DOCKETED

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

FILED

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o'clock
ALBERT A. WAGNER, 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 JAMES C. COLVIN, 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 Lucile E. Meeps, 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 4:00 o'clock p.m. on Wednesday, October 26, 1966.

LE[illegible]/mbs

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 H. RINES
(Rines & Rines,
10 Post Office Square,
Boston, Massachusetts),

and

MR. RICHARD S. PHILLIPS
(Hofgren, Wegner, Allen,
Stellman & McCord,
20 North 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 1900,
Chicago, Illinois),

on behalf of Counterclaim
Defendant.

ALSO PRESENT:

Mr. Isaac S. Blonder

- - -

I N D E X

Exhibits:	Description	Identified
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JAMES C. COLVIN,

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

DIRECT EXAMINATION

BY MR. RINES:

Q Would you state your full name, residence and occupation?

A James C. Colvin, C-o-l-v-i-n, Urbana, Illinois, 810 Indiana Avenue.

And I am executive director of the Foundation, the University of Illinois Foundation, and secretary of the same Foundation.

Q About how long have you held this post, Mr. Colvin?

A I have been secretary since 1937. And I have been executive director, I think, about eight years.

Q You were here a few moments ago when Mr. Johnson gave his deposition?

A Yes.

Q I gather from Mr. Johnson's statement that you are the Foundation, in terms of the running of it?

A No, sir, I don't think that is true. I think he overplayed me.

Q Will you tell us, just briefly, what are your duties as executive director?

A Well, I report to the board of directors of the Foundation. And I supervise the work of the staff of the Foundation, and write such material as has to be prepared.

Q And in your function as secretary I presume you keep the minutes of the board meetings and things of this sort?

A Yes.

Q Do you recall that we interrogated Mr. Johnson concerning Exhibit B-1; I wonder if you could tell us where that information came from?

A Yes, this was a part of the minutes of the meeting which I believe took place in March, 1965.

Q Would you be able to tell us whether it was early March, late march, mid-March?

A It was early March, March 3, I think.

Q Do you recall who was present at that meeting?

A Most of our directors were present, plus Mr. Robert Marrian, plus Mr. Farber, who is treasurer of the Foundation, and myself.

That's about it, I guess.

Q Do you recall the presentation by Mr. Merriam to the board with regard to the matter of the infringements that are set forth in Exhibit B-1?

A I remember it in general.

Q You were aware, were you not, at that time that the University of Illinois Foundation already had filed prior litigation?

A Yes.

Q Do you remember against whom?

A I think against the Finney Company.

Q Do you know at what stage that litigation is at present?

A No, sir, I do not.

Q Do you recall, during his presentation, or during the presentation of this matter to the board, on or about March 3, 1966, whether any statements were made with regard to inspection of the antennas of Blonder-Tongue Laboratories, in terms of ascertaining the matter of infringement?

A No, sir.

Q Was just the conclusion presented, to the best of your recollection, that there was

infringement?

A Yes.

Q Is it your recollection that the facts set forth in B-1 correctly represent what took place at that meeting?

A Yes.

Q Did you know that the present suit was brought, not just against the local distributor in Chicago for Blonder-Tongue, but against Blonder-Tongue Laboratories, Inc., in Chicago?

A That is the way I recall it, yes.

Q Was it explained to you that Blonder-Tongue Laboratories, Inc. did not reside in Chicago?

A I don't recall whether it was explained.

Q Is it a fact, as appears to be stated in B-1, that the only authorization was to file against the local distributors in the Chicago area?

A Well, all that I know about it is contained in this. That is, I don't think there was any discussion beyond that.

Q Had you been informed, either at that meeting or prior to the bringing of suit against Blonder-Tongue Laboratories, that no notice of infringement had ever been sent to Blonder-Tongue

Laboratories?

A I didn't know that.

Q Do you know whether it was the policy of the Foundation or its attorneys to send notices of infringement to alert people that they might be infringing and give them a chance to stop?

A No, I don't know.

Q You didn't know that.

Do you receive, in connection with your duties at the Foundation, copies of correspondence between your counsel and infringers or licensees?

A I think for the most part I do.

Q You just don't recollect having seen any letters notifying people of infringement?

A That's right.

Q May I show you one, and ask if this would refresh your recollection?

A I don't remember having received this. I assume I did, with my name on it.

Q May I show you another one and ask if you recollect that, perhaps?

A I don't remember this. I don't remember having received this, but I assume I did.

Q May I show you another one and ask you

the same question?

A The answer would be the same to that one.

Q Is it a fair statement that your attorneys kept sending you, at the Foundation, copies of their correspondence with infringers and you believe you received them but you can't recollect them now?

A That is right.

Q I want to ask you if you would particularly read this letter, dated February 4, 1964, to Swan TV Antenna Company, with a carbon copy to Mr. James C. Colvin, and just tell us the substance of that letter.

