IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

APPLE, INC.,	)	
	)	
Plaintiff,	)	C.A. No. 22-1377-MN-JLH
	)	22-1378-MN-JLH
v.	)	
	)	
MASIMO CORPORATION,	)	
et al.,	)	
	)	
Defendant.	)	

Friday, May 5, 2023
10:00 a.m.

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE JENNIFER L. HALL
United States District Court Judge

APPEARANCES:

POTTER, ANDERSON & CORROON, LLP
BY: DAVID ELLIS MOORE, ESQ.
BY: BINDU ANN GEORGE PALAPURA, ESQ.

-and-

MASIMO 2012
Apple v. Masimo
IPR2024-00243

APPEARANCES CONTINUED:

DESMARAIS LLP
BY: JOHN DESMARAIS, ESQ.
BY: PETER MAGIC, ESQ.
BY: JORDAN MALZ, ESQ.
BY: KERRI-ANN LIMBEEK, ESQ.

-and-

WILMER HALE
BY: JENNIFER MILICI, ESQ.
BY: MARK FORD, ESQ.

-and-

APPLE IN-HOUSE COUNSEL
BY: NATALIE POUS, ESQ.
BY: MEAGHAN THOMAS-KENNEDY, ESQ.

Counsel for the Plaintiff

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KNOBBE MARTENS
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BY: JARED C. BUNKER, ESQ.
BY: BENJAMIN A. KATZENELLENBOGEN, ESQ.
BY: STEPHEN LARSON, ESQ.
BY: ADAM B. POWELL, ESQ.

Counsel for the Defendant

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MASIMO 2012
Apple v. Masimo
IPR2024-00243

1 THE COURT: Good morning, counsel.
2 This is Jennifer Hall. We're here on the line
3 for a scheduling conference. This is Apple
4 versus Masimo and Sound United. It's civil
5 action numbers 22-1377 and 22-1378. May I have
6 appearances, please, for plaintiffs?
7 MR. MOORE: Good morning, Your
8 Honor. It's David Moore.
9 THE COURT: Good morning, Mr.
10 Moore. Do you have others with you? You may
11 have cut out.
12 MR. MOORE: Sorry about that.
13 Bindu Palapura is with me. And our co-counsel
14 from Desmarais is on the line as well, John
15 Desmarais, Peter Magic, Jordan Malz and
16 Kerri-Ann Limbeek. We also have counsel from
17 Wilmer Hale on the line, Jennifer Milici and
18 Mark Ford. And I believe we also have in-house
19 counsel from Apple, Natalie Pous and Meaghan
20 Thomas-Kennedy on the line.
21 THE COURT: Great. Good morning
22 to all of you. Do we have counsel for the
23 defendants on the line?
24 MR. PHILLIPS: Good morning, Your

MASIMO 2012
Apple v. Masimo
IPR2024-00243

1 Honor. This is Jack Phillips of Phillips,
2 McLaughlin & Hall and with me on the line are
3 Steve Jenson, Brian Horne, Jared Bunker, Ben
4 Katzenellenbogen, Stephen Larson and Adam Powell
5 of the Knobbe Martens firm.
6 THE COURT: Good morning to all of
7 you. So I thought that I would let you know
8 what my thoughts are and then we'll give
9 everybody a chance to ask questions at the end.
10 I anticipate we may need to get on another call,
11 but let me just tell you what I'm thinking.
12 I can tell you that we spent a
13 great deal of time looking at the docket and
14 seeing what's pending. We have a good
15 understanding about what claims are at issue in
16 the two cases and what the parties want to do
17 with respect to the schedule. I think we also
18 have a gut understanding about why they want to
19 do what they want to do. So what I'm going to
20 outline for you takes into consideration the
21 parties' pleadings, which we've reviewed, the
22 pending motions to dismiss and strike, the
23 claims and the counterclaims and the defenses.
24 We've looked carefully at the competing proposed

