

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

**RESPONDENT APPLE INC.'S OPPOSITION TO COMPLAINANTS'
MOTION FOR PROTECTIVE ORDER TO PRECLUDE ACCESS BY
BRIAN ANTHONY, PH.D., TO COMPLAINANTS'
CONFIDENTIAL BUSINESS INFORMATION (MOTION NO. 1276-005)**

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Respondent Apple Inc. (“Apple”) respectfully submits its opposition to Complainants’ Masimo Corporation (“Masimo”) and Cercacor Laboratories, Inc.’s (“Cercacor”) motion to preclude Apple’s expert Dr. Brian Anthony from accessing materials designated as containing Complainants’ confidential business information (“CBI”) under the Protective Order unless he signs a separate, side-agreement imposing a product development bar on them that Complainants refuse to accept for their own experts. This is Complainants’ third of three pending motions that collectively seek to preclude four of Apple’s five technical experts from accessing Complainants’ CBI unless they agree to restrictions that Complainants refuse to apply to their own experts. Complainants’ refusal to negotiate in good faith a development bar that would apply equally to experts that access CBI of both sides in this case and tactic of instead filing serial objections is prejudicing Apple by preventing it from discussing Complainants’ CBI with its technical experts while wasting party and Commission resources.

As discussed in Apple’s oppositions to Complainants’ motions to preclude Dr. Steven Warren, Dr. Robert Stone, and Dr. Majid Sarrafzadeh from this Investigation (*see* Doc ID 756608; Doc ID 756950), Apple has consistently maintained that a product development bar is an appropriate restriction for *all* individuals accessing CBI in this Investigation. Complainants continue to refuse to engage with Apple’s proposals. As discussed below, Complainants have now *twice* struck entirely the product development bar proposed by Apple—even though the second bar Apple proposed contained language taken *directly* from the separate agreements Complainants are seeking to enforce against Apple’s experts—while continuing to maintain their “objection” to Dr. Anthony (and all but one of Apple’s other technical experts) unless he agrees to sign Complainants’ unilateral agreements including such a bar.

Complainants have not raised a valid individualized objection to Dr. Anthony. Nor have

Complainants articulated—in any of its three motions—why it is appropriate that they should force Apple’s experts to abide by restrictions that Complainants are unwilling to impose on those who access Apple’s CBI. As before, the concerns that Complainants recycle in their latest motion should be addressed through the negotiation and submission of a Supplemental Protective Order. Instead, Complainants have manufactured a dispute by refusing to negotiate with Apple on the content and scope of a product development bar in the parties’ Supplemental Protective Order, and then later objecting to Apple’s experts unless they agree to execute a separate product development bar agreement. This conduct is the cause of real, immediate, and ongoing prejudice to Apple. Accordingly, Apple again respectfully requests that Complainants’ motion be denied.

I. FACTUAL BACKGROUND

A. Apple’s Proposed Product Development In The Supplemental Protective Order Would Fully Address Complainants’ Concerns.

Apple first proposed in August 2021 that the parties negotiate and jointly move for an amendment to the Protective Order (“Supplemental Protective Order”) that would include various protections, including a product development provision of the type Complainants now seek to unilaterally impose on Dr. Anthony. The purpose of the Supplemental Protective Order would be to provide additional safeguards for the production and review of source code in this Investigation and also, as relevant to Complainants’ motion, establish a product development bar that would apply equally to all recipients of CBI in this Investigation.

On August 31, 2021, the parties filed a Joint Discovery Statement pursuant to Chief Administrative Judge Bullock’s Order No. 2: Notice of Ground Rules; Order Setting Date for Submission of Joint Discovery Statement. *See* Doc ID 750609. Paragraph 12 of Exhibit A to the Joint Discovery Statement is titled “Proposal for any modifications to the protective order now in effect for this Investigation” and provides the parties’ respective positions regarding the contents

of a Supplemental Protective Order. *Id.* [JDS Ex. A] at 24-25. Apple provided its position:

Given Complainants' counsel's involvement in prosecuting patents on behalf of Complainants, Apple believes that a patent prosecution and product development bar is a necessary and reasonable amendment to the Protective Order in this Investigation. Apple's proposed patent prosecution and product development bar will be appropriately limited in duration and scope, consistent with other patent and prosecution bars permitted by the CALJ in other investigations. *See, e.g., Certain Automated Storage and Retrieval Systems, Robots, and Components Thereof*, Inv. No. 337-TA-1228, Order No. 15 (May 4, 2021); *Certain Audio Players and Controllers, Components Thereof, and Products Containing Same*, ITC Inv. No. 337-TA-1191, Order No. 8 (Apr. 29, 2020).

Id. Complainants stated that they "understand that Apple intends to propose a patent prosecution and product development bar. Complainants will consider the proposal once received." *Id.* at 24. Notably, Complainants never suggested that they would seek to require Apple's experts to sign separate product development bars outside the Protective Order. The parties' positions with respect to a patent prosecution and product development bar were repeated in Exhibit B to the Joint Discovery Statement. *Id.* [JDS Ex. B] at 10. Again, Complainants' position contains no mention of separate, ad hoc agreements that would apply to only Apple's experts in lieu of a single product development bar.

On September 24, 2021, Apple sent to Complainants a proposed Supplemental Protective Order that included a patent-prosecution and product development bar. Ex. A [9/24 Frazier Email].

Paragraph 19(c) of Apple's September 24 Supplemental Protective Order stated:

Unless otherwise permitted in writing between supplying party and receiving party, any Qualified Consultant or Qualified Expert or other SOURCE CODE QUALIFIED PERSON retained on behalf of receiving party who is to be given access to any material showing or describing the technical functionality of the supplying party's products designated as CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES ONLY produced by another party must agree in writing not to perform product development work directly or indirectly intended for commercial purposes related to the particular information disclosed in the CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES ONLY from the time of first receipt of such

material through one year after the date the Qualified Expert or other SOURCE CODE QUALIFIED PERSON formally withdraws from the Protective Order. For avoidance of doubt, during periods in which the individual person(s) has ceased to have possession of such material or any documents or notes reflecting such material, this section shall not apply.

Ex. B at 15-16 [9/24 SPO]. Apple offered to discuss the proposed Supplemental Protective Order at the parties' next Discovery Committee Meeting ("DCM"). Complainants stated that they were not prepared to discuss the Supplemental Protective Order on the September 29 DCM and postponed the discussion. Ex. C [9/30 Frazier Letter]. In the following weeks, Apple repeatedly sought Complainants' position on the Supplemental Protective Order. *See* Ex. D [10/1 and 10/4 Garcia Emails]; Ex. E at 1-2 [10/8 Frazier Letter] (noting "Complainants stated they are still drafting redlines [to the Supplemental Protective Order] and could not commit to a date certain to provide them"); Ex. F [10/12 Frazier Email] ("We have also not received any response to the proposed Supplemental Protective Order, which Apple provided a draft of on September 24. Please provide your edits this afternoon so that negotiation of that Order can continue at this week's DCM[.]").

B. Complainants Rejected Apple's Proposed Product Development Bar with No Counterproposal

Complainants first provided edits to the Supplemental Protective Order on October 13, 2021. Ex. G [10/13 Laquer Email]. Complainants struck *entirely* the product development bar proposed by Apple and provided no counterproposal to address limitations on product development. Ex. H [10/13 SPO]. Nor did Complainants provide any rationale for deleting the product development bar—a protection that Complainants now allege is not only necessary to safeguard their CBI, but also is the basis for each of their motions to preclude Apple's technical experts from accessing their CBI. During the parties' October 13, 2021 DCM, Apple asked Complainants to explain why they deleted Apple's proposed product development bar in its

entirety, and why Complainants did not counter propose with their own product development language. Complainants responded that they object to the entry of a Supplemental Protective Order with provisions that differ from the protective order entered in a separate litigation pending between the parties in the United States District Court for the Central District of California, Case No. 8:20-cv-00048. However, Complainants again failed to inform Apple that they would seek to require separate, ad hoc agreements that would apply to Apple's experts in lieu of the single product development bar proposed by Apple.

C. Complainants' Objection to Dr. Anthony Are Similar to Their Objections to Dr. Stone, Dr. Sarrafzadeh, and Dr. Warren.

On October 25, 2021, Apple disclosed its technical expert, Dr. Anthony, pursuant to paragraph 11 of the Protective Order. *See* Ex. I [10/25 Garcia Email]. Dr. Anthony is a professor and the Principal Research Scientist in the MIT Department of Mechanical Engineering. *See* Ex. J [Anthony CV]. On November 3, 2021, Complainants objected to Dr. Anthony's receipt of CBI under the Protective Order. Ex. K [11/03 Loebbaka Letter]. Complainants' November 3 "objection" follow the same pattern as their October 22 and October 28 "objections" to Apple's other technical experts Dr. Warren, Dr. Stone, and Dr. Sarrafzadeh. *See* Ex. M [10/22 Loebbaka Letter]; Ex. L [10/28 Loebbaka Letter].

In their November 3 letter, Complainants objected to Dr. Anthony's access to their CBI based on his participation in certain academic research endeavors at MIT, including MIT's Master of Engineering in Manufacturing Program, Medical Electronic Device Realization Center, and Skoltech Initiative. *See* Ex. K at 1 [11/03 Loebbaka Letter]. Complainants also objected that Dr. Anthony "is a published author and has conducted research on non-invasive monitoring of health information." *Id.* Again, Complainants' November 3 letter does not identify any past confidential relationship Dr. Anthony had with either Masimo or Cercacor. *Id.* And, as they did with Dr.

Warren, Dr. Stone, and Dr. Sarrafzadeh, Complainants stated they would withdraw their “objection” to Dr. Anthony *if* he “execut[es] an agreement similar to the agreements other experts disclosed by Apple have signed with respect to other matters with Masimo.” *Id.* As before, Complainants’ November 3 letter dismisses Apple’s efforts to address Complainants’ concerns through the Supplemental Protective Order. *Id.*

D. Complainants Continue To Ignore Apple’s Efforts to Address Their Concerns.

As discussed in Apple’s oppositions to Complainants’ motions to preclude Dr. Warren, Dr. Stone, and Dr. Sarrafzadeh (*see* Doc ID 756608; Doc ID 756950), Complainants have repeatedly ignored any effort to resolve their product development concerns through a mutually-negotiated Supplemental Protective Order. Instead, Complainants steadfastly insist that their concerns can only be resolved if Apple’s technical experts execute multiple, separate agreements that apply to them only.

On November 1, 2021, Apple sent Complainants another draft of the Supplemental Protective Order. *See* Ex. N [11/01 Garcia Email]. In an effort to resolve the parties’ disputes, Apple’s November 1 Supplemental Protective Order contained a revised product development bar, with language taken *directly* from the separate agreements Complainants have demanded that Apple’s experts sign. *See* Ex. O ¶ 19(C) [11/01 SPO]. During the parties’ November 3, 2021 DCM, Apple reiterated that any additional restrictions to an expert’s ability to access CBI should be achieved through mutually-negotiated language in the Supplemental Protective Order, and that the restrictions should apply to both parties’ experts. *See* Ex. P at 7 [11/5 Frazier Letter]. To the extent Complainants were concerned that the time for objections to disclosed experts would lapse during the parties’ negotiations over a Supplemental Protective Order, Apple further offered to *agree to extend the expert objection period* until an agreement on a Supplemental Protective Order

could be reached. *See id.* Complainants stated they understood Apple’s position but later that day filed their motion against Dr. Warren. Motion No. 1276-004.

On November 5, 2021, Apple reiterated in writing its offer to agree to extend the deadlines for expert objections so that the parties could finalize negotiation of the Supplemental Protective Order and avoid burdening the ALJ with unnecessary motion practice. *See* Ex. P [11/05 Frazier Letter]. Complainants again ignored Apple’s offer, and on November 8 moved to preclude Dr. Stone and Dr. Sarrafzadeh from accessing Complainants’ CBI unless they, too, execute the unilateral product development bars proposed by Complainants. Motion No. 1276-005.

On November 12, 2021, Complainants provided additional edits to the Supplemental Protective Order Apple shared on November 1. *See* Ex. Q [11/12 Laquer Email]. Again, Complainants struck *entirely*, with no counterproposal, the product development bar. As stated above, the bar had language taken *directly* from the separate agreements Complainants seek to enforce against only Apple’s experts. *See* Ex. R [11/12 SPO].

On November 15, 2021, Complainants filed their *third* motion Apple’s expert Dr. Anthony from accessing Complainants’ CBI in this Investigation unless he also agrees to their separate product development bar. Motion No. 1276-006.

II. LEGAL STANDARD

Although an administrative law judge has the authority to disqualify experts from participating in an investigation, *see Certain Automated Media Library Devices*, Inv. No. 337-TA-746, Order No. 12 at 3 (May 19, 2011), “disqualification is a drastic measure that courts should impose only hesitantly, reluctantly, and rarely.” *Hewlett-Packard Co. v. EMC Corp.*, 330 F.Supp.2d 1087, 1092 (N.D. Cal. 2004). Moreover, “[c]ourts have considered the competing policy objectives in determining expert disqualification such as ensuring parties have access to experts with specialized knowledge, the right of experts to pursue their profession, preventing

litigants from easily disqualifying experts, preventing conflicts of interest, and maintaining the integrity of the judicial process.” *Certain Mobile Elec. Devices Incorporating Haptics*, Inv. No. 337-TA-834, Corrected Order No. 15 at 4 (Sept. 20, 2012) (citing *Thompson, I.G., L.L.C. v. Edgetech I.G., Inc.*, 2012 WL 3870563, at *3 (E.D. Mich. Sept. 6, 2012); *Cordy v. Sherwin Williams Co.*, 156 F.R.D. 575, 580 (D.N.J. 1994); *Koch Refining Co. v. Boudreau*, 85 F.3d 1178, 1182 (5th Cir. 1996)). “Expert disqualification *may* be appropriate when a party retains expert witnesses who previously worked for an adversary and who acquired confidential information during the course of their employment.” *Certain Automated Media Library Devices*, Order No. 12 at 3 (emphasis added) (quoting *Eastman Kodak Co. v. AGFA-Gevaert N.V.*, No. 02-CV-6564, 2003 WL 23101783, at *1 (W.D.N.Y. Dec. 4, 2003)).

III. ARGUMENT

A. **Complainants Have No Individualized Objection To Dr. Anthony’s Participation In This Investigation.**

Complainants have not identified any valid reason specific to Dr. Anthony to justify denying him access to Complainants’ CBI in this Investigation. As explained in Apple’s November 15 and November 18 oppositions (*see* Doc ID 756608; Doc ID 756950), expert preclusion is a “drastic measure” that applies when a retained expert previously had a relationship with the opposing party and acquired confidential information through that relationship. *Hewlett-Packard Co.*, 330 F. Supp. 2d at 1092; *Certain Automated Media Library Devices*, Order No. 12 at 4 (disqualifying respondents’ expert who previously had an “undisputed” confidential relationship with complainant); *see also Certain Mobile Electronic Devices Incorporating Haptics*, Corrected Order No. 15 at 5-6 (same).

In their brief, Complainants raise for the first time two additional “concerns” that they present as grounds for precluding Dr. Anthony from accessing their CBI. First, Complainants state

their “concern” that Dr. Anthony provides consulting services to multiple companies, including Apple. Br. at 7. Complainants say “it is unclear whether such services are limited to expert services or also include technical consulting,” and further assert that “[i]f Dr. Anthony provides technical consulting services for Apple, this heightens Masimo’s concerns with Dr. Anthony viewing its CBI.” *Id.* Second, Complainants state that MIT’s Medical Electronic Device Realization Center—of which Dr. Anthony is a co-director—identifies Philips Healthcare as one of its partners. *Id.* at 8. Complainants state that “Philips is one of Masimo’s largest competitors,” and assert that Dr. Anthony’s “engagement” with Philips Health—through MIT’s research center—“pose[s] a significant risk to Masimo’s CBI.” *Id.*

As they were with Dr. Warren, Dr. Stone, and Dr. Sarrafzadeh, Complainants’ stated concerns regarding Dr. Anthony are insufficient. *See Certain Basketball Backboard Components*, Inv. No. 337-TA-1040, Order No. 6 at 4 (Apr. 19, 2017) (“[R]elevant past experience and the possibility of future related engagements is true of any technical expert in patent infringement litigation” and denying motion to preclude) (quotation omitted). Again, Complainants have not identified, for example, any confidential relationship Dr. Anthony previously had with either Masimo or Cercacor (he has none). Indeed, Complainants consistently focus on Dr. Anthony’s “engagements” with their competitors, such as Philips Health. Nor have Complainants articulated any concurrent conflict of interest presented by any of Dr. Anthony’s academic research endeavors or consulting activity (there is none).¹

As before, Complainants argue that Dr. Anthony’s access to CBI poses a “serious risk of competitive harm” because this information “cannot be forgotten.” Br. at 7-9. Apple explained

¹ If Complainants, in fact, had “heightened” concerns about the type of consulting Dr. Anthony provides to Apple, they could have asked Apple to provide clarification. They did not.

in its November 15 and November 18 oppositions that Complainants' concern of possible inadvertent, unauthorized use of information is not specific to Dr. Anthony (or Dr. Stone or Dr. Sarrafzadeh or Dr. Warren) but extends to virtually any technical expert—including Complainants' own.

Complainants are again willing to dismiss their “concerns” regarding Dr. Anthony if he agrees to sign a separate agreement that would place additional restrictions on only him—and not on Complainants' own experts who conduct similar academic research. *See* Br. at 2, 9-10; Ex. K at 1 [11/03 Loebbaka Letter]. Complainants' concerns are not grounds to preclude Dr. Anthony but are the type of generalized concerns that apply to all technical experts, and thus should be addressed via a Supplemental Protective Order that applies a single, consistent standard to all parties' experts.

Complainants assert that the “drastic measure” of expert preclusion, *Hewlett-Packard Co.*, 330 F. Supp. 2d at 1092, is an appropriate remedy here because it is Apple's burden to show that other experts are not available to it. Br. at 10. Complainants argue that Apple cannot meet this burden because “Dr. Anthony does not have any unique knowledge” and “Apple has other experts—Drs. Warren, Sarrafzadeh, and Stone—to provide whatever assistance Apple seeks from Dr. Anthony *if* these other experts are willing to agree to the restrictions” Complainants have demanded of them. *Id.* (emphasis added). But Complainants have not met *their* burden to identify a valid, individualized objection to Dr. Anthony that would justify denying his access to Complainants' CBI. Complainants' remark that Apple “has other experts” is specious. *Id.* Complainants have objected to all but one of Apple's technical experts unless they agree to Complainants' separate agreements and have now filed *three motions* to preclude them from accessing Complainants CBI. Complainants themselves acknowledge that Apple only “has other

experts” *if* those experts are willing to acquiesce to Complainants’ unilateral demands. *Id.* Apple is entitled to use the experts of its choosing and Complainants’ objections purely an effort to delay Apple’s ability to prepare its defenses and gain a perceived strategic advantage by subjecting Apple’s experts to restrictions that Complainants are unwilling to adhere to themselves after accessing Apple’s CBI.

B. Complainants’ Concerns Regarding CBI Should Be Addressed By A Supplemental Protective Order That Applies Equally to All Individuals Who Access CBI.

Complainants have not identified a valid, individualized basis for precluding Dr. Anthony from accessing their CBI. Accordingly, Complainants’ concerns about access to their CBI should be addressed in a Supplemental Protective Order that would apply to all parties’ experts. When good cause is shown, ALJs routinely grant motions for the entry of additional provisions to a protective order. *See* 19 C.F.R. § 210.34(a)(7). Additional protections that are generally granted include protections for the production and review of highly confidential source code, patent prosecution bars, and development bars. *See, e.g., Certain Wearable Electronic Devices with ECG Functionality and Components Thereof*, Inv. No. 337-TA-1266, Order No. 7 (Aug. 18, 2021) (granting motion to amend the protective order with, *inter alia*, patent prosecution, product development, and competitive decision-making bars). The parties can jointly move to amend the Protective Order in this Investigation with a Supplemental Protective Order that would include a product development bar that applies equally to both parties’ experts.

Complainants agree that entry of a Supplemental Protective Order is warranted. *See* Br. at 6-7 (“Masimo . . . will continue to produce additional documents and its source code upon entry of a supplemental protective order.”). Complainants have identified no reason why a global product development bar—such as what Apple has proposed since August—would not be the “adequate safeguard” that Complainants claim is necessary for any of Apple’s technical experts to

access their CBI. Ex. K at 1 [11/03 Loebbaka Letter]. Nor have Complainants justified their position that Apple’s experts—but not their own—should be subject to the restrictions of a product development bar. To the extent the ALJ finds that Dr. Anthony’s academic research endeavors are sufficient to preclude him from accessing Complainants’ CBI absent execution of the separate agreements proposed by Complainants, Apple respectfully requests that the ALJ order that all parties’ experts must be subject to the same agreement as a condition for access to CBI and participation in this Investigation.

IV. CONCLUSION

For the foregoing reasons, Complainants’ Motion to Preclude Apple’s expert Dr. Anthony under the Protective Order should be denied.

DATED: November 24, 2021

Respectfully submitted,

/s/ Sarah R. Frazier

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INDEX OF EXHIBITS

Exhibit	Description
Exhibit A	9-24-2021 Email from S. Frazier re: “Inv. No. 337-TA-1276 Suppl. PO”
Exhibit B	9-24-2021 Apple draft Supplemental Protective Order
Exhibit C	9-30-2021 Letter from S. Frazier to K. Loebbaka
Exhibit D	10-01-2021 and 10-04-2021 Emails from N. Garcia re: “Inv. No. 337-TA-1276 Suppl. PO”
Exhibit E	10-08-2021 Letter from S. Frazier to K. Loebbaka
Exhibit F	10-12-2021 Email from S. Frazier re: “Inv. No. 337-TA-1276 October 13 Inspection & Supplemental PO”
Exhibit G	10-13-2021 Email from A. Laquer re: “Inv. No. 337-TA-1276 Suppl. PO”
Exhibit H	10-13-2021 Complainants’ edits to draft Supplemental Protective Order
Exhibit I	10-25-2021 Email from N. Garcia re: “Inv. No. 337-TA-1276 – Expert Disclosures”
Exhibit J	Brian Anthony, Ph.D., <i>curriculum vitae</i>
Exhibit K	11-03-2021 Letter from K. Loebbaka to N. Garcia
Exhibit L	10-28-2021 Letter from K. Loebbaka to H. Nikogosyan
Exhibit M	10-22-2021 Letter from K. Loebbaka to J. Cox
Exhibit N	11-01-2021 Email from N. Garcia re: “337-TA-1276: Supplemental Protective Order”
Exhibit O	11-01-2021 Apple’s edits to draft Supplemental Protective Order
Exhibit P	11-05-2021 Letter from S. Frazier to K. Loebbaka
Exhibit Q	11-12-2021 Email from A. Laquer re: “Inv. 1276: Supplemental Protective Order”
Exhibit R	11-12-2021 Complainants’ edits to draft Supplemental Protective Order

EXHIBIT A

PUBLIC VERSION

From: [Frazier, Sarah](#)
To: [Masimo.AppleITC](#)
Cc: [WH Apple-Masimo 1276 Service List](#); [Lyon, H. Mark](#); [bandrea@gibsondunn.com](#); [dbrzowski@gibsondunn.com](#)
Subject: Inv. No. 337-TA-1276 | Suppl. PO
Date: Friday, September 24, 2021 11:51:07 AM
Attachments: [2021-09-24 Supplemental Protective Order.docx](#)

Counsel,

Following up on the parties' prior discussions, I have attached a proposed Supplemental Protective Order for your review. We would like to discuss on next week's DCM, or we can schedule a separate, earlier time if you prefer.

Thanks,
Sarah

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EXHIBIT B

18. **Source Code.** A supplier may designate documents, information, or things as “HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY,” which shall mean litigation material of a supplier or of any non-parties that a supplier is permitted to produce in this investigation that constitutes or contains non-public Source Code.
- A. “Source Code” shall mean source code, source code listings (e.g., file names and path structures), object code (e.g., computer instructions and data definitions expressed in a form suitable for input to an assembler, compiler, or other translator), object code listings and descriptions of object code, scripts, assemblies, binaries, descriptions of source code (e.g., descriptions of declarations, functions, and parameters), microcode, register transfer level (“RTL”) files that describe the hardware design of any ASIC or other chip, firmware, hardware description language (“HDL”), and computer aided design (“CAD”) files that describe the hardware design of any component, as well as any and all programmer notes, annotations, and other comments of any type related thereto and accompanying the code. For avoidance of doubt, this includes source files, make files, intermediate output files, executable files, header files, resource files, library files, module definition files, map files, object files, linker files, browse info files, and debug files.
- B. Materials designated as “HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY,” shall only be reviewable by SOURCE CODE-QUALIFIED PERSONS. SOURCE CODE QUALIFIED PERSONS include the following:

PUBLIC VERSION

- (i) outside litigation counsel as necessarily incident to the litigation of this Investigation and who have subscribed to the Administrative Protective Order in this Investigation;
- (ii) the Commission, the Administrative Law Judge (“ALJ”), Commission personnel and contract personnel who are acting in the capacity of Commission employees as indicated in paragraph 3 of this Protective Order;
- (iii) court reporters, stenographers and videographers transcribing or recording testimony at depositions, hearings or trial in this Investigation; and
- (iv) Qualified Consultants and/or Qualified Experts in this Investigation (under paragraph 11 of the Administrative Protective Order in this Investigation) to whom disclosure is reasonably necessary for this Investigation, provided that each Qualified Consultant and/or Qualified Expert complies with the following “Pre-Access Disclosure Requirements:” at least ten (10) calendar days (not including federal holidays) before access to the HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY information is to be given to a consultant or expert, the consultant or expert shall complete the “CERTIFICATION OF EXPERT/CONSULTANT REGARDING PROTECTIVE ORDER” (Exhibit A) and the same shall be served upon the supplier along with the consultant or expert’s educational and detailed employment history, including an identification of any individual or entity with or for whom the person is employed or to whom the person provides consulting services

relating to the design, development, operation, or patenting of non-invasive physiological monitoring technologies, or relating to the acquisition of intellectual property assets relating to noninvasive physiological monitoring.

1. The supplier shall have ten (10) calendar days (excluding federal holidays) from receipt of the information described in the Pre-Access Disclosure Requirements (plus three (3) extra days if notice is given other than by hand delivery, email delivery, or facsimile transmission) to object to the disclosure of HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY information to any proposed expert or consultant. After the expiration of this objection period, if no objection has been asserted, the HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY information may be disclosed to the Qualified Consultant and/or Qualified Expert pursuant to the terms of this Supplemental Protective Order.

C. Source Code shall be provided with the following additional protections:

- (i) Nothing in this Protective Order shall obligate the parties to produce any Source Code, nor act as an admission that any particular Source Code is discoverable.
- (ii) Access to Source Code will be given only to SOURCE CODE QUALIFIED PERSONS.

