Daniel Kiang

From: Nicholas Stephens <nstephens@fr.com>
Sent: Tuesday, September 27, 2022 9:42 AM
To: Daniel Kiang; 2Bcc; AppleIPR745-1
Cc: IPR50095-0045IP1; Karl Renner; Andrew Patrick; Dan Smith
Subject: RE: IPR2022-01291 - Petition Correction (US Patent 10,687,745) (FR Ref. 50095-0045IP1)

Thank you, Daniel. We appreciate the response, and will email the Board this afternoon noting Masimo's position and the parties' availability.

Best regards,
Nick

From: Daniel Kiang <Daniel.Kiang@knobbe.com>
Sent: Monday, September 26, 2022 1:20 PM
To: Nicholas Stephens <nstephens@fr.com>; 2Bcc <2Bcc@knobbe.com>; AppleIPR745-1 <AppleIPR745-1@knobbe.com>
Cc: IPR50095-0045IP1 <IPR50095-0045IP1@fr.com>; Karl Renner <renner@fr.com>; Andrew Patrick <patrick@fr.com>; Dan Smith <dsmith@fr.com>
Subject: RE: IPR2022-01291 - Petition Correction (US Patent 10,687,745) (FR Ref. 50095-0045IP1)

Counsel,

Masimo will not oppose Apple's request for leave to strike portions of its petitions identified in your 9/14 and 9/19 emails. We are available at the following times for a conference call with the Board:

- Wed. 9/28 – 2-3pm ET
- Thurs. 9/29 – 2:30-5 pm ET
- Fri. 9/30 – 1:30pm-2:30pm ET
- Tues. 10/4 – 1pm-2pm ET

Best regards,
Daniel

Daniel Kiang
Associate
949-721-5205 **Direct**
Knobbe Martens

From: Nicholas Stephens <nstephens@fr.com>
Sent: Monday, September 26, 2022 7:07 AM
To: Daniel Kiang <Daniel.Kiang@knobbe.com>; 2Bcc <2Bcc@knobbe.com>; AppleIPR745-1 <AppleIPR745-1@knobbe.com>
Cc: IPR50095-0045IP1 <IPR50095-0045IP1@fr.com>; Karl Renner <renner@fr.com>; Andrew Patrick <patrick@fr.com>;

MASIMO 2030
Apple v. Masimo
IPR2024-00242

Dan Smith <dsmith@fr.com>
Subject: RE: IPR2022-01291 - Petition Correction (US Patent 10,687,745) (FR Ref. 50095-0045IP1)

Daniel,

We intend to reach out to the Board soon with Apple's requests. Will you please let us know Masimo's position on the remaining correction noted in the email below?

We are available for a call with the Board at the following dates/times. We'd appreciate if you could also let us know Masimo's availability, so that we can include an indication of the parties' availability for a call in the email to the Board.

- Wed. 9/28 – 12-3pm ET
- Thurs. 9/29 – 10am-12pm ET, 2:30-5 pm ET
- Fri. 9/30 – 10am-2:30pm ET
- Tues. 10/4 – 10am-2pm ET

Thank you.

Best regards,
Nick

Nick Stephens :: Principal :: Fish & Richardson P.C.
612 766 2018 direct :: nstephens@fr.com :: fr.com

From: Nicholas Stephens <nstephens@fr.com>
Sent: Monday, September 19, 2022 9:34 AM
To: Daniel Kiang <Daniel.Kiang@knobbe.com>; 2Bcc <2Bcc@knobbe.com>; AppleIPR745-1 <AppleIPR745-1@knobbe.com>
Cc: IPR50095-0045IP1 <IPR50095-0045IP1@fr.com>; Karl Renner <renner@fr.com>; Andrew Patrick <patrick@fr.com>; Dan Smith <dsmith@fr.com>
Subject: RE: IPR2022-01291 - Petition Correction (US Patent 10,687,745) (FR Ref. 50095-0045IP1)

Counsel,

Thank you for the confirmation that Masimo will not oppose Apple's motion to correct the final paragraph on page 46 of the -01291 petition per the agreed language. We also acknowledge Masimo's agreement with Apple's proposal to strike the statements identified in our email from September 14.

As to the additional statements highlighted in your most recent email from September 15, Apple agrees to request leave to strike in each of the relevant petitions the portion of the following sentence shown in red text:

> "Notably absent from that notice was any discussion whatsoever of ~~art applied in Apple's IPRs, including~~ art on which the present Petition's grounds are premised."

