

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

		FILED: OCTOBER 13, 2008
NIKE, INC.)	08CV5840
)	JUDGE HIBBLER
Plaintiff,)	MAGISTRATE JUDGE MASON
)	AO
v.)	Civil Action No.
)	
WAL-MART STORES, INC.)	
)	
Defendant.)	Jury Trial Demanded
)	

COMPLAINT

The plaintiff, NIKE, Inc. ("NIKE"), for its complaint against defendant, Wal-Mart Stores, Inc. ("Wal-Mart"), alleges as follows:

THE PARTIES

1. The plaintiff, NIKE, is a corporation organized and existing under the laws of the State of Oregon and has a principal place of business at One Bowerman Drive, Beaverton, Oregon, 97005.

2. On information and belief, the defendant, Wal-Mart, is a corporation organized under the laws of the State of Delaware, and having a principal place of business at 702 SW Eighth Street, Bentonville, Arkansas 72716, and having established places of business in the Northern District of Illinois, Eastern Division, doing business as Wal-Mart.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

4. This Court has subject matter jurisdiction over this dispute pursuant to 28 U.S.C. §§ 1331, and 1338(a).

5. This Court may exercise personal jurisdiction over Wal-Mart based upon its contacts with this forum, including, at least, regularly and intentionally doing business here.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and 1400(b).

GENERAL ALLEGATIONS – THE NIKE DESIGN PATENTS

7. For many years, NIKE has engaged in the development, manufacture, and sale of a wide array of athletic and fashion footwear, apparel, and sports equipment.

8. NIKE has taken steps to protect its innovative designs, including its footwear-related designs. In particular, NIKE owns various United States design patents relating to its footwear designs. Relevant to this dispute, NIKE is and has been the owner of all right, title, and interest to each of the United States design patents identified in Table 1 (hereafter, the “NIKE Design Patents”) since the date each patent duly and legally issued to NIKE. A copy of each NIKE Design Patent is attached to this Complaint as indicated in Table 1.

Table 1: NIKE Design Patents		
United States Design Patent Number	Issue Date of Patent	Complaint Exhibit
D498,914 (‘914 patent)	November 30, 2004	A
D499,248 (‘248 patent)	December 7, 2004	B

GENERAL ALLEGATIONS – DEFENDANT’S INFRINGING ACTIVITIES

9. On information and belief, without NIKE’s authorization, Wal-Mart has offered for sale and sold in the United States shoes having designs that are covered by the NIKE Design Patents (hereafter, the “Infringing Shoes”). Upon information and belief, Wal-Mart knowingly

and intentionally sold and continues to sell the Infringing Shoes as simulations of NIKE shoes.

10. Charts 1 and 2 below demonstrate Wal-Mart's infringement by comparing images of the Infringing Shoes sold by Wal-Mart with figures from the NIKE Design Patents.

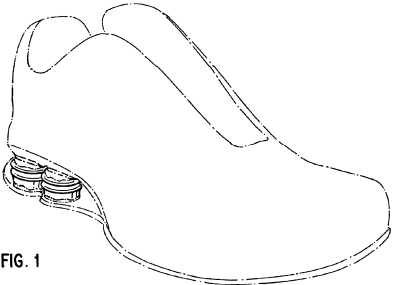

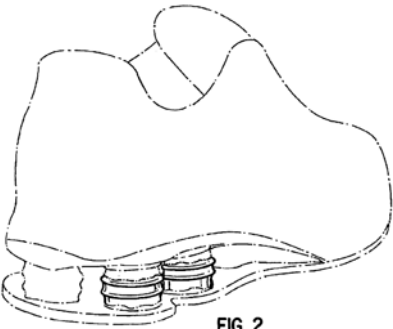

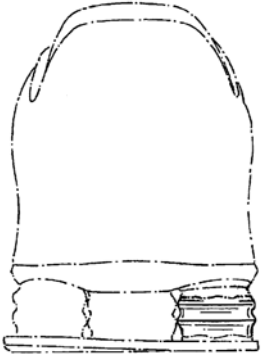

Chart 1: Images Depicting Infringement of NIKE Design Patent D498,914 by the Wal-Mart Shoe	
D498,914	Wal-Mart Shoe
 <p>FIG. 1</p>	
 <p>FIG. 2</p>	
 <p>FIG. 3</p>	

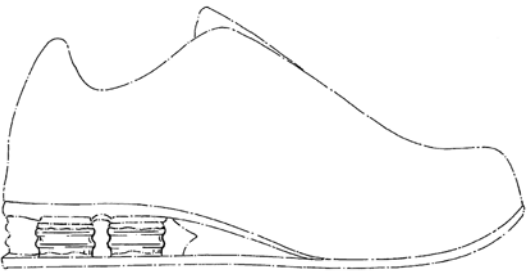

Chart 1: Images Depicting Infringement of NIKE Design Patent D498,914 by the Wal-Mart Shoe	
D498,914	Wal-Mart Shoe
 <p>FIG. 4</p>	



