

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN BIO-LAYER
INTERFEROMETERS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1344

**NOTICE OF COMMISSION DECISION NOT TO REVIEW AN INITIAL
DETERMINATION GRANTING AN UNOPPOSED MOTION FOR PARTIAL
TERMINATION OF THE INVESTIGATION AS TO CERTAIN PRODUCTS
BASED ON A CONSENT ORDER; ISSUANCE OF A CONSENT ORDER**

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. 8) of the presiding Chief Administrative Law Judge (“Chief ALJ”) granting an unopposed motion for partial termination of the investigation as to certain accused products based upon entry of a consent order stipulation and a proposed consent order. The Commission has issued a consent order as to those products.

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 November 29, 2022, 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 Sartorius Bioanalytical Instruments, Inc. of Bohemia, New York (“Complainant”). *See* 87 FR 73329-30 (Nov. 29, 2022). The complaint, as supplemented, alleges a violation of 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 bio-layer interferometers and components thereof by reason of the infringement of certain claims of U.S. Patent Nos. 7,394,547; 7,445,887; 7,728,982; and 8,305,585. *See id.* The notice of investigation names Gator Bio, Inc. of Palo Alto, California (“Gator Bio” or “Respondent”), as a respondent in the investigation. *See id.* The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *See id.*

On January 20, 2023, Respondent filed an unopposed motion to partially terminate the investigation as to certain products that contain a registration plate (“Subject Articles”) based on a consent order stipulation and proposed consent order. On January 31, 2023, OUII filed a response in support of the motion. OUII’s response states that the motion complies with Commission Rule 210.21(c)(3) (consent order stipulation) and Commission Rule 210.21(c)(4) (consent order). On February 1, 2023, Complainant filed a response to the motion. Complainant does not object to the entry of the consent order but states that such entry does not preclude it from asserting all of the asserted patents against Respondent’s redesigned products.

On February 24, 2023, the Chief ALJ issued the subject ID (Order No. 8) granting the motion and terminating the investigation as to the Subject Articles. The ID finds that the consent order stipulation and the proposed consent order comply with Commission Rules 210.21(c)(3)-(4). *See ID at 2.* In addition, the ID notes that, pursuant to Commission Rule 210.21(c), 19 CFR 210.21(c), “Gator Bio represents that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation.” *See id.* Furthermore, in accordance with Commission Rule 210.50(b)(2), 19 CFR 210.50(b)(2), the ID finds that “any effect the consent order stipulation and proposed consent order may have on the statutory public interest factors does not counsel against entry of the consent order.” *See id.* at 3.

No petition for review of the subject ID was filed.

The Commission has determined not to review the subject ID and has issued a consent order as to the Subject Articles.

The Commission vote for this determination took place on March 23, 2023.

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: March 23, 2023