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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MASIMO CORPORATION, : Case No.:
Petitioner, : IPR2023-00745
v. :
APPLE, INC., : U.S. Patent
Patent Owner. : 10,076,257

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Deposition of ALAN OSLAN

Conducted Remotely

Wednesday, May 15, 2024

9:54 a.m.

Reported by: Matthew Goldstein, RMR, CRR

DIGITAL EVIDENCE GROUP

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Page 2

1 Deposition of ALAN OSLAN, conducted remotely:

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8 Pursuant to Notice, before Matthew Goldstein,

9 RMR, CRR, Notary Public in and for the State of

10 Maryland.

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A P P E A R A N C E S

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ON BEHALF OF THE PETITIONER:

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1 P R O C E E D I N G S

2 Whereupon,

3 ALAN OSLAN,

4 being first duly sworn or affirmed to testify to
5 the truth, the whole truth, and nothing but the
6 truth, was examined and testified as follows:

7 EXAMINATION BY COUNSEL FOR THE PATENT OWNER

8 BY MR. BISENIUS:

9 Q. We are here today regarding IPR
10 proceeding IPR2023-00745 regarding U.S. patent
11 No. 10,076,257.

12 Is there any reason that you cannot give
13 truthful and accurate testimony today?

14 A. No, there is not.

15 Q. Similar to our last discussion, I'm
16 going to define a few terms just for clarity
17 before we jump into the questions. When I use the
18 terms "petitioner" or "Masimo," I'm referring to
19 Masimo Corporation, the petitioner in this
20 proceeding.

21 Do you understand?

22 A. Yes, I do.

1 Q. When I use the term "Apple" or "patent
2 owner," I am referring to Apple, Inc.

3 Do you understand?

4 A. Yes, I do.

5 Q. When I use the term "'257 patent," I'm
6 referring to U.S. Patent No. 10,076,257, titled,
7 "seamlessly embedded heart rate monitor."

8 Do you understand?

9 A. Yes, I do.

10 Q. When I use the phrase, "this IPR" or
11 "this proceeding," I am referring to IPR
12 proceeding No. IPR2023-00745 filed against the
13 '257 patent.

14 Do you understand?

15 A. Yes, I do.

16 Q. When I use the acronym "POSITA," I am
17 referring to a person of ordinary skill in the art
18 at the time of the alleged invention.

19 Do you understand?

20 A. Yes, I do.

21 Q. You have submitted a total of three
22 declarations in this proceeding; is that correct?

1 A. I believe that's correct.

2 Q. When I use the term, "your first
3 declaration," I am referring to Exhibit 1003 in
4 this proceeding.

5 Do you understand?

6 A. Yes, I do. I have the Dropbox, whatever
7 listing. So I'm just referring to those, as well.

8 Q. I also uploaded all of the documents
9 that we're going to be talking about today earlier
10 this morning.

11 Perhaps the court reporter can provide a
12 link to those.

13 MR. EVERTON: Is that what you're
14 referring to, Alan? Are you referring to --

15 THE WITNESS: Yes, it's the --

16 MR. EVERTON: -- the Dropbox you're
17 looking at is the Box that was provided by
18 counsel?

19 THE WITNESS: Yeah, the
20 deglit.app.box.com. And there's, I think, seven
21 files loaded in it now.

22

1 BY MR. BISENIUS:

2 Q. All right. When I use the term "your
3 second declaration," I'm referring to Exhibit 1051
4 in this proceeding.

5 Do you understand?

6 A. Yes, I do.

7 Q. And when I use the term "your third
8 declaration," I am referring to Exhibit 1065 in
9 this proceeding.

10 Do you understand?

11 A. Yes, I do.

12 Q. Can you please describe how you prepared
13 for today's deposition?

14 A. So I reviewed my declarations and
15 supporting documentation.

16 Q. Approximately how much time did you
17 spend preparing for today's deposition?

18 A. Probably about the last three days.

19 Q. Can you please identify which documents
20 you reviewed when preparing for the deposition
21 today?

22 A. So the three declarations of mine that

1 we just discussed, maybe not in full, but in part
2 at least, the Markel patent, the Mills patent, the
3 '257 patent.

4 Q. Approximately when did you begin working
5 on your second declaration for the present
6 proceeding?

7 A. I don't know off the top of my head when
8 I started working on it without at least looking
9 when the -- when it was filed.

10 Q. Do you recall approximately when you
11 began working on your third declaration for this
12 proceeding?

13 A. I believe that might have been in March
14 or May of this year. No, I'm sorry, March or
15 April of this year.

16 Q. Did you have anyone such as an assistant
17 help you with either your second or third
18 declaration for this IPR?

19 A. So personally I don't have an assistant
20 that works with me.

21 Q. Can you please identify each person
22 other than attorneys with whom you have

1 communicated as part of your work for preparing
2 your second and third declarations?

3 A. So I'm not -- can you -- or should I
4 open up the second declaration? I just want to
5 see the time frame of that. So let me open it up.

6 Okay. So I see it's dated April 1st,
7 2024. So other than the Knobbe attorneys, there
8 were no other people that I discussed this with.

9 Q. In forming your opinions in your second
10 and third declarations, did you rely on any
11 assumptions that are not identified in the
12 declarations?

13 A. So all my opinions are based on
14 assumptions that are in my reports.

15 Q. Do you currently have any opinions about
16 the '257 patent that are not contained in your
17 declarations?

18 A. All the opinions that I have are in my
19 declarations.

20 Q. Has anything happened since you prepared
21 your declarations that changes any of the opinions
22 that you provided in the declarations?

1 A. Nothing has happened that changed my
2 opinions in the declarations.

3 Q. Are you currently aware of any errors
4 that exist in your second or third declarations?

5 A. There's a typo in a heading in the
6 third. I'm just trying to navigate the Dropbox
7 here. Okay. Here it is.

8 So my third declaration, Exhibit 1065,
9 just before paragraph 226, it says, heading A.,
10 "Mills discloses the embedded-in pads under
11 Apple's 'embedded in' construction." That should
12 be -- and you'll see it's identical to the heading
13 B, just below on the next page.

14 So A should be, Mills discloses the
15 embedded pads under Masimo's embedded
16 construction. But the contents are correct, just
17 the heading has the typo. And that's the only
18 error that I've seen.

