

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

THE UNIVERSITY OF ILLINOIS FOUNDATION, )

Plaintiff and  
Counterclaim Defendant,

- v -

BLONDER-TONGUE LABORATORIES, INC., )

Defendant and  
Counterclaimant,

- v -

JFD ELECTRONICS CORPORATION, )

Counterclaim Defendant. )

Civil Action

No. 66 C 567

BRIEF IN ADVANCE OF TRIAL  
OF DEFENDANT AND COUNTERCLAIMANT,  
BLONDER-TONGUE LABORATORIES, INC.

INTRODUCTION - THE PARTIES AND ISSUES

Plaintiff, The University of Illinois Foundation (hereinafter referred to as the "Foundation"), as the owner of U. S. Letters Patent No. 3,210,767 issued October 5, 1965, to Dwight E. Isbell and Reissue Patent No. 25,740 issued March 9, 1965, to Paul E. Mayes and Robert L. Carrel, has brought suit against defendant, a New Jersey corporation, Blonder-Tongue Laboratories, Inc. (hereinafter referred to as "BT"), for alleged infringement by the acts of manufacture and sale of television home-receiving antennas.

*(Original Patent 3,108,280 issued October 23, 1963)*

This suit was commenced pursuant to an agreement between the Foundation and JFD Electronics Corporation (hereinafter referred to as "JFD"), under which JFD was granted the exclusive license rights under the Isbell and Mayes et al patents to manufacture and sell such antennas. <sup>in certain fields including home television</sup>

Defendant, BT, although not having a place of business or its residence within the jurisdiction of this Court, voluntarily consented to jurisdiction; and counterclaimed against the Foundation for a declaratory judgment that said patents are invalid, void, un infringed and unenforceable.

In its counterclaim, BT joined JFD as a second counterclaim defendant and included counts for unfair competition and antitrust violations in which the Foundation was joined, and for infringement of BT's own antenna patent 3,259,904 issued to Isaac S. Blonder and Abraham Schenfeld. <sup>on July 5, 1966.</sup>

It is the above issues that are before this Court for trial.

#### The Isbell and Mayes et al Patents

As defenses to the Foundation's suit for patent infringement (and in support of BT's ~~counterclaim~~ <sup>counterclaim</sup> declaratory judgment <sup>count</sup> relating to the same), BT shall endeavor to demonstrate, among other reasons for invalidity, non-infringement and unenforceability, the following:

1. The subject matter of the claims of the Isbell patent No. 3,210,767 was described in a printed publication\* published <sup>in April 1959</sup> ~~more~~ than one year prior to the May 3, 1960, date of ~~the~~ application for said patent in contravention of Sec. 102 of Title 35, United States Code [35 U.S.C. 102(b)].
2. The antennas of BT do not employ the substantially coplanar or ~~co~~linear structure of antenna elements specifically provided for in the claims of each of the Isbell and Mayes et al patents but, rather, employ the spaced vertical ~~plane~~ arrangement for which the U. S. Patent Office granted the Blonder et al patent 3,259,904 to BT, wherefor no infringement of the Isbell and Mayes et al patents exists.
3. The subject matter of the claims of the Isbell and Mayes et al patents was fully anticipated by prior art and, if any differences existed therein from such prior art, they were of the type that were clearly obvious to one skilled in the art and thus the patents were issued in contravention of 35 U.S.C. 102 and 103.

\* Antenna Laboratory Quarterly Engineering Report No. 2, "Research Studies On Problems Related to ECM Antennas," Electrical Engineering Research Laboratory; University of Illinois, Urbana, Illinois, dated 31 March 1959.

4. With regard further to the Mayes et al patent, the alleged inventors did not themselves invent the subject matter of the claims of this patent, but derived the same from another\*, such that the patent was granted further in contravention of 35 U.S.C. 102(f) and 103.
5. The Mayes et al patent is further invalid for double-patenting and for having been reissued contrary to the grounds provided ~~for~~ by statute for reissue patents, 35 U.S.C. 251.
6. Both the Isbell and Mayes et al patents are unenforceable in view of the unclean hands of the Foundation and its exclusive licensee, JFD, not only in connection with the acts of unfair competition and antitrust violation hereinafter summarized, but further because the Mayes et al reissue patent (and the original patent therefor) was procured by the Foundation presenting to the Patent Office deceptive and misleading evidence

