BURT BUSINESS FORMS, LIMITED... PLAINTIFF;

VS.

AUTOGRAPHIC REGISTER SYSTEMS, LIMITED ..... DEFENDANT.

1931
Nov. 9.

1932
Jan. 21.

Patents—Infringement—Invalidity—Anticipation—General commercial adoption—Evidence of invention

Plaintiff's patent No. 246,547 issued in 1925, on application filed in 1923 relates to Manifolding Books, and claim 8, which is typical, claims:—

"A supply pad for manifolding machines including, in combination, a plurality of record strips folded zig-zag, the folds of one interengaged with those of the others so as to provide superposed sets of superposed leaves connected end-to-end, each strip having a longitudinal series of printed forms and a series of form-registering apertures in fixed relation to said forms, respectively, there being a form and a form-registering aperture in each leaf of a set, and between the forms."

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Held that to manufacture or assemble a paper supply with apertures or holes that co-operate with a particular manifolding machine did not require inventive skill.

2. Held further that, on the facts, plaintiff's Patent 246,547 was invalid by reason of anticipation.

3. That although evidence of a general commercial adoption of a certain device may assist in the determination of the question as to whether or not there is invention, invention cannot be presumed from such a fact. Such evidence is of little assistance to the Court in determining whether or not there is invention, and evidence of that nature must be considered with caution.

4. The Court also held that defendant's machine did not infringe plaintiff's patent, No. 237,913.

ACTION by plaintiff to have it ordered and adjudged that defendant is infringing its patents, No. 246,547 and No. 237,913.

The action was tried before the Honourable Mr. Justice Maclean, President of the Court, at Montreal.

A. J. Thompson, K.C., for plaintiff.

O. M. Biggar, K.C., and *R. S. Smart, K.C.*, for defendant.

The facts are stated in the reasons for judgment.

THE PRESIDENT now (January 21, 1932) delivered the following judgment:

In this action, the plaintiff claims infringement of two patents, by the defendant. One patent, being No. 246,547 issued in February, 1925, upon an application made in May, 1923, and relates to a Manifolding Book; the other is patent No. 237,913, which issued in February, 1924, upon an application made in August, 1921, and relates to improvements in Manifolding Devices. The plaintiff's patentee in the case of each patent, is one William J. Wiswall.

Briefly, in the manifolding machine in use to-day, superposed continuous sheets or strips of paper, usually two or more, are fed by suitable mechanical means from a roll or rolls, or a pad or pads, contained in a compartment of the manifolding device, over a writing tablet, where sheets of carbon paper are inserted transversely between the superposed strips so as to secure a plurality of copies of the matter written on the top sheet. Generally, upon each of these strips of paper are printed a series of forms of account, consecutively numbered, whereon a record of sales may be

recorded, the idea being that the form upon one of the superposed strips of paper is for delivery to the customer, the corresponding numbered form upon another strip being intended as an office record of the transaction; there may be a third form, which is automatically fed into a chamber in front of the machine, which is available later for audit or reference purposes. If required, more than three strips of paper may be used in a manifolding machine. By a revolution of a crank in the manifolding device, or some such similar means, the forms are advanced in the machine to the writing tablet and are torn off when a transaction has been recorded on the top sheet; then fresh forms are similarly advanced for the registry of further transactions; the forms on the audit strip are not torn off but the strip is fed intact through the machine, as already mentioned, into a compartment specially provided therefor. It is necessary that the strips of paper in the manifolding machine be in perfect alignment, that is to say, the forms upon the underlying strips of paper bearing the same number as the top form, must be in alignment or registration, the one to the other, so that any inscription made on the upper form upon the writing tablet will be transferred with exactness in all respects to the same numbered underlying forms. This sufficiently describes the purpose and manner of use of a manifolding machine, and its paper supply.

