2 October 1931

Associate
Mr Justice Scott
2/10/31
13/5/35
Original
(5)

88. 27/31

Orbit Electric Coy. Ltd

v

Rapid Electric & General Heaters Ltd & anor

Appeal dismissed with costs. 2/10/31

Reasons for Judgment

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See [illegible] Reg. of 5th Oct. 1931
(His Honour the Chief Justice stated that he concurred in the Reasons for Judgment of Mr. Justice Dixon x)

1931

ORBIT ELECTRIC COMPANY LIMITED V. RAPID ELECTRIC ETC LIMITED AND ANOR.

JUDGMENT STARKE J.

This is an appeal from a decree of the Supreme Court of New South Wales (Long Innes J.) restraining the infringement of Letters Patent of an invention for "an improved electric heating appliance of the immersed element type" The complete specification of the invention sets forth that the main object of the invention is to provide a simple and efficient heating appliance in which the heating element is brought into direct contact with the liquid, or semi-liquid, to be heated. A further object of the invention is to provide means whereby the liquid contents of any vessel or container cannot be poured out until the current is cut off, those means being also utilised for making the electric connection. The Specification then describes a simple form of appliance, but states that the details of construction and design may be varied. The form selected consists of a vessel made of non-conducting material such as earthern-ware, with projections or lugs on the inner wall, adapted to maintain rods supporting the immersed element, and having contact points at their upper ends. A lid or cover for the vessel is also provided of non-conducting material, with means whereby it may be connected to a source of electric supply, a closed chamber within the lid, contact pieces within the chamber, and openings in the wall of the chamber through which contact tongues project when the lid or cover is placed in position upon the vessel, in order to make contact with the contact pieces within the chamber and thereby complete the circuit through the immersed element. And to discharge the contents of the vessel, it is thus necessary to remove the lid or cover, and in doing so the contact points become disengaged and the electrical ~~current~~ circuit is broken - the removal of the lid or cover acting as an automatic switch or cut out. But the invention claimed by the first claim of the Specification is expressed in very general terms, and on its validity the result of this appeal depends. It is as follows:

"In an electric water-heating appliance a vessel or container provided with a lid or cover adapted to be connected with any suitable source of electric supply and to complete the electric current through an immersed element when the lid or cover is placed in position upon the vessel for the purpose specified".

Appliances for electrically heating liquids were common enough, and varied in design. The heating element was generally enclosed, and not brought into direct contact with the liquid. But appliances of the immersed element type, that is, appliances in which the heating element is brought into direct contac

with the liquid, were not unknown. Publications were proved in this case illustrating an appliance of this type. It was self contained, and was not fitted to any particular vessel: it could be used indiscriminately in any vessel, and be instantaneously inserted and withdrawn from it. So too, it could be so constructed as automatically to switch on the electric current when inserted in the vessel and switch it off when withdrawn. If an appliance of this kind is within the ambit of the first claim, then that claim is clearly bad and cannot be supported. Long Innes J. has said that the patent is a master patent, whatever that loose phrase means, but the first claim must in truth be limited in construction if it is to be supported. All depends, to my mind, upon whether the first claim can be confined to a vessel provided with a lid or cover adapted to be connected with an electric supply, and to complete the electric circuit through an immersed element fitted within the vessel, so that the contact points may engage or disengage and the circuit be made or broken when the lid is placed on or taken off the vessel as the case may be. The form of appliance selected to illustrate and describe the invention certainly shows the immersed element fitted within the vessel. The claim itself supports this view, for the circuit is completed through an immersed element when the lid or cover is placed in position. That suggests that the element and the lid are detached from one from the other, but, on the contact points being engaged, the electrical circuit is completed. Moreover, it is a rule of construction that a claim should be interpretated so as to support rather than to destroy it. Therefore I arrive at the conclusion that the first claim is limited to an element placed and fitted within the vessel itself. The anticipations relied upon do not, as I have already indicated , disclose the invention thus described. And on the evidence, the invention or arrangement of the heating appliance described in the Letters Patent is not only novel but useful. The infringement of the first claim is clear enough, and was hardly disputed if the claim were valid.

Some discussion took place on the fourth claim, but that claim, to my mind, was not infringed. The appliance relied upon as an infringement had not, I think, any "closed chamber within the lid" which is an essential feature of the fourth claim. However, it is enough to say that the first claim is valid, and has been infringed, and that this appeal should therefore be dismissed.

ORBIT ELECTRIC COMPANY LIMITED

v

RAPID ELECTRIC AND GENERAL HEATERS LIMITED

J U D G M E N T — DIXON J.

