May 2, 1967

Mr. Isaac S. Blonder
Blonder-Tongue Laboratories Inc.
9 Alling Street
Newark 2, New Jersey

Re: Univ. Illinois v. Blonder-Tongue Labs.

Dear Ike:

The enclosed are charts that JFD proposes to use at the trial in connection with supposed anticipation of your invention by prior art and supposed non-infringement by their structures.

Why don't you glance these over and when we get together, hopefully next week, we will go into them in more detail.

At present, the judge does not think he will get to our case before May 15, 1967, and maybe not then.

Very truly yours,

RINES AND RINES

RHR:H

By_____

Enclosures

May 2, 1967

VIA AIR MAIL

John Rex Allen, Esq.
Hofgren, Wegner, Allen, Stellman & McCord
20 North Wacker Drive
Chicago, Illinois 60606

Re: University of Illinois v. Blonder-Tongue et al

Dear Dick:

In reply to your letters of April 27th and 28th, we probably answered the earlier letter in our telephone conversation with regard to the later letter, we would like to have a copy of Report TR52 and a copy of the other publications listed in the JFD notice.

Very truly yours,

RINES AND RINES

RHR:H

By_____

LAW OFFICES

HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

20 NORTH WACKER DRIVE

CHICAGO 60606

TELEPHONE
FINANCIAL 6-1630
AREA CODE 312

AXEL A. HOFGREN
ERNEST A. WEGNER
JOHN REX ALLEN
WILLIAM J. STELLMAN
JOHN B. McCORD
BRADFORD WILES
JAMES C. WOOD
STANLEY C. DALTON
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W. E. RECKTENWALD
J. R. STAPLETON

WILLIAM R. McNAIR
JOHN P. MILNAMOW
DILLIS V. ALLEN
W. A. VAN SANTEN, JR.
JOHN R. HOFFMAN

May 1, 1967 Encl.

Mr. Robert H. Rines
Rines and Rines
No. Ten Post Office Square
Boston, Mass. 02109

Re: University of Illinois v. Blonder-Tongue et al

Dear Mr. Rines:

At the hearing this morning Judge Hoffman set the trial of our case over until May 16. Just prior to that he had a hearing on the antitrust case that precedes us and the trial of which he reset for May 15 advising counsel that it might not be reached on that date or for some time thereafter.

This antitrust case is the one I referred to previously. There is no hope of settlement. If it goes on trial it will take somewhere between a week and five weeks, and we will maintain our place behind it. It is therefore most unlikely that we will get on trial before June even if the antitrust case does start on the 15th.

Additionally, there are criminal cases on Judge Hoffman's docket which will take precedence over the antitrust case as it is a civil suit and there is therefore the possibility that our case won't go to trial until fall.

All we can do is keep in touch with the cases ahead of us and from time to time will let you know what the situation is.

Sincerely,

Jack

JRA:DB

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MAY 2 - 1967
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J. R. STAPLETON

WILLIAM R. McNAIR
JOHN P. MILNAMOW
DILLIS V. ALLEN
W. A. VAN SANTEN, JR.
JOHN R. HOFFMAN

April 28, 1967

Mr. Robert H. Rines
Rines and Rines
No. Ten Post Office Square
Boston, Massachusetts 02109

Dear Bob:

I didn't find anything particularly startling in the Foundation's or JFD's trial briefs. There are a couple of places where JFD gets a little sloppy and refers to the development of the log periodic "principle" by the University.

With regard to the Blonder patent, JFD is placing a great deal of reliance on technical report TR 52. Do you have a copy of this? We do not. I am sure I can get a copy from Pete Mann if they have an extra or at least borrow one so that it can be duplicated. Do you have copies of the other publications listed in the notices from JFD? If you would like me to get them, let me know.

Very truly yours,

Richard S. Phillips

RSP:iag

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MAY 1 1967
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WILLIAM R. McNAIR
JOHN P. MILNAMOW
DILLIS V. ALLEN
W. A. VAN SANTEN, JR.
JOHN R. HOFFMAN

April 27, 1967

Mr. Robert H. Rines
Rines and Rines
No. Ten Post Office Square
Boston, Massachusetts 02109

Dear Bob:

Pete Mann called with regard to their possible use of Ron Grant as a witness at the trial. The sole purpose of his testimony will be to identify some documentary records of performance tests of Blonder-Tongue antennas. Grant supervised the tests which were made at the JFD lab in Champaign. Someone else, probably Mayes, will testify regarding the meaning of the results. Pete wonders if you will accept the test results without Grant's testimony. He says that Mayes can testify with regard to the equipment and procedures which were used, but that he did not direct these specific tests.

I am picking up today the depositions and trial testimony of Lawler and Marjorie Johnson and possibly a copy of a Collins technical report. Do you want me to send you copies of all of it or should I merely hold it until we get together?

Very truly yours,

Richard S. Phillips

RSP:iag

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NO. TEN POST OFFICE SQUARE, BOSTON

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

S T I P U L A T I O N

For the purpose of this suit, it is stipulated that:

1. Soft copies of patents, or reproductions thereof, reproductions of publications and of documents may be introduced in evidence in lieu of the originals, with the understanding that the originals, if available to one of the parties, will be produced for inspection upon request.

2. Dated documents and records will be presumed to have been made on the date thereof and publications will

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NO. TEN POST OFFICE SQUARE, BOSTON

be presumed to have been published on the date thereof, unless the contrary be shown.

HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

By _____
Attorneys for Defendant
and Counterclaimant
20 North Wacker Drive
Chicago, Illinois 60606

Chicago, Illinois
April 21, 1967

MERRIAM, MARSHALL, SHAPIRO & KLOSE

By _____
Attorneys for Plaintiff
and Counterclaim Defendant
30 West Monroe Street
Chicago, Illinois 60603

Chicago, Illinois
April 24, 1967

SILVERMAN & CASS

By _____
Attorneys for Counterclaim Defendant
105 West Adams Street
Chicago, Illinois 60603

Chicago, Illinois
April 26, 1967

LAW OFFICES

HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

20 NORTH WACKER DRIVE

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WILLIAM R. McNAIR
JOHN P. MILNAMOW
DILLIS V. ALLEN
W. A. VAN SANTEN, JR.
JOHN R. HOFFMAN

April 28, 1967 Enl.

Mr. Robert H. Rines
Rines and Rines
No. Ten Post Office Square
Boston, Massachusetts 02109

Dear Bob:

* I enclose copies of the JFD charts in full color, as they will be presented in court. We received only one colored set but I thought it would be of more use to you than to me.

Very truly yours,

Dick

Richard S. Phillips

RSP:lag

* Enclosures

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MAY 1 1967
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

McKENNEY, FARRINGTON, PEARNE & GORDON
[illegible] MIDLAND BUILDING
CLEVELAND, OHIO 44115

April 27, 1967

Richard S. Phillips, Esq.
Hofgren, Wegner, Allen, Stellman & McCord
20 North Wacker Drive
Chicago, Illinois 60606

Re: UIF v. BT v. JFD

Dear Dick:

Many thanks for your letter of April 25th and the enclosed copy of the trial brief on behalf of Blonder-Tongue. I am pleased with the content and impressed with the crispness of its presentation.

Sincerely,

JFP:jmc

cc: Robert H. Rines, Esq.

RECEIVED
[illegible]

McNENNY, FARRINGTON, PEARNE & GORDON

ATTORNEYS AT LAW

920 MIDLAND BUILDING

CLEVELAND, OHIO 44115

F. O. RICHEY (1878-1964)

HAROLD F. McNENNY
DONALD W. FARRINGTON
JOHN F. PEARNE
CHARLES B. GORDON
WILLIAM A. GAIL
RICHARD H. DICKINSON, JR.
THOMAS P. SCHILLER

LYNN L. AUGSPURGER
STANLEY R. MILLER

TELEPHONE
(216) 623-1040
CABLE ADDRESS
RICHEY

PATENT AND
TRADEMARK LAW

LLOYD L. EVANS
OF COUNSEL

April 25, 1967

Encl

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APR 27 1967
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

Robert H. Rines, Esq.
Rines & Rines
10 Post Office Square
Boston, Massachusetts

Re: The Finney Company v. JFD Electronics Corporation et al., Civil Action Nos. 65 C 220 and 65 C 671 (Consol.)

Dear Bob:

Thank you for your longhand note from Miami acknowledging receipt of an advance copy of our Motion for Summary Judgment and supporting memorandum. Since sending you that material, we have slightly revised the motion itself and considerably revised the supporting memorandum. Both were filed in Court yesterday, together with the various exhibits referred to therein.

After discussing the above with Dick Phillips by telephone this morning, I am sending you herewith the following:

1. Revised Motion for Summary Judgment

2. Revised memorandum in support of the motion

3. Motion Exhibits PX-H, PX-I, PX-1A, PX-3, PX-12, and PX-27.

I previously sent you copies of PX-C, PX-D, PX-F, PX-G, PX-15, PX-34, and PX-35. I am not sending you copies of the patents in suit that are attacked by the motion

or the three prior art patents referred to in the motion (PX-A, PX-B, PX-31, PX-32, and PX-33). I am also not duplicating or sending to you copies of the printed University of Illinois reports or file histories of the patents in suit that are attacked by the motion (PX-4, PX-5, PX-17, PX-29, PX-30, and PX-36), or a copy of the IRE Transactions article constituting a file wrapper reference against Isbell (PX-28), on the assumption that you have copies of those documents. I also am not sending you a copy of the Lawler deposition (PX-E) or of the testimony of Johnson and Lawler in the Winegard suit (PX-DD and PX-EE) which Dick Phillips will reproduce by borrowing the copies from Winegard's Chicago counsel, Keith Kulie.

The Stipulation, PX-C, on substantive matters and the additional Stipulation on formal matters included in the Appendix at the end of our memorandum in support of our motion were both executed by counsel for all three parties to our suit.

I hope that by now I have supplied you with everything in my possession that may be useful to you in your suit. If not, please let me know.

If possible, I would like to arrange to sit as an observer at the trial of your suit, so that I may benefit as much as possible if and when our own suit should come to trial. To the extent that any questions arise in the course of your trial on which I might be of any further help, or on which I might have any useful evidentiary material, I would want you to feel free to call on me. So I can make my plans accordingly, I would greatly appreciate being advised by you or Dick as soon as a definite or prospective trial date has been set. In the meantime, if you believe I might have anything helpful in connection with your preparation for trial, please let me know and we can arrange to get together again for that purpose.

Sincerely,

John

JFP:jh
Enclosures
cc: Richard S. Phillips, Esq.

LAW OFFICES

HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

20 NORTH WACKER DRIVE

CHICAGO 60606

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JOHN R. HOFFMAN

April 25, 1967

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APR 26 1967
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

Mr. Robert H. Rines
Rines and Rines
No. Ten Post Office Square
Boston, Massachusetts 02109

RE: UIF v. BT v. JFD

Dear Bob:

* I enclose a copy of the trial brief as it was filed. Jack and I made only a few minor changes in it. I sent a copy to John Pearne.

Very truly yours,

Richard S. Phillips

RSP:iag

* Enclosure

LAW OFFICES

HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

20 NORTH WACKER DRIVE

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April 25, 1967

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APR 26 1967
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

Mr. Robert H. Rines
Rines and Rines
No. Ten Post Office Square
Boston, Massachusetts 02109

RE: UIF v. BT v. JFD

Dear Bob:

* I enclose copies of the trial briefs for the Foundation and JFD, together with some charts from JFD. I have not yet had an opportunity to read them, but will comment later.

Very truly yours,

Richard S. Phillips

RSP:iag

* Enclosures

LAW OFFICES

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WILLIAM R. McNAIR
JOHN P. MILNAMOW
DILLIS V. ALLEN
W. A. VAN SANTEN, JR.
JOHN R. HOFFMAN

April 24, 1967

VIA AIR MAIL

Mr. Robert H. Rines
Flamingo Lodge
Evergreen National Park, Florida

Dear Bob:

Pete Mann has asked that we advise him as soon as possible which of the many pieces of prior art identified in the list of exhibits you intend to rely on at the trial. Can you cut the list down a bit?

Very truly yours,

Richard S. Phillips

RSP:iag

cc: Mr. R. H. Rines, Boston

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APR 26 1967
RINES AND RINES
NO. TEN POST OFFICE SQUARE BOSTON

LAW OFFICES

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JOHN R. HOFFMAN

April 24, 1967

RECEIVED
APR 25 1967
RINES AND RINES
NO. TEN POST OFFICE SQUARE BOSTON

Mr. Robert H. Rines
Flamingo Lodge
Everglades National Park
Florida

Re: UIF v. BT v. JFD

Dear Mr. Rines:

This morning we appeared before Judge Hoffman while Pete Mann presented his motion with regard to the order of trial. Judge Hoffman was initially reluctant to sign the order but, after Pete assured him that this was not intended in any way to limit the Judge's discretion in the matter, he signed it. I then advised him of the Iowa case and he thanked me for it but said that he might be interested in reading the decision of the Judge but would obviously not be bound by it and therefore the trial would go on as planned. I then told him about the cases before Judge Lynch and, inasmuch as the motion for summary judgment hasn't as yet been filed, I saw no point in even mentioning it, particularly as the Judge quickly interposed with the comment that this would not affect the trial date.

We had previously checked with the clerk with regard to the likelihood of our going on trial. He gave us the same information as is contained in the attached letter from Mike Cass about which I told you last Friday and a copy of which has been sent to your Boston office.

In addition to the information contained in this letter, we find that the criminal case in which the Syndicate is involved was started last week, will continue through this week and may go partly or all the way through next week. This will probably mean that the cases that are set for trial this week will go ahead of us on the list so we just have no idea of where we are. Pete Mann and I will go in and see Judge Hoffman's clerk on Thursday and at that time will take down a list of all

the cases that are ahead of us and will split up these cases in order to discuss with the lawyers involved whether or not they will go to trial, how long the trial will last, etc.

In other words, by Thursday we should have a pretty general idea as to when we are going to trial. It seems most likely that we won't go to trial on May 1st or during that week. However, there is no point at this time in asking for a new date as the Judge just won't hear us until the situation is better known. As a matter of fact, somebody tried it this morning and got nowhere.

Please let me know where you will be on Thursday so I can communicate with you.

Yours very truly,

HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

John Rex Allen

JRA:DB
Enc.

cc: Rines and Rines
Boston, Mass.

P.S. The draft of your brief just arrived. Dick and I are working on it.

LAW OFFICES

AXEL A. HOFGREN
ERNEST A. WEGNER
JOHN REX ALLEN
WILLIAM J. STELLMAN
JOHN B. McCORD
BRADFORD WILES
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JOHN R. HOFFMAN

HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

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April 21, 1967

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APR 24 1967
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

Mr. Basil P. Mann
Merriam, Marshall, Shapiro & Klose
30 West Monroe Street
Chicago, Illinois 60603

RE: UIF v. BT v. JFD

Dear Pete:

* I am returning herewith two executed copies of the stipulation regarding the COLOR RANGER 10 and GOLDEN DART antennas.

Very truly yours,

Richard S. Phillips

RSP:iag

* Enclosures

cc: Mr. Robert H. Rines (*)

LAW OFFICES
Silverman & Cass
PATENTS · TRADEMARKS · COPYRIGHTS
105 W. ADAMS STREET · CHICAGO, ILLINOIS, U.S.A. 60603
TELEPHONE 726-6006
AREA CODE 312
CABLE: SILCAS

I. IRVING SILVERMAN
MYRON C. CASS
SIDNEY N. FOX
GERALD R. HIBNICK, IND. BAR

April 20, 1967

Our Ref. 6-418

Jerome M. Berliner, Esq.
Ostrolenk, Faber, Gerb & Soffen
Ten East Fortieth Street
New York, New York 10016

Encl

Re: UIF v. B-T v. JFD
No. 66 C 567

Dear Jerry:

I ascertained from Judge Hoffman's Clerk that as of today there are four cases ahead of us on the list of cases to which we were assigned and that there are eight cases remaining from the previous list to which we were added. These latter eight cases will be called during the coming week so that by Thursday, we should have a better idea where we stand for trial.

I further ascertained that there are two criminal cases set for trial on May 1st. There is a judicial conference scheduled for May 8th and 9th so there will be no convening of the Court on those days.

As of this time, it does not appear that we will be called for trial on May 1st. Judge Hoffman's Clerk told me, however, that he will try to give us a more definite time approximation by Thursday, April 27th.

Best regards,

SILVERMAN & CASS

Mike Cass

MCC/gm

cc: Basil P. Mann, Esq.
Richard S. Phillips, Esq.

Xerox copy to R. S. Phillips 4/21/67

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

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

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between plaintiff and defendant Blonder-Tongue, by their undersigned counsel, that:

1. For purposes of this lawsuit, the Blonder-Tongue antenna identified as "Color Ranger-10" shall be considered representative of Blonder-Tongue's series of "Color Ranger" antennas consisting of Models Color Ranger-3, Color Ranger-5, Color Ranger-7, Color Ranger-10 and Color-Ranger-15. The Court's decision of infringement or non-infringement by Color Ranger-10 shall apply also to the other models of the Color Ranger series without individual consideration of these other models.

2. Similarly, defendant Blonder-Tongue's "Golden Dart" outdoor antenna shall be considered to represent also the indoor "Golden Arrow" antenna. The Court's decision of infringement or noninfringement applicable to the "Golden Dart" shall apply also to the "Golden Arrow" without individual consideration of the latter antenna.

HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

Richard S. Thill

Attorneys for Defendant
Blonder-Tongue Laboratories, Inc.

April 21, 1967

MERRIAM, MARSHALL, SHAPIRO & KLOSE

Basil P. Mann

Attorneys for Plaintiff
University of Illinois Foundation

April 20, 1967

PROOF OF SERVICE

A copy of the foregoing "STIPULATION" was mailed this ____ day of _____, 1967 to Silverman & Cass, 105 West Adams Street, Chicago, Illinois, Attorneys for Counterclaim Defendant JFD Electronics Corporation.

