

# CERTAIN DISPLAY DEVICES FOR PHOTOGRAPHS AND THE LIKE

Investigation No. 337-TA-30

USITC Publication 862

Commission Determination  
and Order and Commissioners'  
Opinions in Support of  
Commission Action



# UNITED STATES INTERNATIONAL TRADE COMMISSION

## COMMISSIONERS

*Daniel Minchew, Chairman*  
*Joseph O. Parker, Vice Chairman*  
*George M. Moore*  
*Catherine Bedell*  
*Italo H. Ablondi*  
*Bill Alberger*

---

Kenneth R. Mason, Secretary to the Commission

---

This report was principally prepared by  
Rhond R. Roth, Office of the General Counsel

Address all communications to  
Office of the Secretary  
United States International Trade Commission  
Washington, D. C. 20436



the complaint and notice of investigation were served upon numerous named respondents. Of those, only four companies--Montgomery Ward Co., Inc., Harben Co., Chadwick-Miller, Inc., and M.I.M. Lador, Inc.--answered the complaint and then only in a general manner. On March 2, 1977, respondents were served with interrogatories by Commission investigative staff. On May 6, 1977, the Presiding Officer issued a notice of preliminary conference for May 26, 1977, but no respondent attended this conference.

On August 1, 1977, Complainant and the Commission investigative staff filed a Joint Motion for Summary Determination under section 210.50 of the Commission's Rules of Practice and Procedure [hereinafter "CRPP"]. None of the respondents opposed the motion by filing affidavits with the Presiding Officer, or by any other means. Accordingly, on August 31, 1977, the Presiding Officer, per CRPP section 210.53, issued his Recommended Determination that the Commission:

1. Determine that there is a violation of Section 337 in the importation or sale in the United States of display devices for photographs and the like meeting the claims of U.S. Letters Patent 3,774,332; and, further,
2. Grant the Joint Motion of Complainant and the Commission Investigative Staff for Summary Determination under CRPP section 210.50 on all issues (Motion Docket 30-5); and, further,
3. Dismiss certain enumerated respondents for the reason that they are not presently importing infringing products, or were not effectively served, and therefore are not proper respondents in the investigation (Motion Docket 30-4).

No respondent filed exceptions or alternative findings of fact and conclusions of law to the Presiding Officer's Recommended Determination per CRPP section 210.54, nor did any respondent take any other action.

On September 2, 1977, the Commission Investigative Staff filed a Supplemental Submission to the Joint Motion of Complainant and Commission Investigative Staff discussing U.K. Patent No. 1,270,715 [hereinafter "the British patent"] in order to complete the record and address certain questions as to the existence of prior art and derivation raised thereby. The Presiding Officer, by his Supplement to Recommended Determination of September 8, 1977, discussed the British Patent, held that it does not affect the Findings of Fact and Conclusions of Law of the Recommended Determination of August 31, and amended the Recommended Determination to include five additional respondents recommended for dismissal.

On October 31, 1977, the Commission held a hearing for the purposes of hearing oral argument with respect to:

1. The Presiding Officer's Recommended Determination that there is a violation of Section 337.
2. Appropriate relief in the event that the Commission determines that there is a violation of Section 337 and determines that there should be relief; and
3. Relief and the public interest factors as set forth in Sections 337(d) and (f) of the Tariff Act of 1930, which the Commission is to consider in the event it determines there is a violation of Section 337 and determines that there should be relief.

Notice for the above hearing was issued on October 5, 1977, and served upon respondents; no respondent attended the hearing. Oral argument on all three of the above topics was presented by both Complainant and the Commission investigative staff at the hearing.

Commission Determination

Having reviewed (1) the evidentiary record in the investigation as certified to it by the Presiding Officer, (2) the Presiding Officer's Recommended Determination and Supplemental Documents, and (3) the hearing record of October 31, 1977, THE COMMISSION, by action of November 29, 1977, unanimously DETERMINED:

1. To dismiss J & M Enterprises; Amerex International, Ltd.; Sanyei New York Corp.; Wai Cheong Industrial Co., Ltd.; Minami Sangyo, Ltd.; G. C. Murphy Co.; Cuckoo Clock Mfg. Co., Inc.; Reliance Pen and Pencil Corp.; F. W. Woolworth Co.; Crest Industries Corp.; Henry Co.; T. Chatani & Co., Ltd.; Osaka General Trading Company, Ltd.; Wing Tat Industrial Co.; Medi Mart; Maruyama Noboru Seisakusho K.K.; Wah Hing Plastic and Metal Ware Factory, Ltd.; Oriental Plastic Factory; Oriental Plastic Industrial Corp., Western Universal (H.K.), Ltd.; and Montgomery Ward & Co., Inc. as respondents in the investigation for the reason that they are not presently importing infringing products or were not effectively served, and therefore are not proper respondents in the investigation (Motion Docket 30-4 and 30-6).
2. That the Joint Motion for Summary Determination of Complainant and the Commission investigative staff should be granted for the reason that there is no genuine issue as to any material fact and that the moving parties are entitled to summary determination as a matter of law [Motion Docket 30-5].
3. That there is a violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), by reason of the importation into the United States of certain display devices for photographs and the like, or in their sale by the owner, importer, consignee, or agent of either, because such devices (a) infringe claims 1, 2, and 3 of the valid U.S. Letters Patent No. 3,774,332, thereby constituting an unfair method or unfair act within the meaning of section 337; and (b) the effect or tendency of such unfair method or act is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, and

4. That the appropriate remedy for such violation is to direct that the articles concerned, display devices for photographs and the like, made in accordance with one or more of the claims of U.S. Letters Patent No. 3,774,332, be excluded from entry into the United States for the term of said patent; and that, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers, such articles should be excluded from entry; and
5. That the bond provided for in subsection 337(g)(3) is determined by the Commission to be, as prescribed by the Secretary of the Treasury, in the amount of 100 percent of the value of the articles concerned, f.o.b. foreign port.

