

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN WEARABLE ELECTRONIC DEVICES
WITH ECG FUNCTIONALITY AND
COMPONENTS THEREOF

Inv. No. 337-TA-1266

ORDER NO. 16: INITIAL DETERMINATION GRANTING COMPLAINANT'S UNOPPOSED MOTION FOR PARTIAL TERMINATION BY WITHDRAWAL OF CERTAIN CLAIMS OF THE ASSERTED PATENTS

(February 23, 2022)

On February 18, 2022, Complainant AliveCor (“AliveCor”) moved (1266-010) for partial termination of the Investigation by withdrawal of claims 1-4, 6-14, and 18-20 of U.S. Patent No. 9,572,499 (“the 499 patent”), claims 2, 4, 6, 7, 11, 13, 14, and 17-30 of U.S. Patent No. 10,595,731 (“the 731 patent”), and claims 1-11, 14, 15, 17, and 18 of U.S. Patent No. 10,638,941 (“the 941 patent”). Mot. at 1. AliveCor filed a corrected version on February 22, 2022. AliveCor states that Respondent Apple Inc. (“Apple”) does not oppose the motion. Staff filed a response on February 22, 2022, and supports the motion. Response of the Commission Investigative Staff at 1.

AliveCor states that “the requested partial termination serves the public interest because it will reduce the number of disputed issues in this Investigation, thereby conserving Commission, ALJ, and party resources.” Mot. at 4. Further, pursuant to Commission Rule 210.21(a), AliveCor certifies that “[t]here are no agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation” beyond the agreements already filed with the Commission. *Id.*

Commission Rule 210.21(a) provides, in relevant part:

[a]ny party may move at any time prior to the issuance of an initial determination on violation of section 337 of the Tariff Act of 1930 to terminate an investigation in whole or in part as to any or all respondents, on the basis of withdrawal of the complaint or certain allegations contained therein A motion for termination of an investigation based on withdrawal of the complaint, or for good cause, shall contain a statement that there are no agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation, or if there are any agreements concerning the subject matter of the investigation, all such agreements shall be identified, and if written, a copy shall be filed with the Commission along with the motion. If the agreement contains confidential business information within the meaning of § 201.6(a) of this chapter, at least one copy of the agreement with such information deleted shall accompany the motion, in addition to a copy of the confidential version. On motion for good cause shown, the administrative law judge may limit service of the agreements to the settling parties and the Commission investigative attorney. The presiding administrative law judge may grant the motion in an initial determination upon such terms and conditions as he deems proper.

19 C.F.R. § 210.21(a)(1). The Commission has further stated that “in the absence of extraordinary circumstances, termination of the Investigation will be granted to a complainant during the prehearing stage of an investigation.” *Certain Ultrafiltration Sys. and Components Thereof, Including Ultrafiltration Membranes*, Inv. No. 337-TA-107, Comm’n Action and Order at 2 (Mar. 11, 1982).

Based on the pleadings and arguments therein, I find no extraordinary circumstances that would prevent the requested partial termination of this investigation. I also find that AliveCor has complied with the requirements of Commission Rule 210.21(a). I appreciate the Parties’ good faith efforts in narrowing the scope of this case.

Accordingly, it is my Initial Determination to grant AliveCor’s motion (1266-010) for partial termination of the Investigation by withdrawal of claims 1-4, 6-14, and 18-20 of the 499

patent, claims 2, 4, 6, 7, 11, 13, 14, and 17-30 of the 731 patent, and claims 1-11, 14, 15, 17, and 18 of the 941 patent. The remaining patents and claims at issue are:

Patent No.	Asserted Claims
9,572,499	16, 17
10,595,731	1, 3, 5 (infringement only), 8-10 (infringement only), 12, 15, 16
10,638,941	12, 13 (infringement only), 16 (DI only), 19 (infringement only), 20-23

This Initial Determination is hereby certified to the Commission.

Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall be the determination of the Commission unless a party files a petition for review of the Initial Determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders, on its own motion, a review of the Initial Determination or certain issues herein.

SO ORDERED.



Cameron Elliot
Administrative Law Judge