Prior to 1923, it is said, that in the use of manifolding machines the paper supply was usually in the form of rolls, that is to say, two or more separate rolls of paper with printed forms thereon, were placed in a specially provided chamber in the manifolding machine, and the paper from each of such rolls was by appropriate means unwound from the rolls during the operation of the machine. The manifolding machines were constructed having in mind this form of paper supply. It is claimed that the roll form of paper supply frequently developed undesirable consequences, chiefly, that the paper in being fed from separate rolls into and through the machine would frequently jam, crush or break, and that the forms upon the strips were liable to be out of alignment on reaching the writing tablet. In the plaintiff's alleged invention relating to a Manifolding Book, the paper strips are interleaved and folded flat in zig zag

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fashion in one packet, and fed into the manifolding machine from that packet; and that flat packet is the major subject of controversy in both of the patents in suit.

It will be more convenient and satisfactory to consider, first, the plaintiff's alleged invention relating to a Manifolding Book. The object of the invention is stated in the first two paragraphs of the specification and they are as follows:—

This invention relates to record supply devices for use with manifolding machines, and with respect to its more specific features to manifolding book or pad for use in manifolding autographic registers and other machines which are adapted for the feeding of paper strips into position for the making of two or more records simultaneously by impression transfer to a lower strip of a record made on an upper strip.

An object of the invention is the provision of a supply pad or book for the use referred to in which the manifolding sets are effectively retained initially in such relation as to conduce to perfect registration, at manifolding position, of their printed matter or forms, the leaves of the pad being so retained and so constructed as positively to co-operate with each other and with the feeding and registering elements of the machine to further the important end in view; to wit, perfect registration. Supplementing the object just mentioned is the object of providing such a pad adapted to be increased in copy capacity to the extent of any practical requirements without detracting from its adaptability to accomplish the object heretofore mentioned, especially the perfection of registration. The pad, provided by the present invention, is of simple form, readily made, free from mechanical features, except such as may be found in the paper itself; required no specially constructed support, and lends itself readily, not only to the production of inscribed slips or leaves adapted to be torn therefrom, but also to the production of a compact filing pad which may be progressively formed in the machine itself, and if desired, in a locked compartment of the machine, the filing pad so formed being adapted for convenient inspection when desired.

The specification refers to the invention as a pad. Fig. 1 shown in the drawings, is below reproduced:

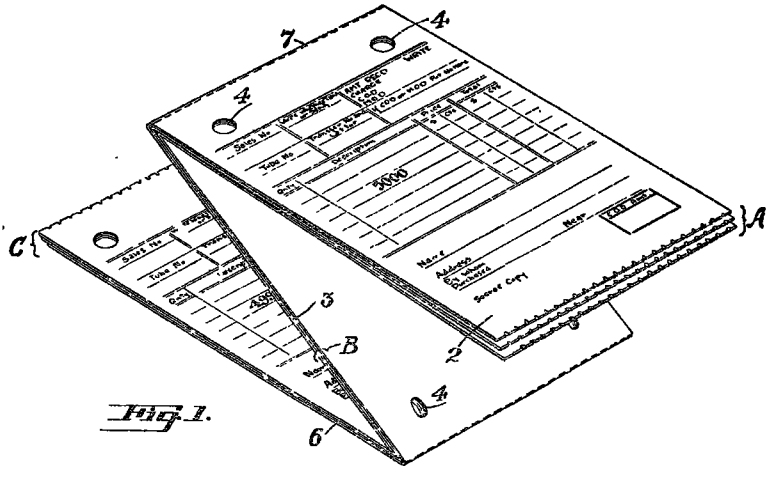

Fig. 1.

