

## UNITED STATES ELECTRIC LIGHTING CO. v. EDISON LAMP CO.

(Circuit Court of Appeals, Third Circuit. November 27, 1893.)

## No. 29.

## 1. PATENTS—ANTICIPATION.

Patent No. 306,980, granted to Edward Weston for an improvement in the process of making carbon conductors for incandescent lamps, is void because anticipated by the Sawyer & Man patent, No. 211,262, for the same invention. 51 Fed. 24, affirmed.

## 2. SAME—PRIOR PUBLIC USE.

The Weston patent is also void because of public use of the invention by Sawyer & Man two years before application for the patent. 51 Fed. 24, affirmed.

Appeal from the Circuit Court of the United States for the District of New Jersey

In Equity. Suit by the United States Electric Lighting Company against the Edison Lamp Company for infringement of patent. Bill dismissed. 51 Fed. 24. Complainant appeals. Affirmed.

Thomas B. Kerr and George H. Christy, for appellant.

Frederic H. Betts, for appellee.

Before DALLAS, Circuit Judge, and BUTLER, District Judge.

DALLAS, Circuit Judge. This suit was brought for alleged infringement of letters patent of the United States No. 306,980, dated October 21, 1884, granted to Edward Weston, for "process of making incandescents." The claim is as follows:

"The improvement in the art of making carbon conductors for incandescent lamps, which consists in first forming a carbon core or base, and then building up said core with carbon obtained and deposited upon the same by and during the operation of electrically heating said core while surrounded by or saturated with a carbonaceous substance, substantially as hereinbefore set forth."

The assignments of error raise no material and substantial question which was not fully investigated, and rightly decided, by the court below. The learned judge of that court deemed it necessary to consider only:

"First, the prior letters patent of the United States, No. 211,262, for the same invention, dated January 7, 1879, granted to William E. Sawyer and Albon Man, upon an application filed October 15, 1878, [the application for the Weston patent, in suit, was filed on May 27, 1881;] and, second, the alleged public use of the invention by Sawyer & Man, and those acting under them, for more than two years before Weston's application for a patent."

The evidence bearing upon these matters is reviewed and properly dealt with in the opinion of the circuit court, and the conclusions there reached are that the proofs, as a whole, do not satisfactorily show that Weston's alleged invention preceded that of Sawyer & Man, and that the defense of two years' prior public use of the invention before the application for the patent in suit was impregably established. No purpose would be subserved by again discussing this evidence. It is enough to say that our own examination of this record has entirely convinced us that the ac-

tion of the circuit court in dismissing the bill was based upon a true apprehension of the facts, and a correct conception of the law.

The decree of the circuit court is affirmed, with costs.

ROGERS TYPOGRAPHIC CO. v. MERGENTHALER LINOTYPE CO.

(Circuit Court, D. New Jersey. November 28, 1893.)

1. PATENTS—ESTOPPEL—INTERFERENCE—ACQUIESCENCE.

The fact that a contestant does not move to dissolve an interference is not such an acquiescence as will estop him, when subsequently sued upon his opponent's patent, from setting up a prior state of the art, so limiting the claims thereof as to prevent infringement.

2. SAME—PRELIMINARY INJUNCTION—WHEN GRANTED.

A preliminary injunction will not be granted when the proofs leave complainant's case in doubt, when defendant's pecuniary responsibility is not questioned, and when very serious injury would be caused to defendant's business, while no irreparable damage would accrue to complainant by a denial of the injunction.

In Equity. Bill by the Rogers Typographic Company against the Mergenthaler Linotype Company for infringement of letters patent No. 474,306, issued May 3, 1892, to Jacob W. Schuckers for "improvements in mechanism for justifying composed lines of type." Heard on motion for a preliminary injunction. Denied.

B. M. Philipp and M. H. Phelps, for the motion.  
Frederic H. Betts, opposed.

ACHESON, Circuit Judge. The patent in suit is of recent date, having been granted on May 3, 1892. Acquiescence in its claims by the public cannot be asserted upon the evidence. It has not been the subject of judicial decision. True, in the interference proceedings between Schuckers and Mergenthaler, the concurrent judgment of the examiner of interferences, the examiner in chief, and the commissioner of patents was in favor of Schuckers upon the question of priority of invention; and this might well be deemed good ground for the allowance of a preliminary injunction were that the only question here raised. But such is not the case. Infringement is strenuously denied. The defendant maintains that the antecedent state of the art imposes such limitations upon the Schuckers claims that they cannot rightly be construed to cover the defendant's machine. This is a fundamental question, and one for judicial determination. I do not see how the question could well have been involved in the interference proceedings. Nor am I convinced that by reason of what occurred in the patent office the defendant is precluded from setting up this defense at this preliminary stage of the case. Undoubtedly, the patent office officials gave a very broad interpretation to the interference issues. We discover, however, from a perusal of the decision of the examiner of interferences, that he had great difficulty in determining what scope should be given to the language in which the issues had