

1 UNITED STATES PATENT AND TRADEMARK OFFICE

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3 BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Under Armour, Inc.,

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Petitioner

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v.

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Adidas AG,

9

Patent Owner

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Case No. IPR2015-00698

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Patent No. 8,092,345

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DEPOSITION OF WILLIAM R. MICHALSON, Ph.D.

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FEBRUARY 5, 2016

9:45 A.M.

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KILPATRICK TOWNSEND & STOCKTON LLP

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ATLANTA, GEORGIA

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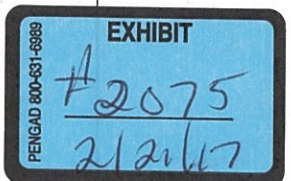
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SUZANNE BEASLEY, RPR

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CCR-B-1184



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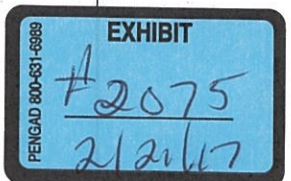
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<p>1 INDEX TO EXAMINATION Page 2 2 3 Examination Page No. 4 5 By Mr. Ansley 4 6 7 8 9 10 11 INDEX TO EXHIBITS 12 13 Exhibit No. Page No. 14 15 Exhibit 2002 4 16 Declaration of William R. 17 Michalson, Ph.D. 18 19 20 21 22 23 24 25</p>	<p>1 (The signature of the witness to the Page 4 2 deposition was reserved.) 3 WILLIAM R. MICHALSON, Ph.D., 4 having been duly sworn, was examined and testified 5 as follows: 6 EXAMINATION 7 BY MR. ANSLEY: 8 Q. Hello again, Dr. Michalson. 9 A. Hello. 10 Q. We just concluded the deposition for IPR 11 proceeding that ends in 697. Now we're moving on to 12 the IPR proceeding that ends in 698 for U.S. Patent 13 No. 8,092,345. 14 Again, same rules as last time. You 15 understand? 16 A. Yes. 17 (Exhibit 2002 was marked for 18 identification.) 19 BY MR. ANSLEY: 20 Q. So I've already handed you Exhibit 2002. 21 Are you familiar with this document? 22 A. Yes. 23 Q. Let's turn to page 35. And in Section B 24 you provide analysis of secondary considerations; is 25 that correct?</p>
<p>1 APPEARANCES OF COUNSEL: Page 3 2 On behalf of the Petitioner: 3 W. SUTTON ANSLEY, Esq. 4 Weil, Gotshal & Manges LLP 5 1300 Eye Street, N.W. 6 Suite 900 7 Washington, D.C. 20005-3314 8 (202) 682-7018 9 sutton.ansley@weil.com 10 11 On behalf of the Patent Owner and the Witness: 12 JONATHAN D. OLINGER, Esq. 13 Kilpatrick Townsend & Stockton LLP 14 1100 Peachtree Street, N.E. 15 Suite 2800 16 Atlanta, Georgia 30309 17 (404) 815-6500 18 jolinger@kilpatricktownsend.com 19 20 - - - 21 22 23 24 25</p>	<p>1 A. That's correct. Page 5 2 Q. And let's turn to paragraph 74. And in 74 3 you mention the MapMyFitness mobile applications and 4 state, "It is my conclusion that the commercial 5 success of these mobile applications supports a 6 finding that the instituted claims are not obvious." 7 Do you see that? 8 A. Yes. 9 Q. And in particular if you go to 10 paragraph 75, you state that MapMyFitness is evidence 11 of commercial success; is that correct? 12 A. I don't see the particular turn of phrase 13 you used. 14 Q. Sorry. I was just asking you to confirm 15 that you lay out your evidence for what -- for your 16 opinion that the MapMyFitness mobile applications are 17 evidence of commercial success. Is that correct? 18 A. On paragraph 75 I elaborate on that 19 opinion, yes. 20 Q. Okay. And then in paragraph 77 you state 21 that -- sorry, I've got the wrong paragraph here. 22 Give me one second. 23 All right, 76. You state in your opinion, 24 the commercial success of the MapMyFitness suite of 25 products is plainly demonstrated by the number of</p>