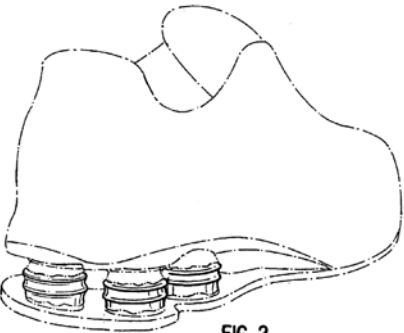

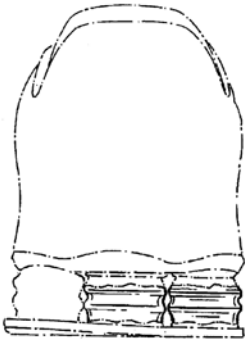

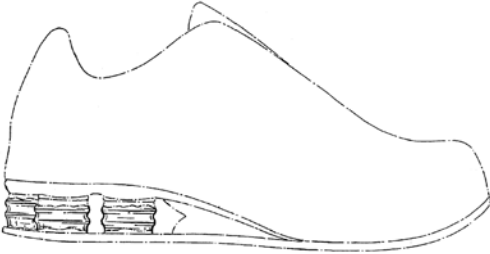

Chart 2: Images Depicting Infringement of NIKE Design Patent D499,248 by the Wal-Mart Shoe	
D499,248	Wal-Mart Shoe
 <p>FIG. 1</p>	
 <p>FIG. 2</p>	

Chart 2: Images Depicting Infringement of NIKE Design Patent D499,248 by the Wal-Mart Shoe	
D499,248	Wal-Mart Shoe
 <p style="text-align: center;">FIG. 3</p>	
 <p style="text-align: center;">FIG. 4</p>	

11. Based on information and belief, defendant Wal-Mart has infringed and continues to infringe the NIKE Design Patents within the meaning of 35 U.S.C. §271(a) at least by selling and offering to sell the Infringing Shoes without NIKE’s authorization or license.

12. NIKE has sold and is currently selling its NIKE SHOX footwear models bearing the design claimed in the ‘914 and ‘248 patents. As contemplated by the Patent Act, 35 U.S.C. § 287, NIKE has provided notice of its ‘914 and ‘248 patents by marking the ‘914 and ‘248 patent numbers on NIKE footwear models bearing those patented designs since approximately the time the United States Patent and Trademark Office issued the ‘914 and ‘248 patents.

13. On information and belief, Wal-Mart’s infringement of the NIKE Design Patents

has been and continues to be intentional and willful.

COUNT 1: PATENT INFRINGEMENT

14. NIKE re-alleges each and every allegation set forth in paragraphs 1 through 13 above, inclusive, and incorporates them by reference herein.

15. Defendant has made, used, offered to sell, sold, and/or imported into the United States, and still are making, using, offering to sell, selling, and/or importing into the United States, shoes having designs that infringe the NIKE Design Patents without NIKE's authorization.

16. On information and belief, Defendant's infringement has been intentional and willful, making this an exceptional case.

17. NIKE has been and will continue to be irreparably harmed by Defendant's infringement of the NIKE Design Patents.

JURY DEMAND

NIKE demands a trial by jury.

RELIEF SOUGHT

WHEREFORE, NIKE respectfully prays for:

A. Judgment that Defendant willfully infringed the NIKE Design Patents in violation of 35 U.S.C. § 271(a);

B. An injunction against further infringement of the NIKE Design Patents by Defendant, its agents, servants, employees, officers, and all others controlled by them;

C. An award of damages adequate to compensate NIKE for the patent infringement that has occurred pursuant to 35 U.S.C. § 284, which shall be trebled as a result of Defendant's

willful patent infringement, or an award of Defendant's profits from its infringement pursuant to 35 U.S.C. § 289, whichever is greater, together with prejudgment interest and costs;

D. An assessment of costs, including reasonable attorney fees, pursuant to 35 U.S.C. § 285, with prejudgment interest;

E. Such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: October 13, 2008

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Attorneys for Plaintiff,
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(12) **United States Design Patent** (10) Patent No.: **US D498,914 S**
Sokolowski (45) Date of Patent: **** Nov. 30, 2004**

(54) **PORTION OF A SHOE MIDSOLE**
 (75) Inventor: Susan Sokolowski, Portland, OR (US)
 (73) Assignee: Nike, Inc., Beaverton, OR (US)
 (**) Term: 14 Years

D351,720 S 10/1994 Kilgore
 5,353,523 A 10/1994 Kilgore et al.
 D351,936 S 11/1994 Kilgore
 D352,159 S 11/1994 Kilgore
 D352,160 S 11/1994 Kilgore

(List continued on next page.)

