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THE INVENTOR'S PROTECTION

(Illustrations courtesy Allis-Chalmers Electrical Review)

Since an inventor is liable to place an excessive value on his invention particularly if it is out of his trade or profession and a manufacturer is liable to undervalue an invention, the value of an invention in dollars and cents is quite debatable. Since the manufacturer may consider money spent on an untried invention as a poor investment he may wish to place the invention on the market to get the public's reaction before applying for a patent for the article.

If an article has been on sale or in public use in this country for more than one year a patent covering that article may not be secured. Until about two years ago, two years was the time limit. The basis for this law is the assumption that after an invention has been on sale one year, with or without the inventor's consent, he does not desire to apply for a patent but wishes to abandon his invention to the public.

Invalidation of a patent due to premature sale of an invention does not occur frequently now. The multitudinous meanings of "sale" are now clearer than they were formerly. For instance, an invention is "on sale" not only when it is sold but when it is merely offered for sale. However, an invention must have been tested and found satisfactory before it can be considered to be offered for sale. An article need only be exhibited for sale and need not be offered to any particular person to put an invention on sale. A sample wagon jack sat in a hardware store window in 1888, more than two years before a patent was applied for in 1890. As a matter of fact, it was not sold until 1889. Its mere display was sufficient to invalidate a patent in 1901.

It is not necessary that the object for sale be shown to the prospective buyer. The inventor of the roller skate included it in a price list which he distributed two years before he made application for a patent. This invalidated his patent. The same restrictions on sales hold on design patents as are placed on mechanical patents.

Manufacturing a machine and delivering it on advance order rather than manufacturing before an order was obtained and selling the machine later does not nullify the sale in the patent sense. However, if the inventor had his invention embodied in a machine and then bought the machine no sale is held to exist. A sale can be made only

by the inventor to the public, not the other way around.

An article may be sold even if the acceptance of the article is not expressed but merely implied. A mantel was shipped to a purchaser and billed to him. There existed no formal acceptance of the mantel but since the invoice was not protested, acceptance was implied. Here again, the patent was held invalid since the bill was rendered more than two years before application for the design patent.

A sale may even be completed before the sold article is delivered. An inventor borrowed money to complete development of his invention; to repay the loan he gave a bill of sale for the machine to the lender, soon after the inventor's wife leased the machine from the buyer. The court held that the sale was completed by the trans-action of the bill of sale.

A sale is not affected by any money-back guarantee or other guarantee of satisfactory operation. Conditional sales were enough to invalidate

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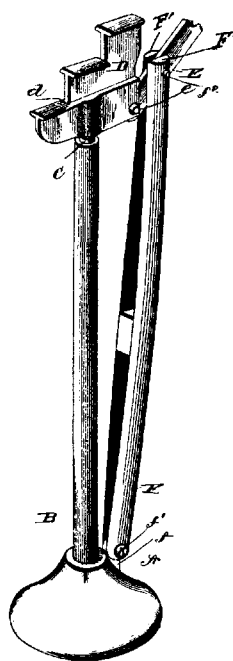


Fig. 1 — C. Emons' wagon jack, displayed for sale in 1888, invalidating patent applied for in 1890.

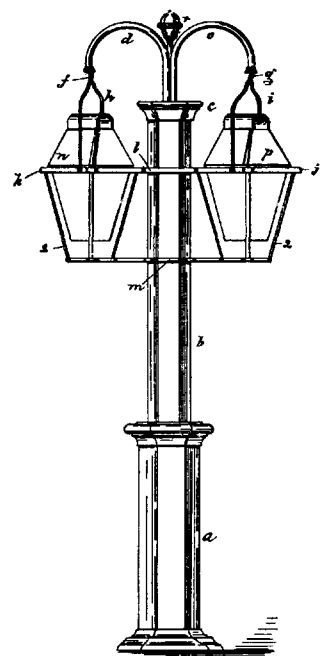


Fig. 2 — G. D. Burton's lamp post, offered for sale in 1875. Design patent, applied for in 1878, rendered invalid.

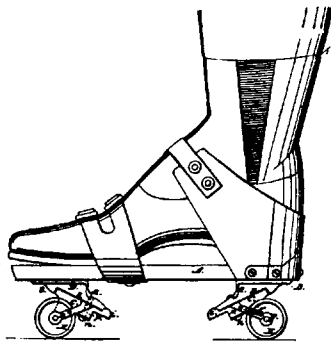


Fig. 3 — J. L. Plimpton's parlor skate, included in a price list in 1863, rendered void the patent applied for in 1865.

