

More Lemelson Lawsuits

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On the day after Thanksgiving, the Lemelson Foundation continued its litigious ways by filing two more patent infringement lawsuits in the U. S. District Court in Arizona. In one lawsuit, Lemelson sued a wide range of companies including FedEx Corp., Amazon.com, Avis, BlockBuster, Abercrombie & Fitch, and 82 other defendants claiming that they had infringed auto-identification systems such as bar code readers. The other lawsuit was filed against 17 wine, medical, pharmaceutical, and paper companies for allegedly infringing 14 machine vision patents, covering technologies that facilitate automated packaging and inspection of goods.

These two lawsuits make a total of ten in patent infringement lawsuits pending in Phoenix against approximately 400 companies. According to lead counsel for the Foundation, Gerald D. Hosier, 912 companies have settled lawsuits involving Lemelson patents at this point, and they have paid more than \$1.2 billion. In addition to the infringement lawsuits, there are a number of other lawsuits initiated against Lemelson requesting declaratory relief from Lemelson license agreements and seeking to have various Lemelson patents declared invalid, unenforceable, and not infringed.

The late Jerome Lemelson was a prolific inventor, obtaining more than 500 patents during his lifetime. There are still 180 of his patents which are unexpired, while an additional 40 of his patent applications are still pending. The Lemelson Foundation has continued to pursue enforcement of these patents, their licensing, and their alleged infringement. Many of these patents are particularly controversial because of the method by which Lemelson obtained them - submitting very broad patent applications which were repeatedly amended while the auto-identification industry developed around them. When the applications were ultimately approved and by the time that the patents surfaced, an entire industry had grown up in the midst of their

subject matter. This prolonged application process is referred to as "submarining," has been heavily criticized, and is no longer permitted under U.S. patent laws. Attorney Hosier has argued, however, that the lengthy application progress was caused by unavoidable delays but was not fraudulent. He contends that these patents cover novel technology which Jerome Lemelson always contemplated and that the Foundation is simply protecting the intellectual property rights which it owns as a result of its founder's creations. Critics, on the other hand, charge that Lemelson was more creative in his manipulation of the patenting process than he was in developing innovative breakthroughs in technology. They believe that the Lemelson patents challenge the very integrity of the U. S. patent system.

While these legal concepts are being debated, the number of lawsuits continues to grow and the amount of royalties being paid under licensing agreements continues to increase.

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