66. Apple also contributes to infringement of the ’941 patent by selling for importation into the United States, importing into the United States, and/or selling within the United States after importation the Accused ’941 Devices and the non-staple constituent parts of those devices, which are not suitable for substantial non-infringing use and which embody a material part of the invention described in the ’941 patent. These mobile electronic devices are known by Apple to be especially made or especially adapted for use in the infringement of the ’941 patent. Apple also contributes to the infringement of the ’941 patent by selling for importation into the United States, importing into the United States, and/or selling within the United States after importation components, such as the chipsets or software containing the infringing functionality, of the Accused ’941 Devices, which are not suitable for substantial non-infringing use and which embody a material part of the invention described in the ’941 patent. These mobile devices are known by Apple to be especially made or especially adapted for use in the infringement of the ’941 patent. Specifically, on information and belief, Apple sells the Accused ’941 Devices to resellers, retailers, and end users with knowledge that the devices are used for infringement.

67. Attached as Exhibit 10 are representative claim charts for the Accused ’941 Devices showing infringement of the ’941 patent by exemplary Accused ’9419 Devices.

3. Infringement of the ’499 Patent

68. Apple infringes, literally and/or under the doctrine of equivalents, at least claims 11-14, and 16-20 of the ’499 patent. Apple infringes at least these claims by importing, selling for importation, and/or selling after importation into the United States certain of the Accused Devices, including at least the Apple Watch Series 4, Apple Watch Series 5, and Apple Watch
Series 6 (the “Accused ‘499 Devices”). The Accused ’499 Devices satisfy all claim limitations of claims 11-14, and 16-20 at the time of importation into the United States.

69. On information and belief, Apple also knowingly induces and/or contributes to the infringement of at least claims 11-14, and 16-20 of the ’499 patent by others. On information and belief, Apple has had knowledge of the ’499 patent, and its infringement of the ’499 patent, since at least December 7, 2020, when AliveCor filed a parallel action in the Western District of Texas.

70. Apple also contributes to infringement of the ’499 patent by selling for importation into the United States, importing into the United States, and/or selling within the United States after importation the Accused ’499 Devices and the non-staple constituent parts of those devices, which are not suitable for substantial non-infringing use and which embody a material part of the invention described in the ’499 patent. These mobile electronic devices are known by Apple to be especially made or especially adapted for use in the infringement of the ’499 patent. Apple also contributes to the infringement of the ’499 patent by selling for importation into the United States, importing into the United States, and/or selling within the United States after importation components, such as the chipsets or software containing the infringing functionality, of the Accused ’499 Devices, which are not suitable for substantial non-infringing use and which embody a material part of the invention described in the ’499 patent. These mobile devices are known by Apple to be especially made or especially adapted for use in the infringement of the ’499 patent. Specifically, on information and belief, Apple sells the Accused ’499 Devices to resellers, retailers, and end users with knowledge that the devices are used for infringement.

71. Attached as Exhibit 11 are representative claim charts for the Accused ’499 Devices showing infringement of the ’499 patent by exemplary Accused ‘499 Devices.
VI. SPECIFIC INSTANCES OF UNFAIR IMPORTATION AND SALE

72. Apple sells for importation into the United States, imports into the United States, and/or sells after importation into the United States the Accused Products. These Accused Products include, but are not limited to the Apple Watch Series 4, Apple Watch Series 5, and Apple Watch Series 6.

73. A sample of the Apple Watch Series 6 was purchased from bestbuy.com on March 19, 2021. See Ex. 12. The packaging states that the Apple Watch Series 6 was “assembled in Vietnam.” See id.

74. A sample of the Apple Watch Series 5 was purchased from bestbuy.com on March 19, 2021. See Ex. 12. The packaging states that the Apple Watch Series 5 was “assembled in China.” See id.

75. A sample of the Apple Watch Series 4 was purchased on March 24, 2021. See Ex. 12. The packaging states that the Apple Watch Series 4 was “assembled in China.” See id.

76. Upon information and belief, substantially all of the Accused Products in the United States are manufactured by Apple’s suppliers, which are located primarily in Asia, and sold for importation into the United States by or on behalf of Apple. See Ex. 12.

A. Harmonized Tariff Schedule Numbers

77. The Accused Products are classified under at least the following subheading of the Harmonized Tariff Schedule of the United States: 8517.62.00 (Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; parts thereof: Other apparatus for
transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus). This classification is exemplary in nature and not intended to restrict the scope of any exclusion order or other remedy ordered by the Commission.

VII. RELATED LITIGATION

78. AliveCor filed a complaint in the Western District of Texas on December 07, 2020, asserting the same patents asserted here. See AliveCor, Inc. v. Apple, Inc., 6:20-cv-1112 (WDTX).

79. Aside from the above-mentioned parallel district court matter, AliveCor has not previously litigated the asserted patents before any other court or agency.

VIII. LICENSEES TO THE ASSERTED PATENTS

80. Confidential Exhibit 8 is a list of licensees that includes within that list all licenses to one or more of the Asserted Patents. Confidential Exhibit 22 is a copy of a license to the Asserted Patents.

