

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN MICROFLUIDIC DEVICES

Investigation No. 337-TA-1068

**NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW
AN INITIAL DETERMINATION GRANTING 10X GENOMICS, INC.'S MOTION FOR
RETURN OF ITS BOND**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined not to review an initial determination (“ID”) (Order No. 37) of the presiding administrative law judge (“ALJ”), granting 10X Genomics, Inc.’s motion for return of its bond.

FOR FURTHER INFORMATION CONTACT: Ronald A. Traud, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-3427. 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 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, “Bio-Rad”). 82 FR 42115 (Sept. 6, 2017). The complaint alleged violations 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, or the sale within the United States after importation of certain microfluidic devices by reason of infringement certain claims of U.S. Patent Nos. 9,500,664 (“the ’664 patent”); 9,089,844 (“the ’844 patent”); 9,636,682 (“the ’682 patent”); 9,649,635 (“the ’635 patent”); and 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 (“OUII”) was also named as a party to this investigation. *Id.*

The Commission subsequently terminated the investigation as to the '844 patent. Order No. 19 (Mar. 6, 2018), *unreviewed by* Notice (Apr. 16, 2018).

On September 20, 2018, the presiding ALJ issued the final ID. The final ID found a violation of section 337 by virtue of 10X's infringement of the '664, '682, and '635 patents. The ID found that 10X had not established a violation with respect to the '160 patent. On December 4, 2018, the Commission determined to review various findings in the ID. 83 FR 63672 (Dec. 11, 2018).

On December 18, 2019, the Commission found a violation of section 337 with respect to the '664, '682, and '635 patents. 84 FR 70999 (Dec. 26, 2019). The Commission also found no violation of section 337 with respect to the '160 patent. *Id.* The Commission determined to issue a limited exclusion order prohibiting further importation of 10X's infringing microfluidic devices and a cease and desist order ("CDO") against 10X. *Id.*

On May 28, 2021, in an appeal initiated by Bio-Rad, the U.S. Court of Appeals for the Federal Circuit issued a decision affirming the Commission's final determination. *Bio-Rad Labs., Inc. v. Int'l Trade Comm'n*, 998 F.3d 1320 (Fed. Cir. 2021).

On July 26, 2021, Bio-Rad and 10X entered into a settlement agreement that resolved the disputes concerning the subject matter of this investigation.

On July 28, 2021, Bio-Rad and 10X jointly petitioned for rescission of the Commission's remedial orders under section 337(k) (19 U.S.C. 1337(k)) and Commission Rule 210.76(a) (19 CFR 210.76(a)). On August 25, 2021, the Commission granted the parties' petition and rescinded the remedial orders.

On July 27, 2021, 10X filed a motion for return of the bond it posted pursuant to the CDO entered in this investigation. On August 6, 2021, OUII filed a response supporting the motion.

On April 13, 2022, the ALJ issued Order No. 37, the subject ID, which granted the motion. The ALJ found that 10X satisfied the procedural requirements for the return of bond, that the settlement agreement between Bio-Rad and 10X resolved the dispute between them regarding activities during the period of Presidential review that were subject to the Commission's remedial orders, and that the Commission has previously released the respondent's bond under similar circumstances.

No party filed a petition for review of the subject ID.

The Commission has determined not to review the subject ID.

The Commission vote for this determination took place on May 31, 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.

A handwritten signature in black ink, appearing to read 'L. Barton', enclosed within a circular flourish.

Lisa R. Barton
Secretary to the Commission

Issued: May 31, 2022