

plainant produced a stove of that make, which was identified as one of those named by the defendant's witness as made and sold by the Magee Company, and of the pattern referred to, in which the under side of the ring was unpolished, and it was conceded that it could not serve as a reflector. The Spear fireplace device, called the "New Golden Sun," has an arched border or frame nickel plated, which serves to reflect the rays of light and heat to a certain extent at the sides, although not at the top. The only witness upon this point is the designer and manufacturer, James Spear, who gives enthusiastic description of the "dazzling glow" which was produced. A cut of it is shown in his catalogue of 1884, and the feature of reflection is referred to in the context. But there is no provision of an in-turned mica section and reflector serving in any manner to reflect the rays of light and heat from the upper surface of the fire pot, which is the distinguishing feature of the complainant's device, and gives it the large measure of success shown in this record. While there is incidental use of the feature of reflection, there was, in my opinion, no such recognition of its benefits as should appear to constitute anticipation in view of the success obtained by the complainant's device. The question of patentable invention is close, but the new testimony is not sufficient, in my view of the case as a whole, to disturb the opinion heretofore reached. Decree will be entered in favor of the complainant according to the former opinion.

ROEMER v. PEDDIE et al.

(Circuit Court of Appeals, Third Circuit. May 17, 1897.)

No. 4, March Term, 1897.

1. PATENTS—CONSTRUCTION OF CLAIMS—INFRINGEMENT—SACHEL FRAMES.

The Roemer patent, No. 340,459, for a bag or satchel frame, is strictly limited by the prior state of the art, and its third claim is not infringed by a frame which does not have the described groove "adapted to receive the edge of the bag material."

2. SAME.

The Roemer patent, No. 378,263, for a bag or satchel frame, covers, in its first claim, a combination of elements, all of which, excepting the two ears described as pivoted on the end sections of the frame, were old; and said claim is not infringed by a frame having but one ear, instead of two, and a single rod in place of two pins. The second claim is for a combination of old elements without producing any new result, and is, therefore, void.

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

This was a suit in equity by William Roemer against T. B. Peddie & Co. for alleged infringement of two patents for bag or satchel frames. The circuit court dismissed the bill, and the complainant appealed.

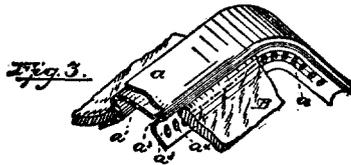
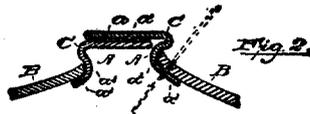
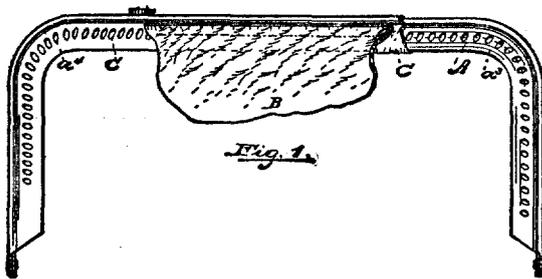
R. Wayne Parker, for appellant.
Louis C. Raegener, for appellees.

Before **ACHESON** and **DALLAS**, Circuit Judges, and **BUFFINGTON**, District Judge.

DALLAS, Circuit Judge. This is an appeal from a decree dismissing a bill for alleged infringement of two patents.

1. Patent No. 340,459, dated April 20, 1886, was issued to the appellant for a bag and satchel frame. The claim in question is as follows:

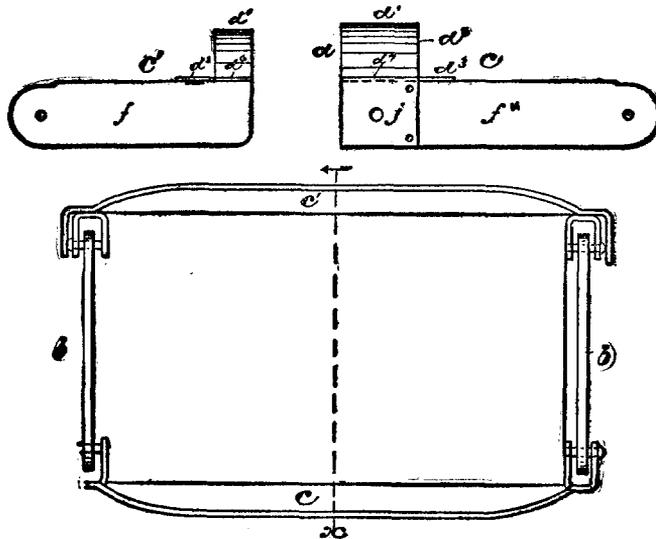
"(3) A bag or satchel frame having grooved sides adapted to receive the edge of the bag material, the lower edge or portion of said groove projecting outwardly beyond the upper edge of the said groove under the bag material. the said outwardly projecting portion being provided with perforations therein through which the stitches or rivets pass that secure the bag material to the frame, substantially as and for the purposes set forth."



The prior state of the art, as necessarily admitted, imperatively requires the limitation of this claim to the particular groove described; and as inspection plainly reveals that the defendants' frame does not have such a groove "adapted to receive the edge of the bag material," the charge of infringement cannot be sustained.

2. Patent No. 378,263, dated February 21, 1888, was also issued to the appellant for a bag or satchel frame. The claims alleged to have been infringed are as follows:

"(1) In a bag or satchel frame, the combination with end sections, *b, b*, of a frame, of jaws, *c, c'*, pivoted at the opposite ends of and connecting said end sections, each of said jaws consisting, essentially, of a seat, *d'*, a vertical portion, *d²*, to elevate said seat, and a perforated flange, *d³*, to receive the body material, and end sections, *f, f*, secured to the ends of said section *d*, and provided with ears *f³, f⁴*, pivoted on the end sections, *b, b*, of the frame, substantially as set forth.



"(2) In combination with jaws, *c*, *c*¹, of a bag frame, strap-like end sections, *b*, *b*, disposed vertically edgewise at the ends of the frame, and providing pivotal bearings for said jaws, substantially as and for the purposes set forth."

The first of these claims is for a combination, all the elements of which, with the exception of the two ears especially described as pivoted on the end sections of the frame, were unquestionably old. The appellees' construction comprises but one ear, not two, and, instead of two pins, it has a single rod, and without giving to the claim a breadth of construction which its language does not warrant, and which pre-existing devices render wholly inadmissible, these differences cannot be regarded as immaterial.

The second claim of this patent has been several times in litigation, and upon each occasion has either been not insisted upon, or has been held to be invalid; and the record in the present case leaves no room for doubt that each and all of its constituent contrivances were well known long before this patent was applied for. The utmost that can be justly credited to the appellant is that, in their aggregation, he exhibited an appreciative realization of the utility of each of them. It does not appear that he so associated them as to produce any new result as the consequence of their union; and therefore he did not create a patentable combination. Upon the whole case we are of opinion that no error was committed in the disposition made of it by the circuit court, and its decree is affirmed.

CONSOLIDATED FASTENER CO. v. TRAUT & HINE MANUF'G CO.

(Circuit Court, D. Connecticut. May 6, 1897.)

PATENTS—PRELIMINARY INJUNCTION—VIOLATION OF AGREEMENT.

A preliminary injunction will not be issued to prevent the alleged violation of a contract by the manufacture of a certain kind of article, where the affidavits show that it will be contended at the trial that the construction of the written contract depends upon the intention, to be gathered from the surrounding circumstances, and the conduct of the parties before and after execution of the contract, which questions cannot be satisfactorily determined upon the affidavits.

This was a suit in equity by the Consolidated Fastener Company against the Traut & Hine Manufacturing Company to enjoin the alleged violation of an agreement in respect to patent rights. The cause was heard on a motion for preliminary injunction.

W. B. H. Dowse and John E. Bennett, for complainant.
Mitchell, Bartlett & Brownell, for defendant.

TOWNSEND, District Judge. On motion for a preliminary injunction. The parties hereto are manufacturers of lock fasteners and buttons for gloves, suspenders, and other similar articles. On November 17, 1893, they executed the following agreement, the statements whereof sufficiently show their prior relations:

"Memorandum of agreement made this day by and between the Traut & Hine Mfg. Co., of New Britain, Conn., and Geo. E. Adams, of said New Britain, and Jno. C. Knowles, of Providence, R. I., and the Consolidated Fastener Co., of Portland, Me.: Whereas, a suit is pending against Hewes & Potter, of Boston, in the U. S. circuit court, by said Consolidated Fastener Co., for infringement for one of its patents, for the use of fasteners made by the said Traut & Hine Mfg. Co.; and whereas, it is desired by the said Adams & Knowles to dispose of their patents under which said T. & H. Co. made said fasteners, and by said T. & H. Co. to dispose of its tools and all fasteners it has made or in the process of making, together with any good will it may have acquired in the sale of said fasteners herein mentioned: Now, therefore, it is agreed by and between said parties that a decree may be entered in said suit against said Hewes & Potter, and the said Adams & Knowles, and the said Traut & Hine Mfg. Co., for the sum of one thousand dollars paid them by the Consolidated Fastener Co., agree to convey, sell, and deliver to the said Consolidated Fastener Co. the following letters patent of the U. S., viz.: No. 489,891, dated Jan. 10, 1893, and No. 489,890, dated Jan. 10, 1893, both granted to Geo. E. Adams; all the fasteners made up and in process of manufacture (it being estimated that there are at least six hundred gross of fasteners so made up); the tools in existence for the manufacture of said fasteners; the dies for setting the same; the machines for setting the same, wherever situated,—together with all the said good will in trade connected with the sale of said fasteners. And the Consolidated Fastener Co. agrees, for said transfer, to pay the sum of one thousand dollars; and both parties agree to execute said papers, deliver said goods, and pay said sum, within ten days from the date of this agreement.

"Witness our hands, at New York City, this 17th day of Nov., 1893.

"The Traut & Hine Mfg. Co.,

"By Justus A. Traut, Pres.

"Consolidated Fastener Co.,

"By Louis A. Douillet, Pres.

"Geo. E. Adams,

"Jno. C. Knowles,

"By Geo. E. Adams."