

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 If the patent is repealed the suits may fall, or may not; but whether they do or not is a matter entirely between the parties to the suits, and not at all between the United States and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.

PETERS v. ACTIVE MANUF'G CO.¹

(Circuit Court, S. D. Ohio, W. D. August 22, 1884.)

1. PATENTS—PETERS' CARRIAGE DASHES—SHEATHS FOR APPLYING MOULDINGS.
Patent No. 178,463, granted George M. Peters for improvements in sheaths or holders for applying mouldings to the tops of carriage dash-boards, held to be anticipated by a machine used for putting mouldings on combs by means of a sheath constructed and operated similarly. That the machine was comparatively small, and used only for applying mouldings to combs, is immaterial.
2. SAME—INFRINGEMENT—ANTICIPATION.
That which would infringe, if later, anticipates, if earlier.

In Equity.

J. W. Firestone and Wm. Hubbell Fisher, for complainant.

Stem & Peck, for respondent.

SAGE, J. This suit is brought upon letters patent No. 178,463, issued to complainant, June 6, 1876, for an improvement in tools for attaching sheet-metal mouldings. The specifications set forth the invention of certain new and useful improvements in sheaths or holders for applying mouldings to the tops of carriage dash-boards, and that it comprises a peculiarly constructed sheath or holder, wherewith the moulding may be applied expeditiously, and without bending or buckling, or injuring or marring, either the moulding or dash-board. The sheath may be made of one or more pieces of metal, or it may be made of wood lined with a metallic bushing. When made of two pieces or parts, which is the form preferred by the patentee, the pieces are connected by bolts and washers, and grooved so as to inclose the moulding; a key or other suitable stop being fitted within the sheath to prevent the moulding slipping through the groove. The sheath has undercut notches to receive the key, which is detachable, and serves as a stop or abutment for the rear end of the moulding to rest against. Notches may be cut at such distances from the front end of the sheath as may be required for the various lengths of mouldings to be used, or the notches and key may be dispensed with, and a screw stop, described in the specifications, substituted. The moulding consists of a sheet-metal tube, having a longitudinal slot or parting, and its forward end is made flaring or trumpet-mouthed, so as not to tear the leather coverings of the dash while the moulding is being applied. The dash is held perfectly rigid in clamps, and the sheath, containing the moulding and fitting it closely so as to prevent buckling, is drawn, by means of a cord or strap, attached to a hook or link, pivoted to the front end and guttered to avoid contact with the edge of the dash, along the upper edge of the dash, which projects above the clamps. As the sheath advances, the flaring mouth serves to conduct the leather margins of the dash into the longitudinal slot of the moulding, and, the sheath fitting the moulding closely, prevents any radial

¹Reported by J. C. Harper, Esq., of the Cincinnati bar.