



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
**United States Patent and Trademark Office**  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/931,127	11/03/2015	Brooke A. Singer	151064.00001	1089
29880	7590	06/02/2020	EXAMINER	
FOX ROTHSCHILD LLP PRINCETON PIKE CORPORATE CENTER 997 LENOX DRIVE BLDG. #3 LAWRENCEVILLE, NJ 08648			KOZAK, ANNE M	
			ART UNIT	PAPER NUMBER
			3732	
			NOTIFICATION DATE	DELIVERY MODE
			06/02/2020	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipdocket@foxrothschild.com

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* BROOKE A. SINGER

---

Appeal 2019-006869  
Application 14/931,127  
Technology Center 3700

---

Before JAMESON LEE, SALLY C. MEDLEY, and  
JUSTIN A. ARBES, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner’s decision to finally reject claims 1, 4–9, 12–18, and 20–23, all of the claims now pending in this Application.<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

---

<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Brooke A. Singer. Appeal Br. 3.

<sup>2</sup> Claims 2, 3, 10, 11, 19, and 24–26 have been cancelled. Final Act. 2; Advisory Act. Box 15 (May 9, 2019).

### CLAIMED SUBJECT MATTER

The invention generally relates to a platform for a high heeled shoe. Spec. Abstr. The Specification describes that the height of a high heeled shoe makes walking difficult, and that if the ground is soft or if the heel is narrow then the heel can quickly sink into the ground, causing the wearer to lose balance, or break the heel. Spec. ¶ 1. The Specification states that the disclosed invention solves some of the above-described issues. *Id.* ¶ 2.

Figure 3 illustrates the disclosed invention attached to a high heeled shoe and is reproduced below:

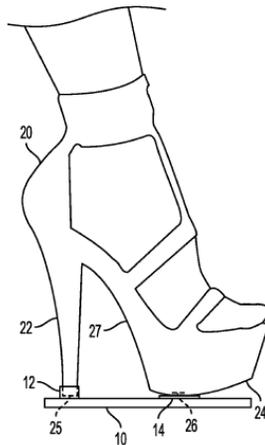


FIG. 3

Figure 3 illustrates a high heeled shoe to which a shoe heel platform is removably attached. Spec. ¶ 12. First connecting member 14 is attached to sole 24 of the shoe, and second connecting member 12 is attached to heel 22 of the shoe, in particular the shoe's tap piece 25. *Id.* ¶ 22.

Figure 1 shows one embodiment of the shoe heel platform and is reproduced below:

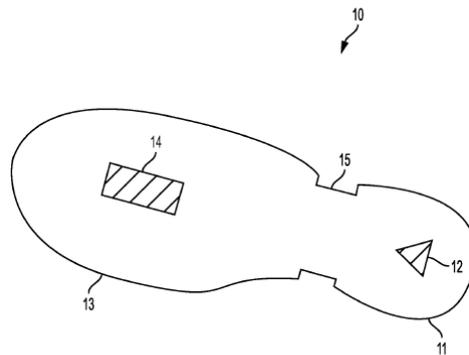


FIG. 1

Figure 1 shows shoe heel platform 10 including a base sized to extend from a sole of a high heeled shoe to a heel of the high heeled shoe, sole section 13, heel section 11, and linking section 15. *Id.* ¶ 15. Sole section 13 includes first connecting member 14 positioned and configured to removably attach to the sole of the high heeled shoe; heel section 11 includes second connecting member 12 positioned and configured to removably attach to the heel of the high heeled shoe. *Id.* ¶ 19.

