

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNDER ARMOUR, INC.,
Petitioner,

v.

ADIDAS AG,
Patent Owner.

Case IPR2015-00696
Patent 8,068,858 B2

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

BISK, *Administrative Patent Judge*.

DECISION

Denying 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, 8, 11, 13, and 18 of U.S. Patent No. 8,068,858 B2 (“the ’858 patent”). Paper 1, 2 (“Pet.”). Patent Owner, adidas AG, filed a Preliminary Response pursuant to 35 U.S.C. § 313. Paper 6 (“Prelim. Resp.”).

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). Upon consideration of the Petition and the Preliminary Response, and for the reasons explained below, we determine that the information presented does not show a reasonable likelihood that Petitioner would prevail with respect to any claim. *See* 35 U.S.C. § 314(a). Accordingly, we deny the Petition to institute an *inter partes* review.

A. Related Matters

Patent Owner has asserted the ’858 patent along with additional patents, including related U.S. Patent No. 7,292,867 B2 and related U.S. Patent No. 7,805,149 B2, 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 those related patents. *See* Paper 5, 1 (citing IPR2015-00694; IPR2015-00695).

B. The Asserted Grounds

Petitioner identifies the following as asserted grounds of unpatentability:

References	Basis	Claims Challenged
Satava (Ex. 1002) ¹	§ 102(b) ²	1, 3, 8, 11, 13, and 18
Wadell (Ex. 1003) ³	§ 102(b)	1, 3, 8, 11, 13, and 18
Smith (Ex. 1004) ⁴	§ 102(a) and (b)	1, 3, 8, 11, 13, and 18

Pet. 7–8.

C. The '858 Patent

The '858 patent describes methods and products that take advantage of location-aware electronic devices to facilitate the “routing, scheduling, and real-time monitoring of outdoor activities, such as human fitness activities.” Ex. 1001, 1:20–24. Figure 1 of the '858 patent is reproduced below.

¹ R. Satava, et. al., *The Physiologic Cipher at Altitude: Telemedicine and Real-Time Monitoring of Climbers on Mount Everest*, Telemedicine Journal and e-Health, Vol. 6, No. 3 (2000).

² The Leahy-Smith America Invents Act (“AIA”), Pub.L. No. 112–29, took effect on March 16, 2013. Because the application from which the '867 patent issued was filed before that date, our citations to Title 35 are to its pre-AIA version.

³ PCT Application WO 01/00281 A2, published Jan. 4, 2001.

⁴ U.S. Patent Application 2002/0198612 A1, published Dec. 26, 2002.

