

Complaint at Law in Transcript of Record at 3, *American Well Works Company v. Layne and Bowler Company*, 241 U.S. 257 (1916) (No. 376).

In the Circuit Court of Arkansas County, Arkansas

AMERICAN WELL WORKS COMPANY, Plaintiff

v.

LAYNE AND BOWLER COMPANY and M.F. LAYNE, Defendants

Complaint at Law

Plaintiff states that it is a corporation organized and existing as such under the laws of the State of Illinois and has complied with the laws of the State of Arkansas relative to foreign corporations transacting business in the State of Arkansas; that defendant company is a corporation organized and existing as such under the laws of the State of Texas, and has offices and place of business, and Clerks and Managers in charge thereof in Arkansas County, State of Arkansas.

Plaintiff for its complaint and cause of action against defendants states that it is engaged in the business of manufacturing and selling well pumps; that it owns, manufactures and sells a certain well pump, known as the "American Deep Well Centrifugal Turbine Pump," and has patent, or has applied for patent from the United States Government, for said pump and all attachments to and component parts thereof, and is and has been for many months past engaged in selling said pumps in the State of Arkansas and other States; that its business in owning, manufacturing, and selling said pumps, and in all attachments thereto and parts thereof, is legitimate and lawful in every respect, and is not an infringement and trespass upon the rights, property, patents, application for patents of defendants, or any other persons or corporations, and that defendants or either of them, do not own the aforesaid pump, or any of the attachments thereto or component parts thereof, nor the patent for same, nor have they applied for patents for same; that to carry on its business in manufacturing and selling said pumps, plaintiff has incurred great expense, and especially so in selling and offering for sale its said pumps in the State of Arkansas and elsewhere; that its said pump, attachments thereto, and component parts thereof, have been well advertised in the State of Arkansas and elsewhere; and are favorably known and regarded by the public as being the best and highest grade standard pump on the market.

Plaintiff further states that defendants are also engaged in selling well pumps, and that while defendants have full knowledge that plaintiff's pumps, or any attachment thereto or component parts thereof, are not infringements in any degree whatever upon said pumps of defendants, or any attachment or part thereof, yet defendants have falsely and maliciously libeled and slandered plaintiff's title to said pump and certain attachments and component parts thereof, by asserting and stating that plaintiff's pump and certain attachments thereto and parts thereof are infringements upon defendant's pump and certain attachments and parts thereof, all without probable cause; and, without probable cause or grounds therefor, have brought suits against certain parties who are using plaintiff's pumps, and are threatening to bring suits against any and all other parties who are using or contemplating using plaintiff's said pumps, for the purpose of collecting damages from said parties and involving them in litigation, and threatening to restrain them by proceedings in the Courts for using said pumps.

Plaintiff further alleges that defendant Layne and defendant Layne & Bowler Company, through defendant Layne, its president, and other authorized agents and employees, have stated to divers, various and sundry persons that "The American (meaning and referring to plaintiff's pump above-mentioned) is an infringement upon defendant's pump,

and we will sue them if they sell you their pump, and sue you if you use the same"; and that said defendant Layne, and defendant company, through the president, said Layne, and other authorized agents and employees, maliciously stated to divers, sundry and various parties "We know all about how they are making them (meaning and referring to plaintiff's pump, attachments thereto and component parts thereof). They are just trying to evade our patent and they cannot do it"; and further stated "They (meaning and referring to plaintiff and its said pump, attachments and component parts thereof) are infringing my patents."

Plaintiff alleges that all of said statements are made without probable cause or grounds therefor, and are doe maliciously and with the full intent and purpose of injuring and damaging plaintiff in its business and in preventing plaintiff from selling its said pumps and that said statements were so made and said suits brought and threatened to be brought to and against persons who were contemplating and negotiating for the purchase of plaintiff's said pumps, and who would, but for said false, libelous and malicious statements have purchased pumps from plaintiff, and that by reason of said false, libelous and malicious statements plaintiff has been greatly damaged in its business and injured in its reputation as a manufacturer and dealer in said pumps, and that said persons to whom said false, libelous and malicious statements were made, by reason thereof, have not and will not purchase plaintiff's said pumps.

Plaintiff states that it makes a good and reasonable profit upon the sale of each one of said pumps, and that by reason of said false, libelous and slanderous statements made as herein alleged and set forth, defendants have damaged plaintiff in the actual sum of Fifty Thousand Dollars (\$50,000.00), and that also by reason thereof plaintiff is entitled to recover of defendants the sum of Fifty Thousand Dollars (\$50,000.00) as punitive damages, and it therefore prays judgment against the defendants for the sum of One Hundred Thousand Dollars (\$100,000.00), for the costs of this suit, and for all other sums to which it may be entitled in the premises.

