

**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. 3:       REGARDING TARGET DATE, CASE MANAGEMENT  
CONFERENCE, AND PROCEDURAL SCHEDULE**

(December 8, 2015)

By publication of a notice in the Federal Register on December 7, 2015, the U.S.

International Trade Commission ordered that:

Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain wearable activity tracking devices, systems, and components thereof by reason of infringement of one or more of claims 1, 4, 5, and 13-17 of [U.S. Patent No. 8,920,332]; claims 1-4, 7-11, 16, 25, 27, and 28 of [U.S. Patent No. 8,868,377]; claims 1-15 and 18-21 of [U.S. Patent No. 9,089,760], and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

80 F.R. 76040 (Dec. 7, 2015).

The Complainant in this Investigation is Fitbit, Inc. and the Respondents are AliphCom d/b/a Jawbone, Ltd. and BodyMedia, Inc. The Office of Unfair Import Investigations is also a party in this Investigation.

The target date for this Investigation shall be Friday April 7, 2017, which is sixteen months from the date that the Notice of Investigation was published in the Federal Register. *See*

19 C.F.R. § 210.51(a). Consequently, any final initial determination would be due by Wednesday, December 7, 2016. See 19 C.F.R. § 210.42(a)(1)(i).

**Initial Case Management Conference**

Pursuant to Ground Rule 6, I will hold the initial case management conference in this Investigation on **Monday, January 4, 2016 at 10:00 AM ET**. The conference will be held telephonically. Complainants shall be responsible for setting up the teleconference number, ensuring a court reporter is present to transcribe the call, and filing the transcript of the teleconference on EDIS. As set forth in Ground Rule 6.3, each party shall submit a case management statement two (2) business days prior to the scheduled initial case management conference on **Wednesday, December 30, 2015** by the close of business.

**Procedural Schedule**

I hereby order that the Procedural Schedule attached hereto as Appendix A is now in effect. A technology tutorial will commence at 8:45 AM ET on Monday, April 11, 2016. The tutorial shall be immediately followed by a *Markman* hearing, which shall conclude no later than 4:45 PM ET on Tuesday, April 12, 2016. The pre-hearing conference in this Investigation shall commence at 8:45 AM ET on Friday, August 5, 2016, and shall conclude no later than 11:45 AM that day. The Hearing in this Investigation shall commence at 8:45 AM ET on Monday, August 8, 2016, and shall conclude no later than 11:45 AM ET on Friday, August 12, 2016.

The parties shall meet and confer to jointly propose deadlines for those events in the Procedural Schedule where no deadline is indicated, including deadlines for the Commission Investigative Staff. The parties may also propose modifications to the listed deadlines. Further, the parties may jointly propose including additional deadlines, including deadlines for the

Commission Investigative Staff. The parties shall submit a joint procedural schedule at the same time the parties submit their initial case management statements.

**SO ORDERED.**

A handwritten signature in black ink, appearing to read "Thomas B. Pender", written over a horizontal line.

Thomas B. Pender  
Administrative Law Judge

**APPENDIX A**

<b>PROCEDURAL SCHEDULE, CASE NO. 337-TA-973</b>	
<b>Event</b>	<b>Date</b>
Initial Case Management Conference	Monday, January 4, 2016
Deadline for Propounding Ground Rule 6.2 Interrogatories	Friday, January 8, 2016
File identification of expert witnesses, including their expertise and curriculum vitae	
Deadline for Ground Rule 7.1 Disclosure of Priority Dates and Dates of Conception/Reduction to Practice	Friday, February 5, 2016
Exchange list of claim terms for construction	Friday, February 12, 2016
Exchange proposed claim constructions	Friday, February 19, 2016
File joint claim construction chart	Friday, February 26, 2016
First settlement conference	
Submit first settlement conference joint report	
Deadline for Ground Rule 7.2 Disclosure of Products	Friday, March 4, 2016
Deadline for Ground Rule 7.3 Disclosure of Domestic Industry Contentions	Friday, March 4, 2016
File initial claim construction briefs	Friday, March 11, 2016
File reply claim construction briefs	Friday, March 25, 2016
Technology Tutorial	Monday, April 4, 2016
Markman Hearing	Monday, April 4, 2016 through Tuesday, April 5, 2016
Deadline for Ground Rule 7.4 Disclosure of Infringement Contentions	Friday, April 15, 2016
Deadline for Ground Rule 7.5 Disclosure of Invalidity Contentions	Friday, April 15, 2016
Issue Order Construing Terms (*tentative date*)	Friday, May 6, 2016
Fact discovery cutoff and completion	Friday, May 20, 2016

**PROCEDURAL SCHEDULE, CASE NO. 337-TA-973**

<b>Event</b>	<b>Date</b>
Second settlement conference	
Submit second settlement conference joint report	
Serve initial expert reports	Friday, June 3, 2016
Deadline for filing summary determination motions	Friday, June 10, 2016
Serve rebuttal expert reports	Friday, June 17, 2016
Expert discovery cutoff and completion	Friday, July 1, 2016
Third settlement conference	
Submit third settlement conference joint report	
File requests for receipt of evidence without a witness	
Serve proposed exhibit lists	
Serve proposed direct exhibits (including witness statements), with available proposed physical and demonstrative exhibits	
File objections to proposed direct exhibits (including witness statements)	
File responses to objections to proposed direct exhibits (including witness statements)	
Serve proposed rebuttal exhibits (including witness statements), with available proposed rebuttal physical and demonstrative exhibits	
File pre-hearing statements and briefs	Monday, July 11, 2016
Submit on electronic media proposed direct and proposed rebuttal exhibits (including witness statements) with available proposed direct and proposed rebuttal physical and demonstrative exhibits	Monday, July 11, 2016
Deadline for filing motions <i>in limine</i>	
File objections to proposed rebuttal exhibits (including witness statements)	
File responses to objections to proposed rebuttal exhibits (including witness statements)	

**PROCEDURAL SCHEDULE, CASE NO. 337-TA-973**

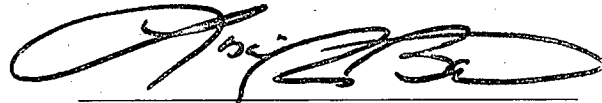
<b>Event</b>	<b>Date</b>
File responses to motions <i>in limine</i>	Monday, July 25, 2016
Pre-hearing conference	Friday, August 5, 2016
Hearing	Monday, August 8, 2016 through Friday, August 12, 2016
File initial post-hearing briefs and final exhibit lists	Friday, August 26, 2016
Submit final direct and rebuttal exhibits (including witness statements) with direct and rebuttal physical and demonstrative exhibits	Friday, August 26, 2016
File responsive post-hearing briefs	Friday, September 9, 2016
File reply post-hearing briefs	Friday, September 16, 2016
Initial Determination Due	Wednesday, December 7, 2016
Target date for completion of investigation	Friday, April 7, 2017

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CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **PUBLIC ORDER NO. 03** has been served upon the **Commission Investigative Attorney, Yoncha Kundupoglu, Esq.**, and the following parties as indicated on DEC 08 2015



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**

99 Rhode Island Street  
3<sup>rd</sup> Floor  
San Francisco, CA 94103

( ) Via Hand Delivery  
( ) Via Express Delivery  
 Via First Class Mail  
( ) Other: \_\_\_\_\_

**FOR RESPONDENT BODYMEDIA, INC.**

Union Trusting Building  
501 Grant Street, Suite 1075  
Pittsburgh, PA 15219

( ) Via Hand Delivery  
( ) Via Express Delivery  
 Via First Class Mail  
( ) Other: \_\_\_\_\_