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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

COLE HAAN LLC

Plaintiff,

v.

TOP GLORY TRADING GROUP INC. AND DP
DREAM PAIRS INC.

Defendants.

**CIVIL ACTION NO.
2:25-cv-00176-ES-SDA**

JURY TRIAL DEMANDED

**REPLY IN SUPPORT OF
DEFENDANTS' MOTION TO
DISMISS THE AMENDED
COMPLAINT PURSUANT TO
FED. R. CIV. P. 12(B)(6)**

MOTION DATE: APRIL 21, 2025

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Cole Haan's Opposition (Dkt. No. 38; "Opp.") presents numerous irrelevant and unavailing arguments that do not undermine the straightforward premise of Top Glory's Motion (Dkt. No. 25; "Mot.")—the claims are unpatentable under 35 U.S.C. §§ 102 and 103 in view of the Dua prior art reference cited during prosecution.

First, Cole Haan's perplexing focus on patent eligibility under 35 U.S.C. § 101 (nearly ten pages of its brief) represents either a complete misunderstanding of the basis of the Motion, or an outright attempt to distract the Court. But Top Glory has never argued the claims as a whole are unpatentable as directed to patent-ineligible subject matter under § 101. Top Glory instead argued—consistent with Federal Circuit precedent—that *certain limitations* of the Utility Patents recite ornamental features that are not entitled to patentable weight and cannot be relied upon for purposes of patentability as part of an anticipation or obviousness analysis. That this doctrine of assigning no patentable weight to unpatentable ornamental limitations is grounded in § 101—the same statute that may render a claim unpatentable for failing to recite *any* patent-eligible subject matter under the *Mayo/Alice* test—is of no moment.

Second, Cole Haan incorrectly asserts that the claimed ornamental features (i.e., the "wingtip pattern," the "broguing," and the arrangement of "pointelle" and "jersey stitch knit" areas) are not ornamental merely because they are "seamlessly knit." Opp. 21-22. The prior art here, Dua, discloses a patterned, seamlessly knit shoe upper—albeit one that differs in *appearance* from the specific wingtip and broguing patterns claimed in the Utility Patents. But those patterns are ornamental features that provide no utility or function to the shoe itself, and Cole Haan's Opposition does not identify any function associated with these ornamental features. This is fatal to Cole Haan's argument. Without these ornamental limitations, which are not entitled to patentable weight and cannot be relied upon to define over the prior art, the Utility Patents are

unpatentable under §§ 102 and 103 over Dua, as confirmed by Cole Haan's admissions made during prosecution.

Finally, with respect to the Design Patent, Cole Haan asserts that Top Glory improperly focuses on small differences in the claimed design and accused products. Not so. As explained in the Motion, the designs are plainly dissimilar because there are several clear differences between the accused products and the claimed design that collectively result in a different overall visual appearance. No ordinary observer could determine that the designs are substantially the same.

Because the Utility Patents are invalid and because the Design Patent is not infringed, the Amended Complaint fails to state a claim for infringement and must be dismissed with prejudice.

I. THE UTILITY PATENTS ARE INVALID

Far from being a “veritable Frankenstein’s monster of invalidity” (Opp. 1), Top Glory’s invalidity argument is a straightforward application of the laws of anticipation and obviousness based on Cole Haan’s own admissions. The only aspect that distinguishes the claims from Dua is the specific ornamental patterns. But ornamental features lack patentable weight and therefore “may not be a basis for distinguishing prior art.” *In re Distefano*, 808 F.3d 845, 848 (Fed. Cir. 2015). Thus, the Utility Patents are invalid over Dua.

Cole Haan raises several arguments in response to Top Glory’s straightforward argument, each of which has no connection to Top Glory’s position in the motion. These arguments are irrelevant and unavailing.

