### UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC., Petitioner,

v.

MASIMO CORPORATION, Patent Owner.

IPR2020-01526 Patent 6,771,994 B2

Record of Oral Hearing Held: January 19, 2022

Before JOSIAH C. COCKS, ROBERT L. KINDER, and AMANDA F. WIEKER, *Administrative Patent Judges*.

### **APPEARANCES:**

### ON BEHALF OF THE PETITIONER:

ANDREW PATRICK, ESQUIRE W. KARL RENNER, ESQUIRE DAN SMITH, ESQUIRE Fish & Richardson 1000 Maine Avenue, S.W. Washington, D.C. 20024

### ON BEHALF OF PATENT OWNER:

JEREMIAH S. HELM, ESQUIRE Knobbe, Martens, Olson & Bear, LLP 2040 Main Street Irvine, CA 92614

The above-entitled matter came on for hearing on Wednesday, January 19, 2022, commencing at 3:59 p.m., EDT, at the U.S. Patent and Trademark Office, by video/by telephone, before Chris Hofer, Notary Public.



1	PROCEEDINGS
2	
3	JUDGE COCKS: All right. We have arrived at the fourth session of
4	our oral argument today. This session involves IPR2020-01526 concerning
5	patent 6,771,994. I'm Judge Cocks and I'm joined by Judges Wieker and
6	Kinder on the panel. Let's begin with introduction of counsel. Would
7	Petitioner state their appearance for this session.
8	MR. PATRICK: Thank you, Your Honors. My name is Andrew
9	Patrick. I'm joined by my colleagues Karl Renner and Dan Smith.
10	JUDGE COCKS: Thank you, Mr. Patrick, and would counsel for
11	Patent Owner please state their appearance today.
12	MR. HELM: Thank you, Your Honor. Jeremiah Helm from Knobbe
13	Martens on behalf of the Patent Owner Masimo.
14	JUDGE COCKS: All right. Thank you, Mr. Helm. All right. With
15	that being said, each side has 40 minutes and as usual Petitioner will argue
16	their case first and they may reserve rebuttal time. Patent Owner will then
17	argue their opposition to Petitioner's case and may reserve surrebuttal time
18	and will conclude with rebuttal and surrebuttals. So, counsel for Petitioner,
19	whenever you're ready you may begin.
20	MR. PATRICK: Thank you, Your Honors. If I could I'd like to ask
21	you to turn to the table of contents on slide 2. We plan today to focus a
22	direct of approximately 30 minutes on issues 1 and 2 as identified within the
23	table of contents which address the '994 patent's obviousness over
24	respectively the combinations of Diab, Benjamin and Melby and Webster
25	and Melby. Now there are a number of related sub-issues on which the



- parties are briefed during this proceeding and they are identified within our
- 2 table of contents as issues 1A through 1D and as 2A and 2B.
- 3 MR. PATRICK: I would like to ask Your Honors to turn to slide 5
- 4 which begins our treatment of issue 1A and --
- 5 JUDGE COCKS: Counsel, before you begin just --
- 6 MR. PATRICK: -- there you'll see the issues --
- 7 JUDGE COCKS: Counsel? Just to double check you said ten
- 8 minutes of rebuttal time; is that accurate?
- 9 MR. PATRICK: Yes, Your Honor, that's right. Thank you.
- JUDGE COCKS: Go ahead, please.
- MR. PATRICK: Thank you, Your Honor. So, slide 5 shows our
- treatment of issue 1A that a POSITA would have understood and found it
- obvious to apply light control film as taught by Benjamin and further
- detailed by Melby to Diab's system to improve that system's consistency and
- 15 accuracy.
- So, turning to slide 5. We can see that Diab describes an optical probe
- 17 for measurements that in the embodiment shown in figure 24 at the top right
- of this slide includes a light source consisting of two LEDs operating in
- 19 different wavelengths and a photodetector that detects light emitted by the
- 20 LEDs ideally only after it has passed through user tissue and as Dr. Anthony
- 21 explained --
- JUDGE KINDER: This is Judge Kinder. Sorry to interrupt you. If I
- 23 could ask a quick question. This is Judge Kinder.
- 24 MR. PATRICK: Yes, Your Honor.
- JUDGE KINDER: I kind of understood what the scattering medium



1	is but can you describe the purpose of the scattering medium because I know
2	that's kind of one of the issues we'll talk about later.
3	MR. PATRICK: Thank you, Your Honor. I appreciate that question.
4	So Diab actually describes the scattering medium and you may see some
5	description with respect to that actually on slide 6 as offering an improved
6	optical signal-to-noise ratio and it does that in a few portions. It details it in
7	a few portions. In the section appearing on slide 6 of Diab which is column
8	3, lines 63 through column, line 12, it talks about actually a number of
9	preferred embodiments of its invention in which the scattering medium is
10	used and in some of those embodiments the scattering medium is said to be
11	positioned between the user tissue and a photodetector and others it's said to
12	be placed between LEDs and user tissue and yet other it's said to be placed
13	in both locations. Now all of those embodiments are said to result in an
14	improved optical signal-to-noise ratio and I don't have the clipping available
15	on this slide but this could be better understood I think with respect to
16	column 20 of Diab and in particular column 20, lines 1 through 13 and there
17	Diab explains that by scattering the signal either prior to or posterior to the
18	material interface and by material interface I believe they're referring to the
19	user tissue, perturbations of a locality within the area of exposure will have
20	less effect and in that regard, at least the way I'm thinking about this and as
21	it's been explained on the record, the locality within an area of exposure
22	would refer to structures within user tissue and so Diab speaks to reduction
23	of noise related to user motion because as a user of the device is moving and
24	light is passing through that tissue particular structures within the tissue can



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you know, have an effect on the way that the light passes and so through use

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