A Well, he tells Mr. Swan there was a misfiling of the antenna identifications.

And he mentions the STAR FIRE series of antennas.

Q Is it fair to say that there was correspondence where there were mistakes in terms of what was sent to possible infringers, and this had to be corrected?

A This would indicate so, yes.

Q So far as you know, you can't recollect ever having seen a letter that was sent to Blonder-

Tongue Laboratories?

A No, I am sorry, I can't.

MR. RINES: Would you mark these as Exhibits B-7, B-8 and B-9.

Said documents were marked Exhibits B-7, B-8 and B-9.)

MR. PHILLIPS: The reporter has just marked as Exhibits B-7, B-8 and B-9, documents which have been identified as A-00087, A-00091, and A-00085, which are the documents which have just been examined by Mr. Colvin.

BY MR. RINES:

Q I note on Exhibit B-1 the name Jerrold Electronics Corp., and I gather that this is one of the parties against the distributor of which legal action was authorized at the meeting you refer to on March 3, 1966?

A That is the way I understand it.

Q Did you see this letter dated December 27, 1965, to Jerrold Electronics, prior to bringing this suit, calling their attention to the patents and asking them to stop?

A I remember this type of letter; I don't remember the instance of it being directed to

Jerrold.

But I remember this type of letter.

Q Do you recall whether, at this board meeting, it was in any way suggested by the board that before the suits be brought an effort be made to inform the suspected infringers of their infringement to give them a chance to stop if they were infringing?

A No, I don't remember.

Q You don't remember that discussion?

A No.

MR. RINES: Will you please mark this as Exhibit B-10.

(Whereupon said document was marked Exhibit B-10 for identification.)

57 BY MR. RINES:

Q Were you aware of the procedure that had been set up on behalf of the Foundation for checking on the matter of infringement before bringing suit?

A No.

Q I show you a copy of a letter given us by your counsel, dated April 29, 1964, identification Nos. A-00065, and A-00066, and indicating that a carbon copy was sent to you and to S. Farber, and

ask you if you have any recollection of having received a copy of that letter about that time?

A I do remember this letter.

Q Would you refresh yourself from that letter, and tell us what were the procedures that were set up before a suit would be brought for insuring the Foundation that there really was an infringement?

A I don't recall that.

Q Would you read the letter and see if it comes back.

A I will read the letter.

Q Please.

A Yes, I see what it says.

Q Would you, for the record, just state what the policy was?

A Well, I am quoting now from the letter.

Q Yes.

A "In the matter of enforcing the patents of the University of Illinois Foundation we hope that you will recognize that this will be done to the best of the ability of the Foundation, but of course, before any final decision can be made, it will necessitate a careful review of possible

infringing structures being made by this office, and the engineers connected with the development program.

Any decision would then be made by the executors of the Foundation following a submission of such recommendation to the Board of Directors."

Q Thank you.

Do you know whether any such careful review was made by the officer referred to and by the engineers connected with the development program in connection with the Blonder-Tongue antenna?

A I would assume that this was done, but I don't know of my own knowledge that it was.

Q Was there any report to you at the March 3rd meeting that this had been done?

A I can't recall that there was.

Q Certainly, if engineers, as well as the lawyers, felt there was no infringement, you would not want the Foundation patents to be sued on against any such structure, would you?

A That's right.

Q Is the word "executor" here a misprint?

A It is either a misprint or a misstatement. It may mean the Executive Committee.

Q And that is the committee of which you are the chairman?

A No, no, sir. Mr. Johnson is the chairman.

Q Mr. Johnson is the chairman of the executive committee?

A Yes.

Q What constitutes the executive committee as distinguished from the board of directors?

A Well, there are three, and the president of the Foundation almost always is one, and then there are two other directors.

Q Do you happen to know who they are?

A At the present time it is Mr. J. G. Thomas, and Mr. K. E. Williamson.

Q Do you know whether this matter was submitted to those three gentlemen?

A No, sir, I don't know.

Q Who would have made the submission to them for the decision, following the action of the board of directors?

A Well, excuse me, if the board acted on it the executive committee would not have to.

I am assuming that he means there the executive committee in the absence of action by

the board.

I am assuming this, I don't know that it is right.

Q Making the correction about executive committee, would this not read, "any decision", and that means decision for enforcing patents, "would then be made by the executive committee of the Foundation, following a submission of such recommendations to the board of directors"?

A I don't understand that, frankly.

Q You don't? I didn't either.

We called Mr. Johnson's attention to --

MR. RINES: Will you mark this as Exhibit B-11 and B-11-a.

(Said documents were marked Exhibits B-11 and B-11-a for identification.)

BY MR. RINES:

Q We called Mr. Johnson's attention to an advertisement of JFD, Exhibit B-4, and B-4-a, and we ask you whether you saw any advertisements of this character by JFD, or perhaps this very one?

A Yes, I have seen them.

Q Can you tell us about when?

