CONSOLIDATED VAPOR-STOVE CO. v. NATIONAL VAPOR-STOVE & MANUF'G CO.

(Circuit Court, N. D. Ohio, E. D. May 12, 1893.)

No. 4,800.

PATENTS—VAPOR STOVE BURNERS.

The Whittingham patent, No. 235,600, for a vapor-stove burner, *held* valid, as covering a novel and patentable device, and also *held* infringed by defendant's burner.

This was a suit in equity by the Consolidated Vapor-Stove Company against the National Vapor-Stove & Manufacturing Company for infringement of letters patent No. 235,600, issued December 14, 1880, to Charles and Joseph Whittingham. A full description of this patent will be found in Consolidated Vapor-Stove Co. v. Ellwood Gas-Stove & Stamping Co., 63 Fed. 698.

Sherman, Hoyt & Dustin, for complainant.

W. M. Lottridge, for respondent.

RICKS, District Judge. This is a bill filed by the complainant, alleging that the defendant infringes patent No. 235,600, dated December 14, 1880, for a vapor-stove burner. The complainant makes the usual allegations that it has a patent issued to it for an improved vapor burner used on stoves commonly known as gasoline stoves. The defendant denies infringement, and claims prior use. The only proof taken is as to the novelty and patentability of the complainant's device, offered on its behalf, and proof denying infringement, offered on behalf of the defendant. I have inspected complainant's exhibit of defendant's device, and also the testimony of the experts, and the testimony of the manager of the defendant. From this testimony it seems to me clear that the complainant, under its first claim, has a combination of devices which results in a novel and patentable process for generating gas and consuming the same. The defendant's burner is certainly an infringement of the complainant's device. The only difference I can discover is that the cap, S, in the defendant's burner, has different shaped orifices; but in both devices it acts as a burner. In the defendant's combination it may be a better burner, but the function it performs is the same as cap S in the complainant's combination, as described in claim 1. The conducting pipe, F, as given in the exhibit (which is the defendant's stove), which corresponds to complainant's tube, F, is given a horizontal position, because such position answers defendant's purpose better, inasmuch as its conducting tube performs other functions in connection with outer or auxiliary burners. But it performs the same, though additional, functions as tube F in complainant's device. In the latter it is heated from the heater plate; in the defendant's combination, through the central burner. But in both it acts as a conductor, commingler, and heater. For these reasons I think it a clear infringement of the first claim in complainant's patent, and a decree may be accordingly entered.

SESSIONS v. GOULD et al.

(Circuit Court of Appeals, Second Circuit. October 16, 1894.)

PATENTS—INFRINGEMENT—TRUNK FASTENERS.

The Taylor patent, No. 203,860, for trunk fasteners, construed as to the second claim, which is *held* to be valid, and to have been infringed by defendants. Sessions v. Gould, 49 Fed. 855, 60 Fed. 753, affirmed.

Appeal from the Circuit Court of the United States for the Southern District of New York.

This was a bill by John H. Sessions against William B. Gould and others for infringement of letters patent No. 203,860, issued May 21, 1878, to Charles A. Taylor, for an "improvement in trunk fixtures," assigned to complainant June 1, 1878; and letters patent No. 255,122, issued March 1, 1882, to John H. Sessions, Jr., "for trunk fasteners," assigned to complainant July 1, 1888. The case was heard on motion for a preliminary injunction before Judge Lacombe, who granted an injunction under claim 2 of the Taylor patent of 1878, and the Sessions patent of 1882. 49 Fed. 855. On final hearing, the case was heard before Judge Coxe, who found the Sessions patent of 1882 invalid, and sustained the Taylor patent, allowing a decree on claim 2. 60 Fed. 753. From the interlocutory decree granting a permanent injunction under claim 2 of the Taylor patent, defendants appealed to this court.

Arthur v. Briesen, for appellants.

Charles E. Mitchell (John P. Bartlett, of counsel), for appellee.

Before BROWN, Circuit Justice, and WALLACE and SHIPMAN, Circuit Judges.

PER CURIAM. We fully agree with the opinion of Judge Lacombe upon the motion for a preliminary injunction in the circuit court in regard to the construction of the second claim of the Taylor patent, and deem it unnecessary to add anything to his observations. As, under that construction, the defendants' trunk fasteners concededly infringe the claim, and the only errors assigned by the appellants are in respect to the questions of construction and infringement, the interlocutory decree appealed from should be affirmed, with costs.

SESSIONS v. GOULD et al.

(Circuit Court of Appeals, Second Circuit. October 16, 1894.)

APPEAL—JUDGMENT IN CONTEMPT PROCEEDINGS.

An appeal from an order compelling defendants to pay a fine made upon motion to have defendants punished for contempt for violating an interlocutory injunction must be dismissed; for, if the order is to be treated as part of what was done in the original suit, it is interlocutory, and can only be corrected upon an appeal from the final decree, or, if such order is to be treated as an independent proceeding, it is, in effect, a judgment in a criminal case, reviewable only upon writ of error.