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ITC To Review Patent Dispute Between Biotech Firms

By **Kaitlyn Burton**

Law360 (February 5, 2020, 8:01 PM EST) -- The U.S. International Trade Commission will weigh in on a patent dispute between biotechnology companies Glycosyn and Jennewein Biotechnologie after announcing Wednesday that it will partially review an administrative law judge's finding that Jennewein's imports infringe a Glycosyn milk patent.

The ITC said in a Federal Register notice that it will review some of Administrative Law Judge Carnfon Elliot's September 2019 final initial determination, which found that certain human milk oligosaccharides, or HMOs, imported by Jennewein Biotechnologie GmbH infringed Glycosyn LLC's U.S. Patent No. 9,970,018. The patent covers a way to produce purified HMOs — sugars found in breast milk — using *E. coli* bacteria.

Judge Elliot also recommended that the commission issue a limited exclusion order barring entry of the infringing products, according to the notice.

"Notice is hereby given that the U.S. International Trade Commission has determined to review in part a final initial determination ... of the presiding administrative law judge ... finding a violation of section 337 of the Tariff Act of 1930, as amended," the commission said.

In particular, the ITC will review the judge's findings related to Jennewein's bacterial strains and its alternative bacterial strain, the TTFL12 strain, the notice said.

"The commission has determined not to review the remainder of the [final initial determination]," it said.

The ITC kicked off the investigation in June 2018, based on a complaint lodged by Glycosyn accusing Jennewein of importing certain HMOs that infringe two of its patents, the '018 patent and U.S. Patent No. 9,453,230, which also covers producing HMOs.

In its May 2018 amended complaint, Glycosyn asked the ITC for a limited exclusion and a cease-and-desist order barring entry of the allegedly infringing products into the U.S.

Counsel for the companies didn't immediately respond to requests for comment Wednesday.

Glycosyn is represented by Michael C. Newman of Mintz Levin Cohn Ferris Glovsky and Popeo PC.

Jennewein is represented by Gary M. Hnath of Mayer Brown LLP.

The investigation is Certain Human Milk Oligosaccharides and Methods of Producing the Same, investigation number 337-TA-1120, before the U.S. International Trade Commission.

--Additional reporting by Tiffany Hu and Suzanne Monyak. Editing by Stephen Berg.

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