

and to thereby represent to the public that its goods were those of complainant." The devices on the bottles, wrappers, and packages of complainant were closely, and for some time exactly, imitated by defendant, and, as said by the court, defendant's "first, and almost exact, imitation of complainant's packages and device showed not the advertisement of a new article with a reputation to make, but the counterfeiting of an old article with a reputation already made, and the change in the device was and is an attempt to preserve the deceit, and yet avoid a liability for it." Judge McKenna expressly stated, in reply to defendant's claim that complainant's trade-mark was descriptive and deceptive, that "the question is now, not whether complainant has the exclusive right to use the words 'Fig Syrup' or 'Syrup of Figs,' but it is whether respondent has by use of them and other words, and by the other imitations alleged and exhibited, so far imitated the form of complainant's device as to represent its goods as its [complainant's] goods, and appropriate its reputation and trade. * * * The gravamen of the action is the simulation of complainant's devices and the deception of purchasers." The injunction was granted because of such imitations. On appeal from this order it was affirmed, the court of appeals, in the last paragraph of its opinion, saying: "As we construe this restraining order of the court below, it simply excludes the use by appellants of trade-marks, bottles, wrappers, and devices used in offering their preparation to the public similar to those applied by appellee to its preparation for a similar use and purpose." It is true that the court of appeals discuss at some length the character of complainant's trade-mark; yet, with all deference to the opinion of the learned court, it would seem from its concluding paragraph, quoted supra, that its expression upon this point was not necessary to the decision of the case presented, and that the true ground for the relief granted was the manifest equity of complainant to have the defendant restrained from unfair trade, independent of the question arising upon the validity of the trade-mark in controversy. *Goodyear's India-Rubber Glove Manuf'g Co. v. Goodyear Rubber Co.*, 128 U. S. 598, 604, 9 Sup. Ct. 166; *Lawrence Manuf'g Co. v. Tennessee Manuf'g Co.*, 138 U. S. 537, 11 Sup. Ct. 396; *Chemical Co. v. Meyer*, 139 U. S. 540, 11 Sup. Ct. 625. However this may be, I am unable to accept its conclusions upon the character of complainant's trade-name. The bill of complaint is dismissed, with costs.

LAUFERTY v. KURSHEET MANUF'G CO.
(Circuit Court, S. D. New York. June 5, 1895.)

1. PATENTS—WHAT CONSTITUTES INVENTION.

There is no invention in substituting, for the solid needles of a braiding machine, tubular needles, for feeding the thread in making purl-edge braid, it being common to feed thread into braids by means of tubular needles.

2. SAME—BRAIDING MACHINES.

The Lauferty patent, No. 430,346, for an improvement in braiding machines, is void for want of invention.

This was a bill by Henry Lauferty against the Kursheet Manufacturing Company for alleged infringement of a patent relating to braiding machines.

F. R. Coudert and David Keane, for complainant.
A. v. Briesen and M. A. Kursheet, for defendant.

COXE, District Judge. The complainant is the owner of letters patent No. 430,346, granted to him June 17, 1890, for an improvement in braiding machines. The bill is in the usual form and prays for an injunction and an accounting. The principal question is of invention. The claims relate to combinations each element of which is old, except the tubular or grooved needle which is substituted for the solid needle similarly mounted in the old machines. Tubular needles were also old and had been previously used to do similar, but, perhaps, not identical work. In other words, this patentee had before him an operative braiding machine precisely like the machine of the patent save that it was provided with a solid needle. He also had before him tubular needles used as thread guides in braiding machines. He took two of these needles out of interjacent circles and placed them in the terminal circles of the race plate. All this is conceded. Did it tax the inventive faculty to do this? Other threads had been fed into braid by hollow needles, did one who fed the "beazer" thread in this way become an inventor? The question cannot be more tersely stated than by the expert witness for the complainant. He says:

"The prior art relating to braiding machines shows that long prior to complainant's patent it was common to feed wires, threads and other bodies into braid by means of hollow tubes. I do not wish to be understood as saying that the combination recited in complainant's patent had ever been used, for such I do not find to be the case; but that, for instance, in making whips the core of the whip was fed through a hollow tube, or for making various kinds of braids, heavy and strong threads were fed through hollow tubes. Therefore it seems the most obvious thing in the world for a mechanic called upon to make a braiding-machine for making purl-edge braid to use hollow needles; but the fact is that prior to the date of complainant's patent they did not do it, which to my mind proves that it was not obvious then and to them, however obvious it now appears to me. * * * Prior to complainant's patent solid needles were used in braiding machines to produce a purl-edge braid."

Assuming that the complainant was the first to use the combinations of the claims, the court cannot assent to the proposition that it involved invention, after the Benjamin machine, for instance, was adjusted to produce a flat braid, to place the feed tubes there shown in the terminal circles. If the complainant has done more than this the court fails to perceive it.

Conceding that the complainant's braid has a finish superior to that produced by the solid needles, and this is by no means clear from the testimony, still, no new result is produced. The complainant has changed the location of the old hollow needle in the old braiding machine. This was the work of the skilled artisan, not of the inventor. It would naturally occur to the former when adjusting the machine for a flat braid. Complainant invented

neither needle nor machine. At best he placed the old needle in a slightly changed position and thus did at the edge what others had done at the center of the braid, and elsewhere. Prior to October, 1889, the art was such that a manufacturer was at liberty to use a hollow needle to carry any thread he desired into the braid. The selection of a particular thread did not make him an inventor. The bill is dismissed.

KILMER MANUF'G CO. v. GRISWOLD et al.

(Circuit Court of Appeals, Second Circuit. April 23, 1895.)

No. 93.

1. APPEALS FROM INTERLOCUTORY DECREE—CIRCUIT COURT OF APPEALS—PATENT CASES.

Where both parties appealed from an interlocutory decree finding that one claim of a patent was invalid, and that another claim was valid and infringed, and directing an injunction and accounting, *held*, that the only appeal which could be considered by the circuit court of appeals was from so much of the decree as granted an injunction.

2. PATENTS—INVENTION—INJUNCTION AGAINST INFRINGEMENT—BALE TIES.

The Kilmer patent, No. 372,375, for an improvement in adjustable bale ties, *held* to be apparently without invention, as to its second claim, in view of the Griswold patent, No. 322,442, and the prior Kilmer patent, No. 282,991; and *held*, therefore, that an interlocutory decree granting an injunction to restrain infringement thereof should be reversed. Shipman, Circuit Judge, dissenting. 62 Fed. 119, reversed.

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

This was a bill by the Kilmer Manufacturing Company against J. W. Griswold and F. B. Griswold for alleged infringement of patents Nos. 282,991 and 372,375, issued to Irving A. Kilmer August 14, 1883, and November 1, 1887, respectively, for improvements in adjustable bale ties. Upon the hearing, complainant's contention was confined to the second claim of each patent. The circuit court held that the second claim of No. 282,991 was invalid, and that the second claim of No. 372,375 was valid, and had been infringed by defendants, and decreed an accounting, and an injunction restraining them from future infringement. 62 Fed. 119. From this interlocutory decree both parties have appealed.

W. H. Singleton and S. A. Duncan, for complainant.
Edwin H. Brown, for defendants.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

LACOMBE, Circuit Judge. Inasmuch as the decree of the circuit court is not final, the only appeal which can be considered is from so much of such decree as grants an injunction. The bale tie of No. 282,991, as complainant contends, possessed the following