

Filed January 18, 2022

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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.

IPR2021-00209
Patent 10,376,191

PATENT OWNER MASIMO SUR-REPLY TO REPLY

TABLE OF CONTENTS
(cont'd)

	Page No.
I. INTRODUCTION	1
II. ARGUMENT	2
A. Grounds 1A-1B	2
1. Petitioner’s New Evidence And Arguments Address An Argument Masimo Never Made	2
a) The Principle Of Reversibility Is Irrelevant To Petitioner’s Proposed Combination	6
b) Petitioner’s Other New Theories Are Similarly Misplaced.....	10
2. Petitioner Does Not Establish A Motivation To Modify Aizawa’s Sensor To Include Both Multiple Detectors And Multiple LEDs	13
3. Ohsaki Would Not Have Motivated A POSITA To Add A Convex Protrusion To Aizawa’s Sensor	15
B. Ground 2.....	20
1. A POSITA Would Not Have Added A Convex Surface To Mendelson-1988’s Sensor	20
2. Petitioner’s Proposed Combination Does Not Include A “Cover”	20
3. Petitioner’s Proposed Combination Does Not Include The Claimed “Plurality Of Detectors In A Circular Portion Of The Housing”	23

TABLE OF CONTENTS
(cont'd)

	Page No.
4. Petitioner Uses Nishikawa As Far More Than A “Supporting Reference”	23
III. CONCLUSION.....	24

TABLE OF CONTENTS
(cont'd)

Page No.

DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.,
567 F.3d 1314 (Fed. Cir. 2009)19

Phillips v. AWH Corp.,
415 F.3d 1303 (Fed. Cir. 2005) (*en banc*)21

I. INTRODUCTION

Rather than substantively rebut Masimo’s arguments, Petitioner concocts arguments Masimo never made and then spends many pages of briefing attempting to disprove those arguments. Petitioner asserts numerous new optics theories in an attempt to show a convex surface does not direct “*all*” light to “a single point at the center.” Reply 3.¹ Masimo never made such an argument.

Rather, Masimo argued that a convex surface condenses relatively more light towards a more central location as compared to a flat surface. There should be no dispute on this issue. Petitioner and its declarant repeatedly admitted that a convex surface would direct light away from the periphery and towards a more central position. Yet, Petitioner proposed adding a convex surface above *peripherally located detectors*, arguing a POSITA would make the addition to *improve* optical signal strength. Masimo explained that, consistent with Petitioner’s admissions, a POSITA would *not* have been motivated to direct light *away* from peripherally located detectors. None of Petitioner’s new arguments persuasively rebut this. The Board should affirm the patentability of all challenged claims.

¹ All emphasis is added unless otherwise noted

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