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January 15, 2024
VIA ECF

The Honorable Jarrett B. Perlow
Circuit Executive and Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

Re: ***Apple Inc. v. ITC*, Appeal No. 24-1285**
Notice of Supplemental Authority

Dear Mr. Perlow:

Intervenors Masimo Corporation and Cercacor Laboratories (collectively, “Masimo”) write to advise the Court of supplemental authority regarding Apple’s Emergency Motion to Stay Enforcement of ITC’s Orders Pending Review (“Emergency Motion”), ECF-8.

On Friday, January 12, the Exclusion Order Enforcement Branch (EOE) of U.S. Customs and Border Protection decided that Apple’s redesign falls outside the scope of the remedial orders in the ITC Investigation underlying Apple’s appeal. In Apple’s request under 19 C.F.R. Part 177 (in a portion it did not identify as confidential), Apple explained “that its Redesigned Watch Products definitively (i) do not contain pulse oximetry functionality...” Because Apple has maintained that certain information in the EOE proceeding is confidential, Masimo does not provide a copy of the decision with this letter. Currently, no public version of the decision exists.

All parties have discussed the relevance of this EOE ruling on the Emergency Motion in their respective briefs. ECF-8 at 2 & n.2, 19-20, 23 (Apple); ECF-23 at 7 (ITC); ECF-26 at 1-2, 19 & n.6 (Masimo). As pointed out in Masimo’s Opposition, Apple’s arguments lead to the conclusion that the EOE Branch decision finding the redesign outside the scope of the remedial orders would eliminate any irreparable harm alleged by Apple. *Id.* at 1-2, 19.

Respectfully submitted,

/s/ *Joseph R. Re*
Joseph R. Re

Attorney for Intervenors
Masimo Corporation and Cercacor Laboratories, Inc.

cc: Counsel of record (via ECF)