MASIMO 2012
Apple v. Masimo
IPR2024-00243

1 schedules and we looked at all of the arguments
2 made in all of the scheduling related motions to
3 include the pending motions to expedite, to
4 consolidate, to sever and to stay and we've also
5 taken into account that it appears to us that
6 this is -- well, it doesn't just appear to us,
7 it's the case that it's not the only matter
8 between plaintiff and defendants and these cases
9 are part of a larger battle between the parties.
10 You all have many cases against each other
11 related to the products at issue and so any
12 arguments by one side or the other side to the
13 Court about why it would be burdensome to defend
14 against the other side's claims are taken by the
15 Court with a degree of skepticism. And I also
16 think that there's no reason why the parties'
17 claims that they've chosen to bring against each
18 other in Delaware can't move as fast here as
19 they have in other forums as well. I've also
20 taken into account that there is a reason to
21 think that some discovery relevant to this case
22 has already been had. And the parties have
23 suggested that they are both amenable in
24 principle to cross these agreements that would

MASIMO 2012
Apple v. Masimo
IPR2024-00243

1 allow discovery between the cases presently
2 before the Court as well as including some of
3 the discovery that they've had in the Central
4 District of California case and the ITC case.
5 So having taken the totality of
6 these circumstances under consideration, in my
7 view there's really only one good way to proceed
8 that takes into account both sides' competing
9 interests in having their claims and defenses
10 heard both fairly and expeditiously as well as
11 the Court's and the parties' interests in
12 efficiency. And so here's the broad outline of
13 the plan.
14 The cases are going to be
15 informally consolidated for pretrial
16 proceedings. There will be one scheduling order
17 that will apply to both cases for pretrial
18 proceeding. Subject to the Court's upcoming
19 ruling on the pending motions to dismiss and
20 strike, every claim and every defense and every
21 counterclaim is going to go forward in discovery
22 at this time. As I mentioned in my oral order
23 yesterday, the Court will take up the motions to
24 dismiss and strike claims and defenses in due

MASIMO 2012
Apple v. Masimo
IPR2024-00243

1 course, but for now everything is going forward
2 in discovery.
3 The cases and the claims are going
4 to proceed forward with the idea that we will
5 have a case management conference in January of
6 2024, at which time we will decide which claims
7 and defenses should proceed to trial. And
8 should the Court determine that there are cases
9 that should proceed to trial, the Court is going
10 to be able to get you to trial within a month or
11 two of January 2024. The exact date will be
12 decided at the case management conference in
13 January.
14 Should the parties desire to file
15 summary judgment motions, briefing on those
16 motions should be complete by the second week in
17 December. If a party wishes to file more than
18 one summary judgment motion, what we're going to
19 do is incorporate a ranking procedure that's
20 consistent with the procedure that Judge
21 Connolly uses. And I know your Delaware counsel
22 will be able to fill you in on that if you're
23 not familiar, but the general idea is that the
24 parties have to make clear the order in which

MASIMO 2012
Apple v. Masimo
IPR2024-00243

1 they want their summary judgment motions heard.
2 So the first motion the party wishes the Court
3 to consider should be designated number one and
4 the second motion number two and so on. And
5 then the Court will review those motions in
6 order. And if the Court decides to deny a
7 motion filed by the parties, barring
8 exceptionable circumstances, the Court will not
9 review any further summary judgment motions by
10 that party.
11 Alternatively, if the parties want
12 to save some time on the schedule, they can, if
13 both sides agree, forego the opportunity to file
14 summary judgment motions as of right and instead
15 the Court will adopt a procedure under which the
16 parties can file short competing letters
17 requesting leave to file summary judgment. If
18 the parties choose that option, those can be due
19 two weeks before the January 2024 case
20 management conference and we'll take them up at
21 that conference.
22 And as I said, the plan would be
23 to get you to trial within a month or two of
24 January 2024. That trial may involve a formal

