

purpose in both cases is the same—to strengthen the attachment of the standard to the beam. Exhibit 15, then, is a complete anticipation of the invention covered by the second claim of the patent.

Another standard-head introduced in evidence, which was made by Sperry, shows this same arrangement of the three holes out of line, one with the others; but the evidence as to prior use by Sperry is not very satisfactory. Three or four witnesses for the defendant state that it was made and used by Sperry 20 years or more ago; but there is testimony to the contrary on the part of complainants. One witness testified that Sperry died about 20 years ago, which is very indefinite. Defendant insists that this so-called Sperry standard was made before Sperry died, and before the date of plaintiff's invention. Mr. Matteson, however, states that he had a conversation with Sperry, in which Sperry called his attention to his tenon-head standard, and asked him if he could not rig another head for it; that he told Sperry that he could, and showed him the standard-head described in the patent; and that Sperry's standard was thereupon changed, upon Matteson's suggestion, and the Matteson or patented head substituted for the tenon-head.

As I have stated, the testimony in relation to the prior use of this Sperry standard-head is not satisfactory; but the standard-heads upon Exhibits 4 and 15, I think, clearly show an anticipation of the device described in the second claim of complainants' patent. I shall, therefore, be compelled to find against the validity of that claim upon that ground.

A decree will be entered dismissing the bill.

UNITED NICKEL CO. *v.* NEW HOME SEWING MACHINE CO.

(Circuit Court, S. D. New York. July 20, 1883.)

PATENTS FOR INVENTIONS—INFRINGEMENT—PRELIMINARY INJUNCTION.

Where it appears that defendant has been doing for seven years what plaintiff complains of, and that in 1880 he sued defendant at law in a circuit court of the United States for the infringement of the patent now sued on, and that such suit at law, after proceeding to a declaration, has been allowed by plaintiff to remain unprosecuted, and that defendant is pecuniarily responsible, a preliminary injunction will not be granted.

Motion for Preliminary Injunction.

Dickerson & Dickerson, for plaintiff.

W. A. Jenner and Chauncey Smith, for defendant.

BLATCHFORD, Justice. I do not deem it necessary or proper to consider, on this motion for a preliminary injunction, the merits of the controversy between the parties, for there is a sufficient ground for denying the motion in the fact that the defendant has been doing for

seven years what is now complained of, and that, in 1880, the plaintiff sued the defendant at law in the circuit court of the United States for the district of Massachusetts for the infringement of the patent now sued on, and that such suit at law, after proceeding to a declaration, has been allowed by the plaintiff to remain unprosecuted. It appears that what the defendant did before such suit at law was brought was of the same character with what it has done since. The plated articles it now has on hand for sale as parts of sewing-machines must have been plated by it since such suit at law was brought. The plaintiff does not plate, but licenses others to plate. It is shown that the defendant's license fee would be about \$300 a year. That would be the amount of profits or damages to be recovered by the plaintiff. The defendant is shown to be pecuniarily responsible. Under the foregoing circumstances, there ought not to be an injunction before final hearing.

BRETT, Adm'x, etc., v. QUINTARD, Adm'r, etc.

(Circuit Court, D. Connecticut. August 16, 1883.)

PATENTS FOR INVENTIONS—INFRINGEMENT.

The sixth claim of the Henry A. Wells "hat-body patent" held to have been infringed by the manner in which defendant's intestate removed the hat from the revolving cone in the manufacture of hats, and a decree for an accounting granted.

In Equity.

E. N. Dickerson, for plaintiff.

John H. Perry and *Henry T. Blake*, for defendant.

SHIPMAN, J. The question of the infringement by the defendant's intestate of the sixth claim of the Henry A. Wells "hat-body patent" has again been heard upon the evidence introduced by the defendant. It is proved that the manner in which Mr. Brown removed the hat from the revolving cone was the same as that described by Prof. Trowbridge upon the seventh page of the printed testimony. The additional fact appears that 72 bats are plunged in the water each working hour, and consequently that the covering cloths are immersed in very hot water as often as once in each minute. It is to be remembered that in this examination the question of infringement only is at issue; all questions of the validity of the claim or of the novelty of the alleged invention are foreclosed. The defendant has, therefore, introduced the William Ponsford English patent of 1839, and, quoting the decision of the supreme court upon the Wells process patent, (*Burr v. Duryee*, 1 Wall. 531,) that the Wells process for removing the bat from the cone was the same as the Ponsford