

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

MASIMO CORPORATION,
Patent Owner

IPR2022-01299
Patent 7,761,127

PETITIONER'S OBJECTIONS TO EVIDENCE

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner hereby submits the following objections to evidence filed with Patent Owner's Response of May 19, 2023. The following paragraphs are referenced herein by way of example, and not limitation, and the objections applies to the enumerated paragraphs and any other paragraph incorporating or referencing the following paragraphs.

Exhibit No.	Description
2102	<p>FRE 701 -703 and 37 C.F.R. § 42.65(b): Whether offered as lay or expert testimony, or both, record evidence fails to establish that the requirements of FRE 701, 702, or 703 are satisfied. This exhibit sets forth opinions that are conclusory, do not disclose supporting facts or data, are based on unreliable facts, data, or methods, and/or include testimony outside the scope of Mr. Diab's specialized knowledge (to the extent he has any such knowledge).</p> <p>Mr. Diab's testimony in ¶¶41-65, for example, refers to a number of simulations allegedly performed to model thermal properties and other characteristics of certain sensor devices. The simulations are based upon insufficient facts and/or data, as Mr. Diab fails to presents the results of multiple simulations without adequate evidence of how the simulations were performed, the parameters of the simulations, and the software and hardware requirements necessary to faithfully reproduce and verify the results of each simulation. <i>See e.g.</i>, EX2103, EX2135-2140. Mr. Diab further does not establish how the sensors and devices modeled in his</p>

	<p>simulations relate to the subject matter of the claims challenged in the '127 Patent. Mr. Diab's testimony and exhibits showing results of the simulations are submitted without evidence that the results or opinions are based upon reliable scientific principles and methods.</p> <p>FRE 401-403: Exhibit 2102 further contains opinions that are irrelevant, confusing, and presenting the danger of unfair prejudice. For example, the declaration relies upon EX2103 and EX2135-2140 without adequate explanation of how the simulations were performed, which software and hardware was utilized, and the parameters involved in the simulation. <i>See e.g.</i>, EX2102, ¶¶41-65.</p>
2103	<p>FRE 401 - 403: This exhibit contains information relating to simulation(s) purportedly performed by Mr. Diab. Apple objects to Patent Owner's reliance on this exhibit at least because insufficient evidence has been submitted to demonstrate that referenced simulation(s) were reliably performed or that the simulation(s) bear on any issues of relevance in the IPR. The exhibit is irrelevant, confusing, and presents danger of unfair prejudice.</p>
2135	<p>FRE 401 - 403: This exhibit contains information relating to simulation(s) purportedly performed by Mr. Diab. Apple objects to Patent Owner's reliance on this exhibit at least because insufficient evidence has been submitted to demonstrate that referenced simulation(s) were reliably performed or that the simulation(s) bear on any issues of relevance in the IPR. The exhibit is irrelevant, confusing, and presents danger of unfair prejudice.</p>

2136	<p>FRE 401 - 403: This exhibit contains information relating to simulation(s) purportedly performed by Mr. Diab. Apple objects to Patent Owner's reliance on this exhibit at least because insufficient evidence has been submitted to demonstrate that referenced simulation(s) were reliably performed or that the simulation(s) bear on any issues of relevance in the IPR. The exhibit is irrelevant, confusing, and presents danger of unfair prejudice.</p>
2137	<p>FRE 401 - 403: This exhibit contains information relating to simulation(s) purportedly performed by Mr. Diab. Apple objects to Patent Owner's reliance on this exhibit at least because insufficient evidence has been submitted to demonstrate that referenced simulation(s) were reliably performed or that the simulation(s) bear on any issues of relevance in the IPR. The exhibit is irrelevant, confusing, and presents danger of unfair prejudice.</p>
2138	<p>FRE 401 - 403: This exhibit contains information relating to simulation(s) purportedly performed by Mr. Diab. Apple objects to Patent Owner's reliance on this exhibit at least because insufficient evidence has been submitted to demonstrate that referenced simulation(s) were reliably performed or that the simulation(s) bear on any issues of relevance in the IPR. The exhibit is irrelevant, confusing, and presents danger of unfair prejudice.</p>
2139	<p>FRE 401 - 403: This exhibit contains information relating to simulation(s) purportedly performed by Mr. Diab. Apple objects to Patent Owner's reliance on this exhibit at least because insufficient evidence has been submitted to demonstrate that referenced</p>

	<p>simulation(s) were reliably performed or that the simulation(s) bear on any issues of relevance in the IPR. The exhibit is irrelevant, confusing, and presents danger of unfair prejudice.</p>
2140	<p>FRE 401 - 403: This exhibit contains information relating to simulation(s) purportedly performed by Mr. Diab. Apple objects to Patent Owner's reliance on this exhibit at least because insufficient evidence has been submitted to demonstrate that referenced simulation(s) were reliably performed or that the simulation(s) bear on any issues of relevance in the IPR. The exhibit is irrelevant, confusing, and presents danger of unfair prejudice.</p>
2151	<p>FRE 702 -703: Petitioner objects to the admissibility of this exhibit, because it contains opinions that are conclusory, do not disclose supporting facts or data, are based on unreliable facts, data, or methods, and/or include testimony outside the scope of Dr. King's specialized knowledge (to the extent he has any such knowledge) that will not assist the trier of fact.</p> <p>Dr. King acknowledges that evidence was presented "showing that the rainbow® sensors are commercially successful," but does not assert whether the assertions in ¶¶ 253-261 of EX 2151 are his expert opinions, based on fact or data presented to Dr. King, or whether the assertions are lay opinions.</p> <p>In addition, in ¶¶ 52-64 of EX2151, Dr. King asserts that he reviewed Mr. Diab's declaration and references EX2103, 2135,</p>

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