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Default [Judgments] & the U.S. Open

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The late and great tennis writer and broadcaster Bud Collins loved loud pants (Google it), nicknames (ditto), and "net cords,"* those balls that hit the top of the net and through some combination of physics and fortune fall on the opponent's side of the court. Bud would interrupt the silence that tennis broadcasters observed during a point to urgently whisper "net cord!" whenever one occurred. Bud probably never developed a passion for patent litigation, but surely he would have been amused by *Group One Ltd. v. GTE GmbH*, No. 20-CV-2205 (MKB), 2023 WL 6845864 (E.D.N.Y Oct. 17, 2023), a case involving patents directed to tennis let-detection systems.**

For students of the law rather than the game, *Group One* stands out for two reasons. First, the case serves as an instructive reminder that default judgments do not necessarily entitle the plaintiff to its requested relief. The defendants here made an appearance but then defaulted. Plaintiffs must show an evidentiary basis for their requested damages, and doubts are resolved in favor of the defaulting party. The court had previously denied the patentee's request for lost profits based on profits it would have made for supplying the U.S. Open with its let-detection systems because the patentee failed to provide evidence of its fixed costs. As the court recognized in its recent opinion, that was an error because lost profits require proof of the patentee's incremental costs. The court corrected that error and awarded lost profits based on sales the patentee would have made to the U.S. Open for two years. The court did deny, however, the patentee's requests for price erosion and enhanced damages.

The case is also notable because of the interplay between the patentee and the U.S. Open's organizers, the United States Tennis Association ("USTA"). The patentee declined to name the USTA, its potential customer, as a defendant. Nevertheless, the patentee sought to permanently enjoin the USTA from using the defendant's systems. For its part, the USTA was represented by the lawyers who originally appeared for the defaulting defendant, filed multiple briefs in the case, and maintained that it should not be subject to a temporary restraining order barring use of the defendant's system at the 2021 U.S. Open. The court has declined to extend the injunction it entered to the USTA because it has never addressed the question of whether the USTA has actually infringed the asserted patents.

The parties appear to remain in a curious limbo. It is unclear whether the case will quietly end or enter a new, expanded phase with the USTA as a party.

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*I was never sure whether Bud was saying "net cord" or "let cord," and I was in good company. His frequent broadcast partner John McEnroe once asked Bud to clarify, and Bud assured him that "net cord" was the correct term.

**Professional tennis tournaments use let detection systems to determine whether a serve has touched the top of the net before landing in the appropriate service box. In such instances, a "let" is awarded, and the server receives an additional serve.

> **Plaintiff argues that USTA's "past misconduct" justifies reversion to the original proposed language. (Pl.'s Inj. Mem. 7–10.) This argument is unavailing because Plaintiff has never shown and the Court has never held that the USTA committed any misconduct. The Court has never adjudicated the issue of whether USTA is in violation of Plaintiff's patents because the USTA is not a party in this matter, as the Court has made clear a number of times.**
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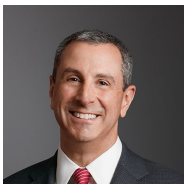

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