Commission Order

Accordingly, IT IS HEREBY ORDERED:

1. That J & M Enterprises; Amerex International, Ltd.; Sanyei New York Corp.; Wai Cheong Industrial Co., Ltd.; Minami Sangyo, Ltd.; G. C. Murphy Co.; Cuckoo Clock Mfg. Co., Inc.; Reliance Pen and Pencil Corp.; F. W. Woolworth Co.; Crest Industries Corp.; Henry Co.; T. Chatani & Co., Ltd.; Osaka General Trading Company, Ltd.; Wing Tat Industrial Co.; Medi Mart; Maruyama Noboru Seisakusho K.K.; Wah Hing Plastic and Metal Ware Factory, Ltd.; Oriental Plastic Factory; Oriental Plastic Industrial Corp., Western Univeral (H.K.), Ltd.; and Montgomery Ward & Co., Inc. are dismissed as respondents in the investigation [Motion Docket 30-4 and 30-6].
2. That the Joint Motion for Summary Determination of Complainant and Commission investigative staff is granted [Motion Docket 30-5];
3. That display devices for photographs and the like, made in accordance with one or more of the claims of U.S. Letters Patent No. 3,774,332 are excluded from entry into the United States for the term of said patent except (1) as provided in paragraph 4 of this Order, infra, or (2) as such importation is licensed by the holder of U.S. Letters Patent No. 3,774,332; and
4. That the articles ordered to be excluded from entry are entitled to entry into the United States under bond in the amount of 100 percent of the value of the articles, f.o.b. foreign port, from the day after the day this Order is received by the President pursuant to section 337(g) of the Tariff Act of 1930, as amended, until such time as the President notifies the Commission that he approves this action, or the President disapproves this action, but, in any event, not later than sixty (60) days after such day of receipt.
5. That this Order will be published in the Federal Register and served upon each party of record in this investigation and upon the U.S. Department of Health, Education & Welfare, the U.S. Department of Justice, the Federal Trade Commission, and the Secretary of the Treasury.

Opinion of Chairman Daniel Minchew and  
Commissioners George M. Moore and Bill Alberger

Our determination and order, supra, are primarily predicated upon the following bases:

1. The Commission has jurisdiction over the subject matter of the investigation and over the respondents named by the Commission in its notice of investigation [19 U.S.C. 1337].
2. Patent infringement has been held to be an "unfair method of competition and unfair act" for the purposes of section 337 of the Tariff Act of 1930, as amended [See, e.g., *In re Northern Pigment Co., et al.*, 71 F.2d 447 (C.C.P.A. 1934) and 71 F.2d 447, *In re Von Clemm*, 229 F.2d 441 (C.C.P.A. 1955)].
3. Complainant is the owner of U.S. Letters Patent 3,774,332 by virtue of an assignment from the inventor, Marshall C. Schneider, filed with the U.S. Patent Office, March 9, 1971 [Recommended Determination, Finding B, p. 6]. Complainant is therefore a proper party to bring a Section 337 proceeding with infringement of said patent as the basis for an "unfair method of competition or unfair act."
4. U.S. Letters Patent No. 3,774,332 is a valid and enforceable patent for the purposes of Section 337 [Recommended Determination, Findings 19-21, pp. 8-9]. Per 35 U.S.C. 282, said patent is presumptively valid; respondents did not carry their burden of proving invalidity or unenforceability of said patent [Recommended Determination, pp. 8-9, 15; Supp. to Recommended Determination].
5. The accused infringing products which have been imported and sold in the United States directly and literally infringe the terms of claims 1, 2, and 3 of U.S. Letters Patent No. 3,774,332 [Recommended Determination, Finding G, p. 8].
6. Complainant and its subcontractors constitute a domestic industry for the purpose of section 337 by producing in the United States display devices covered by claims 1, 2 and 3 of U.S. Letters Patent No. 3,774,332 [Recommended Determination, pp. 8, 15]. Said domestic industry is efficiently and economically operated [Recommended Determination, pp. 13-14].
7. The domestic industry has suffered substantial economic injury from the loss of sales and resultant loss of revenue by reason of the importation and sale of articles which infringe the claims of U.S. Letters Patent No. 3,774,332 [Recommended Determination, pp. 9-13].



8. On motion per CRPP Section 210.50(b), movant is entitled to summary determination if the pleadings and any depositions, admissions on file, and affidavits show that there is no genuine issue as to any material facts and that the moving party is entitled to a summary determination as a matter of law. Our review of the record certified to us by the Presiding Officer does not reveal a genuine issue as to a material fact. Furthermore, the facts as found by the Presiding Officer and adopted in our opinion lead to our conclusion that the moving party is entitled to a summary determination as a matter of law.
9. Our consideration of the effect of exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers as required by Section 337(d), does not lead us to the conclusion that an exclusion order should not be issued.

In order to further explain the Commission's determination and order, we shall briefly comment upon three areas of concern in the discussion below:

- I. The more pertinent patent-related issues raised during the course of the investigation respecting:
  - A. The "British Patent" [U.K. Patent No. 1,270,715];
  - B. The "Nyman Patent" [U.S. Letters Patent No. 3,703,405]; and
  - C. Various allegations respecting the validity of the "Schneider Patent" [U.S. Letters Patent No. 3,774,332].
- II. The Commission's consideration of the "public interest" factors of section 337(d) in determining to enter an exclusion order; and
- III. Rationale for a bond of 100 percent of the value of the articles concerned, f.o.b. foreign port.

#### I. Patent Issues

The display device which is the subject of the investigation was invented by Marshall C. Schneider and patent rights assigned by him to Complainant. Upon application Serial No. 127,279, filed in the U.S. Patent Office on March 23, 1971, U.S. Letters Patent 3,774,332 was issued to Complainant on November 27, 1973.

Title 35, United States Code, Section 102, provides as follows:

A person shall be entitled to a patent unless:

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the *invention* thereof by the applicant for patent, or

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the *application* for patent in the United States, . . . (Emphasis added)

Accordingly, in order to create successfully a genuine issue of material fact as to the validity of Complainant's patent for the purposes of CRPP section 210.50, a respondent or other party could, for instance, provide evidence of knowledge or use of the invention prior to the invention thereof by Marshall C. Schneider or evidence of the patent or description in a printed publication in this or a foreign country, or public use or sale in this country of the invention *more than one year prior to the date of the application for the patent in the United States by Marshall C. Schneider*. Such genuine issues of material fact do not appear in the record. The following three sections discuss those patent issues which were raised but which were not sufficient to constitute genuine issues of material fact in the context of CRPP Section 210.50, 19 U.S.C. 1337, and 35 U.S.C. §§102 and 282.

A. The "British Patent" [U.K. Patent No. 1,270,715].

Application for U.S. Letters Patent 3,774,332 ("Complainants' patent") was filed March 23, 1971. The first patenting and publication of the British patent was not until April 12, 1972 [Supp. Submission to Joint Motion of Complainant and Investigative Staff, Memo in support, p. 3], too late to invalidate Complainant's patent under 35 U.S.C. 102. Furthermore, even if the British

patent had been filed sufficiently early for the purposes of 35 U.S.C. 102, it would not have affected the right of Complainant to a patent, inasmuch as the British patent lacked identity of invention (Supp. Submission to Joint Motion of Complainant and Investigative Staff, Memorandum in Support, p. 3). Namely, the British invention is distinguishable by the absence of an inner box to support items for viewing from all six sides (Affidavit of Marshall C. Schneider, par. 4).

