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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JASON BERNS, JULIAN ELLIS, TOM LUEDECKE, and  
THOMAS WHITE<sup>1</sup>

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Appeal 2019-001428  
Application 15/176,476  
Technology Center 3700

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Before MICHAEL L. HOELTER, JAMES P. CALVE, and  
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

HOELTER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is a Decision on Appeal, under 35 U.S.C. § 134(a), from the Examiner’s Non-Final Rejection of claims 1, 2, 4–8, 10–18, and 21–24, which constitute all the claims pending in this Application. Non-Final Act. 1 (Office Action Summary). Claims 3, 9, 19, and 20 have been canceled. App. Br. 27, 28, 30 (Claims Appendix). We have jurisdiction under 35 U.S.C. § 6(b).

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<sup>1</sup> “The real party in interest in the present appeal is Under Armour, Inc.” App. Br. 3. We refer to the appealing party as “Appellant.”

For the reasons explained below, we AFFIRM-IN-PART the Examiner's decision to reject the claims.

### CLAIMED SUBJECT MATTER

The disclosed subject matter "is directed to footwear and, in particular, to an article of footwear with an upper including [a] textile element and a method of forming the article of footwear." Spec. ¶ 2. Apparatus claims 1 and 13 are independent. Claim 1 is illustrative of the claims on appeal and is reproduced below.

1. An upper for an article of footwear, the upper comprising:
  - a textile structure including a plurality of yarn rows, each yarn row of the plurality of yarn rows including a first strand aligned with a second strand, the first and second strands being interlocked via stitches disposed at selected locations along a length of the yarn row such that each distance between adjacent stitches along the yarn row is 5 mm or less, wherein:
    - the stitches in the plurality of yarn rows define a stitch density within the upper, the stitch density being the number of stitches present within a selected area of the upper,
      - a first selected area of the upper possesses a first stitch density and a second selected area of the upper possesses a second stitch density, and
      - the first stitch density is greater than the second stitch density.

### REFERENCES RELIED ON BY THE EXAMINER

Bruno	US 4,254,563	Mar. 10, 1981
Meschter '822	US 2007/0271822 A1	Nov. 29, 2007
Meschter '564	US 2010/0251564 A1	Oct. 7, 2010

### THE REJECTIONS ON APPEAL

Claims 1, 2, 4–7, 10, 11, 13–16, and 18 are rejected under 35 U.S.C. § 103 as unpatentable over Meschter '822.<sup>2</sup>

Claims 12 and 21–24 are rejected under 35 U.S.C. § 103 as unpatentable over Meschter '822 and Meschter '564.<sup>3</sup>

Claims 8 and 17 are rejected under 35 U.S.C. § 103 as unpatentable over Meschter '822 and Bruno.

### ANALYSIS

*The rejection of claims 1, 2, 4–7, 10, 11, 13–16, and 18  
as unpatentable over Meschter '822*

Appellant argues claims 1, 2, 10, and 11 together (*see* App. Br. 10–14), claims 4 and 5 together (*see* App. Br. 14–15), claim 6 alone (*see* App. Br. 16), claim 7 alone (*see* App. Br. 17), claims 13–15 and 18 together (*see* App. Br. 18–20), and claim 16 alone (*see* App. Br. 21). We select claims 1, 4, 6, 7, 13, and 16 for review, with the remaining claims standing or falling with their respectively grouped claim under review. *See* 37 C.F.R. § 41.37(c)(1)(iv).

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<sup>2</sup> The Examiner listed claim 8, but there is no reference to the rejection of claim 8 under Meschter '822 alone. Instead, the Examiner rejects claim 8 in a following rejection involving Meschter '822 and Bruno. We address claim 8 with respect to this latter rejection.

<sup>3</sup> The Examiner does not list a rejection for claims 21–24, but the Examiner provides specific reasons for their rejection under 35 U.S.C. § 103 over Meschter '822 and Meschter '564. *See* Non-Final Act. 10–11. Appellant understands that such claims have been rejected stating, “the rejections of claims . . . 21–24 are improper and should be reversed.” App. Br. 26.

Claim 1

Claim 1 recites a plurality of yarn rows wherein each yarn row includes “first and second strands being interlocked via stitches . . . such that each distance between adjacent stitches along the yarn row is 5 mm or less.” The Examiner relies on Meschter ’822 for such teachings (*see* Non-Final Act. 4) and particularly Paragraph 62 therein (*see* Ans. 7; *see also* Notice of Panel Decision from Pre-Appeal Brief Review dated April 20, 2018).

