

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);

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5. One (1) electronic copy of each of United States Patent Nos. 9,918,511, 9,743,705, 8,266,749,<sup>1</sup> 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.*

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<sup>1</sup> 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:

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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%.”<sup>1</sup> 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.<sup>2</sup>

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<sup>1</sup> 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](https://www.stern.nyu.edu/sites/default/files/assets/documents/Nike_Carly_04.2017%20-%20Copy.pdf).

<sup>2</sup> 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](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).<sup>3</sup>

### **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

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<sup>3</sup> 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

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**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**

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**EXHIBIT LIST**

<b>Ex. No.</b>	<b>Description</b>
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: <a href="https://purpose-cms-preprod01.s3.amazonaws.com/wp-content/uploads/2021/04/26225049/FY20_Nike_Inc_Impact_Report2.pdf">https://purpose-cms-preprod01.s3.amazonaws.com/wp-content/uploads/2021/04/26225049/FY20 Nike Inc Impact Report2.pdf</a> .



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Ex. No.	Description
33	Billy Hunter, <i>Nike Flyknit: Quantum Leap for Flat Knitting</i> , KNITTING INDUSTRY (July 26, 2012), available at: <a href="http://www.knittingindustry.com/nike-flyknit-quantum-leap-for-flat-knitting/">http://www.knittingindustry.com/nike-flyknit-quantum-leap-for-flat-knitting/</a> (printed Nov. 11, 2013).
34	Billy Hunter, <i>Nike Flyknit: Ready, Steady, Go!</i> , KNITTING INDUSTRY (July 31, 2012), available at: <a href="http://www.knittingindustry.com/nike-flyknit-ready-steady-go/">http://www.knittingindustry.com/nike-flyknit-ready-steady-go/</a> (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: <a href="https://www.stern.nyu.edu/sites/default/files/assets/documents/Nike_Carly_04.2017%20-%20Copy.pdf">https://www.stern.nyu.edu/sites/default/files/assets/documents/Nike_Carly_04.2017%20-%20Copy.pdf</a> .
36	adidas - Headquarters Webpage, available at: <a href="https://www.adidas-group.com/en/about/headquarters/">https://www.adidas-group.com/en/about/headquarters/</a> (visited and printed Nov. 4, 2021).
37	adidas - Annual Report 2020, Shareholdings of adidas AG, Herzogenaurach, as at December 31, 2020, available at: <a href="https://report.adidas-group.com/2020/en/servicepages/downloads/files/ai-shareholdings-adidas-ag-adidas-ar20.xlsx">https://report.adidas-group.com/2020/en/servicepages/downloads/files/ai-shareholdings-adidas-ag-adidas-ar20.xlsx</a> (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: <a href="https://www.westnyc.com/blogs/latest/adidas-originals-samba-sock-primeknit-black-white">https://www.westnyc.com/blogs/latest/adidas-originals-samba-sock-primeknit-black-white</a> (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: <a href="https://www.westnyc.com/blogs/latest/adidas-originals-samba-sock-primeknit-white-black">https://www.westnyc.com/blogs/latest/adidas-originals-samba-sock-primeknit-white-black</a> (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: <a href="https://www.sneakerfreaker.com/features/material-matters/material-matters-adidas-primeknit">https://www.sneakerfreaker.com/features/material-matters/material-matters-adidas-primeknit</a> (printed and visited Nov. 20, 2021).
42	ADIDAS, <i>Phosphere</i> , available at: <a href="https://www.adidas.de/en/phosphere-shoes/EG3491.html">https://www.adidas.de/en/phosphere-shoes/EG3491.html</a> (printed and visited Oct. 12, 2021).
43	ADIDAS, <i>Pureboost Go</i> , available at: <a href="https://www.adidas.com/us/running_pureboost">https://www.adidas.com/us/running_pureboost</a> (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: <a href="https://news.adidas.com/running/adidas-running-launches-brand-new-pureboost-go--created-specifically-for-thrilling-city-running/s/b07903c5-6db5-49fb-9c2e-1e114ef0eb8a">https://news.adidas.com/running/adidas-running-launches-brand-new-pureboost-go--created-specifically-for-thrilling-city-running/s/b07903c5-6db5-49fb-9c2e-1e114ef0eb8a</a> (printed and visited Oct. 12, 2021).
45	ADIDAS, <i>Pro Boost Mid Shoes</i> , available at: <a href="https://www.adidas.com/us/pro-boost-mid-shoes/FW9517.html">https://www.adidas.com/us/pro-boost-mid-shoes/FW9517.html</a> (printed and last visited Oct. 13, 2021).

***PUBLIC, REDACTED VERSION***

<b>Ex. No.</b>	<b>Description</b>
46	ADIDAS, <i>Pro Boost Mid Shoes</i> , available at: <a href="https://www.adidas.de/en/pro-boost-mid-shoes/FW9509.html">https://www.adidas.de/en/pro-boost-mid-shoes/FW9509.html</a> (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: <a href="https://www.adidas.de/en/pro-boost-mid-shoes/FW9509.html">https://www.adidas.de/en/pro-boost-mid-shoes/FW9509.html</a> (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**

<b>Appx. No.</b>	<b>Description</b>
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:

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

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<sup>1</sup> Independent claims are denoted by \*.

<b>U.S. Patent No.</b>	<b>Asserted Claims<sup>1</sup></b>
7,814,598	<b>1*, 9*, 14*</b>
9,060,562	<b>1*, 2, 3, 4</b>
8,898,932	<b>11*, 12, 14, 15</b>

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.<sup>2</sup> 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.<sup>3</sup> 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.**

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

<sup>3</sup> *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 Collection<sup>4</sup>**

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

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<sup>4</sup> 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.<sup>5</sup> See **Exhibits 14-29, 28-30, 38-47**. Those example styles are also shown in the summary table below:<sup>6</sup>

<b>Example Style</b>	<b>Example Picture</b>
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	

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

<sup>6</sup> 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.



<b>Example Style</b>	<b>Example Picture</b>
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	