

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner

v.

Masimo Corporation,
Patent Owner.

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

PETITIONER'S UNOPPOSED MOTION TO SEAL

I. INTRODUCTION

Pursuant to the Protective Order (EX1035) in this proceeding and 37 C.F.R. § 42.14, Petitioner Apple Inc. (“Apple”) submits this Motion to Seal (“Motion”) concurrent with the filing of Petitioner’s Reply to the Patent Owner’s Response (“Reply”). Through this Motion, Apple respectfully requests that certain information in the Reply and other information cited in the Reply or otherwise of record in this proceeding be sealed.

As detailed further below, the documents and information that Apple moves to seal include Apple confidential business information (“CBI”) related to, among other things, development of Apple’s Watch products, including internal business practices and sensitive, proprietary technical and product development information concerning Apple’s Watch products. The CBI in this proceeding includes sealed documents and exhibits from related ITC Investigation (*Certain Light-Based Physiological Measurement Devices and Components Thereof*, Inv. No. 337-TA-1276 (ITC) involving U.S. Patent 10,687, 745 (“the ’745 Patent”) and other patents. The CBI in this proceeding further includes argument and testimony that references sealed documents and exhibits from ITC Inv. No. 337-TA-1276.

Apple specifically moves to seal portions of the Reply and Exhibits 1036, 1037, 1042, and 1059 that contain Apple CBI as described in the sections below.

Public versions of the Reply and Exhibits 1036, 1037, 1042, and 1059 with

confidential portions redacted are being filed with the Reply and this Motion. The parties have conferred by email and Masimo has explained its position on the Motion as follows:

“Masimo will not oppose the motion to seal Apple CBI that Apple produced from the ITC proceeding in response to Masimo’s motion for additional discovery in these IPR or in EX1036 or EX1037. However, to the extent Apple seeks to introduce Apple CBI that was not produced in response to Masimo’s motion for additional discovery in these IPRs or in EX1036 or EX1037, Masimo reserves all rights to oppose. Masimo also reserves the right to object to Apple’s Reply arguments or to any exhibits that Apple may submit with its Reply.”

Because Apple has not introduced any new Apple CBI that was not produced responsive to the Board’s order granting-in-part Masimo’s motion for additional discovery or that is not in Exhibits 1036 or 1037, Apple understands that this Motion is *unopposed*.

II. THE DOCUMENTS REQUESTED TO BE SEALED CONTAIN CONFIDENTIAL BUSINESS INFORMATION

In an *inter partes* review (“IPR”), the Board will grant a motion to seal upon a showing of “good cause” for the relief requested. 37 C.F.R. § 42.20(c). The Board has explained that “a movant to seal must demonstrate adequately that (1) the

information sought to be sealed is truly confidential, (2) a concrete harm would result upon public disclosure, (3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and (4), on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record.” *Argentum Pharmaceuticals LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 4 (PTAB Jan. 19, 2018) (informative).

Apple respectfully submits that each of the *Argentum* conditions is satisfied and that good cause exists for the relief requested in this Motion.

A. Identification of Documents and Information that Apple Moves to Seal

Apple moves to seal the following information:

First, Apple moves to seal identified portions of the Supplemental Declaration of Dr. Brian Anthony (APPLE-1042). These portions of Dr. Anthony’s Supplemental Declaration reference testimony from witnesses offered in closed session in ITC Inv. No. 337-TA-1276. These portions of Dr. Anthony’s Supplemental Declaration further reference various confidential exhibits from ITC Inv. No. 337-TA-1276 that have been entered in this proceeding. The identified information from these portions of Dr. Anthony’s Supplemental Declaration includes quotes, images, and discussion of CBI related to Apple’s Watch products, including sensitive, proprietary research and development (R&D) information, trade

secrets, proprietary processes and apparatuses, and confidential business operations information.

Second, Apple moves to seal identified portions of the deposition transcript of R. James Duckworth, Ph.D., conducted August 9, 2023 (APPLE-1059). These portions of Dr. Duckworth's deposition transcript include questions and testimony that refer to various confidential exhibits that have been entered in the subject IPR from ITC Inv. No. 337-TA-1276. The questioning and testimony in the identified portions of the transcript include discussion of CBI related to Apple's Watch products, including sensitive, proprietary research and development (R&D) information, trade secrets, proprietary processes and apparatuses, and confidential business operations information.

Third, Apple moves to seal pages 5-23 of the transcript of Dr. Ueyn Block's testimony from a hearing in ITC Inv. No. 337-TA-1276 (APPLE-1036). These pages of the hearing transcript were conducted in closed session at the ITC and include questioning and testimony related to Apple's Watch products, including sensitive, proprietary research and development (R&D) information, trade secrets, proprietary processes and apparatuses, and confidential business operations information.

Fourth, Apple moves to seal pages 3-21 of the transcript of Dr. Saahil Mehra's testimony from a hearing in ITC Inv. No. 337-TA-1276 (APPLE-1037). These

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