

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)

APPEARANCES:

ON BEHALF OF THE PETITIONER:

RICHARD LACAVA, ESQ.

MICHAEL SCARPATI, ESQ.

of: Arent Fox, LLP

1301 Avenue of the Americas

New York, New York 10019-6040

(212) 484-3900

[richard.lacava@arentfox.com](mailto:richard.lacava@arentfox.com)

[michael.scarpati@arentfox.com](mailto:michael.scarpati@arentfox.com)

ON BEHALF OF THE PATENT OWNER:

MITCHELL G. STOCKWELL, ESQ.

MATIAS FERRARIO, ESQ.

Kilpatrick Townsend & Stockton LLP

1001 West Fourth Street

Winston-Salem, North Carolina 27101

(336) 607-7503

[mstockwell@kilpatricktownsend.com](mailto:mstockwell@kilpatricktownsend.com)

[mferrario@kilpatricktownsend.com](mailto:mferrario@kilpatricktownsend.com)

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.

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

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.

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

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

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

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,

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.