19 Q. I want to start out by briefly talking
20 about your first declaration, Exhibit 1003,
21 specifically paragraph 46.

22 A. Okay. Let me download that.

1 Exhibit 1003; correct?

2 Q. Correct.

3 A. Okay. Now, which paragraph, again,
4 please?

5 Q. Paragraph 46.

6 A. Okay.

7 Q. In paragraph 46, you've given a
8 construction for the term "embedded"; is that
9 correct?

10 A. Yeah, paragraph 46 says the construction
11 for the term "embedded."

12 Q. What is the construction that you've
13 given for the term "embedded" here?

14 A. So reading from paragraph 46,
15 "Accordingly, a POSITA would understand at the
16 time of the '257 patent disclosure that the
17 ordinary and customary meaning of 'embedded' means
18 'an integral part of' such as, by 'being placed in
19 the thickness of a surrounding material including
20 forming an outer and/or inner surface' or 'placed
21 underneath an exterior surface and against an
22 inner surface.'"

1 Q. Do you still believe that this
2 construction for the term "embedded" is the
3 correct construction for this term?

4 A. So this is the definition that I've used
5 in the IPR analysis.

6 Q. But do you still believe that this is
7 the correct construction for the term "embedded"?

8 MR. EVERTON: Objection to form.

9 THE WITNESS: It's the definition that
10 I've used in this IPR.

11 BY MR. BISENIUS:

12 Q. Okay. I'd like to turn to your third
13 declaration, Exhibit 1065.

14 A. Okay.

15 Q. Specifically, the section starting at
16 paragraph 211.

17 In paragraph 212 --

18 A. Yeah, just -- yeah, I'm just confused,
19 because I see in 212 there's some highlighting. I
20 think -- yeah, I just want to make sure, yeah,
21 this is the one from the Dropbox.

22 Q. Yeah, that's the sentence I was going to

1 talk about today.

2 A. Okay. All right. I'm sorry. So
3 continue on, please.

4 Q. In paragraph 212, you state that the
5 term "embedded in" is narrower than the term
6 "embedded"; is that correct?

7 A. So, yeah, in paragraph 212, there's --
8 it's talking about the two constructions of
9 "embedded" and "embedded in." And, however, these
10 two constructions are not inconsistent because
11 "embedded in" is narrower than "embedded."

12 Q. In what ways is the term "embedded in"
13 narrower than the term "embedded"?

14 A. So in paragraph 213, at the third
15 sentence, so "Apple does not specify a threshold
16 for 'partially,' so it is my opinion that a POSITA
17 would understand that this construction covers
18 pads that are minimally set in or surrounded by an
19 enclosure."

20 Q. So as I mentioned earlier, you stated
21 that the term "embedded in" is narrower than
22 "embedded."

1 What relationship between a first and
2 second component would make the first component
3 embedded with respect to the second component but
4 not embedded in the second component?

5 MR. EVERTON: Objection to form.

6 THE WITNESS: So could you repeat the
7 question, please?

8 BY MR. BISENIUS:

9 Q. What relationship between a first and
10 second component would make the first component
11 embedded with respect to the second component but
12 not embedded in the second component?

13 A. So I have not done that analysis in any
14 of my declarations. So I'm not prepared to
15 comment on that at this time.

16 Q. Can you think of any examples in which a
17 component would be embedded but not embedded in?

18 A. I've not done that in any of my
19 declarations. So I'm not prepared to answer that
20 at this time.

21 Q. So you stated that the term "embedded
22 in" is narrower than the term "embedded," but you

1 haven't actually thought about what the difference
2 is; is that correct?

3 MR. EVERTON: Objection to form.

4 THE WITNESS: Can you repeat your
5 question, please?

6 BY MR. BISENIUS:

7 Q. You stated that the term "embedded in"
8 is narrower than the term "embedded," but you
9 haven't actually thought about what the difference
10 between the two terms is; is that correct?

11 MR. EVERTON: Objection to form.

12 THE WITNESS: So the analysis that I did
13 in my declarations was to show that under any of
14 the definitions of "embedded" or "embedded in"
15 that the claims in the '257 patent are
16 unpatentable.

17 BY MR. BISENIUS:

18 Q. And what I'm asking you is if you can
19 provide any examples to show the distinction
20 between the term "embedded in" and the term
21 "embedded," such that a component would be
22 embedded but not embedded in?

1 MR. EVERTON: Objection to form.

2 THE WITNESS: So I did not do that
3 analysis in my declarations. My analysis was to
4 show that under any of the definitions of
5 "embedded" or "embedded in" that the claims in the
6 '257 were unpatentable.

7 BY MR. BISENIUS:

8 Q. But is it true that you did not conduct
9 an analysis as to the difference or differences
10 between the term "embedded in" and the term
11 "embedded"?

12 MR. EVERTON: Objection to form.

13 THE WITNESS: So the analyses in my
14 declaration were only on -- I'm sorry, let me
15 rephrase that.

16 The analyses that I did in my
17 declarations were to show that any definition of
18 "embedded" or "embedded in" that the claims in the
19 '257 patent were unpatentable.

20 BY MR. BISENIUS:

21 Q. In the context of the claims of the
22 '257 patent, do you believe the term "embedded in"

1 should be given its plain and ordinary meaning or
2 that it should be given a specialized meaning?

3 A. Repeat the question, please.

4 Q. In the context of the claims of the
5 '257 patent, do you believe that the term
6 "embedded in" should be given its plain and
7 ordinary meaning or that it should be given a
8 specialized meaning?

9 A. So for the declarations for my IPR, I
10 only looked at the definition of "embedded."

11 Q. So are you saying that you did not
12 consider the definition of the term "embedded in"
13 when making your analysis?

14 MR. EVERTON: Objection to form.

15 THE WITNESS: So in my IPR declarations,
16 I only defined the term "embedded."

17 BY MR. BISENIUS:

18 Q. You've read the claims of the
19 '257 patent; correct?

20 A. I've read the claims of the '257 patent,
21 correct.

22 Q. And you've analyzed how you believe the

1 cited references apply to the claims; is that
2 correct?

