But if we go a step further and examine the situation at the time the law was passed the conclusion cannot be resisted that the law says precisely what congress intended to say and accomplishes precisely what congress intended to accomplish,—no more and no less. As has been seen the task to which the law-makers were addressing themselves was to find some remedy for a consummated infringement. Without legislation the rights of owners of design patents were null. If the recovery against infringers were confined to profits due to the design the patentee was without redress. It was to remedy this well-recognized evil that the act was passed. Is it likely that congress expected to remedy the evil by re-enacting the precise rule of damage which produced the evil? If it were intended that the profits should be confined to the value imparted by the design no legislation was necessary. The paragraph above quoted might well have been omitted. The report of the committee and the debates in congress are all in consonance with this view. The precise objection now urged was sharply pointed out in congress, and, with full and exact knowledge of the radical change which it would produce, the bill was passed.

Suppositive cases have been suggested for the purpose of showing how the act may produce unjust results requiring the payment of large profits in no way due to the design, but actually due to other and, perhaps, patented features. On the other hand, the hardship to the patentee of the situation as it existed prior to the act has been enlarged upon. With full knowledge of the situation *pro* and *con* congress attempted to solve the problem. The act proceeds upon the idea that a willful infringer is not entitled to the same consideration as a meritorious inventor. That if one or the other must suffer it shall be he who by his wrongful act has produced the situation in which exact justice is impossible. By analogy to a well-known principle of equity the theory of the law seems to be that where an infringer intentionally appropriates the design and so mixes up the patentee's profits with his own that it is impossible to apportion them the loss must fall upon the guilty and not upon the innocent party. The exceptions must be overruled and the report of the master confirmed. If the foregoing views are correct it follows that the defendants must pay the master's fees. The master has done his work ably and well and it is hoped that there will be no difficulty in arriving at a satisfactory compensation. Any difference on the subject may, perhaps, be adjusted by a reference to *Doughty* v. *Manufacturing Co.*, 8 Blatchf. 107.

ELECTRICAL ACCUMULATOR CO. v. NEW YORK & H. R. CO.

(*Circuit Court, S. D. New York.* April 9, 1892.)

1. PATENTS FOR INVENTIONS—INVENTION—ELECTRIC ACCUMULATORS.
Reissued letters patent No. 11,047, granted to the Electrical Accumulator Company, as assignee of Joseph Wilson Swan, December 17, 1889, claiming a perforated plate for secondary batteries, having the perforations extending through the plate, and the active material packed in the perforations only, cover a patentable invention.

2. SAME—UTILITY.
The fact that, before the date of this invention, Prof. Eaton had packed active material in perforations extending through the plate, at the same time covering the surfaces thereof, and that Mr. Brush had packed it into grooves in the plate without covering the surfaces, does not show a want of invention in the idea of confining it entirely to perforations extending through the plate, since this apparently slight change avoided the difficulties before encountered, and produced an electrode which has, to a great extent, superseded all others, and has become the electrode of commerce.

In Equity. Suit by the Electrical Accumulator Company against the New York & Harlem Railroad Company for infringement of a patent. Decree for complainant.

Frederic H. Betts, for complainant.

Thomas W. Osborn, for defendant.

COXE, District Judge. This is an action for infringment of reissued letters patent No. 11,047, granted to the Electrical Accumulator Company of New York, as assignee of Joseph Wilson Swan, on the 17th of December, 1889, for an improvement in secondary batteries. The invention of the reissue is intended to facilitate the construction of secondary battery plates by preparing them with perforations, cells or holes extending through the plate, in which holes the active material is packed. The original patent, No. 312,599, dated February 17, 1885, was considered by this court in the case of *Accumulator Co.* v. *Julien Co.*, 38 Fed. Rep. 117. The original was held invalid (pages 140–142) for the reason that it described and claimed a plate the outer surface of which might be covered by the active material. This construction, in view of the work done by Prof. Eaton, was held to be anticipated. The theory of the reissue is that the valuable feature contributed by Swan consists in confining the active material to the holes, without permitting it to extend beyond them to the surface of the plate. That portion of the original which refers to the coating of the outer surface of the plate has been omitted in the reissue. In other respects the description is unchanged.

The claim is as follows:

"A perforated or cellular plate for secondary batteries, having the perforations or cells extending through the plate and the active material or material to become active packed in the said perforations or cells only, substantially as described."

This is the claim of the original, except that the word "only" has been added. The patent cannot be criticised as a reissue. The