Adam Alper (SBN: 196834)
adam.alper@kirkland.com
Akshay S. Deoras (SBN: 301962)
akshay.deoras@kirkland.com
KIRKLAND & ELLIS LLP
555 California Street
San Francisco, CA 94104
Telephone: (415) 439-1400
Facsimile: (415) 439-1500

Michael W. De Vries (SBN: 211001)
michael.devries@kirkland.com
KIRKLAND & ELLIS LLP
555 South Flower Street
Los Angeles, CA 90071
Telephone: (213) 680-8400
Facsimile: (213) 680-8500

Leslie M. Schmidt (*pro hac vice*)
leslie.schmidt@kirkland.com
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Kat Li (*pro hac vice*)
kat.li@kirkland.com
KIRKLAND & ELLIS LLP
401 Congress Avenue
Austin, TX 78701
Telephone: (512) 678-9100
Facsimile: (512) 678-9101

Attorneys for Plaintiff Apple Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

APPLE INC., Plaintiff, v. ALIVECOR, INC., Defendant.	CASE NO. 22-CV-07608-HSG **PLAINTIFF APPLE INC.'S DISCLOSURE OF ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS**

APPLE 2002
AliveCor v. Apple
IPR2023-00948

Pursuant to Patent Local Rules 3-1 and 3-2, Plaintiff Apple Inc. ("Apple") hereby submits its Disclosure of Asserted Claims and Infringement Contentions ("Disclosure") and its document production accompanying disclosure. Apple's Disclosure is based on information presently available to Apple. As fact discovery is ongoing, this Disclosure is preliminary, and Apple reserves the right to amend this Disclosure consistent with the Court's rules and orders. Further, given that the parties have not yet identified proposed terms for construction or provided proposed constructions for the Patents-in-Suit, and that the Court has not yet made any claim construction ruling, Apple's infringement contentions may be made in a variety of alternatives. Apple's infringement contentions do not constitute admissions of any particular claim scope or construction.

Apple's investigation is ongoing, and Apple reserves the right to supplement this Disclosure based on its review of documents, information, and other materials produced by Defendant AliveCor, Inc. ("AliveCor"), third parties, and in accordance with the schedule in this case. *See* Patent L.R. 3-6.

I. Disclosure of Asserted Claims and Infringement Contentions

A. Asserted Claims Pursuant to Patent Local Rule 3-1(a)

Based on its investigation to date, Apple identifies the following Asserted Claims for each of the Patents-in-Suit:

U.S. Patent No.	Asserted Claims
10,076,257 (the "'257 Patent")	Claims 1–4, 8, 10–14
10,866,619 (the "'619 Patent")	Claims 1, 4
10,270,898 (the "'898 Patent")	Claims 1, 9, 23, 32
10,568,533 (the "'533 Patent")	Claims 20–22, 24, 37

See APL-ALV00000390, APL-ALV00004259, APL-ALV00006284, APL-ALV00006636 (certified copies of the Patents-in-Suit). AliveCor's Accused Products identified in Section I.B infringe the Patents-in-Suit under at least 35 U.S.C. §§ 271(a)–(c). Apple's investigation is ongoing, and Apple reserves the right to supplement this Disclosure based on, for example, the Court's claim construction and/or Apple's review of documents, information, and other materials produced by AliveCor, third parties, and in accordance with the schedule in this case. *See* Patent L.R. 3-6.

B. Accused Instrumentalities Pursuant to Patent L.R. 3-1(b)

Based on its investigation to date, Apple identifies AliveCor's Accused Instrumentalities (collectively, "Accused Products") by Asserted Claim:

U.S. Patent No.	AliveCor Accused Instrumentalities
'257 Patent	KardiaMobile, KardiaMobile 6L, KardiaMobile Card, Kardia App
'619 Patent	KardiaMobile Card, Kardia App
'898 Patent	KardiaPro service, in conjunction with KardiaMobile, KardiaMobile 6L, KardiaMobile Card, and/or Kardia App
'533 Patent	KardiaMobile Card, Kardia App

C. Infringement Claim Charts Pursuant to Patent L.R. 3-1(c)

Based on its investigation to date, Apple provides the following charts identifying specifically how each AliveCor Accused Instrumentality infringes the Patents-in-Suit. The exemplary infringement claim charts attached as Exhibits A–D identify examples of specific Accused Products and illustrate how those products satisfy the various elements of the asserted claims:

Exhibit	Description
Exhibit A (A1–A3)	Infringement of the '257 Patent by KardiaMobile, KardiaMobile 6L, KardiaMobile Card, Kardia App
Exhibit B	Infringement of the '619 Patent by KardiaMobile Card, Kardia App
Exhibit C	Infringement of the '898 Patent by the KardiaPro service, in conjunction with KardiaMobile, KardiaMobile 6L, KardiaMobile Card, and/or Kardia App
Exhibit D	Infringement of the '533 Patent by KardiaMobile Card, Kardia App

Apple's analysis of the Accused Products is based on information that is publicly available and on Apple's own investigation. Apple reserves the right to supplement and/or amend these infringement contentions as appropriate and as permitted under the Court's rules and orders, including in response to any non-infringement or claim construction theory asserted by AliveCor, the Court's claim construction order(s), and any additional evidence, including non-public evidence such as source code and product specifications, that AliveCor and/or third parties produce regarding the Accused Products. Apple further

reserves the right to prove infringement by relying on documents and/or portions of documents other than those cited in Exhibits A–D, which are intended to be merely exemplary. In situations in which one claim limitation references a prior limitation in Exhibits A–D, Apple incorporates by reference its contentions with respect to the prior limitation into that limitation.

