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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.

Petitioner,

v.

MASIMO CORPORATION,

Patent Owner.

IRP2024-00294

REMOTE DEPOSITION OF GORDON MACPHERSON

February 27, 2025

12:00 p.m. (Eastern)

Reported by: Eileen Mulvenna, CSR/RMR/CRR/RDR

DIGITAL EVIDENCE GROUP

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1 REMOTE DEPOSITION of
2 GORDON MACPHERSON,
3 nonparty witness in the above-titled action, held on
4 Thursday, February 27, 2025, commencing at
5 approximately 12:00 p.m., before Eileen Mulvenna,
6 CSR/RMR/CRR/RDR, Certified Shorthand Reporter,
7 Registered Merit Reporter, Certified Realtime
8 Reporter, Registered Diplomate Reporter, and Notary
9 Public of the State of New York.

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1 A P P E A R A N C E S:

2

3 On behalf of the Petitioner, Apple, Inc.:

4 FISH & RICHARDSON P.C.

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1 A P P E A R A N C E S (Continued):

2

3 On behalf of the Patent Owner, Masimo Corporation:

4 KNOBBE MARTENS OLSON & BEAR, LLP

5 BY: PERRY OLDHAM, ESQUIRE

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1 I N D E X

2 WITNESS EXAMINATION BY PAGE

3 GORDON MACPHERSON

4 MR. OLDHAM 7

5 MS. KIM 30

6 MR. OLDHAM 39

7

8 E X H I B I T S

9 PAGE

10 Exhibit 2051 No Bates numbers, Subpoena 9

11 Exhibit 1082 No Bates numbers, Gordon 10

12 MacPherson Declaration

13 Exhibit 2052 No Bates numbers, IEEE 13

14 Contact & Support Document

15 Exhibit 2053 No Bates numbers, Web Page 14

16 from www.proceedings.com

Exhibit 2054 No Bates numbers, Conference 16

17 17 Volumes

18 Exhibit 2055 No Bates numbers, IEEE web 26

page

19 Exhibit 2056 No Bates numbers, Wayback 28

20 machine version of the web

21 page for the 2011 IEEE EMBS

22 conference

1 THE REPORTER: Counsel, before I swear
2 in the witness, do all counsel stipulate to
3 the witness being sworn in remotely?

4 MR. OLDHAM: This is Perry Oldham,
5 yes.

6 MS. SCHAEFER: Alyssa Schaefer, yes.

7 MS. KIM: Yes.

8 THE REPORTER: Counsel, please state
9 your appearance and whom you represent for
10 the record.

11 MR. OLDHAM: This is Perry Oldham from
12 Knobbe Martens representing the patent owner,
13 Masimo Corporation.

14 MS. KIM: This is Grace Kim from Fish
15 & Richardson representing Apple, Inc., as
16 well as the witness, Mr. MacPherson. I also
17 have with me my colleague Michael Amon from
18 Fish & Richardson.

19 MS. SCHAEFER: And Alyssa Schaefer
20 from the firm Dorsey & Whitney representing
21 Mr. MacPherson.

22

1 GORDON MACPHERSON,

2 having been duly sworn by Eileen Mulvenna,

3 a Notary Public of the State of New York,

4 was examined and testified as follows:

5 EXAMINATION

6 BY MR. OLDHAM:

7 Q. Good morning. Will you please state
8 your name for the record.

9 A. Gordon MacPherson.

10 Q. You've been deposed before; right?

11 A. Yes.

12 Q. How many times?

13 A. A few dozen.

14 Q. Is there any reason you cannot provide
15 complete, accurate and truthful testimony today?

16 A. No.

17 Q. If at any time you do not understand
18 my questions, please ask me to clarify. If you do
19 not ask for clarification, I will assume you fully
20 understand my question; agreed?

21 A. Yes.

22 Q. What did you do to prepare for today's

1 deposition?

2 A. I reviewed -- I reviewed the paperwork
3 that was related to the deposition, such as the
4 article and my -- and my statement.

