

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

RADAR SOLUTIONS, LTD. d/b/a)
ROCKY MOUNTAIN RADAR, INC.,)

Plaintiff-Appellant,)

v.)

No. 09-50683

UNITED STATES FEDERAL)
COMMUNICATIONS COMMISSION,)

Defendant-Appellee.)

GOVERNMENT'S MOTION TO SUPPLEMENT THE RECORD

Now comes the United States of America, by and through the United States Attorney for the Western District of Texas, on behalf of defendant-appellee Federal Communications Commission (FCC) and files this motion to supplement the record. In support of the motion, we respectfully show the Court as follows:

Appellant's brief was filed on October 20, 2009, and the government's responsive brief is being filed contemporaneously with this motion. During the preparation of the government's brief, it became apparent that it would be necessary to rely upon certain record materials not included in the transcript of proceedings supplied by the appellant. Specifically, the question at issue in this case is whether the record shows that products manufactured by appellant are "intentional radiators" within the meaning of FCC rules. Parts of the deposition of appellant's

president, who testified about the electronic components of the devices and how they function, are directly material to that question.


We therefore respectfully request that the record on appeal be supplemented with the relevant pages of the deposition transcript, which are attached hereto as an exhibit.

WHEREFORE, PREMISES CONSIDERED, the United States prays that its motion to supplement the record with the above-referenced deposition materials be granted.

Respectfully Submitted,

JOHN E. MURPHY
United States Attorney

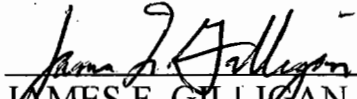
By:


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CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2009, a true and correct copy of the foregoing Government's Motion to Supplement the Record has been sent to:

Kim J. Seter
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7400 E. Orchard Road, Suite 3300,
Greenwood Village, Colorado 80111



JAMES F. GILLIGAN
Assistant United States Attorney

EXHIBIT

**SUPPLEMENTAL APPENDIX MATERIALS
(EXCERPTS FROM DEPOSITION OF MICHAEL B. CHURCHMAN)**

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

RADAR SOLUTIONS, LTD,
d/b/a ROCKY MOUNTAIN
RADAR, INC.,

Plaintiff,

VS.

THE UNITED STATES FEDERAL
COMMUNICATIONS COMMISSION,

Defendants.

NO.: EP-07-CV-0344-KC

UNITED STATES OF AMERICA,

Counterclaimant,

VS.

RADAR SOLUTIONS, LTD,
d/b/a ROCKY MOUNTAIN
RADAR, INC.,

Counterclaim
Defendant,

ORIGINAL

ORAL DEPOSITION OF

MICHAEL B. CHURCHMAN

OCTOBER 18, 2008

ORAL DEPOSITION OF MICHAEL B. CHURCHMAN,

produced as a witness at the instance of the

1 DEFENDANT/COUNTERCLAIMANT, and duly sworn, was taken in
2 the above-styled and numbered cause on OCTOBER 18, 2008,
3 from 8:28 a.m. to 3:37 p.m., before Ginger G. Zachary,
4 RPR, CRR, and CSR in and for the State of Texas,
5 reported by machine shorthand, at the offices of
6 Rasberry & Associates, 300 East Main, Suite 1024,
7 El Paso, Texas, pursuant to the Federal Rules of Civil
8 Procedure and the provisions stated on the record or
9 attached hereto.

10
11 A P P E A R A N C E S

12
13 FOR THE PLAINTIFF/COUNTERCLAIM DEFENDANT:

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16 7400 East Orchard Road, Suite 3300
17 Greenwood Village, Colorado 80111

18 FOR THE DEFENDANT/COUNTERCLAIMANT:

19 Mr. James F. Gilligan
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23
24
25

1 scenario, because a set of rules written by any man is
2 not going to cover all foreseeable futures -- all
3 foreseeable events forever and ever and ever. It would
4 be nice if they did.

