

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

	)	
LULULEMON ATHLETICA CANADA,	)	
INC., AND LULULEMON USA, INC.	)	
	)	
Petitioner	)	
	)	
vs.	)	Case IPR2023-00180
	)	
	)	
NIKE, INC.,	)	
	)	
Patent Owner	)	
	)	

VIDEOTAPED DEPOSITION OF
HENRY H. HOUH, PH.D.
THURSDAY, DECEMBER 14, 2023
9:02 A.M. - 11:04 A.M.
MORRISON & FOERSTER LLP
200 CLARENDON STREET
BOSTON, MASSACHUSETTS

lululemon athletica inc. et al. v. Nike, Inc. IPR2023-00180 Patent No. 10,232,220 Ex. 2004

Reported by: Sandra A. Deschaine, CSR, RPR,
CLR, CRA
Job No. MW63286760

December 14, 2023

9:02 a.m.

Videotaped Deposition of Henry H.
Houh, Ph.D., pursuant to Notice, before
Sandra A. Deschaine, a Shorthand Reporter,
Registered Professional Reporter, Certified
LiveNote Reporter, and Notary Public in and
for the Commonwealth of Massachusetts.

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1 A P P E A R A N C E S:

2
3 ON BEHALF OF THE PETITIONER AND THE WITNESS:
4 MORRISON & FOERSTER LLP

5 Jean Nguyen, Esquire

6 Alex Yap, Esquire

7 707 Wilshire Boulevard, Suite 6000

8 Los Angeles, California 90017

9 213.892.5295

10 jnguyen@mofo.com

11 ayap@mofo.com

12
13 ON BEHALF OF THE PATENT OWNER:

14 ARNOLD & PORTER KAE SCHOLER LLP

15 Michael Sebba, Esquire

16 777 South Figueroa Street, 44th Floor

17 Los Angeles, California 90017-5844

18 213.243.4229

19 michael.sebba@arnoldporter.com

20
21 Also Present: Gayle Ashton, videographer

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P R O C E E D I N G S

1 THE VIDEOGRAPHER: Good morning.
2 We are now on the record. This is the
3 videographer speaking, Gayle Ashton,
4 with Veritext Legal Solutions. Today's
5 date is December 14th, 2023, and the
6 time is 9:02 a.m. We are here at
7 Morrison & Foerster, LLP, 200 Clarendon
8 Street, Boston, Massachusetts, to take
9 the video deposition of Dr. Henry Houh,
10 in the matter of Lululemon Athletica
11 Canada Inc., et al. versus Nike, Inc.,
12 et al., Case IPR2023-00180.

13
14 Would counsel please introduce
15 themselves for the record?

16 MR. SEBBA: This is Michael Sebba
17 from Arnold Porter representing Nike,
18 Inc.

19 MS. NGUYEN: And Jean Nguyen with
20 my colleague Alex Yap from Morrison &
21 Foerster representing petitioner
22 Lululemon, and on behalf of the expert
23 witness Dr. Henry Houh.

24 THE VIDEOGRAPHER: Would the court
25 reporter, Sandra Deschaine, please swear

1 in the witness.

2 HENRY H. HOUG, PH.D., Deponent,
3 having first been satisfactorily identified
4 by the production of his Massachusetts
5 driver's license and duly sworn by the Notary
6 Public, was examined and testified as
7 follows:

8 EXAMINATION

9 BY MR. SEBBA:

10 Q. Good morning, Dr. Houh.

11 A. Good morning.

12 Q. Can you please state your full
13 name for the record?

14 A. My name is Henry Houh. That's
15 spelled H-o-u-h.

16 Q. And have you been deposed before?

17 A. Yes.

18 Q. Approximately how many times?

19 A. Over a hundred. I don't really
20 know for sure exactly how many.

21 Q. Okay. So I'm sure you're familiar
22 with most of this, but we're going to -- I'll
23 start with a few ground rules.

24 First, we can take breaks at any
25 point you'd like today. I only ask that if

1 there's a question pending, you answer that
2 and then we can go on break.

3 Do you understand?

4 A. Yes.

5 Q. Also, as you can see, we have a
6 court reporter here writing down everything
7 we say, so let's please, if possible, keep
8 your answers verbal, no head nods, no head
9 shakes.

10 Do you understand that?

11 A. Yes.

12 Q. For the same reason, let's try not
13 to speak over each other so the record comes
14 out clear. Is that okay?

15 A. Yes.

16 Q. Thank you.

17 And if I ask a question that you
18 don't understand, please let me know, and
19 I'll rephrase it.

20 Is that okay?

21 A. Sure.

22 Q. And if you answer a question I
23 ask, I'll assume that you understood it.

24 Okay?

25 A. Sure.

1 Q. Is there any reason you cannot
2 give truthful and accurate testimony today?

3 A. No.

4 Q. Now, what did you do to prepare
5 for today's deposition?

6 A. I met with an attorney, and I
7 reviewed the documents.

8 Q. When you say "the documents," what
9 documents did you review?

10 A. I reviewed my reply declaration.
11 I reviewed my opening declaration. I
12 reviewed the references, or portions of the
13 references, the '220 patent, Johnson and
14 Sutton. I reviewed the deposition transcript
15 of Dr. Stone, and I reviewed his -- one of
16 his -- his declaration.

