

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNDER ARMOUR, INC.,
Petitioner,

v.

ADIDAS AG,
Patent Owner.

Case IPR2015-00694
Patent 7,292,867 B2

Before JENNIFER S. BISK, MICHAEL J. FITZPATRICK, and
JUSTIN BUSCH, *Administrative Patent Judges*.

FITZPATRICK, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

Petitioner, Under Armour, Inc., filed a Petition to institute an *inter partes* review of claims 1, 3, 9, 10, 12, 14–18, 23, and 24 of U.S. Patent No. 7,292,867 B2 (“the ’867 patent”) pursuant to 35 U.S.C. § 311(a). Paper 1, “Pet.” Patent Owner, adidas AG, filed a Preliminary Response pursuant to 35 U.S.C. § 313. Paper 6, “Prelim. Resp.”

We have authority to determine whether to institute an *inter partes* review. 35 U.S.C. § 314(b); 37 C.F.R. § 42.4(a). Upon consideration of the Petition and the Preliminary Response, and for the reasons explained below, we determine that the information presented does not show a reasonable likelihood that Petitioner would prevail with respect to any claim. *See* 35 U.S.C. § 314(a). Accordingly, we deny the Petition.

A. Related Matters

Patent Owner has asserted the ’867 patent along with additional patents, including related U.S. Patent No. 7,805,149 B2 and related U.S. Patent No. 8,068,858 B2, against Petitioner in *adidas AG, et. al. v. Under Armour, Inc. and MapMyFitness, Inc.*, Case No. 14-130-GMS (D. Del.). Pet. 1; Paper 5, 2. Petitioner has filed petitions to institute *inter partes* reviews of those related patents. *See* Paper 5, 2 (citing IPR2015-00695; IPR2015-00696).

B. The Asserted Grounds

Petitioner identifies the following as asserted grounds of unpatentability:

References	Basis	Claims Challenged
Gardner (Ex. 1005) ¹	§ 102(e) ²	1, 9, 10, 12, 14, 15, 16, 23, and 24
Gardner and Satava (Ex. 1007) ³	§ 103(a)	1, 9, 10, 12, 14, 15, 16, 23, and 24
Gardner and Seiple (Ex. 1009) ⁴	§ 103(a)	17
Benefon (Ex. 1006) ⁵	§ 102(b)	1, 3, 9, 10, 12, 15, 16, 18, 23, and 24
Benefon and eTrex (Ex. 1010) ⁶	§103(a)	17

Pet. 7–8.

C. The '867 Patent

The '867 patent describes “a portable fitness device including a global positioning system (GPS) receiver that receives GPS signals, a wireless wide-area network transmitter supporting communication over-the-air to a wireless communication network, and a processing unit coupled to the GPS

¹ U.S. Patent No. 7,454,002 B1, filed Jan. 8, 2001 and issued Nov. 18, 2008.

² The Leahy-Smith America Invents Act (“AIA”), Pub.L. No. 112–29, took effect on March 16, 2013. Because the application from which the '867 patent issued was filed before that date, our citations to Title 35 are to its pre-AIA version.

³ R. Satava, et. al., *The Physiologic Cipher at Altitude: Telemedicine and Real-Time Monitoring of Climbers on Mount Everest*, *Telemedicine Journal and e-Health*, Vol. 6, No. 3 (2000).

⁴ U.S. Patent No. 6,032,108, issued Feb. 29, 2000.

⁵ *BENEFON ESC!*, *Owner's Manual*, Benefon Oyj (2001).

⁶ *eTrex Summit Personal Navigator, Owner's Manual and Reference Guide*, GARMIN Corporation (Feb. 2001).

receiver and the wireless wide-area network transmitter.” Ex. 1001, 1:66–2:4. Figure 1 of the ’867 patent is reproduced below.

