

and the result of the combination is not the result of the combination specified in claim 3.

In the model of the Advance machine put in evidence the hand-lever, when the machine is in operation, inclines decidedly forward. The spring h^2 is curved in its upper part like the letter S. Its lower end, coming down nearly straight, bears against a ledge on the frame, thus preventing the lever from dropping further forward, and holding it against the slight pull on its lower end, needed to keep the chain and segment in position. It is not contended by appellee that this spring has the function of claim 3 in lifting and floating the finger-bar and its appendages. The insistence is, as already stated, that the helical spring of the machine complained of has substantially no other function than that of the spring in the Advance machine, or of the spring n^2 in the patent of April 27, 1868. It may be here added that the little spring of the Advance and of the patent last named is not secured at one end to the frame of the machine as in claim 3, or as in the machine complained of. This spring merely affords an elastic support for the hand-lever, it is carried by the hand-lever, and its lower end bears or thumps intermittently against the ledge or bearing place on the frame as the machine is drawn over the ground in mowing.

A patent to one Heston under date of February 6, 1872, is much dwelt on as going to the matter of anticipation. This patent shows a lever hinged to a drooping corner of the frame of a mowing machine, and with its shorter arm bearing on the heel of a finger-bar, also hinged at said corner. The specification contains the following statements:

"The long arm of this lever projects inwardly, or toward to rear of the machine, where its position may be controlled by any suitable device erected upon the machine for that purpose; or a weight may be attached to it, which shall counterbalance the outer end of the cutter-bar, and thus such bar be kept in its position by changing the position of this arm of the lever, the opposite or short arm of which bears upon the inner end of the cutter-bar."

The patentee goes on to say, with reference to the working of his device, that his lever "will be operated so as to cause its inner end to assume a higher or lower position with reference to the frame of the machine, which operation will cause the outer end of the finger-bar to be raised or lowered, and thus the grass may be cut of an even length, whether the machine be used upon even or uneven ground." The function of lifting on the inner shoe, and so changing its weight or bearing on the ground to correspond with the lift on the outer end of the finger-bar, is not suggested in this patent. If a weight be attached to the extremity of the long arm of the lever, the effect would be to pull up the short arm, and so drop the outer end of the finger bar, with its full weight, on the ground. If the longer arm of the lever be curved upward and backward over the shorter arm till it droops across and forward of the finger-bar or cutter-bar, a weight attached to it might "counterbalance the outer end of the cutter-bar," but the inner shoe, instead of being also eased from the ground, would be pressed down by the added weight so hung upon the forwardly bent and projecting long arm of the lever.

Now, assuming that a weight would be the same in action for the purpose of floating a finger-bar as a spring, and assuming a familiarity with the combination of the third claim of the patent in suit, or the like combination as used by appellee, one might well devise a coupling between the long arm of Heston's lever and the frame of the machine which would serve as a prototype. But this would be to construct the anticipating device, rather than to find it in the prior art.

The decree below is affirmed.

WESTERN ELECTRIC CO. v. WESTERN TEL. CONST. CO. et al.

(Circuit Court of Appeals, Seventh Circuit. February 7, 1899.)

No. 421.

PATENTS—CONSTRUCTION OF CLAIMS—IMPROVEMENT IN TELEPHONE SWITCHES.

The Roosevelt patent, No. 215,837, for an improvement in telephone switches, is entitled to only a very narrow construction, and is limited to the mechanism described for so connecting the transmitting instrument with a spring switch that the unskilled operator, without intending or understanding the result, shall cut out and in the call bell by the act of raising and dropping the instrument in using it.

Appeal from the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

This was a suit in equity by the Western Electric Company against the Western Telephone Construction Company, James E. Keelyn, Madison B. Kennedy, and Isador Baumgartl, for the alleged infringement of a patent for an improved telephone switch. From a decree dismissing the bill, complainant appeals.

This suit was brought to obtain an accounting, and an injunction against infringement of letters patent of the United States No. 215,837, issued on May 27, 1879, to Hilborne L. Roosevelt, of New York, for an "improvement in telephone switches." The specification, excepting the technical description of the device, reads as follows: "It is a matter of considerable importance in connection with several telegraphic transmitting instruments, more especially telephones, that the operation of the transmitting instrument should automatically signal to the receiving instrument at the other end of the line the fact that a message is about to be transmitted, whereby the receiving operator is enabled to prepare himself for the reception of such messages. This is particularly true where the transmitting operator is not of necessity a skilled person in the electrical art. An instance of this can be readily given: Supposing it is desired to transmit a message to a distant point by means of a telephone or similar transmitting instrument, it is obviously desirable that the mere fact of the preparation of such transmitting instrument or telephone for sending the signal should of itself prepare the receiving operator at the other end of the line for the reception of the message. If, for instance, a telephone were hanging in a position to be raised by the transmitter, it would be very desirable that the mere fact of raising such telephone to the lips should of itself inform the receiving operator that a message was to be transmitted. My invention is designed to accomplish this result.

* * * It is obvious that by this arrangement unskilled persons must, as it were, automatically make all the necessary changes and switchings from the signal battery and bell-call to the transmitting and receiving telephones, and that this is done without the possibility of mistake." The first, second, third, and seventh claims, of which infringement is alleged, read as follows: "(1) The combination, with a telephone, of a circuit closing or changing portion