Prior to reviewing Meschter ’822, we first interpret the claim term “stitches.”<sup>4</sup> Paragraph 19 of Appellant’s Specification references “FIG. 2B” and states, “the strands 215A, 215B are coupled via a stitch 225, i.e., an interlocking structure that locks the strands together.” Figure 2B illustrates two such stitches 225, and a distance between them identified as “SL.” Appellant’s Specification states, “[t]he distance between adjacent stitches is referred to as the stitch length SL.” Spec. ¶ 20; *see also* Reply Br. 3 (employing Appellant’s Specification and Figure 2B to describe “stitches along a single yarn row”). Based on such disclosures, we understand claim 1 as reciting a plurality of yarn rows, each yarn row comprising co-extending first and second strands that are “interlocked via stitches” and that the “distance between adjacent stitches [i.e., “stitch length SL”] along the yarn row is 5 mm or less.”

Appellant does not dispute the Examiner’s finding that a stitch length is disclosed in the cited art (*see* Non-Final Act. 4; App. Br. 11 (“*Meschter* ’822 clearly discloses a stitch length.”)), only that the cited art does not

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<sup>4</sup> The Examiner acknowledges that “*Appellant can be his own lexicographer.*” Ans. 7.

disclose the recited “distance between adjacent stitches” of “5 mm or less.” *See* App. Br. 10–14. Appellant replicates the relevant portion of Paragraph 62 of Meschter ’822 concluding, “[t]his, however, is not a teaching of providing a stitch length of five millimeters or less.” App. Br. 12.

Paragraph 62 of Meschter ’822 states, “[c]onventional satin-stitch embroidery, therefore, involves threads that extend between locations separated by twelve millimeters or less.”<sup>5</sup> Paragraph 62 of Meschter ’822 states that the formation of “satin-stitches . . . may utilize a lock-stitch to secure thread **42** to base layer **41**.” In describing the formation of “lock-stitches,” Paragraph 61 of Meschter ’822 describes “piercing a first location of base layer **41** with a needle to pass a first loop of thread **42** through base layer **41**,” which first loop is then secured by “another thread.” This same paragraph addresses “moving the needle to a second location” and “piercing the second location of base layer **41** with the needle to pass a second loop of thread **42** through base layer **41**,” which second loop is also secured by the “other thread.” Paragraph 61 of Meschter ’822 concludes, “the embroidery machine operates to secure thread **42** to two defined locations and also extend thread **42** between the two locations.”

Thus, the loop at each first and second “location” addressed in Meschter ’822 readily corresponds to the “interlocking structure” described in Appellant’s Specification as “stitch 225,” and hence the “strands being interlocked” as claimed.<sup>6</sup> *See* Spec. ¶ 19; *see also* Fig. 2B. That Meschter

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<sup>5</sup> Appellant’s Specification identifies a “satin stitch” (along with “a lockstitch”) as an example of “stitches [that] may be utilized.” Spec. ¶ 19.

<sup>6</sup> Paragraph 62 of Meschter ’822 further employs the word “stitches,” but in Meschter ’822’s usage, a “stitch” is a completed assembly (i.e., two locked

'822 describes the thread also being secured to a base layer via this operation does not circumvent the fact that the strands of the thread, during such operation, are likewise “being interlocked via stitches” at the same interval.

In view of the Examiner’s specific reference to Paragraph 62 of Meschter '822 (*see supra*), and particularly the lines stating that these “locations [are] separated by twelve millimeters or less,” Appellant’s various contentions that Meschter '822 fails to teach the recited “distance between adjacent stitches . . . is 5 mm or less” is not persuasive. In other words, in view of the Examiner’s citation to where Meschter '822 explicitly discloses the recited range, Appellant’s contentions that the Examiner fails to make a *prima facie* case of obviousness, that Meschter '822 fails to disclose the recited value, that Meschter '822 teaches away from this value, that the Examiner fails to provide proper motivation to modify Meschter '822, and that the Examiner relies on improper speculation, unfounded assumptions or hindsight reconstruction (*see App. Br. 10–14; Reply Br. 4*), are not persuasive of Examiner error. Further, Appellant does not explain how any criticality associated with the recited range is not already associated with Meschter '822’s disclosed (and overlapping) range. *See App. Br. 14; Reply Br. 4*. Accordingly, we sustain the Examiner’s rejection of claims 1, 2, 10, and 11 as being obvious in view of Meschter '822.

