IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

APPLE INC., *Plaintiff*, v. MASIMO CORPORATION and SOUND UNITED, LLC, *Defendants*.	Civil Action No. **JURY TRIAL DEMANDED**

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Apple Inc. ("Apple"), for its complaint against Defendants Masimo Corporation ("Masimo") and Sound United, LLC ("Sound United") (together, "Defendants"), alleges as follows:

INTRODUCTION

1. Apple is world-renowned for creating innovative products that people love. Apple produces those innovative products through its significant investment in research and development in technology and product design. Apple's innovations have been recognized with thousands of patents globally.

2. In 2015, Apple released Apple Watch, a revolutionary consumer wearable device. Apple Watch pairs cutting-edge technology with a beautiful design and is made from the highest quality materials. As a result of Apple's investments and advances in consumer wearables, Apple Watch is the best-selling smart watch of all time. Apple protects these investments and advances through its intellectual property (IP) rights, including patents.

3. Masimo is a hospital equipment manufacturer that has never been in the consumer wearables business.[1] But recently, Masimo released its first watch, direct to consumers, called the Masimo W1. Rather than innovating and developing a product independently, Masimo copied Apple while filing lawsuits to try to prevent sales of Apple Watch.

Apple Watch	Masimo W1

4. Masimo's copying violates Apple's patent rights. Apple brings this action to stop Masimo's infringement.

[1] *See* Company Evolution: About Masimo, MASIMO CORP., https://www.masimo.com/company/masimo/evolution/ (last visited Oct. 13, 2022).

THE PARTIES

5. Plaintiff Apple is a California corporation with its principal place of business at One Apple Park Way, Cupertino, California 95014.

6. Defendant Masimo is a Delaware corporation with its principal place of business at 52 Discovery, Irvine, California 92618. Masimo has appointed the Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808 as its registered agent for service of process.

7. Defendant Sound United is a Delaware limited liability company with its principal place of business at 5541 Fermi Court, Carlsbad, CA 92008. On information and belief, Sound United is a wholly owned subsidiary of Masimo. Sound United has appointed the Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808 as its registered agent for service of process.

8. Joinder of Masimo and Sound United in this action and consolidation for trial is appropriate under 35 U.S.C. § 299. Apple asserts claims for relief jointly, severally, or in the alternative against Masimo and its wholly owned subsidiary Sound United arising from the making, using, importing into the United States, offering for sale, and/or selling of the same infringing product, the W1. Common questions of fact will arise in this action relating to Defendants' infringement and liability.

JURISDICTION AND VENUE

9. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, 35 U.S.C. §§ 100 *et seq.*

10. This Court has personal jurisdiction over Defendants because Defendants are entities each organized and existing under the laws of the State of Delaware.

11. Venue is proper in this Court under 28 U.S.C. § 1400(b) because Defendants are entities each organized and existing under the laws of the State of Delaware, and therefore each resides in the District of Delaware.

BACKGROUND

12. Apple was founded in 1976. Since then, Apple has made countless significant contributions in a variety of fields, including computers, software, telecommunications, integrated circuits, user interfaces, and industrial design. Apple's successful products include not only wearables, but also smartphones, tablets, desktop and laptop computers, operating systems, music products, professional-grade audio and video production software, semiconductor chips, and more. The United States Patent and Trademark Office ("USPTO") has awarded thousands of patents to Apple for its contributions to science and the useful arts. Apple's patents include U.S. Patent Nos. D735,131; D883,279; D947,842; and D962,936 (the "Patents-in-Suit").

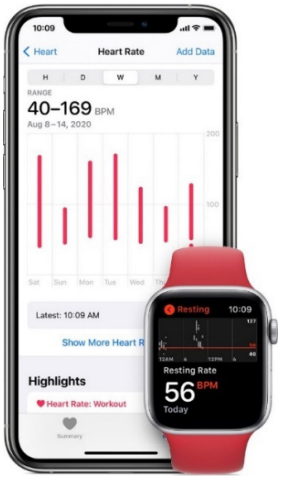
13. Defendants' accused products are one or more products that infringe the Patents-in-Suit, including the Masimo W1 device ("Device") and its charger ("Wireless Charger") (together, "W1").[2]

I. APPLE REVOLUTIONIZES WEARABLE TECHNOLOGY AND DESIGN

14. Apple released the first-generation Apple Watch in April 2015, and it quickly became the best-selling smart watch. Since then, new line ups of Apple Watch have been released with powerful new technology. In September 2022, Apple announced the newest generation of Apple Watch products, including Apple Watch Series 8, the latest Apple Watch SE, and the all-new Apple Watch Ultra.

[2] Masimo W1 User's Guide at 7, *available at* https://www.masimopersonalhealth.com/pages/masimo-w1-support (last visited Oct. 13, 2022).

15. Apple Watch integrates seamlessly with popular Apple products such as the iPhone and expands their capabilities. It allows wearers to conveniently and intuitively access many of their favorite features. For example, users can receive and respond to notifications from their iPhone, place and answer phone calls, listen to music, download apps, and access features such as Apple Maps and Siri—all on a device conveniently located on the wearer's wrist. Apple Watch also uses this position on the wearer's wrist to introduce new capabilities, such as advanced fitness tracking and health metrics including heart health, sleep, women's health, and mobility. And features like Fall Detection, Crash Detection, and Emergency SOS can also help users call for help in the moment they need it. These features and others work in tandem with apps on the wearer's iPhone.



Health App and Apple Watch

16. Every Apple Watch includes a biosensor module on the back that rests on the wearer's wrist. The biosensor module contains LEDs, photodiodes, electrodes, and other components to enable measurement of health and wellness metrics such as heart rate, blood oxygen, and even electrocardiogram (ECG). The technology that enables these features is paired with a unique, eye-pleasing design and made of high-quality materials. Apple has updated the biosensor module and its design several times.

L to R: Apple Watch (first generation), Apple Watch Series 4, and Apple Watch Series 7

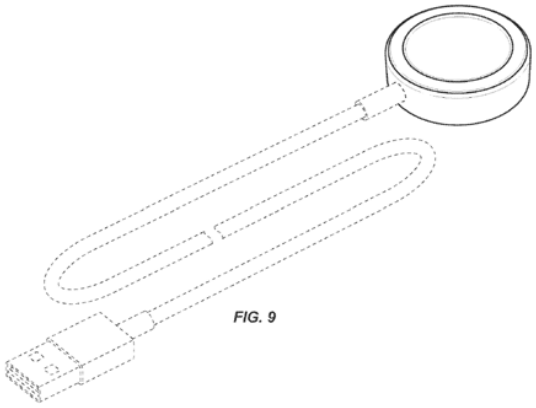
Apple Watch Ultra (2022)

17. Apple Watch also contains a receive coil that inductively couples to a transmit coil in the charging "puck" to wirelessly charge Apple Watch's battery. The puck contains an internal permanent magnet that enables the user to connect and disconnect Apple Watch from its charger easily and effortlessly. Implementing wireless charging allowed Apple to greatly simplify not only the charging process, but also reduce its footprint.

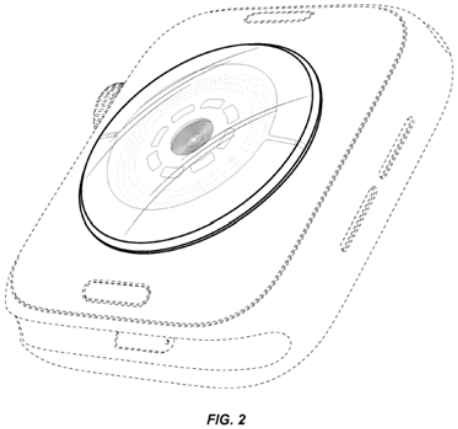
Apple Watch Magnetic Charging Cable

Charging an Apple Watch

18. Apple has patented these and other ornamental designs.



U.S. Patent No. D735,131
Figure 9



U.S. Patent No. D883,279
Figure 2

19. The success of Apple's products is attributable not only to Apple's technological innovations, but also to Apple's careful attention to industrial design. Apple Watch is no exception. Apple's products, including Apple Watch, are meticulously designed to be eye-pleasing. Aesthetic themes and cues run through all of Apple's products, from the iPhone to Apple Watch.

20. Apple's products use the highest quality materials, such as high-grade aluminum, composites, ceramics, glass, and sapphire. Apple offers Apple Watch in several finishes and offers a variety of bands, straps, and loops to suit each wearer's preference. Apple also offers Apple Watch in collaboration with high-profile brands such as Hermès and Nike. Apple Watch's aesthetic appeal to a wide variety of consumer tastes is important to the product's success.

Apple Watch Nike

Apple Watch Hermès

Apple Watch Bands

II. MASIMO TAKES UNFAIR SHORTCUTS FOR ITS WATCH

21. Since its founding in 1989, Masimo has been a hospital equipment company.[3] Until recently, Masimo never disclosed an intent to offer consumer wearables to the general public.[4] In fact, as detailed below, Masimo had never even disclosed its intent to sell a consumer wearable until after it began its litigation campaign against Apple targeting Apple Watch—which came many years after Apple Watch revolutionized the consumer watch market.

[3] *See* Company Evolution: About Masimo, MASIMO CORP., https://www.masimo.com/company/masimo/evolution/ (last visited Oct. 13, 2022).
[4] *Id.*

22. Teams across Apple worked for years to develop Apple Watch into a successful, innovative, and appealing product. In contrast, Masimo copied from Apple Watch and is free-riding on Apple's hard work. Rather than develop its own innovations to make its W1 attractive to consumers, Masimo copied Apple Watch and brought carefully timed lawsuits to try to kick Apple out of the market while Masimo and its recently acquired consumer division, Sound United, launched the W1.

23. Masimo is and has always been a hospital equipment company. Its product offerings are primarily directed at medical professionals for use in hospitals or other caregiving settings, such as the following products:

Masimo Radical
(2000)

Masimo Rad-9
(2006)

Masimo Rad-87
(2008)

Radical-7
(2011)

Root
(2014)

Rad-97
(2017)

24. In fact, the entire "Company Evolution" on Masimo's website is devoted to showcasing hospital products, and not consumer wearables.[5] Masimo portrays its 33-year history as devoted to hospital products and the patient sensors that go with those products.[6]

25. Masimo's business revolves around selling hospital products that use disposable biometric sensors, and the subsequent sale of additional disposable sensors.[7] For this reason, Masimo touts its "installed base" of hospital equipment in its annual reports.[8] Masimo derives the majority of its revenue from, and is "highly dependent" on, its Masimo SET platform, Masimo rainbow SET platform and related products, which Masimo describes as its "primary product offerings."[9]

26. For years, Masimo's focus was clinical-grade pulse oximetry. Following years of litigation, Masimo received a steady stream of patent licensing revenue from Nellcor (Medtronic),

[5] Company Evolution: About Masimo, MASIMO CORP., https://www.masimo.com/company/masimo/evolution/ (last visited Oct. 13, 2022).
[6] *Id.*
[7] *See, e.g.*, Masimo (MASI) Q3 2021 Earnings Call Transcript, MOTLEY FOOL TRANSCRIBING (Oct. 27, 2021), https://www.fool.com/earnings/call-transcripts/2021/10/27/masimo-masi-q3-2021-earnings-call-transcript/ ("The year-over-year improvement was primarily driven by a more favorable revenue mix as we delivered strong revenue performance from our higher margin sensors in combination with the anticipated decline in sales for our lower margin technology boards and instruments."); Kenneth Squire, *How Activist Politan Capital May Find An Opportunity to Trim Costs, Build Value at Masimo*, CNBC (Aug 20, 2022), https://www.cnbc.com/2022/08/20/how-activist-politan-capital-may-find-an-opportunity-to-trim-costs-build-value-at-masimo.html. ("This is a razor/razor blade business model with the devices using single-use sensors pursuant to five-year contracts resulting in 80% recurring revenue for Masimo.").
[8] *E.g.*, Masimo Corporation, *2016 Annual Report* at 7, *available at* https://investor.masimo.com/financials/annual-reports/default.aspx (last visited Oct. 13, 2022).
[9] Masimo Corporation, *Fiscal Year 2021 Form 10-K Annual Report*, at 38, *available at* https://investor.masimo.com/financials/sec-filings/sec-filings-details/default.aspx?FilingId=15576856 (last visited Oct. 13, 2022) [hereinafter "Masimo F.Y. 2021 10-K"].

its only major competitor, and other companies.[10] But around 2019, Masimo's patents and license agreements began to expire, and the royalty revenue dried up.[11]

	Year Ended January 2, 2021	Year Ended December 28, 2019	Year Ended December 29, 2018	Year Ended December 30, 2017[1]	Year Ended December 31, 2016[1]
	(in thousands, except per share amounts)				
Statement of Operations:					
Revenue:					
Product	$ 1,143,744	$ 936,408	$ 829,874	$ 738,242	$ 673,962
Royalty and other revenue	—	1,429	28,415	52,006	38,936
Total revenue	1,143,744	937,837	858,289	790,248	712,898

27. As Masimo told investors in its most recent Form 10-K, "[c]ertain of our patents related to our technologies have begun to expire. Upon the expiration of our issued or licensed patents, we generally lose some of our rights to exclude competitors from making, using, selling

[10] *See, e.g.*, *Court Upholds $134.5 Million Verdict Against Nellcor for Infringement of Masimo's Patents*, MASIMO CORP. (July 16, 2004), https://www.masimo.com/company/news/news-media/2004/#news-2f5e00c6-d7af-4d79-92bb-a3345ea49465; *Masimo and Nellcor Announce Settlement of Patent Litigation*, MASIMO CORP. (Jan. 23, 2006), https://www.masimo.com/company/news/news-media/2006#news-76f2c84e-7857-4cff-a364-8a7af3b2221e ($330 million payments and ongoing royalty); *Masimo and Dolphin Announce Settlement of Patent Dispute*, MASIMO CORP. (April 27, 2006), https://www.masimo.com/company/news/news-media/2006#news-ce7f5903-c045-4afa-8c90-4e81ca557fb5; *Masimo and Respironics Announce an Expanded Relationship, the Adoption of Masimo Rainbow SET Pulse CO-Oximetry, and Settlement of Patent Dispute*, MASIMO CORP. (August 1, 2006), https://www.masimo.com/company/news/news-media/2006#news-0cac0538-250f-4c11-b412-217e20006e5e; *Court Upholds Award of $467 Million to Masimo for Philips' Patent Infringement*, MASIMO CORP. (May 19, 2015), https://www.masimo.com/company/news/news-media/2015/#news-3497b147-8519-44ce-8b05-c7c14db3d95d; *Masimo Announces Amendment to Nellcor Royalty Agreement*, MASIMO CORP. (Sept. 2, 2016), https://www.masimo.com/company/news/news-media/2016/#news-0f61fb9f-0af5-4245-b4e2-a329ad0562a6 ("Medtronic will continue to pay Masimo a royalty of 7.75% for its current pulse oximetry products sold in the United States through October 6, 2018. . ."); *Philips and Masimo Sign Multi-Year Business Partnership Agreement in Patient Monitoring and Select Therapy Solutions*, MASIMO CORP. (Nov. 7, 2016), https://www.masimo.com/company/news/news-media/2016/#news-3c555bf2-2e14-4eaa-abc0-5b723675c1e9 ("Agreement ends all pending lawsuits between the two companies and . . . includes a cash payment of USD 300 million by Philips to Masimo.").

[11] Masimo Corporation, *Fiscal Year 2020 Form 10-K Annual Report*, at 66, *available at* https://investor.masimo.com/financials/sec-filings/sec-filings-details/default.aspx?FilingId=14736544 (last visited Oct. 18, 2022) [hereinafter "Masimo F.Y. 2020 10-K"].

or importing products using the technology. . ."[12] For the first time in a long while, Masimo would have to compete without the benefit of patent exclusivity.

28. Around the same time, Masimo noticed that the nature of health technology was changing—driven by innovative companies like Apple—to evince a new focus on consumer health and general well-being.[13] In 2018, Masimo noted to its investors that leading technology companies, including specifically Apple, had expanded into consumer health technology.[14] At the close of its fiscal year 2020—the year Masimo sued Apple in federal court—Masimo again referenced Apple's success in health-oriented wearables in its 10-K and remarked: "If we are unable to successfully compete against them, our financial performance could decline."[15] And in 2021—the year Masimo sued Apple at the ITC—it again referenced Apple, this time specifically highlighting Apple Watch Series 6 and Series 7.[16] It told its investors pointedly: "To effectively compete, we may need to expand our product offerings and distribution channels. . ."[17] Seeing Apple's continued success, Masimo tried to pivot to focus on the consumer to stay competitive. But Masimo, having focused only on clinical settings for decades, had already fallen behind.

29. Masimo had never designed a consumer wearable.[18] Delivering a high-quality product to market from scratch would take years of investment and innovation, but Masimo, already behind the curve, wanted to get there faster. As explained below, Masimo took shortcuts.

[12] Masimo F.Y. 2021 10-K at 43.
[13] Masimo F.Y. 2021 10-K at 39.
[14] Masimo Corporation, *Fiscal Year 2018 Form 10-K Annual Report*, at 34, *available at* https://investor.masimo.com/financials/sec-filings/sec-filings-details/default.aspx?FilingId=13255271 (last visited Oct. 18, 2022).
[15] Masimo F.Y. 2020 10-K at 33.
[16] Masimo F.Y. 2021 10-K at 39.
[17] *Id.*
[18] Prior to the W1, Masimo's only consumer products were consumer versions of its fingertip pulse oximeters (iSpO2 and MightySat), which "account for a very, very tiny portion of [Masimo's]

30. In January 2020, Masimo brought a patent lawsuit against Apple targeting Apple Watch.[19] In that case, access to Apple's confidential information and source code for various models of Apple Watch, including details of its construction and functionality, was provided to a board member of Cercacor—a spin-off from Masimo that focuses on research and development.[20] That was two years before Masimo released the W1 to the general public.

31. In June 2021, Masimo filed a complaint before the U.S. International Trade Commission (ITC), an administrative agency, seeking an order that bans Apple Watch from being imported into the United States.[21] According to the public complaint, Masimo's ITC lawsuit claimed that Apple Watch allegedly infringed Masimo patents related to pulse oximetry.[22] But in the months that followed, a more nefarious potential strategy of this lawsuit came to light: to remove Apple Watch from the market and make way for Masimo's own watch.

32. In a Statement of Public Interest—a filing required to bring an ITC lawsuit—Masimo told the ITC that "no public interest concerns exist" with banning importation of Apple Watch. For example, Masimo claimed that the ban would not raise public health, safety, or welfare concerns because "Masimo offers ***pulse oximetry devices*** with reliable ***medical grade***

overall business." *MASI – Masimo Corp. at Deutsche Bank Health Care Conference*, THOMSON REUTERS STREETEVENTS (May 8, 2018) (statement of Eli Kammerman, VP of Business Development & Investor Relations at Masimo), Exhibit E.

[19] *Masimo Corp. v. Apple Inc.*, Complaint, D.I. 1, No. 20-cv-48-JVS-JDE (C.D. Cal.).

[20] *See Masimo Corp. v. Apple Inc.*, D.I. 61-1 at 36–49, No. 20-cv-48-JVS-JDE (C.D. Cal.); *see also id.* D.I. 67 ¶ 9.3. Masimo and Cercacor retain a close relationship and have a significant technology cross-license agreement. Masimo's CEO and Chairman Joe Kiani is also the CEO and Chairman of Cercacor. *See* Masimo F.Y. 2021 10-K at 25; *see also* Who We Are, CERCACOR LABORATORIES, *available at* https://www.cercacor.com/pages/about-us-team (last visited Oct. 13, 2022) ("[Masimo CEO] Joe Kiani has ultimate oversight of [Cercacor's] marketing, product development, staffing and other key functions.").

[21] Complaint (Public Version) at ¶ 7, *In the Matter of Certain Light-Based Physiological Measurement Devices and Components Thereof*, Inv. No. 337-TA-1276 (Int'l Trade Comm. Jun. 29, 2021) [hereinafter *ITC Action*].

