

The other element lacking in the respondents' testimony quoted relates to the "clean knitted face." The product of Keely & Wilkinson's patent appears to be a solid knitted fabric, homogeneous throughout, except only that it contains three or four different threads. The respondents' testimony, already quoted, apparently admits this. The fabric of the complainant, however, has what is described by his counsel as a self-sustaining face. Perhaps it would not be safe for the court, or for the complainant himself, to use this word to its full extent, or even according to its ordinary meaning. The court does not find occasion to decide between the litigants with reference to their various refinements touching the word clean; but it is sufficiently plain that the words clean knitted face mean a fabric not homogeneous, and not knitted solid, or through and through. While the claim does not, in terms, refer to the specifications for an explanation of its various parts, yet there can be no doubt that a clean knitted face means something fully as self-sustaining with reference to the other face as though the other face had been woven, and not knitted. The knowledge of the fact brought to the court by the specifications—a fact of so simple and universal a character that the court may act on it without their aid—that various kinds of plush goods with a knitted or woven face have been made and used, emphasizes and makes clear this proposition. On account, therefore, of the lack of a clean knitted face in the Keely & Wilkinson fabric, it was insufficient to anticipate the patent in controversy.

Decree for an account; complainant to file draft decree on or before September rules, and respondents to file corrections of decree on or before September 16th.

RUSSELL v. KENDALL et al.

(Circuit Court, E. D. Wisconsin. January 5, 1891.)

PATENTS FOR INVENTIONS—ASSIGNMENT—WHAT CONSTITUTES.

Two persons owning interests in certain patents declared, by a written contract, that it was their intention in making the contract to perfect and establish in each the sole and entire right to the invention in the states and territories set off to him in a prior contract between the parties. *Held*, that this contract vested the absolute title for the states and territories named in the party to whom they were set off, and he was entitled to sue alone for infringement of the patents therein.

At Law. Action by John H. Russell, assignee of one Ager, (mentioned in the opinion,) to recover damages for the infringement of certain patents. On demurrer to the complaint. Demurrer overruled.

G. W. Hazelton, for plaintiff.

N. C. Gridley, for defendants.

JENKINS, District Judge. Demurrer is interposed to the complaint upon the ground that the complaint shows that one Smith

is in law a joint owner with complainant of the patent in question, and he should be made a party plaintiff. The various agreements between the original patentees, and by which title is claimed to be vested in Ager, are set forth in the complaint, and the question is readily determined upon the construction of two of them. The agreement of December 21, 1872, is the first. It provides that Ager is to complete and perfect his title to the Barter patents, they are to pool their interests, and Ager is to perfect his title to the Barter patent, and thereupon Smith and Ager are to be interested as owners of the two patents, subject to certain rights in Pray. It is then covenanted that the parties are authorized to sell, vend, and dispose of individual and corporate rights to the use of the inventions, improvements, rights, and patents granted, and to be hereafter granted, as aforesaid, but not otherwise to sell or dispose of any state or territorial interest, or of any undivided interest in said patent or inventions, and such sale shall be only within the territorial limits as hereafter agreed upon. This territory, as thereafter agreed upon by the contract, gives to the plaintiff the territory of Wisconsin. In case of failure by Ager to make good his title to the Barter patent, and convey the same to the said Smith within the territory assigned, then the agreement is to be null. Afterwards the two parties made an agreement for acquiring the interest of Pray, by which it was agreed that it was their intention, in making the contract entered into between them and Pray, to perfect and establish in George T. Smith the sole and entire right and title to the invention covered by the contract between Smith and Pray for the states and territories set off to Smith in the contracts between Ager and Smith dated December 23, 1872, and to perfect and establish in Ager the sole and entire right to said invention covered by the contract of June 5, 1872, in and for the state and territories set off to said Ager in the contract between Smith and Ager dated December 23, 1872.

I can come to no other conclusion than that the effect of this agreement is to vest in Russell the absolute title to these patents as to the territory named, and to vest in Smith the title to the territory named as to him, and that, therefore, the demurrer must be overruled, with leave to defendant to answer by the first Monday of February.

RUSSELL v. KERN.

(Circuit Court, E. D. Wisconsin. August 10, 1893.)

1. PATENTS FOR INVENTIONS—ASSIGNMENT—WHAT CONSTITUTES.

Instruments executed by a patentee purporting to perfect and establish in another the sole and entire right to an invention in certain named states, excepting "two mill rights heretofore sold," which "are excepted * * * in the above adjustment of territory," constitute an assignment of the patent subject to the specified mill rights, and authorize the assignee, or persons claiming through him, to institute suits for infringement.