

printed publication prior to the invention. Complainant then moved for leave to file an amended bill supplying these omissions. *Held*, that such a bill was not a new bill, and that defendant was not entitled, as a condition of allowing the same to be filed, to have his demurrer sustained as on final hearing, but the filing would be allowed on payment of defendant's reasonable costs, without passing upon the demurrer.

In Equity. Suit by the Edison Electric Light Company against the Mather Electric Company for infringement of a patent. On motion for leave to file an amended bill. Granted.

Dyer & Seeley, for complainant.
West & Fairfax, for defendant.

TOWNSEND, District Judge. Defendant demurred to the original bill because it failed to allege a written assignment of patent to complainant, and that it had not been patented or described in any printed publication prior to the invention. Complainant thereupon moved for leave to file an amended bill. Defendant claims that, if complainant is given leave to amend, his demurrer to the original bill should be sustained as on a final hearing. He cites no precedent or authority for this course, but claims that the amended bill is virtually a new bill. I do not find any material difference between the original and amended bills, except that in the latter the omissions above stated have been inserted. The motion is granted upon condition that complainant pay to defendant the probable disbursements to which it has been subjected by reason of the amendment, say \$10, and with leave to defendant to file a pleading to the same on the next rule day. As I understand it not to be the practice in granting such a motion to pass upon the demurrer, I decline to make any order thereon, and deny defendant's motion for \$20 costs for attorney's docket fee as on final decree.

BALL GLOVE FASTENING CO. v. BALL & SOCKET FASTENER CO.

(Circuit Court, D. Massachusetts. December, 1892.)

No. 2514.

PATENTS FOR INVENTIONS—INFRINGEMENT—ACCOUNTING—MASTER'S FINDINGS.

In a suit for infringement of the Kraetzer patents, No. 290,067, and No. 306,021, for glove fasteners, the court held that the first claim of the former and the fourth claim of the latter were infringed by the "Mead solid-ball" fastener, and accordingly ordered an injunction and accounting. The master found that the "Mead hollow-ball" fastener was included in the decree, as being only colorably different from the solid-ball fastener. *Held*, that the finding should not be disturbed, the only difference being that in the solid-ball fastener the connecting shank goes down through the upper plate and the material, and is upset underneath the lower plate, on the underside of the material, while in the former the connecting shank goes up through the lower plate, material, and upper plate, and is upset or compressed in the hollow ball.

In Equity. Bill by the Ball Glove Fastening Company against the Ball & Socket Fastener Company for infringement of the Kraetzer patents, No. 290,067 and No. 306,021, for improvements in glove fast-

eners. An injunction was heretofore granted. 36 Fed. Rep. 309. Subsequently the court entered a decree for complainant, and an accounting was ordered. 39 Fed. Rep. 790. The cause is now heard on exceptions to the master's report. Overruled and report confirmed.

William B. H. Dowse, for complainant.
Thos. Wm. Clarke, for defendant.

COLT, Circuit Judge. This case now comes before the court upon exceptions taken by the defendant to the master's report.

As to the first exception, which relates to the question of jurisdiction, I have nothing to add to what is said by the court in the opinion in this case on motion for injunction. 36 Fed. Rep. 309.

The remaining exceptions relate to the Mead hollow-ball fastener, and the question is whether this fastener comes within the terms of the decree. This court has decreed that the Mead solid-ball fastener is an infringement of the second claim of the first, and the fourth claim of the second, Kraetzer patents. 36 Fed. Rep. 309. The master found the Mead fastener with a hollow ball to be identical in principle and appearance with the Mead solid-ball fastener, the difference being merely in construction; and he declined to enter into the prior state of the art, or to specifically compare the hollow-ball fastener with the claims of the Kraetzer patents, or to permit the introduction of testimony relative to the merits of the hollow-ball fastener. These devices relate solely to the button member of a fastener. In the solid-ball fastener, the connecting shank goes down through the upper plate and the material, and is upset underneath the lower plate, on the underside of the material; while in the hollow-ball fastener the connecting shank goes up through the lower plate, material, and upper plate, and is upset or compressed in the hollow ball. Upon a comparison of these two structures, I agree in the conclusion reached by the master. In the opinion referred to, the court said:

"The Kraetzer patents should not be limited to the exact forms found described in the specifications; and the defendant should not be permitted to escape by making colorable or immaterial changes in construction, while retaining all the vital parts of Kraetzer's improvements."

It is evident that the master, upon examination, considered that the difference between the solid-ball and the hollow-ball fasteners was merely colorable, and he therefore concluded that the hollow-ball structure was within the opinion and decree of the court, and that it was therefore unnecessary and, perhaps, improper, for him to go any further. I can see no sufficient reason for changing the master's findings. The exceptions are overruled, and the master's report confirmed.

DICKERSON v. GREENE et al.

(Circuit Court, D. Rhode Island. November 17, 1892.)

No. 2,362.

PATENTS FOR INVENTIONS—PLEADING—PROFERT OF PATENT.

A bill for infringement alleged that "on the 30th day of October, 1888, letters patent of the United States numbered No. 391,875 * * * were issued, * * * as by a certified copy of said letters patent in court to be produced will more fully appear." *Held*, that this was sufficient profert of the patent to make the same a part of the bill. *Bogart v. Hinds*, 25 Fed. Rep. 484, and *American Bell Tel. Co. v. Southern Tel. Co.*, 34 Fed. Rep. 803, followed.

In Equity. Suit by Edward N. Dickerson against William R. Greene and another for infringement of a patent. On demurrer to the bill. Overruled.

Statement by CARPENTER, District Judge:

This is a bill in equity to enjoin an alleged infringement of letters patent for an invention. The bill alleges that "on the 30th day of October, 1888, letters patent of the United States numbered No. 391,875 * * * were issued, * * * as by a certified copy of said letters patent in court to be produced will more fully appear." The respondents demur because the complainant "has nowhere set forth what the 'medical compound' is, the alleged sale of which by said respondents he claims to be an infringement."

Cowen, Dickerson, Nicoll & Brown, for complainant.

David S. Baker, Jr., and William C. Baker, for respondents.

CARPENTER, District Judge. The respondents, in support of their demurrer, argue that the bill should set out the nature of the patented invention, or at least should make the specification of the letters patent a part of the bill in express words. But it seems to be settled, at least in the practice of the federal courts, that profert of an instrument, such as this bill makes, is sufficient to make such instrument a part of the bill. *Bogart v. Hinds*, 25 Fed. Rep. 484; *American Bell Tel. Co. v. Southern Tel. Co.*, 34 Fed. Rep. 803. This demurrer must therefore be overruled, and the respondents ordered to answer over.

OVERMAN WHEEL CO. et al. v. CURTIS.

(Circuit Court, D. Connecticut. October 17, 1892.)

1. PATENTS FOR INVENTIONS—SUIT FOR INFRINGEMENT—ADJUDICATIONS IN OTHER CIRCUITS.

The fact that the judiciary act of March 3, 1891, took away the appellate jurisdiction of the supreme court in patent cases, did not extinguish the doctrine of comity between circuit courts, so as to diminish the weight which should be given to a prior decision in another circuit in relation to the same patent. *American Paper Pail, etc., Co. v. National Folding Box, etc., Co.*, 51 Fed. Rep. 232, followed.

2. SAME—INVENTION—VELOCIPEDE PEDALS.

Claims 1 and 2 of letters patent No. 329,851, issued November 3, 1885, to Albert H. Overman, for an improvement in pedals for velocipedes,