File Copy
Due Oct 11, '65
H.B

RECEIVED
SEP 20 1965
ELBERT A. WAGNER, JR., Clerk
United States District Court

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

THE FINNEY COMPANY, a partnership, Plaintiff, v. JFD ELECTRONICS CORPORATION, a corporation, and THE UNIVERSITY OF ILLINOIS FOUNDATION, a non-profit corporation, Defendants.	Civil Action No. 65 C 220 and No. 65 C 671 (Consolidated)

AMENDED COMPLAINT

FIRST CAUSE OF ACTION

1. Plaintiff, The Finney Company, is a partnership having its principal place of business at 34 West Interstate Street, Bedford, Ohio, and being composed of Lewis H. Finneburgh, Jr., Morris L. Finneburgh, and Morris L. Finney, Jr., as partners, all of whom are citizens and residents of the State of Ohio.

2. Defendant, JFD Electronics Corporation, is a corporation organized under the laws of the State of New York, is doing business in the State of Illinois, and has a place of business and agents at 6330 West Hermione, Chicago, Illinois.

3. Defendant, The University of Illinois Foundation, is a non-profit corporation organized under the laws of the State of Illinois, is doing business and has a place of business and agents at various locations in Chicago, Illinois, including the LaSalle Hotel, Chicago, Illinois.

4. This cause of action arises under the patent laws of the United States. Jurisdiction is given this Court by Title 28 United States Code, Sections 1331, 1332, 1338(a) and 2201. Venue is given this Court by Title 28 United States Code, Section 1391(c).

5. United States Letters Patent No. 3,108,280 issued to Defendant, The University of Illinois Foundation, on October 22, 1963, as the assignee of Paul E. Mayes and Robert L. Carrel. On March 9, 1965, this patent was reissued as Re. 25,740. Defendant, The University of Illinois Foundation was the owner of said patent 3,108,280 until it was surrendered and replaced by the reissue thereof and has since been and now is the owner of the reissue patent.

6. United States Letters Patent No. 3,150,376 issued to Defendant, The University of Illinois Foundation, on September 22, 1964, as the assignee of Robert L. Carrel and Paul E. Mayes. Defendant, The University of Illinois Foundation, is also the owner of said patent 3,150,376.

7. Defendant, The University of Illinois Foundation, by letter dated February 4, 1965, and over the signature of its attorney, Samuel B. Smith, charged Plaintiff with infringement of both of its aforesaid United States Letters Patent Nos. 3,108,280 and 3,150,376; and, by letter dated April 23, 1965, and over the signature of its attorney, Basil P. Mann, that Defendant charged Plaintiff with infringement of its aforesaid reissue patent Re. 25,740 and repeated the charge of infringement by Plaintiff of its aforesaid patent No. 3,150,376.

8. On information and belief, Defendant, JFD Electronics Corporation, is the exclusive licensee under a license granted to it by Defendant, The University of Illinois Foundation, under both of said United States Letters Patent Nos. Re. 25,740 (formerly 3,108,280) and 3,150,376.

9. Defendant, JFD Electronics Corporation, has charged Plaintiff's customers with infringement of United States Letters Patent Nos. 3,108,280 (now Re. 25,740) and 3,150,376 in their sale of home television antennas manufactured by Plaintiff and originally sold by it to such customers; and Defendant, JFD Electronics Corporation, has threatened Plaintiff's customers with suits for infringement of United States Letters Patent Nos. 3,108,280 (now Re. 25,740) and 3,150,376.

10. Defendant, The University of Illinois Foundation, has sued a customer of Plaintiff, Allied Radio Corporation of Chicago, Illinois, for infringement of both of said patents Re. 25,740 and 3,150,376 in the sale by said customer of home television antennas manufactured by Plaintiff and originally sold by it to said customer. That suit is Civil Action No. 650220 filed in this Court on or about February 12, 1965. Plaintiff was named in said suit as a co-defendant, but has never been served with process in that suit or appeared generally or specially therein and is not a party thereto.

11. A justiciable controversy exists between Plaintiff and both Defendants with respect to the validity and infringement of said Letters Patent.