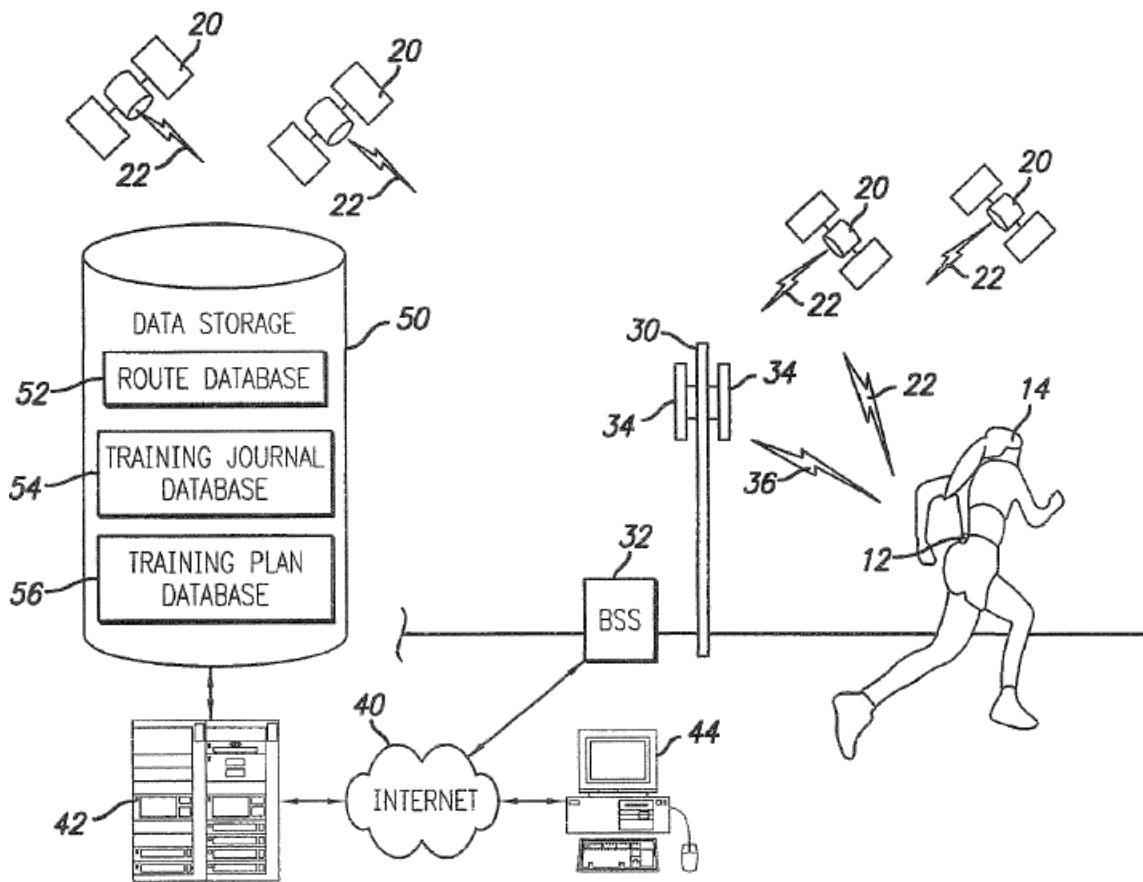


FIG. 1

Figure 1 shows athlete 14 running with portable fitness device 12 on her back. Ex. 1001, 3:42–45.⁵ GPS satellites 20 emit GPS signals 22, which allow the PFD to continuously determine its position, velocity, and bearing. *Id.* at 3:48–52. A wireless wide area network is provided by cellular telephone towers 30 with antennae 34 and base station systems (BSS) 32.

⁵ The '858 patent uses “portable training device” interchangeably with “portable fitness device.” *See, e.g.*, Ex. 1001, 4:21–23. For simplicity, we consistently use “portable fitness device” or the acronym “PFD.”

Id. at 3:53–60 (only one tower and one BSS are shown in Figure 1). The base station systems are in communication with the Internet. *Id.* at 3:64–4:2.

The '858 patent describes a second user receiving location and performance data from PFD 12 via a wide-area wireless network while athlete 14 is engaged in physical activity. *Id.* at 2:4–21. The second user's client computer system can display athlete 14's performance data and an indication of athlete 14's location with respect to a route path based on the received location data. *Id.* Figure 5B of the '858 patent is reproduced below.

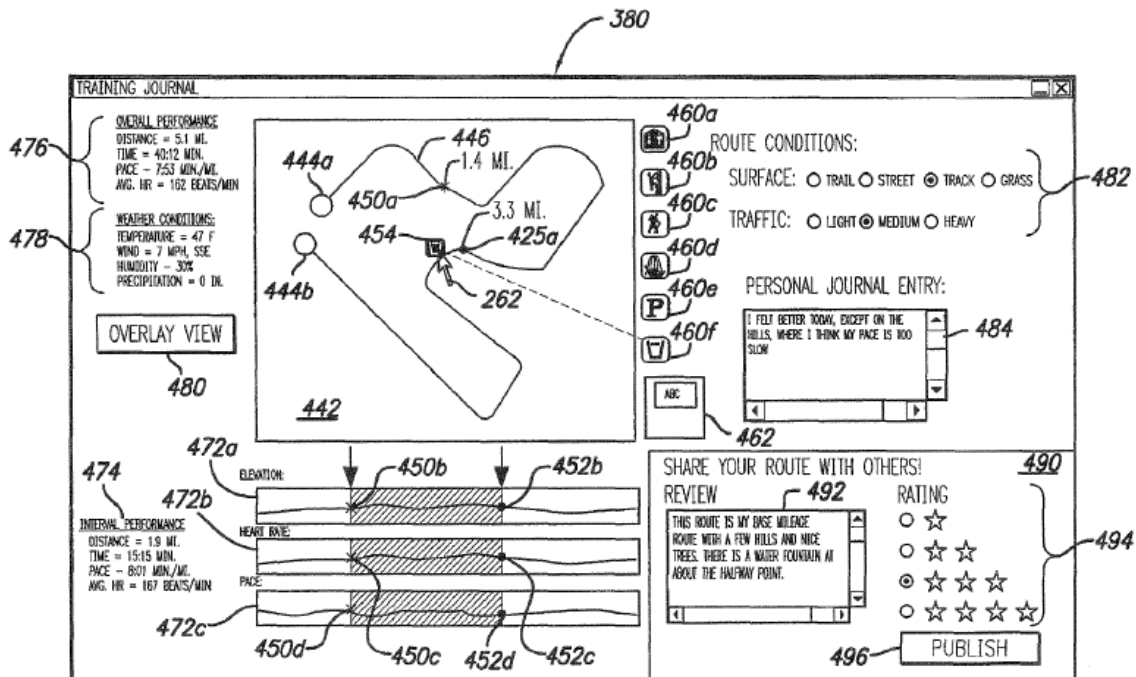


FIG. 5B

Figure 5B shows an exemplary visual interface, including route map 442 and marker 450a showing athlete 14's current location with respect to route path 446. Ex. 1001, 3:26–29, 16:17–23.