08:52:27 5 So back to how my scrambler works. The
6 scrambler in the 450 has an audio generator. So we
7 create, we generate an audio signal that's below nine
8 kilohertz, and we frequently -- frequency modulate that
9 between 500 hertz and just under nine kilohertz. And we
08:52:50 10 take that, and we mix it with an incoming signal, the
11 police signal, and we reflect it back to the radar gun.

12 And when that signal is reflected back to
13 the radar gun, it now has a Doppler shift added to it,
14 and it tries to read that Doppler shift the same way
08:53:08 15 it's reading the Doppler shift that's coming off the car
16 and anything else in its vision that's moving.

17 And so the idea is that we simulate
18 electronically two cars approaching the radar at the
19 same time, jockeying for speed to pass each other, and in
08:53:24 20 that position, in that case, the radar gets confused and
21 cannot get a reading, because -- because in 1988,
22 there's a federal case in Florida where radar gun
23 clocked a tree doing 80 miles an hour, and so the
24 federal -- the judge ruled in that case, years and years
08:53:46 25 ago, that if you're going to use police radar, then you

1 device and goes through the FM chirp, processed through
2 that. That introduces a frequency, or a Doppler shift,
3 correct?

4 A. Correct.

08:57:07 5 Q. Which some people might call "white noise"?

6 A. No.

7 Q. Okay. You don't call it "white noise"?

8 A. No, nobody calls it "white noise."

9 Q. Okay.

08:57:16 10 A. It is not white noise.

11 Q. And then what happens is, it's then focused and
12 sent back through an antenna, true?

13 A. Well, it's collected through an antenna, and
14 then it's -- and then it's -- it's reflected out of the
08:57:34 15 same antenna, correct.

16 Q. It comes in, and then it's issued back out,
17 after it goes through this FM chirp --

18 A. No.

19 Q. -- process?

08:57:42 20 A. Okay. The FM chirp -- you -- you had it almost
21 correct the first time. The signal comes in through the
22 antenna.

23 Q. Yes.

24 A. It collects the signal --

08:57:51 25 Q. Yes.

1 A. -- where it's presented to a mixer diode. The
2 FM chirp is also on the mixer diode, so the two mix
3 together. And so when the signal reflects back out the
4 antenna, then it does have the FM chirp added to the
08:58:07 5 radar signal. It doesn't go through an FM.

6 Q. All right.

7 A. It's mixed with it.

8 Q. Okay. I understand, at least I think I
9 understand.

08:58:17 10 Could we mark this Exhibit 1?

11 A. Okay.

12 Q. Call it the C450?

13 A. Okay.

14 Q. And then could you explain those three
08:58:23 15 components that we just discussed?

16 A. Which three components?

17 Q. The oscillator, the FM chirp, and the antenna.

18 A. Okay. Here's --

19 Q. And just keep it as simple as we can.

08:58:36 20 A. Here's an antenna, and then that's a symbol for
21 a mixer diode.

22 Q. Yes, sir.

23 A. Okay. This is an FM chirp.

24 Q. This is -- the FM chirp, you just referenced
08:58:46 25 also with the arrow as a mixer diode?

1 A. No. It goes into the mixer diode.

2 Q. Okay. Can --

3 A. The -- the scrambler -- the scrambler consists
4 of three components, all right?

08:58:55 5 Q. Okay. Can you --

6 A. There's -- there's an antenna --

7 Q. Yes.

8 A. -- all right? An antenna that's shaped like
9 this (indicating).

08:59:02 10 Q. Yes.

11 A. And then inside the antenna, there's a diode,
12 shaped like that. And then on top of the diode, we put
13 a signal that -- that's called an FM chirp. So it's an
14 audio signal that changes frequency.

08:59:20 15 Q. Desynchronous?

16 A. No, it's got nothing to do with synchronicity.

17 Q. Okay.

18 A. This -- this one goes from 500 hertz to nine
19 kilohertz, all right? So that's from 5,000 cycles per
08:59:35 20 second to 9,000 -- or 500 cycles per second to 9,000
21 cycles per second.

22 Q. I understand.

23 A. Okay. And, of course, that can be only chosen
24 because it's below the FCC rules. And then that signal
08:59:45 25 is applied to a diode, so it puts a DC bias on the