DOCKETED

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

FILED

APR 27 1967

O'CLOCK
GILBERT A. WASHER, JR.
CLERK

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

The deposition of HJALMAR W. JOHNSON, a witness in the above-entitled cause, taken at the instance of the defendant and counterclaimant, Blonder-Tongue Laboratories, Inc., pursuant to notice and pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Lucille E. Moore, a notary public in and for the County of Cook and State of Illinois, at 30 West Monroe Street, 10th Floor, Chicago, Illinois, commencing at 2:30 o'clock p.m. on October 26, 1966.

APPEARANCES:

MR. WILLIAM A. MARSHALL and
MR. BASIL P. MANN
(Merriam, Marshall, Shapiro & Klose,
30 West Monroe Street, 10th Floor,
Chicago, Illinois),

on behalf of the Plaintiff and
Counterclaim Defendant;

MR. ROBERT N. RINES
(Rines & Rines,
10 Post Office Square,
Boston, Massachusetts),

and

MR. RICHARD S. PHILLIPS
(Hofgren, Wegner, Allen,
Stellman & McCord,
29 N. Wacker Drive, Suite 2200,
Chicago, Illinois),

on behalf of the Defendant
and Counterclaimant

MR. MYRON C. CASS and
MR. SIDNEY N. FOX
(Silverman & Cass,
105 W. Adams Street, Suite 1990,
Chicago, Illinois),

on behalf of Counterclaim
Defendant.

ALSO PRESENT:

Mr. Isaac D. Blonder

- - -

I N D E X

Deposition of Hjalmer W. Johnson

Exhibits:	Description	Identified
B-1	Meeting of Board of Directors of Foundation marked "Infringement suit"	17
B-2	News Release No. A00344.....	30
B-3	News Release No. A00345.....	31
B-4, B-4-a	Radio & Television Weekly ad (Feb. 10, 1964 -BT-12 & -13)...	36
B-5 (a, b, c)	BT Sheets 57 through 60	49
B-6 (a, b, c)	BT Sheets marked 61 thru 64 ...	49

MR. PHILLIPS: Mr. Mann, this morning you gave us a certain collection of documents.

This was, as we understand it, in reply to a letter directed to Mr. Marshall, dated October 7, outlining various documents.

MR. MANN: As modified by our conference last Monday in your office.

MR. PHILLIPS: Yes; I would like to go through the letter and each of the items and make it clear what modifications were made, for the record, and whether the documents that you gave us this morning, and I believe you said you had some additional documents to give us when they were copied, to make sure whether they represent all of the documents which we have requested, so that it will be clear what exceptions there are.

MR. MANN: Why don't you proceed to do so.

MR. PHILLIPS: Copies of all news releases, public announcements and advertisements emanating from the University of Illinois and the University of Illinois Foundation, relating to the log-periodic antennas covered by the patent in suit, and relating to any and all licenses under such patent and any and all litigation or intended litigation involving

the patent in suit, including but not limited to the present litigation with Blonder-Tongue.

We have three news releases. We have some correspondence regarding alleged infringement in 1964 with SWAN antenna, another firm in Capetown. I find correspondence with R&S Electronics Corp., JCK, KAY-TOWNES antenna.

MR. MANN: You notice all of these documents have, or should have, we intended to have production numbers, an "A" followed by a 5-digid number.

If I inadvertently omitted to have numbers put on any documents that I gave you this morning, I would appreciate your identifying them so that we could have numbers put on.

Why don't you identify the ones.

MR. MARSHALL: By production numbers, Mr. Phillips.

MR. PHILLIPS: Off the record for a moment.

(Off the record.)

MR. PHILLIPS: We will resume the summary of the documents furnished us by the Foundation at a later point in the record.

HJALMAR W. JOHNSON,

having been first duly sworn, deposeth and saith as follows:

DIRECT EXAMINATION

BY MR. RINES:

Q Please state your name, residence and occupation for the record.

A My name is Hjalmar W. Johnson -- retired.

Q What was your occupation before retirement?

A I was with Inland Steel Company.

Q Have you had any association with the University of Illinois Foundation, subsequent to your retirement?

A I had an association with them previous to and since my retirement.

Q Will you tell us what that association has been and is?

A I was a member of the Foundation. At some stage I was elected to the board of the Foundation.

A year ago I was elected president of the Foundation. And recently I was re-elected.

Q Could you briefly tell us what the purpose of the Foundation is?

A The purpose of the Foundation is trying to assist the University in carrying out its program of an educational institution.

Q By "University" you mean the University of Illinois?

A University of Illinois.