One of the Attorneys for The
University of Illinois Foundation

Exhibit

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

NOTICE OF MOTION

TO: (1) HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD
20 North Wacker Drive
Chicago, Illinois 60606
Attorneys for Blonder-Tongue Laboratories, Inc. and

(2) SILVERMAN & CASS
105 West Adams Street
Chicago, Illinois 60603
Attorneys for JFD Electronics Corporation

PLEASE TAKE NOTICE that plaintiff will appear before the Honorable Julius J. Hoffman, United States District Judge, or before any other Judge who may be sitting in his stead, on Monday, April 24, 1967, at 10 a.m., to present the

attached "Motion for Order Setting Sequence of Proof at Trial".

MERRIAM, MARSHALL, SHAPIRO & KLOSE

By_____
Basil P. Mann
A Member of the Firm
Attorneys for Plaintiff
30 West Monroe Street
Chicago, Illinois 60603
Area Code 312 - 346-5750

DATE:_____

ACKNOWLEDGMENT OF SERVICE

Receipt of a copy of the foregoing "Notice of Motion" and the attached "Motion for Order Setting Sequence of Proof at Trial" is hereby acknowledged this ___ day of April, 1967.

HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

By_____
Attorneys for Defendant and Counterclaimant

ACKNOWLEDGMENT OF SERVICE

Receipt of a copy of the foregoing "Notice of Motion" and the attached "Motion for Order Setting Sequence of Proof at Trial" is hereby acknowledged this ___day of April, 1967.

SILVERMAN & CASS

By_____
Attorneys for Counterclaim Defendant

Entd.

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

MOTION FOR ORDER SETTING SEQUENCE OF PROOF AT TRIAL

In the interest of facilitating the conduct of the trial and possibly reducing its length, plaintiff moves for a pretrial order establishing the sequence in which proof on the several issues is to be presented at the trial.

This case presents several different issues raised by the complaint and by defendant Blonder-Tongue's counterclaim, which may be summarized as follows:

1. The Complaint raises the issue of the validity and infringement by defendant Blonder-Tongue of patents 3,210,767 and Re. 25,740 owned by plaintiff.

2. The Counterclaim by Blonder-Tongue raises the issues of:

(a) Unfair competition and anti-trust violation by counterclaim defendant JFD Electronics Corporation and plaintiff.

(b) Validity and infringement by counterclaim defendant JFD and plaintiff of patent 3,259,904 owned by defendant Blonder-Tongue.

The several issues set forth above are only incidentally related, if at all, and consideration of each of them on an individual basis is both feasible and likely to facilitate the orderly conduct of the trial. The facts relative to each of the issues are easily separable. In addition, only a few of the prospective witnesses are expected to testify on more than one of the issues. The use of the sequence in the order of proof which is set out in the proposed Order attached hereto, not only would permit the evidence pertinent to each issue to be presented as a unit, thereby facilitating the Court's consideration thereof, but also would permit a more orderly scheduling of the witnesses to be called.

Respectfully submitted,

MERRIAM, MARSHALL, SHAPIRO & KLOSE

By _____

Basil P. Mann
A Member of the Firm
Attorneys for Plaintiff
30 West Monroe Street
Chicago, Illinois 60603

Chicago, Illinois
April , 1967

Entd

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

ORDER SETTING SEQUENCE OF PROOF AT TRIAL

This matter having come before the Court on the motion of plaintiff and the Court having considered the same, in the interest of facilitating the conduct of the trial, IT IS HEREBY ORDERED that the order of proof at the trial will be as follows:

1. Plaintiff's proof on background of invention and infringement by defendant Blonder-Tongue of patents 3,210,767 and Re. 25,740.

2. Defendant Blonder-Tongue's proof on invalidity and non-infringement of patents 3,210,767 and Re. 25,740.

3. Rebuttal by plaintiff.

4. Defendant Blonder-Tongue's proof on the issues raised in its counterclaim:

(a) Unfair competition and anti-trust violation by counterclaim defendant JFD and plaintiff.

(b) Infringement by counterclaim defendant JFD and plaintiff of patent 3,259,904.

5. Proof by plaintiff and counterclaim defendant JFD on issues of:

(a) Unfair competition and anti-trust violation.

(b) Invalidity and non-infringement of patent 3,259,904.

6. Rebuttal by defendant Blonder-Tongue.

The above sequence shall be adhered to as far as is reasonably feasible, but it is not to be construed as requiring witnesses to make several appearances merely in order to maintain the specified order of presentation.

ENTERED:

_____

United States District Court Judge

Date:

JULIUS E. FOSTER
COUNSELLOR AT LAW
[redacted]5 LEXINGTON AVENUE
NEW YORK, N. Y. 10017

TELEPHONE
(212) [redacted]
889-4608

MESSAGE REPLY

TO R & R
U of Ill v B-T

DATE April 17—67

Enclosed:
5 Pl of Facts
rec'd from Berlin
for sign by K.A.R. -

DATE

RECEIVED
APR 18 1967
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

Taken Care of
in my

SIGNED

SIGNED

FORM AVAILABLE FROM GRAYARC CO., INC.
882 THIRD AVE., B'KLYN 32, N. Y.

THIS COPY FOR PERSON ADDRESSED

RINES AND RINES
ATTORNEYS AT LAW
NO. TEN POST OFFICE SQUARE
BOSTON, MASSACHUSETTS 02109

DAVID RINES
ROBERT H. RINES

OSTROLENK, FABER, GERB & SOFFEN

√ SEEN BY		O RETURN TO	
	S.O.	S.G.F.	CABLE SENIR
	B.G.	M.C.S.	TELEPHONE HUbbARD 2-3289
DUE DATE	FEB 2 4 1967		OK TO FILE
	M.S.P.	S.H.W.	
	J.M.B.	L.W.	
	S.J.F.	M.S.G.	
	S.D.	R.C.F.	

February 24, 1967

Jerome M. Berliner, Esq.
Ostrolenk, Faber, Gerb & Soffen
Ten East Fortieth Street
New York, New York 10016

Re: UIF v. B-T v. JFD -66-C-567

Dear Jerry:

We are prepared to assist you in avoiding the necessity of taking testimony in the specific matters and statements contained in the second and third paragraphs of your letter of February 20, 1967, and are willing to stipulate to the authenticity of Ex. J-53 and to the statements that you say Mr. Field would testify to, contained in the third paragraph of your letter. It should be clearly understood, however, that we are not agreeing to any facts or details other than the specific statements above-referred to.

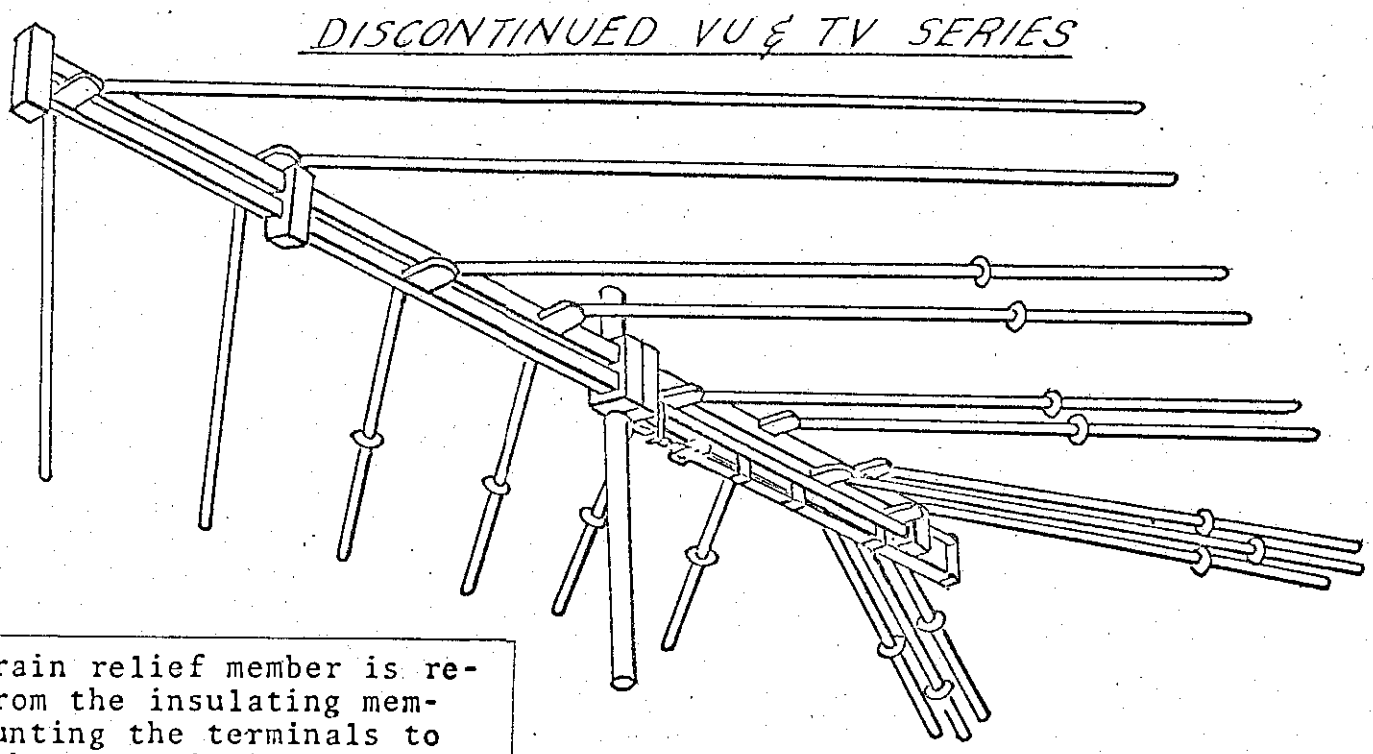
Very truly yours,
RINES AND RINES

By Robert H. Rines

RHR:H

cc: R. Phillips, Esq.

DISCONTINUED VU & TV SERIES



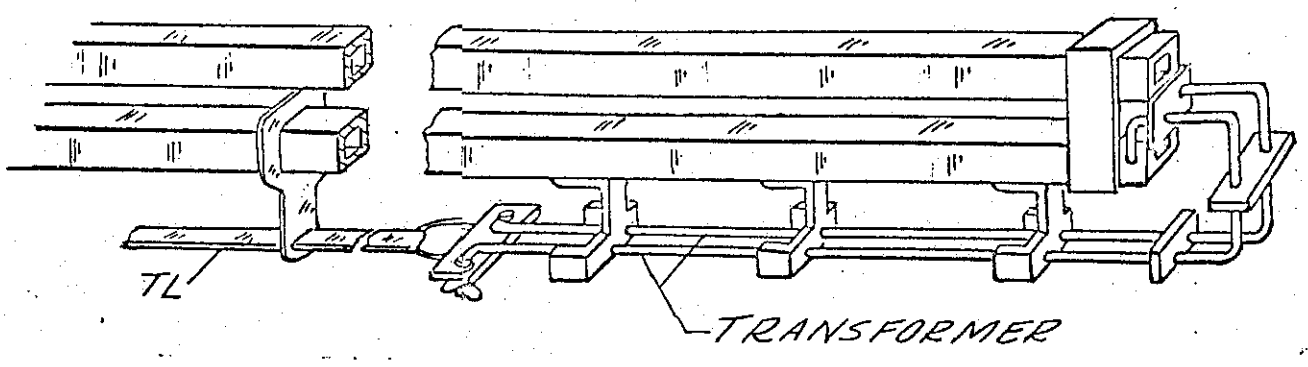
LPV-VU9

IS ELEMENT FOUND IN OLD LPV-VU & LPV-TV?
YES
YES
YES
YES
YES
YES
NO
YES
NO
YES

The strain relief member is remote from the insulating member mounting the terminals to which the transmission line connects. Hence, the strain relief and insulating members are no more connected together than each member of the antenna is "connected" to every other member by virtue of the fact that the antenna is a mechanical assembly of parts. Note that the Blonder et al strain relief 2' is integral with insulator 2 while in the JFD antenna the strain relief member is spaced from the member mounting the transmission line connecting terminals.

Further, the conductors forming an impedance matching transformer bring the transmission line connecting terminals to a point remote from "said one end of the conductors" and the strain relief for the transmission line connected to these terminals is even more remote from "said one end" than are these terminals.

There is no rigid insulating means other than claim element 5 in the region where the antenna mounts to the mast.



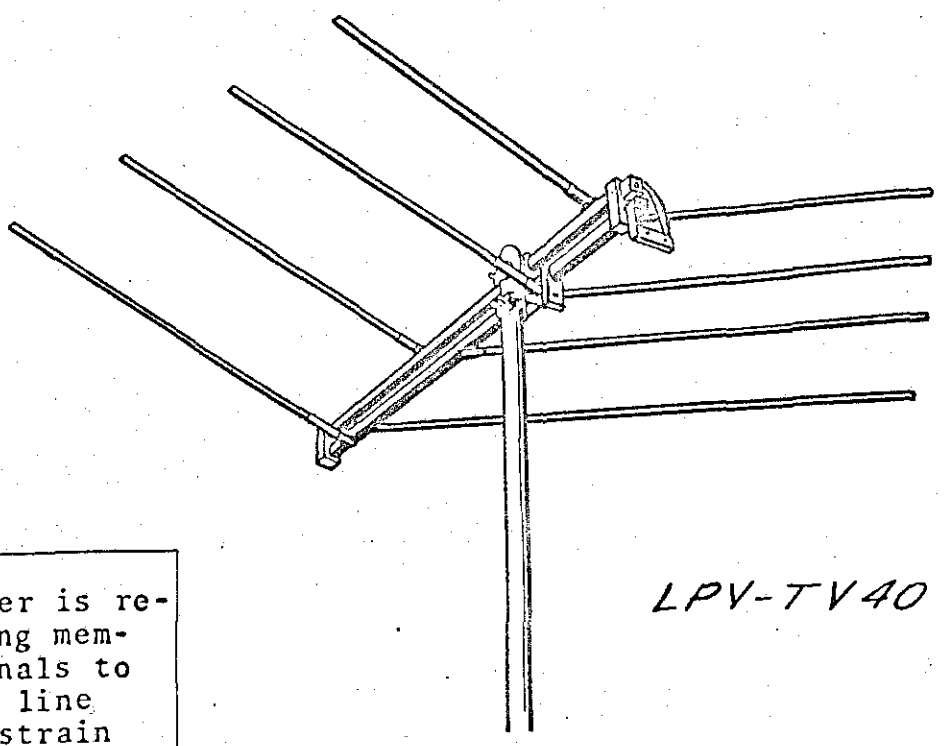
JFD CHART 2E

IS ELEMENT FOUND IN NEW LPV-TV?
YES
YES
YES
YES
YES
YES
YES
NO
YES
NO
YES

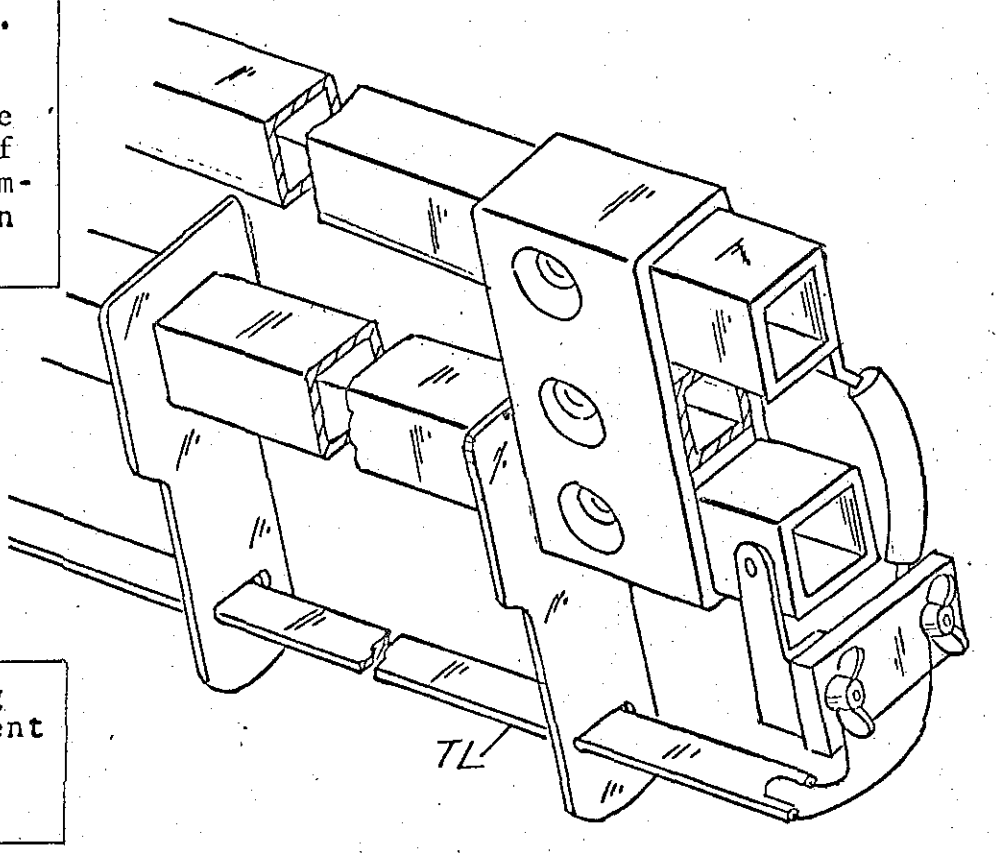
The strain relief member is remote from the insulating member mounting the terminals to which the transmission line connects. Hence, the strain relief and insulating members are no more connected together than each member of the antenna is "connected" to every other member by virtue of the fact that the antenna is a mechanical assembly of parts. Note that the Blonder et al strain relief 2' is integral with insulator 2 while in the JFD antenna the strain relief member is spaced from the member mounting the transmission line connecting terminals.

There is no rigid insulating means other than claim element 5 in the region where the antenna mounts to the mast.