5 Q. Did you meet with anyone in
6 preparation for the deposition?

7 A. I met briefly with Alyssa just to
8 refresh my memory about which article we were going
9 to be talking about.

10 Q. Where are you physically located for
11 the deposition?

12 A. I'm at my home in Lewes, Delaware.

13 Q. Is there anyone in the room with you?

14 A. No.

15 Q. Do you have anything open on your
16 computer other than this Zoom meeting?

17 A. Yes, I have -- I have my browser open.

18 Q. Is there a reason you need to have the
19 browser open during the deposition?

20 A. Actually, I can close it. Let me make
21 sure I don't have the meeting going in the browser.
22 I think I have a separate instance of Zoom.

1 So, okay, I've closed my browser now
2 so this is the only program that's open.

3 Q. I have uploaded exhibits to the Zoom
4 chat, and the last four digits of the file name will
5 be the exhibit number. I will start with
6 Exhibit 2051, which is now in the chat.

7 Please let me know when you have
8 Exhibit 2051 open.

9 (Exhibit 2051, No Bates numbers,
10 Subpoena, received and marked.)

11 THE WITNESS: I have it open.

12 BY MR. OLDHAM:

13 Q. Exhibit 2051 is a copy of a subpoena
14 issued to you. Do you understand that you are here
15 to testify about a declaration you signed that was
16 submitted in a patent office proceeding?

17 A. Yes.

18 MR. OLDHAM: I am uploading Exhibit
19 1082 -- I'm sorry.

20 I'm uploading Exhibit 1082 to the
21 chat.

22

1 (Exhibit 1082, No Bates numbers,
2 Gordon MacPherson Declaration, received and
3 marked.)

4 BY MR. OLDHAM:

5 Q. Please let me know when you have
6 Exhibit 1082 open.

7 A. I have it open.

8 Q. Do you recognize Exhibit 1082 as the
9 declaration that you signed on October 18th, 2024,
10 in connection with this proceeding?

11 A. Yes.

12 Q. If I refer to Exhibit 1082 today as
13 your declaration, you will understand what I am
14 referring to; right?

15 A. Yes.

16 Q. Who prepared your declaration?

17 A. I believe it was prepared by a
18 paralegal who works for IEEE.

19 Q. You are currently the director, board
20 governance and policy development at the IEEE;
21 right?

22 A. Yes, that's right.

1 Q. How long have you been in that role at
2 the IEEE?

3 A. I've been doing this job for a little
4 over nine years. My -- 17 and a half or so at IEEE.

5 Q. Exhibit A to your declaration is a
6 copy of a paper related to the 2011 annual
7 international conference of the IEEE Engineering in
8 Medicine and Biology Society; right?

9 A. Yes.

10 Q. The title of the paper is "A sensor
11 network to iPhone interface separating continuous
12 and sporadic processes in mobile telemedicine";
13 right?

14 A. Yes.

15 Q. The first listed author of the paper
16 is L.T. D'Angelo; right?

17 A. Yes, Lorenzo T. D'Angelo.

18 Q. Can we refer to this paper as the
19 D'Angelo reference today?

20 A. Yes.

21 Q. Can we refer to the 2011 IEEE
22 conference as the 2011 IEEE EMBS conference?

1 A. Yes.

2 Q. When was the first time you saw the
3 D'Angelo reference?

4 A. When I was alerted by our legal team
5 that I was being deposed -- or actually, I'm sorry,
6 strike that.

7 Not when I was being deposed, but when
8 I was asked to attest to certain aspects of this
9 paper.

10 Q. Did you personally attend the 2011
11 IEEE EMBS conference?

12 A. No.

13 Q. Do you have any firsthand knowledge of
14 what information was provided to the attendees of
15 the 2011 IEEE EMBS conference?

16 A. I do not.

17 Q. Do you have any firsthand knowledge of
18 what information conference attendees were able to
19 learn about the D'Angelo reference?

20 A. No, I don't.

21 Q. Do you know if D'Angelo presented this
22 paper at the 2011 IEEE EMBS conference?

1 A. I do not know if -- if D'Angelo
2 presented the paper in person.

3 Q. Are IEEE conference proceedings
4 printed in bound volumes?

5 A. In 2011, that practice was starting to
6 fade and CD-ROMs and thumb drives were starting to
7 replace printed books. So it's possible that it was
8 a printed volume, but I can't -- I can't say for
9 sure.

