UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Under Armour Inc.
Petitioner

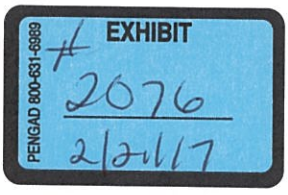
v.

adidas AG,
Patent Owner

Case No. IPR2015-00698

Patent No. 8,092,345

DECLARATION OF WILLIAM R. MICHALSON, PH.D.



I, William R. Michalson, declare as follows:

I. Introduction

1. I have prepared this Declaration for consideration by the Patent Trial and Appeal Board in connection with the above-referenced *inter partes* review proceeding.

2. I am over eighteen years of age, and I would otherwise be competent to testify as to the matters set forth herein if I am called upon to do so.

3. I have written this Declaration at the request of and have been retained by Kilpatrick Townsend & Stockton LLP, which represents Patent Owner adidas AG.

4. I am being paid for my work in this matter at the rate of $425.00 per hour, plus reimbursement of reasonable expenses. My compensation does not depend on the outcome of this matter and I have no financial interest in that outcome.

5. I have been asked to provide my opinion as to the validity of United States Patent No. 8,092,345 (the "'345 patent"). Specifically, I have been asked to evaluate the validity of claims 1-3, 6-11, 15-17, and 20 of the '345 patent.

recording device with very little or no processing power. However, the device preferably includes some type of processor such as CPU 30 for processing and controlling the various signals." Ex. 1004 at 7:53-58. Thus, Petitioner has not, and cannot establish that incorporating the database structure of DeLorme ***into the portable device*** of Mault, such that the device was capable of making the claimed data tagging manipulations of Claims 6, 7 and 8 of the '345 patent would have been nothing more than a "non-consequential design choice." Ex. 1003 at ¶ 67.

71. For these reasons, it is my opinion that Petitioner has not demonstrated that the combination of Mault and DeLorme would render claims 6 obvious. Accordingly, instituted claims 6, and claims 7 and 8 which depend on claim 6, are patentable over the combination of Mault and DeLorme.

B. Petitioner Ignores Evidence of Secondary Considerations

72. Petitioner has challenged the patentability of claims 1-3, 6-11, 15-17, and 20 on obviousness grounds. However, Petitioner has made no effort to address key secondary considerations of non-obviousness that demonstrate the patentability of the Instituted Claims. Namely, it is my opinion that Petitioner ignores evidence demonstrating the commercial success of products that embody the claimed invention, including products sold by Petitioner. Additionally, Petitioner ignores industry praise of these products that further underscores the patentability of the Instituted Patents.

73. As noted above, I understand that certain factors may be used to rebut a defense of obviousness. I have been informed that these "secondary considerations" may include, among others, (1) commercial success of the invention; (2) a long-felt but unsolved need for the invention; (3) failure of others to make the invention; (4) teaching away from the invention; (5) initial skepticism by experts; (6) subsequent professional praise in the industry; (8) acquiescence of others in the industry that the patent is valid through licensing, and (9) copying. I understand that each of these considerations may form an independent basis for non-obviousness of a patent.

74. The first secondary consideration of non-obviousness that I conclude supports the patentability of the Instituted Claims consists of evidence of commercial success. I understand that commercial success of products that embody the invention indicates that the patented invention was not obvious, so long as there is a nexus between the commercial success of a product and the patented features. I have reviewed the Declaration of Dr. Mark T. Jones, as well as publicly available information regarding MapMyFitness mobile applications. It is my conclusion that the commercial success of these mobile applications supports a finding that the Instituted Claims are not obvious.

75. The first secondary consideration of non-obviousness supporting the patentability of the Instituted Claims consists of evidence of commercial success of

products that embody the Instituted Claims. One such set of products is the MapMyFitness suite of mobile applications and associated websites sold by Petitioner. MapMyFitness, Inc. ("MMF"), headquartered in Austin, Texas, launched in 2007. *See* MapMyFitness, About Us, Ex. 2005. Reaching a total of 30 million users in 2014, MMF allows users to map, record, and share their exercise routes and workouts through its consumer brands such as MapMyRun, MapMyRide, and MapMyWalk, among others. *Id.* In comparison, research compiled by Running USA estimates the total number of runners in the United States to be 54 million. Running USA, 2014 State of the Sport – Part II: Running Industry Report, Ex. 2006. MMF specializes in building a fitness community by providing interactive tools to make fitness social. *Id.* MMF's platform enables users to find local routes, courses, groups, and events; and offers an application that provides real-time fitness utilizing the GPS capabilities in smartphones for workouts, as well as enables users to follow the route on an interactive map, while logging time, distance, speed, pace, elevation, and calories burned. *See* Bloomberg, Company Overview of MapMyFitness, Inc., Ex. 2007. In December 2013, Under Armour acquired MMF for $150 Million. *See* Under Armour, Inc. SEC Form 10-K, for the fiscal year ended December 31, 2013, Ex. 2008 at page 31.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.