



US00D535088S

(12) **United States Design Patent**  
**Seamans**

(10) **Patent No.:** **US D535,088 S**  
(45) **Date of Patent:** **\*\* Jan. 16, 2007**

- (54) **FOOTWEAR UPPER PORTION**
- (75) Inventor: **Scott Seamans**, Boulder, CO (US)
- (73) Assignee: **Crocs, Inc.**, Niwot, CO (US)
- (\*\*) Term: **14 Years**
- (21) Appl. No.: **29/226,793**
- (22) Filed: **Mar. 31, 2005**
- (51) **LOC (8) Cl.** ..... **02-99**
- (52) **U.S. Cl.** ..... **D2/969**
- (58) **Field of Classification Search** ..... D2/902,  
D2/903, 907, 908, 919, 923, 926, 943, 944,  
D2/969, 972-974; 36/45, 50.1, 77 M, 77 R,  
36/83, 88, 113, 114, 123-131, 4, 8.1  
See application file for complete search history.

CA	2375957	9/2002
EM	000061122-001	11/2003
EM	000257001-001	2/2005
EM	000257001-002	2/2005
EM	000257001-003	2/2005
EM	000308903-001	5/2005
EM	000308903-002	5/2005
EM	000308903-003	5/2005
EM	000308903-004	5/2005
EP	0 802 039 A2	10/1997
EP	0 802 040 A2	10/1997
EP	0 802 041 A2	10/1997
EP	0 884 005 A1	12/1998
FR	2 595 213	9/1987
GB	2322286	8/1998
WO	WO 2004/105531 A1	12/2004

(56) **References Cited**

**U.S. PATENT DOCUMENTS**

1,392,350 A	10/1921	O'Brien	
D66,083 S	11/1924	Johnson	
2,180,924 A	11/1939	Dunbar	
D151,304 S	10/1948	Walsh	
2,470,089 A	5/1949	Booth	
D155,956 S	* 11/1949	Wood	..... D2/969
2,897,566 A	8/1959	Albiniano	
3,407,517 A	10/1968	Gessner	
3,698,107 A	10/1972	Fukuoka	
4,032,611 A	6/1977	Fukuoka	
D247,136 S	2/1978	Mizoguchi	
4,100,685 A	7/1978	Dassler	
D251,158 S	2/1979	Edmonds	
4,408,401 A	10/1983	Seidel et al.	
4,476,600 A	10/1984	Seidel et al.	
4,888,887 A	12/1989	Solow	
4,967,750 A	11/1990	Cherniak	
D345,245 S	3/1994	McDonald	

(Continued)

**FOREIGN PATENT DOCUMENTS**

CA	2199084	10/1997
CA	2238842	12/1998

**OTHER PUBLICATIONS**

*Birkenstock®*, *Spring & Summer 2003 Catalog*, Birkenstock Orthopudie GMBH, Germany (82 pages).  
*Comfortable Walking*, Italian Technology, Oct. 1999, n. 3, p. 168 (abstract, 1 page).  
 COMPLAINT, *Holey Soles Holdings LTD v. Foam Creations, Inc. and CROCS, Inc.* (05CV6893 (MBM) (AJP) S.D.N.Y. filed Aug. 2, 2005) (Including Appendices A-D, 59 pages).

(Continued)

*Primary Examiner*—Dominic Simone  
 (74) *Attorney, Agent, or Firm*—Faegre & Benson LLP

