

In the Matter of

**CERTAIN FEATHERED FUR COATS
AND PELTS, AND PROCESS FOR
THE MANUFACTURE THEREOF**

Investigation No. 337-TA-260



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UNITED STATES INTERNATIONAL TRADE COMMISSION

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(PUBLIC VERSION)

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

SECRET

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INITIAL DETERMINATION

Paul J. Luckern, Administrative Law Judge

Pursuant to the notice of investigation (51 Fed. Reg. 46944, December 29, 1986), this is the administrative law judge's initial determination under Rule 210.53 of the Rules of Practice and Procedure of this Commission, 19 C.F.R. §210.53. The administrative law judge hereby determines, after a review of the submissions of parties and of the record developed at the hearing, that there is a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. §1337), hereafter section 337, in the importation into the United States, or in the sale of certain imported feathered fur coats and pelts, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

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TABLE OF CONTENTS

	<u>PAGE</u>
PROCEDURAL HISTORY	1
JURISDICTION	5
OPINION	5
I. Unfair Act	5
II. Importation and Sale	12
III. Domestic Industry	14
U.S. Production	16
Foreign Subcontractor Yick Fung	19
Licensees	21
IV. Efficient and Economic Operation	21
V. Substantial Injury	23
A. Past Injury	23
B. Tendency to Injure	27
FINDINGS OF FACT	29
I. Jurisdiction	29
II. Parties and Products in Issue	29
III. The Invention of the '424 Patent	30
IV. Prior Act	38
V. Infringement	40
VI. Importation or Sale	53
VII. Domestic Injury	56
VIII. Efficient and Economic Operation	63
IX. Injury	64
CONCLUSIONS OF LAW	73
INITIAL DETERMINATION AND ORDER	74

ABBREVIATIONS

CPHB - Complainants' Prehearing Brief
C Post - Complainants' Posthearing Brief
CX - Complainants' Exhibit
Dep. - Deposition
SPFF - Staff's Proposed Finding
S Post - Staff's Posthearing Brief
SX - Staff's Exhibit
Tr. - Hearing Transcript

PROCEDURAL HISTORY

On November 10, 1986, complainants David Leinoff and David Leinoff, Inc. filed a complaint with the Commission under section 337. The complaint, as amended on November 24, 1986, requested that the Commission institute an investigation and thereafter issue a permanent exclusion order and permanent cease and desist orders. On December 15, 1986 the Commission issued a notice of investigation by which it instituted an investigation, pursuant to subsection (b) of section 337 of the Tariff Act of 1930, to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain feathered fur coats and pelts into the United States, or in their sale by reason of alleged infringement of claim 1 of U. S. Letters Patent 3,760,424 (the '424 patent) and further of alleged manufacture abroad by a process which, if practiced in the United States, would infringe claim 5 of the '424 patent, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. The notice of investigation was published on December 29, 1986. (51 Fed. Reg. 46944)

The notice of investigation named the following respondents:

Jindo Fur Salon of Seoul, Korea and Jindo Fur Salon of Honolulu,
Hawaii (Jindo);^{1/}

Asia Fur Company of Hong Kong (Asia Fur);

Hong Kong Tientsin Fur Co. Ltd. of Hong Kong (Tientsin);

Peking Fur Store Ltd. of Hong Kong (Peking Fur);

^{1/} The correct name for "Jindo Fur Salon" is "Jindo Industries Ltd." (FF 40).

Excelsior Fur Co., Ltd. of Hong Kong (Excelsior);
Papadopouli Kevrekidis & Co. of Greece and Papadopouli Kevrekidis &
Co. of New York (Papadopouli);
China National Produce and Animal By-Products Import and Export
Corporation of the Peoples Republic of China (China National);
Sunry Import Export Corp. of New Jersey (Sunry);^{2/}
E. Vassou Brothers, Inc. of Greece (Vassou).

On June 10, 1987 an initial determination (Order No. 15) issued granting complainants' motion for partial summary determination on the issue of validity of the '424 patent and found that the '424 patent is not invalid. Pursuant to a notice dated July 13, 1987, the Commission determined not to review the initial determination.

On June 25, 1987 an initial determination (Order No. 18) issued granting a joint motion to terminate the investigation as to respondents Papadopouli. Pursuant to a notice dated July 21, 1987, the Commission determined not to review the initial determination.

A hearing was held on June 23, 1987. Only complainants and the staff appeared at the hearing. The record was closed at conclusion of the hearing. On June 25, 1987 complainants filed Motion No. 260-19 to reopen the record for the admission of certain documentary evidence (CX-79, CX-80, CX-81 and CX-82). Order No. 23 granted Motion No. 260-19. Pursuant to the schedule set by the administrative law judge at the hearing, posthearing submissions were submitted by the complainants and the staff.

^{2/} A letter dated September 1, 1987 to the administrative law judge from attorney William F. Pan (ALJ Ex. 1) stated that Pan had been approached by Sunry; that Sunry is "one of the agent" for China National; and that Sunry is in the process of negotiating an amicable solution. A letter dated September 9, 1987 to the administrative law judge from complainants' attorney stated that Sunry's proposal is entirely unacceptable. (ALJ Ex. 1).

On July 1, 1987 an initial determination (Order No. 21) issued granting a joint motion to terminate the investigation as to respondents Jindo. Pursuant to a notice dated July 28, 1987, the Commission determined not to review the initial determination.

On July 30, 1987 an initial determination (Order No. 24) issued granting a joint motion to terminate the investigation as to respondent Tientsin. Pursuant to a notice dated August 28, 1987, the Commission determined not to review the initial determination.

On August 14, 1987, an initial determination (Order No. 26) issued finding Asia Fur, Peking Fur, Excelsior, China National, Sunry and Vassou in default, pursuant to Commission rule 210.25, for their failure to appear at the hearing and to file prehearing and posthearing submissions. It was found that their default constituted a waiver of their right to appear, to be served with documents, and to contest the allegations in issue.

On August 24, 1987 the staff moved to strike a filing on August 18, 1987 by respondents Asia Fur and Peking Fur titled "Asia Fur Company and Peking Fur Store Ltd's Response to the Post-Hearing Brief and Findings of Facts of the Commission Investigative Staff" (Motion No. 260-23) on the grounds that the filing improperly attempted to address the merits of said respondents' case well after the close of the record in this investigation. Complainants filed a motion of the same nature on August 26, 1987. (Motion No. 260-24). Order No. 29, which issued September 24, 1987, granted Motion Nos. 260-23 and 260-24.

Order No. 30, which issued September 24, 1987, imposed discovery sanctions on certain of the respondents.

The matter is now ready for an initial determination.

This initial determination is based on the entire record including the evidentiary record compiled at the hearing and the exhibits admitted into

evidence. The administrative law judge has also taken into account his observation of David Leinoff, complainants' only witness, at the hearing. Proposed findings submitted by the parties participating at the hearing, but not herein adopted, either in the form submitted or in substance, are rejected either as not supported by the evidence or as involving immaterial matters. The findings of fact include references intended to serve as guides to the testimony and exhibits supporting the findings of fact. The references do not necessarily represent complete summaries of the evidence supporting each finding.

JURISDICTION

The Commission has in rem and subject matter jurisdiction. (FF 1).

OPINION

With the exception of the settling respondents Jindo, Tientsin and Papadopouli, all of the remaining respondents Asia Fur, Peking Fur, Excelsior, China National, Sunry and Vassou have been found in default (Order No. 26). Also discovery sanctions have been imposed on certain respondents (Order No. 30). Accordingly, pursuant to Commission rule 210.25(c), the Commission shall issue relief against the defaulting respondents if the record developed by the administrative law judge establishes a prima facie case of, or a reason to believe there is, a violation of section 337. Because Order No. 15 found that the '424 patent is not invalid, at issue is whether complainants have established a prima facie case or a reason to believe that respondents through importation, have infringed claims 1 and/or 5 of the '424 patent, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

I. Unfair Act

The '424 patent on "Composite Fur Pelt and Method of Making Same and Fur Coat" issued on September 23, 1973 to complainant David Leinoff (FF 12).

Claims 1 and 5 in issue read:

1. As an article of manufacture, a composite pelt formed of fur strips cut from a long haired pelt in which the tip portions of the pelt hairs are dark and the remainder of

the hairs, between the skin and the dark tips, is light; and connector strips operatively connected to and alternated with said first strips whereby each connector strip is positioned between two fur strips with said connector strips having a width dimension between adjacent fur strips selected to be greater than the length of the dark tip portions of the pelt hairs and less than the length of the pelt hairs, whereby the pelt hairs on said fur strips extend across adjacent connector strips with the dark tips of the pelt hairs overlying the light portions of the pelt hairs on the next fur strip, thereby to expose said light portions of the pelt hairs and produce a striped effect.

5. The method of producing fur coats and the like from long haired fur pelts in which the tip portions of the pelt hairs are dark and the remainder of the hairs, between the skin and the dark tips is light, which method comprises, the steps of, cutting a pelt into fur strips of substantially the same width at a substantial angle to the general direction in which the pelt hairs normally repose, maintaining said fur strips in their normal relative positions, inserting an insert strip of substantially uniform width between each fur strip and the next, the width dimension of said insert strips being selected to be greater than the length of the dark tip portions of the pelt hairs and less than the length of the pelt hairs, attaching the adjacent edges of the fur strips and the adjacent insert strips to produce a composite pelt which is longer and wider than the original pelt and in which the hair from each fur strip normally reposes across one of the adjacent insert strips at an angle to its longitudinal dimensions whereby the pelt hairs on said fur strips extend across adjacent insert strips with the dark tips of the pelt hairs overlying the light portions of the pelt hairs on the next fur strip, thereby to expose said light portions of the pelt hairs and produce a striped effect.

(FF 12).

According to the '424 patent a fur coat by the patented process is formed of a number of individual composite pelts and portions thereof which are unique in construction and in appearance. Composite pelts can be of herringbone type strips, there being light stripes and dark stripes. To produce a composite pelt, the original pelt is first slitted or cut. The original pelt is cut along its longitudinal center line to form two half-pelts, and each of the half-pelts is then slit along cut lines which are substantially parallel and at an angle to the side edge of the pelt. However,

each cut line does not extend completely to the opposite edges of the pelt so that there is an uncut edge portion along one edge and an uncut portion along the opposite edge. The principal cut lines are at an angle of the order of 45 degrees, although at the bottom of the pelt that angle is greater, for example, a maximum of 80 degrees. The processing of each half-pelt is continued by first extending each cut line through edge portions to produce a series of individual fur strips. The fur strips are kept in their original series relationship, and a strip of softer leather is positioned beneath each fur strip and the next and each of its edges is sewed to the coextensive fur-strip edge. That forms a composite half-pelt which is then sewed to the composite half-pelt produced from the other half of the original pelt to produce the composite pelt. Each composite pelt is of much greater area than the original pelt, i.e., it is much longer and somewhat wider. The hairs on the pelt tend to lie down from the head toward the tail of the animal, and the separating of the strips causes the hairs from one fur strip to lie down in somewhat shingle fashion over the next adjacent leather strip and onto the next fur strip below it. Hence, each row of hairs on a fur strip extends at an angle across the strip of leather and has a generally normal posture with the tips of the hairs covering the base ends of the hairs on the next fur strip below it. Thus there is exposed the central portions of the hairs which can be light in color, whereas the tips of the hair are dark in color. The exposure of the central portions produces the stripe effect. Also, the ends of the hairs are unrestrained so that there is a "feathery" effect. (FF 17, 18).

Complainants have the burden of proving prima facie that the respondents have infringed the claims in issue, because complainant Leinoff is the patent owner (FF 12) Envirotech Corp. v. Al George, Inc., 730 F.2d 753, 221 U.S.P.Q. 473, 477 (Fed. Cir. 1984); Roberts Dairy Co. v. United States, 530 F.2d 1342,

1357, 182 U.S.P.Q. 218, 255 (Ct. Cl. 1976); See Chisum Patents § 18.06 Vol. 4 (1982).

Unrebutted testimony at the hearing by complainant inventor Leinoff, a skilled furrier (FF 11, 101), established that a skilled furrier, by visual inspection, can determine whether a fur coat infringes the article of manufacture claim 1 and the method claim 5. (FF 28, 31, 32, 33). While a striped effect of a fur coat is not unique to the claimed invention (FF 31), the "unnatural" striped effect of a fur coat is unique. (FF 31). Thus a skilled furrier will see a shingle effect created in the coats of the claimed invention which shingle effect is created by the leather insert between two fur strip portions such that hairs from the first fur strip portion overlap a fur strip portion below the first strip portion. (FF 31). Brushing back the fur will show leather. (FF 31, 33).^{3/} In addition unrebutted testimony by inventor Leinoff shows that a fur coat of the claimed invention to a skilled furrier, if looked at sideways, shows little depressions and ridges where the leather has been inserted. (FF 31).

Complainants argue that "all Respondents directly infringe claims 1 and 5 of the '424 patent by the manufacture and sale of the feathered fur coats identified by Complainants as having sold or offered for sale by Respondents in this country." (C Post at 5, 6).^{4/} The staff argues that the named

^{3/} The significance of the leather inserts in Leinoff's process is their insertion in such a manner as to displace the dark tips of the fur a sufficient distance to expose the inner light portions, or underground of the fur Leinoff v. Louis Melona & Sons, Inc., 756 F. 2d. 734, 741 U.S.P.Q. (Fed Cir. 1984).

^{4/} While complainants use the term "all Respondents", complainants have offered no evidence that respondent Papadopouli infringe the '424 patent. The staff has noted that complainant no longer contends that Papadopouli "is
(Footnote continued to page 9)

respondents, with the exception of Papadopouli and Sunry, infringe the '424 patent (S Post at 7 to 11).

With respect to the named respondents the record establishes the following:

Settled Respondent Jindo

Jindo admitted that it has manufactured in Korea and sold or caused to be sold in the United States fur coats having a striped effect and of the type disclosed and claimed in the '424 patent. A June 1986 Pan Am clipper magazine advertisement of respondent Jindo shows a feathered blue fox coat which infringes claims 1 and 5 of the '424 patent. In addition, inventor Leinoff inspected a feathered blue fox fur coat manufactured by Jindo and determined that the coat infringes claims 1 and 5 of the '424 patent. (FF 40 to 44, 46, 59).

The administrative law judge finds that complainants have established prima facie that respondent Jindo infringed claims 1 and 5 of the '424 patent.

Defaulting Respondent Asia Fur

A brochure of Asia Fur which Leinoff obtained at a fur fair shows a feathered fur coat which infringes claims 1 and 5 of the '424 patent. In addition, Leinoff inspected feathered fur coats of Asia Fur and determined that they infringe claims 1 and 5 of the '424 patent. (FF 34 to 36).

The administrative law judge finds that complainants have established prima facie that respondent Asia Fur infringes claims 1 and 5 of the '424

(Footnote continued from page 8)
importing infringing garments" (S Post at 11). In a settlement agreement, it was stated that Papadopouli has demonstrated, and complainant Leinoff agreed, that red fox and grey fox coats of Papadopouli, alleged as infringing the '424 patent in the complaint, do not infringe the patent (FF 52).

patent.

Settled Respondent Tientsin

Tientsin has agreed not to market in the United States coats of the type which complainants have accused Tientsin of infringing the '424 patent and for which Tientsin has paid money to complainants in satisfaction of the infringement claim. In addition a "Furs '85 Hong Kong" brochure shows a dyed blue fox jacket with sleeves formed from feathered blue fox and of the type sold and offered for sale by Tientsin in the United States. Leinoff inspected such jackets at the 1985 American International Fur Fair and concluded they infringe claims 1 and 5 of the '424 patent. (FF 37 to 39).

The administrative law judge finds that complainants have established prima facie that respondent Tientsin infringed claims 1 and 5 of the '424 patent.

Defaulting Respondent Peking Fur

Peking Fur displayed a feathered blue fox coat at the 1985 American International Fur Fair which Leinoff inspected. The coat was made in the same way as the feathered blue fox coat which Leinoff inspected and which was manufactured by Jindo. (FF 44).

The administrative law judge finds that complainants have established prima facie that respondent Peking Fur infringes claims 1 and 5 of the '424 patent.

Defaulting Respondent Excelsior

Leinoff found on inspection at the 1985 American International Fur Fair that a feathered fox fur coat of the type displayed in an advertisement by Excelsior infringed claims 1 and 5 of the '424 patent. (FF 47).

The administrative law judge finds that complainants have established prima facie that respondent Excelsior infringes claims 1 and 5 of the '424 patent.

Defaulting Respondent China National

A brochure titled "Chinese Fur Garments Elegant" shows feathered fur coats of the type sold and offered for sale by China National. Leinoff inspected such coats at the 1985 American International Fur Fair and at a showroom of China National and determined that said fur coats infringe claims 1 and 5 of the '424 patent. (FF 48, 49).

The administrative law judge finds that complainants have established prima facie that respondent China National infringes claims 1 and 5 of the '424 patent.

Defaulting Respondent Sunry

Sunry is an agent of China National. (FF 50, 51). For reasons set forth with respect to China National, the administrative law judge finds that complainants have established prima facie that respondent Sunry infringes claims 1 and 5 of the '424 patent.

Defaulting Respondent Vassou

Leinoff inspected Vassou's feathered fox jackets sold in this country by Vassou to MS Furs, Inc. of New York City and determined that they infringe claims 1 and 5 of the '424 patent. (FF 53).

The administrative law judge finds that complainants have established prima facie that respondent Vassou infringes claims 1 and 5 of the '424 patent.

The record also establishes that Leinoff has seen feathered fur coats sold in this country by nonrespondent Dynasty Furs, Inc. of New York City and

determined that they infringe the '424 patent. (FF 54).

The administrative law judge finds that complainants have established prima facie that Dynasty Fur Inc. infringes the '424 patent.^{5/}

Summarizing the administrative law judges finds that complainants have established a reason to believe that settled respondents Jindo and Tienstin, defaulting respondents Asia Fur, Peking Fur, Excelsior, China National, Sunry and Vassou and nonparty Dynasty Furs, Inc. have infringed the '424 patnt which patent has been found not to be invalid.

II. Importation or Sale

Importation or sale of imported articles, which are the subject of allegedly unfair acts, is necessary for subject matter jurisdiction over a respondent under section 337. Certain Trolley Wheel Assemblies, Inv. No. 337-TA-161 (Comm. 1984).

Respondent Jindo has manufactured, imported into, and sold in, the United States 431 feathered fur coats. (FF 5, 56, 57). With the exception of blue fox coats, all sales by Jindo were to _____ in 1986. (FF 58).

Respondent Tientsin manufactured, and sold in the United States prior to June 1987, \$20,000 worth of feathered fur coats. (FF 6, 60).

Respondent China National displayed and offered for sale imported feathered fur garments at the American International Fur Fair in Las Vegas in _____

^{5/} While there is testimony that complainants' counsel visited Leather City (Footnote continued to page 13)

1985. Complainant Leinoff visited China National's showroom in New York City in May 1987 and inspected imported feathered fox coats and jackets being offered for sale. Additionally, a New York City furrier obtained an imported feathered Chinese Tanucki jacket from China National which was displayed at the hearing and of which CPX-5 is a photograph. (FF 8, 48, 62).

Respondent Asia Fur displayed and offered for sale at New York trade shows in 1985 and 1986, and at a fur show in Las Vegas in 1985, imported feathered fur garments. (FF 6, 34, 35, 63).

Respondent Peking Fur displayed and offered for sale an imported feathered blue fox coat at the American International Fur Fair in Las Vegas in 1985. (FF 6, 45, 64).

In 1985, respondent Vassou exported to the United States 60 feathered fox fur jackets and sold them to MS Furs Inc. of New York City. (FF 10, 53, 65).

