

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN MICROFLUIDIC DEVICES

Investigation No. 337-TA-1068

**NOTICE OF COMMISSION DETERMINATION TO REVIEW IN PART A FINAL
INITIAL DETERMINATION FINDING A VIOLATION OF SECTION 337; SCHEDULE
FOR FILING WRITTEN SUBMISSIONS ON THE ISSUES UNDER REVIEW AND ON
REMEDY, THE PUBLIC INTEREST, AND BONDING; EXTENSION OF TARGET
DATE**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the “Commission”) has determined to review in part the final initial determination (the “ID”) issued by the presiding administrative law judge (“ALJ”) on September 20, 2018, finding a violation of section 337 of the Tariff Act of 1930, as amended, in connection with certain asserted patents. The Commission has also determined to extend the target date for the completion of this investigation to February 11, 2019.

FOR FURTHER INFORMATION CONTACT: Ron Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-3427. 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 SW., Washington, DC 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (“EDIS”) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone 202-205-1810.

SUPPLEMENTARY INFORMATION: On September 6, 2017, the Commission instituted this investigation based on a complaint filed by Bio-Rad Laboratories, Inc. of Hercules, CA; and Lawrence Livermore National Security, LLC of Livermore, CA (collectively, “complainants”). 82 FR 42115 (Sept. 6, 2017). The complaint (and supplement thereto) alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”) based upon the importation into the United States, the sale for importation, or the sale within the United States after importation of certain microfluidic devices by reason of infringement of one or more of claims 1-12 and 14-16 of U.S. Patent No. 9,500,664 (“the ’664 patent”); claims 1-15 of U.S. Patent No. 9,089,844 (“the ’844 patent”); claims 1-21 of U.S. Patent No. 9,636,682 (“the ’682

patent”); claims 1-27 of U.S. Patent No. 9,649,635 (“the ’635 patent”); and claims 1, 2, 4-8, and 14-21 of U.S. Patent No. 9,126,160 (“the ’160 patent). *Id.* The Commission’s notice of investigation named as the sole respondent 10X Genomics, Inc. of Pleasanton, CA (“10X”). *Id.* The Office of Unfair Import Investigations was also named as a party to this investigation. *Id.*

On March 6, 2018, the Commission terminated the investigation as to claims 14-17 of the ’160 patent; claim 3 of the ’664 patent; claims 2, 8, 11, and 14–15 of the ’844 patent; claims 2–3 of the ’682 patent; and claims 2–4, 9–10, 15, 22, and 27 of the ’635 patent. *See* Order No. 12, *unreviewed*, Notice of Commission Determination Not to Review an Initial Determination (Order No. 12) Partially Terminating the Investigation as to Certain Patent Claims (March 6, 2018). On March 26, 2018, the Commission terminated the investigation as to claims 1 and 18 of the ’160 patent; claims 6, 7, 9, and 13 of the ’844 patent; claims 4 and 13 of the ’682 patent; and claims 5 and 17 of the ’635 patent. *See* Order No. 16, *unreviewed*, Notice of Commission Determination Not to Review an ID (Order No. 16) Partially Terminating the Investigation as to Certain Patent Claims (March 26, 2018). On April 16, 2018, the Commission terminated the investigation as to claims 2, 6, 7, and 19 of the ’160 patent; claims 5–7, 10, and 12 of the ’664 patent; claims 1, 3–5, 10, and 12 of the ’844 patent; claims 5–6, 8, 10–12, 15, and 20–21 of the ’682 patent; and claims 6–8, 11–12, 18–20, and 23–26 of the ’635 patent. *See* Order No. 19, *unreviewed*, Notice of Commission Determination Not to Review an Initial Determination (Order No. 19) Partially Terminating the Investigation as to U.S. Patent No. 9,089,844 and Other Asserted Patent Claims (Apr. 16, 2018).

On September 20, 2018, the ALJ issued the ID, which finds 10X in violation of section 337 as to the ’664 patent, the ’682 patent, and the ’635 patent. On September 28, 2018, the ALJ issued her recommendations on remedy, bond, and the public interest. The ALJ recommended that the Commission issue a limited exclusion order directed to 10X’s infringing products and a cease and desist order directed to 10X. The ALJ also recommended a bond of 100 percent of entered value during the Presidential review period. *See* 19 U.S.C. 1337(j)(3).

On October 3, 2018, Complainants and 10X each filed petitions for review. OUII did not file a petition for review. On October 11, 2018, the Complainants, 10X, and OUII filed responses to those petitions.

Having examined the record in this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has determined to review the ID in part. In particular, the Commission has determined to review the following:

- (1) Whether 10X indirectly infringes the ’682 and ’635 patents.
- (2) Whether 10X’s Chip GB infringes claims 1 and 14 of the ’664 patent.
- (3) Whether 10X’s Chip SE infringes claim 20 of the ’160 patent and claim 1 of the ’664 patent.

As the petitions and responses thereto have adequately addressed these issues, the Commission does not request any briefing on these issues. The Commission has determined to not review the remainder of the ID.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue a cease and desist order that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainants and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the date that the patents expire and the HTSUS numbers under which the accused products are imported. Complainants are further requested to supply the names of known importers of the products at issue in this investigation. The written submissions and proposed remedial orders must be filed no later than close of business on December 17, 2018. Reply submissions must be filed no later than the close of business on December 24, 2018. Such submissions should address the ALJ's recommended determinations on remedy and bonding and the public interest. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1068") in a prominent place on the cover page and/or the first page. (See

Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes (all contract personnel will sign appropriate nondisclosure agreements). All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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.



Lisa R. Barton
Secretary to the Commission

Issued: December 4, 2018