subject matter—for example, an Internet Archive capture of Trainer Knit shows public commentary, time-stamped at January 12, 2017, related to the overall appearance of the Trainer Knit Shoe. EX1005, EX1020. A DOSA interested in the

field of footwear would have also been independently aware of Weartesters.com. *See Voter Verified*, 698 F.3d at 1381. Weartesters is a well-established shoe review platform known for in-depth product and performance reviews, with over 900,000 YouTube subscribers. EX1026 (Weartesters YouTube Subscriber Count). Indeed, "such an interested researcher would have found Trainer Knit using that website's own search functions and applying reasonable diligence." *Id.*; *see also M & K Holdings, Inc. v. Samsung Elecs. Co.*, 985 F.3d 1376, 1381 (Fed. Cir. 2021) ("[t]he relevant inquiry is whether the channel through which the references were publicized is prominent or well-known among persons of ordinary skill in the art."). Moreover, Weartesters would have been readily accessible by keyword search on third-party search engines. *In re Lister*, 583 F.3d 1307, 1315 (Fed. Cir. 2009) (finding prior art publicly accessible "as of the date that it was included in [] databases that permitted keyword searching of titles").

#### **VIII. THE D'641 PATENT IS NOT ENTITLED TO ITS EARLIEST PURPORTED PRIORITY DATE**

The D'641 was filed on September 29, 2023, but purports to claim priority to several earlier-filed utility patent applications:

This application is a continuation of applicant's earlier application 17/893,697, filed August 23, 2022, which is a continuation of 17/584,036, filed January 25, 2022, which is a continuation of 16/990,713 (U.S. Patent 11,737,511), filed August 11, 2020, which is a continuation of 16/899,586 (U.S. Patent 10,973,279), filed June 12, 2020, which is a continuation of PCT/US19/67437, filed December 19,

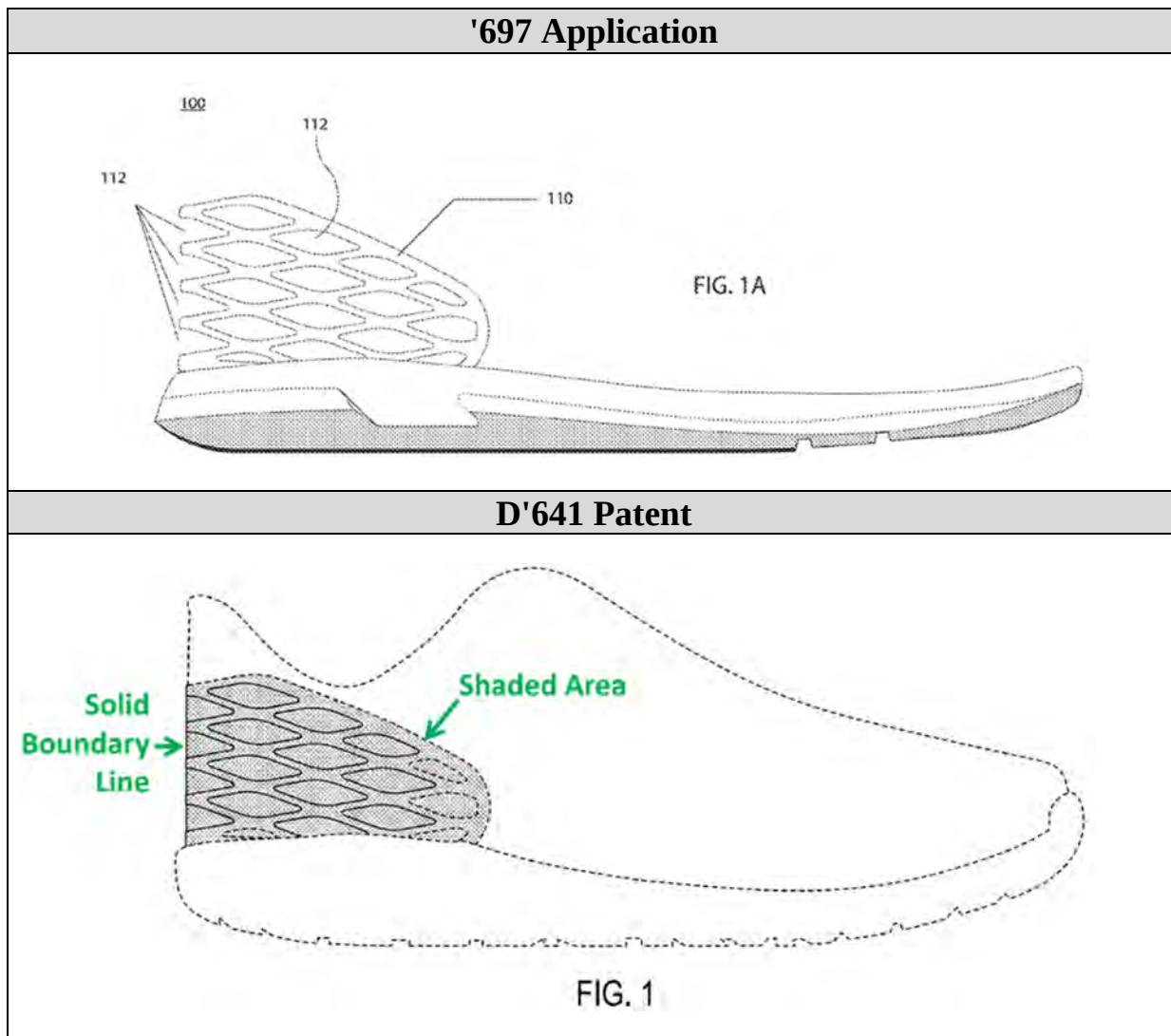
2019, which claims priority to 62/789,367, filed January 7, 2019, and 62/935,556, filed November 14, 2019.

EX1013, 11. As all purported parent applications have identical figures, Skechers focuses on the most recent, Application No. 17/893,697, filed August 23, 2022 ("the '697 application"). EX1014. If the D'641 patent cannot claim priority to the '697 application, then Skechers' earlier-issued Weeks patent (EX1002) is prior art.

When analyzing issues of design patent priority, "the drawings provide the written description of the invention." *In re Owens*, 710 F.3d 1362, 1366 (Fed. Cir. 2013) (citations omitted). Thus, "one looks to the drawings of the earlier application for disclosure of the subject matter claimed in the later application" *Id.* "As a practical matter, meeting the remaining requirements of § 112 is, in the case of an ornamental design, simply a question of whether the earlier application contains illustrations (. . .) depicting the ornamental design illustrated in the later application and claimed therein." *Racing Strollers, Inc. v. TRI Indus., Inc.*, 878 F.2d 1418, 1420 (Fed. Cir. 1989) (citing 37 CFR 1.153(a)); *see also Application of Blum*, 374 F.2d 904, 907 (C.C.P.A. 1967) ("there are no portions of a design which are 'immaterial' or 'not important.' A design is a unitary thing and all of its portions are material in that they contribute to the appearance which constitutes the design.").

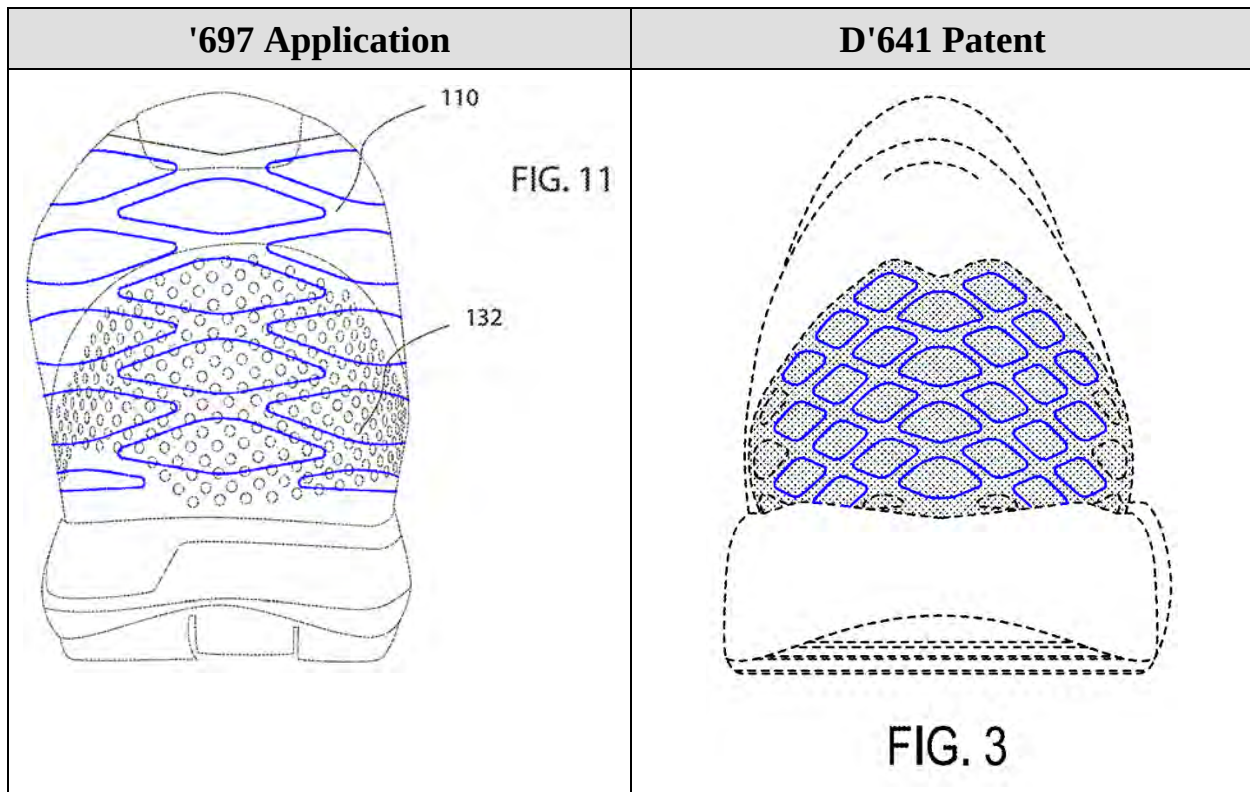
As discussed below, the Applicant introduced significant new matter in App. No. 29/903,995 filed on September 29, 2023, which issued as the D'641 patent.

First, the Applicant introduced new matter by adding new solid boundary lines and surface shading, to indicate and claim a new material overlaying its entire lattice structure that renders the outer surface of the claimed area substantially flat:



EX1014, Fig 1A; EX1001, Fig. 1.

Second, the Applicant introduced more new matter by significantly changing the sizes and shapes, and thus appearance, of the diamond openings in the claimed lattice structure.



EX1014, Fig 11; EX1001, Fig. 3.

Each of these additions are key features defining the overall visual impression of the claimed design, and each will be addressed in turn below. See EX1021, ¶36; see also, Part V, *supra* (discussing defining features of the claimed design, including the ***diamond lattice***, the ***shaded area***, and the ***solid boundary lines***).

**A. D'641 Introduced And Claimed New Matter By Adding New Solid Boundary Lines And Surface Shading**

The D'641 patent claims a material overlaying its entire lattice structure that renders the outer surface of the claimed area substantially flat. See Part V, *supra*. The D'641 patent's figures indicate and claim this with a combination of a ***shaded area*** and ***solid boundary lines***, which together make clear that the shaded area is a

material overlaying the lattice structure that renders the outer surface of the claimed area substantially flat:

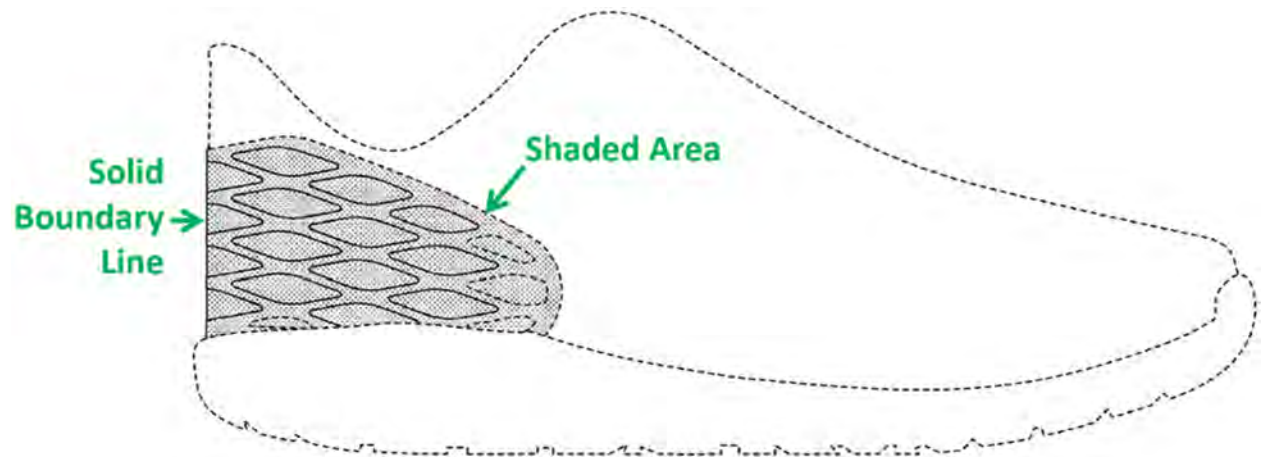


FIG. 1

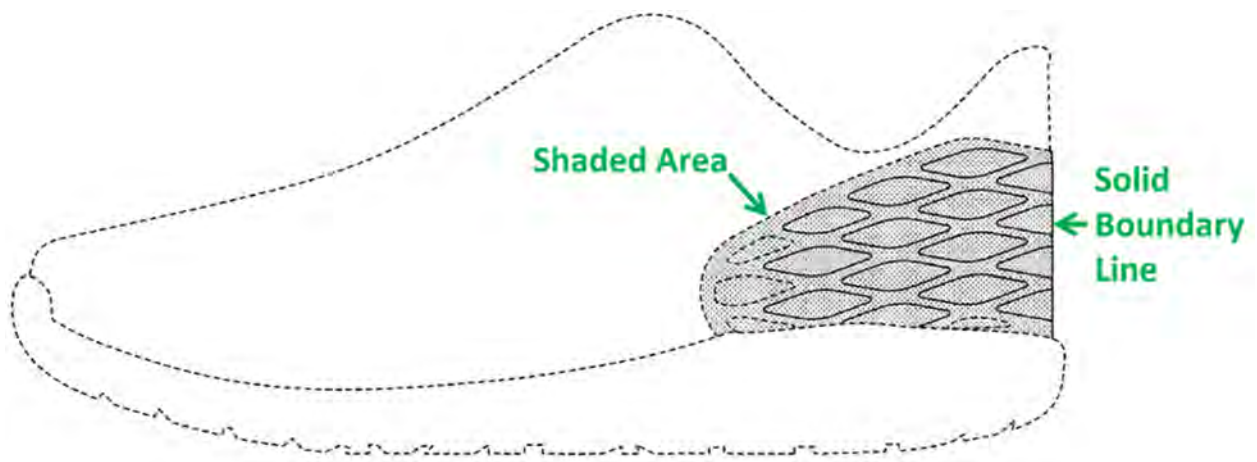


FIG. 2

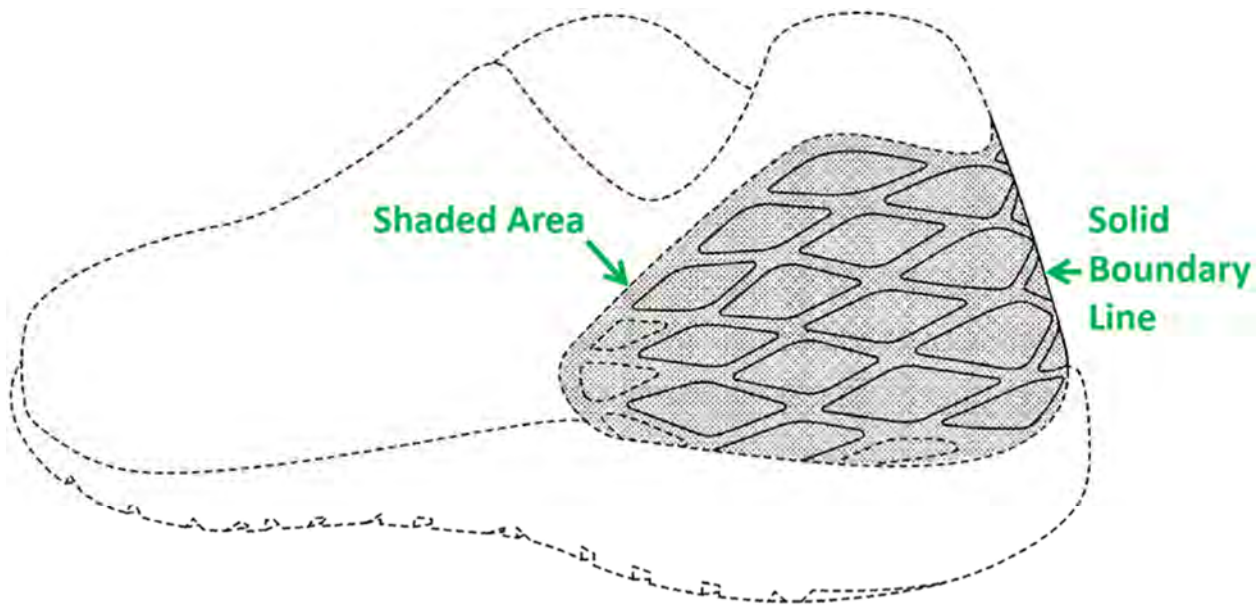


FIG. 4

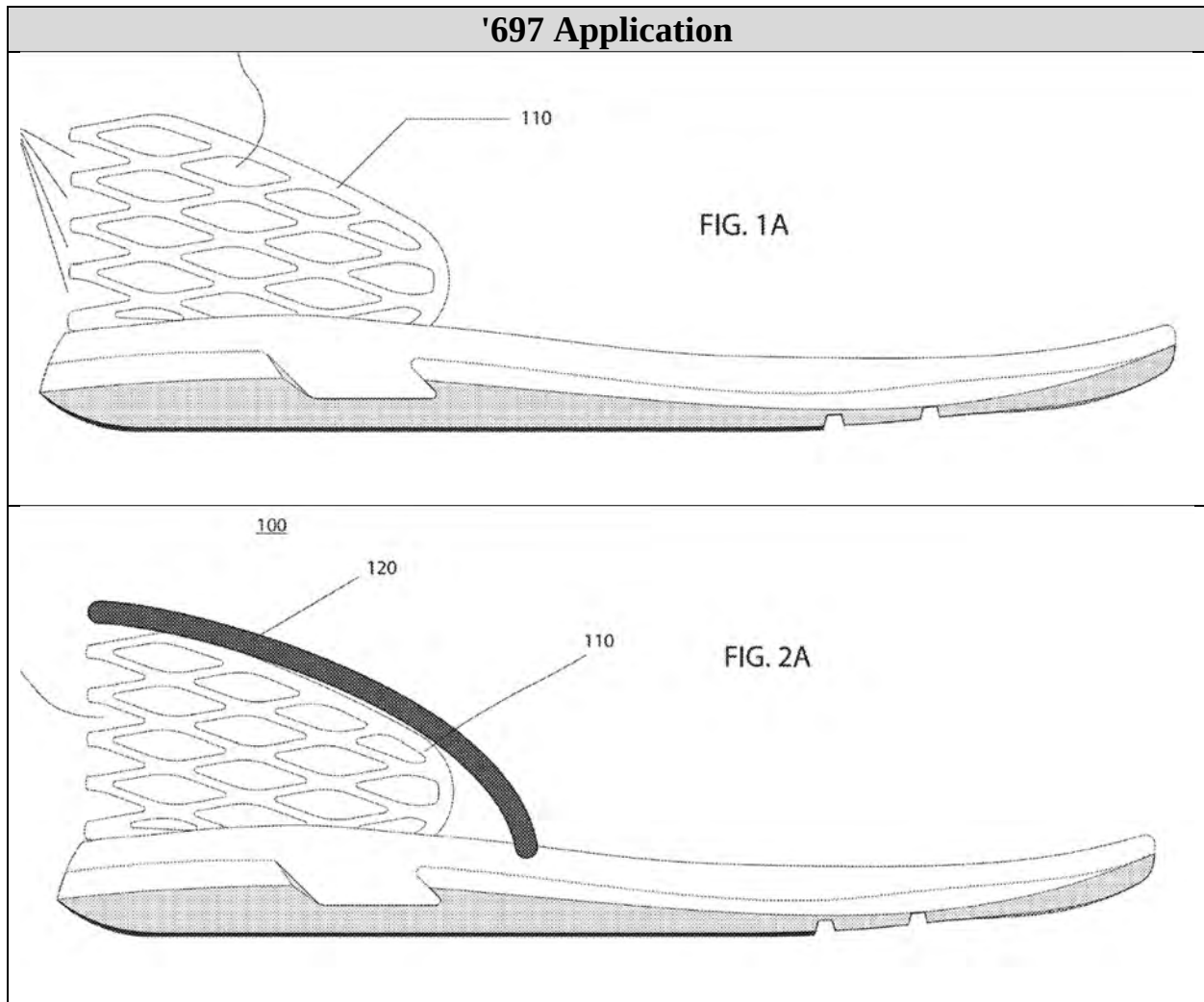
EX1001, Figs. 1-2, 4. *See also* EX1021, ¶29.