Q Does this embrace all kinds of assistance, in terms of financial assistance, services, personnel; in what way do you generally do this assistance?

A Essentially we operate as a fund raising organization to provide funds.

Q For the University?

A For various needs in the whole university program.

Q Your organization is a non-profit foundation?

A That's right.

Q Do you dispense these funds for particular purposes at the University of Illinois, or do you just raise the funds and give them to the University to use for anything they desire?

A Most of the funds which we raise are earmarked by the donor for specific uses.

It is our job to see to it that the money

goes for those specific uses.

Some money that comes to us has no strings on it, so that money we can allocate to various uses.

Q Do you have on your board individuals who are also members of the Board of Trustees or officers of the University of Illinois?

A President Henry is a member of the Board of the Foundation. The Board of Trustees of the University has one member on the Foundation board.

The treasurer of the Foundation is also the Controller of the University.

Outside of that, all others are elected from the membership of the Foundation.

Q Now, those interlocking members that you have just referred to, that serve both with the University of Illinois and the University of Illinois Foundation, are required, are they not, by the bylaws to be members of the board of the Foundation?

A I can't answer that.

Q You don't know?

A I don't know.

Q So far as you know, these people holding those offices have always been on the board?

A That's right.

Q I have read with considerable interest, and I wish to congratulate you on it, your annual report for 1965-1966.

51 And I would like to turn to those matters on which you reported which deal with the patent program, because that is at the root of the problem that we are here today on.

I note that in your introduction you point out that the patent program now carried on by an auxiliary organization -- University Patents, Inc., of Illinois, has launched a promising program.

Would you tell me, just briefly, what is University Patents, Inc., and how is it an auxiliary organization?

A Well, it came into being as a part of the Foundation. And the purpose of the University Patents, Inc. is to handle the patents which originate at the University, and were turned over to the Foundation to handle. Because this got to be too large a problem, and not being dealt with well, we formed University Patents, Inc.

And then it was expected that maybe, in time, it would find other uses, would develop other uses.

Q You stated that the University turned over patents to the Foundation, and when I refer to "Foundation," I mean the University of Illinois Foundation.

A That is correct.

Q And when I refer to the "University" I mean the University of Illinois.

Could you generally tell us what kind of a relationship underlies the turning over of patents by the University to the Foundation?

A I can't tell you any details. All I know is that they originate at the University.

Q When you say, originate, are these inventions that are made by University staff members?

A As I understand it.

Q And is it fair to say that when a University professor or staff member makes an invention, the University may turn that invention over to the Foundation to look into commercial uses?

A I assume that is the purpose.

Q And the Foundation, if it finds those uses, decides whether it wants to take out patents and whether it wants to grant licenses to raise money under these inventions?

A That's right.

Q Are those funds that are received under this program by the Foundation also given to the University without reference to how they will be used, or do you designate what the proceeds of the patent licensing program are to be used for by the University?

A The proceeds go into the Foundation's general fund.

Q And what do you do with that general fund?

A We spend it for needs as they arise in the educational program, as approved by the Board of Trustees of the Foundation.

Q You indicate that at the present time this patent management, or patent licensing, is being conducted for the Foundation by University Patents, Inc.?

A That's right.

Q On page 12 of your Annual Report you define University Patents, Inc. as an adjunct of the Foundation, and say that the Foundation received reports from the various university departments of 37 new inventions.

Am I interpreting that to mean that during the fiscal year 1965-66, 37 new inventions that were made by staff members in the various university departments were reported to the Foundation to look into the commercial utilisation?

A I don't know.

Q Well, did you write the annual report?

A No.

Q Oh, you didn't write it?

A No.

Q It was written for you?

A That's right.

Q Did you read it before it was sent out?

A No.

Q Is it a fact that in this report it purports to be, however, the President's statement by Hjalmar W. Johnson, President of the Foundation?

A Yes.

Q But it was ghost written, is that a fair statement?

A It was written by the staff, the Foundation staff.

Q Without your reading it?

A That's right.

Q During the course of the year, this past year, for example, in connection with your duties as president, did you call any meetings of the officers or boards at which the patent development program was discussed?

A We have a meeting of the board generally once a month.

Q Do you attend those meetings?

A Yes, most of them.

Q Do you officiate at those meetings?

A I do.

Q Do you recall whether, at any of those meetings during the past year, some of these new inventions from the various university departments were reported to you as having been received by the Foundation?

A From the University of Illinois?

Q Yes, sir.

A I remember vaguely at some of the meetings there would be mention made of them.

Q Yes?

A And how they were getting along at University Patents, Inc.

