

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

MASIMO CORPORATION,
Patent Owner.

Case IPR2020-01521
Patent 10,292,628

PETITIONER'S OBJECTIONS TO EVIDENCE

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner, Apple Inc. hereby submits the following objections to evidence in Patent Owner’s Response of July 9, 2021.

<u>Evidence</u>	<u>Objections</u>
Exhibit 2004	Petitioner objects to the admissibility of Exhibit 2004 under FRE 702 and 703, because it contains opinions that are conclusory, do not disclose supporting facts or data, are based on unreliable facts, data, or methods, and/or include testimony outside the scope of Dr. Madisetti’s specialized knowledge (to the extent he has any such knowledge) that will not assist the trier of fact. As an example, Dr. Madisetti possesses no experience or training relevant to his opinion that “a POSITA considering the impact of a convex surface on the direction of light would have applied the basic understanding that a convex lens directs light toward the center” Exhibit 2004 at ¶¶ 70; <i>see also id.</i> at ¶¶ 47, 52, 67, 74, 104, 107, 110. Accordingly, at least part of Dr. Madisetti’s declaration is unreliable in so much as it relies on his understanding of how a convex lens works. Patent Owner also objects to Exhibit 2004 as containing opinions that are irrelevant, confusing, and presenting the danger of unfair prejudice under FRE 401, 402, and 403.
Exhibit 2010	Petitioner objects to Exhibit 2010 under FRE 901, as Patent Owner has not submitted evidence that the document is authentic, nor that the document is self-authenticating. Of note, there is insufficient support in the Exhibit 2010 to

	<p>show that the document was publically available before the priority date of the pate nt. <i>See Microsoft Corp. v. Corel Software, LLC</i>, IPR2016-01300 (P.T.A.B. Jan. 4, 2017) (Denial of Institution) (finding that a Copyright Notice sheds virtually no light on public accessibility as of that date); <i>see also ServiceNow, Inc. v. Hewlett-Packard Co.</i>, IPR2015-00716, Paper No. 13 at 2-3, 10-18 (P.T.A.B. Aug. 26, 2015). Petitioner further objects to Exhibit 2010 under FRE 801 and 802 as inadmissible hearsay.</p>
Exhibit 2019	<p>Petitioner objects to the admissibility of Exhibit 2019 under FRE 401, 402, and 403 at least insofar as the Patent Owner Response does not establish the relevance of the statements cited, and at least insofar as the cited statements are potentially misleading when taken out of context.</p>
Exhibit 2020	<p>Petitioner objects to the admissibility of Exhibit 2020 under FRE 401, 402, and 403 at least insofar as the Patent Owner Response does not establish the relevance of the statements cited, and at least insofar as the cited statements are potentially misleading when taken out of context.</p>

For at least these reasons, Petitioner objects to Exhibits 2004, 2010, 2019, and 2020. Petitioner reserves the right to move to exclude Exhibits 2004, 2010, 2019, and 2020.

Respectfully submitted,

Dated: July 16, 2021

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§ 42.6(e)(4)(i) *et seq.*, the undersigned certifies that on July 16, 2021, a complete and entire copy of this Petitioner's Objections to Evidence was provided by electronic mail to the Patent Owner by serving the correspondence e-mail address of record as follows:

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