

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 OPPOSITION TO
PATENT OWNER'S MOTION TO EXCLUDE**

PUBLIC VERSION – CONTAINS REDACTIONS

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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	Transcript of February 5, 2016 deposition 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
1017	Transcript of October 21-22, 2015 deposition of Dr. William Michalson (Part I)
1018	Transcript of October 21-22, 2015 deposition of Dr. William Michalson (Part II)
1019	Petitioner's September 9, 2015 Responses to Patent Owner's Objections to Admissibility of Evidence
1020	<i>Santarus, Inc. v. Par Pharmaceutical, Inc.</i> , No. 07-551 (GMS), Document 163 (D. Del. June 26, 2009)

I. INTRODUCTION

In its motion, Patent Owner requests that the Board exclude the declaration of Ms. Julie Davis (UA-1014) under Federal Rules of Evidence (“FREs”) 702, 402, and 403, the February 5, 2016 deposition testimony of Dr. William Michalson (UA-1012) under FRE 901, the October 21, 2015 deposition testimony of Dr. Michalson under 37 C.F.R. § 42.53, and the NavTalk Cellular Phone/GPS Receiver Owner's Manual and Reference Guide (UA-1008) under FRE 402 and 403.

The crux of Patent Owner's argument that Ms. Davis's declaration should be excluded under FRE 702 stems from a disagreement over her opinion about whether any commercial success of the MapMyFitness *apps* can be attributed to (1) the number of users and (2) the purchase price of the MapMyFitness company. This disagreement, however, does not render Ms. Davis's opinion inadmissible. *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 595 (1993) (“The focus, of course, must be solely on principles and methodology, not on the conclusions that they generate.”); *Kannankeril v. Terminix Int'l, Inc.*, 128 F. 3d 802, 807, 809 (3d Cir. 1997) (reversing exclusion of expert and cautioning that the “trial judge must be careful not to mistake credibility questions for admissibility questions”) Moreover, as detailed below, Ms. Davis is qualified as an expert, applies a reliable methodology (which has withstood the rigors of *Daubert* in past cases), and relies

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