

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

adidas AG
Petitioner

v.

NIKE, Inc.
Patent Owner

Case IPR2013-00067
Patent 7,347,011 B2

Before MICHAEL P. TIERNEY, MICHAEL J. FITZPATRICK, and JAMES B. ARPIN, *Administrative Patent Judges*.

ARPIN, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

adidas AG (“Petitioner”) filed a petition to institute an *inter partes* review of claims 1-46 of Patent No. US 7,347,011 B2 (Ex. 1002; the “’011 Patent”) (Paper 3, “Pet.”). Nike, Inc. (“Patent Owner”) has filed a patent owner preliminary response (Paper 12; “Prel. Resp.”). We have jurisdiction under 35 U.S.C. § 314.

The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a) which provides as follows:

THRESHOLD -- The Director may not authorize an *inter partes* review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.

Upon consideration of the petition and patent owner preliminary response, we determine that the information presented in the petition establishes that there is a reasonable likelihood that Petitioner would prevail with respect to claims 1-46 of the ’011 Patent. Accordingly, pursuant to 35 U.S.C. § 314, we authorize an *inter partes* review to be instituted as to claims 1-46 of the ’011 Patent.

A. *Related Proceedings*

Petitioner does not identify any related proceedings. Pet. 1. Patent Owner identifies three Patents, identified by Nos. US 7,814,598 B2; US 8,042,288 B2, and US 8,266,749 B2 and one U.S. Patent Application, identified by No. 13/413,233. Paper 9, Patent Owner Mand. Notices at 2.

B. *The ’011 Patent*

The ’011 Patent relates to articles of footwear having a textile upper. ’011

Patent, col. 1, ll. 7-10. In particular, the patent describes articles of footwear having an upper incorporating a knitted textile element and having a sole structure secured to the upper. *Id.* at col. 3, ll. 20-47.

Conventional articles of athletic footwear may include two primary elements: an upper and a sole structure. *Id.* at col. 1, ll. 12-15. The upper may form a void on the interior of the footwear for receiving a wearer's foot, and the upper may extend over the instep and toe areas, along the medial and lateral sides, and around the heel area of the foot. *Id.* at ll. 30-35. The upper may be formed of multiple layers of materials, which may be selected for properties of wear resistance, flexibility, and air permeability. *Id.* at ll. 43-50. Thus, different areas of the exterior layer of the upper may be formed of different materials with differing properties. *Id.* at ll. 51-60.

A textile may be defined as any manufacture from fibers, filaments, or yarns characterized by flexibility, fineness, and a high ratio of length to thickness. *Textiles generally fall into two categories.* The first category includes textiles produced directly from webs of filaments or fibers by randomly interlocking to construct non-woven fabrics and felts. The second category includes textiles formed through a mechanical manipulation of yarn, thereby producing a woven fabric, for example.

Id. at col. 2, ll. 6-14 (emphasis added). Techniques for mechanically manipulating yarn into a textile include weaving (e.g., producing a woven material) and knitting (e.g., producing a knitted material). *Id.* at ll. 36-46. Further, textiles for uppers may be formed of weft or warp, woven or knitted materials. *Id.* at ll. 40-41; *see also id.* at col. 3, ll. 30-32 (describing a weft knitted and warp knitted "textile

element”).

Figure 8 of the '011 Patent is reproduced below.

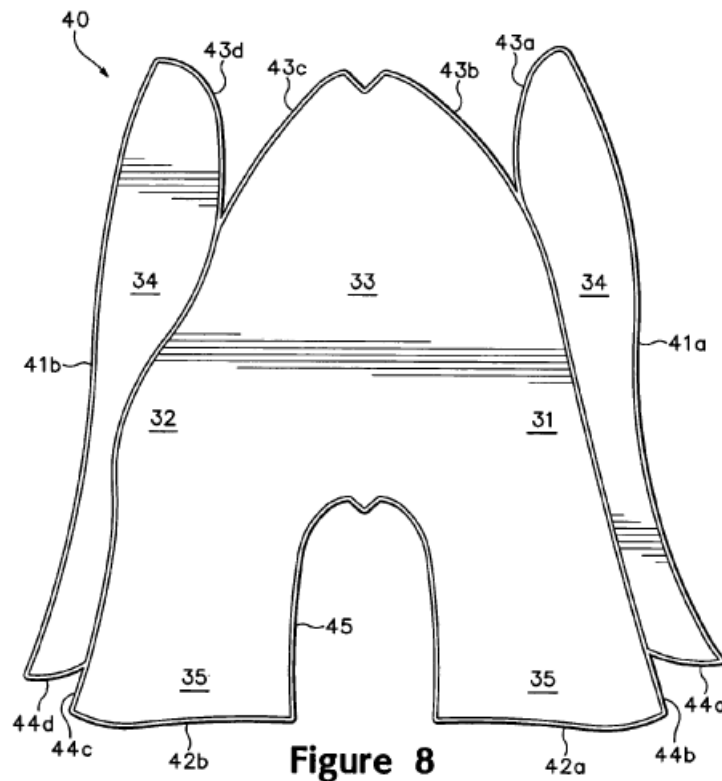


Figure 8 illustrates an embodiment of an upper according to the '011 Patent. *Id.* at col. 5, l. 58-col. 6, l. 65. A textile element 40 is a single material element with a unitary (i.e., one-piece) construction. *Id.* at col. 5, ll. 38-41. Consequently, textile element 40 is configured, such that portions of the textile element are not joined together with seams or other connections. *Id.* at col. 5, ll. 38-41; col. 6, ll. 41-46. Although edges 41a-44d are joined together to as shown in Figures 3-5 to form seams 51-54, thereby forming at least a portion of a void for receiving the

foot, a lateral region 31, a medial region 32, an instep region 33, lower regions 34, and heel regions 35 together have a unitary (i.e., one-piece) construction without seams (*id.* at col. 5, ll. 44-57; col. 6, ll. 47-50).

Figure 11 of the '011 Patent is reproduced below.

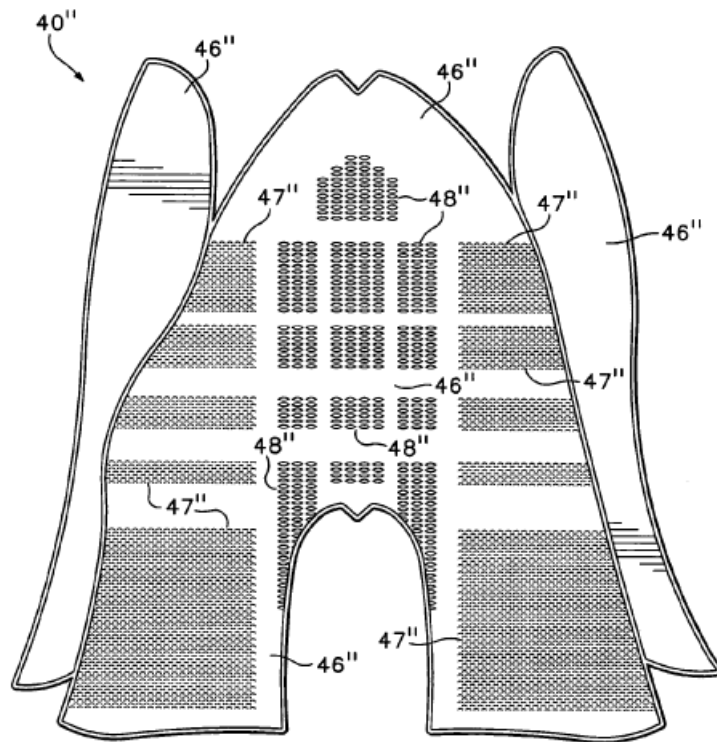


Figure 11

Figure 11 illustrates another embodiment of an upper according to the '011 Patent. *Id.* at col. 9, l. 36-col. 10, ll. 14. A textile element 40'' includes three different areas with three different textures. *Id.* at col. 9, ll. 38-39. A first texture 46'' is generally smooth and extends in strips across lateral region 31, medial region 32, and instep region 33 of the upper. *Id.* at ll. 39-42. In addition, textile element 40'' includes a second texture 47'' and a third texture 48''. *Id.* at ll. 42-46.

