

HICKS *v.* BEARDSLEY AND ANOTHER.

*Circuit Court, S. D. New York.*

September 21, 1887.

PATENTS FOR INVENTIONS—INFRINGEMENT—PRELIMINARY INJUNCTION.

On motion for preliminary injunction to restrain the infringement of letters patent No. 126,347, granted to D. W. Thompson, in 1872, for fire-kindlers, *held*, that in view of the fact that in another action pending in another district of the same circuit, brought by complainant against the manufacturers from whom defendants obtain the article alleged to infringe, a similar motion had been made and denied, with leave to renew, and in view of the fact that defendants vigorously assail the validity of complainant's patent, the motion should be denied, with leave to renew when an injunction is obtained against the manufacturers.

*Wm. H. King*, for complainant.

*M. B. Andrus* and *James A. Whitney*, for defendants.

LACOMBE, J. The complainant moves for a preliminary injunction to restrain infringement of a certain patent (No. 126,347) for fire-kindlers. The patent was granted to D. W. Thompson, in 1872, and assigned to complainant in August last, a few days before the bringing of this suit. Defendants do not manufacture the articles which it is claimed infringe the Thompson patent; they obtain them from one George S. Geer, against whom complainant has a suit pending in the Northern district of this

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state. No preliminary injunction has been granted in the Geer suit; complainant's motion for that relief having been denied, with leave to renew. The validity of the Thompson patent is vigorously assailed by the defendants, many prior patents for fire-kindlers being submitted with the opposing affidavits.

In view of all the facts, the manufacturer being a resident of the Northern district where he has been regularly served, and has appeared by Counsel, the motion for a preliminary injunction is denied, with leave to renew when an injunction, preliminary or final, is obtained against the manufacturer.