A. The Claims Recite Ornamental Features That Are Not Entitled to Patentable Weight

Contrary to Cole Haan’s arguments (Opp. 6-8), Top Glory does not assert that the claims of the Utility Patents are invalid as being directed to a patent-ineligible judicial exception under § 101. Instead, as explained in the Motion, the claims of the Utility Patents include certain

ornamental features (i.e., the “wingtip pattern,” the “broguing,” and the arrangement of “pointelle” and “jersey stitch knit” areas). Mot. 13-15. But the law is clear that such ornamental features are not entitled to patentable weight¹ in a utility patent and therefore “may not be a basis for distinguishing prior art.” *Distefano*, 808 F.3d at 848; *see also In re Seid*, 161 F.2d 229, 231 (C.C.P.A. 1947). Ornamental features are protectable only in *design* patents. *See Golden Eye Media USA, Inc. v. Trolley Bags UK Ltd.*, 525 F. Supp. 3d 1145, 1180 (S.D. Cal. 2021) (“unlike a utility patent, ‘[a] design patent protects the non-functional aspects of an ornamental design’” (quoting *Amini Innovation Corp. v. Anthony Cal., Inc.*, 439 F.3d 1365, 1370-71 (Fed. Cir. 2006))). That principle is grounded in § 101. *Id.* (“While a utility patent covers how a product works, *see* 35 U.S.C. § 101, a design patent covers how a product looks, *see* 35 U.S.C. § 171(a).” (citation omitted)). “Claim language is construed to lack patentable weight when it involves subject matter that 35 U.S.C. § 101 treats as unpatentable.” *Regeneron Pharms., Inc. v. Mylan Pharms. Inc.*, No. 1:22-CV-61, 2023 WL 11891335, at *8 (N.D.W. Va. Apr. 19, 2023); *see also Praxair Distrib., Inc. v. Mallinckrodt Hosp. Prods. IP Ltd.*, 890 F.3d 1024, 1032 (Fed. Cir. 2018). The claimed ornamental features here are patent ineligible and not entitled to patentable weight.

Cole Haan’s argument that Top Glory must apply § 101 to the claim in its entirety or not at all (Opp. 8) and protestation that Top Glory inappropriately “ignores” certain claim limitations (Opp. 16, 21) are meritless. It is well-established that § 101 need not be applied to “the claim in its entirety” (Opp. 8); individual “[c]laim *limitations* directed to . . . patent [in]eligible subject matter under 35 U.S.C. § 101” are simply “not entitled to patentable weight.” *Praxair Distrib.*,

¹ Top Glory does not concede these limitations are amenable to construction or take any position on the scope of these claim limitations. *See Crocs, Inc. v. Polliwalks, Inc.*, No. IPR2014-00423, 2014 WL 4181937, at *6 (P.T.A.B. Aug. 20, 2014) (declining to construe limitations after finding they lacked patentable weight). Top Glory reserves the right to propose constructions and identify additional theories of invalidity in any further proceedings before this Court.

890 F.3d at 1032 (citations omitted). Giving no patentable weight to limitations is not ignoring limitations or some type of novel argument—the Federal Circuit *routinely* gives claim limitations no patentable weight when performing an anticipation or obviousness analysis. *E.g.*, *Arctic Cat Inc. v. GEP Power Prods., Inc.*, 919 F.3d 1320, 1328 (Fed. Cir. 2019) (preamble); *Distefano*, 808 F.3d at 848 (printed matter); *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997) (intended use). When claim limitations are not entitled to patentable weight, it means that those limitations “may not be a basis for distinguishing prior art”—exactly the argument Top Glory makes here. *Distefano*, 808 F.3d at 848.

Cole Haan does not meaningfully argue that the claimed ornamental features are structural, functional, or non-ornamental (nor could it). While Cole Haan asserts that these limitations are “structural” because they require “multiple regions to be seamlessly knitted, and to be collectively knitted with lines of broguing to form a wingtip pattern” (Opp. 21-22), Cole Haan fails to explain how the claimed *patterns* (i.e., the “wingtip pattern,” the “broguing,” and the arrangement of “pointelle” and “jersey stitch knit” areas) are structural—because they are not. And as explained in more detail below, this argument also ignores the fact that the seamless knitting of shoe uppers with holes defining patterns and arrangements of multiple fabrics was admittedly disclosed by Dua. And critically, Cole Haan never addresses the fact that it sought to *separately* protect the ornamental aspects of its shoe through a design patent which claimed priority to the Utility Patents. *See* Mot. 14; *Golden Eye Media*, 525 F. Supp. 3d at 1180. Instead, Cole Haan attempts to distinguish *Seid*, but fails both legally and factually.