B. The "Nyman Patent" [U.S. Letters Patent No. 3,703,405].

Questions were raised quite early as to the possibility that the Nyman patent anticipated the Complainant's patent. However, such suggestions carry little convincing force when one considers that just over two months before Complainant's patent was filed and searched, the same Patent Office examiner who considered Complainant's patent also reviewed the Nyman patent (filed January 18, 1971). In fact, field search for Complainant's patent included U.S. Class 40, subclass 152 and 152.1, with the Nyman patent classified in subclass 152 and the '332 patent in 152.1 (Joint Motion for Summary Determination of Complainant and Investigative Staff, Memorandum in Support, p. 6). It is highly unlikely that identical prior art would have been overlooked.

C. Other Patent Issues.

During the course of the investigation certain respondents made assertions that several distinct types of display devices anticipated the claims of Complainant's patent. First, it was advanced that the devices imported during 1968-1969 anticipated Complainant's patent (Commission Oral Argument, p. 42, lines 5-8). Investigation subsequently revealed, however, that these display devices were identical to the Nyman patent. Since the

Nyman patent appears not to have been anticipatory, neither were the display devices referred to by these respondents (Commission Oral Argument, p. 42, lines 16-21).

Second, it was indicated that display devices identical to those covered by the claims of Complainant's patent (Commission Oral Argument, p. 33, line 8) were shipped from Hong Kong to the United States in December of 1970. While this statement is literally true, those shipments were of only sample devices. (Commission Oral Argument p. 32, line 12). The first commercial shipment of such display devices was not made until April 12, 1972 (Commission Oral Argument, p. 32, lines 13-14), a date which is too late to invalidate Complainant's patent under U.S. law. In addition, it should be noted that suggestions of derivation are not persuasive in light of the Affidavit of inventor Marshall C. Schneider that he had not visited Hong Kong before 1976, five full years after his application for a patent.

Finally, a respondent alleged that it had exported display cubes to the United States in March of 1971 (Joint Motion for Summary Determination of Complaint and Investigative Staff, Memorandum in Support, p. 7). Though the record contains a dearth of information about the structural features of these display devices, even assuming the identity thereof with those covered by Complainant's patent, such exportation occurred at too late a date to affect the validity of Complainant's patent.

## II. Public interest factors

Title 19 U.S.C. 1337(d) provides:

If the Commission determines. . .that there is a violation . . .it shall direct that the articles concerned. . .be excluded. . .unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and the United States consumers, it finds that such articles should not be excluded from entry.

Oral argument advanced before the Commission indicates that the entry of an exclusion order will not adversely affect the public interest. The two most significant interests to be balanced in this case are the protection of a valid U.S. patent as opposed to a possible increase in consumer pricing.

Testimony before the Commission reveals that Complainant possesses the productive capacity to meet domestic market demand (Commission Oral Argument p. 53, lines 16-17). Additionally, complainant is the holder of a valid U.S. patent and is entitled to the remunerative benefits that normally accrue therefrom.

While, admittedly, consumers *may* pay a higher retail price for the product produced by Complainant in light of a landed price differential of two-to-one (Commission Oral Argument p. 50, lines 4-7), it appears that the profit markup is a normal rather than a premium one (Commission Oral Argument p. 56-57). Moreover, consumer constraints prevent premium pricing. Plastic display devices are not essentials of life. If one is to abuse the patent monopoly granted one, a reduction in sales is sure to follow.

For these reasons, the Commission feels an exclusion order strikes the most appropriate balance between patent protection and consumer interests.

### III. Bonding

In light of the fact that a two-to-one price differential exists between the landed price of the imported product and the sale price of the domestic product, the most efficacious bond would be a bond of 100 percent of the value of the articles, F.O.B. foreign port.

Opinion of Vice Chairman Joseph O. Parker and  
Commissioners Catherine Bedell and Italo H. Ablondi

The record in this proceeding establishes that after the institution of this proceeding, service of the complaint, and the receipt of answers from four respondents, the presiding officer issued a notice of a prehearing conference. Complainants and the Commission investigative staff appeared at this conference but no respondents entered an appearance. Thereafter, complainant and the Commission investigative staff filed a Joint Motion for Summary Determination, supported by a number of affidavits. The Joint Motion for Summary Determination and the affidavits were served upon all parties to the proceedings. No responses or opposing affidavits were filed by any respondents. On August 31, 1977, the presiding officer issued a recommended determination in which he determined that there is a violation of section 337 of the Tariff Act of 1930, as amended, in the unauthorized importation into the United States, and in the sale, of certain display devices for photographs and the like, by reason of the fact that such devices infringe claims 1, 2, and 3 of United States Letters Patent No. 3,774,332, with the effect or tendency to destroy or substantially injure an industry, efficiently and economically operated in the United States, and recommended that the Commission grant the Motion for Summary Determination. All named respondents were served with copies of the recommended determination of the presiding officer. No exceptions or alternative findings of fact and conclusions of law to the presiding officer's recommended determination were filed by any respondent. No respondent took any other action contesting the claim of the complainant.

On October 21, 1977, the Commission held a hearing for the purpose of oral argument on the recommended determination, public interest issues, and appropriate relief in the event the Commission determined that there is a violation of section 337. Notice of the above hearing was issued on October 5, 1977, and served on all parties to the investigation including all respondents; no respondent appeared or filed any written submission. Both complainant and the Commission investigative staff entered an appearance at the hearing and supported the recommended determination of the presiding officer and urged that an exclusion order be issued.

The affidavits in support of the Joint Motion for Summary Determination contain evidence which shows the importation of display devices for photographs which infringe complainant's U.S. patent. Such patent is entitled to the statutory presumption of validity. The respondents did not challenge the validity of the patent with any evidentiary showing. The affidavits also contain evidence showing that the effect or tendency of the infringing imports is to destroy or substantially injure an industry efficiently and economically operated in the United States. On the basis of the record in this proceeding, we determine that there is a violation of section 337 of the Tariff Act of 1930, as amended.

Public interest factors

Section 337(d) of the Tariff Act of 1930, as amended, requires that prior to the entry of an exclusion order, consideration be given to the

effect of such an order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and U.S. consumers.

The Commission, after public notice, provided opportunity for oral hearing on these questions. Complainant appeared through its attorney, and the Commission's investigative attorney appeared on behalf of the Commission. Both counsel presented oral argument in support of the entry of an exclusion order. There was no appearance by any other governmental agency or any other person in opposition to the entry of an exclusion order. From the record in this proceeding, we have determined that there is no justifiable reason for not entering an exclusion order to remedy the violation found as a result of this proceeding. We therefore determine that the entry of an exclusion order is necessary to prevent the unfair acts of importation of the subject articles in violation of section 337 of the Tariff Act of 1930, as amended, and grant the Joint Motion for Summary Determination.

