

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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NIKE, INC.,  
Petitioner,

v.

JEZIGN LICENSING INC.,  
Patent Owner.

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Case IPR2017-00246  
Patent 6,837,590 B2

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Record of Oral Hearing  
Held: February 28, 2018

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Before KRISTEN L. DROESCH, PHILLIP J. KAUFFMAN, and  
GEORGIANNA W. BRADEN, *Administrative Patent Judges*.

Case IPR2017-00246  
Patent 6,837,590 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

EDWARD SIKORSKI, ESQ.  
KIM VAN VOORHIS, ESQ.  
401 B Street  
Suite 1700  
San Diego CA 92101

ON BEHALF OF THE PATENT OWNER:

JOSEPH ZITO, ESQ.  
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1250 Connecticut Ave, NW  
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Washington DC, DC 20036

and

JEZ MARSTON, INVENTOR

The above-entitled matter came for hearing on Wednesday, February 28, 2018 at Tulane Law School, Weinmann Hall, 6329 Freret Street New Orleans, Louisiana 70118, beginning at 4:10 p.m.

P R O C E E D I N G S

4:10 p.m.

JUDGE DROESCH: Okay. We are on the record. This is the hearing for inter partes review 2017-00246 between petitioner, Nike Incorporated and patent owner, Jezign Licensing. Each party has 30 minutes for oral argument. Because petitioner has the ultimate burden, petitioner will proceed first with arguments followed by patent owner.

Petitioner may reserve some time for rebuttal. Counsel for petitioner, you may begin when you're ready, and please introduce yourself and everybody else that is in attendance for your party.

MR. SIKORSKI: Thank you, Your Honor. Edward Sikorski from DLA Piper on behalf of Nike, Inc. With me today is Kim Van Voorhis, assistant general counsel for Global IP litigation of Nike.

If it please the court, I plan to reserve maybe ten minutes for rebuttal following the 30-minute presentation. As we were kindly introduced by the Tulane student body, we'd also like to thank the Tulane school for hosting this hearing. We're here today to discuss U.S. patent number 6,837,590, which as the introductory remarks indicated, is entitled illuminated hat and shoe.

As the panel no doubt knows, the claims themselves are directed solely to a shoe. The hat is not germane to today's discussion. I've got a slide presentation. I'll endeavor to identify which slide I'm on during the

1 course of the presentation. If the court has any questions, I'm glad to be  
2 interrupted.

3 Here on slide 2, what I've offered for the court, or for the board,  
4 excuse me, is generally an overview of where we are today. As you know,  
5 the board's initial decision indicated that we, Nike, have a reasonable  
6 likelihood of prevailing as to the unpatentability of Claims 1, 2, and 3. In  
7 other words, all the claims of the 590 patent. It is our position that the  
8 Board's initial decision is correct, and we would urge that the Board  
9 continue to find, on the bottom half of slide 2, Claims 1 and 2 anticipated by  
10 the Shkalim reference. Claims 1 and 2 anticipated by the Chiaramonte  
11 reference, Claim 1 anticipated by the Chien reference, and Claim 3, which is  
12 a separate independent claim obvious for any of those three references in  
13 view of Powell.

14 The board in its decision was also asked and rendered a decision as  
15 the claim construction of one term. The term is sole, shoe sole, and the  
16 board in its initial decision was to construe that term as the part of a shoe  
17 that sits below wearer's foot. We would urge that the board continue to  
18 maintain that construction that is, in our view, correct for the 590 patent.

19 JUDGE DROESCH: I have a question for you. Does the sole of the  
20 shoe include the heel, or does it exclude the heel?

21 MR. SIKORSKI: As the panel's aware, that is the primary argument  
22 from Jezign, patent owner, as the claim construction. It's our position -- and  
23 I'm glad to go through the intrinsic evidence that supports our position --

1 there's no question. And it's a bit of an astonishing argument that they  
2 would argue otherwise.

3 In our view, the sole of the shoe is the entirety of the portion that sits  
4 below the wearer's foot. I'm paraphrasing your construction, but I think  
5 your construction is correct. In other words, looking at Figure 3 of a 590  
6 patent, it's our contention that the sole extends from the tip of the toe to the  
7 back of the heel of the foot.

8 JUDGE KAUFFMAN: And could you please comment on the  
9 definition that's offered by patent owner.

10 MR. SIKORSKI: Patent owner doesn't really offer a counter  
11 construction. In their arguments, they say that they, I believe they don't  
12 dispute are the words they use. The correctness insofar as -- if I can quote  
13 them correctly -- here on slide 8, I've excerpted a portion of patent owner's  
14 response at page 7 of paper 16. They do, as part of their argument -- in the  
15 beginning of their argument, they say that they do not dispute the proposing  
16 construction of sole insofar as the sole is a portion of a shoe that sits below a  
17 wearer's foot.

18 So in that capacity, I believe they think the construction is correct.  
19 That said, they have a position, which I find to have no merit that somehow  
20 the term sole excludes the heel. Here on slide 8, to continue the  
21 conversation, Figure 3 of the patent, the 590 patent, illustrates the shoe and  
22 its various components. Among those components is sole 105. 105 is the  
23 reference numeral that the patent uses to point out the sole of the shoe. A  
24 very similar drawing is found in Figure 5, and the lead line for reference

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