The remaining text highlighted in the September 15 email and Footnote 1 are factual statements that hold true notwithstanding the '745 patent's issuance before the petitions on the '695 patent were filed.

MASIMO 2030
Apple v. Masimo
IPR2024-00242

Please confirm whether Masimo opposes Apple's proposal to strike the above-identified words in addition to the statements from our September 14 email. Please also let us know Masimo's availability for a Board call on Wednesday 9/21 through Friday 9/23.

Best regards,
Nick

Nick Stephens :: Principal :: Fish & Richardson P.C.
612 766 2018 direct :: nstephens@fr.com :: fr.com

From: Daniel Kiang <Daniel.Kiang@knobbe.com>
Sent: Thursday, September 15, 2022 9:02 PM
To: Nicholas Stephens <nstephens@fr.com>; 2Bcc <2Bcc@knobbe.com>; AppleIPR745-1 <AppleIPR745-1@knobbe.com>
Cc: IPR50095-0045IP1 <IPR50095-0045IP1@fr.com>; Karl Renner <renner@fr.com>; Andrew Patrick <patrick@fr.com>; Dan Smith <dsmith@fr.com>
Subject: RE: IPR2022-01291 - Petition Correction (US Patent 10,687,745) (FR Ref. 50095-0045IP1)

Counsel,

Thank you for confirming that Apple will use the statement regarding Iwamiya from page 2 of the petition. Masimo will not oppose Apple's motion to correct the -01291 petition based on the agreed changes.

Regarding a motion to strike, Masimo agrees that the statements identified in your email below should be stricken. However, Masimo believes additional statements should also be stricken. Specifically, the highlighted sentences below from the "Summary of the Prosecution History" section in each of the four petitions and footnote 1 should also be stricken:

> Masimo filed the application that issued as the '745 Patent (16/835,772) ("'772 Application") with a request for accelerated examination on March 30, 2020, approximately three months after Masimo initiated its serial litigation campaign against Apple through its January 9, 2020 complaint in the U.S. District Court for the Central District of California (CDCA) (Case No. 8:20-cv-00048)~~, and approximately seven months after Apple filed IPRs challenging claims of related U.S. Patent No. 10,470,695 ("'695 Patent").~~[1]
>
> On May 4, 2020, only five weeks after Masimo filed the '772 Application, and without having issued a single rejection, the examiner issued a notice of allowance. APPLE-1002, 147-153. Notably absent from that notice was any discussion whatsoever of art applied in Apple's IPRs, including art on which the present Petition's grounds are premised. *Id.*
>
> Also notable is the fact that, in a final written decision issued May 5, 2022, the Board went on to invalidate every challenged claim of the '695 Patent based on art applied in Apple's IPRs. *Apple Inc. v. Masimo Corp.*, IPR2020-01722 Pap. 29, 2 (PTAB May 5, 2022)(finding "claims 6, 14, and 21 of the '695 patent…unpatentable" based on grounds including Ackermans, Sarantos, Mendelson-1991, and Chin).

The highlighted sentences clearly relate to the incorrect allegation that Masimo filed the application that issued as the '745 Patent seven months after Apple filed IPRs on the '695 Patent. These sentences also do not describe the '745

MASIMO 2030
Apple v. Masimo
IPR2024-00242

Patent prosecution history and only serve to falsely insinuate that Masimo violated its duty to disclose material information.

Please confirm that Apple will also seek to strike footnote 1 and the highlighted sentences from each of the four petitions.

Best regards,
Daniel

Daniel Kiang
Associate
949-721-5205 **Direct**
Knobbe Martens

From: Nicholas Stephens <nstephens@fr.com>
Sent: Wednesday, September 14, 2022 1:19 PM
To: Daniel Kiang <Daniel.Kiang@knobbe.com>; 2Bcc <2Bcc@knobbe.com>; AppleIPR745-1 <AppleIPR745-1@knobbe.com>
Cc: IPR50095-0045IP1 <IPR50095-0045IP1@fr.com>; Karl Renner <renner@fr.com>; Andrew Patrick <patrick@fr.com>; Dan Smith <dsmith@fr.com>
Subject: RE: IPR2022-01291 - Petition Correction (US Patent 10,687,745) (FR Ref. 50095-0045IP1)

Counsel,

Apple agrees to substitute the last sentence in the corrected paragraph with the sentence from page 2 of the Petition: "Iwamiya is cited on the face of the '745 patent, but was not relied on by the Examiner."

