

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

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

JOINT CLAIM CONSTRUCTION BRIEF FOR APPLE ASSERTED PATENTS

is “unclaimed.” *Supra* at 74. But a construction “that excludes a preferred embodiment from the scope of the claim is *rarely, if ever, correct.*” *MBO Labs.*, 474 F.3d at 1333.

d) Masimo’s Sur-Reply Position

That the specification discusses multiple coating deposition processes does not undermine Masimo’s construction. *See supra* at 75. Apple never explains how these processes affect claim construction. *Id.* Masimo previously addressed Apple’s argument that Masimo’s construction excludes an embodiment. *See id.* at 74-75.

11. “application” (’352 Patent, Claims 1, 9, 17)

a) Apple’s Opening Position

Apple’s Proposed Construction	Masimo’s Proposed Construction
plain and ordinary meaning	a program that, in response to user commands, performs a task beyond: (a) device control, (b) device status indication, or (c) another task related to the internal function of the device itself

The term “application” is a word that is commonly used by POSITAs and lay persons alike. Nothing in the claims or specification warrants deviation from the plain and ordinary meaning. The specification provides numerous examples, including contact, telephone, e-mail, calendar, and word processing applications in Figure 3, and clock, weather, and settings applications in Figure 4A, among many others. ’352 patent, 17:33–61; 21:12–14; 30:24–67.

Masimo’s construction is essentially a negative construction that seeks to define an application by what Masimo contends is not an application. Specifically, Masimo seeks to exclude programs that do not perform tasks beyond “device control,” “device status indication,” or some other unspecified “task related to the internal function of the device itself.” Masimo’s construction should be rejected for two reasons. *First*, far from providing clarity, Masimo’s vague construction just invites disputes regarding what is “a task beyond” “device control” or “device status

indication” or—particularly problematic—what Masimo’s construction refers to as some other unspecified “task related to the internal function of the device itself.”

Second, none of Masimo’s vaguely defined exclusions is supported by the claims or specification. Indeed, Masimo’s construction improperly reads out “applications” explicitly disclosed in the specification. For example, the specification provides an example of “a **settings application** or module, which **provides access to settings for device 100.**” ’352 patent, 30:65–67. That explicitly disclosed settings **application**—which does nothing other than provide device control²⁴—would not be an “application” under Masimo’s overly narrow construction. Other prominent examples include applications that provide status indications, such as “the number of missed calls or voicemail messages” and “the number of unread emails.” *Id.*, 30:36–42. Accordingly, Masimo’s vague negative construction should be rejected. *See Kamstrup A/S v. Axioma Metering UAB*, 43 F.4th 1374, 1383 (Fed. Cir. 2022) (rejecting proposed construction because it “reads in a negative limitation that is at odds with the claim language” and specification).

b) Masimo’s Answering Position

Every example in the specification of an application falls within Masimo’s construction: “a program that, in response to user commands, performs a task beyond: (a) device control, (b) device status indication, or (c) another task related to the internal function of the device itself.” The applications of Figures 1A and 3—including “Contacts,” “Telephone,” Video Conference,” “E-mail Client,” “Instant Messaging,” “Word Processing,” and “Spreadsheet”—are programs that, in response to user commands, perform tasks beyond device control and device status indication, and that are unrelated to the internal function of the device. ’352 patent at FIGS. 1A, 3, 7:36-47.

²⁴ The “settings” application allows the user to “adjust one or more of the set of intensity thresholds (e.g., by adjusting individual intensity thresholds and/or by adjusting a plurality of intensity thresholds at once with a **system-level click** ‘intensity’ parameter).” ’352 patent, 33:15–20.

The specification distinguishes those “applications” from (1) “indicators” (*e.g.*, “Signal strength indicator(s) for wireless communication(s), such as cellular and Wi-Fi signals,” “a Bluetooth indicator,” and “a Battery status indicator”) and (2) “device controls.” ’352 patent at 30:24-67 (listing “indicators” separately from “applications”), 80:19-22 (“device controls . . . for controlling one or more device functions of the device”). And claim 7 expressly recites that the “control panel” that includes “controls” for “device functions” is “different from . . . the widget screen” that includes “user interface objects corresponding to different applications.”

