

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

MASIMO CORPORATION,
Patent Owner.

Case IPR2020-01538
Patent 10,588,554

PETITIONER'S OBJECTIONS TO EVIDENCE

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner hereby submits the following objections to evidence filed with Patent Owner’s Response of June 8, 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 would have believed that a convex surface directs light to a more central location relative to a flat surface. . . .” Exhibit 2004 at ¶ 63; <i>see also id.</i> at ¶¶ 71-76, 84. Accordingly, at least part of Dr. Madisetti’s declaration is unreliable inasmuch 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 show that the document was publically available before the

	<p>priority date of the patent. <i>See, e.g., Microsoft Corp. v. Corel Software, LLC</i>, IPR2016-01300 (P.T.A.B. Jan. 4, 2017) (Denial of Institution); <i>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 2013	<p>Petitioner objects to Exhibit 2013 under FRE 802, 901, as the exhibit includes out-of-court statements that are offered for the truth of the matter asserted and are asserted by a declarant who lacks personal knowledge.</p>
Exhibit 2014	<p>Petitioner objects to Exhibit 2014 under FRE 802, 901, as the exhibit includes out-of-court statements that are offered for the truth of the matter asserted.</p>
Exhibit 2015	<p>Petitioner objects to Exhibit 2015 under FRE 401, 403 as providing an irrelevant and misleading characterization of the knowledge in the art as of the priority date of the patent, as the report was published 5 years after the priority date of the patent, and therefore confuses the issues in the case.</p>
Exhibit 2016	<p>Petitioner objects to Exhibit 2016 under FRE 401 as irrelevant and under FRE 403. Specifically, any probative value it may have is substantially outweighed by a danger of unfair prejudice, confusing the issues, and/or being misleading. The article, written in 2020 (over a decade after the alleged priority date of the patent), does not</p>

	<p>provide any information relevant to the priority date of the patent. Additionally, Petitioner objects to Exhibit 2016 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 2016 to show that the document was publically available before the priority date of the patent. <i>See, e.g., Microsoft Corp. v. Corel Software, LLC</i>, IPR2016-01300 (P.T.A.B. Jan. 4, 2017); <i>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 2016 under FRE 801 and 802 as inadmissible hearsay.</p>
Exhibit 2017	<p>Petitioner objects to Exhibit 2017 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 2017 to show that the document was publically available before the priority date of the patent. <i>See, e.g., Microsoft Corp. v. Corel Software, LLC</i>, IPR2016-01300 (P.T.A.B. Jan. 4, 2017); <i>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 2017 under FRE 801 and 802 as inadmissible hearsay.</p>
Exhibit 2018	<p>Petitioner objects to Exhibit 2018 under FRE 401, 403 as providing an irrelevant and misleading characterization of</p>

	<p>the knowledge in the art as of the priority date of the patent, as the article was purportedly published 8 years after the priority date of the patent, and therefore confuses the issues in the case. Petitioner additionally objects to Exhibit 2018 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 2018 to show that the document was publically available before the priority date of the patent. <i>See, e.g., Microsoft Corp. v. Corel Software, LLC</i>, IPR2016-01300 (P.T.A.B. Jan. 4, 2017); <i>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 2018 under FRE 801 and 802 as inadmissible hearsay.</p>
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For at least these reasons, Petitioner objects to Exhibits 2004, 2010, and 2013-2018. Petitioner reserves the right to move to exclude Exhibits 2004, 2010, and 2013-2018.

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