

considered and decided with deliberation without recourse to presumption, and without danger of injustice to either party. If complainant unreasonably delays the taking of proofs, the motion may be renewed.

Motion denied.

ECLAUBERT *v.* APPLETON *et al.*

(Circuit Court, S. D. New York. November 2, 1891.)

PATENTS FOR INVENTIONS—INFRINGEMENT—PLEADING—SCANDALOUS ANSWER.

In a suit for infringement of a patent, an answer which alleges that complainant's patent was obtained by trick, artifice, and deception, and without the knowledge of the commissioner, after a judgment in defendant's favor in interference proceedings concerning the same invention, is not scandalous or impertinent, since Rev. St. U. S. § 4920, authorizes the defense that the patentee "had surreptitiously or unjustly obtained the patent for that which was in fact the invention of another, who was using reasonable diligence in adapting and perfecting the same."

In Equity. Bill for infringement of patent. On exceptions to answer.

Francis Forbes, for complainant.

Church & Church, for defendants.

COXE, J. The answer alleges that one Hofmann was the first inventor of the improvement covered by the complainant's patent, and that the defendants are the owners of a patent granted to Hofmann after a decision by the commissioner in his favor, and against the complainant. The portions of the answer excepted to describe in detail the interference proceedings between Hofmann and complainant, the final judgment in Hofmann's favor and the granting of the patent to the defendants, as his assignees. The answer further alleges that, pending the interference proceedings, the complainant by trick, artifice, and deception, and without the knowledge of the commissioner, obtained another patent—the one in suit—for the identical subject-matter involved in the interference proceedings. In short, it alleges that the complainant has obtained by deception a patent for an invention which the patent-office has adjudged to belong to the defendants. The exceptions proceed upon the theory that the allegations which describe the interference proceedings are scandalous and impertinent. This position is not well founded. One of the defenses permitted by section 4920 is:

"That he [the patentee] had surreptitiously or unjustly obtained the patent for that which was in fact invented by another, who was using reasonable diligence in adapting and perfecting the same."

The defendants rely upon the facts surrounding the interference proceedings to establish this defense. They cannot prove these facts without alleging them. The exceptions are overruled.

CONSOLIDATED BRAKE-SHOE Co. *et al.* v. DETROIT STEEL & SPRING Co. *et al.*

(Circuit Court, E. D. Michigan. May 26, 1890.)

1. PATENTS FOR INVENTIONS—INVENTION—ACQUIESCENCE.

Letters patent No. 292,861, issued February 5, 1884, to George B. Ross, for a railway brake-shoe, adapted to get its friction from those parts of the wheel not worn by the rail, and constructed with two grooves, one closely embracing the flange of the wheel, and reaching down on the inner face thereof, in a lug which presses against the tread at the base of the flange, the other being about the width of the tread of the rail, thus relieving this portion of the wheel from wear, possesses patentable invention over the English patent of May 11, 1875, to James Steel, for a shoe possessing substantially the same features, except that the lug of the flange groove came only part way down the flange, and did not bear on the tread at the base thereof, since the Ross patent has been acquiesced in by most of the railroads in this country, and the shoe adopted after attempts by some of them to use the Steel shoe, which was found unsuccessful by reason of wearing a groove in the flange.

2. SAME—INFRINGEMENT—SUFFICIENCY OF BILL.

Where a bill for infringement of a patent alleges that the patentee "became and was, as your orators now believe, the original and first inventor of certain new and useful improvements," and is sworn to by three of complainant's agents, this is a sufficient showing that the patentee was the original inventor to sustain the suit, and no affidavits to that effect are required.

3. SAME—AVERMENTS OF BILL—PRIOR USE AND SALE.

In a bill for infringement of a patent, an averment that the improvement claimed was not in public use or sale in this country, with the patentee's "consent and allowance," more than two years prior to his application, is insufficient to show his right to a patent, under the unqualified requirement of Rev. St. U. S. § 4886.

In Equity. Bill for infringement of patent. On motion for an injunction.

This was a bill in equity to recover damages for the infringement of letters patent No. 292,861, issued February 5, 1884, to George B. Ross for a railway brake-shoe. The object of the invention is stated to be "to avoid the unequal wearing of the wheels by the track, or, more correctly, to cause them to wear more evenly, and thereby avoid the necessity of sending them so often to the shop to be turned up in the lathe." This is accomplished by two grooves, one of which is arranged lengthwise of the shoe, and made to embrace and closely fit the flange of the wheel. The second groove is made about the width of the tread of the rail, and takes off the wear of the brake from that portion of the wheel which is worn by the track. "Between the grooves is a rib which forms a portion of one side of the flange groove, and projects down to reach that portion of the wheel not worn much by the track." The shoe is adapted "to get its friction surface from the portions of the tread of the wheel which are not engaged by or brought in contact with the rail, thereby avoiding the additional wear put upon tires and wheels, as in the ordinary use of the common brake-shoe." The claim is for "a brake-shoe provided with the grooves, *a*¹, *a*², and the wearing projection, *c*, *c*¹, the portion or rib, *C*, projecting down to the wheel, substantially as and for the purposes specified." That the defendant infringes by manufacturing shoes in accordance with complainant's patent for the Chicago, Burlington & Quincy Railroad Company is admitted by the answer.

J. H. Raymond and *Wm. A. Redding*, for complainant.