

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

ORDER DENYING RESPONDENT'S MOTION TO STAY REMEDIAL ORDERS
PENDING APPEAL AND/OR IN LIGHT OF POTENTIAL GOVERNMENT
SHUTDOWN

On August 18, 2021, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“section 337”), based on a complaint filed on behalf of Masimo Corporation and Cercacor Laboratories, Inc., both of Irvine, California (collectively, “Complainants”). *See* 86 Fed. Reg. 46275 (Aug. 18, 2021). The complaint, as amended, alleged violations of section 337 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, e.g.*, Final ID at 335–36.

On May 15, 2023, the Commission determined to review the Final ID in part. *See* 88 Fed. Reg. 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 Fed. Reg. 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.

Upon review of Apple's motion and Complainants' response thereto, it is hereby ORDERED that:

- (1) Apple's motion to the stay exclusion and cease and desist orders pending appeal and/or in light of a potential government shutdown is denied; and
- (2) Notice of this Order shall be served on the parties to this investigation.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: December 20, 2023