12. Plaintiff denies that it has infringed any of the claims of either of said United States Letters Patent Nos. Re. 25,740 (formerly 3,108,280) and 3,150,376.

13. Plaintiff alleges that the United States Letters Patent Nos. Re. 25,740 (formerly 3,108,280) and 3,150,376 are both void and invalid in law in their entireties because, as to each of said patents, the alleged invention described and claimed therein was described in a printed publication more than one year prior to the effective filing date thereof and was in public use and on sale in the United States more than one year prior to the effective filing date thereof; and the alleged

invention thereof was described in a patent granted on an application for patent by another filed in the United States before the invention or discovery thereof by the patentees; and the patentees named therein did not themselves invent the alleged invention described and claimed therein.

14. Plaintiff alleges that the United States Letters Patent Nos. Re. 25,740 (formerly 3,108,280) and 3,150,376 are both void and invalid in law in their entireties because, as to each of said patents, the alleged invention described and claimed therein was such that the differences between the subject matter thereof and the prior art would have been obvious, at the time the alleged invention was made, to a person having ordinary skill in the art to which said subject matter pertains.

15. Plaintiff alleges that the United States Letters Patent Nos. Re. 25,740 (formerly 3,108,280) and 3,150,376 are void and invalid in their entireties because, as to each of said patents, the claims thereof do not particularly point out and distinctly claim the subject matter sought to be patented.

16. Plaintiff alleges that the United States Letters Patent Nos. Re. 25,740 (formerly 3,108,280) and 3,150,376 are void and invalid in their entireties because, as to each of said patents, the claims thereof embrace and purport to cover more than that which is disclosed therein as the alleged invention of the patentees and more than they had a right to claim.

17. At least thirty (30) days before trial hereof, in accordance with the provisions of Title 35 United States Code, Section 282, plaintiff will give Defendants notice of the prior publications and patents and the names and addresses of the persons to be relied upon by Plaintiff to establish that the aforesaid patents are void and invalid.

18. A decree by this Court with respect to the issues of patent validity and infringement, as between Plaintiff and the Defendants, is reasonably calculated to prevent needless additional litigation in this and other jurisdictions between Defendants and customers of Plaintiff that use or resell Plaintiff's products.

SECOND CAUSE OF ACTION AGAINST JFD ELECTRONICS CORPORATION

19. Plaintiff incorporates by reference paragraphs 1 and 2 of the First Cause of Action.

20. This Cause of Action is for false marking under the Patent Laws of the United States. Jurisdiction is given this Court by Title 28, United States Code, Section 1338(a) and Title 35, United States Code, Section 292(b). Venue is given this Court by Title 28, United States Code, Section 1391(c).

21. Defendant, JFD Electronics Corporation, has been and still is manufacturing and selling throughout the United

States a variety of different unpatented antennas for home television and radio receivers while affixing to such antennas or the cartons in which the antennas are shipped and sold, and while using in its advertising of such antennas, the terms "U.S. Patents" and "U.S. Patent Numbers," followed by patent numbers designating United States Letters Patent which describe and claim certain alleged inventions none of which has been or is now embodied or incorporation in such antennas, all with the intent and for the purpose of deceiving the public and causing the public to believe, incorrectly, that such antennas are covered by or manufactured under such patents.

THIRD CAUSE OF ACTION AGAINST JFD ELECTRONICS CORPORATION

22. This Cause of Action is for unfair competition resulting from sales promotion and advertising practices of Defendant, JFD Electronics Corporation, involving false representations of patent protection for products of Defendant, JFD Electronics Corporation, false representations that patent rights of Defendant, JFD Electronics Corporation, are being infringed by the manufacture and sale by Plaintiff and by the resale by Plaintiff's customers of certain products of Plaintiff, and threats of suits for such infringement. This cause of action is based, in part, on Title 15, United States Code, Section 1125 (a). Jurisdiction is given this Court by Title 15, United States Code, Section 1121 and Title 28, United States Code, Sections 1332 and 1338 (b). Venue is given this Court by Title 28, United States Code, Section 1391 (c).

23. Plaintiff incorporates, by reference; paragraphs 1 and 2 of the Plaintiff's First Cause of Action and paragraph 21 of Plaintiff's Second Cause of Action.

24. Plaintiff manufactures and sells in commerce throughout the United States, antennas for use with radio and television receivers and transmitters, including a variety of different antennas that are designed for home, radio and television receivers of various types.

25. Plaintiff's antennas are manufactured in Bedford, Ohio, and are sold through distributors and wholesalers throughout the United States.

26. Defendant, JFD Electronics Corporation, manufactures and sells in commerce throughout the United States antennas for use with radio and television receivers and transmitters, including a variety of different antennas that are designed for home radio and television receivers of various types, that are characterized by said defendant as "Log-Periodic" antennas, and that are respectively directly competitive in the market place with the antennas of Plaintiff.

27. According to Plaintiff's information and belief, Defendant, JFD Electronics Corporation manufactures its aforesaid and so-called "Log-Periodic" antennas in the State of New York and sells them through distributors and wholesalers throughout the United States.

28. Plaintiff and Defendant, JFD Electronics Corporation, are in direct competition throughout the United States in the sale of antennas for home radio and television receivers and, in many instances, sell their respective antennas through the same distributors and wholesalers.

29. Defendant, JFD Electronics Corporation, in its sales promotion and advertising program for its so-called "Log-Periodic" antennas, has been and is unfairly competing with Plaintiff by engaging substantially throughout the United States, in an elaborate sales promotion scheme calculated to create the erroneous belief in the trade and among the public that said Defendant has a broad and dominating patent position in the field of antennas of the "Log-Periodic" type, that said Defendant is the only concern legally entitled to manufacture and sell any such antennas, that all antennas of other concerns, including Plaintiff, that are even of a generally similar character infringe exclusive patent rights of said Defendant and cannot be purchased and resold by the trade without incurring patent infringement liability to said Defendant and/or to The University of Illinois Foundation, and that Plaintiff has inaccurately and with "half truths" and "distortions of the truth" described its antennas and comparative features thereof in Plaintiff's advertising. Said Defendant has been and still is engaging in said scheme substantially throughout the United States for the purpose and with the effect of increasing its

own sales of its so-called "Log-Periodic" antennas and reducing and rendering more difficult the sales by Plaintiff of its competitive antennas.

30. The aforesaid elaborate scheme of Defendant, JFD Electronics Corporation, has included:

(a) asserting to its own and Plaintiff's customers and to the public, substantially throughout the United States, by various expressions and modes of communication, that the so-called "Log-Periodic" antennas of said defendant are protected by several United States Letters Patent under which said Defendant is the exclusive licensee, whereas none of the so-called "Log-Periodic" antennas of said Defendant has been or is patented or protected by, or incorporates or embodies any of the alleged inventions described and claimed in any of said several Letters Patent.

(b) applying to its labels, advertising, and other sales promotion media for its so-called "Log-Periodic" antennas statements indicating that such antennas of said Defendant which it sells substantially throughout the United States, are covered and protected by specifically enumerated ones of United States Letters Patent Nos. 2,958,081, 2,985,879, 3,011,168, 3,108,280 and 3,150,376, whereas, to the knowledge of said Defendant and in violation of 35 United States Code, Section 292(b), none of said patents so enumerated is applicable to the antennas of said Defendant.

(c) asserting to its own and Plaintiff's customers and to the public, by various expressions and modes of communication, that Plaintiff's antennas which are competitive with the so-called "Log-Periodic" antennas of said Defendant infringe one or more of said several Letters Patent, whereas said Defendant is fully aware that such assertions of patent infringement are false.

(d) making numerous direct and inferred threats to its own and Plaintiff's customers that said customers will or may be sued for patent infringement if they deal in antennas of Plaintiff which are directly competitive with the so-called "Log-Periodic" antennas of said Defendant.

(e) publishing libelous statements falsely impugning the veracity of Plaintiff and of statements made in Plaintiff's advertising.