[22] *Id.* ¶¶ 39–76.

measurements, directly to consumers."[23] Masimo also stated that "[e]ven if smartwatches were necessary for some important public interest function, Apple ***and other third parties*** can provide an adequate supply of alternatives to consumers."[24]

33. In its ITC complaint, Masimo identified an alleged "Masimo Watch" as a "domestic industry" product for four of its patents.[25] On information and belief, no commercial "Masimo Watch" existed at the time Masimo filed its ITC lawsuit in June 2021—rather, it was hastily developed during litigation.[26]

34. Masimo, while trying to block importation or sale of Apple Watch, was also secretly copying it. Masimo hid its copying until the W1 was ready for the public.

35. Masimo unveiled the W1 to the public in January 2022—with the ITC lawsuit ongoing—at a conference in Dubai. At the conference, Masimo executives demonstrated the W1 to attendees and gave interviews to the media.

[23] Complainants' Statement on the Public Interest (Public Version) at 2–3, *ITC Action* (Jun. 29, 2021).
[24] *Id*. at 4.
[25] Order No. 32: Granting-in-Part and Denying-in-Part Respondent's Motion to Strike and Preclude Reliance on Complainants' Domestic Industry Contentions (Public Version) at 1–2, *ITC Action* (May 5, 2022).
[26] *See* Order No. 31: Denying Respondent's Motion For Sanctions (Public Version) at 2, *ITC Action* (April 28, 2022) (explaining Masimo "represented that 'a ***confidential sample*** of a Masimo Watch" existed); *id.* at 5-6 ("Complainants oppose the motion for sanctions, arguing that Apple's contentions are premised on an erroneous assumption that the domestic industry requirement requires a ***finished commercial product***."); *id.* at 8 ("[T]he Amended Complaint is equivocal on the issue of whether a domestic industry exists or is in the process of being established.").

Masimo W1 display at Arab Health 2022[27]

36. When the Masimo W1 became public, it was clear that Masimo had copied Apple. As more details emerged, it was clear the scope of that copying was expansive. In addition to copying Apple Watch's overall look and feel, the Masimo W1 copied the patented designs of Apple Watch and its wireless charger. Apple worked hard to develop innovative designs and features for Apple Watch. Masimo took shortcuts.

[27] Arab Health, *Masimo Talks to Arab Health TV (Nazih Darwish)*, YOUTUBE (Jan 24, 2022), https://www.youtube.com/watch?v=5KvcsFkxBvE (last accessed Oct. 13, 2022).

Apple Watch	Masimo W1

37. With the ITC lawsuit against Apple ongoing, Masimo bought Defendant Sound United to bring the W1 to market as quickly as possible. In February 2022, Masimo announced that it would acquire Sound United, "a leading innovator of premium, high-performance audio products for consumers,"[28] for $1.025 billion.[29] Masimo's stated reason for the acquisition, which closed in April 2022, was to "leverage Sound United's expertise across consumer channels to

[28] *Sound United Enters into Agreement to Be Acquired by Masimo Corporation*, SOUND UNITED (Feb. 15, 2022), https://www.soundunited.com/news/sound-united-enters-into-agreement-to-be-acquired-by-masimo-corporation.
[29] William White, *MASI Stock: The Masimo-Sound United Deal That Has Investors Scratching Their Heads*, INVESTORPLACE (Feb. 16, 2022), https://investorplace.com/2022/02/masi-stock-the-masimo-sound-united-deal-that-has-investors-scratching-their-heads/.

accelerate distribution of the combined company's expanding portfolio of consumer-facing healthcare products."[30] The CEO of Masimo stated on an earnings call in February 2022: "We like Sound United the most for several reasons. One, it's [sic] management team. Two, the distribution channel, that is essential to what we are doing as an important product for us which is the Masimo Watch."[31]

38. Masimo's sudden pivot into consumer wearables with a product that copied Apple Watch required consumer distribution channels that Masimo lacked. Masimo's stock fell 35% the day after it announced the Sound United acquisition.[32] Months later, news outlet CNBC reported that an "activist" investor had increased its holdings of Masimo, and CNBC questioned the motivation of Masimo's sudden move into consumer wearables: "But, now Masimo has launched its own W1 watch to compete with Apple. This feels more personal than fiduciary."[33]

39. Masimo released the W1 to the general public on August 31, 2022.[34] As shown below, the Masimo W1 infringes the Patents-in-Suit.

[30] *Masimo Closes Acquisition of Sound United*, MASIMO CORP. (April 12, 2022), https://www.masimo.com/company/news/news-media/#4rtyy700d-7c03-9876-bt7u-8y57ktr7ull8n.
[31] Masimo (MASI) Q4 2021 Earnings Call Transcript, MOTLEY FOOL TRANSCRIBING (Feb. 15, 2022), https://www.fool.com/earnings/call-transcripts/2022/02/15/masimo-masi-q4-2021-earnings-call-transcript/.
[32] Ciara Linnane, *Medical Technology Company Masimo Stock Slides 35% After Unveiling $1 Billion Acquisition of Sound United*, MARKETWATCH (Feb. 16, 2022), https://www.marketwatch.com/story/medical-technology-company-masimo-stock-slides-35-after-unveiling-1-billion-acquisition-of-sound-united-2022-02-16; William White, *MASI Stock: The Masimo-Sound United Deal That Has Investors Scratching Their Heads*, INVESTORPLACE (Feb. 16, 2022) https://investorplace.com/2022/02/masi-stock-the-masimo-sound-united-deal-that-has-investors-scratching-their-heads/.
[33] Kenneth Squire, *How Activist Politan Capital May Find An Opportunity to Trim Costs, Build Value at Masimo*, CNBC (Aug 20, 2022), https://www.cnbc.com/2022/08/20/how-activist-politan-capital-may-find-an-opportunity-to-trim-costs-build-value-at-masimo.html.
[34] *Medical Pioneer Masimo Announces the Full Market Consumer Release of the Masimo W1™, the First Watch to Offer Accurate, Continuous Health Data*, MASIMO CORP. (Aug. 31, 2022),

40. Masimo carefully studied Apple's IP for its litigation campaign. Masimo cited numerous Apple Watch patents in its complaints in federal court[35]—well before willfully copying Apple Watch. On information and belief, Masimo either knew about or willfully blinded itself to Apple's patent rights while infringing the Patents-in-Suit.

COUNT I: INFRINGEMENT OF U.S. PATENT NO. D883,279

41. The preceding paragraphs are incorporated by reference as if fully realleged herein.

42. U.S. Patent No. D883,279 (the "D'279 Patent"), entitled "Electronic Device," was duly, legally, and validly issued to inventors Jody Akana et al. on May 5, 2020. The D'279 Patent is assigned to Apple. The D'279 Patent is attached hereto as Exhibit A.

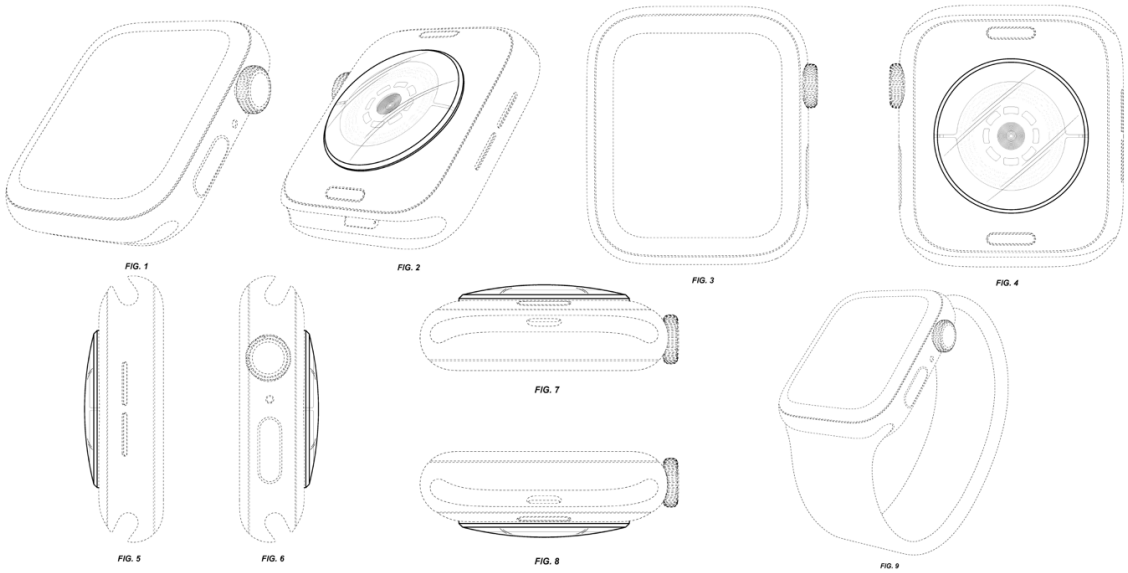
43. Apple is the exclusive and current owner of all rights, title, and interest in the D'279 Patent, including the right to exclude and the right to seek damages and injunctive relief.

44. The D'279 Patent claims the ornamental design for an electronic device as shown and described in its specification and the figures reproduced herein:

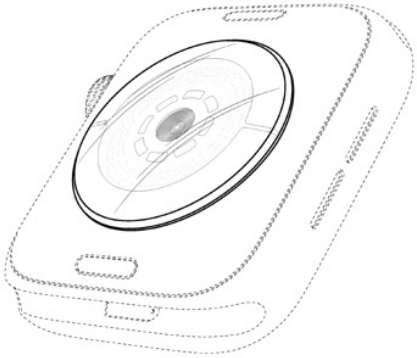
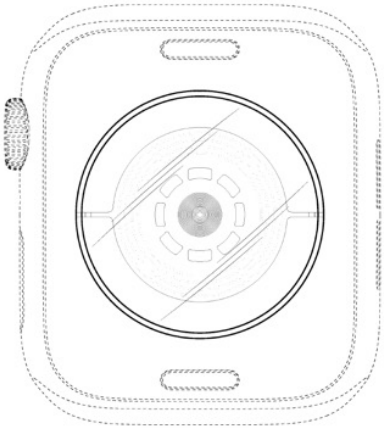
https://www.masimo.com/company/news/news-media/#eccc62f2-a423-4e81-a064-57ddc48c8a13.

[35] *See, e.g.*, *Masimo Corp. v. Apple Inc.*, Complaint, D.I. 1, No. 20-cv-48-JVS-JDE (C.D. Cal.).

D'279 Patent
Figures 1–9 (Design Claim)



45. Defendants infringe the D'279 Patent by making, using, selling, and/or offering for sale in the United States, and/or importing into the United States, products that embody the design claimed in the D'279 Patent or a colorable imitation thereof, including the Masimo W1. The design embodied in the W1 Device is substantially similar to the design claimed in the D'279 Patent such that it would deceive an ordinary observer. Defendants' infringement is a violation of 35 U.S.C. § 271.

D'279 Patent (Figures 2 and 4)	Masimo W1 (Device)
 FIG. 2	
 FIG. 4	

46. Defendants' infringement is willful. The design of the W1 product so closely resembles Apple Watch that the only plausible inference is that Defendants copied Apple Watch to develop their own product. On information and belief, Defendants have willfully blinded themselves to Apple's patent rights, including the rights protected by the D'279 Patent.

Apple Watch (Series 4)	Masimo W1 (Device)

47. Apple has been damaged and continues to be damaged by Defendants' infringement of the D'279 Patent. In addition, Apple has suffered and will continue to suffer irreparable harm unless Defendants' infringement of the D'279 Patent is enjoined.

COUNT II: INFRINGEMENT OF U.S. PATENT NO. D947,842

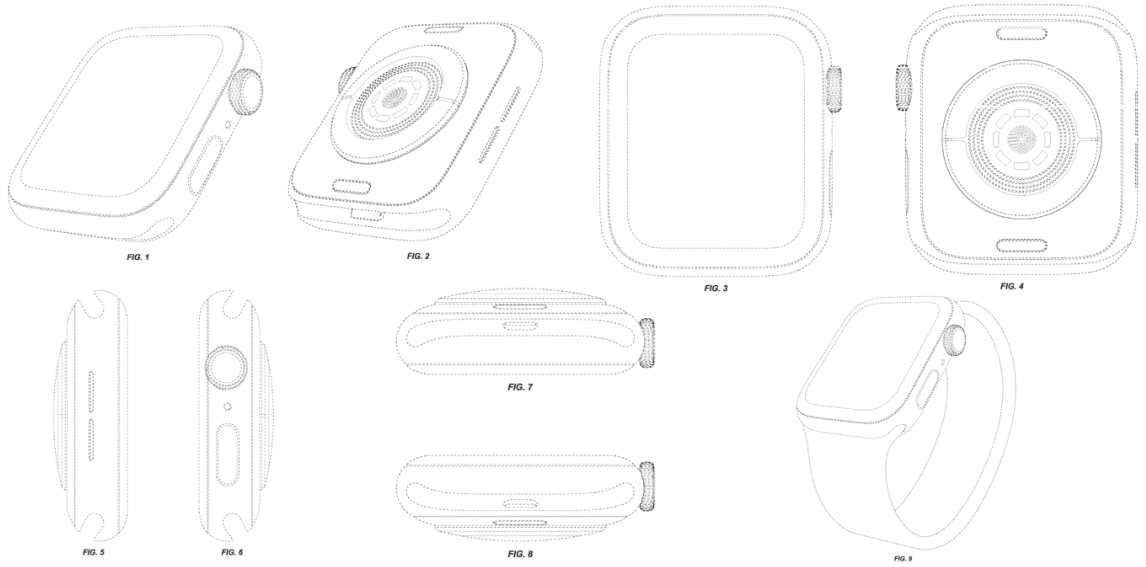
48. The preceding paragraphs are incorporated by reference as if fully realleged herein.

49. U.S. Patent No. D947,842 (the "D'842 Patent"), entitled "Electronic Device," was duly, legally, and validly issued to inventors Jody Akana et al. on April 5, 2022. The D'842 Patent is assigned to Apple. The D'842 Patent is attached hereto as Exhibit B.

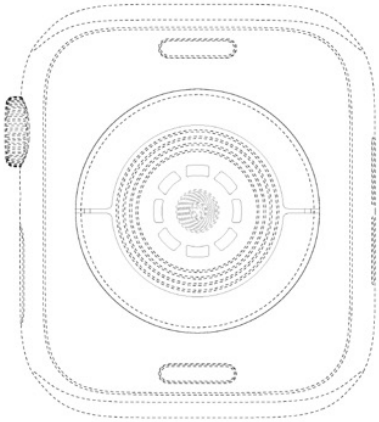
50. Apple is the exclusive and current owner of all rights, title, and interest in the D'842 Patent, including the right to exclude and the right to seek damages and injunctive relief.

51. The D'842 Patent claims the ornamental design for an electronic device as shown and described in its specification and the figures reproduced herein:

D'842 Patent
Figures 1–9 (Design Claim)



52. Defendants infringe the D'842 Patent by making, using, selling, and/or offering for sale in the United States, and/or importing into the United States, products that embody the design claimed in the D'842 Patent or a colorable imitation thereof, including the Masimo W1. The design embodied in the W1 Device is substantially similar to the design claimed in the D'842 Patent such that it would deceive an ordinary observer. Defendants' infringement is a violation of 35 U.S.C. § 271.

D'842 Patent (Figures 2 and 4)	Masimo W1 (Device)
FIG. 2	
 FIG. 4	

53. Defendants' infringement is willful. The design of the W1 so closely resembles Apple Watch that the only plausible inference is that Defendants copied Apple Watch to develop their own product. On information and belief, Defendants have willfully blinded themselves to Apple's patent rights, including the rights protected by the D'842 Patent.

Apple Watch (Series 4)	Masimo W1 (Device)

54. Apple has been damaged and continues to be damaged by Defendants' infringement of the D'842 Patent. In addition, Apple has suffered and will continue to suffer irreparable harm unless Defendants' infringement of the D'842 Patent is enjoined.

COUNT III: INFRINGEMENT OF U.S. PATENT NO. D962,936

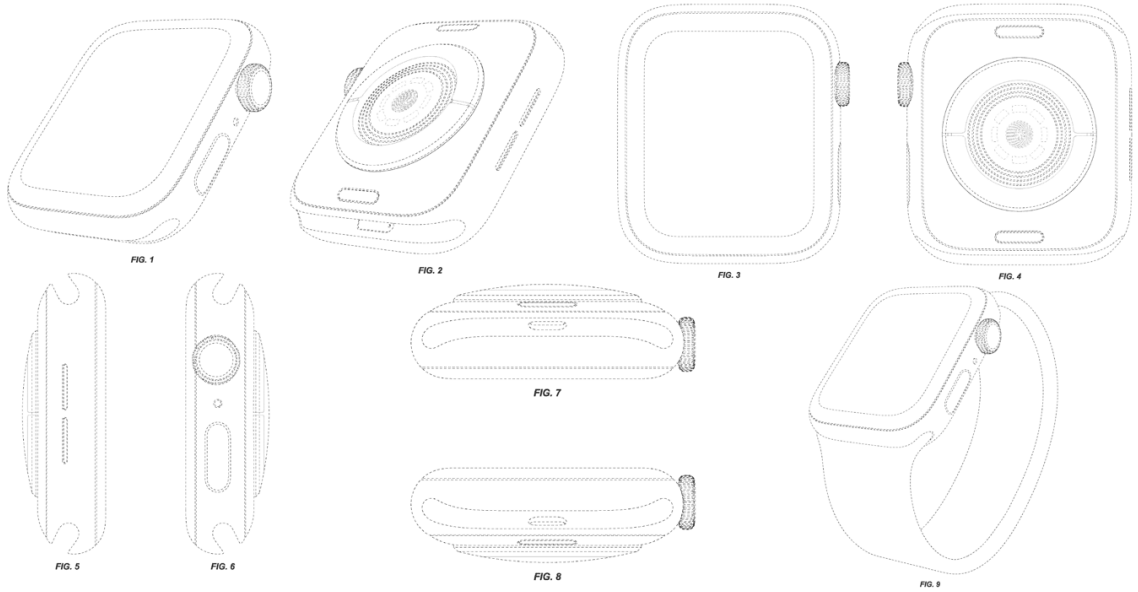
55. The preceding paragraphs are incorporated by reference as if fully realleged herein.

56. U.S. Patent No. D962,936 (the "D'936 Patent"), entitled "Electronic Device," was duly, legally, and validly issued to inventors Jody Akana et al. on September 6, 2022. The D'936 Patent is assigned to Apple. The D'936 Patent is attached hereto as Exhibit C.

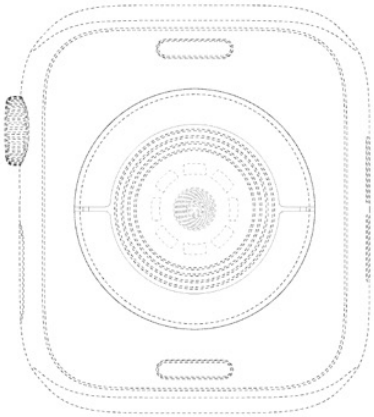
57. Apple is the exclusive and current owner of all rights, title, and interest in the D'936 Patent, including the right to exclude and the right to seek damages and injunctive relief.

58. The D'936 Patent claims the ornamental design for an electronic device as shown and described in its specification and the figures reproduced herein:

D'936 Patent
Figures 1–9 (Design Claim)



59. Defendants infringe the D'936 Patent by making, using, selling, and/or offering for sale in the United States, and/or importing into the United States, products that embody the design claimed in the D'936 Patent or a colorable imitation thereof, including the Masimo W1. The design embodied in the W1 Device is substantially similar to the design claimed in the D'936 Patent such that it would deceive an ordinary observer. Defendants' infringement is a violation of 35 U.S.C. § 271.

D'936 Patent (Figures 2 and 4)	Masimo W1 (Device)
FIG. 2	
 FIG. 4	

60. Defendants' infringement is willful. The design of the W1 so closely resembles Apple Watch that the only plausible inference is that Defendants copied Apple Watch to develop their own product. On information and belief, Defendants have willfully blinded themselves to Apple's patent rights, including the rights protected by the D'936 Patent.

Apple Watch (Series 4)	Masimo W1 (Device)

61. Apple has been damaged and continues to be damaged by Defendants' infringement of the D'936 Patent. In addition, Apple has suffered and will continue to suffer irreparable harm unless Defendants' infringement of the D'936 Patent is enjoined.

