

of novelty, or which, though immaterially varied, was essentially old. The presumption is that neither of these things was done; and that presumption, in my opinion, should, under the circumstances of this case, be accorded very great weight. The Boynton patent, upon which the respondent mainly relies, was very carefully considered, and although the proceedings were prolonged, and several of the claims originally presented were rejected, yet, in the end, those now in controversy were allowed, and, in the absence of explanatory testimony in support of the contention that their allowance was improper, there is nothing which would justify the court in saying that the patents were erroneously issued, or in so limiting their scope as practically to annul them. Decree for complainant.

SPRAGUE ELECTRIC RAILWAY & MOTOR CO. v. NASSAU ELECTRIC
R. CO. (two cases).

(Circuit Court, E. D. New York. January 24, 1899.)

PATENTS—ELECTRIC RAILWAY MOTORS.

The Sprague patent, No. 324,892, for an electric railway motor, construed, and *held* infringed as to claims 2 and 6.

In suit No. 1, complainant moves to punish defendant for contempt in disobeying an injunction against infringement of claims 2 and 6 of the Sprague patent (324,892), which was before the circuit court of appeals in this circuit. 88 Fed. 82. In suit No. 2, complainant asks an injunction against the structures complained of in the first suit, under claims 2, 4, and 6 of the same patent, claim 4 never having been adjudicated.

Frederic Betts, for the motion.

George Harding, Jr., opposed.

LACOMBE, Circuit Judge. The words "flexible connections," in claim 2, and "flexibly supported," in claim 6, refer to the flexible suspension spoken of in the opinion, by which, in combination with centering the one part on the axle, both armature and field magnet always maintain precisely the same relative position under every vertical or lateral movement of the car. It may be that defendant's present devices, in which wooden blocks, with a core large enough to allow play of the bolt which passes through them, constitute the support, are deleterious when the parts become loose, but nevertheless they do under such conditions give substantially the same freedom of movement to the nose end of the motor as was given by the "flexible connections" of the Sprague patent. The numerous affidavits which assert that no good mechanic would allow the parts to become loose, that all loose nuts are at once tightened up, and most positive directions given to have all connections rigid, are of little weight in contradiction of the express statements as to cars examined, in which freedom of movement of the nose end of the motor was found to exist, the distinguishing numbers of such cars being given. It

would seem as if, in view of the character of inspection which is to be expected of the rolling stock of a road in a large city where the carrying capacity must frequently be taxed to its limit for days at a time, the present device so menaces infringement that it should be enjoined, unless it be so modified as to insure rigidity even when in constant use.

In the first suit, complainant may take an order fining defendant \$25 per car for disobedience of injunction; that is, \$25 for each separate car enumerated in the affidavits of Broadhurst and Hammer as exhibiting freedom of movement in the motors. In the second suit, complainant may take injunction under claims 2 and 6, but not under claim 4 (which has not yet been adjudicated), against the present wood block, bolt, and nut device; but injunction shall not require removal of first 250 until 60 days thereafter, at the rate of 300 a month until all are removed.

McEWAN BROS. CO. v. McEWAN et al.

(Circuit Court. D. New Jersey. February 13, 1899.)

1. PATENTS—VALIDITY—INVENTION.

Letters patent of the United States No. 492,927, granted March 7, 1893, to Robert B. McEwan, Jessie L. McEwan and Richard W. McEwan, for an improvement in paper-board, cover a patentable product and are valid.

2. SAME.

The essence of the invention consists in the retention, in the finished product, of the printers' ink in minute and distributed particles unimpaired by chemical action, coupled with an avoidance of any impairment of the fiber through such action.

3. SAME—IDEA.

An idea or discovery unaccompanied by any inventive act or practical application of an inventive nature is not within the scope of the patent laws.

4. SAME.

It is not the purpose of those laws to compel a discontinuance of the lawful manufacture and sale of known products in public use by reason of the mere recognition by some one that they possess merits not theretofore appreciated.

5. SAME—ANTICIPATION.

The question of anticipation or lack of novelty not being free from doubt, the success with which the complainant's product has met has weight in turning the scale in favor of the invention.

(Syllabus by the Court.)

In Equity.

Arthur v. Briesen, for complainant.

Edwin H. Brown and W. Laird Goldsborough, for defendants.

BRADFORD, District Judge. The bill in this case charges infringement of letters patent of the United States No. 492,927, granted March 7, 1893, to Robert B. McEwan, Jessie L. McEwan and Richard W. McEwan, for an improvement in paper-board, and by them assigned to the complainant, and prays for an injunction and an account. There is but one claim, reading as follows: