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On behalf of:

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.

Petitioner,

v.

MASIMO CORPORATION,

Patent Owner.

IPR2020-01713
Patent 10,624,564

**MASIMO OBJECTIONS TO ADMISSIBILITY OF
APPLE EVIDENCE SERVED WITH ITS REPLY**

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.

Exhibit No. and Description	Objection
Exhibit 1050 - Second Declaration of Dr. Thomas W. Kenny	Masimo’s objections to Ex. 1050 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> , ¶¶31-59).

Exhibit No. and Description	Objection
	<p>Incomplete, Irrelevant, Misleading (FRE 106, 401, 403):</p> <p>¶¶7-23 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, 1015, 1021, 1060, and the Patent Owner Response.</p> <p>¶¶24-30 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, 1021, and the Patent Owner Response.</p> <p>¶¶31-35 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited and mischaracterize the teachings of Exs. 1006, 1021, 1051, 1052, 1053, 1054, 1059, 2004, 2006, and the Patent Owner Response.</p> <p>¶¶38-40 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited and mischaracterize the teachings of Exs. 1051, 1052.</p> <p>¶44 is misleading, incomplete, and irrelevant because it lacks support for the contentions for which it is cited and mischaracterizes the teachings of Exs. 1006, 1051, 1052, 1055.</p> <p>¶¶46-58 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited and mischaracterize the teachings of Exs. 1001, 1007, 1008, 1009, 1012, 1021, 1051, 1052, 1053, 1054, 1056, 1057, 1058, 1059, 2004, 2006, 2007, and the Patent Owner Response.</p> <p>¶¶63-66 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited and</p>

Exhibit No. and Description	Objection
	<p data-bbox="691 264 1432 380">mischaracterize the teachings of Exs. 1003, 1010, 1014, 1023, 1026, 1050, and the Patent Owner Response.</p> <p data-bbox="691 394 1432 604">¶¶67-69 are misleading, incomplete, and irrelevant because they lack support for the contentions for which they are cited and mischaracterize the teachings of Exs. 1003, 1009, 1013, and the Patent Owner Response.</p> <p data-bbox="691 642 1432 720">Improper Testimony by Expert Witness (FRE 702):</p> <p data-bbox="691 737 1432 940">¶¶7, 8, 9, 10, 13, 16, 23, 26, 30, 31, 33, 35, 36, 39, 40, 41, 42, 43, 45, 47, 48, 51, 54, 56, 59, 60, 63, 64, 69 are not based on sufficient facts and data, and do not reliably apply facts and data using scientific principles.</p>
Exhibit 1051 - Hecht Optics Second Edition	<p data-bbox="691 961 1432 995">Admissibility (FRE 1002, 1003):</p> <p data-bbox="691 1010 1432 1129">This exhibit is an inadmissible copy because the exhibit as filed contains illegible and/or inaccurate reproductions of text and/or figures.</p> <p data-bbox="691 1144 1432 1222">Incomplete, Irrelevant, Misleading (FRE 106, 401, 403):</p> <p data-bbox="691 1239 1432 1520">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>

Exhibit No. and Description	Objection
Exhibit 1052 - Hecht Optics Fourth Edition	<p>Admissibility (FRE 1002, 1003): This exhibit is an inadmissible copy because the exhibit as filed contains illegible and/or inaccurate reproductions of text and/or figures.</p> <p>Incomplete, Irrelevant, Misleading (FRE 106, 401, 403): 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>
Exhibit 1057 - “Refractive Indices of Human Skin Tissues at Eight Wavelengths and Estimated Dispersion Relations between 300 and 1600 nm,” H. Ding, et al.; Phys. Med. Biol. 51 (2006); pp. 1479-1489	<p>Incomplete, Irrelevant, Misleading (FRE 106, 401, 403): 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>
Exhibit 1058 - “Analysis of the Dispersion of Optical Plastic Materials,” S. Kasarova, et al.; Optical Materials 29 (2007); pp. 1481-1490	<p>Incomplete, Irrelevant, Misleading (FRE 106, 401, 403): 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>

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