

UNITED STATES DISTRICT  
DISTRICT OF DELAWARE  
Case No. 14-130-GMS

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ADIDAS AG and )  
ADIDAS AMERICA, INC., )  
Plaintiffs )  
vs. )  
UNDER ARMOUR, INC., and )  
MAPMYFITNESS, INC., )  
Defendants )  
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VOLUME I  
VIDEOTAPED DEPOSITION OF WILLIAM R. MICHALSON  
Wednesday, October 21, 2015  
BOSTON, MASSACHUSETTS  
9:04 A.M.

Reported By: Sandra A. Deschaine, CSR, RPR, CLR, CRA  
Job No. 15097

OCTOBER 21, 2015  
9:04 A.M.

Deposition of WILLIAM R. MICHALSON,  
held at the offices Weil, Gotshal & Manges  
LLP, 100 Federal Street, Boston,  
Massachusetts, pursuant to Notice before  
Sandra A. Deschaine, a Shorthand Reporter,  
Registered Professional Reporter, Certified  
LiveNote Reporter, Real-Time Systems  
Administrator, and Notary Public of the State  
of Massachusetts.

INDEX

-----  
WITNESSES: PAGE  
-----

William R. Michalson  
By Mr. Desai 7

-----  
EXHIBITS: DESCRIPTION PAGE  
-----

MICHALSON EXHIBITS VOLUME I  
Exhibit 1 U.S. Patent No. 7,292,867 35  
Exhibit 2 Rebuttal Export Report of  
William Michalson, Ph.D. 69  
  
Exhibit 3 Exhibit 1, Curriculum of  
William R. Michalson 70  
Exhibit 4 Exhibit 2, List of  
Materials Considered 70  
  
Exhibit 5 U.S. Patent No. 7,805,149 80  
Exhibit 6 U.S. Patent No. 7,957,752 80  
Exhibit 7 U.S. Patent No. 7,957,752 80  
Exhibit 8 U.S. Patent No. 8,244,226 80  
Exhibit 9 Find A Hike 87  
Exhibit 10 Expert Report of Dr.  
Shawn Burke 102  
Exhibit 11 Benefon ESC!  
Owner's Manual 114

(Exhibits continued)

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Also Present: Shawn Budd

INDEX (continued)

-----  
EXHIBITS: DESCRIPTION PAGE  
-----

Exhibit 12 Creating Location Services  
for the Wireless Web. 114  
  
Exhibit 13 Mobile Phone Telematics  
Protocol Specification 126  
Exhibit 14 Benefon Corp., Version 1.0 128  
Exhibit 15 Exhibit 3, NavTalk GSM  
Owner's Manual 141  
  
Exhibit 16 International Publication  
W003/007014 A1 147  
Exhibit 17 Telemedicine and e-Health 163  
Exhibit 18 Hand-drawn diagram 201  
Exhibit 19 U.S. Patent No. 7,454,002 230

1 THE VIDEOGRAPHER: We are on the  
2 record. This is the videographer speaking,  
3 Shawn Budd, with Transperfect Legal  
4 Solutions. Today's date is October 21st,  
5 2015, and the time is 9:04 a.m.

6 We are here in Boston,  
7 Massachusetts, to take the video  
8 deposition of William Michalson in the  
9 matter of adidas AG and adidas America,  
10 Inc., versus Under Armour and  
11 MapMyFitness, Inc.

12 Would counsel please introduce  
13 themselves?

14 MR. DESAI: Anish Desai and  
15 Sutton, and we're for Under Armour.

16 MR. OLINGER: Jonathan Olinger and  
17 Mitch Stockwell here for Plaintiff  
18 adidas.

19 THE VIDEOGRAPHER: And would the  
20 court reporter please swear in the  
21 witness?

22 WILLIAM R. MICHALSON, Deponent,  
23 having first been satisfactorily identified  
24 by the production of his Massachusetts  
25 driver's license and duly sworn by the Notary

