

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN IN VITRO FERTILIZATION
PRODUCTS, COMPONENTS THEREOF,
AND PRODUCTS CONTAINING THE SAME**

Inv. No. 337-TA-1196

**NOTICE OF COMMISSION DECISION NOT TO REVIEW AN INITIAL
DETERMINATION FINDING CERTAIN RESPONDENTS IN DEFAULT**

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. 6) of the presiding Chief Administrative Law Judge (“Chief ALJ”) finding respondents Fast IVF of Scottsdale, Arizona and Hermes Ezcanesi of Istanbul, Turkey (collectively, the “Defaulting Respondents”) in default.

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 April 16, 2020, 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 complainant EMD Serono, Inc. of Rockland, Massachusetts (“Complainant”). *See* 85 FR 21267-68 (Apr. 16, 2020). The complaint, as amended and supplemented, alleges a violation of section 337 based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain *in vitro* fertilization products, components thereof, and products containing same (collectively, “Gray Market IVF Products”) by reason of infringement of certain U.S. Trademark Registration Nos. 4,689,651; 1,772,761; 3,777,170; 3,389,332; 3,816,320; 1,972,079; 3,604,207; and 3,185,427; unfair methods of competition and unfair acts in the importation and sale of Gray Market IVF Products by reason of false designation of source; and unfair methods of competition and unfair acts in the importation and sale of the Gray Market IVF Products by reason of false advertising. *See id.* In addition to the Defaulting Respondents, the notice of investigation also names General

Plastik Drug Stores of Istanbul Suadiye, Turkey as a respondent in this investigation. *See id.* The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *See id.*

Complainant effected service of the complaint and notice of investigation on the Defaulting Respondents on or before June 17, 2020. On July 23, 2020, Complainant filed a motion (“Motion”) pursuant to Commission Rule 210.16 (19 CFR 210.16) for: (1) an order directing the Defaulting Respondents to show cause why they should not be found in default for failing to respond to the complaint and notice of investigation; and (2) an ID finding the Defaulting Respondents in default upon their failure to show cause. On the same day, OUII filed a response in support of the Motion.

On August 4, 2020, the Chief ALJ issued an order (Order No. 5) requiring the Defaulting Respondents to show cause, no later than August 26, 2020, as to why they should not be held in default for failing to respond to the complaint and notice of investigation. No response was received from the Defaulting Respondents. On September 1, 2020, the Chief ALJ issued the subject ID (Order No. 6) finding the Defaulting Respondents in default pursuant to Commission Rule 210.16 (19 CFR 210.16), for failure to respond to the complaint and notice of investigation and to the order to show cause (*i.e.*, Order No. 5). *See ID at 1-2.*

No petition for review of the subject ID was filed. The Commission has determined not to review the ID.

The Commission vote for this determination took place on September 23, 2020.

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).

While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant(s) complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: September 24, 2020