

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 OF DEFENDANT AND COUNTERCLAIMANT,
BLONDER-TONGUE LABORATORIES, INC.,
IN SUPPORT OF COUNTS I, II AND III
OF ITS COUNTERCLAIM

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INTRODUCTION - THE PARTIES AND ISSUES

Plaintiff, The University of Illinois Foundation
(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 (original
patent 3,108,280 issued October 22, 1963), has brought suit
against defendant, a New Jersey corporation, Blonder-Tongue
Laboratories, Inc. (referred to as "BT"), for alleged

infringement by the acts of manufacture and sale of television home-receiving antennas.

This suit was commenced pursuant to an agreement between the Foundation and JFD Electronics Corporation (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 in certain fields, including home television.

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 (Count IV).

In its counterclaim, BT joined JFD as a second counterclaim defendant and included Counts I, II and III 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 July 5, 1966, to Isaac S. Blonder and Abraham Schenfeld.

This brief is concerned with the unfair competition and antitrust allegations of counterclaim Counts I and II, respectively, and the infringement of the BT patent by JFD and the Foundation, Count III.

INTRODUCTORY SUMMARY OF THE ACTS OF
UNFAIR COMPETITION AND ANTITRUST VIOLATION

Before proceeding to the specific proofs bearing on the unfair competition and antitrust violation complained of, it is desired briefly to summarize the conduct of the counterclaim defendants. A series of acts on the part of JFD, abetted by the Foundation, establishes a pattern of unfair and illegal competition with BT in the market place, which competition, in fact, prevented BT from establishing a position with its relatively new venture into the antenna market, as distinguished from its previously established business in apparatus for amplifying and distributing television signals.

The principal acts of this overall program of unfair and illegal competition are as follows:

1. A nationwide advertising program in technical, consumer, trade and news publications knowingly falsely representing the scope of patent coverage of the JFD antennas marketed under license from the Foundation, and deliberately or negligently grossly exaggerating the performance thereof. The ads use the names of both the Foundation and the University of Illinois to give color, credence and prestige to the misleading statements as to the patent monopoly of the Foundation and JFD in log periodic television antennas, with the innuendo of threat against any customers who use log periodic antennas of other manufacturers, including BT.

2. Coupled with this advertising program, a campaign of litigation and threatened litigation against numerous manufacturers of log periodic antennas, including BT, together with the wide circulation to the trade and to antenna customers, including those of BT, of news releases of such multiple suits and threats of suits and of newspaper clippings and reprints relating to the same. In connection with the newspaper and news release campaign, bringing suit against BT in this jurisdiction with the knowledge that there was no jurisdiction over BT, clearly for the purpose of releasing and mailing to BT's customers and the trade, news releases both of JFD and the Foundation which prominently mention the suit against BT.

3. A campaign of mismarking of the JFD antennas licensed by the Foundation, knowing the antennas not to be covered by the patents so marked, with the intent of deceiving the public into thinking that the antennas offered for sale were already protected by patents of the Foundation, thereby to dissuade customers from purchasing log periodic antennas from anyone else, including BT.

4. Procuring the Mayes and Carrel patent 3,108,-280 (forming the basis of the reissue patent 25,740) by filing in the Patent Office a misleading affidavit, either willfully or through gross negligence, a fraud on the Patent Office.

5. Raiding key personnel associated with the BT antenna business and program at times clearly calculated to handicap BT in collecting and presenting evidence in this trial as well as to prevent BT from effectively competing as an antenna marketing company.

6. A campaign under the threat of the Foundation patents to force customers to buy unpatented items from JFD and not from BT and other competitors.

While some of the acts above specified appear to have been initiated solely by one of the counter defendants, others were carried out in concert. While witnesses for the Foundation have tried to paint a picture of the Foundation as merely a licensor, the proofs show that the Foundation has been acting in additional capacities and, indeed, has been a party to and given its express or tacit approval to the use of its name and news releases in the improper advertising and other campaigns above discussed.

We shall now proceed to call attention to the proofs in this record that bear upon each of the acts above mentioned and then demonstrate the legal consequences of those acts in terms of the law of unfair competition and antitrust.

1. THE JFD ADVERTISING CAMPAIGN

The record contains samples of the advertising and news release data of JFD in the period from the summer and fall of 1963, when BT entered the market for the first time with its log periodic DART antenna, P. Ex. 10 (T. 762),* up to and after the filing of this suit in late March, 1966.

The widespread scope of this advertising is admitted in the JFD advertisement accompanying the Finkel deposition, D. Ex. 42, as D. Ex. 42 - B-101, as encompassing

"The Technical Press . . . The News Press . . .
The Consumer Press . . . The Trade Press"

". . . more news coverage than any TV or
FM antenna has ever received."

Among the numerous technical, trade and consumer journals and news media in which JFD so advertised, are listed

Radio Electronics
Electronic Distributing
NEDA Journal
Microwave Journal
Chicago Tribune
PF Reporter
Electronic Technician
Home Furnishings Daily
Popular Science
Electronics & Appliance Specialist
NATESA Scope
Electronic Industries
Modern Electronic Service Dealer

* In this brief, Plaintiff's exhibits will be identified by the designation P. Ex.; Defendant's exhibits by D. Ex.; and Counterclaim Defendant JFD's exhibits by CCD. Ex. References to the record will be designated by the letter T. and the page number.

Other advertising exhibits show publicity in at least LOOK magazine (D. Ex. 42 - B-107), the New York Worlds Fair of 1964-1965 (D. Ex. 42 - B-106), Radio & Television Weekly (D. Ex. 42 - B-110), and Popular Electronics, 1965 (D. Ex. 42 - J6).

The dates of many of these advertising exhibits are shown thereon and establish use of the ads from 1963 through 1966. By stipulation, dates of publications are correct unless evidence to the contrary is introduced.

From the very first of these advertisements and releases, it is evident that their purpose was at least three-fold:

First, to cloak JFD and its LPV television antennas with the prestige and aura of the University of Illinois and its Antenna Laboratory, as distinguished from the role of a mere licensee;

Secondly, to cause the readers to believe that the JFD LPV antennas being offered for sale were already covered by patents, thus to dissuade purchasing of log periodic antennas elsewhere (including from BT); and

Thirdly, to make it appear, through the use of both the prestigious scientific name of the University and the listing of patents, that the log periodic formula itself had been patented, thus to foreclose in the reader's mind

the possibility of anyone else legally offering any kind of log periodic antenna to the trade (as BT was contemporaneously starting to do in 1963, T. 762).

The LPV Was Not Developed By The University; And JFD Knew This.

In D. Ex. 42 - B-106, it was prominently bannered at the top that the JFD LPV TV antenna had been

"DEVELOPED BY THE ANTENNA RESEARCH LABORATORIES OF THE UNIVERSITY OF ILLINOIS"

In D. Ex. 42 - B-107, it is again stated that LPV came

"from the Antenna Research Laboratories of the University of Illinois".

Again, in D. Ex. 42 - B-108, it is prominently stated, under the picture of the LPV-11 antenna, that this was

"Developed by the University of Illinois Antenna Laboratory."

Not only was the development of the LPV so attributed to the University, but, as appears from the statements of the president of JFD (under reprint dated February, 1964, D. Ex. 42 - B-103), the readers of Radio & Television Weekly were told that JFD

"Forms Alliance With the University of Illinois; New Laboratory Established Under the Direction of Prof. Paul E. Mayes, an Antenna Authority"

It is further stated that

"The alliance is not based on college courses . . . Far more dynamic in its ramifications,

it prompted the creation of the JFD Research and Development Lab and a unique relationship with the University of Illinois."

That JFD then knew the absolute falsity of each of these claims is evident from the proofs herein.

As for the fact that the JFD LPV antennas advertised for sale were not developed by the University of Illinois Antenna Laboratory, Mr. Edward Finkel, executive vice president of JFD, conceded in his deposition, D. Ex. 42, p. 9, that

"I do not believe they [i.e., the University of Illinois Antenna Laboratory] actually had antennas as such developed at the Laboratories for TV use."; and

at p. 21, 22, that the University of Illinois

"Antenna Laboratory never got into the commercial aspect of the research work . . .",

never into

"home TV",

and that Finkel and "others at JFD" knew this fact

"From the very beginning."

Ultimately, indeed, Mr. Finkel conceded in his deposition, in connection with this statement in D. Ex. 42 - B-106, that this was

"a misstatement" (D. Ex. 42, p. 37).

