

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.

Nike Inc.,  
Patent Owner.

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Case IPR2017-00620 (Patent D723783)  
Case IPR2017-00621 (Patent D723781)

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Record of Oral Hearing  
Held: April 12, 2018

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Before KEN B. BARRETT, GRACE K. OBERMANN, and SCOTT A.  
DANIELS, *Administrative Patent Judges*.

Case IPR2017-00620 (Patent D723783)

Case IPR2017-00621 (Patent D723781)

APPEARANCES:

ON BEHALF OF THE PETITIONER:

MICHAEL R. FLEMING, ESQUIRE

SAMUEL K. LU, ESQUIRE

TALIN GORDNIA, ESQUIRE

Irell & Manella LLP

1800 Avenue of the Stars, Suite 900

Los Angeles, California 90067

ON BEHALF OF THE PATENT OWNER:

ERIK S. MAURER, ESQUIRE

CHRISTOPHER J. RENK, ESQUIRE

AUDRA C. EIDEM HEINZE, ESQUIRE

Banner & Witcoff, Ltd.

Ten South Wacker Drive, Suite 3000

Chicago, Illinois 60606

The above-entitled matter came on for hearing on Thursday, April 12, 2018, commencing at 10:00 a.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

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P R O C E E D I N G S

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JUDGE OBERMANN: Please be seated. Good morning. This is a little different from what I'm used to; usually the petitioner's over there and the patent owner's over there, but I will make the adjustments. Welcome to the PTAB. This is the final hearing -- it's a combined final hearing in IPR 2017-00620 and IPR 2017-00621.

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I'm Judge Obermann, and to my right is Judge Barrett. Today, we have appearing remotely from New Hampshire, Judge Daniels -- he's on the screen to my left. This means that the counsel who's presenting argument has to be very careful to identify exhibits by number, please. I noticed that one party -- and I'm not to call you out by name -- in their briefs they refer to things like the Anders Declaration and the Ball transcript, that's not as helpful to us as the number of the exhibit. So, please refer to the numbers of the exhibits and the numbers of your demonstratives, especially so that Judge Daniels can pull them up on his screen in New Hampshire.

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Let's start with introductions; I'll start with Petitioner. Who do we have for Petitioner, today?

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MR. FLEMING: Yes, Your Honor. Mike Fleming with Irell & Manella, representing Skechers, the Petitioner; and I would like to introduce Sam Lu who is the lead counsel and Talin Gordnia.

22

JUDGE OBERMANN: Hello; thank you.

23

MR. FLEMING: I also have our slides to hard copy. May I present them?

24

1 JUDGE OBERMANN: Absolutely; thank you. Mr. Fleming, will  
2 you be presenting argument or will you be splitting your argument time with  
3 co-counsel?

4 MR. FLEMING: I'm going to allow Mr. Lu to begin, and then Talin.

5 JUDGE OBERMANN: Thank you very much. Okay; and who do we  
6 have for Patent Owner today?

7 MR. MAURER: Good morning, Your Honor. My name is Eric  
8 Maurer. I'll be arguing on behalf of Nike. With me is lead counsel, Mr.  
9 Christopher Renk.

10 MR. RENK: Good morning.

11 JUDGE OBERMANN: Good morning.

12 MR. MAURER: And Audra Eidem Heinze; and also with us today is  
13 Brian Fogarty. Mr. Fogarty is the Vice President of Global IP Litigation and  
14 Brand Protection for Nike.

15 JUDGE OBERMANN: Thank you. I think we have one more person  
16 in the room that wasn't identified. Do we want to identify our last person?

17 MR. JOHNSON: Jamie Johnson with FTILB, filming the  
18 presentation today.

19 JUDGE OBERMANN: Thank you.

20 MR. JOHNSON: Thank you.

21 MR. RENK: May I present hard copies of the demonstratives?

22 JUDGE OBERMANN: Absolutely; thank you. Mr. Maurer, did you  
23 already tell me who's going to be presenting argument?

24 MR. MAURER: I will, Your Honor. I don't think I did, but I will.

25 JUDGE OBERMANN: Okay. Before we get going, I just wanted to  
26 go over a couple of things. I'm in receipt of the paper that was filed

1 regarding Paper 51, which is the sealed version of the Petitioner's reply brief,  
2 I believe. Is it my understanding that document can be unsealed in its  
3 entirety?

4 MS. HEINZE: Yes, Your Honor. The issue that was raised via email  
5 to the Board is no longer an issue, (inaudible) so that Paper 51 (inaudible)  
6 can be restored to public.

7 JUDGE OBERMANN: Great; thank you. And that the information  
8 was actually owned by Patent Owner, is that correct? And that was  
9 allegedly confidential?

10 MS. HEINZE: It was owned by Petitioner.

11 JUDGE OBERMANN: Oh, it was; okay. But you agree, Mr. Maurer,  
12 that can be opened to the public?

13 MR. MAURER: We agree.

14 JUDGE OBERMANN: Great. So, I set down some ground rules in  
15 the hearing order. I want to make sure that we don't blur the evidence  
16 between the cases. They're very similar, but they are different patents; so, to  
17 the extent that you can make sure that you let us know how you're dividing  
18 up your argument -- that would be helpful. I've reviewed with the Panel the  
19 objections to the demonstrative exhibits, and we're overruling those  
20 objections. We're going to let both sides refer to whichever demonstratives  
21 they would like. Those demonstratives are not evidence, they're just visual  
22 aids for us and we'll take into account your objections, but we are quite  
23 competent to discern when there's new evidence in a demonstrative; and we  
24 are also quite skilled at figuring out whether, for example, there's something  
25 misleading or it exceeds the scope of a proper responsive brief.

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