COUNT IV: INFRINGEMENT OF U.S. PATENT NO. D735,131

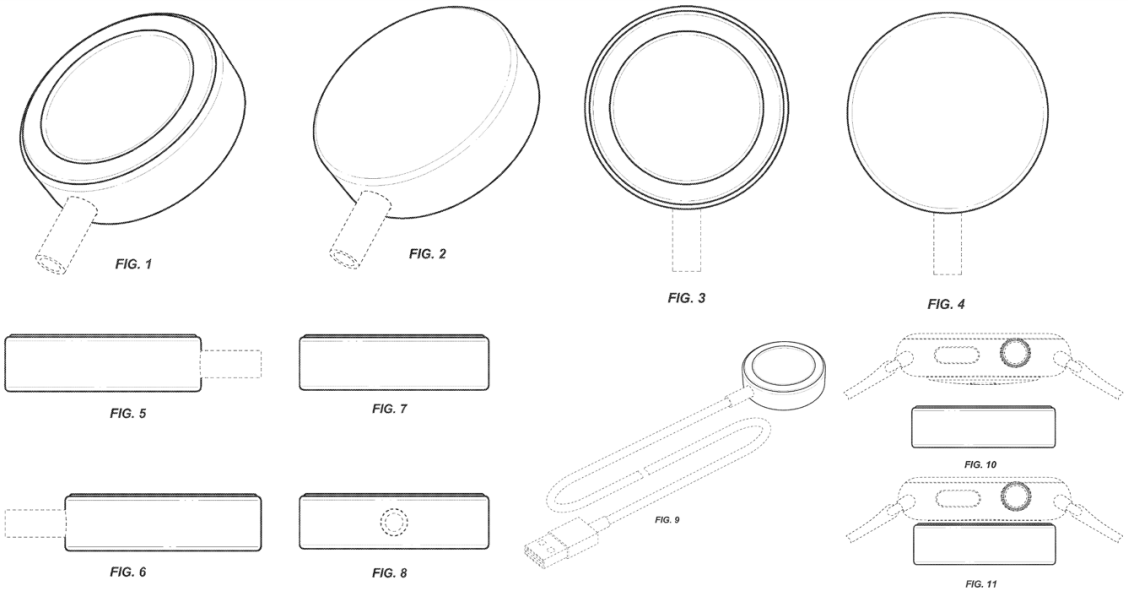
62. The preceding paragraphs are incorporated by reference as if fully realleged herein.

63. U.S. Patent No. D735,131 (the "D'131 Patent"), entitled "Charger," was duly, legally, and validly issued to inventors Jody Akana et al. on July 28, 2015. The D'131 Patent is assigned to Apple. The D'131 Patent is attached hereto as Exhibit D.

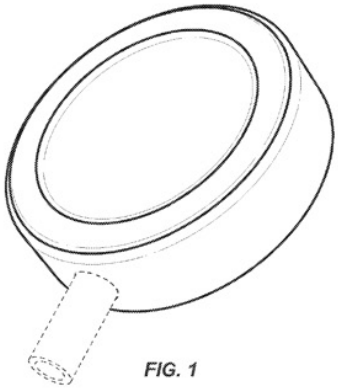
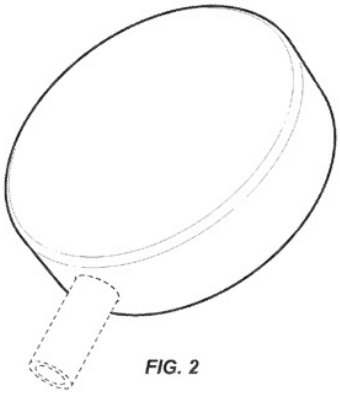
64. Apple is the exclusive and current owner of all rights, title, and interest in the D'131 Patent, including the right to exclude and the right to seek damages and injunctive relief.

65. The D'131 Patent claims the ornamental design for a charger as shown and described in its specification and the figures reproduced herein:

D'131 Patent
Figures 1–11 (Design Claim)



66. Defendants infringe the D'131 Patent by making, using, selling, and/or offering for sale in the United States, and/or importing into the United States, products that embody the design claimed in the D'131 Patent or a colorable imitation thereof, including the Masimo W1. The design embodied in the W1 Wireless Charger is substantially similar to the design claimed in the D'131 Patent such that it would deceive an ordinary observer. Defendants' infringement is a violation of 35 U.S.C. § 271.

D'131 Patent (Figures 1 and 2)	Masimo W1 (Wireless Charger)
 FIG. 1	
 FIG. 2	

67. Defendants' infringement is willful. The design of the W1 Wireless Charger so closely resembles the Apple Watch charger that the only plausible inference is that Defendants copied the Apple Watch charger to develop their own product. On information and belief, Defendants have willfully blinded themselves to Apple's patent rights, including the rights protected by the D'131 Patent.

Apple Watch (Charger)	Masimo W1 (Wireless Charger)

68. Apple has been damaged and continues to be damaged by Defendants' infringement of the D'131 Patent. In addition, Apple has suffered and will continue to suffer irreparable harm unless Defendants' infringement of the D'131 Patent is enjoined.

PRAYER FOR RELIEF

For the foregoing reasons, Apple prays for relief and entry of judgment as follows:

A. That Defendants infringe one or more claims of the Patents-in-Suit;

B. That Defendants' infringement is willful;

C. That Defendants be preliminarily enjoined from further infringement of the Patents-in-Suit pending final disposition of the merits;

D. That Defendants be permanently enjoined from further infringement of the Patents-in-Suit;

E. That Apple be awarded damages for Defendants' infringement of the Patents-in-Suit;

F. That Defendants be disgorged of any wrongfully obtained profits from their infringement of the Patents-in-Suit pursuant to 35 U.S.C. § 289;

G. That Apple be awarded enhanced damages pursuant to 35 U.S.C. § 284, and pre- and post-judgment interest at the maximum rate permitted by law;

H. That this case be declared an exceptional case within the meaning of 35 U.S.C. § 285 and that Apple be awarded attorneys' fees, costs, and expenses incurred in connection with this action; and

I. That Apple be awarded such other relief as this Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38 and the Local Rules of this Court, Apple respectfully demands a jury trial on all issues so triable.

Dated: October 20, 2022

Respectfully submitted,

By: */s/ David E. Moore*

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EXHIBIT A

US00D883279S

(12) United States Design Patent

Akana et al.

(10) Patent No.: US D883,279 S

(45) Date of Patent: ** May 5, 2020

(54) **ELECTRONIC DEVICE**

(71) Applicant: **Apple Inc.**, Cupertino, CA (US)

(72) Inventors: **Jody Akana**, San Francisco, CA (US); **Molly Anderson**, San Francisco, CA (US); **Bartley K. Andre**, Palo Alto, CA (US); **Shota Aoyagi**, San Francisco, CA (US); **Anthony Michael Ashcroft**, San Francisco, CA (US); **Marine C. Bataille**, San Francisco, CA (US); **Jeremy Bataillou**, San Francisco, CA (US); **Markus Diebel**, San Francisco, CA (US); **M. Evans Hankey**, San Francisco, CA (US); **Julian Hoenig**, San Francisco, CA (US); **Richard P. Howarth**, San Francisco, CA (US); **Jonathan P. Ive**, San Francisco, CA (US); **Julian Jaede**, San Francisco, CA (US); **Duncan Robert Kerr**, San Francisco, CA (US); **Peter Russell-Clarke**, San Francisco, CA (US); **Benjamin Andrew Shaffer**, San Jose, CA (US); **Mikael Silvanto**, San Francisco, CA (US); **Sung-Ho Tan**, San Francisco, CA (US); **Clement Tissandier**, San Francisco, CA (US); **Eugene Antony Whang**, San Francisco, CA (US); **Rico Zörkendörfer**, San Francisco, CA (US)

(73) Assignee: **Apple Inc.**, Cupertino, CA (US)

(**) Term: **15 Years**

(21) Appl. No.: **29/684,822**

(22) Filed: **Mar. 25, 2019**

Related U.S. Application Data

(63) Continuation of application No. 29/654,754, filed on Jun. 27, 2018.

(51) **LOC (12) Cl.** **14-02**

(52) **U.S. Cl.**
USPC **D14/344**

(58) **Field of Classification Search**
USPC ... D14/138 R, 144, 341, 344, 358, 388, 218, D14/485–495; D10/30–39, 70, 98; D11/3, 4, 26, 93–94, 78.1, 79, 86; D24/167, 169, 186–187, 164
CPC A41D 1/002; A41D 19/0034; G06F 1/04; G06F 1/08; G06F 1/10; G06F 1/14; G06F 1/1626; G06F 1/1628; G06F 1/163; G06F 1/1635; G06F 1/3203; G06Q 20/10; G06Q 20/12; G06Q 20/108; G06Q 20/145; H04B 1/3833; H04B 1/385; H04B 1/3888; H04M 1/02; H04M 1/03; H04M 1/04; H04M 1/05; H04M 1/667; H04M 1/6058; Y02B 60/1217
See application file for complete search history.

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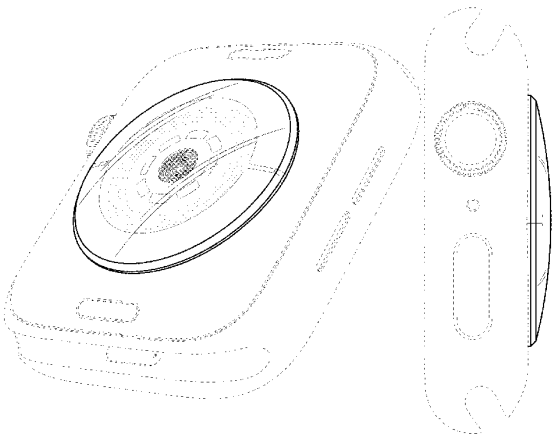

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Primary Examiner — Karen E Kearney
Assistant Examiner — Kristin E Reed
(74) *Attorney, Agent, or Firm* — Sterne, Kessler, Goldstein & Fox P.L.L.C.

(57) **CLAIM**

The ornamental design for an electronic device, as shown and described.

DESCRIPTION

FIG. **1** is a bottom front perspective view of an electronic device showing the claimed design;

FIG. **2** is a bottom rear perspective view thereof;
FIG. **3** is a front view thereof;
FIG. **4** is a rear view thereof;
FIG. **5** is a left side view thereof;
FIG. **6** is a right side view thereof;
FIG. **7** is a top view thereof;
FIG. **8** is a bottom view thereof; and,
FIG. **9** is a bottom front perspective reference view thereof showing the electronic device in an environment in which it may be used.
The broken lines in the figures show portions of the electronic device and environment that form no part of the claimed design.

