

JONES v. HOLMAN et al.

(Circuit Court, E. D. Pennsylvania. January 30, 1894.)

No. 15.

This was a suit by Joshua R. Jones against William A. Holman and others for infringement of letters patent No. 432,411, for an invention relating to easel albums. Plaintiff obtained a decree, the case being fully reported in 58 Fed. 973. The defendants thereupon filed a petition for a rehearing.

A. B. Stoughton, for complainant.

Hector T. Fenton, for defendant.

DALLAS, Circuit Judge. The defendants' petition for a rehearing, having been argued upon the merits, has been fully considered, but will be disposed of without going into the case at length.

The three claims involved were all adjudged (plainly, it was supposed) to be valid. The exhibit Weiderer Picture Frame No. 4 was not overlooked. It is true that neither the first nor the third claim includes an inclined stand, but they each include a "stand" which is wholly absent from the Weiderer frame. That device discloses nothing resembling a stand, inclined or otherwise, capable of serving as a resting place for the back or edge of the book to roll upon as its cover turns on the fulcrum rod. However much this frame may be supposed to resemble the plaintiff's device, now, when both are seen together, it is obvious, I think, that they are not, in the sense of the patent law, substantially identical or conflicting. The Weiderer contrivance was not designed, and could not be successfully used, to accomplish the object proposed and attained by the patented combination, as set forth in either of the claims in question. The defendants' device, which is especially dealt with in the opinion filed, is the one which was chiefly referred to upon the argument; and, that having been held to be an infringing one, it was not deemed requisite to discuss any other. The reasons for my conclusion that the defendants had infringed, and the ground upon which that finding rests, have been sufficiently stated. I cannot agree that, in the defendants' arrangement, what is called in this petition "the cross-bar of a hinge brace" essentially differs from the corresponding part shown and described in the patent in suit, or that it does not perform the same function. There is nothing suggested by the present petition which had not already been heretofore considered, or which, in my opinion, should change the result heretofore announced. Rehearing refused.

MERRITT v. MIDDLETON et al.

(Circuit Court of Appeals, Second Circuit. April 19, 1894.)

No. 90.

PATENTS—INVENTION—EYEGLASS HOLDERS.

The Clawson patent, No. 175,821, for an eyeglass holder, consisting of a combination of a hook with a pin, identical with the device shown in the

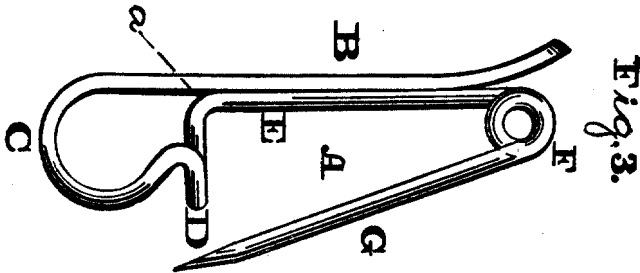
British patent to Montleart & Tent, No. 1,788, of 1863, when inverted, except that the hook, instead of projecting outwardly, is an "inwardly closing" hook, made as suggested by the snap hook in the Merritt patent, No. 58,867, is void for lack of patentable invention. 55 Fed. 976, affirmed.

This was a suit by Samuel F. Merritt against John D. Middleton and Reuben S. Middleton for alleged infringement of United States letters patent No. 175,821, for improvements in eyeglass holders, issued April 11, 1876, to I. Neal Clawson, and assigned to complainant. The circuit court dismissed the bill (55 Fed. 976). Complainant appealed.

Philip J. O'Reilly, for appellant.
Willis Fowler, for appellees.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

LACOMBE, Circuit Judge. The patentee's device, which is made of a single piece of wire, will be best shown by the following cut, being Fig. 3 of the patent:



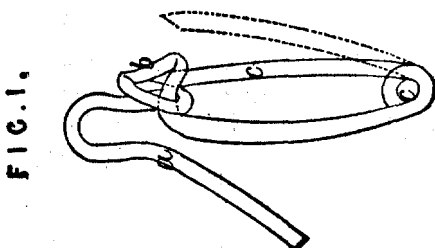
His claim is for—

"The inwardly-closing hook, B, bottom bend, C, and bar, E, with the contact point, a, closing the upper space of the bend, in combination with the single laterally-extending open eye, D, and with the coil, F, and pin, G, all constructed and arranged to operate as specified."

In use, the bridge or the handle of a pair of eyeglasses is slipped over the hook, B, and passes down into the bottom bend, C, from which the glasses hang suspended when not in use. The hook has sufficient elasticity (secured in part, as the specification states, by the open eye, D) to admit of the glasses being readily passed between the hook, B, and the bar, E, while there is yet such close contact between the bar and the hook that, once hung in the bend, the glasses will be retained there, unless purposely withdrawn. The spring coil, F, assists in securing this contact, and at the same time gives to the pin, G, an outwardly-projecting tendency, which will facilitate its insertion in the garment to which it is to be fastened. The pin hooks into the open eye, D, as a brooch or safety pin does. The circuit court held the patent void for lack of patentable invention.