10 Q. Who prints the conference proceedings
11 in bound volumes?

12 A. For EMBS, I believe they use an
13 outside printer at that time.

14 Q. I've uploaded Exhibit 2052. Please
15 let me know when it's open.

16 (Exhibit 2052, No Bates numbers, IEEE
17 Contact & Support Document, received and
18 marked.)

19 A. I have it open.

20 Q. Exhibit 2052 is a web page from the
21 IEEE website. The fourth page has a section called
22 "Conferences and Events."

1 A. Yes.

2 Q. It states, "For individual conference
3 publications or conference proceedings, contact
4 Curran Associates," and gives a link to the website
5 www.proceedings.com; right?

6 A. Yes.

7 Q. What is Curran Associates?

8 A. At that time, Curran -- Curran
9 Associates was what we would call a print-on-demand
10 vendor that had a contract with IEEE.

11 If you -- if you were, for instance, a
12 librarian and you wished to have a printed volume,
13 if printed volumes were not handed out at the
14 conference or otherwise they were hard to come by,
15 IEEE used a service at the time that would -- that
16 would create a printed proceedings from the
17 collection of PDFs at the article level for the
18 conference.

19 Q. Can you open Exhibit 2053.

20 (Exhibit 2053, No Bates numbers, Web
21 Page from www.proceedings.com, received and
22 marked.)

1 MS. KIM: Objection, scope.

2 BY MR. OLDHAM:

3 Q. Please let me know when you have it
4 open.

5 A. I have -- I have 2053 open.

6 Q. Exhibit 2053 is a web page from
7 www.proceedings.com. Did Curran Associates publish
8 a DVD of the conference proceedings for the 2011
9 IEEE EMBS conference?

10 MS. KIM: Objection, form.

11 THE WITNESS: Looking at this page, I
12 would say that the DVD was -- was an
13 offering. And proceedings.com was Curran's
14 website. It looks -- it looks -- from what I
15 can see here, they made a DVD available.
16 Made it available in the DVD format.

17 BY MR. OLDHAM:

18 Q. And it was made available in March of
19 2012; right?

20 MS. KIM: Objection; lack of
21 foundation.

22 THE WITNESS: And I can't answer as to

1 the date it was made available.

2 BY MR. OLDHAM:

3 Q. Do you see March 2012 --

4 A. Okay. Let me scan --

5 Q. -- on the exhibit?

6 (Document review.)

7 A. Okay. Yes, the print-on-demand

8 publisher, Curran Associates, March 2012.

9 Q. Would that be the date that the DVD
10 was made available?

11 A. Yes.

12 Q. You've uploaded Exhibit 2054.

13 (Exhibit 2054, No Bates numbers,
14 Conference 17 Volumes, received and marked.)

15 BY MR. OLDHAM:

16 Q. Would you be surprised if the 2011
17 IEEE EMBS conference proceedings are over 8500 pages
18 long across 17 different volumes?

19 A. I would not be shocked. I've seen
20 large conference proceedings before.

21 MS. KIM: Objection, relevance.

22

1 BY MR. OLDHAM:

2 Q. Did Curran Associates publish the
3 17-volume paper set of the conference proceedings
4 for the 2011 IEEE EMBS conference?

5 A. I'm sorry, I just want to make sure I
6 have the last exhibit open. That was 294?

7 Q. 0254.

8 A. Okay. I do have it open.

9 Could you repeat the question, please?

10 Q. Did Curran Associates publish the
11 17-volume paper set of the conference proceedings
12 for the 2011 IEEE EMBS conference?

13 A. Yes, but I would question the use of
14 the word "the" rather than the use of the word "of"
15 to describe the proceedings. This was a format that
16 was made available so it was one of -- one of the
17 options available after the conference.

18 Q. Are you aware of another publisher for
19 the proceeding?

20 A. I'm not aware of who they were, but
21 according to IEEE's business practices, common
22 business practice is a version of the proceedings

1 would have been distributed at the conference, but I
2 don't know who the vendor was who produced them.

3 Q. Where's that business practice
4 documented?

5 A. At this time, I can't say because I'm
6 14 years removed from that part of our business,
7 producing conference proceedings.

8 Q. How do you know it's a business
9 practice?

10 A. I'm the former manager of IEEE Xpress
11 conference publishing team and we handled conference
12 proceedings, printing and distribution for many of
13 the large conferences at IEEE. So I'm familiar with
14 the typical business practices with the larger
15 conferences.

