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AT.....O'CLOCK.....  
ELBERT A. WAGNER, JR.  
CLERK

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

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

REPLY BRIEF OF DEFENDANT AND COUNTERCLAIMANT,  
BLONDER-TONGUE LABORATORIES, INC.,  
IN SUPPORT OF COUNTS I, II AND III  
OF ITS COUNTERCLAIM

In this reply brief relating to Counts I, II and III of the Counterclaim, Counterclaimant BT will treat first with the "Answering Brief" of the Foundation and then, because it is of an entirely different character, with that of JFD.

THE FOUNDATION'S ANSWERING BRIEF  
(As to Counterclaim Counts I, II and III)

In its answer to the main brief of BT as to the Counterclaim, the Foundation treats with certain phases only

of the unfair competition and antitrust counts (I and II); fails to discuss others in detail, "such as alleged mismarking, alleged personnel raiding and alleged JFD customer practices" (page 17 of Foundation answering brief) because these charges were allegedly "made solely against JFD"; and fails completely to treat with the merits of Count III (infringement of the Blonder et al patent 3,259,904) because "The Foundation does not make or sell any commercial antennas" (p. 22).

While conceding (p. 6) that the Foundation did play the part of

"reviewing the proposed advertisements for improper use of the name of the Foundation or of the University, in accordance with the provisions of the license agreement",

the Foundation disclaims responsibility for the JFD advertising campaign.

It thus remains for this Court to determine as a matter of law whether the Foundation actually escapes legal liability for the patently false advertising and technical claims discussed on pages 7 - 16 of the BT main brief, and the false patent markings and misrepresentations of patent coverage contained in such advertising, as discussed on pages 11 - 13 and 22 of the BT main brief - all done in advertisements copiously using the name of the Foundation and/or the University.

Let us turn to specific aspects of the advertising discussed by the Foundation in its answering brief.

1. ADVERTISING - THE PATENT MISMARKING AND MISREPRESENTATION OF THE SCOPE OF THE PATENTS

The Foundation, on pages 20 and 21 of its answering brief, states that it has

"no quarrel with the discussion of the law of unfair competition and antitrust which B-T has set forth on pages 37-44 of its brief";

and, specifically, that

"overstated patent marking or representations of non-existent patent protection, in a proper situation, could well be additional evidence of unfair competition."

But, says the Foundation, the JFD advertisement mis- markings and misrepresentations were "an innocent mistake" or "non-actionable 'puffing'"; so this law should not apply.

A. The Mismarking

With particular regard to the patent mismarking, the Foundation now concedes that JFD's advertising head and executive vice president, Mr. Finkel,

"may have known as of April, 1964 (DX-42) that its commercial products were not covered by issued patents" (p. 5);

but, complains the Foundation,

"there was no indication that he knew this when the advertisements appeared in the trade".

In the first place, the record contains JFD advertisements in April of 1964 and thereafter (such as, for example, D. Ex. 42-B113 and B-106) still using these very same three patent numbers in connection with the LPV-11 and similar antennas which the Foundation now admits "were not covered by issued patents". Even in 1966, the patents were still included in JFD advertising, D.Ex. 37.

This can hardly be an "innocent mistake".

Secondly, the Foundation cannot escape its responsibility. It was the patentee, and it must certainly be charged with knowledge of the scope of its patents - particularly when the record shows that the Foundation itself was prosecuting the original Mayes and Carrel patent application covering the LPV-11 and related antennas in the Patent Office when these advertisements started appearing, and thus knew there was no issued patent coverage. To allow clearly non-applicable patent numbers to be so widely used by its licensee and under the Foundation's own name (and that of the University) in nationwide advertisements, and not to speak out until many months later (p. 13 of BT main brief, for example), at the very least constituted gross neglect; particularly since, under its written agreement with JFD, the Foundation was obligated to the task of "reviewing the proposed advertisements", as it now admits (p. 6 of Foundation answering brief; p. 34 of BT brief, D. Ex. 44, 45).

B. Misrepresentation as to Patent Scope

The Foundation is silent in its answering brief as to the JFD advertisements, copiously using the University's name, which stated that the log periodic "formula" had been patented by the Foundation ("The Patented Log-Periodic Cellular Formula"; "Only the JFD Log Periodic LPV operates according to The Patented Log-Periodic Cellular Formula"; D. Ex. 42-B-4, B-4A, 107).

