

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

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

Inv. No. 337-TA-1120

**INITIAL DETERMINATION ON VIOLATION OF SECTION 337 AND
RECOMMENDED DETERMINATION ON REMEDY AND BOND**

Administrative Law Judge Cameron Elliot

(September 9, 2019)

Pursuant to the Notice of Investigation and Rule 210.42(a) of the Rules of Practice and Procedure of the United States International Trade Commission, this is my Initial Determination in the matter of *Certain Human Milk Oligosaccharides and Methods of Producing the Same*, Investigation No. 337-TA-1120.



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TABLE OF ABBREVIATIONS

CDX	Complainant's Demonstrative Exhibit
CIB	Complainant's Revised Initial Post-Hearing Brief
CPB	Complainant's Pre-Hearing Brief
CPX	Complainant's Physical Exhibit
CRB	Complainant's Reply Post-Hearing Brief
CX	Complainant's Exhibit
Dep. Tr.	Deposition Transcript
Hr'g Tr.	Hearing Transcript
JX	Joint Exhibit
RDX	Respondents' Demonstrative Exhibit
RIB	Respondents' Initial Post-Hearing Brief
RPB	Respondents' Pre-Hearing Brief
RPX	Respondents' Physical Exhibit
RRB	Respondents' Reply Post-Hearing Brief
RX	Respondents' Exhibit
SDX	Staff's Demonstrative Exhibit
SIB	Staff's Initial Post-Hearing Brief
SPB	Staff's Pre-Hearing Brief
SPX	Staff's Physical Exhibit
SRB	Staff's Reply Post-Hearing Brief
SX	Staff's Exhibit

[REDACTED]

I. INTRODUCTION

A. Procedural Background

Complainant Glycosyn LLC (“Glycosyn” or “Complainant”) filed the complaint underlying this Investigation on April 2, 2018, and then filed an amended complaint on May 16, 2018. The complaint alleged respondent Jennewein Biotechnologie GmbH (“Jennewein” or “Respondent”) imports certain products that infringe one or more claims of U.S. Patent Nos. 9,453,230 (the “’230 patent”) and 9,970,018 (the “’018 patent” also referred to as JX-0003).

By publication of a notice in the *Federal Register* on June 21, 2018, the U.S. International Trade Commission ordered that:

Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of products identified in paragraph (2) by reason of infringement of one or more of claims 1–40 of the ’230 patent; and claims 1–28 of the ’018 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337[.]

83 Fed. Reg. 28,865 (June 21, 2018). On July 16, 2018, the presiding administrative law judge set a target date of October 21, 2019 for completion of this investigation and set the evidentiary hearing for February 22, 2019. (Order No. 4.) On August 20, 2018, the administrative law judge issued the procedural schedule. (Order No. 6.) On September 4, 2018, and due to the retirement of the presiding administrative law judge, the investigation was reassigned to the Chief Administrative Law Judge. (EDIS Doc. ID 654642.)

In accordance with the issued procedural schedule, on October 16, 2018, the Chief Administrative Law Judge held a technology tutorial and *Markman* hearing, and on December 18, 2018, issued Order No. 22, construing certain terms of the asserted patents.

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