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BROOKLYN OFFICE

JOHNSON, J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

POLLAK, M.J.

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SUNNY INTERNATIONAL DOORS & WINDOWS CORP., f/k/a GUARDER SECURITY PRODUCT CORP., d/b/a GUARDER SECURITY,	: Civil Action
	: Case No.:
	:
Plaintiff,	:
	: <u>VERIFIED COMPLAINT</u>
-against-	: Demand for Jury Trial
	:
MING-KUN LEE, a/k/a RICHARD LEE, a/k/a RICHARD M. LEE, and DYNASTY STAINLESS STEEL & METAL INDUSTRIES, INC.,	:
	:
Defendants.	:
-----X	

Plaintiff, SUNNY INTERNATIONAL DOORS & WINDOWS CORP., f/k/a GUARDER SECURITY PRODUCT CORP., d/b/a GUARDER SECURITY (collectively "plaintiff"), by and through their attorneys, REPPERT KELLY, LLC, complaining against defendants MING-KUN LEE, a/k/a RICHARD M. LEE, a/k/a RICHARD LEE, and DYNASTY STAINLESS STEEL & METAL INDUSTRIES, INC., hereinafter alleges at all times, and, upon information and belief, as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over the within civil action pursuant to 28 U.S.C. § 1338 where the within civil action arises under 35 U.S.C. §1 *et seq.* relating to the United States letters patent and the plaintiff herein seeks declaratory judgment respecting the patent *sub judice* under the Declaratory Judgment Act of 1964 (28 U.S.C. §2201 *et seq.*).

2. Venue is proper in this district pursuant to 28 U.S.C. § 1400 (a) and (b).

PARTIES

3. Plaintiff SUNNY INTERNATIONAL DOORS & WINDOWS CORP. ("Sunny International") is a corporation duly incorporated in the State of New York in November 2000, doing business at the address of 40-55 College Point Boulevard, Flushing, New York 11355.

4. GUARDER SECURITY PRODUCT CORP. ("Guarder Security") was a corporation duly incorporated in the State of New York in July 1992, formerly doing business at the address of 34-01 College Point Boulevard, Flushing, New York 11354.

5. Sunny International became the successor in interest of Guarder Security in or about November 2000 when Guarder Security ceased to operate business upon a corporate restructure.

6. Upon information and belief, defendant MING-KUN LEE, a/k/a RICHARD LEE, a/k/a RICHARD M. LEE ("Lee") is an individual residing in the County of Queens, City and State of New York.

7. Upon information and belief, defendant DYNASTY STAINLESS STEEL & METAL INDUSTRIES, INC. ("Dynasty Stainless") is a corporation incorporated in the State of New York on or about May 28, 1997, doing business at the address of 36-27 College Point Boulevard, Flushing, New York 11354.

8. Upon information and believe, Lee is the sole or major shareholder, the Chairman, Chief Executive Officer, Chief Financial Officer, and duly authorized agent of Dynasty Stainless.

NATURE OF ACTION

9. Plaintiff commences this civil action pursuant to 28 U.S.C. § 2201 and §1338 seeking a declaratory judgment that the United States Letters Patent No. 5,813,187 filed on June 27, 1997 and issued on September 29, 1998 to defendant Lee, together with various design patents associated with the same Letters Patent, is invalid and not infringed upon by the plaintiff, on the grounds that:

- a) Lee's claimed invention was known and used by others in this county, and patented and described in a printed publication in this country and in Taiwan before Lee applied for patent of his claimed invention, and therefore not patentable pursuant to 35 U.S.C. § 102(a);
- b) Lee's claimed invention was patented and described in a printed publication in Taiwan, and in public use in this country, more than one year prior to the date of the application for patent in the United States, and therefore not patentable pursuant to 35 U.S.C. § 102(b);

- c) in the event the Court adjudges that Lee's claimed invention is not identically disclosed or described as set forth in paragraphs (a) and (b) of 35 U.S.C. § 102, the differences between Lee's invention and the prior patented invention in Taiwan are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains, and therefore the claimed invention was not patentable pursuant to 35 U.S.C. § 103(a);
- d) Lee had actual knowledge and was fully aware that the invention he sought to be patented in the United States was the subject matter of valid patents in Taiwan and that Lee did not invent or discover the patented invention pursuant to 35 U.S.C. § 101 and did not have any basis to believe that he was the original and first inventor of the process or improvement thereof pursuant to 35 U.S.C. § 115;
- e) Lee's various design patents are not patentable pursuant to 35 U.S.C. §171 and §102 because Lee did not invent the designs and the designs were not distinguished from the already existing designs; and
- f) Lee procured his patent and design patents through fraudulent misrepresentation and/or fraudulent omission as to his knowledge about the existing invention in Taiwan which Lee sought to be patented in the United States.