CURRENT TV SERIES



LPV-TV40



JFD CHART 2D

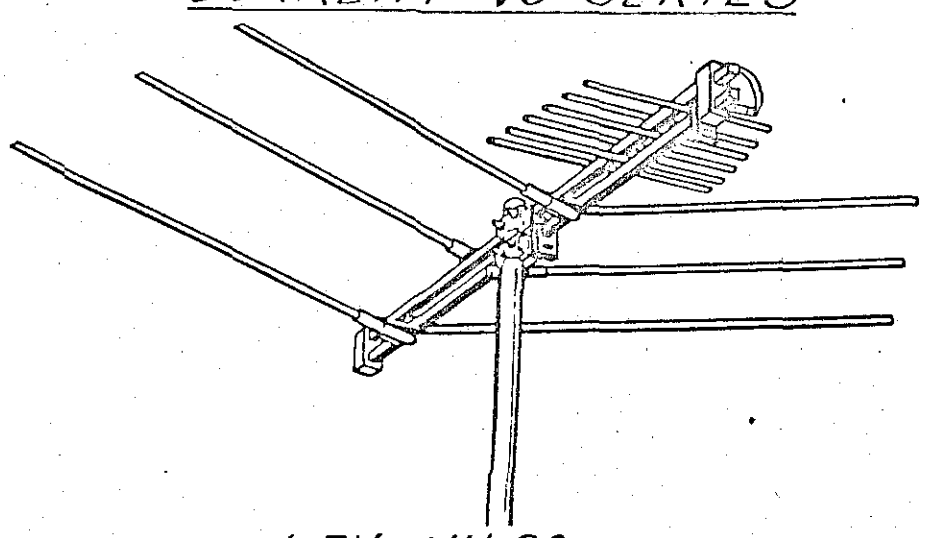
IS ELEMENT FOUND IN NEW LPV-VU?
YES
YES
YES
YES
YES
YES
YES
NO
YES
NO
NO

The strain relief member is remote from the insulating member mounting the terminals to which the transmission line connects. Hence, the strain relief and insulating members are no more connected together than each member of the antenna is "connected" to every other member by virtue of the fact that the antenna is a mechanical assembly of parts. Note that the Blonder et al strain relief 2' is integral with insulator 2 while in the JFD antenna the strain relief member is spaced from the member mounting the transmission line connecting terminals.

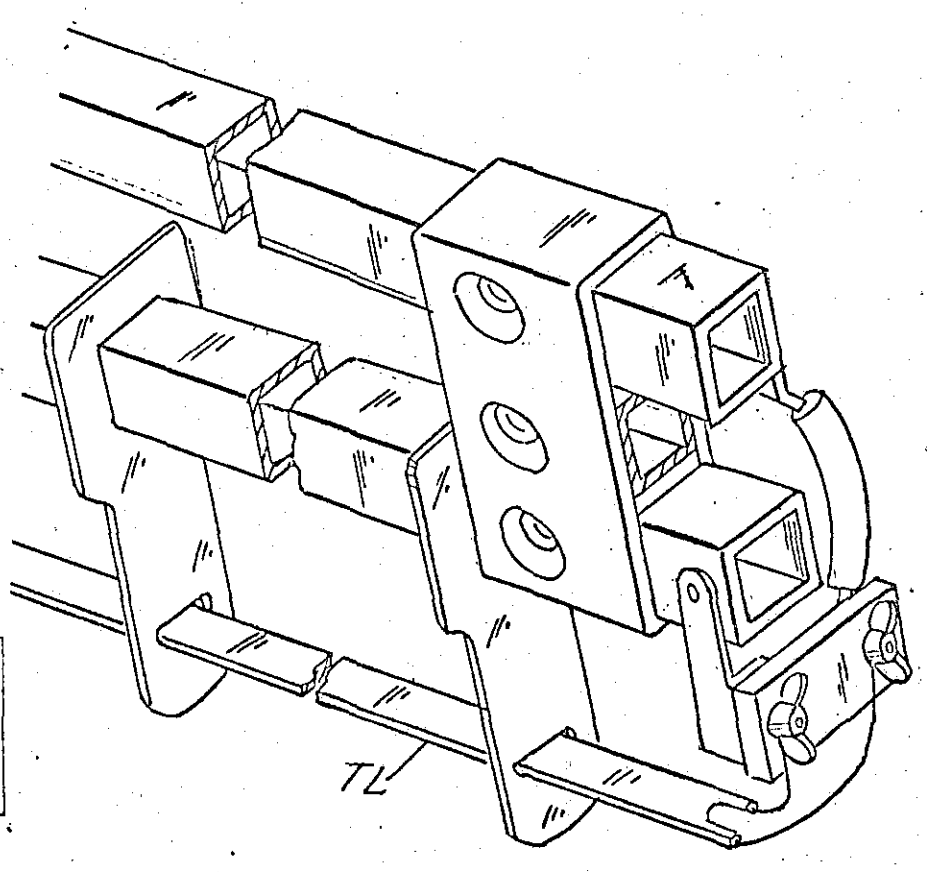
There is no rigid insulating means other than claim element 5 in the region where the antenna mounts to the mast.

The spacing (center-to-center) between many of the successive points in the region of the teeth perpendicular to the longitudinal conductors is less than the spacing (center-to-center) between the longitudinal conductors.

CURRENT VU SERIES



LPV-VU 30



JFD CHART 2C

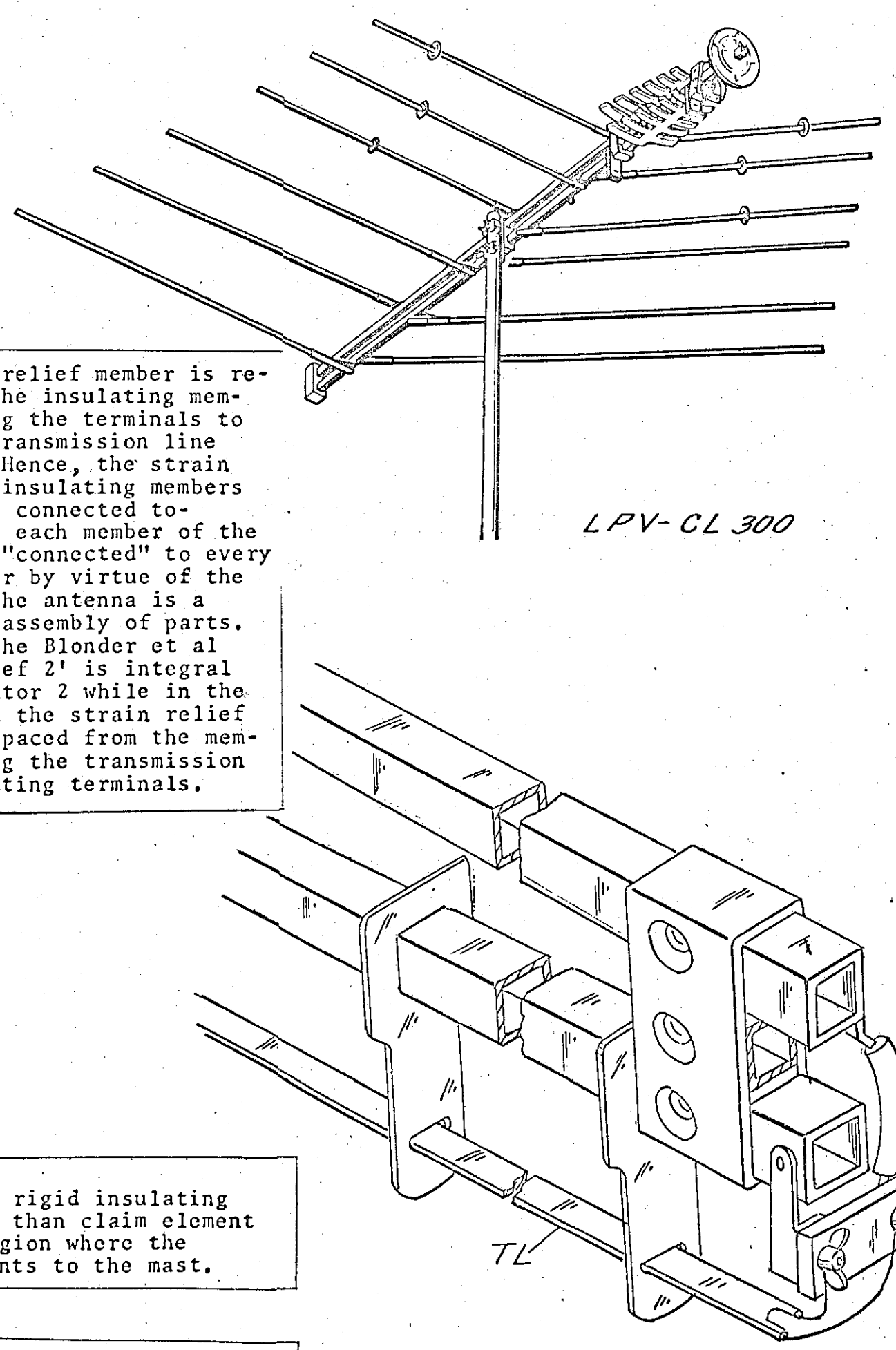
IS ELEMENT FOUND IN LPV-CL?
YES
YES
YES
YES
YES
YES
YES
NO
YES
NO
NO

The strain relief member is remote from the insulating member mounting the terminals to which the transmission line connects. Hence, the strain relief and insulating members are no more connected together than each member of the antenna is "connected" to every other member by virtue of the fact that the antenna is a mechanical assembly of parts. Note that the Blonder et al strain relief 2' is integral with insulator 2 while in the JFD antenna the strain relief member is spaced from the member mounting the transmission line connecting terminals.

There is no rigid insulating means other than claim element 5 in the region where the antenna mounts to the mast.

The vertical distance (center-to-center) between the longitudinal conductors is 2 3/4 inches while the spacing (center-to-center) between the successive points in the region of the sheet metal teeth is less than 1 3/4 inches.

CL SERIES



LPV-CL 300

JFD CHART 2B

July 5, 1966 I. S. BLONDER ETAL 3,259,904

ANTENNA HAVING COMBINED SUPPORT AND LEAD-IN

Filed Nov. 21, 1963

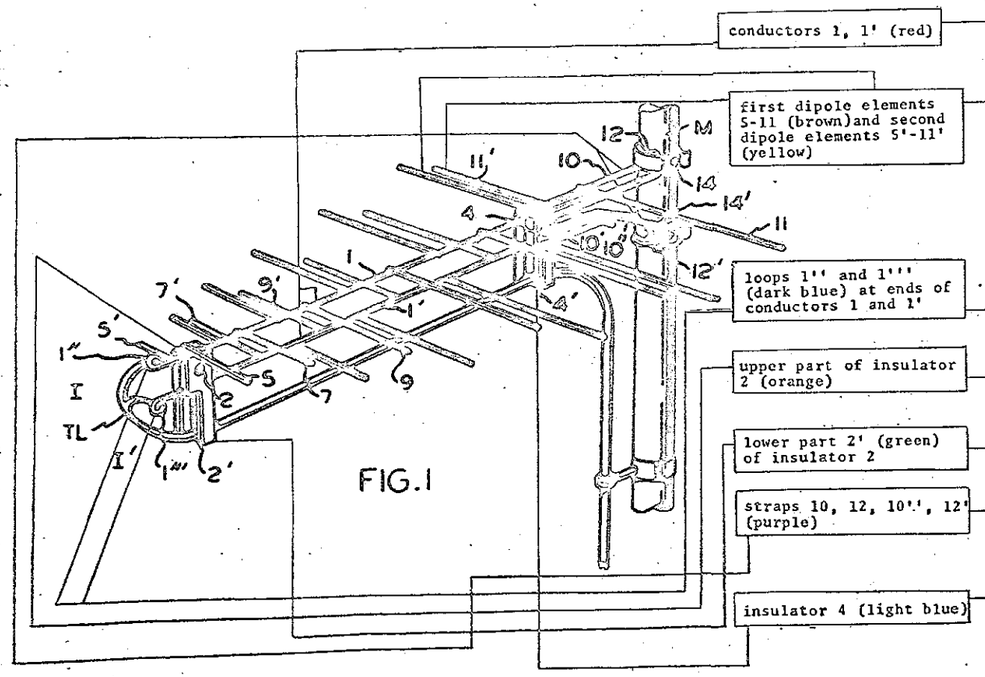


FIG. 1

JFD CHARTS 2A-2E

CHART SHOWING WHEREIN ELEMENTS OF CLAIM 5 OF BLONDER ET AL PATENT 3,259,904 ARE NOT FOUND IN JFD STRUCTURES

ELEMENT NO.	ELEMENTS OF CLAIM 5 BLONDER ET AL PATENT 3,259,904	IS ELEMENT FOUND IN LPV-UCL?
INTRO	An antenna for operation over a predetermined frequency band, having, in combination,	YES
1	a pair or rigid longitudinal conductors held spaced a predetermined vertical distance apart in a vertical plane,	YES
2	first and second pluralities of dipole elements lying in corresponding first and second vertically spaced horizontal planes containing the respective conductors,	YES
2A	the dipole elements extending from opposite sides of 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,	YES
2B	the length of the dipole elements successively increasing from one end of the conductors towards the other end thereof,	YES
3	means for connecting a parallel-wire transmission line to the said one end of the conductors,	YES
4	rigid insulating means securing the said connecting means mechanically in spaced-apart relation	YES
4A	and connected with means for supporting the transmission line near the said one end,	NO
5	and means for mounting the antenna at a region of the said conductors remote from the said one end,	NO
6	further rigid insulating means being provided for securing the said longitudinal conductors mechanically in rigid spaced-apart relation near the said region,	NO
7	the said vertical distance being less than the distance between the said successive points and less than the wavelengths of the said band.	NO

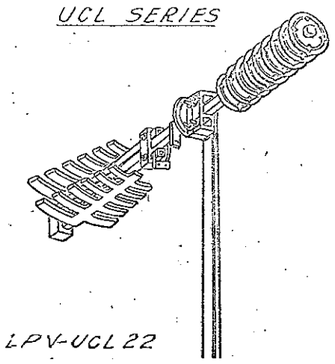
The strain relief member is remote from the insulating member mounting the terminals to which the transmission line connects. Hence, the strain relief and insulating members are no more connected together than each member of the antenna is "connected" to every other member by virtue of the fact that the antenna is a mechanical assembly of parts. Note that the Blonder et al strain relief 2' is integral with insulator 2 while in the JFD antenna the strain relief member is spaced from the member mounting the transmission line connecting terminals.

No, for Models LPV-UCL 18, 22, 26 since each is mounted adjacent to the transmission line connecting points.

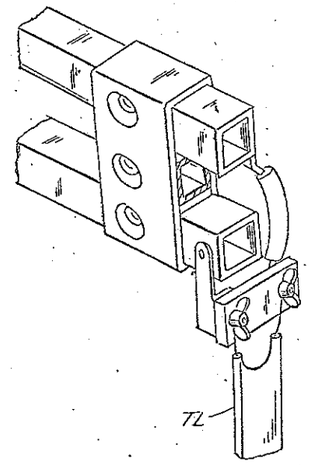
Detailed explanation depends upon the interpretation given by B-T.

The vertical distance (center-to-center) between the longitudinal conductors is 2 3/4 inches while in each instance the spacing (center-to-center) between successive points is less than 1 3/4 inches.

