

SARGENT *ET AL.* V. JENKINS *ET AL.*

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

March 21, 1889.

PATENTS FOB INVENTIONS—PATENTABILITY—ANTICIPATION—WASH—BOARD PROTECTORS.

Letters patent No. 223,388, January 6, 1880, to John M. Gorham, describe a protector for wash-boards, which yields to pressure and returns to its normal position automatically when the pressure is removed; the patentee stating that he is not to be confined to any particular form of device. *Held* not anticipated by the protector of the Frike patent, which has not such yielding or resilient function.

In Equity. On motion for preliminary injunction.

Bill by Sargent and others against Jenkins and others, to restrain the infringement of letters patent No. 223,338, to John Gorham, January 6, 1880.

*William C. Witter* and *George H. Christy*, for complainants.

*E. N. Dickerson* and *J. Walter Douglass*, for defendants.

WALLACE, J. The wash-boards which the defendants are manufacturing embody the invention specified in the first and second claims of the patent to Gorham; and the motion for a preliminary injunction should be granted, unless there is a serious question of the novelty of the subject-matter of those claims. The essential feature of the wash-board of those claims is a protector (to shield the operator from getting wet) which yields to pressure, and returns to its normal position automatically when the pressure is removed. In the second claim the spring is the device which gives the elastic or resilient quality to the protector; but the patentee states that he is not to be confined to any specific form of device, and consequently the first claim should be interpreted broadly to include any wash-board having a protector, whether with or without a spring, which is so constructed as to bend or yield to pressure, and return when the pressure is removed. If the patent to Frike describes a wash-board having a protector that possesses this function, and yields to pressure, and returns automatically on its pivot by gravity, the first claim is anticipated; and, as the substitution of the spring for the weight would not involve invention, the second claim would also be invalid. The protector of the Frike patent, however, is not of that character. There is no suggestion in the specification that it is to return to its position by gravity, or by any instrumentality except by the hand of the operator. It is designed exclusively for a wash-board having a double face, and is constructed so as to afford a broad surface to support the operator (and protect him from getting wet) until he desires to use the other side of the wash-board, when, by tilting it over, he can transfer it for use upon that side. It belongs to the second class of protectors referred to in Gorham's patent as not embodying his invention. The Frike patent was before the supreme court in the suit upon the complainants' patent against Burgess, (9 Sup. Ct. Rep. 220,) and is referred to in the opinion.

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In the opinion the court say that hut for the yielding or resilient function of Gorham's protector: it would be questionable whether his patent would be valid. It is fairly to be assumed that the supreme court did not consider the Frike patent an anticipation of either of the claims of the Gorham patent, and that the court were of the opinion, that the patent to Gorham was a valid one. The motion for an injunction is granted.