

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

In re U.S. Patent No. 8,725,276

Filed: March 8, 2013

Issued: May 13, 2014

Inventors: Michael D. Ellis, Caron Schwartz

Title: Performance Monitoring Methods

Mail Stop Patent Board
Patent Trial and Appeal Board
U.S.P.T.O.
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION OF DR. TED SELKER

I, Dr. Ted Selker, make this declaration in connection with the petition for *inter partes* review submitted by Petitioner for U.S. Patent No. 8,725,276 (UA-1001 to the Petition, the “276 Patent”). All statements herein made of my own knowledge are true, and all statements herein made based on information and belief are believed to be true. I am over age 21 and otherwise competent to make this declaration. Although I am being compensated for my time in preparing this

declaration, the positions articulated herein are my own, and I have no stake in the outcome of this proceeding or any related litigation or administrative proceedings.

I. Background and Qualifications

1. Appendix A to this declaration is my *curriculum vitae*. I am currently an independent consultant with my own company, Selker Design Research. I also serve as Director of Research on Accessible Voting at University of California Berkeley. I spent the previous five years as Director of Considerate Systems research at Carnegie Mellon University Silicon Valley. While there, I worked to develop the PhD program and campus' research mission. I taught a series of classes in research methods, HCI, Android product design, and research in voting with disabilities.

2. I also spent ten years as an Associate Professor at the MIT Media Laboratory where I created the Context Aware Computing group, co-directed the Caltech/MIT Voting Technology Project, and directed the CI/DI kitchen of the future/design of the future project. My work strives to demonstrate considerate technology, in which people's intentions are recognized and respected.

3. My successes at targeted product creation and enhancement led to my role of IBM Fellow and director of User Systems Ergonomics Research at IBM. I have also served as a consulting professor at Stanford University, taught at Hampshire College, University of Massachusetts at Amherst, and Brown University. I also

created research technology prototypes at Weyerhaeuser Research labs, Brown&Sharpe, Xerox PARC, and Atari Research Labs. I have also worked on related prototypes in many consulting engagements.

4. My innovation has been responsible for profitable and award-winning products ranging from notebook computers to operating systems. For example, my design of the TrackPoint in-keyboard pointing device is used in many notebook computers. My visualization and visual interface work has made impacts in the performance of the PowerPC, usability in OS/2, ThinkPad setup, Google maps, etc. My adaptive help system has been the basis of products.

5. My work has resulted in numerous awards, patents, and papers, and has often been featured in the press. I was given the American Association for People with Disabilities Thomas Paine Award for my work on voting technology, and I was co-recipient of the Computer Science Policy Leader Award for Scientific American 50.

6. My opinions herein are based on my experience and knowledge and the information I have reviewed as of the date of this report. Pertinent to the technology at issue here, I helped supervise many projects using mobile computing relating to health. For example, in the 1990s I built exercise equipment that used a model of a user to encourage them. I made a pad including an array of pressure sensors used to measure sleep patterns, as well as identify and alert a user of

dangerous symptoms of health risks such as sleep apnea or coma. I worked on many wearable demonstration systems for business education and entertainment that were widely written about. I informally advised the wearable research team at MIT Media lab starting in 1994. I advised Vadim Gerosimov's *Any Sign of Life* wearable biosensing, recording, and feedback PhD project starting in 1998. I advised many students creating demonstrations of using a map to find and communicate opportunities at MIT starting in 1999. In the last 5 years, I created apps at CMU Silicon Valley to measure tremor, pulse, and blood oxygen to assess, among other things, elder pain. I also advised the creation of many location aware and persuasive exercise apps in my classes and research at CMU.

7. Even more apropos of this Declaration and Petition, I was involved in creating hardware to support a scientific expedition to Everest in 1998. Indeed, I went to Everest and helped debug software and hardware to support both the GPS mapping initiative and the biometrics initiatives of that expedition. For the purpose of this report I in part rely on my experiences in all of these areas.

II. Status as an Independent Expert Witness

8. As a sub-contractor to IMS Expert Services, I was retained in this matter by Weil, Gotshal & Manges LLP ("Weil") to provide various observations regarding the 276 Patent and prior art thereto. IMS Expert Services is being compensated at the rate of \$720 per hour for my work, of which I receive \$500 per

hour. Similarly, IMS Expert Services is being compensated at the rate of \$375 per hour for my travel time, of which I receive \$250 per hour. My fee is not contingent on the outcome of this matter or on any of the positions I have taken, as discussed below.

9. I have been advised that Weil represents the Petitioner in this matter. I have no direct financial interest in the Petitioner.

10. I have been advised that adidas AG (hereinafter referred to as “Adidas”) owns the 276 Patent. I have no financial interest in Adidas, including its subsidiaries, or the 276 Patent. I have never had any contact with Michael D. Ellis or Caron Schwartz, the named inventors of the 276 Patent.

III. Materials Considered

11. I have reviewed the 276 Patent and relevant portions of its prosecution history. I have also reviewed the prior art relied on in the Petition and herein including the Satava reference (UA-1004, Richard Satava et al., The Physiologic Cipher at Altitude: Telemedicine and Real-Time Monitoring of Climbers on Mount Everest, 6 *TELEMEDICINE J. AND E-HEALTH* (Sept. 2000), “Satava”), the Garmin eTrex Summit reference (UA-1005, owner’s manual dated May 2000, “eTrex Summit”), the Stubbs patent (UA-1006, U.S. Pat. No. 6,736,759, “Stubbs”), and the Gardner patent (UA-1007, U.S. Pat. No. 7,454,002, “Gardner”).

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.