MASIMO 2012
Apple v. Masimo
IPR2024-00243

1 consolidation of certain claims from each of the
2 two actions or it may not. We'll figure that
3 out in January. The parties can argue at that
4 point in time about what should go forward and
5 the Court will need a joint letter no longer
6 than six pages, single-spaced, to be filed at
7 least 10 days before the January 2024 status
8 conference and the letter should indicate how
9 the parties think the case should proceed to
10 trial.
11 Based on what I said, I imagine
12 that you will all want to go back and meet and
13 confer about discovery limits and dates.
14 To the extent there is a need to
15 have a markman hearing, I'll need a joint brief
16 for that two weeks before whatever date you want
17 the markman hearing to be and I can accommodate
18 that. I'll be able to get you a ruling on any
19 markman issues at the hearing or very shortly
20 thereafter, but if you don't have a ruling by
21 the time expert reports are due, the parties'
22 experts will need to address both sides'
23 competing claim constructions.
24 So with respect to the pending

MASIMO 2012
Apple v. Masimo
IPR2024-00243

1 motions we've got in the 1377 case, there's a
2 motion to expedite. That is denied. However, I
3 will say that Apple's request for a trial eight
4 months from the date of the scheduling order
5 comes pretty close to what the Court has just
6 offered on the phone today and my plan is to
7 keep the trial pretty close to eight months from
8 the day we're going to enter the scheduling
9 order. With respect to, again, the 1377 and the
10 1378 cases, the motion to consolidate cases,
11 that's going to be denied, because we're not
12 going to have formal consolidation at this time.
13 The cases, however, will be informally
14 consolidated for scheduling and discovery and we
15 can re-raise at the case management conference
16 any arguments that the claims should be tried
17 together.
18 In 1378 we've got a motion to
19 sever certain of the counterclaims in that case.
20 That's denied without prejudice to re-raise at
21 the January 2024 case management conference.
22 And then we have also a motion to stay discovery
23 pending a resolution of a motion to dismiss and
24 that's denied.

MASIMO 2012
Apple v. Masimo
IPR2024-00243

1 I know what you all are probably
2 wondering, which is is Judge Noreika going to go
3 for this and the answer to that is yes. I
4 actually have spoken with her about the pending
5 motions and she and I each independently came up
6 with the plan that I have outlined for you
7 today, which indicates to me that it's a good
8 plan and it's the right way to proceed.
9 So I don't know where we are with
10 the 26-day disclosures and the initial patent
11 disclosures. At least based on the competing
12 proposed schedules that you all filed a couple
13 weeks ago, it looked to me like we were making
14 some progress, so hopefully those things can be
15 incorporated into whatever you all come up with,
16 but I'd like you all to have a proposed
17 scheduling order with any additional disputes
18 based on the plan that I've outlined set forth
19 in that and then if we need to get back on the
20 phone we can. Hopefully we can get that revised
21 scheduling order within a week.
22 So does anyone have any questions
23 from plaintiff's side?
24 MR. DESMARAIS: Hello, Your Honor.

MASIMO 2012
Apple v. Masimo
IPR2024-00243

1 This is John Desmarais for Apple. Your plan
2 sounds like a good one and we have no questions
3 and we appreciate the Court's hard work to come
4 up with the plan. So thank you.
5 THE COURT: Great. Thanks very
6 much. Any questions from defendants?
7 MR. HORNE: No, Your Honor. This
8 is Brian Horne for defendants and I echo Mr.
9 Desmarais's sentiments.
10 THE COURT: Fantastic. Well,
11 let's get crackin' on these claims. So we'll
12 look forward to getting a scheduling from you in
13 a week. Thank you, everybody. Bye bye.
14 (End at 10:15 a.m.)
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MASIMO 2012
Apple v. Masimo
IPR2024-00243

1 State of Delaware)
)
2 New Castle County)
3
4
5 CERTIFICATE OF REPORTER
6
7 I, Stacy M. Ingram, Certified Court Reporter
8 and Notary Public, do hereby certify that the
9 foregoing record, Pages 1 to 13 inclusive, is a true
10 and accurate transcript of my stenographic notes
11 taken on May 5, 2023, in the above-captioned matter.
12
13 IN WITNESS WHEREOF, I have hereunto set my
14 hand and seal this 5th day of May 2023, at
15 Wilmington.
16
17
18 /s/ Stacy M. Ingram
19 Stacy M. Ingram, CCR
20
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22
23
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MASIMO 2012
Apple v. Masimo
IPR2024-00243

