

1 Joseph R. Re (Bar No. 134479)  
 2 joseph.re@knobbe.com  
 3 Stephen C. Jensen (Bar No. 149894)  
 4 steve.jensen@knobbe.com  
 5 Perry D. Oldham (Bar No. 216016)  
 6 perry.oldham@knobbe.com  
 7 Stephen W. Larson (Bar No. 240844)  
 8 stephen.larson@knobbe.com  
 9 **KNOBBE, MARTENS, OLSON & BEAR, LLP**  
 10 2040 Main Street, Fourteenth Floor  
 11 Irvine, CA 92614  
 12 Telephone: (949) 760-0404  
 13 Facsimile: (949) 760-9502

10 Attorneys for Plaintiff,  
 11 **Masimo Corporation**

13 **IN THE UNITED STATES DISTRICT COURT**  
 14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
 15 **SOUTHERN DIVISION**

17 \_\_\_\_\_  
 18 MASIMO CORPORATION,  
 19 a Delaware corporation; and  
 20 CERCACOR LABORATORIES, INC.,  
 21 a Delaware corporation  
 22 Plaintiffs,  
 23 v.  
 24 APPLE INC., a California corporation  
 25 Defendant.

) Case No. 8:20-cv-00048-JVS-JDE  
 ) **FIRST AMENDED**  
 ) **COMPLAINT FOR**  
 ) **(1) PATENT INFRINGEMENT**  
 ) **(2) TRADE SECRET**  
 ) **MISAPPROPRIATION**  
 ) **(3) CORRECTION OF**  
 ) **INVENTORSHIP AND**  
 ) **(4) OWNERSHIP OF PATENTS**  
 ) **AND DEMAND FOR JURY**  
 ) **TRIAL**  
 ) Hon. James V. Selna

25  
 26  
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1 Plaintiffs MASIMO CORPORATION (“Masimo”) and CERCACOR  
2 LABORATIES, INC. (“Cercacor”) hereby complain of Defendant APPLE INC.  
3 (“Apple”), and allege as follows:

4 **I. THE PARTIES**

5 1. Plaintiff Masimo is a Delaware corporation having its principal  
6 place of business at 52 Discovery, Irvine, California 92618.

7 2. Plaintiff Cercacor is a Delaware corporation having its principal  
8 place of business at 15750 Alton Pkwy, Irvine, California 92618.

9 3. Upon information and belief, Defendant Apple is a California  
10 corporation having a principal place of business at One Apple Park Way,  
11 Cupertino, California, 95014.

12 **II. JURISDICTION AND VENUE**

13 4. This civil action includes claims for patent infringement arising  
14 under the patent laws of the United States, 35 U.S.C. §§ 100, *et seq.*, more  
15 particularly, 35 U.S.C. §§ 271 and 281. This civil action includes claims for  
16 correction of inventorship of certain United States patents arising under the  
17 patent law of the United States, more particularly 35 U.S.C. § 256. This  
18 Complaint further alleges trade secret misappropriation and seeks a declaration  
19 of ownership of certain patents and patent applications.

20 5. This Court has subject matter jurisdiction over claims 1-12 and 14-  
21 18 pursuant to at least 28 U.S.C. §§ 1331 and 1338(a), and has at least  
22 supplemental jurisdiction over claims 13 and 19-24 pursuant to at least 28  
23 U.S.C. §§ 1367(a), including because, as alleged in more detail below, they are  
24 sufficiently related to the claims over which this Court has original jurisdiction  
25 that they form part of the same case or controversy under Article III of the  
26 United States Constitution.



1 of this light is typically accomplished through a sensor that is applied to a body  
2 part such as a finger, arm, toe, forehead or ear.

3 11. Before Masimo, non-invasive measurements from the PPG were  
4 plagued by unreliability, often when the measurement was needed most, due to  
5 the person moving or having low peripheral blood flow (known as “low  
6 perfusion”). The industry had essentially given up on solving these problems,  
7 concluding they were largely unsolvable. In the medical context, clinicians had  
8 to live with the results – patient monitors gave excessive false alarms, froze  
9 their measurements for prolonged periods of time despite potential changes in  
10 the physiological parameter (e.g., oxygen saturation or pulse rate), delayed  
11 notification of alarms due to long averaging times of sensor data, produced  
12 inaccurate measurements, or were unable to obtain data on the most critical  
13 patients and babies who cannot be instructed to stay still. Masimo’s pioneering  
14 technology, known as Masimo Signal Extraction Technology (“Masimo SET”),  
15 solved this problem and dramatically improved the reliability of monitoring and  
16 reporting physiological signals derived from the PPG.

17 12. Following its initial success with Masimo SET, Masimo invested  
18 heavily in developing additional breakthrough measurement technologies, such  
19 as non-invasively measuring total hemoglobin, carboxyhemoglobin, and  
20 methemoglobin. Masimo has continued to innovate, succeeding where others  
21 have consistently failed. Masimo was the first, and remains the only, company  
22 delivering these game-changing technologies to hospitals in the United States.  
23 Use of Masimo’s technology in the clinical setting has been proven to reduce  
24 blindness in premature infants, detect congenital heart disease in infants, save  
25 lives on the general care floor and post-surgery, and improve transfusion  
26 management, while saving money.

27 13. From its inception, Masimo has continuously developed cutting-  
28 edge noninvasive patient monitoring technologies. Masimo sought and received

1 numerous U.S. patents for many of its inventions. Masimo's revolutionary  
2 technology was a key to its gaining significant market praise and penetration.  
3 After introduction into the market, many competitors, much larger than  
4 Masimo, used Masimo's technology without a license, resulting in patent  
5 infringement lawsuits that ultimately confirmed the validity of Masimo's  
6 innovations. Masimo also maintains some technology as trade secrets. Masimo  
7 also closely guards its future product and market plans. Only select employees  
8 have knowledge of and access to these guarded secrets.

9 14. Masimo's innovations also include important advances in sensor  
10 technologies that work together as part of Masimo's system and algorithms.  
11 Masimo's sensors are integral to the success of the revolutionary technologies  
12 Masimo has developed.

13 15. In 1998, Masimo spun certain technologies off into a new  
14 company, Masimo Laboratories, Inc. or "Masimo Labs," to further research and  
15 develop the technologies. The name of the company was later changed to  
16 Cercacor Laboratories Inc. or "Cercacor." Cercacor and Masimo have a cross-  
17 license agreement to facilitate confidential collaboration between the  
18 companies. Cercacor is not owned by Masimo.

19 16. Like Masimo, Cercacor is an innovator of non-invasive monitoring  
20 technologies. Cercacor is on the frontline of understanding how measuring,  
21 tracking, and analyzing physiological parameters can impact pre-diabetic and  
22 diabetic patients, sports training and performance and overall health and  
23 wellness principally in the consumer market. Cercacor continued the  
24 development that started at Masimo on non-invasive total hemoglobin (SpHb®),  
25 methemoglobin (SpMet®), and carboxyhemoglobin (SpCO®) and other non-  
26 invasive physiological parameters.

27 17. Leading hospitals around the world use Cercacor technology  
28 licensed to Masimo and sold under the name Masimo rainbow SET. Like

1 Masimo, Cercacor also maintains some technology as trade secrets, and  
2 Cercacor closely guards its future product and market plans. Only select  
3 employees have knowledge of and access to these guarded secrets.

4 18. Plaintiffs carefully guard the secrecy of their confidential  
5 information and documents. For example, Plaintiffs have policies regarding  
6 labeling confidential information and documents as “CONFIDENTIAL AND  
7 PROPRIETARY.” They also restrict these documents and information from  
8 disclosure to third parties and employees on a need-to-know basis. Plaintiffs  
9 also have policies in place regarding the use of computers and related equipment  
10 that govern how their computer systems may be used. Those policies also  
11 govern the protection of Plaintiffs’ confidential information. Plaintiffs have  
12 document management systems that restrict access to confidential documents to  
13 only those employees with proper security credentials and a need for access.  
14 Plaintiffs also require employees to sign agreements precluding the employees  
15 from disclosing or making use of any confidential information except as  
16 authorized by Plaintiffs and as necessary for the performance of the employees’  
17 duties. Plaintiffs also require third parties, including customers, to execute  
18 confidential non-disclosure agreements. Plaintiffs implemented such policies  
19 and procedures to maintain the confidentiality of sensitive information. These  
20 policies remain in place today.

21 19. In 2013, Apple contacted Masimo and asked to meet regarding a  
22 potential collaboration. Apple told Masimo that Apple would like to understand  
23 more about Masimo’s technology to potentially integrate that technology into  
24 Apple’s products. Apple and Masimo later entered into a confidentiality  
25 agreement, and Masimo’s management met with Apple. The meetings included  
26 confidential discussions of Masimo’s technology. After what seemed to  
27 Masimo to have been productive meetings, Apple quickly began trying to hire  
28 Masimo employees, including engineers and key management.

1           20. Masimo employed Michael O'Reilly as its Chief Medical Officer  
2 and Executive Vice President for Medical Affairs beginning in January 2008.  
3 As part of the Masimo executive team, O'Reilly was privy to extremely  
4 sensitive information, including information about mobile medical products and  
5 applications, wellness applications, clinical data gathering and analytics, and  
6 other technology of Masimo. Upon information and belief, Apple employed  
7 O'Reilly in July 2013, shortly after the meetings with Masimo, to assist in  
8 wellness and mobile applications that include non-invasive measurement of  
9 physiological parameters. Not long after, by December of 2013, O'Reilly was  
10 already meeting with the FDA on behalf of Apple to discuss medical  
11 applications and discuss medical products that non-invasively measures blood  
12 constituents.

13           21. Apple systematically recruited other key Masimo personnel, such  
14 as Marcelo Lamego, who was the former Chief Technical Officer of Cercacor  
15 and a former Research Scientist at Masimo. Lamego was a Masimo employee  
16 during 2000-2001 and 2003-2006, and the Cercacor Chief Technical Officer  
17 during 2006-2014.

18           22. Lamego had unfettered access to Plaintiffs' highly confidential  
19 technical information. He was trained and mentored at Masimo by the most  
20 skilled engineers and scientists, and was taught about the keys to effective non-  
21 invasive monitoring, something he was not involved in prior to Masimo.  
22 Masimo engineers and scientists taught Lamego about non-invasive monitoring,  
23 including, among others, Ammar Al-Ali, Mohamed Diab, and Walter Weber.  
24 The Masimo engineers, including Al-Ali, Diab, and Weber, were Masimo  
25 employees at all relevant times. Lamego also had access to and learned  
26 guarded secrets regarding Plaintiffs' mobile medical products, including key  
27 technology and advance plans for future products.  
28

1           23. When Lamego left Cercacor, he assured Plaintiffs that he would  
2 not violate his agreements with Plaintiffs and volunteered that he would not  
3 work on technology similar to Plaintiffs' technology. On January 24, 2014,  
4 Plaintiffs sent a letter to Defendant explaining that Lamego possessed Plaintiffs'  
5 confidential proprietary information and warning Apple to respect Plaintiffs'  
6 rights in such information. The letter stated "we trust that Apple will employ  
7 Mr. Lamego in an area that does not involve healthcare technology, including  
8 mobile health applications and the measurement of physiological information."  
9 The letter also asked that "Apple refrain from inducing Mr. Lamego to take  
10 actions that would violate the Agreement while he performs services for Apple"  
11 and asked Apple to "direct Mr. Lamego to honor his obligations to all of his  
12 prior employers." Based on Plaintiffs' conversations with Lamego, Plaintiffs'  
13 letter to Apple, and Plaintiffs' confidentiality agreement with Apple, Plaintiffs  
14 reasonably believed that Lamego would not use or disclose Plaintiffs'  
15 confidential information and that Defendant would not induce Lamego to do so  
16 or itself use Plaintiffs' confidential information.

17           24. Unbeknownst to Plaintiffs at the time, it now appears that, shortly  
18 after joining Apple in January 2014, Lamego began pursuing on behalf of Apple  
19 numerous patent applications directed toward technologies he worked on at  
20 Plaintiffs, and with which he had no prior experience or knowledge.

21           25. Upon information and belief, Apple announced the first version of  
22 its watch in September 2014, and began shipping its watch in April 2015. The  
23 Apple Watch Series 3 was released on September 22, 2017, and upon  
24 information and belief had significant performance issues with the non-invasive  
25 physiological measurements. Apple announced the Apple Watch Series 4 on  
26 September 12, 2018, and upon information and belief, that watch includes  
27 technology that tracks Plaintiffs' technologies to solve some of the performance  
28 issues. The Apple Watch Series 5 was announced on September 10, 2019 and



1 released on September 20, 2019. Upon information and belief, the Apple Watch  
2 Series 5 also includes Plaintiffs' technologies to solve some of the prior  
3 performance issues, including technology as to which Lamego was an inventor  
4 while at Plaintiffs.

5 26. As set forth in detail below, and on information and belief, each  
6 portion of evidence cited by Plaintiffs, such as the selected portions of Apple  
7 patent applications and Apple websites, accurately portrays, in relevant part, the  
8 structure, design, function and/or operation of the Apple Watch Series 4 and  
9 later devices.

10 **V. THE PATENTS-IN-SUIT**

11 27. Masimo is the owner by assignment of U.S. Patent No. 10,258,265  
12 entitled "Multi-stream data collection system for noninvasive measurement of  
13 blood constituents" ("the '265 patent"), which the United States Patent and  
14 Trademark Office lawfully and duly issued on April 16, 2019. A true and  
15 correct copy of the '265 patent is attached hereto as Exhibit 1.

16 28. Masimo is the owner by assignment of U.S. Patent No. 10,258,266  
17 entitled "Multi-stream data collection system for noninvasive measurement of  
18 blood constituents" ("the '266 patent"), which the United States Patent and  
19 Trademark Office lawfully and duly issued on April 16, 2019. A true and  
20 correct copy of the '266 patent is attached hereto as Exhibit 2.

21 29. Masimo is the owner by assignment of U.S. Patent No. 10,292,628  
22 entitled "Multi-stream data collection system for noninvasive measurement of  
23 blood constituents" ("the '628 patent"), which the United States Patent and  
24 Trademark Office lawfully and duly issued on May 21, 2019. A true and  
25 correct copy of the '628 patent is attached hereto as Exhibit 3.

26 30. Masimo is the owner by assignment of U.S. Patent No. 10,299,708  
27 entitled "Multi-stream data collection system for noninvasive measurement of  
28 blood constituents" ("the '708 patent"), which the United States Patent and

1 Trademark Office lawfully and duly issued on May 21, 2019. A true and  
2 correct copy of the '708 patent is attached hereto as Exhibit 4.

3 31. Masimo is the owner by assignment of U.S. Patent No. 10,376,190  
4 entitled "Multi-stream data collection system for noninvasive measurement of  
5 blood constituents" ("the '190 patent"), which the United States Patent and  
6 Trademark Office lawfully and duly issued on August 13, 2019. A true and  
7 correct copy of the '190 patent is attached hereto as Exhibit 5.

8 32. Masimo is the owner by assignment of U.S. Patent No. 10,376,191  
9 entitled "Multi-stream data collection system for noninvasive measurement of  
10 blood constituents" ("the '191 patent"), which the United States Patent and  
11 Trademark Office lawfully and duly issued on August 13, 2019. A true and  
12 correct copy of the '191 patent is attached hereto as Exhibit 6.

13 33. Masimo is the owner by assignment of U.S. Patent No. 10,470,695  
14 entitled "Advanced pulse oximetry sensor" ("the '695 patent"), which the  
15 United States Patent and Trademark Office lawfully and duly issued on  
16 November 12, 2019. A true and correct copy of the '695 patent is attached  
17 hereto as Exhibit 7.

18 34. Masimo is the owner by assignment of U.S. Patent No. 6,771,994  
19 entitled "Pulse oximeter probe-off detection system" ("the '994 patent"), which  
20 the United States Patent and Trademark Office lawfully and duly issued on  
21 August 3, 2004. A true and correct copy of the '994 patent is attached hereto as  
22 Exhibit 8.

23 35. Masimo is the owner by assignment of U.S. Patent No. 8,457,703  
24 entitled "Low power pulse oximeter" ("the '703 patent"), which the United  
25 States Patent and Trademark Office lawfully and duly issued on June 4, 2013.  
26 A true and correct copy of the '703 patent is attached hereto as Exhibit 9.

27 36. Masimo is the owner by assignment of U.S. Patent No. 10,433,776  
28 entitled "Low power pulse oximeter" ("the '776 patent"), which the United

1 States Patent and Trademark Office lawfully and duly issued on October 8,  
2 2019. A true and correct copy of the '776 patent is attached hereto as  
3 Exhibit 10.

4 37. Masimo is the owner by assignment of U.S. Patent No. 10,588,553  
5 entitled "Multi-Stream Data Collection System For Noninvasive Measurement  
6 of Blood Constituents" ("the '553 patent"), which the United States Patent and  
7 Trademark Office lawfully and duly issued on March 17, 2020. A true and  
8 correct copy of the '553 patent is attached hereto as Exhibit 11.

9 38. Masimo is the owner by assignment of U.S. Patent No. 10,588,554  
10 entitled "Multi-Stream Data Collection System For Noninvasive Measurement  
11 of Blood Constituents" ("the '554 patent"), which the United States Patent and  
12 Trademark Office lawfully and duly issued on March 17, 2020. A true and  
13 correct copy of the '554 patent is attached hereto as Exhibit 12.

14 **VI. THE DISPUTED LAMEGO PATENTS**

15 39. Lamego is named as an inventor on U.S. Provisional Patent  
16 Application No. 62/043,294, filed Aug. 28, 2014 and titled "Reflective Surface  
17 Treatments for Optical Sensors." Related applications that also name Lamego  
18 as an inventor include U.S Patent Application Nos. 14/740,196 and 16/114,003,  
19 which issued as U.S. Patent Nos. 10,078,052 and 10,247,670.

20 40. Lamego is also named as an inventor on U.S. Provisional Patent  
21 Application No. 62/047,818, filed Sep. 9, 2014, entitled "Modulation and  
22 Demodulation Techniques for a Health Monitoring System." A related  
23 application that names Lamego as the sole inventor includes U.S Patent  
24 Application No. 14/621,268, which issued as U.S. Patent No. 10,219,754.

25 41. Lamego is also named as an inventor on U.S. Provisional Patent  
26 Application No. 62/056,299, filed on Sep. 26, 2014, and entitled "Electronic  
27 Device that Computes Health Data." Related applications that also name  
28 Lamego as the sole inventor include U.S Patent Application Nos. 14/617,422,

1 15/667,832, and 16/700,710. The '422 Application issued as U.S. Patent No.  
2 9,723,997 and the '832 Application issued as U.S. Patent No. 10,524,671.

3 42. Lamego is also named as an inventor on U.S. Provisional Patent  
4 Application No. 62/057,089, filed on Sep. 29, 2014, and entitled "Methods and  
5 Systems for Modulation and Demodulation of Optical Signals." Related  
6 applications that also name Lamego as an inventor include U.S Patent  
7 Application Nos. 14/618,664 and 15/960,507. The '664 Application issued as  
8 U.S. Patent No. 9,952,095.

9 **VII. FIRST CAUSE OF ACTION**

10 **(INFRINGEMENT OF U.S. PATENT NO. 10,258,265)**

11 43. Plaintiff Masimo hereby realleges and incorporates by reference  
12 the allegations set forth in paragraphs 1 through 42.

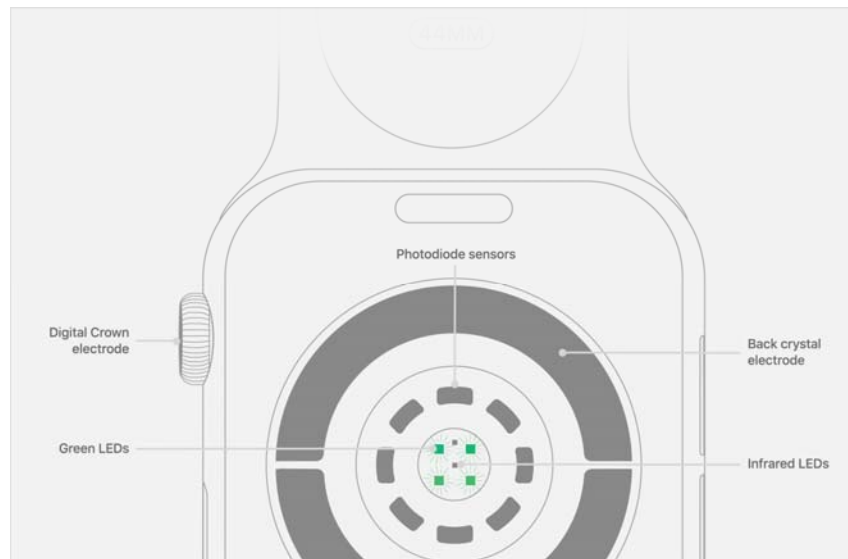
13 44. Upon information and belief, Defendant's products, including at  
14 least the Apple Watch Series 4 and later devices, infringe at least Claims 1-3, 6-  
15 11, 13, 17, and 17-25 of the '265 patent under at least 35 U.S.C. § 271(a), (b),  
16 and (c).

17 45. Upon information and belief, Defendant has directly infringed one  
18 or more claims of the '265 patent through manufacture, use, sale, offer for sale,  
19 and/or importation into the United States of physiological monitors, including  
20 the Apple Watch Series 4 and later devices.

21 46. For example, upon information and belief, in operation, the Apple  
22 Watch Series 4 and later devices include all of the limitations of Claim 1 of the  
23 '265 patent as set forth herein and further illustrated in the claim chart shown in  
24 Exhibit 13. The Apple Watch Series 4 and later devices are adapted to be worn  
25 by a wearer and provide an indication of a physiological parameter (for  
26 example, heart rate) of the wearer as shown in the image below found on the  
27 Apple website at <https://www.apple.com/apple-watch-series-4/health/>:  
28



47. The Apple Watch Series 4 and later devices include a plurality of emitters of different wavelengths (for example, green and infrared LEDs) and at least four detectors (for example, photodiode sensors) spaced apart from each other as shown in the image below found on the Apple website at <https://support.apple.com/en-us/HT204666>:



48. The detectors output signals responsive to light from the light emitters attenuated by body tissue. Upon information and belief, the signals are indicative of a physiological parameter (for example, heart rate) of the wearer.

1            49. Upon information and belief, the relevant technology in the Apple  
 2 Watch Series 4 and later devices is described in the below citations to U.S.  
 3 Patent Application Publication 2019/0072912 (the '912 publication). A copy of  
 4 the publication is attached as Exhibit 25. The Apple Watch Series 4 and later  
 5 devices include a housing having a surface and a circular wall protruding from  
 6 the surface, and a light permeable cover arranged above a portion of the housing  
 7 and covering the detectors. Fig. 4C and the corresponding text of the '912  
 8 publication show, for example, such housing:

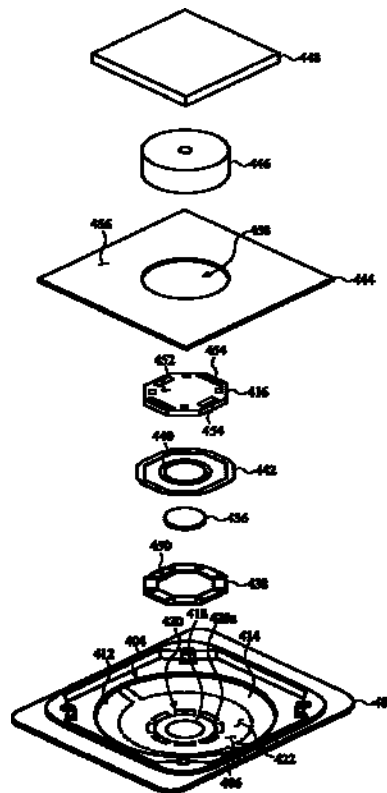


FIG. 4C

23            50. Upon information and belief, Defendant has knowledge of  
 24 Masimo's patents, including the '265 patent, at least based on O'Reilly and  
 25 Lamego's former positions with Plaintiffs. Masimo filed provisional patent  
 26 applications that led to the '265 patent in August 2008, while O'Reilly and  
 27 Lamego were with Masimo and/or Cercacor. Lamego is a named inventor of  
 28

1 the '265 patent. Defendant had knowledge of the '265 patent no later than the  
2 filing of the original Complaint.

3 51. Upon information and belief, Defendant has actively induced  
4 others to infringe the '265 patent by marketing and selling the above Apple  
5 Watch Series 4 and later devices, knowing and intending that such systems  
6 would be used by customers and end users in a manner that infringes the  
7 '265 patent. To that end, Defendant provides instructions and teachings to its  
8 customers and end users that such Apple Watch Series 4 and later devices be  
9 used to infringe the '265 patent. Defendant's acts constitute infringement of the  
10 '265 patent in violation of 35 U.S.C. § 271(b).

11 52. Upon information and belief, Defendant actively induces users to  
12 directly infringe the asserted claims of the '265 patent. By way of example  
13 only, upon information and belief, Defendant actively induces direct  
14 infringement of the '265 patent by providing directions, demonstrations, guides,  
15 manuals, training for use, and/or other materials necessary for the use of the  
16 Apple Watch Series 4 and later devices, including use with Apple iPhones.  
17 Upon information and belief, Defendant knew or should have known that these  
18 activities would cause direct infringement.

19 53. Upon information and belief, Defendant's acts constitute  
20 contributory infringement of the '265 patent in violation of 35 U.S.C. § 271(c).  
21 Upon information and belief, Defendant contributorily infringes because, among  
22 other things, Defendant offers to sell and/or sells within the United States,  
23 and/or imports into the United States, components of the Apple Watch Series 4  
24 and later devices and Apple iPhones that constitute material parts of the  
25 invention of the asserted claims of the '265 patent, are not staple articles or  
26 commodities of commerce suitable for substantial non-infringing use and are  
27 known by Defendant to be especially made or especially adapted for use in an  
28 infringement of the '265 patent.

1 54. Defendant's infringement of the '265 patent is willful, deliberate,  
2 and intentional by continuing its acts of infringement after becoming aware of  
3 the '265 patent and its infringement thereof, thus acting in reckless disregard of  
4 Masimo's patent rights.

5 55. Because of Defendant's infringement of the '265 patent, Masimo  
6 has suffered and will continue to suffer irreparable harm and injury, including  
7 monetary damages in an amount to be determined at trial.

8 56. Upon information and belief, unless enjoined, Defendant, and/or  
9 others acting on behalf of Defendant, will continue their infringing acts, thereby  
10 causing additional irreparable injury to Masimo for which there is no adequate  
11 remedy at law.

12 **VIII. SECOND CAUSE OF ACTION**

13 **(INFRINGEMENT OF U.S. PATENT NO. 10,258,266)**

14 57. Plaintiff Masimo hereby realleges and incorporates by reference  
15 the allegations set forth in paragraphs 1 through 42.

16 58. Upon information and belief, Defendant's products, including at  
17 least the Apple Watch Series 4 and later devices, infringe at least Claims 1-19 of  
18 the '266 patent under at least 35 U.S.C. § 271(a), (b), and (c).

19 59. Upon information and belief, Defendant has directly infringed one  
20 or more claims of the '266 patent through manufacture, use, sale, offer for sale,  
21 and/or importation into the United States of physiological monitors, including  
22 the Apple Watch Series 4 and later devices.

23 60. For example, upon information and belief, in operation, the Apple  
24 Watch Series 4 and later devices 4 and 5 devices include all of the limitations of  
25 Claim 1 of the '266 patent as set forth herein and further illustrated in the claim  
26 chart shown in Exhibit 14. The Apple Watch Series 4 and later devices provide  
27 an indication of a physiological parameter (for example, heart rate) of the  
28



1 wearer as shown in the image below found on the Apple website at  
2 <https://www.apple.com/apple-watch-series-4/health/>:



12 61. The Apple Watch Series 4 and later devices include a plurality of  
13 emitters that emit light into tissue of a user and a plurality of detectors (for  
14 example, photodiode sensors) that detect light that has been attenuated by tissue  
15 of the user as shown in the image below found on the Apple website at  
16 <https://support.apple.com/en-us/HT204666>:



27 62. The Apple Watch Series 4 and later devices include a housing  
28 configured to house the detectors and a lens located between the tissue of the

1 user and the detectors. Fig. 4C and the corresponding text of the '912  
 2 publication show, for example, such housing:

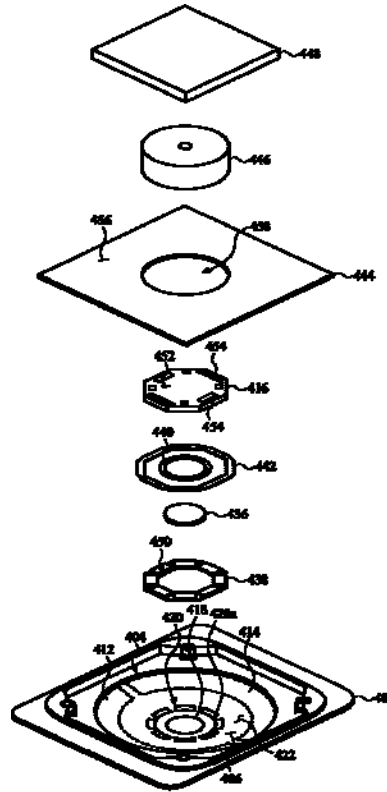


FIG. 4C

63. Upon information and belief, the lens has a single outwardly  
 protruding convex surface configured to cause tissue of the user to conform to  
 the protruding convex surface during operation of the noninvasive optical  
 physiological sensor.

64. Upon information and belief, Defendant has knowledge of  
 Masimo's patents, including the '266 patent, at least based on O'Reilly and  
 Lamego's former positions with Plaintiffs. Masimo filed provisional patent  
 applications that led to the '266 patent in August 2008, while O'Reilly and  
 Lamego were with Masimo and/or Cercacor. Lamego is a named inventor of  
 the '266 patent. Defendant had knowledge of the '266 patent no later than the  
 filing of the original Complaint.

1           65. Upon information and belief, Defendant has actively induced  
2 others to infringe the '266 patent by marketing and selling the above Apple  
3 Watch Series 4 and later devices, knowing and intending that such systems  
4 would be used by customers and end users in a manner that infringes the  
5 '266 patent. To that end, Defendant provides instructions and teachings to its  
6 customers and end users that such Apple Watch Series 4 and later devices be  
7 used to infringe the '266 patent. Defendant's acts constitute infringement of the  
8 '266 patent in violation of 35 U.S.C. § 271(b).

9           66. Upon information and belief, Defendant actively induces users to  
10 directly infringe the asserted claims of the '266 patent. By way of example  
11 only, upon information and belief, Defendant actively induces direct  
12 infringement of the '266 patent by providing directions, demonstrations, guides,  
13 manuals, training for use, and/or other materials necessary for the use of the  
14 Apple Watch Series 4 and later devices. Upon information and belief,  
15 Defendant knew or should have known that these activities would cause direct  
16 infringement.

17           67. Upon information and belief, Defendant's acts constitute  
18 contributory infringement of the '266 patent in violation of 35 U.S.C. § 271(c).  
19 Upon information and belief, Defendant contributorily infringes because, among  
20 other things, Defendant offers to sell and/or sells within the United States,  
21 and/or imports into the United States, components of the Apple Watch Series 4  
22 and later devices that constitute material parts of the invention of the asserted  
23 claims of the '266 patent, are not staple articles or commodities of commerce  
24 suitable for substantial non-infringing use and are known by Defendant to be  
25 especially made or especially adapted for use in an infringement of the  
26 '266 patent.

27           68. Defendant's infringement of the '266 patent is willful, deliberate,  
28 and intentional by continuing its acts of infringement after becoming aware of

1 the '266 patent and its infringement thereof, thus acting in reckless disregard of  
2 Masimo's patent rights.

3 69. Because of Defendant's infringement of the '266 patent, Masimo  
4 has suffered and will continue to suffer irreparable harm and injury, including  
5 monetary damages in an amount to be determined at trial.

6 70. Upon information and belief, unless enjoined, Defendant, and/or  
7 others acting on behalf of Defendant, will continue their infringing acts, thereby  
8 causing additional irreparable injury to Masimo for which there is no adequate  
9 remedy at law.

10 **IX. THIRD CAUSE OF ACTION**

11 **(INFRINGEMENT OF U.S. PATENT NO. 10,292,628)**

12 71. Plaintiff Masimo hereby realleges and incorporates by reference  
13 the allegations set forth in paragraphs 1 through 42.

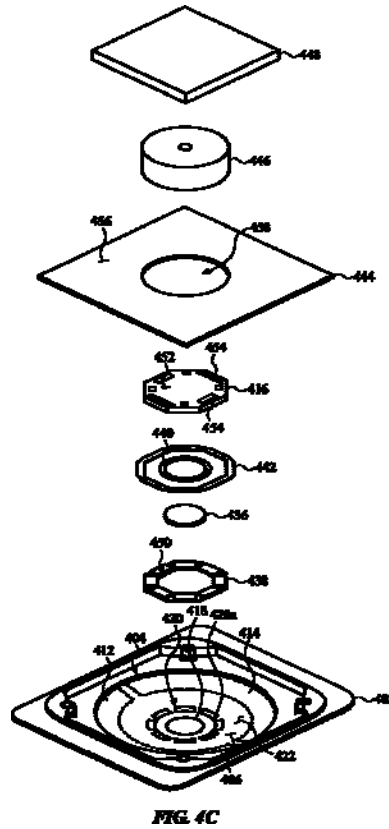
14 72. Upon information and belief, Defendant's products, including at  
15 least the Apple Watch Series 4 and later devices, infringe at least Claim 1 of the  
16 '628 patent under at least 35 U.S.C. § 271(a), (b), and (c).

17 73. Upon information and belief, Defendant has directly infringed one  
18 or more claims of the '628 patent through manufacture, use, sale, offer for sale,  
19 and/or importation into the United States of physiological monitors, including  
20 the Apple Watch Series 4 and later devices.

21 74. For example, upon information and belief, in operation, the Apple  
22 Watch Series 4 and later devices include all of the limitations of Claim 1 of the  
23 '628 patent as set forth herein and further illustrated in the claim chart shown in  
24 Exhibit 15.

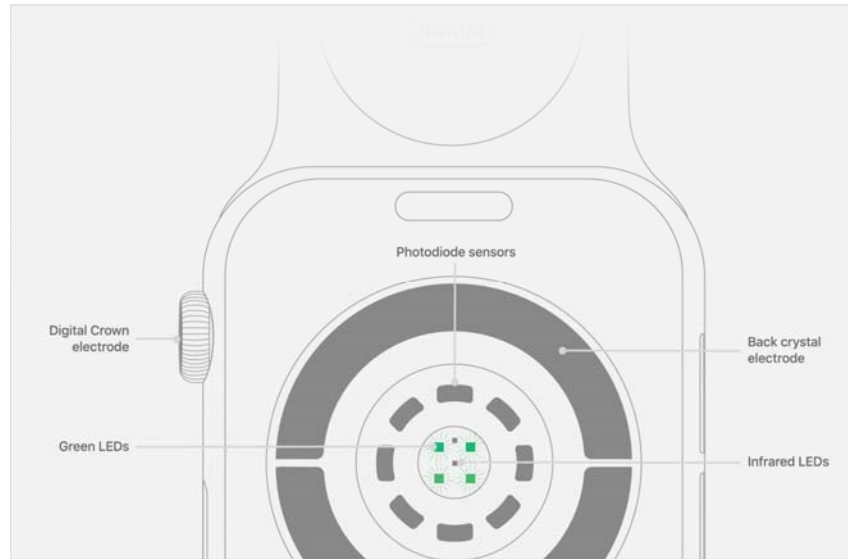
25 75. The Apple Watch Series 4 and later devices include a housing  
26 configured to house a plurality of detectors. Fig. 4C and the corresponding text  
27 of the '912 publication show, for example, such housing:  
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76. The Apple Watch Series 4 and later devices include a plurality of emitters that emit light into tissue of a user and a plurality of detectors that detect light that has been attenuated by tissue of the user as shown in the image below found on the Apple website at <https://support.apple.com/en-us/HT204666>:

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77. The Apple Watch Series 4 and later devices include a light permeable cover configured to be located between tissue of the user and the plurality of detectors when the noninvasive optical physiological sensor is worn by the user, wherein the cover comprises an outwardly protruding convex surface configured to cause tissue of the user to conform to at least a portion of the outwardly protruding convex surface when the noninvasive optical physiological sensor is worn by the user and during operation of the noninvasive optical physiological sensor, and wherein the plurality of detectors are configured to receive light passed through the outwardly protruding convex surface after attenuation by tissue of the user. Fig. 4C and the corresponding text of the '912 publication show, for example, such cover:

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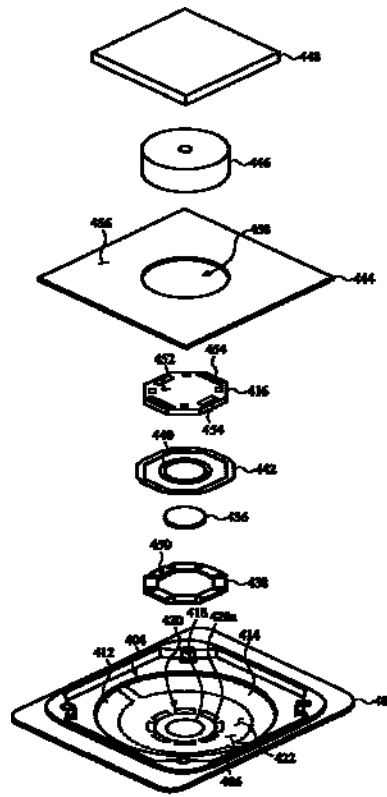


FIG. 4C

78. Upon information and belief, Defendant has knowledge of Masimo’s patents, including the ’628 patent, at least based on O’Reilly and Lamego’s former positions with Plaintiffs. Masimo filed provisional patent applications that led to the ’628 patent in August 2008, while O’Reilly and Lamego were with Masimo and/or Cercacor. Lamego is a named inventor of the ’628 patent. Defendant had knowledge of the ’628 patent no later than the filing of the original Complaint.

79. Upon information and belief, Defendant has actively induced others to infringe the ’628 patent by marketing and selling the above Apple Watch Series 4 and later devices, knowing and intending that such systems would be used by customers and end users in a manner that infringes the ’628 patent. To that end, Defendant provides instructions and teachings to its customers and end users that such Apple Watch Series 4 and later devices be

1 used to infringe the '628 patent. Defendant's acts constitute infringement of the  
2 '628 patent in violation of 35 U.S.C. § 271(b).

3 80. Upon information and belief, Defendant actively induces users to  
4 directly infringe the asserted claims of the '628 patent. By way of example  
5 only, upon information and belief, Defendant actively induces direct  
6 infringement of the '628 patent by providing directions, demonstrations, guides,  
7 manuals, training for use, and/or other materials necessary for the use of the  
8 Apple Watch Series 4 and later devices, including use with Apple iPhones.  
9 Upon information and belief, Defendant knew or should have known that these  
10 activities would cause direct infringement.

11 81. Upon information and belief, Defendant's acts constitute  
12 contributory infringement of the '628 patent in violation of 35 U.S.C. § 271(c).  
13 Upon information and belief, Defendant contributorily infringes because, among  
14 other things, Defendant offers to sell and/or sells within the United States,  
15 and/or imports into the United States, components of the Apple Watch Series 4  
16 and later devices and Apple iPhones that constitute material parts of the  
17 invention of the asserted claims of the '628 patent, are not staple articles or  
18 commodities of commerce suitable for substantial non-infringing use, and are  
19 known by Defendant to be especially made or especially adapted for use in an  
20 infringement of the '628 patent.

