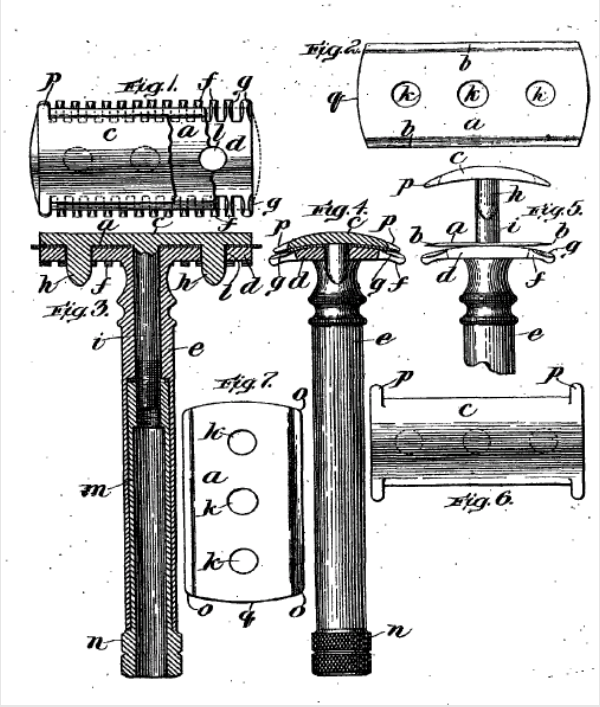
UK House of Lords, 1913, Gillette Safety Razor Co. v. Anglo-American Trading Co.

UK patent 28,763 - 1902



PATENT LAW

Gillette defence of applying the prior art

- **secure if he knows that that which he is doing differs from that which has been done of old only in non-patentable variations, such as the substitution of mechanical equivalents or changes of material, shape, or size. The defence that 'the alleged infringement was not novel at the date of the plaintiff's letters patent,' is a good defence in law, and it would sometimes obviate the great length and expense of patent cases if the defendant could and would put forth his case in this form, and thus spare himself the trouble of demonstrating on which horn of the well-known dilemma the plaintiff had impaled himself, invalidity or noninfringement**.

Source: 30 R. P. C. at p. 480, **Terrel on Patents, 1921**

House of Lords, 1913
(…)
LORD MOULTON:
I am of opinion that in this case the defendant's right to succeed can be established without an examination of the terms of the specification of the plaintiff's letters patent. I am aware that such a mode of deciding a patent case is unusual, but from the point of view of the public, it is important that this method of viewing their rights should not be overlooked. In practical life it is often the only safeguard to the manufacturer. It is impossible for an ordinary member of the public to keep watch on all the numerous patents which are taken out and to ascertain the validity and scope of their claims. But he is entitled to feel secure if he knows that that which he is doing differs from that which has been done of old only in non-patentable variations, such as the substitution of mechanical equivalents or changes of material, shape, or size. The defence that 'the alleged infringement was not novel at the date of the plaintiff's letters patent,' is a good defence in law, and it would sometimes obviate the great length and expense of patent cases if the defendant could and would put forth his case in this form, and thus spare himself the trouble of demonstrating on which horn of the well-known dilemma the plaintiff had impaled himself, invalidity or noninfringement.
