

**PUBLIC VERSION**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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In re U.S. Patent No. 8,092,345

Filed: November 13, 2009

Issued: January 10, 2012

Inventors: Michael Ellis; Caron Ellis

Title: Systems and Methods for a Portable Electronic Journal

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Mail Stop PATENT BOARD, PTAB  
Patent Trial and Appeal Board  
U.S.P.T.O.  
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**DECLARATION OF JULIE L. DAVIS**

I, Julie L. Davis, make this declaration in connection with Petitioner's Reply to Patent Owner's Response submitted by Petitioner for the *inter parties* review of U.S. Patent No. 8,092,345 ("the 345 Patent"), IPR2015-00698. All statements herein made of my own knowledge are true, and all statements herein made based on information and belief are believed to be true. I am over age 21 and otherwise competent to make this declaration. Although I am being compensated for my time in preparing this declaration, the positions articulated herein are my own, and

I have no stake in the outcome of this proceeding or any related litigation or administrative proceedings.

## **I. Background and Experience**

1. I have been providing audit and financial consulting services to attorneys and corporate clients for over thirty-seven years. The early part of my career was devoted to directing and performing independent financial audits of private and publicly held companies ranging from manufacturing entities to financial institutions at Touche Ross & Co., which at the time was one of the Big 8 accounting firms. Drawing upon that background, I have spent the last twenty-eight years consulting extensively with companies involved in business and intellectual property disputes. Prior to starting my own firm, Davis & Hosfield Consulting LLC, I served as the Partner-in-Charge of the National Intellectual Property Practice at KPMG LLP and prior to that served as the Co-Managing Partner of the Global Intellectual Asset Consulting Practice at Andersen LLP.

2. I have worked on numerous intellectual property cases during my career and have conducted complex studies of damages related thereto. These studies have included evaluations of lost sales, lost profits, incremental profits, manufacturing and marketing capacities, fixed and variable costs, product line profitability, price erosion, reasonable royalties, unjust enrichment, and prejudgment interest. I have testified in matters related to these studies.

3. In addition to intellectual property disputes, I have assisted companies in developing intellectual property strategies and managing their intellectual property portfolios. I have also conducted studies related to those portfolios including patent portfolio analyses, competitive assessments, licensing analyses, cost studies, and benchmarking studies. In addition, I have co-authored a book, *Edison in the Boardroom*, on the best practices used by leading companies in managing their intellectual property.

4. I graduated in 1978, *summa cum laude*, from Kansas State University with a Bachelor of Science degree in Business Administration and Accounting. In the same year, I earned the Gold Key in the State of Kansas for the highest score in the state on the CPA exam. I am a licensed CPA in California, Illinois, Kansas, Missouri, and Texas. I am a member of the American Institute of Certified Public Accountants, American Bar Association, and Licensing Executives Society. My curriculum vitae, which is attached as Exhibit 1, describes in more detail my professional credentials including other publications and prior testimony experience as required under Federal Rules of Civil Procedure Rule 26(a)(2)(B).

## **II. Information Relied Upon**

5. My opinions are based upon information available to me as of the date of this declaration. I, and professionals working under my direction, have relied

upon and examined documents listed in Exhibit 2, as well as publicly available information.

6. We also reviewed all filings and exhibits (including those filed or served) in connection with IPR2015-00698.

7. In addition, we reviewed the following deposition testimony:

- Deposition of Chris Glode (VP of Digital at Under Armour, Inc.), dated July 17, 2015.
- Deposition of Andrew Page (Global Controller at Under Armour, Inc.), dated June 12, 2015.
- Deposition of Scott Laing (Connected Fitness Director of Product at Under Armour, Inc.), dated July 10, 2015.
- Deposition of Robin Thurston (Chief Digital Office at Under Armour, Inc. and MapMyFitness, Inc. co-founder), dated June 30, 2015.
- Deposition of Sara Hester (Senior Manager, Digital Marketing at Under Armour, Inc.), dated July 15, 2015.
- Deposition of Christy Hedgpeth (former General Manager, Digital Sport at Under Armour, Inc.), dated July 21, 2015.

8. I also spoke with Brian Scheeler (Senior Manager, Connected Fitness, FP&A at Under Armour, Inc.) and Robin Thurston (Chief Digital Office at Under Armour, Inc. and MapMyFitness, Inc. co-founder) in forming the opinions herein.

9. My opinions are based on my skills, knowledge, experience, education, and training, as well as information gathered by and/or provided to me as of the date of this declaration.

10. I understand that I may be asked to testify regarding my opinions contained herein as well as related matters, including those raised on cross examination. I expect to further elaborate and expand on the content of my declaration as necessary to make my testimony understandable to the Board. To the extent helpful to explain, or to put in context, the subject matters discussed throughout my declaration, I also expect to provide further general explanations of the matters I discuss. In connection with any testimony, I may rely on materials referenced in this declaration and in the attachments and demonstrative exhibits to be prepared and identified before my testimony.

11. I understand that other new information may become available prior to the conclusion of these proceedings. Therefore, I will be prepared to supplement my declaration in the event that any new facts that may become known to me prior to the final written decision impact my opinions and bases therefor.

### **III. Overview of Assignment & Summary of Opinions**

12. I have been asked to review adidas's Response submitted in these proceedings and to respond to adidas's allegations that MMF's mobile applications have been commercially successful. Based on the information available to me and

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