21 82. Defendant's infringement of the '628 patent is willful, deliberate,  
22 and intentional by continuing its acts of infringement after becoming aware of  
23 the '628 patent and its infringement thereof, thus acting in reckless disregard of  
24 Masimo's patent rights.

25 83. Because of Defendant's infringement of the '628 patent, Masimo  
26 has suffered and will continue to suffer irreparable harm and injury, including  
27 monetary damages in an amount to be determined at trial.  
28



1 84. Upon information and belief, unless enjoined, Defendant, and/or  
2 others acting on behalf of Defendant, will continue their infringing acts, thereby  
3 causing additional irreparable injury to Masimo for which there is no adequate  
4 remedy at law.

5 **X. FOURTH CAUSE OF ACTION**

6 **(INFRINGEMENT OF U.S. PATENT NO. 10,299,708)**

7 85. Plaintiff Masimo hereby realleges and incorporates by reference  
8 the allegations set forth in paragraphs 1 through 42.

9 86. Upon information and belief, Defendant's products, including at  
10 least the Apple Watch Series 4 and later devices, infringe at least Claim 1 of the  
11 '708 patent under at least 35 U.S.C. § 271(a), (b), and (c).

12 87. Upon information and belief, Defendant has directly infringed one  
13 or more claims of the '708 patent through manufacture, use, sale, offer for sale,  
14 and/or importation into the United States of physiological monitors, including  
15 the Apple Watch Series 4 and later devices.

16 88. For example, upon information and belief, in operation, the Apple  
17 Watch Series 4 and later devices include all of the limitations of Claim 1 of the  
18 '708 patent as set forth herein and further illustrated in the claim chart shown in  
19 Exhibit 16. The Apple Watch Series 4 and later devices are adapted to be worn  
20 by a wearer and provide an indication of a physiological parameter (for  
21 example, heart rate) of the wearer as shown in the image below found on the  
22 Apple website at <https://www.apple.com/apple-watch-series-4/health/>:

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89. The Apple Watch Series 4 and later devices include a platform including a planar surface, a housing including a raised edge portion extending from and enclosing at least a portion of the planar surface, and the housing including a protruding light permeable cover. Fig. 4C and the corresponding text of the '912 publication show, for example, such platform and housing:

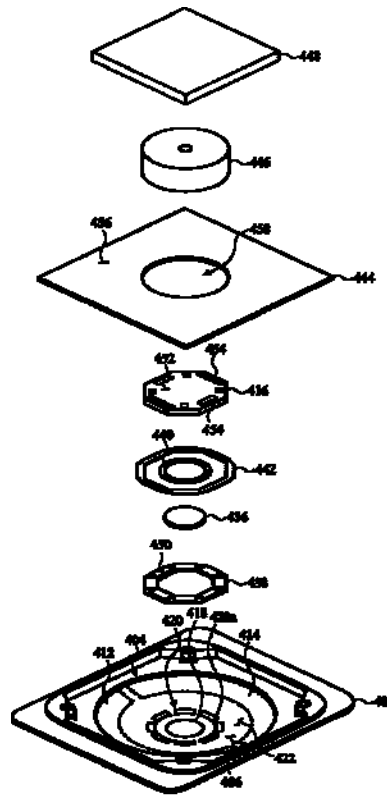


FIG. 4C

1           90. Upon information and belief, the Apple Watch Series 4 and later  
2 devices include at least four detectors (for example, photodiode sensors)  
3 arranged on the planar surface of the platform and within the housing, wherein  
4 the at least four detectors are arranged in a grid pattern such that a first detector  
5 and a second detector are arranged across from each other on opposite sides of a  
6 central point along a first axis, and a third detector and a fourth detector are  
7 arranged across from each other on opposite sides of the central point along a  
8 second axis which is perpendicular to the first axis as shown in the image below  
9 found on the Apple website at <https://support.apple.com/en-us/HT204666>:



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20           91. Upon information and belief, Defendant has knowledge of  
21 Masimo's patents, including the '708 patent, at least based on O'Reilly and  
22 Lamego's former positions with Plaintiffs. Masimo filed provisional patent  
23 applications that led to the '708 patent in August 2008, while O'Reilly and  
24 Lamego were with Masimo and/or Cercacor. Lamego is a named inventor of  
25 the '708 patent. Defendant had knowledge of the '708 patent no later than the  
26 filing of the original Complaint.

27           92. Upon information and belief, Defendant has actively induced  
28 others to infringe the '708 patent by marketing and selling the above Apple

1 Watch Series 4 and later devices, knowing and intending that such systems  
2 would be used by customers and end users in a manner that infringes the  
3 '708 patent. To that end, Defendant provides instructions and teachings to its  
4 customers and end users that such Apple Watch Series 4 and later devices be  
5 used to infringe the '708 patent. Defendant's acts constitute infringement of the  
6 '708 patent in violation of 35 U.S.C. § 271(b).

7 93. Upon information and belief, Defendant actively induces users to  
8 directly infringe the asserted claims of the '708 patent. By way of example  
9 only, upon information and belief, Defendant actively induces direct  
10 infringement of the '708 patent by providing directions, demonstrations, guides,  
11 manuals, training for use, and/or other materials necessary for the use of the  
12 Apple Watch Series 4 and later devices, including use with Apple iPhones.  
13 Upon information and belief, Defendant knew or should have known that these  
14 activities would cause direct infringement.

15 94. Upon information and belief, Defendant's acts constitute  
16 contributory infringement of the '708 patent in violation of 35 U.S.C. § 271(c).  
17 Upon information and belief, Defendant contributorily infringes because, among  
18 other things, Defendant offers to sell and/or sells within the United States,  
19 and/or imports into the United States, components of the Apple Watch Series 4  
20 and later devices and Apple iPhones that constitute material parts of the  
21 invention of the asserted claims of the '708 patent, are not staple articles or  
22 commodities of commerce suitable for substantial non-infringing use, and are  
23 known by Defendant to be especially made or especially adapted for use in an  
24 infringement of the '708 patent.

25 95. Defendant's infringement of the '708 patent is willful, deliberate,  
26 and intentional by continuing its acts of infringement after becoming aware of  
27 the '708 patent and its infringement thereof, thus acting in reckless disregard of  
28 Masimo's patent rights.

1 96. Because of Defendant's infringement of the '708 patent, Masimo  
2 has suffered and will continue to suffer irreparable harm and injury, including  
3 monetary damages in an amount to be determined at trial.

4 97. Upon information and belief, unless enjoined, Defendant, and/or  
5 others acting on behalf of Defendant, will continue their infringing acts, thereby  
6 causing additional irreparable injury to Masimo for which there is no adequate  
7 remedy at law.

8 **XI. FIFTH CAUSE OF ACTION**

9 **(INFRINGEMENT OF U.S. PATENT NO. 10,376,190)**

10 98. Plaintiff Masimo hereby realleges and incorporates by reference  
11 the allegations set forth in paragraphs 1 through 42.

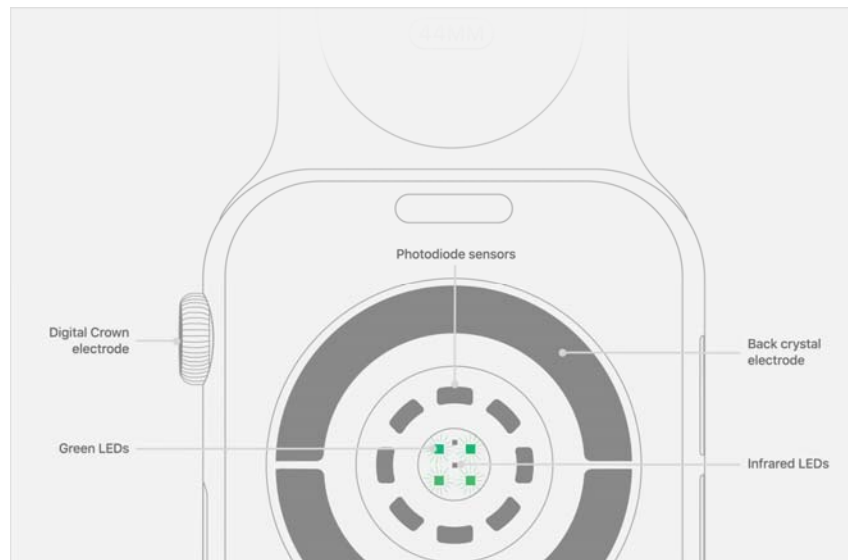
12 99. Upon information and belief, Defendant's products, including at  
13 least the Apple Watch Series 4 and later devices, infringe at least Claim 1 of the  
14 '190 patent under at least 35 U.S.C. § 271(a), (b), and (c).

15 100. Upon information and belief, Defendant has directly infringed one  
16 or more claims of the '190 patent through manufacture, use, sale, offer for sale,  
17 and/or importation into the United States of physiological monitors, including  
18 the Apple Watch Series 4 and later devices.

19 101. For example, upon information and belief, in operation, the Apple  
20 Watch Series 4 and later devices include all of the limitations of Claim 1 of the  
21 '190 patent as set forth herein and further illustrated in the claim chart shown in  
22 Exhibit 17. The Apple Watch Series 4 and later devices are noninvasive optical  
23 physiological measurement devices adapted to be worn by a wearer, the  
24 noninvasive optical physiological measurement device providing an indication  
25 of a physiological parameter (for example, heart rate) of the wearer as shown in  
26 the image below found on the Apple website at [https://www.apple.com/apple-  
27 watch-series-4/health/](https://www.apple.com/apple-watch-series-4/health/):  
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102. Upon information and belief, the Apple Watch Series 4 and later devices include light emitters and at least four detectors spaced apart from each other and configured to output one or more signals responsive to light from the one or more light emitters attenuated by body tissue, the one or more signals indicative of a physiological parameter of the wearer as shown in the image below found on the Apple website at <https://support.apple.com/en-us/HT204666>:



103. The Apple Watch Series 4 and later devices include a housing having a surface and a circular raised edge extending from the surface, and a

1 light permeable cover arranged above at least a portion of the housing, the light  
2 permeable cover comprising a protrusion arranged to cover the at least four  
3 detectors. Fig. 4C and the corresponding text of the '912 publication show, for  
4 example, such housing:

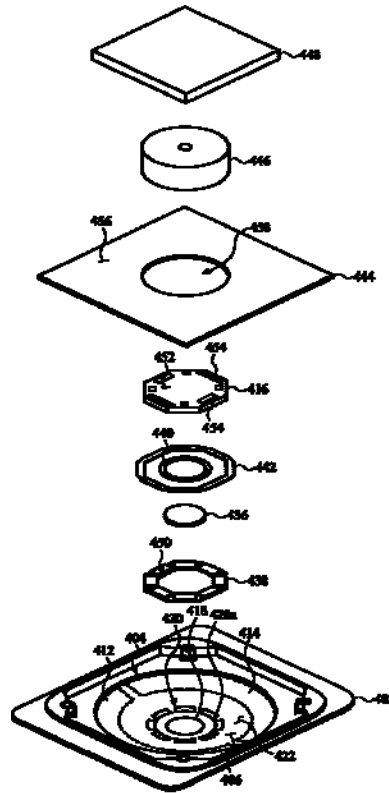


FIG. 4C

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20 104. Upon information and belief, Defendant has knowledge of  
21 Masimo's patents, including the '190 patent, at least based on O'Reilly and  
22 Lamego's former positions with Plaintiffs. Masimo filed provisional patent  
23 applications that led to the '190 patent in August 2008, while O'Reilly and  
24 Lamego were with Masimo and/or Cercacor. Lamego is a named inventor of  
25 the '190 patent. Defendant had knowledge of the '190 patent no later than the  
26 filing of the original Complaint.

27 105. Upon information and belief, Defendant has actively induced  
28 others to infringe the '190 patent by marketing and selling the above Apple

1 Watch Series 4 and later devices, knowing and intending that such systems  
2 would be used by customers and end users in a manner that infringes the  
3 '190 patent. To that end, Defendant provides instructions and teachings to its  
4 customers and end users that such Apple Watch Series 4 and later devices be  
5 used to infringe the '190 patent. Defendant's acts constitute infringement of the  
6 '190 patent in violation of 35 U.S.C. § 271(b).

7 106. Upon information and belief, Defendant actively induces users to  
8 directly infringe the asserted claims of the '190 patent. By way of example  
9 only, upon information and belief, Defendant actively induces direct  
10 infringement of the '190 patent by providing directions, demonstrations, guides,  
11 manuals, training for use, and/or other materials necessary for the use of the  
12 Apple Watch Series 4 and later devices, including use with Apple iPhones.  
13 Upon information and belief, Defendant knew or should have known that these  
14 activities would cause direct infringement.

15 107. Upon information and belief, Defendant's acts constitute  
16 contributory infringement of the '190 patent in violation of 35 U.S.C. § 271(c).  
17 Upon information and belief, Defendant contributorily infringes because, among  
18 other things, Defendant offers to sell and/or sells within the United States,  
19 and/or imports into the United States, components of the Apple Watch Series 4  
20 and later devices and Apple iPhones that constitute material parts of the  
21 invention of the asserted claims of the '190 patent, are not staple articles or  
22 commodities of commerce suitable for substantial non-infringing use, and are  
23 known by Defendant to be especially made or especially adapted for use in an  
24 infringement of the '190 patent.

25 108. Defendant's infringement of the '190 patent is willful, deliberate,  
26 and intentional by continuing its acts of infringement after becoming aware of  
27 the '190 patent and its infringement thereof, thus acting in reckless disregard of  
28 Masimo's patent rights.



1 109. Because of Defendant's infringement of the '190 patent, Masimo  
2 has suffered and will continue to suffer irreparable harm and injury, including  
3 monetary damages in an amount to be determined at trial.

4 110. Upon information and belief, unless enjoined, Defendant, and/or  
5 others acting on behalf of Defendant, will continue their infringing acts, thereby  
6 causing additional irreparable injury to Masimo for which there is no adequate  
7 remedy at law.

8 **XII. SIXTH CAUSE OF ACTION**

9 **(INFRINGEMENT OF U.S. PATENT NO. 10,376,191)**

10 111. Plaintiff Masimo hereby realleges and incorporates by reference  
11 the allegations set forth in paragraphs 1 through 42.

12 112. Upon information and belief, Defendant's products, including at  
13 least the Apple Watch Series 4 and later devices, infringe at least Claim 1 of the  
14 '191 patent under at least 35 U.S.C. § 271(a), (b), and (c).

15 113. Upon information and belief, Defendant has directly infringed one  
16 or more claims of the '191 patent through manufacture, use, sale, offer for sale,  
17 and/or importation into the United States of physiological monitors, including  
18 the Apple Watch Series 4 and later devices.

19 114. For example, upon information and belief, in operation, the Apple  
20 Watch Series 4 and later devices include all of the limitations of Claim 1 of the  
21 '191 patent as set forth herein and further illustrated in the claim chart shown in  
22 Exhibit 18. The Apple Watch Series 4 and later devices are a noninvasive  
23 optical physiological sensor as shown in the image below found on the Apple  
24 website at <https://www.apple.com/apple-watch-series-4/health/>:  
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10           115. The Apple Watch Series 4 and later devices include a plurality of  
11 emitters configured to emit light into tissue of a user and a plurality of detectors  
12 configured to detect light that has been attenuated by tissue of the user, wherein  
13 the plurality of detectors comprise at least four detectors as shown in the image  
14 below found on the Apple website at [https://support.apple.com/en-](https://support.apple.com/en-us/HT204666)  
15 [us/HT204666](https://support.apple.com/en-us/HT204666):



26           116. The Apple Watch Series 4 and later devices include a housing  
27 configured to house at least the plurality of detectors in a circular portion of the  
28 housing, and a lens configured to be located between tissue of the user and the

1 plurality of detectors when the noninvasive optical physiological sensor is worn  
 2 by the user, wherein the lens comprises a single outwardly protruding convex  
 3 surface configured to cause tissue of the user to conform to at least a portion of  
 4 the single outwardly protruding convex surface when the noninvasive optical  
 5 physiological sensor is worn by the user and during operation of the noninvasive  
 6 optical physiological sensor. Fig. 4C and the corresponding text of the '912  
 7 publication show, for example, such housing and lens:

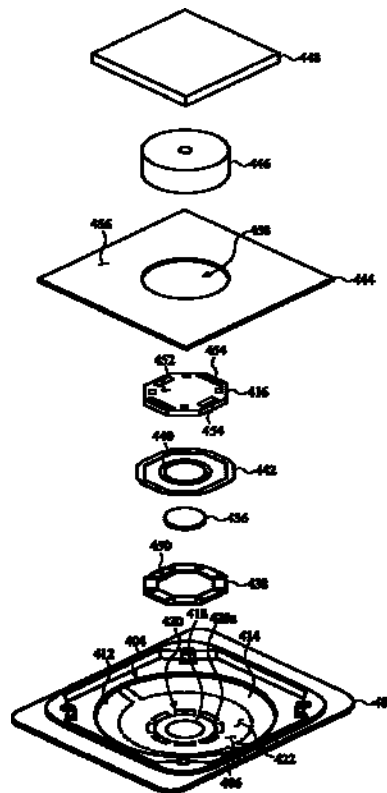


FIG. 4C

117. Upon information and belief, Defendant has knowledge of Masimo's patents, including the '191 patent, at least based on O'Reilly and Lamego's former positions with Plaintiffs. Masimo filed provisional patent applications that led to the '191 patent in August 2008, while O'Reilly and Lamego were with Masimo and/or Cercacor. Lamego is a named inventor of

1 the '191 patent. Defendant had knowledge of the '191 patent no later than the  
2 filing of the original Complaint.

3 118. Upon information and belief, Defendant has actively induced  
4 others to infringe the '191 patent by marketing and selling the above Apple  
5 Watch Series 4 and later devices, knowing and intending that such systems  
6 would be used by customers and end users in a manner that infringes the  
7 '191 patent. To that end, Defendant provides instructions and teachings to its  
8 customers and end users that such Apple Watch Series 4 and later devices be  
9 used to infringe the '191 patent. Defendant's acts constitute infringement of the  
10 '191 patent in violation of 35 U.S.C. § 271(b).

11 119. Upon information and belief, Defendant actively induces users to  
12 directly infringe the asserted claims of the '191 patent. By way of example  
13 only, upon information and belief, Defendant actively induces direct  
14 infringement of the '191 patent by providing directions, demonstrations, guides,  
15 manuals, training for use, and/or other materials necessary for the use of the  
16 Apple Watch Series 4 and later devices. Upon information and belief,  
17 Defendant knew or should have known that these activities would cause direct  
18 infringement.

19 120. Upon information and belief, Defendant's acts constitute  
20 contributory infringement of the '191 patent in violation of 35 U.S.C. § 271(c).  
21 Upon information and belief, Defendant contributorily infringes because, among  
22 other things, Defendant offers to sell and/or sells within the United States,  
23 and/or imports into the United States, components of the Apple Watch Series 4  
24 and later devices that constitute material parts of the invention of the asserted  
25 claims of the '191 patent, are not staple articles or commodities of commerce  
26 suitable for substantial non-infringing use, and are known by Defendant to be  
27 especially made or especially adapted for use in an infringement of the  
28 '191 patent.

1 121. Defendant's infringement of the '191 patent is willful, deliberate,  
2 and intentional by continuing its acts of infringement after becoming aware of  
3 the '191 patent and its infringement thereof, thus acting in reckless disregard of  
4 Masimo's patent rights.

5 122. Because of Defendant's infringement of the '191 patent, Masimo  
6 has suffered and will continue to suffer irreparable harm and injury, including  
7 monetary damages in an amount to be determined at trial.

