

certain prior art and her construction of additional terms in these claims, should the Commission adopt complainant's claim construction over the ALJ's. Complainant did not petition for review of the ALJ's conclusions as to claim 37. Respondent filed a contingent petition for review identifying as issues for consideration should the Commission decide to review the ID certain aspects of the ALJ's construction of claims 13, 15, 16, 17, 23, and 37, application of the doctrine of equivalents, and conclusions as to invalidity and inequitable conduct. The Commission investigative attorney (IA) petitioned for review of the ALJ's alternative basis for finding no domestic industry as erroneous as a matter of law. On May 20, 1999, respondent, complainant, and the IA filed responses to the petitions for review.

Having reviewed the record in this investigation, including the parties' written submissions, the Commission determined not to review the ID, except that the Commission determined to take no position as to the ALJ's findings as to the following issues: (1) The invention date of the 525 patent; (2) the prior art status of the Oak/Brooktree combination under 35 U.S.C. 102(a); (3) the prior art status of the Bindlish 864 patent under 35 U.S.C. 102(e); (4) the invalidity of claim 37 of the 525 patent as anticipated by the Bindlish 864 prior art patent under 35 U.S.C. 102(e); and (5) the non-enablement of claims 13, 15, 16, 17, and 23. With respect to the ID's finding that complainant failed to satisfy the technical prong of the domestic industry requirement in part because claim 13 is invalid for indefiniteness, the Commission clarifies that it understands the ID to mean that complainant cannot meet the burden of demonstrating the practice of an indefinite claim. The Commission thereby adopted the ID, with the exceptions noted, as its final determination.

The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42-210.43 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.42-.43).

Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be 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, 500 E Street, SW, Washington, DC 20436, telephone 202-205-2000.

Issued: July 19, 1999.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

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## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to the Clean Water Act and Oil Pollution Act of 1990

Notice is hereby given that a consent decree in *United States v. Carlos R. Leffler, Inc.*, Civil Action No. 99-3027 (E.D. Pa) was lodged with the court on June 15, 1999.

The proposed decree resolves claims of the United States against Carlos R. Leffler, Inc. under Section 311 of the Clean Water Act, as amended by the Oil Pollution Act of 1990, 33 U.S.C. 1321, for failure to timely prepare and submit EPA plans for the prevention, control and cleanup of potential oil spills for twelve of its oil storage facilities in Pennsylvania. The decree requires Carlos R. Leffler to pay a penalty of \$435,000.00 to the Oil Spill Liability Trust Fund and to spend a minimum of \$110,000.00 for the donation and enhancement of approximately fifteen acres of wetlands and uplands in Walker Township, Juniata County, Pennsylvania.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Carlos R. Leffler, Inc.*, Civil Action No. 99-3027, DOJ Ref. #90-5-1-1-4452.

The proposed consent decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Consent Decree Library, 1120 G Street, NW, 4th floor, Washington, DC 20005. (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$7.50 (25 cent per page reproduction cost), payable to the Consent Decree Library.

**Walker Smith,**

*Environmental Enforcement Section,  
Environment and Natural Resources Division.*

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## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. FMC Corporation*, Civil Action No. 5:99-CV-0054, was lodged on July 9, 1999 with the United States District Court for the Western District of Virginia. The United States filed this action pursuant to Sections 106 & 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9606 & 9607 at the Avtex Fibers Superfund Site in Front Royal, Virginia.

Before it closed in 1989, the Avtex plant in Front Royal was the largest rayon manufacturing facility in the United States and is now the largest Superfund site in the Commonwealth of Virginia. The plant is a 440 acre facility that is located directly adjacent to the Shenandoah River in the town of Front Royal. The site is contaminated with a variety of hazardous substances including PCBs, arsenic, lead, cadmium, chromium, zinc and carbon disulfide as the result of rayon manufacturing operations conducted at the site over the course of 50 years. The consent decree requires FMC to pay \$9.1 million for past and interim responses costs incurred by EPA at the Avtex Site. In addition, FMC has agreed to perform future response work at the site, with a value of \$62.7 million (in 1998 dollars) and pay for EPA's oversight of the clean up. Finally, FMC has agreed to oversee and participate in the removal of abandoned buildings and structures at the Avtex plant. This additional future work is not covered under CERCLA but will enable the property to be redeveloped or reused.

The Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to: *United States v. FMC Corporation*, DOJ Ref. #90-11-3-372A.

The proposed consent decree may be examined at the Office of the United States Attorney, Western District of Virginia, Office of the U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, Pa., and at the Consent Decree Library, 1120 G Street, NW, 3rd