Moreover, the '011 Patent describes that

[t]he different textures 46"-48" are formed *by merely varying the type of stitch formed* by the wide-tube circular knitting machine at each location of textile element 40". Textures 46"-48" may exhibit aesthetic differences, or the differences may be structural. *For example, the degree of stretch in areas with textures 46"-48" may be different, or the wear resistance of the areas may vary depending upon the stitch utilized.* The air-permeability of textile element 40" may also vary in the different areas.

Id. at ll. 46-54 (emphases added). Similarly, the type of yarn used in different areas may impart different properties to each area. *Id.* at col. 9, l. 65-col. 10, l. 14. Thus, the textures and properties of different areas of the upper may be varied by altering the stitching or yarn used in those areas.

C. Exemplary Claims

Of the challenged claims, claims 1, 16, 24, 36, and 44 are independent. Independent claims 1, 24, and 36 recite similar limitations describing the formation of a void to receive the foot, and independent claims 16 and 44 recite similar limitations describing the unitary construction of the textile element. As to the dependent claims, claims 2-15 depend from claim 1, claims 17-23 depend from claim 16, claims 25-35 depend from claim 24, claims 37-43 depend from claim 36, and claims 45 and 46 depend from claim 44. Claims 1, 16, and 44 are exemplary and are reproduced below to demonstrate the claimed subject matter (emphases added):

1. An article of footwear comprising:
an upper incorporating a weft-knitted textile element *having edges that are joined together to define at least a portion of a void for*

receiving a foot, wherein the weft-knitted textile element incorporates a single type of textile having a plurality of knit constructions; and a sole structure secured to the upper.

16. An article of footwear comprising:
an upper incorporating a weft-knitted textile element, *the textile element having a first area and a second area with a unitary construction*, the first area being formed of a first stitch configuration, and the second area being formed of a second stitch configuration that is different from the first stitch configuration to impart varying properties to the textile element; and
a sole structure secured to the upper.

44. An article of footwear comprising:
an upper incorporating a flat-knitted textile element, *the flat-knitted textile element having a first area with a first unitary construction and a second area with a second unitary construction different from the first unitary construction*, the first area having a first set of properties, and the second area having a second set of properties that is different from the first set of properties to impart varying characteristics to the textile element; and
a sole structure secured to the upper.

D. Prior Art Relied Upon

Petitioner relies upon the following prior art references:

Glidden	US 2,147,197	Feb. 14, 1939	(Ex. 1007)
McDonald	US 2,314,098	Mar. 16, 1943	(Ex. 1008)
Whiting	US 2,641,004	June 9, 1953	(Ex. 1009)
Shiomura	US 4,785,558	Nov. 22, 1988	(Ex. 1011)
Curley	WO 90/03744	Apr. 19, 1990	(Ex. 1010)
Osamu	JP H06-113905	Apr. 26, 1994	(Ex. 1006)
Nishida	US 5,345,638	Sep. 13, 1994	(Ex. 1005)

E. The Asserted Grounds

Petitioner alleges that the challenged claims are unpatentable under 35 U.S.C. § 102 or § 103, or both, based upon the listed prior art references, alone or in various combinations. The specific grounds are detailed below.

Reference(s)	Basis	Claims challenged
Nishida	§ 102 or § 103	1-16, 19-34, 36, and 39-46
Nishida	§ 103	35, 37, and 38
Nishida and McDonald	§ 103	1-7, 10-12, 14, 16-20, 32, 33, and 37
Nishida, McDonald, and Curley or Shiomura	§ 103	8, 9, 13, and 21-23
Nishida, McDonald, and Glidden	§ 103	9, 13, 22, and 23
Nishida and Whiting	§ 103	1-7, 10-12, 14-16, 19, 20, 32, 33, and 44-46
Nishida, Whiting, and Curley or Shiomura	§ 103	8, 9, 13, and 21-23
Nishida, Whiting, and Glidden	§ 103	9, 13, 17, 18, 22, and 23
Nishida, Whiting, and McDonald	§ 103	17 and 18
Nishida and Curley	§ 103	1-3, 16, 19-23, 30, 31, 34, 35, 38, and 43
Nishida and Shiomura	§ 103	8, 9, 13, 22, 23, 30, 31, 34, 34, 38, and 43
Nishida and Glidden	§ 103	9, 13, 22, 23, 30, 31, and 43
Glidden	§ 102	1, 2, 7-14, and 16-23

Glidden ¹	§ 103	16-23
Glidden and McDonald or Whiting	§ 103	1, 2, 7-14, and 16-23
Osamu	§ 103	1-16 and 19-46
Osamu and McDonald	§ 103	1-7, 9, 10, 13, 14, 16-20, 22-33, 36, 37, and 39-43
Osamu, McDonald, and Curley	§ 103	8, 21, and 34
Osamu, McDonald, and Shiomura	§ 103	8, 21, 34, 35, and 38
Osamu, McDonald, and Glidden	§ 103	11 and 12
Osamu, McDonald, and Nishida	§ 103	11, 12, and 34
Osamu and Whiting	§ 103	1-7, 9, 10, 13-16, 19, 20, 22-33, 26, 39-44, and 46
Osamu, Whiting, and Curley	§ 103	8, 21, and 34
Osamu, Whiting, and Shiomura	§ 103	8, 21, 34, 35, and 38
Osamu, Whiting, and Glidden	§ 103	11, 12, 17, 18, and 45
Osamu, Whiting, and Nishida	§ 103	11, 12, 34, and 45
Osamu and Nishida	§ 103	1-7, 9-13, 16, 19, 20, 22-32, 34, 36, and 39-46
Osamu, Nishida, and Curley	§ 103	8 and 21
Osamu, Nishida, and Shiomura	§ 103	8, 21, 35, and 38

¹ Although this ground is not listed in the table included in the petition (Pet. 3-4), Petitioner does assert it at pages 43-44 of the petition.