The Foundation itself, moreover, belatedly criticized the giving of such origination to the University as "not true" (page 2, line 5, from end of letter of October 14,

1964, from Mr. Colvin of the Foundation to Mr. Finkel, D. Ex. 42 - B-104).

(It should here be borne in mind that Mr. Finkel admitted it was his responsibility "to develop this literature," p. 7; that he "assisted in preparation" of the JFD ads in question, p. 23; that he helped "lay them out with my Advertising Department", p. 22; and that he was "very closely involved in preparation of the similar advertisements of this era", p. 28.) (All page references are to D. Ex. 42.)

As for the statement (D. Ex. 42 - B-103) that Dr. Mayes was directing the new JFD laboratory ("New Laboratory Established Under the Direction of Prof. Paul E. Mayes") - clearly calculated to cement this alleged "Alliance with the University of Illinois" - again Mr. Finkel admitted in his deposition, D. Ex. 42, that he knew this was false at the time because Professor Mayes "wasn't a director at any time" (p. 19).

And that no such "Alliance with the University of Illinois" had ever been established, as represented in D. Ex. 42 - B-103, was further admitted by Finkel (D. Ex. 42, p. 20 - "It was strictly licensing arrangement.")

The Advertised LPV-11 And Related Antennas
Were Not Covered By the Patents Listed
Thereunder And JFD Knew This Fact

In, for example, the advertisement, D. Ex. 42 - B-108, there appears a picture of what is identified as the JFD LPV-11 antenna; and in the upper right-hand corner of the photograph, there prominently appears the legend

"U. S. Patents 2,958,081, 2,985,879, 3,011,168".

These patents are, respectively, patents to Dyson, DuHamel, and an early patent to Isbell, copies of which are in evidence as D. Ex. 66, 67 and 65. From the face of the patents themselves, it is evident that none applies to the illustrated Mayes and Carrel LPV antenna, dealing rather with spiral cone antennas and flat-plane antennas.

In his deposition, D. Ex. 42, Finkel admitted that the LPV-11 antenna illustrated in B-108 and B-109 was the Mayes and Carrel configuration (p. 43) and that none of the "three patents mentioned" in these ads were the patents of "Mayes and Carrel". (p. 44, 45).

Lest this be interpreted as a bona fide mistake or misunderstanding in connection with representing that the LPV-11 was covered by existing patents, the record shows that Mr. Finkel, when so using these patent numbers, knew none of these patents covered the LPV-11 or any other antenna JFD was then selling:

"At the present time we are not selling any products that come under the Dyson, DuHamel, and Isbell patents." (D. Ex. 42 - B-105, p. 2, letter of Finkel of April 21, 1964)

This same deliberate mis-marking and misleading of the reader was copiously done (D. Ex. 42 - B-107; B-109); and Finkel's admission, p. 42 of D. Ex. 42, that B-108 and 109 are "representative of the kind of patent marking of the early releases".)

The Log Periodic Formula Was Not
The Monopoly Of JFD Or The University,
And JFD Knew This

The clear and patently false impression that the JFD advertisements such as D. Ex. 42 - B-107 were intended to convey was that the "formula" " $\frac{L(n+1)}{L_n} = \tau$ " was patented and the monopoly of the "Antenna Research Laboratories of the University of Illinois" and JFD - this formula was printed very closely adjacent the patent numbers (false, as they were).

The innuendo desired from the readers is obvious; namely, that no one else had a right to make any kind of log periodic antenna, since they all follow the formula! JFD was the sole source.

More than this, some ads such as the February 10, 1964, Radio & Television Weekly ad, D. Ex. 42 - B-4 and 4A distinctly refer to

"The Patented Log-Periodic Cellular Formula".

Note, also, the statements that "Only the JFD Log Periodic LPV operates according To The Patented Log-Periodic Cellular Formula", and "Do Not Be Misled By Log-Periodic Imitations", and "No other so-called Log-Periodic Antenna can work like the JFD Log Periodic LPV", etc. This same "no other antenna" libel is also repeated as late as 1965, D. Ex. 42 - J6.

And all this under color not only of the name of the University itself, but even in D. Ex. 42 - B4A, the picture of Prof. Mayes and the legend as to the "Antenna Research Laboratories of the University of Illinois".

It is no wonder that ultimately (and very belatedly) the Foundation found these tactics to be unworthy, and, in their letter to JFD of October 14, 1964, after almost two years of these ads, complained (D. Ex. 42 - B-104, p. 2)

"Paragraph 4 is untrue. The Log-Periodic LPV formula is not patented."

False Technical Claims

While a certain amount of "puffing" is recognized in the selling arena, in technical fields where numerical figures of performance are presented to the customers, it is not "puffing" to put in false figures.

To say in advertisements that an automobile has a 350 horsepower engine, when in fact it has a 100 horsepower engine, would not be tolerated by the FTC or the courts for one moment - and is certainly not in the realm of "puffing".

But that is just what JFD has done in this case. In its Radio Electronics article of June, 1963 (reprinted for advertising use), D. Ex. 42 - B-102, JFD baldly stated that

"the LPV-11 . . . maintained a front-to-back ratio of 35 db . . ." (underlining added).

This was repeated in advertisement D. Ex. 42 - B-109 (upper right-hand corner of second sheet thereof).

The significance of this figure resides in the fact that it numerically rates the performance of the antenna in receiving the desired television signal, much as horsepower rates an automobile's power.

The record shows, however, that tests - as to which JFD introduced no contrary evidence obviously because they were true - demonstrated that the JFD LPV-11 fell far short of producing the claimed "35 db" and, indeed, only

"about 10 to 12 db" (T. 822-3).

The significance of this is that, in the same 1963-1964 period, BT was advertising the true figures of performance of its log-periodic DART antenna (CCD. Ex. JFD 23, p. 7, for example).

Now appear these false JFD performance figures, under color of the name and prestige of the University of Illinois, trying to impress customers and potential customers that the JFD LPV antenna was 3.5 times better than it actually was - and, of course, thus far above the BT antenna performance.

These false performance figures, moreover, are coupled with the apparent University sponsorship for the statements in the ads, such as D. Ex. 42, B-4 and 4A, that "only the JFD Log Periodic LPV Operates According To The Patented . . . Formula" and that "No other so-called Log Periodic antenna can work like the JFD".

What customer would not be persuaded that an antenna allegedly designed by the University of Illinois Antenna Laboratory and with such alleged tremendous performance figures - and all allegedly covered by patents and even a patented formula - was the one to buy; not that of a "Johnny-come-lately" in the antenna field, BT?

Finally, indeed, the Foundation realized that JFD was using its name and that of the University "as a gimmick" to support its "publicity" and "new peak of performance" claims, and threatened to "cancel" the license (D. Ex. 42 - B-112); but the damage had irreparably been done in the market place by this extensive, almost two-year unchecked advertising campaign.

Summary As To JFD Advertising Campaign

It has been above shown that the JFD advertising campaign was framed not just with "puffing" or legitimate extolling, but was based upon deliberately concocted false

representations designed to be cloaked with the aura of truth, reliability and prestige associated with the University, misrepresenting that the LPV antennas were the product of the University itself and thus of presumably unimpeachable quality and performance, that the University was allied with JFD in this design work, that its professor was directing the same, that no one else could market a log periodic television antenna, that no other antenna could work as well as JFD's, and that the LPV antennas and even the log periodic formula itself were then covered by patents - all for the very clear purpose of representing JFD as the sole authorized source of any and all log periodic television antennas, and dissuading the purchasing of such antennas from others (including ET).

2. THE JFD-FOUNDATION LITIGATION AND NEWS RELEASE CAMPAIGN

Coupled with this misleading advertising campaign, and more particularly after the issuance of the Mayes and Carrel, and Isbell patents here in suit, the Foundation undertook (under the obligation of its license agreements with JFD, D. Ex. 44, 45) to police these patents by numerous lawsuits and threats of litigation.

There is, of course, nothing improper in bringing lawsuits against infringers. To the contrary, this is a purpose of the patent laws.

But where the suits are used to coerce the trade into dealing with JFD exclusively, where newspaper clippings of litigation and news releases announcing litigation and threats thereof are deliberately widely circulated in the trade and to customers of competitors, and where a suit is brought, knowingly without jurisdiction (as in the present cause), merely to enable the issuance of a news release mentioning BT under the letterhead of the Foundation and to mail the same to BT's customers, this far transcends the proper use of patents and patent litigation.