The claimed material overlaying its entire lattice structure, and the shading and solid boundary lines indicating and claiming this feature, are new matter the Applicant added for the first time in the D'641 application. The shading and solid boundary lines were not present in any of the D'641 patent's purported earlier priority documents. Below Skechers focuses on the '697 application, the most recent claimed parent application.<sup>7</sup>

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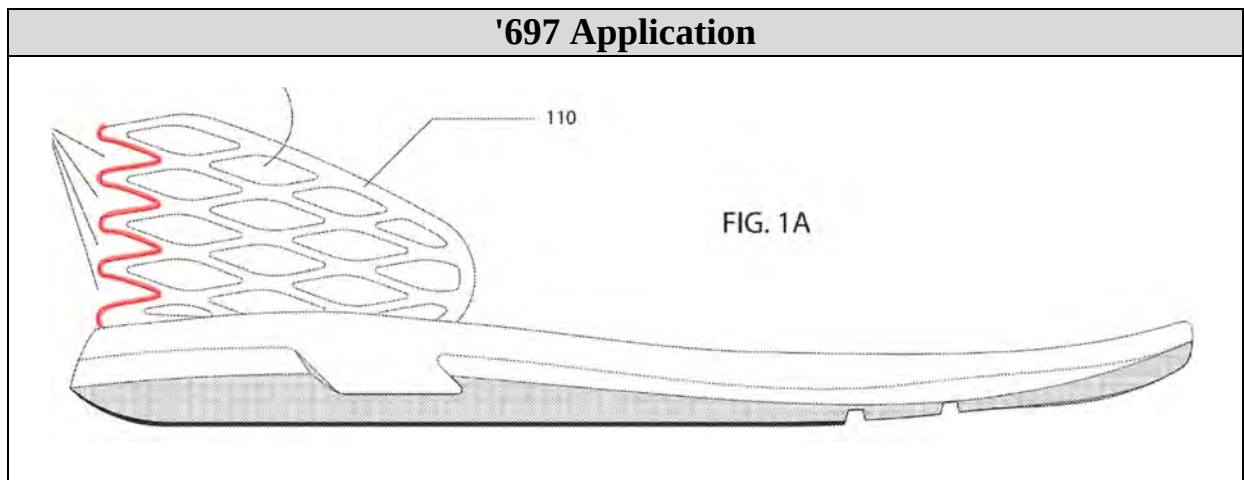
<sup>7</sup> Because the figures in each of the purported priority documents are identical, the '697 application is representative of the full scope of Applicant's earlier claims.

In the '697 application, Figures 1A and 2A make up the full extent of the previous disclosures from a left side view. As can be plainly seen, they do not include either the shaded area or solid boundary lines claimed in the D'641 patent:



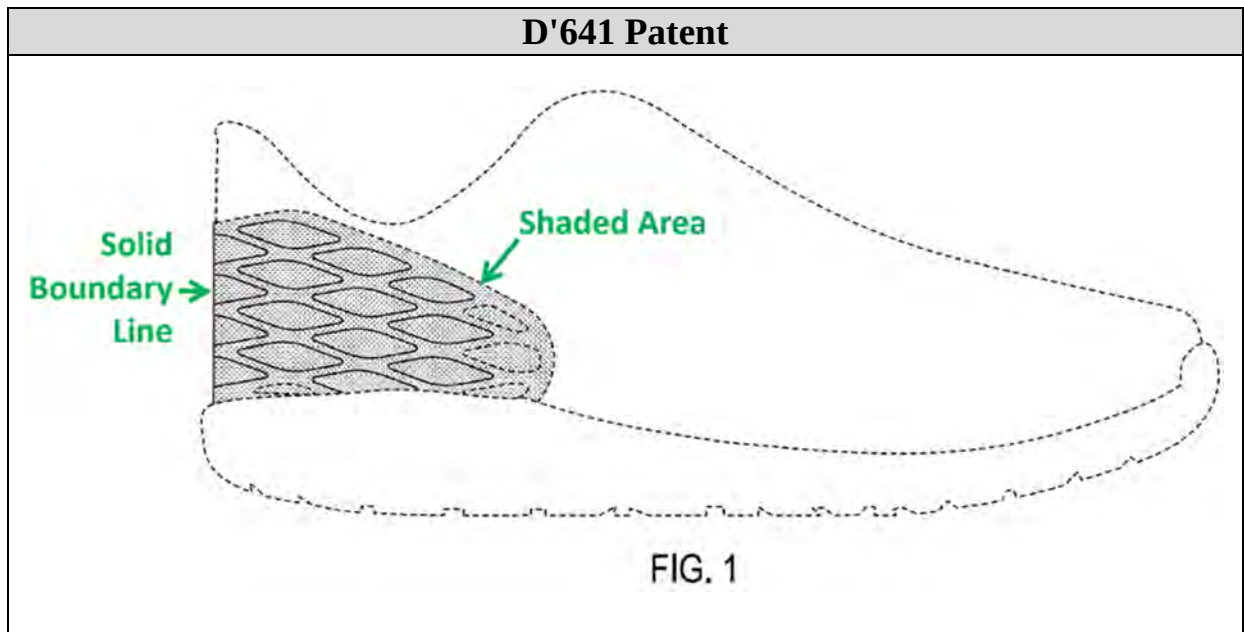
EX1014, Figs. 1A, 2A. See also, EX1021, ¶38 ("A DOSA would understand the '697 application as an open, molded 3D plastic piece (. . .). The original utility drawings do not show or describe a flat overlay piece at all.").

Unlike the D'641 patent which discloses a lattice structure entirely covered in grey shading, the '697 application showed the lattice without any shading. Further, unlike the D'641 patent which includes solid boundary lines indicating an enclosed lattice, the '697 application depicted an open lattice defined by diamond openings that form a zig-zag path (rather than a straight boundary line) at the outermost edge of the heel. For clarity, Petitioner has traced the zig-zag path in red below:



EX1014, Fig. 1A.

Comparing Figure 1A of the '697 application to Figure 1 of the D'641 patent makes clear that the Applicant introduced significant new matter:

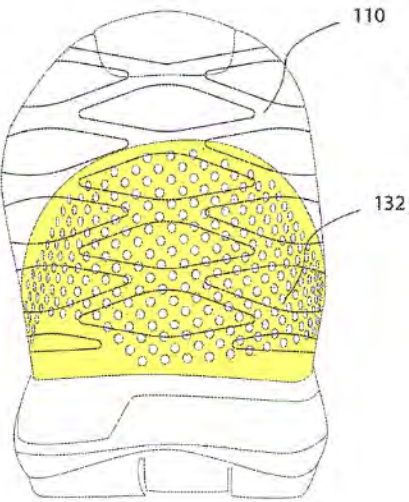
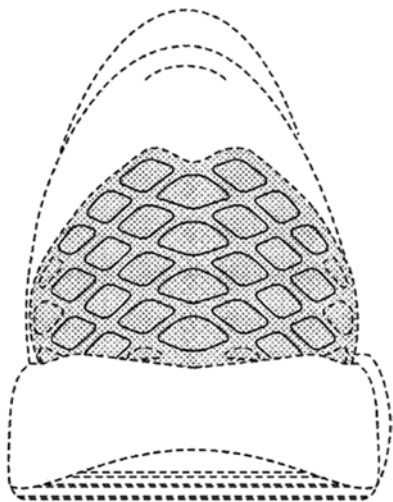
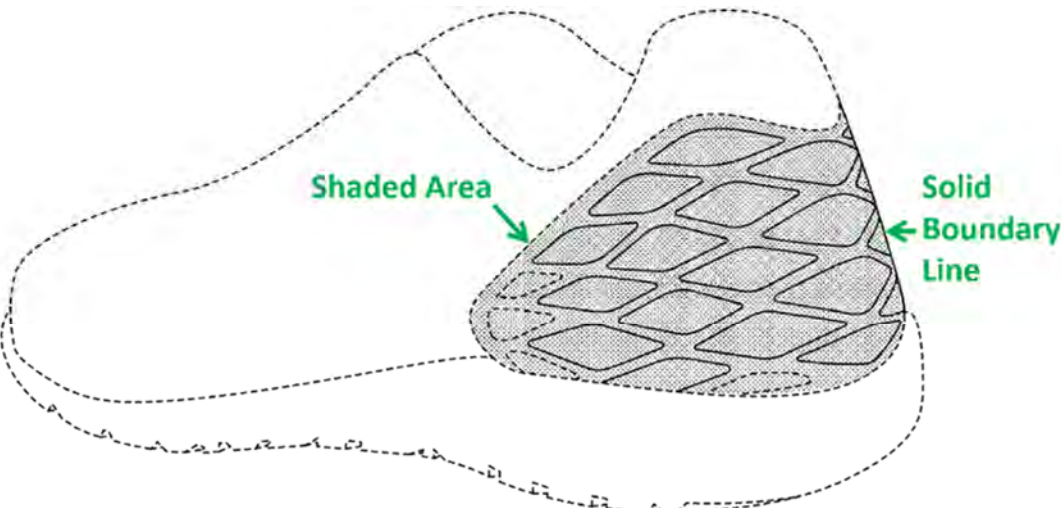


EX1001, Fig. 1.

As with the introduction of any modifications in a continuation application, "the introduction of the boundary line must comply with the written description requirement of 35 U.S.C. 112(a)." 1503.02 Drawing (R-01.2024), MPEP § 1503.02; *see also, e.g., Owens*, 710 F.3d at 1369 (explaining that "boundary lines typically should satisfy the written description requirement **only if they make explicit a boundary that already exists**, but was unclaimed."); *Diode Dynamics, L.L.C v. 5Dlight, Inc.*, No. 5:23-CV-02238-WLH-JPR, 2025 WL 2827023, at \*3 (C.D. Cal. Sept. 15, 2025) (explaining *Owens*) ("a continuation that introduced a new boundary line not present in the parent drawings was not entitled to priority, because the change altered the scope of the claimed design and was unsupported by the parent's disclosure (. . .) the [*Owens*] court made clear that any change to the claimed design,

whether by addition or omission, must be visually supported in the parent drawings to satisfy the written description requirement."). It is well-established that the addition of surface shading to a disclosure constitutes new matter. *See, e.g.*, MPEP § 1504.04, subsection I.B ("Another example of an amendment which introduces new matter would be an amendment changing the surface appearance of the original design by the addition of previously undisclosed subject matter.").

Any argument that the D'641 patent's priority claim to the '697 application is supported by Figure 11 and its corresponding verbal description as a "material" component with "perforations or openings 132" would be misplaced. Simple observation makes clear that Figure 11 does not depict solid surface shading covering the entire lattice structure. *Owens*, 710 F.3d at 1366, citing *In re Daniels*, 144 F.3d at 1452, 1456 (Fed.Cir.1998) ("when an issue of priority arises under § 120 in the context of design patent prosecution, one looks to the drawings of the earlier application for disclosure of the subject matter claimed in the later application."). For clarity, Petitioner has highlighted the distinct material component of Figure 11 in yellow below, compared next to figures of the D'641 patent:

| '697 Application                                                                                            | D'641 Patent                                                                                     |
|-------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|
| <p>100</p>  <p>FIG. 11</p> |  <p>FIG. 3</p> |
| D'641 Patent                                                                                                |                                                                                                  |
|  <p>FIG. 4</p>           |                                                                                                  |

EX1014, Fig. 11; EX1001, Figs. 3, 4.

Because a design claimed in a design patent "can be described only by illustrations showing what it looks like," there can be no argument that the '697

application discloses a material overlaying the entire lattice structure as claimed in the D'641 patent. *Racing Strollers, Inc.* 878 F.2d at 1420. Figure 11 does not support any such disclosure, and no other figures in the '697 application depict that feature.

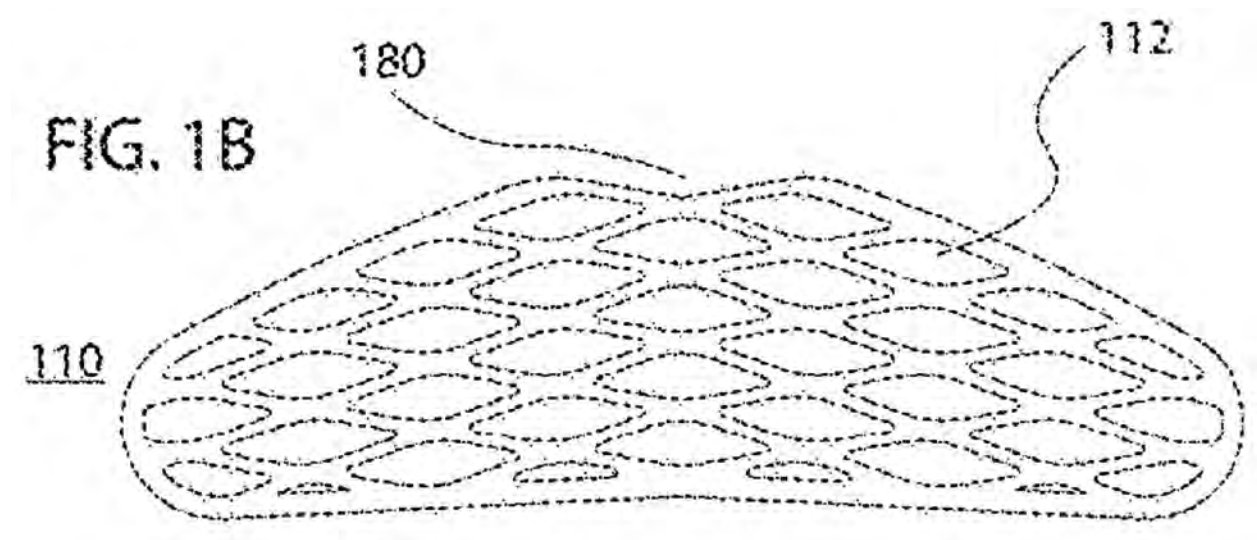
For example, the '697 applications' component 132 does not provide written description support for either the D'641 patent's **shaded area** or **solid boundary lines**, which together make clear that the shaded area in the D'641 patent is a material overlaying its entire lattice structure, bridging the gaps across the openings of the lattice in a manner that renders the outer surface of the claimed area substantially flat. EX1021, ¶¶34-39. Even if the '697 application's component 132 were viewed as being on top of the lattice instead of underneath it (which is equally possible), Figure 11 makes clear that component 132 does **not** intersect with the **entire** lattice structure like the D'641 patent's shaded area. At most, component 132 intersects with only a portion of the lattice openings, only encompassing three of them in full visible from the rear view.

Moreover, unlike in the D'641 patent, there is no **flat boundary line** depicted relative to component 132 in Figure 11 of the '697 application. Unlike the shaded area with flat boundary lines in the D'641 patent, there is no indication in the '697 application that component 132 bridges the gaps across the openings of the lattice in a manner that renders the outer surface of the claimed area substantially flat.

**B. D'641 Also Introduced And Claimed New Matter By Significantly Altering The Sizes and Shapes Of The Lattice Openings**

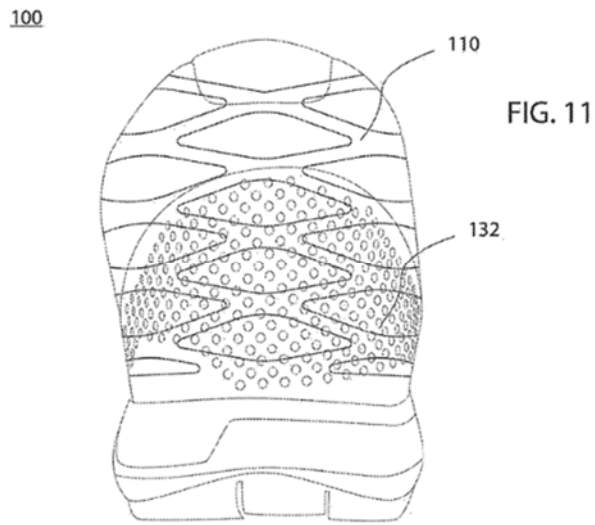
The rear view of the D'641 patent depicts a diamond pattern materially different from that shown in the purported priority applications.

Figures 1B and 11 of the '697 application make up the full extent of the rear view described in the previous disclosures. Figure 1B discloses a lattice structure "formed substantially flat" before being "subsequently curved when coupled to a rapid-entry shoe." EX1014, ¶0032.

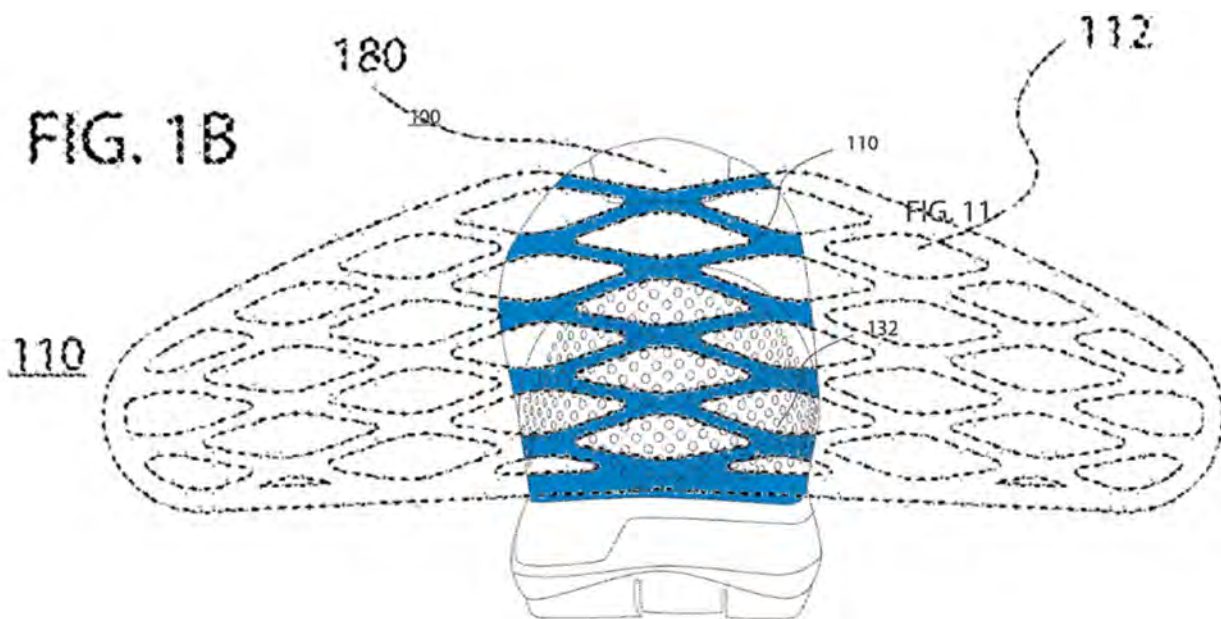


EX1014, Fig. 1B.

Correspondingly, Figure 11 of the '697 application discloses the lattice structure of Figure 1B as applied to the heel of a shoe. See EX1014, ¶0018 ("FIG. 11 illustrates a rapid entry shoe having a (. . .) compressible lattice structure").