1 Claim, 7 Drawing Sheets

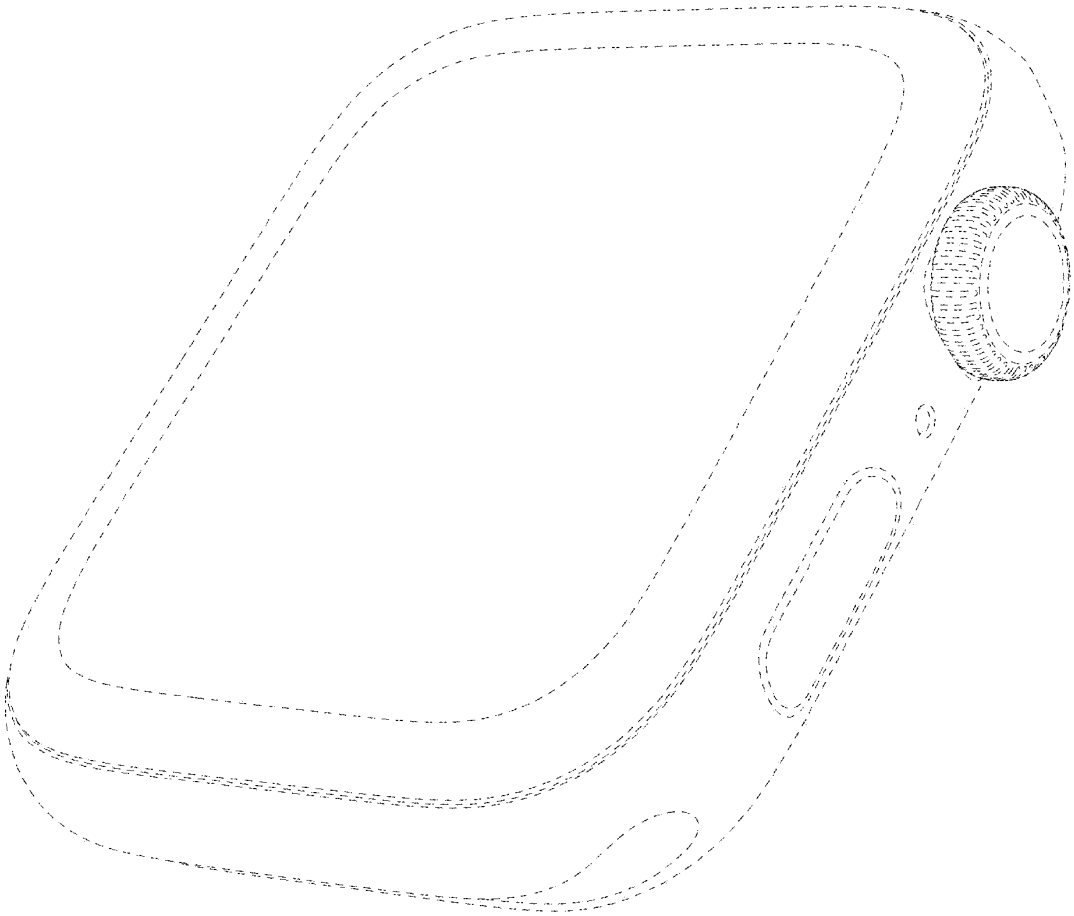

FIG. 1

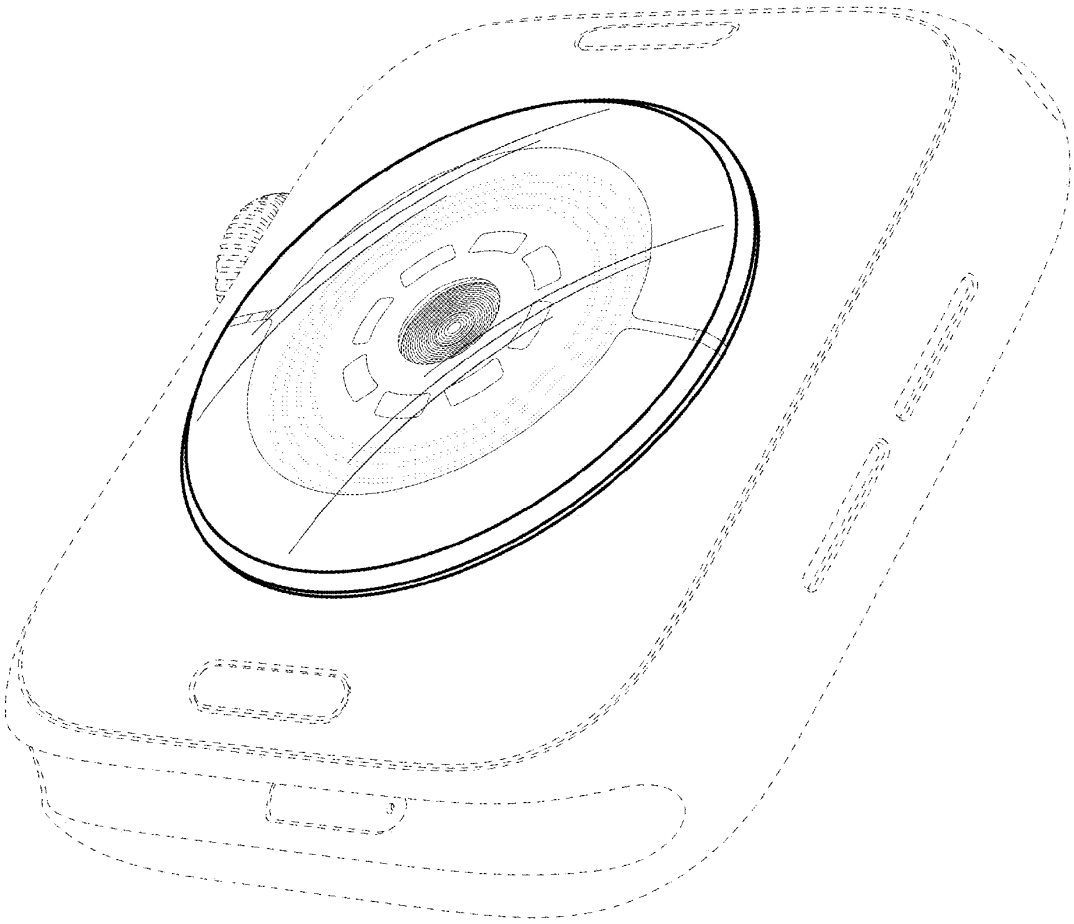

FIG. 2

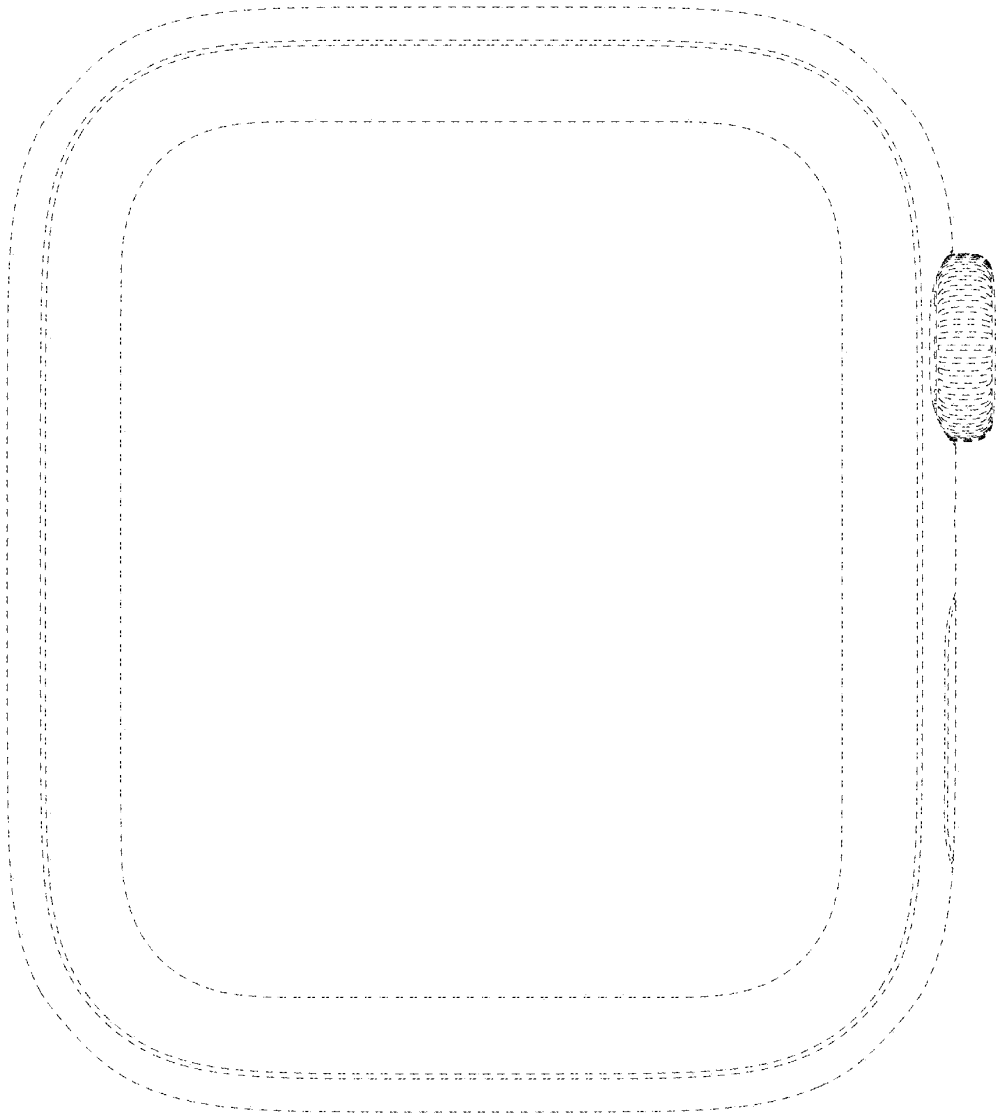

FIG. 3

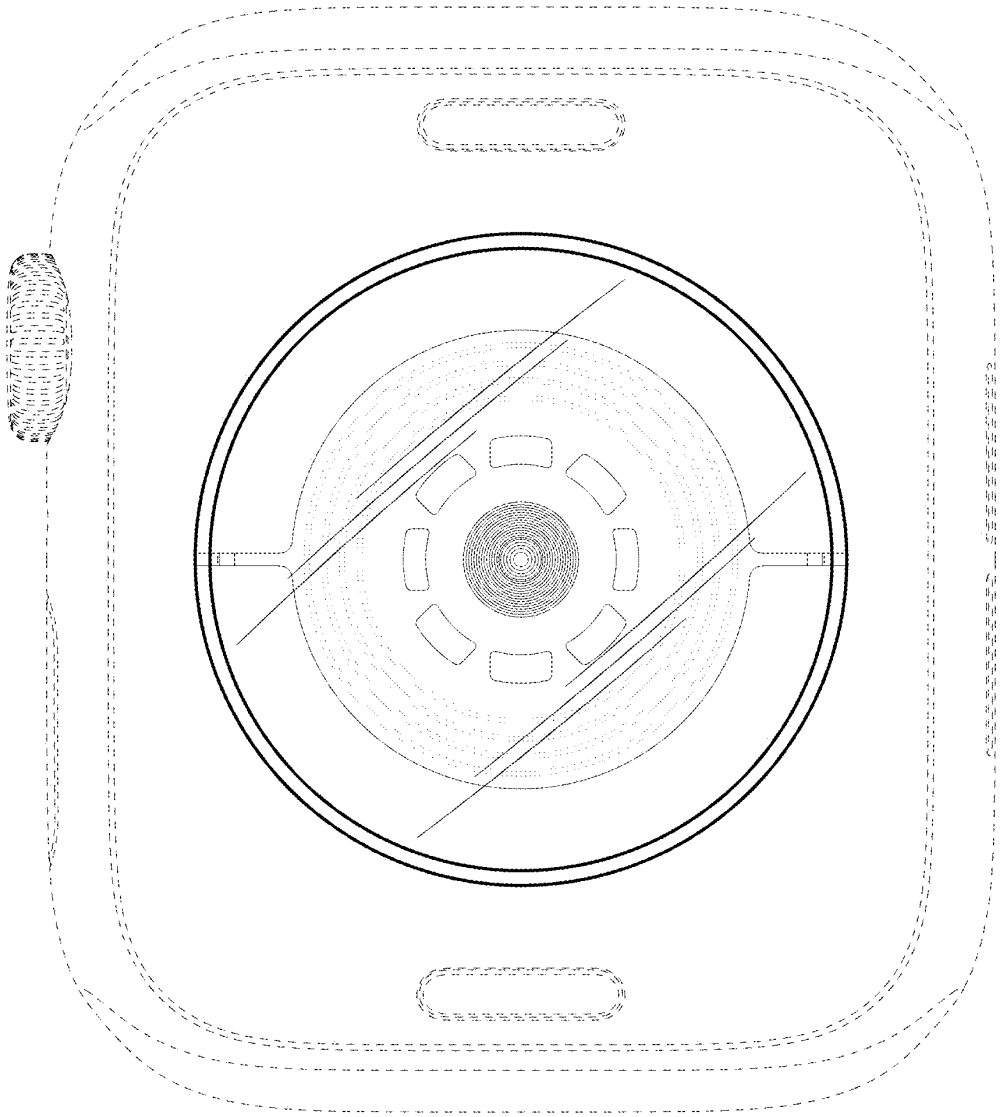

FIG. 4

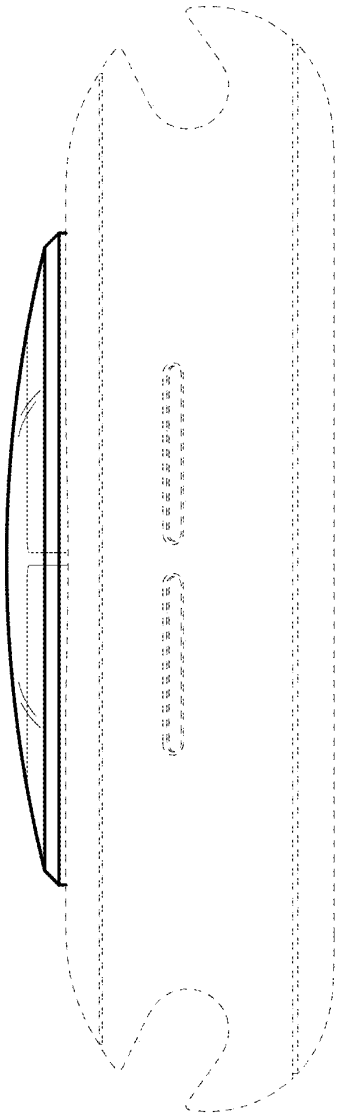

FIG. 5

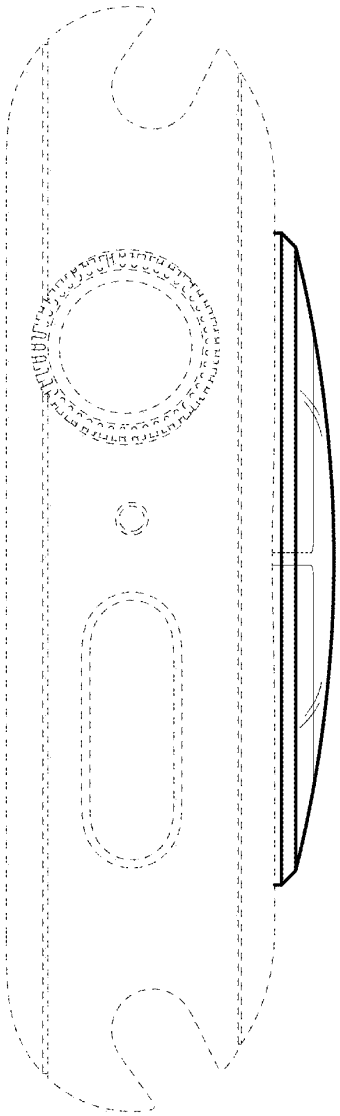

FIG. 6

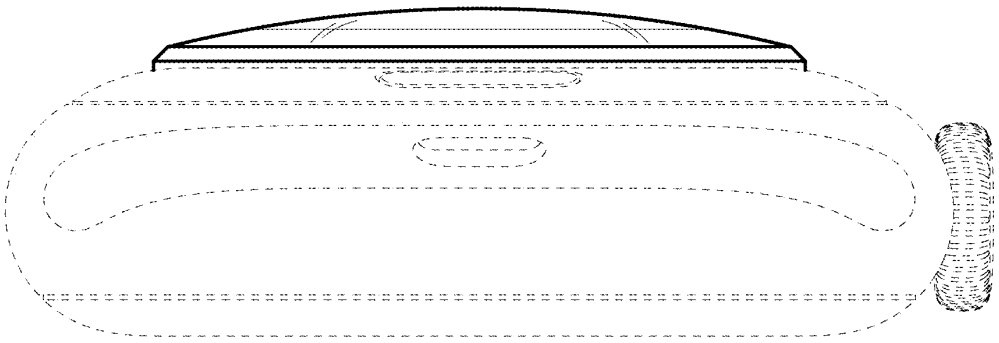

FIG. 7

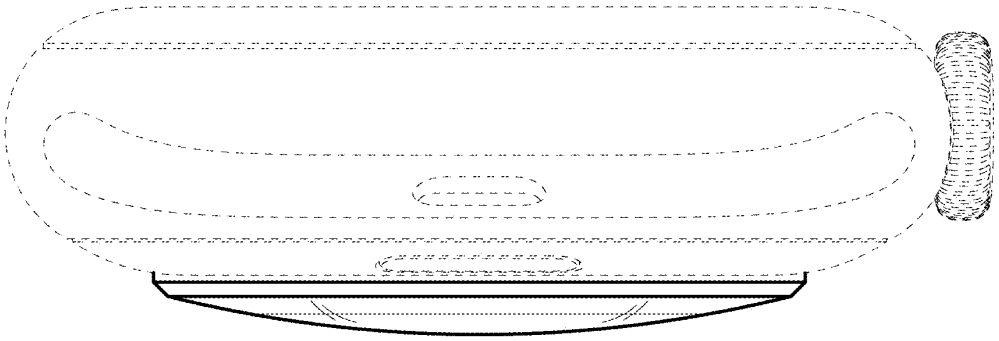

FIG. 8

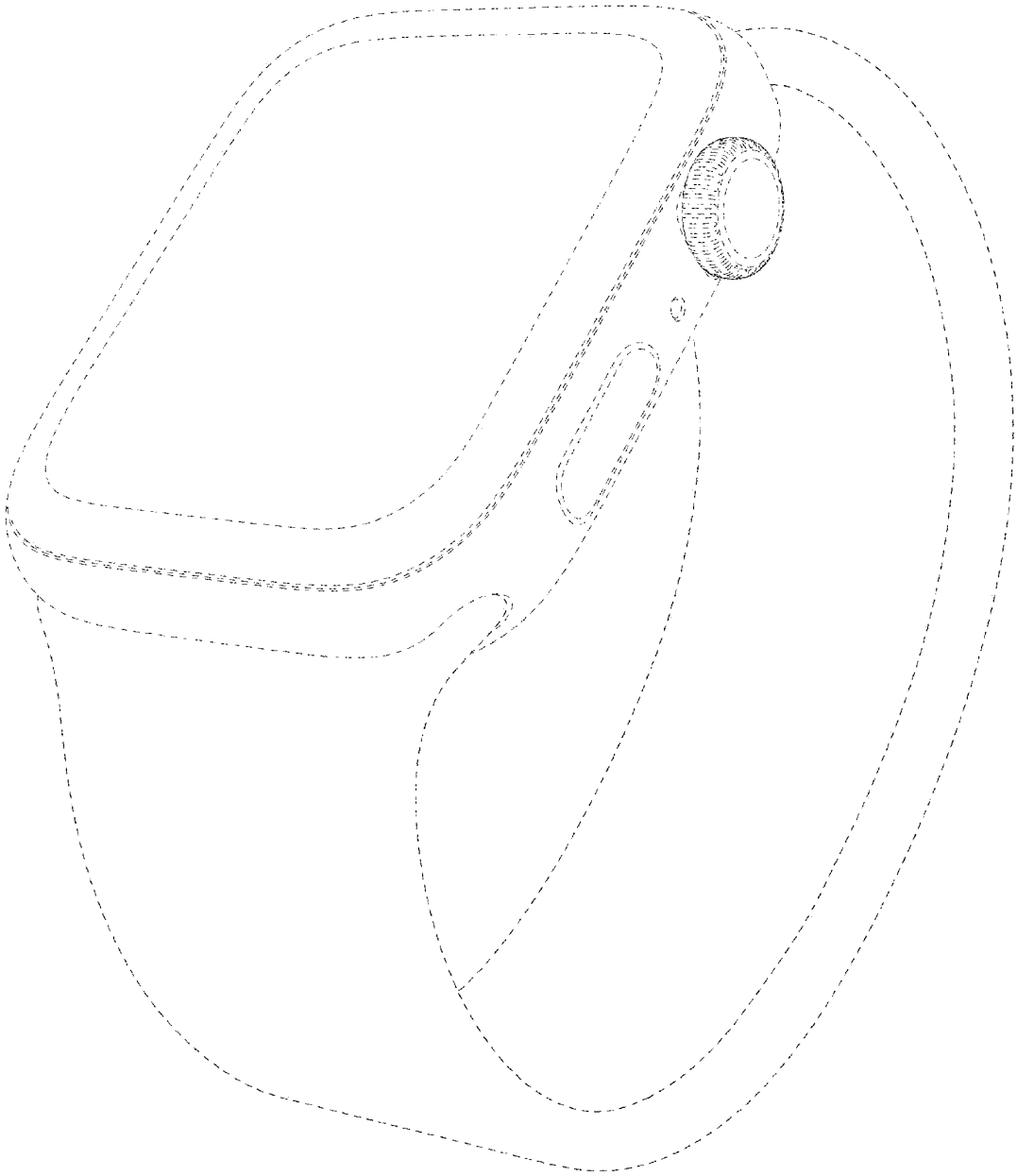

FIG. 9

EXHIBIT B

US00D947842S

(12) **United States Design Patent**
Akana et al.

(10) **Patent No.: US D947,842 S**
(45) **Date of Patent: ** Apr. 5, 2022**

(54) **ELECTRONIC DEVICE**

(71) Applicant: **Apple Inc.**, Cupertino, CA (US)

(72) Inventors: **Jody Akana**, San Francisco, CA (US); **Molly Anderson**, San Francisco, CA (US); **Bartley K. Andre**, Palo Alto, CA (US); **Shota Aoyagi**, San Francisco, CA (US); **Anthony Michael Ashcroft**, San Francisco, CA (US); **Marine C. Bataille**, San Francisco, CA (US); **Jeremy Bataillou**, San Francisco, CA (US); **Markus Diebel**, San Francisco, CA (US); **M. Evans Hankey**, San Francisco, CA (US); **Julian Hoenig**, San Francisco, CA (US); **Richard P. Howarth**, San Francisco, CA (US); **Jonathan P. Ive**, San Francisco, CA (US); **Julian Jaede**, San Francisco, CA (US); **Duncan Robert Kerr**, San Francisco, CA (US); **Peter Russell-Clarke**, San Francisco, CA (US); **Benjamin Andrew Shaffer**, San Jose, CA (US); **Mikael Silvanto**, San Francisco, CA (US); **Sung-Ho Tan**, Vienna (AT); **Clement Tissandier**, San Francisco, CA (US); **Eugene Antony Whang**, San Francisco, CA (US); **Rico Zörkendörfer**, San Francisco, CA (US)

(73) Assignee: **Apple Inc.**, Cupertino, CA (US)

(**) Term: **15 Years**

(21) Appl. No.: **29/816,024**

(22) Filed: **Nov. 18, 2021**

Related U.S. Application Data

(63) Continuation of application No. 29/780,292, filed on Apr. 23, 2021, which is a continuation of application
(Continued)

(51) **LOC (13) Cl.** **14-02**

(52) **U.S. Cl.**
USPC **D14/344**

(58) **Field of Classification Search**
USPC ..... D10/30, 31, 32, 38, 39; D14/138 R, D14/138 G, 144, 341, 344, 346, 388, 389, D14/390
(Continued)

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Primary Examiner — Joseph Kukella
(74) *Attorney, Agent, or Firm* — Sterne, Kessler, Goldstein & Fox P.L.L.C.

(57) **CLAIM**

The ornamental design for an electronic device, as shown and described.

DESCRIPTION

FIG. **1** is a bottom front perspective view of an electronic device showing the claimed design;
FIG. **2** is a bottom rear perspective view thereof;
FIG. **3** is a front view thereof;
FIG. **4** is a rear view thereof;
FIG. **5** is a left side view thereof;
FIG. **6** is a right side view thereof;
(Continued)

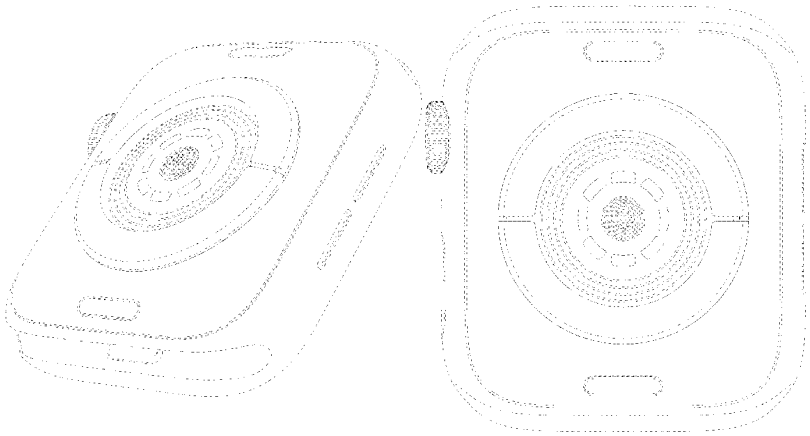

FIG. **7** is a top view thereof;
FIG. **8** is a bottom view thereof; and,
FIG. **9** is a bottom front perspective view thereof showing the electronic device in an environment in which it may be used.
The broken lines in the figures show portions of the electronic device and environment that form no part of the claimed design.

1 Claim, 7 Drawing Sheets

Related U.S. Application Data

No. 29/684,825, filed on Mar. 25, 2019, now Pat. No. Des. 917,470, which is a continuation of application No. 29/654,754, filed on Jun. 27, 2018, now Pat. No. Des. 882,563.

(58) **Field of Classification Search**
CPC G04G 17/00; G04G 17/045; G04G 17/08; G04G 17/083; G04G 21/00; G04G 21/08; G04G 99/006
See application file for complete search history.