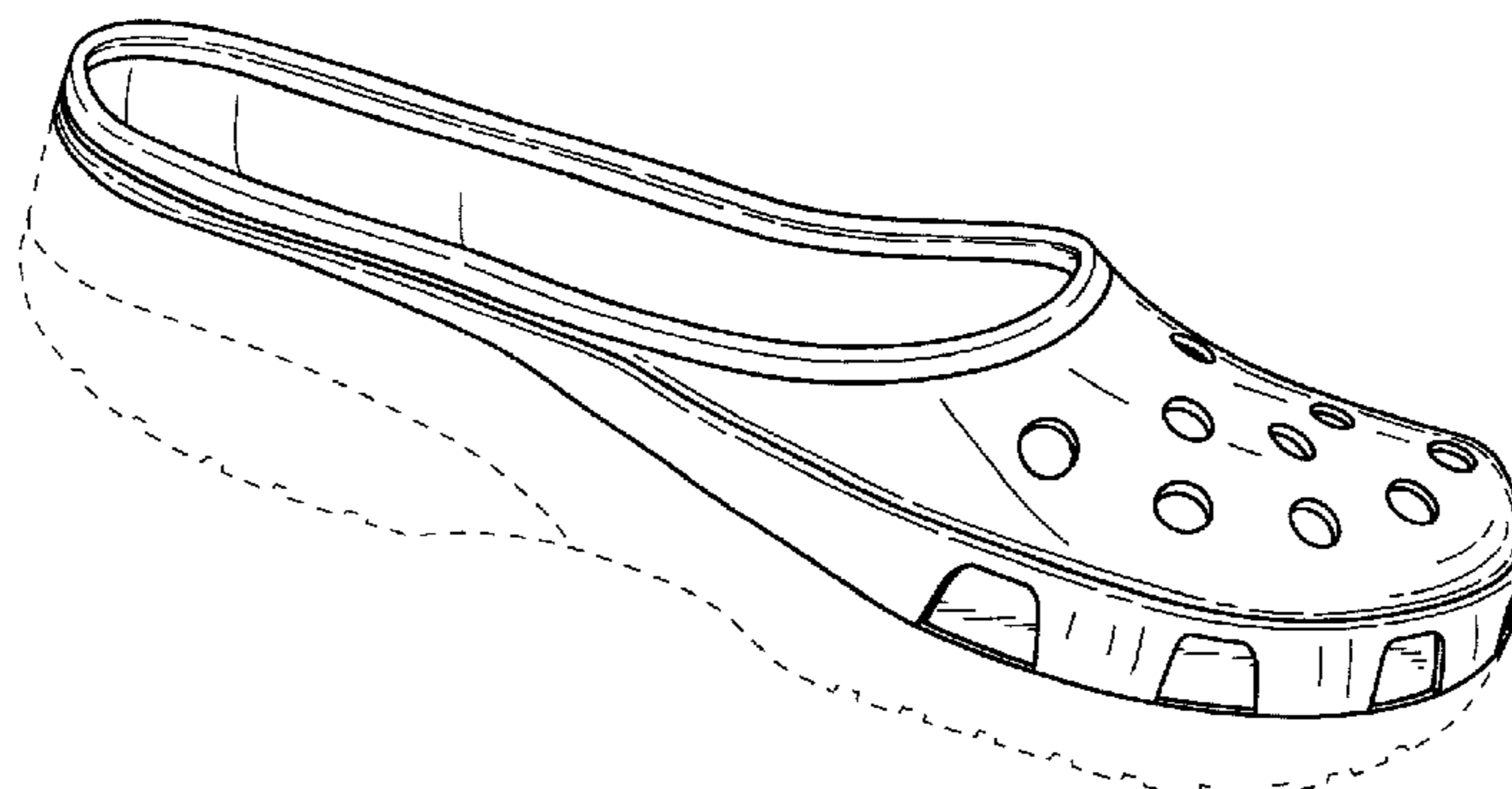
(57) **CLAIM**

The ornamental design for footwear upper portion, as shown and described.

**DESCRIPTION**

FIG. 1 is a front perspective view.  
 FIG. 2 is an outer side view.  
 FIG. 3 is an inner view  
 FIG. 4 is a front view.  
 FIG. 5 is a rear view.  
 FIG. 6 is a top view; and  
 FIG. 7 is a bottom view.

**1 Claim, 4 Drawing Sheets**



## U.S. PATENT DOCUMENTS

D350,021	S	8/1994	Stein	
D350,223	S	9/1994	Buckner	
5,369,895	A	12/1994	Hammerschmidt	
D355,526	S	2/1995	Duclos	
5,438,767	A	8/1995	Stein	
D368,797	S	* 4/1996	Brooks et al.	..... D2/969
5,528,841	A	6/1996	Pozzobon	
5,561,919	A	10/1996	Gill	
5,615,496	A	4/1997	Sharpstein	
5,651,195	A	7/1997	Clancy	
D381,794	S	8/1997	Gelli	
5,736,167	A	4/1998	Chang	
5,814,254	A	9/1998	Bisconti	
D415,606	S	10/1999	Bray, Jr. et al.	
D416,667	S	11/1999	Lamstein	
D418,281	S	1/2000	Bray, Jr. et al.	
D422,780	S	4/2000	Aguerre	
6,052,920	A	4/2000	Bathum	
D428,239	S	* 7/2000	Plamondon	..... D2/908
D431,346	S	10/2000	Birkenstock	
6,237,249	B1	5/2001	Aguerre	
6,237,250	B1	5/2001	Aguerre	
6,256,906	B1	7/2001	Matis et al.	
D448,918	S	10/2001	Hoyt et al.	
D452,366	S	12/2001	Wilson	
6,416,610	B1	7/2002	Matis et al.	
6,439,536	B1	8/2002	Piccolo	
D467,085	S	12/2002	Chen	
D473,040	S	4/2003	Hawker et al.	
6,560,900	B1	5/2003	Bray, Jr. et al.	
D476,797	S	7/2003	Schenone	
D479,034	S	* 9/2003	Tzenos	..... D2/926
D479,906	S	9/2003	Hawker et al.	
6,625,904	B1	9/2003	Frederiksen	
6,640,464	B1	11/2003	Hsin et al.	
D483,929	S	12/2003	Tzenos	
D490,219	S	5/2004	Lu	
D492,095	S	* 6/2004	Sanchez et al.	..... D2/908
D492,096	S	* 6/2004	Sanchez et al.	..... D2/908
D492,841	S	* 7/2004	Magro	..... D2/926
D493,611	S	* 8/2004	Chen	..... D2/969
D494,345	S	8/2004	Werman	
6,772,539	B1	8/2004	Tai	
D498,901	S	11/2004	Hawker et al.	
D499,234	S	12/2004	Dal Magro et al.	
6,860,035	B1	3/2005	Girard	
2001/0001350	A1	5/2001	Aguerre	
2002/0124434	A1	9/2002	Hsin et al.	
2003/0009909	A1	1/2003	Chen	
2003/0074806	A1	4/2003	Urle et al.	
2004/0231189	A1	11/2004	Seamans	
2004/0231190	A1	11/2004	Seamans	
2004/0231191	A1	11/2004	Seamans	