Figure 2 shows another embodiment of the shoe heel platform and is reproduced below:

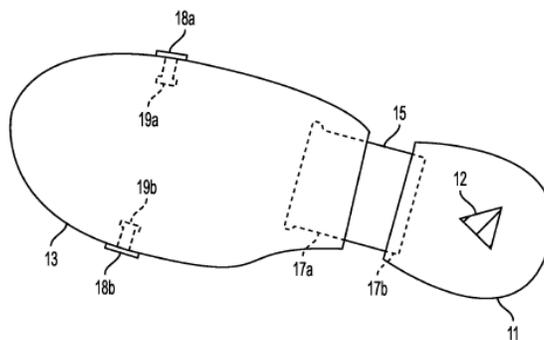


FIG. 2

Figure 2 illustrates an embodiment in which the first connecting member is not centrally located on sole section 13 but is in the form of a pair of side supports 18a and 18b which extend upward from the widest point along the

sides of sole section 13. *Id.* ¶ 21. “Each side support may include a clip, an inward slope, a friction surface made of a material such as rubber or a ribbed structure, or another surface to help the side support remain in place when attached to the shoe.” *Id.* Optionally, either side support may include lateral extension 19a or 19b that slidably extends into a pocket of the sole section to allow the user to adjust the width of the sole section to accommodate shoes of varying width. *Id.*

Claims 1, 12, and 20 are independent. Claim 1 is reproduced below:

1. A shoe heel platform, comprising:
  - a base sized to extend from a sole of a high heeled shoe to a heel of the high heeled shoe, the base comprising:
    - a sole section that comprises a rigid base material and a first connecting member that is positioned and configured to removably attach to the sole of the high heeled shoe; and
    - a heel section that comprises the rigid base material and that also comprises a second connecting member positioned and configured to removably attach to the heel of the high heeled shoe, wherein:
      - second connecting member comprises a receptacle sized and positioned to receive and snugly fit around a tap piece of the heel of the high heeled shoe, and
      - the receptacle comprises an elastic material or a rigid material having a non-smooth interior surface; and
      - a linking member that connects the sole and the heel section.

Appeal Br. 16 (Claims App.).

Claim 12 is much like claim 1. However, claim 12 recites the first connecting member as attached to the sole section of the base rather than as

a component of the sole section of the base, and also recites the second connecting member as attached to the heel section of the base rather than as a component of the heel section of the base. *Id.* at 18. Further, claim 12 does not recite that the second connecting member is configured to removably attach to the heel of the high heeled shoe, but recites that the receptacle of the second connecting member is removably attached to the heel of the high heeled shoe. *Id.* Additionally, claim 12 recites an “adjustable linking member” rather than just a “linking member,” and recites that the linking member “is positioned to be placed under an upper of the shoe.” *Id.* Further, claim 12 specifies that the base is substantially flat. *Id.*

Claim 20 is similar to claim 12. However, it does not recite a first connecting member or a linking member. *Id.* at 20. Rather, it recites that the sole section of the base “is positioned and configured to removably attach to the sole of the high heeled shoe.” *Id.* Also, rather than reciting a second connecting member attached to the heel section, it recites a connecting member attached to the heel section and configured to removably attach to the heel of the high heeled shoe. *Id.* Claim 20 recites that the base is “sized to extend under a heel and sole of a high heeled shoe,” not that the base is “sized to extend from a sole of a high heeled shoe to a heel of the high heeled shoe.” *Id.* at 16, 18, 20. Further, claim 20 recites the connecting member comprises one or both of:

a magnet, or

a receptacle sized and positioned to receive and snugly fit around the tap piece of the heel of the high heeled shoe, wherein the receptacle comprises an elastic material or a rigid material having a non-smooth interior surface.

*Id.*

#### REFERENCES

Mitchell	US 754,673	Mar. 15, 1904
Pollard	US 5,666,746	Sept. 16, 1997
Newton-Dunn	US 6,092,306	July 25, 2000
Brown	US 8,033,035 B2	Oct. 11, 2011
Macfarlane	US 2016/0095386 A1	Apr. 7, 2016 (filed June 22, 2015)

#### REJECTIONS

A. Claims 1, 4, 5, 7, 12–14, 16, and 20–23 were finally rejected under 35 U.S.C. § 103 as obvious over Macfarlane, Brown, and Pollard.

