

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 NOT TO REVIEW AN INITIAL
DETERMINATION GRANTING RESPONDENTS' MOTION FOR SUMMARY
DETERMINATION THAT CERTAIN ASSERTED CLAIMS ARE DIRECTED TO
INELIGIBLE SUBJECT MATTER UNDER 35 U.S.C. § 101**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 54) of the presiding administrative law judge ("ALJ") granting a motion for summary determination that the asserted claims of U.S. Patent Nos. 8,961,413 ("the '413 patent) and 8,073,707 ("the '707 patent") are directed to ineligible subject matter under 35 U.S.C. § 101.

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 (subsequently terminated from the investigation); 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, "Fitbit"). The Office of Unfair Import Investigations ("OUII") is a party to the investigation.

On March 11, 2016, Fitbit 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, Fitbit filed a reply.

On April 27, 2016, the ALJ issued the subject ID (Order No. 54) granting Fitbit's motion for summary determination that the '413 and '707 patents are directed to ineligible subject matter under 35 U.S.C. § 101. The ID found there was no genuine issue of material fact in dispute as to the asserted claims of '413 and '707 patents. On May 5, 2016, Jawbone petitioned for review of the ID. On May 12, 2016, Fitbit filed an opposition to Jawbone's petition. On May 20, 2016, the IA filed an opposition to Jawbone's petition (the Commission granted the IA's motion for extension of time to file its response).

Having examined the record of this investigation, including the subject ID and the submissions of the parties, the Commission has determined not to review the ID.

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: June 2, 2016