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Filed on behalf of:

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SOTERA WIRELESS,
Petitioner,

v.

MASIMO CORPORATION,
Patent Owner.

Case IPR2020-00954
U.S. Patent 9,788,735

PATENT OWNER'S OBJECTIONS TO EVIDENCE

Pursuant to 37 C.F.R. § 42.64(b), Patent Owner Masimo Corporation objects to the admissibility of evidence submitted by Petitioner Sotera Wireless. Patent Owner reserves its rights to: (1) timely file a motion to exclude these objectionable exhibits or portions thereof; (2) challenge the credibility and/or weight that should be afforded to these exhibits, whether or not Patent Owner files a motion to exclude the exhibits; (3) challenge the sufficiency of the evidence to meet Petitioner's burden of proof on any issue, including, without limitation, whether Petitioner met its burden to prove the prior art status of the alleged prior art on which it relies, whether or not Patent Owner has objected to, or files a motion to exclude, the evidence; and (4) cross examine any Petitioner declarant within the scope of his or her direct testimony that is or relates to these exhibits, without regard to whether Patent Owner has objected to the testimony or related exhibits or whether the testimony or related exhibits are ultimately found to be inadmissible.

In providing these objections to the admissibility of certain evidence, Masimo is not waiving its other objections to Sotera's Reply, the Bergeron declaration, and the other exhibits submitted along with Sotera's Reply as exceeding the proper scope of a reply and improperly raising new theories of unpatentability that could have and should have been raised in Sotera's Petition. Masimo expressly maintains those objections, which will be the subject of Masimo's requested motion to strike.

Evidence	Objections
EX1040	<p>Improper Testimony by Expert Witness (FRE 702):</p> <p>Masimo objects to Dr. Bergeron's reliance on unsupported assertions regarding the knowledge of a skilled artisan; the scope and content of the art and his interpretation thereof; and the ultimate issues of obviousness as unhelpful to the trier of fact to understand the evidence or to determine a fact in issue due to his lack of experience in the relevant field. Further, to the extent Dr. Bergeron's declaration incorporates prior objectionable paragraphs, Masimo's objections apply with equal force to those same paragraphs as later incorporated.</p> <p>¶¶ 46-48 are irrelevant to any issue and needlessly present cumulative evidence and is unfairly prejudicial (FRE 402, FRE 403)</p> <p>¶ 49 is irrelevant and is unfairly prejudicial (FRE 402, FRE 403) and is based on evidence that is irrelevant and unfairly prejudicial (EX1044).</p> <p>¶ 50 is not based on sufficient facts or data and is not the product of reliable principles and methods (FRE 702).</p>

Evidence	Objections
	<p>¶ 54 is irrelevant to any issue and is unfairly prejudicial (FRE 402, FRE 403) and is not based on sufficient facts or data and is not the product of reliable principles and methods (FRE 702).</p> <p>¶¶ 55-60 are irrelevant to any issue, cumulative, and unfairly prejudicial (FRE 402, FRE 403) and are not based on sufficient facts or data and are not the product of reliable principles and methods (FRE 702).</p> <p>¶¶ 66-67 are irrelevant to any issue, unfairly prejudicial, confuses the issues, and are misleading (FRE 402, FRE 403), and are not the product of reliable principles and methods (FRE 702).</p> <p>¶ 69 is not based on sufficient facts or data and not the product of reliable principles and methods (FRE 702).</p> <p>¶ 71 is irrelevant, unfairly prejudicial, confuses the issues, and misleading (FRE 402, FRE 403) and is not based on sufficient facts or data and is not the product of reliable principles and methods (FRE 702).</p> <p>¶ 73 is irrelevant, unfairly prejudicial, confuses the issues, and</p>

Evidence	Objections
	<p data-bbox="488 289 980 321">misleading (FRE 402, FRE 403).</p> <p data-bbox="488 373 1435 573">¶ 75 is irrelevant, unfairly prejudicial, and confuses the issues (FRE 402, FRE 403) and is based on irrelevant evidence (EX1045).</p> <p data-bbox="488 625 1435 1003">¶ 76 is irrelevant and unfairly prejudicial (FRE 402, FRE 403) and is based on evidence that is irrelevant and unfairly prejudicial (EX1052-EX1055), and is not based on sufficient facts or data and not the product of reliable principles and methods (FRE 702).</p> <p data-bbox="488 1056 1435 1266">¶ 78 is irrelevant and unfairly prejudicial (FRE 402, FRE 403) and based on evidence that is irrelevant and unfairly prejudicial (EX1047-EX1051, EX1055).</p> <p data-bbox="488 1318 1435 1518">¶¶ 80-81 are not the proper subjects of expert testimony and are not based on sufficient facts or data and are not the product of reliable principles and methods (FRE 702).</p> <p data-bbox="488 1570 1435 1770">¶¶ 84-85 are irrelevant, unfairly prejudicial, and confuses the issues (FRE 402, 403) and are based on irrelevant and unfairly prejudicial evidence (EX1043).</p> <p data-bbox="488 1822 1435 1854">¶ 86 is irrelevant, unfairly prejudicial, confuses the issues, and</p>