A To the best of my knowledge, I have. I

don't recall, I see the date but I don't recall when I saw it.

Q Do you remember the circumstances or any discussions with regard to the use of the name of the University of Illinois Foundation in this advertisement?

A We were not always pleased with the fact that the University of Illinois' name was used prominently in the advertising.

Q And why did this not please you?

A We thought this was overemphasis of the University's name, and also that of the Foundation.

Q Do you recall the provision of your license agreement with JFD with regard to the right to use the name of the Foundation or the University?

A I believe that I do.

Q May I show you copies of the first and second license agreements and ask that you refresh yourself on that?

I believe it is paragraph 10 of the first agreement of the 31st of May, 1962 and paragraph 8 of the second agreement of the 1st of December, 1965.

A What was your question?

Q Would you refresh yourself with regard to what were the requirements under the license agreements in connection with the use of the name of the Foundation and the University of Illinois?

A That these would not be used except with the written consent of the Foundation.

Q Did the Foundation have the right, just arbitrarily, to refuse the use of the name?

A No, this sentence in here sets forth "Such written authorization may be obtained from the Executive Director of the University of Illinois Foundation, which authorization will not be unreasonably withheld."

Q Now who was the executive director?

A I am, and was.

Q So that the matter of approving the use of the name of the Foundation or the University or of staff was something that you were to be informed about, and something that you were to approve in writing, but you were not unreasonably to withhold consent?

A Yes.

Q Are you familiar with the difficulties

that ensued following advertisements of the type of Exhibit B-4 and B-5-a, with your licensee JFD, in connection with the use of the name in advertising?

A I don't understand what kind of difficulties.

Q Were there any difficulties?

A Only the one that I mentioned before, that we were not always in accord with their presentation of their material.

Q And what did you do about it?

A Well, we wrote to them about it, we had some correspondence about it.

And I recall having spoken by telephone, I believe to the president of JFD.

Q Would you identify him, please?

A Mr. Edward Finkel, I believe his name is. I think he is president, I don't know.

Q Do you recall whether it was just one ad that you complained about or whether it was more than one advertisement?

A More than one.

Q Can you tell us what action was taken as a result of your complaints?

A Well, we asked to see the ad, and these were sent to us for inspection.

Q Do you recall receiving a copy of the letter I now hand you, bearing the date of 7-27-64, with a notation that it was handed by Finkel, as a draft, and an indication of a carbon copy to you?

A You know, I don't remember this letter.

58 Q All right; had the substance of that letter ever been discussed with you orally by Mr. Finkel or others?

A I think some ideas in here have been discussed in my presence.

MR. RINES: May I mark that, please.

Would you mark this as Exhibit B-12 and B-12-a.

And for the record that is A-00209 and A-00210.

(Said documents were marked Exhibits B-12 and B-12-a for identification.)

BY MR. RINES:

Q I would invite particularly your attention to the paragraph that I have underlined on the first page, and ask whether that subject matter was discussed in your presence.

A I'm sorry, I don't remember, I don't remember.

Q Did Mr. Finkel ever say anything similar to that to you on any occasion?

A Well, I think I recall hearing him say that as long as we were licensing the invention it had to be advertised.

Q Do you know, if you do, what he meant by the fact that this necessarily entailed at least a partial entry into the commercial world?

MR. MANN: May I have that question again, please.

(Question read by the court reporter.)

MR. MANN: I think the question is objectionable, but I will let the witness answer.

BY THE WITNESS:

A No, I don't know what he meant.

BY MR. RINES:

Q What was your understanding that the obligations of the Foundation were in connection with licensing these inventions to JFD?

A Are we discussing advertising now?

Q In any function that you thought it was the duty of the Foundation under your agreement with JFD, just generally.

A Well, I think we supplied the knowledge

and that was basically what we were required to do.

Q It was not your impression then that you were to engage in providing advertising material for the use of your Foundation's name or the names of its personnel in an advertising program?

A Well, we permitted the use of the name of the Foundation, yes.

Q But not its use in the kind of prominent manner that you said was objectionable in Exhibit B-4 and B-4-a?

A Well, in the main we preferred that this not be done.

Q Can you tell me why you had that preference?

A Well, as I indicated before, this seemed to be giving too much prominence to the University and Foundation names in the way it was said.

Q What about the name of the professors of the university, with whom I understand from Mr. Johnson there was some agreement from the Foundation that you gave some royalties to.

What about the use of their names, was this something that you felt you were responsible for supervising?

A If it was factual information, we had no

objection to it.

Q What about the use of pictures of the professors, and the use of the name of the University?

A Well, I didn't object to that.

Q What did you think was the purpose in the use of these photographs, Professor Mayes, for example, and the use of the name of the University of Illinois?

A Well, it helped tell the story of the origin of the invention.

Q You feel that it helped sell the potential customers that this was a product having an endorsement of the University?

A Yes.

Q And was it in the expectation that the use of the name of the University and the Foundation and the professors would have this effect on the buying public, that they would want to buy these antennas and not other antennas because the University name was used?

A Yes.

Q Do you know whether there are any written agreements between, for example, Professor Mayes or Professor Isbell, and the University of Illinois Foundation with regard to sharing royalty or other

income from their invention?

A I don't believe we have such written agreements.

Q Mr. Johnson said he thought there were some agreements. If I recollect correctly, he didn't know if they were written.

Is it your understanding that they are oral arrangements?

A I think so, for the most part.

Q What do you mean by "for the most part"?

A Well, this would be an action -- the amount of royalty to be distributed is left to a university faculty committee, because the inventors are employees of the university and we think that this relationship is between the university and the professors, not between the Foundation and the professors, this one thing.

Q Would you characterize Professor Hayes as one such employee of the University?

A Yes.

Q And Mr. Isbell at that time?

A Yes.

Q Mr. Carrel?

A Yes.

Q They are members of the staff of the University?

A Yes.

Q But the Foundation as such, as I understand your testimony, left to the University the matter of determining how much of the royalties would be given to the professors?

A Yes, yes.

Q Did the Foundation make any recommendations in this connection to your knowledge?

A Not as such, no.

Q Well, what did it make?

A Well, the Foundation made no such recommendations.

Q I notice you smiled. Is there something the Foundation did in this connection?

A No, I smiled because I am a member of the University Faculty Patent Committee, and I, as such, had a vote, although it was a very small vote.

Q Were there any other members of the Foundation on the University Faculty Patent Committee?

A No, sir.

Q Do you know as a fact whether the University Faculty Committee voted a percentage of returns under royalties to Professor Mayes, for example?

A That is the way I recall it.

Q And Professor Isbell?

A And the other inventors.

Q Do you know whether Professor Mayes is employed full-time by the University of Illinois?

A I understand that he is.

Q Do you recall what his official post is, or what his rank is?

A As I recall it, he is a professor and head of the Antenna Laboratories.

Q Do you know whether he heads any other antenna laboratory than -- or is associated with any other antenna laboratory, than those of the University of Illinois?

A No.

Q You don't know that?

A No.

Q Would it be a matter of concern to the Foundation if, in advertisements bearing its name, Mr. Mayes were identified as the director of a

different laboratory than the one operated by the University of Illinois?

A I don't think it would be. It would not be to me.

Q You see no conflict between Professor Mayes being head of the University of Illinois Antenna Laboratory and being the head of some other laboratories not associated with the university?

A No, I don't see a conflict of interest.

Q Do you know whether the University of Illinois permits its professors to run departments in the University, and, at the same time, to run similar organizations outside the University?

A Well, it permits its professors, throughout the university, to act as consultants for industrial organizations.

And I assume this would cover the same type of activity.

Q Would you equate a consultant with a director of the laboratory?

A Well, I am not sufficiently versed to know about that, either as to time or what he would do.

Q Was it your recollection that if JFD was going to use Professor Mayes' picture, for example, in an advertisement, that this was something that fell into a category of having to be cleared with you before it was done?

A Well, we were supposed to clear all the advertising, including that.

Q Do you recall whether you cleared this particular advertisement I show you, pages BT-21 through -24?

A Are these pages from a catalog?

Q No, pages from an advertisement, I believe.

A I don't recall having seen this.

Q I ask you the same question with regard to the JFD circular, advertising circular, I presume, No. 68, BT-68.

A I don't remember having seen this one, either.

MR. RINES: I would like the first ones marked, that is, BT-21 through 24, as B-13, 13-a, 13-b, and 13-c.

(Said documents were marked Exhibits B-13, B-13-a, B-13-b and B-13-c for identification.)

59 MR. RINES: And let's mark this one Exhibit B-14 and B-14-a, 14-b and 14-c.

(Said documents were marked Exhibits B-14, B-14-a, B-14-b and B-14-c for identification.)

BY MR. RINES:

Q I ask you whether you recall having approved this advertising.

A No, sir, I do not. There are two of these here.

Q Yes, sir.

A No, I do not remember that I did.

MR. RINES: And will you mark these as Exhibit B-15 and B-15-a.

(Said documents were marked for identification as Exhibit B-15 and B-15-a.)

BY MR. RINES:

Q Mr. Colvin, in B-15, for example, there appears the phrase, opposite the place where Professor Mayes' picture is shown, and the name of the University of Illinois and the Foundation is used, a sentence, "No other so-called log-periodic antenna can work like the JFD log-periodic LPV",

and so forth.

If that sentence were not true, would it be a matter of concern to you that a statement like that were made in an advertisement that you had not seen, bearing the name of the University and Professor Mayes' picture and the name of the Foundation?

A Yes.

Q If, in connection with Exhibit B-4 and 4-a, for example, using Professor Mayes' picture, the name of the university, and, in headlines, the name of the University of Illinois Foundation, there were statements that were not correct as to the application of a particular patent to a particular antenna design, would this be a matter of concern to you?