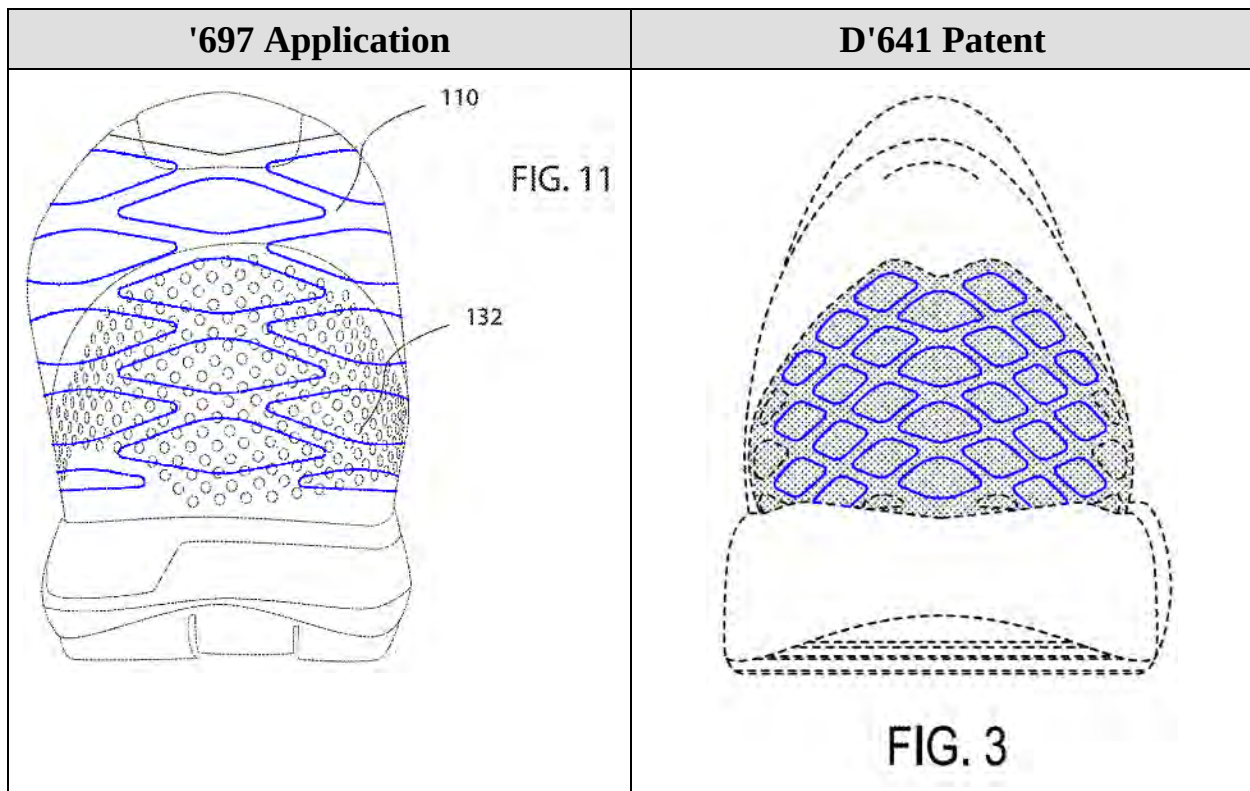


*Id.*, Fig. 11. In other words, Figure 11 depicts the flat lattice structure of Figure 1B applied to the heel of the shoe, with portions of the Figure 1B lattice structure wrapped around the sides of the shoe and thus being out of view in Figure 11. To help illustrate this visually, below Petitioner has colored the visible portion of the lattice blue in Figure 11 below, then overlaid Figure 1B on top of it:



EX1014, Fig. 1B, *overlayed on* Fig. 11.

In stark contrast, in Figure 3 of the D'641 patent, the Applicant introduced and claimed new matter by ***significantly altering both the sizes and shapes*** of the diamond openings in the lattice structure. For example, these changes can be plainly seen by comparing Figure 11 of the '697 application to Figure 3 of the D'641 patent, which both show a rear view of the shoe. For clarity, below Petitioner has highlighted the diamond openings of the lattice structures blue:

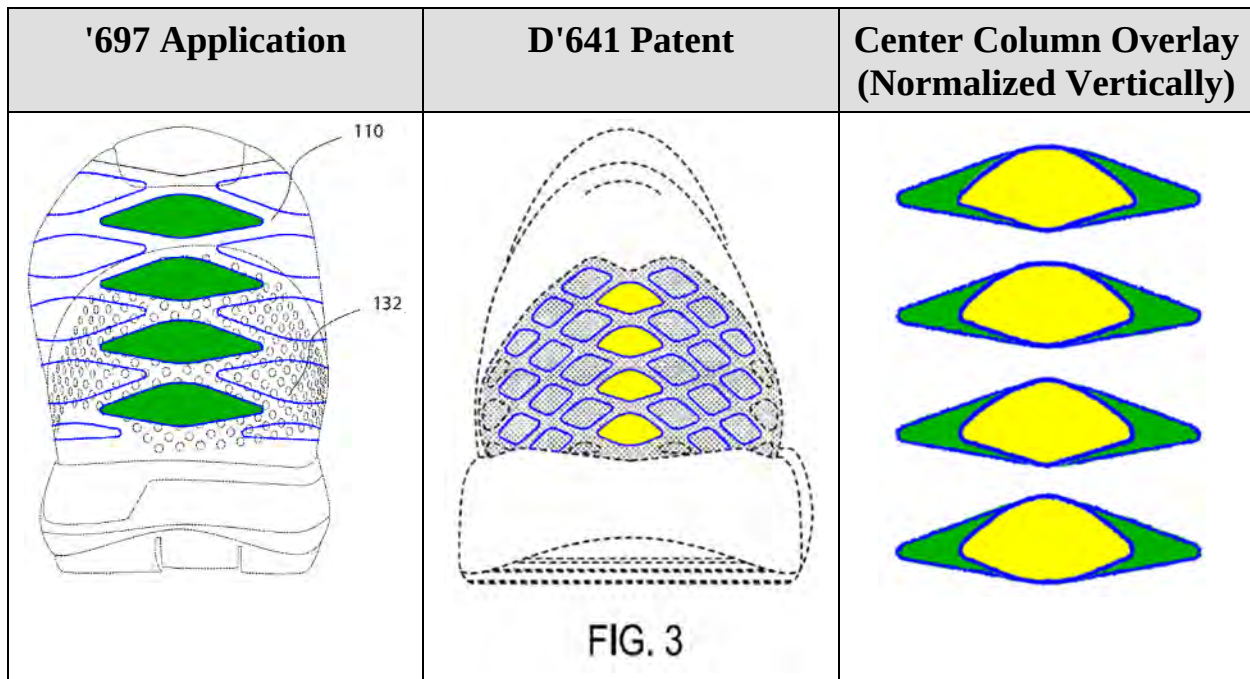


EX1014, Fig. 11; EX1001, Fig. 3. As shown, the Applicant made several significant changes in the D'641 patent.

First, in the D'641 patent, the Applicant ***significantly reduced the sizes*** of the openings in the lattice relative to the shoe's heel, both horizontally and vertically.

For example, in the horizontal direction, Figure 11 of the '697 application depicts openings that are large relative to the shoe, such that ***less than three vertical columns*** of openings are visible from the rear. In contrast, in Figure 3 of the D'641 patent, the Applicant reduced the horizontal size of the openings in order to allow ***seven full vertical columns*** to be visible from the rear. Similarly, in the vertical direction, Figure 11 of the '697 application shows a center column with four large openings that extend ***nearly to the top*** of the heel, whereas in Figure 3 of the D'641 patent, the Applicant reduced the vertical size of the openings so that the center column with four openings only extends ***just over half way*** up the heel. As a result of these size changes, Figure 3 of the D'641 patent depicts at least ***32 small diamond openings*** covering about 2/3 of the heel, whereas Figure 11 of the '697 application depicted fewer than ***14 large diamond openings*** covering nearly its entire heel.

Second, in addition to altering the size of the openings, the Applicant also ***significantly modified the shapes*** of the individual openings themselves, separate and apart from changing their sizes. In particular, in Figure 3 of the D'641 patent, the Applicant horizontally compressed the diamond openings relative to those in Figure 11 of the '697 application, which were significantly more elongated. For example, this can be shown by overlaying the center columns of the diamond openings from both figures after normalizing their size vertically:

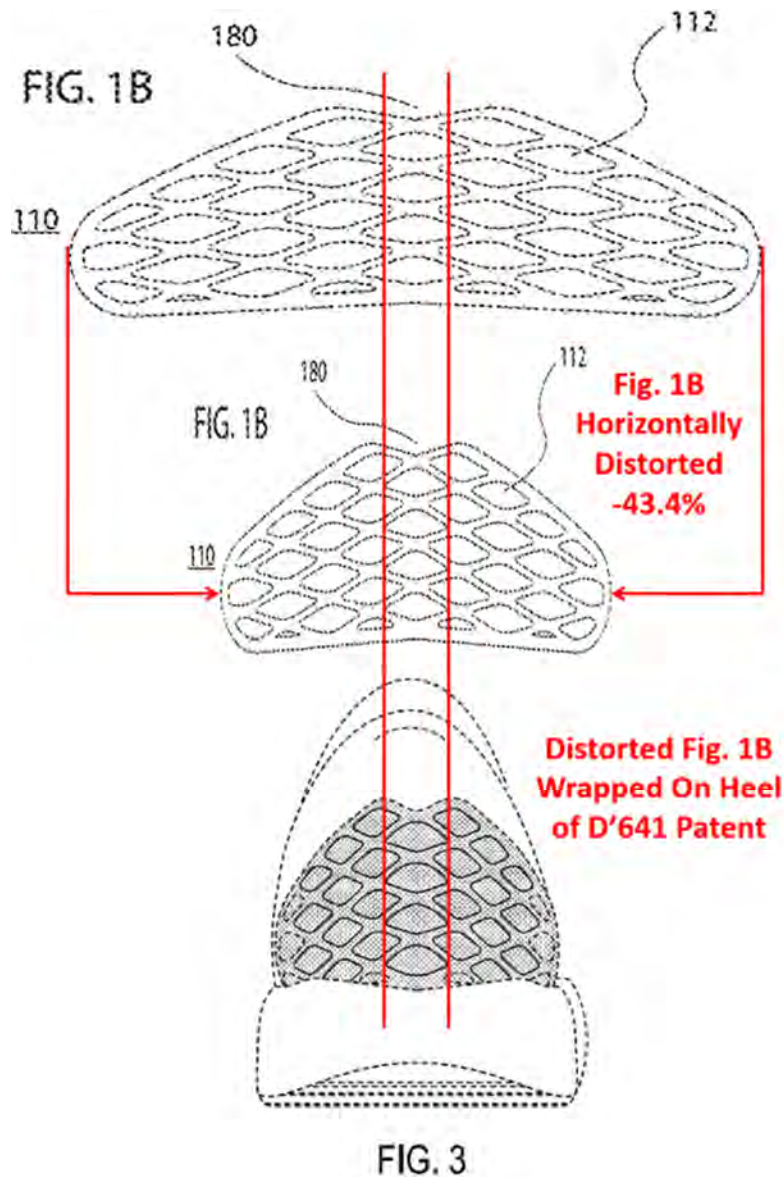


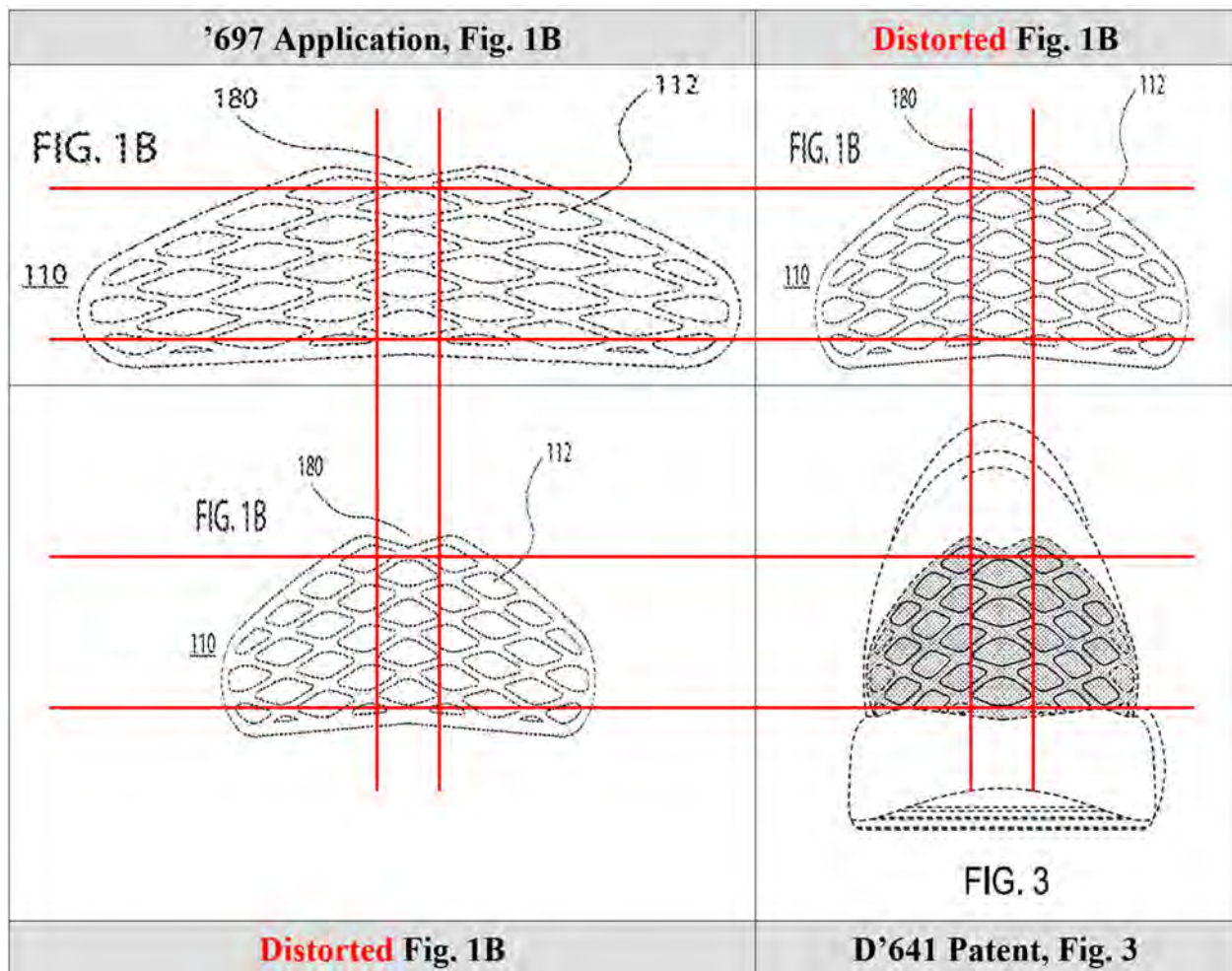
EX1014, Fig. 11; EX1001, Fig. 3.

As the above comparison makes clear, the diamond openings in the '697 application were far more elongated than the corresponding horizontally-compressed openings in the D'641 patent, even after normalizing their vertical size. This makes clear that the Applicant introduced new matter not only by shrinking the sizes of the openings in the lattice structure, but also by changing their shapes. Moreover, the above differences cannot be explained away as mere optical illusions resulting from perspective, as the above figures both have the same perspective (rear view of the shoe), and even comparing the center column (a dead-on perspective) shows that the Applicant significantly changed the shapes of the openings.

There is no mystery as to **how** the Applicant arrived at the new, horizontally distorted diamond openings in the D'641 patent. As discussed above, Figure 1B of

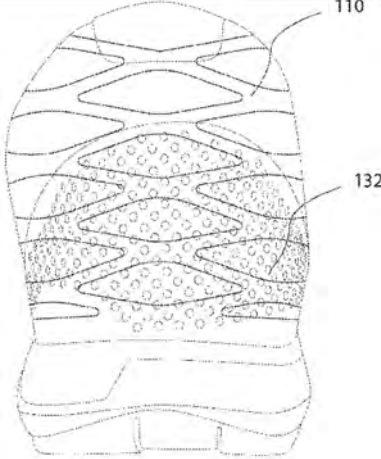
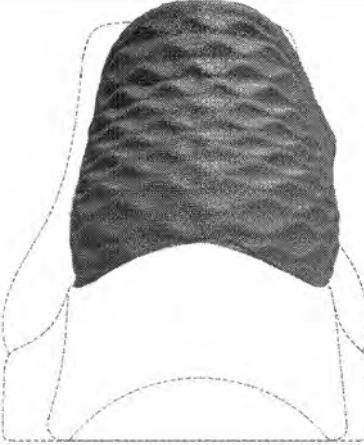
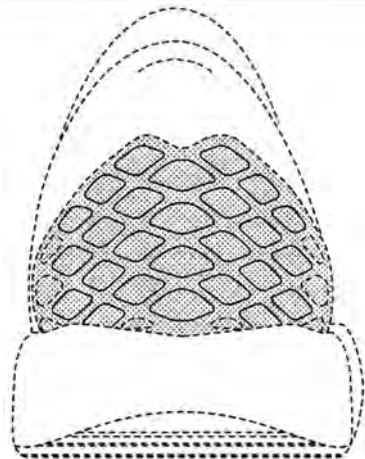
the '697 application shows the lattice structure "formed substantially flat" before being "subsequently curved when coupled to a rapid-entry shoe." EX1014, ¶0032. To arrive at the horizontally compressed diamond openings in the D'641 patent, the Applicant clearly took the flat lattice in Figure 1B of the '697 application, ***distorted that flat lattice horizontally by about -43.4%***, and then visually wrapped that distorted Figure 1B lattice structure onto the heel in Figure 3 of the D'641 patent:



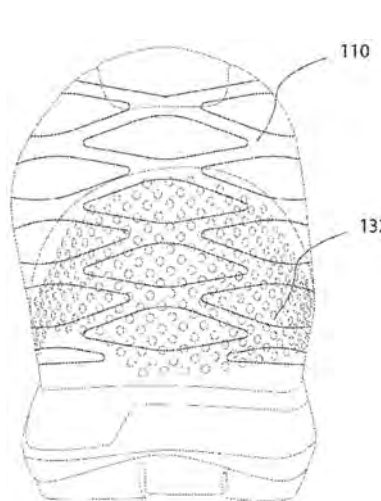
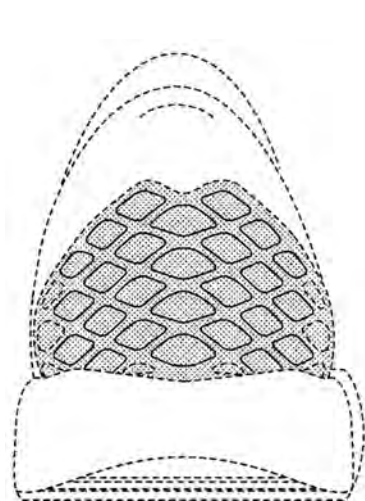


EX1014, Fig. 1B; EX1001, Fig. 3 (red annotations, and horizontal distortion on Distorted Fig. 1B, added by Petitioner). But of course, there is no distorted version of Figure 1B in the '697 application to support the D'641 patent's priority claim.

Likewise, there is little mystery as to **why** the Applicant went out of its way to horizontally distort the lattice structure in the D'641 patent. FAST IP appears to have done so in an attempt to make its later-filed D'641 patent cover Skechers' shoes—which were already on the market when FAST IP filed its altered patent application, and which embody the design of Skechers' earlier-issued Weeks patent:

| <b>FAST IP's '697 App.</b><br>(Filed Aug. 23, 2022)                                                                          | <b>Skechers' Weeks Patent</b><br>(Issued Jun. 6, 2023)                                                                      | <b>FAST IP's D'641 Patent</b><br>(Filed Sep. 29, 2023)                                                                          |
|------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
|  <p data-bbox="337 825 456 856">FIG. 11</p> |  <p data-bbox="760 825 862 856">FIG. 4</p> |  <p data-bbox="1170 825 1273 856">FIG. 3</p> |

EX1014, Fig. 1; EX1002, Fig. 4; EX1001, Fig. 3.

| <b>FAST IP's '697 App.</b><br>(Filed Aug. 23, 2022)                                                                              | <b>Skechers GOWalk Fabulous</b><br>(March 12, 2023)                                 | <b>FAST IP's D'641 Patent</b><br>(Filed Sep. 29, 2023)                                                                              |
|----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
|  <p data-bbox="337 1665 456 1696">FIG. 11</p> |  |  <p data-bbox="1170 1665 1273 1696">FIG. 3</p> |

EX1014, Fig. 1; EX1019; EX1001, Fig. 3.

