
No. 1491.

September Sess., 1915.

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

In Equity.

On United States Letters Patent Nos.
845,756 and 868,327.

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 Nos. 845,756
and 868,327.

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:

1. That the plaintiff CHURCHWARD INTER-
NATIONAL 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. Upon information and belief, that the defendant, BETHLEHEM STEEL COMPANY is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with 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 said State of Pennsylvania, and Eastern District thereof.

2. 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.

3. That James Churchward was a subject of the King of Great Britain and a resident of the City, County and State of New York before and at the time of his application for the letters patent hereinafter mentioned; that he was the true, original and first inventor of certain new and useful inventions, fully described in the specifications of the letters patent hereinafter mentioned, for self hardening alloy of iron and steel and alloyed steel, and which were not known or used in this country and not patented or described in any printed publication in this country or any foreign country before his invention thereof, and were not in

public use or on sale in the United States more than two years prior to his application for letters patent of the United States therefor, and that no application for foreign letters patent for said inventions had been made or filed at any time by anyone and the inventions and improvements had not been abandoned at the time that the said James Churchward made application for letters patent thereon.

4. That on the 15th day of October, 1907, letters patent of the United States numbered 868,327, were issued upon the application of the said James Churchward filed April 12, 1907, for said invention and improvements in alloyed steel, in due form of law, and delivered to the said James Churchward, who was the first, original and sole inventor of the subject matter of said letters patent; and that on the 5th day of March, 1907, letters patent numbered 845,756, for improvements in self hardening alloy of iron and steel, duly issued to the said James Churchward, in due form of law, upon an application filed November 1, 1906, and that said letters patent did grant to the said James Churchward, his heirs and assigns, for the term of seventeen years from the date of their issue, the exclusive right to make, use and sell the said inventions throughout the United States and the territories thereof.

5. Plaintiff further alleges 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 rights, title and interest in and to the aforesaid letters patent and in and to the inventions and improvements set out and claimed therein, and in and to all claims for damages and profits aris-

ing out of any infringement thereon prior to the date of its acquiring said title as aforesaid, as by said instruments in writing, or duly certified copies thereof now in 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 seventeen years from the 5th day of March, 1907, and the 15th day of October, 1907, with regard to the said letters patent, respectively, the full and exclusive right of making, using, and vending to others to be used, the said inventions and improvements throughout the United States and the territories thereof.

6. The plaintiff further alleges that on or about the 23rd day of June, 1914, it sold and assigned, for a large sum of money, to the Carnegie Steel Company, a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, certain rights under the two letters patent aforesaid, for war material, but retained the right to sue and collect for all infringements involved in the production of war material by others than the said Carnegie Steel Company, up to the date of said agreement, and that it retains and is the sole and exclusive owner of all rights of all kinds under said letters patent of the United States for any production other than war material.

7. Plaintiff further alleges that during the pendency of the applications for said letters patent, and both prior to and subsequent thereto, said James Churchward and this plaintiff expended large sums of money and were put to great trouble in and about said inventions for the purpose of preparing for the manu-

facture, use and sale of the improvements described in the aforesaid letters patent; and plaintiff further alleges that the said inventions and improvements of said letters patent have been extensively applied to practical use and that large quantities of steel alloys have been produced in accordance with said letters patents Nos. 845,756 and 868,327 and the inventions therein set out and claimed, so that the same have gone into extensive use without the United States, supplanting those formerly used.

8. That the defendant, well knowing the premises, did contrive to injure the plaintiff in that heretofore, to wit: Subsequent to the 5th day of March, 1907, and subsequent to the 15th day of October, 1907, and up to and on the 23rd day of June, 1914, and during and within the term of seventeen years mentioned in the aforesaid letters patent, and after the grant of the same, and within the Eastern District of Pennsylvania, and elsewhere in the United States, the defendant, unlawfully, wrongfully and injuriously, and with intent to deprive the plaintiff of the rights and benefits which it might and otherwise would have had and derived, and to its very great damage, and without the license of the plaintiff and against its will, did make, use and sell large quantities of steel alloys in accordance with the inventions set forth and claimed in the said letters patent numbered 845,756 and 868,327, and in violation and in infringement thereof, at its said manufacturing plant at South Bethlehem, Pennsylvania, in the Eastern District of Pennsylvania, and elsewhere in the United States, the exclusive right and privilege to do which throughout the United States and territories thereof was by law vested in the plaintiff; and that the defendant, without the license or consent of the plaintiff, and against its will, and in violation of its rights,

sold, during the period above mentioned, to the very great damage of the plaintiffs, large quantities of steel alloys for war material and other purposes the same or substantially the same as set forth in the said letters patent numbered 845,756 and 868,327, and upon information and belief, that said defendant has continued up to the present time to make, use and sell large quantities of steel alloys for purposes other than for use as war material the same or substantially the same as set forth in the aforesaid letters patent, and threatens and intends to continue so to do, all of which is in violation of and in infringement on said letters patent and claims thereof and of the plaintiff's rights in the premises and is contrary to the Statutes of the United States in such cases made and provided, whereby the plaintiff has been and is greatly injured and has been deprived of large royalties and profits, and that the 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 Two million dollars (\$2,000,000), 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 employees from further manufacture, use and sale of the steel alloys made in accordance with and set forth and claimed in said letters

patent numbered 845,756 and 868,327, 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 unto 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 Co.

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 City, 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.