Legally, it is irrelevant that *Seid* was decided by the Federal Circuit’s predecessor Court of Customs and Patent Appeals (CCPA) and has not been addressed since (Opp. 8-10), because the Federal Circuit—in the first decision rendered by the court—adopted all holdings of the CCPA as

binding precedent. *South Corp. v. United States*, 690 F.2d 1368, 1370-71 (Fed. Cir. 1982). The adoption of the 1952 Patent Act, which replaced the word “art” with “process,” does not call into question *Seid*’s applicability to the current § 101. 35 U.S.C. § 101 (Revision Notes and Legislative Notes). Indeed, *Seid* is referenced and cited in multiple portions of the USPTO’s current Manual of Patent Examining Procedure (“MPEP”), including a section identifying relevant legal precedent to support a rejection of pending claims under § 103. *See, e.g.*, Ex. G² (MPEP § 2144.04) (section related to “Legal Precedent as Source of Supporting Rationale” citing *Seid* for the proposition that “matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art.”); Ex. H (MPEP § 2112.01) (same citation to *Seid* in section related to inherency of prior art under §§ 102 and 103).³

On the facts, Cole Haan is incorrect that the CCPA in *Seid* found “all limitations were collectively disclosed by the prior art references.” Opp. 9. In fact, the CCPA found that, while the prior art did not disclose the “particular shape and arrangement” recited in the claims, the “board properly held [those matters] relate to ornamentation only” and “cannot [] be relied on here, as the appealed claims are not directed to a design.” *Seid*, 161 F.2d at 231.⁴ That *Seid* found the claims unpatentable as obvious—and not patent ineligible under § 101—is precisely the reason it is cited here, where Top Glory asserts the ornamental features “cannot [] be relied on” to distinguish the Dua prior art because the “claims are not directed to a design.” *Id.* Cole Haan’s reliance on *Ex Parte Albert Chen*, No. 2014-007259, 2016 WL 4255084, at *2 (P.T.A.B. Aug. 10,

² Exhibits (“Ex. ___”) cited herein are exhibits to the Declaration of Yenis V. Argueta Guevara filed herewith.

³ “While the MPEP does not have the force of law, it is entitled to judicial notice as an official interpretation of statutes or regulations as long as it is not in conflict therewith.” *Molins PLC v. Textron, Inc.*, 48 F.3d 1172, 1180 n.10 (Fed. Cir. 1995).

⁴ All emphasis added unless noted otherwise.

2016) is misplaced for the same reason. Opp. 10-11.

B. Dua Teaches All Structural and Functional Features Recited in the Claims

The claimed *patterns/arrangements* (i.e., the “wingtip pattern,” the “broguing,” and the arrangement of “pointelle” and “jersey stitch knit” areas) are not structural. Cole Haan’s only argument to the contrary—that the claims require “multiple regions to be seamlessly knitted, and to be collectively knitted with lines of broguing to form a wingtip pattern” (Opp. 21-22)—not only fails to explain how that makes the claimed *patterns/arrangements* structural, but also fails to address the fact that Dua teaches seamlessly knitting multiple regions and collectively knitting patterns into a shoe upper. Indeed, Cole Haan conceded during prosecution that Dua discloses seamless knitting techniques to join regions of fabric with different stitch types and to create apertures forming patterns—just not in the specific patterns recited in the claims (e.g., wingtip pattern). Mot. 15-17. That is the issue here.

