Apple's Argument to Avoid Import Ban on Watches Is a Tough Sell for the Federal Circuit

IAM

Joshua Budwin and Rebecca Traber

July 18, 2025

[Link]

The tech giant pushed for a narrow reading of the ITC's domestic industry requirement and suggested Masimo did not meet it

In a bid to escape the US International Trade Commission's import ban on Apple watches infringing Masimo's patents, Apple is seeking to "rewrite" the statutory domestic industry requirement by advancing an overly narrow interpretation.

In 2023, the ITC found that some Apple watches using blood-oxygen reading technology infringed Masimo's patents and that Masimo had a domestic industry. It issued an import ban on the Series 9 and Ultra 2 watches. In response, Apple appealed; oral argument was held in front of the US Court of Appeals for the Federal Circuit on 7 July.

Patent enforcement at the ITC is unique because it can only ban imports of infringing Apple watches if Masimo can prove that it has a domestic industry related to the patents being enforced. At issue in this appeal is whether Masimo's iterative process of product development – starting with prototypes that did not implement the patents being enforced but culminating with patent-practicing products – complied with Masimo's (and the ITC's) requirement to show the existence of a domestic industry. While the specifics are a matter of first impression, the Federal Circuit has been consistent in recent years in its broad interpretation of the domestic industry requirement. Persuading otherwise will be difficult.

Does Masimo have domestic industry?

Section 337 of the Tariff Act of 1930 provides relief for companies attempting to stop the importation of patent-infringing products, but only if "an industry in the United States, relating to the articles protected by the patent . . . exists or is in the process of being established". This requires a showing of "an industry" within the US (the economic prong), related to the patented articles (the technical prong).

Apple argued that the ITC exceeded its authority under Section 337 when it banned the import of Apple watches. While the briefing also considered other issues, the Federal Circuit and parties were mostly interested in whether Masimo had the required domestic industry. Joseph Mueller, Apple's attorney, argued that the very same product must be evaluated for both the economic and technical prongs, and that the economic evaluation cannot include research and development engaged in as part of an iterative design process.

In response, Joseph Re, Masimo's attorney, argued that Apple was attempting to "rewrite the law". The statute does not require perfect symmetry between the products considered for the economic and technical prongs, and the statutory language is broad enough to encompass the research and development investments engaged in during an iterative design process starting with a non-patent practicing article, so long as that process culminates in a patent practicing article.

Apple's challenge ignores facts

Apple's assertion that the ITC relied on insufficient evidence carves away the full breadth of the evidence considered by the commission, characterising the opinion as reliant solely on CAD drawings. Both the ITC and Masimo contest this characterisation, which unfairly ignores the extensive record developed and discussed in the detailed factual findings in the commission's opinion.

As the ITC's brief makes clear, the commission evaluated a multi-year process of product development by Masimo, with each product iterating and improving upon the previous one. Apple insists that this history is insufficient to constitute an "article" practicing the patent as required by Section 337. As one Federal Circuit judge noted, Apple's view would require each new prototype to be considered as part of a distinct domestic industry, without consideration of the iterative design process engaged in by commercial actors (including Apple itself).

The Masimo protypes considered by the ITC for the technical prong were part of the same product that indisputably practiced the patents at-issue once it was further along in its development process. Apple asserted that the use of these earlier non-patent embodying prototypes was equivalent to Ford claiming that research related to the Model-T could still be relevant for a product today. Apple's argument ignores that the ITC required a clear relationship to the articles protected by the patent – a fact Ronald Traud, the ITC attorney, pushed back strongly on.

Overall, this question is one of facts, seriously considered and evaluated using extensive evidence by the ITC. As the Federal Circuit can (and should) evaluate factual findings like this under the substantial evidence standard, the commission's domestic industry finding in Masimo's favour should be allowed to stand. Since the Federal Circuit has clearly held

that the commission's factual decisions should be affirmed as long as the determination is "reasonable and supported by the record as a whole, even if some evidence detracts from the commission's conclusion," Apple's argument is unpersuasive. The disputes about the evidence demonstrate the wisdom of this standard of review. Both parties characterise the copious and confidential record slightly differently, and the ITC's care in carefully evaluating years of protypes and research is difficult to replicate at the appellate level.

Demand for symmetry is unsupported

For the economic prong, Masimo relied in part on the labour investments involved in researching and developing the Masimo watch, sold after filing the initial complaint, including the prototypes. Apple does not dispute whether these expenditures were significant; it only argues that such expenditures are inappropriate to consider. However, the labour investments indisputably led to patent-practicing prototypes and, therefore, relate to the domestic industry. For reasons that are unclear in the record, it does not seem that Masimo advanced a theory related to a domestic industry "in the process" of being established, and there was some discussion of a potential remand to develop additional facts related to this statutory provision.

Regardless, the statute makes clear there is no symmetry requirement for the product considered by the economic requirement and the technical requirement, as Masimo's attorney explained. The statute applies to domestic industries "relating to the articles protected by the patent". It does not require the articles to be finished or complete, if the industry relates to the protected article. In rebuttal, Apple's attorney was pressed on how his demand for symmetry between the products could be consistent with *Motorola*, which held that significant investment directed toward component of the patent-practicing article was sufficient to demonstrate a domestic industry. Here, Masimo indisputably invested significantly in an overall project of product development, culminating in a patent-practicing product sold to consumers.

As the Federal Circuit recently reinforced in *Lashify*, Section 337 states that a domestic industry exists if there is "significant employment of labor or capital". It does not require that the labour be manufacturing or production; there are no carveouts or limitations in the statute.

The statutory domestic industry requirement is broad, and the Federal Circuitunderlined in *Lashify* that it should not be read narrowly. Additionally, the Federal Circuit is likely to be deferential to the ITC's detailed factual findings. Apple's view ignores the commercial realities of iterative design, does not have clear support in statute or precedent and would require new fact-finding on appeal. While this is an issue of first impression, Apple's interpretation would unfairly constrain the breadth of the domestic industry requirement.

Joshua Budwin

Partner

McKool Smith

jbudwin@mckoolsmith.com

Rebecca Traber

Summer associate

McKool Smith