

TUTTLE, Trustee, etc., v. CLAFLIN and others.

(Circuit Court, S. D. New York. March 10, 1884.)

1. PATENTS—CRIMPING-MACHINE—PATENT No. 37,033.

The first claim of patent No. 37,033, for an improvement in frilling and crimping machines, being limited by its terms to a combination in which the blade acts to space the crimps as well as to form them, is not infringed by a crimper which does not space the crimps.

2. SAME—CRIMPER AND SMOOTHER—SECOND CLAIM.

The specifications for the second claim of the same patent, describing a combined crimper and smoother, point out the method in which the parts can operate without spacing the crimps, and the claim is infringed by a machine which crimps and smooths the cloth by a similar device.

C. B. Stoughton, for complainant.

Vanderpoel, Green & Cuming, for defendants.

WALLACE, J. The complainant's patent, (No. 37,033, Crosby & Kellogg, patentees, granted December 2, 1882,) for an improvement in frilling and crimping machines, describes and claims devices which constitute distinct inventions residing in the same machine. The devices for forming and spacing the frill or crimp, and those for securing them in place after it is formed, accomplish distinct results, both of which are useful, and either of which would support a patent. The devices also co-operate to make the stitched plait. The sewing mechanism is essential only for making the complete or stitched plait. The claims of the patent cover all the devices in combination, and also the sub-combinations, which are operative only in forming and spacing the frills or plaits. The first claim covers the crimping devices with and without the stitching mechanism. It is limited, however, by its terms to a combination in which the blade or crimper acts to space the crimps as well as to form them. The defendants' crimper does not act to space the crimps, and they do not therefore infringe this claim. The second claim is as follows: "In combination, a crimper and a smoother, substantially such as described, and acting substantially as specified, to fold the crimps to an edge." The crimper described in the specification is a blade actuated by a cam and spring, and its mode of operation is to engage the cloth, advance and make a crimp of the cloth lying between it and the holder, and shove the cloth along under the holder; it then retreats for another advance. While it moves forward to crimp it acts as a crimper. After the crimp is formed it acts as a spacer to space the crimps apart, and as a pusher to force the goods through the machine. The space between the crimps depends upon the length of advance of the crimper after the crimp is formed, which is determined and made adjustable by other mechanism. The crimper which is included in this claim is one which is to operate in combination with the other necessary co-operative parts substantially in the manner thus pointed out. It may operate effectively to fold the crimp to an edge without

spacing them regularly, and in this regard may be an improvement upon the Singer, or Arnold, or Magic ruffle contrivance. In describing their invention, the patentees state that the invention "consists essentially of two parts,—the one for forming the crimps, and the other for securing them in place after they are formed;" and they then proceed to say that "the mechanism for forming the crimps consists of a crimper which both forms and spaces them." The specification plainly describes how the parts can operate to fold the crimps to an edge without spacing them. The language of the claim is apt and precise to cover such a combination, and clearly distinguishes the functions of the operative parts from those assigned to the parts in the first claim.

While the defendants' machines do not employ a crimper which operates independently to space the crimps, their crimper and smoother effect the operation of folding the crimps to an edge, and their devices in this behalf are the substantial equivalents of those in the combination described in the second claim. In their machines the spacing is done by revolving rolls or holder, which, after each crimp is formed, advances the cloth, while the blade is retreating through a distance equal to the space between the successive crimps.

The second claim and the fourth claim of the patent are infringed. The fifth claim is not infringed, as the defendants have no auxiliary smoother such as is described in the patent.

The decree is ordered for the complainant, adjudging infringement of the second and fourth claims of the patent.

TAFT *v.* STEERE and others.

(*Circuit Court, D. Rhode Island.* February 9, 1884.)

1. PATENTS—IMPROVEMENT IN LOOMS—SHUTTLE-RACE.

The characteristic feature of the second claim, patented by letters No. 63,853, for improvements in looms, is the vertical spring adjusted over each end of the shuttle-race; and a contrivance for checking the flight of the shuttle by other means is not an infringement.

2. SAME—ADJUSTABLE NOSE-PIECE.

The third claim of the same patent, if valid at all, is not infringed without the use of an adjustable nose-piece upon the cam.

In Equity.

A. J. P. Joy, for complainant.

Eugene F. Warner and Walter B. Vincent, for defendants.

Before *LOWELL* and *COLT, JJ.*

COLT, J. The complainant in his bill charges the defendants with the infringement of certain letters patent for improvements in looms, dated March 26, 1867, No. 63,853, issued to James J. Walworth and

Gustavus E. Buschick, assignees of Caspar Zwicky, the inventor. By subsequent assignments the plaintiff became the owner of the patent. The alleged infringements relate to the second and third claims. The second claim is as follows:

"In combination with the shuttle-race the springs, H, at either end, arranged over the top of the shuttle-path, and provided with means for vertical adjustment substantially as described."

