

parts are so bound together by the spindle which rests in the socketed step bearing that they act as one tube, the requirements of the claims would seem to be complied with. The testimony on the part of the complainant was to the effect that the two pieces of the Dady tube were so combined, by means of the spindle, that both the upper lateral bearing and the lower bearing of the spindle move with it in the same manner, substantially, as in the Hammond spindle, and that the parts move together laterally in all directions during the self-adjustment of the spindle. It cannot be said that there is an absolute unity of motion in the two bearings, because from the fact of severance absolute unity will not probably exist; but the complainant's testimony is to the effect that there is no substantial independent movement of the step bearing. This testimony was not denied or controverted by the defendant company, which showed no disposition to neglect any attackable point in the complainant's case. I therefore conclude that it could not be successfully attacked, and that the doubt which I expressed was not well founded.

Let there be a decree for the complainant for an injunction against the infringement of the second and third claims, and for an accounting.

INTERNATIONAL POSTAL SUPPLY CO. v. GROTH et al.

(Circuit Court, S. D. New York. September 15, 1893.)

PATENTS FOR INVENTIONS—INFRINGEMENT—STAMPING MACHINE.

Letters patent Nos. 341,380 and 388,366, for mail-stamping apparatus, consisting of a bolt or rollers carrying the mail matter, a piece at a time, under or opposite to the face of a stamp out of its path, and against a supporting bed, to be caught momentarily by fingers which are moved forward by it, forming an electric connection which moves the stamp against, and stamps, the piece, and releases it, to be carried along again by the carrier to a receptacle, are infringed by an apparatus which draws to the place of stamping by pneumatic tubes, where each piece, when still, releases a constantly moving stamp, giving it a longer motion by becoming a barrier to the motion of an arm, and shunting a detent, whereby the stamp is brought against it, and it is thereby stamped, and left to be carried along by the carrier to a receptacle; the whole arrangement of the patented invention being new, and the whole machine being covered by the letters patent, which are infringed by the taking of any substantial part of the machine.

In Equity. Bill by the International Postal Supply Company against William Groth and others to enjoin the defendants from infringing letters patent Nos. 341,380 and 388,366. Decree for plaintiff.

George W. Hey, for plaintiff.
Rowland Cox, for defendants.

WHEELER, District Judge. This suit is brought upon patents 341,380, dated May 4, 1886, and 388,366, dated August 21, 1888, and granted to George W. Hey and Emil Laass, for mail-stamping ap-

paratus, consisting of a bolt or rollers carrying the mail matter, a piece at a time, under or opposite to the face of a stamp out of its path, and against a supporting bed, to be caught momentarily by fingers which are moved forward by it, forming an electric connection which moves the stamp against, and stamps, the piece, and releases it, to be carried along again by the carrier to a receptacle. The stamp does not move otherwise. The claims relied upon in 341,380 are:

"(2) An automatic marking or stamping apparatus, comprising a bed for supporting the article to be marked, a marking stamp supported opposite said bed, an actuating barrier or selecting feeler, arranged to be encountered by the article passing over said bed, and transmitting motion to the marking stamp, substantially as set forth." "(4) In combination with a letter supporting bed, a carrier for moving the letter over the bed, a stamp or marker, and a mechanical engaging finger to engage the moving letter, and transmit motion to the stamp or marker, substantially as described."

And in 388,366 are:

"(1) In a machine for stamping or marking mail matter, the combination, with the supporting feed bed, of a stamp normally out of the path of movement of the mail matter, and a stamp tripper or releaser normally in said path." "(3) In a machine for marking or stamping mail matter, the combination, with the supporting feed bed, of a stamp normally out of the path of the movement of the mail matter, and a stamp tipper or releaser normally in said path, and opposite the letter bed, substantially as specified."

The defendants' apparatus draws the matter to the place of stamping by pneumatic tubes, where each piece, when still, releases a constantly moving stamp, giving it longer motion by becoming a barrier to the motion of an arm, and shunting a detent, whereby the stamp is brought against it, and it is thereby stamped, and left to be carried along by the carrier to a receptacle.

The principal question made is whether the defendants infringe. If the patents were for that part of the machine moving the stamp only, the defendants would not infringe, for their contrivances for this purpose are entirely different. *Railway Co. v. Sayles*, 97 U. S. 554. But if they cover the whole machine they are not avoided by making some of its parts differently. *Machine Co. v. Lancaster*, 129 U. S. 263, 9 Sup. Ct. Rep. 299. The exclusive right is as extensive as the patented invention, and is infringed by the taking of any substantial part of it. Nothing existing before the applications narrowed this field for invention. The whole arrangement was new, and was patented. The parts covered by these claims, other than the mechanism for moving the stamp, are all found in the same relation, and do the same things in substantially the same way, in the defendants' as in the patented machine, and in each the piece to be stamped brings the stamp to place,—in the patented machine, by moving it from at rest; in the defendants', by extending its motion. In each the stamp is out of the path of, and inoperative without the presence of, the piece; the object being to prevent inking the bed, and smearing the opposite side of the piece. The arm in the defendants' machine is the feeler, finger, tripper, or releaser, as variously called, of these claims; and, as the defendants' machine has all the other elements of the claims, it embodies the patented invention.

It may have improvements upon the patented machine. If so, it has also the theory and parts of it improved upon, and still appears to be substantially the same. Therefore, it appears to infringe.

Let a decree be entered for the plaintiff.

HOLLIDAY & SONS, Limited, v. SCHULTZEBERGE et al

(Circuit Court, S. D. New York. September 29, 1893.)

PATENTS FOR INVENTIONS—INFRINGEMENT—COMMISSION TO EXAMINE EXPERTS.

In a suit for infringing a patent, a commission to examine witnesses abroad will, in a proper case, be granted for the purpose of obtaining expert testimony; and such commission should be granted in the case of a patent involving the chemistry of coloring compounds, when it is asserted by the moving party, and denied by the opposing party, that the art is so little practiced here that the best expert testimony can only be obtained by a commission.

In Equity. Bill by Paul Holliday & Sons, Limited, against Paul Schultzeberge and others to enjoin the infringement of letters patent. Motion for a commission to examine witnesses. Granted.

Cowen, Dickerson, Nicoll & Brown, for complainant.
Goepel & Raegener, for defendant.

LACOMBE, Circuit Judge. This court is practically asked in this case to prescribe a new rule of procedure, to the effect that in patent cases commissions to examine witnesses abroad should not be granted for the purpose of eliciting merely expert testimony. It is urged that such an examination can rarely, if at all, be conducted upon written interrogatories, and that the issuing of open commissions for such purpose entails a very heavy expense upon litigants. There is much force in the argument. The cost of such litigation is already great, and, where equally competent experts can be found in this country, it would be desirable, in most cases, to confine the expert testimony to such as might be elicited from them; but it is hard to see how the court can make any general regulation upon the subject. It would seem unwise for it to undertake to decide in advance whether the experts who can best inform it as to the prior state of the art are to be found here or abroad. Upon the argument of this motion it was asserted, and the assertion disputed, that within the field of the patent, viz. the chemistry of coloring compounds, the art was so little practiced here that the best expert testimony could only be secured by a commission. The interrogatories are therefore allowed, under the arrangement as to method of taking proof before the commissioner, which was suggested by the court, and apparently assented to by counsel.