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## Apple Pause on Holiday Watch Sales Points to Legal Bind It Faces

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December 19, 2023

- Company's prospects for relief from sales ban are dwindling
- Experts surprised Apple didn't make other arrangements

Apple Inc.'s plan to halt online sales of its smartwatch four days before Christmas to comply with a regulator's order shows that it's in a legal jam.

The company has known for almost two months that a ban imposed by the International Trade Commission would take effect Dec. 25 unless it persuaded the Biden administration to intervene — or worked out a settlement with Masimo Corp., the medical device maker that accused it of copying patented technology for measuring blood-oxygen levels.

The iPhone maker now is racing to make software fixes in a work-around effort to get the product back on the market next year and salvage the \$17 billion business generated by its smartwatch sales. The company's preparations to pull a big moneymaker off the market in the busy holiday season signals that its prospects for relief from the ban are dwindling.

Read More: [Apple Plans Rescue for \\$17 Billion Watch Business in Face of Ban](#)

Intellectual property lawyer James Gagen said it's striking that in its long-running dispute with Masimo, Apple hadn't begun the process of obtaining approval for alternative designs earlier or made other arrangements to avoid a halt in sales.

"Normally we would want to have a fallback position so that we could ensure continued supply," said Gagen, of the firm Allen & Overy LLP.

Patent disputes of the sort that arose between Masimo and Apple in 2020 typically settle before they get to the point where one side is facing a potential sales ban. In this case, Masimo's allegations of wrongdoing ran deeper than patents: The Irvine, California-based company accused Apple of poaching its employees and stealing trade secrets worth billions of dollars — which the iPhone maker denied. A jury trial this year ended in a stalemate.

Apple could still settle with Masimo, though that's a route the Cupertino, California-based giant typically prefers not to take.

Bloomberg Intelligence has estimated that after Masimo gained leverage with its victory at the trade commission, Apple could negotiate a multiyear license in the range of \$60 million to \$300 million in annual royalties.

Representatives of Apple and Masimo didn't immediately respond to requests for comment.

Apple has said the ruling from the ITC is erroneous and that it plans to appeal.

The ban "demonstrates that even the world's most powerful company must abide by the law," Masimo has said. Its Chief Executive Officer Joe Kiani has said Apple has tested updated Masimo technology that could, if licensed, resolve the patent infringement.

Apple has a few days left to persuade the White House to overrule the ITC ban, but such vetoes are rare. There has been just one in the last decade, when the Obama administration in 2013 halted an iPhone ban stemming from a patent dispute with Samsung Electronics Co.

The fact that the only White House veto issued in a decade was in Apple's favor might have given the company the impression it could clinch a political victory after a judicial loss, said Nicholas Matich, a former acting general counsel for the US Patent and Trademark Office.

"Apple may be feeling a little bit of invincibility," said Matich, who is now at law firm McKool Smith PC.

Still, Matich doesn't think Apple is at a dead end. A software workaround seems like a viable strategy to rescue its product without making concessions to Masimo, he said.

"The patent suit pertains to one very specific feature of Apple's product," he said. "Apple can remove the feature and then it's not infringing."

--With assistance from Christopher Yasiejko and Mark Gurman.