8 123. Upon information and belief, unless enjoined, Defendant, and/or  
9 others acting on behalf of Defendant, will continue their infringing acts, thereby  
10 causing additional irreparable injury to Masimo for which there is no adequate  
11 remedy at law.

12 **XIII. SEVENTH CAUSE OF ACTION**

13 **(INFRINGEMENT OF U.S. PATENT NO. 10,470,695)**

14 124. Plaintiff Masimo hereby realleges and incorporates by reference  
15 the allegations set forth in paragraphs 1 through 42.

16 125. Upon information and belief, Defendant's products, including at  
17 least the Apple Watch Series 4 and later devices, infringe at least Claim 1 of the  
18 '695 patent under at least 35 U.S.C. § 271(a), (b), and (c).

19 126. Upon information and belief, Defendant has directly infringed one  
20 or more claims of the '695 patent through manufacture, use, sale, offer for sale,  
21 and/or importation into the United States of physiological monitors, including  
22 the Apple Watch Series 4 and later devices.

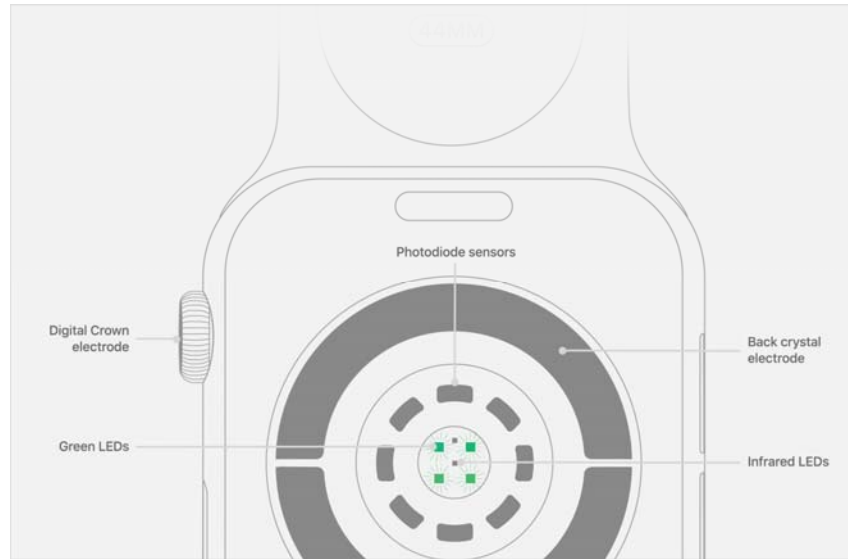
23 127. For example, upon information and belief, in operation, the Apple  
24 Watch Series 4 and later devices include all of the limitations of Claim 1 of the  
25 '695 patent as set forth herein and further illustrated in the claim chart shown in  
26 Exhibit 19. The Apple Watch Series 4 and later devices are a wrist-worn  
27 physiological monitoring device configured for placement on a user at a tissue  
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1 measurement site as shown in the image below found on the Apple website at  
2 <https://www.apple.com/apple-watch-series-4/health/>:



12 128. The Apple Watch Series 4 and later devices include a light  
13 emission source comprising a plurality of emitters configured to irradiate the  
14 tissue measurement site by emitting light towards the tissue measurement site,  
15 the tissue measurement site being located on a wrist of the user, the plurality of  
16 emitters configured to emit one or more wavelengths and a plurality of detectors  
17 configured to detect the light emitted by the plurality of emitters after  
18 attenuation by a circular portion of the tissue measurement site, the plurality of  
19 detectors further configured to output at least one signal responsive to the  
20 detected light as shown in the image below found on the Apple website at  
21 <https://support.apple.com/en-us/HT204666>:

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129. The Apple Watch Series 4 and later devices include a processor configured to receive the at least one signal responsive to the output and determine a physiological parameter of the user and a light block forming an enclosing wall between the light emission source and the plurality of detectors, the light block defining the circular portion of the tissue measurement site, the light emission source arranged proximate a first side of the enclosing wall and the plurality of detectors arranged proximate a second side of the enclosing wall, the first side being different than the second side, wherein the enclosing wall prevents at least a portion of light emitted from the light emission source from being detected by the plurality of detectors without attenuation by the tissue, and wherein the plurality of detectors are arranged in an array having a spatial configuration corresponding to the portion of the tissue measurement site. Fig. 4C and the corresponding text of the '912 publication show, for example, such light block:





1           132. Upon information and belief, Defendant actively induces users to  
2 directly infringe the asserted claims of the '695 patent. By way of example  
3 only, upon information and belief, Defendant actively induces direct  
4 infringement of the '695 patent by providing directions, demonstrations, guides,  
5 manuals, training for use, and/or other materials necessary for the use of the  
6 Apple Watch Series 4 and later devices. Upon information and belief,  
7 Defendant knew or should have known that these activities would cause direct  
8 infringement.

9           133. Upon information and belief, Defendant's acts constitute  
10 contributory infringement of the '695 patent in violation of 35 U.S.C. § 271(c).  
11 Upon information and belief, Defendant contributorily infringes because, among  
12 other things, Defendant offers to sell and/or sells within the United States,  
13 and/or imports into the United States, components of the Apple Watch Series 4  
14 and later devices that constitute material parts of the invention of the asserted  
15 claims of the '695 patent, are not staple articles or commodities of commerce  
16 suitable for substantial non-infringing use, and are known by Defendant to be  
17 especially made or especially adapted for use in an infringement of the  
18 '695 patent.

19           134. Defendant's infringement of the '695 patent is willful, deliberate,  
20 and intentional by continuing its acts of infringement after becoming aware of  
21 the '695 patent and its infringement thereof, thus acting in reckless disregard of  
22 Masimo's patent rights.

23           135. Because of Defendant's infringement of the '695 patent, Masimo  
24 has suffered and will continue to suffer irreparable harm and injury, including  
25 monetary damages in an amount to be determined at trial.

26           136. Upon information and belief, unless enjoined, Defendant, and/or  
27 others acting on behalf of Defendant, will continue their infringing acts, thereby  
28

1 causing additional irreparable injury to Masimo for which there is no adequate  
2 remedy at law.

3 **XIV. EIGHTH CAUSE OF ACTION**

4 **(INFRINGEMENT OF U.S. PATENT NO. 6,771,994)**

5 137. Plaintiff Masimo hereby realleges and incorporates by reference  
6 the allegations set forth in paragraphs 1 through 42.

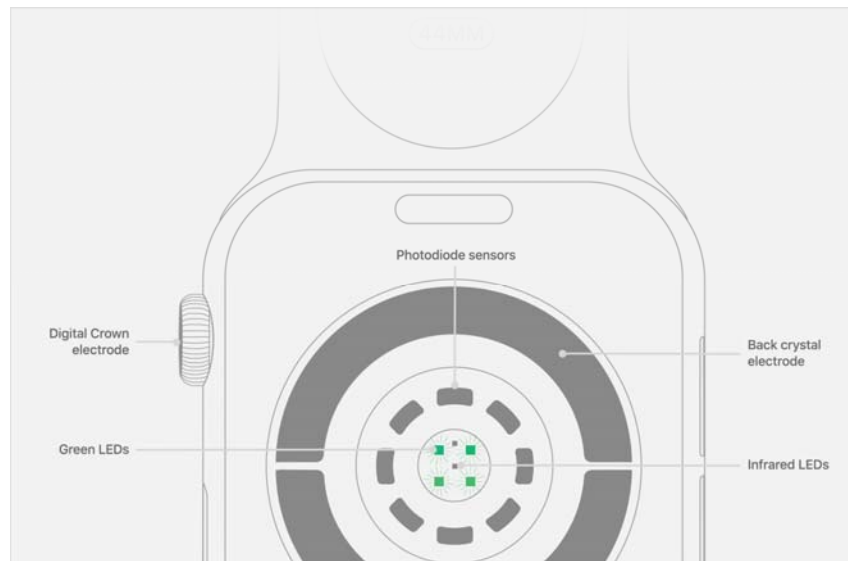
7 138. Upon information and belief, Defendant's products, including at  
8 least the Apple Watch Series 4 and later devices, infringe at least Claim 15 of  
9 the '994 patent under at least 35 U.S.C. § 271(a), (b), and (c).

10 139. Upon information and belief, Defendant has directly infringed one  
11 or more claims of the '994 patent through manufacture, use, sale, offer for sale,  
12 and/or importation into the United States of physiological monitors, including  
13 the Apple Watch Series 4 and later devices.

14 140. For example, upon information and belief, in operation, the Apple  
15 Watch Series 4 and later devices include all of the limitations of Claim 15 of the  
16 '994 patent as set forth herein and further illustrated in the claim chart shown in  
17 Exhibit 20. Upon information and belief, the Apple Watch Series 4 and later  
18 devices detects light transmitted through body tissue carrying pulsing blood to  
19 determine heart rate as shown in the image below found on the Apple website at  
20 <https://www.apple.com/apple-watch-series-4/health/>:



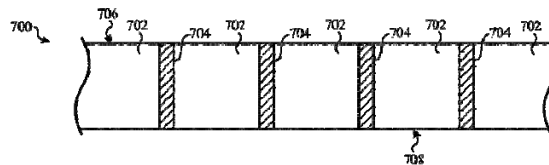
141. The Apple Watch Series 4 and later devices include at least one light emission device and a light sensitive detector as shown in the image below found on the Apple website at <https://support.apple.com/en-us/HT204666>:



142. The detectors output signals responsive to light from the light emitters attenuated by body tissue. Upon information and belief, the signals are indicative of a physiological parameter (for example, heart rate) of the wearer.

143. Upon information and belief, the relevant technology in the Apple Watch Series 4 and later devices is described in the below citations to U.S. Patent Application Publication 2019/0090806 (the '806 publication). A copy of

1 the publication is attached as Exhibit 26. The Apple Watch Series 4 and later  
 2 devices include a plurality of louvers positioned over the light sensitive detector  
 3 to accept light from the at least one light emission device originating from a  
 4 general direction of the at least one light emission device and then transmitting  
 5 through body tissue carrying pulsing blood, wherein the louvers accept the light  
 6 when the sensor is properly applied to tissue of a patient. Upon information and  
 7 belief, this technology is described, for example, in Fig. 7 and the corresponding  
 8 text of the '806 publication:



12 **FIG. 7**

13 144. Upon information and belief, Defendant has knowledge of  
 14 Masimo's patents, including the '994 patent, at least based on O'Reilly and  
 15 Lamego's former positions with Plaintiffs. Masimo filed a patent application  
 16 that led to the '994 patent on June 16, 2000. The '994 patent issued on August  
 17 3, 2004, and Masimo has maintained the patent while O'Reilly and Lamego  
 18 were with Masimo and/or Cercacor. Defendant had knowledge of the  
 '994 patent no later than the filing of the original Complaint.

19 145. Upon information and belief, Defendant has actively induced  
 20 others to infringe the '994 patent by marketing and selling the above Apple  
 21 Watch Series 4 and later devices, knowing and intending that such systems  
 22 would be used by customers and end users in a manner that infringes the  
 23 '994 patent. To that end, Defendant provides instructions and teachings to its  
 24 customers and end users that such Apple Watch Series 4 and later devices be  
 25 used to infringe the '994 patent. Defendant's acts constitute infringement of the  
 26 '994 patent in violation of 35 U.S.C. § 271(b).

27 146. Upon information and belief, Defendant actively induces users to  
 28 directly infringe the asserted claims of the '994 patent. By way of example

1 only, upon information and belief, Defendant actively induces direct  
2 infringement of the '994 patent by providing directions, demonstrations, guides,  
3 manuals, training for use, and/or other materials necessary for the use of the  
4 Apple Watch Series 4 and later devices. Upon information and belief,  
5 Defendant knew or should have known that these activities would cause direct  
6 infringement.

7 147. Upon information and belief, Defendant's acts constitute  
8 contributory infringement of the '994 patent in violation of 35 U.S.C. § 271(c).  
9 Upon information and belief, Defendant contributorily infringes because, among  
10 other things, Defendant offers to sell and/or sells within the United States,  
11 and/or imports into the United States, components of the Apple Watch Series 4  
12 and later devices that constitute material parts of the invention of the asserted  
13 claims of the '994 patent, are not staple articles or commodities of commerce  
14 suitable for substantial non-infringing use, and are known by Defendant to be  
15 especially made or especially adapted for use in an infringement of the  
16 '994 patent.

17 148. Defendant's infringement of the '994 patent is willful, deliberate,  
18 and intentional by continuing its acts of infringement after becoming aware of  
19 the '994 patent and its infringement thereof, thus acting in reckless disregard of  
20 Masimo's patent rights.

21 149. Because of Defendant's infringement of the '994 patent, Masimo  
22 has suffered and will continue to suffer irreparable harm and injury, including  
23 monetary damages in an amount to be determined at trial.

24 150. Upon information and belief, unless enjoined, Defendant, and/or  
25 others acting on behalf of Defendant, will continue their infringing acts, thereby  
26 causing additional irreparable injury to Masimo for which there is no adequate  
27 remedy at law.

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**XV. NINTH CAUSE OF ACTION**

**(INFRINGEMENT OF U.S. PATENT NO. 8,457,703)**

151. Plaintiff Masimo hereby realleges and incorporates by reference the allegations set forth in paragraphs 1 through 42.

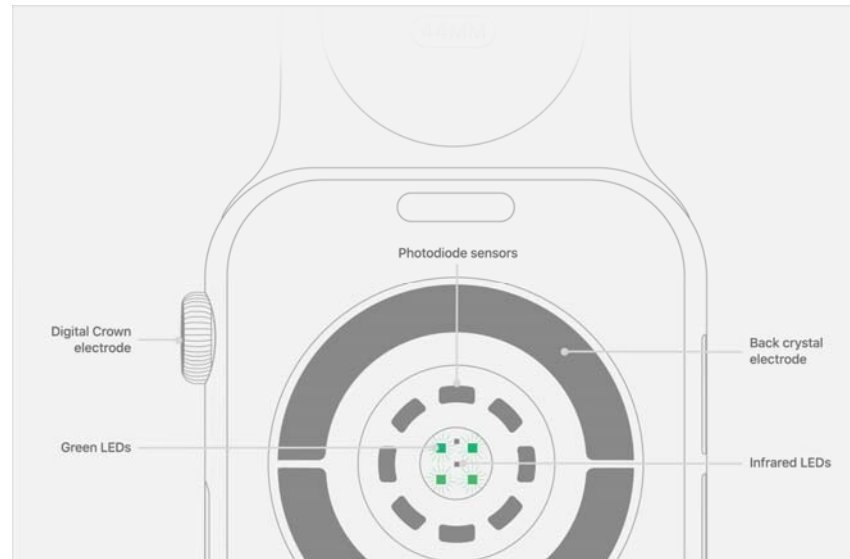
152. Upon information and belief, Defendant’s products, including at least the Apple Watch Series 4 and later devices, infringe at least Claim 1 of the ’703 patent under at least 35 U.S.C. § 271(a), (b), and (c).

153. Upon information and belief, Defendant has directly infringed one or more claims of the ’703 patent through manufacture, use, sale, offer for sale, and/or importation into the United States of physiological monitors, including the Apple Watch Series 4 and later devices.

154. For example, upon information and belief, in operation, the Apple Watch Series 4 and later devices include all of the limitations of Claim 1 of the ’703 patent as set forth herein and further illustrated in the claim chart shown in Exhibit 21. The Apple Watch Series 4 and later devices provide an indication of a physiological parameter (for example, heart rate) of the wearer as shown in the image below found on the Apple website at <https://www.apple.com/apple-watch-series-4/health/>:



1 155. The Apple Watch Series 4 and later devices drive one or more light  
2 sources configured to emit light into tissue and receives one or more signals  
3 from one or more detectors configured to detect light after attenuation by tissue  
4 as shown in the image below found on the Apple website at  
5 <https://support.apple.com/en-us/HT204666>:



15  
16 156. The detectors output signals responsive to light from the light  
17 emitters attenuated by body tissue. Upon information and belief, the signals are  
18 indicative of a physiological parameter (for example, heart rate) of the wearer.

19 157. Upon information and belief, the Apple Watch Series 4 and later  
20 devices continuously operate at a lower power consumption level to determine  
21 measurement values for heart rate, as described at [https://support.apple.com/en-](https://support.apple.com/en-us/HT204666)  
22 [us/HT204666](https://support.apple.com/en-us/HT204666):

23 The optical heart sensor in Apple Watch uses what is known as  
24 photoplethysmography. This technology, while difficult to  
25 pronounce, is based on a very simple fact: Blood is red because it  
26 reflects red light and absorbs green light. Apple Watch uses green  
27 LED lights paired with light-sensitive photodiodes to detect the  
28 amount of blood flowing through your wrist at any given moment.

1           When your heart beats, the blood flow in your wrist — and the  
2           green light absorption — is greater. Between beats, it's less. By  
3           flashing its LED lights hundreds of times per second, Apple Watch  
4           can calculate the number of times the heart beats each minute —  
5           your heart rate. The optical heart sensor supports a range of 30–210  
6           beats per minute. In addition, the optical heart sensor is designed to  
7           compensate for low signal levels by increasing both LED  
8           brightness and sampling rate.

9           158. Upon information and belief, the Apple Watch Series 4 and later  
10          devices as described above compare processing characteristics to a  
11          predetermined threshold, and when the processing characteristics pass the  
12          threshold, the Apple Watch Series 4 and later devices transition to continuously  
13          operating at a higher power consumption level, wherein the continuously  
14          operating at the lower power consumption level comprises reducing activation  
15          of an attached sensor, the sensor positioning the light sources and the detectors  
16          proximate to the tissue.

17          159. Upon information and belief, Defendant has knowledge of  
18          Masimo's patents, including the '703 patent, at least based on O'Reilly and  
19          Lamego's former positions with Plaintiffs. Masimo filed a provisional patent  
20          application that led to the '703 patent on July 2, 2001. The '703 patent issued  
21          on June 4, 2013, while O'Reilly and Lamego were with Masimo and/or  
22          Cercacor. Defendant had knowledge of the '703 patent no later than the filing  
23          of the original Complaint.

24          160. Upon information and belief, Defendant has actively induced  
25          others to infringe the '703 patent by marketing and selling the above Apple  
26          Watch Series 4 and later devices, knowing and intending that such systems  
27          would be used by customers and end users in a manner that infringes the  
28          '703 patent. To that end, Defendant provides instructions and teachings to its



1 customers and end users that such Apple Watch Series 4 and later devices be  
2 used to infringe the '703 patent. Defendant's acts constitute infringement of the  
3 '703 patent in violation of 35 U.S.C. § 271(b).

4 161. Upon information and belief, Defendant actively induces users to  
5 directly infringe the asserted claims of the '703 patent. By way of example  
6 only, upon information and belief, Defendant actively induces direct  
7 infringement of the '703 patent by providing directions, demonstrations, guides,  
8 manuals, training for use, and/or other materials necessary for the use of the  
9 Apple Watch Series 4 and later devices. Upon information and belief,  
10 Defendant knew or should have known that these activities would cause direct  
11 infringement.

12 162. Upon information and belief, Defendant's acts constitute  
13 contributory infringement of the '703 patent in violation of 35 U.S.C. § 271(c).  
14 Upon information and belief, Defendant contributorily infringes because, among  
15 other things, Defendant offers to sell and/or sells within the United States,  
16 and/or imports into the United States, components of the Apple Watch Series 4  
17 and later devices that constitute material parts of the invention of the asserted  
18 claims of the '703 patent, are not staple articles or commodities of commerce  
19 suitable for substantial non-infringing use, and are known by Defendant to be  
20 especially made or especially adapted for use in an infringement of the  
21 '703 patent.

22 163. Defendant's infringement of the '703 patent is willful, deliberate,  
23 and intentional by continuing its acts of infringement after becoming aware of  
24 the '703 patent and its infringement thereof, thus acting in reckless disregard of  
25 Masimo's patent rights.

