

The bill further alleges that the defendant is infringing said patent, and asks for an injunction and damages. The defendant demurred to the complainant's bill.

Lysander Hill, for plaintiff.

John M. Thatcher and Davis, Kellogg & Severance, for defendant.

BLODGETT, District Judge, (*orally*.) I cannot see any ground on which to sustain this patent. It is void for want of invention. The guarantying of men's financial ability to pay is not an invention of the complainant. Nearly all forms of guarantying or insuring have been in existence for many years, notably fidelity, casualty, fire, lightning, and other forms of insurance, all of which are based upon averages obtained from practical experience. It required no inventive genius to form and plan the insurance on this basis. One is not entitled to a patent for a plan or method of business which only requires good judgment and foresight. In this case ordinary business judgment would suggest this system of guarantying. Again, the means for securing merchants and others against excessive losses is stated to consist of a sheet of paper containing ruled lines and certain tabulated information or statistics. It is evident that the means for securing the merchant is by virtue of a contract or agreement whereby the assured guaranties the merchant against loss. The arrangement of a sheet of paper with ruled lines for tabulating information is not new. That statistics and various kinds of information have always been tabulated in a similar manner is a matter of general knowledge. I do not intend to decide that a man may not have a patent for a mode of keeping accounts, or for a form of tabulating amounts or statistics; but am clearly of opinion that this patent cannot be construed to cover a business principle such as a law of averages, which seems to have been the purpose of the specifications in this patent.

After the foregoing opinion was delivered, and before any formal order was entered, the complainant dismissed its bill of complaint.

HENZEL v. CALIFORNIA ELECTRICAL WORKS.

(*Circuit Court of Appeals, Ninth Circuit. July 18, 1892.*)

I. PATENTS FOR INVENTIONS—CONSTRUCTION OF CLAIM—ELECTRIC-LIGHTING GAS-BURNERS.

In letters patent No. 280,590, issued July 27, 1886, to George F. Pinkham, as assignee of Jacob P. Tirrell, the claim is for, "in an electric-lighting gas-burner, a magnet for turning the gas cock by one electric impulse, combined with a fixed electrode, *a'*, and a movable electrode, *c'*, normally in contact, and mechanism connecting the armature with the movable electrode, to break the contact between *a'* and *c'* the instant after the gas is turned on, and create a spark for ignition, substantially as described." In the drawings, *a'* designated a platinum point on the fixed arm, and *c'* a small bent arm normally in contact with the fixed electrode. *Held*, that the word "electrode" generally, and especially as used in the patent, means the platinum or other metal points constituting the poles of the circuit. 43 Fed. Rep. 375, affirmed.

2. SAME—INFRINGEMENT.

The mechanism being otherwise substantially the same, the fact that defendant's apparatus has a horizontal armature, which moves in a vertical direction, while the patented apparatus has a vertical armature, which moves in a horizontal direction, does not prevent infringement. 48 Fed. Rep. 375, affirmed.

3. SAME—PAST INFRINGEMENTS—EQUITY JURISDICTION.

When a patent has been assigned, together with all claims for past infringements, the fact that a person sued by the assignee has not sold any of the infringing articles since the assignment, and testifies that he intends to sell no more, is not sufficient to exclude equitable jurisdiction, when it appears that he still has them in stock, and has published a catalogue offering them for sale, and that in his answer he asserts a right to sell them. 43 Fed. Rep. 375, affirmed.

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

In Equity. Suit by the California Electrical Works against George L. Henzel for infringement of letters patent No. 230,590, issued July 27, 1886, to George F. Pinkham, as assignee of Jacob P. Tirrell, for an electric gas-lighting apparatus. Decree for injunction and accounting. See 48 Fed. Rep. 375, where a full statement of the facts will be found in the opinion delivered by HAWLEY, J. Defendant appeals. Affirmed.

M. A. Wheaton, I. M. Kalloch, and F. J. Kierce, for appellant.

John H. Miller and J. P. Langhorne, for appellee.

Before McKENNA and GILBERT, Circuit Judges.

McKENNA, Circuit Judge. The facts in this case justified an injunction and the equitable jurisdiction of the court. The contending devices are for lighting and extinguishing gas by "one impulse," through the agency of electricity. We think the defendant's device is an infringing imitation of claimant's device. The substantial resemblances in structure and friction were clearly delineated by the learned judge who tried the case in the circuit court, and we concur in his reasoning and conclusions. Judgment is affirmed.

MARSHALL v. PACKARD *et al.*

(Circuit Court, D. Massachusetts. August 29, 1892.)

No. 2,875.

PATENTS FOR INVENTIONS—TRIVIAL IMPROVEMENTS—BOOTS AND SHOES.

Letters patent No. 340,135, issued April 20, 1886, to Howard T. Marshall for improvements in boots and shoes designed more particularly for playing lawn tennis, claim substantially (1) a continuous rubber sole with projections at the heel and tread, all molded from a single blank; and (2) the same features, with the addition that the projections shall be conoidal and arranged in regular order. *Held*, that the improvement is of a trivial and unpatentable character.

In Equity. Bill by Howard T. Marshall against Fred Packard and others for infringement of letters patent No. 340,135, issued April 20, 1886, to complainant. The invention relates to boots and shoes "more