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Referring to this drawing the specification states:—

The pad illustrated in Fig. 1 is composed of three superposed sets of leaves, the sets being indicated respectively by the letters A, B, and C, each set comprising three leaves 2, 3, and 6. It will be understood that as many sets as desired may be employed, the drawing being restricted to three sets as sufficient for illustrative purposes. The pad is composed of a plurality of similar continuous strips one such strip being shown in Fig. 2, each strip being reversely folded, as clearly illustrated in Fig. 1, the folds of one strip interengaged with those of the others so as to provide the superposed sets of leaves A, B, and C, the leaves of the superposed sets being connected end-to-end, as also clearly illustrated in Fig. 1. At the fold-lines the paper strips are weakened, as indicated at 7, so that the successive leaves of the strip are separated by these weakened lines which facilitate tearing the leaves apart and minimize the thickness of the apex of the fold, in this wise reducing the thickness of the pad at the ends. In the embodiment illustrated, the fold-lines are perforated, that is, small openings, as slits, penetrate the full thickness of the strip along the line 7.

I will quote freely from the specification because it will explain more clearly than I could possibly do, the alleged invention. The specification continues:—

The superposed leaves of each of the sets A, B, and C have each a form, the forms on one strip being clearly illustrated in Fig. 2. It will be understood that the forms on the underlying leaves of the other strips are similar to the forms on the top strip so that, when the forms are superposed and in registry, an inscription made on the upper form will be transferred in the same relation to the underlying forms. The transfer material may be provided in any manner customary in machines of the character for which it has been explained the pad is adopted. Usually separate carbon transfer sheets are employed at writing position between each pair of superposed forms.

Each strip is provided with one or more apertures 4. The position of these apertures relative to the forms is of great importance. In the embodiment illustrated sets of these apertures are employed, one set for each leaf, the respective apertures of a set being adjacent the longitudinal margins of the leaf and in transverse alignment. The relation between any aperture or set of apertures 4 to its respective form on the leaf is such that when the apertures of superposed leaves are in registry the superposed forms are also in registry. The apertures 4 are therefore form-registering apertures and the registry relation between the apertures 4 in a leaf and the form in that leaf is the same as the registry relation between the form on the underlying leaf and its aperture. The apertures in the leaves 4 may be produced in any efficient manner, but it is found to conduce to accuracy of the registry relation mentioned to print the forms in a press which is equipped with a suitable punch which will punch the apertures at the same time that the forms are printed.

In the pad (Fig. 1) it will be seen that the apertures of any set are in substantial registry depthwise of the pad, being displaced from each other by only a small amount because of the folding of the strip; which amount is the same for all sets, being constant throughout the pad. These apertures are also clear of the fold-lines 7, the apertures in the successive superposed sets of leaves being adjacent opposite ends of the pad formed by the folds of the strips. As hereinafter explained the apertures 4 serve

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not only as form-registering apertures but also as feed-control apertures, and are made of sufficient diameter to accommodate the feeding and registering mechanism of the machine with which the pad is used as will appear hereinafter. The weakened lines 7 are, in practice, provided by perforations, the perforations being usually smaller than the apertures 4. The perforations on the line 7 should be so disposed as to provide strip material at the fold-lines which strip material is in longitudinal alignment between immediately succeeding apertures for engagement by a feeding mechanism. Inasmuch as it will be desired to tear simultaneously two or more of the leaves from each other, this may be conveniently effected by tearing along the weakened fold-lines 7 of each leaf when these lines are in registry. Accordingly the apertures 4 of superposed leaves are arranged equidistant from the proximate fold-line so that they may serve to register the fold-lines for such purpose.

It will be observed that taken depthwise of the pad the forms on one set, for instance, the forms on the set A, facing in the opposite direction from the forms on the next succeeding set B. In the embodiment illustrated the several forms are similarly disposed on each of the strips 2, 3 and 6 so that the foot of one form is followed by the head of the next form. In the pad, however, such forms are reversed, end for end, relative to each other in the succeeding sets so that the immediately superposed sets are not in operative manifolding relation relative to each other. On each strip the forms are longitudinally spaced apart, both the apertures and the weakened lines coming between successive sets on each strip, each of the leaves of the pad being of the same length, with the fold-lines occurring at the head and foot of the pad. Inasmuch as each leaf has but one form thereon, it will be noted that there is but one aperture or set of apertures 4, for each leaf. Should single apertures be employed they should preferably be disposed along the longitudinal central line of the respective leaves.