1 Q. Is it more than ten hours?

2 A. Certainly.

3 Q. Is it more than a hundred hours?

4 A. Probably.

5 Q. More than 200 hours?

6 A. If I were to guess, I would guess  
7 it's going to be between -- somewhere between  
8 a hundred and 200 hours.

9 Q. Okay. Well, at one of your  
10 breaks, I think I'd like you to find out for  
11 sure.

12 A. I won't be able to do that, I  
13 don't think. I'll try. I'll see what I can  
14 do.

15 Q. You don't keep track of your  
16 hours?

17 A. I do. I just don't have those  
18 records with me.

19 Q. Are you able to access those  
20 records?

21 A. I don't think so, but I will see  
22 what I can do. I don't think I can access  
23 them all.

24 Q. How many times have you testified,  
25 as an expert witness, in a patent case?

1 Public, was examined and testified as  
2 follows:

3 EXAMINATION

4 BY MR. DESAI:

5 Q. Good morning, Dr. Michalson.

6 A. Good morning.

7 Q. When were you retained by the  
8 Plaintiff adidas to provide opinions in this  
9 litigation?

10 A. I don't recall specifically. I'd  
11 have to go back and look at the engagement  
12 letter.

13 Q. Was it this year, the year before?

14 A. I don't recall.

15 Q. How many hours have you worked on  
16 this litigation to date?

17 A. Well, I'm a little bit back on my  
18 invoices. I don't really know how many hours  
19 I've put in since my last invoice. I haven't  
20 recorded them yet.

21 Q. You have no idea how many hours  
22 approximately you've worked on this case?

23 A. I'm really not sure. I don't -- I  
24 haven't entered that recently so I haven't  
25 looked at that.

1 A. Many. Dozens.

2 Q. Roughly speaking, how many times  
3 have you provided an opinion that a patent  
4 that was issued by the U.S. Patent Office was  
5 invalid?

6 A. Probably dozens.

7 Q. There are two sets of patents in  
8 this case, the Werner patents and the Ellis  
9 patents; is that right?

10 A. Correct.

11 Q. Okay.

12 And the named inventors of the  
13 Werner patents are John Werner and Scott  
14 Doyle; correct?

15 A. I believe so, yes.

16 THE REPORTER: I'm sorry, what  
17 were the names?

18 MR. DESAI: John Werner and Scott  
19 Doyle.

20 BY MR. DESAI:

21 Q. Have you ever spoken to either of  
22 these gentlemen before?

23 A. No.

24 Q. Have you had any email  
25 communications with them?

1 A. No.  
 2 Q. The named inventors of the Ellis  
 3 patents are Michael Ellis and Caron Schwartz;  
 4 is that correct?  
 5 A. That sounds correct.  
 6 Q. Okay.  
 7 Have you ever spoken or  
 8 communicated with either of them before?  
 9 A. No.  
 10 Q. Okay.  
 11 Dr. Michalson, who was responsible  
 12 for creating the global system -- Global  
 13 Positioning System, GPS?  
 14 A. That's a very big question.  
 15 Q. Can you answer it?  
 16 A. It was conceived and initially  
 17 implemented by the U.S. Air Force under the  
 18 direction of, at the time, Kernel Brad  
 19 Parkinson.  
 20 Q. And when did that take place,  
 21 approximately? What decade?  
 22 A. '70s.  
 23 Q. Since the time -- so you said it  
 24 was originally conceived and implemented by  
 25 the U.S. Air Force. Have other parties been

1 Do you mean when could some -- a  
 2 civilian receive a GPS signal.  
 3 Q. Yeah, that's what I mean.  
 4 A. Probably early '80s you could  
 5 perceive some of the block one satellite  
 6 signals.  
 7 Q. Okay.  
 8 Has the availability of the  
 9 satellites to the public changed over time?  
 10 A. There have been a lot of changes  
 11 to the GPS system over time. It was first  
 12 declared operational in the '90s.  
 13 Q. What does that mean, that it was  
 14 declared operational in the '90s?  
 15 A. That meant that the Air Force had  
 16 enough confidence in the system that they  
 17 could rely on the specifications of that  
 18 system.  
 19 Q. When, in the '90s, did that  
 20 happen?  
 21 A. I believe IOC, which was the  
 22 initial operational capability was  
 23 announced -- I would have to check the date.  
 24 I want to say '95.  
 25 Q. Now, just so lay people aren't

1 involved in the creation of the system since  
 2 then?  
 3 A. What do you mean by "the creation  
 4 of the system"?  
 5 Q. Well, I'm referring to the  
 6 satellites and the GPS satellites that are  
 7 orbiting the earth.  
 8 A. Well, the satellites are created  
 9 by a contractor for the Air Force.  
 10 Q. Okay.  
 11 A. I know there have been -- I mean,  
 12 there are several contractors that would be  
 13 involved in that.  
 14 Q. Who is ultimately in control of  
 15 the satellites?  
 16 A. Right now there's a Joint Program  
 17 Office, and the control of the satellites is  
 18 shared by the Department of Transportation  
 19 and the Department of Defense. I believe the  
 20 actual flight control center is manned by Air  
 21 Force personnel.  
 22 Q. When was the collection of GPS  
 23 satellites made available for public use?  
 24 A. Again, that's a difficult question  
 25 in some ways.

