

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

PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	THE CHALLENGED CLAIMS ARE UNPATENTABLE.....	3
A.	A POSITA Would Have Been Motivated to Combine the Teachings of Mault and DeLorme to Render Obvious Claims 1-3, 6-11, 15-17, and 20 of the 345 Patent	3
1.	Mault Teaches That a PDA Can Be Used to Record a User's Location Over Time	3
2.	A POSITA Would Have Been Motivated to Combine Mault and DeLorme	7
3.	Dr. Paradiso Was a POSITA as of the Earliest Possible Priority Date of the 345 Patent.....	11
B.	Software to Create a New Journal, to the Extent Not Disclosed by Mault, Would Have Been Obvious to a POSITA	12
C.	Formatting Journal Entries to a Common File Format Is Disclosed In Mault, Or Would Have Otherwise Been Obvious In View Of Mault	13
D.	Patent Owner Has Not Overcome the Evidence Showing That the Limitations of Claim 6-8 Would Have Been Obvious.....	16
III.	PATENT OWNER'S ARGUMENTS REGARDING PURPORTED COMMERCIAL SUCCESS AND INDUSTRY PRAISE SHOULD BE GIVEN NO WEIGHT	19
A.	Patent Owner Has Not Identified Any Evidence of Commercial Success.....	20
B.	Patent Owner Has Not Established a Nexus Between the Purported Commercial Success and the Instituted Claims	23
C.	Patent Owner Has Not Established a Nexus Between the Purported Industry Praise and the Instituted Claims.....	24
IV.	CONCLUSION.....	25

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>ABT Sys., LLC v. Emerson Elec. Co.</i> , 797 F.3d 1350 (Fed. Cir. 2015)	21
<i>In re Chevalier</i> , 500 Fed. Appx. 932 (Fed. Cir. 2013).....	10, 11
<i>Gator Tail, LLC v. Mud Buddy LLC</i> , 618 F. App'x 992 (Fed. Cir. 2015).....	22
<i>In re Huang</i> , 100 F.3d 135 (Fed. Cir. 1996)	20, 23
<i>In re Kao</i> , 639 F.3d 1057 (Fed. Cir. 2011)	21, 23
<i>KSR Int'l Co. v. Teleflex Inc.</i> , 550 U.S. 398 (2007).....	2, 15, 16
<i>St. Jude Med., Cardiology Div., Inc., Petitioner</i> , IPR2013-00014, 2014 WL 1783276 (May 1, 2014)	20

I. INTRODUCTION

The present Reply is directed to the instituted ground that claims 1-3, 6-11, 15-17, and 20 of U.S. Patent No. 8,092,345 (the "345 Patent") (UA-1001) are obvious over U.S. Patent No. 6,513,532 ("Mault") (UA-1004) in view of U.S. Patent No. 6,321,158 ("DeLorme") (UA-1005).

Patent Owner argues that: (1) a person of ordinary skill in the art ("POSITA") would not be motivated to combine Mault and DeLorme; (2) it was not obvious to use software to create the claimed "journal" and to format journal entries to a common file format as required by claims 1 and 20; and (3) Mault in view of DeLorme does not render the "database" limitations of claims 6-8 obvious. These arguments, including Patent Owner's attempt to show secondary considerations, do not save the validity of the instituted claims.

In arguing that a skilled artisan would not combine Mault and DeLorme, Patent Owner argues, including that Petitioner mischaracterizes the prior art. But there simply is no getting around the fact that Mault and DeLorme both disclose worn or carried GPS-enabled devices to track the user. Patent Owner also claims that DeLorme's GPS device should not be used for navigation or the precise measurement of distance or direction, even though DeLorme discloses that its GPS device is used for these very purposes. In fact, any suggestion by DeLorme that GPS lacked precision is negated by the fact that after DeLorme was written, and

before the priority date of the 345 Patent, the U.S. Government turned off “selective availability,” which restricted the precision of civilian GPS devices. A POSITA would therefore have not been dissuaded from applying the teachings of DeLorme to the system disclosed by Mault.

Patent Owner's remaining challenges focus on common elements well-known to POSITAs and taught by Mault and/or DeLorme (journal software, common file formats, and databases). As such, these arguments cannot overcome the obviousness of the claims. “[A] ‘patent for a combination which only unites old elements with no change in their respective functions ... obviously withdraws what is already known into the field of its monopoly and diminishes the resources available to skillful men.’” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007) (citations omitted). Here, and as further detailed below, Mault or the combination of Mault and DeLorme teaches the familiar (*i.e.*, old) elements of installing, configuring, or setting up software for use and formatting data to a common file format. Further, Patent Owner makes no argument (nor could it) that the 345 Patent claims use such old elements in a new way. Accordingly, the claims are obvious.

Finally, Patent Owner's reliance on alleged evidence of secondary considerations wholly fails, at least because Patent Owner fails to establish a nexus between the claims and any evidence of commercial success or industry praise.

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.