UCL SERIES



LPV-UCL 22



JFD CHART 2A

July 5, 1966 I. S. BLONDER ETAL 3,259,904

ANTENNA HAVING COMBINED SUPPORT AND LEAD-IN

Filed Nov. 21, 1963

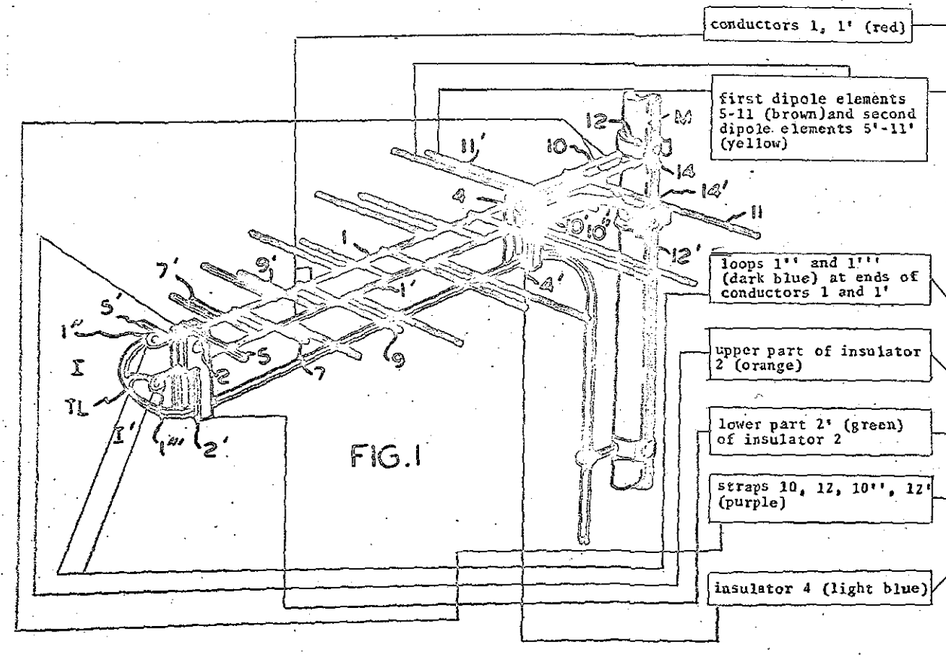


FIG. 1

ELEMENT NO.	ANTICIPATION OF CLAIM 5 BY PRIOR ART (PARTICULARLY TECHNICAL REPORT 52)	IS ELEMENT FOUND IN T.R. 52?
INTRO	An antenna for operation over a predetermined frequency band, having, in combination,	YES
1	a pair or rigid longitudinal conductors held spaced a predetermined vertical distance apart in a vertical plane,	YES
2	first and second pluralities of dipole elements lying in corresponding first and second vertically spaced horizontal planes containing the respective conductors,	YES
2A	the dipole elements extending from opposite sides of 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,	YES
2B	the length of the dipole elements successively increasing from one end of the conductors towards the other end thereof,	YES
3	means for connecting a parallel-wire transmission line to the said one end of the conductors,	YES
4	rigid insulating means securing the said connecting means mechanically in spaced-apart relation	YES
4A	and connected with means for supporting the transmission line near the said one end,	NO, BUT
5	and means for mounting the antenna at a region of the said conductors remote from the said one end,	YES
6	further rigid insulating means being provided for securing the said longitudinal conductors mechanically in rigid spaced-apart relation near the said region,	YES
7	the said vertical distance being less than the distance between the said successive points and less than the wavelengths of the said band.	YES

JFD CHART 1

July 5, 1966 I. S. BLONDER ETAL 3,259,904

ANTENNA HAVING COMBINED SUPPORT AND LEAD-IN

Filed Nov. 21, 1963

From p.16 T.R.52 at right of Fig. 7

FROM TECHNICAL REPORT 52 (T.R.52)

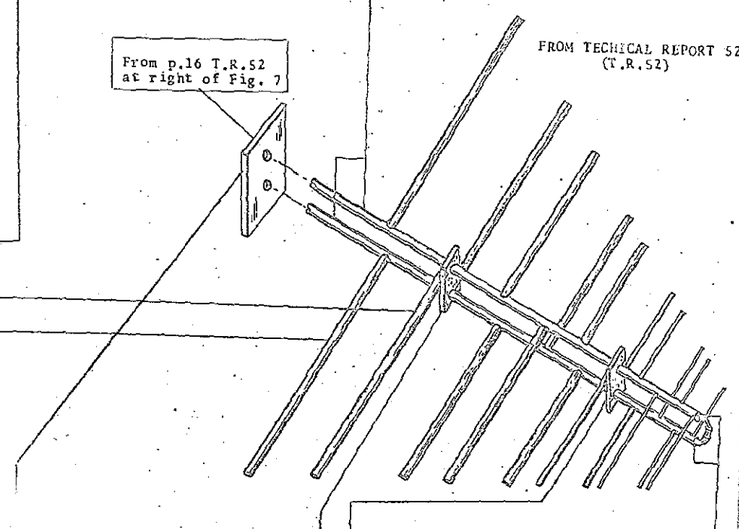


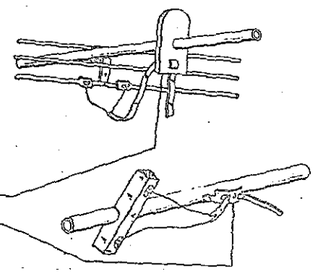
Figure 6. A log-periodic dipole antenna

"The antenna may be energized from a balanced twin wire connected at the junction of the feeder and smallest element. Alternatively, a coaxial line--" as shown in Figure 6 may be used.-- P. 18 T.R. 52.

it is obvious to provide an antenna with a strain relief member at any convenient location to support a transmission line where the latter electrically connects to an antenna as taught by the prior art as exemplified by:

-- Line Lok

-- Strain Relief on Zip Antenna



Leanne

3/30/67

Internal report of U/I - by Dr Champ - reviewed by Dr Bicknell & Dr Bell & written up & reports on April publication -

Ex 27 - Mayo dep. -

Collins - publication May 14, 1958 - #3337422

Research Project Report #1
Eng Exp Station
U of Ill.
6/12/59

→ Document 5336 #7 - produced by University

last line - p 29 report -

March 27, 1967

Mr. Basil P. Mann
Merriam, Marshall, Shapiro & Klose
30 West Monroe Street
Chicago, Illinois 60603

Mr. Myron C. Cass
Silverman & Cass
105 West Adams Street
Chicago, Illinois 60603

Gentlemen:

In accordance with the pre-trial order, I enclose * a list of exhibits and a list of witnesses which Blonder-Tongue presently contemplates presenting at the trial. If any changes should be necessary, you will be informed promptly.

Very truly yours,

Richard S. Phillips

RSP:iag

* Enclosures

cc: Mr. Robert H. Rines

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

EXHIBITS WHICH MAY BE OFFERED BY
BLONDER-TONGUE LABORATORIES, INC. AT TRIAL

Isbell Patent 3,210,767: its file wrapper, contents and cited references

Mayes et al Patent 3,108,280: Its file wrapper, contents and cited references

Mayes et al Patent Re.25,470: its file wrapper, contents and cited references

Blonder Patent 3,259,904: its file wrapper, contents and cited references

U. S. PATENTS:

Kandoian	2,429,629 (8)
Wolff	2,433,804 (9)
Peterson	2,375,580 (1)
Katzin	2,192,532 (5)
Carter	2,149,726 (4)
Schwartz	2,817,085 (14)
Weiss	2,726,390 (13)
White	2,615,005 (13) ~~(10037)~~
Kolster	2,580,798 (1)
Rowland	2,538,915 (10)
Carter	2,258,407 (6)
Godley	2,083,260 (3)
Carter	1,974,387 (2)
Koomans	1,964,189 (1)

FOREIGN PATENT:

German	729,912	January 5, 1943

PUBLICATIONS:

University of Illinois, Antenna Laboratory
Technical Report 52

Publication of Collins Radio Company entitled
Logarithmically Periodic Antennas
by duHamel and Ore, dated Mar. 31, 1958,
CTR-198

Radio Engineers Handbook, First Edition, Terman,
published by McGraw-Hill Book Company,
1943, pages 788, 807, 808

DEPOSITIONS OF THE FOLLOWING AND THE EXHIBITS IDENTIFIED THEREIN:

Hjalmar W. Johnson	Oct. 26, 1966
James C. Colvin	Oct. 26, 1966
Isaac S. Blonder	Oct. 24, 25, 28 1966
Paul E. Mayes	Oct. 27, 1966 and Dec. 14, 1966
Ronald D. Grant	Dec. 15, 1966
Edward Finkel	Nov. 1, 1966
Jerome N. Balash	Feb 17, 1967
Harry Gilbert	Feb. 7, 1967
Richard B. Helhoski	Feb. 17, 1967
Jerome I. Cohn	Feb. 17, 1967

Plaintiff's First, Second and Third Interrogatories and the Answers Thereto

Blonder-Tongue Interrogatories and the Answers Thereto

Transcript of Testimony, Interrogatories and Answers, and Depositions and Exhibits and exhibits thereto in Universal Research Laboratories v Wiegand, D. C. S.D. Iowa (Davenport) Doc. 3-695-D

DOCUMENTS PRODUCED BY UNIVERSITY OF ILLINOIS FOUNDATION:

Paul E. Mayes Computation Book, November 15, 1960, Pages 1-26

Isbell disclosure documents (5254-5257)

Mayes and Carrel disclosure document (5287-5290)

Mayes request for Foundation support (5316)

Foundation action on request (A00389)

Foundation minutes reJFD license (A00382-A00386)

Proposed JFD ads (A00390-A00413)

Correspondence relating to JFD advertising (A00357-A00381)

Release of Mayes and Carrel invention from University of Illinois to University of Illinois Foundation (5302)

JFD correspondence with Foundation regarding Blonder-Tongue infringement (A00414-A00421)

DOCUMENTS PRODUCED BY JFD:

JFD Research and Development Laboratory progress reports re UHF log periodic dipole antenna, January 18, 1963 through March 9, 1963 (00250-00257)

Progress report, April 13, 1963

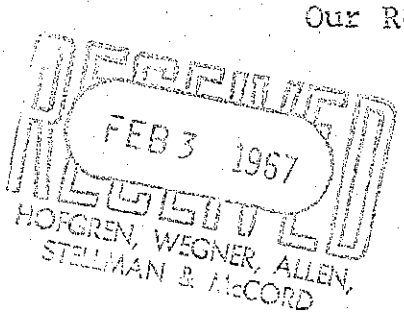
JFD-Mayes agreement (00258-00263)

LAW OFFICES
Silverman & Cass
PATENTS · TRADEMARKS · COPYRIGHTS
105 W. ADAMS STREET · CHICAGO, ILLINOIS, U.S.A. 60603
TELEPHONE 726-6006
AREA CODE 312
CABLE: SILCAS

I. IRVING SILVERMAN
MYRON C. CASS
SIDNEY N. FOX
GERALD R. HIBNICK, IND. BAR

February 2, 1967

Our Ref. 6-418



Richard S. Phillips, Esq.
Hofgren, Brady, Wegner, Allen,
Stellman & McCord
20 North Wacker Drive
Chicago, Illinois 60606

Re: UIF v. BT v. JFD - Civil Action No. 66 C 567

Dear Dick:

Continued search for materials which you requested has located blueprints of JFD antennas and parts therefor which are proposed to be used in attacking validity of the B-T patent in suit. With respect to the enclosed JFD drawings 52720, 52730 and 50451, I am advised that the drawings were made after each of the mechanical components illustrated had been designed and the tools built. Obviously, this would be long after the research and development work was done with respect to the components. I am advised that these assembly drawings would have been made sometime between nine months to one year after the original development of the project.

Per our agreement, dimensions of the antenna elements have been removed.

With respect to the enclosed JFD drawings 11881-0101 and 01201140, there is shown a strain relief member used since the middle of 1962 and is still in use on JFD antenna model 10Y1013G illustrated.

Very truly yours,

SILVERMAN & CASS

Myron C. Cass

MCC/gm
Encl.
cc: Basil P. Mann, Esq.

Mem - 3/27/67

Declassified -

Color Ranger 7 launch sequence chronology

only 3 on list. 2187-1G

- Don't launch (evasion) for Ranger 8 -

Don't object to ~~XXXXXXXX~~ 1st two PS

Handle others on piece meal basis -

Tax - 38-41 - Jan 1 Sheet CR 10

42 V. Ranger in Y Sh.

47 Hom. Trans to J Daily - News release

48 - BT employment agreement

51, 52 - J FD 302 3/7/67

53 - Memo. Mr Kay Mitchell → Rai

54 - Baleark → Gilbert Clowes

55 – 14 – lbs –

56 12, 8 d –

Witness to be called
by Blood, Tonjes, Leb & Co.

1. Isaac S. Blood - facts concerning Blood Co. [illegible]

2. Dr. Lan Jen Chu - Am'ca expert

The following witnesses may be called if available,

3. Marjorie A. Johnson - facts concerning patent 3,878,462 -

4. Harry Gibbs - facts concerning [illegible] year

Stanley/Sacramento - -

- "Skip" Womack, Sacramento Electronics Supply, Sacramento Calif. -

- Adolph Freiman, Main Line Cleveland

3/21 - 4/1 - 1944
Rimini & Cesena

Witnesses

Isaac S. Blonder - [illegible] - Rockford
employee & inspection Comp. & Contractor -

Dr. Lan Jen Chu - Antenna expert

Gerald J. DuHamel - fact witness - prior o. t

Gerald Mary G. Clark - WC + Arlington -

" Rich. Kalkowski "

" Jerry Cohen "

" [illegible] U.A "

" other civilians

" Margaret A. Johnson - served 21st Rockford -
- fact witness -

~~Attorneys - Hall~~

Attorneys - Hall -

" Carroll -

List of Exhibit which may be offered by BT at Trial

Isbell patent —; file wrapper & contents "
Mayer " " "
Blanchard " Re — "; " " "

U.S. patents:

Kardoian patent - 2,472,962 -
Wolff - 2,473,804
Peterson - 2,375,580
Katzin - 2,152,532
Carter - 2,147,726

add —

Deposition of _____ and Exhibit Ident. Nos.

Hjalmar Johnson - 10/26/66
Jomar Colvin "
Paul E. Mayer - 10/27/66 & 12/14/66
Ronald D. Grant - 12/15/66

Jerome Bacash -

John Pearce — 3/22/67

Lyhall.

DeHaven - plain - pinched

3011, 168 Lyhall — " " bent together

3079, 60" DeHaven & Ora — reinked from w/ cuts

Edwards 2,817,085

Weiss 2,726,390 — fold & rod eq. —

Watts 2,615,005 bow tie.

Kolster 2,580,798 slip on dipole

Rowland 2,538,915 — .05 eq & ca

dupl. Peterson 2375-380

Carter 2258407

dupl. Katzin 2192,532

Godley 2053,260 7/9/19-21

Carter 1974387 1st V dipole

Koomans 1964189

Foreign patents -

German 729,912 - Ausgegeben 11/5/43

Publications.

TR. 52

Collins pilcade -

Logarithmically periodic antennas
by Du Hamel & Ore

Characteristics of tapered teeth & arms.

31 Mar. 1958 -

CTR - 198

Radio Engineers Handbook Terman - 1st Ed.
1943

pgs. 788 + 807-808. -

V dipoles

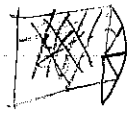
Prepare circulation of Sgt copies - magazine articles, etc. -

Send Pearce Mayer Dyes -

Copies to Commandant Infantry Training Battalion -

Every document.

Some pages = Some documents not known to
put in deposition or the transcript.



1). All depositions & exhibits - ✓

2). All documents - working papers & key documents

3). Transcript of testimony & exhibits from Wingard suit - ✓

Slip & admission of record

4). Patent -

2,083,260 -

Du Mont file 6

Report #2 - etc. to confirm Rein Publications

check w/ Reanne re: prior patents on

Reanne Du Mont - Ishell check

Wayne & Carter -

File folder - 3 - U/I F. pat. -

All literature - book copy -

Bloodworth Calc
Robert
Early Blondes antenna
JFD antenna - all models -
" - Laser antenna (~~Fred~~ Grant dy)

Cushcraft Corp -
Hajoricki
Cobra -
Courtesy UCF & JFD

~~Dog~~
~~Gilbert~~
~~Hitchcock~~
Cobra -
Bobcat -

- QST - Robert F. Heslin

Julian Foster
912-889-4608

LAW OFFICES

HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

20 NORTH WACKER DRIVE

CHICAGO 60606

TELEPHONE
FINANCIAL 6-1630
AREA CODE 312

AXEL A. HOFGREN
ERNEST A. WEGNER
JOHN REX ALLEN
WILLIAM J. STELLMAN
JOHN B. McCORD
BRADFORD WILES
JAMES C. WOOD
STANLEY C. DALTON
RICHARD S. PHILLIPS
LLOYD W. MASON
TED E. KILLINGSWORTH
CHARLES L. ROWE
JAMES R. SWEENEY
W. E. RECKTENWALD
J. R. STAPLETON

WILLIAM R. McNAIR
JOHN P. MILNAMOW
DILLIS V. ALLEN
W. A. VAN SANTEN, JR.
JOHN R. HOFFMAN

March 27, 1967

Mr. Robert H. Rines
Rines and Rines
No. Ten Post Office Square
Boston, Massachusetts 02109

Dear Bob:

* I enclose a copy of a draft of a stipulation regarding patent copies, publications and the like which I suggested to Cass and Mann. Cass says he may have a couple of things he would like to add to it. I am waiting for further word from him.

Mann would rather not stipulate to the blanket admission of all materials from other cases. He would rather consider specific items on a piecemeal basis. He said he knows of nothing in another case to which they would object. He also said that as far as he knows, the witnesses from the Winegard suit can be made available.

Do you want to select specific testimony or other records from the Winegard suit?

Very truly yours,

Richard S. Phillips

RSP:iag

* Enclosure

RECEIVED
MAR 29 1967
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

LAW OFFICES

HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

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WILLIAM R. McNAIR
JOHN P. MILNAMOW
DILLIS V. ALLEN
W. A. VAN SANTEN, JR.
JOHN R. HOFFMAN

March 28, 1967

Mr. Robert H. Rines
Rines and Rines
No. Ten Post Office Square
Boston, Massachusetts 02109

RE: UIF v. BT v. JFD

Dear Bob:

* I enclose a copy of the list of exhibits from the Foundation. I see nothing objectionable.

Very truly yours,

Richard S. Phillips

RSP:iag

* Enclosure

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CHARLES J. MERRIAM
WILLIAM A. MARSHALL
JEROME B. KLOSE
NORMAN M. SHAPIRO
BASIL P. MANN
CLYDE V. ERWIN, JR.
ALVIN D. SHULMAN
EDWARD M. O'TOOLE
ALLEN H. GERSTEIN
OWEN J. MURRAY
DONALD E. EGAN
NATE F. SCARPELLI

LAW OFFICES

MERRIAM, MARSHALL, SHAPIRO & KLOSE

THIRTY WEST MONROE STREET
CHICAGO, ILLINOIS 60603

TELEPHONE
FINANCIAL 6-5750

March 27, 1967

RECEIVED
MAR 28 1967
HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

Mr. Richard S. Phillips
Hofgren, Wegner, Allen,
Stellman & McCord
20 North Wacker Drive
Chicago, Illinois 60606

Re: University of Illinois Foundation
v. Blonder-Tongue Laboratories, Inc.
v. JFD Electronics Corporation
Civil Action No. 66 C 567

Dear Mr. Phillips:

In accordance with the Court's order concerning identification of exhibits, this will identify the documents that plaintiff will use as its exhibits in the subject action.

Blonder-Tongue Advertisements and Instruction Sheets

1. "First antennas to deliver uniform, peak performance on all UHF channels"; B-T advertisement No. 3520-87; 2 pages, B-T document Nos. 1 and 7.

2. "New look in true log-periodic design"; B-T advertisement No. 52; B-T document Nos. 2-5; 4 pages.

3. "First antenna that delivers uniform, peak performance on all UHF channels"; B-T advertisement No. YC-2015; B-T document No. 6; 1 page.

4. "Blonder-Tongue Channel 14 to 83 TV Antenna - Golden Dart Technical Specifications"; B-T document No. 8; 1 page.

5. "Blonder-Tongue Color Ranger - 10 Instructions"; B-T document Nos. 38-41; 4 pages.