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\* At least from one Edwin M. Turner of Wright Patterson Air Force Base, Dayton, Ohio.

to the effect that the earlier work of Dwight E. Isbell was not a part of the prior art; whereas it was in fact a part of the prior art and had been described in printed publications\* more than one year before the Mayes et al filing date. As a result, the Patent Office dropped the earlier work of Isbell from consideration as prior art against Mayes et al, which it otherwise would not have done, and was thereby influenced to grant said original and reissue patents. Because the Foundation and the alleged inventors knew the pertinent facts, or should have known them, they have come into court with unclean hands and are not entitled to enforce such patent, and the patent is invalid. Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944); Precision Instrument Mnf. Co. v. Automotive Maintenance Machinery Co., 324 U.S. 806 (1945); Walker Equip Process Equipment, Inc. v. Food Machinery and Chemical Corp., 322 U.S. 172 (1965).

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\* Including report of footnote, # page 1, and Antenna Laboratory Technical Report No. 39, "Log Periodic Dipole Arrays," Electrical Engineering Research Laboratory, Urbana, Illinois.

The defendant BT is thus entitled to judgment

*Just*  
(1) that the Isbell and Mayes et al patents are invalid and void; (2) that even had they been otherwise valid, they are not enforceable against BT as a result of the unclean hands of the Foundation and JFD; and (3) that in any event, said patents have not been infringed by BT.

BT's COUNTERCLAIMS

- A. Unfair Competition
- B. Antitrust
- C. BT Patent Infringement

At the trial of the issues of the counterclaims, BT will endeavor to ~~prove~~ prove acts of unfair competition of the Foundation and JFD (that also bear upon the unclean hands matter, supra), including acts that further constitute a violation of the antitrust laws, and acts of infringement of the BT antenna patent 3,259,904, as well.

A. Unfair Competition

*It will be shown that*  
With regard to unfair competition, the conspiracy and actions in pursuance thereof by the Foundation and JFD will be shown, unlawfully to dissuade<sup>d</sup> BT's customers and potential customers from purchasing BT antennas, *These actions include* by individual and joint acts including<sup>e</sup> circulating<sup>AN</sup> false and/or misleading news releases, advertising, announcements to the trade, threats and statements with regard to litigation, the right of BT to market so-called

"log-periodic" antennas, <sup>and</sup> the scope of the patents in suit - all to the irreparable injury of BT.

Further to prevent competition from BT, it will be shown that JFD deliberately hired away from BT the head ~~of~~ and key sales manager of the BT antenna program, ~~and~~ at a time ~~at~~ (after the filing of this suit against BT) when said program head was investigating, on behalf of BT, the unfair competition and antitrust activities of JFD that were impeding the sale of BT antennas in the market place.

#### B. Antitrust

Though the last-named act has hampered BT in its proofs, it is expected ~~that~~ this case will be well documented and otherwise proven.

The above mentioned acts in restraint of competition, particularly in the ~~light~~ light of the fact that JFD is among the largest manufacturers of said antennas in the country, coupled with ~~mis~~use of the Foundation <sup>Isbell</sup> and Mayes et al patents for purposes of securing tie-in sales not covered by those patents, ~~for~~ constitute clear violations of the antitrust laws (150 U.S.C. 1, 14, 15).

#### C. BT Patent Infringement

And ~~with~~ regard to the BT patent 3,259,904 ~~itself~~, it will be shown that <sup>e</sup>this patent covers a highly unobvious

improvement, contrary to the co~~x~~planar antenna element teachings of the~~x~~ Isbell and Mayes et al patents and the then-known art relating to "log-periodic" antennas - an improvement that thus constitutes highly patentable invention~~x~~ <sup>which</sup> and that JFD chose widely to copy and incorporate into its antenna line following the appearance of the BT antennas on the market.

WHEREFORE, it is believed that counterclaimant BT is entitled to an injunction restraining the acts of unfair competition, antitrust violation and patent infringement complained of in the counterclaim; and, in view of the wanton character of the illegal conduct of the Foundation and JFD, triple damages ~~x~~and attorneys' fees, as provided for by ~~xxx~~ statute, together with such other and further relief as may seem proper to this Court.

HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

By \_\_\_\_\_  
Attorneys for Defendant  
and Counterclaimant

OF COUNSEL:

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John Allen  
(or Ruth Phillips)

Miami, Fla.  
Sun - April

Re: BT - Brief In Advance of Trial

Dear John -

Finished this on the airplane

am airmailing it to you. Feel free to  
modify -

Will be readable (by message thru)

Mr. Houston Branch [813-0X5-3101] until Tuesday --

then I'll be arriving Tuesday I will be there  
(Wed.)

Cordially -

Bob Rines

① Flamingo Lodge - Everglades Natl Park, Fla.



acts of <sup>in the field of</sup> ~~the~~ manufacture and sale of television home-receiving antennas.

This suit was commenced pursuant to an agreement between the Foundation and JFD Electronics Corporation (hereinafter referred to as "JFD"), under which JFD was granted the exclusive license rights under the Isbell and Mayes et al patents to manufacture and sell such antennas.

Defendant, BT, although not having a place of business or its residence within the jurisdiction of this Court, voluntarily consented to jurisdiction and counterclaimed against the Foundation for a declaratory judgment that said patents are invalid, void, unenforceable and unenforceable.

In its counterclaim, BT joined JFD as a second counterclaim defendant and included counts for unfair competition and anti-trust violations in which the Foundation was joined, and for infringement of BT's own antenna patent 3,259,904 issued to Isaac S. Blonder and Abraham Schenfeld.

It is the above issues that are before this Court for trial.

The Isbell and Mayes et al Patents

As defenses to the Foundation's suit for patent infringement ~~and~~ (and in support of BT's countering declaratory judgment counts ~~and~~ relating to the same), BT shall

endeavor to demonstrate, among other reasons for invalidity, non-infringement and unenforceability, the following:

1. The subject matter of the claims of the Isbell patents No. 3,210,767 was described in a printed publication published more than one year prior to the May 3, 1960 date of application for said patent in contravention of Sec. 102 of Title 35, United States Code [35 U.S.C. 102(b)].
2. The antennas of BT do not employ the substantially coplanar or co-linear structure of antenna elements <sup>each of</sup> specifically provided for in the claims of <sup>the</sup> Isbell <sup>and Mays et al</sup> patents, but, rather, employ the spaced vertical-plane arrangement for which the U.S. Patent Office granted <sup>the</sup> Blender et al patent 3,259,904 to BT, wherefor no infringement of the Isbell and Mays et al patents exists.
3. The subject matter of the claims of the Isbell <sup>and Mays et al</sup> patents was fully anticipated by prior art and, if any differences existed therein ~~was~~ from such prior art, they were of the type that ~~would~~ were clearly obvious to one skilled in the art and thus, in contravention of 35 U.S.C. 102 and 103.  
the patents were issued

① "Antenna Laboratory Quarterly Engineering Report NO. 2," "Research Studies On Problems Related TO ECM Antennas," Electrical Engineering Research Laboratory, University of Delaware, Newark Delaware, dated 31 March 1959.

4. With regard further to the Mays et al patent, the ~~claims thereof~~ <sup>alleged inventors</sup> did not themselves invent the subject matter of the claims of this patent, but derived the same from another, <sup>(2)</sup> such that the patent was granted further in contravention of 35 U.S.C. 102 (f) and 103.

5. The Mays et al patent is further invalid for double-patenting over ~~earlier~~ and for having been reissued contrary to the grounds provided for by statute for ~~reissue~~ <sup>patents</sup>, 35 USC 251.

6. Both the Isbell and Mays et al patents are unenforceable ~~for the same~~ in view of the unclean hands of the Foundation and its exclusive licensee, JFD, not only in connection with the acts of unfair competition and anti-trust violation hereinafter summarized, but further because ~~both~~ the Mays et al reissue patent (and the original patent therefor) was procured by the Foundation presenting to the Patent Office deceptive and misleading

(2) At least from one Edwin M. Turner of Wright Patterson Air Force Base, Dayton, Ohio.

