

circuit court was properly exercised, we have found ourselves obliged to consider the validity of the patent, and its infringement, with the conclusion above stated. As the patent is valid, and it was infringed by the defendants, the court necessarily exercised proper discretion in granting the injunction appealed from, and its decree is affirmed.

DEVLIN et al. v. PAYNTER et al.

(Circuit Court of Appeals, Third Circuit. November 16, 1894.)

No. 8.

1. PATENTS—STEAM-PIPE UNION—NOVELTY.

A union for steam pipes, consisting of one member with an internal seat of soft metal having a concave face, and an opposing member with a convex face, thus forming a perfect connection without an accurate alignment of the pipes, constitutes a patentable invention. 63 Fed. 122, affirmed.

2. SAME—INFRINGEMENT.

A union for steam pipes, consisting of a head member having a seat of soft metal with a concave face, and a tail member having a convex face, is infringed by a union that differs only in the facts that the convex face is on the head member and the concave face is on the tail member, and that the soft metal is on the convex face instead of on the concave face.

3. SAME.

The Paynter patent, No. 367,725, for union for steam pipes, held valid and infringed. 63 Fed. 122, affirmed.

Appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania.

In Equity. Bill by Edward P. Paynter and John K. Moore against Thomas Devlin and others, trading as Thomas Devlin & Co., for infringement of a patent. Complainants had decree (63 Fed. 122), and defendants appeal.

Hector T. Fenton, for appellants.

Connolly Bros., for appellees.

Before ACHESON and DALLAS, Circuit Judges, and WALES, District Judge.

ACHESON, Circuit Judge. The appellants, who were the defendants below, complain of the decree of the circuit court, sustaining as valid, and adjudging them to have infringed, the first claim of letters patent No. 367,725, for improvements in unions for steam pipes, etc., granted on August 2, 1887, to Edward P. Paynter, Jr., the inventor, and John K. Moore, his assignee of a part interest. The claim in question is in these words:

"(1) A union for steam pipes, comprising a threaded ring or nut, a member having a seat of soft metal with a concave face, and an opposing member with a rounded or convex end, substantially as shown and described."

The declared object of the invention is to provide a construction whereby the joint of the union of steam and other pipes will be

made more tight than heretofore, and in which the danger of injury by indentation to the soft-metal seat of such union will be avoided. The specification states:

"The concavo-convex character of the joint prevents the seat from being indented, even if the two members of the coupling should not be exactly aligned, thereby avoiding the difficulty hitherto encountered with the flat, soft-metal seats and straight ends of unions as heretofore constructed."

The specification describes and shows a union, one of the members of which is provided with an internal seat of soft metal, the face of which is made concave, and the opposing part of the union formed with a convex end, so as to conform to the concavity of the seat, against which it rests, thus making a perfectly tight joint therewith. A pipe union is a complete and independent contrivance made and sold by itself, consisting of head and tail members, and a fastening ring or nut drawing the two members closely together. The purpose of the device is to join together the adjacent ends of two sections of pipe through which steam or water or other liquids or gases flow. Such unions are not designed to be fixed and permanent couplings, but they are used where the pipes are to be repeatedly disconnected and again joined, and thus it is intended that the unions shall be taken apart and put together again and again. It is of supreme importance that the union should form and constantly maintain a perfectly tight joint, and it is also very desirable that it should be so constructed as to provide for the nonalignment of the pipes which it connects. These ends are attained by the device of the patent in suit. The patented improvement consists in having one of the two opposing members of the union formed with a concave abutting face, and the other with a convex abutting face, one of these meeting faces being composed of soft metal. The evidence is convincing that this improvement effectively overcomes difficulties incident to and inseparable from all the expedients of this general character previously in use. It meets the practical difficulty arising from want of exact axial alignment of the two pipes which are to be connected; and it not only secures complete contact between the meeting faces of the head and tail members, when they are first put together, but permits, without impairing the efficiency of the joint, the repeated use of the same union as the pipes are disconnected and again united. We have attentively examined all the earlier patents, and the exhibits illustrative of the prior state of the art, in evidence. To discuss these at length, and point out the distinctions between them, respectively, and the Paynter-Moore device, we deem unnecessary. It is enough to declare that in our judgment they do not, taken singly or considered together, anticipate the invention in question. They fail to show a union made in accordance with the patent in suit, or possessing its peculiar advantages. We are entirely satisfied with the conclusion of the court below that the first claim of the patent in suit covers a union patentably new and useful.