Q Do you recall any discussions with regard

to any lawsuits that were pending or were about to be brought in connection with any of those patents?

A I vaguely remember one meeting in which there was a discussion. There was reported to the Board that there had been some infringements on the antenna patent, with the recommendation that we proceed, that the Foundation proceed with the suit.

And such action was taken.

Q Could you place roughly when that meeting would have been? I realize you can't say which one it was, but was it early in 1965, to the best of your recollection, or late '65, or this year, early '66, or when do you think that meeting took place?

A I would be guessing, but I would say it was on the order of a year ago.

Q About a year ago?

A I don't know for sure.

Q It would have been to the best of your recollection something like October of 1965?

A I wouldn't say that.

Q Well, that is a year ago.

A I know it is, maybe it was nine months ago, or maybe eight months ago, I don't know.

Q Within the year?

A It would seem to me that way.

Q Do you remember who was at that meeting, what members of the Board were present?

A No, I do not.

Q Records are kept of the board meetings?

A That's right.

Q Am I right in assuming that Mr. James C. Colvin is the secretary?

A That's right.

Q And he would keep the records of that meeting?

A Yes.

Q So he would know who was there, is that correct?

A Yes.

Q Is Mr. Colvin, as indicated in your Annual Report, also given a title under the heading "staff member" as Executive Director, in addition to the secretary?

Could you tell us what the Executive Director is, roughly what his duties are?

A Roughly, his duties are running the Foundation under the direction, the general direction of the Board of Directors.

Q Do you remember who made the report at this meeting with regard to the matter of these infringements, and the recommendation that the board consider legal action?

A I can't remember who it was. I have a pretty good idea who it was, but I don't remember.

Q Would you tell us whom you think it was?

A I think it was Merriam, Bob Merriam.

Q Robert Merriam, and he is the counsel of record in this -- or who is Robert Merriam?

A He is president of University Patents, Inc.

Q Do you know whether he has any relationship to Mr. Charles Merriam of the firm of Merriam, Shapiro & Marshall, of record in this litigation?

A Yes, Bob Merriam is the brother of Charles Merriam.

Q Do you remember the names of any of the infringers that may have been mentioned at this meeting?

A I do not. I mean from the meeting I don't remember a single name.

Q Do you remember whether there was more than one infringer discussed?

A I can't answer that.

Q Do you remember whether there was more than one patent that was asserted to be infringed?

A I don't know that.

Q What action was asked of the Board in this report of Mr. Merriam's?

A He reported that they had investigated and there had been infringement of the antenna patent which we had, and recommended that we take action on this infringement.

Q You said "they investigated"; whom did you mean?

A I don't know who is "they" -- he then.

Q He investigated, all right.

52 And did the Board take any formal action on that recommendation?

A They did.

Q Would there be recorded in the minutes a vote of the Board with regard to that?

A Yes, what action the Board took would be recorded.

MR. MANN: We have here a report, obtained by telephone this afternoon, from the Foundation office, giving a report from

the Board of Directors of the Foundation relative to this meeting that Mr. Johnson has been discussing.

Now we have no objection to reproducing this report, with this modification.

The report lists six companies as infringers. Suits have actually been filed against three of them, and I do not believe that we will give you the names of the other three at this time.

MR. RINES: Subject to our later feeling that those other three names are important, we will accept the copy of that report for the present, with those names deleted.

MR. MANN: All right, on that basis we will give you a copy of this report.

MR. RINES: Will you mark this as Exhibit B-1 for identification.

(Said document was marked Exhibit B-1 for identification.)

BY MR. RINES:

Q Mr. Johnson, does this sheet that your counsel has given us, marked "Infringement Suit" and bearing the legend B-1, refresh your recollection

of the meeting to which you referred?

A No.

Q Do you think it is the same meeting that you were discussing?

A Yes.

Q Would you say -- do you see any inaccuracies in this document that do not jibe with your recollection?

A No.

Q Who was the Mr. Thomas mentioned in the last sentence, if you know?

A He is one of the members of the Board.

Q Do you know his first name?

A No, I don't, I don't recall, I don't know what his first name is.

Q Would that be J. G. Thomas?

A That's right.

Q I note that this document states that a motion was made that legal action be taken, as outlined.

And I gather that the motion was carried by the Board, is that correct?

A That's right.

Q And the legal action seems to be identified

in the end of the preceding paragraph that "The Foundation plans to file against the local distributors in the Chicago area who are selling the products of the following six companies," and then Blonder-Tongue Laboratories, Inc. appears as company No. 2, is that correct?

A I don't know.

Q I mean, did I read that correctly?

