

Case No. 2,984.

COLEMAN V. LIESOR.

Circuit Court, S. D. Ohio.

1859.

PRESUMPTIONS

OF

PATENT—UTILITY—NOVELTY—INFRINGEMENT—ESTOPPEL—PRIOR
USE—PRIOR PUBLISHED DESCRIPTION—MEASURE OF DAMAGES.

1. When ascertainable, the defendant's profits, are the proper rule of damages.
2. The defence that an invention is wanting in novelty or originality goes to the validity of the patent.
3. If the defendants have used the plaintiff's invention, or something substantially like it, they are estopped from denying its utility, for use implies utility, and it is fair to presume that they would not use it if they thought it of no utility.
4. There is a presumption arising from the patent itself in favor of the novelty of the invention which it covers. But this presumption may be overcome by showing that the thing had been previously known.
5. It is always presumed from the patent itself that the invention is new, and if a party sued would avail himself of the want of such novelty, it is incumbent upon him to prove it by giving a proper notice to the plaintiff to prevent surprise.
6. A mere addition to a patented invention, will not justify the use of the invention first patented.

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7. It is an infringement if a person had used a patentee's improvements or devices substantially the same, in which the same principles are brought into requisition, or in other words, which are alike in their principle of operation.
8. An invention must be of some utility; a patent cannot be granted for a thing altogether frivolous; but the presumption on the face of the patent is that it is of some utility, for the applicant is obliged to swear that the invention is useful before the securing of the patent.
9. There is a presumption arising from the patent itself in favor of the novelty of the invention which it covers. But this presumption may be overcome by showing that the thing had been previously known.
10. A prior use of a thing in a foreign country will not invalidate a patent afterward taken out in this country, where the inventor supposed himself to be the first inventor, unless the prior invention had been patented or described in some printed public work.
11. The description of an invention in any public work, to invalidate a patent, should be, to some degree, in the nature of a specification, so far as to enable a mechanic skilled in the art to construct the machine; they should not be vague references to or suggestions of the thing described.
[Before LEAVITT, District Judge. The points stated above are taken from Law's Pat. Dig. 240, 246, 281, 311, 345, 357, 370, 435, 516, 602, 609. Nowhere more fully reported; opinion not now accessible.]