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/s [1] - 13:18

1

1 [1] - 13:9
10 [1] - 9:7
10:00 [1] - 1:11
10:15 [1] - 12:14
13 [1] - 13:9
1377 [2] - 10:1, 10:9
1378 [2] - 10:10, 10:18

2

2023 [3] - 1:10, 13:11, 13:14
2024 [6] - 7:6, 7:11, 8:19, 8:24, 9:7, 10:21
22-1377 [1] - 3:5
22-1377-MN-JLH [1] - 1:4
22-1378 [1] - 3:5
22-1378-MN-JLH [1] - 1:5
26-day [1] - 11:10

5

5 [2] - 1:10, 13:11
5th [1] - 13:14

8

844 [1] - 1:12

A

a.m [2] - 1:11, 12:14
able [3] - 7:10, 7:22, 9:18
above-captioned [1] - 13:11
accommodate [1] - 9:17
account [3] - 5:5, 5:20, 6:8
accurate [1] - 13:10
action [1] - 3:5
actions [1] - 9:2
ADAM [1] - 2:18
Adam [1] - 4:4
additional [1] - 11:17
address [1] - 9:22
adopt [1] - 8:15
ago [1] - 11:13
agree [1] - 8:13
agreements [1] - 5:24
al [1] - 1:7
allow [1] - 6:1
alternatively [1] - 8:11
amenable [1] - 5:23
ANDERSON [1] - 1:20
Ann [1] - 3:16
ANN [2] - 1:21, 2:4
answer [1] - 11:3
anticipate [1] - 4:10
appear [1] - 5:6
APPEARANCES [2] - 1:19, 2:1
appearances [1] - 3:6
APPLE [2] - 1:3, 2:9
Apple [3] - 3:3, 3:19, 12:1
Apple's [1] - 10:3
apply [1] - 6:17
appreciate [1] - 12:3
argue [1] - 9:3
arguments [3] - 5:1, 5:12, 10:16

B

barring [1] - 8:7
based [3] - 9:11, 11:11, 11:18
battle [1] - 5:9
BEFORE [1] - 1:16
Ben [1] - 4:3
BENJAMIN [1] - 2:17
between [3] - 5:8, 5:9, 6:1
BINDU [1] - 1:21
Bindu [1] - 3:13
Brian [2] - 4:3, 12:8
BRIAN [1] - 2:16
brief [1] - 9:15
briefing [1] - 7:15
bring [1] - 5:17
broad [1] - 6:12
BUNKER [1] - 2:16
Bunker [1] - 4:3
burdensome [1] - 5:13
BY [17] - 1:20, 1:21, 2:2, 2:3, 2:3, 2:4, 2:6, 2:7, 2:9, 2:10, 2:13, 2:15, 2:16, 2:16, 2:17, 2:17, 2:18
bye [2] - 12:13