(21) Appl. No.: 29/201,774
 (22) Filed: Mar. 22, 2004
 (51) LOC (7) Cl. 02-99
 (52) U.S. Cl. D2/972; D2/964
 (58) Field of Search D2/907, 908, 943,
 D2/944, 964, 969, 972-974; 36/45, 50.1,
 77 M, 77 R, 83, 88, 113, 114, 126-130

OTHER PUBLICATIONS

Nike Footwear Catalog, Fall 1997, p. 44, published Dec. 1996.
 Nike Footwear Catalog, Late Spring 2001, p. M5, published Sep. 2000.
 Nike Footwear Catalog, Holiday 2001, p. M34, published Feb. 2001.
 Nike Footwear Catalog, Spring 2002, p. M29, published Jun. 2001.
 Nike Footwear Catalog, Spring 2003, p. M6, published Jun. 2002.
 Nike Footwear Catalog, Holiday 2003, p. M82, published Mar. 2003.
 Nike Footwear Catalog, Spring 2004, pp. M31 and M40, published Jun. 2003.

(56) **References Cited**
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2,299,009 A	10/1942	Denk
3,777,374 A	12/1973	Hendricks
4,457,084 A	7/1984	Horibata et al.
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D325,288 S	4/1992	Richard et al.
5,235,761 A	8/1993	Chang
5,247,742 A	9/1993	Kilgore et al.
D340,349 S	10/1993	Kilgore et al.
D344,174 S	2/1994	Kilgore
D344,398 S	2/1994	Kilgore
D344,399 S	2/1994	Kilgore
D344,400 S	2/1994	Kilgore
D344,401 S	2/1994	Kilgore
D344,622 S	3/1994	Kilgore
5,297,349 A	3/1994	Kilgore
D350,018 S	8/1994	Kilgore
D350,019 S	8/1994	Kilgore
D350,020 S	8/1994	Kilgore
D350,225 S	9/1994	Kilgore
D350,226 S	9/1994	Kilgore
D350,227 S	9/1994	Kilgore
D350,433 S	9/1994	Kilgore
5,343,639 A	9/1994	Kilgore et al.
D351,057 S	10/1994	Kilgore

Primary Examiner—Dominic Simone
 (74) Attorney, Agent, or Firm—Banner & Witcoff, Ltd.

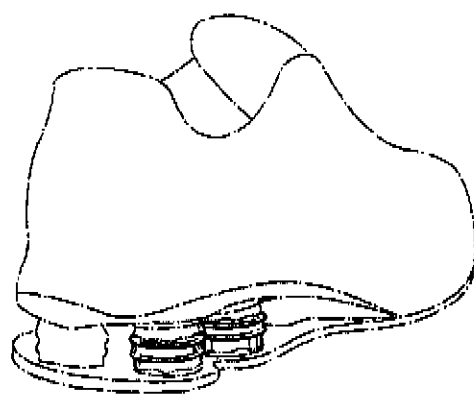
(57) **CLAIM**

The ornamental design for a portion of a shoe midsole, as shown and described.

DESCRIPTION

FIG. 1 is a perspective view of a portion of a shoe midsole showing my new design;
 FIG. 2 is another perspective view thereof;
 FIG. 3 is a rear elevational view thereof; and,
 FIG. 4 is a side elevational view thereof.
 The uneven broken line immediately adjacent to the shaded area represents an unclaimed boundary of the design. The uneven broken line showing of the remainder of the shoe is for illustrative purposes only and forms no part of the claimed design.

1 Claim, 3 Drawing Sheets



EX A

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U.S. PATENT DOCUMENTS

D354,617 S	1/1995	Kilgore	D450,437 S	11/2001	Simpson et al.	
D355,755 S	2/1995	Kilgore	D462,830 S	9/2002	Greene	
6,006,449 A	12/1999	Orlowski et al.	6,457,261 B1	10/2002	Crary	
D429,877 S	8/2000	Lozano et al.	D474,581 S	5/2003	Cooper	
D431,898 S	10/2000	Clegg et al.	D474,582 S	5/2003	Cooper	
D432,293 S	10/2000	Clegg et al.	D476,474 S	7/2003	McDowell	
D433,216 S	11/2000	Avar et al.	D483,936 S	* 12/2003	Fullum	D2,972
D446,387 S	8/2001	McCourt	D483,937 S	* 12/2003	Fullum	D2,972
D446,923 S	8/2001	McCourt	D485,053 S	1/2004	McDowell	
D447,330 S	9/2001	McCourt	D485,975 S	* 2/2004	McDowell	D2,972