Cole Haan cannot rely upon the *specific claimed pattern/arrangement* to define over Dua. Those limitations are not entitled to patentable weight. *See* § I.A. And Dua teaches all of the claimed structural and functional features besides the specific pattern/arrangement. Mot. at 15-17. Thus, when the ornamental features are not given patentable weight, the claims are invalid under §§ 102 and 103 as anticipated and rendered obvious by Dua. *Kimberly-Clark, Inc. v. First Quality Baby Prods., LLC*, 900 F. Supp. 2d 919, 926 (E.D. Wis. 2012) (finding claims covering a child’s training pants with a “particular arrangement” for a wetness indicator were invalid over prior art disclosing training pants with a different wetness indicator design because the claimed arrangement was not entitled to patentable weight), *aff’d sub nom.* 579 F. App’x 996 (Fed. Cir. 2014); *see also In re Xiao*, 462 F. App’x 947, 950-51 (Fed. Cir. 2011) (affirming an obviousness rejection and finding a claim limitation reciting the use of letters instead of numbers on a tumbler lock were not entitled to patentable weight).

To be sure, Cole Haan did rely upon the ornamental features to distinguish Dua during prosecution—while conceding Dua taught or suggested the remaining structural/functional limitations—in order to secure allowance of the pending claims of the Utility Patents. Mot. 5-7. While Cole Haan argues to the contrary, its arguments are unavailing. Cole Haan’s argument that the claims were not amended to overcome a rejection is semantic. Opp. 17-18. Canceling an independent claim (here, claim 1) and rewriting a dependent claim (here, claim 2) as independent is substantively identical to the act of adding features of a dependent claim to an independent claim. Ex. I (MPEP § 1206.I) (“Rewriting dependent claims into independent form . . . includes the following situations: (A) rewriting a dependent claim in independent form”); *see also In re Clement*, 131 F.3d 1464, 1469 (Fed. Cir. 1997) (“[A]mending a claim . . . to overcome a reference strongly suggests that the applicant admits . . . the claim before the [] amendment is unpatentable.”).

But even if Cole Haan did not add the ornamental features by amendment, that is irrelevant because Cole Haan nonetheless *argued* that those ornamental features were the basis for patentability. *Hester Indus., Inc. v. Stein, Inc.*, 142 F.3d 1472, 1481 (Fed. Cir. 1998) (explaining “arguments [] made in the absence of any claim amendment” can “evidence[] an admission that the claim was not patentable”); *see* Mot. at 6. And critically, Cole Haan concedes it argued during prosecution that the ornamental features supported patentability *not because they had structure or function*, but because “shape [is] important because it results in a product distinct from the reference product.” Opp. 19. But that is precisely what *Seid* holds “cannot [] be relied on” when the claims “are not directed to a design.” *Seid*, 161 F.2d at 231.

The claims of the Utility Patent are invalid because Cole Haan relied upon the ornamental feature to distinguish prior art during prosecution. Those features are not entitled to patentable

weight under *Seid*. Cole Haan has not identified a single limitation in any of the claims that is allegedly not disclosed by Dua. Further, while Cole Haan argues Top Glory fails to identify a reason for invalidity, Cole Haan treats Top Glory's motion as limited to § 102 and fails to address § 103—i.e., whether Dua *teaches* each element of the claims entitled to patentable weight. Opp. 15-22. As explained in the Motion, Dua teaches just that, and the claims are invalid. Mot. 15-17.

C. Cole Haan's Other Arguments Are Irrelevant and Unavailing

Cole Haan's arguments regarding the alleged lack of a statutory basis for invalidity (Opp. 5-6) and representativeness of the claims (Opp. 4 n.2), and its attempts to distinguish several cases cited by Top Glory (Opp. 11-15, 19-20), are incorrect on the facts and the law, irrelevant, or both.

