

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

RECEIVED

NOV - 4 1966

RINES AND RINES
NO. TEN POST OFFICE SQUARE, BOSTON

THE UNIVERSITY OF ILLINOIS FOUNDATION,)
)
Plaintiff and)
Counterclaim Defendant,)
)
v.)
)
BLONDER-TONGUE LABORATORIES, INC.,)
)
Defendant and)
Counterclaimant,)
)
v.)
)
JFD ELECTRONICS CORPORATION,)
)
Counterclaim Defendant.)

CIVIL ACTION

No. 66 C 567

COUNTERCLAIM DEFENDANT'S, JFD ELECTRONICS CORPORATION,
REPLY TO COUNTERCLAIM OF COUNTERCLAIMANT, BLONDER-TONGUE
LABORATORIES, INC., AND CROSS-CLAIM

Counterclaim defendant, JFD ELECTRONICS CORPORATION (JFD),
replies to the Counterclaim herein as follows:

Resume, Paragraph 1: Identity and principal place of
business of counterclaimant, Blonder-Tongue Laboratories, Inc.
(BT).

Counterclaim defendant admits the allegations of
paragraph 1.

Resume, Paragraph 2: The University of Illinois Foundation
(Foundation) and the University of Illinois' identity, ownership
and control.

Upon information and belief, counterclaim defendant admits

that the Foundation and University of Illinois are non-profit corporations of the State of Illinois and that each has a place of business in Urbana, Illinois. As to the other allegations, counterclaim defendant is without sufficient knowledge or information with which to form a belief as to the truth thereof.

Resume, Paragraph 3: Identity of JFD Electronics Corporation (JFD) and acts of unfair competition engaged by JFD with the Foundation.

Counterclaim defendant denies all of the allegations of paragraph 3. JFD further states that JFD Electronics Corporation, prior to becoming a party to this lawsuit, was dissolved and is now JFD Electronics Company, a Division of Stratford Retreat House, a religious corporation of the State of New York. JFD Electronics Company, the Division, has a place for doing business within this judicial district.

COUNT I -- FOR UNFAIR COMPETITION

Resume, Paragraph 4: Statement of jurisdiction.

Counterclaim defendant is without sufficient knowledge or information to form a belief as to whether the amount in controversy exceeds Ten Thousand Dollars (\$10,000), and admits the remaining allegations of paragraph 4.

Resume, Paragraph 5: The Foundation has exclusively licensed JFD under Isbell Patent No. 3,210,767 in certain fields.

Counterclaim defendant admits that it is an exclusive licensee under said Isbell patent in the field of receiving antennas for television and FM broadcasting on a royalty basis based on a percentage of sales of antennas covered by the patent. All of the other allegations are denied.

Resume, Paragraph 6: The Foundation has the primary responsibility of policing the patent and aiding the commercial sales of antennas by JFD.

Counterclaim defendant admits that under the terms of the license agreement with the Foundation, the Foundation has the initial responsibility with respect to policing of Patent No. 3,210,767 against infringement and denies all of the other allegations.

Resume, Paragraph 7: The Foundation and JFD have conspired to restrain competition.

The allegations of this paragraph, including subparagraphs (a) through (j) are denied.

COUNT II -- ANTI-TRUST

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

Counterclaim defendant is without sufficient knowledge

or information to form a belief as to the truth of the allegations of this paragraph. The particular section or sections of the anti-trust laws charged to have been violated are not identified.

Resume, Paragraph 9: The reallegation of paragraphs 1-7 of Count I of the Counterclaim.

Counterclaim defendant denies the allegations of paragraph 9. Counterclaim defendant is without sufficient knowledge or information to form a belief as to whether it is one of the largest manufacturers of antennas as alleged.

By way of separate and alternative defense to Count II, counterclaim defendant states:

1. Count II fails to state a cause of action.
2. Counterclaimant is without standing as a proper party to maintain the action purported to be set forth in Count II of the Counterclaim.

COUNT III -- PATENT INFRINGEMENT

Resume, Paragraph 10: This count arises under the patent laws of the United States.

Paragraph 10 is admitted.

Resume, Paragraph 11: Counterclaimant reasserts the allegations of paragraphs 1-9 of the Counterclaim.

Counterclaim defendant reasserts its replies to paragraphs 1-9.

Resume, Paragraph 12: BT is the owner of Patent No. 3,259,904, which was legally issued.

Counterclaim defendant admits the issuance of said patent but denies that it was legally issued. Counterclaim defendant is without sufficient knowledge or information to form a belief as to the alleged ownership of said patent.

Resume, Paragraph 13: Patent No. 3,259,904 covers antennas manufactured by BT.

Counterclaim defendant admits that the Foundation charges that the GOLDEN DART and GOLDEN ARROW antennas infringe Patent 3,210,767, but is without sufficient knowledge or information to form a belief as to whether these antennas are covered by Patent No. 3,259,904.

Resume, Paragraph 14: Plaintiff and counterclaim defendant infringe Patent 3,259,904.

The allegations of paragraph 14 are denied.

Further answering the Counterclaim and for its further and additional defenses, counterclaim defendant states:

A. United States Patent No. 3,259,904 is invalid because the differences between the subject matter patented and the prior art are such that the subject matter as a whole would have been obvious at the time the alleged invention was made to a person having ordinary skill in the art to which said subject matter pertains.

B. United States Patent No. 3,259,904 is invalid because the subject matter thereof was known or used or invented by others in this country, or patented or described in a printed publication in this or a foreign country before the alleged invention thereof, or patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the filing date of the original application on which said patent issued.

