

**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 TO REVIEW IN PART, AND
ON REVIEW TO AFFIRM WITH MODIFICATION A FINAL INITIAL
DETERMINATION FINDING NO VIOLATION OF SECTION 337;
TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part a final initial determination (“FID”) of the presiding Administrative Law Judge (“ALJ”) finding no violation of section 337, and on review, to affirm the FID with modification. Accordingly, the investigation is terminated with a finding of no violation of section 337.

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 U.S. Patent Nos. 7,445,887 (“the ’887 patent”); 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 the sole respondent in the investigation. *Id.* The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *Id.*

The Commission previously terminated the investigation as to the '547, '982, and '585 patents and claims 1-5, 7, 9-14, and 16-18 of the '887 patent based on the withdrawal of the complaint as to those patents and claims. 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); Order No. 37 (Oct. 26, 2023), *unreviewed by* Comm'n Notice (Nov. 27, 2023).

On March 8, 2024, the ALJ issued the FID finding no violation of section 337. Specifically, the FID finds that the accused products do not infringe claim 8 of the '887 patent, and that the domestic industry products do not practice that claim, thus finding that the technical prong of the domestic industry requirement is not satisfied. The FID also finds that claim 8 of the '887 patent is not invalid. The FID further finds, should the Commission find that the technical prong is satisfied, that the economic prong of the domestic industry requirement is satisfied with respect to the '887 patent.

On March 22, 2024, Sartorius petitioned for Commission review of the FID's finding of no violation of section 337. Specifically, Sartorius requests Commission review of certain findings of the FID including with respect to: (1) importation and *in rem* jurisdiction; (2) whether the accused instruments are "articles that infringe"; (3) claim construction; (4) non-infringement; and (5) non-satisfaction of the technical prong of the domestic industry requirement. On the same day, Gator Bio filed a contingent petition for review requesting review of certain FID's findings including with respect to: (1) infringement; (2) invalidity; and (3) the domestic industry requirement (economic prong and technical prong). On April 3, 2024, the parties, including OUII, filed responses to the parties' petitions.

Having examined the record of this investigation, including the FID and the parties' submissions, the Commission has determined to review in part and on review, to affirm with modification the FID's determination of no violation of section 337. Specifically, as explained in the Commission Opinion filed concurrently herewith, the Commission has determined to review certain findings of the FID and, on review to: (1) take no position on the FID's findings of no importation with respect to Gator Bio's probes and kits; (2) vacate the FID's findings of no *in rem* jurisdiction with respect to Gator Bio's probes and kits; (3) find that Gator Bio's instruments are not "articles that infringe" because the accused products do not infringe the asserted claim; (4) modify the claim construction of the preamble of claim 8, "assaying enzyme activity," and the claim term "air gap"; (5) affirm with modification the FID's finding that the accused products do not infringe claim 8 of the '887 patent; (6) affirm with modification the FID's finding that the domestic industry products do not practice claim 8 of the '887 patent, and thus Sartorius does not satisfy the technical prong of the domestic industry requirement; and (7) take no position as to the FID's finding that Sartorius satisfies the economic prong of the domestic industry requirement. The Commission has determined not to review the remainder of the FID. Accordingly, the investigation is terminated with a finding of no violation of section 337.

The Commission's vote for this determination took place on June 26, 2024.

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: June 26, 2024