#### Claim 4

Claim 4 depends from claim 1 and additionally recites “wherein, in the first stitch density area, the stitches are present every 0.20 mm to 1.50

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piercings with a span of thread therebetween as described in Paragraph 61). In contrast, Appellant’s usage of “stitch” is as either a beginning or ending terminus of a strand span. *See Spec.* ¶¶ 19, 20, and Fig. 2B.

mm.” The Examiner states, “*Meschter* ’822 is silent to the first stitch density area, the stitches are present every 0.20 mm to 1.50 mm.” Non-Final Act. 5. The Examiner thereafter relies on a desire to “optimize the strength and stability and prevent breakage of the yarns in a specific area” as a reason the stitches would be “present every 0.20 mm to 1.50 mm” as recited. Non-Final Act. 6; *see also* Ans. 9–10.

This stated reason sidesteps the Examiner’s more direct finding above that *Meschter* ’822 (and particularly Paragraph 62 thereof) expressly teaches the limitation of a “distance between adjacent stitches along the yarn row is 5 mm or less.” *See* Notice of Panel Decision from Pre-Appeal Brief Review dated April 20, 2018; *see also* Ans. 7. Claim 4 recites, “the stitches are present every 0.20 mm to 1.50 mm,” and Appellant is not persuasive that this limitation fails to be disclosed by *Meschter* ’822’s teaching of a corresponding distance “separated by twelve millimeters or less.” *Meschter* ’822 ¶ 62. Regarding the recitation to a “first stitch density area,” the various figures of *Meschter* ’822 readily disclose areas lacking any such threading (i.e., stitching) as well as areas where numerous threads converge upon each other. *See also, e.g.*, *Meschter* ’822 ¶¶ 35, 36, 42, 43, 48, 53, 54, 57. Appellant does not explain how such illustrations (and discussions thereof) fail to disclose the recited “first stitch density area.”

Thus, we affirm the Examiner’s rejection of claim 4 in view of the Examiner’s reliance on *Meschter* ’822 for such teachings. Appellant’s contention that “the prior art reference must disclose parameter values overlapping the claimed ranges” (App. Br. 14) is not persuasive because the range disclosed in *Meschter* ’822 (*see* *Meschter* ’822 ¶ 62) and that recited by Appellant do, in fact, overlap. Further, and as above, Appellant does not

explain how any criticality associated with the recited range is not already associated with Meschter '822's disclosed (and overlapping) range. *See* App. Br. 14–15. Additionally, Appellant's contentions of optimization and teaching away (*see* App. Br. 14–16) are equally not persuasive in view of the range expressly disclosed in Paragraph 62 of Meschter '822.

Appellant also contends, “[t]he Office appears to be interchanging the claimed concepts of stitch length and stitch density” and further that “[s]titch density, then, operates independently of stitch length.” Reply Br. 3. Such contentions are not persuasive because Appellant has defined “stitch length” as “distance between adjacent stitches” (Spec. ¶ 20) and thus, any variation in the distance between adjacent stitches would cause a likewise variation in the density of such stitches, i.e., stitch density. Consequently, we are not persuaded the Examiner erred in view of the interrelationship between the claimed concepts of stitch length and stitch density.

Accordingly, we sustain the Examiner's rejection of claims 4 and 5 as being obvious in view of Meschter '822.

#### Claim 6

Claim 6 depends from claim 1 and additionally recites an upper comprising both a sole perimeter and an eyelet perimeter such that “the sole perimeter possesses the first stitch density.” Claim 1 recites “a first selected area of the upper possesses a first stitch density” in contrast to a second area having a second stitch density. Neither claim 1 nor claim 6 assigns a numerical value to any stitch density, only requiring that “the first stitch density is greater than the second stitch density.”

The Examiner finds that Meschter '822 discloses these limitations “as best seen in Figure 1.” Non-Final Act. 6. Figure 1 of Meschter '822

discloses a multitude of threads extending generally horizontally and also converging on each other while also intersecting other threads that extend generally vertically from the eyelet perimeter to the sole perimeter. *See also* Ans. 11. Additionally, some areas of this upper are depicted as lacking any such threads at all. *See* Meschter '822 Figures. In view of such disclosures, Figure 1 of Meschter '822 discloses a sole perimeter having a first stitch density (i.e., where threading is illustrated) that is greater than a second stitch density (i.e., an area where there is no threading and hence no stitching or stitch density). Appellant does not explain how this is not the case.

