

Infringement of patent No. 41,395 was not shown. In rebuttal of the defendant's testimony, the plaintiff called the defendant, and now insists that he, by one answer in regard to a date, established an infringement which had not been the subject of previous testimony, and that this answer is to overthrow his uniform denial of his having made the infringing device during the life of the patent without the knowledge and permission of the patentee. Such testimony is not sufficient to make out a case of infringement.

The bill should be dismissed.

McCLOSKEY v. HAMILL.

(Circuit Court, S. D. New York. February 19, 1883.)

PATENT LAW—DISMISSAL OF BILL.

Where the subject of the patent in controversy in this case has been decided by the circuit court for this district not to be patentable, such decision is conclusive on this court, and the bill will be dismissed.

James C. Cloyd and *Wm. J. Underwood, Jr.*, for plaintiff.

Howard A. Sperry, for defendant.

SHIPMAN, J. This is a bill in equity to restrain the alleged infringement of letters patent No. 220,767, which were issued to John McCloskey on October 21, 1879, for an improved plumbers' trap of soft metal. This patent has been twice the subject of examination by Judge WHEELER, in the circuit court for this district. *McCloskey v. Du Bois*, 8 FED. REP. 710, and 9 FED. REP. 38. The facts which the plaintiff proved upon the second hearing are the same which he relies upon in this case. Judge WHEELER's opinion was that the alleged invention, which is the subject of this patent, is not patentable. That must be taken to be the law of this circuit until either a state of facts is proved which shall present a different case, or until the conclusion of law upon the facts as now shown shall be overruled by the supreme court. My own examination of the case leads me to concur in the result which Judge WHEELER reached. The intention of the plaintiff in bringing this bill was probably to present the case in such a clear and accurate manner that the conclusion of Judge WHEELER might be properly examined by the supreme court.

The plea is sustained and the bill is dismissed.

HYATT v. SOUTHWORTH.

(Circuit Court, N. D. Ohio. February Term, 1883.)

PATENTS—REISSUE INVALID—CLAIM TOO BROAD—LACHES.

In Equity.

Arnold Green, for complainant.*M. D. & L. L. Leggett*, for defendant.

DECREE.

This cause came on to be heard on this fourteenth day of February, 1883, upon the bill of complaint, the plea of the defendant, certified copies of original patent No. 68,332, granted to Elizabeth Adelaide Lake, August 27, 1867, and of the reissue of the same, No. 9,883, granted September 27, 1881, to Elizabeth A. L. Hyatt, and argument of counsel; and thereupon it is ordered, adjudged, and decreed as follows, to-wit:

(1) That said reissued letters patent No. 9,883, upon which said bill of complaint is based, is invalid and of no effect, for these reasons: *First*, because said reissue contains matter not embraced in the original; *second*, because the claims in said reissue are broader than the claims of the original; *third*, because the patentee has been guilty of laches in permitting more than 14 years to lapse between the date of the original and that of the reissue.

(2) That said plea be sustained, and said bill of complaint be dismissed.

(3) That the costs in this suit be assessed against the said complainant, and that an execution issue therefor as in a case at law.

THE ACORN.

(District Court, W. D. Pennsylvania. May Term, 1883.)

SEAMEN'S WAGES—SHIPPING WITHOUT ARTICLES—VERBAL AGREEMENT.

If the master of a vessel dispenses with shipping articles and disputes arise as to the rate of wages to be paid the mariners, the court will incline to allow their claim to the rate paid by other like vessels leaving the same port at the same time on the like voyage. If the seamen can be held to a less rate, by reason of a verbal contract, such contract must be clearly established.

In Admiralty.