#### Bonding

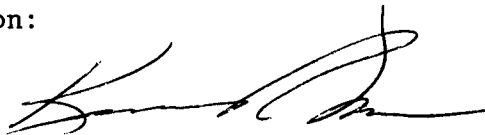
In view of the price difference between the imported infringing article and the domestic products, we determine that a bond in the amount of 100 per cent of the value of the imported article is warranted.



## ADDENDUM

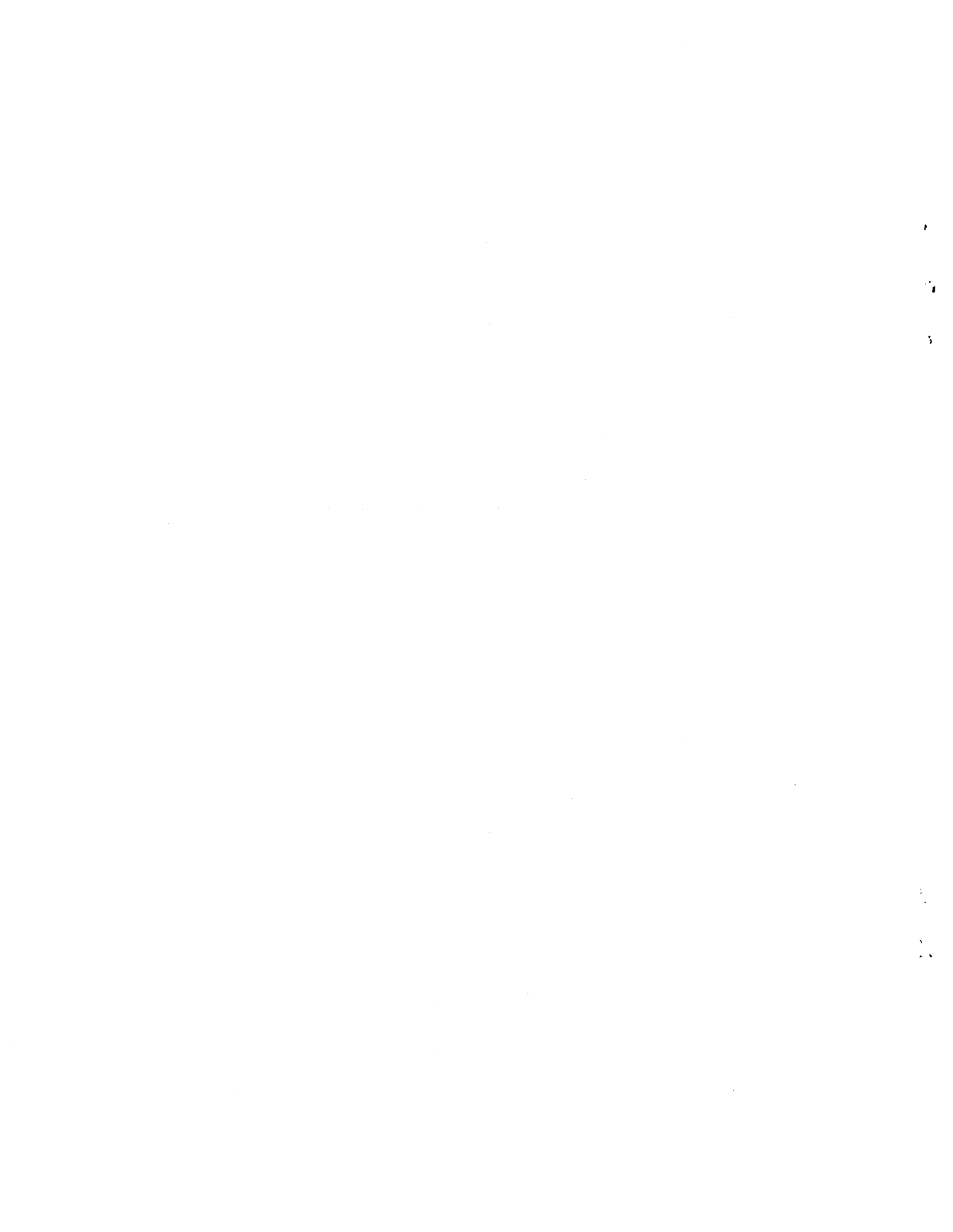
It should be noted that simultaneously with the issuance of this determination and order, the United States International Trade Commission has transmitted to the Secretary of the Treasury and the Commissioner of Customs a letter containing (1) a description of claims 1, 2 and 3 of U.S. Letters Patent No. 3,774,332 as found in the Presiding Officer's Recommended Determination of August 31, 1977, Finding of Fact A, at page 5, and (2) a copy of the aforementioned patent, and (3) sample display devices constructed in accordance with the claims of said patent. The Commission has made such transmittal (1) for the guidance of Customs officer; (2) for the purpose of facilitating enforcement of the Commission's order, and (3) for the purpose of fulfilling the notice requirements of section 337(d), of the Tariff Act of 1930, as amended. Copies of the letter of transmittal to the Secretary of the Treasury and Commissioner of Customs and copies of U.S. Letters Patent No. 3,774,332 are available for public inspection in the Office of the Secretary, United States International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436.

By order of the Commission:



KENNETH R. MASON  
Secretary

Issued: January 12, 1978



UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

In the Matter of: )

CERTAIN DISPLAY DEVICES FOR )  
PHOTOGRAPHS AND THE LIKE )

Investigation No. 337-TA-30

COMMISSION DETERMINATION AND ORDER AND COMMISSIONERS' OPINIONS

Procedural History

On January 14, 1977, a complaint was filed with the United States International Trade Commission under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of Charles D. Burnes Company, of Boston, Massachusetts [hereinafter "Complainant"], that unfair methods of competition and unfair acts exist in the unlicensed importation of hexahedron-shaped devices for the display of photographs and the like [hereinafter "display cubes"] into the United States, or in their sale, by reason of the coverage of such display cubes by the claims of U.S. Letters Patent No. 3,774,332, the effect or tendency of such unlicensed importation being to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Accordingly, Complainant sought an order of exclusion against the imports in question. On February 15, 1977, the Commission instituted an investigation thereof and published a notice of investigation in the Federal Register of February 18 [42 F.R. 10073]. Copies of

the complaint and notice of investigation were served upon numerous named respondents. Of those, only four companies--Montgomery Ward Co., Inc., Harben Co., Chadwick-Miller, Inc., and M.I.M. Lador, Inc.--answered the complaint and then only in a general manner. On March 2, 1977, respondents were served with interrogatories by Commission investigative staff. On May 6, 1977, the Presiding Officer issued a notice of preliminary conference for May 26, 1977, but no respondent attended this conference.

