

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

**CERTAIN LIGHT-BASED
PHYSIOLOGICAL MEASUREMENT
DEVICES AND COMPONENTS
THEREOF**

Inv. No. 337-TA-1276

NOTICE OF INSTITUTION OF INVESTIGATION

Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission

ACTION: Notice

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 30, 2021, under section 337 of the Tariff Act of 1930, as amended, on behalf of Masimo Corporation of Irvine, California and Cercacor Laboratories, Inc. of Irvine, California. An amended complaint was filed on July 12, 2021. A supplement was filed on July 19, 2021. The complaint, as amended, alleges 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 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”). The amended complaint further alleges that an industry in the United States exists and/or is in the process of being established as required by the applicable Federal Statute.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

ADDRESSES: The complaint, as amended, except for any confidential information contained therein, may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Katherine Hiner, Office of Docket Services, U.S. International Trade Commission, telephone (202) 205-1802.

SUPPLEMENTARY INFORMATION:

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission’s Rules of Practice and Procedure, 19 C.F.R. 210.10 (2020).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on August 13, 2021, **ORDERED THAT** –

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1-9 and 11-30 of the ’501 patent; claims 1-2, 4-6, 8-12, 14-22, 24-26, and 28-30 of the ’502 patent; claims 1-17 and 19-30 of the ’648 patent; claims 1-6, 8-9, 11, 14, 20-24, and 26-27 of the ’745 patent; and claims 7-9 of the ’127 patent; and whether an industry in the United States exists and/or is in the process of being established as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission’s Rules of Practice and Procedure, 19 C.F.R. 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is “wearable electronic devices with light-based pulse oximetry functionality and components thereof”;

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Masimo Corporation
52 Discovery
Irvine, CA 92618

Cercacor Laboratories, Inc.
15750 Alton Pkwy
Irvine, CA 92618

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

Apple Inc.
One Apple Park Way
Cupertino, CA 95014

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.13. Pursuant to 19 C.F.R. 201.16(e) and 210.13(a), as amended in 85 Fed. Reg. 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainants of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: August 13, 2021

**CERTAIN LIGHT-BASED PHYSIOLOGICAL
MEASUREMENT DEVICES AND COMPONENTS
THEREOF**

Inv. No. 337-TA-1276

Certificate of Service – Page 1

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **INSTITUTION OF INVESTIGATION** has been served upon the following parties as indicated, on **August 13, 2021**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

Complainants:

Masimo Corporation
52 Discovery
Irvine, CA 92618

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Email Notification of Availability for Download

Cercacor Laboratories, Inc.
15750 Alton Pkwy
Irvine, CA 92618

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Email Notification of Availability for Download

On Behalf of Complainants:

Jonathan Bachand, Esq.
KNOBBE, MARTENS, OLSON & BEAR, LLP
1717 Pennsylvania Avenue, NW, Suite 900
Washington, DC 20006
Email: Jonathan.Bachand@knobbe.com

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Email Notification of Availability for Download

Respondent:

Apple Inc.
One Apple Park Way
Cupertino, CA 95014

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Service to Be

**CERTAIN LIGHT-BASED PHYSIOLOGICAL
MEASUREMENT DEVICES AND COMPONENTS
THEREOF**

Inv. No. 337-TA-1276

Certificate of Service – Page 2

Completed by Complainants

Government Agencies:

Lynda Marshall
International Section, Antitrust Division
U.S. Department of Justice
450 5th Street NW, Room 11000
Washington, DC 20530

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Email Notification of Availability for Download

U.S. Bureau of Customs and Border Protection
Intellectual Property Rights Branch
Mint Annex Building
799 9th Street, NW, 7th floor
Washington, DC 20229

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Email Notification of Availability for Download

Elizabeth Kraus, Deputy Director
International Antitrust, Office of International Affairs
Federal Trade Commission
600 Pennsylvania Avenue, Room 498
Washington, DC 20580

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Email Notification of Availability for Download

Dale D. Berkley, Ph.D., J.D.
Office of the General Counsel, PHD, NIH Branch
National Institutes of Health
31 Center Drive
Bldg. 31, Rm. 47
Bethesda, MD 20892

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Email Notification of Availability for Download



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

August 13, 2021

Jonathan E. Bachand
Knobbe, Martens, Olson & Bear, LLP
1717 Pennsylvania Ave., NW, Suite 900
Washington, DC 20006

**Re: Certain Light-Based Physiological Measurement Devices and Components
Thereof
Inv. No. 337-TA-1276**

Dear Jonathan E. Bachand:

This letter is to advise you that the U.S. International Trade Commission has instituted an investigation pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). A copy of the Commission's notice of investigation is enclosed. Also enclosed is the Section 337 Mediation Program brochure. After reviewing the brochure, please sign and return the enclosed certification of receipt.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa R. Barton".

