

required something more than mere mechanical skill to accomplish the result attained by this patent.

As to the second point, that this device shows only a mere aggregation of parts and produces no new result, it is sufficient to say the result produced is the transmission of signals to a car *when in motion*, which was new and had never been produced until this combination, and that some of the parts in this combination perform a new function, and the whole combination produces a new result.

As to the objection that the Gray patent was irregularly issued, it is, perhaps, not material to the purposes of this case to consider that point seriously, because the defendant in this case is shown by the proof to only use the flexible-cable method covered by the Hahl patent; but I have no doubt that under section 4904 of the Revised Statutes the commissioner of patents had the right to declare an interference between Gray's application and the Hahl patent, as the statute expressly gives him the power to declare an interference between "any pending application and any unexpired patent." So, too, it seems to me that both patents are sufficiently definite in their statements to describe and cover the inventions claimed.

There is no controversy in this case on the question of infringement. The proof shows that the defendants have used, and are using, the flexible-cable method shown and described in the Hahl patent. I can, therefore, see no reason why the complainant is not entitled to a decree and an accounting.

### J. B. BREWSTER & Co. and others v. PARRY.

(Circuit Court, D. Massachusetts. December 19, 1882.)

#### PATENTS FOR INVENTIONS—REISSUE—PRELIMINARY INJUNCTION.

A motion for a preliminary injunction against an infringement of a reissued patent, where there is no doubt that the reissue is in terms broader than the original, but which change may be legitimate, as describing the real invention, will be denied.

In Equity.

*L. Gifford and W. B. H. Dowse*, for complainants.

*J. A. Loring and W. P. Preble, Jr.*, for defendant.

LOWELL, C. J. This motion is for a preliminary injunction against an infringement by the defendant of the reissued patent No. 6,018,

for an improvement in carriage springs. This invention has for its object to improve the manner of connecting the bodies of light carriages with the side-bars, by which they are supported, and consists in interposing a pair of semi-elliptic springs between said side-bars and the wagon body. The single claim of the reissue is: "The semi-elliptic springs, G, G, interposed between the side-bars, F, F, and the wagon body, all combined substantially as specified."

The suit is brought by J. B. Brewster & Co., the owners of the patent, and James Hume, the exclusive licensee for Amesbury Mills, a territory in which a very large number of carriages are made.

Two defenses are insisted on—that J. B. Brewster & Co. have issued licenses to a great number of spring makers, to make and sell springs fit to be used in the patented combination, which imply a right to use or authorize the use of the springs in making carriages, and that the defendant bought his springs of a licensee; and that the reissue is void.

To the first defense the reply of the plaintiffs is that Hume's exclusive license to make and sell in Amesbury Mills is older than the licenses to the spring makers, and was well known to them and to the defendant; and to the second, that the reissue claims the true invention of Wood, the original patentee, and was taken out only 14 months after the patent was granted.

There can be no doubt that the reissue is, in terms, broader than the original, and that it includes and was intended to include one class, though not a large class, of carriages not covered by the original patent. The patent, No. 139,348, describes and claims an improvement of carriages having the ends of the side-bars supported by elliptic springs, by adding middle springs. The claim is: "A frame, consisting of the side-bars, F, F, downwardly-bowed end springs, E, E, and upwardly-bowed middle springs, G, G, constructed, arranged, and applied as and for the purpose described."

It is seen at once that the reissue omits the end springs, E, E, and thus covers wagons rigidly attached at the ends, which are not within the former claim. Under the law, as formerly understood, I should not doubt that this change is legitimate, as describing the real invention; but under late decisions of the supreme court I hesitate to decide so on a motion of this sort, especially because I am not able to say what limit of time that court intend to lay down within which a mistake of judgment may be corrected. True, it is as easy to decide such a question on motion as at a hearing, but the difference is that a wrong decision on a motion is not appealable, and, besides, it is

within the power of the court at a hearing (though not often exercised of late) to grant a decree for damages or profits and withhold the injunction. For these reasons, though my impressions are in favor of the plaintiffs, I must deny the motion.

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WARD *v.* GRAND DETOUR PLOW CO.

(Circuit Court, N. D. Illinois. January 8, 1883.)

1. PATENT FOR INVENTION—COLORABLE DIFFERENCES—INFRINGEMENT.

Where defendant's device, used in a combination of parts, is the same for all practicable purposes, and performs the same function, and no other, in the mechanism as the device of complainant, and the difference between the devices is merely colorable, it is an infringement of complainant's patent.

2. SAME—EVIDENCE OF NOVELTY AND UTILITY.

Where the proof shows that many others had endeavored unsuccessfully to accomplish what the complainant achieved, and also that the device of complainant was at once accepted by the public, the fact of success and acceptance by the public in a field where others had tried and failed, is sufficient evidence that the device was both new and useful.

In Equity.

*J. G. Manaham*, for complainant.

*West & Bond*, for defendant.

BLODGETT, D. J. This is a bill to enjoin the alleged infringement of a patent to Adam B. Spies, No. 153,225, dated July 21, 1874, for an "improved harrow," and for an accounting. Defendant denies the infringement, and denies the validity of the patent for want of novelty. Complainant claims by assignment from the patentee, and no question is made to his title. The Spies harrow is made by attaching two or more sections to a draw-bar, so that each section may rise independently of the other, or others, and so that each section may preserve its relative position to the other section or sections, without the use of other hinges or other connecting devices between the section. The sections are joined to the draw-bar by means of an eyebolt fastened through the draw-bar so as to leave the eye in a vertical position, and a clevis which passes through the eye of the eyebolt, and is attached horizontally or flatwise to the front end of one of the section beams, and each section is connected to the draw-bar by two such joints. This form of connection gives two vertical joints or points of articulation,—one at the clevis-bolt and one at the connection between the clevis and eyebolt,—but only gives one joint