16 I don't recall that we -- that my team
17 handled the EMBS annual meeting at that time.

18 Q. Let's return to Exhibit 1082, which is
19 your declaration. Can you please look at Exhibit B.

20 (Document review.)

21 A. Okay, I have it in front of me.

22

1 Q. Exhibit B of your declaration is an
2 abstract of the IEEE Xplore web page for the
3 D'Angelo reference; right?

4 A. Yes. And I'm sorry, I have to look at
5 it sideways.

6 Yes, I can see the full page.

7 Q. Can you please turn to the last page.

8 A. Okay, I'm on the last page.

9 Q. This shows that the D'Angelo reference
10 was added to the IEEE Xplore on December 1st, 2011;
11 right?

12 A. Yes.

13 Q. Was the D'Angelo reference added to
14 the IEEE Xplore on December 1st, 2011?

15 A. Yes. The entire proceedings are
16 loaded together.

17 Q. If someone wanted to view the full
18 contents of the D'Angelo reference on IEEE Xplore,
19 they would need to either have a subscription or
20 purchase the reference; right?

21 A. Yes, that's right.

22 Q. And that was also the case in December

1 of 2011; right?

2 A. Yes.

3 Q. The first sentence in paragraph 10 of
4 your declaration states that "The article and
5 abstract from IEEE Xplore show the date of
6 publication"; right?

7 A. Yes.

8 Q. What is the date of publication you
9 are referring to in paragraph 10 of your
10 declaration?

11 A. The date of publication for an IEEE
12 conference paper would recognize as the first day
13 that the -- that the content was made available to
14 an interested audience.

15 So our business rule is that we
16 recognize the first day of the conference as the
17 publication date, and we recognize the last day of
18 the conference as the last reasonable date at which
19 those proceedings would have been typically made
20 available to the attendees.

21 Generally they were given to attendees
22 the first day of the conference. We consider that a

1 best practice. There are some rare cases where they
2 would be held until the last day of the conference.

3 Q. Even if an article was not distributed
4 during the conference, as a business rule, the IEEE
5 still recognizes a conference paper's date of
6 publication as the date that the conference opened;
7 right?

8 A. Yes, that's right.

9 Q. And in paragraph 11 of your
10 declaration, you relied on this IEEE business rule
11 when you stated that the D'Angelo reference was
12 available by the last day of the conference; right?

13 A. Yes.

14 Q. The second sentence in paragraph 10 of
15 your declaration states that, "IEEE Xplore populates
16 this information using the metadata associated with
17 the publication"; right?

18 A. Yes.

19 Q. What metadata are you referring to in
20 paragraph 10?

21 A. Metadata is information about
22 information. So when we use the term "metadata" at

1 the article level, we're typically referring to key
2 information such as the title of the paper, the
3 author, the author's affiliations and the date of
4 publication. That's typically what we refer to as
5 the key metadata.

6 Q. And the metadata comes from the
7 conference organizers; right?

8 A. Yes.

9 Q. The metadata is not created by IEEE
10 employees; right?

11 A. That's correct. It's mined from
12 information given to us by the conference
13 organizers.

14 Q. Does the IEEE ever change the metadata
15 it receives from conference organizers?

16 A. I have seen rare cases where a mistake
17 was discovered and a correction was made.

18 Q. Are there any instances in which the
19 IEEE would edit or alter metadata outside a direct
20 request from the conference organizers?

21 A. No.

22 Q. Please describe how the metadata would

1 be created for an article.

2 A. When -- when an IEEE conference would
3 close, the conference organizers would send a
4 package to IEEE. It included an individual PDF of
5 each article and ancillary material, such as a cover
6 page, which would include an international
7 standardized book number or ISBN, the date of the
8 conference. Some basic information like that. And
9 that represents the proceedings. And we -- we will
10 publish them on Xplore at the individual article
11 level.

12 There's also a file called a packing
13 list. And the packing list accompanies the PDFs and
14 it's a very basic manifest of what is being
15 delivered. So it lists the file names of each PDF
16 and the key -- the metadata at the conference level.
17 The name of the conference, how many papers are
18 being included, and what we recognize as the public
19 case date, which is the first day of the conference.