Lisa R. Barton
Secretary

Enclosures:

1. Notice of Investigation
2. Publication Regarding the Section 337 Mediation Program
3. Certification of Receipt of Mediation Materials



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

August 13, 2021

Masimo Corporation
52 Discovery
Irvine, CA 92618

**Re: Certain Light-Based Physiological Measurement Devices and Components
Thereof
Inv. No. 337-TA-1276**

Dear Sir/Madam:

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Lisa R. Barton
Secretary

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UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

August 13, 2021

Cercacor Laboratories, Inc.
15750 Alton Pkwy
Irvine, CA 92618

**Re: Certain Light-Based Physiological Measurement Devices and Components
Thereof
Inv. No. 337-TA-1276**

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Lisa R. Barton
Secretary

Enclosures:

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2. Publication Regarding the Section 337 Mediation Program
3. Certification of Receipt of Mediation Materials



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

August 13, 2021

Apple Inc.
One Apple Park Way
Cupertino, CA 95014

**Re: Certain Light-Based Physiological Measurement Devices and Components Thereof
Inv. No. 337-TA-1276**

Dear Sir/Madam:

This letter is to advise you that the United States International Trade Commission has instituted an investigation pursuant to Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). **Apple Inc.** is a named respondent in this investigation.

We are hereby serving you with a copy of the Complaint and the Notice of Investigation issued in this matter. Enclosed is a copy of the Code of Federal Regulations. Also enclosed is a the Section 337 Mediation Program brochure. After reviewing this brochure, please sign and return the enclosed certification of receipt.

Please note that the Notice requires a response to the allegations in the Complaint and the response must be received not later than twenty (20) days after the date of service of the Complaint. Failure to file a response may result in inferences being drawn against your interests.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa R. Barton".

Lisa R. Barton
Secretary

Enclosures:

1. Complaint
2. Notice of Investigation
3. Code of Federal Regulation
4. Publication Regarding the Section 337 Mediation Program
5. Certification of Receipt of Mediation Materials



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

August 13, 2021

Lynda Marshall
International Section
Antitrust Division
U.S. Dept of Justice
450 5th Street NW, Room 11000
Washington, DC 20530

**Re: Certain Light-Based Physiological Measurement Devices and Components
Thereof
Inv. No. 337-TA-1276**

Dear Lynda Marshall:

This letter is to advise you that the United States International Trade Commission has instituted an investigation pursuant to Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). A copy of the Notice of Investigation is enclosed. Non-confidential copies of the Complaint and any supplements filed in the investigation will be provided upon request. Requests should be directed to Docket Services at (202) 205-1802.

If you have any questions concerning this investigation, please contact the Commission Investigative Attorney whose name and telephone number appear in the enclosed Notice.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa R. Barton".

Lisa R. Barton
Secretary

Enclosure:

1. Notice of Investigation



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

August 13, 2021

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

**Re: Certain Light-Based Physiological Measurement Devices and Components
Thereof
Inv. No. 337-TA-1276**

Dear Dax Terrill:

This letter is to advise you that the United States International Trade Commission has instituted an investigation pursuant to Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). A copy of the Notice of Investigation is enclosed. Non-confidential copies of the Complaint and any supplements filed in the investigation will be provided upon request. Requests should be directed to Docket Services at (202) 205-1802.

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Lisa R. Barton
Secretary

Enclosure:

1. Notice of Investigation



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

August 13, 2021

Elizabeth Kraus, Deputy Director
International Antitrust, Office of
International Affairs
Federal Trade Commission
600 Pennsylvania Avenue, Room 498
Washington, DC 20580

**Re: Certain Light-Based Physiological Measurement Devices and Components
Thereof
Inv. No. 337-TA-1276**

Dear Elizabeth Kraus:

This letter is to advise you that the United States International Trade Commission has instituted an investigation pursuant to Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). A copy of the Notice of Investigation is enclosed. Non-confidential copies of the Complaint and any supplements filed in the investigation will be provided upon request. Requests should be directed to Docket Services at (202) 205-1802.

If you have any questions concerning this investigation, please contact the Commission Investigative Attorney whose name and telephone number appear in the enclosed Notice.

Sincerely,

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Lisa R. Barton
Secretary

Enclosure:

1. Notice of Investigation



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

August 13, 2021

Dale D. Berkley, Ph.D., J.D.
Office of the General Counsel, PHD, NIH Branch
National Institutes of Health
31 Center Drive
Bldg. 31, Rm. 47
Bethesda, MD 20892

**Re: Certain Light-Based Physiological Measurement Devices and Components
Thereof
Inv. No. 337-TA-1276**

Dear Dale Berkley:

This letter is to advise you that the United States International Trade Commission has instituted an investigation pursuant to Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). A copy of the Notice of Investigation is enclosed. Non-confidential copies of the Complaint and any supplements filed in the investigation will be provided upon request. Requests should be directed to Docket Services at (202) 205-1802.

If you have any questions concerning this investigation, please contact the Commission Investigative Attorney whose name and telephone number appear in the enclosed Notice.

Sincerely,

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Lisa R. Barton
Secretary

Enclosure:

1. Notice of Investigation