

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

Before the Honorable Monica Bhattacharyya
Administrative Law Judge

In the Matter of
CERTAIN LIGHT-BASED PHYSIOLOGICAL
MEASUREMENT DEVICES AND
COMPONENTS THEREOF

Inv. No. 337-TA-1276

RESPONDENT APPLE INC.'S CORRECTED PRE-HEARING BRIEF

TABLE OF CONTENTS

I.	INTRODUCTION	0
A.	Procedural History	2
B.	The Parties	2
1.	Masimo & Cercacor	2
2.	Apple	2
C.	Overview of the Technology	3
D.	The Asserted Patents	3
1.	U.S. Patent Nos. 10,912,501, 10,912,502, and 10,945,648	3
2.	U.S. Patent No. 10,687,745	3
3.	U.S. Patent No. 7,761,127	4
E.	The Products at Issue	4
1.	Masimo’s Domestic Industry Products	4
a.	Masimo Watch	4
b.	rainbow® sensors	4
2.	The Accused Products	4
II.	JURISDICTION	7
III.	’501, ’502, AND ’648 PATENTS	7
A.	Level of Ordinary Skill in the Art	7
B.	Noninfringement	7
1.	Accused Apple Watches	7
2.	No Protrusions, Openings, or Through Holes “Over” or “Above” Interior Surface or Photodiodes When Apple Watch Is Configured to Measure Physiological Parameter (’501 Claim 12; ’502 Claims 22 and 28; and ’648 Claims 24, 30)	8
3.	No “Through Holes” or “Openings” “Through” the Protrusion (’501 Claim 12; ’502 Claims 22 and 28; and ’648 Claims 12, 24, and 30)	11
4.	No Indirect Infringement (’502 Claim 28)	15
5.	Complainants and Dr. Madisetti Have Not Alleged Infringement Under the Doctrine of Equivalents	16
C.	No Domestic Industry – “Technical Prong”	17
1.	No Patent-Practicing Article [REDACTED]	17
2.	Alleged Articles Are Not the “Masimo Watch” [REDACTED]	21
3.	Complainants Lack Reliable Evidence Describing Alleged DI Articles	23
4.	“Masimo Watch” Articles Do Not Practice the Poeze DI Claims	28

a. “Masimo Watch” Articles Do Not Practice ’501 Claim 1228

(1) Articles Are Not “A User-Worn Device” [1 Preamble]28

(2) Articles Are Not “Configured to Noninvasively Measure A Physiological Parameters” [1 Preamble] and Lack “One or More Processors Configured ... to Calculate a Measurement of the Physiological Parameter of the User” [1E]29

(3) No evidence articles have “at least three photodiodes arranged on an interior surface...” [1B]31

(4) Articles Lack “...Openings Extending Through the Protrusion...” [1C].....31

(5) No evidence articles have “opaque lateral surfaces configured to avoid light piping [1D]32

b. The “Masimo Watch” Articles Do Not Practice ’502 Claim 28.....32

(1) Articles Are Not “A User Worn Device” [28 preamble]...32

(2) Articles Are Not “Configured to Non-Invasively Measure An Oxygen Saturation Of a User” [28 preamble] and Lack “One Or More Processors Configured To ... Calculate An Oxygen Saturation Measurement Of The User” [28I].....33

(3) No evidence articles have “a first set of light emitting diodes (LEDs), the first set comprising at least an led configured to emit light at a first wavelength and at least an led configured to emit light at a second wavelength” [28A] or “a second set of LEDs spaced apart from the first set of LEDs, the second set of LEDs comprising an led configured to emit light at the first wavelength and an led configured to emit light at the second wavelength” [28B] 33

(4) No evidence articles have “four photodiodes arranged in a quadrant configuration on an interior surface of the user-worn device and configured to receive light after at least a portion of the light has been attenuated by tissue of the user” [28C].....34

(5) No evidence articles have “a thermistor configured to provide a temperature signal” [28D].....34

(6) Articles Lack “A Plurality of Openings in the Convex Surface, Extending Through the Protrusion...” [28F].....35

(7) Articles lack “a network interface configured to wirelessly communicate the oxygen saturation measurement to at least one of a mobile phone or an electronic network” [28J].....35