20 Q. Does the conference organizer provide
21 the packing list to the IEEE?

22 A. Yes.

1 Q. When does that happen?

2 A. It could happen soon after the
3 conference. Sometimes there is a month or two lag
4 because once the conference is over, the people who
5 organize the conference kind of disburse and it's
6 someone's responsibilities to get us -- to get us
7 the articles as quickly as possible because the
8 timeliness of the research is a concern and we want
9 to get the new research out there in the larger
10 community as quickly as possible. So we encourage
11 conference organizers to get that package to us as
12 quickly after the conference as they can.

13 Q. The conference's organizer or
14 publication chair provides the metadata at a
15 conference level; right?

16 A. Yes.

17 Q. The conference organizer is a
18 volunteer, not an IEEE employee; right?

19 A. That's correct.

20 Q. The publication chair of the
21 conference is also a volunteer, not an IEEE
22 employee; right?

1 A. Yes.

2 Q. Who is the conference organizer of the
3 2011 IEEE EMBS conference?

4 A. I don't know.

5 Q. Who is the publication chair of the
6 2011 IEEE EMBS conference?

7 A. I don't know that, either.

8 Q. You don't have any personal knowledge
9 of the 2011 EMBS conference, do you?

10 A. No.

11 Q. Let's turn to paragraph 11 of your
12 declaration. What is your basis for stating that
13 copies of the conference proceedings were made
14 available no later than the last day of the
15 conference?

16 A. I use that phrase to indicate that no
17 later than the last day because typically the first
18 day of the conference is when -- is when the
19 proceedings would be handed out; but under oath, I
20 have -- and this is -- this is why I word it this
21 way -- under oath, I cannot attest that every single
22 IEEE conference follows our best practices.

1 So instead of saying that I can attest
2 that it was handed on the first day of the
3 conference, I feel more comfortable attesting that
4 no later than the last day of the conference were
5 the proceedings handed out to the attendees.

6 Q. Your statement in paragraph 11 is
7 based on your experience with IEEE and not any
8 personal knowledge of this conference; right?

9 A. Yes, that's right.

10 Q. Will you open Exhibit 2055.

11 (Exhibit 2055, No Bates numbers, IEEE
12 web page, received and marked.)

13 MS. KIM: Objection, scope.

14 BY MR. OLDHAM:

15 Q. Do you have that open?

16 A. Yes, I do.

17 Q. Exhibit 2055 is an IEEE web page on
18 preparing conference proceedings for attendees;
19 right?

20 A. Yes.

21 Q. The first page has a section called
22 "Prepare for distribution at the conference."

1 It states, "The publication chair
2 decides whether to distribute the proceedings or
3 other publication at the conference"; right?

4 A. Yes.

5 Q. The IEEE instructs the conference
6 publication chair to decide whether to distribute
7 the proceedings or their publications at the
8 conference; right?

9 A. Yes.

10 Q. You do not know who the conference
11 publication chair was for the 2011 IEEE EMBS
12 conference; right?

13 MS. SCHAEFER: Objection, asked and
14 answered.

15 THE WITNESS: Right.

16 BY MR. OLDHAM:

17 Q. You do not know whether the conference
18 publication for the chair 2011 IEEE EMBS conference
19 decided to distribute the proceedings at the
20 conference; right?

21 A. Right.

22 Q. You personally do not know whether the

1 D'Angelo reference or any other reference was made
2 available at the 2011 IEEE EMBS conference; right?

3 A. That's right.

4 Q. If you can take a look at
5 Exhibit 2056.

6 (Exhibit 2056, No Bates numbers,
7 Wayback machine version of the web page for
8 the 2011 IEEE EMBS conference, received and
9 marked.)

10 BY MR. OLDHAM:

11 Q. This is a wayback machine version of
12 the web page for the 2011 IEEE EMBS conference.

13 Do you have that open?

14 A. I have it open.

15 Q. Are you aware that Hurricane Irene
16 made it impossible for several 2011 IEEE EMBS
17 conference attendees to arrive in Boston in time for
18 their presentation?

