EAST AFR. PROT.

6913

C.O.
6913
27 FEB 13

G.P.O.

1913

26 Feb

Last previous Paper.

C.O.
41026/12

Wireless Tel. Station at Mombasa

Sends report by Engr in Chief resp. judgment obtained by Marconi Co. in French Courts, & encloses copy of judgment. Considers that system of Anglo French Co. does not come within the judgment, & that Co's tender might be accepted, subject to usual indemnity against actions for infringement of patents.

Mr. Johnson

~~Mr. Tennyson~~
~~Mr. Collins~~
~~Mr. Read~~

H. J. R.
27/II

Sir J. Anderson

~~[illegible]~~

See 8813/13

Mr. Grindle also to see (in connection with a Barbados paper) what decision is taken on this paper —

See also the report of our own Consulting Engineers in H Kong 7029 which is in agreement with the present letter in favouring on the whole and accepting the Anglo French tender (1) for E.A.P. (2) for Hong Kong and what will shortly follow (3) for Singapore & Penang.

But as regards the cost & terms of this letter, should Crown Agents be asked

[illegible] 10166 [illegible]

Next subsequent Paper.

MC 8667 Bah. 1913
10166

Mr Botterell. Mr Johnson
Mr Rees

So far as Dst is concerned, there appears no objection to the Anglo French wireless. It appears that we might get a reply from the Italian Govt. see 70/40283/13

If the Italians at Guiumbo refuse to communicate with a non-Marconi station at Mombasa, we also have to consider what action should be taken to meet the difficulty. (See Mr Johnson's memo on Cas 40011/12)

I ask FO. to chase Italian Govt's reply.

Sd Provis 4.6.13

[illegible] 7/3/13

[illegible]

10/VII

* Not much fear, I think
J.C.P.

Any letter reply to "The Secretary, General Post Office," quoting Registered No. 4247/13

GENERAL POST OFFICE, LONDON.

26 February 1913.

C. O. 6913

Rec'd 27 FEB 13

Sir,

With reference to your letter of the 11th instant, 41280/13, forwarding the terms of the Anglo-French Wireless Company for a wireless station at Malabata, I am directed by the Postmaster General to say, for the information of the Secretary of State, that he understands that the system now used by the Anglo French Wireless Company is different from that in regard to which a judgment was recently obtained in the French Court's by the Marconi Company against the Société Française Radioélectrique and the Compagnie Générale Radiotélégraphique. I am to enclose a copy of the judgment in question and of a confidential report made by the Engineer-in-Chief on the matter.

The system now used by the Anglo French Company does not, in the opinion of the Law Officers, come within the judgment, and if under circumstances the Secretary of State may desire to accept the terms of the Anglo French Company for the Malabata station, without [illegible] being satisfied that the Company [illegible] usual indemnity against [illegible] patents.

I am,

Sir,

Your obedient Servant,

Under Secretary of State,
COLONIAL OFFICE.

Record of Report by Assistant Engineer-in-Chief, dated
14 January 1916.

In this case the action, by the Wireless Telegraph Co., alleged infringement of plaintiffs' English patent 708, of 1900, which corresponds to the American patent 2,772 of 1901. The effect, the Judgment followed [illegible] in the Supreme Court of February 1911.

[illegible] the English case, [illegible]

(a) [illegible] was invalidated by (a) anticipation, and (b) want of subject matter:

(b) that there was no infringement.

[illegible] the additional plea,

(c) (a) by the [illegible] that the patent had lapsed [illegible] non-[illegible] [illegible] [illegible] was [illegible]

(b) [illegible] the Judge [illegible] validity of the patent, the [illegible] as formally established [illegible]

Any Letter addressed to The Secretary, General Post Office, quoting Registered No. 4777/13

GENERAL POST OFFICE, LONDON.

26 February 1913.

Sir,

With reference to your letter of the 11th instant, 41020/12, regarding the tender of the Anglo-French Wireless Company for a wireless station at Mombasa, I am directed by the Postmaster General to say, for the information of the Secretary of State, that he understands that the system now used by the Anglo French Wireless Company is different from that in regard to which a judgment was recently obtained in the French Courts by the Marconi Company against the Société Française Radioélectrique and the Compagnie Générale Radiotélégraphique. I am to enclose a copy of the judgment in question and of a confidential report made by the Engineer in Chief on the subject.

The system now used by the Anglo French Company does not, in the Engineer in Chief's opinion, infringe the judgment, and in these circumstances the Secretary of State may desire to accept the tender of the Anglo French Company for the Mombasa station, subject to his being satisfied that the Company is in a position to give the usual indemnity against actions for infringement of patents.

I am,

Sir,

Your obedient Servant,

Under Secretary of State,
COLONIAL OFFICE.

COPY of Report by Assistant Engineer-in-Chief dated
14 February 1916.

In this case the plaintiffs, the Marconi's Wireless Telegraph Co., alleged infringement of plaintiffs' French patent 305,060 of 1900, which corresponds to the Marconi English patent 7,777 of 1900. Throughout, the judgment followed very closely that of Mr. Justice Parker in the [illegible] Marconi v. English Radio in February 1911.

In both the English and French cases, the defendants pleaded:-

(i) that the patent was invalidated by (a) anticipation, and (b) want of subject matter;

(ii) that there was no infringement.

