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**Siemens' Administrator Vs. Sellers**

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**SooperKanoon Citation** : sooperkanoon.com/85529

**Court** : US Supreme Court

**Decided On :** Nov-14-1887

**Appeal No.** : 123 U.S. 276

**Appellant** : Siemens' Administrator

**Respondent** : Sellers

**Judgement** :

Siemens' Administrator v. Sellers - 123 U.S. 276 (1887)
U.S. Supreme Court Siemens' Administrator v. Sellers, 123 U.S. 276 (1887)

**Siemens' Administrator v. Sellers**

**Argued October 17, 1887**

**Decided November 14, 1887**

**123 U.S. 276**

*APPEAL FROM THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA*

## SYLLABUS

The English letters patent dated January 22, 1861, and sealed July 19, 1861, issued to Charles William Siemens and Frederick Siemens for "improvements in furnaces," and the American letters patent No. 41,788, dated March 1, 1864, issued to C. W. and F. Siemens for "improved regenerator furnaces" describe the same furnace in all essential particulars, and are substantially for the same invention.

When American letters patent are issued covering the same invention described in foreign letters patent of an earlier date, the life of the American patent is not prolonged by the fact that it also covers improvements upon the invention as patented in the foreign country.

The condition imposed by the Act of July 4, 1836, 5 Stat. 117, that the term of a patent for an invention which has been patented in a foreign country shall commence to run from the time of publication of the foreign patent was not repealed or abrogated by the Act of March 2, 1861, 12 Stat. 246.

In the construction of a statute, although the words of the act are generally to have a controlling effect, yet the interpretation of those words must often be sought from the surrounding circumstances and previous history.

In equity for an account and for an injunction to restrain infringement of letters patent. Decree dismissing the bill from which the complainants appealed. After the cause was docketed in this Court, one of the appellants died and his administrator with the will annexed appeared and prosecuted his appeal. The following is the case as stated by the court.

This is a suit on a patent granted to the appellants, Charles

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W. and Frederick Siemens, of Great Britain, on the 12th day of January, 1869, being a reissue of a patent originally granted to the appellants on the 1st day of March, 1864. This patent was for an improved regenerator furnace, so called, intended to be used where a high degree of heat is required. By the arrangements

of this invention, the products of combustion, after passing through the furnace, and before entering the chimney, are utilized in heating what are called the regenerators, consisting of bricks, or other refractory materials, loosely piled up in two pairs of separate chambers though which, alternately, after being thus heated, the air and gases are made to pass on their way to the furnace, and thus become raised to an intense degree of heat before entering it. While one pair of regenerators is being thus heated by the outgoing products of combustion or flame, the other pair are giving out their heat to the air and gases which are passing into the furnace, and then, by a reversal of dampers, the current is changed, and the air and gases are made to pass through the newly heated regenerators, and the products of combustion or flame through those that have become partially cooled, and so on alternately.

The apparatus has various incidental appliances necessary to its successful operation. Thus, as the regenerator chambers are placed underneath the furnace, spaces are formed between them and the furnace bottom for the purpose of admitting a circulation of air to cool the parts and prevent their being destroyed by the intense heat. Another arrangement is that of a separate and distinct furnace, of peculiar form, for the consumption of the raw fuel, so constructed and operated that the gases produced thereby are carried over by a suitable flue to one of the heated regenerators, while atmospheric air is admitted into the other regenerator of the same pair. The air and gases are thus kept separate until about to enter the furnace by separate flues, when they meet and commingle and produce a rapid combustion and a most intense heat.

This is the general nature the invention, and this explanation will be sufficient for understanding the claims of the patent, which are four in number, and are as follows, to-wit:



"We claim, in combination with a furnace A and its chimney or smoke-discharge flue P, a system or series of air and gas regenerators B1 B2 B3 B4 constructed

substantially as specified and having conduits and dampers arranged so that air and gas may be led into and through such regenerators and furnace and out of the chimney in manner and so as to be operated as and for the purpose or purposes hereinbefore described."

"We also claim the arrangement and combination of the air space or open chamber *C* with the furnace and its system of regenerators, arranged and applied together substantially in manner and so as to operate as described. same and the space, E, with the furnace, regenerators, conduits, and damper chests applied thereto, the whole being substantially as specified. [The air chamber D admits the atmospheric air to the regenerator.]"

"We also claim the combination of a furnace with one or more regenerators or means of receiving its waste smoke and gaseous products and intercepting or receiving heat therefrom, and also with means or devices by which all or a portion of the heat so intercepted or received may be absorbed by the influent air or gas during its passage into or to such furnace for the purpose of improving or promoting combustion therein."

The defendants do not deny that the appellants were the authors of the very ingenious invention claimed by the patent, and they do not seriously deny that they use it. The principal defense which they set up is that the appellants took out an English patent for the same invention dated January 22, 1861, and sealed July 19, 1861, and that, by force of the acts of 1839 and 1861, the American patent expired at the end of seventeen years from the sealing of the English patent -- namely on the 19th day of July, 1878, and they deny that they used the said invention before the last-mentioned date, and no evidence is given that they did so.

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MR. JUSTICE BRADLEY delivered the opinion of the Court.

The questions to be decided therefore are whether the English patent (which was given in evidence) was for the same invention as the American patent, and if so

whether the latter is limited to expire at the end of seventeen years

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from the sealing of the former. We think that both of these questions must be answered in the affirmative.