## OTHER PUBLICATIONS

CINDY MACDONALD, *The Entrepreneurs: They're bilingual, Multicultural and talented. Distance and language present no Barriers to Quebec plastics processors and mold makers as the province's plastics industry continues to increase its level of exports and welcome new companies*, Canadian Plastics, O'99, v. 57(10), p. 35-50 (9 pages).

*Defendant's Response to Request for Particulars*, FOAM CREATIONS. vs. HOLEY SOLES HOLDINGS LTD., Ontario, Canada Federal Court, Court File No. T-161-05, Apr. 22, 2005, Oyen Wiggs Green & Mutala LLP (Including Appendices A-C, 236 pages).

*Defendant's Statement of Defence*, FOAM CREATIONS INC. vs. HOLEY SOLES HOLDINGS LTD., Ontario, Canada Federal Court, Court File No. T-161-05, Mar. 10, 2005, Oyen Wiggs Green & Mutala LLP (9 pages).

*The Elastomers Times: Engage Adds Comfort to Sporting Components*, Chemical Business New Base: The Elastomers Times, Dec. 1, 2000 (2 pages).

*Engage® polyolefin elastomers, the critical Ingredient for Success*, DuPont Dow Elastomers, Copyright©2000, DuPont Dow Elastomers, www.dupont.dow.com/engage (12 pages).

*FinProject Brews an Extralight (Evasol Plastic and Finproject signed a joint venture agreement to introduce a range of new-block and net-fit soles for shoes)*, Footwear News, World Week, Aug. 4, 1997, v. 53, n. 31, p. 8 (3 pages).

*Inject Eva*, Macplas International, Aug. 1999, n. 10, p. 90 (abstract, 1 page).

<http://web.archive.org/web/19980-420230857/www-birkenstock.com/featprof.htm> (3 pages).

Luisa Zargani, *One Fine Year; Anton Magnani's Quirky Dry-Shod Designs have Gained the Italian Designer Respect, Recognition and a Deal with Comme Des Garcons*, Footwear News, Aug. 2, 1999, p. 102 (2 pages).

*Plaintiff's Statement of Claim*, FOAM CREATIONS INC. vs. HOLEY SOLES HOLDINGS LTD., Ontario, Canada Federal Court, Jan. 28, 2005, Ridout & Maybee LLP (8 pages).

*Plaintiff's Request for Particulars of Defence*, FOAM CREATIONS INC. vs. HOLEY SOLES HOLDINGS LTD., Ontario, Canada Federal Court, Court File No. T-161-05, May 1, 2005, Ridout & Maybee (5 pages).

*Plaintiff's Further Request for Particulars*, FOAM CREATIONS INC. vs. HOLEY SOLES HOLDINGS LTD., Ontario, Canada Federal Court, Court File No. T-161-05, May 12, 2005, Ridout & Maybee (Including Schedule A, 6 pages).

*Plaintiff's Reply*, FOAM CREATIONS INC. vs. HOLEY SOLES HOLDINGS LTD., Ontario, Canada Federal Court, Court File No. T-161-05, Ridout & Maybee (7 pages).

Rhoda Miel, *Snowshoe Walks Away with Best Design*, Plastic News, Apr. 22, 2002, v. 14, n. 8, p. 4 (2 pages).

*Trade Name Record*, Official Gazette of the US Patents and Trademarks Office, Mar. 24, 1998, 1208, n. 4, p. 73, (Abstract, 1 page).

waldenstore.com, *Footwear Waldies*, Aug. 4, 2003, <http://www.waldenstore.com/waldies.html>. (1 pages).

*Walking on Modified Eva*, Italian Technology, May 1999, n. 2, p. 121, (abstract, 1 page).

