

PUBLIC VERSION

Office of the Secretary



UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C. 20436

October 26, 2023

Dax Terrill, Chief
Exclusion Order Enforcement Branch
U.S. Customs and Border Protection
Regulations and Rulings – Office of Trade
90 K Street NE – 10th Floor
Washington, DC 20229-1177

Re: Limited exclusion order issued by the U.S. International Trade Commission in Investigation No. 337-TA-1276, *Certain Light-Based Physiological Measurement Devices and Components Thereof*.

Dear Mr. Terrill:

On October 26, 2023, the United States International Trade Commission issued a limited exclusion order prohibiting Apple, Inc. of Cupertino, California from importing into the United States light-based physiological measurement devices and components thereof that infringe one or more of claims 22 and 28 of U.S. Patent No. 10,912,502 and claims 12, 24, and 30 of U.S. Patent No. 10,945,648 (collectively, the “subject patents”).

The owner of the subject patents is Masimo Corporation of Irvine, California. Kendall M. Loebbaka (tel. (949) 760-0404), of the law firm Knobbe, Martens, Olson & Bear, LLP, was counsel for complainant in the proceedings before the Commission.

The products in question are believed to be imported under at least HTSUS Number 8517.62.0090.

The Commission’s order is in effect until the subject patent(s) expire(s) or one or more of its claims are rendered invalid or unenforceable. The expiration date for both patents is August 25, 2028. A copy of each of the subject patents is enclosed. We separately transmitted the limited exclusion order to you, along with the Commission record, on the day of its issuance.

Per the limited exclusion order, the covered products are entitled to entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a

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the United States Trade Representative, pursuant to subsection G) of section 337 of the Tariff Act of 1930, as amended, and the Presidential Memorandum of July 21, 2005 (70 FR 43251), until such time as the Representative notifies the Commission of approval or disapproval of this action but, in any event, not later than sixty (60) days after the date of receipt of this action.

Known importers of the infringing products include: Apple, Inc.;

; and

If you have any questions concerning the limited exclusion order, please feel free to contact Ron Traud (202-205-3427, ronald.traud@usitc.gov) or Michelle Klancnik (202-205-3104, michelle.klancnik@usitc.gov).

Sincerely,



Lisa R. Barton
Secretary to the Commission

Enclosures

cc: Office of the General Counsel
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

**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

LIMITED EXCLUSION ORDER

The United States International Trade Commission (“Commission”) has determined that there is a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), in the unlawful importation, sale for importation, or sale within the United States after importation by respondent Apple, Inc. of Cupertino, California (“Respondent”) of certain light-based physiological measurement devices and components thereof (as defined in paragraph 2 below) that infringe one or more of claims 22 and 28 of U.S. Patent No. 10,912,502 and claims 12, 24, and 30 of U.S. Patent No. 10,945,648 (“Asserted Patents”).

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determinations on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of infringing light-based physiological measurement devices and components thereof manufactured by or on behalf of Respondent or any of its affiliated companies, parents, subsidiaries, agents, or other related business entities, or its successors or assigns.

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude the issuance of the limited exclusion order, and that the

bond during the period of Presidential review shall be in the amount of zero percent (0%, *i.e.*, no bond) of the entered value of the entered value of the articles subject to this Order.

Accordingly, the Commission hereby **ORDERS** that:

1. Light-based physiological measurement devices and components thereof that infringe one or more of claims 22 and 28 of U.S. Patent No. 10,912,502 and claims 12, 24, and 30 of U.S. Patent No. 10,945,648 and are manufactured abroad by, or on behalf of, or imported by or on behalf of Respondent or any of its affiliated companies, parents, subsidiaries, agents, or other related business entities, or its successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining terms of the Asserted Patents, except under license from, or with the permission of, the patent owner or as provided by law; and except for parts necessary to service and repair covered products purchased by consumers prior to the date this Order becomes final within the meaning of 19 U.S.C. § 1337(j)(4), and except for covered products that are replacements for covered products purchased by consumers prior to the date this Order becomes final within the meaning of 19 U.S.C. § 1337(j)(4), provided that replacement is pursuant to a warranty for the replaced article.

2. The light-based physiological measurement devices and components thereof subject to this exclusion order (*i.e.*, “covered articles”) are as follows: wearable electronic devices with light-based pulse oximetry functionality and components thereof.

3. Notwithstanding paragraph 1 of this Order, covered articles are entitled to entry into the United States for consumption, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, under bond in the amount of zero percent (0%, *i.e.*, no bond) of their entered value, pursuant to subsection (j) of section 337 (19 U.S.C.

§ 1337(j)) and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 Fed. Reg. 43,251), from the day after this Order is received by the United States Trade Representative until such time as the United States Trade Representative notifies the Commission that this Order is approved or disapproved but, in any event, not later than sixty (60) days after the receipt of this Order. All entries of covered articles made pursuant to this paragraph are to be reported to U.S. Customs and Border Protection (“CBP”), in advance of the date of the entry, pursuant to procedures CBP establishes.

4. At the discretion of CBP and pursuant to the procedures it establishes, persons seeking to import articles may be required to certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraph 1 of this Order. At its discretion, CBP may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.

5. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to covered articles that are imported by and for the use of the United States, or imported for and to be used for, the United States with the authorization or consent of the Government.

6. The Commission may modify this Order in accordance with the procedures described in Rule 210.76 of the Commission’s Rules of Practice and Procedure (19 C.F.R. § 210.76).

7. The Secretary shall serve copies of this Order upon each party of record in this investigation that has retained counsel or otherwise provided a point of contact for electronic service and upon CBP.

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