

contact with the gum except along its front lower edge, and supported by rigid attachment to one or more adjoining permanent teeth, substantially as and for the purpose set forth."

This method, as such, would be as well practiced and shown by the attachment in that way of one side of one tooth or one end of a block of teeth, to one natural tooth, as by so attaching each side of the single artificial tooth, or each end of the block, to a natural tooth. The method of each attachment to a natural tooth is, by the terms of the patent, precisely the same. A band extending upward so as to form a cap over the natural tooth would be none the less a continuing band of the patent, when used as such in carrying out this method. The alleged infringement was done only by such use of such a cap. Dr. Day testifies to soldering a silver cusp to a silver band, making a cap, which was permanently attached to a natural tooth of a patient, and to which an artificial tooth was attached. This testimony is supported by that of an assistant learning the profession, that of an intimate acquaintance of the patient, and the production in evidence of the work, kept after long wear. Dr. Beardsley testifies to making a similar cap of gold and attaching it to a natural tooth of a patient, wife of a clergyman, and to attaching at first an artificial tooth at one side of the cap, and afterwards another on the other side, which were worn, and gave satisfaction, several years. In this he is corroborated by an assistant, also learning the profession, and by the patient, her two daughters, and one of her Sunday school scholars. There is nothing so improbable about this testimony, which is left wholly undisputed, as to leave any fair doubt as to the occurrences, or their date, both of which preceded Low's invention. The method of either seems to be the method of the patent, and either seems to well have anticipated it. Let a decree be entered dismissing the bill.

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HAMMOND BUCKLE CO v. WELD et al.

(Circuit Court of Appeals, First Circuit. February 14, 1896.)

No. 145.

1. PATENTS—COMITY BETWEEN CIRCUIT COURTS OF APPEAL.

Quære: Whether, and how far, the circuit court of appeals of one circuit should be controlled by a decision of the circuit court of appeals of another circuit upon the question of the validity of a patent.

2. SAME—VALIDITY AND INFRINGEMENT.

The Hammond & King patent, No. 301,884, for an improvement in shoe clasps for arctic overshoes, must, in view of the prior state of the art, be limited, in respect to claims 1, 2, and 3, to the specific combination which is described in claim 4. *Held*, therefore, that these claims were not infringed by defendant's buckle; and *hæc*, further, that claims 2 and 3 are void for want of patentable invention.

Appeal from the Circuit Court of the United States for the District of Massachusetts.

This was a suit in equity by the Hammond Buckle Company against George A. Weld and others, for alleged infringement of

letters patent No. 301,884, issued July 15, 1884, to Hammond & King, for an improvement in shoe clasps for arctic overshoes. The circuit court dismissed the bill; its action being apparently based upon the decision of the circuit court of appeals for the Second circuit in Hammond Buckle Co. v. Goodyear Rubber Co., 7 C. C. A. 276, 58 Fed. 411, wherein the patent was given a narrow construction. The complainant appealed, and in this court one of the contentions was in respect to the effect which was to be given by this court to that decision.

George W. Hey (Arthur E. Parsons, on briefs), for appellant.

James J. Storrow, Jr. (William K. Richardson, on briefs), for appellees.

Before PUTNAM, Circuit Judge, and NELSON and WEBB, District Judges.

WEBB, District Judge. Whether, and how far, in a case like this, in which a patent has been held invalid by the circuit court of appeals in another circuit, this court should be controlled by such judgment, it is not important now to determine, inasmuch as we are entirely in agreement with the reasoning and the judgment of the circuit court of appeals for the Second circuit in Hammond Buckle Co. v. Goodyear Rubber Co., 7 C. C. A. 276, 58 Fed. 411, the opinion in which case was made an exhibit of the defendants in this. It is true that opinion and decree dealt with the first claim only of the patent, while here the second and third claims, also, are in controversy. But everything said by Judge Lacombe about the first claim may with equal cogency be applied to the second and third claims. He goes on to say, speaking of certain elements in the fourth claim:

"As thus modified, however, the invention is described in claim 4 of the patent: '(4) In combination, the catch plate, the tongue plate provided with the laterally elastic bifurcations extending rearward of the pivot, and the tongue swinging in the bifurcations, with a broadened portion which passes between the elastic arms as the tongue is swung, all substantially as described, and for the purposes set forth,'—which is really all that the inventor was entitled to claim."

So we think, and it disposes of the second and third claims as effectually as it does of the first.

It is assigned as an error that the circuit court did not hold that the defendants herein were bound by the decision of the United States circuit court for the district of Connecticut, in Hammond Buckle Co. v. Hathaway, 48 Fed. 305. As it is not shown that the parties in that case were the same as in this, we think there was no error in so not holding; still, as this decision has been pressed in argument on the attention of this court, it is not inappropriate to direct the appellant's attention to the fact that, in Hammond Buckle Co. v. Hathaway, the circuit court held that the combination described in the second claim of the patent, "as an entirety, was not patentable," and of the third claim says, "This claim is not patentable." Without recognizing a duty to be controlled by that decision of a circuit court respecting the second and third

claims of the Hammond & King patent, No. 301,884, we think it was correct.

Decree of the circuit court affirmed, with costs.

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CRAIG et al. v. MICHIGAN LUBRICATOR CO. et al.

(Circuit Court, E. D. Michigan. January 14, 1896.)

No. 2,324.

1. CRAIG PATENT No. 398,583—LUBRICATORS.

This patent is clearly void for want of invention, in view of the state of the art and the limitations which the inventor has imposed upon himself in his specification as to the nature and extent of his improvement.

2. SAME—CONSTRUCTION OF THE PATENT.

The patent, if sustainable, must, under the proofs, be strictly construed, and limited to the precise construction shown.

3. SAME—LIMITATIONS BY PATENT OFFICE.

Craig, having accepted, without appeal, limitations and restrictions imposed upon his claim by the patent office while his application was there pending, cannot now obtain by construction what the patent office repeatedly denied, nor can he evade his own limitations upon his claims. His patent cannot thus be enlarged.

4. SAME—CONSTRUCTION OF CLAIMS.

In the light of the history of this application in the patent office, the phrases "within the lines of the lubricator" and "within the condenser" must be held merely equivalent expressions, which restricted Craig to the very arrangement of parts which his application described and delineated.

5. SAME—PRIOR USE AND SALE.

Craig's application was filed June 1, 1885. He testified that in March, 1883, he reduced his invention to practice, and operated it upon the Pillsbury engine, at Lawrence, under an agreement that, if satisfactory, it should be paid for by Pillsbury; that, after two or three weeks' use, it was altered, for the purpose of trying another experiment, and then, after proving satisfactory, was paid for by Pillsbury. *Held* that, "under the proofs in this case, it is clear that there was such a public use and sale of the Craig lubricator as to avoid his patent."

The bill of complaint in this cause is filed by Warren H. Craig and others against the Michigan Lubricator Company and Frank W. Marvin, as its president and individually, for an alleged infringement of claims 2, 4, 5, 6, and 7 of letters patent No. 398,583, dated February 26, 1889, and issued to Craig for "improvements in sight-feed lubricators." By stipulation, Max Nathan was made a party complainant, because of certain rights held by him under the patent.

James H. Raymond, F. P. Fish, and Edmund Wetmore, for complainants.

John B. Corliss, George S. Payson, and George H. Lothrop, for defendants.

SWAN, District Judge. The proofs in the cause fail to establish any individual liability for the matters charged in the bill upon Mr. Marvin, the individual defendant, and it is practically conceded that it should be dismissed as to him.

The defenses to the charge of infringement are: (1) That the