C

C.A [1] - 1:4
California [1] - 6:4
captioned [1] - 13:11
carefully [1] - 4:24
case [12] - 5:7, 5:21, 6:4, 7:5, 7:12, 8:19, 9:9, 10:1, 10:15, 10:19, 10:21
cases [11] - 4:16, 5:8, 5:10, 6:1, 6:14, 6:17, 7:3, 7:8, 10:10, 10:13
Castle [1] - 13:2
CCR [1] - 13:19
Central [1] - 6:3
certain [2] - 9:1, 10:19
CERTIFICATE [1] - 13:5
Certified [1] - 13:7
certify [1] - 13:8
chance [1] - 4:9
choose [1] - 8:18
chosen [1] - 5:17
circumstances [2] - 6:6, 8:8
civil [1] - 3:4
claim [2] - 6:20, 9:23
claims [11] - 4:15, 4:23, 5:14, 5:17, 6:9, 6:24, 7:3, 7:6, 9:1, 10:16, 12:11
clear [1] - 7:24
close [2] - 10:5, 10:7
co [1] - 3:13
co-counsel [1] - 3:13
competing [5] - 4:24, 6:8, 8:16, 9:23, 11:11
complete [1] - 7:16
confer [1] - 9:13
conference [8] - 3:3, 7:5, 7:12, 8:20, 8:21, 9:8, 10:15, 10:21
Connolly [1] - 7:21
consider [1] - 8:3
consideration [2] - 4:20, 6:6
consistent [1] - 7:20
consolidate [2] - 5:4, 10:10
consolidated [2] - 6:15, 10:14
consolidation [2] - 9:1, 10:12
constructions [1] - 9:23
CONTINUED [1] - 2:1
CORPORATION [1] - 1:6
CORROON [1] - 1:20
COUNSEL [1] - 2:9
Counsel [2] - 2:11, 2:19
counsel [6] - 3:1, 3:13, 3:16, 3:19, 3:22, 7:21
counterclaim [1] - 6:21
counterclaims [2] - 4:23, 10:19
County [1] - 13:2
couple [1] - 11:12
course [1] - 7:1
COURT [7] - 1:1, 3:1, 3:9, 3:21, 4:6, 12:5, 12:10
Court [15] - 1:16, 5:13, 5:15, 6:2, 6:23, 7:8, 7:9, 8:2, 8:5, 8:6, 8:8, 8:15, 9:5, 10:5, 13:7
Court's [3] - 6:11, 6:18, 12:3
crackin' [1] - 12:11
cross [1] - 5:24
cut [1] - 3:11

D

date [3] - 7:11, 9:16, 10:4
dates [1] - 9:13
David [1] - 3:8
DAVID [1] - 1:20
days [1] - 9:7
deal [1] - 4:13
December [1] - 7:17
decide [1] - 7:6
decided [1] - 7:12
decides [1] - 8:6
defend [1] - 5:13
Defendant [2] - 1:8, 2:19
defendants [4] - 3:23, 5:8, 12:6, 12:8
defense [1] - 6:20
defenses [4] - 4:23, 6:9, 6:24, 7:7
degree [1] - 5:15
DELAWARE [1] - 1:1
Delaware [4] - 1:13, 5:18, 7:21, 13:1
denied [4] - 10:2, 10:11, 10:20, 10:24
deny [1] - 8:6
designated [1] - 8:3
desire [1] - 7:14
Desmarais [3] - 3:14, 3:15, 12:1
DESMARAIS [3] - 2:2, 2:2, 11:24
Desmarais's [1] - 12:9
determine [1] - 7:8
disclosures [2] - 11:10, 11:11
discovery [8] - 5:21, 6:1, 6:3, 6:21, 7:2, 9:13, 10:14, 10:22
dismiss [4] - 4:22, 6:19, 6:24, 10:23
disputes [1] - 11:17
DISTRICT [2] - 1:1, 1:1
District [2] - 1:16, 6:4
docket [1] - 4:13
due [3] - 6:24, 8:18, 9:21

E

echo [1] - 12:8
efficiency [1] - 6:12
eight [2] - 10:3, 10:7
ELLIS [1] - 1:20
End [1] - 12:14
end [1] - 4:9
enter [1] - 10:8
ESQ [17] - 1:20, 1:21, 2:2, 2:3, 2:3, 2:4, 2:6, 2:7, 2:9, 2:10, 2:13, 2:15, 2:16, 2:16, 2:17, 2:17, 2:18
et [1] - 1:7
exact [1] - 7:11
exceptionable [1] - 8:8
expedite [2] - 5:3, 10:2
expeditiously [1] - 6:10
expert [1] - 9:21
experts [1] - 9:22
extent [1] - 9:14

