

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

MASIMO CORPORATION,
Patent Owner.

Case IPR2020-01737
Patent 10,709,366

PETITIONER'S OBJECTIONS TO EVIDENCE

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner, Apple Inc. hereby submits the following objections to evidence in Patent Owner's Response of August 12, 2021.

<u>Evidence</u>	<u>Objections</u>
Exhibit 2004	Petitioner objects to the admissibility of Exhibit 2004 under FRE 702 and 703, because it contains opinions that are conclusory, do not disclose supporting facts or data, are based on unreliable facts, data, or methods, and/or include testimony outside the scope of Dr. Madisetti's specialized knowledge (to the extent he has any such knowledge) that will not assist the trier of fact. Petitioner also objects to Exhibit 2004 as containing opinions that are irrelevant, confusing, and presenting the danger of unfair prejudice under FRE 401, 402, and 403.
Exhibit 2006	Petitioner objects to the admissibility of Exhibit 2006 under FRE 401, 402, and 403 at least insofar as the Patent Owner Response does not establish the relevance of the statements cited, and at least insofar as the cited statements are potentially misleading when taken out of context. Petitioner further incorporates the real-time objections made by Petitioner's counsel reflected in Exhibit 2006, to the extent that such objections relate to portions of Exhibit 2006 that are cited in Patent Owner's Response.
Exhibit 2007	Petitioner objects to the admissibility of Exhibit 2007 under FRE 401, 402, and 403 at least insofar as the Patent Owner

	<p>Response does not establish the relevance of the statements cited, and at least insofar as the cited statements are potentially misleading when taken out of context.</p> <p>Petitioner further incorporates the real-time objections made by Petitioner's counsel reflected in Exhibit 2007, to the extent that such objections relate to portions of Exhibit 2007 that are cited in Patent Owner's Response.</p>
Exhibit 2008	<p>Petitioner objects to the admissibility of Exhibit 2008 under FRE 401, 402, and 403 at least insofar as the Patent Owner Response does not establish the relevance of the statements cited, and at least insofar as the cited statements are potentially misleading when taken out of context.</p> <p>Petitioner further incorporates the real-time objections made by Petitioner's counsel reflected in Exhibit 2008, to the extent that such objections relate to portions of Exhibit 2008 that are cited in Patent Owner's Response.</p>
Exhibit 2009	<p>Petitioner objects to the admissibility of Exhibit 2009 under FRE 401, 402, and 403 at least insofar as the Patent Owner Response does not establish the relevance of the statements cited, and at least insofar as the cited statements are potentially misleading when taken out of context.</p> <p>Petitioner further incorporates the real-time objections made by Petitioner's counsel reflected in Exhibit 2009, to the extent that such objections relate to portions of Exhibit 2009 that are cited in Patent Owner's Response.</p>
Exhibit 2010	<p>Petitioner objects to Exhibit 2010 under FRE 901, as Patent</p>

	<p>Owner has not submitted evidence that the document is authentic, nor that the document is self-authenticating. Of note, there is insufficient support in the Exhibit 2010 to show that the document was publically available before the priority date of the patent. <i>See, e.g., Microsoft Corp. v. Corel Software, LLC</i>, IPR2016-01300 (P.T.A.B. Jan. 4, 2017); <i>ServiceNow, Inc. v. Hewlett-Packard Co.</i>, IPR2015-00716, Paper No. 13 at 2-3, 10-18 (P.T.A.B. Aug. 26, 2015). Petitioner further objects to Exhibit 2010 under FRE 801 and 802 as inadmissible hearsay.</p>
Exhibit 2019	<p>Petitioner objects to the admissibility of Exhibit 2019 under FRE 401, 402, and 403 at least insofar as the Patent Owner Response does not establish the relevance of the statements cited, and at least insofar as the cited statements are potentially misleading when taken out of context.</p>
Exhibit 2020	<p>Petitioner objects to the admissibility of Exhibit 2020 under FRE 401, 402, and 403 at least insofar as the Patent Owner Response does not establish the relevance of the statements cited, and at least insofar as the cited statements are potentially misleading when taken out of context.</p>
Exhibit 2026	<p>Petitioner incorporates the real-time objections made by Petitioner's counsel reflected in Exhibit 2026, to the extent that such objections relate to portions of Exhibit 2026 that are cited in Patent Owner's Response.</p>

For at least these reasons, Petitioner objects to Exhibits 2004, 2006-2010, 2019, 2020, and 2026. Petitioner reserves the right to move to exclude Exhibits 2004, 2006-2010, 2019, 2020, and 2026.

Respectfully submitted,

Dated: August 19, 2021

/Hyun Jin In/
W. Karl Renner, Reg. No. 41,265
Roberto J. Devoto, Reg. No. 55,108
Hyun Jin In, Reg. No. 70,014
Fish & Richardson P.C.
3200 RBC Plaza, 60 South Sixth Street
Minneapolis, MN 55402
T: 202-783-5553

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.