

December 8, 2021

VIA EDIS ELECTRONIC FILING

Secretary Lisa R. Barton
U.S. International Trade Commission
500 E Street, S.W., Room 112-A
Washington, DC 20435

Re: ***Certain Knitted Footwear***
Inv. No. 337-TA-_____

Dear Secretary Barton:

In accordance with the Commission's Temporary Change to the Filing Procedures, dated March 16, 2020, enclosed for filing on behalf of Complainant Nike, Inc. ("Nike") are documents in support of Nike's request that the U.S. International Trade Commission commence an investigation pursuant to Section 337 of the Tariff Act of 1930, as amended. This submission includes:

1. One (1) electronic copy each of the confidential and non-confidential versions of the verified Complaint and the Public Interest Statement pursuant to 19 C.F.R. §§ 201.6(c), 210.8(a)(1)(i), and 201.8(b);
2. One (1) electronic copy of the Complainants' letter and certification pursuant to 19 C.F.R. §§ 210.5(d) and 201.6(b) requesting confidential treatment of Nike's confidential business information contained in the confidential version of the verified Complaint and Confidential Exhibit Nos. 13C, 26C, 27C, 48C and 49C to the verified Complaint;
3. One (1) electronic copy of each of Confidential Exhibits to the verified Complaint pursuant to 19 C.F.R. §§ 201.6(c) and 210.8(a)(1)(ii);
4. One (1) electronic copy of each of the Non-Confidential Exhibit Nos. 1-12, 14-25, 28-47, and 50-51 to the verified Complaint and public versions of the verified Complaint and Confidential Exhibit Nos. 13C, 26C, 27C, 48C and 49C to the verified Complaint pursuant to 19 C.F.R. § 210.8(a)(1)(ii);

December 8, 2021

Page 2

5. One (1) electronic copy of each of United States Patent Nos. 9,918,511, 9,743,705, 8,266,749,¹ 7,814,598, 9,060,562 and 8,898,932 (collectively, the “Asserted Patents”), cited in the verified Complaint as Exhibit Nos. 1, 3, 5, 7, 9, and 11, respectively, pursuant to 19 C.F.R. § 210.12(a)(9)(i);

6. One (1) electronic certified copy of each of the assignments for the Asserted Patents, cited in the verified Complaint as Exhibit Nos. 2, 4, 6, 8, 10, and 12, pursuant to 19 C.F.R. § 210.12(a)(9)(ii);

7. One (1) electronic certified copy of the prosecution history for each of the Asserted Patents, included as Appendices A, C, E, G, I, and K to the verified Complaint, pursuant to 19 C.F.R. § 210.12(c)(1); and

8. One (1) electronic copy of each of the technical reference documents identified in the prosecution history of the Asserted Patents, included as Appendices B, D, F, H, J, and L to the verified Complaint, pursuant to 19 C.F.R. § 210.12(c)(2).

Thank you for your attention to this matter. Please do not hesitate to contact us with any questions regarding this submission.

Respectfully submitted,

/s/ Christopher J. Renk

Christopher J. Renk

ARNOLD & PORTER KAYE SCHOLER LLP

Counsel for Complainant Nike, Inc.

¹ Complainant has ordered a certified copy of U.S. Patent No. 8,266,749 but has not yet received it. Complainant will file the certified copy promptly upon receipt. Copies of all other Asserted Patents are certified copies.

December 8, 2021

VIA EDIS ELECTRONIC FILING

Secretary Lisa R. Barton
U.S. International Trade Commission
500 E Street, S.W., Room 112-A
Washington, DC 20435

**REQUEST FOR
CONFIDENTIAL TREATMENT**

Re: ***Certain Knitted Footwear***
Inv. No. 337-TA-_____

Dear Secretary Barton:

Pursuant to Commission Rules 210.5(d) and 201.6(b)(1), as amended by the Commission's Temporary Change to Filing Procedures, dated March 19, 2020, Complainant Nike, Inc. ("Nike") respectfully hereby requests confidential treatment of the confidential business information contained in the verified Complaint and Exhibit Nos. 13C, 26C, 27C, 48C and 49C (collectively the "Confidential Exhibits") to the verified Complaint.

The information in the verified Complaint and the Confidential Exhibits for which Nike seeks confidential treatment consists of:

- Nike's proprietary business methodologies, processes, and information for providing covered domestic industry products;
- Nike's proprietary financial information that is not otherwise publicly available;
- Information concerning Nike's domestic industry investments and expenditures related to plant, equipment, labor, capital, and engineering; and
- Other proprietary and confidential business information not available to the public.

The proprietary information contained in the verified Complaint and the Confidential Exhibits qualifies as confidential business information under Commission Rule 201.6(a)(1) because:

December 8, 2021

Page 2

1. the information or substantially identical information is not available to the public;
2. unauthorized disclosure of this information would cause substantial competitive harm to Nike and its competitive position.
3. disclosure of this information would likely impede the Commission's efforts and ability to obtain similar information in the future; and

Please contact us with any questions regarding this submission. Thank you for your attention to this matter.

Respectfully submitted,

/s/ Christopher J. Renk

Christopher J. Renk

ARNOLD & PORTER KAYE SCHOLER LLP

Counsel for Complainant Nike, Inc.

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, DC**

In the Matter of

CERTAIN KNITTED FOOTWEAR

Inv. No. 337-TA-_____

COMPLAINANT NIKE INC.’S
COMMISSION RULE 210.8(b) STATEMENT ON THE PUBLIC INTEREST

In support of its Complaint, filed herewith, and pursuant to Commission Rule 210.8(b), Complainant Nike Inc. (“Nike” or “Complainant”) respectfully submits this Public Interest Statement. Nike seeks a limited exclusion order and cease and desist orders against Proposed Respondents adidas AG, adidas North America, Inc., and adidas America, Inc. (collectively, “adidas” or “Proposed Respondents”) regarding certain footwear products (the “Accused Products”) that infringe Nike’s patents relating to articles of footwear that incorporate at least one textile or knitted component, including: U.S. Patent Nos. 9,918,511; 9,743,705; 9,907,350; 8,266,749; 7,814,598; 9,060,562; and 8,898,932 (the “Asserted Patents”). The requested remedial orders directed to the Accused Products would not have an adverse effect on public health, safety, or public welfare in the United States, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, or on U.S. consumers. Further, the Commission has long recognized the strong public interest in enforcing intellectual property rights. *See Certain Baseband Processor Chips and Chipsets, Transmitter and Receiver (Radio) Chip, Power Control Chips, and Products Containing Same*, Inv. 337-TA-543 (“*Baseband Processor Chips*”), Comm’n Op. at 136–137 (June 19, 2007); *Certain Two-Handle Centerset Faucets and Escutcheons, and Components Thereof*, Inv. No. 337-TA-422,

Comm’n Op. at 9 (Jun. 19, 2000). Hence, the requested remedial orders are in accord with the public interest.

I. USE OF THE ACCUSED PRODUCTS IN THE UNITED STATES

The Accused Products are footwear articles that incorporate at least one textile or knitted component. Athletic footwear typically includes two main elements, an upper and a sole structure. These elements operate together to provide a structure suitable for various activities, such as walking or running. The upper may also include a tongue that extends under the lacing system to enhance comfort for the wearer. Footwear incorporating at least one textile or knitted component, such as the footwear at issue here, involves uppers made of textile material, manufactured from fibers, filaments, or yarns, which may be constructed using flat or circular knitting techniques. The resulting knit footwear is generally lightweight, air-permeable, flexible, and comfortable, while providing an unprecedented ability to customize fit, function, and design.

Nike’s knit footwear technology—known as Flyknit—has been recognized as “the most groundbreaking sneaker innovation in over 40 years. . . . [because] [t]he revolutionary method of manufacturing enables Nike to create shoes that excel in performance while reducing the amount of materials used and cutting waste by 80%.”¹ A significant reduction in waste and the ability to re-use and recycle materials set Nike’s production of Flyknit footwear apart as more sustainable than footwear manufactured using more conventional methods.²

¹ Carly Fink, *Nike: Sustainability and Innovation through Flyknit Technology*, N.Y.U STERN CTR. FOR SUSTAINABLE BUS. (August 2016), available at: https://www.stern.nyu.edu/sites/default/files/assets/documents/Nike_Carly_04.2017%20-%20Copy.pdf.

² See, e.g., *FY20 Nike, Inc. Impact Report*, 39, 54, 90, 94 (2020), available at: https://purpose-cms-preprod01.s3.amazonaws.com/wp-content/uploads/2021/04/26225049/FY20_Nike_Inc_Impact_Report2.pdf (“Nike spent over 10 years and produced nearly 200 prototypes of the shoe. The process required not only rethinking the design, but the entire process of manufacturing shoes, which required inventing new machinery and software.”).

Nike's research and development of its Flyknit knitted footwear occurred almost entirely in the United States. The Proposed Respondents manufacture the Accused Products abroad and import them into the United States. The Accused Products are then sold to consumers through multiple channels, including retail stores, websites, department stores, independent shoe retailers, and value channels. The Accused Products are also sold at a similar price-point to Nike's Flyknit products and are in direct competition with Nike's Flyknit footwear products.

II. THE REQUESTED REMEDIAL ORDERS POSE NO PUBLIC HEALTH, SAFETY, OR WELFARE CONCERNS

The issuance of a limited exclusion order and cease and desist orders against the Proposed Respondents will not adversely affect public health, safety, or public welfare in the United States, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, or U.S. consumers. The Accused Products represent a small subset of the overall U.S. footwear market—estimated to be more than \$80–\$90 billion in revenue in 2020 in North America and growing—and are limited to footwear products that infringe one or more of the Asserted Patents. As non-essential consumer products, for which many non-infringing alternative designs exist, exclusion of the Accused Products would not compromise the public interest, such as through any public health, safety, or welfare concerns. Additionally, any remedial orders will not prevent Proposed Respondents or others from using alternative sustainable footwear manufacturing techniques that do not infringe the Asserted Patents.

There are no public health implications from the exclusion of the Accused Products. The Commission has never previously found exclusion of footwear products to implicate public health or public welfare concerns, and there are no special circumstances here that would support a different result. *See Certain Footwear Prods.*, Inv. 337-TA-936, (Remand) Comm'n Op. at

123 (Sept. 24, 2020) (“Commission finds that issuing relief would not harm the public interest”); *Certain Foam Footwear*, Inv. No. 337-TA-567 (Remand), Comm’n Op. at 4–8 (Aug. 2, 2011) (“public interest does not preclude” general exclusion order directed to infringing foam footwear and cease and desist orders directed to certain respondents); *see also Sneakers with Fabric Uppers and Rubber Soles*, Inv. No. 337-TA-118, U.S.I.T.C. Pub. No. 1366, Views of the Comm’n at 28 (March 1983); *Certain Flexible Foam Sandals*, Inv. No. 337-TA-047, U.S.I.T.C. Pub. No. 947, Comm’n Mem. Op. at 9 (February 1979).³

III. COMPLAINANT MAKES LIKE OR DIRECTLY COMPETITIVE ARTICLES THAT COULD REPLACE THE ACCUSED PRODUCTS, AND U.S. CONSUMERS WOULD NOT BE ADVERSELY IMPACTED

Complainant has the capacity itself to meet the U.S. demand for footwear protected by the Asserted Patents. Footwear products practicing the Asserted Patents comprise a small subset of the overall footwear market. If the Accused Products are excluded from the United States, U.S. consumers will continue to have access to a large quantity of non-infringing footwear. There are no public interest concerns where domestic demand for a Complainant’s products can be met by the Complainant and its competitors whose products do not infringe the Complainant’s intellectual property rights. *Inkjet Ink Supplies and Components Thereof*, Inv. No. 337-TA-691, Comm’n Op. on Remedy, the Public Interest, and Bonding at 15 (Jan. 28, 2011). In a commercially reasonable time, Nike and other footwear manufacturers have the ability to replace the volume of Accused Products that would be subject to the requested remedial orders. Furthermore, competitive conditions in the U.S. economy would not be adversely affected by the

³ The Commission also has found that public interest considerations do not outweigh remedial relief in investigations involving wearable clothing articles and accessories. *See, e.g., Certain Handbags, Luggage, Accessories, and Packing Thereof*, Inv. No. 337-TA-754, Comm’n Op. at 9–10 (Mar. 2013); *Certain Acid-Washed Denim Garments and Accessories*, Inv. No. 337-TA-324, U.S.I.T.C. Pub. No. 2576, Op. of the Comm’n at 26–27 (Nov. 1992).

requested remedies as there are numerous suppliers of footwear, the U.S market will remain highly competitive. Because of the availability of a broad range of footwear models, the exclusion of the Accused Products is not likely to have a material impact on prices.

Rather, the requested orders serve the public interest in protecting U.S. intellectual property rights. The public has an interest in strong intellectual property protection to encourage innovation, as well as in protecting domestic investment in, research into, and development of, better and more sustainable products for U.S. consumers. *See, e.g., Baseband Processor Chips*, USITC Pub. 4258 (Nov. 2011); *see also* S. Rep. No. 93-1298, 93d Cong. 2nd Sess., at 197 (observing that public interest factors are weighed against what “would be gained by protecting the patent holder (within the context of the U.S. patent laws).”). As a result, Nike’s efforts to protect its inventions in the Asserted Patents, after significant innovation, investment, and research and development into a more sustainable product and process, strongly aligns with the public interest.

Proposed Respondents would remain free to manufacture non-infringing footwear. And because Complainant and Proposed Respondents are only two of many companies that manufacture knit footwear, even if the Accused Products were excluded, U.S. consumers would continue to have uninterrupted access to knit footwear products from Complainant and non-infringing products from third parties. Accordingly, because sufficient alternatives exist, the exclusion of Accused Products will not negatively impact U.S. consumers.

IV. CONCLUSION

For at least the foregoing reasons, there are no public interest concerns that would preclude the Commission from issuing the remedial orders requested by Complainant, and delegation of public interest fact-finding to the Administrative Law Judge is, therefore, unwarranted.

Dated: December 8, 2021

Respectfully submitted,

/s/ Christopher J. Renk

Christopher J. Renk

Michael J. Harris

Aaron Bowling

ARNOLD & PORTER KAYE SCHOLER LLP

70 W Madison Street, #4200

Chicago, IL 60602

Telephone: (312) 583-2300

Facsimile: (312) 583-2360

Philip W. Marsh

ARNOLD & PORTER KAYE SCHOLER LLP

3000 El Camino Real

Five Palo Alto Square, Suite 500

Palo Alto, CA 94306-3807

Telephone: (650) 319-4500

Facsimile: (650) 319-4700

Michael J. Gershoni

Bridgette C. Gershoni

ARNOLD & PORTER KAYE SCHOLER LLP

601 Massachusetts Ave. NW

Washington, DC 20001

Telephone: (202) 942-5000

Facsimile: (202) 942-5999

Deanna Tanner Okun

Lauren E. Peterson

ADDUCI, MASTRIANI & SCHAUMBERG, L.L.P.

