IN THE HIGH COURT AT CALCUTTA

ORIGINAL CIVIL APPLICATION

In the matter of Indian Patents and Designs Act

Decided on 14th July 1925

CORAM

GREGORY, J.

Indian Vacuum Brake Co., Ltd. ... Petitioner

v.

E. S. Luard ... Opposite Party

JUDGMENT

Gregory, J.

This is a petition under Section 26 of the Patents and Designs Act (II of 1911) for the revocation of a patent granted to the respondent on the 21st March 1922 by the Controller of Patents and Designs, Calcutta. At the request of the parties this case has been tried with the aid of an assessor, Mr. A.H. Thackwell Works Manager East Indian Railways Carriage and Wagon Workshops Lilooah and I desire to acknowledge his assistance to me. The petitioner is the Vacuum Brake Co., Ltd, who carry on business in the manufacture and sale of vacuum brake fittings for railway locomotives and rolling stock. The respondent is an Engineer and is a Director of the Consolidated Brake anti Engineering Co., Ltd. manufacturers of vacuum brakes. The petitioner for many years, in the business of the Company, imported from the factory in England and sold in British India, vacuum brake cylinders described as having the value chamber mounted in the inner side of the piston according to two designs No. 14153 dated, 2nd November 1909 and No. 14678 dated 23rd April 1910. These designs were published, and have been publicly known in British India since 1910. The

petitioner also claims to be the assignee of a patent known as 'Hardy's Patent' being British Letters Patent No. 5864 of 1905. This also was publicly known and published in India, and vacuum brake cylinders according to that patent have been publicly used in India.

On the 21st February 1922 the respondent applied for and obtained in England a patent relating to the pistons of vacuum brake cylinders identical with the one in the present suit. That Patent was No. 5099 of 1922. On appeal however by the present petitioner, the Patent 5099 was cancelled on the 31st July 1924 by the Solicitor-General who held the view that it disclosed no invention. In the meanwhile, on the 21st March 1922, the respondent had applied in Calcutta to the Controller of Patents for a patent of the same device. The application was opposed by the petitioner, but it was accepted on the 11th June 1922, and Patent No. 8018, dated 21st March 1922, the subject-matter of the present suit, was granted. On the 10th December 1923 the respondent applied to the Patent Office in Calcutta for an amendment of his Specification No. 8018 of 21st March 1922. The amendments asked for were allowed subject to the insertion of a disclaimer in the specification relating to British Specification 5864 of 1905, and in consequence of this, the present proceedings were instituted for a revocation of the patent.

The specification relating to Hardy?s patent is marked as Exhibit A in this case and the drawings show some examples of forms of construction of the invention. Specimens of the petitioner's design 14153 of 1909 and 14678 of 1910 are marked C and D respectively. The only difference between these two lies in the method of attachment to the vertical wall of the piston. The respondent's Specification 8018 accompanied with the drawings is marked F. I. I think there can be no doubt that both in the working principle, and general character of construction, the petitioner's designs and the respondent's patent are founded on Hardy's patent, It is material in the present case to observe that the ball valve in this patent of 1905 is attached to the inner wall of the piston and figure 2 shows a removable seating at the bottom of the valve. If the nuts are removed from the

bolts, the ball seat below and the ball come away. The ball can he let in either from above or below and in the type shown in figure 4, from the side. In the respondent's patent the ball valve, as it is in Hardy's patent, is attached to the piston wall inside the cylinder. The valve consists of the body with the screw plug underneath, and the hall inside the body rests on the plug which is put in position from below, and which is removable by unscrewing it ; so both in Hardy's patent and in the petitioner's design the ball rests on a removable seating. Exhibit E is a model, which has been used in this ease to show the general character of the construction and principle of the respondent's hall valve. It is not an exact model, but it shows the principle. Later, daring the case, a specimen of the respondent's bull valve, in section, was secured by Mr. Thackwell, the assessor, and at the request of the respondent's counsel it was marked as Exhibit 1. The petitioner's designs C and D as already stated are identical. Type C is attached to the inner wall of the piston by two studs and nuts, and Type D is attached to the inner wall of the piston by the valve being screwed in. The ball valve consists of the valve body, the ball seating which is screwed in, the ball which is contained in a smaller cabs, and a screw plug which closes the top o? the body. It has been proved, and it is not disputed, that the petitioner's ball valve type Exhibit D has been in use on Indian railways many years, and long prior to the grant of Patent 8018 to the respondent, and the present application for a revocation of that patent is made on the ground that it is of no utility and that it is not a new invention, within the meaning of the patent law. The patent is also attacked on the ground that it was anticipated by Hardy's patent. It is important therefore to nee the interpretation placed by (the, Courts on the terms 'utility,' 'novelty,' and 'invention.' The cases show that in patent law the term 'utility'; is used, not in the abstract but in. a very special sense. Mere usefulness is not sufficient to support a patent. In the case of Young and Nelison v. Rosenthal & Co., (1), Grove, J. in charging the jury described 'utility' as meaning an invention better than the preceding knowledge of the trade as to a particular article. As to the meaning of 'novelty' and 'invention,' Lord Westbury,

