

NEW YORK BELTING & PACKING Co. v.  
MAGOWAN AND OTHERS.

*Circuit Court, D. New Jersey.* December 10, 1884.

PATENTS FOR  
INVENTIONS—INFRINGEMENT—PRELIMINARY  
INJUNCTION—WANT OF NOVELTY.

The novelty of the patent being in doubt, the application for a preliminary injunction is refused, on condition that defendants execute a bond to secure complainant on the accounting, if, upon final hearing, the patent is sustained, although the infringement is clearly shown.

On Motion for Preliminary Injunction.

NIXON, J. This is an application for a preliminary injunction. I have no difficulty on the question of infringement. The exhibits of the defendants' manufacture, both in 1882 and 1884, show quite clearly, to my mind, that they are infringements of the complainant's patent. But the evidence of the defendants, and especially the affidavits of the expert, Weigand, throw some doubt on its novelty. Under the circumstances, I regard it as a proper case in which to refuse an injunction, if the defendants will execute a bond to secure the complainant on the accounting, if, upon final hearing, there shall be a decree sustaining the validity of the patent. The injunction is therefore with *held*, provided that the defendants, within 10 days, 597 shall file a bond to the complainant corporation, in the penal sum of \$10,000, conditioned for the payment of profits and damages for all subsequent infringement, if the patent shall be finally sustained; the bond to be approved by the clerk, and the defendants to file an account, under oath, every 60 days, of the rubber manufactured and sold by them, of the kind and character shown in the exhibits.

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