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- (iii) Access to Source Code shall be made available for inspection, in a format allowing it to be reasonably reviewed and searched, during normal business hours or at other mutually agreeable times, at an office of the Producing Party’s outside litigation counsel in [OFFICE] or another mutually agreed upon location on no more than two secured “stand-alone secure computer(s)” (*i.e.*, the computer(s) may not be linked to any network, including a local area network (“LAN”), an intranet, or the Internet, and may not be connected to any printer or storage device other than the internal hard disk drive of the computer). The stand-alone secure computer(s) shall be kept in a secured room without Internet access or network access to other computers (“Source Code Review Room”) at the offices of the supplier’s outside litigation counsel, or at such other location as the supplier and receiving party mutually agree. No recordable media or recordable devices, including without limitation sound recorders, computers, cellular telephones, peripheral equipment, cameras, CDs, DVDs, or drives of any kind, shall be permitted into the Source Code Review Room.
- (iv) The supplier shall install tools that are sufficient for viewing and searching the code produced, on the platform produced, if such tools exist and are presently used in the ordinary course of the supplier’s business. The receiving party’s outside counsel and/or experts may request that commercially available software tools for viewing and searching Source Code be installed on the secured computer, provided, however, that (a) the

receiving party possesses an appropriate license to such software tools; (b) the supplier approves such software tools; and (c) such other software tools are reasonably necessary for the receiving party to perform its review of the Source Code consistent with all of the protections herein. The receiving party must provide the supplier with the CD or DVD containing such licensed software tool(s) at least ten (10) days in advance of the date upon which the receiving party wishes to have the additional software tools available for use on the stand-alone secure computer(s). The Parties agree to cooperate in good faith if additional software becomes necessary.

- (v) The receiving party shall provide at least two (2) business days' notice to access the source code and make reasonable efforts to restrict its requests for access to the stand-alone secure computer to normal business hours, which for purposes of this paragraph shall be 9:00 a.m. through 6:00 p.m. local time at the reviewing location. Upon reasonable notice from the receiving party, which shall not be less than five (5) business days in advance, the supplier shall make reasonable efforts to accommodate the receiving party's request for access to the computer outside of normal business hours. Such an expanded review period shall not begin earlier than 8:00 a.m. and shall not end later than 8:00 p.m. local time at the reviewing location. The parties are to cooperate in good faith such that maintaining the Source Code at the offices of the supplier's outside litigation counsel shall not unreasonably hinder the receiving party's ability to efficiently conduct the prosecution or defense in this

investigation. It is expected that access to the Source Code shall be provided at the site of any hearing. Proper identification of all SOURCE CODE QUALIFIED PERSONS shall be provided prior to any access to the stand-alone secure computer(s). Proper identification requires showing, at a minimum, a photo identification card sanctioned by the government of any State of the United States, by the government of the United States, or by the nation state of the authorized person's current citizenship. Access to the Source Code Review Room or the stand-alone secure computer(s) may be denied, at the discretion of the supplier, to any individual who fails to provide proper identification.

- (vi) All SOURCE CODE QUALIFIED PERSONS who will review Source Code on behalf of a receiving party shall be identified in writing to the supplier at least two (2) business days in advance of the first time that such person reviews such Source Code. Such identification shall be in addition to any disclosure required under paragraph 18(B) of this Protective Order. The supplier shall provide these individuals with information explaining how to start, log on to, and operate the stand-alone secure computer in order to access the produced Source Code on the stand-alone secure computer. For subsequent reviews by SOURCE CODE QUALIFIED PERSONS, the receiving party shall give at least 24 hours' notice to the supplier of such review. All persons viewing Source Code on the source code computer in an office of outside litigation counsel shall sign on each day they view Source Code a log that will include the names of persons

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who enter the Source Code Review Room to view the Source Code and when they enter and depart. The log shall be kept by the supplier.

- (vii) No person other than the supplier may alter, dismantle, disassemble, or modify the stand-alone secure computer in any way, or attempt to circumvent any security feature of the computer.
- (viii) No copies shall be made of Source Code, whether physical, electronic, or otherwise, other than volatile copies necessarily made in the normal course of accessing the Source Code on the stand-alone secure computer, except for: (1) print outs of portions of the Source Code that are reasonably necessary for the preparation of filings, pleadings, expert reports, or other papers, or for deposition or hearing; and (2) such other uses to which the parties may agree or that the ALJ or the Commission may order. The receiving party shall not request paper copies for the purposes of reviewing the source code in the first instance and shall not use any outside electronic device to copy, record, photograph, or otherwise reproduce Source Code. Any printed portion of Source Code that consists of more than fifteen (15) pages of a continuous block of Source Code or more than two hundred (200) pages total shall be presumed to be excessive, and the burden shall be on the receiving party to demonstrate the need for such a printed copy. The supplier shall not unreasonably withhold approval and the parties shall meet and confer in good faith to resolve any disputes.

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- (ix) The receiving party may take notes, but may not copy the Source Code into the notes and may not take notes on a laptop or other personal electronic device. Any such notes must be treated as **HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY** under the Protective Order. Unless otherwise agreed in advance by the Parties in writing, following each day on which inspection is done under this Order, the receiving party’s outside counsel and/or experts shall remove all notes, documents, and all other materials from the Source Code Review Room; failure to do so could be deemed a waiver of confidentiality to any materials left behind. The supplier is not responsible for any items left in the room following each inspection session. But all counsel remain bound by their ethical duties regarding the handling and possible return of work product inadvertently left behind by a representative of an opposing party.
- (x) The supplier may exercise personal supervision from outside the review room over the receiving party when the receiving party is in the Source Code Review Room. Such supervision, however, shall not entail review of any work product generated by the receiving party, *e.g.*, monitoring the screen of the stand-alone secure computer, monitoring any surface reflecting any notes or work product of the receiving party, or monitoring the key strokes of the receiving party. There will be no video supervision by any supplier when the review occurs in the office of outside litigation counsel.

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- (xi) Nothing may be removed from the stand-alone secure computer(s), either by the receiving party or at the request of the receiving party, except for (1) print outs of reasonable portions of the Source Code in accordance with the provisions of paragraphs 18(C)(ix)-(x) of this Protective Order; and (2) such other uses to which the parties may agree or that the ALJ or the Commission may order.
- (xii) At the request of the receiving party, the supplier shall within three (3) business days provide one (1) hard copy print out of the specific lines, pages, or files of the Source Code that the receiving party believes in good faith are necessary to understand a relevant feature of an accused product. If the supplier objects in any manner to the production of the requested source code (*e.g.*, the request is too voluminous), it shall state its objection within the allotted two (3) business days pursuant to this paragraph. In the event of a dispute, the parties will meet and confer within five (5) business days of the objection being raised and if they cannot resolve the objection, the parties will raise it with the ALJ. The burden shall be on the receiving party to demonstrate that any such printed portions of Source Code are no more than is reasonably necessary for a permitted purpose and not merely printed for the purposes of review and analysis elsewhere.
- (xiii) Hard copy print outs of Source Code shall be provided on Bates numbered and watermarked or colored paper clearly labeled HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY on each page and shall be maintained by the receiving party’s outside

litigation counsel or SOURCE CODE QUALIFIED PERSONS in a secure locked area. For avoidance of doubt, an access-restricted location within the facilities of outside litigation counsel or a qualified expert, such as a conference room within an access restricted office or a locked drawer or cabinet, shall constitute a secured locked area. The receiving party may also temporarily keep the print outs at: (1) the Commission for any proceeding(s) relating to the Source Code, for the dates associated with the proceeding(s); (2) the sites where any deposition(s) relating to the Source Code are taken, for the dates associated with the deposition(s); and (3) any intermediate location reasonably necessary to transport the print outs (*e.g.*, a hotel prior to a Commission proceeding or deposition). The receiving party shall exercise due care in maintaining the security of the print outs at these temporary locations. No further hard copies of such Source Code shall be made and the Source Code shall not be transferred into any electronic format or onto any electronic media except that:

1. The receiving party is permitted to request that the supplier make additional hard copies of printed Source Code designated as HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY for use at a deposition. Copies of Source Code designated as HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY that are marked as deposition exhibits shall not be provided to the Court Reporter or attached to deposition transcripts; rather, the deposition record will identify

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the exhibit by its production numbers. All copies shall remain with the supplier's outside counsel for secure destruction in a timely manner following the deposition.

2. The receiving party is permitted to make up to five (5) additional hard copies for the Commission in connection with a Commission filing, hearing, or trial, and of only the specific pages directly relevant to and necessary for deciding the issue for which the portions of the Source Code are being filed or offered.
3. Except as provided in this sub-paragraph, absent express written permission from the supplier, the receiving party may not create electronic images, or any other images, or make electronic copies, of the Source Code from any paper copy of Source Code for use in any manner (including by way of example only, the receiving party may not scan the Source Code to a PDF or photograph the code). Images or copies of Source Code shall not be included in correspondence between the Parties (references to production numbers shall be used instead), and shall be omitted from pleadings and other papers whenever possible. If a Party reasonably believes that it needs to submit a portion of Source Code as part of a filing with the Commission, the Parties shall meet and confer as to how to make such a filing while protecting the confidentiality of the Source Code and such Source Code will not be filed absent agreement from the supplier that the

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confidentiality protections will be adequate or order of the ALJ. If a supplier agrees to produce an electronic copy of all or any portion of its Source Code or provides written permission to the receiving party that an electronic or any other copy may be made for a Commission filing, access to the receiving party's submission, communication, and/or disclosure of electronic files or other materials containing any portion of Source Code (paper or electronic) shall at all times be limited solely to individuals who are expressly authorized to view Source Code under the provisions of this Order. Where the supplier has provided the express written permission required under this provision for a receiving party to create electronic copies of Source Code, the receiving party shall maintain a log of all such electronic copies of any portion of Source Code in its possession or in the possession of its retained consultants, including the names of the reviewers and/or recipients of any such electronic copies, and the locations and manner in which the electronic copies are stored. Additionally, any such electronic copies must be labeled "HIGHLY CONFIDENTIAL – SOURCE CODE" as provided for in this Order.

4. The supplier shall, on request, make a searchable electronic copy of the Source Code available on a stand-alone secure computer during depositions of witnesses who would otherwise be permitted

access to such Source Code. The receiving party shall make such request at the time of the notice for deposition.

- (xiv) Nothing in this Protective Order shall be construed to limit how a supplier may maintain the supplier's own material designated as HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES ONLY.
- (xv) Outside litigation counsel for the receiving party with custody of HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES ONLY shall maintain a source code log containing the following information: (1) the identity of each person granted access to the HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES ONLY; and (2) the first date on which such access was granted. Outside litigation counsel for the receiving party will produce, upon request, each such source code log to the supplier within twenty (20) days of the final determination of the investigation.
- (xvi) Source code may not leave the United States.

19. Prosecution and Development Bar.

- A. "Relevant Technology" means technology related to pulse oximetry.
- B. Unless otherwise permitted in writing between supplying party and receiving party, any individual who personally receives, other than on behalf of supplying party, any material showing or describing the technical functionality of the supplying party's products designated as CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES ONLY shall not

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prepare, prosecute, supervise, advise, counsel, or assist in the preparation or prosecution of any patent application seeking a patent on behalf of the receiving party or its acquirer, successor, or predecessor in the Relevant Technology during the pendency of this Investigation and for two years after final termination of this Investigation or, alternatively, for two years after the time the individual person(s) formally withdraws from the Administrative Protective Order. In addition, any such person is prohibited from having any involvement in the prosecution of any patent, patent application or re-examination in the Relevant Technology that was filed, or that claims priority from any application that was filed, for up to one year following the final termination of this Investigation (including any appeals). To avoid any doubt, “prosecution” as used in this paragraph does not include representing or advising a Party before a domestic or foreign agency in connection with a reissue, ex parte reexamination, *inter partes* review, opposition, cancelation, or similar proceeding; though in connection with any such agency proceeding involving the patents-in-suit, Outside Counsel of Record for a receiving party shall not: (i) participate in the preparation, prosecution, supervision, advice, counsel, or assistance of any amended claims; (ii) reveal a supplier’s CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY material to any prosecuting reexamination counsel or agent; or (iii) use a supplier’s CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY for any

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purpose not permitted by Section 5. The applicability of this provision is to be determined on an individual-by-individual basis such that an individual attorney who has not received CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY is not restricted from undertaking any activities by virtue of this provision even if said individual attorney is employed by or works for the same firm or organization as an individual who has received such material.

- C. Unless otherwise permitted in writing between supplying party and receiving party, any Qualified Consultant or Qualified Expert or other SOURCE CODE QUALIFIED PERSON retained on behalf of receiving party who is to be given access to any material showing or describing the technical functionality of the supplying party’s products designated as CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY produced by another party must agree in writing not to perform product development work directly or indirectly intended for commercial purposes related to the particular information disclosed in the CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY from the time of first receipt of such material through one year after the date the Qualified Expert or other SOURCE CODE QUALIFIED PERSON formally withdraws from the Protective Order. For avoidance of doubt, during periods in which the individual person(s) has

ceased to have possession of such material or any documents or notes reflecting such material, this section shall not apply.

20. **Competitive Decision-Making Bar.** Absent written consent from the supplier, any individual who receives access to material designated CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY shall not be involved in competitive decision-making for a Party, relating to the subject matter of the CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY material accessed by the individual. This bar shall begin when upon the individual’s first receipt of material designated CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY and shall end one (1) year after the affected individual formally withdraws from the Protective Order in this Investigation.
21. This Protective Order Addendum shall not diminish any existing restriction with respect to CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER, as defined in paragraph 2 of the Protective Order. The Private Parties and third parties acknowledge and agree that this Protective Order Addendum is a supplement to the Protective Order entered in this action on August 18, 2021. The Protective Order applies to all material designated pursuant to this Protective Order Addendum. To the extent that there is any confusion or conflict between protective orders with respect to designated Producing Party material, this Protective Order Addendum will govern.

EXHIBIT A

CERTIFICATION OF EXPERT/CONSULTANT REGARDING PROTECTIVE ORDER

I, _____ [print or type full name], of _____ am not an employee of the Party who retained me or of a competitor of any Party and will not use any information, documents, or things that are subject to the Protective Order entered _____, for any purpose other than this litigation. I agree not to perform product development work or participate in competitive decision-making for a Party related to the particular information disclosed in the designated material describing the technical functionality of a supplying party's products disclosed to me, from the time of receipt of such material through the date that I cease to have access to any such designated material. For avoidance of doubt, during periods in which the individual person(s) has ceased to have possession of such material or any documents or notes reflecting such material, this section shall not apply.

I state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed On _____.

[Printed Name]

[Signature]

EXHIBIT C

WILMERHALE

Sarah R. Frazier

September 30, 2021

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Irvine, CA 92614
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sarah.frazier@wilmerhale.com

Re: *Certain Light-Based Physiological Measurement Devices and Components Thereof*,
Inv. No. 337-TA-1276

Dear Kendall:

I write to summarize our positions as stated at the Discovery Committee Meeting (“DCM”) held on September 29, 2021. As you know, Complainants stated at the outset they would be unable to discuss half of Apple’s six items: (1) the importation and inventory stipulation; (2) a supplemental protective order; and (3) the deficiencies with Complainants’ domestic industry because counsel knowledgeable on those topic is Alan Lacquer and he was unavailable to join the DCM. As requested on the DCM, please provide us as soon as possible times this week when Alan is available to confer on these issues. Thank you for your agreement that Complainants will provide notice upon receipt of the agenda if future such conflicts arise, so that parties may reschedule the DCM accordingly.

I. Complainants’ Production of Samples

Complainants agreed to on the DCM to make the [REDACTED] available for inspection on October 13, 2021 at Knobbe Martens’ Irvine office. Apple agreed to confirm whether that date works. Complainants further confirmed that they are willing to make the device available on additional days. Complainants further agreed that Apple may take photographs of the device but requested that Apple produce any photographs and treat them as CBI under the Protective Order. Apple agreed to treat any documentation of the inspection as CBI under the Protective Order.

Apple maintained that nondestructive inspection of the prototypes is not sufficient. Apple reiterated its request that Complainants confirm how many of the [REDACTED] devices exist. Complainants agreed to provide an exact number. Please confirm before the next DCM the total number of [REDACTED] currently in existence. Apple confirms it will inspect the [REDACTED] on October 13, 2021. Please provide before the next DCM additional details regarding the inspection so that we can sort out any issues well in advance of October 13.

Wilmer Cutler Pickering Hale and Dorr LLP, 60 State Street, Boston, Massachusetts 02109

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II. ESI – Repositories of Information and Email Custodians

Complainants re-raised the issue of ESI generally. Apple reiterated that it is willing to discuss ESI on a request-by-request basis as several of the categories raised in Complainants' letter are irrelevant or overbroad. Apple also reiterated that it has proposed in the Joint Electronic Discovery Submission (Exhibit B, page 4) a process whereby parties can identify the custodians knowledgeable on subjects on which parties could confer on the issue. Apple invited Complainants to provide their thoughts or counter proposal on the issue of custodians. Complainants agreed to consider the proposal and provide their position. Please provide your position and a counterproposal regarding what Complainants believe would be a proper number of email custodians in this Investigation.

Apple noted that in your letter dated September 28 addressed to me, Complainants identified approximately 15 RFPs "directed towards communications" and stated that "Masimo will not agree to produce documents in response to these requests until the parties have reached agreement on ESI." As discussed on the DCM, refusing to engage in good faith on these RFPs simply because the parties do not have agreement on all aspects of ESI (e.g., number of e-mail custodians) is not appropriate. Complainants confirmed that they would not refuse to respond to requests on the basis of the outstanding ESI disputes. Accordingly, please provide Complainants' position on these requests by Friday.

Relatedly, Complainants confirmed that they are not withholding and will actively search for responsive documents, including communications, that exist outside of e-mail despite the open issues related to ESI.

III. Apple's Agreement to Supplement Documents with Information on Series 7

Apple re-confirmed it will supplement relevant Interrogatory responses when information on Series 7 becomes available.

IV. Documents in Apple Production with Slip Sheets

Apple explained that the "INTENTIONALLY LEFT BLANK" documents in its production replaced documents that had inadvertently been included when the production was run. Apple chose to replace the erroneously included documents with the "INTENTIONALLY LEFT BLANK" to avoid delaying the production by re-running it to re-sequence the Bates numbers.

V. Complainants' Objections and Responses to Apple's Second Sets of Interrogatories and Requests for Production

Apple noted that Complainants' responses in their September 24 letter do not meaningfully engage on the points raised by Apple.

For Interrogatory No. 66, Apple explained it is looking for information such as individuals who were responsible for drafting submissions or responding to correspondence from the PTO.

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Complainants agreed to consider providing additional detail in their response. Please confirm by Friday whether Complainants will supplement their response to do so.

As for Interrogatory No. 67, Apple reiterated that Complainants cannot decide to selectively waive privilege in a self-serving manner. If Complainants seek to provide privileged information, such disclosures must be comprehensive and include all privileged information on the subject matter. Complainants stated they understood Apple's position on this.

VI. Complainants' Position on Responses to Apple's First Set of Requests for Production for Which They Agreed to Meet & Confer (September 28 Letter from Loebakka to Cox)

Apple emphasized that on the September 22, 2021 DCM parties agreed to share what parties are willing to produce and what additional information is required for Requests which parties sought to meet and confer in their original responses. Complainants' letter of September 28, 2021 (addressed to Cox) fails to specifically articulate the objectionable aspects of Apple's Request nor does it suggest the scope of information Complainants are willing to provide for a majority of requests. Instead, Complainants simply reiterate their generic objections and ask Apple to explain relevance. Please refine your positions in keeping with our agreement from last week and provide updated positions by this Friday.

The Parties discussed their interpretations of the phrase "subject matter in the asserted and related to patents." Apple confirmed it is not looking for information regarding all aspects of Complainants' business. Complainants' position seems to be that the "subject matter" of the asserted patents is all "light-based physiological monitoring." Consistent with our agreement last week, please provide Complainants' position regarding the scope of documents it is willing to produce in response to each of these requests, including how it proposes to interpret "subject matter" of the asserted and related patents.

Finally, Apple raised that it is inappropriate to tie production on responsive issues to the Parties' dispute regarding cross-use. Complainants stated that they will not withhold any documents contingent on the cross-use agreement.

VII. Apple's Offers to Meet and Confer on Masimo's First Set of RFPs

In its September 27 Letter and at the DCM, Apple emphasized the need to balance responsiveness and the burden presented by Complainants' Requests. Apple stated what it has produced what it will agree to produce in its September 27 Letter. If Complainants seeks additional documents, please respond to explain the relevance of those documents.

With regard to Interrogatory 27, Apple confirms that it will produce documents concerning final designs on the Blood Oxygen feature as the accused products in the Investigation are the Apple Watch Series 6 and 7, not any prototype or prefinal design. However, if responsive documents also discuss prototypes or other prefinal designs, Apple will not withhold production for that reason.

September 30, 2021

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VIII. Supplemental Protective Order

Among the topics postponed to a later call was the issue of Complainants' thoughts on the Supplemental Protective Order. Apple suggested Complainants provide a redline in advance of the call with Alan later this week.

Best regards,

/s/ Sarah R. Frazier

Sarah R. Frazier

EXHIBIT D

PUBLIC VERSION

From: [Garcia, Nina](#)
To: [Frazier, Sarah](#); [Masimo.AppleITC](#)
Cc: [WH Apple-Masimo 1276 Service List](#); [Lyon, H. Mark](#); [bandrea@gibsondunn.com](#); [dbrzozowski@gibsondunn.com](#)
Subject: RE: Inv. No. 337-TA-1276 | Suppl. PO
Date: Monday, October 4, 2021 4:24:55 PM

Counsel,

We are still waiting for a response regarding the supplemental protective order. Please confirm that you will send any redlines you have to the SPO by tomorrow, and will be prepared to discuss at this week's DCM.

Best,
Nina

Nina Garcia | WilmerHale
+1 617 526 6446 (t)
nina.garcia@wilmerhale.com

From: Garcia, Nina <Nina.Garcia@wilmerhale.com>
Sent: Friday, October 1, 2021 1:56 PM
To: Frazier, Sarah <Sarah.Frazier@wilmerhale.com>; [Masimo.AppleITC](#) <Masimo.AppleITC@knobbe.com>
Cc: [WH Apple-Masimo 1276 Service List](#) <WHApple-Masimo1276ServiceList@wilmerhale.com>; [Lyon, H. Mark](#) <MLyon@gibsondunn.com>; [bandrea@gibsondunn.com](#); [dbrzozowski@gibsondunn.com](#)
Subject: RE: Inv. No. 337-TA-1276 | Suppl. PO

Counsel,

As we were not able to discuss the supplemental protective during this week's DCM, please let us know when we can expect your redlines to the SPO or a time early next week when we can discuss. Thank you.

Best,
Nina

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From: Frazier, Sarah <Sarah.Frazier@wilmerhale.com>
Sent: Friday, September 24, 2021 11:51 AM
To: [Masimo.AppleITC](#) <Masimo.AppleITC@knobbe.com>
Cc: [WH Apple-Masimo 1276 Service List](#) <WHApple-Masimo1276ServiceList@wilmerhale.com>; [Lyon, H. Mark](#) <MLyon@gibsondunn.com>; [bandrea@gibsondunn.com](#);

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dbrzozowski@gibsondunn.com

Subject: Inv. No. 337-TA-1276 | Suppl. PO

Counsel,

Following up on the parties' prior discussions, I have attached a proposed Supplemental Protective Order for your review. We would like to discuss on next week's DCM, or we can schedule a separate, earlier time if you prefer.

Thanks,
Sarah

Sarah R. Frazier | WilmerHale

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EXHIBIT E

WILMERHALE

Sarah R. Frazier

October 8, 2021

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Re: *Certain Light-Based Physiological Measurement Devices and Components Thereof*,
Inv. No. 337-TA-1276

Dear Kendall:

I write to summarize the parties' positions as stated at the Discovery Committee Meeting ("DCM") held on October 6, 2021.

I. Supplemental Protective Order

Apple noted that it had sent the Supplemental Protective Order ("SPO") to Complainants several weeks ago, attempted to meet and confer on numerous occasions, and made multiple requests for redlines, yet Complainants did not provide any explanation for their disagreement with the SPO prior to the October 6 DCM. At the DCM, Complainants claimed they needed to understand the scope of cross-use in order to negotiate the supplemental protective order. Apple reiterated that parties have not agreed to any general cross-use and Complainants have previously declared an impasse on the issue. Apple confirmed it is reproducing with ITC-specific Bates numbers documents relevant to the Investigation that have also been produced in the district court litigation and that Apple will likewise make a separate production of source code relevant to the ITC Investigation.

Complainants inquired why the proposed SPO had differences in language from the protective order in the District Court proceeding between the parties. As discussed, this is a separate proceeding already governed by a separate Protective Order. Apple further explained that when the protective orders in the related District Court proceeding were negotiated, it was not clear that [REDACTED]

Complainants then asserted that any differences between the protective orders in the two related proceedings would complicate matters or create inconsistencies. Apple disagreed and stated that setting clear and distinct standards between the two proceedings would in fact be more straightforward and no different than what currently exists since there are already separate protective orders for the two matters.

As for the location for inspection of source code, Complainants proposed that each side could identify an office of the producing party's counsel's firm as a location convenient for their

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Beijing Berlin Boston Brussels Denver Frankfurt London Los Angeles New York Palo Alto San Francisco Washington

October 8, 2021

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source review. Apple is amenable to this arrangement and requests you place the computer with Complainants' source code in Knobbe's New York office. Please confirm that you agree to do so. We likewise look forward to your request. If parties believe more than one source code review location is necessary, they have agreed to discuss reciprocal engagements for adding additional machines.

Complainants also noted disagreement with the proposed 200-page limit for printed source code and indicated they will propose an alternative based on a per version of a software release with a limit of 300 pages or 0.1% per version.

Complainants stated they are still drafting redlines and could not commit to a date certain to provide them. Please provide redlines on the SPO by Tuesday, October 12, 2021. Apple will not produce source code or CAD files until a satisfactory SPO has been entered.

II. Complainants' Deficient Domestic Industry Responses

A. Interrogatory No. 36

Complainants agreed to provide an explanation of how specific numbers recited in Interrogatory No. 36 were generated where the source of those numbers is not easily ascertainable from the cited appendices. Apple has already identified some such examples, and Complainants will respond to the September 27 Letter from Derek Gosma to Alan Laquer with an explanation of the examples provided in the letter. Complainants requested and Apple agreed to identify additional specific instances where the source of a value is unclear from a review of the related appendices. A letter on this point is forthcoming.

Apple's Interrogatory No. 40 requests factual information supporting Complainants' allegations in their Amended Complaint under each sub prong. Specifically, the Interrogatory requests in separate subparts foreign and domestic investments by Complainants and Third Parties in "exploitation of each Asserted Patent," "employment of labor or capital" and "plant and equipment relating to such Products." Complainants respond by incorporating by reference their response to Interrogatory No. 36; however, the response to Interrogatory No. 36 is not broken into the relevant sub prongs. Apple stated that an adequate response to Interrogatory No. 40 required information separate by the subparts especially as the Amended Complaint likewise alleges an economic investment in all three categories. Apple is entitled to factual discovery substantiating allegations in the Amended Complaint. Complainants maintained that they will provide this analysis in their domestic industry contention responses and their response was sufficiently complete for the current phase of the litigation. Apple reiterated its request for the factual information that forms the basis of Complainants' allegations; however, parties could not reconcile their differences on this point.

Furthermore, in their Interrogatory No. 36 response, Complainants provide past expenditures and also a total for past and future expenditures, but the response does not sufficiently provide what Complainants intend to expend in the future. At the DCM, Complainants stated that these values track their allegations of a domestic industry presently existing as well as a domestic industry in

October 8, 2021

Page 3

the process of being established. Apple is reviewing Complainants' response in view of these representations and will follow up.

B. Interrogatory No. 38

Complainants confirmed that they are not withholding any documents on the basis of any specific allegations raised in the September 27 letter from Derek Gosma to Alan Laquer. Complainants believe that the data in Appendix T is US-only but agreed to supplement their response to clarify this point.