26 164. Because of Defendant's infringement of the '703 patent, Masimo  
27 has suffered and will continue to suffer irreparable harm and injury, including  
28 monetary damages in an amount to be determined at trial.

1 165. Upon information and belief, unless enjoined, Defendant, and/or  
2 others acting on behalf of Defendant, will continue their infringing acts, thereby  
3 causing additional irreparable injury to Masimo for which there is no adequate  
4 remedy at law.

5 **XVI. TENTH CAUSE OF ACTION**

6 **(INFRINGEMENT OF U.S. PATENT NO. 10,433,776)**

7 166. Plaintiff Masimo hereby realleges and incorporates by reference  
8 the allegations set forth in paragraphs 1 through 42.

9 167. Upon information and belief, Defendant's products, including at  
10 least the Apple Watch Series 4 and later devices, infringe at least Claim 1 of the  
11 '776 patent under at least 35 U.S.C. § 271(a), (b), and (c).

12 168. Upon information and belief, Defendant has directly infringed one  
13 or more claims of the '776 patent through manufacture, use, sale, offer for sale,  
14 and/or importation into the United States of physiological monitors, including  
15 the Apple Watch Series 4 and later devices.

16 169. For example, upon information and belief, in operation, the Apple  
17 Watch Series 4 and later devices include all of the limitations of Claim 1 of the  
18 '776 patent as set forth herein and further illustrated in the claim chart shown in  
19 Exhibit 22. The Apple Watch Series 4 and later devices are configured to  
20 monitor at least a pulse rate of a patient by processing signals responsive to light  
21 attenuated by body tissue of the wearer as shown in the image below found on  
22 the Apple website at <https://www.apple.com/apple-watch-series-4/health/>:

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170. The Apple Watch Series 4 and later devices drive one or more light sources configured to emit light into tissue and receives one or more signals from one or more detectors configured to detect light after attenuation by tissue as shown in the image below found on the Apple website at <https://support.apple.com/en-us/HT204666>:



171. Upon information and belief, the Apple Watch Series 4 and later devices operate according to a first control protocol, wherein said operating includes activating a first control protocol light source in accordance with the

1 first control protocol, the first control protocol light source including one or  
2 more of a plurality of light sources, and when operating according to the first  
3 control protocol, calculating, by the patient monitor, measurement values of the  
4 pulse rate, the measurement values responsive to light from the first control  
5 protocol light source, detected by a detector of an optical sensor after  
6 attenuation by body tissue of the patient using the patient monitor as explained,  
7 for example, on the Apple website at [https://support.apple.com/en-](https://support.apple.com/en-us/HT204666)  
8 [us/HT204666](https://support.apple.com/en-us/HT204666). That webpage explains the optical heart sensor uses  
9 photoplethysmography. “Apple Watch uses green LED lights paired with  
10 light-sensitive photodiodes to detect the amount of blood flowing through your  
11 wrist at any given moment. When your heart beats, the blood flow in your wrist  
12 — and the green light absorption — is greater. Between beats, it’s less. By  
13 flashing its LED lights hundreds of times per second, Apple Watch can calculate  
14 the number of times the heart beats each minute — your heart rate. The optical  
15 heart sensor supports a range of 30–210 beats per minute. In addition, the  
16 optical heart sensor is designed to compensate for low signal levels by  
17 increasing both LED brightness and sampling rate.” That webpage further  
18 explains that the “optical heart sensor can also use infrared light. This mode is  
19 what Apple Watch uses when it measures your heart rate in the background, and  
20 for heart rate notifications. Apple Watch uses green LED lights to measure your  
21 heart rate during workouts and Breathe sessions, and to calculate walking  
22 average and Heart Rate Variability (HRV).”

23 172. Upon information and belief, the Apple Watch Series 4 and later  
24 devices generate a trigger signal, wherein generating said trigger signal is  
25 responsive to at least one of: a comparison of processing characteristics to a  
26 predetermined threshold, a physiological event, or signal quality characteristics  
27 of signals received from the detector, and in response to receiving the trigger  
28 signal, operating the patient monitor according to a second control protocol

1 different from the first control protocol, wherein said operating includes  
2 activating a second control protocol light source in accordance with the second  
3 control protocol, the second control protocol light source including one or more  
4 of the plurality of light sources, and when operating the patient monitor  
5 according to the second control protocol, calculating the measurement values of  
6 the pulse rate, the measurement values responsive to light from the second  
7 control protocol light source, detected by the detector after attenuation by the  
8 body tissue of the patient using the patient monitor, wherein said operating of  
9 the patient monitor according to the first control protocol operates the first  
10 control protocol light source according to a first duty cycle and said operating of  
11 the patient monitor according to the second control protocol operates the second  
12 control protocol light source according to a second duty cycle, wherein power  
13 consumption of the first control protocol light source according to the first duty  
14 cycle is different than power consumption of the second control protocol light  
15 source according to the second duty cycle.

16 173. Upon information and belief, Defendant has knowledge of  
17 Masimo's patents, including the '776 patent, at least based on O'Reilly and  
18 Lamego's former positions with Plaintiffs. Masimo filed a provisional patent  
19 application that led to the '776 patent on July 2, 2001. The '776 patent issued  
20 on June 4, 2013, while O'Reilly and Lamego were with Masimo and/or  
21 Cercacor. Defendant had knowledge of the '776 patent no later than the filing  
22 of the original Complaint.

23 174. Upon information and belief, Defendant has actively induced  
24 others to infringe the '776 patent by marketing and selling the above Apple  
25 Watch Series 4 and later devices, knowing and intending that such systems  
26 would be used by customers and end users in a manner that infringes the  
27 '776 patent. To that end, Defendant provides instructions and teachings to its  
28 customers and end users that such Apple Watch Series 4 and later devices be

1 used to infringe the '776 patent. Defendant's acts constitute infringement of the  
2 '776 patent in violation of 35 U.S.C. § 271(b).

3 175. Upon information and belief, Defendant actively induces users to  
4 directly infringe the asserted claims of the '776 patent. By way of example  
5 only, upon information and belief, Defendant actively induces direct  
6 infringement of the '776 patent by providing directions, demonstrations, guides,  
7 manuals, training for use, and/or other materials necessary for the use of the  
8 Apple Watch Series 4 and later devices. Upon information and belief,  
9 Defendant knew or should have known that these activities would cause direct  
10 infringement.

11 176. Upon information and belief, Defendant's acts constitute  
12 contributory infringement of the '776 patent in violation of 35 U.S.C. § 271(c).  
13 Upon information and belief, Defendant contributorily infringes because, among  
14 other things, Defendant offers to sell and/or sells within the United States,  
15 and/or imports into the United States, components of the Apple Watch Series 4  
16 and later devices that constitute material parts of the invention of the asserted  
17 claims of the '776 patent, are not staple articles or commodities of commerce  
18 suitable for substantial non-infringing use, and are known by Defendant to be  
19 especially made or especially adapted for use in an infringement of the  
20 '776 patent.

21 177. Defendant's infringement of the '776 patent is willful, deliberate,  
22 and intentional by continuing its acts of infringement after becoming aware of  
23 the '776 patent and its infringement thereof, thus acting in reckless disregard of  
24 Masimo's patent rights.

25 178. Because of Defendant's infringement of the '776 patent, Masimo  
26 has suffered and will continue to suffer irreparable harm and injury, including  
27 monetary damages in an amount to be determined at trial.  
28

1 179. Upon information and belief, unless enjoined, Defendant, and/or  
2 others acting on behalf of Defendant, will continue their infringing acts, thereby  
3 causing additional irreparable injury to Masimo for which there is no adequate  
4 remedy at law.

5 **XVII. ELEVENTH CAUSE OF ACTION**

6 **(INFRINGEMENT OF U.S. PATENT NO. 10,588,553)**

7 180. Plaintiff Masimo hereby realleges and incorporates by reference  
8 the allegations set forth in paragraphs 1 through 42.

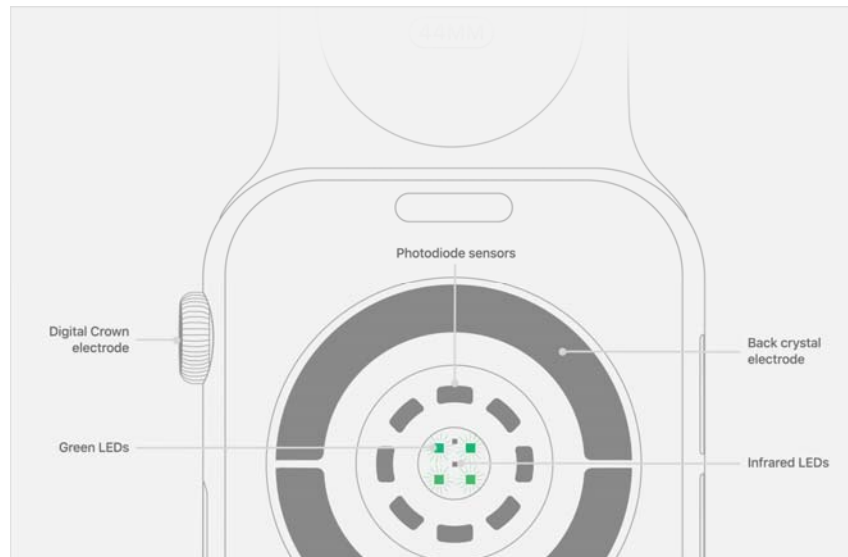
9 181. Upon information and belief, Defendant's products, including at  
10 least the Apple Watch Series 4 and later devices, infringe at least Claim 1 of the  
11 '553 patent under at least 35 U.S.C. § 271(a), (b), and (c).

12 182. Upon information and belief, Defendant has directly infringed one  
13 or more claims of the '553 patent through manufacture, use, sale, offer for sale,  
14 and/or importation into the United States of physiological monitors, including  
15 the Apple Watch Series 4 and later devices.

16 183. For example, upon information and belief, in operation, the Apple  
17 Watch Series 4 and later devices include all of the limitations of Claim 1 of the  
18 '553 patent as set forth herein and further illustrated in the claim chart shown in  
19 Exhibit 23. The Apple Watch Series 4 and later devices are noninvasive optical  
20 physiological sensor devices as shown in the image below found on the Apple  
21 website at <https://www.apple.com/apple-watch-series-4/health/>:  
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184. The Apple Watch Series 4 and later devices include a plurality of emitters configured to emit light into tissue of a user, and at least four detectors, wherein at least one of the at least four detectors is configured to detect light that has been attenuated by tissue of the user, and wherein the at least four detectors are arranged on a substrate as shown in the image below found on the Apple website at <https://support.apple.com/en-us/HT204666>:



185. The detectors output signals responsive to light from the light emitters attenuated by body tissue. Upon information and belief, the signals are indicative of a physiological parameter (for example, heart rate) of the wearer.



1           186. Upon information and belief, the relevant technology in the Apple  
 2 Watch Series 4 and later devices is described in the below citations to U.S.  
 3 Patent Application Publication 2019/0072912 (the '912 publication). A copy of  
 4 the publication is attached as Exhibit 25. The Apple Watch Series 4 and later  
 5 devices include a wall configured to circumscribe at least the at least four  
 6 detectors and a cover configured to be located between tissue of the user and the  
 7 at least four detectors when the noninvasive optical physiological sensor is worn  
 8 by the user, wherein the cover comprises a single protruding convex surface  
 9 operable to conform tissue of the user to at least a portion of the single  
 10 protruding convex surface when the noninvasive optical physiological sensor is  
 11 worn by the user, and wherein the wall operably connects to the substrate and  
 12 the cover. Fig. 4C and the corresponding text of the '912 publication show, for  
 13 example, such wall and cover:

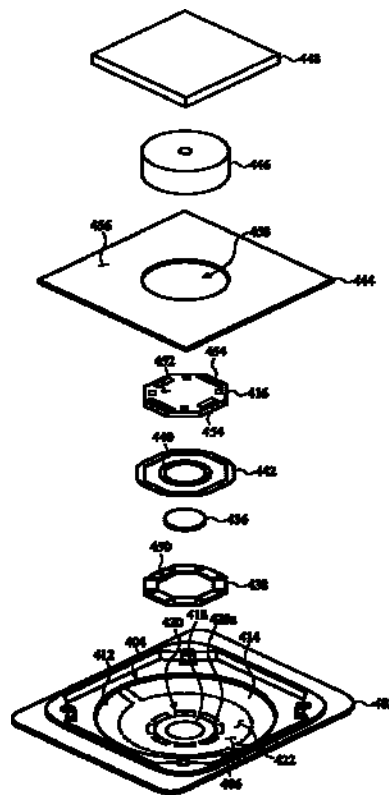


FIG. 4C

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1 187. Upon information and belief, Defendant has knowledge of  
2 Masimo's patents, including the '553 patent, at least based on O'Reilly and  
3 Lamego's former positions with Plaintiffs. Masimo filed provisional patent  
4 applications that led to the '553 patent in August 2008, while O'Reilly and  
5 Lamego were with Masimo and/or Cercacor. Lamego is a named inventor of  
6 the '553 patent. Defendant had knowledge of the '553 patent no later than the  
7 filing of this First Amended Complaint.

8 188. Upon information and belief, Defendant has actively induced  
9 others to infringe the '553 patent by marketing and selling the above Apple  
10 Watch Series 4 and later devices, knowing and intending that such systems  
11 would be used by customers and end users in a manner that infringes the  
12 '553 patent. To that end, Defendant provides instructions and teachings to its  
13 customers and end users that such Apple Watch Series 4 and later devices be  
14 used to infringe the '553 patent. Defendant's acts constitute infringement of the  
15 '553 patent in violation of 35 U.S.C. § 271(b).

16 189. Upon information and belief, Defendant actively induces users to  
17 directly infringe the asserted claims of the '553 patent. By way of example  
18 only, upon information and belief, Defendant actively induces direct  
19 infringement of the '553 patent by providing directions, demonstrations, guides,  
20 manuals, training for use, and/or other materials necessary for the use of the  
21 Apple Watch Series 4 and later devices, including use with Apple iPhones.  
22 Upon information and belief, Defendant knew or should have known that these  
23 activities would cause direct infringement.

24 190. Upon information and belief, Defendant's acts constitute  
25 contributory infringement of the '553 patent in violation of 35 U.S.C. § 271(c).  
26 Upon information and belief, Defendant contributorily infringes because, among  
27 other things, Defendant offers to sell and/or sells within the United States,  
28 and/or imports into the United States, components of the Apple Watch Series 4

1 and later devices and Apple iPhones that constitute material parts of the  
2 invention of the asserted claims of the '553 patent, are not staple articles or  
3 commodities of commerce suitable for substantial non-infringing use and are  
4 known by Defendant to be especially made or especially adapted for use in an  
5 infringement of the '553 patent.

6 191. Defendant's infringement of the '553 patent is willful, deliberate,  
7 and intentional by continuing its acts of infringement after becoming aware of  
8 the '553 patent and its infringement thereof, thus acting in reckless disregard of  
9 Masimo's patent rights.

10 192. Because of Defendant's infringement of the '553 patent, Masimo  
11 has suffered and will continue to suffer irreparable harm and injury, including  
12 monetary damages in an amount to be determined at trial.

13 193. Upon information and belief, unless enjoined, Defendant, and/or  
14 others acting on behalf of Defendant, will continue their infringing acts, thereby  
15 causing additional irreparable injury to Masimo for which there is no adequate  
16 remedy at law.

17 **XVIII. TWELFTH CAUSE OF ACTION**

18 **(INFRINGEMENT OF U.S. PATENT NO. 10,588,554)**

19 194. Plaintiff Masimo hereby realleges and incorporates by reference  
20 the allegations set forth in paragraphs 1 through 42.

21 195. Upon information and belief, Defendant's products, including at  
22 least the Apple Watch Series 4 and later devices, infringe at least Claim 21 of  
23 the '554 patent under at least 35 U.S.C. § 271(a), (b), and (c).

24 196. Upon information and belief, Defendant has directly infringed one  
25 or more claims of the '554 patent through manufacture, use, sale, offer for sale,  
26 and/or importation into the United States of physiological monitors, including  
27 the Apple Watch Series 4 and later devices.

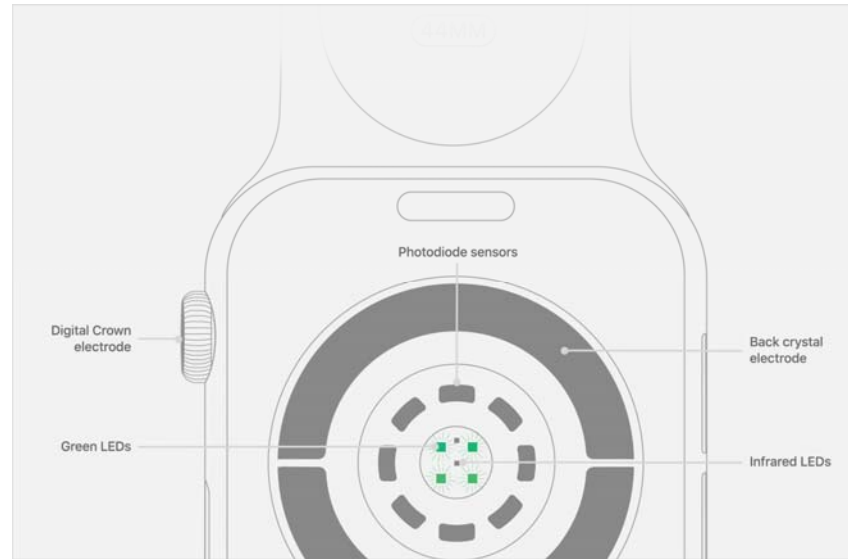
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1 197. For example, upon information and belief, in operation, the Apple  
2 Watch Series 4 and later devices in combination with iPhone devices include all  
3 of the limitations of Claim 21 of the '554 patent as set forth herein and further  
4 illustrated in the claim chart shown in Exhibit 24. The Apple Watch Series 4  
5 and later devices are physiological measurement systems with physiological  
6 sensors as shown in the image below found on the Apple website at  
7 <https://www.apple.com/apple-watch-series-4/health/>:



17 198. The Apple Watch Series 4 and later devices include a plurality of  
18 emitters configured to emit light into tissue of a user, and at least four detectors,  
19 wherein each of the at least four detectors has a corresponding window that  
20 allows light to pass through to the detector as shown in the image below found  
21 on the Apple website at <https://support.apple.com/en-us/HT204666>:

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199. The detectors output signals responsive to light from the light emitters attenuated by body tissue. Upon information and belief, the signals are indicative of a physiological parameter (for example, heart rate) of the wearer.

200. Upon information and belief, the relevant technology in the Apple Watch Series 4 and later devices is described in the below citations to U.S. Patent Application Publication 2019/0072912 (the '912 publication). A copy of the publication is attached as Exhibit 25. The Apple Watch Series 4 and later devices include a wall that surrounds at least the at least four detectors, a cover comprising a single protruding convex surface, wherein the single protruding convex surface is configured to be located between tissue of the user and the at least four detectors when the physiological sensor device is worn by the user, wherein at least a portion of the single protruding convex surface is sufficiently rigid to cause tissue of the user to conform to at least a portion of a shape of the single protruding convex surface when the physiological sensor device is worn by the user, and wherein the cover operably connects to the wall. Fig. 4C and the corresponding text of the '912 publication show, for example, such wall and cover:

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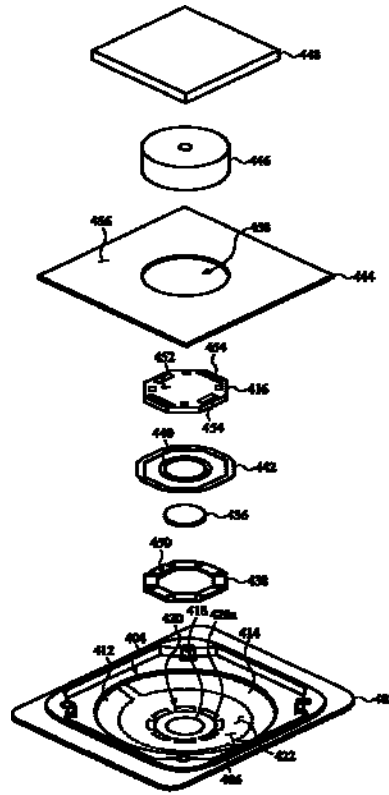


FIG. 4C

201. The Apple Watch Series 4 and later devices communicate wirelessly with handheld computing devices as shown in the image below found on the Apple website at <https://support.apple.com/en-us/HT204666> and as further described at <https://support.apple.com/en-us/HT204505>:



1           202. Upon information and belief, Defendant has knowledge of  
2 Masimo's patents, including the '554 patent, at least based on O'Reilly and  
3 Lamego's former positions with Plaintiffs. Masimo filed provisional patent  
4 applications that led to the '554 patent in August 2008, while O'Reilly and  
5 Lamego were with Masimo and/or Cercacor. Lamego is a named inventor of  
6 the '554 patent. Defendant had knowledge of the '554 patent no later than the  
7 filing of this First Amended Complaint.

