Charles J. Merriam, William A. Marshall and Paul
Esq.
P. Merriam, Merriam, Marshall, Shapiro and
Klose, 30 West Monroe St.
Chicago, Illinois 60603

Jerome M. Berliner and
Robert C. Faber Esq.
Ostrolenk, Faber, Gerb & Soffen,
10 East 40th St.
N.Y.C., N.Y. 10016

John F. Pearne and Harold F. McNenny Esq.
McNenny, Farington, Pearne and
Gordon, 920 Midland Bldg.
Cleveland, Ohio 44115

Solicitor General
Dept of Justice
Washington D.C. 20530

September 17, 1970

Mr. Ben H. Tongue
Blonder-Tongue Laboratories, Inc.
1 Jake Brown Road
Old Bridge, New Jersey 08857

Dear Ben:

Prior to leaving for Loch Ness, we wish to give you a picture of our charge card account which will be up-dated and more acurately detailed on our return.

As of Frank's last letter to us, we had charged about $6900 worth. We were not credited, however, with some $1800 of disbursements made by us on Blonder-Tongue's behalf and outlined in a copy of our ledger sheets sent to you. We were also not credited with the following further items:

1. Returned tickets or ticket portions - approximately $600.00

2. Payment for legal services (reB-T) to Robert Shaw by way of ticket - approximately $300.00

3. Additional travel and disbursements on B-T's behalf - approximately $450.00

Thus, as of a few weeks ago, our net charges were about $3750. We have accordingly made a few charges subsequently.

Cordially,
RINES AND RINES

By
Robert H. Rines

RHR/ch

Rail Creation

Letter from Argue (Walker PERSONAL)

Dear Ben:

Prior to leaving for Los Vegas, we wish to give you a picture of our charge card account which will be up-dated and more accurately detailed on our return.

As of March 2 last little less, we had charges about $6900 worth. We were not credited, however, with some $1800 of disbursements made by us on BT's behalf and outlined in each of our ledger sheets sent by you. We were also not credited with the following further items:

1. Returned cheques on broker portions - approx $600.-
2. Payment for legal services (re BT) & Keller-Thoumbs, etc. approx $300.-
3. Additional travel & disbursements on BT's behalf approx $450.-

Thus, as of a few weeks ago, our net charges were

about #3750. Dr Mann made few changes
and approved.

Consultation
Pt
2
Dr

Blonder-Tongue

May 11, 1970

Mr. Richard S. Philips
Hofgren, Wegner, Allen, Stellman and McCord
20 No. Wacker Drive
Chicago, Illinois 60606

Re: University of Illinois vs Blonder-Tongue
Petition for Certiorari

Dear Dick:

This confirms our telephone arrangements that we shall meet on the afternoon of May 14 to discuss the above matter.