This is an appeal by the defendant against a decree of Long Innes J. in a suit for infringement of a patent. The learned Judge decided in favour of the validity of the patent and found that two of the claims which it contains had been infringed.

The letters patent which are dated as of I3th July I92I relate to " an improved electric heating appliance of the immersed " element type."

Before the year I92I the use was practised of a high resistance wire or coil immersed in the liquid to be heated, but in most household appliances for heating liquids electrically the heat was not supplied within the liquid,but was applied externally to the container which held it.

In I900 a patent had been obtained for a device for the more convenient operation of the immersed heating wire or coil. The object of this device was to furnish for use in any ordinary domestic vessel,such as a jug or tea pot, an appliance which would automatically switch the current through the circuit when it was placed in the vessel for the purpose of immersing the heating wire or coil in the

liquid, and would automatically break the circuit when removed. The resistance wire or coil, wound upon a non conductor, was held between two metal rods forming part of the circuit and these were attached to a top or head piece in the form of a bar or a star or cross-shaped plate or a disc which would rest upon the mouth of the vessel and thus suspend the resistance coil in the liquid. The electric current was conducted by a flex attached to the top or head piece, but the circuit round the rods and resistance was broken on one side immediately under the top or head piece by a spring contact strip the underneath side of which was insulated. The circuit was completed by the closure of the spring contact strip under pressure.

The spring contact strip would rest upon the edge of the vessel when the top or head piece was placed over the mouth and the weight of the appliance would be sufficent to close the spring and complete the ~~xixxxi~~ circuit. When the appliance was lifted off the vessel the spring contact strip would open and break the circuit. It does not appear that this device found any commercial or practical use.

The patent, which has been put in suit, relates to an invention the main purpose of which is to insure a ~~xxxxing~~ breaking of the circuit before the liquid heated by an immersed resistance can be poured out of the vessel in which it is heated. The invention does not extend to an appliance which may be inserted in any vessel.

The vessel to hold the liquid is itself equipped with part of the apparatus and forms an essential part of the invention ; for it contains the heating resistance wouwd on a bobbin suspended within it by two rods attached firmly to lugs forming part of its sides. These rods terminate in contact tongues projecting upwards. The vessel is furnished with a flanged lid, and the lid is provided with two clips which grasp the projecting tongues when the lid is fitted on the vessel. The clips,which are masked by a non conducting protector, are connected with the positive and negative terminals of a flex which conducts the current to the appliance. The circuit is made by placing the lid upon the vessel and is broken by removing it. Thus

the circuit is broken, not by the release of a switch or spring contact but by the complete disconnection of terminals and on both sides, and it is made again only by the junction of the sets of terminals.

The first of the claims contained in the specification is as follows:- " In electric water heating appliances a vessel or " container provided with a lid or cover adapted to be connected with " any suitable source of electric supply and to complete the electric " circuit through an immersed element when the lid or cover is placed " in position upon the vessel for the purposes specified. "

This claim is expressed in very wide language, but, having regard to the body of the specification, I think the words " through an " immersed element " should be construed to mean " through an element " which has been immersed", and this construction operates to confine

the claim to a form of apparatus beyond which I am sure the inventor did not intend to go. For it means that the heating element is immersed before the lid is placed upon the vessel, and therefore restricts the claim to a device in which the vessel and not the lid bears the heating element. Thus,if in the device patented in I900 the top or head piece were constructed as a lid for a vessel,it would not provide an appliance which would fall within the description contained in the claim. For the heating element would be attached to the lid and would be immersed by placing the lid in position. Further,inasmuch as in the invention described in the first claim of the patent sued on the heating element is immersed before the lid is put on the vessel the lid,which is stated to be connected with the

source of energy,could only complete the circuit by bringing the terminals of the heating element into contact with the terminals it contains or bears connected with the source of electric supply.

Closely considered,therefore,the claim compendiously describes a method of constructing a water heating appliance by which the heating element is placed within the vessel,the lid is connected with the source of energy, and the circuit is obtained by bringing the terminals borne by the lid into connexion with the terminals of the heating element as and when the lid is put on the vessel. So understood the claim clearly is not anticipated by the invention patented in I900. No other anticipation was established and according to the evidence such a method of constructing an apparatus for

heating liquids was new at the date of the grant,viz ; the year I92I. But the question remains,whether at that date the claim disclosed subject matter for a grant. Did the advance described by the claim require invention ?.