On August 1, 1977, Complainant and the Commission investigative staff filed a Joint Motion for Summary Determination under section 210.50 of the Commission's Rules of Practice and Procedure [hereinafter "CRPP"]. None of the respondents opposed the motion by filing affidavits with the Presiding Officer, or by any other means. Accordingly, on August 31, 1977, the Presiding Officer, per CRPP section 210.53, issued his Recommended Determination that the Commission:

1. Determine that there is a violation of Section 337 in the importation or sale in the United States of display devices for photographs and the like meeting the claims of U.S. Letters Patent 3,774,332; and, further,
2. Grant the Joint Motion of Complainant and the Commission Investigative Staff for Summary Determination under CRPP section 210.50 on all issues (Motion Docket 30-5); and, further,
3. Dismiss certain enumerated respondents for the reason that they are not presently importing infringing products, or were not effectively served, and therefore are not proper respondents in the investigation (Motion Docket 30-4).

No respondent filed exceptions or alternative findings of fact and conclusions of law to the Presiding Officer's Recommended Determination per CRPP section 210.54, nor did any respondent take any other action.

On September 2, 1977, the Commission Investigative Staff filed a Supplemental Submission to the Joint Motion of Complainant and Commission Investigative Staff discussing U.K. Patent No. 1,270,715 [hereinafter "the British patent"] in order to complete the record and address certain questions as to the existence of prior art and derivation raised thereby. The Presiding Officer, by his Supplement to Recommended Determination of September 8, 1977, discussed the British Patent, held that it does not affect the Findings of Fact and Conclusions of Law of the Recommended Determination of August 31, and amended the Recommended Determination to include five additional respondents recommended for dismissal.

On October 31, 1977, the Commission held a hearing for the purposes of hearing oral argument with respect to:

1. The Presiding Officer's Recommended Determination that there is a violation of Section 337.
2. Appropriate relief in the event that the Commission determines that there is a violation of Section 337 and determines that there should be relief; and
3. Relief and the public interest factors as set forth in Sections 337(d) and (f) of the Tariff Act of 1930, which the Commission is to consider in the event it determines there is a violation of Section 337 and determines that there should be relief.

Notice for the above hearing was issued on October 5, 1977, and served upon respondents; no respondent attended the hearing. Oral argument on all three of the above topics was presented by both Complainant and the Commission investigative staff at the hearing.

Commission Determination

Having reviewed (1) the evidentiary record in the investigation as certified to it by the Presiding Officer, (2) the Presiding Officer's Recommended Determination and Supplemental Documents, and (3) the hearing record of October 31, 1977, THE COMMISSION, by action of November 29, 1977, unanimously DETERMINED:

1. To dismiss J & M Enterprises; Amerex International, Ltd.; Sanyei New York Corp.; Wai Cheong Industrial Co., Ltd.; Minami Sangyo, Ltd.; G. C. Murphy Co.; Cuckoo Clock Mfg. Co., Inc.; Reliance Pen and Pencil Corp.; F. W. Woolworth Co.; Crest Industries Corp.; Henry Co.; T. Chatani & Co., Ltd.; Osaka General Trading Company, Ltd.; Wing Tat Industrial Co.; Medi Mart; Maruyama Noboru Seisakusho K.K.; Wah Hing Plastic and Metal Ware Factory, Ltd.; Oriental Plastic Factory; Oriental Plastic Industrial Corp., Western Universal (H.K.), Ltd.; and Montgomery Ward & Co., Inc. as respondents in the investigation for the reason that they are not presently importing infringing products or were not effectively served, and therefore are not proper respondents in the investigation (Motion Docket 30-4 and 30-6).
2. That the Joint Motion for Summary Determination of Complainant and the Commission investigative staff should be granted for the reason that there is no genuine issue as to any material fact and that the moving parties are entitled to summary determination as a matter of law [Motion Docket 30-5].
3. That there is a violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), by reason of the importation into the United States of certain display devices for photographs and the like, or in their sale by the owner, importer, consignee, or agent of either, because such devices (a) infringe claims 1, 2, and 3 of the valid U.S. Letters Patent No. 3,774,332, thereby constituting an unfair method or unfair act within the meaning of section 337; and (b) the effect or tendency of such unfair method or act is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, and

4. That the appropriate remedy for such violation is to direct that the articles concerned, display devices for photographs and the like, made in accordance with one or more of the claims of U.S. Letters Patent No. 3,774,332, be excluded from entry into the United States for the term of said patent; and that, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers, such articles should be excluded from entry; and
5. That the bond provided for in subsection 337(g)(3) is determined by the Commission to be, as prescribed by the Secretary of the Treasury, in the amount of 100 percent of the value of the articles concerned, f.o.b. foreign port.

Commission Order

Accordingly, IT IS HEREBY ORDERED:

1. That J & M Enterprises; Amerex International, Ltd.; Sanyei New York Corp.; Wai Cheong Industrial Co., Ltd.; Minami Sangyo, Ltd.; G. C. Murphy Co.; Cuckoo Clock Mfg. Co., Inc.; Reliance Pen and Pencil Corp.; F. W. Woolworth Co.; Crest Industries Corp.; Henry Co.; T. Chatani & Co., Ltd.; Osaka General Trading Company, Ltd.; Wing Tat Industrial Co.; Medi Mart; Maruyama Noboru Seisakusho K.K.; Wah Hing Plastic and Metal Ware Factory, Ltd.; Oriental Plastic Factory; Oriental Plastic Industrial Corp., Western Univeral (H.K.), Ltd.; and Montgomery Ward & Co., Inc. are dismissed as respondents in the investigation [Motion Docket 30-4 and 30-6].
2. That the Joint Motion for Summary Determination of Complainant and Commission investigative staff is granted [Motion Docket 30-5];
3. That display devices for photographs and the like, made in accordance with one or more of the claims of U.S. Letters Patent No. 3,774,332 are excluded from entry into the United States for the term of said patent except (1) as provided in paragraph 4 of this Order, infra, or (2) as such importation is licensed by the holder of U.S. Letters Patent No. 3,774,332; and
4. That the articles ordered to be excluded from entry are entitled to entry into the United States under bond in the amount of 100 percent of the value of the articles, f.o.b. foreign port, from the day after the day this Order is received by the President pursuant to section 337(g) of the Tariff Act of 1930, as amended, until such time as the President notifies the Commission that he approves this action, or the President disapproves this action, but, in any event, not later than sixty (60) days after such day of receipt.
5. That this Order will be published in the Federal Register and served upon each party of record in this investigation and upon the U.S. Department of Health, Education & Welfare, the U.S. Department of Justice, the Federal Trade Commission, and the Secretary of the Treasury.