Cordially,
RINES AND RINES

By
Robert H. Rines

RHR/ch

2-23-70

2-22-70

deprived

anticipation

Defendant

proper

testimony

competitive

complained

handicapped

R74-75

R90

proved

Two

occupation

Universities

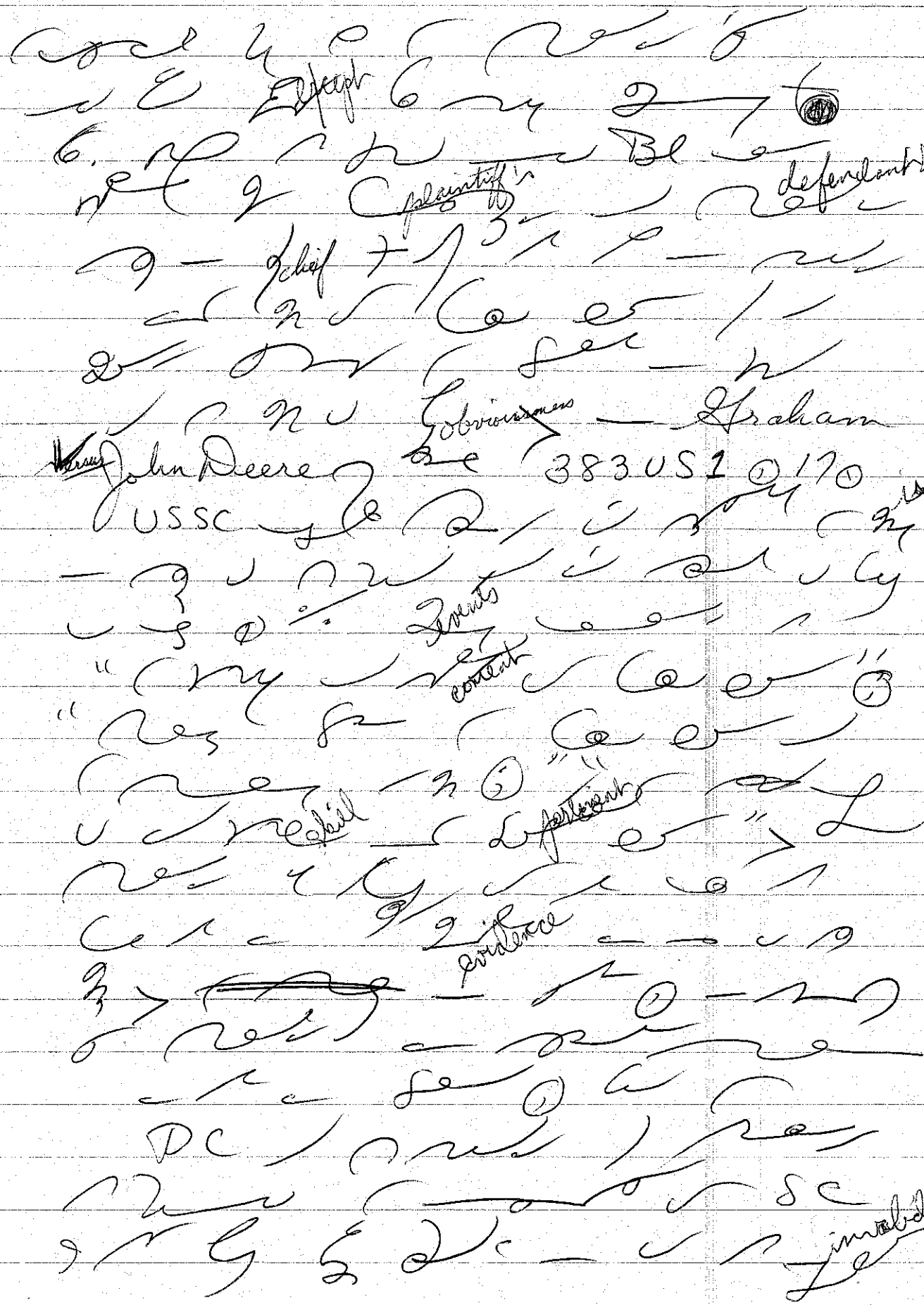
college

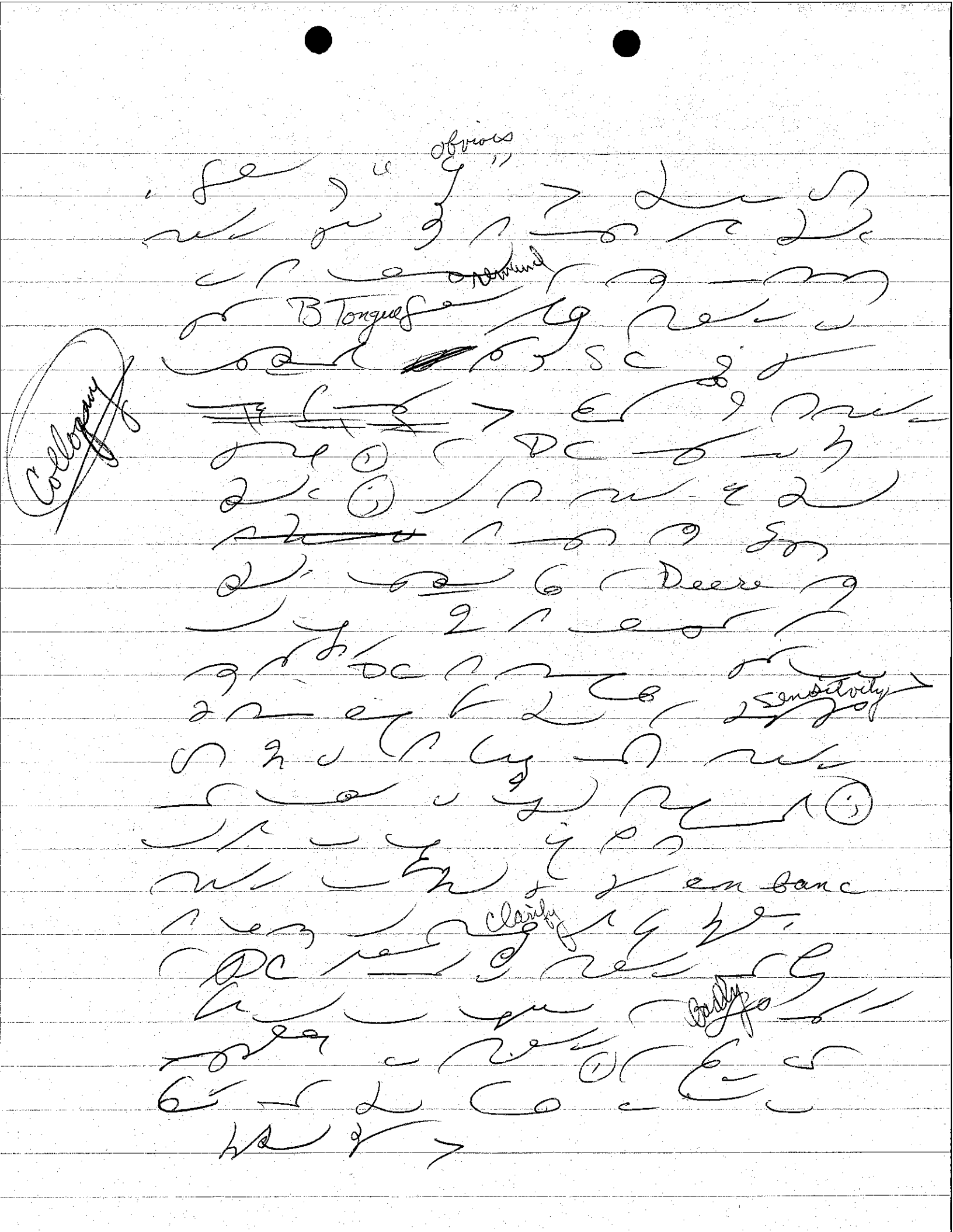
proper

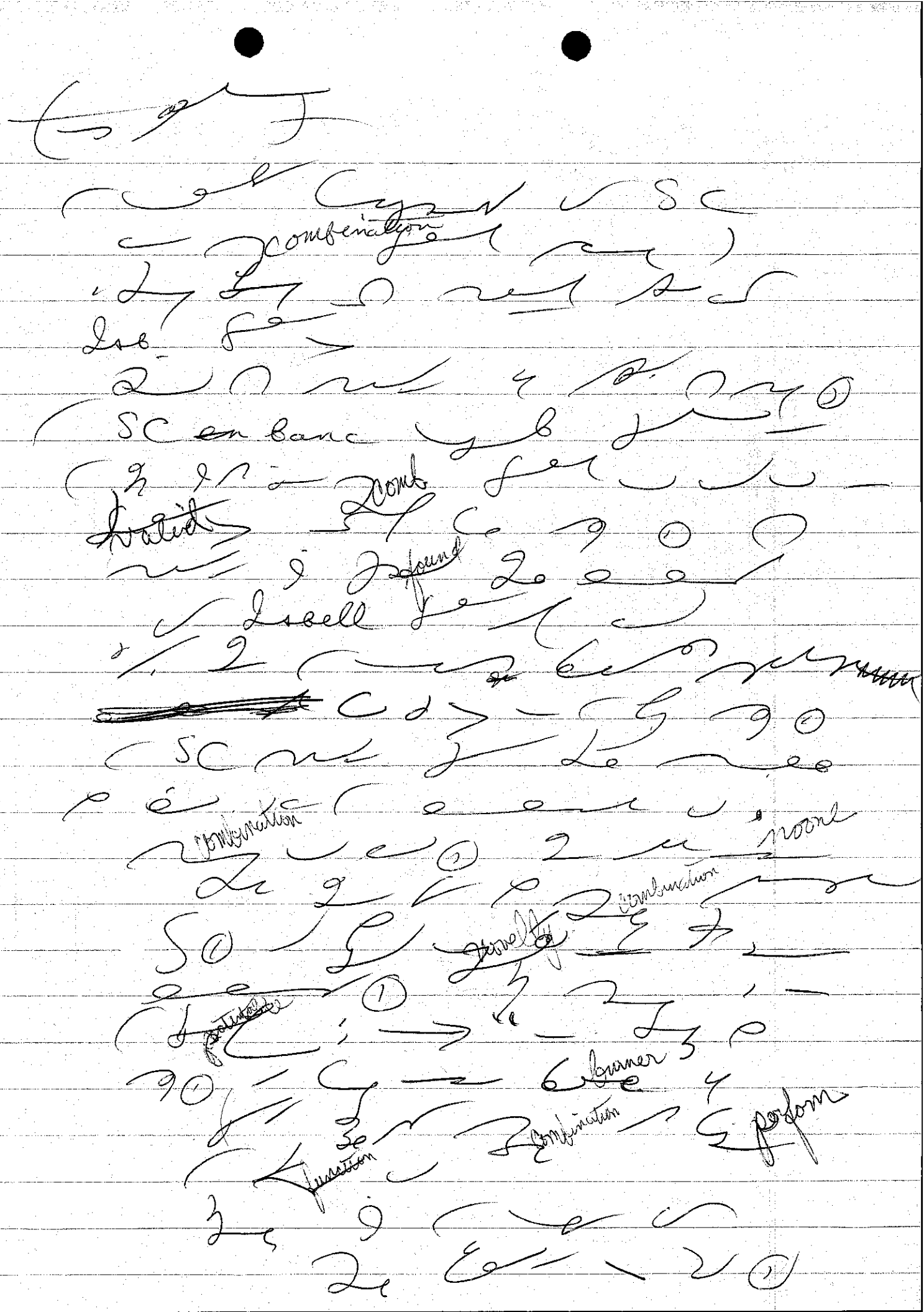
ordinary

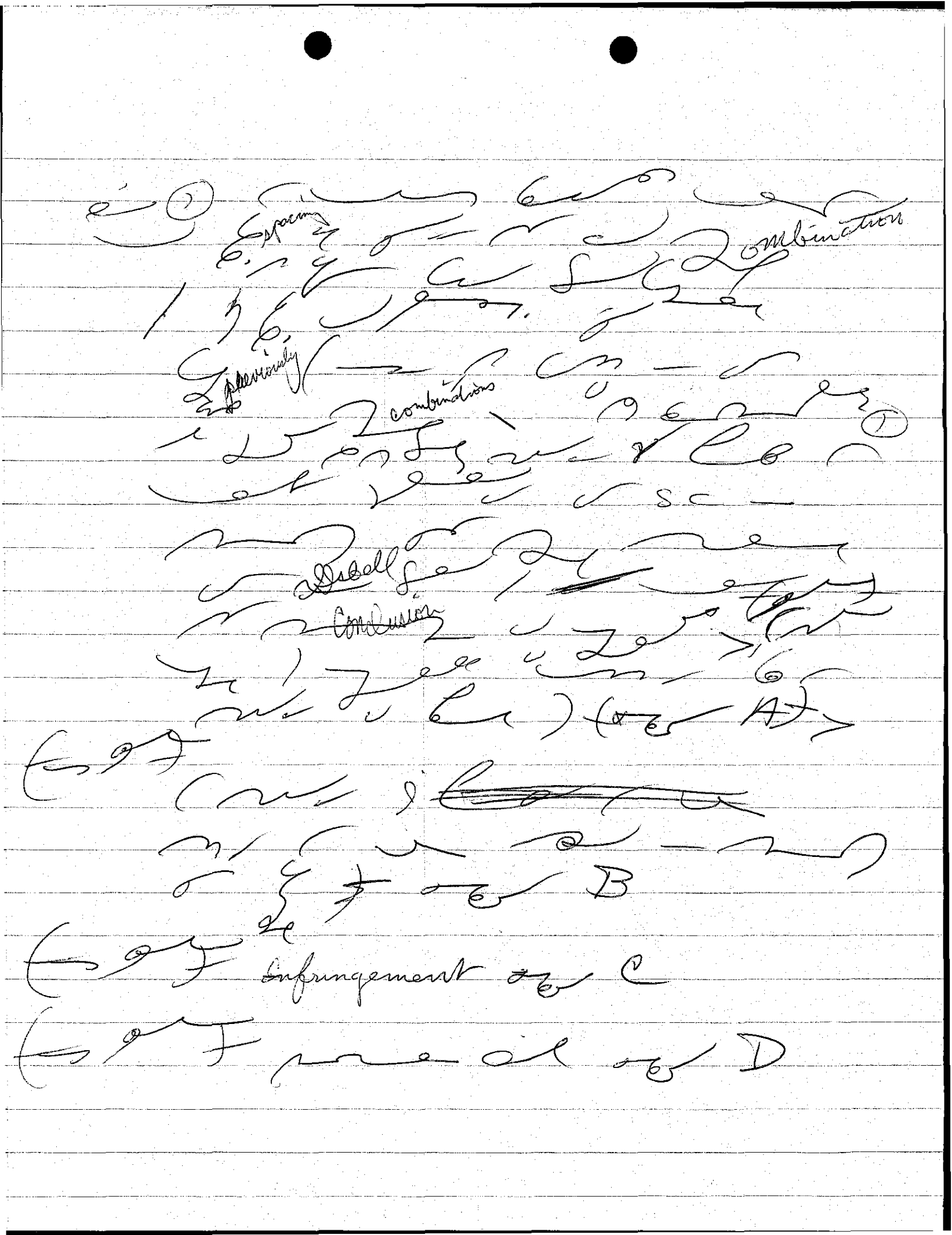
skilled worker

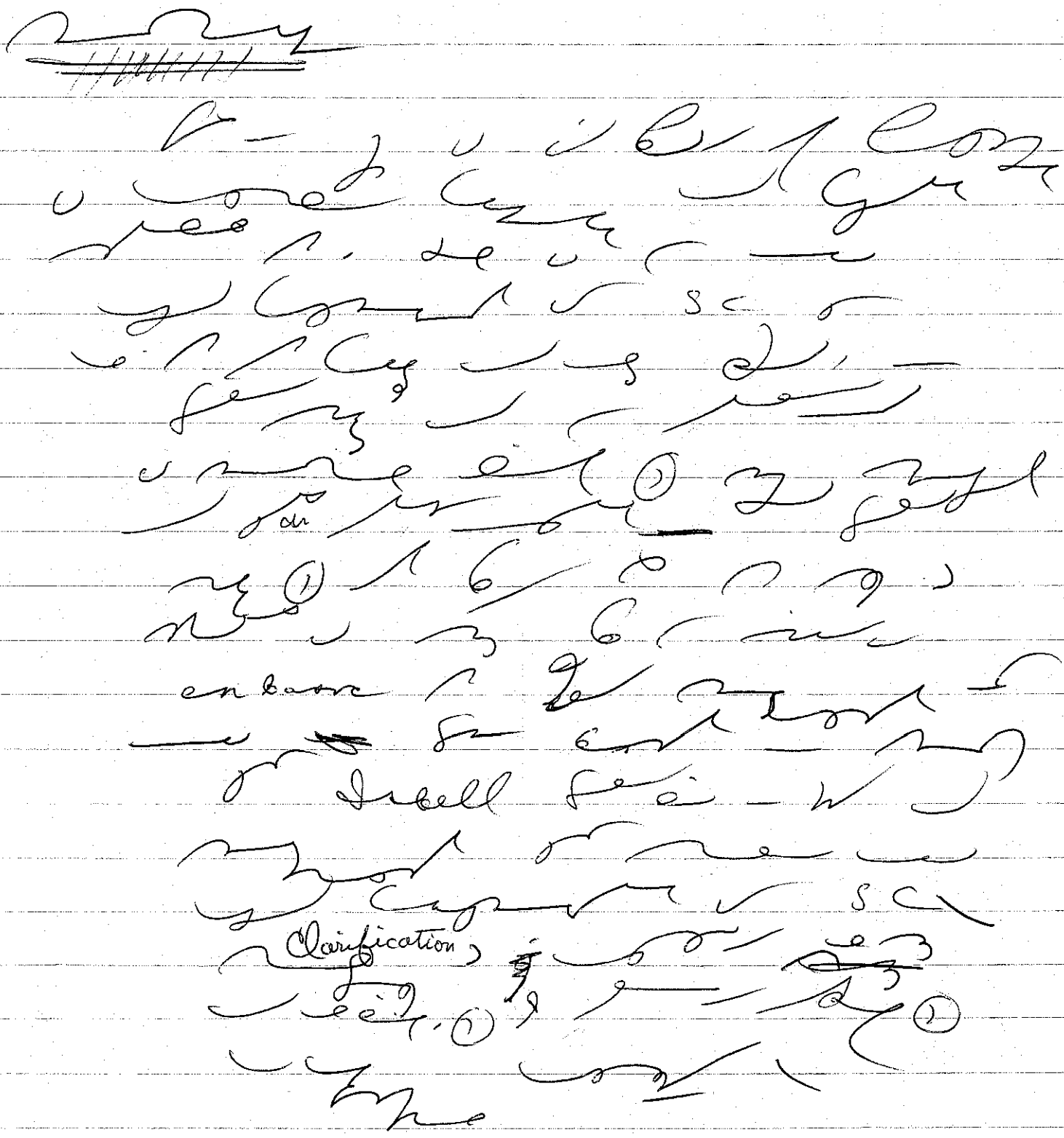
obvious











RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

Copy sent to Isaac Blonder #10 P.O. Square

February 23, 1970

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

Re: Petition for Clarification, Reconsideration and Rehearing in Blonder-Tongue Case

Dear Dick:

Enclosed is our draft which you may feel free to modify, as we discussed.

We have left out a few points which you might want to consider.

First, we did not make any further reference to the matter set forth at the tope of page 8 of our main brief; namely, being deprived of putting in evidence admisstions of the other side with a profert of showing false claims.

Perhaps you will wish to insert this in the section on the Fair Trial. The Court, of course, ignored it.

We also have not quite known where to insert the proposed appendix C. Perhaps this again is something that ought to be inserted in the section of Due Process if you decide to use it.

We have discussed with Mr. Tongue our proposed tack and he has approved our procedure.

Again thanks for your invaluable help.

Cordially,
RINES & RINES

By
Robert H. Rines

RHR/ch
cc:I. S. Blonder

COPY

file

January 5, 1970

Mr. Ben H. Tongue
Blonder-Tongue Laboratories, Inc.
1 Jake Brown Road
Old Bridge, New Jersey 08857

Dear Ben:

Our present estimate of legal services performed on your behalf during the past year is in the neighborhood of some $16,500 which, it would appear, may substantially offset previous monies due you.

If an offset of these items is appropriate at your end, perhaps this would be the simplest way to adjust accounts.

Very truly yours,

RINES AND RINES

By
Robert H. Rines

RHR/ch

cc:Mr. Frank Smith

UHF converter and antenna guide

Selection of right converter and antenna critical for UHF



by I. S. Blonder
Chairman of the Board,
Blonder-Tongue Laboratories, Inc.

There has been a long-standing prejudice against UHF. Since the band opened in 1952, many otherwise knowledgeable technicians have considered UHF reception to be inferior to VHF. Yet the recent New York City tests conducted by the FCC have proved that this is simply not so.

There is a reason for this paradox – equipment. In 1953, the state of the UHF art was relatively primitive. Today, experienced manufacturers like Blonder-Tongue are able to produce equipment capable of providing UHF reception that is, in many ways, superior to VHF.

The latest advance in UHF converters is solid-state circuitry. The use of transistors and tunnel diodes insures longer-life and generally lower noise figures. Also, the Blonder-Tongue patented tuners provide pinpoint, drift-free tuning. The result is brilliant color pictures and sharp black and white reception.

As for antennas, UHF has a definite advantage over VHF. Because the UHF wavelength is so small, high gain, efficient antennas are small and cost little. The periodic principle proved so successful in the U.S. Satellite program is especially applicable to UHF. The Blonder-Tongue Golden Dart (outdoor) and Golden Arrow (indoor) antennas utilize this priniciple.

While they are compact, these antennas provide more gain than the large VHF yagis. What's more important, their patterns are clean, rejecting unwanted "ghost" signals.
With a little extra care in selecting and installing UHF equipment, you can often provide your customers with better UHF pictures than they've been watching on VHF.

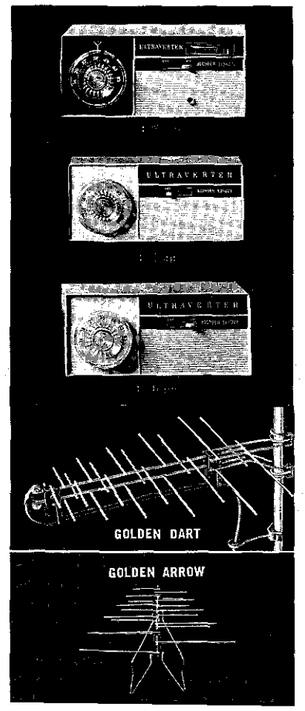
Blonder-Tongue UHF converters

These all-channel UHF converters, your best investment in TV enjoyment, add channels 14-83 to your present set. They are particularly suited to meet the critical demands of color TV. The new BTX-11 and BTX-99 converters retain traditional Blonder-Tongue features such as peak performance on all UHF channels, easy installation and reliable, long-term operation. To these well-known features have been added the advantages of all-transistor circuitry; maximum stability for drift-free performance and lower noise figure for snow-free reception. The BTD-44 employs a tunnel diode circuit for excellent, low cost battery operation.

Blonder-Tongue UHF antennas

The UHF antennas are designed to match the high performance standards on all UHF channels of our famed UHF converters. They employ the well-known Periodic principle, to provide uniform, high gain across the entire UHF spectrum for sharp, ghost-free pictures. Full bandwidth makes these UHF antennas excellent for color and black & white TV.

The Golden Dart is an outdoor UHF antenna which comes completely pre-assembled with nothing to snap out, no screws to tighten. The Golden Arrow is an indoor UHF antenna, which outperforms all other available indoor UHF antennas.



ALL-CHANNEL UHF CONVERTERS

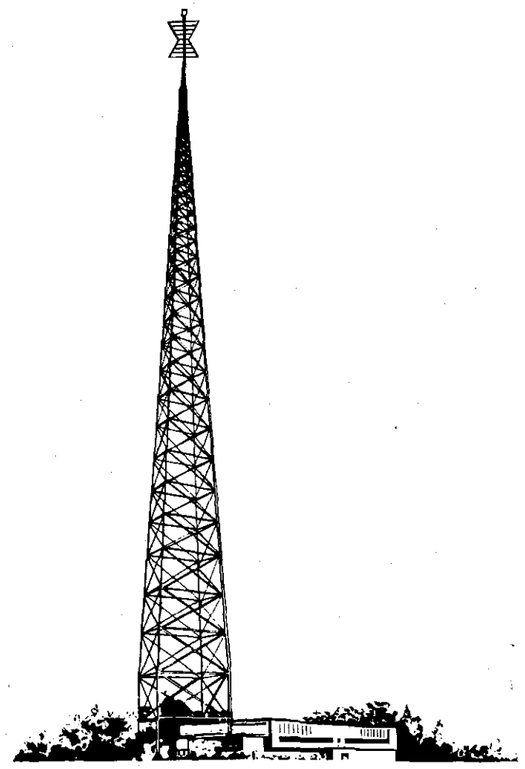
ALL-CHANNEL UHF ANTENNAS

*In weak signal areas, use a model Able-U2 UHF amplifier.

ENJOY BETTER TV RECEPTION WITH BLONDER-TONGUE. SAVE DURING THE VAL·U·RAMA NOW GOING ON.

BLONDER-TONGUE
9 Alling Street, Newark, New Jersey 07102
Canadian Div.: Benco Television Assoc., Ltd., Toronto, Ont.
home TV accessories • closed circuit TV
• community TV • UHF converters • master TV

How to deliver the best signal...



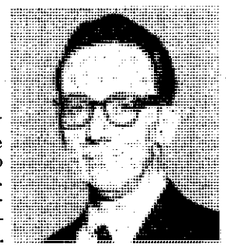
from here...

to here

BLONDER-TONGUE leader in UHF and VHF product design dedicates Fall, 1964 to better TV reception with the

BLONDER-TONGUE VAL·U·RAMA

How TV signal amplifiers improve reception



by Ben H. Tongue
(President, Blonder-Tongue Laboratories)

TV amplifiers can improve TV reception in many cases. There are, however, situations where no improvement is to be expected. This article will cover both situations to help you recognize potentially profitable installations.

Amplifier performance is determined by the level of internally generated noise (snow), amplification level, and degree of freedom from overload by strong local signals. Amplifiers are used as follows:

1. **INCREASE CONTRAST** Low cost TV sets generally have insufficient gain for weak signal reception. Old TV sets (low or high cost) often have aged tubes and insufficient gain. Low gain generally is the cause of poor contrast on weak signals. If the contrast of "snow" when the TV set is operating at full gain (no signal input) is much less than picture contrast on a strong signal, low gain is at fault.

A good amplifier, indoor or outdoor, will improve poor contrast caused by low gain. Contrast is reduced if the transmission line from antenna to TV set has a high loss. Noise (snow) is also increased by this condition. Let us assume that a good antenna is well installed and that quality transmission line is used (flat twinlead for VHF and round foam-filled twinlead for UHF).

TABLE 1 FREQUENCY	Length for 3db Loss	
Low Band VHF (Ch 3-6)	50' Wet	300' Dry
High Band VHF (Ch 7-13)	26' Wet	158' Dry
Low Half UHF (Ch 14-48)	45' Wet	90' Dry
High Half UHF (Ch 49-83)	37' Wet	74' Dry

2. **REDUCE SNOW** Snow appears when the TV signal-to-noise ratio is reduced. A good antenna reduces snow because of increased signal pickup. Transmission line loss increases snow because it reduces the signal reaching the first amplifier stage (booster or tuner RF stage). This reduces the signal-to-noise ratio. Here's how snow can be minimized:

a. Increasing signal pickup by using a higher gain antenna.

b. Using an amplifier which generates less noise than the TV input stage.

c. Amplifying at the antenna. If the amplifier has the same noise figure as the TV set tuner, the amplification overcomes transmission line loss, and the picture signal-to-noise ratio is nearly the same as if the TV set were at the antenna.

Point "A" applies at all times. Point "B" generally applies to low cost (tetrode tuner) and older TV sets when the amplifier is mounted near the set. Point "C" applies when the transmission line loss is appreciable. (See table 1). In this case we can improve the initial signal-to-noise ratio by using a low noise mast-mounted amplifier.

3. **OVERCOME SPLITTING LOSSES** Splitting a signal to drive several TV sets causes loss to each set. If the signal power is divided among two sets, each will receive ½ the original power (3db loss). This is equivalent in points "1" and "2" to an extra 3db of transmission line loss. The solution is amplification before splitting. This can restore contrast and re-establish signal-to-noise ratio (or even improve it).

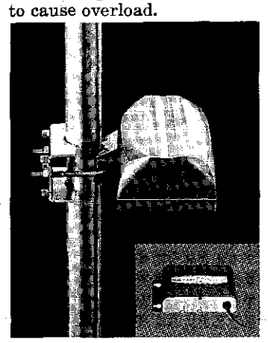
One transistor amplifiers are most susceptible to overload. Two transistor amplifiers are much less susceptible, performing about the same as single tube units. Two tube and dual section tube amplifiers overload least. Frame-grid tubes provide exceptionally low noise and last longer than ordinary tubes. If interference occurs, attenuation filters can be used.

Guide to selecting the Blonder-Tongue amplifier that's best for you

BLONDER-TONGUE TV/FM SIGNAL AMPLIFIERS

Brilliant color TV, sharp black and white TV and lifelike FM stereo reception require strong, clean signals. To provide TV viewers with the best possible reception in any area of the country, Blonder-Tongue offers the world's largest selection of signal amplifiers. There are VHF amplifiers, UHF amplifiers, FM amplifiers. And, for the first time, all-channel TV amplifiers covering every channel from 2 to 83.

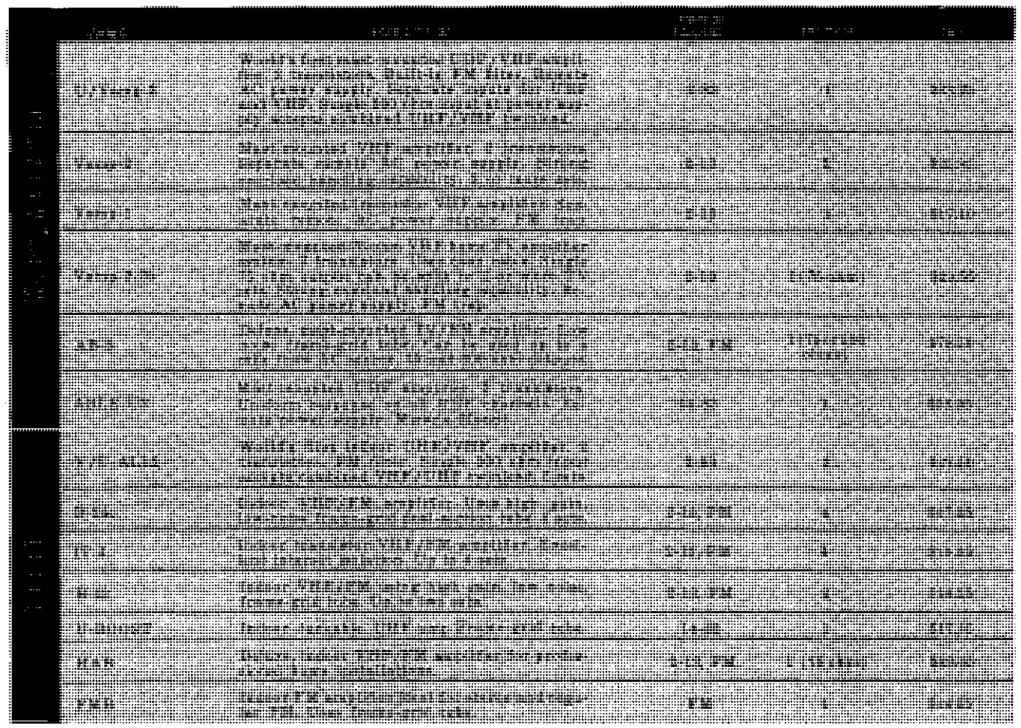
When you select a Blonder-Tongue amplifier, you can always be sure of getting the best amplifier for your specific reception problem. There are mast-mounted amplifiers designed to take advantage of the best signal-to-noise ratio available at the antenna for weak signal areas. There are indoor amplifiers, that offer convenient installation and can provide excellent results where there are relatively strong signals. You also have a choice of either tubed or transistor amplifiers. For example, transistor amplifiers offer greater gain and are most effective in weak signal areas where there are no strong local channels to cause overload.