STATEMENT OF FACTS

10. Plaintiff has been in the business of marketing and installing metal security anti-storm doors and windows in the United States, primarily in the States of New York,

New Jersey, Connecticut, Massachusetts and Pennsylvania since July 1992 when Guarder Security was first incorporated.

11. Plaintiff processes its products by installing components of various designs and specifications ("the components") in the doors and windows frames ("the frames") imported from various distributors in Taiwan.

12. Plaintiff's earlier supplier of the frames and components is NANSHAN GRINDING AND HARDWARE COMPANY ("NGH"), located in Taipei City, Taiwan.

13. At all relevant times, Nanshan was and still is a distributor of various brand name frames and components, including the brand of "*Jeou Shinn*" manufactured by JEOU SHINN METAL CO., LTD. ("JSM") and "*Swan*" manufactured by YUAN TUNG COMPANY ("YTC") and HONG TE COMPANY ("HTC").

14. The components of both brands, *Jeou Shinn* and *Swan*, were all made with the method known and described as the anti-burglar security horizontal tubular barriers intersecting with the longitudinal tubular barriers of the door and window frames where the longitudinal tubular barriers were inserted through the plug holes of the horizontal tubular barriers ("the method").

15. JSM claimed ownership of the patent pertaining to the method and its improvements described in the preceding paragraph.

16. Both YTC and HTC also claimed ownership of the patent pertaining to the improvement of the method described in the preceding paragraphs.

17. In or about April 1995, plaintiff began to import from NGH such components which were made with the method and its improvements described in the preceding paragraph.

18. A true copy of the product catalog of JSM published in 1994 ("Jeou Shinn Catalog") is annexed to and made a part of this complaint as Exhibit A.

19. Copies of YTC and HTC products published in the 1996 annual edition of Doors and Windows Hardware ("Swan Catalog") are annexed to and make a part of this complaint as Exhibit B.

20. The method as described above is fully illustrated in the Jeou Shinn Catalog and the Swan Catalog.

21. To illustrate further, the doors shown in the inside cover of the Jeou Shinn Catalog are the final products for the market which plaintiff similarly installs and sells in the United States.

22. To illustrate further, the drawings shown on pages 3 through 10 of the Jeou Shinn Catalog are door and window frames with components of various designs and specifications.

23. The same method described above and shown in page 2 of the Jeou Shinn Catalog also demonstrates three tubular shapes: square, rectangular and flat oval.

24. The Swan Catalog also shows the similar door and window frames with components of various designs and specifications.

25. The Swan Catalog also shows that the same method described above demonstrates various tubular shapes: square, rectangular and diamond.

26. From 1997, plaintiff began to import the components for the door and window frames from JINTAIMING COMPANY LTD. ("JTM") which was and still is the manufacture of brand name "*Youchang*" door and window frames and components.

27. JTM also claims ownership of the patent pertaining to the improvement of the method described in the preceding paragraphs.

28. The manufacturing method for the punch whole connection of the horizontal tubular barriers with the longitudinal tubular barriers was made widely known to the industries and business involved, particularly the method and its subsequent improvements were published in all of the major industrial product catalogs.

29. For example, the method was introduced and described in the industry journal, Collection of Most Recent Doors and Windows, published by KUO TING BOOKS in 1992.

30. For another example, the method and various designs associated therewith were made widely known by many manufacturers, including JSM, YTC, HTC, and JTM as well as KAIHSIN CONSTRUCTION MATERIALS CO. LTD. ("KCM") which was and is still the manufacturer of the frames and components of the brand name of "*Kaihsin*".

