JONES v. VANKIRK ET AL.

Case No. 7,500.

[2 Fish. Pat. Cas. 586.][1]

Circuit Court, E. D. Pennsylvania. Oct, 1865.

PATENTS—ACKNOWLEDGMENT OF PATENT—"IMPROVEMENTS IN LAMPS."

1. When defendants were licensees of the plaintiff, and stamped every article made with the name and date of the patent this act was a public acknowledgment that the articles were made under the patent, notwithstanding their protest that it should not be so construed.

2. Vankirk's patent of July 17, 1860, for improvement in lamps, is a palpable infringement of Jones' reissued patent of January 11, 1859.

This was a bill in equity, filed to restrain defendants [C. A. Vankirk and L. D. Vankirk] from infringing letters patent [No. 20,159] for improvement in lamps, granted to complainant [Edward P. Jones] May 4, 1858, and reissued January 11, 1859, [No. 648.] The invention of Jones consisted in holding the deflector, as well as the chimney, fast to the cap of the lamp, by means of a spring, so that the chimney and deflector, or either of them, might be readily removed by merely pressing back a spring. The spring was formed of thin metal, having short bends to catch over the lip or base of the chimney. The claim of the original patent was as follows: "Securing the chimney to the removable cap, and both of them to the lamps, by means of a spring operating in the manner substantially as set forth." The claims of the reissue were as follows: "What I claim, etc., is securing the chimney to the removable deflector, and both of them to the lamp cap, by means of a spring operating in the manner substantially as set forth. Second. I claim a detached deflector in combination with a chimney, when the chimney is secured to the cap, independently of the deflector, as set forth."

The defendants claimed under a patent to J. T. Vankirk, dated July 27, 1860 [No. 29, 221], of which they were assignees. Van kirk's improvement consisted of a tube containing a rod surrounded by a coiled spring, and having a collar near one end, and a disc, or other suitable handle, at the opposite end the whole being constructed, applied to, and combined with the flange or projections which inclose the lower end of the glass chimney or shades of lamps. The claim of his patent was as follows: "Combining the tube A, its rods H, and coiled spring e, with the flange or projection which incloses the lower end of the chimney or shade of a lamp, in the manner and for the purpose set forth."

George S. Boutwell and George Harding, for complainant.

S. D. Law and Theodore Cuyler, for defendants.

GRIER, Circuit Justice. The respondents, in October, 1861, entered into an agreement with complainant, by which they obtained a license from him to use his improvements in lamps, for which he had a renewed patent, dated January 11, 1859. Since that time respondents have used the invention without interference or claim of any other person.

Respondents had obtained a patent in 1860, which was a palpable infringement of complainant's patent. At the time or after the execution of this agreement, they protested

that it should not be construed as an acknowledgment that the burners made with a spiral spring were subject to any of the provisions of the agreement. Nevertheless, they stamped on each burner, so made, the words, "E. F. Jones, patent, May 4th, 1853," as they had covenanted with Jones to do.

They thus publicly acknowledged, on every lamp sold by them, that it was made under Jones' patent. In doing this, they acted honestly, for their patent of 1860, which they now set up, is a palpable infringement of Jones' patent. It merely substitutes one kind of spring for another better one, described as one of the devices in the combination as claimed in Jones' patent.

The respondents have enjoyed the benefit of their license without interference—they allege no fraud or unfair dealings on the part of Jones, but have attempted to prove that Jones was not the first inventor of the combination of devices patented by him.

It is not worth while inquiring whether the respondents are not estopped from alleging any such defense under the circumstances, as the evidence does not establish the fact of a prior invention. It shows only that others have tried some of the devices used in Jones' patent. The result being that they came very near, but never succeeded, in accomplishing what Jones has accomplished. This is the history of nearly every valuable invention or discovery that has ever been made. See remarks on this subject in Good year v. Day {Case No. 5,569}. Let a decree be entered for an account, as prayed for in the bill.

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