

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN STRONTIUM-RUBIDIUM
RADIOISOTOPE INFUSION SYSTEMS,
AND COMPONENTS THEREOF
INCLUDING GENERATORS**

Investigation No. 337-TA-1110

**NOTICE OF COMMISSION DECLASSIFICATION
DETERMINATION AFTER REMAND**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has completed the remand proceeding in connection with its May 6, 2019 determination. The Commission has determined on remand to maintain the declassifications that were previously identified in its May 6, 2019 determination and to further declassify certain material that had previously been marked redacted in this investigation.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-708-2301. 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, D.C. 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 on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 1, 2018, based on a complaint, as amended, filed by Bracco Diagnostics Inc. ("Complainant" or "Bracco") of Monroe Township, New Jersey. *See* 83 Fed. Reg. 19112-13 (May 1, 2018). The complaint, as amended, alleges violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain strontium-rubidium radioisotope infusion systems, and components thereof including generators, by reason of infringement of certain claims of U.S. Patent Nos. 9,814,826; 9,750,869; and 9,750,870 (collectively, "the Asserted Patents"). *See id.* The notice of investigation names Jubilant DraxImage Inc. of Kirkland, Québec, Canada; Jubilant Pharma Limited of Singapore; and

Jubilant Life Sciences of Noida, Uttar Pradesh, India (collectively, “Jubilant”) as respondents in this investigation. *See id.* The Office of Unfair Import Investigations is also a party to this investigation. *See id.*

On October 29, 2018, Jubilant filed a motion for summary determination that the RUBY Rubidium Elution System Version 3.1 and the RUBY Rubidium Elution System Version 4 do not infringe the Asserted Patents. Bracco did not accuse the Version 3.1 and Version 4 products in this investigation but Jubilant sought an adjudication of non-infringement as to those products. On February 8, 2019, the ALJ in the above-identified investigation issued an initial determination (“ID”) (Order No. 27) granting Jubilant’s motion for summary determination that the RUBY Rubidium Elution System Version 3.1 and the RUBY Rubidium Elution System Version 4 do not infringe the Asserted Patents. *See* Order No. 27 (Feb. 8, 2019), *unreviewed*, Comm’n Notice (Mar. 8, 2019).

On November 14, 2018, the Commission Investigative Attorney (“IA”) filed a motion to declassify portions of Jubilant’s motion for summary determination on the basis that they do not qualify as confidential business information (“CBI”) under Commission Rule 201.6 (19 C.F.R. § 201.6). On November 26, 2018, Jubilant filed a response in opposition to the IA’s motion to declassify. On March 21, 2019, the ALJ issued an ID (Order No. 31) granting-in-part the IA’s motion to declassify. The ALJ granted the IA’s Motion to Declassify with respect to certain claim limitations relating to the Version 4 product and denied it with respect to certain claim limitations relating to the Version 3.1 product. *See* Order No. 31 at 3-5. On May 6, 2019, the Commission determined to affirm Order No. 31 with modification, consistent with the redactions and declassifications proposed by the IA in its response to Jubilant’s petition for review and in Exhibit 1 thereof (showing redactions in yellow and declassified material in red) (EDIS Doc. No. 672558).

On May 22, 2019, Jubilant filed a complaint and a motion for a preliminary injunction with the United States District Court for the District of Columbia (Docket No. 1:19-1494-RDM), seeking to set aside the Commission’s declassification determination and to enjoin the Commission from disclosing the declassified information in the underlying investigation. On July 10, 2019, the district court granted Jubilant’s motion for a preliminary injunction. *See Jubilant DraxImage Inc. v. U.S. Int’l Trade Comm’n*, 396 F. Supp. 3d 113 (July 10, 2019). On July 17, 2019, the Commission filed a motion for a voluntary remand and for a stay pending resolution of the remand proceeding before the Commission. On July 25, 2019, the district court granted the Commission’s motion for a voluntary remand. *See* Order, *Jubilant DraxImage Inc. v. U.S. Int’l Trade Comm’n*, No. 1:19-1494-RDM (July 25, 2019) (ECF No. 17). The court explained that “[o]n remand, the Court imposes no limitations as to scope, and the Commission’s authority shall extend to the full extent permissible under applicable law or regulation.” *See id.*

On August 16, 2019, the Commission issued a notice requesting written submissions from the parties in connection with the remand proceeding. In response to the August 16, 2019 notice, Jubilant and the IA filed written submissions on September 24, 2019, and on October 4, 2019, they filed responses to each other’s submission.

As explained in the Commission Declassification Opinion After Remand issued concurrently herewith, the Commission has determined to maintain the declassifications that were previously identified in its May 6, 2019 determination and to further declassify certain material that had previously been marked redacted in this investigation. As set forth in the district court's July 25, 2019 Order, Jubilant has 14 days to seek judicial review of the present determination.

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', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: March 5, 2020