1133 Connecticut Avenue, N.W., 12th Floor

Washington, DC 20036

Telephone: (202) 467-6300

Facsimile: (202) 466-2006

Counsel for Complainant Nike, Inc.

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, DC**

In the Matter of

CERTAIN KNITTED FOOTWEAR

Inv. No. 337-TA-_____

**VERIFIED COMPLAINT OF NIKE, INC.
UNDER SECTION 337 OF THE TARIFF ACT OF 1930, AS AMENDED**

COMPLAINANT

Nike, Inc.
One Bowerman Drive
Beaverton, OR 97005
Telephone: (503) 671-6453

COUNSEL FOR COMPLAINANT

Christopher J. Renk
Michael J. Harris
Aaron Bowling
ARNOLD & PORTER KAYE SCHOLER LLP
70 W Madison Street, #4200
Chicago, IL 60602
Telephone: (312) 583-2300
Facsimile: (312) 583-2360

Philip W. Marsh
ARNOLD & PORTER KAYE SCHOLER LLP
3000 El Camino Real
Five Palo Alto Square, Suite 500
Palo Alto, CA 94306-3807
Telephone: (650) 319-4500
Facsimile: (650) 319-4700

Michael J. Gershoni
Bridgette C. Gershoni
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Ave. NW
Washington, DC 20001
Telephone: (202) 942-5000
Facsimile: (202) 942-5999

PROPOSED RESPONDENTS

adidas AG
World of Sports
Adi-Dassler-Strasse 1
91074 Herzogenaurach
Germany
Telephone: +49 9132 84 0
Facsimile: +49 9132 84 0

adidas North America, Inc.
adidas Village
5055 N Greeley Avenue
Portland, OR 97217
Telephone: 1-800-982-9337
Facsimile: 1-800-982-9337

adidas America, Inc.
adidas Village
5055 N Greeley Avenue
Portland, OR 97217
Telephone: 1-971-234-2300
Facsimile: 1-800-982-9337

PUBLIC, REDACTED VERSION

Deanna Tanner Okun
Lauren E. Peterson
Adduci, Mastriani & Schaumberg, L.L.P.
1133 Connecticut Avenue, N.W., 12th Floor
Washington, DC 20036
Telephone: (202) 467-6300
Facsimile: (202) 466-2006

PUBLIC, REDACTED VERSION

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. THE PARTIES.....	4
A. Complainant.....	4
B. Respondents	6
1. adidas AG.....	6
2. adidas North America, Inc.	6
3. adidas America, Inc.	6
III. THE TECHNOLOGY AND PRODUCTS AT ISSUE	7
A. The Technology	7
B. The Accused Products.....	9
IV. THE PATENTS AT ISSUE.....	17
A. U.S. Patent No. 9,918,511.....	18
1. Identification of the Patent and Ownership by Complainant.....	18
2. Non-Technical Description of the '511 Patent	19
3. Foreign Counterparts to the '511 Patent	21
B. U.S. Patent No. 9,743,705.....	21
1. Identification of the Patent and Ownership by Complainant.....	21
2. Non-Technical Description of the '705 Patent	22
3. Foreign Counterparts to the '705 Patent	22
C. U.S. Patent No. 8,266,749.....	23
1. Identification of the Patent and Ownership by Complainant.....	23
2. Non-Technical Description of the '749 Patent	24
3. Foreign Counterparts to the '749 Patent	24
D. U.S. Patent No. 7,814,598.....	25
1. Identification of the Patent and Ownership by Complainant.....	25
2. Non-Technical Description of the '598 Patent	25
3. Foreign Counterparts to the '598 Patent	26
E. U.S. Patent No. 9,060,562.....	26
1. Identification of the Patent and Ownership by Complainant.....	26

PUBLIC, REDACTED VERSION

TABLE OF CONTENTS

(continued)

	Page
2. Non-Technical Description of the '562 Patent	27
3. Foreign Counterparts to the '562 Patent	29
F. U.S. Patent No. 8,898,932.....	29
1. Identification of the Patent and Ownership by Complainant.....	29
2. Non-Technical Description of the '932 Patent	30
3. Foreign Counterparts to the '932 Patent	30
G. Licensees Under the Asserted Patents	32
V. SPECIFIC INSTANCES OF UNLAWFUL IMPORTATION AND SALE.....	32
VI. UNFAIR ACTS OF RESPONDENTS	34
A. Infringement.....	34
1. Direct Infringement.....	34
2. Indirect Infringement	38
B. Evidence of Infringement	45
1. The '511 Patent.....	45
2. The '705 Patent.....	45
3. The '749 Patent.....	45
4. The '598 Patent.....	46
5. The '562 Patent.....	46
6. The '932 Patent.....	46
VII. HARMONIZED TARIFF SCHEDULE INFORMATION	46
VIII. THE DOMESTIC INDUSTRY	47
A. Economic Prong.....	47
1. Nike's Activities Related to Flyknit	47
2. Nike's Domestic Investment in Research, Design, and Development Related to Flyknit	50
3. Nike's Domestic Investments in Labor Related to Flyknit.....	50
4. Nike's Domestic Investments in Facilities and Equipment Related to Flyknit.....	51
5. Flyknit Sales.....	53
B. Technical Prong	54

PUBLIC, REDACTED VERSION

TABLE OF CONTENTS

(continued)

	Page
IX. RELATED LITIGATION	58
A. U.S. Proceedings Related to the Knitted Textile Upper Family '011 Parent Patent.....	58
B. Foreign Proceedings Related to the '011 Patent	59
C. Proceedings Related to the '598 Patent	60
D. Proceedings Related to the '749 Patent	60
X. RELIEF REQUESTED.....	61

EXHIBIT LIST

Ex. No.	Description
1	Certified Copy of U.S. Patent No. 9,918,511
2	Certified Copy of Assignment Records for U.S. Patent No. 9,918,511
3	Certified Copy of U.S. Patent No. 9,743,705
4	Certified Copy of Assignment Records for U.S. Patent No. 9,743,705
5	Copy of U.S. Patent No. 8,266,749
6	Certified Copy of Assignment Records for U.S. Patent No. 8,266,749
7	Certified Copy of U.S. Patent No. 7,814,598
8	Certified Copy of Assignment Records for U.S. Patent No. 7,814,598
9	Certified Copy of U.S. Patent No. 9,060,562
10	Certified Copy of Assignment Records for U.S. Patent No. 9,060,562
11	Certified Copy of U.S. Patent No. 8,898,932
12	Certified Copy of Assignment Records for U.S. Patent No. 8,898,932
13C	List of Foreign Counterparts to Asserted Patents
14	Representative Infringement Claim Chart for U.S. Patent No. 9,918,511
15	Representative Infringement Claim Chart for U.S. Patent No. 9,743,705
16	Representative Infringement Claim Chart for U.S. Patent No. 8,266,749
17	Representative Infringement Claim Chart for U.S. Patent No. 7,814,598
18	Representative Infringement Claim Chart for U.S. Patent No. 9,060,562
19	Representative Infringement Claim Chart for U.S. Patent No. 8,898,932
20	Representative Domestic Industry Claim Chart for U.S. Patent No. 9,918,511
21	Representative Domestic Industry Claim Chart for U.S. Patent No. 9,743,705
22	Representative Domestic Industry Claim Chart for U.S. Patent No. 8,266,749
23	Representative Domestic Industry Claim Chart for U.S. Patent No. 7,814,598
24	Representative Domestic Industry Claim Chart for U.S. Patent No. 9,060,562
25	Representative Domestic Industry Claim Chart for U.S. Patent No. 8,898,932
26C	Confidential Declaration of Tyler Piumbroeck
27C	Confidential Declaration of Daren Tatler
28	Declaration of Kimberly J. Hedgren
29	Compilation of photos of boxes of Accused Products showing product labels
30	Compilation of receipts for purchase of Accused Products
31	Nike, Inc., <i>Form 10-K</i> , Fiscal Year 2021 (July 20, 2021)
32	<i>FY20 Nike, Inc. Impact Report</i> (2020), available at: https://purpose-cms-preprod01.s3.amazonaws.com/wp-content/uploads/2021/04/26225049/FY20 Nike Inc Impact Report2.pdf .

PUBLIC, REDACTED VERSION

Ex. No.	Description
33	Billy Hunter, <i>Nike Flyknit: Quantum Leap for Flat Knitting</i> , KNITTING INDUSTRY (July 26, 2012), available at: http://www.knittingindustry.com/nike-flyknit-quantum-leap-for-flat-knitting/ (printed Nov. 11, 2013).
34	Billy Hunter, <i>Nike Flyknit: Ready, Steady, Go!</i> , KNITTING INDUSTRY (July 31, 2012), available at: http://www.knittingindustry.com/nike-flyknit-ready-steady-go/ (printed Nov. 11, 2013).
35	Carly Fink, <i>Nike: Sustainability and Innovation through Flyknit Technology</i> , N.Y.U STERN CTR. FOR SUSTAINABLE BUS. (August 2016), available at: https://www.stern.nyu.edu/sites/default/files/assets/documents/Nike_Carly_04.2017%20-%20Copy.pdf .
36	adidas - Headquarters Webpage, available at: https://www.adidas-group.com/en/about/headquarters/ (visited and printed Nov. 4, 2021).
37	adidas - Annual Report 2020, Shareholdings of adidas AG, Herzogenaurach, as at December 31, 2020, available at: https://report.adidas-group.com/2020/en/servicepages/downloads/files/ai-shareholdings-adidas-ag-adidas-ar20.xlsx (visited and printed Nov. 9, 2021).
38	adidas Originals Samba Sock Primeknit “Black / White” - West NYC, WEST NYC SNEAKER BLOG (May 7, 2018), available at: https://www.westnyc.com/blogs/latest/adidas-originals-samba-sock-primeknit-black-white (visited and printed Nov. 16, 2021).
39	adidas Originals Samba Sock Primeknit “White / Black” - West NYC, WEST NYC SNEAKER BLOG (May 22, 2018), available at: https://www.westnyc.com/blogs/latest/adidas-originals-samba-sock-primeknit-white-black (visited and printed Nov. 16, 2021).
40	Compilation of Adidas Importation Evidence
41	Minh Vuong, “Material Matters: Adidas Primeknit,” SNEAKER FREAKER (Nov. 16, 2020), available at: https://www.sneakerfreaker.com/features/material-matters/material-matters-adidas-primeknit (printed and visited Nov. 20, 2021).
42	ADIDAS, <i>Phosphere</i> , available at: https://www.adidas.de/en/phosphere-shoes/EG3491.html (printed and visited Oct. 12, 2021).
43	ADIDAS, <i>Pureboost Go</i> , available at: https://www.adidas.com/us/running_pureboost (printed Oct. 12, 2021; last visited Nov. 11, 2021).
44	ADIDAS, <i>adidas Running launches brand-new PureBOOST GO, created specifically for thrilling city running</i> (Aug. 13, 2018), available at: https://news.adidas.com/running/adidas-running-launches-brand-new-pureboost-go--created-specifically-for-thrilling-city-running/s/b07903c5-6db5-49fb-9c2e-1e114ef0eb8a (printed and visited Oct. 12, 2021).
45	ADIDAS, <i>Pro Boost Mid Shoes</i> , available at: https://www.adidas.com/us/pro-boost-mid-shoes/FW9517.html (printed and last visited Oct. 13, 2021).

PUBLIC, REDACTED VERSION

Ex. No.	Description
46	ADIDAS, <i>Pro Boost Mid Shoes</i> , available at: https://www.adidas.de/en/pro-boost-mid-shoes/FW9509.html (printed and last visited Oct. 12, 2021).
47	Rofiquzzaman Raju, <i>Features and Uses of the Raschel Warp Knitting Machine</i> , TEXTILE LEARNER (Dec. 23, 2020), available at: https://www.adidas.de/en/pro-boost-mid-shoes/FW9509.html (printed and last visited Oct. 12, 2021).
48C	Compilation of Confidential Photos of the APCC
49C	Compilation of Confidential Photos of the LBJ
50	Email from Paul Ehrlich to Hilary Krane dated March 16, 2016
51	Letter from Mitchell G. Stockwell to Christopher J. Renk dated December 11, 2019

APPENDIX LIST

Appx. No.	Description
A	U.S. Patent No. 9,918,511 Certified Prosecution History
B	U.S. Patent No. 9,918,511 Cited References
C	U.S. Patent No. 9,743,705 Certified Prosecution History
D	U.S. Patent No. 9,743,705 Cited References
E	U.S. Patent No. 8,266,749 Certified Prosecution History
F	U.S. Patent No. 8,266,749 Cited References
G	U.S. Patent No. 7,814,598 Certified Prosecution History
H	U.S. Patent No. 7,814,598 Cited References
I	U.S. Patent No. 9,060,562 Certified Prosecution History
J	U.S. Patent No. 9,060,562 Cited References
K	U.S. Patent No. 8,898,932 Certified Prosecution History
L	U.S. Patent No. 8,898,932 Cited References

I. INTRODUCTION

1. Nike, Inc. (“Nike”) is the Complainant in this Investigation. Nike’s mission is to bring inspiration and innovation to every athlete in the world, with the belief that if you have a body, you are an athlete. Nike fulfills that mission, in part, by investing heavily in research, design, and development. Through that investment, Nike strives to create game-changing technologies and products that enhance athletic performance, reduce injury, and maximize comfort all while reducing waste.

2. Nike’s Flyknit is an example of those game-changing technologies. Flyknit resulted from more than a decade of Nike’s research and development, and it has been hailed as “the most groundbreaking sneaker innovation in over 40 years.” **Exhibit 35** at 2. Nike’s Flyknit technology provides a novel method of designing and manufacturing shoe uppers, which enables Nike to create footwear with excellent performance, design, and aesthetics—all while reducing materials and waste. A Nike Flyknit shoe upper is shown below.



3. Unlike Nike, Respondents adidas AG, adidas North America, Inc., and adidas America, Inc. (collectively, “Respondents” or “adidas”) have forgone independent innovation. Instead, adidas spent much of the past decade challenging several of Nike’s patents directed to Flyknit technology. adidas’ challenges included unsuccessful petitions at the U.S. Patent and

Trademark Office’s Patent Trial & Appeal Board that targeted two of Nike’s patents at issue in this case. Those challenges failed, as did adidas’ subsequent appeals to the U.S. Court of Appeals for the Federal Circuit and the U.S. Supreme Court. And while adidas unsuccessfully challenged Nike’s patents, it continued to use Nike’s patented technology without permission. Today, adidas offers dozens of footwear products that infringe Nike’s patents, including many of adidas’ so-called “Primeknit” shoes.