3 A. I'm sorry, you kind of broke up there.
4 Can you repeat, please?

5 Q. You've analyzed how you believe the
6 cited references apply to the claims of the
7 '257 patent; correct?

8 A. Which cited references are you referring
9 to?

10 Q. Mills and Markel.

11 A. Okay. So can you repeat the question,
12 please?

13 Q. You have analyzed how you believe Mills
14 and Markel applied the claims of the '257 patent;
15 correct?

16 A. So I did an analysis showing that Mills
17 and Mills and Markel show that the claims in the
18 '257 patent are unpatentable.

19 Q. And the term "embedded in" appears in
20 Claim 1?

21 A. Sorry, you kind of broke up right at the
22 end there.

1 Q. The term "embedded in" is recited in
2 Claim 1 of the '257 patent; correct?

3 A. Okay, let me just open the '257 patent
4 up. So I don't see the '257 patent in the Box.

5 Q. Okay. It looks like that finished
6 uploading.

7 A. Okay, I see it now.

8 Q. So the question is: The term "embedded
9 in" appears in Claim 1 of the '257 patent;
10 correct?

11 A. Yeah, so I'm looking at the '257,
12 Claim 1. So, for example, a first lead comprising
13 a first pad that is embedded in a first portion of
14 the enclosure.

15 Q. And you provided an analysis as to why
16 you believe the cited references provide a first
17 pad that is embedded in a first portion of the
18 enclosure; is that correct?

19 A. So I provided an analysis that the first
20 and second pads are embedded in the identified
21 first and second portions of the enclosure using
22 the Masimo embedded construction, the Apple IPR

1 embedded in construction, and the Masimo district
2 court embedded in construction.

3 Q. So my question is: In the context of
4 the claims of the '257 patent, do you believe that
5 the term "embedded in" should be given its plain
6 and ordinary meaning or that it should be given a
7 specialized meaning?

8 MR. EVERTON: Objection to form.

9 THE WITNESS: So my analysis, which is
10 based on -- analyzed based on the different
11 definitions of "embedded" or "embedded in" to show
12 that they were unpatentable.

13 BY MR. BISENIUS:

14 Q. So standing here today, you have no
15 opinion on whether the constructions for
16 "embedded" or "embedded in" discussed in your
17 declarations are correct or not?

18 MR. EVERTON: Objection to form.

19 THE WITNESS: So I did not do an
20 analysis of if they're correct or not. I analyzed
21 that using any of the three definitions of an
22 "embedded" or "embedded in" that the claims of the

1 '257 patent are unpatentable.

2 BY MR. BISENIUS:

3 Q. So you have no opinion as to whether the
4 term "embedded in" should be given its plain and
5 ordinary meaning?

6 MR. EVERTON: Objection to form.

7 THE WITNESS: So I did not do that
8 analysis. I analyzed that under the different
9 definitions of "embedded" or "embedded in," that
10 the claims in the '257 patent were unpatentable.

11 BY MR. BISENIUS:

12 Q. And sitting here today, you still have
13 no opinion on whether the term "embedded in"
14 should be given its plain and ordinary meaning?

15 MR. EVERTON: Objection to form.

16 THE WITNESS: So I did not do that
17 analysis. I analyzed that under the different
18 definitions of "embedded" or "embedded in," that
19 the claims in the '257 patent are unpatentable.

20 BY MR. BISENIUS:

21 Q. Returning to your third declaration,
22 paragraph 212 that we were discussing earlier, you

1 stated that "embedded in" is narrower than
2 "embedded."

3 But sitting here today, you can't
4 explain why "embedded in" is narrower than
5 "embedded"; is that correct?

6 A. So in paragraph 213, I wrote, "Apple
7 does not specify a threshold for 'partially,' so
8 it's my opinion that a POSITA would understand
9 that this construction covers pads that are
10 minimally set in or surrounded by an enclosure."

11 Q. So is it your opinion that the term
12 "embedded" would cover situations in which the pad
13 is not minimally set in or surrounded by an
14 enclosure?

15 MR. EVERTON: Objection to form.

16 THE WITNESS: Can you repeat the
17 question, please?

18 BY MR. BISENIUS:

19 Q. Is it your opinion that the term
20 "embedded" does not require that the pads are
21 minimally set in or surrounded by an enclosure?

22 A. I'm sorry, can you repeat the question

1 one more time?

2 Q. Is it your opinion that the term
3 "embedded" does not require that the pads are
4 minimally set in or surrounded by an enclosure?

5 A. So in my first declaration,
6 Exhibit 1003, paragraph 46, and so "a POSITA would
7 understand that at the time of the '257 patent
8 disclosure that the ordinary and customary meaning
9 of "embedded" means 'an integral part of' such as,
10 'by being placed in the thickness of a surrounding
11 material including forming an outer and/or inner
12 surface' or 'placed underneath an exterior surface
13 and against an inner surface.'"

14 Q. How is that construction for the term
15 "embedded" broader than the term "embedded in"?

16 MR. EVERTON: Objection to form.

17 THE WITNESS: I'm sorry, can you repeat
18 the question, please?

19 BY MR. BISENIUS:

20 Q. How is the construction for the term
21 "embedded," that you just referenced in your first
22 declaration, broader than the term "embedded in"?

1 MR. EVERTON: Objection to form.

2 THE WITNESS: So in paragraph 213 of my
3 third declaration, Exhibit 1065, I state, "Apple
4 does not specify a threshold for 'partially,' so
5 it is my opinion that a POSITA would understand
6 that this construction covers pads that are
7 minimally set in or surrounded by an enclosure."

8 BY MR. BISENIUS:

9 Q. So I'll repeat my earlier question.

10 Do you believe that the term "embedded"
11 does not require that the pads are minimally set
12 in or surrounded by an enclosure?

13 MR. EVERTON: Objection to form.

14 THE WITNESS: So I have not done that
15 analysis in my declaration. So I can't answer it
16 at this time.

17 BY MR. BISENIUS:

18 Q. So you cannot articulate what makes the
19 term "embedded in" narrower than the term
20 "embedded"; is that correct?

21 MR. EVERTON: Object to form.

22 THE WITNESS: Repeat your question

1 again, please.

2 BY MR. BISENIUS:

3 Q. So you cannot articulate what makes the
4 term "embedded in" narrower than the term
5 "embedded"; is that correct?

6 MR. EVERTON: Objection to form.

7 THE WITNESS: So in paragraph 213 of my
8 third declaration, Exhibit 1065, "Apple does not
9 specify a threshold for 'partially,' so it is my
10 opinion that a POSITA would understand that this
11 construction covers pads that are minimally set in
12 or surrounded by an enclosure."