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Blonder-Tongue Reports

1. Report of 8/16/65 prepared by "G.Z."; Project No. 1407; B-T document Nos. 212-214; 3 pages.

2. Report of 8/26/65 prepared by "G.Z."; Project No. 1476; B-T document Nos. 215-216; 2 pages.

Blonder-Tongue Blueprints

1. Drawing No. C-2330-B; Boom - (3) Element.

2. Drawing No. C-2186-A; Boom - (5) Element.

3. Drawing No. C-2185-B; Boom - (10) Element.

4. Drawing No. C-2863-C; Boom - (15) Element Main Left.

5. Drawing No. C-2865-A; Boom - (15) Support.

6. Drawing No. C-2864-B; Boom Assembly - Main Right.

7. Drawing No. C-2868-B; Boom Assembly Color Ranger 15.

8. Drawing No. C-2866-A; Boom - (15) Element Director.

9. Drawing No. C-1756-C; Separator, UHF.

10. Drawing No. C-2187-1G; Elements (tubing).

11. Drawing No. C-2187-2A; Elements (tubing).

Diagrams of Blonder-Tongue Antennas Prepared by Plaintiff

The following drawings were prepared by plaintiff to show the lengths and spacings of the accused Blonder-Tongue Antennas based on data from B-T documents.

1. Golden Dart
2. Golden Arrow
3. Color Ranger 3
4. Color Ranger 5
5. Color Ranger 7
6. Color Ranger 10
7. Color Ranger 15

Performance Tests

The following documents were prepared by plaintiff to show the performance characteristics, including radiation patterns, gain measurements and voltage standing wave ratios (VSWR) for the accused Blonder-Tongue antennas, as follows:

1. Golden Dart
2. Golden Arrow
3. Color Ranger 3
4. Color Ranger 5
5. Color Ranger 7
6. Color Ranger 10
7. Color Ranger 15

Very truly yours,

Basil P. Mann

BPM/cjh

McNENNY, FARRINGTON, PEARNE & GORDON
920 MIDLAND BUILDING
CLEVELAND, OHIO 44115

RECEIVED
MAR 30 1967
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

March 29, 1967

Basil P. Mann, Esq.
Merriam, Marshall, Shapiro & Klose
30 West Monroe Street
Chicago, Illinois 60603

Re: The Finney Company v. JFD Electronics Corporation and The University of Illinois Foundation - Civil Action Nos. 65 C 220 and 65 C 671 (Consolidated)

COPY

Dear Pete:

For your advance information, I am enclosing herewith a copy of a motion for summary judgment in the above-captioned suit. Plaintiff proposes to file this motion, together with a memorandum in support of the motion and supporting documents on or before a target date of April 15, 1967.

My purpose in sending you an advance copy of that motion is twofold. First, it occurred to me that you and counsel for Blonder-Tongue, parties to Civil Action No. 66 C 567 set for trial before Judge Hoffman on May 1, 1967, might wish to seek postponement of that trial pending decision of The Finney Company motion, particularly in view of the fact that a decision is also being awaited in your suit against Winegard in the Southern District of Iowa on the Isbell patent and the fact that a decision on The Finney Company motion against the Isbell and Mayes et al. patents should, effectively, either dispose of your suit against Blonder-Tongue (to the extent the motion may be granted) or simplify the issues in that suit (to the extent that the motion may

be denied). Obviously, this involves an issue between you, counsel for Blonder-Tongue, and Judge Hoffman, but it seemed appropriate, under the circumstances, that you and counsel for Blonder-Tongue be informed of The Finney Company motion as far as possible in advance of the trial date set in your suit against Blonder-Tongue.

My second purpose for giving you advance notice of The Finney Company motion is to seek your cooperation in establishing, for the purposes of the motion and defendants' response, the authenticity of various documents and, perhaps, some of the pertinent facts, where such documents and facts clearly involve no genuine issue between the parties. To the extent that we can coopérate in this regard, the work of both parties in preparing their briefs, establishing the authenticity of documents they will rely upon, and preparing affidavits to establish undisputed facts should be reduced considerably to our mutual advantage and to the advantage of the Court.

Accordingly, I shall greatly appreciate hearing from you as quickly as possible regarding the desirability of cooperating in the manner suggested in the preceding paragraph.

Sincerely,

John

JFP:jh
Enclosure

cc: Richard S. Phillips

bcc: Walther E. Wyss, Esq.
Robert H. Rines, Esq.
Mr. L. H. Finneburgh, Jr.

LAW OFFICES

HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

20 NORTH WACKER DRIVE

CHICAGO 60606

TELEPHONE
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AREA CODE 312

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DILLIS V. ALLEN
W. A. VAN SANTEN, JR.
JOHN R. HOFFMAN
A. R. OSTRAUSKAS

March 30, 1967

Mr. Robert H. Rines
Rines and Rines
No. Ten Post Office Square
Boston, Massachusetts 02109

Dear Bob:

* I enclose a revised notice from the Foundation including their list of witnesses.

Very truly yours,

Dick

Richard S. Phillips

RSP:iag

* Enclosure

RECEIVED
APR - 1 1967
RINES AND RINES
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LAW OFFICES

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J. R. STAPLETON

WILLIAM R. McNAIR
JOHN P. MILNAMOW
DILLIS V. ALLEN
W. A. VAN SANTEN, JR.
JOHN R. HOFFMAN

April 4, 1967

Mr. Robert H. Rines
Rines and Rines
No. Ten Post Office Square
Boston, Massachusetts 02109

Dear Bob:

You have a copy of John Pearne's letter of March 29. I talked with John after he had discussed this with Pete Mann. The Foundation does not wish to seek postponement of your trial and does not intend to bring the Winegard suit or the Finney motion, when filed, to Judge Hoffman's attention.

John tells me you have no objection to seeking postponement of the trial. I don't know what Judge Hoffman may do with this one, but we can bring it to his attention, probably by way of a motion to postpone the trial. I don't think this should be done, however, until Finney's motion has been filed.

Please let me know your thoughts on this.

Jack and I are looking forward to receiving a draft of your trial brief.

Very truly yours,

Dick

Richard S. Phillips

RSP:iag

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HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD
20 NORTH WACKER DRIVE
CHICAGO 60606

TELEPHONE
FINANCIAL 6-1630
AREA CODE 312

April 7, 1967

Mr. Basil P. Mann
Merriam, Marshall, Shapiro & Klose
30 West Monroe Street
Chicago, Illinois 60603

RE: UIF v. BT v. JFD

Dear Pete:

I have talked with Bob Rines. He is willing to stipulate that the element length and spacing of the Blonder-Tongue antennas conform with a log periodic formula if the stipulation also makes it clear that such an element relationship was not invented by Isbell, Mayes or Carrel. If this is agreeable with you, would you like to draft the stipulation?

Bob will be at the Blonder-Tongue plant next week and will let us know after he has been there whether your suggestion regarding representative antennas is satisfactory.

Very truly yours,

Richard S. Phillips

RSP:iag

bcc: Mr. Robert H. Rines

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APR 10 1967
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LAW OFFICES

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WILLIAM R. McNAIR
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W. A. VAN SANTEN, JR.
JOHN R. HOFFMAN

HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

20 NORTH WACKER DRIVE

CHICAGO 60606

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FINANCIAL 6-1630
AREA CODE 312

April 4, 1967

RSP HR 4/10/67

Mr. Robert H. Rines
Rines and Rines
No. Ten Post Office Square
Boston, Massachusetts 02109

Dear Bob:

I am writing as I have been unable to reach you by phone.

Pete Mann has asked whether you will stipulate that certain of the Blonder-Tongue antennas are representative of the entire line. He suggests that the Ranger 10 and the Golden Dart be used for the purpose of discussion during trial; and that the question of infringement of all the antennas be determined on the basis of these two models.

We also discussed the possibility of a stipulation that the length and spacing of the Blonder-Tongue antenna elements conforms with the log periodic formula. It is my understanding that this is true and that the question of infringement turns on the meaning of "co-planar". Please call me on this as soon as possible.

Very truly yours,

Richard S. Phillips

rsp/iag

cc: Mr. Basil P. Mann

RECEIVED
APR - 6 1967
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

March 23, 1967

Jerome M. Berliner, Esq.
Ostrolenk, Faber, Gerb & Soffen
Ten East Fortieth Street
New York, New York 10016

Re: JFD 3.233, UIF v. B-T v. JFD - 66-C-567

Dear Mr. Berliner:

This will acknowledge receipt of your letter of March 20, 1967 with enclosures in Mr. Robert H. Rines' absence from the office.

This matter will be brought to his attention on his return to the office after April 1, 1967.

Very truly yours,

RINES AND RINES

MGH

By_____

OSTROLENK, FABER, GERB & SOFFEN

ATTORNEYS AT LAW

TEN EAST FORTIETH STREET

NEW YORK, N. Y. 10016

SAMUEL OSTROLENK
SIDNEY G. FABER
BERNARD GERB
MARVIN C. SOFFEN
SAMUEL H. WEINER
JEROME M. BERLINER
LOUIS WEINSTEIN
MARC S. GROSS
STEWART J. FRIED

MICHAEL S. PINELES
(ILL. & PA. BARS ONLY)

ROBERT C. FABER

PATENT CAUSES

AREA CODE 212
MURRAY HILL 5-8470

CABLE ADDRESS
"OSTROFABER" NEW YORK

March 20, 1967

Robert H. Rines, Esq.
Rines and Rines
No. Ten Post Office Square
Boston, Massachusetts

Re: JFD 3,223 - UIF v. B-T v. JFD
66-C-567

Dear Bob:

Robert Heslin has advised me that a portion of the testimony given by him on February 14, 1967 was in error. More particularly, he advised me that the equation in Exhibit J-57 is incorrect and sent me a letter dated March 13, 1967 (copy enclosed) containing the correct equation.

For the sake of having an accurate record, I feel that this error should be indicated, and I propose that this be done by stipulation to the effect that the enclosed affidavit (after execution by Robert Heslin) be admissible as evidence at the trial of this Action with the same force and effect as the transcript of Mr. Heslin's deposition.

I look forward to receiving an early reply from you concerning the above, as well as a reply concerning the Stipulation of Facts sent to you on February 28, 1967.

Sincerely,

OSTROLENK, FABER, GERB & SOFFEN

Jerry

Jerome M. Berliner

JMB:cg

Enclosures

RECEIVED
MAR 21 1967
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

281 Thornell Road
Pittsford, New York
March 13, 1967

OSTROLENK, FABER, GERB & SOFFEN
√ SEEN BY
S.G. | G.G.F.
B.G. | M.C.S.
DUE DATE | MAR 2 1967 | OK TO FILE
M.S.P. | R.W.
S.D. | R.C.F.

Ostrolenk, Faber, Gerb & Soffen
10 East 40th Street
New York, New York

Attention: Mr. Jerome Berliner

Dear Mr. Berliner

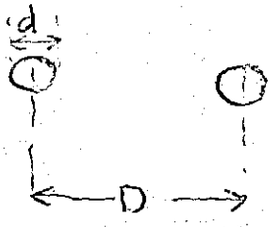
The correct equation appears on page 589 of the following publication:

Reference Data for Radio Engineers
Fourth Edition
International Telephone and Telegraph Corporation.

The correct equation is as follows:

$$Z_0 \approx 276 \log_{10} \frac{2D}{d}$$

where;



Very truly yours,

Robert Heslin

RH/mam

RECEIVED
MAR 21 1967
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

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,

Civil Action
No. 66 C 567

v.

JFD ELECTRONICS CORPORATION,

Counterclaim Defendant.

AFFIDAVIT OF ROBERT F. HESLIN

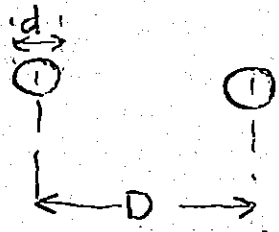
STATE OF NEW YORK)
)SS:
COUNTY OF)

Being duly sworn, ROBERT F. HESLIN, deposes and says that at the time your deponent reviewed the transcript of oral testimony given by him on February 14, 1967, in connection with the above identified litigation, your deponent became aware that he had not correctly stated the equation that appears on line 12, page 20 of the aforesaid transcript and in Exhibit J-57 marked for identification during the taking of your deponent's deposition on February 14, 1967.

The correct equation appears on page 589 of the publication Reference Data For Radio Engineers, Fourth Edition (International Telephone and Telegraph Corporation). The correct equation is as follows:

$$Z_o \approx 276 \log_{10} \frac{2D}{d}$$

where;



Sworn to before me this
_____ day of _____, 1967.

_____

Robert F. Heslin

_____

NOTARY PUBLIC

March 30, 1967

Mr. Richard S. Phillips
Hofgren, Wegner, Allen, Stellman & McCord
20 North Wacker Drive
Chicago, Illinois 60606

Dear Dick:

The drawings you were sent show more than one antenna. That is probably why he was confused.

If he will look at the drawings in more detail, he will find he has been sent everything.

Sincerely,

BLONDER-TONGUE LABORATORIES, INC.

Isaac S. Blonder
Chairman of the Board

ISB:dd

CC: Mr. Robert H. Rines

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APR - 3 1967
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JOHN R. HOFFMAN

HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

20 NORTH WACKER DRIVE

CHICAGO 60606

TELEPHONE
FINANCIAL 6-1630
AREA CODE 312

April 18, 1967

VIA AIR MAIL

Mr. Robert H. Rines
Rines and Rines
No. Ten Post Office Square
Boston, Massachusetts 02109

RE: UIF v. BT v. JFD

Dear Bob:

I have talked with Marjorie Johnson. She will be quite willing to testify in the Blonder-Tongue suit if you wish, either by way of deposition ahead of time or at the trial. Apparently her time is reasonably free so that she could come to Chicago whenever the case actually goes to trial. In the Winegard suit she received her expenses plus $10.00 an hour for the time she spent conferring with attorneys and on the witness stand. She expects to receive the same in any of the other cases in which she testifies. Her telephone number in Rock Island, Illinois, is Area Code 309 786-7347.

Very truly yours,

Dick

Richard S. Phillips

RSP:iag

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APR 20 1967
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NO. TEN POST OFFICE SQUARE, BOSTON

LAW OFFICES

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AREA CODE 312

April 10, 1967

Rec'd in RHR's absence 4/11/67

Mr. Robert H. Rines
Rines and Rines
No. Ten Post Office Square
Boston, Massachusetts 02109

Dear Bob:

I had a call from Pete Mann in reply to the letter I wrote him after you called last Friday. He is not sure he can work out stipulation language regarding the Isbell invention which will satisfy both you and him. I suggested that he call you directly to discuss it. He did not go into detail but indicated that they take the position Isbell's contribution was the application of the log periodic principal to an antenna with dipole elements.

He is more interested in learning which antenna models can be considered as representative. He intends to have some charts and diagrams made and would like to turn the material over to his draftsman. Please call Jack or me (I will be out of town Tuesday) when you have checked this with Ike.

Very truly yours,

Dick

Richard S. Phillips

RSP:iag

cc: Mr. Robert H. Rines
(c/o Mr. I. S. Blonder)

RECEIVED
APR 11 1967
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

cc to Belmont
3/17/67

MOOT, SPRAGUE, MARCY, LANDY & FERNBACH

ATTORNEYS AT LAW

WELLES V. MOOT
DAVID L. LANDY
JOHN T. SMYTHE
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JOHN S. N. SPRAGUE (1893-1965)
WILLIAM G. CONABLE (1915-1966)

400 ERIE COUNTY SAVINGS BANK BUILDING
BUFFALO, NEW YORK 14202
716-854-7200

March 15, 1967

Re: The Anderson Company and Productive Inventions, Inc. vs. Sears, Roebuck and Co. and The Zaiger Corporation
Our File No. 65-326

Robert H. Rines, Esq.
10 Postoffice Square
Boston, Mass. 02109

Dear Mr. Rines:

At the request of John R. Allen, Esq., of Hofgren, Wegner, Allen, Stellman & McCord, I am pleased to enclose photostat copy of Plaintiffs' Trial Brief on Complaint and copy of Plaintiffs' Trial Brief on Counterclaim in the above matter.

Very truly yours,

David L Landy

DLL:C
Encl.
cc: John R. Allen, Esq.

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Black Book

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

THE ANDERSON COMPANY,
a corporation, and
PRODUCTIVE INVENTIONS, INC.,
a corporation,

Plaintiffs,

v.

SEARS, ROEBUCK AND CO.,
a corporation, and
THE ZAIGER CORPORATION,
a corporation,

Defendants.

CIVIL ACTION NO. 56 C 463

PLAINTIFFS' TRIAL BRIEF ON COMPLAINT

This is a patent infringement action in which plaintiffs complain of the manufacture and sale of certain windshield wiper blades for automotive vehicles as infringing Anderson patent 2,596,063, issued May 6, 1952, as a result of an application for patent filed December 13, 1945, for Windshield Wiper Blade Linkage Assembly. A copy of the patent is attached.

THE PARTIES

Plaintiff, The Anderson Company, is an Indiana corporation having a place of business in Gary, Indiana. Plaintiff, Productive Inventions, Inc., was an Indiana corporation and held legal title to the patent in suit at the time of filing the Complaint and has since been merged into The Anderson Company. Leave to amend the pleadings in this respect will be requested.

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Defendant, Sears, Roebuck and Co., is a New York corporation having its principal place of business in Chicago, Illinois, and has sold the infringing Wiper Blades in the Northern District of Illinois. Defendant, The Zaiger Corporation, is a Massachusetts corporation having its principal place of business in Lyon, Massachusetts. The Zaiger Corporation manufactured the accused Wiper Blades sold by Sears and has waived venue to defend the charge of infringement.

A counterclaim filed by The Zaiger Corporation alleges infringement by The Anderson Company of patent 2,709,825 on "Clip for Wiper Blades". A discussion of the counterclaim appears in another brief filed contemporaneously with this brief.

