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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.

IPR2020-01714
Patent 10,631,765

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 Masimo "avoids addressing the merits" of Petitioner's three purported motivations to combine Mendelson '799 and Ohsaki. Reply 2. That is incorrect. Petitioner's first motivation was to "improve adhesion." *Id.* 1. Masimo directly responded, pointing out that Petitioner's proposed combination has a shape that Ohsaki indicates would tend to *slip*. Patent Owner Response ("POR") 22-28. Rather than substantively respond, Petitioner argues Ohsaki has *no* particular shape and that Ohsaki's benefit of reduced slipping would apply to *any* shaped sensor used at *any* body location. Reply 6-10. That contradicts Ohsaki, which illustrates its sensor's long shape and explains how even slightly changing the sensor's orientation or measurement location results in slipping. Ex. 1009 Figs. 1, 2, 3A-3B, ¶¶[0019], [0023]. Petitioner has no response to these Ohsaki teachings and thus simply ignores them. Petitioner's first motivation fails.

Masimo also responded to Petitioner's second motivation, a purported motivation to "improve detection efficiency." Reply 1. As Masimo explained, Petitioner admitted adding a convex cover to Mendelson '799's sensor would

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