13 BY MR. BISENIUS:

14 Q. But earlier -- sorry, but earlier you
15 would not distinguish that language from the term
16 "embedded."

17 I asked you, do you believe that the
18 term "embedded" does not require that the pads are
19 minimally set in or surrounded by an enclosure?

20 You stated, I've not done that analysis
21 in my declaration, so I can't answer.

22 And so the sentence in paragraph 213 of

1 your third declaration that you have read several
2 times now, is that actually a distinction between
3 the terms "embedded" and "embedded in," or are you
4 identifying a fault with Apple's construction for
5 the term "embedded in"?

6 MR. EVERTON: Object to form.

7 THE WITNESS: So I have not done that
8 analysis. I just analyzed that under all the
9 constructions of "embedded" or "embedded in," that
10 the '257 claims are unpatentable.

11 BY MR. BISENIUS:

12 Q. Continuing with your third declaration,
13 I want to move ahead to paragraph 214.

14 Here, you discuss Masimo's district
15 court construction for the term "embedded in"; is
16 that correct?

17 A. So, yeah, it says in 214, "to prove
18 unpatentability under Masimo's district court
19 construction of 'embedded in: 'set firmly into and
20 surrounded by material.'"

21 Q. Do you believe that this is the correct
22 construction for the term "embedded in"?

1 A. So my analysis was done under all
2 definitions of "embedded" or "embedded in" to show
3 that the '257 claims are unpatentable.

4 Q. So you have no opinion as to whether
5 Masimo's district court construction for the term
6 "embedded in" of, quote, set firmly into and
7 surrounded by a material, end quote, is correct?

8 MR. EVERTON: Object to form.

9 BY MR. BISENIUS:

10 Q. I'll rephrase.

11 Do you have an opinion as to whether or
12 not Masimo's district court construction for the
13 term "embedded in" is correct?

14 A. So it's my opinion that in the district
15 court construction of "embedded in," set firmly
16 into and surrounded by material, is an appropriate
17 definition under the district court construction.
18 And in the IPR declarations, I used all the
19 different definitions of "embedded" or "embedded
20 in" to show that the '257 claims are unpatentable.

21 Q. So of each of these constructions for
22 the term "embedded" or "embedded in," can you

1 identify which construction you believe to be the
2 correct construction?

3 MR. EVERTON: Objection to form.

4 THE WITNESS: So I have no opinion on --
5 of these definitions, which is correct. I just
6 analyzed to show that under any of the
7 constructions of "embedded" or "embedded in," that
8 the claims in the '257 patent are unpatentable.

9 BY MR. BISENIUS:

10 Q. In the previous paragraph,
11 paragraph 213, you're discussing the construction
12 for the term "embedded in" presented by Dr. Kenney
13 of, quote, at least partially set in or partially
14 surrounded by a material, end quote.

15 Do you see that?

16 A. In paragraph 213?

17 Q. Correct.

18 A. I'm sorry, can you read that again?

19 Q. In paragraph 213, you're discussing
20 Apple's proposed construction for the term
21 "embedded in" as presented by Dr. Kenney of,
22 quote, at least partially set in or partially

1 surrounded by a material, end quote.

2 Do you see that?

3 A. I see the references to Dr. Kenney, but
4 I don't actually see him saying what you just
5 said.

6 Q. But you agree that you're discussing
7 Apple's construction of the term "embedded in,"
8 which is, quote, at least partially set in or
9 partially surrounded by a material, end quote, in
10 this paragraph; is that correct?

11 A. So I see the sentence that, "Apple
12 argues that if the Board construes 'embedded in,'
13 it should be construed to mean 'at least partially
14 set in or partially surrounded by a material.'"

15 Q. Do you agree or disagree with this
16 construction for the term "embedded"?

17 MR. EVERTON: Objection to form.

18 THE WITNESS: So my opinions are based
19 on using all the definitions of embedded or
20 embedded in to show that the '257 claims are
21 unpatentable.

22

1 BY MR. BISENIUS:

2 Q. But you have no opinion as to whether
3 Apple's construction for the term "embedded in" is
4 correct or not?

5 MR. EVERTON: Object to form.

6 THE WITNESS: I only did the analysis
7 based on the definitions of "embedded" or
8 "embedded in" to show that the '257 claims are
9 unpatentable.

10 BY MR. BISENIUS:

11 Q. So you have no opinion as to what the
12 correct construction for the term "embedded in"
13 is; is that correct?

14 MR. EVERTON: Objection to form.

15 THE WITNESS: So I did not form that
16 opinion. I only opined on that using any of the
17 definitions of "embedded" or "embedded in" that
18 the '257 claims are unpatentable.

19 MR. BISENIUS: Let's go off the record.

20 (Recess from the record.)

21 BY MR. BISENIUS:

22 Q. I'd like to talk about Markel, which is

1 Exhibit 1005 of this proceeding.

2 A. Okay. I have Markel open.

3 Q. Can you please turn to Figure 4?

4 A. Okay.

5 Q. You referenced Figure 4 of Markel in
6 both your original declaration and your third
7 declaration; is that correct?

8 A. I -- without actually opening it up, I
9 believe that's correct.

10 Q. What is reference numeral 415
11 identifying in Figure 4 of Markel?

12 A. So in Markel, in paragraph 45, it's
13 insulating region 415 that may separate regions
14 410b and 420b.

15 Q. If a user were to contact the insulating
16 region 415 of Markel's device, that would be
17 insufficient for the circuitry of the device to
18 detect an electrical signal of the user's cardiac
19 signal; is that correct?

20 MR. EVERTON: Object to form.

21 THE WITNESS: I'm sorry, can you repeat
22 the question again, please?

1 BY MR. BISENIUS:

2 Q. If a user were to contact the insulating
3 region 415 of Markel's device, that would be
4 insufficient for the circuitry of the device to
5 detect an electrical signal of the user's cardiac
6 signal; is that correct?

7 MR. EVERTON: Same objection.

8 THE WITNESS: So Markel discusses at 415
9 is an insulating region and electrodes that can be
10 molded into 410b and 420b. So if someone were to
11 touch only 415, the insulating region, that there
12 would be no cardiac signal detected.