C. Interrogatory Nos. 39, 55 & Requests for Production Nos. 127, 129-131, 144-146

Complainants objected to these requests on the grounds that they are not related to any US-based expenditures and Complainants are not relying on foreign expenditures to establish a domestic industry. Apple explained that this information is relevant in conducting a comparative analysis of foreign and domestic investments that the Commission has considered probative in recent investigations. Apple agreed to provide legal authority on this point and will do so in forthcoming correspondence. Complainants stated they are willing to provide relevant and reasonably detailed information on foreign investments.

D. Interrogatory No. 54

Apple stated that Complainants' response is deficient in that it fails to explain the roles of the identified foreign subsidiaries regarding the Covered Products. Complainants agreed to supplement their response with roles of the foreign subsidiaries to the extent that they are involved in the design and manufacture of the Covered Products. Please provide a date certain when Complainants will supplement their response.

III. Importation and Inventory Stipulation

Complainants suggested that in connection with the proposed stipulation regarding importation and inventory they are entitled to information on issues related to enforcement of any exclusion order. Apple responded that the information that hypothetically might be sought in a hypothetical enforcement by Customs Border Patrol is not relevant to any issues in this Investigation. Complainants agreed to provide any legal authority they believe exists for their position that information regarding enforcement is relevant and discoverable.

Complainants further suggested that because the stipulation is not entered, Apple must respond to Complainants' discovery requests regarding importation. As explained during the DCM, Apple explained, per 19 CFR § 210.27(d)(3), Apple is no longer obligated to provide discovery on importation as it has offered to stipulate the issue. Apple further notes it has also admitted the issue in its response to the Amended Complaint. For the issue of inventory, Apple represented that it has already produced the relevant discovery on the Apple Watch Series 6 and will likewise do so on the Series 7.

October 8, 2021

Page 4

IV. Complainants' Production of Samples

Parties discussed Complainants' offer to make the [REDACTED] available for inspection. I sent a letter addressed to Jon Bachand on October 7, 2021. Please review and respond by October 8, 2021, so Apple can assess its options to inspect [REDACTED]

Best regards,

/s/ Sarah R. Frazier

Sarah R. Frazier

EXHIBIT F

From: Frazier, Sarah
Sent: Tuesday, October 12, 2021 11:30 AM
To: Kendall.Loebbaka
Cc: WH Apple-Masimo 1276 Service List; Masimo.AppleITC
Subject: ITC No. 337-TA-1276 | October 13 Inspection & Supplemental PO

Dear Kendall,

I received seven separate letters and multiple emails from you between Friday afternoon and yesterday, many of which appear to manufacture disputes where none exists and mischaracterize the parties' discussions at DCMs. Your demands in many of these letters for immediate responses are not reasonable and not well taken, particularly given Complainants' failure to respond to numerous outstanding issues that are of importance to Apple and that were raised many weeks ago, including issues related to the sample inspection scheduled for this Wednesday. As requested last night, please confirm Complainants will arrange for alternative coverage to enable that inspection to proceed. Please also promptly respond to our most recent letter on that issue dated October 7 addressed to Jon Bachand regarding the terms of that inspection—including whether the [REDACTED] will be provided for inspection—so we can ensure the parties are all on the same page. As you know, Apple has been requesting production of Complainants' [REDACTED] for over a month. Complainants' delay tactics on this front are prejudicing Apple's ability to prepare its defense.

We have also not received any response to the proposed Supplemental Protective Order, which Apple provided a draft of on September 24. Please provide your edits this afternoon so that negotiation of that Order can continue at this week's DCM and Complainants can promptly produce the code that Apple has requested, including the code for the [REDACTED].

Regards,
Sarah

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EXHIBIT G

PUBLIC VERSION

From: [Alan.Laquer](#)
To: [Garcia, Nina](#); [Frazier, Sarah](#)
Cc: [WH Apple-Masimo 1276 Service List](#); [Lyon, H. Mark](#); [bandrea@gibsondunn.com](#); [dbrzozowski@gibsondunn.com](#); [Masimo.AppleITC](#)
Subject: RE: Inv. No. 337-TA-1276 | Suppl. PO
Date: Wednesday, October 13, 2021 4:40:41 AM
Attachments: [2021-10-13 Draft Supplemental Protective Order \(Masimo redline to Apple\).DOCX](#)

EXTERNAL SENDER

Nina,

Please see Masimo's attached redlines to the draft proposed supplemental protective order.

Thanks,
Alan

Alan Laquer Office: [949-721-5285](#) Cell: [949-872-7343](#)

Knobbe Martens

From: Garcia, Nina <Nina.Garcia@wilmerhale.com>
Sent: Monday, October 04, 2021 1:25 PM
To: Frazier, Sarah <Sarah.Frazier@wilmerhale.com>; Masimo.AppleITC <Masimo.AppleITC@knobbe.com>
Cc: WH Apple-Masimo 1276 Service List <WHApple-Masimo1276ServiceList@wilmerhale.com>; Lyon, H. Mark <MLyon@gibsondunn.com>; bandrea@gibsondunn.com; dbrzozowski@gibsondunn.com
Subject: RE: Inv. No. 337-TA-1276 | Suppl. PO

Counsel,

We are still waiting for a response regarding the supplemental protective order. Please confirm that you will send any redlines you have to the SPO by tomorrow, and will be prepared to discuss at this week's DCM.

Best,
Nina

Nina Garcia | WilmerHale
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nina.garcia@wilmerhale.com

From: Garcia, Nina <Nina.Garcia@wilmerhale.com>
Sent: Friday, October 1, 2021 1:56 PM
To: Frazier, Sarah <Sarah.Frazier@wilmerhale.com>; Masimo.AppleITC <Masimo.AppleITC@knobbe.com>

PUBLIC VERSION

Cc: WH Apple-Masimo 1276 Service List <WHApple-Masimo1276ServiceList@wilmerhale.com>; Lyon, H. Mark <MLyon@gibsondunn.com>; bandrea@gibsondunn.com; dbrzowski@gibsondunn.com
Subject: RE: Inv. No. 337-TA-1276 | Suppl. PO

Counsel,

As we were not able to discuss the supplemental protective during this week's DCM, please let us know when we can expect your redlines to the SPO or a time early next week when we can discuss. Thank you.

Best,
Nina

Nina Garcia | WilmerHale
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From: Frazier, Sarah <Sarah.Frazier@wilmerhale.com>
Sent: Friday, September 24, 2021 11:51 AM
To: Masimo.AppleITC <Masimo.AppleITC@knobbe.com>
Cc: WH Apple-Masimo 1276 Service List <WHApple-Masimo1276ServiceList@wilmerhale.com>; Lyon, H. Mark <MLyon@gibsondunn.com>; bandrea@gibsondunn.com; dbrzowski@gibsondunn.com
Subject: Inv. No. 337-TA-1276 | Suppl. PO

Counsel,

Following up on the parties' prior discussions, I have attached a proposed Supplemental Protective Order for your review. We would like to discuss on next week's DCM, or we can schedule a separate, earlier time if you prefer.

Thanks,
Sarah

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EXHIBIT H

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

JOINT MOTION TO AMEND THE PROTECTIVE ORDER TO ADD PROVISIONS
REGARDING PRODUCTION AND REVIEW OF SOURCE CODE

Pursuant to 19 C.F.R. § 201.6, Complainants Masimo Corporation and Cercacor Laboratories, Inc. (collectively, “Masimo” or “Complainants”) and Respondent Apple Inc. (“Apple”) (collective, the “Parties”) jointly move to amend the Protective Order (Order No. 1), which issued on August 19, 2021, to establish procedures for enhanced confidentiality protections regarding the production and review of source code. The proposed amendments are attached as Appendix A.

The Parties have already requested and expect they will produce source code in this Investigation. The requested source code is highly confidential and is relevant to show the structure and operation of products at issue in this Investigation. The source code is highly valuable intellectual property, and unauthorized disclosure of the source code would cause significant, lasting competitive harm to the producing parties. Source code is easily copied, particularly in the electronic form in which it is typically produced or reviewed. These amendments to the Protective Order are intended to impose reasonable controls on the potential distribution and copying of source code by, among other things, allowing inspection in a controlled environment and printing only portions thereof with markings that indicate that its use is subject to the Protective Order.

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The Parties have met and conferred, and agreed upon the provisions set forth below. Accordingly, the Parties respectfully request this Motion be granted, and for paragraphs 18-28 in Appendix A to be adopted by Order.

Dated: November 12, 2021 ~~October 13, 2021~~ Respectfully submitted,

/s/ *

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Counsel for Complainants
Masimo Corporation and
Cercacor Laboratories, Inc.

/s/ *

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Facsimile:

Counsel for Respondent Apple Inc.

18. **Source Code.** A supplier may designate ~~documents, information, or things~~ non-public Source Code as “HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY;” ~~which shall mean litigation material of a supplier or of any non-parties that a supplier is permitted to produce in this investigation that constitutes or contains non-public Source Code.~~”
- A. “Source Code” shall mean source code, ~~source code listings (e.g., file names and path structures);~~ object code (e.g., computer instructions and data definitions expressed in a form suitable for input to an assembler, compiler, or other ~~translator); object code listings and descriptions of object code, scripts, assemblies, binaries, descriptions of source code (e.g., descriptions of declarations, functions, and parameters);~~ computer-language translator), scripts, microcode, register transfer level (“RTL”) files that describe the hardware design of any ASIC or other chip, ~~firmware;~~ and hardware description language (“HDL”); ~~and computer-aided design (“CAD”) files that describe the hardware design of any component;”) (collectively, “Source Files”);~~ as well as any and all programmer notes, annotations, and other comments of any type related thereto and ~~accompanying the code~~ contained within a file also containing the code, which the supplier treats as Source Files during its ordinary course of business. For avoidance of doubt, this includes source files, make files, intermediate output files, executable files, header files, resource files, library files, module definition files, map files, object files, linker files, browse info files, and debug files; and this does not include documents, information, and things that the supplier does not

treat as Source Files during its ordinary course of business, such as email and technical design documents.

B. Materials designated as “HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY,” shall only be reviewable by SOURCE CODE-QUALIFIED PERSONS. SOURCE CODE QUALIFIED PERSONS include the following:

- (i) outside litigation counsel ~~as necessarily incident to the litigation of~~ for parties in this Investigation ~~and~~, who have subscribed to the Administrative Protective Order in this Investigation, and necessary secretarial and support personnel assisting such counsel;
- (ii) the Commission, the Administrative Law Judge (“ALJ”), Commission personnel and contract personnel who are acting in the capacity of Commission employees as indicated in paragraph 3 of this Protective Order;
- (iii) court reporters, stenographers and videographers transcribing or recording testimony at depositions, hearings or trial in this Investigation; and
- (iv) Qualified Consultants and/or Qualified Experts in this Investigation (under paragraph 11 of the Administrative Protective Order in this Investigation) to whom disclosure is reasonably necessary for this Investigation, provided that each Qualified Consultant and/or Qualified Expert complies with the following “Pre-Access Disclosure Requirements:” at least ten (10) calendar days (not including federal holidays) before access to the HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES

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ONLY information is to be given to a consultant or expert, the consultant or expert shall complete the “CERTIFICATION OF EXPERT/CONSULTANT REGARDING PROTECTIVE ORDER” (Exhibit A) and the same shall be served upon the supplier along with the consultant or expert’s educational and detailed employment history, including an identification of any individual or entity with or for whom the person is employed or to whom the person provides consulting services relating to the design, development, operation, or patenting of non-invasive physiological monitoring technologies, or relating to the acquisition of intellectual property assets relating to noninvasive physiological monitoring.

1. The supplier shall have ten (10) calendar days (excluding federal holidays) from receipt of the information described in the Pre-Access Disclosure Requirements (plus three (3) extra days if notice is given other than by hand delivery, email delivery, or facsimile transmission) to object to the disclosure of HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY information to any proposed expert or consultant. After the expiration of this objection period, if no objection has been asserted, the HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY information may be disclosed to the Qualified Consultant and/or Qualified Expert pursuant to the terms of this Supplemental Protective Order.

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- C. Source Code shall be provided with the following additional protections:
- (i) Nothing in this Protective Order shall obligate the parties to produce any Source Code, nor act as an admission that any particular Source Code is discoverable.
 - (ii) Access to Source Code will be given only to SOURCE CODE QUALIFIED PERSONS.
 - (iii) Access to Source Code shall be made available for inspection, in a format allowing it to be reasonably reviewed and searched, during normal business hours or at other mutually agreeable times, at an office of the Producing Party's outside litigation counsel in [OFFICE] or another mutually agreed upon location on ~~no one or more than two~~ computers that may be provided as secured "stand-alone secure computer(s)" (*i.e.*, the computer(s) may not be linked to any network, including a local area network ("LAN"), an intranet, or the Internet, and may not be connected to any printer or storage device other than the internal hard disk drive of the computer). The stand-alone secure computer(s) ~~shall~~ may be ~~kept~~ provided in a secured room without Internet access or network access to other computers ("Source Code Review Room") at the offices of the supplier's outside litigation counsel, or at such other location as the supplier and receiving party mutually agree. No recordable media or recordable devices, including without limitation sound recorders, computers, cellular telephones, peripheral equipment, cameras, CDs,

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DVDs, or drives of any kind, shall be permitted into the Source Code Review Room.

- (iv) The supplier shall install tools that are sufficient for viewing and searching the code produced, on the platform produced, if such tools exist and are presently used in the ordinary course of the supplier's business. The receiving party's outside counsel and/or experts may request that commercially available software tools for viewing and searching Source Code be installed on the secured computer, provided, however, that (a) the receiving party possesses an appropriate license to such software tools; (b) the supplier approves such software tools; and (c) such other software tools are reasonably necessary for the receiving party to perform its review of the Source Code consistent with all of the protections herein. The receiving party must provide the supplier with [access to the ~~CD or DVD~~ containing installation copy of](#) such licensed software tool(s) [\(e.g., through the installer package or a URL to download it from, or its CD or DVD\)](#) at least ten (10) days in advance of the date upon which the receiving party wishes to have the additional software tools available for use on the stand-alone secure computer(s). The Parties agree to cooperate in good faith if additional software becomes necessary.
- (v) The receiving party shall provide at least two (2) business days' notice to access the source code and make reasonable efforts to restrict its requests for access to the stand-alone secure computer to normal business hours, which for purposes of this paragraph shall be 9:00 a.m. through 6:00 p.m.

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local time at the reviewing location. Upon reasonable notice from the receiving party, which shall not be less than five (5) business days in advance, the supplier shall make reasonable efforts to accommodate the receiving party's request for access to the computer outside of normal business hours. Such an expanded review period shall not begin earlier than 8:00 a.m. and shall not end later than 8:00 p.m. local time at the reviewing location. The parties are to cooperate in good faith such that maintaining the Source Code at the offices of the supplier's outside litigation counsel shall not unreasonably hinder the receiving party's ability to efficiently conduct the prosecution or defense in this investigation. It is expected that access to the Source Code shall be provided at the site of any hearing. Proper identification of all SOURCE CODE QUALIFIED PERSONS shall be provided prior to any access to the stand-alone secure computer(s). Proper identification requires showing, at a minimum, a photo identification card sanctioned by the government of any State of the United States, by the government of the United States, or by the nation state of the authorized person's current citizenship. Access to the Source Code Review Room or the stand-alone secure computer(s) may be denied, at the discretion of the supplier, to any individual who fails to provide proper identification.

- (vi) All SOURCE CODE QUALIFIED PERSONS who will review Source Code on behalf of a receiving party shall be identified in writing to the supplier at least two (2) business days in advance of the first time that such

Field Code Changed

person reviews such Source Code. Such identification shall be in addition to any disclosure required under paragraph 18(B) of this Protective Order. The supplier shall provide these individuals with information explaining how to start, log on to, and operate the stand-alone secure computer in order to access the produced Source Code on the stand-alone secure computer. For subsequent reviews by SOURCE CODE QUALIFIED PERSONS, the receiving party shall give at least 24 hours' notice to the supplier of such review. All persons viewing Source Code on the source code computer in an office of outside litigation counsel shall sign on each day they view Source Code a log that will include the names of persons who enter the Source Code Review Room to view the Source Code and when they enter and depart. The log shall be kept by the supplier.

- (vii) No person other than the supplier may alter, dismantle, disassemble, or modify the stand-alone secure computer in any way, or attempt to circumvent any security feature of the computer.
- (viii) No copies shall be made of Source Code, whether physical, electronic, or otherwise, other than volatile copies necessarily made in the normal course of accessing the Source Code on the stand-alone secure computer, except for: (1) print outs of portions of the Source Code that are reasonably necessary for the preparation of filings, pleadings, expert reports, or other papers, or for deposition or hearing; and (2) such other uses to which the parties may agree or that the ALJ or the Commission may order. The receiving party shall not request paper copies for the

Field Code Changed

purposes of reviewing the source code in the first instance and shall not use any outside electronic device to copy, record, photograph, or otherwise reproduce Source Code. Any printed portion of Source Code that consists of more than fifteen (15) pages of a continuous block of Source Code ~~or more than two hundred (200) pages total~~ shall be presumed to be excessive, ~~and the~~. Any printed portion of Source Code that consists of, for any Source Code software release (i.e., version), more than the greater of three hundred (300) pages or 0.1% of the Source Code for that software version shall also be presumed to be excessive. The burden shall be on the receiving party to demonstrate the need for ~~such a~~ printed copy that is presumed to be excessive. The supplier shall not unreasonably withhold approval and the parties shall meet and confer in good faith to resolve any disputes.

- (ix) The receiving party may take notes, but may not copy the Source Code into the notes and may not take notes on a laptop or other personal electronic device. For clarity, the receiving party may include the names of source code files, variables, and functions within their notes, as well as small snippets of up to five (5) continuous lines of Source Code, as reasonably necessary for notetaking purposes. Any such notes must be treated as HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY under the Protective Order. Unless otherwise agreed in advance by the Parties in writing, following each day on which inspection is done under this Order, the receiving party’s outside counsel and/or

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experts shall remove all notes, documents, and all other materials from the Source Code Review Room; ~~failure to do so could be deemed a waiver of confidentiality to any materials left behind.~~ The supplier is not responsible for any items left in the room following each inspection session. But all counsel remain bound by their ethical duties regarding the handling and possible return of work product inadvertently left behind by a representative of an opposing party.

- (x) The supplier may exercise personal supervision from outside the review room over the receiving party when the receiving party is in the Source Code Review Room. Such supervision, however, shall not entail review of any work product generated by the receiving party, *e.g.*, monitoring the screen of the stand-alone secure computer, monitoring any surface reflecting any notes or work product of the receiving party, or monitoring the key strokes of the receiving party. There will be no video supervision by any supplier when the review occurs in the office of outside litigation counsel.
- (xi) Nothing may be removed from the stand-alone secure computer(s), either by the receiving party or at the request of the receiving party, except for (1) print outs of reasonable portions of the Source Code in accordance with the provisions of paragraphs 18(C)(ix)-(x) of this Protective Order; and (2) such other uses to which the parties may agree or that the ALJ or the Commission may order.

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- (xii) At the request of the receiving party, the supplier shall within three (3) business days provide ~~one (1)~~three (3) hard copy print outs of the specific lines, pages, or files of the Source Code that the receiving party believes in good faith are necessary to understand a relevant feature of an accused product. The receiving party may identify those lines, pages, or files by printing them to a temporary file on the computer, such as in PDF format. If the supplier objects in any manner to the production of the requested source code (e.g., the request is too voluminous), it shall state its objection within the allotted two (~~3~~2) business days pursuant to this paragraph. In the event of a dispute, the parties will meet and confer within five (5) business days of the objection being raised and if they cannot resolve the objection, the parties will raise it with the ALJ. The burden shall be on the receiving party to demonstrate that any such printed portions of Source Code are no more than is reasonably necessary for a permitted purpose and not merely printed for the purposes of review and analysis elsewhere.
- (xiii) Hard copy print outs of Source Code shall be provided on Bates numbered and watermarked or colored paper clearly labeled HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY on each page and shall be maintained by the receiving party’s outside litigation counsel or SOURCE CODE QUALIFIED PERSONS in a secure locked area. For avoidance of doubt, an access-restricted location within the facilities of outside litigation counsel or a qualified expert, such as a conference room within an access restricted office or a locked drawer or

Field Code Changed

cabinet, shall constitute a secured locked area. The receiving party may also temporarily keep the print outs at: (1) the Commission for any proceeding(s) relating to the Source Code, for the dates associated with the proceeding(s); (2) the sites where any deposition(s) relating to the Source Code are taken, for the dates associated with the deposition(s); and (3) any intermediate location reasonably necessary to transport the print outs (*e.g.*, a hotel prior to a Commission proceeding or deposition). The receiving party shall exercise due care in maintaining the security of the print outs at these temporary locations. No further hard copies of such Source Code shall be made and the Source Code shall not be transferred into any electronic format or onto any electronic media except that:

1. The receiving party is permitted to request that the supplier make additional hard copies of printed Source Code designated as HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY for use at a deposition. Copies of Source Code designated as HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY that are marked as deposition exhibits shall not be provided to the Court Reporter or attached to deposition transcripts; rather, the deposition record will identify the exhibit by its production numbers. All such copies shall remain with the supplier’s outside counsel for secure destruction in a timely manner following the deposition.

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2. The receiving party is permitted to make up to five (5) additional hard copies, or any other number or format of copies as the Commission or the ALJ orders, for the Commission or the ALJ in connection with a ~~Commission~~ filing, hearing, or trial, and of only the specific pages directly relevant to and necessary for deciding the issue for which the portions of the Source Code are being filed or offered.
3. Except as provided in this sub-paragraph, absent express written permission from the supplier, the receiving party may not create electronic images, or any other images, or make electronic copies, of the Source Code from any paper copy of Source Code for use in any manner (including by way of example only, the receiving party may not scan the Source Code to a PDF or photograph the code). Images or copies of Source Code shall not be included in correspondence between the Parties (references to production numbers shall be used instead), and shall be omitted from pleadings and other papers whenever possible. If a Party reasonably believes that it needs to submit a portion of Source Code as part of a filing ~~with the Commission, the Parties shall meet and confer as to how to make such a filing while protecting the confidentiality of the Source Code and such Source Code will not be filed absent agreement from the supplier that the confidentiality protections will be adequate or order of the ALJ. If~~

Field Code Changed

~~a supplier agrees to produce an electronic copy of all or any portion of its Source Code or provides written permission to the receiving party that an electronic or any other copy may be made for a Commission filing, access to the receiving party's submission, communication, and/or disclosure, or as part of an expert report, contention, or discovery response, the Party shall protect the confidentiality of the Source Code pursuant to this Protective Order. Disclosure of electronic files or other materials containing any portion of Source Code (paper or electronic) shall at all times be limited by a receiving party solely to individuals who are expressly authorized to view Source Code under the provisions of this Order. Where the supplier has provided the express written permission required under this provision for a receiving party to create electronic copies of Source Code, the receiving party shall maintain a log of all such electronic copies of any portion of Source Code in its possession or in the possession of its retained consultants, including the names of the reviewers and/or recipients of any such electronic copies, and the locations and manner in which the electronic copies are stored. Additionally, any~~Any such electronic copies must be labeled "HIGHLY CONFIDENTIAL – SOURCE CODE" as provided for in this Order.

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4. The supplier shall, on request, make a searchable electronic copy of the Source Code available on a stand-alone secure computer during depositions of witnesses who would otherwise be permitted access to such Source Code. The receiving party shall make such request at the time of the notice for deposition.
- (xiv) Nothing in this Protective Order shall be construed to limit how a supplier may maintain the supplier's own material designated as HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES ONLY.
- (xv) Outside litigation counsel for the receiving party with custody of HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES ONLY shall maintain a source code log containing the following information: (1) the identity of each person granted access to the HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES ONLY; and (2) the first date on which such access was granted. Outside litigation counsel for the receiving party will produce, upon request, each such source code log to the supplier within twenty (20) days of the final determination of the investigation.
- (xvi) [A receiving party may not cause a supplier's](#) Source code ~~may not~~to leave the United States [absent written agreement](#).

19. Prosecution and Development Bar.

- A. "Relevant Technology" means technology related to pulse oximetry.
- B. Unless otherwise permitted in writing between supplying party and receiving party, any individual who personally receives, other than on behalf of [the](#)

supplying party, any material showing or describing the technical functionality of the supplying party's products designated as ~~CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER~~ or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES ONLY under this Protective Order shall not prepare, prosecute, supervise, advise, counsel, or assist in the preparation or prosecution of any patent application seeking a patent on behalf of the receiving party or its acquirer, successor, or predecessor in the Relevant Technology during the pendency of this Investigation ~~and for two years after final termination of this Investigation or, alternatively, for two years after the time the individual person(s) formally withdraws from the Administrative Protective Order. In addition, any such person is prohibited from having any involvement in the prosecution of any patent, patent application or re-examination in the Relevant Technology that was filed, or that claims priority from any application that was filed, for up to one year following the final termination of this Investigation (including any appeals).~~ To avoid any doubt, "prosecution" as used in this paragraph does not include representing or advising a Party before a domestic or foreign agency in connection with a reissue, ex parte reexamination, *inter partes* review, opposition, cancellation, or similar proceeding; though in connection with any such agency proceeding involving the patents-in-suit, Outside Counsel of Record for a receiving party shall not: (i) participate in the preparation, prosecution, supervision, advice, counsel, or assistance of any amended claims; (ii) reveal a supplier's CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY

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CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY material to any prosecuting reexamination counsel or agent; or (iii) use a supplier’s CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY for any purpose ~~not permitted~~prohibited by ~~Section 5~~this Protective Order. The applicability of this provision is to be determined on an individual-by-individual basis such that an individual attorney who has not received CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY is not restricted from undertaking any activities by virtue of this provision even if said individual attorney is employed by or works for the same firm or organization as an individual who has received such material.

~~C. Unless otherwise permitted in writing between supplying party and receiving party, any Qualified Consultant or Qualified Expert or other SOURCE CODE QUALIFIED PERSON retained on behalf of receiving party who is to be given access to any material showing or describing the technical functionality of the supplying party’s products designated as CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY produced by another party must agree in writing not to perform product development work directly or indirectly intended for commercial purposes related to the particular information disclosed in the CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE~~

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~~CODE—ATTORNEYS’ EYES ONLY from the time of first receipt of such material through one year after the date the Qualified Expert or other SOURCE CODE QUALIFIED PERSON formally withdraws from the Protective Order. For avoidance of doubt, during periods in which the individual person(s) has ceased to have possession of such material or any documents or notes reflecting such material, this section shall not apply.~~

20. ~~**Competitive Decision-Making Bar.** Absent written consent from the supplier, any individual who receives access to material designated CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE—ATTORNEYS’ EYES ONLY shall not be involved in competitive decision-making for a Party, relating to the subject matter of the CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE—ATTORNEYS’ EYES ONLY material accessed by the individual. This bar shall begin when upon the individual’s first receipt of material designated CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE—ATTORNEYS’ EYES ONLY and shall end one (1) year after the affected individual formally withdraws from the Protective Order in this Investigation.~~

21. 20. This Protective Order Addendum shall not diminish any existing restriction with respect to ~~CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER~~, as defined in paragraph 2 of the Protective Order. The Private Parties and third parties acknowledge and agree that this Protective Order Addendum is a supplement to the Protective Order entered in this action on August 18, 2021. The Protective Order

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~~applies to all material designated pursuant to this Protective Order Addendum. To the extent that there is any confusion or conflict between protective orders with respect to designated Producing Party material, this Protective Order Addendum will govern.~~

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EXHIBIT A

CERTIFICATION OF EXPERT/CONSULTANT REGARDING PROTECTIVE ORDER

I, _____ [print or type full name], of

_____ am not an employee of the Party who retained me or of a competitor of any Party and will not use any information, documents, or things that are subject to the Protective Order entered _____, for any purpose other than this

litigation. ~~I agree not to perform product development work or participate in competitive decision-making for a Party related to the particular information disclosed in the designated material describing the technical functionality of a supplying party's products disclosed to me, from the time of receipt of such material through the date that I cease to have access to any such designated material. For avoidance of doubt, during periods in which the individual person(s) has ceased to have possession of such material or any documents or notes reflecting such material, this section shall not apply.~~

I state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed On _____.

