

The parties to said agreement duly fulfilled its conditions. George E. Adams, the patentee therein named, on April 21, 1896, obtained patent No. 558,580, and on September 1, 1896, patent No. 566,731; both of said patents being for glove fasteners. The defendant is now engaged in making and selling fasteners under said patents, which differ in construction from, but are like in appearance and adaptation for use to, the fasteners made under the patents transferred under said agreement.

The single question presented herein is whether the defendant has thereby violated said agreement. It is unnecessary, in the disposition of this motion, to finally determine the respective rights and obligations of the parties. The complainant is obliged to concede that the fasteners now sold by defendant are not the same fasteners as those made under said earlier patents, and transferred under said agreement. It contends, however, that, under the transfer of "the good will in trade connected with the sale of said fasteners," the defendant agreed that it would not thereafter sell similar fasteners, such as would be likely to interfere with the business of the complainant. This contention and concession and the affidavits herein show that it will be claimed upon the trial that the question between the parties depends upon their intention, to be gathered from the surrounding circumstances, their conduct before and after the execution of said agreement, the objects which they respectively had in view, the consideration paid for said transfer, and other questions of interpretation, as well as from the terms of said contract. Inasmuch as this question cannot be satisfactorily determined upon affidavits, but only by testimony of witnesses with the privilege of cross-examination, I do not feel justified in granting the extraordinary relief of a preliminary injunction.

The defendant, in the affidavits introduced by it, and in argument, contends that the good will transferred was limited to that connected with the particular fasteners covered by said patents; and to the stock, tools, and machinery transferred as a part of said agreement, and that it has not violated the terms thereof, and has acted in good faith. Inasmuch as the affidavits show the necessity of a resort to a practical interpretation, which can only be determined after a full hearing, and as a decision now, if improper, might cause material loss, the motion is denied.

CONSOLIDATED SAFETY-VALVE CO. v. ASHTON VALVE CO. et al.

(Circuit Court, D. Massachusetts. May 7, 1897.)

PATENTS—INTERPRETATION—STEAM SAFETY VALVES.

The Richardson patent of January 19, 1869, for an improvement in steam safety valves, properly construed, requires that the aperture in the ground joint, caused by lifting the valve, shall always be greater than the aperture for the exit of steam to the open air.

This was a suit in equity by the Consolidated Safety-Valve Company against the Ashton Valve Company and others for alleged infringement of a patent for an improvement in steam safety valves.

Clark, Raymond & Coale and Frederic H. Betts, for complainant.
James E. Maynadier, for defendants.

COLT, Circuit Judge. This bill was filed May 6, 1885, and is based upon the Richardson patent of January 19, 1869, for an improvement in steam safety valves. As stated by complainant's counsel, the real question in this case is:

"Does the Richardson patent of 1866, or the Richardson patent of 1869, require that the aperture at the ground joint, caused by lifting the valve, should be always greater than the aperture from the pop chamber between the flange, n, and the rim, q, of the patent of 1869?"

Upon a careful examination of the Richardson patent of September 25, 1866, and the Richardson patent of 1869, in connection with the decision of the supreme court in Consolidated Safety-Valve Co. v. Crosby Steam-Gauge & Valve Co., 113 U. S. 157, 5 Sup. Ct. 513, I am of opinion that the proper construction of the patent in suit requires that the aperture at the ground joint, caused by lifting the valve, should always be greater than the aperture for the exit of steam into the open air. As the defendants' valve does not embody this construction, I must hold that there is no infringement, and that the bill should be dismissed, with costs. Bill dismissed, with costs.

HUNT v. ARCHIBALD et al.

(Circuit Court, D. Massachusetts. May 29, 1897.)

PATENTS—NOVELTY—FIRECRACKERS.

The Hunt patent, No. 547,921, for an improved firecracker, in which the fuse is held in place by a portion of the tube forced in and down to form ridges, extending towards the fuse, and forming a rosette with the fuse projecting from its center, is void for want of novelty, considering the prior state of the art.

This was a suit in equity by Edmund S. Hunt against Thomas Archibald and others for alleged infringement of a patent relating to firecrackers. On final hearing.

Maynadier & Mitchell, for complainant.
George O. G. Coale, for defendants.

COLT, Circuit Judge. This is a bill in equity, brought for the infringement of letters patent No. 547,921, granted to the complainant October 15, 1895, for an improved firecracker. The specification describes the invention as follows:

"My invention relates to closing the paper case or tube about the fuse or igniting device; and it consists in a firecracker in which the fuse is held in place by a portion of the tube forced in and down to form ridges, which extend toward the fuse, and cause the portion bent in to form a rosette, with the fuse projecting from its center, as will be plain from the drawings, which show a rosette formed by crimping in the inner portion of the tube, A, along six radial lines, a, these lines slanting upward, and meeting at their inner ends about the fuse, B."

The drawings show a tool for making a rosette, and the specification further declares that: