

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

the skates are infringements of all the patents, but the defendants are not required to take the chances of being compelled to litigate several distinct and unconnected controversies in one suit.

The demurrer is sustained.

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SMITH *v.* HALKYARD and others.

(Circuit Court, D. Rhode Island. 1883.)

1. PATENTS FOR INVENTIONS—PRIORITY OF INVENTION—EFFECT OF DECISION OF PATENT-OFFICE.

The decision of the patent-office upon an interference proceeding is sufficient to entitle the successful party, as against the defeated party or his privies, to a preliminary injunction upon the question of priority of invention raised in a subsequent suit.

2. SAME—NOT AN ESTOPPEL—INJUNCTION.

While the defeated party to an interference is not estopped in another action from raising the question of want of novelty in the invention, yet if he had knowledge of the condition of the art at the time of his application, a want of novelty in the invention must be clearly apparent, or a preliminary injunction will be granted.

3. SAME—WANT OF GOOD FAITH.

In such a case it has been held, where there is want of good faith, the court will grant an injunction.

4. SAME—PATENTS NOS. 259,597 AND 232,561 SUSTAINED.

Patent No. 259,597, granted to Stephen N. Smith, June 13, 1882, for a machine for making lacing-hooks for machines, compared with patent No. 102,195, granted to Solomon W. Young, April 19, 1870, and the Towne patent, re-issued August 9, 1881, and numbered 9,837, and *held* not anticipated thereby. Patent No. 102,195 *held* valid, and defendant enjoined from constructing and using either of said patents.

In Equity. Motion for a preliminary injunction.

*John L. S. Roberts, George L. Roberts, and Oscar Lapham, for complainant.*

*Wilmarth H. Thurston and Benj. F. Thurston, for defendants.*

Before LOWELL and COLT, JJ.

COLT, J. This motion is based upon an alleged infringement by the defendants of two letters patent issued to the complainant—No. 259,597, dated June 13, 1882, covering a machine for making lacing-hooks for shoes, and No. 232,561, dated September 21, 1880, for lacing-hook stock.

The complainant made application for the machine patent July 28, 1879. On the day it was allowed, the defendant Halkyard ap-