MASIMO 2012
Apple v. Masimo
IPR2024-00243

F

fairly [1] - 6:10
familiar [1] - 7:23
Fantastic [1] - 12:10
fast [1] - 5:18
figure [1] - 9:2
file [5] - 7:14, 7:17, 8:13, 8:16, 8:17
filed [3] - 8:7, 9:6, 11:12
fill [1] - 7:22
firm [1] - 4:5
first [1] - 8:2
FOR [1] - 1:1
FORD [1] - 2:7
Ford [1] - 3:18
forego [1] - 8:13
foregoing [1] - 13:9
formal [2] - 8:24, 10:12
forth [1] - 11:18
forums [1] - 5:19
forward [5] - 6:21, 7:1, 7:4, 9:4, 12:12
Friday [1] - 1:10

G

general [1] - 7:23
GEORGE [1] - 1:21
great [3] - 3:21, 4:13, 12:5
gut [1] - 4:18

H

HALE [1] - 2:6
Hale [1] - 3:17
HALL [2] - 1:16, 2:12
Hall [2] - 3:2, 4:2
hand [1] - 13:14
hard [1] - 12:3
heard [2] - 6:10, 8:1
hearing [3] - 9:15, 9:17, 9:19
hello [1] - 11:24
hereby [1] - 13:8
hereunto [1] - 13:13
Honor [4] - 3:8, 4:1, 11:24, 12:7
HONORABLE [1] - 1:16
hopefully [2] - 11:14, 11:20
Horne [2] - 4:3, 12:8
HORNE [2] - 2:16, 12:7
house [1] - 3:18
HOUSE [1] - 2:9

I

idea [2] - 7:4, 7:23
imagine [1] - 9:11
IN [3] - 1:1, 2:9, 13:13
in-house [1] - 3:18
IN-HOUSE [1] - 2:9
INC [1] - 1:3
include [1] - 5:3
including [1] - 6:2
inclusive [1] - 13:9
incorporate [1] - 7:19
incorporated [1] - 11:15
independently [1] - 11:5
indicate [1] - 9:8
indicates [1] - 11:7
informally [2] - 6:15, 10:13
Ingram [3] - 13:7, 13:18, 13:19
initial [1] - 11:10
instead [1] - 8:14
interests [2] - 6:9, 6:11
involve [1] - 8:24
issue [2] - 4:15, 5:11
issues [1] - 9:19
ITC [1] - 6:4

J

Jack [1] - 4:1
January [8] - 7:5, 7:11, 7:13, 8:19, 8:24, 9:3, 9:7, 10:21
Jared [1] - 4:3
JARED [1] - 2:16
JENNIFER [2] - 1:16, 2:6
Jennifer [2] - 3:2, 3:17
Jenson [1] - 4:3
JENSON [1] - 2:15
JOHN [2] - 2:2, 2:13
John [2] - 3:14, 12:1
joint [2] - 9:5, 9:15
Jordan [1] - 3:15
JORDAN [1] - 2:3
JR [1] - 2:13
Judge [3] - 1:16, 7:20, 11:2
judgment [6] - 7:15, 7:18, 8:1, 8:9, 8:14, 8:17

K

KATZENELLENBOGEN [1] - 2:17
Katzenellenbogen [1] - 4:4
keep [1] - 10:7
Kennedy [1] - 3:20
KENNEDY [1] - 2:10
KERRI [1] - 2:4
Kerri [1] - 3:16
KERRI-ANN [1] - 2:4
Kerri-Ann [1] - 3:16
King [1] - 1:12
KNOBBE [1] - 2:15
Knobbe [1] - 4:5

L

larger [1] - 5:9
LARSON [1] - 2:17
Larson [1] - 4:4
least [2] - 9:7, 11:11
leave [1] - 8:17
letter [2] - 9:5, 9:8
letters [1] - 8:16
LIMBEEK [1] - 2:4
Limbeek [1] - 3:16
limits [1] - 9:13
line [6] - 3:2, 3:14, 3:17, 3:20, 3:23, 4:2
LLP [2] - 1:20, 2:2
look [1] - 12:12
looked [3] - 4:24, 5:1, 11:13
looking [1] - 4:13