31. A copy of the *Kaihsin* product catalog for the year of 1995 ("*Kaihsin* Catalog") is annexed to and made a part of the complaint as Exhibit C.

32. The *Kaihsin* Catalog illustrates the manufacturing method of the punch whole connection of the horizontal tubular barriers with the longitudinal tubular barriers. See pages 1 through 18 of the *Kaihsin* catalog.

33. In addition to the tubular shapes made known in the 1994 Jeou Shinn Catalog and 1996 YTC and HTC Catalog, i.e., square, rectangular, diamond and flat oval, the *Kaihsin* Catalog further shows the tubular shapes of diamond (pp. 6 -9), triangle (pp. 10-11), round knob with flat rectangular extensions (pp. 12-13), various unique and original designs, and even tubular barriers made of bronze (p. 14).

34. In actuality, the manufacturing method and its subsequent improvements for the punch whole connection of the horizontal tubular barriers with the longitudinal tubular barriers used in making the frames and components have been the subject matter of about 30 patents of the original patent and its subsequent improvements duly registered in the Patent and Trademark Office of Taiwan. Upon information and belief, the original and first inventor of the method is Wu Ming Che whose invention of the method was patented in Taiwan in or about 1985.

35. Plaintiff at this time is able to retrieve six of the numerous patents from the Patent and Trademark Office of Taiwan, the information of which is described in detail in Schedule A as follows:

Schedule A

Patent Date	Application Date	Patent Number	Patentee	Comment
03/21/90	07/27/89	131418	Lai Tsen-Long, Lai Tsen-Yee	improvement
12/01/90	07/09/90	147168	Lai Tsen-Long, Lai Tsen-Yee	improvement
07/01/91	09/05/90	162727	Wu Ming Che	improvement
12/11/92	08/29/92	196477	Wang Hsia Lien	improvement
09/11/96	11/20/95	286003	Lai Tsen-Long, Lai Tsen-Yee	improvement
11/11/96	01/17/96	291067	Lai Tsen-Long, Lai Tsen-Yee	improvement

36. Upon information, patentee Wu Ming Che was and still is the controlling shareholder of the JSM, the manufacturer of the *Jeou Shinn* brand frame components.

37. Upon information and belief, patentees Lai Tsen-Long, Lai Tsen-Yee were and still are the controlling shareholder of YTC and HTC, the manufacturers of the *Swan* brand frame components.

38. Upon information and belief, patentee Wang Hsia Lien was and still is the controlling shareholder of JTM, the manufacture of the *Youchang* brand frame components.

39. Upon information and belief, defendant Lee incorporated Dynasty Stainless in or about July 1997 in the State of New York, conducting the same line of business of installing and selling security anti-burglary doors and windows as the plaintiff.

40. Upon information and believe, Lee has been the sole or major shareholder, the Chairman, Chief Executive Officer, Chief Financial Officer, and duly authorized agent of Dynasty Stainless.

41. From the time Lee formed Dynasty Stainless, Lee regularly and frequently came to the plaintiff and demanded that plaintiff control its sales prices within the range of the sales quotes prescribed by Lee and Dynasty Stainless.

42. In a letter dated May 31, 1999 transmitted via facsimile to the plaintiff, Dynasty Stainless included a list of prices for various products and material and requested that plaintiff direct its sales on the price list.

43. In the same May 31, 1999 letter, Dynasty Stainless threatened that if plaintiff refused to sell its products by following the Dynasty Stainless price list, then Dynasty Stainless would influence the suppliers of the metal and stainless material in Taiwan in order to disrupt plaintiff's business.

44. Lee expressly threatened to disrupt plaintiff's business.

45. In early September 2001, plaintiff received a letter from the law firm of ROSENBERG, KLEIN & LEE (the "Rosenberg Firm") which claimed to be the "U.S. Patent counsel" for Lee and alleged that plaintiff has infringed on the patent known by the U.S. Letter Patent Number 5,813,187 owned by Lee (the "Lee patent").

46. Before September 2001 when plaintiff received the Rosenberg Firm letter, plaintiff did not know and did not reasonably anticipate that there had been any patent

in the U.S. pertaining to the method in question as the invention has been patented in Taiwan and plaintiff has been importing components produced by the invention for more than seven years prior to September 2001.

