

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

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In the Matter of: )  
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Invitrogen Corporation )  
1600 Faraday Avenue )  
Carlsbad, CA 92008 )  
)  
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)  
\_\_\_\_\_  
Respondent )

ORDER RELATING TO INVITROGEN CORPORATION

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has notified Invitrogen Corporation (“Invitrogen”), of its intention to initiate an administrative proceeding against Invitrogen pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2007)) (the “Regulations”),<sup>1</sup> and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”),<sup>2</sup> through issuance of a proposed charging letter to Invitrogen that alleged that Invitrogen, as successor to Dynal Biotech LLC<sup>3</sup> (“Dynal”), is liable for eight violations of the Regulations. Specifically, the charges are:

<sup>1</sup> The violations alleged to have been committed occurred in 2004. The Regulations governing the violations at issue are found in the 2004 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2004)). The 2007 Regulations establish the procedures that apply to this matter.

<sup>2</sup> Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007 (72 Fed. Reg. 46,137 (Aug. 16, 2007)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) (“IEEPA”).

<sup>3</sup> Invitrogen Corporation acquired Dynal Biotech LLC on September 1, 2005 and Dynal Biotech merged into Invitrogen effective February 6, 2006.

**Charges 1-3 15 C.F.R. § 764.2(a): Unlicensed Exports of HLA Tissue Typing Trays to Syria**

On three occasions between on or about June 9, 2004 and on or about October 13, 2004, Dynal engaged in conduct prohibited by the Regulations by exporting HLA Tissue Typing Trays, items subject to the Regulations, to Syria without the required export license. Pursuant to General Order No. 2 of Supplement 1 to Part 736 of the Regulations, the export of these items from the United States to Syria required a Department of Commerce license and no license was obtained. In engaging in this activity, Dynal committed three violations of Section 764.2(a) of the Regulations.

**Charge 4 15 C.F.R. § 764.2(c): Attempted Unlicensed Exports of HLA Tissue Typing Trays to Syria**

On or about December 15, 2004, Dynal attempted a violation of the Regulations by attempting to export HLA Tissue Typing Trays, items subject to the Regulations, to Syria without the required export license. Pursuant to General Order No. 2 to Supplement 1 of Part 736 of the Regulations, the export of these items from the United States to Syria required a Department of Commerce license and no license was obtained. In engaging in this activity, Dynal committed one violation of Section 764.2(c) of the Regulations.

**Charges 5-8 15 C.F.R. § 764.2(g)- False Statement on Shipper's Export Declaration**

On four occasions between on or about June 9, 2004 and on or about December 15, 2004, in connection with the transactions described in Charges 1-4 above, Dynal made false statements to the U.S. Government in connection with the submission of export control documents. Specifically, Dynal filed Shipper's Export Declarations ("SEDs) with the U.S. Government stating that the items that were the subject of the SEDs qualified for export as "NLR," i.e., that no license was required. These representations were false, as licenses were required to export HLA Tissue Typing Trays to Syria. In engaging in this activity, Dynal committed four violations of Section 764.2(g) of the Regulations.

WHEREAS, BIS and Invitrogen have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

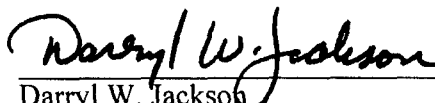
FIRST, Invitrogen shall be assessed a civil penalty in the amount of \$30,000, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order. Payment shall be made in the manner specified in the attached instructions.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Invitrogen will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Invitrogen. Accordingly, if Invitrogen should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Invitrogen's export privileges for a period of one year from the date of entry of this Order.

FOURTH, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

  
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Darryl W. Jackson  
Assistant Secretary of Commerce  
for Export Enforcement

Entered this 24<sup>th</sup> day of September, 2007.

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

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Carlsbad, CA 92008 )  
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Respondent )

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Invitrogen Corporation (“Invitrogen”), as successor to, Dynal Biotech, LLC<sup>1</sup>, (“Dynal”), and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively, the “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2007)) (the “Regulations”),<sup>2</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”),<sup>3</sup>

<sup>1</sup> Invitrogen Corporation acquired Dynal Biotech LLC on September 1, 2005 and Dynal Biotech merged into Invitrogen effective February 6, 2006.

<sup>2</sup> The violations alleged to have been committed occurred in 2004. The Regulations governing the violations at issue are found in the 2004 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2004)). The 2007 Regulations establish the procedures that apply to this matter.

