

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN WEARABLE ELECTRONIC
DEVICES WITH ECG FUNCTIONALITY
AND COMPONENTS THEREOF

Investigation No. 337-TA-1266

NOTICE OF COMMISSION DETERMINATION TO EXTEND THE TARGET DATE
FOR THE COMPLETION OF THIS INVESTIGATION

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to extend the target date for completion of this investigation from December 20, 2022, to December 22, 2022.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3042. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On May 26, 2021, the Commission instituted this investigation based on a complaint filed by AliveCor, Inc. of Mountain View, California (“AliveCor”). 86 FR 28382 (May 26, 2021). The complaint alleged violations of section 337 based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain wearable electronic devices with ECG functionality and components thereof by reason of infringement of one or more of claims 1-30 of U.S. Patent No. 10,595,731 (“the ’731 patent”); claims 1-23 of U.S. Patent No. 10,638,941 (“the ’941 patent”); and claims 1-4, 6-14, 16-20 of U.S. Patent No. 9,572,499 (“the ’499 patent”). *Id.* The Commission’s notice of investigation named Apple Inc. of Cupertino, California (“Apple”) as the sole respondent. The Office of Unfair Import Investigations (“OUII”) is named as a party in this investigation. *Id.*

On February 23, 2022, the ALJ issued an initial determination granting AliveCor's motion to terminate the investigation as to (1) claims 1-4, 6-14, and 18-20 of the '499 patent; (2) claims 2, 4, 6, 7, 11, 13, 14, and 17-30 of the '731 patent; and (3) claims 1-11, 14, 15, 17, and 18 of the '941 patent based upon withdrawal of allegations from the complaint as to those claims. Order No. 16 (Feb. 23, 2022), *unreviewed by* Notice (Mar. 18, 2022).

On June 27, 2022, the ALJ issued the final initial determination ("ID") finding a violation of section 337 as to the '941 and '731 patents, and no violation of section 337 as to the '499 patent.

On July 11, 2022, Apple filed a petition for review of the ID, and AliveCor filed a combined petition and contingent petition for review of the ID. On July 19, 2022, the private parties and OUII's investigative attorney filed responses to the petitions.

On September 22, 2022, the Commission determined to review the final ID in part and requested briefing on certain issues under review and on remedy, the public interest, and bonding. 87 Fed. Reg. 58819-21 (Sept. 28, 2022).

On October 6, 2022, the parties filed initial submissions in response to the Commission's request for briefing. On October 14, 2022, the parties filed reply submissions. On October 21, 2022, Apple moved for leave to file a sur-reply to AliveCor's reply submission. On October 24, 2022, AliveCor filed an opposition. OUII filed a response in opposition on November 2, 2022.

On December 7, 2022, Apple filed an emergency motion, asking "the Commission to suspend any remedial orders or, in the alternative, extend the December 12, 2022 Target Date of its Final Determination and stay all proceedings prior to issuance of any Final Determination pending final resolution of any appeal of the PTAB's [Patent Trial and Appeal Board of the U.S. Patent and Trademark Office] decisions" finding the asserted patent claims unpatentable. Apple Emergency Motion at 1. On December 9, 2022, AliveCor filed an opposition to Apple's motion. On December 16, 2022, OUII filed a response in support of Apple's motion, but only to the extent that any remedy the Commission issues be suspended pending appeal of the PTAB decisions. OUII Reply to Emergency Motion at 4.

The Commission has determined to extend the target date for completion of the investigation from December 20, 2022, to December 22, 2022.

The Commission's vote on this determination took place on December 20, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR 210).

By order of the Commission.



Katherine M. Hiner
Acting Secretary to the Commission

Issued: December 20, 2022