

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN IN VITRO FERTILIZATION
PRODUCTS, COMPONENTS THEREOF,
AND PRODUCTS CONTAINING THE SAME**

Inv. No. 337-TA-1196

**NOTICE OF COMMISSION DECISION NOT TO REVIEW AN INITIAL
DETERMINATION PARTIALLY TERMINATING THE INVESTIGATION
AS TO CERTAIN CLAIMS AND EXTENDING THE TARGET DATE**

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. 13) of the presiding administrative law judge (“ALJ”) partially terminating the investigation as to certain claims and extending the target date for completion of the investigation until April 18, 2022.

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 April 16, 2020, 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 complainant EMD Serono, Inc. of Rockland, Massachusetts (“Complainant”). *See* 85 FR 21267-68 (Apr. 16, 2020). The complaint, as amended and supplemented, alleges a violation of section 337 based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain *in vitro* fertilization products, components thereof, and products containing same (collectively, “Gray Market IVF Products”), by reason of: (1) infringement of U.S. Trademark Registration Nos. 4,689,651; 1,772,761; 3,777,170; 3,389,332; 3,816,320; 1,972,079; 3,604,207; and 3,185,427; (2) unfair methods of competition and unfair acts in the importation and sale of Gray Market IVF Products by reason of false designation of source; and (3) unfair methods of competition and unfair acts in the importation and sale of the Gray Market IVF Products by reason of false advertising. *See id.* The notice of investigation names Fast IVF of Scottsdale, Arizona and Hermes Ezcanesi of Istanbul, Turkey (collectively, the “Defaulting Respondents”) as

respondents in this investigation. *See id.* In addition, the notice of investigation also names General Plastik Drug Stores of Istanbul Suadiye, Turkey (“Unserved Respondent”) as a respondent. *See id.* The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *See id.*

On September 24, 2020, the Commission found each of the Defaulting Respondents in default. *See* Order No. 6 (Sept. 1, 2020), *unreviewed by* Comm’n Notice (Sept. 24, 2020). On October 26, 2020, the Commission terminated the Unserved Respondent from the investigation based on the withdrawal of the complaint allegations as to that respondent. *See* Order No. 8 (Oct. 13, 2020), *unreviewed by* Comm’n Notice (Oct. 26, 2020).

On April 16, 2021, the ALJ issued an ID (Order No. 10), pursuant to Commission Rule 210.18 (19 CFR 210.18), granting in part Complainant’s motion for summary determination of violation of section 337 by the Defaulting Respondents. Specifically, the ALJ granted the motion with respect to Complainant’s trademark infringement claim under section 337(a)(1)(C) but denied the motion with respect to Complainant’s unfair competition claims under section 337(a)(1)(A). The ALJ’s denial of summary determination as to the unfair competition claims under section 337(a)(1)(A) was not part of the ID and was not subject to Commission review. On October 6, 2021, the Commission determined to review and vacate the ID in part and to remand with respect to the economic prong of the domestic industry requirement.

On December 7, 2021, Complainant filed a motion for partial termination of the investigation based on the withdrawal of the allegations in the complaint as to Complainant’s unfair competition claims under section 337(a)(1)(A). On December 8, 2021, OUII filed a response in support of the motion.

On December 15, 2021, the ALJ issued the subject ID (Order No. 13) partially terminating the investigation as to Complainant’s unfair competition claims under section 337(a)(1)(A). In accordance with Commission Rule 210.21(a)(1), 19 CFR 210.21(a)(1), the ID notes that Complainant represents that “there are no agreements, written or oral, express or implied between the parties concerning the subject matter of this investigation.” *See* ID at 2. In addition, the ID finds “no extraordinary circumstances that warrant denying the motion.” *See id.*

The subject ID also extends the target date for completion of the investigation until April 18, 2022. *See id.* Pursuant to this schedule, the final ID on violation issued on December 15, 2021. The subject ID explains that the extension is necessary “[t]o allow the Commission time to review the [final ID].” *See id.*

No petition for review of the subject ID was filed.

The Commission has determined not to review the subject ID. The target date for completion of the investigation is extended until April 18, 2022.

The Commission’s vote for this determination took place on January 10, 2022.

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.

Issued: January 10, 2022.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton,
Secretary to the Commission.