

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN ACTIVITY TRACKING
DEVICES, SYSTEMS, AND
COMPONENTS THEREOF**

Investigation No. 337-TA-963

**NOTICE OF COMMISSION DETERMINATION TO EXTEND THE
WHETHER-TO-REVIEW DATE FOR ORDER NO. 54**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend the date for the Commission to determine whether to review the Administrative Law Judge's ("ALJ") initial determination ("ID") (Order No. 54), granting a motion by the respondents for summary determination that the asserted claims of U.S. Patent No. 8,961,413 ("the '413 patent") and U.S. Patent No. 8,073,707 ("the '707 patent") are directed to ineligible subject matter under 35 U.S.C. § 101, until June 3, 2016.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Inv. No. 337-TA-963 on August 21, 2015, based on a complaint filed by AliphCom d/b/a Jawbone of San Francisco, California and BodyMedia, Inc. of Pittsburgh, Pennsylvania (collectively, "Jawbone"). 80 *Fed. Reg.* 50870-71 (Aug. 21, 2015). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain activity tracking devices, systems, and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,529,811 (subsequently terminated from the investigation); U.S. Patent No. 8,398,546 (subsequently terminated from the investigation); U.S. Patent No. 8,793,522; U.S.

Patent No. 8,446,275 (subsequently terminated from the investigation); the '413 patent; and the '707 patent. The complaint further alleges misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States. The notice of investigation named the following respondents: Fitbit, Inc. of San Francisco, California; Flextronics International Ltd. of San Jose, California; and Flextronics Sales & Marketing (A-P) Ltd. of Port Louis, Mauritius (collectively, "Respondents"). The Office of Unfair Import Investigations (OUII) is a party to the investigation.

On March 11, 2016, Respondents filed a motion for summary determination that the '413 and '707 patents are directed to ineligible subject matter under 35 U.S.C. § 101. On March 23, 2016, Jawbone filed an opposition to the motion. That same day, the Commission investigative attorney ("IA") filed an opposition to the motion as to the '413 patent. On March 28, 2016, Respondents filed a reply.

On April 27, 2016, the ALJ issued the subject ID (Order No. 54) granting the motion. On May 5, 2016, Jawbone filed a petition for review of the ID. Respondents filed an opposition to Jawbone's petition on May 12, 2016. However, on May 10, 2016, the IA filed a motion to extend its response time until May 20, 2016. The Commission granted the motion that same day.

Thus, the Commission has determined to extend the date for whether to review the subject ID (Order No. 54) until June 3, 2016.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: May 23, 2016