31. As a result of the foregoing, Plaintiff has been and is being damaged by Defendant, JFD Electronics Corporation, by way of lost sales and profits by Plaintiff, injury to the prestige and standing of Plaintiff in the trade, and the necessity for Plaintiff, at great expense, to take extraordinary steps throughout the trade to reassure its customers that they can safely deal in plaintiff's products without fear of legal liability.

32. Plaintiff has been damaged by the aforesaid unfair competition of Defendant, JFD Electronics Corporation, in an amount exceeding ten thousand dollars ($10,000.00) exclusive of interest and costs and will be further and irreparably so damaged unless said Defendant is appropriately restrained by this Court from continuing such unfair competition in any of its various aspects.

FOURTH CAUSE OF ACTION AGAINST
DEFENDANT JFD ELECTRONICS CORPORATION

33. This cause of action is for libel. There is diversity of citizenship between Plaintiff and Defendant, JFD Electronics Corporation, and the subject matter of the claim to which this cause of action relates involves an amount in controversy in excess of $10,000.00 exclusive of interest and costs. Jurisdiction with respect to this cause of action is given this Court by Title 28, United States Code, Section 1332. Venue is given this Court by Title 28, United States Code, Section 1391(a).

34. Defendant repeats and incorporates herein by reference the allegations contained in paragraphs 1, 2, and 24 to 29, inclusive, hereof.

35. Plaintiff has extensively advertised its lines of antennas, including antennas for home radio and television reception which are directly competitive with antennas of Defendant, JFD Electronics Corporation. In the course of such advertising,

and as a part thereof, Plaintiff has made factual and truthful comparisons of certain of its antennas with certain of said competitive antennas of that Defendant.

36. Subsequent to the aforesaid advertising by Plaintiff and as recently as the last few months prior to the filing of this Complaint, Defendant, JFD Electronics Corporation, well knowing the facts set forth in the foregoing paragraph 35 hereof and with the deliberate purpose and malicious intent to injure the Plaintiff in its good name and its business reputation for honesty, reliability, and fairness in its dealings with the antenna industry, composed, printed, and distributed widely in said industry a large number of circular letters accusing Plaintiff, by name, with making "mis-statements and distortions of the truth***" in the advertising and promotion of Plaintiff's antennas.

37. The foregoing accusation of Plaintiff by Defendant, JFD Electronics Corporation, was libelous per se and has greatly injured Plaintiff in its good name and business reputation, for which Plaintiff claims general damages in the amount of one hundred thousand dollars ($100,000.00) and special damages as may be discovered and proved at the trial.

38. Subsequent to the filing by Defendant, The University of Illinois Foundation, of the aforementioned Civil Action No. 65C220 in this Court, and long after Defendant, JFD

Electronics Corporation, knew or should have known that Plaintiff was not a party to that suit and could not be made a party thereto, that latter Defendant, with the deliberate purpose and malicious intent to injure Plaintiff in its business of selling its antennas, distributed widely in the antenna industry copies of an earlier news release which originally emanated from the Public Information Office of The University of Illinois and which asserted, under date of "2/12/65,"--

> "URBANA, Ill.--The University of Illinois Foundation today instituted suits in United States District Court in Chicago against the Finney Manufacturing Co. and the Finney Co., both of Bedford, Ohio, and the Allied Radio Corp., Chicago, for infringement of a patent owned by the Foundation.
>
> "The patent (U.S. No. 3150376) covers radio and television antennas of the log periodic type. It is alleged that this patent is being infringed by certain antennas manufactured by Finney Manufacturing Co. and sold by Allied Radio Corp.
>
> "Exclusive manufacturing rights under the patent in suit are held by the JFD Electronics Corp. of New York."

39. The aforementioned news release as distributed by Defendant, JFD Electronics Corporation, was false in that no suit by The University of Illinois Foundation or any other party had been instituted in the United States District Court in Chicago or in any other court against Plaintiff or its affiliated concern, Finney Manufacturing Company, for infringement of any patent.