THE PROBLEM OF WIPING CURVED WINDSHIELDS

A windshield wiper moving over a curved glass windshield is required to change its shape constantly to conform to the wiped surface. Directly in front of the driver, the glass is generally straight. The glass is curved differently on opposite sides of the straight front part. The wiper must flex through a cycle of shapes continually changing through varying degrees of curvature to straight and then to curved again for each pass it makes over the windshield. At the same time, the wiping edge should search out any valleys or depressions and curve over any high areas while faithfully following the varying contour of glass surface.

The auto industry had been working with the problem of wiping curved windshields since early in the 1930's and patents purporting to show blades for uniform curved windshields were issued as early as the 1920's. Chrysler Corporation had attempted to provide a curved windshield on its "Air Flow" models in 1933 and 1934. Generally, from that time on, the auto industry has been interested in curved glass windshields. windshields without success until 1946 A satisfactory wiper was still being sought when Anderson made his invention.

The application for Anderson's patent was filed on December 13, 1945. Prior to this time, all commercial windshield wiper blades had a rubber squeegee held in a rigid channel-shaped metal holder. A driving arm was attached to the rigid channel in order to press the blade against the glass and carry the squeegee in a back and forth movement over the windshield. These blades worked well on flat glass only if the glass had no substantial irregularities or curvature, which was rarely the case.

THE INVENTION OF ANDERSON PATENT NO. 2,595,063

Anderson's invention departed radically from the prior art. The invention contributed to the art, for the first time, a universal wiper blade which wiped equally well all portions of the windshield in the arc of its

sweep. Whether operating on flat glass, or one distorted out of flatness, or on curved glass, the performance of this invention surpasses the performance of any previous blade; and no one to date has produced a blade that can equal the performance while infringing the patent.

Anderson employed a flexible blade assembly to which pressure was applied at several spaced points to conform the flexible blade to the curvature or irregularities of the surface being wiped. The patent claims clearly define the structure of the invention. Claim 6 of the patent is one of the typical claims charged to be infringed and was drawn by the Patent Office for the purpose of interference proceedings between Anderson and an application owned by Trico Products Corporation of Buffalo, New York. Claim 6 was awarded Anderson following the contested interference and appeals to the Patent Office Board of Appeals and the Court of Customs and Patent Appeals (193 F. 2nd. 1020).

One structure for carrying out the invention is described in claim 6 of the patent in suit. It includes a rubber wiping blade or squeegee which is flexible and a resilient metal backing strip ~~(sometimes called "flexor")~~ which confines flexure of the blade to a plane generally perpendicular to the glass. The combination of the rubber and backing strip makes a blade assembly which can be carried back and forth across the windshield while it conforms to the changing curvature of the wind-

shield glass. The flexible, resilient backing strip also provides means for distributing pressure over the entire wiping edge of the rubber.

The structure further includes mechanism for applying constant proportional amounts of the concentrated pressure of the wiper carrying arm to spaced points along the flexible blade. The pressure applying mechanism includes a primary yoke which distributes the arm pressure to a pair of secondary yokes attached to the ends of the primary. The secondary yokes, in turn, have their ends connected to the backing strip at spaced points. There are, thus, four (4) points to which pressure from the wiping arm is distributed to the flexible blade structure.

The yokes are pivoted together so that they can move relatively to each other, maintaining a constant proportion of the arm pressure on the points of connection to the blade as the blade flexes. The pressure is applied to the backing strip which distributes the pressure over the entire wiping edge of the rubber. The entire wiping edge is always urged toward the glass which accounts for the superior wipe obtained with the Anderson blade on so-called flat glass that has irregularities. This structure was new, different and had a profound effect upon the wiper blade industry which has abandoned practically all other structures for wiping curved windshields and has adopted the Anderson invention.

ANDERSON INTRODUCED THE INVENTION TO THE INDUSTRY AND IT WAS A SUCCESS

Late in 1945 and early in 1946, handmade samples of the new Anderson blade were delivered to members of the automotive industry. Ford Motor Company, Chrysler, General Motors, Stewart-Warner and several others received blade samples at this time. On October 24, 1946, Mr. Anderson gave an address before the American Society of Body Engineers in Detroit, Michigan, explaining the structure of the invention and using slides illustrating the structure of the new blades. Illustrated copies of the speech were available to all those present and were widely distributed to those present and to others in the industry. Prior authorizations attended the meeting and received copies of the speech. Trial had obtained a number of blades early in 1946

The Anderson Company placed its blade on sale, commercially, late in 1946. The blade was advertised to a small extent, but this advertising failed to produce sales. We will show that the tremendous commercial success that followed was due solely to the inherent quality of the blade. Even though there were substantially no curved windshields in 1946-47, and no replacement more than a million blades were sold for wiping flat windshields because of the superior results obtained and in spite of the fact that the blades cost twice as much as other replacement blades then on the market.

Continued next p.

Hudson was first to mass produce an automobile with a curved windshield and this automobile came on the market late in 1947. In 1948, a small number of General Motors cars had curved windshields. A gradual change of the automobile bodies resulted in the adoption of curved windshields in later years. In 1952, Ford generally adopted curved windshields and a year later, Chrysler also produced automobiles with curved windshields. The Anderson Company sales of its new blade gradually increased as the number of cars with curved windshields increased so that in 1956, over nine million of blades were sold. The competitors of Anderson also selling blades for curved glass windshields all use the Anderson invention so that today, all the blades used to wipe curved windshields embody the Anderson invention.

The initial sales of Anderson's new blade were for use on flat glass windshields since there were no curved glass windshields on cars then in use. Actually, flat glass is not absolutely flat. As produced, flat glass has hills and valleys and additional warping of the glass occurs when the glass is installed in its frame. The Anderson blade proved superior for wiping flat glass and several million of the blades were sold for use on flat glass as a result of this superiority.

ZAIGER TAKES THE ANDERSON INVENTION

In 1945, The Zaiger Corporation, then known as Lion Products Company, brought out its first commercial wiper blade for wiping curved glass surfaces. Israel Nesson, an employee of Lyon Products, testified in pre-trial deposition that the commercial Zaiger blade required six months to "develop". The Anderson Commercial blade was known to Nesson before he "developed" the accused blade for Zaiger. The blade complained of embodies all the important features of the Anderson patent. Long before this "development" took place, Mr. Anderson had published to the world the essence of his invention in the address given in Detroit in October of 1946 and had sold millions of blades. The Zaiger blades complained of herein are substantially copies of Anderson's invention.

THE ISSUE OF VALIDITY

The Answer to the Complaint sets up the usual defense of invalidity of the patent in suit over certain prior art patents. Every one of the patents listed in the Answer was before the Patent Office during the prosecution of the application, during the interference and during the appeals to the Board of Appeals and Court of Customs and Patent Appeals. The presumption of validity of a patent is greatly strengthened when the principal art relied upon has been considered and rejected by the Patent Office. Hunt vs. Armour C.A. 7 - 185 F. 2nd 722, 726; Lovell Corporation vs. Hendrickson, Inc., C.A. 7 - 191 F. 2nd 855, 857.

The majority of the patents set up in the Answer show blades having straight rigid channel holders for the squeegee and are entirely unsatisfactory for wiping curved glass windshields. Horton patent 2,303,694 shows a blade having two rigid channels end to end on a continuous squeegee. Such blades can only wipe curved glass within the flexing of the rubber since the rigid channels cannot flex. The only blades sold for use on curved glass prior to Anderson's 1946 Clearflex blade, were the Horton blade and a blade having two overlapping rigid sections attached to a single yoke. The latter left an undesirable streak at the overlap.

The blades shown in some of the other patents are described as intended for use on curved glass; however, none of these blades have ever gone into commercial use. Among these are foreign patents which also state that the blades described are for use on curved glass, however, the description is speculative as to any definite structure for carrying out the aims of the patentee. The anticipatory value of foreign patents has been limited to what is clearly and definitely expressed in them. Nordberg Mfg. Co. v. Woolery Machine Co., C.A. 7, 79 F.2d 685.

ZAIGER'S ALLEGED PRIOR USE

In pre-trial depositions*, an alleged 1941 prior use by Zaiger was referred to and a single blade was offered in evidence exemplary of that use. The alleged blade does

* These depositions were originally taken in connection with the suit (discussed later) against Trico Products which was tried in 1956 before Judge Morgan of the Western District of New York, most of which by stipulation will be in the record of the present case.

not have the invention of the Anderson patent. It does not have a flexible resilient backing strip, but has rigid sections hinged together. It does not operate in the manner taught by the Anderson invention and is further an unsatisfactory blade for wiping curved windshields.

There are no contemporary documents of any kind to substantiate the date of the existence of the alleged prior blade. Oral testimony of events that alleged-ly took place many years ago is the sole support for the alleged prior use. The burden of proof of the alleged prior use is, of course, on the defendants. Keller Mfg. Co. vs. Wen Products, Inc. D. C.N.D. Ill. 1957, 135 Fed. Supp. 121. The degree of proof required to establish a prior public use is that which carries conviction beyond a reasonable doubt. H. Keller Mfg. Co. vs. Glauber, C.A. 7, 164 Fed. 600.

The following circumstances clearly rebut the oral testimony as to the alleged prior use.

1. Zaiger did not file a patent application until 1948 describing the alleged blade although in 1941 he filed other patent applications on other inventions at the time the alleged blade is supposed to have existed.

2. Not a single written report of tests of the blade are in existence, but there are reports of other Zaiger blades tested at that time.

3. Studebaker is supposed to have requested the blade to be made. There is no evidence of any kind,

oral or written, that Studebaker even received one of the blades, although a report of another blade that would not wipe satisfactorily was sent to Studebaker in 1941.

4. Blades were supposed to have been presented to Stewart-Warner for testing. Mr. Whitted, in charge of testing for Stewart-Warner, testified that he had never seen one of the blades but did see other blades made by Zaiger at that time. The Stewart-Warner salesman who testified that he had the alleged blade on his car for tests admittedly made no report of the tests.

5. Zaiger is supposed to have personally delivered the blades in Detroit but his office manager testified that Zaiger made but one trip into Detroit in 1941, and documentary exhibits show conclusively that this was in connection with another blade and before the alleged prior use blade was supposed to have been made.

6. The blade was alleged to have been tested on a number of cars, none of which had a windshield large enough to accommodate it.

7. In 1948, Zaiger produced his first commercial blade for curved windshields and he claims that it was nothing more than a refinement of his own prior use; however, he and his engineer Nesson stated that it took six months to "develop" this commercial blade. In 1948 they filed a patent application swearing on oath that the blade had not been in public use or on sale for more than one year prior thereto. This application was not before Judge Morgan at the trial because its existence was

discovered accidentally only long after the evidence was closed in the Buffalo case.

We will further show that the blade to be offered in evidence is spurious because it could not have been made as testified to by Mr. Neuson who claimed to have made the blade. Pairs of notches on opposite sides of the blade are shaped alike and spaced apart equally lengthwise of the blade negativing the possibility that they could have been formed separately as Neeson claims. The burrs on the metal indicate a hand saw was used rather than a power saw as claimed. These and other facts will prove the Zaiger blade exhibit spurious.

In summary, Zaiger's alleged prior use fails for three reasons:

1. The alleged blade does not have the invention of the Anderson patent.

2. Prior existence of the blade before the date of Anderson's invention is not shown beyond reasonable doubt and is clearly rebutted by other known facts.

3. The Zaiger blade exhibit is spurious.

Furthermore, Zaiger's alleged prior blade, even if it existed, fails as a prior use because it did not enrich the art. It was at best an abandoned experiment, not understood or practiced nor persisted in so as to become an established fact accessible to the public. It did not contribute in any way to the sum of knowledge. Failing in these respects, there is no anticipating prior public use.

Gaylor vs. Wilder, 10 How. 477, 13 L. Ed. 504; Metallizing Engineering Co. vs. Kenyon Bearing and Auto Parts Co., 153 F. (2nd) 516; Diamond Patent Co. vs. S. E. Carr 217 Fed. 400, 402.

THE ISSUE OF INFRINGEMENT

Charts will be presented to show how typical claims 6, 8 and 12 of the Anderson patent read on the patent disclosure and the accused wiper blades. A copy of the chart on claim 6 is attached. The accused structures clearly correspond to the claim language without need of interpretation or the use of the doctrine of equivalents. We do not believe that there is a genuine issue as to infringement of the Anderson patent claims.

PRIOR LITIGATION OF PATENT IN SUIT

A prior action was brought by plaintiffs herein in the District Court for the Western District of New York against Trico Products Company for infringement of the Anderson patent in suit. The evidence was received by Judge Morgan at trial sessions ending in October, 1956. A decision dated January 17, 1958 held the patent in suit invalid "based solely on the Zaiger blade." An appeal to the Court of Appeals for the Second Circuit is being prosecuted by plaintiff. A substantial amount of evidence discovered since the trial of the Buffalo case will be presented to this Court. Sears has sold within the Northern District of Illinois windshield wiper blades manufactured by Trico Products Company. We are not seeking a

determination by this Court with respect to Trico Manufactured Blades.

CONCLUSION

The patent in suit discloses a great invention. The wiper blade of the patent in suit is the first blade that successfully wiped a curved windshield. In fact, it is the only blade that has yet been developed for this purpose. Its commercial success has been phenomenal. Its construction was closely copied by the only other manufacturers in the field shortly after it appeared on the market. There is no question as to infringement. The prior art fails to disclose the invention and the alleged public prior use defense is wholly without merit. The patent should be held to be valid and infringed.

Respectfully submitted,

SCHROEDER, HOFGREN, BRADY & WEGNER

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

THE ANDERSON COMPANY, a corporation, and PRODUCTIVE INVENTIONS, INC., a corporation, Plaintiffs, v. SEARS, ROEBUCK AND CO., a corporation, and THE ZAIGER CORPORATION, a corporation, Defendants.	CIVIL ACTION NO. 56 C 463

PLAINTIFFS' TRIAL BRIEF
ON COUNTERCLAIM

The present counterclaim for infringement of Nesson Patent No. 2,709,825 was asserted against The Anderson Company by The Zaiger Corporation in its amended answer filed May 18, 1956. The amended answer was preceded by the original answer filed April 30, 1956, and by Defendant's motion to stay proceedings which was

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denied by Judge Barnes in an order dated May 8, 1956.

Preliminary

The Nesson patent relates to a connecting structure for joining a windshield wiper blade to the end of a wiper arm which carries the blade back and forth over the windshield. The connecting structure is called a connector or clip, and it is ordinarily secured to the middle of the backside of a wiper blade. The general form of connector structure is dictated by the structure of the terminal end of the wiper arm to which it is to be joined.

In the past thirty years, wiper arm manufacturers supplying the original equipment requirements of automobile manufacturers have provided wiper arms with many different types of terminal end portions. Oftentimes, cars manufactured in a single model year have been equipped with wiper arms having two or three types of terminal ends. Blade manufacturers who sell replacement blades through service stations

and other retail outlets must provide blades with connectors which will accommodate the types of wiper arm terminal ends currently in use. During the 1930's, blade manufacturers recognized that replacement blade inventories of retail outlets could be drastically cut by providing a single connector which could accommodate the various types of arms then in use.

This was the start of the so-called "universal connector", of which the structure of the Nesem patent is an example. Generally such multi-purpose connectors merely incorporated in one structure the latching means for two or more of the original equipment connectors. Sometimes the connectors were formed so that they could directly take several types of arm ends. It was also common to provide adapters which would fit upon the arm end to permit its use with the connector provided. Through the years, as car manufacturers made changes in wiper arms, the universal connectors and their adapter elements in the replacement market had to be changed to receive the new types of wiper arms.

When the present suit was filed, the four most prevalent types of arm ends were the spoon, cross-bar, hook and slotted terminal, their names being descriptive of their structural shape. The spoon arm has a narrow dished end with a terminal lug. Each of the other three arms are channel-shaped to make a close fit with opposite sides of a connector,

but have differing structures for effecting latching with the connector. The cross-bar arm has a round bar joining the opposite channel sides; the hook arm has a U-shaped hook extending forwardly of the channel; and the slotted arm has a slot disposed in the web joining the channel sides.

The structure of Nissel Patent 2,670,465 FILED DECEMBER 8, 1952 AND ISSUED MARCH 2, 1954

Nissel's patent is directed specifically to a universal connector which will take varying types of wiper arm ends. It discloses that such connectors formerly have required special adaptors or attachments for certain arm ends, but that the present connector can be used with any standard wiper arm "without the nuisance of adding adaptors". However, Nissel's structure needs a removable adaptor to take the slotted terminal arm end.

The patent shows two forms of connectors. Each form will take the cross-bar, open, slotted terminal and hook types of wiper arm ends. The first form was made commercially and is shown in Figs. 1 through 8 of the patent and includes a specially formed leaf spring 42 which is anchored in the connector at 40. The spring extends along the bottom of the connector, and then curves upwardly and rearwardly so that its upper end portion rests upon the saddle 22. A similar leaf spring (shown in Patent 2,643,410)

was employed in a universal connector commercially produced more than one year before the patent in suit was filed. This connector would take the above four types of arm ends.

Referring to Fig. 3*, to insert the spoon-type arm end 29, the spring end 47 is depressed by the arm end to permit the enlarged end of the spoon to pass beneath the stationary latch member 30. When the pressure of the arm end on the spring is released, the spring urges the spoon arm end upwardly against the latch member. This type of connector for a spoon-type arm end was utilized when the spoon arm was introduced on cars in 1946, and is shown in Patents 2,618,805 and 2,643,410.

Also in Fig. 3, a second part of the leaf spring, i.e. the spring bow portion 45, is shown directly contacting the adapter 37, called a hook plate, to hold it in place at the top of the connector. The hook plate is necessary to attach the slotted terminal end-type of wiper arm (see Fig. 7) which was used as original equipment on cars before World War II. Adapter elements similar to the hook plate 37 are shown in Abdelnour 2,539,219 and Anderson 2,632,910 for attaching the slotted terminal arm end to a universal or multi-purpose connector.