M

MAGIC [1] - 2:3
Magic [1] - 3:15
Malz [1] - 3:15
MALZ [1] - 2:3
management [5] - 7:5, 7:12, 8:20, 10:15, 10:21
MARK [1] - 2:7
Mark [1] - 3:18
markman [3] - 9:15, 9:17, 9:19
MARTENS [1] - 2:15
Martens [1] - 4:5
MASIMO [1] - 1:6
Masimo [1] - 3:4
matter [2] - 5:7, 13:11
McLaughlin [2] - 2:12, 4:2
Meaghan [1] - 3:19
MEAGHAN [1] - 2:10
meet [1] - 9:12
mentioned [1] - 6:22
Milici [1] - 3:17
MILICI [1] - 2:6
month [2] - 7:10, 8:23
months [2] - 10:4, 10:7
Moore [2] - 3:8, 3:10
MOORE [3] - 1:20, 3:7, 3:12
morning [6] - 3:1, 3:7, 3:9, 3:21, 3:24, 4:6
motion [9] - 7:18, 8:2, 8:4, 8:7, 10:2, 10:10, 10:18, 10:22, 10:23
motions [13] - 4:22, 5:2, 5:3, 6:19, 6:23, 7:15, 7:16, 8:1, 8:5, 8:9, 8:14, 10:1, 11:5
move [1] - 5:18
MR [5] - 3:7, 3:12, 3:24, 11:24, 12:7

N

Natalie [1] - 3:19
NATALIE [1] - 2:9
need [6] - 4:10, 9:5, 9:14, 9:15, 9:22, 11:19
New [1] - 13:2
Noreika [1] - 11:2
Notary [1] - 13:8
notes [1] - 13:10
number [2] - 8:3, 8:4
numbers [1] - 3:5

O

OF [2] - 1:1, 13:5
offered [1] - 10:6
one [6] - 5:12, 6:7, 6:16, 7:18, 8:3, 12:2
opportunity [1] - 8:13
option [1] - 8:18
oral [1] - 6:22
order [8] - 6:16, 6:22, 7:24, 8:6, 10:4, 10:9, 11:17, 11:21
outline [2] - 4:20, 6:12
outlined [2] - 11:6, 11:18

P

P.A [1] - 2:12
Pages [1] - 13:9
pages [1] - 9:6
PALAPURA [1] - 1:21
Palapura [1] - 3:13
part [1] - 5:9
parties [11] - 4:16, 5:9, 5:22, 7:14, 7:24, 8:7, 8:11, 8:16, 8:18, 9:3, 9:9
parties' [4] - 4:21, 5:16, 6:11, 9:21
party [3] - 7:17, 8:2, 8:10
patent [1] - 11:10
pending [7] - 4:14, 4:22, 5:3, 6:19, 9:24, 10:23, 11:4
Peter [1] - 3:15
PETER [1] - 2:3
Phillips [2] - 4:1
PHILLIPS [3] - 2:12, 2:13, 3:24
phone [2] - 10:6, 11:20
Plaintiff [2] - 1:4, 2:11
plaintiff [1] - 5:8
plaintiff's [1] - 11:23
plaintiffs [1] - 3:6
plan [8] - 6:13, 8:22, 10:6, 11:6, 11:8, 11:18, 12:1, 12:4
pleadings [1] - 4:21
point [1] - 9:4
POTTER [1] - 1:20
Pous [1] - 3:19
POUS [1] - 2:9
Powell [1] - 4:4
POWELL [1] - 2:18
prejudice [1] - 10:20
presently [1] - 6:1
pretrial [2] - 6:15, 6:17
pretty [2] - 10:5, 10:7
principle [1] - 5:24
procedure [3] - 7:19, 7:20, 8:15
proceed [6] - 6:7, 7:4, 7:7, 7:9, 9:9, 11:8
proceeding [1] - 6:18
proceedings [1] - 6:16

MASIMO 2012
Apple v. Masimo
IPR2024-00243

products [1] - 5:11
progress [1] - 11:14
proposed [3] - 4:24, 11:12, 11:16
Public [1] - 13:8