"A change in the configuration of the claimed design is considered a departure from the original disclosure and introduces prohibited new matter." MPEP 1504.4 (citing 37 CFR 1.121(f), *In re Salmon*, 705 F.2d 1579, 217 USPQ 981 (Fed. Cir. 1983)). By introducing new matter in the D'641 patent, FAST IP attempted to claim a design that Skechers created and patented first, to which FAST IP has no right. The D'641 patent should not be entitled to claim priority to any date earlier than its September 29, 2023 filing date. Skechers' Weeks patent (EX1002), which issued on June 6, 2023, is thus prior art to the D'641 patent under 35 U.S.C. § 102(a)(1).

## **IX. DETAILED EXPLANATION OF THE GROUNDS FOR UNPATENTABILITY**

### **A. GROUND 1: Under Its Correct Priority Date, D'641 Is Obvious Over Weeks In View Of Spine**

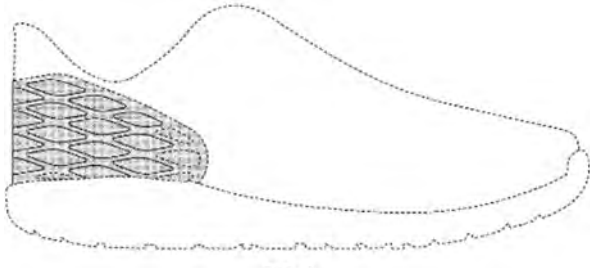
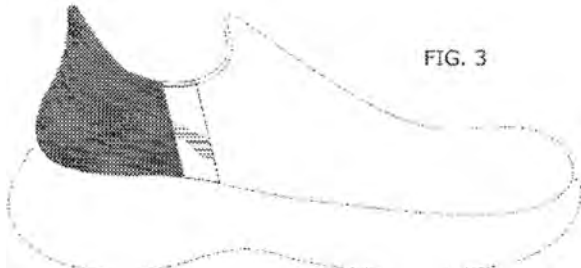
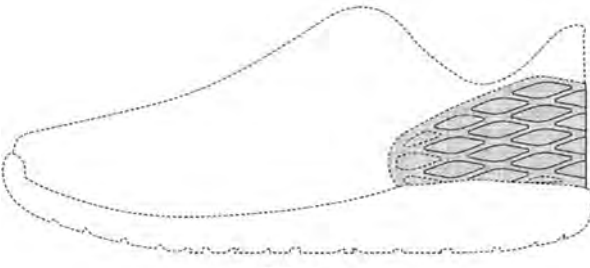
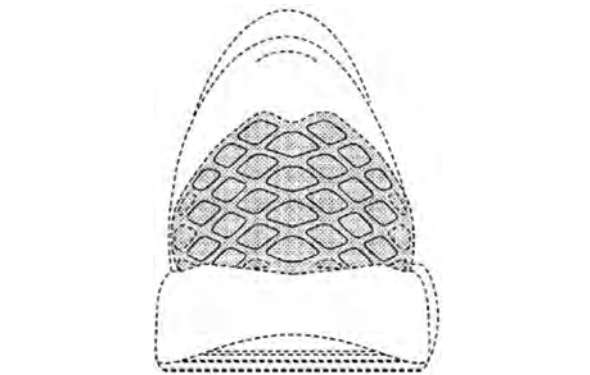
The D'641 patent's claimed design is obvious over Weeks in view of Spine. For example, as is discussed below, a DOSA would have found it obvious to modify the *patterned heel element* of Weeks by (a) changing Weeks' sinusoidal waves pattern to a *lattice structure with diamond shaped openings* as disclosed in Spine, and (b) adding *material overlaying the entire lattice structure to render its outer surface substantially flat*, as also disclose in Spine.

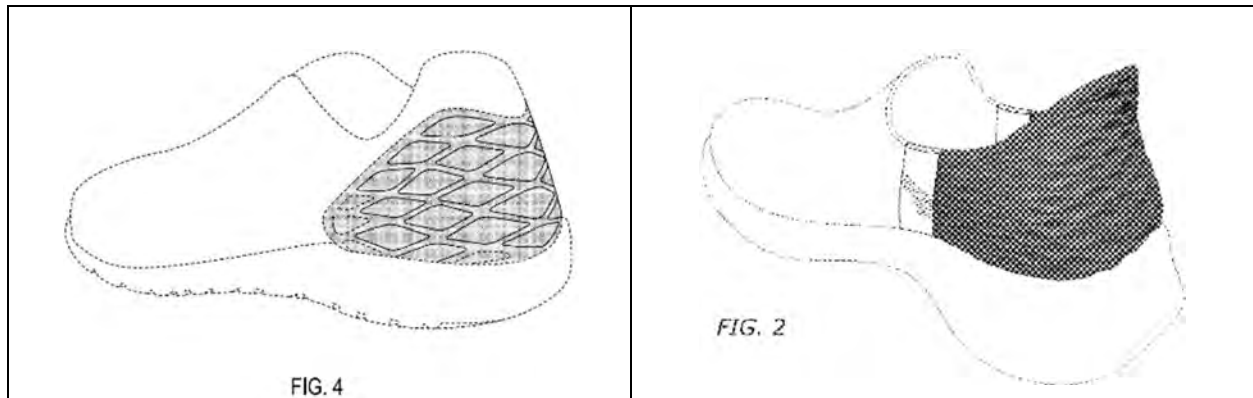
A DOSA's motivations to make these modifications, and expectation of success, are discussed in detail in Part IX.A.3 below.

**1. Weeks**

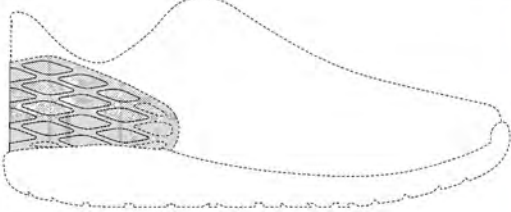
***a) Patterned Element on Heel***

The claim chart below shows the overall appearance of the D'641 patent as compared to Weeks. Both Weeks and the D'641 patent disclose a patterned element on the heel of a footwear upper:

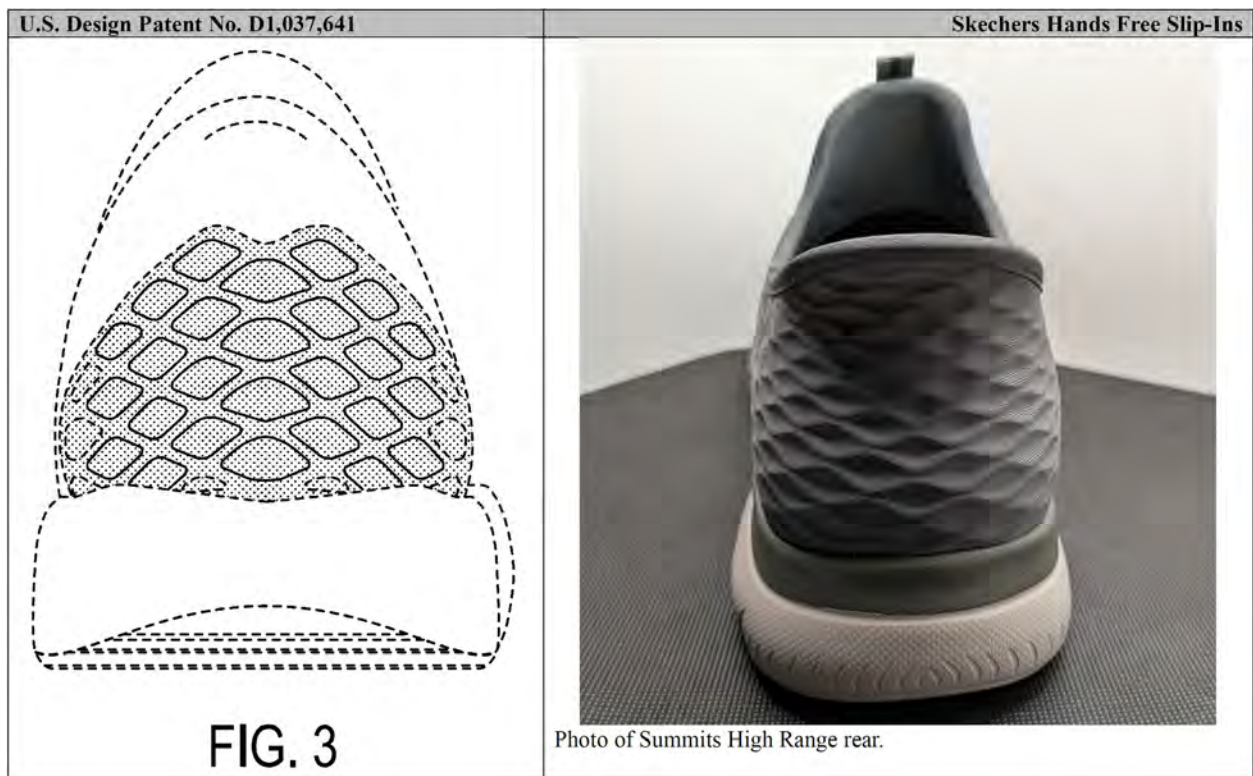
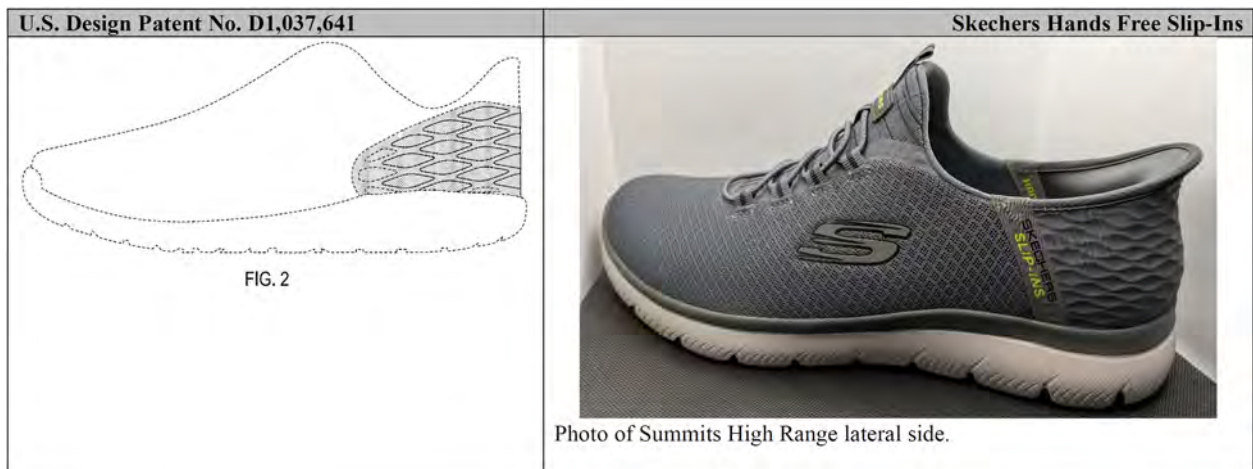
| D'641 Patent (EX1001)                                                                             | Weeks (EX1002)                                                                                     |
|---------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
|  <p>FIG. 1</p>   |  <p>FIG. 3</p>   |
|  <p>FIG. 2</p> |  <p>FIG. 2</p> |
|  <p>FIG. 3</p> |  <p>FIG. 4</p> |

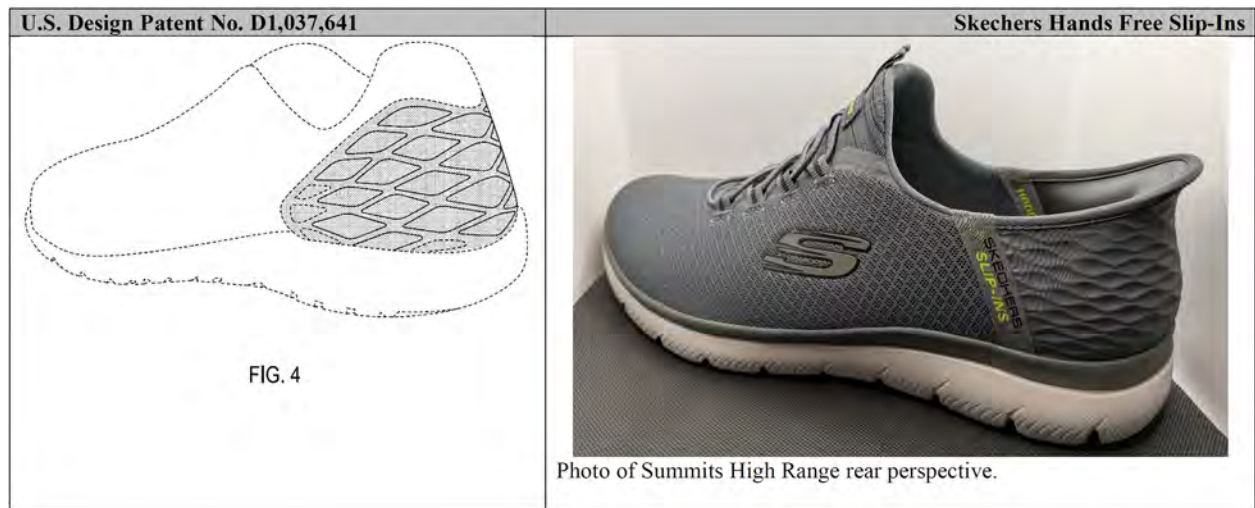


EX1001; EX1002. As explained above, the Skechers products accused in the underlying litigation embody the patented design claimed in Skechers' Weeks patent. Notably, the above claim chart comparing Weeks to the D'641 patent mirrors FAST IP's infringement contentions regarding Skechers' accused products in the litigation. FAST IP's infringement contentions claim chart for the D'641 patent, served in the underlying litigation, is reproduced in full below:

| U.S. Design Patent No. D1,037,641                                                                 | Skechers Hands Free Slip-Ins                                                                                                                                                                                                                                      |
|---------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. The ornamental design for footwear, as shown and described.                                    | Skechers makes and sells footwear exhibiting the ornamental design as shown and described. For instance, Skechers Hands Free Slip-Ins <sup>1</sup> such as Summits High Range models are footwear exhibiting the ornamental design of claim 1 as set forth below. |
|  <p>FIG. 1</p> |  <p>Photo of Summits High Range medial side.</p>                                                                                                                              |

<sup>1</sup> On information and belief, the infringing Skechers Hands Free Slip-Ins design is implemented in many models that exhibit similar features. For instance, as discussed in HFL's Infringement Contentions Cover Pleading, for purposes of the asserted claims, the Summits – High Range model is representative of substantially similar looking models.





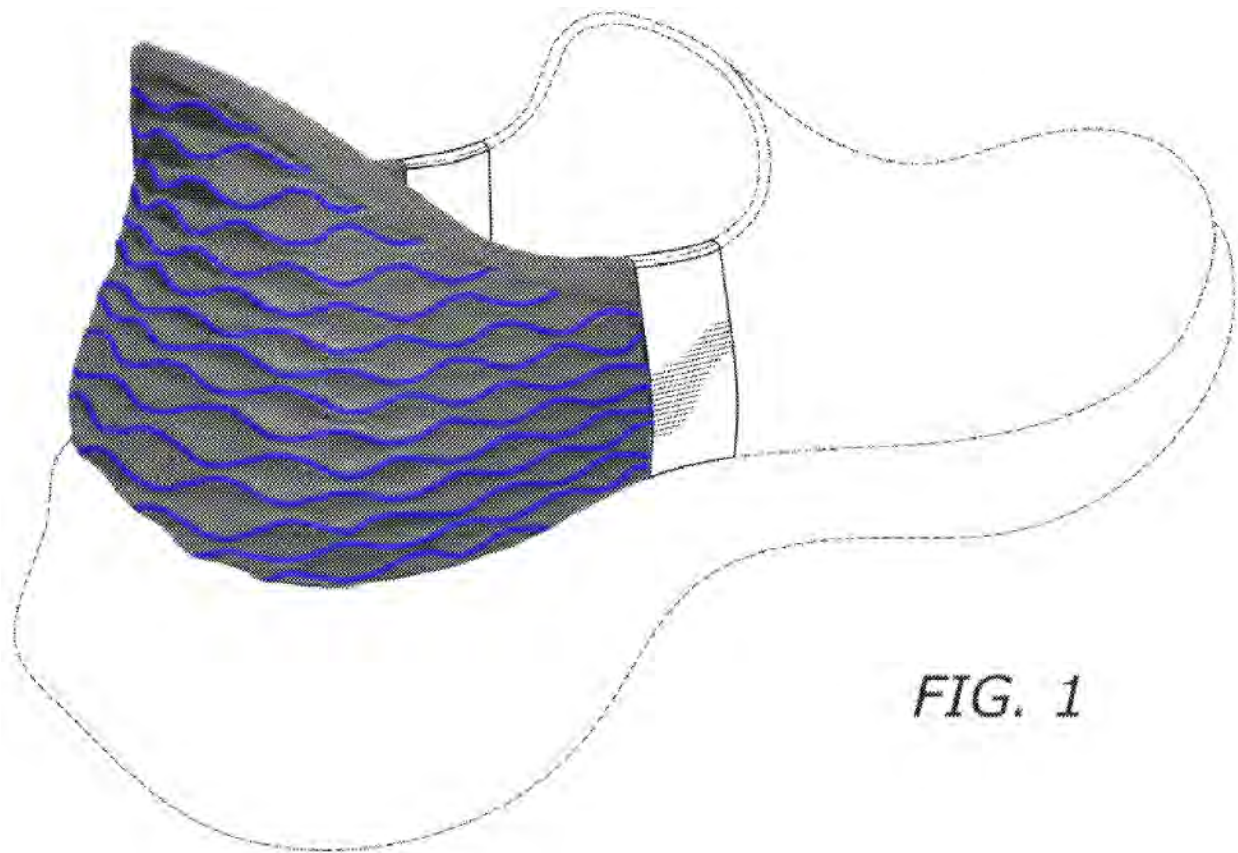
EX1007. As shown in the claim chart above and in FAST IP's infringement contentions, Weeks and the D'641 patent each describe a patterned element on the heel of a footwear upper.

Weeks constitutes a proper primary reference because it is an article of manufacture from "same field of endeavor as the claimed ornamental design." *LKQ Corp.*, 102 F.4th at 1298. Differences between Weeks and the claimed design do not preclude its use as a primary reference; there is no threshold similarity requirement for a reference to qualify as prior art, and a "primary reference need not be "basically the same" as the claimed design." *Id.* at 1296-1298.

In the underlying litigation, Skechers contends there are differences between the Weeks design and the D'641 patent that defeat infringement. However, those differences are consistent with Petitioner's position that Weeks, combined with the

below-described features of Spine, discloses a heel pattern that is substantially the same in overall appearance to the D'641 Patent.

For clarity, while Weeks discloses a patterned element on the heel, the Weeks design does not include a *lattice structure with diamond shaped openings*. Rather, the Weeks design includes a pattern comprised of horizontal, non-overlapping rows of sinusoidal waves. For example, perspective views of the Weeks patent and D'641 patent are compared below, with their patterns highlighted blue by Petitioner:



EX1002 (Weeks), Fig. 1;

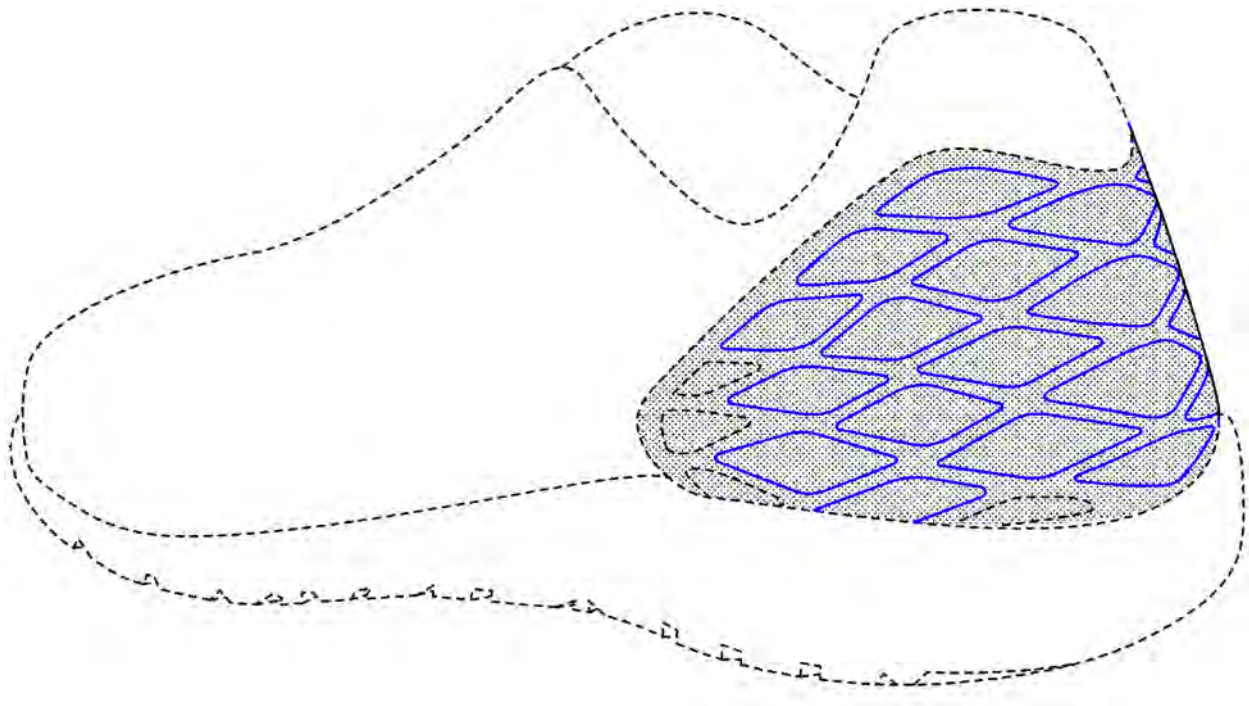


FIG. 4

EX1001 (D'641), Fig. 4.