Respondent Sunry is a domestic importer or agent of China National in the importation and sale of feathered fur coats. Sunry has sample imported feathered fur coats for display at its office in New Jersey. (FF 9, 50, 51, 67).^{6/}

At the 1985 International Fur Fair in New York, respondent Excelsior exhibited and offered for sale an imported feathered fur coat. Excelsior's manufacturing facility is located in Hong Kong. (FF 6, 47, 68).

(Footnote continued from page 12)
at East 39th Street, New York City, inspected fur coats and concluded they infringed the '424 patent (FF 55) the record does not establish that complainant Leinoff who has the expertise (FF 11) so inspected the coats.

^{6/} While the staff points to testimony that Sunry is not the exclusive importer for China National, and that complainant Leinoff was confused about the precise legal relationship between Sunry and China National (S Post at 6, SPFF 9), the administrative law judge finds sufficient probative evidence which shows that representatives of Sunry confirmed that it is an importer or agent for China National. (FF 50, 51, 67).

No probative evidence is of record that establishes that respondent Papadopouli has imported or sold feathered fur coats in the United States. (FF 7, 52, 69).

III. Domestic Industry

The Commission has generally defined the domestic industry in patent-based investigations as the domestic operations of the patent owner and its licensees devoted to the exploitation of the patent. Schaper Manufacturing Co. v. U.S. International Trade Commission, 219 U.S.P.Q. 665, 667 (1983); Certain Methods for Extruding Plastic Tubing, 218 U.S.P.Q. 348 (1982); Certain Slide Fastener Stringers and Machines and Components Thereof, 216 U.S.P.Q. 907 (1981). The Commission does not adhere to any rigid formula in determining the scope of the domestic industry but examines each case in light of the particular realities of the marketplace. Slide Fastener Stringers; Certain Apparatus for the Continuous Production of Copper Rod, 206 U.S.P.Q. 138 (1979).

When a portion of the production of the subject product occurs offshore, the existence of a domestic industry must be determined according to an assessment of the nature and significance of the activities carried out in the United States in connection with the subject product. Certain Papermaking Machine Forming Sections, Inv. No. 337-TA-122 (1982). One method to assess the nature and significance of domestic activities where all, or a substantial part, of the production process occurs overseas is to determine the value added to the product by domestic activities as a percentage of the product's total value. Certain Cube Puzzles, 219 U.S.P.Q. 322, 334-35 (1982). A value-added analysis, however, is recognized as "simply one factor in considering the nature and significance of a party's relevant activities in

the United States. It is not necessarily dispositive [of this issue]."

Certain Fluidized Supporting Apparatus, 225 U.S.P.Q. 1211, 1218 (1984).

Complainants argue that the domestic industry in this investigation is comprised of complainant's David Leinoff, Inc.'s (Leinoff) production of feathered fur coats in the United States (including the contribution of its New York City subcontractors), the domestic feathered fur coat production capacity of its U.S. licensees, and the manufacture of feathered fur coats by its one foreign subcontractor Yick Fung located in Hong Kong. (C Post at 10-15).

Complainants also argue that the full value of the fur pelt should be included in the domestic value added, even if the animal from which the fur was obtained is from outside the United States, because complainants generally purchase the fur pelt from a U.S. dealer. (C Post at 13-14). Complainants would also include in the U.S. value added the cost of air freight (which it assumes to be American), and the profit of the fur dealer, as payment to American labor for selecting and purchasing pelts. (C Post at 14).

The staff contends that the domestic industry is complainant Leinoff's production of feathered fur coats in the United States, including the contribution made by its New York City subcontractors. The staff excludes Leinoff's licensees from the domestic industry because of the lack of evidence that such licensees produce feathered fur coats in the United States. The staff also excludes from the domestic industry the production of feathered fur coats by Leinoff's subcontractor in Hong Kong, on the ground that there is insufficient domestic value added to such fur coats. (S Post at 20-27). The staff further argues that the cost of the fur pelt should not be considered in calculating the domestic value added, because pelts for some animals are necessarily of foreign origin, the cost of the pelts would obscure the value added of the actual domestic manufacturing process, and wide fluctuations in

the cost of pelts both among different types of animals and over time would lead to unreliable and varied results. (S Post at 17-20).

From the following analyses of complainant Leinoff's U.S. production, complainant Leinoff's foreign subcontractor Yick Fung and complainant Leinoff's licensees, the administrative law judge finds that the domestic industry is comprised of complainant Leinoff's production of feathered fur coats where cutting and sewing is done in the United States either by Leinoff or by its New York City subcontractors. Production of feathered fur coats, when cutting and sewing is performed by the subcontractor Yick Fung in Hong Kong, is not included in the domestic industry because the nature and significance of any domestic operations are found to be insufficient to constitute a domestic industry. Complainant Leinoff's U.S. licensees are not included in the domestic industry because they have not been shown at present to manufacture feathered fur garments in the United States.

U.S. Production

Complainant Leinoff has manufacturing facilities in New York City, consisting of a manufacturing area of 3,000 square feet, a showroom of 2,800 square feet, and capital equipment valued at \$200,000. (FF 71, 100). Leinoff employs approximately 40 workers. (FF 74). However, feathered fur garments currently account for only about five percent of Leinoff's fur business. (FF 107). About 80 percent of Leinoff's sales are to the wholesale market, with the rest sold at retail. (FF 73).

For feathered fur coats manufactured in the United States by Leinoff and its domestic subcontractors, only the fur pelt may be of foreign origin. Leinoff provided a cost breakout for feathered fur coats manufactured by Leinoff in the United States. (FF 76, 85). The cost of the pelt includes

certain domestic components, such as tanning (about \$10 per pelt), and possibly dyeing. (FF 77, 84). The pelt cost includes a markup of from 3 to 10 percent charged by dealers or brokers that sell to Leinoff. (FF 81). In addition, the time complainant Leinoff spends in the purchase of furs adds about \$1.30 to the domestic value added of each coat. (FF 83). When these factors are taken into account, the U.S. value added in 1986/1987 for different types of fur coats, assuming the pelt originated from offshore, is (in percent):

	<u>Coats</u>	<u>Jackets</u>
Finn & Amur Raccoon	56.9	56.9
Badger	53.5	51.1
Tanuki	58.9	56.0
Silver Fox	41.1	39.8
Fisher	42.0	40.1
Mink	62.0	60.0
Stone Martin	54.6	51.1
Blue Fox	66.1	64.8

(FF 86).

American raccoon is not included in the above tabulation because 100 percent of such pelts originate in the United States, so this type of fur coat is obviously of U.S. origin. (FF 76). Pelts from certain animals are necessarily of foreign origin, and pelts from animals raised in climates colder than the United States are generally more desirable for feathering. (FF 78-79). The cost of the pelt is the single most important cost component of a feathered fur garment, and the prices of such pelts are subject to wide fluctuations that can significantly alter the value added calculations from year to year. (FF 76, 79). Nonetheless, the administrative law judge finds the pelt cost should be included in the value added calculation which is the quantitative measure of the domestic content of the product at issue. An exclusion of the pelt cost would alter the quantitative test of domestic value

added and ignore the principal foreign content of the article. The fact that certain materials are necessarily foreign can be taken into account, when appropriate, in the qualitative evaluation of the nature of domestic operations.

The Commission has traditionally based its U.S. industry and value added analysis on the article of commerce at issue that exploits the intellectual property. The Commission has not required that only those parts of the production process related to the intellectual property be included in the industry or the value added. Certain Personal Computers and Components Thereof, 224 U.S.P.Q. 270, 284 (1984). To exclude pelt costs, a basic materials cost, from the value added calculation because this material is necessarily of foreign origin for certain animals is considered inconsistent with Commission precedent and the realities of feathered fur coat production. See, e.g., In re Certain Luggage Products, USITC Publication 1969 at 79 (1987) (belting leather found to be only foreign raw material in luggage in consideration of domestic value added). The fact that the fur pelt is a significant and direct factor in the value of the final commercial product mandates its inclusion. A fur pelt is a raw material input that may fluctuate in price, and cause the value added to change significantly from year to year, complicating the analysis. Nevertheless, this factor should be considered in the nature of the domestic value added, rather than excluding the fur pelt cost from the value added calculation itself. Furthermore, any differentiation between a "raw material" input such as fur, and a "fabricated" material input, such as thread or fabric, is merely one of degree and may not apply in a particular case. Even a fur pelt has a certain degree of labor content beyond its raw value in the wild, such as those things necessary to bring a fur pelt to the market (i.e., trapping or raising, slaughtering,

7/
skinning).

The nature and significance of fur coats produced by Leinoff and its New York City subcontractors in the United States, even if foreign-sourced fur pelts are used, is found to be sufficient for inclusion in the U.S. industry. See, Continuous Production of Copper Rod, 206 U.S.P.Q. at 161 (inclusion of subcontractors in the U.S. industry). The value added for all but two types of fur coats was over 50 percent, and for silver fox and fisher coats and jackets the U.S. value added was close to 40 percent. (FF 86). Moreover these are conservative estimates, because some furs are also dyed in the United States, which costs were not included in the above calculations. Furthermore, these value added figures should be assessed in light of the fact that raw fur pelts are a major component of the value of a feathered fur coat, and in many instances availability or quality requires that these furs be of foreign origin. The U.S. value added is comprised of the cost of the actual production of feathered fur coats by Leinoff or its New York City subcontractors.

Foreign Subcontractor Yick Fung

Among Leinoff's subcontractors that are involved in the production of

7/ Complainants argue (Tr. at 149-151) that focusing on the origin of the raw material input in this investigation would require tracing the origin of raw material inputs in other cases (i.e., tracing the origin of petroleum used in petroleum-based plastic containers for cube puzzles, or the origin of iron ore used to make the steel in staple guns tackers). This argument is without merit. While tracing the origin and value of raw materials used in successively fabricated inputs would generally be impractical, and would likely alter little the result that require a value added analysis, in the present investigation the fur pelt itself is a significant direct input into the commercial product at issue, of which the value and origin are readily available. The costs and origin of fur pelts cannot, therefore, be ignored in calculating the U.S. value added. Moreover, complainants have not pointed to any prior investigations in which evidence presented of significant foreign materials content has been disregarded due to subsequent domestic fabrication.

feathered fur coats is Yick Fung, located in Hong Kong. (FF 87). Leinoff subcontracts portions of its feathered fur coat production in order to cut costs. (FF 103). Leinoff paid Yick Fung \$300 per coat for the work done on Finnish raccoon coats in 1986, which does not include the cost of the fur pelt, and includes about \$37 freight. (FF 90). This compares to Leinoff's own labor costs in the United States of (FF 76). For coats that are made by Yick Fung in Hong Kong, Leinoff purchases the furs, has the furs tanned by U.S. subcontractors, and matches the pelts for texture and color in the United States, prior to shipping the furs abroad. The cost of sorting the furs is about \$3.15 per coat. (FF 89). Leinoff provides the pattern to his subcontractors, at a cost of about \$10 a coat. (FF 88). After receiving the fur coats from Yick Fung, Leinoff must perform finishing and glazing in the United States, at a cost of \$45 to \$60 per coat.

For Finnish raccoon coats subcontracted to Yick Fung the cost of the coat was about based on the lower labor cost of Yick Fung. (FF 76, 90). U.S. value would include the tanning (\$70), sorting (\$3.15), refinishing after the coat is returned (\$45 to \$60), overhead, and the cost of the pattern (\$10). The U.S. value added is at most, therefore, about 24 percent.^{8/} The administrative law judge finds that this value added is not sufficient to include feathered fur coats made by the subcontractor Yick Fung

^{8/} Complainants argue that the cost of transportation should be included in the U.S. value added because such costs were incurred on American carriers. (CPHB at 13). Regardless of whether such costs should be included in the U.S. value added if in fact U.S. carriers were used, the administrative law judge finds that Leinoff was uncertain whether or not the coats were transported on U.S. carriers. (FF 91). Also, Leinoff's overhead costs are included in the U.S. value added, even though it is unclear that such costs would be incurred fully by Leinoff for feathered fur coats manufactured by Yick Fung. (FF 94).

in the U.S. industry. Moreover, the nature of those foreign operations is such that the principal activity under the intellectual property at issue, the labor intensive feathering of the fur pelt, occurs abroad rather than in the U.S.

Licensees

Leinoff has entered into license agreements under the '424 patent with about 24 companies that either manufactured or sold feathered fur coats. (FF 75). However, complainants were not able to establish that any of those licensees are presently manufacturers of feathered fur coats in the United States. In fact, complainants did not know of any others besides complainant Leinoff and its New York City subcontractors that continued to produce feathered fur coats in the United States as of November, 1986. (FF 95 to 99). For purposes of section 337, production under the intellectual property, as of the time of the filing of the complaint, determines the critical date for the existence and identity of those comprising the domestic industry. Bally/Midway Mfg. Co. v. USITC, 714 F.2d 1117, 219 U.S.P.Q. 97 (Fed. Cir. 1983); Certain Double Sided Floppy Disk Drives, 227 U.S.P.Q. 982, 989 (1985).

Based on the foregoing, the administrative law judge finds that complainants' licensees are not to be included within the scope of the domestic industry.

IV. Efficient and Economic Operation

In order to prevail under section 337, a complainant must establish that the domestic industry is efficiently and economically operated. The guidelines set forth by the Commission to assess whether a domestic industry

is efficiently and economically operated include: (1) use of modern equipment and manufacturing facilities; (2) investment in research and development; (3) profitability; (4) substantial expenditures in advertising, promotion, and development of consumer goodwill; (5) effective quality control programs; and (6) incentive compensation and fringe benefit programs for employees. See, e.g., Certain Methods for Extruding Plastic Tubing, 218 U.S.P.Q. 348 (1982); Certain Coin Operated Audio Visual Games and Components Thereof, 216 U.S.P.Q. 1106 (1982); Slide Fastener Stringers, supra.

Complainant inventor Leinoff is a furrier with over 35 years of experience, and is personally involved in all aspects of his business, and inspects all garments produced by his company. (FF 11, 101). The employees who manufacture Leinoff's fur garments do so with skill. (FF 102). Leinoff has expended over \$200,000 in equipment for the production of fur garments. (FF 100).

Complainant Leinoff has reduced its costs of production by subcontracting cutting and sewing of its feathered fur garment production. Cutting and sewing costs are reduced by about 20 percent using domestic subcontractors. (FF 103). However, for more innovative styles, over which Leinoff wants to exercise more control, cutting and sewing is not contracted out. (FF 104).

Although complainant Leinoff's gross profit margins for feathered fur coats have declined since 1983, they were still above percent during partial year 1986 and complainant Leinoff has been consistently profitable for a number of years. (FF 108).

For the above reasons, the administrative law judge finds that complainants have established a reason to believe that the domestic industry is efficiently and economically operated.

V. Substantial Injury

Factors relevant to a determination of the effect or tendency to substantially injure include, but are not limited to: (1) declining sales; (2) volume of imports and capacity to increase imports; (3) loss of market share; (4) lost customers; (5) decreased employment; (6) decreased production and profitability; (7) underselling in price; and (8) excess domestic capacity. See, e.g., Certain Vertical Milling Machines and Parts, Attachments, and Accessories Thereto, 223 U.S.P.Q. 332, 348, (1984); Certain Drill Point Screws for Drywall Construction, Inv. 337-TA-115 (1983); Spring Assemblies, 216 U.S.P.Q. 225, 242-245 (1981); Certain Roller Units, 208 U.S.P.Q. 141, 144 (1979). Paramount to any consideration are the particular facts of each investigation. Corning Glass Works v. International Trade Commission, 799 F.2d 1559, 1565, 230 U.S.P.Q. 822, 828 (Fed. Cir. 1986).

Although the quantum of proof of injury is lower in investigations involving infringement of intellectual property rights, injury to a domestic industry under section 337 does not automatically follow from such infringement, but must be shown to be both substantial in degree and to occur as a result of infringing imports. Corning, 799 F.2d at 1566, 230 U.S.P.Q. at 829; Textron v. U.S. International Trade Commission, 753 F.2d 1019, 1028, 224 U.S.P.Q. 625, 632 (Fed. Cir. 1985).

A. Past Injury

Complainant Leinoff's sales of feathered fur garments (both U.S. produced and those produced by its foreign licensee Yick Fung) declined over the period 1983 to 1985 from to garments, and increased in 1986 to from to

fur coats. (FF 106, 108). In 1986, sales of feathered fur coats by Leinoff that were produced in the United States ranged from to (FF 106). The decline in the 80's in part can be explained by changes in fashion trends, as the popularity of feathered fur coats peaked during 1977-1978. (FF 111-112). Complainant Leinoff has the capacity to produce 200 feathered fur coats annually, and it had produced this many garments annually during the 1970's. (FF 105).

Complainant Leinoff's gross profit margins for feathered fur coats declined from percent in 1983 to percent for partial year 1986. (FF 108-110). Imported feathered fur coats have been consistently and substantially lower priced at the wholesale level compared to complainant Leinoff's feathered fur garments, and often lower than Leinoff's domestic cost of production. Respondent China National offered for sale a blue fox coat at a 1987 trade show for \$580, compared to Leinoff's cost of (FF 62, 76). Respondent Vassou sold fox fur jackets to MS Furs, Inc. for \$500 to \$595 in 1985. (FF 65). By comparison, complainant Leinoff's costs in 1986 for feathered fox jackets ranged from (blue fox) to (silver fox). (FF 76). Imports of non-respondent Dynasty Furs, Inc. include tanuki and Finnish raccoon coats. (FF 121). In all cases, the prices of those coats were lower than Leinoff's wholesale price or cost of production. (FF 76, 115-119).

Complainants have entered into settlement agreements with the now terminated respondents Jindo and Tientsin. Through those settlement agreements those foreign manufacturers have paid royalties for past sales in the United States of feathered fur coats that were admitted to infringe the '424 patent. (FF 38, 46, 59, 61). The administrative law judge finds that imports from those settled respondents constitute a part of the past imports

of feathered fur garments and are relevant to the injury analysis.^{9/}

Respondent Vassou supplied feathered fur coats to MS Furs Inc. in the United States. (FF 65). Complainants have shown that four non-settling respondents have displayed and offered for sale at least five feathered fur coats at trade fairs in the United States during 1985-1987. (FF 62-64, 68).

Non-respondent Dynasty Furs Inc. imported 25 tanuki or Chinese raccoon feathered fur coats from China in 1986, and sold both at a wholesale price of

^{9/} Although the staff contends that complainants have established a prima facie case of past injury due to the number of documented infringing imports, the low prices at which they have been sold, and complainants' decline in production and sales, the staff contends that the sales of respondents Jindo and Tientsin should not be considered on the issue of injury, because under the terms of the settlement agreements those respondents paid royalties for their past sales of fur coats and hence those sales can no longer be considered "unfair" for purposes of an injury analysis (S Post at 29, 32). The staff cited Certain Trolley Wheel Assemblies to support its contention that payment of past royalties in a settlement negates consideration of the settlement for any injury consideration. The administrative law judge does not find treatment of that contention in Trolley Wheel Assemblies.

Royalty payments under the settlement agreements in issue were made subsequent to the sales of the imports and subsequent to the institution of this investigation. (FF 38, 46, 59, 61). The sales and importations by those respondents were unlicensed when made and were admitted to have been infringing. As such, the administrative law judge finds that such sales and imports were unfair under the contemplation of section 337. Ignoring settled respondents merely because their settlement agreements contain royalty payments linked to past imports would ignore the Commission policy of favoring the amicable settlement of section 337 actions on the basis of legitimate settlement agreements, Certain Food Slicers, 219 U.S.P.Q. 176, 183 (1984). Moreover, since the terms of licensing provisions in settlement agreements can easily be recast to attribute royalty payments only to future licensing grants or other future conduct, ignoring those settled respondents on the basis that royalties are tied to past imports or sales would elevate form over substance. Although the imports of settled and terminated respondents need not in every instance be considered on the issue of injury, as a general rule they will be relevant to the effects of imported devices where an unfair act has been shown to occur. Certain Trolley Wheel Assemblies, at 9-10. The fact that the settled respondent manufacturers have agreed to avoid future unfair acts, one by accepting a license under the patent, and the other by agreeing not to import during the life of the patent, does not affect the relevance of their imports going to past injury suffered by complainants although such imports will not be considered on the issue of tendency to injure.