(56) **References Cited**

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D782,537	S		3/2017	Akana et al.	
D789,545	S	*	6/2017	Pippel	D24/186
D816,524	S		5/2018	Akana et al.	
D816,667	S	*	5/2018	Hardi	D14/344
D863,295	S	*	10/2019	Hardi	D14/344
D882,565	S	*	4/2020	Akana	D14/344
D883,279	S		5/2020	Akana et al.	
D894,192	S	*	8/2020	Akana	D14/439
D900,809	S	*	11/2020	Gao	D14/344
D917,470	S	*	4/2021	Akana	D14/344
D923,004	S	*	6/2021	Gao	D14/344
D924,240	S	*	7/2021	Akana	D14/439

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KR	301067863.0000	7/2020

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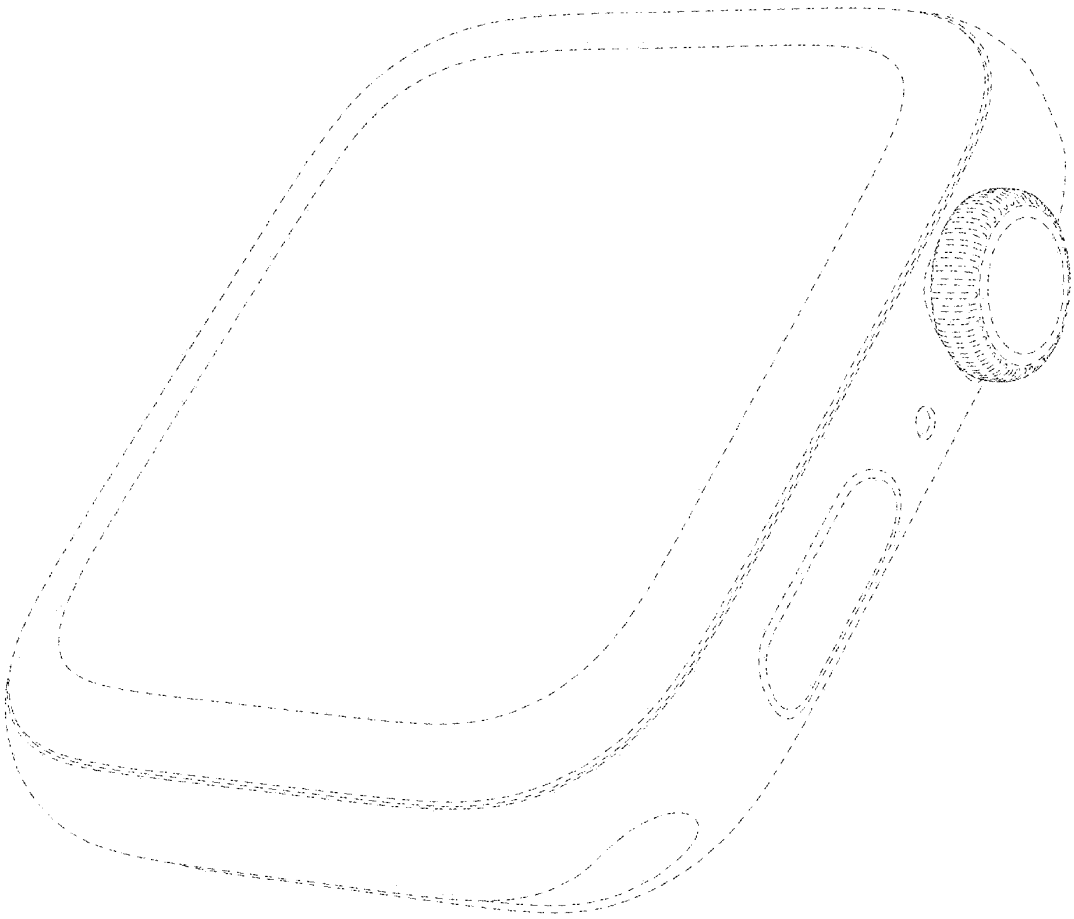

FIG. 1

FIG. 2

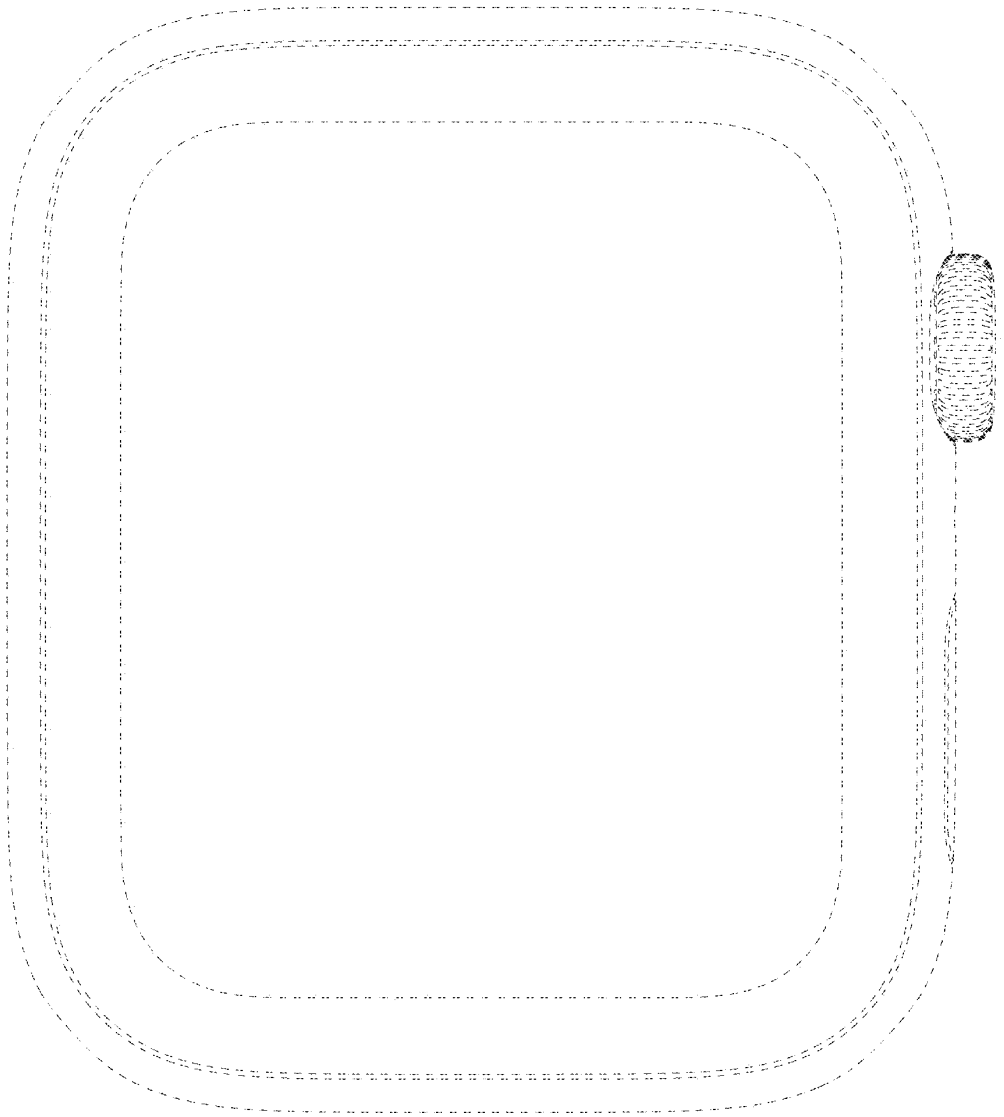

FIG. 3

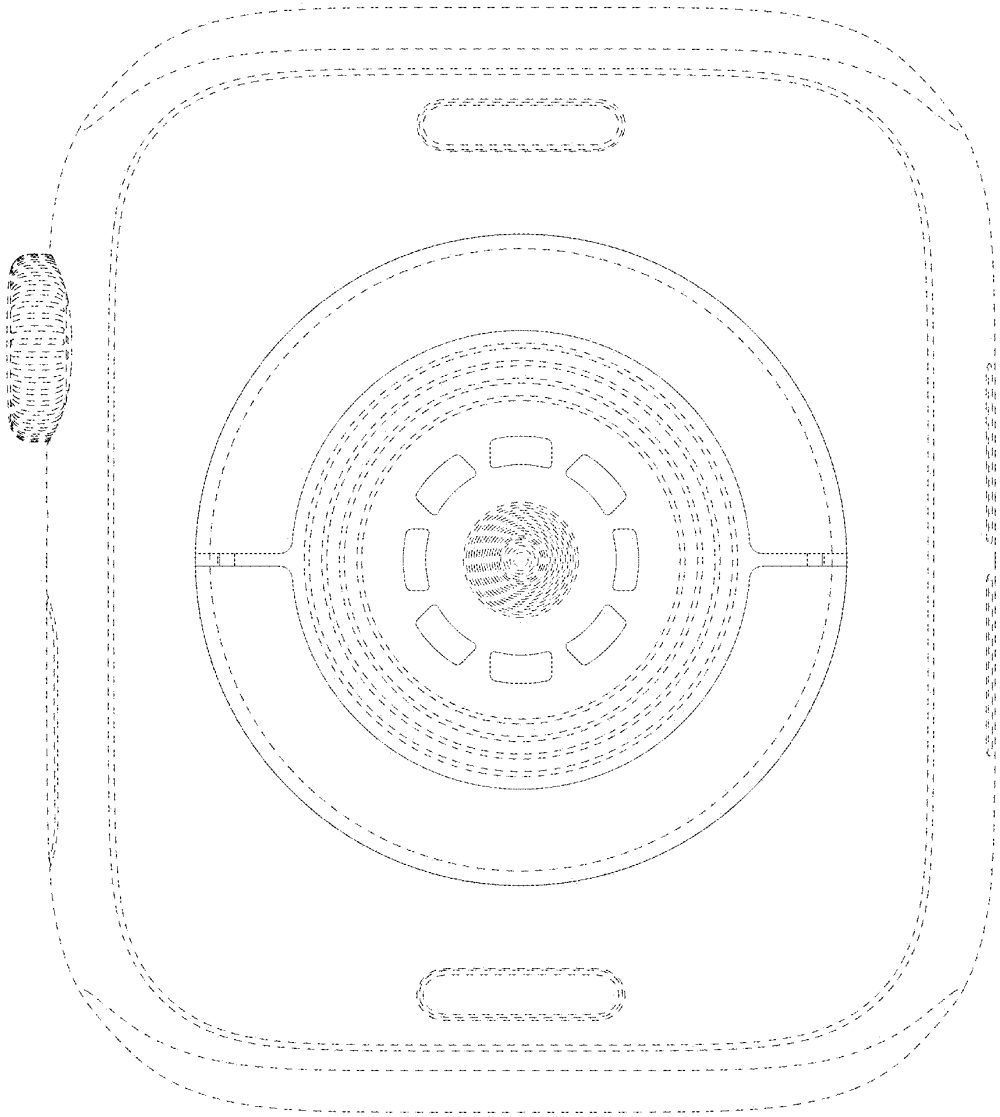

FIG. 4

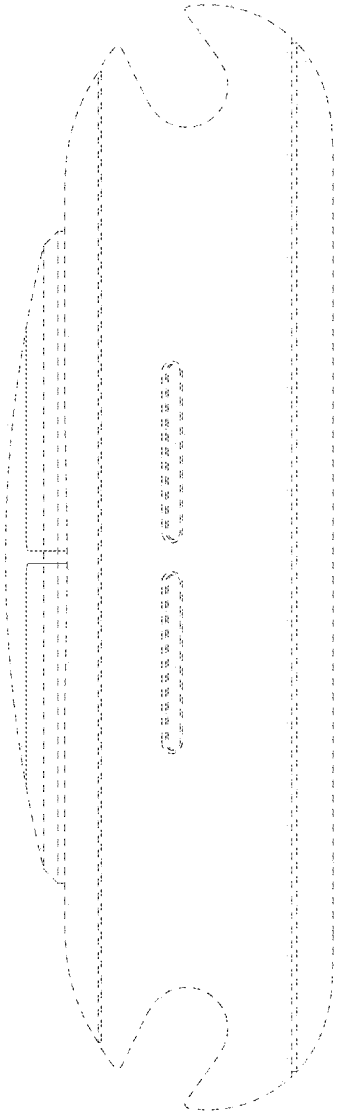

FIG. 5

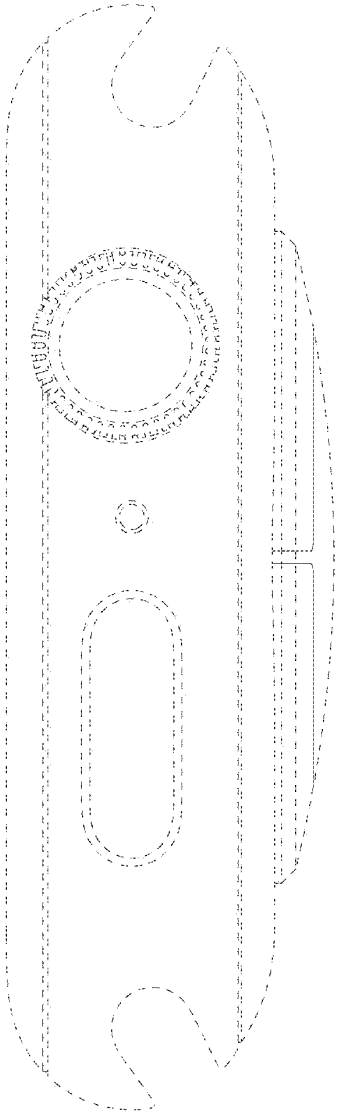

FIG. 6

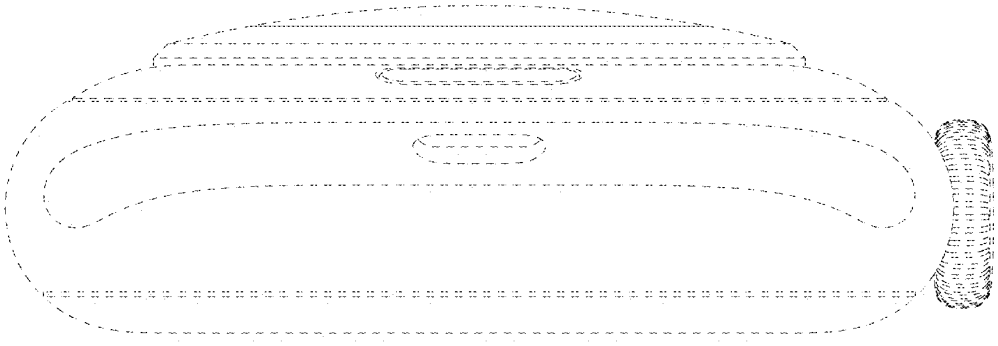

FIG. 7

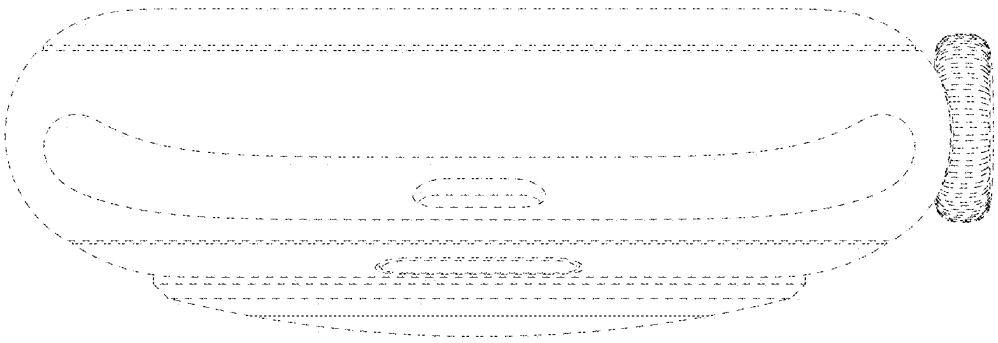

FIG. 8

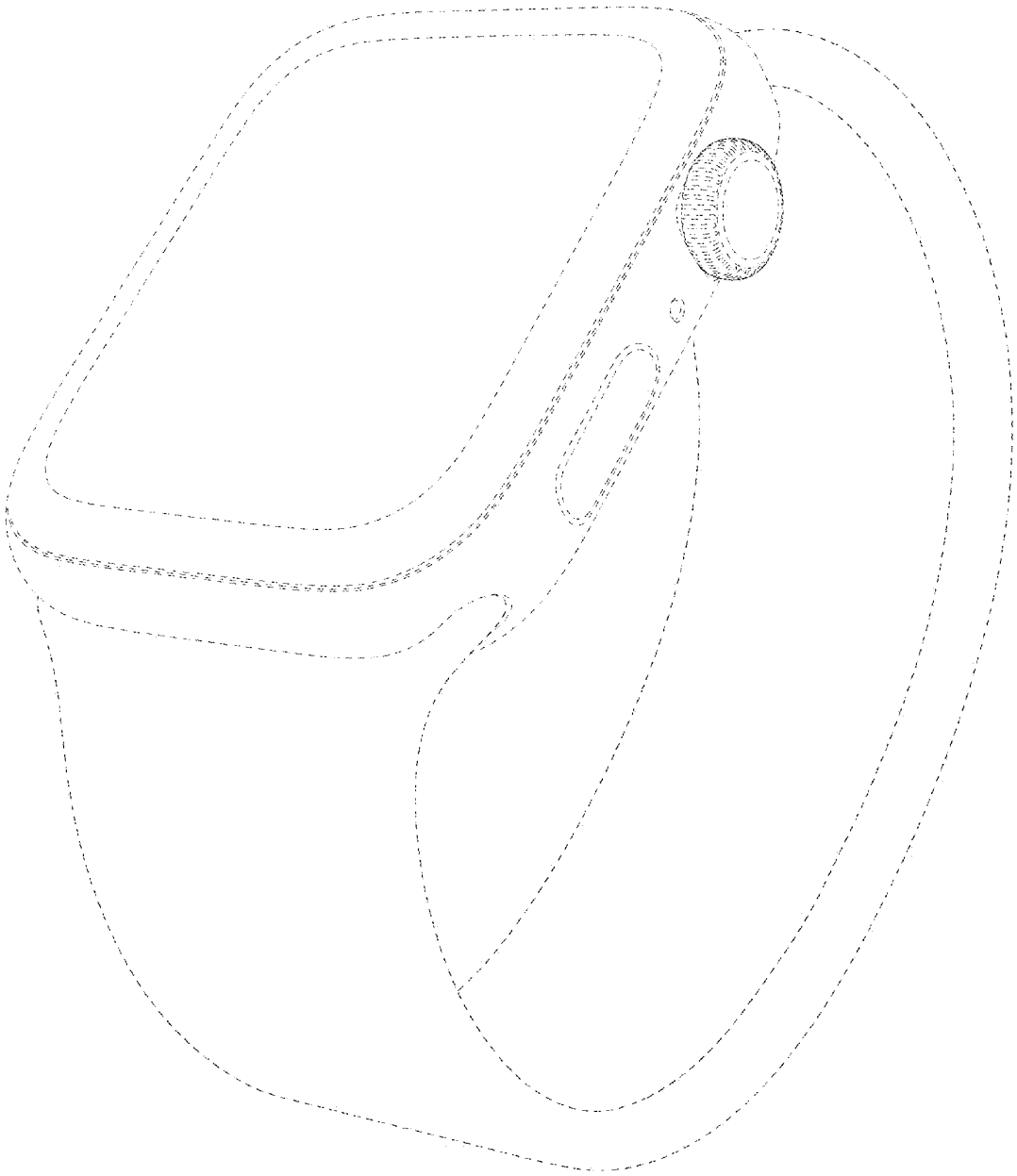

FIG. 9

EXHIBIT C

US00D962936S

(12) **United States Design Patent**
Akana et al.

(10) **Patent No.: US D962,936 S**
(45) **Date of Patent: ** Sep. 6, 2022**

(54) **ELECTRONIC DEVICE**

(71) Applicant: **Apple Inc.**, Cupertino, CA (US)

(72) Inventors: **Jody Akana**, San Francisco, CA (US); **Molly Anderson**, San Francisco, CA (US); **Bartley K. Andre**, Palo Alto, CA (US); **Shota Aoyagi**, San Francisco, CA (US); **Anthony Michael Ashcroft**, San Francisco, CA (US); **Marine C. Bataille**, San Francisco, CA (US); **Jeremy Bataillou**, San Francisco, CA (US); **Markus Diebel**, San Francisco, CA (US); **M. Evans Hankey**, San Francisco, CA (US); **Julian Hoenig**, San Francisco, CA (US); **Richard P. Howarth**, San Francisco, CA (US); **Jonathan P. Ive**, San Francisco, CA (US); **Julian Jaede**, San Francisco, CA (US); **Duncan Robert Kerr**, San Francisco, CA (US); **Peter Russell-Clarke**, San Francisco, CA (US); **Benjamin Andrew Shaffer**, San Jose, CA (US); **Mikael Silvanto**, San Francisco, CA (US); **Sung-Ho Tan**, Vienna (AT); **Clement Tissandier**, San Francisco, CA (US); **Eugene Antony Whang**, San Francisco, CA (US); **Rico Zörkendörfer**, San Francisco, CA (US)

(73) Assignee: **Apple Inc.**, Cupertino, CA (US)

(**) Term: **15 Years**

(21) Appl. No.: **29/816,025**

(22) Filed: **Nov. 18, 2021**

Related U.S. Application Data

(63) Continuation of application No. 29/780,292, filed on Apr. 23, 2021, now Pat. No. Des. 949,146, which is

(Continued)

(51) **LOC (13) Cl.** **14-02**

(52) **U.S. Cl.**
USPC **D14/344**

(58) **Field of Classification Search**
USPC ..... D10/30, 31, 32, 38, 39; D14/138 R, D14/138 G, 144, 341, 344, 346, 388, 389, D14/390

(Continued)

(56) **References Cited**

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D759,120	S	6/2016	Akana et al.

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Primary Examiner — Joseph Kukella
(74) *Attorney, Agent, or Firm* — Sterne, Kessler, Goldstein & Fox P.L.L.C.

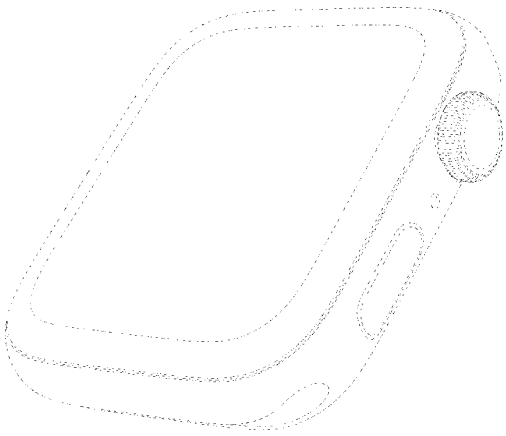
(57) **CLAIM**

The ornamental design for an electronic device, as shown and described.

