

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

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

Inv. No. 337-TA-973

**ORDER NO. 25: INITIAL DETERMINATION SETTING TARGET DATE FOR
REMAND INVESTIGATION**

(November 22, 2016)

On September 7, 2016, the Commission issued an Order in this investigation remanding the investigation back to me to continue the Investigation as to U.S. Patent Nos. 8,920,332 (the “332 patent”) and 8,868,377 (the “377 patent”). The Commission also instructed me to issue an ID within 30 days of its Order setting a target date for this remand proceeding.

On September 29, 2016, I held a teleconference with the parties to discuss the status of the Investigation and to reschedule the hearing. During this teleconference, it was brought to my attention that recent developments in the businesses of the parties may warrant a voluntary withdrawal of the complaint and termination of the Investigation. I granted the parties two weeks’ leave to conduct additional discovery to answer this question. Specifically, I granted leave to hold a 30(b)(6) deposition of Respondents’ witness limited to the topic of those recent developments. A subsequent conference was scheduled for October 20, 2016 to discuss the results of the discovery.

On October 14, 2016, the parties filed a Joint Motion for Extension of Time to Hold Status Conference. (Motion Docket No. 973-041.) The Motion requested the date for the status conference be postponed to November 4, 2016. Having reviewed the grounds for the Motion

and finding good cause, I granted the request.

On November 4, 2016, I held a teleconference to discuss the results of the additional discovery and to determine if there were grounds to continue the Investigation. Counsel for Complainants indicated that the recently obtained discovery warranted a continuation of the Investigation as well as a reopening of discovery, the latter of which Respondents opposed but the Staff supported. After hearing the parties' arguments, I found good cause to reopen discovery. I am setting the target date for the Remand Investigation for November 6, 2017. Given a target date of November 6, 2017, my Final Initial Determination on Remand shall be due by July 6, 2017.

This Initial Determination, along with any supporting documentation, is hereby certified to the Commission. Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review of the Initial Determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders, on its own motion, a review of the Initial Determination or certain issues herein.

SO ORDERED.



Thomas B. Pender
Administrative Law Judge

**IN THE MATTER OF CERTAIN WEARABLE ACTIVITY 337-TA-973 (Remand)
TRACKING DEVICES, SYSTEMS AND COMPONENTS THEREOF**

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **PUBLIC INITIAL DETERMINATION ORDER NO. 25** has been served upon the **Commission Investigative Attorney, Yoncha Kundupoglu, Esq.**, and the following parties as indicated on

NOV 22 2016



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112A
Washington, DC 20436

FOR COMPLAINANTS FITBIT INC.:

Josh Krevitt, Esq.
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166

() Via Hand Delivery
 Via Express Delivery
() Via First Class Mail
() Other: _____

FOR RESPONDENT ALIPHCOM d/b/a JAWBONE & BODYMEDIA, INC.

Kalpana Srinivasan, Esq.
SUSMAN GODFREY L.L.P.
1901 Avenue of the Stars, Suite 950
Los Angeles, CA 90067

() Via Hand Delivery
 Via Express Delivery
() Via First Class Mail
() Other: _____