

also averred that the said publications were not original with the complainant. It further averred that the suit above referred to had been brought to final hearing in the supreme court of Massachusetts, and had been dismissed, with costs; that the decision in said suit was an estoppel upon the present one. It denied the use of said trade-marks, except the word "Hygienic," which was part of its corporate title.

Under the evidence, the suit was narrowed down to the right of the use of the word "Hygienic," and the adjudication of the essential matters in dispute in favor of the defendants in the Boston suit; both parties being privies thereto, as admitted in the pleadings. In said case no opinion was rendered, but the entire record was put in evidence by the defendants, for the purpose of showing that the subject-matter was the same as in the present suit.

W. P. Preble, Jr., for complainant.

Jos. C. Fraley, for defendants.

DALLAS, Circuit Judge. The oral argument of the learned counsel of the complainant, and the brief which he has submitted, have, I believe, presented as forcibly as possible every consideration which could be urged on its behalf; but I have not been persuaded that it is entitled to the relief which it seeks. I do not deem it necessary to detail the facts, or to discuss the familiar principles of law which have been debated at bar. It must suffice to say that I am of opinion that the final decree of the Massachusetts court in the case of this complainant against the William H. Richardson Company is conclusive in the present one (*Lyon v. Manufacturing Co.*, 125 U. S. 698, 8 Sup. Ct. 1024; *Billing v. Gilmer*, 8 C. C. A. 645, 60 Fed. 332; *Castle v. Noyes*, 14 N. Y. 329; *Follansbee v. Walker*, 74 Pa. St. 306; *Frauenthal's Appeal*, 100 Pa. St. 290; *Spring Run Coal Co. v. Tosier*, 102 Pa. St. 342; *Finley v. Hanbest*, 30 Pa. St. 190); and that, irrespective of that decree, the complainant has no right or title to such exclusive use of the word "Hygienic" as it claims. With reference to complainant's citation of *Manufacturing Co. v. Ludeling*, 22 Fed. 823, the attention of counsel is directed to *National, etc., Co. v. Munn's, etc., Co.*, [1894] App. Cas. 275. Bill dismissed, with costs.

CLINTON WIRE-CLOTH CO. v. WRIGHT & COLTON WIRE-CLOTH CO.

(Circuit Court, D. Massachusetts. January 22, 1895.)

No. 222.

PATENTS—INVENTION—INFRINGEMENT—WIRE CLOTH.

The Wright patents, No. 239,011, for a shuttle for weaving wire cloth, and No. 239,012, for an improvement in the art of weaving wire cloth, held valid, as showing patentable invention.

This was a suit by the Clinton Wire-Cloth Company against the Wright & Colton Wire-Cloth Company for infringement of certain patents.

Cansten Browne and Alex. P. Browne, for complainant.

Elmer P. Howe, for defendant.

CARPENTER, District Judge. This is a bill in equity to restrain an alleged infringement on letters patent No. 239,011, issued March

15, 1881, to George F. Wright, for shuttle for weaving wire cloth, and No. 239,012, issued March 15, 1881, for improvement in the art of weaving wire cloth. It appears that in weaving wire cloth by means of a shuttle a difficulty was found to exist by reason of the fact that the wire in leaving the shuttle acquired a twist, in consequence of which the surface of the fabric was distorted. This difficulty has been met by the improvement described in the art patent, which improvement may be best stated in the words of the claim of that patent, as follows:

"The hereinbefore described improvement in the art of weaving wire cloth, which consists in swaging the coils of filling wire into the body of the wire during the process of weaving, substantially in the manner specified."

The method by which this is accomplished is shown in the patent for the shuttle. It shows a shuttle containing a case or chamber for the cop of wire, swaging rolls around which the wire passes under strain, and delivery rolls at the point where the wire passes out from the shuttle. The invention here alleged to be infringed is claimed in the following terms:

(1) The combination of a shuttle body for weaving wire with a cop case or chamber to contain the wire, and with swaging rolls, around which the wire passes after leaving the cop and before leaving the shuttle, whereby the twists of the wire are swaged into its body, and smooth weaving insured, substantially as described.