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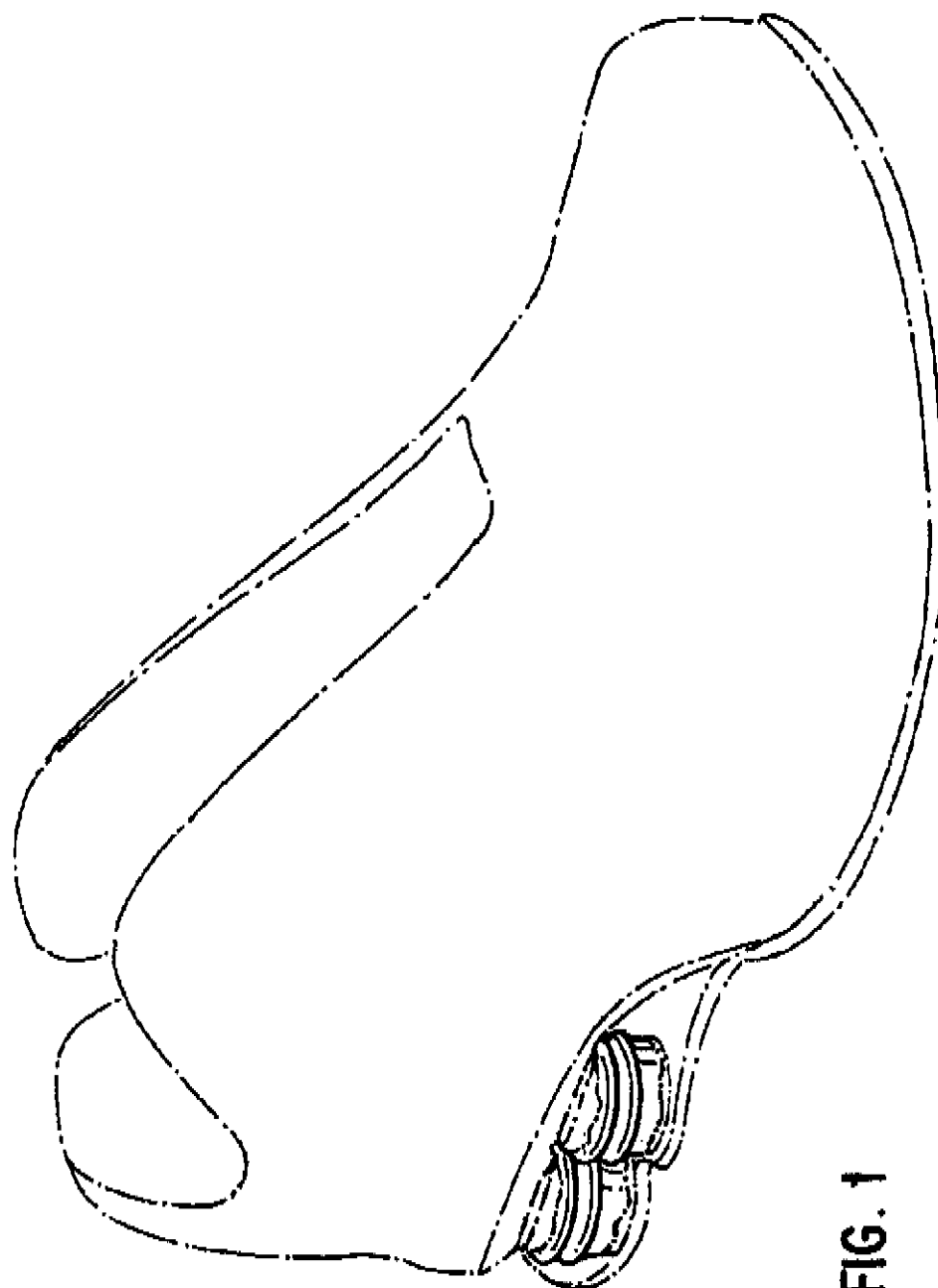


FIG. 1

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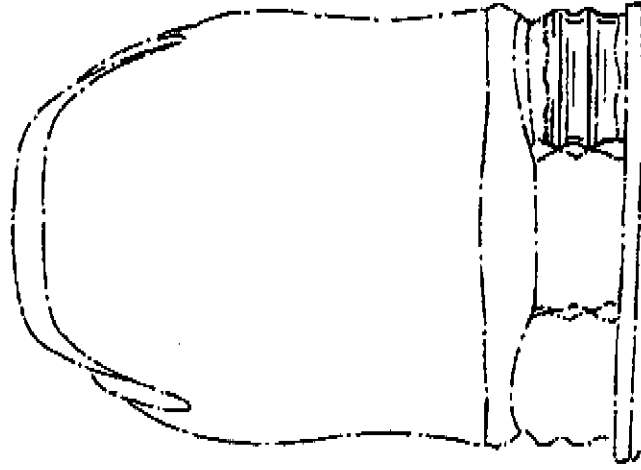