17 Q. Did you view any other documents?

18 A. I might have reviewed, like, a
19 dictionary definition exhibit.

20 Q. Anything else?

21 A. I can't remember if there is
22 anything else right now, but that is what I
23 can remember right now.

24 Q. Did you review Lululemon's reply
25 in this proceeding?

1 A. I'm not -- I'm not sure I reviewed
2 the reply.

3 Q. And then you said you met with an
4 attorney.

5 Who did you meet with?

6 A. It was Jean.

7 Q. How many times did you meet with
8 her?

9 A. Twice.

10 Q. For approximately how long?

11 A. It's probably around six hours
12 total.

13 Q. And were those meetings in person
14 or via Zoom, or phone?

15 A. One was a Zoom meeting. One was
16 in person.

17 Q. Did you discuss this deposition
18 with anyone other than your attorneys?

19 A. No.

20 Q. What is a sensor?

21 I'm sorry. What's the document
22 you have in front of you?

23 A. Oh, this is my reply declaration.

24 Q. Well, let's just do this formally,
25 before you answer that question.

1 MR. SEBBA: I'll introduce --
2 well, I'm providing you Exhibit 1017,
3 which has already been admitted in this
4 proceeding.

5 (Exhibit 1017, Reply Declaration of Dr.
6 Henry H. Houh, Ph.D., previously marked.)

7 BY MR. SEBBA:

8 Q. Do you recognize this document?

9 A. Yes.

10 Q. What is this?

11 A. This is my reply declaration.

12 Q. Okay. Great.

13 Okay. So going back to the
14 question. What is a sensor?

15 A. I mean, I can't recall if this
16 phrase is used in the challenged claims or
17 not.

18 Do you have a copy of the '220
19 patent?

20 Q. Well, we can get to that later.
21 I'm asking you what a sensor is.

22 A. I mean, I don't know about
23 providing an express claim construction,
24 anything about that, that term, in this case.

25 Q. As you sit here today, what do you

1 think a sensor means?

2 Excuse me. What do you think the
3 word "sensor" means?

4 A. Well, in a very general context,
5 not in the context of this case, but sensors
6 are devices that detect desired parameters,
7 depending on what the application is. Just
8 very generally.

9 Q. So let's turn to paragraphs 14 and
10 15 of your declaration.

11 A. Okay.

12 Q. You can take a second to read
13 those, if you'd like.

14 (Witness reviewing document.)

15 A. Okay.

16 Q. Okay. So in paragraph 15 you say
17 that the '220 specification uses the word
18 "measure" when discussing the sensors,
19 correct?

20 A. Yeah, as distinguished from the
21 word "record." But, yeah, the '220 spec, and
22 I've cited a number of places where it talks
23 about sensor measuring.

24 Q. So it's your view that, in the
25 context of the '220 patent, sensors measure

1 parameters. Is that fair?

2 MS. NGUYEN: Objection, form.

3 A. Well, in the '220 spec, the word
4 "measuring" is used often in discussing
5 sensors, and I've cited a number of passages
6 in paragraph 15 that highlight that.

7 BY MR. SEBBA:

8 Q. And do sensors save data?

9 MS. NGUYEN: Objection, form.

10 A. The '220 specification uses a
11 different word, the word "record," when
12 discussing saving or storing, and I explain
13 that in paragraph 14.

14 BY MR. SEBBA:

15 Q. Okay. But that doesn't answer my
16 question.

17 Do sensors save data?

18 MS. NGUYEN: Same objection.

19 A. So in the '220 spec, it talks
20 about how sensors measure, but the spec uses
21 a different word, the word "record," when
22 discussing saving or storing the data.

23 And so -- so it's the word -- and
24 this is part of why I disagree with
25 Dr. Stone's proposed construction of record,

1 to include measure or capture then save,
2 because the '220 spec itself uses the word
3 "record" when discussing saving or storing,
4 but for measuring, did -- from a sensor -- it
5 uses a different word. It doesn't use the
6 word "record," in discussing measuring from
7 the sensors. It uses the word "measure" or
8 "measuring."

9 Q. Okay. So you're saying that the
10 '220 spec doesn't use the word "record" with
11 sensor; is that right?

12 MS. NGUYEN: Objection, form.

13 A. What I'm saying is that I'm
14 disagreeing with Dr. Stone's construction of
15 "record" because it conflicts with the
16 specification; that is, Dr. Stone is
17 proposing that the -- that record is narrowed
18 to additionally require, measure -- or
19 measuring or capturing or measure or capture.

