

**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**

**LIMITED EXCLUSION ORDER**

The United States International Trade Commission (“Commission”) has determined that there is a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), in the unlawful importation, sale for importation, or sale within the United States after importation by Apple Inc. (“Apple” or “Respondent”) of certain wearable electronic devices with ECG functionality and components thereof that infringe one or more of claims 12, 13, and 19-23 of U.S. Patent No. 10,638,941 (“the ’941 patent”); and claims 1, 3, 5, 8-10, 12, 15, and 16 of U.S. Patent No. 10,595,731 (“the ’731 patent”) (the ’941 and ’731 patents are collectively referred to herein as “the Asserted Patents”).

Having reviewed the record in this investigation, including the written submissions of the parties and non-parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief includes a limited exclusion order prohibiting the unlicensed entry of wearable electronic devices with ECG functionality and components thereof that are manufactured abroad by or on behalf of, or imported by or on behalf of, Respondent or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns.

The Commission has determined that the public interest factors enumerated in 19 U.S.C. § 1337(d)(1) do not preclude the issuance of the limited exclusion order, and that the bond

during the Presidential review period shall be in the amount of \$2 per unit of covered articles imported.

Accordingly, the Commission hereby **ORDERS** that:

1. Wearable electronic devices with ECG functionality and components thereof that infringe one or more of claims 12, 13, and 19-23 of the '941 patent; and claims 1, 3, 5, 8-10, 12, 15, and 16 of the '731 patent that are manufactured abroad by or on behalf of, or imported by or on behalf of, Respondent or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, for the remaining terms of the patents, except under license of the patent owner or as provided by law, and except for articles or components imported for use in servicing, repairing, or replacing covered articles that were imported prior to the effective date of this Order pursuant to existing service and warranty contracts.

2. The wearable electronic devices with ECG functionality and components thereof that are subject to this Order (“covered articles”) are as follows: Apple Watches with ECG functionality, and hardware and software components thereof.

3. Notwithstanding paragraph 1 of this Order, covered articles are entitled to entry into the United States for consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption under bond in the amount of \$2 per unit of covered articles imported pursuant to subsection (j) of section 337 (19 U.S.C. § 1337(j)) and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (*70 Fed. Reg.* 43,251), from the day after this Order is received by the United States Trade Representative until such time as the United States Trade Representative notifies the Commission that this Order is approved or disapproved but, in any event, not later than sixty (60) days after the date of

receipt of this Order. All entries of covered articles made pursuant to this paragraph are to be reported to U.S. Customs and Border Protection (“CBP”), in advance of the date of the entry, pursuant to procedures CBP establishes.

4. The enforcement of this Order, including the bond provision, is suspended pending final resolution of the U.S. Patent and Trademark Office, Patent Trial and Appeal Board’s Final Written Decisions finding the asserted patent claims unpatentable. *See Apple, Inc. v. AliveCor, Inc.*, IPR2021-00971, Patent 10,595,731, Final Written Decision Determining All Challenged Claims Unpatentable (Dec. 6, 2022); *Apple, Inc. v. AliveCor, Inc.*, IPR2021-00972, Patent 10,638,941, Final Written Decision Determining All Challenged Claims Unpatentable (Dec. 6, 2022). *See* 35 U.S.C. § 318(b).

5. At the discretion of CBP and pursuant to procedures that it establishes, persons seeking to import articles that are potentially subject to this Order may be required to certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraph 1 of this Order. At its discretion, CBP may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.

6. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to covered articles that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

7. The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission’s Rules of Practice and Procedure (19 C.F.R. § 210.76).

8. The Secretary shall serve copies of this Order upon each party of record in this investigation that has retained counsel or otherwise provided a point of contact for electronic service and upon CBP.

9. Notice of this Order shall be published in the *Federal Register*.

By order of the Commission.



Katherine M. Hiner  
Acting Secretary to the Commission

Issued: December 22, 2022