Consequently, we disagree with Appellant's denial that "any of these areas have stitch densities as claimed." App. Br. 16. Accordingly, we are not persuaded the Examiner erred in rejecting claim 6 as being obvious in view of Meschter '822. We sustain the Examiner's rejection of claim 6.

#### Claim 7

Claim 7 depends from claim 6 and recites "the eyelet perimeter further possesses the first stitch density" and that the area between the sole and eyelet perimeters "possesses the second stitch density." As above with respect to claim 6, the Examiner finds that Meschter '822 discloses these limitations "as best seen in Figure 1." Non-Final Act. 6. Again, Figure 1 of Meschter '822 discloses a portion of the eyelet perimeter possessing a first stitch density (i.e., where threading is illustrated) that is greater than a second stitch density (i.e., a mid-area where there is no threading and hence no stitching or stitch density). *See* Meschter '822 Figures; *see also* Ans. 13. Similar to the above, Appellant is not persuasive that the Examiner's reliance on Figure 1 of Meschter '822 is faulty. We sustain the Examiner's rejection of claim 7 as being obvious over Meschter '822.

Claim 13

Independent claim 13 differs from claim 1 above in that claim 13 lacks the recitation to “5 mm or less,” but claim 13 includes many similar, if not identical, other limitations, as recited in claim 1. Regardless, claim 13 specifically differs from claim 1 by reciting “a self-supported textile structure” in the preamble and concluding that the overlapping yarn rows “are not secured to a substrate.” Appellant does not dispute the other findings made by the Examiner, but disagrees that Meschter ’822 discloses “a self-supported textile structure (i.e., a textile structure which is not supported by a substrate) as recited in claim 13.” App. Br. 19; *see also* Reply Br. 5–6.

The Examiner references Paragraphs 42, 57, 58, and 61 of Meschter ’822 as teaching this “not secured to a substrate” limitation. Non-Final Act. 7; Ans. 15. Paragraph 42 states, “[p]ortions of threads **52** may extend through base layer **51** or lie adjacent to base layer **51**.”<sup>7</sup> We understand the Examiner to be referencing those thread portions that “lie adjacent to base layer **51**” and which “may be unsecured to base layer **51**.” However, Meschter ’822 is clearly referring to thread *portions*, some of which extend through a base layer via the aforementioned stitching while others (i.e., those portion between such stitches) lying adjacent the base layer.<sup>8</sup> *See also*

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<sup>7</sup> Paragraph 42 of Meschter ’822 continues stating “[i]n areas where threads **52** lie adjacent to base layer **51**, threads **52** may be unsecured to base layer **51**.”

<sup>8</sup> Appellant contends, “[s]imply because the entirety of the thread 42, 52 is not joined to the base layer 41, 51 does not mean that the entirety of the thread is unsecured thereto.” App. Br. 19. This argument is consistent with our understanding of claim 13 reciting layers of yarn rows that “are not

Meschter '822 ¶¶ 6 (describing a method that “includes embroidering a base layer with at least one thread to locate a plurality of sections of the thread adjacent a surface of the base layer”), 31 (“[a]n embroidery process, which will be described in greater detail below, is utilized to secure or locate threads **42** relative to base layer **41**”), 35 (“[p]ortions of threads **42** extend through base layer **41** or lie adjacent to base layer **41**”). The other cited paragraphs of Meschter '822 relied on by the Examiner (i.e., Paragraphs 57, 58, and 61 (*see* Ans. 15)) are all either silent regarding no securement to a substrate, or address securement to a substrate. *See also* Meschter '822 ¶ 56.

To emphasize the lack of securement, Appellant's Specification states, “[t]he above described invention provides a self-supporting embroidered element. This is in contrast with conventional uppers utilizing embroidery techniques, which require a substrate or foundation layer to which one or more strands are secured.” Spec. ¶ 59.