19 MS. SCHAEFER: Objection, foundation.

20 MS. KIM: Objection, scope.

21 THE WITNESS: I was not aware.

22

1 BY MR. OLDHAM:

2 Q. What impact did Hurricane Irene have
3 on the 2011 IEEE EMBS conference?

4 MS. KIM: Objection, scope.

5 THE WITNESS: I don't know.

6 BY MR. OLDHAM:

7 Q. Do you know if Hurricane Irene
8 disrupted supplies for the 2011 IEEE EMBS
9 conference?

10 MS. KIM: Objection, speculation.

11 THE WITNESS: I don't know.

12 MR. OLDHAM: I have no further
13 questions.

14 THE REPORTER: Does anyone else have
15 questions?

16 MS. KIM: I would like to ask
17 questions. Can we take a break before we do
18 so?

19 THE REPORTER: Sure.

20 MS. KIM: 15 minutes?

21 THE REPORTER: Fine.

22 MS. KIM: Thank you.

1 THE REPORTER: We're off the record.

2 (Recess from the record.)

3 THE REPORTER: We're back on the

4 record.

5 EXAMINATION

6 BY MS. KIM:

7 Q. Mr. MacPherson, I'd like to start off
8 where Masimo's counsel left off and ask you how long
9 have you worked for IEEE?

10 A. 17 and a half years.

11 Q. And how long were you involved with
12 publications relating to conference proceedings?

13 A. My first -- my first five years at
14 IEEE, 2007 to 2012, I managed a group that published
15 conference proceedings. And from 2012 to 2016, I
16 was IEEE's director of conference quality, so I led
17 a group that -- that was tasked with intercepting
18 subpar conference content.

19 Q. Can you tell me a little bit more
20 about that?

21 A. As we - we use the criteria of subject
22 matter scope and quality of the written English

1 as -- we use them as filters to weed out conference
2 contents that was flooding in for a certain time
3 when peer review was weak or nonexistent with some
4 of our IEEE societies.

5 So we were -- a group of volunteers
6 would audit a certain amount of conference
7 proceedings that were coming in, and if we found a
8 critical mass of out of scope content, meaning it
9 had little or nothing to do with our core areas,
10 electrical engineering and computing, or if the
11 English was incomprehensible, we would push back to
12 the conference organizers and say you need to clean
13 up these proceedings before -- before we will
14 publish them.

15 Q. Thank you, Mr. MacPherson.

16 Can you estimate how many different
17 conferences and associated publications throughout
18 the years that you've been involved with them?

19 A. This past year, 2024, I think we
20 published nearly 300,000 individual conference
21 papers from over 2,000 conferences. Those are --
22 those are the highest numbers that I recall. But as

1 long as I've been -- as long as I've been at IEEE,
2 the number of papers coming in each year from our
3 conferences has been in the six figures. And at
4 least going back at least 10 to 15 years, we were --
5 we were publishing from well over a thousand
6 conferences each year and now it's over 2,000.

7 Q. Based on your 17 years of experience
8 at IEEE, do you have any reason to believe that the
9 2011 IEEE publications were not provided by at least
10 the last day of the conference?

11 A. I don't have good reason to believe
12 that this would represent an exception.

13 Q. Based on all your years of experience,
14 do you have any reason to believe that the D'Angelo
15 paper, Exhibit A in your declaration, was not
16 provided by the last day of the 2011 annual
17 conference?

18 A. I don't have any reason to believe
19 it -- or I don't have a reasonable doubt about it.

20 Q. And based on your experience, do you
21 believe that the D'Angelo paper was not provided as
22 part of the conference proceeding at that 2011

1 annual conference?

2 A. I have no reason to believe that.

3 Q. Again, based on your experience, do
4 you have any reason to believe that D'Angelo himself
5 did not attend that conference?

6 MR. OLDHAM: Objection, leading.

7 THE WITNESS: I can't -- I can't guess
8 whether D'Angelo was at the conference or
9 not.

10 BY MS. KIM:

11 Q. Is it more likely than not the
12 D'Angelo reference was made available on the last
13 day of the 2011 annual conference as it is IEEE's
14 normal and ordinary course of business?