47. Plaintiff immediately retained counsel to seek protection from Lee's threat of infringement lawsuit against the plaintiff.

48. The Lee Patent shows that the same Rosenberg Firm petitioned for the registration of the patent with the United States Patent and Trademark Office ("U.S. P.T.O." on June 27, 1997 and the patent was registered on September 29, 1998.

49. The Lee Patent also shows that Lee filed the patent petition with the U.S. P.T.O. as a citizen and resident of Taiwan, even though Lee formed his corporation, Dynasty Stainless in May 1997 and was actually residing in the U.S.

50. The Lee Patent also shows that Lee filed the patent petition with the U.S. P.T.O. as the original inventor of the process, rather than in any capacity as a representative or assignee of the inventors in Taiwan.

51. The Lee Patent contains five (5) claims, all of which are the subject matter of the 30 Taiwan patents including those described in Schedule A of the Complaint.

52. A true copy of the Lee Patent is annexed to and made a part of the Complaint as Exhibit D.

53. A search of Lee's patents further reveals that Lee is also the patentee of ten design patents all associated with the invention.

54. Information about Lee's ten design patents as related to the invention is described in detail in Schedule B as follows (marked as Exhibit E through Exhibit N):

Schedule B

Patent Date	Application Filing Date	Patent Number	Claim	Exhibit
01/27/98	04/15/97	Des. 389,921	stainless steel door design	E
01/27/98	04/15/97	Des. 389,922	stainless steel door design	F
02/17/98	04/15/97	Des. 390,971	stainless steel door design	G
03/10/98	06/23/97	Des. 392,048	stainless steel door design	H
03/10/98	06/23/97	Des. 392,049	stainless steel door design	I
03/10/98	06/23/97	Des. 392,050	stainless steel door design	J
03/10/98	06/23/97	Des. 392,051	stainless steel door design	K
07/21/98	06/23/97	Des. 396,299	stainless steel door design	L
10/20/98	06/23/97	Des. 399,976	stainless steel door design	M
07/13/99	09/30/97	Des. 412,036	stainless steel door design	N

55. True copies of the ten Lee design patents described in Schedule B are annexed to and made a part of the complaint as Exhibit E through Exhibit N respectively.

56. However, all the ten ornamental designs of Lee were already existing at the time when Lee applied for the design patents thereof.

57. Moreover, Lee did not invent the designs himself.

FIRST CAUSE OF ACTION**Declaratory Judgment Pursuant to 35 U.S.C. § 102(a)**

58. Plaintiff repeats and realleges each and every paragraph numbered "1" through "57" of the Complaint as if fully set forth herein.

59. The invention claimed by the Lee Patent was known by others in this country before Lee applied for the patent in the United States in June 1997.

60. Therefore, the Lee Patent is invalid pursuant to 35 U.S.C. § 102(a).

SECOND CAUSE OF ACTION
Declaratory Judgment Pursuant to 35 U.S.C. § 102(a)

61. Plaintiff repeats and realleges each and every paragraph numbered "1" through "60" of the Complaint as if fully set forth herein.

62. The invention claimed by the Lee Patent was used by others in this country before Lee applied for patent in the United States in June 1997.

63. Therefore, the Lee Patent is invalid pursuant to 35 U.S.C. § 102(a).

THIRD CAUSE OF ACTION
Declaratory Judgment Pursuant to 35 U.S.C. § 102(a)

64. Plaintiff repeats and realleges each and every paragraph numbered "1" through "63" of the Complaint as if fully set forth herein.

65. The invention claimed by the Lee Patent was patented in Taiwan before Lee applied for patent in the United States in June 1997.

66. Therefore, the Lee Patent is invalid pursuant to 35 U.S.C. § 102(a).

FOURTH CAUSE OF ACTION
Declaratory Judgment Pursuant to 35 U.S.C. § 102(a)

67. Plaintiff repeats and realleges each and every paragraph numbered "1" through "66" of the Complaint as if fully set forth herein.

68. The invention claimed by the Lee Patent was described in a printed publication in Taiwan before Lee applied for patent in the United States in June 1997.

