

IPR2022-01299

Apple Inc. v. Masimo Corp.

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

SECOND DECLARATION OF WILLIAM P. KING, Ph.D.

I declare that all statements made herein on my own knowledge are true and that all statements made on information and belief are believed to be true, and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Dated: 19 October 2023

By: _____



William P. King, Ph.D.

1. I, William P. King, Ph.D., am making this declaration at the request of Patent Owner Masimo Corporation (“Masimo”) in the matter of the *Inter Partes* Review No. IPR2022-01299 of U.S. Patent No. 7,761,127 (“the ’127 patent”). I understand that this declaration is being submitted in this proceeding as Exhibit 2194.

2. I previously submitted the declaration that is Exhibit 2151 in this IPR.

3. I am being compensated for my work in this matter at my standard hourly rate for consulting services. My compensation in no way depends on the outcome of this proceeding.

4. In addition to my own knowledge and expertise and the materials identified in Exhibit 2151, I have reviewed and considered the following written materials in conducting the analyses and forming the opinions set forth in this declaration.

Exhibit or Paper No.	Description
46	Petitioner’s Reply to Patent Owner’s Response
1050	U.S. Patent Application Publication No. 2005/0279949 A1 (“Oldham”)
1051	“Red, Green, and Blue LEDs for White Light Illumination,” <i>IEEE Journal on Selected Topics in Quantum Electronics</i> , Vol. 8, No. 2, March/April 2002, pp. 333-338 (“Muthu”)
1052	U.S. Patent Application Publication No. 2003/0230765 A1 (“Dry”)

Exhibit or Paper No.	Description
1053	U.S. Patent Application Publication No. 2010/0259182 A1 (“Man”)
1054	U.S. Patent No. 7,055,986 (“Littleton”)
1055	Supplemental Declaration of Dr. Brian W. Anthony

I. LIMITED SCOPE OF THIS DECLARATION

5. I understand that this declaration is limited to responding to Apple’s and Dr. Anthony’s reply arguments related to the additional references of Exhibits 1050-1054. Consistent with this limited scope, in connection with this declaration, I have not conducted supplemental analysis of the information and opinions set forth in my Exhibit 2151 declaration, including information and opinions related to (1) my qualifications and professional background, (2) my understanding of relevant legal principles, (3) the state of the art prior to the ’127 patent, (4) the invention of the ’127 patent, (5) the file history of the ’127 patent, (6) claim construction, (7) scientific principles including heat transfer principles, and (8) the teachings of the prior art. In view of the limited scope of this declaration, I do not respond herein to every assertion made by Apple in its Reply or by Dr. Anthony in his Reply declaration. My not responding to an assertion of Apple or Dr. Anthony should not be interpreted to mean that the assertion is correct or that I agree with the assertion.

II. ANALYSIS OF APPLE'S NEW REFERENCES

A. Oldham

6. In my Exhibit 2151 declaration, I testified:

Some devices used temperature sensors as a thermostatic control in wavelength-shift-reduction systems. For example, U.S. Patent Application Publication No. US 2005/0279949 A1 to Oldham, which Apple submitted as Exhibit 1010 in non-instituted IPR2022-01300, uses a temperature sensor to control active heating and cooling devices (such as heaters and fans) to heat up or cool the LEDs based on the temperature reading of the temperature sensor to attempt to maintain target LED temperatures or operating wavelengths.

EX2151 ¶40. That testimony accurately describes Oldham and its disclosure of an example of a device that used a temperature sensor “as a thermostatic control in wavelength-shift-reduction systems.” In its Petition in IPR2022-01300 (which I understand was *not* instituted), Apple similarly described Oldham as “a temperature regulation system to control heating and cooling of LEDs such that their operating temperatures are stabilized within an acceptable temperature range.” IPR2022-01300 Pet., 9-10. Apple also explained to the Board that, while the combinations presented in the Petition in *this* IPR2022-01299 case “describe temperature sensing for purposes such as ... compensating for temperature fluctuations of LEDs,” the combinations including Oldham presented in the

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IPR2022-01300 Petition “describe active temperature regulation for LEDs in an oximetry environment.” Paper 3, 3.

7. Apple’s Petition in this IPR2022-01299 case does not rely on Oldham for *any* purpose, much less as a reference that allegedly discloses or makes obvious the “thermal mass” or “bulk temperature” limitations. In this case, Apple first relied on Oldham in its Reply. Thus, this declaration is my first chance to respond to Apple’s and Dr. Anthony’s new unpatentability arguments relying on Oldham.

8. I reviewed the entire disclosure of Oldham (including but not limited to the portions Apple and Dr. Anthony rely on) to assess whether Oldham would have motivated a POSITA to combine Yamada with “a thermal core ... based on the teachings of Chadwick” in a manner that yields the claimed invention of the ’127 patent. In my opinion, Oldham would not have motivated a POSITA to make that combination, as explained below.

9. Apple and Anthony specifically rely on Oldham’s Paragraph 39 disclosure that its “temperature regulating system can adjust a monitored temperature of the LED to compensate for any thermal masses intervening between the LED and the temperature sensor and to thus derive, calculate, or estimate an operating temperature.” Reply, 17; EX1055 ¶36 (both citing EX1050 ¶39). In my view, a POSITA could not reasonably interpret that passage as suggesting that Oldham’s “thermal masses” have the appropriate temperature-change resistance or

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