Now to the proofs of these serious charges.

The record shows that at least two of BT's distributor-customers received from JFD after suit was filed herein a set of three documents:

JFD Sales Bulletin of April 19, 1966
(D. Ex. 43 - XB6a; D. Ex. 46 - XB5a);

University of Illinois Foundation News
release of April 7, 1966 (D. Ex. 43 -
XB6c; D. Ex. 46 - XB5b);

Print of a newspaper clipping (D. Ex. 43
- XB6b; D. Ex. 46 - XB5c).

Mr. Finkel specifically testified, D. Ex. 42, p. 78, that the Foundation gave "authorization . . . to send" the above-mentioned Foundation news release (D. Ex. 43 - XB6c and D. Ex. 46 - XB5b) to the antenna distributors and representatives in the trade.

The JFD Sales Bulletin refers to five suits, using the name "Blonder-Tongue Laboratories, Inc." prominently at

the top. It not only announces these suits, but threatens others:

"The Foundation is taking vigorous action in the courts to sue all violators of the basic Log Periodic Patents."

Note the characterization of "basic Log Periodic Patents" - clearly intended to imply, as in the previously discussed misleading advertising campaign, that no one but JFD can make a log periodic antenna (when, of course, no such basic patent exists). This is clinched by the next sentence:

"JFD is the EXCLUSIVE licensee of the Foundation authorized to manufacture antennas under these basic patents."

The University of Illinois Foundation news release also mentions "Blonder-Tongue Laboratories, Inc." first among the new defendants, and mentions a prior suit against Winegard, as well. It also identifies JFD as having "an exclusive license".

And the accompanying news clipping from Home Furnishings Daily reports on still another suit "Antenna Patent Suit Hits Jerrold".

This trying of these so-called "basic Log Periodic Antenna" patents in news releases and newspaper clippings with the prominent mention of BT was, it is maintained, part of the overall plan to keep BT from effectively developing in the antenna market.

Why, except for these news releases to be sent to BT's distributors and customers (the Foundation's release having been prepared but a few days after this suit against BT, filed March 29, 1966), was this suit brought here in Illinois when the Foundation and JFD both knew BT had no residence or place of business here?

Mr. Finkel testified, D. Ex. 42, p. 79, that he told Mr. Colvin, secretary of the Foundation, that

"Blonder-Tongue Laboratories was in Newark, New Jersey"

Mr. Finkel further stated that he discussed with counsel for the Foundation whether BT "had a place of business in Illinois" (p. 79, 80) and that he did not think that BT had "a branch office for sales or manufacturing or distributing antennas in Illinois". (p. 82)

And the complaint herein further supports this misuse of litigation.

It has been well established for more than ten years (Fourco Glass Co. v. Transmirra Products Corp., N. Y. 1957, 77 S.Ct. 787, 353 US 222, 1 L.Ed.2d 786) that the exclusive venue statute for patent action is 28 U.S.C. 1400, wherein it is stated that suit may be brought in the District where the defendant "resides" or "has committed acts of infringement and [emphasis added] has a regular and established place of business." The Foundation admits in paragraph "2" of its Complaint herein that BT "resides" in New Jersey

(i.e., is a New Jersey corporation), thus making that portion of Section 1400 inapplicable. The Foundation then states in paragraph "6" that BT is "infringing" in this District. Nowhere is there an allegation that BT has "a regular and established place of business" in this District. The Complaint was drawn by able counsel who knew full well that this was not a proper court as to BT. When the news releases were written, immediately following filing of the suit, it was, therefore, known full well that the patent suit was not properly brought in this District.

It is not as though an allegation was made with an argument of proper venue on the facts. There was not proper venue and none was pleaded. The Complaint on its face shows it to be a court action brought merely to allow wide publication of such an action in the trade.

As such, this is a bare-faced and blatant act of using the offices of this Court to further the ends of the Foundation and its exclusive licensee in the market place. The act of filing such a Complaint is a travesty upon good taste and proper conduct in the circumstances and an act which it is believed this Honorable Court should not countenance.

In the specific instance of the BT distributor-customers (Sacramento Electronics, D. Ex. 43, and Main Line Cleveland, D. Ex. 46), the record shows that this litigation

tactic of JFD and the Foundation eminently well succeeded since BT, following receipt of this JFD news release material by the customer,

"could not sell our antennas to this account" (T. 838).

The context in which this JFD campaign was carried out, moreover, is important to these issues. Mr. Blonder testified that distributor-customers also reported being threatened with suit "By JFD and the University of Illinois Patent Foundation" if the distributors "were to take on our line". (T. 781-2)

That he was aware that such threats were in fact made to such distributor-customers was, indeed, conceded by Mr. Finkel of JFD himself at D. Ex. 42, p. 74:

"Q. Are you aware that salesmen and distributors of yours have made these comments?

[i.e., "if they handled anyone else's line of log periodic antennas, they would be sued"]

"A. It might be they have made them. This is the normal kind of selling that goes on in the field, not just this one."

Summary As To The Litigation Campaign

The above-described trying of lawsuits in news releases and the press and use of the same to coerce BT's customers, coupled with the circumstances of deliberately

bringing this suit against BT with the knowledge of lack of jurisdiction and from the proven purpose of notifying BT's customers, is another cog in the overall plan of JFD improperly to prevent competition from BT.

3. THE JFD PATENT MIS-MARKING CAMPAIGN

The use of false patent numbers in the advertising, knowing the advertised LPV antennas (and formula) not then to be covered by the cited patents and with the intent to dissuade customers from purchasing log periodic television antennas from any competitor of JFD, has been documented above.

But JFD did not just use these improper patent markings in advertisements. Mr. Finkel admitted, D. Ex. 42, p. 28, that the patent numbers were placed on "the boxes in which the antennas . . . were shipped" and which every distributor and home owner sees and uses.

This widened, of course, the scope and effect of this tactic, particularly as coupled with the threats discussed in the preceding section of this brief.

4. THE PROCURING OF THE MAYES AND CARREL PATENT

It will be recalled that JFD in its earlier '63 ads had mis-marked its Mayes and Carrel type LPV-11 and other similar antennas with wrong patents, presumably because the Mayes and Carrel patent had not issued.

It was the Foundation, however, that was prosecuting the Mayes and Carrel patent application (D. Ex. 12, center of cover page).

During the prosecution of the Mayes and Carrel application, the Examiner (D. Ex. 12, p. 30) took the position that "V-shaped dipoles" were well-known before this application, there was no invention in modifying the Isbell antenna (as taught in an Isbell IRE paper of May, 1960) to use this old V dipole.

Counsel for the Foundation thereupon prepared an affidavit (D. Ex. 12, p. 31 and 32) in which they had Dr. Mayes (and not Mr. Carrel) swear that he had made the invention before the May, 1960 publication date of this IRE Isbell paper.

The effect of this was to force the Patent Examiner, who only knew about this May, 1960 paper describing Isbell's work and did not know of prior papers, such as the University of Illinois published reports, to withdraw the Isbell paper as a reference. Without Isbell as a reference, the Patent Examiner had to withdraw "the rejection on the Isbell reference" (p. 44); and the patent was allowed.

But the record shows that at the time of execution of this affidavit on May 18, 1964, Dr. Mayes had been thoroughly familiar with prior reports published more than one year before his September 30, 1960, application filing

date, which prior reports showed this same Isbell disclosure of the May, 1960 article that had been cited by the Examiner.

In fact, Mayes had signed the publication, Research Studies on Problems Related to ECM Antennas, Report No. 2 of the Antenna Laboratory of the University of Illinois (D. Ex. 8), March 21, 1959, admittedly disclosing the Isbell antenna disclosure. Mayes also, in his signed disclosure report (D. Ex. 10) describing his alleged invention of this very Mayes and Carrel application, cited the further publication of Isbell "Log Periodic Dipole Arrays", Antenna Laboratory Technical Report No. 39, June 1, 1959 (also in evidence as D. Ex. 23 and containing the same disclosure as the later IRE article cited by the Patent Examiner.)

Not only did Mayes know of these Isbell publications more than a year before his application filing date, but counsel for the Foundation were also apprised of the same since they filed the Isbell patent application itself and received the Mayes and Carrel invention disclosure, D. Ex. 10.

