UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner

v.

MASIMO CORPORATION,
Patent Owner

Case IPR2024-00243
Patent 10,722,159

MOTION TO SEAL UNDER 37 CFR § 42.74(c)

I. INTRODUCTION

Pursuant to the Protective Order (Papers 13, 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 Masimo's Sur-Reply (Paper 41) and accompanying Transcript of Dr. Anthony's Deposition (EX2111), collectively referred to as the "Requested Documents," be sealed. Each of these documents includes Apple's confidential business information ("CBI").

As described in further detail below, the Requested documents 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. The information in these documents originated from related proceedings between the parties, including:[1]

- ITC Inv. No. 337-TA-1276 (*Certain Light-Based Physiological Measurement Devices and Components Thereof*) ("the ITC investigation");

[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.

- *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 partially seal the confidential (non-public) versions of Masimo's Sur-Reply (Paper 41) and accompanying EX2111. The Requested Documents should be sealed because they contain Apple's CBI. *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). Non-confidential versions of the parties' demonstratives are also being submitted with redactions being applied to portions of the documents that contain Apple CBI while leaving non-confidential portions unredacted. Both parties have agreed to the redactions.

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).

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. For example, page 10 of the sur-reply discusses confidential Apple product design and performance, and page 17 of the sur-reply describes confidential Apple communication regarding the same. Pages 169 and 176 of EX2011 describe the factors considered and confidential processes and operations in the development of Apple's products, and pages 174-175 describe protected information about the capabilities of Apple's products. More generally, the redactions protect 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. As noted above, 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 IPR2022-01291 proceeding 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*: There Exists a Genuine Need to Rely in the Trial on the Specific Information Sought to be Sealed

The information sought to be sealed relates to issues in this proceeding such as the reasonable expectation of success of performing pulse oximetry at the wrist and, relatedly, the obviousness of one of the asserted prior art combinations. Previously, Masimo offered the following statements in support of sealing similar information, 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.

See Paper 28 at 8. While Apple does not agree with the substance of Masimo's arguments 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 address all issues raised in this IPR proceeding.[2] In that regard, the Requested Documents support Apple's obviousness theories, and demonstrate the consistency of Apple's positions on similar issues across 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

[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.

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.

Moreover, pursuant to the Protective Order entered in this proceeding (Papers, 13, 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 content 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: April 17, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e), the undersigned certifies that on April 17, 2025 a complete and entire copy of this Motion to Seal provided via email to the Patent Owner by serving the correspondence email address of record as follows:

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