Evidence	Objections
	<p data-bbox="488 289 980 321">misleading (FRE 402, FRE 403).</p> <p data-bbox="488 373 1433 579">¶¶ 88-89 are irrelevant to the instituted grounds, unfairly prejudicial, confuses the issues, misleading, and wastes the parties' and the Board's time (FRE 402, FRE 403).</p> <p data-bbox="488 632 1433 1003">¶¶ 90-92 are irrelevant to the instituted grounds, unfairly prejudicial, misleading, confuses the issues, and wastes the parties' and the Board's time (FRE 402, FRE 403) and based on evidence that is irrelevant and unfairly prejudicial (EX1045, EX1058-EX1059).</p> <p data-bbox="488 1056 1289 1087">¶ 93 is misleading and confuses the issues (FRE 403).</p> <p data-bbox="488 1140 1433 1346">¶ 95 is irrelevant to any instituted ground, misleading, confuses the issues, and wastes the parties' and the Board's time (FRE 402, FRE 403).</p> <p data-bbox="488 1398 1433 1770">¶ 96 is irrelevant to any instituted ground, is unfairly prejudicial, misleading, confuses the issues, and wastes the parties' and the Board's time (FRE 402, FRE 403) and is based on evidence that is irrelevant and unfairly prejudicial (EX1057).</p> <p data-bbox="488 1822 1433 1854">¶ 100 is unfairly prejudicial, confuses the issues, and wastes</p>

Evidence	Objections
	the parties' and the Board's time (FRE 403).
EX1043 – U.S. Patent No. 4,889,132 to Hutcheson et al.	This reference is not relevant to any instituted ground in this proceeding (FRE 402) and confuses the issues, wastes the parties' and the Board's time, and is unfairly prejudicial (FRE 403).
EX1044 – PIC16C5X Datasheet	This reference is not relevant to any issue in this proceeding (FRE 402) and confuses the issues, and wastes the parties' and the Board's time (FRE 403). This reference has not been authenticated (FRE 901).
EX1045 – Amazon.com printout	This reference is not relevant to any issue in this proceeding (FRE 402) and confuses the issues, wastes the parties' and the Board's time, and is unfairly prejudicial (FRE 403). This reference has not been authenticated (FRE 901).
EX1047 – ATT Standard 463-400-400	This reference is not relevant to any issue in this proceeding (FRE 402) and confuses the issues, wastes the parties' and the Board's time, and is unfairly prejudicial (FRE 403). This reference has not been authenticated (FRE 901).

Evidence	Objections
EX1048 – ATT Standard 463- 400-110	This reference is not relevant to any issue in this proceeding (FRE 402) and confuses the issues, wastes the parties’ and the Board’s time, and is unfairly prejudicial (FRE 403). This reference has not been authenticated (FRE 901).
EX1049 – Modular Cable and RJ Connector Guide C2G	This reference is not relevant to any issue in this proceeding (FRE 402) and confuses the issues, wastes the parties’ and the Board’s time, and is unfairly prejudicial (FRE 403). This reference has not been authenticated (FRE 901).
EX1050 – U.S. Patent No. 5,637,002 to Buck et al.	This reference is not relevant to any issue in this proceeding (FRE 402) and confuses the issues, wastes the parties’ and the Board’s time, and is unfairly prejudicial (FRE 403).
EX1051 – U.S. Patent No. 4,557,545 to Ohtsuki et al.	This reference is not relevant to any issue in this proceeding (FRE 402) and confuses the issues, wastes the parties’ and the Board’s time, and is unfairly prejudicial (FRE 403).
EX1052 – U.S. Patent No. 6,755,689	This reference is not relevant to any issue in this proceeding (FRE 402) and confuses the issues, wastes the parties’ and the Board’s time, and is unfairly prejudicial (FRE 403).

Evidence	Objections
EX1053 – U.S. Patent No. D391,551 to Ono	This reference is not relevant to any issue in this proceeding (FRE 402) and confuses the issues, wastes the parties’ and the Board’s time, and is unfairly prejudicial (FRE 403).
EX1054 – U.S. Patent No. D390,192	This reference is not relevant to any issue in this proceeding (FRE 402) and confuses the issues, wastes the parties’ and the Board’s time, and is unfairly prejudicial (FRE 403).
EX1055 – IEEE Standard for a High Performance Serial Bus—Amendment 1	This reference is not relevant to any issue in this proceeding (FRE 402) and confuses the issues, wastes the parties’ and the Board’s time, and is unfairly prejudicial (FRE 403). This reference has not been authenticated (FRE 901).
EX1057 – U.S. Patent No. 4,883,055 to Merrick	This reference is not relevant to any issue in this proceeding (FRE 402) and confuses the issues, wastes the parties’ and the Board’s time, and is unfairly prejudicial (FRE 403).
EX1058 – Amazon.com printout of Invicta	This reference is not relevant to any issue in this proceeding (FRE 402) and confuses the issues, wastes the parties’ and the Board’s time, and is unfairly prejudicial (FRE 403).

Evidence	Objections
Men's Pro Diver	<p>This reference has not been authenticated (FRE 901).</p> <p>Patent Owner objects to Sotera's reliance on EX1058 for the truth of the matter asserted (FRE 802).</p>
EX1059 – Ikey AK-39 Rugged Wearable Keyboard	<p>This reference is not relevant to any issue in this proceeding (FRE 402) and confuses the issues, wastes the parties' and the Board's time, and is unfairly prejudicial (FRE 403).</p> <p>This reference is not authenticated (FRE 901).</p> <p>Patent Owner objects to Sotera's reliance on EX1059 for the truth of the matter asserted (FRE 802).</p>

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: May 26, 2021

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Customer No. 64,735

Attorneys for Patent Owner
Masimo Corporation

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to 37 C.F.R. § 42.6(e) and with the agreement of counsel for Petitioner, a true and correct copy of **PATENT OWNER'S OBJECTIONS TO EVIDENCE** is being served electronically on May 26, 2021, to the e-mail addresses shown below:

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Dated: May 26, 2021

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