B. Claims 6, 9, 15, and 18 were finally rejected under 35 U.S.C. § 103 as obvious over Macfarlane, Brown, Pollard, and Newton-Dunn.

C. Claims 8 and 17 were finally rejected under 35 U.S.C. § 103 as obvious over Macfarlane, Brown, Pollard, and Mitchell.

#### OPINION

A. The Obviousness Rejection of Claims 1, 4, 5, 7, 12–14, 16, and 20–23 over Macfarlane, Brown, and Pollard

1. Claims 1, 12, and 20

For claim 1, the Examiner determined that Macfarlane discloses a first connecting member that is positioned and configured to removably attach to the sole of a high heeled shoe. Final Act. 3. For claim 12, the Examiner determined that Macfarlane discloses a first connecting member, attached to the sole section of the base of a shoe heel platform, that is positioned and configured to removably attach to the sole of a high heeled shoe. Final Act. 6. For claim 20, the Examiner determined that Macfarlane discloses a sole section, of the base of a shoe heel platform, that is positioned and configured to removably attach to the heel of a high heeled shoe. Final Act. 9. All of

these determinations depend on the Examiner's finding that element 40 shown in Macfarlane's Figure 1a is a connecting member that removably attaches to the sole of a high heeled shoe. Final Act. 3, 6; Ans. 3-4, 8-9. For reasons discussed below, that finding is not supported by the evidence and explanation provided by the Examiner.

Figure 1a of Macfarlane shows a shoe sole assembly in use with a high heeled shoe and is reproduced below:

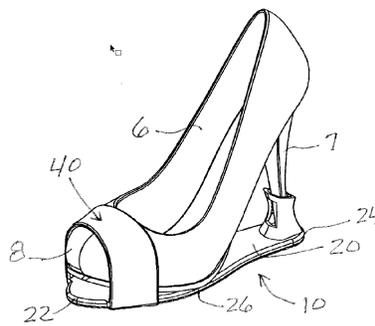


Fig.1a

Figure 1a illustrates shoe sole assembly 10 including sole member 20, heel receiving member 30, and toe securement member 40. Macfarlane ¶ 29.

Figure 1b is an exploded view of Figure 1a and is reproduced below:

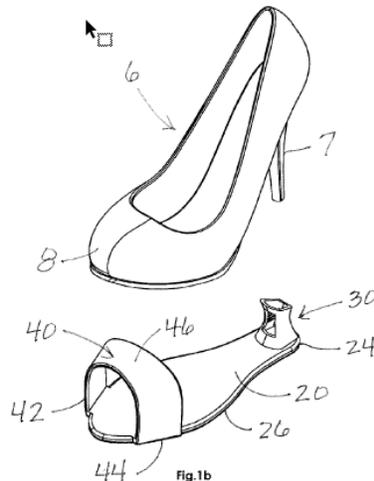


Fig.1b

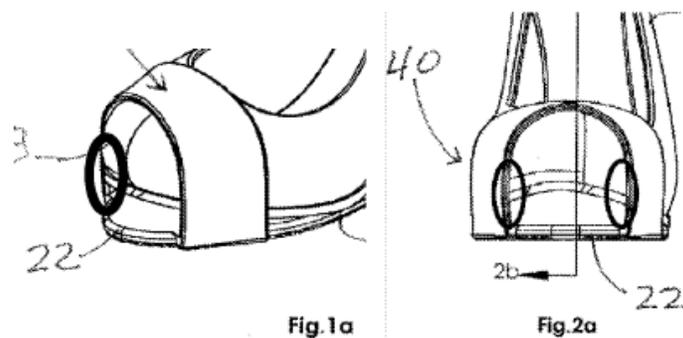
*Id.* ¶ 15. As shown in Figure 1b, the high heeled shoe is separated from the shoe sole assembly. Sole member 20 of shoe sole assembly 10 has front end