The use of an immersed resistance was not uncommon and was well understood. It was daily practice to make and break a circuit with bayonet and socket,tongue and clip,or otherwise by joining and parting sections of conductors. The advance claimed consisted in arranging well known components in a manner not before adopted. A result of the arrangement was to give greater safety to the operation of heating a liquid by a method which necessarily charged it with electricity. The liquid might be enclosed in a vessel of non

conducting material with a lid which could not be removed without disconnecting the supply of energy. The utility of the arrangement cannot be denied. The steps which it involved are doubtless comparatively simple,but were they so evident at the date of the grant as to call for no exercise of the inventive faculty ?. Would such an arrangement have been obvious to those acquainted with the common knowledge of electrical practice and skilled in its appliaation ?. On the whole I think not. The arrangement embodied an idea or conception which was new. It was more than a skilful use of existing art or knowledge. Although the ingredients were familiar,there was inventiveness in their use. The amount of ingenuity or inventiveness may not be great,but it is enough.

II

I am of opinion that the first claim is valid.

There can be no question that this claim was infringed by the appellant. I therefore think the appeal should be dismissed.

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JUDGMENT. EVATT J.

Two attacks have been made by the appellant upon the validity of claim 1 of the Stubbs patent of 1921. It is said that there was no subject matter and that there was also a paper anticipation.

Reading the specification as a whole, I regard the contrivance claimed as that of a vessel provided with a lid, which is to be used for the purpose of electrically heating the liquid contents of the vessel. The means of conducting heat is an element immersed in the liquid before the lid is placed in position above the vessel. The lid being attached to a suitable source of electric supply and when the lid is in position, the electric circuit to the element is complete. It is clearly implied that when the lid is taken off the container, the electric circuit is automatically broken.

Stubbs' device must be regarded from the aspect of the

year 1921, and in the light of the evidence put before the Court, Stubbs' was undoubtedly a neat combination. Even if it be treated as belonging to the same genus as the Leask patent of 1900, there was a considerable improvement on Leask, which itself, I rather think, was not devoid of subject matter. The evidence shows that Stubbs' proved to be a commercial success. He had hit upon something which was a great convenience for household purposes, ensuring a maximum of safety. Its simplicity was its outstanding feature. It was so simple and so obvious that no one but Stubbs' appears to have thought of it. The truth is that this simplicity concealed both art and ingenuity, and the defence of want of subject matter fails.

Next, it is said that Stubbs' was anticipated by the Leask specification, which was published some twenty years earlier.

It is true that there are points of resemblance between the two. The lifting of the crown or headpiece from a container, in which a Leask appliance might be imagined as having been plunged, like the removal of the lid from Stubbs' contrivance, automatically

shut off all electric connection with the resistance coil; and, of course, each invention included the generation of heat in the liquid by means of a coil intended to be completely immersed therein while the current was on.

But there are essential differences between the two. Leask was intended for insertion in all sorts of containers, providing their size was suitable; it was not designed for operating a single container. If the vessel in use was already provided with a lid, the lid had to be taken off before Leask's apparatus could be used at all; Leask had visualized his appliance, when in use, as resting upon, and supported by two or more points of the mouth of, and as projecting into the vessel; but it was never suggested by Leask that the horizontal plane through the crown or headpiece should completely cover the mouth of the container, and so serve as a lid to it. There are strong indications in the diagrams that he had supposed the contrary. There was obvious inconvenience and no little danger in the

careless use in a household of his invention, and this probably explains why it was never adapted for commercial purposes. It is quite clear that Leask made no suggestion or direction pointing to Stubbs', and I think that the defence of anticipation in relation to claim 1 broke down.

This conclusion is enough to dispose of the substance of the present appeal, because the appellant's jug is an obvious capture of the contrivance described in claim 1.

With regard to claim 4 of Stubbs' specification, Mr. Jordan's argument depends upon giving a meaning to the word "within" which I hesitate to adopt. The vertical "jack", which is screwed to the lid of the appellant's container, serves as a handle to the lid and may fairly be regarded as part of it. But, on the whole, I think that Stubbs contemplated that the closed chamber containing the contact pieces would lie below the horizontal plane of the main surface of the lid, and not above it. If so, claim 4 is not broad enough to make the appellant's container an infringement of it.

I agree with the construction placed by Starke J. upon sec. 61 of the Patents Act in Ramsford's Case. The validity of claims 1, 4, and 5 is therefore not affected by any invalidity in claims 2 or 3. The words of sec. 61 are too clear to allow of any restriction upon their ordinary grammatical sense merely because of the place in the Act in which that section is found. Sec. 90 also supports this conclusion.

The respondent therefore succeeds upon his broader claim, and, [redacted], the appeal should be dismissed with costs.

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McTIERNAN J. : I agree that the appeal should be dismissed.