20 And the way the '220 spec uses the
21 word "record," it's discussing saving or
22 storing, and it's using a different phrase
23 for measuring parameters from the sensor.

24 And so -- and that's part of the
25 reason why I'm disagreeing with Dr. Stone's

1 proposed narrowing of the construction of
2 record, because it's record that's discussing
3 the spec, and it's discussing saving data or
4 storing data, and it's a different word
5 that's used for -- that uses measuring
6 differently in the spec.

7 Q. Okay. So it's your view that
8 record means -- or let's step back.

9 In your review, what does "record"
10 mean?

11 A. Oh, I just remembered I also
12 reviewed the institution decision, by the
13 way.

14 I mean, I think -- I think the
15 PTAB cited to a dictionary definition of
16 record, and I think they use that to support
17 something consistent with what I'm saying
18 record is, and I think that was consistent.

19 I think it should not -- it should
20 not be construed to additionally require
21 measure or capture, the word "record."

22 Q. Okay. You still haven't answered
23 the question.

24 MS. NGUYEN: My feed is not
25 updating.

1 MR. SEBBA: We can go over the
2 record and fix that.

3 THE VIDEOGRAPHER: The time is
4 9:18, and we are going off the record.
5 (Recess taken at 9:18 a.m. to 9:19 a.m.)

6 THE VIDEOGRAPHER: We are back on
7 the record. The time is 9:19.

8 BY MR. SEBBA:

9 Q. Okay. So, Dr. Houh, in your view,
10 in the '220 patent, what does the term
11 "record" mean?

12 A. So I think that record should
13 include, for example, storing -- store data
14 in memory, but it should not include
15 measuring or -- measure or capture, as
16 Dr. Stone is trying to narrow and add to the
17 definition.

18 So I think the board did talk
19 about how store data in memory that is saved
20 as a form of recording.

21 Q. Okay. So on page 5 of your
22 declaration, at the top of this page there's
23 a heading labeled "B."

24 Do you see that?

25 A. Yes.

1 Q. It reads "A POSITA would have
2 understood 'record' means "save"?

3 A. Yes.

4 Q. Is it your view that "record"
5 means save?

6 A. I think that's what a POSITA would
7 have understood, and it's consistent with
8 what the PTAB said, but I disagree with that
9 it should also require measure or capture.

10 Q. Okay. Now, it's your view -- or,
11 rather, let's look at paragraph 15 of your
12 declaration.

13 It says, "The '220 specification
14 used a different word 'measure' when
15 discussing the sensors," correct?

16 A. That's what it says at the
17 beginning of paragraph 15.

18 Q. Okay. So it's your view that the
19 sensors discussed in the '220 specification
20 measure something; is that right?

21 MS. NGUYEN: Objection, form.

22 A. Well, the '220 specification
23 actually discusses, and I've cited various
24 passages about -- that the sensors are for
25 measuring parameters. You know, that's the

1 first bullet.

2 "A sensor or multiple sensors for
3 measuring parameters relating to the person
4 being monitored."

5 The second bullet is "one or more
6 sensors for measuring an athletic parameter."
7 (as read)

8 And it goes on to -- you know, I
9 have four more bullets that discuss -- that
10 cite to the '220 patent specification, where
11 it's using the word "measure" or "measuring,"
12 with different sensors or a specific form of
13 sensors, such as an accelerometer.

14 And so that's what I'm citing to
15 say -- to support that the spec uses a
16 different word, the word "measure" or
17 "measuring" when discussing sensors.

18 Q. So the sensors measure but they
19 don't record; is that right?

20 MS. NGUYEN: Objection, form.

21 A. When the specification is
22 discussing saving or storing, it's using a
23 different word, the word "record."

24 BY MR. SEBBA:

25 Q. Are you aware of any examples --

1 let's start in the specification.

2 Are you aware of any examples in
3 the '220 specification where sensors record
4 information?

5 A. You know, I don't have it
6 committed to memory. So if you want to show
7 me, I could take a look. I can't recall
8 whether Dr. Stone cited to any. I can take a
9 look at that, but I don't have the spec
10 committed to memory.

11 Q. Okay. Are you aware of any
12 examples, outside of the '220 patent, where
13 there are sensors that record -- excuse me,
14 withdrawn.

15 Are you aware of any examples
16 outside of the '220 patent where there are
17 sensors that save data?

18 MS. NGUYEN: Objection, form.

19 A. I mean, what I consider is the
20 '220 and the specification, and I think that
21 I didn't -- and it's the context of the
22 specification that I use to determine the
23 plain, ordinary meaning of the word "record"
24 as used in the claims, "record" or
25 "recorded." And that's how I'd approach my

1 analysis, based on the context of the '220
2 patent.