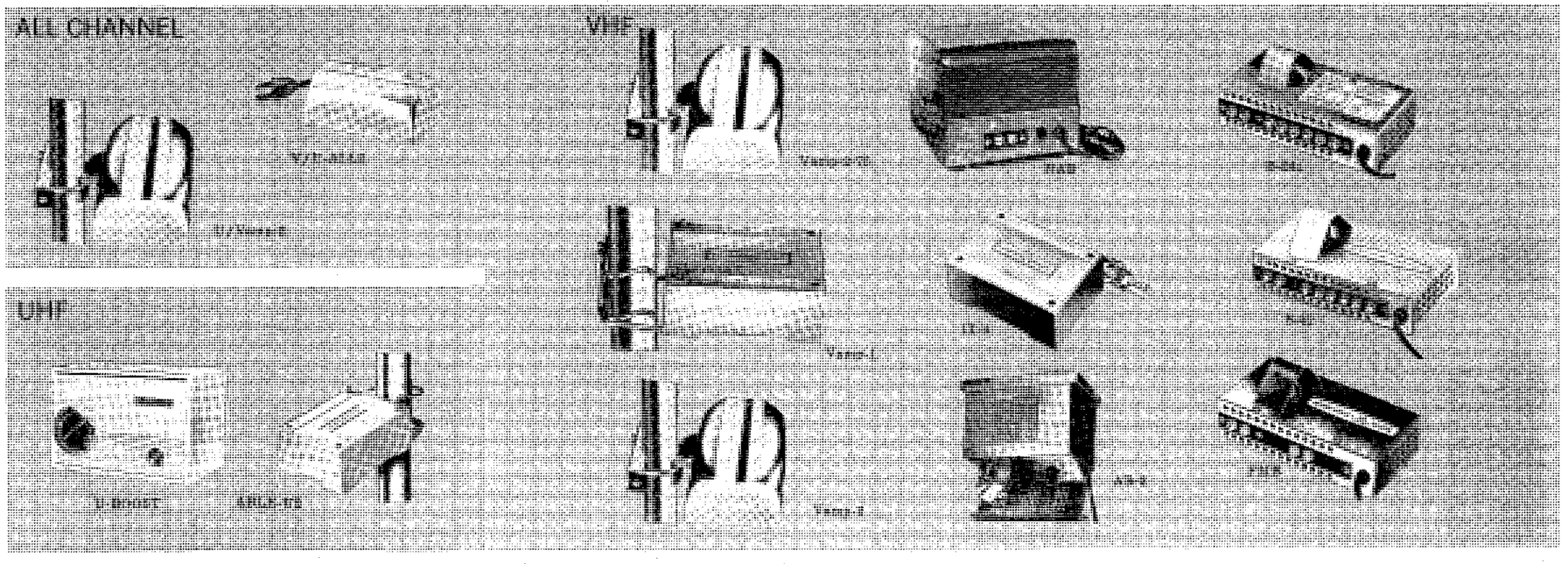


The finest signal amplifiers in the world are also the easiest to install. Many of the mast-mounted amplifiers feature the exclusive 'Miracle Mount'. All mast mounted amplifiers feature a separate remote power supply which can be installed easily indoors near the set. Finally, secure, positive 300 ohm connections can be made in a jiffy with Blonder-Tongue patented stripless terminals.

The chart on the right hand page will serve as a guide that will help you select the best signal amplifier for your area.

BLONDER-TONGUE SIGNAL AMPLIFIERS—VHF, UHF, VHF-UHF, FM





OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

E. ROBERT SEAVER
CLERK OF THE COURT

October 20, 1970

Robert H. Rines, Esq.
Ten P. O. Square
Boston, Massachusetts 02109

RE: BLONDER-TONGUE LABORATORIES, INC.
v. UNIVERSITY OF ILLINOIS FOUNDATION,
ET AL., No. 338, October Term, 1970

Dear Mr. Rines:

Confirming our telegram of yesterday the Court took the following action in the above case:

> "The motion of The Finney Company for leave to file a brief, as amicus curiae, is granted. The petition for a writ of certiorari is also granted."

I enclose a memorandum describing the time requirements and procedures under the Rules and a copy of the Rules.

The additional docketing fee of $50, Rule 52(a) is due and payable.

Very truly yours,

E. ROBERT SEAVER, Clerk
By Helen K. Loughran
(Mrs.) Helen K. Loughran
Assistant Clerk

AIR MAIL
cc: Harold F. McNenny

Used monopolistic position to create supposedly right immediately protected by appropriate law as personal, whereas public participated in giving opportunity to compile.

same issues & experience (Trump)

plenty

bias - damn that has impacted grow

neutral party law

corporate v. patent v. Equipment

public parties

patent - competitive

intellectual - Internet

talking parties

don't talk to

Communication

Crypto

Laptop

others

Internet Communication

Extensive

Patents unreasonable

stand changes &

Internet stable — electronic introduced

non-Newtonian

machine.

Apple & Google —

Computer

Microsoft

Laptop — problem today

TRIPLETT V. LOWELL, 1936, 297 U.S. 638
SHOULD NOT BE OVERRULED

This topic will doubtless be fully explored, on both sides, by others. The best contribution that the present petitioner can make is to relate the experiences of an inventor who, after contributing materially to the prosecution of two world wars, thereafter deliberately stopped making further inventions.*

One of his inventions is today known throughout the world as the Pierce oscillator. Its value in war is attested by the tribute that it was "playing a role in World War II comparable to dive bonbers and block busters," Bokovoy, S. A., "Quartz Crystals - Development and Application," 21 Electrical Communication, Nov. 4, 1944, p. 233. In peace, according to Judge Ford, Pierce v. American Communications Co., Inc., 1953, D.C. Mass., 111 F. Supp. 181, 186, 187,

> "Pierce's work has received widespread scientific recognition . . . , and piezo-electric crystals are in common use to control the frequency of radio transmitting and receiving apparatus . . .
>
> Pierce, in summary, made a distinct and useful contribution to the art of radio broadcasting."

The Court of Appeals for the First Circuit, however, vacated Judge Ford's decision. American Communications Co., Inc. v. Pierce, 1953, 1 Cir., 208 F. 2d 763, cert. denied, 347 U.S. 944, reh. denied, 347 U. S. 970, 348 U. S. 851.

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*Petition For a Writ of Certiorari, p. 22, second footnote, Pierce v. Hewlett-Packard Company, 1955, petition denied, 350 U. S. 833, rehearing denied, p. 897.

Upon what ground? Upon a newly thought-up ground. It so happened that Professor Pierce had obtained an earlier patent for a combination including the Pierce oscillator (or even any other oscillator) as an element of the combination. Upon the earlier expiration of the combination patent, of course, the public was still unpermitted to use that combination, with the Pierce oscillator as an element thereof, because such use would have infringed the still unexpired element patent. The fact that the element and the combination were held by the Patent Office to constitute separate inventions made no difference to the Court of Appeals for the First Circuit, page 769:

> "But it is not necessary for the disposition of the present action for us to decide whether or not the two patents may possibly cover separate inventions."

The ground of the decision of the Court of Appeals for the First Circuit was not double patenting. That decision was likewise not based upon a holding of invalidity of the later element patent.

The decision was to the effect, rather, that the later element patent was, indeed, valid; and that not only was it valid, but also that it was enforceable during the life of the earlier combination patent; but that, though still valid, it was no longer enforceable after the expiration of the earlier combination patent, see page 770, column 1, lines 3 and 4.

As this court refused certiorari, this brand-new principle of patent law has never been reviewed.

Triplett v. Lowell, however, was not yet overruled. The inventor, accordingly, became enabled to try again, this time in the Third Circuit. But the Court of Appeals for the Third Circuit also ruled against him. Pierce v. Allen B. Du Mont Laboratories, Inc., 1961, 3 Cir., 297 F. 2d 323.

Not, however, on the same ground, of the later element patent being valid but unenforceable, that had been adopted by the Court of Appeals for the First Circuit. The Court of Appeals for the Third Circuit recognized fully the unsoundness of that ground. It therefore adopted an entirely different ground, namely, that the later element patent (which the court described as the "generic" patent) was actually invalid, and that the reason that it was invalid was that, if it would be held valid, the result would be an extension of the monopoly of the earlier combination patent, page 329:

> "it is the extension of this monopoly [of the earlier combination patent] beyond its proper seventeen year term which invalidates the generic patent"

This new holding, by the Court of Appeals of the Third Circuit, to the effect that the "generic" oscillator patent was invalid, because, if valid, the public would be unable to use the combination of the earlier expired combination patent without infringing the later element patent, was as new to the patent law as was the previous holding of the Court of Appeals for the First Circuit, that the element patent was valid, and could be enforced up to the date of the expiration of the combination patent, and that it was still valid thereafter, but no longer enforceable.

The inventor thus became deprived of the fruits of his invention in both the First and Third Circuits, but for two entirely different reasons, both unique in the law of patents, and both laid down for the first time in two opinions that have never been reviewed by this Court.

But Triplett v. Lowell was still in force, so the inventor tried a third time, this time in the Fifth Circuit.

And the Court of Appeals for the Fifth Circuit, in full knowledge of the adverse rulings of the Courts of Appeals for the First and Third Circuits, overruled them both, and held that the earlier element patent was both valid and unenforceable. Pierce v. Astron Acoustical Communications Equipment, Inc., 1962, 5 Cir., 307 F. 2d 790, cert. denied, 371 U. S. 954.

The overruling of Triplett v. Lowell certainly would not serve to encourage inventors to invent.

Certainly DuHamel's antenna of Fig. 5 thus constituted an anticipation of Isbell's structure, particularly since all the Isbell claims broadly refer to "dipoles", and do not exclude DuHamel's well known dipoles.

Even more, however, DuHamel taught making his dipoles of any variable "width" (col. 3, line 15), thus teaching every single element of Isbell's alleged invention. Dr. DuHamel, indeed, conceded that at least at the outer regions of his very dipole elements of Fig. 5, the same were of substantially zero width (T. 528).

Obviously a valid patent cannot be granted for each old and well known type of dipole that is substituted in the same old antenna array configuration.

3. The Publication D. Ex. 8 Is a Statutory Bar.

It has been conceded in plaintiff's brief, p. 17, that if the Antenna Laboratory Report No. 2, D. 8, was, as a matter of law, published more than a year before the Isbell filing date, that it "would have anticipated Isbell's invention".

Plaintiff states that only "speculation" was offered as to when this report was available to the public.

The actual fact is that the University librarian charged with the public distribution of this report, Miss Marjorie Johnson, unequivocally testified in the Vinegard

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

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

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

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

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

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

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

1. THE JFD ADVERTISING CAMPAIGN

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

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

> "The Technical Press . . . The News Press . . . The Consumer Press . . . The Trade Press"
>
> ". . . more news coverage than any TV or FM antenna has ever received."

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

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

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

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

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

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

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

Secondly, to mislead the readers into believing that the JFD antennas being offered for sale were already covered by patents, even before the issuance of the same, thus to dissuade purchasing of log periodic antennas elsewhere (including from petitioner); and

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

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

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

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

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

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

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

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

"Developed by the University of Illinois Antenna Laboratory."

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

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

It is further stated that

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

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

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

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

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

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

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

"The Patented Log-Periodic Cellular Formula".

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

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

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

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

False Technical Claims

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

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

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

E. ROBERT SEAVER
CLERK OF THE COURT

October 29, 1970

RECEIVED
NOV -2 1970
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

Robert H. Rines, Esq.
Ten P. O. Square
Boston, Massachusetts 02109

Charles J. Merriam, Esq.
30 West Monroe Street
Chicago, Illinois 60603

Sidney G. Faber, Esq.
10 East 40th Street
New York, N. Y. 10016

Harold F. McNenny, Esq.
920 Midland Building
Cleveland, Ohio 44115

RE: BLONDER-TONGUE LABORATORIES, INC.
v. UNIVERSITY OF ILLINOIS FOUNDATION,
ET AL., No. 338, Oct. Term, 1970

Gentlemen:

I have been instructed to advise you that the Court on November 9 will enter the following order in the above-entitled case:

"In addition to the questions tendered in the petition for certiorari, the parties in this case are requested to address themselves to the following questions in their briefs and oral arguments:

1. Should the holding of Triplett v. Lowell, 297 U.S. 638, that a determination of patent invalidity is not res judicata as against the patentee in subsequent litigation against a different defendant, be adhered to?

See next page, also

2. If not, does the determination of invalidity in the Winegard litigation bind the respondents in this case?"

Very truly yours,

E. ROBERT SEAVER, Clerk

By

E. P. Cullinan
Chief Deputy

EPC:jmh

Due process of law is more than just a phrase. It is a right--a most important right--of substance. As such, it is also more than just a formality. Thus, when a Court requires a party on one day notice after eight postponements extending over a six-month period, to proceed with ~~final~~ trial in a complex patent case, such a trial is an empty shell, ~~of~~ a mere formality, adØpted to satisfy requirements of formality, but not of substance; and, therefore, not to satisfy the requirement of due process.

Long Island Railroad speeds traffic at Jamaica Station with Blonder-Tongue CCTV



The Jamaica station of the Long Island Railroad is one of the world's busiest commuter stations. During the height of the rush hour, the Station Master must keep an eye on five tracks (4, 5, 6, 7, and 8) from his booth located on the platform between track 7 and track 8. This becomes difficult because his view of tracks 4, 5, and 6 are blocked when there are trains on 7 or 6 during the rush hour.

No longer is this a problem. Blonder-Tongue TC-1 transistor vidicon cameras are stationed at platforms serving tracks 4, 5 and 6 to keep an eye on the loading and unloading of passengers. The cameras deliver a clear picture of the situation to three TV monitors (TV sets) in the Station Master's booth. Thus, he can easily view the passengers getting on and off the trains on 4, 5 and 6 and give the dispatch signal promptly when all passengers have boarded to speed commuters on their way.

Installation by Norcon Electronics, Brooklyn, N.Y.

BLONDER-TONGUE

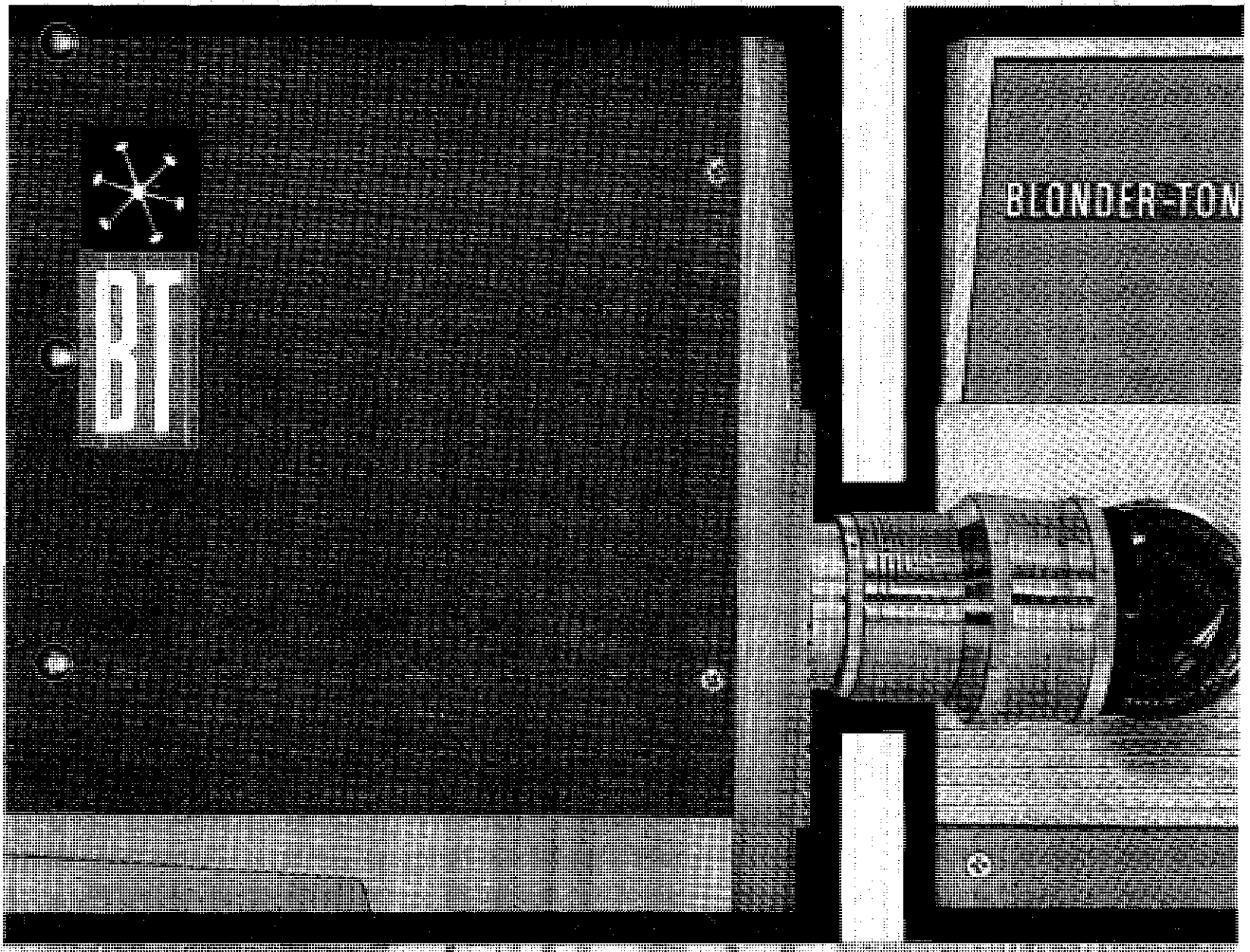
9 Alling Street, Newark, New Jersey 07102

home TV accessories • closed circuit TV • community TV • UHF converters • master TV

©1965 BLONDER-TONGUE LABORATORIES, INC. TO REORDER REFER TO CCTV-24

MODEL TTVC 800

TRANSISTOR VIDICON CAMERA



engineered and manufactured by

Blonder-Tongue

Blonder-Tongue Laboratories, pioneers and developers of the world's first all-transistor television camera, presents the TTVC-800. The result of over a decade's experience in the design of quality television cameras — the TTVC combines traditional Blonder-Tongue quality with the latest state-of-the-art technology.

