

**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 PARTIALLY TERMINATING THE INVESTIGATION  
AS TO CERTAIN PATENTS AND TO REVIEW AND TAKE NO POSITION  
AS TO AN INITIAL DETERMINATION GRANTING IN PART SUMMARY  
DETERMINATION OF NON-INFRINGEMENT AS TO A PATENT**

**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. 26) of the presiding Administrative Law Judge (“ALJ”) partially terminating the investigation as to U.S. Patent Nos. 7,394,547 (“the ’547 patent”); 7,728,982 (“the ’982 patent”); and 8,305,585 (“the ’585 patent”) based on withdrawal of the complaint as to those patents. In view of the termination of the investigation as to the ’982 patent, the Commission has determined to review and, on review, to take no position as to an ID (Order No. 23) granting in part summary determination of non-infringement as to the ’982 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](mailto: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. of Bohemia, New York (“Sartorius” or “Complainant”). 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 U.S. Patent No. 7,445,887 (“the ’887 patent”), as well as the ’547, ’982, and ’585 patents. *See id.* The notice of investigation names Gator Bio, Inc. (“Respondent”) 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 June 9, 2023, the Commission terminated the investigation as to claims 20 and 29-31 of the ’982 patent, claims 1-5, 7, 9-14, and 17 of the ’887 patent, and claims 5, 6, and 15 of the ’547 patent. *See* Order No. 14 (May 15, 2023), *unreviewed by* Comm’n Notice (June 9, 2023).

On May 11, 2023, Respondent filed a motion for summary determination of non-infringement with respect to the ’982 and ’887 patents (“SD Motion”). On May 22, 2023, Complainant filed an opposition to Respondent’s SD Motion. On the same day, OUII filed a response supporting the SD Motion in part. On May 25, 2023, Respondent filed a reply in support of the SD Motion.

On June 27, 2023, the ALJ issued an ID (Order No. 23) pursuant to Commission Rule 210.18, 19 CFR 210.18, granting the SD Motion to the extent that the ’982 patent is not literally infringed. The ALJ denied the SD Motion as to non-infringement of the ’982 patent under the doctrine of equivalents. The ALJ also denied as moot the SD Motion as to the ’887 patent in view of Order No. 22 (Supplemental Claim Construction Order), in which the ALJ found the asserted claims of the ’887 patent to be indefinite.

On June 28, 2023, Complainant filed an unopposed motion for partial termination of the investigation as to all asserted claims of the ’982, ’585, and ’547 patents based on the withdrawal of the allegations in the complaint as to those claims. No response to the motion to terminate was filed.

On June 29, 2023, the ALJ issued an ID (Order No. 26) granting the motion to terminate. The ID finds that the motion to terminate complies with the Commission’s rules. In accordance with Commission Rule 210.21(a)(1), 19 CFR 210.21(a)(1), the motion to terminate represents that “there are no agreements, written or oral, express or implied, between the parties concerning the subject matter of this Investigation or Sartorius’s Motion for Partial Termination of this Investigation as to Certain Patents.” *See* Order No. 26 at 1-2. In addition, the ID finds “no extraordinary circumstances that warrant denying Sartorius’s motion.” *See id.* at 2.

No petitions for review of the subject IDs were filed.

The Commission has determined not to review Order No. 26. Accordingly, the ’982 patent, ’585, and ’547 patents are terminated from the investigation. In view of the termination of the investigation as to the ’982 patent, the Commission has determined to review Order No. 23 and, on review, to take no position as to that ID’s finding of no literal infringement of the ’982 patent.

The Commission vote for these determinations took place on July 20, 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 'LRB', enclosed within a circular flourish.

Lisa R. Barton  
Secretary to the Commission

Issued: July 20, 2023