

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.,

Petitioner,

v.

MASIMO CORPORATION,

Patent Owner

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Case IPR2022-01299  
U.S. Patent 7,761,127

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**JOINT AGREEMENT REGARDING PROCEDURE FOR OBJECTING TO  
SEALED EXHIBITS FILED PRE-INSTITUTION**

The Board instituted trial in the present proceeding on February 1, 2023. *See* Paper 21. 37 C.F.R. § 42.64(b)(1) provides that “[a]ny objection to evidence submitted during a preliminary proceeding must be filed within ten business days of the institution of the trial” and “[o]nce a trial has been instituted, any objection must be filed within five business days of service of evidence to which the objection is directed.”

Patent Owner (Masimo Corp.) filed a number of confidential exhibits with its Preliminary Response. The confidential exhibits were filed under seal and have remained under seal pending resolution of Patent Owner’s Renewed Motion to Seal and for Entry of a Protective Order, which was filed on November 22, 2022. Petitioner (Apple Inc.) has not yet been served the confidential exhibits, nor has Petitioner been provided access to the sealed exhibits.

In view of the present circumstances, the parties conferred by email on February 7-8 and agreed to a proposal by Masimo as follows:

- (1) Masimo will waive the requirement to file objections to the sealed exhibits within 10 business days of institution and to allow Apple to file, within five business days of service of Masimo’s Patent Owner Response, objections to any sealed exhibits Masimo relies on in its POR, and
- (2) any sealed exhibits that Masimo does not rely on in its Patent Owner’s Response will be deemed to be withdrawn from the record.

Petitioner emailed the Board on February 8, 2023 to request clarification regarding Petitioner's ability to offer timely objections to the confidential exhibits that remain inaccessible to Petitioner. *See* EX3002. Petitioner's email referenced agreement to the above proposal, and the Board on February 9, 2023 authorized the parties to jointly file a copy of the agreement. *Id.* The parties jointly file this paper pursuant to the Board's authorization.

Respectfully submitted,

Dated: 02/13/2023

/Nicholas W. Stephens/  
Nicholas Stephens, Reg. No. 74,320

Fish & Richardson P.C.  
Attorney for Petitioner Apple Inc.

Dated: 02/13/2023

/Ted M. Cannon/  
Ted M. Cannon, Reg. No. 55,036

Knobbe, Martens, Olson & Bear, LLP  
Attorney for Patent Owner Masimo Corp.

(Control No. IPR2022-01299)

**CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. § 42.6(e)(4), the undersigned certifies that on February 13, 2023, a complete and entire copy of this Joint Agreement Regarding Procedure for Objecting to Sealed Exhibits Filed Pre-Institution was provided by email to the Patent Owner by serving the email correspondence addresses of record as follows:

Irfan A. Lateef (Reg. No. 51,922)  
Ted M. Cannon (Reg. No. 55,036)  
Jarom D. Kesler (Reg. No. 57,046)  
Jacob L. Peterson (Reg. No. 65,096)

KNOBBE, MARTENS, OLSON & BEAR, LLP  
2040 Main Street, Fourteenth Floor  
Irvine, CA 92614 Tel.: (949) 760-0404  
Fax: (949) 760-9502

E-mail: [AppleIPR127-1@knobbe.com](mailto:AppleIPR127-1@knobbe.com)

/Crena Pacheco/  
Crena Pacheco  
Fish & Richardson P.C.  
60 South Sixth Street  
Minneapolis, MN 55402  
(617) 956-5938