

The Protection of Ideas

ALBERT WOODRUFF GRAY*

Legal aspects of creative thought are also important to engineers.

THE SUGGESTION for an improvement in radio cabinets, accompanied by sketches of the proposed innovation was submitted to a radio manufacturer by a firm of cabinet designers. Later the sketches were returned by the manufacturer with a letter that it was not interested but should any of the designs be used, payment would be made on a royalty basis of 1 per cent of the cost of the cabinet, to be paid by the cabinet manufacturer.

The sketches submitted by these cabinet designers to the radio manufacturer had no earmarks by which the designers might identify the plans as their own. When later these same features appeared in a cabinet produced by this manufacturer, suit was brought by the designers for the value of the plans they had submitted.

The defense of the company, which the court sustained, was that the design incorporated in these cabinets was conceived by the president of the company from the suggestion of an automobile hood and that at no time had he ever had any knowledge of the ideas or suggestions submitted by these designers.

Nearly two hundred years before this incident an English judge said in the decision of a case involving the exploitation of ideas,

"Nothing can be the object of property that is not capable of distinguishable proprietary marks. The principle of this first institution of property was established to preserve the peace of mankind which could not exist in a promiscuous scramble. Therefore a moral obligation rests on all that none should intrude upon the possessions of another.

"But this obligation could only take place where the property was distinguishable and everybody knew that it was not open to another. The breach of a duty must be willful to make it criminal. It was necessary therefore that every person should have some indicia, some distinguishing marks upon his property to denote his being the proprietor, for hard would be the law that should judge a man guilty of a crime when he had no possibility of knowing that he was doing the least wrong to any individual.

"Now where are the indicia or distinguishing marks of ideas," asked that eighteenth century English judge. "What distinguishing marks can a man fix upon a set of intellectual ideas so as to call himself the proprietor of them? They have no earmarks upon them, no tokens of a particular proprietor."

There was lacking in these radio cabinet designs the earmarks or indicia, mentioned in that English decision, that

would have aided them in the support of their claim for compensation, had the ideas for this innovation been submitted under the provisions of an agreement or contract between themselves and the radio manufacturer.

This lack of means of showing the identity, the absence of the earmarks, in circumstances of this character, was the subject of a comment by the Court of Appeals in New York state, in denying recovery to the proprietor of another idea claimed by him to have been wrongfully appropriated by another.

"Without denying that there may be property in an idea or trade secret or system," said that court, "it is obvious that its originator or proprietor must himself protect it from escape or discovery. If it cannot be sold or negotiated or used without disclosure it would seem proper that some contract should guard or regulate the disclosure, otherwise it must follow the law of ideas and become the acquisition of whoever receives it."

Idea Outlined in MS.

An action before a New Jersey court involved a manuscript in which had been outlined a valuable idea but with no provision for compensation to the originator. The plan was adopted. Later when an action was brought to recover the value of this plan the court said of the recovery claimed by the author,

"He has undoubtedly the right to claim protection for his manuscript. The combination of words of which it is composed is also protected. The law has never attempted to go beyond this and to enjoin for the benefit of the author, after publication, the use of ideas contained in his work. In the case of secret processes of manufacturing the law does to a certain extent enjoin the use of ideas. In enjoining the use of formula it restrains the wrongdoer from putting the ideas formulated to practical account. The protection ends when the secret becomes known.

"If the idea contained in a patented device of 'A' suggests to the mind of 'B' another idea that would not have arisen in the mind of 'B' but for the stimulus of the prior idea, 'A' can claim no property in that, and yet 'B' has mentally appropriated 'A's' idea and made it the basis of his own; and I do not suppose it has ever been contended that the entire public are not at liberty to subject 'A's' idea to such investigation and discussion as it may desire.

"It was, as far as its originator was concerned, an idea, pure and simple. Now it has never in the absence of contract or statute, been held, as far as I am aware, that mere ideas are capable of legal ownership and protection."

In a later opinion rendered in this same litigation the New Jersey court made this supplementary comment, "Undoubtedly ideas, if valuable or even thought to be valuable, may be the subject of bargain and sale. They may be the subject of contract but they must be protected by contract."

An idea once released by publication freed for the use of whomsoever may so wish, like a wild animal freed from its cage, can be the property of no one. Substitute for a cage a contract and for the bird or beast of the outdoors, an idea, and the analogy is complete. In every instance there must be a contract, either express or implied. Lacking that the idea is irrecoverable when once it has gone from its owner.

An idea was submitted to a manufacturer who had made no agreement for payment and the outline of this idea was unaccompanied either by drawings or the findings of experimental work.

If the manufacturer derived benefit from the idea, asserted the federal court denying to the originator of this idea a recovery, it is nevertheless not indebted to this originator because it did not offer to or make any agreement to pay for such mere suggestions as the possessor of this idea made. When he voluntarily divulged his mere idea and suggestion, whatever interest he had in it became common property and was available to the manufacturer.

A contract protecting an idea against exploitation and loss must obviously precede the disclosure of the idea itself. The idea, however, must be thus protected in its disclosure but it must be novel to the recipient and of a substantial value to him.

"When information is proffered as consideration for a contract it is necessarily implied—it is indeed the essence of the proffer that the information shall be new to the one to whom it is proffered," said the Connecticut Supreme Court in its decision of a case of this character.

"A statement to one of what he already knows is not, as to him, information but merely a statement of fact already known. The imparting of information in a situation like this must involve an active process, resulting in arousing or suggesting ideas or notions not before existent in the minds of the recipient, otherwise it is not information in the true sense of the term, although it may be a statement of fact."

In Indiana some years ago an idea or scheme was submitted with a letter that said, in substance, that the plan was submitted for approval. This was followed by an outline of the scheme and the letter concluded with, "I trust that this idea

[Continued on page 51]

* 3536 76th St., Jackson Heights, N. Y.

PROTECTION

(from page 36)

will be of sufficient value to merit a reasonable charge therefor."

No response was made to this letter but later, when the suggested idea was put into operation, the Indiana court said, holding the originator entitled to recover,

"While we recognize that an abstract idea as such may not be the subject of a property right yet when it takes upon itself the concrete form which we find in the instant case, it is our opinion that it becomes a property right subject to sale.

"Of course, it must be something novel and new; in other words, one cannot claim any right in the multiplication table."

REFERENCES

- Millar v. Taylor, 98 Eng. Reprint 201, 234
Pidot v. Zenith Radio Corp., 31 N.E. 2d 385, Illinois
Bristol v. Equitable Life Assur. Soc., 30 N.E. 506
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