

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 B1)
IPR2020-01716 (Patent 10,702,194 B1)
IPR2020-01733 (Patent 10,702,195 B1)
IPR2020-01737 (Patent 10,709,366 B1)

Before JOSIAH C. COCKS, ROBERT L. KINDER, and
AMANDA F. WIEKER, *Administrative Patent Judges*.

WIEKER, *Administrative Patent Judge*.

ORDER

Granting Petitioner's Motion to Submit Supplemental Information
37 C.F.R. § 42.123

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In each captioned proceeding, we entered a Decision to Institute the requested *inter partes* review. *See, e.g.*, IPR2020-01716, Paper 7.¹ On June 2, 2021, Petitioner requested authorization to file a motion to submit supplemental information in each proceeding, and we granted authorization by email.

On June 9, 2021, Petitioner filed a Motion to Submit Supplemental Information in each proceeding. *See, e.g.*, IPR2020-01716, Paper 10 (“Mot.”). In IPR2020-01716, IPR2020-01733, and IPR2020-01737, Petitioner moves to submit a Declaration of Jacob Munford (“Munford Declaration”), a Declaration of Gordon MacPherson: Mendelson-2006 (“MacPherson M-2006 Declaration”), a Declaration of Gordon MacPherson: Mendelson-2003 (“MacPherson M-2003 Declaration”), and a Declaration of Gordon MacPherson: Mendelson-IEEE-1988 (“MacPherson M-1988 Declaration”) into the record as supplemental information, to be entered as Exhibits 1049–1052. *See, e.g., id.* at 1. In IPR2020-01713, Petitioner moves to submit the Munford Declaration into the record as supplemental information, to be entered as Exhibit 1049. IPR2020-01713, Paper 10, 1.

Petitioner contends that the declarations “provide further testimony supporting the public accessibility and authenticity of prior art references relied upon in the challenges set forth in [each] Petition,” and are offered in response to Patent Owner’s objections, which were served on Petitioner in mid-May, 2021. *See, e.g.*, Mot. 1–2. Petitioner also contends that its

¹ In this Order, we provide citations to the record of IPR2020-01716, unless otherwise indicated. Similar papers appear in the record of each captioned proceeding.

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motions meet the requirements for submission of supplemental information as set forth in 37 C.F.R. § 42.123(a) because the motions are timely and the declarations are relevant to a claim for which trial has been instituted. *See, e.g., id.* at 4–5. Petitioner represents that Patent Owner does not oppose the motions. *See, e.g., id.* at 1.

As the motions are unopposed and otherwise satisfy the requirements of § 42.123(a), we *grant* Petitioner’s motions.²

ORDER

Accordingly, it is:

ORDERED that Petitioner’s Motion to Submit Supplemental Information is *granted* in each proceeding.

² The declarations respond to Patent Owner’s evidentiary objections and were served on Patent Owner in accordance with 37 C.F.R. § 42.64. *See, e.g., Mot. 2.* As such, the declarations are supplemental evidence governed by 37 C.F.R. § 42.64(b)(2). *See id.* (“Petitioner served Patent Owner with supplemental evidence including [the declarations].”). Because the parties agree to entry of the declarations as supplemental information, governed by 37 C.F.R. § 42.123(a), we grant Petitioner’s motions, regardless of the fact that the declarations could instead be entered with Petitioner’s opposition to a motion to exclude, in the event such a motion is filed by Patent Owner. *See* 37 C.F.R. § 42.5.

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