SWIFT v. EAMES VACUUM BRAKE CO.

(Circuit Court of Appeals, Second Circuit. March 22, 1895.)

PATENTS—CONSTRUCTION AND INFRINGEMENT—EXHAUST STEAM MUFFLERS.

The Swift patent, No. 209,939, for an improvement in mufflers for the escape of exhaust steam, construed, and *held* infringed by an apparatus made under the Eames patent, No. 228,744.

Appeal from the Circuit Court of the United States for the Southern District of New York.

This was a suit in equity by William H. Swift against the Eames Vacuum Brake Company for alleged infringement of a patent. The circuit court sustained the patent, and held that the same was infringed by the defendant's apparatus. The following opinion was rendered below by Wheeler, District Judge:

The plaintiff's patent, No. 209,939, dated Nov. 12, 1878, for an "improvement in mufflers for the escape of exhaust steam," is, upon the pleadings and proofs, to be compared with patent No. 131,807, dated October 1, 1872, and granted to George S. Bassett, for an "improvement in vaporizers for steam-heating apparatus," and No. 195,003, dated September 11, 1877, and granted to Herman Guels, for an "improvement in devices for preventing the noise of escaping steam," as well as with No. 228,744, dated June 15, 1880, and granted to Elisha D. Eames, for a "noise muffler," under which the alleged infringement is made. Bassett's vaporizer has angular diaphragms, against which the steam is sent for the taking out of water and conducting it away, and a perforated cap for spraying the steam into the air of the heated rooms to moisten it; and Guels' devices are finely-perforated plates. The plaintiff's muffler is composed of literally sinuous passages, and one or more series of perforations graduated to proper size to prevent setting back the steam, and dividing it into jets. The diaphragms of Bassett form pockets for drying the steam, rather than passages mitigating its flow; and the passage leading that part of it wanted for spraying to the perforations is not sinuous, and the perforations are not graduated to prevent setting back. The devices of Guels have no sinuous passages. And neither anticipates the combination of sinuous passages and one or more series of graduated perforations of the plaintiff's patent. A construction of the patent always including an intermediate series of perforations is plausibly argued for the defendant; but one series, which may be the outer one, or more, seems to be well covered by the patent. The patent of Eames and the alleged infringement to a greater extent have the sinuous passages mitigating the flow of the escaping steam, and both have one series of perforations, dividing it into jets. The patent of Eames may cover improvements upon the plaintiff's muffler; but, notwithstanding this, the substance of the plaintiff's patented invention appears to have been taken into the improvement, and the alleged appears to be an actual infringement. Decree for plaintiff.

J. E. Maynadier, for appellant.

Cowen, Dickerson & Brown, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. Inasmuch as no defense of want of novelty, based on the prior patent to Bassett, has been interposed by the defendant, and we are unable to adopt the narrow construction of the first claim of the patent in suit contended for in behalf of the defendant, we are constrained to affirm the decree of the court below, and do not deem it necessary to add anything to the observations in the opinion of Judge Wheeler. The decree is affirmed, with costs.

INTERNATIONAL PAVEMENT CO. v. RICHARDSON.

(Circuit Court, E. D. Pennsylvania. June 20, 1896.)

PATENTS—LICENSES—RESTRICTIONS ON TITLE TO MACHINES.

It is competent for a licensee who has purchased and is operating patented machines under the license to restrict his title and ownership therein by a new contract of license, made upon a sufficient consideration, and containing a condition or stipulation that he shall have no title or interest in the machines which can be sold or assigned without the consent of the licensor, except to some other licensee; and any one purchasing such machines with knowledge of the license takes them subject to the condition, so that the same may be enforced against him by the licensor.

This was a suit in equity by the International Pavement Company against Benjamin F. Richardson to restrain him from using or disposing of two patented machines, in violation of the covenants and conditions of a certain contract of license.

Strawbridge & Taylor, for complainant.
Hector T. Fenton and E. Hunn Hanson, for defendant.

ACHESON, Circuit Judge. By a contract in writing between the International Pavement Company (the plaintiff in this suit) and the Trinidad Asphaltum Block Company, dated August 14, 1893, and duly executed by the parties thereto, the former-named company granted to the latter-named company an exclusive license to use the improvements patented in 11 named letters patent of the United States, and each of them, in the manufacture, sale, and use of compressed asphalt paving and building blocks and tiles within the counties of Philadelphia, Delaware, Chester, Lancaster, and York, in the state of Pennsylvania, for the period of 17 years from July 12, 1892, unless sooner terminated for breach of condition, as therein provided. This contract of license contains the clause following:

> This license shall not be transferable or assignable by the said party of the second part without the consent in writing of the said party of the first part, duly authorized by a vote of its board of directors, and indorsed hereon; and the said party of the second part shall have no interest in the patented machines that it is by this contract of license licensed to procure and use, or in the machines covered by said letters patent which are now owned by it, or have been used and operated by the party of the second part under any prior license from the party of the first part, which it can use and operate as constructed and operative machines, except under and pursuant to this contract of license, and while the same remains in force; and that said party of the second part shall have no interest in said patented machines which, as constructed and operative machines, can be assigned, sold, or in any manner transferred, without the written consent of the said party of the first part, duly authorized by vote of its board of directors. And, apart from said contract of license, the title to said patented machines shall be merely as raw metals or materials in the possessor's hands; provided, however, that the said party of the second part may at any time sell said patented machines to any persons or parties who may have a license from the International Pavement Company to use the same, to be used and enjoyed by such purchasing licensee, subject to all the terms, restrictions, limitations, and conditions in such purchasers' license from the International Pavement Company contained.