3 As would be understood by a person
4 of ordinary skill in the art at the time of
5 the invention and recorded is, I think, one
6 of the claim terms in at least one of the
7 challenged independent claims, I think.
8 That's what I recall right now.

9 Q. Okay. So do you, in your
10 declaration, cite any examples where sensors
11 save or record data in the '220
12 specification?

13 MS. NGUYEN: Objection, form.

14 A. When you say "declaration," do you
15 mean this reply declaration?

16 BY MR. SEBBA:

17 Q. Yes.

18 A. I'm just looking through my reply
19 declaration now and looking at the
20 specifications to the '220 patent, and where
21 I've seen block quotes or quoted things, I
22 don't see that any of those contain what
23 you're asking for.

24 Q. Okay. As we sit here today, do
25 you have an opinion as to whether or not

1 sensors always, sometimes, or never record
2 data?

3 MS. NGUYEN: Objection, form.

4 A. Are you talking about as discussed
5 in the '220 specification?

6 BY MR. SEBBA:

7 Q. Let's start with that.

8 As discussed in the '220 patent,
9 as we sit here today, do you have an opinion
10 as to whether or not sensors always,
11 sometimes, or never record data?

12 A. Again, I can't remember every --
13 part of every discussion from the '220
14 patent, but what I have cited to is our
15 passage where it's discussing recording,
16 while discussing saving or storing and using
17 a different word when discussing measuring
18 data or measuring with respect to the
19 sensors.

20 So, I mean, I'm happy to take a
21 look at a passage, or if Dr. Stone cited to
22 one, I don't recall that he did or not. I
23 don't have his report or his declaration
24 memorized, but I'd be happy to take a look at
25 anything you might want to direct me to.

1 But I don't have -- you know, I
2 don't have a photographic memory, so I can't
3 search through the specification in my memory
4 and answer that.

5 Q. Okay. So then let's step beyond
6 the '220 patent.

7 As we sit here today, do you have
8 an opinion as to whether, in general, sensors
9 always, sometimes, or never save data?

10 MS. NGUYEN: Objection, form.

11 A. I mean, I haven't really performed
12 a full analysis of sensors outside the
13 context of the specification because -- in my
14 analysis with respect to the '220 patent
15 itself.

16 I mean, if there's an example
17 you're thinking about outside the context of
18 the spec, we would take a look at it, if you
19 have, you know -- but in the context of the
20 '220 spec, as I discuss, the word "record" is
21 used when discussing saving or storing, but
22 the '220 spec uses a different word when
23 discussing the sensors for measure or
24 measuring.

25 Q. So you don't have an opinion as to

1 whether or not -- as to whether sensors
2 always, sometimes, or never save data?

3 MS. NGUYEN: Objection, form.

4 A. Well, I don't have a written
5 opinion as to that, outside the context of
6 the spec in my reply declaration, because my
7 reply declaration is actually about the '220
8 patent.

9 BY MR. SEBBA:

10 Q. Okay. Let's turn back to
11 paragraph 15 of your reply declaration. And
12 just to be clear, when we're talking about
13 your reply declaration, I'm referring to
14 Exhibit 1017.

15 Do you understand that?

16 A. Okay. Yes. My reply declaration
17 is Exhibit 1017.

18 BY MR. SEBBA:

19 Q. Okay. Great. Let's turn to
20 paragraph 15 of your reply declaration.

21 A. Okay.

22 Q. All right. The first bullet here
23 reads, "'a sensor or multiple sensors for
24 measuring parameters relating to the person
25 being monitored,'" correct?

1 A. Yes.

2 Q. And it's citing Exhibit 1001,
3 8:51-53, correct?

4 A. Yes.

5 Q. And Exhibit 1001 is the '220
6 patent?

7 A. Yes.

8 Q. In this example, are the sensors
9 saving data?

10 MS. NGUYEN: Objection, form.

11 A. Well, what this excerpt says here
12 is that they're just -- the sensors are for
13 measuring parameters relating to the person
14 being monitored. So it's not -- it's a
15 different word than "record." And even
16 Dr. Stone breaks up the meaning of measure
17 versus record or save in his proposed
18 construction, because he uses the phrase
19 "measure" or "capture" then "save." So even,
20 I think, Dr. Stone is saying here that
21 measure doesn't include save.

22 Q. I'm not asking you what Dr. Stone
23 thinks.

24 I'm asking you, in your view, in
25 this example that you put in your

1 declaration, in the first bullet of paragraph
2 17 -- paragraph 15, are the sensors saving
3 data?