Fig. 5 shows a third portion (shoulder 44) of the leaf spring directly engaging a cross-bar type of arm end to

* Reproduced on page 9 of this brief. A copy of the patent is also attached hereto as is a book of the prior art patents.

secure it to the connector. To anchor or to secure the cross-bar, the spring shoulder is moved to the left out from under the finger 32. In patent 2,643,410 a similar spring shoulder secures this type of arm end to a connector. Patents 2,436,689 and 2,632,910 show the use of a spring actuated roller or bolt to secure the cross-bar type of arm end to a connector, and Rockwell, the Anderson Company, has commercially used this type of structure for over ten years. (Also see Patent 2,643,410).

Figure 6 of the Mason patent discloses a hook-type arm end secured beneath a cross strap 36 of the connector. The leaf spring 42 performs no function when this arm is used. The hook-type arm was used as original equipment on cars before World War II and was attached to block connectors at that time in the manner shown in the patent in suit and in Figure 6 of Patent 2,643,410.

In the modified structure (never sold commercially) disclosed in Figs. 9 through 14 of the Mason patent, the cross-bar, slotted terminal and hook types of wiper arms are attached to the connector in the same manner as described above, only the structure for latching the spoon-type arm end being different. In the first embodiment it will be recalled that a portion of the leaf spring urged the spoon end upwardly against a stationary latch member. As seen in Fig. 10 of the modified structure, the spoon arm end is

inserted in the connector beneath a movable latch 60 which is urged against the spoon end by the spring portion 73 of the leaf spring. In order to disconnect the spoon end, a center element (Fig. 14) is provided to raise the latch 60 (Fig. 11) and allow the spoon end to be withdrawn.

Manual means for disconnecting an end from a connector have been used by Anderson since the early 1940's, for example, see Sadlad 2,432,589, Anderson 2,432,693 and Anderson 2,638,587. In each of these references, a latch member is urged toward locking position by a spring or resilient member, and a finger portion is provided for manually moving the latch member out of locking position.

Three characteristics of the Hesson structure are quite apparent. First, contact by different parts of the leaf spring with the two arm ends of the adapter element effects the latching. Second, there is no coaction between the three latching portions of the leaf spring 72, i.e., only one portion of the leaf spring functions at a time, and its operation is independent of the operation of the other two spring portions. Third, the structure is simply a composite of well-known connecting devices in the wiper field incorporated into a unitary structure to perform the same functions as when used alone.

THE CLAIMS IN SUIT

Claims 7, 8, 9 and 10 of the Hosmer patent, which are relied upon here, were added to the Hosmer patent application on November 22, 1954. At that time, one of the Anderson connectors which is alleged to infringe had been on the market since September 21, 1954.

Briefly, the connector of claim 9 is adapted to connect a wiper blade to arm ends of the studded spoon or cross-bar types. A spring (integral leaf spring 42) is "constructed and arranged" so that one part locks the cross-bar in slotted slots and a second part locks the spoon under a hitch member.

Claim 7 calls for a connector which will take the hook arm or the slotted terminal arm in addition to the two arms above, the hook arm end being engageable under a metal strap at the top of the connector. The cross-bar and the spoon are attached by the spring as described above. In order to accommodate the slotted terminal arm, a removable adapter (called a "hook plate") is used. The spring is "constructed and arranged" to provide a third part for securing the adapter to the connector.

Claim 8 is dependent upon claim 7, and claim 10 upon claim 9. Each qualifies its parent claim by calling for a movable hitch member held in locking position by the

spring, and for manual means to move the latch member to unlocking position. As pointed out in the preceding section, such a structure was in commercial use and well-known in the wiper art long before the Nesson patent was filed. The first sheet of drawings of the counterclaim patent is reproduced below.

THE CLAIMS ARE

A. Zaiger's Adm

Zaiger Corporation s

more than one year before the

patent was filed. This counte

ends as the counterclaim pate

patent 2,643,410. Defendant

patent was commercially sold

counterclaim patent was file

June 7, 1955 I. NESSON 2,709,825

CLIP FOR WIPER BLADES

Filed Dec. 8, 1951 2 Sheets-Sheet 1

Fig. 1.

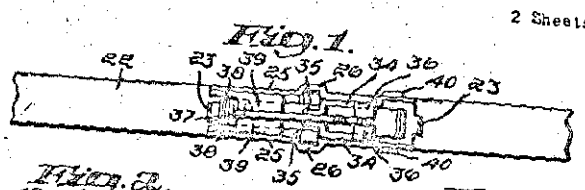


Fig. 2.

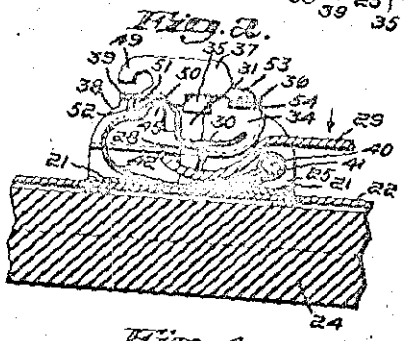


Fig. 3.

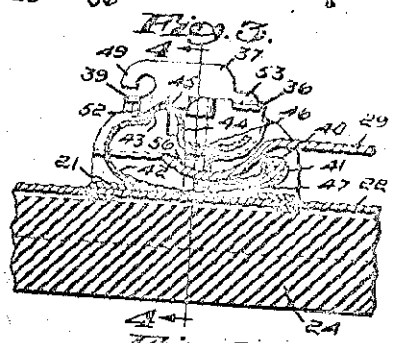


Fig. 4.

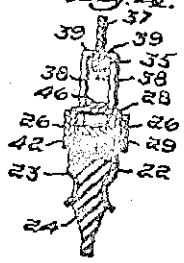


Fig. 5.

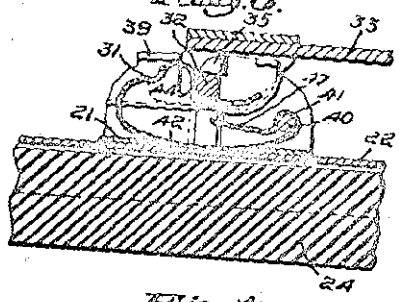


Fig. 6.

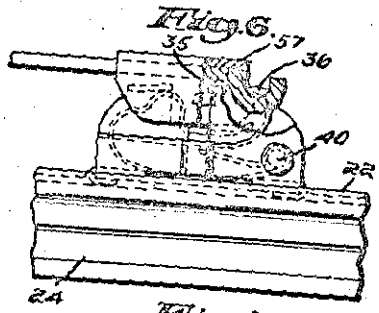


Fig. 7.

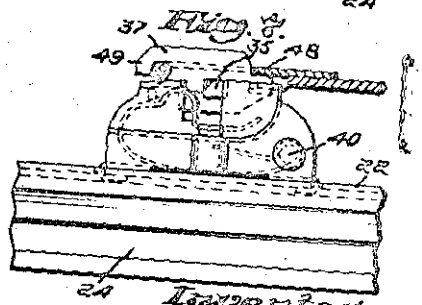
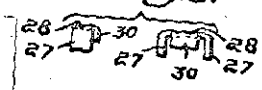


Fig. 8.



Inventor:
Israel Nesson,
By Thomas & Thomas
Attorneys

Fig. 5.

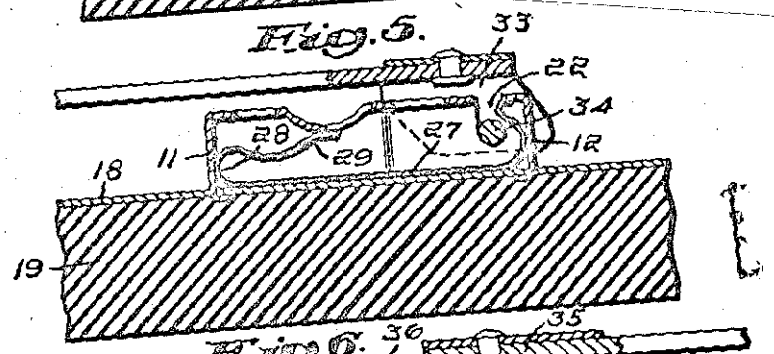


Fig. 6.

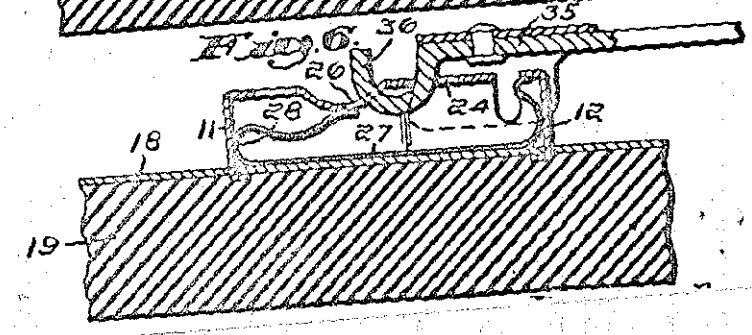
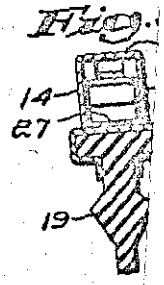


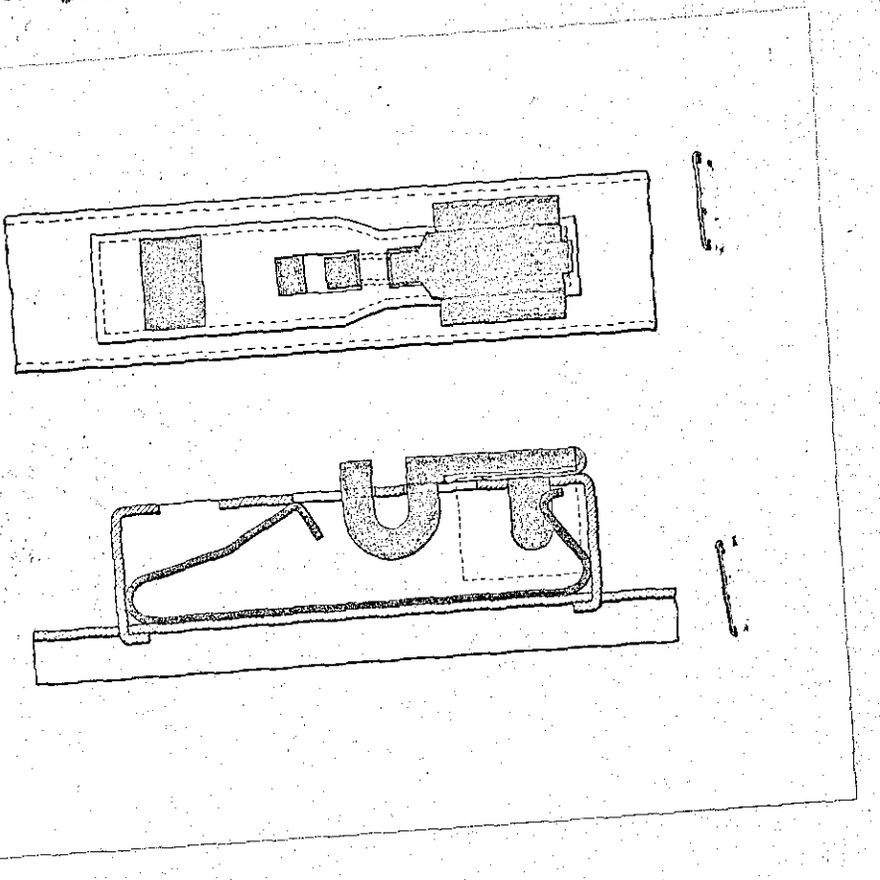
Fig. 1.



Claim 9 reads element for element on this Edgar prior use connector and is therefore invalid. The comparison of elements is as follows:

Claim 9	Responsive Elements in Above Structure
A wiper blade having a clip adapted for connecting the blade to wiper arm having ends of the studded spoon type or cross-bar type, the clip comprising:	Fig. 4 shows the spoon arm end; Fig. 5 shows the cross-bar arm end.
spaced, elongate substantially parallel sides and longitudinally spaced top portions,	Fig. 3 shows the parallel sides 14 and 15; the longitudinally spaced top portions are shown most clearly in Fig. 1 and Fig. 5.
the space between said top portions being adapted to receive the cross-bar type of arm end,	Numeral 22 in Fig. 5
a latch member disposed between said sides and having a depending finger adapted to be engaged by the stud of a spoon type arm end inserted between the clip sides beneath the latch member,	In Fig. 4, the depending latch 25 engages the stud 32 of the spoon arm end 31
and means comprising a spring disposed in said clip and being constructed and arranged to lock the cross-bar type end in said space and to lock the spoon type end under said latch member.	The leaf spring 27 (colored red) which has a spring portion 29 for locking the spoon arm under the latch 25, and a spring portion 30 for locking the cross-bar arm end in the space 22

The connector shown in the following drawing was also admittedly made and commercially sold by the Zaiger Corporation more than one year before the filing of the counterclaim patent.



This connector has an integral leaf spring (colored red) and takes the same four arm ends as the connector structure of claim 7. Both connectors directly take the spoon arm, the cross-bar arm and the hook arm in the same way, and both use adapter elements to accommodate the slotted terminal arm.

In the above drawing, the adapter element (colored green) fits upon the slotted terminal arm end and converts it to a hook arm. The hook of the adapter fits beneath a cross strap, and the resilient adapter sides frictionally engage the side walls of the connector to attach the arm end.

Except for the type of adapter used and the manner of attachment, claim 7 read directly upon the structure shown above. The claim calls for "a hook plate removably secured to the clip and adapted to engage the slotted terminal type of wire end", and specifies that a spring be disposed in the clip "to hold said hook plate on the clip". Such hook plates were common in the art, but were held to the connector by a spring-pressed bolt or rocker member (see Anderson 2,622,910). Hanson's mere change from the hook adapter to another well-known adapter held on the connector by a spring did not involve invention, and claim 7 is invalid.

Claims 8 and 10, which are dependent upon parent claims 7 and 9 respectively, each specifies a movable latch member held in locking position by a spring, and manual means for moving the latch member to unlocking position. The structure added by these claims was well-known in the wiper art, for example, see Anderson 2,430,693 and Anderson 2,632,907. The addition of this structure to either of Zelger's pairs was common practice in the art, and clearly does not amount to invention.

Even assuming the particular structure added in claims 8 and 10 to be a novel improvement, both claims are still invalid because Hanson attempted to claim the alleged improvement in combination with old elements which

performed no new function in his claimed combination. This was precisely the type of claim struck down by the Supreme Court in Lincoln Engineering Co. v. Stewart-Warner Corp., 303 U.S. 545, 549, 552, where the court remarked:

> "As we said of Gullborg in the Rogers Case, having hit upon this improvement he did not patent it as such but attempted to claim it in combination with other old elements which performed no new function in his claimed combination. The patent is therefore void as claiming more than the applicant invented. The mere aggregation of a number of old parts or elements which, in the aggregation, perform or produce no new or different function or operation than that theretofore performed or produced by them, is not patentable invention. And the improvement of one part of an old combination gives no right to claim that improvement in combination with other old parts which perform no new function in the combination."

* * *

> "We conclude that Butler's effort, by the use of a combination claim, to extend the monopoly of his invention of an improved form of chuck or coupler to old parts or elements having no new function when operated in connection with the coupler renders the claim void."

3. The Claimed Structures are Non-Patentable Aggregations

The connector structure of the Nagen patent is a classic example of aggregation. Each type of wiper arm end is attached by a different portion of the connector, and none of the portions mutually cooperate to effect latching or attaching of an arm end. Each portion performs only its well-known function. For example, three separate parts of the integral, U-shaped, leaf spring respectively secure the cross-bar arm, the spoon arm and the hook plate to the connector. When one spring part is being used, the other two parts perform no function. The hook arm is attached by merely hooking its end beneath a cross strap of the connector, and the leaf spring is not used at all. The total performance of the Nagen connector is merely a summation of the individual functions of each of the four separate connector portions.

Courts have uniformly held that structures which are mere aggregations are unpatentable. They have generally classified aggregative structures in either of two categories. The first category is sometimes defined by the term "pure aggregation" and consists of structures exhibiting no cooperation or coaction in the performance of their functions. Individual elements of each structure separately and independently perform their functions, and no elements interact to mutually contribute to a single result. The ultimate performance of the entire structure is clearly reflected by the aggregation

of the individual performance of the structure's elements so that no new or surprising result flows from the assembly of the elements into a unitary structure. The structure of Imson's patent clearly falls within this category.

A familiar illustration of the first type of aggregation is found in Reckendorfer v. Faber, 92 U.S. 347 (1876), the so-called pencil and eraser case. Here the patentee claimed a pencil composed of a wooden sheath and a lead core, one end of the sheath being enlarged and recessed to receive an eraser. In holding the claims to be aggregative and void, the Court said:

> "This combination consists only of the application of a piece of rubber to one end of the same piece of wood which makes a lead-pencil. It is as if a patent should be granted for an article, or a manufacture, as the patentee prefers to term it, consisting of a stick twelve inches long, on one end of which is an ordinary hammer, and on the other end is a screwdriver or a tack-drawer, or, what you will see in use in every retail shop, a lead-pencil, on one end of which is a steel pen. It is the case of a carpenter rule, on the handle end of which should be placed a hook, or on the other side of the same end of which should be placed a hoe. In all these cases there might be the advantage of carrying about an instrument instead of two, or of avoiding the liability to lose or misplacing of separate tools. The implements placed upon the same rod might be more convenient for use than when used separately. Each, however, continues to perform its own duty, and nothing else. No effect is produced, no result follows, from the joint use of the two."

* * *

> "The combination, to be patentable, must produce a different force or effect, or result in the combined forces or processes, from that given by their separate parts. There must be a new result produced by their union; if not so, it is only an aggregation of separate elements."