A Oh, you read it correctly, yes.

Q Did you have any knowledge that the suit that was brought was not just brought against the distributors of Blonder-Tongue in the Chicago area but against Blonder-Tongue Laboratories itself?

A I have no idea. All I know is that Bob Merriam reported on infringement. And it was discussed whether or not we should let people infringe or whether we should take some action against them.

And we decided to take the action he recommended.

Q Did you know whether you had taken any previous action with regard to antenna patents against other people?

A I don't know.

Q You don't know now?

A No.

Q And you didn't know then?

A No.

Q Do you know whether you have in the Foundation actually secured any licensees under the antenna patent that you have referred to?

A Whether we secured any licensees -- we are getting some royalties.

Q Do you know from whom?

A No, I don't.

Q Does the name JPD mean anything to you?

A I remember that whoever it was it was a series of initials.

Q Do you recall whether any action of the Board was requested with regard to granting a license under these antenna patents to JPD or any other party?

A No, no, I don't.

Q You don't ever remember voting on any motion to grant the license?

A No, I don't.

Q How do you know that you got income from such a license?

A Once a month we get a statement, made by the controller, as to what moneys come in and

what we have spent and where it came from.

Well, it is given to us in a good deal of detail.

Q Do you usually review that statement each month?

A Yes.

Q You mentioned the controller; could you tell us his name?

A Herb Farber. H. O. Farber.

Q He is the controller of the University of Illinois, but the treasurer of the University of Illinois Foundation, is that correct?

A That's right.

Q Do you know whether you received any income from any other patent licenses besides these antennas over a period of the last year?

A Well, I think we received some income from a dentifrice patent.

Q Would those be the only two patents that you presently recollect you received income from, the antenna patent and the dentifrice patent?

A That is all I remember.

Q Do you recall which income was larger?

A No.

Q Do you recall whether they were about the same?

A I don't know.

Q How important to the Foundation was this income?

A Was during the past year?

Q Yes, the past year.

A Oh, it is important enough that it is of interest to us.

Our dentifrice patent has been the source of satisfactory income, and this is why we persist.

Q In connection with the dentifrice patent, do you know whether you had just one licensee or a number of licensees?

A I don't know.

Q You don't know whether more than one toothpaste company uses your patent?

A I don't know.

Q Can you tell me what has been the policy of the Foundation with regard to giving licenses under its patents to reliable, interested, commercial companies, who request a license?

A Well, we have sought too, when we had a patent, to get it in the hands of somebody so

that it will produce revenue for us.

Q Was it the Foundation policy to just give it to one person exclusively, or to provide any qualified company who wished to use it the right to do so, and to pay income?

A We use counsel's recommendation. All we were interested in was maximum revenue to the Foundation.

Q Is the sole objective of the Foundation the raising of revenue or the raising of revenue in what might be considered the best interests of the University of Illinois for its educational and other purposes?

A We assumed our job was to handle such patents so as to gain the maximum amount of revenue for the Foundation.

Q Did you visualise that the Foundation, or the University, would play any active part in selling the patented items that you were licensing?

A When you say the University or the Foundation, as far as we are concerned it is the Foundation. We are not interested in the University.

Q All right. Let us say the Foundation.

Did you consider that the Foundation's

function was merely to grant a license, or did you consider that the Foundation should partake in the selling activities of the licensee?

A Well, we sure as hell didn't have a sales organization, no.

Q Were you interested in having the Foundation do advertising or communicate with customers of your licensee, or in any other way use the name of the Foundation to assist in selling by the licensee?

A We expected the patent to be sold on its merits, not because it was held by the University of Illinois.

We had had patents that we thought had merit and were of no interest, and were dropped.

Q Is your answer then, am I fairly stating your answer, that the Foundation was interested in licensing the patent on its merits?

A That's right.

Q And not in participating in aidng the licensee in using the name of the Foundation or other activities of the Foundation to help sell the product?

A I never knew that subject to ever come up.

Q Did you know that in the license agreement on the antenna patents that the Foundation granted an exclusive license to JFD?

A I didn't know that, but I am not surprised.

Q Why do you say that you are not surprised?

A Well, I imagine, from my experience in commercial life, if you had a patent and somebody was going to spend some money developing it, they wanted an exclusive. Whether it was an exclusive for one year, or two or five.

Q Would you have considered it in the best interests of the University, the Foundation and also the University, to have given an exclusive for the whole life of the patent and bar anybody else from using that technology?

A I would not answer that question. You need to have all the details and a lot of information before you arrive at that conclusion.

Q So you could not say, offhand, that this was a policy that would be favorable to the Foundation without studying the details of the transaction?

