

Appeal from the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

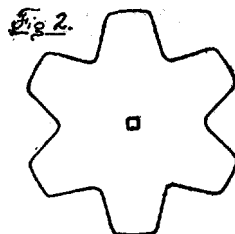
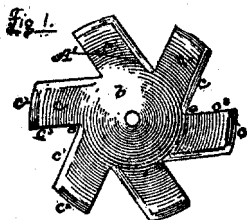
This was a suit in equity by Clemontine I. Clark and the Cutaway Harrow Company against the Deere & Mansur Company for alleged infringement of a patent. In the circuit court a decree was entered dismissing the bill on the merits, and the plaintiffs appealed.

This appeal seeks to bring under review a final decree, the entry of which reads as follows: "On this 20th day of March, 1896, this cause having been heard at final hearing upon the pleadings and proofs, * * * it is ordered, adjudged, and decreed that the bill of complaint herein be, and the same is hereby, dismissed at the complainants' cost, to be taxed in favor of the defendant and for the amount of which the defendant shall have judgment and execution; the ground of dismissal being that defendant's harrow does not infringe the claims of letters patent of the United States No. 369,163, granted to George M. Clark, August 30, 1887, the court, however, not expressing any opinion upon the validity of the claims of the said letters patent."

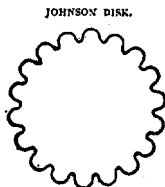
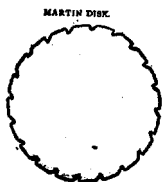
The patent in controversy is for improvements in disk harrows. The specification, after recognizing the existence and pointing out the defects of prior revolving disk harrows and revolving toothed harrows, says: "Among the many prior harrows heretofore patented are some which embody what may be termed 'revolving bladed disks,' because of their general disk-like form and the presence of a series of blades which have not only a cutting capacity, but also the function of harrow teeth; and there are other forms of harrows embodying disks which have corrugated edges, and still others which have teeth which are not cutting blades. As compared with any prior harrow known to me, a harrow embodying my invention has soil-working devices, each of which in its best form possesses all of the following characteristics, viz.: First, a central circular earth-working face, which may be flat, but which in its best form is concave; second, cutting blades which have their forward edges sharpened, and also their outer ends, and said outer ends occupy a circular line concentric to the axis of the disk; third, said forward edges are substantially tangential to said central circular working face, and in its best form each blade as a whole is substantially tangential to the axis of the disk; fourth, at the junction of the edges of any two adjacent blades their lines are merged, so that no wedging crevice is afforded into which a root or stalk can be forced and retained therein; fifth, when employed in gangs angular to each other and to the line of draft, my bladed disks of one gang must be 'rights,' and those of the other 'lefts,' as distinguished from any prior harrow known to me, whether it had either toothed or bladed devices, with the single exception of a certain special type of prior harrow embodying an angular frame, and having at each side thereof individual earth-working wheels provided with spade-like blades, which were twisted substantially parallel with the axis, and then at their outer ends bent or curved in the line of the periphery of the wheel, and hence said blades were specially bent in each wheel for service at one particular side of said frame. * * * Although for obtaining the best results the bladed disks should be formed and arranged substantially as shown, it is to be understood that it will be within certain portions of my invention if the disks be flat, instead of concavo-convex, provided they be otherwise constructed as shown and described."

The claims in issue read as follows: "(1) In a harrow the combination of angularly arranged gangs of bladed disks, each disk having a circular central earth-working face, and also cutting blades, each having a forward or front cutting edge tangential to said central working face, and a cutting edge at its outer end in a line concentric to the axis of the disk, substantially as described. (2) A harrow disk having a central circular earth-working face, and blades having front cutting edges which are tangential to said central face, substantially as described. (3) A harrow disk having a central circular concave earth-working face, blades having front cutting edges which are tangential to said face, and cutting edges at their outer ends which occupy a line concentric with the axis of the disk, substantially as described."

The annexed Fig. 1 represents the disk of the patent, and Fig. 2 the disk made by the appellee, which is alleged to infringe:



In the prior art are the following, among other, disks.



