

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN MODIFIED VACCINIA
ANKARA (“MVA”) VIRUSES AND
VACCINES AND PHARMACEUTICAL
COMPOSITIONS BASED THEREON**

Investigation No. 337-TA-550

**NOTICE OF DECISION TO REVIEW AN INITIAL DETERMINATION GRANTING
IN PART RESPONDENT’S MOTION FOR SUMMARY DETERMINATION
WITH REGARD TO THE CONVERSION CLAIM**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the administrative law judge’s (“ALJ”) initial determination (“ID”) (Order No. 27) granting in part respondent’s motion for summary determination with regard to the conversion claim. On review, the Commission has determined to affirm the ALJ’s determination that complaint’s conversion claim is not within the scope of the investigation and has determined to take no position on his alternative finding on jurisdiction.

FOR FURTHER INFORMATION CONTACT: Michelle Walters, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.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: This investigation was instituted on September 23, 2005, based on a complaint filed by Bavarian Nordic A/S (“BN”) of Denmark. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation

into the United States, the sale for importation, and the sale within the United States after importation of certain Modified Vaccinia Ankara (“MVA”) viruses and vaccines and pharmaceutical compositions based thereon by reason of infringement of various claims of United States Patent Nos. 6,761,893 and 6,913,752. The complaint also alleges violations of section 337 in the importation of certain MVA viruses and vaccines and pharmaceutical compositions based thereon or in the sale of such articles by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States. The complaint named a single respondent, Acambis PLC (“Acambis”) of the United Kingdom.

On March 20, 2006, Acambis filed, pursuant to 19 C.F.R. § 210.18(a), a motion for summary determination with respect to infringement, misappropriation of trade secrets, invalidity of the asserted patent claims, lack of domestic industry, and conversion of physical property. BN opposed Acambis’s motion in its entirety. The Commission investigative attorney supported the motion with regard to the conversion claim.

On April 17, 2006, the ALJ issued an ID (Order No. 27) granting in part respondent’s motion for summary determination with regard to the conversion claim. Specifically, the ALJ found that the conversion claim was not properly within the scope of the investigation and that, even if it were added to the investigation, the Commission would be without jurisdiction to hear the claim. No petitions for review of this ID were filed.

Having examined the record of this investigation, the Commission has determined to review this ID. On review, the Commission has determined to affirm the ALJ’s decision to grant in part respondent’s motion for summary determination with regard to the conversion claim on the ground that the claim is not set forth in the notice of investigation, and therefore, it is not within the scope of this investigation. The Commission, however, has determined to take no position on the ALJ’s alternative jurisdictional ground.

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 sections 210.42 and 210.44 of the Commission’s Rules of Practice and Procedure (19 C.F.R. §§ 210.42 & 210.44).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: May 9, 2006