A What policy?

Q Granting an exclusive license for the whole life of the patent.

A I don't even know that such was the case.

Q No, my question to you is, in connection with the policy of the Foundation, does the idea of giving an exclusive license for the whole life of the patent to one party, is that one which appeals to you as being in accord with the objectives of the Foundation?

A I did not say that the Foundation policy was to grant an exclusive license for the life of the patent. I did not say that.

Q Would you tell me what its policy is in general, or what it was with regard to the antenna, if you know?

A I do not know what it was in regard to the antenna, and to my knowledge it doesn't have any specific spelled out policy.

Q So each case is treated on its own merits?

A As far as I know.

Q Do you recall any discussion in the board meetings with regard to the merits of the granting of the license to JFD?

A No, I don't remember that.

Q Would you say there was no such discussion, to the best of your recollection?

A I can't answer that. I don't remember that.

Q Do you think you would have remembered it had it taken place, where there were only two licenses that have been granted?

A I don't remember, I don't know.

Q Would you think it would be in the Foundation's interests, as you understand them, to permit the licensee to utilize the name of the Foundation and the name of professor of the University who made the invention handled by the Foundation, in prominent ways in advertising, in news releases to customers of equipment, without the Foundation's permission?

A I had never given that any thought.

Q You did not know that a clause of the license agreement with JFD gave to this licensee the right to use the name of the University Foundation, provided it was submitted to the Foundation in advance, but that the Foundation would not unreasonably withhold consent to the use of its name in advertising.

You did not know that?

A I did not.

Q Did you know that prior to this meeting on the infringement suit, JFD had widely used the name of the University, even in headlines, the University Foundation and the University, and the names of professors, in their advertising, and without prior clearing with the Foundation?

A I didn't know that.

Q Did you know that the Foundation lawyers tried to stop this kind of advertising without having it checked? And that there is a whole file of correspondence relating to that?

A I didn't know it.

Q This was not brought up to you, as far as you can recall, in any board meeting?

A Not that I recall.

Q Do you recall ever having seen any advertisements in any magazines of antennas made by JFD under its license?

A No.

Q Do you recall whether the University of Illinois Foundation issued any news releases relating to suits under the antenna patent?

A I recall Jim reading the one over the telephone.

Q And by, Jim, you mean Mr. Colvin?

A That's right.

Q Do you remember about when that was?

A No, I don't.

Q Do you remember the substance of the release?

A It was something about further infringement suits.

Q I gather then there had already been infringement suits filed, because you used the word "further"?

A Well, no, I should not have used the word "further." It was something about infringement suits.

Q Do you recall whether it was against more than one party or one party?

A I don't remember.

Q Does the name "Finney Manufacturing Company" mean anything to you?

A No.

Q How about the Winegard Company?

A No.

Q Do the names on Exhibit B-1 have any meaning to you; other than the fact that they are on there, do you have any independent recollection?

A No.

Q I would like to hand you a copy of a news release given me by your counsel, his number A00344, which I would like to ask the reporter to mark as Exhibit B-2.

(Said document was marked Exhibit B-2 for identification.)

BY MR. RINES:

Q I would like to ask you whether, upon your reading this, you feel that may have some bearing on the telephone calls from Mr. Colvin.

A This doesn't refresh my memory in any way.

I know Jim called me about a news release and wanted to know if it was all right.

And I said, if it was okay with him, okay.

Q Had he prepared this without consulting you before that and just read it to you?

A That's right.

Q So where it says that you, Mr. Johnson, president of the University of Illinois Foundation,

revealed today that the Foundation had filed a civil action, you didn't actually reveal, you were doing this through Mr. Colvin?

A That's right.

Q And when it says Mr. Johnson stated that the log periodic antenna, this was again Mr. Colvin saying it for you?

A I assume it was. He read it to me, that's right.

Q And you approved it?

A That's right.

Q Do you recall the second news release, which your counsel has given us, A00345, which I would ask the reporter to mark B-3.

(Said document was marked for identification as Exhibit B-3.)

BY THE WITNESS:

A I do not.

BY MR. RINES:

Q You do not recall Mr. Colvin calling you about this one?

A As far as I can recall, he only called me on one, and it may have been written more generally and then he used that as a basis.

Q So again it was not you who revealed, under date of 4-14-66, that the Foundation had filed civil actions against Blonder-Tongue Laboratories, Inc., and others?

A As far as I remember, I was called once.

Q Now, Exhibit B-2, for your information, was not quite a month earlier.

A Yes, I saw that on there.