\$1,095. Dynasty is not a licensee of Leinoff's. (FF 121). Even though Dynasty's imports are from a non-respondent, they can be included in the injury analysis in view of the in rem nature of this investigation. Certain Roller Units, 337-TA-44 at 31-32 (RD 1978) aff'd, 208 U.S.P.Q. at 144 (Findings and conclusions of RD on injury adopted by Commission).

Market shares of imports are difficult to determine because the record has focused on imports made primarily to the New York City area, and feathered fur coats are sold throughout the United States and sold by complainants to retailers across the country. (FF 136). Despite this limitation, it is evident that over 100 fur coats have been imported by respondents and non-respondent Dynasty during 1986 alone, a significant number relative to Leinoff's 1986 sales of to U.S.-produced feathered fur coats.

The administrative law judge finds that the complainants have established a prima facie case of substantial injury to the domestic industry by the large number of imports which were in excess of complainants' own sales, as well as the substantial underselling and evidence of complainants' excess capacity.^{10/}

^{10/} Complainants have shown that they have reduced sales to their former customers at those stores which have continued to sell feathered fur garments for sale. However, they have not established that the coats for sale at these stores were non-licensees. (FF 116-120). Complainants' licensees often were given the right to "make and have made" coats, indicating that they could rightly obtain coats from other sources including foreign sources. Thus their right to make coats was not restricted to manufacture in the U.S. Moreover even though complainants now require that licensees affix a patent marking tag to the feathered fur garments they sell, the garments at three stores did not have such tags and license agreements signed in 1984 did not include such a requirement. (FF 137). In fact, two licensees that did pay royalties to Leinoff, indicating sales in the United States, were not required to affix such tags to the feathered fur garments they sold. (FF 134). Therefore, given the large number of licensees, and the facts that not all licensees were required to affix patent marking tags and licensees were not restricted to the sale of coats made in the U.S., it has not been affirmatively proven that the imported garments seen by Leinoff at complainants' customers or former customers were unlicensed and infringing. The administrative law judge finds that complainants have not met their burden in establishing lost sales.

B. Tendency to Injure

To establish a tendency for injury of a domestic industry for violation of section 337, a complainant must show circumstances from which probable future substantial injury from infringing imports can reasonably be inferred. Corning 799 F.2d at 1565, 230 U.S.P.Q. at 828. Relevant circumstances include foreign cost advantage and production capacity, ability of the imported product to undersell a complainant's product, and the potential and intention to penetrate the United States market. Certain Methods for Extruding Plastic Tubing, 218 U.S.P.Q. 248 (1982); Certain Reclosable Plastic Bags, 192 U.S.P.Q. 674 (1977).

Complainant argued that there is evidence of a tendency to destroy or substantially injure complainants through the foreign capacity to manufacture and import, the intent to export and the ability to penetrate the domestic market. (C Post at 22-26).

The staff argued that the evidence established a tendency to injure the domestic industry due to a significant foreign capacity to manufacture infringing feathered fur garments, an intent by infringers to export such garments, as well as the demonstrated ability of foreign manufacturers to penetrate the domestic market. (S Post at 35-38).

The administrative law judge finds that conditions exist to support a finding that there exists a tendency to injure the domestic industry by reason of infringing imports of feathered fur coats. The production of feathered fur coats is labor intensive, and production in the Far East is less costly than in the United States. Complainant Leinoff's cutting and sewing costs were reduced by almost 60 percent when performed by its Hong Kong subcontractor. (FF 76, 90, 126, 131, 133). The cost advantage of producing in the Far East

is reflected in the lower price in the United States of imported feathered fur coats compared to Leinoff's feathered fur coats. (FF 57, 62, 65, 125-130).

The existence of substantial foreign capacity and intent to export to the United States is reflected in the evidence of numerous non-licensee respondent and non-respondent importers or foreign producers that have recently made available, or have offered for sale, feathered fur coats in the United States. (FF 62-65, 68, 127, 136).

The market for feathered fur coats is likely to expand, as the increase in the dollar price of furs increased significantly from 1986 to 1987, in part because of the falling value of the dollar. (FF 129, 131). The feathering technique increases the square inches of the pelt, and decreases the cost of the coat. (FF 130).

For the above reasons, the administrative law judge determines that complainants have established a prima facie case of a tendency to injure the domestic industry by reason of imports of feathered fur garments. Substantial foreign cost advantages, underselling, production capacity, and demonstrated potential and intention to penetrate the United States market on behalf of respondents and a non-respondent, establish a probability of future injury to the domestic industry.

FINDINGS OF FACT

I. Jurisdiction

1. The Commission has in rem and subject matter jurisdiction in this investigation because the complaint alleged unfair acts involving the importation into, and sale in, the United States of certain feathered fur coats and pelts, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

2. With the exception of Peking Fur service of the complaint and notice of investigation was perfected on each of the respondents identified in the notice of investigation. (ALJ Ex. 2). Peking Fur has acknowledged service of the notice of investigation and complaint (See "Peking Fur Store Ltd.'s Response to Order No. 25" at 2 dated August 6, 1987).

II. Parties and Products in Issue

Complainants

3. Complainant David Leinoff is a private individual residing in New York City. He is the sole owner of complainant David Leinoff, Inc., a fur manufacturing and selling corporation, located in the so-called New York City "Fur District." David Leinoff, as the sole proprietor of complainant David Leinoff, Inc., is the sole individual in charge of any and all aspects of his business which is essentially a one-man business. (SX-16 at 5).

4. The products involved in this investigation are feathered fur coats. The term "feathered" fur coat has come to designate coats made in accordance with the process developed and covered by the method claims of the

'424 patent. This process involved cutting a fur pelt in fur strips and inserting a strip of leather or other material between each adjacent fur strip with the insert strips having a width dimension greater than the length of the tip portions of the pelt hairs but less than the length of the entire hair. As a result of this process the hairs on the fur strips lie across the insert strips with the tips of the hairs overlying the contrasting base portions of the hairs on the adjacent fur strip thereby to produce a striped effect on the fur side of the pelt. (SX-16 at 8).

Respondents

5. Respondent Jindo with offices in Seoule, Korea. The same respondent also maintains an office in Honolulu, Hawaii. (SX-16 at 10).
6. Respondents Asia Fur, Tientsin, Peking Fur, and Excelsior are Hong Kong companies having offices in Kowloon, Hong Kong. (SX-16 at 10, 11)
7. Respondent Papadopouli is a Greek company with offices in Kastoria Greece. (SX-16 at 11).
8. Respondent China National has offices in Beijing, People's Republic of China. (SX-16 at 11).
9. Respondent Sunry is a New Jersey company with offices in Paramus, New Jersey. (SX-16 at 11).
10. Respondent Vassou is a Greek company with offices in Kastoria, Greece. (SX-16 at 11).

III. The Invention of the '424 Patent

11. David Leinoff, one of the complainants, is the sole owner of complainant David Leinoff, Inc. He has worked in the fur trade since the age

of 14 and has owned and operated his own furrier business since the age of 22, i.e. for over 35 years. (Leinoff CX-62 at 1).

12. The '424 patent titled "Composite Fur Pelt and Method of Making Same and Fur Coat" issued on September 23, 1973 on an application filed July 24, 1972 to complainant David Leinoff. Complainant Leinoff is the owner of the '424 patent. Claims 1 and 5, the only claims in issue, read:

1. As an article of manufacture, a composite pelt formed of fur strips cut from a long haired pelt in which the tip portions of the pelt hairs are dark and the remainder of the hairs, between the skin and the dark tips, is light; and connector strips operatively connected to and alternated with said first strips whereby each connector strip is positioned between two fur strips with said connector strips having a width dimension between adjacent fur strips selected to be greater than the length of the dark tip portions of the pelt hairs and less than the length of the pelt hairs, whereby the pelt hairs on said fur strips extend across adjacent connector strips with the dark tips of the pelt hairs overlying the light portions of the pelt hairs on the next fur strip, thereby to expose said light portions of the pelt hairs and produce a striped effect.

5. The method of producing fur coats and the like from long haired fur pelts in which the tip portions of the pelt hairs are dark and the remainder of the hairs, between the skin and the dark tips is light, which method comprises, the steps of, cutting a pelt into fur strips of substantially the same width at a substantial angle to the general direction in which the pelt hairs normally repose, maintaining said fur strips in their normal relative positions, inserting an insert strip of substantially uniform width between each fur strip and the next, the width dimension of said insert strips being selected to be greater than the length of the dark tip portions of the pelt hairs and less than the length of the pelt hairs, attaching the adjacent edges of the fur strips and the adjacent insert strips to produce a composite pelt which is longer and wider than the original pelt and in which the hair from each fur strip normally reposes across one of the adjacent insert strips at an angle to its longitudinal dimensions whereby the pelt hairs on said fur strips extend across adjacent insert strips with the dark tips of the pelt hairs overlying the light portions of the pelt hairs on the next fur strip, thereby to expose said light portions of the pelt hairs and produce a striped effect.

(CX-1; SX-16 at 3).

13. According to the '424 patent, the invention relates to producing unique design effects on "long haired" pelts, and to producing fur coats and the like. (CX-1, col. 1 at 4-6).

14. Leinoff testified as to "long haired furs":

Q. Now, your ['424] patent refers to long haired furs. Is the invention applicable to short haired furs?

Or should I ask first, is there such a thing as short haired furs?

A. There are some short haired furs. There's broad tailed, where the hair lies -- the hairline is very very close, and is rigid, and will not fluff, and will not cover a leather insert.

So even if you put in a 64th of an inch leather, it will show.

There is ermine, which is a very, very short hair. There is a fur named barunducki, which is very short haired skin.

There is mole, which is a very short haired skin, probably the hairs are no more than 3/8th of an inch long.

There is leopard. Well, leopard isn't used any more. But where the hair is long enough to fall shingle effect over the lower half, over a piece of leather that can be inserted, then it can work.

I don't know how to describe a long hair, where the boundary line between long hair and short hair is, except as it relates to the patent method, which will allow a piece of leather to be sewn between the hairs and still be covered and create a design.

So I think if a fur can allow that to happen, then it will be long enough to be called feathered, to be used as feathered.

Q. Let's take a specific example, mink. Now, the hairs on a mink are shorter than the hairs on a fox; is that right?

A. Oh, yes.

Q. So that relative to a fox, it's short hair?

A. yes.

Q. But relative to a broad tailed or Persian lamb, it's long?

A. It would be very long, yes.

Q. And can a furrier feather mink?

A. Yes.

Q. I will show you again Complainant's Exhibit 6, which is the Asia Fur Company brochure, and direct your attention to pages 5 and 6.

And are these feathered mink coats?

A. Yes.

(Leinoff Tr. at 36 to 38).

15. The drawings of the '424 patent consist of the following:

FIG.1 which is a perspective view of a fur coat made in accordance with the invention;

FIG.2 which is a view of the composite pelt of the type used in making the fur coat of FIG.1:

FIG.2a which is a near full size view of the portion 9 of the composite pelt of FIG. 2; and

FIG.3, 4 and 5 which are somewhat diagrammatic views illustrating the method of producing the pelt of FIG. 2.

(CX-1, col. 1 at 15 to 22).

16. FIGS. 1, 2, 2a, 4 and 5 of the '424 patent are represented as follows:



Fig. 1



Fig. 2

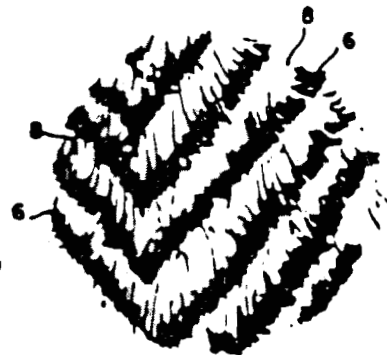


Fig. 2a

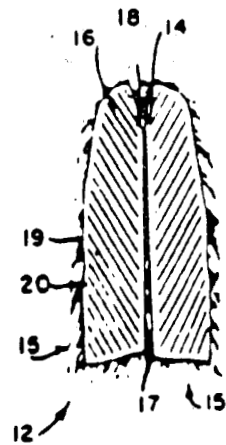


Fig. 4

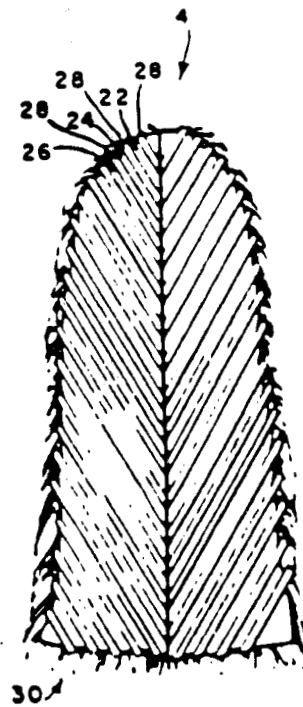


Fig. 5

(CX-1).

17. According to the '424 patent and referring to FIG. 1 the fur coat 2 is formed of a number of individual composite pelts 4 and portions thereof which are unique in construction and in appearance. Composite pelts 4 are of the types shown in FIG. 2 with herringbone stripes, there being light stripes 6 and dark stripes 8. The skin side of composite pelt 4 such as an original badger pelt is shown in FIG. 5. To produce a composite pelt 4, the original pelt is first slitted or cut as illustrated by pelt 12 in FIG. 4. The original pelt is cut along its longitudinal center line at 14 to form two half-pelts 15, and each of half-pelts is then slit along cut lines 16 which are substantially parallel and at an angle to the side edge 17 of the pelt along line 14. However, each cut line does not extend completely to the opposite edges of the pelt so that there is an uncut edge portion 18 along edge 17 and an uncut portion 20 along the opposite edge 19. The principal cut lines are at an angle of the order of 45 degrees from line 14, although at the bottom of the pelt that angle is greater, illustratively, a maximum of 80 degree. Referring to FIG. 5, the processing of each half-pelt 15 of FIG. 4 is continued by first extending each cut line through the edge portions 18 and 20 to produce a series of individual fur strips 22, 24 and 26, etc. The fur strips are kept in their original series relationship, and a strip of softer leather 28 is positioned beneath each fur strip and the next and each of its edges is sewed to the coextensive fur-strip edge. That forms a composite half-pelt 30 which is then sewed to the composite half-pelt produced from the other half of its original pelt to produce the composite pelt 4. Each composite pelt is of much greater area than its original pelt, i.e., it is much longer and somewhat wider. The hairs on the pelt tend to lie down from the head toward the tail of the animal, and the separating of the strips 22, 24, 26 etc. causes the hairs from one fur strip to lie down in somewhat

shingle fashion over the next adjacent leather strip and onto the next fur strip below it. Hence, each row of hairs on a fur strip extends at an angle across the strip of leather and has a generally normal posture with the tips of the hairs covering the base ends of the hairs on the next fur strip below it. That exposes the central portions of the hairs, which in the embodiment of the FIGS. are light in color, whereas the tips of the hair are dark in color, and that produces the strips 6 and 8. Also, the ends of the hairs are unrestrained so that with the fur of the illustrative embodiment there is a "feathery" effect. (CX-1 at col. 1, 23 to 68, col. 2 1 to 5).

18. As to the term "feathering" Leinoff testified:

JUDGE LUCKERN: When you say "feathering", what is your meaning of this term feathering? How did you come to say feathering? Is that a term associated in the art?

THE WITNESS: No, originally, when I started doing it, somebody said, gee, that looks like feathers. And it seemed to be a nice name, so we called it feathering.

I guess the feathers on a bird lay shingle fashion on a bird. And that might be a connection.

JUDGE LUCKERN: I noticed in some of the papers I've read about this case, there's chevron type design or a V-type design.

Is there something critical, something special, about this V or whatever it is, the design, that you have to do?

THE WITNESS: Well, what we do, what we're looking at here is a skin which has a side, a grotzen, which is the spine of the animal, and then the side again.

MR. RAZZANO: So it is clear on the record, in testifying, the witness testified the grotzen as the center portion of the pelt.

THE WITNESS: Which is the equivalent to the animal's spine. In the original way we made it, we made the chevron design, we coat from one side on an angle to the grotzen, and on the other side from an angle to the grotzen.

Each half a skin has been feathered. it might be possible to cut the skin in a stretch line all the way through and still have a feathered look. But reversing the angle on one half, as opposed to -- if when cutting from top side to low grotzen, you could also cut from top grotzen to low side, and then get one line going all the way across.

But the shingling effect of the -- and bringing up the underground of the fur, and expanding the leather, I believe, are the essential portions of the ['624] patent.

(Leinoff Tr. at 12 to 14).

19. Inventor Leinoff testified that the invention of the '424 patent involves a composite pelt construction and process for forming the composite pelt which is then used to form coats. The construction creates a striped effect on the fur side of the coat by the unique displacement or separation of hairs on the pelt to cause the tip portions of the hairs to lie over the contrasting base portions of adjacent hairs so that the base portions are exposed to view with the contrast of tips and bases creating a striped appearance. This separation of the pelt hairs is achieved by cutting the pelts into strips of substantially the same width at an angle to the direction in which the pelt hairs lie. These strips are then separated and spaced from one another so that the hairs on adjacent strips are moved away from each other. Connector strips of leather or other material are sewn between the fur strips to maintain the separation. The connector strips have width dimensions in the direction in which the pelt hairs lie which are greater than the length of the tip portions of the hairs but less than the overall length of the hairs. Thus the fur strips are held together in their displaced relationship with the tips of the hairs on adjacent strips separated and overlying the contrasting base portions of the hairs to produce the striped effect. As the fur hairs are less restrained by their separation, particularly in long-haired

furs, a lighter or "feathery" appearance is also imparted to the pelt.

(Leinoff CX-61 at 1, 2).

20. CPX-1 is a photograph of a feathered blue fox pelt made in complainants' factory by the patented method of feathering. It has leather running throughout. The photograph was made on June 23, 1987 from an actual feathered blue fox pelt. The leather in CPX-1 is not seen but the leather creates organized marks and makes the whole garment much more economical to make because of using less skins in it. (Leinoff Tr. at 7, 10, 11).

21. According to Leinoff when a stripe in a coat is caused by the insertion of leather, the stripe is produced by Leinoff's patented '424 process. (Leinoff Tr. at 116).

22. CPX-3 and CPX-4 are photos of a feathered mink coat with a fox fur border which Leinoff made very recently in accordance with the '424 patent. The photos were taken on June 23, 1987 from an actual coat. (Leinoff Tr. at 38, 39).

23. CPX-6 is a photo of a stone martin skin fur coat taken on June 23, 1987. The hair is shorter than blue fox and badger but longer than mink. The skin can be feathered. Stone martins have dark tip portions and a light underground. (Leinoff Tr. at 43, 44).

24. CPX-7 is a photo taken on June 23, 1987 of a badger coat made by complainants feathered in accordance with the '424 patent. Badger was the original pelt Leinoff feathered. (Leinoff Tr. at 44, 45).

IV. Prior Art

25. CPX-2 is a sketch of a "reset" garment. SX-1 is Post U.S. Patent No. 1,558,879 (the '279 patent) shows resetting with leather. (Leinoff Tr. at 23).