D. The Challenged Claims

Petitioner challenges claims 1, 3, 8, 11, 13, and 18. Pet. 2. Claims 1 and 11 are independent. Claim 1 is illustrative and reproduced below:

1. A method for execution by a server computer system of providing information about a first user engaged in a physical activity with a portable fitness device, the method comprising:

receiving first user location data from the portable fitness device via a wide-area wireless network while the first user is engaged in the physical activity;

receiving first user performance data from the portable fitness device via a wide-area wireless network while the first user is engaged in the physical activity;

determining the first user's location with respect to a route path based on the received first user location data; and

initiating a visual display on a remotely located second user's client computer system while the first user is engaged in the physical activity,

wherein the visual display includes performance related content that is based on the first user performance data, and

wherein the visual display further includes an indication of the first user's location with respect to the route path.

Ex. 1001, 17:20–39.

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).

The parties propose express constructions for several terms, two of which we discuss below. Pet. 9–11; Prelim. Resp. 5–11. Before construing these terms, however, we address claims 13 and 18, which, on their face, depend from claim 10, reciting “[t]he computer program product of claim 10. . . .” Ex. 1001, 18:64–67, 20:16–17. Because claim 10 recites “[t]he method of claim 1,” Petitioner notes that this dependency appears to be an error. Pet. 7, n.1. We agree. For purposes of this decision, we construe claims 13 and 18 to depend from claim 11, which claims “[a] computer program product.” Ex. 1001, 18:28.

1. “wireless wide-area network” (claims 1 and 11)

Petitioner asserts that the broadest reasonable construction of “wireless wide-area network” is “a network that extends beyond the immediate vicinity of a user or room.” Pet. 9. Patent Owner proposes that the broadest reasonable interpretation of this term is “any wireless network other than a local area network (LAN).” Prelim. Resp. 5.

Both parties acknowledge that the ’858 patent does not expressly define the term “wireless wide-area network,” but it does describe a wide area network as a cellular network. Pet. 9 (citing Ex. 1001, 3:53–4:2); Prelim. Resp. 7 (citing Ex. 1001, 4:22–26, 3:53–55, 5:10–13). Although Petitioner concedes that there is “no precise delineation in the art between a

‘wide area’ network and a ‘local area’ network,’” Petitioner asserts that there is “agreement regarding extreme ends of the spectrum.” Pet. 9 (citing Ex. 1005 ¶ 31). In fact, both parties appear to agree that a wide-area network is generally any network that is not merely local in area. Pet. 9; Prelim. Resp. 5–7. According to Petitioner, the proper construction “excludes only those wireless networks that are clearly local area, such as those that are limited in range to the immediate vicinity of a user or room.” Pet 9. Petitioner does not explain further the restriction “the immediate vicinity of a user or room.” *Id.* Patent Owner argues that this restriction, in fact, increases, rather than reduces, the ambiguity of the term because “there is no clear meaning of how far removed the immediate vicinity may be from the user.” Prelim. Resp. 5–6.

We are not persuaded that the restriction “beyond the immediate vicinity of a user or room” is an appropriate or helpful addition to the construction of the term “wireless wide-area network.” Instead, for purposes of this decision, we construe “wireless wide-area network” to be “a wireless network that is not merely local in area.”

2. “*with respect to a route path*” (claims 1 and 11)

Petitioner asserts that the broadest reasonable construction of “with respect to a route path” is “in relation to a predetermined path.” Pet. 10. Petitioner points to the ’858 patent’s description of Figure 5B, which describes “route map 442 and a marker 450a showing the athlete’s current location with respect to a route path 446.” *Id.* (quoting Ex. 1001, 16:17–30). Petitioner asserts that Figure 5B “plainly shows the ‘route path 446’ to

be a predetermined path’” and the athlete’s location, 450a, depicts where the athlete is currently located on that path. *Id.* at 11 (citing Ex. 1005 ¶ 32).