4 MS. NGUYEN: Objection, form.

5 A. It says the sensors are for
6 measuring parameters. It doesn't say -- it
7 doesn't use the word "save" in this phrase.
8 BY MR. SEBBA:

9 Q. And measuring is different than
10 saving?

11 A. They're different words. I think
12 they have different meanings.

13 Q. And here the example only
14 discusses measuring?

15 A. I'm not really sure what you mean
16 by "only." When it says for measuring, it
17 doesn't say for measuring with anyone else.
18 It just says for measuring parameters related
19 to the person being monitored. It doesn't
20 include the word "saving" there.

21 Q. So, in this example, the sensors
22 are not saving?

23 MS. NGUYEN: Objection, form.

24 A. This citation is just saying the
25 sensors are for measuring parameters relating

1 to the person being monitored.

2 BY MR. SEBBA:

3 Q. In this example, do the sensors
4 save any data?

5 A. The '220 spec uses a different
6 word, "record," when discussing saving or
7 restoring, and it's about the data -- it
8 talks about data can be stored locally in the
9 user's mobile device or data recorded by the
10 mobil device, but this excerpt here doesn't
11 use the word "save" or "record." It just
12 uses the word "measuring." So it doesn't use
13 the word "saving" with that. That's not
14 there. It doesn't use the word "recording."
15 This phrase just uses "measuring."

16 Q. And so if it doesn't use the words
17 "save" or "record," that means it is not
18 saving data; is that right?

19 MS. NGUYEN: Objection, form.

20 A. The spec uses a different word
21 when it's discussing saving or storing data.
22 So this passage doesn't use the word "record"
23 with respect to what the sensors are -- what
24 they're for, or recording, to discuss what
25 the sensors are for. This is what -- the

1 sensors are for measuring parameters relating
2 to the person being monitored.

3 BY MR. SEBBA:

4 Q. Okay. Let's look at the second
5 bullet in paragraph 15, which reads, "one or
6 more sensors 301 for measuring an athletic
7 parameter," correct?

8 A. Yes.

9 Q. And it cites to the '220 patent
10 Column 11, lines 61, 62?

11 A. Yes.

12 Q. In this example, do the sensors
13 save data?

14 MS. NGUYEN: Objection, form.

15 A. This isn't talking about saving.
16 It's talking about one or more sensors, 301,
17 for measuring an athletic parameter. So the
18 spec -- the '220 spec uses a different word
19 to discuss saving or storing and that word is
20 "record" or various -- variations of the root
21 word "record."

22 BY MR. SEBBA:

23 Q. And when that word "record" isn't
24 used, does that mean that it's -- withdrawn.

25 In the '220 specification, when

1 the word "record" is not used, does that mean
2 that the '220 specification is not addressing
3 saving or storing?

4 MS. NGUYEN: Objection, form.

5 A. I think the '220 spec uses a
6 different word to address saving or storing,
7 and that's the word "record" or "recorded" or
8 "recording." Actually, I don't -- or there's
9 different forms of the word "record." This
10 is discussing the sensors, about how they
11 measure an athletic parameter. The sensors
12 are for measuring an athletic parameter.

13 BY MR. SEBBA:

14 Q. Okay. My question was about the
15 word "record," and then your answer said the
16 '220 spec uses a different word and you said
17 that word is "record."

18 So different than what?

19 MS. NGUYEN: Objection, form.

20 A. Recording is different than
21 measuring. A spec is using different words
22 for those two different actions.

23 BY MR. SEBBA:

24 Q. Okay. But -- okay.

25 So in this example in the second

1 bullet point, the spec uses the word
2 "measuring," correct?

3 A. Yes.

4 Q. The spec does not use the word
5 "record" or "recording," correct?

6 A. That's correct, in this passage.

7 Q. And it does not -- and in this
8 passage, it does it not use the word "safe"
9 or "saving," correct?

10 A. That's correct.

11 Q. So in this passage, are the
12 sensors saving or recording data?

13 MS. NGUYEN: Objection, form.

14 A. This passage is only discussing
15 what the sensors -- are for measuring and
16 athletic parameter. It doesn't use the word
17 "record."

18 BY MR. SEBBA:

19 Q. And so do these sensors in the
20 passage from -- on Column 11, line 61, 62,
21 save any data?

22 MS. NGUYEN: Objection, form.

23 A. This passage doesn't discuss any
24 saving of any measured parameters. It's just
25 discussing the measuring of an athletic

1 parameter.

2 BY MR. SEBBA:

3 Q. So, in your view, as an expert,
4 sensors save data?

5 MS. NGUYEN: Objection, form.

6 A. I don't think I said that.

7 BY MR. SEBBA:

8 Q. There's a question. I didn't say
9 you said anything.

10 A. In the context of the
11 specification, a different word is used to
12 discuss "saving" or "storing," and it -- and
13 is what is used to describe what the sensors
14 are for.

