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

THE UNIVERSITY OF ILLINOIS FOUNDATION, Plaintiff and Counterclaim Defendant, v. BLONDER-TONGUE LABORATORIES, INC., Defendant and Counterclaimant, v. JFD ELECTRONICS CORPORATION, Counterclaim Defendant.	CIVIL ACTION No. 66 C 567

ANSWER AND COUNTERCLAIM

ANSWER

Now comes the defendant, Blonder-Tongue Laboratories, Inc. (hereinafter referred to as BT), by its attorneys, and answers the complaint herein, pursuant to this Court's order of August 12, 1966, as follows:

1, 2, 3, 4. Paragraphs 1, 2, 3 and 4 of the complaint are admitted.

5. Answering paragraph 5 of the complaint, defendant denies that United States Letters Patent No. 3,210,767 was either duly or legally issued to plaintiff, as assignee of Dwight E. Isbell, though admitting that such a patent in fact exists; and defendant is without sufficient information and belief to admit or deny the remaining allegations of this paragraph and therefore leaves plaintiff to its proof.

6. Defendant denies each and every allegation of paragraph 6 of the complaint.

Further answering, defendant states that (a) the accused antennas do not incorporate any patented invention described or properly claimed in the patent in suit and do not infringe said patent, assuming, arguendo, its validity; and (b) that said patent in suit is in fact invalid and unenforceable against defendant for the reasons set forth in the counterclaim herein.

WHEREFORE, defendant prays for the dismissal of the complaint and for such other and further relief in the premises as to this Court may seem just and proper.

COUNTERCLAIM

Now comes the defendant BT, by its attorneys, and by way of counterclaim to the complaint herein, alleges as follows:

1. Counterclaimant Blonder-Tongue Laboratories, Inc. (BT) is a corporation duly organized and existing under the laws of the State of New Jersey, having a principal place of business at 9 Alling Street, Newark, New Jersey, where it manufactures and sells for distribution throughout the United States, including within the Northern District of Illinois, antennas under its trademarks GOLDEN DART and GOLDEN ARROW.

2. The University of Illinois Foundation (Foundation) is a non-profit corporation organized and existing under the laws of the State of Illinois, having its place of business at 224 Illini Union, Urbana, Illinois; and, upon information and belief, said Foundation is wholly owned and controlled by the University of Illinois of Urbana, Illinois, being an alter ego of said University, which, in turn, is a public institution supported principally by funds derived from the State of Illinois, the United States Government and other public sources and exempted from taxation upon the representation that it is a non-profit educational institution.

3. JFD Electronics Corporation (JFD), upon information and belief, is a corporation organized under the laws of the State of New York, having places of business and doing business at 6330 West Hermione Street and at 6139 West Touhy Avenue, Chicago, Illinois, where, and elsewhere within the Northern District of Illinois, it has engaged jointly with the said Foundation, and severally, in acts of unfair competition and other actionable causes hereinafter set forth.

Count I — For Unfair Competition

4. This cause of action arises by virtue of diversity of citizenship and an amount in controversy exceeding ten thousand dollars, exclusive of interest and costs, and under the unfair competition and related laws of the State of Illinois and under 28 U.S.C. 1338.

5. On information and belief, the plaintiff and counterclaim defendant, said Foundation, after acquiring rights under certain so-called log-periodic antenna designs, including title to Isbell Patent No. 3,210,767, the subject matter of the complaint herein, entered into a commercial business arrangement, including a license agreement, with counterclaim defendant JFD to exploit the said antenna designs and patent in the field of receiving antennas for television

and FM broadcast, under the terms of which the antennas for said field would be exclusively manufactured and sold by JFD and distributed by JFD from its places of business in Chicago, Illinois and elsewhere, and moneys received therefrom would be divided between JFD and the Foundation in accordance with certain percentage figures.

6. Further in accordance with said commercial business arrangement, on information and belief, the Foundation undertook the primary responsibility of policing said patent and of aiding the commercial sales of the antennas of JFD, in which, as before stated, it shared in the sales returns, by news releases and other advertising media using the name of said Foundation and threatening all manufacturers in the industry (and thus counterclaimant BT) with suit if any so-called log-periodic antennas were made and sold by them, and by announcements and mailings to customers of such other manufacturers, including customers of BT, of suits which were filed and intended suits, regardless of whether such antennas were actually covered by said patent or any other patent of the Foundation or JFD.