Patent Owner does not propose an alternative construction for this term, but states in a footnote that “Patent Owner does not agree that this is the correct construction.” Prelim. Resp. 16, n.3. For purposes of this decision, we adopt Petitioner’s proposed construction of “with respect to a route path” as “in relation to a predetermined path.”

B. Anticipation by Satava

Petitioner asserts that claims 1, 3, 8, 11, 13, and 18 were anticipated by Satava under 35 U.S.C. § 102(b). Pet. 7.

Satava discusses the monitoring of three climbers wearing vital-signs monitoring systems while climbing through the Khumbu Icefall on Mount Everest. Ex. 1002, Abs. The climbers used a system called “the vital-signs monitoring (VSM) system of Fitsense, Inc.,” which included position tracking using a Global Positional Satellite (GPS) system and a “[w]earable, wireless communication system with radio frequency (RF) transmission.” *Id.* at 3. Data from the VSM systems was transmitted to a laptop at Everest Base Camp and then retransmitted to Yale University over the Internet. *Id.* at Abs. Figure 4 of Satava is reproduced below.

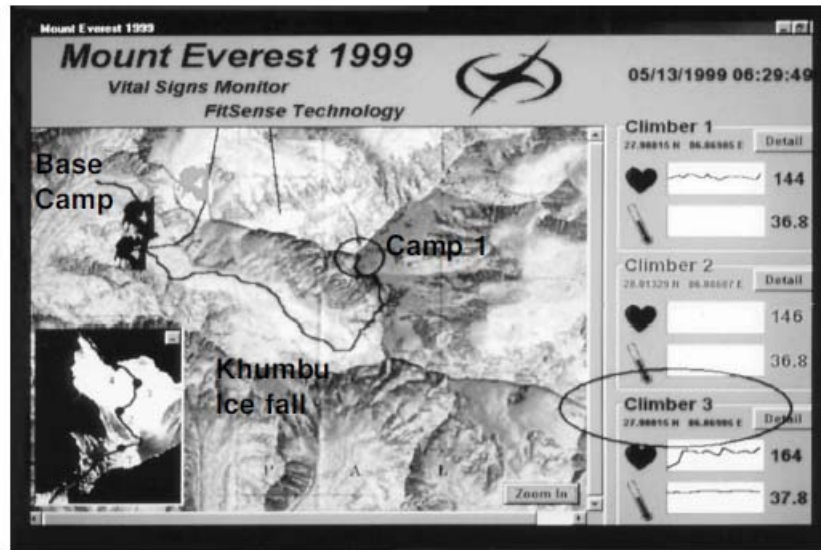


Figure 4, above, shows the interface for viewing the data sent from the climbers' VSM systems. *Id.* at 7. "On the left is the terrain map of Mount Everest with the overlay of the climbers' position, and on the right are the individual climber's vital signs." *Id.* at 5. "The inset in the lower left corner is a reference graphic representation of the vertical ascent usually taken to the summit with the numbers representing the locations of the four camps." *Id.* at 7.

Independent claims 1 and 11 require "wherein the visual display further includes an indication of the first user's location with respect to the route path." As discussed above, Petitioner asserts, and we agree, for purposes of this decision, that this requires a display of the athlete's location in relation to a predetermined path. Petitioner asserts that this limitation is disclosed by Satava because Figure 4 "not only displayed 'the trail and location of an individual climber'—i.e., the path traced by the route the climbers actually took—it also displayed, in the inset, a 'reference graphic representation of the vertical ascent usually taken to the summit.'" Pet. 16. Thus, we understand that Petitioner equates the map showing the vertical

ascent usually taken to the summit with the predetermined path of the limitation at issue. Petitioner does not make clear, however, how the trail and position of the individual climber, shown in the main map area of the display relates to the vertical ascent usually taken to the summit. Petitioner simply concludes that “Satava’s display of both the climbers’ current position *and* their expected future positions accordingly discloses determining user location with respect to a route path.” *Id.* (citing Ex. 1005 ¶ 46). This conclusion is not sufficient for several reasons. First, the limitation does not require simply *determining user location* with respect to a route path, but *indicating the user’s location* with respect to the route path. Second, it is not clear from Figure 4, or any other disclosure in Satava to which Petitioner has directed us, how the main map and the inset map relate to one another. Thus, it is not apparent, simply by looking at Figure 4, what relation the location of a climber on one map would have to the other map.

