
No. 1489.

September Sess., 1915.

IN THE
District Court of the United States,
EASTERN DISTRICT OF PENNSYLVANIA.

In Equity.

On United States Letters Patent No.
884,009.

CHURCHWARD INTERNATIONAL
STEEL COMPANY,
Plaintiff,
vs.

BETHLEHEM STEEL COMPANY,
Defendant.

Bill of Complaint.

FILED
OCTOBER 29, 1915.
WM. W. CRAIG, Clerk.

WM. B. LINN,
DUELL, WARFIELD & DUELL,
Attorneys for Plaintiff.

C. H. DUELL,
F. P. WARFIELD,
H. S. DUELL,
Of Counsel.

IN THE
District Court of the United States,
EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

On United States Letters Patent No. 884,009.

CHURCHWARD INTERNATIONAL STEEL
COMPANY,

Plaintiff,

vs.

BETHLEHEM STEEL COMPANY,

Defendant.

BILL OF COMPLAINT.

*To the Honorable the Judges of the District Court of
the United States for the Eastern District of
Pennsylvania:*

The Plaintiff above named brings this Bill of Com-
plaint against the above named defendant and alleges
as follows:

First: That the plaintiff CHURCHWARD INTERNATIONAL STEEL COMPANY is a corporation duly organized and existing under and in accordance with the laws of the State of Delaware, and having an office and principal place of business at Wilmington, in the County of Newcastle and State of Delaware, and a citizen of and an inhabitant in the District of Delaware. Upon information and belief, that the defendant BETHLEHEM STEEL COMPANY is a corporation organized and existing under the laws of the State of Pennsylvania, and having its principal office and place of business at South Bethlehem, in the County of Northampton, in the State of Pennsylvania, and a citizen of and an inhabitant within the State of Pennsylvania and the Eastern District thereof.

Second: The jurisdiction of the Court herein exists by reason of the fact that the controversy arises under the patent laws of the United States. The suit is brought in equity to restrain the defendant from infringement upon Letters Patent of the United States and for an accounting and an injunction. More specifically that the defendant, in the City of South Bethlehem, State of Pennsylvania, in the Eastern District of Pennsylvania, has there and elsewhere committed the acts of infringement complained of in violation of the rights of the plaintiff.

Third: The plaintiff, Churchward International Steel Company is the sole owner of United States Letters Patent No. 884,009, dated April 7, 1908, for the art of producing alloyed steels. The said Letters Patent duly issued in due form of law April 7, 1908, upon an application filed September 18, 1907, to James Churchward, a subject of the King of Great Britain and then a resident of the City, County and State of New York,

who was the first, original and sole inventor of the subject matter of said Letters Patent. That prior to the acts herein complained of, and prior to the year 1910, the plaintiff duly purchased and acquired under and by virtue of instruments in writing duly signed, sealed and delivered, and recorded in the Patent Office of the United States, all right, title and interest in and to said Letters Patent, in and to the invention and improvements set out and claimed therein, and in and to all claims for damages and profits arising out of any infringement thereon prior to the date of its acquiring said title as aforesaid, as by said instrument in writing, or duly certified copies thereof, now in the possession of the plaintiff and ready in court to be produced will more fully and at large appear, whereby there was secured unto the plaintiff Churchward International Steel Company, its successors, legal representatives and assigns, for the balance of the term of 17 years from the 7th day of April, 1908, the full and exclusive right of making, using and vending to others to be used said invention and improvements throughout the United States and territories thereof, and the plaintiff alleges that it is now the sole and exclusive owner of said Letters Patent of the United States, and all rights thereunder.

Fourth: The invention shown, described and claimed in said Letters Patent numbered 884,009 had not been known or used in this country, nor patented or described in any printed publication in this or any foreign country before the invention and discovery thereof by said James Churchward, nor for more than two years prior to his application for said Letters Patent, and had not been in public use or on sale anywhere for more than two years prior to said application, nor

had applications for foreign letters patent been made or filed at any time by anyone, and the inventions and improvements had not been abandoned at the time that said James Churchward made application for said Letters Patent on September 18, 1907. The said James Churchward in respect to said application duly complied in all respects with the Statutes of the United States and the rules of the United States Patent Office in that behalf made and provided, and after due proceedings had said Letters Patent did issue in due form of law, duly signed and sealed, unto the said James Churchward.

