

"beveled edges," "reeds," "moldings," and the like devices for configuration and ornamentation, have long been familiar to the trade of the carpenter. They could not have been exclusively appropriated by the patentee, and he did not claim them. He claimed a specific design composed of old figures, and produced by well-known methods. His title to that for which he asked and obtained a patent need not be questioned; but to hold that his right is invaded by the use of the same figures, and the practice of the same method, for the production of the very different design of which he now complains, would be to extend his monopoly beyond the terms of his grant, or of any grant which, under the law, would be possible.

What has been said applies to all the infringements alleged, except that, in the case of Monroe only, there was a single, trivial sale where the design used was admittedly that of the complainant. But this sale was made before Monroe knew of the issue of the patent, was not repeated, and is quite apart from the real subject of controversy. Its effect was not passed upon by the court below, and the views which we entertain with respect to it may be very briefly indicated. At the time this particular sale was made the requirements of section 4900 of the Revised Statutes with respect to notice to the public had not been complied with. Therefore no damages could be recovered; and the liability imposed by the act of February 4, 1887, (1 Supp. Rev. St. p. 533,) is a statutory penalty in the nature of damages, and not, as has been contended, a "profit liquidated." It was not alleged, and could not have been reasonably asserted, that persistence in this acknowledged use of the exact design covered by the patent was apprehended, and therefore a decree for injunction could not have been founded upon it.

The decree of the circuit court is, in each of the cases named at the head of this opinion, reversed, with costs.

ANDERSON v. MONROE. SAME v. RIGGS et al. SAME v. PATTERSON.

(Circuit Court of Appeals, Third Circuit. November 3, 1893.)

Nos. 8, 9, and 10.

PATENTS FOR INVENTIONS—DEFENSE OF PRIOR SALE—QUANTUM OF PROOF.

The defense of prior sale must be proved beyond reasonable doubt, but not to the exclusion of all possibility of conjecture to the contrary. 55 Fed. Rep. 407, affirmed.

Appeals from the Circuit Court of the United States for the Western District of Pennsylvania.

In Equity. Suits brought by William Anderson—one against W. T. Monroe, one against R. L. Riggs and Bert Hubbell, doing business as Riggs & Hubbell, and one against James E. Patterson—for infringement of design patent No. 19,877, issued June 3, 1890, to William Anderson, for a design for mantels. The bills were dismissed below, (55 Fed. Rep. 407,) and complainant appeals. Affirmed.

Wm. L. Pierce, for appellant.
James K. Bakewell and W. Bakewell, for appellees.

Before SHIRAS, Circuit Justice, and ACHESON and DALLAS, Circuit Judges.

DALLAS, Circuit Judge. The only specific assignment of error in these cases has not been sustained. It is that "the court erred in finding that mantels embodying the patented design had been on sale more than two years prior to the application for a patent therefor." Upon the issue of fact presented, the burden was on the defendant below to support the affirmative beyond reasonable doubt, but not to the exclusion of all possibility of conjecture to the contrary. "None but mathematical truth is susceptible of that high degree of evidence called 'demonstration,' which excludes all possibility of error. In the investigation of matters of fact, such evidence cannot be obtained, and the most that can be said is that there is no reasonable doubt concerning them." Conceding to the appellant the benefit of the most rigorous application of the rule with regard to the strictness of proof required to establish the defense of sale made more than two years prior to date of application for patent, careful examination of this record has fully satisfied us that the evidence in these cases was rightly considered by the circuit court, and abundantly justifies its finding that "a sale was intended by the parties, and was consummated as early as March 15th, which was more than two years prior to the application."

The decree of the circuit court is, in each of the cases named at the head of this opinion, affirmed, with costs.

PARRY MANUF'G CO. v. HITCHCOCK MANUF'G CO. et al.

(Circuit Court, N. D. New York. July 24, 1893.)

1. PATENTS FOR INVENTIONS—LIMITATION OF CLAIMS—SULKIES.

Letters patent No. 266,895, issued October 31, 1882, to John Robinson, for improvements in sulky wagons, consisting in a construction which permits a lateral motion of the body, independent of the axle and wheels, so as to secure comfort in riding, ease the back of the animal, and avoid jar upon the wheels, must be limited, in view of the prior art, to the specific construction described, and are not entitled to the doctrine of equivalents.

2. SAME—INFRINGEMENT.

Claim 1 reads: "In combination with the cross bar, C, and the body, E, the hooks, F, and loops, G, the latter constructed as described, to permit a lateral movement of the body, as set forth." The loops, G, are made wider than the hooks, F, so as to permit a lateral play. *Held*, that this claim is limited by its terms, as well as by the state of the art, to the specific construction, and is not infringed by a cart having the body secured to the cross bar by L-shaped bolts or hinges, which do not permit the loose, swaying movement of the patent.

3. SAME—NOVELTY.

The second claim, covering a spring secured to the under side of the body, and connected at the ends to the rear portion of the shafts by

double shackles, whereby vertical and lateral motions are permitted, is void for want of novelty, as practically the same construction is shown in the patents of Soule, Jenkins, and Winecoff.

