NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

MOJAVE DESERT HOLDINGS, LLC,
Appellant

v.

CROCS, INC.,
Appellee

2020-1167

Appeal from the United States Patent and Trademark Office, Patent Trial and Appeal Board in No. 95/002,100.

Decided: February 18, 2021

MATT BERKOWITZ, Shearman & Sterling LLP, Menlo Park, CA, argued for appellant. Also represented by YUE WANG; PATRICK ROBERT COLSHER, MARK A. HANNEMANN, THOMAS R. MAKIN, New York, NY; LAURA KIERAN KIECKHEFER, San Francisco, CA.

MICHAEL BERTA, Arnold & Porter Kaye Scholer LLP, San Francisco, CA, argued for appellee. Also represented by SEAN MICHAEL CALLAGY; MARK CHRISTOPHER FLEMING, Wilmer Cutler Pickering Hale and Dorr LLP, Boston, MA; BENJAMIN S. FERNANDEZ, Denver, CO.

Before NEWMAN, DYK, and O'MALLEY, *Circuit Judges*.

PER CURIAM.

Mojave Desert Holdings, LLC[1] appeals from a final written decision of the Patent Trial and Appeal Board ("Board") following inter partes reexamination of U.S. Patent No. D517,789 ("'789 patent"). *See U.S.A. Dawgs, Inc. v. Crocs, Inc.*, 2019 Pat. App. LEXIS 6418 (P.T.A.B. Sept. 10, 2019) ("*Board Decision*"). Mojave argues that the Board legally erred in its analysis of the prior art. Because we discern no reversible error, we *affirm*.

I.

A.

The '789 patent, a design patent titled "Footwear," issued on March 28, 2006. The patent claims "[t]he ornamental design for footwear, as shown and described" in the patent's seven figures. '789 patent, claim 1. Figures 3, 4, 5, and 7, which collectively show the outside, front, bottom, and rear of the shoe, provide a sufficient representation of the claimed design:

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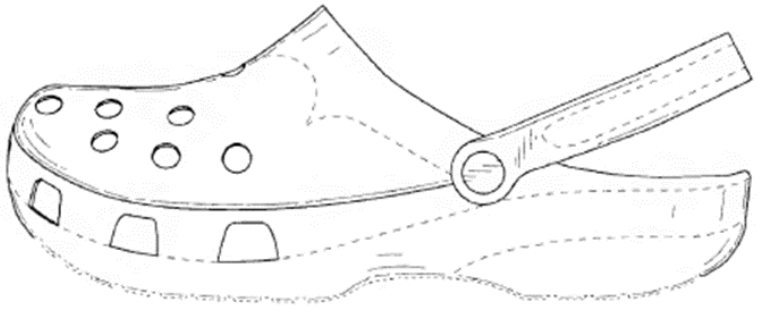
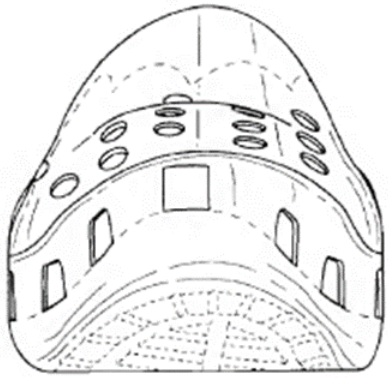
[1] On February 11, 2021, we granted Mojave's motion to substitute for U.S.A. Dawgs, Inc. ("Dawgs"). *See Mojave Desert Holdings, LLC v. Crocs, Inc.*, No. 2020-1167, 2021 WL 499576 (Fed. Cir. Feb. 11, 2021).

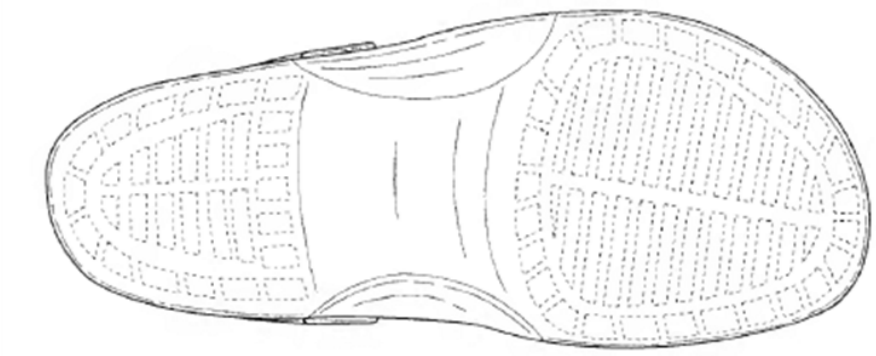


’789 patent, Figure 3 (left side view).



