

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNIVERSITY OF ILLINOIS FOUNDATION,)	
)	
Plaintiff-Appellant,)	
)	Appeal No.
v.)	
)	71-1879
BLONDER-TONGUE LABORATORIES, INC.,)	
)	
Defendant-Appellee.)	

MOTION

Now comes plaintiff-appellant University of Illinois Foundation by its counsel and moves this Court for an order allowing the appendix previously filed in this Court in Appeal No. 17153 (APPENDIX TO BRIEF FOR DEFENDANT AND COUNTERCLAIMANT-APPELLANT) to be considered as an appendix in the above-captioned appeal.

In addition, leave is requested to file an additional supplemental appendix on or before the date when plaintiff-appellant's brief is filed with the Court.

The affidavit of Basil P. Mann in support of this Motion is attached.

MERRIAM, MARSHALL, SHAPIRO & KLOSE

By _____

Basil P. Mann
Attorneys for University of
Illinois Foundation

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 Plaintiff-Appellant,)
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 v.) Appeal No.
) 71-1879
 BLONDER-TONGUE LABORATORIES, INC.,)
)
 Defendant-Appellee.)

AFFIDAVIT

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

BASIL P. MANN, being duly sworn, states that:

He is one of the attorneys for plaintiff-appellant in the above-captioned case and has been admitted to practice before this Court.

The present case began as a patent infringement action filed by plaintiff University of Illinois Foundation against Blonder-Tongue Laboratories, Inc., alleging the infringement of U. S. patents Isbell 3,210,767 and Mayes Re. 25,740. The trial was held before the Honorable Julius J. Hoffman, United States District Judge for the United States District Court for the Northern District of Illinois, who on June 27, 1968 entered a judgment that both patents in suit were valid and infringed. A timely appeal was taken by Blonder-Tongue (Appeal No. 17153) to this Court.

On February 13, 1970, this Court affirmed the District Court's judgment with respect to Isbell Patent 3,210,767, but reversed with respect to Mayes Patent Re. 25,740. A petition by Blonder-Tongue for rehearing was denied by this Court on April 2, 1970.

On a petition by Blonder-Tongue, the Supreme Court of the United States granted certiorari to review this Court's judgment relative to Isbell Patent 3,210,767, and on May 3, 1971, the Supreme Court vacated this Court's judgment and remanded the case to the District Court to permit Blonder-Tongue to interpose as a defense a possible estoppel arising from the previous judgment of the Court of Appeals for the Eighth Circuit, which on September 30, 1968 had held the Isbell patent invalid (University of Illinois Foundation v. Winegard Co., 402 F.2d 125).

On September 27, 1971, Judge Hoffman entered a judgment order holding that the University of Illinois Foundation was estopped to assert the validity of the Isbell patent, as a result of the previous finding of invalidity by the Court of Appeals for the Eighth Circuit in the Winegard case. It is from Judge Hoffman's order that the present appeal is being taken by plaintiff University of Illinois Foundation.

The appendix identified in the attached Motion, which was originally presented to this Court by Blonder-Tongue in connection with the previous appeal in this case (Appeal No. 17153), includes some of the relevant material needed for this Court's review of the present appeal. It is understood by affiant that there exist in this Court six copies of the appendix. In order to comply with Rule 30 of the Federal Rules of Appellate Procedure, which requires that ten copies of the appendix be filed with this Court, it would be necessary to reprint portions of the prior appendix for consideration here. Such an undertaking would be both expensive and time consuming and would not confer a benefit commensurate with its cost.

The additional material necessary for this Court's review will be included in a supplemental appendix to be filed together with appellant's brief.

Basil P. Mann

Subscribed and sworn to before me this 14th
day of December, 1971.

Notary Public

My Commission Expires: _____

CERTIFICATE OF SERVICE

Two copies of the foregoing MOTION and supporting AFFIDAVIT were mailed to Hofgren, Wegner, Allen, Stellman & McCord, 20 North Wacker Drive, Chicago, Illinois 60603, this 14th day of December, 1971.

One of the Attorneys
for Plaintiff-Appellant