

## FAIRBANKS WOOD RIM CO. v. MOORE.

(Circuit Court, N. D. New York. February 12, 1897.)

## 1. PATENTS—INVENTION—BICYCLE RIMS.

The substitution, for a bicycle rim made of a single piece of metal, of a rim composed of a series of plies of wood of varying course or direction of grain, cemented together, each section breaking joints with each of the other sections, and the whole forming a compact, durable, symmetrical, and highly efficient structure, involves the use of inventive faculty.

## 2. SAME.

The Fairbanks and Berlo patent, No. 496,971, for improvements in bicycle rims, discloses patentable invention.

This was a suit in equity by the Fairbanks Wood Rim Company against Edward S. Moore for alleged infringement of a patent relating to bicycle rims.

The patent in controversy, No. 496,971, was granted to Fairbanks and Berlo, May 9, 1893, for improvements in rims for bicycle wheels. The invention consists in providing a wood rim for bicycle wheels in place of the metal rims theretofore used. The rim of the patent is composed of a series of plies of wood of varying course or direction of grain, bent into circular form, and cemented together, each section breaking joint with each of the other sections. A bicycle wheel constructed with this laminated rim is said to be lighter, stiffer, more durable and more buoyant than the rims of the prior art. The claim is as follows: "A rim for bicycle wheels comprising in its construction a series of sections or plies of wood of varying course or direction of grain, cemented together, the ends of each section breaking joints with the ends of adjacent sections, and the inner surface, *f*, being of convex form, and the outer surface, *g*, of concave form, as set forth."

Edward S. Beach, Nathaniel L. Frothingham, and Emmett J. Ball, for complainant.

William O. Campbell, for defendant.

COXE, District Judge. There is but one question to decide,—the question of invention. The court is convinced that the introduction into the art of the marked, and, at the present day, universally recognized, improvement of the patent, required an exercise of the inventive faculties. It was not the mere substitution of wood for iron. It was the substitution for a rim made of a single piece of metal of a laminated rim made of a series of sections so constructed as to form a compact, durable, symmetrical and highly efficient structure. After the idea that wood could be used instead of metal was conceived, the real work of invention began. How could wood be utilized? How could a rim be made that would not crack and warp without being so cumbersome as to be useless? Even after a practical rim had been constructed, the bicycle community was still incredulous as to the use of wood. It was only after its superiority to metallic rims had been fully demonstrated that it was accepted by the trade. Fairbanks and Berlo were the first to make a wooden bicycle rim. There was nothing in the prior art to show them how to do this and very little in analogous arts to assist them. Carriage wheels with the ordinary compression spokes, and reinforced with iron tires, had been made with laminated felloes, but there is no pretense that the break joint and varying grain features of the patent are to be found in any of these structures

which are not adapted for use in a wheel provided with suspension spokes and pneumatic tires.

Two significant facts stand unchallenged: First, that the patentees were the first in an art which has attracted a multitude of ingenious inventors, to employ a wooden rim; and, second, that to-day this rim is the only one used, all others, in the construction of first-class machines, having been driven from the market. They certainly have done much to make the modern bicycle a perfect machine.

It follows that the complainant is entitled to the usual decree.

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THOMASSON v. BUMPASS et al.

(Circuit Court of Appeals, Fourth Circuit. February 2, 1897.)

No. 182.

PATENTS—INFRINGEMENT—POULTRY CRATES.

The Thomasson patent, No. 444,561, for an improved poultry crate for shipping live poultry, construed, and held not infringed. 74 Fed. 243, affirmed.

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

This is a bill in equity, in usual form, by Robert G. Thomasson, appellant, against Charles W. Bumpass and William McCandlish, appellees, praying an injunction and other relief for the infringement of appellant's patent, No. 444,561, dated January 13, 1891, for an improved poultry crate to be used in shipping live poultry. The defenses principally relied upon by the appellees are noninfringement and want of patentable invention. The court below (Judge Hughes), upon final hearing, held that the crate made by the appellees did not have the wicker bottom of the appellant's patent, and did not infringe. 74 Fed. 243. The complainant appealed.

F. W. Sims and John G. May, for appellant.

B. B. Munford, for appellees.

Before SIMONTON, Circuit Judge, and MORRIS and BRAWLEY, District Judges.

MORRIS, District Judge. The appellant, in the specification of his patent, states that his invention consists in the novel construction and combination of the parts of a poultry coop for shipping purposes, which, he states, combines strength and durability, and is easily and cheaply made. He gives a minute description of the details of the construction, nearly all the elements of which are obviously old, but he does not indicate what it is that he has invented or considers new, otherwise than by his two specific claims. In his testimony, in describing what it was that he invented, he does state that it was new, and resulted in a great saving of time and material, to adopt his method of weaving the splits in the wicker bottom, using broader and stouter splits, as contrasted with the old wicker bottoms, woven as a basket is, and also he claims, in his testimony, that it was new to put on the wire netting in the manner in which he did; but neither of these things is pointed out in