DESCRIPTION

FIG. **1** is a bottom front perspective view of an electronic device showing the claimed design;
FIG. **2** is a bottom rear perspective view thereof;
FIG. **3** is a front view thereof;
FIG. **4** is a rear view thereof;
FIG. **5** is a left side view thereof;
FIG. **6** is a right side view thereof;

(Continued)



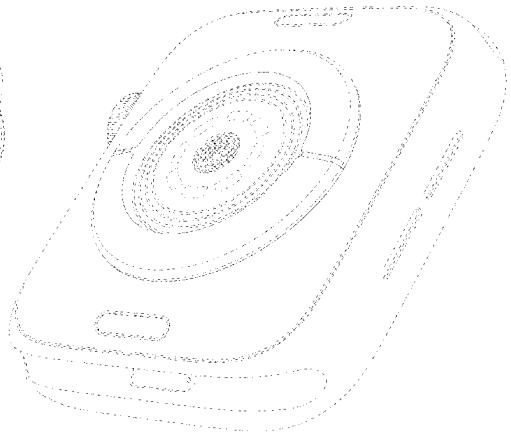


FIG. **7** is a top view thereof;
FIG. **8** is a bottom view thereof; and,
FIG. **9** is a bottom front perspective view thereof showing the electronic device in an environment in which it may be used.
The broken lines in the figures show portions of the electronic device and environment that form no part of the claimed design.

1 Claim, 7 Drawing Sheets

Related U.S. Application Data

a continuation of application No. 29/684,825, filed on Mar. 25, 2019, now Pat. No. Des. 917,470, which is a continuation of application No. 29/654,754, filed on Jun. 27, 2018, now Pat. No. Des. 882,563.

(58) **Field of Classification Search**
CPC G04G 17/00; G04G 17/045; G04G 17/08; G04G 17/083; G04G 21/00; G04G 21/08; G04G 99/006
See application file for complete search history.

(56) **References Cited**

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D782,537	S		3/2017	Akana et al.	
D816,524	S		5/2018	Akana et al.	
D883,279	S		5/2020	Akana et al.	
D894,192	S	*	8/2020	Akana	D14/344
D899,429	S	*	10/2020	Akana	D14/439
D900,809	S	*	11/2020	Gao	D14/344
D919,617	S	*	5/2021	Akana	D14/344
D923,002	S	*	6/2021	Hong	D14/344
D924,240	S	*	7/2021	Akana	D14/344
D939,512	S	*	12/2021	Akana	D14/439
D947,841	S	*	4/2022	Akana	D14/344
D947,842	S	*	4/2022	Akana	D14/344
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D949,146	S	*	4/2022	Akana	D14/344
D953,324	S	*	5/2022	Akana	D14/344

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CN	306148267	11/2020
CN	306173790	11/2020
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KR	301064289.0000	6/2020
KR	301067863.0000	7/2020

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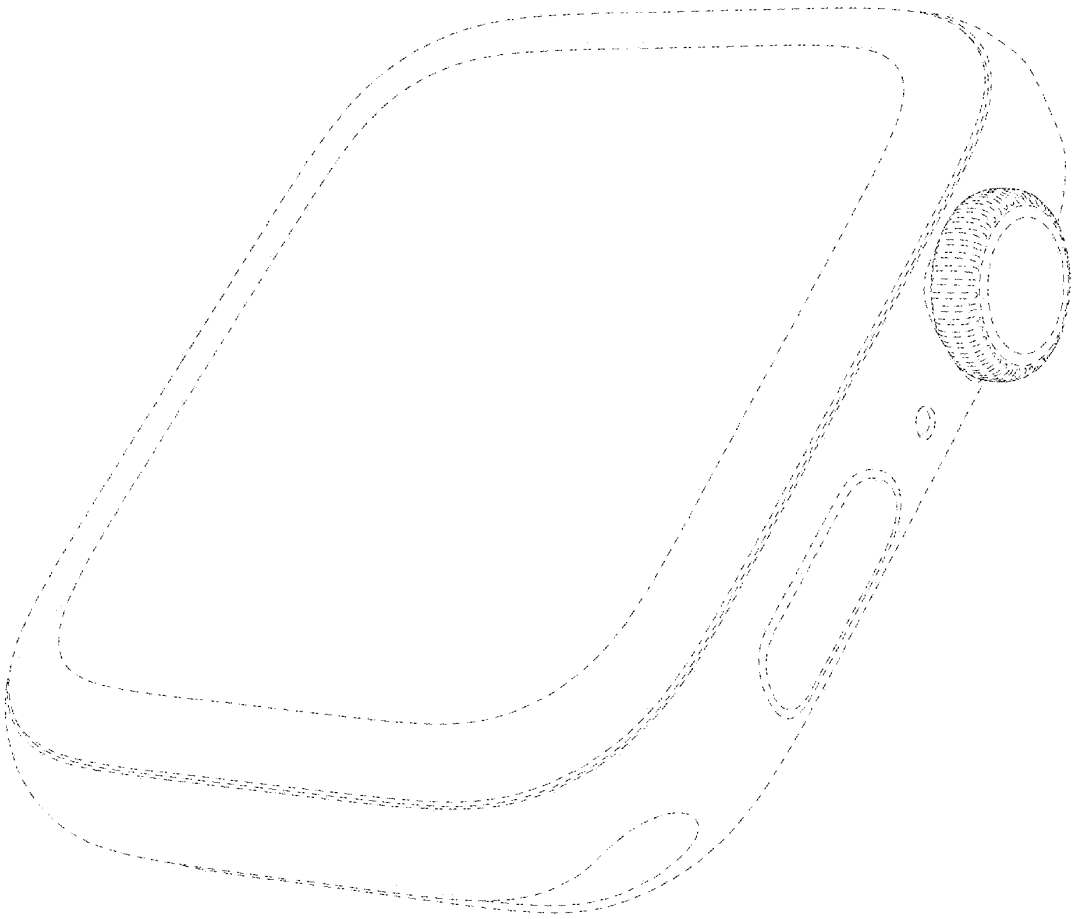


FIG. 1

FIG. 2

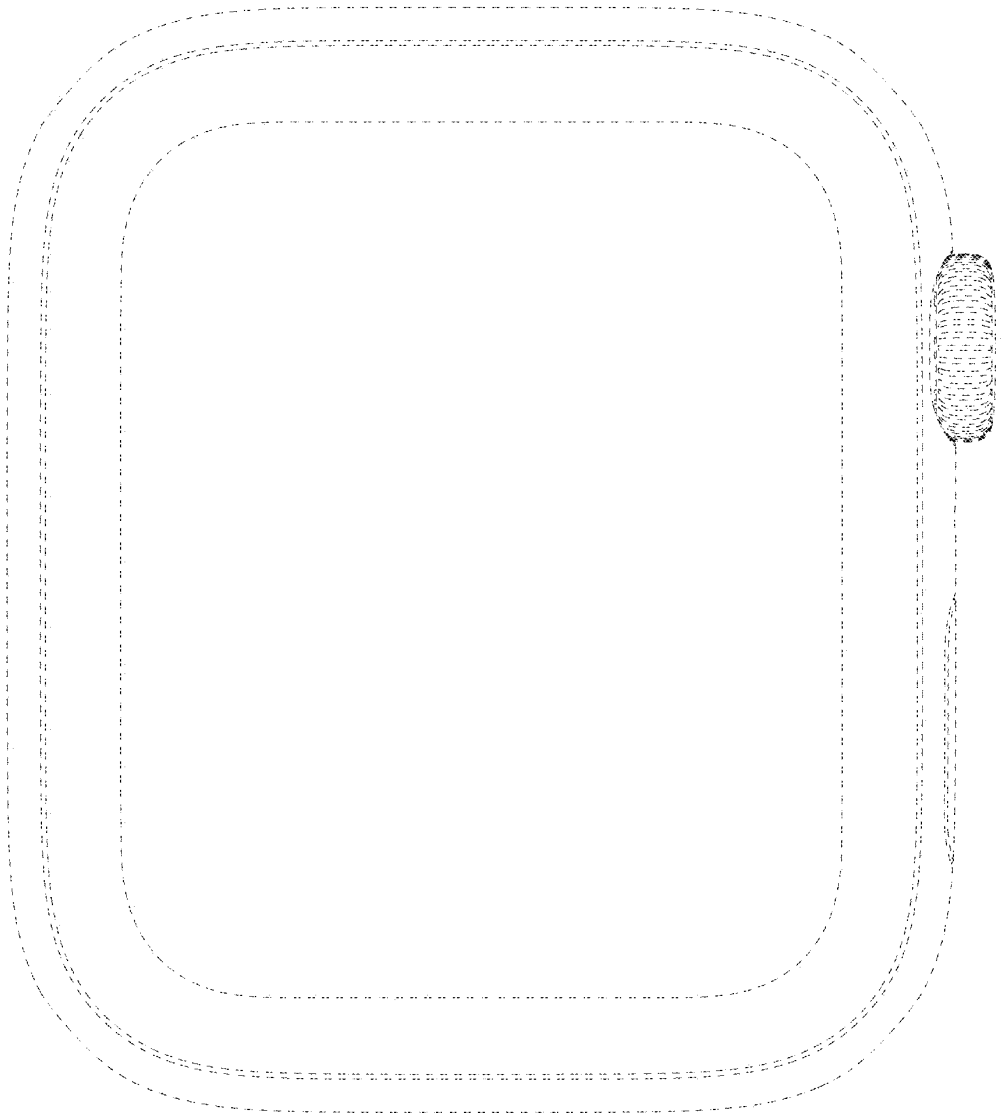


FIG. 3

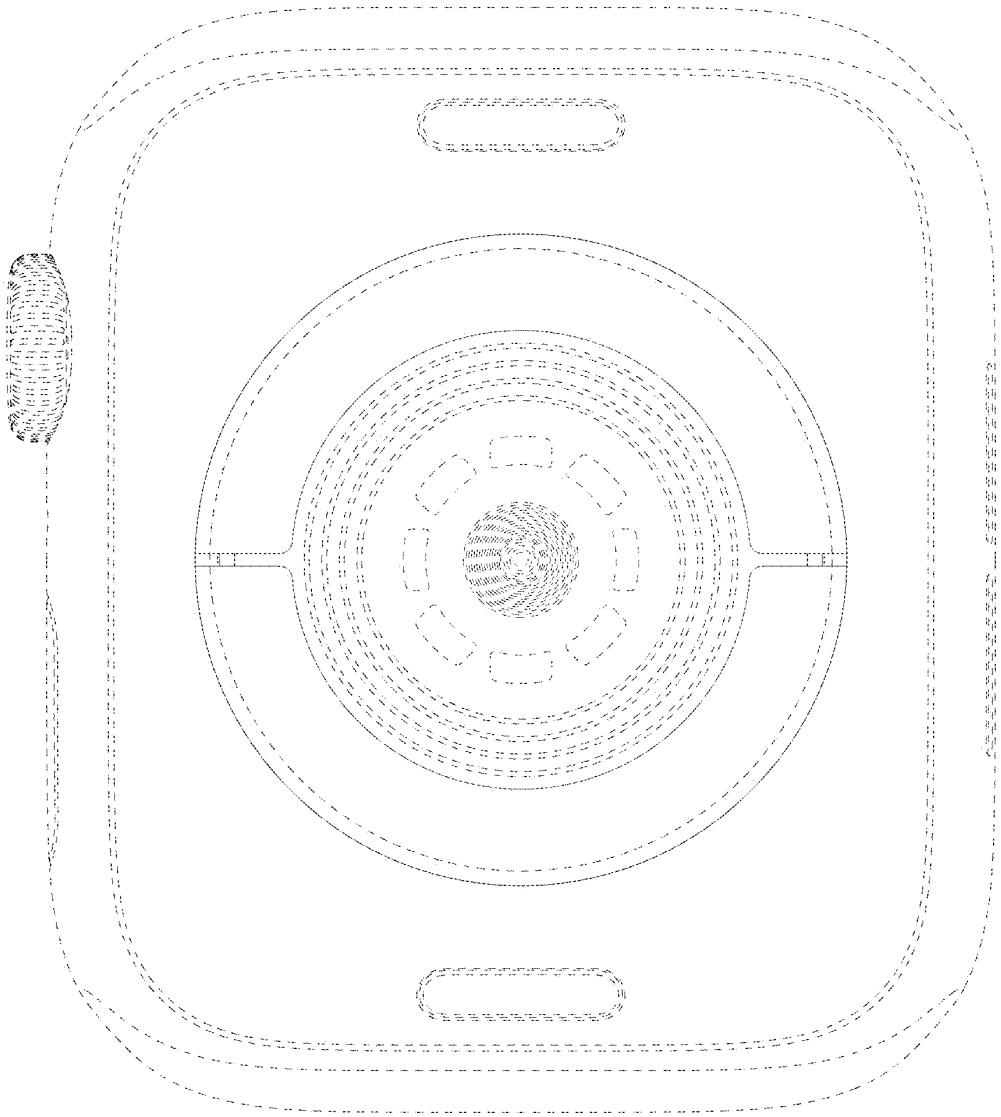


FIG. 4

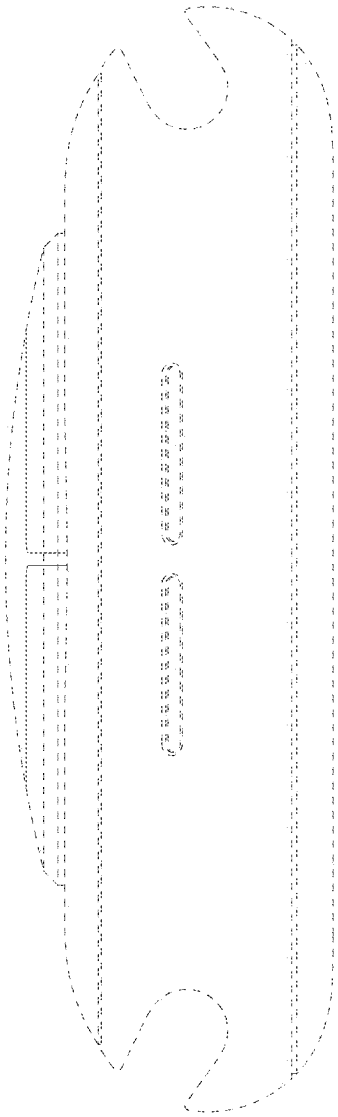


FIG. 5

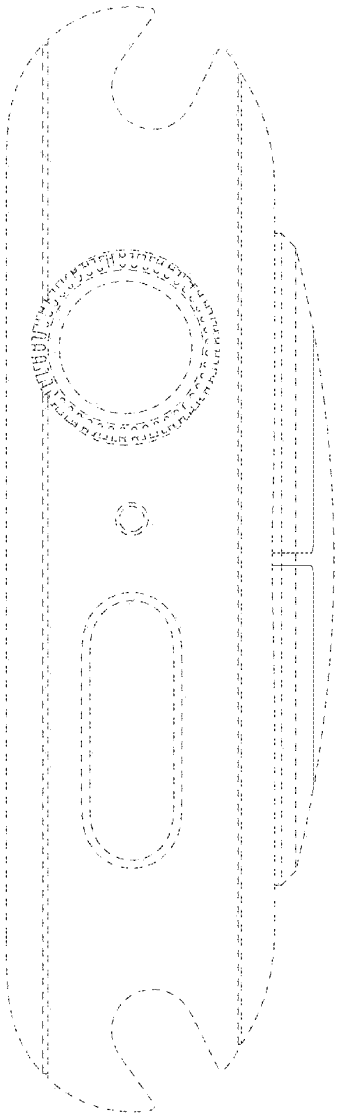


FIG. 6

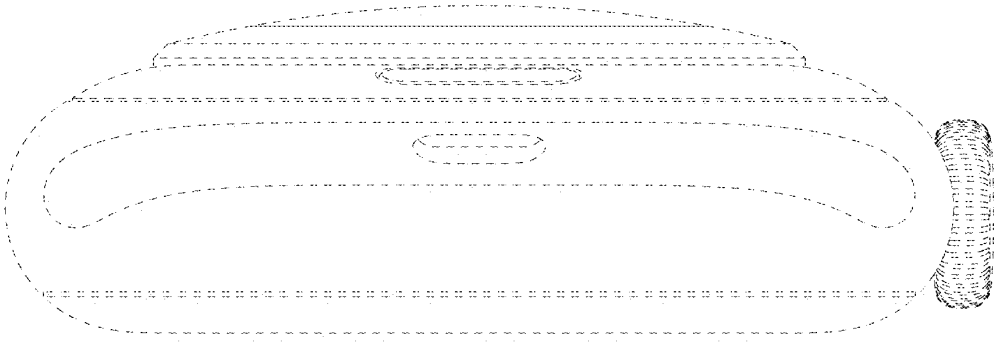
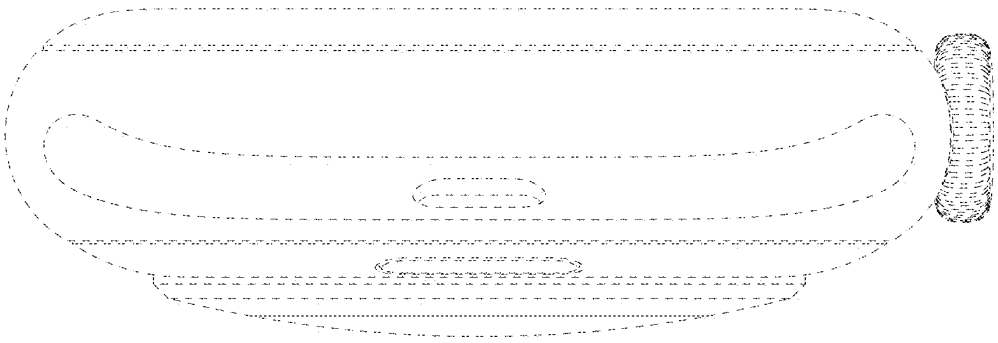


FIG. 7



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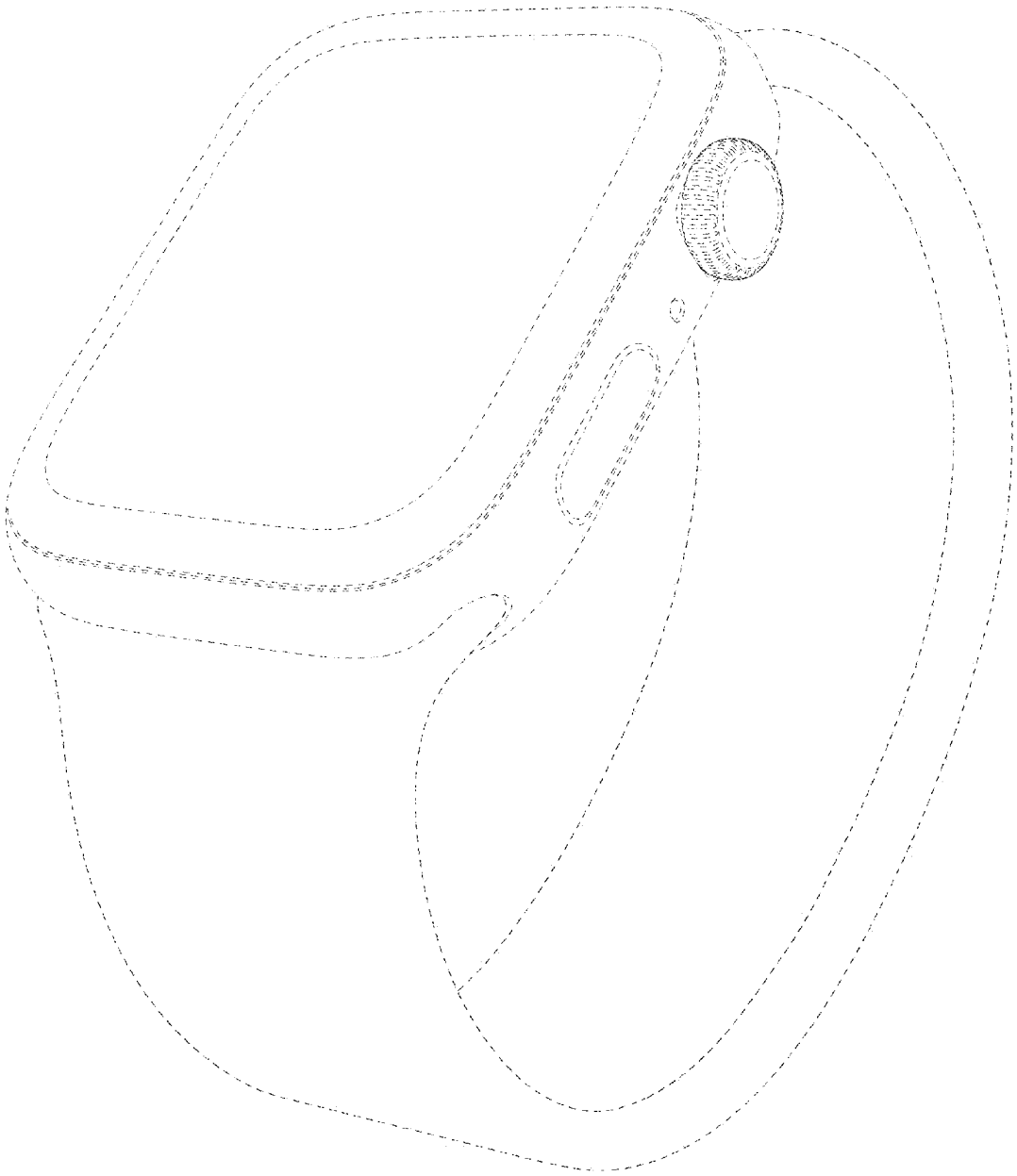

FIG. 9

EXHIBIT D

US00D735131S

(12) **United States Design Patent**
Akana et al.

