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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
U.S. Patent 10,624,564

PATENT OWNER'S SUR-REPLY TO REPLY

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I. INTRODUCTION

Petitioner attempts to rewrite a flawed petition that misunderstood the cited references and basic optical principles. Petitioner’s new arguments are inconsistent with its prior positions, conflict with the cited references, and constitute a hindsight-driven reconstruction of Masimo’s claims.

Petitioner asserts that Masimo did not respond to Petitioner’s three purported motivations to modify Aizawa’s “flat cover to include a protruding convex surface...similar to Ohsaki’s” translucent board. Reply 7; Pet. 22-23. That is incorrect.

Petitioner’s first motivation is to “improve adhesion.” *Id.* Masimo directly responded, pointing out that Aizawa discloses a palm-side sensor and that Petitioner’s proposed combination has a shape that would *increase slipping* at Aizawa’s measurement location. Patent Owner Response (“POR”) 16-25. Indeed, Aizawa teaches a *flat* surface improves adhesion on the wrist’s palm-side and Ohsaki teaches a *convex* surface tends to *slip* on the wrist’s palm-side. POR 25-38. Both references thus undermine Petitioner’s proposed motivation of improved adhesion. Rather than address these contrary teachings, Petitioner asserts that Ohsaki’s sensor has *no* particular shape and reduces slipping at *any* body location. Reply 12-20. That contradicts Ohsaki, which illustrates its sensor’s longitudinal shape and explains how even slightly changing the sensor’s orientation or

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