

UTICA FIRE-ALARM TEL. CO. et al. v. MUNICIPAL FIRE & POLICE
TEL. CO. et al.

(Circuit Court, D. Massachusetts. June 12, 1895.)

No. 381.

PATENTS—INFRINGEMENT—FIRE-ALARM BOXES.

The Palmer patent, No. 220,088, for an improvement in noninterfering fire-alarm boxes, cannot, in view of the prior art, as shown particularly in the Pond and Chester patents, Nos. 188,182 and 164,425, respectively, be construed as extending to all mechanism which performs the main functions effected by the devices described in claims 4 and 5.

This was a bill in equity by the Utica Fire-Alarm Telegraph Company and others against the Municipal Fire & Police Telegraph Company and others for infringement of a patent relating to fire-alarm boxes.

Richard H. Dyer, for complainants.

James J. Storrow, Jr., and Frederick P. Fish, for respondents.

CARPENTER, District Judge. This is a bill in equity to restrain an alleged infringement of letters patent No. 220,088, issued September 30, 1879, to Augustus H. Palmer, for improvement in noninterfering fire-alarm boxes. The claims alleged to be infringed are as follows:

"4. In combination with the carriage, A, the spring-barrel, spring, and pin-lever, p, rod, r, and armature, s, whereby the armature is positively raised and held to the magnet until the circuit is renewed, substantially as set forth.

"5. In combination with the rectangle-bar, U, and bent rod, l, the rod, m, thumbscrew and jam-nut, z, and armature, s, whereby the rectangle-bar is held from engagement with the signal-rack, and a positive noninterference obtained with all the other boxes of the circuit, substantially as shown and described, and for the purposes set forth."

The device employed by the respondents can be held to infringe this patent only by construing the two claims here in controversy to cover all mechanism which performs the main functions performed by the devices described in those two claims. Shortly stated, these are as follows: The device covered by the fifth claim causes the armature of the noninterfering mechanism to fall entirely out of the field of influence of the magnet which holds it in the normal position of the apparatus, while the device covered by the fourth claim mechanically replaces the armature within the same field of influence, by the automatic action of the motor mechanism which drives the system as a whole. These main functions, however, are performed in the mechanism shown in several earlier patents. I refer particularly, with respect to the fifth claim, to the patents to Pond, No. 188,182, and to Chester, No. 164,425, and, with respect to the fourth claim, to the Chester patent, above named. I therefore conclude that the respondents do not infringe, and that the bill must be dismissed.

RANSOME et al. v. HYATT.

(Circuit Court of Appeals, Ninth Circuit. June 27, 1895.)

No. 201.

PATENTS—ACTION AT LAW FOR INFRINGEMENT — PRESUMPTION FROM DEFENDANT'S PATENT.

In an action at law, where the alleged infringing machine is made under a subsequent patent, defendant is entitled to an instruction that the issuance of such patent creates a prima facie presumption of a patentable difference from the machine of complainant's patent. *Miller v. Manufacturing Co.*, 14 Sup. Ct. 310, 151 U. S. 208, and *Boyd v. Tool Co.*, 15 Sup. Ct. 837, followed and applied.

In Error to the Circuit Court of the United States for the Northern District of California.

This was an action at law by Thaddeus Hyatt against Ernest L. Ransome and others for infringement of a patent for improvements in compositions for floors, roofs, pavements, etc. In the circuit court there was a verdict and judgment for plaintiff in a nominal sum, and defendants bring error.

Wheaton, Kalloch & Kierce, for plaintiffs in error.

John L. Boone, for defendant in error.

Before GILBERT, Circuit Judge, and KNOWLES and BELLINGER, District Judges.

GILBERT, Circuit Judge. The defendant in error was the plaintiff in an action at law brought to recover damages for the infringement of the Hyatt letters patent, No. 206,112, of date July 16, 1878, for an improvement in composition floors, roofs, pavements, etc. The specification of the patent refers to what are claimed to be "new and useful improvements in the use and application of hydraulic cements and concretes in combination with metal as a building material," etc., and describes the building material so referred to as hydraulic cement, "concrete," etc., and describes the combination therewith of metal bars or ties embedded therein, and having their surfaces roughened in some manner to prevent them from slipping horizontally in the material, and proceeds thus:

"To prevent slipping, these ties require also a roughened surface. This roughened or nonslipping surface may be made in many ways. For some purposes a mere sanded, tarred surface may possibly suffice, but I prefer to use metal specially rolled for the purpose, with bosses or raised portions formed upon the flat faces of the metal."

The defendants manufactured building material in a manner similar to that described in the Hyatt patent, the only difference being that, instead of using metal rods with projections or bosses produced in the casting, they used a square rod, so twisted as to present the appearance of a screw. For the use of the twisted rod in such combination, the defendants had secured a patent of date September 16, 1884, which was read in evidence. The only assignment of error necessary to be considered is the refusal of the court to instruct the jury concerning the effect to be given to the fact that a patent had so issued to the defendants.