Such false representations of the coverage of the Foundation patents, under the name of the University, clearly told the trade that they could not buy a log periodic antenna from anyone other than JFD - since every log periodic antenna follows the log periodic formula!

But there was a time when the Foundation was not so silent on this issue.

After the damage had been done to BT in the market place, as later discussed, and after willingly collecting royalties from JFD from sales attained by these patently illegal advertising tactics over many months, the Foundation finally complained to JFD

"Paragraph 4 is untrue. The Log-Periodic LPV formula is not patented." (emphasis added) (D. Ex. 42-B-104, p. 2)

C. The Damage Resulting From the Above

While, under the authorities cited on page 43 of the BT brief, with which the Foundation states it has "no

quarrel", false and overstated patent markings and claims are illegal, such extension of patents to cover an unpatented product appears to be a "per se" violation of the antitrust laws as to which no special damage need be shown (White Motor Co. v. United States, 372 U.S. 253, 259-60 (1963)). Specific damage to BT tied in to the period of these falsely marked advertisements has, however, been shown (p. 34 of BT brief; Tr. 781-2, T. 1051-1052, for example).

If these deliberate misrepresentations and mis-markings constituted only mere "puffing" and "innocent mistakes", particularly when taken in the context of the other unfair tactics elsewhere recounted, then a new low in business ethics will have been sanctioned in our country.

## 2. THE NEWS RELEASE

The Foundation states it has the right to issue a news release of the bringing of suit.

With this BT agrees.

The gravamen of BT's complaint, however, resides in the totality and effect of the following now apparently admitted facts:

1. The Foundation knew it had no venue as to BT when it filed this suit. (It is immaterial that BT could have had this suit dismissed for lack of venue. The damage

was already done in the market place by these prompt news releases and threat tactics.)

2. The news release, prominently mentioning the suit against BT, was prepared by the Foundation immediately following the filing of suit.
3. This news release was thereupon promulgated by JFD with the Foundation's consent, not just by itself, but together with a threatening JFD sales bulletin and newspaper clipping of still other litigation (see p. 17-21 of BT main brief).
4. All of the material of item 3, supra, was deliberately mailed by JFD, with the Foundation's consent, directly to BT's own customers (D. Ex. 43, 46).

This goes far beyond a mere announcement of a suit, even if brought in good faith and in proper venue.

That this conduct, as distinguished from a mere announcement, constitutes unfair competition, is believed evident from the 7th Circuit Panay case quoted on pages 40 and 41 and other cases of BT's main brief (with which law the Foundation, as before stated, conceded it had "no quarrel").

And that this specific conduct, and with particular regard to the specific BT customer who received D. Ex. 43, resulted in the loss of sales by BT has also been proven (T. 838; T. 781-2).

3. THE PROCURING OF THE MAYES AND CARREL PATENT

The Foundation criticizes BT's charge of misrepresentation in the Patent Office in connection with the prosecution of the Mayes and Carrel patent application, upon two basic grounds:

First, there allegedly was no burden on the Foundation or Dr. Mayes to tell the Patent Office of prior publications of Isbell (citing purported authority); and

Second, that, though admittedly "Mayes et al knew of the existence of the prior reports" (p. 16), there was no showing that Dr. Mayes or the Foundation's counsel actually knew such to be "publications" before the filing of the Mayes and Carrel affidavit under Patent Office Rule 131, swearing back of Isbell.

BT's counsel wishes to assure this Court that long and careful thought was given, and the record checked and rechecked, before making this accusation of misrepresentation in the Patent Office. The record and the law clearly support this charge.

First, the United States v. Standard Electric Time Co. case, cited by the Foundation to excuse calling to the attention of the Patent Examiner earlier publications of Isbell corresponding to the paper cited by the Examiner as a prior art basis for the rejection of the Mayes and Carrèl patent application, is entirely impertinent. That decision deals only with the general lack of burden on a patent applicant to tell the Patent Office of other prior art of which the applicant is aware during the normal prosecution of a patent application. Under the circumstances of that case, there is no such burden. This has nothing to do with Patent Office Rule 131, and the prohibition therein against filing an affidavit swearing back of any reference published "more than one year prior to the date on which the application was filed".

