

CORNELLY. *v.* MARKWALD.*Circuit Court, S. D. New York.*

1885.

PATENTS FOR
INVENTIONS—INFRINGEMENT—COSTS—EXPENSE
OF MODEL.

The expense of obtaining a model of an infringing machine cannot be deemed taxable disbursement in favor of the prevailing party.

WALLACE, J. The clerk properly refused to tax the item of \$150 in plaintiff's bill of costs for the expense of obtaining a model of the defendant's infringing machine. Irrespective of any question as to the propriety or necessity of procuring such a model, the expense incurred cannot be deemed a taxable disbursement in favor of the prevailing party. The reasons why such an item should not be allowed, are fully stated in the opinion of the court in *Woodruff v. Barney*, 1 Bond, 528, and in *Hussey v. Bradley*, 5 Blatchf. 210. It is obvious that it would subject litigants in patent cases to onerous and sometimes to oppressive burdens, if parties were permitted, at their discretion, to procure models, and tax their unsuccessful adversaries with the expense. The question is not an open one. See, also, *Wooster v. Barker*, 23 FED. REP. 49.

The taxation is affirmed.

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