Firestone Tire and Rubber Company v. Sieberling,

257, Fed. 74 C.C.A. 6, 1919 was a similar case. The patented structure related to a turret lathe which mounted four peripherally spaced tools each of which performed separate and successive operations upon a tire casing. In finding the patent invalid on aggregation, the court remarked at Page 81,

> "From the standpoint of an interdependent combination, the situation is the same as if there four tools had been lying upon a work-bench by the side of the operator and he had successively selected the ones he desired."

* * *

> "...but the trouble here is more vital. Stiebel's spinning tool has no operating connection whatever with the remainder of the mechanism. Each part performs its own work in its own way, and no new result flows from bringing the two into juxtaposition."

In the second type of aggregation (sometimes referred to as "Exhausted Combination") a structure is formed from elements which exhibit cooperation to produce a unitary result; however, the elements exist in a known way, and the result produced is not new. More specifically, elements which are individually old in the art are assembled in a unitary structure so that they mutually cooperate, but collectively perform only their well-known functions and nothing more. Their combined result is not new, and no surprising result is effected from their interaction.

This type of aggregation was considered in Richards v. Chase Elevator Co., 159 U.S. 477 (1895). The device in question shifted grain from a railway car to a hopper scale by an elevating mechanism, and then discharged the grain through a spout in the hopper scale to a second car. The Court held the combination claimed to be aggregative and invalid, saying at Page 500,

> "Unless the combination accomplishes some new result, the mere multiplicity of elements does not make it patentable. So long as each element performs some old and well-known function, the result is not a patentable combination, but an aggregation of elements. Indeed, the multiplicity of elements may go on indefinitely without creating a patentable combination, unless by their collocation a new result be produced."

See also Hale v. Van Norman, 67 U.S. 353, 360 (1863); Dawson Company v. The U.S. Rubber, 142 F. Supp. 385 (1955), D.C., N.D. Ill., E.D.

Under either of the above tests of aggregation, the claimed connector of the Nesson patent is invalid. Nesson incorporated four well-known connecting structures from the prior art in a single connector where each performed only its well-known function in attaching an arm end. The connecting structures do not cooperate or react with each other in the performance of their functions. Each acts as it always has, and placing them in juxtaposition produces no new or surprising result. As the court remarked in Reclendorfer v. Faber, supra, at Page 347,

> "The law requires more than a change of form, or juxtaposition of parts, or of the external arrangement of things, or of the order in which they are used, to give patentability."

NON-INFRINGEMENT

Nason's claimed structure is totally lacking in invention. However, even assuming that invention is present, Anderson's accused structures do not infringe because they do not have an essential element called for in each of Nason's claims.

In Electric Smelt Co. v. Nail Smelt Co., 124 U.S. 67, 90 (1888), the Supreme Court said:

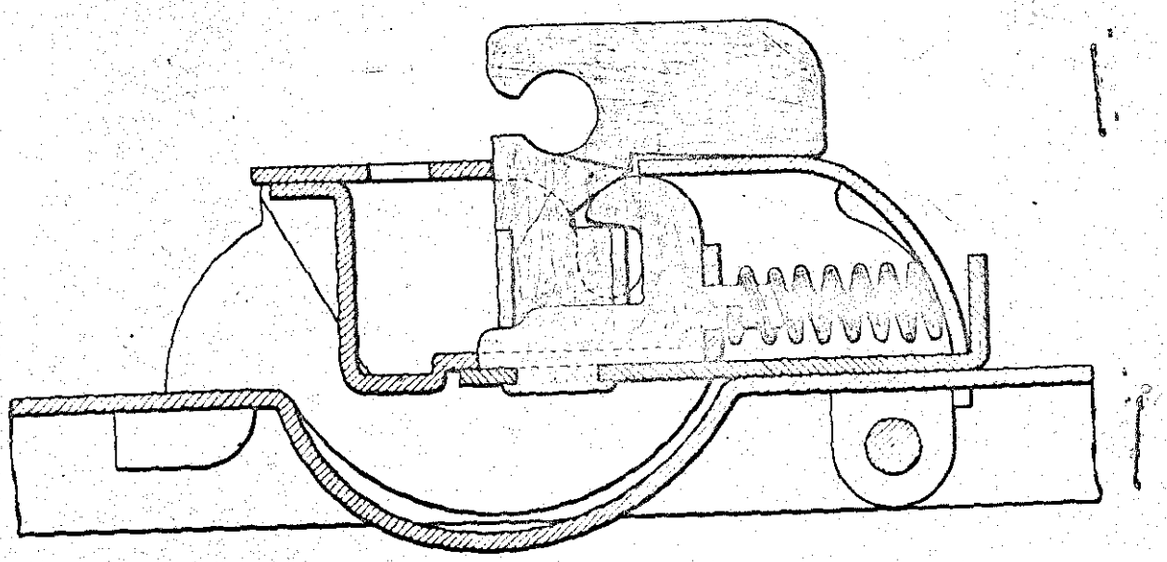
> "The thing patented is the particular means devised by the inventor by which that result is attained, leaving it open to any other inventor to accomplish the same result by other means. To constitute identity of invention, and therefore infringement, not only must the result obtained be the same, but in case the means used for the attainment is a combination of known elements, the elements combined in both cases must be the same, and combined in the same way, so that each element shall perform the same function, provided, however, that the differences alleged are not merely colorable, according to the rule forbidding the use of known equivalents."

Both claims 7 and 8 specify "means comprising a spring disposed in said clip and being constructed and arranged to retain the cross-bar type end in said space, to hold said hook plate on the clip, and to lock said open type end within the clip." Claims 9 and 10 each call for "means comprising a spring disposed in said clip and being constructed and arranged to lock the cross-bar type end in said space and to lock the open type end under said latch member."

The specification shows that the claimed spring is the integral leaf spring 42. It points out that this spring was bent to form three portions; that one of the portions

directly contacts and holds the spoon arm end in the clip; that a second portion directly engages and holds the cross-bar arm end in the clip and that a third portion directly engages and holds a hook plate on the clip. In other words, the specification points out the particular construction and arrangement of the leaf spring, and the claims each include the described construction and arrangement of the spring.

A typical form of Anco structure which is alleged to infringe is shown below. A consideration of the structure of only one of the alleged infringing devices is sufficient to make non-infringement blatantly clear.



In the foregoing photograph, the connector structure has a slidable bolt (colored purple) which is urged to the left by a coil spring (colored red). This general structure, shown in Emlold Patent 2,432,609 owned by the Anderson Company, was commercially used as early as 1944. The coil spring is completely conventional. It has no particular "construction or arrangement" to effect latching as specified in each of the claims in suit, and there is no direct contact between the spring and the arm ends as in the structure of the patent.

The structure of The Anderson Company's accused connector closely follows the teachings of its earlier connector constructions, and does not differ from Nelson's disclosure. The latching in the Anderson structure is effected by the bolt, not by three separate parts of a leaf spring. With the cross-bar type of arm, the upper finger on the bolt holds the cross-bar in a pair of aligned slots. The finger also holds the hook plate on the connector in the manner shown in Anderson Patent 2,532,910. The spoon arm end fits within the connector in the chamber beneath the bolt, and the left end of the bolt restricts the connector opening so that the spoon cannot be pulled out. The hook arm end fits under the cross strap at the top of the connector in the manner commonly employed for the past fifteen years.

Neeson's claimed leaf spring is clearly not present in the accused structure. Furthermore, the latching structures of the two connectors are completely different. The patent discloses two forms of connectors each having a leaf spring with three separate portions which, functioning separately and independently of each other, individually latch three arm ends to the connector. The leaf spring of each form directly engages two arm ends during latching, and in one form, it contacts a third arm. In the accused structure a slidable bolt engages and latches the arm ends to the connector. Anderson's coil spring is completely conventional, and it never contacts any of the arm ends during latching.

The claims do not read on the accused device and there is no identity of invention between the patented structure and the accused device.

CONCLUSION

Claims 7, 8, 9 and 10 of the Neeson patent are invalid because they read on, or are not patentable over, structures in the prior art and are directed to non-patentable aggregations. Since each of the claims contains an essential element not found in the Anderson accused structures, the claims are also not infringed.

Respectfully submitted,

SCHROEDER, HOFGREN, BRADY & WEGNER

By _____
John Rex Allen

OF COUNSEL:

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Robert H. Rines, Esq.

February 20, 1967

Kindly advise me of your intentions with respect to the above requests.

Very truly yours,

OSTROLENK, FABER, GERB & SOFFEN

Jerry

Jerome M. Berliner

JMB:cg

Enclosures

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FINANCIAL 6-1630
AREA CODE 312

February 6, 1967

RECEIVED
FEB - 9 1967
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

Mr. Robert H. Rines
Rines and Rines
No. Ten Post Office Square
Boston, Massachusetts 02109

RE: UIF v. BT v. JFD

Dear Bob:

* I enclose a copy of a letter from Cass together with copies of JFD drawings which purportedly show twin boom antennas early in 1964. There is also a part drawing for a strain relief member.

I am sending a set of the drawings to Ike also so that he can bring them along if he attends Finkle's deposition on Wednesday.

* I also enclose another notice of prior art from JFD.

Very truly yours,

Richard S. Phillips

RSP:iag

* Enclosures

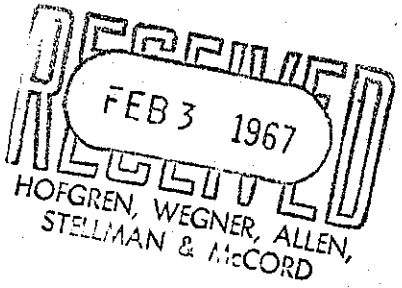
cc: Mr. I. S. Blonder (with enclosures)

LAW OFFICES
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PATENTS · TRADEMARKS · COPYRIGHTS
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TELEPHONE 726-6006
AREA CODE 312
CABLE: SILCAS

I. IRVING SILVERMAN
MYRON C. CASS
SIDNEY N. FOX
GERALD R. HIBNICK, IND. BAR

February 2, 1967

Our Ref. 6-418



Richard S. Phillips, Esq.
Hofgren, Brady, Wegner, Allen,
Stellman & McCord
20 North Wacker Drive
Chicago, Illinois 60606

Re: UIF v. BT v. JFD - Civil Action No. 66 C 567

Dear Dick:

Continued search for materials which you requested has located blueprints of JFD antennas and parts therefor which are proposed to be used in attacking validity of the B-T patent in suit. With respect to the enclosed JFD drawings 52720, 52730 and 50451, I am advised that the drawings were made after each of the mechanical components illustrated had been designed and the tools built. Obviously, this would be long after the research and development work was done with respect to the components. I am advised that these assembly drawings would have been made sometime between nine months to one year after the original development of the project.

Per our agreement, dimensions of the antenna elements have been removed.

With respect to the enclosed JFD drawings 11881-0101 and 01201140, there is shown a strain relief member used since the middle of 1962 and is still in use on JFD antenna model 10Y1013G illustrated.

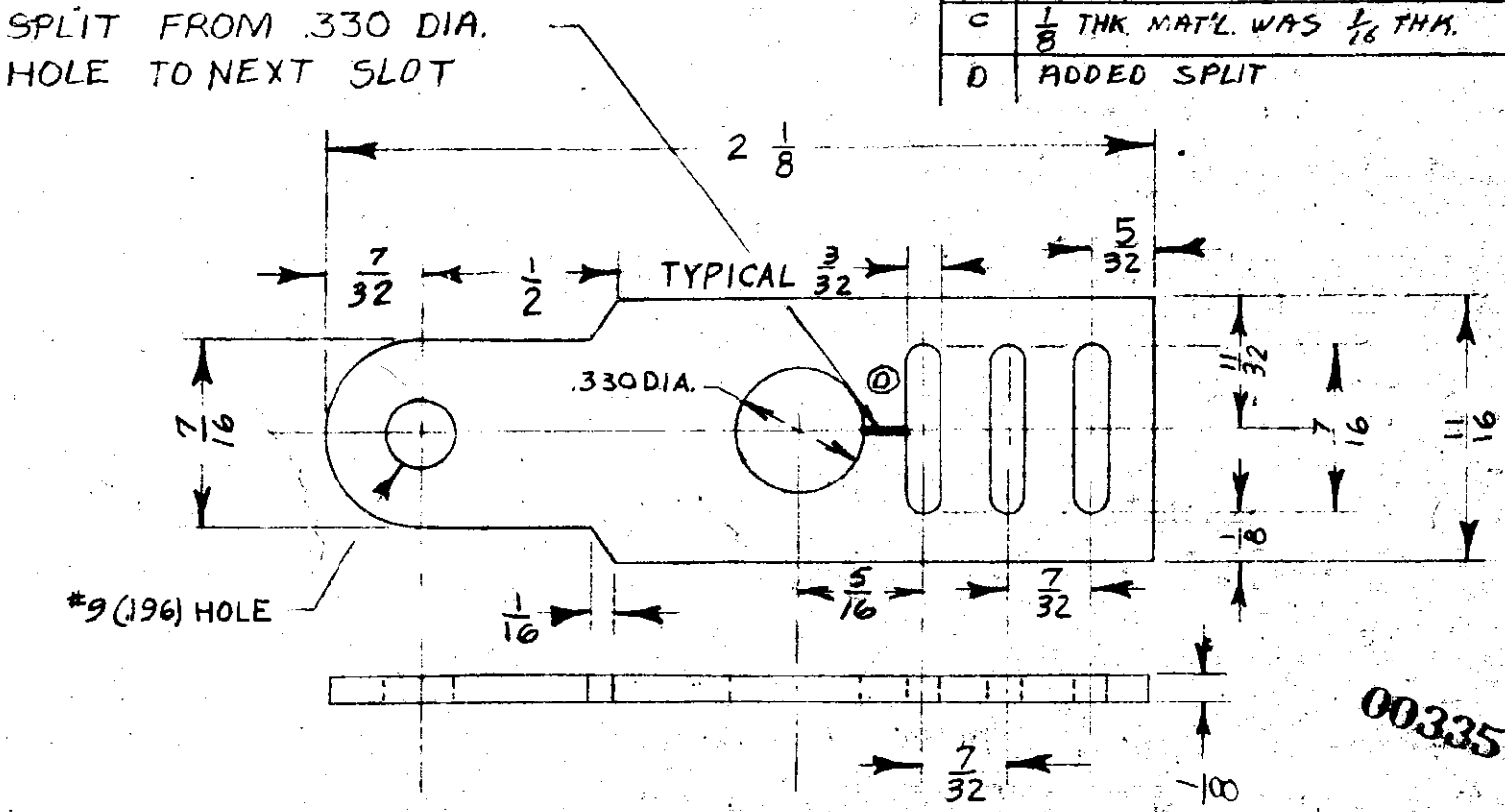
Very truly yours,

SILVERMAN & CASS

Myron C. Cass

MCC/gm
Encl.
cc: Basil P. Mann, Esq.

REV.	DESCRIPTION	DATE	APP.
A	FINISH WAS NATURAL	1-23-63	
B	ADDED .330 DIA. HOLE	11-6-63	
C	$\frac{1}{8}$ THK. MAT'L. WAS $\frac{1}{16}$ THK.		
D	ADDED SPLIT	5-16-66	



ITEM NO.	NO. REQ'D	PART NO.	DESCRIPTION	MATERIAL	SPECIFICATION	NOTE

SCALE: 2 X SIZE

NO. REQ'D PER ASSEMBLY: ~

TOLERANCES UNLESS OTHERWISE SPECIFIED
FRACTIONAL ± 1/64
DECIMAL ± .005
ANGULAR ± 1/2°

MATERIAL: POLYETHYLENE

HEAT TREAT: ~

FINISH: BLACK

TWIN LEAD STRAIN RELIEF
ZIP ANT.

DRAWN	CHECKED	ENG. APP.	PROD. APP.
G. SMAGALA 7-18-62	7-18-62		

IFD ELECTRONICS CORP.
BROOKLYN, N.Y.

DATE OF PRINTING: JAN 2 0 1967

NEXT ASSEMBLY:

DRAWING NO.: 11931-0101

M+E ALBANENE 1966 TRACING PAPER 56219

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LLOYD L. EVANS
OF COUNSEL

April 17, 1967

RECEIVED
APR 18 1967
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

Robert H. Rines, Esq.
Rines & Rines
10 Post Office Square
Boston, Massachusetts

Dear Bob:

Re: The Finney Company v. JFD Electronics Corporation et al., Civil Action Nos. 65 C 220 and 65 C 671 (Consol.)

Enclosed herewith is a slightly revised version of our Motion for Summary Judgment compared to the advance copy sent to you earlier. Also enclosed herewith (not entirely in final form) is a copy of our memorandum in support of our Motion for Summary Judgment, together with a copy of the more important exhibits referred to which I assumed you might not have in your files. I have not yet prepared any part of the table of contents that will include a list of the exhibits, among other things.

I wish to call your attention particularly to the stipulation, PX-C. This stipulation has been approved by Pete Mann and is presently being circulated for execution by all of the parties. In view of the attitude taken heretofore by Faber regarding the patent aspects of the suit, I expect no problem in securing execution of that stipulation by him, as well as by Mann.

The reason for my use of capital letters to identify some exhibits and numerals to identify others is the likelihood that the exhibits identified by capital letters may never

be used as exhibits at the trial or will be introduced as exhibits by the opposition, whereas those identified by numerals would seem most likely to be introduced by us as exhibits at the trial (if there is one), and those through PX-27 have already been identified by their exhibit numbers in our depositions.

If you can look over the enclosed material quickly and give me your comments by telephone, I may be able to profit from those comments in finally revising the memorandum and still get the motion and memorandum filed by the end of this week. In any event, and whether or not you decide to move for a separate trial of the issue of "unclean hands" I would hope that the enclosed material might be of some assistance to you in the handling of your own case.

I shall, of course, be intensely interested in whatever develops regarding a trial date for your case and what issues will be tried.

Sincerely,

John

JFP:jh
Enclosures

cc: Richard S. Phillips, Esq.
Walther E. Wyss, Esq.