FIG. 3

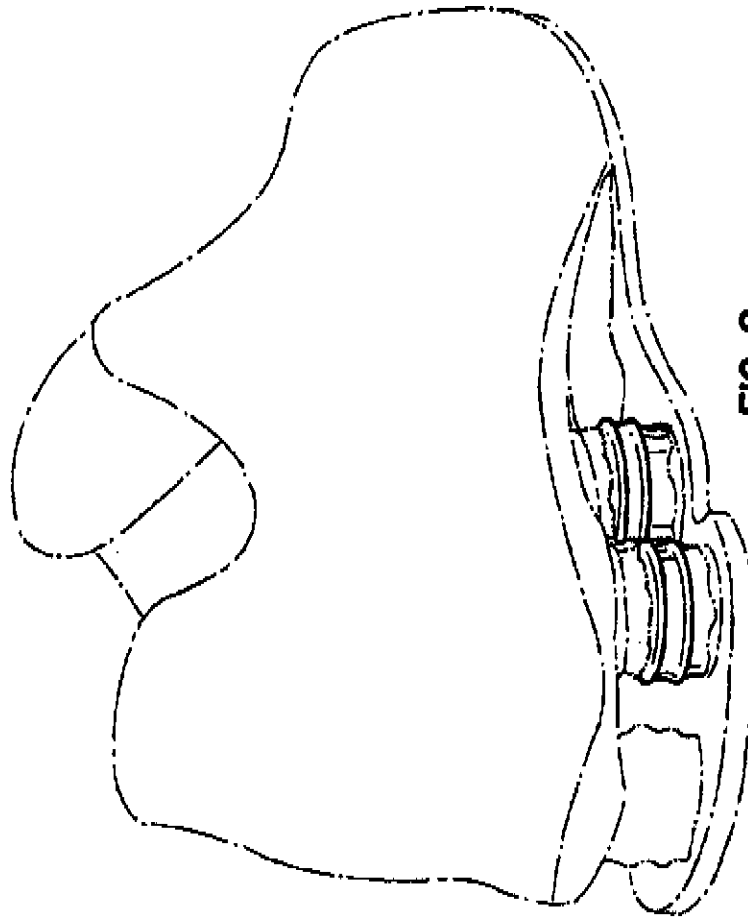


FIG. 2

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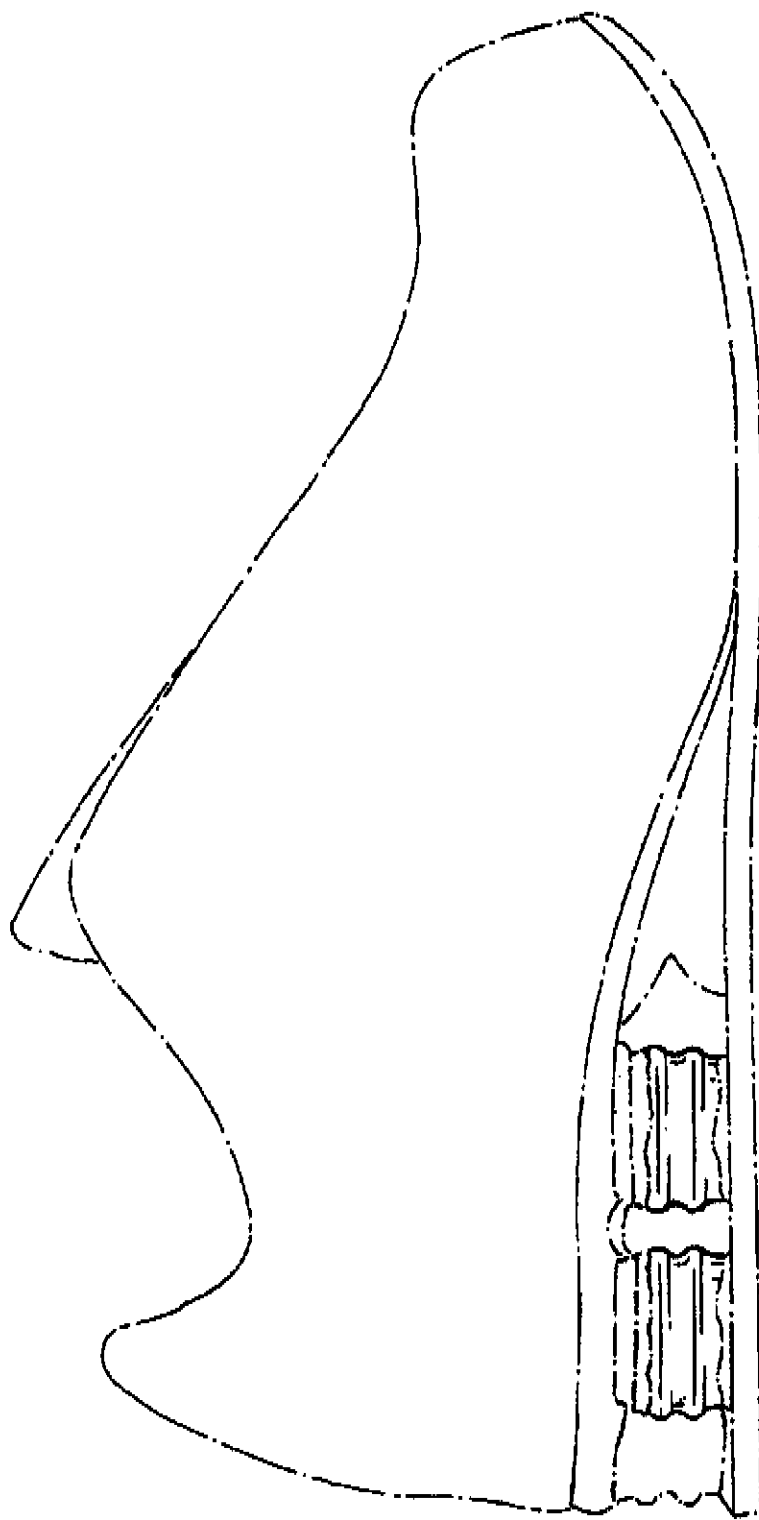