The Examiner does not explain where it is evident that Meschter '822 discloses the limitation “wherein the overlapping first and second layers [of yarn rows] are not secured to a substrate.” Accordingly, the Examiner has not established by a preponderance of the evidence that independent claim 13 is obvious in view of Meschter '822. Thus, based on the record presented, we do not sustain the Examiner's rejection of claims 13–15 and 18 as being obvious over Meschter '822.<sup>9</sup>

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secured to a substrate” (i.e., “the entirety of the thread is unsecured thereto”).

<sup>9</sup> However, Appellant's Specification states, “[o]nce the desired number of rows is created, the temporary substrate is then removed, resulting in a self-supporting structure.” Spec. ¶ 26; *see also id.* at 44 (“[o]nce removed, a self-supporting embroidered structure results”). Thus, at some time,

Claim 16

Claim 16 depends, ultimately, from claim 13 discussed above. For similar reasons (subject to our note in the immediately above footnote), we do not sustain the Examiner's rejection of claim 16 as being obvious over Meschter '822.

*The rejection of claims 12 and 21–24  
as unpatentable over Meschter '822 and Meschter '564*

Claim 12

Claim 12 depends from claim 1 and further recites “wherein strands of the yarn rows are not secured to a substrate” (a limitation similar to that discussed above with respect to independent claim 13). In rejecting claim 12, the Examiner identifies both Meschter references stating, “the combined references disclose all the limitations of claim 12 *except they do not disclose wherein strands of the yarn rows are not secured to a substrate.*” Non-Final Act. 9 (emphasis added). Immediately thereafter, however, the Examiner states “*Meschter '564* discloses wherein strands of the yarn rows are not secured to a substrate (0026, 0036 of *Meschter '564* and paragraph 0042 of *Meschter [']822*).” Non-Final Act. 9. This is confusing since the Examiner is saying that the references both fail to disclose this “not secured to a

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Appellant's yarn rows are secured to a substrate despite a recitation that they “are not secured to a substrate.” In the event further prosecution of this application occurs, we leave it to the Examiner to ascertain whether claim 13 particularly points out and distinctly claims this limitation in a manner that avoids contradiction with Appellant's own Specification.

substrate” limitation, and also identifies where both references disclose this limitation.<sup>10</sup>

Appellant states, “[t]he key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reasons why the claimed invention would have been obvious.” App. Br. 22. Appellant also states, “Applicant, however, can find no statement in either referenced paragraph of *Meschter* ’564 that supports this position.”<sup>11</sup> App. Br. 22.

We agree with Appellant’s characterization of Paragraph 26 of *Meschter* ’564 as being silent regarding yarn rows, strands, threads, etc. not being secured to a substrate as recited. *See* App. Br. 22. We likewise agree with Appellant’s characterization of Paragraph 36 of *Meschter* ’564 as being a “header.” App. Br. 22. However, we also undertake a review of the paragraphs following this header to ascertain if they address yarn rows, strands, thread, etc. as not being secured to a substrate as recited. The following paragraphs address the issue of textiles that may only incur forces in a certain direction such that yarns lying in other directions are either not utilized, or under-utilized. Consequently, Paragraph 39 of *Meschter* ’564 states, “[a]ccordingly, the orientations, locations, and quantity of strands **34** are selected to provide structural components that are tailored to a specific purpose.” Again, *Meschter* ’564 is silent (or not altogether clear) as to any yarn rows, strands, threads, etc. not being secured to a substrate as recited.

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<sup>10</sup> Appellant agrees “with the statement by the Office that the *Meschter* ’822 layers are secured to a substrate.” Reply Br. 5.

<sup>11</sup> The matter of Paragraphs 42, 57, 58 and 61 of *Meschter* ’822 has been addressed above regarding claim 13. *See* Ans. 17, 18.

Appellant references *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967) which provides instruction from our reviewing court that the Examiner may not “resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis” in the event there are “doubts that the invention is patentable.” App. Br. 22–23.

Here, in view of the Examiner’s citations to these Meschter references, and the content contained therein, the Examiner has not established by a preponderance of the evidence that claim 12 is obvious in view of Meschter ’822 and Meschter ’564. Thus, based on the record presented, we do not sustain the Examiner’s rejection of claim 12 as being obvious over these two references.<sup>12</sup>

#### Claims 21 and 22

Claims 21 and 22 depend from independent claim 13. The Examiner’s rejection of claims 21 and 22 does not cure the deficiency of the Examiner’s rejection of claim 13 discussed above. Non-Final Act. 10. Accordingly, we do not sustain the rejection of claims 21 and 22.