(Signed)

MANNING AND EMERSON

Attorneys for Plaintiff

Complaint filed December 13th, 1912.

valid at law, questions which have been committed to the exclusive jurisdiction of the United States Courts.

7. The jurisdiction of this court of equity arises from the fact that no action at law, and therefore no remedy at law exists relative to said controversy, and that the declaratory decree of this court can become effective only by further relief in the form of an injunction to restrain respondent from making said baseless assertions pending the litigation, and after this court has held that said patent is wholly invalid or is not infringed by petitioner.

8. That petitioner's testers or frostgages made and sold or offered for sale by petitioner do not incorporate or embody the elements disclosed and claimed in the Edelmann patent No. 1,800,139, and therefore do not infringe said patent.

9. That in the prosecution of the application on which said patent No. 1,800,139 was issued, applicant was compelled by the prior art to so restrict the claims of said patent, during the prosecution of said application, that said claims became and are limited to a device containing or embodying a cushioning material or a cap of cushion material carried or fitted upon the float element of the claims, the claims having other limitations not appearing or embodied in respondent's construction, and that all of the elements of the thirteen claims of the Edelmann patent No. 1,800,139 are old in the art, and in public use.

10. That the Frostgage made by petitioner, which is charged by respondent to infringe said patent, does not have a "cap of cushion material carried at one end of the float element" (as stated in claim 5 of the patent), nor does it have a cap or band of cushion material, "fitted," "carried by," "fitted around," "fitted upon," or "mounted upon" the float element; on the contrary, the cushion material, in petitioner's construction, is not attached to or fitted upon the float element at all, but is entirely separate therefrom and appears in substantially the same position in the barrel of the tube as a like element appears in the prior art devices.

11. That said Edelmann patent No. 1,800,139, and each and all of the claims thereof, are void, in view of the state of the art at the time of the patentee's alleged invention, and long prior thereto, and that the alleged invention claimed in said patent was not patentable, but involved nothing more than the exercise of mere mechanical skill.

12. Said patent No. 1,800,139 and each and all of the claims thereof are wholly void because the alleged invention described and claimed therein, long prior to the patentee's alleged invention thereof, and more than two years prior to the filing of the application for said patent No. 1,800,139, was described and shown in United States patent No. 1,331,165, issued February 17, 1920, and in divers and sundry other patents, the numbers and dates of which petitioner prays leave to insert herein when known.

13. Said patent No. 1,800,139 and each and all of the claims thereof are wholly void because the essential and only real difference between the device of the patent and the prior art devices lies in the fact that the cushion material is made a part of and attached to the float element, in which respect the patented construction differs from the prior art generally, and that said difference constitutes a mere reversal of the devices of the prior art such as that shown in patent No. 1,331,165.

14. That respondent, as incidental to the charges of infringement made against petitioner by respondent respecting Letters Patent No. 1,800,139, through its officers, salesmen, an representatives (as petitioner is informed and verily believes), is representing that there is a suit pending between petitioner and respondent, based upon the alleged infringement by respondent of said patent No. 1,800,139, and that petitioner has ceased to manufacture or produce its said No. 711 Frostgage, all of which representations are wholly without foundation and are made for the express purpose of diverting from petitioner to respondent trade and custom which belongs to and otherwise would go to petitioner, to the irreparable wrong, injury and damage of petitioner.

WHEREFORE, being without adequate remedy at law, your petitioner prays:

(a) That a writ of subpoena *ad respondendum* under the seal of this court be issued, directed to respondent, requiring it to appear and make answer to this petition or complaint, and to perform and abide by such further orders and decrees as this court may make;

(b) That a declaratory decree be entered herein, adjudging said Edelman patent No. 1,800,139, and each and all of the claims thereof, to be invalid, and also that none of the said claims is infringed by said Frostgag No. 711 made and sold by petitioner;

(c) That respondent be enjoined, both *pendente lite* and permanently, from suing or sending any threats of suit or infringement notices to customers or prospective customers of petitioner, charging that said Frostgag No. 711 infringes either or any of the claims of said patent No. 1,800,139, and from making any false or unfounded statements respecting the alleged infringement of said patent by petitioner or any statement or statements to the effect that the petitioner has ceased to manufacture or sell said device;

(d) That respondent be decreed to pay the costs of this proceeding, including a reasonable attorney's fee to petitioner; and

(e) That petitioner may have such further and other relief in the premises as to this court may seem meet.

TRIPLE-A SPECIALTY CO.,

/s/

By DYRENFORTH, LEE, CHRITTON & WILES
Its Solicitors.

/s/

GEORGE A. CHRITTON,

/s/

RUSSELL WILES

/s/

BERNARD A. SCHROEDER,
Of Counsel for Petitioner.

November 2, 1935.