’789 patent, Figure 4 (front view).

’789 patent, Figure 5 (rear view).

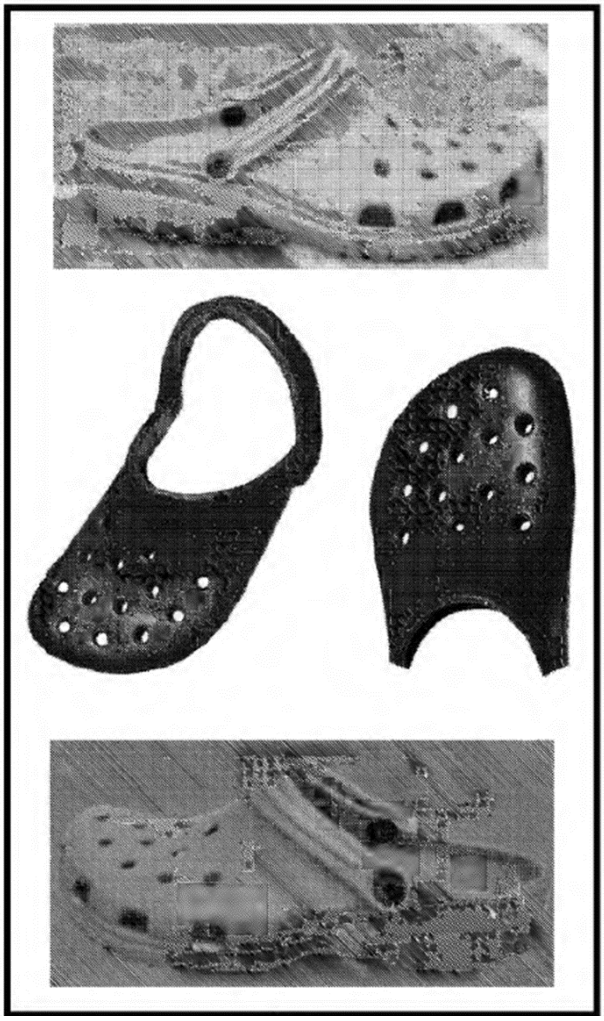


’789 patent, Figure 7 (bottom view).

B.

On August 24, 2012, Dawgs filed a request for inter partes reexamination of the ’789 patent, which the U.S. Patent and Trademark Office ordered on November 19, 2012. Although Dawgs proposed rejections, the examiner did not adopt them. Instead, the examiner issued a final rejection on August 9, 2017, finding that the design claimed in the ’789 patent was anticipated by “the shoe shown in the Examiner’s Citation U,” which the examiner included in the examiner’s appendix, UX. J.A. 1745.

The examiner's appendix contains a collection of web pages acquired by the examiner using the Wayback Machine.[2] The examiner compiled the key images as Figure 11:



[2] The Wayback Machine is an online digital archive of web pages. It is run by the Internet Archive, a nonprofit library in San Francisco, California.

J.A. 2132 (Figure 11).

Crocs appealed the examiner's final rejection to the Board. On September 10, 2019, following an oral hearing, the Board issued a Final Written Decision reversing the examiner's anticipation finding.

Dawgs timely appealed, and we have allowed Mojave to substitute. We have jurisdiction to hear appeals of final written decisions from the Board under 28 U.S.C. § 1295(a)(4)(A).

II.

We review the Board's legal conclusions de novo and its factual findings for substantial evidence. *See In re Gartside*, 203 F.3d 1305, 1316 (Fed. Cir. 2000). "A finding is supported by substantial evidence if a reasonable mind might accept the evidence to support the finding." *Q.I. Press Controls, B.V. v. Lee*, 752 F.3d 1371, 1378–79 (Fed. Cir. 2014). Anticipation is a question of fact that we review for substantial evidence. *HTC Corp. v. Cellular Commc'ns Equip., LLC*, 877 F.3d 1361, 1368 (Fed. Cir. 2017).

Having reviewed the Board's decision and the record, we discern no reversible error. We therefore *affirm*.

AFFIRMED

COSTS

No costs.