

We cannot discover any material difference between the two devices. They do the same work in substantially the same way, and accomplish substantially the same result.

2. The second stated objection to the interlocutory decree is "that the patent has never been sustained by a court, nor sufficiently acquiesced in by the public." To this it is enough to say that, until the defendants began to infringe, the plaintiff had no occasion to apply to the courts to protect his patent, and that, if public acquiescence need be shown to entitle the owner of a valid patent to a preliminary injunction against clear infringement, such acquiescence satisfactorily appears here in the facts stated in the opinion of the court below. It is shown, indeed, that a large number of the plaintiff's rings were not marked "Patented"; but a sufficiently large number of them were so marked to give general notice that the ring was patented. There was ample proof of public acquiescence.

3. We do not think that sufficient doubt as to whether Kurtz was the original inventor of the patented ring to defeat the application for the preliminary injunction was raised by the affidavit of Harry Hipwell, especially in view of the rebuttal affidavits upon that subject.

4. The fourth objection is based upon the provisions of section 719 of the Revised Statutes of the United States, relating to the issuing of an injunction by a district judge. But that section does not apply to this case. *Vulcanite Co. v. Folsom*, 3 Fed. 509. The injunction here was not issued by the district judge under section 719. When the case was heard below, and the injunction was granted, the district judge was holding the circuit court, under section 609, Rev. St. U. S.; and his authority was co-extensive with that of any other judge sitting in the same court. *Robinson v. Satterlee*, 3 Sawy. 134, 140, Fed. Cas. No. 11,967. Therefore, his action in granting the injunction had the same force and effect as if the court had been held by the circuit justice, or a circuit judge, or by a full bench. *Industrial & Mining Guaranty Co. v. Electrical Supply Co.*, 7 C. C. A. 471, 58 Fed. 732, 737. The decree appealed from is the decree of the circuit court.

Upon a careful consideration of the whole record it seems to us that the proofs justified the allowance of a preliminary injunction, and therefore the interlocutory decree granting the same is affirmed.

SCHENCK et al. v. DIAMOND MATCH CO.

(Circuit Court of Appeals, Third Circuit. November 9, 1896.)

No. 23, September Term, 1896.

PATENTS—INVENTION—INFRINGEMENT—FRICTION-MATCH DEVICE.

The Pusey patent, No. 483,166, for a friction-match device designed to be carried in the pocket, held to show sufficient invention to sustain the patent, it appearing that the device, though simple, was new in the art, and was cheap and convenient, and supplied a distinctly felt want; and the patent also held infringed. 71 Fed. 521, affirmed.

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

This was a suit in equity by the Diamond Match Company against John H. Schenck and John M. Moore, trading as Dr. J. H. Schenck & Sons, and the Binghamton Match Company, for alleged infringement of letters patent No. 483,166, issued September 27, 1892, to Joshua Pusey, for a friction-match device, designed to be carried in the pocket. The circuit court sustained the patent, found infringement, and entered a decree accordingly. 71 Fed. 521. Defendants appealed.

Charles A. Brodek, for appellants.

Joshua Pusey, for appellee.

Before ACHESON, Circuit Judge, and BUTLER and WALES, District Judges.

BUTLER, District Judge. The decree of the circuit court must be affirmed. The record shows nothing to sustain either of the defenses set up. The defendants' device is undistinguishable from the plaintiffs' except in slight unimportant formal differences—apparently introduced to avoid liability for infringement.

The other defense—lack of patentable novelty—presents little greater difficulty. While the invention displayed is of a low order, it is sufficient to support the patent. The device, though simple, was new in the art, and was cheap, convenient, and supplied a want distinctly felt. Manufacturers of matches immediately recognized its usefulness, and sought the privilege of making it. The defendants were among the first to do so, and seem to have entertained no doubt respecting the validity of the patent, until their efforts to obtain such privilege on their own terms had failed. The defendants may well be regarded as experts in the art, and their conduct was an unbiased and emphatic expression of judgment in favor of the patent; their present expression and that of their experts are probably entitled to less weight.

The effort to prove anticipation by the Farnhams failed. Without considering the question whether this defense is admissible under the pleadings, it is sufficient to say that we are satisfied the defense is not proved. Nothing is shown but occasional, tentative experiments by the Farnhams, made years ago to meet their personal and temporary wants. Precisely what they accomplished is uncertain; no sample of their device is exhibited. Whatever it may have been it was never applied to nor intended for the public use; it was a mere makeshift, for a temporary purpose, which disappeared with the occasion that called for it, never known to anybody but the Farnhams, and now is almost forgotten by them.

The decree is affirmed.

CLEVELAND FAUCET CO. v. SYRACUSE FAUCET CO.

(Circuit Court, N. D. New York. November 9, 1896.)

PATENTS—INVENTION AND INFRINGEMENT—HYDRAULIC AIR PUMPS.

The Weatherhead patent, No. 504,097, for an hydraulic air pump, *held* valid, as showing patentable invention, and also *held* infringed by a pump containing mechanism which accomplishes the same result in the same way, and differs only in details of construction.

This was a suit in equity by the Cleveland Faucet Company against the Syracuse Faucet Company for alleged infringement of a patent for improvements in hydraulic air pumps.

Thomas K. Banning, for complainant.
George W. Hey, for defendant.

COXE, District Judge. This action is founded upon letters patent, No. 504,097, granted to Edward H. Weatherhead, August 29, 1893, for improvements in hydraulic air pumps. It is not pretended that this is a primary patent. The specification expressly states that the invention is for improvements upon the pump of a prior patent granted to Weatherhead, October 7, 1890. It says, further:

"My invention relates to hydraulic air pumps of the variety in which hydraulic pressure is automatically controlled to compress air or to force the same under pressure into a receptacle or chamber, and to this end the invention consists in the construction shown and described and particularly pointed out in the claims."

The pump thus described is useful in many arts, but, perhaps, its principal and most familiar use is in forcing air into beer kegs so that the beer may be drawn from the faucet at the bar although the keg is located in the cellar.

The patent has seven claims which aptly describe and cover the various features of the pump. No attempt has been made to segregate these claims upon the question of patentability. The first claim is as follows:

"(1) In a hydraulic air pump, the pump casing and the valve and piston to control the inlet and outlet of the motive fluid, in combination with two cylinders, one within the other having each an open fluid connection with the pump casing, and connected pistons in said cylinders, substantially as described."

The next four claims contain the same main elements with various differences of detail. The sixth and seventh claims contain limitations which it is unnecessary to consider at the present time. The defenses are noninfringement and lack of invention.

It is proved by testimony, which is uncontradicted and trustworthy, that Weatherhead conceived the invention in March, 1888. This disposes of the patents to Olin, Stitt and Shiring, as all were applied for and granted after that date.

The defendant expressly admits that the combination of the patent is not anticipated, but contends that if there be any patentable novelty it resides in details of construction which the defendant does not employ. The question is, therefore, a simple one. The combination being new, it only remains to inquire whether it produces a new result or an old result in a better way. That it produces the desired result in a better way seems clear from the evidence. With-