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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.

Case IPR2022-01291
U.S. Patent 10,687,745

PATENT OWNER'S OBJECTIONS TO EVIDENCE

Pursuant to 37 C.F.R. § 42.64(b), Patent Owner Masimo Corporation objects to the admissibility of evidence submitted by Petitioner Apple Inc. Patent Owner reserves its rights 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 is or 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.

Evidence	**Objections**
EX1003	Masimo objects to Dr. Anthony's testimony regarding the level of ordinary skill in the art, the knowledge of a skilled artisan, the scope and content of the art and his interpretation thereof, and the ultimate issue of obviousness on the bases that such testimony (1) will not "help the trier of fact to understand the evidence or to determine a fact in

Evidence	Objections
	issue," at least because Dr. Anthony lacks experience in the relevant field and/or is not qualified to testify as to the knowledge of a person of skill in the art or how a person of skill in the art would understand the relevant technical issues, (2) is not "based on sufficient facts or data," (3) is not "the product of reliable principles and methods," and/or (4) is not based on a reliable application of "the principles and methods to the facts of the case" (FRE 702). By way of example and not limitation, Dr. Anthony's testimony is deficient under FRE 702 at least for the reasons set forth in the following paragraphs. Masimo objects that Dr. Anthony's declaration as irrelevant and unfairly prejudicial, not based on sufficient facts or data, and also not the product of an appropriate analysis (FRE 402, 403, 702) because Dr. Anthony's analysis is incomplete and does not address the objective evidence of nonobviousness known to Apple or the parties' prior

Evidence	Objections
	agreement on claim construction. This objection applies to the entirety of Dr. Anthony's testimony regarding invalidity. Masimo further objects to Dr. Anthony's declaration as not the product of an appropriate analysis, and unhelpful to the factfinder (FRE 702) because it merely copies arguments verbatim or nearly verbatim from the Petition without further analysis. *See Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 (Aug. 24, 2022) (precedential). This objection applies at least to ¶ 25 and ¶¶ 29-104. Masimo further objects on the basis that Dr. Anthony's declaration fails to disclose all the materials he considered in forming his opinions (FRE 702, 37 CFR § 42.65). For example, Dr. Anthony's declaration copied from Apple's ITC Pre-Hearing Brief, but failed to disclose that briefing in his materials considered. At least ¶ 76 of Dr. Anthony's declaration copies arguments from Apple's ITC Pre-

Evidence	Objections
	Hearing Brief nearly verbatim, including a citation to Apple's expert report in the ITC investigation. Paragraphs 25 and 29-104 of Dr. Anthony's declaration also contains numerous statements that appear to have been copied verbatim or nearly verbatim from Apple's ITC Pre-Hearing Brief. Masimo further objects to ¶¶ 47-48 as not based on sufficient facts or data and not the product of reliable principles and methods (FRE 702). Dr. Anthony testifies, for example, that "oxygen saturation comprises heart rate sensing at different wavelengths," but cites no evidence to support that assertion. EX1003 ¶ 47. Dr. Anthony also testifies that "A POSITA would have reasonably expected success in adapting Iwamiya's sensor to this purpose because wrist-worn pulse oximetry sensors, such as that described in Sarantos, were well-known in the art." *Id.* ¶ 48. But Dr. Anthony cited no evidence to support the assertion that wrist-worn pulse oximetry sensors were well-

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