UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner

v.

MASIMO CORPORATION,
Patent Owner

Case IPR2024-00241
Patent No. 10,687,743

PETITIONER'S MOTION TO SEAL DOCUMENTS FILED WITH THE PATENT OWNER'S RESPONSE

I. INTRODUCTION

Pursuant to the Protective Order (Papers, 14, 16) in this proceeding and 37 C.F.R. § 42.14, Petitioner Apple Inc. ("Apple") submits this Motion to Seal ("Motion"). Through this Motion, Apple respectfully requests that Apple's Petitioner's Reply, and certain exhibits filed with the Petitioner's Reply, be sealed. Each of these documents includes Apple's confidential business information ("CBI").

As described in further detail below, the documents that Apple moves to seal include Apple CBI related to, among other things, sensitive information related to Apple's Watch products, including proprietary research and development (R&D) information, trade secrets, proprietary processes and apparatuses, and confidential business operations information. Several of the documents originated from related proceedings between the parties, including:[1]

[1] The ITC investigation, the -01291 IPR, and the -01465 IPR all involved validity challenges to U.S. Patent No. 10,687,745 ("the '745 Patent"). The '745 Patent is related to and has the same disclosure as the '743 Patent at issue in the present IPR.

- ITC Inv. No. 337-TA-1276 (*Certain Light-Based Physiological Measurement Devices and Components Thereof*) ("the ITC investigation");
- *Apple Inc. v. Masimo Corp.*, IPR2022-01291 (PTAB) ("the -01291 IPR")
- *Apple Inc. v. Masimo Corp.*, IPR2022-01465 (PTAB) ("the -01465 IPR")
- *Apple Inc. v. Masimo Corp.*, 1-22-cv-01378 (D. Del.) ("the Delaware litigation")

This Motion comports with the Board's "aim to strike a balance between the public's interest in maintaining a complete and understandable file history and the parties' interest in protecting truly sensitive information." PTAB Consolidated Trial Practice Guide 2019 (CTPG), p. 19.

The public versions of the documents that Apple seeks to seal in this proceeding, for example, will allow the public to fairly access any non-confidential information related to disputed issues in this IPR, while also maintaining Apple's strong interest in maintaining its CBI in confidence. Apple respectfully submits that the Board should accordingly ***grant*** this Motion and seal and protect the documents identified below for each of the reasons described herein.

II. IDENTIFICATION OF DOCUMENTS THAT APPLE REQUESTS TO BE SEALED

Apple respectfully moves to seal each of the following documents filed by Apple with its Petitioner's Reply (collectively, the "Requested Documents"):

Document	Description
Paper 27	Petitioner's Reply
EX1079	Supplemental Declaration of Dr. Brian Anthony
EX1080	Transcript of the Deposition of Dr. R. James Duckworth (August 9, 2023)
EX1082	ITC Inv. No. 337-TA-1276 Hearing Transcript of Dr. Saahil Mehra
EX1083	Transcript of Testimony of Dr. Vivek Venugopal from June 6-10, 2022 Hearing Transcript, *Masimo Corp. et al. v. Apple Inc.*, ITC Inv. No 337-TA-1276
EX1084	ITC Inv. No. 337-TA-1276 Hearing Transcript of Dr. Ueyn Block
EX1086	Transcript of the Deposition of Dr. Madisetti (February 4, 2025)
EX1087	Transcript of the second session of the Deposition of Dr. Vijay K. Madisetti (February 7, 2025)

Apple specifically requests that Exhibits 1082, 1083, and 1084 be sealed in their entirety because Apple's CBI pervades the entirety of these documents. *See* IPR2022-01291, Paper 41 at 4-5 (PTAB Aug. 28, 2023) ("[W]e agree … that granting [the] Motions strikes the right balance 'between the public's interest in

maintaining a complete and understandable file history and the parties' interest in protecting truly sensitive information.'") (citing CTPG, p. 19).

Apple further requests that the Petitioner's Reply and Exhibits 1079, 1080, 1086, and 1087 be partially sealed. These documents contain both confidential and non-confidential portions, and pursuant to the Protective Order entered in this proceeding (Papers, 14, 16), public versions of these documents will be filed following an exchange between the parties of proposed redactions. The public versions of these documents will include redactions to portions of the documents that contain Apple CBI while leaving non-confidential portions identified through negotiations with Masimo unredacted.

III. THE *ARGENTUM* FACTORS FAVOR SEALING THE REQUESTED DOCUMENTS

In an *inter partes* review ("IPR"), the Board will seal confidential information on a showing of "good cause." 37 C.F.R. § 42.20(c). The Board has explained that "a movant to seal must demonstrate adequately that (1) the information sought to be sealed is truly confidential, (2) a concrete harm would result upon public disclosure, (3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and (4), on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open

record." *Argentum Pharmaceuticals LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 4 (PTAB Jan. 19, 2018) (informative).

Apple submits that the *Argentum* factors favor sealing the Requested Documents and that good cause exists for such relief under 37 C.F.R. § 42.20(c). Good cause for this Motion is underscored by the fact that Masimo itself moved to seal documents that were previously submitted in the -01291 IPR and that similarly reference Apple CBI related to Apple's Watch products, and that Masimo expressly acknowledged in its motion that "good cause exists to seal the exhibits and the confidential version of Masimo's Patent Owner Response." IPR2022-01291, Paper 30 at 5 (May 26, 2023). The Board agreed. IPR2022-01291, Paper 41 (PTAB August 28, 2023).

A. *Factor 1*: The Information Sought to be Sealed is Truly Confidential

Factor 1 favors sealing the Requested Documents because the Requested Documents contain information that is truly confidential.