Chas. E. Mitchell, Wm. E. Simonds, Chas. A. Dupee, Noble B. Judah, Monroe L. Willard, and Henry M. Wolf, for appellants.
John R. Bennett, for appellee.

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

WOODS, Circuit Judge, after making the foregoing statement, delivered the opinion of the court:

It is evident that the patent in suit, by its own terms as well as by force of the prior art, is one of very narrow scope. It must be limited substantially to the particular construction described, and when that is done it is impossible to reach any other conclusion upon the question of infringement than that declared by the court below. This is so clear upon a mere statement of the case that a discussion of the question would be unprofitable.

It is to be observed that the assignment of error is not such as required an examination into the merits of the appeal, because if it were found that error was committed to the full extent alleged it would not follow that the decree rendered should be reversed. The assignment contains but one specification, and that, contrary to our rule 11 (21 C. C. A. cxii., 78 Fed. cxii.), embraces two distinct propositions. It reads as follows:

"The circuit court erred in holding that respondents have not infringed upon the patent in suit, and it erred in declining to grant a provisional injunction with reference for accounting in damages and profits."

The one thing done by the court was to dismiss the bill, and on that action the assignment should have been predicated. The record shows no refusal to grant a provisional injunction, and if there had been such a ruling the question of its correctness could be involved in an appeal from a final decree of dismissal only incidentally,

if at all. The decision was put upon the ground that there had been no infringement, but it is also said that the court expressed no opinion upon the validity of the claims of the patent. If, therefore, this court should have determined that on the question of infringement the court had erred, the conclusion could be of no avail to the appellant, unless, going beyond the assignment of error, we had also determined that the patent in suit is valid. The assignment is predicated, not as it ought to have been, upon the ruling of the court, but upon the reason given for the decision. That, as we have more than once declared, is improper and unavailing. *Caverly v. Deere*, 24 U. S. App. 617, 13 C. C. A. 452, 66 Fed. 305; *Russell v. Kern*, 34 U. S. App. 90, 16 C. C. A. 154, 69 Fed. 94.

The decree below is affirmed.

ENTERPRISE MANUF'G CO. v. SNOW et al.

(Circuit Court of Appeals, Second Circuit. May 3, 1897.)

PATENTS—INFRINGEMENT—MEAT CUTTERS.

The Baker patent, No. 271,398, for an improved machine for cutting up plastic substances, in which the main idea consists in pressing the meat, by means of a forcing screw, and without any preliminary cutting, against a perforated plate, on the inner face of which is a knife, which, operating in connection with the plate, serves as the sole means of the cutting, held not infringed by a somewhat similar device, in which there was a preliminary cutting or slitting of the meat by stationary knives. 72 Fed. 262, affirmed.

Appeal from the Circuit Court of the United States for the District of Connecticut.

Charles E. Mitchell and Charles Howson, for complainant.

Albert H. Walker, for defendants.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. The complainant brought its bill in equity before the circuit court for the district of Connecticut to restrain the defendants from the alleged infringement of claims 1, 4, and 5 of letters patent No. 271,398, granted on January 30, 1883, to John G. Baker, for an improved machine for cutting up plastic substances. From the decree of the circuit court, which dismissed the bill (72 Fed. 262), the complainants appealed.

The claims which are in controversy are as follows:

"(1) The combination, in a machine for cutting up plastic or yielding substances, of the following instrumentalities, namely: First, a casing for containing the substances to be cut up; second, a perforated plate at or near the end of the casing; third, a device for forcing the crude mass forward in the casing and against the said plate, without otherwise disturbing the integrity of the said mass; and, fourth, a knife operating against the inner face of the plate, and serving as the sole means, in connection with the said plate, of cutting up the mass by severing therefrom the portions which enter the perforations, all substantially as set forth."

"(4) The combination of the casing, E, made larger at its outer than at its inner end, with a perforated plate, a knife, and a feed-screw.

"(5) The combination of a casing, E, made larger at its outer than at its