\* cited by examiner

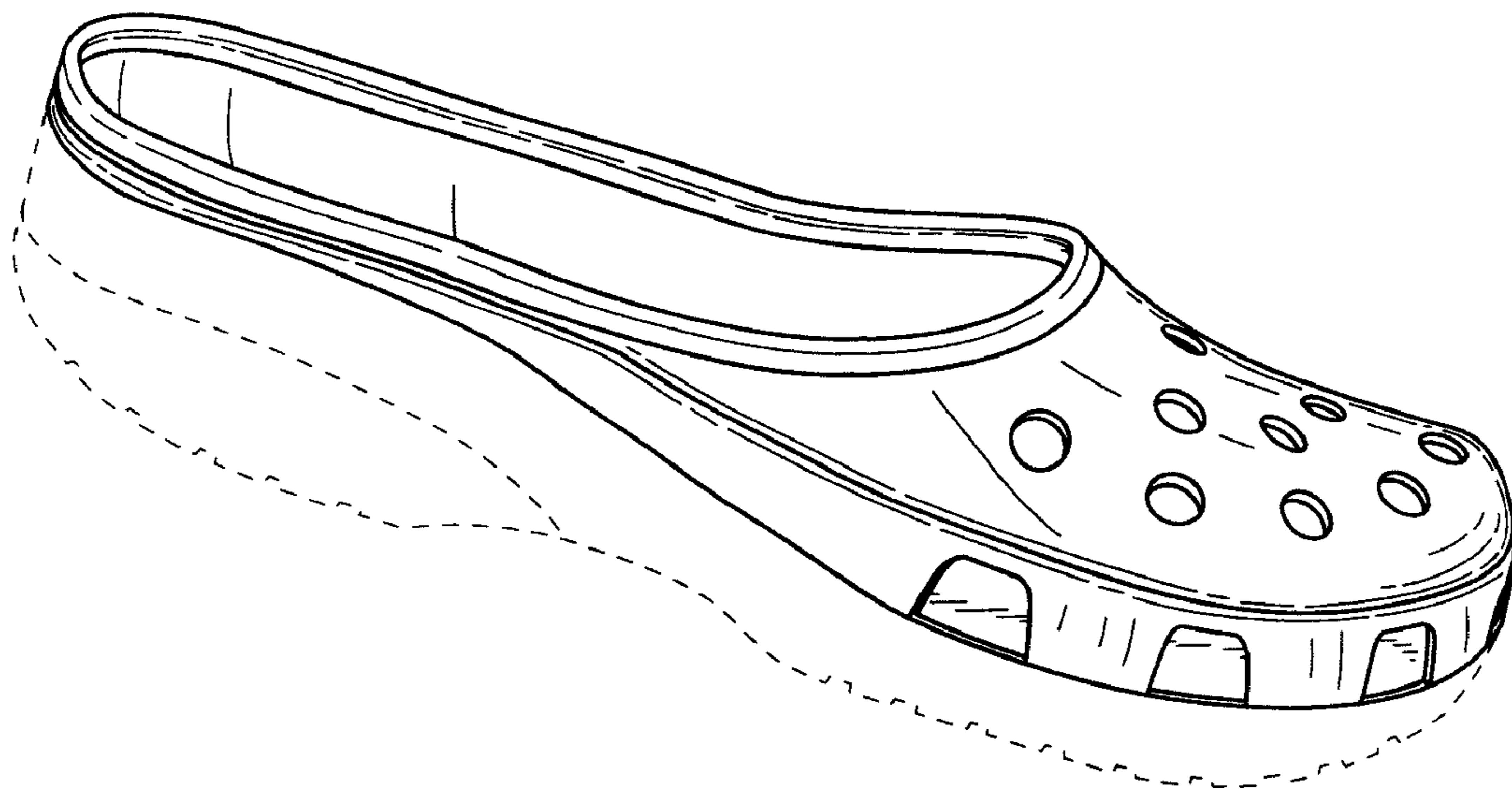


FIG.1

