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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

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PATENT OWNER SUR-REPLY



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<i>In re Epstein</i> , 32 F.3d 1559 (Fed. Cir. 1994)	24
Fox Factory, Inc. v. SRAM, LLC, 944 F.3d 1366 (Fed. Cir. 2019)	25
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Key Pharms. v. Hercon Labs. Corp., 161 F.3d 709 (Fed. Cir. 1998)	9
In re Publicover, 813 F. App'x 527 (Fed. Cir. 2020)	24
Sanofi-Aventis Deutschland GmbH v. Mylan Pharms. Inc., 66 F.4th 1373 (2023)	16, 17, 18, 19
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Unigene Labs., Inc. v. Apotex, Inc., 655 F 3d 1352 (Fed. Cir. 2011)	19



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