(10) **Patent No.: US D735,131 S**
(45) **Date of Patent: ** Jul. 28, 2015**

(54) **CHARGER**

(71) Applicant: **Apple Inc.**, Cupertino, CA (US)

(72) Inventors: **Jody Akana**, San Francisco, CA (US); **Bartley K. Andre**, Palo Alto, CA (US); **Shota Aoyagi**, San Francisco, CA (US); **Anthony Michael Ashcroft**, San Francisco, CA (US); **Jeremy Bataillou**, San Francisco, CA (US); **Daniel J. Coster**, San Francisco, CA (US); **Daniele De Iuliis**, San Francisco, CA (US); **M. Evans Hankey**, San Francisco, CA (US); **Julian Hoenig**, San Francisco, CA (US); **Richard P. Howarth**, San Francisco, CA (US); **Jonathan P. Ive**, San Francisco, CA (US); **Duncan Robert Kerr**, San Francisco, CA (US); **Marc A. Newson**, London (GB); **Matthew Dean Rohrbach**, San Francisco, CA (US); **Peter Russell-Clarke**, San Francisco, CA (US); **Benjamin Andrew Shaffer**, San Jose, CA (US); **Mikael Silvanto**, San Francisco, CA (US); **Christopher J. Stringer**, Woodside, CA (US); **Eugene Antony Whang**, San Francisco, CA (US); **Rico Zörkendörfer**, San Francisco, CA (US)

(73) Assignee: **Apple Inc.**, Cupertino, CA (US)

(**) Term: **14 Years**

(21) Appl. No.: **29/498,998**

(22) Filed: **Aug. 11, 2014**

(51) **LOC (10) Cl.** **13-02**

(52) **U.S. Cl.**
USPC **D13/108**

(58) **Field of Classification Search**
USPC D13/107–110, 118–119, 182, 199; D14/251, 253, 432, 434; 320/107–115
CPC Y02E 60/12; Y02T 90/14; Y02T 90/122; Y02T 90/128; Y02T 90/163; H02J 7/025; H02J 7/0042; H02J 7/0044; H02J 7/0045; H02J 7/0003; H01F 38/14; H01R 13/6675; H01M 2/1022; H01M 2/1055; H01M 10/44; H01M 10/46; H01M 10/425; B60L 11/182
See application file for complete search history.

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D461,813 S * 8/2002 Chang D14/432

(Continued)

Primary Examiner — Rosemary K Tarcza
(74) *Attorney, Agent, or Firm* — Sterne, Kessler, Goldstein & Fox P.L.L.C.

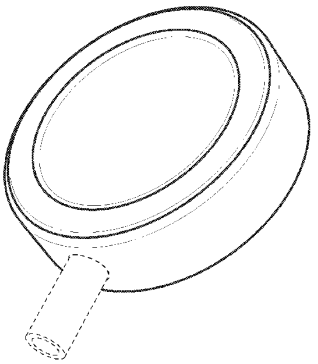
(57) **CLAIM**

The ornamental design for a charger, as shown and described.

DESCRIPTION

FIG. **1** is a bottom front perspective view of a charger showing our new design;
FIG. **2** is a bottom rear perspective view thereof;
FIG. **3** is a front view thereof;
FIG. **4** is a rear view thereof;
FIG. **5** is a left side view thereof;
FIG. **6** is a right side view thereof;
FIG. **7** is a top view thereof;
FIG. **8** is a bottom view thereof;
FIG. **9** is a perspective view thereof showing the charger in an environment in which it may be used;
FIG. **10** is a perspective view thereof showing the charger in another environment in which it may be used; and,
FIG. **11** is a perspective view thereof showing the charger in another environment in which it may be used.
The broken lines in the Figures show portions of the charger and environment that form no part of the claimed design. The shade lines in the Figures show contour and not surface ornamentation.

1 Claim, 5 Drawing Sheets



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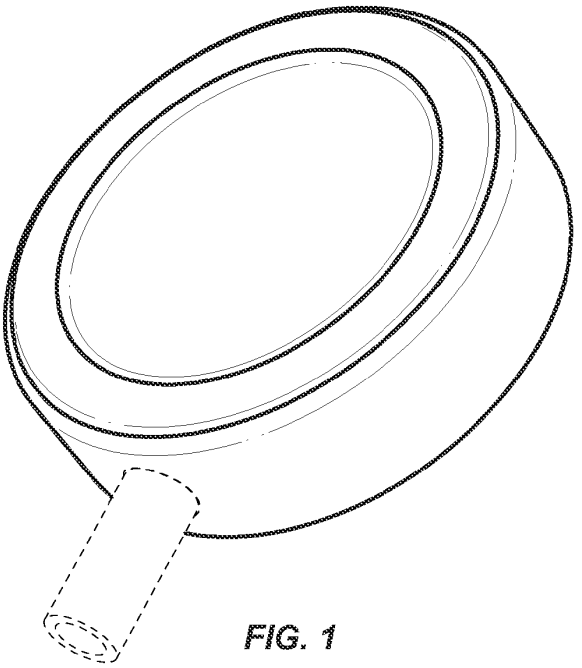

FIG. 1

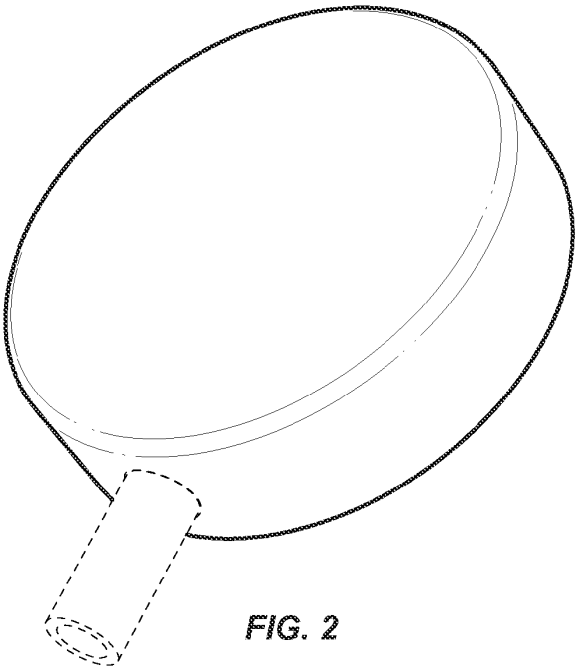

FIG. 2

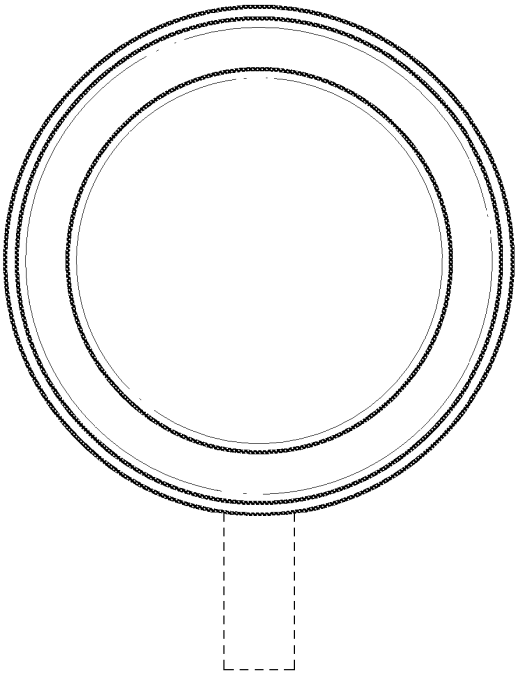

FIG. 3

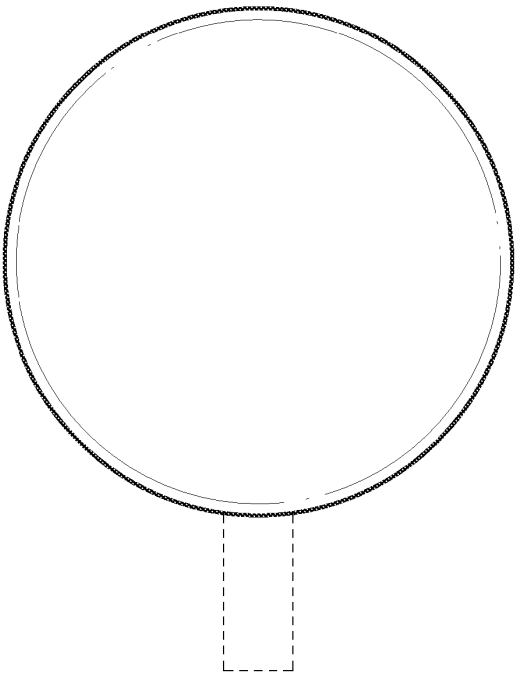

FIG. 4

FIG. 5

FIG. 6

FIG. 7

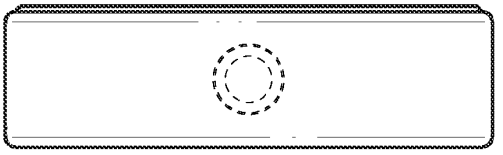

FIG. 8

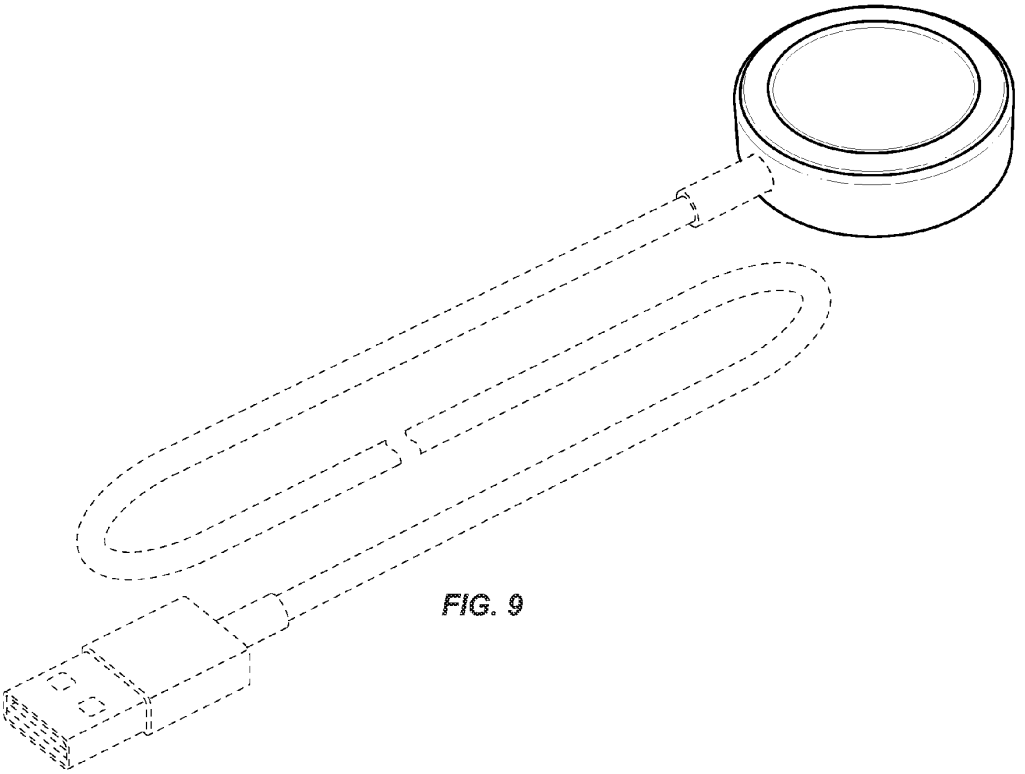

FIG. 9

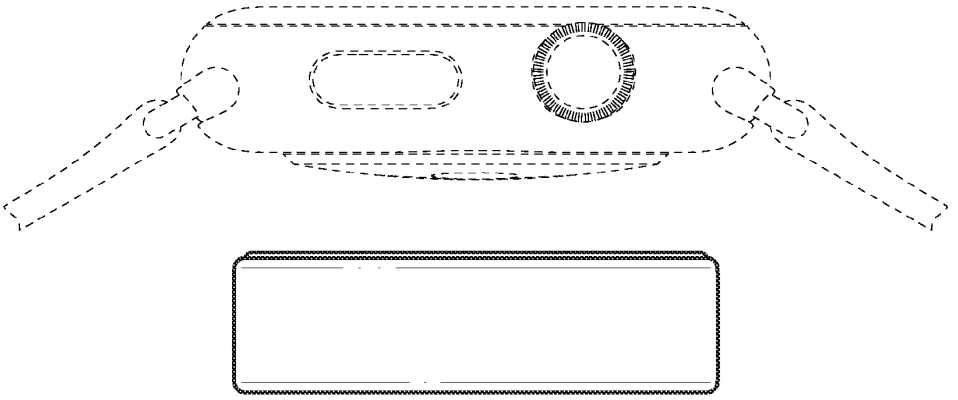

FIG. 10

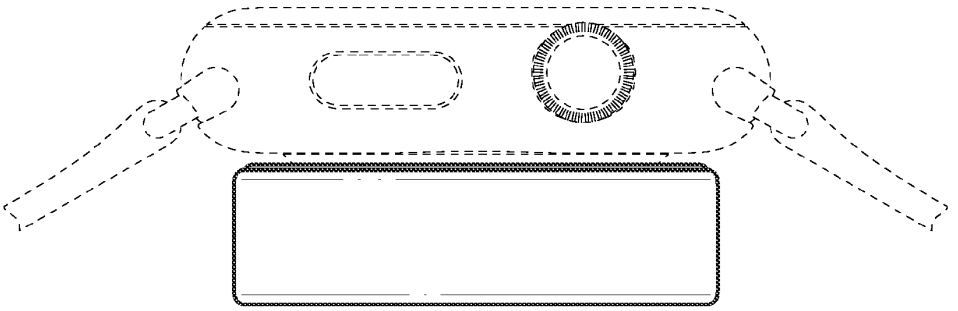

FIG. 11

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EDITED TRANSCRIPT

MASI - Masimo Corp at Deutsche Bank Health Care Conference

EVENT DATE/TIME: MAY 08, 2018 / 1:20PM GMT

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CONFERENCE CALL PARTICIPANTS

Kristen Marie Stewart *Deutsche Bank AG, Research Division - Director and Senior Company Research Analyst*

PRESENTATION

Kristen Marie Stewart - *Deutsche Bank AG, Research Division - Director and Senior Company Research Analyst*

Hi. Thanks for joining us for this session at the Deutsche Bank Healthcare Conference. I'm Kristen Stewart, the medical supplies and device analyst. It's my pleasure to have Masimo here. I have Micah Young and Eli Kammerman with me on the stage. We're going to have a little, short presentation and then we'll do Q&A that follows. Micah?

Micah Young - *Masimo Corporation - Executive VP of Finance & CFO*

Great. Thank you.

All right. Appreciate the opportunity to be here with you this morning and share with you a little bit about the Masimo story.

Before I get started, I'm just going to just touch on forward-looking statements, which involve risks and uncertainties, as well as non-GAAP financial measures. You can find a reference to all those on our website at masimo.com and find more information as well on the GAAP-to-non-GAAP reconciliation.

So just jumping in. A quick overview of Masimo today.

So for 2018, we're guiding to $818 million of product revenue, which is -- represents about 10% constant currency growth over the prior year. We're in over 140 countries worldwide, and we're monitoring over 100 million patients each year with our technology. We're also a leading innovator in noninvasive patient monitoring technologies and a leader in pulse oximetry. In fact, 17 of the top 20 hospitals in the U.S. are fully utilizing our technology.

We're also embarking on a new 7-year plan, and we've talked a lot about our targeted revenue growth of 8% to 10%; long-term operating profit margins, trying to drive to 30% over time. And these targets don't include -- do not include contributions from major products that we talked about in our pipeline or M&A.

So if you look at the technology we build out, and one of the things that we've been out really speaking to investors about this year is just talking more about how broad the portfolio is getting. And we're moving well beyond just measuring oxygen saturation, or SpO2, and we're getting into a lot of different parameters, and we'll talk about more of those here in just a minute with rainbow SET but also expanding out into other monitoring technologies and newer product lines.

If you look at the majority of our revenues today, over 80% are from consumables. So as we put more and more of our devices as well as our OEM devices out in the marketplace and we have a very large installed base, that installed base consumes our single-patient-use sensors as well as reusable sensors.

We have over 70 OEMs that we work with today. They have Masimo labels on their devices that show that they have the most accurate technology out there and in terms of specificity and sensitivity on the marketplace.

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If you look at our rainbow -- or our Masimo SET technology, traditional pulse oximetry offers about 2 parameters: SpO2, which is oxygen saturation, as well as pulse rate. With Masimo's SET, you get 5 different measurements. And that include -- it also includes perfusion index, Pleth Variability, PVi, which excludes responsiveness as well as respiratory rate. And then if you look at rainbow, you -- with 1 fingertip sensor, you can measure up to 12 different parameters that include total hemoglobin, Oxygen Reserve Index and those types of parameters. And with 1 acoustic sensor on the neck, you actually get a 13th parameter.

So we get a lot of questions about our revenue per driver, and that continue to expand, and that's what really is helping us to expand as we're getting more and more revenue that we're generating from adding more and more parameters to these devices.

We also have newer product lines such as SedLine, Brain Function Monitoring, O3 organ oximetry and NomoLine Capnography. If you look at the total addressable market for these newer product lines, it's about $700 million to $800 million total addressable market opportunity. And we're just getting started in these product lines, and they're growing at a very fast pace. And we'll talk a little bit more about how they're contributing to that growth rate, but big market opportunity for us in the future.

And then if you look at our products and our technologies, we're really broadening across the continuum of care, from the hospital to the home, also from the critical care unit of a hospital to the general floor.

As you think about our technologies, such as Patient SafetyNet, where you can remotely monitor up to 200 patients across a general floor, it gives you the -- it gives us the opportunity to really expand more and more of our capabilities to get onto the general floor. If you combine that, too, with the capability of Root, where we can connect into third-party devices, such as anesthesia machines, ventilation pumps, all those different third-party monitors, you can also transfer that into Patient SafetyNet where you're remotely monitoring these patients but also feed that in automatically into the electronic medical records of a hospital. Hospitals have made significant investments in EMR, and -- but if they can't fully utilize that capability because it's not well integrated, then they're not getting the full value of that investment.