13 BY MR. BISENIUS:

14 Q. So would you agree that in the device
15 depicted in Figure 4 of Markel, the user would
16 need to contact the electrode portion 410b and/or
17 the electrode portion 420b in order for the device
18 to detect cardiac signal?

19 MR. EVERTON: Object to form.

20 THE WITNESS: Can you repeat the
21 question, please?

22

1 BY MR. BISENIUS:

2 Q. In the device depicted in Figure 4 of
3 Markel, the user would need to contact the
4 electrode portion 410b and/or the electrode
5 portion 420b for the device to detect the user's
6 cardiac signal; is that correct?

7 MR. EVERTON: Object to form.

8 THE WITNESS: So one way that the Markel
9 device would operate would be for a user to touch
10 the electrode regions 410b and 420b.

11 BY MR. BISENIUS:

12 Q. I'd like to discuss Mills, which is
13 Exhibit 1006.

14 A. Okay. I have Mills open now.

15 Q. Can you please turn to Figure 2?

16 A. Figure 2. Okay.

17 Q. You reference Figure 2 of Mills in both
18 your original declaration and your third
19 declaration; is that correct?

20 A. I believe that's correct.

21 Q. What material is the housing 12 of
22 Mills' device made from?

1 If it's helpful, I can direct you to the
2 discussion at Column 6, starting at line 40 of
3 Mills.

4 A. Okay. Can you repeat your question,
5 please?

6 Q. What material is the housing 12 of
7 Mills' device made from?

8 A. Okay. So in, yeah, line 41, housing 12
9 and support member 52 are molded plastic, such as
10 ABS.

11 Q. And you previously testified that the
12 molded plastic used for the housing 12 of Mills is
13 a well-known electrical insulator; is that
14 correct?

15 A. So in my first declaration,
16 Exhibit 1003, paragraph 68, so Mills discloses a
17 housing 12 which separates its two electrodes 14,
18 15 -- I think that's actually a typo. 14, 16.
19 And Mills discloses its housing 12 may be molded
20 plastic, such as ABS. Plastics in general are
21 well-known electrical insulators, and ABS plastic
22 is an electrical insulator.

1 Q. If a user were to contact the plastic
2 housing 12 of Mills' device, that would be
3 insufficient for the circuitry of the device to
4 detect an electrical signal of the user's cardiac
5 signal; is that correct?

6 A. So to detect a cardiac signal, a user
7 would at least have to touch the electrode 14 and
8 the electrode 16.

9 Q. I'd like to return to your third
10 declaration, Exhibit 1065.

11 A. Okay.

12 Q. And this time I want to start at
13 paragraph 292.

14 A. 292?

15 Q. Yeah. This is a fairly long paragraph.
16 It goes over a few pages. I want to talk about
17 the annotated figure that you've included on
18 page 50.

19 A. So you said the figure on the top of
20 page 50?

21 Q. Correct.

22 A. Yeah.

1 Q. What is being depicted in this annotated
2 figure that you've included at the end of
3 paragraph 292 on page 50?

4 MR. EVERTON: Object to form.

5 THE WITNESS: So in Exhibit 1065, the
6 bottom of page 49, for example, with reference to
7 Figure 4 of Markel, a POSITA having ordinary
8 creativity would have been able to align and
9 rearrange Mills' leaf springs as illustrated
10 below. They're referring to that figure.

11 BY MR. BISENIUS:

12 Q. So is it fair to say that this is a
13 representation of Markel's device as modified
14 based on Mills to include the leaf springs of
15 Mills?

16 A. So it's showing that a POSITA with
17 ordinary creativity aligning and rearranging
18 Mills' leaf springs to incorporate them into
19 Markel.

20 Q. In this figure, you've identified the
21 electrode 410b as the first portion; is that
22 correct?

1 A. So it identifies 410b as the -- one
2 electrode and 420b as the other electrode.

3 Q. But you also labeled the electrode 410b
4 as the first portion in this figure; is that
5 correct?

6 You've been taking quite a while for
7 this answer. Really I'm just asking you to
8 confirm that in this figure you've labeled --

9 A. Yes, I just wanted to just double-check.

10 So the arrow is showing there's a first
11 portion and it includes electrode 410b and a
12 second portion that includes electrode 420b.

13 Q. And the text is in blue; is that
14 correct?

15 A. Yes, the text is in blue for both of
16 them.

17 Q. And you've outlined the electrode 410b
18 in the same color of blue to indicate what portion
19 of the device the blue text referring to the first
20 portion is referring to; is that correct?

21 A. So the arrow is pointing to the first
22 portion and the electrode 410b is outlined in

1 blue.

2 Q. And you've also outlined the electrode
3 420b in blue; is that correct?

4 A. That's correct.

5 Q. And you've colored the insulating region
6 415 in red; is that correct?

7 A. Yeah, it appears the red seems to be the
8 plastic region 415.

9 Q. Is it your opinion that the insulating
10 region 415 acts as an insulator between the
11 electrode 410b and the electrode 420b?

12 A. So there's electrode 410b and electrode
13 420b, and they're separated by the insulating
14 plastic material.

15 Q. So is it fair to say that the insulating
16 region 415 prevents electrical signals from
17 flowing through the insulating region 415 between
18 the electrode 410b and the electrode 420b?

19 MR. EVERTON: Object to form.

20 THE WITNESS: So the insulating material
21 prevents electrical signals -- prevents signals
22 from going between the electrode 410b and

1 electrode 420b.

2 BY MR. BISENIUS:

3 Q. And in this mockup of your proposed
4 combination of Markel and Mills, the other side of
5 the electrode 410b would come in contact with a
6 leaf spring 62 taken from Mills; is that correct?

7 A. So this arrangement is showing that, for
8 example, the backside of electrode 410b is in
9 electrical contact with one of the leaf springs
10 and electrode 420b is in -- the backside is in
11 electrical contact with the other leaf spring.

12 Q. I'd like to continue with this
13 declaration, jumping ahead to paragraph 295.

14 Here, you're discussing Claim 9; is that
15 correct?

16 A. Yes, Claim 9 is paragraph 295.

17 Q. Can you identify what portion of
18 Markel's housing that you are identifying as the
19 claimed, quote, a portion of the exterior surface
20 of the enclosure forms at least a portion of an
21 exterior surface of the electronic device behind
22 the display, end quote?