Certainly counsel knew of these earlier publications which Mayes could not have sworn back of to remove Isbell as a reference and which were in existence more than a year before the Mayes and Carrel filing dates. Indeed, Patent Office Rule 131 under which this Mayes affidavit was filed (D. Ex. 12, p. 31) specifically excludes the filing of such an affidavit in these circumstances, the rule reading,

in part, as follows:

"Rule 131, Affidavit of prior invention to overcome cited patent or publication. (a) When any claim of an application is rejected on reference to a domestic patent which substantially shows or describes but does not claim the rejected invention, or on reference to a foreign patent or to a printed publication, and the applicant shall make oath to facts showing a completion of the invention in this country before the filing date of the application on which the domestic patent issued, or before the date of the foreign patent, or before the date of the printed publication, then the patent or publication cited shall not bar the grant of a patent to the applicant, unless the date of such patent or printed publication be more than one year prior to the date on which the application was filed in this country." [emphasis added]

The Foundation's procuring of the Mayes and Carrel patent, in pursuance of its effort to give JFD further ammunition against competition in the market place, was thus effected by an entirely misleading affidavit, either prepared willfully or through gross and wanton neglect, perpetrating a fraud on the Patent Office.

The significance of that fraudulent affidavit is all the more pointed out by the testimony of Dr. Mayes in this case, admitting that he could not swear back of Isbell's invention, and thus the Mayes and Carrel patent would never have been granted had the Patent Office been properly informed:

"Q. Is it not the fact that the structural difference between the antennas of your Mayes and Carrel Patent in suit, Plaintiff's Exhibit 20, and the antenna of the Isbell Patent, Plaintiff's Exhibit 1, is the bending of the straight Isbell dipoles into V's?

"A. Yes.

"Q. Do you agree that the invention of the Isbell Patent, Plaintiff's Exhibit 1, was completed before you and Carrel made the invention of your patent, Plaintiff's Exhibit 20?

"A. Yes." (T. 650)

5. JFD CAMPAIGN TO RAID KEY BT PERSONNEL

The record shows that Jerome Balash was the "organizer of Blonder-Tongue's complete antenna business . . . from the marketing standpoint" (T. 1073) and later product manager in charge of antennas at BT (T. 765); and, following the filing of this suit, was "assigned . . . to personally investigate" why the customers were not purchasing antennas, including the threats of JFD (T. 766-7; 1082-3).

Though then on notice that BT was trying to join JFD in this litigation (Motion to Dismiss for failure to join JFD as party plaintiff, motion to join JFD as counter-claim defendant) in the midst of Mr. Balash's investigation of customers and JFD threats to the same, Mr. Balash was hired by JFD.

The day after Mr. Balash left, Mr. Blonder (T. 770) searched for BT's files of Mr. Balash's correspondence with the customers and couldn't find them.

Mr. Gilbert and Mr. Helhoski of BT were also unable, after Mr. Balash's departure, to find the BT file containing

Mr. Balash's reports on the customers (T. 1052-3, 1073). These are the very reports relating to the activities of JFD in the market place that Mr. Balash had been assigned to investigate for the purposes of this counterclaim!

More than this, Mr. Gilbert testified that one of the BT - IBM reports ending April 30, 1966, giving breakdown of customers, addresses and products sold, disappeared at the time of Mr. Balash's departure for JFD (T. 1059-60).

Mr. Helhoski characterized these missing BT records as the BT sales reports and a list of all accounts and what was purchased from BT (T. 1072).

Both Mr. Gilbert and Mr. Helhoski further testified that with Mr. Balash's departure, Mr. Balash's letterbook of correspondence also was missing (T. 1061-2; T. 1073).

JFD has offered not one word of explanation in this suit!

Not only were these customer records (crucial to proving this counterclaim) missing following Mr. Balash's departure for JFD, but the trial record shows that testimony as to customer's reasons for not buying BT's antennas after threats from JFD could not be elicited from Mr. Blonder, since counsel could not prove Mr. Blonder knew the customer's voice on the telephone, which he did not (T. 836-840).

Mr. Balash, who had the contact with customers, was present during that telephone conversation (T., bottom

p. 836) - but he was long since in the JFD camp. (The others present, Mr. Gilbert and Mr. Helhoski, testified in their depositions of lack of recollection of details - T. 1050-1; 1061-2; 1066).

Note, also, that it was Mr. Balash who did the investigating, had the first-hand knowledge and "made reports" to Mr. Gilbert of BT "that JFD had threatened . . . customers with suit". (T. 1048-9, 1052) Mr. Helhoski of BT also derived his information on this matter from Mr. Balash (T. 1065-6; 1069).

And the record shows that the customers themselves - as the courts have realized is generally true in these cases - just refuse on pain of ceasing to be customers, to testify or "to get involved" (T. 1043).

Thus, Mr. Balash's leaving for JFD during his investigation for BT of the activities of JFD in the market place that were hampering BT's antenna program and the attempt to get evidence and testimony from witnesses, not only injured the sales activity of the BT antenna program, but frustrated the obtaining of evidence for this suit.

The Balash departure and the missing records were, indeed, almost the coup de grace to BT's possible proofs, except for the lucky saving of a few documents such as D. Ex.'s 43 and 46 that support the oral testimony.

But JFD was not content with hiring just Mr. Balash. In the heat of this litigation last summer and fall, with the

case set for trial, JFD hired three other BT engineering employees: two engineers, Mr. Eduardo Elesandro, the "project engineer in charge of . . . master television antenna equipment division" at BT (T. 778-9), Mr. Abraham Schenfeld, co-inventor of the Blonder-Schenfeld patent in suit in this counterclaim, and one laboratory assistant, Robert Mannkedic.

The hiring of Mr. Schenfeld, just as trial had been set, indeed, deprived BT of the services (and, obviously, the reliable testimony and loyalty) of the co-inventor in its own patent in suit against JFD!

The record shows how hampered BT was in its proofs (and what interference this caused with the processes of this Court) as a result of the hiring away of co-inventor Schenfeld. Mr. Blonder testified (T. 755-6) that Mr. Schenfeld made the performance tests on the JFD antennas charged with infringement; and Mr. Blonder had no knowledge that qualified him to testify! And Mr. Schenfeld was now in the "enemy" camp.

But even this was not enough in the campaign to prevent BT's emergence in the antenna field and to hinder the BT proofs in this litigation.

On the eve of the present trial, JFD even lured away the West Coast sales representative of BT, Mr. Graham Sisson (T. 779-80).

Is it any wonder that BT's business deteriorated and its valued Vice President, Mr. Gilbert, had to be let go? (T. 906)

6. THE JFD CAMPAIGN TO FORCE CUSTOMERS TO PURCHASE FROM JFD

As before stated, Mr. Balash's investigations, reports and records relating to the above, before he left BT's employ and went over to JFD, are not available.

Much of the information of Mr. Gilbert and Mr. Helhoski relating to this was obtained directly from Mr. Balash and his investigations (T. 1048-9; 1052; 1065-6; 1069); and the customers just refuse "to get involved" in this litigation (T. 1043, 1082).

Though grievously damaged by all these acts and campaigns of JFD, BT has been almost paralyzed in trying to prove certain aspects of its counterclaim for unfair competition and antitrust violation by the loss of key employees and records.

Fortunately, however, Mr. Finkel, executive vice-president of JFD, was very candid in his deposition, D. Ex. 42, as to the JFD tactics with distributor-customers.

On Page 73, Mr. Finkel conceded that BT and JFD have a competitive line of converters and amplifiers that are used with antennas in receiving systems:

"Q. Was it the fact, to your knowledge, that Blonder-Tongue Laboratories had a competitive line of converters and amplifiers?

"A. Yes, of course."

Mr. Finkel also conceded that JFD's converters and amplifiers are not covered by patents, p. 75-6: "On the existing line, no."

Mr. Finkel further admitted, p. 73-4, that JFD's salesmen and distributors stress that the JFD antennas "are covered by patents of the University of Illinois Foundation", and that JFD is

"the exclusive licensee under those patents."

As part of what Mr. Finkel characterized as the "normal selling" by JFD salesmen and distributors, he conceded that they also might make statements to a potential customer that if such customer

"handled anyone else's line of log periodic antennas, they would be sued."

