

prays that the complainant may be enjoined from prosecuting other actions against customers of the defendant for alleged infringement.

It is apparent, upon this statement of the allegations of the cross bill, and the scope of the relief sought, that it cannot be maintained as a cross bill. A cross bill must be in all respects germane to the subject-matter of the original bill. It is a bill brought by the defendant against the complainant touching and concerning only and exactly the same subject-matter with which the original bill concerns itself, and in which the defendant seeks affirmative relief which cannot be obtained by answer. So strictly has this restriction been applied that it is customary to refuse a decree upon new and distinct matters introduced by a cross bill which were not embraced in the original bill of complaint. Nor is this difficulty avoided by the contention that the allegation of interfering patents is based upon matters germane to the subject-matter of the original bill. It is not necessary to discuss the question whether they are or not. It is enough to say that the statute relied upon contemplates only such a suit in equity as presents but a single issue,—that of priority between the alleged interfering patents. This matter is *res adjudicata* in this circuit. *Lockwood v. Cleaveland*, 6 Fed. 721.

The motion to strike out the cross bill is granted, without prejudice to the right of the defendant to raise by original bill the issues stated in cross bill.

GEORGE FROST CO. et al. v. SILVERMANN et al.

(Circuit Court, W. D. Pennsylvania. May 31, 1894.)

No. 25.

1. PATENTS—INFRINGEMENT—ADJUSTABLE GARTERS.

A patent for a stocking supporter consisting of a strip of elastic webbing extending partially around the limb, and having its two ends connected by a loop of cord, which renders freely through its connections with the ends of the webbing, and to which is attached a clasp to hold the garment to be supported, is infringed by a device which differs only in the substitution of a chain loop for the loop of cord, and in allowing the clasp to render freely on the loop, instead of being rigidly fixed thereto, as in the patent.

2. SAME.

The Brown patent, No. 210,666, for an improvement in stocking supporters, construed, and held valid and infringed.

This was a suit by the George Frost Company and Mary G. Brown against William Silvermann and others for infringement of patents. Complainants moved for a preliminary injunction.

Frederick P. Fish, for complainants.

H. A. Seymour, for defendants.

ACHESON, Circuit Judge. The plaintiffs sue for infringement of letters patent No. 210,666, dated December 10, 1878, granted to F. Barton Brown, for an improvement in stocking supporters. The patent shows and describes a garter consisting of a strip of elastic webbing extending partially around the limb, and having its two ends connected by a loop of cord which renders freely through its

connections with the ends of the webbing, and attached to the loop is a clasp to hold the garment to be supported; the loop forming a connection between the clasp and the band of webbing, and a rendering, self-adjusting connection between the ends of the webbing. The garter thus easily and automatically accommodates itself to varying lengths of stockings, and to differences in the size and length of limbs of the wearers, and is free from any slip-noose action, to impede the circulation or produce discomfort. In the specification the patentee states:

"The gist of my invention consists in the use of the cord, C, as a means for connecting together the two ends of the webbing, A, and also for connecting the clasp, E (or other device for holding the stocking or sleeve), with the webbing, A; the cord, C, constituting a flexible, rendering connection between the ends of the webbing, A."

The claim is as follows:

"The webbing, A, and clasp, E, in combination with the cord, C; the cord, C, adapted, not only to connect together the ends of the webbing, A, but also to connect the clasp, E, with the webbing, A, all as described."

None of the earlier patents or exhibits illustrative of the prior art shows the self-adjusting qualities of the garter of the patent in suit. In construction and principle of operation, the complainants' garter was new. It has met with extraordinary public favor. The complainants' annual sales of the article probably exceed the sales by all other manufacturers of all other kinds of garters put together. The proof of public acquiescence in the validity of the patent is unusually strong, and furnishes a firm basis for a preliminary injunction. *Blount v. Societe Anonyme du Filtre*, 3 C. C. A. 455, 53 Fed. 98, 102. There is no serious dispute as to the facts of the case. It only remains, then, to inquire whether the defendants infringe.

In form of construction and mode of operation, the defendants' garter is identical with the garter shown and described in the patent in suit. We find in the two garters substantially the same elements, combined in the like manner, and producing the same result. The only differences are that, instead of a fibrous cord for connecting the two ends of the webbing, the defendants have substituted a metallic chain, composed of bead-like links flexibly connected with one another, and their clasp is free to render upon this loop of chain, whereas in the patent drawing the clasp seems to be rigidly fixed to the ends of the cord. The latter feature, however, does not enter into the claim of the patent, and it is wholly immaterial to the desired result whether the clasp is rigidly attached to the loop, or renders thereon. It is very doubtful whether this formal variation in the manner of attaching the clasp to the loop is any improvement, but, even if it be so, the defendants do not thereby avoid infringement. Now, cords and chains, as appears from the proofs (and as, indeed, is commonly known), are interchangeable mechanical equivalents for a great variety of purposes. The change from a fibrous cord to a flexible chain affects neither the form of construction, the mode of operation, nor the result. The chain loop performs the exact function that the cord loop does, and in precisely the same way. This is, I think, a plain case of equiv-

alency. The gist of the invention, as defined in the specification of the patent, is found in the defendants' garter.

In *Winans v. Denmead*, 15 How. 330, 342, the supreme court declared:

"It is generally true, when a patentee describes a machine, and then claims it as described, that he is understood to intend to claim, and does by law actually cover, not only the precise forms he has described, but all other forms which embody his invention; it being a familiar rule that to copy the principle or mode of operation described is an infringement, although such copy should be totally unlike the original, in form or proportions."

In the late case of *Hoyt v. Horne*, 145 U. S. 302, 308, 12 Sup. Ct. 922, this doctrine was so applied as to condemn, as an infringement, a machine which departed from the letter of the claim in substituting a vertical for a horizontal device. In *Machine Co. v. Murphy*, 97 U. S. 120, 125, it is said that the—

"Authorities concur that the substantial equivalent of a thing, in the sense of the patent law, is the same as the thing itself; so that if two devices do the same work in substantially the same way, and accomplish substantially the same result, they are the same, even though they differ in name, form, or shape."

These authorities quite justify our conclusion that the defendants' substitution of a chain for the cord does not take their garter out of the scope of the *Brown* patent.

A preliminary injunction will be allowed.

ECLIPSE MANUF'G CO. v. HOLLAND.

(Circuit Court, N. D. New York. July 20, 1894.)

1. DESIGN PATENTS—LIMITATION BY PRIOR ART.

After one has patented a design, another cannot have a valid patent for merely embossing the same design upon a similar object.

2. SAME—INFRINGEMENT.

The Prentice design patent, No. 17,270, for a design for radiators, if valid at all, in view of prior designs, must be limited to the precise drawing shown, and, being so limited, is not infringed by a radiator differing in size, shape, and depth, so that an ordinary purchaser, looking for the specific design of the patent, could hardly be deceived.

This was a suit by the Eclipse Manufacturing Company against Holland for infringement of a design patent. On final hearing.

P. C. Dyrenforth, for complainant.

E. S. Jenney and George H. Lothrop, for defendant.

COXE, District Judge. This is an equity action based upon letters patent No. 17,270, granted to Leon H. Prentice April 19, 1887, for a design for a radiator. The patent has been three times before the courts. On demurrer and final hearing in the northern district of Illinois and on motion for an injunction in the eastern district of Michigan. In the Illinois case the material portions of the patent, and of the patent law, are set out in full and facts are stated which bear more or less directly upon the present contro-