

THE AMERICAN GRAPHOPHONE COMPANY AND THE COLUMBIA PHONOGRAPH COMPANY ENTER THE DISC RECORD BUSINESS, 1897-1903¹

By Raymond R. Wile

By 1897 the American Graphophone Company and its marketing arms, the Columbia Phonograph Company and the Columbia Phonograph Company: General were in a position to control a large portion of the talking machine industry. Patent problems involving the Edison interests had been resolved in late 1896 when the two warring parties agreed to accept consent decrees and to cross-license each other. Delays in the settlement of the North American Phonograph Company liquidation adversely affected Edison and gave the Graphophone group valuable lead time. And now that major segments of the Bell and Tainter patents had been sustained in the courts, the American Graphophone Company decided to test claims concerning pre-recorded cylinders. Relying upon these, as well as on patents granted or pending that had been obtained from Douglass, Bettini and Macdonald, the company commenced a wide-ranging series of suits in Midwest and East Coast federal jurisdictions. Edison soon applied for and received a license under the Macdonald patent when it was granted—but at a cost of \$10,000. If the Graphophone Company was successful in its other areas it would effectively control a major portion of the market and might even dry up potential supplies of cylinder masters that could be used by Edison's National Phonograph Company. Preliminary injunctions were obtained in all cases except one brought against the United States Phonograph Company, a major supplier of master recordings to National. Later, after George Tewksberry, its chief motivating force, suffered a progressive mental disorder, even this firm had to admit defeat. It was soon afterwards dissolved.²

At the same time the American Graphophone Company was making other efforts to widen its sales base. By handling and licensing competing machines (usually limiting the number to be made under the license) the opponents could be controlled. The first instance involved the Metaphone (also known as the Echophone), an instrument developed by Edward Amet. An injunction had been obtained in Chicago, but others attempted to market the machine in New York. We are not certain if later sales were licensed so that monies to compensate the Graphophone Companies for the infringement would be generated. Another instrument devised by Gianni Bettini was not only licensed by American Graphophone but the machine was manufactured at its plant. Although nominal sales were handled by U. S. Phonette, shipment was f.o.b. Bridgeport, Connecticut. Both the Amet machine and the Lyrophone saw a relatively short American market life. No Lyrophone is now known to exist.

By the latter part of 1897 the Graphophone Company was ready to unveil its own inexpensive cylinder machine—the Eagle since it was designed to cost one American

Gold Eagle (ten dollars). Edison's National Phonograph Company was not to be outdone and introduced its own Ten Dollar machine—the Gem. Both Companies were fortunate in that a trough in economic activity occurred in June 1897 so that the two new machines were introduced in the environment of a recovering economy.³

In such a situation it was imperative that the Graphophone group examine every opportunity that might produce income. An abortive and short-lived foray was made into the new motion picture business, and Columbia Phonograph also handled the Densmore typewriter for a short period of time. But the disc gramophone represented one area that was not under their control and the business was growing. By mid-1897 the Berliner Gramophone system was beginning a relatively rapid expansion as the concerted efforts of Frank Seaman and his National Gramophone Company began to bear fruit. A constant barrage of advertising, a low price for machines and records, and the development of a reliable spring motor made the system attractive to the public, and while the reproduction of a Berliner Gramophone record was not as good as that possible from a well recorded cylinder, the increased volume of the sound compensated for any lack of quality. The success of these efforts soon brought imitators and infringers onto the scene.⁴

It was at this time that the activities of a former employee of Berliner's Washington laboratory began to make himself known. Joseph W. Jones first teamed up with B. F. Kearns who had been one of the individuals who had introduced William Jones to the system Jones had then organized the Berliner Gramophone Company and William Jones was Joe's relative. It can be assumed that this was the original reason for Joe Jones working for Berliner. Joe, after leaving, began to apply the knowledge that he had gained in the laboratory. His first move was to design a gramophone which employed a mechanical feed. In utilizing such a feed device, Joe would overcome the Berliner patent claim in which the record spiral was used as the reproducer feed. The patent made it through the Patent Office in relatively quick time and was granted in early 1898. At the same time Joe began to experiment with recording in wax. Berliner himself previously had pursued such an avenue, and had made a few laterally cut wax records as early as 1888. In the mid-nineties he resumed this work, but realized later that if he utilized such a process he would be attacked by American Graphophone for infringing on the Bell and Tainter patents. Even though samples of wax matrices were displayed on the walls of the Berliner laboratory, the inventor was waiting patiently for 1903 and the expiration of the patents.

Berliner also recognized the potential dangers that Jones might pose for the Gramophone organizations. In a letter to Frank Seaman he commented:

I saw Joe J's machine and as I always advocated he should remain & be retained in the folds of our interests & not be permitted to drift into an opposition concern I suggested to Mr. Parvin a long time ago that all three companies should together support a laboratory for *mechanical experiment* in Phi[adelphi]a; and for such a one Joe J. would be good to put in charge. It wouldn't cost so much and would pay all of us.... I offered Joe a yearly amount from my private U. S. Stock as a private encouragement in case he can arrange with you and Phi[adelphia]. As for laboratory expenses I will be able to get our Directors to consent to a 1/3 contribution....⁵

With a favorable action anticipated on the mechanical feed machine patent, Joe began to seek additional backers. He already was being financed by a Joseph A. Vincent of Philadelphia, but Vincent now was interested in seeing some return on his investment rather than a continuing outflow. In September 1897 Jones met Albert T. Armstrong, a New York businessman, who was looking for additional avenues for investment. Armstrong obviously was impressed with Jones' work and entered into an informal verbal agreement to finance his experimental expenses for a month—should anything promising

ensue he was willing to enter into a more formal agreement. Jones readied a new patent application during that period. On November 9, 1897 a formal agreement was signed. Jones agreed to license his talking machine and to supply records if an order for at least 12,000 discs was placed.

