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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.

Petitioner,

v.

MASIMO CORPORATION,

Patent Owner.

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Case IPR2020-01539  
U.S. Patent 10,588,554

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**PATENT OWNER'S OBJECTIONS TO EVIDENCE**

Pursuant to 37 C.F.R. § 42.64(b), Patent Owner Masimo Corporation objects as follows to the admissibility of evidence served with Petitioner's reply. Patent Owner reserves the right to: (1) timely file a motion to exclude these objectionable exhibits or portions thereof; (2) challenge the credibility and/or weight that should be afforded to these exhibits, whether or not Patent Owner files a motion to exclude the exhibits; (3) challenge the sufficiency of the evidence to meet Petitioner's burden of proof on any issue, including, without limitation, whether Petitioner met its burden to prove the prior art status of the alleged prior art on which it relies, whether or not Patent Owner has objected to, or files a motion to exclude, the evidence; and (4) cross examine any Petitioner declarant within the scope of his or her direct testimony that relates to these exhibits, without regard to whether Patent Owner has objected to the testimony or related exhibits or whether the testimony or related exhibits are ultimately found to be inadmissible.

<b>Exhibit Number and Description</b>	<b>Objections</b>
Exhibit 1039 Excerpts of Eugene Hecht Optics 2nd Ed. 1990	<b>Admissibility (FRE 1002, 1003):</b> This exhibit is an inadmissible copy because the exhibit as filed contains illegible and/or inaccurate reproductions of text and/or figures. <b>Incomplete, Irrelevant, Misleading (FRE 106, 401, 403):</b> This exhibit is a selected subsection of a larger document and is thus incomplete. Moreover, as used by Petitioner, this document does not stand for the proposition for which it is cited and the

	<p>portion of this document cited by Petitioner provides an incomplete characterization that, when taken in isolation, is misleading in the manner in which it is used, and confuses issues in the case. In addition, this exhibit is not cited in or part of Petitioner's remarks.</p>
<p>Exhibit 1040 Eugene Hecht Optics 2nd Ed. 1990</p>	<p><b>Admissibility (FRE 1002, 1003):</b> This exhibit is an inadmissible copy because the exhibit as filed contains illegible and/or inaccurate reproductions of text and/or figures.</p> <p><b>Incomplete, Irrelevant, Misleading (FRE 106, 401, 403):</b> As used by Petitioner, this document does not stand for the proposition for which it is cited and the portion of this document cited by Petitioner provides an incomplete characterization that, when taken in isolation, is misleading in the manner in which it is used, and confuses issues in the case.</p>
<p>Exhibit 1044 Refractive Indices of Human Skin Tissues at Eight Wavelengths</p>	<p><b>Incomplete, Irrelevant, Misleading (FRE 106, 401, 403):</b> As used by Petitioner, this document does not stand for the proposition for which it is cited and the portion of this document cited by Petitioner provides an incomplete characterization that, when taken in isolation, is misleading in the manner in which it is used, and confuses issues in the case.</p>
<p>Exhibit 1045 Analysis of the Dispersion of Optical Plastic Materials</p>	<p><b>Incomplete, Irrelevant, Misleading (FRE 106, 401, 403):</b> As used by Petitioner, this document does not stand for the proposition for which it is cited and the portion of this document cited by Petitioner provides an incomplete characterization that, when taken in isolation, is misleading in the manner in which it is used, and confuses issues in the case.</p>

<p>Exhibit 1046 Noninvasive Pulse Oximetry Utilizing Skin Reflectance</p>	<p><b>Incomplete, Irrelevant, Misleading (FRE 106, 401, 403):</b></p> <p>As used by Petitioner, this document does not stand for the proposition for which it is cited and the portion of this document cited by Petitioner provides an incomplete characterization that, when taken in isolation, is misleading in the manner in which it is used, and confuses issues in the case.</p>
<p>Exhibit 1047 Second Declaration of Dr. Thomas W. Kenny</p>	<p>Masimo's objections to Ex. 1047 are set forth below. To the extent Dr. Kenny's declaration incorporates objectionable material in the cited paragraphs below in additional paragraphs or sections, Masimo's objections apply with equal force to those additional paragraphs or sections. In addition, Masimo objects because declarant's testimony improperly relies on new evidence and arguments not presented in connection with Petitioner's petition and does not respond to arguments raised in Patent Owner's responsive papers (37 C.F.R. § 42.23) (<i>see e.g.</i>, ¶¶29-48).</p> <p><b>Incomplete, Irrelevant, Misleading (FRE 106, 401, 403):</b></p> <p>¶¶7-19 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited and mischaracterize the teachings of Exs. 1003, 1006, 1008, 1009, 1012, 1019, 1024, and the Patent Owner Response.</p> <p>¶¶22-27 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited and mischaracterize the teachings of Exs. 1006, 1009, 1019, and the Patent Owner Response.</p> <p>¶¶29-31 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited and mischaracterize the teachings of Exs. 1006, 1016, 1019, 1040, 1046, 1049, and the Patent</p>

	<p>Owner Response.</p> <p>¶34 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited and mischaracterizes the teachings of Exs. 1003, 1040, and 1049.</p> <p>¶¶36-46 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited and mischaracterize the teachings of Exs. 1008, 1012, 1019, 1040, 1042, 1044, 1045, 1049, and the Patent Owner Response.</p> <p>¶48 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited and mischaracterizes the teachings of Ex. 1019.</p> <p>¶¶54-60 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited and mischaracterize the teachings of Exs. 1006, 1008, 1010, 1051, and the Patent Owner Response.</p> <p>¶¶66-67 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited and mischaracterize the teachings of Exs. 1010, 1027.</p> <p><b>Improper Testimony by Expert Witness (FRE 702):</b></p> <p>¶¶7, 8, 9, 20, 21, 24, 28, 30, 32, 33, 35, 37, 38, 40, 41, 44, 46, 47, 49, 50, 51, 52, 53, 54, 55, 61, 62, 63, 64, 65, 66 are not based on sufficient facts and data, and do not reliably apply facts and data using scientific principles.</p>
Exhibit 1049 Eugene Hecht Optics 4th Ed. 2002	<p><b>Admissibility (FRE 1002, 1003):</b></p> <p>This exhibit is an inadmissible copy because the exhibit as filed contains illegible and/or inaccurate reproductions of text and/or figures.</p> <p><b>Incomplete, Irrelevant, Misleading (FRE 106,</b></p>

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