

the converging strands are to be made, through the loops at the ends of the hammock-body in a straight line, and in then drawing this thread from between said loops, forming of it the converging strands of the hammock end, and finally uniting these strands into a terminal eye, all as hereinafter more fully described and claimed.

The two claims of the patent read as follows:

(1) The art of making hammocks which consists in forming the hammock-body with loops, b, b, in the ends thereof, in any known manner, then forming each end of the hammock by drawing the cord, E, from which the hammock end is to be made, in a straight line through the end loops, b, b, of the hammock-body, and in then drawing said cord from between said end loops, b, b, forming of it the converging strands of the hammock end, and in finally uniting these strands into a terminal eye, i, substantially as herein shown and described.

(2) The art of making hammocks, which consists in forming the hammock-body with loops, b, b, in the ends thereof, in any known manner, then forming each end of the hammock by drawing the cord, E, in a straight line through the loops, b, b, that are at the ends of the hammock-body, D, in then drawing this cord out from between the end loops, b, and holding it temporarily, in then coiling or winding the outer part of this cord, and in then forming from this coiled or wound portion the eye, i, at the end of the hammock, substantially as herein shown and described.

Winkler, Flanders, Smith, Bottum & Vilas, for complainant.
Benedict & Morsell, for defendant.

SEAMAN, District Judge. The bill of complaint alleges infringement, respectively, of two letters patent, viz.: First, No. 277,161, issued May 8, 1883; and, second, No. 296,460, issued April 8, 1884. Demurrer is interposed to so much of the bill as relates to the latter patent, No. 296,460, on the ground that the patent is for a process, and is void upon its face. This patent contains two claims of similar nature, and each stated as for "the art of making hammocks." I think each clearly states a process under the definitions of the patent law; that it involves merely mechanical operations without any chemical action or the operation of natural elements; and that, therefore, the process is not patentable under the rule held in *Locomotive Works v. Medart*, 158 U. S. 68, 15 Sup. Ct. 745, and *Glass Co. v. Henderson*, 15 C. C. A. 84, 67 Fed. 935. The question is clearly presented upon the face of this patent, and it does not seem to me that aid can be furnished by extraneous or expert testimony. Therefore it is well raised by demurrer, and will thus reach a final determination in the best method for all concerned. The demurrer is sustained.

WELSBACH LIGHT CO. v. COSMOPOLITAN INCANDESCENT GAS-LIGHT CO.

(Circuit Court, N. D. Illinois. January 29, 1897.)

PLEADING IN PATENT SUITS—CROSS BILL.

In an infringement suit, defendant sought to file a cross bill, setting up that, by reason of the expiration of a prior foreign patent, the monopoly of the patent in suit had terminated, and that, knowing this, complainant maliciously sought to injure defendant by distributing circulars, etc., asserting an exclusive right to the invention, and threatening defendant's customers with infringement suits, to restrain which defendant prayed an injunction. *Held*, that the cross bill would not lie, for the expiration of the foreign patent was mere matter of defense, and the alleged malicious acts were independent wrongs, unconnected with the matter of the original bill.

This was a suit in equity by the Welsbach Light Company against the Cosmopolitan Incandescent Gaslight Company for alleged infringement of a patent. The cause was heard on a motion by defendant for leave to file a cross bill.

Wm. Findlay Brown and John R. Bennett, for complainant.
Dyrenforth & Dyrenforth, for defendant.

JENKINS, Circuit Judge. This bill was filed to restrain the alleged infringement of letters patent of the United States No. 438,125, granted to Carl Auer Von Welsbach, for an "improvement in the manufacture of incandescent devices for gas burners." The defendant now moves the court for leave to file a cross bill which asserts, in substance, that under the law of the United States, and by reason of the expiration of a prior foreign patent, the monopoly granted by the patent in suit had come to an end prior to this suit. Notwithstanding which, and with knowledge of such facts, maliciously seeking to injure the cross complainant, and deprive it of the profit and advantages to which it is entitled by the use and sale of the patented article, and with a view to deceive and mislead the public by means of printed circulars distributed through the mail, the original complainant asserts itself to be the owner, under the patent, of the exclusive right to the use of the patented invention, and falsely asserts its right to recover damages from any person buying or using the same unless obtained from it, and threatens the customers of the cross complainant and its intending customers with suits for infringement, and with injunctions, and with suits for damages, in case of their purchase or use of the patented invention, if purchased from the cross complainant or from others than the original company. An injunction is also prayed restraining the original complainant from the distribution of such circulars, and from the continuance of such threats.

If it be true, as asserted (and, for the purposes of the present motions, I assume it to be true), that, by reason of the facts stated, the patent had come to an end, the cross complainant has then a perfect and absolute defense to the suit brought for an alleged infringement of the complainant's patent. That defense required no cross bill for its presentation and assertion. It can be brought to the attention of the court by plea or answer to the original suit as fully and completely as by cross bill.