As to the related statements regarding the earlier-filed IPRs on the '695 Patent, Apple intends to request leave to strike these statements from each of the petitions pursuant to 37 CFR § 42.104(c). Specifically, Apple proposes to strike each of the following statements, in addition to correcting the paragraph in the IPR2022-01291 petition that we have negotiated in our earlier exchanges:

- IPR2022-01291
  - ", and approximately seven months after Apple filed IPRs challenging claims of related U.S. Patent No. 10,470,695 ("'695 Patent")" (Petition, p. 3)
- IPR2022-01292
  - ", and approximately seven months after Apple filed IPRs challenging claims of related U.S. Patent No. 10,470,695 ("'695 Patent")" (Petition, p. 3)
  - ", despite being in possession of Apple's earlier IPR petitions challenging claims of the related '695 Patent based on those same references. *See, generally*, IPR2020-01722, -01723" (Petition, p. 78)
- IPR2022-01465
  - ", and approximately seven months after Apple filed IPRs challenging claims of related U.S. Patent No. 10,470,695 ("'695 Patent")" (Petition, p. 3)
  - ", despite being in possession of Apple's earlier IPR petitions challenging claims of the related '695 Patent based on those same references. *See, generally*, IPR2020-01722, -01723" (Petition, p. 77)
- IPR2022-01466
  - ", and approximately seven months after Apple filed IPRs challenging claims of related U.S. Patent No. 10,470,695 ("'695 Patent")" (Petition, p. 3)

MASIMO 2030
Apple v. Masimo
IPR2024-00242

- ", despite being in possession of Apple's earlier IPR petitions challenging claims of the related '695 Patent based on those same references. *See, generally*, IPR2020-01722, -01723" (Petition, pp. 68-69)

Please let us know whether Masimo opposes Apple's request to strike these statements.

Best regards,
Nick

Nick Stephens :: Principal :: Fish & Richardson P.C.
612 766 2018 direct :: nstephens@fr.com :: fr.com

From: Daniel Kiang <Daniel.Kiang@knobbe.com>
Sent: Tuesday, September 13, 2022 2:55 PM
To: Nicholas Stephens <nstephens@fr.com>; 2Bcc <2Bcc@knobbe.com>; AppleIPR745-1 <AppleIPR745-1@knobbe.com>
Cc: IPR50095-0045IP1 <IPR50095-0045IP1@fr.com>; Karl Renner <renner@fr.com>; Andrew Patrick <patrick@fr.com>; Dan Smith <dsmith@fr.com>
Subject: RE: IPR2022-01291 - Petition Correction (US Patent 10,687,745) (FR Ref. 50095-0045IP1)

Counsel,

Regarding your second proposed correction below, Masimo would not object if Apple were to substitute the last sentence regarding Iwamiya with a copy of the statement on page 2 of the Petition: "Iwamiya is cited on the face of the '745 patent, but was not relied on by the Examiner." Please let us know if Apple is agreeable to that change. Masimo does not object to the remaining redlines.

Regarding the incorrect allegation involving the '745 Patent prosecution history and the dates of Apple's IPRs on the '695 Patent, we note that Apple also made similar false statements in multiple places, such as in the description of the prosecution history, in each of the four IPR petitions challenging the '745 Patent (IPR2022-01291, -01292, -01465, and -01466). Please explain how Apple intends to address those false statements.

Best regards,
Daniel

Daniel Kiang
Associate
949-721-5205 **Direct**
Knobbe Martens

From: Nicholas Stephens <nstephens@fr.com>
Sent: Saturday, September 10, 2022 11:19 AM
To: Daniel Kiang <Daniel.Kiang@knobbe.com>; 2Bcc <2Bcc@knobbe.com>; AppleIPR745-1 <AppleIPR745-1@knobbe.com>
Cc: IPR50095-0045IP1 <IPR50095-0045IP1@fr.com>; Karl Renner <renner@fr.com>; Andrew Patrick <patrick@fr.com>; Dan Smith <dsmith@fr.com>
Subject: RE: IPR2022-01291 - Petition Correction (US Patent 10,687,745) (FR Ref. 50095-0045IP1)

Counsel,

MASIMO 2030
Apple v. Masimo
IPR2024-00242

Thank you for pointing out the discrepancy with the dates implicated by the first sentence of the paragraph. As you correctly noted, the date of issuance of the '745 patent preceded the filing of IPR2020-01722 and -01723.

