

- a. Masimo's objection to the recommendation that summary judgment of

invalidity of the '222 patent due to lack of written description be granted to Philips is SUSTAINED and Philips' motion for summary judgment of invalidity due to lack of written description (D.I. 410) is DENIED.

b. Masimo's objection to the recommendation that summary judgment of non-infringement of the '984 patent be granted to Philips is SUSTAINED and Philips' motion for summary judgment of non-infringement (D.I. 394) is DENIED.

c. Masimo's objection to the recommendation the Ukawa reference be considered prior art to the '984 patent is SUSTAINED. Masimo will be permitted to challenge the Ukawa reference's status as prior art to the '984 patent.

d. Masimo's objection to the recommendation that summary judgment of invalidity of the '194 patent due to lack of written description be granted to Philips is OVERRULED and Philips' motion for summary judgment of invalidity due to lack of written description (D.I. 406) is GRANTED.

e. Philips' objection to the recommendation that summary judgment of non-infringement of the '535 patent be granted to Masimo with respect to literal infringement is SUSTAINED and Masimo's motion for non-infringement (D.I. 393) is DENIED with respect to literal infringement.

f. Philips' objection to the recommendation that it be barred from arguing that evaluation of only infrared spectral values falls within the doctrine of equivalents with respect to infringement of the '535 patent is OVERRULED and Masimo's motion for summary judgment of non-infringement of the '535 patent (D.I. 393) is GRANTED with respect to infringement under the doctrine of equivalents.

g. Philips' objection that claims 15, 16, 19, 20, 53, and 54 of the '984 patent

are not infringed is OVERRULED and Philips' motion for summary judgment of non-infringement (D.I. 394) is DENIED.

h. Philips' objection to the recommendation that summary judgment of invalidity of the '222 patent due to anticipation be denied to Philips is OVERRULED and Philips' motion for summary judgment of invalidity due to anticipation (D.I. 410) is DENIED.

i. Philips' objection to the recommendation that summary judgment of non-infringement of the '272 patent be denied to Philips is SUSTAINED and Philips' motion for summary judgment of non-infringement (D.I. 402) is GRANTED.

2. The Court ADOPTS IN PART and REJECTS IN PART Chief Magistrate Judge Thyng's *Daubert* Report and Recommendation issued on May 20, 2013 (D.I. 704), and specifically holds as follows:

a. Masimo's objection to the recommendation to strike Dr. Quill's supplemental report relating to non-infringing alternatives is OVERRULED and Philips' motion to exclude (D.I. 420) is GRANTED with regard to this portion of the testimony.

b. Masimo's objection to the recommendation to strike Dr. Quill's opinion or testimony that the lack of peer reviewed studies on Nonin PureSat show Nonin PureSat is an unacceptable alternative is OVERRULED and Philips' motion to exclude (D.I. 420) is GRANTED with regard to this portion of the testimony.

c. Masimo's objection to the recommendation to strike Mr. Wagner's testimony regarding Masimo's incremental profit margin is SUSTAINED and Philips' motion to exclude (D.I. 422) is DENIED with regard to this portion of the testimony.

d. Philips' objection to the recommendation to strike Dr. Keeley's testimony relying on Nonin-Respironics agreement is OVERRULED and Masimo's motion to exclude (D.I.

388) is GRANTED with regard to this portion of the testimony.

e. Philips' objection to the recommendation to admit Mr. Wagner's testimony on the percentage of FAST sockets using Masimo, Nellcor, and Philips sensors is OVERRULED and Philips' motion to strike (D.I. 422) is DENIED with regard to this portion of the testimony.

f. Philips' objection to the recommendation to admit Mr. Wagner's testimony regarding the reasonable royalty rate is OVERRULED and Philips' motion to strike (D.I. 422) is DENIED with regard to this portion of the testimony.

g. Philips' objection to the recommendation to admit Dr. Quill's opinion or testimony that there are no peer reviewed studies on Nonin PureSat showing Nonin PureSat is an acceptable alternative is OVERRULED and Philips' motion to exclude (D.I. 420) is DENIED with regard to this portion of the testimony.


3. The Court ADOPTS Chief Magistrate Judge Thyng's Damages Report and Recommendation issued on June 14, 2013 (D.I. 721), and specifically holds as follows:

- a. Masimo's and Philips' objections are OVERRULED.
- b. Philips' motion for summary judgment of no willful infringement (D.I. 426) is GRANTED.
- c. Philips' motion for summary judgment of no lost profits damages (D.I. 424) is DENIED.

4. The Court ADOPTS all of Chief Magistrate Judge Thyng's Reports and Recommendations regarding Summary Judgment, *Daubert*, and Damages to the extent not objected to and to the extent any objections have been deemed waived for the reasons explained in the opinion.

5. Because the Memorandum Opinion today was filed under seal, the parties shall meet and confer and propose, no later than April 3, 2014, a proposed redacted version.

6. The parties shall meet and confer and, no later than ten (10) days after the date of this Order, submit a joint status report, advising the Court, among other things, of their proposal(s) for how this matter should proceed.


UNITED STATES DISTRICT JUDGE