

Filed December 14, 2021

On behalf of:

Patent Owner Masimo Corporation
By: Joseph R. Re (Reg. No. 31,291)
Jarom D. Kesler (Reg. No. 57,046)
Stephen W. Larson (Reg. No. 69,133)
Jacob L. Peterson (Reg. No. 65,096)
KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street, 14th Floor
Irvine, CA 92614
Tel.: (949) 760-0404 Fax: (949) 760-9502
E-mail: AppleIPR2021-0209-191@knobbe.com

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

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

Exhibit Number and Description	Objections
Exhibit 1044 Refractive Indices of Human Skin Tissues at Eight Wavelengths	Incomplete, Irrelevant, Misleading (FRE 106, 401, 403): 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.

Exhibit Number and Description	Objections
Exhibit 1045 Analysis of the Dispersion of Optical Plastic Materials	<p>Incomplete, Irrelevant, Misleading (FRE 106, 401, 403):</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>
Exhibit 1046 Noninvasive Pulse Oximetry Utilizing Skin Reflectance Photoplethysmography	<p>Incomplete, Irrelevant, Misleading (FRE 106, 401, 403):</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>
Exhibit 1047 Second Declaration of Dr. Thomas W. Kenny	<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>Incomplete, Irrelevant, Misleading (FRE 106, 401, 403):</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, 1045, 1046, 1049, 1050, 1051, 1052, 2004, 2006, 2007, 2009, 2020, and the Patent Owner Response.</p> <p>Improper Testimony by Expert Witness (FRE 702):</p> <p>The testimony is not based on sufficient facts and data, and does not reliably apply facts and data using scientific principles.</p>
Exhibit 1048 Declaration of Dr. Thomas W. Kenny from IPR2020-01539	<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>

Exhibit Number and Description	Objections
	<p>Incomplete, Irrelevant, Misleading (FRE 106, 401, 403):</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>
Exhibit 1049 Eugene Hecht Optics 4th Ed. 2002	<p>Admissibility (FRE 1002, 1003):</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>Incomplete, Irrelevant, Misleading (FRE 106, 401, 403):</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>
Exhibit 1052 Eugene Hecht Optics 2nd Ed. 1990	<p>Admissibility (FRE 1002, 1003):</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>Incomplete, Irrelevant, Misleading (FRE 106, 401, 403):</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>

IPR2021-00209 – Patent 10,376,191
Apple v. Masimo

Respectfully submitted,
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: December 14, 2021

By: /Jacob L. Peterson/

Joseph R. Re (Reg. No. 31,291)

Jarom D. Kesler (Reg. No. 57,046)

Stephen W. Larson (Reg. No. 69,133)

Jacob L. Peterson (Reg. No. 65,096)

Customer No. 64,735

Attorneys for Patent Owner
Masimo Corporation

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.