The specification says:

"Above each end of the shuttle-race, E, are springs, H, each fastened to holding-pieces, e, on the side of the race, so that they can be adjusted in a vertical direction, and provided with a set, or thumb-screw, at f, for the purpose of further adjustment of the free end of said spring, H, in a vertical direction. The function of these springs, H, is to stop the shuttle gradually, and without recoil, and to keep it in its proper position on the shuttle-race to receive the blows of the picker staffs, T."

The essence of this claim is a spring, capable of vertical adjustment, over each end of the shuttle-race, to check the flight of the shuttle, and keep it in its place. The defendants do not use this. Their looms have no spring over the top of the shuttle-race, and no means of vertical adjustment. They use a piece of wood screwed on to the top of the shuttle-race, or a narrow piece of wood screwed on to the inside of the top, and the evidence goes to show that these have been in use for a period of 35 years. The side of the shuttle-box in the defendants' looms is of such shape that it operates to check the flight of the shuttle, and it also appears to be adjustable, but the important element in the plaintiff's claim is a spring on the top of the shuttle-box, capable of vertical adjustment, and this we do not find, nor any equivalent therefor, in the defendants' machine, and so there is no infringement.

The third claim is as follows:

"In combination with the picker staff of a loom, the cam, N, when provided with the adjustable piece, o, substantially as described."

It is not contended that Zwicky was the first to make a cam with a nose, in two pieces, instead of being solid, but the adjustable character of the nose-piece upon the cam is claimed as an improvement.

After carefully examining the evidence and exhibits, we are satisfied that the cams used by the defendants are not adjustable for any practicable purpose, that such adjustment is not attempted in their use; and that it is doubtful, at least, whether there is any utility in this feature of the patent, supposing the nose-piece to be attached to the cam exactly as shown in the model. It does not appear that any looms embodying the improvements claimed in this patent have ever been put in operation.

These conclusions dispose of the two main questions raised in this case, and we therefore deem it unnecessary to consider any others.

The bill should be dismissed.

SMITH v. HALKYARD and others.

(Circuit Court, D. Rhode Island. February 9, 1884.)

MOTION FOR CONTEMPT—PLAIN EVIDENCE REQUIRED.

To sustain a motion for contempt on account of the violation of an injunction issued to restrain the infringement of a patent, it must appear clearly and indisputably that the infringement continues.

In Equity. Motion for contempt.

John L. S. Roberts and George L. Roberts, for complainant.

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

Before LOWELL and COLT, JJ.

COLT, J. The defendants contend that they are not violating the injunction recently granted by this court by reason of certain changes made in their machine. The plaintiff claims that the defendants still infringe the first and seventh claims of the lacing-hook patent, as well as the patent for lacing-hook stock. The lacing-hook patent is for a combination. One of the elements of the feeding device mentioned in the first and seventh claims is a spring inserted in the groove along which the stock is fed, which operates to raise the stock and clear it from the dies. In their present machine the defendants use no spring. The inclines in the groove of the feeding mechanism are not, in our opinion, the equivalents of the spring, and do not perform the same function, and, as shown in the affidavit of Mr. Renwick, may be dispensed with altogether. By leaving out one element of the combination a serious doubt is raised as to the defendants' infringement.

As to the lacing-hook stock patent the position is strongly urged by the defendants that the patent is for stock with a series of alternate necks and indentations, and that in their present machine they only use a single neck and indentation at the end of the stock strip, and not a series. The plaintiff contends that, while at no moment of time a series exists, this is due to the fact that each neck and indentation is cut out as soon as formed, and that a series does exist in order of time or successively, as is shown by the successive holes in the waste strip. It is clear, from the specification and drawing, that the patentee contemplated the co-existence of a series of alternate necks and indentations. It is from stock so specially prepared in a series from which the blanks for the formation of lacing-hooks were to be cut. It may well be doubted whether, in view of the terms of the patent and the prior state of the art, the patent can be held to extend to a single neck and indentation.

Motions of this character are not granted unless the violation of the injunction is plain and free from doubt. *Walk. Pat.* 481; *Birdsall v. Hagerstown Manuf'g Co.* 2 Ban. & A. 519; *Liddle v. Cory*, 7 Blatchf. 1; *Welling v. Trimming Co.* 2 Ban. & A. 1; *Bate Refrig. Co. v. Eastman*, 11 FED. REP. 902.

Motion denied