

for objection; but, when that process is found not to be satisfactory, resort is had to the aluminium treatment, which is conducted in the same manner as when operating with scrap zinc. Therefore, nothing need be added with especial reference to this part of the defense. I have, upon the whole case, arrived at the conclusion that the method used by the defendants is substantially the same as that described and claimed in the patent in suit, and that they thereby accomplish a result which is substantially the same as that attained by the patented process, and that, therefore, infringement has been established.

The averment that this patent is invalid because, in view of the prior state of the art, it does not disclose any patentable invention, is absolutely without support. The patent granted to Anthony Pierce, Jr., upon September 6, 1864, is for treating impure zinc, but in a manner wholly different from that claimed by, and secured to, Richards, the grantor of the complainant; and the argument based upon the assumption that the product of the Richards process is but the old and well-known alloy of zinc and aluminium is fallacious, because, under the evidence, that assumption is clearly inadmissible.

A decree in favor of the plaintiff, for injunction and account, in the usual form, may be prepared and submitted.

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GRISWOLD MANUF'G CO. v. HARKER et al.

(Circuit Court, D. Minnesota, Fourth Division. June 5, 1893.)

PATENTS FOR INVENTIONS—INFRINGEMENT—WAFFLE IRONS.

The claims of letters patent No. 229,280, granted June 29, 1880, to Selden and Griswold, for an improvement in waffle irons, were as follows: "(1) In a waffle iron, the hinge upon which the pan opens provided with one of the journals or pivots on which the pan is rotated; (2) the journals or pivots on which the pan rotates, formed upon or connected, one with the hinge upon which the pan opens, and the other on the handle for rotating said pan." *Held*, that this is not infringed by letters patent No. 277,422, issued May 8, 1883, to Harker and Wilkins, in which one of the journals upon which the pan rotates is formed by elongated ears or lugs upon each section of the pan, through which a pin passes to hinge them together, and the divided handle on the side opposite forms the other journal upon which the pan rotates.

In Equity. Suit by the Griswold Manufacturing Company against John B. Harker & Co. for the infringement of a patent. Bill dismissed.

Barr & Catlin and J. C. Sturgeon, for complainant.  
Paul & Hawley, for defendants.

NELSON, District Judge. This is a suit brought by the complainant for an accounting and injunction by reason of an alleged infringement of letters patent No. 229,280, granted to Selden and Griswold, June 29, 1880, for improvements in waffle irons. It is charged that the defendants infringe the first and second claims

of the patent. The complainant company has by assignment all of the rights granted under the patent to Selden and Griswold. The claims charged to be infringed are:

"(1) In a waffle iron, the hinge upon which the pan opens provided with one of the journals or pivots on which the pan is rotated.

"(2) The journals or pivots on which the pan rotates, formed upon or connected, one with the hinge upon which the pan opens, and the other on the handle for rotating and opening said pan."

The specification of the patentee states that—

"In waffle irons, as ordinarily constructed, the hinge connecting the two parts of the pan has been made separate from the pivot on which the pan rotates, and been located at one side of the pan relatively to said pivot."

And then follows a description of the invention:

"Our improvement consists of a novel construction of the hinge connecting the two parts of the divided pan, whereby one of the pivots or journals upon which the pan rotates is made to form a part of said hinge, the hinge and pivot being thus brought together, while the opposite pivot or journal on which the pan rotates is formed on the divided handle, by means of which, also, either portion of the pan which, for the time being, is uppermost, is lifted for opening the pan. It further consists in a novel construction and arrangement of the socket in the rim or supporting ring for the reception of the hinge and pivot, whereby the tilting or dumping of the pan is prevented when the cover is raised, and in a novel manner of attaching the wooden handles. \* \* \*"

Then the details of the invention and its operation are described. If I understand the description, the hinge is formed by a combination of one of the journals on which the pan is rotated, and the usual lugs and ears upon each part of the divided pan, through which a pin passes for hinging the parts together. In order that this journal shall form a part of the hinge, a space is left between the inner adjacent ears for the insertion of a wedge-shaped, perforated block, D, called a "pivot block," conforming in size to the shape of the ears, and terminating between two lips on the parts of the divided pan, and through this block, also, the pin passes, thus uniting the pivot or journal block to the divided pan, and making it form a part of the hinge. A divided handle on the side opposite the pivot block when the parts are brought together forms the other journal upon which the pan is rotated. The supporting frame or ring is in the usual form, except it has an angular projection forming a bearing socket for the reception of the hinge.

The defendants make a waffle iron under letters patent No. 277,422, dated May 8, 1883, issued to Harker and Williams. One of the journals upon which the waffle iron rotates is formed by elongated ears or lugs upon each section of the pan, through which a pin passes to hinge them together, and the divided handle on the side opposite forms the other journal upon which the pan rotates. The only resemblance between the two waffle irons in this particular is that they both open in a plane parallel with the axis upon which they turn. The defendants use no such novel construction of hinge described in the complainant's patent. The patentee of complainant's waffle iron was not the first inventor of double or divided revolving cooking pans, griddles, or gridirons, to be placed

over the hole in the top of a cooking range. Utensils of this kind were in use long before his invention, and the state of the art shows that many of them opened in a plane parallel to the axis upon which they turned. Some of them have a hook on the end of one part of the divided journal, formed by a nob and a notch, to receive a corresponding hook to fasten them together, and to allow them to move when the two parts were opened. One was reversible, not revolving, but was provided with a square-heeled hinge on the side opposite the handle, so that the halves could be opened. All of them have a hinge joint, a device on which the divided parts turn, but not joined together.

The complainant's expert says the purpose of the invention involving the first and second claims was to construct a waffle iron that should open in a plane parallel with the axis on which the pan turns, and he says this was new and valuable; and he further says that the essence of the invention—the substantive feature—was bringing the hinge and the pivot or axis of the pan into a given line. He admits that bivalvous gridirons, revolving in their bearings by an arrangement similar to a waffle iron, were old, but that they were not hinged together, and were not waffle irons, except E. J. Smith's patent for cakes. These old divided griddles certainly opened in a plane parallel to the axis upon which the pan revolves, and, unless the complainant is entitled to claim all sorts of hinges joining the two parts of the griddle, under the invention of a novel construction of a hinge described in the specification, the defendants do not infringe. In view of the state of the art, and looking at the specification of the patent, the complainant is only entitled, in my opinion, to claim the peculiar combination and construction of a hinge formed with the journal and novel construction and arrangement of the socket described therein. The defendants do not use such novel construction of the hinge and socket described in the complainant's patent, and therefore do not infringe the claims as charged.

Decree dismissing the bill, with costs, is ordered.

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THE DANUBE.

UNITED STATES v. THE DANUBE et al.

(District Court, D. Oregon. May 12, 1893.)

No. 3,306.

SHIPPING—EMIGRANT PASSENGERS—CONTIGUOUS TERRITORY.

Under the act of congress of August 2, 1882, prohibiting the carrying of "emigrant passengers" from any port or place in a foreign country, except ports and places "in foreign territory contiguous to the United States," unless the spaces and accommodations therein mentioned be provided, Van ouver's island, B. C., is territory contiguous to the United States, and the transportation of passengers therefrom to Astoria, Or., is within the exception.

In Admiralty. Action by the United States against the steamship Danube and William Meyers, her master, for penalties for a