(8) No evidence articles have “a storage device configured to at least temporarily store at least the measurement” [28L]36

(9) Articles Lack “a strap configured to position the user-worn device on the user” [28M].....36



- c. “Masimo Watch” Articles Do Not Practice ’648 Claims 12, 20, or 3036
 - (1) Articles are Not “A User-Worn Device” [8 preamble] & [20preamble]36
 - (2) Articles Are Not “Configured to Non-Invasively Determine Measurements of a Physiological Parameter Of a User” [8 preamble] & [20preamble] And Do Not Have “Processors Configured To” “Output Measurements of a Physiological Parameter” [8G] or “Determine Measurements Of Oxygen Saturation” [20E]36
 - (3) No evidence articles have “a first set of light emitting diodes (LEDs), the first set comprising at least an LED configured to emit light at a first wavelength and at least an LED configured to emit light at a second wavelength” [8A]; “second set of LEDs spaced apart from the first set of LEDs, the second set of LEDs comprising an LED configured to emit light at the first wavelength and an LED configured to emit light at the second wavelength” [8B] ..37
 - (4) No evidence articles have “four photodiodes” [8C]; “at least four photodiodes configured to receive light emitted by the LEDs, the four photodiodes being arranged to capture light at different quadrants of tissue of a user” [20B]37
 - (5) No evidence articles have “a plurality of openings provided through the protrusion and the convex surface, the openings aligned with the photodiodes” [8E]; “...a plurality of through holes, each through hole including a window and arranged over a different one of the at least four photodiodes” [20C]37
 - (6) Articles lack “a strap configured to position the housing proximate tissue of the user when the device is worn” [8I].38
- D. Invalidity38
 - 1. Anticipation/Obviousness38
 - a. State of the Art38
 - b. Anticipation Under 35 U.S.C. 102(a) / Single-Reference Obviousness Under 35 U.S.C. 103(a) Based on Lumidigm43
 - (1) ’501 Patent, Claim 1245
 - (2) ’502 Patent, Claim 2251
 - (3) ’502 Patent, Claim 2858
 - (4) ’648 Patent, Claim 1266
 - (5) ’648 Patent, Claim 2468
 - c. Obviousness Under 35 U.S.C. 103(a)70



- (1) Lumidigm in View of Seiko 131 and Cramer Render Obvious '501 Claim 12, '502 Claims 22 and 28, and '648 Claims 12, 24, and 3070
- (2) Lumidigm in View of Webster Render Obvious '502 Claim 22.....84
- (3) Lumidigm in view of Seiko 131, Cramer, and Webster Render Obvious Claim 22.....87
- (4) Lumidigm in View of Webster and Apple '047 Render Obvious '502 claim 28.....91
- (5) Lumidigm in View of Seiko 131, Cramer, Webster, and Apple '047 Render Obvious '502 Claim 2895
- (6) Kansas State 6D in View of Seiko 131 and Haar Render Obvious '501 Claim 12 and '648 Claims 12, 24, 30100
- (7) Kansas State 6D in View of Seiko, Haar, and Webster Render Obvious '502 Claim 22114
- (8) Kansas State 6D in View of Seiko, Haar, Apple '047 and Webster Render Obvious '502 Claim 28117
- d. No Secondary Considerations of Non-Obviousness.....123
- 2. Invalidity Under 35 U.S.C. § 112126
- E. Unenforceability130
 - 1. Prosecution Laches130
 - 2. Unclean Hands133
- IV. U.S. PATENT NO. 10,687,745133
 - A. Level of Skill of a Person of Ordinary Skill in the Art.....134
 - B. Claim Construction (“Second Shape” Claims 1, 20).....134
 - C. Noninfringement.....134
 - 1. [REDACTED] Does Not Receive Light Having the Same (First) Shape That Was Emitted By the “Light-Emitting” Diodes” [1B], [20B].....135
 - a. Complainants’ expert’s test images confirm that [REDACTED]136
 - b. [REDACTED]138
 - c. Complainants and their expert have failed to show that [REDACTED]139
 - 2. [REDACTED] Does Not Change the Shape of the Light Into a “Second Shape” [1B], [20B]140
 - a. [REDACTED]141

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.