Where, however, the Patent Office has called attention to a particular piece of prior art (the Isbell IRE paper describing the Isbell antenna) and has specifically rejected the application on the basis thereof, and resort is made by the applicant and his attorneys to try to remove that citation by swearing back of the same under Rule 131, then there clearly is a burden not to swear back if either the applicant or attorney knows of a publication of essentially the same material more than one year prior to the patent application filing date and before the invention was made. And it is a fraud (or a reckless act at the very least) to suppress the

fact that while the particular publication cited by the Examiner had a publication date after the Mayes and Carrel so-called invention, that the same paper was earlier published in other media more than a year before Mayes and Carrel filed their application! (D. Ex. 23; D. Ex. 8)

The Examiner could not possibly know that Isbell's paper in the IRE had been previously published and distributed in other media by the University of Illinois. If, as will be shown, both Dr. Mayes and the Foundation, by its attorneys, knew this, then to entice the Examiner to withdraw the Isbell work as a reference because of an affidavit stating that Mayes and Carrel made the invention before that paper, certainly was at the very least misleading; since the same paper covering Isbell's same work (D. Ex. 23) was distributed through another medium more than one year before the Mayes and Carrel filing date - all in direct contravention of Rule 131.

But does the record show that either Dr. Mayes or the Foundation, through its attorneys, knew of such prior papers describing Isbell's work, before preparing and filing the Mayes and Carrel affidavit under Rule 131?

Decidedly, yes!

Dr. Mayes' signature appears both on reports D. Ex. 23 and D. Ex. 8, under dates more than a year before the Mayes and Carrel filing date. Indeed, as before stated, the Foundation now concedes that "Mayes et al knew of the existence of the prior reports".

Before the preparation of the Mayes and Carrel patent application, moreover, and thus long prior to the affidavit in question, the record shows that Dr. Mayes prepared a disclosure of invention report, D. Ex. 10; and, on the reverse side, under the heading:

"19. Prior reports or records of invention to which invention is related",

Dr. Mayes himself listed the very prior Isbell paper, D. Ex. 23 and the publication date June 1, 1959. And under heading:

"20. Other known closely related patents, patent applications and publications",

Report No. 39, D. Ex. 23, is again listed. This shows absolute knowledge by Dr. Mayes and knowledge (at the very least, constructive knowledge) of the Foundation, through its attorneys, to whom said disclosure report D. Ex. 10 was made for the very purpose of preparing the Mayes and Carrel patent application. (R. 343, 344)

Which brings us to the last issue raised by the Foundation that, even if Dr. Mayes and/or his attorneys had been aware of these reports that issued more than a year before Mayes and Carrel's filing date, did they know these were "publications" (citing the Patent Office Board of Appeals decision in Ex parte Suozzi)?

From the large distribution list presented at the end of these reports D. Ex. 8 and 23, including the Library of Congress, certainly both Dr. Mayes and counsel knew of the

publication, entirely inapposite to the Suozzi case (see, for example, Ex parte Brimm and Gailey, 147 USPQ 72, 73, copy attached).

And if there were any doubt, before persuading the Patent Office to withdraw a reference to Isbell's work on the technicality that the particular paper cited by the Examiner, describing the work, was not published before Mayes and Carrel's so-called invention, candor would have required informing the Patent Office of these prior known reports having the same disclosure, to resolve whether these were "publications"; particularly where both Dr. Mayes and counsel knew the fact, later admitted by Dr. Mayes, that his so-called invention came after that of Isbell (see p. 25, 26 of BT main brief).

The Foundation, through its attorneys, knew, moreover, that Mayes and Carrel made their invention after Isbell by virtue not only of the disclosure of invention document prepared for them, D. Ex. 10, but by virtue of the fact that they were the same counsel who much earlier had indeed filed the Isbell patent application that matured into the Isbell patent in suit.

Without such swearing back of Isbell's work, the Examiner clearly would not have allowed the Mayes and Carrel patent! (See rejection, D. Ex. 12, p. 30).

Couple this suppression and misrepresentation with the immediate use made by JFD of the Mayes and Carrel patent

promptly upon its issue (ads D. Ex. 42-B-4, 4A, claiming the formula to be patented, etc., p. 12-13 of BT main brief), all under the name of the Foundation and/or University prominently bannered in such ads, and the conclusion is inescapable that this was part and parcel of a crude, unethical and improper conspiracy to defraud both the Patent Office and the public.