15 BY MR. SEBBA:

16 Q. So, as we sit here today, are you
17 able to say whether the sensors, 301, in the
18 '220 patent save any data?

19 A. Well, what I'm pointing out here
20 is that what's described as what the sensors
21 do -- are for, are more "measuring," and
22 that's a different word than "recording,"
23 which would be -- which is what the spec uses
24 to discuss saving or storing.

25 So my point here is that the

1 sensors here are discussed as for measuring
2 but none of these cited passages talk about
3 how the sensors save or store data. The
4 sensors are just for measuring.

5 Again, if there's a different
6 passage that you're thinking of in the '220
7 spec, if you would like to direct me to it,
8 I'd be happy to take a look.

9 But here, these passages are
10 talking about how the sensors are for
11 measuring and don't discuss that the sensors
12 save or store data or even that they're for
13 saving or recording or storing parameters.
14 What the '220 spec says, is that the sensors
15 are for measuring parameters, and that's what
16 are cited, at least these six passages that
17 talk about the sensors in that way.

18 Q. Okay. Let's look at paragraph 17
19 of your declaration. If you want to take a
20 second to read that.

21 A. Sure. Thank you.
22 (Witness reviewing document.)

23 A. Okay.

24 Q. Okay. In this paragraph you
25 discuss GPS devices and GPS satellites,

1 correct?

2 A. Yes.

3 Q. Okay. Do you have any
4 professional experience working with GPS?

5 MS. NGUYEN: Objection, form.

6 A. I don't think I've had a job that
7 involved integrating GPS, but I have used
8 separate, you know, GPS devices that -- and
9 purchased them for projects before.

10 BY MR. SEBBA:

11 Q. When you say you've used GPS
12 devices, you mean like a mapping device for
13 your car?

14 A. Well, I have, but I did purchase a
15 separate GPS sensor that could plug into a
16 PC, and where I could pull -- and see the
17 output through, like, a computer link of some
18 sort, I think it was a serial link, to look
19 at the data that was coming out of the GPS
20 device that I had purchased.

21 Q. When was that, approximately?

22 MS. NGUYEN: Objection, form.

23 A. I can't remember the exact time
24 frame. It was some time ago, but I can't,
25 off the top of my head, think of exactly

1 when.

2 BY MR. SEBBA:

3 Q. Was it related to your analysis in
4 this IPR?

5 A. No.

6 Q. And has your use of GPS devices
7 ever required you to study GPS satellites?

8 MS. NGUYEN: Objection, form.

9 A. I don't know if it required me to,
10 but often I have -- I have developed an
11 understanding of the GPS system based just on
12 a -- my experience, and I don't remember if
13 anything ever came up in a class that I took,
14 but it may have.

15 MR. SEBBA: Okay. This a good
16 time for a break. Let's go off the
17 record.

18 THE VIDEOGRAPHER: The time is
19 9:46. We are going over the record.
20 (Recess taken at 9:46 a.m. to 10:02 a.m.)

21 THE VIDEOGRAPHER: We are back on
22 the record. The time is 10:02 into.

23 BY MR. SEBBA:

24 Q. Welcome back, Dr. Houh.

25 A. Thank you.

1 Q. Let's go back to your reply
2 declaration on page 25.

3 Are you there?

4 A. Yes.

5 Q. Okay. There's a heading halfway
6 through the page that says, "Johnson Teaches
7 'the apparatus is further cause to tag a
8 summary of one or the more metrics from a
9 recorded athletic activity with identifiers
10 of one or more other users,'" correct?

11 A. Yes.

12 Q. Let's turn to the following page.
13 Within paragraph 46 you pasted the Figure 23
14 from Johnson; is that correct?

15 A. Yes. And I've annotated it.

16 Q. Okay. When I say "Johnson," you
17 understand that I mean the Johnson reference
18 which is cited throughout this proceeding?

19 A. Yes. I think it's Exhibit 1016.

20 Q. Hold on.

21 A. At least that's what I've cited at
22 the top of page 26, so...

23 Q. Yeah. I think it's Exhibit 1004.

24 A. Oh, well, sorry. That might be a
25 deposition transcript. Sorry. That might be

1 mine. Yeah, so, right. So I'm citing to --
2 I think -- yes. Let me just check.

3 Q. Here, let's look at --

4 A. Okay. Yeah, I think the
5 references are in the low 1000s.

6 BY MR. SEBBA:

7 Q. I'll tell you what, I'm handing
8 you a document, this is already marked in
9 this proceeding as Exhibit 1004.

10 A. Thank you. Wait. Maybe 1006 is
11 Stone's deposition transcript. Yes, that's
12 right.

13 Q. Okay. So when we're talking about
14 Johnson, we're talking about Exhibit 1004; is
15 that correct?

16 A. Yes. Sorry. I didn't mean to
17 misspeak earlier.

18 Q. Not a problem.

19 So in paragraph 46 of your
20 declaration, you have pasted an annotated
21 copy of Figure 23 from Johnson, correct?

22 A. Yes.

23 Q. Okay. What in this figure
24 represents the summary of one or more
25 metrics, as you note in heading D on page 25

1 of your declaration?