And further as to this "normal selling" of stressing the antenna patents and the possibility of suit, he frankly conceded that JFD salesmen try to tie in the non-patented converters and amplifiers of JFD, as well (p. 74-5):

"Q. And would you acknowledge that in connection with this normal selling they at the same time tried to persuade the customer to handle your antennas and your line of converters and boosters?

"A. Our salesmen are always trying to sell all of our accessory merchandise along with our antennas . . .

* * *

"Q. Do you know in connection with these customers that handle your entire line, whether the distributors tried to persuade the customers to handle only the JFD line of products and not those of the competitor?

"A. You are talking of distributors persuading dealers when you say customers?

"Q. Yes.

"A. This, again, is par for the course, because all distributors are trying to get the dealer convinced that the product they are selling is better than anybody else's.

"Q. So it is conventional for them to say, to try to get the dealers to handle only JFD antennas, converters, boosters?

"A. They try, but too few succeed."

Under mention of the antenna patents and threat of suit if the dealer handles anyone else's log periodic antenna, thus, JFD admittedly tries to get customers to purchase its unpatented converters and amplifiers to the exclusion of competition.

This practice was also verified by Mr. Helhoski, who testified that he received reports that customers received the implication from JFD that JFD would not sell its patented antennas to those who did not purchase JFD's converters

and amplifiers or to those who purchased BT equipment (T. 1070-1; 1067-8).

Mr. Gilbert similarly testified to oral customer reports of JFD salesmen refusing to sell JFD antennas to BT customers when they bought BT products (T. 1050-2).

Mr. Cohn similarly testified, with names of specific customers, as to JFD's tie-in sales policy (T. 1044-1046).

While the above, except for the frank admissions of Mr. Finkel, are not the strongest of proofs, they at least, in the light of Mr. Balash's joining of JFD and the simultaneous disappearance of records, and the presence of at least some written customer communications relating to JFD threats (D. Ex. 43 and 46) constitute some proof of these illegal activities of JFD.

Because of the truth of these activities, JFD has chosen to remain absolutely silent and has offered not one word of explanation. It kept Mr. Balash and any explanations away from this court; and it carefully limited the scope of Mr. Finkel's appearance so that he could not be questioned on this subject matter.

The Foundation Is Not A Mere Licensor

The Foundation has tried to maintain a posture of aloofness to the activities of JFD, insisting that the Foundation is only a licensor.

But a mere licensor does not permit its name to be used for advertising, as distinguished from a mere mention in a license notice. The agreement between the Foundation and JFD (D. Ex. 44 and 45) provides that while the licensee shall not refer to the University of Illinois or the Foundation in its "advertising matter or literature" except with the "prior written authorization of Licensor as to such reference", the agreement specifically provides that such "authorization will not be unreasonably withheld". And the fact, as demonstrated by many of the JFD advertisements before discussed, is that the Foundation lent its name for a period of almost two years in the era 1963-64 when BT was starting to market its log periodic antenna without restraint on the false statements made by JFD.

It was not until late in October, 1964 (D. Ex. 42 - B-104) that the re-writing of advertisements was insisted upon by the Foundation; but by this time the damage had been done to BT in the market place.

Mr. Blonder testified that though the Blonder-Tongue log periodic DART antenna introduced in late 1963 met with initial success, the distributors within "a few months" refused "to take on our line" under threat of suit "by JFD and the University of Illinois Patent Foundation" (T. 781-2).

It is also not the role of a "mere licensor" to issue news releases announcing suit against competitors of the licensee (such as D. Ex. 43 - XB6c; D. Ex. 46 - XB5b) and to authorize the mailing of such news releases to customers of the competitor of the licensee, such authorization by the Foundation having been specifically testified to by Mr. Finkel at D. Ex. 42, p. 78.

It is also, of course, not the role of a "mere licensor" to try to obtain patents for use as weapons by a licensee through any means, foul or fair, in the Patent Office; specific reference being made to the improper conduct in the filing of the Mayes affidavit that persuaded the Patent Office to grant the Mayes and Carrel patent. Immediately upon the issuance of that patent, the licensee JFD, widely using the name of the University of Illinois, prominently advertised the issuance of the patent to the detriment of BT as previously discussed in connection with D. Ex. 42, B-4 and 4a.

That at least JFD contemporaneously considered the Foundation to be more than a mere licensor is also evident from the correspondence between JFD and the Foundation represented by the letters, D. Ex. 42 - B-111 and XB12, 12a. In the former letter, Mr. Finkel expresses the view that in JFD's relationship with the Foundation "The University must be prepared to support their licensee against tactics of the

likes of" a competitor; and that the Foundation was "neglecting the responsibilities of a licensor to a licensee, as well as our mutual benefit in establishing a stronger position in the antenna market to sell all LPV antennas" (emphasis supplied). In the latter document, Mr. Finkel, further emphasized that the Foundation is not a mere licensor in the following terms:

"Also, when the Foundation decided to commercialize on some of its developments, the decision necessarily entailed at least a partial entry into the commercial world where advertising and the exploitation of ideas help to produce income";

and Mr. Finkel reminded the Foundation that "the license agreement envisages advertising. The basic operative position is that 'authorization will not be unreasonably withheld'."

BT has been mortally injured by the campaign of the series of acts of JFD previously outlined. In some of these acts, it has been shown that the Foundation has actively participated; and in others the Foundation remained silent over a long period of time and thus gave tacit approval to this overall plan of unfair and illegal competition.

The Foundation clearly was not just a mere aloof licensor.

Summary Of The Law

The cumulative result of the actions by the counter-claim defendants was wrongfully to deny Blonder-Tongue an opportunity to compete for log periodic home receiver television antenna business.

It is well established that both unfair competition and antitrust violations may be made out by a series of acts each of which in itself might not constitute a serious wrong. In Kobe, Inc. v. Dempsey Pump Co., 198 F.2d 416, CA 10, 1952, Kobe had acquired a rights in a group of patents relating to hydraulic pumps. The court held that the mere fact of creation of the patent pool was not illegal so long as the purposes for which it was used were legitimate. However, Kobe had followed a pattern of acquiring all important patents in its field and pursued infringement actions against Dempsey for the principal purpose of furthering its monopoly and eliminating Dempsey as a competitor and the Court of Appeals held there was support for the District Court's finding of an antitrust violation.

To a similar effect is the decision of the New York Court of Appeals in Electrolux Corp. v. Val-Worth, Inc., et al, reported at 123 USPQ 175 (1959) (copy attached), where the Court said:

"It is, in a sense, fruitless to examine each individual step in the scheme for actionable wrong. They are so dependent upon one another that one can only say that its entirety is an unfair method of direct competition."

Unfair competition and antitrust often result from the same actions. One commentator expresses it as follows:

"When, of course, unfair competition has an anticompetitive effect as in restraint of trade or monopoly, the antitrust laws as well as the law against unfair competition are concurrently applicable." (Callmann Unfair Competition Trademarks and Monopolies, Third Edition, Sec. 15.1c (Volume 1, p. 287))

Unfair Competition

Unfair competition is a loosely defined concept and has been described by Callmann (cited above) as follows:

"Violation of the 'rules of the game' is the essence of unfair competition and it is the nature of the competition that determines those rules." Sec. 1 (Vol. 1, p. 1)

And

"Though the wrong stems out of the violation of a code of equitable conduct rather than injury to particular values, the violation of related duties rather than the infringement of particular rights, the violation of rights and the injury to values are evidentiary factors which define the extent of the defendant's wrongful conduct. The latter's intent or success in diverting trade from another may be shown by such acts as his imitation of the plaintiff's trademark, his betrayal or unlawful obtention of plaintiff's trade secrets, interference with plaintiff's contracts, slander of plaintiff's reputation, etc. The defendant may also be equally chargeable with unfair competition if he has falsely advertised, or has

sold his product by improper means (i.e., lottery or below cost, etc.) even though these acts bear no direct reference to the plaintiff." Sec. 2 (p. 25, 26)

In Royer v. Stoodly Company, DC WD Okla. (1961), 192 F. Supp. 949 at 952, 953, Chief Judge Chandler discusses the general scope of unfair competition and cites several cases and commentators with regard to the general principles.

False or overstated patent marking has long been recognized as an act of unfair competition. This was one aspect of the decision in Kobe v. Dempsey, where Kobe gave wide publicity to the number of patents which it owned and "they were used to the limit in its attempt to stop Dempsey", 198 F.2d at 424.

