

**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

COMPLAINANTS' OPENING CLAIM CONSTRUCTION BRIEF

TABLE OF CONTENTS

	Page No.
I. INTRODUCTION	1
II. BACKGROUND OF THE ASSERTED PATENTS.....	2
A. Pulse Oximetry Overview.....	2
B. The Asserted Patents.....	7
1. The '501, '502, and '648 Patents.....	7
2. The '745 Patent.....	9
3. The '127 Patent.....	10
III. LEGAL STANDARDS	11
A. Claim Construction.....	11
B. Indefiniteness	13
IV. PERSON OF ORDINARY SKILL IN THE ART.....	13
V. ARGUMENT.....	14
A. Bulk Measurement.....	14
1. The Intrinsic Evidence Supports Masimo's Construction	15
2. Extrinsic Evidence Supports Masimo's Construction	18
3. "Bulk Measurement" Is Not Indefinite.....	19
B. Second Shape.....	21
C. Plurality of Operating Wavelengths.....	24
VI. CONCLUSION.....	27

TABLE OF AUTHORITIES

Page No(s).

Advanced Cardiovascular Sys. v. Medtronic, Inc.,
265 F.3d 1294 (Fed. Cir. 2001)..... 11

Akzo Nobel Coatings, Inc. v. Dow Chem. Co.,
811 F.3d 1334 (Fed. Cir. 2016)..... 13

BASF Corp. v. Johnson Matthey Inc.,
875 F.3d 1360 (Fed. Cir. 2017)..... 13, 19

Biosig Instruments, Inc. v. Nautilus, Inc.,
783 F.3d 1374 (Fed. Cir. 2015)..... 13

Indacon v. Facebook,
824 F.3d 1352 (Fed. Cir. 2016)..... 12

Markman v. Westview Instruments, Inc.,
517 U.S. 370 (1996)..... 13, 19

Nautilus, Inc. v. Biosig Instruments, Inc.,
572 U.S. 898 (2014)..... 13

Phillips v. AWH Corp.,
415 F.3d 1303 (Fed. Cir. 2005) (en banc)..... 11, 12, 20

Terlep v. Brinkmann Corp.,
418 F.3d 1379 (Fed. Cir. 2005)..... 11

Teva Pharms. USA, Inc. v. Sandoz, Inc.,
135 S. Ct 831 (2015)..... 11

Vitrionics Corp. v. Conception, Inc.,
90 F.3d 1576 (Fed. Cir. 1996)..... 11, 12

OTHER AUTHORITIES

Ground Rule 6.1 19

I. INTRODUCTION

Complainants Masimo Corporation and Cercacor Laboratories, Inc. (collectively, “Masimo”) submit this opening claim construction brief regarding three disputed claim phrases from five asserted patents: U.S. Patent Nos. 10,912,501 (“the ’501 patent”), 10,912,502 (“the ’502 patent”), 10,945,648 (“the ’648 patent”), 10,687,745 (“the ’745 patent”), and 7,761,127 (“the ’127 patent”) (collectively, “the asserted patents”).

The asserted patents contain simple language readily understood by a skilled artisan. Across the five patents and numerous asserted claims, only three claim phrases are presented for construction: (1) “bulk measurement”; (2) “second shape”; and (3) “plurality of wavelengths.” Masimo’s proposed constructions for these phrases are supported by the intrinsic evidence, including the claims, the specifications, and the relevant prosecution history.

The first phrase for construction is “bulk measurement.” A skilled artisan would readily understand “bulk measurement” to refer to a baseline measurement. That baseline is simply the non-pulsatile or DC component of the measurement or signal and forms the vast majority of the signal. The specification repeatedly and consistently contrasts a “bulk measurement” with the pulsatile measurement, which forms a very small component of the signal. Apple’s expert obfuscates the basic distinction between the bulk and the pulsatile measurement to inject ambiguity where none exists. Apple cannot meet its burden of showing this well-understood phrase is indefinite.

The second phrase for construction is “second shape.” During prosecution of a parent patent application, Masimo explained the meaning of this phrase through an amendment and remarks in response to cited prior art. Masimo’s proposed construction is based on that prosecution confirming that “second shape” is a shape that is different from the first shape beyond a change in size of the first shape. Apple’s proposed construction ignores this explanation.

The third phrase for construction is “plurality of operating wavelengths.” Masimo’s proposed construction “operating wavelength that varies with temperature” takes into account the specification’s teaching that each of the recited LEDs has a wavelength that varies with temperature. Apple’s proposed construction simply defines “plurality” as two or more, a point that is not in debate. Masimo does not know the basis for Apple’s disagreement.

Masimo supports its positions with expert reports submitted by Vijay K. Madiseti, Ph.D. and Jack Goldberg (Exs. 1-3). As described in detail below, the ALJ should adopt Masimo’s proposed constructions.

II. BACKGROUND OF THE ASSERTED PATENTS

A. Pulse Oximetry Overview

Masimo is a global medical technology company that, through years of innovation, has revolutionized non-invasive monitoring of physiological parameters, such as pulse rate, arterial oxygen saturation and many others. In particular, Masimo discovered how to reliably measure arterial oxygen saturation, even in the presence of motion and low blood flow, without drawing blood. This was a major breakthrough in the field of pulse oximetry. Masimo manufactures and sells pulse oximeters with this technology that caregivers use to monitor over 200 million patients a year. By developing various consumer products, Masimo has now made its hospital-grade technology directly available to everyone. Overcrowded hospitals nationwide have used Masimo’s leading pulse oximetry to monitor COVID-19 patients at home.

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.