1 A. So in looking at the diagram on page 52
2 of Exhibit 1065, so the left-hand side shows the
3 display on -- we'll call this the front of Markel.
4 It's identified as 140 in Figure 1. It's not
5 identified here, but that rectangle in the upper
6 part above the button that says "menu." So that's
7 the front. And then if you look at the view on
8 the right side, 415 is the part of the housing
9 that is behind the display.

10 Q. So this backside 415 is what you're
11 identifying; is that correct?

12 A. Yeah, 415 is the housing, and even the
13 regions 420b, 410b, part of those are behind the
14 display.

15 Q. I want to turn back to your first
16 declaration, paragraph 91.

17 A. Okay, I'm there.

18 Q. In paragraph 91, you've included an
19 annotated version of Markel's Figure 4. Similar
20 to the discussion we just had with respect to your
21 third declaration, in this annotated figure in
22 paragraph 91, you've identified the electrode 410b

1 as the first portion; is that correct?

2 A. I'm sorry, can you repeat the question,
3 please?

4 Q. In this annotated figure in paragraph 91
5 of your first declaration, you've identified the
6 electrode 410b as the first portion?

7 A. So it's the first -- 410b is the first
8 portion and has the electrode or the pad molded
9 into the left side.

10 Q. And similar to what we were just
11 discussing in your third declaration, you've once
12 again used blue text and a blue outline around the
13 electrode 410b; is that correct?

14 A. So the blue shows the electrode or the
15 pad for the electrode that's in the first portion
16 and the electrode that's in the second portion.

17 Q. So you're stating that you also used
18 blue for showing the electrode 420b as the second
19 portion and outlined 420b; is that correct?

20 MR. EVERTON: Object to form.

21 THE WITNESS: Yeah, you kind of broke up
22 a little bit there. Can you repeat, please?

1 BY MR. BISENIUS:

2 Q. You've outlined the electrode 420b in
3 the same color of blue to indicate this as the
4 second portion; is that correct?

5 MR. EVERTON: Object to form.

6 THE WITNESS: So the second portion
7 contains the electrode or the pad molded into the
8 right side and the electrode is outlined in blue.

9 BY MR. BISENIUS:

10 Q. I'd like to go back to paragraph 81 of
11 your first declaration.

12 A. Okay.

13 Q. Here, you're discussing the application
14 of the proposed combination of Markel with Mills
15 to what you've identified as limitations
16 1[b(i)-(iv)]; is that correct?

17 A. You're at paragraph 81?

18 Q. Correct.

19 A. I don't see any mention of Mills in
20 here. But it's Exhibit 1003?

21 Q. Correct.

22 If you look back up to page 44, above

1 paragraph 78, the heading there indicates that
2 this is Ground 2 in view of Markel in combination
3 with Mills.

4 A. Oh, okay, I got it.

5 Q. So in the section starting at
6 paragraph 81, you're discussing the combination of
7 Markel with Mills as applied to limitations
8 1[b(i)-(iv)]; is that correct?

9 A. Oh, you're citing Section I, limitation
10 1[b(i)-(iv)]?

11 Q. Correct.

12 A. Yeah, sometimes I don't know why you
13 kind of break up. I think you just said
14 "correct," but I'm not sure.

15 Q. Correct.

16 A. Okay.

17 Q. So, yeah, I'm just trying to establish
18 that in the section at paragraph 81, you're
19 discussing the application of in combination of
20 Markel with Mills to limitations 1[b(i)-(iv)]?

21 A. Yeah, so -- yeah, paragraph 81 starts
22 the discussion of limitations 1[b(i)-(iv)] with

1 Markel in combination with Mills.

2 Q. Turning to the next paragraph,
3 paragraph 82, you've included an annotated version
4 of Figure 4 of Markel; correct?

5 A. Yeah, at the top of page 47, there's an
6 annotated figure from Markel, Figure 4.

7 Q. And similar to the annotated version of
8 Figure 4 we were just discussing, you once again
9 identified the region 410b of Markel's device as
10 the first portion in the Markel/Mills combination;
11 is that correct?

12 MR. EVERTON: Objection to form.

13 THE WITNESS: Yeah, can you repeat the
14 question, please?

15 BY MR. BISENIUS:

16 Q. Similar to the discussion we just had
17 with respect to the other annotated version of
18 Figure 4, once again here, you've identified the
19 region 410b of Markel's device as corresponding to
20 the claimed first portion in the Markel/Mills
21 combination; is that correct?

22 MR. EVERTON: Object to form.

1 THE WITNESS: So it's referring to the
2 first portion which contains the electrode or the
3 pad molded to the left side.

4 BY MR. BISENIUS:

5 Q. In your first declaration, do you
6 identify any other structures in the combination
7 of Markel and Mills as reading on the claimed
8 first portion?

9 MR. EVERTON: Object to form.

10 THE WITNESS: Can you repeat the
11 question, please?

12 BY MR. BISENIUS:

13 Q. In your first declaration, do you
14 identify any other structures in the combination
15 of Markel and Mills as reading on the claimed
16 first portion?

17 A. I'm not sure. There might be other
18 portions in my declaration to other claims
19 dependent or independent that discuss a first
20 portion.

21 Q. But right now you can't identify
22 anywhere else in your analysis of the Markel/Mills

1 combination that you've identified a different
2 structure as corresponding to the claimed first
3 portion?

4 A. I mean, I can search through if you
5 want. Actually --

6 Q. We don't need to have you reread your
7 entire declaration.

8 Let's turn to paragraph 68 of your first
9 declaration.

10 A. 68?

11 Q. Correct.

12 A. Okay.

13 Q. This analysis is under Ground 1, the
14 mapping of Mills to the claims alone; is that
15 correct?

16 A. Well -- I got lost. I believe so, I
17 haven't verified it. And what paragraph are we on
18 now?

19 Q. Paragraph 68.

20 I just want to verify that this is in
21 Ground 1, where you're discussing Mills alone with
22 respect to the claims and not the Markel/Mills

1 combination?

2 A. Okay.

3 Q. At the end of paragraph 68, you've
4 included an annotated version of Figure 2 of
5 Mills; is that correct?

6 A. Yes, towards the bottom of page 39,
7 there's an annotated version of Figure 2 from
8 Mills.

9 Q. Here, you've identified the electrode 14
10 as the first portion; is that correct?

11 MR. EVERTON: Object to form.

12 THE WITNESS: So the upper -- the first
13 portion contains electrode -- or at least part of
14 electrode 14.

15 BY MR. BISENIUS:

16 Q. And here, you've colored the text,
17 quote, electrode 14, upper first portion, end
18 quote, in blue and have also shaded the electrode
19 14 in blue; is that correct?

