

WHEELER, District Judge. This suit is brought upon patent No. 525,746, dated September 11, 1894, and granted to Arnold Sessler, for an insole for slippers, used as an outsole for knit slippers, and made of leather, paper, and wool, "by turning the thickness of leather at its edge over the thickness of paper, and uniting to the turned-over portion of the leather the braid to which the knitted portion of the slipper is to be attached; the paper portion of the insole serving, as in the prior insoles, to carry the lamb's wool." The claims in question are for:

"(1) The combination, in an insole, of a thickness of leather, a thickness of another material, as paper, and a tape; said thickness of leather being turned over the thickness of paper, and the tape being attached to said inturned portion of leather,—substantially as set forth. (3) The combination, with a slipper upper, of an insole provided with a thickness of leather having a turned-over edge, a tape attached to said overturned edge, said knitted upper being attached to the tape, substantially as set forth."

The alleged infringement has a cord running under stitches on the turned-over edge of the leather, for attachment to the knit upper by stitches under it. The defenses are prior patents and structures. The tape answers the purpose here of the welt in a hand-sewed shoe, which is first sewed to the upper, and then to the flat, thick outsole of the shoe, instead of to the turned-over edge of the flexible outsole of the slipper, as the tape is. A prior patent shows such a turned-over, flexible outsole, with an upper sewed to it, in a bathing slipper; and prior scuffs show such a one with a straw welt sewed to it, and a straw upper sewed to that. So a turned-over sole was not new. Neither was connecting such a sole by a welt to the upper new, and the tape is the same as a welt. In the scuffs seems to be the precise combination of the third claim. These soles are, however, sold without the uppers; and these scuffs are said, as exhibited whole, in argument, not to show these separate soles of the first claim. But the construction of the soles and welt is as well shown with the uppers attached as without them. If this would not be an anticipation, the defendant's sole would not seem to be an infringement. Bill dismissed.

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#### DEWEY ELECTRIC HEATING CO. v. ALBANY RAILWAY.

(Circuit Court, N. D. New York. February 15, 1897.)

##### PATENTS—INVENTION AND INFRINGEMENT—ELECTRIC HEATERS.

The Dewey patent, No. 464,247, for improvements in electric heating apparatus, discloses invention as to the ninth claim, in its combination of heating conductors adapted to be connected in different ways with the supply conductors, a switch for controlling said connections, and an indicator operated by the switch to show how the connections stand. This claim is not limited to the particular form described, and is infringed by a heater employing the same combination, with mere difference of form and location.

This was a suit in equity by the Dewey Electric Heating Company against the Albany Railway for alleged infringement of a patent.

This is an equity suit for infringement based upon letters patent, No. 464,247, granted to Mark W. Dewey, December 1, 1891, for improvements in electric-

heating apparatus. The patentee says in the specification: "The objects of my invention are to provide an electric heater that will produce a great amount of heat, expose a large radiating surface, and yet not occupy much floor space. Also, to provide a heater having its resistance divided into sections, and so arranged that if any one of the sections becomes injured it may be repaired without cutting off the current from the entire heater or the other sections of resistance. Also, to provide the heater with an adjustable switch or current controller, so that the heat may be regulated as desired. The switch may be provided with an indicator to show the amount of current flowing through the heater or the number of sections of the resistance in circuit. To this end my invention consists in the combination of a plurality of cases, an electric heat-developing conductor within each of said cases, and a frame to hold or support said cases. Also, in the combination of supply conductors, a plurality of cases, an electric heat-developing conductor within each of said cases and connected with the supply conductor in parallel, suitable means to hold said cases apart and a switch to cut out of circuit one or more of the heat-developing conductors." The ninth claim, the only one involved, is as follows: "(9) In an electric heating apparatus having heating conductors or sections adapted to be connected in different ways with the supply conductors, a switch for controlling said connections, and an indicator operated by the movement of the switch to indicate how the connections stand." The defenses are anticipation, lack of novelty, and invention and noninfringement.

