

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

SKECHERS U.S.A., INC.,
Petitioner,

v.

NIKE, INC.,
Patent Owner.

IPR2025-00141
Patent 8,266,749 B2

Before COKE MORGAN STEWART, *Acting Under Secretary of
Commerce for Intellectual Property and Acting Director of the United States
Patent and Trademark Office.*

ORDER

Granting Director Review, Vacating the Decision Denying Institution, and
Remanding to the Board for Further Proceedings

Skechers U.S.A., Inc. (“Petitioner”) filed a request for Director Review of the Decision denying institution (“Decision,” Paper 20) in the above-captioned case, and Nike, Inc. (“Patent Owner”) filed an authorized response. *See* Paper 21 (“DR Request”); Paper 22. Petitioner argues that the Board abused its discretion by denying institution under 35 U.S.C. § 325(d) because, among other things, the Board’s failure to find examiner error regarding the Nishida¹ reference is erroneous. DR Request 9. More specifically, Petitioner argues that the Board’s determination in this case contradicts the factual findings in two prior *inter partes* review proceedings involving the same challenged patent (collectively, “the prior IPRs”) regarding the same teachings in Nishida.² *Id.* According to Petitioner, “[t]his should have been an open-and-shut case of examiner error” because the Petition relied on Nishida as an anticipatory reference and showed that the Board already has found that Nishida discloses “simultaneously knitting,” as recited in claims 1 and 13 of the challenged patent, “while in the process rejecting the same arguments [Patent Owner] made to the [e]xaminer.” *Id.* at 10 (citing Pet. 20–21; Ex. 1016, 28–31; Ex. 1013, 259).

Patent Owner responds that “the Board found no material error in the [e]xaminer’s previous consideration of Nishida” and that the Board correctly found that Petitioner failed to carry its burden under the Board’s decision in

¹ US 5,345,638, issued Sept. 13, 1994 (Ex. 1022).

² The prior IPRs are IPR2016-00922 and IPR2024-00460. The petitioner in IPR2016-00922 relied on Nishida, whereas the petitioner in IPR2024-00460 relied on the PCT application of Nishida. Both Nishida references have substantively similar disclosures. *See* Ex. 1069, 22 (Board decision on institution in IPR2024-00460, explaining that “there is recognizable substantive overlap between” Nishida and the Nishida PCT application).

Ecto World, LLC v. RAI Strategic Holdings, Inc., IPR2024-01280, Paper 13 (May 19, 2025) (precedential as to § A).

The Board erred in finding that Petitioner failed to sufficiently argue examiner error under *Ecto World* and abused its discretion in failing to reach Petitioner’s arguments that Nishida teaches the limitations of the challenged claims. Decision 20–21, n.10. First, both the Petition and Petitioner’s additional briefing addressing § 325(d) point to the Board’s findings in the prior IPRs regarding Nishida’s teachings. *See* Pet. 20–21; Paper 16, 4. Second, Petitioner’s § 325(d) briefing specifically argues that the examiner “erred by misapprehending or overlooking Nishida’s teachings,” given the Board’s findings in the prior IPRs. Paper 16, 4. Thus, Petitioner sufficiently argued under *Ecto World* how the examiner erred in overlooking the prior art. *See Ecto World*, IPR2024-01280, Paper 13 at 5–6.

Next, Petitioner’s briefing persuasively argues that the Board’s findings in the prior IPRs establish an apparent material error by the Office. Pet. 20–21 (citing Ex. 1017, 24–27); Paper 16, 4. In IPR2016-00922, the Board determined in a final written decision that “Nishida teaches ‘simultaneously knitting a textile element with a surrounding textile structure,’ . . . as recited in independent claims 1 and 13.” Ex. 1017, 25–26. In IPR2024-00460, the Board at institution found that “there is a reasonable case to be made that [Nishida’s PCT application] disclosure conveys that the material (1) and the patterns (2) are created simultaneously.” Ex. 1069, 23. In IPR2024-00460, the Board also recognized that in the earlier IPR (IPR2016-00922), the Board “determined that Nishida[] did, indeed, disclose

the relevant ‘simultaneously knitting’ limitation.” *Id.* at 24.³ Accordingly, based on the record here, which includes the Board’s prior findings that Nishida discloses the “simultaneous knitting” limitation, Petitioner demonstrates an apparent error in the examiner’s findings regarding Nishida that is material to the patentability of the challenged claims.

Petitioner’s additional arguments as to Günther⁴ and Orei⁵ are unpersuasive. *See* DR Request 5–9, 12–15. In view of the foregoing, Director Review is granted, and this case is remanded to the Board with instructions to consider Petitioner’s Nishida grounds and to determine whether the Petition should be instituted.

Absent good cause, the Board shall issue its decision within 30 days of this Order.

Accordingly, it is:

ORDERED that Director Review is granted;

FURTHER ORDERED that the Decision denying institution of *inter partes* review (Paper 20) is vacated; and

FURTHER ORDERED that the case is remanded to the Board for further proceedings consistent with this Order.

³ The Board subsequently issued a final written decision in IPR2024-00460 determining that the petitioner “has demonstrated by a preponderance of the evidence that Nishida[’s PCT application] discloses ‘simultaneously knitting a textile element with a surrounding textile structure,’ as recited in independent claim 1.” IPR2024-00460, Paper 30 at 29–30 (PTAB Aug. 6, 2025). This determination further supports Petitioner’s position that the examiner erred in a manner material to patentability.

⁴ German Patent No. 627 878, issued July 1, 1936 (Ex. 1023).

⁵ US 7,051,460 B2, issued May 30, 2006 (Ex. 1020).

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