#### Claims 23 and 24

Appellant does not present any argument regarding the Examiner’s rejection of these claims despite acknowledging their rejection. *See* Non-Final Act. 10–11; App. Br. 26. Claims 23 and 24 each depend from claim 1. For the reasons discussed above with respect to claim 1, we sustain the rejection of claims 23 and 24.

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<sup>12</sup> The footnote above regarding Appellant’s temporary affixation of the yarn rows to a substrate, and the need to ascertain whether claim 12 particularly points out and distinctly claims this limitation is equally applicable here.

*The rejection of claims 8 and 17  
as unpatentable over Meschter '822 and Bruno*

Claim 8 ultimately depends from independent claim 1, whereas claim 17 ultimately depends from independent claim 13. As we are not sustaining the Examiner's rejection of claim 13 for the reasons expressed above (subject to the indicated footnote), we likewise do not sustain the rejection of its dependent claim 17 for these same reasons.

Claim 8 includes additional limitations directed to a tongue and a tongue opening. The Examiner states, "the combined references disclose all the limitations of claim 8 except they do not disclose" lateral and medial body sides that "define a tongue opening" and a "tongue is positioned within the tongue opening." Non-Final Act. 11. Confusingly, however, immediately following this statement of what the references do not disclose, the Examiner asserts that "*Bruno* discloses" these limitations. Non-Final Act. 11. More specifically, the Examiner finds that Bruno discloses a tongue comprising "a textile structure including a plurality of intersecting yarn rows (as best seen in Figure 1)" including first and second strands "being interlocked via stitches" along their length. Non-Final Act. 11–12: *see also* Ans. 19 (referencing "Figures 1, 2 and 4 of *Bruno*" and "paragraph 0061 of *Meschter '822*"). Appellant states, "there is no disclosure in Bruno regarding the claimed interlocked strand structure" of the recited tongue. App. Br. 25.

It is not disputed that Bruno discloses “tongue portion 40.”<sup>13</sup> Bruno 2:36–37. Bruno also discloses that front and back members “are quilted together as shown at **24**.” Bruno 2:24–25. Appellant contends, “[a] cryptic reference to sewing provides no support for a specific structure of two aligned strands interlocked [at] selected locations.” App. Br. 25. Further, “[w]ith specific regard to sewing, conventional sewing techniques do not include interlocked strand pairs.” App. Br. 25.

Paragraph 37 of Meschter ’822, clearly states that “suitable materials for threads **42** include various filaments and yarns.” This paragraph continues stating, “yarns may be formed from a single filament or a plurality of individual filaments grouped together.” Appellant does not explain how this is not a disclosure of the recited yarn row that includes first and second aligned strands. Regarding the recitation that these strands are “interlocked via stitches,” Appellant fails to indicate how strand interlocking via spaced stitches has not already been addressed above with respect to parent claim 1.

Appellant further argues that “sewing involves the manipulation of a single thread that is secured utilizing a selected stitch pattern.” App. Br. 25. This contention runs counter to the discussion of “lock-stitches” in Paragraph 61 of Meschter ’822 which clearly describes sewing involving the manipulation of two separate threads (i.e., “thread **42**” and “another thread” that passes through a loop formed by thread 42). Further, such a limitation (i.e., sewing limited to a single thread) is not a recited claim element.

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<sup>13</sup> Although Meschter ’822 does not illustrate a tongue structure in the accompanying figures, this reference, at Paragraphs 2 and 28, states “the upper may include a tongue that extends under” lacing.

Accordingly, and based on the record presented, we are not persuaded the Examiner erred in rejecting claim 8 as being obvious over Meschter '822 and Bruno.

#### DECISION

The Examiner's rejection of claims 1, 2, 4-7, 10, and 11 as unpatentable over Meschter '822 is affirmed.

The Examiner's rejection of claims 13-16 and 18 as unpatentable over Meschter '822 is reversed.

The Examiner's rejection of claims 12, 21, and 22 as unpatentable over Meschter '822 and Meschter '564 is reversed.

The Examiner's rejection of claims 23 and 24 as unpatentable over Meschter '822 and Meschter '564 is affirmed.

The Examiner's rejection of claim 8 over Meschter '822 and Bruno is affirmed.

The Examiner's rejection of claim 17 over Meschter '822 and Bruno is reversed.

No period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED-IN-PART