

**From:** [Daniel Kiang](#)  
**To:** [Trials](#)  
**Cc:** [IPR50095-0045IP1](#); [IPR50095-0045IP3](#); [AppleIPR745-1](#); [AppleIPR745-3](#)  
**Subject:** IPR2022-01291, -01465: Request for Authorization for Motion to Strike and Motion to Suspend Board Rules to Permit Sur-Reply Evidence  
**Date:** Monday, August 28, 2023 10:04:40 PM

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Dear Board,

Patent Owner respectfully requests the Board grant authorization in IPR2022-01291 and IPR2022-01465 to file two separate motions: (1) a motion to strike portions of Petitioner's Replies and exhibits submitted with those Replies for exceeding the permissible scope of reply by introducing new evidence and arguments, exceeding the word limit for Replies by incorporating by reference arguments from a new expert declaration, presenting an enablement issue beyond the scope of IPR, and requesting to correct the 1291 Petition, and (2) a motion for waiver of the Board's rules so that Patent Owner may submit an expert declaration and new evidence in support of Patent Owner's Sur-Replies.

Patent Owner is emailing the Board today to comply with the Consolidated Trial Practice Guide's statement that "authorization to file a motion to strike should be requested within one week of the allegedly improper submission." Consolidated Trial Practice Guide, 81. After receiving Petitioner's Replies, expert declaration, and new exhibits late Monday, August 21, Masimo promptly notified Petitioner of the issues on Thursday, August 24 and provided additional information at Petitioner's request on Saturday, August 26.

The parties met and conferred via email over the past week and via teleconference on August 28. Apple's position is:

Apple is working diligently and with urgency to investigate allegations from Masimo that are central to its authorization requests. Masimo's initial email identified on 8/24 only pages and sections of the brief, inspiring a request from Apple the next day for further detail to enable investigation. Masimo provided Apple, for the first time, identification of particular arguments and exhibits over the weekend, at 9:38 pm ET on Saturday evening, and Apple made itself available to discuss the same with Masimo during a call earlier today, the first business day after receiving that list. Apple proposed a follow-up meet and confer call on Thursday, to further discuss Masimo's concerns after conducting its investigation into the issues alleged by Masimo, to see whether progress can be made to reduce issues that require Board consideration. Apple respectfully requests that the parties be given an opportunity to further confer this week as we work through the list of issues in Masimo's Saturday evening email.

The parties are available for a conference call at the Board's convenience. In view of Apple's representations above, Masimo expects the parties will be ready for a teleconference with the Board

no later than this Friday, September 1.

Petitioner's counsel is copied on this email.

Best regards,  
Daniel

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