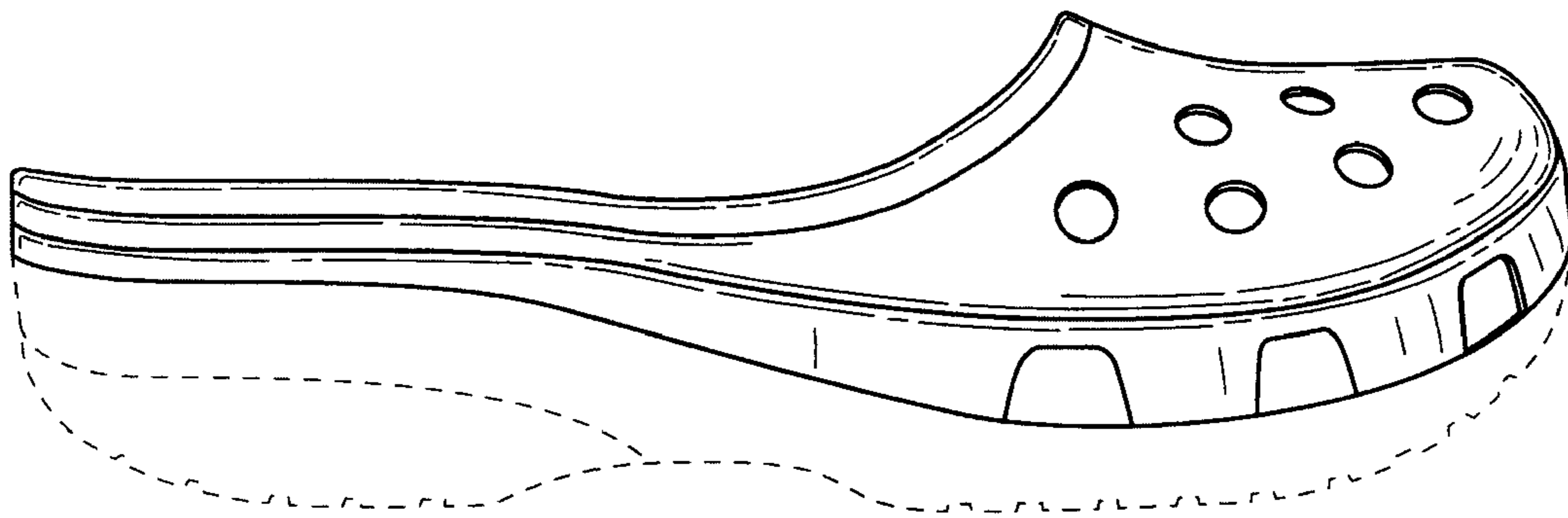


FIG.2

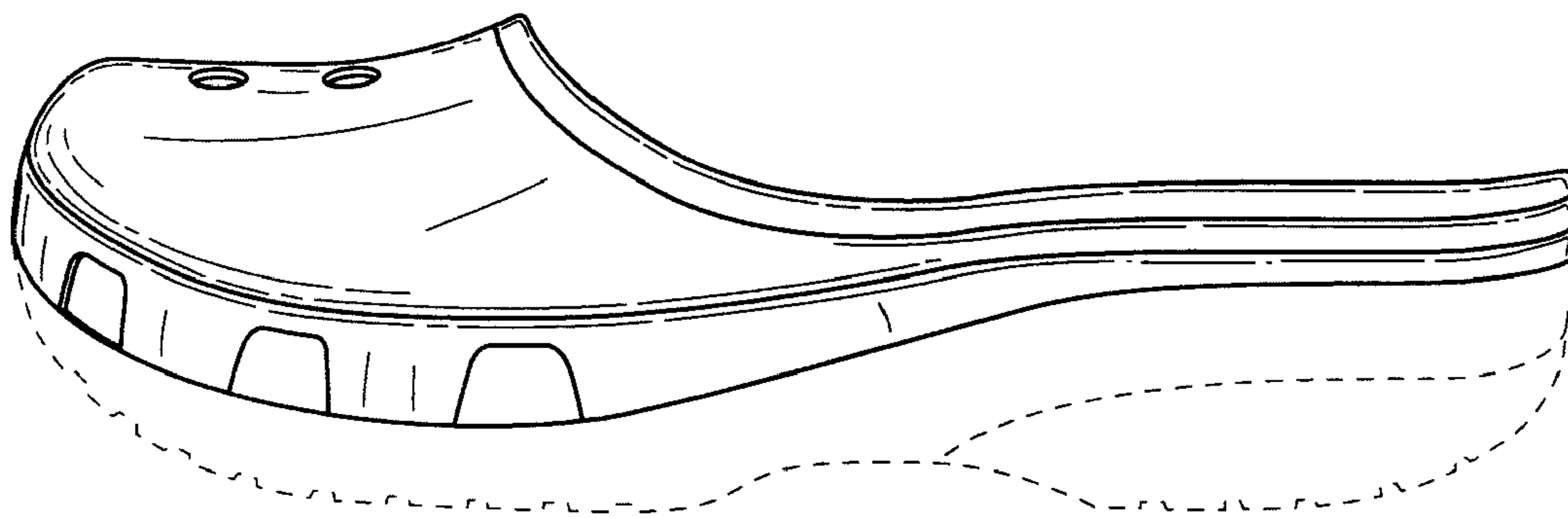


