

[REDACTED]

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

MASIMO CORPORATION,
Patent Owner.


Case IPR2022-01291, IPR2022-01465
U.S. Patent 10,687,745

**DECLARATION OF R. JAMES DUCKWORTH
IN SUPPORT OF PATENT OWNER'S RESPONSES**

I declare that all statements made herein on my own knowledge are true and that all statements made on information and belief are believed to be true, and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

I reserve the right to supplement my opinions in the future to respond to any arguments or positions Apple may raise, taking account of new information as it becomes available to me.

Dated: 5/26/2023



R. James Duckworth, Ph.D.

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I, R. James Duckworth, declare and state as follows:

I. INTRODUCTION

1. My name is R. James Duckworth, Ph.D. I have been retained by Knobbe, Martens, Olson & Bear, LLP, counsel for Patent Owner Masimo Corporation (“Masimo”). I previously submitted two declarations in IPR2022-01291 and IPR2022-01465, both of which concern the ’745 Patent. Both declarations are labeled Exhibit 2002 in their respective IPRs. I expressly incorporate by reference my original declarations, EX2002 in IPR2022-01291 and EX2002 in IPR2022-01465, as if set forth fully herein.

2. I am providing this supplemental declaration to provide additional opinions relating to IPR2022-01291 and IPR2022-01465. I may refer to my original declarations throughout this supplemental declaration. I will refer to my original declaration in IPR2022-01291 as EX2002-1291 and to my original declaration in IPR2022-01465 as EX2002-1465.

3. I have continued to apply the legal standards provided to me by counsel as set forth in my original declarations.

II. MATERIALS CONSIDERED

4. In paragraphs 3-6 of Exhibit 2002-1291 and in paragraphs 3-5 of Exhibit 2002-1465, I listed the materials I considered with respect to my original

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declarations. In connection with this declaration, I have considered those materials and further considered the following materials:

Exhibit	Description
2071	Transcript of March 24, 2023 Deposition of Dr. Brian W. Anthony
2072	Excerpt of Webster's II New College Dictionary (2001)
2073	Encyclopedia Britannica, <i>Light, the visible spectrum</i> , https://www.britannica.com/science/light (last visited May 19, 2023)
2074	Nonconfidential Excerpt of Page 65 from June 6-10, 2022 Hearing Transcript, <i>Masimo Corp. et al. v. Apple Inc.</i> , ITC Inv. No 337-TA-1276
2075	February 13, 2023 Respondent Apple Inc.'s Response to Complainants' Petition for Review (Public Version), filed in <i>Masimo Corp. et al. v. Apple Inc.</i> , ITC Inv. No 337-TA-1276
2076	CONFIDENTIAL – Transcript of Testimony of Brian Land from June 6-10, 2022 Hearing Transcript, <i>Masimo Corp. et al. v. Apple Inc.</i> , ITC Inv. No 337-TA-1276
2077	CONFIDENTIAL – Transcript of Testimony of Dr. Paul Mannheimer from June 6-10, 2022 Hearing Transcript, <i>Masimo Corp. et al. v. Apple Inc.</i> , ITC Inv. No 337-TA-1276
2078	CONFIDENTIAL – Transcript of Testimony of Dr. Stephen Waydo from June 6-10, 2022 Hearing Transcript, <i>Masimo Corp. et al. v. Apple Inc.</i> , ITC Inv. No 337-TA-1276
2079	CONFIDENTIAL – Transcript of Testimony of Dr. Vivek Venugopal from June 6-10, 2022 Hearing Transcript, <i>Masimo Corp. et al. v. Apple Inc.</i> , ITC Inv. No 337-TA-1276
2080	CONFIDENTIAL – ITC Exhibit CX-0289C – Designated Portions of February 10, 2022 Deposition of Paul Mannheimer



2081	CONFIDENTIAL – ITC Exhibit CX-0299C – Designated Portions of February 18, 2022 Deposition of Stephen Waydo
2082	CONFIDENTIAL – ITC Exhibit CX-0295C – Designated Portions of February 11, 2022 Deposition of Tao Shui
2083	CONFIDENTIAL – ITC Exhibit CX-0007C – Email from Brian Land to Paul Mannheimer et al.
2084	CONFIDENTIAL – ITC Exhibit CX-0175C – Apple Organization Chart
2085	CONFIDENTIAL – ITC Exhibit CX-0177C – Apple Presentation
2086	CONFIDENTIAL – ITC Exhibit CX-0185C – Apple Presentation
2087	Kim, Gina, “Masimo Wants \$3B From Apple Over Smartwatch IP, Jury Told.” Law360, April 5, 2023 (https://www.law360.com/articles/1593689/masimo-wants-3b-from-apple-over-smartwatch-ip-jury-told)
2088	ITC Exhibit CX-1616 – Fowler, Geoffrey, “The new Apple Watch says my lungs may be sick. Or perfect. It can’t decide.” Washington Post, September 23, 2020 (https://www.washingtonpost.com/technology/2020/09/23/apple-watch-oximeter/)
2089	CONFIDENTIAL – ITC Exhibit CX-1793C – Apple Presentation
2090	CONFIDENTIAL – ITC Exhibit CX-1800C – Email from Adrian Perica to Steve Hotelling, et al.
2091	William, Andrews, “Fitbit Update Lets You Quickly Check Your Blood Oxygen Saturation.” Forbes, Sept. 9, 2020 (https://www.forbes.com/sites/andrewwilliams/2020/09/09/fitbit-update-lets-you-quickly-check-your-blood-oxygen-saturation/?sh=5d6ecb55e76a)
2092	“Track Your SpO2 to Uncover Changes in Your Wellbeing,” Fitbit, Sept. 7, 2020 (https://blog.fitbit.com/track-your-spo2/)
2093	CONFIDENTIAL – ITC Final Initial Determination



EX1036	CONFIDENTIAL – Transcript of Testimony of Ueyn Block from June 6-10, 2022 Hearing Transcript, <i>Masimo Corp. et al. v. Apple Inc.</i> , ITC Inv. No 337-TA-1276
EX1037	CONFIDENTIAL – Transcript of Testimony of Saahil Mehra from June 6-10, 2022 Hearing Transcript, <i>Masimo Corp. et al. v. Apple Inc.</i> , ITC Inv. No 337-TA-1276
EX1038	ITC Exhibit RX-0335
EX1039	ITC Exhibit RX-0504
EX1040	ITC Exhibit RX-0508
EX1041	ITC Exhibit RX-0632

In addition to the exhibits listed above, I have also considered Masimo’s Patent Owner Preliminary Responses in these IPRs, the Institution Decisions in these IPRs, all other documents that Apple produced in response to Masimo’s Motion for Additional Discovery, the parties’ public Petitions for Review of the Final Initial Determination and the parties’ public Responses to those Petitions in the Investigation, and to the extent not listed here, any other documents that I cite in this declaration.

III. LEVEL OF ORDINARY SKILL

5. For purposes of this declaration, I have continued to apply the definition of a person of ordinary skill in the art (“POSITA”) that Apple proposed. *See* EX2002-1291 at ¶¶ 31-32. I have been informed and understand that obviousness must be evaluated from the perspective of a POSITA as of the effective filing date

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