The licensor will begin to furnish the licensee with records at the rate of not less than 200 dozen per week, the said records to be serviceable and to accomplish the same results as the average records now being made by the Berliner Gramophone Company.⁶

With this contract in hand Armstrong now felt confident to ally himself with partners. C. G. Conn of Elkhart, Indiana and Emory Foster of Washington, D. C. came on the scene as a result. Conn soon developed the concept of a two-horn reproducer, or double-belled as it was called in trade literature. Jones was to provide the machines and Conn the assembly. The machines were known as the Wonder and business was commenced on Fourteenth Street in New York. Upon the granting of the Jones machine patent, a formal incorporation took place and the business became the Standard Talking Machine Company. But Jones found it difficult to produce satisfactory machines, and in this was reflecting the problems that plagued the Berliner Gramophone Company and Eldridge Johnson when the spring motor gramophone was developed. As a result, Armstrong later estimated, not more than 50 or 60 Wonders were sent out during the Company's period of existence, and these were samples.⁷

Jones also found it difficult to produce records, and despite all his efforts to copy selections or record new ones the results were disappointing. Armstrong found himself supporting a will-of-the-wisp—so much so that he constantly had to sell goods at a discount as seconds or imperfects. As a result of the growing number of problems, he must have been happy to wind up the company's affairs sometime after June 1898 when suit was brought by Berliner for patent infringement.⁸

Compounding Armstrong's problems was the lack of success by Jones at pushing his patent application through the Patent Office. He applied on November 19, 1897 for a patent on a *Method or process of making records for the reproduction of sound waves* which almost immediately was rejected on references to Edison patents and Berliner's patent no. 548,623. In June Jones amended the application and substituted other claims to replace those in the original manuscript. The amended application again was rejected on June 28, 1898. In such a situation it is not surprising that Armstrong and his colleagues decided to close up Standard.⁹ If any new activities were to be contemplated it would be wise to more effectively protect his interests.

The most logical method would be to make an alliance of some sort with the American Graphophone Company which controlled the Bell and Tainter patents. The rich menu of processes and claims contained in each patent certainly would provide a basis for protection. The evidence suggests Armstrong approached, or was approached by, American Graphophone in September or October 1898 and an informal or formal arrangement was worked out at that time. American Graphophone was no stranger to the courts so that the initiation of suits against the Berliner Gramophone Company and the National Gramophone Company and Frank Seaman was no accident. The attack, based on the concept that Berliner infringed by using a universal joint on his reproducer arm, was calculated to achieve a decision since suits had just been won against Amet and Leeds and Baldwin using that attack point. Once victory was won the Graphophone Company would be in a strong position to insist upon cross-licensing with Berliner. The Bill of Complaint in New York was filed on October 22 and on December 15, after an extensive record was produced, a preliminary injunction was granted based on the affidavits. On appeal to the Circuit Court of Appeals, the injunction was dissolved and the case returned to the lower court for a full hearing on the merits.¹⁰

Armstrong now proceeded to cement his alliance and strengthen his position further. In his previous experience, Jones and the New Jersey Company had found it difficult to supply adequate machines so he arranged for American Graphophone to manufacture machines for him. He would be the outlet but American Graphophone would manufacture and pay him royalties under the Jones machine patent. This represented the first formal entrance into the disc field, but American Graphophone encountered the usual difficulties and was forced to admit defeat after eight months. As a result Armstrong had to arrange for his own manufacturing and was not able to launch his new enterprise until mid-1899. In addition, even though Armstrong was not certain if the Bell and Tainter patents adequately covered records, he arranged for a contract to be signed in which Jones would again attempt to supply records. The usual problems occurred and the majority of the Jones output was of second quality. As a result, Armstrong advertised in *The Phonoscope* for someone to produce master records. A Philadelphia firm responded and at long last Armstrong began to achieve success. Some of these records are owned by the Library of Congress and represent a good, workman-like job with raised typeset title information in the center area.¹¹

But the American Talking Machine Company was hampered by the delays in machine production caused by the inability of American Graphophone to produce an adequate instrument. Armstrong arranged to recover some of his investment through dealing in an additional machine. He arranged for a sub-license for the International Stylophone Company of New Haven, Connecticut, on July 11, 1899—the arrangement being countersigned and approved by Philip Mauro, Counsel for the American Graphophone Company. Soon ads appeared in *The Phonoscope* for the Vitaphone.¹²

Since American Graphophone had invested in tools and patterns for making an inexpensive hand operated disc type gramophone, it is not surprising that they decided to introduce a small, inexpensive disc graphophone for the Christmas trade of 1899. The toy graphophone was supplied with vertically cut 3 3/8-inch wax records. Despite their low cost the machines did not appeal to the public and are now quite rare. To make sure that there was no infringement, the company started the groove spiral at the center of the tablet. By offering the machines the company was also showing its intention to go into the disc field and was protecting itself from other claims at a later date.¹³

