

## **Apple Watch Faces Import Ban Into US**

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Certain Apple Watch models face an import ban into the US and a cease-and-desist order, following a section 337 investigation by the US International Trade Commission (ITC).

The ITC found that Apple violated US laws by incorporating medtech company Masimo's patented light-based pulse oximetry technology in its products. The exclusion is scheduled to go into effect after a 60-day Presidential review period.

The ITC is an agency of the US government that advises the legislative and executive branches on matters relating to trade; ITC section 337 investigations are conducted when it is alleged that imported goods infringe IP rights.

The ITC began the investigation in August 2021 based on a complaint filed by US-headquartered Masimo Corporation and spin off company Ceracor Laboratories that alleged that Apple watches infringed some of their patents related to measuring blood oxygen.

The ITC reversed a Patent Trial and Appeal Board (PTAB) finding that Apple proved by "clear and convincing evidence" that claim 28 of one of the disputed patents - the '502 patent - and claim 12 of another patent - the '648 patent - were invalid for lack of written description.

As a result of its investigations, the ITC found that Apple violated section 337 as to claims 22 and 28 of the '502 patent and claims 12, 24 and 30 of the '648 patent.

On 26 October it issued a limited exclusion order prohibiting the unlicensed entry of infringing wearable electronic devices with "light-based pulse oximetry functionality and components thereof" manufactured by or on behalf of Apple.

Masimo founder and CEO, Joe Kiani, said the ruling "sends a powerful message that even the world's largest company is not above the law."

He added: "This important determination is a strong validation of our efforts to hold Apple accountable for unlawfully misappropriating our patented technology."

Commenting on the ITC order, Matt Harvey, patent partner at Holland & Hart, said Apple had already stated that it intends to appeal the ruling to the Federal Circuit. It can also ask the US Trade Representative to veto the import ban.

He added that while obtaining a veto "seems like a longshot", Apple would have every incentive to at least try for one.

Nick Matich, principal at McKool Smith, added that this will be an "important test for President Biden on IP issues" given the ITC is the only forum where patent owners can regularly obtain exclusionary relief.

Harvey continued that Apple and Masimo have been going against each other for years in other courts and before the PTAB on a variety of patent and trade secret issues, with plenty of wins for Apple along the way.

Although this ITC ruling is a "huge win" for Masimo that could eventually give them enough leverage to obtain favourable settlement or licensing terms, Apple, Harvey noted, still has some options and "no shortage of resources to continue the battle".

