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.

NILSSON v. JEFFERSON et al.

(Circuit Court, N. D. California. December 31, 1896.

No. 12,296.

1. PATENTS—PRELIMINARY INJUNCTION—ACQUIESCENCE.
A patent only eight months old is too recent to have received sufficient acquiescence to warrant a preliminary injunction.
2. SAME—PECUNIARY RESPONSIBILITY.
Where defendants are pecuniarily responsible, and their infringing device is for use by themselves, and not for sale, there cannot be such irreparable injury as will overweigh the considerations against granting the injunction.

This was a suit in equity by Carl E. Nilsson against C. B. Jefferson and others for infringement of a patent for an aerial ballet. The cause was heard on motion for preliminary injunction.

J. J. Scrivner, for complainant.

Naphtaly, Friedenrich & Ackerman and John L. Boone, for respondents.

McKENNA, Circuit Judge (orally). This is an application for an injunction pendente lite on a bill for infringement of a patent and for an accounting. The patent is for an aerial ballet, and is described in the specifications by the patentee as follows:

"My invention relates to improvements in stage apparatus, and the object of my invention is to produce a simple apparatus which is adapted for use in producing an aerial ballet, and which, by being arranged above a stage, is capable of supporting ballet dancers in mid air, and may be conveniently and easily manipulated, so as to give to the aerial dancers the appearance of floating in the air, or moving laterally, and also of moving up and down."

There were affidavits filed supporting the bill, and affidavits against it. The facts need not be detailed.

It is conceded that an injunction pendente lite should not be granted unless the remedy is clearly demanded, upon a clear title and a clear detriment. An injunction certainly interrupts action. It may interrupt rights, and therefore do, instead of preventing, an irreparable injury, unless great care be used. This admonition is constantly made in the cases, and must be heeded now.

There is an objection to the jurisdiction. That is easily disposed of. The foundation of the action is an injunction. The accounting for profits is but incidental to that, and, if the bill should exclude the fact of the existence of royalties as a condition of equitable remedy, as contended for by the respondents, which I do not decide now, but only mention, it may be corrected by amendment. The same remarks apply to the other defects which are urged against the bill. We shall, therefore, assume the amendments as made, and the bill as sufficient, as also the affidavits.

The patent is a very recent one, issued in April of this year,—only eight months ago. It is conceded that the necessary conditions of an injunction pendente lite are: First, a judgment establishing the validity of the patent; second, an acquiescence in the patent for such a length of time as to afford a reasonable presumption of its