A Yes.

Q I show you a reprint of the News Gazette, Champaign, Illinois, BT-14, and ask you whether you saw a copy of that article before?

A I think I did.

Q Do you recall the circumstances under which the reporter got that information?

A No, I don't know anything about it.

Q Do you remember whether you saw that

article substantially contemporaneously with its issuance in the paper?

A I think I saw it the day it appeared.

Q Do you think it is a correct article, that it states the facts as you know them correctly?

A I would have to read the whole thing.

Q Would you please; it isn't very long, and this may be an important piece of evidence.

A I don't really feel qualified to say whether -- maybe I didn't get your question correctly, but I don't feel qualified to say whether all of this is correct or not, because I don't know.

Q Can you tell me what part you do know to be correct?

A I don't say that I know any part to be correct.

I don't know any parts to be incorrect, either.

Q I see; let me ask you a question: Are you aware, for example, that these new laboratories of JFD, located in Interstate Research Park, northwest of Champaign, are in existence?

A Yes, I know there are or is such an area,

and I believe I know that JFD has an operation out there.

Q Do you know that they do use undergraduates, graduates, and postgraduate students in research on these log-periodic antennas there?

A I believe I recall having heard this, yes.

Q And that Professor Mayes and other staff members of the University work there, do you know that?

A I believe this is correct.

MR. RINES: I would like to mark this as Exhibit B-16 for identification.

(Said document was marked Exhibit B-16 for identification.)

BY MR. RINES:

Q Did the University of Illinois Foundation have anything at all to do with the setting up of this JFD laboratory?

A Not to my knowledge, I believe not.

Q How about the University of Illinois?

A I don't think the University did, either.

Q Do you know whether there were discussions between staff of the University of Illinois and JFD in connection with setting up this laboratory?

A No, sir; no, sir, I don't.

Q Does the Foundation have any agreements with this laboratory?

A Not that I know of.

Q Do you know whether the University of Illinois has any agreements, contracts, or anything of that sort with this laboratory?

A I don't know.

Q The records of the Board of Directors of the Illinois Foundation, do they contain any minutes or information relating to the licensing of JFD under the antenna patents here involved?

A I believe that they do. I am not certain of that, but I would think they would.

MR. RINES: Are they among the documents that we asked to be produced?

MR. MANN: I don't think we so interpreted it, and, therefore, I don't think that they are in there, but I am sure that Mr. Colvin will get them for you.

BY THE WITNESS:

A There is no difficulty.

BY MR. RINES:

Q Will you get us copies of all matters

that bear upon the license agreement with JFD and its administration?

A Yes, sir, I will.

MR. MANN: What was that; will you repeat that last question, please.

(Question read by the court reporter.)

BY MR. RINES:

Q Do the minutes of the Foundation reflect any other agreement with JFD, other than the two license agreements, parts of which we showed you earlier, dated May 31, 1962 and December 1, 1965?

A I don't think so -- Well, would you repeat that question, please?

(Question read by the court reporter.)

BY THE WITNESS:

A I don't think so.

BY MR. RINES:

Q Are there any other agreements besides these license agreements that the Foundation has had with JFD on the matter of these antennas?

A I am sorry, would you read that question again, please.

(Question read by the court reporter.)

BY THE WITNESS:

A I believe not.

BY MR. RINES:

Q Are you aware of any agreements between JFD and the University of Illinois?

A No, no, sir; I am not.

MR. MANN: May I have a moment's conference with Mr. Colvin, please?

(Off the record.)

BY THE WITNESS:

A I was looking at these to see if I could learn from the dates whether included in these documents was an agreement to extend the agreement with JFD.

And I know that there was such an agreement.

MR. RINES: Have you produced that?

MR. MANN: We have not. That was merely, as I recall it, a small minute.

We have a letter, I am sorry it was not produced, informing JFD that by action of the Board their license was extended.

However, in the past we have taken the position that the actual date was confidential, to which it was extended.

And we would have to decide that question, in view of the fact that it has been superseded by the second agreement.

I believe it could possibly be considered not confidential this time, although I am not committing myself.

MR. RINES: Will you produce what you think you should produce.

BY MR. RINES:

Q In Mr. Johnson's examination, he explained that he had been unaware of the fact that -- which you have verified, that there had been criticism of JFD's use of the name of the University of Illinois Foundation, and some correspondence relating to this.

Do you recall that in that correspondence JFD did submit to you copies of some of its advertisements?

A Yes, I remember.

Q Do you have those copies in the Foundation files, or elsewhere?

A I don't know whether we do or not.

Q Would you be good enough to look?

A I will look for those.

Q And since the correspondence is with the attorneys, perhaps it is in their files.

We would like the copies of the advertisements submitted, with the correspondence relating to the use of the name of the Foundation in advertisements.

