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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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**PATENT OWNER'S OBJECTIONS TO EVIDENCE  
SERVED AUGUST 31, 2023**

Pursuant to 37 C.F.R. § 42.64(b), Patent Owner Masimo Corporation objects to the admissibility of evidence submitted by Petitioner Apple Inc with its Reply on August 31, 2023. Patent Owner reserves its rights to: (1) timely file a motion to exclude these objectionable exhibits or portions thereof; (2) challenge the credibility and/or weight that should be afforded to these exhibits, whether or not Patent Owner files a motion to exclude the exhibits; (3) challenge the sufficiency of the evidence to meet Petitioner's burden of proof on any issue, including, without limitation, whether Petitioner met its burden to prove the prior art status of the alleged prior art on which it relies, whether or not Patent Owner has objected to, or files a motion to exclude, the evidence; and (4) cross examine any Petitioner declarant within the scope of his or her direct testimony that is or relates to these exhibits, without regard to whether Patent Owner has objected to the testimony or related exhibits or whether the testimony or related exhibits are ultimately found to be inadmissible.

<b>Exhibit</b>	<b>Objections</b>
<b>1050-1054</b>	<b>FRE 402:</b> The Petition defines the scope of the issues in this IPR. Masimo objects to these exhibits because they are not relevant to the unpatentability theories set forth in the Petition. Masimo further objects to Apple's reliance on these exhibits to substitute alleged teachings of these exhibits for the alleged teachings of the references upon

Exhibit	Objections
	<p>which Apple relied in the Petition. Masimo also objects to Apple's reliance on these exhibits to support any argument or factual assertion beyond those for which Apple cited these exhibits in the Reply.</p> <p><b>FRE 802:</b> Masimo objects, on the basis of inadmissible hearsay, to any statement included in the exhibits that Apple relies upon to prove the truth of the matter asserted in the statement.</p>
1055	<p><b>FRE 402:</b> The exhibit includes testimony that is not relevant to the issues set forth in the Petition, including, without limitation, testimony related to Exhibits 1050-1054. The exhibit also includes testimony that is not relevant to the arguments and factual assertions set forth in the Reply. By way of example and not limitation, this objection applies to at least paragraphs 32-52 of the exhibit, any other paragraph incorporating or referencing the foregoing paragraphs, and any other paragraph citing or referencing any of Exhibits 1050-1054.</p> <p><b>FRE 602:</b> The declarant admits that he relied on his "own</p>

Exhibit	Objections
	<p>knowledge.” Ex. 1055 ¶ 3; <i>see also</i> Ex. 1003 ¶ 14. However, insufficient evidence has been introduced to establish that the declarant has sufficient personal knowledge to rely on his own knowledge to support his obviousness opinions. This deficiency infects the declarant’s entire testimony because he did not identify which portions of his analysis rely on his own knowledge.</p> <p><b>FRE 701-702:</b> The exhibit includes opinion testimony that does not comply with the requirements of FRE 701 and 702. The testimony is not lay opinion testimony under FRE 701. With respect to FRE 702, the evidence does not establish that the declarant’s obviousness opinions are (1) “based on sufficient facts or data,” (2) “the product of reliable principles and methods,” and that (3) “the expert has reliably applied the principles and methods to the facts of the case.” Deficiencies in the declarant’s analysis include, without limitation: (1) conclusory assertions unsupported by sufficient underlying facts, data, or reasoning, (2) reliance on allegedly known facts or alleged</p>

Exhibit	Objections
	<p>motivations to combine without citation to contemporaneous evidence of what knowledge and motivation a POSITA would have possessed at the relevant time; (3) reliance on his “own knowledge,” without any specific indication what portions of his analysis are based on his own knowledge, explanation how he obtained such knowledge, or evidence that a POSITA would have possessed the knowledge at the relevant time; and (4) failure to consider evidence or factors necessary to an obviousness analysis.</p> <p><b>FRE 802:</b> The exhibit includes testimony that relies on inadmissible hearsay included in cited exhibits if Apple relies on the content of the cited exhibits to prove the truth of matters allegedly asserted therein.</p> <p><b>Objection to Testimony Relying on Inadmissible Exhibits:</b> The exhibit includes testimony that relies on exhibits that are inadmissible for the reasons set forth in the objections below. Masimo objects to such testimony for the same reasons set forth below for the underlying</p>

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