

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN BIO-LAYER
INTERFEROMETERS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1344

**NOTICE OF COMMISSION DECISION NOT TO REVIEW
AN INITIAL DETERMINATION GRANTING IN PART SUMMARY
DETERMINATION OF NON-INFRINGEMENT**

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 an initial determination (“ID”) (Order No. 32) of the presiding Administrative Law Judge (“ALJ”) granting in part summary determination of non-infringement with respect to the asserted claims of U.S. Patent No. 7,445,887 (“the ’887 patent”).

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.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: On November 29, 2022, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by Sartorius Bioanalytical Instruments, Inc. (“Sartorius”) of Bohemia, New York. *See* 87 FR 73329-30 (Nov. 29, 2022). The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain bio-layer interferometers and components thereof by reason of the infringement of certain claims of the ’887 patent as well as U.S. Patent Nos. 7,394,547 (“the ’547 patent”); 7,728,982 (“the ’982 patent”); and 8,305,585 (“the ’585 patent”). *See id.* The notice of investigation names Gator Bio, Inc. (“Gator Bio”) of Palo Alto, California as a respondent in the investigation. *See id.* The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *See id.*

On May 11, 2023, Gator Bio filed a motion for summary determination of non-infringement with respect to the asserted claims of the '982 and '887 patents. On May 22, 2023, Sartorius filed a response in opposition to Gator Bio's motion. On the same day, OUII filed a response supporting in part Gator Bio's motion.

On June 26, 2023, the ALJ issued a supplemental claim construction order (Order No. 22) finding the asserted claims of the '887 patent invalid based on indefiniteness. In view of the indefiniteness finding, on June 27, 2023, the ALJ issued an ID (Order No. 23) granting in part Gator Bio's motion for summary determination of non-infringement with respect to the '982 patent and denying it as moot with respect to the '887 patent.

The Commission subsequently terminated the investigation as to the '547, '982, and '585 patents based on the withdrawal of the complaint as to those patents. *See* Order No. 14 (May 15, 2023), *unreviewed by* Comm'n Notice (June 9, 2023); Order No. 26 (June 29, 2023), *unreviewed by* Comm'n Notice (July 20, 2023). Claims 8, 16, and 18 of the '887 patent remain pending in this investigation.

On June 30, 2023, the ALJ issued an ID (Order No. 27) granting summary determination of invalidity based on indefiniteness with respect to the asserted claims of the '887 patent, consistent with the previous finding of invalidity in Order No. 22, thereby terminating the investigation before the ALJ. On August 16, 2023, the Commission determined to reverse the ALJ's invalidity finding and to remand to the ALJ for further proceedings consistent with the Commission's determination. *See* Comm'n Notice (Aug. 16, 2023).

In view of the Commission's remand order, on September 28, 2023, the ALJ issued the subject ID (Order No. 32) reconsidering and granting in part Gator Bio's motion for summary determination of non-infringement with respect to the asserted claims of the '887 patent, which is no longer moot. In particular, the ID grants summary determination of no contributory infringement because it is no longer asserted by Sartorius. *See* ID at 13-14. The ALJ otherwise denied Gator Bio's motion for summary determination of non-infringement with respect to the asserted claims of the '887 patent.

No petition for review of the subject ID was filed.

The Commission has determined not to review the subject ID.

The Commission vote for this determination took place on October 30, 2023.

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 CFR part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', enclosed within a large, stylized oval flourish.

Lisa R. Barton
Secretary to the Commission

Issued: October 30, 2023