4. Nike is now forced to bring this action to defend its investments in innovation and to protect its technology by halting adidas’ unauthorized use. Specifically, Nike respectfully requests that the United States International Trade Commission (“the Commission”) institute an investigation into violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by adidas.

5. This Complaint is based on adidas’ unlawful and unauthorized importation into the United States, sale for importation, and/or sale within the United States after importation of certain knitted footwear products that infringe Nike’s patents protecting its Flyknit technology. adidas’ products infringe, either literally or under the doctrine of equivalents, at least one or more claims listed below (“Asserted Claims”) of the six U.S. Patents (“Asserted Patents”) listed in the table below, which as discussed below are grouped into three families based on just three separate disclosures and include 11 asserted independent claims:

U.S. Patent No.	Asserted Claims¹
9,918,511	1* , 2, 3, 5, 9, 10, 11, 15* , 17, 18, 19, 20
9,743,705	1* , 2, 3, 4, 5, 6, 7, 8, 11* , 12, 13, 14, 15, 16, 17, 18, 19, 20
8,266,749	1* , 2, 3, 4, 5, 6, 7, 8, 9, 13* , 14, 15, 16, 17, 18, 19, 21

¹ Independent claims are denoted by *.

U.S. Patent No.	Asserted Claims¹
7,814,598	1*, 9*, 14*
9,060,562	1*, 2, 3, 4
8,898,932	11*, 12, 14, 15

6. The Asserted Patents are valid and enforceable United States Patents, the entire right, title, and interest to which Nike owns.

7. adidas' activities with respect to the importation into the United States, the sale for importation into the United States, and/or the sale within the United States after importation of certain knitted footwear, including primarily its Primeknit footwear and footwear products that incorporate Primeknit elements, described more fully *infra*, are unlawful under 19 U.S.C. § 1337(a)(1)(B)(i) in that they constitute infringement of one or more valid and enforceable claims of the Asserted Patents.

8. Pursuant to Commission Rules 210.10(b)(1) and 210.12(a)(12), Complainant states that a plain English description of the category of Accused Products is footwear with a knitted upper or with an upper with knitted elements.

9. An industry exists in the United States related to articles protected by the Asserted Patents, as required by Section 337 (a)(2) and defined by Section 337 (a)(3). Nike has made significant investments in plant and equipment, significant employment of labor and capital, and substantial investments in engineering and research and development related to its Flyknit products. And while Nike does have manufacturing facilities abroad, Nike also has significant manufacturing capability in the United States and has manufactured, produced and prototyped a number of its Flyknit uppers in the United States. The market success of products featuring Flyknit technology can be seen not only in Nike's Flyknit sales figures, which are over [REDACTED] [REDACTED] for Flyknit styles from 2018-2021, but also in the fact that adidas has manufactured

abroad and imported into the United States its own Accused Products, defined *infra*, which misappropriate Nike's patented Flyknit innovations. **Exhibit 26C**, ¶ 8.

10. To remedy adidas' continuing unfair and unlawful violations of Section 337, Nike seeks, as permanent relief, a limited exclusion order pursuant to 19 U.S.C. § 1337(d) barring from entry into the United States adidas' products that infringe one or more of the Asserted Claims of the Asserted Patents. Nike also seeks cease and desist orders pursuant to 19 U.S.C. § 1337(f) prohibiting adidas from engaging in the importation into the United States, as well as the sale within the United States after importation, the offer for sale, advertising, distributing, transferring, operating, testing, updating, supporting, servicing, repairing, or soliciting of products that infringe one or more of the Asserted Claims. Further, Nike requests that the Commission impose a bond upon adidas' importation of infringing devices during the 60-day Presidential review period pursuant to 19 U.S.C. § 1337(j).

II. THE PARTIES

A. Complainant

11. Nike is the world's leading designer of athletic footwear, apparel, and sports equipment. Nike became the industry leader, and maintains that position, by investing heavily in research, design, and development, creating game-changing designs and technologies. Nike's investments in research, design, and development have led to many innovative footwear technologies, including many of the technologies at issue in this case.

12. Nike is also one of America's great success stories. Co-founded by Phil Knight while he was a student at the University of Oregon, Nike grew to become the Fortune 100 company it is today. From those humble beginnings, Nike grew to the point that during fiscal year 2021 the company employed approximately 73,300 employees worldwide and reported \$44.5 billion in revenue. **Exhibit 31** at 6, 28-29.

13. Nike now has facilities around the world, with its world headquarters (“WHQ”) based on a 400-acre campus in Beaverton, Oregon with more than 40 buildings, and including adjacent leased properties. *Id.* at 24. Over 11,000 employees go to work at Nike’s WHQ in Beaverton, Oregon, and the campus is home to research and development facilities, manufacturing facilities, testing facilities, and a variety of other buildings dedicated to inventing, researching, developing, testing, manufacturing, and improving its products, including the domestic industry products described below. *See id.* One of the results is a series of innovative and wildly successful footwear styles incorporating the asserted Flyknit technology that account for [REDACTED] in sales in the United States from 2018 through the present. **Exhibit 26C, ¶ 8.**

14. Nike has taken steps to protect and defend its innovative footwear technologies, including by obtaining and enforcing utility patents around the world. For its innovations, the U.S. Patent and Trademark Office (“PTO”) has awarded Nike over 10,500 patents according to the PTO’s own patent database.² Nike’s patented technology includes its Flyknit technology, which Nike publicly unveiled in February 2012 and continues to update and innovate with new applications and expanded features.³ The Asserted Patents described below relate to this technology, which was invented, researched, developed, tested, and refined principally at Nike’s world headquarters in Beaverton, Oregon. **Exhibit 26C, ¶ 9; Exhibit 27C, ¶ 9.**

² PTO Patent Database, available at <https://patft.uspto.gov/>.

³ *See, e.g.*, <https://news.nike.com/news/four-years-of-nike-flyknit>; <https://news.nike.com/news/nike-unveils-flyknit-performance-track-spike>.

B. Respondents

1. adidas AG

15. Upon information and belief, Respondent adidas AG is a German corporation with its principal place of business at World of Sports, Adi-Dassler-Strasse 1, 91074 Herzogenaurach, Germany. *See Exhibit 36* at 2. adidas AG designs, manufactures, imports or causes others (including adidas North America, Inc. and/or adidas America, Inc., discussed below) to import into the United States, sells or causes others (*e.g.*, adidas North America, Inc. and/or adidas America, Inc.) to sell for importation into the United States, and/or sells or causes others (*e.g.*, adidas North America, Inc. and/or adidas America, Inc.) to sell after importation knitted footwear, including its Primeknit shoes, that infringe the Asserted Patents.

2. adidas North America, Inc.

16. Upon information and belief, Respondent adidas North America, Inc. is a corporation organized and existing under the laws of Delaware with its principal place of business located at 5055 N Greeley Avenue, Portland, Oregon 97217. *See Exhibit 36*. Upon information and belief, adidas North America, Inc. operates as a subsidiary of and is controlled by adidas International B.V., which in turn operates as a subsidiary of and is controlled by adidas AG. *See Exhibit 37* at 1-2. adidas North America, Inc. imports or causes others (including adidas America, Inc. discussed below) to import into the United States, sells or causes others (*e.g.*, adidas America, Inc.) to sell for importation into the United States, and/or sells or causes others (*e.g.*, adidas America, Inc.) to sell after importation knitted footwear, including its Primeknit shoes, that infringe the Asserted Patents.

3. adidas America, Inc.

17. Upon information and belief, Respondent adidas America, Inc. is a corporation organized and existing under the laws of Oregon with its principal place of business located at

5055 N Greeley Avenue, Portland, Oregon 97217. *See* **Exhibit 36** at 4. Upon information and belief, adidas America, Inc. operates as a subsidiary of and is controlled by adidas North America, Inc. *See* **Exhibit 37** at 1-2. adidas America, Inc. imports into the United States, sells for importation into the United States, and/or sells after importation, knitted footwear, including its Primeknit shoes, that infringe the Asserted Patents. adidas America, Inc. is an importer of record of the Accused Products and sells the Accused products after importation into the United States. **Exhibit 40.**

III. THE TECHNOLOGY AND PRODUCTS AT ISSUE

A. The Technology

18. The technology at issue generally involves knitted footwear featuring uppers created using Nike’s Flyknit knitting technology. Flyknit involves a novel method of designing and manufacturing uppers that enables Nike to create footwear that excels in performance, design and aesthetics while reducing materials and waste.

19. Nike publicly unveiled Flyknit in February 2012, ahead of its debut at the 2012 London Olympics. The technology is the culmination of more than a decade of research and development and an investment of [REDACTED], and it represented the first major technology innovation in footwear uppers in decades: “Nike’s Flyknit shoe is the most groundbreaking sneaker innovation in over 40 years.” *See* **Exhibit 35** at 2. One of the major advances with Flyknit technology was the ability to use yarns made of recycled materials and to knit the upper to the exact shape needed, if desired, decreasing waste and increasing sustainability. *See, e.g.,* **Exhibit 32.**

20. Flyknit was quickly hailed as a “quantum leap” by the knitting industry:

Nike Flyknit represents a quantum leap for flat knitting technology and heralds a new era for integrally knitted nonapparel products which can be manufactured on a large scale to meet global demand. Make no mistake – this is flat knitting technology’s finest hour.

See **Exhibit 33** at 2.



Figure 1: A Flyknit Knitted Shoe Upper



Figure 2: Running Shoes From the London 2012 Collection⁴

21. Nike's Flyknit technology is lightweight, breathable, and supportive. It uses high-strength fibers to create lightweight uppers with targeted areas of support, stretch and breathability. Flyknit is created from strong, yet lightweight strands of yarn woven into a one-piece upper that secures an athlete's foot to the shoe platform. Different yarns and knit patterns can be used to customize the fit and function of different areas, giving more support or flexibility

⁴ See <https://news.nike.com/news/nike-unveils-a-volt-collection-for-track-and-field>.

as needed. Because of its special construction, Flyknit technology provides a sock-like fit, but with the support and durability needed for sports and other athletic endeavors.








Figure 3: Figures Showing Unfinished and Finished Flyknit Shoe

22. Since its debut at the 2012 London Olympics, Nike has adopted its Flyknit technology in footwear products used in many different sports, such as running, basketball, soccer, tennis, golf, and football, as well as for lifestyle shoes. Elite professional and Olympic athletes around the world have adopted Flyknit footwear, including basketball great LeBron James, international soccer superstar Cristiano Ronaldo, and world record marathoner Eliud Kipchoge. Flyknit styles have also become a popular option for the masses because of their comfort, design and aesthetic. As of today, because of consumer demand, many of Nike's lifestyle footwear products also feature Flyknit technology. Because the upper is knitted, Nike can provide unique new shoe designs using Flyknit with aesthetics and performance features not previously possible. Additionally, because Flyknit is created using yarn from reclaimed and recycled materials, it is an important part of Nike's drive toward increasing sustainability, reducing waste and minimizing its carbon footprint. *See, e.g., Exhibit 32.* The Asserted Patents all relate to Flyknit technology.

B. The Accused Products

23. The Accused Products are knitted footwear products made by adidas, including its Primeknit footwear and footwear products including Primeknit elements imported into the









United States, sold for importation into the United States, and/or sold within the United States after importation by or on behalf of adidas, that infringe one or more of the Asserted Claims of the Asserted Patents. These include numerous styles of shoes manufactured, imported, sold for importation, and/or sold after importation by adidas. Examples of imported articles that infringe the Asserted Patents are adidas' Primeknit shoes.⁵ See **Exhibits 14-29, 28-30, 38-47**. Those example styles are also shown in the summary table below:⁶

Example Style	Example Picture
4D Run 1.0 Shoes	
4DFWD Shoes	
adidas by Stella McCartney Ultraboost 20 Shoes (Style 1)	
adidas by Stella McCartney Ultraboost 20 Shoes (Style 2)	
adidas By Stella McCartney Ultraboost Sandals	

⁵ Because of the large number of infringing Primeknit styles, only examples are provided in this complaint and the attached exhibits.

⁶ Nike has physical samples of its Flyknit styles that practice claims of the Asserted Patents and adidas' Primeknit styles that infringe claims of the Asserted Patents. Nike will make the samples available for the ALJ's or Commission's inspection or will provide samples directly to the ALJ or Commission, if samples are desired, when the Commission offices reopen.

Example Style	Example Picture
Adizero 11.0 Primeknit Football Cleats	
Adizero Primeknit SK Cleats	
Alphaedge 4D Shoes	
Crazy 1 ADV Primeknit Sock Shoes	
Crossknit DPR Golf Shoes	
FutureNatural Shoes	
Lucas Premiere Primeknit Shoes	
NMD_R1 Primeknit Shoes	
Pharrell Williams Superstar Primeknit Shoes	
Phosphere Shoes	

Example Style	Example Picture
Predator Freak+ Firm Ground Cleats	
Pro Boost Mid	
PureBoost GO	
Samba Sock Primeknit Shoes	
Stabil Next Gen Primeblue Handball Shoes	
Stan Smith Primeknit Shoes	
Terrex Free Hiker COLD.RDY Hiking Boots	
Terrex Free Hiker GTX	

Example Style	Example Picture
Terrex Free Hiker Hiking Shoes	
Terrex Free Hiker Parley Hiking Shoes	
Terrex Free Hiker Primeblue Hiking Shoes	
Terrex Two Ultra Parley AP Shoes	
Terrex Two Ultra Parley Trail Running Shoes	
Tour360 XT Primeknit Shoes	
Ultraboost 20 Lab Shoes	
Ultraboost 20 Shoes	
Ultraboost 20 x James Bond Shoes	

Example Style	Example Picture
Ultraboost 21 Shoes	
Ultraboost 4.0 DNA Shoes	
Ultraboost 5.0 DNA Shoes	
Ultraboost 6.0 DNA x Parley Shoes	
Ultraboost DNA 1.0 Shoes	
Ultraboost DNA CC_1 Shoes	
Ultraboost DNA x DFB Shoes	
Ultraboost DNA x James Bond Shoes	
Ultraboost Slip-On DNA Shoes	
Ultraboost Summer.RDY Tokyo Shoes	

Example Style	Example Picture
Ultraboost Uncaged Lab	
X Speedflow+ Adizero Firm Ground Cleats	
X Speedflow+ Firm Ground Cleats	
X Speedflow.1 Artificial Grass Cleats	
X Speedflow+ FG	
Y-3 Ultraboost 21	
ZG21 Motion Primegreen Boa Mid Golf Shoes	

24. In contrast to Nike, the PTO has awarded adidas fewer than 800 patents according to the PTO's Patent Database.⁷ In July of 2012, just five months after Nike announced Flyknit, adidas announced a similar product of its own called "Primeknit." **Exhibit 34** at 4. The industry immediately took note of the similarities between Nike's patented Flyknit technology and

⁷ See note 2, *supra*.

adidas' Primeknit offerings. *See id.* ("adidas has just released its adizero Primeknit sho[e] which looks very similar to Flyknit.").

