

Book sheds new light on epic patent battle

The bitter patent war fought by Edison and Westinghouse for control of electricity is depicted in a best-selling novel, soon to be a major motion picture

By Bruce Berman

The *Last Days of Night* is a deft work of fact-based fiction which brings to life the battle for control of electric light – known as the ‘war of the currents’ – fought by Thomas A Edison and George Westinghouse, the Steve Jobs and Bill Gates of their day.

The book brilliantly illustrates the dark side of genius. It shows how a great idea is rarely good enough to succeed on its own – it also needs capital, strategy, perspective and dogged determination – and that some people are willing to go to any lengths to make it happen or to prevent it.

The year is 1888; the place New York. Edison’s direct current (DC) is battling Westinghouse’s alternating current (AC) to become the industry standard. There can be only one winner and both sides will stop at nothing to triumph. Lurking in the background are a leading banker, a famous opera singer and a celebrated inventor.

The protagonist is a young Paul Cravath, progenitor of Cravath Swaine & Moore, who is hired by Westinghouse 18 months out of Columbia Law School to come up with an innovative defence against Edison. Edison has launched 312 lawsuits against Westinghouse, who is facing \$1 billion in damages (\$25 billion in today’s money). The book features the phobic Serbian inventor Nikola Tesla, perhaps the greatest innovator of his era who, in addition to identifying AC current, would go on to develop x-ray technology and other breakthroughs. JP Morgan and Alexander Graham Bell also appear in the novel; as does one of the most famous opera singers of the day, Agnes Huntington.

Patent wars

The bitter fight to establish the electricity standard was a precursor to the smartphone wars of the 21st century. The first billion-dollar patent case, *Polaroid v Kodak* (1990), was mere child’s play compared to what transpired between the owners of AC and DC. The Edison team subjected animals to electrocution to prove their point (falsely) that DC was safer than AC and stoke fear in the public. In 1888 the DC team went so far as to facilitate the use of alternating current to power an electric chair, “a current standard adopted by a committee after a demonstration performed at Edison’s laboratory by anti-AC activist Harold P. Brown showing AC’s lethality, was supplied by a Westinghouse generator surreptitiously acquired by Brown”.

Last Days is not great literature. Its short chapters and crisp prose give it the feel of a pot-boiler, without

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detracting from the book’s timely importance and ability to reveal human weaknesses and strengths. It is no surprise that author Graham Moore won an Oscar for his adaptation of *The Imitation Game*, the story of British mathematician Alan Turing, who cracked the Nazi’s enigma code. Moore is currently adapting *Last Days* into a major motion picture starring Eddie Redmayne, who won the Best Actor Oscar for his portrayal of the young Steven Hawking in *The Theory of Everything*.

It is heartening to see Hollywood eager to depict the mystery of innovation. Informed audiences are eager to learn how new ideas evolve from an individual or team to the drawing board and then to commercialisation, and the role that various parties play in making it a reality. This novel and the ensuing film are sure to have an impact.

Inventing is as much a mystery today as it was in the 19th century. Great ideas still need equal parts of nurturing, capital and grit, and competition is often as much a part of success as it is an impediment. The heated battle between Edison and Westinghouse had its share of unfortunate victims. Despite Edison’s machinations – and money – he lost the DC standard battle, but won the current war by securing enough shares of his partner’s company, General Electric, to make him an even richer man. Battles for standards between today’s tech giants and their wealthy founders suggest a strong sense of déjà vu.

In historical fiction, authors tend to take liberties with facts in deference of the story. To author Graham Moore’s credit, he provides a lengthy note from the author, detailing what has been condensed and why. Moore’s historical timeline (mrgrahammoore.com) helps readers to separate fact from fiction, for a fuller appreciation of the people and events that helped to secure a bittersweet victory.

Flash of Genius

Another film dealing with a patent battle – *Flash of Genius*, the story of Robert Kearns and the intermittent windshield wiper, starring Greg Kinnear as Kearns – generated just \$4.8 million in ticket sales when it opened to mixed reviews in 2008. Despite its inauspicious launch, the film still resonates with curious rental and streaming audiences. (It recently became available to Netflix subscribers.) Over a recent two-week period, a *Flash* post on *IP CloseUp* generated more than 20,000 visits. People are shocked and genuinely inspired by the challenges that Kearns faced and how they affected his family.

Interest is growing about how inventions come about and are used, and who ultimately benefits from them. That is good news for IP rights and some holders, which have been beaten down by bad publicity and misinformation. Thoughtful works like *The Last Days of Night* have the ability to shed much-needed light on the impact of invention rights, as well as the strategies and people responsible for bringing them to market. **iam**