15 MR. OLDHAM: Objection; leading, lacks
16 foundation, calls for speculation.

17 THE WITNESS: Yes.

18 MR. OLDHAM: Let me refrain.

19 BY MS. KIM:

20 Q. Is it more likely than not that
21 D'Angelo was made available on the last day of the
22 2011 annual conference?

1 MR. OLDHAM: Objection; leading, lacks
2 foundation, calls for speculation.

3 THE WITNESS: Yes.

4 BY MS. KIM:

5 Q. Thank you, Mr. MacPherson.

6 I'd like to just back up now and just
7 kind of have you explain, what is IEEE?

8 A. IEEE is -- it's the largest
9 technological professional association on earth.
10 It's a professional association for electrical
11 engineers, computer scientists and technologists who
12 revolve around those core areas. Well over 400,000
13 members.

14 We're also a conference organizer, a
15 standards association, a charity. So there are
16 many -- there are many things under the IEEE tent,
17 but I guess to summarize, our intention is to
18 enhance the engineering profession and to advance
19 technology for the good of humanity.

20 Q. Is it an objective of IEEE to ensure
21 that it has systems in place to accurately document
22 when publications are made available to its

1 subscribers?

2 MR. OLDHAM: Objection; leading, lacks
3 foundation, calls for speculation.

4 THE WITNESS: Yes.

5 BY MS. KIM:

6 Q. Can you tell me a little bit more
7 about how IEEE ensures that its systems are
8 accurate?

9 A. When an IEEE conference becomes part
10 of our publications program, it -- connected to that
11 is the sponsorship model for that conference. We
12 have technical sponsorships and financial
13 sponsorships and mixes of those. But, in brief,
14 technical cosponsorship of a conference means that
15 we are lending our name to the conference, but
16 people outside of IEEE societies -- and societies
17 are -- we have about 45 mini IEEE's that are
18 dedicated to thinner slices of electrical engineers
19 and they are typically the sponsors of our
20 conferences.

21 We do lend our name to conferences
22 that are run by outside organizations and that's

1 called a technical sponsorship. Financial
2 sponsorship is when an IEEE entity is running the
3 business of the conference.

4 When they become part of our program
5 and they establish the sponsorship, we're given key
6 metadata about the conference itself. When the --
7 when the proceedings are delivered to us after the
8 conference, there are routines in place to
9 cross-check what we were originally told about the
10 conference versus what appears on the packing list
11 which accompanied the contents. So we can -- we can
12 cross-check what we originally thought to be the
13 conference start date and end date against what
14 was -- what is stated in the packing list.

15 So there are checks like that to make
16 sure that we're being told a consistent story by the
17 conference organizers.

18 Q. Would there have been cross-checks in
19 place at the time that the D'Angelo article would
20 have been made available?

21 A. Yes.

22 MR. OLDHAM: Leading, vague, lacks

1 foundation.

2 THE WITNESS: Yes.

3 BY MS. KIM:

4 Q. Would you have any information to
5 believe that the metadata associated with the
6 D'Angelo reference would be inaccurate?

7 A. I have no reason to believe it's
8 inaccurate.

9 Q. Do you have any reason to believe that
10 the metadata provided by the organizers of the
11 conference would have been inaccurate for any
12 reason?

13 A. No.

14 Q. So, then, is it more likely than not
15 that the information received for the D'Angelo
16 reference from the conference organizers is
17 accurate?

18 MR. OLDHAM: Objection; leading, lacks
19 foundation, calls for speculation.

20 THE WITNESS: I believe the answer is
21 yes.

22

1 BY MS. KIM:

2 Q. Thank you, Mr. MacPherson.

3 Based on your experience in 2011, the
4 typical business practice for IEEE would have been
5 to publish the conference proceeding at the
6 conference even if it were handled by a third party;
7 correct?

8 MR. OLDHAM: Objection --

9 THE WITNESS: Yes.

10 MR. OLDHAM: -- leading, calls for
11 speculation, lacks foundation.

12 BY MS. KIM:

13 Q. Other than paying for the subscription
14 to IEEE, is there any limitation on being able to
15 access documents from IEEE?

16 MR. OLDHAM: Objection, vague.

17 THE WITNESS: The two ways typically
18 that someone would access -- after the
19 conference -- would access the conference
20 proceedings would be through a subscription
21 through IEEE Xplore or a single article
22 purchased by a nonsubscriber.