Q In the discussion of bringing the infringement action, B-1, was there any inquiry made, that you recall, as to whether any of these companies had been notified of their infringement, so that if they were infringing they could be given a chance to stop before you filed suit?

A I do not recall Bob Merriam's presentation and all that he said, no.

Q You would certainly agree with me, would you not, that the fair thing for a university organization to do, if they felt someone was infringing, was to write and inquire whether they would stop?

A I would expect our responsibility is to hire competent patent attorneys to handle our problems and give them the full responsibility.

and that is what we do.

Q I am not asking you about the competence of the attorneys. The attorneys, am I not correct, must operate in connection with the University, so as to be cognizant with the front and appearance of a university, as distinguished from a crass commercial company, is that not a fair statement?

A No, you used the word "university" and we are not university.

Q Well, you are a university organization. You have the name of the University of Illinois in your name, don't you?

A Yes, we are the University of Illinois Foundation.

54 Q Right, and I have asked you for your opinion, not a matter of patent attorneys.

Do you think it is becoming a University of Illinois Foundation or any university foundation just to bring a lawsuit --

MR. MANN: I object to this line of inquiry. I don't think it makes any difference in this lawsuit what Mr. Johnson's personal opinion is of the fitness of any particular course of action.

He has indicated that he believes the Foundation met its responsibility by hiring what they assumed to be competent professional people, and following their advice.

BY MR. RINES:

Q Are you familiar with the restrictions of the bylaws and charter of the Foundation in terms of how it must conduct its affairs?

A No, I have read the bylaws. I don't recall.

Q And it would be your view that if your lawyer did anything at all, so long as it was in his judgment, this is perfectly proper for the University of Illinois Foundation?

A I didn't say that.

Q I am asking you, sir, as the president of the University of Illinois Foundation, that has a policy of granting licenses to people under inventions coming from the University, whether you feel it is the University Foundation's policy just to bring lawsuits against suspected infringers, or whether at least to notify them that you think they are infringing and to give them a chance to stop?

A I feel it is our job as the University of Illinois Foundation to handle the patents so as to generate as much income as possible accruing to the Foundation, so that we can use it for the purposes for which we operate.

And in doing this we expect to follow what is good, ethical practice.

Q Do you consider it good, ethical practice for your Foundation to bring a suit without having inquired of the party that you are suing whether it is necessary to bring the suit?

A If the people whom we employ recommend that we should do that, then we concur in it.

MR. CASS: May I inquire, is it your position that the bylaws of the Foundation --

MR. RINES: I am not going to answer your question. I would just suggest that you read the bylaws.

BY MR. RINES:

Q Do you recall whether Mr. Merriam reported that he, or members of his staff, had actually inspected the antenna of any of these infringers and independently arrived at the conclusion that they were infringing?

A I don't recall.

Q Did you know that that was a requirement under the relationship with JFD before a suit was brought?

A I didn't know that.

Q I would like to show you an advertisement, Radio and Television Weekly, February 10, 1964, it was marked BT-12 and 13, which I would ask the reporter to mark B-4 and B-4-a.

(Said document was marked Exhibit B-4 and B-4-a for identification.)

BY MR. RINES:

Q Does this advertisement refresh your recollection at all of anything you may have seen with regard to the activities of your licensee, JFD?

A Does it what?

Q Refresh your recollection?

A No.

Q Would you think it was a matter of concern to the University of Illinois Foundation if its name was going to be used in headlines and its professors' pictures to be shown, and the name of the university be known, that this be something

that the University of Illinois had something to say about before it is used by a licensee in an advertisement?

A I don't know what kind of an understanding went with the granting of this license or what privileges were associated with it.

Q Do you feel it is in the best interests of the Foundation to have no control over how its name is used in advertising?

A I feel that our control has to come through our patent attorneys who are handling it.

Q And it is of no concern to you as the president, you just abdicate to the patent attorneys?

A Until such time as we ever found that they are failing to do a proper job.

Q Did the attorneys report to you a sheath of correspondence with this licensee about the use of the name University of Illinois Foundation in improper ways by JFD?

A Your sentences get too long.

MR. RINES: Excuse me, would you read that, please, Miss Reporter.

(Question read by the court reporter.)

BY THE WITNESS:

A I know nothing about that.

BY MR. RINES:

Q Would you be concerned if there had been use of the name of the University of Illinois Foundation that was contrary to the way the attorneys wanted it used?

MR. MANN: Mr. Rines, may I inquire where this line of inquiry is going? To what issue in the case are you addressing yourself at this time?

MR. RINES: I am asking this witness whether he has approved the use of the name of the University of Illinois in advertising that we have charged constitutes unfair competition.