Below is a revised version of the corrected paragraph that we propose to replace the final paragraph on page 46 of the Petition. Please let us know whether Masimo opposes the proposed correction.

> ~~Although the face of the '745 Patent lists hundreds of other references cited by Masimo, Masimo failed to cite the Ackermans, Venkatraman, and Mendelson-799 references applied in this Petition to the examiner, despite being in possession of Apple's earlier IPR petitions challenging claims of the related '695 Patent based on those same references. *See, generally*, IPR2020-01722, -01723. Indeed, there~~ There is no indication in the '745 Patent's file history that the examiner was even aware of, let alone substantively considered, ~~any of the prior art applied in this Petition~~ Sarantos, Venkatraman, or Shie prior to allowing the '772 Application. *See, generally*, APPLE-1002. A related Iwamiya publication (U.S. Pub. 2011/0004106) is cited on the face of the '745 Patent, but was not relied on by the Examiner.~~The Ackermans, Venkatraman, Mendelson-799, Savant, and Haar references applied in this Petition are new, noncumulative prior art.~~

Best regards,
Nick

Nick Stephens :: Principal :: Fish & Richardson P.C.
612 766 2018 direct :: nstephens@fr.com :: fr.com

From: Daniel Kiang <Daniel.Kiang@knobbe.com>
Sent: Friday, September 09, 2022 4:23 PM
To: Nicholas Stephens <nstephens@fr.com>; 2Bcc <2Bcc@knobbe.com>; AppleIPR745-1 <AppleIPR745-1@knobbe.com>
Cc: IPR50095-0045IP1 <IPR50095-0045IP1@fr.com>; Karl Renner <renner@fr.com>; Andrew Patrick <patrick@fr.com>; Dan Smith <dsmith@fr.com>
Subject: RE: IPR2022-01291 - Petition Correction (US Patent 10,687,745) (FR Ref. 50095-0045IP1)

Counsel,

I write to summarize our meet and confer on September 9 regarding Apple's proposed motion to correct the IPR2022-01291 petition.

Masimo explained that the proposed changes to identify prior art and to add a final sentence relating to the Iwamiya publication are substantive, not clerical. Apple suggested that Masimo provide its position for Apple to include in its email to the Board. Regarding the Iwamiya publication statement, Apple explained that the new sentence is similar to its statement on page 2 of the petition. Masimo explained that the statement on page 2 was not sufficient to introduce a new argument in the *Advanced Bionics* section. Apple responded that page 2 of the petition also referenced § 325 and *Advanced Bionics*.

Masimo also explained that Apple made a false statement in its proposed paragraph. Specifically, Apple stated that Masimo failed to cite certain references to the examiner "despite being in possession of Apple's earlier IPR petitions challenging claims of the related '695 Patent based on those same references." The '745 Patent issued on June 23, 2020. On October 2, 2020, Apple filed the referenced IPRs (IPR2020-01722, -01723). Masimo could not have failed to cite references it became aware of after issuance. Apple explained that it would consider revisions to that paragraph.

We will wait to review Apple's additional revisions and will take Apple's response concerning the Iwamiya publication under advisement.

MASIMO 2030
Apple v. Masimo
IPR2024-00242

Best regards,
Daniel

Daniel Kiang
Associate
949-721-5205 **Direct**
Knobbe Martens

From: Nicholas Stephens <nstephens@fr.com>
Sent: Thursday, September 8, 2022 9:02 AM
To: Daniel Kiang <Daniel.Kiang@knobbe.com>; 2Bcc <2Bcc@knobbe.com>; AppleIPR745-1 <AppleIPR745-1@knobbe.com>
Cc: IPR50095-0045IP1 <IPR50095-0045IP1@fr.com>; Karl Renner <renner@fr.com>; Andrew Patrick <patrick@fr.com>; Dan Smith <dsmith@fr.com>
Subject: RE: IPR2022-01291 - Petition Correction (US Patent 10,687,745) (FR Ref. 50095-0045IP1)

Hi Daniel,

Thanks for the update. That sounds fine, we'll plan to meet tomorrow at 10 am Pacific using the same bridge number below.

