

the other. Then the orator is not entitled to a monopoly of this friction surface in such machines. It is said that beyond this he did nothing but to bring the spring of former machines into Knowlson's, which could be accomplished by the skill of good workmanship. Had this been all, the argument would be well founded. But he did more. One spring would not have answered to repel the friction surfaces in that machine; two would have been necessary, and of different power; one to repel the cone on the wheel not geared, and another and stronger to repel the drum and that from the gear-wheel. The orator dispensed with one of Knowlson's friction cones and flanges, rearranged and simplified the machine, and put the spring where it was needed or where he wanted it. This appears, after it was done, to have been easy to do; but no one did it before and it makes a more compact, economical, and useful machine. *Loom Co. v. Higgins*, 105 U. S. 580. The patent is for the new combination. It is further strenuously urged that the gear-wheel, with the cone, supported in the orator's peculiar manner, is one element of the combination, and that, as the defendant does not use that element, it does not infringe that combination. But the gear-wheel and friction cone of the defendant are the equivalent in the combination to those of the orator, and by the use of them the defendant takes the orator's patented combination.

Let there be a decree for the orator for an injunction and an account, with costs.

MALLORY MANUF'G CO. v. HICKOK and another.

(Circuit Court, D. Connecticut. April 5, 1884.)

PATENTS FOR INVENTIONS—INFRINGEMENT—PRELIMINARY INJUNCTION—PREVIOUS ADJUDICATION.

Upon the decision of a motion for a preliminary injunction against the infringement of a patent, which has been sustained by a previous adjudication, it is proper, as a general rule, to follow the construction of the patent given upon such adjudication, provided the construction was given with deliberation and thoughtfulness in the use of language.

Motion for Preliminary Injunction.

Eugene Treadwell, for plaintiff.

Wm. Edgar Simonds, for defendants.

SHIPMAN, J. This is a motion for a preliminary injunction against the infringement of letters patent to George Mallory, dated February 11, 1868, for an improvement in hats. The defense is non-infringement. The invention is described and the patent is construed in *Mallory Manuf'g Co. v. Marks*, 20 Blatchf. C. C. 32.¹ It is not claimed that the present defendants use twisted wire, and, for the purposes of

¹S. C. 11 FED. REP. 887.

this motion, it is admitted that round bent wire is used. The only question is whether such use is an infringement. Upon the decision of a motion for a preliminary injunction against the infringement of a patent which has been sustained by a previous adjudication, it is proper, as a general rule, to follow the construction of the patent which was given upon such adjudication, provided the construction was given with deliberation and thoughtfulness in the use of language. Judge BLATCHFORD says in his opinion that the specification uses the word "bent" as synonymous with the word "twisted;" and further says: "The hoop of the claim must be a spring hoop twisted substantially in the manner described in the patent. This construction is necessary to sustain the claim, in view of the state of the art as shown." I do not mean to say that the question in regard to the proper construction of the patent is to be considered as finally settled by the decision in the *Marks Case*, but, for the purposes of this motion, it is not expedient to depart from Judge BLATCHFORD's construction, which was carefully given.

The motion is denied.

VERMONT FARM MACHINE Co. and others v. MARBLE, Com'r, etc.

(Circuit Court, D. Vermont. April 12, 1884.)

1. JURISDICTION OF CIRCUIT COURT—ACCEPTANCE OF SERVICE.

By accepting service of process the defendant, in a suit arising under the patent laws, subjects himself to the jurisdiction of a court, sitting in a district of which he is not a resident.

2. SAME—BILL TO SECURE A PATENT.

The United States courts have jurisdiction of bills to obtain the issue of patents refused by the commissioner.

3. SAME—WANT OF POWER TO ENFORCE DECREE.

The fact that a circuit court cannot compel the commissioner of patents to obey its decree is no objection to its jurisdiction to entertain a bill against him for the purpose of obtaining a decree in favor of the orator's right to a patent. It is presumed that he will do his duty

In Equity.

Frank T. Brown, for commissioner.

William E. Simonds, for orators.

WHEELER, J. The bill was brought for an adjudication that the orators were entitled to a patent, pursuant to section 4915, Rev. St. The defendant accepted service of the subpoena to have the same effect as if duly served on him by a proper officer, and acknowledged receipt of a copy, but did not appear in court, nor made any objection to proceeding to decree. After hearing the orators, a decree was made and entered in their favor. 19 FED. REP. 307. The present commissioner now moves for a rehearing, principally upon the ground