Then also, during the quarter, we recently received approval -- FDA approval for Rad-97, which is telehealth for home monitoring. And just like Root can connect all these third-party devices and feed that information back into the electronic medical records of a hospital, Rad-97 does the same thing. It has Bluetooth and wireless connectivity options where you can tie into third-party devices, such as weight scales, glucometers, thermometers, and basically feed all that information from the home and all those vital signs of a patient back into Patient SafetyNet, where clinicians can monitor all those different patients remotely as well as feeding that back into the electronic medical records as well. It's like having an EMP beside you in the home. And we'll talk more about that here in a minute.

And then we also announced Replica during the quarter. And Replica is basically an application for smartphones that has 2-way intelligent communication where it can escalate and route alerts to smartphones and tablets for clinicians and they can collaborate amongst themselves. And it tries to find those clinicians who are on duty and escalate those alarms in those occasions so they can respond timely to patients. So this is another great opportunity to really provide that kind of ecosystem within a hospital or a clinical office to where they can monitor patients effectively.

So now turning to our first quarter results.

Revenue -- total revenue, including royalty and other revenue, is $213 million for the quarter. Product revenue increased actually about 12% for the quarter, reaching $204.4 million. And we reported non-GAAP net income of $41.9 million or $0.75 per diluted share, and that was up significantly over the prior year period.

Our financial guidance for the year is -- so our product revenues, we increased those from $810 million and up to $818 million. So a $10 million increase. And that now reflects growth of 10% over the prior year 2017.

Product gross margins, we're increasing 80 basis points versus last year to reach 65.8% for 2018. And then our non-GAAP earnings per share, we've increased that to $2.80 now up to $2.88. And that reflects growth of about 25% over the prior year.

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If you look at our guidance, you can see that we've continued to demonstrate strong top line growth of about 10% over the past couple years, and our EPS is growing at about 16% -- a rate of 16% these past couple periods.

Product revenue growth. You'd really break down our growth rates and look at that 8% to 10% growth that we've been reporting out. Of course, our SET technology is an underlying driver for growth. We're growing at multiples of the market. Roughly implied in our guidance, in our long-term growth, is about 6% to 8% growth coming from our core SET technologies and then double-digit growth coming from rainbow and similar newer product lines.

We have a lot of opportunity to continue to expand in the general floor with Patient SafetyNet combined with Root and its capability of hospital automation. And also, with -- our partnership with Philips is a tremendous opportunity ahead to continue to drive more and more growth and share gains within pulse oximetry but also expanding on those additional parameters that come along with rainbow.

And then if you look at the opportunities that we have to expand into new markets in NomoLine Capnography, SedLine Brain Function Monitoring and O3 Regional Oximetry, those are other big markets for us that are growing at a very fast pace. And we're just really getting started in those markets, and it's going to be a significant driver to our growth in the future.

This chart just basically shows the expectations over the next 7 years. We're going from a $3 billion market opportunity to what we believe will be a $6 billion market when you start to bring in SET, rainbow and those newer product lines that connect to Root.

And if you -- just to sum it all up, looking at just reasons why you want to put your money to work with Masimo and invest in Masimo, if you look at our long-term growth rates, we're guiding to 8% to 10% on the top line; long-term gross profit margin of 70% with multiple drivers to help us get to that level; and then operating profit margins growing and improving, expanding all the way to 30%.

And then if you look at our tax structure, we have a lot of opportunity to continue to expand -- or to lower our tax rate over time as we continue to see a higher mix of profits outside the U.S. Today, we have -- our revenues are around 30% outside the U.S. And if you look at a lot of larger players in the health care space, a lot of those companies are around 40% to 50% mix of business outside the U.S. So as we continue to drive more and more growth and have a higher mix of our revenue and profits outside the U.S., it's going to give us the opportunities to also lower the tax rate over time. And that, in turn, will continue to help us drive double-digit long-term EPS growth. And as you saw in the first quarter this year, we generated significant cash flow. We increased our cash position by about $54 million in the quarter up to about $370 million of cash in the balance sheet for the end of the first quarter. So we'll continue to generate strong cash flow and returning great returns to shareholders through growth and profitability. And I just want to give you a little summary there before we go into the fireside chat.

QUESTIONS AND ANSWERS

Kristen Marie Stewart - *Deutsche Bank AG, Research Division - Director and Senior Company Research Analyst*

Great. Thank you very much. Maybe just to start. For those that aren't familiar with the Philips agreement, can you just talk a little bit about Philips? And when do you expect to see a material impact from that relationship?

Micah Young - *Masimo Corporation - Executive VP of Finance & CFO*

Sorry...

Kristen Marie Stewart - *Deutsche Bank AG, Research Division - Director and Senior Company Research Analyst*

Oh, sorry. So with Philips...

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Micah Young - *Masimo Corporation - Executive VP of Finance & CFO*

On the Philips relationship?

Kristen Marie Stewart - *Deutsche Bank AG, Research Division - Director and Senior Company Research Analyst*

Yes. When do you expect to see a material impact from Philips?

Micah Young - *Masimo Corporation - Executive VP of Finance & CFO*

Yes. So last year -- let me just kind of sum up the history with Philips. So back in 2016, there was an agreement that we settled, which is a long period of litigation between the companies. And basically, when we entered in that agreement, one of the things that we determined together was we both believe that rainbow would become a standard of care. So one of the things with that agreement is over the course of the past year, we've been continuing to integrate our technology, our boards into their devices. And that was why you saw us recognize a lot of nonrecurring engineering revenues last year, is because we completed the integration of rainbow -- our rainbow technology into their devices, their monitors. So that was going well ahead of schedule. We never expected to complete all of that work in the fourth quarter last year. And so that's been a great opportunity for us, and that's where you heard us speak about on the last conference call that we are tracking very well in terms of the rainbow integration. We're putting more and more boards out there. But we -- in terms of the revenue and the contribution from revenue, it's been minimal at this point because it's only been the boards. So we're expecting that it's going to take about 12 to 18 months to really start to see those longer-term sensor contracts come into play from when those get out into the marketplace. So we're -- we could see contribution as early as Q4 this year, but we're expecting more of a contribution in 2019. And then also, we are working on co-marketing with Philips on Rainbow this year but also starting to integrate our technologies for NomoLine Capnography, SedLine Brain Function Monitoring and O3 organ oximetry. So those are the newer product lines that are part of this agreement to start integrating into their technologies as well.

Kristen Marie Stewart - *Deutsche Bank AG, Research Division - Director and Senior Company Research Analyst*

Okay, perfect. And I guess is it part of that relationship with Philips that gives you confidence in your ability to continue to grow at 2x market?

Micah Young - *Masimo Corporation - Executive VP of Finance & CFO*

Yes, it's several things. So for one, we have a very high renewal rate on our contracts for SET. So we've seen over 98% renewal rate because our technologies are very well differentiated, much more accurate than what's out there in the marketplace today. So high renewal rates. We're also taking new share as contracts continue to come up for renewal from our competitors. We're seeing strong share taking there, just been what we're seeing today. And then you start to bring in the contribution that we could see from Philips in the future we expect to see. That gives us the confidence to basically guide at those growth rates over time. And then you think about the general floor expansion opportunities of continuous monitoring becoming standard of care on the general floor, that can be another leg of growth for us in pulse oximetry.

Kristen Marie Stewart - *Deutsche Bank AG, Research Division - Director and Senior Company Research Analyst*

Maybe you can just talk a little bit more about general ward.

Micah Young - *Masimo Corporation - Executive VP of Finance & CFO*

Yes. So the general floor -- and I also look at it, too, just more broadly in how we're automating the hospital and then also telehealth for home monitoring. There's a lot of opportunities with general floor expansion where today, our critical care business, which is a majority of our revenue, is -- there's about 150,000 beds in the U.S. that are critical care beds. The general floor is about 3 to 4x opportunity of about 450,000 beds in the

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U.S. So if we start to see legislation that comes out that -- or resolutions that come out with different government bodies that promote continuous monitoring as the standard of care on the general floor or even in the home, those are opportunities for us to really -- to accelerate that expansion on to -- into that market opportunity. And we can get into some more of those as well.

Kristen Marie Stewart - *Deutsche Bank AG, Research Division - Director and Senior Company Research Analyst*

Yes. yes. Any questions from the audience? I just want to take a pause. Just wait for the mic. Thank you.

Unidentified Analyst

I'm curious about your approach for direct-to-consumer you mentioned in the home products. And curious also of your perspective about other companies in this space that are emerging like [Alta].

Micah Young - *Masimo Corporation - Executive VP of Finance & CFO*

Yes. Well, right now -- I'll touch on one. And Eli, if you want to add anything else. Based on what we're seeing and where we're really focused is telehealth for home monitoring. And we just released what's called Rad-97, and that got approved by the FDA for home use, telehealth for home monitoring. What we're starting to see is there's going -- we believe there's opportunity, especially when you think about the opioid crisis that's in the U.S. right now and now we're seeing out there. For example, if you look at what was released, I believe it was yesterday -- sorry, it was released earlier today, about a legislation in Utah where the Senate passed a resolution on deaths related to opioid-induced postoperative respiratory depression. There was a young gentleman aged 21 years old who basically had a tonsillectomy, was given painkillers, went home. And he has only taken half a dose that was required, and about 3 days later, he passed in his sleep, and it was because of respiratory depression. So they call it [Parker's Law] is what basically just came out into Utah. So we're seeing some of those things where they're encouraging the use of home monitoring and basically measuring SpO2 or oxygen saturation levels in the home to make sure that when patients are discharged early from the hospital, that they're being taken care of, that they have devices that are beside them that can interact back with clinicians and give them that safety that they need. So those are some of the things that we believe are opportunities for us to expand not only to the general floor with continuous monitoring but also into the home.

Unidentified Analyst

Just to expand on that a little bit and to be clear, the Rad-97 is a prescribed device. The customers for that product would be hospitals and home health care companies. And they would loan it to the patients on their way out of the hospital through discharge. The patients would use it temporarily at home and then bring it back to the hospital. But regarding our consumer product strategy, we have 2 main products in that segment, and consumer is a very, very tiny portion of Masimo's overall business. We have a device called iSpO2, which is a plug-in for iPhones and Android phones that has an app to go with it and allows people to monitor their blood oxygen and pulse rate in accordance with certain kinds of exercise programs they might be doing. For example, they try to push their intensity and see how low they can drive their oxygen level through anaerobic exercise. There's another device called the MightySat. It's a self-contained what we call fingertip pulse oximeter, which has the display screen built right into the device. That's available through Apple stores and also through Amazon. It costs a few hundred dollars, but, as I said, those products together account for a very, very tiny portion of our overall business. You can see more details about them on MasimoPersonalHealth.com.

Kristen Marie Stewart - *Deutsche Bank AG, Research Division - Director and Senior Company Research Analyst*

Good. Okay, perfect. So we talked a little bit about the general ward and home monitoring. Can you talk a little bit about hospital automation? I think that's your kind of third lever for longer-term growth.

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Micah Young - *Masimo Corporation - Executive VP of Finance & CFO*

That's right, yes. So we've been working with some larger hospital systems as well to -- automating the hospital -- we're not saying automate and replacing the doctors or the clinicians. It's really just trying to automate and improve workflow. So when we talk about that or we talk about our Root device, which is basically, it serves as a hub that connects all these third-party devices that I mentioned before, anesthesia machines, ventilators, monitors, connect them all the way through to where it feeds into our Patient SafetyNet, which allows you to monitor the hospital but then also automate the connection into the electronic medical record. Today, clinicians will go into a room and have to write -- handwrite all the vital signs of a patient, and then that gets input into the electronic medical record at a later time. So this -- we're trying to use our technology and be able to integrate it very well to where it feeds that data in automatically and then there's less room for human error and also saves the clinicians time. So those are some of the things we're working on right now.

Kristen Marie Stewart - *Deutsche Bank AG, Research Division - Director and Senior Company Research Analyst*

Okay. And then in terms of your longer-term forecasts, you've mentioned the 8% to 10% revenue growth, and I think I got you -- I think earlier I heard you say the base runs around 6% to 8%. Is that about right?

Micah Young - *Masimo Corporation - Executive VP of Finance & CFO*

Yes, that's about right.

Kristen Marie Stewart - *Deutsche Bank AG, Research Division - Director and Senior Company Research Analyst*

So how do I think about the kind of difference between the 6% to 8% to get to the 8% to 10%? Is it just kind of the 3 new products that you mentioned? What are the market opportunities with that?

Micah Young - *Masimo Corporation - Executive VP of Finance & CFO*

Yes. So yes, to your point, the base business, which is the -- of course, SET technology, we look at that as being 6% to 8% at a multiple of where the market is growing at. We believe the market's growing somewhere around 3% to 4% overall. And then you start to think about rainbow, which represents roughly 10% of our business, growing at 10% or more, and that contributes about 1 point to our growth rate. And then you add in the newer product lines, Capnography, SedLine Brain Function Monitoring and the O3 organ oximetry, which, I mentioned earlier, was about a $700 million to $800 million total addressable market and it's growing very fast, and we assume about a 20% growth there. And it's still very early stages, but that also contributes 1 point to growth. So you have 6% to 8% on our base business, add 1 point for rainbow and another percentage point for those newer product lines to get to that 8% to 10% range.

Kristen Marie Stewart - *Deutsche Bank AG, Research Division - Director and Senior Company Research Analyst*

Okay. And then just the confidence around being able to get to 70% growth margins, how do you kind of get there from today?

Micah Young - *Masimo Corporation - Executive VP of Finance & CFO*

Yes, I think we've got a lot of -- still have a lot of runway ahead. We're in the early innings of converting to our RD sensor line from our current -- or from our older sensor line. And that is significantly lower cost than what our existing sensory line is, and it's also a higher quality. So we believe it's going to be well received and adopted. We're seeing that adoption in contracts that we're renewing right now. And again, we're probably in the first inning of that conversion, and that's going to be -- give us a great opportunity to contribute to that 50 basis points of improvement each and every year that we commit to. And then also vertically integrating our manufacturing facility. We see a lot of opportunities to drive more and more economies of scale within our plants and then also to improve our yields on the investment.

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Kristen Marie Stewart - *Deutsche Bank AG, Research Division - Director and Senior Company Research Analyst*

Okay. And then the operating margin expansion of getting to 30%, I know some of that's obviously going to be predicated on the gross margin. But is there a leverageable opportunity for P&L?

Micah Young - *Masimo Corporation - Executive VP of Finance & CFO*

Yes. I think some of the opportunities are our international scale as we continue to grow that segment. It's about 30% of our business. We're seeing that grow anywhere from 13% to 15% range kind of in our long-range growth plan. As we continue to scour our international business, we've made a lot of investments over the past 5 years that are going to -- that we're going to leverage over time and give us the opportunity to really scale that business and drive more profits outside the U.S., which not only does it help improve our overall operating margins but also helps improve our tax rate, because you're getting -- driving more profitability or mix of profits in lower-tax jurisdictions. That's one. And then there's other areas that we're -- we've made investments in the company that -- in terms of facilities and infrastructure that we're going to be able to continue to lever with the growth rates that we're planning.

Kristen Marie Stewart - *Deutsche Bank AG, Research Division - Director and Senior Company Research Analyst*

Okay. And then you kind of touched a little bit on lowering the tax rate. Where are you today? And where do you think you can go over the next (inaudible)?

Micah Young - *Masimo Corporation - Executive VP of Finance & CFO*

Yes. So we originally guided to 25% coming into the year. Of course, that reflected a change in the new U.S. tax law. We're now guiding to 24%. We'll continue to see a better -- an improved mix of profits outside the U.S. So we brought that down to 24%. We believe that over time, that we can get that down into the low 20s. And we're still working through trying to optimize the structure and determine what that timing would look like, but we're optimistic that we'll continue to be able to get that levered down into the low 20s.

Kristen Marie Stewart - *Deutsche Bank AG, Research Division - Director and Senior Company Research Analyst*

Okay. Are there some questions from the audience? No? Okay, I'll keep going.

You have, I think, a royalty that's going to be rolling off, what kind of gives you, I guess, confidence that it can continue to grow in 2019, I guess, beyond that royalty rate? Is that a major headwind for you? Maybe just comment a little bit about that.

Micah Young - *Masimo Corporation - Executive VP of Finance & CFO*

Yes, I think yes, our royalty rolls off -- starts to roll off in October this year. We -- we're continuing to get more and more confidence around our ability to grow and grow through that, and we're seeing products like rainbow and some of those newer product lines are really contributing at a faster rate than we expected that we're in our 8% to 10% growth range. So we're seeing very strong contribution from the core business. We believe that we can continue to grow through. And there will be some impact if there's a sizable royalty that does come off, but a lot of that's already been reflected in some of the numbers that are out there. But there's also things that we're looking at in terms of capital allocations decisions where we're going to be opportunistic about opportunities to give back cash to shareholders through share buybacks and those types of things that we're going to evaluate, so.

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Kristen Marie Stewart - *Deutsche Bank AG, Research Division - Director and Senior Company Research Analyst*

Yes. Maybe if you could touch a little bit more just about capital allocation and kind of where the capital structure is today and just kind of use of cash.

Micah Young - *Masimo Corporation - Executive VP of Finance & CFO*

Yes. So first, we've got about $370 million of cash on the balance sheet as we exited the first quarter. There's a lot of opportunity to continue to really reinvest back internally into R&D, and we want to continue to invest, number one, internally to innovate as a company and continue to deliver those innovative technologies into the marketplace. So we will think of -- we think of having R&D as a percentage of revenue somewhere between that 8% to 9%. So that will be number one. And then in terms of other capital allocation, of course, the share repurchase opportunities, we're continuing to evaluate buying back shares. We've -- as you saw last quarter, we bought back some shares, about -- or nearly 200,000 shares in the quarter. And then the third would be just continue to evaluate opportunities. That may be a tuck-in opportunity or a bolt-on type acquisition that brings some synergies to the company. And we're evaluating companies that are in larger markets that are accretive to our top line growth rate of 8% to 10% and opportunities where we feel that it's going to contribute to our profitability and our ability to get to 30% operating margins over time and that are ROIC accretive by 3 to 5 years. So we want to make sure that we're bringing a return that's better than our weighted average cost of capital within the next 3 to 5 years.

Kristen Marie Stewart - *Deutsche Bank AG, Research Division - Director and Senior Company Research Analyst*

Okay. And just in terms of the priority, is it fair to say that priority is share repurchase over M&A at this point or...

Micah Young - *Masimo Corporation - Executive VP of Finance & CFO*

I think we mentioned on the call -- Joe talked to -- about it a little bit that there's nothing significant or substantial we're looking at right now that's on the horizon that's substantial. So we are definitely considering different allocations of capital. But we're also looking at some of the smaller, tuck-in-type opportunities right now that we're evaluating. But I think it's probably a little different than we were maybe a year ago, where there are some larger things on the horizon.

Kristen Marie Stewart - *Deutsche Bank AG, Research Division - Director and Senior Company Research Analyst*

Yes. What's kind of change your thinking there. As you mentioned, about a year ago, it sounded like you guys were more looking towards M&A. And now it seems like it's more in backseat or kind of -- it's [overall]...

Micah Young - *Masimo Corporation - Executive VP of Finance & CFO*

I think it's just we're continuing to get more and more confidence in our core business. I mean, the growth rates that we're seeing and the execution on what we're delivering each and every quarter here recently has given us a lot of confidence and that we don't have to rush into anything in terms of something sizable and we'll continue to evaluate. If something comes along and it's strategic and it kind of meets the criteria that we're looking at and trying to vet through financially, I think we'll definitely consider it. But there's no sense of urgency. I think it's -- we're highly confident in the core business and the execution of our leadership team in the company, and I think that's what's giving us the confidence.

Kristen Marie Stewart - *Deutsche Bank AG, Research Division - Director and Senior Company Research Analyst*

Okay. I'm going to try with the audience. Okay.

And with that, I think we'll probably close then and just take some offline.

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Micah Young - *Masimo Corporation - Executive VP of Finance & CFO*

All right, great.

Kristen Marie Stewart - *Deutsche Bank AG, Research Division - Director and Senior Company Research Analyst*

All right. Thanks again for joining us. I appreciate it.

Micah Young - *Masimo Corporation - Executive VP of Finance & CFO*

All right. Thank you.

Kristen Marie Stewart - *Deutsche Bank AG, Research Division - Director and Senior Company Research Analyst*

Thanks, everybody.

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