4. SAME—NOVELTY—LIMITATION—INFRINGEMENT.

The third claim reads: "In a two-wheeled wagon in which the body is pivotally connected at its forward end, a spring, H, arranged between such pivotal connection and the axle, as and for the purpose set forth." *Held*, that this claim, if strictly limited to the mechanism described, is void for want of novelty; and, if construed to include the devices which permit the swaying motion of the body, it is not infringed by a cart which does not have the hooks and loops of the patent, and in which the spring is not arranged between the pivoted connection and the axle.

In Equity. Suit by the Parry Manufacturing Company against the Hitchcock Manufacturing Company and others for infringement of a patent. Bill dismissed.

William M. Eccles, for complainant.

Irving H. Palmer and J. W. Suggett, for defendants.

COXE, District Judge. This is an equity action for infringement, based upon letters patent, No. 266,895, granted October 31, 1882, to John Robinson for improvements in sulky road-wagons. The specification says:

"My invention has for its objects to secure ease and comfort in riding, and to relieve the back of the animal from undue weight, while at the same time the usual jar upon the wheels is avoided; and with these ends in view my invention consists of the peculiar construction and arrangement of parts hereinafter fully described and specifically claimed. * * * E is the body of the wagon, which is secured at its forward end to the cross bar C by means of hooks F, which engage with loops G, secured to the cross bar. The loops G, as seen more particularly at Fig. 1, are wider than the hooks F for the purpose of permitting a sufficient lateral movement of the body in an obvious manner."

The claims are as follows:

"(1) In combination with the cross bar C and the body E, the hooks F and loops G, the latter constructed, as described, to permit of a lateral movement of the body, as set forth.

"(2) The spring H, connected to the under side of the body A, and having its ends connected to the rear portions of the shafts by double shackles I, whereby vertical and lateral motions are permitted, substantially as set forth.

"(3) In a two-wheeled wagon in which the body is pivotally connected at its forward end, a spring H, arranged between such pivotal connection and the axle, as and for the purpose set forth."

The defenses are lack of patentability and noninfringement. The field of invention is exceedingly narrow. For centuries improvements in vehicles drawn by animals have been going on in both hemispheres. It is manifest that a broad invention in this art is well nigh impossible. Improvements may be made from time to time, but patents therefor must be strictly construed and the claims limited to the precise advances made by the inventor. *Derby v. Thompson*, 146 U. S. 476, 13 Sup. Ct. Rep. 181; *McCormick v. Talcott*, 20 How. 402; *Railway Co. v. Sayles*, 97 U. S. 564; *Harrow Co. v. Hanby*, 54 Fed. Rep. 493. The novel feature of the patent is the combination, which, in addition to the vertical motion

of the spring, permits a lateral motion to be imparted to the body of the cart, thus insuring comfort to the traveler and durability to the wheels. If confined to this feature the patent may be sustained.

In addition to the limitations made necessary by the prior art it will be observed that the language employed narrows the first claim to the precise mechanism of the patent. Every element is restricted by a reference later to the structure described and shown. A claim so explicit cannot be enlarged by construction. *Keystone Bridge Co. v. Phoenix Iron Co.*, 95 U. S. 274; *Sutter v. Robinson*, 119 U. S. 530, 7 Sup. Ct. Rep. 376; *Snow v. Railway Co.*, 121 U. S. 617, 7 Sup. Ct. Rep. 1343; *Machine Co. v. Williams*, 44 Fed. Rep. 190, 194. The hooks F and loops G are not found in the defendants' cart. The body of their cart is secured to the cross bar by L-shaped bolts or hinges which do not permit lateral motion at that point. Certainly they do not permit the loose swaying motion of the patent. The complainant is not entitled to the benefit of the doctrine of equivalents, but even if it were, these bolts or hinges would not infringe the hook and loop connection of the patent.

Regarding the second claim it is thought that it is invalid for want of patentability. A spring having its ends connected to the shafts, and adjacent parts, by shackles, is old. Substantially the same construction is shown in the patents of Soule, Jenkins and Winecoff.

The third claim, if confined strictly to the mechanism described, is in the same predicament. There is no patentable novelty in a spring arranged as stated. A construction can, however, be placed upon this claim which will uphold it. It may fairly be construed to include the novel feature referred to, viz.: the devices which permit the swaying motion of the body of the cart. But if so construed the defendants do not infringe. They do not have the hooks and loops and their spring is not arranged between the pivoted connection and the axle.

The bill must be dismissed.

ROSS v. CITY OF FT. WAYNE.

(Circuit Court, D. Indiana. October 6, 1893.)

No. 8,742.

1. PATENTS FOR INVENTIONS — ASSIGNMENT PENDING INFRINGEMENT SUIT — PLEADING BY ASSIGNEE.

Where a patent, with all rights and claims under it, is assigned to a stranger pending suit for infringement, the assignee cannot obtain the benefit of the proceedings brought by the assignor, by means of a supplemental or amended bill, but he may do so by means of an original bill in the nature of a supplemental bill.

2. SAME—PLEADING.

Where a bill filed by the assignee contains all the material averments of an original bill, together with a statement of supplemental matter showing the assignment subsequent to the institution of the suit, it must