1 BY MS. KIM:

2 Q. Thank you, Mr. MacPherson. I have no
3 further questions.

4 MR. OLDHAM: I have a few more.

5 EXAMINATION

6 BY MR. OLDHAM:

7 Q. Did you have any communications with
8 anyone during the break?

9 A. My wife.

10 Q. Anyone else?

11 A. No, that's it.

12 Q. I assume she didn't advise you about
13 your testimony; is that correct?

14 A. That's correct.

15 Q. Of the over 2,000 conferences that the
16 IEEE held last year, how many of those conferences
17 did you attend?

18 A. None.

19 Q. Over your career at the IEEE, how many
20 conferences have you attended?

21 A. Four or five conferences.

22 Q. What are those conferences that you

1 attended?

2 A. One I remember for sure was the 2011
3 of NPSS. It's the nuclear plasma -- nuclear plasma
4 conference. I attended as part of an orientation
5 program for senior managers to actually work at a
6 conference and hand out T-shirts, set up booths,
7 things like that.

8 Q. Is it fair to say that in your time at
9 IEEE, the IEEE has held over 20,000 conferences?

10 A. Yes.

11 Q. And you attended four or five of those
12 conferences; is that correct?

13 A. That's correct?

14 MR. OLDHAM: No further questions.

15 THE REPORTER: Anyone else?

16 MS. KIM: No further questions.

17 THE REPORTER: Thank you, everyone.

18 We're off the record.

19 (The deposition concluded at
20 12:51 p.m.)

21

22

1 STATE OF NEW YORK)
2) SS:
3 COUNTY OF WESTCHESTER)
4)

5 I, EILEEN MULVENNA, CSR/RMR/CRR/RDR, a
6 Certified Court Reporter, Registered Merit Reporter,
7 Certified Realtime Reporter, Registered Diplomat
8 Reporter, and Notary Public in and for the State of
9 New York, do hereby certify:

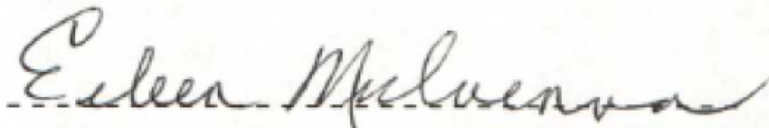
10 That I reported the taking of the
11 deposition of the witness, GORDON MACPHERSON,
12 commencing on the 27th day of February , 2025 at the
13 hour of 12:00 p.m.

14 That prior to being examined, the witness
15 was duly sworn by me to testify to the truth, the
16 whole truth, and nothing but the truth.

17 That I thereafter transcribed my said
18 shorthand notes into typewriting and that the
19 typewritten transcript of said deposition is a
20 complete, true and accurate transcription of my
21 said shorthand notes taken down at said time, and
22 that a request has been made to review the
transcript.

I further certify that I am not a relative
or employee of an attorney or counsel of any of the
parties, nor a relative or employee of any attorney
or counsel involved in said action, nor a person
financially interested in the action.

IN WITNESS WHEREOF, I have hereunto
set my signature this 27th day of February, 2025.

19
20
21
22

EILEEN MULVENNA, CSR/RMR/CRR

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1 Gordon MacPherson, c/o
2 Fish & Richardson, P.C.
3 60 South 6th Street, Suite 3200
4 Minneapolis, MN 55402
5

Case: Apple, Inc. v. Masimo Corp.

6 Date of deposition: February 27, 2025

Deponent: Gordon MacPherson

7

8 Please be advised that the transcript in the above
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10 a copy may be purchased for the witness to review and sign,
11 or the deponent and/or counsel may waive the option of
12 signing. Please advise us of the option selected.

13 Please forward the errata sheet and the original signed
signature page to counsel noticing the deposition, noting the
14 applicable time period allowed for such by the governing
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15 not hesitate to call our office at (202)-232-0646.

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7 Case: Apple, Inc. v. Masimo Corp.
8 Witness Name: Gordon MacPherson
Deposition Date: February 27, 2025
9

10 I do hereby acknowledge that I have read
and examined the foregoing pages
of the transcript of my deposition and that:

11

12 (Check appropriate box):

13 () The same is a true, correct and
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me to the questions therein recorded.

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15 correct and complete transcription of the
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6 ERRATA SHEET

7

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9 Witness Name: Gordon MacPherson

10 Deposition Date: February 27, 2025

11 Page No. Line No. Change

12

13

14

15

16

17

18

19

20

21

22

Signature_____
Date

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