The differences between the union shown by the patent in suit and the appellants' union are these: In the latter the convex face is

on the head member, and the concave face is on the tail member, reversing the arrangement of the patent; and in the appellants' union the convex face is composed of soft metal, whereas in the union described in the patent it is the concave face which is of soft metal. The appellants have transposed the position of the soft-metal face. Do they escape infringement by the transposition of parts? We think not. The essence of the invention embodied in the first claim of the patent is a union in which one of the two opposing members has a concave abutting face, and the other a convex abutting face, one of these faces being of soft metal. The appellants, therefore, have appropriated the gist of the invention. The changes found in their device do not at all affect either the principle of operation or the result. There is a substantial identity between the two unions. Now, in the sense of the patent law, the substantial equivalent of a thing is the same as the thing itself. *Winans v. Denmead*, 15 How. 330, 342; *Machine Co. v. Murphy*, 97 U. S. 120. The changes which the appellants have made are immaterial, and, indeed, are but a subterfuge. Made, evidently, for the mere purpose of evading the wording of the claim, they are unavailing. *Hoyt v. Horne*, 145 U. S. 302, 308, 12 Sup. Ct. 922.

Nor do we find anything in the proceedings in the patent office requiring us to read the first claim of the patent as subject to the limitation upon which the appellants insist. The reasons urged by the appellees' solicitors before the patent-office officials in favor of the grant of the patent, if entitled to consideration here at all, do not, we think, regarded as a whole, support the contention that the patentees, when in the patent office, placed such a narrow construction upon the claim as would exclude from its scope the appellants' device. We do not see that they take here any position inconsistent with their position when in the patent office. There is nothing to bring this case within the rule that, where a patentee has modified his claim in obedience to the requirements of the patent office, he cannot have for it an extended construction which has been rejected by the office. The only amendment of the first claim ever made was the introduction of the "threaded ring or nut" as an element of the combination, and that addition does not affect the question now before us. We are of the opinion that the decree of the circuit court was right, and accordingly it is affirmed.

LEHIGH MIN. & MANUF'G CO. v. KELLY et al.

(Circuit Court, W. D. Virginia. May 30, 1894.)

JURISDICTION—COLLUSIVE ORGANIZATION OF CORPORATION.

The organization by the individual stockholders and officers of a corporation existing under the laws of one state of a corporation under the laws of another state for the express purpose of bringing a suit in a federal court to try the title to a tract of land claimed by the former corporation, and conveyed to the latter after its organization and before suit brought, will not enable the grantee to maintain a suit in ejectment in such court.

This was an action of ejectment, brought by the Lehigh Mining & Manufacturing Company against J. J. Kelly, Jr., and others. The case was heard on defendants' pleas to the jurisdiction.

J. F. Bullitt, Jr., and J. A. Buchanan, for plaintiff.
Morrison & Duncan and F. S. Blair, for defendants.

PAUL, District Judge. This is an action of ejectment, brought by the plaintiff, a corporation under the laws of Pennsylvania, against J. J. Kelly, Jr., and others, citizens of the state of Virginia. The defendants file two pleas in abatement, which are as follows:

"Plea No. 1. And for plea in this behalf said defendants say: That the Virginia Coal & Iron Company is a corporation organized and existing under the laws of Virginia; that as such it has been for the last ten years claiming title to the lands of the defendants, J. J. Kelly, Jun., described in the declaration in this case; and said defendants say that for the purpose of fraudulently imposing on the jurisdiction of this court said Virginia Coal & Iron Company has, during the year 1893, attempted to organize, form, and create under the laws of the state of Pennsylvania a corporation out of its (the Virginia Coal & Iron Company's) own stockholders and officers, to whom it has fraudulently and collusively conveyed the land in the declaration mentioned for the purpose of enabling this plaintiff to institute this suit in this United States court. And said defendants say that said Lehigh Mining & Manufacturing Co. is simply another name for the Virginia Coal & Iron Co., composed of the same parties, and organized alone for the purpose of providing jurisdiction of this case in this court. Wherefore defendants say that this suit is in fraud of the jurisdiction of this court, and should be abated. And this they are ready to verify," etc.

"Plea No. 2. And for further plea in this behalf the said defendants come and say that said plaintiffs should not further have or maintain said suit against them, because, they say, there was no such legally organized corporation as the plaintiff company at the date of the institution of this suit, and they say that the real and substantial plaintiff in this suit is the Virginia Coal & Iron Company, which is a corporation organized and existing under the laws of Virginia, and a citizen of Virginia. And said defendants further say that said Virginia Coal & Iron Company, for the purpose and with the view of instituting and prosecuting this suit in the United States court, and of conferring an apparent jurisdiction on said court, did by prearrangement, fraud, and collusion attempt to organize said Lehigh Mining and Manufacturing Company as a corporation of a foreign state, to take and hold the land in the declaration mentioned for the purpose of giving this court jurisdiction of said suit. Whereupon defendants say that the said plaintiff has wrongfully and fraudulently imposed itself on the jurisdiction of this court, has abused its process, and wrongfully impleaded these defendants in this court; whereupon they pray judgment," etc., "that this suit be abated and dismissed as brought in fraud of this court's jurisdiction. And this they are ready to verify," etc.