1 confused, the system was working before 1995,  
 2 but it was just declared to be fully  
 3 operational after that time? I'm just --  
 4 A. Well, there was a period of time  
 5 when they didn't have a complete  
 6 constellation, and they also did not have  
 7 enough recorded data to be able to rely on --  
 8 reliably meet the specifications. There were  
 9 periods when satellites might be taken off  
 10 arbitrarily. So if you are using GPS for any  
 11 particular application, its performance  
 12 wasn't guaranteed before it was declared  
 13 operational. Once it was declared  
 14 operational, that meant that it had a certain  
 15 minimum operational capability.  
 16 Q. Okay.  
 17 Did you have any role in the  
 18 design and development of the GPS system?  
 19 A. The GPS satellites themselves, no.  
 20 Q. Okay.  
 21 Did you -- it sounds like you had  
 22 some other role.  
 23 A. I did a fair amount of work with  
 24 the F- -- sponsored by the FAA in evaluating  
 25 what they call receiver autonomous integrity

1 monitoring algorithms. There was a period of  
2 time where the FAA wanted to be able to  
3 approve GPS for use in civilian aircraft  
4 navigation; and in order to do that, they had  
5 to be able to verify the integrity and  
6 reliability and verify that that met the  
7 standards of the FAA. So some of the work  
8 that I was involved with early on was  
9 involving the valuation and test of  
10 algorithms for performing that receiver  
11 autonomous integrity monitoring.

12 So I worked with the RTCM --  
13 excuse me -- the RTCA working groups that  
14 were putting together the specifications that  
15 ultimately would be used by the FAA to draft  
16 their regulations.

17 Q. So you mentioned GPS receivers,  
18 and is it fair to say that the, you know, two  
19 basic components of the GPS system are the  
20 receivers that are located on the ground or  
21 on the surface of the earth and the  
22 satellites orbiting the earth?

23 A. No, not really. There's a third  
24 part that would be the control system.

25 Q. Okay.

1 against us, and therefore they implemented  
2 selective availability to reduce the accuracy  
3 of a civilian receiver.

4 Q. Okay.

5 So selective availability was a  
6 way for the U.S. Government to intentionally  
7 limit the accuracy of GPS receivers available  
8 to the public?

9 A. At that time, yes.

10 Q. And when did that -- when did  
11 selective availability, you know, get  
12 switched off or turned off?

13 A. I believe it was May 1st, 2000.  
14 Yeah, I think it was 2000.

15 Q. So before selective availability  
16 was switched off, so before May 2000, what  
17 was the accuracy of a civilian GPS receiver?

18 A. That depends upon whether  
19 selective availability was on or off or  
20 whether or not you were using differential  
21 corrections. Very often selective  
22 availability was off, in which case your  
23 receiver would be three to five meter  
24 accuracy, typically.

25 With selective availability on, it

1 So then is it fair to say that the  
2 GPS system is composed of the satellites, the  
3 receivers on the ground and a control  
4 system?

5 A. Yeah, the ground control, yes.

6 Q. Okay.

7 And you had some involvement in  
8 designing and evaluating GPS receivers;  
9 correct?

10 A. Yes.

11 Q. Okay.

12 But you had no involvement in  
13 designing or developing the control center or  
14 the GPS satellites; correct?

15 A. Correct.

16 Q. Okay.

17 Have you heard of the term  
18 "selective availability"?

19 A. Yes.

20 Q. What does that mean to you?

21 A. What selective availability was,  
22 was a mechanism for reducing the achievable  
23 accuracy of the GPS receiver. There was a  
24 period of time that the military was  
25 concerned that the GPS system could be used

1 would be -- it would be around a hundred  
2 meter extremes, but the average accuracy  
3 would be very high. So if you averaged over  
4 several minutes, you'd be able to get a very  
5 accurate position even in the presence of  
6 selective availability; or if you had a  
7 differential correction, you'd be able to  
8 get, you know, one to three meter  
9 positioning.

10 Q. So I guess are you saying that  
11 selective availability didn't really work the  
12 way it was supposed to?

13 A. No, that's not what I'm saying.

14 Q. Okay.

15 So was the U.S. Government  
16 actually able to prevent civilians from  
17 having GPS receivers that could provide three  
18 to five meter accuracy before switching off  
19 selective availability?

20 A. Well, the way you phrased that, I  
21 think the answer is no.

22 Q. Okay.

23 Why did the government switch off  
24 selective availability; do you know?

25 A. There are a lot of reasons. I

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