

GOLD & STOCK TELEGRAPH CO. v. WILEY.

(Circuit Court, S. D. New York. June 16, 1883.)

1. PATENT TELEGRAPHIC PRINTING INSTRUMENTS—INFRINGEMENT.

The third claim of the reissued patent, No. 3,810, granted to plaintiff, as assignee of Edward A. Calahan, January 25, 1870, for an improvement in telegraphic printing instruments particularly designed for registering the prices of stocks, is infringed by machines made under the Wiley patent, No. 227,868, but those machines are not an infringement of the original patent granted to Henry Van Hoevenbergh, April 21, 1868.

2. SAME—REISSUE—JURISDICTION OF COMMISSIONER OF PATENTS.

Power is conferred upon the commissioner of patents to cause the specification of a patent to be amended, on application for reissue, so as to fully describe and claim the very invention attempted to be secured by the original patent, and which was not fully secured thereby in consequence of inadvertence, accident, or mistake.

3. SAME—FORM OF PETITION.

It is not indispensable that the petitioner, in his application for a reissue, should use the exact phraseology of the statute, if he employs language which actually conveys its legal meaning.

Dickerson & Dickerson, for plaintiff.

Charles N. Judson, for defendant.

SHIPMAN, J. This is a bill in equity, founded upon the alleged infringement by the defendant of reissued letters patent No. 3,810, granted January 25, 1870, to the plaintiff, as assignee of Edward A. Calahan, and of original letters patent granted July 27, 1871, to Henry Van Hoevenbergh, as inventor. The original Calahan patent was granted April 21, 1868. Each patent is for an improvement in telegraphic printing instruments particularly designed for registering the prices of stocks. The specification of the Calahan reissue describes the invention in general terms, as follows:

“It is often desired, particularly in large cities, to keep a correct record of various fluctuations in the price of gold, stocks, and articles of trade, and to have these fluctuations simultaneously and periodically denoted and registered at the various centers of business connected with one central transmitting station. This invention is intended to accomplish the said objects in a very reliable manner, and to dispense with the complicated mechanism heretofore made use of to cause an impression to be made when the type-wheel has been brought to a proper position. A magnet and armature are employed in effecting the movement of the type-wheel, so that the same is turned to the required position, and then, by an independent motion, separately controlled from that of the type-wheel, the impression is made, so that the type-wheel can remain after it is adjusted, or be again moved previous to the impression being made. The impression is made on a strip of paper by two type-wheels, so that the printing is in two lines, and the figures and fractions for denoting the prices or quotations are contained upon a wheel and combined therewith. Letters are provided for printing on the same strip of paper to denote the articles to which the quotations relate. As the different machines will generally be but a short distance apart, it is preferred to make use of two or more wires communicating through the entire circuit of machines. One of these wires transmits the pulsations of electricity that act upon a magnet and adjust the type-wheel to the proper letter or number. The other wire trans-

mits the pulsations of electricity, which, acting in a magnet, produce the impression upon the paper."

The third and only claim in controversy is as follows:

"(3) The combination of the type-wheels, *k* and *l*, magnets, *f* and *i*, with the magnet, *c*, and impression roller, *u*, or its equivalent, substantially as set forth."

This claim is precisely like the third claim of the original, except that in the original, after the words "substantially as," the words "and for the purposes" were inserted.

The petition of the plaintiff to the commissioner of patents for a reissue averred that the original patent was "not fully operative and valid by reason of a defective specification;" and in the affidavit attached to the petition the affiants made oath that they verily believed that, by reason of an insufficient or defective specification, "the aforesaid patent is not fully valid and available." The defendant says that in order to confer jurisdiction upon the commissioner to grant a reissue, the petition should have averred that the patent was inoperative or invalid, and there being no such averment the commissioner was without jurisdiction, and the reissue is void.

I do not understand that the supreme court has ever held that a reissue can only be granted when the original patent is completely inoperative or is entirely invalid; but, on the contrary, it has held that power is conferred to cause the specification to be amended "so as fully to describe and claim the very invention attempted to be secured by the original patent, and which was not fully secured thereby, in consequence of inadvertence, accident, or mistake." *Powder Co. v. Powder Works*, 98 U. S. 126; *Wilson v. Coon*, 18 Blatchf. 532; [S. C. 6 FED. REP. 611.] It is not indispensable that the petitioner should use the exact phraseology of the statute, if he employs language which actually conveys its legal meaning.

A reissued patent may be valid as to one claim and invalid as to others. In this case, the only claim in controversy is in substantially the same language with one of the original claims, and, so far as that claim and its subject-matter are concerned, the reissue is a substantial repetition of the original patent. Even if the petition had been technically defective in its allegations, I should not be inclined to hold that the reissue was therefore void as to an original claim which was repeated in the reissue.

The Calahan instrument, as used at the receiving station, is thus described by Mr. Brevoort, the plaintiff's expert. It—

"Consists essentially of two wheels, having respectively letters and figures upon their peripheries, which wheels are capable of independent motion. Each of the two wheels is independently controlled by a separate and independent electro-magnet. Under the wheels passes the strip of paper upon which the information from either one wheel or the other wheel is to be printed. This strip of paper is brought up into contact with the surface of

the type-wheels by being moved upward when it is desired to print by an independent electro-magnet. Thus, in the Calahan instrument, two type-wheels, printing on the same strip of paper, and three electro-magnets, are used, each one of which is operative from the central station by the appropriate device, which sends pulsations of electricity through the wires which connect the central station with the receiving instrument or instruments."

The third claim is for the combination of six elements: the type-wheel upon which are figures; the type-wheel upon which are letters; the electro-magnet operating the letter-wheel; the electro-magnet operating the number-wheel; the electro-magnet operating the impression-roller, so that impressions may be taken from either wheel; and the impression-roller.

The testimony for the plaintiff is to the effect that instruments made under the Wiley patent, No. 227,868, contain the invention specified in this claim.

One of the two experts who were introduced by the defendant said nothing in regard to the Calahan patent or its infringement. The other did not deny infringement, but thought that the Theiler (French) and the Johnson (English) patent, which was also for the Theiler invention, and which invention antedated Calahan's, contained the elements of his third claim: but the witness also testified that the Theiler patent does "not contain two independently moving type-wheels, each advanced by a magnet, independent of the magnet advancing the other type-wheel." The Theiler patent has but one electro-magnet, which moves and stops both type-wheels simultaneously, and neither wheel can be moved independently of the other.

The counsel for the defendant argued earnestly that there was no infringement, because, he insisted, the function of the magnets, *f* and *i*, in the Calahan patent, is entirely positive, *i. e.*, to act directly upon and move a type-wheel without extraneous aid; while the function of the defendant's magnets is entirely negative, *i. e.*, to prevent and regulate continuous extraneous motion imparted to the type-wheel by clock-work; and that these magnets were not, at the date of the Calahan patent, known to be proper substitutes for his magnets, and are not, therefore, equivalents therefor; and furthermore, that the Wiley machine is an improvement upon the Theiler machine, but in a different direction from the Calahan invention.

It is obvious that these various suggestions involve questions of fact, and that the defendant has no testimony, other than that appearing upon the face of the various patents and file-wrappers, upon which to support the theory of his counsel. These questions the patents alone will not settle. A court cannot deem itself called upon to examine elaborate theories upon abstruse scientific subjects, when the theories depend upon questions of fact, in regard to which there is an absence of testimony. In this case, it is to be noticed that the defendant's two experts have virtually declined to adopt his theory.