FIG. 4

MAGISTRATE JUDGE MASON



US00D499248S

(12) **United States Design Patent** (10) Patent No.: **US D499,248 S**
Sokolowski (45) Date of Patent: **** Dec. 7, 2004**

(54) **PORTION OF A SHOE MIDSOLE**
(75) Inventor: **Susan Sokolowski, Portland, OR (US)**
(73) Assignee: **Nike, Inc., Beaverton, OR (US)**
(**) Term: **14 Years**

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(58) **Field of Search** **D2/907, 908, 943,**
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Primary Examiner—Dominic Simone
(74) *Attorney, Agent, or Firm*—Banner & Witcoff, Ltd.

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D351,057 S	10/1994	Kilgore

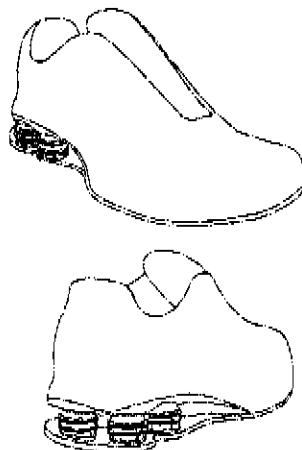
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1 Claim, 3 Drawing Sheets



EX 25

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U.S. PATENT DOCUMENTS

D352,160 S	11/1994	Kilgore	D450,437 S	11/2001	Simpson et al.	
D354,617 S	1/1995	Kilgore	D462,830 S	9/2002	Greene	
D355,755 S	2/1995	Kilgore	6,457,261 B1	10/2002	Crary	
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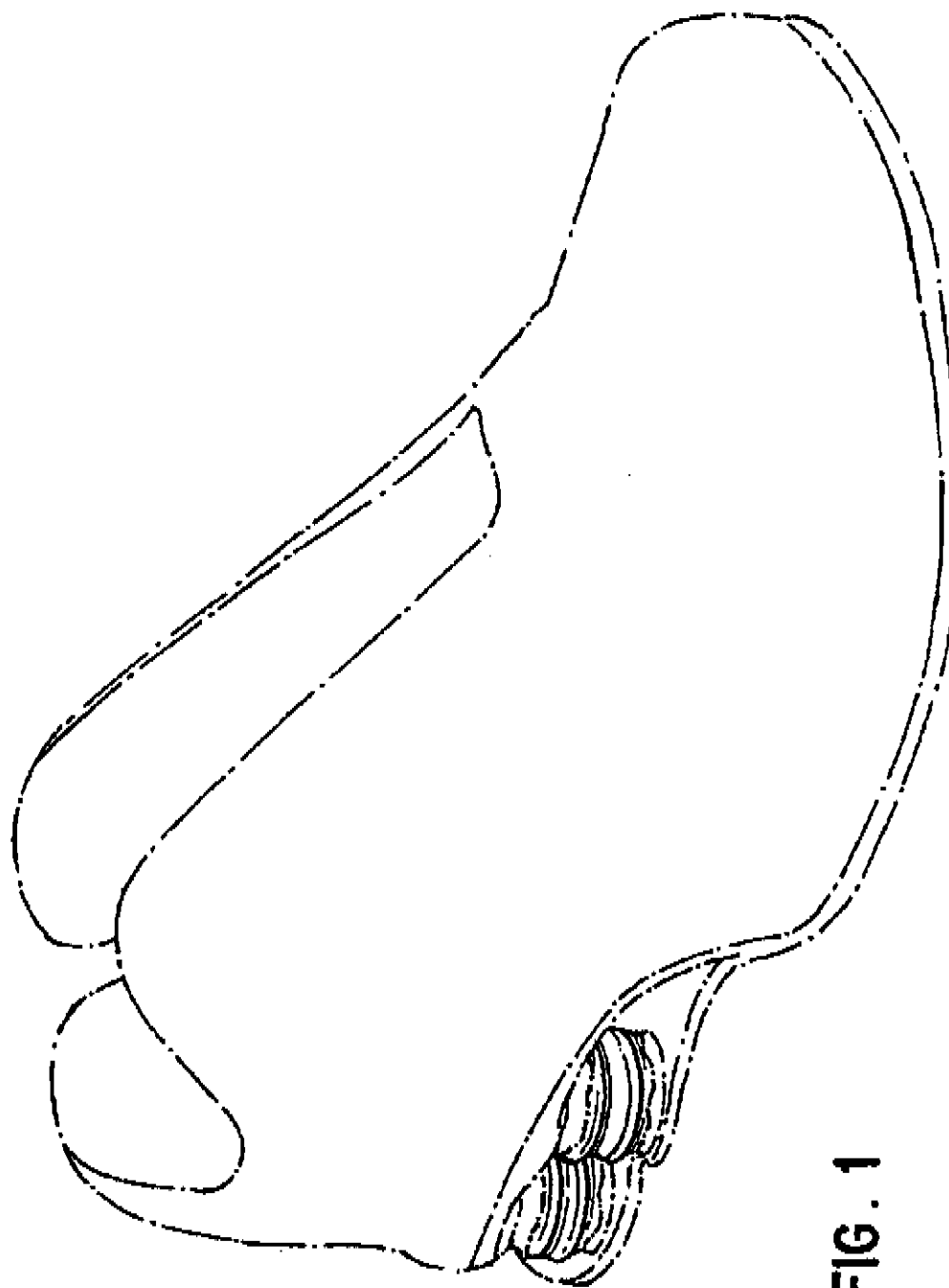