Moreover, to the extent the non-overlapping sinusoidal waves in Weeks form any shapes, they are formed from the 3D molding of the sinusoidal wave pattern, which is visually and materially distinct from the 2D diamond shaped cutouts claimed in the D'641 patent. Further, in the Weeks design, any shapes that are formed by the sinusoidal waves are all connected together in one long row, rather than individual divided shapes as in the D'641 patent. See EX1021, ¶42:

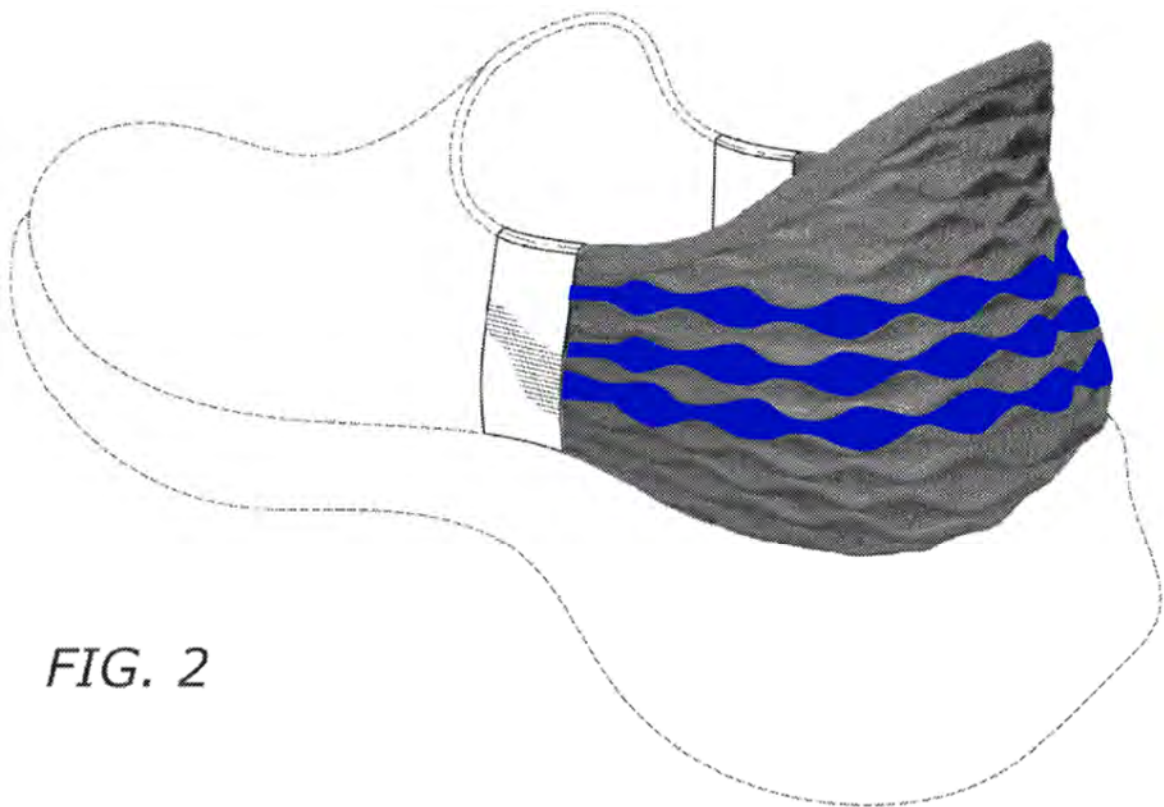


*FIG. 2*

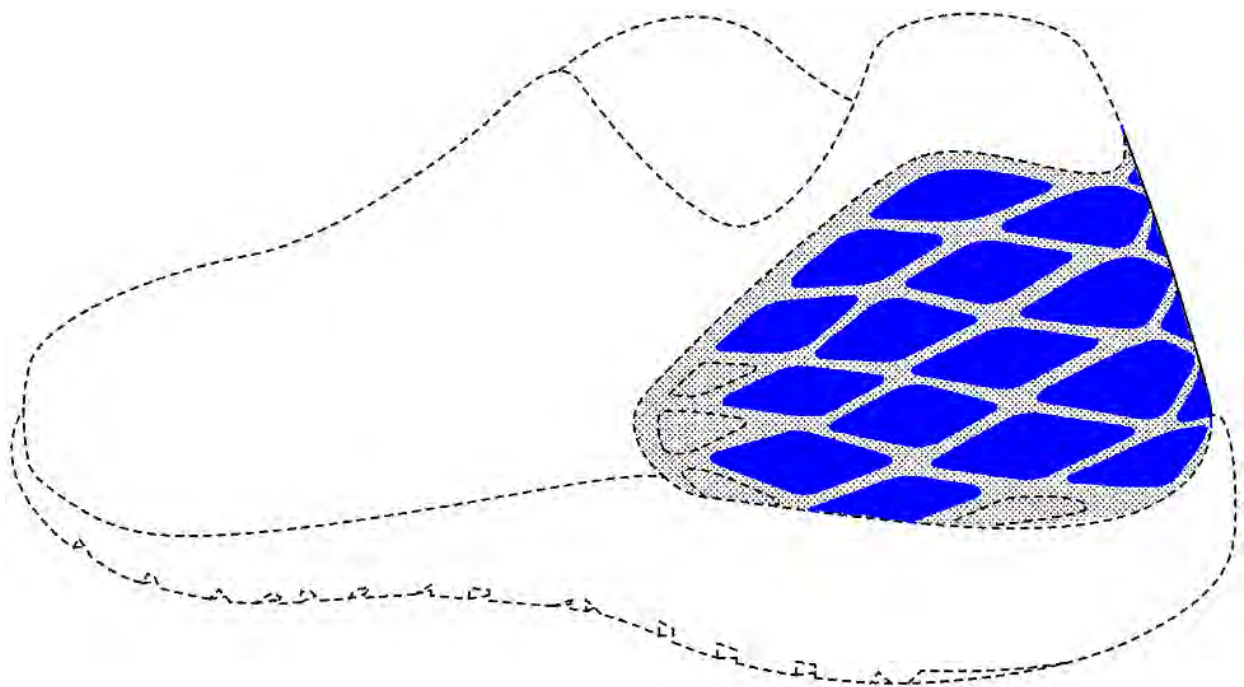


**FIG. 4**

EX1002 (Weeks), Fig. 2; EX1001 (D'641), Fig. 4. Nonetheless, as discussed further below, the foregoing features missing from Weeks are expressly disclosed in Spine and would have been obvious to combine with Weeks.

Additionally, the Weeks design consists of structural 3D molding and does not describe a ***material overlayed on an lattice structure that creates a substantially flat outer surface***, as is required by the D'641 patent:

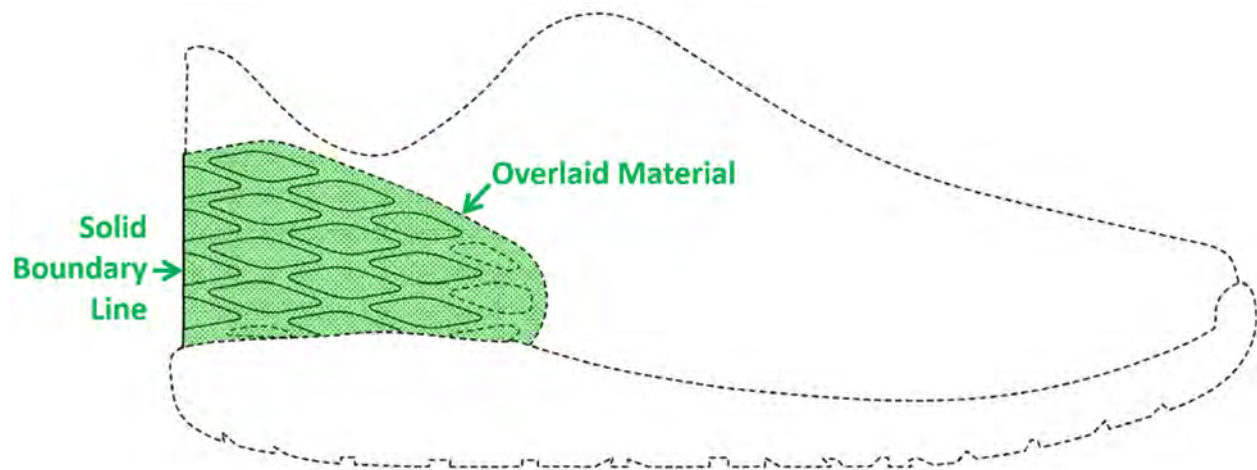
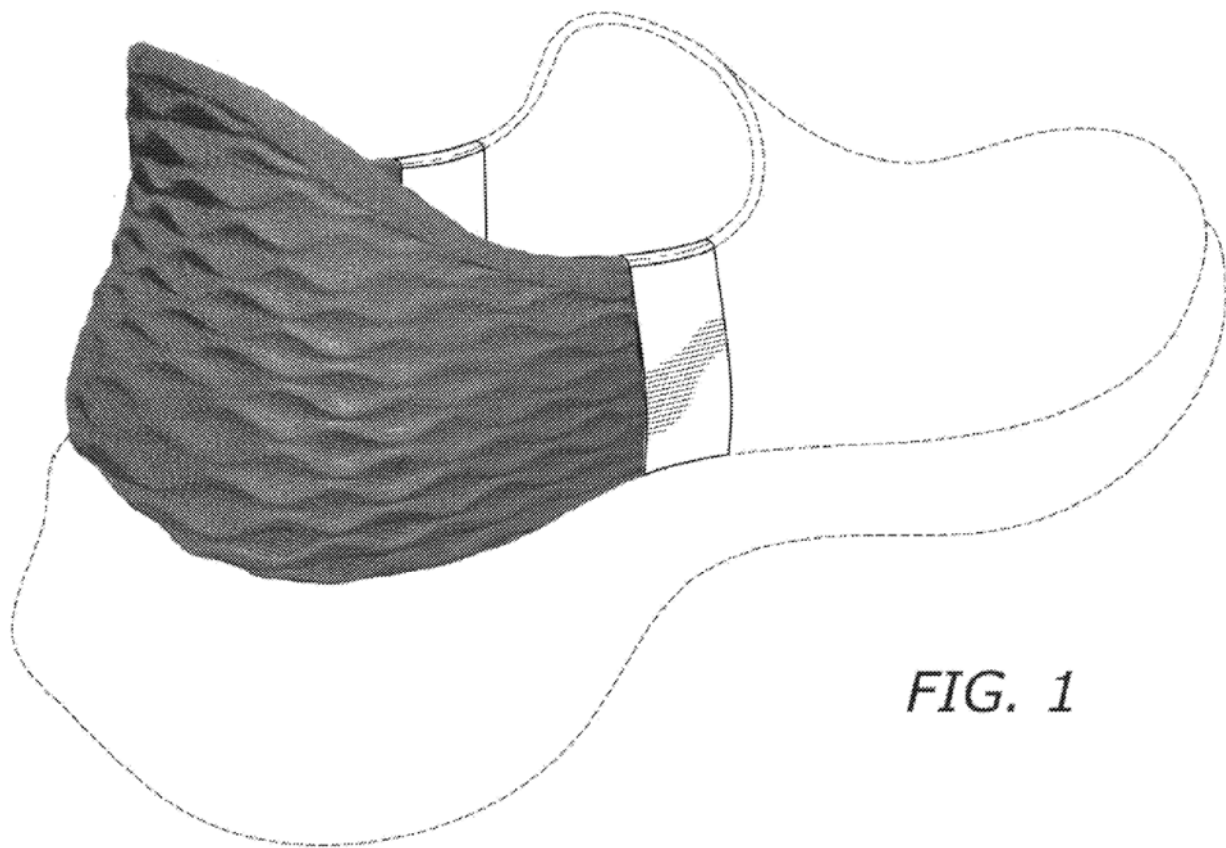


FIG. 1

EX1001 (D'641), Fig. 1. In contrast to the flat outer surface of the D'641 patent's claimed area, the outer surface of the patterned area in Weeks is characterized by prominent valleys between its sinusoidal waves, as indicated by prominent shadows that are plainly visible in Weeks' figures:



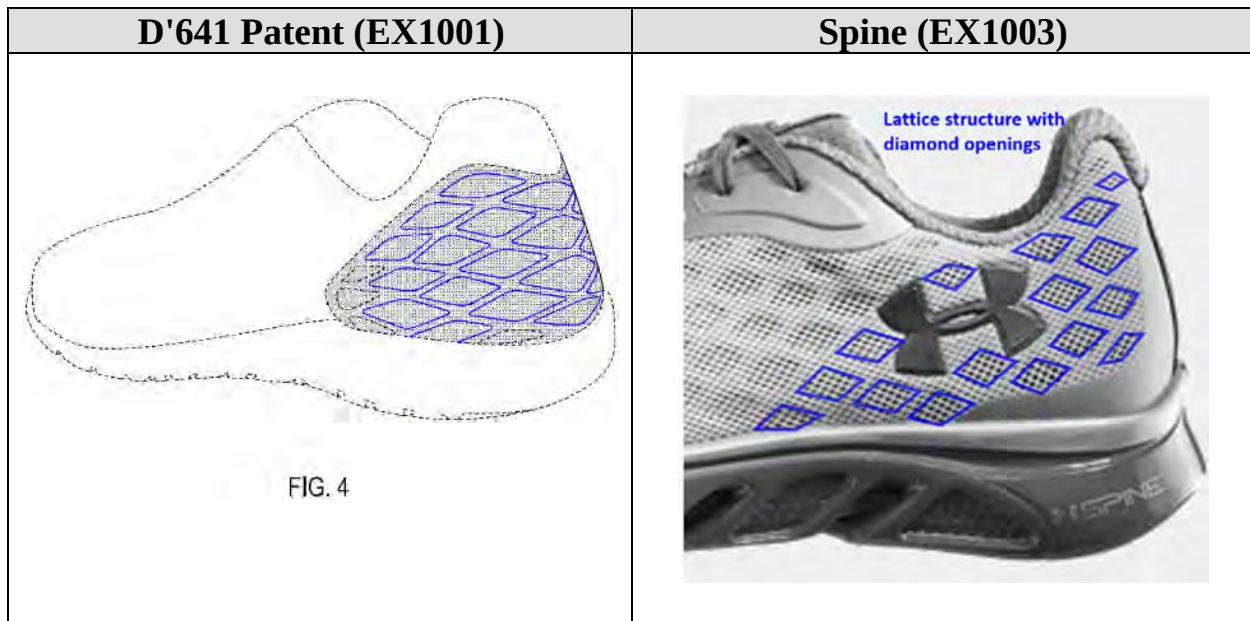
EX1002 (Weeks), Fig. 1. Nonetheless, these features missing from Weeks are expressly disclosed in Spine and would have been obvious to combine with Weeks.

## 2. *Spine*

Spine discloses both a ***lattice structure with diamond shaped openings*** and a ***material overlaying the entire lattice rendering its outer surface substantially flat.*** See *LKQ Corp.*, 102 F.4th at 1299 ("Where a primary reference alone does not render the claimed design obvious, secondary references may be considered.").

### a) *Lattice Structure*

Spine discloses a shoe comprising a ***lattice structure with diamond shaped openings***, including at the heel.



EX1001, Fig. 4; EX1003, 4 (cropped, converted to greyscale, and annotated with blue markings).

A DOSA would have found it obvious to modify the pattern in Weeks by replacing its molded sinusoidal waves with Spine's lattice structure with diamond shaped openings. EX1021, ¶54. A DOSA's motivation to make these modifications, and expectation of success, are discussed in Part IX.A.3 below.

### ***b) Material Overlay***

Spine further discloses a ***material overlaying its entire lattice structure that creates a substantially flat outer surface.*** Spine's breathable mesh fabric bridges the gaps across the diamond openings of the lattice structure, rendering the outer surface of the lattice area substantially flat.

**D'641 Patent (EX1001)**

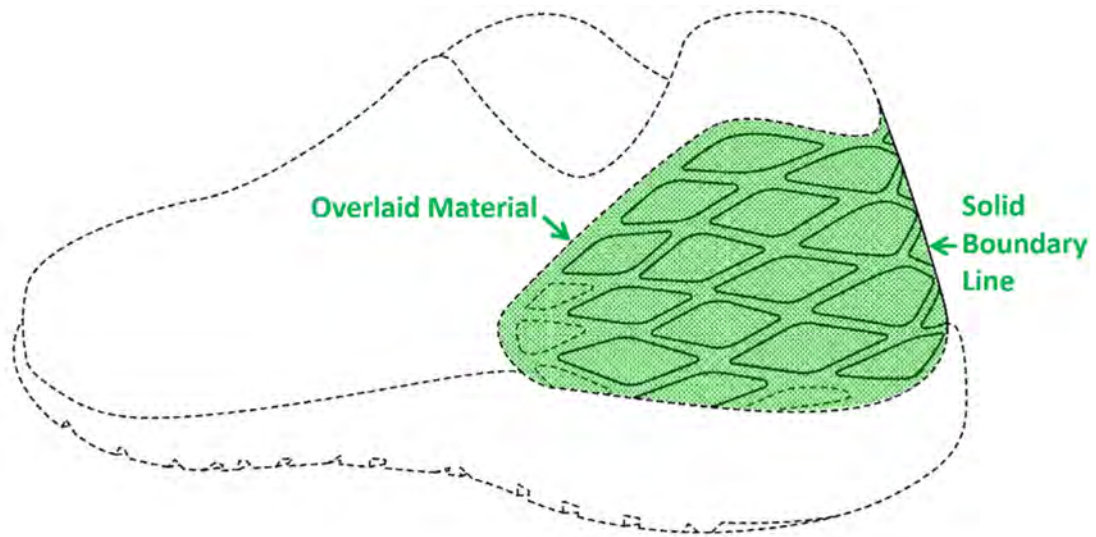
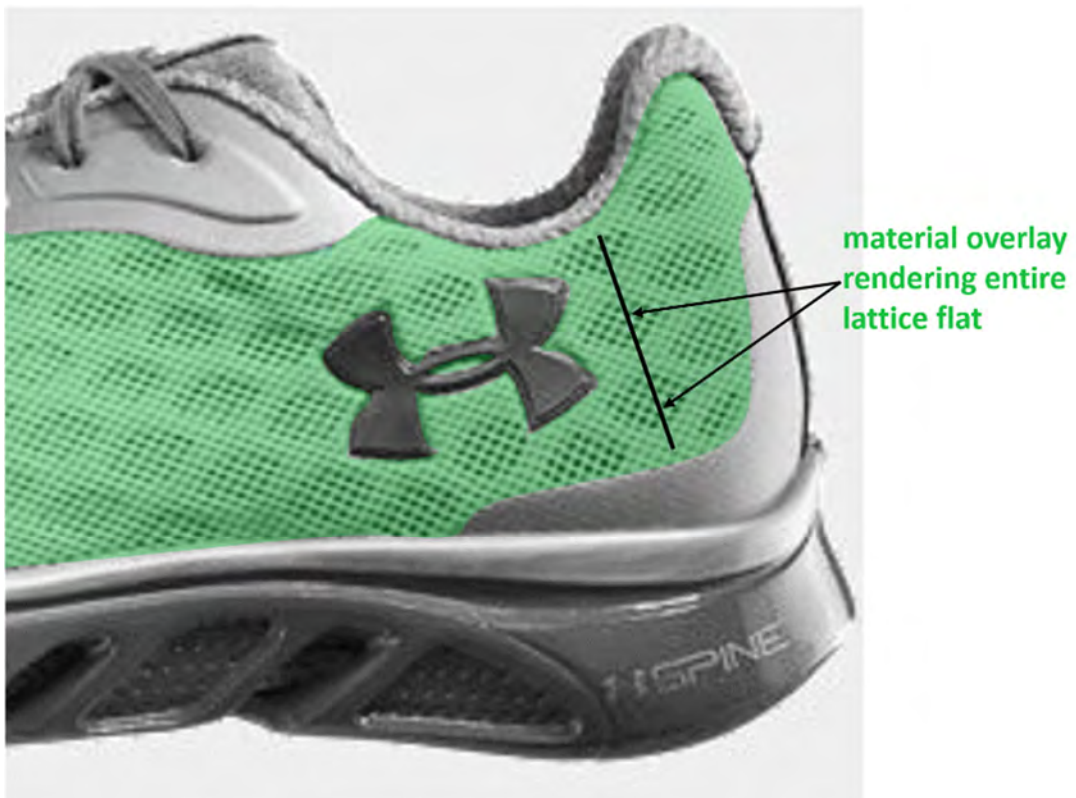


FIG. 4

**Spine (EX1003)**



EX1001, Fig. 4; EX1003, 4 (cropped, converted to greyscale, and annotated with green and black markings).