in the case of Harwood, v. Great Northern Railway Co. (2), said 'you cannot have a patent for a well known mechanical contrivance merely when it is applied in a manner or to a purpose, which is not quite the same, but is analogous to the manner or the purpose in or to which it has been hitherto notoriously used.' In citing thin rule in Rickmann v. Thierry (3), Lord Davey said:' It is not enough that the purpose is new or that there is novelty in the application, so that the article produced is in that sense new, but there must be some novelty in the mode of application. By that I understand that in adopting the old contrivance to the new purpose, there must be difficulties to be overcome, requiring what is called invention, or thane must be some ingenuity in the mode of making the adaption and Cotton, L. J., in Blakey v. Latham (4) laid that to be new in the patent 'sense, the novelty moat show invention:see also Fletcher Moulton on Patent, p. 21.

Three witnesses have been called on behalf of the parties. Mr. Cook, a District Carriage and Wagon Supdt on the B. N. Ry., Mr. Bwye, an Engineer in the employment of the Consolidated Brake and Engineering Co. Ltd., on behalf of the respondent. Mr. Luard 'is a Director of this Company and was the Managing Director when Mr. Bwnye came out to India in 7923. The evidence of Mr. Cook and Mr. Remfry, generally speaking, is to the effect that they cannot find anything new in the respondent's, ball valve or any improvement on that of the petitioner's. It is common ground that the principle is the same and the valves' function exactly alike. Mr. Bwye says that she essential difference between the two is the simplicity of the respondent's ball valve which has fewer parts the ball seat sing combined with the plug. I do not think that this in itself is enough to support a patent. Many cases are collected in Fletcher on Patents P. 39 where it is stated that patents for making in one piece, articles, previously made in two or more pieces, have generally been held invalid. I have been unable to see what advantage results from this and I cannot regard it as an invention. Mr. Luard, in an affidavit that has been referred to, says, in paragraph 4, that his patent differs from the petitioner?s designs in two features which are claimed by him to be of great more pieces, have generally been held invalid. I have been unable to see

what advantage results from this and I cannot regard it as an invention. Mr. Luard, in an affidavit that has been referred to, says, in paragraph 4, that his patent differs from the petitioner's designs in two features which are claimed by him to be of great value. One of these features is that the value seat can be removed without first removing that ball, and that upon removing the valve seat for the purpose of inspection, cleaning or removal, the ball is simultaneously removed. The first part of this statement suggests that the ball can be left in the valve chamber after the valve seat has been removed. As a matter of fact it cannot. As noon as the ball seat is removed, the ball falls out, and the latter portion of Mr. Luard's statement shown that this is so. In my opinion there is no substance in the point made. For the purpose of inspecting or cleaning the valve seat, in Mr. Luards' design, the screw plug underneath is removed and the ball falls out; and in the petitioner's construction the screw plug at the top is removed and the small cage containing the ball is taken out. Even for the purpose of grinding the valve seat, which is done according to Mr. Cook about once in 5 years, and are to Mr. Bwye about once every year, it is not necessary for the valve seat in the petitioner's construction to be taken out. The overhauling of the ball valve is so occasional, that if Mr. Luard?s design showed any greater convenience, which I have been unable to find, it would not be one of value. The other feature claimed to be valuable is that the ball is properly located within the valve chamber without the provision of a cage which Mr. Luard says may possibly be omitted when replacing the parts. As there is no greater likelihood of the cage not being replaced than there, is of the ball not being replaced in the chamber in Mr. Luard's construction, there is no substance in the advantage he claims differentially for his own design. Mr. Luard?s is mistaken if he suggests that there is necessary to keep the ball in position. The evidence of Mr. Cook and Mr. Remfry shows that the absence of the cage would made no difference to the working of the valve, for the ball must come into position as soon as the screw plug at the top is screwed down properly. The cage is merely a convenient receptacle for the ball, which is taken out simply by lifting out the cage. In this

