

the circuit court of appeals. 64 Fed. 492. Defendant now moves for a rehearing, upon the ground of newly-discovered evidence.

Mitchell, Hungerford & Bartlett, for complainants.  
George E. Terry, for defendant.

TOWNSEND, District Judge. This is a motion for a rehearing, upon the ground of newly-discovered evidence, which, it is alleged, shows lack of novelty, in view of the prior art, and raises a question of doubt as to whether the patentee was the first to conceive the invention of the patent. On the former hearing, the court decided that the second claim of the patent in suit was infringed, and ordered a preliminary injunction, but granted, also, an order suspending its operation until the case could be heard by the circuit court of appeals. Under the general claim of lack of novelty, three patents were introduced on this hearing, namely: Patent No. 300,430, dated June 17, 1884, granted to Benjamin F. Archer; British patent No. 9,617, dated July 3, 1888, granted to Charles N. Fyland; and British patent No. 2,150, dated May 26, 1880, granted to George Walker. One of the drawings of the Fyland patent shows or suggests the downward curve of the patented cast-off. Another shows two catches at the side of the front plate. The curve at the lower end of the back plate is practically the same as that of defendant's buckle. It may be true, as urged by complainants, that said patent does not show the precise latch for positively locking the members together, as described in the patent in suit, and covered by the first claim, nor such coacting members for jointly supporting the cord when it is subjected to stress. But, in order to sustain the second claim of the patent, and to find infringement upon the evidence presented at the former hearing, it seemed necessary to hold that the location of the catch was not a special feature of the patented invention, and that the only object of the patent was to so arrange it that it might be readily engaged and disengaged. The feature of joint support by coacting members was considered, and it was thought that, as the downward pull was entirely upon defendant's back plate, the arrangement of said catch and of the two members for joint support was not an essential element of the second claim. Under no other construction did the order for a temporary injunction seem to be justified, and this construction was adopted, with some hesitation, in order to permit the question involved to be raised by appeal. The additional evidence introduced so strongly confirms the doubts originally entertained that I think the orders already made should be vacated, and the motion for a preliminary injunction should be denied. Let an order be entered accordingly.

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TAGLIABUE v. SONDERMANN.

(Circuit Court, E. D. New York. May 15, 1895.)

PATENTS—ANTICIPATION—SYRINGE.

The Tagliabue patent, No. 325,132, for a syringe in which the piston is made expansible without being removed, by having a threaded piston

rod working in a jam nut, which is held stationary for tightening the screw by being drawn into and held by a socket in the cylinder head, is void because of anticipation by the Myers patent, No. 261,026, which shows the same elements, working together in the same way, in a pump, which is a closely analogous use.

This was a suit in equity by Charles J. Tagliabue against Hermann Sondermann for infringement of a patent for a syringe.

John Henry Hull, for plaintiff.

Arthur v. Briesen, for defendant.

**WHEELER**, District Judge. This suit is brought upon patent No. 325,132, dated August 25, 1885, and granted to the plaintiff for a syringe, in which the piston is made expandible without being removed by having the piston rod threaded and working in a jam nut, which is held stationary for tightening the screw and expanding the piston by being drawn into and held by a socket in the cylinder head. The claims are for:

"(1) In combination with the screw-threaded piston rod, the expandible piston, and the jam nut fitted on the piston rod to act on the piston, the cylinder head having the axial passage for the piston rod provided with a socket to receive the jam nut, and hold it stationary in the rotation of the piston rod, substantially as shown and described.

"(2) The screw-threaded piston rod, the expandible piston, and the jam nut arranged on the piston rod to act on the piston, and constructed in form of a tapering polygon, in combination with the cylinder head having the axial passage for the piston rod, provided with a socket of corresponding form to the jam nut to receive the latter, and hold it stationary in the rotation of the piston rod, substantially as described."

Among others, patent No. 261,026, dated July 11, 1882, and granted to Philip A. Myers, for a piston packing for pumps, is set up as an anticipation. In it the patentee describes the operation of these parts thus:

"In pumps of this class it is inconvenient to take out the piston from the cylinder when it needs readjustment. I have therefore devised simple means for effecting this adjustment while the piston remains in the cylinder. This I accomplish by forming on the upper end of the cylinder in which the piston works a socket in line with the piston rod, this socket being polygonal or otherwise shaped to fit the upper nut when the piston is drawn up. In order, therefore, to tighten the nuts and increase the pressure upon the rubber or other expandible disk, it is only necessary to draw up the piston till the upper nut enters the cavity or recess or socket, when it is held while the piston rod is turned. As the piston rod is turned, it passes through the upper nut, all below said upper nut turning with the rod. This forces down the upper nut, and presses the lower into the rubber disk, thereby expanding the rubber and the bushing or packing without removing the piston from the cylinder."

The second claim is for:

"(2) The combination of the cylinder, the piston rod and piston, the packing, and the expandible disk within the packing, and the socket fixed to the upper end of the cylinder, adapted to receive the upper nut, and to turn it down to compress said packing, as set forth."

Here are all the elements of the plaintiff's claims, operating together in a pump in the same way as in his syringe, and for the same purpose. A syringe is a kind of pump, and these uses are not only analogous, but closely so, for the expandible piston is expanded in each, and works precisely as in the other. The difference, if any,

is only in size; but this does not affect the relation or operation of the parts. As machines they appear to be the same. The plaintiff seems to have been an original, but not the first, inventor of this invention. For want of that priority, his patent fails.

Let a decree be entered dismissing the bill.

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THE COLUMBUS.

THE SCOWS NOS. 6, 8, 11, and 12.

MUNN v. GARVER.

(Circuit Court of Appeals, Third Circuit. May 3, 1895.)

No. 9.

1. MARITIME LIENS—TOWAGE SERVICES RENDERED UNDER CONTRACT—EXISTENCE OF LIEN.

Where a libel against certain scows and dredges, constituting together a dredging plant, to recover for towage services rendered during the operation of the plant, showed that the services were rendered under contract made with a person with whom the libelant dealt as agent for the owners or users of the plant, without any agreement for a lien, *held*, that an averment in the libel that the services were rendered on the credit of the plant, and not upon the credit of the owners, was insufficient in law, because the material inquiry was, not whether the libelant himself contemplated a lien, but whether a lien was created by or resulted from the mutual understanding of the parties and the services rendered in pursuance of it; and *held*, further, that, as the services were not alleged to have been rendered upon the request of the master, but under contract with an agent of the owners, it was immaterial, under the circumstances, whether or not the owners were known to libelant.

2. SAME.

Where special and unusual towage services, such as conveying the scows of a dredging plant back and forth from the dredges to the dumping place, and moving the dredges from time to time, are rendered pursuant to a contract, any intention to create a lien for the services should be clearly expressed.

3. SAME.

Dredges and scows used together upon a dredging contract, both being necessary to the operation of the dredging plant, are not to be considered as one thing, in such sense that a lien will attach to all for services rendered in towing some of the scows back and forth from the dredges to the dumping place, and in moving the dredges from time to time. 65 Fed. 430, affirmed.

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

This was a libel by Frank W. Munn, managing owner of the tug-boats Philadelphia and Alert, against the dredge Columbus and the scows Nos. 6, 8, 11, and 12, of which John A. Garver was claimant, as agent for the owners. In the district court the libel was dismissed. 65 Fed. 430. The libelant appeals.

Horace L. Cheyney and John F. Lewis, for appellant.

J. Rodman Paul, for appellee.

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