8           203. Upon information and belief, Defendant has actively induced  
9 others to infringe the '554 patent by marketing and selling the above Apple  
10 Watch Series 4 and later devices, knowing and intending that such systems  
11 would be used by customers and end users in a manner that infringes the  
12 '554 patent. To that end, Defendant provides instructions and teachings to its  
13 customers and end users that such Apple Watch Series 4 and later devices be  
14 used to infringe the '554 patent. Defendant's acts constitute infringement of the  
15 '554 patent in violation of 35 U.S.C. § 271(b).

16           204. Upon information and belief, Defendant actively induces users to  
17 directly infringe the asserted claims of the '554 patent. By way of example  
18 only, upon information and belief, Defendant actively induces direct  
19 infringement of the '554 patent by providing directions, demonstrations, guides,  
20 manuals, training for use, and/or other materials necessary for the use of the  
21 Apple Watch Series 4 and later devices, including use with Apple iPhones.  
22 Upon information and belief, Defendant knew or should have known that these  
23 activities would cause direct infringement.

24           205. Upon information and belief, Defendant's acts constitute  
25 contributory infringement of the '554 patent in violation of 35 U.S.C. § 271(c).  
26 Upon information and belief, Defendant contributorily infringes because, among  
27 other things, Defendant offers to sell and/or sells within the United States,  
28 and/or imports into the United States, components of the Apple Watch Series 4

1 and later devices and Apple iPhones that constitute material parts of the  
2 invention of the asserted claims of the '554 patent, are not staple articles or  
3 commodities of commerce suitable for substantial non-infringing use and are  
4 known by Defendant to be especially made or especially adapted for use in an  
5 infringement of the '554 patent.

6 206. Defendant's infringement of the '554 patent is willful, deliberate,  
7 and intentional by continuing its acts of infringement after becoming aware of  
8 the '554 patent and its infringement thereof, thus acting in reckless disregard of  
9 Masimo's patent rights.

10 207. Because of Defendant's infringement of the '554 patent, Masimo  
11 has suffered and will continue to suffer irreparable harm and injury, including  
12 monetary damages in an amount to be determined at trial.

13 208. Upon information and belief, unless enjoined, Defendant, and/or  
14 others acting on behalf of Defendant, will continue their infringing acts, thereby  
15 causing additional irreparable injury to Masimo for which there is no adequate  
16 remedy at law.

17 **XIX. THIRTEENTH CAUSE OF ACTION**  
18 **(TRADE SECRET MISAPPROPRIATION UNDER**  
19 **CALIFORNIA'S UNIFORM TRADE SECRET ACT)**

20 209. Plaintiffs hereby reallege and incorporate by reference the  
21 allegations set forth in paragraphs 1 through 42.

22 210. This is a cause of action for Misappropriation of Trade Secrets under  
23 California's Uniform Trade Secrets Act, Cal. Civ. Code §§ 3426 *et seq.*, based  
24 upon Defendant's wrongful and improper acquisition, use, and disclosure of  
25 confidential and proprietary trade secret information of Plaintiffs.

26 211. Plaintiffs own trade secrets that include, but are not limited to,  
27 Plaintiffs' technical information, sales and marketing information, and other  
28 business information relating to non-invasive monitoring of physiological



1 parameters and products to perform such monitoring. Plaintiffs' technical  
2 information includes product plans, engineering plans, product briefs, technical  
3 drawings, technical specifications, technical data, product designs, system designs,  
4 design captures, assembly design requirements, risk analysis, test procedures and  
5 results, test data, design review documents, software requirement specifications,  
6 technical know-how, manufacturing techniques and procedures, installation  
7 techniques and procedures, and invention disclosures. Plaintiffs' sales and  
8 marketing information includes product plans, business plans, customer  
9 information, sales pipelines, proposal and quote generation tools, pricing models,  
10 pricing schedules, sales training materials, product training materials, marketing  
11 and launch plans, marketing analysis, and competitive analysis. Plaintiffs' other  
12 business information includes information for successfully operating a non-  
13 invasive patient monitoring company, including personnel information, supplier  
14 information, and other business spreadsheets and analysis. Plaintiffs trade secrets  
15 also include combinations and selections of the above information, and knowledge  
16 of the varying importance of the information. Plaintiffs trade secrets also include  
17 knowledge for selecting which information and technology are important for  
18 improving reliability, improving measurements, and how to successfully combine  
19 and implement them to achieve the desired functionality. Plaintiffs' trade secrets  
20 also include negative information, what works well under certain conditions, and  
21 trade-offs of selecting certain techniques. The aforementioned information is  
22 referred to herein as Plaintiffs' "Confidential Information."

23         212. Plaintiffs' Confidential Information is currently or was, at least at the  
24 time of Defendant's misappropriation, not generally known to the public or to  
25 other persons who can obtain economic value from its disclosure or use. All  
26 individuals with access to Plaintiffs' Confidential Information were instructed to  
27 keep it confidential, and they were subject to obligations to keep Plaintiffs'  
28 Confidential Information secret. For example, Plaintiffs marked documents

1 confidential, and instructed those individuals with access to the information to  
2 treat it as confidential, restricted access to the information, and required  
3 individuals and companies to enter into confidentiality agreements with Plaintiffs  
4 in order to receive Plaintiffs' Confidential Information.

5 213. Plaintiffs' Confidential Information derives independent economic  
6 value, actual and potential, because it is, or was at the time of Defendant's  
7 misappropriation, not generally known to the public or to other persons who can  
8 obtain economic value from its disclosure or use. The actual and potential  
9 independent economic value of Plaintiffs' Confidential Information is derived  
10 from not being generally known because it gives or gave Plaintiffs an actual and  
11 potential business advantage over others who do not know the information and  
12 who could obtain economic value from its disclosure or use. If others obtained  
13 access to Plaintiffs' Confidential Information, they could use the information to  
14 deprive Plaintiffs of the business advantage it has over others, as well as to  
15 themselves obtain a business advantage over others.

16 214. Plaintiffs made reasonable efforts under the circumstances to keep  
17 Plaintiffs' Confidential Information from becoming generally known. For  
18 example, Plaintiffs' efforts included marking documents confidential, instructing  
19 individuals with access to the information to treat it as confidential, restricting  
20 access to the information, and requiring individuals and companies to enter into  
21 confidentiality agreements with Plaintiffs in order to receive Plaintiffs'  
22 Confidential Information. Accordingly, Plaintiffs' Confidential Information  
23 constitutes a "trade secret" pursuant to Cal. Civ. Code § 3426.1.

24 215. Plaintiffs are informed and believe, and thereon allege, that  
25 Defendant misappropriated Plaintiffs' Confidential Information by acquisition at  
26 least from Plaintiffs' former employees who left Plaintiffs to work for Defendant.  
27 For example, upon information and belief, Lamego disclosed Plaintiffs'  
28 Confidential Information, without Plaintiffs' consent, to Defendant. At the time of

1 disclosure, Lamego knew, or had reason to know, that his knowledge of Plaintiffs'  
2 Confidential Information was acquired by an employer-employee relationship,  
3 fiduciary relationship, and Lamego's employment agreements, which created a  
4 duty for Lamego to keep Plaintiffs' Confidential Information secret. Lamego also  
5 knew, or had reason to know, that disclosing Plaintiffs' Confidential Information  
6 to Defendant constituted a breach of those obligations.

7 216. At the time of acquisition, Defendant also knew, or had reason to  
8 know, that Lamego obtained Plaintiffs' Confidential information pursuant to a  
9 duty or obligation to keep Plaintiffs' Confidential information secret. This duty or  
10 obligation arose from an employer-employee relationship, fiduciary relationship,  
11 and Lamego's employment agreements. Among other things, Defendant knew  
12 Lamego was the Chief Technical Officer of Cercacor and a Research Scientist at  
13 Masimo. Defendant knew Lamego was under a duty to maintain the secrecy of  
14 the information he obtained from Plaintiffs. Defendant knew Plaintiffs  
15 considered the information confidential by virtue of its prior relationship with  
16 Plaintiffs. Defendant had also received a letter dated January 24, 2014, from  
17 Plaintiffs explaining that Lamego possessed Plaintiffs' Confidential Information,  
18 asking Defendant not to use such information, and attaching a copy of Lamego's  
19 Employee Confidentiality Agreement with Cercacor. Nevertheless, Defendant  
20 induced Lamego to disclose Plaintiffs' Confidential Information and Lamego  
21 disclosed Plaintiffs' Confidential Information for the benefit of Defendant while  
22 employed by Defendant. Thus, Defendant acquired Plaintiffs' trade secrets  
23 through the improper means of its employees breaching a duty to maintain secrecy  
24 owed to Plaintiffs, as well as inducing its employees to breach a duty to maintain  
25 secrecy owed to Plaintiffs.

26 217. Upon information and belief, Defendant used and disclosed  
27 Plaintiffs' Confidential Information it obtained from Plaintiffs and their former  
28 employees without Plaintiffs' express or implied consent. For example, Lamego

1 used and disclosed Plaintiffs' Confidential Information for the benefit of  
2 Defendant while employed by Defendant. As discussed above, Lamego knew or  
3 had reason to know that his knowledge of Plaintiffs' Confidential Information was  
4 acquired under circumstances giving rise to a duty to maintain its secrecy and limit  
5 its use.

6 218. Defendant further used and disclosed Plaintiffs' Confidential  
7 Information at least by incorporating it into Defendant's products and by filing  
8 patent applications containing Plaintiffs' Confidential Information, without  
9 Plaintiffs' express or implied consent. As discussed above, Defendant knew or  
10 had reason to know that its knowledge of Plaintiffs' Confidential Information  
11 came from Plaintiffs, Lamego's knowledge of Plaintiffs' Confidential Information  
12 came from Plaintiffs, and that Lamego had previously acquired Plaintiffs'  
13 Confidential Information by virtue of employer-employee and fiduciary  
14 relationships and the Lamego employment agreements, all of which created a duty  
15 for Lamego to keep Plaintiffs' Confidential Information secret.

16 219. Plaintiffs had no way of knowing, or learning, of Defendant's  
17 improper acquisition, use, or disclosure prior to January 10, 2017. Defendant did  
18 not publish Plaintiffs' Confidential Information in patent applications until after  
19 January 10, 2017, and the first product at issue was not announced until 2018.  
20 Additionally, based at least on Plaintiffs' conversations with Lamego, Plaintiffs'  
21 letter to Apple, and Plaintiffs' confidentiality agreement with Apple, Plaintiffs  
22 had no reason to suspect or believe that Defendant had ignored Plaintiffs' letter  
23 and improperly acquired, used, and disclosed Plaintiffs' Confidential  
24 Information until after Plaintiffs discovered patent applications published after  
25 January 10, 2017, and accused products announced in 2018.

26 220. Defendant and Lamego also led Plaintiffs to believe they intended to  
27 respect Plaintiffs' intellectual property rights and concealed Defendant's  
28 acquisition, use, and disclosure of Plaintiffs' Confidential Information. Plaintiffs

1 notified Defendant that Lamego possessed the Confidential Information on  
2 January 24, 2014. Defendant never informed Plaintiffs that Lamego had used or  
3 disclosed the Confidential Information. Defendant also requested non-  
4 publication of patent applications, which prevented Plaintiffs from learning of  
5 the contents of those applications until much later. For example, Defendant  
6 requested non-publication of the '268 Application (which issued as the '754  
7 Patent), the '422 Application (which issued as the '997 Patent), and the '664  
8 Application (which issued as the '095 Patent). On information and belief,  
9 Defendant requested non-publication of those applications to prevent Plaintiffs  
10 from learning those applications contained Plaintiffs' Confidential Information,  
11 and from learning the Defendant had acquired, used and disclosed Plaintiffs'  
12 Confidential Information.

13 221. Plaintiffs were harmed by Defendant's acquisition, use, and  
14 disclosure of Plaintiffs' Confidential Information, and Defendant's actions were  
15 substantial factors in causing Plaintiffs' harm. As a direct and proximate result of  
16 Defendant's willful, improper, and unlawful acquisition, use, and disclosure of  
17 Plaintiffs' trade secrets, Plaintiffs have suffered, and will continue to suffer, great  
18 harm and damage. Plaintiffs will continue to be irreparably damaged unless  
19 Defendant is enjoined from further use and disclosure of Plaintiffs' Confidential  
20 Information.

21 222. Defendant was unjustly enriched by Defendant's acquisition, use,  
22 and disclosure of Plaintiffs' Confidential Information, and Defendant's actions  
23 were substantial factors in causing Defendant to be unjustly enriched. Defendant  
24 was unjustly enriched because its misappropriation of Plaintiffs' Confidential  
25 Information caused Defendant to receive a benefit that it otherwise would not have  
26 achieved.

27 223. If neither damages nor unjust enrichment caused by Defendant's  
28 misappropriation of Plaintiffs' Confidential Information is provable at trial,

1 Plaintiffs are entitled to a reasonable royalty for the period of time that  
2 Defendant's use of Plaintiffs' Confidential Information could have been  
3 prohibited.

4 224. The aforementioned acts of Defendant wrongfully misappropriating  
5 Plaintiffs' trade secrets were, and continue to be, willful and malicious, warranting  
6 an award of reasonable attorneys' fees, as provided by Cal. Civ. Code § 3426.4,  
7 and exemplary damages, as provided by Cal. Civ. Code §§ 3294 and 3426.3(c).

8 **XX. FOURTEENTH CAUSE OF ACTION**

9 **(CORRECTION OF INVENTORSHIP OF U.S. PATENT NO. 10,078,052)**

10 225. Plaintiffs hereby reallege and incorporate by reference the  
11 allegations set forth in paragraphs 1 through 42.

12 226. Lamego is a named inventor of U.S. Patent 10,078,052 presently  
13 recorded as owned by Apple. A true and correct copy of the '052 Patent is  
14 attached hereto as Exhibit 27.

15 227. The '052 Patent claims subject matter that Lamego obtained from  
16 discussions with, or jointly conceived with, Masimo employees. For example,  
17 Claim 1 of the '052 Patent recites an electronic device comprising a housing  
18 defining an aperture; an optical sensing system comprising a light emitter for  
19 emitting light through the aperture, the light emitter positioned adjacent the  
20 aperture; and a light detector for obtaining a first portion of the light after the  
21 first portion of the light reflects from an object; and a reflector disposed about  
22 the aperture and adapted to reflect a second portion of the light back into the  
23 object after the second portion of the light reflects from the object. Lamego  
24 obtained this subject matter from discussions with, or jointly conceived it with,  
25 Diab. Accordingly, Diab is a joint inventor of any patentable subject matter  
26 claimed in the '052 Patent, and should have been named as an inventor on the  
27 '052 Patent.

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1           228. In written assignments, Lamego, as well as Diab, agreed to assign  
2 and assigned to Masimo all patentable subject matter (as well as all works of  
3 authorship, developments, improvements, or trade secrets) conceived during  
4 their employment at Masimo, including ownership of all patents and patent  
5 applications claiming such subject matter.

6           229. Those assignments vested in Masimo all legal and equitable title to  
7 all patents and patent applications reciting inventions made during their  
8 employment, such that Masimo is at least a joint owner of the '052 Patent and  
9 Masimo has standing to seek correction of inventorship to perfect Masimo's  
10 ownership interest in the '052 Patent.

11           230. In at least one written assignment, Lamego agreed to assign and  
12 assigned to Cercacor all patentable subject matter (as well as all works of  
13 authorship, developments, improvements, or trade secrets) conceived during his  
14 employment at Cercacor, including ownership of all patents and patent  
15 applications claiming such subject matter. An exemplary agreement conveying  
16 such rights was attached as Exhibit A to Apple's Motion to Dismiss (Doc. No.  
17 16-3). Accordingly, to the extent the evidence establishes that Lamego obtained  
18 patentable subject matter claimed in the '052 Patent from, or jointly conceived  
19 such subject matter with, Masimo employees while Lamego was an employee of  
20 Cercacor, Cercacor would be a joint owner of the '052 Patent and has standing  
21 to seek correction of inventorship to perfect Cercacor's ownership interest in the  
22 '052 Patent.

23           231. Pursuant to 28 U.S.C. § 2201 and 35 U.S.C. § 256, Plaintiffs seek  
24 an order directing the U.S. Patent and Trademark Office to correct the  
25 inventorship of the '052 Patent by adding inventor Diab as a named inventor.  
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**XXI. FIFTEENTH CAUSE OF ACTION**

**(CORRECTION OF INVENTORSHIP OF U.S. PATENT NO. 10,247,670)**

232. Plaintiffs hereby reallege and incorporate by reference the allegations set forth in paragraphs 1 through 42.

233. Lamego is a named inventor of U.S. Patent 10,247,670 presently recorded as owned by Apple. A true and correct copy of the '670 Patent is attached hereto as Exhibit 28.

234. The '670 Patent claims subject matter that Lamego obtained from discussions with, or jointly conceived with, Masimo employees. For example, Claim 1 of the '670 Patent recites an electronic device comprising a housing with a surface; a reflective layer that is formed on the surface, wherein the reflective layer has first and second openings; a light emitter that emits light through the first opening; and a light detector that receives the light emitted by the light emitter through the second opening. Lamego obtained this subject matter from discussions with, or jointly conceived it with, Diab. Accordingly, Diab is a joint inventor of any patentable subject matter claimed in the '670 Patent, and should have been named as an inventor on the '670 Patent.

235. In written assignments, Lamego, as well as Diab, agreed to assign and assigned to Masimo all patentable subject matter (as well as all works of authorship, developments, improvements, or trade secrets) conceived during their employment at Masimo, including ownership of all patents and patent applications claiming such subject matter.

236. Those assignments vested in Masimo all legal and equitable title to all patents and patent applications reciting inventions made during their employment, such that Masimo is at least a joint owner of the '670 Patent and Masimo has standing to seek correction of inventorship to perfect Masimo's ownership interest in the '670 Patent.



1           237. In at least one written assignment, Lamego agreed to assign and  
2 assigned to Cercacor all patentable subject matter (as well as all works of  
3 authorship, developments, improvements, or trade secrets) conceived during his  
4 employment at Cercacor, including ownership of all patents and patent  
5 applications claiming such subject matter. An exemplary agreement conveying  
6 such rights was attached as Exhibit A to Apple's Motion to Dismiss (Doc. No.  
7 16-3). Accordingly, to the extent the evidence establishes that Lamego obtained  
8 patentable subject matter claimed in the '670 Patent from, or jointly conceived  
9 such subject matter with, Masimo employees while Lamego was an employee of  
10 Cercacor, Cercacor would be a joint owner of the '670 Patent and has standing  
11 to seek correction of inventorship to perfect Cercacor's ownership interest in the  
12 '670 Patent.

