

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

MASIMO CORPORATION,
Patent Owner.

IPR2022-01299 (US 7,761,127 B2)
IPR2022-01300 (US 7,761,127 B2)¹

Before JOSIAH C. COX, JAMES A. TARTAL, and
ROBERT A. POLLOCK, *Administrative Patent Judges*.

POLLOCK, *Administrative Patent Judge*.

ORDER

Denying Without Prejudice Patent Owner's Motion to Seal and
for Entry of a Modified Protective Order
37 C.F.R. §§ 42.5, 42.14, 42.54

¹ These cases are not consolidated and the parties may not use this style of heading absent express authorization. Similar papers are filed in both proceedings; for simplicity we refer herein to those filed in IPR2022-01299.

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I. INTRODUCTION

On November 4, 2022, Patent Owner, Masimo Corporation, filed a motion to seal confidential versions of its Preliminary Response² and certain exhibits, presently designated “Filing Party and Board.” Paper 8, “Mot.” Patent Owner indicated that Petitioner would oppose the motion and included a proposed modified protective order as Appendix A.

With respect to the latter, page 91 of our Consolidated Trial Practice Guide (Nov. 2019) (“CTPG”)³ provides that:

No protective order shall apply to this proceeding until the Board enters one. If either party files a motion to seal before entry of a protective order, a jointly proposed protective order shall be filed as an exhibit with the motion. . . . If the parties choose to propose a protective order deviating from the default protective order, they must submit the proposed protective order jointly along with a marked-up comparison of the proposed and default protective orders showing the differences between the two and explain why good cause exists to deviate from the default protective order.

CTPG 91.

In its present filings, Patent Owner has not 1) jointly submitted the proposed protective order, 2) provided a marked-up comparison of the proposed and default protective orders showing the differences between the two, nor 3) explained why good cause exists to deviate from the default protective order. In view of these deficiencies, Patent Owner’s motion is denied without prejudice to refile within one week of this Order.

² On November 14, 2022, Patent Owner filed a Corrected Patent Owner Preliminary Response for IPR2022-01300.

³ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

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Patent Owner should also confirm within one week of this Order that the exhibits designated “Filing Party and Board” have been served on Petitioner’s counsel for this proceeding. Absent such confirmation or acceptable explanation, those exhibits will be designated “Board and Parties Only.”

SO ORDERED

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