

pellants contend that an equivalent for the serrations of their first patent is found in the beads or depressions in the appellee's device, which are used to retain the wrappings of the wire, and prevent them from coming off in case the broom straws should shrink, and cause the ferrule to slacken up or loosen. It is clear from the complainants' patent, however, that the serrations perform no such office. In the specification the serrations are called "teeth," and their use is described as follows:

"But the butt ends of the straws extend only under the teeth, and terminate at their base. In order to bind these teeth upon the broom straws so as to clamp the latter upon the handle, we bind a wire, a, around the teeth into a number of coils sufficient to conceal the teeth, and at the lower end of the coil secure a tack, pin, or screw, H, by passing the same through the straws and into the handle."

It will thus be seen that the purpose of the teeth is not to prevent the wire from slipping off the ferrule, but to attach the ferrule more securely to the broom straws. The appellants contend also that an equivalent for the lugs or extensions of their second patent is found in the appellee's device, from the fact that the appellee causes a tack or nail to be driven through the lower corners of the open ferrule to fasten the end of the wire to the broom handle. Here again the appellants must be bound by their claim. They have specifically claimed the extensions for the purpose of inserting the nail therein. If the appellee had the right to use an open ferrule at all, he had the right to drive a nail through it at any point. He was only precluded from using a ferrule with a lug or extension thereto, such as was described and claimed in the complainants' second patent. Inasmuch as the serrations of the first and the extensions or lugs of the second patent are wholly dispensed with in the device which was used by the appellee, there was no infringement. The decree of the circuit court will be affirmed, with costs to the appellee.

A SCOW WITHOUT A NAME.

ROGERS v. A SCOW WITHOUT A NAME.

(District Court, E. D. New York. May 17, 1897.)

ADMIRALTY JURISDICTION—HOUSE BOAT—LIEN FOR TOWAGE.

A scow, which had been fitted up with a cabin and other appurtenances to serve as a house boat, was chartered for the season, the owner agreeing with the charterers to share the profits after a certain date. The charterers engaged the libellant to tow them to New London and back, without informing him that it was a chartered vessel. The answer in the case objected to the jurisdiction, that there was no admiralty lien on such a craft, and that the charterers were liable for the towage. *Held*, that the house boat was subject to admiralty liens, and that the towage was done on the credit of the boat.

This was a libel in admiralty by Robert Rogers against an unnamed scow to enforce an alleged lien for towage. The scow had been fitted up with a cabin and other appurtenances to serve as a house boat. It was then chartered for the season, the owner agreeing to share the profits with the charterers after a certain date. The charterers procured the libellant to tow them to New London and back, without informing him that the boat was chartered. The claimant set up in his answer a want of jurisdiction in the court on the ground that such a craft was not the subject-matter of an admiralty lien, and that the charterers were liable for the towage.

Edwin G. Davis, for libellant.

Goodrich, Deady & Goodrich, for claimant.

BENEDICT, District Judge. I have no doubt as to the jurisdiction of the court to entertain a proceeding to enforce a claim for towage against a house boat, and it seems to me that the evidence shows that the towage sued for was performed on the credit of the boat and her owners, in good faith. There was no bad faith in the transaction, and, in my opinion, the case of *The Kate*, 164 U. S. 458, 17 Sup. Ct. 135, relied on by the claimant, does not apply. Decree for the libellant for the sum of \$200.

PACIFIC CONTRACTING CO. v. UNION PAVING & CONTRACTING CO. et al.

(Circuit Court, N. D. California. May 17, 1897.)

1. FEDERAL COURTS—JURISDICTION IN PATENT CASES—LICENSES.

When there appears to be a subsisting license between the parties to an infringement suit, a federal court has no jurisdiction, under the patent law, to enforce the terms of the license, or to forfeit the license on the ground that its terms have been violated. But, when the existence of the license is alleged by the defendant and denied by the complainant, it is competent for the court to determine whether, at the time of filing the bill, there was a subsisting license between the parties, and until this fact is determined the court has jurisdiction.

2. PATENTS—PRELIMINARY INJUNCTION.

Preliminary injunction granted to restrain infringement of the Rice, Steiger & Thurber patent, No. 319,125, for a process of working and using asphaltum.

Bill in equity for alleged infringement of letters patent No. 319,125, covering a "process of working and using asphaltum." Order to show cause why a preliminary injunction should not be granted. Application for preliminary injunction granted.

Wheaton, Kalloch & Kierce, for complainant.

D. H. Whittemore, for defendants.

MORROW, District Judge. The bill in this case is in the usual form, for an infringement of letters patent No. 319,125, granted to Judson Rice, Andrew Steiger, and Isaac L. Thurber, and which were assigned and are now held by the present complainant. The validity of the invention covered by the letters patent has been adjudged heretofore. *Pacific Contracting Co. v. Southern California Bituminous Pav. Co.*, 48 Fed. 300; *Contracting Co. v. Bingham*, 62 Fed. 281. The invention is described in the letters patent as a "process of working and using asphaltum," and consists, generally speaking, in reducing asphaltum to a plastic condition by the application thereto of hot water or steam, without mixing it with coal tar or any other deleterious substance, and then pressing it under heated rollers or other heated irons. An order to show cause why a preliminary injunction should not be granted was issued on June 6, 1896, and meanwhile a restraining order was granted. The defendants have filed their several answers, to which the complainant has filed its replications, and the case now comes up on the order to show cause. The complainant and the defendants are all citizens of the state of California. The Southern California Bituminous Paving Company, by its answer and affidavits, pleads the right, by a license from the complainant, to use the invention involved in this case; the Union Paving & Contracting Company denies that the process described in the bill is the process covered by the patent; and the three other defendants, officers of the two defendant corporations, deny that they infringed.

It is objected, on the order to show cause, that the court has no jurisdiction of the case, in view of the fact that the rights of the Southern California Bituminous Paving Company to use the inven-