

U.S. PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ELITE PERFORMANCE FOOTWARE, L.L.C.,
Petitioner

v.

REEBOK INTERNATIONAL LIMITED,
Patent Owner.

Case IPR2017-01676 (Patent 7,637,035 B1)

Case IPR2017-01680 (Patent 8,505,221 B2)

Case IPR2017-01689 (Patent 8,020,320 B2)

Record of Oral Hearing
Held: October 25, 2018

Before MEREDITH C. PETRAVICK, KEVIN W. CHERRY, and
JAMES A. WORTH, *Administrative Patent Judges*.

Case IPR2017-01676 (Patent 7,637,035 B1)

Case IPR2017-01680 (Patent 8,505,221 B2)

Case IPR2017-01689 (Patent 8,020,320 B2)

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The above-entitled matter came on for hearing on Thursday, October 25, 2018, commencing at 9:00 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

8:58 a.m.

JUDGE PETRAVICK: Good morning, please be seated. It will take us a few minutes to boot-up our computers.

(Pause.)

JUDGE PETRAVICK: All right, we'll begin. Today we're here for a hearing for IPR 2017-01676, -01680, and -01689. I'm Judge Petravick; with me on the bench is Judge Cherry and Judge Worth.

Each side will have 90 minutes total time which can be divided between argument and rebuttal, and so the order will go, Petitioner, Patent Owner, Petitioner, and then Patent Owner again, as set forth in the scheduling order.

So, Petitioner and Patent Owner, if you'd like to introduce yourselves and then let me know how much time you'd like to reserve for rebuttal.

MR. LACAVA: My name is Richard LaCava from Arent Fox, here on the behalf of Petitioner, Elite Footwear, and with me is Michael Scarpati, also from Arent Fox. I'd like to reserve 45 minutes for rebuttal.

JUDGE PETRAVICK: Okay. And for Patent Owner?

MR. FERRARIO: Good morning, Your Honors, Matias Ferrario from Kilpatrick Townsend on behalf Reebok International. With me is Caroline Wray, my colleague, also from Kilpatrick Townsend, and with me and joining us today is Ms. Sara Halton, who is Senior IP Counsel of Reebok International.

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1 JUDGE PETRAVICK: And would you like to reserve some time for
2 your rebuttal?

3 MR. FERRARIO: Yes. I don't know that I'll need all my 90
4 minutes. My timing right now looks to be about 40 minutes on an opening
5 and reserving some time for rebuttal.

6 JUDGE PETRAVICK: Okay. All right. Also, if you can make
7 sure that after the hearing you give a business card to the court reporter so
8 that they have the correct spelling of your name. That would be
9 appreciated.

10 Can you hear me? Am I close enough to the microphone? Okay.

11 MR. LACAVA: I can hear you just fine.

12 JUDGE PETRAVICK: So Petitioner, if you'd like to approach the
13 podium. Give me a minute -- I'm going to set this clock for 45 minutes, and
14 anytime you go over it, that will be deducted from your rebuttal time.

15 MR. LACAVA: Thank you very much, Your Honor.

16 JUDGE PETRAVICK: All right. Then one last instruction before
17 you start; if you are going to refer to a slide, please make sure to say the
18 slide number so that it's reflected in the transcript so we can go back and
19 look at it later.

20 MR. LACAVA: Yes, Your Honor. Thank you.

21 JUDGE PETRAVICK: Thank you. You can begin when you're
22 ready.

23 MR. LACAVA: Good morning, Your Honors. Thank you for being

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1 here this morning. My name is Rich LaCava, I'm here representing
2 Petitioner in this matter, and I just want to let you know, I believe we have --
3 and I'll lay out for a very straightforward case in this proceeding for
4 invalidity of the claims that are at issue here, and I will be presenting that as
5 we go forward.

6 The first thing I'd just like to take you through is an overview of the
7 patent that we're dealing with here. As we here on slide No. 4, we have just
8 a summary and an exemplary picture of what we're dealing with, and it's an
9 article of footwear. The claims cover an upper material, a sole material, and
10 some flexure grooves or flex lines in the sole of the material, and sole plates
11 that are there.

12 So we'll be going through this in the context of what the claims are,
13 just to give you some idea, but I think the first ultimate issue that we are
14 dealing with is what the proper claim construction is of these flexure lines
15 that are within the claims at issue.

16 (Off microphone comments).

17 So looking at slide No. 12, we have here at issue in the case we've
18 had three constructions that are basically at issue here. We had petitioned
19 our initial construction, which we had proposed a claim construction for a
20 flexure line that was simply a line that divides the sole of the shoe into a
21 plurality of sole plates.

22 As we know from the Institution Decision, the Board, Your Honors,
23 adopted a slightly different construction of that for the Institution Decision,

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