<p style="text-align: right;">Page 6</p> <p>1 MapMyFitness users and Under Armour's purchase of 2 MapMyFitness. Do you see that? 3 A. I do. 4 Q. So hypothetically would the profitability 5 of MapMyFitness as a company be a relevant factor in 6 your opinion to determining whether its products were 7 commercially successful or not? 8 MR. OLINGER: Objection. Form. 9 Outside the scope. 10 THE WITNESS: Can you state that 11 question again? 12 BY MR. ANSLEY: 13 Q. Sure. So you mention two factors here. 14 In paragraph 76 you state that commercial success is 15 demonstrated, A, by the number of MMF users, and, B, 16 Under Armour's purchase of MapMyFitness. 17 And my question is hypothetically would 18 the profitability of MapMyFitness as a company be a 19 relevant factor in your opinion to determining 20 whether its products were a commercial success? 21 MR. OLINGER: Objection. Form. 22 Outside the scope. 23 THE WITNESS: In paragraph 76 I'm not 24 referring to the profitability of 25 MapMyFitness. I'm referring to the number</p>	<p style="text-align: right;">Page 8</p> <p>1 hypothetically, the profitability of a 2 company may be due to a number of factors. 3 I would have to analyze what that -- I 4 would have to look and see what that 5 profitability was due to. That's not what 6 I'm talking about here in paragraph 76. 7 BY MR. ANSLEY: 8 Q. I understand you're not talking about that 9 here. Well, so you mentioned two things. Again, 10 it's the number of MMF users and Under Armour's 11 purchase of MMF would be the two factors that you 12 considered. 13 Would there be any other factors that you 14 would want information -- I'm sorry. 15 Would there be any other information that 16 you would want to see to assess whether or not the 17 MapMyFitness suite of products are commercially 18 successful? 19 MR. OLINGER: Objection. Form. 20 Outside the scope. 21 THE WITNESS: I wasn't asked to 22 consider any other factors and I didn't 23 consider any other factors. You know, if 24 there were more factors that were brought 25 to my attention or that I obtained, I would</p>
<p style="text-align: right;">Page 7</p> <p>1 of users they accumulated and the fact that 2 Under Armour purchased the company. 3 BY MR. ANSLEY: 4 Q. I understand that, but I'm asking a 5 hypothetical. Would the profitability of 6 MapMyFitness be a relevant factor in your 7 consideration if you have that information available 8 to you? 9 MR. OLINGER: Objection. Form. 10 Outside the scope. 11 THE WITNESS: Well, hypothetically if 12 I had the information available to me, I 13 would review that information and determine 14 if it appeared as if it made -- if it was 15 also an indicator of commercial success. 16 Without that information I can't really do 17 that analysis. I would have to do that 18 analysis. 19 BY MR. ANSLEY: 20 Q. So without that information, you can't say 21 one way or another whether or not the company's 22 profitability would be a relevant factor? 23 MR. OLINGER: Objection. Form. 24 Outside the scope. 25 THE WITNESS: Again speaking</p>	<p style="text-align: right;">Page 9</p> <p>1 consider them, but I did not do that 2 analysis. 3 BY MR. ANSLEY: 4 Q. Do you consider yourself an expert in 5 evaluating whether a product is a commercial success? 6 MR. OLINGER: Objection. Form. 7 THE WITNESS: I have in the past been 8 asked to provide opinions about technology 9 and likelihood of success of technologies 10 offered by different companies, both, you 11 know, by entrepreneurial groups and also in 12 some of my own endeavors trying to do 13 technical evaluations of companies and my 14 assessment of likelihood of their 15 longevity. So I certainly have some 16 experience in that area. 17 BY MR. ANSLEY: 18 Q. Well, I didn't ask you if you had 19 experience in the area. I asked you if you consider 20 yourself an expert in evaluating whether a product is 21 a commercial success or not. 22 MR. OLINGER: Objection. Form. 23 THE WITNESS: I think that I have 24 enough knowledge about the field to be able 25 to look at some of the typical indicators</p>

