JACOBSON *et al. v.* ALPI *et al.*, (seven cases.)

(*Circuit Court, S. D. New York.* June 18, 1891.)

PATENTS FOR INVENTIONS—PRELIMINARY INJUNCTION—PRIOR ADJUDICATION.

Where a prior adjudication sustaining a patent is decided on the ground that the defendant's own testimony that "he did not think there was any invention in the patent" is not sufficient to overcome the *prima facie* effect of the patent, such decision is not sufficient to justify the issuance of a preliminary injunction, restraining an alleged infringement of the patent, where the existence of an anticipating device is shown on the application for injunction by evidence which is undisputed, except by the opinion of an expert.

In Equity. Motion for preliminary injunction.

Walter R. Beach, for complainants.

Edward K. Jones, for defendants.

LACOMBE, Circuit Judge. The patent for the branched foundation for artificial flowers (Jules Lambert, No. 264,308, Sept. 12, 1882) has never been judicially sustained, and there is not sufficient proof of public acquiescence to take the place of such adjudication, and justify the issuing of a preliminary injunction. The patent for an improvement in gauges for making foundations for artificial flowers (Jules Lambert No. 276,430, April 24, 1883) was sustained by Judge WHEELER in *Lambert* v. *Hofheimer*, 18 Fed. Rep. 654. It appears from the opinion in that case, however, that the only proof introduced by the defendant was his own testimony that "he did not think there was any invention in the patent;" no reasons being given for such opinion. The court reached the conclusion that such testimony was not sufficient to overcome the *prima facie* effect of the patent; the device, in the opinion of the court, seeming "to be quite ingenious, and well worthy to be called the result of the exercise of inventive faculties, especially in the absence of any proof of prior contrivance of this sort." A very different case is made out upon this motion. Undisputed testimony shows the existence for years of a gauge for making fringes, etc., which is plainly a prior contrivance of the same sort as the patent. Whether or not the complainant may be able to differentiate this fringe gauge from his own contrivance sufficiently to disclose patentable invention in the mere shifting of the position of the pins, which is the only apparent difference between the two, may be left for determination at final hearing. His case is certainly not strong enough on these papers to warrant the granting of a preliminary injunction. A prior adjudication sustaining a patent, where the defense interposed was so weak as in *Lambert* v. *Hofheimer*, is not necessarily constraining, when, upon a subsequent application for a preliminary injunction, the existence of an anticipating device is shown by testimony which, as in this case, is undisputed save by the opinion of an expert.

CHALLENGE CORN-PLANTER CO. *v.* GEARHARDT *et al.*

(Circuit Court, S. D. Ohio, E. D. July 7, 1891.)

1. PATENTS FOR INVENTIONS—INFRINGEMENT—CORN-PLANTERS.
Letters patent No. 279,822, June 19, 1883, to Levi Schofield, for improvement in corn-planters, consisting in the combination with a tooth seed-plate of vibrating pawl-carriers, pivoted on diagonally opposite corners of a stationary casting, and carrying pawls for acting alternately upon the seed-plate to rotate it, are not infringed by a corn-planter in which the pawls are carried on a U-shaped slide operating as a rectilinearly moving pawl-carrier, the slide being guided by links which neither support nor carry the pawls.

2. SAME.
Nor is the claim in said patent of the combination with a toothed seed-plate of pawl-carriers pivoted on diagonally opposite corners of a stationary casting, the gravitating pawls mounted on the pawl-carriers, and flanges on the stationary casting for guiding the pawls laterally, and insuring their positive and certain engagement with the teeth of the seed-plate, infringed by a corn-planter, which, instead of pivoted pawl-carriers, and gravitating pawls mounted thereon, has a sliding frame and gravitating pawls, such as were known and in common use prior to the date of the patent.

In Equity.

Suit for infringement of patent No. 279,822 for improvement in corn-planters, issued to Levy Schofield, June 19, 1883, and assigned to complainant.

Arthur Stem, for complainant.

H. H. Bliss, for respondents.

SAGE, J. Complainant's contention is that the respondents are infringers of the first, second, third, and fifth claims of the patent sued upon, which are as follows:

"(1) In a corn-planter, the combination with the toothed seed-plate of the vibrating pawl-carriers, pivoted on diagonally opposite corners of the stationary casting, and carrying pawls for acting alternately upon the seed-plate to rotate it, substantially as described.

"(2) In a corn-planter, the combination, with the toothed seed-plate, of the pawl-carriers, pivoted on diagonally opposite corners of the stationary casting, the gravitating pawls mounted on said pawl-carriers, and the flanges on the stationary casting for guiding the pawls laterally and insuring their positive and certain engagement with the teeth of the seed-plate, substantially as described.

"(3) In a corn-planter, the combination, with the toothed seed-plate, of the vibrating pawl-carriers, pivoted to diagonally opposite corners of the stationary casting, the gravitating pawls mounted on said carriers, and the bifurcated operating slide having its arms connected to the pawl-carriers, substantially as described.

"(5) In a corn-planter, the combination, with the stationary casting, of the vibrating pawl-carriers, pivoted on diagonally opposite corners of the casting, the ribs on the casting for supporting the outer ends of the pawl-carriers, the reciprocating slide connected to the pawl-carriers below the casting, and the roller for supporting the slide, substantially as described."

The respondents rest their defense upon the issue of non-infringement. They leave with the court the question of the validity of complainant's patent. The court concurs in the statement of their expert that the