The basic camera contains all the elements necessary for producing video signals of the highest quality, consisting of eight precision modules — all housed in a rugged, dustproof case.

- **a low-noise multi-stage video preamplifier**
- **a multi-stage control and output amplifier**
- **a crystal-controlled sync generator**
- **vertical and horizontal sweep generators • a high-voltage section**
- **a regulator section • a junction and control assembly**

The TTVC generates a standard 30-frame, 525-line picture (European standard also available) with positive 2:1 interlace and a resolution of 800 lines. Composite video output is 1.2 volts peak-to-peak into a 75-ohm (standard) load, assuring an excellent signal-to-noise ratio, even over long cable runs. Sensitivity is ½ foot candle, with 4000:1 automatic light compensation. The camera is also available with an RF output, with 3 video outputs, with negative video polarity, with 600-line resolution, and with remoted controls (see 'Alternate Versions,' next page).

Here are but a few reasons for the inherent superiority of the TTVC-800:

- **Performance:** Model TTVC-800 provides consistently high stability, assured by the use of crystal-control, temperature compensation and regulation of all DC voltages (especially important for maintaining accurate focus).
- **Ease of Operation:** Just set 3 controls once and a perfect picture is assured every time. Made possible by the camera's sophisticated circuitry. Automatic light compensator maintains maximum detail over a wide range of light conditions.
- **Set it and forget it reliability** — Long-life, solid-state components operate well below rated parameters yielding consistent maximum performance with minimum maintenance (80% less than comparable tube equipment). Special sweep failure circuits protect the vidicon tube, and a series-diode configuration provides extra protection for the video amplifier.
- **Completely Self-Contained System** — All the components necessary to produce television signals of the highest quality — a camera 'front-end,' complete video amplifier and control unit, and sync generator — all within a single, rugged, 8⅞ x 11½ x 4¼-inch housing.



CAMERA MANUFACTURE

At Blonder-Tongue, manufacturing techniques are to the most exacting standards to assure you excellent performance and maximum reliability.

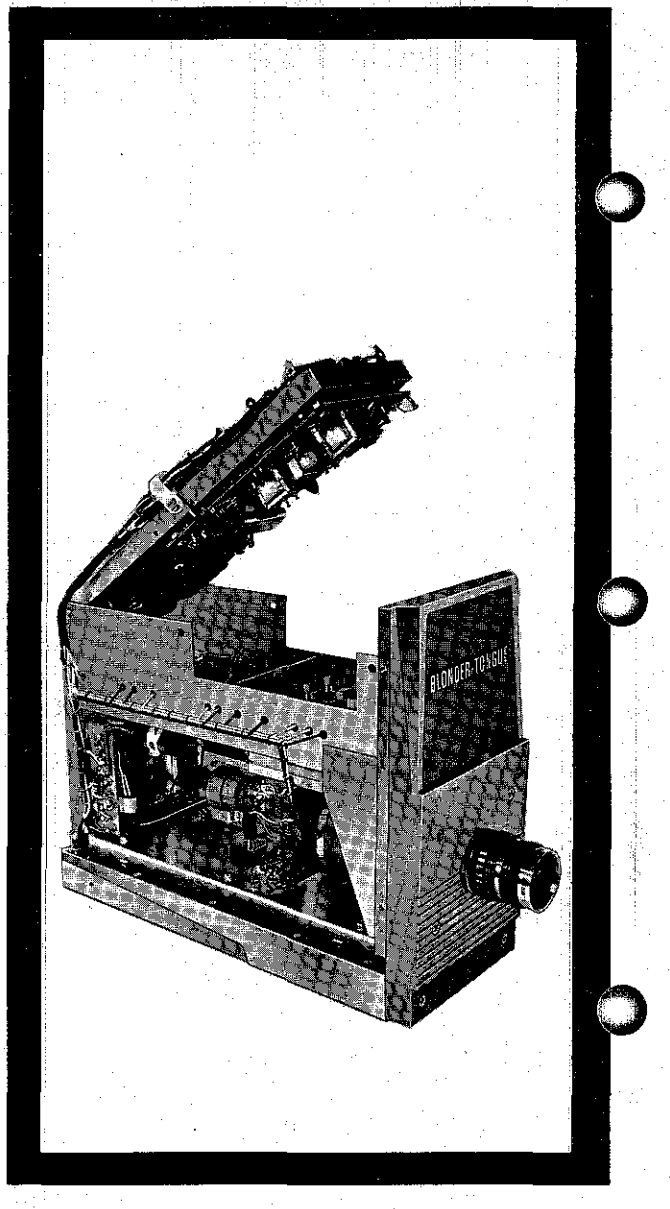
- Every vidicon tube, the 'heart' of the television camera, is *100% inspected* for all critical parameters. All other components are statistically inspected.
- All completed circuit modules are aligned and tested on special jigs *prior to camera assembly.*
- Assembled cameras are aligned and placed in a 130°F test oven for 8 hours. The camera is then completely re-tested and realigned.
- Before receiving the Blonder-Tongue label, all cameras undergo final comprehensive inspection and testing by the Quality Control division, a completely independent facility.

APPLICATIONS

Here are four of the many places where the TTVC is providing superior performance today:

On the scenic Thousand Islands Bridge, near Watertown, New York, three TTVC cameras are used to remotely monitor traffic conditions several thousand feet away, thus preventing accidents and enabling a smoother flow of traffic. The cameras, mounted on towers 250 feet above the St. Lawrence River, have provided continuous day-in, day-out service for several years, withstanding winter hailstorms, gale-force winds and the intense heat of the summer sun.

At the Massachusetts Institute of Technology's powerful 3 mev cyclotron, a TTVC camera *without special shielding* is used to monitor the target in the accelerator's scattering chamber. In addition, the camera is used for observation of the particle beam in the dee chamber, to facilitate trouble-shooting in a location where personnel are not permitted while the unit is in operation. During a test, conducted under



'worst-case' conditions (in the stray magnetic field of the unit's 17,000-gauss magnet), the TTVC was chosen because it provided a clearer more *stable* picture.

At the West Virginia Pulp and Paper Corporation, the world's largest industrial closed-circuit television installation uses TTVC cameras to automate a huge wood yard from a central control tower. Here, operators can monitor and control machines within a one-mile radius. The TTVC was selected after extensive comparative field test trials proved Blonder-Tongue's superior performance and reliability.

Selected for use at the U. S. Pavilion at the New York World's Fair, showing the educational television system of the future. It is also being used in the following areas: ETV, medical TV, aeronautical field, banks, gate watching; systems for inspection, process control and any area that requires the ultimate in picture reproduction.

ALTERNATE VERSIONS

TTVC-1b Identical to **TTVC-1b-800 (TTVC-800),** except with 650-line resolution and 1.4 v video output level. Used where utmost resolution is not required.

TTVC-1b-CB Same as **TTVC-1b** above, but with three fully-isolated video outputs. Eliminates the need for a video distribution amplifier, saving several hundred dollars. Use where multiple video monitors are required.

TTVC-1b-2-6 Same as **TTVC-1b** above, but with 50,000 μv, 75-ohm RF output, which can be used simultaneously with the video output.

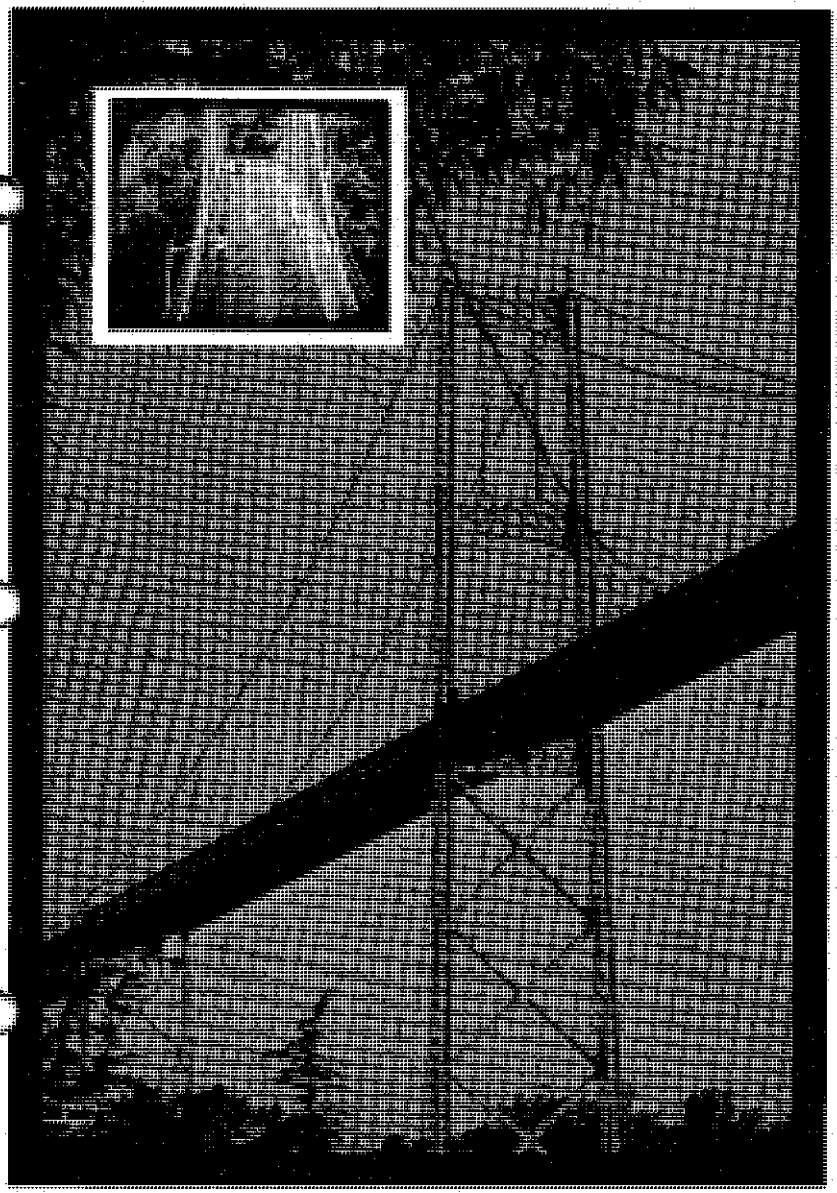
TTVC-1b-CC Same as **TTVC-1b,** but with *negative* video polarity. Used in special applications, such as inspecting for flaws in material.

TTVC-1b-R Same as **TTVC-1b** but with remote control panel and 25 feet of connecting cable. Use where camera is inaccessible after installation, or in hazardous environments.

TTVC-1b-R2-6 Same as **TTVC-1b-R,** but with addition of RF output, as in **TTVC-1b-2-6.**

TTVC-1b-R-EE2:1 Same as **TTVC-1b-R** above, but offers a two times image magnifier circuit.

TTVC-1b-CD Same as **TTVC-1b** above, but with switch to bypass the automatic light compensation feature.



THOUSAND ISLANDS BRIDGE, NEAR WATERTOWN, NEW YORK.



MASSACHUSETTS INSTITUTE OF TECHNOLOGY.



WEST VIRGINIA PULP AND PAPER CORPORATION.

TECHNICAL DATA

BLONDER-TONGUE

9 Alling Street, Newark 2, New Jersey

home TV accessories * closed circuit TV
* community TV * UHF converters * master TV

©1963 Blonder-Tongue Laboratories, Inc.

DISTRIBUTED BY:

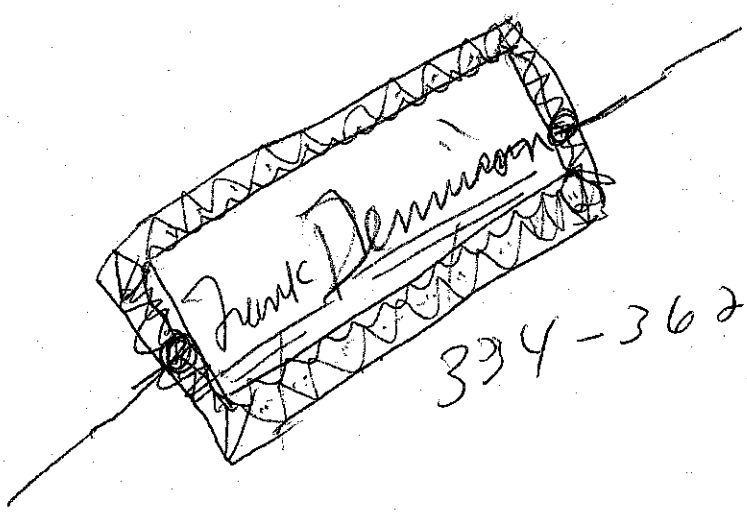
12/8/70

Julius Foster called in this reference to me

On appeal in a patent case, tried by judge without jury, Court of Appeals is required to accept the findings of fact of the trial Court unless they are clearly erroneous. Erickson Tool Co. v. Balas Collet Co., Court of Appeals, 1968, 404 F. 2d page 35

Bob – Call Victor Pompeo at home –
369-4534 tonight

Paul Foley – 703-461-8888



(This to be added to the ~~xx~~ difference between Holte and Hoag)

1. "Holtje's system achieved a range of voltage variation free of spikes and transients beyond the other systems, and it did so with a physically compact system that required no components blown up in scale to compensate for the inherent limitation of the earlier systems."

Relegated to absolutely silence
the trial before the D.C., the
testing of witnesses and the
demonstration of the actual
prosecution trial of the
events and summing up speeches
from of fact of the D.C.

Warrants the upon the
trial of a C.d. A conduct this?
Effects
Standard of a that cause
the Power of law

The Court of Appeals has violated
duty imposed by the S.C.,
this and the C.A. must also be
C.A. on the law, that it
shall not substitute its view
of the evidence for the facts
found by the D.C. when based on
evidence, ~~~~~
vacated the grant for a trial.

Appendix B.

Other Cases Requiring Honoring The Findings Of Fact Of The District Court Based On Substantial Evidence

> "The ultimate findings of value made by the trial court are not likely open to reappraisal on appeal. Federal Rules of Civil Procedure, Rules 71 and 52, 28 U.S.C.A. Even if we would have arrived at a different result based upon trial record, we may not substitute our judgment for that of the trier of the facts in the absence of clear error.

(see, also, Judge Learned Hand's decision in United States v. Aluminum Co. of America, 148 F. 2d 416, 433 (2 Cir., 1945).

This, also, is the universal interpretation of the rules and law in every other circuit of the country and in the guidelines and interpretations and rulings of the United States Supreme Court itself. Leach v. Crucible Center Company, 388 F. 2d 176 (1 Cir., 1968); Porter-Cable Machinery Co. v. Black & Decker Mfg. Co., 402 F. 2d 517, 519 (4 Cir., 1968); Strickler v. Pfister Associated Growers Inc., 319 F. 2d 788, 790 (6 Cir., 1963); Prince v. Packer Mfg. Co., 419 F. 2d 34, 36 (7 Cir., 1969); Saturn Oil and Gas Co. v. Northern Natural Gas Co., 359 F. 2d 297, 303 (8 Cir., 1966); Mitsugi Nishikawa v. Dulles, 235 F. 2d 135, 141 (9 Cir., 1956); Glen Falls Insurance Co. v. Newton Lumber & Mfg. Co., 388 F. 2d 66, 70 (10 Cir., 1967).

The language in the Prince v. Packer case, supra, expresses the doctrine very clearly, page 36

> "it is for the trial court to weigh the evidence, draw inferences and declare the result * * * [and] ~~pit-pm;u-gimvyopm-od-yp-fryrt,omrxx~~ our only function is to determine whether the findings are clearly erroneous, that is whether upon the whole record, there is substantial evidence to support them and whether the court erred as to law."

Sperti Products, Inc. v. Coca Cola Company, 399 F. 2d 607, 609 (3 Cir., 1968);

So, also, in the Strickler case, supra, page 790

> "It is not enough that we might give the facts another construction, resolve the ambiguities differently, and reach a conclusion different from that of the District Judge. Such a conclusion on our part does not make the finding "clearly erroneous". United States v. National Association of Real Estate Boards, 339 U.S. 485, 495-496, 70 S. Ct. 711, 94 L. Ed. 1007.

And, of course, these principles have been reiterated by the United States Supreme Court itself both in patent and non-patent cases; to wit, in Graver Mfg. Co. v. Linde Co., 336 U.S. 271, 274-5:

> Rule 52 (a) of the Federal Rules of Civil Procedure provides in part: "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses." To no type of case is this last clause more appropriately applicable than to the one before us, where the evidence is largely the testimony of experts as to which a trial court may be enlightened by scientific demonstrations. This trial occupied some three weeks, during which, as the record shows, the trial judge visited laboratories with counsel and experts to observe actual demonstrations of welding as taught by the patent and of the welding accused of infringing it, and of various stages of the prior art. He viewed motion pictures of various welding operations and tests and heard many experts and other witnesses. He wrote a careful and succinct opinion and made findings covering all the factual issues.
>
> The rule requires that an appellate court make allowance for the advantages possessed by the trial court in appraising the significance of conflicting testimony and reverse only "clearly erroneous" findings. These are manifestly supported by substantial evidence and the Court of Appeals found them supported by the weight of the evidence—indeed found the evidence to warrant support of the patent even in matters not found by the trial court. A court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error.

