

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

Before the Honorable Cameron R. Elliot
Administrative Law Judge

In the Matter of

CERTAIN WEARABLE ELECTRONIC
DEVICES WITH ECG FUNCTIONALITY
AND COMPONENTS THEREOF

Inv. No. 337-TA-1266

**APPLE'S DISCLOSURE OF INITIAL INVALIDITY CONTENTIONS
IN RESPONSE TO INDIVIDUAL INTERROGATORY NOS. 19-21
OF ALIVECOR'S FIRST SET OF INTERROGATORIES TO APPLE**

I. INTRODUCTION

Pursuant to the Procedural Schedule set forth in Order No. 6, Respondent Apple Inc. ("Apple") hereby provides its initial invalidity contentions to Complainant AliveCor, Inc. ("AliveCor") in response to Interrogatory Nos. 15, 19-21.

Apple's initial invalidity contentions address United States Patent Nos. 10,595,731 ("the '731 patent"), 10,638,941 ("the '941 patent"), and 9,572,499 ("the '499 patent") (collectively, the "Asserted Patents"). AliveCor asserts the following claims are allegedly infringed by Apple: claims 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 of the '731 patent; claims 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23; claims 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20 of the '499 patent (collectively, "the Asserted Claims").

These contentions are Apple's initial responses to AliveCor's contention interrogatories regarding invalidity, including at least Interrogatory Nos. 19-21 of AliveCor's first set of Interrogatories to Apple. Apple's supplemental responses to AliveCor's burden contention

interrogatories incorporate and attach these initial invalidity contentions in accordance with Order No. 6. *See* Apple's September 10, 2021 Supplemental Objections and Responses to Complaint's First Set of Interrogatories (Nos. 15-16, 19-21) (served concurrently).

II. GENERAL RESERVATIONS

The contentions set forth below are initial contentions and provide notice to AliveCor of Apple's current invalidity theories, as required by the disclosure schedule in Order No. 6. Apple reserves the right to revise or supplement these contentions in light of party and third-party discovery, AliveCor's forthcoming infringement contentions, any claim construction order issued by the Administrative Law Judge, review and analysis by expert witnesses, and further investigation and discovery regarding the defenses asserted by Apple. For example, Apple expressly reserves the right to amend these contentions after review of AliveCor's infringement contentions, after review of AliveCor's validity contentions, after the exchange of the parties' claim construction briefing, after issuance of a claim construction order, or in the event AliveCor provides any information that it failed to provide in its disclosures, including if AliveCor amends its disclosures in any way. Further, because discovery is ongoing and the exchange of final burden contention interrogatory responses is not until November 12, 2021, Apple reserves the right to revise, amend, and/or supplement the information provided herein, including identifying other bases of invalidity based on the identified and charted references, and also charting and relying on additional references. Further, Apple reserves its right to revise, amend, or supplement when AliveCor provides additional discovery. Further, Apple reserves the right to revise its ultimate contentions concerning the invalidity of the Asserted Claims, which may change depending upon further and ongoing investigation, the construction of the Asserted Claims and/or positions that AliveCor or expert witnesses may take concerning claim construction, infringement, and/or invalidity issues.

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Prior art not included in this disclosure, whether known or not known to Apple, may become relevant later in the discovery period. In particular, Apple is currently unaware of the extent, if any, to which AliveCor will contend that limitations of the Asserted Claims are not disclosed in the prior art identified by Apple. To the extent that such an issue arises, Apple reserves the right to identify other prior art that would anticipate and/or render obvious the allegedly missing limitations of the claims, alone and/or in combination with identified or additional prior art. Further, Apple reserves the right to rely on any prior art or item sought or to be sought from third parties that are within those third parties' possession, custody, or control, and have not yet been produced during discovery. Apple reserves the right to rely on any prior art found in the prosecution histories of the applications leading to the Asserted Patents, identified on the covers of the Asserted Patents, or otherwise identified in connection with this Investigation, including in Apple' Notice of Prior Art to be filed with the schedule set forth in Order No. 6. Apple also reserves the right to rely on the prior art cited in its petitions for *inter partes* review of the Asserted Patents (IPR2021-00970; IPR2021-00971; IPR2021-00972). Apple is not relying on the art cited in its petitions at this time given Apple's stipulation not to do so, but intends to rely on such art in the future in the event that the PTAB denies institution. *See* Letter from Amon to Counsel re Conditional Stipulation dated June 8, 2021.

