

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

**NOTICE OF COMMISSION DECISION TO DENY RESPONDENT'S MOTION TO
STAY REMEDIAL ORDERS PENDING APPEAL AND/OR IN LIGHT OF POTENTIAL
GOVERNMENT SHUTDOWN**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission ("Commission") has determined to deny the respondent's motion to stay remedial orders pending appeal and/or in light of potential government shutdown.

FOR FURTHER INFORMATION CONTACT: Ronald A. Traud, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-3427. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 18, 2021, based on a complaint filed on behalf of Masimo Corporation and Cercacor Laboratories, Inc., both of Irvine, California (collectively, "Complainants"). 86 FR 46275 (Aug. 18, 2021). The complaint, as amended, alleged violations of section 337 of the 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 U.S. Patent No. 10,912,501 ("the '501 patent"); U.S. Patent No. 10,912,502 ("the '502 patent"); U.S. Patent No. 10,945,648 ("the '648 patent"); U.S. Patent No. 10,687,745 ("the '745

patent”); and U.S. Patent No. 7,761,127 (“the ’127 patent”). *Id.* The amended complaint further alleged that an industry in the United States exists and/or is in the process of being established as required by section 337. *Id.* The notice of investigation named Apple Inc. of Cupertino, California (“Apple”) as the sole respondent. *Id.* at 46276. The Office of Unfair Import Investigations did not participate in this investigation. *Id.*

Before the presiding administrative law judge (“ALJ”) issued the final initial determination (“Final ID”), Complainants withdrew from the investigation certain asserted patent claims. *See* 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 Final ID, only 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, and 27 of the ’745 patent, and claim 9 of the ’127 patent remained in the investigation. Claim 18 of the ’745 patent remained at issue for purposes of the domestic industry only.

On January 10, 2023, the ALJ issued the Final ID, which found that Apple violated section 337 as to claims 24 and 30 of the ’648 patent, but not as to claim 12 of the ’501 patent, claims 22 and 28 of the ’502 patent, claim 12 of the ’648 patent, claims 9 and 27 of the ’745 patent, and claim 9 of the ’127 patent. *See* Final ID at 335–36.

On May 15, 2023, the Commission determined to review the Final ID in part. *See* 88 FR 32243, 32243–46 (May 19, 2023). The Commission requested briefing on certain issues under review and on remedy, the public interest, and bonding. *See id.*

On October 26, 2023, the Commission issued its final determination in this investigation, finding Apple in violation of section 337 as to only claims 22 and 28 of the ’502 patent and claims 12, 24, and 30 of the ’648 patent. 88 FR 75032, 75032–33 (Nov. 1, 2023). The Commission issued: (1) a limited exclusion order prohibiting the importation of light-based physiological measurement devices and components thereof that infringe one or more of claims 22 and 28 of the ’502 patent and claims 12, 24, and 30 of the ’648 patent; and (2) a cease and desist order directed to Apple. *Id.* The Commission determined that the public interest factors did not preclude issuance of the limited exclusion order or the cease and desist order. *Id.* The Commission further determined that no bond was to be required during the period of Presidential review. *See id.*; 19 U.S.C. 1337(j)(3).

On October 30, 2023, Apple filed a motion to stay the exclusion and cease and desist orders pending appeal and/or in light of a potential government shutdown. On November 9, 2023, Complainants filed an opposition to Apple’s motion. On November 20, 2023, Complainants also filed a Request for Judicial Notice of Recent Regulatory Developments for Masimo W1 Watch requesting that the Commission consider certain documents in making its decision on Apple’s motion.

For the reasons discussed in the Commission Opinion issued concurrently herewith, the Commission has determined to deny Apple’s motion to stay the remedial orders pending appeal

and/or in light of a potential government shutdown, and it has done so without reliance on the materials of which Complainants requested the Commission take judicial notice.

The Commission vote for this determination took place on December 20, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: December 20, 2023