

From: [Ted Cannon](#)
To: [Trials](#)
Cc: [IPR50095-0046IP1](#); [AppleIPR127-1](#)
Subject: IPR2022-01299 - Apple v. Masimo - withdrawal of and request to expunge confidential documents
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Dear Board:

Pursuant to the Board's February 17, 2023 Order (Paper 27), Patent Owner Masimo has filed a revised protective order removing the prosecution bar provision of paragraph 4.B. In addition to not entering the proposed prosecution bar in the February 17, 2023 Order, the Board in its Institution Decision declined to consider Masimo's objective evidence of non-obviousness based on the Board's finding that such evidence "is not sufficiently developed on the present record" and the Board's "understanding of the claim terms." Inst. Dec. (Paper 21) at 35 n.9. Almost all of the confidential information Masimo has filed is directed to the objective evidence of non-obviousness.

In view of these circumstances, Masimo withdraws its filed confidential information and requests expungement of its confidential exhibits and confidential POPR. *See Consolidated Trial Practice Guide at 20* ("If a motion for a protective order is not granted, the party submitting the confidential information will have the opportunity to have the submitted information expunged from the record.")

Counsel for the parties have conferred by email and Apple does not oppose Masimo's request. If the Board desires to have a conference call, counsel for the parties are available for such a call between 1:00 pm and 5:00 pm ET on Monday, February 27, Thursday, March 2, or Friday, March 3.

The confidential documents Masimo withdraws and requests to be expunged are: the confidential version of the POPR (Paper 9), the confidential versions of Exhibits 2002, 2051, and 2081, and Exhibits 2003, 2004, 2006, 2007, 2009, 2010, 2012-2021, 2027, 2028, 2031-2033, 2057, 2058, and 2082. If the Board desires, Masimo will file a formal withdrawal and request for expungement of these documents.

Respectfully,

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IPR2022-01299

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