

clamps and transfers a longitudinal into a transverse motion, and heel clamps for grasping the heel. It omits the requirement of the second claim.

The defendants' skate has laterally-sliding sole clamps, a longitudinally-sliding heel clamp in front of the heel, and fixed stops on the rear side of the heel-plate to hold the heel of the boot, both sets of sliding clamps being moved by one operation of a lever and an eccentrically pivoted cam. It is admitted that the skate does not infringe the second claim, because one set of clamps does not act as a resistance in closing the other set. Not having this peculiarity, this skate would not have infringed the original patent.

It may well be admitted that it infringes the first, third, and fourth claims, and that it may contain the respective subcombinations which are included therein, because those claims are void upon the principle declared in *Bantz v. Frantz*, 105 U. S. 160. The original patent was granted May 29, 1860. The first reissue was granted in 1868, the second in 1875, and the third and present reissue on May 30, 1876, 16 years after the patent was originally issued.

The defendant's skate was patented in 1867. Under the original patent those who did not use the entire combination, which included all the subcombinations mentioned in the reissue, were not infringers. These claims of the reissue are void, having been granted many years after the date of the original patent, and after the invention of another device which did not use the entire combination of that patent, and when "the right to have the correction made" had been "abandoned and lost by unreasonable delay." *Bantz v. Frantz*, 105 U. S. 160.

The bill is dismissed.

SPAETH v. GIBSON.

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

PATENTS FOR INVENTIONS—IMPROVED SKATE—AMERICAN CLUB SKATE.

The operative locking mechanism is the lever, which operates as the ordinary toggle-joint does after the parts have passed centers and is automatically held in against the runner by the pressure of the clamps, and the hook-like action alone of one of the links would not keep the clamps closed or locked, but the efficient locking cause is the toggle-joint and lever, the use of which in defendant's device will be enjoined.

Arthur v. Briesen, for plaintiff.

A. J. Todd and Benj. F. Thurston, for defendant.

SHIPMAN, J. This is a bill in equity to restrain an alleged infringement of reissued letters patent which were granted on February 18, 1879, to the plaintiff, as assignee of Charles T. Day, for an improved skate commonly known as "The American Club Skate." The original patent was issued to said Day, as inventor, on July 11, 1871.

The invention is described in the specification of the reissue as follows :

"This invention consists in the combination in a skate of movable clamps for grasping the sole, and longitudinally-sliding clamps for grasping the heel at the back part thereof, a stationary spur or abutment for the breast of the heel, and a hand-lever adapted to operate both sets of clamps; also, in the combination in a skate of the heel and toe clamps, and of a lever swinging on a pivot which is situated on one side of the center line of said clamps for the purpose of holding the clamps firmly in their closed position; and, further, in the combination, with movable clamps for grasping the sole, longitudinally-sliding clamps for grasping the heel at the back part thereof, and with a hand-lever adapted to operate both sets of clamps, of a regulating screw for adjusting the clamps to heels and soles of different sizes."

The reissue contains four claims, of which the first and fourth only are said to have been infringed. These claims are as follows :

"(1) The combination, in a skate, of movable clamps for grasping the soles, of longitudinally-sliding clamps for grasping the heel at the back part thereof, a stationary spur or abutment for the breast of the heel, and a hand-lever adapted to operate both sets of the clamps, substantially in the manner herein shown and described. (4) The combination, with movable clamps for grasping the sole, longitudinally-sliding clamps for grasping the heel at the back part thereof, a stationary spur or abutment for the breast of the heel, and with a hand-lever adapted to operate both sets of clamps simultaneously, of a regulating screw for adjusting the two sets of clamps to soles and heels of different sizes, substantially as set forth."

The original patent contained a single claim, which was as follows :

"The eccentrically-pivoted lever, E, combined and arranged with the heel and toe clamps of a skate substantially as specified."

