

KNOX ROCK-BLASTING CO. v. DRAKE et al.

(Circuit Court, S. D. New York, December 31, 1890.)

No. 4,596.

PATENTS FOR INVENTIONS—VALIDITY—PRIOR USE.

Letters patent No. 291,606, issued January 8, 1884, to John L. L. Knox, for "an improvement in methods of and tools for blasting rocks," was not invalidated by any prior use of the invention therein described.

In Equity. Bill by the Knox Rock-Blasting Company against Drake and Stratton for infringement of a patent. Decree for complainant.

The bill charged defendants with infringement of letters patent No. 291,606, granted on January 8, 1884, to John L. L. Knox, for an improvement in methods of, and tools for, blasting rocks. Defendants alleged that the patent was invalid by reason of prior use of the invention by others. The claims of the patent, of which infringement was charged, are: "(1) The within-described method of blasting rock, whereby the alignment of the fractures upon the opposite sides of the bore is insured, which consists, essentially, in forming longitudinal grooves in the opposite sides of a cylindrical bore, said grooves having equal sides, and so situated as that a plane bisecting two opposite grooves will bisect the axis of the cylindrical bore, substantially as and for the purposes described. (2) The within-described instrument for cutting grooves in cylindrical blasting bores, said instrument having a hexagonal flat cutting face, two sides, c, parallel, and of the length and distance apart, equal to the sides of a square inscribed within the circle of the cylindrical bore to be operated upon, and cutting edges, a, of equal length, and so situated as that a line joining the points, b, will pass through a point equidistant from the ends of the sides, c, substantially as and for the purposes described."

W. Bakewell & Sons and Kerr & Curtis, for complainant.
Arthur C. Butts, for defendants.

WALLACE, Circuit Judge, (after stating the facts.) It is altogether unlikely that an invention which is so useful and meritorious as the one which is the subject of the patent in suit, and which, as soon as it was patented, and introduced to the notice of quarrymen, was so immediately and generally recognized as an extremely valuable one, would have made no mark, and slumbered in obscurity, if it had been known and used by intelligent quarrymen any considerable length of time before it was patented. The defense of prior use made by the evidence for the defendants is an unusually weak one, tested by the rules which apply to such a defense, and falls far short of the satisfactory demonstration which is required to overcome the presumption of novelty arising from the grant of letters patent. *American Bell Tel. Co. v. People's Tel. Co.*, 22 Blatchf. 531, 536, 22 Fed. Rep. 309. A decree is ordered for the complainant.

WANAMAKER v. ENTERPRISE MANUF'G CO.

(Circuit Court of Appeals, Third Circuit. January 27, 1893.)

No. 16.

1. PATENTS FOR INVENTIONS—COMITY BETWEEN CIRCUITS.

A circuit court should follow the decision of another circuit court upholding a patent, except when new evidence of invalidity is introduced, and in the latter event should confine its investigation to the additional evidence. *National Cash Register Co. v. American Cash Register Co.*, 53 Fed. Rep. 367, followed.

2. SAME—CIRCUIT COURT OF APPEALS.

The rule of comity between circuit courts in respect to decisions in patent cases does not apply to the circuit court of appeals, and the latter court will examine independently all the questions presented by the record.

3. SAME.

The first claim of letters patent No. 271,398, issued to John G. Baker, January 30, 1883, for improvements in mechanism for cutting up plastic or yielding substances, consisting of a machine in which the sole reliance for cutting is upon a knife or other cutting device, operating in conjunction with a perforated plate at the points of discharge from the casing, and in which there is no intentional disturbance of the substance to be cut other than to force it forward before it reaches the plate, is not invalid because of anticipation. 46 Fed. Rep. 854, affirmed. *Enterprise Manuf'g Co. v. Sargent*, 28 Fed. Rep. 185, and 34 Fed. Rep. 134, approved.

4. SAME—INFRINGEMENT.

This claim is infringed by a machine which contains all of the elements enumerated therein, although there is some unintentional disturbance caused by the forcing apparatus in the substance to be cut before it reaches the plate. 46 Fed. Rep. 854, affirmed.

Appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania.

In Equity. Bill by the Enterprise Manufacturing Company against John Wanamaker, as a seller of a meat-cutting device, for infringement of letters patent No. 271,398, issued January 30, 1883, to John G. Baker, for improvements in mechanism to cut up plastic or yielding substances. The circuit court found that the first claim was valid, and that defendant infringed the same, but that he did not infringe the second claim, and accordingly entered a decree for infringement of the first claim. See 46 Fed. Rep. 854. Defendant appeals. Affirmed.

The first claim of the patent reads as follows:

"The combination, in a machine for cutting up plastic or yielding substances, of the following instrumentalities, namely: First, a casing for containing the substances to be cut up; second, a perforated plate at or near the end of the casing; third, a device for forcing the crude mass forward in the casing and against the said plate without otherwise disturbing the integrity of the said mass; and, fourth, a knife operating against the inner face of the plate, and serving as the sole means, in connection with the said plate, of cutting up the mass by severing therefrom the portions which enter the perforations; all substantially as set forth."

In the opinion delivered by the circuit court it is said:

"The first claim is clearly and precisely stated. Its essential elements are the casing; the perforated plate; the forcing device, which drives the mass forward without otherwise disturbing its integrity; and the knife operating