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Filed on behalf of:

Patent Owner Masimo Corporation
By: Brian C. Claassen (Reg. No. 63,051)
Carol Pitzel Cruz (Reg. No. 61,224)
Daniel Kiang (Reg. No. 79,631)
Jeremiah S. Helm, Ph.D. (admitted *pro hac vice*)

KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street, Fourteenth Floor
Irvine, CA 92614
Tel.: (949) 760-0404
Fax: (949) 760-9502
E-mail: AppleIPR745-1@knobbe.com

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. in connection with its Reply brief. Further, pursuant to the parties' agreement and the Board's approval in an email to the parties dated April 18, 2023 (attached hereto as Appendix A), Patent Owner also objects to the admissibility of EX1037-EX1041 which Petitioner filed as "supplemental information."

Evidence	Objections
EX1037	Patent Owner objects to 878:4-16 of EX1037 as inadmissible hearsay pursuant to FRE 801-802 that is not subject to any exception.
EX1038	<p>Patent Owner objects to EX1038 as irrelevant (FRE 401).</p> <p>Patent Owner also objects to Petitioner's reliance on EX1038 for the first time in Reply is improper and unfairly prejudicial under FRE403. Apple was aware of the EX1038 through the ITC investigation before filing the Petition and chose not to rely upon it.</p> <p>Patent Owner reserves all rights to move to strike arguments or testimony relying on EX1038 as exceeding the proper scope of reply.</p>
EX1039-EX1041	<p>Patent Owner objects to EX1039-EX1041 as irrelevant. FRE 401.</p> <p>Patent Owner further objects to these exhibits as lacking foundation and not authenticated.</p> <p>FRE 403, 901. Patent Owner further objects to all statements within the exhibits as inadmissible hearsay that is not subject to any exception. FRE 801-802.</p> <p>Patent Owner also objects to Petitioner's reliance on these</p>

Evidence	Objections
	<p>exhibits for the first time in Reply as improper and unfairly prejudicial under FRE403. Apple was aware of these exhibits through the ITC investigation before filing the Petition and chose not to rely upon it. <i>See Consolidated Trial Practice Guide 74-75</i> (“improper for a reply to present new evidence (including new expert testimony) that could have been presented in a prior filing”). Patent Owner reserves all rights to move to strike arguments or testimony relying on EX1039-EX1041 as exceeding the proper scope of reply.</p>
EX1042	<p>Patent Owner reserves all rights to move to strike Dr. Anthony’s supplemental declaration for exceeding the permissible scope of reply. Dr. Anthony’s supplemental declaration introduces improper new theories of unpatentability, including new combinations and modifications of references, new motivations to combine, introduces improper opinions on enablement that exceed the scope of IPR, relies on improper new exhibits that could have been, but were not, presented earlier, and is used to circumvent the word limit on Petitioner’s replies. As such, the identified portions of the declaration are irrelevant, counter to statute and the Board’s rules, and prejudicial. FRE 401-403. Patent Owner identifies at least the following paragraphs of Dr. Anthony’s supplemental declaration that exceed the permissible scope of reply or are otherwise used for an improper purpose, such as to violate the word limit on Reply or to change the contents of the Petition: 5, 7, 8, 15-17, 21, 25-38, 40-50, 52-53, 55, 57-64, 66-75. While Patent Owner has attempted in good faith to identify example paragraphs to which the foregoing objections apply, the paragraph listings are not limiting. Patent Owner is continuing to review Petitioner’s voluminous improper submissions and may identify additional testimony within EX1042 that exceeds the permissible scope of reply.</p> <p>Patent Owner objects to Dr. Anthony’s testimony</p>

Evidence	Objections
	<p>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 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.</p> <p>Patent Owner further objects to paragraphs 27-34 and 40-50 to the extent they purport to reproduce the disclosure of other exhibits for lack of foundation, as hearsay that is not subject to any exception, for lack of completeness, and as not proper expert testimony and unhelpful to the trier of fact. FRE 106, 702, 801, 802, 901.</p> <p>Patent Owner further objects to paragraphs 28-34 as lacking foundation.</p> <p>Patent Owner further objects to paragraphs 15, 40-41 and 50 as impermissibly providing legal opinions and therefore not based on reliable principles and unhelpful to the trier of fact. FRE 702.</p>
EX1043-1045	Patent Owner objects to EX1043-1045 as not authenticated. FRE 901.
EX1046, EX1048, EX1049	<p>Patent Owner objects to EX1046, EX1048, and EX1049 as irrelevant. FRE 401.</p> <p>Patent Owner further objects to EX1046, EX1048, and EX1049 as lacking foundation and not authenticated. FRE</p>

Evidence	Objections
	<p>901.</p> <p>Patent Owner further objects to all statements within the EX1046, EX1048, and EX1049 as inadmissible hearsay that is not subject to any exception. FRE 801, 802.</p> <p>Patent Owner also objects to Petitioner’s reliance on these exhibits for the first time in Reply as improper and unfairly prejudicial under FRE 403. <i>See Consolidated Trial Practice Guide 74-75</i> (“improper for a reply to present new evidence (including new expert testimony) that could have been presented in a prior filing”). Patent Owner reserves all rights to move to strike arguments or testimony relying on EX1046-EX1049 as exceeding the proper scope of reply.</p>
EX1047	<p>Patent Owner objects to EX1047 as irrelevant. FRE 401.</p> <p>Patent Owner also objects to Petitioner’s reliance on EX1047 for the first time in Reply as improper and unfairly prejudicial under FRE 403. <i>See Consolidated Trial Practice Guide 74-75</i> (“improper for a reply to present new evidence (including new expert testimony) that could have been presented in a prior filing”). Patent Owner reserves all rights to move to strike arguments or testimony relying on EX1046-EX1049 as exceeding the proper scope of reply.</p>
EX1050-EX1056	<p>Patent Owner objected to the admissibility of EX1050-EX1056 during the cross-examination of Dr. Duckworth and maintains those objections. <i>See EX1059, 70:8-75:5.</i></p> <p>Patent Owner objects to these exhibits as irrelevant, unfairly prejudicial, not authenticated, lacking foundation, and further objects to all statements within as inadmissible hearsay that is not subject to any exception. FRE 401, 403, 801, 802, 901.</p> <p>Patent Owner also objects to Petitioner’s reliance on</p>

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