

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN LIGHT-BASED
PHYSIOLOGICAL MEASUREMENT
DEVICES AND COMPONENTS
THEREOF

Investigation No. 337-TA-1276

COMMISSION OPINION

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I. INTRODUCTION

On May 15, 2023, the Commission determined to review in part the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on January 10, 2023. 88 Fed. Reg. 32243 (May 19, 2023). On review, the Commission has determined that there has been a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, with respect to U.S. Patent Nos. 10,945,648 (“the ’648 patent”) and 10,912,502 (“the ’502 patent”), but not with respect to U.S. Patent Nos. 10,912,501 (“the ’501 patent”), 10,687,745 (“the ’745 patent”), and 7,761,127 (“the ’127 patent”). This opinion sets forth the Commission’s reasoning in support of that determination.

II. BACKGROUND

A. Procedural History

The Commission instituted this investigation on August 18, 2021, based on an amended and supplemented complaint (“Complaint”) filed by complainants Masimo Corporation (“Masimo”) and Cercacor Laboratories, Inc. (“Cercacor,” collectively, “Complainants”).^{1, 2, 3} 86 Fed. Reg. 46275–76 (Aug. 18, 2021). The Complaint alleged violations of section 337 of the

¹ The original public complaint was filed on June 30, 2021. *See* EDIS Doc. ID 745713 (June 30, 2021). On July 7, 2021, Complainants filed an “Amendment to the Public Complaint, with Amended Exhibit 2 and Appendix C.” *See* EDIS Doc. ID 746186. And on July 12, 2021, Complainants filed a “Confidential Amendment to the Public Complaint and Exhibits.” *See* EDIS Doc. ID 746514. The Commission has determined that the filing date of the Complaint is July 12, 2021. *See, e.g.*, 86 Fed. Reg. at 46275; Final ID at 84 (including n.24).

² Supplement to the Confidential Amended Complaint and Exhibits, EDIS Doc. ID 747244 (July 19, 2021); Supplement to the Amended Public Complaint and Exhibits, EDIS Doc. ID 747240 (July 19, 2021).

³ Masimo is the owner of the ’501 patent (JX-0001), ’502 patent (JX-0002), ’648 patent (JX-0003), and ’745 patent (JX-0009). Compl. at ¶ 4. Cercacor is the owner of the ’127 patent (JX-0007). *Id.* Masimo and Cercacor have rights to each of the Asserted Patents through a cross-licensing agreement. *Id.* at ¶¶ 4, 77; CX-1612C.

Tariff Act of 1930, as amended, 19 U.S.C. § 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain light-based physiological measurement devices and components thereof by reason of infringement of certain claims of the '501 patent; the '502 patent; the '648 patent; the '745 patent; and the '127 patent (collectively, the “Asserted Patents”). *Id.* The Complaint further alleged that an industry in the United States exists and/or is in the process of being established. *Id.* The notice of investigation named Apple Inc. of Cupertino, California as the sole respondent (“Apple”). *Id.* at 46276. The Office of Unfair Import Investigations is not participating in this investigation. *See id.*

Prior to the issuance of the Final ID, the investigation terminated as to several claims. Order No. 25 (Mar. 23, 2022), *unreviewed by* Comm’n Notice (Apr. 12, 2022); Order No. 33 (May 20, 2022), *unreviewed by* Comm’n Notice (June 10, 2022). At the time of the hearing on June 6–10, 2022, only the following claims remained at issue: claim 12 of the '501 patent, claims 22 and 28 of the '502 patent, claims 12, 24, and 30 of the '648 patent, claims 9, 18,⁴ and 27 of the '745 patent, and claim 9 of the '127 patent.

⁴ Complainants proceeded at the hearing as to claim 18 of the '745 patent for domestic industry purposes only. *See, e.g.*, Final ID at 176. In other words, Complainants did not allege that Apple violated section 337 by infringing that claim.

On May 13, 2022, Complainants and Apple filed their pre-hearing briefs.⁵ The parties filed initial post-hearing briefs on June 27, 2022,⁶ and the parties filed post-hearing reply briefs on July 11, 2022.⁷

On January 10, 2023, the ALJ issued the Final ID,⁸ which found that Apple violated section 337 as to only claims 24 and 30 of the '648 patent. *See* Final ID at 335–36. The Final ID found that Complainants did not establish a violation as to the other remaining asserted claims. *E.g., id.*

On January 24, 2023, the ALJ issued the Recommended Determination on Remedy and Bonding (“RD”).⁹ The RD recommended that, if the Commission finds a violation, it should

⁵ Complainants’ Pre-Hearing Brief, EDIS Doc. ID 770786 (May 13, 2022) (“CPreHBr.”); Respondent Apple Inc.’s Pre-Hearing Brief, EDIS Doc. ID 770790 (May 13, 2022). On May 16, 2022, Apple filed a corrected pre-hearing brief. Respondent Apple Inc.’s Corrected Pre-Hearing Brief, EDIS Doc. ID 770874 (May 16, 2022) (“RPreHBr.”).