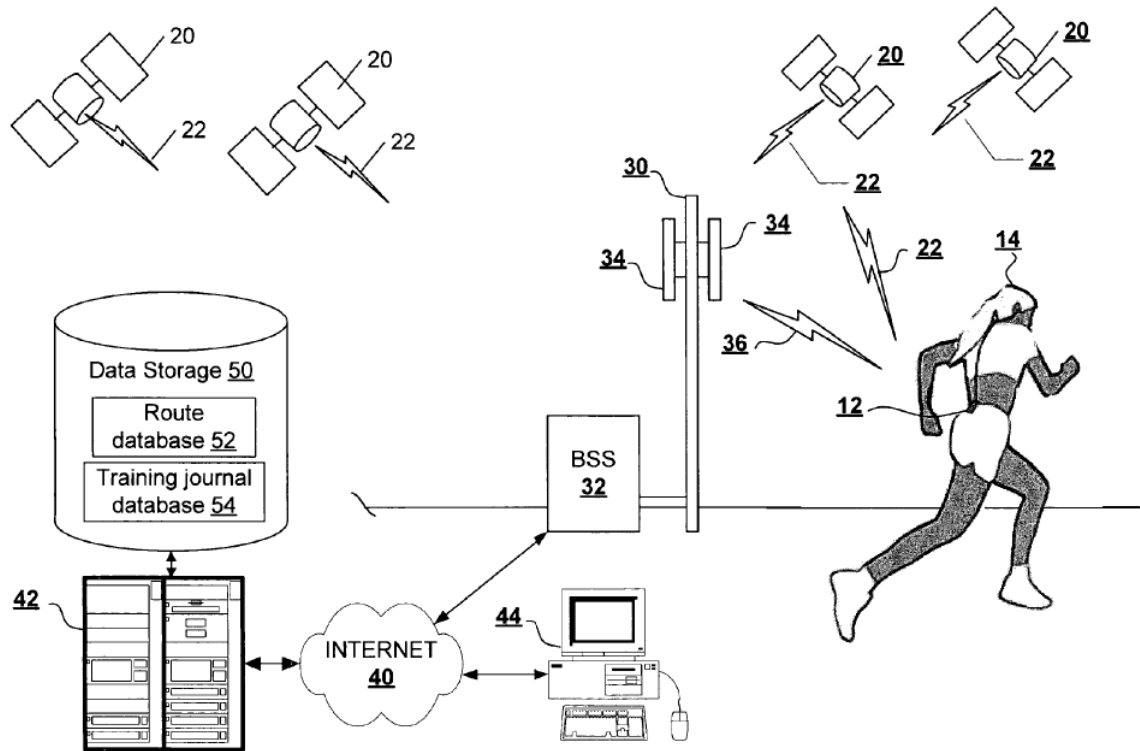


Figure 1

Figure 1 shows athlete 14 running with portable fitness device 12 on her back. Ex. 1001, 3:29–32.⁷ GPS satellites 20 emit GPS signals 22, which allow the PFD to continuously determine its position, velocity, and bearing. *Id.* at 3:34–39. A wireless wide area network is provided by cellular telephone towers 30 with antennae 34 and base station systems (BSS) 32. *Id.* at 3:40–52 (only one tower and one BSS are shown in Figure 1). The base station systems are in communication with the Internet. *Id.* at 3:52–57.

⁷ The ’867 patent uses “portable training device” interchangeably with “portable fitness device.” *See, e.g.*, Ex. 1001, 6:44–45. For simplicity, we consistently use “portable fitness device” or the acronym “PFD.”

The '867 patent describes utilizing this hardware such that a PFD's GPS receiver can receive GPS signals having time-stamped waypoints, the PFD's processor can determine athletic performance information (API) and route information from the waypoint data, and the PFD's transmitter can output API and route information over the wireless wide area network during a fitness activity. *Id.* at 2:5–12.

D. The Challenged Claims

Petitioner challenges claims 1, 3, 9, 10, 12, 14–18, 23, and 24. Pet. 2. Claims 1 and 16 are independent. Claim 1 is illustrative and reproduced below:

1. A portable fitness device, comprising:
 - a mobile phone including:
 - a global positioning system (GPS) receiver;
 - a wireless wide-area network transceiver supporting bi-directional voice communication over-the-air with a wireless communication network; and
 - a processing unit coupled to the GPS receiver and the wireless wide-area network transceiver, wherein the processing unit receives from said GPS receiver data describing a plurality of waypoints within a route of a fitness activity, determines athletic performance information at multiple of the plurality of waypoints, said athletic performance information including athletic performance information indicative of velocity and at least some of said athletic performance information being determined from the waypoints, and outputs said plurality of waypoints within the route and at least a portion of said athletic performance information to said wireless communication network during traversal of the route via said wireless wide-area network transceiver.

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