C. H. Duell, for complainant.

R. A. Parker, for defendant.

COXE, District Judge. The claim in controversy contains three elements, as follows: First. Heating conductors adapted to be connected in different ways with the supply conductors. Second. A switch for controlling said connections. Third. An indicator operated by the movement of the switch to indicate how the connections stand. Each of these elements considered separately is old, but, on the other hand, the combination is new. Dewey conceived the invention February 18, 1890, and there is no pretense that the combination of the claim, as applied to electric heaters, had been used prior to that date. A study of the record, extending over several days, has convinced the court, notwithstanding the ingenious and able argument of the defendant's counsel to the contrary, that it required an exercise of the inventive faculties to produce this combination. The mechanic could not have done it. Even though there were doubt on the subject the doubt should be resolved in favor of the patent. In cases of uncertainty the effort should be to sustain the patent, not to destroy it. The anxiety manifested by the defendant to use the Dewey heater seems inconsistent with the theory that it is no more efficient than the heaters of the prior art. The defendant has only to drop one element of the combination and it will be absolutely safe from attack.

But it is said, conceding invention, that, in view of what had been done before, the claim must be restricted to the exact structures shown in the drawings, and, if so construed, the defendant does not infringe. The invention consists in combining any desired number of distinct heating sections, each complete in itself, adapted to be connected with the supply conductors in series, in multiple arc or in multiple series, with a switch for controlling these connections and an indicator operated by the movement of the switch to show how the connections stand. The novelty is in the combination, not in

the separate elements of the combination, each of which is frankly admitted to be old. If the claim is to be confined to a particular form of heater, switch or indicator, it could be avoided in as many ways as there are patents in the record. It would, of course, be absolutely worthless. There is nothing in the specification or in the record requiring the claim to be so limited.

The defendant's apparatus as applied to the heating of a street car is made up of a number of sections each in a separate case adapted to be connected in different ways with the supply conductor. The defendant employs a switch for controlling the connection of the heaters and an indicator to show how the connections stand. There is no frame like that shown in the drawings of the patent for holding the heaters. They are supported by the woodwork of the car body. The switch is not fixed to the frame, but is placed in any convenient place in the car, and the indicator is of a different type from that shown in the patent. All such differences are immaterial. Matters relating merely to form and location are not of the essence of the invention. The specification expressly states that the principle upon which regulating devices operate is well known and that almost any form can be used. It is thought that the defendant's combination operates in substantially the same manner and accomplishes the same result as the combination of the claim. The complainant is entitled to the usual decree.

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EWART MANUF'G CO. v. MITCHELL.

(Circuit Court, E. D. Pennsylvania. January 2, 1897.)

No. 46.

**PATENTS—CONSTRUCTION AND INFRINGEMENT—CHAIN CABLES.**

The Dodge patent, No. 264,139, for an improvement in cabin cables intended to operate with sprocket wheels, as driving chains, construed as covering a novel and useful invention, which should be protected to its full extent, as disclosed by a fair and unconstrained reading of the patent, and *held* infringed by a chain varying therefrom in matters of form and construction, but performing the same functions in substantially the same way.

This was a suit in equity by the Ewart Manufacturing Company against James H. Mitchell for alleged infringement of a patent for an improvement in chain cables.

Howson & Howson, for complainant.

Francis T. Chambers, Arthur M. Pierce, and Walter E. Rex, for defendant.

DALLAS, Circuit Judge. This is a suit upon patent No. 264,139, dated September 12, 1882, issued to James M. Dodge, for an improvement in chain cables, having, as the specification states, "for its main object to adapt this sort of cable to more successfully operate, in connection with sprocket wheels, as a drive chain, and for elevator and conveyor purposes." The employment of chain cables as drive chains, though in other respects advantageous, was subject to three objec-