

**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.

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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

particularly designed for use in playing lawn tennis, although capable of use for other purposes." Bill dismissed.

The claims of the patent are as follows:

"(1) A boot or shoe having an outer sole permanently secured to the upper and inner sole, and its outer or treading surface made of india rubber or any of its compounds, and provided with independent projections integral with said rubber, and severally separated from each other, and with the surface of the sole exposed between and around them, substantially as described, and for the purpose specified."

"(2) A boot or shoe having an outer sole permanently secured to the upper and inner sole, and its outer or treading surface made of india rubber or any of its compounds, and provided with independent projections integral with said rubber of conoidal and in planes parallel with said outer surface of circular or substantially circular form, and severally separated from each other, and with the surface of the sole exposed between and around them, substantially as described, and for the purpose specified."

*Maynard & Beach*, for complainant.

*Bentley & Blodgett*, for defendants.

PUTNAM, Circuit Judge. The claims in this patent are not restricted to boots or shoes for any designated uses; nor does any technical limitation appear in the specifications without which the claims could not be understood, although they state that the alleged invention relates more particularly to shoes for playing lawn tennis. Stripped of all verbiage, the first claim, as properly construed in connection with the specifications, is for a continuous rubber sole with projections at the heel and tread, all molded from a single blank. The second claim adds to the first that the projections shall be conoidal, and arranged in certain regular order. Whatever there is more than this appears to be mere sound. The only advantages claimed by the patentee are that these projections, "especially in playing lawn tennis and like games," "act to secure a most firm and close footing of the boot or shoe upon the ground or floor;" that they thus "tend to obviate the liability or danger of the wearer slipping;" and that the peculiar form and arrangement of the projections present a "much neater appearance than they would if they were of a square, triangular, or lozenge shape in similar planes," and also give an "increased serviceability and durability."

The court listened to the oral arguments, and has read carefully complainant's brief, for the purpose of ascertaining what there is in any of this beyond the most trivial detail, but without result. The point of want of patentability is taken by the defense, and I think it must prevail. There have been of late so many decisions of the supreme court against patents for trivial improvements that it is not necessary to refer to any of them, and merely because of its peculiar aptness I cite *Burt v. Ivory*, 133 U. S. 349, 10 Sup. Ct. Rep. 394.

Bill dismissed, with costs for defendants.

WATSON v. STEVENS *et al.*

(Circuit Court of Appeals, First Circuit. September 6, 1892.)

## 1. PATENTS FOR INVENTIONS—ANTICIPATION—SHANK STIFFENER MACHINES.

In letters patent No. 367,484, issued August 2, 1887, to Jeremiah M. Watson, claim 1 is for a machine for compressing shank stiffeners, having "two rotating die or compressing rollers, the meeting faces of which are formed to present a recess, having one straight and one curved face or side, to thereby curve transversely one face of the stiffener," etc. Claim 6 is for a method of finishing the edges of shank stiffeners, consisting "in cutting out a blank from a sheet of material, leaving the same with beveled edges and obtuse-angled corners, and thereafter passing the same between rolls having dies with rounded edges or margins, in order to round the obtuse angles and beveled portions as cut." *Held*, that the patent was not anticipated by either the "calendering process machine" of the American Shoe Shank Company or the Blake or Tripp machines.

## 2. SAME—INVENTION—EQUIVALENTS.

In view of the fact that the patented machine is the only one thus far discovered operating with efficiency, rapidity, and economy, and of the other circumstances stated in the opinion, it cannot be held that the patent is void for want of invention over the prior machines having reciprocating instead of rotating dies, although ordinarily the one is only the mechanical equivalent of the other. 47 Fed. Rep. 117, reversed. *Loom Co. v. Higgins*, 105 U. S. 580, applied.

Appeal from the Circuit Court of the United States for the District of Massachusetts.

In Equity. Bill by Jeremiah M. Watson against George H. Stevens and others for infringement of letters patent No. 367,484, issued August 2, 1887, to the complainant for the "method" of, and apparatus for, compressing shank stiffeners. The circuit held that the alleged invention consisted only of the mechanical adaptation of well-known machines and processes to a new use, and dismissed the bill. 47 Fed. Rep. 117. Complainant appeals. Reversed.

In his specifications the patentee makes the following statements:

"Shank stiffeners, as now commonly made, are cut from leather or leather board or equivalent material, so as to leave beveled edges; but previous to applying the same to a boot or shoe it is customary to somewhat shave off or curve the beveled edges at each side of the stiffener, and also to impart a longitudinal curve to the stiffener. This invention has for its object to devise a method of and apparatus for rounding off or curving the beveled edges of the shank stiffeners, and also to give to the same a longitudinal curve before applying the same to a last or shoe. In carrying out this invention a shank stiffener of suitable shape, cut from a sheet of leather board or other material, so as to leave its sides and one end to present beveled edges, the bevel of the edges occupying such relation to the plain surface of the material as to form obtuse-angled corners, and thereafter the blank so formed is subjected to the action of compressing or die rollers, one of which is cut away or recessed to conform in cross section to the shape it is desired to give to the stiffener, the second roll acting to force the stiffener into the said recessed or cut-away part of the other roller, so as to cause the said beveled edges and obtuse-angled corners to be broken down into a round or curve, as will be described. The machine herein shown has two rotating die or compressing rollers, combined with feeding devices for feeding the shank stiffeners to the die or compressing rollers. The parts are all preferably made adjustable, and, if desired for different-sized shank stiffeners, the recessed roller may be removed, and another substituted for it having a recess of a different size or