In the Seventh Circuit, Judge Evans criticized plaintiff-appellant for misrepresentations concerning non-existent patent protection, and refused to enforce appellant's trademark rights, because of the unfair business practices. Perfection Mfg. Co. v. B. Coleman Silver's Co., 270 F. 576 (1921), CA 7.

In Angel Research, Inc. v. Photo-Engravers Research, Inc., 223 F. Supp. 673 (1962), DC ND Ill., Judge Perry held that the actions of Photo-Engravers Research, Inc. in attributing to a patent a scope which it did not have and in threatening members of the trade with the patent, were factors in the creation of a monopoly. Photo-Engravers Research, Inc. had

also misused the patent by refusing to sell allegedly patented material to certain customers who wouldn't join the research group.

In another case involving counterclaim defendant, JFD, the United States District Court for the Eastern District of New York held allegations of false representations by JFD with respect to their antennas and those of another antenna manufacturer stated a cause of action both under the Patent Law, 35 U.S.C. 292, and Section 43a of the Lanham Act, 15 U.S.C. 1125a. Channel Master Corp. v. JFD Electronics Corp., 260 F. Supp. 568 (1966), DC ED NY.

The evidence with regard to false advertising and marking is clear. There can be no question regarding the applicability of the law.

Publicity with regard to suits for patent infringement and threats of such suits have been held to constitute an act of unfair competition. A case in the Seventh Circuit, Panay Horizontal Show Jar Co. v. Airdor Co., 292 F. 858 (1923), criticized the publicity given to a patent and a suit which had been filed but not yet heard. Judge Evans said (p. 859):

"The practice of trying suits in newspapers or circulars, in order to scare or daunt competitors, is pernicious and apparently growing. While courts are always open to protect patentees or manufacturers who have established a business which is being unfairly assailed, they cannot permit or sanction the

use of the court's name, in advance of adjudication (or falsely after adjudication), to harass or obstruct a rival. A patentee who resorts to such practices comes into court with unclean hands, and on that ground alone will be denied the relief to which he otherwise might be entitled."

To a similar effect is Maytag Co. v. Meadows Mfg. Co., 35 F.2d 403, CA 7 (1929), where Judge Lindley, speaking for the Court of Appeals, commented on the misleading and erroneous charges made by patentees' representatives which had the result of causing prospective customers to hesitate or refuse to purchase the accused machines. The Court found that appellee had been put to great expense in counteracting the propoganda of appellant and that he was entitled to an injunction and damages.

H. A. Toulmin, Jr., in Patents and the Anti-Trust Laws of the United States, 1960, says:

"Mass patent litigation and the sending of notices of patent infringement may be regarded as evidence of unfair competition. This unfair competitive method is aggravated where it is coupled with a general attack on a trade, both by patent notices and litigation." Vol. 4, page 696, Chap. 23, Sec. 23.1.

See also Gerosa v. Apco Mfg. Co., 299 F. 19, CA 1 (1924); Robbins v. Petersime, CA 10 (1931), 51 F.2d 174.

The hiring away of key employees has been held to be an actionable wrong. In Sugar Creek Creamery Company v. Momence Milk Cooperative Assn., DC ED Ill. (1947), 75 USPQ 193 (copy attached), Judge Lindley issued a preliminary

injunction to restrain acts of unfair competition, one factor being the hiring away of key employees of plaintiff who in turn induced third parties who had contracts with the plaintiff to breach those contracts and to refuse to deal further with plaintiff. In the present case, JFD hired away key people in the sales and engineering operations of BT relative to the antenna business. These wrongful acts of JFD have greatly impeded Blonder-Tongue's ability to compete in the antenna market and have seriously hindered its preparation for this trial. In addition to the damage done defendant, these acts have had the effect of frustrating justice by preventing the presentation to this Court of much of the evidence of JFD's wrongdoing.

Antitrust

Several of the acts discussed above as constituting unfair competition were performed with the intent and had the effect of restraining the participation of others, including BT, in the field of log periodic home television receiving antennas and as such constitute monopolistic practices. 15 U.S.C. 1, 14, 15.

In this connection it should be noted that JFD has described itself as "one of the world's largest producers of TV antennas" (D. Ex. 42 - B-101); and as "the world's

largest manufacturer of TV and FM antennas" (D. Ex. 42 - J6), a statement which Mr. Finkel testified as "accurate" and "true" (D. Ex. 42, p. 22). The activities complained of were, therefore, of the leading manufacturer and supplier in the field and were directed against BT, a brand new-comer to the commercial antenna market.

The false and overstated patent marking, discussed above, and done for the purpose of excluding others from the market, is an antitrust violation (Kobe v. Dempsey, supra; Angel Research v. Photo-Engravers Research, supra).

Furthermore, the wrongful marking of antennas by JFD with patent numbers which were admittedly inapplicable is an action in restraint of trade. Surgitube Products Corp. v. Scholl Manufacturing Co., 158 F. Supp. 540, DC SD NY (1958).

The tie-in sales admitted by JFD's executive vice-president, Mr. Finkel, constitute an antitrust violation. Carbice Corp. of America v. American Patents Development Corp. and Dry Ice Corp. of America, 283 U.S. 27 (1931); Leitch Manufacturing Co., Inc. v. Barber Co., Inc., 302 U.S. 458 (1938); Morton Salt Co. v. G. S. Suppiger Co., 314 U.S. 488 (1942).

It has been demonstrated that Mayes and Carrel 3,108,280, the basis of Re.25,740, was secured by a fraud on the Patent Office, in the filing of a misleading affidavit. The subsequent action of the Foundation, asserting the patent

in an attempt to foreclose others from manufacturing log periodic home television receiving antennas is a violation of Section 2 of the Sherman Act, 15 U.S.C. 2, Walker Process Equipment, Inc. v. Food Machinery & Chemical Corporation, 382 U.S. 172, 15 L.Ed.2d 247, 86 S.Ct. 347 (1965).

COUNT III - THE INFRINGEMENT OF THE
BLONDER-SCHENFELD PATENT 3,259,904 (D. Ex. 26)

The work of the University of Illinois in log periodic antennas preceded that of BT's Blonder and Schenfeld.

The work of Isbell and Mayes and Carrel, represented by their patents in suit, dealt with substantially coplanar or colinear arrays of dipoles and their specifications and claims are all so limited.

Blonder and Schenfeld discovered, however, that they could make an array of two sets of dipole elements and separate them into two spaced planes sufficiently to overcome the mechanical instability and other deleterious effects inherent in prior log periodic structures, such as those of Isbell and Mayes and Carrel, and yet, surprisingly, maintain log periodic operation:

"Numerous types of antennas have been evolved for broad-band directive radio and television reception including driven arrays, Yagi-type arrays, log periodic linear and V-type antennas, helical antennas and other configurations. The problems of mounting

such antennas upon masts for outdoor operation or upon portable structures adapted for directional adjustment in connection with indoor reception have, however, long plagued the art; the mounting and adjusting structures introducing 'ghosts' and other deleterious electrical field-pattern aberrations over the band. It is to the improvement of such mounting structures and the minimizing of electrical interfering effects over a wide band of frequencies, including stabilizing of outdoor performance and providing for ready adjustability in indoor performance, that the present invention is primarily directed."
(Col. 1 of patent; emphasis added)

* * *

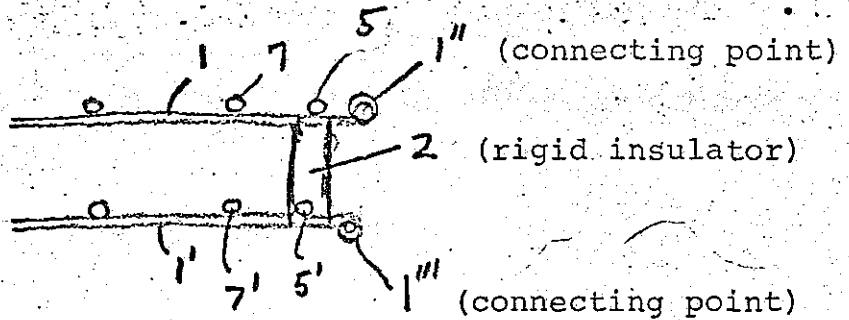
"Unlike prior-art arrays, including Yagi arrays, conventional log-periodic structures and the like first and second pluralities of horizontal dipole elements 5, 7, 9 . . . 11 and 5', 7', 9' . . . and 11' are provided, lying in corresponding first and second vertically spaced horizontal planes I and I' containing the respective longitudinal conductors 1 and 1'." (top of Col.2 of patent)

