

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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FITBIT, INC.,  
Petitioner,

v.

ALIPHCOM, INC. D/B/A JAWBONE,  
Patent Owner.

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Case IPR2016-00607  
Patent 8,529,811

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**MOTION TO ACCEPT SUBMISSION OF PATENT OWNER'S  
PRELIMINARY RESPONSE**

## **I. STATEMENT OF PRECISE RELIEF REQUESTED**

AliphCom, Inc. d/b/a Jawbone (“Jawbone”), submitted to the Patent Trial and Appeal Board (“Board”) via email ([trials@uspto.gov](mailto:trials@uspto.gov)) the Patent Owner’s Preliminary Response on May 17, 2016. Service of all Preliminary Response materials was provided to the Petitioner on the same day. Jawbone submits the present paper requesting acceptance of the submission of the Patent Owner’s Preliminary Response.

## **II. STATEMENT OF REASONS FOR THE RELIEF REQUESTED**

On March 25, 2016, counsel for Patent Owner filed Updated Mandatory Notices (Paper No. 7) and an executed Power of Attorney (Paper No. 8), identifying Michael T. Rosato as lead counsel and Andrew S. Brown and Jose C. Villarreal as back-up Counsel. On April 28, 2016, the Board granted Patent Owner’s Motion, recognizing Messrs. Rosato, Brown and Villarreal as counsel for Patent Owner (Paper No. 9).

In the process of attempting to file its Preliminary Response on May 17, 2016, Jawbone’s counsel noticed for the first time that the Patent Review Processing System (“PRPS”) has incorrectly listed Patent Owner’s current counsel (i.e., Messrs. Rosato, Brown and Villarreal ) in the system as counsel for the petitioner. Ex. 2003 is a PRPS screenshot showing Mr. Rosato incorrectly listed in PRPS as lead counsel for Petitioner. As a result, Jawbone’s counsel was not able to file documents through

PRPS on behalf of the Patent Owner. Jawbone's counsel attempted to contact the Board but was unable to reach anyone to resolve the matter.

Jawbone's undersigned counsel notified counsel for the Petitioner of the error in PRPS, the current unavailability of PRPS to the Patent Owner, and its intent to file its Patent Owner's Preliminary Response via email to [trials@uspto.gov](mailto:trials@uspto.gov). See Ex. 2004. Patent Owner subsequently filed its Preliminary Response with the Board, together with the present motion, via email to [trials@uspto.gov](mailto:trials@uspto.gov).

Accordingly, Jawbone respectfully requests the Board enter the emailed Patent Owner Preliminary Response materials and accord those papers the filing date of May 17, 2016.

Respectfully submitted,

Date: May 17, 2016

/ Michael T. Rosato /  
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Michael T. Rosato, Lead Counsel  
Reg. No. 52,182

**LISTING OF EXHIBITS**

<b>EXHIBIT NO.</b>	<b>DESCRIPTION</b>
2001	Reserved
2002	Reserved
2003	PRPS Screenshot of Petitioner's Counsel Information
2004	Email from Michael T. Rosato to Naveen Modi (May 17, 2016)

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing Motion to Accept Submission of Patent Owner's Preliminary Response and Exhibits 2003 and 2004 were served on May 17, 2016, on the Petitioner at the correspondence address of the Petitioner as follows:

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Dated: May 17, 2016

/ Michael T. Rosato /  
Michael T. Rosato, Lead Counsel  
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