

U. S. 423, 433, 11 Sup. Ct. 150; *Andrews v. Thum*, 15 C. C. A. 67, 67 Fed. 911.

Nor does the fact that better material is used in constructing the device, such material being well known as adapted to the purpose for which it is used, make the device patentable.

In *Hotchkiss v. Greenwood*, 11 How. 248, 266, where it was held that the substitution of porcelain for metal in making door knobs of a particular construction was not patentable, the court said:

"No one will pretend that a machine made, in whole or in part, of materials better adapted to the purpose for which it is used than the materials of which the old one is constructed, and for that reason better and cheaper, can be distinguished from the old one, or, in the sense of the patent law, can entitle the manufacturer to a patent. \* \* \* It may afford evidence of judgment and skill in the selection and adaptation of the materials in the manufacture of the instrument for the purposes intended, but nothing more."

See, also, *Hicks v. Kelsey*, 18 Wall. 670; *Dunbar v. Myers*, 94 U. S. 187, 197; *Florsheim v. Schilling*, 137 U. S. 64, 11 Sup. Ct. 20.

Applying these general principles to the facts of this case, we are of opinion that the conclusions arrived at by the circuit court were correct. The judgment of the circuit court is affirmed, with costs.

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CLUNE v. MADDEN et al.

(Circuit Court, D. Indiana. November 5, 1896.)

No. 9,231.

1. PATENTS—INVENTION—FOLDING BEDS.

There is no invention in the use of a pin or hook on the back of a folding bed lounge to automatically engage with an eye on the headrest when the two sections are folded together, thus holding the back firmly in place.

2. SAME.

The Clune patent, No. 394,957, for a folding bed lounge, is invalid as to the first claim for lack of invention.

This was a suit in equity by Michael Clune against Thomas Madden and others for alleged infringement of a patent.

Chester Bradford, for complainant.

V. H. Lockwood, for defendants.

BAKER, District Judge. This is a suit in equity in the usual form for infringement of the first claim of letters patent No. 394,957, issued to the complainant, December 25, 1888. The claim involved reads as follows:

"(1) A bed lounge, composed of two folding sections, hinged together, the lower one having a back rigidly attached thereto, and a fastening for the same, composed of two parts, one of which is fixed at or near the top of the inside of the head of the upper folding section, the other at or near the top of the back, so that when the lounge is folded up the two parts will engage with each other, securing the headrest of the frame to the back, substantially as shown and described."

The defenses relied on are noninvention and noninfringement. The only novelty in the combination claimed by the complainant con-

sists in the use of an eye on the headrest of the lounge and a pin or hook on the back so placed that the two will automatically engage when the two sections are folded together, and thus hold the back firmly in place. In view of the common and diversified use of similar devices for the accomplishment of substantially similar purposes, and especially in view of the Braun patent, No. 177,462, it seems impossible to find in the claim involved in this suit any such advance in the prior state of the art, or any such new and useful combination, as is necessary to constitute invention. In my opinion, mere mechanical skill, without any exercise of the inventive faculty, would have suggested to any ordinarily skillful mechanic familiar with the manufacture of bed lounges, the use of a pin or hook to be inserted in the eye found on the headrest of the Braun patent to support the back of the lounge, and hold it firmly in place. Indeed, such a pin or hook is distinctly suggested in the specifications of the Braun patent in these words:

"The back, C, is provided with a groove, hook, or spring-catch, or other device for securing the upper head section on the lower stationary section, and to the back when folded over; the lower part to form the head of the lounge."

The foregoing views make it unnecessary to consider the question of infringement. The bill will be dismissed for want of equity, at complainant's costs.

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McDOWELL et al. v. KURTZ.

(Circuit Court of Appeals, Third Circuit. October 26, 1896.)

No. 11.

1. PATENTS—INFRINGEMENT—PRELIMINARY INJUNCTION.

The proof of infringement in this case was so clear and free from doubt as to justify a preliminary injunction.

2. SAME—PUBLIC ACQUIESCENCE.

Where plaintiffs have manufactured and sold their device without opposition for upward of five years, there is sufficient proof of public acquiescence; and it is immaterial that a large number of their devices were not marked "Patented," when it appears that enough were so marked to give general notice of the patent.

3. INJUNCTION—DISTRICT JUDGE HOLDING CIRCUIT COURT.

The authority of a district judge, when holding a circuit court under Rev. St. § 609, is co-extensive with that of any judge sitting in the same court; and the restrictions of Rev. St. § 719, relative to the granting of injunctions by district judges, do not apply.

4. PATENTS—PROTECTION FOR PIPE THREADS.

The Kurtz patent, No. 440,168, for a band or ring for protecting the screw threads of pipes, *held* valid and infringed.

Appeal from the Circuit Court of the United States for the Western District of Pennsylvania.

This was a suit in equity by Jacob H. Kurtz, trading as the National Manufacturing Company, against D. F. McDowell and others, trading as the Pittsburgh Ring Company, to restrain the infringement of a patent. From an interlocutory order granting a preliminary injunction, defendants appeal.