<sup>3</sup> Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007 (72 Fed. Reg. 46,137 (Aug. 16, 2007)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) (“IEEPA”).

WHEREAS, Invitrogen filed a voluntary self-disclosure with BIS's Office of Export Enforcement in accordance with Section 764.5 of the Regulations concerning the transactions at issue herein;

WHEREAS, BIS has notified Invitrogen of its intention to initiate an administrative proceeding against Invitrogen, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a proposed charging letter to Invitrogen that alleged that Invitrogen is liable for eight violations of the Regulations committed by Dynal, specifically:

**Charges 1-3 15 C.F.R. § 764.2(a): Unlicensed Exports of HLA Tissue Typing Trays to Syria**

On three occasions between on or about June 9, 2004 and on or about October 13, 2004, Dynal engaged in conduct prohibited by the Regulations by exporting HLA Tissue Typing Trays, items subject to the Regulations, to Syria without the required export license. Pursuant to General Order No. 2 of Supplement 1 to Part 736 of the Regulations, the export of these items from the United States to Syria required a Department of Commerce license and no license was obtained. In engaging in this activity, Dynal committed three violations of Section 764.2(a) of the Regulations.

**Charge 4 15 C.F.R. § 764.2(c): Attempted Unlicensed Exports of HLA Tissue Typing Trays to Syria**

On or about December 15, 2004, Dynal attempted a violation of the Regulations by attempting to export HLA Tissue Typing Trays, items subject to the Regulations, to Syria without the required export license. Pursuant to General Order No. 2 to Supplement 1 of Part 736 of the Regulations, the export of these items from the United States to Syria required a Department of Commerce license and no license was obtained. In engaging in this activity, Dynal committed one violation of Section 764.2(c) of the Regulations.

**Charges 5-8 15 C.F.R. § 764.2(g)- False Statement on Shipper's Export Declaration**

On four occasions between on or about June 9, 2004 and on or about December 15, 2004, in connection with the transactions described in Charges 1-4 above, Dynal made false statements to the U.S. Government in connection with the submission of export control documents. Specifically, Dynal filed Shipper's Export Declarations ("SEDs) with the U.S. Government stating that the items that were the subject of the SEDs qualified for export as "NLR," i.e., that no license was required. These representations were false, as

licenses were required to export HLA Tissue Typing Trays to Syria. In engaging in this activity, Dynal committed four violations of Section 764.2(g) of the Regulations.

WHEREAS, Invitrogen has reviewed the proposed charging letter and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true;

WHEREAS, Invitrogen fully understands the terms of this Agreement and the Order (“Order”) that the Assistant Secretary of Commerce for Export Enforcement will issue if he approves this Agreement as the final resolution of this matter;

WHEREAS, Invitrogen enters into this Agreement voluntarily and with full knowledge of its rights;

WHEREAS, Invitrogen states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, Invitrogen neither admits nor denies the allegations contained in the proposed charging letter;

WHEREAS, Invitrogen wishes to settle and dispose of all matters alleged in the proposed charging letter by entering into this Agreement; and

WHEREAS, Invitrogen agrees to be bound by the Order, if entered;

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Invitrogen, under the Regulations, in connection with the matters alleged in the proposed charging letter.

2. The following sanction shall be imposed against Invitrogen in complete settlement of the alleged violations of the Regulations relating to the transactions detailed in the proposed charging letter:

a.       Invitrogen shall be assessed a civil penalty in the amount of \$30,000, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order.

b.       The timely payment of the civil penalty agreed to in paragraph 2.a is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Invitrogen. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of Invitrogen's export privileges for a period of one year from the date of imposition of the penalty.

3.       Subject to the approval of this Agreement pursuant to paragraph 8 hereof, Invitrogen hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in any charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if entered; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if entered.

4.       Upon entry of the Order and timely payment of the \$30,000 civil penalty, BIS will not initiate any further administrative proceeding against Invitrogen in connection with any violation of the Act or the Regulations arising out of the transactions identified in the proposed charging letter.

5.       BIS will make the proposed charging letter, this Agreement, and the Order, if entered, available to the public.


6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.