Cole Haan's arguments that the Court should not even reach the merits because Top Glory did not identify a statutory basis for invalidity is incorrect on the facts and the law. In its Motion, Top Glory explained that, when patent-ineligible limitations are not afforded patentable weight, the claims are invalid under §§ 102 and 103, consistent with the Examiner's rejection of the structural/functional limitations based on Dua. Mot. 5-7, 17. In any event, Cole Haan's focus on semantics is irrelevant. The Federal Circuit has affirmed invalidation of claims without expressly identifying the statutory basis (i.e., §§ 102 or 103) under similar circumstances. *AstraZeneca LP v. Apotex, Inc.*, 633 F.3d 1042, 1063-65 (Fed. Cir. 2010). In *AstraZeneca*, the claims recited "a budesonide composition" and "a label indicating" a treatment method and regimen. *Id.* at 1063. The Federal Circuit agreed with the district court that the label was "not entitled to patentable weight." *Id.* at 1065. And because the Federal Circuit also agreed that the budesonide composition was generally "known in the prior art"—without reference to any specific prior art references—it affirmed the decision finding the claims invalid. *Id.* at 1063-65.

With respect to representativeness, Top Glory did explain (1) the Utility Patents are terminally disclaimed over one another, and (2) that the patterns recited in claims 1 and 21 of the

'511 patent are representative of the other claims. Mot. 6-7. “[A] terminal disclaimer is a strong clue that a patent examiner and, by concession, the applicant, thought the claims in the continuation lacked a patentable distinction over the parent.” *See SimpleAir, Inc. v. Google LLC*, 884 F.3d 1160, 1168 (Fed. Cir. 2018). But even more importantly, Cole Haan’s “lack of representativeness” argument fails as a matter of Federal Circuit law, because Cole Haan has not “presented any meaningful argument for the distinctive significance of any claim limitations not found in the representative claim.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1365 (Fed. Cir. 2018).⁵

Cole Haan’s attempts to distinguish *Crocs* and *Marco Guldenaar* are also unavailing. It is irrelevant that *Crocs* was an institution decision⁶ or involved claim construction because (1) *Crocs* relied upon *Seid* for the same proposition (explained above) that Top Glory relies upon here, and (2) the Board refused to construe ornamental limitations that it found could not be relied upon for patentability. *Crocs*, 2014 WL 4181937, at *6. And *Marco Guldenaar* is relevant because shows that claims limitations directed to patent-ineligible subject matter, like the ornamental features here, are not afforded patentable weight. 911 F.3d 1157, 1161 (Fed. Cir. 2018).

Cole Haan fails to distinguish Top Glory’s remaining cases. It is irrelevant that *Hester* and *Mentor* involved reissue patents because they are relied upon for the premise that arguments and amendments to overcome prior art rejections “evidence[] an admission that the claim was not

⁵ At a minimum, there is no dispute that Top Glory’s Motion addresses each of the claims identified with specificity in Cole Haan’s Complaint (claims 1 and 21 of the ’511 patent, claim 1 of the ’163 patent, and claim 1 of the ’262 patent).

⁶ Cole Haan’s discussion of the IPR evidentiary standard (Opp. 12 n.3) is another irrelevant tangent. Those evidentiary standards apply to factual issues. The issue decided in *Crocs* that is relevant here (i.e., patentable weight and claim construction) relate to matters of *law* decided by the Court. *UTTO Inc. v. Metrotech Corp.*, 119 F.4th 984, 993 (Fed. Cir. 2024). And because, as described herein and in Top Glory’s Motion, Cole Haan admitted during prosecution that all limitations entitled to patentable weight were disclosed in Dua, the claims are invalid even under the clear and convincing standard applicable in district court.

patentable.” *Hester*, 142 F.3d at 1481 (citations omitted). And Cole Haan’s attempt to distinguish *Procter & Gamble* by stating it relates to disavowal is both incorrect (it does not even mention “disavowal”) or address why Top Glory cited it. Mot. 15-16 (citing *Procter & Gamble Co. v. Nabisco Brands, Inc.*, 711 F. Supp. 759, 770 (D. Del 1989) for the notion that “a patentee’s representations to the PTO during [] prosecution . . . about the scope of the prior art is a binding admission and should ‘be accepted at face value’ during subsequent litigation”).⁷

In view of the foregoing, the Utility Patents are invalid over Dua.

