

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. 26: DENYING RESPONDENT APPLE'S MOTION *IN LIMINE* NO. 5

(March 24, 2022)

Respondent Apple, Inc. ("Apple") filed motion *in limine* no. 5 ("MIL 5" (Mot. 1266-026)) on March 7, 2022. Complainant AliveCor, Inc. ("AliveCor") timely filed an opposition ("MIL 5 Oppo."), and the Commission's Office of Unfair Import Investigations ("Staff") filed an omnibus response ("Staff Resp.").

AliveCor entered into a license agreement with [REDACTED] Inc. (the "License"), after the close of fact discovery. *See* MIL 5, Ex. A (CX-0872C). AliveCor then moved, and was permitted, to supplement its interrogatory responses to incorporate this newly created document. Order No. 17 (Feb. 24, 2022). In MIL 5, Apple nonetheless requests that all reference to the License "and the license itself should be excluded from the hearing and the evidentiary record." MIL 5 at 2. The Staff opposes the motion. *See* Staff Resp. at 12-13.

AliveCor appears to rely on the License in only a very limited way; AliveCor's Prehearing Brief ("CPB") cites it only as very generalized evidence of a domestic industry and as evidence that a reasonable royalty may be calculated for purposes of setting a bond. *See* CPB at 180 (citing CX-0872C), 200 (same). Although AliveCor suggests that the License may be relied on more substantively both for domestic industry and as a secondary consideration of non-obviousness, the Prehearing Brief does not include it in any quantitative analysis of domestic industry economic

[REDACTED]

prong, or cite it as evidence of non-obviousness, and does not even argue that the License's royalty rate (at most [REDACTED] per unit, in contrast to [REDACTED] per unit for its license with [REDACTED]) should be adopted. *See* CPB at 98, 191-93, 200; MIL 5, Ex. A at Attachment A; MIL 5 Oppo. at 3-4. In view of such limited materiality, Apple will suffer no undue prejudice by its admission or consideration.

Therefore, MIL 5 (Mot. 1266-026) is denied.

Within seven days of the date of this document, the parties shall submit to the Office of the Administrative Law Judges a joint statement as to whether or not they seek to have any portion of this document deleted from the public version. If the parties do seek to have portions of this document deleted from the public version, they must submit to this office a copy of this document with red brackets indicating the portion or portions asserted to contain confidential business information. The submission may be made by email and/or hard copy by the aforementioned date and need not be filed with the Commission Secretary.

SO ORDERED.



Cameron Elliot
Administrative Law Judge