Much of what Joe Jones had proposed to do in making records and producing matrices was common knowledge in other trades—particularly those involving electrotyping and electroplating. One of the side benefits of the Berliner laboratory location at the Powerhouse of the Capital Traction Company before the building was destroyed by fire was the close proximity to electrotypers such as the Maurice Joyce company. In the 1890s, as advertising became national in scope, a thriving trade developed in the distribution of “mats” and “cuts” to various newspapers. Orville D. La Dow, who replaced William Barry Owen when he resigned from the National Gramophone Company in order to arrange for the sale of English rights to the Gramophone, already was thoroughly familiar with electrotyping as were many connected with Frank Seaman’s advertising agency. La Dow had originally been employed in the advertising department of the Royal Baking Powder Company and was involved in the preparation and distribution of electrotypes to local newspapers. He was thoroughly conversant with all facets of the process. Upon assuming his duties at National, he immediately arranged for experiments designed to produce copies of Berliner Records. While this may have been occasioned by the relatively small yield of records from each Berliner matrix and the sharp fall-off in quality when copies were made by utilizing hard rubber pressings to generate additional matrixes, it is also possible that La Dow and Seaman already were

laying the groundwork for splitting away from Berliner control should other, and infringing, organizations prove successful in maintaining their product in the face of potential or actual litigation.¹⁴

Seaman had grown increasingly restive under the terms of his contract with the Berliner Gramophone Company. Since the organization farmed out its manufacturing and charged a cost-plus markup, he felt, and rightly, that there was no incentive for them to reduce the mark-up base. He felt that he was being forced to take all of the risks while the "Philadelphia crowd" garnered undeserved income. He was suspicious of the arrangements with Eldridge R. Johnson and attempted to have a less expensive spring motor supplied by Levi H. Montross, a former associate of Johnson in the development of spring motors. Two thousand of these motors were purchased for use as "scheme goods." He also suspected that there might be some sort of rake-off or kickback deal between the Berliner Gramophone Company and Eldridge R. Johnson. What he did not know was that Johnson was being partially financed by members of the Berliner Company and that Thomas Parvin, the President, owned a share in the Johnson patents. Seaman also was critical of the cost and quality of the records pressed by the Duranoid Company of Newark for the Berliner Company. He arranged for sample pressings to be supplied by the Burt Company of Milburn, New Jersey, a maker of billiard balls and other such goods. Although the Burt pressings were less costly and more durable than those of Duranoid, the Berliner Company insisted on continuing to use Duranoid as their supplier.¹⁵ Although Seaman and La Dow were unsuccessful in their first cost-cutting efforts, valuable contacts had been made should they have occasion to operate apart from the Berliner group.

Several figures float in and out of the industry picture during the decade. Many of them found niches early in the 1890s but John C. English was an exceptional member of this group. At first he had worked for the chemical supply firm Eimer and Amend and often processed the chemical orders of Thomas A. Edison. Because of this background Edison hired him to supervise procurement efforts for the Edison Laboratory. While working for Edison he gained a rough idea of the chemicals composing the recipe for the "metallic soap" compound used in Edison cylinders. In 1895 American Graphophone hired him in an attempt to copy the Edison formula. But English was not able to duplicate the amounts; while the Graphophone product was a close approximation it was susceptible to mold, particularly a variety which gave them the nick-name "blue cylinders." He was spirited away by Frank Seaman and Orville La Dow to conduct record making experiments for the National Gramophone Company. He was soon producing acceptable copies and original gramophone type records.¹⁶

In 1898 Frank Seaman incorporated a new company, the Universal Talking Machine Company, for the ostensible purpose of producing coin-operation devices to convert gramophones for nickel-in-the-slot operation. The new firm adopted the trademark Zon-o-phone and began shipments of machines to those sections of Europe that were not subject to patent protection. At the same time, groundwork was laid for a split away from the Berliner interests. Seaman and La Dow had met several individuals who held viable patents that could be acquired for the new Company. Louis P. Valiquet had developed a spring motor for use on music boxes that might be used for gramophones, and he was hired. Valiquet then developed a new motor. Since the motor and the reproducers and recorders were key elements in the machines being supplied to National by Berliner, Valiquet's contribution should be seen as one of several efforts to develop non-infringing devices.

By 1899 Seaman had finalized his plans. Either he would achieve lower costs or he would be in a position to secede. However, an alteration had to be made in his basic

method of doing business. And to do this he needed increased capitalization and affiliation with a firm that possessed a much broader charter than his National Gramophone Company. In the first half of the year, he chartered a new firm in New York, the National Gramophone Corporation, and replaced the old company with it through the exchange of stock for assets. National now began to support the increasing activities of Universal.¹⁷

By mid-1899, the Universal Company was in a strong position. It could produce a machine whose construction was based on a wide range of its patents, but did not yet have a reproducer that was patented, though Valiquet would soon apply for such protection. In preparation for the ultimate introduction of machines, it was necessary to ensure a supply of records if the Berliner groups decided to cut off supplies. Seaman himself had employed such tactics against Owen's newly organized firm and things had been tough and go for them until manufacturing and recording facilities were established in Europe. Soon workers were sanding off essential information from the central location of Berliner Gramophone Records so that the sole information remaining would be issue numbers and title-artist credits. Pressings also were modified so that the product could be used on the new Zon-o-phone machines. Seaman felt that little prevented him from doing this because he had been forced to pay for the original recording session, including a forty percent markup, and reasoned that the ensuing pressings were really his property. By the end of the year this activity already had begun to adversely affect the volume of sales of Berliner Records through the National Gramophone Corporation.¹⁸

