

**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

COMPLAINANTS' REBUTTAL CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION

Masimo proposed constructions to help explain three terms from the five Asserted Patents. For “plurality of operating wavelengths,” Masimo advocated for a construction to make clear that the operating wavelengths, as used throughout the claim, varies with bulk temperature. Apple conceded in its opening brief that each instance of the phrase “operating wavelength” requires a relationship between the operating wavelengths and bulk temperature. Based on this concession, Masimo accepts Apple’s proposal that the claim should be construed according to its plain and ordinary meaning.

For “second shape,” Masimo proposed a construction coming directly from the prosecution history of a related patent. Apple criticized that construction based on the word “beyond.” In response, Masimo proposed an explicit definition to address that criticism: “a shape that is different from the first shape, where a different size, without any other difference, is not a shape different from the first shape.” Apple rejected that proposal. Apple’s remaining objection focuses on an unreasonable hypothetical and not the prosecution history.

Finally, “bulk measurement” refers to a basic, well-known principle of pulse oximetry: that the vast majority of the signal is the non-pulsatile, DC component. A skilled artisan would readily understand “bulk measurement” to mean “baseline measurement.” Apple argues that “bulk measurement” is indefinite, manufacturing an ambiguity between one embodiment and the claim language. But neither the claim nor the specification is limited to that embodiment. Apple cannot show by clear and convincing evidence that the claim is indefinite.

II. PERSON OF ORDINARY SKILL IN THE ART

Ground Rule 6.2 requires identification of the person of ordinary skill in the art (“POSA” or “POSITA”) in the opening claim construction brief. Apple’s opening brief did not address this

issue. Apple's expert, however, identified a POSA for the '501, '502, and '648 patents in his claim construction report. *See* Ex. 4¹ (Warren Initial Report) ¶ 32.

Masimo's opening brief did not oppose that identification for purposes of this Investigation. Masimo Opening Brief (Doc ID 761612, "Masimo Op. Br.") at 13. The ALJ should therefore adopt that identification:

[A] person with a working knowledge of physiological monitoring technologies. The person would have had a Bachelor of Science degree in an academic discipline emphasizing the design of electrical, computer, or software technologies, in combination with training or at least one to two years of related work experience with capture and processing of data or information, including but not limited to physiological monitoring technologies. Alternatively, the person could have also had a Master of Science degree in a relevant academic discipline with less than a year of related work experience in the same discipline.

Ex. 4 ¶ 32.

With respect to the POSA for the '745 and '127 patents. Masimo and its experts adopted the same identification provided above. Masimo Op. Br. at 13-14. Apple identified no one. Therefore, the ALJ should also adopt the same level of ordinary skill in the art for all five of the asserted patents.

III. PLURALITY OF OPERATING WAVELENGTHS ('127 PATENT)

Using Apple's labels, Claim 7 of the '127 patent is as follows:

7. [preamble] A physiological sensor capable of emitting light into tissue and producing an output signal usable to determine one or more physiological parameters of a patient, the physiological sensor comprising:

[a] a thermal mass;

[b] a plurality of light emitting sources, including a substrate of the plurality of light emitting sources, thermally coupled to the thermal mass, the sources having a corresponding *plurality of operating wavelengths*, the thermal mass disposed within the substrate;

¹ Exhibits 1-16 are attached to Masimo's Opening Brief.

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