26. Leinoff testified that the resetting process is described in the '279 patent to Post and in Advanced Fur Craftmanship by Raphael (pages 32-36), both of which were considered by the Court of Appeals for the Federal Circuit in prior litigation; that in the resetting process the pelt is cut into strips, and alternate fur strips are removed and replaced with leather; that the removed fur strips are kept in the same order in which they existed in the original pelt and leather strips are sewn between them; that thus, two pelts of about the same size are created; that this process has been used in the past in skins or pelts whose hairs have a single color or texture and with extremely thin leather strips; that as a result, as described in Post (page 2, lines 19-22) "To the non-expert observer, it is impossible to discern any substitution or addition of foreign material to the original skin"; that similarly, in the section of Raphael which describes "Diagonal Reset Method" and "Leathering", it is stated that "leathering should be applied only where it is absolutely necessary and where the wool is so heavy that breaks will not show"; and that clearly, this resetting technique did not and does not contemplate the use of leather in the dimensions claimed in the '424 patent to produce a striped effect, and the District Court and Federal Circuit have so held. (Leinoff CX-61 at 4, 5).

27. According to Leinoff all the teachings up until he started doing the feathering were that leathering a garment was done to make a skin wider and the leather was to be invisible to the naked eye, looking at the leather from the hair side. (Leinoff Tr. at 10-11).

V. Infringement

28. When asked how Leinoff determined infringement on coats he inspected, Leinoff testified referencing to CPX-1:

A. Well, if the coat were not feathered you wouldn't have these lines showing, the fur shingle effect from the portion of the fur above the leather insert concealing the leather, but at the same time allowing the underground fur from the pelt from the next section underneath to come to the surface.

It has contrasting tips, which would stand out in relief against the underground. The pelt has gotten to be much larger than its normal size would be because of the increased area placed in the pelt. The pelt lays down flatter than it would otherwise because by putting that much leather in the hair becomes sparser, so it has room to lay down.

Q. In summary, what you're saying is that by viewing the appearance of the fur side of the pelt and the effect that is displayed you can determine that, as a skilled furrier, that it is feathered?

A. Yes.

(Leinoff Tr. at 8, 9).

29. In 1987 animal skin prices have gone extremely high. (Leinoff Tr. at 12).

30. The grotzen of a pelt (the position over the animal's spine) is generally darker and thicker than the remaining portions of the pelt.

(Leinoff Tr. at 13, 14).

31. Referring to CX-13, a catalog with photographs of fur garments, and whether a fur coat infringes the '424 patent Leinoff testified (Tr. at 123 to 132):

JUDGE LUCKERN: According to the way you're testifying, you can look at a coat and immediately say this is my process or not my process? It seems that that's what I'm getting from what you're saying, and I'm trying to say what makes you look at one coat and say that's mine and then you look at another coat and that can't be mine.

THE WITNESS: There are some -- I don't believe that I am unique in that.

JUDGE LUCKERN: You're a man skilled in the art.

THE WITNESS: A skilled furrier will see that within the terms of the feathering, which means that a leather is inserted so that the leather is not seen but that the fact, its presence is made know by separations such as like a shingle effect, where the shingle effect is created by a leather insert so as the hairs from the portion above overlap the one below. That would be feathering, and that's what we have here.

BY MS. STRAUSS: (Resuming)

Q. Let me ask you this, Mr. Leinoff, in furtherance of what the judge has asked you. Although I can't tell, it seems that you can tell immediately by looking at a coat whether whole pelts have been used; is that correct .

A. Yes.

Q. Whether it appears to incorporate natural fur, natural pelts as opposed to the, for want of a better word, unnatural appearance that your patent produces; is that correct?

A. Yes.

Q. So if you look at a coat and it doesn't have the appearance of a natural pelt and it has the stripes in it, you're quite certain then that it is your -- it was made --

A. It's the unnatural look goes into the area which my patent covers,...

JUDGE LUCKERN: What is unnatural look versus natural look? Can you distinguish the two?

THE WITNESS: Of course. For instance, here you have a natural -- on page 18 [of CX-13] garment lettered F has leather set into it, but that does not infringe our patent.

JUDGE LUCKERN: Why doesn't it?

THE WITNESS: Because we don't have a Chevron effect; or, more precisely, we don't have a shingling effect here. The skin is separated by leather. This is not natural but there is no shingling effect.

BY MR. STRAUSS: (Resuming)

Q. Is the stripe caused by the leather in that?

A. The stripe is caused by the leather.

Q. Just by separating parts of the pelt?

A. Yes.

Q. So you're seeing a little bit of leather there?

A. You can actually see the leather.

JUDGE LUCKERN: By looking at that photo?

THE WITNESS: I can not see leather in the photo. But the main reason that this does not infringe is very simply that there is leather put in and they call this in the trade a corduroy effect. If you would say to a furrier, I want a corduroy coat, this is what the furrier will immediately know you mean.

When I say this, I mean F on page 18 [of CX-13]. And when you say feathered, you would immediately know that we are talking about the shingling effect.

JUDGE LUCKERN: Let me pin this down, and then I will let Ms. Strauss continue.

But Ms. Strauss, in her pre-hearing statement has stated that in your declaration, and this is in connection with your summary determination motion on infringement, that you did not state that each inspection was a detailed examination of both sides of the garment, and also that your inspections amounted to no more than a brief glance at the fur side of the garment.

Now, what I am hearing today is that you really do not have to examine both sides. You can look at just, you do not have to look at the back of the garment, the back side where you see the leather, the yellow and darker that we saw this morning.

You can just look at the fur coat itself, and you can tell whether it is your process or not. That is what I am getting this afternoon. Is that not correct?

THE WITNESS: In 99 percent of the cases, that will be true.

JUDGE LUCKERN: And that is due again to the chevron --

THE WITNESS: To the shingling effect.

JUDGE LUCKERN: Anything else? I am not trying to box you in.

THE WITNESS: I appreciate that. I would like to give you a thoughtful answer.

JUDGE LUCKERN: Yes, I want one.

THE WITNESS: Let us say that it could be harder to see in the picture than it would if I see the garment itself. If I see the garment itself, that would be definitely true, that I could tell by looking at it. In the picture, it could sometimes be obscure. If I see the actual garment, I could see if it is feathered without examining the leather side.

JUDGE LUCKERN: And why is that?

THE WITNESS: I am looking at page 18 [of CX-13].

* * *

THE WITNESS: I see a garment with a striped effect. At first glance you might say that it is feathered, but if I study it closely, I get the impression that it is either dyed or they have two contrasting pieces of fur working together.

I am not sure what that is. It might turn out to be feathered. But I would not make any claim because I am uncertain. Even though it is a chevron effect. I can not say that.

* * *

THE WITNESS: This is coat No. 8 on page 18, on CX-13. There is another thing that happens also when you feather a garment. You get little depressions where the leather goes in.

And that is sort of a tell-tale thing which sometimes does not show up on a flat photograph.

JUDGE LUCKERN: What is that again, did you say?

THE WITNESS: You get little depressions and ridges where the leather has been inserted, so that if you would look at the fur sidewise, instead of just getting a smooth surface with stripes running through, you would find that there are little round ridges wherever the leather went in.

And that is a tell-tale thing. I guess I am analyzing it now even as you are talking to me. When you hold up a coat and you see this, you know immediately that it is feathered because that is typical of what an insertion of leather will do.

* * *

THE WITNESS: I would like to draw your attention to page 4.

JUDGE LUCKERN: Of CX-13.

THE WITNESS: This is a very clear, large picture which will demonstrate, which will sort of demonstrate what I am talking about. Where the leather is inserted you get this kind of rolling effect. It rolls over here.

* * *

THE WITNESS: The edge of the sleeve. Over here where you have a little constrast. If it is folded in the right place you get this roundness.

JUDGE LUCKERN: The leather would be the thicker?

THE WITNESS: You can not see the leather because it is hidden underneath.

* * *

THE WITNESS: The leather would cause that break.

MS. STRAUSS: The undulation.

JUDGE LUCKERN: The coat on the right, obviously that is not your process.

THE WITNESS: On page 5, that is right.

JUDGE LUCKERN: Or the one in the middle?

THE WITNESS: That is right. This is made of skin on skin. On page 3 you have another coat with a chevron effect.

* * *

THE WITNESS: Page 3. This is also a chevron effect. But this is made out of two different colors of weasel, I believe. Let us see, mink and weasel skin coat.

They say feathered here, but it is not feathered. They say it is feathered, but it is not feathered. They are getting the striped effect by putting, one, the dark one would be mink, and the light one would be weasel. So they are getting a striped effect by using two contrasting furs.

BY MS. STRAUSS: (Resuming)

Q. There is no leather inserted in that one?

A. According to them, they say that they put leather in here. But we make no claim on this, because the stripe is being caused by the two tones and not by the leather.

Accordingly, Leinoff is able to discern whether a fur garment is covered by claims of his '424 patent. His extensive experience permits him to observe whether the strips in the fur of a fur garment occur naturally or are the result of feathering in accordance with the '424 patent.

32. Leinoff testified:

Q. Can the striped effect that you achieve with your feathering process, a specific effect, as demonstrated by Complainant's Exhibit 1 ['424 patent], be achieved by any other process that you are aware of?

A. Not that I'm aware of.

(Leinoff Tr. at 26, 27).

33. As to a basis for Leinoff's opinion that a coat infringes the '424 patent Leinoff testified:

JUDGE LUCKERN: When your counsel asks you, is it made by a process in your patent, and you said yes, how do you know?

Again, I know you have made a lot of testimony, but let's pin it down. Or you just look at it and you say yes.

BY MR. RAZZANO: (Resuming)

Q. Why don't you demonstrate it to the Court?

A. The effect that you are getting here could only be achieved that way -- and this is done deliberately --

JUDGE LUCKERN: And the effect would be?

THE WITNESS: The stripes. If you blow into the hair, you would see the cause of the stripes is the leather insert that is put in there.

It could be leather; it could be another material. But there has to be material put in there to get that effect.

JUDGE LUCKERN: Do the stripes have to have the V or chevron?

THE WITNESS: No. If you would take this skin, and then take the opposite half, you could have one coat going in one direction all the time.

So each half is feathered, but the chevron effect is gotten by putting two halves together. If you chose to, you could make a coat, making one-half of the coat going in one direction, all the halves on one side of the coat going in one direction, and all the halves on the other side of the coat, going in the other direction, and have one huge V.

Or if you chose to make two coats and use one-half of the skin for one coat and one-half for the other coat, you could also do that.

However, each half of the skin is feathered according to the invention.

JUDGE LUCKERN: And the witness had in his hand the coat pictured in CPX-5.

BY MR. RAZZANO: (Resuming)

Q. So as long as the hair --

A. It also has a label in it, made in China.

Q. As long as the hair is long enough, whether it's short as in mink, or longer, as in raccoon or Tanuki, you achieve the same result by the insertion of Tanuki, you achieve the

same result by the insertion of leather in the proportions required to produce the striped effect in your invention?

A. Yes.

(Leinoff Tr. at 41 to 43).

Respondent Asia Fur

34. Respondent Asia Fur Company is referred to in CX-61 par. 6. CX-6 is a brochure Leinoff obtained from Asia Fur Company at one of the fur fairs. It shows a feathered fur coat C-51 47 which infringes claims 1 and 5 of the '424 patent (CX-7). Leinoff examined feathered fur coats of Asia Fur Company at fur fairs. (Leinoff Tr. at 17, 18).

35. Leinoff inspected samples of a feathered blue fox coat EC1012, a feathered red fox coat EC1023, a feathered raccoon coat C-5147 and a feathered mink jacket shown in an advertising brochure of the Asia Fur Company at the American International Fur Fairs in 1985 and 1986. The raccoon C-5147 is exemplary of the construction of each of those coats which are all made in the same way except having sleeves formed from feathered blue fox of the type sold and offered by Tientsin in the U.S. He testified that such coats infringe claim 1 of the '424 patent and were made by the process of claim 5 of the '424 patent. Leinoff could tell from his experience that the fur coats examined were feathered pursuant to his '424 patent. (Leinoff CX-61 at 3, 4 Tr. at 18; CX-6; CX-7).

36. Leinoff testified that the Asia Fur Company's feathered fur coats he observed clearly had a striped effect on the fur side; and that therefore, the leather insert strips had a width dimension greater than the

tip portions of the pelt hairs and less than the hair lengths. (Leinoff Tr. at 25).

Respondent Tientsin

37. A brochure entitled "Furs 85 Hong Kong" shows a dyed blue fox jacket with sleeves formed from feathered blue fox and of the type sold and offered for sale by Hong Kong Tientsin Fur Company in the United States. Leinoff inspected such jackets at the 1985 American International Fur Fair and concluded that they infringe claim 1 of the '424 patent and were made by the process of claim 5 of the '424 patent. (Leinoff CX-61 at 6, 7, Tr. at 27; CX-9; CX-10).

38. In a signed addendum to a settlement agreement between complainants and Tientsin, Tientsin agreed not to market in the United States coats of the type which complainant has accused Tientsin of infringing the '424 patent and for which Tientsin has paid money to complainants in satisfaction of the infringement charge (Order No. 24).

39. As to the fur coat from Hong Kong Tientsin which Leinoff inspected at the fur fair, Leinoff testified:

THE WITNESS: By looking at the sleeve, you are getting the shingled effect that is obtained by using my invention.

BY MR. RAZZANO: (Resuming)

Q. Could the effect of the striped appearance on that sleeve be achieved by any process that you are aware of other than your invention?

A. I don't believe so.

(Leinoff Tr. at 27, 28).

Respondents Peking Fur and Jindo

40. Jindo was named in the complaint as Jindo Fur Salon of Seoul, Korea and of Honolulu. It noted its correct name "Jindo Industries, Ltd." in answer to Int. No. 1. (CX-74).

41. CX-4, a June 1986 Pan Am clipper magazine advertisement of respondent Jindo, shows a feathered blue fox coat No. 8011/47 which infringes claims 1 and 5 of the '424 patent. According to Leinoff a furrier could determine infringement of the '424 patent by looking at the fur side. Brushing back the hair shows the leather. (Leinoff Tr. at 14, 15, 16; CX-61 at 3; CX-5).

42. Ronlee Apparel Company of New York City was a customer of respondent Jindo. Leinoff inspected a feathered blue fox coat manufactured by Jindo and as sold by Ronlee and this coat infringes claims 1 and 5 of the '424 patent. (CX-61 at 3).

43. Ronlee Apparel was involved in earlier litigation by complainant Leinoff involving the feathered furs sold by Jindo. The litigation was settled by payment of a royalty for such furs. (CX-74 at 6).

44. Jindo sold blue fox coats to in 1986. (CX-74 at 5, 6).

45. Peking Fur displayed a feathered blue fox coat at the 1985 American International Fur Fair which Leinoff inspected. Leinoff testified that the coat was made in the same way as the feathered blue fox coat Leinoff inspected and which was sold by "Ronlee," which Leinoff testified was manufactured by Jindo Fur Salon and which Leinoff testified infringed claims 1 and 5 of the '424 patent. (Leinoff CX-61 at 3, 7, Tr. at 28).

46. Jindo has admitted that it has manufactured in Korea and sold or caused to be sold in the United States fur coats having a striped effect of the type disclosed and claims in the '424 patent. (Order No. 21, settlement and license agreement at 1, 2).

Respondent Excelsior

47. Leinoff inspected a feathered fox fur coat of the type displayed in an advertisement by Excelsior at the 1985 American International Fur Fair and testified that it infringed claims 1 and 5 of his '424 patent. (Leinoff CX-61 at 7, Tr. at 29; CX-11, CX-12).

Respondent China National

48. Leinoff testified that a brochure titled "Chinese Fur Garments Elegant" shows a feathered Finish raccoon coat (on its inside cover), a feathered blue fox coat (FGP056); a feathered yellow Goupee coat (FGH025), a feathered North-East fox skin coat (FGL044), a feathered red fox/weasel jacket (FGP054); a feathered blue fox jacket (FGP055), a feathered grey color Goupee skin coat (FGT022), a feathered blue fox jacket (FGT023), and an imitation feathered blue fox nanny goat skin jacket (FGE035) of the type sold and offered for sale in the United States by China National; that he inspected those feathered coats at the 1985 American International Fur Fair; that in addition, on May 13, 1987, after his deposition by the staff, Leinoff's counsel and Leinoff visited the showroom of this respondent at 14-16 West 4 Street, New York, New York, where they observed and inspected a feathered red fox jacket, a feathered blue fox jacket, and a feathered blue fox coat, all being offered for sale; that each coat bore a label reading "Peacock Feather"; that the red fox jacket bore a price tag of \$490.00 and the blue fox coat was being offered for sale at \$580.00; and that said feathered fur coats infringe

claims 1 and 5 of the '424 patent. (Leinoff CX-61 at 8, 9, Tr. at 30, 31, 32; CX-13; CX-4).

49. CPX-5 is a photo of a feathered Tanuki (Chinese raccoon) coat taken on June 23, 1987 from an actual coat. Leinoff testified the coat obtained from Venini Furs, a New York furrier, was made in accordance with his '424 invention. Design Furs purchased this coat from China National. (CPX-5; Leinoff Tr. at 39 to 43).

Respondent Sunry

50. Leinoff testified that based on his experience in the importation of various fur garments from abroad, and also in his personal dealings with respondent Sunry Import Export, Sunry is the importer of "feathered" fur garments into the United States for respondent China National and that this was confirmed in his counsel's presence on May 13, 1987 by representatives of this respondent. (Leinoff CX-61 at 8, 9).

51. While Leinoff testified that he does not know what the structure of respondent Sunry is, i.e. if it is a U.S. based firm or if it is an arm of the Chinese government, Leinoff has used Sunry for importing from China. He testified that Sunry seems to be a facilitator, like a liason, to do business at least in the Eastern part of the United States; that he knows that Sunry has samples of Chinese products at the Sunry office in New Jersey, which includes but is not limited to furs of China National; and that he has visited the office which is not open to the public but is open to the trade. In settlement discussions, Sunry has been represented as an agent for China National. (Leinoff Tr. at 108, 111; ALJ Ex. 1).

Respondent Papadopouli

52. In a settlement agreement it was stated that Papadopouli has demonstrated, and Leinoff agreed, that red fox and grey fox coats of Papadopouli, alleged as infringing in the complaint, do not infringe the '424 patent. (Order No. 18, settlement agreement at 1).

Respondent Vassou

53. Leinoff testified that Vassou's feathered fox jackets were sold in this country by Vassou to MS Furs, Inc. in New York City (CX-40); that he has inspected such coats (as has his counsel) and, in Leinoff's opinion, they infringe claim 1 and were made by the process of claim 5 of the '424 patent. (Leinoff CX-61 at 9, Tr. at 34, 35; CX-14; CX-40).

Nonrespondent Dynasty Furs, Inc.

54. Complainant Leinoff has seen feathered fur coats sold by Dynasty Furs, Inc. 333 Seventh Ave., New York, N.Y. 10001 and determined they were made in accordance with the '424 patent. (Leinoff Tr. at 73 to 75; CX-41).

Nonrespondent Leather City

55. Complainant's counsel visited Leather City at East 39th Street, New York City and inspected fur coats. He concluded they infringed the '424 patent. (Leinoff Tr. at 77).

VI. Importation or Sale

Jindo

56. Jindo manufactures, imports into, and sells in the United States feathered fur coats. (CX-74, Ans. to Interrog. Nos. 1-2).

57. Jindo sold a total of at least feathered fur coats or jackets in the United States during 1984-1986, as follows:

	<u>Style</u>	<u>Quantity</u>
1984:		
1985:		
1986:		

In 1986, the and the
These costs were at the U.S. port of entry, including freight and insurance.
(CX-74, Ans. to Interrog. Nos. 5-b, 9; Leinoff Tr. at 14-15).

58. With the exception of sales by Jindo were
to . The blue fox coats were sold by Jindo to
in 1986. (CX-74, Ans. to Interrog. No. 6).

