

thereto. It is shown conclusively that at the very time the representations were made and the license taken by defendants the favored licensees were paying the schedule rates with one hand and receiving 50 per cent. thereof back again from the complainant with the other, through a tortuous and carefully disguised channel. Defendants may take a decree canceling the license and dismissing the bill.

PRICE *et al.* v. JOLIET STEEL CO.

(Circuit Court, N. D. Illinois. May, 1891.)

INFRINGEMENT OF PATENTS—LACHES.

An unexplained delay of seven and a half years in bringing suit for infringement of a patent will deprive complainants of the right to a preliminary injunction, and perhaps to an account; but, inasmuch as it would be inequitable to allow infringement to continue in the future, a court of equity will entertain jurisdiction to grant an injunction notwithstanding such laches.

In Equity.

Samuel A. Duncan and Horace S. Oakley, for complainants.

Prussing, Hutchins & Goodrich, Banning & Banning & Payson, and *E. N. Dickerson*, for defendant.

GRESHAM, J. The bill was filed October 30, 1890, and it avers that on the 2d day of May, 1876, letters patent 176,996 were duly issued to John M. Price and William Lewis for an original invention therein described; that on February 25, 1883, Lewis died intestate, and, on the 13th of April following, Louisa Lewis and Margaret Lewis qualified as his personal representatives; that on April 1, 1890, the surviving patentee and the personal representatives of Lewis, by a proper instrument, assigned the patent to the complainants, together with all rights of action for past infringements; that the complainants are still the owners of the patent; that it is valid, of great value, and has been generally respected by the public; "that the defendant, well knowing the premises and the rights secured to the inventors and patentees of the said invention aforesaid and of your orators, but conspiring with others and contriving to injure the said patentees, John M. Price and William Lewis, and your orators, and deprive them of the benefits and advantages which might and otherwise would accrue to them, the said patentees and your orators, from the said invention and improvement, since the grant of said letters patent has made or caused to be made and used, and now uses, within the city of Joliet, Ill., and elsewhere, a rolling-mill, for the rolling of steel or iron rails, embodying the principles of construction and of operation set forth in said letters patent, and covered by the several claims thereof, and that this manufacture and use on the part of the defendant has been without the license or authority of the said John M.

Price and William Lewis, or the administratrices of the said William Lewis, and without the license or authority of these, your orators, or either of them, but in disregard and defiance of the said patentees and your orators' rights in the premises, and in infringement of the said letters patent, and to the great injury of the said patentees and your orators, and damage to their rights." The bill also avers that the defendant, by its unlawful use of the invention, has derived large gains and profits, which should and would have been received by the patentees and the personal representatives of Lewis, and since the date of the assignment, by the complainants; that the defendant is prepared to continue its unlawful acts, and avows its purpose to do so. The bill prays for an injunction and an account. The defendant demurs, on the ground that the long delay in bringing the suit deprives the complainants of standing in a court of equity. It is urged in support of the demurrer that the bill shows the defendant was infringing as early as February 25, 1883, when Lewis died, and that the trespass continued until October 30, 1890, (the date of the filing of the bill,) a period of seven and a half years. The complainants' counsel concedes this to be a correct construction of the bill, and it will be treated accordingly. This unexplained delay in bringing suit is sufficient to deprive the complainants of the right to a preliminary injunction, and perhaps to an account. Is it fatal to their right to all other relief? The demurrer admits that the complainants own the patent; that it is valid and for a valuable invention; that the public has generally respected it; that the defendant has derived large gains by unlawful infringement and is prepared and expects to continue the trespass during the remainder of the life of the patent. Assuming that the complainants and their predecessors in ownership were guilty of laches in asserting their right to the invention, infringement under no claim of right is admitted, and it would be inequitable to allow it to continue during the remaining two years of the patent. An injunction would stop the trespass, and prevent a multiplicity of actions at law, which would be expensive and afford inadequate relief. In *McLean v. Fleming*, 96 U. S. 245, which was a suit for infringement of a trade-mark and an account, the court said: "Equity courts will not in general refuse an injunction on account of delay in seeking relief, when the proof of infringement is clear, even though the delay may be such as to preclude the party from any right to an account for past profits."

Demurrer overruled.

ROCKER SPRING CO. v. FLINN, (six cases.)

(Circuit Court, N. D. Ohio, E. D. 1891.)

1. PATENTS FOR INVENTIONS—ANTICIPATION.

Letters patent No. 354,043, issued to Connolly December 7, 1886, No. 247,472, issued to Beiersdorf & Bunker September 27, 1881, No. 313,429, issued to Kenna March 3, 1885, No. 334,102, issued to Bunker January 12, 1886, No. 334,345, issued to Bunker January 12, 1886, and No. 273,630, issued to Stevens March 6, 1883, the principal feature of each of which is the use of spiral or coil springs to connect the base and rocking part of a platform rocking-chair, located at opposite sides of the chair center, and in the center of the oscillation of the chair-seat, and rigidly connected to said parts, are not anticipated by springs manufactured under letters patent to John Flinn, 339,754, issued April 5, 1881, or No. 345,673, issued July 20, 1886, which were attached only at one place on the base rail and rocker of the chair, and were not rigid and firm, but were long and weak, and would not hold the upper and lower rocker to an alignment, and to the use of which guides and stops and other appliances were necessary. These objections and noises, sudden jerks, a wobbling motion, and the sense of insecurity caused thereby, combined to make the use of the springs limited, and they cannot be regarded as anticipating the Connolly invention, which was generally accepted and used.

2. SAME.

The use of such coil or spiral springs is not anticipated by the use for a similar purpose of steel springs made of flat sheet steel of various thicknesses and strength, attached to the base and rocker so as to receive a torsional spring action, and operate with a twist against itself, giving the chair a jerky twisting movement, unpleasant to the occupant.

In Equity. Bills for infringement of letters patent.

Banning, Banning & Payson, (M. D. & L. L. Leggett, of counsel), for complainant.

Henry C. Ranney and Henry McKinney, for defendant.

RICKS, J. The complainant has filed six bills in equity under six different letters patent owned by it, and of which the defendant is charged with infringement. The complainant asks for a decree for perpetual injunction, but waives any accounting as to profit and damages. The several patents sued upon, and the different claims which it is charged the defendant infringes, are as follows:

First, the Connolly patent of December 7, 1886. This patent is numbered 354,043, and was originally applied for on July 30, 1880. A provisional application was made on March 23, 1885, which entitles it on the record to date back to the date or time of the original filing. There are two claims in this patent, as follows:

"(1) The combination in a chair of a seat having rockers secured to its under side, a base having a lower support for said rockers, and two spiral springs rigidly connected to said parts, respectively, and located and secured at opposite sides of the chair center, and constituting the connection between the seat and base parts of the chair, for holding the rockers and their lower support in alignment and proper relative position, substantially as described.

"(2) The combination in a chair of a seat having rockers secured to its under side, a base having a lower support for said rockers, and two spiral springs rigidly connected to said parts, respectively, and located and described at opposite sides of the chair center, and in the center of oscillation of the chair-seat, and constituting the connection between the seat and base parts of the chair for holding the rockers and their lower support in alignment and proper relative position, substantially as described."