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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

MASIMO CORPORATION,
Patent Owner.

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

PATENT OWNER MOTION TO SEAL

Patent Owner Masimo Corporation (“Masimo”) submits this Motion to Seal. Counsel for the parties have conferred via email. Apple reserves the right to oppose upon review of the confidential information.

I. INTRODUCTION

Masimo’s Patent Owner Response relies, in part, on objective evidence of non-obviousness. Specifically, Masimo presents evidence of commercial success and praise for the ’127 patented product, Masimo’s rainbow® sensors. Declarations and other exhibits supporting the POR include Masimo’s proprietary and highly sensitive information detailing the development, design, structure, functionality, and sales of that product. Thus, Masimo moves to seal confidential versions of the declarations of Mohamed Diab (Exhibit 2102), William P. King, Ph.D. (Exhibit 2151), and Micah Young (Exhibit 2181). Masimo has filed public versions, with confidential portions redacted, of those declarations. Masimo also moves to seal Exhibits 2103, 2104, 2106, 2107, 2109-2121, 2127, 2128, 2131-2134, 2157, 2158, and 2182.

A protective order has been entered in this IPR. EX2194. Accordingly, Masimo does not move for entry of a protective order with this motion. The protective order entered in this IPR includes protection for Confidential Business Information (“CBI”) modeled after provisions of the protective order in the ITC investigation *Certain Light-Based Physiological Measurement Devices and*

Components Thereof, Inv. No. 337-TA-1276 (ITC) (“ITC Investigation”). EX2083, EX2084. In the ITC Investigation, Masimo designated as CBI most of the objective evidence that it now submits with the POR. Masimo also submits with the POR additional objective evidence it did not rely on in the ITC Investigation.

II. DOCUMENTS REQUESTED TO BE SEALED

Exhibit 2102 is the declaration of named inventor Mohamed Diab. The declaration tracks testimony that Diab gave in deposition and at the hearing in the ITC investigation. The redacted portions of this declaration contain information pertaining to Masimo’s research, development, and production work related to the subject matter of the ’127 patent and patented products.

Exhibit 2103 is a collection of plots from computer simulations that Diab performed while researching and developing the invention of the ’127 patent and rainbow® products.

Exhibits 2104 is a Masimo internal PowerPoint Presentations about research and development of the ’127 invention and rainbow® products.

Exhibits 2106, 2107, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2120, 2127, 2132, and 2133 are engineering drawings and technical specifications detailing the design, structure, components, materials used, dimensions, and functionality of rainbow® sensors. These documents have internal corporate confidentiality designations.

Exhibit 2116 is an internal Masimo CAD drawing showing an expanded view of, and additional detail related to, the substrate of some rainbow® products.

Exhibit 2117 is an internal Masimo presentation containing information about adhesives used in rainbow® sensors.

Exhibit 2118 is a technical data sheet for adhesive used in rainbow® sensors.

Exhibits 2119 and 2121 are internally produced, non-public photographs of internal parts and structure of rainbow® sensors that are not publicly viewable.

Exhibit 2128 is a collection of testing data plots showing results of internal Masimo sensor characterization tests to verify that the rainbow® products work.

Exhibit 2131 is Diab's confidential research folder containing an internal Masimo technical report authored by the named inventors and having an internal corporate confidentiality designation. This exhibit contains information about Masimo's research and development of the '127 invention and rainbow® products.

Exhibit 2134 is an excerpt of Masimo source code including information about a proprietary algorithm executed by rainbow® products.

Exhibit 2151 is a declaration of Masimo's technical expert, William P. King, Ph.D.. The redacted portions of King's declaration include information from the confidential testimony of Diab and Exhibit 2103. Exhibits 2157 and 2158 are King's claim charts detailing analysis comparing the rainbow® products to the claims of the '127 patent. The charts heavily rely on confidential exhibits.

Exhibit 2181 is a declaration of Micah Young, Masimo's CFO. Paragraph 9 summarizes confidential financial data in Exhibit 2182. Exhibit 2182 is a spreadsheet showing confidential financial data from an internal Masimo database.

None of these exhibits or confidential information have been made public.

III. MOTION TO SEAL LEGAL STANDARD

“There is a strong public policy for making all information filed in a quasijudicial administrative proceeding open to the public.” *Garmin Int'l v. Cuozzo Speed Techs., LLC*, IPR2012–00001, slip op. at 1–2 (PTAB Mar. 14, 2013) (Paper 34). The record for an *inter partes* review shall be made available to the public, except as otherwise ordered on a motion to seal. 35 U.S.C. § 326(a)(1); 37 C.F.R. § 42.14. The documents and information that are the subject of the motion to seal shall be treated as sealed until the motion is decided. *Id.*

In determining whether to grant a Motion to Seal, the Board must find “good cause” and “strike a balance between the public's interest in maintaining a complete and understandable file history and the parties' interest in protecting truly sensitive information.” 37 C.F.R. § 42.54(a); Consolidated Trial Practice Guide (November 2019) at 19 *see also Argentum Pharms. LLC v. Alcon Res., Ltd.*, IPR2017-01053, Paper 27 at 3-4 (PTAB Jan. 19, 2018) (Informative) (describing the “good cause” standard). As described in the Consolidated Trial Practice Guide, the Board identifies confidential information in a manner “consistent with Federal Rule of

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