

sisted in their infringing course with full knowledge of the adjudication sustaining the Schultz patents. The patents have only a very few years to run, and preventive relief is the plaintiff's only efficient remedy. It is true that the plaintiff is not itself engaged in the manufacture of leather, but its licensees are so engaged, and they need, and are justly entitled to, protection from infringement. The plaintiff has not refused to license the defendants upon the same reasonable terms that it has accorded to other manufacturers. The motion to dissolve the preliminary injunction is denied.

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**AMERICAN GRAPHAPHONE CO. v. LEEDS et al.**

(Circuit Court, S. D. New York. November 10, 1896.)

**PATENT SUITS—PRELIMINARY INJUNCTION—ADJUDICATIONS IN OTHER CIRCUITS.**

An adjudication sustaining a patent is not conclusive in favor of granting a preliminary injunction in a suit in another circuit, where a decisive question raised in the latter suit was not contested in the former, and it appears that, in the former, a motion for reargument for the purpose of raising this point has been entertained, but not yet decided.

This was a suit in equity by the American Graphophone Company against Loring L. Leeds and others for alleged infringement of a patent. The cause was heard on a motion for preliminary injunction.

Philip Mauro and Benjamin F. Lee, for the motion.  
R. N. Dyer, opposed.

LACOMBE, Circuit Judge. The only question really presented on this motion is whether the adjudication in support of the patent in the district of Illinois is to be taken as controlling as to validity and scope of the claims relied upon, when application is made here for preliminary injunction. If there had been no adjudication, injunction would be refused, in view of the serious dispute as to material issues in the case. Had there been no proceedings subsequent to such adjudication, it might be that this court would not inquire with much particularity as to the issues raised and the evidence introduced in the earlier suit, when it is admitted, as it is here, that the alleged infringing machines are substantially the same. It appears, however, that in the earlier suit there was no serious contention but that the sound record (of wax or some other material upon which the record was impressed) was the discovery and invention of Bell & Tainter; that the court in that case was convinced that Bell & Tainter were entitled to this invention; that such conviction lay at the basis of the court's conclusion; and that because of such conviction the court held the particular claims here relied upon to be valid as a combination containing this invention of the sound record. It now appears that it is not only not conceded that this sound record was the invention of Bell & Tainter, but, on the contrary, it is strenuously insisted that it was the invention of Edison. Upon that disputed point a mass of evidence has been produced which should not be passed upon on the hearing of a preliminary injunction.

nary motion. And it further appears that, when the attention of the court in the earlier case was called to this condition of affairs, it entertained a motion for reargument, which has not yet been decided, and which that court has intimated it will not decide until the determination of this important issue of fact in the main case (in New Jersey). Under these circumstances the case in Illinois must be considered as sub judice,—a matter not yet decided,—and therefore not entitling the complainant to a preliminary injunction as an adjudication sustaining the claims relied on. Motion denied.

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WESTERN WHEEL SCRAPER CO. v. DRINNIN et al.

(Circuit Court, N. D. Illinois, S. D. July 10, 1896.)

1. PATENTS FOR INVENTIONS—PATENTABILITY—ROAD SCRAPER.

Letters patent No. 379,550, issued to the Western Wheel Scraper Company March 13, 1888, and No. 380,068, issued to said company March 27, 1888, for improvements in wheeled road scrapers, consisting of a combination of old elements to produce a machine in which vertical, horizontal, and angular adjustments of the scraper blade may be made by the man who rides it without stopping the machine, are not void for want of invention.

2. SAME—INFRINGEMENT.

Such patents are infringed by a device containing all the substantial elements of the patented machines, except that rods are substituted for chains, as a means of changing the position of the scraper blade.

Suit for injunction brought by the Western Wheel Scraper Company against William Drinnin and Charles Pate.

Bond, Adams, Pickard & Jackson, for complainant.

H. C. Hartman, for defendants.

GROSSCUP, District Judge. The bill is to restrain infringement of letters patent No. 379,550, granted to complainant, on application of S. F. Welch, March 13, 1888, and also to restrain infringement of letters patent No. 380,068, granted to complainant, on application of S. F. Welch, March 27, 1888. Both of these patents relate to road scrapers. Patent No. 379, 550, with the claim relied upon, is as follows:

To All Whom It may Concern: Be it known that I, S. Frank Welch, residing at Mt. Pleasant, in the county of Henry and state of Iowa, and a citizen of the United States, have invented a new and useful improvement in road graders, of which the following is a specification, reference being had to the accompanying drawings, in which Fig. 1 is a plan. Fig. 2 is a rear elevation. Fig. 3 is a side elevation. Fig. 4 is a detail, being a longitudinal section through the rings, F, G, and pinion, e. Fig. 5 is a detail, being a section at line, x, of Fig. 1. My invention relates to that class of road graders in which the scraper is supported by a frame mounted on wheels, and in which it can be adjusted vertically and laterally, and can be set at different angles of diagonal adjustment to the roadbed. The leading object of my invention is to provide convenient and efficient means, by the use of which the various adjustments desired can be secured, which I accomplish as illustrated in the drawings, and as hereinafter fully described. Those things which I claim as new will be set forth in the claims. In the drawings, A, A', represent the front and rear wheels of the road grader, which wheels are supported on axles as usual. B, B', are the front and rear bolsters. The front