22, rear end 24, and a generally flat surface extending therebetween. *Id.*

¶ 30. Heel receiving member 30 is in the form of a sleeve that defines an interior area and an open top configured to receive the bottom tip of a heeled shaft 7 of high heeled shoe 6. *Id.* ¶ 31. Toe securement member 40 is coupled to sole member 20 adjacent front end 22. *Id.* ¶ 34. Toe securement member 40 is dimensioned and configured to selectively receive toe portion 8 of high heeled shoe 6. *Id.* McFarlane describes that “toe securement member 40 is important in making it possible for a wearer to walk using the shoe sole assembly 10 without first having to remove her high heeled shoes.” *Id.*

Appellant asserts that element 40 of Macfarlane does not attach to the sole of the high heeled shoe as the Examiner asserts. Appeal Br. 8. We agree. Appellant argues that element 40 of Macfarlane merely touches the sole of the shoe but does not “attach” to the sole of the shoe. Reply Br. 3. We agree.

The Examiner explains the purported attachment by producing the following annotated figures based on Macfarlane’s Figures 1a and 2a:



The annotated figures are reproduced versions of Figures 1a and 2a of Macfarlane, with the circles added by the Examiner. Ans. 3. The Examiner asserts that the portion of element 40 extending from element 22 is

removably attached to the sole of the shoe, referring to the circled areas of the above-reproduced figures. *Id.* That is an over-simplification of the attachment mechanism of Macfarlane. It is the entire loop element 40 that constitutes a toe securement member that secures the toe portion of the shoe. Macfarlane ¶ 34. “The toe securement member 40 is dimensioned and configured to selectively receive the toe portion 8 of a high heeled shoe 6 therein when the shoe sole assembly 10 is coupled to a high heeled shoe.” *Id.* Macfarlane does not refer to any cooperative relationship between the upwardly extending sides of element 40 and the side edge of the sole of the high heeled shoe, and none is evident from the figures of Macfarlane beyond mere touch contact. Any contact therebetween appears to be incidental and not a part of a meaningful attachment. Although the contact helps to retain the toe portion of the shoe inside the pocket within loop 40, it is not sufficient to constitute an attachment, much like the contents of a container are not attached to the inside walls of the container.

Appellant asserts that the plain meaning of “attach” is to “fasten” or “join.” Reply Br. 3. It suffices that we agree with Appellant that “attach” means more than touch or have physical contact. The Examiner has not disputed that “attach” requires more than “touch” or physical contact. The Examiner has not provided sufficient explanation to support a finding that element 40 attaches to the side edge of the sole of the shoe. The Examiner notes that Appellant’s Specification shows an embodiment (Figure 2) in which the first connecting member is in the form of side supports 18a and 18b which extend upward from the widest point along the side of sole section 13 of the base of the platform and that each such side support may include a clip, an inward slope, or a friction surface. Ans. 4. However, the

Examiner does not identify any description in Macfarlane that the lateral edges of loop element 40, where they make contact with the sole of the high heeled shoe, are in the form of a clip, have an inward slope, or embody a frictional surface sufficient to form an attachment. Indeed, even Figures 1a and 2a of Macfarlane do not show the lateral edges of loop element 40 to have an inward slope where they contact the sole of the high heeled shoe. On this record, Macfarlane's loop element 40 is not comparable to side supports 18a and 18b in the embodiment shown in Figure 2 of Appellant's Specification.