20 A. So, yeah, there's a text electrode 14 in
21 blue, and it's pointing to the blue in the
22 annotated diagram of -- that's the electrode 14.

1 Q. And you've identified the electrode 16
2 as the second portion in this annotated figure; is
3 that correct?

4 MR. EVERTON: Object to form.

5 THE WITNESS: So the electrode 16 is
6 part of the lower -- or parts of at least
7 electrode 16 are included in the lower or second
8 portion.

9 BY MR. BISENIUS:

10 Q. And, similarly, you've colored the text
11 electrode 16 lower (second) portion in blue and
12 have also shaded the electrode 16 in blue; is that
13 correct?

14 A. Yeah, so in blue text is electrode 16, a
15 blue arrow, and electrode 16 is in blue.

16 Q. And you've identified the housing as the
17 third portion; is that correct?

18 MR. EVERTON: Object to form.

19 THE WITNESS: So the housing 12 is shown
20 in red, and the third portion consists of parts of
21 the housing.

22

1 BY MR. BISENIUS:

2 Q. And you've colored the entire housing 12
3 in red and the text identifying the housing as the
4 third portion in red; is that correct?

5 MR. EVERTON: Object to form.

6 THE WITNESS: So the housing 12 in red
7 text is pointing to the Mills' housing Item 12,
8 and it's shaded in red. And parts of the housing
9 are the third portion.

10 BY MR. BISENIUS:

11 Q. And as we discussed earlier, the housing
12 12 is an insulator; is that correct?

13 A. Yes, we discussed that it's ABS plastic
14 that's an electrical insulator.

15 Q. So in this annotated figure, you're
16 showing that housing 12 acts to electrically
17 isolate the first and second portion; is that
18 correct?

19 MR. EVERTON: Object to form.

20 THE WITNESS: Parts of the housing 12
21 serve to insulate the upper first portion from the
22 lower or second portion.

1 BY MR. BISENIUS:

2 Q. I'd like to move up to paragraph 59 of
3 your first declaration.

4 A. Okay.

5 Q. So a few sentences into this paragraph,
6 specifically the sentence at the very top of
7 page 27, you refer to, quote, the first
8 pad/electrode 14, end quote.

9 So you've identified the electrode 14 as
10 corresponding to the first pad here; is that
11 correct?

12 MR. EVERTON: Object to form.

13 THE WITNESS: So you're reading the
14 first sentence at the top of page 27?

15 BY MR. BISENIUS:

16 Q. Correct.

17 A. Yes, I associate the first pad/electrode
18 14 with the first lead of the claim and the second
19 pad/electrode 16 with the second lead of the
20 claim.

21 Q. So you're identifying the electrode 14
22 as the first pad; is that correct?

1 MR. EVERTON: Object to form.

2 THE WITNESS: Sorry, repeat your
3 question, please.

4 BY MR. BISENIUS:

5 Q. In this sentence, you've identified the
6 electrode 14 as corresponding to the first pad?

7 MR. EVERTON: Object to form.

8 BY MR. BISENIUS:

9 Q. Well, a few sentences later in the same
10 paragraph --

11 A. So the --

12 Q. Okay. Go ahead.

13 A. So in this mapping, the -- so the
14 electrode consists of the plating 14b and the base
15 metal 14a, and the base metal 14a is the first
16 pad.

17 Q. But in this paragraph, paragraph 59, at
18 the top of page 127 [sic], you state, quote, first
19 pad/electrode 14, end quote. And then a few
20 sentences later, you state, Figure 1 of Mills
21 shows a first pad 14.

22 So here you're identifying the

1 electrode 14 as the first pad, not the plating 14b
2 alone; is that correct?

3 MR. EVERTON: Object to form.

4 (Reporter seeks clarification.)

5 BY MR. BISENIUS:

6 Q. At the top of page 27, you state, quote,
7 first pad/electrode 14, end quote. And then a few
8 sentences later, you state, Figure 1 of Mills
9 shows a first pad 14.

10 So in this particular paragraph, you're
11 identifying the electrode 14 as the first pad, not
12 just the plating 14b; is that correct?

13 MR. EVERTON: Object to form.

14 THE WITNESS: So if you look further,
15 yeah, it's still paragraph 59 and page 28, so the
16 second sentence -- so it starts, Figure 3B of
17 Mills, shown with annotations below, depicts a
18 cross-section of an electrode such as
19 electrode 14.

20 And the construction shown consists of a
21 base metal 14 on an inner surface and plating of
22 an outer skin-contactable region or surface 14.

1 Thus, the pad (the base metal 14a) is positioned
2 underneath the first portion.

3 BY MR. BISENIUS:

4 Q. I'd like to turn back to your third
5 declaration, Exhibit 1065.

6 A. Okay.

7 Q. And this time I'd like to talk about
8 paragraph 265.

9 A. Okay.

10 Q. Here, in the second sentence of
11 paragraph 265, you state, quote, the top of the
12 leaf spring Masimo identifies as the first pad is
13 readily distinguishable with the bridging portion
14 of the leaf spring Masimo identifies as the first
15 connector, end quote.

16 Do you see that?

17 A. Yes, I do.

18 Q. Okay. Now, I'd like to return to your
19 first declaration, Exhibit 1003 at paragraph 65.

20 A. Did you say 265?

21 Q. Paragraph 65 of your first declaration.

22 A. Okay.

1 Q. Here, you're discussing what you've
2 identified as limitation 1[c], which includes the
3 recitation, quote, wherein the first lead further
4 comprises a first connector coupled to the first
5 pad and configured to provide the first electrical
6 signal detected by the first pad to the processor,
7 end quote.

8 Do you see that?

9 A. Yes, I do.

10 Q. Can you identify where in your analysis
11 of limitation 1[c] that you've identified the top
12 of the leaf spring as the first pad and the
13 bridging portion of the leaf spring as the first
14 connector, as you now assert in your most recent
15 declaration?

