

From: [Grace Kim](#)
To: [Trials](#)
Cc: [IPR50095-0135IP2](#); [AppleIPR507-2](#)
Subject: IPR2024-00294 | Authorization of Additional Pages for Petitioner's Opposition to PO's rMTA
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Your Honors,

Given the number and complexity of issues raised by Masimo's Revised Motion to Amend (rMTA) that must be addressed in Apple's corresponding Opposition, Apple respectfully requests:

1. the Board's authorization under 37 C.F.R. § 42.5(b) to increase the number of pages for Apple's upcoming Opposition to at least 50, with an equivalent increase to pages for Masimo's Reply to the Opposition to the rMTA; and
2. the Board's extension of the current 4/3/25 deadline for Apple's upcoming Opposition by 6 weeks, with a corresponding extension of the deadline for Masimo's Reply.

Apple respectfully submits that there is good cause to grant the additional pages and to extend the deadline for a Final Written Decision (FWD) so as to grant the requested extensions of time, at least because Apple's Opposition must demonstrate the obviousness of newly proposed rMTA substitute claims over prior art combinations involving both a new primary reference and secondary references that were not advanced in the Petition or in the Opposition to the original Motion to Amend (MTA), in addition to addressing lack of written description support and lack of entitlement to Masimo's claimed swear back date. For example, none of the amended limitations from Masimo's original MTA were preserved in substitute claim 21's new limitations, which by itself contains at least 7 distinct features (as indicated by the rMTA at 7-8).

In that regard, Apple further respectfully submits that at least 50 pages and an additional 6 weeks (for a total of 12 weeks) are required for Apple to be able to prepare its Opposition to the rMTA in a manner that will ensure a full and fair record for the Board's consideration, that if granted these requests would result in approximately the same amount of time for preparation as Apple had when preparing the Opposition to Masimo's original MTA, and that the equivalent increases in pages and time would eliminate any potential prejudice to Masimo.

Counsel for Apple and Masimo have met and conferred. Masimo opposes this request and asked Apple to provide the following statement for your consideration:

Masimo opposes Apple's requests to extend the page limit and due date for Apple's Opposition to the rMTA. The USPTO has established a page limit and default schedule that it has found adequate to oppose rMTAs with a reasonable number of substitute claims.

Further, the parties already agreed to a schedule that moved the oral hearing date consistent with the USPTO’s default rMTA schedule.

Apple has not met its burden to show good cause for any extension of the page limit or due date for its rMTA Opposition, much less doubling both. Masimo’s rMTA has just one independent claim and four total claims, making it much simpler to respond to than the original MTA, which had two independent claims and 16 total claims.

Apple also has identified only standard issues—obviousness, written description, and priority—nothing abnormally complex. Masimo is not aware of the Board ever extending page limits or due dates based on the number of allegedly “distinct features” of one independent claim. And regardless of the references Apple uses for its Opposition, 25 pages is sufficient to address such issues for one independent claim and three dependent claims. Indeed, in IPRs involving the same parties, Masimo’s rMTA oppositions raised numerous issues for even more claims within the standard 25-page limit and six-week deadline (or less). See, e.g., IPR2023-00745, Paper 30; IPR2023-00664, Paper 32.

Apple also asserts it must respond to “Masimo’s claimed swear back date.” But that is no reason to extend page or time limits because Masimo has not alleged a “swear back date” for the rMTA claims.

Finally, Masimo is concerned that Apple would again use any extra pages almost entirely for standard obviousness arguments, just as Apple did in opposing the original MTA. Indeed, after representing it needed additional pages to allege the ’507 Patent is a post-AIA patent and not entitled to its priority date, Apple’s MTA Opposition used 40 of 50 pages to make standard obviousness arguments that did not rely on those allegations.

Should the Board desire a call to discuss this request, the parties are available on:

- Friday, March 7 from 3-5pm Est (or 12-3pm Pacific).

Respectfully,

Grace Kim
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