* * * * *

The pad above described is of a convenient shape, being rectangular, suitable for manipulation and for application to the machine to which it is to be applied. The folds interengage with each other so that the leaves are efficiently held together in manifolding sets with the apertures of the leaves of either set in alignment with each other depthwise of the pad, the registering apertures 4 being in the same registry relation to the form in each leaf and also to the fold-lines. When a set has been inscribed and fed forward so as to occupy a position at the left of the feed roller 12, with the next succeeding set of apertures between the feed roller 12 and the discs 13, the weakened line 7 just ahead of the last mentioned apertures will also be in alignment, and the inscribed leaves at the left of the roller may be simultaneously torn off on a straight line.

As illustrated in Fig. 3 the two inscribed upper leaves pass out of the machine and may be torn off as just explained. The lowermost inscribed leaf passes into the compartment 20 and refolds, on the original fold lines, into pad form which pad may be denominated a filing pad, inasmuch as it may be removed from the machine and filed for record. It will be noted that this filing pad is single-ply, that is, it is composed of but one continuous strip and that it is in leaf form so as to be adapted for ready inspection of all or any of its leaves.

By placing the apertures clear of the weakened lines at the folds, the tearing off of the leaves does not affect the apertures, and hence the succeeding set of leaves will be retained with their apertures in engagement with the discs and consequently with their forms in registry relation. If

the tearing line intersected the apertures the engagement of the latter with the discs would be broken and permit the succeeding set of leaves to move or be accidentally forced from registry relation because they would be no longer held by the discs. The apertures being spaced clear of the ends of the pad, such ends are included in the substantially plane face or end of the pad whereas otherwise they would have reentrant portions or recesses caused by the presence of aperture walls. Inasmuch as in the present embodiment the leaves are of the same length and the apertures are equidistant from the fold lines at the ends of the leaves, many of the apertures are in registry depthwise of the pad, alternating, however, with the material of certain of the leaves. For filing purposes this is a great convenience because a pointed filing pin may be readily thrust through the interrupting leaf material whereas it would be more difficult to thrust such a pin through the thickness of the pad were there no apertures. By providing forms on successive sets, facing in opposite directions respectively, successive forms may be printed on the same face of each strip and follow each other closely, lending themselves at the same time for proper association on the leaves of reversely folded strips. Thus paper is saved by arranging the forms in this manner.

Claim 8 is typical of other claims and is as follows:—

A supply pad for manifolding machines including, in combination, a plurality of record strips folded zig-zag, the folds of one interengaged with those of the others so as to provide superposed sets of superposed leaves connected end-to-end, each strip having a longitudinal series of printed forms and a series of form-registering apertures in fixed relation to said forms, respectively, there being a form and a form-registering aperture in each leaf of a set, and between the forms.

The essence of the claim to invention in this patent is to be found, it will be seen, in a pad of several strips of paper, which are interleaved, and folded in zig zag fashion at the point of the transverse perforations dividing the several forms printed on the superposed strips of paper. Each form has apertures or holes adjacent the longitudinal margins of the form and in transverse alignment, and they are described as form-registering apertures, and feed-control apertures. The defence is that there is no invention in the manifolding book described by Wiswall, or in its use in any manifolding machine, and that in any event it had been long anticipated.

