

**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**

**CEASE AND DESIST ORDER**

**IT IS HEREBY ORDERED THAT** Apple Inc., of Cupertino, California, cease and desist from conducting any of the following activities in the United States: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of 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”) (collectively, the “Asserted Patents”) in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

**I.  
Definitions**

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean AliveCor, Inc., of Mountain View, California.
- (C) “Respondent” shall mean Apple Inc., of Cupertino, California.

- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.
- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean Certain 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. The Certain Wearable Electronic Devices with ECG Functionality and Components Thereof subject to this order are as follows: Apple Watches with ECG functionality, and hardware and software components thereof. Covered products shall not include articles for which a provision of law or license avoids liability for infringement.

## **II. Applicability**

The provisions of this Cease and Desist Order shall apply to the Respondent and to any of its principals, stockholders, officers, directors, employees, agents, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by section III, *infra*, for, with, or otherwise on behalf of, Respondent.

**III.  
Conduct Prohibited**

The following conduct of Respondent in the United States is prohibited by this Order.

For the remaining terms of the Asserted Patents, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, sell, offer to sell, or otherwise transfer (except for exportation) in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of covered products.

**IV.  
Conduct Permitted**

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this order shall be permitted:

- (A) service, repair, or replacement of wearable electronic devices with ECG functionality that were imported prior to the effective date of this Order pursuant to existing service and warranty contracts,
- (B) if in a written instrument, the owner of the '941 and '731 patents licenses or authorizes such specific conduct, or
- (C) if such specific conduct is related to the importation or sale of covered products by or for the United States.

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).

## **V. Reporting**

For purposes of this requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. The first report required under this section shall cover the period from the date of issuance of this order through June 30, 2023. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that it has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above. Submissions should refer to the investigation number (“Inv. No. 337-TA-1266”) in a prominent place on the cover pages and/or the first page. (*See Handbook for Electronic Filing Procedures,*

[http://www.usitc.gov/secretary/fed\\_reg\\_notices/rules/handbook\\_on\\_electronic\\_filing.pdf](http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf)).

Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant's counsel.<sup>1</sup>

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

## **VI. Record-Keeping and Inspection**

- (A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.
- (B) For the purposes of determining or securing compliance with this Order and for no other purpose, subject to any privilege recognized by the federal courts of the United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in Respondent's principal offices during office

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<sup>1</sup> Complainant must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this Order. The designated attorney must be on the protective order entered in the investigation.

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