60 A You see, unless these have been submitted in duplicate, I might have returned them with an "okay" on them.

Q Well, in that connection may I invite your attention to a letter, dated August 12, 1964, directed to you by Mr. Finkel, and ask if you recollect receiving the original of that letter?

A Yes, I do recall.

Q Now that mentions a number of advertisements, and quotes from them, does it not?

A Yes.

Q That is the kind of advertisement that I am asking you to look for.

A Very good.

Q Do you recall whether you answered that letter?

A No, I don't recall whether I answered it in writing or not.

My recollection is that I told the

patent attorneys what the answers were and that they communicated.

Q Do you happen to have a copy of the answer to that letter, whether it was from you or from the attorneys?

A I can try to find one for you.

Q Will you, please, because the documents supplied to us indicate no written answer to that letter.

MR. RINES: I would like to have marked, that letter, which is A-00313, -4, and -5, as Exhibit B-17, B-17-a, and B-17-b.

(Said documents were marked for identification as B-17, B-17-a and B-17-B.)

BY MR. RINES:

Q It is my understanding further, that the material supplied to us ends in September, 1964, in connection with these writings relating to the use of the name of the university, or Foundation, or staff, in JFD ads.

MR. RINES: Do I correctly understand, Mr. Mann, that there is material in 1965 and possibly 1966 that you are still preparing

for us?

MR. MANN: I don't know of any. There may be something that we have overlooked, but I don't know about it.

I am not consciously withholding anything at this time and I don't recall having received anything recently.

That is, I have been through these files several times and I don't recall anything later than this.

BY MR. RINES:

Q All right, then, I would like to show to you, Mr. Colvin, the last document that we have, and you correct me, Mr. Mann, if you have given us something later than that.

First, a letter dated September 14, '64, A-000219 and A-000220, to you, Mr. Colvin.

And then, apparently your reply, A-00223 and A-00224, with a carbon copy to Professor Mayes and Mr. Smith.

MR. MANN: What is the date on that one?

MR. RINES: September 25, 1964.

MR. MANN: Mr. Rines, I call your attention to our document A-00346, being a letter

from Mr. Finkel to Mr. Colvin, with a subject heading, "Copy Clearance for LPV Antennas."

That would be 346, 347 and 348, in the same series.

MR. RINES: Will you mark these documents as Exhibits B-18 and B-18-a, and B-19, and B-19-a.

(Said documents were marked Exhibits B-18, B-18-A, B-19 and B-19-a for identification.)

BY MR. RINES:

Q I believe I asked you to read what has been marked Exhibit B-18 and 18-a, and B-19 and 19-a, and my request to you would be will you please look through your records at the Foundation and see if there were any writings subsequent to this between you and JFD, bearing on -- and when I say you I mean the Foundation.

A Yes, sir.

Q Bearing on this matter of use of the name of the University, the Foundation or the staff in literature and advertisements of JFD.

A Yes, sir, I shall.

Q Thank you, sir.

MR. RINES: At this time I would like to

put in exhibit numbers, I think a single exhibit number, a copy supplied to us by Mr. Mann of the license agreement dated 31st, May, 1962, consisting of 12 pages, as Group Exhibit B-20.

(Said document was marked for identification as Group Exhibit B-20.)

MR. RINES: And as Group Exhibit B-21 the license agreement supplied by Mr. Mann dated December 1, 1965, consisting of 21 pages.

(Said document was marked for identification as Group Exhibit B-21.)

BY MR. RINES:

Q I notice on Exhibit B-18, to the left, in ink or pencil, appears the word "no" in connection with a particular advertising paragraph suggested by JFD, and a comment on that in your letter Exhibit B-19, saying, "We object to the fourth paragraph."

Can you tell us what was the "wrong impression," to which you refer in Exhibit B-19,

in connection with that paragraph?

A Well, I didn't like the word "alliance" in the quote.

Q Would you read the part of the quote you objected to -- maybe you objected to the whole thing, I don't know.

A Well, I did object to the whole thing.

Q Would you read that into the record, the part you objected to?

A (Reading:) "JFD Electronic antenna laboratory employs industry's hidden resource -- forms alliance with the University of Illinois; new laboratory established under the direction of Professor Paul E. Mayes, an antenna authority."

Q Where did that phrase, who sent you that phrase for your approval?

A Well, this came from Mr. Ed Finkel.

Q Of JFD?

A Of JFD.

Q And so far as Mr. Finkel was concerned, when you received that, did you think he thought that was all right?

A I assume he did.

MR. CASS: Well, the witness doesn't

really know.

THE WITNESS: I said, I assumed.

MR. CASS: That is not a fair question to this witness. He doesn't know what Mr. Finkel thought.

BY MR. RINES:

Q Did you think from your past relations with Mr. Finkel that he was sending you things he didn't think were true?

A No.

Q When you read that were you under the impression that Mr. Finkel thought that statement was true?

A Yes.

