

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

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

Investigation No. 337-TA-973

**NOTICE OF COMMISSION DETERMINATION TO EXTEND THE DATE FOR
DETERMINING WHETHER TO REVIEW ORDER NO. 24**

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. 24), granting a motion by the respondents for summary determination that the asserted claims of U.S. Patent No. 8,920,332 ("the '332 patent"); U.S. Patent No. 8,868,377 ("the '377 patent"); and U.S. Patent No. 9,089,760 ("the '760 patent") are directed to ineligible subject matter under 35 U.S.C. § 101, until September 7, 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-973 on December 7, 2015, based on a complaint filed by Fitbit, Inc. of San Francisco, California ("Fitbit"). 80 *Fed. Reg.* 76040 (Dec. 7, 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 wearable activity tracking devices, systems, and components thereof by reason of infringement of certain claims of the '332 patent, the '377 patent, and the '760 patent. The notice of investigation named the following respondents: AliphCom d/b/a Jawbone of San Francisco,

California and BodyMedia, Inc. of Pittsburgh, Pennsylvania (collectively, “Jawbone”). The Office of Unfair Import Investigations (OUII) is a party to the investigation.

On May 23, 2016, Jawbone filed a motion for summary determination that the '332 patent, the '377 patent, and the '760 patent are directed to ineligible subject matter under 35 U.S.C. § 101. On June 2, 2016, Fitbit filed an opposition to the motion. On June 3, 2016, the Commission investigative attorney (“IA”) filed a response supporting the motion as to the '760 patent and opposing as to the '332 patent and the '377 patent.

On July 19, 2016, the ALJ issued the subject ID (Order No. 24) granting the motion for summary determination that the '332 patent, the '377 patent, and the '760 patent are invalid under 35 U.S.C. § 101 for being directed to ineligible subject matter, and terminated the investigation in its entirety. On August 1, 2016, Fitbit petitioned for review of the ID. On August 8, 2016, Jawbone and the IA filed oppositions to Fitbit’s petition.

The Commission has determined to extend the date for determining whether to review the subject ID (Order No. 24) until September 7, 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: September 2, 2016