MR. MANN: And what is the significance of whether he personally had approved it or not?

MR. RINES: It is of significance as to whether he is truly, as we allege, a part of the conspiracy with JFD or an innocent bystander.

MR. MANN: He personally is?

MR. RINES: He, on behalf of the Foundation.

MR. MANN: Is he the only representative of the Foundation?

MR. RINES: He is the only one on the stand right now.

MR. MANN: I see, continue.

MR. RINES: Is there a question, Miss Reporter?

MR. CASS: May I say something at this particular point, on behalf of JFD?

We are present at this deposition which is being taken on behalf of Blonder-Tongue. We are not interposing any objections, but we are announcing that our presence without objections to any of these questions does not mean that we accede to any of the statements made by counsel in characterizing the contents of any evidence submitted and being examined with respect thereto.

Particularly there is no admission on the part of JFD that any use of the Foundation's name, as such, in advertising carries the connotation that Blonder-Tongue has applied to it.

So in that respect we have a standing objection.

MR. RINES: Would you read the last question back now, please, Miss Reporter.

(Question read by the reporter as follows:

"Q Would you be concerned if there had been use of the name University of Illinois Foundation that was contrary to the way the attorneys wanted it used?")

BY THE WITNESS:

A If there had been use contrary to the way our attorneys had wanted it to be used, eventually I would be concerned.

BY MR. RINES:

Q If you were not told about that use, you would have no way of knowing about being concerned, though?

A I would not be concerned as it is because I have confidence in them that if it had been carried far enough that it needed to be brought to our attention it would have.

Q Did you know that your name in these news releases, that is, that these news releases with your name had been reproduced by JFD and sent to customers of Blonder-Tongue?

A I did not know.

Q Did you intend, when authorizing Mr. Colvin to issue at least one of these news releases,

that this be used as advertising literature for customers, to dissuade them from buying a competitor's product?

A I didn't know to what use the news release would be put, no.

Q What was your thought about the purpose of the news release, why a news release?

A Essentially the news release, to me, is a matter of bringing to the attention of people that the University of Illinois Foundation exists, and that we are in business and that we would be glad to get help from anywhere.

Q In what business?

A The business of trying to enhance the educational program of the University of Illinois.

Q And you are enhancing the educational purpose of the University of Illinois by bringing lawsuits, is that the publicity you feel enhances the educational policy of the University of Illinois?

A I don't believe that, no.

Q Well, tell me what else you find in this news release that enhances the educational policy of the University.

A I didn't say it enhances the educational

policy of the University directly.

What I said is that it brings the attention of the people to the fact that there is a University of Illinois Foundation that is in operation.

Q So, it was the intention of the news release merely to tell people that there was a University of Illinois Foundation in operation?

A No, that wasn't the only purpose.

Q Well, tell me the other purpose.

A It was to inform whoever might be interested that this action was being taken.

Q Whom, in your mind, did you think might be interested?

A I haven't the least idea.

Q So you didn't care how it was used when you authorized the news release, you didn't care who saw it, is that right?

A I didn't care?

Q Well, what was in your mind when Mr. Colvin called you and said, look, I want to use your name and I want to have a news release?

What did you think was the purpose of the news release; why did you give your permission?

A We want to inform the people that the Foundation is taking this action.

Q What people?

A Whoever might read the news release.

Q And what is the normal procedure for disseminating news releases from the Foundation, so we know what people might normally read it?

A I don't know, except that what news releases I have been involved with have been through the executive secretary.

Q So we would have to ask Mr. Colvin that question?

A Yes.

Q Would you have been concerned if you had learned that your news releases were being sent by your licensee to customers of competitors for the purpose of informing them of this litigation, in the hope that they would buy from the licensee?

MR. MANN: I object to that question as assuming facts not in evidence. There has been no evidence here showing with what intention TDD sent those news releases or what their hopes were in so sending them.

MR. RINES: Will you permit the witness to answer or shall I rephrase the question?

MR. MANN: Well, I will permit him to answer if he has an answer.

I want my objection of record, though.

MR. RINES: Would you read the question to the witness.

(Question read by the court reporter.)

MR. CASS: I don't see how the witness can answer that question.

MR. RINES: Let the witness tell me that.

BY THE WITNESS:

A I have no background in the merchandising business, and I have no knowledge whether this is accepted practice or not.

If our counsel was aware of this and was not concerned about it, I would not be concerned about it.

BY MR. RINES:

Q Suppose your counsel was not aware of it?

A Then I would expect -- I think it would have been brought to my attention and I would have perhaps passed it on to counsel.

