

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
(Remand)

**NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL
DETERMINATION SETTING A TARGET DATE FOR COMPLETION OF REMAND
PROCEEDINGS**

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 the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 25) setting November 6, 2017, as the target date for completion of the remand proceedings.

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 <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://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 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"). 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 July 19, 2016, the ALJ issued Order No. 24 granting a 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.

On September 7, 2016, the Commission determined to review the ID, and on review, vacated and remanded for the ALJ to continue the investigation as to the '332 patent and the '377 patent. The Commission directed the ALJ to set a target date for completion of the remand proceedings. On November 22, 2016, the ALJ issued the subject ID (Order No. 25) setting November 6, 2017 as the target date, with the final remand ID being due by July 6, 2017. No petitions for review of the ID were filed.

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.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: December 14, 2016