

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

Before the Honorable Monica Bhattacharyya
Administrative Law Judge

In the Matter of

CERTAIN LIGHT-BASED PHYSIOLOGICAL
MEASUREMENT DEVICES AND
COMPONENTS THEREOF

Inv. No. 337-TA-1276

UPDATED JOINT PROPOSED CLAIM CONSTRUCTION CHART

Pursuant to Ground Rule 6.3, Order No. 6 (Setting Procedural Schedule), and Order No. 12 (Granting Respondent's Motion for Leave to Supplement Identification of Terms for Claim Construction), Complainants Masimo Corporation and Cercacor Laboratories, Inc. and Respondent Apple Inc. hereby submit their post-hearing joint claim construction chart setting forth the post-hearing construction of the terms discussed at the February 17, 2022 *Markman* hearing.

I. AGREED-UPON CONSTRUCTIONS

The parties agree to the construction of the following term:

U.S. Patent No. 7,761,127

Term	Agreed Construction
"plurality of operating wavelengths" in Claim 7	"two or more operating wavelengths"

II. TERMS FOR RESOLUTION DURING MARKMAN PROCEEDINGS

The parties have agreed that the following two terms should be considered by the Administrative Law Judge during the *Markman* hearing process, and have provided their respective post-hearing positions on the construction of these terms:

U.S. Patent No. 10,912,501

Term	Complainants' Proposed Construction	Respondent's Proposed Construction
"bulk measurement" in Claim 13	"DC component" or "non-pulsatile measurement"	Indefinite as used in asserted claims (<i>i.e.</i> , "wherein the one or more processors are further configured to process the one or more signals to determine a bulk measurement")

U.S. Patent No. 10,912,502

Term	Complainants' Proposed Construction	Respondent's Proposed Construction
"bulk measurement" in Claim 12	"DC component" or "non-pulsatile measurement"	Indefinite as used in asserted claims (<i>i.e.</i> , "wherein the one or more processors are further configured to calculate a bulk measurement")

U.S. Patent No. 10,945,648

Term	Complainants' Proposed Construction	Respondent's Proposed Construction
"bulk measurement" in Claims 2 and 21	"DC component" or "non-pulsatile measurement"	Indefinite as used in asserted claims (<i>i.e.</i> , "wherein the one or more processors are further configured to process the one or more signals to determine a bulk measurement")

U.S. Patent No. 10,687,745

Term	Complainants’ Proposed Construction	Respondent’s Proposed Construction¹
“second shape” in Claims 1 and 20	“A shape that is different from the first shape, where a difference in size, without any other difference, is not a shape different from the first shape”	Plain and ordinary meaning (<i>i.e.</i> , a shape different than the first shape)

¹ **Apple’s Note:** After the Markman hearing, Apple proposed in writing that the parties drop the term “second shape” from the list of terms requiring the ALJ’s construction because it could not discern what dispute remained between the parties. Apple explained that, as the parties’ briefs have made clear, both sides agree that a mere difference in size is neither necessary nor sufficient to change a first shape into a “second shape.” *See* Apple Rebuttal Br. at 1; Complainants’ Rebuttal Br. at 4. Apple also explained that, at the Markman hearing, Apple had agreed on the record with Complainants’ position that whether other differences in characteristics result in a change in shape should be an issue of fact for trial. *See* Complainants’ Rebuttal Br. at 4-5. Complainants did not agree to Apple’s proposal, but repeatedly refused to identify what remains in dispute.

Masimo’s Note: Masimo has maintained this term in the joint claim construction chart because Apple has not confirmed that it agrees with Masimo’s proposed construction. Absent agreement, this term remains in dispute.

DATED: February 23, 2022

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Respectfully submitted,

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**In the Matter of Certain Light-Based Physiological Measurement Devices
and Components Thereof
Inv. No. 337-TA-1276**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 23, 2022, I caused copies of the foregoing document to be filed and served as indicated below:

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