25. Rather than seek a license to any of Nike's patents covering Flyknit technology, adidas instead opted to challenge several of them, all while marketing a number of different infringing shoe styles and following on Nike's innovation coattails into other sports (*e.g.*, basketball, soccer, golf, etc.).⁸ For example, adidas challenged Nike's U.S. Patent No. 7,347,011 ("the '011 Patent"), which is the original application in the Knitted Textile Upper Family. That challenge is still ongoing with an appeal currently pending. adidas also challenged Nike's European counterpart patent to the '011 Patent in Germany after Nike sued adidas in Germany based on infringement of that patent. Although Nike was initially awarded a temporary injunction in Germany, the German courts ultimately denied Nike's request for a permanent injunction and revoked the German portion of Nike's European patent.

26. adidas then threatened to attempt to invalidate two more of Nike's Flyknit-related patents (asserted U.S. Patent Nos. 8,266,749 and 7,814,598) in the same family if Nike did not give adidas a covenant not to sue. *See Exhibit 50.* adidas also confirmed the existence of an Article III controversy between Nike and adidas related to the similarities between Nike's Flyknit and adidas' Primeknit. *See Exhibit 51* at 1-2. Nike did not accede to adidas' ill-founded request and then, adidas filed *inter partes* review ("IPR") proceedings at the Patent Office challenging those patents. After several years and multiple appeals, adidas lost those baseless challenges and Nike's patents were vindicated. Despite adidas' unsuccessful challenges, its implicit acknowledgment of the need for a covenant not to sue, and its acknowledgement of an ongoing Article III controversy due to the similarities between Nike's patented Flyknit

⁸ *See, e.g.*, <https://www.adidas.com/us/primeknit-shoes>.

technology and adidas' Primeknit styles, adidas failed to seek a license after the termination of its unsuccessful challenges to Nike's patents. Instead, adidas escalated and scaled its infringing footwear offerings.

27. The Accused Products are manufactured abroad by or on behalf of adidas and are imported into the United States, sold for importation into the United States and/or sold within the United States after importation, by or on behalf of adidas.

28. Each of the Accused Products meets each and every limitation of at least one claim of one or more of the Asserted Patents. The products identified herein are merely illustrative of the types of infringing products that adidas manufactures and imports into the United States, sells for importation into the United States, and/or sells within the United States after importation in violation of Section 337. The fact that Nike has identified specific models or types of products in this Complaint and certain attachments is not intended, either implicitly or explicitly, to limit the scope of the investigation or the scope of relief to which Nike is entitled.

IV. THE PATENTS AT ISSUE

29. Several of the Asserted Patents are related, and the Asserted Patents can be grouped into three patent families of closely related patents, based on three original patent disclosures, as shown in the table below:

Patent Family	Asserted Patent(s)
Knitted Textile Upper Family	9,918,511
	9,743,705
	8,266,749
	7,814,598
Integral Knit Tongue Family	9,060,562
Knit with Skin Layer Family	8,898,932

30. The first family listed above, the Knitted Textile Upper Family, includes a number of patents that claim priority as continuation and divisional applications to the '011 Patent, which issued on March 25, 2008, based on an application filed on March 3, 2004. The patents in the Knitted Textile Upper Family shown in the table above (the '511, '705, '749, and '598 Patents), all share a common disclosure that relates to specific aspects of knitted textile uppers and claim priority back to the '011 Patent.

31. The integral knit tongue family includes the '562 Patent, which claims priority as continuations-in-part ("CIPs") to U.S. Patent No. 8,448,474 ("the '474 Patent"), which issued May 28, 2013, based on an application filed on February 20, 2012. Because the '562 Patent and other patents in the integral knit tongue family claim priority to the '474 Patent as CIPs, there are some differences between their specifications. The '562 Patent from this family relates to a knitted upper that has an integral tongue that is formed as part of the knitted upper.

32. Finally, the third patent family, the knit with skin layer family, includes the '932 Patent, which claims priority to U.S. application No. 13/944,689, filed on July 17, 2013. The '932 Patent from this family relates to an upper with a knitted component and a skin layer secured to the knitted component.

33. The Asserted Patents are described below in more detail in the order in which they are listed in the table above.

A. U.S. Patent No. 9,918,511

1. Identification of the Patent and Ownership by Complainant

34. Nike owns the entire right, title, and interest in U.S. Patent No. 9,918,511 ("the '511 Patent") entitled "Article of Footwear Having a Textile Upper," which issued on March 20, 2018. Pursuant to Commission Rule 210.12(a)(9)(i), a certified copy of the '511 Patent is attached as **Exhibit 1**.

35. The '511 Patent issued from United States Patent Application No. 15/664,587, which was filed on July 31, 2017, and names Bhupesh Dua and Edward Nathaniel Thomas as inventors. The '511 Patent is a continuation of application No. 15/610,089, filed on May 31, 2017, which is a continuation of application No. 14/503,514, filed on October 1, 2014, now Pat. No. 9,743,705 (the '705 Patent described below), which is a division of application No. 14/079,748, filed on November 14, 2013, now abandoned, which is a continuation of application No. 13/413,233, filed on March 6, 2012, now abandoned, which is a continuation of application No. 13/236,742, filed on September 20, 2011, now Pat. No. 8,266,749 (the '749 Patent described below), which is a continuation of application No. 12/879,517, filed on September 10, 2010, now Pat. No. 8,042,288, which is a continuation of application No. 12/032,995, filed on February 18, 2008, now Pat. No. 7,814,598 (the '598 Patent described below), which is a division of application No. 10/791,289, filed on March 3, 2004, now Pat. No. 7,347,011. Pursuant to Commission Rule 210.12(a)(9)(ii), certified copies of the recorded assignments of the '511 Patent are attached as **Exhibit 2**.

36. Pursuant to Commission Rule 210.12(c), a certified copy of the prosecution history of the '511 Patent, as well as each patent and applicable pages of each technical reference mentioned in the prosecution history, are attached as **Appendices A and B**, respectively.

37. The '511 Patent expires on March 3, 2024.

2. Non-Technical Description of the '511 Patent⁹

38. Pursuant to Commission Rule 210.12(a)(9)(vi), the '511 Patent generally relates to an article of footwear with an upper and a sole structure. The upper incorporates a textile

⁹ This description and other non-technical descriptions within this Complaint are for illustrative purposes only. Nothing in any non-technical description is intended, either implicitly

element with edges that are joined together to define at least a portion of a void for receiving a foot. In other words, the '511 Patent describes an upper that may be knit to shape without the need to remove the upper from a surrounding structure.

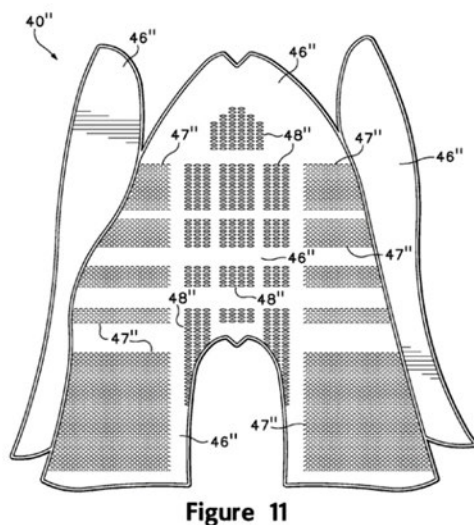


Figure 4: Figure 11 of the '511 Patent

39. For example, Figure 11 of the '511 Patent, reproduced above, shows a textile structure 40'' that includes a curved edge, has a number of areas with different textures, and can be formed via flat knitting. *See* '511 Patent at Fig. 11, 9:58-61, 10:30-36. The textile structure 40'' shown in Figure 11 of the '511 Patent has areas with different textures, including a first texture 46'' that is generally smooth and "has the configuration of various strips that extend[] laterally across" the lateral, medial, and instep region of the foot. *Id.* at 9:60-64. The textile structure 40'' also includes a second portion with a second texture 47'' that is generally rough in comparison with the first texture 46.'' *Id.* at 9:64-66.

or explicitly, to express any position regarding the scope or proper construction of any claim of the Asserted Patents.

3. Foreign Counterparts to the '511 Patent

40. Pursuant to Commission Rule 210.12(a)(9)(v), **Exhibit 13C** identifies, to the extent known, each foreign patent, each foreign patent application (not already issued as a patent) and each foreign patent application that has been denied, abandoned or withdrawn corresponding to the '511 Patent with an indication of the prosecution status of each such patent application.

B. U.S. Patent No. 9,743,705

1. Identification of the Patent and Ownership by Complainant

41. Nike owns the entire right, title, and interest in U.S. Patent No. 9,743,705 ("the '705 Patent") entitled "Method of Manufacturing an Article of Footwear Having a Textile Upper," which issued on August 29, 2017. Pursuant to Commission Rule 210.12(a)(9)(i), a certified copy of the '705 Patent is attached as **Exhibit 3**.

42. The '705 Patent issued from United States Patent Application No. 14/503,514, which was filed on October 1, 2014, and names Edward N. Thomas and Bhupesh Dua as inventors. The '705 Patent is a division of application No. 14/079,748, filed on November 14, 2013, now abandoned, which is a continuation of application No. 13/413,233, filed on March 6, 2012, now abandoned, which is a continuation of application No. 13/236,742, filed on September 20, 2011, now Pat. No. 8,266,749 (the '749 Patent described below), which is a continuation of application No. 12/879,517, filed on September 10, 2010, now Pat. No. 8,042,288, which is a continuation of application No. 12/032,995, filed on February 18, 2008, now Pat. No. 7,814,598 (the '598 Patent described below), which is a division of application No. 10/791,289, filed on March 3, 2004, now Pat. No. 7,347,011. Pursuant to Commission Rule 210.12(a)(9)(ii), certified copies of the recorded assignments of the '705 Patent are attached as **Exhibit 4**.

43. Pursuant to Commission Rule 210.12(c), a certified copy of the prosecution history of the '705 Patent, as well as each patent and applicable pages of each technical reference mentioned in the prosecution history, are attached as **Appendices C and D**, respectively.

44. The '705 Patent expires on March 3, 2024.¹⁰

2. Non-Technical Description of the '705 Patent

45. Pursuant to Commission Rule 210.12(a)(9)(vi), the '705 Patent generally concerns a method of manufacturing an article of footwear. In particular, the '705 Patent describes a method for manufacturing footwear that may include an upper and a sole structure, with the upper including a textile element with flat-knit edges that are joined together to define at least a portion of a void for receiving a foot. As with the '511 Patent described above, the '705 Patent describes a method of manufacturing an upper that may be knit to shape without the need to remove the upper from a surrounding textile structure. The '705 Patent contains the same Figure 11 from the common specification with the '511 Patent that can be a flat knitted textile elements that are knitted in such a way to have different areas with different corresponding textures, including a configuration of strips that extend across the lateral, medial, and instep portion of the foot. *See* '705 Patent at Fig. 11, 9:58-10:36.

3. Foreign Counterparts to the '705 Patent

46. Pursuant to Commission Rule 210.12(a)(9)(v), **Exhibit 13C** identifies, to the extent known, each foreign patent, each foreign patent application (not already issued as a patent) and each foreign patent application that has been denied, abandoned or withdrawn

¹⁰ The portion of the term of the '705 Patent that would exceed the term of the '749 Patent has been disclaimed.

corresponding to the '705 Patent with an indication of the prosecution status of each such patent application.

C. U.S. Patent No. 8,266,749

1. Identification of the Patent and Ownership by Complainant

47. Nike owns the entire right, title, and interest in U.S. Patent No. 8,266,749 (“the ’749 Patent”) entitled “Article of Footwear Having a Textile Upper,” which issued on September 18, 2012. Pursuant to Commission Rule 210.12(a)(9)(i), a certified copy of the ’749 Patent has been ordered, but has not yet been received from the Patent Office. Accordingly, a non-certified copy of the ’749 Patent is currently attached as **Exhibit 5**, and the certified copy will be substituted once it is received.

48. The ’749 Patent issued from United States Patent Application No. 13/236,742, which was filed on September 20, 2011, and names Bhupesh Dua and Edward Nathaniel Thomas as inventors. The ’749 Patent is a continuation of application No. 12/879,517, filed on September 10, 2010, now Pat. No. 8,042,288, which is a continuation of application No. 12/032,995, filed on February 18, 2008, now Pat. No. 7,814,598 (the ’598 Patent described below), which is a division of application No. 10/791,289, filed on March 3, 2004, now Pat. No. 7,347,011. Pursuant to Commission Rule 210.12(a)(9)(ii), certified copies of the recorded assignments of the ’749 Patent are attached as **Exhibit 6**.

49. Pursuant to Commission Rule 210.12(c), a certified copy of the prosecution history of the ’749 Patent, as well as each patent and applicable pages of each technical reference mentioned in the prosecution history, are attached as **Appendices E and F**, respectively.

50. The ’749 Patent expires on March 3, 2024.

2. Non-Technical Description of the '749 Patent

51. Pursuant to Commission Rule 210.12(a)(9)(vi), the '749 Patent generally concerns a method for manufacturing an article of footwear, including an upper and a sole structure. The '749 Patent describes that the upper may be a knitted textile element with surrounding textile structure having a different knitted texture that is removed from the upper before the knitted textile element is incorporated into the article of footwear.

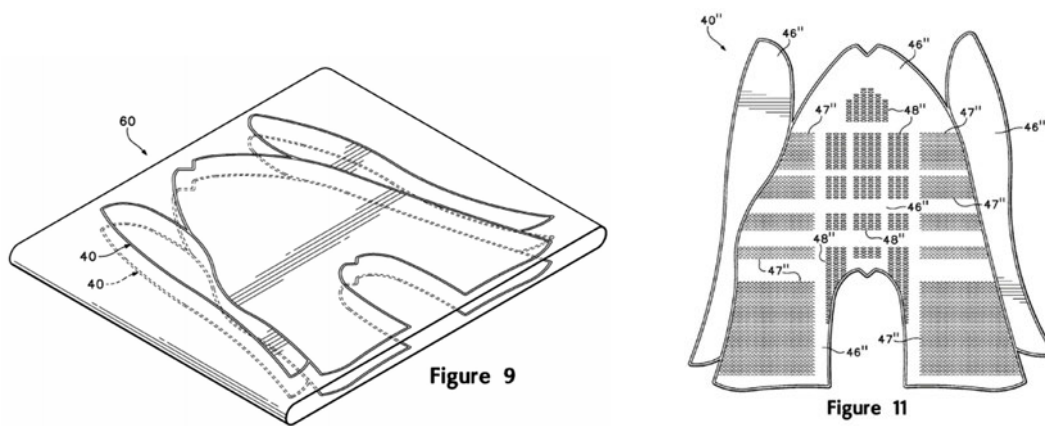


Figure 5: Figs. 9 & 11 of the '749 Patent

52. Figure 9 of the '749 Patent (reproduced above) shows the outline of the textile element before the knitted textile element that will form the upper has been removed from the surrounding textile structure. *See* '749 Patent at Fig. 9, 7:51-63. Figure 11 (reproduced above) shows the textile structure 40'' without the surrounding textile structure. *See id.* at Fig. 11, 9:29-32.