II. COLE HAAN HAS NOT PLAUSIBLY PLED DESIGN PATENT INFRINGEMENT

Top Glory’s side-by-side comparison of the Design Patent’s claimed design and the accused product (Mot. 19-20) identified how each of the many differences contributes to a plainly dissimilar overall visual impression. Contrary to Cole Haan’s argument (Opp. 25-26), such an analysis does not focus on “minor differences” and is entirely consistent with Federal Circuit precedent. *Ethicon Endo-Surgery, Inc. v. Covidien, Inc.*, 796 F.3d 1312, 1335 (Fed. Cir. 2015) (affirming that designs were plainly dissimilar based on the district court’s “side-by-side comparison between the claimed designs and the design of Covidien’s accused shears” and concluding that the designs “did not look alike except for the fact that both are hand-held surgical devices”). Indeed, in *Ethicon*, the Federal Circuit found the district court’s analysis, which identified “plain dissimilarities between the ornamentation of the trigger, torque knob, and button elements” (e.g., claimed handle was curved and tapered whereas accused handle was straight and

⁷ Cole Haan also fails to rebut or address important points from Top Glory’s other cited cases, including that prosecution statements made in one patent apply to patents in the same family (*Microsoft Corp. v. Multi-Tech Sys., Inc.*, 357 F.3d 1340 (Fed. Cir. 2004), *Verizon Servs. Corp. v. Vonage Holdings Corp.*, 503 F.3d 1295 (Fed. Cir. 2007)) and that an applicant’s statement about prior art during prosecution is binding (*Sherwin-Williams Co. v. PPG Indus., Inc.*, No. 17-1023, 2021 WL 211497 (W.D. Pa. Jan. 21, 2021)).

had a consistent width; claimed button was “football-shaped” whereas accused button was rectangular; claimed torque knob was unevenly tapered whereas accused torque knob was evenly tapered), supported its conclusion that the designs were plainly dissimilar. *Id.* at 1336-37.

Consistent with the approach sanctioned by the Federal Circuit in *Ethicon*, Top Glory identified the differences between the claimed design and the accused products—because “[s]imilarity at th[e] conceptual level [] is not sufficient to demonstrate infringement of the claimed designs”—and also evaluated those differences “in the context of the claimed design as a whole, and not in the context of separate elements in isolation.” *Id.* at 1335-36. And after identifying at least seven differences in the design, Top Glory explained how those differences contributed to an overall visual impression that was plainly dissimilar. Mot. 19-20 (explaining an ordinary observer’s eye would notice the “stark contrast between the accused products’ broken, discontinuous, and uncompressed midsections and the claimed design’s smooth, continuous midsection” having layers “coverg[ing] into a [] toe section”; and “the contrast between the accused products’ six asymmetric layers . . . angled such that the midsole widens . . . and the accused product’s vertically oriented edged layers—which appear to jut out sharply”).

This Court need not wait until summary judgment and put the parties through expensive, burdensome, and unnecessary discovery; it can and should dispose of the design patent infringement claim because the designs are plainly dissimilar. *Anderson v. Kimberly-Clark Corp.*, 570 F. App’x 927, 934 (Fed. Cir. 2014) (affirming dismissal of design patent for noninfringement); *MSA Prods., Inc. v. Nifty Home Prods., Inc.*, 883 F. Supp. 2d 535, 540-42 (D.N.J. 2012) (dismissing design patent infringement claims with prejudice and rejecting an argument that “patent infringement is [a question] of fact . . . not appropriate for decision on a motion to dismiss”).

III. CONCLUSION

For the foregoing reasons, Top Glory respectfully requests that the Court dismiss with prejudice Cole Haan's infringement claims with respect to the Asserted Patents.

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on April 14, 2025, I caused to be filed a true and correct copy of the foregoing Reply In Support of Defendants’ Motion To Dismiss The Complaint Pursuant To Fed. R. Civ. P. 12(b)(6) and accompanying declaration with exhibits with the United States District Court for the District of New Jersey, which was served on all counsel of record by filing it electronically through this Court’s ECF System.

Dated: April 14, 2025

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