Q Can you shed some light, Mr. Colvin, on the matter of the duplicate news releases, B-3 and B-6-c, and B-5-b?

A What is your question, specifically?

Q You recall we asked Mr. Johnson if he could explain the difference in the dates between the releases that have been received by Blonder-Tongue customers and the release supplied to us by counsel, Exhibit B-3.

A I don't believe that I can explain it.

It could be that -- you notice this was mailed the 14th of April, and it could have been written and cleared much earlier than that.

Q Well, earlier than that then, is it a fact that JFD received it earlier than 4-14-66?

A This is possible, yes, sir.

Q Did you intend, when releasing this, that JFD send this with other of its sales literature to customers of competitors?

A It had not occurred to me that it would.

Q Did you give consent to such use of this as advertising material?

A Not written consent.

61 Q Did you give oral consent?

A Not specifically, no, no.

Q When was the first time you heard that JFD had made this use of your news release?

A To the best of my knowledge it was this afternoon.

Q At the deposition of Mr. Johnson?

A Yes.

Q Thank you.

Is there any written agreement between the University of Illinois and the University of

Illinois Foundation with regard to either the handling of patents and inventions or the specific antenna patents involved in this litigation?

A To the best of my knowledge, no.

Q I understood from Mr. Johnson that the University takes the inventions of the professors, made in the University of Illinois, and submits them to the Foundation to determine whether they can find any commercial interest in these inventions.

Is that a fair statement?

A Yes, it is.

Q And then the Foundation worries about patenting, and now, through its University Patents, Inc., the licensing of these inventions, turning back the money to the University of Illinois for its uses in educational pursuits.

Is that a fair statement?

A Well --

Q If not, correct it, please.

A I don't agree with Mr. Johnson in the matter of returning the money to the University, because I don't recall any instance when this was done.

The rest of his statement I agree with.

Q Can you tell us what is done with the money received from the licensing of these patents?

A Yes, it is used by the Foundation to support its operating budget.

Excuse me, sir; in some cases, in some rare cases, we will allocate some of these funds to the University for a specific purpose. But this has been done infrequently.

For the most part it is held and used for the operations of the Foundation.

Q Would you agree with Mr. Johnson that those operations are money-making operations, in order to obtain funds for the operation of the University?

A To assist the University programs, yes.

Q Your counsel submitted to us one letter, which seems to be the only writing he has been able to find bearing on the matter of the relationship between the University and the Foundation in connection with the Isbell patent.

It was a letter addressed to you, and I wonder if you recollect having received it?

A I recall having received it.

Q Do you think there was a similar letter

with Professor Mayes and Professor Carrel, and so forth?

A I should think there would be.

Q Would you please look and see if you can find it.

A This I would have to get out of the University files. It is not in mine.

Q I would appreciate it if you would.

MR. RINES: Will you mark this as Exhibit B-22.

(Said document was marked for identification as Exhibit B-22.)

BY MR. RINES:

Q I would like to show you, Mr. Colvin, a copy of an assignment document, provided us by your counsel, which indicates that Mr. Dwight E. Isbell assigned to the University of Illinois Foundation certain patent rights, which I believe are those involved in this litigation.

Have you ever seen the assignment, or do you have it in your Foundation records?

A We should have.

Q Good. Do you think there is a similar one from Mr. Mayes, and so on?

A There should be, yes, sir.

MR. RINES: Might I ask you particularly to produce Mr. Mayes' assignment documents of the patent in suit, involved in this litigation.

MR. MANN: I was unaware that we had a patent of Mr. Mayes at this time.

MR. RINES: Well, let me ask -- the patent that I cited in the counterclaim, which is Mayes patent three million one hundred thousand and something, which you later reissued -- Mayes and Carrel.

MR. MANN: Mayes and Carrel.

MR. RINES: It is stipulated by and between counsel that the assignment of the Mayes, et al., patent 3,108,280, is of the same form as the assignment of the Isbell application 26,589.

Will you mark that as Exhibit B-23.

(Said document was marked for identification as Exhibit B-23.)

MR. RINES: Do you want to read the stipulation back so that we will be sure it it is right.

(Record read by the court reporter.)

BY MR. RINES:

Q This document says "For good and valuable considerations the receipt and sufficiencies hereof are hereby acknowledged. The undersigned" -- meaning Mr. Isbell -- "hereby assigns to the University of Illinois Foundation these rights."

Do you know what that "good and valuable considerstion" was?

A No, sir.

Q Would you make an effort to find out whether the Foundation did in fact pay good and valuable consideration to Mr. Isbell, or what was the consideration there referred to?

A Well, I think I could say now that there was no financial payment to him, except as he participated in the royalty arrangement.

Q So the consideration here for the Foundation having the assignment was that the University of Illinois was going to make a royalty arrangement with Mr. Isbell?

A Yes.

Q Thank you.

MR. MANN: Mr. Rines, you appreciate, of course, that Mr. Colvin is not a lawyer and this may well be his understanding of what

the consideration was, but we do not intend to be bound by his understanding.