Osamu, Nishida, and Glidden	§ 103	17 and 18
Osamu, Nishida, and McDonald	§ 103	14, 17, 18, 33, and 37
Osamu, Nishida, and Whiting	§ 103	14, 15, and 33
Osamu and Glidden	§ 103	1-7, 9-13, 16-20, 22-32, 36, and 39-43
Osamu, Glidden, and Curley	§ 103	8, 21, and 34
Osamu, Glidden, and Shiomura	§ 103	8, 21, 34, 35, and 38
Osamu and Curley	§ 103	1-10, 13, 16, 19-32, 34, 36, 39-44, and 46
Osamu, Curley, and Shiomura	§ 103	35 and 38

II. ANALYSIS

A. Claim Construction

As a first step in our analysis for determining whether to institute a trial, we construe the claims. In an *inter partes* review, claim terms in an unexpired patent are given their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *see* Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48766 (Aug. 14, 2012). Under the broadest reasonable interpretation standard, claim terms are presumed to be given their ordinary and customary meaning as understood by one of ordinary skill in the art at the time of the invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (*en banc*). An inventor may rebut that presumption by providing a definition of the

term in the specification with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). In this regard, however, we are careful not to read a particular embodiment appearing in the written description into the claim if the claim language is broader than the embodiment. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

Petitioner proposes that we adopt the broadest reasonable interpretation of the claim terms in view of the Specification. Pet. 9. Additionally, Petitioner provides express interpretations for certain claim terms. *Id.* at 10-12. Patent Owner does not challenge, in the preliminary response, the specific interpretations of claim terms proposed by Petitioner. We find it necessary to construe expressly the claim terms “a single type of textile,” a “weft-knitted textile element,” a “flat-knitted textile element,” and “unitary construction,” in order to determine whether to institute a trial.

1. “A Single Type of Textile”

Independent claims 1, 24, and 36 recite that a textile element incorporates “a single type of textile.” Pet. 10. Petitioner points out that “textile element 40 is primarily formed from one or more yarns that are manipulated mechanically through either an interweaving, intertwining and twisting, or interlooping process.” *Id.* (quoting ‘011 Patent, col. 6, ll. 51-54). Petitioner states that “[t]extile element 40 is a single material element that is formed to exhibit a unitary (i.e., one-piece) construction.” Pet. 10 (quoting ‘011 Patent, col. 5, ll. 38-39). Thus, Petitioner contends that “a broadest reasonable interpretation of ‘a single type of textile’ is *a single material element* that may include one or more yarns.” *Id.* (emphasis

added). This proposed interpretation, however, simply introduces a new term, i.e., a single material element, which does not appear in the claims, for construction. Consequently, we are not persuaded that this is the appropriate construction of this claim term.

“A single type of textile” is not defined expressly in the Specification of the ‘011 Patent. Nevertheless, a pertinent definition of the term “textile” is “any cloth or goods produced by weaving, knitting, or felting.” RANDOM HOUSE WEBSTER’S COLLEGE DICTIONARY at 1351; *cf.* Spec. col. 2, ll. 6-14 (defining “textiles”). In addition, the term “textile” is defined more broadly as “[a] material made of natural or artificial fibers and used for the manufacture of items such as clothing or furniture fittings.” MCGRAW-HILL DICTIONARY OF SCIENTIFIC AND TECHNICAL TERMS 1911 (4th ed. 1988). As noted above, the ‘011 Patent states that textiles generally fall into two categories: fabrics formed of randomly locked filaments or fibers, such as felts, and fabrics formed of mechanically manipulated yarn, such as woven or knitted fabrics. ‘011 Patent, col. 2, ll. 9-14.

The ‘011 Patent describes various techniques for mechanically manipulating yarn into woven fabrics or textiles, including interweaving (e.g., weaving), intertwining and twisting (e.g., braiding and knotting), and interlooping (e.g., knitting). *Id.* at ll. 36-46. In the Detailed Description of the Invention portion of the Specification, the ‘011 Patent further describes that

[a] variety of mechanical processes have been developed to manufacture a textile. *In general, the mechanical processes may be classified as either warp knitting or weft knitting.* With regard to warp knitting, various specific *sub-types* that may be utilized to manufacture a textile include tricot, raschel, and double needle-bar

raschel (which further includes jacquard double needle-bar raschel). With regard to weft knitting, various specific *sub-types* that may be utilized to manufacture a textile include circular knitting and flat knitting. Various *types* of circular knitting include sock knitting (narrow tube), body garment (seamless or wide tube), and jacquard.

Id. at col. 6, l. 66-col. 7, l. 10 (emphases added).

We note that claims 1, 16, and 36 recite that the textile element is “knitted” (including “weft-knitted”), and, consequently, we construe the “single type of textile” in each those claims as a knitted textile. Further, each of claims 1, 24, and 36 recites that the “single type of textile” has “a plurality of knit constructions.” We construe such “knit constructions” to mean various kinds of stitching, which exhibit aesthetic or structural differences, such as those in different areas of textile element 40”, depicted in Figure 11. *See id.* at col. 9, l. 36-col. 10, l. 14. Moreover, even though claim 24 does not recite that the textile element is “knitted,” we also construe claim 24 to encompass “knitted” textile elements. *See id.* at Claims 32 (depending from claim 24 and additionally requiring a “weft knitted construction”) and 34 (depending from claim 24 and additionally requiring a “warp knitted construction”). Because the ‘011 Patent describes warp and weft knitting as including various “sub-types,” including circular and flat knitting, we construe the term “a single *type* of textile” to mean either a warp or weft type of knitted textile.

2. *“Weft-Knitted Textile Element” and “Flat-Knitted Textile Element”*

Petitioner argues that the terms “weft-knitted” and “flat-knitted” are well-

known in the art. Pet. 10. We agree.

As noted above, the ‘011 Patent describes that various textile (e.g. knitted textile) types (e.g., warp and weft knitting) and sub-types (e.g., circular and flat knitted) may be used to manufacture textile elements for incorporation into the uppers of the claimed articles of footwear. ‘011 Patent, col. 6, l. 66-col. 7, l. 10. Although the ‘011 Patent does not include a definition of either term, a pertinent definition of “weft knitting” is “[a] knitting process in which *a continuous yarn* is carried *in crosswise rows*.” MCGRAW-HILL DICTIONARY OF SCIENTIFIC AND TECHNICAL TERMS at 2054 (emphases added); *see also* Declaration of Edward Frederick (Ex. 1001) ¶ 56 (“Decl.”)(reproducing H. Eberle et al., CLOTHING TECHNOLOGY, Sec. 3.3.1 (3rd English ed. 2002) (weft knitted fabric “[m]ay be made from a single yarn”)). By comparison, a pertinent definition of the term “warp knitting” is “[a] knitting process in which *a group of yarns form rows running lengthwise* by an interlocking process.” MCGRAW-HILL DICTIONARY OF SCIENTIFIC AND TECHNICAL TERMS at 2045 (emphasis added). For purposes of this decision, we agree that “it is reasonable to interpret these claim limitations as consistent with their ordinary meaning as conventional, known knitting techniques” and consistent with the definitions provided above. Pet. 11.

3. *Independent Claim 16: The Textile Element Having First and Second Areas*

Petitioner contends that the phrase “the textile element *having a first area and a second area* with a unitary construction” in claim 16 should be construed to require a textile element (1) having a unitary construction *and* (2) having a first

area and a second area, each area having stitching that imparts different properties to its area. Pet. 11-12. Thus, Petitioner contends that the textile element has a *single* unitary construction containing different areas. Petitioner contends, however, that separate unitary constructions in *different* areas of the textile element would be inconsistent with the invention, as described in the Specification. *Id.* at 12.