It is, however, insisted that the cross bill can be maintained upon the ground that the original complainant, by its circulars and its threats, has intimidated customers and intending customers of the cross complainant, thereby inflicting upon it irreparable damages, which cannot be measured in any suit at law, and that, therefore, equity should extend its preventive arm, and stay the threatened injury. It may be assumed, for the purposes of these motions, that an original bill in equity would lie under the circumstances disclosed, but it does not follow that a cross bill can be sustained. In *Tooth-Crown Co. v. Carmichael*, 44 Fed. 350, I had occasion to consider the question under similar circumstances, and came to

the conclusion that a cross bill would not lie, because "the purpose of such a bill is to obtain the discovery of facts in aid of the defense to the original bill, or to obtain full relief to all parties touching the matter of the original bill." The defense there alleged anticipation of the patented invention, which, of course, went to the foundation of the complainant's right, and also asserted that the patent, if valid, could not properly be construed to cover the particular forms of artificial dentures claimed in the bill. Here, as there, the cross bill goes to the foundation of the right of the original complainant to his patented monopoly; for whether the invention be in fact anticipated, or the patent has terminated by operation of law, the monopoly granted by the patent is inoperative and ineffectual. It needs no cross bill here to aid in defense of the original bill, nor is there any relief touching the matter of the original bill which is sought by this cross bill. The matters which are complained of as working irreparable mischief are independent torts or wrongs asserted to have been committed by the original complainant upon the false assumption that its patent is valid. The same charge might well be asserted of any patentee seeking to restrain the infringement of his rights, if his patent be as yet unadjudicated by the court. The acts charged are independent, unlawful acts by the owners of the patent, founded upon its assertion of the continued validity of the patent. Whether those acts be lawful or unlawful depends, perhaps, upon the fact whether its patent has expired by virtue of the law; but these acts, however unlawful, do not touch the matter of the original bill, and have no connection with the assertion of any defense to the original bill, and therefore are not within the scope of a cross bill, for the discovery sought, if one be sought, must be for facts in aid of the original bill, or to obtain full and complete relief to all the parties with respect to matters charged in the original bill, not as to independent acts the lawfulness or unlawfulness of which may depend upon the question of right as asserted in the original bill. The acts charged may constitute the subject-matter of an independent suit, but are not, in my judgment, within the purview of a cross bill. I think that these motions are presented through failure to properly distinguish between a cross and an original bill; and, however great may be the wrong complained of in its effect upon the business of the cross complainant, it is not a wrong that can be remedied by means of a cross bill. I have carefully reconsidered my former decision, to which I have referred, and have examined the authorities presented, and am content with my former decision. I could not grant the relief here asked without extending the practice in equity proceedings beyond its prescribed bounds. To do this, however beneficial it might prove in the present instance (assuming the cross complainant to be entirely in the right), would be to work inextricable confusion in equity procedure, and to overturn the settled law of the land. The motions will be overruled.

LOCHMORE S. S. CO., Limited, v. HAGAR et al.

(District Court, E. D. Pennsylvania. January 22, 1897.)

No. 57.

1. ADMIRALTY PRACTICE—CROSS LIBEL—RULE 53.

Admiralty rule 53, requiring security from the respondent in a cross libel for a counterclaim arising out of the same transaction as the original libel, applies to a case in which the original libel was in personam, but the vessel to which the suit relates was attached. The proceeding is then in effect in rem.

2. SAME.

The object of rule 53, requiring security to respond in damages from the respondents in cross libels in certain cases, is not merely to compel an appearance, but appears to be to place the parties on an equality.

This was a libel in admiralty by the Lochmore Steamship Company, Limited, owner of the steamship Kilmore, against Walter F. Hagar and John H. Thompson, trading as W. F. Hagar & Co. The cause was heard on motion to vacate security on the cross-libel.

J. Rodman Paul, for libelants.

Horace L. Cheney, for respondents.

BUTLER, District Judge. Rule 53 reads as follows:

"Whenever a cross-libel is filed upon any counter claim arising out of the same cause of action for which the original libel was filed, the respondents in the cross-libel shall give security in the usual amount and form, to respond in damages, as claimed in said cross-libel, unless the court on cause shown shall otherwise direct; and all proceedings on the original libel shall be stayed until such security is given."

It is thus seen that the language of the rule applies to all cases of cross-libel. In *Refining Co. v. Funch*, 66 Fed. 342, the court questioned the applicability of the rule to cases where the original libel is in personam. That subject need not be considered at this time. While the original libel here is in personam in form, it prays for an attachment; and the vessel to which the charter party sued upon relates, was attached, and the proceeding therefore is in effect in rem. The object of the attachment was not simply to procure the respondents' appearance but to collect the money demanded, from the vessel. Her release could only be effected by entering security for the debt, as in ordinary proceedings in rem. The libelants may have had no lien until they attached the vessel, but thereafter they had; and to realize on this lien was the object of their subsequent efforts. It was unimportant to them whether the respondents appeared or not; the value of the vessel exceeds their claim. The rule must therefore be held applicable to the case. The libelants urge that as they reside here and may be served, security should not be required; that the object of the rule is simply to compel the original libelants (when foreigners) to appear. If such had been the object it could have been attained more readily by providing for service on the proctors of such libelants. Again if an appearance alone was contemplated the security should be for an appearance simply; and the rule would doubtless have so provided. It is more probable that the object was to place the parties on an equality.