

substantially the same place as before, as appears in the patents to Aspinwall and Chapman.

Now, the patentee, stating his invention in the terms of his drawing and specification, has devised a combination of a falling tailboard and two seats, so connected by levers and hinges that the movement of the tailboard upwards will at once drop the rear seat entirely out of use, and move the front seat backwards so as to preserve the proper center of gravity. He claims that this is a pioneer invention, being the first mechanism in which the tailboard is connected with both seats, and must be so construed as to cover a combination of a falling tailboard and two seats so connected that the movement upwards of the tailboard will move the rear seat into position to act as a back to the front seat, and at the same time give the proper backward sliding motion to the front seat. In view of the state of the art, I think this construction of the patent is too broad. His invention seems to me not to be a pioneer invention, but only one step in the series of inventions in sliding and swinging seats and tailboards. He has, as it seems to me, selected out of all the known movements of these elements a certain set, which are made to result from his mechanical combination of devices. The carriage of the respondents seems to me to show another set of movements, and a mechanical combination which shall produce them. It is true that in both cases the movements of the rear seat are similar, in that they are upward and downward movements, but they are different in their character, inasmuch as one brings the seat out of use and the other leaves it in use. The functions performed by the two mechanisms are therefore different.

The bill must be dismissed, with costs.

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STANDARD FOLDING BED CO. v. OSGOOD et al.

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

No. 55.

1. PATENTS FOR INVENTIONS—INFRINGEMENT—COMBINATION—EQUIVALENTS.

Infringement is not prevented by the substitution of a well-known equivalent for one element in a patented combination, although the working of the combination is thereby slightly varied, especially when no new or useful result is obtained, and the only effect is the production of an inferior device.

2. SAME—INVENTION—FOLDING BEDS.

The gist of the Welch patent No. 397,766 is a suspended folding bed, in which the movement of the foot legs is obtained directly from the suspended mechanism, and this is a useful and patentable invention, though perhaps not of wide scope, considering the prior state of the art. 51 Fed. Rep. 675, reversed.

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

In Equity. Suit by the Standard Folding Bed Company against Charles E. Osgood and others for infringement of a patent. The court below dismissed the bill. 51 Fed. Rep. 675. Complainant appeals. Reversed.

Edwin T. Rice, Jr., (Cary & Whitridge, on the brief,) for complainant.

John H. Whipple, for defendants.

Before COLT, Circuit Judge, and WEBB and CARPENTER, District Judges.

COLT, Circuit Judge. This case turns upon the question whether the defendants infringe the first claim of letters patent No. 397,766, granted February 12, 1889, to Lyman W. Welch, for improvements in folding beds. The invention has reference to that class of beds known as "suspended," as distinct from "supported" beds. In suspended beds the bed proper is hung from the standard; in supported beds the weight of the bed proper is supported from below. In suspended beds, as the bed body is lowered from the standard it describes an upward and outward movement, and, as it is raised, a downward and inward movement. The advantage of this double movement is that it enables the standard to be made shallower, and thus economizes space. The suspending devices having this eccentric movement are described in the earlier Welch patents of February 3, 1885, and June 14, 1887.

The invention covered by the present patent is for foot legs which automatically fold in or out by the movement of the suspending mechanism, as the bed is turned up or down. This had never been done before. In the prior Williams patent of April 19, 1881, there is shown a bed essentially of the supported class, and the mechanism to fold and unfold the legs is connected with the standard. The so-called "Eclipse" bed, invented by W. D. Snyder, is of the Williams type, and does not contain the invention of Welch. The Adgate and Hickman patent, No. 262,882, is for a suspended bed, but it describes no mechanism for folding the legs. The Laskey patent, No. 314,032, shows a bed suspended by slotted arms or links, but with no folding leg device. It is unnecessary to refer to the other patents cited by defendants. It is sufficient to observe that there is not found before the Welch invention any folding bed where the movement of the foot legs is obtained directly from the suspending mechanism, and this is the gist of the Welch invention. It may not have been an invention of very wide scope, looking at the state of the art at the time, but it was nevertheless, in our view, a simple, useful, and patentable improvement in the folding bed art.

The first claim of the patent is as follows:

"The combination with the standard and bed proper of the crank lever, c, pivotally mounted at its middle to the face of the bed rail, the suspending chain or connector, C, secured at one end to the bed proper, and at the other end to one end of the said crank lever, the legs, D, hinged to the bed proper, and the rod, E, connecting the other end of said crank lever with the legs, D, said parts being respectively arranged as shown, whereby said crank lever is held at all times aligned with that portion of the connector to which it is attached."

This claim sets forth a combination of devices by means of which the foot legs are automatically folded and unfolded by the movement of the suspending mechanism. The defendants make a bed in

which a similar movement of the foot legs is obtained from the suspended mechanism, but, in place of the suspending chain or connector of Welch, they have substituted the slotted arm of the Laskey patent, extending it beyond the point of attachment to the rail. The effect of this change is that the bed is not suspended during the whole of the folding and unfolding movement, but turns upon a bearing during a portion of the time. But a charge of infringement cannot be overcome by the substitution of a well-known equivalent for one element in a patented combination, although the result of the working of the combination as a whole may be slightly different, especially where no new or useful result is obtained, and the only effect is the production of an inferior device. With this exception the defendants' bed contains all the elements in combination which are found in the first claim of the Welch patent. There is nothing in the disclaimer of the patent or in the proceedings in the patent office which limit Welch to the use of a flexible connector in this combination. For these reasons we are of opinion that the first claim of the Welch patent is valid, and that the defendants infringe.

Decree of the circuit court is reversed, and the case remanded, with directions to enter a decree in favor of the plaintiff, sustaining the validity of the first claim of the Welch patent, and adjudging that this claim has been infringed by the defendants, and ordering an injunction and account.

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KRAUSS et al. v. JOS. R. PEEBLES' SONS CO. et al.

(Circuit Court, S. D. Ohio, W. D. September 15, 1893.)

No. 4,621.

1. TRADE-MARKS—INFRINGEMENT—INJUNCTION—PLEADING—PARTIES.

Where a distiller granted the sole and exclusive control of his bottle product for five years, and agreed not to permit others to use his trade labels, a bill by the grantee to enjoin infringement of the trade-marks was defective which failed to make the distiller a complainant, or state a reason for not doing so.

2. SAME—SALE IN BULK—RESALE IN BOTTLES.

The sale of whisky in bulk under a trade-mark by a distiller does not justify the vendee in bottling for retail, and in using on the bottles the trade label which the distiller uses on smaller bottles of the same brand of whisky when prepared by himself for the retail trade.

3. EQUITABLE RELIEF—WHEN REFUSED—FRAUD.

Where a distiller mixes 35 per cent. of other whiskies, bought for the purpose, with his own brand of whisky, and sells the mixture under his trade label, with cautions to avoid imitations, and to the effect that the mixture was "bottled at the distillery warehouse, and is warranted perfectly pure and unadulterated," a court of equity will not protect the distiller or his privies in contract from infringement of the trade-mark thus fraudulently used.

In Equity. Suit by Otto A. Krauss and Krauss, Hart, Felbel & Co. against the Jos. R. Peebles' Sons Company and Jos. S. Peebles to restrain infringement of trade-mark. On motion for a preliminary injunction. Denied.

Statement by TAFT, Circuit Judge: