

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

ADIDAS AG and)
ADIDAS AMERICA, INC.,)
Plaintiffs)
vs.)
UNDER ARMOUR, INC., and)
MAPMYFITNESS, INC.,)
Defendants)

VOLUME II
VIDEOTAPED DEPOSITION OF WILLIAM R. MICHALSON
Wednesday, October 22, 2015
Boston, Massachusetts

Sandra A. Deschaine, CSR, RPR, CLR, CRA
Job No. 15098

1
 2 OCTOBER 22, 2015
 3 9:08 A.M.
 4 Deposition of WILLIAM R. MICHALSON,
 5 held at the offices Weil, Gotshal & Manges
 6 LLP, 100 Federal Street, Boston,
 7 Massachusetts, pursuant to Notice before
 8 Sandra A. Deschaine, a Shorthand Reporter,
 9 Registered Professional Reporter, Certified
 10 LiveNote Reporter, Realtime Systems
 11 Administrator, and Notary Public of the State
 12 of Massachusetts.
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 3 I N D E X
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 6 WITNESSES: PAGE
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 8 William R. Michalson
 9
 10 By Mr. Desai (continued examination) 254
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 12 EXHIBITS: DESCRIPTION PAGE
 13 -----
 14 MICHALSON EXHIBITS VOLUME II
 15 Exhibit 20 U.S. Patent No. 8,579,767 254
 16 Exhibit 21 Exhibit 8, GPS II Plus
 17 Owner's Manual 254
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 19 Exhibit 22 Exhibit 1, NavTalk Owner's
 20 Manual 254
 21 Exhibit 23 U.S. Patent No. 8,652,009 279
 22 Exhibit 24 U.S. Patent No. 8,721,502 298
 23 Exhibit 25 U.S. Patent No. 6,002,982 309
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 25 Exhibit 27 Hand-drawn diagram 337
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1
 2 APPEARANCES:
 3 ON BEHALF OF THE DEFENDANTS:
 4 KILPATRICK TOWNSEND & STOCKTON LLP
 5 Jonathan Orlinger, Esquire
 6 Mitchell Stockwell, Esquire
 7 1100 Peachtree Street, Suite 2800
 8 Atlanta, Georgia 30309-4528
 9 T. 404.745.2494 F. 404.815.6555
 10 jolinger@kilpatricktownsend.com
 11 mstockwell@kilpatricktownsend.com
 12
 13 ON BEHALF OF THE PLAINTIFFS:
 14 WEIL, GOTSHAL & MANGES LLP
 15 Anish Desai, Esquire
 16 W. Sutton Ansley, Esquire
 17 1300 Eye Street N.W., Suite 900
 18 Washington, DC 20005-3314
 19 T. 202.682.7000
 20 anish.desai@weil.com
 21 sutton.ansley@weil.com
 22
 23 Also Present: Shawn Budd
 24
 25

1
 2
 3
 4 (Exhibit 20, U.S. Patent No. 8,579.767,
 5 marked for identification.)
 6 (Exhibit 21, Exhibit 8, GPS II Plus Owner's
 7 Manual, marked for identification.)
 8 (Exhibit 22, Exhibit 1, NavTalk Owner's
 9 Manual, marked for identification.)
 10 THE VIDEOGRAPHER: Okay. We are
 11 back on the record. This is Day 2 in
 12 the video deposition of William
 13 Michalson. Today's date is October
 14 22nd, 2015, and the time is 9:08 a.m.
 15 You may continue.
 16 CONTINUED EXAMINATION
 17 BY MR. DESAI:
 18 Q. Good morning, Dr. Michalson.
 19 Could you take out Exhibit 18? It
 20 was the drawing that I made yesterday.
 21 A. Okay.
 22 Q. Okay.
 23 And I was asking you yesterday
 24 about whether, what I had drawn there, that
 25 display, and based on the assumptions I had

1 described, whether that fell within the scope
 2 of the '858 Patent.
 3 Now, let's assume that the dotted
 4 line that I've drawn there is a trail that is
 5 based on a collection of position points that
 6 were obtained using a position monitor, like
 7 a GPS. Okay?
 8 A. Okay.
 9 Q. And then, at some point, those --
 10 that collection of position points are
 11 plotted on that display like that. Okay?
 12 A. Okay.
 13 Q. Does the display that I've now
 14 described to you and what's shown in
 15 Exhibit 18 still fall within the scope of the
 16 claims of the '858 Patent?
 17 MR. OLINGER: Objection, vague,
 18 incomplete hypothetical.
 19 A. You're talking about the display
 20 that I'm seeing, that you've drawn here on
 21 this Exhibit 18?
 22 Q. With the explanation of how that
 23 dotted line came to be, that it's based on a
 24 collection of position points that were
 25 obtained from a position monitor, like a GPS

1 A. Yes.
 2 Q. Okay.
 3 Did conventional GPS devices,
 4 portable GPS devices that existed before the
 5 priority date of this patent, have the
 6 ability to display performance information on
 7 a display?
 8 A. Performance information such as?
 9 Q. What -- what's -- I guess one
 10 example in the claims is speed.
 11 MR. OLINGER: Objection,
 12 incomplete hypothetical.
 13 A. Some devices could display speed.
 14 Q. So there were conventional GPS --
 15 I'm sorry. Strike that.
 16 There were conventional portable
 17 GPS devices that existed before the prior
 18 date of this patent, that could display
 19 performance information, like speed, on the
 20 display?
 21 A. Yes. I think that's correct.
 22 Q. Okay.
 23 Claim 7 adds another requirement,
 24 that the individual's present location is
 25 displayed on a map during a physical

1 receiver.
 2 MR. OLINGER: Same objections.
 3 A. As it -- as it's shown here,
 4 because you've got -- you've got the map that
 5 the position points are relating -- are
 6 related to, yes. I think it does.
 7 Q. Okay.
 8 You can put that aside now.
 9 All right. I'm going to hand you
 10 what's been marked as Exhibit 20, and this is
 11 the Ellis '767 Patent.
 12 Okay. Could you take a look at
 13 Claim 6 and 7 of the '767 Patent?
 14 (Witness reviewing document.)
 15 A. Okay.
 16 Q. Okay.
 17 And Claim 7 -- sorry. It's Claim
 18 6. Requires that performance information is
 19 visually displayed on the portable device;
 20 right?
 21 A. Can you say that again, please?
 22 Q. Sure. It's Claim 6. Requires
 23 that performance information is visually
 24 displayed on the display of the performance
 25 monitoring device, the portable device?

1 activity; right?
 2 A. Yes.
 3 Q. Okay.
 4 Same question. Were there
 5 portable GPS devices that existed before the
 6 prior date of this patent, that would display
 7 an individual's current location on a map
 8 during a physical activity?
 9 A. We'd have to look at some devices
 10 to see if they have. This has priority back
 11 to, potentially, 2001. So there were
 12 certainly devices by that time that would
 13 display position on a map. Whether that
 14 display included speed or not, I -- I'd want
 15 to look at more -- a specific reference.
 16 Q. Okay.
 17 We can do that. I'll come back to
 18 that in a -- in a few moments.
 19 Why don't we go to Claim 12.
 20 And Claim 12 requires, "receiving
 21 a personal annotation and storing the
 22 personal annotation in association with one
 23 or more position points in a memory of a
 24 portable a device"; right?
 25 A. Correct.

1 Q. Okay.
 2 Is this a step that was performed
 3 by a conventional portable GPS device?
 4 MR. OLINGER: Objection, vague.
 5 BY MR. DESAI:
 6 Q. Before the priority date of this
 7 patent?
 8 MR. OLINGER: Same objection.
 9 A. Yeah, I think that's one that I'd
 10 want to take a look at a specific device.
 11 Q. Okay.
 12 I'll hand you what's marked as
 13 Exhibit 21. And Exhibit 21 is the Garmin
 14 GPS II Plus Manual, and it's labeled -- well,
 15 there's two sets of Bates labels on it.
 16 There's MMF02497300 is the first label.
 17 Are you familiar with this device?
 18 A. Yes, I've seen this device before.
 19 Q. And this device is prior art to
 20 the Ellis Patents; correct?
 21 A. It appears to be.
 22 Q. Why don't you skip to MMF249765.
 23 MR. OLINGER: Can you say that
 24 page again, please?
 25 MR. DESAI: 249765.

1 A. That would be correct, yes.
 2 Q. Okay.
 3 So does that inform you as to
 4 whether the step that's described in 12 -- in
 5 Claim 12 of the '767 Patent, it was performed
 6 in a conventional GPS device?
 7 MR. OLINGER: Objection, vague.
 8 (Witness reviewing document.)
 9 A. Could you repeat the question
 10 again, please?
 11 Q. Yeah. I just want to know if what
 12 I -- what we just discussed about the Garmin
 13 GPS II Plus, informs you as to whether the
 14 steps that are described in Claim 12 of the
 15 '767 Patent were steps that were performed by
 16 a conventional GPS device that existed before
 17 the priority date of the '767 Patent?
 18 A. And in this -- in this context,
 19 are you referring -- are you saying that the
 20 GPS III is the performance monitoring device
 21 that is being mentioned in Claim 12?
 22 Q. Yeah. It's the portable device,
 23 yes.
 24 A. Well, I mean, Claim 12
 25 specifically requires that the portable

1 MR. OLINGER: Thank you.
 2 THE WITNESS: Okay.
 3 BY MR. DESAI:
 4 Q. Okay.
 5 And so this, starting at this page
 6 and proceeding to page -- let's just say 774.
 7 There's a discussion in this manual about
 8 marking, labeling, and storing waypoints;
 9 correct?
 10 A. Yes.
 11 Q. As part of this functionality, a
 12 user can mark a waypoint, which is a
 13 position; right?
 14 A. Yes, that's correct.
 15 Q. And then they can associate, with
 16 that position, a name; is that right?
 17 A. They can store a name with that
 18 waypoint, yes.
 19 Q. And they can also associate a
 20 symbol with that waypoint?
 21 A. Yes.
 22 Q. Okay.
 23 And the waypoint and the symbol
 24 and the name are all stored in the memory of
 25 the device; right?

1 performance measuring device.
 2 So to the extent that you're
 3 considering the GPS II to be that portable
 4 measuring device, it would have those
 5 elements of being able to annotate of the
 6 waypoint as described in Claim 12.
 7 Q. Okay.
 8 And if we look at Claim 13, that
 9 requires that you select from a number of
 10 predefined annotations; right?
 11 A. Correct.
 12 Q. Okay.
 13 And I think we saw in the manual
 14 that you could select from predefined
 15 annotations, which were those symbols; right?
 16 I can point you to the page,
 17 again, if you'd like. It's Page 249772.
 18 A. Yes, you could select from a
 19 series of predefined symbols.
 20 Q. All right.
 21 Claim 14 of the '767 Patent. That
 22 requires the step of receiving an incoming
 23 communication via the wireless wide-area
 24 network transceiver during the physical
 25 activity; correct?

1 A. Correct.
 2 Q. Does receiving a phone call
 3 satisfy that step?
 4 MR. OLINGER: Objection, vague.
 5 Q. I mean, I can -- Claim 16,
 6 actually, specifically adds that. So, I
 7 mean, if that helps you answer the question.
 8 A. That would be one of the forms of
 9 communications.
 10 Q. So --
 11 A. That -- that would fulfill
 12 Claim 14.
 13 Q. So --
 14 A. Or at least that dependent
 15 Claim 14.
 16 Q. Yeah. I'm -- I'm obviously not
 17 asking you to admit that -- all of the
 18 previous elements. That's not part of my
 19 question.
 20 I'm focusing --
 21 A. That's -- in answering these, but
 22 that's my understanding, that -- that we're
 23 not -- we're just looking at the dependent
 24 language or the dependent claim.
 25 Q. Yeah.

1 A. If the ringer is enabled, yes. I
 2 mean, I think they all had the ability to
 3 turn that off as well.
 4 Q. Okay.
 5 So --
 6 A. So -- so just because you have a
 7 cell phone, doesn't necessarily mean you're
 8 going to receive a notification.
 9 Q. Okay.
 10 Do you think, in 2001, it was a
 11 novel idea to notify an individual of a phone
 12 call via an output device?
 13 A. That capability existed in -- in
 14 phones of the time.
 15 Q. All right.
 16 I'm going to hand you what's being
 17 marked as Exhibit 22.
 18 THE REPORTER: I don't think
 19 that's 22. 22?
 20 MR. DESAI: The last one was 21.
 21 Yeah. Definitely.
 22 MR. OLINGER: This one -- this one
 23 was marked -- the one -- the last one
 24 you handed me, you marked 21.
 25 MR. DESAI: Yeah. Okay. Yeah.

1 So the step in Claim 14 can be
 2 performed if someone's walking and they
 3 receive a phone call on a portable device;
 4 right?
 5 A. That appears to be true.
 6 Q. Okay.
 7 In 2001, when this patent was --
 8 the provision was filed, do you think that
 9 was a novel idea, to receive a phone call
 10 while you're walking?
 11 A. No.
 12 Q. Okay.
 13 Claim 15. It's -- depends on --
 14 from Claim 14, and it requires that you
 15 "notify the individual of the incoming
 16 communication," which we've already discussed
 17 can be a phone call; right?
 18 A. Correct.
 19 Q. Okay.
 20 And every cellular phone since, I
 21 think they've been made, will notify the --
 22 the individual of an incoming phone call;
 23 right?
 24 MR. OLINGER: Objection,
 25 incomplete hypothetical.

1 THE REPORTER: Okay. Sorry.
 2 MR. DESAI: That's okay.
 3 BY MR. DESAI:
 4 Q. All right.
 5 Here's Exhibit 22, and this is the
 6 NavTalk Owner's Manual, and the beginning
 7 Bates label is MMF0249332. Okay.
 8 And you're familiar with the
 9 NavTalk phone; right?
 10 A. Yes.
 11 Q. Okay.
 12 And this is prior art to the Ellis
 13 patents; correct?
 14 MR. OLINGER: Calls for a legal
 15 conclusion.
 16 Sorry. Did you hear me?
 17 THE REPORTER: Barely, but yes.
 18 MR. OLINGER: Sorry about that. I
 19 realized I was speaking softly.
 20 THE WITNESS: The copyright date
 21 on this is 1999, so.
 22 BY MR. DESAI:
 23 Q. Okay.
 24 Did you review a declaration from
 25 an individual from Garmin that explained when

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