The matter of the apertures in the several forms printed on the strips of paper was the subject of considerable discussion at the trial, and that point may first be considered. These apertures, placed in each form of a set as described, co-operate with the feeding and registration mechanism of the manifolding machine. The apertures in the paper supply are there because the manifolding machine, described by Wiswall, requires them in order that it may consummate its real functions. The Shoup-Oliver manifolding machine

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which goes back to 1915, required apertures in the paper supply so that they might co-operate with the manifolding machine in performing certain definite functions, just as in Wiswall's manifolding machine. And there are other instances of substantially the same thing in the prior art. It is the manifolding machine that effectuates the alignment or registration of the forms, and the feed control, and in order that the machine may perform these functions, it is necessary that apertures, of a predetermined number and position, appear in the paper supply. They are found in the paper supply forms, not because they were invented, but because a certain type or types of manifolding machines made their presence necessary. To manufacture or assemble a paper supply with apertures or holes to co-operate with a particular manifolding machine could not possibly call for inventive skill, or anything approaching it. Therefore I say, that upon a consideration of the question of the patentability of Wiswall's paper supply pad, the matter of the apertures may be disregarded entirely; and in fact, as I understood it, the whole action proceeded upon the footing that the infringement, if any, was in the use of a paper supply that was folded in the manner described by Wiswall, and in which form of paper supply the lowermost or audit strip might be refolded in the same manner, after passing through the machine into a compartment specially provided for it.

Turning now to a consideration of the state of the prior art, I think that perhaps Sherman (U.S.A., 1922) might first be considered, not that it is as relevant as others, but because, I think, it in a limited sense disclosed the idea which is the claim to invention in Wiswall. This patentee in his specification states:—

> In registers of this type there have been developed in the past what are known as recording autographic registers, wherein one of the plurality of strips is not fed out of the machine, but instead, is wound up or otherwise deposited within the casing of the machine thereby forming a complete record of transactions on such machine, this record available only to persons who can open the machine casing.
>
> * * * * *
>
> In the autographic registers of the past the paper has generally been installed in the machines in roll form, and unwound from the rolls during the operation of the machine. The record strips have also been stored on rolls, by winding the strip containing the record over a core at the delivery end of the machine.

The result in general from using papers that have been rolled up just previous to delivery from the machine is that the sections torn therefrom will tend to curl and thus be hard to handle. This is particularly true where the paper has been stored for some months, in which case it is a great annoyance to try to file the detached sections.

In these machines the record strip is necessarily wound upon a roll, as above noted, and when the owner attempts to unroll the record strip, in such a machine he is involved in a great deal of difficulty in handling it. He can turn only with great difficulty to any desired transaction, and the paper will be long and unwieldy so as to make it hard to manage.

Moreover there is great difficulty in maintaining the proper feed and registration in registers of the pin wheel feed type, of a record strip which is wound in a roll, since all strips should be free from friction while being fed by the pins in order to maintain registry. In the record machines of the past there have been various devices for allowing for the difference in diameter between the storage roll of the record strip due to accumulation of paper on it, but this is of no assistance when it comes to the elimination of all friction from the record strip in order to maintain or establish registration between the record strip and the other strips in the machine.

Accordingly in my invention herein I provide the paper for use in the form of bundles made up of opposite flat folds whereby the slips delivered will be flat, and whereby the record bundle will naturally fall in place in its previous folded condition in a receptacle located in the casing just beyond the feeding mechanism.

* * * * *

The paper is furnished in bundles 11 (Figure 3) composed of reversely folded printed sections 12. In my preferred practice, the sections of each bundle will be correspondingly printed and perforated with marginal holes 13 and also consecutively numbered. The bundles, four in number, as shown, will be mounted in casings in any desired manner, such as permitting them to rest against sloping backs 14, or laying them on shelves 14a (Figure 4), both shelves and backs being shown to indicate a supporting means generally.

It will be seen that Sherman discloses the idea of employing a paper supply in the form of bundles made up of opposite flat folds, whereby the slips (forms) delivered would be flat, and whereby what has been called the audit sheet would fall into a compartment provided therefor, in its previous folded flat state; in other words, Sherman clearly suggested the idea of a flat pad or packet instead of rolls as the paper supply in a manifolding machine. Other advantages of the flat pads as compared with rolls the patentee points out, and these advantages are in effect mentioned by Wiswall. The specification further states:—

Due to the tendency of the strip D to fold, it will form in a neat pile in the chamber, therefore, as shown at 17. When the owner desires to get at the record, he will open the closure 7 and lift out the bundle, tearing off the dependent strip thereof. It will be comparatively easy for him to look at any portion of the record, or find any given consecutive number that he desires as the bundle will open like a book.

