

Petitioner's Motion to Exclude Evidence

IPR2015-00698

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

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 MOTION TO EXCLUDE

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PETITIONER'S EXHIBIT LIST

Exhibit Number	Description
1001	U.S. Patent No. 8,092,345 to Ellis et al.
1002	Docket Report for Civil Action No. 1:14-cv-00130-GMS (excerpt)
1003	Expert Declaration of Dr. Joseph Paradiso
1004	U.S. Patent No. 6,513,532 to Mault et al.
1005	U.S. Patent No. 6,321,158 to DeLorme et al.
1006	Ari T. Adler, <i>A Cost-Effective Portable Telemedicine Kit for Use in Developing Countries</i> (May 2000) (M.S. thesis, Massachusetts Institute of Technology) (on file with MIT Libraries) (" <i>Telemedicine Kit</i> ")
1007	U.S. Patent no. 6,790,178 to Mault et al.
1008	NavTalk™ Cellular Phone/GPS Receiver, Owner's Manual and Reference Guide (January 2000)
1009	Toshiba Satellite 2530CDS Product Specifications (February 2000)
1010	U.S. Patent No. 5,864,870 to Guck et al.
1011	Reply Expert Declaration of Dr. Joseph Paradiso
1012	October 21, 2015 deposition transcript of Dr. William Michalson
1013	MapMyFitness, Inc.'s non-infringement contentions (Excerpt of Defendant MapMyFitness, Inc.'s Supplemental Objections and Responses to Plaintiffs' First Set of Interrogatories (Nos. 3, 6-12))
1014	Expert Declaration of Julie Davis
1015	Biography of Zac Garthe
1016	Biography of Robert T. Vlasis

I. RELIEF REQUESTED

Petitioner requests the Board to exclude the following evidence relied upon by Patent Owner under Federal Rules of Evidence (“FREs”) 402, 701, 702, and 901: Exs. 2003, 2005-2022, and paragraphs 72-86 from Ex. 2002, the Declaration of William R. Michalson, Ph.D. This evidence is used solely to support Patent Owner's assertions of commercial success and industry praise of certain mobile applications accused of infringing the 345 Patent in a co-pending district court litigation. Because there is no finding—nor can there be in this proceeding—that these mobile applications practice the 345 Patent claims (*see See St. Jude Med., Cardiology Div., Inc. v. Bd. of Regents of the Univ. of Mich.*, No. IPR2013-00041, 2014 WL 1783276, at *20 n.10 (May 1, 2014)), there is no nexus to make Patent Owner's secondary considerations analysis relevant under FRE 401. Moreover, Dr. Michalson's testimony on secondary considerations in paragraphs 72-86 of his declaration should be excluded under FREs 701 and 702. Dr. Michalson does not possess the qualifications to render an opinion on the commercial success of products, and his entire secondary considerations analysis is fundamentally unreliable—and therefore inadmissible—under *Daubert* and its progeny. Finally, Patent Owner has offered no evidence from a witness with adequate knowledge to authenticate Exhibits 2007 and 2017-2020 under FRE 901.

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