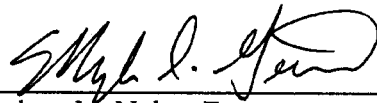
8. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement approves it by entering the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

BUREAU OF INDUSTRY AND SECURITY  
U.S. DEPARTMENT OF COMMERCE

  
\_\_\_\_\_  
Thomas Madigan  
Acting Director  
Office of Export Enforcement

INVITROGEN CORPORATION

  
\_\_\_\_\_  
Matthew M. Nolan, Esq.  
Myles S. Getlan, Esq.  
Arent Fox LLP  
Attorneys for Invitrogen Corporation

Date: 9/21/07

Date: 9/21/07



PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Invitrogen Corporation  
1600 Faraday Avenue  
Carlsbad, CA 92008

Attn: *Mr. John A. Cottingham*  
*Sr. Vice President, General Counsel and Secretary*

Dear Mr. Cottingham:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Invitrogen Corporation of Carlsbad, California (“Invitrogen”), as successor to Dynal Biotech LLC (“Dynal”)<sup>1</sup>, is liable for eight violations of the Export Administration Regulations (the “Regulations”),<sup>2</sup> which are issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).<sup>3</sup> Specifically, BIS charges that Dynal committed the following violations:

**Charges 1-3 15 C.F.R. § 764.2(a): Unlicensed Exports of HLA Tissue Typing Trays to Syria**

On three occasions between on or about June 9, 2004 and on or about October 13, 2004, Dynal engaged in conduct prohibited by the Regulations by exporting HLA Tissue Typing Trays, items subject to the Regulations, to Syria without the required export license. Pursuant to General Order No. 2 of Supplement 1 to Part 736 of the Regulations, the export of these items from the United States to Syria required a Department of Commerce license and no license was obtained. In engaging in this activity, Dynal committed three violations of Section 764.2(a) of the Regulations.

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<sup>1</sup> Invitrogen Corporation acquired Dynal Biotech LLC on September 1, 2005 and Dynal Biotech merged into Invitrogen effective February 6, 2006.

<sup>2</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2007). The charged violations occurred in 2004. The Regulations governing the violations at issue are found in the 2004 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2004)). The 2007 Regulations set forth the procedures that apply to this matter.

<sup>3</sup> 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007 (72 Fed. Reg. 46,137 (Aug. 16, 2007)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000) (“IEEPA”). The Act and the Regulations are available on the Government Printing Office website at: <http://www.access.gpo.gov/bis/>.

**Charge 4 15 C.F.R. § 764.2(c): Attempted Unlicensed Exports of HLA Tissue Typing Trays to Syria**

On or about December 15, 2004, Dynal attempted a violation of the Regulations by attempting to export HLA Tissue Typing Trays, items subject to the Regulations, to Syria without the required export license. Pursuant to General Order No. 2 to Supplement 1 of Part 736 of the Regulations, the export of these items from the United States to Syria required a Department of Commerce license and no license was obtained. In engaging in this activity, Dynal committed one violation of Section 764.2(c) of the Regulations.

**Charges 5-8 15 C.F.R. § 764.2(g)- False Statement on Shipper's Export Declaration**

On four occasions between on or about June 9, 2004 and on or about December 15, 2004, in connection with the transactions described in Charges 1-4 above, Dynal made false statements to the U.S. Government in connection with the submission of export control documents. Specifically, Dynal filed Shipper's Export Declarations ("SEDs) with the U.S. Government stating that the items that were the subject of the SEDs qualified for export as "NLR," i.e., that no license was required. These representations were false, as licenses were required to export HLA Tissue Typing Trays to Syria. In engaging in this activity, Dynal committed four violations of Section 764.2(g) of the Regulations.

\* \* \* \* \*

Accordingly, Invitrogen is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

- The maximum civil penalty allowed by law of \$11,000 per violation;<sup>4</sup>
- Denial of export privileges; and/or
- Exclusion from practice before BIS.

If Invitrogen fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. *See* 15 C.F.R. §§ 766.6 and 766.7. If Invitrogen defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Invitrogen. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

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<sup>4</sup> 15 C.F.R. § 6.4(a)(4) (2004).

Invitrogen is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. *See* 15 C.F.R. § 766.6. Invitrogen is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. *See* 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should Invitrogen have a proposal to settle this case, Invitrogen or its representative should transmit it to the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Invitrogen answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center  
40 S. Gay Street  
Baltimore, Maryland 21202-4022

In addition, a copy of Invitrogen's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security  
Attention: Gregory Michelsen  
Room H-3839  
United States Department of Commerce  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

Gregory Michelsen is the attorney representing BIS in this case; any communications that Invitrogen may wish to have concerning this matter should occur through him. Mr. Michelsen may be contacted by telephone at (202) 482-5301.

Invitrogen is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Invitrogen may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter. To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman/>.

Sincerely,

Thomas Madigan  
Acting Director  
Office of Export Enforcement