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It can be observed also that no friction or pull is applied to the record strip beyond the feed, as would be the case if the strip were rolled up on a core operated by gears from the feed device. Not only this, but the strips A, B, and C, which will be torn off in sections when they are fed from the machine, will show no tendency to curl. It will be seen also that the record sections can be of identical size to the removed sections since no problem is involved of winding them on a roll whose diameter varies with the amount of paper thereon.

It is apparent therefore that in so far as the use of a paper supply, folded flat in zig zag fashion, each form being transversely perforated and consecutively numbered, Sherman's disclosure was exactly the same as Wiswall, except, that Wiswall interleaves his strips of paper, that is to say, he folds his three or more strips of paper together in zig zag fashion into one pad, instead of folding each strip into a separate bundle and feeding the paper from each bundle to the writing tablet of the manifolding machine, as Sherman directs. The forms are marginally perforated so that the pin wheel feed will engage in the perforations thereby feeding them in registry; the feeding and registering mechanism is different from Wiswall, but the perforations in the paper supply are intended for substantially the same purpose as in Wiswall. Sherman is a complete anticipation of Wiswall so far as the method of folding the original paper supply is concerned, and also in respect of the re-folding of the audit or record strip in the closure provided for it; and the advantages of the flat folded pad over the roll type of paper supply are apparently extolled by each for the very same reasons.

Holmes (1902, U.S.A.) relates to a multiple counter check or sales books for merchants. The check-sheets consist of an original and a duplicate, the sheets being divided off at regular intervals by transverse lines of perforations into spaces forming consecutively numbered checks, and with the required matter printed thereon. The sheets are then superposed so that the numbers on the duplicate check will lie directly under the corresponding numbers on the original check, with the lines of perforations being always directly above each other. Then, the patentee states, when the two sheets have thus been superposed, the two "are then folded together zig zag position as shown in Fig. 3", exactly as shown in Wiswall, except, that the folded pad comprises but two strips of paper, instead of three as in Wiswall. Holmes did not however limit himself to two strips of paper.

It is obviously of no importance that the Holmes disclosure refers only to a simple manifolding book or case cover, there being no mechanical device corresponding to a modern manifolding machine; the important thing is that the patent discloses an interleaved zig zag folded paper supply for use in a manifolding book.

Then there is Bentel (U.S.A., 1899). In this patent, the invention relates entirely to the paper supply for use in a simple manifolding holder; the holder may be disregarded because the invention relates only to the form of paper supply. This alleged invention is described by the patentee in the following language:—

> My invention relates to a shipping system; and the objects of my improvement are to perforate and fold the bills in multiple and in such manner that they will maintain their registered position with each other and not crawl in being unfolded, to increase the durability of the carbon paper by reinforcing its edges, and to perforate the bills in a manner to adapt them to be placed on filing-pins separated more or less apart. These objects are obtained in the following described manner, as illustrated in the accompanying drawings, in which

He further states:

> Said bills 21, preferably shipping bills, are prepared in long sheets and separated by transverse lines of perforation or indentation 22. The head of each bill is perforated near one side with a hole 23 and near the other side with a transverse slot 24 to adapt them when detached to be filed on pins more or less distant apart. Two or more long sheets are placed together and folded on the lines of perforation 22 back and forth into a compact pad or pile, as shown at 25 in Fig. 1. From this pile the bills may be unfolded without displacing the position of corresponding bills of the different sheets in relation to each other, i.e., they do not crawl longitudinally from their exact position over each other.

