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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 MOTION TO SEAL

I. INTRODUCTION

Patent Owner Masimo Corporation (“Masimo”) submits this Motion to Seal pursuant to the Protective Order (EX1035). Masimo’s Patent Owner Response and its expert’s declaration (EX2070) rely, in part, on evidence that Apple produced in response to Masimo’s Motion for Additional Discovery. That evidence consists of Apple’s documents and its engineers’ testimony during the June 6-10, 2022 hearing in the ITC investigation, *Certain Light-Based Physiological Measurement Devices and Components Thereof*, Inv. No. 337-TA-1276 (ITC) (“ITC Investigation”). All of the information that Masimo moves to seal was designated by Apple in the ITC Investigation as containing its Confidential Business Information. Specifically, Masimo moves to seal confidential versions of its Patent Owner Response and Exhibits 2070, 2076-2086, 2089, 2090, and 2093. Masimo has filed public versions, with confidential portions redacted, of its Patent Owner Response and the Declaration of R. James Duckworth.

Counsel for the parties have conferred via email. Apple does not oppose the motion as to sealing any Apple confidential information in any documents that Apple produced in response to the Masimo’s Motion for Additional Discovery or other papers or exhibits that quote from the produced documents, but reserves the right to oppose any other aspects of the motion at a later time after an opportunity to review the substance of this motion. Thus, Masimo believes that the motion is *unopposed*.

II. MOTION TO SEAL LEGAL STANDARD

“There is a strong public policy for making all information filed in a quasijudicial administrative proceeding open to the public.” *Garmin Int’l v. Cuozzo Speed Techs., LLC*, IPR2012–00001, slip op. at 1–2 (PTAB Mar. 14, 2013) (Paper 34). The record for an *inter partes* review shall be made available to the public, except as otherwise ordered on a motion to seal. 35 U.S.C. § 326(a)(1); 37 C.F.R. § 42.14. The documents and information that are the subject of the motion to seal shall be treated as sealed until the motion is decided. *Id.*

In determining whether to grant a Motion to Seal, the Board must find “good cause” and “strike a balance between the public’s interest in maintaining a complete and understandable file history and the parties’ interest in protecting truly sensitive information.” 37 C.F.R. § 42.54(a); Consolidated Trial Practice Guide (November 2019) at 19 *see also* *Argentum Pharms. LLC v. Alcon Res., Ltd.*, IPR2017-01053, Paper 27 at 3-4 (PTAB Jan. 19, 2018) (Informative) (describing the “good cause” standard). As described in the Consolidated Trial Practice Guide, the Board identifies confidential information in a manner “consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.”

The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). That includes showing that the information is

truly confidential, and that such confidentiality outweighs the strong public interest in having an open record. See *Argentum*, Paper 27 at 3–4. A party moving to seal has the burden of showing that:

(1) the information sought to be sealed is truly confidential, (2) a concrete harm would result upon public disclosure, (3) there exists a genuine need to rely on the specific information sought to be sealed, and (4) on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record.

Id. These factors support granting Masimo’s motion to seal.

III. ALL OF THE DOCUMENTS REQUESTED TO BE SEALED CONTAIN APPLE’S CONFIDENTIAL BUSINESS INFORMATION

Masimo’s Patent Owner Response contains quotes and images from documents and testimony designated as Apple’s Confidential Business Information. Masimo has concurrently filed a public version of its Patent Owner Response with Apple’s Confidential Business Information redacted. Information that previously became public through public filings in the ITC Investigation have not been redacted.

Exhibit 2070 is the Declaration of R. James Duckworth, Ph.D., in support of Masimo’s Patent Owner Responses. Exhibit 2070 contains quotes and images from documents and testimony designated as Apple’s Confidential Business Information. Masimo has concurrently filed a public version of Exhibit 2070 with Apple’s Confidential Business Information redacted. Information that previously became

public through public filings in the ITC Investigation have not been redacted.

Exhibits 2076, 2077, 2078, and 2079 are transcripts of the ITC Investigation hearing testimonies of Apple's engineers, Brian Land, Dr. Paul Mannheimer, Dr. Stephen Waydo, and Dr. Vivek Venugopal, respectively. The transcripts contain portions of their testimonies that were designated as Apple's Confidential Business Information. The public portions of their testimony can be found in Exhibit 2008.

Exhibits 2080, 2081, and 2082 are designated portions of transcripts of the depositions of Apple's engineers, Dr. Paul Mannheimer, Dr. Stephen Waydo, and Dr. Tao Shui, respectively, taken during the ITC Investigation. Apple designated these transcripts as containing its Confidential Business Information.

Exhibit 2083 is an internal Apple email between Apple's engineers and an attached internal Apple presentation. Apple designated this exhibit as containing its Confidential Business Information.

Exhibit 2084 is an internal Apple organizational chart. Apple designated this exhibit as containing its Confidential Business Information.

Exhibits 2085, 2086, and 2089 are internal Apple presentations concerning its research and development. Apple designated these exhibits as containing its Confidential Business Information.

Exhibit 2090 is an internal Apple email between Apple employees. Apple designated this exhibit as containing its Confidential Business Information.

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