

than any other patents. The remaining time during which the inventor and his assigns may enjoy the fruit of the invention is short. After such a conflict the court ought not to permit infringement during the short remaining period. The defendants claim to have invested large amounts of money in their enterprise. They did it in the face of repeated adjudications sustaining the validity of the patent in question, and with their eyes open. If they must use the Bell invention to make operative the Brown improvement, they must await the expiration of the Bell patent.

An injunction will issue, as prayed for in the bill.

AMERICAN BELL TEL. CO. v. WESTERN TEL. CONST. CO. et al.

(Circuit Court, N. D. Illinois. October 18, 1893.)

PATENTS FOR INVENTIONS—INFRINGEMENT—INJUNCTION.

One who invests his money in an infringing business, knowing that the patent has been sustained by the United States supreme court, will not be permitted to give bonds for damages, instead of submitting to an injunction, merely because the patent will expire in a few months.

In Equity. Suit by the American Bell Telephone Company against the Western Telephone Construction Company and others for infringement of letters patent No. 186,787, issued January 30, 1877, to Alexander Graham Bell, for improvements in electric telegraphy. Injunction granted.

Bond, Adams, Pickard & Jackson and J. J. Storrow, for complainant.

Joseph G. Parkinson, Robert H. Parkinson, and Adolph Moses, for defendants.

JENKINS, Circuit Judge. The validity and infringement of the complainant's patent are not disputed. The life of that patent expires on January 30, 1894. It is claimed that the defendants ought not now to be enjoined, but should be permitted to pursue their infringement upon giving bond to pay royalties to the complainant. The defendants, at the commencement of their enterprise, knew that this patent had been sustained by the supreme court of the United States. They were well informed of the complainant's rights under that patent. With that knowledge, they have pursued their infringement, with a view to entering into competition with the complainant in the use of this patented improvement. It is true that they have a right to enter into competition with the complainant and to use the invention of Mr. Bell covered by patents which have expired. To that extent, they are justified. But they have no right, in the prosecution of such competition, to use the inventions covered by his patent No. 186,787 until the expiration of that patent. They must await that time before they may use the invention thereby covered. If it be true that the defendants have invested large amounts of money in the prosecution of their enterprise, which will be prejudiced or injured by an injunc-

tion here, it need only be said that they went into the enterprise with their eyes open, and with deliberate design to infringe another's rights. In such case, they have no right to favorable consideration by a court of equity.

An injunction will issue, as prayed for.

HAMMOND BUCKLE CO. v. GOODYEAR RUBBER CO. et al.

(Circuit Court of Appeals, Second Circuit. October 17, 1893.)

PATENTS FOR INVENTIONS—INFRINGEMENT—IMPROVEMENT IN SHOE CLASPS.

In view of the prior state of the art, the first claim in letters patent No. 301,884, granted July 15, 1884, to Hammond & King, for improvement in shoe clasps for arctic shoes, viz.: "In combination, the catch plate, the tongue pivoted directly to the tongue plate, and the tongue plate extending rearward of the pivot, and in contact with the catch plate when the parts are engaged," can only be sustained by reading into it the limitations that the tongue should be pivoted directly to the tongue plate, below its face, and between its bifurcated ends, and that the tongue should have a broadened position to combine with the elastic arms of the bifurcated ends, and, as thus modified, the invention is described in claim 4 of the same patent; and the patent is not infringed by a shoe clasp which has no broadened tongue, the lock of the tongue being secured by the use of flattened, laterally projecting pivots.

Appeal from the Circuit Court of the United States for the District of Connecticut.

In Equity. Bill by the Hammond Buckle Company against the Goodyear Rubber Company and others to restrain the infringement of letters patent No. 301,884, issued July 15, 1884, to Hammond & King, for an improvement in shoe clasps for arctic overshoes. Decree for complainant. Defendants appeal. Reversed.

C. H. Duell, for appellants.

George W. Hey, for appellee.

Before WALLACE and LACOMBE, Circuit Judges.

LACOMBE, Circuit Judge. The patent is for an improvement in shoe clasps of the kind used to fasten together the flaps of arctic overshoes. The particular claim is as follows:

"(1) In combination, the catch plate, the tongue pivoted directly to the tongue plate, and the tongue plate extending rearward of the pivot, and in contact with the catch plate when the parts are engaged, all substantially as described."

The patent contains three other claims, but they are not in question in this suit.

The defendants' clasp is made under letters patent No. 418,924, January 7, 1890, to John Nase.

The patent sued upon was construed by Judge Shipman in Hammond Buckle Co. v. Hathaway, 48 Fed. Rep. 305, 834, and the validity of this claim sustained. Application for a preliminary injunction in the suit at bar was made before the same judge. It was denied for the reason that infringement was not plain, but the validity of the claim was again sustained. Subsequently, when the case came