And, Mr. Justice Douglas in United States v. Real Estate Boards, 339 U.S. 485, and 495:

> It is not enough that we might give the facts another construction, resolve the ambiguities differently, and find a more sinister cast to actions which the District Court apparently deemed innocent.

IP

~~patent case~~ interpreted the same issues ~~as~~ of Graham v. Deere, 383 U.S. 1 (1966) and A. & P. Tea Co. v. Supermarket Corporation, 340 U.S. 147, both considered by the Court of Appeals in this cause; ~~requires the same principles as set forth in~~ The Porter-Cable Machine Co. case, supra, at 519,

> "While the ultimate question of patent validity is one of law, [Great] A. & P. Tea Co. v. Supermarket [Equipment] Corp., supra, [340 U.S. 147], at 155 [71 S.Ct. 127, 95 L.Ed. 162], the § 103 condition, which is but one of three conditions [non-obviousness, utility and novelty] each of which must be satisfied, lends itself to several basic *factual* inquiries. Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. * * *"

> That infringement, too, is a matter of fact is generally agreed. Graver Mfg. Co. v. Linde Co., 339 U.S. 605, 609, 70 S.Ct. 854, 94 L.Ed. 1097 (1950); Hazeltine Research v. Admiral Corp., 183 F.2d 953, 955 (7 Cir. 1950).
>
> [5, 6] Literally, therefore, decisions upon these issues come within the commandment of Rule 52 F.R.Civ.P., that we honor them unless clearly in error. Here the rule is significantly nerved and inspirited by the judicial scrutiny and deliberation from which the findings evolved. The pattern for decision prescribed in Graham v. Deere, supra, 383 U.S. 1, 86 S.Ct. 684 was pursued almost ad verbum. The primary inquiries there directed were exhausted by the District Judge who arrayed and measured the evidence on each. Secondary considerations were also appraised. These included the outstanding but previously unanswered need for a remedy for the splintering or chipping, the earlier ineffectual efforts to find a correction and the apparent operational success of the patented article, as indicated by its commercial success. Then was added the statutory presumption of validity. 35 U.S.C. § 282.

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

E. ROBERT SEAVER
CLERK OF THE COURT

November 9, 1970

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RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

Robert H. Rines, Esq.
Ten P. O. Square
Boston, Massachusetts 02109

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30 West Monroe Street
Chicago, Illinois 60603

Sidney G. Faber, Esq.
10 East 40th Street
New York, N. Y. 10016

Harold F. McNenny, Esq.
920 Midland Building
Cleveland, Ohio 44115

RE: BLONDER-TONGUE LABORATORIES, INC.
v. UNIVERSITY OF ILLINOIS FOUNDATION,
ET AL., No. 338, Oct. Term, 1970

Gentlemen:

Supplementing my letter of October 29, 1970, I am writing to advise you that I have been directed by the Court not to enter a formal order today propounding the two additional questions referred to in my letter. However, the instructions as to such questions still stand, and in your briefs and arguments you will be expected to brief and argue such additional questions.

Very truly yours,

E. ROBERT SEAVER, Clerk

By E. P. Cullinan

E. P. Cullinan
Chief Deputy

EPC:jmh

U.S. DEPARTMENT OF COMMERCE
Patent Office

Address Only: COMMISSIONER OF PATENTS
Washington, D.C. 20231

November 4, 1970

Messrs. Robert H. Rines
and Richard S. Phillips
Hofgren, Wegner, Allen, Stellman
& McCord
20 North Wacker Drive
Chicago, Illinois 60606

Gentlemen:

Careful consideration has been given all of the matters referred to in your letter of October 29, 1970, forwarding a copy of the petition for a writ of certiorari in Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation. The conclusion has been reached that the case is not one in which it would be appropriate for the Patent Office to express any view as an amicus curiae.

Very truly yours,

S. Wm. Cochran

S. Wm. Cochran
Solicitor

Xerox copy to R.H. Rines 11/9/70

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NOV 9 1970
HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

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[redacted]

Bob -

re Trade Secrets -

See 164 USPQ 595

Dick

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LAW OFFICES

AXEL A. HOFGREN
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J. R. STAPLETON
WILLIAM R. McNAIR
DILLIS V. ALLEN
WM. A. VAN SANTEN
JOHN R. HOFFMAN
RONALD L. WANKE
POWELL L. SPRUNGER
LOUIS A. HECHT

HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

20 NORTH WACKER DRIVE

CHICAGO 60606

TELEPHONE
FINANCIAL 6-1630
AREA CODE 312

JOHN REX ALLEN
1945-1969

November 2, 1970

Mr. William A. Marshall
Merriam, Marshall, Shapiro & Klose
30 West Monroe Street
Chicago, Illinois 60603

Mr. Jerome M. Berliner
Ostrolenk, Faber, Gerb & Soffen
10 East 40th Street
New York, New York 10016

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

Gentlemen:

In the memorandum I sent you on October 30, 1970, Paragraph VI, please add Plaintiff's Exhibit 1 and delete Plaintiff's Exhibit 33.

Very truly yours,

Richard S. Phillips

RSP:N

cc: Mr. M.C. Cass
Mr. R.H. Rines

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20 NORTH WACKER DRIVE

CHICAGO 60606

TELEPHONE
FINANCIAL 6-1630
AREA CODE 312

JOHN REX ALLEN
1945-1969

November 2, 1970

Clerk, U.S. Court of Appeals
for the Seventh Circuit
219 S. Dearborn St.
Chicago, Illinois 60604

Dear Sir:

The U.S. Supreme Court has granted a Petition for Writ of Certiorari in the case of University of Illinois Foundation v. Blonder-Tongue Laboratories v. JFD Electronics Corporation, No. 17153.

The undersigned attorneys for Blonder-Tongue Laboratories, Inc. hereby request permission to withdraw the documentary exhibits of the University of Illinois Foundation and of Blonder-Tongue Laboratories, Inc. for use in connection with the preparation of the Appendix in the Supreme Court.

Very truly yours,

HOFGREN, WEGNER, ALLEN, STELLMAN & MC CORD

By

Richard S. Phillips

RSP:N

cc: Merriam, Marshall, Shapiro & Kloss
Ostrolenk, Faber, Gerb & Soffen
Mr. M.C. Cass
Mr. R.H. Rines

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RINES AND RINES
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OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

October 29, 1970

Case No. 338
O.T. 1970

Receipt is acknowledged of your letter of October 26, 1970 forwarding the check for $50 in this case. Thank you.

E. ROBERT SEAVER,
Clerk

by
H. Loughran

CO-4

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

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Robert H. Rines, Esq.
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CHICAGO 60606

TELEPHONE
FINANCIAL 6-1630
AREA CODE 312

JOHN REX ALLEN
1945-1969

November 13, 1970

Mr. William A. Marshall
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30 West Monroe Street
Chicago, Illinois 60603

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10 East 40th Street
New York, New York 10016

RE: Blonder-Tongue v. University
of Illinois Foundation et al

Gentlemen:

The material you have designated for the single Appendix in the Supreme Court has been turned over to the printer. I hope to have a page proof of the typeset portion before the end of next week. I will send you a copy of the page proof so that you can proofread the portions which you have designated.

If you will want more than the three copies of the Appendix provided for in Rule 36(1), let me know.

Very truly yours,

Richard S. Phillips

RSP:iag

cc: Mr. B. P. Mann
Mr. R. H. Rines - Where's the brief?

NOVEMBER 1970

1	2	3 ELECTION DAY To Electric	4 To London Ldn	5	6	7
8	9	10	11 VETERANS DAY	12	13 Bridge	14
15 Pleadings	16	17	18 Firm Mtg.	19	20	21
22 C-11:30 Dep to Seattle	23 H.S	24	25	26 THANKSGIVING DAY	27	28 C-9:00 C-2:00
29 C-11:30	30	1	2			

OCTOBER 1970

S	M	T	W	T	F	S
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4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

DECEMBER 1970

S	M	T	W	T	F	S
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6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

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ALLEN H. GERSTEIN
OWEN J. MURRAY
DONALD E. EGAN
NATE F. SCARPELLI
CARL KUSTIN
MICHAEL P. BUCKLO
CARL E. MOORE, JR.

LAW OFFICES
MERRIAM, MARSHALL, SHAPIRO & KLOSE
THIRTY WEST MONROE STREET
CHICAGO, ILLINOIS 60603

TELEPHONE
312-346-5750
TELEX 25-3856

November 12, 1970

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

Sidney C. Faber, Esq.
Ostrolenk, Faber, Gerb & Soffen
10 East 40th Street
New York, New York 10016

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

Gentlemen:

Enclosed is the list of the additional material which the Foundation would like to have reproduced in the Appendix for the Supreme Court.

Very truly yours,

Original Signed by
BASIL P. MANN

Basil P. Mann

BPM/kd
Encl.

cc: Myron C. Cass, Esq.
S. M. Rines, Esq.
Harold F. McMenny, Esq.

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BLONDER-TONGUE v. UNIVERSITY OF ILLINOIS FOUNDATION et al

ADDITIONAL MATERIAL SELECTED BY
UNIVERSITY OF ILLINOIS FOUNDATION
TO BE PRINTED IN APPENDIX

1. Following is a list of passages from the Seventh Circuit Appendix which will be reproduced in the Supreme Court Appendix:

Start		End	
Page	Line	Page	Line
60	1	61	7
94	21	95	4
98	21	99	11
106	11	106	22
107	19	113	22
114	2	117	11
117	24	118	11
119	31	120	13
131	21	131	33
133	18	133	25
134	16	134	26
175	25	175	30
188	29	189	26
191	17	192	9
199	17	199	33
202	18	204	9
204	15	204	18
204	33	205	5
205	17	206	27
206	30	207	2
210	1	210	5
257	31	258	28
295	26	303	12
303	24	307	34
308	10	325	2
332	10	333	16
334	32	335	18
336	4	341	10
341	18	341	25

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Start		End	
Page	Line	Page	Line
342	2	343	6
343	16	343	21
346	5	347	27
353	33	355	1
357	4	358	28
382	8	383	23
385	31	387	4
388	1	388	29
400	10	401	24
402	32	405	30
406	18	419	30
438	23	439	32
453	24	455	1
456	7	457	14
458	31	460	22
461	5	463	15
464	21	468	19
469	26	470	2
507	6	508	13
641	1	647	16
649	6	658	32
740	8	742	33
743	24	747	31

2. The following exhibits:

Plaintiff's Exhibits

29
45
46
47
50
51
55
56
57
70 - (cover only)
71 - (cover only)

Defendant's Exhibits

6
30
42 - In additon to the portions listed in your letter of Oct. 30, we also request reproduction of the following:

Defendant's Exhibits (Cont'd)

B102
B104
B109
B111
B112
J20

45

Counter-Defendant Exhibits

11
23
24

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CHARLES L. ROWE
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RONALD L. WANKE
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LOUIS A. HECHT

HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

20 NORTH WACKER DRIVE

CHICAGO 60606

TELEPHONE
FINANCIAL 6-1630
AREA CODE 312

JOHN REX ALLEN
1945-1969

November 10, 1970

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

Dear Bob:

I have given our material to the printer this morning. We still don't have a designation from the Foundation or JFD.

I heard third hand that John Pearne will not argue in favor of Triplett v. Lowell.

How is the brief coming?

Very truly yours,

Dick

Richard S. Phillips

RSP:iag

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OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

E. ROBERT SEAVER
CLERK OF THE COURT

November 9, 1970

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RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

Robert H. Rines, Esq.
Ten P. O. Square
Boston, Massachusetts 02109

Charles J. Merriam, Esq.
30 West Monroe Street
Chicago, Illinois 60603

Sidney G. Faber, Esq.
10 East 40th Street
New York, N. Y. 10016

Harold F. McNenny, Esq.
920 Midland Building
Cleveland, Ohio 44115

RE: BLONDER-TONGUE LABORATORIES, INC.
v. UNIVERSITY OF ILLINOIS FOUNDATION,
ET AL., No. 338, Oct. Term, 1970

Gentlemen:

Supplementing my letter of October 29, 1970, I am writing to advise you that I have been directed by the Court not to enter a formal order today propounding the two additional questions referred to in my letter. However, the instructions as to such questions still stand, and in your briefs and arguments you will be expected to brief and argue such additional questions.

Very truly yours,

E. ROBERT SEAVER, Clerk

By

E. P. Gulliman
Chief Deputy

EPG:jmh

original in file

U.S. DEPARTMENT OF COMMERCE
Patent Office

Address Only: COMMISSIONER OF PATENTS
Washington, D.C. 20231

November 4, 1970

Messrs. Robert H. Rines
and Richard S. Phillips
Hofgren, Wegner, Allen, Stellman
& McCord
20 North Wacker Drive
Chicago, Illinois 60606

Gentlemen:

Careful consideration has been given all of the matters referred to in your letter of October 29, 1970, forwarding a copy of the petition for a writ of certiorari in Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation. The conclusion has been reached that the case is not one in which it would be appropriate for the Patent Office to express any view as an amicus curiae.

Very truly yours,

S. Wm. Cochran

S. Wm. Cochran
Solicitor

Xerox copy to R.H. Rines 11/19/70

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JOHN REX ALLEN
1945-1969

November 6, 1970

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RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

Mr. Jerome M. Berliner
Ostrolenk, Faber, Gerb & Soffen
10 East 40th Street
New York, New York 10016

RE: BT v. UIF & JFD

Dear Jerry:

We plan on sending the bulk of our material for the Supreme Court appendix to the printer on Monday. I hope to have a designation from the Foundation by Wednesday. The sooner you can give me your material, the easier it will be for the printer.

Very truly yours,

Richard S. Phillips

RSP:iag

cc: Mr. M. C. Cass
Mr. R. H. Rines

My calculations show our brief is due in the Supreme Court on December 3. The Thanksgiving holiday will cut into printing time the week before. I would like to have a draft from you no later than the 20th; and if you expect me to do some work on it, I should have it before then.

Encl's Cal

OSTROLENK, FABER, GERB & SOFFEN
ATTORNEYS AT LAW
10 EAST 40TH STREET
NEW YORK, N. Y. 10016

SAMUEL OSTROLENK
1898-1968

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

EDWARD A. MEILMAN

PATENTS
TRADE MARKS
RELATED CAUSES

TELEPHONE
(212) 685-8470

CABLE:
OSTROFABER NEW YORK

November 9, 1970

William A. Marshall, Esq.
Merriam, Marshall, Shapiro & Kloss
30 West Monroe Street
Chicago, Illinois 60603

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

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

Gentlemen:

I enclose a memorandum identifying the additional material which we wish to have reproduced in the single Appendix before the Supreme Court.

Very truly yours,

OSTROLENK, FABER, GERB & SOFFEN

Sidney G. Faber

SGF/ec
Encl.

cc: Myron C. Cass, Esq.
R. H. Rines, Esq.
Harold F. McNenny, Esq.

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BLONDER-TONGUE v. UNIVERSITY OF ILLINOIS FOUNDATION et al

ADDITIONAL MATERIAL SELECTED BY
JFD ELECTRONICS CORPORATION TO
BE PRINTED IN APPENDIX

1. Following is a list of passages from the Seventh Circuit Appendix which will be reproduced in the Supreme Court Appendix:

Start		End	
Page 54		Page 61	
78,	line 1	78,	line 6
230,	17	230,	29
231,	18	231,	23
477,	1	477,	9
477,	25	478,	32
480,	5	480,	24
507,	15	507,	27
571,	19	572,	19
669,	7	669,	31
671,	23	671,	30
672,	13	673,	24
674,	21	674,	31
683,	10	683,	16
683,	18	683,	34
697,	3	697,	end
777,	17	777,	22
781,	11	782,	24
782,	26	783,	8
784,	2	784,	13
784,	20	784,	31
786,	24	789,	27
790,	1	790,	2
790,	10	794,	5
794,	10		(same line)
795,	2	797,	14

2. The following exhibits will be reproduced in the Appendix:

Defendant's Exhibits

42, from p. 20, line 16, through page 21, line 2

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JFD's Exhibits

2A
2B
2C
2D
2E
2F
3A
3B
3C
3D
3E
3F
4B
5B
10, pp. 9-19, 87-96
23, p. 4

3. The following exhibits will be sent to the Supreme Court for use during the hearing:

JFD's Exhibits

5C
8D
13
14

LAW OFFICES

AXEL A. HOFGREN
ERNEST A. WEGNER
WILLIAM J. STELLMAN
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RICHARD S. PHILLIPS
LLOYD W. MASON
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CHARLES L. ROWE
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RONALD L. WANKE
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LOUIS A. HECHT

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20 NORTH WACKER DRIVE

CHICAGO 60606

TELEPHONE
FINANCIAL 6-1630
AREA CODE 312

JOHN REX ALLEN
1945-1969

November 5, 1970

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

Dear Bob:

I talked with Keith Kulie on November 3. The Supreme Court has not yet acted on the Foundation's petition in the Winegard suit.