FIG.3

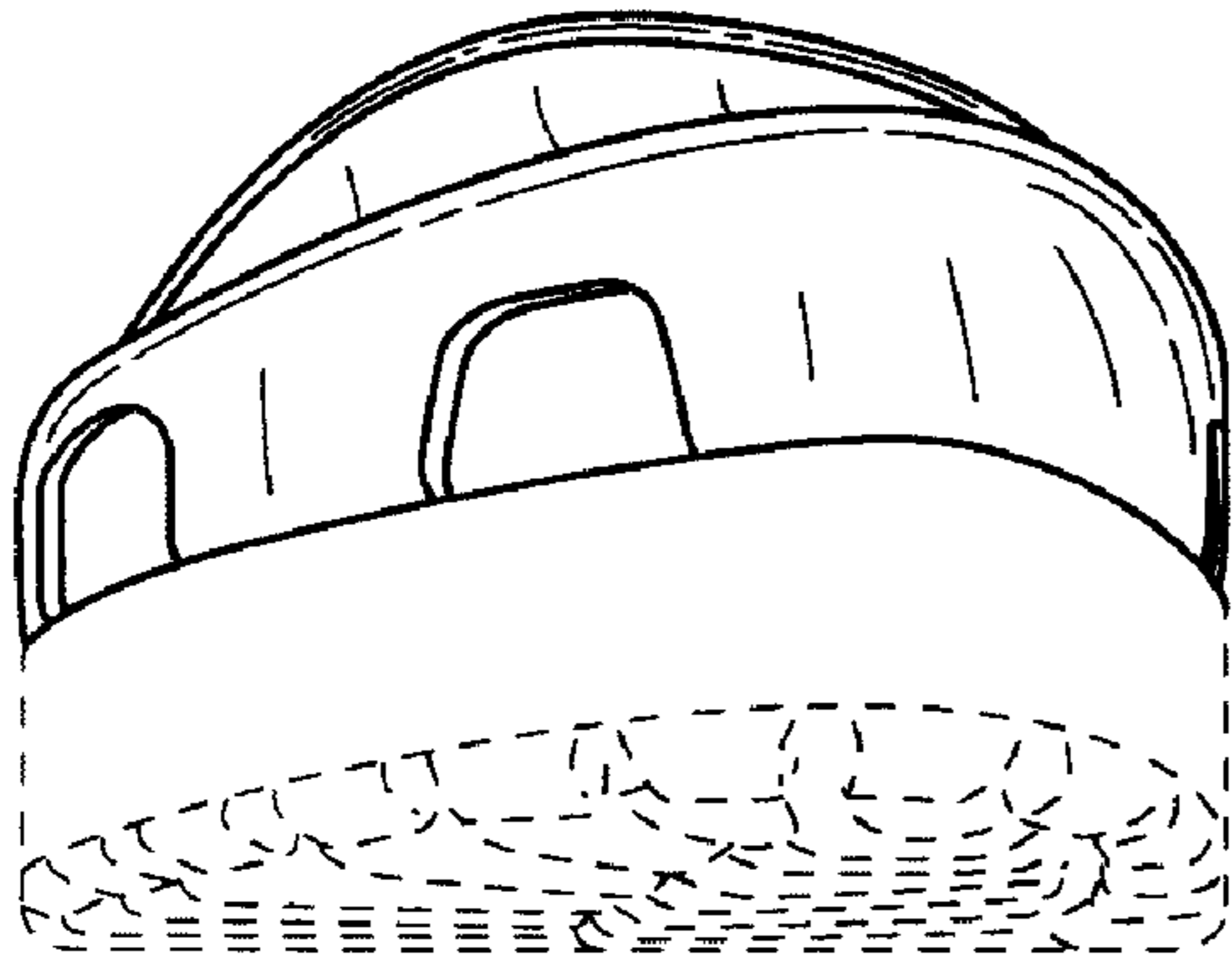


FIG.4

