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Congress of the United States
House of Representatives
Washington, DC 20515

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November 23, 2022

Chairman David S. Johanson
United States International Trade Commission
500 E Street SW
Washington, DC 20436

Commissioner Jason E. Kearns
United States International Trade Commission
500 E Street SW
Washington, DC 20436

Commissioner Amy A. Karpel
United States International Trade Commission
500 E Street SW
Washington, DC 20436

Commissioner Rhonda K. Schmidtlein
United States International Trade Commission
500 E Street SW
Washington, DC 20436

Commissioner Randolph J. Stayin
United States International Trade Commission
500 E Street SW
Washington, DC 20436

Dear Chairman Johanson and Commissioners Schmidtlein, Kearns, Stayin, and Karpe:

I write today to associate myself with the letter dated October 14, 2022 (attached) submitted to the Commission by my colleagues Representatives Swalwell, Lofgren, Eshoo, Beyer, Panetta, and Sánchez with respect to Investigation No. 337-TA-1266. I respectfully request that the Commission treat the undersigned as original signatories of that letter, which I adopt in its entirety.

Sincerely,

J. Luis Correa
Member of Congress

Congress of the United States

Washington, DC 20515

October 14, 2022

Chairman David S. Johanson
United States International Trade Commission
500 E Street SW
Washington, DC 20436

Commissioner Rhonda K. Schmidlein
United States International Trade Commission
500 E Street SW
Washington, DC 20436

Commissioner Jason E. Kearns
United States International Trade Commission
500 E Street SW
Washington, DC 20436

Commissioner Randolph J. Stayin
United States International Trade Commission
500 E Street SW
Washington, DC 20436

Commissioner Amy A. Karpel
United States International Trade Commission
500 E Street SW
Washington, DC 20436

Re: Inv. No. 337-TA-1266: Certain Wearable Electronic Devices With ECG Functionality and Components Thereof

Dear Chairman Johanson and Commissioners Schmidlein, Kearns, Stayin, and Karpel:

We write today to highlight public interest concerns if the initial International Trade Commission (ITC) determination is upheld during your independent review. Failure to overturn this initial determination, which may include an exclusion order to ban the importation of all Apple wearable devices across the United States, could result in severe negative impacts to businesses and millions of Americans.

Currently, the ITC is considering a dispute between AliveCor, Inc. and Apple, Inc., under Section 337 of the Tariff Act of 1930 (Tariff Act).¹ Enforcement provisions under Section 337 include the complete importation ban of a foreign product that infringes upon a domestic patent.² AliveCor's complaint alleges patent violations of its heart-health monitoring components within Apple's wearable devices that were previously imported and sold across the United States. In June, an ITC Administrative Law Judge (ALJ) issued an initial determination recommending the ITC find that Apple infringed upon two of three AliveCor's patents. The review of this initial determination is now before the ITC Commissioners.

In your review, the Tariff Act requires consideration of "public interest" factors before issuing an exclusion order. Public interest factors include: 1) public health and welfare; 2) competitive conditions in the United States economy; 3) the production of like or directly competitive articles in the United States; and 4) the effect on United States consumers.³

While we take no position on the underlying merits of the patent dispute between the parties in this litigation, we are concerned that issuing an exclusion order against Apple's wearable devices would present a significant

¹ Inv. No. 337-TA-1266

² 19 U.S.C. § 1337(a)

³ 19 U.S.C. § 1337(c)

detriment to American consumers. We ask that our concerns be included as part of the record under consideration by the ITC Commissioners who will soon finalize its review of the ALJ's initial determination.

Speaking directly to the public health and welfare standard, an exclusion order would immediately limit access to Apple's heart-health monitoring wearable devices which are already widely available to the public. A complete restriction would add significant barriers to health and wellness features such as atrial fibrillation, or Afib monitors, which promptly alert users to previously undetected heart conditions. Heart-health information is also provided to valuable organizations such as the American Heart Association, Mayo Clinic, Northwestern University, and the National Institutes of Health (NIH) to conduct lifesaving research on serious conditions like reducing the risk of stroke and other cardiovascular conditions.⁴

Concurrently with this ITC investigation, the Patent Trial and Appeal Board of the United States Patent and Trademark Office (PTAB) is undertaking an *inter partes* review (IPR) to determine the patentability of AliveCor's asserted patents. As you may be aware, the purpose of the PTAB is to adjudicate the patentability of issued patents challenged by third parties. While PTAB judges continue to assess the patentability of these claims, their final determinations may add insight into the proceedings before the ITC.

We recognize the unique challenges facing the ITC in protecting American consumers from unfair trade practices and infringements on intellectual property rights, including as an adjudicator of claims between domestic and foreign entities. Leading up to the ITC's final determination in this case, we encourage close consideration of the public health benefits which Apple's heart-health monitoring devices bring to the American consumer. Additionally, we recommend allowing the PTAB to finalize its own written decision stemming from the patentability dispute between AliveCor and Apple before making any final determination on the merits of this claim.

We look forward to your prompt attention to this matter and appreciate your dedication towards an equitable outcome that benefits American consumers.

Sincerely,



Eric Swalwell
Member of Congress



Zoe Lofgren
Member of Congress

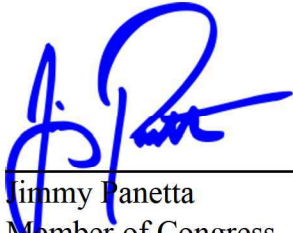
⁴ See, e.g., *Can Apple Watch reduce patients' reliance on blood thinners?*, Northwestern University, Aug. 29, 2022, available at, <https://news.northwestern.edu/stories/2022/08/30m-grant-to-study-wearables-stroke-prevention-in-patients-with-atrial-fibrillation/>

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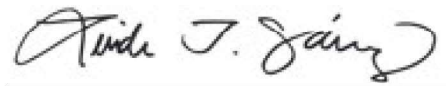
Donald S. Beyer Jr.
Member of Congress

A blue ink handwritten signature of Anna G. Eshoo in a cursive style, positioned above a horizontal line.

Anna G. Eshoo
Member of Congress

A blue ink handwritten signature of Jimmy Panetta in a cursive style, positioned above a horizontal line.

Jimmy Panetta
Member of Congress

A blue ink handwritten signature of Linda T. Sánchez in a cursive style, positioned above a horizontal line.

Linda T. Sánchez
Member of Congress