[Printed Name]

[Signature]

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EXHIBIT I

From: Garcia, Nina
Sent: Monday, October 25, 2021 11:39 AM
To: Nikogosyan, Henry; Masimo.AppleITC@Knobbe.com
Cc: WH Apple-Masimo 1276 Service List
Subject: RE: Inv. No. 337-TA-1276 - Expert Disclosures
Attachments: Anthony, Brian CV Oct 2020.pdf

Counsel,

Pursuant to Paragraph 11 of the Protective Order, Apple identifies Brian Anthony as an expert to whom Apple intends to provide CBI in this Investigation. Attached is a copy of his CV.

Best,
Nina

Nina Garcia | WilmerHale
+1 617 526 6446 (t)
nina.garcia@wilmerhale.com

From: Garcia, Nina <Nina.Garcia@wilmerhale.com>
Sent: Thursday, October 21, 2021 3:50 PM
To: Nikogosyan, Henry <Henry.Nikogosyan@wilmerhale.com>; Masimo.AppleITC@Knobbe.com
Cc: WH Apple-Masimo 1276 Service List <WHApple-Masimo1276ServiceList@wilmerhale.com>
Subject: RE: Inv. No. 337-TA-1276 - Expert Disclosures

Counsel,

Pursuant to Paragraph 11 of the Protective Order, Apple identifies Benjamin Goldberg as an expert to whom Apple intends to provide CBI in this Investigation. Attached is a copy of his CV.

Best,
Nina

Nina Garcia | WilmerHale
+1 617 526 6446 (t)
nina.garcia@wilmerhale.com

From: Nikogosyan, Henry <Henry.Nikogosyan@wilmerhale.com>
Sent: Tuesday, October 19, 2021 6:03 PM
To: Masimo.AppleITC@Knobbe.com
Cc: WH Apple-Masimo 1276 Service List <WHApple-Masimo1276ServiceList@wilmerhale.com>
Subject: Inv. No. 337-TA-1276 - Expert Disclosures

Counsel,

Pursuant to Paragraph 11 of the Protective Order, Apple identifies Robert Stone and Majid Sarrafzadeh as experts to whom Apple intends to provide CBI in this Investigation. Attached are copies of their curriculum vitae. Please let us

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know of any objection you may have on behalf of Complainants. To the extent we do not hear from you within ten days, Apple will assume that Complainants have no objection.

Best,

Henry Nikogosyan | WilmerHale

2600 El Camino Real, Suite 400

Palo Alto, CA 94306 USA

+1 650 858 6004 (t)

+1 650 858 6100 (f)

henry.nikogosyan@wilmerhale.com

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EXHIBIT J

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MASSACHUSETTS INSTITUTE OF TECHNOLOGY
School of Engineering Faculty Personnel Record

Date: October 20, 2021 Name: Brian W. Anthony

Department: Mechanical Engineering / Institute of Medical Engineering and Science

- 1. Date of Birth: July 1972
- 2. Citizenship: USA
- 3. Education:

<u>School</u>	<u>Degree</u>	<u>Date</u>
Carnegie Mellon University	BS	1994
MIT	SM	1998
MIT	PhD	2006

- 4. Title of Thesis for Most Advanced Degree:
Video Based System Monitoring

- 5. Principal Fields of Interest:
Computational Instrumentation, Medical Device Design and Manufacturing, Innovation and Product Realization, Ultrasound Imaging and Novel uses of Ultrasound

- 6. Name and Rank of Other Department Faculty in the Same Field:
Harry Asada, Professor
Ian Hunter, Professor
Kamal Youcef-Toumi, Professor
Charlie Sodini, Professor (EECS)

- 7. Non-MIT Experience (including military service):

<u>Employer</u>	<u>Position</u>	<u>Beginning</u>	<u>Ending</u>
LANL	Scientist	1992	1994
Independent Consultant	Consultant	1994	1998
Xcitex	CoFounder / CTO	1998	2005
Cooper Perkins	CTO	2005	2007
dRNOME	CoFounder	2011	2016

- 8. History of MIT Appointments:

<u>Rank</u>	<u>Beginning</u>	<u>Ending</u>
Lecturer, Sloan	2006	2009
Lecturer, MechE	2006	(present)
Research Scientist	2006	2013
Principal Research Scientist	2013	(present)
Director Singapore MIT Alliance – Manufacturing Systems and Technology		

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Program (SMA-MST)	2006	2010
Director Master of Engineering in Manufacturing Program (MEngM)	2006	(present)
Faculty Lead for Education, MIT Skoltech Initiative	2011	2016
Deputy Director, MIT Skoltech Initiative	2014	2016
Associate Director, AIM Academy	2016	2017
Associate Director, MIT.nano	2017	
Faculty Lead for Industry Engagement, MechE	2018	

9. Consulting Record:

<u>Firm</u>	<u>Beginning</u>	<u>Ending</u>
Engagements greater than 3 months.		
Los Alamos National Labs		2000
Textron		2000
Federal Trade Commission		2000
FAA		2004
Kodak		2004
Redlake		2005
Olympus		2006
TIS	2009	2012
Photron	2009	2011
Cooper Perkins	2010	2012
IDEO	2012	---
Alcon	2012	---
Ximedica	2013	2014
Herman Miller	2014	2014
Novartis	2015	2015
Lenze	2015	2016
Apple	2017	

10. Professional Service

<u>Activity</u>	<u>Beginning</u>	<u>Ending</u>
MEngM Admissions Committee	2006	present
CDO Admissions Committee	2007	2008
Career Fair – SMA in Singapore, Org Chair	2007	2007
Career Fair – SMA/MIT in Singapore, Org Chair	2008	2008
Mfg. microFluidics Symp, Chair	2009	2010
SMART Proposal Lead on Med Devices	3/2010	9/2010
LMP Summit Co-Chair	2011	2011
MEDRC Workshop, Chair	2012	2012
Pilot IMI Proposal, MIT Lead	5/2012	6/2012
Additive mfg working group, Lead	6/2012	8/2012
MIT's role in reducing the cost of health care	2014	2015

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<u>Activity</u>	<u>Beginning</u>	<u>Ending</u>
SPIE Conference Committee	2011	2018
SPIE Conference Committee	2012	2018
Co-Chair Education Workstream, AMP 2.0	2013	2014

11. Awards Received:

<u>Award</u>	<u>Date</u>
National Television Academy, Emmy for Innovative Technical Achievement. "Golf on CBS, SwingVision."	2005
BPLA Invented Here, Featured Honoree	2014

12. Current Organization Membership:

<u>Organization</u>	<u>Offices Held</u>
ASME	
IEEE	
SPIE	
AIUM (American Institute of Ultrasound in Medicine)	
Sigma Xi	

13. Patents and Patent Applications Pending:

1. US Patent 5606130 "Method for determining the octane rating of gasoline samples by observing corresponding acoustic resonances therein."
2. US Patent 6393384 "Apparatus and method for remote ultrasonic determination of thin material properties using signal correlation."
3. US Patent 6226081 "Optical height of fill detection system and associated methods."
4. US Patent 8,333,704, B. Anthony and M. Gilbertson, "Handheld Force-Controlled Ultrasound Probe," Dec 11, 2012
5. US Patent 8,328,725, B. Anthony and M. Gilbertson, "Ultrasound Probe," Dec 18, 2012
6. US Patent 8,382,671, B. Anthony and M. Gilbertson, "Handheld Ultrasound Probe," Feb 26, 2013
7. US Patent 9,121,705, B. Anthony and D. Ljubicic, "Sensor for Simultaneous Measurement of Thickness and Lateral Position of a transparent object," Sept 1, 2015
8. US Patent 9,456,800, Brian W. Anthony, Matthew W. Gilbertson, "Ultrasound scanning system", Oct 4, 2016
9. US Patent 10353191, Circular scanning technique for large area inspection, July 16, 2019.
10. MIT Case 14088, Force Controlled Ultrasound Probe, 16-Dec-09
11. MIT Case 14387, Deformation Estimation and Correction in Elastography with a Handheld Force Controlled Ultrasound Probe, 16-Jul-10
12. MIT Case 14422, High-Speed Profilometer for Manufacturing Inspection, 30-Jul-10
13. MIT Case 14966J, Force Measurement Ultrasound Probe for Sonographer Fatigue Monitoring, 10-Jun-11

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14. MIT Case 15012, A 6-DOF Optical System for Freehand 3D Ultrasound, 05-Jul-11
15. MIT Case 15681J, Local Actuation and Control of Stamp Deformation in Microcontact Printing, 06-Jun-12
16. MIT Case 15782, Usability Improvements to a Handheld Force-Controlled Ultrasound Probe, 03-Aug-12
17. MIT Case 15884, Computer-Guided Restoration of Ultrasound Scan Poses by Optical Tracking, 01-Oct-12
18. MIT Case 16160, Quick-Release Mechanism for a Force-Measuring Ultrasound Probe, 22-Feb-13
19. MIT Case 16447, Force-correlated Quantitative Ultrasound Image Analysis, 02-Jul-13
20. MIT Case 17106J, Acoustic Characterization of Superficial Body Fluids, 07-May-14
21. MIT Case 17211J, Wireless Capsule Endoscopic Ultrasound, 24-Jun-14
22. MIT Case 17259K, A Concentric Circle Scanning Technique for Large Area Inspection, 09-Jul-14
23. MIT Case 17260K, Grid-Based Matching for Full-Field Large-Area Deformation Measurement, 09-Jul-14
24. MIT Case 17344, Recovery and Computer-Guided Restoration of Ultrasound Scan Poses Based on Human Skin Features, 21-Aug-14
25. MIT Case 17864J, Ultrasound-Based Individual Scatterer Detection Method Using Scatterer Motion Induced by Acoustic Radiation Force, 21-Apr-15
26. MIT Case 17865, Ultrasound-Based Absolute Scatterer Concentration Measurement Technique: Image Volume Estimation from Scatter Spread Function Extracted From the Image, 21-Apr-15
27. MIT Case 17990, Hydrogel Ultrasound Angle Wedge, 04-Jun-15
28. MIT Case 18074, Joint Camera-Ultrasound Data Acquisition for Limb Scanning, 13-Jul-15
29. MIT Case 18544, An Iterative RTM with a Priori Data to Estimate Bone Thickness Using a Cylindrically Scanning Ultrasound Tomography Scanner, 22-Feb-16
30. MIT Case 18545K, Block-Wise Inversion for the Soundspeed of Human Soft Tissue and Bone Using Ray Based Travel Time Tomographic Techniques, 22-Feb-16
31. MIT Case 18636, Concentric Ring-Based Point Pattern Matching of Skin Features, 05-Apr-16
32. MIT Case, Physical and Chemical Characterization of Aerosols with Photonic Waveguides, United States Patent Application 20190234850
33. (to be updated)

14. Professional Registration:

N/A.

15. Major New Products, Processes Designs, or Systems:

See next.

16. Major New Products, Processes Designs, or Systems:

The following is split between a) University Programs or Significant Initiatives, b) Products, and c) Companies.

A. Programs, Centers, or Significant Initiatives

MechE Alliance – Industry Immersion Project Program

The I2P Program provides MechE graduate students with an exclusive opportunity to gain real-world experience working on a 3-to-6 month industry project at a participating company while still enrolled at MIT. Project concepts are first proposed by the company, and then refined and improved by students and their faculty advisors to best suit their academic experience and career interests.

Living Lab in IMES

The Sekisui House at MIT will establish a multi-year and sustained collaboration around specific themes and needs, answer key questions—via targeted projects designed to collect clinically relevant evidence—and generate significant technology innovations. The program will be staffed and operated by clinicians, researchers, and technical instructors, while fostering educational and global exchange between disparate communities, all while highlighting efforts in medical and observational research. The broader MIT community will be engaged with annual workshops and calls for proposals, as well as nominations for faculty and students to join programs surrounding specific themes.

Immersion Lab – MIT.nano

The Immersion Lab is a two-story, state-of-the-art space for research in visualization, augmented and virtual reality (AR/VR), and the depiction and analysis of spatially related data. Housed in MIT.nano, the lab is an open-access research space. The Immersion Lab mission is to propel research and education at MIT by: Providing the community with an array of cutting-edge technologies to facilitate immersive experiences; Broadening interdisciplinary interest in immersive technologies at MIT and promoting collaborations in art, science, and technology; Supporting teaching in enhanced reality and mentoring MIT community members seeking to realize their projects using our facility; Bridging the domains of hardware and software—and encouraging cycles in which advances in one domain spark innovation in the other; Fueling experimentation and research in enhanced reality technologies through seed grants, shared equipment, symposia, and other resources.

MEngM

Former Director of the Master of Engineering in Manufacturing Program, and previously the director of the Singapore MIT Alliance - Manufacturing Systems and Technology Program since 2006. In these roles I have developed an education partnership program with small to multi-national corporations, defined and built the MEngM program and structure for the development and execution of company based projects. I place student groups into companies, teach professional engineering practice in the context of industry based group projects, and broadly define and execute the operations of the MEngM degree program. Between 2007 and 2010, I raised over \$900,000 from our partner companies to support program sponsored student fellowship and program operations.

MEDRC

Co-Founder, Co-Director of the Medical Electronic Device Realization Center (MEDRC). Along with Charlie Sodini, and Joel Voldman, I recruit large Medical Device manufacturing companies, lead research, and engage with the Med Tech community nationally and internationally.

PUBLIC VERSION

The MEDRC establishes partnerships between the microelectronics industry, the medical devices industry, medical professionals, and MIT faculty, researchers and students to collaboratively achieve improvements in the cost and performance of medical electronic devices. The successful realization of such a vision also demands innovations in the usability and productivity of medical devices, and new technologies and approaches to manufacture devices. The MEDRC is a focal point for large business, for venture-funded startups, and for the medical community.

The unique research methodology of the MEDRC begins with the project definition. Research activities are jointly defined by faculty, physicians and clinicians, and industrial partners. Visiting scientists from microelectronic and medical device companies, physically resident at the Center, provide the industrial viewpoint in the project definitions and participate in the realization of the technology. Prototype systems are developed which are used in clinical tests early in the projects to help guide the research technology being developed in parallel.

To date we have raised significant funding and identified a visiting scientist from GE, Analog Devices, Maxim, Philips, Nihon Kohden, Novartis. Each company commits to \$900,000 over 3 years.

MIT Skoltech Initiative

Deputy Director, and Lead Education, MIT Skoltech Initiative. I served as the education faculty lead in the development of high level curriculum concept for SkolTech Master's degree programs, spanning across domains (space, nuclear, biomedicine, IT, and energy). We develop the education-team collaboration, build consensus on vision, objectives, and plans, and to create education programs for each domain.

AIM Academy

Associate Director of AIM Advance Integrated Photonics Manufacturing Academy. The AIM Photonics manufacturing institute is a public-private partnership that focuses the nation's premiere capabilities and expertise to capture critical global manufacturing leadership in Integrated Photonics technology that is essential to the U.S. economy. In this role I supported community, careers and investment for US world leadership in Integrated Photonics manufacturing. I lead development of a Masters program in Integrated Photonics Manufacturing and development of an Education Factory practice facility.

MIT.nano / SENSE.nano

Associated Director, MIT.nano.

Founding director of first center of excellence at MIT.nano, SENSE.nano. New sensors and sensing systems can provide previously unimaginable insight into the condition of the built and natural world and to positively impact man, machine, and environment. For example, new sensors can provide accessible sensing capabilities important to individual's health and wellness, such as recently-developed nanoparticle-embedded paper strips that can rapidly diagnose Zika, Ebola, and other diseases in a simple color-coded test. Massively distributed networks of sensors enable large-scale, global data collection important to agriculture and water distribution, environment monitoring, disaster recovery, disease outbreak detection and intervention, supply chain operations, and the operations of cities. Nano sciences and technologies offer unprecedented opportunities to realize designs for, and scale manufacturing of, the sensors and sensing technologies required to fundamentally understand and fight diverse challenges. MIT—with comprehensive excellence in engineering, business, earth science, electronics, computation, nanoscience, materials science, neuroscience, chemistry, physics, manufacturing, and biology—is poised

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to address the engineering, science, policy, and commercial challenges required to realize these grand, but nano, visions, to translate them to scale, and to positively impact society. MIT.nano is a world-class, nano-capable, shared laboratory facility and provides an open collaborative and cross-disciplinary nexus for advanced research, innovation, and education.

MIT Center for Clinical and Translation Research

Director of Clinical Technology.

The CCTR provides the facilities needed to conduct safe human research - in concert with colleagues in MIT Medical, the VPR Office of Research Compliance, and the Committee on the Use of Humans as Experimental Subjects (COUHES). The Center embodies a three-part mission: addressing critical needs in translational research within medicine, expanding central resources essential to MIT, and enabling external links to outside schools (Tufts University, Harvard University, Harvard Medical School), hospitals, and agencies (e.g. FDA).

Other Significant, formative, Initiatives

SMART Center - March through September 2010

I developed consensus around a theme, built the team of 10 investigators in Singapore and 10 investigators at MIT for a whitepaper and requested full center-proposal for SMART, entitled “*Realization (Design, Manufacturing, and Use) of Injectable Physiological Monitors – Enabling a Patient Centric Information Driven Healthcare Future.*” The research was motivated by addressing the need for unobtrusive, continuous, ambulatory, physiological monitoring of Congestive Heart Failure and Chronic Obstructive Pulmonary Disease patients. The 'state of health' information generated from these sensors can help reduce societal health care costs, improve quality of health care, increase quality lifespan, and lead to new understanding of the human physiology. Our proposal made it to the final round but was not selected. However these efforts lead to the creation of the MEDRC.

Pilot Innovation Manufacturing Institute (IMI) Proposal – May, June 2012

A team (University of Massachusetts Amherst, University of Connecticut, Massachusetts Institute of Technology, the Connecticut Center for Advanced Technology, the Pennsylvania State University, UMass Lowell, United Technologies Corporation, and the National Center for Manufacturing Sciences) proposed to form an independent, non-profit technical center of excellence to accelerate technological progress and innovation in additive manufacturing (AM), in response to the May 8, 2012 Air Force Research Laboratory Broad Agency Announcement (BAA-122-17-PKM) for the NNMI pilot. The NNMI Pilot Institute will demonstrate the value of the kind of collaborative problem-solving and asset-building that could occur on a broader scale with a nation-wide network of Institutes for Manufacturing Innovation. Federal government funding for the 2.5-year pilot program is \$30M with a minimum of \$30M in required cost sharing from industry, state government and universities.

In our center, The Advanced Direct Additive Manufacturing Institute (ADAM-I), we proposed to address key gap-bridging challenges in AM, including: rapid net shape production of structural metal, ceramic and polymer parts, and cost-effective manufacturing of large-area functional materials, components and devices.

Marty Schmidt and I spearheaded the MIT collaboration. We developed the business plan and financial sustainability model for the proposed center. I raised \$3 million in matching fund commitments (10% of the total match commitment).

Flexible Hybrid Electronics Manufacturing Innovation Institute (NextFlex) – October 2015

MIT PI on winning proposal, including a team of : Marc Baldo, Duane Boning, Vladimir Bulovic, Karen K Gleason, David E Hardt, Anastasios John Hart, Sang-Gook Kim.

\$150M national center with a mission to catalyze the development of an ecosystem for manufacturing new forms of electronics that integrate bulk ICs and printed devices with functions such as power, communications, fluidics, and bio-sensing in flexible systems that can bend, fold, stretch, and conform.

B. Products

Fuselage Crack Inspection System for FAA

In support of the Federal Aviation Administration National Aging Aircraft Research Program (NAARP) the state-of-the-art Full-Scale Aircraft Structural Test Evaluation and Research (FASTER) Facility was established at the FAA William J. Hughes Technical Center. A fixture was designed to simulate the actual loads to which an aircraft fuselage structure is subjected while in flight. Data from tests using this fixture was used to experimentally validate analytical theories and methodologies to evaluate and predict the onset of Widespread Fatigue Damage (WFD). Crack growth data from testing was gathered from the Remote Control Crack Monitoring System.

I designed, built, and delivered The Remote Control Crack Monitoring System consisting of a pair of cameras with two different fields of view manipulative by with a large gantry robot. The cameras ‘fly’ over the fuselage surface to identify and track cracks using processed camera images to generate the feedback signal

Laser Wave for Textron

Textron Inc.’s LaserWave[®] products integrated advanced signal processing techniques, robust software algorithms, lasers, optics and ultrasonic technology. The LaserWave Instrument could measure material characteristics such as density, hardness, temperature, thickness, elastic constants and more. LaserWave was developed to measure the temperature of Silicon Wafers undergoing rapid thermal processing and evolved to become a general system for material characterization.

A pulse laser system is used to initiate a circular thermo-elastic Lamb wave. I developed propagation models describing the propagation of the collapsing circular, thermo-elastic, transient Lamb waves. I developed real-time inversion routines using a time-frequency wavelet decomposition to extract and identify group velocity mode shapes. The LaserWave products use models and algorithms that I developed to invert the measured temporal signals in order to estimate elastic constants and material thickness of thin layers.

This product line didn’t fit Textron’s business mode. They transferred the technology to Brown University.

PUBLIC VERSION

<http://investor.textron.com/newsroom/news-releases/press-release-details/2003/Textron-Donates-Laser-Technology-to-Brown-University-Research-Foundation/default.aspx>

Motion Tools for Photron Inc

I designed Photron Motion Tools to operate high-speed PCI cameras. Photron Motion Tools provides users with manual and automatic tracking capabilities. By simply selecting the point of interest within the recorded image sequence, Motion Tools automatically tracks the points-motion within the sequence.

http://www.photron.com/index.php?cmd=product_general&product_id=17

i-Speed for Olympus

Capable of capturing images at speeds from 60 to 150,000 frames per second in 'normal' mode (down to 1 second/frame in 'timelapse' mode) i-SPEED cameras are an effective method of locating problems quickly and easily. The user can evaluate designs, increase productivity and reduce maintenance costs. Video images are digitally captured onto its onboard memory, where they can be written to compact flash card or downloaded via Ethernet connection to a laptop or PC.

I designed custom software to provide the operator with the ability to analyze and enhance images. Velocity and distance measurement can also be calculated. The i-SPEED Software Suite was designed to mirror the ease-of-use and high specification power of the camera range.

<http://www.olympus-ims.com/en/ispeed-software/>

Swing Vision for CBS

I designed and built the Swing Vision camera system, camera control system, camera mounts, the server architecture, and the analysis software. Two high-speed cameras record a golfer t-shot. A 2000 fps camera records the full view of the golfer. A 12500 frame per second camera is used to record the ball-club interaction. As the 2000 fps video is broadcast in slow motion, the 12500 fps video (gigabytes of raw video data) is **automatically** analyzed (in under 20 seconds). The ball is located, used for calibration, and tracked, the club is identified and tracked – all under highly variable condition (variable lighting from shadows, grass, occlusions, etc). The calculated speeds, back spin, and launch angle are sent to the broadcast truck. The results are broadcast in a graphic.

I won an Emmy for this system in 2005.

MiDAS - Xcitex

As Xcitex's first engineer, I developed the core of the flagship products - MiDAS and ProAnalyst. And as CTO and Vice-President of Xcitex, I developed and directed the development of products and solutions for the industrial and scientific video markets.

MiDAS is now the the standard for controlling, synchronizing, and automating digital high-speed and industrial video cameras. With thousands of installations worldwide, MiDAS software is used by researchers, production line engineers, scientists, doctors, and military range operators to convert their video cameras into easy-to-use motion capture systems.

PUBLIC VERSION

MiDAS includes intelligent triggering, autonomous recording, synchronized video/data collection, large file organization tools. Features such as distance and velocity measurement calipers, auto-tracking, and video triggering are included.

http://xcitex.com/html/midas_description.php

ProAnalyst - Xcitex

As Xcitex's first engineer, I developed the core of the flagship products - MiDAS and ProAnalyst. And as CTO and Vice-President of Xcitex, I developed and directed the development of products and solutions for the industrial and scientific video markets.

ProAnalyst is a software package for automatically measuring moving objects with video. It is used extensively by NASA, engineers, broadcasters, researchers and athletes. ProAnalyst allows users to measure and track velocity, position, size, acceleration, location and other characteristics. Results can be instantly graphed and reviewed, compared against external data, and exported to a variety of output formats for further analysis or presentation purposes.

http://xcitex.com/html/proanalyst_description.php

C. Companies

Xcitex – CoFounder, formerly CTO, formerly Vice-President, Board of Directors

Xcitex was self-funded and grew through solid product development and consistent execution of our business strategy. As Xcitex's first engineer, I developed the core of the flagship products - MiDAS and Pro Analyst. I also describe these products in a document that I include as supplemental material. As CTO and Vice-President of Xcitex, I built the technical team, architected and directed the development of products and solutions for the industrial and scientific video markets. Our products alone fueled our growth from startup to dominant market leader.

dRNOME – CoFounder, Investor, Board of Director

CueVue is a cloud computing and storage service for the scientific video industry - enabling video content query and generalized motion analysis in video content management systems. We provide tools for managing, manipulating, archiving, and searching your scientific video. It removes the necessity for its customers to make heavy investments in expensive hardware and software solutions, removes the overhead required to manage high-volume video needs, and we back this with a service level guarantee.

Dynamic Time and Space Warping (DTSW), an algorithm that I developed for part of my doctoral work is core technology for CueVue - enabling video content query and generalized motion analysis in video content management systems.

dRNOME Inc. (CueVue.com – Launched in February 2011, sold technology in 2014). Our core technologies can be used to perform automated feature recognition of multiple streaming telemetry sources and to extract metadata and make this information available for ongoing operations, forensics, and security. Our products enable multi-camera real-time feature recognition, extraction & tagging automation.

Enumage – CoFounder, Investor, Board of Director

Specializing in Laser Ultrasound.

