

EAST AFR. PROT

C.O.  
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27 FEB 1913

GPO

1913

26 Feb.

Last previous Paper.

4/026

Seeds report by Luigi in chief legal judgment obtained by Marconi Co. in French Court, encloses copy of judgment. Considers that system of Anglo-French Co. does not come within the judgment. That Co. tends might be accepted, subject to usual indemnity against claim for infringement of patent.

Mr. J. Anderson

~~Mr. Morgan  
Mr. Collins  
Mr. Read~~

R. J. R.

27/II

Mr. J. Anderson

~~Mr. Morgan  
Mr. Collins  
Mr. Read~~ See 6913/3

~~Mr. Grindell~~ also see (in connection with a Barbados paper) what decision is taken on this paper -

see also the report of our own Consulting Engineers in Hong Kong which

Coop is in agreement with the present letter in finding in the whole are accepting the Anglo-French tender (1) for Eng. (2) for Hong Kong and (3) for Singapore what will shortly follow.

On Pemba  
But as regards the last 2 lines of his letter, should Coop accept them

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Next subsequent Paper

Mr. Babu

8667 30/2

Mr. Bottsley Mr. Johnson  
Mr. Reed

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To far as I & C. is concerned,  
~~we~~ ~~we~~ ~~we~~ we  
report fully except the  
Anglo-Dutch winter, it  
appears that we ought to  
get a reply from the  
Italian Govt. see FO 40283

& not much  
fear, I think

J.W.

If the Italians at Giunba  
refuse to communicate  
with a non-Matson station  
at Monbasa, we will have  
to consider what action should  
be taken to meet the difficulty  
(See W. Johnson's minute  
on Cap 20001/12).

? ask FO. to mention  
Nathan Govt's reply.

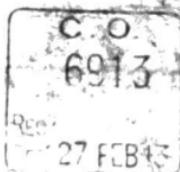
Sincerely yours A. E. B.  
FO 40283

4/10/37

H. J. R.  
107

## GENERAL POST OFFICE, LONDON.

26 February 1913.



Sir,

With reference to your letter of the 11th instant,  
 recompensing the loss of the Anglo-French Wireless  
 Company's wireless station at Holland, 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 by the Marconi Company against the  
 Société Française Radiotélégraphique 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 opinion of the engineer in chief, fall within the  
 judgment, and it does not distinguish the Secretary  
 of State may desire to accept this offer by the Anglo-French  
 Company for the Holland station, subject to his being  
 satisfied that the compensation will be paid in the  
 usual indemnity against the cost of the damage sustained.

Minister of State,  
 COLONIAL OFFICE.

*Resigned*

Copy of Report by Assistant Engineer-in-Charge.

14 January 1916.

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Recd.

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In this case the plaintiff, Mr. John Joseph Tolepuri Co., alleged infringement of plaintiff's French patent No. 705,010 of 1909, which corresponds to the "Baron" of English patent 2,722 of 1909. The Court, the defendant followed the course of the French case. In the main in the English case it was held valid up to February 1911.

As to the English and French cases, the following points were discussed:

- (1) That the patent was invalidated by (a) anticipation, and (b) want of subject matter;
- (11) that there was no infringement;
- (3) that as far as the additional plea,
- (4) (c) by the Court held that the patent had lapsed by long non-use; and (d) that the defendant was liable from 1911 to 1916.

As to (1) the Court rejected the plaintiff's contention that the patent was invalid with regard to the prior art, in particular, the Court considered that the invention of the plaintiff was not new, but was as fully established as plaintiff's own case.

As to (2) the Court rejected the plaintiff's contention that there was no infringement, in particular, the Court held that the defendant's product did not infringe the plaintiff's patent.

As to (3) the Court rejected the plaintiff's contention that the patent had lapsed by long non-use.

mentioned and illustrated in the Marconi specification; and this was ruled to be a matter of indifference so far as the question of the infringement's continuance. In the French case the said defence is made, and is similarly ruled out.

The defendants, (the British) used "the right and freedom of the open sea" as their sole defence. It is contended by the inventors that "the right of passage" is a "privilege". In addition to the old defence of the inventor's former, a novel defence is set up by the defendants in the present case; viz that the "functioning of the several circuits is in practice carried out, not by sending them" - which is free period - "but artificially to give the loud signals; and that in fact, in virtue of the defendants' construction of the apparatus, it is clear that the theory of the French scheme 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, and is rejected by the Judge, on the authority of certain passages in the Marconi specification, whereby the contrivance is described as "using two oscillators of different frequencies".

The next point to consider is the defence against the application of U.S. Patent No. 770,110, the English claim being identical. This is not concerned with the question of infringement, but is concerned with the question of validity. The U.S. Patent Office rejected the application, as, however, still further consideration was given to it, and the application was allowed.

#### SYSTEMS AND METHODS.

The wireless transmission system of the invention

is given above, viz., that it fulfills all the conditions  
and requirements of the Treaty; and one  
refers to so belies as the "S. & C. and the Company's"  
so easily. The point of a single, "condemned" in this  
document is well known, and it is argued that those  
provisions are not to be regarded as essential  
to the contract, and that they can be omitted  
without changing the essential conditions.