The ‘011 Patent expressly defines the term “unitary construction.” ‘011 Patent col. 6, ll. 41-46. The ‘011 Patent states that, “[a]s defined for purposes of the present invention, unitary construction is intended to express a configuration wherein portions of a textile element are not joined together by seams or other connections, *as depicted with textile element 40 in FIG. 8.*” *Id.* (emphases added); *see Paulsen*, 30 F.3d at 1480. For purposes of this decision, we agree with Petitioner and construe the phrase “the textile element having a first area and a second area with a unitary construction” to require a textile element having a unitary construction *and* having a first area and a second area.

4. *Independent Claim 44: The Textile Element Having a First Area and a Second Area*

As noted above, claim 16 recites that “the textile element [has] a first area and a second area *with a unitary construction*” (emphasis added). Claim 44 originally recited the same language as claim 16, but claim 44 was amended to recite that “the textile element [has] a first area *with a first unitary construction* and a second area *with a second unitary construction.*” Pet. 11-12. Petitioner contends that, like claim 16, the phrase “the flat-knitted textile element having a first area

with a first unitary construction and a second area with a second unitary construction different from the first unitary construction” should be construed to mean that the flat-knitted textile element “is a unitary construction with two areas, each [area] having a different construction and set of properties in accordance with the additional language of claim 44.” Pet. 12; *see also* Decl. ¶ 35. Thus, Petitioner contends that this language of claim 44 should be construed to have substantially the same meaning as the related, but grammatically different, language of claim 16. *Id.* at 11-12. We disagree.

Unlike claim 16, claim 44 recites a *first* area with a *first* unitary construction and a *second* area with a *second* unitary construction. Further, as noted above, the language of claim 44 was identical to that of current claim 16, but the language of claim 44 was amended during prosecution to overcome a rejection based on cited art. *See* Pet. 11-12. Petitioner’s proposed construction discounts both the prosecution history and the differences in the language of claims 16 and 44. As the Federal Circuit advises, “[a] claim construction that gives meaning to all the terms of the claim is preferred over one that does not do so.” *Merck & Co. v. Teva Pharms. USA, Inc.*, 395 F.3d 1364, 1372 (Fed. Circ. 2005); *see Mangosoft, Inc. v. Oracle Corp.*, 525 F.3d 1327, 1330-31 (Fed. Cir. 2008) (rejecting claim construction that “ascribes no meaning to the term . . . not already implicit in the rest of the claim.”).

For purposes of this decision, we interpret the phrase “the flat-knitted textile element having a first area with a first unitary construction and a second area with a second unitary construction different from the first unitary construction” to have

its plain and ordinary meaning: two textile element areas, each having a unitary construction, but which areas may possess different structures, e.g., knit constructions or stitch configurations, resulting in different properties.

III. DECISION ON PETITION

For the reasons described below, we institute an *inter partes* review of each of claims 1-46 based on unpatentability either due to anticipation by Nishida or Glidden or due to obviousness over Nishida or Glidden. We deny as redundant institution based on alleged unpatentability due to obviousness over Osamu, alone, or over Nishida, Glidden, or Osamu in combination with each other or with one or more of McDonald, Curley, Whiting, and Shiomura.

Patent Owner asserts that each of the references relied upon by Petitioner in the request for *inter partes* review either was considered by the Examiner during the prosecution of the claims for which review is sought or that, to the extent that the applied references themselves were not considered previously, the references are cumulative with respect to previously considered references. Prel. Resp. 3-7 (citing 35 U.S.C. § 325(d)). Patent Owner concludes that, therefore, the Board should not institute trial on any of the proposed grounds for review.

Petitioner, however, presents different arguments and new supporting evidence that were not before the Examiner. As such, we decline to deny the proposed grounds of review under 35 U.S.C. § 325(d).

IV. GROUNDS FOR REVIEW

A. *Nishida*

Nishida is directed to the production of a shoe upper by (1) cutting out a layout

in the form of the shoe upper from a web of material and (2) shaping the shoe upper by connecting material parts of the layout by the formation of seams. *See generally* Nishida, Abstract. By the disclosed process, such shoe uppers allegedly may be produced efficiently and in reduced time despite the many individual parts present or to be made visible. *Id.*

Figure 2 of Nishida is reproduced below.

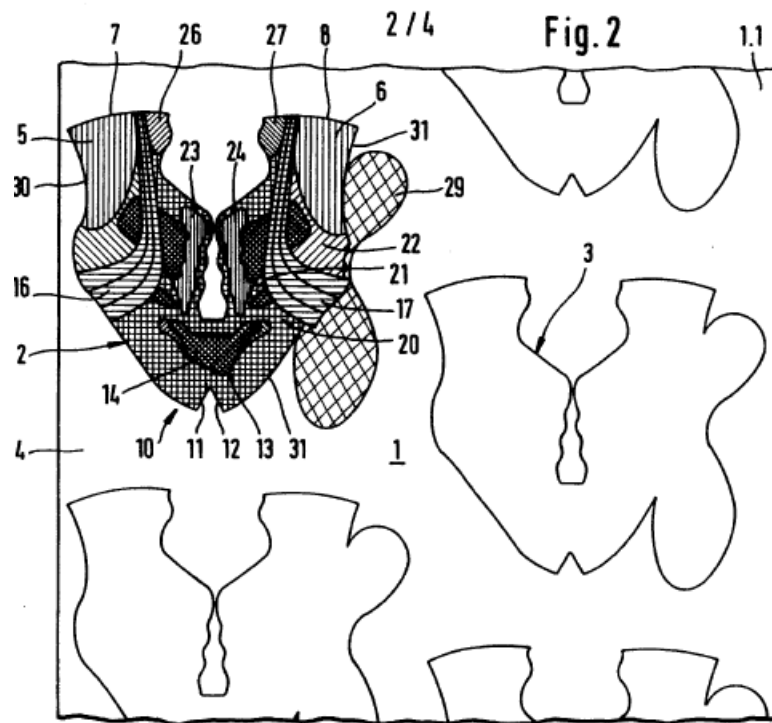


Figure 2 illustrates an embodiment of the upper layout according to Nishida. *Id.* at col. 3, ll. 6-12. A web of material 1 may include one or a plurality of layouts 2. Web of material 1 includes a backing 4 that may be a knitted material, and different areas of layout 2 may be formed by knitting different yarns or fibers on backing 4. *Id.* at col. 3, ll. 15-26; col. 5, l. 63-col. 6, l. 2.

Consequently, web of material 1 may be used to produce layouts 2 by different production measures, such as different styles, yarn material, color, material thickness, number of layers of material, or the like, simultaneously with the production of web of material 1. *Id.*; *see also* Nishida, Figs. 1, 2. Each layout 2, including a sole part, may be cut from web of material 1 as a unit and processed into an upper. *Id.* Nishida describes the manufacture of an article of footwear incorporating such an upper. Nishida, col. 3, ll. 9-12; Fig. 3.