There would therefore seem to be a complete disclosure in Bentel, of everything in Wiswall in respect of the form of paper supply, or the method of folding the paper supply in zig zag fashion into a pad. The holes in the paper are not intended to co-operate with manifolding holder and therefore may be disregarded. The long sheets of paper, two or more in number, are interleaved and folded upon the transverse lines of perforation in zig zag fashion, into a pad, and then fed through the manifolding holder.

Shirek, et al (U.S.A., 1901), describing the form of paper supply to be used in a manifolding device, and by reference to a drawing, states:—

> B. represents the paper, consisting of a plurality of superposed sheets piled in tablet form and arranged in zig zag folds.

This invention relates to improvements in autographic cash-register devices where multiple copies of checks are

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to be made. The manifolding feature of this patented device is quite a simple affair, but I refer to this patent merely to point out that so far as the paper supply is concerned, it discloses "a plurality of superposed sheets piled in tablet form and arranged in zig zag folds", and it is stated that the sheets may be perforated whereby the checks may be more readily torn, and in this case the checks were all to be torn off from the sheets as and when used. It matters not how the sheets of paper were to reach the writing tablet, whether the manifolding device itself was greatly inferior to others that followed it, or whether the manifolding device would generally meet to-day's commercial requirements; Shirek discloses the use of a plurality of superposed sheets piled in tablet form and arranged in zig zag folds for use in a manifolding device, just as was later suggested by Wiswall, and which form of paper supply is a matter entirely distinct from the particular manifolding device in which it may be used; and Shirek, like Wiswall, did not limit himself to the pad form of paper supply.

It would seem to me that the prior art which I have mentioned completely discloses the idea of the use of a plurality of superposed sheets, folded flat in zig zag form into a pad or tablet, for use in almost any form of manifolding device. If there could be invention in providing any particular form of paper supply for a manifolding device, it could only be found in the idea itself, and not in its practical application. When Wiswall had once settled upon his manifolding device, and was considering his form of paper supply, had he resorted to the prior art he could not have failed to there find disclosure and publication of the idea of the interleaved, and zig zag folded pad; he would have found that the idea was old and its application involved no difficulties whatever. Sherman carried the idea forward one stage, and others carried it to the stage disclosed by Wiswall. Whether the interleaved series of sheets of paper are fed from a roll, or from a flat pad—both of which Wiswall suggests—or whatever be the nature of the manifolding machine in which it is used, is immaterial in my opinion, because the alleged invention does not lie in the manner or means of feeding or conveying the paper into and through a manifolding machine, but in the idea of folding superposed strips of paper in zig zag fashion into

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a single flat pad. A manifolding device or machine is one thing; the form of arrangement or assembly of the paper supply is entirely another thing, and there is no need, I think, for associating them together in view of the trend of the prior art in regard to each. There was no invention in providing for the separation of consecutively numbered forms by transverse lines of perforation, upon superposed strips of paper; that was an old practice and its purpose and value was of course known. Bentel suggested that the sheets of paper be collectively folded back and forth together on the lines of perforation in the form of a single pad, and although he did not in express language state that the folding would be more effectively accomplished if made upon the lines of perforation there can be no doubt, I think, that that was what he meant when he stated that if the sheets of paper were folded on the lines of perforation the sheets would maintain their registered position with each other and would not crawl when being unfolded. Treating the alleged invention as one relating only to the folding of superposed sheets in a zig zag form—and that is what the patent states it to be—disregarding the mechanism for feeding the paper from the pad into and through the manifolding device—and there is no reason for associating it with the manifolding book—then it seems to me that the idea said to constitute invention in this patent was anticipated by the prior art. I do not know whether the manifolding devices associated with the paper supply described in the prior art which I have mentioned, ever came into general use, there was no evidence upon the point; they may have been superseded by superior devices, but at any rate I do not think it is of importance. The form of paper supply to be used in a manifolding device may be fully published in the prior art, without the manifolding device ever having come into use. In this particular art, it may be that the earlier manifolding devices were not sufficiently developed to encourage their immediate and general acceptance or use by the public, or, it may be that business needs at the time did not require or warrant the use of manifolding devices; all this would have the effect of postponing any expression of preference by the public for the form of paper supply to be used in any manifolding devices. In so far as the form of paper supply to be used in any manifolding device is concerned, there was always a very restricted field

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for invention, if such a field there ever was. If there be distinction between what Wiswall described and what other patentees had previously described and published, it is so slight as not to call for that degree of inventive genius, as to justify a monopoly.

