

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

APPLE INC.,  
Petitioner

v.

MASIMO CORPORATION,  
Patent Owner.

---

Case IPR2022-01299  
Patent No. 7,761,127

---

**PETITIONER'S UNOPPOSED MOTION TO SEAL**

## I. INTRODUCTION

Pursuant to Protective Order (EX-2094) and 37 C.F.R. § 42.14, Petitioner Apple Inc. (“Apple”) submits this Motion to Seal (“Motion”) concurrent with the filing of Petitioner’s Reply to the Patent Owner’s Response (“Reply”). Through this Motion, Apple respectfully requests that certain confidential business information (“CBI”) in the Reply and other information cited in the Reply be sealed.

As detailed further below, the documents and information that Apple moves to seal include Masimo’s CBI covering, among other things, technical and commercial data related to Masimo’s Rainbow® sensor products and Rad-57 monitor.

Apple specifically moves to seal portions of the Reply, portions of Exhibit 1055, and the entirety of Exhibit 1056, as each contains Masimo CBI as described in the sections below. Public versions of the Reply and Exhibits 1055-1056 with confidential portions redacted, are being filed with the Reply and this Motion. The parties have conferred by email and Masimo does **not oppose**.

## II. THE DOCUMENTS REQUESTED TO BE SEALED CONTAIN CONFIDENTIAL BUSINESS INFORMATION

In an *inter partes* review (“IPR”), the party moving to seal information must demonstrate “good cause.” 37 C.F.R. § 42.20(c). The Board has explained that “a

movant to seal must demonstrate adequately that (1) the information sought to be sealed is truly confidential, (2) a concrete harm would result upon public disclosure, (3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and (4), on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record.” *Argentum Pharmaceuticals LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 4 (PTAB Jan. 19, 2018) (informative).

**A. Identification of Documents and Information that Apple Moves to Seal**

Apple moves to seal the following information:

*First*, Apple moves to seal the entirety of the transcript of Mr. Diab’s testimony (APPLE-1056). The transcript includes questioning and witness testimony pertaining to technical and development details for Masimo’s Rainbow® sensors and Rad-57® monitors.

*Second*, Apple moves to seal identified portions of the Supplemental Declaration of Dr. Brian Anthony (APPLE-1055) that address Masimo CBI. These portions of Dr. Anthony’s Supplemental Declaration reference testimony from Mr. Diab’s deposition transcript and other confidential exhibits that Masimo submitted with its Patent Owner’s Response related to the development, design, and alleged sales of Masimo’s Rainbow ® sensors and Rad-57® monitors.

*Third*, Apple moves to seal identified portions of Petitioner’s Reply to Patent Owner’s Response in this proceeding. These portions of the Reply reference testimony from Mr. Diab’s deposition transcript and other confidential exhibits that Masimo submitted with its Patent Owner’s Response related to the development, design, and alleged sales of Masimo’s Rainbow ® sensors and Rad-57® monitors.

**B. Masimo Represents that the Information Sought to be Sealed is Truly Confidential**

The Reply and Exhibits 1055-1056 include quotations, references, discussion, and analysis of information contained in confidential exhibits submitted with Masimo’s Patent Owner’s Response. Masimo represents that the information discussed and analyzed in the Reply and Exhibits 1055-1056 are truly confidential. Paper 36, 5.

**C. Masimo Represents it Would Suffer Concrete Harm Upon Public Disclosure of the Information Sought to be Sealed**

The Reply and Exhibits 1055-1056 include quotations, references, discussion, and analysis of information contained in confidential exhibits submitted with Masimo’s Patent Owner’s Response. Masimo represents in its motion to seal those exhibits that “‘concrete harm’ to Masimo would result if the documents were accessible to Apple or the public” and that “[t]he confidential information includes engineering drawings and technical specifications that reveal significant confidential information about the development, design, structure, and

functionality of Masimo's rainbow® sensors." Paper 36, 5-6.

**D. Masimo Represents that its Interest in Maintaining Confidentiality Outweighs the Strong Public Interest in Having an Open Record**

The Reply and Exhibits 1055-1056 include quotations, references, discussion, and analysis of information contained in confidential exhibits submitted with Masimo's Patent Owner's Response. Masimo represents in its motion to seal that "the prejudicial effect that disclosure would have on Masimo far outweighs the public's interest in accessing this information for the purposes of understanding the file history and the Board's patentability decisions." Paper 36, 7.

Apple is concurrently filing public, redacted versions of the Reply and Exhibit 1055. The public will have full access to the nature of the information and the conclusions reached using the information as portions of Apple's Reply and Exhibit 1055 remains unsealed.

**III. CONCLUSION**

For these reasons, Apple respectfully requests that the Board seal and protect the Reply and Exhibits 1055-1056. Apple further respectfully requests that the Board seal and protect the confidential information in these exhibits until such time as it receives and rules on this Motion.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.