1. Anticipation

Petitioner contends that claims 1-16, 19-34, 36, and 39-46 are anticipated by Nishida.

a. Claims 1-15, 24-34, 36, and 39-43

i. Independent Claim 1

As noted above and as recited in independent claim 1, Nishida discloses an article of footwear. Pet. 18. In particular, Nishida discloses an upper incorporating a textile element manufactured by a “conventional” textile process, such as knitting. *Id.* at 14, 18 (citing Nishida, col. 3, ll. 6-12). Petitioner contends, and Patent Owner does not rebut the contention, that a person skilled in the relevant art would understand such “conventional” knitting processes to include “weft-knitting.” *See id.* at 17-19 (citing McDonald, col. 2, ll. 26-39; Whiting, col. 2, ll. 39-56; Curley, 7:32-8:25); *see also* Decl. ¶¶ 52, 54. Nishida discloses that layout 2 has edges that are joined together to form seams and to define at least a portion of a void for receiving a foot. *Id.* at 18 (citing Nishida col. 3, ll. 31-42; Figs. 2, 3).

Petitioner further contends that Nishida discloses that “the weft-knitted

textile element incorporates *a single type of textile* having a plurality of knit constructions” (emphasis added). Pet. 14, 16, 20. As noted above, we construe “a single type of textile” broadly as a manufacture formed by the mechanical manipulation, including interlooping (e.g., knitting), of one or more yarns. For the reasons set forth above, we are persuaded by Petitioner that Nishida’s “conventional” textile process includes knitting, including “weft-knitting.” *Id.* at 14, 20. Moreover, Nishida discloses that, in an embodiment, up to seven different textile fibers or yarns and the same number of different colors may be put into, e.g., woven into, web of material 1. *Id.* at 20 (citing Nishida, col. 4, ll. 47-60); *see also* Pet. 14-16. Further, Nishida discloses that the knit pattern, e.g., a “knit construction,” in web of material 1 may be selected to achieve a deformably soft or elastic configuration or an air permeable configuration. *Id.* (citing Nishida, col. 3, ll. 43-52).

Finally, Petitioner contends that Nishida discloses a sole structure secured to the upper. Pet. 20 (citing Nishida, Fig. 3).

The explanations provided by Petitioner regarding how each element of claim 1 is met by Nishida are persuasive, and are unrebutted by Patent Owner. Thus, based on this record, we hold that Petitioner has demonstrated a reasonable likelihood that independent claim 1 is anticipated by Nishida.

ii. *Independent Claims 24 and 36*

As with claim 1, claims 24 and 36 are directed to the use of a textile element to form a void for receiving a foot. Claim 36 recites that the edges of a knitted “textile element are joined together to define at least a portion of a void for

receiving a foot.” ‘011 Patent, col. 14, ll. 1-3; *see* Pet. 18-19, 38. For the reasons discussed above, we are persuaded that Petitioner has demonstrated that Nishida also discloses this limitation. Similarly, claim 24 requires “a textile element having edges that are joined together to form seams and define at least a portion of a void for receiving a foot[.]” ’011 Patent, col. 13, ll. 2-4. Nishida discloses that edges 7 and 8 of layout 2 may be stitched together to form a vertical, heel seam and that edges 11 and 12 may be stitched together to form a seam in a shoe toe 10. Nishida, col. 3, ll. 31-42. Further, Nishida discloses that a sole part section 29.1 of a sole part 29 may be stitched together with a sole part section 29.2 of sole part 29 to form a longitudinal seam extending along sole part 29. Nishida, col. 5 ll. 3-13; Fig. 3. Thus, Petitioner also demonstrates that Nishida discloses, not only the joining of edges to form seams, but “the seams including a first seam and a second seam, the first seam extending from a heel area to a forefoot area of the footwear along a lower surface of the upper, and the second seam extending vertically in the heel area,” as recited in claim 24. ‘011 Patent, col. 13, ll. 4-8.

Claim 36 further recites that the knitted textile element is “formed *with a knitting machine*, the textile element *being removed* from a textile structure that includes an outline of the textile element[.]” ’011 Patent col. 13, l. 48-col. 14, l. 1 (emphases added). We construe this language to describe a product-by-process limitation. The Federal Circuit explains that

even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. *The patentability of a product does not depend on its method of production.* If the product in a product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable

even though the prior product was made by a different process.

In re Thorpe, 777 F.2d 695, 697 (Fed. Cir. 1985) (emphasis added; internal citations omitted). Although Petitioner contends that Nishida discloses the process recited in claim 36, we conclude that such a disclosure is not necessary in order for claim 36 to be found unpatentable.

The explanations provided by Petitioner regarding how each element of claims 24 and 36 is met by Nishida are persuasive, and are unrebutted by Patent Owner. Thus, based on this record, we hold that Petitioner has demonstrated a reasonable likelihood that independent claims 24 and 36 are anticipated by Nishida.

iii. Dependent Claims 2-15, 25-34, and 39-43

Claims 2-6 depend from independent claim 1 and describe an upper having various sides and regions formed from the textile element (claim 2) and various seams formed by joining the edges of the textile element of claim 1 (claims 3-6). Claim 25 depends from independent claim 24, and claim 41 depends from independent claim 36. Each of these claims recites that the footwear includes a seam “extending through the forefoot area of the upper.” *Cf.* Claim 6. Similarly, claims 39 and 40 depend from independent claim 36 and recite that the footwear includes a seam “extending longitudinally along a lower region of the upper” and “extending along a heel region of the upper,” respectively. *Cf.* Claims 3, 4. Petitioner notes that Nishida discloses an upper having various sides and regions formed from layout 2 (Nishida, col. 3, ll. 15-col. 4, ll. 46; Fig. 3) and various seams formed by joining the edges of layout 2 (*id.*; *see also* Nishida, col. 5, ll. 3-13). Pet.

21-22, 31, 40-41.

Claims 7 and 8 recite that the weft-knitted textile element of claim 1 is one of an interior, exterior, or intermediate layer of the upper. *See* '011 Patent, Fig. 14 (depicting exterior layer 260, intermediate layer 250, and interior layer 240). Claims 29 and 30 depend from independent claim 24, and claim 42 depends from independent claim 36. *See* Pet. 31-32, 41. Claims 29 and 42 recite corresponding limitations to claim 7, and claim 30 recites corresponding limitations to claim 8. Petitioner notes that Nishida discloses that web of material 1 “can be woven or knitted in two or more layers.” Pet. 22 (citing Nishida, col. 3, ll. 66-68).

Claims 8 and 13 also recite that the weft-knitted textile element forms at least a portion or all, respectively, of the interior surface of the upper. Claim 43 depends from independent claim 36 and recites limitations corresponding to those of claim 13. *See* Pet. 41. Claim 9 recites that the weft-knitted textile element forms at least a portion of both of the interior and exterior surface of the upper. As noted above, Nishida discloses that web of material 1 may be woven in a single or multiple layers. *See* Nishida, col. 3, ll. 66-68. Thus, as recited in claims 8 and 13, the weft-knitted textile element may form all (and, consequently, “at least a portion”) of the interior surface of the upper. Pet. 23, 26. With respect to claim 9, Petitioner similarly notes that, if web of material 1 is a single layer, that layer may form both the interior and exterior surface of the upper. *See* Pet. 24 (citing Nishida, col. 3, l. 6-col. 4, l. 46).