evidence to the effect that the earlier work of Designer E. Ishell was not a part of the prior art; whereas it was in fact a part of the prior art and had been described in printed publications<sup>(3)</sup> more than one year before the Mayes et al filing date. As a result, the Patent Office dropped the earlier work of Ishell from consideration as prior art against Mayes et al, which it otherwise would not have done, and was thereby influenced to grant said original and reissue patents. Because the Foundation and the alleged inventors knew the pertinent facts, or should have known them, they have come into court with unclean hands <sup>additional</sup> (for this reason) and are not entitled to enforce such patent, and the patent is invalid. Hazel - Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944); Precision Instrument Mfg. Co. v. Automotive Maintenance Machinery Co., 324 U.S. 806 (1945); Walker Process Equipment, Inc. v. Food Machinery and Chemical Corp., 372 U.S. 172 (1965).

X

(3) Inclusion report of footnote 1 and Antenna Laboratory Technical Report No. 39, "Log Periodic Dipole Arrays", Electrical Engineering Research Laboratory, Urbana, Illinois.

The Defendant BT is thus entitled to judgment (1) that the Isbell and Wages et al patents are invalid and void, (2) that even had they been otherwise valid, they are not enforceable against BT as a result of the unclean ~~hands~~ hands of the Foundation and JFD; and (3) that in any event, said patents have not been infringed by BT.

BT's Counterclaims (A. Unfair Competition, B. Anti-Trust, C. BT-Patent Infringement)

At the trial of the issues of the counterclaims, BT will endeavor to prove acts of unfair competition of the Foundation and JFD (that also bear upon the unclean hands matter, supra), including acts that ~~also~~ <sup>further</sup> constitute a violation of the anti-trust laws, and <sup>acts of</sup> infringement of the BT antenna patent 3,259,904, as well.

A. Unfair Competition With regard to unfair competition, the conspiracy <sup>and actions in pursuance thereof</sup> of the Foundation and JFD <sup>will be shown,</sup> unlawfully to dissuade BT's customers and potential customers from purchasing BT antennas <sup>individual and joint acts including</sup> by circulating false and/or misleading news releases, advertising, <sup>announcements to the trade, threats</sup> and statements with regard to litigation <sup>market</sup>, the right of BT to ~~make~~ so-called "leg-peeker" antennas <sup>to the detriment of BT, but</sup> ~~to the detriment of BT, but~~ <sup>the scope of the patents in issue -- all</sup> ~~be shown. Further acts including false patent marking,~~

to the irreparable injury of BT. Further to prevent competition from BT, it will be shown that JFD deliberately hired away from BT the head <sup>and Key Salesman</sup> of the BT antenna program <sup>and</sup> at a time (after the filing of this suit against BT) when said head was investigating the unfair competition ~~and~~ and anti-trust activities of JFD (on behalf of BT) that were impeding the sale of BT antennas in the marketplace.

B. Anti-Trust

Though the last-named act has hampered BT in its efforts, it is expected that this case will be well documented and otherwise proven.

The above-mentioned acts in restraint of competition, particularly in the light of the fact that JFD is among the largest <sup>of manufacturers</sup> of said antennas in the country, coupled with mis-use of the Foundation ~~of~~ Isbell and Mays et al patents <sup>for purposes of securing</sup> the sales not covered by those patents, constitute clear violations of the anti-trust laws <sup>(John-Creation)</sup> here of the sections that we delineated ~~to the JFD~~ <sup>to the JFD</sup>.

See RSP

C. BT-Patent Infringement

(co-planar antenna element) (15 USC 1, 14, 15)

And with regard to the BT patent 3,259,904 itself, it will be shown that this <sup>patent</sup> covers a highly unobvious improvement, contrary to the teachings of the Isbell and Mays et al patents and the then-known art relating to "log-periodic" antennas -- an improvement that



this constitutes highly patentable invention, and that JFD chose <sup>wisely</sup> to copy and incorporate into its antenna line following the appearance of the BT antennas on the market.

Wherefore it is believed that Complainant BT is entitled to an injunction restraining the acts of unfair competition, anti-trust violation and patent infringement complained of <sup>in the Complainant;</sup> and, in view of the wasteful character of the illegal conduct of the Foundation and JFD, triple damages and attorneys' fees, as provided for by statute, together with such other and further relief as may seem proper to this Court.

Respectfully submitted,  
H. J. Green, Werner, Allen, Stebbins & McLeod  
By

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