

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNDER ARMOUR, INC.,
Petitioner,

v.

ADIDAS AG,
Patent Owner.

Case IPR2015-00698
Patent 8,092,345 B2

Before JENNIFER S. BISK, MICHAEL J. FITZPATRICK, and
JUSTIN BUSCH, *Administrative Patent Judges*.

BUSCH, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

Petitioner, Under Armour, Inc., filed a Petition to institute an *inter partes* review of claims 1–11, 15–18, and 20 (“the challenged claims”) of U.S. Patent No. 8,092,345 B2 (“the ’345 patent”). Paper 1 (“Pet.”). Patent Owner, adidas AG, filed a Preliminary Response pursuant to 35 U.S.C. § 313. Paper 6 (“Prelim. Resp.”).

Upon consideration of the Petition and the Preliminary Response, and for the reasons explained below, we determine that the information presented shows a reasonable likelihood that Petitioner would prevail with respect to at least one claim. *See* 35 U.S.C. § 314(a). Accordingly, we institute an *inter partes* review.

A. Related Matters

Patent Owner has asserted the ’345 patent, along with additional patents, including related U.S. Patent No. 7,905,815 and related U.S. Patent No. 8,579,767, against Petitioner in *adidas AG v. Under Armour, Inc.*, Case No. 14-130-GMS (D. Del.). Pet. 1; Paper 5, 1. Petitioner has filed petitions to institute *inter partes* reviews of those related patents. *See* Paper 5, 1 (citing IPR2015-00697; IPR2015-00700).

B. The Asserted Grounds

Petitioner identifies the following as asserted grounds of unpatentability:

References	Basis	Claims Challenged
Mault (Ex. 1004) ¹ and DeLorme (Ex. 1005) ²	§ 103(a)	1–4, 6–11, 15–18, and 20
Adler (Ex. 1006) ³ and DeLorme	§ 103(a)	1–11, 15–18, and 20

Pet. 4.

C. The '345 Patent

Among other aspects, the '345 patent describes “a mobile journal system that can be customized for different types of uses.” Ex. 1001, 2:53–55. Electronic journal entries may be created through receipt of various types of input and the journal entries may be linked with data, including time and location. *Id.* at 4:42–44. Figure 42 of the '345 patent provides a flowchart of the basic limitations recited in the challenged claims. In particular, a user may create journal entries in various ways, including using voice, text, or an electronic sketchpad. *Id.* at 39:61–65. A user may also capture an image or video and associate that image with the journal entry. *Id.* at 39:65–40:4. The system may automatically tag the journal entry with a current date and time and location using a clock and GPS monitor,

¹ U.S. Patent No. 6,513,532 B2, issued Feb. 4, 2003.

² U.S. Patent No. 6,321,158 B1, issued Nov. 20, 2001.

³ Ari T. Adler, A Cost-Effective Portable Telemedicine Kit for Use in Developing Countries (May 2000) (M.S.E. M.E. thesis, Massachusetts Institute of Technology).

respectively, associated with the system. *Id.* at 40:4–9. A user may link the entries to a database element and upload journal entries to a personal computer. *Id.* at 40:12–21. The uploaded journal may then be converted to a standard file format, such as HTML or PDF. *Id.* at 40:26–29.

D. The Challenged Claims

Petitioner challenges claims 1-11, 15–18, and 20. Pet. 2. Claims 1 and 20 are independent. Claim 1 is illustrative and reproduced below with indentations added:

A portable electronic journal configured to be worn or carried by a user comprising

a memory to store journal entries,

journal software with which a user interacts and creates a new journal and is capable of creating individual text or audio journal entries for the journal and optionally linking one or more images to the journal,

a user input device that is used in creating journal entries, wherein the user input device is selected from the group consisting of a voice input device and a text input device to create journal entries,

a digital camera that creates images to store with the created journal entries,

a clock to tag the journal entries with date and time a communication device to upload the journal entries to a personal computer, and

software to format the journal entries to a common file format.

II. ANALYSIS

A. Claim Construction

“A claim in an unexpired patent shall be given its broadest reasonable construction in light of the specification of the patent in which it appears.” 37 C.F.R. § 42.100(b). Pursuant to that standard, the claim language should be read in light of the specification, as it would be interpreted by one of ordinary skill in the art. *In re Suitco Surface, Inc.*, 603 F.3d 1255, 1260 (Fed. Cir. 2010). Thus, we generally give claim terms their ordinary and customary meaning. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007) (“The ordinary and customary meaning is the meaning that the term would have to a person of ordinary skill in the art in question.”) (internal quotation marks omitted).

Petitioner proposes express constructions for two terms, “common file format” and “advertisement,” which we discuss below. Pet. 5–6. Patent Owner proposes an express construction only for “advertisement.” Prelim. Resp. 7–8.

1. “common file format” (claims 1 and 20)

Petitioner proposes that common file format be construed as any well-known or standardized format that permits easy viewing or printing with a computer, such as a personal computer. Pet. 6. To support these constructions, Petitioner relies on declaration testimony of Dr. Joseph Paradiso and also the specification of the ’345 patent. *Id.* (citing Ex. 1003 ¶ 17; Ex. 1001, 40:26–31). We find Petitioner’s construction is overly narrow. In particular, we note that the specification of the ’345 patent describes that “[i]mages and audio segments may also be stored in a

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