Blonder and Schenfeld further discovered that if a parallel wire transmission line is carried near the front end of the antenna in a certain critical way, it will, even though the parallel wire line is of much smaller separation between its lines than the separation between the antenna planes, do unobvious and surprising things; namely:

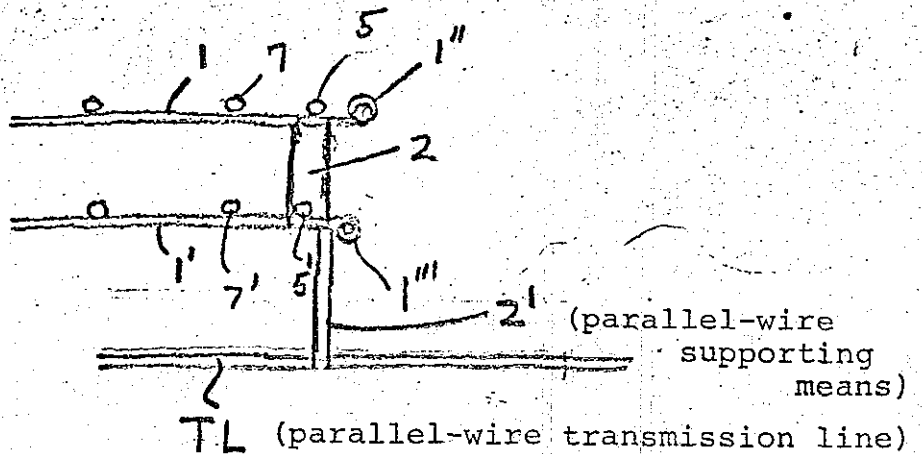
- a. prevent deleterious relative movement of line and antenna that upsets or varies the radiation receiving field; and
- b. provide a surprisingly adequate "match" of line-to-antenna over the frequency band of interest.

The critical way that Blonder and Schenfeld accomplished this was by:

- 1.. Rigidly holding the front end apart by an insulator 2 (Fig. 1 of patent) at the two connecting points 1'' and 1''' at which the line is to be connected.

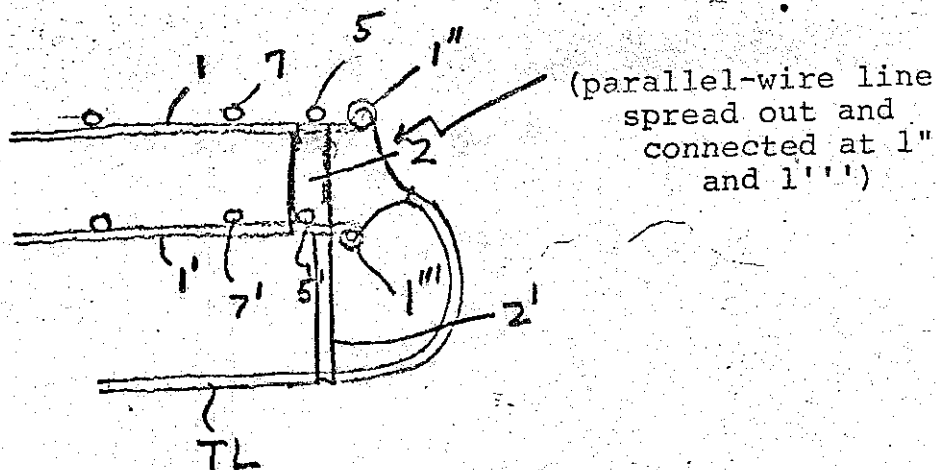


2. Holding or supporting the parallel wire line TL beneath the lower plane boom 1' by means 2' mechanically connected to this insulator-boom assembly.

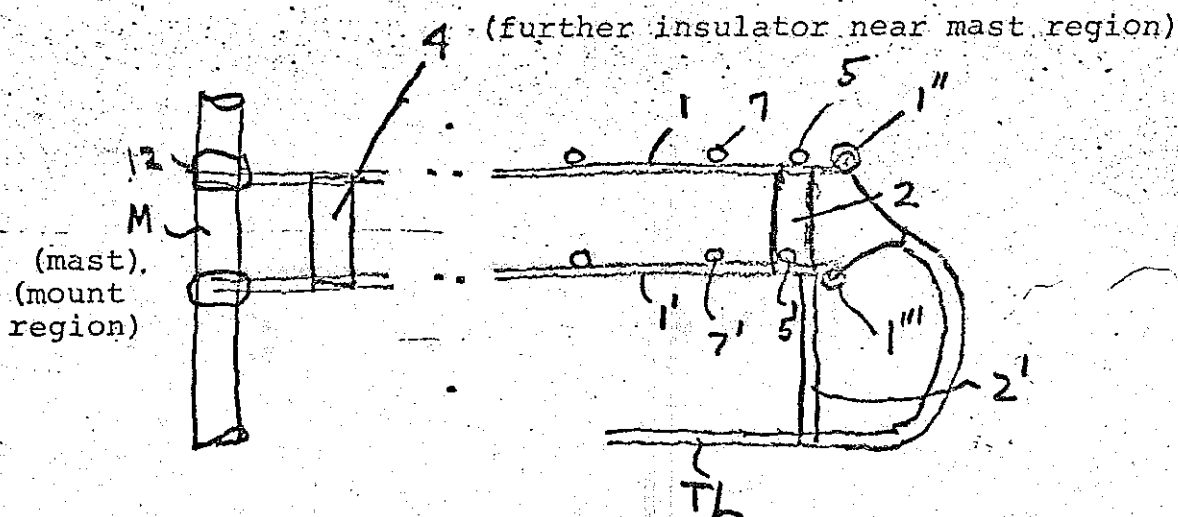


3. Carrying the end of the parallel-wire line TL from such means 2' around the front end and spreading out the line

vertically to join with the two connecting points 1'' and 1''' (this ingenious technique apparently producing a transition that effects the necessary "match" from the small wire separation transmission line TL to the widely-separated antenna booms 1-1').



4. Insuring the mounting at 12 to the mast M at a region remote from the front end of the antenna and near which region a further insulator 4 keeps the booms at the precise separation.



The manner in which these elements are thus so critically positioned is specified in the asserted claim 5 of this patent follows:

Claim 5 applied to Fig. 1 of Blonder-Schenfeld Patent

a pair of rigid longitudinal conductors held spaced a predetermined vertical distance apart in a vertical plane (1 and 1' in Fig. 1)

first and second pluralities of dipole elements lying in corresponding first and second vertically spaced horizontal planes containing the respective conductors (5, 7, 9, etc., in plane of conductor 1; and 5', 7', 9', etc., in plane of conductor 1')

the dipole elements extending from opposite sides and transversely at an angle to each conductor at successive points therealong with dipole elements connected to one conductor extending in opposite direction to the corresponding dipole elements of the other conductor (5, 7, 9 extending to the right and 5', 7', 9' extending to the left)

the length of the dipole elements successively increasing from one end of the conductor toward the other end thereof (short length of 5 and 5' at free end and long length of 11 and 11' at mast mounting end)

means for connecting a parallel wire transmission line to the said one end of the conductor (the connecting means 1'' and 1''' for the line TL at the free end)

rigid insulating means securing the said connecting means mechanically in spaced-apart relation (insulator 2 keeping connecting means 1'' and 1''' of respective conductors 1 and 1' vertically rigidly spaced)

and connected with means for supporting the transmission line near the said one end (the insulator 2 clamping conductors 1 and 1' is connected with means 2'' depending therebelow for supporting the transmission line TL near the free end)

and means for mounting the antenna at a region of the said conductor remote from the said one end (mast clamps 12 at the mast M, remote from the free end)

further rigid insulating means being provided for securing the said longitudinal conductors mechanically in rigid spaced-apart relation near the said region (insulator 4 keeps the conductors 1 and 1' apart near the mounting region)

the said vertical distance being less than the distances between the said successive points and less than the wavelengths of the said band (the separation between 1 and 1' is less than the average distance between successive dipole

elements 5, 7, 9, etc. and less than the wavelengths of the frequency band over which the antenna is to operate).

