

We regard these expressions of the supreme court conclusive in favor of the complainant in the suit at bar, even if the cause of action was not technically the same as in the prior suit. The decree of the circuit court is reversed, and the cause is remanded to that court, with instructions to enter a decree in favor of the complainant for a perpetual injunction and an accounting, and to take such further proceedings as are consistent with the opinion filed this day in this cause; the complainant to have its costs in this court.

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BEALE et al. v. SPATE et al.

(Circuit Court, S. D. New York. June 27, 1890.)

**PATENTS—LIMITATION OF CLAIMS—STAIR PADS.**

The Sperry patent, No. 363,695, for improvements in stair pads, is limited by the prior state of the art, and especially by the language of the specifications and claims, to a pad having, among other things, a loose, separate, and disintegrated filling, and a covering case sewed or secured to the edges of the stiff base piece.

This was a suit in equity by Joseph H. Beale and others against Frederick Spate and others for alleged infringement of letters patent No. 363,635, granted to Timothy S. Sperry, May 24, 1887, for improvements in stair pads. Final hearing.

This action is based upon letters patent No. 363,695, granted to Timothy S. Sperry, May 24, 1887, for improvements in stair pads. The pad is composed of three parts. (1) A stiff base of uniform thickness having one edge turned over to fit the edge of the step. (2) A flexible covering secured to the edges of the base part. (3) An elastic body of loose material interposed between the stiff base and flexible covering. The patentee asserts that a pad thus constructed has a stiff seating upon the step, that it forms an elastic support for the carpet, that its elasticity and shape can be easily restored when worn down by use and that it can be made cheaply. The stiff base is constructed of suitable material to retain it in the desired flat shape, such as thin wooden or paper boards. The front edge of the base is curved over to fit the front edge of the step and aid in retaining the pad in position. The covering may be of any suitable cloth or netting. The elastic material, which is loosely disposed in the closure between the base and the covering may be cotton, hair, granulated cork, chaff, shavings, jute, or any other convenient material. "These," says the description, "are disposed in a loose, separate, or disintegrated condition, so that when hardened by being trodden they can be 'worked' or separated again to restore the necessary softness or elasticity to the pad. \* \* \* When the elastic material becomes deadened or trodden down by wear, it is only necessary to take up the pad, bend it slightly in the direction of the covering part, a, shake it well, and pick or liven up the loose material by working it in any suitable way and the elasticity will be restored." This process of working up the elastic material after it has become deadened by use is made easy by the fact that it is placed loosely in the case. The patentee describes the prior art as follows: "The state of the art shows that stair pads have been made of cotton felt of a soft, moderately yielding, and elastic character, sufficiently rigid and stiff, however, to form a slab of unequal thickness and retain its shape, and having its front edge curved hook-like to form a lip to hook over the edge of the step; that they have been made up of a layer of cotton or other fiber placed between a netting on one side and a fabric or cloth on the other side, and the whole folded and stitched, and that such pads have been made of granulated cork and pulp combined, forming a composite molded sheet;

but my improvement differs from these things in the particulars stated, by which the pad is formed into an elastic case having a stiff inelastic base or seating, and which gives the advantage of allowing the pad formed by said case to be re-formed with a proper shape and fullness when worn down. My improvement is distinguished from all other stair pads in this, that it is made of an unyielding part, a covering part having a suitable fullness for forming a case, and a filling of loose elastic material, and that as an elastic pad its form can be restored after being worn down by merely shaking and loosening up the case as an entirety to restore the elastic function of the loose confined material. These distinguishing features and their advantages, so far as I know and can find, are not possible in pads formed of single sheets of elastic material folded or molded." The patent has three claims. They are as follows: "(1) As an improved article of manufacture, a stair pad consisting of a stiff base part, a covering case part secured to the edges thereof, and a body of elastic material loosely disposed between the base and the covering part, substantially as described. (2) A stair pad consisting of a stiff base part of uniform thickness, a covering case part having a suitable fullness attached to the edges of the base, and an interposed body of granulated cork, substantially as described. (3) A stair pad consisting of a base part of stiff unyielding material of uniform thickness having an edge curved-lip bend, d, a fabric cover having a fullness sewed to the edges of said base part, and an interposed body of elastic material, substantially as described." The defenses are noninfringement and want of patentable novelty.

Arthur v. Briesen and Harry M. Turk, for complainants.  
Robert N. Kenyon, for defendants.

COXE, District Judge (after stating the facts as above). Sperry did not invent a stair pad. His patent relates only to improvements upon the existing art. He fully recognizes this fact in the frank statement found at the end of the description. Every feature of his pad, considered separately, was old, unless limited to the details of construction described and shown. The stiff base, the covering case, the elastic material and the curved lip were well known in this particular art. William Warren was granted a patent for a stair pad in 1883. In speaking of the then prior art he says:

"The stair pads now in use consist of a bag of cloth, which is first sewed up and afterwards filled with cotton, properly distributed, and finally knotted or tied in a number of places, to prevent the displacement of the cotton when the pad is subjected to wear."

In the same year a patent was granted to Henry W. Mather for "a felt stair pad made sufficiently rigid or stiff to retain its form, as shown, and having a lip, c, formed on its front edge, to take over the edge of the step."

Should it be found that this pad possessed insufficient elasticity, or should it lose its elasticity by wear, what more natural than to reinforce it by a layer of cotton? It will hardly be insisted that one who did this, and covered the whole with "any suitable cloth" to hold the cotton in place, would be entitled to rank as an inventor. And yet, broadly speaking, this is what Sperry did. Mather showed him the stiff base and retaining lip and the old pillow pad showed him how to produce elasticity. He sewed the latter to the former and thus produced the desired effect. It is manifest that a construction of the claims broad enough to cover such a