Nuttall trolley, and, as it is not entirely clear upon the papers but what defendants may be able to show that these particular trolleys are within the provisions of the license given by complainant to the Nuttall Company, it seems unnecessary at this stage of the case to interfere with these fourteen cars. Complainant, however, may take an injunction forbidding the defendant railways from hereafter using any infringing combination covered by the claims specified (except such as may now be in use on the fourteen cars), unless they show that such infringing combinations have been manufactured and sold under license from the owner of the patent.

THOMSON-HOUSTON ELECTRIC CO. v. H. W. JOHNS MANUF'G CO. et al.

(Circuit Court, S. D. New York. June 8, 1896.)

PATENTS—INFRINGEMENT—PRELIMINARY INJUNCTION.

Preliminary injunction granted, on the strength of prior decisions, against the infringement of the Van Depoele patent, No. 424,695, for a trolley frog or switch.

This was a suit in equity by the Thomson-Houston Electric Company against the H. W. Johns Manufacturing Company and H. W. Johns, R. H. Martin, and Charles H. Patrick, individually and as officers of the H. W. Johns Company. The cause was heard on motion for preliminary injunction.

Frederic H. Betts, for complainant.
Edmund Wetmore, for defendants.

LACOMBE, Circuit Judge. The complainant may take injunction restraining the making or sale of any trolley frog or switch devised or intended to be used in infringement of such claims of the patent sued upon as were sustained by the court of appeals. It is not intended, however, to enjoin against the sale of trolley frogs or switches by way of replacement of broken frogs or switches, or such as are worn out by use, or of substitution for trolley frogs or switches previously sold by the owner of the patent to purchasers from it. Defendants, however, must determine, at their peril, whether the purchaser buys to use for infringement, or only for legitimate repair; but this permission to repair does not give authority to reconstruct or rebuild a combination which has been sold by the owner of the patent. Injunction may run against the officers as well as the corporation defendant. Possibly, under the stimulus of an apprehended prosecution for contempt, they may familiarize themselves with the kind of goods their company is publicly advertising for sale, and thus infringement may be more satisfactorily checked than it would otherwise be.

THOMSON-HOUSTON ELECTRIC CO. v. UNION RY. CO. et al.

(Circuit Court, S. D. New York. November 14, 1896.)

PATENTS—PRELIMINARY INJUNCTIONS—PUBLIC CONVENIENCE.

Inconvenience to the public, in stopping the running of electric cars, is not sufficient ground to require the refusal of an injunction, though it may induce a modification as to time of compliance therewith.

This was a suit in equity by the Thomson-Houston Electric Company against the Union Railway Company and others to restrain the alleged infringement of the Van Depoele patent, No. 495,443, for an electric trolley switching device.

Frederic H. Betts, for complainant.
William C. Witter, for defendants.

LACOMBE, Circuit Judge. When preliminary injunction was granted in this case these 10 trolleys were excepted, since upon the proofs there was a reasonable inference that they had been licensed. The case, as now made, shows quite clearly that they were not. It further appears, and is not disputed, that the Union Railway Company did not obtain these 10 infringing trolleys until April 18, 1896, more than four months after Judge Townsend's decision, and that, when it selected the equipment in which they were included from the Walker Company, in preference to that offered by the General Electric Company, it did so because it could get such equipment at a lower price. The Walker Company appears to be abundantly able to respond to any claim which the Union Railway Company may have by reason of its use of the equipment being stopped as an infringement of complainant's patent. There seems no longer any reason to except these 10 trolleys from the operation of the injunction, except the public convenience, it appearing that the cars equipped with them are in actual use. This is not sufficient to require a refusal of the injunction, although it may induce a modification as to time of compliance. Campbell Printing Press & Manuf'g Co. v. Manhattan Ry. Co., 49 Fed. 930. Injunction, therefore, may issue against the further use of these 10 infringing trolleys, but its operation be suspended for 30 days after entry of order on this motion. So far as appears, that will be ample time for substituting noninfringing equipment.