Best regards,
Nick

From: Daniel Kiang <Daniel.Kiang@knobbe.com>
Sent: Thursday, September 08, 2022 10:57 AM
To: Nicholas Stephens <nstephens@fr.com>; 2Bcc <2Bcc@knobbe.com>; AppleIPR745-1 <AppleIPR745-1@knobbe.com>
Cc: IPR50095-0045IP1 <IPR50095-0045IP1@fr.com>; Karl Renner <renner@fr.com>; Andrew Patrick <patrick@fr.com>; Dan Smith <dsmith@fr.com>
Subject: RE: IPR2022-01291 - Petition Correction (US Patent 10,687,745) (FR Ref. 50095-0045IP1)

Hi Nick,

An urgent matter came up on our end and we will need to postpone the call. Does 10am Pacific tomorrow work?

Thanks,
Daniel

Daniel Kiang
Associate
949-721-5205 **Direct**
Knobbe Martens

From: Nicholas Stephens <nstephens@fr.com>
Sent: Wednesday, September 7, 2022 6:10 PM
To: Daniel Kiang <Daniel.Kiang@knobbe.com>; 2Bcc <2Bcc@knobbe.com>; AppleIPR745-1 <AppleIPR745-

MASIMO 2030
Apple v. Masimo
IPR2024-00242

1@knobbe.com>
Cc: IPR50095-0045IP1 <IPR50095-0045IP1@fr.com>; Karl Renner <renner@fr.com>; Andrew Patrick <patrick@fr.com>; Dan Smith <dsmith@fr.com>
Subject: RE: IPR2022-01291 - Petition Correction (US Patent 10,687,745) (FR Ref. 50095-0045IP1)

Daniel,

Thank you for your email. We are available to meet and confer tomorrow 9/8 at 10 am PT / 1 pm ET as you proposed. I've setup the following bridge for the call:

Tel: 888-706-0584
Code: 2915893#

The paragraph that we propose to replace is the final paragraph on page 46 of the Petition. Specifically, we propose to replace this paragraph with a corrected paragraph having the following changes relative to the original paragraph:

> Although the face of the '745 Patent lists hundreds of other references cited by Masimo, Masimo failed to cite the ~~Ackermans,~~ Sarantos or Venkatraman~~, and Mendelson-799~~ references applied in this Petition to the examiner, despite being in possession of Apple's earlier IPR petitions challenging claims of the related '695 Patent based on those same references. *See*, *generally*, IPR2020-01722, -01723. Indeed, there is no indication in the '745 Patent's file history that the examiner was even aware of, let alone substantively considered, ~~any of the prior art applied in this Petition~~ Sarantos, Venkatraman, or Shie prior to allowing the '772 Application. *See*, *generally*, APPLE-1002. A related Iwamiya publication (U.S. Pub. 2011/0004106) is cited on the face of the '745 Patent, but was not relied on by the Examiner.~~The Ackermans, Venkatraman, Mendelson-799, Savant, and Haar references applied in this Petition are new, noncumulative prior art.~~

We believe the final sentence aligns with the statement on page 2 of the Petition that "Iwamiya is cited on the face of the '745 patent, but was not relied on by the Examiner."

Best regards,
Nick

Nick Stephens :: Principal :: Fish & Richardson P.C.
612 766 2018 direct :: nstephens@fr.com :: fr.com

From: Daniel Kiang <Daniel.Kiang@knobbe.com>
Sent: Tuesday, September 06, 2022 1:52 PM
To: Nicholas Stephens <nstephens@fr.com>; 2Bcc <2Bcc@knobbe.com>; AppleIPR745-1 <AppleIPR745-1@knobbe.com>
Cc: IPR50095-0045IP1 <IPR50095-0045IP1@fr.com>; Karl Renner <renner@fr.com>; Andrew Patrick <patrick@fr.com>; Dan Smith <dsmith@fr.com>
Subject: RE: IPR2022-01291 - Petition Correction (US Patent 10,687,745) (FR Ref. 50095-0045IP1)

[This email originated outside of F&R.]

Counsel,

MASIMO 2030
Apple v. Masimo
IPR2024-00242

We are considering your request regarding the replacement of a paragraph in the IPR2022-01291 petition. Please send us a copy of the exact paragraph you intend to replace and the proposed replacement paragraph in advance of a meet and confer. Assuming we receive the proposed replacement language, we are available to meet and confer on 9/8 at 10am Pacific/1pm Eastern.

