

# Avery Never Brought an Injunction Against A. W. Stevens for Patent Infringement

By Robert T. Rhode

When I began writing my article on patents (See "The American Patent System and Farm Steam Engines" in this issue.), I was eager to mention the undermounted patent infringement lawsuit by the Avery Manufacturing Company (or the Avery Company after 1907) of Peoria, Illinois, that doomed the A. W. Stevens Company of Marinette, Wisconsin. On page 2 of the *Iron-Men Album Magazine* for November and December of 1956, Marcus Leonard presented this information:

"The picture of the Stevens Cross Compound Under-mounted [sic] engine, published in the July-August, 1956 issue of the ALBUM, reminds me most forcibly of what happened, which hastened the coming of the end of the Stevens Company.

"The Stevens Company was exhibiting one of the Undermounted engines at a state fair. J. B. Bartholemew [sic], for Avery Company, obtained an injunction to restrain the Stevens Company from building the engine, because of the infringement of Avery Co's. [sic] patents. The papers were served and the Stevens Company was compelled to cover the engine with a canvas. That was the beginning of the end of the Stevens Company."

I thought I should research Leonard's topic—mainly to find out which state fair witnessed the hiding of the Stevens undermounted engine beneath a canvas and in what year the dramatic incident took place. I assumed newspapers carried the story, so I invested in a subscription to Newspapers.com and started looking for articles. I was surprised.

There were no articles!

Other patent infringement cases made headlines, but the conflict between Avery and Stevens apparently went unnoticed. Such a dearth of news items was astonishing because, in the early 1900s, newspapers devoted innumerable columns to state fair news and surely would have jumped at the chance to print juicy details about a patent infringement injunction.

I was stymied. Then I had an inspiration. "The *American Thresherman* or *Threshermen's Review* must have carried the story," I confidently decided. I searched collections of both magazines, and I was surprised again.

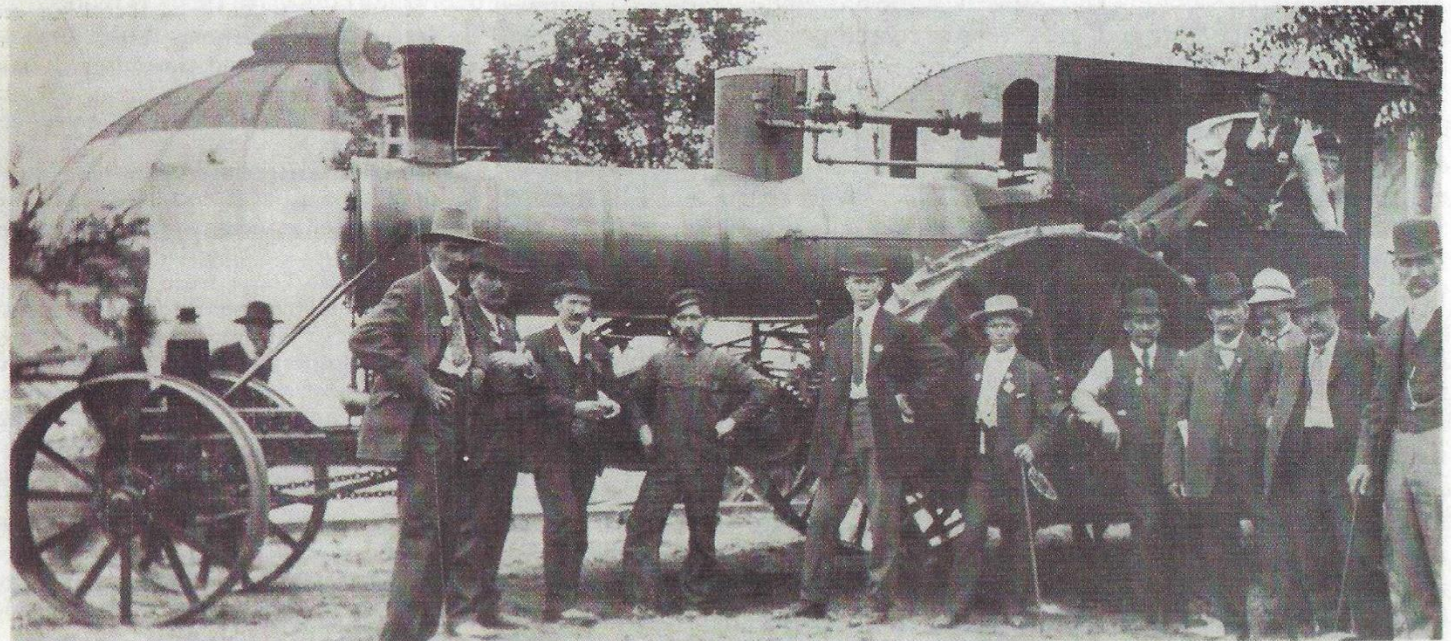
There were no articles in the threshing magazines!