The timing of these ads, moreover, coincides with the BT introduction of its antennas; and, as the record shows, resulted within "a few months" in customers' refusal "to take on our line". (Tr. 781-2)

4. OTHER ADVERTISING MIS-STATEMENTS

While the Foundation admits to be incorrect such statements as

- (1) the University development of the JFD antenna offered for sale,
- (2) the advertised "alliance" with the University, and
- (3) the purported direction of the JFD laboratory by University professor, Dr. Mayes,

it seeks to dismiss them as "nit-picking" and "not really significant".

At an earlier time, however, before this litigation, the Foundation considered such misrepresentations so serious that they criticized JFD for the same ("not true" - page 2, line 5, from end of letter of October 14, 1964, D. Ex. 42-B-104; see pages 8 through 15 of BT main brief); and even threatened to "cancel" the license (D. Ex. 42-B-112).

The Foundation realized at that time (as distinguished from its present position now that it has been called down for acquiescing in these tactics over such a long period of time to the damage of BT) that this was not "nit-picking" and was "really significant", since the totality of these misleading advertising statements was to imbue the JFD antenna with the prestige and integrity of the University and to have the University stand sponsor for the JFD misleading and false claims that abound in this literature, to the detriment of all competitors. The contemporaneous reaction of the Foundation is much more significant than the present assertions that the mis-statements were unimportant.

5. CONCLUSION AS TO FOUNDATION ANSWERING BRIEF

It is believed that it has been shown that while the Foundation was a licensor, it engaged in activities over and above the granting of a mere license, and to BT's detriment.

As engaged in such broader joint activity with JFD, the Foundation, it is believed, became a joint tort-feasor, including sharing in the spoils from the sales of JFD antennas, under color of the JFD ads, mismarking and other improper activities, and in infringement of the Blonder et al patent 3,259,904.

That the Foundation lent its name in these ads with JFD, and received income from JFD's sale of antennas embodying the invention of the Blonder et al patent 3,259,904, shows at least inducement to infringe, which is as much an act of infringement as manufacture and sale (35 U.S. 271b).

That BT has proceeded in good faith in its proofs and allegations is beyond question; such that no further discussion of attorneys' fee appears warranted. If attorneys' fees are to be awarded, indeed, they properly belong to BT as a result of the unfair competition, antitrust and unclean hands activities of JFD and the Foundation.

THE BRIEF OF JFD IN OPPOSITION TO COUNTERCLAIM

Unlike the brief of the Foundation, the JFD brief is replete with statements of fact unsupported by the record or any other evidence in this suit, requiring that a caveat be issued.

COUNT I

Clearly, the JFD statement that BT believes there is evil in extensive news coverage is ridiculous. The significance of the extensive coverage resides in proof of the large exposure in the market place that the misleading and illegal advertising of JFD enjoyed.

We have earlier commented on the significance of the attempts to ally JFD with the University and the effect that this had in the market place with regard to newcomers, such as BT. JFD's attempt to mitigate against the positive misstatements of "Alliance" between the University and JFD by resorting to stretched meanings in dictionary definitions, does not change the positive fact that there never was such an alliance. Yet it suited JFD's sales program to mislead customers into thinking that there was such an alliance and that therefore the JFD antenna was the very product of the University itself, thus to imbue it with a quality attainable by no other manufacturer, including BT.

Similar squirming with terminology is attempted in the JFD brief with regard to the various advertisements misrepresenting that Professor Mayes was the director of the JFD laboratory.

With regard to the false patent legends, the JFD brief again engages in legerdemain and statements outside the record, such as when JFD supposedly made changes in legends,

etc.; and again JFD resorts to further dictionary definitions to try to escape the actual facts of mis-statement.

This Court will not be misled, we are confident, with regard to the matter of patent mismarking. It is a fact, admitted now at least by the Foundation, that none of the patent numbers on the items in question covered the JFD equipment advertised for sale under those patent numbers. And we have pointed out, pages 3 and 4, supra, that knowledge of this fact was present in JFD during this false marking period.

Equally spurious are the attempts to mitigate against the very clear false claim in the JFD ads that the University or the Foundation had patented the log periodic formula. Again, on pages 18 through 23, JFD attempts to confuse the issue with the difference between a "formula" and an "equation". This is another false issue, however, since all of the ads referred to on pages 12 and 13 of the main BT brief only refer to "formula"; and no one can get away from the fact that, as quoted on page 13 of the BT main brief, the Foundation very clearly has admitted in writing that these statements are "untrue". The log periodic LPV formula is not patented. This was clearly a deliberate misrepresentation of the patent scope, definitely and solely calculated, on its face, to imply to customers that they should not buy a log periodic antenna from anyone else since JFD and the Foundation had patented the formula that underlies all log periodic antennas.