To the extent that the following contentions reflect constructions of claim limitations consistent with or implicit in AliveCor's infringement allegations as set forth in the Complaint, no inference is intended nor should any be drawn that Apple agrees with AliveCor's infringement allegations or claim interpretations, and Apple expressly reserves the right to contest such allegations. Apple intends to offer such contentions in response to AliveCor's infringement allegations as set forth in the Complaint and without prejudice to any position that Apple may ultimately take as to any claim construction issues. Nothing herein should be construed or

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represented as evidence of any express or implied agreement with any of AliveCor's claim construction or infringement positions.

Apple intends to rely on admissions concerning the scope of the prior art relevant to the Asserted Patents found in, *inter alia*: the Asserted Patents, related patents, and/or patent applications; the patent prosecution histories for the Asserted Patents, related patents, and/or patent applications (including all prior art cited therein); any deposition testimony of the named inventors on the Asserted Patents, related patents, and/or patent applications in this matter or any other matter; evidence and testimony relating to the level of ordinary skill in the art; and the papers filed and any evidence submitted by AliveCor in connection with this matter.

Apple's claim charts cite to particular teachings and disclosures of the prior art as applied to features of the Asserted Claims. However, persons having ordinary skill in the art generally may view an item of prior art in the context of other publications, literature, products, and general understanding. As such, the cited portions are only examples, and Apple reserves the right to rely on uncited portions of the prior art references and on other publications, expert testimony, and evidence as aids in understanding and interpreting the cited portions, as providing context thereto, and as additional evidence that the prior art discloses a claim limitation or any of the Asserted Claims as a whole. Apple further reserves the right to rely on uncited portions of the prior art references, other publications, and testimony, including expert testimony, to establish bases for combinations of certain cited references that render the Asserted Claims obvious.

The references discussed in the claim charts may disclose the elements of the Asserted Claims explicitly and/or inherently, and/or they may be relied upon to show the state of the art in the relevant timeframe. The suggested obviousness combinations are provided in addition to, and/or in the alternative to, Apple's anticipation contentions and are not to be construed to suggest that any reference included in the combinations is not by itself anticipatory. The combinations of

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prior art references referred to in these initial invalidity contentions are exemplary. Apple reserves the right to rely on any combination of prior art references to the extent that such prior art references are identified in Apple's initial contentions or final contentions to be served in accordance with Order No. 6. The rationale or motivations to combine the prior art references identified in these initial invalidity contentions are also exemplary. As discovery is ongoing, Apple reserves the right to amend or supplement the rationale or motivation to combine the prior art references identified in these initial contentions.

The following discussion and appendices provide exemplary prior art citations and obviousness positions. The citations and discussion in the charts are organized by claim (and claim limitation) for convenience, but each limitation or claim section applies to the larger context of each claim, to any related dependent or independent claims, as well as all claims containing similar limitations or elements. For example, citations as to any recited limitation, step, or component in the claims apply wherever each such limitation, step, or component is repeated elsewhere in the claim or Asserted Patents. Where Apple cites to a particular drawing or figure in the attached claim charts, the citation encompasses the description of the drawing or figure, as well as any text associated with the drawing or figure. Similarly, where Apple cites to particular text concerning a drawing or figure, the citation encompasses that drawing or figure as well as any other text associated with the drawing or figure. Relatedly, certain portions of patent or other prior art disclosures build upon other disclosures, even if they are referred to as a separate or alternative embodiment. Thus, Apple's citations to structures or functions incorporate by reference all disclosures to related structures or functions, including any additional detail provided as to the operation or design of those structures or functions.

Apple also reserves the right to challenge any of the claim terms herein under 35 U.S.C.

§ 112 beyond the grounds outlined in their responses to interrogatories related to invalidity,

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