As to the first question, we have carefully compared the two patents, the English and American, and can see no essential difference between them. They describe the same furnace in all essential particulars. The English specification is more detailed and the drawings are more minute and full, but the same thing is described in both. There is only one claim in the English patent, it is true. But that claim, under the English patent system, entitled the patentees to their entire invention, and is at least as broad and comprehensive as all four claims in the American patent. It is in these terms:

"Having now described the nature of our invention and the best modes we are acquainted with of performing the same, we wish it to be understood that we do not confine ourselves to the precise details shown on the accompanying drawings, but we claim as our invention the various arrangements of regenerative furnaces worked by the gases resulting from an imperfect combustion of solid fuel in separate places, as hereinbefore set forth."

It is contended by the counsel of the complainants that the American patent contains improvements which are not exhibited in the English patent. But if this were so, it would not help the complainants. The principal invention is in both, and if the American patent contains additional improvements, this fact cannot save the patent from the operation of the law which is invoked, if it is subject to that law at all. A patent cannot be exempted from the operation of the law by adding some new improvements to the invention, and cannot be construed as running partly from one date and partly from another. This would be productive of endless confusion.

We have, then, to examine the question whether the term of the American patent was limited to run from its own date, or from the date (or sealing -- which is

equivalent to the publication) of the English patent. The reissued patent sued on is dated January 12, 1869, but the original patent, which is



the one to be looked at, was dated March 1, 1864. It was issued, therefore, before the act of 1870, by which the patent laws were revised, and while the acts of 1836, 1839, and 1861 were in force. The act of 1836, as well as previous acts, made the term of a patent fourteen years; but it authorized an extension of the term for seven years longer if it should appear that the patentee, without neglect or fault on his part, failed to obtain a reasonable remuneration for his invention. By the same act (§ 7), if an invention for which a patent was sought had been patented in a foreign country before the application for a patent here, it was a bar to obtaining a patent in this country unless (§ 8) such foreign letters patent had been taken out by the applicant himself within six months previous to the filing of his specification and drawings. The act of 1839, § 6, removed the limitation of six months and allowed a patent to be taken out here at any time after the inventor had taken out a patent for the same invention in a foreign country, provided it should not have been introduced into public and common use in the United States prior to the application for a patent here,

" *and provided also* that in all cases, every such patent shall be limited to the term of fourteen years from the date or publication of such foreign letters patent."

The act of 1861 introduced several changes in the administration of the Patent Office, and gave a right to patents for designs. The last section (§ 16) declared as follows, to-wit:

"That all patents hereafter granted shall remain in force for the term of seventeen years from the date of issue, and all extension of such patents is hereby prohibited."

The act of 1870, which was a revision of all previous laws relating to patents, continued the period of seventeen years as the term of a patent, and, in case a foreign patent had been previously issued, declared that the American patent

should expire at the same time with the foreign patent, or, if more than one at the same time with the one having the shortest term, but in no case for a longer term than seventeen years. This provision is substantially carried forward into the Revised Statutes, § 4887.

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The appellants contend that the act of 1861 repealed that portion of the act of 1839 which declared that a patent should be limited to the term of fourteen years from the date or publication of prior foreign letters patent for the same invention. So far as the period of fourteen years is concerned, this is undoubtedly true. Prior to 1861, all patents, as we have seen, were granted for the term of fourteen years, with a right under certain circumstances to an extension for seven years longer. This right of extension was attended with many inconveniences and much expense to meritorious patentees, and Congress, by the act of 1861, cut it off, and made the term of all patents seventeen years (a compromise between fourteen and twenty-one years). The act had nothing to do with the question of foreign patents, but only with the term for which patents would ordinarily run, and the period of seventeen years, without any privilege of extension, was adopted in lieu of fourteen years, with a provisional right of extension. That was the sole point before the legislative mind. Seventeen years limit was substituted for fourteen years. That was all that was intended or thought of. We are of opinion, therefore, that the condition imposed by the act of 1839, that the term of a patent for an invention which has been patented in a foreign country shall commence to run from the time of publication of the foreign patent, was not repealed or abrogated by the act of 1861. If it was, it follows that there was a period of nine years, from 1861 to 1870, in which our patent system presented the anomaly of allowing patents to be taken out in this country at any length of time after the invention had been patented abroad, and without being subject to any condition, limitation, or restriction. This can hardly be supposed to have been the intention of Congress.

No doubt the words of a law are generally to have a controlling effect upon its construction, but the interpretation of those words is often to be sought from the

surrounding circumstances and preceding history. From the history of the law in this case, as exhibited in previous enactments, and from the evident object and purpose of § 16 of the act of 1861,

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we are satisfied that the words there used to define and limit the term during which patents thereafter granted should remain in force -- namely "seventeen years from the date of issue" -- were only intended to change the length of the term, and not the point of its commencement. The latter continued as before at "the date of issue," as defined by previous laws -- referring either to the issue of the American patent itself, when no foreign patent had been obtained. This view of the construction and meaning of the act of 1861 was fully explained and enforced by MR. JUSTICE BLATCHFORD in the case of *De Florez v. Raynolds,* 8 F. 434.

*The decree of the circuit court is affirmed.*

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