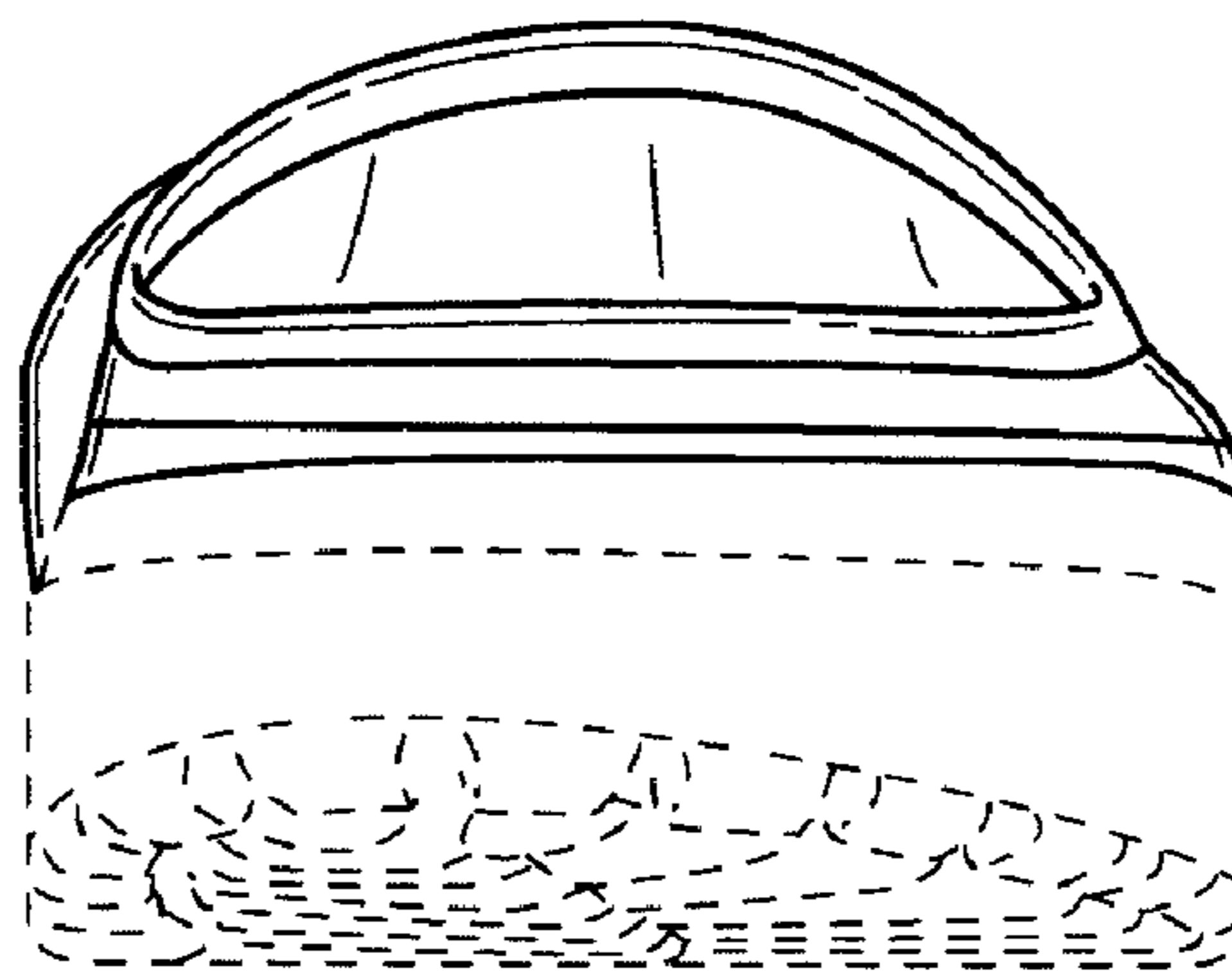


FIG.5

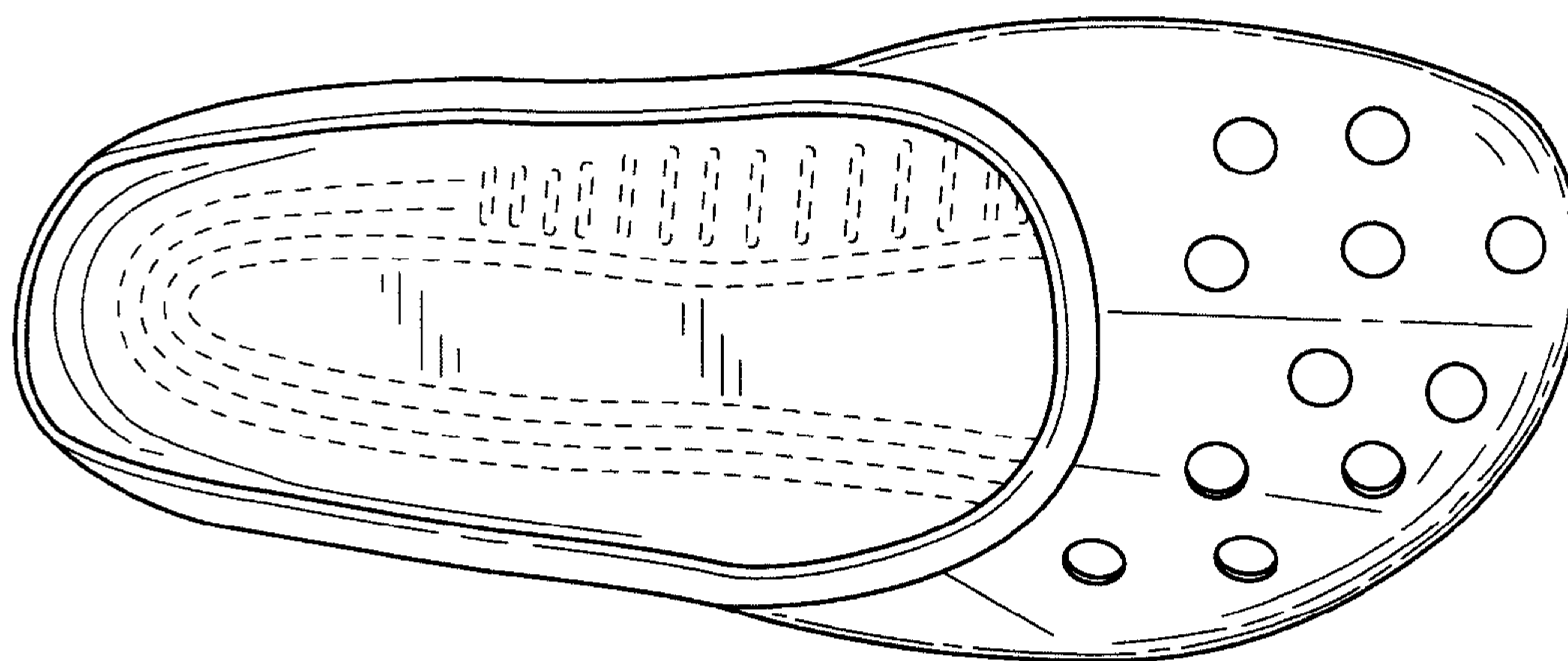