2 A. So it's this 500 Mile Club, which
3 the user becomes a member of once the user
4 runs 500 miles, and that's -- that's --
5 that's the mapping to the summary.

6 Q. Okay. So in this figure, each of
7 the green tiles show that a -- represent the
8 500 Mile Club; is that right?

9 A. Well, it's a collection of --
10 those are the people, at least on this
11 screen, that are members of the 500 Mile
12 Club. There are five green -- annotated
13 green tiles in Figure 23.

14 Q. Okay. So the summary is those
15 five green tiles; is that right?

16 A. The summary is the 500 Mile Club,
17 and those green tiles are tiles of -- those
18 are people who are part of the 500 Mile Club.

19 Q. So is there something in this
20 figure you can point to that is the summary?

21 MS. NGUYEN: Objection, form.

22 A. The summary, and this is a part --
23 you know, this is showing five users, five
24 tiles, each indicated as being part of the
25 500 Mile Club, and those are annotated in

1 green.

2 BY MR. SEBBA:

3 Q. Okay. Okay. Let's look at
4 paragraph 35 -- paragraphs 35 and 36 of your
5 declaration -- your reply declaration.

6 Excuse me.

7 A. Okay.

8 Q. Do you want to take a second to
9 read those?

10 A. Sure. Thank you.

11 (Witness reviewing document.)

12 A. Okay.

13 Q. Okay. Do you identify anywhere
14 that Johnson -- withdrawn.

15 In paragraphs 35 and 36 of your
16 declaration -- or reply declaration, do you
17 identify anywhere that Johnson measures
18 athletic data -- or athletic activity data?

19 MS. NGUYEN: Objection, form.

20 A. I don't see the use of the word
21 "measure" or its variants in these two
22 paragraphs, 35 and 36.

23 BY MR. SEBBA:

24 Q. And then let's turn to paragraphs
25 47 and 48 of your reply declaration.

1 Would you like to take a second to
2 read those?

3 A. Yes, please. Thank you.
4 (Witness reviewing document.)

5 A. Okay.

6 Q. Okay. Do you cite anywhere in
7 paragraphs 47 or 48 where Sutton discloses
8 measuring athletic activity?

9 A. I mean, this section is about
10 record athletic activity performed by the
11 user, and I don't see the use of the word
12 "measure" or "measuring" in these two
13 paragraphs.

14 Q. Okay. And you understand that
15 Dr. Stone's view is that "record" includes
16 measuring or capturing?

17 A. That's what I understand Dr. Stone
18 is setting forth, but I disagree with him for
19 the reasons I've laid out in my declaration.

20 Q. Okay. So you don't address Dr. --
21 you don't address the limitation or the claim
22 element 11C under Dr. Stone's claim
23 construction?

24 MS. NGUYEN: Objection, form.

25 A. I mean, this is about a different

1 issue really. This is about -- well, record
2 athletic activity performed by the user, and
3 the focus is based on Sutton disclosing --
4 about how Dr. Stone is contending that Sutton
5 does not satisfy element 11C because manually
6 entered workout information is not workout
7 information associated with recorded athletic
8 activity.

9 And what I understand is that it's
10 the issue about the manually entered workout
11 data, not about -- in this section, I'm not
12 addressing the report -- the record -- the
13 claim constr- -- the difference in claim
14 construction issue. It's more about the
15 manually entered workout information and how
16 the '220 specification discloses manual input
17 and how that data is recorded.

18 But Sutton does talk about users
19 entering -- manually entering the workout
20 information.

21 MR. SEBBA: No further
22 questions.

23 MS. NGUYEN: Can we take a break?

24 THE VIDEOGRAPHER: The time is
25 10:17. We are going off the record.

1 (Recess taken at 10:17 a.m. to 11:03 a.m.)

2 THE VIDEOGRAPHER: We are back on
3 the record. The time is 11:03.

4 MS. NGUYEN: We have no questions.

5 THE VIDEOGRAPHER: The time is
6 11:03. We are going off the record.
7 This is the end of the recorded
8 deposition of Dr. Henry Houh.