7. On information and belief, said Foundation and JFD conspired unlawfully to restrain competition in the field of television and FM broadcast receiving antennas, and jointly and severally have engaged in unlawfully restraining such

competition by at least the following acts and possibly others, presently unknown to counterclaimant, but as to which counterclaimant prays leave to add by amendment to this counterclaim upon completion of discovery herein:

(a) Publication of copious advertisements in national, technical and popular publications and elsewhere, circulated throughout the United States, including the Northern District of Illinois, using the names of both said Foundation and JFD, knowingly and falsely representing the scope of their patent coverage as embracing all antennas of the so-called log-periodic type, and generally threatening every antenna manufacturer (which includes counterclaimant BT) and customers in said field with patent suit even before the issuance of said Patent No. 3,210,767, illegally to restrain competition in the manufacture and sale of all log-periodic type antennas, including those clearly outside such patent coverage.

(b) Conspiring to use and using the name and prestige of the supposedly non-profit tax-free educational and research institution, said Foundation, in falsely representing to the public, in newspapers, sales catalogs and magazine advertisements, within the Northern District of Illinois and throughout the country, that only said JFD had a right to make log-periodic antennas, and that only the antennas of JFD had certain

desirable performance characteristics, thereby illegally influencing the public, through the prestige of said Foundation, to patronize only the defendant JFD.

(c) Conspiring to join and joining forces in a nationwide advertising campaign and otherwise misusing the name, influence, reputation and prestige of said Foundation and the tax-exempt University of Illinois in a crass commercial activity dedicated to the restraint of competition by such false and misleading statements above set forth, and by falsely libeling and disparaging competitors' businesses and antenna products, including those of counterclaimant BT, by maliciously misleading statements that none of such competitors could use the log-periodic principle or get the allegedly desirable performance attainable therewith.

(d) Committing the acts aforesaid to create and perpetuate a reluctance in the trade and among prospective customers to purchase antennas from counterclaimant, and to create an unjustified concern that counterclaimant would not be able to continue to supply their antennas and that purchasers would subject themselves to the risk of incurring expense and inconvenience and of impairment of business reputation by being sued for patent infringement by said Foundation.

(e) Conspiring to sue and suing counterclaimant BT (and other manufacturers) under said Patent No. 3,210,767, in the United States District Court for the Northern District of Illinois, Eastern Division, in a suit wherein the complaint on its face shows that said Foundation knew it had no jurisdiction over counterclaimant BT, but with the clear purpose of providing an excuse for each of said Foundation and JFD, within a few days after the filing of such complaint, to issue separate and independent news releases announcing suit against the counterclaimant BT, by name, and thereupon circularizing copies of said news releases to many customers of counterclaimant BT, both within the Northern District of Illinois and throughout the country, illegally to mislead said customers into thinking that counterclaimant BT had been properly sued and illegally to induce said customers to cease buying from counterclaimant and to purchase only from JFD.

(f) Conspiring to perform and performing the acts set forth in (a) through (e) above, while, on information and belief, knowing that BT, even before the issuance of said Patent No. 3,210,767, had been marketing its antennas marked "patent pending" and that such antennas were not infringements of said Patent No. 3,210,767, wherefore neither the Foundation nor JFD even bothered, prior to instituting suit, to send any formal notice of infringement to counterclaimant or formally

to discuss the same with it.

(g) Conspiring further to mislead the public by deliberately changing the electrical and mechanical design of many of the JFD antennas over to the design of BT's own antennas, and thereafter falsely representing to the public that these changed designs were actually those of the Foundation and JFD and were covered by the said Foundation patent, thus libeling the rights and title of BT in and to its own antennas.

(h) Representing and publishing in advertising, sales literature and instructional material accompanying the JFD antennas and under the names of both said Foundation and JFD, that said antennas operate according to a patented log-periodic formula; whereas in actual fact said antennas were not then patented, were not log-periodic, did not operate according to the so-called log-periodic formula, and such formula as such was not patented — all facts then well-known to said Foundation and JFD but which, on information and belief, they deliberately chose to disregard in their intent to mislead and deceive the public, not only in unfair competition with counterclaimant, but in violation of the false patent marking provisions of 35 U.S.C. 292, as well.

(i) Damaging the business of counterclaimant by loss of sales and good will among its customers and potential

customers and by the resulting diminution of the position and value of counterclaimant BT's own patented antennas;

(J) And, as part of the campaign unfairly to compete with counterclaimant and to try to restrain it from becoming established as a serious antenna competitor of JFD, deliberately inducing the manager and organizer of BT's complete antenna business recently to leave the employ of BT and to enter the employ of JFD, knowing that such manager was the sole and key executive in BT's antenna business and that his loss would greatly impair BT's ability to maintain continuity in the development of its antenna business.