13           238. Pursuant to 28 U.S.C. § 2201 and 35 U.S.C. § 256, Plaintiffs seek  
14 an order directing the U.S. Patent and Trademark Office to correct the  
15 inventorship of the '670 Patent by adding inventor Diab as a named inventors.

16                           **XXII. SIXTEENTH CAUSE OF ACTION**  
17                           **(CORRECTION OF INVENTORSHIP OF U.S. PATENT NO. 9,952,095)**

18           239. Plaintiffs hereby reallege and incorporate by reference the  
19 allegations set forth in paragraphs 1 through 42.

20           240. Lamego is a named inventor of U.S. Patent 9,952,095 presently  
21 recorded as owned by Apple. A true and correct copy of the '095 Patent is  
22 attached hereto as Exhibit 29.

23           241. The '095 Patent claims subject matter that Lamego obtained from  
24 discussions with, or jointly conceived with, Masimo employees. For example,  
25 Claim 1 of the '095 Patent recites an electronic device comprising a housing  
26 comprising a surface adapted to be positioned proximate a measurement site of  
27 a subject; a biometric sensor positioned at least partially within the surface and  
28 comprising: a plurality of light sources for emitting light toward the

1 measurement site at a selected modulation frequency; and an optical sensor for  
2 obtaining light exiting the measurement site; and an input amplifier coupled to  
3 the output of the biometric sensor and disposed within the housing; a high pass  
4 filter coupled to an output of the input amplifier and disposed within the  
5 housing, the high pass filter having a cutoff frequency above that of a periodic  
6 biometric property of the measurement site; an output amplifier coupled to an  
7 output of the high pass filter and disposed within the housing; and an analog to  
8 digital converter coupled to an output of the output amplifier and disposed  
9 within the housing. Lamego obtained this subject matter from discussions with,  
10 or jointly conceived it with, Diab. Accordingly, Diab is a joint inventor of any  
11 patentable subject matter claimed in the '095 Patent, and should have been  
12 named as an inventor on the '095 Patent.

13         242. In written assignments, Lamego, as well as Diab, agreed to assign  
14 and assigned to Masimo all patentable subject matter (as well as all works of  
15 authorship, developments, improvements, or trade secrets) conceived during  
16 their employment at Masimo, including ownership of all patents and patent  
17 applications claiming such subject matter.

18         243. Those assignments vested in Masimo all legal and equitable title to  
19 all patents and patent applications reciting inventions made during their  
20 employment, such that Masimo is at least a joint owner of the '095 Patent and  
21 Masimo has standing to seek correction of inventorship to perfect Masimo's  
22 ownership interest in the '095 Patent.

23         244. In at least one written assignment, Lamego agreed to assign and  
24 assigned to Cercacor all patentable subject matter (as well as all works of  
25 authorship, developments, improvements, or trade secrets) conceived during his  
26 employment at Cercacor, including ownership of all patents and patent  
27 applications claiming such subject matter. An exemplary agreement conveying  
28 such rights was attached as Exhibit A to Apple's Motion to Dismiss (Doc. No.

1 16-3). Accordingly, to the extent the evidence establishes that Lamego obtained  
2 patentable subject matter claimed in the '095 Patent from, or jointly conceived  
3 such subject matter with, Masimo employees while Lamego was an employee of  
4 Cercacor, Cercacor would be a joint owner of the '095 Patent and has standing  
5 to seek correction of inventorship to perfect Cercacor's ownership interest in the  
6 '095 Patent.

7 245. Pursuant to 28 U.S.C. § 2201 and 35 U.S.C. § 256, Plaintiffs seek  
8 an order directing the U.S. Patent and Trademark Office to correct the  
9 inventorship of the '095 Patent by adding inventor Diab as a named inventor.

10 **XXIII. SEVENTEENTH CAUSE OF ACTION**  
11 **(CORRECTION OF INVENTORSHIP OF U.S. PATENT NO. 10,219,754)**

12 246. Plaintiffs hereby reallege and incorporate by reference the  
13 allegations set forth in paragraphs 1 through 42.

14 247. Lamego is a named inventor of U.S. Patent 10,219,754 presently  
15 recorded as owned by Apple. A true and correct copy of the '754 Patent is  
16 attached hereto as Exhibit 30.

17 248. The '754 Patent claims subject matter that Lamego obtained from  
18 discussions with, or jointly conceived with, Masimo employees. For example,  
19 Claim 1 of the '754 Patent recites a method for estimating physiological  
20 parameters when modulated light from a first light source and a second light  
21 source is emitted toward a body part of a user, the method comprising  
22 determining a first multiplier value by: turning on the first light source;  
23 generating a first initial signal in response to capturing a first light sample  
24 corresponding to the first light source; demodulating the first initial signal to  
25 produce first initial demodulated signals; filtering and decimating the first initial  
26 demodulated signals; and determining the first multiplier value based on the  
27 filtered and decimated first initial demodulated signals; determining a second  
28 multiplier value by: turning on the second light source; generating a second

1 initial signal in response to capturing a second light sample corresponding to the  
2 second light source; demodulating the second initial signal to produce second  
3 initial demodulated signals; filtering and decimating the second initial  
4 demodulated signals; and determining the second multiplier value based on the  
5 filtered and decimated second initial demodulated signals; capturing multiple  
6 light samples while the first light source and the second light source are turned  
7 on to emit modulated light toward the body part of the user and converting the  
8 multiple light samples into a captured signal; demodulating the captured signal  
9 to produce multiple demodulated signals; performing a first decimation stage  
10 by: low pass filtering each demodulated signal; and decimating each  
11 demodulated signal; performing a second decimation stage after the first  
12 decimation stage by: low pass filtering each demodulated signal; and decimating  
13 each demodulated signal; demultiplexing each demodulated signal after the  
14 second decimation stage to produce a first signal associated with the first light  
15 source and a second signal associated with the second light source; multiplying  
16 the first signal by the first multiplier value using a first multiplier circuit to  
17 obtain a first conditioned signal; multiplying the second signal by the second  
18 multiplier value using a second multiplier circuit to obtain a second conditioned  
19 signal; and analyzing the first conditioned signal and the second conditioned  
20 signal to estimate the physiological parameter of the user. Lamego obtained this  
21 subject matter from discussions with, or jointly conceived it with, Al-Ali, Diab,  
22 and Weber. Accordingly, Al-Ali, Diab, and Weber are joint inventors of any  
23 patentable subject matter claimed in the '754 Patent, and should have been  
24 named as inventors on the '754 Patent.

25 249. In written assignments, Lamego, as well as Al-Ali, Diab, and  
26 Weber, agreed to assign and assigned to Masimo all patentable subject matter  
27 (as well as all works of authorship, developments, improvements, or trade  
28

1 secrets) conceived during their employment at Masimo, including ownership of  
2 all patents and patent applications claiming such subject matter.

3 250. Those assignments vested in Masimo all legal and equitable title to  
4 all patents and patent applications reciting inventions made during their  
5 employment, such that Masimo is at least a joint owner of the '754 Patent and  
6 Masimo has standing to seek correction of inventorship to perfect Masimo's  
7 ownership interest in the '754 Patent.

8 251. In at least one written assignment, Lamego agreed to assign and  
9 assigned to Cercacor all patentable subject matter (as well as all works of  
10 authorship, developments, improvements, or trade secrets) conceived during his  
11 employment at Cercacor, including ownership of all patents and patent  
12 applications claiming such subject matter. An exemplary agreement conveying  
13 such rights was attached as Exhibit A to Apple's Motion to Dismiss (Doc. No.  
14 16-3). Accordingly, to the extent the evidence establishes that Lamego obtained  
15 patentable subject matter claimed in the '754 Patent from, or jointly conceived  
16 such subject matter with, Masimo employees while Lamego was an employee of  
17 Cercacor, Cercacor would be a joint owner of the '754 Patent and has standing  
18 to seek correction of inventorship to perfect Cercacor's ownership interest in the  
19 '754 Patent.

20 252. Pursuant to 28 U.S.C. § 2201 and 35 U.S.C. § 256, Plaintiffs seek  
21 an order directing the U.S. Patent and Trademark Office to correct the  
22 inventorship of the '754 Patent by adding inventors Al-Ali, Diab, and Weber as  
23 named inventors.

24 **XXIV. EIGHTEENTH CAUSE OF ACTION**  
25 **(CORRECTION OF INVENTORSHIP OF U.S. PATENT NO. 10,524,671)**

26 253. Plaintiffs hereby reallege and incorporate by reference the  
27 allegations set forth in paragraphs 1 through 42.  
28

1           254. Lamego is a named inventor of U.S. Patent 10,524,671 presently  
2 recorded as owned by Apple. A true and correct copy of the '671 Patent is  
3 attached hereto as Exhibit 31.

4           255. The '671 Patent claims subject matter that Lamego obtained from  
5 discussions with, or jointly conceived with, Masimo employees. For example,  
6 Claim 1 of the '671 Patent recites a wearable device, comprising a first light  
7 source; a second light source, the second light source operating at a different  
8 wavelength than the first light source; at least one light receiver; and a  
9 processing unit communicably coupled to the first light source, the second light  
10 source, and the at least one light receiver; wherein the processing unit is  
11 configured to: use the first light source and the second light source to emit light  
12 into a body part of a user; and dependent on the light emitted by the first light  
13 source and received by the at least one light receiver, compute a pulse rate of the  
14 user using the light emitted by the second light source and received by the at  
15 least one light receiver. Lamego obtained this subject matter from discussions  
16 with, or jointly conceived it with, Diab. Accordingly, Diab is a joint inventor of  
17 any patentable subject matter claimed in the '671 Patent, and should have been  
18 named as an inventor on the '671 Patent.

19           256. In written assignments, Lamego, as well as Diab, agreed to assign  
20 and assigned to Masimo all patentable subject matter (as well as all works of  
21 authorship, developments, improvements, or trade secrets) conceived during  
22 their employment at Masimo, including ownership of all patents and patent  
23 applications claiming such subject matter.

24           257. Those assignments vested in Masimo all legal and equitable title to  
25 all patents and patent applications reciting inventions made during their  
26 employment, such that Masimo is at least a joint owner of the '671 Patent and  
27 Masimo has standing to seek correction of inventorship to perfect Masimo's  
28 ownership interest in the '671 Patent.

1           258. In at least one written assignment, Lamego agreed to assign and  
2 assigned to Cercacor all patentable subject matter (as well as all works of  
3 authorship, developments, improvements, or trade secrets) conceived during his  
4 employment at Cercacor, including ownership of all patents and patent  
5 applications claiming such subject matter. An exemplary agreement conveying  
6 such rights was attached as Exhibit A to Apple's Motion to Dismiss (Doc. No.  
7 16-3). Accordingly, to the extent the evidence establishes that Lamego obtained  
8 patentable subject matter claimed in the '671 Patent from, or jointly conceived  
9 such subject matter with, Masimo employees while Lamego was an employee of  
10 Cercacor, Cercacor would be a joint owner of the '671 Patent and has standing  
11 to seek correction of inventorship to perfect Cercacor's ownership interest in the  
12 '671 Patent.

13           259. Pursuant to 28 U.S.C. § 2201 and 35 U.S.C. § 256, Plaintiffs seek  
14 an order directing the U.S. Patent and Trademark Office to correct the  
15 inventorship of the '671 Patent by adding inventor Diab as a named inventor.

16                           **XXV. NINETEENTH CAUSE OF ACTION**  
17                           **(DECLARATORY JUDGMENT OF OWNERSHIP OF**  
18                           **U.S. PATENT NO. 10,078,052)**

19           260. Plaintiffs hereby reallege and incorporate by reference the  
20 allegations set forth in paragraphs 1 through 42.

21           261. U.S. Patent 10,078,052 is recorded as owned by Apple.

22           262. The '052 Patent claims subject matter that Lamego obtained from  
23 discussions with, or jointly conceived with, Masimo employees. For example,  
24 Claim 1 of the '052 Patent recites an electronic device comprising a housing  
25 defining an aperture; an optical sensing system comprising a light emitter for  
26 emitting light through the aperture, the light emitter positioned adjacent the  
27 aperture; and a light detector for obtaining a first portion of the light after the  
28 first portion of the light reflects from an object; and a reflector disposed about

1 the aperture and adapted to reflect a second portion of the light back into the  
2 object after the second portion of the light reflects from the object. Lamego  
3 obtained this subject matter from discussions with, or jointly conceived it with  
4 Diab. Accordingly, Diab is a joint inventor of any patentable subject matter  
5 claimed in the '052 Patent, and should have been named as an inventor on the  
6 '052 Patent

7 263. Lamego and Diab made any inventive contributions to at least Claim  
8 1 while they were employees of Masimo.

9 264. In written assignments, Lamego, as well as Diab, agreed to assign  
10 and assigned to Masimo all patentable subject matter (as well as all works of  
11 authorship, developments, improvements, or trade secrets) conceived during  
12 their employment at Masimo, including ownership of all patents and patent  
13 applications claiming such subject matter.

14 265. Those assignments vested in Masimo all legal and equitable title to  
15 patents and patent applications reciting inventions made during their  
16 employment, such that Masimo is at least a joint owner of the '052 Patent and  
17 all applications, patents, continuations, divisionals, and reissues that claim priority  
18 to the '052 Patent, including foreign counterparts.

19 266. In at least one written assignment, Lamego agreed to assign and  
20 assigned to Cercacor all patentable subject matter (as well as all works of  
21 authorship, developments, improvements, or trade secrets) conceived during his  
22 employment at Cercacor, including ownership of all patents and patent  
23 applications claiming such subject matter. An exemplary agreement conveying  
24 such rights was attached as Exhibit A to Apple's Motion to Dismiss (Doc. No.  
25 16-3). That assignment vested in Cercacor all legal and equitable title to patents  
26 and patent applications reciting inventions made during his employment, such  
27 that, to the extent the evidence establishes that Lamego obtained patentable  
28 subject matter claimed in the '052 Patent from, or jointly conceived such subject



1 matter with, Cercacor employees while Lamego was an employee of Cercacor,  
2 Cercacor would be a joint owner of the '052 Patent and all applications, patents,  
3 continuations, divisionals, and reissues that claim priority to the '052 Patent,  
4 including foreign counterparts.

5 267. Based on the forgoing, Plaintiffs seek declaratory relief under at  
6 least 28 U.S.C. §§ 2201 & 2202, as well as applicable state contract law and  
7 federal patent law, declaring that Masimo is at least a joint owner of the '052  
8 Patent (or, to the extent it is determined that Masimo employees invented all of  
9 the patentable subject matter claimed in the '052 Patent, that Masimo is the  
10 exclusive owner), and, in the alternative, that Cercacor is a joint owner of the  
11 '052 Patent. Plaintiffs also seek an order from the Court directing the Patent  
12 Office to amend the Patent Office records to reflect the ownership interest of  
13 Masimo and/or Cercacor.

14 **XXVI. TWENTIETH CAUSE OF ACTION**  
15 **(DECLARATORY JUDGMENT OF OWNERSHIP OF**  
16 **U.S. PATENT NO. 10,247,670)**

17 268. Plaintiffs hereby reallege and incorporate by reference the  
18 allegations set forth in paragraphs 1 through 42.

19 269. U.S. Patent 10,247,670 is recorded as owned by Apple.

20 270. The '670 Patent claims subject matter that Lamego obtained from  
21 discussions with, or jointly conceived with, Masimo employees. For example,  
22 Claim 1 of the '670 Patent recites an electronic device comprising a housing  
23 with a surface; a reflective layer that is formed on the surface, wherein the  
24 reflective layer has first and second openings; a light emitter that emits light  
25 through the first opening; and a light detector that receives the light emitted by  
26 the light emitter through the second opening. Lamego obtained this subject  
27 matter from discussions with, or jointly conceived it with, Diab. Accordingly,  
28

1 Diab is a joint inventor of any patentable subject matter claimed in the  
2 '670 Patent, and should have been named as an inventor on the '670 Patent.

3 271. Lamego and Diab made any inventive contributions to at least Claim  
4 1 while they were employees of Masimo.

5 272. In written assignments, Lamego, as well as Diab, agreed to assign  
6 and assigned to Masimo all patentable subject matter (as well as all works of  
7 authorship, developments, improvements, or trade secrets) conceived during  
8 their employment at Masimo, including ownership of all patents and patent  
9 applications claiming such subject matter.

10 273. Those assignments vested in Masimo all legal and equitable title to  
11 patents and patent applications reciting inventions made during their  
12 employment, such that Masimo is at least a joint owner of the '670 Patent and  
13 all applications, patents, continuations, divisionals, and reissues that claim priority  
14 to the '670 Patent, including foreign counterparts.

15 274. In at least one written assignment, Lamego agreed to assign and  
16 assigned to Cercacor all patentable subject matter (as well as all works of  
17 authorship, developments, improvements, or trade secrets) conceived during his  
18 employment at Cercacor, including ownership of all patents and patent  
19 applications claiming such subject matter. An exemplary agreement conveying  
20 such rights was attached as Exhibit A to Apple's Motion to Dismiss (Doc. No.  
21 16-3). That assignment vested in Cercacor all legal and equitable title to patents  
22 and patent applications reciting inventions made during his employment, such  
23 that, to the extent the evidence establishes that Lamego obtained patentable  
24 subject matter claimed in the '670 Patent from, or jointly conceived such subject  
25 matter with, Cercacor employees while Lamego was an employee of Cercacor,  
26 Cercacor would be a joint owner of the '670 Patent and all applications, patents,  
27 continuations, divisionals, and reissues that claim priority to the '670 Patent,  
28 including foreign counterparts.

1           275. Based on the forgoing, Plaintiffs seek declaratory relief under at  
2 least 28 U.S.C. §§ 2201 & 2202, as well as applicable state contract law and  
3 federal patent law, declaring that Masimo is at least a joint owner of the '670  
4 Patent (or, to the extent it is determined that Masimo employees invented all of  
5 the patentable subject matter claimed in the '670 Patent, that Masimo is the  
6 exclusive owner), and, in the alternative, that Cercacor is a joint owner of the  
7 '670 Patent. Plaintiffs also seek an order from the Court directing the Patent  
8 Office to amend the Patent Office records to reflect the ownership interest of  
9 Masimo and/or Cercacor.

10                           **XXVII. TWENTY-FIRST CAUSE OF ACTION**  
11                           **(DECLARATORY JUDGMENT OF OWNERSHIP OF**  
12                           **U.S. PATENT NO. 9,952,095)**

13           276. Plaintiffs hereby reallege and incorporate by reference the  
14 allegations set forth in paragraphs 1 through 42.

15           277. U.S. Patent 9,952,095 is recorded as owned by Apple.

16           278. The '095 Patent claims subject matter that Lamego obtained from  
17 discussions with, or jointly conceived with, Masimo employees. For example,  
18 Claim 1 of the '095 Patent recites an electronic device comprising a housing  
19 comprising a surface adapted to be positioned proximate a measurement site of  
20 a subject; a biometric sensor positioned at least partially within the surface and  
21 comprising: a plurality of light sources for emitting light toward the  
22 measurement site at a selected modulation frequency; and an optical sensor for  
23 obtaining light exiting the measurement site; and an input amplifier coupled to  
24 the output of the biometric sensor and disposed within the housing; a high pass  
25 filter coupled to an output of the input amplifier and disposed within the  
26 housing, the high pass filter having a cutoff frequency above that of a periodic  
27 biometric property of the measurement site; an output amplifier coupled to an  
28 output of the high pass filter and disposed within the housing; and an analog to

1 digital converter coupled to an output of the output amplifier and disposed  
2 within the housing. Lamego obtained this subject matter from discussions with,  
3 or jointly conceived it with, Diab. Accordingly, Diab is a joint inventor of any  
4 patentable subject matter claimed in the '095 Patent, and should have been  
5 named as an inventor on the '095 Patent.

6 279. Lamego and Diab made any inventive contributions to at least Claim  
7 1 while they were employees of Masimo.