During the latter part of the year Seaman began to order large numbers of replacement reproducers from the Berliner Company, which countered by insisting that a broken or defective one be returned for each new one ordered. In the fall he formally unveiled a sample machine for examination by the Berliner management and insisted that they use it and take their markup on it. They declined and stated that under their agreement with Berliner they could not handle infringing goods. They also reminded Seaman of his contract terms. The additional ties of the Berliner management to the Johnson manufacturing operation precluded any additional move on their part.¹⁹

In the spring of 1900 the entire situation began to change rapidly. Because of the clouded situation Armstrong, with his Vitaphone and Stylophone licenses from American Graphophone, insisted that the company give the public a formal assurance. In January a letter was provided that could be reproduced for the trade. At the end of March Easton wrote to Armstrong asking for payment of arrears in royalty. Apparently the management wanted to be paid before the next development occurred. This was announced in a letter to Armstrong of April 12:

For your information, and to be regarded as strictly confidential for the present, I would advise you that, after careful consideration of the entire subject, the Graphophone Company has decided to grant an exclusive license for machines of the gramophone type to the Universal Talking Machine Company, and to cooperate with that concern commercially and legally against the other gramophone companies. This situation renders it necessary, in your interest as well as that of the Graphophone Company, that your future operations should be brought into harmony with the general plan....

This arrangement will not preclude your continuance in the manufacture of records, if it be advantageous to do so; but as there will undoubtedly be a stiff fight with the Berliner Company, we must unite our forces and act in concert as far as possible.

On May 5, 1900 the National Gramophone Company admitted that the Berliner patents were infringed, and accepted a consent decree and a perpetual injunction against its dealing in infringing machines. The Berliner Gramophone Company had never formally recognized the National Gramophone Company nor the National Gramophone Company and had always conducted its dealings through Frank Seaman. The die was now

cast, although Frank Seaman had not agreed to such terms and continued as a defendant in the case. American Graphophone and Universal both felt themselves in a particularly strong position. The suits against the Berliner system were still being continued, but without an outlet in New York they had no legal recourse for selling their goods except in the District of Columbia.²⁰

On another front Armstrong had grown tired of the patent situation with regard to the Jones application. He consequently consulted the law office of Philip Mauro in an attempt to push the matter. Mauro completely rewrote the application and at the same time he was nominated Associate Attorney of Record for Jones. In the new form the resubmission was again refused—this time on references to patents of Rosenthal and Frank and of J. Lewis Young. In May Mauro wrote to Armstrong for monies to continue the work. "The disbursements in these cases amount to nearly \$75 already, to say nothing of the professional services involved." Armstrong sent \$100 on account. He did not realize it but he was in an extremely vulnerable position since the application was in the name of Jones with a half interest assigned to Joseph Vincent. Nowhere was Armstrong's equity indicated.²¹

American Graphophone had not granted too much to the Universal Talking Machine Company. The license it had approved provided only for machines under the provisions of Bell and Tainter patents and these were due to expire in 1903. As all anticipated, the consent decree created a tremendous furor, but it was hoped that American Graphophone could end much of the confusion by circularizing the trade. Even so, dealers and customers often were hesitant to consider the Zon-o-phone because they feared suits for infringing on patented merchandise. Seaman also brought suits against the Berliner Gramophone Company and the United States Gramophone Company. A field day was created for the legal profession as actions and cross-actions were instituted. The uncertainty, the disappointing market, and the consequent financial drain proved too much for the National Gramophone Corporation which in the summer of 1901 applied for voluntary dissolution. Cut off from its chief source of support, the Universal Talking Machine Company was forced into a sale of assets to satisfy creditors. It emerged as the Universal Talking Machine Manufacturing Company.²²

Meanwhile the Berliner group had managed to reform itself, and sales were at first conducted by Eldridge R. Johnson operating as the Consolidated Talking Machine Company and then later after a court action simply as Eldridge R. Johnson. With the able assistance of Leon F. Douglass an aggressive sales campaign was begun. We know that he persuaded Johnson, who normally was extremely cautious and was now even more so in the swirling waters of controversy, to embark on a concentrated advertising campaign to counteract that mounted by Zon-o-phone. It paid off and sales rapidly climbed.²³

The Jones patent application continued to encounter problems at the Patent Office. The situation was further compounded as Emile Berliner, who realized that such an application had been filed, sought a patent using similar matter as its basis. Even though he privately felt that it was not possible to obtain a patent because of prior processes and the Bell and Tainter patents, he knew that he must protect his interest. Nonetheless, Mauro continued to write and rewrite claims for Jones as the application continually was rejected and returned. The last of these occurred in February 1901, and on April 17, 1901 it was placed in interference with that of Emile Berliner.²³

American Graphophone and Columbia were faced with another possible complication by a new series of events originating in New Jersey. In March 1901 the Burt Company hired John C. English, Universal's chief record maker, away from Zon-o-phone to oversee their efforts to produce an acceptable gramophone record. Although Universal immediately

brought suit to prevent this, the New York Courts allowed the matter to stand. English soon was able to create a workmanlike product with a raised inscription in the center area of the disc. The Burt Company carefully arranged its business operations so that any activities directed towards making records would be handled by a new company, the Globe Record Company. Presumably, any recoverable damages in the event of litigation would be limited to the assets of Globe.²⁵

Even though the voluntary dissolution of the National Gramophone Company and the consequent sheriff's sale of Universal was to affect the Graphophone Company's disc plans profoundly, the interference with Berliner was proceeding favorably. As a result, the Graphophone management decided to invest in the Jones patent application. Philip Mauro dealt directly with Jones and took out an option under his own name. Despite obvious conflicts of interest, Mauro did not inform Armstrong of the action nor was any remuneration offered to him. He was warned of the impending action by two officers of American Graphophone—William Herbert Smith and Mervin E. Lyle.

