for the proposition that complainant's performance is a dramatic composition, within the meaning of the copyright act. It is essential to such a composition that it should tell some story. The plot may be simple. It may be but the narrative or representation of a single transaction; but it must repeat or mimic some action, speech, emotion, passion, or character, real or imaginary. And when it does, it is the ideas thus expressed which become subject of copyright. An examination of the description of complainant's dance, as filed for copyright, shows that the end sought for and accomplished was solely the devising of a series of graceful movements, combined with an attractive arrangement of drapery, lights, and shadows, telling no story, portraying no character, depicting no emotion. The merely mechanical movements by which effects are produced on the stage are not subjects of copyright where they convey no ideas whose arrangement makes up a dramatic composition. Surely, those described and practiced here convey, and were devised to convey, to the spectator, no other idea than that a comely woman is illustrating the poetry of motion in a singularly graceful fashion. Such an idea may be pleasing, but it can hardly be called dramatic. Motion for preliminary injunction denied.

AMERICAN SOLID LEATHER BUTTON CO. *v.* EMPIRE STATE NAIL CO.

(*Circuit Court, S. D. New York.* April 22, 1892.)

PROCESS PATENT—BILL FOR INFRINGEMENT—DEMURRER.

A bill which sets forth a patent for a "process" of making furniture nails, and then alleges that defendant, "in infringement of the aforesaid letters patent," did wrongfully "make, use, and vend to others to be used, furniture nails embracing the improvement set forth and claimed" in said patent, is demurrable for want of a sufficient allegation of infringement of the process.

In Equity. Suit for infringement of letters patent No. 270,239, issued January 9, 1883, to J. Wilson McCrillis, for an "improvement in the process of manufacturing furniture nails and analogous articles." Heard on demurrer to the bill. Demurrer sustained.

The bill, after alleging the issuance of the patent, averred "that defendant, well knowing the premises and the rights" secured to your orator as aforesaid, but contriving to injure your orator, and to deprive it of the benefits and advantages which might and otherwise would accrue from said inventions, * * * did, * * * in violation of its rights, and in infringement of the aforesaid letters patent No. 270,239, unlawfully and wrongfully, and in defiance of the rights of your orator, make, use, and vend to others to be used, furniture nails embracing * * * the improvement set forth and claimed in the aforesaid letters patent No. 270,239." The bill prays that the defendant may be compelled to account for and pay to your orator the income thus unlawfully derived from the violation of the rights of your orator,

as above, as well as the damages therefor, and be restrained from any further violation of said rights. "Your orator prays that your honors may grant the writ of injunction restraining the defendant * * * from any construction, sale, or use in any manner of * * * furniture nails, * * * in violation of the rights of your orator, as aforesaid, * * * and also that your honors * * * may assess, in addition to the gains and profit, * * * the damages your orator has sustained by reason of said infringement." The bill contains a prayer for all other relief that it may be righteous, in the premises, to administer.

Witter & Kenyon, (*Alan D. Kenyon*, of counsel,) in support of the demurrer.

The patent is for a process of manufacturing furniture nails. Nowhere is it alleged in the bill that the defendant uses or has used this process. The bill simply alleges that defendant has made, used, and sold certain furniture nails. The patent being for a process, and not for a product, the use or sale of the product (furniture nails) is, of course, not an infringement. *Merrill* v. *Yeomans*, 94 U. S. 568–574; *Ditmar* v. *Rix*, 1 Fed. Rep. 342.

Nor is the making of furniture nails, even of exactly the same kind as that made by the patented process, unless all the steps of the process are used. *Hammerschlag* v. *Garrett*, 10 Fed. Rep. 479; *Dittmar* v. *Rix*, 1 Fed. Rep. 342; *Fermentation Co.* v. *Maus*, 20 Fed. Rep. 725.

Rowland Cox, opposed.