IX. THE DOMESTIC INDUSTRY RELATING TO THE ASSERTED PATENTS

81. An industry as required by Section 337(a)(2) and defined by Section 337(a)(3)(A)-(C) exists and/or is in the process of being established in the United States relating to the Asserted Patents and AliveCor’s products and components thereof protected by the Asserted Patents.

82. As described below and in the accompanying declaration at Confidential Exhibits 19 and 20, AliveCor researches, designs, and develops wearable electronic devices and components in the United States that practice the claims of each of the Asserted Patents (“Domestic Industry Products”).
83. As further described in Confidential Exhibits 19 and 20, AliveCor is currently developing new wearable devices, that practice the claims of each of the Asserted Patents.

A. Technical Prong

84. The Domestic Industry Products include AliveCor’s KardiaBand and new wearable devices under development. Claim charts demonstrating that representative Domestic Industry Products practice at least one claim of each Asserted Patent are attached as Exhibits 13-15 and Confidential Exhibits 16-18.8

B. Economic Prong

85. There is a domestic industry as defined under 19 U.S.C. § 1337(a)(3)(A), (B), and/or (C), comprising continuing significant investments made in the United States by AliveCor in plant and equipment and employment of labor and capital, and continuing substantial investment in exploitation of the Asserted Patents.

86. AliveCor has made and continues to make significant investments in plant and equipment directed to the Domestic Industry Products in the United States. Those investments in plant and equipment are dedicated to research, design, development, engineering, product support, manufacturing support, testing, and various customer support activities focused on the Domestic Industry Products.

87. AliveCor also has made and continues to make significant investments in labor and capital directed to the Domestic Industry Products in the United States. Those investments in labor and capital are dedicated to research, design, development, engineering, product support,

8 The Domestic Industry Products practice additional claims of the Asserted Patents, and AliveCor may establish the technical prong of the domestic industry requirement through claims other than those used in these exhibits.
manufacturing support, testing, and various customer support activities focused on the Domestic Industry Products.

88. AliveCor further engages in exploitation of the Asserted Patents through its substantial domestic investments in research and development and engineering activities in the United States. These activities include, among other things, research and development and engineering and design tied to the claimed technology implemented in the Asserted Patents. These activities have occurred in the past and are ongoing with respect to prior and current versions of the Domestic Industry Products as well as future products under development.

89. In addition to the existing domestic industry, a domestic industry in new products that practice the Asserted Patents in the United States is in the process of being established under 19 U.S.C. § 1337(a)(3)(A), (B), and/or (C). AliveCor has taken necessary tangible steps to establish of this new domestic industry in the United States. As a result of these steps, there is a significant likelihood that this new domestic industry will be established in the future.

90. Specific, non-limiting examples of the foregoing investments are set forth in Confidential Exhibits 19 and 20.

X. **RELIEF REQUESTED**

91. Complainant respectfully requests that the Commission:

(a) Institute an investigation pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, with respect to Apple’s violations of that section arising from the importation into the United States, sale for importation, and/or the sale within the United States after importation of certain wearable electronic devices with ECG functionality and components thereof that infringe one or more claims of the Asserted Patents;
(b) Schedule and conduct a hearing pursuant to Section 337(c) for the purposes of (i) receiving evidence and hearing argument concerning whether there has been a violation of Section 337, and (ii) following the hearing, determining that there has been a violation of Section 337;

(c) Issue a permanent limited exclusion order pursuant to 19 U.S.C. § 1337(d) excluding entry into the United States of Respondent’s wearable electronic devices with ECG functionality and components thereof that infringe one or more claims of the Asserted Patents;

(d) Issue a permanent cease and desist order pursuant to 19 U.S.C. § 1337(f) prohibiting Apple, its subsidiaries, related companies and agents from engaging in the importation, sale for importation, marketing and/or advertising, distribution, offering for sale, sale, use after importation, sale after importation, and other transfer within the United States of wearable electronic devices with ECG functionality and components thereof that infringe one or more claims of the Asserted Patents;

(e) Impose a bond upon importation of Respondent’s wearable electronic devices with ECG functionality and components thereof that infringe one or more claims of the Asserted Patents during the 60-day Presidential review period pursuant to 19 U.S.C. § 1337(j); and

(f) Issue such other and further relief as the Commission deems just and proper under the law, based on the facts determined by the investigation and the authority of the Commission.

Dated: April 20, 2021

Respectfully submitted,

/s/ S. Alex Lasher
S. Alex Lasher
QUINN EMANUEL URQUHART & SULLIVAN, LLP
1300 I Street NW, Suite 900
Washington D.C. 20005
Tel.: (202) 538-8000

Sean S. Pak
Andrew M. Holmes
QUINN EMANUEL URQUHART & SULLIVAN, LLP
50 California Street, 22nd Floor
San Francisco, CA 94111
Tel.: (415) 875-6600

Adam B. Wolfson
QUINN EMANUEL URQUHART & SULLIVAN, LLP
865 S. Figueroa St., 10th Floor
Los Angeles, California 90017
Tel.: (213) 443-3000
Counsel for AliveCor, Inc.