Well Mr. Smith called me into his office one day I was up there on some business or other, and he stated, he says the company has taken an option on this Jones patent, and you better go after Mr. Mauro, as you certainly have rights there that he should recognize, as you paid him for looking after your interest. I said Are they going to buy, or what? He said No, Mauro is going to take an option on it pending its decision or the sustaining of the same.... Mr. Lyle told me that they were going to enter into the disc talking machine business in the proper way and had taken an option on the Jones patent and were going to push the thing to sustain it as soon as possible.²⁶

The Columbia Phonograph Company would thus be in a position to handle the Globe Record Company's product—Climax Records.

All of these activities were carefully noted by the Johnson and Berliner camps. After the removal of Frank Seaman from the arena and with the probability that American Graphophone would enter the disc scene on a more proper footing, it was decided to bring the Berliner and Johnson interests more formally together. Although the Consolidated Talking Machine Company trust offered the most logical avenue, using this umbrella would play directly into the hands of Seaman who had always claimed collusion. Rather than chance this, a new firm was organized that began operations in October 1901—the Victor Talking Machine Company. American Graphophone also formally unveiled the Columbia Disc Graphophone and a series of records to be used on it. These Climax Records were made especially by the Globe Record Company for the Columbia Phonograph Company. On December 10 the Patent Office issued the Jones patent. To set the house in order, the Joseph A. Vincent half-interest was reassigned back to Jones.²⁷

In late December and early January 1902, Eldridge Johnson and Leon F. Douglass began negotiations that would profoundly affect American Graphophone. Somehow they learned of dissension between the Burt Company and the Graphophone management. A series of visits to New York City occurred in that period which resulted in the acquisition of the Globe Record Company by Johnson and Douglass for \$10,000. Under the agreement, Burt was allowed to collect any unpaid bills due to Globe from American Graphophone, and the Burt Company agreed to press records for Victor. At that time Victor was experiencing growing pains and needed capacity beyond that which it and Duranoid could provide. By this move American Graphophone's distribution arm, Columbia, was completely shut off from supplies of the disc records used on its new machines.²⁸

Johnson and Douglass did not wait for the counterattack that they knew would soon come. Ostensibly for the purpose of providing Globe with additional working capital, they purchased its inventory of matrices and shipped them off to Philadelphia where

they were placed in storage. Presumably the VTM which appears in raised letters on some Climax pressings was marked on the matrices at this time to identify the metal parts for ownership and bookkeeping purposes. The move also meant that if American Graphophone instituted a legal action, the ensuing cases would be covered by several Federal jurisdictions: Eastern Pennsylvania, New Jersey and Southern New York. Almost immediately Easton opened negotiations but only after initiating a suit to be on the safe side. By mid-February a settlement was reached. Globe was acquired for American Graphophone for the amount that Johnson and Douglass had offered. In addition, and even more important for Victor, the Graphophone Companies agreed to settle all outstanding cases pending against Victor and the Gramophone interests. Johnson, for the first time, was able to draw an easy breath.

Not wanting additional problems to crop up with the Burt Company, the Graphophone management arranged for that company's acquisition. Soon preparations were made to move its scene of operations from New Jersey to Bridgeport, Connecticut, where a new factory building was erected opposite the Graphophone plant. The Burt Company did maintain a separate existence for many years as evidenced by the use of Burt stock as partial collateral for a mortgage bond loan that the Graphophone Company arranged in the mid-1910s. John C. English, meanwhile, had accepted employment with Victor and became involved in experimental work for that Company.²⁹

After operating for a short period of time with the Climax label, Columbia decided to market discs under its own trade name and the pressings became known as Columbia Disc Records. This apparently occurred sometime in the latter part of 1902. In 1903 a group of Grand Opera Records was released with red labels and were exhibited at the 1904 World's Fair at St. Louis. In mid-1904 the label color was changed to black, possibly as the result of still another litigation involving Albert T. Armstrong. In 1904 Armstrong was selling dubbed, pirated Victor Recordings using his own label dressed in red and with a circular gold band running around its edge. Victor had registered the use of red labels as a trademark and sued Armstrong on the basis of unfair competition. The courts quickly ruled against Armstrong and issued an injunction. It appears that the Graphophone Company took its cue from this suit and changed its color back to black. At the same time they took care to divide the wide circular gold band of their label into segments. Soon the label was redesigned and the band abandoned entirely.³⁰

The Graphophone Company was now firmly in the disc camp and within the next 10 years completely abandoned the cylinder form except for use on its business machines. It took eight years before the complete transition was effected.