THE WITNESS: Well, I was trying to avoid being facetious, but if I had been facetious I was going to say that if I did know the answer I would be practicing law without a license. Because I just thought this was part of the one dollar and other valuable considerations type of thing.

MR. RINES: So that the record is clear, this is your understanding of the quid pro quo given to Mr. Isbell?

THE WITNESS: The Foundation paid out no money.

BY MR. RINES:

Q But your understanding is that the quid pro quo, the reason for this is that Mr. Isbell was getting compensated for the University?

A It might be.

Q What do you think, to the best of your information?

A I don't know.

Q What do you believe?

A Honestly, I am not trying to hedge, but

I don't know. If I had to guess, I would --

MR. MANN: I would suggest to the witness that he is not required to guess and that his answer that he doesn't know should stand.

BY MR. RINES:

Q Why did you answer earlier that the consideration you believed was the royalty that the University was paying to Mr. Isbell?

A Well, I did because if there is any financial consideration at all, if this refers to any financial consideration it would be royalty participation.

But I don't quite see how it could be true in this case, because this is an agreement between the Foundation and Mr. Isbell, and not involving the University.

Q But doesn't the University give to the Foundation these patents that the University has?

A Yes.

Q And so if the Foundation isn't going to pay the inventor, I thought it was your testimony that the university paid the inventor, isn't that right?

A Shared the royalties with him.

Q Isn't that correct?

A That is correct.

Q And don't you know it to be a fact, on your representation on the University patent board, that they did vote to give Mr. Isbell a share of the royalties received on his invention?

A Yes.

Q At the March 3, 1966 board meeting, Mr. Colvin, both you and Mr. Johnson testified that a report was given to you by Mr. Merriam relating to the people regarded as infringers. Was this a written report, or was there any writing involved in the report?

A Not to my knowledge; it was oral.

Q Have you been made aware, Mr. Colvin, of the charges made by Blonder-Tongue against the Foundation in this suit?

A I don't believe I can answer that question, I don't believe so.

MR. RINES: Would you please read the question. I want your counsel to hear it.

(Question read by the court reporter.)

BY MR. RINES:

Q Were you shown the copy of the counterclaim

in this suit, that is, the countersuit brought by Blonder-Tongue against the Foundation?

A I can't recall whether or not.

62 Q Was any report given to you that Blonder-Tongue was charging the Foundation with unfair competition, or antitrust violations, or associated with patent infringement of a patent of Blonder-Tongue?

A Well, I heard some remark made about that today.

Q Do you recall who made the remark -- oh, today?

A Today.

Q You don't remember hearing it before today?

A I don't believe so.

Q Is it a matter of concern to you, in your position with the Foundation, to know what charges are being made against the Foundation?

A Yes.

May I please ask advice of counsel on this.

Q Please.

(Off the record.)

BY THE WITNESS:

A Did I have a question, I forgot.

(Question read by the court reporter.)

BY THE WITNESS:

A You had asked me whether I had been informed about it.

And I recall now that Mr. Mann and I had a conversation by telephone about it, to me in Urbana.

BY MR. RINES:

Q But the details of what it is that you are charged with?

A I have not seen the details.

Q Did you know that a letter had apparently been sent to Blonder-Tongue, after the filing of suit, saying that the licensee, JPD, would be interested in sitting down to talk about sublicensing?

A I don't recall such a letter.

Q Were you informed that yesterday Blonder-Tongue attempted to take advantage of that opportunity and asked counsel to contact JPD to see if we could discuss settling all the issues of this suit, including the charges against the Foundation?

A No, sir.

Q You were not told that the licensee said he would only discuss sublicensing, but not the settling of the other parts of the suit, including the charges against the Foundation?

A I don't remember that, no.

MR. CASS: This is on the record, you realize that.

MR. RINES: Yes.

MR. CASS: And you intend to use that for whatever purposes --

MR. RINES: I don't intend to use it. I am just asking the witness if he knows the status of this litigation.

MR. CASS: And this is how you characterize it.

MR. RINES: This is right.

MR. CASS: And if there were any kind of settlement negotiations you want it to appear of record?

MR. RINES: I don't mind it at all.

MR. CASS: Well, what about the letter; are you denying that you received the letter?

MR. RINES: I think in our deposition that we have answered that question directly,

I myself on the record, and Mr. Blonder.

We have also agreed to check the records to see if that letter was ever received at Blonder-Tongue.

We can only answer for Mr. Blonder and myself.

I don't think I have anything further of this witness.

MR. MANN: I have no questions.

MR. RINES: Thank you very much, Mr. Colvin.

AND FURTHER THIS DEPONENT SAITH NOT.

(Whereupon, this deposition was adjourned at 6:00 o'clock p.m. 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 JAMES C. COLVIN 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 4:00 o'clock in the afternoon and was completed at approximately 6:00 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.