Apple contends that each element of each asserted claim is literally present, and AliveCor directly infringes each asserted claim. To the extent any element is not literally infringed, AliveCor infringes each asserted claim under the doctrine of equivalents. Each limitation of the asserted claims is present, either literally or equivalently, within the Accused Products. The accused functionality in the Accused Products, if not literally satisfying limitations of the asserted claims, performs the same function, in the same way to obtain the same result as the asserted claims' limitations. Any differences between the functionality in the Accused Products and the asserted claims' limitations are insubstantial.

AliveCor also indirectly infringes the asserted claims. For example, AliveCor provides the Accused Products to customers and partners and actively encourages and instructs each customer and partner to use the Accused Products in ways that directly infringe at least one claim each of the Patents-in-Suit. AliveCor therefore specifically intends to induce its customers and partners to practice at least one claim of each of the Patents-in-Suit through the customers' and partners' normal and customary use of the Accused Products. Apple reserves the right to supplement and/or amend its infringement contentions relating to indirect infringement.

D. Indirect Infringement Claims Pursuant to Patent L.R. 3-1(d)

Based on its investigation to date, Apple alleges indirect infringement of the Patents-in-Suit as described in Exhibits A–D (infringement claim charts). AliveCor makes and offers for sale infringing products and services, and actively instructs and encourages its customers and partners on how to use such infringing products and services, including through product manuals, advertising, and instructional videos. AliveCor's customers directly infringe the Patents-in-Suit at AliveCor's direction by following the directions provided by AliveCor. *See* APL-ALV00000390, APL-ALV00004259, APL-ALV00006284, APL-ALV00006636.

E. Type of Infringement Claim Pursuant to Patent L.R. 3-1(e)

Based on its investigation to date, Apple alleges literal infringement and infringement under the doctrine of equivalents of the Patents-in-Suit as described in Exhibits A–D (infringement claim charts). Apple contends that each element of each asserted claim is literally present, and AliveCor directly infringes each asserted claim. To the extent any element is not literally infringed, AliveCor infringes each asserted claim under the doctrine of equivalents. Each limitation of the asserted claims is present, either literally or equivalently, within the Accused Products. The accused functionality in the Accused Products, if not literally satisfying limitations of the asserted claims, performs the same function, in the same way to obtain the same result as the asserted claims' limitations. Any differences between the functionality in the Accused Products and the asserted claims' limitations are insubstantial.

F. Priority Date(s) Pursuant to Patent L.R. 3-1(f)

The Patents-in-Suit are entitled to at least the following priority dates:

- '257 Patent: no later than November 5, 2008;
- '619 Patent: no later than June 19, 2017;
- '898 Patent: no later than May 30, 2014; and
- '533 Patent: no later than April 15, 2018.

G. Practicing Instrumentalities Pursuant to Patent L.R. 3-1(g)

The following Apple instrumentalities practice the Patents-in-Suit:

U.S. Patent No.	Apple Practicing Instrumentalities
'257 Patent	Apple Watch Series 4–8, Watch Ultra
'898 Patent	Apple Watch Series 4–8, Watch Ultra, Health App
'533 Patent	Apple Watch Series 4–8, Watch Ultra

H. Timing of Infringement and Damages Period Pursuant to L.R. 3-1(h)

Based on its investigation to date, Apple contends that infringement of the Patents-in-Suit began at least as of the September 2018. The damages period starts as of the filing of the Complaint and remains ongoing as of this Disclosure. If AliveCor continues its unauthorized making, using, selling, and/or offering for sale of the Accused Products indefinitely, then the damages period will continue through the

expiration dates of the Patents-in-Suit. Apple reserves the right to modify its disclosure of the infringement and damages periods as discovery continues.

I. Willful Infringement Claims Pursuant to Patent L.R. 3-1(i)

Based on its investigation to date, Apple is not currently alleging willful infringement of the Patents-in-Suit. Discovery is ongoing, and Apple reserves the right to allege willful infringement of the Patents-in-Suit based on its review of documents, information, and other materials produced by AliveCor and third parties, and in accordance with the schedule in this case.

II. Document Production Accompanying Disclosure

A. Documents Pursuant to Patent L.R. 3-2(a)

Apple is not aware of any documents evidencing discussions with, disclosures to, or other manner of providing to a third party, or sales of or offers to sell, or any public uses of, the claimed inventions prior to the date of application for each Patent-in-Suit.