40. The deliberate and malicious intent and purpose of Defendant, JFD Electronics Corporation, in distributing copies of the aforesaid news release was to create and perpetuate a reluctance among customers in the antenna business to purchase antennas from Plaintiff because of an unfounded concern that Plaintiff would be unable to continue supplying such antennas and/or that said customers would subject themselves to the risks of incurring expense and inconvenience and a reflection on their own business reputations by becoming involved as defendants in additional patent infringement suits brought by a respected, non-profit institution of the character and stature of The University of Illinois Foundation; and Plaintiff has thereby been damaged in its business by loss of sales from and loss of good will among its customers and potential customers in the antenna business, for which Plaintiff claims general damages in the amount of an additional one hundred thousand dollars ($100,000.00) and special damages as may be discovered and proved at the trial.

WHEREFORE, plaintiff prays:

1. That a declaratory judgment be entered herein adjudging that United States Letters Patent Nos. Re. 25,740 (formerly 3,108,280) and 3,150,376 are, as to each of the claims therein, invalid and void in law and not infringed by any product

made, sold, or used by Plaintiff.

2. That Defendant, JFD Electronics Corporation, its agents, servants, employees, and attorneys be appropriately enjoined, preliminarily and permanently, from using references to U. S. Patents or using either of the words "patents" or "patented" on or in connection with the sale of its so-called "Log-Periodic" antennas in a manner calculated to misrepresent that those antennas are patented or are covered by specific patents not applicable thereto.

3. That Defendant, JFD Electronics Corporation, its agents, servants, employees, and attorneys be preliminarily and permanently enjoined from asserting or threatening to assert against customers or potential customers of Plaintiff or users of Plaintiff's products, any charge of infringement of United States Letters Patent Nos. Re. 25,740 (formerly 3,108,280) and/or 3,150,376 based on the manufacture or sale of antennas by Plaintiff and/or the resale or use thereof by others.

4. That a preliminary and permanent injunction be issued restraining both of the Defendants from filing or prosecuting any other civil action or actions against Plaintiff and/or its customers for infringement of United States Letters Patent Nos. Re. 25,740 (formerly 3,108,280) and/or 3,150,376 based on the manufacture or sale of antennas by Plaintiff and/or the resale or use thereof by others.

5. That Defendant, JFD Electronics Corporation, its agents, servants, employees, and attorneys be preliminarily and permanently enjoined from further acts of unfair competition of the character charged by Plaintiff in this action, in such terms as the Court may deem appropriate.

6. That Defendant, JFD Electronics Corporation, be preliminarily and permanently enjoined from the continued false use of patent numbers and references to patents in violation of Title 35, United States Code, Section 292(b).

7. That Defendant, JFD Electronics Corporation, be fined five-hundred dollars ($500.00) for each instance of its false patent marking in violation of Title 35, United States Code, Section 292(b), and that Plaintiff be awarded one-half of the fine imposed upon said Defendant by this Court for such false patent marking, as also provided by Title 35, United States Code, Section 292(b).

8. That Plaintiff be awarded damages against Defendant, JFD Electronics Corporation, for unfair competition in an amount sufficient to compensate Plaintiff for its lost profits and other damages incurred as aforesaid.

9. That Plaintiff be awarded general damages against Defendant, JFD Electronics Corporation, in the amount of two hundred thousand dollars ($200,000.00) for libel, and such additional special damages therefor as may be proved by Plaintiff at the trial.

10. That Plaintiff be awarded its costs and reasonable attorney's fees incurred in connection with the institution and prosecution of this civil action, and such other and further relief as justice may require.

MASON, KOLEHMAINEN, RATHBURN & WYSS

By M. Hudson Rathburn

20 North Wacker Drive
Chicago, Illinois 60606
FInancial 6-1677
Attorneys for Plaintiff

Date:

OF COUNSEL:

John F. Pearne
920 Midland Building
Cleveland, Ohio 44115

PROOF OF SERVICE

One copy of the foregoing AMENDED COMPLAINT was mailed this 17th day of September, 1965, postage prepaid, to each of the following: Silverman & Cass, 105 West Adams Street, Chicago, Illinois 60603 and Merriam, Marshall, Shapiro & Klose, 30 West Monroe Street, Chicago, Illinois 60603, attorneys for Defendants JFD Electromics Corporation and The University of Illinois Foundation, respectively.

John F. Pearne
Attorney for Plaintiff, The Finney Company