connexion, Mr. Luard has made a state, went in his amended specification to which exception has, and I, think justly, been taken. Referring to the petitioner's construction Mr. Luard says removing the screw plug the ball must be removed with some difficulty.' If Mr. Luard had seen a specimen of the petitioner's ball valve, it should have been patent to him' that the ball comes away in the cage, and that his statement was misleading. With reference then to the special features in Patent 8018 mentioned by Mr. Luard, am enable, for the reasons I have given, to take his view of their valve. From the point of view of convenience it has been said on behalf of the petitioner that it is much easier to get at the screw plug when placed at the top of the ball valve, as in the petitioner's designs, than when it is placed underneath, and is practically unseen, as in Patent 8018. Both Mr. Cook and Mr. Remfry say this, but Mr. Bwye thinks it is equally ease? in either case. Such judgment as I am able to form on this particular point, does not lead me to agree with Mr. Bwye. There is one more point in Mr. Bwye's evidence I shall refer to before stating my conclusions in this case. Mr. Bwye says that welding the valve after it has been fixed to the piston wall eliminates a possible source of leakage of air at the place of attachment. I do not think it can be contended that there is any invention in this. Mx. Bwye concedes there is no novelty in welding and there can be no question that welding could be applied equally well in the case of the petitioner's ball valves if were considered an advantage. The possible consequences, however, of fixing the ball valve in the manner described, as Mr. Bwye, preparatory to the welding have been criticised as serious. Mr. Bwye says that the ball valve is attached to the vertical wale of the piston by drillings hole in the piston wall to receive the turned portion of the valve, and, as the hole is drilled smaller than the turned portion of the valve, it is necessary to drive the valve into position by the use of a hammer, after which the welding is done. When at the assessor's instance he done. When at the assessor?s instance he was asked what would happen if a considerable degree of force were used he said this would not be permitted, but that if a considerable degree of force was used, there would be every likelihood of injuring the piston wall. Mr.

Bwye's evidence further shows that if for any cause it becomes necessary to remove the valve body the welding would have to be chipped away by hammer and chisel and the ball salvo driven out and the effect of his evidence is that there would be some slight damage to the inside of the piston wall, but lie says that it would not lie material if reasonable care were used. Mr. Remfry gays that injury to the piston wall would mean injury to the piston itself. Mr. Cook was not cross-examined on this question. The evidence altogether leaves the impression on my mind that the welding process, taken as a whole, is not unattended with danger to the piston. I do not find in Mr. Luard's specification or affidavit, a claim to any specialty in the process, and it does not impress me as a valuable feature of the patent, As stated before, the evidence shows, and it is not disputed, that type D of 1910 of the petitioner's designs has been in use on Indian Railways for many year, prior to the grant of Patent 8018. Mr. Cook has many years' practical experience of vacuum brakes and is well acquainted with the construction and working of the petitioner's ball valve type D and lie is a witness unconnected in any way with the parties. He was unable to find anything new, or, from the point of view of practical utility, anything more useful in Mr. Luard's patent. After giving my best consideration to the several matters on which evidence has been given and the question raised in this case with reference to both Mr. Luard's patent and the petitioner's deign, I have come to the conclusion that in no respect is the Patent 8018 an improvement on, or morn useful or better than, the petitioner's design. In my judgment it is not, as claimed, an improved vacuum brake piston and so far as I can see there is nothing new, in the sense of novelty, in the patent, and it discloses no invention. Furthermore, in my view, in material features, the patent was anticipated by Hardy's Patent. Applying the principles laid down in the cases cited, I am of opinion that the Patent No. 8018 of the 21st March 1922 granted to Mr. Luard the respondent with the amended specification relating thereto, ought to be revoked, and I give judgment accordingly in favour of the petitioner. The respondent mast pay the petitioner's costs in these proceedings. The Taxing Officer will on taxation fix

what allowance can reasonably be made to the expert witnesses in the suit, viz.' Messrs. Cook, Remfry and Bwye for qualifying themselves for the purposes of giving evidence and also for their attendance in Court; the amount to be fixed by the Taxing Officer in his discretion. Under Section 35 of the Patents and Designs Act I fix the remuneration of the accessor at Rs. 100 per diem. This item will not be chargeable to the parties.