8 280. In written assignments, Lamego, as well as Diab, agreed to assign  
9 and assigned to Masimo all patentable subject matter (as well as all works of  
10 authorship, developments, improvements, or trade secrets) conceived during  
11 their employment at Masimo, including ownership of all patents and patent  
12 applications claiming such subject matter.

13 281. Those assignments vested in Masimo all legal and equitable title to  
14 patents and patent applications reciting inventions made during their  
15 employment, such that Masimo is at least a joint owner of the '095 Patent and  
16 all applications, patents, continuations, divisionals, and reissues that claim priority  
17 to the '095 Patent, including foreign counterparts.

18 282. In at least one written assignment, Lamego agreed to assign and  
19 assigned to Cercacor all patentable subject matter (as well as all works of  
20 authorship, developments, improvements, or trade secrets) conceived during his  
21 employment at Cercacor, including ownership of all patents and patent  
22 applications claiming such subject matter. An exemplary agreement conveying  
23 such rights was attached as Exhibit A to Apple's Motion to Dismiss (Doc. No.  
24 16-3). That assignment vested in Cercacor all legal and equitable title to patents  
25 and patent applications reciting inventions made during his employment, such  
26 that, to the extent the evidence establishes that Lamego obtained patentable  
27 subject matter claimed in the '095 Patent from, or jointly conceived such subject  
28 matter with, Cercacor employees while Lamego was an employee of Cercacor,

1 Cercacor would be a joint owner of the '095 Patent and all applications, patents,  
2 continuations, divisionals, and reissues that claim priority to the '095 Patent,  
3 including foreign counterparts.

4 283. Based on the forgoing, Plaintiffs seek declaratory relief under at  
5 least 28 U.S.C. §§ 2201 & 2202, as well as applicable state contract law and  
6 federal patent law, declaring that Masimo is at least a joint owner of the '095  
7 Patent (or, to the extent it is determined that Masimo employees invented all of  
8 the patentable subject matter claimed in the '095 Patent, that Masimo is the  
9 exclusive owner), and, in the alternative, that Cercacor is a joint owner of the  
10 '095 Patent. Plaintiffs also seek an order from the Court directing the Patent  
11 Office to amend the Patent Office records to reflect the ownership interest of  
12 Masimo and/or Cercacor.

13 **XXVIII. TWENTY-SECOND CAUSE OF ACTION**  
14 **(DECLARATORY JUDGMENT OF OWNERSHIP OF**  
15 **U.S. PATENT NO. 10,219,754)**

16 284. Plaintiffs hereby reallege and incorporate by reference the  
17 allegations set forth in paragraphs 1 through 42.

18 285. U.S. Patent 10,219,754 is recorded as owned by Apple.

19 286. The '754 Patent claims subject matter that Lamego obtained from  
20 discussions with, or jointly conceived with, Masimo employees. For example,  
21 Claim 1 of the '754 Patent recites a method for estimating physiological  
22 parameters when modulated light from a first light source and a second light  
23 source is emitted toward a body part of a user, the method comprising  
24 determining a first multiplier value by: turning on the first light source;  
25 generating a first initial signal in response to capturing a first light sample  
26 corresponding to the first light source; demodulating the first initial signal to  
27 produce first initial demodulated signals; filtering and decimating the first initial  
28 demodulated signals; and determining the first multiplier value based on the

1 filtered and decimated first initial demodulated signals; determining a second  
2 multiplier value by: turning on the second light source; generating a second  
3 initial signal in response to capturing a second light sample corresponding to the  
4 second light source; demodulating the second initial signal to produce second  
5 initial demodulated signals; filtering and decimating the second initial  
6 demodulated signals; and determining the second multiplier value based on the  
7 filtered and decimated second initial demodulated signals; capturing multiple  
8 light samples while the first light source and the second light source are turned  
9 on to emit modulated light toward the body part of the user and converting the  
10 multiple light samples into a captured signal; demodulating the captured signal  
11 to produce multiple demodulated signals; performing a first decimation stage  
12 by: low pass filtering each demodulated signal; and decimating each  
13 demodulated signal; performing a second decimation stage after the first  
14 decimation stage by: low pass filtering each demodulated signal; and decimating  
15 each demodulated signal; demultiplexing each demodulated signal after the  
16 second decimation stage to produce a first signal associated with the first light  
17 source and a second signal associated with the second light source; multiplying  
18 the first signal by the first multiplier value using a first multiplier circuit to  
19 obtain a first conditioned signal; multiplying the second signal by the second  
20 multiplier value using a second multiplier circuit to obtain a second conditioned  
21 signal; and analyzing the first conditioned signal and the second conditioned  
22 signal to estimate the physiological parameter of the user. Lamego obtained this  
23 subject matter from discussions with, or jointly conceived it with, Al-Ali, Diab,  
24 and Weber. Accordingly, Al-Ali, Diab, and Weber are joint inventors of any  
25 patentable subject matter claimed in the '754 Patent, and should have been  
26 named as inventors on the '754 Patent.

27 287. Lamego, Al-Ali, Diab, and Weber made any inventive contributions  
28 to at least Claim 1 while they were employees of Masimo.

1           288. In written assignments, Lamego, Al-Ali, Diab, and Weber, agreed  
2 to assign and assigned to Masimo all patentable subject matter (as well as all  
3 works of authorship, developments, improvements, or trade secrets) conceived  
4 during their employment at Masimo, including ownership of all patents and  
5 patent applications claiming such subject matter.

6           289. Those assignments vested in Masimo all legal and equitable title to  
7 patents and patent applications reciting inventions made during their  
8 employment, such that Masimo is at least a joint owner of the '754 Patent and  
9 all applications, patents, continuations, divisionals, and reissues that claim priority  
10 to the '754 Patent, including foreign counterparts.

11           290. In at least one written assignment, Lamego agreed to assign and  
12 assigned to Cercacor all patentable subject matter (as well as all works of  
13 authorship, developments, improvements, or trade secrets) conceived during his  
14 employment at Cercacor, including ownership of all patents and patent  
15 applications claiming such subject matter. An exemplary agreement conveying  
16 such rights was attached as Exhibit A to Apple's Motion to Dismiss (Doc. No.  
17 16-3). That assignment vested in Cercacor all legal and equitable title to patents  
18 and patent applications reciting inventions made during his employment, such  
19 that, to the extent the evidence establishes that Lamego obtained patentable  
20 subject matter claimed in the '754 Patent from, or jointly conceived such subject  
21 matter with, Cercacor employees while Lamego was an employee of Cercacor,  
22 Cercacor would be a joint owner of the '754 Patent and all applications, patents,  
23 continuations, divisionals, and reissues that claim priority to the '754 Patent,  
24 including foreign counterparts.

25           291. Based on the forgoing, Plaintiffs seek declaratory relief under at  
26 least 28 U.S.C. §§ 2201 & 2202, as well as applicable state contract law and  
27 federal patent law, declaring that Masimo is at least a joint owner of the '754  
28 Patent (or, to the extent it is determined that Masimo employees invented all of

1 the patentable subject matter claimed in the '754 Patent, that Masimo is the  
2 exclusive owner), and, in the alternative, that Cercacor is a joint owner of the  
3 '754 Patent. Plaintiffs also seek an order from the Court directing the Patent  
4 Office to amend the Patent Office records to reflect the ownership interest of  
5 Masimo and/or Cercacor.

6 **XXIX. TWENTY-THIRD CAUSE OF ACTION**  
7 **(DECLARATORY JUDGMENT OF OWNERSHIP OF**  
8 **U.S. PATENT NO. 10,524,671)**

9 292. Plaintiffs hereby reallege and incorporate by reference the  
10 allegations set forth in paragraphs 1 through 42.

11 293. U.S. Patent 10,524,671 is recorded as owned by Apple.

12 294. The '671 Patent claims subject matter that Lamego obtained from  
13 discussions with, or jointly conceived with, Masimo employees. For example,  
14 Claim 1 of the '671 Patent recites a wearable device, comprising a first light  
15 source; a second light source, the second light source operating at a different  
16 wavelength than the first light source; at least one light receiver; and a  
17 processing unit communicably coupled to the first light source, the second light  
18 source, and the at least one light receiver; wherein the processing unit is  
19 configured to: use the first light source and the second light source to emit light  
20 into a body part of a user; and dependent on the light emitted by the first light  
21 source and received by the at least one light receiver, compute a pulse rate of the  
22 user using the light emitted by the second light source and received by the at  
23 least one light receiver. Lamego obtained this subject matter from discussions  
24 with, or jointly conceived it with, Diab. Accordingly, Diab is a joint inventor of  
25 any patentable subject matter claimed in the '671 Patent, and should have been  
26 named as an inventor on the '671 Patent.

27 295. Lamego and Diab made any inventive contributions to at least Claim  
28 1 while they were employees of Masimo.



1           296. In written assignments, Lamego, as well as Diab, agreed to assign  
2 and assigned to Masimo all patentable subject matter (as well as all works of  
3 authorship, developments, improvements, or trade secrets) conceived during  
4 their employment at Masimo, including ownership of all patents and patent  
5 applications claiming such subject matter.

6           297. Those assignments vested in Masimo all legal and equitable title to  
7 patents and patent applications reciting inventions made during their  
8 employment, such that Masimo is at least a joint owner of the '671 Patent and  
9 all applications, patents, continuations, divisionals, and reissues that claim priority  
10 to the '671 Patent, including foreign counterparts.

11           298. In at least one written assignment, Lamego agreed to assign and  
12 assigned to Cercacor all patentable subject matter (as well as all works of  
13 authorship, developments, improvements, or trade secrets) conceived during his  
14 employment at Cercacor, including ownership of all patents and patent  
15 applications claiming such subject matter. An exemplary agreement conveying  
16 such rights was attached as Exhibit A to Apple's Motion to Dismiss (Doc. No.  
17 16-3). That assignment vested in Cercacor all legal and equitable title to patents  
18 and patent applications reciting inventions made during his employment, such  
19 that, to the extent the evidence establishes that Lamego obtained patentable  
20 subject matter claimed in the '671 Patent from, or jointly conceived such subject  
21 matter with, Cercacor employees while Lamego was an employee of Cercacor,  
22 Cercacor would be a joint owner of the '671 Patent and all applications, patents,  
23 continuations, divisionals, and reissues that claim priority to the '671 Patent,  
24 including foreign counterparts.

25           299. Based on the forgoing, Plaintiffs seek declaratory relief under at  
26 least 28 U.S.C. §§ 2201 & 2202, as well as applicable state contract law and  
27 federal patent law, declaring that Masimo is at least a joint owner of the '671  
28 Patent (or, to the extent it is determined that Masimo employees invented all of

1 the patentable subject matter claimed in the '671 Patent, that Masimo is the  
2 exclusive owner), and, in the alternative, that Cercacor is a joint owner of the  
3 '671 Patent. Plaintiffs also seek an order from the Court directing the Patent  
4 Office to amend the Patent Office records to reflect the ownership interest of  
5 Masimo and/or Cercacor.

6 **XXX. TWENTY-FOURTH CAUSE OF ACTION**  
7 **(DECLARATORY JUDGMENT OF OWNERSHIP OF**  
8 **U.S. PATENT APPLICATION NO. 15/960,507)**

9 300. Plaintiffs hereby reallege and incorporate by reference the  
10 allegations set forth in paragraphs 1 through 42.

11 301. U.S. Patent Application 15/960,507 is recorded as owned by Apple.

12 302. Any inventive contribution that Lamego could have made to the  
13 alleged invention of the subject matter claimed in the '507 application was made  
14 while he was a Masimo employee during 2000-2001 and 2003-2006, or a  
15 Cercacor employee during 2006-2014. This includes, for example, Claim 21 of  
16 the '507 Application recites a biometric sensor within a housing of a wearable  
17 electronic device, the biometric sensor comprising: an emitter for transmitting  
18 modulated light toward a measurement site of a subject through a first aperture  
19 in the housing; an optical sensor for receiving modulated light through a second  
20 aperture in the housing, the modulated light at least partially exiting the  
21 measurement site; a high pass filter to receive an output of the optical sensor,  
22 the high pass filter having a cutoff frequency above a frequency of a periodic  
23 optical property of the measurement site; and an analog to digital converter to  
24 receive an output of the high pass filter.”

25 303. In written assignments, Lamego agreed to assign and assigned to  
26 Masimo all patentable subject matter (as well as all works of authorship,  
27 developments, improvements, or trade secrets) conceived during their  
28

1 employment at Masimo, including ownership of all patents and patent  
2 applications claiming such subject matter.

3 304. Those assignments vested in Masimo all legal and equitable title to  
4 patents and patent applications reciting inventions made during their  
5 employment, such that Masimo is at least a joint owner of the '507 Application  
6 and all applications, patents, continuations, divisionals, and reissues that claim  
7 priority to the '507 Application, including foreign counterparts.

8 305. In at least one written assignment, Lamego agreed to assign and  
9 assigned to Cercacor all patentable subject matter (as well as all works of  
10 authorship, developments, improvements, or trade secrets) conceived during his  
11 employment at Cercacor, including ownership of all patents and patent  
12 applications claiming such subject matter. An exemplary agreement conveying  
13 such rights was attached as Exhibit A to Apple's Motion to Dismiss (Doc. No.  
14 16-3). That assignment vested in Cercacor all legal and equitable title to patents  
15 and patent applications reciting inventions made during his employment, such  
16 that, to the extent the evidence establishes that Lamego obtained patentable  
17 subject matter claimed in the '507 Application from, or jointly conceived such  
18 subject matter with, Cercacor employees while Lamego was an employee of  
19 Cercacor, Cercacor would be a joint owner of the '507 Application and all  
20 applications, patents, continuations, divisionals, and reissues that claim priority to  
21 the '507 Application, including foreign counterparts.

22 306. Based on the forgoing, Plaintiffs seek declaratory relief under at  
23 least 28 U.S.C. §§ 2201 & 2202, as well as applicable state contract law and  
24 federal patent law, declaring that Masimo is at least a joint owner of the '507  
25 Application (or, to the extent it is determined that Masimo employees invented  
26 all of the patentable subject matter claimed in the '507 Application, that Masimo  
27 is the exclusive owner), and, in the alternative, that Cercacor is a joint owner of  
28 the '507 Application. Plaintiffs also seek an order from the Court directing the

1 Patent Office to amend the Patent Office records to reflect the ownership  
2 interest of Masimo and/or Cercacor.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiffs pray for judgment in their favor against  
5 Defendant for the following relief:

6 A. Pursuant to 35 U.S.C. § 271, a determination that Defendant and its  
7 officers, agents, servants, employees, attorneys and all others in active concert  
8 and/or participation with them have infringed each of the '265, '266, '628, '708,  
9 '190, '191, '994, '695, '703, '776, '553, and '554 patents through the  
10 manufacture, use, importation, offer for sale, and/or sale of infringing products  
11 and/or any of the other acts prohibited by 35 U.S.C. § 271;

12 B. Pursuant to 35 U.S.C. § 283, an injunction enjoining Defendant and  
13 its officers, agents, servants, employees, attorneys and all others in active  
14 concert and/or participation with them from infringing the '265, '266, '628,  
15 '708, '190, '191, '994, '695, '703, '776, '553, and '554 patents through the  
16 manufacture, use, importation, offer for sale, and/or sale of infringing products  
17 and/or any of the other acts prohibited by 35 U.S.C. § 271, including  
18 preliminary and permanent injunctive relief;

19 C. Pursuant to 35 U.S.C. § 284, an award compensating Masimo for  
20 Defendant's infringement of the '265, '266, '628, '708, '190, '191, '994, '695,  
21 '703, '776, '553, and '554 patents through payment of not less than a reasonable  
22 royalty on Defendant's sales of infringing products;

23 D. Pursuant to 35 U.S.C. § 284, an award increasing damages up to  
24 three times the amount found or assessed by the jury for Defendant's  
25 infringement of each of the '265, '266, '628, '708, '190, '191, '994, '695, '703,  
26 '776, '553, and '554 patents in view of the willful and deliberate nature of the  
27 infringement;

28 E. Pursuant to 35 U.S.C. § 285, a finding that this is an exceptional

1 case, and an award of reasonable attorneys' fees and non-taxable costs;

2 F. An assessment of prejudgment and post-judgment interest and  
3 costs against Defendant, together with an award of such interest and costs,  
4 pursuant to 35 U.S.C. § 284;

5 G. That Defendant be adjudged to have misappropriated Plaintiffs' trade  
6 secrets in violation of the California Uniform Trade Secrets Act, Cal. Civ. Code  
7 § 3426 *et seq.*, and that Defendant's acts in doing so be adjudged willful,  
8 malicious, oppressive, and done knowingly;

9 H. That Defendant be adjudged to have been unjustly enriched;

10 I. That Plaintiffs be awarded damages for actual losses, unjust  
11 enrichment, and/or a reasonable royalty pursuant to Cal. Civ. Code § 3426.3.

12 J. That Defendant, its agents, servants, employees, and attorneys, and  
13 all those persons in active concert or participation with Defendant, be forthwith  
14 temporarily, preliminarily, and thereafter permanently required to return all of  
15 Plaintiffs' trade secrets and confidential information and enjoined from further  
16 using and disclosing to any third parties any of Plaintiffs' trade secrets and  
17 confidential information;

18 K. That Defendant be enjoined from selling or offering to sell any  
19 product, including Defendant's Apple Watch Series 4 and later devices, that  
20 includes or uses any of Plaintiffs' trade secrets;

21 L. That Defendant be directed to file with this Court and to serve on  
22 Plaintiffs within thirty (30) days after the service of the injunction, a report in  
23 writing, under oath, setting forth in detail the manner and form in which  
24 Defendant has complied with the injunction;

25 M. That Defendant be required to account to Plaintiffs for any and all  
26 gains, profits, and advantages derived by it, and all damages sustained by  
27 Plaintiffs, by reason of Defendant's acts complained herein;

28

1 N. That Plaintiffs be awarded exemplary damages and reasonable  
2 attorneys' fees pursuant to Cal. Civ. Code § 3426.3(c) and 3426.4;

3 O. That the U.S. Patent and Trademark Office be directed to correct  
4 the inventorship of the '052, '670, '095, '754 and '671 patents to add the correct  
5 inventors;

6 P. An order imposing a constructive trust for the benefit of Plaintiffs  
7 over: (1) any trade secrets Defendants obtained from Plaintiffs; (2) any profits,  
8 revenues, or other benefits obtained by Defendants as a result of any disclosure  
9 or use of trade secrets obtained from Plaintiffs; and (3) the Lamego Patents and  
10 the Lamego Patent Applications;

11 Q. That Plaintiffs be declared exclusive owners, or at least joint owners,  
12 of the patents and patent applications that are based on Plaintiffs' developments,  
13 including the '052, '670, '095, '754 and '671 patents, and the '507 application,  
14 and all applications, patents, continuations, divisionals, and reissues that claim  
15 priority to those patents and that patent application, including foreign counterparts;

16 R. An award of taxable costs; and

17 S. That this Court award such other and further relief as this Court  
18 may deem just.

19  
20 Respectfully submitted,

21 KNOBBE, MARTENS, OLSON & BEAR, LLP

22 Dated: March 25, 2020

23 By: /s/ Perry D. Oldham

24 Joseph R. Re  
25 Stephen C. Jensen  
26 Perry D. Oldham  
27 Stephen W. Larson

28 Attorneys for Plaintiffs,  
Masimo Corporation and  
Cercacor Laboratories, Inc.

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**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs Masimo Corporation and Cercacor Laboratories, Inc. hereby demands a trial by jury on all issues so triable.

Respectfully submitted,  
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: March 25, 2020 By: /s/ Perry D. Oldham

Joseph R. Re  
Stephen C. Jensen  
Perry D. Oldham  
Stephen W. Larson  
  
Attorneys for Plaintiffs,  
Masimo Corporation and  
Cercacor Laboratories, Inc.

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