Fifth: Plaintiff further alleges that during the pendency of the application for said Letters Patent, and both prior and subsequent thereto, said James Churchward and the plaintiff expended large sums of money and were put to great trouble in and by the said invention for the purpose of preparing for using and causing to be used the methods or processes and improvements described and claimed in said Letters Patent, and the plaintiff further alleges that said invention and improvements of said Letters Patent have been extensively applied to practical use, and that large quantities of steel alloys have been treated in accordance with said Letters Patent numbered 884,009, and the invention therein set out and claimed, so that the same have gone into extensive use throughout the United States, supplanting those formerly used. Plaintiff further alleges that it has caused notice to be given to the public in general and to this defendant in particular of the said Letters Patent numbered 884,009, and of the infringement herein complained of, and the rights of the plaintiff in the premises, requesting the said defendant to desist and refrain therefrom, but that in

total disregard of said notice and of the Plaintiff's rights, the said defendant has refused to desist from said infringement, and is continuing and threatening to continue to infringe upon said Letters Patent, and upon the exclusive rights of the plaintiff in the premises.

Sixth: The plaintiff further alleges that the public has generally acquiesced in said Letters Patent, and the plaintiff's exclusive rights thereunder, as therein set forth and claimed, and the plaintiff further alleges, upon information and belief, that the defendant has conspired with others to infringe upon the rights of the plaintiff in the premises, and that with full knowledge of the existence of said patent and without license from the plaintiff, against its will, and in violation of its rights, and to its very great damage and irreparable injury, the defendant is now using a method or process for treating or causing to be treated large quantities of steel alloys in accordance with the said method or process set forth and claimed in said Letters Patent numbered 884,009, and in violation and infringement thereof, at its manufacturing plant at South Bethlehem, in the Eastern District of Pennsylvania, and elsewhere in the United States. That the defendant has continued to infringe, and is continuing and threatening so to do unto the present time. That its said infringing acts have the effect of inducing others so to infringe, and will tend to induce others so to do, through the manufacture, use and sale of steel alloys, treated or caused to be treated, in accordance with the method or process and improvements described and claimed in said Letters Patent.

Seventh: The plaintiff further alleges, upon information and belief, that said defendant has realized

and made great profits and charges in its said unlawful acts, but to what extent and how much exactly the plaintiff does not know, but believes the same to be about the sum of One million dollars (\$1,000,000), and so charges the fact to be and prays that said defendant may be required to make discovery as to its use of said invention, and of all gains and profits received by it therefrom, or by reason thereof. That said acts of the defendant have been contrary to equity and good conscience and have caused great and irreparable damage to the plaintiff.

WHEREFORE, the plaintiff prays for a writ of injunction, as well provisional as permanent, issuing out of and under the seal of this court, enjoining and restraining the said defendant, its attorneys, officers, agents, servants and employes from further use in any manner or way whatsoever of the said method or process set forth and claimed in said Letters Patent numbered 884,009, or any part thereof, in violation and infringement of the rights of the plaintiff, as secured to it in and by said Letters Patent. That the defendant account to the plaintiff for the profits made by the defendant, and the damage sustained by the plaintiff, by reason of said infringement, and that upon rendering the decree herein the actual damage so assessed may be increased by the Court to a sum equal to three times the amount of such assessment by reason of the wilful and unjust infringement of the said defendant, as herein set forth; that the plaintiff recover the costs and disbursements of this action, and the plaintiff prays that a subpoena ad respondendum may issue forthwith out of and under the seal of this court, directed to the defendant Bethlehem Steel Company, requiring it by a day certain and under a certain penalty

to appear and make full, true and certain answer until this Bill of Complaint, but not under oath, answer under oath being specifically waived, and the plaintiff prays for such other and further relief as may appear proper to the court and agreeable to equity.

CHURCHWARD INTERNATIONAL STEEL COMPANY.

By J. CHURCHWARD, JR.,
President.

WM. B. LINN,
DUELL, WARFIELD & DUELL,
Attorneys for Plaintiff.

C. H. DUELL,
F. P. WARFIELD,
H. S. DUELL,
Of Counsel.

Office and Post-Office address,
No. 2 Rector Street,
Borough of Manhattan,
New York, N. Y.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss:

JAMES CHURCHWARD, being duly sworn, deposes and says that he is the President of the Churchward International Steel Company, plaintiff named in the foregoing complaint; that he has read the said complaint and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true; that the reason why this verification is made by deponent and not by the plaintiff is that the plaintiff is a corporation acting through its officers and agents and that deponent is an officer, to wit, the President thereof; that the sources of deponent's information as to all the matters not stated upon his knowledge are conferences had with various persons and documents and other material examined in the course of his duties as president of the plaintiff corporation.

J. CHURCHWARD, JR.

Subscribed and sworn to before me
this 19th day of October, 1915.

(Seal) C. J. KULBERG,
Notary Public.