3. Foreign Counterparts to the '749 Patent

53. Pursuant to Commission Rule 210.12(a)(9)(v), **Exhibit 13C** identifies, to the extent known, each foreign patent, each foreign patent application (not already issued as a patent) and each foreign patent application that has been denied, abandoned or withdrawn

corresponding to the '749 Patent with an indication of the prosecution status of each such patent application.

D. U.S. Patent No. 7,814,598

1. Identification of the Patent and Ownership by Complainant

54. Nike owns the entire right, title, and interest in U.S. Patent No. 7,814,598 (“the ’598 Patent”) entitled “Article of Footwear Having a Textile Upper,” which issued on October 19, 2010. Pursuant to Commission Rule 210.12(a)(9)(i), a certified copy of the ’598 Patent is attached as **Exhibit 7**.

55. The ’598 Patent issued from United States Patent Application No. 12/032,995, which was filed on February 18, 2008, and names Bhupesh Dua and Edward Nathaniel Thomas as inventors. The ’598 Patent is a division of application No. 10/791,289, filed on March 3, 2004, now Pat. No. 7,347,011, filed on March 3, 2004. Pursuant to Commission Rule 210.12(a)(9)(ii), certified copies of the recorded assignments of the ’598 Patent are attached as **Exhibit 8**.

56. Pursuant to Commission Rule 210.12(c), a certified copy of the prosecution history of the ’598 Patent, as well as each patent and applicable pages of each technical reference mentioned in the prosecution history, are attached as **Appendices G and H**, respectively.

57. The ’598 Patent expires on May 12, 2024.

2. Non-Technical Description of the ’598 Patent

58. Pursuant to Commission Rule 210.12(a)(9)(vi), the ’598 Patent generally concerns a method of manufacturing an article of footwear using a circular knitting machine to create an upper. The ’598 Patent describes circular knitting as one of several mechanical processes developed to manufacture textiles and describes knitting textile element 40 through circular knitting. *See* ’598 Patent at 6:65-7:45.

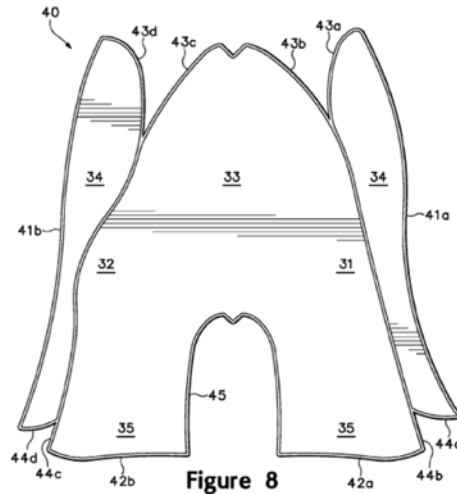


Figure 6: Fig. 8 of the '598 Patent

59. The '598 Patent also describes that textile element 40 may take the general shape shown in Fig. 8 (reproduced above) and that it is used to at least partially form the upper for the article of footwear. *See id.* at 5:37-60.

3. Foreign Counterparts to the '598 Patent

60. Pursuant to Commission Rule 210.12(a)(9)(v), **Exhibit 13C** identifies, to the extent known, each foreign patent, each foreign patent application (not already issued as a patent) and each foreign patent application that has been denied, abandoned or withdrawn corresponding to the '598 Patent with an indication of the prosecution status of each such patent application.

E. U.S. Patent No. 9,060,562

1. Identification of the Patent and Ownership by Complainant

61. Nike owns the entire right, title, and interest in U.S. Patent No. 9,060,562 ("the '562 Patent") entitled "Method of Knitting a Knitted Component with an Integral Knit Tongue," which issued on June 23, 2015. Pursuant to Commission Rule 210.12(a)(9)(i), a certified copy of the '562 Patent is attached as **Exhibit 9**. A certificate of correction issued on December 8,

2015 for the '562 Patent to correct the first-listed inventor's name from "Adrain Meir" to "Adrian Meir," which is shown on the last page of **Exhibit 9**.

62. The '562 Patent issued from United States Patent Application No. 13/781,551, which was filed on February 28, 2013, and names Adrian Meir, Daniel A. Podhajny, and Daren P. Tatler as inventors. The '562 Patent is a continuation-in-part of application No. 13/400,511, filed on February 20, 2012, now Pat. No. 8,448,474. Pursuant to Commission Rule 210.12(a)(9)(ii), certified copies of the recorded assignments of the '562 Patent are attached as **Exhibit 10**.

63. Pursuant to Commission Rule 210.12(c), a certified copy of the prosecution history of the '562 Patent, as well as each patent and applicable pages of each technical reference mentioned in the prosecution history, are attached as **Appendices I and J**, respectively.

64. The '562 Patent expires on July 10, 2032.

2. Non-Technical Description of the '562 Patent

65. Pursuant to Commission Rule 210.12(a)(9)(vi), the '562 Patent generally concerns methods of manufacturing a knitted component for an article of footwear that includes knitting an upper with an integral knit tongue on a knitting machine.

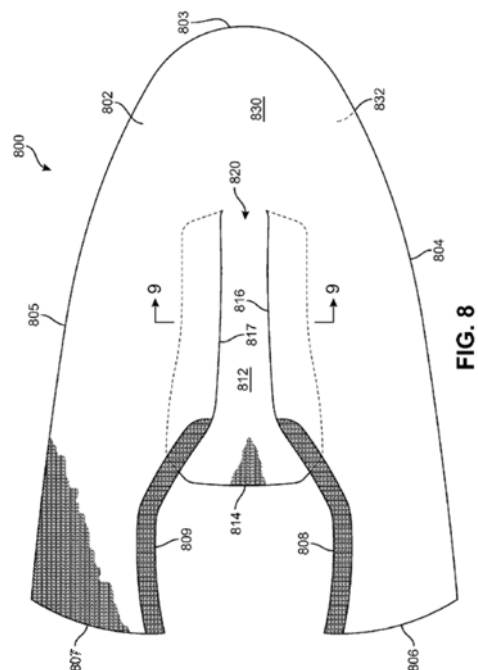


Figure 7: Fig. 8 of the '562 Patent

66. Figure 8 of the '562 Patent (reproduced above) shows one example of the integral knit tongue 812 from the top view. The integral knit tongue 812 of Figure 8 is part of a second knitted component 800. '562 Patent at Fig. 8, 11:36-45. The second knitted component 800 includes a portion that extends over the tongue 812, and the edges of the integral knit tongue 812 are knit to an area of the second knitted component that is spaced outward from the lateral inner edge 816 and the medial inner edge 817. *Id.* at 11:45-54.

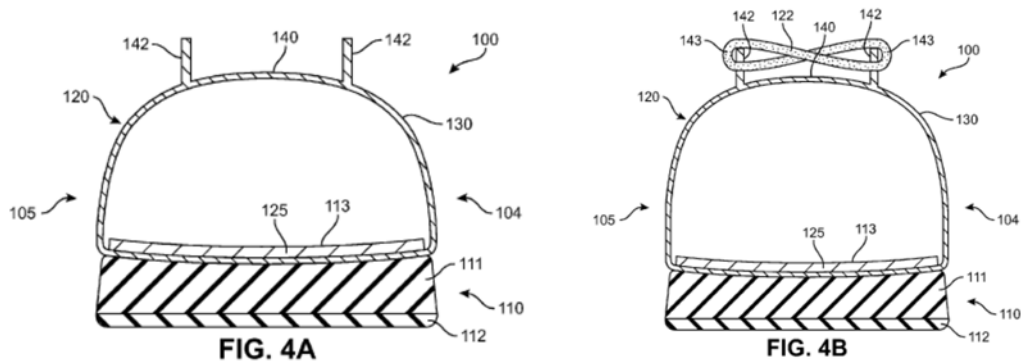


Figure 8: Figs. 4A & 4B of the '562 Patent

67. Figures 4A and 4B of the '562 Patent (reproduced above) show different cross-sectional views according to embodiments of sole structure 110 and a knit upper 120, which includes a tongue 140 that is formed of unitary knit construction with the upper 120 either under a lace 122 (as shown in Fig. 4B) or without a lace (as shown in Fig. 4A). *See* '562 Patent at Figs. 4A, 4B, 6:31-50.

3. Foreign Counterparts to the '562 Patent

68. Pursuant to Commission Rule 210.12(a)(9)(v), **Exhibit 13C** identifies, to the extent known, each foreign patent, each foreign patent application (not already issued as a patent) and each foreign patent application that has been denied, abandoned or withdrawn corresponding to the '562 Patent with an indication of the prosecution status of each such patent application.

F. U.S. Patent No. 8,898,932

1. Identification of the Patent and Ownership by Complainant

69. Nike owns the entire right, title, and interest in U.S. Patent No. 8,898,932 ("the '932 Patent") entitled "Article of Footwear Incorporating a Knitted Component," which issued on December 2, 2014. Pursuant to Commission Rule 210.12(a)(9)(i), a certified copy of the '932 Patent is attached as **Exhibit 11**.

70. The '932 Patent issued from United States Patent Application No. 14/273,574, which was filed on May 9, 2014, and names Phil Woodman, Doug D. Wilken, Tetsuya T. Minami, and James Molyneux as inventors. The '932 Patent claims priority to U.S. Provisional Application No. 61/727,010, filed on November 15, 2012 and is a continuation of U.S. application No. 13/944,689, filed on July 17, 2013. Pursuant to Commission Rule 210.12(a)(9)(ii), certified copies of the recorded assignments of the '932 Patent are attached as **Exhibit 12**.

71. Pursuant to Commission Rule 210.12(c), a certified copy of the prosecution history of the '932 Patent, as well as each patent and applicable pages of each technical reference mentioned in the prosecution history, are attached as **Appendices K** and **L**, respectively.

72. The '932 Patent expires on July 17, 2033.

2. Non-Technical Description of the '932 Patent

73. Pursuant to Commission Rule 210.12(a)(9)(vi), the '932 Patent generally concerns a footwear structure with a textile upper member that includes a knitted component and, in some configurations, a skin layer secured to the knitted component, as well as a sole structure secured to the upper.

3. Foreign Counterparts to the '932 Patent

74. Pursuant to Commission Rule 210.12(a)(9)(v), **Exhibit 13C** identifies, to the extent known, each foreign patent, each foreign patent application (not already issued as a patent) and each foreign patent application that has been denied, abandoned or withdrawn corresponding to the '932 Patent with an indication of the prosecution status of each such patent application.

G. Licensees Under the Asserted Patents

76. There are no licensees under the Asserted Patents, except to other Nike affiliates.

V. SPECIFIC INSTANCES OF UNLAWFUL IMPORTATION AND SALE

77. The specific instances of importation of infringing Accused Products set forth below are representative examples of adidas' unlawful importation into the United States, sale for importation into the United States, and/or sales within the United States after importation of infringing products.

78. Upon information and belief, adidas designs, develops, evaluates, tests, and manufactures or has manufactured Accused Products outside of the United States and are importing into the United States, selling for importation into the United States, and/or selling within the United States after importation Accused Products. Upon information and belief, adidas sells Accused Products knowing, or having reason to know, that the Accused Products will be subsequently imported into the United States.

79. adidas collectively manufactures, imports, and sells after importation knitted footwear, including its Primeknit footwear products, including the Accused Products as described herein and in **Exhibits 14-19, 28-30, 38-40**.

80. For example, the labels for the Accused Products, which are compiled in **Exhibit 29**, show that these shoes, purchased in the United States, were all manufactured outside of the United States (*e.g.*, in China, Vietnam, India, Indonesia). Attached as **Exhibit 28** is a Declaration of Kimberly J. Hedgren, who purchased Accused Products from adidas, attaching **Exhibit 29**, the compilation of labels for the Accused Products that she purchased. Examples of these labels are shown below, showing shoes made in China, Vietnam, India, Indonesia:



Figure 10: Example Accused Product Label Showing "MADE IN CHINA"



Figure 11: Example Accused Product Label Showing "MADE IN VIETNAM"



Figure 12: Example Accused Product Label Showing "MADE IN INDIA"



Figure 13: Example Accused Product Label Showing "MADE IN INDONESIA"

See also Exhibits 28-29.

81. **Exhibit 28**, the Declaration of Kimberly J. Hedgren also attaches **Exhibit 30**, a compilation of receipts for purchase of the Accused Products in the United States. **Exhibit 30**; *see also Exhibit 38* ("The adidas Originals Samba Sock Primeknit can be purchased in store or online. . . at 147 W 72nd ST."); **Exhibit 39** (same). This declaration and attached exhibits confirm that adidas imports the Accused Products into the United States, sells the Accused Products for importation into the United States, and/or sells the Accused Products within the United States after importation.

VI. UNFAIR ACTS OF RESPONDENTS

A. Infringement

82. adidas unlawfully imports into the United States, sells for importation into the United States, offers to sell in the United States, and/or sells within the United States after importation, the Accused Products, of which adidas is the owner, importer or consignee. The aforesaid acts of adidas constitute acts of direct infringement and/or indirect infringement under at least 35 U.S.C. § 271(a), (b), (c), and/or (g).