Petitioner proffers testimony from Dr. Paradiso on this issue. Ex. 1005 ¶¶ 44–46. This testimony, however, suffers from the same deficiencies as Petitioner’s argument. Specifically, Dr. Paradiso states that “one of ordinary skill in the art would understand that, in generating this graphical user interface, the base camp laptop *determined* the climbers’ location ‘in relation to a predetermined path.’” *Id.* ¶ 46 (emphasis added). This statement, however, does not shed any light on whether the display *indicates* the user’s location in relation to a predetermined path, as required by the claims. More importantly, Dr. Paradiso does not address whether one of ordinary skill, looking at Figure 4, would find an indication of a climber’s location in relation to the vertical ascent usually taken to the summit contained in the inset map.

Under these circumstances, we are not persuaded that Petitioner has shown a reasonable likelihood of prevailing in its assertion that claims 1, 3, 8, 11, 13, and 18 were anticipated by Satava.

C. Anticipation by Wadell

Petitioner asserts that claims 1, 3, 8, 11, 13, and 18 were anticipated by Wadell under 35 U.S.C. § 102(b). Pet. 7.

Wadell describes a system for monitoring the performance of a participant in a sporting or recreational activity using a “player-mounted device.” Ex. 1003, 3. Wadell’s device collects data from sensors and other devices and wirelessly transmits this data, either raw or processed, to another device, which may be connected to the Internet. *Id.* at 4–6. According to Wadell, one embodiment of the system includes a display for displaying the performance information in substantially real-time. *Id.* at 6.

Independent claims 1 and 11 require “wherein the visual display further includes an indication of the first user’s location with respect to the route path.” As discussed above, Petitioner asserts, and we agree, for purposes of this decision, that this requires a display of the athlete’s location in relation to a predetermined path.

Petitioner does not cite any disclosure of Wadell meeting this limitation. Instead, Petitioner argues that this limitation is disclosed by Wadell based on Wadell’s disclosure of (1) collecting performance data related to the player’s location such as “position on a course,” and (2) any collected information can be visually displayed “in the form of an Internet webpage.” Pet. 27–28. From these disclosures, Petitioner concludes that “one of ordinary skill in the art would understand Wadell to disclose

initiation of a visual display—including both performance and position information—on a remotely located user’s computer, with the display also indicating the user’s location with respect to a route path.” *Id.* at 28 (citing Ex. 100[5] ¶ 70). Petitioner does not point to any portion of Wadell that discloses, either expressly or inherently, displaying a player’s location in relation to a predetermined path.

We are, therefore, not persuaded that Petitioner has shown a reasonable likelihood of prevailing in its assertion that claims 1, 3, 8, 11, 13, and 18 were anticipated by Wadell.

D. Anticipation by Smith

Petitioner asserts that claims 1, 3, 8, 11, 13, and 18 were anticipated by Smith under 35 U.S.C. § 102(a) and (b). Pet. 8.

Smith describes real time monitoring of competitors in a sporting event, each carrying a “position locating device” with “a miniature radio frequency transmitter” and a GPS board. Ex. 1004, Abs., ¶ 43. According to Smith, “[t]he transmission system for real time transmission is preferably a radio frequency transmission unit 9, miniaturized to reduce weight and power consumption.” *Id.* ¶ 30. Further, Smith states that “[t]he purpose of the transmission equipment is to transmit the GPS location data from unit 7 to a receiving station 8 located nearby for subsequent data processing and presentation.” *Id.*

Independent claims 1 and 11 require receiving location and performance data “from the portable fitness device via a wide-area wireless network.” As discussed above, for purposes of this decision, we have construed a “wide-area wireless network” to be a wireless network that is

not merely local in area. Petitioner asserts that this limitation is disclosed by Smith because the system transmits data using the radio frequency unit to the radio frequency interface. Pet. 33–34 (citing Ex. 1004 ¶¶ 43, 44; Ex. 1005 ¶¶ 81–82). Petitioner does not explain how this radio frequency transmission qualifies as “via a wide-area wireless network.” Particularly in light of Smith’s explicit statement that the receiving statement is “located nearby” the transmitting unit (Ex. 1004 ¶ 30), we are not persuaded that Petitioner has shown that Smith discloses receiving data “via a wide-area wireless network” as required by the claims.

Accordingly, we are not persuaded that Petitioner has shown a reasonable likelihood of prevailing in its assertion that claims 1, 3, 8, 11, 13, and 18 were anticipated by Smith.

III. CONCLUSION

The Petition fails to show there is a reasonable likelihood that Petitioner would prevail with respect to at least one of the claims challenged in the Petition. *See* 35 U.S.C. § 314(a); 37 C.F.R. § 42.108.

IV. ORDER

Accordingly, the Petition is denied, and no trial is instituted.

IPR2015-00696
Patent 8,068,858 B2

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