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

THE FINNEY COMPANY, a partnership,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No.
	)	
JFD ELECTRONICS CORPORATION, a corporation, and THE UNIVERSITY OF ILLINOIS FOUNDATION, a non-profit corporation,	)	65 C 671
	)	
Defendants.	)	

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Now comes the plaintiff, by its attorneys, and moves under the provisions of Rule 56, F.R.C.P., for a summary judgment that two of the three patents in suit are invalid in their entireties, and that one of the two is unenforceable for unclean hands in the procurement thereof, said patents in suit being:

I. U. S. patent No. 3,210,767 (PX-A)*
Inventor: Dwight E. Isbell
Application filed: May 3, 1960
Patent granted: October 5, 1965

II. U. S. patent No. Re. 25,740 (PX-B)**
Inventors: Paul E. Mayes and Robert L. Carrel
Original application filed: September 30, 1960
Original patent No. 3,108,280 granted: October 22, 1963
Reissue application filed: March 5, 1964
Reissue patent granted: March 9, 1965

I. ISBELL PATENT NO. 3,210,767

The ground for invalidity of the claims of the Isbell patent is that the subject matter of said claims was described in a printed publication (PX-4)*** published April 30, 1959 (more than one year prior to the May 3, 1960, date of application for the patent) in contravention of §102 of Title 35, United States Code [35 U.S.C. 102(b)].

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* Hereafter called "Isbell patent."

** Hereafter called "Mayes et al. reissue patent," the original patent replaced thereby being hereafter called "Mayes et al. original patent."

*** Antenna Laboratory Quarterly Engineering Report No. 2, "RESEARCH STUDIES ON PROBLEMS RELATED TO ECM ANTENNAS," Electrical Engineering Research Laboratory, Engineering Experiment Station, University of Illinois, Urbana, Illinois. This report has heretofore been identified as plaintiff's Exhibit 4 (PX-4) and will hereafter be so referred to.

II. MAYES ET AL. REISSUE PATENT NO. RE. 25,740

A.

The ground for invalidity of the claims of the Mayes et al. reissue patent is that the alleged inventors did not themselves invent the subject matter of said claims, but derived the same from another,* so that the patent was granted in contravention of §102(f) and §103 of Title 35, United States Code [35 U.S.C. 102(f) and 103].

B.

The Mayes et al. reissue patent is unenforceable because it and the Mayes et al. original patent on which the reissue was based were both procured by the Foundation defendant by presenting the Patent Office with deceptive and misleading evidence to the effect that the earlier work of Dwight E. Isbell was not a part of the prior art, whereas it was in fact a part of the prior art and had been described in printed publications** more than one year prior to the date of the application for the Mayes et al. original patent. As a result, the Patent Office dropped the earlier work of Isbell from consideration as prior art against Mayes et al., which it otherwise would not have done, and was

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* Edwin M. Turner of Wright Patterson Air Force Base, Dayton, Ohio.

** The publication PX-4 and Antenna Laboratory Technical Report No. 39, "LOG PERIODIC DIPOLE ARRAYS," Electrical Engineering Research Laboratory, Engineering Experiment Station, University of Illinois, Urbana, Illinois. The latter report has heretofore been identified as Plaintiff's Exhibit 17 (PX-17) and will hereafter be so referred to.

thereby influenced to grant the Mayes et al. original and reissue patents. Because defendant knew the pertinent facts, or should have known them, they have come into court with unclean hands with respect to the Mayes et al. reissue patent and are not entitled to enforce that patent, and the patent is invalid. Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944); Precision Instrument Manufacturing Co. v. Automotive Maintenance Machinery Co., 324 U.S. 806 (1945); Walker Process Equipment, Inc. v. Food Machinery and Chemical Corp., 322 U.S. 172 (1965).

SUPPORTING EVIDENCE AND MEMORANDUM

Affidavits supporting the foregoing motion as to each of the grounds thereof are attached hereto as a part hereof, together with copies of depositions, answers to interrogatories, and admissions that are on file or are filed herewith, and copies of prior patents and publications that are also relied upon in support of this motion.

A separate memorandum in support of this motion further explains each of the grounds therefor and is being filed by plaintiff concurrently therewith.

Respectfully submitted,

MASON, KOLEHMAINEN, RATHBURN & WYSS

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