1. Direct Infringement

83. The Accused Products infringe, either literally or through the doctrine of equivalents, all the limitations of at least one claim of each of the Asserted Patents under at least

35 U.S.C. § 271(a) or (g). For at least the Asserted Claims of the '511 and '932 Patents, adidas, without Nike's authority, makes, uses, offers to sell, sells, and/or imports the Accused Products within the United States in violation of at least 35 U.S.C. § 271(a). For at least the Asserted Claims of the '705, '749, '598, and '562 Patents, adidas, without Nike's authority, imports into the United States or offers to sell, sells, or uses within the United States, the Accused Products, which are made by a process patented in the United States (*e.g.*, as claimed in the '705, '749, '598, and '562 Patents), or has caused these actions to be taken, during the terms of the Asserted Patents containing process/method claims (*e.g.*, the '705, '749, '598, and '562 Patents) in violation of at least 35 U.S.C. § 271(g). adidas' acts of infringement involving the Accused Products were and are commercial, and are not noncommercial uses or retail sales of the Accused Products. The Accused Products also are not materially changed by subsequent processes, and have not become a trivial and nonessential component of another product. Specifically, the Accused Products infringe at least the claims identified in the table below:

U.S. Patent No.	Asserted Claims¹¹
9,918,511	1* , 2, 3, 5, 9, 10, 11, 15* , 17, 18, 19, 20
9,743,705	1* , 2, 3, 4, 5, 6, 7, 8, 11* , 12, 13, 14, 15, 16, 17, 18, 19, 20
8,266,749	1* , 2, 3, 4, 5, 6, 7, 8, 9, 13* , 14, 15, 16, 17, 18, 19, 21
7,814,598	1* , 9* , 14*
9,060,562	1* , 2, 3, 4
8,898,932	11* , 12, 14, 15

84. While the above asserted claims are provided as examples of the claims that adidas infringes, Nike reserves the right, depending on information learned through discovery, to

¹¹ Independent claims are denoted by *.

add or remove asserted claims and to add allegations under 35 U.S.C. § 271(a), (b), (c), or (g) for all asserted claims.

85. The Accused Products infringe one or more claims from at least the Asserted Patents as identified in the table below:

Style	'511	'705	'749	'598	'562	'932
4D Run 1.0 Shoes	✓	✓				
4DFWD Shoes		✓				
adidas by Stella McCartney Ultraboost 20 Shoes (Style 1)		✓				
adidas by Stella McCartney Ultraboost 20 Shoes (Style 2)		✓				
adidas By Stella McCartney Ultraboost Sandals		✓				✓
Adizero 11.0 Primeknit Football Cleats	✓				✓	
Adizero Primeknit SK Cleats	✓				✓	✓
Alphaedge 4D Shoes	✓	✓				
Crazy 1 ADV Primeknit Sock Shoes	✓	✓				
Crossknit DPR Golf Shoes	✓				✓	
FutureNatural Shoes	✓	✓			✓	✓
Lucas Premiere Primeknit Shoes	✓				✓	
NMD_R1 Primeknit Shoes	✓	✓			✓	
Pharrell Williams Superstar Primeknit Shoes	✓	✓				
Phosphere Shoes			✓	✓		
Predator Freak+ Firm Ground Cleats						✓
Pro Boost Mid Shoes			✓	✓		
PureBoost GO Shoes			✓	✓	✓	
Samba Sock Primeknit Shoes	✓	✓			✓	
Stabil Next Gen Primeblue Handball Shoes						✓
Stan Smith Primeknit Shoes	✓					
Terrex Free Hiker COLD.RDY Hiking Boots						✓
Terrex Free Hiker GTX Hiking Shoes	✓				✓	
Terrex Free Hiker Hiking Shoes					✓	✓

PUBLIC, REDACTED VERSION

Style	'511	'705	'749	'598	'562	'932
Terrex Free Hiker Parley Hiking Shoes					✓	✓
Terrex Free Hiker Primeblue Hiking Shoes	✓				✓	✓
Terrex Two Ultra Parley AP Shoes	✓	✓			✓	✓
Terrex Two Ultra Parley Trail Running Shoes	✓	✓			✓	✓
Tour360 XT Primeknit Shoes	✓				✓	✓
Ultraboost 20 Lab Shoes		✓				
Ultraboost 20 Shoes	✓				✓	
Ultraboost 20 x James Bond Shoes		✓				
Ultraboost 21 Shoes	✓	✓			✓	
Ultraboost 4.0 DNA Shoes		✓			✓	
Ultraboost 5.0 DNA Shoes	✓	✓				
Ultraboost 6.0 DNA x Parley Shoes	✓	✓			✓	
Ultraboost DNA 1.0 Shoes		✓				
Ultraboost DNA CC_1 Shoes	✓	✓			✓	
Ultraboost DNA x DFB Shoes		✓				
Ultraboost DNA x James Bond Shoes		✓				
Ultraboost Slip-On DNA Shoes	✓	✓			✓	
Ultraboost Summer.RDY Tokyo Shoes	✓				✓	
Ultraboost Uncaged Lab Shoes	✓	✓			✓	
X Speedflow+ Adizero Firm Ground Cleats	✓	✓			✓	
X Speedflow+ Firm Ground Cleats	✓	✓			✓	
X Speedflow.1 Artificial Grass Cleats	✓	✓			✓	
X Speedflow+ FG Cleats	✓	✓			✓	
Y-3 Ultraboost 21 Shoes					✓	
ZG21 Motion Primegreen Boa Mid Golf Shoes						✓

86. While the patents and styles indicated above are provided as examples of the Accused Products and the patents they infringe, Nike reserves the right, depending on

information learned through discovery, to add or remove styles and to assert that styles infringe patents other than those shown above or in the exhibits.

2. Indirect Infringement

87. Upon information and belief, adidas indirectly infringes at least the Asserted Claims of the '511 and '932 Patents pursuant to 35 U.S.C. § 271(b) and/or (c) by knowingly and intentionally inducing infringement and/or contributing to the infringement of one or more claims of those Asserted Patents by providing and/or selling in the United States the Accused Products to customers and/or distributors of those products, and thus is liable for infringement of the Asserted Patents pursuant to 35 U.S.C. § 271(b) and/or (c).

88. Upon information and belief, adidas indirectly infringes at least the Asserted Claims of the '705, '749, '598, and '562 Patents pursuant to 35 U.S.C. § 271(b) by knowingly and intentionally inducing others (including at least other adidas entities and/or contract manufacturers) to import into the United States or offer to sell, sell, or use within the United States, the Accused Products, which are made by a process patented in the United States (*e.g.*, as claimed in the '705, '749, '598, and '562 Patents), or has caused these actions to be taken by others (including at least by other adidas entities and/or contract manufacturers), during the terms of the Asserted Patents containing process/method claims (*e.g.*, the '705, '749, '598, and '562 Patents).

89. Upon information and belief, adidas had knowledge of the Asserted Patents. For example, adidas' knowledge of the Asserted Patents and their patent families is evidenced by the reference to or citation to the Asserted Patents and/or their family members during prosecution of adidas' own patents. Additionally, adidas' knowledge of the Asserted Patents and their patent families is evidenced by adidas' efforts to invalidate the Asserted Patents and related patents in *inter partes* review ("IPR") proceedings. Finally, adidas also implicitly acknowledged its need

for a license or a covenant not to sue on several of the Asserted Patents, as well as the existence of an Article III controversy, because of the similarity of the Flyknit technology described in those patents and adidas' Primeknit footwear styles. Despite these implicit and explicit acknowledgements, adidas has not sought a license, instead continuing and escalating its infringing activities.

90. Upon information and belief, adidas had knowledge of the '511 Patent and its patent family as evidenced, for example, by the reference and citation to the '511 Patent and/or other members of the Knitted Textile Upper Family during prosecution of adidas' own patent applications. *See, e.g.*, German patent documents DE102011086742B4, DE102012206062B4, DE102013207163A1, DE102013207153B4, DE102013207155B4, DE102013207156A1, DE102014202432B4, DE102014220087B4, DE102015219614A1, DE102015219636A1, and DE102017223746A1, all of which are or were believed to be assigned to Respondent adidas AG. Additionally, upon information and belief, adidas was aware of the '511 Patent and its family because adidas filed multiple IPR petitions targeting different members of the same Knitted Textile Upper Family to which the '511 Patent belongs. For example, adidas filed the petition in PTAB Case No. IPR2013-00067 against the '011 Patent, the first-filed patent of the Knitted Textile Upper Family, to which the '511 Patent claims priority, on November 28, 2012. The PTAB instituted review of the '011 Patent on May 17, 2013, and issued a final written decision on April 28, 2014, and Nike appealed. After multiple written decisions and appeals, the parties are currently disputing the most recent appeal of this matter related to the '011 Patent, which was filed on April 29, 2021 and is currently pending at the United States Court of Appeals for the Federal Circuit (the "Federal Circuit"). adidas also filed an IPR petition against U.S. Patent No. 8,042,288 ("the '288 Patent"), which is in the same Knitted Textile Upper Family, and to which

the '511 Patent claims priority. Specifically, adidas filed the petitions in PTAB Case Nos. IPR2017-00263 and IPR2017-00264 against the '288 Patent on November 14, 2016. The PTAB denied institution of both petitions on June 7, 2017. adidas also filed unsuccessful IPR petitions against other patents in this same Knitted Textile Upper Family, including the '749 and '598 Patents, as discussed below.

91. Upon information and belief, adidas had knowledge of the '705 Patent and its patent family as evidenced, for example, by the reference and citation to the '705 Patent and/or other members of the Knitted Textile Upper Family during prosecution of adidas' own patent applications. *See, e.g.*, Respondent adidas AG's German patents referenced above in connection with the '511 Patent. Additionally, upon information and belief, adidas was aware of the '705 Patent and its family because adidas filed multiple IPR petitions targeting different members of the same Knitted Textile Upper Family to which the '705 Patent belongs, including the IPRs of the '011 Patent and the '288 Patent to which the '705 Patent claims priority, as discussed above, and the '749 and '598 Patents, as discussed below.

92. Upon information and belief, adidas had knowledge of the '749 Patent and its patent family as evidenced, for example, by the reference and citation to the '749 Patent and/or other members of the Knitted Textile Upper Family during prosecution of adidas' own patent applications. *See, e.g.*, Respondent adidas AG's German patents referenced above in connection with the '511 Patent. Additionally, upon information and belief, adidas was aware of the '749 Patent and its family because adidas filed multiple IPR petitions targeting the '749 Patent and different members of the same Knitted Textile Upper Family to which the '749 Patent belongs, including the IPRs of the '011 Patent and the '288 Patent to which the '749 Patent claims priority, as discussed above, and the '598 Patent, as discussed below. adidas also filed the

petition in PTAB Case No. IPR2016-00922 against the '749 patent on April 19, 2016. The PTAB instituted review of the '749 Patent on October 21, 2016, and issued a final written decision on October 19, 2017, finding the challenged claims all patentable. adidas appealed that decision, and on remand the PTAB again found all challenged claims to be patentable in a final written decision dated February 19, 2019. adidas again appealed, and on June 25, 2020, the Federal Circuit affirmed the PTAB's decision. adidas filed the IPRs against the '749 Patent (as well as the '598 Patent and the related '288 Patent) after threatening to do so if Nike did not provide adidas a covenant not to sue, implicitly acknowledging its need for a license or covenant not to sue.

93. Upon information and belief, adidas had knowledge of the '598 Patent and its patent family as evidenced, for example, by the reference and citation to the '598 Patent and/or other members of the Knitted Textile Upper Family during prosecution of adidas' own patent applications. *See, e.g.*, Respondent adidas AG's German patents referenced above in connection with the '511 Patent. Additionally, upon information and belief, adidas was aware of the '598 Patent and its family because adidas filed multiple IPR petitions targeting different members of the same Knitted Textile Upper Family to which the '598 Patent belongs, including the IPRs of the '011 Patent and the '288 Patent to which the '598 Patent claims priority, as discussed above, and the '749 Patent, as discussed above. adidas also filed the petition in PTAB Case No. IPR2016-00921 against the '598 patent on April 19, 2016. The PTAB instituted review of the '598 Patent on October 21, 2016, and issued a final written decision on October 19, 2017, finding the challenged claims all patentable. adidas appealed that decision, and on remand, the PTAB again found all challenged claims to be patentable in a final written decision dated February 19, 2019. adidas again appealed, and on June 25, 2020, the Federal Circuit affirmed

the PTAB's decision. adidas filed the IPRs against the '598 Patent (as well as the '749 Patent and the related '288 Patent) after threatening to do so if Nike did not provide adidas a covenant not to sue, implicitly acknowledging its need for a license or covenant not to sue.

94. Upon information and belief, adidas had knowledge of the '562 Patent and its patent family as evidenced, for example, by the reference and citation to the '562 Patent and/or other members of the Integral Knit Tongue Family during prosecution of adidas' own patent applications. U.S. Patent Nos. 10,455,885, 10,834,992, 10,939,729, and 11,044,963, and/or German patent documents DE102013207155B4, DE102013207156A1, DE102014202432B4, DE102014220087B4, all of which are or were believed to be assigned to Respondent adidas AG.

95. Upon information and belief, adidas had knowledge of the '932 Patent and its patent family as evidenced, for example, by the reference and citation to the '932 Patent and/or other members of the Knit with Skin Layer Family during prosecution of adidas' own patent applications. *See, e.g.*, U.S. Patent Nos. 10,455,885, 10,834,992, 10,939,729, 11,044,963, 10,034,519 and/or German patent documents DE102017210821A1 and DE102017223746A1, all of which are or were believed to be assigned to Respondent adidas AG.

96. Furthermore, to the extent necessary, this complaint now unquestionably provides adidas with the requisite knowledge of the Asserted Patents.

97. Upon information and belief, adidas is currently actively inducing and has induced infringement of the Asserted Patents pursuant to 35 U.S.C. § 271(b) through, among other things, (i) the sale and offer for sale in the United States of Accused Products to direct infringers that include, without limitation, customers and/or distributors who use, sell, offer to sell, or import adidas' Accused Products, with the specific intent that the Accused Products be used, sold, offered for sale, or imported in an infringing manner, and/or (ii) knowingly and

intentionally inducing others (including at least other adidas entities and/or contract manufacturers) to import into the United States or offer to sell, sell, or use within the United States, the Accused Products, which are made by a process patented in the United States (*e.g.*, as claimed in the '705, '749, '598, and '562 Patents), or has caused these actions to be taken by others (including at least by other adidas entities and/or contract manufacturers), during the terms of the Asserted Patents containing process/method claims (*e.g.*, the '705, '749, '598, and '562 Patents).

98. Upon information and belief, adidas encouraged and continues to encourage customers and/or distributors to use, sell, offer to sell, or import the Accused Products in an infringing manner, provided product materials and directions instructing customers and/or distributors to use, sell, offer to sell, or import the Accused Products in an infringing manner, provided training, instructions, and/or technical support to customers and/or distributors instructing how to use the Accused Products in an infringing manner, and advertised, marketed, and promoted the use, sale, offers for sale, or importation of the Accused Products in an infringing manner. Upon information and belief, adidas had specific intent to cause infringement of the Asserted Patents or were willfully blind to such infringement.