69. Therefore, the Lee Patent is invalid pursuant to 35 U.S.C. § 102(a).

FIFTH CAUSE OF ACTION
Declaratory Judgment Pursuant to 35 U.S.C. § 102(b)

70. Plaintiff repeats and realleges each and every paragraph numbered "1" through "69" of the Complaint as if fully set forth herein.

71. The invention claimed by the Lee Patent was in public use in this country more than one year prior to the date of Lee's application for patent in the United States in June 1997.

72. Therefore, the Lee Patent is invalid pursuant to 35 U.S.C. § 102(b).

SIXTH CAUSE OF ACTION
Declaratory Judgment Pursuant to 35 U.S.C. § 103(a)

73. Plaintiff repeats and realleges each and every paragraph numbered "1" through "72" of the Complaint as if fully set forth herein.

74. In the event the Court adjudges that Lee's claimed invention is not identically disclosed or described as set forth in paragraphs (a) and (b) of 35 U.S.C. § 102, the differences between Lee's claimed invention and prior patented invention in Taiwan are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains pursuant to 35 U.S.C. § 103(a).

75. Therefore, the Lee Patent is invalid pursuant to 35 U.S.C. § 103(a).

SEVENTH CAUSE OF ACTION
Declaratory Judgment Pursuant to 35 U.S.C. § 101 and § 115

76. Plaintiff repeats and realleges each and every paragraph numbered "1" through "75" of the Complaint as if fully set forth herein.

77. Lee had actual knowledge and was fully aware that the invention he sought to be patented in the United States in June 1997 was the subject matter of valid patents in Taiwan and that Lee did not invent or discover the patented invention pursuant to 35 U.S.C. § 101 and did not have any basis to believe that he was the original and first inventor of the process or improvement thereof pursuant to 35 U.S.C. § 115.

78. Therefore, the Lee Patent is invalid pursuant to 35 U.S.C. § 101 and § 115.

EIGHTH CAUSE OF ACTION
Declaratory Judgment Pursuant to 35 U.S.C. § 101 and § 115

79. Plaintiff repeats and realleges each and every paragraph numbered "1" through "78" of the Complaint as if fully set forth herein.

80. Lee either has intentionally made false oath regarding his belief to be the original and first inventor of the method or improvement thereof, or substantially failed to disclose in his application about his knowledge as to the existing valid patent in Taiwan.

81. Lee procured his patent through fraudulent misrepresentation and/or fraudulent omission in his application for patent in the United States in June 1997 as to his knowledge about the existing invention in Taiwan.

82. Therefore, the Lee Patent is invalid due to Lee's fraudulent misrepresentation and/or fraudulent omission pursuant to 35 U.S.C. § 101 and § 115.

NINTH CAUSE OF ACTION
Declaratory Judgment Pursuant to 35 U.S.C. §171 and §102

83. Plaintiff repeats and realleges each and every paragraph numbered "1" through "82" of the Complaint as if fully set forth herein.

84. Defendant Lee did not invent any new, original and ornamental designs for any article of manufacture.

85. The Lee's ten designs shown in **Schedule B** of the Complaint were not new or original and are obvious at the time when Lee applied for patents thereof.

86. The lee's ten design patents shown in **Schedule B** of the Complaint were not the result of his invention.

87. Therefore, the Lee's five design patents are invalid pursuant to 35 U.S.C. § 171 and §102.

TENTH CAUSE OF ACTION
Tortious Interference with Business Relations

88. Plaintiff repeats and realleges each and every paragraph numbered "1" through "87" of the Complaint as if fully set forth herein.

89. Dynasty Stainless and Lee have on many occasions demanded that plaintiff sell its products at such prices as fixed by the defendants and threatened to disrupt plaintiff's business if plaintiff did not do what defendants demanded.

90. Dynasty Stainless and Lee have on many occasions threatened plaintiff's customers into not buying plaintiff's products.

91. Dynasty Stainless and Lee used wrongful, unfair, or improper means in interfering with plaintiff's business relations with its customers.

92. Dynasty Stainless and Lee interfered with the plaintiff's business relations in order to harm the plaintiff and to advance its own competing interests.

93. Dynasty Stainless and Lee interfered with the plaintiff's business with malice and ill will and exceeded the bounds of legitimate competition.

94. As a direct and proximate result of defendants' wrongful conducts, plaintiff has been injured in an amount which is not presently ascertainable without uncertainty, but which is reasonably expected to exceed the sum of \$600,000.00.

