

## LEMELSON LAWSUITS LANGUISH

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The ghost of Jerome Lemelson, whom some have called the *Grim Reaper of the Information Age* because of his aggressive enforcement of patents dealing with "bar coding," "machine vision" and "auto-ID," continues to be as prolific in patent litigation as he was in applying for them. Now dead, Lemelson has left a legacy of terror in many corners of the information industry because of various lawsuits initiated by him and now by the Lemelson Foundation to enforce these patents.

When he was alive, Lemelson himself amassed an impressive string of victories in patent enforcement lawsuits in cases involving the Big Three automobile makers, electronics firms, video camcorder companies, and others. His Foundation has turned those court victories into an impressive series of settlements or "shake-downs" aimed at end users who may lack the fortitude or the funds for a courtroom fight, preferring to settle for royalties, which the Foundation sets just below the end user's threshold of pain. There are now more than 500 licensees who pay royalties which, for instance, may amount to mere pennies for every hundred dollars of product passing over a bar code reader but which, nonetheless, add up to significant royalty payments to the financial benefit of the Lemelson Foundation and its lawyers.

Over the past couple years, the Lemelson Foundation has proceeded with a strategy of "divide and conquer" in this litigation. It has resisted any temptation to confront most companies which manufacture such products and which would have more incentive to fight a patent battle to the end. Instead, the Foundation has been targeting end users. Current lawsuits involving Intel and Lucent continue to be hard fought with motions for partial summary judgment, to amend the complaint, and to stay the action pending. Other suits which were initiated by manufacturers such as AccuSort

seek a declaratory judgment that Lemelson's patents are invalid due to prior art, and they continue in discovery as well. A lawsuit in which U.S. Metals Refining Company asserts ownership of many of these patents because Jerome Lemelson worked for that company when he invented them also continues in federal court.

Not much has been definitively resolved in any of these lawsuits. There have been no declarations that the patents are invalid. There has been no resolution of any of the substantive issues including the patents' ownership. End users continue to be approached for royalties and continue to be threatened with oppressive litigation if they choose not to pay royalties. Many end users (more than 500) continue to "fold" under threat of an enforcement action, even though they may not believe that the patents are valid.

The Lemelson Foundation has not retreated from the litigation front. It continues to carry out its threat of litigation against end users who refuse to knuckle under the pressure to settle. In April, 2000, the Lemelson Foundation initiated five separate lawsuits in the U.S. District Court in Phoenix, Arizona, naming more than 400 defendants in five separate industries -- manufacturing, distribution, personal products, electronics, and "web inspection systems." Those cases are in their infancy. Beyond them, the other cases continue to work their way through discovery while end user customers continue to be pressured for royalties.

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