

Filed November 24, 2021

On behalf of:

Patent Owner Masimo Corporation  
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.

Petitioner,

v.

MASIMO CORPORATION,

Patent Owner.

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IPR2021-00193  
U.S. Patent 10,299,708

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**MASIMO OBJECTIONS TO ADMISSIBILITY OF APPLE EVIDENCE  
SERVED WITH APPLE'S 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.

<b>Exhibit Number and Description</b>	<b>Objections</b>
Exhibit 1044 Refractive Indices of Human Skin Tissues at Eight Wavelengths	<b>Incomplete, Irrelevant, Misleading (FRE 106, 401, 403):</b> 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 1045 Analysis of the Dispersion of Optical Plastic Materials</p>	<p><b>Incomplete, Irrelevant, Misleading (FRE 106, 401, 403):</b></p> <p>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>
<p>Exhibit 1046 Noninvasive Pulse Oximetry Utilizing Skin Reflectance Photoplethysmography</p>	<p><b>Incomplete, Irrelevant, Misleading (FRE 106, 401, 403):</b></p> <p>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>
<p>Exhibit 1047 Second Declaration of Dr. Thomas W. Kenny</p>	<p>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>, ¶¶7-34).</p> <p><b>Incomplete, Irrelevant, Misleading (FRE 106, 401, 403):</b></p> <p>The testimony is misleading, incomplete, and irrelevant because it lacks support for contentions and mischaracterizes the teachings of Exs. 1001, 1003, 1006, 1008, 1012, 1014, 1023, 1025, 1034, 1036, 1041, 1044, 1046, 1049, 1050, 1051, 1052, 2004, 2006, 2009, 2020, and the Patent Owner Response.</p> <p><b>Improper Testimony by Expert Witness (FRE 702):</b></p> <p>The testimony is not based on sufficient facts and data, and does not reliably apply facts and data using scientific principles.</p>

<p>Exhibit 1048 Declaration of Dr. Thomas W. Kenny from IPR2020-01539</p>	<p>Masimo incorporates herein its previously served objections to this declaration (Ex. 1003 in IPR2020-01539). In addition, Masimo provides the following further objections to Ex. 1048.</p> <p><b>Incomplete, Irrelevant, Misleading (FRE 106, 401, 403):</b></p> <p>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>
<p>Exhibit 1049 Eugene Hecht Optics 4th Ed. 2002</p>	<p><b>Admissibility (FRE 1002, 1003):</b></p> <p>This exhibit is an inadmissible copy because the exhibit as filed contains illegible and/or inaccurate reproductions of text and/or figures.</p> <p><b>Incomplete, Irrelevant, Misleading (FRE 106, 401, 403):</b></p> <p>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>
<p>Exhibit 1052 Eugene Hecht Optics 2nd Ed. 1990</p>	<p><b>Admissibility (FRE 1002, 1003):</b></p> <p>This exhibit is an inadmissible copy because the exhibit as filed contains illegible and/or inaccurate reproductions of text and/or figures.</p> <p><b>Incomplete, Irrelevant, Misleading (FRE 106, 401, 403):</b></p> <p>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</p>

	manner in which it is used, and confuses issues in the case.
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Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: November 24, 2021

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