Q You would have been disturbed?

A I don't say I would have been disturbed, no, but I would have raised a question.

Q Do you feel that as a foundation bearing the name of the university that you have an extra special public requirement of doing things that appear to be above reproach, as well are are above reproach?

A To the best of my knowledge, every action we have taken in the Foundation during the period of time I have been associated with it has been above reproach.

Q And this would be of concern to you if actions were taken that used your name in a way that would not be above reproach?

A I am not saying, I am not admitting that anything was done that is not above reproach.

Q I understand, but if something was done --

A If something was done -- well, this is getting into semantics.

We want to keep our nose clean, period.

Q Do you know, Mr. Johnson, in connection with you receiving those inventions from the University of Illinois, whether the Foundation enters into any financial or other agreement with

the inventor himself in terms of the proceeds that might come back, for example, from licensing?

A I know nothing about the detailed agreements.

Q Are there such?

A I don't know that. I know that the inventor gets some compensation or some portion of the total amount received.

Q By the Foundation?

A That's right.

Q Do you know whether they are written agreements?

A I don't know that.

Q Do you recall any matter of the compensation of the inventors of the antenna patents coming up specifically at your board meetings?

A I don't know.

MR. RINES: I don't think I have any further questions.

Just one moment.

BY MR. RINES:

Q I would like to show you two sets of papers that were numbered EE-57 through 60, and 61 through 64, which I will characterize as

material received by Blonder-Tongue customers, as having been provided to them by your licensee, JFD.

And I would like to show you that among the literature that was sent to Blonder-Tongue clients is a news release, in each case, under the heading "University of Illinois Foundation," bearing the date of April 7, 1966.

And I will ask you to compare that release with Exhibit B-3, as to content.

A These are identical. It seems to me the wording here is the same. This is a different date than this.

Q Yes, it appears that the news release on the University of Illinois Foundation's stationery -- is that their stationery?

A Yes.

Q That was sent by JFD to Blonder-Tongue customers, bears a different date, which is a week earlier, isn't it, than the immediate release date of Exhibit B-3?

MR. HAHN: May I have that question, please.

(Question read by the court reporter.)

BY MR. RINES:

Q Do you agree that the date is 4-14-66 on B-3, but April 7, 1966 on the other documents, 59 and 64?

A Well, I agree that right on this piece of paper it says "4-14," and this paper says "4-7". That is a week's difference in date.

Q Do you have any explanation of that at all?

A I have no explanation. I can't identify where this paper came from.

Q The paper in your hand was given to me by your lawyer as your University of Illinois Foundation release.

A Okay.

Q The papers I have given you are what Blonder-Tongue customers gave Blonder-Tongue that they received.

A I understand.

Q And you can't explain the discrepancy?

A Except that it seems to me from what I saw floating around before, that there was a release before this one.

Q Do you want to see if this is the release you refer to?

A Yes, here is one, March the 25th.

Q Does that have the same content?

A No, that is different wording.

MR. RINES: I would like to ask the reporter please to mark as B Exhibit 5, 5-a, 5-b, and 5-c, the BT sheets 57 through 60.

And to mark as B Exhibit 6, 6-a, 6-b, 6-c, the BT sheets marked 61 through 64.

(Said documents were marked as Exhibits B-5, B-5-a, B-5-b, B-5-c and B-6, B-6-a, B-6-b, and B-6-c, for identification.)

MR. RINES: That is all I have, Mr. Johnson. Thanks for coming.

AND FURTHER THIS DEPONENT SAITH NOT.

(Whereupon, at 4:00 o'clock p.m. the deposition was adjourned sine die.)

UNITED STATES OF AMERICA)
NORTHERN DISTRICT OF ILLINOIS)
EASTERN DIVISION) SS:
STATE OF ILLINOIS)
COUNTY OF COOK)

I, Lucile E. Moore, a notary public in and for the County of Cook and State of Illinois, do hereby certify that HJALMAR W. JOHNSON was by me first duly sworn to testify the whole truth and that the above deposition was recorded stenographically by me and was reduced to typewriting under my personal direction, and that the said deposition constitutes a true record of the testimony given by said witness.

I further certify that the said deposition was taken at the time and place specified hereinbefore, and that the taking of said deposition commenced on the 26th day of October, 1966, at the hour of 2:30 o'clock in the afternoon and was completed at approximately 4:00 o'clock in the afternoon of the same day.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or financially interested

directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Chicago, Illinois, this 27th day of April, A.D. 1967.

Lucile E. Moore

Notary Public, Cook County, Illinois.
My Commission expires November 21, 1970.

