

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNDER ARMOUR, INC.,
Petitioner,

v.

ADIDAS AG,
Patent Owner.

Case IPR2015-01891
Patent 8,725,276 B2

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

FITZPATRICK, *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, 3, 6–10, 15–19, and 21–23 of U.S. Patent No. 8,725,276 B2 (Ex. 1001, “the ’276 patent”) pursuant to 35 U.S.C. § 311(a). Paper 1 (“Pet.”). Patent Owner, adidas AG, responded by filing a statutory disclaimer of claims 1, 3, 6, and 7 pursuant to 35 U.S.C. § 235(a) and 37 C.F.R. § 1.321(a) (Ex. 2001) and a Preliminary Response pursuant to 35 U.S.C. § 313. Paper 6 (“Prelim. Resp.”).

“No *inter partes* review will be instituted based on disclaimed claims.” 37 C.F.R. § 42.107(e). Thus, only claims 8–10, 15–19, and 21–23 remain for our consideration.

We have authority to determine whether to institute an *inter partes* review. 35 U.S.C. § 314(b); 37 C.F.R. § 42.4(a). The information presented in the Petition and the Preliminary Response shows that there is a reasonable likelihood that Petitioner would prevail with respect to at least one challenged claim. *See* 35 U.S.C. § 314(a). For the reasons explained below, we institute an *inter partes* review on claims 9, 10, and 15 but not on claims 8, 16–19, and 21–23.

A. Related Matters

Patent Owner has asserted the ’276 patent along with additional patents against Petitioner in *adidas AG, et. al. v. Under Armour, Inc. and MapMyFitness, Inc.*, Case No. 14-130-GMS (D. Del.). Pet. 1; Paper 5, 1. Petitioner has filed petitions to institute *inter partes* reviews of five related patents and three additional patents asserted in the Delaware lawsuit. *See* Pet. 1 (citing Cases IPR2015-00694, -00695, -00696, -00697, -00698,

-00700, -01528, and -01532); Paper 5, 1 (same). Patent Owner notes that Petitioner previously filed a petition for an *inter partes* review of the '276 patent, but that petition was dismissed prior to an institution decision based on Petitioner's unopposed motion. Paper 5, 1 (citing Case IPR2015-01531).

B. The '276 Patent

The specification of the '276 patent is extensive. It describes a system of individual portable personal devices such as mobile phones, personal digital assistants (PDAs), medical monitoring devices, personal entertainment systems, and athletic monitoring systems, used in conjunction with a wireless personal network to provide flexibility in features, capabilities, and extensibility. Ex. 1001, 1:27–52, 3:30–4:26. Figure 100 of the '276 patent is reproduced below.

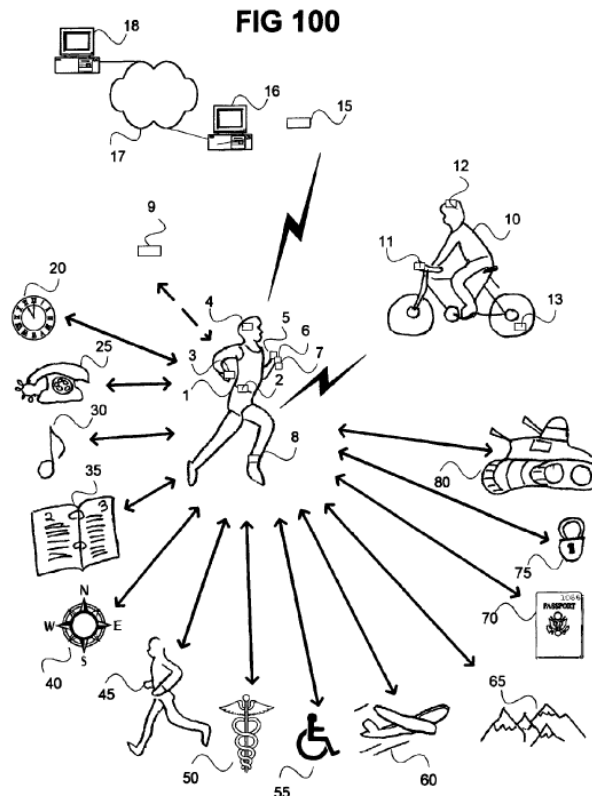


Figure 100 is an overview of a “modular personal network (MPN)” that “allows multiple individual network components (INCs), each with one or more primary functions, to be used in a wireless personal network, and that INCs may be added and removed modularly to add or remove functions of the MPN.” *Id.* at 15:34, 3:32–38. The INCs “may be worn, carried, mounted on personal equipment, or otherwise used in proximity to the person associated with the MPN.” *Id.* at 3:40–42. The MPN is associated with user 1 and “[e]ach INC may include a wireless transceiver for communicating with other INCs in the MPN.” *Id.* at 15:40–45.

Relevant to the challenged claims, the ’276 patent generally describes methods of monitoring the athletic performance of an individual. Ex. 1001, 1 (Abstract).

The methods may include receiving position data relating to geographical positions of the individual during an athletic activity with a global positioning satellite receiver, receiving performance data about the individual during the athletic activity with a performance monitor that is physically separate from the global positioning satellite receiver, displaying athletic performance information during the athletic activity based on the performance data received by the performance monitor, and correlating the performance data received by the performance monitor with the position data received by the global positioning satellite receiver.

Id.

C. The Challenged Claims

The Petition challenges claims 1, 3, 6–10, 15–19, and 21–23. Pet. 2. Taking into account the statutory disclaimer of claims 1, 3, 6, and 7 (Ex. 2001), however, only claims 8–10, 15–19, and 21–23 remain for our consideration. Independent claim 1, although disclaimed, is illustrative of

the claimed subject matter, as is independent claim 10. Claims 1 and 10 are reproduced below.

1. A method for monitoring an athletic activity, comprising:

receiving position data relating to the geographical positions of an individual during the athletic activity with a global positioning satellite receiver;

receiving performance data about the individual during the athletic activity with a performance monitor that is physically separate from the global positioning satellite receiver;

displaying athletic performance information with a display screen during the athletic activity based on the performance data received by the performance monitor; and

correlating the performance data received by the performance monitor with the position data received by the global positioning satellite receiver with at least one processor.

10. A method for monitoring athletic performance, comprising:

receiving with a global positioning satellite receiver position data relating to a position of an individual during an athletic performance; and

controlling with at least one processor playback of content provided to the individual based at least on the position data when the position data indicates that the individual has fallen outside of a predetermined performance zone having upper and lower limits for a performance characteristic.

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