I am not unmindful of the legal proposition advanced by Mr. Thompson, counsel for the plaintiff, that any prior art, invoked as being anticipatory of a later patent, should disclose as much as the subsequent patent before it can be held to be an anticipation of that other patent, and with that I agree. The plaintiff's folded flat pad merely represents an idea as to the form of paper supply that might be used in almost any manifolding device. That idea, in my opinion, was for all practical purposes as amply disclosed in the prior art as in Wiswall.

The general commercial adoption of the flat folded paper pad in manifolding machines, since 1923, was stressed by plaintiff's counsel as evidence of invention. That kind of evidence may sometimes assist in the determination of the question as to whether or not there is invention in any particular patent, but invention is not to be presumed from such a fact, and in my brief experience, I have found such evidence to be of little assistance to the Court in determining whether or not there is invention. In any event, evidence of that nature must be considered with caution. And that is true of this case. The success attending the sale of the plaintiff's manifolding book is due, I think, to the fact that its manifolding machine itself, is efficient, is attractively assembled and bears evidence of excellent workmanship; it is manufactured and sold by a large and successful business organization allied with other corporations having objects similar to the plaintiff corporation, and their joint business activities, as I understand it, extend over the whole continent; the growing sales of the plaintiff's manifolding book is likely more attributable to these circumstances than to the mere fact that use is made of a flat folded paper pad in its manifolding machine. I think it may be conceded that the flat interleaved paper pad has advantages over the rolled paper supply, but that, in my opinion, was not an invention of Wiswall.

Now referring to the second patent in suit, in which the alleged invention is designated as a Manifolding Device, and in which it is claimed that certain claims of this patent

have been infringed by the defendant. Whether this manifolding device has been infringed, I am not called upon to decide, that question not having been put in issue. But it is in some way claimed that there has been infringement because the Wiswall pad was used, not in the plaintiff's manifolding machine, but in a manifolding machine used by the defendant, and which is not in any way in issue here. In my view of the case the flat folded paper pad may be used in any manifolding machine designed for the reception of that form of paper supply.

This patent very clearly relates only to a manifolding machine, because that is what the patentee states it to be. This manifolding machine is not intended solely for the use of the flat folded paper pad, but for the roll form of paper supply as well. The specification makes this clear; it states:—

> The machine forming the subject matter of this invention is especially designed for the reception and handling of books or multiple forms of this character regardless of whether the several sheets are zig zag folded, interfolded, separately folded, rolled or otherwise. It is however necessary that the forms on the several sheets are identical, that they are interspaced, and that each sheet is punched at one or more predetermined fixed points with relation to each printed form.

The manifolding machine described in this patent does not lay claim to invention because it is capable of using the paper supply of the nature claimed as invention in the other patent, but because of the manifolding machine itself, which might use either the flat paper pad or the rolled paper, whether interfolded or separately folded, and it is only required that the forms on the several sheets be punched at one or more predetermined fixed points with relation to each form; this requirement, as I have already stated, is made necessary by the particular construction of the manifolding device, the validity of which is not in issue, and the defendant's manifolding machine is not said to infringe it. I fail to conceive of any ground upon which the plaintiff should succeed in its claim that there was infringement of this patent.

Accordingly, I think the plaintiff must fail and its action is therefore dismissed; and costs will follow the event.

Judgment Accordingly.