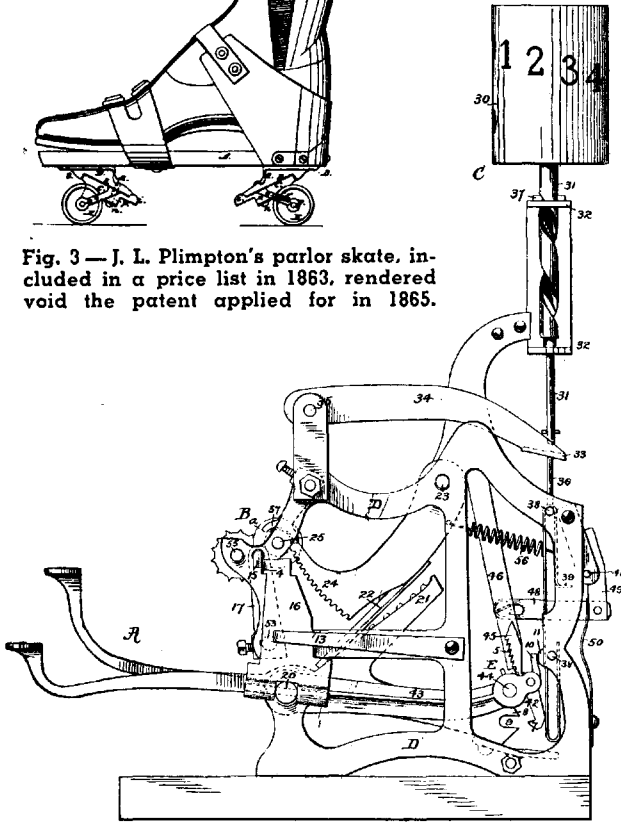


Fig. 4 — C. A. Juengst's cash register, invented to order and sold in 1886, nullifying the patent applied for in 1890.

a stove patent. The stoves were sold on trial, to be returned if they were not satisfactory to the buyers.

The courts held that the conditional sale was insufficient proof of the inventor's intent to use his customers to test his stoves to discover their defects as he had sufficient apparatus available for testing.

Sales may not be made to test the salability of an invention in the open market without risking the possible refusal of an application for a patent. This was the case of the Mason fruit jar.

Experiment was the reason for the sale of a hydraulic turbine previous to patenting. This turbine was of the double runner type discharging into a single draft tube. A partition was placed in the draft tube to minimize eddies resulting from the meeting of the two water streams. A turbine, completed and fully developed, was sold, but it could not operate at full efficiency because it was connected to under-size water pipes.

Even though the turbine was previously untried, the first sale was not experimental because it was not conducted as an experiment. This was

the inventor's first chance to test his machine but he neglected this opportunity to find out what improvements would be necessary or to discover the efficiency of the turbine. Even any tests made would have been of little value since the input pipes were too small. Therefore, patent claims were held invalid.

The argument of experimental sale is held valid by the courts when a single sale of an invention permitted the inventor to conduct necessary tests on his invention. For instance, it may have been necessary for the inventor to secure capital to test his invention by a single sale, and his facilities for testing under operating conditions may have been negligible.

The inventor should clearly stipulate his intention to use his machine to run tests on it after it had been sold. The right to make any changes he deems wise to overcome defects which are exposed during operation should be retained by the inventor. Even with these precautions it is possible that some circumstance may arise to disprove that the sale was experimental. The safe practice is to consider any sale as a regular sale and apply for a patent within one year of the sale of the invention. This is the practice in most industrial concerns at the present time.

(Extracted from **Allis-Chalmers Electrical Review**)

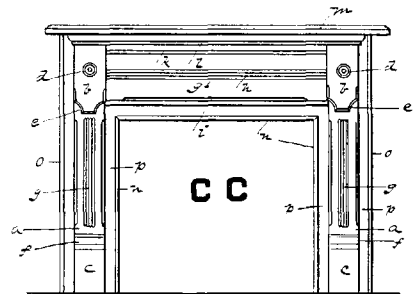


Fig. 5 — W. Anderson's mantel design, shipped and billed in 1888, rendering invalid the design patent applied for more than two years later.

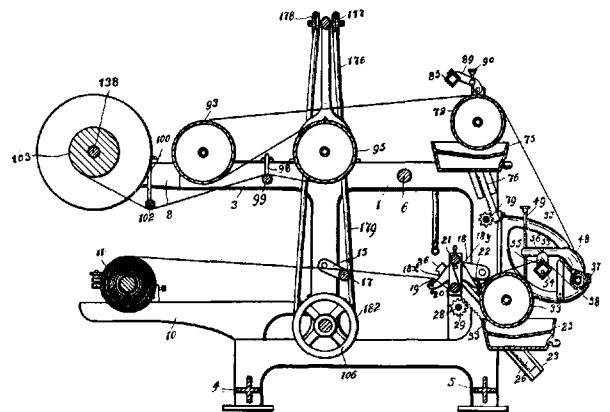


Fig. 6 — C. W. Mayer's paper coating machine, for which bill of sale in 1908 invalidated patent applied for in 1911.