Notes:

1. I should like to acknowledge, with thanks, awards from the New Jersey Historical Commission, the Faculty Research Award Program of the City University of New York (FRAP 11042), and the Professional Staff Congress/Board of Higher Education Award Program (PSC/BHE 1206), which partially funded my continuing research into the business organization of the early sound recording industry.
2. In the Edison cases the American Graphophone Company brought suit against the Edison Phonograph Works, the United States Phonograph Company and many of the Edison distributors in such diverse Federal jurisdictions as Eastern Pennsylvania, New Jersey and Southern New York. Similarly Edison initiated suits against the American Graphophone Company and its various agents. It was decided to treat the two New Jersey cases as primary cases and to limit the majority of the testimony to them. The death of Judge Green after he had heard Final Arguments in September 1896 meant that a decision might be delayed for years while another judge familiarized himself with the points in contention. Rather than do this the two sides agreed to each accept consent decrees, to admit infringement, pay minimal damages of \$1 each and to cross-license one another. This was accomplished in December 1896. The major pre-recorded cylinder suits were brought in the Federal Circuit Courts for Northern Illinois, New Jersey and the Southern District of New York. The whole situation will be treated at length in my industry history. Copies of the cases are located at National Archives Regional Centers at Chicago and at Bayonne, N.J.
3. The Amet machine was held to infringe in *American Graphophone Company versus Edward H. Amet* (U. S. Circuit Court for the Northern District of Illinois. Northern Division. In Equity No. 23,986). After additional suits were brought in New York against Leeds and Baldwin, who were selling the Amet machine in New York City, license fees were paid. At one time Berliner contemplated suing Amet, basing his complaint on the self-feeding feature of the instrument. The Lyrophone was an inexpensive machine, marketed by the U.S. Phonette Company. A circular concerning the device, once in the possession of American Graphophone, is now in the possession of CBS Records. The circular reprinted a letter dated April 7, 1897 stating: "This is to certify that the Lyrophone is manufactured by this Company [American Graphophone Company] for you under our United States Letter Patent, and is a lawful instrument which the trade may purchase. Yours truly, E. D. EASTON, President." The low price of Seven Dollars, which included one cylinder, was apparently too much in the way of competition for the Company's eventual plans. For details of the trough of the depression see Charles Hoffman "The Depression of the Nineties" in *Journal of Economic History*, Vol. 16, No. 2 (June 1956) and in his doctoral dissertation *The Depression of the Nineties: an Economic History* (Columbia University, Jan. 1954).
4. The gramophone presented two potential areas of danger. One was as a domestic competitor and the other was to American Graphophone's plans for foreign expansion. If American Graphophone could intimidate entrepreneurs into seeking a license they would have created a type of de facto patent control. Even more important would be the fact that the licensee would be assuming the majority of the risks although American Graphophone would be obliged to defend the licensee.
5. See letter Emile Berliner to William Barry Own 9 May 1897. EMI Archives: letter Emile Berliner to Frank Seaman 13 May 1897; Emile Berliner to Frank Seaman 1 June 1897. Both were introduced into *Frank Seaman versus the United States Gramophone Company* (U.S. Circuit Court for the District of West Virginia. In Equity No. 555). National Archive Regional Center, Philadelphia.

6. See testimony of Albert T. Armstrong, 1 December 1904 in “Defendants Record on Plea” in *American Graphophone Company versus Leeds & Catlin Company et al.* (U. S. Circuit Court for the Southern District of New York. In Equity No. 8570) Cross Question 98, 164, 171. The Contract was introduced as evidence —
 Agreement 9th November, 1897 between Joseph W. Jones ... and Albert T. Armstrong. NARC—Bayonne. A catalog of Wonder Machines and Records was issued, probably in early 1898. An electrostatic copy is owned by the Library of Congress. James R. Smart mentions the Wonder situation in his volume *The Sousa Band: a discography*. Much of his information concerning Wonder has been corrected and amplified by the recently discovered Armstrong testimony.
7. See Armstrong testimony. XQ 162.
8. *United States Gramophone Company and Berliner Gramophone Company against Standard Talking Machine Company, Charles G. Conn, Albert T. Armstrong and Emory Foster.* (U. S. Circuit Court for the Southern District of New York. In Equity No. 6919) NARC—Bayonne. See also U. S. Gramophone Company *Annual Report*, March 31, 1898. Berliner Scrapbook—Library of Congress.
9. The entire file wrapper and contents of the Jones Patent No. 688,739 was introduced as evidence in the case *American Graphophone Company versus Universal Talking Machine Manufacturing Company* (U.S. Circuit Court for the Southern District of New York. In Equity No. 8056). NARC—Bayonne.
10. The two cases were *American Graphophone Company versus The Berliner Gramophone Company et al.* (U. S. Circuit Court for the Eastern District of Pennsylvania. October Session 1898, No. 34. In Equity) — NARC—Philadelphia and *American Graphophone Company versus the National Gramophone Company and Frank Seaman.* (U. S. Circuit Court for the Southern District of New York. In Equity No. 7063) NARC—Bayonne. Although differing testimony was taken in both cases and some different exhibits presented it was stipulated that materials entered in either could be used in the other. Even so the New York case was considered primary. See also Armstrong testimony. Q8 and XQ 163.
11. Armstrong testimony. XQ 178, Q8, RDQ 243-146. The advertisement referred to appeared in the *Phonoscope* Vol III, No. 3 (March 1899) p. 6. At this time the *Phonoscope* normally appeared at least two months beyond the date on the masthead. The actual date would thus be May.
12. “Armstrong license to International Stylophone Company, 11 July 1899” was introduced as evidence in *American Graphophone Company versus Leeds and Catlin Company, et al.* The first advertisement for a Vitaphone appeared in the *Phonoscope* Vol 111, No. 8 (August 1899) [i.e. November].
13. The *Phonoscope* Vol 111, No. 9 (September 1899) p. 11 [i.e. December] noted “The Columbia Phonograph Company offers the latest talking-machine, a sort of Graphophone with small wax discs, on which the sound box travels from the center to the circumference instead of vice-versa as in the real Gramophone. Not having heard the machine we cannot venture an opinion as to its merit. It will sell for about \$3.00 including five wax disks.” The account does not make it completely clear that the wax discs were vertically cut—they were. They were also center start.

