[redacted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

APPLE INC., *Plaintiff*, v. MASIMO CORPORATION and SOUND UNITED, LLC, *Defendants*.	C.A. No. 22-1377-MN-JLH **JURY TRIAL DEMANDED**
MASIMO CORPORATION, *Counter-Claimant,* v. APPLE INC. *Counter-Defendant.*	
APPLE INC., *Plaintiff,* v. MASIMO CORPORATION and SOUND UNITED, LLC, *Defendants.*	C.A. No. 22-1378-MN-JLH **JURY TRIAL DEMANDED**
MASIMO CORPORATION and CERCACOR LABORATORIES, INC., *Counter-Claimants,* v. APPLE INC. *Counter-Defendant.*	

REBUTTAL EXPERT REPORT OF ALAN L. OSLAN ON NONINFRINGEMENT OF U.S. PATENT NO. 10,076,257 AND U.S. PATENT NO. 10,987,054

[redacted]

I declare that all statements made herein on my own knowledge are true and that all statements made on information and belief are believed to be true, and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine and imprisonment, or both, under 18 U.S.C. §1001.

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

Executed on December 15, 2023 at Bedford, MA

Alan L. Oslan

Appendix A

[redacted]

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REBUTTAL EXPERT REPORT OF ALAN L. OSLAN

APPENDIX A: NONINFRINGEMENT OF U.S. PATENT NO. 10,076,257

[redacted]

[redacted]

[redacted]

ii. Claim 1[c][i]: "a first lead comprising a first pad that is embedded in a first portion of the enclosure, wherein an exterior surface of the enclosure comprises an exterior surface of the first portion, wherein the first pad is positioned underneath the exterior surface of the first portion,"

10. Dr. Irazoqui fails to show that either the W1 or the W1 Wave Electrode Design has a "first pad" that is "embedded in" the "first portion of the enclosure," as required by Claim 1. Dr. Irazoqui has alleged that:

- the **bezel**[2] of the W1 and W1 Wave Electrode Design is a **"first portion of the enclosure"** as required by Claim 1
- **the ECG flex or the circle flex** is Claim 1's "**first lead comprising a first pad**"

[2] Hereinafter, emphasis added, unless otherwise specified.

[redacted]

- **the exposed copper region on the ECG flex circuit** is Claim 1's "**first pad**."

Dr. Irazoqui has not shown that the exposed copper region on the ECG flex **circuit** is "**embedded in**" the bezel, under either Apple's or Masimo's proposed construction for that term, literally or under the doctrine of equivalents, as explained in detail below.

11. In his report, Dr. Irazoqui alleges that the W1 and W1 Wave Electrode Design's **bezel** is a **"first portion of the enclosure"** as required by Claim 1. [redacted]

[redacted]

[redacted]

13. Dr. Irazoqui alleges that the "first pad" is an exposed copper region on the ECG flex circuit to which the spring contact is soldered. [redacted]

[redacted]

I have addressed below Dr. Irazoqui's infringement allegations under his understanding of the plain and ordinary meaning of "embedded in" and under Masimo's construction.

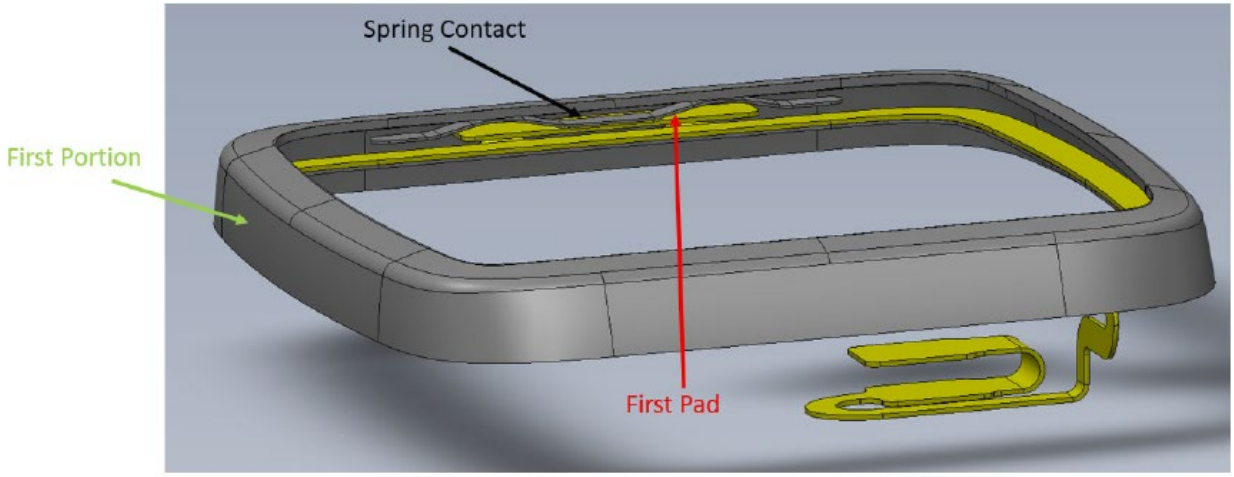
16. In his report, Dr. Irazoqui concludes that the W1 and W1 Wave Electrode Design meet the limitation that the first pad is embedded in the first portion of the enclosure under both Apple's and Masimo's proposed constructions. I disagree.