⁶ Complainants’ Initial Post-Hearing Brief, EDIS Doc. ID 774000 (June 27, 2022); Respondent Apple Inc.’s Post-Hearing Brief, EDIS Doc. ID 774025 (June 27, 2022). On July 14, 2022, Complainant filed a corrected opening post-hearing brief. Complainants’ Corrected Initial Post-Hearing Brief, EDIS Doc. ID 775422 (July 14, 2022) (“CPHBr.”). On September 2, 2022, Apple filed a second corrected opening post-hearing brief. Respondent Apple Inc.’s Second Corrected Post-Hearing Brief, EDIS Doc. ID 779376 (Sept. 2, 2022) (“RPHBr.”).

⁷ Complainants’ Reply Post-Hearing Brief, EDIS Doc. ID 775058 (July 11, 2022) (“CPHBr. (Reply)”); Respondent Apple Inc.’s Reply Post-Hearing Brief, EDIS Doc. ID 775073 (July 11, 2022). On September 2, 2022, Apple filed a corrected post-hearing reply brief. Respondent Apple Inc.’s Corrected Post-Hearing Reply Brief, EDIS Doc. ID 779379 (Sept. 2, 2022) (“RPHBr. (Reply)”).

⁸ Final Initial Determination on Violation of Section 337, EDIS Doc. ID 787653 (Jan. 10, 2023); *see also* Final Initial Determination on Violation of Section 337, EDIS Doc. ID 789795 (Feb. 7, 2023) (Public Version).

⁹ Recommended Determination on Remedy and Bonding, EDIS Doc. ID 788506 (Jan. 24, 2023); *see also* Recommended Determination on Remedy and Bonding, EDIS Doc. ID 790079 (Feb. 10, 2023) (Public Version).

issue a limited exclusion order (“LEO”) directed to certain wearable electronic devices with light-based pulse oximetry functionality and components thereof that are imported, sold for importation, and/or sold after importation by Apple; and a cease and desist order (“CDO”) directed to Apple. *See* RD at 2–5. The RD additionally recommended that the Commission set a 0% bond (*i.e.*, no bond) during the sixty-day period of Presidential review. *See id.* at 6–7. The Commission’s notice of investigation did not instruct the ALJ to make findings and recommendations concerning the public interest. *See* 86 Fed. Reg. at 46275–76.

On January 23, 2023, Complainants and Apple each filed a petition for review of the Final ID.¹⁰ On January 31, 2023, Complainants and Apple each filed responses to the other respective petition.¹¹

On January 24 and 30, 2023, (after the Final ID issued and petitions for review were filed), the United States Patent and Trademark Office (“USPTO”) denied Apple’s request for the institution of *inter partes* review proceedings (“IPRs”) as to the ’501, ’502, and ’648 patents based on a combination of references that included the same primary reference as one of the

¹⁰ Complainants’ Petition for Review of the Final Initial Determination on Violation of Section 337, EDIS Doc. ID 788456 (Jan. 23, 2023) (“CPet.”); Complainants’ Summary of Petition for Review of the Final Initial Determination on Violation of Section 337, EDIS Doc. ID 788457 (Jan. 23, 2023); Respondent Apple Inc.’s Petition for Review of the Initial Determination of Violation of Section 337, EDIS Doc. ID 788470 (Jan. 23, 2023) (“RPet.”); Respondent Apple Inc.’s Summary of Petition for Review of the Initial Determination of Violation of Section 337, EDIS Doc. ID 788474 (Jan. 23, 2023).

¹¹ Complainants’ Response to Apple Inc.’s Petition for Review of the Final Initial Determination on Violation of Section 337, EDIS Doc. ID 789044 (Jan. 31, 2023) (“CResp.”); Complainants’ Summary of Response to Apple Inc.’s Petition for Review of the Final Initial Determination on Violation of Section 337, EDIS Doc. ID 789045 (Jan. 31, 2023); Respondent Apple Inc.’s Response to Complainants’ Petition for Review, EDIS Doc. ID 789061 (Jan. 31, 2023) (“RResp.”); Respondent Apple Inc.’s Summary of Its Response to Complainants’ Petition for Review, EDIS Doc. ID 789067 (Jan. 31, 2023).

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