

Cavallus process, the Ordway process, the Heinzerling process, and perhaps others, all have, in a very high degree, a positive likeness to, if not practical equivalency with, the Schultz process, and clearly disclose a state of art which leaves scarcely anything to be accomplished in the future, so far as chrome tanning is concerned. Certainly, considered in connection with the Swan patent and the publication on this subject extant years before Schultz made his experiments, they strip his alleged discovery of all legitimate claim to that novelty and invention upon which alone rests safely the validity of letters patent. The bill of complaint must, for the reasons stated, be dismissed.

---

EBERHARD MANUF'G CO. v. ELBEL et al.

(Circuit Court, N. D. Ohio, E. D. August 8, 1893.)

No. 5,009.

**PATENTS—ANTICIPATION—INFRINGEMENT—HARNES TRIMMINGS.**

The Zeller patent, No. 207,791, for improvements in harness trimmings, shows patentable invention, and was not anticipated either by the Zeller patent of 1874, or by the Hinman patent of February 25, 1868.

This was a suit by the Eberhard Manufacturing Company against Elbel & Co. for infringement of the Zeller patent, No. 207,791. The patent relates to drop hooks and terrets for harness. The hook is used for holding the checkrein which extends from the bridle bit, and is secured to the apex of the harness saddle. The terrets are rings through which the driving reins pass, and are fixed to the sides of the harness saddle. The patented hook comprised three parts,—a base plate having rivet holes enabling it to be attached to the harness saddle, and having a concave bearing for the hook; an annularly grooved hook; and a covering cap piece fitting over the groove of the hook, forming, with the concavity of the base plate, a contracted cylindrical cavity, which prevents the shank from moving lengthwise, but leaves it free to turn laterally, and drop into a horizontal position when not in use.

E. A. Angell and Thomas W. Bakewell, for complainant.

M. D. Leggett and Charles R. Miller, for respondents.

RICKS, District Judge. The bill is filed for infringement of letters patent No. 207,791, granted on September 3, 1878, to Melancthon E. Zeller, for an improvement in harness trimmings. The complainant has given to the public a very simple device, which combines several elements that are all calculated to make it acceptable and useful. Though it presents no single element evincing great invention, it combines several new features, which, taken together, make it a successful device, which has rapidly won its place among articles of useful manufacture. It is easily and cheaply made; so designed and constructed as to be easily put together; each part performs the function claimed for it; and when put into

use it is superior to any other article made or designed for the same purpose. It can be made and sold separately; can be readily attached to any kind of harness; and it fulfills the uses for which it was designed. In it the patentee developed as to its leading features that "last step" which completes invention, and makes the device a success. This is particularly striking in comparing the device of the patent in suit with the device of the same patentee in the patent designated the "Zeller Patent of 1874." That device was practically inoperative, both because of the expense and difficulties connected with its manufacture, and more particularly because the falling hook, which was designed to receive the checkrein, had such a long vertical end projecting through the elevated plate or passage that when the strain on the checkrein was lessened so as to permit the hook to slip back, or to force it back, towards or over the crupper loop, the ring, instead of falling easily and surely, would catch and remain rigid. One of the principal features claimed for the hook so constructed was that it would readily fall and prevent its destruction in case the horse or mule should fall or roll with the harness on it, so that for the chief advantage claimed it was inoperative. The chief defense against this patent is that it was anticipated by the manufacture and sale of various articles of common use by nine prior United States patents. The two chiefly relied upon as showing an anticipation are those of J. W. Hinman, February 25, 1868, and of M. E. Zeller, of September 15, 1874, just referred to. The Hinman patent, while it involves the drop hook and drop ring in a device intended for an entirely different use, did not disclose those uses in a way to make them any more conspicuous than had been done in other devices in which they had been previously employed, or than would suggest such use in a drop hook such as used in complainant's patent. I do not, therefore, think that the Hinman patent was an anticipation.

