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

RECEIVED
JAN 23 1967
ELBERT A. WAGNER, JR., Clerk
United States District Court

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

AMENDED ANSWER AND COUNTERCLAIM

AMENDED ANSWER

Now comes the defendant, Blonder-Tongue Laboratories, Inc. (hereinafter referred to as BT), by its attorneys, and answers the amended complaint herein, pursuant to this Court's order of January 16, 1967, as follows:

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

4. Answering paragraph 4 of the amended 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.

5. Answering paragraph 5 of the amended complaint, defendant denies that United States Letters Patent No. Re.25,740 was either duly or legally issued to plaintiff, as assignee of Paul E. Mayes et al, 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 amended complaint.

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

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

AMENDED COUNTERCLAIM

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

1, 2, 3. Counterclaimant realleges paragraphs 1, 2 and 3 of the counterclaim.

Count I - For Unfair Competition

4. Counterclaimaint realleges paragraph 4 of the counterclaim.

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 and Mayes et al Patent Re.25,740, the subject matter of the amended complaint herein, entered into a commercial business arrangement, including a license agreement, with counterclaim defendant JFD to exploit the said antenna designs and patents 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 patents 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 patents 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 amended 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 Patents No. 3,210,767 and Re.25,740, illegally to restrain competition in the manufacture and sale of all log-periodic type antennas, including those clearly outside such patent coverage.

7(b) through 7(j). Counterclaimant realleges paragraphs 7(b) through 7(j) of the counterclaim.

Count II - Anti-Trust

8 and 9. Counterclaimant realleges paragraphs 8 and 9 of the counterclaim.

Count III - Patent Infringement

10 through 13. Counterclaimant realleges paragraphs 10 through 13 of the counterclaim.

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 through 14 of this amended counterclaim.

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

17. The BT antennas charged in the amended 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 & 19. Counterclaimant reasserts the allegations of paragraphs 18 and 19 of the counterclaim.

Count V - Declaratory Judgment for Patent Invalidity and/or Non-Infringement of Patent Re.25,740

20. Counterclaimant reasserts the allegations of paragraphs 1 through 14 of the amended counterclaim.

21. From the amended 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.

22. The BT antennas charged in the amended complaint as infringements of Mayes et al Patent Re. 25,740 do not use the invention purported to be covered by the claims of said patent and do not infringe Mayes et al Patent Re.25,740.

23. Mayes et al Patent Re.25,740 is invalid and void as Mayes and Carrel were not the first inventors 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 the Mayes et al original patent, by others, whom counterclaimant prays leave to add by amendment to this count, after discovery proceedings.

24. Mayes et al Patent Re.25,740 was invalidly reissued as there was no error without deceptive intention in the original patent, as required by 35 U.S.C. 251.

25. Mayes et al Patent Re.25,740 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 or Mayes et al Patent Re.25,740 and/or that said patents are 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 /s/ Richard S. P Rines
Attorneys for Defendant and
Counterclaimant

January 23, 1967.

RINES AND RINES
Robert H. Rines
David Rines
No. 10 Post Office Square
Boston, Massachusetts 02109

OF COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Amended Answer and Counterclaim was mailed by first class mail this 23rd day of January, 1967, to each of the following:

Merriam, Marshall, Shapiro & Klose
Attorneys for Plaintiff and
Counterclaim Defendant
30 West Monroe Street
Chicago, Illinois 60603

Silverman & Cass
Attorneys for Counterclaim Defendant
105 West Adams Street
Chicago, Illinois 60603.

/s/ Richard S. Phillips