9 THE REPORTER: I think there are
10 standing orders. But, Ms. Nguyen, you
11 want a copy?

12 MS. NGUYEN: Yeah.

13 THE REPORTER: Are you getting
14 rough?

15 MS. NGUYEN: Yes, please.

16 MR. SEBBA: We'll take a rough
17 also.

18 THE REPORTER: Expedited order?

19 MS. NGUYEN: We don't need
20 expedited.

21 (Deposition concluded at 11:04 a.m.)
22
23
24
25

1 COMMONWEALTH OF MASSACHUSETTS
2 SUFFOLK, SS.
3

4 I, Sandra A. Deschaine, Registered
5 Professional Reporter and Notary Public
6 within and for the Commonwealth of
7 Massachusetts at large, do hereby certify
8 that the videotaped deposition of Henry H.
9 Houh, Ph.D., in the matter of Lululemon
10 Athletica Canada, et al. vs. Nike, Inc., at
11 the offices Morrison Foerster, 200 Clarendon,
12 Boston, Massachusetts, on December 14, 2023,
13 taken and transcribed by me; that the witness
14 provided satisfactory evidence of
15 identification as prescribed by Executive
16 Order 455 (03-13) issued by the Governor of
17 the Commonwealth of Massachusetts; that the
18 transcript produced by me is a true record of
19 the proceedings to the best of my ability;
20 that the witness is reading and signing; that
21 I am neither counsel for, related to, nor
22 employed by any of the parties to the action
23 in which this deposition was taken, and
24 further that I am not a relative or employee
25 of any attorney or counsel employed by the
parties thereto, nor financially or otherwise
interested in the outcome of the action, on
this 15th of December 2023.


Sandra A. Deschaine

Registered Professional Reporter

My Commission Expires:
July 5, 2024

Veritext Legal Solutions
1100 Superior Ave
Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

December 15, 2023

To: Jean Nguyen, Esquire

Case Name: Lululemon Athletica Canada Inc. v. Nike Inc.

Veritext Reference Number: 6328760

Witness: Dr. Henry H. Houh Deposition Date: 12/14/2023

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within 28 days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,
Production Department

NO NOTARY REQUIRED IN CA

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6328760

CASE NAME: Lululemon Athletica Canada Inc. v. Nike Inc.

DATE OF DEPOSITION: 12/14/2023

WITNESS' NAME: Dr. Henry H. Houh

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have made no changes to the testimony as transcribed by the court reporter.

Date Dr. Henry H. Houh

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;

They signed the foregoing Sworn Statement; and

Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal

this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6328760

CASE NAME: Lululemon Athletica Canada Inc. v. Nike Inc.

DATE OF DEPOSITION: 12/14/2023

WITNESS' NAME: Dr. Henry H. Houh

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).

I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

Date

Dr. Henry H. Houh

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;

They have listed all of their corrections in the appended Errata Sheet;

They signed the foregoing Sworn Statement; and

Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST

ASSIGNMENT NO: 6328760

PAGE/LINE(S) / CHANGE /REASON

Date Dr. Henry H. Houh
SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
DAY OF _____, 20_____ .

Notary Public

Commission Expiration Date

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Illinois Code of Civil Procedure

Article II, Part E

Rule 207, Signing and Filing Depositions

Signing and Filing Depositions

(a) Submission to Deponent; Changes; Signing.

Unless signature is waived by the deponent, the officer shall instruct the deponent that if the testimony is transcribed the deponent will be afforded an opportunity to examine the deposition at the office of the officer or reporter, or elsewhere, by reasonable arrangement at the deponent's expense, and that corrections based on errors in reporting or transcription which the deponent desires to make will be entered upon the deposition with a statement by the deponent that the reporter erred in reporting or transcribing the answer or answers involved. The deponent may not otherwise change either the form or substance of his or her answers. The deponent shall provide the officer with an electronic or physical address to which notice is to be sent when the transcript is available for examination and signing. When the deposition is fully transcribed, the officer shall deliver to the deponent, at the address supplied,

notice that it is available and may be examined at a stated place at stated times, or pursuant to arrangement. After the deponent has examined the deposition, the officer shall enter upon it any changes the deponent desires to make, with the reasons the deponent gives for making them. If the deponent does not appear at the place specified in the notice within 28 days after the mailing of the notice, or within the same 28 days make other arrangements for examination of the deposition, or after examining the deposition refuses to sign it, or after it has been made available to the deponent by arrangement it remains unsigned for 28 days, the officer's certificate shall state the reason for the omission of the signature, including any reason given by the deponent for a refusal to sign. The deposition may then be used as fully as though signed, unless on a motion to suppress under Rule 211(d) the court holds that the reasons given by the deponent for a refusal to sign require rejection of the deposition in whole or in part.

(b) Certification, Filing, and Notice of Filing.

(1) If the testimony is transcribed, the officer

shall certify within the deposition transcript that the deponent was duly sworn by the officer and that the deposition is a true record of the testimony given by the deponent. A deposition so certified requires no further proof of authenticity

(2) Deposition transcripts shall not be filed with the clerk of the court as a matter of course. The party filing a deposition shall promptly serve notice thereof on the other parties and shall file the transcript and any exhibits in the form and manner specified by local rule.

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