16 MR. EVERTON: Object to form.

17 THE WITNESS: Okay. Can you tell me
18 which paragraph that was again, please?

19 BY MR. BISENIUS:

20 Q. Paragraph 65, where you're discussing
21 limitation 1[c].

22 Can you identify where in your analysis

1 of limitation 1[c] that you've identified the top
2 of the leaf spring as the first pad and the
3 bridging portion of the leaf spring as the first
4 connector, as you now assert in your most recent
5 declaration?

6 MR. EVERTON: Object to form.

7 THE WITNESS: So in paragraph 65, about
8 midway, electrodes 14 and 16 are electrically
9 connected to the PCB 50 via a respective spring 60
10 or 62.

11 BY MR. BISENIUS:

12 Q. But you've not included a discussion
13 here where you identify different portions of the
14 leaf spring 62 that's applying to different
15 portions of the claims; is that correct?

16 MR. EVERTON: Object to form.

17 THE WITNESS: So it just said
18 electrodes 14 and 16 are electrically connected to
19 the PCB 50 via their respective spring 60 or 62.

20 BY MR. BISENIUS:

21 Q. At the end of paragraph 65, you state
22 that, quote, Electrodes 14 and 16 are both thin

1 mats that are part of the electrical path of a
2 lead and are therefore pads, end quote.

3 Do you see that?

4 A. Yes, I see that.

5 Q. So it would appear that, in your
6 analysis of limitation 1[c], you've reverted to
7 your first mapping of Mills to Claim 1, where
8 you're identifying electrode 14 as the claimed
9 first pad; wouldn't you agree?

10 MR. EVERTON: Objection to form.

11 THE WITNESS: So in paragraph 60 of
12 Exhibit 1003, so there's an additional way in
13 addition to -- so in addition to the above
14 described ways in which Mills meets the limitation
15 of this claim, Mills discloses electrode 14 is
16 physically connected to the processing circuit by
17 a leaf spring 62, as shown in Figure 2. So
18 there's two different mappings.

19 BY MR. BISENIUS:

20 Q. So looking at limitation 1[c], as we
21 discussed earlier, it includes the recitation, a
22 first connector coupled to the first pad and

1 configured to provide the first electrical signal
2 detected by the first pad to the processor.

3 So the limitation 1[c] is reciting a
4 first connector and then it recites a specific
5 relationship between the first connector and the
6 first pad and between the first connector and the
7 processor.

8 And in your analysis, you appear to have
9 discussed how the electrodes 14 and 16 are
10 connected to the processor and identified those
11 electrodes as pads, but you haven't discussed the
12 bridging portion of the leaf spring as distinct
13 from the upper portion of the leaf spring, as you
14 now state in your most recent declaration; is that
15 correct?

16 MR. EVERTON: Object to form.

17 I'd like to also make an objection, a
18 standing objection to all these questions about
19 Exhibit 1003, the first declaration, as outside
20 the scope of this deposition.

21 THE WITNESS: Oh, sorry, are you waiting
22 for my reply?

1 BY MR. BISENIUS:

2 Q. Yes.

3 A. Oh, so on advice from counsel, then
4 Exhibit 1003 is outside the scope of this
5 deposition.

6 Q. So counsel for Masimo can preserve this
7 objection and object to the evidence later. As
8 long as you're not revealing anything privileged,
9 you still need to answer the question at this
10 point in time.

11 MR. EVERTON: Yeah, I'm not instructing
12 the witness not to answer. I'm just making that
13 objection, preserving that objection that
14 questions about Exhibit 1003 are outside the scope
15 of this deposition.

16 THE WITNESS: Okay. I'm sorry --

17 BY MR. BISENIUS:

18 Q. I can repeat the question.

19 A. Yeah.

20 Q. We're discussing limitation 1[c].
21 Limitation 1[c] recites a first connector and then
22 recites a specific relationship between the first

1 connector and the first pad in between the first
2 connector and the processor.

3 Here, in paragraph 65 of your first
4 declaration, you've discussed the electrodes 14
5 and 16 as the pads and their respective springs of
6 the connectors.

7 What I'm asking you is: Would you agree
8 that there's no discussion of separate bridging
9 portion of the leaf spring and the top portion of
10 the leaf spring, as you now state in your most
11 recent declaration?

12 MR. EVERTON: Objection to form.

13 THE WITNESS: So I believe part of this
14 is in my third declaration, Exhibit 1065. It was
15 responding to an Apple document and clarifying
16 things.

17 BY MR. BISENIUS:

18 Q. My question is: You had not previously
19 discussed the separate bridging portion of the
20 leaf spring and the top portion of the leaf spring
21 when discussing limitation 1[c] until this most
22 recent declaration; is that correct?

1 MR. EVERTON: Objection to form.

2 THE WITNESS: So in my third
3 declaration, that was replying to an Apple
4 document that was after my first declaration. So
5 it was to clarify some items.

6 MR. BISENIUS: I have no more questions.

7 MR. EVERTON: Okay. Can we take maybe a
8 ten-minute break and then come back on?

9 MR. BISENIUS: Sure.

10 (Recess from the record.)

11 MR. EVERTON: Okay. From Masimo, no
12 questions at this time. So I think we're done.

13 MR. BISENIUS: All right. Thanks,
14 everybody.

15 THE WITNESS: Okay. Thank you.

16 (Off the record at 12:15 p.m.)

17

18

19

20

21

22

1 STATE OF MARYLAND)

2 ss:

3 COUNTY OF MONTGOMERY)

4

5 I, Matthew Goldstein, Notary Public
6 within and for the State of Maryland, do hereby
7 certify:

8 That I reported the proceedings in the
9 within entitled matter, and that the within
10 transcript is a true record of said proceedings.

11 I further certify that I am not related
12 to any of the parties to the action by blood or
13 marriage, and that I am in no way interested in
14 the outcome of this matter.

15 IN WITNESS WHEREOF, I have hereunto set
16 my hand this 18th day of May, 2024.

17

18

19

20

21

22



Matthew Goldstein, RMR, CRR

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1 Alan Oslan, c/o
KNOBBE MARTENS OLSON & BEAR, LLP

2 2040 Main Street, 14th Floor
Irvine, California 92614

3
Case: Masimo Corporation v. Apple Inc.

4 Date of deposition: May 15, 2024
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9 Witness Name: Alan Oslan

10 Deposition Date: May 15, 2024

11 Page No. Line No. Change

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Signature

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