Very truly yours,

Richard S. Phillips

RSP:iag

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NOV - 9 1970
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

LAW OFFICES

HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

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AREA CODE 312

JOHN REX ALLEN
1945-1969

AXEL A. HOFGREN
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RICHARD S. PHILLIPS
LLOYD W. MASON
TED E. KILLINGSWORTH
CHARLES L. ROWE
JAMES R. SWEENEY
W. E. RECKTENWALD
J. R. STAPLETON
WILLIAM R. McNAIR
DILLIS V. ALLEN
WM. A. VAN SANTEN
JOHN R. HOFFMAN
RONALD L. WANKE
POWELL L. SPRUNGER
LOUIS A. HECHT

November 3, 1970

Mr. Robert H. Rines
10 Post Office Square
Boston, Massachusetts 02109

Dear Bob:

On October 30th, we received the September issue of the Journal of the Patent Office Society. It contains an extensive discussion of ~~the~~ IN REM INVALIDITY.

Very truly yours,

Dick

Richard S. Phillips

RSP:MMI

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OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

E. ROBERT SEAVER
CLERK OF THE COURT

October 29, 1970

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RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

Robert H. Rines, Esq.
Ten P. O. Square
Boston, Massachusetts 02109

Charles J. Merriam, Esq.
30 West Monroe Street
Chicago, Illinois 60603

Sidney G. Faber, Esq.
10 East 40th Street
New York, N. Y. 10016

Harold F. McNenny, Esq.
920 Midland Building
Cleveland, Ohio 44115

RE: BLONDER-TONGUE LABORATORIES, INC.
v. UNIVERSITY OF ILLINOIS FOUNDATION,
ET AL., No. 338, Oct. Term, 1970

Gentlemen:

I have been instructed to advise you that the Court on November 9 will enter the following order in the above-entitled case:

"In addition to the questions tendered in the petition for certiorari, the parties in this case are requested to address themselves to the following questions in their briefs and oral arguments:

1. Should the holding of Triplett v. Lowell, 297 U.S. 638, that a determination of patent invalidity is not res judicata as against the patentee in subsequent litigation against a different defendant, be adhered to?

2. If not, does the determination of invalidity in the Winegard litigation bind the respondents in this case?"

Very truly yours,

E. ROBERT SEAVER, Clerk

By

E. P. Cullinan
Chief Deputy

EPC:jmh

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 ONLY
HERBERT J. SINGER
NORBERT MELBER

October 27, 1970

Our Ref. 166,418

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

Re: UIF v. B-T v. JFD

Dear Dick:

I relayed your message regarding Bob Rines being in Chicago on Thursday in connection with designating the contents of the Appendix in the Appeal to the Supreme Court. Jerry Berliner advised that I have no authority to deal with you on that problem at this time. The reason for this is that principal counsel is Sidney J. Faber and Jerry Berliner is working with him. Consequently, you or Bob Rines will be required to contact Sid Faber and/or Jerry Berliner with regard to this Appendix matter.

Yours very truly,

SILVERMAN & CASS

Myron C. Cass

MCC/gm

cc: William A. Marshall, Esq.

Wrote & spoke to R. H. Rines 10/28/70

10/28/— called Berliner - told him we would write Rines or call Friday

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1945-1968

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CHARLES L. ROWE
JAMES R. SWEENEY
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DILLIS V. ALLEN
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LOUIS A. RECHT

October 30, 1970

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NO. TEN POST OFFICE SQUARE, BOSTON

Mr. William A. Marshall
Merriam, Marshall, Shapiro & Klose
30 West Monroe Street
Chicago, Illinois 60603

Mr. Jerome M. Berliner
Ostrolenk, Faber, Gerb & Soffen
10 East 40th Street
New York, New York 10016

RE: Blonder-Tongue v. University of Illinois Foundation et al

Gentlemen:

I enclose a memorandum identifying the material which Blonder-Tongue plans to have reproduced in the single Appendix before the Supreme Court. Please let me know promptly whether there is additional material from the record which you would like to have reproduced. The issues which we intend to present for review are outlined in the petition for certiorari under the heading "Questions Presented" on pages 3 and 4 and in the further discussion of each question on pages 7-13.

Very truly yours,

Richard S. Phillips

RSP:iag

Enclosure

cc: Mr. M. C. Cass (*)
Mr. R. H. Rines (*)

BLONDER-TONGUE v. UNIVERSITY OF ILLINOIS FOUNDATION et al

MATERIAL SELECTED BY BLONDER-TONGUE
TO BE PRINTED IN APPENDIX

1. Relevant docket entries. All relevant docket entries in the District Court and the Court of Appeals will be printed.

2. Pleadings. The pleadings reproduced in the Appendix before CA 7 will be printed and in addition the Notice of Appeal and various orders staying the mandate will be printed.

3. All four decisions reproduced in the Petition for Certiorari will be reproduced in the Appendix.

4. Following is a list of passages from the Seventh Circuit Appendix which will be reproduced in the Supreme Court Appendix:

Start		End	
Page 62		Page 77	
90,	line 7	94,	line 20
153,	21	154,	9
157,	11	167	
168,	30	169,	1
170,	12	170,	30
171,	28	172	
173,	30	174,	14
175,	32	181,	2
186,	15	186,	29
189,	27	190,	12
190,	30	192,	17
200,	32	202,	6
208,	14	209,	23
218,	17	235,	24

Start		End	
Page 238,	line 6	Page 246,	line 2
249,	30	251,	3
252,	8	252,	32
259,	7	264,	31
359,	1	364,	10
365,	24	382,	5
430,	17	431,	6
431,	25	432,	3
432,	7	432,	22
433,	21	434,	end
436,	19	436,	29
437,	11	437,	18
468,	30	469,	20
533,	33	539,	3
540,	9	545,	19
697,	3	698,	2

5. The stipulation regarding the use of the testimony of Marjorie Johnson and the various exhibits from the Winegard suit, the Finney suit, and the Isbell v. Kravis interference. The following testimony of Marjorie Johnson from defendant's exhibit 22:

Start		End	
Page 202,	line 3	Page 206,	line 1
213,	19	213,	25
216,	11	217,	5
235,	2	235,	25
240,	1	240,	14
243,	8	243,	12

Stipulation PX-C from Finney v. JFD et al.

6. The following exhibits will be reproduced in the Appendix:

Plaintiff's Exhibits

20
30
31
32
33
34
36
37
38

Defendant's Exhibits

1
2
3
4
7 - cover, title page and pages 1 and 2
8 - cover, title page, pages 2 and 3 and distribution list
14
26
37
42 - reproduce the following:
B4
B4A
B101
B103
B105
B106
B107
B108
B113
J6
43
46

7. The following exhibits will be sent to the Supreme Court for use during the hearing:

Plaintiff's exhibit 10
Defendant's exhibits 24 and 29
JFD Exhibits 26A and 26D

LAW OFFICES

HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

20 NORTH WACKER DRIVE

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WM. A. VAN SANTEN
JOHN R. HOFFMAN
RONALD L. WANKE
POWELL L. SPRUNGER
LOUIS A. HECHT

October 29, 1970

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NOV - 2 1970
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

Mrs. Mary R. Canavan
2043 Crystal Plaza Drive
Arlington, Virginia 22202

Dear Mrs. Canavan:

* I enclose an envelope which I would like you to deliver to S. W. Cochran, Office of the Solicitor, Room 11C04 CP 3.

Very truly yours,

Richard S. Phillips

RSP:iag

* Enclosure

LAW OFFICES

HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

20 NORTH WACKER DRIVE

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LOUIS A. HECHT

October 29, 1970

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NOV -2 1970
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

S. W. Cochran, Esq.
Office of the Solicitor
United States Patent Office
Washington, D. C. 20231

RE: Blonder-Tongue Laboratories, Inc. v.
University of Illinois Foundation
and JFD Electronics Corp.
U. S. Supreme Court, No. 338
Certiorari Granted October 20, 1970

Dear Mr. Cochran:

Confirming our telephone discussion, we are dictating this letter at the office of Mr. Richard Phillips, who is counsel with us in the above cause.

Enclosed is a copy of our petition and we invite particular attention to the second question contained on pages 3 and 4 and discussed on pages 9 through 12 of the petition.

This situation is actually aggravated by virtue of the fact that the prior invention of Isbell was admittedly a fact known to Mayes and counsel, though it was not communicated to the Patent Office. Mayes, indeed, was a co-worker in the University antenna laboratory and was stimulated by Isbell's work. Counsel, moreover, were the same individuals who were then prosecuting the earlier Isbell patent application.

The court of appeals recognized the impropriety of making an affirmative statement of half truths in an affidavit, in the knowledge that if the patent examiner knew the whole truth, this would sustain and not overcome the rejection.

As you are undoubtedly aware, and as we discussed over the telephone, many courts (we suspect in their hostility

to patents) are going much farther than seems reasonable in terms of the obligations of lawyers practicing before the Patent Office (we might refer you, for example, to the Beckman Instruments case cited on page 14 of our petition).

Although we feel there is no excuse for the kind of misconduct involved in our case, we are fearful that the Supreme Court might go too far in this matter and in a way that might make it uncomfortable for the Patent Office and the practitioners before that bar.

We, accordingly, feel strongly that the view of the Patent Office in terms of a sensible approach to this problem from the point of view of practice and procedure would be most helpful, particularly now that the Supreme Court is apparently going to make a definitive ruling on the responsibilities in this connection.

In telephonically checking with Solicitor General Griswold, we were informed that the Solicitor General's office would consider as persuasive any expression of interest in an amicus participation from the Patent Office, though the Solicitor General's office would be free to decide ultimately whether it would or would not participate.

Should the Patent Office have interest, and we think it ought to seize this opportunity so that mischief is not created on either side, we then suspect that the Justice Department will want to have something to say about the related issues of what should be the sanctions under circumstances of such abuse in the Patent Office when the patent gets to court; i.e., questions of enforceability under equitable doctrines, such as unclean hands, and questions of unfair competition and antitrust violation in connection with competition-restraining use of a patent obtained by such improper conduct.

We would be delighted to visit with you and Commissioner Schuyler to discuss this further, not just from the partisian point of view of representing our client, but, with our client's permission, from the broader point of view of our mutual responsibilities as officers of the Patent Bar, the Patent Office and the courts.

Cordially,

Robert H. Rines

Richard S. Phillips

RHR:iag
* Enclosure
bcc: Nelson Shapiro, Esq.

LAW OFFICES

HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

20 NORTH WACKER DRIVE

CHICAGO 60606

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LOUIS A. HECHT

October 27, 1970

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

Dear Bob:

Keith Kulie advised me this morning that the Supreme Court did not act yesterday on the Foundation's petition in the Winegard suit.

Very truly yours,

Richard S. Phillips

RSP:iag

cc: Mr. J. F. Pearne

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OCT 30 1970
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

B-T-v-U. Illinois Supreme Ct Case

10/29/70:

The clerk of the Supreme Court has telephoned that the Court has issued an order containing two questions bearing on TRIPLETT vs. LOWELL. A letter containing this order is being mailed this morning so that we ought to get it tomorrow.

The reason for the clerk telephoning, he states, was that if you were working on the brief you should hold it up until you get the letter.

I do not find this case mentioned in your Petition for Certiorari. So I assume that the Court seeks information in connection with somebody else's case.

The case held, you may recall, that a holding in patent cases does not bind other parties in different suits for the same patent. There has been considerable agitation that this ruling ought to be overturned. At least one Court has actually ruled to the contrary on this case.

In your -case a similar question may arise thought it has not been raised. It may be that the court wants your view on this point.

DAVID RINES

DR:H

LAW OFFICES

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JOHN REX ALLEN
1945-1969

October 26, 1970

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

RE: UIF v. BT v. JFD

Dear Bob:

I talked with John Pearne today. He would like to know whether you propose to argue the question presented by his amicus brief supporting the petition for certiorari, relating to logical experimentation and predictability. If you plan to argue this point, he will probably not seek to file an amicus brief on the merits. However, if you do not plan to argue the question, he may file an argument on behalf of the Finney company.

I told him we would try to resolve this question on Thursday and to discuss it with him then.

Very truly yours,

Richard S. Phillips

RSP:iag

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JOHN REX ALLEN
1945-1968

October 23, 1970

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OCT 26 1970
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

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

Dear Bob:

* I enclose a copy of the letter from the Supreme Court and its enclosures which I borrowed from Bill Marshall. We don't have much time.

Very truly yours,

Dick

Richard S. Phillips

RSP:iag

* Enclosure

cc: Mr. J. F. Pearne

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

E. ROBERT SEAVER
CLERK OF THE COURT

October 20, 1970

RECEIVED
OCT 26 1970
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

Charles J. Merriam, Esq.
30 West Monroe Street
Chicago, Illinois 60603

RE: BLONDER-TONGUE LABORATORIES, INC.
v. UNIVERSITY OF ILLINOIS FOUNDATION,
ET AL., No. 338, October Term, 1970

Dear Sir:

Confirming our telegram of yesterday the Court took the following action in the above case:

"The motion of The Finney Company for leave to file a brief, as amicus curiae, is granted. The petition for a writ of certiorari is also granted."

I enclose a memorandum describing the time requirements and procedures under the Rules.

Very truly yours,

E. ROBERT SEAVER, Clerk
By Helen K. Loughran
(Mrs.) Helen K. Loughran
Assistant Clerk

AIR MAIL
cc: Sidney G. Faber, Esq.

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
Washington, D. C. 20543

No. 338
O.T. 1970

MEMORANDUM to Counsel in Cases granted Review on October 19, 1970

Your attention is called particularly to Supreme Court Rules 17, 26, 36 and 39 which apply to the time for the preparation of the record in the form of a Single Appendix and for the filing of briefs on the merits. Copies of these Rules are available from the Clerk and they also are printed in 398 U.S. 1009; 90 S.Ct. 2273; 49 F.R.D. 613; 26 L. Ed 2d following p. 577, p. II and 38 LW 4516. See commentaries in 90 S.Ct. 2337; 49 F.R.D. 679; and Vol. 38 LW 3501.

Unless expedited, some of the cases granted review on October 19 will be calendared for argument in the January 18 session of the Court. This means deadlines provided by the Rules must be met and counsel cannot assume extensions of time will be granted. The Single Appendix and the petitioner's or appellant's brief will be due 45 days from the date of grant, namely December 3. The respondent's, or appellee's brief will be due 30 days thereafter. Rule 36(4) permits the deferral of the filing of the Single Appendix by stipulation of counsel or order of the Court. However, this provision should be used sparingly and only when there is a bulky record which may be reduced in size by a narrowing of the issues in the briefs.

The responsibility for preparing and printing the record in the form of a Single Appendix is placed upon counsel for petitioner or appellant and the attached "Memorandum re Printing" should be followed as closely as possible. It is anticipated that in most instances the contents of the Single Appendix will be agreed upon by the parties. The parties should remember that the entire record is always available to the Court for reference and examination. In the absence of agreement, counsel for the petitioner or appellant must designate the portions of the record to be printed by October 29, and counsel for respondent or appellee must cross-designate by November 9. Since the Single Appendix must be printed by December 3 these dates must be met.

In order to aid the Clerk in administering the Rules, counsel for all parties are requested to inform the Clerk on the date agreement is reached on the contents of the Single Appendix, or in the absence of agreement, the Clerk should be informed on the date that they designate and cross-designate for printing. Also counsel for the petitioner or appellant are requested to inform the Clerk when the Single Appendix is sent to the printers.

If the record was not filed at the time of the docketing of the case, the clerk of the lower court has been requested to certify and transmit the record to this office, under Rule 16(6) or 25(1).

The Clerk and his staff are ready and willing to provide aid and advice on the application of the Rules to each case.

Telephone: Area Code 202 - Executive 3-1640, Extension 315.

RECEIVED
OCT 26 1970
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
Washington, D. C. 20543

MEMORANDUM RE PRINTING

To assist counsel who are called upon to print Single Appendices under Rule 36, the following suggestions are made:

1. There is enclosed a sample cover to show the appropriate form and color. If the case is on appeal rather than certiorari, the last two lines should indicate when the appeal was docketed and when jurisdiction was noted or postponed. The line preceding should recite - Appeal from the (name of court). The names of counsel should not appear on the cover.

2. Rule 36(1) requires that the Single Appendix contain:
"(1) the relevant docket entries in the proceeding below;
(2) any relevant pleading, charge, finding or opinion;
(3) the judgment, order or decision in question; and
(4) any other parts of the record to which the parties wish to direct the Court's particular attention."

The Single Appendix should be arranged so that the various documents appear chronologically to the extent possible.

3. Rule 36(6) requires the printing of an appropriate index at the beginning of the Single Appendix.

4. If no docket entries appear in the record, counsel for the petitioner or appellant should prepare as a substitute a chronological list of the important dates on which pleadings were filed, hearings held and orders entered. The provision of Rule 36(1) for the printing of the docket entries, requires only the printing of entries relating to substantial matters unless a procedural step is germane to the issues presented.

5. The name of the Court involved should appear at the beginning of each item printed in the Single Appendix.

6. The title of the case should be printed at the beginning of the first item and the opinions and judgments should likewise carry the title. The title need not be printed on any other papers but a parenthetical note should be inserted - (Title omitted in printing).

7. Jurats and certificates or affidavits of service may be omitted and an appropriate parenthetical note printed in its stead - (Jurat omitted in printing), (Certificate, or affidavit of service omitted in printing).

8. Any deletions not specifically noted should be indicated by asterisks.

9. All opinions and judgments should be printed in full and no deletions made.

10. In order that testimony reprinted in a Single Appendix may be checked against the original copy, the page at which it appeared in the transcript should be printed in brackets. See Rule 36(6).

11. The size of type, type page and over-all page are covered by Rule 39(1). If a process other than typographical printing is used, it is not necessary to "justify" the right hand margin.

Telephone: Area Code - Executive 3-1640, Extension 315.

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RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

October 26, 1970

Office of the Clerk
Supreme Court of the United States
Washington, D.C. 20543

Attention: E. Robert Seaver, Clerk

Re: Blonder-Tongue Laboratories, Inc. v.
University of Illinois Foundation,
No. 338, October Term, 1970

Dear Mr. Seaver:

In response to your letter of October 20, 1970, we enclose the additional docketing fee of $50 in connection with the above-entitled cause.

