

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of

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

Investigation No. 337-TA-550

**NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW AN
INITIAL DETERMINATION TERMINATING THE INVESTIGATION IN ITS
ENTIRETY BASED ON A CONSENT ORDER; ISSUANCE OF CONSENT ORDER**

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. 54) of the presiding administrative law judge (“ALJ”) in the above-captioned investigation terminating the investigation in its entirety on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Clint A. Gerdine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. 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 (<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 of Denmark (“Bavarian Nordic”). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) (“section 337”) 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 alleged 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 of the United Kingdom (“Acambis”). Only the patent allegations remain in this investigation.

After a hearing and post-hearing briefing, the then-presiding ALJ issued a final initial determination (“final ID”) on September 6, 2006, finding no violation of section 337. The ALJ held that the patents were infringed but invalid.

Bavarian Nordic, Acambis, and the Commission investigative attorney filed petitions for review of the final ID. On November 22, 2006, the Commission determined to review the final ID in its entirety, and to ask the parties for briefing on the issues on review and on remedy, the public interest, and bonding. On February 21, 2007, the Commission determined to remand the final ID to the ALJ and to extend the target date for completion of the investigation to October 19, 2007. The target date was subsequently extended to February 20, 2008.

On July 27, 2007, complainant and respondent filed a joint motion to terminate the investigation on the basis of a consent order. The Commission investigative attorney filed a response in support of the motion. The consent order includes a provision vacating the final ID of September 6, 2006.

The ALJ issued the subject ID on August 9, 2007, granting the motion for termination. He found that the consent order stipulation satisfies Commission rule 210.21(c)(3)(i), and that the termination of the investigation by consent order is not contrary to the public interest. No party petitioned for review of the ID. The Commission has determined not to review the ID. The investigation is terminated in its entirety and the final ID of September 6, 2006, is vacated.

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 210.21(c) and 210.42(h) of the Commission’s Rules of Practice and Procedure (19 C.F.R. §§ 210.21(c), 210.42(h)).

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: August 29, 2007