In the French case there was the additional plea,

(i) (c) by the defendants that the patent had lapsed through non-exploitation. In both cases the judgment was for the plaintiffs on all points.

(i) As regards the question of the validity of the patent in question, the only comment that could be made is that the Marconi main patent appears now to be as firmly established in France as it has been [illegible]

(ii) As regards infringement however, the judgment requires a more detailed consideration. The defence in the English case rested wholly upon the [illegible] of an "autotransformer" for the "transformer" specified

mentioned and illustrated in the Marconi specification and this was ruled to be a matter of indifference so far as the essence of the invention is concerned. In the French case the same defence is made, and is similarly ruled out. The defendants, (the judgment runs) "n'ont pas prouvé des procédés nouveaux, mais se bornent à des variantes insignifiantes dans ses appareils". In addition to the old defence of the "anticipation", a novel defence is made by the defendants in the present case; viz that the tuning of the several circuits is in practice carried out, not by adjusting them to the same free period but empirically to give the loudest signals; and that in fact, by virtue of the defendants' substitution of an electrolytic detector for the Braunly coherer of the Marconi specification, it is not advantageous to tune the several circuits to precisely the same free period. This claim, as one would have expected, does not carry much weight. It is denied by the judge, on the authority of certain passages in a book by Commander Jackson, which the correct principle of the manner in which the two circuits should be tuned is laid down.

It is important to note that no other defence against the charge of infringement is made; in particular no attempt as in the English case, "There is no invention whatever of the quarter-wave ... " is made. Certain outstanding questions as to the ... ask and might possibly ... Marconi patent, ... therefore still ...

SYSTEMS ATTACKED BY THE JUDGMENT.

The wireless companies against whom this judgment

is given are two, viz., Société Française Radioélectrique and Compagnie Générale Radiotélégraphique; they are referred to below as the Société and the Compagnie respectively. The apparatus seized and condemned in the judgment was not modern, and it is thought that the systems now employed by both companies are essentially different from the system condemned as infringement.

The Société in their modern apparatus do not employ a quenched spark-gap, but do use a peculiar method of connecting the spark-circuit with the antenna. For this they claim that only one wave-length is emitted however tight the coupling is, the aerial in question being, in view of the stress laid upon loose coupling in the interpretation of the Marconi patent by both English and French judges, it is a moot question whether the system can be held to infringe the Marconi patent. I am inclined to consider that the system of the Société is one of great merit, and it is [illegible] on the Eiffel Tower and on many ships of the French navy and mercantile service. The question of infringement of the Marconi patent by their modern system is therefore one of great importance, and may be expected to form the subject of further litigation.

The Compagnie are employing now to employ a quenched-spark system; but [illegible] the last [illegible] have been made, and of these I am not well informed. If a quenched-spark method is [illegible] to any extent or not, it would be held by a judge to [illegible] infringement of the Marconi patent.

Thus

Thus the French judgment goes no further than Mr. Justice Parker's judgment of two years ago in deciding whether or not the Marconi patent is infringed by the various quenched spark and tight coupling systems, such as those of the Telefunken & Heis[illegible] Companies, and probably also those of the defendants in the present case.

G.P.O. 6913 Rec

Immediate & Confidential

DRAFT.

Cd.

10 March 1913.

MINUTE.

Cent

G.P.O. 7/3/13

Mr. Buckmaster 7

Mr. Samuson 10

Lt Read 10

Sir G. Fiddes. [G.P.O. 11/12] With reference to your letters

Sir H. Just. S/201/19 of the 17th of Dec. &

Sir J. Anderson. [G.P.O. 12/12] S/201/19 of the 20th of Dec.,

Lord Emmott.

Mr. Harcourt.

relating to Tenders

for the erection of a wireless

telegraph station at Mombasa

and to your letter S/201 of the 28th ult

to the Postmaster General at Hong Kong

further minute

Received [C.O. 17029]

to inform you that

after giving the matter

this

2. My Minute on the Specification, a copy of which was enclosed in my letter E/202/19 of the 2nd. of Dec. [38249/27]

3. In this connection however I am to observe that Mr. H. is advised that it should be made clear that the Co. must make good to the Govt. any expenses which the Govt. may have to incur by replacing mechanism which is found to infringe patent rights. He considers therefore that clause 3 of the General Conditions of the Indian Munitions Contract and of any future Colonial contract should be amended to read as follows:—

"3. The Contractor shall

G.P.O. 6913/1913 E&P

R. 1 MAR 1913

15 March 1913.

Sir,

With reference to your letter, No. 53279/1912, of the 20th ult., I am directed to request you to inform Secretary Sir Edward Grey that he would be glad, should see no objection, if enquiry could be made of the Italian Government to ascertain whether a reply can now be furnished by the Italian Government to Sir E. Grey's note of the 17th ult. on the proposed radiotelegraphic communication between Kismayu and Kombaza.

I am,

DRAFT.

Wells 4/3.

F.O.

(B.O. 402 83/12 24/3)

MINUTE.

Mr. Harper 13 March

Mr. Bottomley 13/3

Sir C. Fiddes.

Sir H. Just.

Sir J. Anderson.

Lord Emmott.

Mr. Harcourt.