59. After this investigation was instituted Jindo and Leinoff
entered into a license agreement, whereby licensee Jindo agreed to pay to
Leinoff the sum of in "full satisfaction of any and all claims that
Leinoff may have against Licensee [Jindo] for past infringement" of the '424
patent. According to the license this payment represented

Pursuant to a settlement agreement between Leinoff and Ronlee entered into on June 10, 1987 after the institution of this investigation, Leinoff has also received royalty payments from Ronlee for Ronlee's sale of feathered fur coats or jackets which it obtained from Jindo. (CX-43, at 3-4; CX-77; CX-82).

Tientsin

60. Tientsin manufactured, and sold in the United States prior to June 1987, \$20,000 worth of feathered fur coats. (CX-70).

61. Tientsin and Leinoff entered into a license agreement in June 1987 whereby Tientsin agreed to pay to Leinoff a royalty of \$1,200, or 6 percent of the value of Tientsin's past imports of feathered fur coats. Leinoff accepted this payment "in full satisfaction of any and all claims that Leinoff may have against licensee for any alleged infringement" of the '424 patent. Tientsin further agreed to discontinue importing into the United States feathered fur coats which infringe the '424 patent and of the type it has imported. (CX-70; Order No. 24).

China National

62. China National displayed and offered for sale imported feathered fur garments at the 1985 American International Fur Fair. Complainant visited China National's showroom in New York City in May 1987 and inspected a feathered red fox jacket (\$490), a feathered blue fox jacket, and a feathered blue fox coat (\$580) being offered for sale. China National distributed a brochure advertizing the availability of several different types of fur coats. Additionally, Veninni a New York City furrier obtained an imported feathered Chinese Tanucki jacket from China National of which CPX-5 is a photograph. (Leinoff CX-62, at 23; CX-44; CX-13; Tr. at 39-43).

Asia Fur

63. Asia Fur displayed and offered for sale at New York trade shows in 1985 and 1986, and at a fur show in Las Vegas in 1985, feathered fur garments. Asia Fur distributed a brochure advertizing the avilability of several types of feathered fur coats. (CX-61; CX-6; CX-9; Leinoff Tr. at 17-19).

Peking Fur

64. Peking Fur displayed and offered for sale an imported feathered blue fox coat at the American International Fur Fair in Las Vegas in 1985. (CX-9; Leinoff Tr. at 28).

Vassou Brothers

65. In 1985, Vassou exported to the U.S. 60 feathered fox fur jackets and sold them to MS Furs of New York City. MS Furs subsequently resold 53 of these jackets in 1985 for \$500 or \$595. (CX-39; CX-40).

66. MS Furs and Leinoff entered into a settlement agreement in July 1986, whereby MS Furs made payments to Leinoff. By the terms of this settlement agreement MS Furs and its customers were released from all claims and demands against it by Leinoff, as a result of MS Fur's sale of the fur jackets. The terms of this license did not compromise or settle any claims against Vassou for infringement of the '424 patent. (CX-39).

Sunry

67. Sunry is a domestic importer or agent of China national in the importation and sale of feathered fur coats. Sunry has sample imported feathered fur coats at its office in New Jersey. (CX-61 at 8-9; Tr. at 107-111; Order No. 30 which imposed discovery sanctions).

Excelsior Fur Company, Ltd.

68. At the 1985 International Fur Fair in New York, Excelsior Fur Company exhibited and offered for sale an imported feathered fur coat. Excelsior's manufacturing facility is located in Hong Kong. Excelsior placed an advertisement showing a feathered fur garment in the Member Director of the Federation of Fur Manufacturers and Dealers of Hong Kong, which was distributed at the Fur Fair. (Leinoff Tr. at 28-29; CX-11).

Papadopouli

69. No evidence is of record that Papadopouli has imported or sold feathered fur coats.

VII. Domestic Industry

70. Complainant David Leinoff, Inc. (Leinoff) manufactures feathered fur coats in New York City. Some of Complainant's feathered fur coats are made by New York City subcontractors in the United States, as well as by one subcontractor located in Hong Kong, Yick Fung. (CX-62, at 2; CX-72; Leinoff Tr. at 46-51, 167-169; SX-14, Ans. to Interrog. No. 10).

71. Complainants' facility in New York consists of a manufacturing area of 3,000 square feet and a showroom of 2,800 square feet. (SX-14, Ans. to Interrog. No. 6).

72. Davellin is the branch of David Leinoff, Inc. that sells furs at retail. (Leinoff Dep. CX-60, at 5).

73. From May to September, the bulk of business is wholesale, and from October to December the emphasis of Leinoff's fur business is retail. About 80 percent of Leinoff's sales are wholesale, and 15 to 20 percent are retail. (Leinoff Dep. CX-60, at 9, 87-88).

74. Complainant currently employs about 40 workers, of whom 28 are manufacturing employees. The number of manufacturing workers has varied between 10 and 35 over the years. Employees include five sewing machine operators, four fur cutters, two floor workers who prepare the skins for cutting, eight finishers, a nailer, an ironer, a shipper, two full time and two part time bookkeepers, one full-time salesman, a receptionist, and two full-time consultants in buying of skins and marketing. (SX-14, Ans. to Interrog. No. 6; Lenioff Dep. CX-60 at 6-8; CX-62, at 14).

75. The domestic licensees of Leinoff are Kirschner, Rosebaum & Berger Corp., Arm and Goodman, Inc., Michael Forrest, Inc., Valerie Furs Ltd., Louis Milona & Sons, Inc., Alexander's, Inc., The Fur Vault, Inc., Saks & Co., Revillon, Inc., Varriale Furs, Inc., Mondial Furs, Ltd., Goldin Feldman Export Corp., Goldin Feldman Co., Ltd., Jan Originals, Inc., Furrari Furs, Inc., Goldin-Feldman International Corp., Ben Thylan Corp., Wagner Furs, Inc., Hy Fishman Furs, Inc., Maximillian Fur Company, Inc., Alixandre Furs, Inc., Jindo, and Ron Lee. Leinoff was aware of no licensee that had actually made feathered fur coats in the United States since the issuance of licenses to them. No probative evidence was presented showing current domestic production of feathered fur coats by Leinoff's licensees as of the time of the filing of the complaint in this investigation in November, 1986. (SX-16, at 21-22; Leinoff Tr. at 66-67; Leinoff Dep. CX-60 at 81; CX-62, at 5-14; CX-16; CX-19; CX-20; CX-21; CX-26; CX-27; CX-28; CX-77).

76. For feathered fur coats wholly manufactured in the United States by complainant or by its subcontractors, only the fur pelt itself could be of foreign origin, depending on the type of fur used. The tabulation below shows

the cost of production for different types of fur coats and jackets for the 1986-1987 season:

	Cost per pelt	% U.S.	Coats			Jackets				
			No. of pelts	Labor	Pelts	Over- head	No. of pelts	Labor	Pelts	Over- head
Fin & Amur										
Raccoon	\$110	0	7		\$ 770		4.5		\$ 495	
Badger	125	20	8		1,000		5.5		700	
Tanuki	80	0	10		800		7.0		560	
Silver Fox	225	20	7		1,575		5.0		1,125	
Fisher	175	0	12		2,100		8.0		1,400	
Mink	80	60	14		1,100		9.0		720	
Stone										
Martin	80	0	20		1,600		14.0		1,120	
American										
Raccoon	70	100	9		630		6.0		420	
Blue Fox	80	20	7		560		5.0		400	

(SX-14, Ans. to Interrog. No. 6; Leinoff Dep. CX-60, at 42-45, 63).

77. Complainant buys about 80 percent of its pelts in their raw state. The cost of the pelt in the previous finding includes about \$10 per pelt for tanning, which is performed by subcontractors in the United States. (Leinoff Tr. at 54-55, 173).

78. Many of the animals which are the source of furs used in feathered coats are not indigenous to the United States. (Leinoff Dep. CX-60 at 42-45, 63).

79. The price of some furs tends to fluctuate considerably. (Leinoff Dep. CX-60 at 99-103).

80. Because feathering produces the best results in pelts that are heavier and silkier, pelts from colder climates such as Canada or Scandinavia are often preferred for feathering because they tend to have these favorable characteristics. (Leinoff Dep. CX-60 at 42-45, 100-101).

81. Complainants generally purchase raw pelts through dealers or from brokers in the United States, so the cost of the pelt to Leinoff would include a markup charged by the dealer or broker. The markup is generally

about ten percent for the dealer and three to six percent for the broker, although this may vary depending on market conditions. (Leinoff Tr. at 56-57, 106).

82. Leinoff currently purchases about 50 percent of its furs direct (utilizing dealers), and 50 percent through brokers. (Leinoff Tr. at 105-106).

83. Leinoff spends about three to four weeks a year to the purchase of furs. Leinoff attributes to himself a salary of about a year. Feathered fur coats represent about percent of Leinoff's sales. Feathered fur coats were manufactured by or for Leinoff in 1986. (Leinoff Dep. CX-60 at 41; CX-37; CX-76; CX-77).

84. Some of the pelts that Leinoff uses in the manufacture of feathered fur garments are dyed in the United States, at a cost of \$9 to \$14 per pelt. Except for badgers and American raccoon, only a small percentage of pelts is dyed. (Leinoff Tr. at 55-56, 173-175).

85. The remaining materials used by complainant to produce feathered fur coats in the United States, including thread, staples, paper for patterns, fabric for lining, leather, interlining, buttons, clips, cleaning fluid, hangers, boxes, storage bags, and packing materials, are all of U.S. origin. (Leinoff Dep. CX-60 at 46-49).

86. The U.S. value added in 1986/1987 for different types of fur coats domestically made by Leinoff and its U.S. subcontractors is as follows,

assuming the pelt originated from offshore (in percent):

	<u>Coats</u>	<u>Jackets</u>
Finn & Amur Raccoon	56.9	56.9
Badger	53.5	51.1
Tanuki	58.9	56.0
Silver Fox	41.1	39.8
Fisher	42.0	40.1
Mink	62.0	60.0
Stone Martin	54.6	51.1
Blue Fox	66.1	64.8

(FF 76, 77, 80, 82, 83).

87. Leinoff subcontracts the manufacture of fur coats to at least three firms, because of lower cost. One of these subcontractors, Yick Fung Garment Fty., Ltd (Yick Fung), is located in Hong Kong, while the other two are located in New York City. (SX-14, Ans. to Interrog. No. 10; Leinoff Dep. CX-60 at 53-54, 166-167).

88. For coats that are made by Yick Fung in Hong Kong, Leinoff purchases the furs, has the furs tanned by U.S. subcontractors, and matches the pelts for texture and color in the United States, prior to shipping the furs abroad. Leinoff provides the pattern to his subcontractors. Leinoff estimated the cost of the pattern to be about \$10 a coat. (Leinoff Dep. CX-60 at 54-55, 111-112).

89. One of Leinoff's skilled matchers requires two days to sort and match a lot of 500 fox pelts. These workers earn about \$15 an hour and work a 7 1/2 hour day. Based on a fox coat requiring 7 pelts, \$3.15 in domestic matching costs can be allocated to each coat. Leinoff employs a matcher full-time about 5 months of the year. (Leinoff Dep. CX-60 at 17-18).

90. In 1986, Leinoff paid Yick Fung, its foreign subcontractor, \$300 per coat for dyed raccoon feathered coats, c.i.f., New York. The fur originated in Finland for these coats. The \$300 does not include the cost of the fur pelts but does include about \$37 freight. (SX-15; Leinoff Tr. at 57-58; Leinoff Dep. CX-60 at 62).

91. Leinoff was not sure whether the pelts or coats were transported on United States carriers. (Leinoff Tr. at 62).

92. The coats produced by Yick Fung for Leinoff in 1986 included raccoon and fisher. Yick Fung cuts, inserts the leather strips, sews the pelts into a fur coat, and sends the coat back to Leinoff. (Leinoff Dep. CX-60 at 63; Leinoff Tr. at 57-58, 59).

93. After a completed coat is received from Yick Fung, Leinoff refinishes the coat in the United States to improve the hand-finishing, and glazes and shines the coat. This requires about three to four hours of work, at an average wage of \$15 an hour. (Leinoff Dep. CX-60 at 56-57).

94. For Finnish raccoon coats subcontracted to Yick Fung the cost of the coat was about based on the lower labor cost of Yick Fung. (FF 76, 90). U.S. value would include the tanning (\$70), sorting (\$3.15), refinishing after the coat is returned (\$45 to \$60), overhead, and the cost of the pattern (\$10). The U.S. value added is at most, therefore, about 24 percent.

95. Leinoff did not specifically know of any other manufacturers (including his licensees) besides he and his New York City subcontractors who manufactured feathered fur coats in the United States. There is no probative evidence of record that any such licensee was producing feathered fur coats in the U.S. as of the time of the filing of the complaint in this investigation in November, 1986. (Leinoff Dep. CX-60 at 79; SX-16, at 14).

96. Licensee B&B Trading Co., with a principal place of business in New York City, acknowledged having manufactured feathered fur coats of the type disclosed in the '424 patent. In an October 1986 license agreement, B&B agreed to pay to Leinoff \$10,734.44 in "full satisfaction of any and all claims that Leinoff may have against Licensee for past infringement" of the '424 patent. This payment was six percent of the value of feathered fur coats sold by B&B prior to October 1986, or \$178,907.33. The location of B&B's manufacturing operations was not revealed in the license agreement. (CX-53; CX-62 at 28).

97. Licensee Goldner Furs, Inc., with a principal place of business in New York City, acknowledged having manufactured feathered fur coats of the type disclosed in the '424 patent. In an October 1986 license agreement, Goldner agreed to pay to Leinoff \$8,647.14 in "full satisfaction of any and all claims that Leinoff may have against Licensee for past infringement" of the '424 patent. This payment was six percent of the value of feathered fur coats sold by Goldner prior to October 1986, or \$144,119. The location of Goldner's manufacturing operations was not revealed in the license agreement. (CX-54; CX-62 at 28).

98. Jan Original, Inc., Furrari Furs, Inc., Ben Thylan Corp., Wagner Furs, Inc., Hy Fishman Furs, Inc., Varriale Furs, Inc., and Maximillian Furs, Inc., are New York firms that admitted to having manufactured and sold unlicensed feathered fur coats of the type disclosed in the '424 patent. Leinoff entered into individual license agreements with these firms in 1984, whereby these firms agreed to pay royalties to Leinoff in "full satisfaction of any and all claims that Leinoff may have against Licensee for past infringement" of the '424 patent. These licensees agreed to pay to Leinoff a

royalty of 5 percent for future sales of feathered fur coats under the '424 patent. The location of manufacture was not disclosed in any of these license agreements. (CX-16; CX-21; CX-22; CX-24; CX-25; CX-26; CX-27).

99. Alixandre Furs, Inc. manufactured and sold approximately \$20,250 fur coats that have a striped effect, but denied having infringed the '424 patent as alleged by Leinoff. Leinoff entered into a license agreement with Alixandre in June 1984, whereby Alixandre agreed to pay to Lienoff \$1,012.50 in "full satisfaction of any and all claims that Leinoff may have against Licensee for past infringement" of the '424 patent. Alixandre agreed to pay to Leinoff a royalty of 5 percent for future sales of fur coats within the scope of the claims of the '424 patent. Manufacture under the license was not limited to U.S. production, but was an unlimited grant to make or have made the patented articles. (CX-28).

VIII. Efficient and Economic Operation

100. Complainants have expended over \$200,000 in equipment for the production of fur garments. (CX-62 at 16).

101. Complainant David Leinoff, a furrier with over 35 years of experience, is personally involved in all aspects of his business, and inspects all garments produced by complainant. (CX-62 at 1-2).

102. The employees who manufacture Leinoff's fur coats do so with skill. (CX-62 at 16).

103. Leinoff subcontracts portions of its feathered fur coat production in order to cut costs. Leinoff's cutting and sewing costs are reduced about 20 percent with domestic contractors. Leinoff attributed this in part to the fact that outside contractors are generally owner-operators who

can work more efficiently than his unionized workers. (Leinoff Dep. CX-60, at 53-54, 166-167).

104. For innovative styles, over which Leinoff wants to exercise more control, production is done at Leinoff and not contracted out. (Leinoff Dep. CX-60 at 167-168).

IX. Injury

105. Complainant Leinoff has the capacity to produce 200 feathered fur coats a year. Leinoff had produced that number during the 1970's, and has as much capacity today. (Leinoff Dep. CX-60 at 69-71; SX-14, Ans. to Interrog. No. 6a).

106. Leinoff sold from to feathered fur coats in 1986. Of these, about were produced by its subcontractor Yick Fung in Hong Kong. Therefore, from to were produced by Leinoff (or its domestic subcontractors) in the United States. (CX-37; CX-75; CX-76; Leinoff Tr. at 96-104, 169).

107. Feathered furs account for about five percent of complainants' business in terms of dollar volume. (CX-62 at 17).

108. Leinoff's sales and gross profits for feathered fur coats from 1983 to 1985 were as follows (both domestic and imported):

	<u>Sales</u>		<u>Gross Profits</u>
	<u>Units</u>	<u>Dollars</u>	
1983			
1984			
1985			

(CX-33).

109. For partial year 1986 (representing sales of feathered fur coats), the ratio of Leinoff's gross profit margin to sales was percent. (CX-34).

110. According to Leinoff, the overall financial statements for Leinoff would not be helpful in assessing the cost of Leinoff's feathered fur coats. (CX-60, Leinoff Dep. Tr. at 163-164; CX-34).

111. The popularity of feathered fur coats peaked during 1977-1978. (Leinoff Dep. CX-60, at 72).

112. Part of the decline in Leinoff's feathered fur coat sales from a peak in 1978 has been the result of changes in fashion trends. However, evidence showed that since three or four months prior to the hearing in June, 1987 there had been such a drastic rise in the price of skins, particularly mink skins, that furriers will be forced into using feathered furs to produce a lower priced fur with high price pelts. (Leinoff Tr. at 81-82; 199-201; CX-79; CX-80; CX-81).

113. Leinoff's retail price for furs is generally set at 50 percent higher than its wholesale price. (Leinoff Dep. CX-60 at 104).

114. CX-75 and CX-76 are invoices for fur sales by Leinoff. Those invoices which have a red mark represent sales of feathered fur coats. However, there may have been some sales of feathered fur coats not covered by the invoices in these two exhibits. (Leinoff Tr. at 98-99; CX-75; CX-76).

115. Leinoff's sales and prices at the wholesale level (David Leinoff, Inc.) during 1986/1987 were as follows. (These prices include sales of both feathered fur coats produced in the United States and those produced

by Leinoff's subcontractor in Hong Kong, which is not part of the domestic industry):

<u>Date</u>	<u>Invoice Number</u>	<u>Type of Coat</u>	<u>Number Sold</u>	<u>Price</u>
2/12/86	7873	Finnish Raccoon	1	
2/13/86	7876	Finnish Raccoon	2	
2/20/86	7905	Finnish Raccoon	2	
		White Neck Fox	1	
3/12/86	7934	Finnish Raccoon	3	
4/28/86	8019	Finnish Raccoon	1	
5/13/86	8054	Silver Fox	3	
		Silver Fox	1	
5/14/86	8058	Dyed Fox	1	
		Silver Fox	3	
		Silver Fox	1	
6/6/86	8087	Canadian Fisher	1	
6/6/86	8092	Fisher	1	
6/27/86	8146	Canadian Fisher	1	
6/30/86	8162	Finnish Raccoon	1	
7/8/86	8182	Finnish Raccoon	1	
7/8/86	8183	Finnish Raccoon	1	
7/28/86	8236	Finnish Raccoon	1	
8/7/86	8250	Finnish Raccoon	1	
8/27/86	8312	Canadian Fisher	1	
		Finnish Raccoon	1	
9/4/86	8339	Canadian Fisher	1	
9/16/86	8389	Finnish Raccoon	1	
9/29/86	8446	Silver Fox	1	
		Finnish Raccoon	1	
9/30/86	8453	Badger	1	
12/3/86	1068	White Fox	1	
2/	1069	Finnish Raccoon	1	
12/18/86	1163	Finnish Raccoon	1	
		Finnish Raccoon	1	
1/5/87	1239	Finnish Raccoon	1	
1/7/87	1252	Finnish Raccoon	1	
1/20/87	1317	Dyed Raccoon	1	
**/	1334	*/	1	
**/	1426	Fisher	1	

*/ Illegible

**/ No date on invoice

(CX-37; CX-76; Tr. at 98-100).