99. Upon information and belief, adidas encouraged and continues to encourage other adidas entities and/or contract manufacturers to import into the United States or offer to sell, sell, or use within the United States, the Accused Products, which are made by a process patented in the United States (*e.g.*, as claimed in the '705, '749, '598, and '562 Patents), provided product materials and directions instructing other adidas entities and/or contract manufacturers to manufacture and import the Accused Products in an infringing manner, provided training, instructions, or support to other adidas entities and/or contract manufacturers instructing them

how to manufacture and import the Accused Products in an infringing manner, and/or provided training, instructions, or support to other adidas entities and/or contract manufacturers on how to advertise, market, and promote the use, sale, or offers for sale of the Accused Products in an infringing manner. Upon information and belief, adidas had specific intent to cause infringement of the Asserted Patents or were willfully blind to such infringement.

100. Upon information and belief, adidas also indirectly infringed and continues to indirectly infringe the '511 and '932 Patents pursuant to 35 U.S.C. § 271(c) by contributing to the infringement of the '511 and '932 Patents by providing and/or selling the Accused Products in the United States to customers and/or distributors of the Accused Products, structures and features of which constitute a material part of one or more claims of the '511 and '932 Patents, and are not a staple article of commerce suitable for non-infringing uses, and are especially made and or adapted for use in infringing the '511 and '932 Patents.

101. Upon information and belief, adidas possessed intent and continues to possess intent to contributorily infringe the '511 and '932 Patents because adidas knew that the structures and features of the Accused Products are especially made or adapted for use in an infringement of one or more claims of the '511 and '932 Patents and such features are not a staple article of commerce suitable for non-infringing uses.

102. Upon information and belief, the direct infringers for adidas' contributory infringement include, without limitation, the customers and/or distributors who use the Accused Products, to whom adidas sells and offers to sell the Accused Products. adidas contributed to these customers' and/or distributors' infringement by selling and offering to sell the Accused Products to them, by advertising and promoting the Accused Products as embodying a material component of the patented invention, and by encouraging and providing instructions to its

customers and/or distributors for using, selling, offering for sale, and/or importing the Accused Products as embodying a material component of the patented inventions.

B. Evidence of Infringement

103. In addition to the evidence discussed above, attached **Exhibits 14-19** show how certain example styles of adidas' Accused Products infringe the claims of the Asserted Patents. Nike reserves the right to supplement the infringement allegations, including with additional styles, additional claims, and/or additional allegations (*e.g.*, relating to the doctrine of equivalents), should the evidence or decisions of the Administrative Law Judge demonstrate that such additions are warranted.

1. The '511 Patent

104. The Accused Products directly and/or indirectly infringe at least claims 1, 2, 3, 5, 9, 10, 11, 15, 17, 18, 19, and 20 of the '511 Patent. Pursuant to § 210.12(a)(9)(viii), a chart that applies the asserted claims of the '511 Patent to the infringing example styles, including Primeknit styles and styles incorporating Primeknit elements, is attached hereto as **Exhibit 14**.

2. The '705 Patent

105. The Accused Products directly and/or indirectly infringe at least claims 1-8 and 11-20 of the '705 Patent. Pursuant to § 210.12(a)(9)(viii), a chart that applies the asserted claims of the '705 Patent to the infringing example styles, including Primeknit styles and styles incorporating Primeknit elements, is attached hereto as **Exhibit 15**.

3. The '749 Patent

106. The Accused Products directly and/or indirectly infringe at least claims 1-9, 13-19, and 21 of the '749 Patent. Pursuant to § 210.12(a)(9)(viii), a chart that applies the asserted claims of the '749 Patent to the infringing example styles, including Primeknit styles and styles incorporating Primeknit elements, is attached hereto as **Exhibit 16**; *see also Exhibits 42-46*.

4. The '598 Patent

107. The Accused Products directly and/or indirectly infringe at least claims 1, 9, and 14 of the '598 Patent. Pursuant to § 210.12(a)(9)(viii), a chart that applies the asserted claims of the '598 Patent to the infringing example styles, including Primeknit styles and styles incorporating Primeknit elements, is attached hereto as **Exhibit 17**; *see also Exhibits 42-47*.

5. The '562 Patent

108. The Accused Products directly and/or indirectly infringe at least claims 1-4 of the '562 Patent. Pursuant to § 210.12(a)(9)(viii), a chart that applies the asserted claims of the '562 Patent to the infringing example styles, including Primeknit styles and styles incorporating Primeknit elements, is attached hereto as **Exhibit 18**.

6. The '932 Patent

109. The Accused Products directly and/or indirectly infringe at least claims 11, 12, 14, and 15 of the '932 Patent. Pursuant to § 210.12(a)(9)(viii), a chart that applies the asserted claims of the '932 Patent to the infringing example styles, including Primeknit styles and styles incorporating Primeknit elements, is attached hereto as **Exhibit 19**.

VII. HARMONIZED TARIFF SCHEDULE INFORMATION

110. The Harmonized Tariff Schedule ("HTS") of the United States classifies the articles subject to this complaint under at least the following headings and subheadings: **6402.19.90** (Other footwear with outer soles and uppers of rubber or plastics, Sports footwear, outer soles and uppers of rubber or plastics, valued over \$12/pair); **6402.19.15** (Other footwear with outer soles and uppers of rubber or plastics, other); **6403.59.90** (Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather, Other footwear with outer soles of leather, Other, For other persons), **6404.19.90** (Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials, Footwear with

outer soles of rubber or plastics, Other, Valued over \$12/pair). These HTS numbers are illustrative only and may not exhaustively reflect the HTS classification of all Accused Products. These HTS numbers are not intended to restrict the scope of this investigation or the scope of relief to which Nike is entitled.

VIII. THE DOMESTIC INDUSTRY

111. Nike has a domestic industry as defined under 19 U.S.C. § 1337(a)(3)(A), (B), and/or (C), comprising continuing significant investments in plant and equipment and employment of labor and capital, and continuing substantial investment in exploitation of the Asserted Patents. Nike engages in a broad range of qualifying domestic industry activities in the United States directed to articles protected by the Asserted Patents. Specific non-limiting examples of such investments are provided below. The Confidential Declaration of Tyler Piumbroeck, Nike's Director of Global Finance, Product Innovation, is attached hereto as Confidential **Exhibit 26C** in support of Nike's domestic industry expenditures and investments. **Exhibit 26C**, ¶ 3.

A. Economic Prong

112. Flyknit is Nike's primary innovation technology platform related to the upper of its shoes (as opposed to the sole) and is the technology that receives [REDACTED]
[REDACTED] *Id.*, ¶ 7. In sum, Flyknit is critical to Nike's innovation roadmap. *Id.*

1. Nike's Activities Related to Flyknit

113. The research, design, and development of Flyknit took over a decade of work and involved an investment of [REDACTED] for R&D in the United States. *Id.*, ¶ 9. Significant investments in R&D, engineering, and design were needed because Flyknit required re-thinking the shoe upper as well as the entire manufacturing process, and required new

machinery, software, employees, and training. *Id.* Almost all of Nike's Flyknit-related research and development occurs in the United States, and all of Nike's Flyknit products benefit from the investments that Nike makes in Flyknit domestically, as all such products are researched, designed, tested, and supported by Nike at WHQ. *Id.*; *see also id.*, ¶ 8.

114. The work undertaken by Nike in relation to Flyknit is cross-functional and has required a community of employees involved with the Flyknit technology, spanning multiple departments and functions within Nike. *Id.*, ¶ 10. From 2018 through the present, this has meant that approximately [REDACTED] Nike employees have focused on work related to Flyknit at Nike's WHQ campus in Oregon. *Id.*, ¶ 11. This is a conservative estimate. *Id.*, ¶ 11, n.1. That work includes, but is not limited to, research, design, development, manufacturing, testing, and engineering performed by the NXT, Inline, and Operations teams located at Nike's WHQ campus. Nike has also gone to great expense and effort to recruit and train the right people for these teams. *Id.*

115. The innovation or "NXT" employees are the team at Nike that focuses on the earliest research, design, and development of innovation, focusing on concepts that Nike will incorporate into Flyknit products released years later. *Id.*, ¶ 12. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] These NXT employees focus on the long-term developmental objectives related to Flyknit products. *Id.*

116. The Flyknit NXT team includes, but is not limited to:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Id., ¶ 13.

117. When a concept from NXT is ready for commercialization, it moves from the NXT team to the Inline team. *Id.*, ¶ 14. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Flyknit Inline teams include, but are not limited to:

[REDACTED]

[REDACTED]

[REDACTED]

Id., ¶ 15.

118. In addition, Nike has an Operations team that oversees on-site manufacturing activities at Nike's WHQ campus. Nike's WHQ campus has the personnel and the equipment necessary to manufacture Nike's shoes or apparel, including its Flyknit styles. **Exhibit 27C**, ¶ 5,

9; Exhibit 26C, ¶ 9. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Flyknit Operations team includes, but is not limited to:

[REDACTED]

[REDACTED]

[REDACTED]

Id., ¶ 16.

2. Nike's Domestic Investment in Research, Design, and Development Related to Flyknit

119. The research, design, and development of Flyknit requires substantial time, effort, resources and investment by Nike and its employees. *Id.*, ¶ 17. The initial research, design, and development of Flyknit required more than ten years of work by hundreds of employees who worked exclusively or nearly exclusively on Flyknit technology. *Id.*

120. Nike met this challenge by earmarking [REDACTED] for domestic R&D related to Flyknit. *Id.*, ¶ 18. Nike expects to maintain a significant level of investment in Flyknit technologies for the foreseeable future. *Id.* That investment includes, but is not limited to, labor expenditures for the employees described above, as well as facility and equipment expenditures related to Flyknit.

3. Nike's Domestic Investments in Labor Related to Flyknit

121. From 2018 through the present, Nike spent [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] That total is a conservative approximation of Nike's investment in labor related to its Flyknit line of footwear products. In particular, the total does not include certain expenditures, such as [REDACTED]

[REDACTED]

[REDACTED] Additionally, there are others within Nike that work on Flyknit on a non-exclusive basis who are not included above. *Id.*, ¶ 20.

4. Nike's Domestic Investments in Facilities and Equipment Related to Flyknit

122. Nearly all of the above-mentioned work occurs at Nike's WHQ campus, including in Nike's Advanced Product Creation Center ("APCC") and the Lebron James ("LBJ") Innovation Center. *Id.*, ¶ 21. Pictures of these facilities are attached hereto in confidential compilation **Exhibits 48C - 49C**; *see Exhibit 27C*, ¶ 4. Nike's Flyknit research, design, development, and engineering efforts use custom and dedicated equipment for manufacturing knitted swatches (small portions of knitted fabric to test or demonstrate new designs) and uppers, among other things. For example, Nike has [REDACTED] industrial-grade knitting machines at its WHQ campus that are used for Flyknit footwear. **Exhibit 26C**, ¶ 21. The APCC houses [REDACTED] of these machines that are used exclusively for Flyknit footwear projects. *Id.*; *see Exhibit 48C* at 11-21; **Exhibit 27C**, ¶¶ 4-6. Of the industrial knitting machines in the APCC, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

123. Nike's LBJ Innovation Center also houses [REDACTED] [REDACTED] that are used exclusively for Flyknit footwear projects by the NXT team. **Exhibit 26C**, ¶ 22; *see* **Exhibit 49C** at 13-16; **Exhibit 27C**, ¶ 4. The LBJ Innovation Center also houses various testing tools and equipment used for Flyknit research, design, development, testing, and engineering such as [REDACTED] **Exhibit 26C**, ¶ 22; *see* **Exhibit 49C** at 10-19; **Exhibit 27C**, ¶ 4.

124. Nike incurred expenditures for the [REDACTED] discussed above that are used at WHQ for work related to Flyknit footwear. **Exhibit 26C**, ¶ 23. The price of those machines generally ranges from [REDACTED] per machine. *Id.*

[REDACTED]

[REDACTED]

125. Nike has also incurred other equipment and material costs for its work related to Flyknit, such as [REDACTED]

[REDACTED]

[REDACTED] *Id.*, ¶ 24; *see, e.g.*, **Exhibit 48C**; **Exhibit 49C**; **Exhibit 27C**, ¶ 4.

126. The APCC facility mentioned above is owned by Nike and was previously referred to as the Alliance building. **Exhibit 26C**, ¶ 25. In 2017, the Alliance building was renovated by Nike so that it could be used for Flyknit-related work, including research and development. *Id.* That renovation cost [REDACTED] by Nike in 2017 at [REDACTED]. *Id.* As of November 2021, [REDACTED]. *Id.* Nike also incurs annual expenditures related to the APCC, such as utilities and maintenance. *Id.* [REDACTED] in the APCC is dedicated to work related to Flyknit footwear projects. *Id.* As of November 2021, the [REDACTED]

[REDACTED]

127. Nike owns the LBJ Innovation Center. *Id.* Nike also incurs annual expenditures related to the LBJ Innovation Center, such as utilities and maintenance. *Id.* [REDACTED] in the LBJ Innovation Center is [REDACTED] substantially on Flyknit footwear projects. As of November 2021, the [REDACTED]

[REDACTED]

[REDACTED]

128. For the purposes of determining Nike's investments in its domestic industry, it is possible to estimate Nike's investment in facilities for Flyknit community employees by isolating the facility cost from an employees' "full-loaded" cost. *Id.*, ¶ 27.

5. Flyknit Sales

129. From 2018 through the present, sales of Nike's Flyknit footwear products totaled [REDACTED] in the United States. *Id.*, ¶ 28.

130. Nike does not track expenditures or investments on a product-by-product basis in the ordinary course of business. *Id.*, ¶ 30. A reasonable way to allocate the investments associated with specific Flyknit models that practice and are protected by the Asserted Patents could be to allocate by comparing the Domestic Industry Products to total Flyknit sales. *Id.* [REDACTED]

[REDACTED]

[REDACTED]

131. Nike also does not track expenditures or investments on a patent-by-patent basis in the ordinary course of business. *Id.*, ¶ 31. The methodology described above in paragraph 130 could allow for an allocation of investments on a patent-by-patent basis by considering sales of specific Flyknit models that practice and are protected by each Asserted Patent. *Id.* There

also may be other reasonable ways to allocate Nike's investments, which Nike may rely on. *Id.*, ¶ 30.

132. Using these numbers related to the research, design, and development of the Flyknit technology only captures a portion of the investments and expenditures that go into each of the Domestic Industry Products, each of which include significant additional investments in other aspects of these products, including but not limited to general shoe design, sole design, traction, materials, in-sole design, orthopedic design, cushioning (*e.g.*, Nike air technology, foam, etc.), and other technologies. *Id.*, ¶ 32. Nike has made substantial investments in each of these additional technologies in the United States, making the use of Flyknit-specific figures very conservative. *Id.*

133. As discussed below, the Domestic Industry Products each practice at least one valid claim of at least one Asserted Patent. The Domestic Industry Products were all researched, designed, tested, and are currently supported by Nike at its WHQ campus in the United States. *Id.*, ¶ 9; *see also* **Exhibit 27C** at ¶ 9.