B. Documents Pursuant to Patent L.R. 3-2(b)

Pursuant to Patent Local Rule 3-2(b), Apple produced documents evidencing the conception, reduction to practice, design, and development of each claimed invention: APL-ALV00000007, APL-ALV00000406, APL-ALV00004368, APL-ALV00006426.

C. Documents Pursuant to Patent L.R. 3-2(c)

Pursuant to Patent Local Rule 3-2(c), Apple produced a copy of the file history for each Patent-in-Suit: APL-ALV00000007, APL-ALV00000406, APL-ALV00004368, APL-ALV00006426.

D. Documents Pursuant to Patent L.R. 3-2(d)

Pursuant to Patent Local Rule 3-2(d), Apple produced all documents evidencing Apple's ownership of the Patents-in-Suit: APL-ALV00000001, APL-ALV00004359, APL-ALV00006418, APL-ALV00006666.

E. Documents Pursuant to Patent L.R. 3-2(e)

Pursuant to Patent Local Rule 3-2(e), Apple produced documents sufficient to show the operation of its practicing instrumentalities: APL-ALV00010444–APL-ALV00010450.

F. Documents Pursuant to Patent L.R. 3-2(f)

Apple is not aware of any agreements transferring an interest in any Patents-in-Suit. Discovery is ongoing, and to the extent any such documents are discovered or located—including documents produced by AliveCor or third parties—Apple reserves the right to supplement this Disclosure.

G. Documents Pursuant to Patent L.R. 3-2(g) and 3-2(h)

Pursuant to Patent Local Rules 3-2(g) and 3-2(h), Apple produced all agreements that Apple is currently aware of that Apple may contend are comparable to a license that would result from a hypothetical reasonable royalty negotiation, or may otherwise be used to support its damages case: APL-ALV00011749–APL-ALV00012023. Discovery is ongoing, and to the extent any such documents are discovered or located—including documents produced by AliveCor or third parties—Apple reserves the right to supplement this Disclosure.

H. Documents Pursuant to Patent L.R. 3-2(i)

Apple is not aware of any documents evidencing marking. Pursuant to Patent Local Rule 3-2(i), Apple produced documents containing sales, revenues, costs, and profits of its practicing instrumentalities: APL-ALV00000001–APL-ALV00011747. Discovery is ongoing, and to the extent any such documents are discovered or located—including documents produced by AliveCor or third parties—Apple reserves the right to supplement this Disclosure.

I. Documents Pursuant to Patent L.R. 3-2(j)

Apple is not aware of any documents evidencing F/RAND commitments or agreements with respect to the Patents-in-Suit. Discovery is ongoing, and to the extent any such documents are discovered or located—including documents produced by AliveCor or third parties—Apple reserves the right to supplement this Disclosure.

DATED: July 25, 2023

Respectfully submitted,

KIRKLAND & ELLIS LLP

/s/ Adam Alper

Adam Alper (SBN: 196834)
adam.alper@kirkland.com
Akshay S. Deoras (SBN: 301962)
akshay.deoras@kirkland.com
KIRKLAND & ELLIS LLP
555 California Street
San Francisco, CA 94104
Telephone: (415) 439-1400
Facsimile: (415) 439-1500

Michael W. De Vries (SBN: 211001)
michael.devries@kirkland.com
KIRKLAND & ELLIS LLP
555 South Flower Street
Los Angeles, CA 90071
Telephone: (213) 680-8400
Facsimile: (213) 680-8500

Leslie M. Schmidt (*pro hac vice*)
leslie.schmidt@kirkland.com
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Kat Li (*pro hac vice*)
kat.li@kirkland.com
KIRKLAND & ELLIS LLP
401 Congress Avenue
Austin, TX 78701
Telephone: (512) 678-9100
Facsimile: (512) 678-9101

Attorneys for Plaintiff Apple Inc.

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Kirkland & Ellis LLP, 2049 Century Park East, Suite 3700, Los Angeles, California 90067.

On July 25, 2023, I hereby certify that I served **PLAINTIFF APPLE INC.'S DISCLOSURE OF ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS** upon the below recipients via email:

Philip C. Ducker phil.ducker@alston.com **Alston & Bird LLP** 560 Mission Street, Suite 2100 San Francisco, CA 94105 Tel: 415-243-1000	Katherine G. Rubschlager katherine.rubschlager@alston.com **Alston & Bird LLP** 755 Page Mill Road, Building C Suite 200 Palo Alto, CA 94304 Tel: 650-838-2000
Erin Beaton (*pro hac vice*) erin.beaton@alston.com M. Joseph Fernando (*pro hac vice*) ravi.fernando@alston.com Matthew Scott Stevens (*pro hac vice*) scott.stevens@alston.com **Alston & Bird LLP** 101 South Tryon Street Suite 4000 Charlotte, NC 28280-4000 Tel: 704-444-1000	

I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 25, 2023, at Los Angeles, California.

/s/ Alice Pai
Alice Pai