While the so-called prior art cited by the counter-claim defendants admittedly shows parallel boom structures (as, indeed, do the Isbell and Mayes and Carrel patents themselves in their substantially coplanar booms of Fig. 2 thereof), none teaches either individually or in combination or even hints at this critical construction for use with widely spaced booms and with parallel wire lines, as above set forth.

The Blonder-Schenfeld patent shows (bottom of column 4 thereof) that the Patent Office cited both the Isbell and Mayes and Carrel patents here in suit as prior art; so that the issuance of the Blonder-Schenfeld patent constitutes a finding by the Patent Office that this was an unobvious invention over the work of Isbell, Mayes and Carrel and the other prior art of record.

Infringement

Perhaps the best evidence of the unobviousness of this invention and of the significance of the Blonder-Schenfeld improvement invention lies in the fact that after the BT DART had been introduced on the market, JFD completely changed the design of antennas to incorporate this Blonder-Schenfeld invention - and this despite the fact that the

University of Illinois pioneered log periodic antenna investigations.

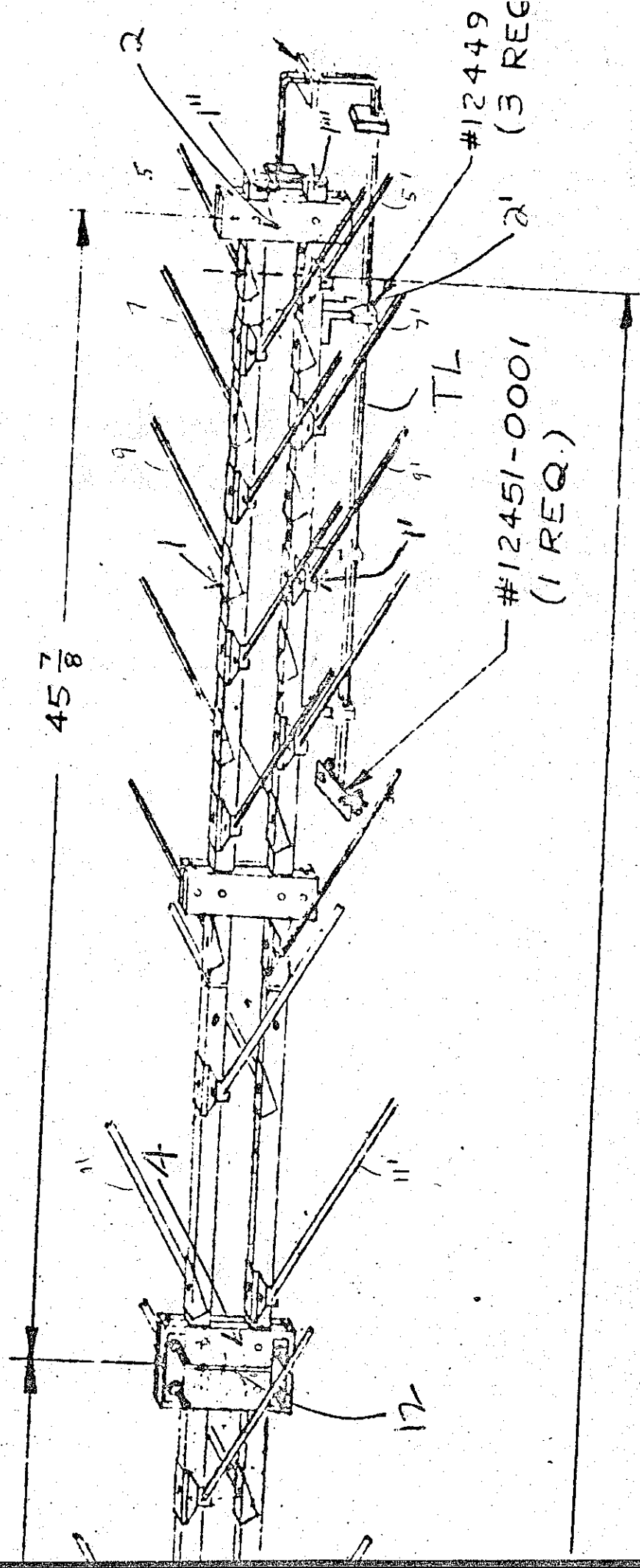
It is significant that despite this incorporation of the Blonder-Schenfeld invention, JFD, still represents to the public in its advertisements that this antenna is the invention of the University and JFD (D. Ex. 42 - B-110, for example).

D. Ex. 42 - B-106 and 108 shows the coplanar construction of the original JFD antennas, following the Isbell and Mayes and Carrel teachings.

D. Ex. 37 and 27, 27-A show the later adoption of the Blonder-Schenfeld construction with the relatively widely spaced booms and the critical transmission line mounting arrangement above-described, as is reproduced in the following sketch, labelled "JFD LPV VU 18".

Dr. Mayes, indeed, conceded that the later models of JFD antennas "after the appearance of Plaintiff's Exhibit 10" (the BT DART) adopted the wide two-plane spacing of the Blonder-Tongue antenna (T. 653). Mr. Finkel also admitted that JFD did not have a "dual boom construction" "UHF antenna" at the time of the BT DART (D. Ex. 42, p. 53).

Mr. Finkel further testified that the LPV VU antennas were marketed after the issuance of the Blonder-Schenfeld patent (T. 1199-1200).



JFD LPV VU-18
 (FROM D.Fx.27,27A)

Mr. Blonder testified to the exact correspondence between the elements of this claim 5 configuration and the JFD LPV VU 18 antenna, for example (T. 746-750). He also testified that the other specified JFD antennas also infringe in the same way.

Claim 5 applies to the JFD antenna in precisely the same way as it does to the Blonder-Schenfeld antenna of Fig. 1 of their patent, as follows, reference being had to the said "JFD LPV VU 18" sketch, a copy of D. Ex. 27A on which the reference numerals testified to by Mr. Blonder have been applied:

Claim 5 applied to JFD LPV VU 18 antenna

a pair of rigid longitudinal conductors held spaced a predetermined vertical distance apart in a vertical plane (1 and 1' in JFD LPV VU 18)

first and second pluralities of dipole elements lying in corresponding first and second vertically spaced horizontal planes containing the respective conductors (5, 7, 9, etc., in plane of top conductor 1; and 5', 7', 9', etc., in plane of lower conductor 1')

the dipole elements extending from opposite sides and transversely at an angle to each conductor at successive points

therealong with dipole elements connected to one conductor extending in opposite direction to the corresponding dipole elements of the other conductor (5, 7, 9 extending to the right and upward and 5', 7', 9' extending to the left and downward)

the length of the dipole elements successively increasing from one end of the conductor toward the other end thereof (short length of 5 and 5' at free end and long length of 11 and 11' at mounting end)

means for connecting a parallel wire transmission line to the said one end of the conductor (the connecting means 1'' and 1''' for the line TL at the free end)

rigid insulating means securing the said connecting means mechanically in spaced-apart relation (insulator 2 keeping connecting means 1'' and 1''' on respective conductors 1 and 1' vertically rigidly spaced)

and connected with means for supporting the transmission line near the said one end (the insulator 2 clamping conductor 1 and 1' is connected with means 2'' depending therebelow for supporting the transmission line TL near the free end)

and means for mounting the antenna at a region of the said conductor remote from the said one end (mast clamps 12 to

the left, remote from the free end)

further rigid insulating means being provided for securing the said longitudinal conductor mechanically in rigid spaced-apart relation near the said region (insulator 4 keeps the conductors 1 and 1' apart near the mast clamp mounting region)

the said vertical distance being less than the distances between the said successive points and less than the wavelengths of the said band (the separation between 1 and 1' is less than the average distance between successive dipole elements 5, 7, 9, etc. and less than the wavelengths of the frequency band over which the antenna is to operate).

A clear case of infringement has thus been made out. Each of JFD and the University of Illinois Foundation have received financial return for use of the Blonder-Schenfeld invention in the changed line of JFD antennas and are liable to BT for damages. 35 U.S.C. 284.

CONCLUSION

The facts and the law show conclusively that the Foundation and JFD have been guilty of unfair competition and antitrust violations and have profited from infringement of the BT antenna. Judgment for BT on Counts I, II and III of the counterclaim is respectfully requested.

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By _____

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CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Brief of Defendant and Counterclaimant, Blonder-Tongue Laboratories, Inc., In Support of Counts I, II and III of Its Counterclaim were mailed by first class mail this 15th day of February, 1968, to each of the following:

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