Case No. 7,081.

IRWIN ET AL. V. DANE ET AL.

{2 Biss. 442; 4 Fish. Pat. Cas. 359; 3 Chi. Leg. News, 180.}[1]

Circuit Court, N. D. Illinois. Feb. 27, 1871.

PRELIMINARY INJUNCTION—WHEN GRANTED.

1. The same rule obtains in patent cases as in other equitable cases; the granting of a preliminary injunction is a matter of judicial discretion, to be determined by the circumstances under which the case is presented.

[Cited in Brush Elec. Light & P. Co. v. Louisiana Elec. L. Co., 45 Fed. 896.]

2. It is proper to grant an injunction where much more injury would or might result to the complainants from refusal than to the defendants from granting it.

3. Where the defendants had very little invested and no substantial damages would accrue to them, if enjoined, while they might seriously injure the complainants' business by competition, an injunction should be granted.

4. Although a patent case is not like a suit upon a trade-mark, yet the standing of the complainants in the market and their relation to the trade are matters of value, and may pertain so intimately to their patent as to be proper for consideration on a motion for a preliminary injunction.

In equity.

Motion for a provisional Injunction to restrain the defendants from infringing five letters patent for "improvements in lamps, lanterns and lamp-burners," granted John H. Irwin May 28, 1867 {No. 65,230}; January 7, 1868 {No. 73,012}; February 2, 1869 {No. 86,549}; May 4, 1869 {No. 89,770}; and February 1, 1870 {No. 99,443}, and assigned to complainants. The claims of these several patents were as follows: Patent of May 28, 1867: 1. "In combination with the lamp or its burner, the tube D, or its equivalent, arranged and operating substantially as and for the purpose specified." 2. "In combination with said tube a cooler E, arranged so as to operate substantially as described." Patent of January 7, 1868: "In combination with a burner of a lamp and a globe or protector thereof, one or more tubes or passages D, or their equivalents, arranged so as to operate substantially as specified and described." Patent of February 2, 1869: 1. "The arrangement beneath the funnel plate E of the prolonged tube D, and one or more flanges 5, arranged substantially as and for the purposes set forth." 2. "In combination with the ring F, funnel plate E, and tube D, a spring S arranged to operate in the manner and for the purposes specified." Patent May 4, 1869: 1. "The combination of the concave plate I, ring G, or its equivalent, tubes H and F, and the base A, B, of the lantern substantially in the manner specified and shown." 2. "The combination of the globe G, concave plate I, tubes H and F and base A and B, of the lantern, arranged and operating substantially as and for the purposes shown and set forth." 3. "The combination of the plate I, tubes F, flange T, upon the top of the wick-tube, and the globe G arranged to operate as set forth." 4. "The combination of the perforated plate E, plate I, tubes H, F, and the base A, B, of the lantern, arranged to

operate as described and for the purposes set forth." Patent of February 1, 1870: 1. "The air-chamber or space B, in combination with the air-tubes C, when said tubes are inserted in the top of said chamber, as and for the purpose specified." 2. "The thumb-piece I, in combination with the globe-holder F, when constructed and arranged substantially as and for the purposes described."

L. L. Coburn, S. A. Goodwin, and Grant Goodrich, for complainants.

West & Bond, for defendants.

BLODGETT, District Judge. This was a motion for a preliminary injunction made by the complainants against the defendants, to restrain the defendants from the use of certain patents which were granted originally to Irwin. By assignment, his co-complainants have acquired an interest in these patents which are the subject-matter of the complaint. The only doubt I have had in reference to the matter was as to whether it was a proper case for an injunction under the points made by the defendants' counsel, but I am satisfied that the same rule really obtains in patent cases as in other equitable cases. The granting of a preliminary injunction is a matter of judicial discretion, to be determined by the circumstances under which the case is presented, and inasmuch as in this case I think that much more injury would or might result to the complainants from a refusal of the injunction than to the defendants by granting it, I have concluded to grant it.

The aspect of the case is simply and briefly this: The complainants are the owners of patents, and are manufacturing under them; have entered upon the manufacture of the patented articles largely, and been engaged in it for over three years. The defendants had, just prior to the commencement of this suit, also entered upon the manufacture of the competing article; but according to the proofs, have invested very little money in it, had acquired no reputation for their manufacture in that line, although in other branches of their business they are largely engaged.

I think they can better afford to await the issue of the controversy here, than even to take the chances of the result of a trial, and perhaps be called on to respond in damages. They are in such condition that they can remain still until the termination of the litigation, which should, however, be prosecuted with all possible dispatch.

They have very little invested, and no substantial damages, perhaps, would accrue

to them in case the determination of the suit should be against them; while if they were to go on with the business as competitors they might seriously injure the complainants' business, and in the end perhaps not be able to respond in damages, and there might be a class of damages for which the complainants could hot be entirely compensated, because the complainants are manufacturers, and while this is not, as has been said, a trade-mark case, yet their standing in the market and their relations to the trade are matters of value to them, and pertain so intimately to their patent that the two interests cannot be separated.

As to the last patent on the burner, I should not grant an injunction upon that if it stood alone, but as it is so intimately blended with the complainants' other patents and manufactures, I am not disposed, for the purpose of this preliminary motion, to separate them. I shall grant the injunction as prayed. I make my statement thus briefly in the case, because I do not think on a preliminary hearing the court should commit itself so definitely in regard to the validity of the patent as to prejudice the hearing. It is better always to reserve all final conclusions and determination until all the testimony is in and the ease is finally heard. I say this, as I do not wish counsel to understand that I foreclose them on any point by this decision, but the case, as presented to me, shows a prima facie case of infringement.

{For other cases involving these patents, see note to Irwin v. Dane, Case No. 7,082.}

[1] {Reported by Josiah H. Bissell, Esq., reprinted in 4 Fish. Pat. Cas. 359; and here re-published by permission.}