(*Adams* v. *Burke*, 17 Wall. *supra*,) that court expressly treated the right to manufacture and sell, and the right to use, a patented article as distinct substantive rights, and decided the law only as it related to the exercise of the latter right. The remaining case (*McKay* v. *Wooster*, 2 Sawy. 373) was ruled upon the opinion of Judge SHEPLEY in *Adams* v. *Burke*, evidently upon the hypothesis that an extra-territorial sale of a patented article was a necessary subject of discussion.

But, with this scrutiny of these cases, we are unembarrassed by the rule of comity which would lead us to conform our own judgment to that pronounced by the circuit court elsewhere for the sake of uniformity of decision; and, in view of the state of the law as it has been expounded by the supreme court, we feel authorized to express our own judgment that a sale of patented articles in the ordinary course of trade, outside the territorial limits to which the right to sell is restricted by the patentee's grant, is unwarranted. There must, therefore, be a decree in favor of the complainant, with costs.

HATCH and others *v.* HALL.

(*Circuit Court, S. D. New York.* December 4, 1884.)

PATENTS FOR INVENTIONS—INJUNCTION—INFRINGEMENT IN ANOTHER DISTRICT—CITIZENSHIP.

The citizenship of an infringer within the district where the suit is brought, gives the right to proceed in such district against him personally to prevent infringement elsewhere.

In Equity.

Frank P. Prichard and *Biddle & Ward*, for complainants.

B. F. Watson, for defendant.

WHEELER, J. The right of the defendant to the orators' patent for the territory comprised within the state of New York would seem to afford him no right to sell for use, within the territory still owned by the orators, the patented articles made by him in his territory. This is shown in the opinion of MCKENNAN, J., in *Hatch* v. *Adams*, *ante*, 434. But no good reason yet appears why he should not be permitted to advertise the articles and sell them in New York, although the purchasers may take them into the orators' territory. The citizenship of the defendant within this district gives the right to proceed here against him personally to prevent infringement elsewhere. The motion for an injunction is granted so far as to restrain sales by the defendant or his agents within the orators' territory, and denied as to the residue.

FRAZER and others v. GATES & SCOVILLE IRON WORKS.

(*Circuit Court, N. D. Illinois.* August 9, 1884.)

PATENTS FOR INVENTIONS — ORE AND STONE CRUSHER — RUTTER, REISSUE No. 3,633—VALIDITY OF CLAIM 1—INFRINGEMENT.

The first claim of reissued patent No. 3,633, granted to J. W. Rutter, September 7, 1869, for an ore and stone crusher, the original patent being No. 88,216, dated March 23, 1869, construed, and *held* valid and infringed by defendant.

BLODGETT, J. This suit is brought for the alleged infringement of reissued patent No. 3,633, granted to J. W. Rutter, September 7, 1869, the original patent being No. 88,216, dated March 23, 1869, and for an accounting for profits and damages. Complainants claim as assignee of Rutter, and no question is raised as to their title. Infringement is insisted upon only as to the first claim of the patent. The machine described in this patent is an ore or stone crusher, and consists of a hollow cylinder within which an oscillating cone revolves, crushing the material to be operated upon between the outer periphery of the cone and the inner lining of the outside cylinder or casing. The testimony in the case shows that prior to the date of this patent crushers had been known and used, having an outside casing or crushing chamber, and where the crushing was produced by the revolving of a crushing cone in a conical orbit, but in all the prior devices disclosed in the proof the power operating the crushing cone had been applied at the top of the crushing cone instead of the base, but in the Rutter device the power is applied at the base, or rather below the base of the cone, whereby a much more effective crushing force is secured; and this change increases the working power and usefulness of the machinery to such a degree as to seem to me to constitute a patentable difference between this and prior devices in the art. Rutter describes his device as follows:

"The invention relates to that class of crushing and grinding machines in which a conical grinder or crusher, with concentric and eccentric bearings, is operated within a stationary upright cylinder or chamber, or in which the crushing chamber is made conical and the crusher straight, and the invention consists in a universal or ball and socket support above the cylinder, from which the crushing cone is suspended on an oscillating arbor, rigidly connected with a rotating eccentric box, carrying its lower extremity, and which is fitted in the hub of a horizontal gear-wheel so as to rotate in an annular conical orbit within said gear-wheel, but having no rotation on its own axis, whereby a grinding or rubbing action as well as crushing effect is produced, instead of a crushing action only, as in similar machines wherein the cone rotates around its own axis."

And the claim of the patent which it is alleged defendant infringes is upon the portion of the device described in the foregoing language, being for "the cone, B, on the arbor, D, when sustained and operated in such manner as to swing in a conical orbit around the axis of its surrounding cylinder without rotating around said arbor, substan-