

Patent-holder Ronald Bormaster has asked the judge to dismiss the case, but plans to appeal on the basis of patent interpretation. The defendants want the judge to rule now.

By Mary Catherine O'Connor

March 7, 2008—An RFID-related lawsuit filed more than 18 months ago by a Houston man named Ronald Bormaster has reached a turning point. In his suit, Bormaster has claimed [Wal-Mart](#) and [Target](#), as well as [Gillette](#) (owned by [Procter & Gamble](#)), are infringing on his RFID patent, which describes a generic RFID tracking system and lists its applications, including the tracking of golf clubs, medical devices, children in a defined play area and livestock. The patent does not specifically name the supply chain applications for which the retailers and manufacturer in the case employ the technology (see [Patent Holder Sues Wal-Mart, Others](#)).

The suit initially named [Home Depot](#), [Pfizer](#) and Michelin North America as defendants. Home Depot, however, was quickly dropped from the case because it was able to prove it was not using technology described in the patent says Edward Goldstein, a partner at [Goldstein, Faucett & Prebeg, LLP](#) and Bormaster's lead attorney. According to Goldstein, Pfizer and Michelin are no longer named in the suit because they settled with his client out of court, though the attorney declines to provide details of the settlements.

Early on, the defendants filed motions with U.S. District Court Judge Leonard Davis in the Eastern District of Texas, calling the patent invalid and asking him to dismiss the case, but the motions were denied. However, Goldstein says, based on a court document known as a claim construction, filed by the judge on February 11, Bormaster has now asked the court to dismiss the case because he disagrees with the judge's interpretation of the patent. Goldstein says Bormaster plans to appeal the case if it is dismissed—or if, rather than dismissing the case, the judge rules in favor of the defendants. In either scenario, he adds, the appeal would state that the judge's interpretation of one of the claims is inaccurate.

A judge writes a claim construction to clarify and interpret the specific patent claims that are the basis of a patent case. Bormaster's particular suit is based on two of the 22 claims in his [patent for an inventory control system](#). During early arguments in the case, the defendants asked the judge to construe the term "interrogator/reader" described in the patent. In response, the judge found that the patent describes an interrogator/reader as containing an RF field generator and a receiver.

According to the Bormaster patent, the judge noted, the interrogator/reader does *not* contain a transmitter. A transmitter is an element of interrogator/readers described in earlier patents awarded to [Cato, et al](#) in 1996 and [Reis, et al](#) in 1997. Describing an interrogator/reader as not having a transmitter made it novel, Bormaster argued, based on prior art (other, previously issued patents) and, therefore, patentable.

The defendants claim the interrogator/readers they use as part of their RFID inventory control system

Plaintiff Prepares Appeal of RFID Case Against Wal-Mart, Target, Gillette

Topics/Verticals: [IT/Infrastructure](#), [Asset Tracking](#), [Retail](#), [Manufacturing](#), [CPG](#)

do contain transmitters. Based on this claim, Goldstein explains, Bormaster says he would "stipulate" (agree) that the defendants did not infringe the claims, and has asked the judge to dismiss the case on that basis, so that he can set up an appeal. The appeal would state that the judge erroneously construed the term "interrogator/reader."

"Claim construction can make or break a case, depending on which way it comes down," says Jim McNeill, a partner at [McKenna Long & Aldridge](#), an international law firm based in Washington, D.C. "If the plaintiff is going to stipulate non-infringement, he believes the court would ultimately decide non-infringement, so it could be a time- and cost-saving measure. If he thinks the court misconstrued a claim, he can then appeal on that."

However, McNeill says, the defendants have asked the judge to make a summary judgment based on other grounds in the case. A party in a case often requests a summary judgment when, based on the patent definitions, it believes it would ultimately win the case. (Summary judgments usually negate the need for court cases, though the other party can still argue that it has enough evidence to merit a full trial.)

According to Goldstein, the judge could soon make his decision on the motions before him. In the event that he does not dismiss the case or present a summary judgment, the parties are set to return to court in August of this year. Although *RFID Journal* has called Wal-Mart and Proctor & Gamble asking for comments, neither company has responded.

Bormaster initially set up a firm called RFID World, to which he transferred the patent. At the request of a media outlet with the same name, however, he has since changed the name of his firm to RFID Tracker. But as a business, RFID Tracker exists only on paper—according to his lawyer, Bormaster works in the real-estate industry and does not sell products or services based on his RFID patent.