In the alternative, with regard to claim 20, the Examiner asserts that a portion of sole member 20 of shoe sole assembly 10, near area 26, is removably attached to the sole of the high heeled shoe. Final Act. 9 (citing Figures 1a and 1b of Macfarlane). We disagree. Figure 1a of Macfarlane, illustrating a shoe sole assembly in use with a high heeled shoe, is again reproduced below:

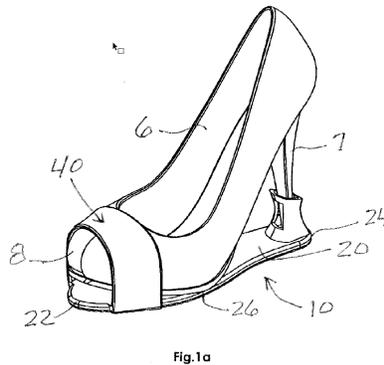


Figure 1a illustrates the positions of shoe 6 and shoe sole assembly 10 when the two are used together. Macfarlane ¶ 14. The illustration shows no attachment between shoe 6 and shoe sole assembly 10 near area 26 as the Examiner asserts. There is only incidental contact between the two. As discussed above, “attach” requires more than incidental contact.

For the foregoing reasons, the rejection of claims 1, 12, and 20 as obvious over Macfarlane, Brown, and Pollard cannot be sustained.

2. Claims 4, 5, 7, 13, 14, 16, and 21–23

Claims 4, 5, 7, and 21 each depend directly from claim 1 and thus incorporate all of the limitations of claim 1. Claims 13, 14, 16, 22, and 23 each depend directly from claim 12 and thus incorporate all of the limitations of claim 12. The deficiency of the Examiner's application of Macfarlane, as discussed above in the context of independent claim 1, equally applies to claims 4, 5, 7, and 21. The deficiency of the Examiner's application of Macfarlane, as discussed above in the context of independent claim 12, equally applies to claims 13, 14, 16, 22, and 23. Accordingly, the rejection of claims 4, 5, 7, 13, 14, 16, and 21–23 as obvious over Macfarlane, Brown, and Pollard cannot be sustained.

B. The Rejection of Claims 6, 9, 15, and 18 as  
Obvious over Macfarlane, Brown, Pollard, and Newton-Dunn

Each of claims 6 and 9 depends from independent claim 1 and thus incorporates all of the limitations of claim 1. Each of claims 15 and 18 depends from independent claim 12 and thus incorporates all of the limitations of claim 12. The deficiency of the Examiner's application of Macfarlane, as discussed above in the context of independent claim 1, applies equally to claims 6 and 9. The deficiency of the Examiner's application of Macfarlane, as discussed above in the context of independent claim 12, applies equally to claims 15 and 18. The Examiner's additional reliance on Newton-Dunn neither relates to nor cures the deficiency. Accordingly, the rejection of claims 6, 9, 15, and 18 as obvious over Macfarlane, Brown, Pollard, and Newton-Dunn cannot be sustained.

C. The Rejection of Claims 8 and 17 as Obvious  
 over Macfarlane, Brown, Pollard, and Mitchell

Claim 8 depends indirectly from claim 1 and thus incorporates all of the limitations of claim 1. Claim 17 depends indirectly from claim 12 and thus incorporates all of the limitations of claim 12. The deficiency of the Examiner’s application of Macfarlane, as discussed above in the context of independent claim 1, applies equally to claim 8. The deficiency of the Examiner’s application of Macfarlane, as discussed above in the context of independent claim 12, applies equally to claim 17. The Examiner’s additional reliance on Mitchell neither relates to nor cures the deficiency. Accordingly, the rejection of claims 8 and 17 as obvious over Macfarlane, Brown, Pollard, and Mitchell cannot be sustained.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	References	Affirmed	Reversed
1, 4, 5, 7, 12–14, 16, 20–23	103	Macfarlane, Brown, Pollard		1, 4, 5, 7, 12–14, 16, 20–23
6, 9, 15, 18	103	Macfarlane, Brown, Pollard, Newton-Dunn		6, 9, 15, 18
8, 17	103	Macfarlane, Brown, Pollard, Mitchell		8, 17
<b>Overall Outcome</b>				1, 4–9, 12–18, 20–23

REVERSED