A general charge of infringement is sufficient. *McCoy* v. *Nelson*, 121 U. S. 486, 7 Sup. Ct. Rep. 1000; *American Bell Tel. Co.* v. *Southern Tel. Co.*, 34 Fed. Rep. 804. In the latter case, there was a general charge of infringement of a patent "covering both a process and an apparatus." The court overruled the demurrer, citing numerous cases, (which see,) including *McCoy* v. *Nelson*, *supra*. In *Haven* v. *Brown*, 6 Fish. Pat. Cas. 414, Mr. Justice SWAYNE states the rule as follows: "The bill merely declares * * * that the patent is for an improvement in bedstead fastenings, and in the same general terms it alleges infringement." He then proceeds to say that "upon the general principles of equity pleading the bill would be bad;" but he overruled the demurrer, adding: "The form of the bill in the present case rests upon a foundation too deep to be disturbed. We therefore feel bound to hold that the demurrer must, on authority, though not on principle, be overruled." In numerous other cases the same doctrine is referred to as one that cannot be disturbed. 3 Rob. Pat. p. 430.

If there were here any doubt, it would be cured by the profert of the patent plus the allegation that it has been infringed.

WALLACE, Circuit Judge. The demurrer is sustained because the bill does not contain any sufficient averment of infringement by the defendant of the process of complainant's patent. Bill may be amended upon payment of costs.

STEAM GAUGE & LANTERN CO. v. WILLIAMS.

(Circuit Court of Appeals, Second Circuit. July 20, 1892.)

1. PATENTS FOR INVENTIONS—LIMITATION OF CLAIM—PRIOR ART—HEADLIGHTS.
Claim 1 of letters patent No. 262,169, issued August 1, 1882, to Edward Wilhelm, for an improved locomotive headlight, covers "a reflector provided with an opening behind the burner, whereby light is emitted backwardly into the headlight case for illuminating signal plates or lenses applied to said case, substantially as described." *Held* that, in view of the pre-existing headlights, the claim must be limited to a reflector having an opening near its apex separate from the burner hole or chimney hole of those devices.

2. SAME—INFRINGEMENT.
Claim 2, which covers a combination of "a reflector constructed with an opening behind the burner, and an auxiliary reflector, whereby the light emitted backwardly through such opening is directed towards the signal plates or lenses," must be limited to a combination of the reflector of the first claim, with its improved opening and an auxiliary reflector, and is not infringed by a reflector with any opening behind the burner and an auxiliary reflector. 42 Fed. Rep. 843, affirmed.

Appeal from the Circuit Court of the United States for the Northern District of New York.

In Equity. Bill by the Steam Gauge & Lantern Company against Irvin A. Williams for infringement of patent. Decree dismissing the bill. Complainant appeals. Affirmed.

Albert H. Walker, for complainant.

Edmund Wetmore, for defendant.

Before LACOMBE and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. This is an appeal from the decree of the circuit court for the northern district of New York, which dismissed the complainant's bill in equity, founded upon the alleged infringement of letters patent No. 262,169, dated August 1, 1882, to Edward Wilhelm, for an improved locomotive headlight. The invention related to "an improvement in that class of headlights which are provided with signal plates or lenses in the sides of the headlight case," and its object was to illuminate such plates, so that the letters thereon could be easily observed at night. The patentee says in his specification that these plates had been illuminated in various ways, "either by direct light thrown upon the signal plates through openings in the reflector on both sides of the lamp, or by the light which is emitted through the chimney opening of the reflector, and which diffuses itself in the upper portion of the headlight case, and also by light reflected backwardly from the front end of the headlight case." He further says that his invention consisted "in constructing the reflector with an opening at or near its apex behind the lamp, whereby light is emitted backwardly into the headlight case, where it diffuses itself, and may be utilized for illuminating the signal plates or lenses applied to the headlight case; also in providing such case and reflector with an auxiliary reflector, which deflects the light emitted backwardly through the openings in the main reflector, and directs such light upon the signals which are desired to be illuminated." The two claims of the patent are as follows: