

From: [Ted Cannon](#)
To: [Trials](#)
Cc: [IPR50095-0046IP1](#); [AppleIPR127-1](#)
Subject: IPR2022-01299 - request for conference call re motion to strike and sur-reply declaration
Date: Friday, September 8, 2023 8:53:34 PM

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Dear Board,

I write on behalf of Patent Owner Masimo to request a conference call to seek Board authorization to file (1) a motion to strike the argument in Section IV.A of Petitioner’s Reply beginning with “Equally problematic” at the bottom of page 16 through the end of that section, Exhibits 1050-1054, and Paragraphs 32-52 of Exhibit 1055 and (2) a sur-reply expert declaration responsive to those portions of the Petitioner’s Reply and Exhibits 1050-1055. Masimo believes that those evidence and arguments are “new evidence or argument in reply that [Apple] could have presented earlier, e.g. to make out a prima facie case of unpatentability.” Consolidated Trial Practice Guide at 73. Accordingly, Masimo believes striking those evidence and arguments and allowing a responsive expert declaration are warranted. Apple disagrees and opposes Masimo’s requests, believing that the evidence and arguments are properly responsive to Masimo’s Patent Owner Response. Rather than including substantive argument in this email, the parties will articulate their positions on the conference call.

Counsel for the parties have conferred about this issue. Masimo’s counsel emailed Apple’s counsel about Masimo’s intent to seek the requested relief on September 7, 2023 (one week, or four business days, after Apple filed its Reply), and counsel for the parties conferred telephonically today, September 8, 2023. Counsel for the parties are available for a conference call with the Board on Wednesday, September 13, 2023 from 11:00 am to 2:00 pm ET and Thursday, September 14, 2023 from 11:00 am to 3:00 pm ET. If the Board desires other options, the parties will confer and provide additional windows of availability. Masimo plans to have a court reporter on the conference call.

Apple’s counsel are copied on this email.

Respectfully,

Ted Cannon
Counsel for Patent Owner

Ted M. Cannon

Partner

Ted.Cannon@knobbe.com

949-721-2897 Direct

Knobbe Martens

2040 Main St., 14th Fl.

Irvine, CA 92614

www.knobbe.com/ted-cannon

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