1. Books:

Smart Manufacturing On-line course, deployed 2019 and 2020

2. Papers in Referred Journals:

- 2.1. B. Anthony, A. Abbate, D. Klimek, P. Kotidis., "Analysis of Ultrasonic Waves in Arbitrarily Oriented or Rotating Anisotropic Thin Materials", *Quantitative Nondestructive Evaluation*. Vol 18. pgs 215 - 222. (1999).
- 2.2. A. Abbate, B. Anthony, D. Klimek, P. Kotidis., "Analysis of Dispersive Ultrasonic Signals by the Ridges of the Analytic Wavelet Transform", *Quantitative Nondestructive Evaluation*. Vol 18. pgs 703 - 710. (1999).
- 2.3. Dan Klimek, Brian Anthony, Agostino Abbate, Petros Kotidis, "Laser Ultrasonic Instrumentation for Accurate Temperature Measurement of Silicon Wafers in Rapid Thermal Processing Systems", *Rapid Thermal and Integrated Processing VII*, Materials Research Society, Volume 525, pg 135. (1999)
- 2.4. Hardt, D.E., Anthony, B.W., Tor S.B., "A teaching factory for polymer microfabrication - μ Fac," *International Journal of Nanomanufacturing*, 2010, Vol. 6, No.1/2/3/4, pp. 137 - 151.
- 2.5. Shih-Yu Sun, Matthew Gilbertson, and Brian W. Anthony, "Probe Localization for Freehand 3D Ultrasound by Tracking Skin Features", Book Section, *Medical Image Computing and Computer-Assisted Intervention - MICCAI 2014*, Springer, 2014, Vol. 8674. *Lecture Notes in Computer Science*, Pages 365-372.
- 2.6. Xian Du, Brian W. Anthony, Nigel C. Kojimoto, "Grid-based matching for full-field large-area deformation measurement", *Optics and Lasers in Engineering*, Volume 66, March 2015, Pages 307-319.
- 2.7. Xian Du, Nigel C. Kojimoto, Brian W. Anthony, "Concentric circular trajectory sampling for super-resolution and image mosaicing", *Journal of the Optical Society of America A*, Volume 32, No. 2, February 2015, Pages 293-304.
- 2.8. M. Gilbertson, B. Anthony. "A Force and Position Control System for Freehand Ultrasound", *IEEE Transactions on Robotics*, Volume 31, Issue 4. 2015.
- 2.9. Andrey Kuzmin, Aaron Zakrzewski, Brian Anthony, Victor Lempitsky, "Multi-frame Elastography Using Handheld Force-Controlled Ultrasound Probe". *Transactions on Ultrasonics, Ferroelectrics, and Frequency Control*, Volume 62, Issue 8, Pages 1486 – 1500, 2015.
- 2.10. Xian Du and Brian Anthony, "Concentric circle scanning system for large-area and high-precision imaging," *Optics Express*, Vol 23, Issue 15, Pages 20014-20029, 2015.
- 2.11. Du, X., Anthony, B., "Controlled angular and radial scanning for super resolution concentric circular imaging," *Opt. Express* 24(20), 22581, United States (2016).
- 2.12. Jimenez, X., Shukla, S. K., Ortega, I., Illana, F. J., Castro-González, C., Marti-Fuster, B., Butterworth, I., Arroyo, M., Anthony, B., et al., "Quantification of Very Low Concentrations of Leukocyte Suspensions In Vitro by High-Frequency Ultrasound," *Ultrasound Med. Biol.* 42(7), 1568–1573, England (2016).
- 2.13. Koppaka, S., Shklyar, I., Rutkove, S. B., Darras, B. T., Anthony, B. W., Zaidman, C. M., Wu, J. S., "Quantitative Ultrasound Assessment of Duchenne Muscular Dystrophy Using Edge Detection Analysis," *J. Ultrasound Med.* 35(9), 1889–1897, United States (2016).
- 2.14. Lee, J., Boning, D., Anthony, B., "Measuring the Absolute Concentration of Microparticles in Suspension using High Frequency B-mode Ultrasound Imaging", *Ultrasound in Medicine and Biology*, 2018.
- 2.15. Correa-de-Araujo, R., Harris-Love, M., Miljkovic, I., Fragala, M.S., Anthony, B.W., Manini, T., Newman, A.B., "The Need for Standardized Assessment of Muscle Quality in Skeletal Muscle

- Function Deficit and Other Aging-Related Muscle Dysfunctions: A Symposium Report", *Frontiers in Physiology*, Section on Striated Muscle Physiology, 2017
- 2.16 Anthony, B, et al, "A Pilot Study to Precisely Quantify Forces Applied by Sonographers While Scanning: A Step Toward Reducing Ergonomic Injury", *WORK: A Journal of Prevention, Assessment, and Rehabilitation*, 2017
 - 2.17 Zakrzewski, Aaron M., Anthony, Brian W., "Non-Invasive Blood Pressure Estimation Using Ultrasound and Simple Finite Element Models", *IEEE Transactions on Biomedical Engineering*, 2017
 - 2.18 Anthony, B., Fitriana, "Computationally-Efficient Optimal Video-Comparison for Machine Monitoring and Process Control", *Journal of Manufacturing Science and Engineering*, 2017
 - 2.19 Lee I, Du X, Anthony B. "Hair segmentation using adaptive threshold from edge and branch length measures," *Computers in Biology Medicine*, (2017).
 - 2.20 Pigula-Tresansky AJ, Wu JS, Kapur K, Darras BT, Rutkove SB, Anthony BW. "Muscle compression improves reliability of ultrasound echo intensity," *Muscle Nerve*, 2017.
 - 2.21 Xian Du, David Hardt, and Brian W. Anthony, "Real time imaging of invisible micron-scale monolayer patterns on a moving web using condensation figure," *IEEE Transactions on Industry Electronics*, (submitted, in review), 2017.
 - 2.22 Brian W. Anthony, Xian Du, Ina Kundu, Judith Beaudoin, "Skin registration and point pattern matching of skin microrelief structure," (submitted, in revision), 2017.
 - 2.23 Ozturk A, Grajo JR, Dhyani M, Anthony BW, Samir AE. *Principles of ultrasound elastography. Abdominal Radiology*. 2018.
 - 2.24 Benjamin A, Zubajlo RE, Dhyani M, Samir AE, Thomenius KE, Grajo JR, Anthony, Brian W., "A Novel Approach to the Quantification of the Longitudinal Speed of Sound and its Potential for Tissue Characterization (Part I)", *Journal of Ultrasound in Medicine and Biology*, 2018
 - 2.25 B. Anthony et al, "Experimental Validation of Longitudinal Speed of Sound Estimates in the Diagnosis of Hepatic Steatosis (Part II)", *Journal of Ultrasound in medicine and biology*, 2018
 - 2.26 A. Ozturk et al., "Quantitative Hepatic Fat Quantification in NAFLD using Ultrasound-Based Techniques: A Review of Literature and their Diagnostic Performance," *Ultrasound in Medicine and Biology*, 2018
 - 2.27 Zakrzewski, A. M., Huang, A. Y., Zubajlo, R. E., & Anthony, B. W. Real-Time Blood Pressure Estimation From Force-Measured Ultrasound. *IEEE Transactions on Biomedical Engineering*, 2018 (Nov 2018 cover article).
 - 2.28 Singh, R., Su, P., Kimerling, L., Agarwal, A., & Anthony, B. W. "Towards On-chip Mid Infrared Photonic Aerosol Spectroscopy." *Applied Physics Letters*. (Accepted). 2018
 - 2.29 Ranger, Bryan J., Feigin, M., Zhang, X., Moerman, Kevin M., Herr, H., Anthony, Brian W. "3D ultrasound imaging of residual limbs with camera-based motion compensation", *Transactions on Neural Systems & Rehabilitation*, (accepted) 2018.
 - 2.30 Singh, R., Ma, D., Kimerling, L., Agarwal, A., & Anthony, B. W. "Chemical Characterization of Aerosol Particles Using On-chip Photonic Cavity Enhanced Spectroscopy". *ACS Sensors*. 2018
 - 2.31 Feigin, M., Ranger, B., Anthony, B., "Probabilistic Framework for Maximal Consensus Image Registration with Application to Medical Ultrasound Imaging" *IEEE Transactions on Biomedical Engineering*, (submitted) 2019.
 - 2.32 X. Du, D. Hardt, and B. Anthony, "Real Time Imaging of Invisible Micron-Scale Monolayer Patterns on a Moving Web Using Condensation Figures," *IEEE Trans. Ind. Electron.*, pp. 1–1, 2019.
 - 2.33 B. J. Ranger, M. Feigin, X. Zhang, K. M. Moerman, H. Herr, and B. W. Anthony, "3D Ultrasound Imaging of Residual Limbs With Camera-Based Motion Compensation," *IEEE Trans. Neural Syst. Rehabil. Eng.*, vol. 27, no. 2, pp. 207–217, Feb. 2019.
 - 2.34 M. Feigin-Almon, D. Freedman, and B. W. Anthony, "A Deep Learning Framework for Single-Sided Sound Speed Inversion in Medical Ultrasound," *IEEE Trans. Biomed. Eng.*, pp. 1–1, 2019.

- 2.35 R. Singh, D. Ma, L. Kimerling, A. M. Agarwal, and B. W. Anthony, "Chemical Characterization of Aerosol Particles Using On-Chip Photonic Cavity Enhanced Spectroscopy," ACS Sensors, vol. 4, no. 3, pp. 571–577, Mar. 2019.
- 2.36 Xiang Zhang, Jonathan Fincke, Charles Wynn, Matthew Johnson, Robert Haupt, and Brian Anthony. Full Noncontact Laser Ultrasound: First Human Data. Nature, Light: Science & Applications. 2019 (Accepted)
- 2.37 M. Feigin, M. Zwecker, D. Freedman, and B. W. Anthony, "Detecting muscle activation using ultrasound speed of sound inversion with deep learning," Submitted Oct. 2019.
- 2.38 S. Kim, D. D. Kim, and B. Anthony, "Dynamic Control of a Fiber Manufacturing Process using Deep Reinforcement Learning," Submitted Nov. 2019.
- 2.39 R. Singh, Y. Nie, A. M. Agarwal, and B. W. Anthony, "Inverse Design of Photonic Metasurface Gratings for Beam Collimation in Opto-fluidic Sensing," Submitted Oct. 2019.

3. Proceedings of Refereed Conferences:

- 3.1. Dipen N. Sinha, Brian W. Anthony, David C. Lizon, "Swept Frequency Acoustic Interferometry Techniques for Chemical Weapons Verification and Monitoring", Third International Conference On-Site Analysis, (1995).
- 3.2. David E. Hardt, Brian W. Anthony and Shu Beng Tor, "A Teaching Factory for Polymer Microfabrication – muFac", Proc. 5th International Symposium on Nano-Manufacturing (ISNM), Athens, November 12-15, 2008.
- 3.3. Gilbertson, M., Anthony, B., and Sun, S.Y., "Handheld Force Controlled Ultrasound Probe", J. Med. Devices 4, 027540 (2010)
- 3.4. Ljubicic, D. M., Anthony, B., "Development of a high-speed profilometer for manufacturing inspection," Proceedings of SPIE Vol. 7767, 776705 (2010).
- 3.5. Sun, S., Anthony, B. W., Gilbertson, M. W., "Trajectory-based deformation correction in ultrasound images," Proceedings of SPIE Vol. 7629, 76290A (2010).
- 3.6. Anthony, B. W., Hardt, D. E., Hale, M., et al., "A research factory for polymer microdevices: muFac," Proceedings of SPIE Vol. 7593, 75930A (2010).
- 3.7. Gilbertson, M. W., Anthony, B. W., "Impedance-controlled ultrasound probe," Proceedings of SPIE Vol. 7968, 796816 (2011).
- 3.8. Ljubicic, D. M., Anthony, B. W., "3D high-speed profilometer for inspection of micro-manufactured transparent parts," Proceedings of SPIE Vol. 8082, 808211 (2011).
- 3.9. Anthony, B.W, Hardt, D.E., "Revitalizing US Manufacturing to Capitalize on Innovation – Through Education" 119th ASEE Annual Conference, San Antonio TX, June 10-13, (2012)
- 3.10. Anthony, B. W., Namvari, K., "Dimensional variation of polymer substrate electrode production," Proceedings of SPIE Vol. 8251, 82510G (2012).
- 3.11. Selvakumar, S., Linares, R., Oppenheimer, A., Anthony, B., "Variation analysis of flow rate delivered using a blister pump," Proceedings of SPIE Vol. 8251, 82510I (2012).
- 3.12. Donoghue, L., Anthony, B. W., "Design for manufacture of a micro-interdigitated electrode for impedance measurement in a biochemical assay," Proceedings of SPIE Vol. 8251, 82510Y (2012).
- 3.13. Holmes, J., Anthony, B. W., "Robustness and repeatability test of interdigitated electrodes on a polymer substrate in an aqueous environment," Proceedings of SPIE Vol. 8251, 825110 (2012).
- 3.14. Sun, S.-Y, Anthony, B. W. "Freehand 3D ultrasound volume imaging using a miniature-mobile 6-DOF camera tracking system". 2012 IEEE International Symposium on Biomedical Imaging (ISBI), 2-5 May, (2012).

- 3.15. Gilbertson, M.W., Anthony, B.A., 2012. "Ergonomic Controls Strategies for a Handheld Force-Controlled Ultrasound Probe," 2012 IEEE/RSJ Intelligent Robots and Systems (IROS) Conference. Vilamoura, Portugal. (2012)
- 3.16. Sun, S.-Y, Gilbertson, M., Anthony, B. W. "6-DoF Probe Tracking via Skin Mapping for Freehand 3D Ultrasound". 2013 IEEE International Symposium on Biomedical Imaging (ISBI), (2013).
- 3.17. Sun, S.-Y, Gilbertson, M., Anthony, B. W. "Computer-Guided Ultrasound Probe Realignment by Optical Tracking". 2013 IEEE International Symposium on Biomedical Imaging (ISBI), (2013).
- 3.18. Inamdar, T., Anthony, B. W., "Characterizing fluidic seals for on-board reagent delivery," Proceedings of SPIE (2013).
- 3.19. Zakrzewski, A., Anthony, B. W. "Quantitative Elastography and its Application to Blood Pressure Estimation: Theoretical and Experimental Results". 2013 IEEE Engineering in Medicine and Biology Society (EMBS), (2013).
- 3.20. Gilbertson, M. Anthony, B.W., "An Ergonomic, Instrumented Ultrasound Probe for 6-Axis Force/Torque Measurement". 2013 IEEE Engineering in Medicine and Biology Society (EMBS), (2013).
- 3.21. Dhyani, M, Gilbertson, M., Samir, A., Anthony, B.W., "Precise Quantification of Sonographic Forces: A First Step Toward Reducing Ergonomic Injury", 2014 AIUM Annual Convention, (2014).
- 3.22. Koppaka, S., Gilbertson, M., Wu, J., Rutkove, S., Anthony, B. W. "Assessing Duchenne Muscular Dystrophy With Force-controlled Ultrasound". 2014 IEEE International Symposium on Biomedical Imaging (ISBI), (2014).
- 3.23. Koppaka, S., Gilbertson, M., Rutkove, S., Anthony, B. W. "Evaluating the Clinical Relevance of Force-correlated Ultrasound". 2014 IEEE International Symposium on Biomedical Imaging (ISBI), (2014).
- 3.24. J. H. Lee, C. M. Schoellhammer, G. Traverso, D. Blankschtein, R. Langer, K. E. Thomenius, D. S. Boning, B. Anthony, "Towards Wireless Capsule Endoscopic Ultrasound (WCEU)," IEEE International Ultrasonics Symposium (IUS), Chicago, IL, 2014, pp. 734-7.
- 3.25. Zhang, Xiang; Fincke, Jonathan; Kuzmin, Andrey; Lempitsky, Victor; Anthony, Brian, "A single element 3D ultrasound tomography system," in Engineering in Medicine and Biology Society (EMBC), 2015 37th Annual International Conference of the IEEE , vol., no., pp.5541-5544, 25-29 Aug. 2015.
- 3.26. Ranger, Bryan J.; Feigin, Micha; Pestrov, Nikita; Zhang, Xiang; Lempitsky, Victor; Herr, Hugh M.; Anthony, Brian W., "Motion compensation in a tomographic ultrasound imaging system: Toward volumetric scans of a limb for prosthetic socket design," in Engineering in Medicine and Biology Society (EMBC), 2015 37th Annual International Conference of the IEEE , vol., no., pp.7204-7207, 25-29 Aug. 2015.
- 3.27. Lee, John H.; Jimenez, Javier; Xiang Zhang; Boning, Duane S.; Anthony, Brian W., "Ultrasound image-based absolute concentration measurement technique for materials with low scatterer concentration", IEEE International Ultrasonics Symposium (IUS), 2015.
- 3.28. Lee, John H.; Jimenez, Javier; Butterworth, Ian R.; Castro-Gonzalez, Carlos; Shukla, Shiva K.; Marti-Fuster, Berta; Elvira, Luis; Boning, Duane S.; Anthony, Brian W., "Measurement of very low concentration of microparticles in fluid by single particle detection using acoustic radiation force induced particle motion", IEEE International, Ultrasonics Symposium (IUS), 2015.
- 3.29. Anthony, B. W., "Enhanced ultrasound for advanced diagnostics, ultrasound tomography for volume limb imaging and prosthetic fitting," Proc. SPIE 9790, N. Duric and B. Heyde, Eds., 97900Q (2016).
- 3.30. Fincke, J. R., Feigin, M., Prieto, G. A., Zhang, X., Anthony, B., "Towards ultrasound travel time tomography for quantifying human limb geometry and material properties," Proc. SPIE 9790, N. Duric and B. Heyde, Eds., 97901S (2016).
- 3.31. Kuzmin, A., Zhang, X., Fincke, J., Feigin, M., Anthony, B. W., Lempitsky, V., "Fast low-cost single element ultrasound reflectivity tomography using angular distribution analysis," 2016 IEEE 13th Int. Symp. Biomed. Imaging, 1021–1024, IEEE (2016).

- 3.32. Pigula, A. J., Wu, J. S., Gilbertson, M. W., Darras, B. T., Rutkove, S. B., Anthony, B. W., “Force-controlled ultrasound to measure passive mechanical properties of muscle in Duchenne muscular dystrophy,” 2016 38th Annu. Int. Conf. IEEE Eng. Med. Biol. Soc., 2865–2868, IEEE (2016).
- 3.33. Ranger, B. J., Feigin, M., Zhang, X., Mireault, A., Raskar, R., Herr, H. M., Anthony, B. W., “3D optical imagery for motion compensation in a limb ultrasound system,” Proc. SPIE 9790, N. Duric and B. Heyde, Eds., 97900R (2016).
- 3.34. Zhang, X., Fincke, J. R., Anthony, B. W., “Single element ultrasonic imaging of limb geometry: an in-vivo study with comparison to MRI,” Proc. SPIE 9790, 97901R–97901R–7 (2016).
- 3.35. Nguyen, M.M, Graule, M.A., Huang, A.Y, Shamdasani, V., Anthony, B.W., Xie, H., “Ultrasound shearwave elastography with force sensing – integration design and preliminary ex-vivo results.,” Proc. Int. Tissue Elast. Conf. 2016 (2016).
- 3.36. Feigin M., Ranger, B., Anthony, B., “Statistical Consensus Matching Framework for Image Registration,” IEEE Int. Conf. Pattern Recognition, (2016).
- 3.37. Zakrzewski, A. M., Dhyani, M., Samir, A. E., Anthony, B. W., “Non-Invasive, Non-Occlusive Blood Pressure Estimation Using Ultrasound: Clinical Results (I),” 38th Annu. Int. Conf. IEEE Eng. Med. Biol. Soc. (2016).
- 3.38. Anthony, et al, "Arterial Blood Pressure Estimation Using Ultrasound: Results on Healthy Volunteers and a Medicated Hypertensive Volunteer", 2017 39th Annu. Int. Conf. IEEE Eng. Med. Biol. Soc., accepted (2017).
- 3.39. Anthony, et al, "Non-Invasive Diagnosis of Non-Alcoholic Fatty Liver Disease (NAFLD) using Ultrasound Image Echogenicity", 2017 39th Annu. Int. Conf. IEEE Eng. Med. Biol. Soc., accepted (2017).
- 3.40. Anthony, et al, "Camera-tracking vs. image-based motion compensation in a tomographic limb ultrasound system", 2017 39th Annu. Int. Conf. IEEE Eng. Med. Biol. Soc., (2017).
- 3.41. Fincke JR. Imaging cortical bone using the level-set method to regularize travel-time and full waveform tomography techniques. J Acoust Soc Am. Acoustical Society of America; (2017)
- 3.42. Yang H, Nguyen MM, Huang S-W, Shamdasani V, Xie H, Anthony BW. "Simulation, design, and implementation of external mechanical vibration for ultrasound shear wave elastography.", IEEE International Ultrasonics Symposium (IUS) IEEE; 2017.
- 3.43. A. Benjamin et al., "Non-invasive diagnosis of non-alcoholic fatty liver disease (NAFLD) using ultrasound image echogenicity," 2017 39th Annual International Conference of the IEEE Engineering in Medicine and Biology Society (EMBC), Seogwipo, 2017,
- 3.44. H. Yang, A. Benjamin, B. Anthony, "Simulation of multi-source external mechanical vibration for shear wave elastography," The Journal of the Acoustical Society of America, 142, 2017
- 3.45. Singh, R., Ma, D., Agarwal, A., & Anthony, B. W. (2018). On-chip photonic particle senso. Presented at the SPIE BiOS, San Francisco, CA.
- 3.46. Kundu, I., & Anthony, B. W. . “Imaging the superficial vascular structure for mapping and identification.” |SPIE Smart Structures and Materials + Nondestructive Evaluation and Health Monitoring, Denver, Colorado. (2018)
- 3.47. Kundu, I., Du, X., & Anthony, B. W. (2018). “Imaging platforms for registering and analyzing the skin microrelief structure.” Presented at the SPIE Smart Structures and Materials + Nondestructive Evaluation and Health Monitoring, Denver, Colorado. (2018)
- 3.48. Zakrzewski, A. M., & Anthony, B. W. (2018). Pre-and-Post Exercise Blood Pressure Estimation from Force-Measured Ultrasound: First Results. Presented at the 2018 40th Annual International Conference of the IEEE Engineering in Medicine and Biology Society (EMBC), Honolulu, HI.
- 3.49. Donk, F., Yang, H., & Anthony, B. W. (2018). Miniaturization of External Mechanical Vibration for Shear Wave Elastography Imaging. Presented at the 2018 40th Annual International Conference of the IEEE Engineering in Medicine and Biology Society (EMBC), Honolulu, HI.
- 3.50. Chen, M., Li, Q., Karimian, N., Yeh, H., Duan, Y., Fontan, F., ... Samir, A. E. (2018). Contrast-Enhanced Ultrasound to Quantify Perfusion in a Machine-Perfused Pig Liver. Presented at the 2018

PUBLIC VERSION

Publications of Brian W. Anthony

40th Annual International Conference of the IEEE Engineering in Medicine and Biology Society (EMBC), Honolulu, HI.

- 3.51. Wang, Y. J., & Anthony, B. W. (2018). Characterization of wave fields using transient motion of microspheres under acoustic radiation force. Presented at the 21st International Symposium on Nonlinear Acoustics, Santa Fe, NM.
- 3.52. Yang, H., Carrascal, C., Xie, H., Shamdasani, V., Anthony, B.W., “Design and Experimental Validation of Miniature External Mechanical Vibrators towards Clinical Ultrasound Shear Wave Elastography”, IUS, 2018.
- 3.53. Singh, Robin; Ma, Danhao; Kimerling, Lionel; Agarwal, Anuradha; Anthony, Brian, “Microscale photoacoustic spectroscopy using integrated photonics for lab-on-chip applications”, Spie BIOS, (accepted), 2018.
- 3.54. J. B. Frontin and B. W. Anthony, “Quantifying Dermatology: Method and Device for User-Independent Ultrasound Measurement of Skin Thickness,” in 2019 41st Annual International Conference of the IEEE Engineering in Medicine and Biology Society (EMBC), 2019, pp. 5743–5748.
- 3.55. A. Benjamin et al., “Renal volume reconstruction using free-hand ultrasound scans,” J. Acoust. Soc. Am., vol. 145, no. 3, pp. 1922–1922, Mar. 2019.
- 3.56. A. Y. Huang and B. W. Anthony, “An Instrumented Ultrasound Probe for Shear Wave Elastography With Uneven Force Distribution,” in 2019 41st Annual International Conference of the IEEE Engineering in Medicine and Biology Society (EMBC), 2019, pp. 6208–6211.

4. Other Major Publications:

- 4.1. Anthony, B.W.; Zarrouati, N.; Ljubicic, D. “Photogrammetric Based Inspection of Polymer Devices”, Singapore MIT Alliance (SMA) Symposium January 2008.
- 4.2. Fitriani, Brian W. Anthony, "Multiscale Dynamic Time and Space Warping" SMA Symposium, January 21-22, 2009.
- 4.3. Anthony, B.W., "Video Analytics – Future is Fast and Distributed", Government Security News (GSN) Guide to Video Surveillance, September 2011. Invited guest column.

4b. Articles in Preparation:

- 4.4. Du, X., Anthony, B., "Rotational Manufacturing Inspection System: Design for Vibration Reduction", target:
- 4.5. Du, X., Anthony, B., "Local-Active-Rotational-Based Super Resolution", target: IEEE Transactions on Pattern Analysis and Machine Intelligence
- 4.6. Ljubicic, D., Anthony, B., "Sensor for Thickness and Lateral Position of a Transparent Web in a Roll-to-Roll Process", target: IEEE Sensors
- 4.7. Feigin M., Ranger B., Anthony B., “Statistical Maximal Consensus Framework for Image Registration with Application to Medical Ultrasound Imaging”, pending submission to IEEE Transactions on Medical Imaging

5. Internal Memoranda and Progress Reports: List chronologically; number each item.

N/A

6. Invited Lectures (as of 2015):

June 2002, “High-speed software synchronizes images and data”, Technology Interview. Vision Systems Design.

PUBLIC VERSION

Publications of Brian W. Anthony

June 2003, 2003 “Highspeed Video and Data”, Brian W. Anthony, MIT High-Speed Photography and Videography for Motion Analysis: Systems and Techniques.

June 2003, 2004, 2005, 2006, “Overview of Machine Vision”, Brian W. Anthony, MIT High-Speed Photography and Videography for Motion Analysis: Systems and Techniques.

June 2006, “Video Event Analysis and Video Event Detection - Video Based System Monitoring”. Brian W. Anthony. CSAIL Machine Vision Colloquim.

July 24, 2008, "Computational Imaging Systems," Samsung Electro Mechanical Research, Korea.

May 5, 2009, "Video Instrumentation," LMP Seminar, MIT

January 5-7, 2011, "Automation of a Work Cell for Polymer Microdevice Production: Precise Alignment and Visual Quality Inspection ", The Second Conference on Advances in Microfluidics and Nanofluidics and Asian-Pacific International Symposium on Lab on Chip (AMN-APLOC 2011). Singapore.

February 11, 2011, "The MEDRC," MassMEDIC Board of Directors Meeting. Greenberg Traurig, International Place, Boston.

March 23-25 2011, "New Perspectives – similar problems", S2I2 Workshop on Collection Digitization, Field Museum, Chicago

June 20-22, 2011, "Design, Manufacturing, Information Technology, and Healthcare – enabling an information-driven healthcare future – industry, academia collaborations", Medical Device Manufacturing Summit, Red Rock Casino Resort & Spa, Las Vegas, NV.

July 6, 2011, “Design, Manufacturing, Information Technology, and Healthcare - enabling an information-driven healthcare future – industry, academia collaborations” Korean Institute of Science and Technology.

Nov 13-15, 2011, Invited Keynote Talk, "Medical Device Manufacturing - Helping to revitalize US manufacturing to capitalize on innovation," Medical Device Manufacturing Summit, Amelia Island, Florida

November 18, 2011, Invited Keynote Talk, "Computational Videography in Manufacturing," MIT Center for Biomedical Innovation’s Biomanufacturing Summit: Implementing Innovation in Biomanufacturing: The Hurdles and Opportunities, Bartos Theater, Building E15 MIT.

January 27, 2012, "The MEngM and MEDRC Models and Experiences," MassMEDIC's Workshop on Catalyzing Innovation through Industry/Academic Collaborations.