Dictionary definitions of “application” also support Masimo’s construction. Several technical-dictionary definitions show it was well understood that an “application” is a program that performs tasks based on user commands but is different from system software related to controlling the computer itself. *See, e.g.*, Masimo Exs. 34-38. A POSITA would have understood that, in a mobile device as disclosed in the ’352 patent, system software includes device control, device status indication, and other tasks related to the internal function of the device itself. Masimo Ex. 40 ¶34. Thus, the accepted meaning of “application” supports Masimo’s construction.

Apple argues that Masimo’s construction is an improper “negative construction.” *Supra* at 76. But the construction affirmatively includes the user tasks (such as phone or email functions) ordinarily understood to be “applications” while correctly excluding operating system software for controlling the computer (such as device controls and device status indicators). *See, e.g.*, Masimo Ex. 35. Apple relies on *Kamstrup A/S v. Axioma Metering UAB*, 43 F.4th 1374, 1383 (Fed. Cir. 2022), as rejecting a negative limitation. *Supra* at 76-77. But in *Kamstrup*, the Federal Circuit rejected a construction that was inconsistent with the claim language and specification. Here, both the claim language and specification support Masimo’s construction.

Apple also argues that Masimo’s construction is vague and “invites disputes” about what

tasks are “beyond: (a) device control, (b) device status indication, or (c) another task related to the internal function of the device itself.” *Supra* at 76-77. But Masimo’s construction clarifies the term “application” to avoid disputes that would be inevitable under Apple’s proposal to *not* construe the term. The types of software included in and excluded from the “application” category would likely be very confusing to the jury if it is provided no guidance as Apple suggests. The phrases Masimo proposes—“device control,” “device status indication,” and “task related to the internal function of the device itself”—use common words for the jury to understand and apply.

Apple also criticizes Masimo’s construction based on the specification’s disclosure of optional indicators on the icons for the phone and email applications. *Supra* at 77. The specification explains that the phone icon “optionally includes an indicator 414 of the number of missed calls or voicemail messages and the email icon “optionally includes an indicator 410 of the number of unread e-mails.” ’352 patent at 30:37-42. But the phone and email applications fall within Masimo’s construction because they process phone calls and email messages. Nothing about Masimo’s construction would exclude those applications merely because their icons may include indicators.

Apple also argues that, because a lay person might commonly use the word “application,” it needs no construction. *Supra* at 76. And while Apple does not identify an ordinary meaning of “application,” it seeks to cover settings such as turning on or off vibrate mode or Bluetooth. *See, e.g.,* Masimo Ex. 39 at 26, 32. Apple argues that settings falls within the specification’s “settings application.” *Supra* at 77.²⁵ But the specification explains that the settings application performs tasks unrelated to the internal functions of the device, such as configuring the email accounts

²⁵ Nothing supports Apple’s footnote 24 speculation that the ’352 patent’s discussion of adjusting intensity thresholds at 33:15-20 describes functionality of the settings application.

accessed by the email application and configuring display settings for the calendar application. See '352 patent at 30:65-67; Masimo Ex. 40 ¶36. Those tasks go beyond “(a) device control, (b) device status indication, or (c) another task related to the internal function of the device itself.” Therefore, the specification’s “settings application” is an “application.” But that does not result in settings as somehow being “applications” as Apple asserts.

c) Apple’s Reply Position

The term “application” requires no construction. *Masimo’s* asserted patents in this case claim an “application” that performs various tasks—yet Masimo proposes “[p]lain and ordinary meaning.” C.A. 1378, D.I. 169 (JCCC) at 7; *see also* Defendants’ Opening Claim Construction Brief at 13. If an “application” is so readily understandable in Masimo’s patents, then it is readily understandable in Apple’s patents as well.

Masimo’s remaining arguments fail for three additional reasons. *First*, Masimo’s construction should be rejected because it excludes applications disclosed in the specification. For example, the “settings” application “provides access to *settings* for [the] device [itself] and its various applications.”²⁶ '352 Patent, 30:65-67. That functionality is both device control and a task related to the function of the device itself, and would be improperly excluded under Masimo’s construction. Masimo cites to its expert to argue that its construction would not exclude the settings application because, according to him, the settings application also “configure[s] the email accounts accessed by the email application and configure[es] display settings for the calendar application.” *Supra* at 78 (citing Masimo Ex. 40, ¶36). But those tasks squarely relate to device control and the internal function of the device itself. Apple Ex. 47, ¶27. And critically, Masimo’s

²⁶ Contrary to Masimo’s argument, (*supra* at 79, n.25), the specification connects the settings application to adjusting intensity levels. Specifically, the specification states that “the user *of the device* is provided with software settings for adjusting intensity thresholds,” and the settings application provides access to those “settings *for [the] device*.” '352 Patent, 30:65-67; 33:15-20.

expert does not cite anything *in the patent* showing that the settings application performs those additional tasks—rather, he is purportedly describing “the settings application on an *iPhone*.” Masimo Ex. 40; Apple Ex. 47, ¶26.

Second, Masimo’s other extrinsic evidence does not support its construction. None of the *five* dictionaries that Masimo cites imposes the same restrictions on “application” as Masimo does in its construction. Indeed, one of Masimo’s dictionaries broadly defines “application” as simply a program that “makes calls to the operating system and manipulates data files.” Masimo Ex. 38. That definition contradicts Masimo’s construction that an application cannot perform a task “related to the internal function of the device itself.” Apple Ex. 47, ¶28.

Third, far from providing guidance to the jury, Masimo’s construction would only create confusion. Modern jurors with the aid of expert testimony are well qualified to understand whether something is an “application.” Under Masimo’s proposed construction, the jury will not be performing that task, but instead will be forced to consider whether a program “performs a task beyond” (1) “device control,” (2) “device status indication,” or (3) some other undefined “task related to the internal function of the device itself.”

d) Masimo’s Sur-Reply Position

That the parties dispute the meaning shows why the Court should construe “application.” *Compare* Masimo Ex. 40 ¶¶29-38 *with* Apple Ex. 47 ¶¶23-28. Apple proposes allowing the experts to dispute that meaning in front of the jury. *Supra* at 80-81. But that dispute should *not* be presented to the jury. *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008).

The specification distinguishes global device settings from settings specific to individual applications. Masimo Ex. 40 ¶¶31-38. Application settings—such as configuring email accounts and calendar application display settings—are not *device* settings such as turning vibrate mode or

Bluetooth on or off. *Supra* at 79-80. Indeed, Balakrishnan acknowledges that application settings control “particular functions with regards to those email and calendar applications.” Apple Ex. 47 ¶27. But without support, Balakrishnan opines those settings entail “nothing more than device control.” *Id.* That opinion is inconsistent with the specification’s distinction between applications and device controls. *See supra* at 78.

Apple criticizes extrinsic evidence of the iPhone settings application. *Supra* at 80-81; Apple Ex. 47 ¶26. But the patent discloses “embodiments ... include ... the iPhone®.” ’352 patent at 7:20-23.

Apple argues Masimo’s definitions do not support its construction. *Supra* at 80-81. But Rosenberg explained how the definitions support Masimo’s construction in view of the ’352 patent. Masimo Ex. 40 ¶¶30-34. And Apple crops the definition it cites to leave out that an “application” allows “a user to perform a specific job (such as accounting or word processing).” *Supra* at 80; Masimo Ex. 38. The full definition supports Masimo’s construction.

Apple argues “application” should not be construed for the ’352 patent because Masimo does not propose to construe it for Masimo’s patents. *Supra* at 80. But construction is needed “to resolve the controversy” for the ’352 patent, not Masimo’s patents. *Vivid Techs.*, 200 F.3d at 803.

12. “side” (’483 Patent, Claims 1, 3, 5, 10, 16, 18)

a) Apple’s Opening Position

Apple’s Proposed Construction	Masimo’s Proposed Construction
plain and ordinary meaning	external surface different from the front surface or the back surface

The claims recite a “wearable electronic device” (claim 1) or an “electronic watch” (claim 10) with: (1) a “front exterior surface”; (2) a “rear surface” or “rear exterior surface”; and (3) a “side.” ’483 patent, claims 1, 10. The specification describes a “side” broadly: a side can be flat and “orthogonal” to other sides (*id.*, 3:43–51); a side can have “rounded corners” (*id.*, 30:34–57);