(2) The combination, substantially as hereinbefore set forth, of the cop case, the delivery rolls, and the swaging rolls interposed between the delivery rolls and the cop, for the purposes set forth.

The respondents use a shuttle which contains the cop chamber and the delivery rolls, and between them a friction block, around which the wire is strained so that the molecular condition of the wire is changed, and the twist in the wire disappears. Their shuttle is shown in the drawings of letters patent No. 299,895, issued June 3, 1884, to George F. Wright, for shuttle for weaving wire cloth. In looms for weaving yarn there had been devices similar in construction to that shown in the patent. The English patent to John Combe, dated February 20, 1857, shows a circular groove or tension post around which the thread passes from the cop before it leaves the shuttle, and the patent No. 45,682, issued December 27, 1864, to William Tunstill, shows a roller around which the weft is carried between the cop and the delivery eye. In weaving wire cloth, where the wire is wound on a spool, and not upon a bobbin, the difficulty to be encountered was that the wire as it issued from the shuttle was curved, rather than twisted; and for the purpose of retarding the flight of the wire, so as to straighten it, there had been used tension devices, an example of which is seen in the patent No. 86,233, issued January 26, 1869, to Levi Kittinger. The mechanism in which this invention is involved was, therefore, a mechanism old in form or construction. But it was not old in function. It had not been applied to the swaging of wire, or of any substance capable of undergoing that operation. The manner in which the patentee applied the mechanism was, therefore, new; and so also was there a new result, substantially different from any which had been theretofore produced,

whether by this mechanism or otherwise, in wire which was in process of formation into wire cloth. It is said that the structures existing before the patent, and shown in previous patents, may now, with slight modifications, involving only ordinary mechanical skill, be used in weaving wire cloth in the method used by the patentee. I suppose this to be true, and I conclude that in the discovery that this is true resides the invention which is protected by this patent. *Pennsylvania R. Co. v. Locomotive Engine Safety Truck Co.*, 110 U. S. 490, 4 Sup. Ct. 220. The same observations lead me to the conclusion that the invention was not abandoned by these complainants by the descriptions of the mechanism capable of performing the function described in this patent, and by reason of which this patent is sustained, which descriptions are contained in the prior patents to Sawyer and Wright, No. 135,446, issued February 4, 1873, and to Waters and Orr, assignors to the complainants, No. 117,837, issued August 8, 1871, and No. 121,830, issued December 12, 1871.

The respondents set up in defense a prior public use of a loom containing the patented improvement. It is sufficient for me to say that I am satisfied from the testimony that the alleged use was only experimental, and does not operate as a bar to the rights under the patent. My conclusion, therefore, is that there must be a decree for an injunction and for an account as prayed in the bill.

THOMSON METER CO. v. NATIONAL METER CO.

(Circuit Court of Appeals, Third Circuit. January 2, 1895.)

No. 18.

1. PATENTS—EXTENT OF MONOPOLY—UNFORESEEN RESULTS.

An inventor is entitled to all the legitimate results of the invention covered by his patent, including even those which were not foreseen by him.

2. SAME—INFRINGEMENT—IMMATERIAL VARIATIONS.

Changes of form do not avoid infringement when the two devices do the same thing in substantially the same way, and accomplish the same result.

3. SAME—WATER METERS.

The Nash patent, No. 379,805, for an improvement in water meters, *held* valid, and infringed as to claims 15 and 17.

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

This was a bill by the National Meter Company against the Thomson Meter Company for infringement of a patent. The circuit court rendered a decree for an injunction and accounting. Defendant appeals.

Edward H. Brown, for appellant.

J. Edgar Bull and Edmund Wetmore, for appellee.

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

WALES, District Judge. This suit was brought in the circuit court of the United States for the district of New Jersey to restrain