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7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1110]

Certain Strontium-Rubidium Radioisotope Infusion Systems, and Components Thereof Including Generators; Commission Determination to Review in Part a Final Initial Determination Finding No Section 337 Violation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part a final initial determination ("FID") of the presiding administrative law judge ("ALJ") finding no 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, DC 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. of Monroe

Township, New Jersey ("Complainant" or "Bracco"). *See* 83 FR 19112-13 (May 1, 2018). The complaint, as amended, 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 strontium-rubidium radioisotope infusion systems, and components thereof including generators, by reason of infringement 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, "Respondents" or "Jubilant") as respondents in this investigation. *See id.* The Office of Unfair Import Investigations is also a party to this investigation. *See id.*

On February 8, 2019, the ALJ issued an ID (Order No. 27) finding by summary determination that Jubilant's RUBY Rubidium Elution System Version 3.0 directly infringes the asserted patents. *See* Order No. 27 (Feb. 8, 2019), *unreviewed*, Comm'n Notice (Mar. 8, 2019). In addition, the ALJ determined that Jubilant's RUBY Rubidium Elution System Version 3.1 and the RUBY Rubidium Elution System Version 4 do not directly infringe the asserted patents. *See id.* The ID (Order No. 27) declined to reach indirect infringement on summary determination. *See id.*

The ALJ conducted an evidentiary hearing on February 11-12 and 15-17, 2019, and on August 1, 2019, issued the FID finding no violation of section 337. Specifically, the FID finds that the domestic industry requirement is satisfied and that all the asserted claims are infringed but invalid as obvious over the prior art. In addition, the ALJ issued a Recommended Determination ("RD") recommending, should the Commission find a section 337 violation, that

the Commission issue a limited exclusion order ("LEO") barring entry of articles that infringe the asserted claims. The RD does not recommend that the Commission issue a cease and desist order or impose a 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 a determination that the public interest factors do not preclude entry of the proposed LEO.

On August 14, 2019, both Bracco and the Commission's Investigative Attorney ("IA") filed petitions for review of the FID. Bracco petitions for review of the FID's findings with respect to invalidity, while the IA petitions for review of the FID's findings with respect to domestic industry. On August 22, 2019, the parties filed responses to the respective petitions.

The Commission has determined to review the FID in part. Specifically, the Commission has determined to review the FID's findings with respect to invalidity and domestic industry. The Commission has determined not to review the remainder of the FID. At this time, the Commission does not request any briefing from the parties.

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: September 30, 2019.

Lisa Barton,

Secretary to the Commission.

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