Opinion of Chairman Daniel Minchew and  
Commissioners George M. Moore and Bill Alberger

Our determination and order, supra, are primarily predicated upon the following bases:

1. The Commission has jurisdiction over the subject matter of the investigation and over the respondents named by the Commission in its notice of investigation [19 U.S.C. 1337].
2. Patent infringement has been held to be an "unfair method of competition and unfair act" for the purposes of section 337 of the Tariff Act of 1930, as amended [See, e.g., *In re Northern Pigment Co., et al.*, 71 F.2d 447 (C.C.P.A. 1934) and 71 F.2d 447, *In re Von Clemm*, 229 F.2d 441 (C.C.P.A. 1955)].
3. Complainant is the owner of U.S. Letters Patent 3,774,332 by virtue of an assignment from the inventor, Marshall C. Schneider, filed with the U.S. Patent Office, March 9, 1971 [Recommended Determination, Finding B, p. 6]. Complainant is therefore a proper party to bring a Section 337 proceeding with infringement of said patent as the basis for an "unfair method of competition or unfair act."
4. U.S. Letters Patent No. 3,774,332 is a valid and enforceable patent for the purposes of Section 337 [Recommended Determination, Findings 19-21, pp. 8-9]. Per 35 U.S.C. 282, said patent is presumptively valid; respondents did not carry their burden of proving invalidity or unenforceability of said patent [Recommended Determination, pp. 8-9, 15; Supp. to Recommended Determination].
5. The accused infringing products which have been imported and sold in the United States directly and literally infringe the terms of claims 1, 2, and 3 of U.S. Letters Patent No. 3,774,332 [Recommended Determination, Finding G, p. 8].
6. Complainant and its subcontractors constitute a domestic industry for the purpose of section 337 by producing in the United States display devices covered by claims 1, 2 and 3 of U.S. Letters Patent No. 3,774,332 [Recommended Determination, pp. 8, 15]. Said domestic industry is efficiently and economically operated [Recommended Determination, pp. 13-14].
7. The domestic industry has suffered substantial economic injury from the loss of sales and resultant loss of revenue by reason of the importation and sale of articles which infringe the claims of U.S. Letters Patent No. 3,774,332 [Recommended Determination, pp. 9-13].



8. On motion per CRPP Section 210.50(b), movant is entitled to summary determination if the pleadings and any depositions, admissions on file, and affidavits show that there is no genuine issue as to any material facts and that the moving party is entitled to a summary determination as a matter of law. Our review of the record certified to us by the Presiding Officer does not reveal a genuine issue as to a material fact. Furthermore, the facts as found by the Presiding Officer and adopted in our opinion lead to our conclusion that the moving party is entitled to a summary determination as a matter of law.
9. Our consideration of the effect of exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers as required by Section 337(d), does not lead us to the conclusion that an exclusion order should not be issued.

In order to further explain the Commission's determination and order, we shall briefly comment upon three areas of concern in the discussion below:

- I. The more pertinent patent-related issues raised during the course of the investigation respecting:
  - A. The "British Patent" [U.K. Patent No. 1,270,715];
  - B. The "Nyman Patent" [U.S. Letters Patent No. 3,703,405]; and
  - C. Various allegations respecting the validity of the "Schneider Patent" [U.S. Letters Patent No. 3,774,332].
- II. The Commission's consideration of the "public interest" factors of section 337(d) in determining to enter an exclusion order; and
- III. Rationale for a bond of 100 percent of the value of the articles concerned, f.o.b. foreign port.

#### I. Patent Issues

The display device which is the subject of the investigation was invented by Marshall C. Schneider and patent rights assigned by him to Complainant. Upon application Serial No. 127,279, filed in the U.S. Patent Office on March 23, 1971, U.S. Letters Patent 3,774,332 was issued to Complainant on November 27, 1973.

Title 35, United States Code, section 102, provides as follows:

A person shall be entitled to a patent unless:

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the *invention* thereof by the applicant for patent, or

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the *application* for patent in the United States, . . . (Emphasis added)

Accordingly, in order to create successfully a genuine issue of material fact as to the validity of Complainant's patent for the purposes of CRPP section 210.50, a respondent or other party could, for instance, provide evidence of knowledge or use of the invention prior to the invention thereof by Marshall C. Schneider or evidence of the patent or description in a printed publication in this or a foreign country, or public use or sale in this country of the invention *more than one year prior to the date of the application for the patent in the United States by Marshall C. Schneider*. Such genuine issues of material fact do not appear in the record. The following three sections discuss those patent issues which were raised but which were not sufficient to constitute genuine issues of material fact in the context of CRPP Section 210.50, 19 U.S.C. 1337, and 35 U.S.C. §§102 and 282.

A. The "British Patent" [U.K. Patent No. 1,270,715].

Application for U.S. Letters Patent 3,774,332 ("Complainants' patent") was filed March 23, 1971. The first patenting and publication of the British patent was not until April 12, 1972 [Supp. Submission to Joint Motion of Complainant and Investigative Staff, Memo in support, p. 3], too late to invalidate Complainant's patent under 35 U.S.C. 102. Furthermore, even if the British

patent had been filed sufficiently early for the purposes of 35 U.S.C. 102, it would not have affected the right of Complainant to a patent, inasmuch as the British patent lacked identity of invention (Supp. Submission to Joint Motion of Complainant and Investigative Staff, Memorandum in Support, p. 3). Namely, the British invention is distinguishable by the absence of an inner box to support items for viewing from all six sides (Affidavit of Marshall C. Schneider, par. 4).

B. The "Nyman Patent" [U.S. Letters Patent No. 3,703,405].

Questions were raised quite early as to the possibility that the Nyman patent anticipated the Complainant's patent. However, such suggestions carry little convincing force when one considers that just over two months before Complainant's patent was filed and searched, the same Patent Office examiner who considered Complainant's patent also reviewed the Nyman patent (filed January 18, 1971). In fact, field search for Complainant's patent included U.S. Class 40, subclass 152 and 152.1, with the Nyman patent classified in subclass 152 and the '332 patent in 152.1 (Joint Motion for Summary Determination of Complainant and Investigative Staff, Memorandum in Support, p. 6). It is highly unlikely that identical prior art would have been overlooked.

C. Other Patent Issues.

During the course of the investigation certain respondents made assertions that several distinct types of display devices anticipated the claims of Complainant's patent. First, it was advanced that the devices imported during 1968-1969 anticipated Complainant's patent (Commission Oral Argument, p. 42, lines 5-8). Investigation subsequently revealed, however, that these display devices were identical to the Nyman patent. Since the

Nyman patent appears not to have been anticipatory, neither were the display devices referred to by these respondents (Commission Oral Argument, p. 42, lines 16-21).

