

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ELITE PERFORMANCE FOOTWEAR, LLC,
Petitioner,

v.

REEBOK INTERNATIONAL LIMITED,
Patent Owner.

IPR2017-01676 (Patent 7,637,035 B1)
IPR2017-01680 (Patent 8,505,221 B2)
IPR2017-01689 (Patent 8,020,320 B2)

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

PETRAVICK, *Administrative Patent Judge*.

DECISION
Conduct of the Proceeding
37 C.F.R. § 42.5

IPR2017-01676 (Patent 7,637,035 B1)
IPR2017-01680 (Patent 8,505,221 B2)
IPR2017-01689 (Patent 8,020,320 B2)

On April 24, 2018, the Supreme Court held that a final written decision under 35 U.S.C. § 318(a) must decide the patentability of all claims challenged in the petition. *SAS Inst., Inc. v. Iancu*, 2018 WL 1914661, at *10 (U.S. Apr. 24, 2018). In each of our Decisions on Institution, we determined that Petitioner demonstrated a reasonable likelihood that it would establish that at least one of the challenged claims of the subject patents are unpatentable. IPR2017-01676, Paper 7, 17; IPR2017-01680, Paper 7, 25–26; IPR2017-01689, Paper 7, 20. Pursuant to the holding in *SAS*, we modify our institution decisions to institute on all of the challenged claims and all of the grounds presented in the Petitions.

A conference call was held on April 30, 2018 between counsel for the parties and Judges Petravick, Cherry, and Worth. Patent Owner requested the call to seek authorization to file certain papers that were not filed prior to DUE DATE 1 because of an alleged clerical error. Patent Owner's request, however, is moot. Due to our institution on all of the challenged claims and all of the grounds presented in the Petitions, modifications must be made to the briefing and schedule. The parties agreed to confer and attempt to come to an agreement as to any needed modifications. The proposed modification must include expunging the Patent Owner's Responses and Motions to Amend already of record and allowing Patent Owner to file new Patent Owner's Responses and Motions to Amend. If needed, the parties may also propose modifying DUE DATES 6 and 7 if needed. Any proposal to modify DUE DATE 7 should include multiple dates on which the parties are available for oral argument. The date of the oral argument must be the same for these proceedings.

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During the call, we authorized the parties to file a paper setting forth any proposed modifications no later than May 4, 2018. The parties shall contact the Board at Trials@uspto.gov to request a conference if they cannot reach agreement.

In consideration of the foregoing, it is hereby:

ORDERED that we modify our institution decisions, which we issued pursuant to 35 U.S.C. § 314(a), to include review of all challenged claims and all grounds presented in the Petitions;

FURTHER ORDERED that Petitioner and Patent Owner shall confer to determine a proposed modification to the briefing and schedule and are authorized to file a paper in each proceeding setting forth any proposed modifications no later than May 4, 2018;

FURTHER ORDERED that Petitioner and Patent Owner shall contact the Board if they cannot reach agreement on proposed modifications.

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