

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN SELECTIVE THYROID
HORMONE RECEPTOR-BETA
AGONISTS, PROCESSES FOR
MANUFACTURING OR RELATING TO
SAME, AND PRODUCTS CONTAINING
SAME**

INV. NO. 337-TA-1352

**ORDER NO. 22: FINDING GOOD CAUSE TO CONTINUE THE INVESTIGATION
BEYOND THE 100-DAY PROCEEDING WITHOUT ISSUING AN
INITIAL DETERMINATION**

(May11, 2023)

On December 29, 2022, complainant Viking Therapeutics, Inc. (Viking) filed a complaint alleging violations of section 337 based on “the importation into the United States, of certain selective thyroid hormone receptor-beta agonists, processes for manufacturing or relating to same, and products containing same by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure a domestic industry or prevent the establishment of a domestic industry.” 88 Fed. Reg. 8455, 8455-56 (Feb. 9, 2023) (hereinafter Notice of Investigation); *see* EDIS Doc. IDs 787049, 787052. Viking supplemented the complaint on January 13, 2023. *See* EDIS Doc. IDs 787965, 787966.

On February 9, 2023, the Commission instituted Investigation No. 337-TA-1352 to determine:

[W]hether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States of certain products identified in paragraph (2) by reason of misappropriation of trade secrets, the threat or effect of which

is to destroy or substantially injure a domestic industry in the United States or prevent the establishment of an industry in the United States.

Notice of Investigation. The Notice of Investigation named the following entities as respondents: Ascletois Pharma Inc. of Hangzhou, China, Ascletois Pharmaceuticals Co. Ltd. of Shaoxing, China, Ascletois Bioscience Co., Ltd., of Hangzhou, China, Gannex Pharma Co., Ltd., of Shanghai, China, and Jinzi Jason Wu of Seattle, Washington, U.S.A. (collectively, Ascletois). *Id.* The Office of Unfair Import Investigations (Staff) is also a party to this investigation. *Id.*

The Commission ordered the presiding administrative law judge to “hold an early evidentiary hearing, find facts, and issue an early decision, within 100 days of institution *except for good cause shown*, as to whether complainant can show that the threat or effect of the alleged unfair acts is to (i) to destroy or substantially injure an industry in the United States, or (ii) to prevent the establishment of such an industry.” *Id.* (emphasis added). The decision for the 100-day proceeding is therefore due on May 22, 2023. *See* Order No. 9 (Mar. 6, 2023).

As described below, events have unfolded in the investigation that preclude the issuance of an early decision on the topic identified in the Notice of Investigation.

Findings Relating to the 100-day Proceeding

During the discovery period set for the 100-day proceeding, Viking and Ascletois initially agreed to exchange email discovery from five custodians limited to ten electronic search terms. *See* Order No. 14 (Mar. 24, 2023) at 1. Viking provided its search terms to Ascletois, but Ascletois asserted that the search terms were unduly burdensome and ultimately refused to produce emails. *Id.* at 2. On March 24, 2023, I issued Order No. 14 granting Viking’s motion to compel production of emails from five custodians limited to only three search terms and ordering Ascletois to complete

production by March 30, 2023, a date that exceeded the originally ordered date for completing discovery in the 100-day proceeding. *Id.* at 2-3.

On April 11, 2023, twelve days after the deadline set in Order No. 14 and two days before the evidentiary hearing for the 100-day proceeding was set to begin, I received a letter from Ascletis reporting that it had not fully complied with Order No. 14. *See* Order No. 19 (Apr. 12, 2023) at 2. In the letter, Ascletis stated that it learned its discovery vendor had identified responsive attachments to otherwise non-responsive emails that had not been produced. *See id.* Ascletis stated that it produced the emails and attachments on April 11, 2023, and this late discovery totaled approximately 44,000 pages of materials. *See id.* Viking submitted a responsive letter later that day on April 11, 2023, and requested sanctions for Ascletis's violation of Order No. 14. *See id.* Staff agreed that sanctions were appropriate but disagreed about what sanctions would be proper under the circumstances. *See id.* Because the evidentiary hearing was set to begin in two days on April 13, 2023, Viking would not have time to review and analyze Ascletis's production before the hearing. As there was also not enough time before the hearing to determine what sanctions were appropriate for Ascletis's violation of Order No. 14, I ordered Ascletis to choose between two options: (1) stipulate to the injury requirement and cancel the evidentiary hearing, which would end any further investigation into whether Ascletis should be sanctioned for violation of Order No. 14, or (2) proceed with the evidentiary hearing, which would allow an orderly investigation into possible sanctions for the admitted discovery violation. *Id.* Ascletis opted to proceed with the hearing. EDIS Doc. ID 794262.