The lever of the claim is thus described in the original specification :

"As the pivot, Z, by which the lever is attached to the stem of the heel clamp, is eccentric in its position, and so arranged that when the lever is closed against the runner it will lie without the line of traction connecting the pivots of the toggle, D, and swivel, D', it follows that the lever will be automatically held in against the runner by the pressure of the clamps. Therefore there is no danger of the lever being thrown outward and tripping the wearer."

It will thus be seen that the claim and the specification of the original patent required that the hand-lever, which operates both sets of clamps simultaneously, should be eccentrically pivoted. The history of the patent shows that the patentee was compelled to limit his inventions, in view of his previous patent of December 28, 1869, to the combination of heel and toe clamps with a lever thus pivoted. The lever of the reissue must be construed to be the eccentrically-pivoted lever of the original patent.

The advice which was relied upon as anticipating the Spaeth skate was the skate of Alpheus S. Hunter, patented June 22, 1869. The two skates are organized in a substantially different manner in this respect. In the Hunter skate, (making use of the language of Mr. Brevoort, one of the plaintiff's experts,) "two adjustments are absolutely essential, while in the skate shown in the Spaeth reissue one adjustment is all that is ever required, and the difference arises from the use in the Spaeth skate of *longitudinally-sliding* heel clamps and sole clamps, which are so drawn together by a lever as to permit one set of clamps to be arrested, while the other set of clamps is capable of further advancement."

The defendant's skate is described in the patent of Everett H. Barney of October 11, 1881. The point wherein it is claimed to differ from the Spaeth skate is that what is called by the plaintiff the lower toggle link is called by the defendant a flat hook, which he says is caused to hook over the pivot of the sole clamp, and his expert says: "By means of said hook only the clamps are then retained in a locked position without any aid from said lever, and the latter may then, without in the least affecting the positive locking of the clamps, be entirely disconnected from said hook and swing freely on said sole-clamp pivot." I am of opinion that the operative locking mechanism is the lever which operates as the ordinary toggle-joint does, after the parts have passed centers, and is "automatically held in against the runner by the pressure of the clamps." I do not think that the hook-like action alone of one of the links would keep the clamps closed or locked, but that the efficient locking cause is the toggle-joint and lever.

Let there be a decree for an injunction and an accounting.

MATTHEWS v. SPANGENBERG.

(Circuit Court, S. D. New York. February 1, 1883.)

PATENTS FOR INVENTIONS—VIOLATION OF INJUNCTION.

Where defendant has been guilty of a contempt in disregarding the injunction of the court, but the act of contempt does not appear to be at all willful or defiant, but merely the exercise of a supposed right under advice taken and given in good faith, it does not deserve punishment as such, but he should make the orator whole as to the damages sustained thereby.

In Equity.

A. v. Briesen, for orator.

Philip Hathaway, for defendant.

WHEELER, J. This cause has now been heard upon motion of the orator for an attachment against the defendant for an alleged violation of the injunction heretofore granted, restraining the defendant from infringing letters patent, reissued No. 9,028, granted to the orator, dated January 6, 1880, for a soda-water apparatus. On the papers it appears that the defendant has continued the use of an apparatus called the Gee Invincible apparatus, which was at the hearing in chief adjudged to be an infringement, except that he has not used the parts which draw syrup; and that he has paid to the orator the damages found by the master to have been sustained by use of this apparatus by the defendant. It is argued for the defendant that this payment has freed the use of this machine from the operation of the patent. The damages recovered by the orator are not for a sale for use, which would probably free the whole use, nor for the use now complained of, which would probably be a satisfaction for that use and entitle the defendant to have it, but were for a prior use of the infringing device, and made satisfaction only for that use. The use complained of has not been paid for, and is not justified by the payment made for something else.

A part of the patent is for that part of the apparatus for containing and drawing the syrups; and a part for that part containing and drawing the waters. As the defendant has not, since the injunction, used the former part, he has not infringed that part of the patent. The qualities of the liquids have nothing to do with the working of either part. The syrups could any of them be contained and drawn in the parts for the waters, and the waters in the parts for syrups, as well as in the parts assigned to them in use, so far as the liquids themselves are concerned. The patent is not for storing and draw-