Second, it was indicated that display devices identical to those covered by the claims of Complainant's patent (Commission Oral Argument, p. 33, line 8) were shipped from Hong Kong to the United States in December of 1970. While this statement is literally true, those shipments were of only sample devices. (Commission Oral Argument p. 32, line 12). The first commercial shipment of such display devices was not made until April 12, 1972 (Commission Oral Argument, p. 32, lines 13-14), a date which is too late to invalidate Complainant's patent under U.S. law. In addition, it should be noted that suggestions of derivation are not persuasive in light of the Affidavit of inventor Marshall C. Schneider that he had not visited Hong Kong before 1976, five full years after his application for a patent.

Finally, a respondent alleged that it had exported display cubes to the United States in March of 1971 (Joint Motion for Summary Determination of Complaint and Investigative Staff, Memorandum in Support, p. 7). Though the record contains a dearth of information about the structural features of these display devices, even assuming the identity thereof with those covered by Complainant's patent, such exportation occurred at too late a date to affect the validity of Complainant's patent.

## II. Public interest factors

Title 19 U.S.C. 1337(d) provides:

If the Commission determines. . .that there is a violation . . .it shall direct that the articles concerned. . .be excluded. . .unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and the United States consumers, it finds that such articles should not be excluded from entry.

Oral argument advanced before the Commission indicates that the entry of an exclusion order will not adversely affect the public interest. The two most significant interests to be balanced in this case are the protection of a valid U.S. patent as opposed to a possible increase in consumer pricing.

Testimony before the Commission reveals that Complainant possesses the productive capacity to meet domestic market demand (Commission Oral Argument p. 53, lines 16-17). Additionally, complainant is the holder of a valid U.S. patent and is entitled to the remunerative benefits that normally accrue therefrom.

While, admittedly, consumers *may* pay a higher retail price for the product produced by Complainant in light of a landed price differential of two-to-one (Commission Oral Argument p. 50, lines 4-7), it appears that the profit markup is a normal rather than a premium one (Commission Oral Argument p. 56-57). Moreover, consumer constraints prevent premium pricing. Plastic display devices are not essentials of life. If one is to abuse the patent monopoly granted one, a reduction in sales is sure to follow.

For these reasons, the Commission feels an exclusion order strikes the most appropriate balance between patent protection and consumer interests.

### III. Bonding

In light of the fact that a two-to-one price differential exists between the landed price of the imported product and the sale price of the domestic product, the most efficacious bond would be a bond of 100 percent of the value of the articles, F.O.B. foreign port.

Opinion of Vice Chairman Joseph O. Parker and  
Commissioners Catherine Bedell and Italo H. Ablondi

The record in this proceeding establishes that after the institution of this proceeding, service of the complaint, and the receipt of answers from four respondents, the presiding officer issued a notice of a prehearing conference. Complainants and the Commission investigative staff appeared at this conference but no respondents entered an appearance. Thereafter, complainant and the Commission investigative staff filed a Joint Motion for Summary Determination, supported by a number of affidavits. The Joint Motion for Summary Determination and the affidavits were served upon all parties to the proceedings. No responses or opposing affidavits were filed by any respondents. On August 31, 1977, the presiding officer issued a recommended determination in which he determined that there is a violation of section 337 of the Tariff Act of 1930, as amended, in the unauthorized importation into the United States, and in the sale, of certain display devices for photographs and the like, by reason of the fact that such devices infringe claims 1, 2, and 3 of United States Letters Patent No. 3,774,332, with the effect or tendency to destroy or substantially injure an industry, efficiently and economically operated in the United States, and recommended that the Commission grant the Motion for Summary Determination. All named respondents were served with copies of the recommended determination of the presiding officer. No exceptions or alternative findings of fact and conclusions of law to the presiding officer's recommended determination were filed by any respondent. No respondent took any other action contesting the claim of the complainant.

On October 21, 1977, the Commission held a hearing for the purpose of oral argument on the recommended determination, public interest issues, and appropriate relief in the event the Commission determined that there is a violation of section 337. Notice of the above hearing was issued on October 5, 1977, and served on all parties to the investigation including all respondents; no respondent appeared or filed any written submission. Both complainant and the Commission investigative staff entered an appearance at the hearing and supported the recommended determination of the presiding officer and urged that an exclusion order be issued.

The affidavits in support of the Joint Motion for Summary Determination contain evidence which shows the importation of display devices for photographs which infringe complainant's U.S. patent. Such patent is entitled to the statutory presumption of validity. The respondents did not challenge the validity of the patent with any evidentiary showing. The affidavits also contain evidence showing that the effect or tendency of the infringing imports is to destroy or substantially injure an industry efficiently and economically operated in the United States. On the basis of the record in this proceeding, we determine that there is a violation of section 337 of the Tariff Act of 1930, as amended.

Public interest factors

Section 337(d) of the Tariff Act of 1930, as amended, requires that prior to the entry of an exclusion order, consideration be given to the

effect of such an order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and U.S. consumers.

The Commission, after public notice, provided opportunity for oral hearing on these questions. Complainant appeared through its attorney, and the Commission's investigative attorney appeared on behalf of the Commission. Both counsel presented oral argument in support of the entry of an exclusion order. There was no appearance by any other governmental agency or any other person in opposition to the entry of an exclusion order. From the record in this proceeding, we have determined that there is no justifiable reason for not entering an exclusion order to remedy the violation found as a result of this proceeding. We therefore determine that the entry of an exclusion order is necessary to prevent the unfair acts of importation of the subject articles in violation of section 337 of the Tariff Act of 1930, as amended, and grant the Joint Motion for Summary Determination.

#### Bonding

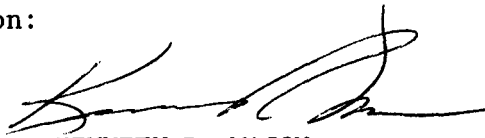
In view of the price difference between the imported infringing article and the domestic products, we determine that a bond in the amount of 100 per cent of the value of the imported article is warranted.



## ADDENDUM

It should be noted that simultaneously with the issuance of this determination and order, the United States International Trade Commission has transmitted to the Secretary of the Treasury and the Commissioner of Customs a letter containing (1) a description of claims 1, 2 and 3 of U.S. Letters Patent No. 3,774,332 as found in the Presiding Officer's Recommended Determination of August 31, 1977, Finding of Fact A, at page 5, and (2) a copy of the aforementioned patent, and (3) sample display devices constructed in accordance with the claims of said patent. The Commission has made such transmittal (1) for the guidance of Customs officer; (2) for the purpose of facilitating enforcement of the Commission's order, and (3) for the purpose of fulfilling the notice requirements of section 337(d), of the Tariff Act of 1930, as amended. Copies of the letter of transmittal to the Secretary of the Treasury and Commissioner of Customs and copies of U.S. Letters Patent No. 3,774,332 are available for public inspection in the Office of the Secretary, United States International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436.