C. United States Patent No. 3,259,904 is invalid because the subject matter therein is clearly disclosed in and lacks any element of invention over the prior art considered by the Patent Office during the prosecution of the application on which the patent issued.

D. United States Patent No. 3,259,904 is invalid because the alleged invention involves no more than the mere exercise of ordinary skill in the art in view of the state of the art at the time of and long prior to the alleged invention thereof, or more than one year prior to the filing of the original application on which the patent issued, all of which prior art counterclaim defendant reserves the right to specify in accordance with the provisions of Title 35, United States Code, Section 282, for the purpose of relying upon same at the time of trial of this action.

E. United States Patent No. 3,295,904 is invalid in that the specification does not describe the alleged invention or the manner of making and using it in such full, clear, concise and exact terms as to enable any person skilled in the art or science to which the alleged invention pertains, or with which it is most nearly connected, to make and use the same.

F. United States Patent No. 3,295,904 is invalid because there is no claim of the patent which is generic to species of the alleged invention as illustrated in Figures 1 and 2 and described in the specification of said patent.

G. United States Patent No. 3,295,904, if valid at all, is limited by the proceedings in the Patent Office; and in view of the history of the prosecution subsequent to which said patent

issued, the claims of said patent as finally issued cannot be interpreted to read upon or include a product, device, or article, or combination thereof, made, used, sold or offered for sale by counterclaim defendant.

G. United States Patent No. 3,295,904, if valid, is so limited by the prior art that the claims of said patent as finally issued cannot be interpreted to read upon or include a product made, used, sold or offered for sale by counterclaim defendant.

COUNT IV -- DECLARATORY JUDGMENT

Counterclaim defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraphs 15 through 19 of the Counterclaim.

WHEREFORE, counterclaim defendant prays that the Counterclaim be dismissed with costs awarded to counterclaim defendant and for such other and further relief as the court may deem just and proper.

CROSS-CLAIM

Now comes the counterclaim defendant, JFD Electronics Corporation, by its attorneys, and by way of Cross-claim to the Counterclaim herein alleges as follows:

1. This action arises under the patent laws of the United States.

2. Cross-claimant is JFD Electronics Company, a Division of Stratford Retreat House, a religious corporation of the State of New York, and with a place for doing business within this judicial district.

3. Upon information and belief, Blonder-Tongue Laboratories, Inc. (BT) is a New Jersey corporation having its principal place of business at 9 Alling Street, Newark, New Jersey.

4. BT has violated the provisions of Title 35, United States Code, Section 292, by marking upon and using in advertising in connection with its GOLDEN DART antenna the Patent No. 3,016,510 importing that the same is patented for the purpose of deceiving the public and well knowing that certain GOLDEN DART antenna was not in any part thereof covered by said Patent No. 3,016,510.

WHEREFORE, counterclaim defendant prays for judgment holding that:

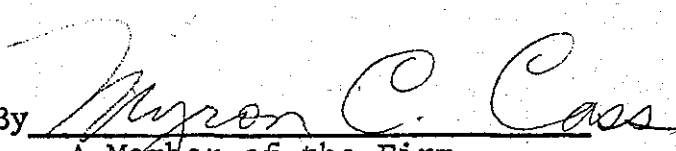
(a) Blonder-Tongue Laboratories, Inc. is guilty of violating Title 35, United States Code, Section 292.

(b) Blonder-Tongue Laboratories, Inc. be preliminarily and permanently enjoined from the continued false use of Patent No. 3,016,510 and references to patents in violation of Title 35, United States Code, Section 292(b).

3. Blonder-Tongue Laboratories, Inc. be fined Five Hundred Dollars (\$500) for each instance of its false patent marking in violation of Title 35, United States Code, Section 292(b), and that cross-claimant be awarded one-half (1/2) of the fine imposed upon said defendant by this Court for such false patent marking, as also provided by Title 35, United States Code, Section 292(b).

SILVERMAN & CASS

By


A Member of the Firm
105 West Adams Street
Chicago, Illinois 60603
726-6006

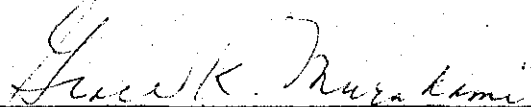
Attorneys for Counterclaim
Defendant

Of Counsel:

Ostrolenk, Faber, Gerb & Soffen
Ten East Fortieth Street
New York, New York, 10016

CERTIFICATE OF SERVICE

I hereby certify that two copies of the above and foregoing COUNTERCLAIM DEFENDANT'S, JFD ELECTRONICS CORPORATION, REPLY TO COUNTERCLAIM OF COUNTERCLAIMANT, BLONDER-TONGUE LABORATORIES, INC., AND CROSS-CLAIM were mailed to: Hofgren, Brady, Wegner, Allen, Stellman & McCord, Suite 2200, 20 North Wacker Drive, Chicago, Illinois 60606, by first-class U.S. mail, postage prepaid, this 1st day of November, 1966.


G. K. Murakami

ACKNOWLEDGMENT OF SERVICE

Received a copy of the above and foregoing COUNTERCLAIM DEFENDANT'S, JFD ELECTRONICS CORPORATION, REPLY TO COUNTERCLAIM OF COUNTERCLAIMANT, BLONDER-TONGUE LABORATORIES, INC., AND CROSS-CLAIM this 1st day of November, 1966.

/s/ William A. Marshall
Attorney for Plaintiff and
Counterclaim Defendant,
UNIVERSITY OF ILLINOIS FOUNDATION