a) No literal infringement of the "embedded in" limitation under Apple's proposed construction.

17. Dr. Irazoqui has not shown that the exposed copper region on the ECG flex circuit that to which the spring is soldered (his alleged "first pad") to is embedded in the bezel (his alleged "first portion") under Apple's proposed construction. Dr. Irazoqui asserts that the exposed copper region on the ECG flex circuit is "embedded in" the bezel under Apple's proposed construction that it alleges to be the plain and ordinary meaning of the term. Dr. Irazoqui first applies Apple's claim construction position at the Markman hearing that the plain and ordinary meaning of "embedded in" requires that the exposed copper region on the ECG flex circuit "has to at least ***partially be set in material***" of the bezel. Irazoqui Opening Report, App'x A ¶ 35 (citing Markman Tr. at 88:5-9). I disagree with Dr. Irazoqui's and Apple's understanding, as I explained in my Opening Report and declaration regarding claim construction. However, should the Court accept Apple's interpretation of "embedded in," my conclusion remains the same—Dr. Irazoqui has failed to sufficiently show that the exposed copper region on the ECG flex circuit is at least partially set in material of the bezel. No structure is set partially into the bezel. [redacted]

[redacted]

18. In ¶¶ 36-37, Dr. Irazoqui provides his annotated figures of Masimo CAD files and other Masimo internal documents to purportedly show that the exposed copper region on the ECG flex circuit is embedded in the bezel. Irazoqui Opening Report, App'x A, pp.26-29 (annotating figures of MASAD00116642, MASAD00014301, [redacted] Beyond labeling portions of the figures as the alleged "first portion," "first pad," and "spring contact," Dr. Irazoqui provides no further explanation. *Id.* Contrary to his assertion, the figures annotated by Dr. Irazoqui himself show that the exposed copper region on the ECG flex circuit is in no way ***at least partially set*** in material of the bezel. This is shown at least in the below CAD image from MASAD00014301 annotated by Dr. Irazoqui, reproduced below. *Id.* at 28. As shown below, the ECG flex (in yellow) is merely placed ***behind*** the bezel (in grey), not embedded in any material of the bezel. The ECG flex is soldered to a spring at the exposed copper region. [redacted] As shown below, the spring is placed between the bezel and the exposed copper area on the ECG flex and the exposed copper area does not even touch the bezel, let alone be at least partially set in material of the bezel.



Irazoqui Opening Report, App'x A at p.28 (Irazoqui annotating MASAD00014301).

[redacted]

[redacted]

[redacted] the ECG flex is soldered to the display unit via the spring, placing Apple's "first pad" behind the spring. No portion of the ECG flex, including the exposed copper portion, is attached to the bezel. [redacted] The entire exposed copper portion on the ECG flex to which the spring is soldered is not even in contact with the bezel, much less partially ***set*** in material of the bezel.

[redacted]

23. In view of the above analysis, I conclude that the exposed copper portion on the ECG flex to which the spring is soldered is not embedded in the bezel under Apple's proposed construction, because no part of the exposed copper portion is even partially set into material of the bezel.

[redacted]

c) No literal infringement of the "embedded in" limitation under Masimo's proposed construction.