Accordingly, a DOSA would have found it obvious to modify the ***patterned heel element*** of Weeks by (a) changing Weeks' sinusoidal waves pattern to a ***lattice structure with diamond shaped openings*** as in Spine, and (b) wrapping it with a ***material overlay that renders the outer surface substantially flat*** as in Spine.

A DOSA's motivation to make these modifications, and expectation of success, are discussed further below.

### ***3. Combining Weeks and Spine***

It would have been obvious to a DOSA to modify the Weeks design with Spine's lattice structure with diamond shaped openings and Spine's material overlay. A DOSA would have been motivated to make these substitution and layering modifications to achieve a similar overall visual impression to that claimed by the D'641 patent—a lattice structure with diamond shaped openings on the heel of an article of footwear, with a mesh overlaying the entire lattice that renders its outer surface substantially flat.

A DOSA would have been motivated to combine these features of Spine with the Weeks design in the manner described based on at least (1) the similarity of the Weeks and Spine shoes as a whole, (2) the design incentives favoring lower-cost

shoes with broader commercial viability (a "Takedown Design" strategy<sup>8</sup>) and industry standards favoring use of diamonds instead of sinusoidal waveforms; and (3) "respond[ing] to a real-world aesthetic trend" by adding diamond shaped openings and a material overlay to an existing pattern. *See Diode Dynamics, LLC*, 2025 WL 2827023, at \*6. Each of these motivations is discussed below in turn.

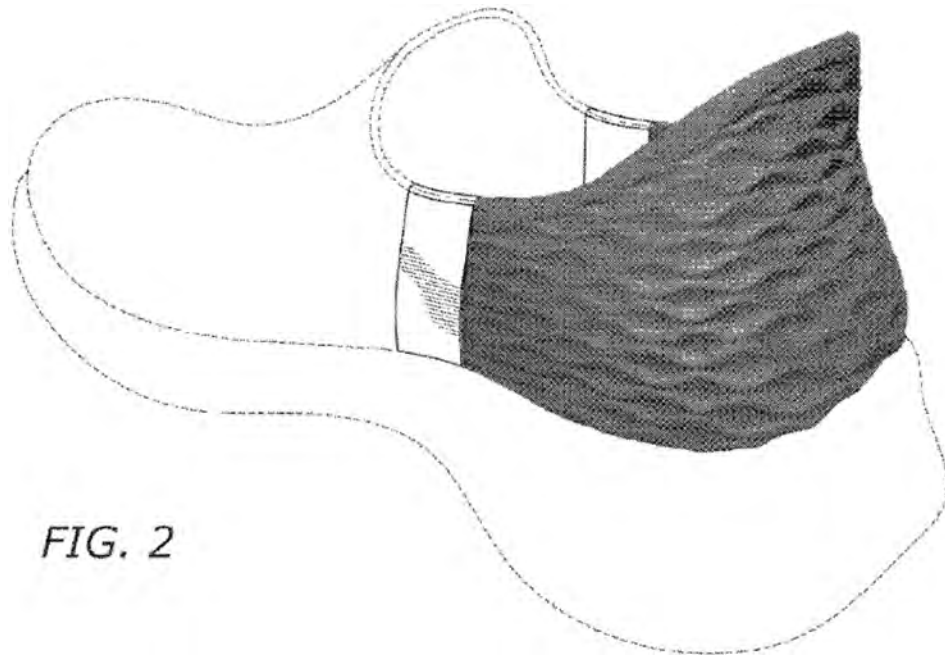
***a) Similarity of Weeks and Spine***

A DOSA would have been motivated to combine the Weeks design with Spine's diamond-shaped lattice structure and material overlay because Spine and Weeks are similar to one another in visual appearance. *Cf. LKQ Corp.*, 102 F.4th at 1299 ("the more different the overall appearances of the primary reference versus the secondary reference(s), the more work a patent challenger will likely need to do to establish a motivation to alter the primary prior art design in light of the secondary one and demonstrate obviousness"). Both disclose sneakers, specifically athletic performance footwear, and both have a patterned section on the back half of the

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<sup>8</sup> See EX1021, ¶43. Flagship sneakers are "packed with the latest in cutting-edge technology or fancy styling [and] [w]hile these products represent the peak of footwear design and engineering, they are usually reflected by a high retail price." EX1045, 1. Takedown sneakers are "[g]enerally marketed at the entry-level sneaker market, or kid's-sized versions, [that often] feature the trickle-down design and aesthetic features that their flagship counterparts contain." *Id.*

upper around the heel, which wraps from the heel onto the sides of the shoe. Both sections also use a pattern motif where the shapes are horizontally elongated.



***b) Manufacturing, Costs Savings, and Commercial Considerations***

A DOSA would have been motivated to modify Weeks with Spine's diamond shaped openings and material overlay to reduce manufacturing costs and improve commercial viability, while maintaining a related design aesthetic. These changes would have been aligned with strategies commonly implemented by footwear designers to create Takedown Models. EX1021 ¶¶48-49.

A DOSA would understand the heel pattern of Weeks to result from an injection molded heel counter,<sup>9</sup> while Spine RPM relies on die-cut 2D heel counters. *See, e.g.*, EX1021, ¶¶42-44; EX1047, 5 ("heel counters are injection molded and have a 3D shape" while "Thermo-Sheets are die-cut 2D counters which are leveled to the last shape via heat and pressure"). A designer looking at a premium 3D heel counter design<sup>10</sup> like Weeks would find it obvious to flatten the architecture into a 2D pattern to meet lower cost targets for a casual sneaker. Shifting a design from a complex 3D molded profile to a flat 2D panel sheet treatment is the standard method

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<sup>9</sup> EX1054, 3 (Manufacturers rely on injection molding to create "unique designs and features [that] can be easily incorporated to meet specific requirements."); *id.*, 4 ("Brands can leverage injection molding to create unique and distinctive products"). For information on the 3D injection molding process through which molded designs such as Weeks are generally created, *see also* EX1053, EX1055, and EX1056.

<sup>10</sup> *See* EX1048, 3 ("For a better fit, a shoe factory may use a 3D injected plastic part instead of the sheet cut goods.").

used by designers to execute a lower-priced shoe. EX1021, ¶49; *see also* EX1047, 6 ("Generally speaking, thermo-sheets are preferably used for casual footwear, where the component price is usually a more important criterion").

3D molding of non-standard shapes, such as the sinusoidal waves in Weeks, is a complex and cost-intensive process. EX1021, ¶¶42, 47-48. EX1043, 13-14 ("Tooling costs for injection molding are very high and depend on a number of parameters and design complexity" and "complex part designs with intricate geometries require complex molds to execute the project."). Cost reduction, especially in view of the cost-efficient alternative of die-cut 2D heel counters, would have prompted a DOSA to replace the molded heel counter of Weeks with a thermo-sheet heel counter as taught in Spine. EX1047, 5 ("Still, there are advantages of thermo-sheets, making them attractive: cost effectiveness and flexibility. The construction of a thermo-sheet tooling (cutting die) costs less than a heel counter mold, and is herewith more flexible when it comes to design changes. Therefore, thermo-sheets usually have a lower unit price.").

Designers in the footwear industry, particularly those working for large retailers well-versed in the design and manufacture of Takedown models, would treat manufacturing costs such as assembly and tooling as rigid design constraints. EX1021, ¶47. *See* EX1044, 3 (explaining that "price target, [and] retail strategy" are determined at initial kickoff meetings before design work begins). Modifying

Weeks by replacing the injection molding with the die-cut 2D counters of Spine would have been aligned with known cost-saving practices, and thus aligned with these design-for-cost and Takedown Design strategies. EX1021, ¶¶41, 46-49.

Spine uses a flat 2D lattice structure with diamond shaped cutouts to create a similar pattern to the Weeks design. *See* Part IX.A.3.a, *supra*. A DOSA would have understood that the visual effect of a dimensional pattern on the heel could be recreated through a flatter cut-sheet or thermo-sheet construction. EX1021, ¶¶47-48. Indeed, shoe designers have long used flat perforations or cutouts to evoke more dimensional construction. *Id.*; *see also, e.g.*, EX1046, 1 ("The perforated material on the uppers (. . .) adds more depth to the design, as the perforations work as a type of minimalist pattern on the uppers.").

Bypassing the significant manufacturing costs of 3D injection molding would allow for broader production of the design. EX1042, 2 ("Simplifying the construction, assembly or working process of a design can reduce labor cost, increase output (amount of pairs per day) and decrease QC issues, all of which reduce product cost. Work with the factory developers and commercialization experts to make a shoe easier to produce."). These lower costs, for both creator and consumer, would have enabled the design to be more widely available and thus more commercially viable and a more attractive choice to a DOSA. EX1021, ¶ 50; EX1045, 1 ("[I]n an age of stagnating incomes and the rising cost of living, not

everyone can afford to sink a chunk of their pay cheque into a pair of sneakers every month – if not every week. This is where the takedown model comes in"); EX1042, 2 ("Everyone wants lower footwear product costs. Brands, consumers, suppliers.").

Moreover, changing the unique sinusoidal waveforms of the Weeks design to the standardized diamond pattern seen in Spine represents a known solution to a common design problem. To mitigate the material and design costs described above, DOSAs often rely on standard materials catalogs or "swatch books" from suppliers to standardize designs, and diamond patterns are incredibly common in stock materials.<sup>11</sup> EX1021, ¶¶53-54. Suppliers often have stock diamond textures produced in mass. *Id.*, ¶53. Selecting a generic stock diamond texture from a supplier's catalog thus would have been an obvious way to make a lower-priced shoe. *Id.*, ¶54.

Designing around standard tools and stock materials keeps the supply chain simple and cost predictable. Because diamond textures are common stock materials that are often pre-designed by manufacturers, changing Weeks' waveforms to a diamond lattice would have been a standard, predictable refinement to an existing design. EX1021, ¶49, 54.

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<sup>11</sup> See, e.g., EX1058, available at <https://www.mesh1978.com/jh11040-xsj-jacquard-nylon-diamond-mesh-for-sport-shoes-product/>.

Thus, a DOSA designing a lower-cost shoe would have had a straightforward reason to replace the custom molded sinusoidal wave pattern of Weeks with a diamond pattern that could be made from more standardized materials and tooling.

***c) Functional and Aesthetic Considerations***

Functional considerations, in tandem with aesthetic trends, would have further motivated a DOSA to modify Weeks with Spine's diamond shaped openings and mesh overlay. A base layer with openings, covered by a semi-transparent mesh layer, would render the outer surface of Weeks substantially flat and breathable, while still showing the aesthetic structure underneath. EX1021, ¶¶56, 60-61.

Mesh is commonly used on shoe uppers for breathability, ventilation, and structure. See EX1035, 2 (diamond-patterned mesh gives fabric "both breathability, lightweight performance, and structural support" and is "widely used in shoe uppers"); EX1051, 3. A lattice made of perforations/openings would also create more breathability in the shoe. EX1046, 1 ("The perforated material on the uppers meanwhile makes the offerings more breathable -- allowing consumers to wear the sneakers in varying levels of heat."); *id.*, ("the incorporation of perforated uppers in the sneakers caters to the growing trend of comfort and breathability in footwear").

In general, using flat material overlays to window or flatten structural components of a shoe design (*e.g.*, a lattice structure or diamond pattern), was standard practice in the footwear industry before the purported priority date of the

D'641 patent. EX1021 ¶59. The use of diamond patterns in footwear has been commonplace for centuries, *see* EX1009-EX1012, and diamond patterns with mesh overlays were common design elements in many popular shoes long before 2019. EX1021, ¶58; EX1049, 2 (describing Nike's Pegasus 31, released in 2014, explaining that "[t]he diamond shaped cut-outs have an uncanny resemblance to that of the Nike Free 5.0, and the mesh overlaid heel counter look near identical to the [Nike] Zoom Vomero 9. So, yes the design commonality isn't just a coincidence."); EX1050, 8 ("mesh underlays add that extra design dimension. The diamond shaped window at the base reveals a glimpse of the Flyknit inspired mesh").

Moreover, meshes, knits, and see-through fabrics were aligned with aesthetic trends in the 2010s. For example, in 2017, a shoe with a see-through mesh overlay was considered by a preeminent fashion publication to be the fifth most popular sneaker of 2017. EX1036, 12-14 (GQ's most popular sneakers of 2017).

Substituting the diamond shapes and mesh overlay of Spine for Weeks' sinusoidal waves thus would have preserved the overall appearance of Weeks, while yielding benefits including improved manufacturing costs, improved breathability, and popular aesthetics. This refinement would have been particularly warranted for a pattern covered by a mesh overlay as in Spine, which allows the diamond pattern to remain visible under the overlay.

**B. GROUND 2: Under Its Correct Priority Date, D'641 Is Obvious Over Weeks In View Of Spine And Trainer Knit**

As shown and discussed in Ground 1, Part IX.A.1, which is incorporated here by reference, Weeks describes a patterned element on the heel of a footwear upper, and it is a proper primary reference for obviousness under *LKQ Corp.* See Part IX.A.1, *supra*. As discussed in Part IX.A.2-3 (also incorporated here by reference), the teachings of Spine would have made it obvious to a DOSA to convert the 3D molded sinusoidal wave ***patterned heel element*** of Weeks into a ***lattice structure with diamond shaped openings*** (as disclosed in Spine), covered by a ***material overlaying the entire lattice rendering its outer surface substantially flat*** (as also disclosed in Spine). See Part IX.A.3, *supra*.

For clarity, Skechers notes that Spine's material overlay does not, in that particular design, wrap all the way around the shoe's heel, as the shoe includes a break in the lattice structure at the heel where another design element is present:



EX1003, 4. Nevertheless, for the reasons discussed in Ground 1, it would have been obvious to wrap Spine's material overlay over the entire patterned area of Weeks (just as it wraps over the entire lattice area in Spine), which patterned area in Weeks does wrap all the way around the heel. *See* EX1002, Figs. 1, 3, 4.

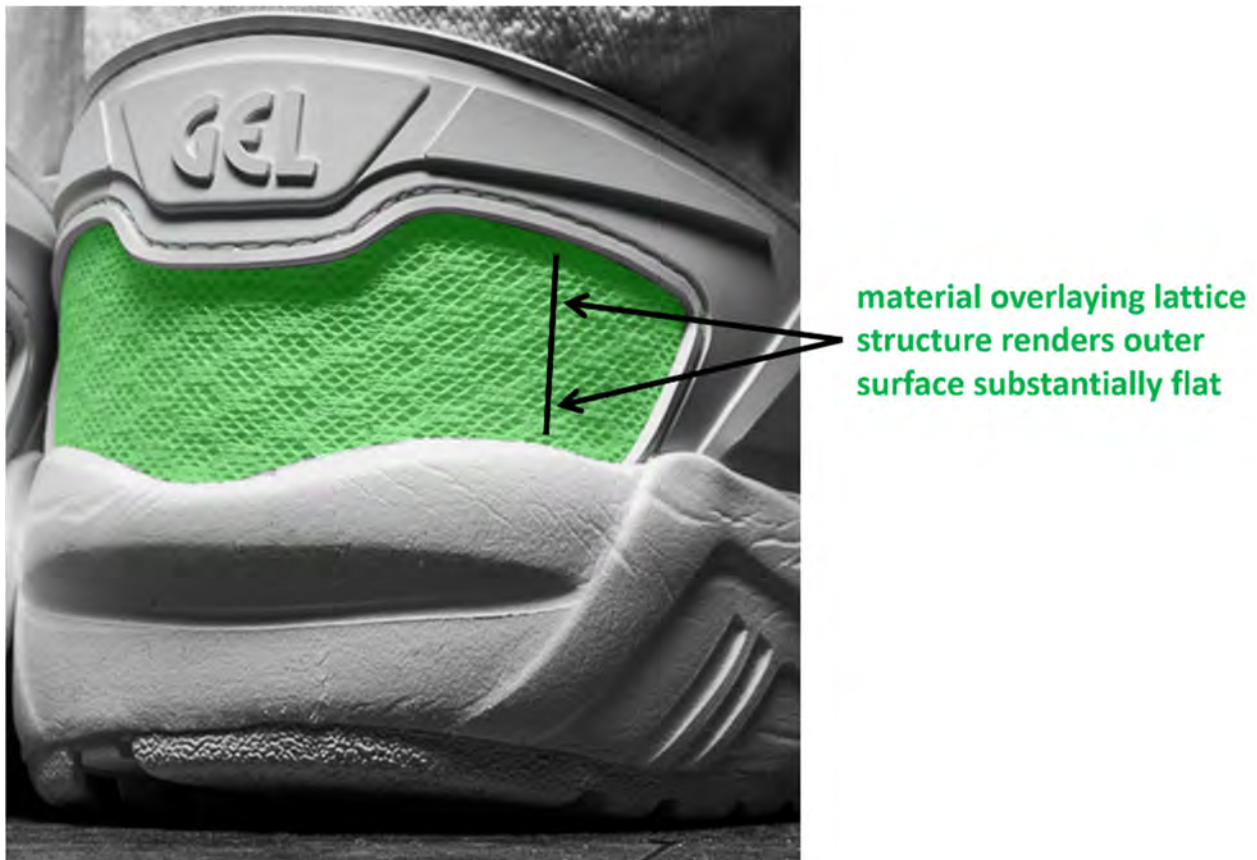
However, even if this modification of Weeks would not have been obvious in view of Spine alone (it would have been), Skechers submits that a DOSA also would have found it obvious to make this modification further in view of Trainer Knit, which expressly discloses a material overlay covering a lattice structure that wraps all the way around the heel, without being interrupted by other design elements:



EX1005, 4.

**1. Trainer Knit**

Like Spine, Trainer Knit discloses a ***material overlaying its entire lattice rendering the outer surface substantially flat***. Additionally, Trainer Knit expressly teaches the wrapping of its material overlay across a lattice structure that extends all the way around the shoe's heel. For example, as shown below, Trainer Knit discloses a mesh fabric overlay that bridges the gaps across the openings of an underlying hexagonal lattice structure, thereby rendering the outer surface of the lattice structure substantially flat, as illustrated below in **green**:



EX1005, 4 (annotated with green color and black markings).

Notably, Trainer Knit includes images that plainly show a *flat boundary line* on the back of the heel, clearly indicating that the material overlaying the lattice structure renders its outer surface substantially flat as required by the D'641 patent:



EX1005, 3 (cropped and annotated with green color and markings).

Accordingly, a DOSA would have found it obvious to modify the ***patterned heel element*** of Weeks by (a) changing Weeks' sinusoidal waves pattern to a ***lattice structure with diamond shaped openings*** as in Spine, and (b) wrapping it with a ***material overlay extending all the way around the heel*** as in Trainer Knit.

A DOSA's motivation to make the foregoing modifications, and expectation of success, are discussed further below.