14. For the location of the laboratory and the nearness of the Maurice Joyce Company see Joseph Sanders to B. L. Aldridge 5/27/53 BP. as well as Sanders testimony of 28 June 1905 in *American Graphophone Company versus American Record Company* (U. S. Circuit Court of the Southern District of New York. In Equity No. 8939) XQ 41. See also testimony of Orville La Dow, 1907 and 1908 in *American Graphophone Company versus Leeds and Catlin Company, et al.* Q 84, RDQ208.
15. The details will be amplified in my projected history of the early sound recording industry. For example ledgers maintained by the U. S. Patent office and now in the custody of the National Archives show Thomas S. Parvin of Philadelphia, PA on May 19, 1898 as acquiring a half-interest in the patent application of Eldridge R. Johnson and Alfred Corning Clark for "Sound Recording and Reproducing Devices." This patent was issued on August 7, 1900 as No. 655,556. The same thing is true with other Johnson applications and patents. Emile Berliner in a letter to William Barry Owen on July 30, 1898 mentioned the superior quality of the Burt pressings. EMI Archives. See also Affidavit of George H. Burt, 10 September 1900 in *Frank Seaman versus Berliner Gramophone Company* (U. S. Circuit Court for the Western District of Virginia. In Equity). NARC-Philadelphia. An examination of matrix information contained in Ted Fagan and William R. Moran, comps. *The Encyclopedic Discography of Victor Recordings. Pre-matrix series* shows pressing runs from matrices as averaging under 500 copies.
16. See my projected history for additional details. The blue cylinders are constantly mentioned in testimony and letters of the period. English appears in many cases and his movements are detailed by them. In 1902 he was employed by Victor. Part of his work for Victor on the 14-inch record is noted in Fagan and Moran.
17. The Charter of Incorporation for the National Gramophone Corporation was filed on March 9, 1899. The new charter authorized it "To manufacture, sell, lease, operate and deal in talking machines ... particularly the instrument commonly known as and called the Gramophone..." The old charter of the National Gramophone Company (October 24, 1896) authorized it to do business "for the introduction of any gramophones, for the exclusive manufacture, sale or use whereof of the said company or companies, person or persons, may own patents... to manufacture, own, sell, lease, and operate gramophones, gramophone goods, and other appliances, useful in, or connected therewith..." On May 19, 1899 the Company voted to dissolve itself and certified the assent on June 8, 1899. See the original charters and documents that were introduced in *Frank Seaman versus Berliner Gramophone Company*.
18. See testimony in *ibid* for details concerning the removal of patent marks and information from the discs. See also George Paul "American Zonophone Records" in *APM: The Antique Phonograph Monthly* Vol. 7, No. 6 p. 2-5 (1983) for an article concerning the identification of Zonophone label types. I am inclined to question some of Mr. Paul's earlier datings. See also Raymond R. Wile "Berliner sales figures" in *ARSC Journal*, Vol 11, Nos 2-3 p. 139-143 (1979) for details concerning sales figures of Berliner records. November and December 1899 should have shown increases over 1898 but instead showed declines.
19. See my proposed history of the industry which will contain additional information. In addition it will include information concerning a stock pooling agreement in 199. Additional details will be found in testimony in *Frank Seaman versus Berliner Gramophone Company*.
20. See *American Graphophone Company versus Leeds and Catlin Company et al* Plea Record where these were introduced. Edward D. Easton to Albert T. Armstrong January 25, 1900; Edward D. Easton to Albert T. Armstrong March 30, 1900; Philip Mauro to A. T. Armstrong April 12, 1900. The "Decree of Judge Henry Lacombe" May 5, 1900 appeared in *American Graphophone Company versus National Gramophone Company and Frank Seaman*.

21. See Armstrong testimony and exhibits. Letter of Philip Mauro to A. T. Armstrong. May 31, 1900. The Jones patent file appears as "Complainants Exhibit No. 2. File wrapper and contents of patent in suit (688, 739)" in *American Graphophone Company versus Universal Talking Machine Company* (U. S. Circuit Court for the Southern District of New York. In Equity No. 8056). This showed Philip Mauro becoming Associate Attorney of Record on March 13, 190[0].
22. See circulars, letters and advertisements attached to "Motion to withdraw Defendants Record and Appearances" November 10, 1900 in *American Graphophone Company versus National Gramophone Company and Frank Seaman*. Details of the Universal sale appear in *American Graphophone Company versus the Universal Talking Machine Manufacturing Company*.
23. The full details of the various moves in the Summer and Fall of 1900 are still somewhat unclear.
24. See File wrapper of Jones patent No. 688,739. The "Berliner vs. Jones Interference" (No. 21,102) also was introduced as evidence in the same case.
25. See *Universal Talking Machine Company versus John C. English* (New York Supreme Court (New York County) Special Term March 1901).
26. Armstrong recalled Smith informing him of the negotiations as about seven months prior to Smith's resignation from the Graphophone Company. XQ206. See Also RDQ223-RDQ226.
27. For details concerning the granting of the patent see File wrapper and contents of Jones patent.
28. See pocket memo notebooks of Eldridge R. Johnson for 1901 and 1902 for sketchy details. Johnson papers -UW(Lar) The contract with Globe and the contract with the Burt Company were in the possession of Howard Hayes, one of Edison's lawyers and eventually were given to the Edison National Historic Site.
29. *American Graphophone Company versus the Globe Record Company and Eldridge R. Johnson* (U. S. Circuit Court for the Southern District of New York. In Equity No. 8011). The departure of English for Victor was detailed by *The Burt Company versus Johns C. English* (U. S. Circuit Court for the southern District of New York No. 8014). Both NARC—Bayonne.
30. See M. "Mr. Eldridge R. Johnson's disc record coup" in *Music Trades* March 8, 1902 for additional details of the settlement. It is unclear as to when Columbia abandoned the Climax label and relegated it to a trademark that might be used on occasion in future years. Since early Columbia Disc Record labels carry the May 4, 1886 patent date it would seem to be in mid- or late 1902.