Very truly yours,

RINES AND RINES

By _____

RHR/bd
Enc.
cc: Richard S. Phillips
Ben H. Tongue

October 23, 1970

The First Jersey National Bank
1 Exchange Place
Jersey City, New Jersey 07303

Att: Mr. William L. Griffin, Jr.
Vice President

Re: Blonder-Tongue Litigation

Dear Mr. Griffin:

This is a report as to the status of the only litigation involving our client above mentioned, of which we are cognizant.

A few years ago our client was sued by the University of Illinois Foundation and its licensee, J.F.D., for alleged infringement of two antenna patents. We previously reported concerning the status of this matter to the accountants for Blonder-Tongue that the possible liability in the event that both of these patents were sustained, and it was determined that Blonder-Tongue was liable thereunder, appeared to be of the order of magnitude of $20,000. maximum.

While the Federal District Court sustained both of these patents, we succeeded in obtaining reversal as to one of the patents in the Court of Appeals for the Seventh Circuit, and the United States Supreme Court has just agreed to hear our appeal as to the other patent.

While nothing is certain in litigation, the fact that the United States Supreme Court has agreed to hear this case, to us indicates that they have grave doubts as to the validity of this second patent. Another Court of Appeals, indeed, in the Eighth Circuit, has thrown out this patent as invalid so that we are quite confident that there is considerable probability that there will be no liability of Blonder-Tongue in connection with this litigation.

To the contrary, since Blonder- Tongue has counterclaimed for infringement of its own patent and for unfair competition and antitrust violation, which we expect the Supreme Court to rule upon, there is in our view a distinct

Re: Blonder-Tongue Litigation

possibility that damages may be awarded to Blonder-Tongue. While not granting such relief, the Court of Appeals for the Seventh Circuit showed its feelings with regard to Blonder-Tongue's position by awarding Blonder-Tongue part of its costs, even though it was the losing party.

Should you have any further questions with regard to this please do not hesitate to call.

Very truly yours,

RINES AND RINES

RHR:H By_____

bcc: Philip L. Chapman, Esq.
bcc: Mr. Ben Tongue

LAW OFFICES

HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

20 NORTH WACKER DRIVE

CHICAGO 60606

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POWELL L. SPRUNGER
LOUIS A. HECHT

October 20, 1970

Mr. William A. Marshall
Merriam, Marshall, Shapiro & Klose
30 West Monroe Street
Chicago, Illinois 60603

RE: UIF v. BT v. JFD

Dear Bill:

This confirms my telephone call proposing to you that we stipulate that the preparation of the Appendix may be deferred in accordance with Supreme Court Rule 36.4. I would appreciate an early reply from you indicating whether this is satisfactory with you as we have a very short period to designate the Appendix in the event you decide not to stipulate that it may be deferred.

Very truly yours,

Richard S. Phillips

RSP:iag

cc: Mr. R. H. Rines
Mr. M. C. Cass

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western union

Telegram

BA027 CTA115 WD104 (1211).

WW NFA038 LG COLLECT=NF WASHINGTON DC 19 1201P EDT=

ROBERT R RINES=

TEN POST OFC SQ BSN=

1970 OCT 19 PM 1 11

PETITION FOR CERTIORARI BLONDER-TONGUE LABORATORIES

AGAINST UNIVERSITY OF ILLINOIS FOUNDATION GRANTED TODAY.

LETTER FOLLOWS=

E ROBERT SEAVER CLERK=

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OCT 19 1970

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WU 1201 (R 5-69)

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JOHN REX ALLEN
1945-1969

October 14, 1970

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

Dear Bob:

We have Potter's Supreme Court report for October 12. No action was taken in the Blonder-Tongue petition although several which were filed after it were denied. For some reason there is no listing by Potter for the petition filed by the Foundation in the Winegard suit.

Very truly yours,

Dick

Richard S. Phillips

RSP:iag

cc: Mr. J. F. Pearne
Mr. W. E. Wyss
Mr. K. J. Kulie

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OCT 19 1970
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

September 23, 1970

Irwin N. Griswold, Solicitor General
Office of the Solicitor General
Washington, D.C. 20530

Re: Blonder-Tongue Laboratories, Inc.
v. University of Illinois Foundation,
No. 338, October Term, 1970

My dear Solicotor General Griswold:

Belated thanks for your letter of July 27th indicating that this is not a case that the government thinks it appropriate to consider filing an amicus curiae brief.

Very truly yours,

RINES AND RINES

RHR/bd

By_____

Office of the Solicitor General
Washington, D.C. 20530

July 27, 1970

Robert H. Rines, Esq.
Ten Post Office Square
Boston, Massachusetts 02109

Re: Blonder-Tongue Laboratories, Inc.
v. University of Illinois Foundation,
No. 338, October Term, 1970

Dear Mr. Rines,

We have given careful consideration to the suggestion made in your letter of July 10 that the government might file a brief amicus curiae in this case. This has been done both by the Antitrust Division, and by members of my own staff.

We have come to the conclusion that it is not a case in which we think it appropriate to file an amicus brief.

Thank you very much for bringing the case to my attention.

Very truly yours,

Erwin N. Griswold
Solicitor General

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NO. TEN POST OFFICE SQUARE, BOSTON

Copy sent to Belmont office 9/11/70

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JOHN REX ALLEN
1945-1969

September 4, 1970

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

Dear Bob:

Sorry I missed you on Thursday.

Dr. Corey talked with Prof. Lion recently and has written him explaining that the delay has been caused by his traveling schedule.

With regard to the Blonder-Tongue suit, the Patent Law Association of Chicago does not very often file an amicus brief. However, I will make the suggestion to the Board of Managers.

Did you get any sonar readings on Nessie?

Very truly yours,

Richard S. Phillips

RSP:iag

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C/R+R

Office of the Solicitor General
Washington, D.C. 20530

July 27, 1970

Robert H. Rines, Esq.
Ten Post Office Square
Boston, Massachusetts 02109

Re: Blonder-Tongue Laboratories, Inc.
v. University of Illinois Foundation,
No. 338, October Term, 1970

Dear Mr. Rines,

We have given careful consideration to the suggestion made in your letter of July 10 that the government might file a brief amicus curiae in this case. This has been done both by the Antitrust Division, and by members of my own staff.

We have come to the conclusion that it is not a case in which we think it appropriate to file an amicus brief.

Thank you very much for bringing the case to my attention.

Very truly yours,

Erwin N. Griswold
Solicitor General

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JUL 30 1970
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

C/ERNR 7/16/70

Office of the Solicitor General
Washington, D.C. 20530

July 13, 1970

Robert H. Rines, Esq.
Ten Post Office Square
Boston, Massachusetts 02109

Re: Blonder-Tongue Laboratories, Inc.
v. University of Illinois Foundation,
No. 338, October Term, 1970

Dear Mr. Rines,

Thank you for your letter of July 10, with the accompanying copies of the petition for certiorari in this case, which reached me this morning.

On a preliminary examination, I think it very unlikely that we will want to participate in this case through the filing of a brief amicus curiae. We do not ordinarily participate in private litigation unless there is some clear concern of the government involved.

However, I am asking a member of my staff to make a careful examination of your petition. If we should find that there is some further information that we would like to have from you, I will let you know.

Very truly yours,

Erwin N. Griswold
Solicitor General

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NO. TEN POST OFFICE SQUARE, BOSTON

LAW OFFICES

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JOHN REX ALLEN
1945-1969

July 17, 1970

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 Keith Kulie together with a copy of a motion which has been filed by the University of Illinois Foundation for a rehearing on their petition for certiorari in the Winegard suit.

Very truly yours,

Richard S. Phillips

RSP:iag

* Enclosure

cc: Mr. J. F. Pearne (*)

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JUL 20 1970
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

KEITH J. KULIE
ATTORNEY AT LAW

135 SOUTH LASALLE STREET · CHICAGO, ILLINOIS 60603

AREA CODE 312
CENTRAL 6-3351

July 16, 1970

RECEIVED
JUL 17 1970
HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

Richard Phillips, Esq.
20 N. Wacker Drive
Chicago, Illinois

Re: University of Illinois Foundation
vs. Winegard Company
File: 45-34

Dick:

Enclosed is a copy of the motion filed in behalf of UIF in conjunction with the case involving Winegard Company.

Fortunately, we had advised our client that an action of this type might occur if the Foundation was able to win one of the other cases here in the Seventh Circuit.

I will try to keep you advised of all activity in conjuction with this matter and hope you can continue to do the same for me in conjunction with the B-T petition.

Sincerely,

Keith J. Kulie

KJK/mn
Enc.

RECEIVED
JUL 20 1970
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 993

UNIVERSITY OF ILLINOIS FOUNDATION,
Petitioner,

vs.

WINEGARD COMPANY,
Respondent.

MOTION FOR LEAVE TO FILE OUT-OF-TIME PETITION FOR REHEARING AND PETITION.

CHARLES J. MERRIAM,
WILLIAM A. MARSHALL,
BASIL P. MANN,
30 West Monroe Street,
Chicago, Illinois 60603,
Area Code 312—346-5750,
Counsel for Petitioner.

Of Counsel:
MERRIAM, MARSHALL, SHAPIRO & KLOSE,
30 West Monroe Street,
Chicago, Illinois 60603.

THE BLAKELY-WARREN PRINTING COMPANY, CHICAGO

RECEIVED
JUL 20 1970
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 993.

UNIVERSITY OF ILLINOIS FOUNDATION,
Petitioner,

vs.

WINEGARD COMPANY,
Respondent.

MOTION FOR LEAVE TO FILE OUT-OF-TIME PETITION FOR REHEARING.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner University of Illinois Foundation respectfully moves this Court for leave to file out-of-time the annexed petition for rehearing of the Court's order denying a petition for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit in the above-entitled action. In support of this motion, petitioner shows that:

1. This action was brought by petitioner in the District Court for the Southern District of Iowa for infringement of Isbell patent 3,210,767 relating to novel broadband radio and television antennas.

2. The District Court held the patent invalid and the Court of Appeals for the Eighth Circuit affirmed the decision on September 30, 1968. A timely petition for rehearing was denied on November 5, 1968.

3. On or about January 27, 1969, petitioner filed in this

Court a petition for a writ of certiorari. That petition was denied by this Court on March 24, 1969.

4. No timely request for rehearing of the denial of the petition for a writ of certiorari was made since no grounds therefor existed at that time.

5. On February 13, 1970, the Court of Appeals for the Seventh Circuit held the Isbell patent valid in *University of Illinois Foundation* v. *Blonder-Tongue Laboratories, Inc.* v. *JFD Electronics Corp.*, No. 17153. A petition for rehearing by Blonder-Tongue was denied on April 2, 1970.

6. Blonder-Tongue, defendant in the Seventh Circuit action, has petitioned this Court for a writ of certiorari to the Court of Appeals for the Seventh Circuit. The petition was filed on June 30, 1970, and is based primarily on the conflict of decisions by the Court of Appeals for the Seventh Circuit in the *Blonder-Tongue* case and the Court of Appeals for the Eighth Circuit in this case, with respect to the validity of the Isbell patent.

7. The grounds for this petition arose after the expiration of the time prescribed in Rule 58(2) for such petitions. Under these circumstances, this Court clearly has the power, in its discretion, to entertain the petition. *United States* v. *Ohio Power Co.*, 353 U. S. 98; *Gondeck* v. *Pan American World Airways*, 382 U. S. 25.

Respectfully submitted,

CHARLES J. MERRIAM,
WILLIAM A. MARSHALL,
BASIL P. MANN,
30 West Monroe Street,
Chicago, Illinois 60603,
Area Code 312—346-5750,
Counsel for Petitioner.

Of Counsel:
MERRIAM, MARSHALL, SHAPIRO & KLOSE,
30 West Monroe Street,
Chicago, Illinois 60603.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 993.

UNIVERSITY OF ILLINOIS FOUNDATION,
Petitioner,

vs.

WINEGARD COMPANY,
Respondent.

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner University of Illinois Foundation presents this petition for rehearing of its petition for a writ of certiorari to the Court of Appeals for the Seventh Circuit in the above-identified case.

This case was brought for infringement of Isbell Patent 3,210,767. The District Court for the Southern District of Iowa held the patent invalid and did not reach the question of infringement (271 F. Supp. 412). The Court of Appeals for the Eighth Circuit affirmed the holding of invalidity (402 F. 2d 125) on September 30, 1968. A timely petition for rehearing was denied on November 5, 1968.

RECEIVED
JUL 20 1970
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

Petitioner presented a petition to this Court for a writ of certiorari and a request for delayed consideration on January 27, 1969. That petition was denied on March 24, 1969.

This petition for rehearing is presented for the reason that, since the denial of the petition for a writ of certiorari on March 24, 1969, the Court of Appeals for the Seventh Circuit has held, in an action brought by petitioner against Blonder-Tongue Laboratories, Inc.,* that the Isbell patent is valid. In its decision, the Court of Appeals for the Seventh Circuit recognized but respectfully refused to follow the earlier contrary decision of the Court of Appeals for the Eighth Circuit regarding the validity of the Isbell patent.

The decision of the Court of Appeals in the *Blonder-Tongue* case was filed on February 13, 1970. A petition by Blonder-Tongue for rehearing was denied on April 2, 1970.

Blonder-Tongue has recently petitioned this Court for a writ of certiorari to the Court of Appeals of the Seventh Circuit. That petition was filed on June 30, 1970 (No. 338, October Term, 1970) and is based primarily on the conflict in the decisions of the Courts of Appeals for the Seventh and Eighth Circuits respecting the validity of the Isbell patent.

---

* *University of Illinois Foundation* v. *Blonder-Tongue Laboratories, Inc.* v. *JFD Electronics Corp.*, 422 F. 2d 769 (1970).

REASON FOR GRANTING THIS WRIT.

Petitioner seeks to invoke the discretionary power of this Court to grant this writ on the ground that there exists a conflict between the Courts of Appeals with respect to the validity of Isbell patent 3,210,767.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit should be granted.

Respectfully submitted,

CHARLES J. MERRIAM,
WILLIAM A. MARSHALL,
BASIL P. MANN,
30 West Monroe Street,
Chicago, Illinois 60603,
Area Code 312—346-5750,
Counsel for Petitioner.

Of Counsel:
MERRIAM, MARSHALL, SHAPIRO & KLOSE,
30 West Monroe Street,
Chicago, Illinois 60603.

CERTIFICATE OF COUNSEL.

As counsel for petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58(2).

.....

Counsel for Petitioner.

CERTIFICATE OF SERVICE.

I hereby certify that service of 3 copies of the foregoing Motion for Leave to File Out-of-Time Petition for Rehearing and Petition for Rehearing was made this ..... day of July, 1970, by depositing copies thereof in a United States Post Office, with first class postage prepaid, addressed to Keith J. Kulie, Esq., 29 South LaSalle Street, Chicago, Illinois 60603, counsel of record for respondent. I further certify that all parties required to be served have been served.

.....

Counsel for Petitioner.

LAW OFFICES

AXEL A. HOFGREN
ERNEST A. WEGNER
WILLIAM J. STELLMAN
JOHN B. McCORD
BRADFORD WILES
JAMES C. WOOD
STANLEY C. DALTON
RICHARD S. PHILLIPS
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HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

20 NORTH WACKER DRIVE

CHICAGO 60606

TELEPHONE
FINANCIAL 6-1630
AREA CODE 312

JOHN REX ALLEN
1945-1969

July 10, 1970

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

Dear Bob:

We have checked with the Clerk of the Court of Appeals and are advised that they have been notified by the Clerk of the Supreme Court of the filing of the petition for certiorari. Under Rule 41(b) F.R.A.P., the stay shall continue until final disposition by the Supreme Court.

Very truly yours,

Richard S. Phillips

RSP:iag

RECEIVED
JUL 13 1970
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

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

July 9, 1970

Sidney G. Faber, Esq.
Ostrolenk, Faber, Gerb & Soffen
10 East Fortieth Street
New York, New York 10016

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

Dear Sid:

Enclosed herewith are two copies of our motion for leave to file an amicus brief in the above case and the brief. The brief contains two minor typographical errors which we propose to have corrected by the Clerk of the Supreme Court, as follows:

Page 1 of the brief (page 5), footnote 1, "Ohio" should have been --Illinois--.

Page 2 of the brief (page 6), penultimate line, "cordingly" should have been --cording--.

Sincerely,

JFP:jh
Enclosures

cc: Richard S. Phillips, Esq.
Robert H. Rines, Esq.

COPY

RECEIVED
JUL 13 1970
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

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

July 9, 1970

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

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

Dear Pete:

Enclosed herewith are two copies of our motion for leave to file an amicus brief in the above case and the brief. The brief contains two minor typographical errors which we propose to have corrected by the Clerk of the Supreme Court, as follows:

Page 1 of the brief (page 5), footnote 1, "Ohio" should have been --Illinois--.

Page 2 of the brief (page 6), penultimate line, "cordingly" should have been --cording--.

Sincerely,

John

JFP:jh
Enclosures

cc: Richard S. Phillips, Esq.
Robert H. Rines, Esq.

COPY

RECEIVED
JUL

July 10, 1970

Solicitor General Erwin N. Griswold
Department of Justice
Washington, D.C. 20530

Re: Petition for Certiorari in the United States Supreme Court - No. 338, October Term, 1970
Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation and J.F.D. Electronics Corporation.

Dear Solicitor General Griswold:

We wish to thank you for suggesting to our Washington associate, Nelson H. Shapiro, that we send to you copies of the above-mentioned petition which has just been filed in the Supreme Court and which involves issues that we think are of great moment to the Government and would warrant consideration in terms of briefing as Amicus Curiae.

