



## **Lough v Brunswick**

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### **Issue**

Was the patent of Lough invalid on the ground that the invention was in public use before the critical date i.e. June 6, 1987?

### **Holding**

Yes

### **Rule:**

102(b) ...Public use before the critical date.

### **Facts**

Lough worked as an repairman for a boat dealership. While repairing Brunswick inboard/outboard boats, he noticed that the upper seal assembly in the stern drives (marine propulsion devices) often failed due to corrosion. Lough determined that the corrosion occurred due to the contact between the annular seal and the bell housing aperture. He designed a new upper seal assembly that solved this problem. He made six prototypes of it and distributed some of them to his friends working in rival metal lathe.

### **Analysis**

Brunswick argued that the uses of Lough's prototypes prior to the critical date were not experimental. Lough did not control the uses of his prototypes by the third parties and also failed to keep records of the alleged experiments. There was no secrecy obligation either.

Lough asserts that the six prototypes were necessary experiments conducted in the course of completing his invention. Lough says that number of factors such as he receiving no compensation for the prototypes, no sale and the fact that he gave the prototypes only to friends and personal acquaintances suggest that it was experimental.

The policy behind bar of public use is discouraging the removal, from the public domain, of the inventions that the public reasonably has come to believe are freely available. The court says that in determining whether use is “experimental” or not, factors such as, number of prototypes, whether records or progress reports were made, compensation received, secrecy agreement and the extent of control the inventor maintained over testing, have to be considered. The court further says that after providing 5 prototypes to the third parties, Lough neither asked and nor did he receive any comments concerning the operability of these prototypes. He was not exercising control over the prototypes which he gave to his friends. After giving the prototypes to his friends, there was no follow up involvement by him and there was no subsequent inspection also.