First, the Petitioner's Reply (Paper 27) and Exhibit 1079 (Dr. Anthony's declaration) cite and discuss confidential information from various of the Requested Documents described below.

Second, Exhibit 1080 is a transcript of a deposition of R. James Duckworth, Ph.D., conducted August 9, 2023, and including questions and testimony that refer to various confidential exhibits that had been entered in the -01291 IPR from ITC Inv. No. 337-TA-1276. The questioning and testimony in the transcript includes discussion of CBI related to Apple's Watch products, including sensitive, proprietary research and development (R&D) information, trade secrets, proprietary processes and apparatuses, and confidential business operations information.

Third, Exhibits 1082, 1083, and 1084 are hearing transcripts of testimony elicited from Apple employees during the ITC proceeding, and include questioning and testimony related to Apple's Watch products, including sensitive, proprietary research and development (R&D) information, trade secrets, proprietary processes and apparatuses, and confidential business operations information.

Fourth, Exhibits 1086 and 1087 are transcripts of depositions of Dr. Vijay K. Madisetti conducted February 4, 2025 and February 7, 2025, and including questions and testimony including discussion of CBI related to Apple's Watch products, including sensitive, proprietary research and development (R&D) information, trade secrets, proprietary processes and apparatuses, and confidential business operations information.

B. *Factor 2*: Apple Would Suffer Concrete Harm Upon Public Disclosure of the Confidential Information

Factor 2 favors sealing the Requested Documents. The Requested Documents include sensitive, proprietary R&D information related to Apple's Watch products, trade secrets, proprietary processes and apparatuses, and confidential business operations. The information includes testimony from engineers, and internal documents related to the design and development of capabilities of Apple's Watch products. The testimony and internal documents contain sensitive and proprietary information regarding technical development of Apple's Watch products and proprietary processes and information relating to the same.

Apple would suffer predictable financial harm through unauthorized release of proprietary, trade secret information to competitors who could leverage Apple's substantial investment in research and development of the Watch to their own advantage. The parties agreed in the -01291 IPR that disclosure of such confidential information would "likely have the effect of … causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained." IPR2022-01291, EX1035, p. 1.

C. *Factor 3*: Masimo's Purported Need to Rely on Apple's Confidential Information

The Requested Documents that Apple seeks to seal with this Motion consist of Apple's Petitioner Reply and certain exhibits cited within the Petitioner's Reply.

The Requested Documents are being filed in reply to issues raised and confidential information addressed in Masimo's Patent Owner Response. Regarding its alleged need to rely on that confirmation information, Masimo offered the following statement, which Apple reproduces for the Board's consideration:

> Regarding *Argentum* factor 3 concerning a "genuine need" to rely on the cited material: Masimo cited the material to demonstrate at least (1) the contemporaneous perspectives of Apple's own engineers regarding measuring oxygen saturation at the wrist, which undermines Apple's obviousness theories, and (2) Apple's inconsistent positions on the same issues between these IPRs and related litigations.

While Apple does not agree with the substance of Masimo's arguments in the POR and reserves all rights to challenge the evidence cited in support of the arguments, Factor 3 nonetheless favors sealing the Requested Documents based both on Masimo's statement, and a genuine need to reply to issues raised in Masimo's

Patent Owner Response and to rely on the Requested Documents in doing so.[2] In that regard, the Requested Documents support Apple's obviousness theories, and demonstrate the consistency of Apple's positions on similar issues across these IPRs and related litigations.

D. *Factor 4*: The Balance of Interests Favors Maintaining Confidentiality

Factor 4 favors grant of this Motion because, on balance, Apple's interest in maintaining confidentiality outweighs the public interest with respect to the limited information sought to be sealed. *See Argentum* at 3-4. As noted above, the information that Apple seeks to seal is truly confidential and Apple would suffer concrete harm if the information were made available to the public.

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[2] To the extent that the Board determines that Apple has no need to rely upon the Requested Documents in this trial, Apple respectfully submits that, rather than denying this Motion to Seal and revealing the included Apple confidential information to the public, an appropriate remedy would be to expunge the Requested Documents from the record. To the extent desired by the Board, Apple respectfully submits that this issue could be addressed upon issuance of the Board's final written decision.

Moreover, pursuant to the Protective Order entered in this proceeding (Papers, 14, 16), public versions of these documents will be filed following an exchange between the parties of proposed redactions. The public will have full access to arguments and evidence developed in these proceedings from the public versions of these documents sufficient for the public to understand the nature of the disputed issues. Such access will fulfill the public's interest in maintaining a complete file history, while still protecting Apple's confidential and proprietary information. Apple's request thus "strike[s] a balance between the public's interest in maintaining a complete and understandable file history and the parties' interest in protecting truly sensitive information." CTPG, p. 19. The Board previously agreed that an appropriate balance was struck when it agreed to seal similar documents in the -01291 IPR, and in so doing, the Board recognized that the proposed public versions of documents that were not sealed in their entirety in that proceeding were "sufficient to notify the public of the general thrust" of Patent Owner's arguments. IPR2022-01291, Paper 41 at 4, 6 (PTAB August 28, 2023) ("we agree" that the motions "strike[] the right balance …").

IV. CONCLUSION

For these reasons, Apple respectfully requests that the Board seal and protect the Requested Documents.

Respectfully submitted,

Date: February 14, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e)(4), the undersigned certifies that on February 14, 2025 a complete and entire copy of this Petitioner's Motion to Seal were provided via email, to the Patent Owner by serving the email correspondence addresses of record as follows:

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