Claim 10 recites that “an additional element is secured to the exterior surface [of the upper] and forms a portion of the exterior surface.” Claims 11 and 12

depend from claim 10 and recite that the additional element is secured to the forefoot or the heel area, respectively, of the upper. *See, e.g.*, ‘011 Patent, Fig. 12 (forefoot area element 132 and heel area element 134). Petitioner notes that Nishida discloses such additional forefoot (e.g., toe) and heel area elements secured to upper 3. Pet. 24-26 (citing Nishida, col. 3, ll. 37-42 (toe cap 15); col. 4, ll. 9-11(heel counter 28)); *see also* Nishida, Fig. 3.

Each of claims 14, 15, and 33 depends from claim 1 or 24, for which Petitioner has demonstrated a reasonable likelihood of anticipation by Nishida. Further, each of these claims differs from the claim from which it depends only by the inclusion of a product-by-process limitation. Claims 14 (“the weft-knitted textile element is created by circular knitting”), 15 (“a weft-knitted textile element created by flat knitting”), 33 (“the weft-knitted construction is produced by one of circular knitting and flat knitting”); *see* Pet. 27-28, 34 (citing Decl. ¶ 72 (describing web of materials 1 produced by a “conventional textile process” such as by knitting)). As noted above, however, “[t]he patentability of a product does not depend on its method of production.” *Thorpe*, 777 F.2d at 697.

Finally, claims 26-28 recite embodiments of articles of footwear in which knit constructions form “an aperture in the textile element” (claim 26), “varying properties in the textile element including a varying elasticity of the textile element” (claim 27), or “varying properties in the textile element including a varying air permeability of the textile element” (claim 28). Pet. 31. With respect to claims 26 and 28, Petitioner notes that Nishida discloses selecting a suitable knit pattern to make toe area 14 “permeable to air.” Nishida, col. 3, ll. 43-45; *see also*

Nishida, col. 6, ll. 25-31; Pet. 31 (citing Decl. ¶ 72 (pgs. 56-57)). In particular, Nishida discloses that good air exchange may be achieved “by a *net-like* woven or knitted structure.” Nishida, col. 3, ll. 49-52 (emphasis added). Further, with respect to claim 27, Petitioner notes that Nishida discloses that patterns may be produced directly in the production of the web of material that may vary the elasticity of the web of material. Pet. 31 (citing Nishida, col. 2, ll. 26-37; col. 3, ll. 43-49).

The explanations provided by Petitioner as to how each element of the challenged dependent claims² is disclosed by Nishida are persuasive (Pet. 21-29, 31-37, and 38-42) and are unrebutted by Patent Owner. Thus, we hold that the Petitioner has demonstrated a reasonable likelihood that dependent claims 2-15, 25-34, and 39-43, as well as their base claims, independent claims 1, 24, and 36, are anticipated by Nishida.

b. Claims 16 and 19-23

i. Independent Claim 16

Petitioner contends that Nishida anticipates independent claim 16. As recited in claim 16, Nishida discloses an article of footwear having an upper incorporating textile element manufactured by a “conventional” textile process, such as knitting. Pet. 45 (citing Nishida, col. 3, ll. 6-12). As noted above, Petitioner contends, and Patent Owner does not rebut, the contention that such “conventional” knitting processes include “weft-knitting.” *See id.* (citing

² Claims 32 and 34 are discussed above in our discussion of independent claim 24.

McDonald, col. 2, ll. 26-39; Whiting, col. 2, ll. 39-56; Curley, 7:32-8:25); *see also* Decl. ¶¶ 52, 54.

Petitioner further contends that Nishida discloses that “the textile element [has] a first area and a second area *with a unitary construction*, the first area being formed of a first stitch configuration, and the second area being formed of a second stitch configuration that is different from the first stitch configuration to impart varying properties to the textile element” (emphasis added). *See* Pet. 42-45. As noted above, we construe the term “textile element” to include textile elements with and without a unitary construction. Consequently, for purposes of this decision, we construe the phrase “the textile element having a first area and a second area with a unitary construction” as: a textile element having a unitary construction *and* having a first area and a second area. *Id.* at 42-43.

Referring to Figures 1 and 2, Nishida discloses that, “layout 2 is divided into different individual parts or areas, which differ from one another, such as by being of another material style and/or by being of different fibers . . .” Nishida, col. 3, ll. 15-18; *see* Pet. 47. As noted above, in an embodiment, up to seven different textile fibers or yarns and the same number of different colors may be put into, e.g., woven into, web of material 1. *Id.* Further, Nishida discloses that the knit pattern, e.g., a “stitch configuration,” in web of material 1 may be selected to achieve a deformably soft or elastic configuration or an air permeable configuration. *Id.* (citing Nishida, col. 3, ll. 43-52). Thus, Nishida discloses that “the first area being formed of a *first stitch configuration*, and the second area being formed of a *second stitch configuration* that is different from the first stitch configuration to

impart varying properties to the textile element” (emphases added), as recited in claim 16. *See* Pet. 47 (citing Nishida, col. 4, ll. 47-60).

Finally, Petitioner contends that Nishida discloses a sole structure secured to the upper. Pet. 48 (citing Nishida, Fig. 3).

The explanations provided by Petitioner regarding how each element of claim 16 is met by Nishida are persuasive, and are unrebutted by Patent Owner. Thus, based on this record, we hold that Petitioner has demonstrated a reasonable likelihood that independent claim 16 is anticipated by Nishida.

ii. Dependent Claims 19-23

Claim 19 recites that at least one of the first and second stitch configurations of claim 16 “forms an aperture in the weft-knitted textile element.” Different areas may have varying air permeability, and such apertures may be formed to “facilitate the transfer of air between the void within upper [30] and the area outside of upper [30].” ‘011 Patent, col. 9, ll. 53-60. As discussed above with respect to claims 26 and 28, Petitioner notes that Nishida discloses selecting a suitable knit pattern to make toe area 14 “permeable to air.” Nishida, col. 3, ll. 43-45; *see also* Nishida, col. 6, ll. 25-31; Pet. 49 (citing Decl. ¶ 72 (pgs. 56-57)). In particular, Nishida discloses that good air exchange may be achieved “by a *net-like* woven or knitted structure.” Nishida, col. 3, ll. 49-52 (emphasis added).

Claim 20 recites that the weft-knitted textile element of claim 16 is one of an interior, exterior, or intermediate layer of the upper. *See* ‘011 Patent, Fig. 14; *cf.* Claim 7 (discussed above). Petitioner notes that Nishida discloses that web of

material 1 “can be woven or knitted in two or more layers.” Pet. 49-50 (citing Nishida, col. 3, ll. 66-68).

Finally, claims 21 and 23 recite that the weft-knitted textile element forms at least a portion or all, respectively, of the interior surface of the upper. Claim 22 recites that the weft-knitted textile element forms at least a portion of both of the interior and exterior surface of the upper. As noted above, Nishida discloses that web of material 1 may be woven in a single or multiple layers. *See* Nishida, col. 3, ll. 66-68. Thus, as recited in claims 21 and 23, the weft-knitted textile element may form all (and, consequently, “at least a portion”) of the interior surface of the upper. Pet. 50, 52. With respect to claim 22, Petitioner similarly notes that, if web of material 1 is a single layer, that layer may form both the interior and exterior surface of the upper. Pet. 51 (citing Nishida, col. 3, l. 6-col. 4, l. 46).