ELEVENTH CAUSE OF ACTION
Trade Libel

95. Plaintiff repeats and realleges each and every paragraph numbered "1" through "94" of the Complaint as if fully set forth herein.

96. Dynasty Stainless and Lee have on many occasions knowingly published false matters derogatory to the plaintiff's business so as to prevent others from dealing with the plaintiff's business and to interfere with the plaintiff's business relations.

97. The communication made by Dynasty Stainless and Lee to others materially and substantially caused others not to deal with the plaintiff.

98. As a direct and proximate result of defendants' wrongful conducts, plaintiff has suffered special damages in the form of lost dealings which are not presently ascertainable without uncertainty, but which is reasonably expected to exceed the sum of \$600,000.00.

TWELFTH CAUSE OF ACTION
Punitive Damages

99. Plaintiff repeats and realleges each and every paragraph numbered "1" through "98" of the Complaint as if fully set forth herein.

100. Lee wrongfully procured the U.S. Letters Patent and Design Patents upon fraudulent misrepresentation and/or fraudulent omission committed against the U.S. P.T.O.

101. Lee's wrongful conducts in threatening to disrupt the plaintiff's business, causing lost dealings to the plaintiff, wrongfully interfering with plaintiff's business relations, and purposefully engaging in the wrongful trade libel against the plaintiff were actuated with evil and reprehensible motives to harm the plaintiff and to advance his own business advantages.

102. Lee's wrongful conducts evinced a high degree of his moral turpitude and wanton dishonesty.

103. The circumstance of the case warrants that Lee be punished for his wrongful conducts so as to deter Lee and others who might otherwise be so prompted from indulging in similar conduct in the future.

104. Plaintiff is, therefore, entitled to recover punitive damages in an amount to be proved at trial but not less than \$1,000,000.00.

WHEREFORE, plaintiff demands judgment as follows:

(a) on the First through Eighth Causes of Action, awarding plaintiff declaratory judgment that the United States Letters Patent No. 5,813,187 filed on June 27, 1997 and issued on September 29, 1998 to defendant Lee is invalid and not infringed upon by the plaintiff;

(b) on the First through Ninth Causes of Action, awarding plaintiff declaratory judgment that the United States Design Patents identified and described in Schedule B of the Complaint are invalid and not infringed upon by the plaintiff;

(c) on the Tenth and Eleventh Cause of Action, awarding plaintiff judgment against Dynasty Stainless and Lee, jointly and severally, in the amount to be determined at trial but not less than \$600,000.00;

(d) on the Twelfth Cause of Action, awarding plaintiff punitive damages against Lee in the amount to be determined at trial but not less than \$1,000,000.00; and

(e) awarding the plaintiff the costs of lawsuit and reasonable attorneys' fees and such other and further relief as the Court deems just and proper.

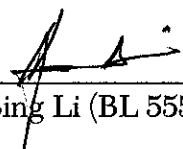
DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury as to all issues herein so triable.

Dated: New York, New York
January 18, 2002

REPERT KELLY, LLC
Attorneys for Plaintiff
275 Madison Avenue, Suite 1300
New York, NY 10016-1101
(212) 490-0988

By:



Bing Li (BL 5550)

VERIFICATION

STATE OF NEW YORK)
COUNTY OF QUEENS) ss.:

TSAI CHUAN LIN, being duly sworn, deposes and says:

I am President and Chairman of SUNNY INTERNATIONAL DOORS & WINDOWS CORP., f/k/a GUARDER SECURITY PRODUCT CORP., d/b/a GUARDER SECURITY, the plaintiff in the within action. I have read the foregoing Complaint and know the contents thereof, which was fully explained to me in the language I understand. The same is true to my knowledge except as to the matters stated to be alleged upon information and belief, and as to those matters, I believe it to be true.



TSAI CHUAN LIN, for and on behalf of
SUNNY INTERNATIONAL DOORS &
WINDOWS CORP.

*Subscribed and sworn to before
me this 16th day of January, 2002.*



Notary Public

BING LI
Notary Public, State of New York
No. 02LI6020984
Qualified in Queens County
Commission Expires Mar. 8, 2003