Commencing on page 23, JFD complains that testimony of Mr. Blonder demonstrating false technical claims of performance in JFD ads had been excluded by the Court. We do not so read the record and can find no such exclusion.

The brief, indeed, is not the proper place to dispute evidence of the false values of performance. It is the courtroom where JFD should have disproved Mr. Blonder's testimony that the "35 db" performance of the LPV-11 antenna was actually only "about 10 or 12 db".

On page 24 there is speculation about the test procedures used by Mr. Blonder; but this is not evidence. There was opportunity to cross-examine or to offer rebuttal testimony, if the LPV-11 really had a "35 db" front-to-back ratio.

As indicated in the BT main brief, the significance of this is analogous to an automobile manufacturer representing an automobile as having a 350 horsepower engine, when in fact it has only a 100 horsepower engine.

It is respectfully submitted that this Court should not dismiss as "nit-picking" or "puffing" these proven false claims - and all under the color of truth associated with the name of the University and the Foundation.

#### The Circularizing of the Trade

It has been shown above what was improper in the way in which the trade was circularized and threatened by news releases and similar literature.

### Patent Mismarkings

This has been discussed above and further demonstrated by reference to record exhibits.

### The Obtaining of the Mayes and Carrel Patent

Much as the Foundation says that the JFD mismarkings, false advertising, raiding, etc., has nothing to do with it, JFD now says that the procuring of the Mayes and Carrel patent was done "without consent or cooperation with the University". This is undoubtedly a truthful statement. But JFD, once the patent was obtained, certainly seized upon it for the most crass kind of false advertising with regard to the "patented formula" etc. (D. Ex. 42-B4-4A).

### Transfer of Personnel from BT to JFD

On page 40 of the JFD brief, the hiring away of Messrs. Balash, Schenfeld, etc., during this litigation is belittled because some one hundred employees may have left Blonder-Tongue's employ over the past years.

This misses the mark. First, we are not talking about the same kind of employees; the one hundred refers to production people (T. 905) that are hired or let go depending upon production runs, and not to key executive people with proprietary information and privileged data germane to the proofs of this litigation. Secondly, there are the various acts of unfair competition that forced the reduction in BT production and staff.

The question to be answered by this Court is whether JFD had a legal right, during this litigation, to hire Mr. Balash from BT under circumstances where it was known, or should have been known by inquiry of Mr. Balash by JFD, that Mr. Balash had been the key antenna program executive at BT and, more important, had the assignment at BT of collecting information for this lawsuit as to JFD's threats and improper conduct with BT's customers.

To this question must be added the further question as to whether JFD then had the further right to compound this, just before trial, by hiring away from BT the coinventor of the very Blonder-Schenfeld patent that JFD was charged with infringing in this suit.

Is it proper to interfere with the presentation of proofs in this Court by hiring such key people with privileged and important information bearing so vitally on the very issues of the suit?

We believe it is improper.

At the very least, it is like the last straw that broke the camel's back, when considered in the light of the myriad of other abuses engaged in by JFD in its unfair competition and antitrust activities directed against BT.

#### Coerced Sales

BT has offered some evidence of illegal activities in sales coercion; this evidence, in part, being admissions of

Mr. Finkel himself; in part, being testimony of Mr. Blonder, not objected to at the trial; and, in part, being somewhat of a hearsay nature in several depositions, but again, not objected to at the trial, and thus in evidence.

At the very least, this appears to raise a presumption of wrongdoing as to which no evidence whatsoever has been submitted on the other side.

Again, it is not the function of a brief to try to serve as evidence, and this Court will look in vain in the record for anything that disproves the prima facie case or at least presumption of wrongdoing residing in the activities of JFD that are delineated on pages 30 through 33 of the BT main brief.

#### Antitrust

At least the Foundation and BT are agreed as to the law contained on pages 37 through 44 of the BT main brief. JFD, however, attempts to restrict antitrust violation to certain items only which appear not to have bearing upon the fact issues covered by the law.

It is not believed necessary to discuss this matter further since each of the cases cited in the BT main brief is related to factual situations previously referred to in the main brief and supported therein by references to the record.