Count II — Anti-Trust

8. This count arises under the anti-trust laws of the United States, including the Sherman and Clayton Acts, as amended.

9. Counterclaimant reasserts the allegations of paragraphs 1-7 of this counterclaim, the acts complained of therein constituting clear violations of the anti-trust laws of the United States, as well, particularly in view of the fact that said JFD is one of the largest manufacturers of antennas for said field in the United States.

Count III — Patent Infringement

10. This count arises under the patent laws of the United States.

11. Counterclaimant reasserts the allegations of paragraphs 1-9 of this counterclaim.

12. Counterclaimant BT is the owner of United States Letters Patent No. 3,259,904 "Antenna Having Combined Support and Lead-In" which duly and legally issued on July 5, 1966, and a copy of which is annexed hereto as Exhibit A.

13. The patent, Exhibit A, covers the GOLDEN DART and GOLDEN ARROW antennas manufactured by BT and which said Foundation charged infringe the Isbell Patent No. 3,210,767, the subject matter of the complaint in this litigation.

14. As set forth in paragraph 7(g) hereof, JFD and the Foundation changed the design of certain of their antennas to copy the invention covered by the BT patent, Exhibit A, including the JFD models LPV-VU18, 15, 12, 9 and 6, LPV-TV 19, 16, 13 and 10, and possibly others presently unknown to counterclaimant, and, since the issuance of counterclaimant's patent, and within six years of the filing of this count, have been inducing the public, within the Northern District of Illinois and elsewhere in the United States,

to purchase said certain antennas including said Models manufactured by JFD in clear infringement of the rights covered by said BT patent, Exhibit A; and JFD and the Foundation, pursuant to their commercial business arrangement set forth in paragraphs 5-7 hereof, are offering for sale, stocking, distributing and selling, within the Northern District of Illinois and elsewhere in the United States, antennas including said Models above, that embody the invention of and infringe said BT patent, Exhibit A, and will continue so to do unless enjoined by this Court.

Count IV — Declaratory Judgment for Patent Invalidity and/or Non-Infringement of Patent No. 3,210,767

15. Counterclaimant reasserts the allegations of paragraphs 1-14 of this counterclaim.

16. From the complaint herein, it is evident that a justiciable controversy exists between the parties under the patent laws of the United States, subject to the Declaratory Judgment Act.

17. The BT antennas charged in the complaint as infringements of the Isbell Patent No. 3,210,767, do not use the invention purported to be covered by the claims of said patent, but, to the contrary, are designed in accordance with

BT's own patent, Exhibit A, and do not infringe the Isbell Patent No. 3,210,767.

18. Isbell Patent No. 3,210,767 is invalid and void for double-patenting over the Foundation's earlier Patent No. 3,108,280, issued October 22, 1963, and possibly other patents, and since Isbell is not the first inventor of the subject matter purported to be covered thereby, the same having previously been invented by others and having been published and/or placed on public sale in this country more than one year prior to the application for said Isbell patent by the following, and possibly others, whom counterclaimant prays leave to add by amendment to this count, after discovery proceedings:

U.S. Patent No. 2,429,629, issued October 28, 1947 to A. G. Kandoian

2,433,804, issued Dec. 30, 1947 to I. Wolff

2,375,580, issued May 18, 1945 to H. O. Peterson

2,192,532, issued March 5, 1940 to M. Katzin

2,149,726, issued March 7, 1939 to P. S. Carter.

19. Isbell Patent No. 3,210,767 is unenforceable against counterclaimant in view of the inequitable conduct of the Foundation above set forth.

WHEREFORE, counterclaimant prays for preliminary and permanent injunctions restraining the acts of unfair competition, anti-trust violation and patent infringement complained of herein, and for a declaratory judgment that counterclaimant BT's antennas do not infringe Isbell Patent No. 3,210,767 and/or that said patent is invalid, void and unenforceable, and, in view of the wanton character of the illegal conduct of the Foundation and JFD, triple damages and attorneys fees, as provided for by statute, together with such other and further relief as may seem proper to the Court.

HOFGREN, WEGNER, ALLEN, STELLMAN & McCORD

By _____
Attorneys for Defendant and
Counterclaimant

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OF COUNSEL

RECEIPT of two copies of the above Answer and Counterclaim acknowledged this 1 day of September, 1966.

_____
Attorney for Plaintiff and
Counterclaim Defendant