

sell and assign to the present plaintiff. For the recovery of damages for past infringements, which alone passed to the assignee, an action at law afforded the plaintiff adequate redress, and, in my judgment, the only redress to which he is entitled.

It follows that the demurrer should be sustained, and the bill dismissed. Let the bill be dismissed without prejudice to an action at law, if the plaintiff should be so advised.

AMERICAN BELL TEL. CO. v. BROWN TELEPHONE & TELEGRAPH CO. et al.

(Circuit Court, N. D. Illinois. October 18, 1893.)

1. PATENTS FOR INVENTIONS—INFRINGEMENT—IMPROVEMENTS—TELEPHONES.

The Bell telephone patent (No. 186,787) is infringed, in respect to claims 3, 5, 6, 7, and 8, by a machine which is perhaps a decided improvement in the addition of a second magnet, giving greater intensity and energy, but which does not change the operation of the parts.

2. SAME—INJUNCTION.

The fact that a patent is about to expire is no reason for refusing an injunction against an infringer who has invested his money in the business in the face of repeated adjudications sustaining the patent.

In Equity. Suit by the American Bell Telephone Company against the Brown Telephone & Telegraph Company and others for infringement of a patent. Injunction granted.

Bond, Adams, Pickard & Jackson and J. J. Storow, for complainant.

Lysander Hill and Charles C. Bulkley, for defendants.

JENKINS, Circuit Judge. This bill is filed to restrain the alleged infringement of the complainant's patent No. 186,787, granted on January 30, 1877. Upon the hearing I declined to consider the question of the validity of this patent, for the reason that it had been passed upon by the supreme court, and because I had previously ruled upon its validity. The defendants are charged with infringing claims 3, 5, 6, 7, and 8, respectively, of the patent. It is not necessary to enter into detailed investigation of those claims. The defendants' machine, in my judgment, contains all of the matters stated in those claims. It has what is claimed to be, and what perhaps is, a decided improvement in the addition of a second magnet. That addition, however, does not change the operation of the parts as declared in the complainant's patent, but is claimed to give to the magnet greater intensity and energy. Whether that be so or not, the defendants were not justified in the use of the inventions of Mr. Bell, secured to him by the letters patent referred to.

Nor do I find any reason in the arguments that have been pressed to me to withhold the issuing of an injunction. The fact that the patent has nearly expired is, to my mind, a greater reason for granting the injunction. These telephone patents, as I have had occasion heretofore to remark, have probably been more vigorously contested

than any other patents. The remaining time during which the inventor and his assigns may enjoy the fruit of the invention is short. After such a conflict the court ought not to permit infringement during the short remaining period. The defendants claim to have invested large amounts of money in their enterprise. They did it in the face of repeated adjudications sustaining the validity of the patent in question, and with their eyes open. If they must use the Bell invention to make operative the Brown improvement, they must await the expiration of the Bell patent.

An injunction will issue, as prayed for in the bill.

AMERICAN BELL TEL. CO. v. WESTERN TEL. CONST. CO. et al.

(Circuit Court, N. D. Illinois. October 18, 1893.)

PATENTS FOR INVENTIONS—INFRINGEMENT—INJUNCTION.

One who invests his money in an infringing business, knowing that the patent has been sustained by the United States supreme court, will not be permitted to give bonds for damages, instead of submitting to an injunction, merely because the patent will expire in a few months.

In Equity. Suit by the American Bell Telephone Company against the Western Telephone Construction Company and others for infringement of letters patent No. 186,787, issued January 30, 1877, to Alexander Graham Bell, for improvements in electric telegraphy. Injunction granted.

Bond, Adams, Pickard & Jackson and J. J. Storrow, for complainant.

Joseph G. Parkinson, Robert H. Parkinson, and Adolph Moses, for defendants.

JENKINS, Circuit Judge. The validity and infringement of the complainant's patent are not disputed. The life of that patent expires on January 30, 1894. It is claimed that the defendants ought not now to be enjoined, but should be permitted to pursue their infringement upon giving bond to pay royalties to the complainant. The defendants, at the commencement of their enterprise, knew that this patent had been sustained by the supreme court of the United States. They were well informed of the complainant's rights under that patent. With that knowledge, they have pursued their infringement, with a view to entering into competition with the complainant in the use of this patented improvement. It is true that they have a right to enter into competition with the complainant and to use the invention of Mr. Bell covered by patents which have expired. To that extent, they are justified. But they have no right, in the prosecution of such competition, to use the inventions covered by his patent No. 186,787 until the expiration of that patent. They must await that time before they may use the invention thereby covered. If it be true that the defendants have invested large amounts of money in the prosecution of their enterprise, which will be prejudiced or injured by an injunc-