

**COBURN and another v. BRAINARD and another.\***

*(Circuit Court, E. D. Missouri. March 12, 1883.)*

**1. PATENTS—EFFECT OF DECISION AS TO VALIDITY—PRELIMINARY INJUNCTION.**

Where a motion is made for a preliminary injunction for an alleged infringement of a patent which has been held valid, without collusion, in a contested patent case, the validity of the patent is considered settled for the purposes of the motion.

**2. SAME.**

Where, however, the decision does not show what claims were held valid, nor what would be an infringement, two questions are left open, viz.: (1) What are the contrivances covered by the patent? and (2) has the defendant infringed the same?

Motion for a Preliminary Injunction for an alleged infringement of letters patent of the United States for an "improvement in cases for transporting eggs," and an "improvement in egg-boxes."

The first of said patents contains two claims, which are as follows:

"(1) A case for transporting eggs, in which are more than two removable trays, each containing a series of bottomless cells or compartments, some of these cells having walls irrespective of the walls of the case, and each tray being separated from its adjoining tray by a removable diaphragm or dividing board; (2) the combination of more than two trays, each containing a series of bottomless cells or compartments, some of these cells having walls irrespective of the walls of the case in which the combination may be used, and each tray being separated from its adjoining tray by a removable diaphragm or dividing board."

The other patent alleged to have been infringed contains the following claims:

"(1) A tray or double series of rectangular bottomless pockets constructed of flexible material, or in separate strips, interwoven and permanently interlocked, beyond danger of separation, by means of straight slits or slots cut in opposite edges thereof, substantially as and for the purposes set forth; (2) a tray or double series of rectangular bottomless pockets, constructed of suitable flexible material, in two intersecting series of separate strips, each series of strips being provided with slots or slits cut in opposite edges of each strip, whereby the respective series are interwoven and permanently interlocked beyond danger of separation, substantially as and for the purposes set forth; (3) a tray or double series of rectangular bottomless pockets, constructed of suitable flexible material, in two intersecting series of separate strips, each series of strips being provided with slots or slits cut alternative in opposite edges of each strip, whereby the respective series are interwoven and permanently interlocked beyond danger of separation, substantially as and for the purposes set forth."

\*Reported by B. F. Rex, Esq., of the St. Louis bar.

The complainants, in their bill, allege that the defendants have acknowledged their infringement of said patents by a written agreement.

For remaining facts see *Coburn v. Clark*, 15 FED. REP. 804.

*Overall & Judson*, for complainants.

*Phillips & Stewart*, for defendants.

TREAT, J. In case No. 2123 (*Coburn v. Clark*, 15 FED. REP. 804) many suggestions have been made applicable to this case.

In addition thereto the question of arrangement between the parties, or confessions, are presented. Waiving that inquiry, and looking to the interlocking and also the combination claims, an injunction order must go provisionally against infringement of either of said claims.

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BARNEY v. PECK and another. (Two Cases.)

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

PATENTS FOR INVENTIONS—INFRINGEMENT OF SEVERAL PATENTS—BILL MULTIFARIOUS—DEMURRER.

When a bill alleges infringement of several patents for different inventions, to escape the objection of multifariousness it must aver that the inventions are capable of conjoint use and are in fact so used by defendant.

Demurrer to Bill.

*A. J. Todd*, for complainant.

*Briesen & Steele*, for defendant.

WALLACE, J. When the bill alleges infringement of several patents for different inventions, to escape the objection of multifariousness it must aver that the inventions are capable of conjoint use, and are in fact so used by the defendant. *Nellis v. McLanahan*, 6 Fisher, Pat. Cas. 286; *Gamewell Fire Alarm Tel. Co. v. Chillicothe*, 7 FED. REP. 351; *Hayes v. Dayton*, 8 FED. REP. 702. The bill here is founded on distinct patents, and alleges that "the defendants have unlawfully used the said patented inventions, and have made and sold skates containing and embodying in their construction said inventions or substantial parts of the same, and still continue so to do." It does not appear that the several inventions can be embodied in one skate. The averment of the bill would be satisfied by proof that some of the skates made by the defendants infringe one of the patents, and others infringe another patent. It may be that some or all of