

to prevail. The tools and patterns belonged to Nichols, Murphy & Geister, and were necessarily included in the order for the sale by the receiver of the assets of that firm; but a sale of tools and patterns which are used solely for the manufacture of a patented device, even if the sale be made by the owner of the patent, does not necessarily imply a license to the purchaser to manufacture and sell the device. That depends on the intention of the parties, and is a question of fact. In *Anderson v. Eiler*, 1 C. C. A. 659, 50 Fed. 775, where the owner of a new design for mantels sold one of the mantels to a manufacturer, who avowed his purpose to use it as a pattern, the court says:

"The inference is therefore, we think, irresistible, that he consented to this use. Whether he actually consented or not, however, the circumstances estop his denial. His silence at the time closes his mouth."

That is, his silence proved his consent. The appellee in this case was not silent. His assertion of individual ownership of the patents, and denial of any right of Murphy and Geister to the use of them, was distinctly made in the suit which he brought against them, and otherwise; and the proof is clear that the parties composing the appellant company, for whom the purchase was made, were not ignorant of the fact and extent of his assertion of right. The receiver, Hoagland, as one of the organizers of the appellant company, was himself interested in the purchase. His testimony is in the record, and in answer to the question whether Nichols did not claim the ownership of the patents, and that the purchaser at the receiver's sale would not acquire any interest in them by the purchase, he said: "I think Mr. Nichols never let up on that. He always claimed that." It is shown, moreover, that the parties concerned in organizing the appellant company negotiated with Nichols, before the purchase, with a view to the acquiring of his rights in the patents, and the circuit judge was clearly justified in concluding that "they were purchasers with notice of his rights." It is not shown what estimate was put upon the patterns by the appellant when the purchase was made, and, if any considerable sum, it must be presumed to have been with the purpose of acquiring the patents, or a license to use them. The decree of the circuit court is affirmed.

L. SCHREIBER & SONS CO. v. GRIM et al.

(Circuit Court, S. D. Ohio, W. D. January 12, 1895.)

No. 4,618.

PATENTS—INVENTION—SUPPORTS FOR CASKS.

The Schreiber patent, No. 396,372, for a support for casks and barrels, consisting of saddles with concave upper surfaces, and convex lower surfaces resting in concave shoes, so as to rock them both longitudinally and transversely, and thus accommodate themselves to the cask at the point of support, held void as to claim 6, for want of invention, and as being a mere application of the old ball and socket joint.

This was a bill by the L. Schreiber & Sons Company against Ignaz Grim and Philip Selbert for infringement of a patent for supports for casks and barrels.

Wood & Boyd, for complainant.
James Moore, for defendants.

SAGE, District Judge. The suit is for infringement of patent No. 396,372, granted complainant January 15, 1889, for a barrel stand, designated in the specification as an improvement in cask supports. The object of the invention is stated to be to provide a strong and durable support for heavy casks and barrels, one readily adjusted to any sized cask, and so constructed as to automatically adjust itself to the curve of the cask. It is designed principally for use in breweries for the support of large casks. There are six claims. It is conceded that there is no infringement of any of the first five claims. The sixth alone is relied upon. The drawings show, and the specification describes, a cask supported by means of four saddles, two placed near each end, and upon opposite sides of the cask. The upper faces of the saddles are concave, and shaped generally to receive the bulge of the cask. They are made self-adjustable to the cask and to each other. The support and seat for the saddles necessary to accomplish this result is called the "shoe," which rests upon a broad, firm base. The union between the shoe and the saddle is what is known as the "ball and socket," the lower surface of the saddle being convex and answering to the ball, and the upper surface of the shoe being concave, answering to the socket, and allowing the saddle to rock longitudinally and transversely, so as to fit the upper surface of the saddle to the conformation of the cask at the place of support. To anchor these shoes in position, or, in other words, to hold them in place, the patentee, in the drawings and specification, shows the shoe in ways on which rest tie rods. At first the construction was according to the description. Afterwards the shoes were made with broad bases, which rested directly on a concrete floor, and were held to their places by a tie rod. The sixth claim is as follows:

"In a cask support, the shoe, 3, provided with a concave seat, in combination with the self-adjusting saddles, 10, supported in said seat, substantially as described."

The first five claims are in various forms for the combination of the saddles, the shoes, and the ways provided for adjusting them to and from each other, and the locking device for securing them in their adjusted position. These claims being, by the concession of counsel, out of the case, the only question remaining is whether the claim for the shoe, provided with the concave seat in combination with the self-adjusting saddle, is valid. No testimony was taken for the defense, sole reliance being placed upon the fact that the ball and socket joint is as old as the creation of man, and universally known and adopted whenever required in the arts from the earliest periods, and that, therefore, there is no invention displayed in the complainant's device. I can see no escape for the complainant from this conclusion. He concedes that there is no infringement of any of the first five claims for the combination of the saddles, the shoes, and the locking device for holding them in position. It is impossible, in my view of the case, to sustain the claim to invention for that

portion of the combination, which is nothing more than the application of the old ball and socket joint to a saddle, which in itself is shaped so as to fit the surface to which it is to be applied. The joint, as has already been said, is old, and the shaping requires nothing more than mechanical skill of ordinary degree. The bill will be dismissed.

RITCHIE v. OBDYKE et al.

(Circuit Court, E. D. Pennsylvania. May 15, 1894.)

No. 16.

1. PATENTABLE INVENTION—SHEET-METAL ELBOWS.

The making of sheet-metal elbows longitudinally corrugated, and having only longitudinal seams, *held* to involve no invention, it appearing that corrugated elbows having transverse seams, and plain metal elbows having only longitudinal seams, were both old, and that all that was done was to make the corrugated elbows without the transverse seams. Affirmed in 65 Fed. 224.

2. SAME.

The Ritchie patent, No. 342,465, for a "sheet-metal expansible elbow," *held* void for want of invention. Affirmed in 65 Fed. 224.

This was a suit in equity by David A. Ritchie against Benjamin P. Obdyke and W. Austin Obdyke for infringement of a patent for a "sheet-metal expansible elbow."

Fish, Richardson & Storrow, for complainant.

Philip I. Dodge, for respondents.

DALLAS, Circuit Judge. This suit is brought on letters patent No. 342,465, granted May 25, 1886, to the complainant. The claim is as follows:

"As an improved article of manufacture, a sheet-metal elbow composed of curved and longitudinally corrugated pieces of metal having only longitudinal seams, whereby the said elbow is free to expand uniformly to avoid bursting, substantially as described."

Corrugated elbows were old, but they were made from the ordinary corrugated pipe, the required curvature being effected by "removing small gores" thereof, and bringing together and uniting by soldering the edges thus produced. Elbows so made necessarily contained transverse seams, and the "improved article" of the patentee, "having only longitudinal seams," is undoubtedly a preferable one, and it has been adopted by the trade to the exclusion of all pre-existing constructions. The gist of the invention claimed, if there was invention, is the exclusively longitudinal seams feature of the complainant's elbow, and the important question in the case is whether the inventive faculty was exercised in its attainment. The elbows previously in use for the precise purpose for which this elbow is intended were made in a manner which did not suggest the absence of transverse seams, but, on the contrary, necessarily involved their presence. The method, as well as the product, of the patentee is different. In his specification he says: