

legislator who drafted the clause meant that the word 'useful' should have substantially the same meaning here that it has in the part of the act creating utility patents,—that is, that the things presented for patent shall be designed for some useful purpose, in distinction from a hurtful, frivolous, or immoral purpose."

I shall, therefore, deny the application for a preliminary injunction.

STEEL-CLAD BATH CO. v. DAVISON.

(Circuit Court of Appeals, Second Circuit. May 26, 1897.)

PATENTS—ANTICIPATION—BATH TUBS.

Claim 1 of the Booth patent, No. 458,995, for a bath tub composed of a smooth sheet metal casing, having a lining of copper or other light flexible metal hammered, rolled, or pressed into close contact therewith, does not describe a patentable invention in view of the Holmes patent, No. 189,559. 77 Fed. 736, reversed.

Appeal from the Circuit Court of the United States for the Northern District of New York.

This was a suit in equity by Samuel Davison against the Steel-Clad Bath Company for alleged infringement of a patent for an improved bath tub. The circuit court entered a decree for the complainant (77 Fed. 736), and the defendant has appealed.

Henry P. Wells, for complainant.

Wm. Raimond Baird, for defendant.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. This appeal is from a decree of the circuit court for the Northern district of New York, which found that the defendant had infringed claims 1, 2, 5, and 7 of letters patent No. 458,995, granted to George Booth on September 8, 1891, for an improved bath tub. The specification described the invention as follows:

"The object of the invention is to construct a cheaply-made, but practically indestructible, bath tub; and it consists, essentially, of a bath tub composed of a casing made of light sheet steel, or such other light sheet metal as has a perfectly smooth surface; the said casing being lined with copper, aluminum, or other light, flexible metal, hammered, rolled, or pressed into close contact with the smooth inner surface of the casing; the said bath tub being preferably made in three sections, each section having an outwardly projecting flange formed on it to correspond with the flange on the section against which it abuts. * * * The outer casing of each section is preferably made of light sheet steel, as the surface of sheet steel is perfectly smooth, so that the inner lining, a, can be hammered, rolled, or pressed into close contact with its outer casing, A. This inner lining, a, is made of copper, aluminum, or other light, flexible metal. By using metal, like sheet steel, with an absolutely smooth surface, I am able to use an extremely thin lining, a, which enables me to produce a highly-finished bath tub at a low price, and which will be very light and portable."

The patentee also said that an outer casing of cast metal could not be used, because the inner surface of the casing could not be made sufficiently smooth to receive the lining. The top edges of the tub were bent inwardly, so that the lining was held firmly

against the outer casing. A cap around the upper edges of the tub helped to hold the lining in position. The preferable division of the tub into three sections was for convenience of transportation. The claims in controversy are as follows:

"(1) As an improved article of manufacture, a bath tub composed of a smooth sheet-metal casing, having a lining of copper, aluminum, or other light, flexible metal, hammered, rolled, or pressed into close contact with its outer casing, substantially as and for the purpose specified. (2) As an improved article of manufacture, a bath tub composed of a smooth sheet-metal casing, having a lining of copper, aluminum, or other flexible metal, hammered, rolled, or pressed into close contact with its outer casing, in combination with a capping extending over, and secured to, the upper edges of the bath tub. (5) As an improved article of manufacture, a bath tub composed of a smooth sheet-metal casing curved in cross sections, so that its upper edges incline inwardly, a lining of copper, aluminum, or other light, flexible metal being hammered, rolled, or pressed, into close contact with its outer casing, substantially as and for the purpose specified. (7) As an improved article of manufacture, a bath tub composed of three flanged, smooth sheet-metal sections, lined with copper, aluminum, or other light, flexible metal, hammered, rolled, or pressed into close contact with its outer casing, in combination with a capping extending over and secured to the flanges formed on the upper edges of the bath tub, substantially as and for the purpose specified."

The trial judge truly stated that the sheet steel and copper tub which the patentee made is cheap, strong, durable, light, and easily moved. The experts in behalf of the complainant relied strongly upon the point that it was a cheap tub, which contained no concealed woodwork, and was so constructed that the pipes and joints were exposed, and that the exterior of the tub was open to free ventilation and examination, and was therefore an improvement both upon tubs which were incased by wooden boxes, and upon expensive porcelain tubs. These sanitary advantages were not mentioned in the specification, but the tub, being, as a whole, of metal, in fact excluded woodwork; and, being elevated upon legs, it was raised from the floor, and therefore the pipes could be examined with ease. The minor improvements specified in claims 2, 5, and 7 were not of patentable importance; and if the patentee had confined himself, in the first claim, to what he actually gave to the public,—a smooth sheet-steel casing, having a lining of flexible copper, rolled or pressed into close contact with its outer casing,—the patent would have been much stronger. But he went further, and claimed a smooth sheet-metal casing of any sort, having a lining of any light, flexible metal brought into close contact with the outer casing, and thereby gave too great breadth to his patent. He evidently intended to include all sheet metal, whether of zinc, copper, or tin. Smooth sheets of metal of different kinds, rolled or pressed together, were not unknown in the art of the coppersmith, and had been used in soda fountains and in water boilers; but these examples belonged to articles which were unlike bath tubs, and are not important in this connection. The patent to Charles E. L. Holmes, No. 189,559, dated April 17, 1877, was for a portable bath tub made of two kinds of metal; the body of the metal being zinc, and the facing of tin. "The sheet," says the specification, "is formed by uniting a thin sheet of tin and a thicker sheet of zinc by rolling the

two sheets together, soldering them face to face, or otherwise producing a homogeneous sheet having tin for a facing and zinc for the body." The outer casing of each section of the Booth tub "is preferably made of light sheet steel, so that the inner lining can be hammered, rolled, or pressed into close contact with its outer casing." The distinction which the complainant's experts make between the modes of construction of the respective tubs, viz. that the Booth tub is made of two independent sheets of metal, one nested within the other, whereas the Holmes tub is made from a homogeneous sheet of compound metal, was not recognized in the original Booth specification, which said that his "lining was hammered, rolled, or pressed so as to be practically integral with its outer casing." The body of each tub can be made by rolling the two sheets of metal together, and, if the Holmes alleged invention had never existed, a tub made of sheet zinc and sheet tin combined by rolling or otherwise pressing the sheets together would have been within the terms of claim 1 of the Booth patent, unless it should be construed as being exclusively for a stationary tub which is connected with the house system of water supply. If the Booth claim should properly be thus limited, the Holmes tub is so much a part of the prior art as to deprive the claimed improvement of the character of invention, for the means of which Booth claimed a monopoly for the manufacture of a stationary tub had been used before to make a light, cheap, and durable portable tub. *Knapp v. Morss*, 150 U. S. 221, 14 Sup. Ct. 81. The decree of the circuit court is reversed, with costs.

BLAUVELT v. INTERIOR CONDUIT & INSULATION CO.

(Circuit Court of Appeals, Second Circuit. May 26, 1897.)

PATENTS—INVENTION BY EMPLOYEE—IMPLIED LICENSE OF EMPLOYER.

An employé who, while earning weekly wages, constructs with his employer's tools and materials, and in his shop, machines which the latter uses as part of his tools, without knowledge of any objection thereto, cannot, after obtaining a patent, enjoin his employer from further use of the particular machines.

Appeal from the Circuit Court of the United States for the Southern District of New York:

This was a suit in equity by James M. S. Blauvelt, trustee, against the Interior Conduit & Insulation Company, to restrain the alleged infringement of a patent. The circuit court dismissed the bill, and the complainant has appealed.

John Dane, Jr., for complainant.

John S. Wise, for defendant.

Before LACOMBE and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. The complainant is the assignee of letters patent No. 456,059, which were issued on July 14, 1891, to Albert D. Prentice, as inventor, for an improvement in machine for seaming tubes of sheet metal, and, as such assignee, brought a bill

in equity in the circuit court for the Southern district of New York against the defendant to restrain an alleged infringement of said patent. This appeal is from a decree of the circuit court, which dismissed the bill.

In April, 1891, Prentice made an application for the patent in suit, which was granted July 14, 1891. Subsequently, upon an application filed September 3, 1891, by Edward F. Greenfield, the electrical superintendent of the defendant corporation, an interference was declared between these two claimants for priority of invention, which resulted in a decision in favor of Prentice, and it may be assumed that he was the original inventor of the machine described in his patent. He had made a wooden model of his invention prior to the fall of 1888, and in November of that year Greenfield called upon him to make inquiries about it, saw it, and said that he might be able to make some arrangements for its manufacture. Prentice's story is that about January 1, 1890, Greenfield sent for him to come to the defendant's shop, and agreed with him that he should build one of his machines at the company's expense, that they should have an opportunity to test the probabilities of its success, and, if the invention proved satisfactory, they were to use it, paying as royalty one-eighth of a cent per foot of tubing manufactured by its aid. He was to take out a patent in the meantime, and was to be paid a mechanic's wages for doing a mechanic's work. He was, in fact, paid at the rate of \$30 per week, and he entered upon their employment in January, 1890, but did not commence working upon these machines until about a year afterwards. From material furnished by the defendant, six or seven machines were made by him, or under his supervision, in its shop, which went immediately into experimental or practical use by the defendant. On August 3, 1891, Prentice sent to its president the following letter:

"New York, Aug. 3rd, 1891.

"Mr. Edwd. H. Johnson—Sir: I called at your office, 44 Broad street, to-day, but failed to find you. I am the inventor and patentee of machine for making hook-seam sheet-metal tubes, as now used by Interior Conduit and Insulation Co. I have failed to come to any agreement with your agent, Mr. Greenfield, in regard to the granting license, or the amount of royalties I should receive. I therefore take this opportunity to notify you to discontinue the use of said machines until such time as we shall come to a mutual understanding as to the amount I shall receive as a royalty on your invention.

"Respectfully yours,

Albert D. Prentice, 257 West 21st St., City.

"P. S. Date of U. S. patent, July 14, 1891."

On August 5th he was discharged by Greenfield. On August 11th Johnson replied to the letter of August 3d, denying Prentice's right to the patented invention, and claiming that, in any event, the defendant was entitled to use it. The question of importance in the case is in regard to the right of the defendant to use the machines which were made prior to August 3d. The complainant testified that the defendant had six or seven patented machines in use when he left. He afterwards said that seven dies were made in all during his continuance with the defendant, one of which was nearly completed when he left. No machines in addition to those substantially made or supervised by the complainant, which made use