Best regards,
Daniel

Daniel Kiang
Associate
949-721-5205 **Direct**
Knobbe Martens

From: Nicholas Stephens <nstephens@fr.com>
Sent: Tuesday, September 6, 2022 7:48 AM
To: 2Bcc <2Bcc@knobbe.com>; AppleIPR745-1 <AppleIPR745-1@knobbe.com>
Cc: IPR50095-0045IP1 <IPR50095-0045IP1@fr.com>; Karl Renner <renner@fr.com>; Andrew Patrick <patrick@fr.com>; Dan Smith <dsmith@fr.com>
Subject: RE: IPR2022-01291 - Petition Correction (US Patent 10,687,745) (FR Ref. 50095-0045IP1)

Counsel,

A kind follow-up to our email from last week. We look forward to hearing from you.

Best regards,
Nick

Nick Stephens :: Principal :: Fish & Richardson P.C.
612 766 2018 direct :: nstephens@fr.com :: fr.com

From: Nicholas Stephens <nstephens@fr.com>
Sent: Wednesday, August 31, 2022 1:29 PM
To: 2bcc@knobbe.com; AppleIPR745-1@knobbe.com
Cc: IPR50095-0045IP1 <IPR50095-0045IP1@fr.com>; Karl Renner <renner@fr.com>; Andrew Patrick <patrick@fr.com>; Dan Smith <dsmith@fr.com>
Subject: IPR2022-01291 - Petition Correction (US Patent 10,687,745) (FR Ref. 50095-0045IP1)

Counsel,

Petitioner filed two petitions involving the '745 patent on July 22, 2022 in IPR2022-01291 and IPR2022-01292. On further review, we recently identified a clerical error in the final paragraph on page 46 of the -01291 petition. This paragraph was inadvertently copied from pp. 77-78 of the -01292 petition, and as a result, it lists the prior art cited in the -01292 petition rather than art cited in -01291.

Petitioner intends to contact the Board to request correction of this paragraph pursuant to 37 CFR § 42.104(c). Specifically, Petitioner would seek leave to replace the final paragraph on page 46 of the -01291 petition with a paragraph that identifies the references actually cited in the -01291 petition, while noting that a related Iwamiya publication (U.S. Pub. 2011/0004106) was cited to the Examiner but not otherwise addressed during prosecution.

MASIMO 2030
Apple v. Masimo
IPR2024-00242

A draft of the email that we propose to send to the Board follows below. Will you please let us know whether Patent Owner opposes this request? If a call would be helpful to discuss further, please let us know a time that you would be available to meet and confer by phone.

Lastly, please also let us know times that Patent Owner could be available for a call with the Board. Petitioner is available in the following windows, although we would consider additional times as needed to accommodate Patent Owner's availability as well:

- 9/1 – 1-4 pm ET
- 9/2 – 11 am – 2 pm ET
- 9/6 – 2-4 pm ET
- 9/8 – 11 am – 3 pm ET

*****DRAFT BOARD EMAIL*******

Honorable Board,

Petitioner respectfully requests leave under 37 CFR § 42.104(c) to address a recently identified clerical error in IPR2022-01291. The -01291 petition was one of two petitions filed on July 22, 2022 involving U.S. Patent 10,687,745. Upon further review of the -01291 petition, Petitioner found that the final paragraph on page 46 of this petition was inadvertently copied from pp. 77-78 of the second of the two petitions filed on the same day (i.e., IPR2022-01292). This paragraph incorrectly lists the prior art applied in the -01292 petition rather than the art that was actually applied in the -01291 petition.

In light of the above, Petitioner respectfully requests authorization to file a corrected petition that replaces the last paragraph on page 46 of the -01291 petition with a corrected paragraph that lists the references actually applied in the -01291 petition. The corrected paragraph would also note that a related Iwamiya publication (U.S. Pub. 2011/0004106) was cited to the Examiner but not otherwise addressed during prosecution, a fact that is apparent from the face of the '745 patent and the surrounding discussion on pages 46-47 of the petition.

Patent Owner indicates that it [opposes/does not oppose] this request.

If the Board believes a call would be helpful to further discuss the request, the parties are available at the following times:

[INSERT AVAILABILITY FOR A CALL]

Respectfully submitted,

Nick Stephens :: Principal :: Fish & Richardson P.C.
612 766 2018 direct :: nstephens@fr.com :: fr.com

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MASIMO 2030
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