DICKERSON *v.* MATHESON *et al.*

(*Circuit Court, S. D. New York.* May 25, 1891.)

PATENTS FOR INVENTIONS—INFRINGEMENT—INTERLOCUTORY INJUNCTIONS.

Where the question whether or not complainant can treat defendants as infringers of his patent depends on whether the latter purchased goods covered by the patent from a foreign corporation, operating under the same patent as complainant, with notice of a restriction against its resale in the United States when they paid the purchase price, and the evidence on this question is insufficient, no interlocutory injunction against the resale of the goods in the United States will issue.

In Equity. On motion for an interlocutory injunction.

Defendants, William J. Matheson and James N. Steele, purchased 2,000 pounds of benzo-purpurine from a German corporation in Berlin, which had the right to make and sell the same under the German patent of the complainant, who also owned the United States patent in suit. The sale was affected through Domeier & Co., of London, England, and the German company had no notice that the goods were intended for the United States. The goods were marked with the following label: "The importation in the United States of North America is forbidden." The invoice also contained a similar restriction. Albert Domeier, who made the purchase, deposed that he was ignorant of the restriction, and that on the same day that the invoice was sent he delivered his check against it.

Dickerson & Dickerson, for complainant.

Henry P. Wells, for defendants.

WALLACE, J. I have held the motion for an interlocutory injunction in this cause undecided for several months, upon the supposition that the complainant proposed to apply for leave to submit supplemental depositions, or to dismiss his motion. In my judgment the right of the complainant to treat the defendants as infringers hinges upon the question of fact whether Domeier paid or sent his check for the benzo-purpurine bought by him for the defendants of the London agent of the Berlin company before he received the invoice which gave notice that the patented article was sold on condition that it was not to be used or sold in the United States. I am unable to determine this question upon the depositions which have been submitted. The motion ought to be disposed of; and, as the complainant has not applied to dismiss it or reopen it for further depositions, and as the case made does not satisfy me that the goods were not paid for or a check given for them before Domeier received the invoice, the motion is denied.

R. E. DIETZ Co. *et al.* *v.* C. T. HAM MANUF'G Co.

(*Circuit Court, N. D. New York.* August 4, 1891.)

PATENTS FOR INVENTIONS—INFRINGEMENT—INJUNCTION.

Where, in a suit to restrain the infringement of two letters patent, complainants' title is uncertain, and the patents have never been adjudicated, proof of acquiescence is inadequate, infringement is not conclusively established, and defendant's financial ability is unquestioned, a preliminary injunction will not issue.

In Equity. Motion for preliminary injunction.

Action by the R. E. Dietz Company and the Steam-Gauge & Lantern Company against the C. T. Ham Manufacturing Company, to restrain the infringement of two letters patent. Preliminary injunction denied.

The complainants sue for infringement of two letters patent, No. 287,932 and No. 450,444, granted to Charles J. Higgins and Lewis F. Betts, November 6, 1883, and April 14, 1891, respectively, for improvements in tubular lanterns. The distinguishing feature of the Higgins patent, No. 287,932, consists "in supporting the globe in a frame composed of a collar, rods to which said collar may be pivoted, and the supporting-base connected directly by the said rods to the said collar, the frame being hinged to the oil reservoir, and movable laterally from the lantern without moving the air-tubes, burner, or oil reservoir." In other words, the glass globe instead of being raised from the burner is tipped over laterally, thus exposing the burner so that the wick may be trimmed or lighted. The patentee says further:

"The globe, E, of usual shape, has its upper end fitted into a collar or ring, *a*, herein shown as pivoted upon the side rods, *b*, *b*, so that the said collar or ring embracing the said globe at top may be turned, tilted, or sprung, or tipped off from the top of the globe when it is desired to reach the latter. * * * It will be noticed that the globe is held in a frame-work composed of the collar, *a*, rods, *b*, *b*, and plate or support, F, and that the said rods are arranged, as I prefer them, at the front and rear sides of the globe, to thus act as guards for the latter. * * * It is obvious that the rods or connections between the perforated plate or support for the bottom of the globe and the collar which holds the top of the globe may be variously modified, so as to permit the collar to be turned or moved off the top of the globe to release the same without departing from my invention."

It will be observed that the patentee makes the tilting collar, *a*, which is everywhere referred to as holding the top of the globe in place, a very prominent feature of the invention. The first claim is as follows:

"(1) In a lantern, the globe, E, supported in and movable with a frame composed of the collar, *a*, rods, *b*, *b*, to which said collar may be pivoted, and the supporting-base, F, connected directly by the said rods to the said collar, the frame being hinged to be tilted laterally, substantially as shown and described."

The second claim is for a narrower combination.

The patent was assigned to complainants on the 17th of February, 1890, but there is evidence tending to show that several years prior thereto the patentee granted a conditional exclusive license to one John