The explanations provided by Petitioner as to how each element of the challenged dependent claims is disclosed by Nishida also are persuasive (Pet. 43, 48-52) and are unrebutted by Patent Owner. Thus, we hold that Petitioner has demonstrated a reasonable likelihood that dependent claims 19-23, as well as their base claim, independent claim 16, are anticipated by Nishida.

c. Claims 44-46

i. Independent Claim 44

Petitioner contends that Nishida anticipates independent claim 44. As noted above and as recited in claim 44, Nishida discloses an article of footwear having an upper incorporating textile element manufactured by a “conventional” textile

process, such as knitting. Pet. 55-56 (citing Nishida, col. 3, ll. 6-12). Petitioner contends, and Patent Owner does not rebut the contention, that such “conventional” knitting processes include “flat-knitting.” *See id.* at 56 (citing McDonald, col. 2, ll. 26-39; Whiting, col. 2, ll. 39-56; Curley, 7:32-8:25); *see also* Decl. ¶¶ 52, 54.

Petitioner further contends that Nishida discloses that “the flat-knitted textile element having a first area *with a first unitary construction* and a second area *with a second unitary construction* different from the first unitary construction, the first area having a first set of properties, and the second area having a second set of properties that is different from the first set of properties to impart varying characteristics to the textile element” (emphases added). Pet. 54-55, 57 (citing Nishida, col. 4, ll. 47-60). Referring to Figures 1 and 2, Nishida discloses that, “layout 2 is divided into different individual parts or areas, which differ from one another, such as by being of another material style and/or by being of different fibers” Nishida, col. 3, ll. 15-18; *see* Pet. 46. As noted above, in an embodiment, up to seven different textile fibers or yarns and the same number of different colors may be put into, e.g., woven into, web of material 1. *Id.* Further, Nishida discloses that the knit pattern, e.g., “varying characteristics,” in web of material 1 may be selected to achieve a deformably soft or elastic configuration or an air permeable configuration. *Id.* (citing Nishida, col. 3, ll. 43-52). Thus, Nishida discloses that “the first area being formed of a first stitch configuration, and the second area being formed of a second stitch configuration that is different from the first stitch configuration to impart varying properties to the textile

element” (emphases added), as recited in claim 44. *See* Pet. 57 (citing Nishida, col. 4, ll. 47-60).

Finally, Petitioner contends that Nishida discloses a sole structure secured to the upper. Pet. 57 (citing Nishida, Fig. 3).

The explanations provided by Petitioner regarding how each element of claim 44 is met by Nishida are persuasive, and are unrebutted by Patent Owner. Thus, based on this record, we hold that Petitioner has demonstrated a reasonable likelihood that independent claim 44 is anticipated by Nishida.

ii. Dependent Claims 45 and 46

Claim 45 recites that the first and second sets of properties are “at least one of a stitch configuration and a yarn type.” Petitioner notes that Nishida discloses that different areas of layout 2 may differ from one another based on the type of yarn used (Nishida, col. 3, ll. 15-26) or based on different knit patterns (*id.* at ll. 43-52). Pet. 57-58; *see also* Decl. ¶ 72. Further, Nishida describes that webs of materials may be produced, which vary according to the type of knit and the type of yarn. Nishida, col. 5, l. 63-col. 6, l. 2.

Claim 46 recites that the weft-knitted textile element of claim 44 is one of an interior, exterior, or intermediate layer of the upper. *See* ‘011 Patent, Fig. 14. Petitioner notes that Nishida discloses that web of material 1 “can be woven or knitted in two or more layers.” Pet. 58 (citing Nishida, col. 3, ll. 66-68); *see also* Decl. ¶ 72.

The explanations provided by Petitioner as to how each element of the challenged dependent claims is disclosed by Nishida also are persuasive (Pet. 57-58) and are unrebutted by Patent Owner. Thus, we hold that Petitioner has demonstrated a reasonable likelihood that dependent claims 45 and 46, as well as their base claim, independent claim 44, are anticipated by Nishida.

2. Obviousness

Petitioner contends that claims 1-16 and 19-46 are rendered obvious by Nishida.

a. Claims 1-16, 19-34, 36 and 39-46

Because anticipation is the epitome of obviousness, a disclosure that anticipates under 35 U.S.C. § 102 also renders the claim unpatentable under 35 U.S.C. § 103. *See In re Pearson*, 494 F.2d 1399, 1402 (CCPA 1974); *In re Meyer*, 599 F.2d 1026, 1031 (CCPA 1979); *In re Fracalossi*, 681 F.2d 792, 794 (CCPA 1982). Therefore, for the reasons set forth above, we hold that Petitioner has demonstrated a reasonable likelihood that independent claims 1, 16, 24, 36, and 44, as well as dependent claims 2-15, 19-23, 25-34, 39-43, 45, and 46, are rendered obvious by Nishida.

b. Claims 35, 37, and 38

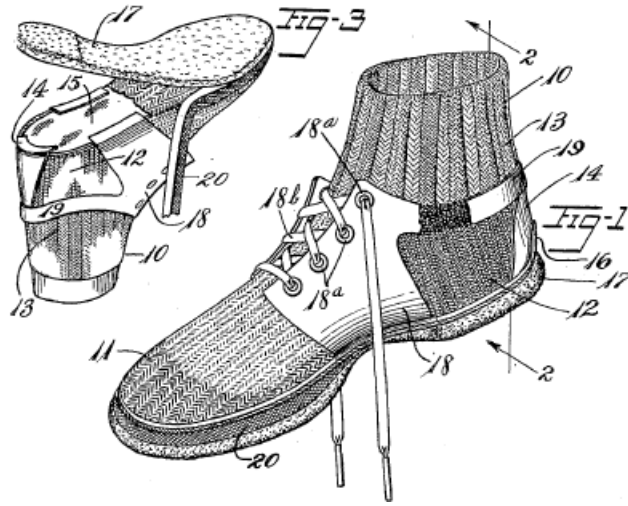
Each of claims 35, 37, and 38 depends from a claim for which Petitioner has demonstrated a reasonable likelihood that the claim is anticipated or rendered

obvious by Nishida. Further, each of these claims differs from the claim from which it depends only by the inclusion of a product-by-process limitation. Claims 35 (a construction “produced by a jacquard double needle-bar raschel”), 37 (“a structure formed by a wide-tube circular knitting machine”), 38 (“a structure formed by a jacquard double needle-bar raschel knitting machine”); *see* Pet. 36-40 (citing Nishida, col. 3, ll. 6-12 (describing web of materials 1 produced by a “conventional textile process” such as by knitting)). As noted above, however, “[t]he patentability of a product does not depend on its method of production.” *Thorpe*, 777 F.2d at 697. Thus, for the reasons set forth above with respect to claims 24 and 36, from which claim 35 and claims 37 and 38 depend, respectively; we hold that Petitioner has demonstrated a reasonable likelihood that dependent claims 35, 37, and 38 are rendered obvious by Nishida.