FIG. 1

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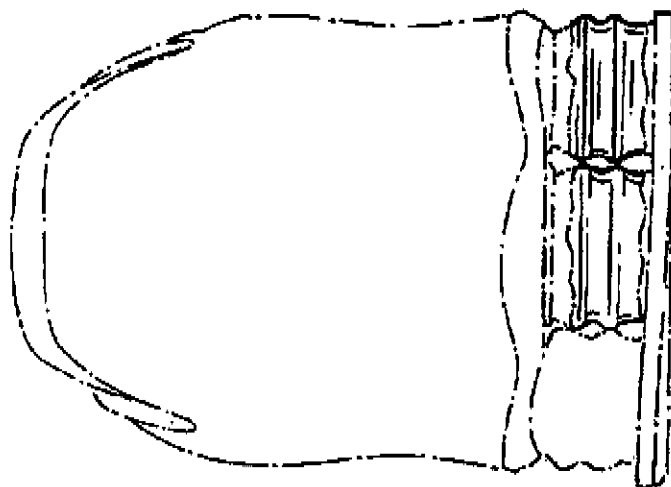


FIG. 3

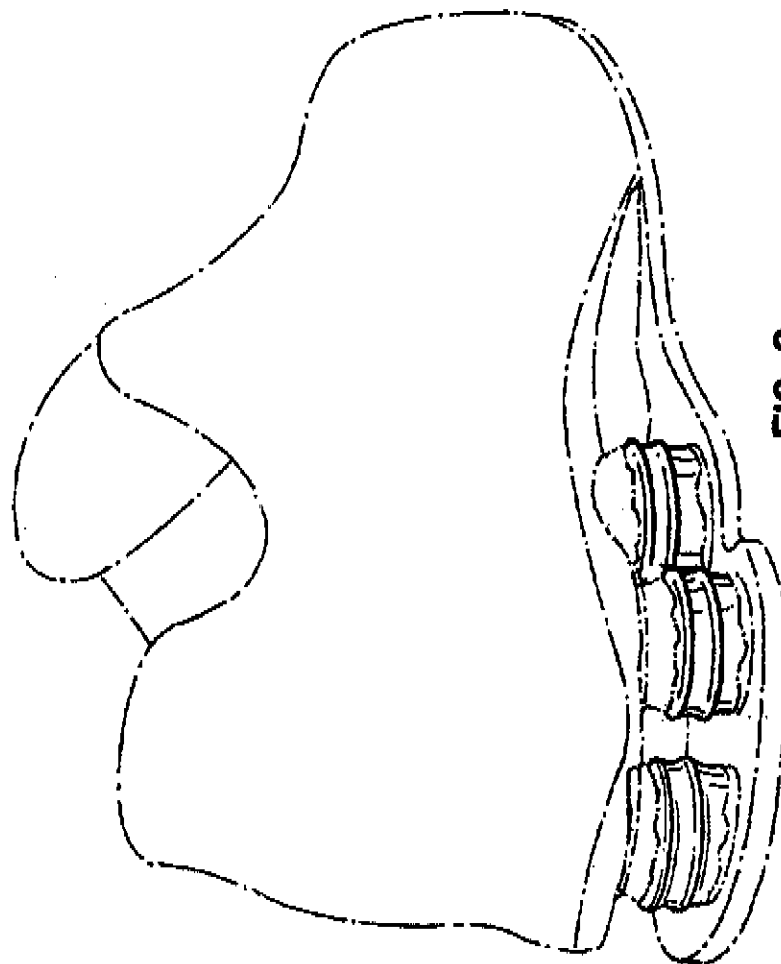


FIG. 2

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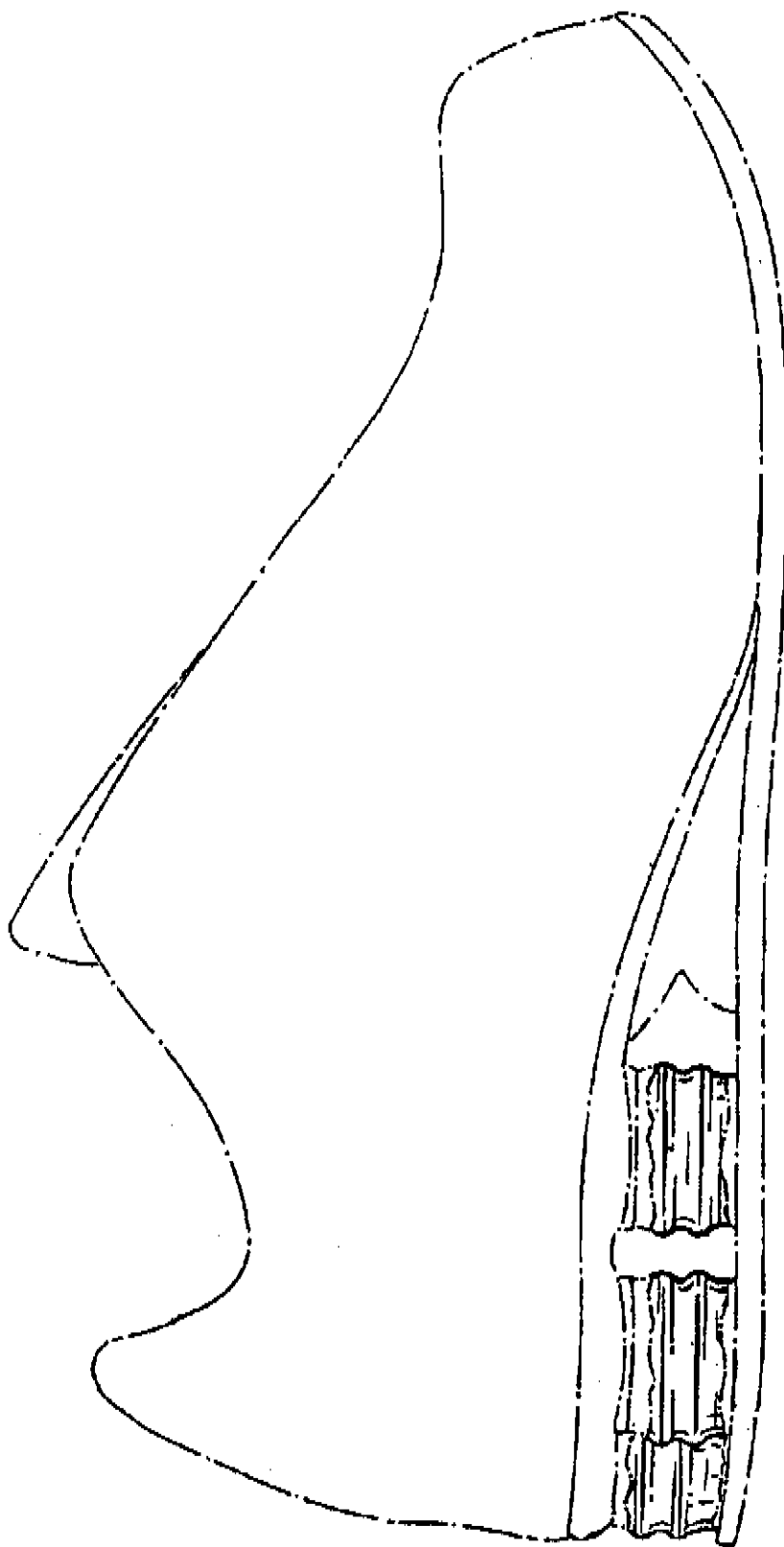


FIG. 4