FIG. 6

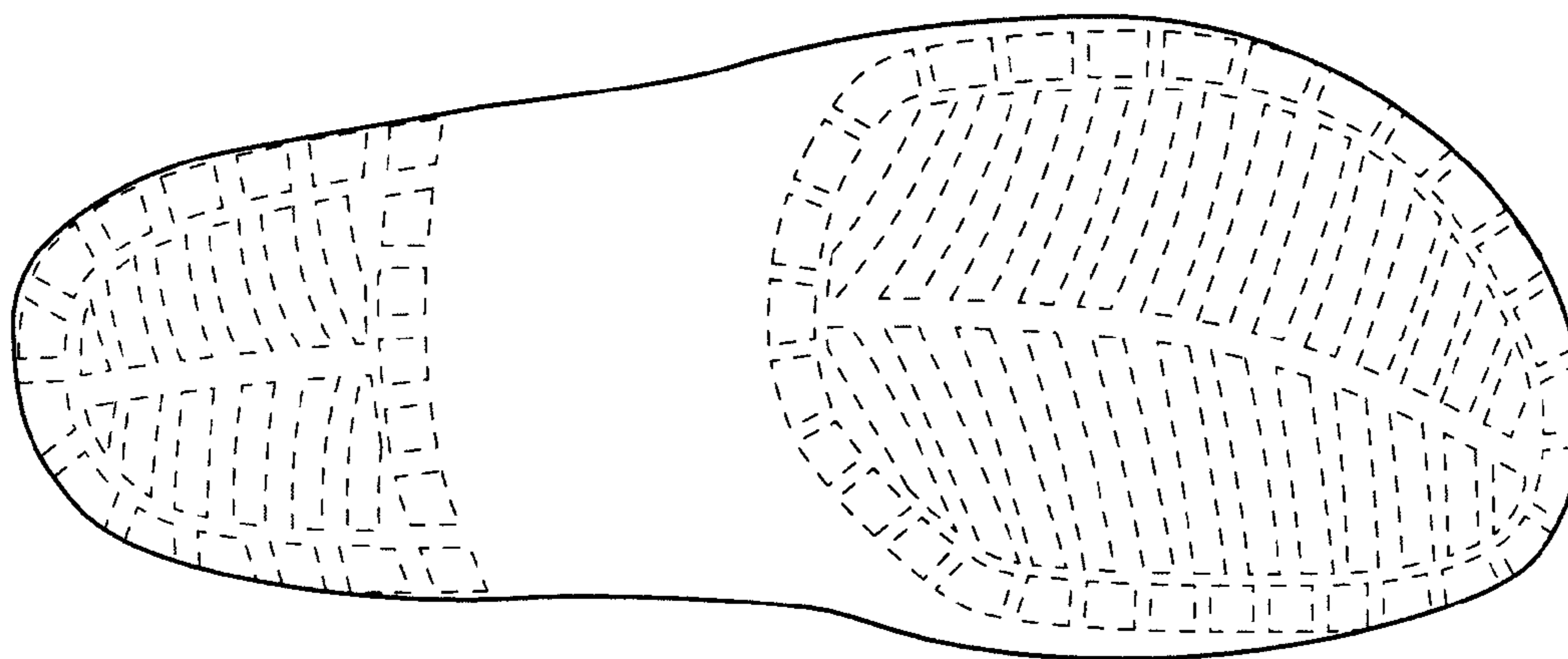


FIG. 7