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1 of success and determine if that, you know,
2 at least represents to me something that is
3 commercially successful.
4 BY MR. ANSLEY:
5 Q. So you said you think given enough
6 knowledge about the field. Is it your testimony then
7 under oath that you think you're an expert in
8 evaluating whether a product is a commercial success?
9 MR. OLINGER: Objection.
10 THE WITNESS: I stand by what I say
11 in paragraph 76. I'm offering an opinion
12 that based on the number of MMF users and
13 the purchase of MMF, that it appears that
14 those products were at least successful
15 enough to get bought up. And presumably
16 Under Armour would not have purchased MMF
17 if they didn't think they were going to
18 make money with that suite of products.
19 BY MR. ANSLEY:
20 Q. I want to get to that in a second, that
21 last thing you said, but so you're not saying one way
22 or the other whether you're an expert or not in
23 evaluating the commercial success of products?
24 MR. OLINGER: Objection. Form.
25 THE WITNESS: I'm not evaluating the

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1 commercial success in the same sense that
2 somebody who's in the business of
3 evaluating the business aspects of
4 companies would evaluate those companies.
5 I'm looking at, you know, the number of
6 users. I'm looking at, you know, the
7 purchase, the feedback that I've cited in
8 this report. And in my opinion, those
9 things are indicators of commercial
10 success.
11 BY MR. ANSLEY:
12 Q. So let's talk about the purchase of
13 MapMyFitness by Under Armour. In the end of
14 paragraph 75 you state, "In December 2013
15 Under Armour acquired MapMyFitness for \$150 million."
16 Do you see that?
17 A. Yes.
18 Q. And so this is one of the bases, one of
19 the two bases for your opinion that the MapMyFitness
20 suite of products has been a commercial success?
21 A. Correct.
22 Q. Do you know how MapMyFitness, the
23 valuation for -- strike that.
24 Do you know how the \$150 million valuation
25 was calculated?

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1 MR. OLINGER: Objection. Form.
2 Outside the scope.
3 THE WITNESS: I don't recall if I've
4 looked at those details or not.
5 BY MR. ANSLEY:
6 Q. So if there's any confidential information
7 you don't want to disclose, just let me know, but if
8 you are aware of confidential information I'd ask you
9 not to disclose that here.
10 But your testimony is you don't recall
11 whether you've seen how Under Armour came to the
12 conclusion that MapMyFitness was worth \$150 million?
13 You can answer.
14 MR. OLINGER: I'm trying to hear the
15 question so I can decide whether or not to
16 make an objection. I'm not preventing him
17 answering.
18 Objection. Form.
19 THE WITNESS: Can you ask the
20 question again, please?
21 BY MR. ANSLEY:
22 Q. Sure. So you testified that you do not
23 recall if you looked at the details of how
24 Under Armour calculated the \$150 million for the
25 purchase price of MapMyFitness; is that correct?

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1 A. That's correct.
2 Q. So you don't know here, sitting here,
3 whether they paid \$149 million for capital
4 investments, employees, know-how, things like that,
5 and \$1 million for the product itself, the underlying
6 technology of the product itself?
7 MR. OLINGER: Objection. Form.
8 THE WITNESS: Offhand I don't recall
9 that breakdown.
10 BY MR. ANSLEY:
11 Q. But you don't know one way or the other
12 how this \$150 million was calculated?
13 MR. OLINGER: Objection to form.
14 THE WITNESS: As I said, I don't
15 recall if I've seen that breakdown or not,
16 but sitting here today, I don't recall how
17 that was calculated.
18 BY MR. ANSLEY:
19 Q. And you don't cite any evidence in your
20 declaration about how that evidence was calculated,
21 do you?
22 MR. OLINGER: Objection. Form.
23 THE WITNESS: I don't believe so.
24 BY MR. ANSLEY:
25 Q. Do you have any expertise in evaluating

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