Q

questions [4] - 4:9, 11:22, 12:2, 12:6

R

raise [2] - 10:15, 10:20
ranking [1] - 7:19
re [2] - 10:15, 10:20
re-raise [2] - 10:15, 10:20
really [1] - 6:7
reason [2] - 5:16, 5:20
record [1] - 13:9
related [2] - 5:2, 5:11
relevant [1] - 5:21
REPORTER [1] - 13:5
Reporter [1] - 13:7
reports [1] - 9:21
request [1] - 10:3
requesting [1] - 8:17
resolution [1] - 10:23
respect [3] - 4:17, 9:24, 10:9
review [2] - 8:5, 8:9
reviewed [1] - 4:21
revised [1] - 11:20
ruling [3] - 6:19, 9:18, 9:20

S

save [1] - 8:12
schedule [2] - 4:17, 8:12
schedules [2] - 5:1, 11:12
scheduling [9] - 3:3, 5:2, 6:16, 10:4, 10:8, 10:14, 11:17, 11:21, 12:12
seal [1] - 13:14
second [2] - 7:16, 8:4
seeing [1] - 4:14
sentiments [1] - 12:9
set [2] - 11:18, 13:13
sever [2] - 5:4, 10:19
short [1] - 8:16
shortly [1] - 9:19
side [3] - 5:12, 11:23
side's [1] - 5:14
sides [1] - 8:13
sides' [2] - 6:8, 9:22
single [1] - 9:6
single-spaced [1] - 9:6
six [1] - 9:6
skepticism [1] - 5:15
sorry [1] - 3:12
Sound [1] - 3:4
sounds [1] - 12:2
spaced [1] - 9:6
spent [1] - 4:12
spoken [1] - 11:4
Stacy [3] - 13:7, 13:18, 13:19
State [1] - 13:1
STATES [1] - 1:1
States [1] - 1:16
status [1] - 9:7
stay [2] - 5:4, 10:22
stenographic [1] - 13:10
STEPHEN [1] - 2:17
Stephen [1] - 4:4
STEVE [1] - 2:15
Steve [1] - 4:3
Street [1] - 1:12
strike [3] - 4:22, 6:20, 6:24
subject [1] - 6:18
suggested [1] - 5:23
summary [6] - 7:15, 7:18, 8:1, 8:9, 8:14, 8:17

T

THE [9] - 1:1, 1:1, 1:16, 3:1, 3:9, 3:21, 4:6, 12:5, 12:10
thereafter [1] - 9:20
they've [2] - 5:17, 6:3
thinking [1] - 4:11
THOMAS [1] - 2:10
Thomas [1] - 3:20
THOMAS-KENNEDY [1] - 2:10
Thomas-Kennedy [1] - 3:20
thoughts [1] - 4:8
today [2] - 10:6, 11:7
together [1] - 10:17
totality [1] - 6:5
transcript [1] - 13:10
trial [8] - 7:7, 7:9, 7:10, 8:23, 8:24, 9:10, 10:3, 10:7
tried [1] - 10:16
true [1] - 13:9
two [7] - 4:16, 7:11, 8:4, 8:19, 8:23, 9:2, 9:16

U

under [2] - 6:6, 8:15
UNITED [1] - 1:1
United [2] - 1:16, 3:4
up [5] - 6:23, 8:20, 11:5, 11:15, 12:4
upcoming [1] - 6:18
uses [1] - 7:21

V

versus [1] - 3:4
view [1] - 6:7

W

week [3] - 7:16, 11:21, 12:13
weeks [3] - 8:19, 9:16, 11:13
WHEREOF [1] - 13:13
Wilmer [1] - 3:17
WILMER [1] - 2:6
Wilmington [2] - 1:13, 13:15
wishes [2] - 7:17, 8:2
WITNESS [1] - 13:13
wondering [1] - 11:2

Y

yesterday [1] - 6:23

MASIMO 2012
Apple v. Masimo
IPR2024-00243