United States District Court,
E.D. Texas, Lufkin Division.

NIKE, INC,
Plaintiff.
v.
ADIDAS AMERICA INC. d/b/a Adidas International, Adidas Salomon North America, Inc., and Adidas Promotion Retail Operations Inc,
Defendants.

Civil Action No. 9:06-CV-43

Dec. 18, 2006.

Christopher D. Bright, Jennifer L. Yokoyama, David M. Stein, Fay E. Morisseau, McDermott Will & Emery, Irvine, CA, J. Thad Heartfield, the Heartfield Law Firm, Beaumont, TX, Clayton Edward Dark, Jr., Attorney at Law, Lufkin, TX, for Plaintiff.

Mitchell G. Stockwell, Bonnie M. Grant, Catherine E. Hart, D. Clay Holloway, Geoffrey K. Gavin, Vaibhav P. Kadaba, Vanessa M. Spencer, William H. Boice, Kilpatrick Stockton LLP, Atlanta, GA, Allen Franklin Gardner, Michael Edwin Jones, Potter Minton PC, Tyler, TX, for Defendants.

ORDER ON AGREED CLAIM TERMS

RON CLARK**, District Judge.**

Plaintiff Nike, Inc. ("Nike") filed suit against Defendants adidas America Inc. d/b/a adidas International, adidas Salomon North America, Inc., and adidas Promotion Retail Operations Inc. (collectively "adidas") claiming infringement of United States Patent No. 6,487, 796 ("the '796 patent") and United States Patent No. 6,298,314 ("the '314 patent"). The parties agreed, either before or at the claim construction hearing, to the proper construction of the following terms in these patents. FN1 The definitions agreed upon comport with the meaning of the terms as they are used in the claims, the specification, the prosecution history, and any applicable extrinsic evidence. Therefore, these terms will be defined as follows:

FN1. For a background of the patents, a description of the technology involved, and the standard of review, see this court's prior order construing claim terms of these patents.

I. Claim Terms-The '796 patent

1. "Medial." Used in Claims 9 and 42.

"**Medial**" means "inside (of the foot)."

2. "Lateral." Used in Claims 9 and 42.

"**Lateral**" means "outside (of the foot)."

3. "Plurality." Used in Claim 9.

"**Plurality**" means "more than one."

4. "Calcaneus." Used in Claims 45 and 46

"**Calcaneus**" means "heel bone."

5. "Perpendicular to a longitudinal axis of said footwear." Used in Claim 43.

"**Perpendicular to a longitudinal axis of said footwear**" means "at about a right or 90 degree angle with the imaginary line running lengthwise down the center of the footwear from the toe to the heel."

6. "Acute angles with respect to said longitudinal axis." Used in Claim 44.

"**Acute angles with respect to said longitudinal axis**" means "less than a right angle or a 90 degree angle with the imaginary line running lengthwise down the center of the footwear from the toe to the heel."

7. "Center of a calcaneus of the foot." Used in Claim 45.

"**Center of a calcaneus of the foot**" means "generally around the center of the heel bone of a typical wearer of the footwear."

8. "Adjacent a calcaneus of the foot." Used in Claim 46.

"**Adjacent a calcaneus of the foot**" means "generally adjacent to (or near) the center of the heel bone of a typical wearer of the footwear."

III. Claim Terms-The '314 patent

1.. "In response to" Used in Claims 13, 18, 27, 31-33, 43-45, 55, 82, and 87.

The parties agree on the following construction:

"**In response to**" means "caused by."

2. "To generate a signal" Used in Claims 13, 18, 27, 31, 32, 43, 44 and 45.

"**To generate a signal**" means "to produce a signal."

3. "First characteristic in the signal that indicates the person has begun walking or running." Used in Claims 32(d) and 43.

"**First characteristic in the signal that indicates the person has begun walking or running**" means "a feature of the signal which first indicates that a person has begun walking or running."

4. "First characteristic in the signal that indicates the foot is in motion." Used in Claims 44(d) and 55.

"**First characteristic in the signal that indicates the foot is in motion**" means "a feature of the signal which first indicates that the foot is in motion."

5. "Characteristic in the signal that indicates the person has initially ceased taking footsteps." Used in Claims 13(c) and 18.

"**Characteristic in the signal that indicates the person has initially ceased taking footsteps**" means "a feature of the signal that indicates the first time a person stops stepping."

6. "Characteristic in the signal indicative of the foot initially ceasing to be in motion." Used in Claims 27(c) and 31.

"**Characteristic in the signal indicative of the foot initially ceasing to be in motion**" means "a feature of the signal that indicates the first time a person's foot stops moving."

7. "Second characteristic in the signal that indicates the person has ceased walking or running." Used in Claims 33(f) and 82.

"**Second characteristic in the signal that indicates the person has ceased walking or running**" means "a feature of the signal that indicates the person has stopped walking or running."

8. "Second characteristic in the signal that indicates the foot has become stationary." Used in Claims 45(f) and 87.

"**Second characteristic in the signal that indicates the person has ceased walking or running**" means "a feature of the signal that indicates the person has stopped walking or running."

IV. Conclusion

The jury shall be instructed in accordance with these agreed interpretations of the claim terms in the '796 and '314 patents.

So **ORDERED.**

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