For the reasons stated before, I do not think the earlier Zeller patent is an anticipation. It is intimated in brief of defendants' counsel that the claim in the earlier patent, abandoned by Zeller, viz.: "A harness finding consisting of the plate, A, upon which is formed the elevation, a, having an eye or passage, A', to receive a terret or ring, a hook or other harness attachment, substantially as and for the purpose set forth,"—is substantially the same as the claims of the later patent, and should estop him from setting up the same in his present suit. The essence of the later invention is that the parts are cast separately, and so made as to be easily and cheaply made and put together, and, when so combined, to furnish a stronger and more satisfactory product. All this is accomplished. And there is no ground for estoppel on the plea that the former claim abandoned is the same device. The defendants have not seen fit to use any of the devices set out in the nine patents pleaded. They have, however, patterned the article they manufacture exactly from that of complainant. They have done this after correspondence, and with full information as to complainant's claims. The hook is a clear infringement of the first and

third claims of the patent, and the terret of the second claim. The complainant is entitled to a decree sustaining its patent, finding infringement, and for an accounting.

---

WESTINGHOUSE et al. v. BOYDEN POWER-BRAKE CO.

(Circuit Court, D. Maryland. March 11, 1895.)

**1. PATENTS—INFRINGEMENT—AIR BRAKES.**

The Westinghouse patent No. 360,070, for a fluid-pressure automatic brake mechanism, is not infringed as to claims 1 and 4, which are expressly limited to an auxiliary valve independent of the triple valve by the Boyden brake mechanism (patents Nos. 481,135 and 481,136), in which the main valve is made to do both main valve work and quick-action work, when needed.

**2. SAME—FUNDAMENTAL INVENTIONS—DIFFERENCES IN FORM.**

Claim 2 of the Westinghouse patent is not, however, thus restricted, and, as the invention is a broad one, *held*, that this claim is infringed by the Boyden mechanism, which attains the same result by means functionally equivalent, though differing in form.

**3. SAME—DISCLAIMERS—AMENDMENTS IN PATENT OFFICE.**

Amendments made to meet the objections of an examiner are not to be construed as a disclaimer of the patentee's actual invention, if such construction can be avoided without doing violence to the obvious meaning of the language used. *Lake Shore & M. S. Ry. Co. v. National Car-Brake Shoe Co.*, 4 Sup. Ct. 33, 110 U. S. 229, and *Reece Button-Hole Mach. Co. v. Globe Button-Hole Mach. Co.*, 10 C. C. A. 194, 61 Fed. 958, followed.

**4. SAME—FUNDAMENTAL INVENTIONS—EFFECT OF SUBSEQUENT IMPROVEMENTS.**

In the case of a fundamental invention, a defect which prevents the commercial success of the mechanism as originally patented, but which is not radical in character, and is readily corrected by the inventor after experiment, does not deprive the patent of its meritorious character, although the improvement itself becomes the subject of a subsequent patent.

This was a bill in equity by George Westinghouse, Jr., and the Westinghouse Air-Brake Company against the Boyden Power-Brake Company, George A. Boyden, president, Charles B. Mann, secretary, and William Whitridge, treasurer, for the infringement of a patent.

George H. Christy, I. Snowden Bell, Frederic H. Betts, and Bernard Carter, for complainants.

Lysander Hill, Hector T. Fenton, and Barton & Wilmer, for defendant.

MORRIS, District Judge. This is a bill in equity, in usual form, charging the defendant with infringing the Westinghouse patent No. 360,070, dated March 29, 1887, for a fluid-pressure automatic brake mechanism. The claims alleged to have been infringed by the defendant are claims 1, 2, and 4, which are as follows:

"(1) In a brake mechanism, the combination of a main air pipe, an auxiliary reservoir, a brake cylinder, a triple valve, and an auxiliary valve device, actuated by the piston of the triple valve and independent of the main valve thereof, for admitting air in the application of the brake directly from the main air pipe to the brake cylinder, substantially as set forth. (2) In a brake mechanism, the combination of a main air pipe, an auxiliary reservoir, a brake cylinder, and a triple valve, having a piston whose preliminary traverse