116. In late 1986, David Leinoff inspected a feathered fur garment being offered for sale by Evans Fur Co. in a Burdine's Store in Florida. The coat was not made by complainants, and Mr. Leinoff testified that the styling and manufacturing indicated that the coat was made in Europe, in either Germany or Italy. Although the coat did not have a patent marking tag and complainant in its most recent license agreements has required such a hang tag from some of its licensees, in view of the large numbers of complainant's licensees there is insufficient evidence that this garment had been obtained by Evans through an unlicensed source, in view of the large numbers of complainant's licensees. (Leinoff Tr at 68, 164; CX-62 at 19; CX-63; FF 96-99).

117. Prior to 1985, Evans Fur Co. purchased between 5 and 50 feathered fur garments from complainants. Evans purchased no feathered fur garments from complainants in 1985 or 1986. (CX-62 at 19).

118. In June 1987, Mr. Leinoff visited the showroom of Flemington Furs in New Jersey. At least three feathered garments, as to which Mr. Leinoff was unable to determine domestic or foreign origin, were displayed and offered for sale. These garments carried no patent marking tags. (Leinoff Tr. at 78-79; CX-63).

119. Prior to 1985, Flemington Furs purchased between 5 and 50 feathered garments from Complainants. In 1985 and 1986, Flemington Furs purchased no feathered fur coats from complainants. (CX-62 at 19).

120. In June 1987, Mr. Leinoff visited an ORR's department store in Flemington, New Jersey. That store carried three feathered garments on display that were made in China or Korea. Although these garments carried no patent marking tags, in view of the large numbers of complainants' licensees there is insufficient evidence to conclude that these garments were not

obtained by ORR's through a licensed source. (Leinoff Tr. at 80-81; CX-63; FF 96-99).

121. In November, 1986 non-respondent Dynasty Fur Company of New York sold 25 feathered tanuki and Chinese raccoon fur garments to Canadian Fur Trappers Corp., a New York City fur retailer. The wholesale price from Dynasty to Canadian Fur Trappers for both styles was \$1,095 apiece, with a retail price of \$2,499. Dynasty furs is not a licensee of Leinoff's. Leinoff inspected a sample of these coats at Canadian's store and found it to be feathered in accordance with the '424 patent. Leinoff testified that the proprietor of Canadian's, Mr. David Hudes, admitted to him that the coats were imported from China and the invoices from Dynasty to Canadian describe the goods as "Nat. Chinese Tanuki Coats" and "Nat. Chinese Raccoon Coats." (Leinoff Tr. at 73-75; CX-41).

122. There is insufficient probative evidence to conclude that imports of Korean-made blue fox coats by non-respondent Leather City, Inc., New York City, were made in accordance with the '424 patent. (CX-68; Leinoff Tr. at 75-78).

123. Rafel is a New York furrier that admitted to having sold approximately \$25,500 worth of unlicensed feathered fur coats of the type disclosed in the '424 patent which were obtained from an undisclosed foreign manufacturer. Leinoff and Rafel entered into a license agreement in December 1986, whereby Rafel paid Leinoff \$1,530 (6 percent of \$25,500) in royalty for Rafel's past sales of feathered fur coats, and Rafel agreed to pay Leinoff a royalty of 6 percent for all future sales of feathered fur coats. The only evidence concerning the origin of these coats was a statement by Mr. Leinoff that the coats were of foreign origin. (CX-38; CX-62 at 21).

124. Mondial Furs Ltd. is a New York furrier that admitted to having sold no more than \$60,000 worth of unlicensed feathered fur coats of the type disclosed in the '424 patent, of which 62 were imported and purchased from Taran Furs Inc. of Canada in 1979. Leinoff and Mondial entered into a license agreement in June 1984, whereby Mondial agreed to pay Leinoff \$5,000 in "full satisfaction of any and all claims that Leinoff may have against Licensee [Mondial] for past infringement" of the '424 patent. Mondial agreed to pay to Leinoff a royalty of 5 percent for future sales of feathered fur coats under the '424 patent. (CX-17; CX-18).

125. One Korean company that was identified by _____ as a supplier of feathered fur coats, _____ had available Finnish raccoon coats at a cost or price of from _____ . (CX-36; CX-42).

126. Complainant's cost in 1986 to produce tanuki and raccoon coats in the United States was _____ and _____ respectively. Complainant was able to sell raccoon coats for less than this when manufacture was subcontracted to Yick Fung in Hong Kong (at about _____), because of lower labor costs. (CX-62 at 4-5).

127. Three Korean companies, _____ were identified by _____ as producers of fur coats and also identified as suppliers of feathered fur coats. Their prices or costs for blue fox jackets (28-inch, 32-inch) ranged from _____ to _____. A retailer, Alexander's, sold feathered blue fox fur coats purchased from Dae Do, at prices ranging from \$399 to \$499. Alexanders is a licensee of Leinoff that paid royalties to Leinoff in 1986. (CX-36; CX-42; CX-62 at 24; Tr. at 88-89).

128. A blue fox jacket presently costs complainant to make in its New York facility. (CX-62 at 4).

129. The price of raw furs increased significantly from 1986 to 1987, in part the result of the falling value of the dollar. (Leinoff Tr. at 104-105; Leinoff Dep. CX-60 at 73-74).

130. The higher price of furs provides an additional incentive to feather fur coats, since the technique increases the square inches of the pelt, and decreases the cost of the coat. For this reason, Leinoff expects demand for feathered fur coats to increase. (Leinoff Dep. CX-60 at 14, 38, 73-74, 115-116; CX-62 at 16; Leinoff Tr. at 82, 179).

131. The manufacture of feathered fur coats is labor intensive relative to traditional fur coats. (CX-62 at 20).

132. Leinoff expects for 1987 to have its subcontractor Yick Fung produce about 60 feathered coats for Leinoff, and expects to itself produce from 40 to 50 coats (with some sewing done by outside U.S. contractors). (Leinoff Dep. CX-60 at 115).

133. Yick Fung's cost of cutting and sewing is about 60 percent less than Leinoff's own cost in the United States for the same operations. (Leinoff Dep. CX-60 at 53-54, 166-167).

134. Rafel is a New York furrier that admitted to having sold approximately \$25,500 worth of unlicensed feathered fur coats of the type disclosed in the '424 patent which were obtained from an undisclosed foreign manufacturer. Leinoff and Rafel entered into a license agreement in December 1986, whereby Rafel paid Leinoff \$1,530 (6 percent of \$25,500) in royalty for Rafel's past sales of feathered fur coats, and Rafel agreed to pay Leinoff a royalty of 6 percent for all future sales of feathered fur coats. The only

evidence concerning the origin of these coats was a statement by Mr. Leinoff that the coats were of foreign origin. (CX-38; CX-62 at 21).

135. Mondial Furs Ltd. is a New York furrier that admitted to having sold no more than \$60,000 worth of unlicensed feathered fur coats of the type disclosed in the '424 patent, of which 62 were imported and purchased from Taran Furs Inc. of Canada in 1979. Leinoff and Mondial entered into a license agreement in June 1984, whereby Mondial agreed to pay Leinoff \$5,000 in "full satisfaction of any and all claims that Leinoff may have against Licensee [Mondial] for past infringement" of the '424 patent. Mondial agreed to pay to Leinoff a royalty of 5 percent for future sales of feathered fur coats under the '424 patent. (CX-17; CX-18).

136. Complainants' evidence of injury concentrated principally on imports to the New York City area. However, there are more than 5,000 furriers located across the United States and complainants sell wholesale to fur retailers across the country. (Leinoff Tr. at 90-92; CX-75; CX-76).

137. Some licensees promised to affix a hang tag to feathered fur coats they sold under license to state that the coat was manufactured under a license for the '424 patent. This provision was not included in the 1984 license agreements of Alexanders or The Fur Vault, which are the only two licensees to have paid royalties to Leinoff for subsequent sales of feathered fur coats (other than royalty payments by licensees for past sales of feathered fur coats as a condition for entering into a license agreement). (CX-29; CX-31; CX-63; Leinoff Tr. at 88-89, 170).

138. Respondents Asia Fur, Tientsin, Peking Fur, Excelsior and China National offered feathered fur garments for sale in the United States during

the past two years in New York. China National has opened a showroom in New York. (Leinoff Tr. at 17-18, 27-32; CX-6; CX-9; CX-11; CX-13; CX-44; CX-62 at 23).

139. At the April 1987 American International Fur Fair trade show in New York City complainants identified six companies that displayed and offered for sale imported feathered fur garments. (CX-62 at 24-26).

CONCLUSIONS OF LAW

1. The Commission has in rem jurisdiction and subject matter jurisdiction.
2. Claims 1 and 5 of the '424 patent are not invalid.
3. There is an unfair act involving infringement of claims 1 and 5 of the '424 patent in the importation of feathered fur coats.
4. There is an efficiently and economically operated domestic industry comprising complainants' production of feathered fur coats where cutting and sewing is done in the United States either by complainants or by their New York City subcontractors.
5. The infringing imports of feathered fur coats have been the cause of substantial injury to the domestic industry, and have a tendency to cause substantial injury.
6. There is a violation of section 337.

INITIAL DETERMINATION AND ORDER

Based on the foregoing findings of fact, conclusions of law, the opinion and the record as a whole, and having considered all of the pleadings and arguments presented orally and in briefs, as well as proposed findings of fact and conclusions of law, it is the administrative law judge's determination that there is a violation of section 337 in the importation and sale in the United States of certain feathered fur coats and pelts.

The administrative law judge hereby CERTIFIES to the Commission the initial determination, together with the record of the hearing in this investigation consisting of the following:

1. The transcript of the hearing; and
2. The exhibits offered into evidence which includes those admitted.
3. ALJ Ex. 1, 2.


The pleadings of the parties are not certified, since they are already in the Commission's possession in accordance with Commission Rules of Practice and Procedure.

Further it is ORDERED that:

1. In accordance with Rule 210.44(b), all material heretofore marked in camera because of business, financial, and marketing data found by the administrative law judge to be cognizable as confidential business information under Rule 201.6(a), is to be given in camera treatment from the date this investigation is terminated.

2. Counsel for the parties shall have in the hands of the administrative law judge those portions of the initial determination which contain confidential business information to be deleted from the public version of the initial determination no later than Friday October 2, 1987. If no comments are received from a party it will mean that the party has no objection in removing the confidential status, in its entirety, from this initial determination.

3. This initial determination shall become the determination of the Commission forty-five (45) days after the service thereof, unless the Commission, within forty-five (45) days after the date of filing of the initial determination shall have ordered review of the initial determination or certain issues therein pursuant to 19 C.F.R. 210(b) or 210.55 or by order shall have changed the effective date of the initial determination.



Paul J. Luckern
Administrative Law Judge

Issued: September 24, 1987

Administrative Law Judge Exhibits

ALJ Ex. 1 - September 9, 1987 Razzano letter and September 1, 1987 Pan letter to the administrative law judge.

ALJ Ex. 2 - Receipt of service of complaint and notice of investigation.

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of)
)
CERTAIN FEATHERED FUR COATS AND) Investigation No. 337-TA-260
PELTS, AND PROCESS FOR THE)
MANUFACTURE THEREOF)
)

COMPLAINANT'S REVISED DIRECT EXHIBIT LIST, INCLUDING
SUPPLEMENTAL EXHIBITS INTRODUCED AT THE HEARING

<u>Complainants' Exhibit</u>	<u>Description</u>	<u>Correlation to Prior Declaration Exhibits</u>
CX 1	U.S. Patent No. 3,760,424	
CX 2	Claim Chart Relating to Complainants' Fur Pelts	Leinoff Infringement Declaration Exhibit 1
CX 3	Photographs of Complainants' Fur Pelts	Leinoff Infringement Declaration Exhibit 2
CX 4	Pan Am Clipper Magazine	Leinoff Infringement Declaration Exhibit 3
CX 5	Claim Chart Relating to Respondent Jindo Fur Salon's Feathered Blue Fox Coat of Exhibit 4	Leinoff Infringement Declaration Exhibit 4
CX 6	Asia Fur Company Catalog	Leinoff Infringement Declaration Exhibit 5
CX 7	Claim Chart Relating to Respondent Asia Fur Company's Raccoon Coat	Leinoff Infringement Declaration Exhibit 6
CX 8	Advanced Fur Craftsmanship	Leinoff Infringement Declaration Exhibit 7

<u>Complainants' Exhibit</u>	<u>Description</u>	<u>Correlation to Prior Declaration Exhibits</u>
CX 9	Furs '85 Hong Kong Catalog	Leinoff Infringement Declaration Exhibit 8
CX 10	Claim Chart Relating to Respondent Hong Kong Tientsin Fur Company's Dyed Blue Fox Jackets	Leinoff Infringement Declaration Exhibit 9
CX 11	Federation of Fur Manufacturers and Dealers - Member Directory 1985	Leinoff Infringement Declaration Exhibit 10
CX 12	Claim Chart Relating to Respondent Excelsior Fur Co.'s Feathered Fox Coat	Leinoff Infringement Declaration Exhibit 11
CX 13	Chinese Fur Garments Elegant - Catalog	Leinoff Infringement Declaration Exhibit 12
CX 14	Claim Chart Relating to Respondent China National Native Produce and Animal By-Products Import and Export Corporation	Leinoff Infringement Declaration Exhibit 13
CX 15	Yick Fung (U.S.A.) Garment Fty., Ltd - Invoices	Leinoff Damages Declaration Exhibit 1
CX 16C ⁴	Settlement and License Agreement - Varriale Furs, Inc.	Leinoff Damages Declaration Exhibit 2
CX 17C	Settlement and License Agreement - Mondial Furs, Ltd.	Leinoff Damages Declaration Exhibit 3
CX 18	Taran Furs (MTL.) Inc. Invoices	Leinoff Damages Declaration Exhibit 4
CX 19C	Settlement and License Agreement - Goldin-Feldman Export Corporation	Leinoff Damages Declaration Exhibit 5

<u>Complainants' Exhibit</u>	<u>Description</u>	<u>Correlation to Prior Declaration Exhibits</u>
CX 20C	Settlement and License Agreement - Goldin-Feldman Co. Ltd.	Leinoff Damages Declaration Exhibit 6
CX 21C	Settlement and License Agreement - Jan Originals Inc.	Leinoff Damages Declaration Exhibit 7
CX 22C	Settlement and License Agreement - Furrari Furs, Inc.	Leinoff Damages Declaration Exhibit 8
CX 23C	Settlement and License Agreement - Goldin-Feldman International Corp.	Leinoff Damages Declaration Exhibit 9
CX 24C	Settlement and License Agreement - Ben Thylan Corp.	Leinoff Damages Declaration Exhibit 10
CX 25C	Settlement and License Agreement - Wagner Furs, Inc.	Leinoff Damages Declaration Exhibit 11
CX 26C	Settlement and License Agreement - Fishman Furs, Inc.	Leinoff Damages Declaration Exhibit 12
CX 27C	Settlement and License Agreement - Maximillian Fur Company, Inc.	Leinoff Damages Declaration Exhibit 13
CX 28C	Settlement and License Agreement - Alixandre Furs, Inc.	Leinoff Damages Declaration Exhibit 14
CX 29C	Settlement and License Agreement - Alexander's Inc.	Leinoff Damages Declaration Exhibit 16
CX 30C	Settlement and License Agreement - Louis Milona & Sons, Inc.	Leinoff Damages Declaration Exhibit 17
CX 31C	Settlement and License Agreement - Fur Vault, Inc.	Leinoff Damages Declaration Exhibit 18

<u>Complainants' Exhibit</u>	<u>Description</u>	<u>Correlation to Prior Declaration Exhibits</u>
CX 32C	Settlement and License Agreement - Revillon, Inc.	Leinoff Damages Declaration Exhibit 19
CX 33C	Settlement and License Agreement - Kirschner, Rosenbaum & Berger Corp.	Leinoff Damages Declaration Exhibit 20
CX 34C	David Leinoff Financial Statements	Leinoff Damages Declaration Exhibit 21
CX 35C	Feathered Fur Coat Sales 1983-1986	Leinoff Damages Declaration Exhibit 22
CX 36	Telex D.K. Lee 5/27/86	Leinoff Damages Declaration Exhibit 23
CX 37C	Davellin - Invoices	Leinoff Damages Declaration Exhibit 24
CX 38C	Settlement and License Agreement - Rafel Fur Co. Inc.	Leinoff Damages Declaration Exhibit 25
CX 39C	Settlement and License Agreement - Ms. FURS INC.	Leinoff Damages Declaration Exhibit 26
CX 40	E. Vassou Brothers Inc. Invoice	Leinoff Damages Declaration Exhibit 27
CX 41	Dynasty Furs, Inc. Invoices	Leinoff Damages Declaration Exhibit 28
CX 42C	Respondent Jindo Industries, Ltd.'s Response to Interrogatory of Complainant David Leinoff	Leinoff Damages Declaration Exhibit 29
CX 43C	Settlement and License Agreement - Jindo Industries, Ltd.	Leinoff Damages Declaration Exhibit 30
CX 44	Liaoning Province's Foreign Trade - Catalog	Leinoff Damages Declaration Exhibit 31

<u>Complainants' Exhibit</u>	<u>Description</u>	<u>Correlation to Prior Declaration Exhibits</u>
CX 45	The Fur Vault Sales Figures	Leinoff Damages Declaration Exhibit 32
CX 46	Letter to Ronald H. Alenstein, Esq. 11/13/86 Re: Leinoff v. Alexander's	Leinoff Damages Declaration Exhibit 33
CX 47	Letter to Ms. Vivian Finkelberg 12/8/86 Re: Claim by Mr. David Leinoff -- "Feathered" Fur Coat Patent - U.S. Patent No. 3,760,424	Leinoff Damages Declaration Exhibit 34
CX 48	Letter to Mr. Michael Nemeroff 12/8/86 Re: Claim by Mr. David Leinoff -- "Feathered" Fur Coat Patent - U.S. Patent No. 3,760,424	Leinoff Damages Declaration Exhibit 34
CX 49	There is no Exhibit 49	
CX 50	8th Annual American International Fur Fair Catalog	Leinoff Damages Declaration Exhibit 36
CX 51	Festival Fur Ltd. Finland - Catalog	Leinoff Damages Declaration Exhibit 37
CX 52	Letter to Pasquale A. Razzano 12/10/86 Re: Leinoff v. Niki Trading Corp., et al	Leinoff Damages Declaration Exhibit 42
CX 53C	Settlement and License Agreement - B & B Trading Corp.	Leinoff Damages Declaration Exhibit 43
CX 54C	Settlement and License Agreement - Goldner Furs Inc.	Leinoff Damages Declaration Exhibit 44
CX 55C	Confidential Exhibit 1 to the Complaint	

<u>Complainants' Exhibit</u>	<u>Description</u>	<u>Correlation to Prior Declaration Exhibits</u>
CX 56	Appendix from David Leinoff v. Louis Milona Appeal	
CX 57	Exhibit Volume from David Leinoff v. Louis Milona Appeal	
CX 58	Trial Testimony of David Leinoff in Leinoff v. Milona on validity (Pages 14-20; 140-248;)	
CX 59	Trial Testimony of David Leinoff in Leinoff v. Milona on infringement (Pages 13-49)	
CX 60	Deposition of David Leinoff	
CX 61	Declaration of David Leinoff in Support of Complainants Motion For Summary Determination on Infringement	
CX 62	Declaration of David Leinoff in Support of Complainants Motion For Summary Determination on the Issues of Industry and Injury	
CX 63	Licensee Hang Tag	
CX 64	Pages 1-3 and 8 of Deposition of K. Wagner	
CX 65	Pages 1-5 and 10-20 of Deposition of L. Schulman	
CX 66	Pages 1-5 of Deposition of Stergios Milona	
CX 67	Leather City Ad	
CX 68	Leather City Letter and Shipping Documents	
CX 69	China National Native Produce and Animal By-Products Import and Export Corporation Brochure Received in China National's New York Showroom	

Complainants'
Exhibit

Description

CX 70	Settlement Agreement to Hong Kong Tientsin
CX 71	May 1987 Fur Parade Magazine
CX 72	Collection of Invoices from Domestic Sub-contractors
CX 73	SANDY PARKER Reports
CX 74C	Jindo Industries Answer to Interrogatories
CX 75C	Collection of Complainants' Sales Invoices
CX 76C	Collection of Complainants' Sales Invoices
CX 77	Complainants' Settlement Agreement with Ronlee
CX 79	Sandy Parker Newsletter of March 30, 1987
CX 80	Sandy Parker Newsletter of May 25, 1987
CX 81	Sandy Parker Newsletter of June 1, 1987
CX 82	Declaration of Pasquale A. Razzano
CPX 1A	Leather Side of Feathered Blue Fox Pelt Made by Complainants
CPX 1	Fur Side of CPX1A (photo)
CPX 2	Drawing Prepared by Complainants to Describe Resetting
CPX 3	Feathered Mink Coat (photo)
CPX 4	Feathered Mink Coat (photo)
CPX 5	Feathered Finn Raccoon Jacket Sold by Respondent China National (photo)
CPX 6	Stone Marten Pelt (photo)
CPX 7	Feathered Badger Jacket Made by Complainants. (photo)

Complainants rely on exhibits 58, 59, 60, 61 and 62 as the witness statements of their sole witness David Leinoff.