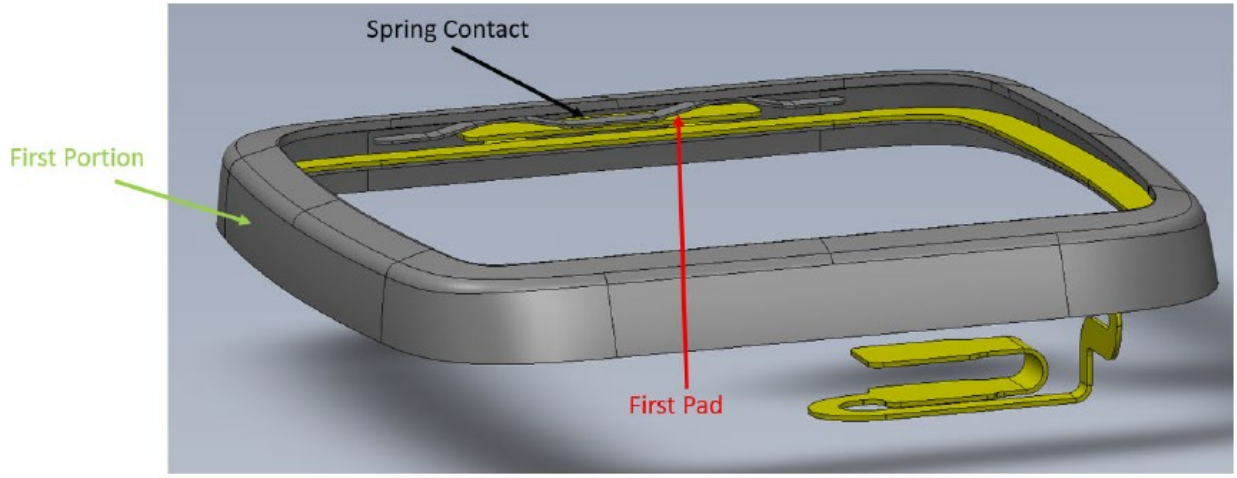
25. In my view, a device that does not satisfy the "embedded in" limitation under Apple's construction requiring the first pad to at least partially be set in material of the first portion cannot satisfy this limitation under Masimo's construction requiring the first pad to be set firmly into and surrounded by material of the first portion. Accordingly, for at least the same reasons that the W1 and the W1 Wave Electrode Design do not include a "first pad that is embedded in a first portion of the enclosure" under Apple's construction, the W1 and the W1 Wave Electrode Design also do not satisfy the "embedded in" limitation under Masimo's construction. Further, the W1 and W1 Wave Electrode Design also do not satisfy the "embedded in" limitation for the additional reasons set forth below.

26. Dr. Irazoqui has not shown that the exposed copper region on the ECG flex circuit to which that the spring is soldered to (his alleged "first pad") is embedded in the bezel (his alleged "first portion") under Masimo's proposed construction. Dr. Irazoqui asserts that the exposed copper region on the ECG flex circuit is set firmly into the bezel and surrounded by it, thereby meeting the limitation under Masimo's proposed construction, which requires the first pad to be

"***set firmly into and surrounded by material***" of the first portion of the enclosure. Irazoqui Opening Report, App'x A, p.30. As I explained above, Dr. Irazoqui has failed to establish that the W1 satisfies this limitation even under Apple's broader construction requiring the first pad to be ***at least partially set in material*** of the first portion of the enclosure. Dr. Irazoqui's analysis is even more deficient under Masimo's construction. Indeed, Dr. Irazoqui did nothing to establish that the exposed copper region on the ECG flex circuit to which the spring is soldered (which he alleges is the claimed "first pad") is ***set firmly*** into or ***surrounded by material*** of the bezel (which he alleges is the claimed "first portion"). [redacted]

27. In ¶¶ 41-42, Dr. Irazoqui provides his annotated figures of Masimo CAD files and other Masimo internal documents to purportedly show that the exposed copper region on the ECG flex circuit is embedded in the bezel. Irazoqui Opening Report, App'x A, pp.30-33 (annotating figures of MASAD00116642, MASAD00014301, [redacted] Beyond labeling portions of the figures as the alleged "first portion," "first pad," and "spring contact," Dr. Irazoqui provides no further explanation. *Id.* The figures annotated by Dr. Irazoqui himself undermine his opinion by showing that the exposed copper region on the ECG flex is ***not*** "set firmly into and surrounded by material" of the bezel. This is shown at least in the below CAD image from MASAD00014301 annotated by Dr. Irazoqui, reproduced below. *Id.* at 32. As shown

below, the ECG flex (in yellow) is merely placed ***behind*** the bezel (in grey), not set firmly in and surrounded by material of the bezel. The ECG flex is soldered to a spring at the exposed copper region. [redacted] As shown below, the spring is placed between the bezel and the exposed copper area on the ECG flex and the exposed copper area does not even touch the bezel, let alone be "set firmly into and surrounded by material" of the bezel.



Irazoqui Opening Report, App'x A at p.28 (Irazoqui annotating MASAD00014301).

[redacted]

32. In view of the above analysis, I conclude that the exposed copper portion on the ECG flex is not embedded in the bezel under Masimo's construction, because no part of the exposed copper portion is firmly set into or surrounded by material of the bezel.

[redacted]