134. Nike's investments and activities are important to the Domestic Industry Products and represent significant domestic added value, particularly where the protected articles are researched, designed, engineered, and developed domestically. Moreover, Nike's investments and activities are quantitatively significant and substantial in the context of comparable products, the company's overall investments, and the relevant marketplace.

B. Technical Prong

135. Nike's Flyknit footwear products, including the select families of styles described below and in the attached claim charts ("the Domestic Industry Products"), have been the subject of Nike's significant and substantial investments in the United States, and, as described herein, practice at least one valid claim of each of the Asserted Patents.

136. Specifically, with respect to this Investigation, the relevant families of domestic industry styles are the following:

Style Family	Example Picture
Nike Vapormax Flyknit styles	
Nike LeBron Flyknit styles	
Nike Epic React Flyknit styles	
Nike Infinity Flyknit styles	
Nike Free Flyknit styles	
Nike Phantom Flyknit styles	
Nike Space Hippy Flyknit styles	
Nike Air Force 1 Flyknit styles	
Nike Alphafly Flyknit styles	

Style Family	Example Picture
Nike Superfly Pro styles	
Nike Vapor Pro styles	

137. The table below indicates which of the Asserted Patents each of the Domestic Industry Products style families practice:

Style Family	'511	'705	'749	'598	'562	'932
Nike Vapormax Flyknit styles	✓	✓			✓	✓
Nike LeBron Flyknit styles	✓	✓			✓	
Nike Epic React Flyknit styles	✓	✓			✓	
Nike Infinity Flyknit styles	✓	✓			✓	
Nike Free Flyknit styles	✓	✓			✓	
Nike Phantom Flyknit styles	✓	✓			✓	✓
Nike Space Hippy Flyknit styles	✓	✓			✓	
Nike Air Force 1 Flyknit styles			✓			
Nike Alphafly Flyknit styles			✓			
Nike Superfly Pro styles				✓	✓	✓
Nike Vapor Pro styles				✓	✓	✓

138. While the table above provides style families that practice claims of the Asserted Patents, Nike reserves the right to change or add to the example styles relied on or to allege that the example styles practice claims of other Asserted Patents.

139. The Domestic Industry Products practice at least the claims in the following table for each Asserted Patent:

U.S. Patent No.	Practiced Claims¹²
9,918,511	1* , 15*
9,743,705	1* , 2, 3, 4, 5, 11* , 12, 13, 14, 15, 16, 17, 18
8,266,749	1* , 3, 4, 5, 6, 7, 8
7,814,598	1* , 9* , 14*
9,060,562	1*
8,898,932	11*

140. Pursuant to § 210.12(a)(9)(ix), claim charts applying one or more exemplary claims of each of the Asserted Patents to the Domestic Industry Products and evidence cited therein are attached as **Exhibits 20** through **Exhibit 25**. While the above claims are provided as examples of the claims that the Domestic Industry Products practice, Nike reserves the right to add or remove claims.

141. As discussed in Nike's separate Public Interest submission submitted pursuant to Commission Rule 210.8(b), the public interest weighs heavily in favor of the relief Nike requests, including the public interest in protecting Nike's intellectual property rights in the Domestic Industry Products. Protecting Nike's intellectual property rights in the Domestic Industry Products will encourage innovation and protect Nike's significant domestic investment in development of better and more sustainable products for U.S. consumers. Additionally, the public interest would not be negatively impacted by these orders, including because Nike has the

¹² Independent claims are denoted by *.

ability, in a commercially reasonable time, to replace the volume of Accused Products that would be subject to the requested remedial orders. **Exhibit 27C**, ¶ 14.

IX. RELATED LITIGATION

142. The parties are and have been involved in the related litigations and adversarial proceedings described below.

A. U.S. Proceedings Related to the Knitted Textile Upper Family '011 Parent Patent

143. *Nike, Inc. v. adidas AG*, Case No. 2021-1903 (Fed. Cir.). This is a currently pending appeal of the IPR decision in IPR2013-00067 (discussed below) concerning the '011 Patent.

144. *adidas AG v. Nike, Inc.*, IPR2013-00067 (PTAB). This IPR, filed on November 28, 2012, challenged the patentability of the claims of the '011 Patent. After two appeals and two remands, on March 1, 2021, the Patent Trial and Appeal Board issued a final written decision finding the challenged claim unpatentable.

145. *Nike, Inc. v. adidas AG*, Case No. 2014-1719 (Fed. Cir.). This is the first appeal from IPR2013-00067 involving the '011 Patent. The Federal Circuit affirmed-in-part and vacated-in-part the PTAB's first written decision, dated April 28, 2014, and remanded the case for further consideration.

146. *Nike, Inc. v. adidas AG*, Case No. 2019-1262 (Fed. Cir.). This is the second appeal from IPR2013-00067 involving the '011 Patent. The Federal Circuit affirmed-in-part and vacated-in-part the PTAB's second written decision, dated September 18, 2018, and remanded the case for further consideration.

147. *adidas AG v. Nike, Inc.*, IPR2017-00263 (PTAB). This IPR involved a petition filed on November 14, 2016, challenging the patentability of certain claims of U.S. Patent No.

8,042,288, which claims priority to the '011 Patent. The PTAB denied institution of the IPR on June 7, 2017, referring to the reasoning in IPR2016-00920 that the Petitioner had not established a reasonable likelihood of success with respect to the challenged claims. On July 20, 2017, the PTAB denied the Petitioner's request for rehearing.

148. *adidas AG v. Nike, Inc.*, IPR2017-00264 (PTAB). This IPR involved a petition filed on November 14, 2016, challenging the patentability of certain claims of U.S. Patent No. 8,042,288, which claims priority to the '011 Patent. The PTAB denied institution of the IPR on June 7, 2017, referring to the reasoning in IPR2016-00920 that the Petitioner had not established a reasonable likelihood of success with respect to the challenged claims. On July 20, 2017, the PTAB denied the Petitioner's request for rehearing.

B. Foreign Proceedings Related to the '011 Patent

149. *Nike International Ltd. v. adidas AG*, Case No. 3 O 6652/12 (Nuremberg ("Nürnberg-Fürth") District Court). In this case, Nuremberg court issued a temporary injunction on August 28, 2012 based on EP 1 571 938, which relates to the '011 Patent. The Nuremberg court lifted the injunction on November 7, 2012.

150. *adidas AG v. Nike International Ltd.*, Case No. 2 Ni 45/12 (EP) (German Federal Patent Court). This is a nullity proceeding filed against European patent EP 1 571 938. On October 30, 2014, the German Federal Patent Court issued a decision to revoke the German part of the European patent EP 1 571 938.

151. *adidas AG v. Nike International Ltd.*, Case No. X ZR 119/14 (German Federal Court of Justice or "Bundesgerichtshof"). This case is an appeal from the decision of the German Federal Patent Court in the nullity proceeding (discussed above). On January 31, 2017, the German Federal Patent Court issued a decision affirming the decision of the German Federal Patent Court to revoke the German part of the European patent EP 1 571 938.

C. Proceedings Related to the '598 Patent

152. *adidas AG v. Nike, Inc.*, IPR2016-00921 (PTAB). This IPR, filed on April 19, 2016, challenged the patentability of certain claims of the '598 Patent. After an appeal and remand, the PTAB upheld all challenged claims of the '598 Patent, determining that Petitioner had not met its burden to prove, by a preponderance of the evidence, that the challenged claims were unpatentable.

153. *Nike, Inc. v. adidas AG*, Case No. 2018-1180 (Fed. Cir.). This is the first appeal from IPR2016-00921 involving the '598 Patent. This appeal was consolidated with Case No. 2018-1181 (discussed below). The Federal Circuit remanded the case for further consideration and proceedings.

154. *adidas AG v. Nike, Inc.*, Case No. 2019-1787 (Fed. Cir.). This is the second appeal from IPR2016-00921 involving the '598 Patent. This appeal was consolidated with Case No. 2019-1788 (discussed below). The Federal Circuit affirmed the PTAB's decision upholding all challenged claims of the '598 Patent and determining that Petitioner had not met its burden to prove, by a preponderance of the evidence, that the challenged claims were unpatentable. The decision is final as adidas AG's petition for writ of certiorari was denied on February 22, 2021.

D. Proceedings Related to the '749 Patent

155. *adidas AG v. Nike, Inc.*, IPR2016-00922 (PTAB). This IPR, filed on April 19, 2016, challenged the patentability of certain claims of the '749 Patent. After appeal and remand, the PTAB upheld all challenged claims of the '749 Patent, determining that Petitioner had not met its burden to prove, by a preponderance of the evidence, that the challenged claims were unpatentable.

156. *Nike, Inc. v. adidas AG*, Case No. 2018-1181 (Fed. Cir.). This is the first appeal from IPR2016-00922 involving the '749 Patent. This appeal was consolidated with Case No.

2018-1180 (discussed above). The Federal Circuit remanded the case for further consideration and proceedings.

157. *adidas AG v. Nike, Inc.*, Case No. 2019-1788 (Fed. Cir.). This is the second appeal from IPR2016-00922 involving the '749 Patent. This appeal was consolidated with Case No. 2019-1787 (discussed above). The Federal Circuit affirmed the PTAB's decision upholding all challenged claims of the '749 Patent and determining that Petitioner had not met its burden to prove, by a preponderance of the evidence, that the challenged claims were unpatentable. The decision is final as adidas AG's petition for writ of certiorari was denied on February 22, 2021.

158. *adidas AG v. Nike, Inc.*, IPR2016-00920 (PTAB). This IPR involved a petition filed on April 19, 2016, challenging the patentability of certain claims of U.S. Patent No. 8,042,288, which claims priority to the '011 Patent. The PTAB denied institution of the IPR on October 20, 2016, concluding that the Petitioner had not established a reasonable likelihood of success with respect to the challenged claims. The decision was not appealed.

X. RELIEF REQUESTED

159. WHEREFORE, by reason of the foregoing, Nike respectfully requests that the United States International Trade Commission:

- (a) Institute an immediate investigation pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, into the violations by Respondents of Section 337 arising from the importation into the United States, sale for importation, and/or sale within the United States after importation, of Respondents' products that infringe one or more claims of the Asserted Patents.
- (b) Schedule and conduct a hearing, pursuant to 19 U.S.C. § 1337(c), for purposes of receiving evidence and hearing argument concerning whether there has been a

violation of Section 337 of the Tariff Act of 1930, as amended; and, following the hearing, determine that there has been a violation of Section 337 of the Tariff Act of 1930, as amended;

- (c) Issue a permanent limited exclusion order, excluding from entry for consumption into the United States, entry for consumption from a foreign trade-zone, or withdrawal from a warehouse for consumption, certain knitted footwear that infringe one or more claims of the Asserted Patents and which are manufactured by or on behalf of, or imported by or on behalf of Respondents, or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, for the remaining terms of the Asserted Patents, except under license of Nike or as provided by law;
- (d) Issue permanent cease-and-desist orders, pursuant to 19 U.S.C. §1337(f), directing Respondents and any of their principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) or majority-owned business entities, successors, and assigns, from either directly engaging in or for, with or otherwise on behalf of Respondents, (A) importing or selling for importation into the United States certain knitted footwear that infringe one or more claims of the Asserted Patents; (B) marketing, distributing, offering for sale, selling, or otherwise transferring, in the United States imported knitted footwear that infringe one or more claims of the Asserted Patents; (C) advertising imported knitted footwear in the United States that infringe one or more claims of the Asserted Patents; (D) soliciting U.S. agents or distributors for knitted footwear that infringe one or more claims of the

Asserted Patents; (E) aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer, or distribution of knitted footwear that infringe one or more claims of the Asserted Patents; (F) testing imported knitted footwear in the United States that infringe one or more claims of the Asserted Patents; (G) updating or upgrading imported knitted footwear in the United States that infringe one or more claims of the Asserted Patents; (H) operating imported knitted footwear in the United States that infringe one or more claims of the Asserted Patents; or (I) supporting, servicing, and/or repairing imported knitted footwear in the United States that infringe one or more claims of the Asserted Patents;

- (e) Impose a bond upon any importations or sales of infringing knitted footwear during the 60-day period for Presidential review, pursuant to 19 U.S.C. § 1337(j); and
- (f) Grant all such other and further relief as the Commission has authority to grant and deems appropriate under the law, based upon the facts complained of herein and as determined by the Investigation.

PUBLIC, REDACTED VERSION

Dated: December 8, 2021

Respectfully submitted,

/s/ Christopher J. Renk

Christopher J. Renk

Michael J. Harris

Aaron Bowling

ARNOLD & PORTER KAYE SCHOLER LLP

70 W Madison Street, #4200

Chicago, IL 60602

Telephone: (312) 583-2300

Facsimile: (312) 583-2360

Philip W. Marsh

ARNOLD & PORTER KAYE SCHOLER LLP

3000 El Camino Real

Five Palo Alto Square, Suite 500

Palo Alto, CA 94306-3807

Telephone: (650) 319-4500

Facsimile: (650) 319-4700

Michael J. Gershoni

Bridgette C. Gershoni

ARNOLD & PORTER KAYE SCHOLER LLP

601 Massachusetts Ave. NW

Washington, DC 20001

Telephone: (202) 942-5000

Facsimile: (202) 942-5999

Deanna Tanner Okun

Lauren E. Peterson

ADDUCI, MASTRIANI & SCHAUMBERG, L.L.P.

1133 Connecticut Avenue, N.W., 12th Floor

Washington, DC 20036

Telephone: (202) 467-6300

Facsimile: (202) 466-2006

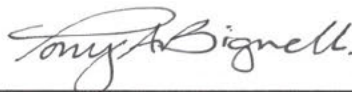
Counsel for Complainant Nike, Inc.

VERIFICATION

I Tony Bignell, declare, in accordance with 19 C.F.R. §§ 210.4(c) and 210.12(a), under penalty of perjury, that the following statements are true:

1. I am Vice President of Men's Sport Performance Footwear at Nike, Inc. ("Nike"). I am duly authorized by Nike to verify the foregoing Complaint Under Section 337 of the Tariff Act of 1930, as Amended.
2. The Complaint is not being filed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
3. To the best of my knowledge, information, and belief, formed after a reasonable inquiry, the claims and other legal contentions set forth in the Complaint are warranted by existing law or by a good faith, non-frivolous argument for extension, modification, or reversal of existing law, or by the establishment of new law.
4. To the best of my knowledge, information, and belief, formed after a reasonable inquiry, the allegations of the Complaint Under Section 337 of the Tariff Act of 1930, as Amended, are well grounded in fact and have evidentiary support, or where specifically identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

Executed on December 6, 2021



Tony Bignell
V.P., Men's Sport Performance Footwear
Nike, Inc.