

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN HUMAN MILK
OLIGOSACCHARIDES AND
METHODS OF PRODUCING
THE SAME**

Investigation No. 337-TA-1120

**NOTICE OF COMMISSION DECISION TO EXTEND THE DATE
FOR DETERMINING WHETHER TO REVIEW A FINAL INITIAL
DETERMINATION FINDING A VIOLATION OF SECTION 337**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend until January 30, 2020, the date for determining whether to review a final initial determination (“FID”) of the presiding administrative law judge (“ALJ”) finding a violation of section 337 of the Tariff Act of 1930, as amended.

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 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 June 21, 2018, based on a complaint, as amended and supplemented, filed on behalf of Glycosyn LLC of Waltham, Massachusetts (“Glycosyn”). *See* 83 Fed. Reg. 28865 (June 21, 2018). The complaint, as amended and supplemented, 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, and the sale within the United States after importation of certain human milk oligosaccharides by reason of infringement of claims 1-40 of U.S. Patent No. 9,453,230 (“the ’230 patent”) and claims 1-28 of U.S. Patent No. 9,970,018 (“the ’018 patent”). *See id.* The notice of investigation named Jennewein Biotechnologie GmbH (“Jennewein”) of

Rheinbreitbach, Germany as a respondent in this investigation. *See id.* The Office of Unfair Import Investigations (“OUII”) is also named as a party to the investigation. *See id.*

The ALJ conducted an evidentiary hearing on May 14-17, 2019, and on September 9, 2019, issued the FID finding a violation of section 337 based on the infringement of claims 1-3, 5, 8, 10, 12, 18, and 24-28 of the '018 patent. In addition, the FID finds that the asserted claims are neither invalid under 35 U.S.C. §§ 103 and 112, nor unenforceable for inequitable conduct. Furthermore, the FID finds that the domestic industry requirement is satisfied. All asserted claims in the '230 patent were withdrawn during the investigation. The FID also contains a recommended determination (“RD”) recommending that the Commission issue a limited exclusion order (“LEO”) barring entry of articles that infringe the '018 patent. The RD also recommends that the Commission impose a 5 percent bond during the period of Presidential review. Furthermore, as directed by the Commission, the RD provides findings with respect to the public interest and recommends that the Commission determine that the public interest factors do not preclude entry of the proposed LEO.

On September 23, 2019, Jennewein and OUII filed petitions for review of the FID. On October 1, 2019, Glycosyn and OUII filed responses to Jennewein’s and the IA’s petitions.

The Commission has determined to extend until January 30, 2020, the date for determining whether to review the FID.

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: January 16, 2020