

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 RESPONSE TO
PATENT OWNER ADIDAS AG'S MOTION FOR OBSERVATION
REGARDING CROSS-EXAMINATION OF
REPLY WITNESS JOSEPH PARADISO**

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

Pursuant to the Scheduling Order (Paper 10) and the Notice of Stipulation for Different Dates for Due Dates 4 and 5 Pursuant to the Scheduling Order (Paper 33), Petitioner Under Armour, Inc. respectfully submits its responses to Patent Owner's motion for observations regarding cross-examination of reply witness Dr. Joseph Paradiso.

II. BECAUSE PATENT OWNER HAS FAILED TO COMPLY WITH THE BASIC RULES OF MOTION PRACTICE BEFORE THE BOARD, PATENT OWNER'S MOTION FOR OBSERVATION SHOULD BE DENIED

Patent Owner has not complied with the basic rules of motion practice before the Board; it even failed to request the Board to grant its motion for observation regarding cross-examination. Motions for observation on cross-examination are governed by, *inter alia*, 37 C.F.R. §§ 42.20 – 42.25 regarding motion practice.¹ See Paper 10 at 4 (“A **motion** for observation on cross-examination provides the parties with a mechanism to draw the Board's attention to relevant cross-examination testimony of a reply witness” (emphasis added) (citing Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14,

¹ Procedures and requirements for filing other documents, such as exhibits, are governed by provisions wholly distinct from those governing motions. *Compare* 37 C.F.R. § 42.6 with 37 C.F.R. §§ 42.20 – 42.25.

2012)), Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,767 (Aug. 14, 2012)

(“There are many types of motions that may be filed in a proceeding in addition to motions to amend. Examples ... include ... motions for observations on cross-examination”). In particular, 37 C.F.R. § 42.22 states: “Each ... motion must be filed as a separate paper and must include: (1) A statement of the precise relief requested; and (2) A full statement of the reasons for the relief requested, including detailed explanation of the significance of the evidence including material facts, and the governing law, rules, and precedent.” Patent Owner’s motion for observation utterly fails to meet these requirements. In fact, its motion does not request *any* relief, whether that be having the Board grant the motion, consider its observations, etc. Patent Owner merely submits its observations, identifies exhibits, and provides procedural background. Under the clearly defined rules, this is not enough.

Accordingly, Petitioner respectfully requests that the Board deny Patent Owner’s motion for observation regarding cross-examination of reply witness Joseph Paradiso.

III. RESPONSES TO OBSERVATIONS ON CROSS-EXAMINATION OF DR. JOSEPH PARADISO

A. Observation #A.1

Patent Owner identifies Exhibit 2039 at 11:15-13:22. Patent Owner mischaracterizes Dr. Paradiso’s testimony at least because Patent Owner fails to

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