In the British patent to Montleart & Tent (No. 1,788, of 1863) there is shown a hook for suspending dresses or parts of dresses, fabrics, curtains, etc., which consists of the combination of a hook

with a pin, constructed somewhat like a brooch pin. One form of this device is here shown:



And this figure is thus described:

"In the accompanying drawing, Fig. 1 shows the fastening constructed of one piece of metal, brass or iron wire being used for the purpose. The wire is first bent to form the hook, a; it is then curled over vertically, and back to a horizontal direction, to form a rest or catch, b (for the spring pin, c'), and it is then carried down to a suitable distance, thereby forming a stem, and is curled round at c to insure elasticity for the spring pin, c', which is produced by continuing the wire upwards to the rest or catch, b, and pointing it at its extremity. In order to hold a curtain by means of this construction of fastening, the pins, c', of any given number of these fastenings, are passed through the fabric in a vertical direction at or near its edge, and the hooks, a, are inserted in the loops of the curtain-rod rings; or, if the rods are of small diameter, the hooks may be hung upon the rods themselves."

The British patentees further state that "by reversing the fastening, and inserting the pin in any fixed fabric, the hook will project, and be ready to receive any light articles which may be suspended therefrom." The most cursory examination of this hook shows that, if reversed, and made of wire of the proper size and finish, it could be used as an eyeglass holder, and that it has the spring coil, the pin, the open eye, the bar, the bottom bend, and the hook of the patent in suit, except that the hook is an outwardly-projecting instead of an inwardly-closing hook, and thus there is no "contact point" provided for closing the upper space of the bend, so as to prevent the eyeglasses from flying out. But the use of a "contact point" to secure that advantage is shown in United States letters patent to Merritt, No. 58,867. His device shows a long hook, bent over upon itself; the straight part, which he calls the "shank," occupying relatively the same position as complainant's bar. Merritt's specification designates this as a "snap-hook; A being the shank, and B the hook; the end of the latter being so bent as to spring against the former, and thus prevent any casual dropping off from the hooks of any article hung thereon." With the Montleart & Tent hook before him, and the necessity apparent of securing the eyeglasses in some way against dropping off the hook, and with the suggestion contained in the Merritt patent that this could be done by springing the end of the hook back upon its shank, it is difficult to understand how the idea of improving it by making the hook "inwardly-closing" instead of "outwardly-projecting" could have failed to occur naturally and spontaneously not only to a skilled mechanic, but to any person of ordinary intelligence.

The decree of the circuit court is affirmed, with costs.

OSBORNE STEAM-ENGINEERING CO. v. LAMB et al.

(Circuit Court, N. D. Illinois. August 10, 1898.)

PATENTS FOR INVENTIONS—INFRINGEMENT—STEAM-HEATING PIPES.

Letters patent No. 269,224, issued December 19, 1882, to Eugene F. Osborne, for improvement in steam piping for heating, consisting in a change in the place where the steam supply pipe is connected with the seal tank, is not infringed by a system of steam heating consisting of the old single-pipe system, without any seal tank, even though the incidental depression of a pipe under a doorway should cause it to be occasionally filled with water, since that would not constitute a water seal between radiators, within the meaning of the patent.

Suit by the Osborne Steam-Engineering Company against F. W. Lamb, Albert C. Lamb, William A. Green, and William M. Crilly, to restrain the alleged infringement of a patent.

Samuel E. Hibben and Banning, Banning & Payson, for complainant.

Coborn & Thacher, for defendants.

JENKINS, Circuit Judge. The bill is filed to restrain an alleged infringement of patent No. 269,224, issued December 19, 1882, to Eugene F. Osborne, for "steam piping for buildings." The defenses are the invalidity of the patent, and noninfringement. The first claim of the patent is alone involved. A prior patent, No. 212,320, was issued to Mr. Osborne, February 18, 1879, for "improvement in steam piping for heating, cooking," etc. The patent in suit is stated to be an improvement upon the system covered by the first patent. In the first patent, according to the drawings, the seal tank is connected with the steam supply main, or with the boiler, at a point back of any connections leading to a radiator. It was found, in practice, that when the pipes forming the supply and return mains of the equalized circuit were laterally extended to a great distance, and the supply was vertically but little higher than the return main, the water from the latter was liable to rise into the former, and shut off the radiator feed. This difficulty was sought to be obviated by conducting the steam supply pipe first to the radiators, and then to the equalizing tank, whereby the pressure in the tank is less than that in the supply main. The principal—and, I believe, the only—difference in the two patents is that in the first the steam supply pipe is connected with the seal tank before the steam to supply the radiators is taken from that pipe; in the second patent, it is connected after the supply to the radiators. In the first patent the specifications and claims—whatever the drawings may show—do not limit the connection between the steam supply and the tank at a point before the connection with the radiators. The inventor sought to obtain, and claimed by his first patent to have obtained, a substantially equable pressure throughout the entire division between the supply and the return pipes. It may be questioned whether the change of location of parts of the apparatus has done more than to vary the degree in the results produced, and whether the first patent would not cover the particular location of the parts designated in the second patent. Without stopping to consider this question, or the