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On behalf of **Masimo Corporation**
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MASIMO CORPORATION,

Petitioner,

v.

APPLE INC.,

Patent Owner.

Case No. IPR2023-00745
U.S. Patent No. 10,076,257

PETITIONER'S OBJECTIONS TO EVIDENCE SERVED JANUARY 22, 2024

Pursuant to 37 C.F.R. § 42.64(b), Patent Owner Masimo Corporation objects to the admissibility of evidence submitted by Patent Owner Apple Inc with its Reply on January 22, 2024. Petitioner reserves its rights to: (1) timely file a motion to exclude these objectionable exhibits or portions thereof; (2) challenge the credibility and/or weight that should be afforded to these exhibits, whether or not Petitioner files a motion to exclude the exhibits; and (3) cross-examine any Patent Owner's declarant within the scope of his or her direct testimony that is or relates to these exhibits, without regard to whether Petitioner has objected to the testimony or related exhibits or whether the testimony or related exhibits are ultimately found to be inadmissible.

Exhibit	Objections
2003	**FRE 602:** The declarant admits that he relied on his "own knowledge." Ex. 2003 ¶ 20, 22. However, insufficient evidence has been introduced to establish that the declarant has sufficient personal knowledge to rely on his own knowledge to support his obviousness opinions. This deficiency infects the declarant's entire testimony because he did not identify which portions of his analysis rely on his own knowledge. **FRE 701-702:** The exhibit includes opinion testimony that

Exhibit	Objections
	does not comply with the requirements of FRE 701 and 702. The testimony is not lay opinion testimony under FRE 701. With respect to FRE 702, the evidence does not establish that the declarant's obviousness opinions are (1) "based on sufficient facts or data," (2) "the product of reliable principles and methods," and that (3) "the expert has reliably applied the principles and methods to the facts of the case." Deficiencies in the declarant's analysis include, without limitation: (1) conclusory assertions unsupported by sufficient underlying facts, data, or reasoning, (2) reliance on allegedly known facts or alleged motivations not to combine without citation to contemporaneous evidence of what knowledge and motivation a POSITA would have possessed at the relevant time; (3) reliance on his "own knowledge," without any specific indication what portions of his analysis are based on his own knowledge, explanation how he obtained such knowledge, or evidence that a POSITA would have possessed the knowledge at the

Exhibit	Objections
	relevant time; and (4) failure to consider evidence or factors necessary to an obviousness analysis. By way of example and not limitation, this objection applies to at least paragraphs 20-22, 26-45, 60-74, 80-85, 131-132, 176-178, 191-193, and 205-207 of the exhibit, any other paragraph incorporating or referencing the foregoing paragraphs. **FRE 802:** The exhibit includes testimony that relies on inadmissible hearsay included in cited exhibits if Apple relies on the content of the cited exhibits to prove the truth of matters allegedly asserted therein. By way of example and not limitation, this objection applies to paragraphs discussing the deposition of Dr. Oslan, of which Dr. Kenny has no first-hand knowledge, such as paragraphs 29, 31, 34, 39, 41, 81, 98, 111, 122, 130, 161, and 165. **Objection to Testimony Relying on Inadmissible Exhibits:** The exhibit includes testimony that relies on exhibits that are inadmissible for the reasons set forth in the objections herein. Masimo objects to such testimony for the same reasons set forth herein for the underlying

Exhibit	Objections
	exhibits. **Reservation of Right to Move to Exclude Additional Testimony:** While Masimo has attempted in good faith to identify example paragraphs to which the foregoing objections apply, the paragraph listings are not limiting. Dr. Kenny has not yet been deposed with respect to his declaration. It may become apparent, based on Dr. Kenny's deposition testimony, that the foregoing objections apply to additional paragraphs of the declaration. Masimo reserves the right to move to exclude additional paragraphs based on the foregoing objections.
2004	**FRE 802:** Masimo objects, on the basis of inadmissible hearsay, to any statement included in these exhibits that Apple relies upon to prove the truth of the matter asserted in the statement.
2005-2007	**FRE 802:** Masimo objects, on the basis of inadmissible hearsay, to any statement included in these exhibits that Apple relies upon to prove the truth of the matter asserted in the statement.

Exhibit	Objections
	FRE 402: Masimo objects to these exhibits because they are not relevant to the unpatentability theories set forth in the Petition. Masimo also objects to Apple's reliance on these exhibits to support any argument or factual assertion beyond those for which Apple cited these exhibits in the Reply.
2008	This exhibit is a deposition transcript. Masimo maintains the objections it made during the deposition. *See* 37 C.F.R. § 42.64(a).

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: January 29, 2024

/Jarom Kesler/
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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to 37 C.F.R. § 42.6(e) and with the agreement of counsel for Petitioner, a true and correct copy of **PATENT OWNER'S OBJECTIONS TO EVIDENCE SERVED JANUARY 22, 2024** is being served electronically on January 29, 2024, to the e-mail addresses shown below:

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Dated: January 29, 2024

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