B. Glidden

Glidden discloses an article of footwear produced by forming a sock-like, shoe upper 10, which may include a toe portion 11 and a heel portion 12, having different textures or properties. Glidden, pg. 1, 2:19-44; Figs. 1, 3. Further, upper 10 may have various parts applied to it, such as an outsole 17 and a blucher saddle 18. *Id.* at pg. 1, 2:11-17; pg. 2, 1:8-19.

Figures 1 and 3 of Glidden are reproduced below.



Figures 1 and 3, above, illustrate an embodiment of upper 10 according to Glidden. *Id.* at pg. 2, 1:5-38. Sock-like upper 10 is fabricated as a *unitary* upper, such as by knitting. *Id.* at pg. 1, 2:33-41. Different types of stitching and different types of yarn may be used to impart different textures, e.g., ribbing, and different properties, e.g., softness or elasticity, respectively, to different areas of upper 10. *Id.* at pg. 1, 2:19-32; pg. 1, 2:41-44.

1. Anticipation

a. Independent Claim 16

Petitioner contends that Glidden anticipates independent claim 16. As noted above and as recited in claim 16, Glidden discloses an article of footwear. Pet. 45 (citing Glidden, pg. 1, 1:1-4). Referring to Figures 1, 6, and 8, Glidden discloses an upper of a textile material, for example, a knitted material, “fabricated as an integral, shaped, *sock-like* article.” *Id.* (citing Glidden, pg. 1, 2:3-10; 2:45-48 (emphasis added)). Such sock-like articles may be manufactured by circular

knitting (*see* Decl. ¶ 84), and such circular knitting is a form of weft knitting (Pet. 45-46; *see also* Decl. ¶ 54 (“Common examples of weft knits are circular knits . . .”); RANDOM HOUSE WEBSTER’S COLLEGE DICTIONARY at 1479 (“weft knitting” is “a knitting process in which the yarn is knitted horizontally *and in a circular form*” (emphasis added)). As noted above, Petitioner contends, and Patent Owner does not rebut the contention, that such “circular” knitting processes include “weft-knitting.” *See* Pet. 45-46.

Petitioner further contends that Glidden discloses that “the textile element having a first area and a second area *with a unitary construction*, the first area being formed of a first stitch configuration, and the second area being formed of a second stitch configuration that is different from the first stitch configuration to impart varying properties to the textile element” (emphasis added). *See* Pet. 42-43, 45-46. As noted above, we construe the term “textile element” to include textile elements with and without a unitary construction. Consequently, for purposes of this decision, we construe the phrase “the textile element having a first area and a second area with a unitary construction” as: a textile element having a unitary construction *and* having a first area and a second area. *Id.* at 42-43.

Glidden discloses that,

[i]n fabricating the *unitary* upper, as by knitting, areas thereof which are normally subjected to greater wear and in which a lower degree of elasticity is desired, such as the toe 11 and the heel portion 12, may be more densely fabricated to provide therein heavier weight and less extensibility than in the other parts of the upper, *as by changing the type of stitch* or the amount or thickness of the yarn in

the knitting. Other areas, such as the ankle portion 13, are preferably made so as to provide softness and elasticity, as by making them of ribbed construction, as shown [in Figure 8].

Pet. 43 (quoting Glidden, pg. 1, 2:33-44 (emphases added). Thus, Glidden discloses both an upper “with a unitary construction” and at least first and second areas of the upper, which areas may have different properties, based on their respective stitch configurations. Pet. 42-43, 45-47; *see also* Decl. ¶ 84.

Finally, Petitioner contends that Glidden discloses a sole structure secured to the upper. Pet. 48 (citing Glidden, pg. 2, 2:8-15; Fig. 1); *see also* Glidden, Figs. 2, 3, 7.

The explanations provided by Petitioner regarding how each element of claim 16 is met by Glidden are persuasive, and are un rebutted by Patent Owner. Thus, based on this record, we hold that Petitioner has demonstrated a reasonable likelihood that independent claim 16 is anticipated by Glidden.

b. Dependent Claims 17 and 18

Claim 17 depends from independent claim 16 and additionally requires that “the first stitch configuration provides *a substantially smooth texture to the first area*, and the second stitch configuration provides *a texture to the second area that is rougher than the smooth texture*” (emphases added). Claim 18 depends from claim 17 and additionally requires that “the second stitch configuration forms a *rib structure* in the second area” (emphasis added), i.e., in the area with the rougher texture. Glidden describes that “[o]ther areas, such as the ankle portion 13, are preferably made so as to provide softness and elasticity, as by making them of

ribbed construction” (emphasis added). Pet. 43 (quoting Glidden, pg. 1, 2:41-44). Thus, Glidden describes that areas of a unitary upper may be ribbed or unribbed, such that these areas may have a rougher, e.g., ribbed, or smoother, e.g., unribbed, texture, as recited in claims 17 and 18. Glidden, pg. 1, 2:41-44.

The explanations provided by Petitioner as to how each element of the challenged dependent claims is disclosed by Glidden are persuasive (Pet. 43, 48-49) and are unrebutted by Patent Owner. Thus, we hold that Petitioner has demonstrated a reasonable likelihood that dependent claims 17 and 18, as well as their base claim, independent claim 16, are anticipated by Glidden.

2. Obviousness

Petitioner contends that claims 16-18 are rendered obvious by Glidden, alone or in combination with McDonald or Whiting. Pet. 3, 43-44. Because anticipation is the epitome of obviousness, a disclosure that anticipates under § 102 also renders the claim unpatentable under § 103. *See In re Pearson*, 494 F.2d at 1402; *In re Meyer*, 599 F.2d at 1031; *In re Fracalossi*, 681 F.2d at 794. Therefore, for the reasons set forth above, we hold that Petitioner has demonstrated a reasonable likelihood that independent claim 16, as well as dependent claims 17 and 18, are rendered obvious by Glidden.

V. CONCLUSION

Petitioner has demonstrated that there is a reasonable likelihood of prevailing on its challenge to the patentability of claims 1-46 of the '011 Patent.

The Petition is granted as to the following grounds for review:
claims 1-16, 19-34, 36, and 39-46 as anticipated by Nishida;
claims 16-18 as anticipated by Glidden;
claims 1-16 and 19-46 as obvious over Nishida; and
claims 16-18 as obvious over Glidden.

VI. ORDER

For the reasons given, it is

ORDERED that the Petition is granted as to claims 1-46 of the '011 Patent.

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(a), *inter partes* review of the '011 Patent is hereby instituted commencing on the entry date of this Order, and pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial.

FURTHER ORDERED that the trial is limited to anticipation by Nishida and Glidden and to obviousness over Nishida and Glidden and no other grounds are authorized.

FURTHER ORDERED that an initial conference call with the Board is scheduled for 2 PM ET on June 18, 2013. The parties are directed to the Office Trial Practice Guide, 77 Fed. Reg. 48756, 48765-66 (Aug. 14, 2012) for guidance in preparing for the initial conference call, and should come prepared to discuss any proposed changes to the Scheduling Order entered herewith and any motions the parties anticipate filing during the trial.

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