Respectfully submitted,

CURTIS, MORRIS & SAFFORD, P.C.

By 

Pasquale A. Razzano
Attorneys for Complainants
530 Fifth Avenue
New York, New York 10036
(212) 840-3333

Dated: August 6, 1987.

CERTIFICATE OF SERVICE

I hereby certify that the attached COMPLAINANTS' REVISED DIRECT EXHIBIT LIST, INCLUDING SUPPLEMENTAL EXHIBITS INTRODUCED AT THE HEARING in the above-entitled investigation was served by First Class Mail, postage prepaid (unless otherwise indicated), this 6th day of August, 1987, upon the following:

The Honorable Paul J. Luckern
Administrative Law Judge
U.S. International Trade Commission
701 E Street, N.W., Room 126
Washington, D.C. 20436 (Original and Two Copies)

Deborah S. Strauss, Esq.
Office of Unfair Import Investigations
U.S. International Trade Commission
701 E Street, N.W., Room 126
Washington, D.C. 20436

Excelsior Fur Co., Ltd. (Airmail)
Flat B
7/F Speedy Industrial Building
114 How Ming Street
Kung Ton
Kowloon, HONG KONG

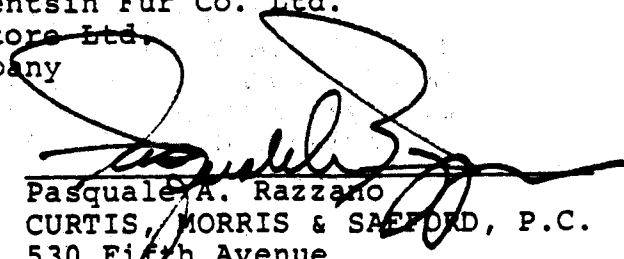
China National Produce and Animal (Airmail)
By-Products Import and Export Corporation
82, Dong An Men Street
Beijing
PEOPLES REPUBLIC OF CHINA

Sunry Import Export Corp.
Suite 125 Paramus Plaza
120 Route 17N
Paramus, NEW JERSEY 07652

E. Vassou Brothers, Inc. (Airmail)
20561 N. Zouzouli
Kastoria, GREECE

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Attorneys for Respondents
Hong Kong Tientsin Fur Co. Ltd.
Peking Fur Store Ltd.
Asia Fur Company



Pasquale A. Razzano
CURTIS, MORRIS & SAFFORD, P.C.
530 Fifth Avenue
New York, New York 10036

Staff Exhibit 8 "Der Kurschner," by Verlag J. P. Backem, excerpt pp. 49, 51-52, 132, 134, 207 and English Translation

Staff Exhibit 9 "Der Kurschner" by J.P. Bachem, excerpt pp. 52-53 and English Translation

Staff Exhibit 10 "Advanced Fur Craftsmanship," by Samuel Raphael, excerpt pp. 32-35, 102, 107, 196-197, 202-203

Staff Exhibit 11 "Rauchwarenherstellung und Pelzkonfektron," by Veb Fachbuchverlag Leipzig, excerpt pp. 335-337 and English Translation

Staff Exhibit 12 Directory of Exhibits at the American International Fur Fair, Jacob K. Javits Convention Center of New York on March 29 - April 1, 1987

Staff Exhibit 13 First Set of Interrogatories of the Commission Investigative Staff of the United States International Trade Commission Propounded to Complainant

Staff Exhibit 14 Complainants' Answers to the Staff's Interrogatories

Staff Exhibit 15 (c) Yick Fung (U.S.A.) Garment Fty. Ltd., invoices

Staff Exhibit 16 First Amended Complaint

Staff Exhibit 17 (c) Invoices

Staff Exhibit 18 (c) Inventory

Staff Exhibit 19 (c) Inventory

Staff Exhibit 20 (c) Stock Book

Staff Exhibit 21 (c) Inventory

Staff Exhibit 22 (c) Stock Book Starting July 1982

Staff Exhibit 23 (c) Letter from Arnold Kaufman, CPA, to David Leinoff, Inc., RE: audit of books for year ending February 28, 1983

Staff Exhibit 24 (c) Letter from Arnold Kaufman, CPA, to David Leinoff, Inc., RE: audit of books for year ending February 29, 1984

- Staff Exhibit 25 (c) Letter from Arnold Kaufman, CPA to David Leinoff, Inc., RE: audit of books for year ending February 28, 1986
- Staff Exhibit 26 (c) Letter from Arnold Kaufman, CPA to David Leinoff, Inc., RE: audit of books for year ending February 28, 1985
- Staff Exhibit 27 Invoice No. 19 dated July 11, 1986, from Billy Topazopoulos Furs and delivery receipts (4 pages)
- Staff Exhibit 28 Invoice No. 17 dated July 18, 1986, from Billy Topazopoulos Furs and delivery receipts (3 pages)
- Staff Exhibit 29 Invoice No. 23 dated October 17, 1986, from Billy Topazopoulos Furs and delivery receipt (2 pages)
- Staff Exhibit 30 Invoice No. 28 dated January 9, 1987, from Billy Topazopoulos Furs and delivery receipts (3 pages)
- Staff Exhibit 31 Invoice No. 33 dated January 9, 1987, from Billy Topazopoulos Furs and delivery receipts (4 pages)
- Staff Exhibit 32 Invoice No. 31 dated February 20, 1987, from Billy Topazopoulos Furs and delivery receipt (2 pages)
- Staff Exhibit 33 Invoice No. 26 dated March 19, 1987, from Billy Topazopoulos Furs and delivery receipts (6 pages)
- Staff Exhibit 34 Invoice No. 32 dated May 13, 1987, from Billy Topazopoulos Furs and delivery receipt (2 pages)
- Staff Exhibit 35 Invoice No. 30 dated May 22, 1987, from Billy Topazopoulos Furs and delivery receipt (2 pages)
- Staff Exhibit 36 Delivery Receipts from Billy Topazopoulos Furs (3 pages)
- Staff Exhibit 37 Invoice No. 100 dated January 13, 1987, from Lakys Furs and delivery receipts (3 pages)

- Staff Exhibit 38 Invoice No. 102 date January ____, 1987,
from Lakys Furs and delivery receipts (4
pages)
- Staff Exhibit 39 Invoice No. 104 dated February 23, 1987,
from Lakys Furs and delivery receipts (2
pages)
- Staff Exhibit 40 Invoice from Venini Furs Ltd. to Canadian
Fur Trappers Corp. dated December 30, 1986,
(3 pages)
- Staff Exhibit 41 Invoice from Venini Furs Ltd. to Canadian
Fur Trappers Corp. dated December 30, 1986,
(3 pages)
- Staff Exhibit 42 Invoice from Venini Furs Ltd. to Canadian
Fur Trappers Corp. dated October 9, 1986, (2
pages)
- Staff Exhibit 43 Invoice from Venini Furs Ltd. to Canadian
Fur Trappers Corp. dated September 18, 1986,
(1 page)
- Staff Exhibit 44 Brochure by China National Native Produce &
Animal By-Products Import & Export Co.
entitled, " Hebei Animal By-Products
Catalogue"
- Staff Exhibit 45 Response of Asia Fur Company to the Complaint

Physical Exhibits

SPX-1 David Leinoff's Deposition taken May 13, 1987

DATED: August 7, 1987

CERTIFICATE OF SERVICE

I, Lynn I. Levine, Esq., hereby certify that the foregoing
SECOND REVISED EXHIBIT LIST OF THE COMMISSION INVESTIGATIVE STAFF
was served upon the following parties via first class mail, on
August 7, 1987.

FOR COMPLAINANT DAVID LEINOFF & DAVID LEINOFF, INC.

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FOR RESPONDENT JINDO FUR SALON

Peter H. J. Yang, Esq.
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FOR HONG KONG TIENTSIN FUR CO. LTD.

Ruby N. Lau, Esq.
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FOR RESPONDENT PAPADOPOULI KEVREKIDIS & CO.

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Kowloon, Hong Kong

Peking Fur Store Ltd.
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4/F, 3 Mok Cheong Street
Hung Hom
Kowloon, Hong Kong

Excelsior Fur Co., Ltd.
Flat B
7/F Speedy Industrial Building
114 How Ming Street
Kung Tong
Kowloon, Hong Kong

China National Produce and Animal
By-Products Import and Export Corporation
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Beijing
Peoples Republic of China

Sunry Import Export Corp.
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Paramus, New Jersey 07652

E. Vassou Brothers, Inc.
20561 N. Zouzouli
Kastoria, Greece

Lynn Levine (df)

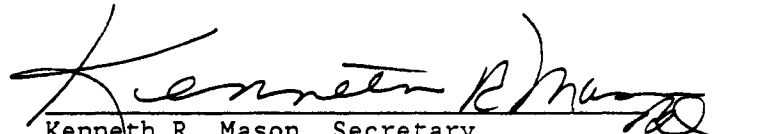
Lynn I. Levine, Esq.
Supervisory Attorney
Office of Unfair Import Investigations

CERTAIN FEATHERED FUR COATS AND PELTS, AND
PROCESS FOR THE MANUFACTURE THEREOF

337-TA-260

CERTIFICATE OF SERVICE

I, Kenneth R. Mason, hereby certify that the attached (Public Version) was served upon Jeffrey L. Gertler, Esq., and upon the following parties via first class mail, and air mail where necessary, on October 9, 1987.


Kenneth R. Mason, Secretary
U.S. International Trade Commission
701 E. Street, N.W.
Washington, D.C.

FOR COMPLAINANTS DAVID LEINOFF & DAVID LEINOFF, INC.

Pasquale A. Razzano
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FOR RESPONDENTS JINDO FUR SALON

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Suite 702
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Peter H. J. Yang
Max F. Schutzman
Whitman & Ransom
200 Park Avenue
New York, New York 10166

(certificate of Service con't page 2)

FOR RESPONDENTS PAPADOPOULI KEVREKIDIS & CO. & PAPADOPOULI KEVREKIDIS & CO.

Allen I. Rubenstein
GOTTLIEB, RACKMAN & REISMAN, P.C.
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FOR RESPONDENT HONG KONG TIENTSIN FUR COMPANY LIMITED

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Ruby N. Lau
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FOR RESPONDENTS ASIA FUR COMPANY & PEKING FUR STORE, LTD.

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Ruby Ng Lau
BARNETT & ALAGIA
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Washington, DC 20007

RESPONDENTS:

Excelsior Fur Co., Ltd.
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7/F Speedy Industrial Building
114 How Ming Street
Kung Tong
Kowloon, Hong Kong

China National Produce and Animal
By-Products Import and Export Corporation
82, Dong An Men Street
Beijing
Peoples Republic of China

Sunry Import Export Corp.
Suite 125 Paramus Plaza
120 Route 17N
Paramus, New Jersey 07652

CERTAIN FEATHERED FUR COATS AND PELTS, AND
PROCESS FOR THE MANUFACTURE THEREOF

337-TA-260

(certificate of Service con't page 3)

RESPONDENTS:

E. Vassou Brothers, Inc.
20561 N. Zouzouli
Kastoria, Greece

Tannimpex
Vorosmarty UTCA 35
H--1395
P.O. Box 406
Budapest, Hungary



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UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of)
)
CERTAIN FEATHERED FUR COATS AND)
PELTS, AND PROCESS FOR THE)
MANUFACTURE THEREOF)
)
)

Investigation No. 337-TA-260

APR 10 1988
14
BUREAU OF CUSTOMS

NOTICE OF COMMISSION DETERMINATION
NOT TO REVIEW AN INITIAL DETERMINATION

AGENCY: U.S. International Trade Commission.

ACTION: The U.S. International Trade Commission has determined not to review an initial determination (ID) finding a violation of section 337 in the above-captioned investigation. The Commission's determination is based on its conclusion that complainants have met their burden of proof of establishing a violation of section 337. In this particular instance, there being a previous finding of default under Commission rule 210.25 (19 C.F.R. § 210.25), that burden was to establish a prima facie case of violation under that rule. The parties to the investigation are requested to file written submissions on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Randi S. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0261.

SUMMARY: On September 24, 1987, the Administrative Law Judge (ALJ) issued an ID in this investigation, finding that there is a violation of section 337 in the importation and sale of certain feathered fur coats and pelts. No petitions for review were filed. No comments were received from government agencies.

SUPPLEMENTARY INFORMATION: Having found that a violation of section 337 has occurred, the Commission may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of relief, if any, which should be ordered.

If the Commission concludes that some form of relief is appropriate, it must consider the effect of that relief upon the public health and welfare, competitive conditions in the U.S. economy, the U.S. production of articles which are like or directly competitive with those that are subject to

investigation, and U.S. consumers. The Commission is therefore interested in receiving written submissions concerning the effect, if any that granting relief would have on the enumerated public interest factors.

If the Commission orders relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond which should be imposed.

WRITTEN SUBMISSIONS: The parties to the investigation and interested government agencies are requested to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Written submissions on the issues of remedy, the public interest, and bonding must be filed no later than the close of business on November 23, 1987. Reply submissions on these issues must be filed no later than the close of business on November 30, 1987. Persons other than the parties and government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Such submissions must be filed not later than the close of business on November 23, 1987. No further submissions will be permitted.

COMMISSION HEARING: The Commission does not plan to hold a public hearing in connection with the final disposition of this investigation.


ADDITIONAL INFORMATION: Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment by the ALJ. All such requests should be directed to the Secretary of the Commission and must include a statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential submissions will be available for public inspection at the Secretary's Office.

AUTHORITY: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and sections 210.54-.56 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.54-.56).

Notice of this investigation was published in the Federal Register on December 29, 1986 (51 Fed. Reg. 46944).

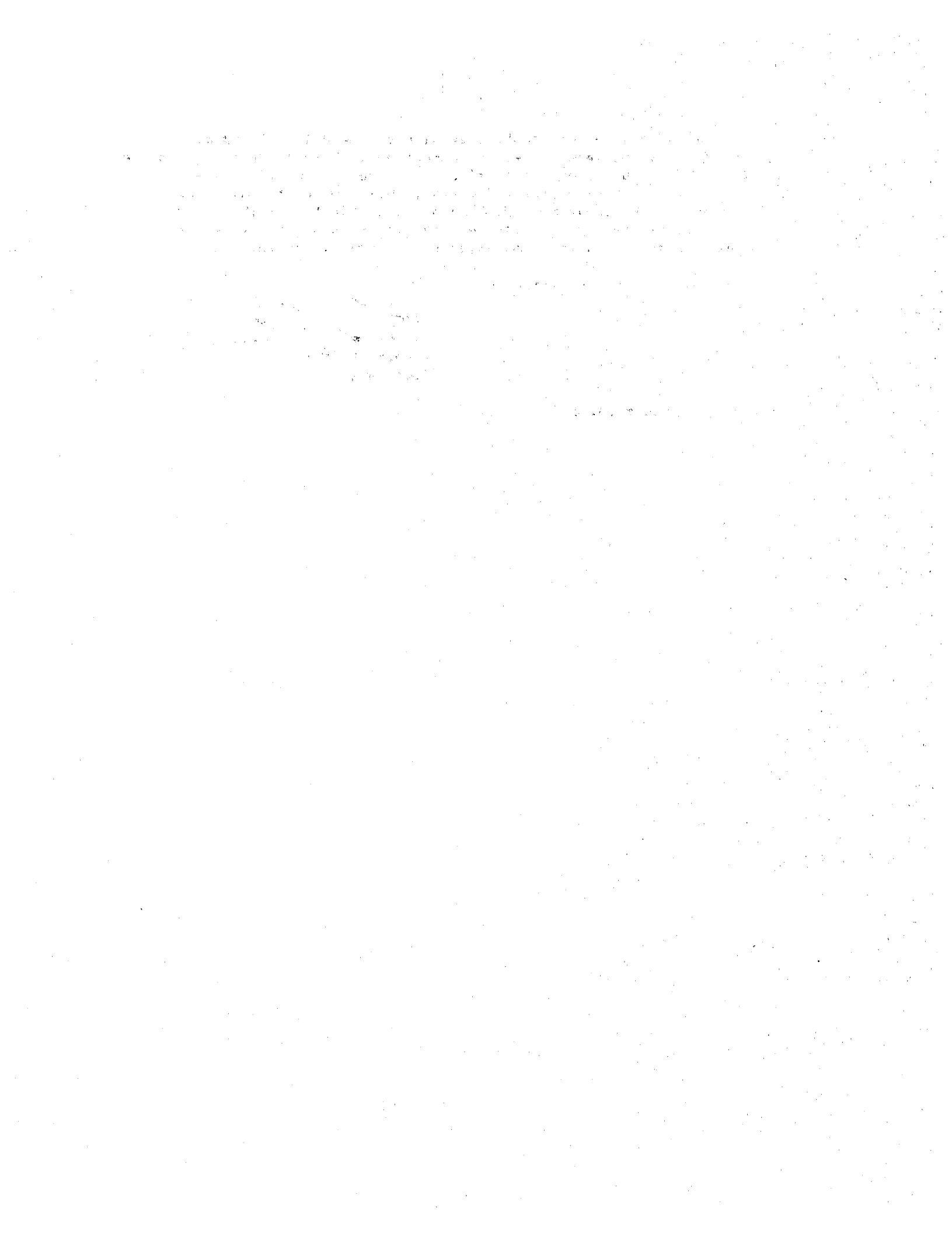
Copies of the nonconfidential version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.



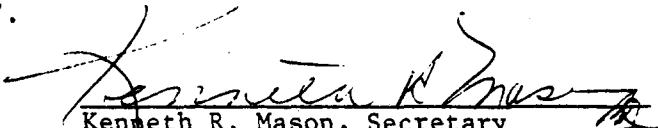
Kenneth R. Mason
Secretary

Issued: November 10, 1987



CERTIFICATE OF SERVICE

I, Kenneth R. Mason, hereby certify that the attached NOTICE OF ISSUANCE OF GENERAL EXCLUSION ORDER, was served upon Jeffrey L. Gertler, Esq., and upon the following parties via first class mail, and air mail where necessary, on December 28, 1987.


Kenneth R. Mason, Secretary
U.S. International Trade Commission
701 E Street, N.W.
Washington, D.C. 20436

For Complainant David Leinoff & David Leinoff, Inc.:

Pasquale A. Razzano
CURTIS, MORRIS & SAFFORD, P.C.
530 Fifth Avenue
New York, New York 10036

For Respondents Jindo Fur Salon:

Andrew L. Lipps
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1747 Pennsylvania Avenue, Northwest
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Washington, D.C. 20006

Peter H. J. Yang
Max F. Schutzman
WHITMAN & RANSOM
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New York, New York 10166

For Respondent Papadopouli Kevrekidis & Co. and Papadopouli Kevrekidis & Co.:

Allen I. Rubenstein
GOTTLIEB, RACKMAN & REISMAN, P.C.
1430 Broadway
New York, New York 10018

CERTIFICATE OF SERVICE

For Respondent Hong Kong Tientsin Fur Company Limited, Asia Fur Company and
Peking Fur Store, Ltd.:

Keith L. Baker
Ruby Ng Lau
BARNETT & ALAGIA
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Suite 600
Washington, D.C. 20007

RESPONDENTS

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7/F Speedy Industrial Building
114 How Ming Street
Kung Tong
Kowloon, Hong Kong

China National Produce and Animal
By-Products Import and Export Corporation
82, Dong An Men Street
Beijing
People Republic of China

Sunry Import Export Corporation
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E. Vassou Brothers, Inc.
20561 N. Zouzouli
Kastoria, Greece

Tannimpex
Vorosmarty UTCA 35
H--1395
P.O. Box 406
Budapest, Hungary

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

132

AC

In the Matter of)
)
CERTAIN FEATHERED FUR COATS AND)
PELTS, AND PROCESS FOR THE)
MANUFACTURE THEREOF)
)
)
)

Investigation No. 337--TA-260

OFFICE OF THE SECRETARY
BOGKET/USITC

87 DEC 28 21:51

RECEIVED

NOTICE OF ISSUANCE OF GENERAL EXCLUSION ORDER

AGENCY: U.S. International Trade Commission.

ACTION: Issuance of a general exclusion order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Randi S. Field, Esq. or Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0261, 202-523-3395, respectively.

SUMMARY: On September 24, 1987, the Administrative Law Judge (ALJ) issued an initial determination (ID) in this investigation, finding that there is a violation of section 337 in the importation and sale of certain feathered fur coats and pelts. On November 9, 1987, the Commission determined not to review the ID. 52 Fed. Reg. 44231 (November 18, 1987). The Commission requested briefs on the issues of remedy, the public interest, and bonding. Submissions were received from complainants David Leinoff and David Leinoff, Inc. and the Commission investigative attorney. A submission on the matter of infringement, which is no longer at issue, was received from settled respondent Hong Kong Tientsin Fur Co. Ltd., defaulting respondent Peking Fur Store Ltd., and defaulting respondent Asia Fur Company. It was subsequently stricken. No submissions from the public or government agencies have been received.

The exclusion order contains the following substantive provisions:

1. Feathered fur coats that infringe claim 1 of U.S. Letters Patent 3,760,424 are excluded from entry into the United States for the remaining term of that patent, except where such importation is licensed by the patent owner;
2. Feathered fur coats manufactured abroad in accordance with the process set forth in claim 5 of U.S. Letters Patent 3,760,424 are excluded from entry into the United States for the remaining term of that patent, except where such importation is licensed by the patent owner;

3. The articles ordered to be excluded from entry into the United States shall be entitled to entry under bond in the amount of 200 percent of the entered value of the imported articles from the day after this Order is received by the President pursuant to subsection (g) of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337(g)) until such time as the President notifies the Commission that he approves or disapproves this action, but, in any event, not later than 60 days after the date of receipt.

AUTHORITY: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and sections 210.54-.58 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.54-.58).

Notice of this investigation was published in the Federal Register on December 29, 1986 (51 Fed. Reg. 46944).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.



Kenneth R. Mason
Secretary

Issued: December 28, 1987

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

In the Matter of)
)
CERTAIN FEATHERED FUR COATS AND)
PELTS, AND PROCESS FOR THE)
MANUFACTURE THEREOF)
)
)
)

Investigation No. 337-TA-260

COMMISSION ACTION AND ORDER

Background

On November 10, 1986, David Leinoff and David Leinoff, Inc. (Leinoff), filed a complaint with the Commission under section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) alleging unfair methods of competition and unfair acts in the importation and sale of certain feathered fur coats and pelts. Based on that complaint, the Commission instituted the above-captioned investigation. The notice of investigation referred to the following unfair acts: (1) alleged infringement of claim 1 of U.S. Letters Patent 3,760,424 (the '424 patent), owned by Leinoff and (2) alleged manufacture abroad by a process which, if practiced in the United States, would infringe claim 5 of the '424 patent, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. 51 Fed. Reg. 46944 (Dec. 29, 1986).

The Commission's notice of investigation listed the following nine respondents who were alleged to be in violation of section 337:

- (1) Jindo Fur Salon (Jindo);
- (2) Asia Fur Company (Asia Fur);
- (3) Hong Kong Tientsin Fur Company (Tientsin);
- (4) Peking Fur Store Ltd. (Peking Fur);
- (5) Excelsior Fur Co. Ltd. (Excelsior);
- (6) Papadopouli Kevrekidis & Co. (Papadopouli);
- (7) China National Produce and Animal By-Products Import and Export Corporation (China National);
- (8) Sunry Import Export Corp. (Sunry); and
- (9) E. Vassou Brothers, Inc. (Vassou).

The investigation has been terminated with respect to Jindo, Tientsin, and Papadopouli on the basis of settlement agreements. The remaining respondents have been held in default.

On June 10, 1987, the ALJ issued an ID (Order No. 15) granting complainants' motion for partial summary determination on the issue of patent validity. The Commission determined not to review the ID.

An evidentiary hearing commenced on June 23, 1987, and concluded on the same day. On September 24, 1987, the presiding administrative law judge (ALJ) (Judge Luckern) issued an initial determination (ID) that there is a violation of section 337 in the above-referenced investigation.

The ALJ found that complainants have established prima facie that settled respondents Jindo and Tientsin, defaulting respondents Asia Fur, Peking Fur, Excelsior, China National, Sunry, and Vassou and nonparty Dynasty Furs, Inc. have infringed the '424 patent. ID at 5-12. He found that the accused furs had been imported and sold in the United States. ID at 12-14.

The ALJ defined the domestic industry as being "comprised of complainant Leinoff's production of feathered fur coats where cutting and sewing is done in the United States either by Leinoff or by its New York City subcontractors." ID at 16. Complainant's licensees and a foreign subcontractor were not included within the scope of the domestic industry. ID

at 16. The ALJ found that complainants had sufficiently established that the domestic industry is efficiently and economically operated. ID at 22.

The ALJ further found that complainants have established a prima facie case of substantial injury to the domestic industry by the large number of imports which exceeded complainants' own sales, as well as evidence of substantial underselling and complainants' excess capacity. ID at 26.

Finally, he found that there exists a tendency to substantially injure the domestic industry based upon evidence of substantial cost advantages, underselling, production capacity, and demonstrated potential and intention to penetrate the United States market by the respondents and a non-respondent. ID at 27-28.

On November 9, 1987, the Commission determined not to review the ID on violation and requested submissions on remedy, the public interest and bonding. Notice of that decision was published in the Federal Register on November 18, 1987 (52 Fed. Reg. 44231).

Action

Having reviewed the written submissions which have been filed regarding the issues of remedy, the public interest, and bonding, and those portions of the record relating to those issues, the Commission has determined to issue a general exclusion order prohibiting entry into the United States of infringing feathered fur coats.

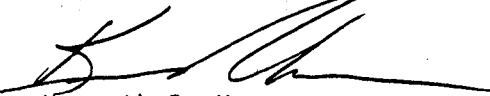
The Commission has determined that the public interest factors enumerated in section 337(d) (19 U.S.C. § 1337(d)) do not preclude issuance of the aforementioned exclusion order and that the bond during the Presidential review period should be in the amount of 200 percent of the entered value of the article concerned.

Order

Accordingly, it is hereby ORDERED that---

1. Feathered fur coats that infringe claim 1 of U.S. Letters Patent 3,760,424 are excluded from entry into the United States for the remaining term of that patent, except where such importation is licensed by the patent owner;
2. Feathered fur coats manufactured abroad in accordance with the process set forth in claim 5 of U.S. Letters Patent 3,760,424 are excluded from entry into the United States for the remaining term of that patent, except where such importation is licensed by the patent owner;
3. The articles ordered to be excluded from entry into the United States shall be entitled to entry under bond in the amount of 200 percent of the entered value of the imported articles from the day after this Order is received by the President pursuant to subsection (g) of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337(g)) until such time as the President notifies the Commission that he approves or disapproves this action, but, in any event, not later than 60 days after the date of receipt;
4. Motions No. 260-27C and No. 260-45 are granted. The November 23, 1987 letter of respondents Tientsin Fur Co., Ltd., Peking Fur Store and Asia Fur Company, is stricken.
5. The Secretary shall serve copies of this Commission Action and Order and the Commission Opinion in support thereof upon each party of record in this investigation (public version only to persons not covered by the protective order) and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the Secretary of the Treasury (public version only);
6. The Secretary shall publish notice of this Action and Order in the Federal Register; and
7. The Commission may amend this Order in accordance with the procedure described in section 211.57 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 211.57).

By order of the Commission.



Kenneth R. Mason
Secretary

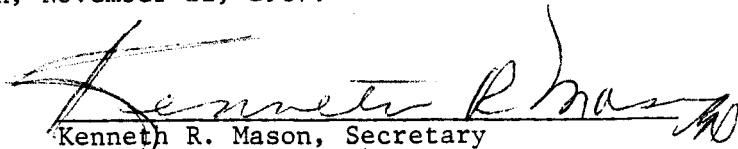
Issued: December 28, 1987

CERTAIN FEATHERED FUR COATS AND PELTS AND
PROCESS FOR THE MANUFACTURE THEREOF

337-TA-260

CERTIFICATE OF SERVICE

I, Kenneth R. Mason, hereby certify that the attached Notice was served upon Jeffrey Gertler, Esq., by hand and upon the following parties via first class mail, and air mail where necessary on, November 12, 1987.


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PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

OFFICE OF THE SECRETARY
DOCKET/USIT

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In the Matter of)
)
CERTAIN FEATHERED FUR COATS AND)
PELTS, AND PROCESS FOR THE)
MANUFACTURE THEREOF)
_____)

Investigation No. 337-TA-260

COMMISSION MEMORANDUM OPINION ON REMEDY,
THE PUBLIC INTEREST, AND BONDING

Introduction

On November 10, 1986, David Leinoff and David Leinoff, Inc. (Leinoff), filed a section 337 complaint with the Commission alleging unfair methods of competition and unfair acts in the importation and sale of certain feathered fur coats and pelts. Based on that complaint, the Commission instituted the above-captioned investigation. The notice of investigation referred to the following unfair acts: (1) alleged infringement of claim 1 of U.S. Letters Patent 3,760,424 (the '424 patent), owned by Leinoff and (2) alleged manufacture by a process which, if practiced in the United States, would infringe claim 5 of the '424 patent, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. 1/

On September 24, 1987, the presiding administrative law judge (ALJ) (Judge Luckern) issued an initial determination (ID) that there is a violation

1/ 51 Fed. Reg. 46944 (Dec. 29, 1986).

of section 337 in the above-referenced investigation. On November 9, 1987, the Commission determined not to review that ID. Notice of the Commission's decision was published in the Federal Register on November 18, 1987. 2/ That notice also requested written submissions on remedy, the public interest, and bonding, the only issues remaining to be resolved in this investigation.

Remedy

The Commission has determined that a general exclusion order is the appropriate remedy in this investigation. An exclusion order is the most effective means of ensuring that articles that infringe a valid patent do not find their way into United States commerce. 3/ Issuance of an exclusion order, however, is not automatic. In Certain Airless Paint Spray Pumps and Components Thereof (Spray Pumps), 4/ the Commission stated:

it is incumbent upon the Commission to balance a complainant's interest in obtaining complete protection from all potential foreign infringers through a single investigation with the inherent potential of a general exclusion order to disrupt legitimate trade. 5/

The Commission therefore requires that, in order to obtain a general exclusion order, there be both (1) a widespread pattern of unauthorized use of the patented invention and (2) business conditions from which it can be inferred

2/ 52 Fed. Reg. 44231.

3/ Certain Plastic Food Storage Containers, Inv. No. 337-TA-152, USITC Pub. 1563 at 3 (1984).

4/ Inv. No. 337-TA-90, USITC Pub. 1199 at 18 (1981).

5/ Id.

that manufacturers other than the named respondents may attempt to enter the U.S. market with infringing articles. 6/

In Spray Pumps, the Commission stated that in order to establish a widespread pattern of unauthorized use, there must be:

- (1) a Commission determination of unauthorized importation into the United States of infringing articles by numerous foreign manufacturers; or
- (2) pending foreign infringement suits based upon foreign patents which correspond to the domestic patents in issue;
- (3) other evidence which demonstrates a history of unauthorized foreign use of the patented invention.

The evidence of record in this investigation establishes a widespread pattern of unauthorized use. Specifically, the ALJ found that eight of the nine named respondents have imported and/or sold infringing feathered fur coats. 7/ Moreover, at least three other manufacturers in Korea produce feathered fur coats. 8/ In addition, there are several other firms which have sold infringing imported feathered fur coats in the United States. 9/

In order to establish the "business conditions" referred to in Spray Pumps as a prerequisite for the issuance of a general exclusion order, the Commission has considered:

6/ See Certain Window Shades and Components Thereof, Inv. No. 337-TA-83, USITC Pub. 1152 at 11-12 (1981).

7/ ID at 9-12.

8/ Findings of Fact (FF) 125, 127.

9/ ID at 12; FFs 54, 55, 118, 123, 139.

- (1) an established demand for the product in the U.S. market and conditions of the world market;
- (2) the availability of marketing and distribution networks in the United States for potential foreign manufacturers;
- (3) the cost of foreign entrepreneurs of building a facility capable of producing the patented article;
- (4) the number of foreign manufacturers whose facilities could be retooled to produce the articles; and
- (5) the cost to foreign manufacturers of retooling their facility to produce the articles. 10/

The evidence of record in this investigation also establishes the existence of the "business conditions" referred to in Spray Pumps which are a prerequisite to the issuance of a general exclusion order. In particular, the level of sales enjoyed by the complainants and their licensees, as well as the evidence of numerous sales of the accused imported fur coats, attests to the existence of substantial demand in the United States for the fur coats at issue. 11/

The record also establishes that there are readily available marketing and distribution networks in the United States for potential foreign manufacturers. Specifically, there are more than 5,000 furriers located throughout the United States which are potential outlets for infringing furs. 12/ In addition, respondent China National has its own showroom in New York City, 13/ and many importers have displayed their products at large trade

10/ See Spray Pumps at 18-19.

11/ See FFs 108, 115, 121, 123, 132, 134-36, 139.

12/ FF 136.

13/ FF 138.

shows. 14/ Moreover, large retail outlets, such as Burdine's of Florida, carry furs of the type involved in this investigation. 15/

The record further indicates that other foreign fur manufacturers are likely to begin producing feathered fur coats for export to the United States. In this regard, the ALJ found that the price of raw furs has significantly increased during the past two years, 16/ and that the patented feathering technique reduces costs and increases the size of fur pelts. 17/ Accordingly, the demand for feathered fur coats in the United States is likely to increase. 18/ In addition, foreign manufacturers have a significant cost advantage over domestic manufacturers because the feathering process is labor intensive. 19/ For all of the above reasons, the Commission determines that the proper remedy in this investigation is the issuance of a general exclusion order.

Finally, in this investigation, the feathered fur coats in issue were found to infringe claim 1 and to be made by the process covered by claim 5 of the '424 patent. In most process patent cases, it is difficult, if not impossible, to determine, from an inspection of the product at issue, whether

14/ FFs 45, 47, 48, 62, 68, 139.

15/ FF 116.

16/ FF 129.

17/ FF 130.

18/ Id.

19/ FFs 126, 131, 133.

it is made from an infringing process. 20/ Accordingly, in prior process patent cases, the Commission has issued a general exclusion order and required potential importers to prove that their products were made in accordance with a noninfringing process before their products were permitted to enter the United States. 21/ In this case, however, the ALJ found that an inspection of the feathered fur coats reveals whether they were made by the process covered by claim 5. 22/ The ALJ found that the only way to obtain the "unnatural" striped effect described in the '424 patent is by using the process of claim 5. 23/ Since an inspection of the fur coats in this case will reveal whether they were made by an infringing process, such an advisory opinion provision is unnecessary.

Public Interest

We find no public interest factors, within the meaning of section 337(d), that preclude the issuance of a general exclusion order in this investigation.

20/ See Staff's Disposition Brief at 6.

21/ Id. (citing Certain Amorphous Metal Alloys and Amorphous Metal Articles, Commission Advisory Opinion at 7-11 (1987); Certain Indomethacin, Commission Opinion After Remand at 33 (1986); Certain Processes for the Manufacture of Skinless Sausage Casings and Resulting Product, Inv. No. 337-TA-148/169 (1984); Certain Multicellular Plastic Film, 337-TA-54 (1979), aff'd sub. nom., Sealed Air Corporation v. U.S. International Trade Commission, 645 F.2d 976 (C.C.P.A. 1984).

22/ ID at 8.

23/ ID at 8; FFs 32, 39.

Bonding

When the Commission finds a violation of section 337 and issues an exclusion order, the infringing products are entitled to entry under bond during the 60-day Presidential review period, pursuant to section 337(g)(3). That bond is to be set so as to offset any competitive advantage resulting from the unfair methods of competition and unfair acts. 24/

Given the large number of respondents, complainants suggest setting a single figure for the bond applicable to all respondents rather than a different bond for each respondent. 25/ Complainants assert that respondents generally sell their feathered fur garments at wholesale for prices as much as \$440 to \$1140 less than complainants' comparable products. 26/ Complainants suggest that an average differential figure of \$750 per imported feathered fur garment be set as the appropriate bond. 27/ They state that the Commission has used a set dollar figure in the past rather than a percentage figure in setting a bond. 28/ In the alternative, complainants suggest that the bond be set at 200 percent of the sales price of the infringing feathered fur garments. 29/

24/ S. Rep. 1298, 93rd Cong., 2d Sess. 198 (1974).

25/ Complainants' Brief at 12.

26/ Id. (citing ID at 24).

27/ Complainants' Brief at 12. Complainants assert that this is the approximate average difference between the imported wholesale price and complainants' wholesale price based on the relative prices on p. 24 of the ID. Id. at 12-13 n.12.

28/ Id. (citing Certain Roller Units, Inv. No. 337-TA-44, USITC Pub. 944 at 12 (1979)).

29/ Id. at 13.

The investigative attorney recommends a bond of 268 percent, the difference between complainants' [], 30/ and []. 31/

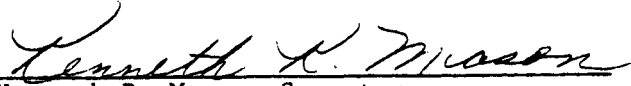
The Commission determines that a bond of 200 percent of entered value will most appropriately offset the price advantage enjoyed by respondents.

30/ FF 126.

31/ CX-74, Interrogatory No. 5.

CERTIFICATE OF SERVICE

I, Kenneth R. Mason, hereby certify that the attached COMMISSION MEMORANDUM OPINION ON REMEDY, THE PUBLIC INTEREST, AND BONDING, was served upon Jeffrey L. Gertler, Esq., and upon the following parties via first class mail, and air mail where necessary, on December 30, 1987.


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