

UNITED STATES *v.* COLGATE.

Circuit Court, S. D. New York. August 9, 1884.

INJUNCTION—INFRINGEMENT—LITIGATED
PATENT.

The United States cannot be heard to ask an injunction restraining the commencement or prosecution of suits for infringement of a patent, for the repeal of which they have begun an action.

In Equity.

Elihu Root, U. S. Atty., *Charles M. Da Costa*, and *Wager Swayne*, for orator.

Frederic H. Betts, for defendant.

WHEELER, J. This suit is brought by direction of the attorney general, to repeal letters patent granting exclusive rights to inventions, and has now been heard on a motion for a preliminary injunction to restrain commencement or prosecution of suits for infringement. The patent has expired, and no injunction is asked against assignment of the patent. The right to maintain such a suit is placed upon the same ground as that to repeal a patent for land. *U. S. v. Gunning*, 18 FED. REP. 511. In a suit to vacate a patent for land it would hardly be claimed that the patentee should be restrained from preventing, or prosecuting suits for, trespasses to the land during the pendency of the suit. Such acts would work no injury to the title or property of the United States in question in the suit. The United States deals with the lands as a proprietor, and brings such suits to be restored to its proprietary rights. *U. S. v. Schurz*, 102 U. S. 378; *U. S. v. Stone*, 2 Wall. 525. Protection of the property would not impair those rights. Infringement of a patent is a trespass upon the exclusive rights granted. The United States, as an owner or proprietor, has no interest in promoting such trespasses; and

their prevention, or the prosecution of suits for their commission, cannot be an injury to the United States as a proprietor. If the patent is repealed the suits may fall, or may not; but whether they do or not is a matter entirely between the parties to the suits, and not at all between the United States and either of the parties. No reason for granting the motion appears, and it must therefore be denied.

Motion denied.

This volume of American Law was transcribed for use
on the Internet

through a contribution from [Maura L. Rees](#) 