

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ELITE PERFORMANCE FOOTWEAR, LLC,
Petitioner,

v.

REEBOK INTERNATIONAL LIMITED,
Patent Owner.

Case 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
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

Elite Performance Footwear, LLC (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 1–20 of U.S. Patent No. 8,020,320 B2 (Ex. 1001, “the ’320 patent”) under 35 U.S.C. §§ 311–319. Paper 2 (“Pet.”). Reebok International Limited. (“Patent Owner”) filed a Preliminary Response. Paper 6 (“Prelim. Resp.”).

Section 314(a) of Title 35 of the United States Code provides that an *inter partes* review may not be instituted “unless . . . the information presented in the petition . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). We determine that the Petition shows a reasonable likelihood that Petitioner would prevail with respect to at least one of the challenged claims. We institute an *inter partes* review of claims 1–20 of the ’320 patent.

We base our findings and conclusions at this stage of the proceeding on the evidentiary record developed thus far. This is not a final decision as to the patentability of claims for which *inter partes* review is instituted. We will base our final decision on the record as fully developed during trial.

A. Related Proceedings

The parties indicate that the ’320 patent is the subject of *Reebok International LTD v. TRB Acquisitions LLC*, Case No. 3:16-cv-01618-SI in the United States District Court for the District of Oregon. Pet. 70; Paper 4, 1. The ’320 patent was also the subject *In the Matter of Certain Athletic Footwear*, Inv. No. 337-TA-1018 (2016) (“the previous ITC case”) in the United States International Trade Commission. Pet. 1.

U.S. Patent No. 7,637,035 and U.S. Patent No. 8,505,221 are related to the '320 patent and are the subject of IPR2017-01676 and IPR2017-001680, respectively. Paper 4, 1.

B. The '320 Patent

The '320 patent is titled “Collapsible Shoe” and issued on September 20, 2011. Ex. 1001, (45), (54). The '320 patent issued from an application that claims priority to an application filed on July 18, 2002. *Id.* at (63). The '320 patent discloses a shoe that has an upper and a sole formed of a lightweight, flexible material. *Id.* at 2:12–17. “The flexible sole and upper allows the article of footwear to be rolled, folded or collapsed on itself so that the article of footwear may be easily stored, packed or distributed.” *Id.* at 2:19–22. Figure 3 of the '320 patent is reproduced below.