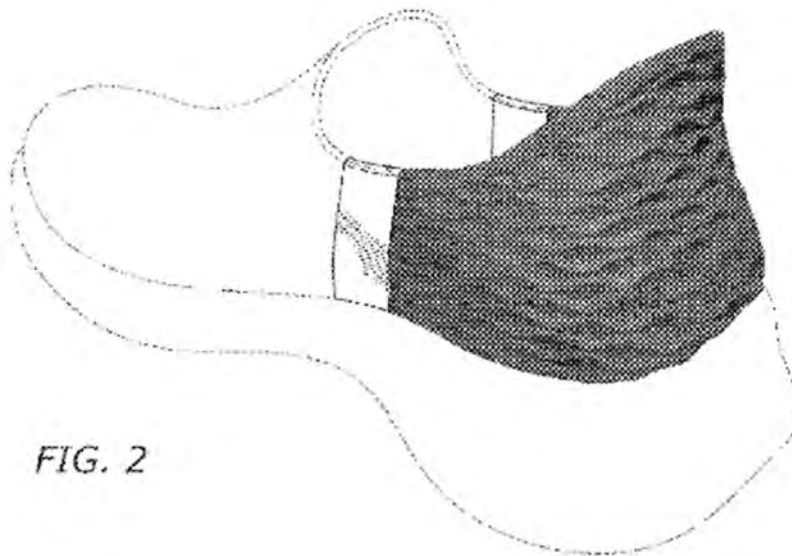
## ***2. Combining Weeks with Spine and Trainer Knit***

As discussed in Part IX.A.3, multiple considerations would have motivated a DOSA to modify Weeks with Spine's lattice with diamond openings and material overlaying the lattice structure. That discussion is incorporated here by reference.

For the reasons discussed below, a DOSA would have also been motivated to further incorporate Trainer Knit's express teaching of wrapping a material overlay over a lattice structure that extends all the way around the heel without interruption.

### ***a) Similarities Between Designs***

A DOSA would have been motivated to make the above combination based on similarities between Weeks and Trainer Knit, as well as between Spine and Trainer Knit. Like Weeks, Trainer Knit discloses a patterned element on the heel:



EX1005, 4 (mirrored); EX1002, Fig. 2.

As shown, the configurations of Weeks and Trainer Knit relative to an article of footwear are highly similar. Both designs teach pattern elements surrounding the heel, extending slightly onto the sides of the upper, but otherwise remaining

relegated to the heel. Both designs are distinct from the footwear upper on which they reside, divided by an intervening design element (highlighted yellow below):

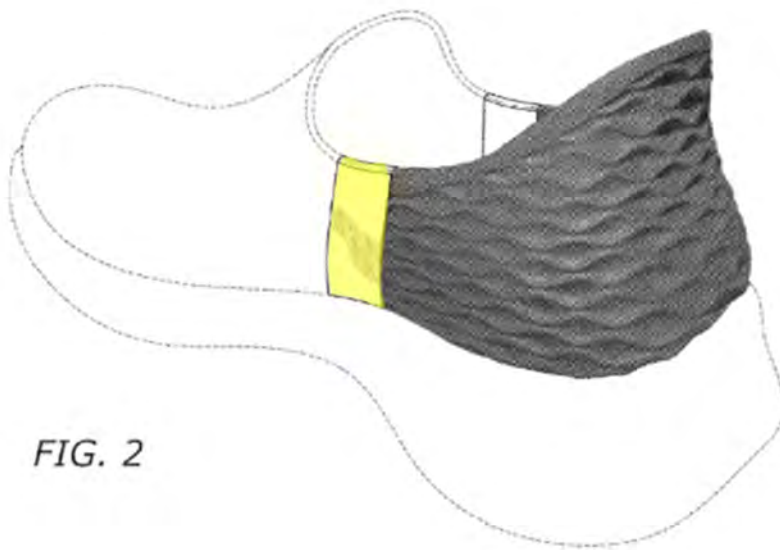


*FIG. 2*

EX1002, Fig. 2 (annotated in yellow); EX1005, 4 (mirrored, annotated in yellow).

Since the patterns of Weeks and Trainer Knit each surround the heel unobstructed, it would have been obvious to take the overlay of Trainer Knit and put it in the same position on Weeks to create the same visual effect. EX1021, ¶64.

A DOSA also would have been motivated to incorporate features of Trainer Knit based on its similarity to Spine. Like Spine, the pattern of Trainer Knit is created by a lattice structure with shaped openings. As shown above in Part IX.B.1., incorporated by reference, Spine and Trainer Knit each discloses a dimensional geometric pattern covered by a semi-transparent mesh overlay, such that the outer surface of the lattice is substantially flat. Both patterns have the same window-like visual effect, in which the shapes (diamonds in Spine, and hexagons in Trainer Knit) are covered by the outer mesh, bridging the gaps of the lattice openings in a manner that renders the outer surface substantially flat.

***b) Additional Considerations***

The motivations for modifying Weeks with Spine's mesh overlay covering the entire lattice, discussed above in Parts IX.A.3.b-IX.A.3.c, would also motivate a DOSA to apply an isolated mesh overlay to the heel pattern in view of Trainer Knit. That discussion is incorporated here by reference.

Like Spine, Trainer Knit uses a flat 2D lattice structure with cutouts to create a similar pattern to the Weeks design. See Part IX.A.3.a, *supra*. As explained, a

DOSA would have understood that the visual effect of a dimensional pattern on the heel could be recreated through a flatter cut-sheet or thermo-sheet construction, and would have known of the manufacturing and cost-saving benefits of making this modification. EX1021, ¶¶47-48.

Trainer Knit's mesh overlay and lattice structure embody the same functional and aesthetic benefits described above, and they are similarly applicable here. In fact, Trainer Knit enforced the popularity of mesh overlay components as they were rising in popularity. EX1005 (Trainer Knit's mesh overlay design, published in 2017); EX1036 (mesh overlay present in GQ's most popular sneakers of 2017).

**C. GROUND 3: Under Any Purported Priority Date, D'641 Is Obvious Over Speedform In View Spine**

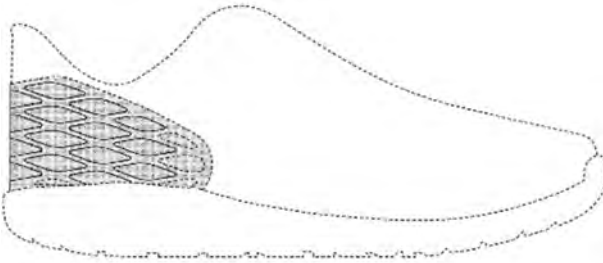
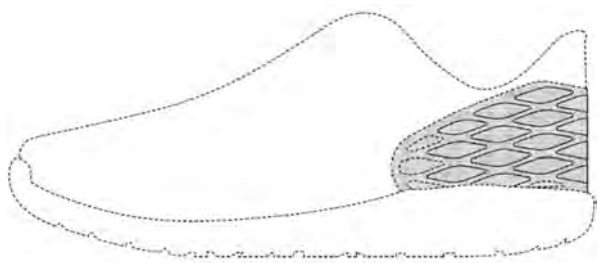
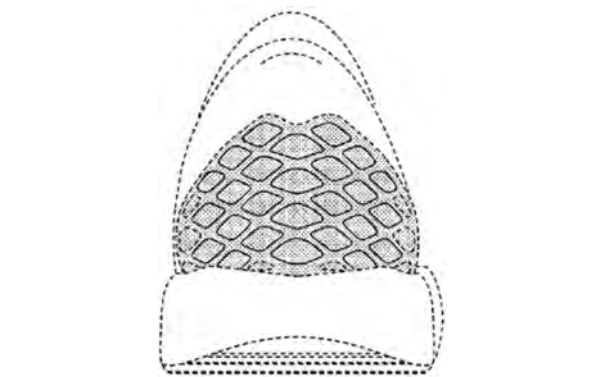
The D'641 patent's claimed design is obvious over Speedform in view of Spine, both of which are prior art regardless of what purported priority date applies. For example, a DOSA would have found it obvious to modify Speedform's *molded pattern* of diamond shapes by (a) converting it into a *lattice structure* with diamond shaped *openings*, as in Spine, and (b) adding *material overlaying the entire lattice structure to render its outer surface substantially flat*, as also disclosed in Spine.

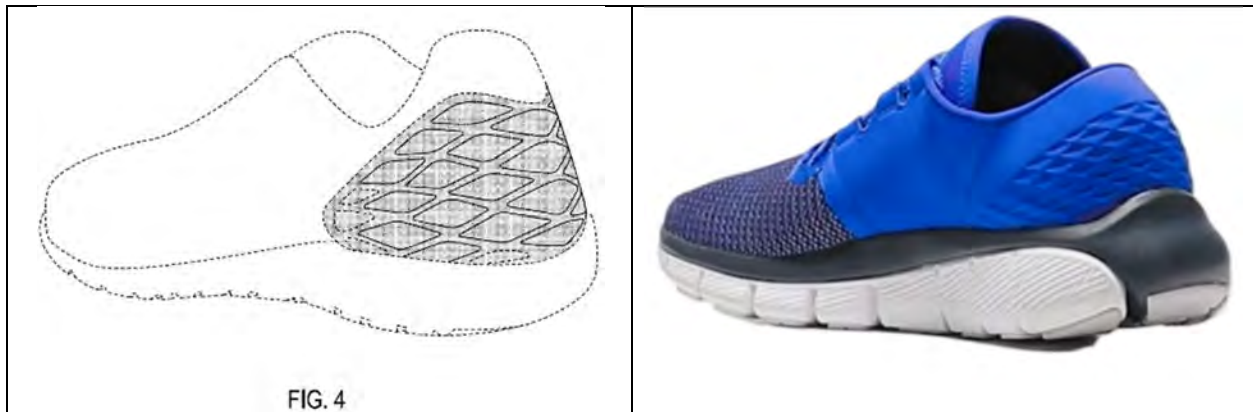
A DOSA's motivations to make the foregoing modifications, and expectation of success, are discussed in detail in Part IX.C.3 below.

**1. Speedform**

**a) Patterned Element On Heel**

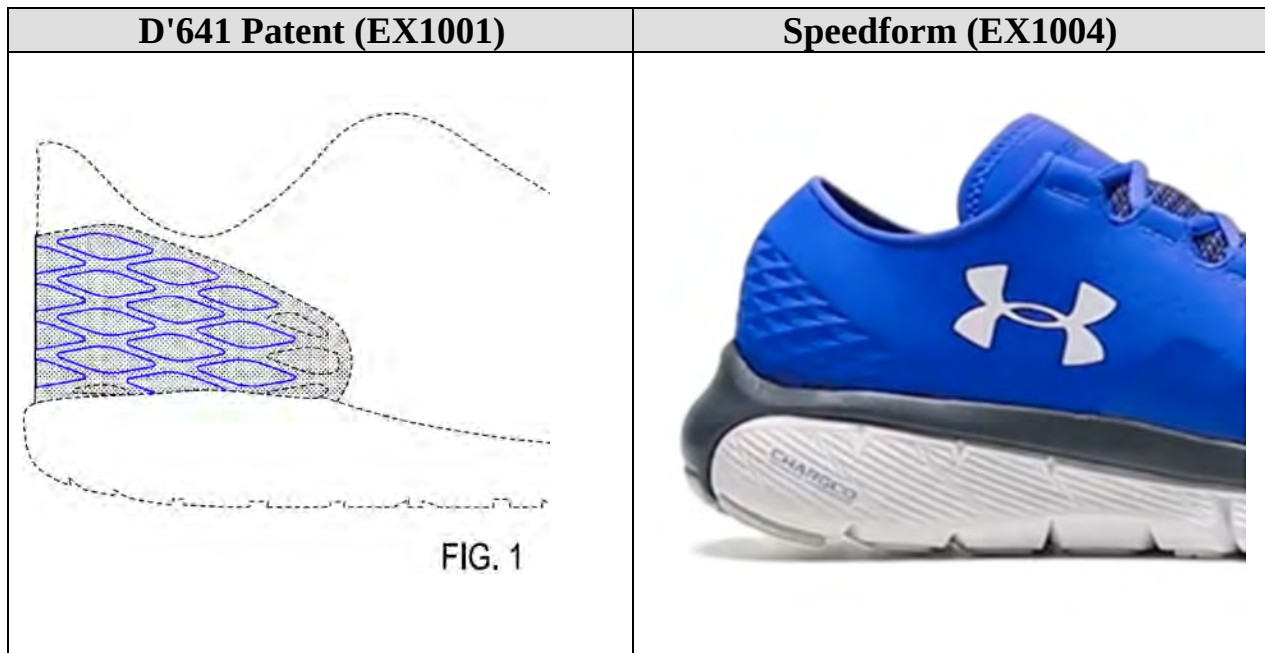
Like the D'641 patent, Speedform plainly discloses a patterned element on the heel of an article of footwear:

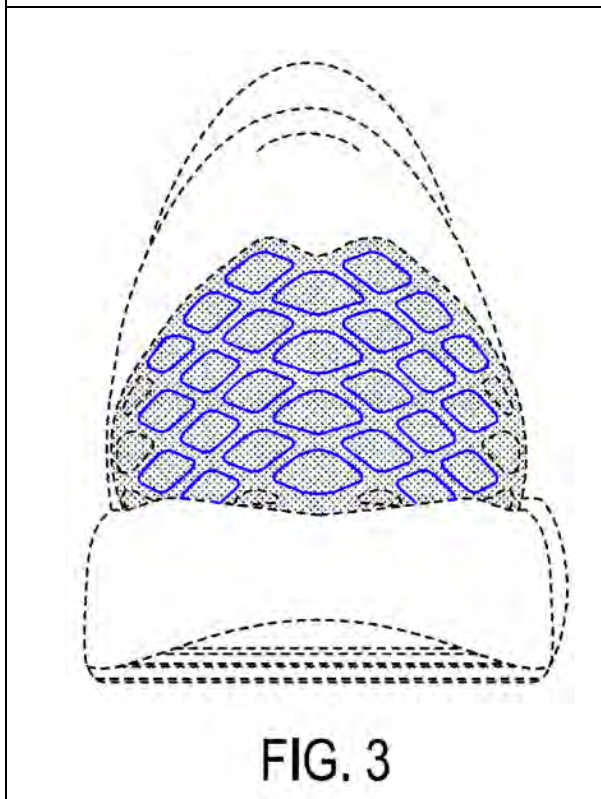
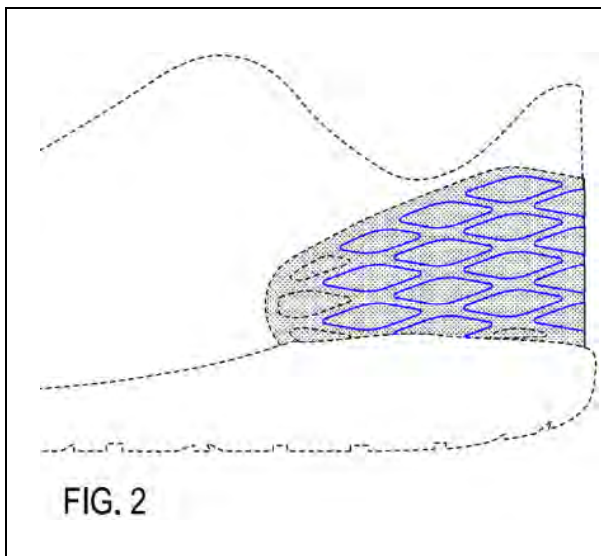
| D'641 Patent (EX1001)                                                                             | Speedform (EX1004)                                                                   |
|---------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
|  <p>FIG. 1</p>   |    |
|  <p>FIG. 2</p>  |   |
|  <p>FIG. 3</p> |  |

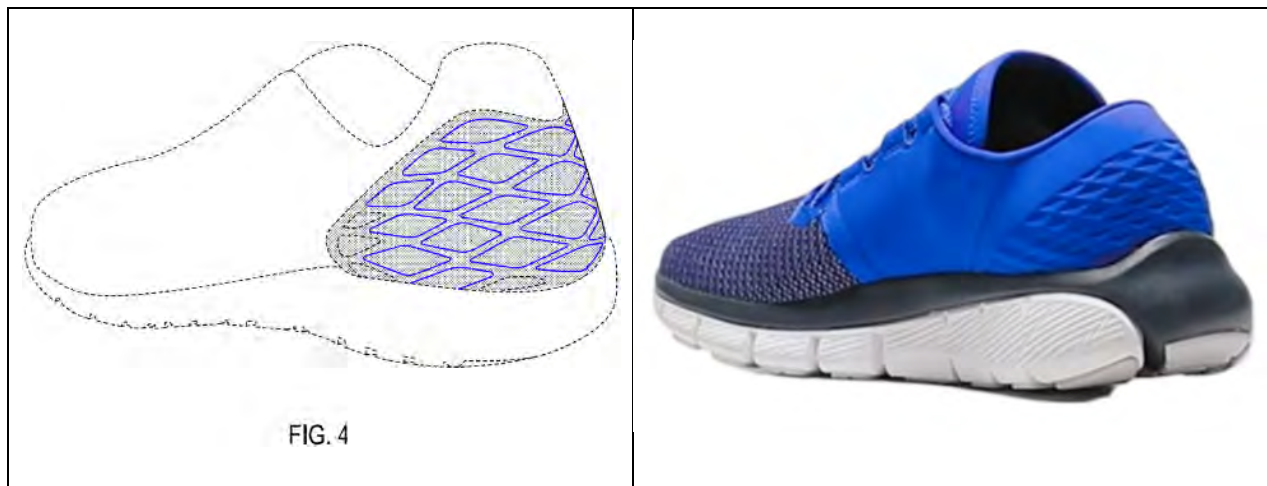


EX1001, EX1022.

In particular, as claimed in the D'641 patent, Speedform discloses a patterned element on the heel comprised of ***diamond shapes***:







EX1001; EX1022 (cropped).

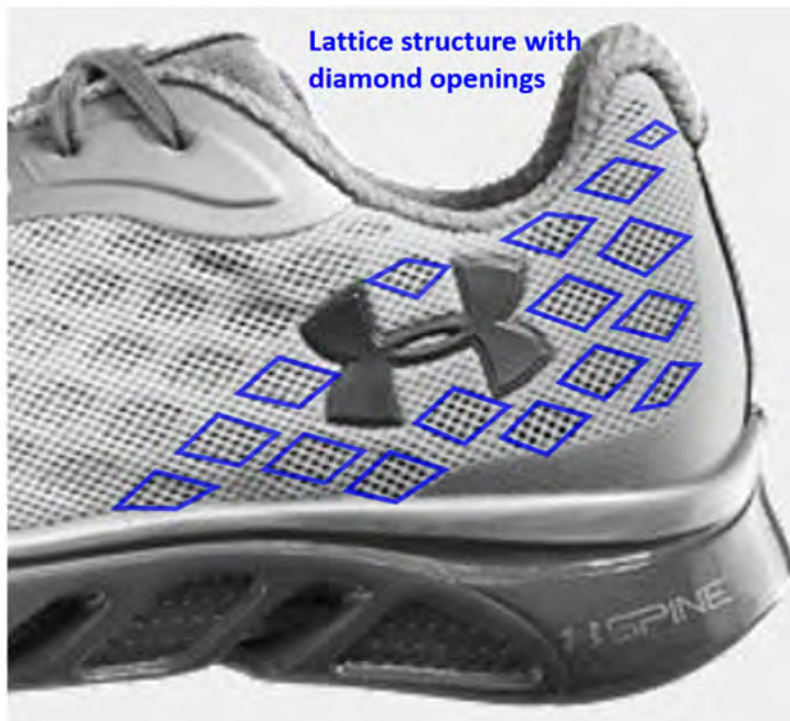
Speedform is an appropriate primary reference under *Graham* and *LKQ* because it is an article of manufacture from the "same field of endeavor as the claimed ornamental design." *LKQ Corp.*, 102 F.4th 1280, 1298. Moreover, Speedform is a strong primary reference on which to base an obviousness inquiry because its overall appearance is visually similar to the claimed design. *Id.* ("The more visually similar the primary reference design is to the claimed design, the better positioned the patent challenger will be to prove its § 103 case.").

Speedform qualifies as a primary reference under *LKQ*. As explained above, there is no threshold similarity requirement for a reference to qualify as prior art, and a "primary reference need not be 'basically the same' as the claimed design." *Id.* at 1296-1298. Indeed, obviousness determinations often rely on secondary references to disclose certain features of the claimed design. *Id.*

For clarity, Speedform does not disclose a ***lattice structure*** with diamond openings,<sup>12</sup> or a ***material overlay rendering its outer surface substantially flat***. However, but both of these features would have been obvious to incorporate in view of Spine. As discussed below, a DOSA would have been highly motivated to apply these teachings of Spine to the diamond heel pattern of Speedform.

