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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 RENEWED MOTION TO SEAL AND  
FOR ENTRY OF A PROTECTIVE ORDER**

Patent Owner Masimo Corporation (“Masimo”) submits this opposed Renewed Motion to Seal and for Entry of a Protective Order. Masimo’s POPR relies, in part, on objective evidence of non-obviousness. In particular, Masimo presents evidence demonstrating the commercial success and praise for the ’127 patented product, Masimo’s rainbow® sensors. The POPR and supporting declarations include Masimo’s proprietary and highly sensitive information detailing the development, design, structure, functionality, and sales of that product. Thus, Masimo moves to seal confidential versions of its POPR and Exhibits 2002-2004, 2006, 2007, 2009, 2010, 2012-2016, 2018-2021, 2027, 2028, 2031, 2032, 2033, 2051, 2057, 2058, 2081, and 2082. Masimo has filed public versions, with confidential portions redacted, of its POPR and Exhibits 2002, 2051, and 2082.

Masimo also proposes a modified version of the Default Protective Order to include language from an ITC investigation protective order agreed upon by Apple and Masimo. The proposed protective order and a redline version showing changes from the Default Protective Order are being filed as Exhibits 2086 and 2087. Masimo certifies that it accepts and agrees to the terms of the proposed protective order.

This IPR is part of multiple patent and trade secret lawsuits between the parties, generally related to the Apple Watch and Masimo’s W1 watch:

- *Masimo Corp. v. Apple Inc.*, Case No. 8:20-cv-00048 (C.D. Cal.);

- *Certain Light-Based Physiological Measurement Devices and Components Thereof*, Inv. No. 337-TA-1276 (ITC) (“ITC Investigation”);
- *Apple Inc. v. Masimo Corp.*, Case No. 1:22-cv-01377 (D. Del.); and
- *Apple Inc. v. Masimo Corp.*, Case No. 1:22-cv-01378 (D. Del.).

The Central District of California case has a protective order, including a prosecution bar. EX2088 ¶10. The ITC Investigation, which included the ’127 patent, also has a protective order with a prosecution and development bar, and strong protection of “Confidential Business Information” (“CBI”). EX2083, EX2084. A protective order has not yet been entered in the District of Delaware cases Apple recently filed on October 20, 2022.

In the ITC Investigation, Masimo designated as CBI most of the objective evidence it submitted with the POPR. With that designation, Apple’s outside ITC counsel, but not its in-house counsel, had access to this evidence under narrow and agreed-upon limitations. Masimo seeks a protective order here with the same level of protection that the parties already agreed to in the ITC Investigation.

#### **I. DOCUMENTS REQUESTED TO BE SEALED**

Exhibit 2002 is the Declaration of named inventor Mohamed Diab. The declaration tracks ITC Investigation testimony that Diab gave in deposition and at the evidentiary hearing. Paragraphs 19-27, 37-42, 47, 48, and 71-90 of Diab’s declaration contains information pertaining to Masimo’s research, development, and

production work related to the subject matter of the '127 patent and patented products.

Exhibit 2003 is a collection of plots from computer simulations that Diab performed while researching and developing the invention of the '127 patent and rainbow® products.

Exhibits 2004 and 2017 are Masimo internal PowerPoint Presentations about research and development of the '127 invention and rainbow® products.

Exhibits 2006, 2007, 2009, 2010, 2012, 2013, 2014, 2015, 2020, 2027, 2032, and 2033 are engineering drawings and technical specifications detailing the design, structure, components, materials used, dimensions, and functionality of rainbow® sensors. These documents have internal corporate confidentiality designations.

Exhibit 2016 is an internal Masimo CAD drawing showing an expanded view of, and additional detail related to, the substrate of some rainbow® products.

Exhibit 2018 is a technical data sheet for adhesive used in rainbow® sensors.

Exhibits 2019 and 2021 are internally produced, non-public photographs of internal parts and structure of rainbow® sensors that are not publicly viewable.

Exhibit 2028 is a collection of testing data plots showing results of internal Masimo sensor characterization tests to verify that the rainbow® products work.

Exhibit 2031 is Diab's confidential research folder containing an internal Masimo technical report authored by the named inventors and having an internal

corporate confidentiality designation. This exhibit contains information about Masimo's research and development of the '127 invention and rainbow® products.

Exhibit 2051 is a declaration of Masimo's technical expert, Jack Goldberg. Paragraphs 28-32 of Goldberg's declaration include information from the confidential testimony of Diab and Exhibit 2003. Exhibits 2057 and 2058 are Goldberg's claim charts detailing analysis comparing the rainbow® products to the claims of the '127 patent. The charts heavily rely on confidential exhibits.

Exhibit 2081 is a declaration of Micah Young, Masimo's CFO. Paragraph 9 summarizes confidential financial data in Exhibit 2082. Exhibit 2082 is a spreadsheet showing confidential financial data from an internal Masimo database.

None of these exhibits or confidential information have been made public.

## II. GOOD CAUSE EXISTS TO SEAL

*Argentum Pharms. LLC v. Alcon Res., Ltd.*, IPR2017-01053, Paper 27 at 3–4 (PTAB Jan. 19, 2018) (informative) sets forth four factors for showing that good cause exists to seal confidential information. The four factors are satisfied here.

First, the information sought to be sealed is “truly confidential.” Masimo has not publicly disclosed the information it requests to be sealed. Masimo produced the information in the ITC Investigation as CBI under a protective order.

Second, “concrete harm” to Masimo would result if the documents were accessible to Apple or the public. The confidential information includes engineering

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