March 9, 2012, “Computational Enhanced Manufacturing Inspection Systems” Department of Manufacturing Engineering, Ann Arbor, Michigan

March 13, 2012, "Computational Instrumentation - designing systems at the intersection of mechanical engineering, electrical engineering, and computer science," LMP Seminar, MIT

March 15-16, 2012, "Industry, innovation, and entrepreneurship, in graduate education and research," SKTech Education Workshop, Moscow, Russia.

PUBLIC VERSION

Publications of Brian W. Anthony

March 27-28 2012, Invited Keynote Talk, "The Inner Beauty of Computational Enhanced Systems,"
Technology Review EmTech India Conference, Bengaluru, India.

June 9, 2012, Invited Moderator, "American Transformations: the Next Industrial Revolution", MIT Graduate
Alumni - Tech Reunions, MIT, Cambridge, MA.

May 22 2013, Invited Speaker, MIT Vienna Conference

June 16, 2013 , Invited Keynote Talk, "Lessons Learned from the MEDRC," EmTech China Conference,
Shanghai, China.

November 13 2013, Invited Speaker, "Microfluidic Devices Manufacturing - Sensing and Instrumentation
Challenges and Opportunities", Lab-on-a-chip Asia, Singapore

October 2013, Invited Speaker, "Have Russia's Innovation Prospects Stalled or Are You Just Not Looking Hard
Enough?", US Russian Business Council (USRBC) Annual Meeting,

January 2015, Keynote, "Limb Imaging" Wayne State University and Karmanos

October 2015, "Medical Device Innovation", Novartis Innovation Summit

(to be updated)

PUBLIC VERSION

Theses Supervised by Brian W. Anthony

Summary:

	<u>Total</u>	<u>Completed</u>	<u>In Progress</u>
Bachelor's	4	4	0
Master's	32	27	5
MEngM	16	16	0
Engineer's			
<u>Doctoral</u>			
As Supervisor	20	10	10
As Reader	4	3	1

Bachelor's Theses

Johnson, Michael B., "Design of a precise X-Y-Theta nanopositioning optical sensor", June 2009.

Syverud, Brian, "Robotic ultrasound manipulator: calibration of position and orientation measurement system", June 2009.

Chai, Lauren, "Design and Manufacture of arterial phantoms for ultrasound imaging", expected June 2012

Ramos, Javier, "Design of Force Measurement Probe", June 2012

Master's Theses

Fitriani, "Multiscale Dynamic Time and Space Warping", 2008

Zarrouati, Nadège, "A precision manipulation system for polymer microdevice production", 2010

Gilbertson, Matthew Wright, "Handheld force-controlled ultrasound probe", 2010

Sun, Shih-Yu, "Deformation correction in ultrasound imaging in an elastography framework", 2010

Zakrzewski, Aaron, "Multi-scale elastography with application to real-time blood pressure estimation", 2013

Koppaka, Sisir, "Quantitative Ultrasound for DMD progression tracking", (in CDO) 2015

Zhang, Xiang (Shawn), "3D Ultrasound scanning system for muscle deterioration monitoring, prosthetic fitting, and bone density monitoring", 2015

Primack, Willow. "Capacity Optimization of a Warehouse Flow Sortation System", LGO, 2015

PUBLIC VERSION

Theses Supervised by Brian W. Anthony

Churchill, Hugh E., II, "Impact of lean implementation on cycle-time and efficiencies within Amazon soft-lines fulfilment", LGO, 2015.

Sazdanoff, Nicholas, "Evaluation of Postponement for Improved Drug Product Supply Chain Stability", LGO, 2015.

Kojimoto, Nigel Costello, "Ultrasonic Inspection Methods for Defect Detection and Process Control in Roll-to-Roll Flexible Electronics Manufacturing", 2015

Kundu, Ina Annesha, "Imaging platforms for detecting and analyzing skin features and Its stability: with applications in skin health and in using the skin as a body-relative position-encoding system", 2015

Conover Susan, "Prime Areas for Improvement in Skin Cancer Detection and How Technology Can Help", SDM, 2015

Hess, Tylor, "System for small-volume high-frequency ultrasound, and quantitative optical molecular imaging assessment of biopsy samples", 2016

Kang Qi Ian Lee, "Skin Feature Analysis", CDO, 2016

Athena Yeh Huang, "New US Probes", 2017

Alex Benjamin, "US Education Hardware", CDO, 2017

Heng Yang, "Pulsed Elastography", 2017

Rebecca Zubajlo, "US Clamp Probe", 2017

Rishon Robert Benjamin, "Roll to roll polymer web inspection", CDO, 2017

Samer Haidar, "Consumer Medical Device Supply Chain Strategy", LGO, 2016

Mariam A Al-Meer, "Reducing Heart Failure Admissions through Improved Care Systems and Processes", LGO, 2017

Michael Sandford, "Improving Speed-to-Market through 3D Printing", LGO, 2017

Moritz Alexander Graule, "Dynamic SLAM", 2017

Mingxiu Sun, "Education and Practice Factory", 2018

Robin Singh. "Integrated Photonics", 2018

Judy Beaudoin, "Quantifying Dermatology: User-Independent Ultrasound Measurement of Skin Thickness, 2018

Andrew Farenheit, "Manufacturing Fleet Flexibility" 2019

Chris DiAndreth, "Product Flow Optimization within the Downstream Supply Chain" 2019.

PUBLIC VERSION

Theses Supervised by Brian W. Anthony

Manuel Martínez Puppo, “Replenishment in an Integrated Stock World”, 2019.

Shirley Lu, “Fiber Manufacturing”, expected 2020

Sangwoon Kim, “Deep learning in manufacturing”, expected 2020.

MEng Theses

Su, Xiangyong, “Optimization of labor allocation at a syringe production facility: design proposals”, September 2008.

Liaw, Sze Sen, “Optimization of labor allocation at a syringe production facility using computer simulation”, September 2008.

Ng, Gar Yan, “Optimization of labor allocation at a syringe production facility: work study”, September 2008.

Linares, Rodrigo, “Manufacturability of lab on a chip devices: tolerance analysis and requirements establishment”, September 2010.

Selvakumar, Sivesh, “Manufacturing of Lab-On-a-Chip devices: variation analysis of liquid delivery using blister packs”, September 2010.

Namvari, Kasra, “Manufacturability of lab-on-chip devices: dimensional variation analysis of electrode foils using visual technology”, September 2011.

Donoghue, Linda, “Design of a micro-interdigitated electrode for impedance measurement performance in a biochemical assay”, September 2011.

Holmes, Jacklyn, “Robustness and repeatability of interdigitated electrodes on a substrate tested in an aqueous environment”, September 2011

Judge, Benjamin, “Electrode manufacturing for micro-fluidic devices”, September 2012

Jain, Nikhil, “Blister pack manufacturing for micro-fluidic devices”, September 2012

Inamdar, Tejas Satish, “Blister pack modeling for micro-fluidic devices”, January 2013

Saber, Aabed Saud, “Electrode modeling for micro-fluidic devices”, January 2013

Nguyen , Khanh Huy, “Microfluidic device manufacturing - tools”, September 2013

Ragosta, Nicholas Hiroshi, “Microfluidic device manufacturing - inspection”, September 2013

Kalsekar, Viren Sunil, “Microfluidic device manufacturing - process”, September 2013

Elise Xue, “Deep-learning in ultrasound”, June 2018

Engineer’s Theses

PUBLIC VERSION

Theses Supervised by Brian W. Anthony

N/A

Doctoral Theses, Supervisor

Ljubicic, Dean, “Design of high-speed inspection system for micro-fluidic device manufacturing”, MechE, January 2013

Gilbertson, Matthew Wright, “Human in the loop design and modeling of force controlled ultrasound probes”, MechE, May 2014

Sun, Shih-Yu, “Real-time visual and ultrasound simultaneous localization and mapping (SLAM)”, EECS, August 2014

Zakrzewski , Aaron, “Real-time multi-scale pressure enhanced elastography”, MechE, 2017.

Roberts, Megan, “Advance manufacturing of flexible arrays for ultrasound probes”, MechE, 2018.

Lee, John, “Cell tracking and non-invasive ultrasound-based methods to diagnose neonatal and young infant meningitis”, EECS, 2015

Fincke, Jonathan Randall, "Ultrasonic quantification of human limbs (bone and tissue) using tomographic inversion techniques", 2018

Ranger, Bryan, “Prosthetic fitting”, HST, 2018

Ina Annesha Kundu, “Skin Imaging”, 2018

Rebecca Zubajlo, “Physical Measurement of Cells”, expected 2021

David Donghyun Kim, “Fiber Manufacturing Equipment”, expected 2020

Lauren Chai, “Radiation Force Manufacturing”, expected 2020

Jenny Wang, “Particle motion for acoustic radiation force characterization”, expected 2020

Anne Pigula, HST, “Image Based Biomarkers for Duchene Muscular Dystrophy”, expected 2020

Xiang Zhang, “Precision Tomography Platforms”, 2019

Alex Benjamin. “Volume Freehand Tomography”, expected 2020

Melinda Chen, “Liver Vascular Health Imaging”, expected 2020

Robin Singh, “Integrated Photonics Medical Sensors”, expected 2021

Alex Jaffe. EECS, “Venous and Blood Pressure in the extremities”, expected 2021

Yuwei Li, “Techniques for using AR/VR to measure physiological response”, expected 2022

PUBLIC VERSION

Theses Supervised by Brian W. Anthony

Arjun Chandar, “Smart Manufacturing”, expected 2021

Doctoral Theses, Reader / Committee

Shi, Chuan, “Efficient Buffer Design Algorithms for Production Line Profit Maximization”, September 2011

Petzelka, Joe, “On the contact fidelity and sensitivity of roll-based soft lithography”, June 2012

Smyth, Katherine, “Piezoelectric Micro-machined Ultrasonic Transducers for Medical Imaging”, October 2016

Athanasios G. Athanassiadis, “Optoacoustic Imaging”, 2019

PUBLIC VERSION

Postdoctoral Associates and Fellows Supervised by Brian W. Anthony

Current Postdocs

<i>Name</i>	<i>Dates of Appointment</i>	<i>PhD Granting Institution</i>
Greg Ely	2019 -	MIT
Megan Roberts	2018 -	MIT
Shawn Zhang	2019 -	MIT

Previous Postdocs

<i>Name</i>	<i>Current Title</i>	<i>Current Employer</i>
Vannah, Bill	Scientist	Mary Free Bed Rehabilitation Hospital
Victor Lempitsky	Head of AI	Samsung
Javier J. Gonzalez	May 2013 – 2015	University of Madrid
Matthew Gilbertson	Senior Electro-Optical Engineer	Lockheed Martin
Xian, Du	Professor	UMass (2018)
David Ibarra	Professor	Monterery Tec
Micha Feigin	Research Scientist	MIT
Ian Butterworth	Biomedical Research Engineer	MIT
Carlos Castro-Gonzalez		
	Co-Founder and CEO	Leuko
Berta Martí Fuster	Head of Communications	Oncoheroes Biosciences
Bonghun (Bruce) Shin	Senior Scientist	University Waterloo

EXHIBIT K

Knobbe Martens

KNOBBE, MARTENS, OLSON & BEAR, LLP

2040 Main St., 14th Fl., Irvine, CA 92614
T (949) 760-0404

Kendall M. Loebbaka
Kendall.Loebbaka@knobbe.com

November 3, 2021
Via Email

Nina Garcia
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109

Re: *In the Matter of Certain Light-Based Physiological Measurement Devices and Components Thereof*, Inv. No. 337-TA-1276

Dear Nina,

I write in response to your October 25 email disclosing expert Brian Anthony in this Investigation. Pursuant to Paragraph 11 of the Protective Order (Order No. 1), Masimo objects to Dr. Anthony receiving Complainants' confidential business information, and it is our understanding that Apple will not disclose such information to Dr. Anthony until Masimo's objections are resolved.

Dr. Anthony's website at the Massachusetts Institute of Technology (MIT) indicates that he "designs instruments and techniques to monitor and control physical systems." Additionally, Dr. Anthony is the director of "MIT's Master of Engineering in Manufacturing Program," co-director of the "Medical Electronic Device Realization Center (MEDRC)," and deputy director for the "MIT Skoltech Initiative." According to the MIT website, the vision of MEDRC is to "transform the medical electronic device industry. Specific areas that show promise are wearable or minimally invasive monitoring devices..." MEDRC was established to "foster the development of patient monitoring devices," and is focused on "minimally invasive technology that monitors activity." Additionally, Dr. Anthony is a published author and has conducted research on non-invasive monitoring of health information. For at least these reasons, Dr. Anthony should not be permitted to review Complainants' confidential information in this Investigation in the absence of adequate safeguards.

In an effort to informally resolve Masimo's objection, Masimo proposes executing an agreement similar to the agreements other experts disclosed by Apple have signed with respect to other matters with Masimo. Masimo has attached a proposed agreement for your review. Masimo understands that although Apple had previously agreed to this type of procedure in the district court action, Apple has changed its position and is now unwilling to address Masimo's objections to Apple's experts with agreements for each expert. Instead, Apple proposes that the parties address objections to all experts in a supplemental protective order. As Masimo explained at the DCM and in its October 28 letter, the parties are currently not in agreement on the supplemental protective order, and the same concerns do not apply to each expert. Moreover, there is uncertainty on when any supplemental protective order will be entered and what provisions will be adopted by the ALJ. Accordingly, Masimo requests that Apple consider Masimo's proposal to address its specific objections to Dr. Anthony.

Please promptly confirm that Apple and Dr. Anthony are agreeable to such an agreement to resolve Masimo's objection to Dr. Anthony. If Apple is not agreeable, please provide Apple's availability to discuss Apple's objections early next week in advance of Masimo's deadline to move for relief from the ALJ. To avoid any ambiguity, in the absence of any executed agreement, Masimo maintains its objection to the disclosure of Complainants' CBI to Dr. Anthony.

Sincerely,

A handwritten signature in black ink, appearing to read 'KL', with a horizontal line extending to the right.

Kendall M. Loebbaka

Enclosure: DRAFT Dr. Anthony Agreement

EXHIBIT L

Knobbe Martens

KNOBBE, MARTENS, OLSON & BEAR, LLP

2040 Main St., 14th Fl., Irvine, CA 92614
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Kendall M. Loebbaka
Kendall.Loebbaka@knobbe.com

October 28, 2021
Via Email

Henry Nikogosyan
Wilmer Cutler Pickering Hale and Dorr LLP
2600 El Camino Real, Suite 400
Palo Alto, California 94306

Re: *In the Matter of Certain Light-Based Physiological Measurement Devices and Components Thereof*, Inv. No. 337-TA-1276

Dear Henry,

I write in response to Apple's October 19 email disclosing experts Robert Stone and Majid Sarrafzadeh in this Investigation and Apple's proposal to resolve Masimo's objections to Dr. Warren discussed during the parties' October 27 Discovery Committee Meeting (DCM).

Pursuant to Paragraph 11 of the Protective Order (Order No. 1), Masimo objects to Drs. Stone and Sarrafzadeh receiving Complainants' confidential business information, and it is our understanding that Apple will not disclose such information to Drs. Stone and Sarrafzadeh until Masimo's objections are resolved.

Dr. Stone

Dr. Stone's CV indicates that he is the founder and Chief Executive Officer of Medical Design Solutions, Inc., where "Dr. Stone is responsible for all phases of product development including concept definition, prototyping, design, evaluation, patenting, and technology licensing." Medical Design Solutions' website states that its expertise includes photo-plethysmographic, invasive and noninvasive, among other areas. Its website also notes that it has a wearable health monitoring device. Further, Dr. Stone has a history of designing and developing medical devices, including devices that compete with Complainants' technology. For at least these reasons, Dr. Stone should not be permitted to review Complainants' confidential information in this Investigation in the absence of adequate safeguards to ensure compliance with Paragraph 4 of the Protective Order to "utilize such confidential business information solely for purposes of this Investigation."

Dr. Stone has previously been an expert for companies adverse to Masimo. In 2010, Dr. Stone executed the attached agreement with respect to the action *Masimo Corp. v. Philips Electronics North America Corp.*, No. 1:09-cv-00080-LPS-MPT in the United States District Court for the District of Delaware. In view of the restrictions previously agreed to by Dr. Stone, and in an effort to informally resolve Masimo's objection in this proceeding, Masimo proposes executing a similar agreement to resolve Masimo's objections to Dr. Stone receiving Masimo's confidential business information. Masimo has attached a proposed agreement for your review.

Dr. Sarrafzadeh

In August 2020, Apple disclosed Dr. Sarrafzadeh as an expert in the parties' District Court Litigation. For the same reasons articulated in the District Court Litigation, Masimo objects to Dr. Sarrafzadeh in this Investigation. Dr. Sarrafzadeh's CV indicates that he has a history of working in the design and development of medical devices, including devices that compete with Complainants' technology. For example, Dr. Sarrafzadeh assists multiple health initiatives at UCLA that test and develop medical devices, including SMART, BRITE, and WHI. Dr. Sarrafzadeh has also founded multiple medical device companies, including MediSens, Bruin Biometrics, and WANDA. Additionally, Dr. Sarrafzadeh is prosecuting patent applications, including U.S. Patent Application No. 16/296,018 entitled "Apparatus, Systems, and Methods for Tissue Oximetry and Perfusion Imaging." For at least these reasons, Dr. Sarrafzadeh should not be permitted to review Complainants' confidential information in this Investigation in the absence of adequate safeguards to ensure compliance with Paragraph 4 of the Protective Order to "utilize such confidential business information solely for purposes of this Investigation."

To resolve the parties' dispute in the District Court Litigation, Dr. Sarrafzadeh executed an agreement in which he represented and warranted that he is not and does not intend or plan to be involved in creating, developing, modifying, publishing, or commercializing certain technology. Dr. Sarrafzadeh also agreed not to be involved in creating, developing, or modifying, for commercial use, certain technology for the duration of the District Court Litigation, including all appeals from orders and final judgments, plus two years. I have attached a copy of this agreement for reference. In view of the restrictions already agreed to by Dr. Sarrafzadeh, and in an effort to informally resolve Masimo's objection in this proceeding, Masimo proposes executing an amendment to the existing agreement to specify that the enforcement period of the agreement shall be the longer of the duration of this Investigation or the District Court Litigation, including all appeals from orders and final judgments in either proceeding, plus two years. Masimo has attached a proposed amendment for your review. As stated above, Masimo requests that Apple reconsider its position from the October 27 DCM and consider the proposed amendment.

Apple's October 27 DCM Proposal

During the parties' October 27 DCM, the parties discussed Masimo's objections to the disclosure of its confidential information to Apple's proposed expert Dr. Steve Warren. As noted in Masimo's October 22 letter, Masimo objected to Dr. Warren in the District Court Litigation, which was resolved by an agreement in which Dr. Warren agreed to not create, develop, or modify certain technology. To address Masimo's objection, Masimo proposed amending the District Court Litigation agreement to include this Investigation. During the DCM, Apple would not confirm whether Dr. Warren was willing to enter into this amendment, but instead stated that it would prefer to address restrictions on experts in a supplemental protective order and would provide a draft for Masimo's review. Masimo will consider the draft when it is received, which Apple indicated would be by the end of this week (i.e., October 29). However, the parties are currently not in agreement on multiple provisions in the supplemental protective order. Moreover, the parties do not know when such supplemental protective order will be entered and what provisions will be adopted by the ALJ. Accordingly, Apple's proposal is unworkable to resolve the parties' expert disputes in the timeframe permitted. Masimo requests that Apple promptly consider the proposed agreements and amendments for Drs. Warren, Stone, and Sarrafzadeh to avoid unnecessary motion practice.

knobbe.com

* * * * *

Please confirm that Apple and Dr. Stone are agreeable to the proposed agreement to resolve Masimo's objection. Please also confirm that Apple and Dr. Sarrafzadeh are agreeable to the proposed amendment to Dr. Sarrafzadeh's agreement to resolve Masimo's objection. If Apple is not agreeable to the proposals to resolve Masimo's objections to Drs. Stone and Sarrafzadeh, please be prepared to discuss Apple's position at the parties' next DCM on November 3. Moreover, pursuant to the Protective Order, Masimo intends to seek relief from the ALJ if Masimo does not receive an executed amendment to Dr. Warren's agreement before 12 p.m. Eastern on Friday October 29.

To avoid any ambiguity, in the absence of any executed agreement for Dr. Stone and executed amendments to the existing agreements of Drs. Warren and Sarrafzadeh, Masimo maintains its objection to the disclosure of Complainants' CBI to Drs. Warren, Stone and Sarrafzadeh.

Sincerely,



Kendall M. Loebbaka

Enclosures: Dr. Stone Agreement, dated September 1, 2010
Draft Dr. Stone Agreement
Dr. Sarrafzadeh Agreement, dated January 7, 2021
Draft Amendment to Dr. Sarrafzadeh Agreement

EXHIBIT M

KNOBBE, MARTENS, OLSON & BEAR, LLP

2040 Main St., 14th Fl., Irvine, CA 92614
T (949) 760-0404

Kendall M. Loebbaka
Kendall.Loebbaka@knobbe.com

October 22, 2021

Via Email

Jonathan A. Cox
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109

Re: *In the Matter of Certain Light-Based Physiological Measurement Devices and Components Thereof*, Inv. No. 337-TA-1276

Dear Jonathan,

I write in response to your October 14 email disclosing expert Steven Warren in this Investigation. Pursuant to Paragraph 11 of the Protective Order (Order No. 1), Masimo objects to Dr. Warren receiving Complainants' confidential business information, and it is our understanding that Apple will not disclose such information to Dr. Warren until Masimo's objections are resolved.

In September 2020, Apple disclosed Dr. Warren as an expert in the parties' District Court Litigation. For the same reasons articulated in the District Court Litigation, Masimo objects to Dr. Warren in this Investigation. Dr. Warren's website at Kansas State University indicates that he is the director of the "K-State Medical Component Design Laboratory," which is involved in "wearable sensors and signal processing techniques to determine human/animal health." Additionally, while discussing Masimo's objections to Dr. Warren in the District Court Litigation, Apple indicated that Dr. Warren may resume research into blood oxygen saturation and/or the determination of blood analytes in the future. For at least these reasons, Dr. Warren should not be permitted to review Complainants' confidential information in this Investigation in the absence of adequate safeguards.

To resolve the parties' dispute in the District Court Litigation, Dr. Warren executed an agreement in which he agreed not to be involved in creating, developing, or modifying certain technology for the duration of the District Court Litigation, including all appeals from orders and final judgments, plus two years. I have attached a copy of this agreement for reference. In view of the restrictions already agreed to by Dr. Warren, and in an effort to informally resolve Masimo's objection in this proceeding, Masimo proposes executing an amendment to the existing agreement to specify that the enforcement period of the agreement shall be the longer of the duration of this Investigation or the District Court Litigation, including all appeals from orders and final judgments in either proceeding, plus two years. Masimo has attached a proposed amendment for your review.

Please confirm that Apple and Dr. Warren are agreeable to such an amendment to resolve Masimo's objection to Dr. Warren. If Apple is not agreeable to such amendment, please be prepared to discuss Apple's objections to the amendment at the parties' next discovery committee meeting on October 27. To avoid any ambiguity, in the absence of any executed amendment to

Dr. Warren's existing agreement, Masimo maintains its objection to the disclosure of Complainants' CBI to Dr. Warren.

Sincerely,

A handwritten signature in black ink, appearing to read 'KML', with a horizontal line extending to the right.

Kendall M. Loebbaka

Enclosures: Dr. Warren Agreement, dated December 18, 2020
 Draft Amendment to Dr. Warren Agreement

EXHIBIT N

From: Garcia, Nina
Sent: Monday, November 1, 2021 4:08 PM
To: Masimo.AppleITC
Cc: WH Apple-Masimo 1276 Service List
Subject: 337-TA-1276: Supplemental Protective Order
Attachments: 2021-11-01 Draft Supplemental Protective Order (Apple edit to Masimo redline)(190594980.2).docx;
Redline - 2021-10-13 Draft Supplemental Protective Order (Masimo redline to Apple) and
2021-11-01 Draft Supplemental Protective Order (Apple edit to Masimo redl.pdf

Counsel,

Please find attached Apple's edits to the supplemental protective order, and redline.

In the parties' October 27 DCM and our October 29 correspondence, we reiterated that the SPO should include a global development bar that would apply a consistent standard for all individuals accessing the parties' CBI. This approach would ensure consistency and address the concerns Complainants have raised in connection with the separate agreements they seek to have Apple's experts Drs. Warren, Sarrafzadeh, and Stone execute. Accordingly, the attached SPO has proposed language aimed at resolving this disagreement.

We again ask that Complainants withdraw their request that Apple's technical experts (but not Complainants') sign individual side agreements, and engage in good faith to resolve the parties' negotiations over an SPO that would apply to all experts. To the extent additional limitations are warranted, they should apply equally to Complainants' and Apple's experts and the most sensical context to negotiate those limitations is in the context of the SPO. To that end, for any proposed experts whom Complainants disclose in the future, as well as any disclosed Complainant experts for whom the objection period has not yet lapsed (including Nicholas Godici), Apple objects to those individuals accessing Apple CBI absent entry of a supplemental protective order that includes a development bar. We are available to meet and confer to resolve any remaining disagreements regarding the scope of the SPO.

Thank you.

Best,
Nina

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For more information about WilmerHale, please visit us at <http://www.wilmerhale.com>.

EXHIBIT O

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

**JOINT MOTION TO AMEND THE PROTECTIVE ORDER TO ADD PROVISIONS
REGARDING PRODUCTION AND REVIEW OF SOURCE CODE**

Pursuant to 19 C.F.R. §§ 201.6, 210.5, 210.15, and 210.34 Complainants Masimo Corporation and Cercacor Laboratories, Inc. (collectively, “Masimo” or “Complainants”) and Respondent Apple Inc. (“Apple”) (collectively, the “Parties”) jointly move to amend the Protective Order (Order No. 1), which issued on August 19, 2021, to establish procedures for enhanced confidentiality protections regarding the production and review of source code. The proposed amendments are attached as Appendix A.

The Parties have already requested and expect they will produce source code in this Investigation. The requested source code is highly confidential and is relevant to show the structure and operation of products at issue in this Investigation. The source code is highly valuable intellectual property, and unauthorized disclosure of the source code would cause significant, lasting competitive harm to the producing parties. Source code is easily copied, particularly in the electronic form in which it is typically produced or reviewed. These amendments to the Protective Order are intended to impose reasonable controls on the potential distribution and copying of source code by, among other things, allowing inspection in a controlled

environment and printing only portions thereof with markings that indicate that its use is subject to the Protective Order.

The Parties have met and conferred, and agreed upon the provisions set forth below. Accordingly, the Parties respectfully request this Motion be granted, and for paragraphs 18-20 in Appendix A to be adopted by Order.

Dated: November 12, 2021

Respectfully submitted,

/s/ *

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Joseph R. Re
Sheila N. Swaroop
Ted. M. Cannon
Alan G. Laquer
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/s/ *

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1155 Avenue of the Americas
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*Counsel for Complainants
Masimo Corporation and
Cercacor Laboratories, Inc.*

APPENDIX A

18. **Source Code.** A supplier may designate non-public Source Code as “HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY.”

