

Office of the Secretary



UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C. 20436

December 22, 2022

Dax Terrill, Chief
Exclusion Order Enforcement
Office of International Trade
Regulation and Rulings
U.S. Customs and Border Protection
90 K Street, N.E.
Washington, D.C. 20229-1177

Re: Limited exclusion order issued by the U.S. International Trade Commission in Investigation No. 337-TA-1266, *Certain Wearable Electronic Devices with ECG Functionality and Components Thereof*.

Dear Mr. Terrill:

On December 22, 2022, the United States International Trade Commission issued a limited exclusion order prohibiting Respondent Apple Inc. of Cupertino, California from importing into the United States 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 “subject 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.

The Commission, however, has determined to suspend enforcement of the order, including the bond provision, 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).

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The owner of the subject patents is AliveCor, Inc. of Mountain View, California. S. Alex Lasher, (tel. (202) 538-8104), of the law firm Quinn Emanuel Urquhart & Sullivan, LLP, was counsel for complainant in the proceedings before the Commission.

The products in question are believed to be imported under at least HTSUS Number 8517.62.0090.

The Commission's order will remain in effect until the subject patents are abandoned, canceled, or rendered invalid or unenforceable. The '731 patent expires on December 12, 2034. The '941 patent expires on May 13, 2036. Copies of the subject patents are enclosed. We separately transmitted the limited exclusion order to you, along with the Commission record, on the day of its issuance.

Per the limited exclusion order, the covered products are entitled to entry for consumption into the United States, entry for consumption from foreign trade zone, or withdrawal from a warehouse for consumption under bond from the day after this order is received by the United States Trade Representative, pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended, and the Presidential Memorandum of July 21, 2005 (70 FR 43251), until such time as the Representative notifies the Commission of approval or disapproval of this action but, in any event, not later than sixty (60) days after the date of receipt of this action. A bond in the amount of \$2 per unit of wearable electronic devices with ECG functionality and components thereof is required to permit temporary importation of the articles in question during the period of Presidential review (19 U.S.C. § 1337(j)).

Known importers of the infringing products include Apple, Inc.

If you have any questions concerning the limited exclusion order, please feel free to contact Panyin Hughes, Esq., at panyin.hughes@usitc.gov, or at 202-205-3042.

Sincerely,



Katherine M. Hiner
Acting Secretary to the Commission

Enclosures

cc: Office of the General Counsel
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508