Specifically, we feel that Questions II and I are of such import. The former deals with protecting the Patent Office and the public from deceptive patent prosecution and establishing a uniform policy in the courts that equitable relief will not be granted to a patentee who has obtained his patent by such deception. Ancillary to this is the opportunity for the Supreme Court to make plain anti-trust ramifications of the deliberate use of such a deceptively obtained patent to restrain competition. The latter Question (I) is also believed of moment since the way the law is presently interpreted the courts can be tied up with several additional suits in different Circuits involving this same patent with great confusion, in view of the validity of the patent in one Circuit and its invalidity in another.

I would welcome the opportunity to visit with you and your staff to discuss this since this is one of those rare cases where there is no dispute on the facts as to Questions II and I and where, as stated on page 15 of our petition, "so many aspects of public moment" in the patent field are involved in a single case.

Best regards from Belmont.

Cordially,

RINES AND RINES

By_____
Robert H. Rines

RHR:H
Enclosures

bcc: N. Shapiro, Esq.

July 10, 1970

Mr. Isaac S. Blonder
Blonder-Tongue Laboratories Inc.
One Jake Brown Road
Old Bridge, New Jersey 08857

Re: Petition to the Supreme Court in the University of Illinois Suit

Dear Ike:

We understand from Dick Phillips that, with the aid of one of the members of his firm who went to Washington, we effected the filing of petition (and had to make some changes in view of new rules of that court that apparently became effective July 1). We understand that a copy of the petition has been received by you and Ben.

As we previously informed you, we have been traveling around trying to interest litigants, legal systems and the Justice Department into filing briefs urging the Supreme Court to hear this case.

So far, we can report Finney is filing a brief as friend of the court. We have seen a draft of the same and it stresses the need for clarifying "obviousness" under the patent statute and for resolving the situation where a patent is valid in one part of the United States and not another.

Interestingly enough, John Pearne, representing Finney, was able to get the consent of JFD's attorney to filing of this brief, and he is trying to get the Foundation's consent, also. Otherwise, we will have to file a motion requesting the Supreme Court's permission to file the brief. Apparently JFD finds it in its best interests to resolve once and for all whether the Isbell patent is valid.

We are off to New York and Washington in further pursuit of supporting briefs. Preliminary discussions with the Solicitor General of the United States (former Dean Griswold of Harvard Law School) have indicated that I will get due consideration directed from the top downward in the Justice Department. Nelson and we will push this very hard, because if the government joins with us, the case is sure to be heard and we will have a strong ally for defeating the Foundation's case, particularly in view of the deceit in the Patent Office.

Isaac S. Blonder

July 10, 1970

We should keep you further posted.

Cordially,

RINES AND RINES

RHR/bd

By_____

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

July 7, 1970

Robert H. Rines, Esq.
Ten P. O. Square
Boston, Massachusetts 02109

RE: BLONDER-TONGUE LABORATORIES, INC.
v. UNIVERSITY OF ILLINOIS FOUNDATION,
ET AL., No. 338, October Term, 1970

Dear Mr. Rines:

The petition for a writ of certiorari in the above-entitled case was docketed in this Court on June 30, 1970, as No. 338, October Term, 1970. Forms are enclosed for notifying opposing counsel that the case was docketed.

Also enclosed are forms for entry of appearance of counsel to be completed and returned to this office.

Very truly yours,

E. ROBERT SEAVER, Clerk

By Jennie H. Lazowski

(Miss) Jennie H. Lazowski
Assistant

jmh
Enclosures

RECEIVED
JUL 10 1970
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

APPEARANCE FORM

SUPREME COURT OF THE UNITED STATES

No. _____, OCTOBER TERM, 19__

_____ _____

vs.

_____ _____

(Petitioner or Appellant) (Respondent or Appellee)

The Clerk will enter my appearance as Counsel for the _____

Signature _____

Type or Print Name _____

Address _____

City and State _____

NOTE: This appearance must be signed by an individual Member of the Bar of the Supreme Court of the United States.

The Clerk is requested to notify counsel of action of the Court by means of:

[ ] Collect Telegram

[ ] Airmail Letter

[ ] Regular Mail

NOTE: When more than one attorney represents a single party or group of parties, counsel should designate a particular individual to whom notification is to be sent, with the understanding that if other counsel should be informed he will perform that function.

In this case the person to be notified for is:

[ ] Petitioner(s)

[ ] Respondent(s)

[ ] Appellant(s)

[ ] Appellee(s)

[ ] Amicus

_____

(Name—Type or Print)

_____

(Street Address)

_____

(City, State and Zip Code)

CO–73

APPEARANCE FORM

SUPREME COURT OF THE UNITED STATES

No. _____, OCTOBER TERM, 19__

_____ _____

vs.

_____ _____

(Petitioner or Appellant) (Respondent or Appellee)

The Clerk will enter my appearance as Counsel for the _____

Signature _____

Type or Print Name _____

Address _____

City and State _____

NOTE: This appearance must be signed by an individual Member of the Bar of the Supreme Court of the United States.

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In this case the person to be notified for is:

[ ] Petitioner(s)

[ ] Respondent(s)

[ ] Appellant(s)

[ ] Appellee(s)

[ ] Amicus

_____

(Name—Type or Print)

_____

(Street Address)

_____

(City, State and Zip Code)

CO–73

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19___

_____

_____
Appellant—Petitioner

vs.

_____
Appellee—Respondent

No.

To _____, Counsel for Appellee—Respondent:

YOU ARE HEREBY NOTIFIED that an appeal—a petition for a writ of certiorari—in the above-entitled and numbered case was docketed in the Supreme Court of the United States on the _____ day of _____, 19___.

At the request of the Clerk of the Supreme Court, we are sending attached hereto an appearance form to be filed by you, or other counsel who will represent your party, with the Clerk at or before the time you file your response to our petition or jurisdictional statement.

_____
Counsel for Appellant—Petitioner

_____
Number and Street

_____
City, State and Zip Code

NOTE: Please indicate whether the case is an appeal or a petition for certiorari by crossing out the inapplicable terms. A copy of this notice need not be filed in the Supreme Court.

APPEARANCE FORM

SUPREME COURT OF THE UNITED STATES

No. _____, October Term, 19__

_____ _____

vs.

_____ _____

(Petitioner or Appellant) (Respondent or Appellee)

The Clerk will enter my appearance as Counsel for the _____

Signature _____

Type or Print Name _____

Address _____

City and State _____

NOTE: This appearance must be signed by an individual Member of the Bar of the Supreme Court of the United States.

The Clerk is requested to notify counsel of action of the Court by means of:

[ ] Collect Telegram

[ ] Airmail Letter

[ ] Regular Mail

NOTE: When more than one attorney represents a single party or group of parties, counsel should designate a particular individual to whom notification is to be sent, with the understanding that if other counsel should be informed he will perform that function.

In this case the person to be notified for is:

[ ] Petitioner(s)

[ ] Respondent(s)

[ ] Appellant(s)

[ ] Appellee(s)

[ ] Amicus

_____

(Name—Type or Print)

_____

(Street Address)

_____

(City, State and Zip Code)

CO–73

GPO : 1969 O - 360-371

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19___

_____ Appellant—Petitioner *vs.* _____ Appellee—Respondent	No.

To _____, Counsel for Appellee—Respondent:

YOU ARE HEREBY NOTIFIED that an appeal—a petition for a writ of certiorari—in the above-entitled and numbered case was docketed in the Supreme Court of the United States on the _____ day of _____, 19___.

At the request of the Clerk of the Supreme Court, we are sending attached hereto an appearance form to be filed by you, or other counsel who will represent your party, with the Clerk at or before the time you file your response to our petition or jurisdictional statement.

_____
Counsel for Appellant—Petitioner

_____
Number and Street

_____
City, State and Zip Code

NOTE: Please indicate whether the case is an appeal or a petition for certiorari by crossing out the inapplicable terms. A copy of this notice need not be filed in the Supreme Court.

APPEARANCE FORM

SUPREME COURT OF THE UNITED STATES

No. _____, OCTOBER TERM, 19__

_____ _____

vs.

_____ _____

(Petitioner or Appellant) (Respondent or Appellee)

The Clerk will enter my appearance as Counsel for the _____

Signature _____

Type or Print Name _____

Address _____

City and State _____

NOTE: This appearance must be signed by an individual Member of the Bar of the Supreme Court of the United States.

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[ ] Regular Mail

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In this case the person to be notified for is:

[ ] Petitioner(s)

[ ] Respondent(s)

[ ] Appellant(s)

[ ] Appellee(s)

[ ] Amicus

_____

(Name—Type or Print)

_____

(Street Address)

_____

(City, State and Zip Code)

CO–73

GPO : 1969 O - 360-371

LAW OFFICES

AXEL A. HOFGREN
ERNEST A. WEGNER
WILLIAM J. STELLMAN
JOHN B. McCORD
BRADFORD WILES
JAMES C. WOOD
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WM. A. VAN SANTEN
JOHN R. HOFFMAN
RONALD L. WANKE
POWELL L. SPRUNGER
LOUIS A. HECHT

HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

20 NORTH WACKER DRIVE

CHICAGO 60606

TELEPHONE
FINANCIAL 6-1630
AREA CODE 312

JOHN REX ALLEN
1945-1969

July 7, 1970

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

Dear Bob:

* I enclose an appearance form for you to file in the Supreme Court. The petition has been assigned case No. 338, October Term 1970.

* I also enclose a copy of an order from the Court of Appeals staying the mandate to and including July 10. We are advising the court that a petition has been filed.

Very truly yours,

Dick

Richard S. Phillips

RSP:iag

* Enclosures

RECEIVED
JUL 10 1970
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

APPEARANCE FORM

SUPREME COURT OF THE UNITED STATES

No. _____, OCTOBER TERM, 19__

_____ _____

vs.

_____ _____

(Petitioner or Appellant) (Respondent or Appellee)

The Clerk will enter my appearance as Counsel for the _____

Signature _____

Type or Print Name _____

Address _____

City and State _____

NOTE: This appearance must be signed by an individual Member of the Bar of the Supreme Court of the United States.

The Clerk is requested to notify counsel of action of the Court by means of:

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In this case the person to be notified for is:

[ ] Petitioner(s)

[ ] Respondent(s)

[ ] Appellant(s)

[ ] Appellee(s)

[ ] Amicus

_____

(Name—Type or Print)

_____

(Street Address)

_____

(City, State and Zip Code)

CO–73

APPEARANCE FORM

SUPREME COURT OF THE UNITED STATES

No. _____, OCTOBER TERM, 19__

_____ _____

vs.

_____ _____

(Petitioner or Appellant) *(Respondent or Appellee)*

The Clerk will enter my appearance as Counsel for the _____

Signature _____

Type or Print Name _____

Address _____

City and State _____

NOTE: This appearance must be signed by an individual Member of the Bar of the Supreme Court of the United States.

The Clerk is requested to notify counsel of action of the Court by means of:

[ ] Collect Telegram

[ ] Airmail Letter

[ ] Regular Mail

NOTE: When more than one attorney represents a single party or group of parties, counsel should designate a particular individual to whom notification is to be sent, with the understanding that if other counsel should be informed he will perform that function.

In this case the person to be notified for is:

[ ] Petitioner(s)

[ ] Respondent(s)

[ ] Appellant(s)

[ ] Appellee(s)

[ ] Amicus

_____

(Name—Type or Print)

_____

(Street Address)

_____

(City, State and Zip Code)

CO-73

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
Washington, D. C. 20543

RECEIVED
OCT 23 1970
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

MEMORANDUM RE PRINTING

To assist counsel who are called upon to print Single Appendices under Rule 36, the following suggestions are made:

1. There is enclosed a sample cover to show the appropriate form and color. If the case is on appeal rather than certiorari, the last two lines should indicate when the appeal was docketed and when jurisdiction was noted or postponed. The line preceding should recite - Appeal from the (name of court). The names of counsel should not appear on the cover.

2. Rule 36(1) requires that the Single Appendix contain:
   "(1) the relevant docket entries in the proceeding below;
   (2) any relevant pleading, charge, finding or opinion;
   (3) the judgment, order or decision in question; and
   (4) any other parts of the record to which the parties wish to direct the Court's particular attention."

   The Single Appendix should be arranged so that the various documents appear chronologically to the extent possible.

3. Rule 36(6) requires the printing of an appropriate index at the beginning of the Single Appendix.

4. If no docket entries appear in the record, counsel for the petitioner or appellant should prepare as a substitute a chronological list of the important dates on which pleadings were filed, hearings held and orders entered. The provision of Rule 36(1) for the printing of the docket entries, requires only the printing of entries relating to substantial matters unless a procedural step is germane to the issues presented.

5. The name of the Court involved should appear at the beginning of each item printed in the Single Appendix.

6. The title of the case should be printed at the beginning of the first item and the opinions and judgments should likewise carry the title. The title need not be printed on any other papers but a parenthetical note should be inserted - (Title omitted in printing).

7. Jurats and certificates or affidavits of service may be omitted and an appropriate parenthetical note printed in its stead - (Jurat omitted in printing), (Certificate, or affidavit of service omitted in printing).

8. Any deletions not specifically noted should be indicated by asterisks.

9. All opinions and judgments should be printed in full and no deletions made.

10. In order that testimony reprinted in a Single Appendix may be checked against the original copy, the page at which it appeared in the transcript should be printed in brackets. See Rule 36(6).

11. The size of type, type page and over-all page are covered by Rule 39(1). If a process other than typographical printing is used, it is not necessary to "justify" the right hand margin.

Telephone: Area Code - Executive 3-1640, Extension 315.

RECEIVED
OCT 23 1970
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
Washington, D. C. 20543

No. 338
O.T. 1970

MEMORANDUM to Counsel in Cases granted Review on October 19, 1970

Your attention is called particularly to Supreme Court Rules 17, 26, 36 and 39 which apply to the time for the preparation of the record in the form of a Single Appendix and for the filing of briefs on the merits. Copies of these Rules are available from the Clerk and they also are printed in 398 U.S. 1009; 90 S.Ct. 2273; 49 F.R.D. 613; 26 L. Ed 2d following p. 577, p. II and 38 LW 4516. See commentaries in 90 S.Ct. 2337; 49 F.R.D. 679; and Vol. 38 LW 3501.

Unless expedited, some of the cases granted review on October 19 will be calendared for argument in the January 18 session of the Court. This means deadlines provided by the Rules must be met and counsel cannot assume extensions of time will be granted. The Single Appendix and the petitioner's or appellant's brief will be due 45 days from the date of grant, namely December 3. The respondent's, or appellee's brief will be due 30 days thereafter. Rule 36(4) permits the deferral of the filing of the Single Appendix by stipulation of counsel or order of the Court. However, this provision should be used sparingly and only when there is a bulky record which may be reduced in size by a narrowing of the issues in the briefs.

The responsibility for preparing and printing the record in the form of a Single Appendix is placed upon counsel for petitioner or appellant and the attached "Memorandum re Printing" should be followed as closely as possible. It is anticipated that in most instances the contents of the Single Appendix will be agreed upon by the parties. The parties should remember that the entire record is always available to the Court for reference and examination. In the absence of agreement, counsel for the petitioner or appellant must designate the portions of the record to be printed by October 29, and counsel for respondent or appellee must cross-designate by November 9. Since the Single Appendix must be printed by December 3 these dates must be met.

In order to aid the Clerk in administering the Rules, counsel for all parties are requested to inform the Clerk on the date agreement is reached on the contents of the Single Appendix, or in the absence of agreement, the Clerk should be informed on the date that they designate and cross-designate for printing. Also counsel for the petitioner or appellant are requested to inform the Clerk when the Single Appendix is sent to the printers.

If the record was not filed at the time of the docketing of the case, the clerk of the lower court has been requested to certify and transmit the record to this office, under Rule 16(6) or 25(1).

The Clerk and his staff are ready and willing to provide aid and advice on the application of the Rules to each case.

Telephone: Area Code 202 - Executive 3-1640, Extension 315.

LAW OFFICES

HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

20 NORTH WACKER DRIVE

CHICAGO 60606

TELEPHONE
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WM. A. VAN SANTEN
JOHN R. HOFFMAN
RONALD L. WANKE
POWELL L. SPRUNGER
LOUIS A. HECHT

July 7, 1970

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

RE: UIF v. BT v. JFD

Dear Mr. Cass:

* I enclose a notice of our filing a petition of certiorari on behalf of Blonder-Tongue. Please complete and file the attached appearance form.

Very truly yours,

Richard S. Phillips

RSP:iag

* Enclosure

cc: Mr. R. H. Rines

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WM. A. VAN SANTEN
JOHN R. HOFFMAN
RONALD L. WANKE
POWELL L. SPRUNGER
LOUIS A. HECHT

July 7, 1970

Mr. William A. Marshall
Merriam, Marshall, Shapiro & Klose
30 West Monroe Street
Chicago, Illinois 60603

RE: UIF v. BT v. JFD

Dear Bill:

* I enclose a notice of our filing a petition of certiorari on behalf of Blonder-Tongue. Please complete and file the attached appearance form.

Very truly yours,

Richard S. Phillips

RSP:iag

* Enclosure

cc: Mr. R. H. Rines

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JOHN REX ALLEN
1945-1969

June 29, 1970

RECEIVED
JUL - 1 1970
RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

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

Dear Bob:

* Enclosed are ten copies of the petition to the Supreme Court. One of the young fellows in our office is leaving for Washington tonight and is taking it with him to file tomorrow.

Very truly yours,

Dick

Richard S. Phillips

RSP:iag

* Enclosures