COUNTERCLAIM III -- INFRINGEMENT OF BLONDER-SCHENFELD  
PATENT 3,259,904 (D. Ex. 26)

While BT agrees that the presumption of validity of a patent may in some cases be weakened by the citation of closer prior art than was considered by the Patent Office, attention is invited to the fact that none of the prior art cited by JFD is any more pertinent than the two-boom variations of the Isbell and Mayes and Carrel patents that were in fact cited by the Patent Office during the prosecution of the Blonder-Schenfeld application (bottom of column 4, D. Ex. 26).

While trying to make it seem that the Blonder-Schenfeld invention is only the adding of a "strain relief member" to a 2-boom system, JFD fails to show anticipation of elements 3 and 4 explained on pages 46 and 47 of the Blonder-Tongue main brief, which represent structure recited in claim 5 for connecting the poings 1'' and 1''' to a parallel wire line TL positioned therebelow and then separated out to connect at 1'' and 1''', in the manner taught by Blonder and Schenfeld and clearly incorporated in the JFD structure (see pages 51a through 54 of the BT main brief).

In not a single one of the Technical Reports, Line Lock, Zip, Valack, Gross, Kane, Wickersham, Callaghan or Winegard references referred to by JFD is this structure even hinted at let alone described; and it is certainly significant that it was not until after BT showed the way, that JFD adopted

this new cooperative structure that the first time enabled the ready use of ordinary parallel wire transmission lines with the spaced-plane log periodic antenna system.

The only real argument of non-infringement that JFD apparently offers is that it originally did not intend the lower transmission line to be just a transmission line; but that it serves an additional transforming function.

One does not escape infringement, however, because an infringing structure may serve an additional purpose; and there is no question but that the JFD line TL (page 51a of BT main brief) is a parallel wire transmission line critically positioned and connected in the same way as the Blonder-Schenfeld line TL and performing the same function.

#### Credibility of the Witness Blonder

We believe this Court had full opportunity to judge Mr. Blonder's character for itself; and at numerous places in the record expressed its justifiably high opinion of the witness.

We must confess that we fail to find any material inconsistent in the most minor points cited on page 89 through 91 of the JFD brief as allegedly proving Mr. Blonder an unreliable witness.

To the contrary, the record abounds with Mr. Blonder's own precise truths; such that he was unable to testify either about tests that he was generally familiar with, but did not

actually perform (T. 755-6) and he would not even pretend that he knew the customer's voice to whom he was talking, that would have made a telephone conversation admissible (T. 836-840).

#### Attorneys' Fees

We have previously commented upon the spuriousness of this request. It is rather significant, indeed, that a so-called trivial and groundless claim took JFD some 95 pages of reply brief.

#### Matter of Damages

We have shown above and in the main brief numerous instances in the record of damage sustained directly from illegal activities of JFD, including those mentioned at page 13, supra. We would also again invite attention to the per se illegalities of the extension of patents to non-patented items which has been proven, and which does not require special proof of damage.

#### CONCLUSION

While, as this Court recognizes, the facts of life of customer relations make it almost impossible to prove unfair competition in antitrust violations in cases of this type, substantial evidence (though admittedly not of the strongest type) has been offered by BT as to each and every element of

charged unfair activity or restraint of trade, and under the considerable additional handicap of loss to JFD itself of the BT employees who had been charged with investigating JFD's activities, together with the disappearance of all the records bearing on this matter.

On the other side, neither the Foundation nor JFD has offered a single bit of contrary evidence (as distinguished from arguments in briefs) - not even a scintilla - to rebut the presumptions of wrongdoing which, at the very least, are raised by the BT proofs.

It is respectfully submitted that a great service can be done by this Honorable Court to the business community at large and to the law, not to speak of doing equity in the premises, by using this record to put a stop to these crass, unchecked, unethical and, we believe, clearly illegal tactics running rampant in our land and making the historically important role of the small independent company all the more untenable.

The infringement of the Blonder-Schenfeld patent has also been proven.

HOPGREN, WEGNER, ALLEN, STELLMAN & MCCORD

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CERTIFICATE OF SERVICE

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I hereby certify that one copy of the foregoing Reply Brief of Defendant and Counterclaimant, Blonder-Tongue Laboratories, Inc., in Support of Counts I, II and III of its Counterclaim has been mailed via first class mail this 17<sup>th</sup> day of April, 1968, to each of the following:

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