- A. “Source Code” shall mean source code, source code listings (e.g., file names and path structures), object code (e.g., computer instructions and data definitions expressed in a form suitable for input to an assembler, compiler, or other translator), object code listings and descriptions of object code, scripts, assemblies, binaries, descriptions of source code (e.g., descriptions of declarations, functions, and parameters), microcode, register transfer level (“RTL”) files that describe the hardware design of any ASIC or other chip, and hardware description language (“HDL”), as well as any and all programmer notes, annotations, and other comments of any type related thereto and contained within a file also containing the code. For avoidance of doubt, Source Code includes source files, make files, intermediate output files, executable files, header files, resource files, library files, module definition files, map files, object files, linker files, browse info files, and debug files. Computer aided design (CAD) files may be designated pursuant to this Paragraph.
- B. Materials designated as “HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY,” shall only be reviewable by SOURCE CODE-QUALIFIED PERSONS. SOURCE CODE QUALIFIED PERSONS include the following:
- (i) outside litigation counsel for Complainants and Respondent in this Investigation who have subscribed to the Administrative Protective Order

in this Investigation, and necessary secretarial and support personnel assisting such counsel;

- (ii) the Commission, the Administrative Law Judge (“ALJ”), Commission personnel and contract personnel who are acting in the capacity of Commission employees as indicated in paragraph 3 of this Protective Order;
- (iii) court reporters, stenographers and videographers transcribing or recording testimony at depositions, hearings or trial in this Investigation; and
- (iv) Qualified Consultants and/or Qualified Experts in this Investigation (under paragraph 11 of the Administrative Protective Order in this Investigation) to whom disclosure is reasonably necessary for this Investigation, provided that each Qualified Consultant and/or Qualified Expert complies with the following “Pre-Access Disclosure Requirements:” at least ten (10) calendar days (not including federal holidays) before access to the HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY information is to be given to a consultant or expert, the consultant or expert shall complete the “CERTIFICATION OF EXPERT/CONSULTANT REGARDING PROTECTIVE ORDER” (Exhibit A) and the same shall be served upon the supplier along with the consultant or expert’s educational and detailed employment history, including an identification of any individual or entity with or for whom the person is employed or to whom the person provides consulting services relating to the design, development, operation, or patenting of non-

invasive physiological monitoring technologies, or relating to the acquisition of intellectual property assets relating to noninvasive physiological monitoring.

1. The supplier shall have ten (10) calendar days (excluding federal holidays) from receipt of the information described in the Pre-Access Disclosure Requirements (plus three (3) extra days if notice is given other than by hand delivery, email delivery, or facsimile transmission) to object to the disclosure of HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY information to any proposed expert or consultant. After the expiration of this objection period, if no objection has been asserted, the HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY information may be disclosed to the Qualified Consultant and/or Qualified Expert pursuant to the terms of this Supplemental Protective Order.

C. Source Code shall be provided with the following additional protections:

- (i) Nothing in this Protective Order shall obligate the parties to produce any Source Code, nor act as an admission that any particular Source Code is discoverable.
- (ii) Access to Source Code will be given only to SOURCE CODE QUALIFIED PERSONS.
- (iii) Access to Source Code shall be made available for inspection, in a format allowing it to be reasonably reviewed and searched, during normal

business hours or at other mutually agreeable times, at an office of the Producing Party's outside litigation counsel WilmerHale or Knobbe Martens or another mutually agreed upon location on a "stand-alone secure computer" (*i.e.*, the computer(s) may not be linked to any network, including a local area network ("LAN"), an intranet, or the Internet, and may not be connected to any printer or storage device other than the internal hard disk drive of the computer). The stand-alone secure computer(s) may be provided in a secured room without Internet access or network access to other computers ("Source Code Review Room") at the offices of the supplier's outside litigation counsel, or at such other location as the supplier and receiving party mutually agree. No recordable media or recordable devices, including without limitation sound recorders, computers, cellular telephones, peripheral equipment, cameras, CDs, DVDs, or drives of any kind, shall be permitted into the Source Code Review Room.

- (iv) The supplier shall install tools that are sufficient for viewing and searching the code produced, on the platform produced, if such tools exist and are presently used in the ordinary course of the supplier's business. The receiving party's outside counsel and/or experts may request that commercially available software tools for viewing and searching Source Code be installed on the secured computer, provided, however, that (a) the receiving party possesses an appropriate license to such software tools; (b) the supplier approves such software tools; and (c) such other software

tools are reasonably necessary for the receiving party to perform its review of the Source Code consistent with all of the protections herein. The receiving party must provide the supplier with access to the installation copy of such licensed software tool(s) (e.g., through the installer package or a URL to download it from, or its CD or DVD) at least ten (10) days in advance of the date upon which the receiving party wishes to have the additional software tools available for use on the stand-alone secure computer(s). The Parties agree to cooperate in good faith if additional software becomes necessary.

- (v) The receiving party shall provide at least two (2) business days' notice to access the source code and make reasonable efforts to restrict its requests for access to the stand-alone secure computer to normal business hours, which for purposes of this paragraph shall be 9:00 a.m. through 6:00 p.m. local time at the reviewing location. Upon reasonable notice from the receiving party, which shall not be less than five (5) business days in advance, the supplier shall make reasonable efforts to accommodate the receiving party's request for access to the computer outside of normal business hours. Such an expanded review period shall not begin earlier than 8:00 a.m. and shall not end later than 8:00 p.m. local time at the reviewing location. The parties are to cooperate in good faith such that maintaining the Source Code at the offices of the supplier's outside litigation counsel shall not unreasonably hinder the receiving party's ability to efficiently conduct the prosecution or defense in this

investigation. It is expected that access to the Source Code shall be provided at the site of any hearing. Proper identification of all SOURCE CODE QUALIFIED PERSONS shall be provided prior to any access to the stand-alone secure computer(s). Proper identification requires showing, at a minimum, a photo identification card sanctioned by the government of any State of the United States, by the government of the United States, or by the nation state of the authorized person's current citizenship. Access to the Source Code Review Room or the stand-alone secure computer(s) may be denied, at the discretion of the supplier, to any individual who fails to provide proper identification.

- (vi) All SOURCE CODE QUALIFIED PERSONS who will review Source Code on behalf of a receiving party shall be identified in writing to the supplier at least two (2) business days in advance of the first time that such person reviews such Source Code. Such identification shall be in addition to any disclosure required under paragraph 18(B) of this Protective Order. The supplier shall provide these individuals with information explaining how to start, log on to, and operate the stand-alone secure computer in order to access the produced Source Code on the stand-alone secure computer. For subsequent reviews by SOURCE CODE QUALIFIED PERSONS, the receiving party shall give at least 24 hours' notice to the supplier of such review. All persons viewing Source Code on the source code computer in an office of outside litigation counsel shall sign on each day they view Source Code a log that will include the names of persons

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who enter the Source Code Review Room to view the Source Code and when they enter and depart. The log shall be kept by the supplier.

- (vii) No person other than the supplier may alter, dismantle, disassemble, or modify the stand-alone secure computer in any way, or attempt to circumvent any security feature of the computer.
- (viii) No copies shall be made of Source Code, whether physical, electronic, or otherwise, other than volatile copies necessarily made in the normal course of accessing the Source Code on the stand-alone secure computer, except for: (1) print outs of portions of the Source Code that are reasonably necessary for the preparation of filings, pleadings, expert reports, or other papers, or for deposition or hearing; and (2) such other uses to which the parties may agree or that the ALJ or the Commission may order. The receiving party shall not request paper copies for the purposes of reviewing the source code in the first instance and shall not use any outside electronic device to copy, record, photograph, or otherwise reproduce Source Code. Any printed portion of Source Code that consists of more than fifteen (15) pages of a continuous block of Source Code or more than two hundred (200) pages total shall be presumed to be excessive, and the burden shall be on the receiving party to demonstrate the need for such a printed copy. The supplier shall not unreasonably withhold approval and the parties shall meet and confer in good faith to resolve any disputes.

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- (ix) The receiving party may take notes, but may not copy the Source Code into the notes and may not take notes on a laptop or other personal electronic device. For clarity, the receiving party may include the names of source code files, variables, and functions within their notes, as reasonably necessary for notetaking purposes. Any such notes must be treated as HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY under the Protective Order. Unless otherwise agreed in advance by the Parties in writing, following each day on which inspection is done under this Order, the receiving party’s outside counsel and/or experts shall remove all notes, documents, and all other materials from the Source Code Review Room. The supplier is not responsible for any items left in the room following each inspection session. But all counsel remain bound by their ethical duties regarding the handling and possible return of work product inadvertently left behind by a representative of an opposing party.
- (x) The supplier may exercise personal supervision from outside the review room over the receiving party when the receiving party is in the Source Code Review Room. Such supervision, however, shall not entail review of any work product generated by the receiving party, *e.g.*, monitoring the screen of the stand-alone secure computer, monitoring any surface reflecting any notes or work product of the receiving party, or monitoring the key strokes of the receiving party. There will be no video supervision

by any supplier when the review occurs in the office of outside litigation counsel.

- (xi) Nothing may be removed from the stand-alone secure computer(s), either by the receiving party or at the request of the receiving party, except for (1) print outs of reasonable portions of the Source Code in accordance with the provisions of paragraphs 18(C)(ix)-(x) of this Protective Order; and (2) such other uses to which the parties may agree or that the ALJ or the Commission may order.
- (xii) At the request of the receiving party, the supplier shall within three (3) business days provide two (2) hard copy print outs of the specific lines, pages, or files of the Source Code that the receiving party believes in good faith are necessary to understand a relevant feature of an accused product. The receiving party may identify those lines, pages, or files by printing them to a temporary file on the computer, such as in PDF format. If the supplier objects in any manner to the production of the requested source code (*e.g.*, the request is too voluminous), it shall state its objection within the allotted two (2) business days pursuant to this paragraph. In the event of a dispute, the parties will meet and confer within five (5) business days of the objection being raised and if they cannot resolve the objection, the parties will raise it with the ALJ. The burden shall be on the receiving party to demonstrate that any such printed portions of Source Code are no more than is reasonably necessary for a permitted purpose and not merely printed for the purposes of review and analysis elsewhere.

(xiii) Hard copy print outs of Source Code shall be provided on Bates numbered and watermarked or colored paper clearly labeled HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY on each page and shall be maintained by the receiving party’s outside litigation counsel or SOURCE CODE QUALIFIED PERSONS in a secure locked area. For avoidance of doubt, an access-restricted location within the facilities of outside litigation counsel or a qualified expert, such as a conference room within an access restricted office or a locked drawer or cabinet, shall constitute a secured locked area. The receiving party may also temporarily keep the print outs at: (1) the Commission for any proceeding(s) relating to the Source Code, for the dates associated with the proceeding(s); (2) the sites where any deposition(s) relating to the Source Code are taken, for the dates associated with the deposition(s); and (3) any intermediate location reasonably necessary to transport the print outs (*e.g.*, a hotel prior to a Commission proceeding or deposition). The receiving party shall exercise due care in maintaining the security of the print outs at these temporary locations. No further hard copies of such Source Code shall be made and the Source Code shall not be transferred into any electronic format or onto any electronic media except that:

1. The receiving party is permitted to request that the supplier make additional hard copies of printed Source Code designated as HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY for use at a deposition. Copies of Source Code

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designated as HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY that are marked as deposition exhibits shall not be provided to the Court Reporter or attached to deposition transcripts; rather, the deposition record will identify the exhibit by its production numbers. All such copies shall remain with the supplier’s outside counsel for secure destruction in a timely manner following the deposition.

2. The receiving party is permitted to make up to five (5) additional hard copies for the Commission in connection with a filing, hearing, or trial, and of only the specific pages directly relevant to and necessary for deciding the issue for which the portions of the Source Code are being filed or offered.
3. Except as provided in this sub-paragraph, absent express written permission from the supplier, the receiving party may not create electronic images, or any other images, or make electronic copies, of the Source Code from any paper copy of Source Code for use in any manner (including by way of example only, the receiving party may not scan the Source Code to a PDF or photograph the code). Images or copies of Source Code shall not be included in correspondence between the Parties (references to production numbers shall be used instead), and shall be omitted from pleadings and other papers whenever possible. If a Party reasonably believes that it needs to reference a portion of Source

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Code as part of a Commission filing, expert report, contention, or discovery response, the Party shall cite the page and line numbers of the relevant Source Code and such Source Code will not be filed or otherwise attached absent agreement from the supplier that the confidentiality protections will be adequate or order of the ALJ. If a supplier agrees to produce an electronic copy of all or any portion of its Source Code or provides written permission to the receiving party that an electronic or any other copy may be made for a Commission filing, expert report, contention, or discovery response, access to the receiving party's submission, communication, and/or disclosure of electronic files or other materials containing any portion of Source Code (paper or electronic) shall at all times be limited solely to individuals who are expressly authorized to view Source Code under the provisions of this Order. Where the supplier has provided the express written permission required under this provision for a receiving party to create electronic copies of Source Code, the receiving party shall maintain a log of all such electronic copies of any portion of Source Code in its possession or in the possession of its retained consultants, including the names of the reviewers and/or recipients of any such electronic copies, and the locations and manner in which the electronic copies are stored. Any such electronic copies

must be labeled “HIGHLY CONFIDENTIAL – SOURCE CODE” as provided for in this Order.

4. The supplier shall, on request, make a searchable electronic copy of the Source Code available on a stand-alone secure computer during depositions of witnesses who would otherwise be permitted access to such Source Code. The receiving party shall make such request at the time of the notice for deposition.
- (xiv) Nothing in this Protective Order shall be construed to limit how a supplier may maintain the supplier’s own material designated as HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY.
 - (xv) Outside litigation counsel for the receiving party with custody of HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY shall maintain a source code log containing the following information: (1) the identity of each person granted access to the HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY; and (2) the first date on which such access was granted. Outside litigation counsel for the receiving party will produce, upon request, each such source code log to the supplier within twenty (20) days of the final determination of the investigation.
 - (xvi) A receiving party may not cause a supplier’s Source code to leave the United States absent written agreement.

19. Prosecution and Development Bar.

- A. “Relevant Technology” means technology related to pulse oximetry.

- B. Unless otherwise permitted in writing between supplying party and receiving party, any individual who personally receives, other than on behalf of the supplying party, any material showing or describing the technical functionality of the supplying party's products designated as CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES ONLY under this Protective Order shall not prepare, prosecute, supervise, advise, counsel, or assist in the preparation or prosecution of any patent application seeking a patent on behalf of the receiving party or its acquirer, successor, or predecessor in the Relevant Technology during the pendency of this Investigation and for two years after final termination of this Investigation or, alternatively, for two years after the time the individual person(s) formally withdraws from the Administrative Protective Order. In addition, any such person is prohibited from having any involvement in the prosecution of any patent, patent application or re-examination in the Relevant Technology that was filed, or that claims priority from any application that was filed, for up to one year following the final termination of this Investigation (including any appeals). To avoid any doubt, "prosecution" as used in this paragraph does not include representing or advising a Party before a domestic or foreign agency in connection with a reissue, ex parte reexamination, *inter partes* review, opposition, cancelation, or similar proceeding; though in connection with any such agency proceeding involving the patents-in-suit, Outside Counsel of Record for a receiving party shall not: (i) participate in the preparation, prosecution, supervision, advice, counsel, or assistance of any

amended claims; (ii) reveal a supplier's CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES ONLY material to any prosecuting reexamination counsel or agent; or (iii) use a supplier's CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES ONLY for any purpose prohibited by this Protective Order Addendum. The applicability of this provision is to be determined on an individual-by-individual basis such that an individual attorney who has not received CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES ONLY is not restricted from undertaking any activities by virtue of this provision even if said individual attorney is employed by or works for the same firm or organization as an individual who has received such material.

- C. Unless otherwise permitted in writing between supplying party and receiving party, any Qualified Consultant or Qualified Expert or other SOURCE CODE QUALIFIED PERSON retained on behalf of receiving party who is to be given access to any material showing or describing the technical functionality of the supplying party's products designated as CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES ONLY produced by another party must agree in writing not to be involved in creating, developing, or modifying, for commercial use, any technology designed for performing pulse

oximetry from the time of first receipt of such material designated as CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY through one year after the date the Qualified Expert or other SOURCE CODE QUALIFIED PERSON formally withdraws from the Protective Order. For avoidance of doubt, during periods in which the individual person(s) has ceased to have possession of such material or any documents or notes reflecting such material, this section shall not apply.

20. **Competitive Decision-Making Bar.** Absent written consent from the supplier, any individual who receives access to material designated CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY shall not be involved in competitive decision-making for a Party, relating to the subject matter of the CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY material accessed by the individual. This bar shall begin when upon the individual’s first receipt of material designated CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY and shall end one (1) year after the affected individual formally withdraws from the Protective Order in this Investigation.

EXHIBIT A

CERTIFICATION OF EXPERT/CONSULTANT REGARDING PROTECTIVE ORDER

I, _____ [print or type full name], of _____ am not an employee of the Party who retained me or of a competitor of any Party and will not use any information, documents, or things that are subject to the Protective Order entered _____, for any purpose other than this litigation. I agree not to perform product development work or participate in competitive decision-making for a Party related to the particular information disclosed in the designated material describing the technical functionality of a supplying party's products disclosed to me, from the time of receipt of such material through the date that I cease to have access to any such designated material. For avoidance of doubt, during periods in which the individual person(s) has ceased to have possession of such material or any documents or notes reflecting such material, this section shall not apply.

I state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed On _____.

[Printed Name]

[Signature]

EXHIBIT P

WILMERHALE

November 5, 2021

Sarah R. Frazier

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Re: *Certain Light-Based Physiological Measurement Devices and Components Thereof*,
Inv. No. 337-TA-1276

Dear Kendall:

I write to summarize the parties' discussions at the November 3, 2021 Discovery Committee Meeting ("DCM").

I. Issues Raised by Apple

A. Inspection of "Physicals" Serving as the Basis for Complainants' Alleged Domestic Industry for the '501, '502, '648, '745 Patents and Complainants' Deficient Responses Regarding Those Items (First Set Requests for Admission and Sixth Set of Interrogatories; Nov. 1 email from Frazier)

As discussed at length on the DCM, Complainants' continued failure to provide Apple with straight answers in response to basic requests about [REDACTED] remains a serious issue that Complainants' recent discovery responses fail to remedy. Complainants have still not clearly identified any of the "physicals" (by which we believe you mean to refer to "physical items") produced for inspection on October 20, 2021 as [REDACTED] that Complainants have alleged in their Amended Complaint and in response to Interrogatory No. 2 that they will rely on to support their domestic industry allegations (and that a [REDACTED] [REDACTED] as of the time of the Amended Complaint). This failure to identify any "physical" provided for inspection as [REDACTED] is also inconsistent with Complainants' responses to Apple's First Set of Requests for Admission (in which Complainants *denied* that [REDACTED] "physicals" at issue in those Requests were *not* the [REDACTED] and Complainants' responses to prior Apple discovery requests (including Complainants' responses to Interrogatory Nos. 2, 68, and 71). When asked directly whether any of the physical items provided for inspection is a [REDACTED]"—information required by both formal discovery requests and the ALJ's order to Complainants—counsel refused to provide any response.

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As explained during the DCM, this is highly troubling. The deficiencies and inconsistencies Apple has identified go beyond a mere discovery dispute. They instead go to the heart of this Investigation. If Complainants signed the Complaint and Amended Complaint while attesting to the domestic industry contentions contained therein, and if the factual bases were not well-founded or accurate as of when the Complaint was filed, Apple will find out as discovery continues. Further, if it is revealed that the Complainants' domestic industry was contrived in order to file a Complaint, we intend to raise that as an issue with the ALJ and Commission. Apple repeatedly encouraged Complainants to critically evaluate whether to continue pursuing this Investigation with respect to the '501, '502, '648, and '745 patents in view of their continued failure to identify [REDACTED] and was allegedly available "upon request" as of that time.

Apple explained to Complainants the inconsistencies discussed above as well as others. For example, Apple noted that in their responses to Interrogatory No. 2, Complainants identified only [REDACTED] as the sole product Complainants are relying on to satisfy the technical prong of the domestic industry requirement. That response is not reconcilable with RFA responses that indicate [REDACTED]. Apple also pointed out that the RFA responses are inconsistent with the fact that Complainants' response to Interrogatory No. 73 fails to describe *any* physical item provided for inspection as [REDACTED] identified in Complainants' August 30, 2021 response to Interrogatory No. 2; and response to Interrogatory No. 68 (which asked for a description of the state of development [REDACTED] as of the time of the Complaint, including the physical embodiments of the device) likewise does not even mention most of the items provided for inspection. In view of these inconsistencies, Apple repeatedly asked Complainants to simply identify which, if any, "physicals" provided for inspection are [REDACTED] and raised the need for a clear, complete, and accurate identification by Complainants of which of the [REDACTED] made available for inspection on October 20, 2021 [REDACTED]. Complainants refused to respond or to even represent on the DCM whether they have in fact provided for inspection [REDACTED].

Complainants indicated that they are reviewing their responses to at least Interrogatory Nos. 2 and 68, and would supplement their responses "if necessary." However, they refused to agree to a date by which they would supplement their responses to correct for the deficiencies Apple has identified.

Apple stated that the purpose of DCMs is to work through discovery deficiencies, such as Complainants' failure to simply identify [REDACTED]. That Complainants could not do so on the DCM, or in responses to the numerous formal discovery requests served to date, is further evidence that Complainants' domestic industry claims are not well-founded, despite Complainants' representation in the recent teleconference with the ALJ that a domestic industry was *already established* at the time of the Complaint.

B. Continuing Deficiencies and Inaccuracies in Complainants' Responses to Apple's Third Set of RFPs & Apple's Third, Fourth, and Fifth Sets of

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Interrogatories (October 8, October 27, and October 31 Letters from Frazier to Loebakka; October 29 Letter from Frazier to Swaroop)

Apple re-raised the deficiencies in Complainants' response to Apple's Interrogatory No. 72 (originally discussed on the October 25 DCM), in which Apple asked Complainants to "[i]dentify the technical person(s) referenced in the October 11, 2021 [sic], 12:33pm ET e-mail from Kendall Loebakka to Apple's counsel whose assistance is needed to enable an inspection of

[REDACTED] including the name, employer, job title, and a description of the employee's responsibilities with respect to [REDACTED]. Apple noted that Complainants continued to refuse to identify the individual, and asked Complainants if they would supplement their response to Interrogatory No. 72.

Complainants noted that they had objected to Interrogatory No. 72 as irrelevant and seeking attorney work product and asked for authority as to why the identification of the technical person(s) is relevant. Apple explained that because this technical person was necessary to [REDACTED] that person clearly has knowledge and information relevant to Complainants' domestic industry claims. Apple further explained that the identity of this individual is not work product and referred Complainants to the October 27, 2021 letter (from Frazier to Loebakka).

Complainants argued that the identity of individuals whom counsel "chose to work with" is properly protected as work product and reiterated that Complainants had pointed Apple to other individuals who had knowledge of [REDACTED]. Apple responded that the identity of the person who was needed [REDACTED]

[REDACTED] is not properly protected as work product. Complainants have provided no authority to suggest otherwise. Indeed, the Ground Rules in this Investigation require that the individuals involved in communications be identified on a privilege log. G.R. 4.8.1 ("The following information shall be provided in the objection, if known or reasonably available, unless divulging such information would cause disclosure of the allegedly privileged information: (A) For oral communications: (i) the name of the person making the communication and the name(s) of persons present while the communication was made; (ii) the date and place of the communication; and (iii) the subject matter of the communication...") Apple's request for the *identity* of the person who Complainants have represented has knowledge relevant to the devices Complainants are providing for inspection is entirely consistent with that requirement. Apple also explained that the fact that there are other individuals with knowledge regarding the design of [REDACTED] does not negate the relevance of the particular individual whose identity is sought by this interrogatory.

Apple stated that the parties are at impasse and requested Complainants' availability for a conference with the ALJ at the end of next week.

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C. Domestic Industry Related Discovery (September 27 & October 15 Letters from Gosma to Laquer; October 22 Letter from Frazier to Loebbaka; October 31 Laquer to Gosma/Frazier)

1. Interrogatory Nos. 39-40, Request for Production Nos. 127, 129, 131 – Foreign Expenditures

Apple stated that Complainants represented on the October 27, 2021 DCM they would produce some unspecified additional information regarding foreign expenditures, but that Complainants have since sought clarification from Apple as to what to produce. Apple reiterated that Complainants are better positioned to know what information is in their possession but provided examples of the following types of information that Apple is seeking: (1) the locations of all foreign facilities related to the Covered Products; (2) the cost of acquiring those foreign facilities; (3) the costs for maintenance of those foreign facilities; (4) the number of employees working in those foreign facilities; and (5) the types of work being done in those facilities. Apple clarified that a good guideline for whether to produce details on foreign expenditures is that if Complainants are relying on an overall category of expenses in the United States to advance their economic domestic industry allegations, then Complainants should also produce corresponding information as to foreign expenditures on that same category of expenditures.

Complainants responded that they have provided some comparative information as to United States sales and revenues versus foreign sales and revenues (such as CoGS data) and reiterated that Complainants are not willing to produce granular data about their foreign expenditures because doing so would allegedly be unduly burdensome. Nonetheless, Complainants indicated that they are continuing to gather information in response to these Requests and would produce additional responsive information regarding foreign expenditures on the Covered Products in the next week to ten days.

2. Request for Production No. 112

Apple explained that this Request for Production for “procurement agreements” is not seeking individual agreements with employees (such as, for example, individual employee compensation contracts). Instead, this Request seeks overall agreements, at the vendor level, for materials and services related to the Covered Products, such as, for example, any agreements with a third-party manufacturer, component supplier, or OEM.

Complainants indicated that this additional clarification was helpful, and that Complainants have gathered some responsive data, but are still assessing the scope of available responsive information. Please let us know by November 10 the scope of documents Complainants will be producing and a date certain when that production will be made.

3. Request for Production No. 118

Apple explained that this Request seeks, *inter alia*, documents sufficient to show the date each Covered Product first went on sale. Apple clarified that it is not looking for documents

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evidencing every sale of a Covered Product. Complainants said they do not dispute that the date of first sale for each Covered Product was discoverable or relevant. Please confirm by November 10 that Complainants will be producing the requested documentation of the date of first sale for each Covered Product, and a date certain when that production will be made.

4. Request for Production Nos. 136-137, 145 and 159

Apple indicated that these Requests, which seek Complainants' "business plans" and other forecasts, have been discussed on numerous DCMs and in correspondence. Apple explained that it is seeking business plans and forecasts because Complainants have alleged both that a domestic industry is established and is in the process of being established for the Covered Products, and as such, the existence or confirmed non-existence of any business plans and forecasts are evidence of the work Complainants describe with respect to the existing industry and developing industry and are probative of Complainants' domestic industry allegations. Apple asked Complainants to conclusively indicate whether they dispute that Complainants' business plans are relevant.

Complainants raised that they have sought reciprocity as to Apple's internal business plans and forecasts, while stating that they only plan to produce business plans or forecasts that Complainants will rely on. Complainants insisted that documents showing whether Apple will import hypothetical and speculative future products are "just as relevant" as Complainants' business plans and forecasts regarding the domestic industry they have contended is *already* established, and said they will produce business plans and forecasts only if Apple does the same.

Apple again explained that Apple's internal plans and forecasts are not central to any issue in the investigation, and are in any event not tied to whether Complainants' own business plans are relevant.