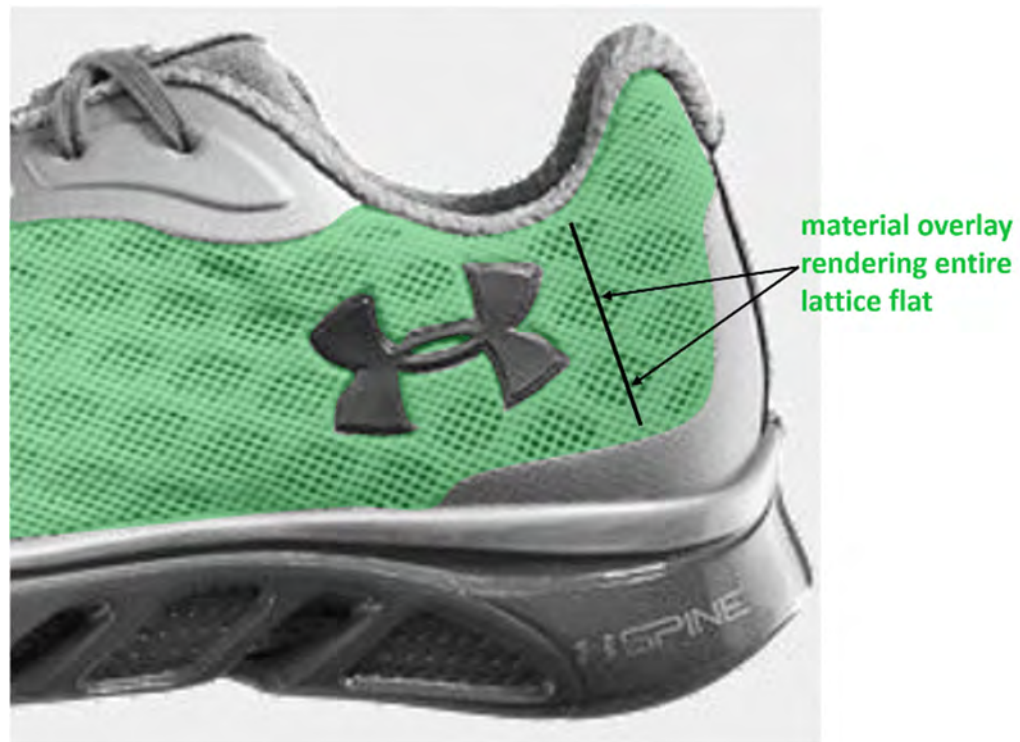
## 2. *Spine*

As discussed in Ground 1, Part IX.A.2, Spine discloses a ***lattice structure with diamond openings*** and a ***material overlaying the entire lattice structure rendering its outer surface substantially flat***. Skechers incorporates by reference the discussion of Spine set forth in Ground 1, which applies equally here. *See also, e.g.:*



---

<sup>12</sup> The diamond pattern of Speedform was created through a 3D injection molding process. *See* EX1052-1056.



EX1003, 4 (cropped, converted to greyscale, and annotated with blue, green and black markings).

A DOSA would have found it obvious to modify the diamond heel pattern of Speedform with the above features of Spine. Although Speedform does not disclose a lattice structure with diamond openings, it does disclose a pattern of uniformly configured diamonds, which would have been obvious to reconfigure into a lattice structure in view of Spine. Moreover, Spine's diamond lattice openings would have made it obvious to convert the molded diamond shapes of Speedform into lattice openings. Spine also would have made it obvious to include a material overlay on top of the lattice to render its outer surface substantially flat. A DOSA's motivation to make these modifications, and expectation of success, are discussed further below.

### **3. *Combining Speedform and Spine***

#### **a) *Similarity of Speedform and Spine***

The high degree of visual similarity between Speedform and Spine would have motivated a DOSA to alter Speedform by implementing the teachings of Spine. Both disclose shoes that are highly similar in form factor: each have a low-profile, an upper with a textural component and a pattern element, a prominent side logo, a rubber outsole, a lace closure, and a rounded toe.



EX1022, 1; EX1003, 4.

Speedform and Spine were designed and manufactured by the same company (Under Armour), for the same use (running). EX1024-EX1025, EX1032. Both were on the market in the early-to-mid 2010s, and in addition to their visual similarities, Speedform and Spine share common technical features. *See* EX1033 19-20 (discussing Micro G foam in Speedform); EX1034, 2 (discussing Micro G Foam in Spine).

Taken together, these commonalities would have motivated a DOSA to modify the molded diamond pattern of Speedform with the diamond lattice structure and material overlay of Spine. *See Laird Techs., Inc. v. GrafTech Int'l Holdings, Inc.*, No. IPR2014-00024, Paper 46 at 30–31 (P.T.A.B. Mar. 25, 2015) (finding motivation to combine references "created by the same company," and noting that "the obviousness analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.").

***b) The Takedown Design Method***

Similar to the Weeks design described above, creating the molded diamond pattern of Speedform necessitates a costly 3D molding process. The manufacturing and cost-efficiency considerations described in Part IX.A.3.b would have similarly motivated a DOSA to replace this expensive molding process with the inexpensive

2D lamination manufacturing method of Spine. That discussion is incorporated here by reference. *See* Part IX.A.3.b, *supra*.

A DOSA would have been further motivated to create a lower-priced, more commercially viable version of Speedform in view of Spine because Spine would have provided a concrete, directly applicable, lower-cost alternative manufacturing method for a Takedown Model. *See* EX1021 ¶¶46-49. Speedform and Spine are both Under Armour running shoes originating from related product lines, and they each implement a similar diamond pattern design motif. *Id.* As explained above, footwear designers routinely translate complex, high-end design features from a flagship shoe into more easily manufactured versions for broader commercial use. EX1041, 4 ("You can find [Takedown] sneakers in your traditional outlets and brand boutiques, but they can also be discovered at discount retailers and big box sports specialty stores.").

Thus, a DOSA would have been motivated to look to Spine to execute a Takedown Design for Speedform by using Spine's thermo-sheet tooling to create a lower-priced, simplified version of Speedform (a premium shoe of the same brand) that retains recognizable design cues while using more economical materials, construction, and technology.

Speedform is a premium grade shoe for which Under Armour uses a Level 2 3D heat-press molding process to create a structural 3D diamond heel component.

EX1021, ¶40. In Spine, Under Armour used a Level 3 flat heat-press lamination technique—die-cutting diamond windows out of a flat skin layer over a base fabric—which mimics the Speedform look while keeping the panel architecture flat. This construction is cheaper and more viable for mass production than Speedform. EX1047, 5 ("The construction of a thermo-sheet tooling (cutting die) costs less than a heel counter mold, and is herewith more flexible when it comes to design changes. Therefore, thermo-sheets usually have a lower unit price.").

In order to manufacture Speedform at a lower price point than required by its 3D molded design, a DOSA would have been motivated use the flat assembly technique of Spine instead—die-cutting diamond windows out of a flat skin layer over a base fabric, to mimic the overall visual appearance of Speedform while keeping the panel architecture completely flat.

***c) Functional and Aesthetic Considerations***

As explained in Part IX.A.3 above, functional and aesthetic considerations would have motivated a DOSA to modify a 3D injection molded design (like Speedform) based on Spine's lattice structure with diamond shaped openings and mesh overlay. That discussion is incorporated here by reference. In fact, modifying Speedform with these features of Spine would have been an even more predictable design solution because Speedform's design already comprises diamond shapes. This modification would have consisted of little more than substituting Speedform's

3D injection molding with Spine's thermo-sheet tooling: a predictable refinement involving applying a known technique to improve a similar design.

***d) Brand Recognition and Aesthetic Cohesion***

A DOSA would have been further motivated to modify Speedform with the diamond lattice and mesh overlay of Spine based on principles of aesthetic consistency and branding. Spine's 2D diamond pattern and mesh overlay is consistent with Under Armour's portfolio of diamond-pattern designs from the 2010s. For one example, Under Armour's Speedfit Hike and Spine Bionic shoes each have diamond lattice patterns made from 2D cutouts. The lattice with diamond openings and material overlay used in Spine had been used on several Under Armour shoe models, across multiple product lines, and are thus recognizable features of Under Armour's design vocabulary:





EX1037, 6 (Under Armour's Speedfit Hike, 2017); EX1038 (Under Armour's Spine Bionic, 2012).

Speedform uses a similar diamond motif, but its positioning of the diamond shapes touching one another instead of in a lattice pattern diverges from Under Armour's other diamond pattern designs. A DOSA would have been motivated to modify the configuration of the diamonds into a lattice pattern in order to better align its overall appearance with Under Armour's other diamond designs.

**D. GROUND 4: Under Any Purported Priority Date, D'641 Is Obvious Over Speedform In View Of Trainer Knit**

**1. *Speedform***

As shown and discussed in Ground 3, Part IX.C.1, Speedform discloses a patterned element on a shoe heel, comprising a molded pattern of diamond shapes:



EX1004, 3. Skechers incorporates by reference the discussion of Speedform set forth in Ground 3, which applies equally here. See Part IX.C.1, *supra*.

In this alternative Ground 4, Speedform again serves as the primary reference, and Trainer Knit (instead of Spine) serves as the sole combination reference. The D'641 patent's claimed design is obvious over Speedform in view of Trainer Knit, both of which are prior art regardless of what purported priority date applies.

For example, a DOSA would have found it obvious to modify Speedform's ***molded pattern*** of diamond shapes by (a) converting it into a ***lattice structure*** with ***openings*** as in Trainer Knit, while still keeping Speedform's diamonds as the shapes

of the openings, and (b) adding *material overlaying the entire lattice structure to render its outer surface substantially flat*, as also disclosed in Trainer Knit.

## 2. *Trainer Knit*

As discussed in Part VII.D, incorporated here by reference, Trainer Knit discloses a *lattice structure with hexagon shaped openings* on a shoe's heel:

**lattice structure with hexagon shaped openings**

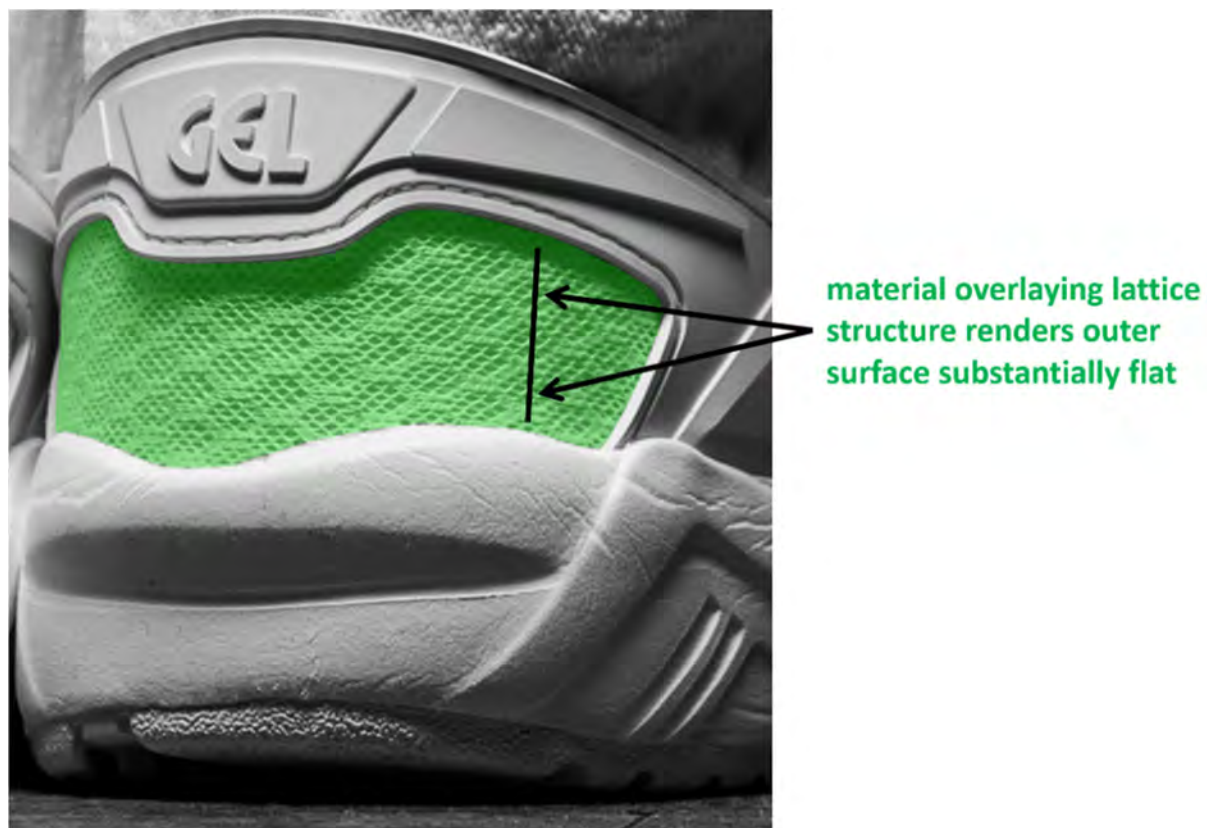


EX1005, 4 (annotated in blue). A DOSA would have found it obvious to apply this teaching to the shoe disclosed in Speedform, modifying that shoe's ***molded pattern*** of diamond shapes to instead be a ***lattice structure*** with diamond shaped ***openings***, while still keeping the overall look, footprint, and pattern of the Speedform design:



EX1004, 3. For clarity, in this combination, Speedform retains its original pattern of diamond shapes, and they simply become diamond shaped openings in a lattice structure instead of molded impressions.

Additionally, as discussed for Ground 2, Part IX.B.1, which is incorporated here by reference, Trainer Knit also discloses a ***material overlaying the entire lattice that renders its outer surface substantially flat***, as required by the D'641 patent:



EX1005, 3 (cropped and annotated with green color and black markings).

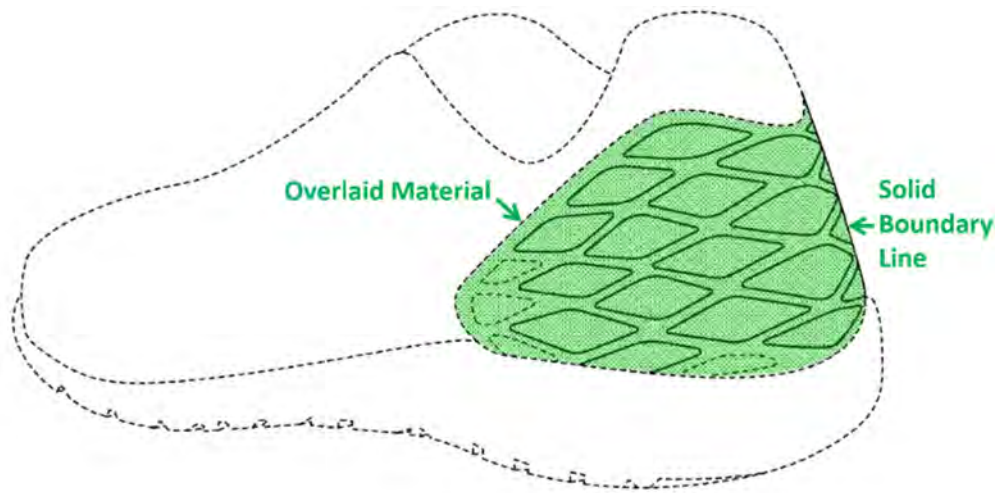


FIG. 4

EX1001 (D'641 Pat.), Fig. 4.

In view of these teachings, after converting Speedform's molded pattern into a lattice structure with diamond shaped openings (as discussed above), a DOSA would have been further motivated to add Trainer Knit's ***material overlaying the entire lattice to render its outer surface substantially flat.*** This final step results in the design claimed in the D'641 patent, with the same footprint and pattern as Speedform's original design, but with it being a lattice structure with diamond openings (instead of a molded impression) and with overlaid material on top that renders its outer surface substantially flat.

A DOSA's motivation to make these modifications, and expectation of success, are discussed further below.

**3.     *Combining Speedform and Trainer Knit***

Speedform and Trainer Knit are highly similar in visual appearance. For example, each discloses a geometric pattern wherein the shapes comprising the pattern are short in length and wide in width, creating an appearance of pronounced lateral extension. The pattern element on both shoes surrounds the heel and extends onto the left and right sides of the footwear, with the pattern having more structure than the rest of the upper and comprising closed diamond or diamond-like shapes.

Both shoes also have material overlays surrounding the patterned area around the heel, giving each shoe's pattern of repeating shapes the overall visual appearance of being integrated into the heel construction (as opposed to, for example, a graphic printed on top of the upper). Moreover, Speedform and Trainer Knit are both largely monochromatic, with their respective patterns being defined primarily by texture. For example, the pattern of Speedform is a nearly identical shade of blue to the shoe, such that the diamond pattern is defined primarily by shadow and surface relief. Similarly, the pattern of Trainer Knit is a nearly identical shade of white to the rest of the upper and is defined by dimension and material changes, namely, recesses or apertures covered by a mesh overlay.

| SPEEDFORM                                                                           | TRAINER KNT                                                                          |
|-------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
|    |    |
|   |   |
|  |  |



EX1022; EX1005, 3-4.

The Speedform and Trainer Kni designs also share in common technical and functional features. For example, both are athletic sneakers with rounded toes and lace-up construction, and each upper design gives the overall visual impression of a minimally structured, flexible, foot-conforming shoe. EX1021, ¶43,45.

The considerations explained in Part IX.A.3.b and Part IX.C.3.b would have similarly motivated a DOSA to replace Speedform's expensive 3D molding process with the inexpensive manufacturing method used for Trainer Kni. That discussion is incorporated here by reference. As explained, Speedform uses an expensive molding techniques that a DOSA would have known could be replicated to similar effect with the 2D laminate manufacturing methods used for Trainer Kni.

A DOSA also would have known that the mesh overlay and lattice openings in Trainer Kni, like that in Spine, would have functional benefits of breathability

and aesthetic benefits of aligning with contemporary trends. Refining Speedform's diamond pattern with Trainer Knit's lattice structure and material overlay would have been an obvious combination of known design features from the same field. The two share the same article of manufacture, the same pattern location, and the same geometric and technical visual language. The combination merely constitutes an adoption of common design elements (a lattice structure with a material overlay) to achieve a predictable variation of Speedform's existing diamond heel pattern. *See* EX1021, ¶¶58-59.

Moreover, a footwear designer would have been motivated to utilize features from Trainer Knit to modify Speedform because the two shoes were designed contemporaneously by direct competitors in a saturated market. Both designs were disclosed in early 2017 (Trainer Knit January 13, 2017, and Speedform April 29, 2017). EX1004, 1; EX1005, 1. Further, the designs are visually similar to one another as described above. In the sneaker and running shoe design market, a DOSA would have analyzed contemporaneously successful competing designs in order to assess aesthetic trends and develop ideas for new products. EX1021, ¶65. A DOSA would have been aware of their contemporaneous release and of the innovations of each, and would have been motivated to apply the overlay and construction of Trainer Knit to Speedform. *See Id.* ¶¶65-67.

**X. CONCLUSION**

For the reasons set forth above, the challenged Claim of the D'641 Patent is unpatentable. Skechers respectfully requests institution of *inter partes* review.

Dated: July 24, 2026

Respectfully submitted,

/s/ Samuel K. Lu

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## **CERTIFICATE OF WORD COUNT**

I hereby certify, pursuant to 37 C.F.R. section 42.24, that the foregoing Petition contains 13,822 words, excluding the parts of the brief exempted by 37 C.F.R. § 42.24(a). The word count is based on the word count of the Microsoft Word program used to prepare the Petition.

Dated: July 24, 2026

/s/ Aron Berger

**CERTIFICATE OF SERVICE**

I hereby certify, pursuant to 37 C.F.R. sections 42.6 and 42.105, that a complete copy of the Petition for *Inter Partes* Review of U.S. Patent No. D1,037,641 and Exhibits are being served via Priority Mail Express on July 24, 2026, the same day as the filing of the above-identified documents in the United States Patent and Trademark Office/Patent Trial and Appeal Board, upon the patent prosecution counsel of record for the Patent Owner:

164668 – FAST IP, LLC  
1172 West 700 North  
Suite 200  
Lindon, UT 84042

Courtesy copies were also sent via ShareSite to Patent Owner's counsel of record in the related district court litigation at the following email address:

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/s/ Pia Kamath  
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