PENTLARGE *v.* NEW YORK BUNG & BUSHING CO. AND OTHERS.

Circuit Court, S. D. New York. May 16, 1884.

1. PATENTS FOR INVENTIONS—RELIEF FOR INFRINGEMENT, WHEN GRANTED.

Relief for the infringement of a patent will not be granted unless the patents interfere.

2. SAME—INTERFERENCE.

When differences in patents are distinct, and neither covers the same things as the other, they do not interfere.

In Equity.

Brodhead, King & Voorhies, for complainant.

Wyllys Hodges, for defendant.

WHEELER, J. The orator owns reissued patent No. 10,175, dated August 1, 1882, the original of which was No. 192,386, dated June 26, 1877, granted to himself and Philipp Hirsch, for a vent-bung. The defendants own patent No. 203,316, dated May 7, 1878, and granted to George Borst for an improvement in bungs. This bill is brought under section 4918, Rev. St., to have the latter patent declared void. There were bungs having a hole nearly through them, leaving a thin web of the wood on the inside, to be driven through in venting the cask, as described in the patent of Rafael Pentlarge, No. 148,747, dated February 18, 1874. The orator's patent is for a bung with a hole on each surface, and a web between the holes in the interior of the bung. The defendant's patent is for a bung like Rafael Pentlarge's, with a core left on the web by a groove cut around it, leaving it ready for removal, or for a bung like the orator's with a like core on one or both sides of the web. The orator is not, and is not claimed to be, entitled to any relief here unless his patent and the defendant's interfere. *Mowry* v. *Whitney* 14 Wall. 434. The patents are each good

for the difference only between the bungs described in them and those in existence before. *Ry. Co.* v. *Sayles,* 97 U. S. 554. The difference between the orator's bung and Rafael Pentlarge's was the having the web in the interior instead of at the inner surface, and 315 his patent covers that. The difference between the defendant's bung and the others is the having the core to strengthen or protect the web, and their patent covers that. These differences are not the same, but distinct, and neither covers the same thing as the other, and therefore they do not, as now viewed, interfere. The practice of the invention of the latter may infringe upon the former and may not; but if it does, it will not do so because the patents interfere, but because the latter takes the invention of the former to improve upon.

Let the bill be dismissed, with costs.

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