

Petitioner's Reply to Patent Owner's Opposition to Petitioner's Motion to Exclude
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 REPLY TO PATENT OWNER'S OPPOSITION TO
PETITIONER'S MOTION TO EXCLUDE**

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TABLE OF AUTHORITIES

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<i>St. Jude Med., Cardiology Div., Inc. v. Bd. of Regents of the Univ. of Mich.</i> , No. IPR2013-00041, 2014 WL 1783276 (May 1, 2014)	2
<i>EMC Corp. v. PersonalWeb Tech., LLC</i> , et al., No. IPR2013-00086, 2014 WL 20906655 (May 15, 2014)	5

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 in IPR2015-00698
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. Vlasits
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)
1021	Excerpt of transcript of February 5, 2016 deposition of Dr. William Michalson in IPR2015-00700

I. INTRODUCTION

For the reasons stated below, Patent Owner has not rebutted Petitioner's arguments in support of its motion to exclude.

II. PATENT OWNER HAS NOT REBUTTED THAT ITS EVIDENCE IS SECONDARY CONSIDERATIONS IS INADMISSIBLE

Patent Owner has *not* made a *prima facie* case of nexus, and thus its cited case law is inapplicable. *Damaco Corp. v. F. Von. Langsdorff Licensing Ltd.*, 851 F.2d 1387, 1393 (Fed. Cir. 1988), states only that “[o]nce a *prima facie* case of *nexus is made* the court must consider the evidence” (emphasis added).

Similarly, “[w]hen a *prima facie* case is made and not fully rebutted, the district court may not totally ignore the objective evidence.” *Id.* (citing *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1555 (Fed. Cir. 1983)).

These cases do not require the Board to consider (or admit) Patent Owner's evidence, because Patent Owner has not made a *prima facie* case, and because Petitioner has fully rebutted Patent Owner's showing. The only evidence that Patent Owner puts forth to show whether the MMF apps practice the claims is the declaration of Dr. Jones (Ex. 2003). As explained in the motion to exclude, Dr. Jones unambiguously distinguishes a server and personal computer, and confirms that the MMF apps, contrary to the claim language, only upload journal entries to the former. *See* Paper 38 at 5. Because Patent Owner has not shown that the MMF apps practice each claimed limitation, Patent Owner has not put forth a *prima facie*

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