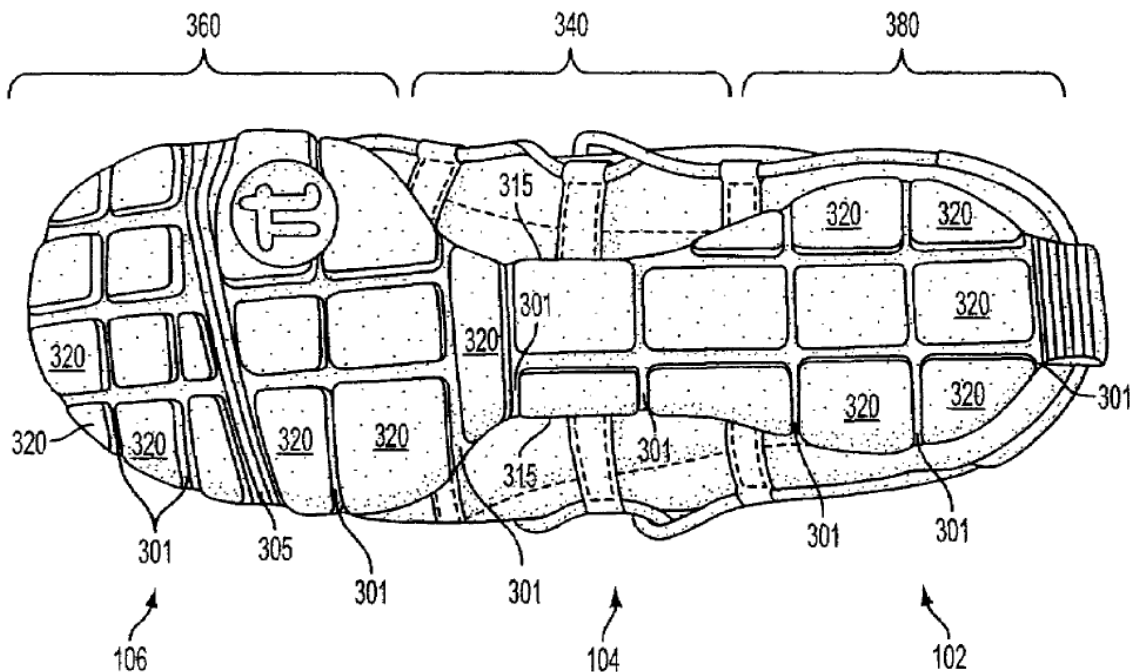


FIG. 3

Figure 3 depicts sole 102 having flexure lines 301, 305 and sole plates 320. *Id.* at 5:29–32. Flexure lines 301, 305 “allow sole [102] to flex and curve,” “allow shoe 100 to be folded,” and “provide additional comfort while the foot is in motion.” *Id.* at 4:66–67, 5:29–30, 5:46. “[S]ole [102] has a larger portion 360 generally located in forefoot area 106, a narrower portion 340 generally located in arch area 104 . . . , and a mid-sized portion 380 generally located in heel area 102.” *Id.* at 5:63–67.

The sole “is preferably made of a flexible, lightweight and durable foam material,” for example, “a mixture of ethyl vinyl acetate (EVA), rubber and other compounds, such as the 3D Ultralite material.” *Id.* at 4:31–35. The upper “may be made of any suitable, breathable and stretchable materials, such as spandex, cotton, or the like.” *Id.* at 3:24–26.

C. Illustrative Claim

Claims 1 and 16, both article claims, are the only independent claims of the ’320 patent. Claims 2–15 each depend from claim 1, and claims 17–20 depend from claim 16. Claim 1 is illustrative and is reproduced below.

1. An article of footwear comprising:
 - an upper adapted to substantially cover a user’s foot and comprising a first flexible material; and
 - a flexible sole fixed to said upper, wherein said sole includes:
 - a second flexible material different from said first flexible material, wherein said second flexible material is a foam material, and
 - a plurality of laterally extending flexure lines that extend across a width of said sole so as to divide

said sole into a plurality of sole plates that flex with respect to one another,

wherein said sole includes an arch area, wherein at least one of said laterally extending flexure lines divide said sole at said arch area, the at least one of said laterally extending flexure lines defining two sole plates at said arch area which flex with respect to one another, wherein at least one of said two sole plates extends the width of said sole and is undivided by a flexure line, wherein the one of said two sole plates extends from a lateral side of said sole to a medial side of said sole.

E. Asserted Grounds of Unpatentability

Petitioner asserts the following grounds of unpatentability:

No.	Ground	Claims	Prior Art
1	§ 103(a)	1–20	Le ¹ and Reebok 2000 ² , Nike H1995 ³ , or Nike S1997 ⁴
2	§ 103(a)	1–20	Yonkers ⁵ and Reebok 2000, Nike H1995, or Nike S1997
3	§ 103(a)	1–20	Merceron '241 ⁶ and Reebok 2000, Nike H1995, or Nike S1997
4	§ 103(a)	1–20	Merceron '546 ⁷ and Reebok 2000, Nike H1995, or Nike S1997
5	§ 103(a)	1–20	Gregg ⁸ and Reebok 2000, Nike H1995, or Nike S1997

¹ U.S. Patent No. Des. 294, 537 (issued Mar. 8, 1988). Ex. 1012.

² Reebok Footwear Q4 Catalog. Ex. 1009.

³ Nike Men's, Women's, and Kid's Holiday Footwear 1995 Catalog. Ex. 1010.

⁴ Nike Footwear Spring 1997 Catalog. Ex. 1011.

⁵ U.S. Patent No. 4,364,190 (issued Dec. 21, 1982). Ex. 1013.

⁶ U.S. Patent No. Des. 388,241 (issued Dec. 30, 1997). Ex. 1014.

⁷ U.S. Patent No. Des. 397,546 (issued Sep. 1, 1998). Ex. 1015.

⁸ U.S. Patent No. Des 133, 176 (issued July 28, 1942). Ex. 1016.

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