

The Litigation on the Coagulant Patents for Filters.

THE MORISON-ALLEN COMPANY, 145 Broadway,
and O. H. JEWELL FILTER COMPANY, 73 West
Jackson street, CHICAGO, ILL.
NEW YORK, May 6, 1893.

DEAR SIRS.—The fact has been brought to our notice that one John C. Symons signing himself secretary of the New York Filter Company has been sending letters to our customers in which notice is given that a company by that name has instituted suit to prevent the use of the Jewell filter and claiming that it "owns the only patents covering the employment of a coagulant in the filtration of water," etc.

In view of this extraordinary claim, we beg to inform you:

1. It is absolutely untrue as stated in said letters that we have been notified that they intend to enforce their pretended or alleged claims. We have heard of these claims only through our customers.

2. The predecessor of this New York Filter Company, viz.: the Hyatt Pure Water Company, long since commenced a suit against the Jewell Company, our licensors, in which they endeavored to establish a similar claim, and after proofs had been taken, the suit was dismissed with costs against the Hyatt Pure Water Company, as appears by inclosed copy of the decree.

3. The said New York Filter Company has now commenced a new suit against one of our customers, namely, Henry Schwarzwalder and August Finck, conducting the Murray Hill Turkish Baths in this city, which suit, like the preceding one, is now proceeding, and we anticipate, to a similar conclusion. The answer in said suit, copy of which we beg to enclose, shows sufficiently, we think, the weakness of the complainant's position and the purpose for which the suit is brought.

We would especially call your attention to paragraph twelve of said answer.

4. We beg to inform you, if you have been or should be similarly threatened, that, *we will defend you and hold you harmless from all loss, cost or damage which you may incur in any such vexatious suit which may be instituted against you.*

Requesting that you will inform us at once should you be similarly annoyed, we are, Yours very truly,

THE MORISON-ALLEN COMPANY,
THE O. H. JEWELL FILTER COMPANY.

This is to certify that the Morison-Allen Company have employed us, the regular attorneys for Messrs. Schwarzwalder & Finck, to appear, at the company's expense, to defend the suit referred to in the foregoing letter, and the Hon. Lysander Hill of Chicago, the company's regular counsel, is assisting us in such defense. DEVO, DUER & BAUERDORF,
115 Broadway, New York City.

New York, May 6, 1893.

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

Wednesday, February 13, 1889.

Present Hon. Henry R. Blodgett, District Judge.

Hyatt Pure Water Company }
vs. } In Chancery.
Jewell Pure Water Company. }

Now again come the parties by their solicitors, and the court having considered the complainant's motion to dismiss this cause without prejudice, overrules said motion, and allows said complainant to dismiss at its own costs.

And now on motion of said complainant's solicitors, it is ordered that this cause be dismissed at complainant's costs and execution issue therefor.

UNITED STATES CIRCUIT COURT,
SOUTHERN DISTRICT OF NEW YORK.

New York Filter Company, Complainant,
vs.
Henry Schwarzwalder and August Finck,
Defendants. } In Equity.

DEFENDANTS' ANSWER.

The joint and several answer of the defendants, Henry Schwarzwalder and August Finck to the bill of complaint of the New York Filter Company.

These defendants, for answer unto complainant's bill of complaint, in this suit, or unto so much and such parts thereof as these defendants are advised is material or necessary for them or either of them to make answer unto, jointly and severally answering, say:

1. These defendants admit the issue of the letters patent set up in the bill of complaint as issued to Isaiah Smith Hyatt; but have no knowledge whether said patent was issued in accordance with law, and require the complainant to make strict proof thereof.

2. These defendants further answering, deny that the said

Isaiah Smith Hyatt was the original and first inventor of the improvements alleged, described and claimed in the said letters patent; or that the same had not been known and used before his alleged invention thereof; or that the same had not been for more than two years in public use and on sale in the United States at the time of the filing of his application for the said letters patent, as stated in the bill of complaint.

3. These defendants further answering say that they have no knowledge whether the complainant is a corporation organized and existing under the laws of the State of New Jersey; nor whether the title to the said letters patent, and the right to bring suit to restrain any alleged infringement thereof; is or are vested in the complainant; and therefore call for due proof of all such matters.

4. These defendants further answering, admit that they are using a filtering apparatus for the filtration and purification of water; but they say that they purchased the same from parties engaged in the manufacture and sale of such apparatus, and who, as they are informed and believe, had at the time lawful right to manufacture and sell the same; and, as advised by their counsel, they deny that the said apparatus, or method or process by which these defendants employ and use the same, infringe the said letters patent named in the bill of complaint, or any lawful right or claim of the complainant thereunder. And these defendants deny that they have, or either of them has, ever made or caused to be made, or sold or caused to be sold, any filtering apparatus embodying or containing any invention claimed in the said letters patent, or that they have, or either of them has, ever infringed upon or violated any of the rights of the complainant as in said bill alleged.

5. These defendants further answering upon information and belief, deny that the said letters patent named in the bill of complaint shows or describes an operative or useful apparatus; but, on the contrary, they aver that the apparatus described and shown in the said letters patent is entirely inoperative and useless for the purposes set forth and claimed therein, and say that for this reason the said letters patent were unlawfully issued and are consequently invalid and void.

6. The defendants further answering on information and belief deny that the said Isaiah Smith Hyatt was the first and original inventor of the alleged invention described and claimed in the said letters patent named in the bill of complaint, or of any substantial or material part thereof; and they aver, on the contrary, that the said invention and every substantial and material part thereof was and were, long prior the alleged discovery and invention thereof by the said Isaiah Smith Hyatt, fully described, shown and patented in the following named letters patent of the United States of America, viz.:

No. 24,036, granted and issued to Robert A. Maingay, May 17, 1859, for purifier and filterer.

No. 143,676, granted and issued to Gustave Demally, October 14, 1873, for system for purifying water, etc.

No. 169,362, granted and issued to Adolphe Le Tellier, November 2, 1875, for water filter and purifier.

And in letters patent Great Britain as follows: No. 589, of 1852, issued to William Dantic; No. 3952, of 1873, issued to Frederic Arthur Paget; No. 2496, of 1874, issued to William Lloyd Wise; No. 2735, of 1874, issued to William Henry Beck; No. 1990, of 1879, issued to John Henderson Parter; No. 3040, of 1881, issued to John Henderson Parter; No. 4212, of 1881, issued to Peter Spence; No. 5183, of 1881, issued to Peter Spence.

7. These defendants further answering say that the alleged invention described and claimed in the said letters patent, and all material and substantial parts thereof, were described in printed publications published long prior to the alleged invention thereof by the said Hyatt, as follows, viz.:

Benton's Sanitary Engineering, edition of 1851, page 377.

Journal of Franklin Institute, 1872, article entitled, "Steam Boiler Waters and Incrustations," by Dr. J. G. Rogers.

Steam Boilers, by William H. Shock, New York, D. Van Nostrand, 1880, page 439.

A Practical Treatise on the Manufacture of Paper, by Carl Hoffman, Henry Carey Baird, Philadelphia, 1873, page 340.

Scientific American Supplement, No. 270, of March 5, 1881, article, "How to Soften Hard Water."

Scientific American Supplement, No. 348, of September 2, 1882, article, "The Water Softening Process."

The Engineer and London Times, from which said articles in The Scientific American Supplement purport to have been copied, but the dates, numbers and pages of which these defendants have not yet been able to obtain, but pray leave to insert when obtained.

8. These defendants further answering on information and belief, say that the alleged invention described and claimed in said letters patent, and all material and substantial parts thereof, was and were, long before the alleged invention thereof by the said Isaiah Smith Hyatt, and for more than two years before his application for said patent, in public use in this country as follows:

By the firm of Jessop & Moore of Philadelphia, Pa., in their factories at Wilmington, Del., and elsewhere.

By Roland Jackson of and at Coatesville, Penn.

By William H. F. Tower of and at Mineral Point, Wis.; and by many others whose names, residences and places of use are at present to these defendants unknown, but which they pray leave to insert by way of amendment when the same shall have been ascertained.

9. These defendants further answering say, that in view of the state of the art at and before the date of the alleged discovery and invention set forth and claimed by said Isaiah Smith Hyatt in his letters patent aforesaid, the said alleged invention and discovery was not at that time a patentable invention or discovery, nor did it require the exercises of discovery or of the inventive faculty, but only the knowledge and judgment of skilled workmen, skilled in the art of filtering and purifying water, to pass from what was before known to what was described and claimed as an invention in and by said patent named in the bill of complaint.

10. These defendants further answering say that, for all and every of the reasons hereinabove set forth, the patent of said Isaiah Smith Hyatt named in the bill of complaint, was and is utterly invalid and void.

11. These defendants further answering deny that the world did not know how to successfully, rapidly and economically purify water in large quantities, prior to the alleged invention of said Hyatt aforesaid; deny that the public derived such knowledge from or through said Hyatt, or from or through his said letters patent; deny that said letters patent communicated to the public any knowledge of how to practically and successfully effect such results; deny that any invention made by said Hyatt, or set forth in his said letters patent, has been accepted, adopted or made use of in all or any parts of the United States; and deny each and every allegation of the bill of complaint, except those hereinabove specifically and expressly admitted to be true.

12. These defendants further answering on information and belief, say that the complainant is entitled to no equitable relief under its bill of complaint; that it well knows that said Isaiah Smith Hyatt was not the first and original inventor or discoverer of the alleged invention or discovery set forth and claimed in his said letters patent; that in the year 1888, its assignor, The Hyatt Pure Water Company, brought suit in the United States Circuit Court for the Northern District of Illinois against the Jewell Pure Water Company of Chicago, Ill., charging the Jewell Pure Water Company with infringing said Hyatt patent, which suit the Jewell Pure Water Company answered, setting up some of the defenses hereinabove pleaded in this cause, and that after proofs had been taken the Hyatt Pure Water Company dismissed its said suit at its own cost and has never attempted to revive the same, of all which facts, this complainant, The New York Filter Company, had full knowledge; that the Jewell Pure Water Company aforesaid was the predecessor and assignor of the O. H. Jewell Filter Company, now of Chicago, Ill., by whom or under whose authority the filtering apparatus sold to and used by those defendants, as above set forth, was manufactured; that said O. H. Jewell Filter Company has openly, notoriously and extensively manufactured and sold, for many years past, all over the country, filtering apparatus like that used by these defendants as aforesaid, and with the full knowledge of this complainant, who has never attempted to bring suit against it therefor and, as these defendants believe and charge, the purpose and object of this suit are not to get any expected relief at the hands of the court, but to lay the ground for advertising all over the country that the complainant had sued a customer of said O. H. Jewell Filter Company and thereby to intimidate said O. H. Jewell Filter Company's patrons and injure and destroy its lawful business; that immediately after the filing of the bill of complaint in this cause the complainant caused to be sent by mail to the customers of the O. H. Jewell Filter Company throughout the country, and to a large number of persons, firms and corporations who were contemplating the purchase of filtering apparatus from said O. H. Jewell Filter Company, printed circular notices announcing the beginning of this suit against these defendants and intimating that all who should use said Jewell filters would be sued; that the agents and licensees of said O. H. Jewell Filter Company for the Atlantic States, who sold to these defendants the filters complained of in the bill of complaint, have an office and place of business in the city of New York, where they can readily be reached by process of this court, but instead of bringing suit against the parties who are engaged in making and selling these filters the complainant has sued one of their customers, viz.: these defendants, so that its said circulars announcing said suit might cause other customers and persons intending to become customers, to fear the institutions of suits against themselves in case they should continue to deal with said O. H. Jewell Filter Company, or its licensees; and that by reason of its whole course of conduct aforesaid the complainant is not entitled to any equitable consideration whatever on the part of this honorable court.

Wherefore, these defendants pray that they may be hence dismissed, with their lawful costs in this behalf most wrongfully sustained.

DEVO, DUER & BAUERDORF,
Attorneys and solicitors for defendants, No. 115 Broadway, New York City.

United States of America. } ss.

State of New York, County of New York. }
Henry Schwarzwalder and August Finck, defendants, each being duly sworn, on oath states that he has read the foregoing answer, and knows the contents thereof, and that the same is true, except as to such matters and things as are therein stated upon information and belief, and as to such matters and things he believes them to be true.
HENRY SCHWARZWALDER.
AUGUST FINCK.

Subscribed and sworn to before me this 29th day of April, 1893.
(Notary's seal) ALEX. F. ROGERS.

Notary Public. (No. 40) New York county.