By order of the Commission:



KENNETH R. MASON  
Secretary

Issued: January 12, 1978



UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of: )  
CERTAIN DISPLAY DEVICES FOR ) Investigation No. 337-TA-30  
PHOTOGRAPHS AND THE LIKE )  
----- )

Notice of Investigation

Notice is hereby given that a complaint was filed with the United States International Trade Commission on January 14, 1977, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of Charles D. Burnes Company, 28 Damrell Street, Boston, Massachusetts 02127, alleging that unfair methods of competition and unfair acts exist in the importation of hexahedron-shaped devices for display of photographs and the like into the United States, or in their sale, by reason of the alleged coverage of such display devices by all claims of U.S. Letters Patent No. 3,774,332. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Complainant requests that the imports in question be permanently excluded from entry into the United States.

Having considered the complaint, the United States International Trade Commission, on February 10, 1977, ORDERED:

(1) That, pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), an investigation be instituted to determine, under subsection (d), whether, on the basis of the allegations set forth in the complaint, there is a violation of subsection (a) of this section in the unauthorized importation of hexahedron-shaped devices, and components thereof, into the United States, or in their unauthorized sale, by reason of such display devices allegedly being covered by the claims, particularly claims 1-3, of U.S. Letters Patent No. 3,774,332, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

(2) That, for the purpose of the investigation so instituted, the following persons, alleged to be involved in the unauthorized importation of such articles into the United States, or in their sale, are hereby named as respondents upon which the complaint and this notice are to be served.

Foreign Manufacturers

Hip Kwan On Plastic Machine Factory  
Hong Kong

Oriental Plastic Industrial Corp.  
Hong Kong

Wing Tat Industrial Co.  
Hong Kong

Poking Industrial Co.  
Hong Kong

Oriental Plastic Factory  
Hong Kong

Western Universal (H.K.) Ltd.  
Hong Kong

Shing Tai Plastic Factory  
Kowloon, Hong Kong

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

[ 337-TA-30 ]

CERTAIN DISPLAY DEVICES FOR PHOTOGRAPHS AND THE LIKE

Notice and Order Concerning Procedure for  
Commission Action

Notice is hereby given that--

On August 31, 1977, the Presiding Officer in investigation No. 337-TA-30 [Certain Display Devices for Photographs and the Like], an investigation being conducted by the United States International Trade Commission under the authority of section 337 of the Tariff Act of 1930, issued his recommended determination that:

1. The Commission determine that there is a violation of section 337 in the importation or sale in the United States of display devices for photographs and the like meeting the claims of U.S. Letters Patent 3,774,332; and, further
2. The Commission grant complainant's and the investigative staff's motion for summary determination [Motion Docket No. 30-5] under Commission rule 210.50 on all issues; and, further
3. The Commission dismiss certain enumerated respondents in the investigation for the reason that they are not presently importing infringing products, or were not effectively served.

The Presiding Officer has certified the evidentiary record to the Commission for its consideration. Copies of the Presiding Officer's recommended determination may be obtained by interested persons by contacting the Office of the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, telephone (202) 523-0161.

The United States International Trade Commission will hold a hearing beginning at 10 a.m., e.d.t., October 31, 1977, in the Commission's Hearing Room, Room 331, 701 E Street, NW., Washington, D.C., for the purpose of (1) hearing oral argument with respect to the recommended determination of the presiding officer concerning whether, in this matter, there is a violation of section 337 of the Tariff Act of 1930; (2) hearing oral argument concerning appropriate relief in the event that the Commission determines that there is a violation of section 337, and determines that there should be relief; and (3) receiving information and hearing oral argument, as provided for in section 210.14(a) of the Commission's Rules of Practice and Procedure [19 C.F.R., 210.14(a)], concerning relief and the public interest factors set forth in sections 337(d) and (f) of the Tariff Act of 1930 which the Commission is to consider in the event it determines there is a violation of section 337 and determines that there should be relief.

For the purpose of this hearing, parties wishing to make oral argument with respect to the recommended determination shall be limited to no more than 30 minutes time per party, 10 minutes of which may be reserved by complainant for rebuttal; and parties wishing to make oral argument with respect to relief shall be limited to no more than 15 minutes time per party.

The Commission will receive information and hear oral argument concerning relief and the public interest factors from all parties and interested persons and agencies. Each participant will be limited to no more than 30 minutes time in making his or her presentation, and each participant will be permitted an additional 5 minutes time for closing arguments after all of the 30 minute presentations have been concluded.

Wah Hing Plastic & Metal Ware Factory  
Kowloon, Hong Kong

Osaka General Trading Co., Ltd.  
P.O. Box SEMBA 43  
Osaka, Japan

Wai Cheong Industrial Co., Ltd.  
Hong Kong

Miye Sangyo K.K.  
Osaka, Japan

Maruyama Noboru  
Sersakusho, Japan

Angel Plastics  
Hong Kong

Foreign Exporters

J & M Enterprises, Ltd.  
Hong Kong

Yipco Trading Co.  
Hong Kong

Prosperous Enterprises, Ltd.  
Hong Kong

Amarex International, Ltd.  
Hong Kong

Deltex Ltd.  
Hong Kong

Minami Sangyo Ltd.  
Kobe, Japan

T. Chatani & Co., Ltd.  
Sersakusho, Japan

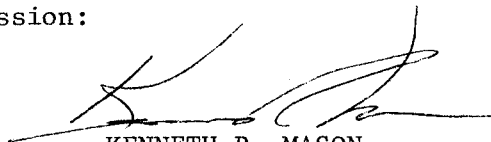
Sanyei New York Corporation  
1271 Avenue of Americas  
New York, New York 10020

Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a response to each of the allegations which are the subject of this investigation as set forth in this notice within the time provided, taking into consideration the applicable detail of the allegations in the complaint, may be deemed to constitute a waiver of its rights to appear and contest each allegation and shall authorize the Commission, without further notice to the respondent, to find the facts to be as alleged and to enter an order containing such findings.

The complaint, with the exception of confidential information referred to therein, is available for inspection by interested persons at the Office of the Secretary, United States International Trade Commission Building, Washington, D.C., and in the New York City Office of the Commission, 6 World Trade Center.

By order of the Commission:




KENNETH R. MASON  
Secretary



Requests for appearances at the hearing should be filed, in writing, with the Secretary of the Commission at his office in Washington no later than the close of business October 26, 1977. Requests should indicate the part of the hearing (i.e., with respect to the recommended determination; relief; or relief and the public interest) in which the requesting person desires to participate.

Notice of the Commission's institution of the investigation was published in the Federal Register of February 18, 1977 [42 F.R. 10073-10074].

By order of the Commission:



KENNETH R. MASON  
Secretary

Issued: October 5, 1977