The point of the "S. & C." referred to is to say  
nothing about the "S. & C." in the French version.  
In settling the differences in the sentence, for this  
purpose, I have had at hand the original document  
in English, and the French results one, in view  
of the phrase laid down above pointing in the first sentence  
to the French patient by both English and French. It is  
in this connection that the English sentence should be compared  
with the French sentence. I am inclined to compare the French  
sentence of the original with the English sentence,  
as the English sentence consists of the French words  
and a translation of them. In a case of this kind, the  
French sentence is held to be the original, and the  
English sentence, a translation, is therefore  
out of court. However, it may be found that  
the English sentence is better English.

The English sentence is likely to follow a modified  
French sentence, as in the French sentence, the English  
words "and the Company's" are placed before  
the French word "condamné," while in the English  
sentence the English word "condemned" is placed  
before the French word "et la compagnie."

GENERAL POST OFFICE, LONDON.

26 February 1913.



Sir,

With reference to your letter of the 11th instant,  
to  
41026/12, 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  
Societe Francaise Radioelectrique and the Compagnie  
Generale Radiotelegraphique. 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, violate 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侵犯 or infringement.

I am,

Very obediently yours,

Under Secretary of State.

COLONIAL OFFICE.

Ashing

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

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Rec'd

27 FEB 16

In this case the plaintiffs, the Marconi Wireless Telegraph Co., alleged infringement of plaintiff's 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 similar case of Compton v. British Radio in February 1911.

In both the English and French cases, the defendant pleaded:

- (1) 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 main question of the validity of the patent in question, the only comment the defendant made being that the Marconi main patent appears now to be as firmly established in France as it has been in England since the M. J. Parker judgment.

(ii) As regards infringement, however, the judgment requires a more detailed consideration. The defense in the English case rested wholly upon the defendant's substitution of an "auto-transformer" for the "transformer" specifically

vention, 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 trouvé des procédés nouveaux, mais se bornent à des variantes insignifiantes dans ses appareils". In addition to the old defence of the sur-trottement, 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 over 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 Branly 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 "bon mot", i.e. certain passage's in a book by Compton Douglas, which is essentially similar to the manner tuning the two Branly detectors is 1 to 10.

The important notice that no other defence against the claim of infringement it made; in particular that there is in the English case, "there is no question whatever of the question of sur-trottement". The great outstanding question, as to whether or not the defendants' ark and night coupling, is defining a new Marconi patent, is therefore still undecided.

#### SYSTEMS ACCREDITED BY THE JUDGE ET AL.

The wireless communication system of the defendant

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 selected 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 infringing.

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 between the terminals of the coupling coil. The claim is a sound one, 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 this system of the Société one of great merit, and it is installed at the Riff 1 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 alleged now to employ a quenched-spark system; but as the last recent developments have been made, and of these I am not well informed, a quenched-spark method is as yet impossible to say whether or not it would be held by a judge to infringe any part of the Marconi patent.

Thus the French judgment is no further than Mr. Justice Parker's judgment of two years ago in deciding whether or not the Maltoni main patent is infringed by the defendant's spark and light-blowing devices, such as those of the Telefunken & Heiss Company, and probably also those of the defendants in the present case.

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Mr. B. Chamberlain

Mr. Harcourt 107

Sir G. Fiddes.

Sir H. Just.

Sir J. Anderson

Lord Euston

Mr. Harcourt.

With reference to your letters

E/201/19 of the 17<sup>th</sup> of Dec.

E/201/19 of the 20<sup>th</sup> of Dec.

and my letter of the 20<sup>th</sup> of Dec.

in regard to the erection of a wireless

station at Benbow

and your letter to me of the 28<sup>th</sup> of Dec.

proposing to put through

the necessary arrangements

for the erection of a wireless

station at Benbow

and your letter to me of the 28<sup>th</sup> of Dec.

proposing to put through

{38249/12}

as enclosed for the 110  
specifications, a copy  
of wh. was enclosed  
in letter 8/201/9 of  
the 2<sup>nd</sup>. of Dec. however  
3. In this connection I am to  
observe that Mr. H.  
advised that it shd  
be made clear that  
the C° must make  
good to the Govt. any  
expense which the  
Govt may have incurred  
by replacing mechanism  
which is found to  
infringe patent rights  
& he considers therefore  
that clause 3 of the  
General Conditions of the  
Specification Contract and of any  
Supplementary Contract <sup>and of any</sup> future Contract  
should be amended to read as  
follows:-

3. The Contractor shall

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R. I. MAR  
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See

15 March 1913.

Sir,

With respect to your letter,  
No. 53279/1912, of the 20<sup>th</sup> p

(00.  
402 83/4  
200.)  
Dear Sir. I am to report  
that he would be glad, should  
~~that~~ <sup>not you</sup> Sir Edward Grey

will, if he <sup>see</sup> has no objection  
of engaging, could be made of  
take the necessary steps  
the Italian foot at  
to ascertain whether a

replay can now be  
furnished by the

~~Italian Government~~ to his  
Grey's note of 16/12/1912  
~~expressing~~ respecting the  
object of the  
proposed radiotelegraphic

communication between  
fronts and fronts

See