

Case No. 17,579a.

[5 Ban. & A. 575.]¹

WHITMAN v. JAMES.

Circuit Court, S. D. New York.

July, 1880.

PATENTS—PRELIMINARY INJUNCTION.

In this case a preliminary injunction was granted, restraining the infringement of the complainant's patent by the defendant.

This was a motion for a preliminary injunction to restrain the infringement of letters patent, No. 199,948, granted to James G. Wilson, February 5th, 1878, for an improvement in connecting blind slats, consisting of a peculiarly shaped distance-piece in combination with the suspending wires and diamond-shaped slats. A defence of want of novelty was set up on the ground that one Niernsee had suggested taking mortised pieces of wood similar to the blind, and using them to cover up the steel band where it showed between the slats; and also by reason of the English patent to Alexander Clark, No. 1,803, of 1863. The title of the complainant [Edmund S. Whitman] was also disputed, on the ground of certain partnership arrangements between Wilson, the patentee, and the defendant [John D. James].

Francis Forbes, for complainant.

Samuel Keeler and W. C. Donn, for defendant.

BLATCHFORD, Circuit Judge. That the defendant has infringed the claims of No. 199,948 is plain and is not denied. The English patent No. 1,803 fails to show the characteristic of No. 199,948, which is that the distance-pieces are to be cut to exactly equal lengths, and the cut ends are to be parallel to each other, and are to come in contact with the upper and lower surfaces of the slats, and are to be parallel to such surfaces, and that at the same time such surfaces are placed at an angle with the vertical supporting wires, and the upper edge of each slat is above the lower edge of the slat above it, the blind being an open blind and not a close blind. The suggestion of Niernsee did not go to the extent of the invention.

Whatever right the defendant had to use the patent expired when the last partnership was dissolved. The title of the plaintiff is clear. There has been sufficient acquiescence and possession.

The injunction is granted as to No. 199,948.

¹ [Reported by Hubert A. Banning, Esq., and Henry Arden, Esq., and here reprinted by permission.]