PRINTED SOURCES

- Fagan, Ted and William R. Moran. *The encyclopedic discography of Victor recordings. Pre-matrix series*. Westport, Conn., Greenwood Press, 1983
- Hoffman, Charles "The Depression of the Nineties" in *Journal of Economic History*, Vol. 16, No. 2 (June 1956)
- Hoffmann, Charles *The Depression of the Nineties: an economic history* (Columbia University, Ph.D. Dissertation, January 1954)

The Music Trades, 1900-1904

Paul, George "American Zonophone Records" in *APM: Antique Phonograph Monthly*, Vol. 8, No. 6, p 2-5 (1983)

The Phonoscope, Nov. 1896 - June 1900

U. S. Gramophone Company. *Annual Report to the President of the United States Gramophone Company* (March 31, 1898) Washington, D.C., National Publishing Company, 1898

U.S. Phonette Company, *The Lyrophone*. 1897

MANUSCRIPT SOURCES

Berliner Papers, Library of Congress. Manuscript Division, Recorded Sound Section

CBS Records Archives

Edison National Historic Site. Document files, legal files

Eldridge R. Johnson Papers — University of Wyoming at Laramie. Library

EMI Archives — I have not utilized this source but I was supplied with some letters from Emile Berliner to William Barry Owen.

COURT CASE FILES

U. S. Circuit Court for the Southern District of New York. In Equity. Deposited at the National Archives Regional Center — Bayonne.

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| No. 6919 | <i>U. S. Gramophone Company and Berliner Gramophone Company against Standard Talking Machine Company, Charles G. Conn, Albert T. Armstrong and Emory Foster.</i> (1898) |
| No. 7063 | <i>American Graphophone Company versus the National Gramophone Company and Frank Seaman.</i> (1898) |
| No. 7948 | <i>Victor Talking Machine Company versus Mervin E. Lyle.</i> (1901) |
| No. 8011 | <i>American Graphophone Company versus The Globe Record Company and Eldridge R. Johnson.</i> (1902) |
| No. 8014 | <i>The Burt Company versus John C. English.</i> (1902) |
| No. 8056 | <i>American Graphophone Company versus the Universal Talking Machine Manufacturing Company.</i> (1902/3) |
| No. 8247 | <i>Universal Talking Machine Company versus the American Graphophone Company and the Columbia Phonograph Company: General</i> (1903) |
| No. 8376 | <i>Universal Talking Machine Company and American Graphophone Company versus Columbia Phonograph Company: General.</i> (1903) |

No. 8570 *American Graphophone Company versus Leeds & Catlin Company, Edward F. Leeds & L. Reed Catlin.* (1904)

No. 8838 *Victor Talking Machine Company versus the American Vitaphone Company & Albert T. Armstrong.* (1904)

No. 8939 *American Graphophone Company versus the American Record Company.* (1905)

U. S. Circuit Court for the District of New Jersey. In Equity. Deposited at the National Archives Regional Center — Bayonne.

No. 3500 *American Graphophone Company versus the Edison Phonograph Works.* (1893)

No. 3668 *American Graphophone Company versus the United States Phonograph Company, Victor H. Emerson, individually as President and George E. Tewksbury, individually and as Treasurer.* (1895)

U. S. Circuit Court for the Eastern District of Pennsylvania. In Equity. Deposited at the National Archives Regional Center — Philadelphia.

October Session 1898 No. 34 *American Graphophone Company versus Berliner Gramophone Company, Thomas S. Parvin and Eldridge R. Johnson.* (1898)

U. S. Circuit Court for the Western District of Virginia. In Equity. Deposited at the Washington National Record Center — Suitland, MD.

Frank Seaman, Plaintiff versus Berliner Gramophone Company. (1900)

Samuel Ford and William C. Smith, individually and on behalf of such stockholders of the Berliner Gramophone Company as may join in this action against Berliner Gramophone Company. (1900)

U. S. Circuit Court for the District of West Virginia. Northern Division. In Equity. Deposited at the Washington National Records Center — Archives Section Suitland, MD.

Frank Seaman, complainant versus the U. S. Gramophone Company, defendant. (1900)

U. S. Circuit Court for the Northern District of Illinois. Northern Division. In Equity. Deposited at the National Archives Regional Center — Chicago

No. 23988 (Term No. 719) *American Graphophone Company versus Edward H. Amet.* (1896)

New York (State) Court of Appeals. First Department.

April Term 1900 *National Gramophone Company, Appellant versus The American Talking Machine Company Respondent* (On appeal from order of the Supreme Court. Special Term. 19 January 1900 requiring plaintiff to serve a verified Bill of Particulars)

New York (State) Supreme Court, New York County.

Special Term March 1901 *Universal Talking Machine Company versus John C. English.* (1901)