Now my curiosity was definitely piqued! I searched high and low. I

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IRON-MEN ALBUM MAGAZINE

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Stevens 25 hp. undermounted at the Illinois State Fair Grounds, October 3rd, 1906. There were only five of these engines built. Courtesy of J. D. Roberts, McClean, Ill.

The *Iron-Men Album* for July and August of 1956 published this photograph, which inspired Marcus Leonard to pen an anecdote that was shared in a later issue and that has been widely disseminated ever since.



found that many of us—myself included—had repeated Leonard's anecdote because he was such a trustworthy source. A few writers added details. Some said that the episode occurred at the Indiana State Fair; others said it happened at the Illinois State Fair. All said that the incident occurred in the early 1900s—in 1904, give or take a couple of years. I could detect that various accounts were traceable back to Leonard.

I had another inspiration. I contacted the Wisconsin Historical Society (WHS). Writing for the WHS, Keith Rabiola said, "A check of the legal database, Hein Online, produced no listing for a suit with both Avery and A. W. Stevens in the period you mention or later. Each company was involved in suits for other reasons in the 1904–1910 period but not with each other. ... I asked our McCormick archivist to see if among the many articles collected by that company regarding agricultural implement adjudications, they had

anything regard[ing] a suit for Avery or A. W. Stevens. She found nothing."

Meanwhile, I had asked Thomas Heard, Assistant Director of the Chase College of Law Library, if he could track down the patent infringement case. He found no evidence of such a matter. In the situation that Leonard mentioned, the injunction would have been a court order prohibiting the A. W. Stevens Company from exhibiting its undermounted engine and halting the building of such engines by Stevens. Courts did not award injunctions lightly—especially in high-profile corporate cases involving prominent manufacturers—and court proceedings resulting in an injunction for patent infringement, either preliminary or permanent, would have been the subject of strict proceedings described in careful records.

The absence of newspaper articles, absence of news stories in threshing magazines, and absence of a court

case point to the conclusion that Avery never brought an injunction against A. W. Stevens for infringement of Avery's undermounted patents; in fact, Stevens continued to advertise undermounted steam engines at least as late as 1908, a mere two years before Stevens' steam business ended. Gayle Martinson, WHS reference librarian, said, "... it seems as if the [Stevens] company may have overextended in 1901, there was a bad corn crop in 1903, there were some management setbacks, there was some labor unrest, and probably a host of other factors" that contributed to the downfall of the firm—not a devastating blow from an Avery injunction.

Why did Leonard say what he said? Who knows? My gut instinct is that he believed in the accuracy of what he wrote, even though what he wrote appears to have been false. Perhaps he was duped by a rumor cranked out by an early 1900s rumor mill.

April, 1908.

THE THRESHERMEN'S REVIEW

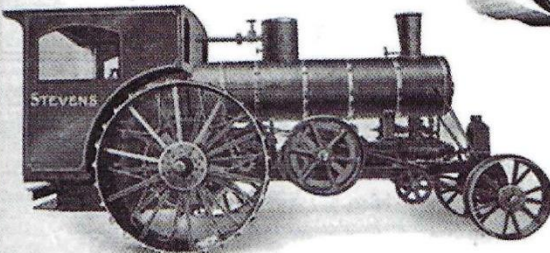
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Please mention The Review

In April of 1908, the *Threshermen's Review* carried this advertisement for the Stevens undermounted traction engine. According to a 1956 anecdote by Marcus Leonard, Stevens had no business promoting an undermounted engine in 1908—unless Leonard's anecdote was erroneous.