"A machine for beating out the soles of boots and shoes, provided with two jacks, two molds, and means, substantially as described, having provision for automatically moving one jack in one direction while the other is being moved in the opposite direction, whereby the sole of the shoe upon one jack will be under pressure, while the other jack will be in a convenient position for the removal of the shoe therefrom."

There is no doubt that the defendants' machine contains all the mechanical elements embraced in the above claim. The fact that the defendants use lasts instead of jacks in their machines is unimportant, because they are well-known equivalents. Upon the question of alleged prior use of the Cutcheon invention several years before the date of the patent, in a single machine constructed mainly in accordance with the Bresnahan patent of June 10, 1884, I am satisfied that this defense has not been made out upon the present record.

The defendants are also charged with infringing the third claim of the patent in suit, which relates to certain details of construction. This claim seems to have been anticipated by the old style Knox molder, but the defendants have not proved the use of the old Knox machine prior to the date of the Cutcheon patent. Upon the evidence, therefore, I must hold that this claim is also infringed. Decree for complainants.

SMITH & DAVIS MANUF'G CO. *v.* MELLON.

(Circuit Court, E. D. Missouri, E. D. June 1, 1892.)

PATENTS FOR INVENTIONS—PUBLIC USE—BED BOTTOMS.

Letters patent No. 269,242, issued December 19, 1882, to J. G. Smith for an improvement in bed bottoms, are void because bed bottoms having all the material elements of the invention were in public use and on sale for more than two years prior to the application.

In Equity. Bill by the Smith & Davis Manufacturing Company against Mellon for infringement of letters patent No. 269,242, issued December 19, 1882, to John G. Smith for an improvement in bed bottoms. Bill dismissed.

William M. Eccles, for complainant.

George H. Knight, for defendant.

THAYER, District Judge, (*orally.*) In view of the testimony the court is of the opinion that the invention covered by letters patent No. 269,242 was in public use and on sale for more than two years prior to the date of the application for the patent, and that the patent is for that reason void. *Smith Co.* v. *Sprague*, 123 U. S. 249, 8 Sup. Ct. Rep. 122; *Egbert* v. *Lippmann*, 104 U. S. 333; *Manning* v. *Glue Co.*, 108 U. S. 462, 2 Sup. Ct. Rep. 860; *Andrews* v. *Hovey*, 123 U. S. 267, 8 Sup. Ct. Rep. 101. It hardly admits of a doubt that complainant made and sold wire bed bottoms which embodied all of the material features or elements of the

invention for a period of more than two years prior to October 14, 1882, and that it did so not as an experiment, but for the purpose of realizing a profit.

The closing of the head of the spiral springs by passing the top wire around the second before extending it to form a hook cannot be regarded, under the specifications, as a material feature of the invention. That is merely a preferable mode of construction. The patentee would be entitled to claim (and no doubt would claim if there was occasion to do so) that the use of a spring with an open head was an infringement of his patent as well as the use of a spring with a closed head. Bed bottoms embracing all of the material elements of the invention having been in public use and on sale for more than two years prior to the application, the patent is void, and the bill must be dismissed.

LORING *v.* BOOTH *et al.*

(Circuit Court, N. D. New York. October 11, 1892.)

No. 6,001.

1. PATENTS FOR INVENTIONS—ASSIGNMENT—INFRINGEMENT BY PATENTEE.
   A patentee assigned all his interest in a patent, agreeing not to manufacture or sell the patented machine or make any improvement thereon which would adapt it to any other kind of work. Subsequently the assignee sued him for infringement in making an improvement on the machine. *Held*, on motion for preliminary injunction, that in the light of the above contract, although the suit was not based thereon, the patentee was not in so favorable a position before a court of equity as one who infringes ignorantly or inadvertently, and that the patent should be construed liberally as against him.
2. SAME—INFRINGEMENT—NOTICE TO DESIST—LACHES.
   The defendants were notified to desist from infringement about eight months after knowledge thereof came to the plaintiff, and suit was begun within four months thereafter. *Held*, that under the circumstances the delay did not constitute laches.

In Equity. Bill by Charles M. Loring against Quentin W. Booth and Irving E. Booth for infringement of patent. On motion for preliminary injunction. Order for injunction unless defendants give bond.

George B. Selden, for complainant.

Howard L. Osgood, for defendants.

COXE, District Judge. The bill is in the usual form, alleging infringement of two letters patent, numbered respectively 318,731 and 344,435, for improvements in shoe-upper machines. The validity of both patents is undisputed. The defendants oppose the motion upon two principal grounds—noninfringement and laches. The question of infringement of the third claim of the patent granted to Charles B. Hatfield, No. 318,731, was decided at the argument. The device which the complainant produces as a sample of the defendants' manufacture certainly infringes when the irons are stationary, but it is thought this condi-