

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALIVECOR, INC.,
Petitioner,

v.

APPLE INC.,
Patent Owner.

IPR2023-00950
Patent 10,076,257 B2

Before KEN B. BARRETT, JOSIAH C. COCKS, and
ROBERT L. KINDER, *Administrative Patent Judges*.

KINDER, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

Pursuant to the Revised Scheduling Order (Paper 30), and the Order Setting Oral Argument (Paper 35), oral argument in this proceeding is currently set for November 5, 2024. Patent Owner's Reply to the Opposition to the Revised Motion to Amend was filed on October 8, 2024 (Paper 36) and Petitioner's sur-reply to reply to opposition to revised motion to amend is due on October 29, 2024.

On October 15, 2024, the Board issued a final written decision in a related proceeding, *Masimo Corp. v. Apple Inc.*, IPR2023-00745, Paper 44 (745-IPR). The 745-IPR also involves the same patent at issue in this proceeding, U.S. Patent No. 10,076,257 B2. In the 745-IPR, we construed the claim limitation "embedded in" and declined to construe just the claim term "embedded" standing alone. *See* 745-IPR, Paper 44 at 12–21. In the 745-IPR, the panel interpreted "embedded in" the same as Apple, Inc. (Patent Owner) requests in this proceeding. *Compare id. with* IPR2023-00950, Paper 20 at 7–8. Thus, in this proceeding, we believe that both parties have had adequate notice and an opportunity to address the claim construction adopted by the Board in IPR-745. *See, e.g.*, Paper 25, 1–6 (Petitioner's Reply Brief addressing Patent Owner's proposed construction of "embedded in"); Paper 28, 2–4 (Patent Owner's Sur-reply addressing the same).

In the interest of having an opportunity to address how our adopted claim construction of "embedded in" may impact this proceeding, the parties may, but are not required to, submit up to five pages of additional briefing by October 30, 2024. The parties may address:

- whether it is necessary to adopt a claim construction for "embedded in" or "embedded" for this proceeding;

- what specific issues may be impacted by that claim construction and what issues are not impacted; and,
- whether the parties have set forth any distinct evidence or argument in this proceeding that would warrant a different claim construction than adopted in 745-IPR.

The parties should label the filing “Supplemental Claim Construction Briefing” and reference this authorization. Each party may respond to the other party’s briefing during oral argument on November 5, 2024.

Accordingly, it is

ORDERED that the parties may submit Supplemental Claim Construction Briefing by October 30, 2024, addressing the issues set forth above.

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Patent 10,076,257 B2

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