



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1100]

Certain Microfluidic Systems and Components Thereof and Products Containing Same; Commission's Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and Cease and Desist Order; and Termination of the Investigation.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is a violation in the above-captioned investigation. The Commission has further determined to issue a limited exclusion order and cease and desist order and to set a bond rate on the entered value of covered products imported during the period of Presidential review.

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-5453. 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: On February 21, 2018, the Commission instituted this investigation based on a complaint filed by 10X Genomics, Inc. of Pleasanton, CA. 83 Fed. Reg. 7491 (Feb. 21, 2018). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain microfluidic systems and components thereof and products containing same by reason of infringement of one or more claims of U.S. Patent Nos. 9,644,204 (“the ’204 patent”); 9,689,024 (“the ’024 patent”); 9,695,468 (“the ’468 patent”); and 9,856,530 (“the ’530 patent”). *Id.* The Commission’s notice of investigation named as the sole respondent Bio-Rad Laboratories, Inc. of Hercules, CA. *Id.* The Office of Unfair Import Investigations (“OUII”) is participating in this investigation. *Id.*

On July 12, 2019, the administrative law judge (“ALJ”) issued the final initial determination (“ID”). The ID found a violation of section 337 by virtue of Bio-Rad’s indirect infringement of the ’024, the ’468, and the ’530 patents. The ID found that 10X had not established a violation with respect to the ’204 patent. The ID also found that Bio-Rad failed to establish invalidity of any of the asserted claims of any patent. The ID further found that the domestic industry requirement was satisfied for each of the asserted patents. Finally, the ID found that Bio-Rad had not carried its burden with respect to various additional affirmative defenses, including improper inventorship and ownership.

On July 25, 2019, the ALJ issued her recommended determination on remedy and bonding. The ALJ recommended, upon a finding of violation, that the Commission issue a limited exclusion order, issue a cease and desist order, and impose a bond in the amount of twenty-five percent of the entered value of any covered products imported during the period of Presidential review.

On July 29, 2019, 10X, Bio-Rad, and OUII submitted petitions seeking review of the ID.

On August 6, 2019, 10X, Bio-Rad, and OUII submitted responses to the others' petitions. On August 26, 2019, 10X and Bio-Rad submitted comments on the public interest pursuant to Commission Rule 210.50(a)(4).

On October 17, 2019, the Commission issued a notice indicating its determination to review the ID with respect to (1) all findings related to a violation based on the '024 patent; (2) all findings related to a violation based on the '468 patent; (3) noninfringement of the '204 patent; (4) all findings related to a violation based on the '530 patent; (5) Bio-Rad's inventorship and ownership defenses; and (6) a typographical error on page 91. The same notice also requested briefing from the parties on certain of those issues, and on remedy, bonding, and the public interest. The notice also included an extension of the target date to December 19, 2019.

The parties filed their initial responses to the Commission's questions on October 31, 2019, and their replies on November 7, 2019.

Upon review of the parties' submissions, the ID, RD, and evidence of record, the Commission has determined that Bio-Rad violated section 337 by reason of infringement of asserted claims 1, 5, 17, 19, and 22 of the '024 patent, claims 1, 6, 7, 9, and 21 of the '468 patent, and claims 1, 4, 11, 14, 19, 26, and 28 of the '530 patent. The Commission found no violation with respect to the '240 patent. The Commission has further determined to issue a limited exclusion order prohibiting further importation of Bio-Rad's infringing microfluidic systems and a cease and desist order against Bio-Rad. The Commission will set a bond of twenty-five percent of entered value on Bio-Rad's infringing microfluidic systems imported during the period of Presidential review.

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 210).

By order of the Commission.

Issued: February 12, 2020.

Lisa Barton,

Secretary to the Commission.

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