Apple stated that it understands that Complainants are conceding that their business plans and forecasts are relevant, but that they are withholding them on the basis that Apple has not committed to produce reciprocal discovery and stated that the parties are therefore at impasse. Complainants disagreed that they have represented that any relevant information is being withheld, and said they have agreed to produce any information they will rely on. That is insufficient. Complainants cannot limit their production of responsive documents to those they intend to rely on to support their allegations

5. Request for Production Nos. 144-146, 149 – Marketing Documents

Apple noted that for these Requests, Complainants are apparently withholding production because of an alleged lack of reciprocal discovery. Apple noted that it has agreed to produce marketing materials in response to Complainants' Request for Production No. 76 ("Apple will produce advertising and marketing for the Accused Products in the United States, if any, that can be located after a reasonably diligent search") and No. 79 ("Apple will produce press releases pertaining to the Blood Oxygen feature of the Accused Products, if any, that can be located after

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a reasonably diligent search”), and that there is no reciprocity issue, since Apple has committed to produce marketing materials.

Complainants stated that they had taken issue with an alleged lack of production by Apple in response to Request for Production Nos. 28-30, 77, 80, 83, and 95. Apple has since reviewed these Requests, and many of them (Request Nos. 28-30, 80) are only, at best, tangentially related to “market-based” documents, and in fact are incredibly broad requests seeking a number of different types of documents from individuals involved in different functions at Apple. The others also have limited relevance to the issues in this Investigation, as damages and the public interest are not at issue, and Apple does not need to establish a domestic industry. Further, Apple’s objections and responses to these requests make clear the scope of what Apple agreed to produce.

The other requests identified by Complainants, Request Nos. 77, 83, and 95, generally seek marketing plans and business plans, which also have limited relevance to the issues in this Investigation, as damages and the public interest are not at issue, and Apple does not need to establish a domestic industry.

Complainants ultimately committed to producing documents in response to Apple’s various requests raised on this DCM related to domestic industry and stated that Complainants expected to produce at least some documents over the next week to ten days.

D. Supplemental Protective Order (November 1 email from Garcia to Counsel)

Complainants acknowledged that they had received Apple’s edits to the proposed Supplemental Protective Order on November 1, but Complainants could only identify one specific issue for discussion on the DCM—namely, that Complainants would not be willing to agree to Apple’s proposed limits on source code printouts in the current draft of the Complaint.

Apple explained that Complainants have previously expressed a desire to remain as consistent as possible with the protective order agreed to in the district court litigation—but Complainants’ current request for additional source code printouts would be inconsistent with the district court protective order. Apple also noted that this Investigation relates to fewer accused products and thus less source code will be produced in this case than in the district court case.

Complainants only explanation for the increased printout limit was that the parties in the district court reached agreement regarding limits on printouts prior to Complainants viewing the code that Apple produced. Apple agreed to consider any proposal made by Complainants but stated that it does not agree that any projections as to the appropriate limits on source code printouts should be based on the code produced in the district court.

II. Issues Raised by Masimo

A. Proposal to Resolve Masimo’s Objections to Drs. Stone and Sarrafzadeh (October 28 Masimo Letter)

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Complainants stated that they have proposed, in order to resolve their objection to Complainants' experts Drs. Stone and Sarrafzadeh, that each expert agree to additional restrictions via side agreements in order to review Complainants' CBI, which would then not be similarly applied to Complainants' experts. Apple explained that any additional restrictions placed on experts should be done as part of a global agreement, applicable to both parties, within the Supplemental Protective Order being negotiated by the parties. Complainants stated that while they are reviewing Apple's revisions to the Supplemental Protective Order, Complainants did not believe that the Supplemental Protective Order could be entered prior to the expiration of Complainants' window to object to Drs. Stone and Sarrafzadeh. Complainants indicated that they would proceed occurring to the current protective order if Apple's experts will not execute the proposed side agreements. Apple noted that Drs. Stone and Sarrafzadeh would be willing to take on additional obligations with respect to review of CBI, but again noted that these additional restrictions should be part of the Supplemental Protective Order. Apple also offered to agree to an extension for any objection periods for experts until a formal Supplemental Protective Order outlining equal obligations for both sides could be reached. Apple also asked Complainants to evaluate Apple's proposed edits to the Supplemental Protective Order in good faith with an eye toward reaching a global agreement on any additional restrictions for experts. Complainants indicated they understood Apple's position.

B. Definition of "Blood Oxygen App"

Complainants asked Apple to withdraw its objection to the definition of the term as vague, ambiguous, and not proportional to the needs of the Investigation based on Complainants' belief that Apple had used the term in prior discovery requests to Complainants.

Apple pointed out that Complainants had conflated Apple's prior use of the term "Blood Oxygen *feature*." See, e.g., Apple's Responses and Objections to Complainant's First Set of Requests for Production (using the term "Blood Oxygen feature" throughout). Apple confirmed that it would not withdraw its objection to the term "Blood Oxygen App," as Complainants had defined that term.

Apple offered to address any specific interrogatories for which Complainants contended that Apple has not provided sufficient discovery based on the definition of "Blood Oxygen App" that Apple expressly applied in those responses.

C. Supplemental interrogatory responses and continued production of documentation on the Series 7 and Interrogatory No. 5

Complainants asked for a supplementation of Apple's response to Interrogatory No. 5 and when it would receive that supplement. Apple noted it has already produced documents and information regarding the Series 7 Watch, which recently launched, and confirmed it is continuing to collect responsive information and will produce documents and supplement its responses to interrogatories with respect to the Watch Series 7 on a rolling basis, including producing additional documents in Apple's next production. Apple supplemented its response to Interrogatory No. 5 today to identify the bills of materials for the Series 7 Watch.

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III. Future DCM Schedule

Complainants stated that they would not be available for a DCM on November 10, but that Complainants would be available on November 17. Apple is available on November 17 at 1:00 pm EST. As discussed on the DCM and consistent with the Joint Discovery Stipulation, Apple proposes the DCMs occur every other week beginning November 17.

Best regards,

/s/ Sarah R. Frazier

Sarah R. Frazier

EXHIBIT Q

PUBLIC VERSION

From: [Alan.Laquer](#)
To: [WH Apple-Masimo 1276 Service List](#)
Cc: [Masimo.AppleITC](#)
Subject: Inv. 1276: Supplemental Protective Order
Date: Friday, November 12, 2021 8:11:47 PM
Attachments: [2021-11-12 Draft Supplemental Protective Order \(Masimo redline to Apple 11-01\).docx](#)

EXTERNAL SENDER

Counsel,

Please see Masimo's attached redline draft of the proposed supplemental protective order.

Best regards,
Alan

Alan Laquer
Partner
Alan.Laquer@knobbe.com
[949-721-5285](tel:949-721-5285) Office

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EXHIBIT R

**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

**JOINT MOTION TO AMEND THE PROTECTIVE ORDER TO ADD PROVISIONS
REGARDING PRODUCTION AND REVIEW OF SOURCE CODE**

Pursuant to 19 C.F.R. §§ 201.6, 210.5, 210.15, and 210.34 Complainants Masimo Corporation and Cercacor Laboratories, Inc. (collectively, “Masimo” or “Complainants”) and Respondent Apple Inc. (“Apple”) (collectively, the “Parties”) jointly move to amend the Protective Order (Order No. 1), which issued on August 19, 2021, to establish procedures for enhanced confidentiality protections regarding the production and review of source code. The proposed amendments are attached as Appendix A.

The Parties have already requested and expect they will produce source code in this Investigation. The requested source code is highly confidential and is relevant to show the structure and operation of products at issue in this Investigation. The source code is highly valuable intellectual property, and unauthorized disclosure of the source code would cause significant, lasting competitive harm to the producing parties. Source code is easily copied, particularly in the electronic form in which it is typically produced or reviewed. These amendments to the Protective Order are intended to impose reasonable controls on the potential distribution and copying of source code by, among other things, allowing inspection in a controlled

environment and printing only portions thereof with markings that indicate that its use is subject to the Protective Order.

The Parties have met and conferred, and agreed upon the provisions set forth below.

Accordingly, the Parties respectfully request this Motion be granted, and for Appendix A to be adopted by Order.

Deleted: paragraphs 18-20 in

Dated: [November 14, 2021](#)

Respectfully submitted,

Deleted: November 12, 2021

/s/ *

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*Counsel for Complainants
Masimo Corporation and
Cercacor Laboratories, Inc.*

APPENDIX A

18. **Source Code.** A supplier may designate non-public Source Code as “HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY.”

A. “Source Code” shall mean source code, source code listings (e.g., file names and path structures), object code (e.g., computer instructions and data definitions expressed in a form suitable for input to an assembler, compiler, or other translator), object code listings and descriptions of object code, scripts, assemblies, binaries, descriptions of source code (e.g., descriptions of declarations, functions, and parameters), microcode, register transfer level (“RTL”) files that describe the hardware design of any ASIC or other chip, and hardware description language (“HDL”), as well as any and all programmer notes, annotations, and other comments of any type related thereto and contained within a file also containing the code. For avoidance of doubt, Source Code includes source files, make files, intermediate output files, executable files, header files, resource files, library files, module definition files, map files, object files, linker files, browse info files, and debug files. Computer aided design (CAD) files may be designated pursuant to this Paragraph, [provided that any printouts of CAD files shall be designated “CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER” and will not be included in any page limit related to printing Source Code.](#)

B. Materials designated as “HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY,” shall only be reviewable by SOURCE CODE-QUALIFIED PERSONS. SOURCE CODE QUALIFIED PERSONS include the following:

- (i) outside litigation counsel for Complainants and Respondent in this Investigation who have subscribed to the Administrative Protective Order in this Investigation, and necessary secretarial and support personnel assisting such counsel;
- (ii) the Commission, the Administrative Law Judge (“ALJ”), Commission personnel and contract personnel who are acting in the capacity of Commission employees as indicated in paragraph 3 of this Protective Order;
- (iii) court reporters, stenographers and videographers transcribing or recording testimony at depositions, hearings or trial in this Investigation; and
- (iv) Qualified Consultants and/or Qualified Experts in this Investigation (under

[Paragraph 11 of the Protective Order in this Investigation](#)) to whom disclosure is reasonably necessary for this Investigation, provided that each Qualified Consultant and/or Qualified Expert complies with the [requirements of Paragraph 11 of the Protective Order and completes the “CERTIFICATION OF EXPERT/CONSULTANT REGARDING PROTECTIVE ORDER” \(Exhibit A\) which shall be served upon the supplier.](#)

1.

C. Source Code shall be provided with the following additional protections:

- (i) Nothing in this Protective Order shall obligate the parties to produce any Source Code, nor act as an admission that any particular Source Code is discoverable.

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Deleted: following “Pre-Access Disclosure Requirements:” at least ten (10) calendar days (not including federal holidays) before access to the HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY information is to be given to a consultant or expert, the consultant or expert shall complete the “CERTIFICATION OF EXPERT/CONSULTANT REGARDING PROTECTIVE ORDER” (Exhibit A) and the same shall be served upon the supplier along with the consultant or expert’s educational and detailed employment history, including an identification of any individual or entity with or for whom the person is employed or to whom the person provides consulting services relating to the design, development, operation, or patenting of non-invasive physiological monitoring technologies, or relating to the acquisition of intellectual property assets relating to noninvasive physiological monitoring

Deleted: The supplier shall have ten (10) calendar days (excluding federal holidays) from receipt of the information described in the Pre-Access Disclosure Requirements (plus three (3) extra days if notice is given other than by hand delivery, email delivery, or facsimile transmission) to object to the disclosure of HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY information to any proposed expert or consultant. After the expiration of this objection period, if no objection has been asserted, the HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY information may be disclosed to the Qualified Consultant and/or Qualified Expert pursuant to the terms of this Supplemental Protective Order.

- (ii) Access to Source Code will be given only to SOURCE CODE QUALIFIED PERSONS.
- (iii) Access to Source Code shall be made available for inspection, in a format allowing it to be reasonably reviewed and searched, during normal business hours or at other mutually agreeable times, at an office of the Producing Party's outside litigation counsel WilmerHale ([Los Angeles office](#)) or Knobbe Martens ([Irvine office](#)) or another mutually agreed upon location on a "stand-alone secure computer" (*i.e.*, the computer(s) may not be linked to any network, including a local area network ("LAN"), an intranet, or the Internet, and may not be connected to any printer or storage device other than the internal hard disk drive of the computer). The stand-alone secure computer(s) may be provided in a secured room without Internet access or network access to other computers ("Source Code Review Room") at the offices of the supplier's outside litigation counsel, or at such other location as the supplier and receiving party mutually agree. No recordable media or recordable devices, including without limitation sound recorders, computers, cellular telephones, peripheral equipment, cameras, CDs, DVDs, or drives of any kind, shall be permitted into the Source Code Review Room.
- (iv) The supplier shall install tools that are sufficient for viewing and searching the code produced, on the platform produced, if such tools exist and are presently used in the ordinary course of the supplier's business. The receiving party's outside counsel and/or experts may request that

commercially available software tools for viewing and searching Source Code be installed on the secured computer, provided, however, that (a) the receiving party possesses an appropriate license to such software tools; (b) the supplier approves such software tools; and (c) such other software tools are reasonably necessary for the receiving party to perform its review of the Source Code consistent with all of the protections herein. The receiving party must provide the supplier with access to the installation copy of such licensed software tool(s) (e.g., through the installer package or a URL to download it from, or its CD or DVD) at least ten (10) days in advance of the date upon which the receiving party wishes to have the additional software tools available for use on the stand-alone secure computer(s). The Parties agree to cooperate in good faith if additional software becomes necessary.

- (v) The receiving party shall provide at least two (2) business days' notice to access the source code and make reasonable efforts to restrict its requests for access to the stand-alone secure computer to normal business hours, which for purposes of this paragraph shall be 9:00 a.m. through 6:00 p.m. local time at the reviewing location. Upon reasonable notice from the receiving party, which shall not be less than five (5) business days in advance, the supplier shall make reasonable efforts to accommodate the receiving party's request for access to the computer outside of normal business hours. Such an expanded review period shall not begin earlier than 8:00 a.m. and shall not end later than 8:00 p.m. local time at the

reviewing location. The parties are to cooperate in good faith such that maintaining the Source Code at the offices of the supplier's outside litigation counsel shall not unreasonably hinder the receiving party's ability to efficiently conduct the prosecution or defense in this investigation. It is expected that access to the Source Code shall be provided at the site of any hearing. Proper identification of all SOURCE CODE QUALIFIED PERSONS shall be provided prior to any access to the stand-alone secure computer(s). Proper identification requires showing, at a minimum, a photo identification card sanctioned by the government of any State of the United States, by the government of the United States, or by the nation state of the authorized person's current citizenship. Access to the Source Code Review Room or the stand-alone secure computer(s) may be denied, at the discretion of the supplier, to any individual who fails to provide proper identification.

- (vi) All SOURCE CODE QUALIFIED PERSONS who will review Source Code on behalf of a receiving party shall be identified in writing to the supplier at least two (2) business days in advance of the first time that such person reviews such Source Code. Such identification shall be in addition to any disclosure required under paragraph 18(B) of this Protective Order. The supplier shall provide these individuals with information explaining how to start, log on to, and operate the stand-alone secure computer in order to access the produced Source Code on the stand-alone secure computer. For subsequent reviews by SOURCE CODE QUALIFIED

PERSONS, the receiving party shall give at least 24 hours' notice to the supplier of such review. All persons viewing Source Code on the source code computer in an office of outside litigation counsel shall sign on each day they view Source Code a log that will include the names of persons who enter the Source Code Review Room to view the Source Code and when they enter and depart. The log shall be kept by the supplier.

- (vii) No person other than the supplier may alter, dismantle, disassemble, or modify the stand-alone secure computer in any way, or attempt to circumvent any security feature of the computer.
- (viii) No copies shall be made of Source Code, whether physical, electronic, or otherwise, other than volatile copies necessarily made in the normal course of accessing the Source Code on the stand-alone secure computer, except for: (1) print outs of portions of the Source Code that are reasonably necessary for the preparation of filings, pleadings, expert reports, or other papers, or for deposition or hearing; and (2) such other uses to which the parties may agree or that the ALJ or the Commission may order. The receiving party shall not request paper copies for the purposes of reviewing the source code in the first instance and shall not use any outside electronic device to copy, record, photograph, or otherwise reproduce Source Code. Any printed portion of Source Code that consists of more than fifteen (15) pages of a continuous block of Source Code or more than two hundred (200) pages total shall be presumed to be excessive, and the burden shall be on the receiving party to

demonstrate the need for such a printed copy. The supplier shall not unreasonably withhold approval and the parties shall meet and confer in good faith to resolve any disputes.

- (ix) The receiving party may take notes, but may not copy the Source Code into the notes and may not take notes on a laptop or other personal electronic device. For clarity, the receiving party may include the names of source code files, variables, and functions within their notes, as reasonably necessary for notetaking purposes. Any such notes must be treated as HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY under the Protective Order. Unless otherwise agreed in advance by the Parties in writing, following each day on which inspection is done under this Order, the receiving party’s outside counsel and/or experts shall remove all notes, documents, and all other materials from the Source Code Review Room. The supplier is not responsible for any items left in the room following each inspection session. But all counsel remain bound by their ethical duties regarding the handling and possible return of work product inadvertently left behind by a representative of an opposing party.
- (x) The supplier may exercise personal supervision from outside the review room over the receiving party when the receiving party is in the Source Code Review Room. Such supervision, however, shall not entail review of any work product generated by the receiving party, *e.g.*, monitoring the screen of the stand-alone secure computer, monitoring any surface

reflecting any notes or work product of the receiving party, or monitoring the key strokes of the receiving party. There will be no video supervision by any supplier when the review occurs in the office of outside litigation counsel.

- (xi) Nothing may be removed from the stand-alone secure computer(s), either by the receiving party or at the request of the receiving party, except for (1) print outs of reasonable portions of the Source Code in accordance with the provisions of paragraphs 18(C)(ix)-(x) of this Protective Order; and (2) such other uses to which the parties may agree or that the ALJ or the Commission may order.
- (xii) At the request of the receiving party, the supplier shall within three (3) business days provide two (2) hard copy print outs of the specific lines, pages, or files of the Source Code that the receiving party believes in good faith are necessary to understand a relevant feature of an accused product. The receiving party may identify those lines, pages, or files by printing them to a temporary file on the computer, such as in PDF format. If the supplier objects in any manner to the production of the requested source code (*e.g.*, the request is too voluminous), it shall state its objection within the allotted two (2) business days pursuant to this paragraph. In the event of a dispute, the parties will meet and confer within five (5) business days of the objection being raised and if they cannot resolve the objection, the parties will raise it with the ALJ. The burden shall be on the receiving party to demonstrate that any such printed portions of Source Code are no

more than is reasonably necessary for a permitted purpose and not merely printed for the purposes of review and analysis elsewhere.

- (xiii) Hard copy print outs of Source Code shall be provided on Bates numbered and watermarked or colored paper clearly labeled HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY on each page and shall be maintained by the receiving party’s outside litigation counsel or SOURCE CODE QUALIFIED PERSONS in a secure locked area. For avoidance of doubt, an access-restricted location within the facilities of outside litigation counsel or a qualified expert, such as a conference room within an access restricted office or a locked drawer or cabinet, shall constitute a secured locked area. The receiving party may also temporarily keep the print outs at: (1) the Commission for any proceeding(s) relating to the Source Code, for the dates associated with the proceeding(s); (2) the sites where any deposition(s) relating to the Source Code are taken, for the dates associated with the deposition(s); and (3) any intermediate location reasonably necessary to transport the print outs (*e.g.*, a hotel prior to a Commission proceeding or deposition). The receiving party shall exercise due care in maintaining the security of the print outs at these temporary locations. No further hard copies of such Source Code shall be made and the Source Code shall not be transferred into any electronic format or onto any electronic media except that:
1. The receiving party is permitted to request that the supplier make additional hard copies of printed Source Code designated as

HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY for use at a deposition. Copies of Source Code designated as HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY that are marked as deposition exhibits shall not be provided to the Court Reporter or attached to deposition transcripts; rather, the deposition record will identify the exhibit by its production numbers. All such copies shall remain with the supplier’s outside counsel for secure destruction in a timely manner following the deposition.

2. The receiving party is permitted to make up to five (5) additional hard copies for the Commission [or the ALJ](#) in connection with a filing, hearing, or trial, and of only the specific pages directly relevant to and necessary for deciding the issue for which the portions of the Source Code are being filed or offered.
3. Except as provided in this sub-paragraph, absent express written permission from the supplier, the receiving party may not create electronic images, or any other images, or make electronic copies, of the Source Code from any paper copy of Source Code for use in any manner (including by way of example only, the receiving party may not scan the Source Code to a PDF or photograph the code). Images or copies of Source Code shall not be included in correspondence between the Parties (references to production numbers shall be used instead), and shall be omitted from

pleadings and other papers whenever possible. If a Party reasonably believes that it needs to reference a portion of Source Code as part of a filing, or as part of an expert report, contention, or discovery response, the Party shall cite the page and line numbers of the relevant Source Code and such Source Code will not be filed or otherwise attached absent agreement from the supplier or order of the ALJ or Commission. If a supplier agrees to produce an electronic copy of all or any portion of its Source Code or provides written permission to the receiving party that an electronic or any other copy may be made for a filing, expert report, contention, or discovery response, access to the receiving party's submission, communication, and/or disclosure of electronic files or other materials containing any portion of Source Code (paper or electronic) shall at all times be limited solely to individuals who are expressly authorized to view Source Code under the provisions of this Order. Where the supplier has provided the express written permission required under this provision for a receiving party to create electronic copies of Source Code, the receiving party shall maintain a log of all such electronic copies of any portion of Source Code in its possession or in the possession of its retained consultants, including the names of the reviewers and/or recipients of any such electronic copies, and the locations and manner in which the electronic copies are stored.

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Deleted: that the confidentiality protections will be adequate

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Deleted: Commission

Any such electronic copies must be labeled “HIGHLY CONFIDENTIAL – SOURCE CODE” as provided for in this Order.

4. The supplier shall, on request, make a searchable electronic copy of the Source Code available on a stand-alone secure computer during depositions of witnesses who would otherwise be permitted access to such Source Code. The receiving party shall make such request at the time of the notice for deposition.
- (xiv) Nothing in this Protective Order shall be construed to limit how a supplier may maintain the supplier’s own material designated as HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY.
 - (xv) Outside litigation counsel for the receiving party with custody of HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY shall maintain a source code log containing the following information: (1) the identity of each person granted access to the HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY; and (2) the first date on which such access was granted. Outside litigation counsel for the receiving party will produce, upon request, each such source code log to the supplier within twenty (20) days of the final determination of the investigation.
 - (xvi) A receiving party may not cause a supplier’s Source code to leave the United States absent written agreement.

19. **Prosecution and Development Bar.**

- A. “Relevant Technology” means technology related to pulse oximetry.
- B. Unless otherwise permitted in writing between supplying party and receiving party, any individual who personally receives, other than on behalf of the supplying party, any material showing or describing the technical functionality of the supplying party’s products designated as CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY under this Protective Order shall not prepare, prosecute, supervise, advise, counsel, or assist in the preparation or prosecution of any patent application seeking a patent on behalf of the receiving party or its acquirer, successor, or predecessor in the Relevant Technology during the pendency of this Investigation and for two years after final termination of this Investigation or, alternatively, for two years after the time the individual person(s) formally withdraws from the Administrative Protective Order, whichever is earlier. To avoid any doubt, “prosecution” as used in this paragraph does not include representing or advising a Party before a domestic or foreign agency in connection with a reissue, ex parte reexamination, *inter partes* review, opposition, cancelation, or similar proceeding; though in connection with any such agency proceeding involving the patents-in-suit, Outside Counsel of Record for a receiving party shall not: (i) participate in the preparation, prosecution, supervision, advice, counsel, or assistance of any amended claims; (ii) reveal a supplier’s CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS’ EYES ONLY material to

Deleted: . In addition, any such person is prohibited from having any involvement in the prosecution of any patent, patent application or re-examination in the Relevant Technology that was filed, or that claims priority from any application that was filed, for up to one year following the final termination of this Investigation (including any appeals).

any prosecuting reexamination counsel or agent; or (iii) use a supplier's CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES ONLY for any purpose prohibited by this Protective Order Addendum. The applicability of this provision is to be determined on an individual-by-individual basis such that an individual attorney who has not received CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES ONLY is not restricted from undertaking any activities by virtue of this provision even if said individual attorney is employed by or works for the same firm or organization as an individual who has received such material.

Deleted: <#>Unless otherwise permitted in writing between supplying party and receiving party, any Qualified Consultant or Qualified Expert or other SOURCE CODE QUALIFIED PERSON retained on behalf of receiving party who is to be given access to any material showing or describing the technical functionality of the supplying party's products designated as CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES ONLY produced by another party must agree in writing not to be involved in creating, developing, or modifying, for commercial use, any technology designed for performing pulse oximetry from the time of first receipt of such material designated as CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES ONLY through one year after the date the Qualified Expert or other SOURCE CODE QUALIFIED PERSON formally withdraws from the Protective Order. For avoidance of doubt, during periods in which the individual person(s) has ceased to have possession of such material or any documents or notes reflecting such material, this section shall not apply.¶
Competitive Decision-Making Bar. Absent written consent from the supplier, any individual who receives access to material designated CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES ONLY shall not be involved in competitive decision-making for a Party, relating to the subject matter of the CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES ONLY material accessed by the individual. This bar shall begin when upon the individual's first receipt of material designated CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL SOURCE CODE – ATTORNEYS' EYES ONLY and shall end one (1) year after the affected individual formally withdraws from the Protective Order in this investigation.¶

EXHIBIT A

CERTIFICATION OF EXPERT/CONSULTANT REGARDING PROTECTIVE ORDER

I, _____ [print or type full name], of _____ am not an employee of the Party who retained me or of a competitor of any Party and will not use any information, documents, or things that are subject to the Protective Order entered _____, for any purpose other than this litigation.

I state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed On _____.

[Printed Name]

[Signature]

Deleted: I agree not to perform product development work or participate in competitive decision-making for a Party related to the particular information disclosed in the designated material describing the technical functionality of a supplying party's products disclosed to me, from the time of receipt of such material through the date that I cease to have access to any such designated material. For avoidance of doubt, during periods in which the individual person(s) has ceased to have possession of such material or any documents or notes reflecting such material, this section shall not apply.

Field Code Changed

PUBLIC VERSION

*CERTAIN LIGHT-BASED PHYSIOLOGICAL MEASUREMENT
DEVICES AND COMPONENTS THEREOF*

Inv. No. 337-TA-1276

CERTIFICATE OF SERVICE

I, Lanta M. Chase, hereby certify that true and correct copies of the foregoing, **PUBLIC VERSION OF RESPONDENT APPLE INC.'S OPPOSITION TO COMPLAINANTS' MOTION FOR PROTECTIVE ORDER TO PRECLUDE ACCESS BY BRIAN ANTHONY, PH.D., TO COMPLAINANTS' CONFIDENTIAL BUSINESS INFORMATION**, have been filed and served on this 2nd day of December 2021, on the following in the manner indicated:

<p>The Honorable Lisa R. Barton Secretary U.S. International Trade Commission 500 E Street, S.W. Washington, DC 20436</p>	<p><input checked="" type="checkbox"/> Via Electronic Filing <input type="checkbox"/> Via Hand Delivery (2 Copies) <input type="checkbox"/> Via Overnight Delivery <input type="checkbox"/> Via Facsimile</p>
<p>The Honorable Monica Bhattacharyya Administrative Law Judge U.S. International Trade Commission 500 E Street, S.W., Room 317 Washington, DC 20436</p>	<p><input type="checkbox"/> Via Hand Delivery (2 Copies) <input type="checkbox"/> Via Overnight Delivery <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Electronic Mail edward.jou@usitc.gov michael.maas@usitc.gov</p>
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/s/ Lanta M. Chase
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