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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 IPR2022-01300  
U.S. Patent 7,761,127

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**PATENT OWNER MOTION TO SEAL AND FOR ENTRY OF A  
PROTECTIVE ORDER**

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner Masimo Corporation (“Masimo”) respectfully submits this opposed Motion to Seal and for Entry of a Protective Order. Masimo specifically moves to seal confidential versions of its Patent Owner Preliminary Response and Exhibits 2002-2004, 2006, 2007, 2009, 2010, 2012-2016, 2018-2021, 2027, 2028, 2031, 2032, 2051, 2057, 2058, 2081, and 2082. Masimo is concurrently filing public versions, with confidential portions redacted, of its Patent Owner Preliminary Response and Exhibits 2002, 2051, and 2082.

Patent Owner also proposes, and moves for entry of, a modified version of the Board’s Default Protective Order as Appendix A.

### **I. INTRODUCTION**

Masimo’s POPR, in part, relies on secondary considerations of nonobviousness related to its rainbow® sensors. For support, Masimo’s POPR includes its proprietary and highly sensitive documents including technical documents detailing the research, design, structure, and functionality of Masimo’s rainbow® sensors and devices. Masimo’s POPR also includes confidential financial documents on Masimo’s sales of the rainbow® sensors.

Masimo relied on most of these documents in the ITC Investigation involving Apple and the ’127 patent. In the ITC Investigation, the Administrative Law Judge entered a protective order providing strong protection of these documents. EX2083.

That protective order provided for a “CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER” (“CBI”) designation. Masimo and Apple also negotiated and stipulated to a supplemental protective order that addressed source code and a prosecution bar. EX2084.

Masimo designated most of the documents at issue in this Motion under the CBI designation in the ITC investigation. With that designation Apple’s outside counsel in the ITC, but not its in-house counsel, had access to these documents. Masimo seeks a protective order here with the same level of protection that the parties already operated under during the ITC Investigation.

## II. DOCUMENTS TO BE SEALED

Masimo requests the following technical documents be sealed:

Exhibit 2002 is the Declaration of named inventor Mohamed Diab. The declaration tracks testimony that Diab gave in deposition and at the hearing in the ITC investigation. Paragraphs 19-27, 37-42, 47, 48, and 71-90 of this declaration contain information pertaining to Masimo’s research, development, and production work related to the subject matter of the ’127 patent and patented products. This testimony has never been made public.

Exhibit 2003 are plots from computer simulations that Diab performed. Diab performed the simulations while researching and developing the subject matter of

the '127 patent and rainbow® products. These computer simulations have never been made public.

Exhibits 2004 and 2017 are Masimo internal PowerPoint Presentations. These exhibits contain information pertaining to Masimo's research and development work related to the subject matter of the '127 patent and/or rainbow® products, These presentations have never been made public.

Exhibit 2006, 2007, 2009, 2010, 2012, 2013, 2014, 2015, 2020, 2027, 2032, 2033 are Masimo engineering drawings and technical specifications containing detailed information about rainbow sensors®, including structure, components, materials used, dimensions, and functionality. These documents are marked with internal corporate confidentiality designations. This information has never been made public.

Exhibit 2016 is an internal Masimo CAD drawing showing an expanded view of, and additional detail related to, the substrate of some rainbow® products. This drawing has never been made public.

Exhibit 2018 is a technical data sheet containing technical details about an adhesive used in the rainbow® products. These technical details of the rainbow® sensors' adhesive have not been made public.

Exhibits 2019 and 2021 are photographs showing internal parts and structure of rainbow® sensors that are not publicly viewable. Masimo produced these photographs internally and they have not been made public.

Exhibit 2028 is a collection of testing data plots showing results of internal Masimo sensor characterization tests conducted to verify the operability of the rainbow® products. The plots have not been made public.

Exhibit 2031 is Diab's confidential research folder containing an internal Masimo technical report authored by the named inventors and marked with an internal corporate confidentiality designation. This exhibit contains information pertaining to Masimo's research and development work related to the subject matter of the '127 patent and rainbow® products. The research folder has not been made public.

Exhibit 2051 is a declaration of Masimo's technical expert, Jack Goldberg. Paragraphs 28-32 of Mr. Goldberg's declaration include information from the confidential testimony of Mr. Diab and Exhibit 2003. This information has not been made public.

Exhibits 2057 and 2058 are Mr. Goldberg's claim charts detailing analysis comparing the rainbow® products to the claims of the '127 patents. The charts heavily rely on the confidential exhibits listed herein. This information has not been made public.

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