THOMPSON et al. v. N. T. BUSHNELL CO.

(Circuit Court, D. Connecticut. June 23, 1898.)

PATENTS—PRELIMINARY INJUNCTION—SAWS.

The Fowler patent, No. 328,019, for a saw to cut metal, with a tough pliable steel blade, highly tempered as to its teeth only, *held* valid and infringed.

This was a suit in equity by Henry G. Thompson and others against the N. T. Bushnell Company for alleged infringement of letters patent No. 328,019, issued October 13, 1885, to complainants as assignees of the inventor, Thaddeus Fowler.

John K. Beach, for complainant.
Phillipp, Phelps & Sawyer, for defendant.

TOWNSEND, District Judge. The parties herein are practically the same as in Thompson v. Jennings, 21 C. C. A. 486, 75 Fed. 572. In said action the decision of the circuit court which dismissed the bill was affirmed by the circuit court of appeals. The circuit court in its opinion held that the patent was valid, but that the defendant did not infringe. The circuit court of appeals held that, "unless the patent in suit can be limited so as to cover only a band saw or a hack saw, there appears to be no escape from the conclusions expressed in the opinion of Judge Lacombe in the court below. It cannot be thus limited, in view of its unequivocal language." In accordance with this suggestion, complainant filed a disclaimer so as "to include only hack saws and band saws." The issues herein relate to certain hack saws sold by defendant. I am satisfied, from the expert testimony and from demonstrations at the hearing and upon practical tests with said exhibits, that many of these saws unquestionably infringe the patent as construed by Judge Lacombe. "They are either hardened to the base line of the teeth, or so near it that the variance from the distinctive fractional tempering of the patent was trivial." It is immaterial that defendant claims said infringement is accidental. If, as it now contends, the saw of the patent in suit is impracticable, and the flexibility which results from the invention of the patent in suit is a disadvantage, the defendant will not suffer from the effect of an injunction which will operate to prevent its making such defective saws in the future, accidentally or otherwise. It is unnecessary now to discuss the elaborate and ingenious arguments of counsel as to the effect of the former judgment or of said disclaimer. The new evidence of alleged prior use is not only discredited by the failure to produce exhibits and by its antiquity and indefiniteness, but because it fails to show that by these uses the new results of the new invention of the patent in suit were produced. Let a decree be entered for an injunction and an accounting.

UNION RY. CO. et al. v. SPRAGUE ELECTRIC RAILWAY & MOTOR CO.

(Circuit Court of Appeals, Second Circuit. May 17, 1898.)

No. 108.

1. PATENTS—INFRINGEMENT—ELECTRIC RAILWAY MOTORS.
In a patent for an electric railway motor, a claim describing the field magnet of the motor as "sleeved upon an axle" of the vehicle at one end is infringed by a construction in which flexible extensions from the field magnet are journaled upon the axle.

2. SAME—CONSTRUCTION OF CLAIMS.
In a claim for the combination with a wheeled vehicle of an electro-dynamic motor flexibly supported from such vehicle, "and centered upon the driving axle thereof," the use of the word "centered" does not require a perfectly rigid union of axle and motor, but only that the center of movement of the motor shall always be the car axle.

3. SAME.
The Sprague patent, No. 324,892, for an improved electric railway motor, covers, not a pioneer or broad invention, but a clearly-defined one, the gist of which consists in the utilization of the frame of the motor itself with the necessary extension, and the centering of the motor on the driven axle by extension pieces from the field magnet at one end, and in its flexible suspension, at the other end, to the car track, the armature being carried rigidly by the field magnet. Claims 2 and 6 of this patent are infringed by a motor made in accordance with the Short patent, No. 546,560, and claim 9 is not infringed.

This appeal is from a decree of the circuit court for the Southern district of New York, which adjudged that the defendants had infringed claims 2, 6, and 9 of letters patent No. 324,892, dated August 25, 1885, and issued to Frank J. Sprague, for an improved electric railway motor. 84 Fed. 641. The defendants' motor is made in accordance with letters patent No. 546,560, dated September 17, 1895, and issued to Sidney H. Short.

The three claims which the circuit court found to have been infringed are as follows:

"(2) The combination of a wheeled vehicle and an electro-dynamic motor mounted upon and propelling the same, the field magnet of said motor being sleeved upon an axle of the vehicle at one end, and supported by flexible connections from the body of the vehicle at the other end, substantially as set forth."

"(6) The combination, with a wheeled vehicle, supported upon its axles by springs, of an electro-dynamic motor flexibly supported from such vehicle, and centered upon the driving axle thereof, substantially as set forth."

"(9) The combination, with a wheeled vehicle, of an electro-dynamic motor centered upon the driving axle thereof at one end, a spring support for that end of the motor from the truck or body of vehicle, and relieving axle wholly or partly of dead weight, and a spring support for the other end of motor from the truck or body of vehicle, substantially as set forth."

Chas. E. Mitchell and Wm. H. Kenyon, for appellants.

Fredk. H. Betts, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. As soon as the use of an electric motor for the propulsion of cars upon a street railway was thought to be attainable, divers methods were invented which were intended to enable the motor to act efficiently, economically, and certainly upon