

The appellant contends that it is not a patentable combination. We do not think the contention is supportable. All the parts of the device operate to produce one result, and it is easily distinguishable from that claimed in *Reckendorfer v. Faber*, 92 U. S. 347, and *Adams v. Stamping Co.*, 141 U. S. 539, 12 Sup. Ct. 66. In the former case the pencil and rubber performed different and independent things. In the latter the hinge attachment to the lantern was a substitute for a detachable fastening, and went no further.

The appellant also contends that the patented device was anticipated by a patent to one J. B. Godwin for an improvement for baling cotton, patented June 17, 1873, and a patent for baling presses to Huntington & Carter, issued May 7, 1872, and one to Patterson, issued September 25, 1883. The patent sued on has some similarity in some of its parts to the Godwin patent and the Huntington & Carter patent, but its purpose and application are different; and therefore, under the evidence in the case, and the presumptions allowed to the patent, we cannot say that it was anticipated by them. As to the Patterson patent, the court below found (and the finding appears to be sustained by the evidence) that the Root device preceded it in invention. The differences between the appellee's device and that of the appellant we do not think are substantial.

The judgment and decree of the circuit court are affirmed.

GEORGE L. THOMPSON MANUF'G CO. v. WALBRIDGE.

(Circuit Court, S. D. New York. March 7, 1894.)

1. PATENTS—INVENTION—CURLING IRONS.

There is no invention in substituting, in a curling-iron, a drawn rod for a cast rod performing the same function, or in displacing a round spring by a flat spring, which is a mere equivalent.

2. SAME.

The Thompson patent, No. 460,709, for a curling-iron is void for want of invention.

In Equity. Suit by the George L. Thompson Manufacturing Company against John H. Walbridge for infringement of a patent for a curling iron. The bill is dismissed.

Lysander Hill and C. Clarence Poole (Taylor E. Brown on the brief), for complainant.

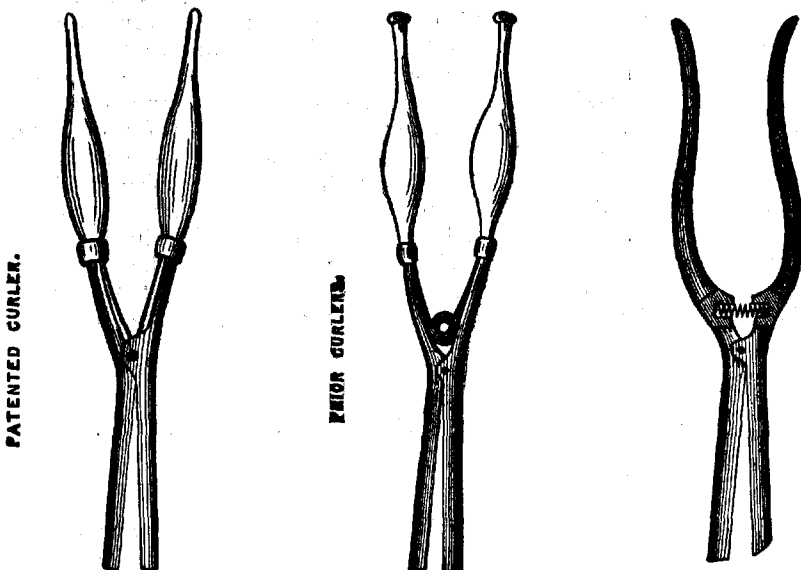
Edwin H. Brown, for defendant.

COXE, District Judge. This action is founded upon letters patent No. 460,709 granted to George L. Thompson, October 6, 1891, for a curling iron. The first claim only is involved. It is as follows:

"1. A curling-iron comprising a mandrel, a clasp pivoted thereto, said mandrel and clasp being each provided with a relatively-long outwardly-deflected shank, a plate-spring bent upon itself and secured at its ends near the rear ends of said shanks, said spring being suitably bent so as to come into contact with the said shanks only at their points of connection with the same, and handles arranged upon said shanks, substantially as described."

The second claim differs from the first only as it provides for wooden handles, and, as such handles on curling-irons were admitted to be old at the date of the patent the second claim was abandoned or withdrawn at the argument.

The defendant contends that the patent is void for lack of invention. This question can best be illustrated by comparing a diagram of the patented curler with diagrams of two curlers selected from the many similar devices shown in the prior art.



This comparison is a demonstration. After the Campbell and Bissell curlers there is not a shred of patentability left in Thompson's patent. He has substituted a plate-spring for the spiral and bent wire springs of the prior patents; but there could hardly be

a better illustration of the use of one equivalent for another. In other respects his structure is almost the exact counterpart of curlers made years before.

It is said that he was the first to use a plate-spring bent upon itself and a mandrel made of steel rod, and it is argued that their use involved invention sufficient to sustain the patent. This proposition is unfounded both in fact and in law. The answer is four-fold. First. The specification says that the rod may be "drawn, rolled or otherwise formed." The claim says nothing whatever on the subject. It is broad enough to cover any mandrel no matter how constructed. Second. There was no invention in substituting a drawn rod for a cast rod, both performing precisely the same function. Third. Thompson was not the first to use a drawn rod for a curling iron. In 1885 Hinde and Bown, both Englishmen, made curlers of steel wire. Fourth. As already seen there was no invention in the substitution of a flat spring for a round spring, but Thompson was not the first to use a flat spring. The prior art shows many instances where flat springs have been employed in similar tools to perform identically the same function. If I had a particle of doubt upon this subject the patent should have the benefit of it, but I have not.

The bill is dismissed.

CONSOLIDATED BUNGING APPARATUS CO. v. METROPOLITAN
BREWING CO.

(Circuit Court of Appeals, Second Circuit. January 12, 1894.)

No. 49.

1. PATENTS—LIMITATION OF CLAIM.

Where "a mechanical fit valve" is one of the elements of a combination claim, the mere fact that one of the drawings and its description show a fit valve having a knife-edge bearing does not confine the claim to that form of fit valve, when there is no other reference, either in the claims or specifications, to a knife-edge bearing. 46 Fed. 288, reversed. Consolidated, etc., Co. v. Woerle, 29 Fed. 449, disapproved.

2. SAME.

In a claim covering an automatic relief apparatus for beer barrels, consisting of a fit valve in combination with a surrounding water chamber, and water therein to prevent fouling of the valve, the water cannot be considered as a separate element, and the combination consists of the two elements,—a fit valve, and a water chamber surrounding the same.

3. SAME—ANTICIPATION.

A patent for a mechanical combination is anticipated by a prior device containing the same elements, although the inventor of the latter did not describe or appreciate the advantage of using the combination in the way pointed out in the patent.

4. SAME—VALVE FOR BEER BARRELS.

The Zwietusch & Heitmann patent, No. 222,975, for an automatic pressure-relief apparatus for beer vessels, was anticipated by the Schaefer patent, No. 313,040. 46 Fed. 288, reversed.

Appeal from a final decree of the circuit court, eastern district of New York, affirming the validity of letters patent No. 222,975,