

the plane of the wheel, the boxes of one series alternating with the boxes of the other series, the wheel shaft keyed to the outer end of the wheel hub, passing through the spindle and lubricated by said boxes, that portion of the shaft on each side of the plane of the wheel being lubricated by its respective set of boxes, substantially as set forth."

These claims, both by reason of the prior art, and on account of the minute and numerous details of description used, are necessarily extremely narrow, and show invention, if at all, only in the specific forms of construction and combination described; and, this being so, the evidence does not show infringement, unless it be of the first and second claims of patent No. 362,870. If those claims are valid, it is conceded that they have been infringed. Their validity, however, is denied; and in view of patent No. 217,125, issued to C. Lohnes, and Nos. 233,178 and 244,968, issued to J. S. Adams, it is clear that they are void of invention. The only feature of novelty asserted for the first claim is that the spindle on which the wheel is mounted "projects about an equal distance on each side of the plane of the wheel," and, for the second claim, the novelty is supposed to be in "the tubular spindle \* \* \* having a bearing formed at its inner end of less diameter than the bore of the spindle." Neither of these things are new, and there was no invention in introducing them into the combinations described. It follows that the bill should be dismissed for want of equity.

C. P. Jacobs and V. H. Lockwood, for appellant.

R. S. Taylor, for appellees.

Before GRESHAM, Circuit Judge, and BUNN and JENKINS, District Judges.

PER CURIAM. The decree appealed from is affirmed upon the grounds stated in the opinion of the court below.

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PALMER et al. v. MILLS et al.

(Circuit Court, D. Connecticut. June 29, 1893.)

No. 728.

PATENTS FOR INVENTIONS — VALIDITY — PRELIMINARY INJUNCTION — QUILTING FABRICS.

Letters patent No. 308,981 and No. 308,982, issued December 9, 1884, to Frank L. Palmer, are for improvements for stitching comfortables by machinery. Owing to the commercial advantages given by these patents, complainants, who owned them, were enabled to practically command the entire business of this country in this kind of quilts. The validity of the patents had never been denied, except by one other party who, after suit brought for infringement, compromised the same, and has ever since paid a royalty. *Held*, that on an application for preliminary injunction, where infringement was plain, the patents would be presumed to be valid, and the injunction granted, unless defendants gave a sufficient bond to secure any damages decreed against them.

In Equity. Bill by Frank L. Palmer and others against Crefeld Mills and others for infringement of patents. On motion for preliminary injunction. Order allowing injunction unless bond be given.

E. H. Brown, for complainants.

J. E. Maynadier, for defendants.

TOWNSEND, District Judge. This is a motion for a preliminary injunction restraining the infringement of claims 14 and 24 of letters patent No. 308,981, and of claims 2, 3, 4, 12, and 15, of letters patent No. 308,982, granted to Frank L. Palmer, December 9, 1884, for sewing or quilting fabrics. The following facts appeared upon the hearing: The complainants' patents provide for a novel and useful mode of stitching comfortables by machinery. The commercial advantages of these improvements have enabled complainants to practically command the entire business of this country in this class of quilts. No one has heretofore disputed the validity of said patents, except the R. T. Palmer Company. Complainants brought suit against said company, and said suit was settled by the grant of a shop right in consideration of the payment of a royalty. Said agreement is still in force, and said royalty has been annually paid. A comparison of the machines of defendants with those of complainants shows them to be substantially the same. If the sewing machine of complainants' model, while in operation upon its quilt, be grasped and held fast, and the pattern be allowed to move, the model becomes the working model of defendants' machine, performing the same functions in the same way, with the same result.

The only vital question in the case is as to the validity of complainants' patents, in view of the prior state of the art. But, in view of the considerations already suggested, it seems that said patents should be assumed to be valid upon this hearing. As was said by Judge Lacombe in *Sessions v. Gould*, 49 Fed. Rep. 856:

"The contention that, in view of the prior state of the art, they do not disclose any patentable invention, is not sufficiently clear and convincing to overthrow the case made out by the patents themselves, and the public acquiescence in their validity. The defense of prior public use \* \* \* should not be disposed of on ex parte affidavits, but reserved for final hearing."

There is nothing in the case to show that complainants will not be sufficiently protected by a suitable bond. They have already granted to their only other competitor a license to make and use machines embodying the improvements claimed in said patents. One of the defendants, whose financial responsibility is unquestioned, has offered to give such bond as may be required for all damages, profits, and costs which may be decreed against either the individual defendants, or the defendant corporation. There can be no irreparable damage, in such a case, where the value of the royalty can be ascertained, provided the responsibility of defendants is guarantied.

Let an order be entered, granting a preliminary injunction, unless the defendants shall, within 10 days, file a satisfactory bond for \$10,000, conditioned for the payment of any final money decree which may be rendered in favor of complainants.

NATIONAL FOLDING BOX & PAPER CO. v. PHOENIX PAPER CO.,  
Limited, et al.

(Circuit Court, E. D. New York. May 18, 1893.)

1. PATENTS FOR INVENTIONS—INFRINGEMENT—PRIOR ADJUDICATIONS.

In a suit for infringement of a patent, where it appears that the courts of other circuits have already sustained the validity of the patent as against all the defenses now made save that of anticipation by reason of certain patents not before in evidence, and have also found that defendants infringed, the court will accept those decisions, and examine only the anticipation alleged.

2. SAME—VALIDITY—ANTICIPATION—PAPER BOXES.

Letters patent No. 171,866, issued January 4, 1876, to Reuben Ritter for an improvement in paper boxes, were not anticipated by prior inventions, and are valid.

In Equity. Suit by the National Folding Box & Paper Company against the Phoenix Paper Co., Limited, and others, for infringement of a patent. Decree for complainant.

Walter D. Edmonds, for complainant.

Billings & Cardozo, (R. B. McMaster, of counsel,) for defendants.

BENEDICT, District Judge. This is an action founded upon the second claim of letters patent No. 171,866, dated January 4, 1876, issued to Reuben Ritter, for an improvement in paper boxes. The patent has expired. The main defense in the case is a defect in title, although the defenses of lack of novelty in invention and noninfringement are set up in the answer. The patent has been several times examined by the courts of the United States, and the question of the validity of the patent has been passed upon by this court. See *Box Co. v. Nugent*, 41 Fed. Rep. 139; *National Folding Box & Paper Co. v. American Paper Pail & Box Co.*, 48 Fed. Rep. 913, 51 Fed. Rep. 229. Moreover, the infringement here complained of has been before the circuit court of New Jersey, and also before the circuit court of the southern district of New York. The question of title raised in this case has also been passed upon by the circuit court for the southern district of New York. *National Folding Box & Paper Co. v. American Paper Pail & Box Co.*, 55 Fed. Rep. 488. Under these circumstances, the only question open for consideration on this occasion is whether certain patents set up in this case, which were not set up in the former cases, can affect the decision. At the argument these patents were not seriously relied upon, as it seemed to me, and upon examination I find nothing in them which impugns the validity of the patent. In regard to the title of the complainant in the patent in question, my opinion coincides with that of Judge Coxe, who examined the question.

There must be a decree for the complainant for an accounting.