

Small-Market Segment Can Still Satisfy Domestic Industry Requirement

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The US Court of Appeals for the Federal Circuit affirmed a US International Trade Commission finding, explaining that small-market segments can be significant and substantial enough to support the Commission's domestic industry requirement. *Wuhan Healthgen Biotechnology Corp. v. International Trade Commission*, Case No. 23-1389, (Fed. Cir. Feb. 7, 2025) (**Moore**, Chen, Murphy, JJ.)

Ventria Bioscience Inc. owns a patent directed to cell-culture media, which supplies nutrients to cells grown in artificial environments. Ventria filed a complaint at the Commission alleging that Wuhan Healthgen Biotechnology violated § 337 of the Tariff Act by importing products that infringed the patent. The Commission ultimately found that Healthgen imported infringing products and that Ventria had satisfied the domestic industry requirement. Healthgen appealed.

The Federal Circuit affirmed the Commission's domestic industry finding. The Court began by explaining the long-standing principle that patent infringement-based violations of § 337, which establishes unlawful import practices, require that "an industry in the United States, relating to the articles protected by the patent...exists or is in the process of being established." This requirement is divided into economic and technical prongs. Here, Healthgen conceded that the technical prong was satisfied by a Ventria product (Optibumin) that practiced the patent.

The economic prong considers three factors, any of which are sufficient to satisfy the prong. As identified by the subsections of § 337(a)(3), "there is in the United States, with respect to the articles of the patent... (A) significant investment in plant and equipment; (B) significant employment of labor or capital; or (C) substantial investment in its exploitation, including engineering, research and development, or licensing." The Commission found that each of these factors was met because, among other things, Ventria had 100% of its relevant investments in Optibumin located within the United States. The conclusion was further supported by a comparison of the investments to Optibumin's revenue.

Healthgen argued that the investments were too small to be significant or substantial, and that Optibumin's revenue was low, which inflated investment-to-revenue ratios. The Federal Circuit rejected Healthgen's argument, stating that "[s]mall market segments can still be significant and substantial enough to satisfy the domestic industry requirement." The Court continued, stating that a

domestic industry analysis “cannot hinge on a threshold dollar value or require a rigid formula; rather, the analysis requires a holistic review of all relevant considerations that is very context dependent.” Here, the Court found that “[t]hrough the dollar amounts of Ventria’s Optibumin investments are small, the Commission found all of the investments are domestic, all market activities occur within the United States, and the high investment-to-revenue ratios indicate this is a valuable market.” The Court found that the Commission’s findings were supported by substantial evidence and affirmed the Commission.

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