I held a prehearing conference on April 13, 2023, and convened the evidentiary hearing for the 100-day proceeding immediately thereafter. The evidentiary hearing ended on April 17, 2023.

See Tr. 1-638.¹ The parties filed their post-hearing briefs in accordance with the procedural schedule set forth in Order No. 9.

Viking argued before the hearing that it did not have an opportunity to conduct a thorough review of Ascleto's late email production of more than 44,000 pages before the start of the hearing. Order No. 19, Attachment D at 2. Viking also contended it was prejudiced in its ability to present evidence from the late production and prejudiced in its ability to conduct a fulsome examination of Ascleto's witnesses regarding the emails. *Id.* As a demonstration of the potential relevance of the materials in Ascleto's untimely production, during the hearing Viking questioned Ascleto's vice president of clinical operations and development, Ms. Yumei Helen Yan, and Ascleto's CEO and named respondent Dr. Jinzi Jason Wu about two emails from that production. *E.g.*, Tr. (Yan) at 381:7-382:24; Tr. (Wu) at 409:25-410:8. I find that the witnesses' answers showed that the emails untimely produced by Ascleto contained information relevant to Viking's alleged industry in the United States and alleged injury to that industry, topics for which the hearing had been convened. I additionally find, based on the evidence presented at the evidentiary hearing, that Viking was substantially prejudiced in its ability to prepare for the hearing due to Ascleto's admitted violation of Order No. 14.

After the evidentiary hearing concluded, Viking filed an unopposed motion for leave to conduct a forensic examination of Ascleto's email production process and to serve discovery on Ascleto and its discovery vendor relating to the violation of Order No. 14. *See* Order No. 21 (Apr. 26, 2023). Viking requested the forensic examination to help determine the scope of Ascleto's

¹ The public transcript of the evidentiary hearing is available as EDIS Doc. IDs 794408 (day 1), 794464 (day 2), and 794467 (day 3). The confidential transcript of the evidentiary hearing is available as EDIS Doc. IDs 794407 (day 1), 794463 (day 2), and 794466 (day 3). These transcripts are hereinafter collectively referred to as "Tr."

violation of Order No. 14 and to obtain information that could be used to craft appropriate sanctions. *Id.* at 2. I issued Order No. 21 on April 26, 2023, granting Viking's unopposed motion. Both the forensic examination and related discovery are ongoing, and Viking estimated it would take at least two months to complete the forensic examination process and that Viking might be ready to file a motion seeking further discovery sanctions against Asclethis by early July 2023. Tr. at 581:3-25.

In view of the course of the investigation to date, including (1) Asclethis's admitted violation of Order No. 14 and late production of email, (2) witness testimony establishing that the late-produced emails contain information relevant to issues that were to be decided in the 100-day initial determination, (3) the ongoing forensic investigation and discovery relating to Asclethis's violation of Order No. 14, and (4) the undisputable prejudice to Viking, I find that good cause exists to continue this investigation beyond the 100-day proceeding without issuing an early decision "as to whether [Viking] can show that the threat or effect of the alleged unfair acts is to (i) to destroy or substantially injure an industry in the United States, or (ii) to prevent the establishment of such an industry."

The stated purpose of an expedited 100-day proceeding is to allow for the early resolution of a potentially case-dispositive issue, which in turn could potentially avoid the costs and burdens of litigating all issues in an investigation. *See* 19 C.F.R. § 210.10(b)(3). But due to Asclethis's actions, any savings contemplated by the 100-day proceeding in this investigation have been frustrated. Viking must be afforded the opportunity to present its case after fair discovery. Accordingly, I am issuing concurrent orders to continue the investigation beyond the 100-day mark

in order to resolve any sanctions issues and to allow for fair investigation of the issues set for the 100-day proceeding as well as all remaining issues identified in the Notice of Investigation.

SO ORDERED.



Clark S. Cheney
Chief Administrative Law Judge