

## WELSBACH LIGHT CO. v. APOLLO INCANDESCENT GASLIGHT CO.

(Circuit Court, S. D. New York. July 12, 1898.)

## PATENTS—PRELIMINARY INJUNCTION—LAPSING OF FOREIGN PATENT.

The question whether or not the granting of an American patent is improper where a foreign patent for the same invention has lapsed between the application for and the granting of the American patent is of so doubtful a character, under the decisions of the supreme court, that it should not be decided on a motion for preliminary injunction, and such motion should accordingly be denied.

This was a suit in equity by the Welsbach Light Company against the Apollo Incandescent Gaslight Company for alleged infringement of letters patent No. 407,963, granted July 30, 1889, to F. W. & W. S. Rawson, for improvements in incandescent mantles for lights. The cause was heard on a motion for preliminary injunction.

John R. Bennett and Joseph H. Choate, for the motion.  
Edmund Wetmore, opposed.

LACOMBE, Circuit Judge. Upon this application the question is raised whether or not, by reason of the circumstance that a prior foreign patent for the same invention lapsed subsequent to the application, but before the issue of the United States patent, such United States patent was improperly issued. Under decisions of the supreme court there is so much doubt as to the correct answer to this question that it should not be decided upon preliminary motion, but upon final hearing, so that the party who may be defeated upon appeal may be in a position to apply to that court for a certiorari, should it be so advised. Motion denied.

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 WELSBACH LIGHT CO. v. REX INCANDESCENT LIGHT CO.

(Circuit Court, S. D. New York. August 1, 1898.)

## PATENTS—PRELIMINARY INJUNCTION.

The fact that a prior foreign patent lapsed between the date of the application and the date of issuance of the American patent renders the latter of such doubtful validity that a preliminary injunction thereon should not be continued.

This was a suit in equity by the Welsbach Light Company against the Rex Incandescent Light Company for alleged infringement of letters patent No. 407,963, issued July 30, 1889, to F. W. & W. S. Rawson, for improvements in incandescent mantles for lights. A preliminary injunction was heretofore granted. See 94 Fed. 1004. The defendant now moves to vacate said preliminary injunction on the ground that a French patent for the same invention had lapsed between the date of the application for the patent in suit and the date of its issuance.

Louis Hicks, for the motion.  
John R. Bennett, opposed.

LACOMBE, Circuit Judge. At the time motion for preliminary injunction was made (94 Fed. 1004) defendant knew nothing about expiration of the French patent, and introduced no evidence on that point. Since then the case against the Apollo Company (Welsbach Light Co. v. Apollo Incandescent Gaslight Co., 94 Fed. 1005) came on to be heard, and the defense of expiration of such patent was fully presented. This court found that it raised objections to complainant's relief which should not be passed upon in preliminary motion, and therefore refused injunction pendente lite. Defendant now presents affidavits setting up the facts as to French patent as they were developed on the Apollo Case. Although this defense comes to light rather late, there is no good reason why this particular defendant should be enjoined while others are left free to infringe, and the motion to vacate preliminary injunction is granted, for the reason stated.

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WELSBACH LIGHT CO. v. REX INCANDESCENT LIGHT CO.

(Circuit Court, S. D. New York. May 26, 1899.)

1. PATENTS—PRELIMINARY INJUNCTION—EFFECT OF PRIOR DECISIONS.

When a patent has been established by a decision of a circuit court after careful consideration upon a full record, another judge sitting subsequently in the same court in a different case, upon an application for preliminary injunction on ex parte papers, may well deem himself constrained to adopt the rulings in the prior case, even against his own judgment, when the facts are substantially the same.

2. SAME—EFFECT OF FOREIGN DECISION.

Where a patent has been sustained on final hearing by an American court, the fact that since such decision an English court, construing a British patent for the same invention, has reached a different conclusion, is no reason why the same American court, in a subsequent suit, and on a motion for preliminary injunction, should refuse to follow the earlier American decision, especially when the language of the two patents is not identical.

3. SAME.

The Rawson patent, No. 407,963, for improvements in incandescent mantles for lights, intended to make such mantles stronger, so that they can be handled and transported without breaking, was not anticipated by the French patent to Welsbach, No. 172,064, nor by the English patent to the same inventor, dated December 12, 1885. *Held*, therefore, on motion for preliminary injunction, that the Rawson patent was valid, and infringed.

This is an application for a preliminary injunction against defendant to restrain continued infringement of United States letters patent No. 407,963, for production of incandescent mantles, granted July 30, 1889 (upon application filed August 21, 1888), to F. W. & W. S. Rawson, and subsequently assigned to complainant. The patent states that the invention was patented in England September 1, 1886, in Germany July 24, 1887, and in France November 2, 1887.

John R. Bennett, for the motion.  
Louis Hicks, opposed.

LACOMBE, Circuit Judge. The Welsbach incandescent mantle is a light hood or frame, which is suspended over the flame of a Bunsen burner so as to become heated by it to incandescence, causing it to