

**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' REBUTTAL CLAIM CONSTRUCTION BRIEF**

## TABLE OF CONTENTS

	Page No.
I. INTRODUCTION .....	1
II. PERSON OF ORDINARY SKILL IN THE ART .....	1
III. PLURALITY OF OPERATING WAVELENGTHS ('127 PATENT) .....	2
IV. SECOND SHAPE ('745 PATENT).....	3
V. BULK MEASUREMENT ('501, '502 AND '648 PATENTS) .....	5
A. "Bulk Measurement" is Readily Understandable .....	5
B. The Specification Does Not Require Multiple Signals from Multiple Detectors .....	7
C. Apple's Expert Contradicts His Own Prior Writings .....	10
VI. CONCLUSION.....	12

**TABLE OF AUTHORITIES**

**Page No(s).**

*Hill-Rom Servs., Inc. v. Stryker Corp.*,  
755 F.3d 1367 (Fed. Cir. 2014).....7

*Masimo Corporation v. Philips Electronics North America Corporation et al.*,  
C.A. Nos. 09-080-LPS, 11-742-LPS-MPT .....11, 12

*Phillips v. AWH Corp.*,  
415 F.3d 1303 (Fed. Cir. 2005).....7

*ScriptPro LLC v. Innovation Assoc., Inc.*,  
833 F.3d 1336 (Fed. Cir. 2016).....9

**OTHER AUTHORITIES**

Ground Rule 6.2.....1

## **I. INTRODUCTION**

Masimo proposed constructions to help explain three terms from the five Asserted Patents. For “plurality of operating wavelengths,” Masimo advocated for a construction to make clear that the operating wavelengths, as used throughout the claim, varies with bulk temperature. Apple conceded in its opening brief that each instance of the phrase “operating wavelength” requires a relationship between the operating wavelengths and bulk temperature. Based on this concession, Masimo accepts Apple’s proposal that the claim should be construed according to its plain and ordinary meaning.

For “second shape,” Masimo proposed a construction coming directly from the prosecution history of a related patent. Apple criticized that construction based on the word “beyond.” In response, Masimo proposed an explicit definition to address that criticism: “a shape that is different from the first shape, where a different size, without any other difference, is not a shape different from the first shape.” Apple rejected that proposal. Apple’s remaining objection focuses on an unreasonable hypothetical and not the prosecution history.

Finally, “bulk measurement” refers to a basic, well-known principle of pulse oximetry: that the vast majority of the signal is the non-pulsatile, DC component. A skilled artisan would readily understand “bulk measurement” to mean “baseline measurement.” Apple argues that “bulk measurement” is indefinite, manufacturing an ambiguity between one embodiment and the claim language. But neither the claim nor the specification is limited to that embodiment. Apple cannot show by clear and convincing evidence that the claim is indefinite.

## **II. PERSON OF ORDINARY SKILL IN THE ART**

Ground Rule 6.2 requires identification of the person of ordinary skill in the art (“POSA” or “POSITA”) in the opening claim construction brief. Apple’s opening brief did not address this

issue. Apple's expert, however, identified a POSA for the '501, '502, and '648 patents in his claim construction report. *See* Ex. 4<sup>1</sup> (Warren Initial Report) ¶ 32.

Masimo's opening brief did not oppose that identification for purposes of this Investigation. Masimo Opening Brief (Doc ID 761612, "Masimo Op. Br.") at 13. The ALJ should therefore adopt that identification:

[A] person with a working knowledge of physiological monitoring technologies. The person would have had a Bachelor of Science degree in an academic discipline emphasizing the design of electrical, computer, or software technologies, in combination with training or at least one to two years of related work experience with capture and processing of data or information, including but not limited to physiological monitoring technologies. Alternatively, the person could have also had a Master of Science degree in a relevant academic discipline with less than a year of related work experience in the same discipline.

Ex. 4 ¶ 32.

With respect to the POSA for the '745 and '127 patents. Masimo and its experts adopted the same identification provided above. Masimo Op. Br. at 13-14. Apple identified no one. Therefore, the ALJ should also adopt the same level of ordinary skill in the art for all five of the asserted patents.

### **III. PLURALITY OF OPERATING WAVELENGTHS ('127 PATENT)**

Using Apple's labels, Claim 7 of the '127 patent is as follows:

7. [preamble] A physiological sensor capable of emitting light into tissue and producing an output signal usable to determine one or more physiological parameters of a patient, the physiological sensor comprising:

[a] a thermal mass;

[b] a plurality of light emitting sources, including a substrate of the plurality of light emitting sources, thermally coupled to the thermal mass, the sources having a corresponding *plurality of operating wavelengths*, the thermal mass disposed within the substrate;

---

<sup>1</sup> Exhibits 1-16 are attached to Masimo's Opening Brief.

# 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.