

oxidation, into a tough, elastic, resinous substance. In the case against the New York Wood-Fibre Company, to which reference has been made, the oil bath consisted of a mixture of London oil and fish oil, the proportions of each not being given. The results attained in all the cases are similar, the means of attainment being chemical equivalents. I am therefore of the opinion that by the adoption of the process of complainants' patent, and the use of its equivalents, the defendants have infringed claims 1 and 2 of patent No. 267,492 (reissue No. 10,282), and by so doing have produced the same "article of paper or paper pulp, having its pores filled with hardened linseed oil, or linseed oil with a proportion of gums, substantially as set forth," thereby infringing the third claim of said patent.

It remains but to consider the seventh claim of the Keyes patent, No. 342,609, relative to the "pail formed of wood pulp having an annular projection or chine around the bottom, formed with a uniformly laminated structure." For the same reasons given in regard to the Carmichael patent, I will, for the purposes of this motion, consider the seventh claim of the Keyes patent, No. 342,609, established. In the suit of these complainants against the New York Wood-Fibre Company, claim 7 of the Keyes patent, No. 342,609, was held to be infringed by the article manufactured by that company. The process used and the article manufactured by the defendants in this case are admittedly similar to those used and manufactured by the New York Wood-Fibre Company in the former suit. The pail made by the New York Wood-Fibre Company having been adjudged to be an infringement of the claim of the patent under consideration, I therefore hold that the similar pail made by similar process likewise infringes.

It has been urged upon the court that a great hardship will be imposed upon the defendants if a preliminary injunction be issued against them. The record discloses that W. W. McEwan, who was one of the incorporators of the defendant company, and Caleb H. Valentine, the superintendent of defendants' factory, were both prominently connected with the New York Wood-Fibre Company at the time injunction issued against it at complainants' suit. The organizer and manager of defendant corporation entered upon their present enterprise with a full knowledge of complainants' rights, and they are not in a position to ask the court to stay its hand in affording to the complainants the full measure of relief to which they are entitled. The preliminary injunction prayed for in the bill should be granted.

JOHN CROSSLEY & SONS, Limited, v. HOGG.
(Circuit Court, D. Massachusetts. May 15, 1897.)

No. 634.

DESIGN PATENTS—ANTICIPATION.

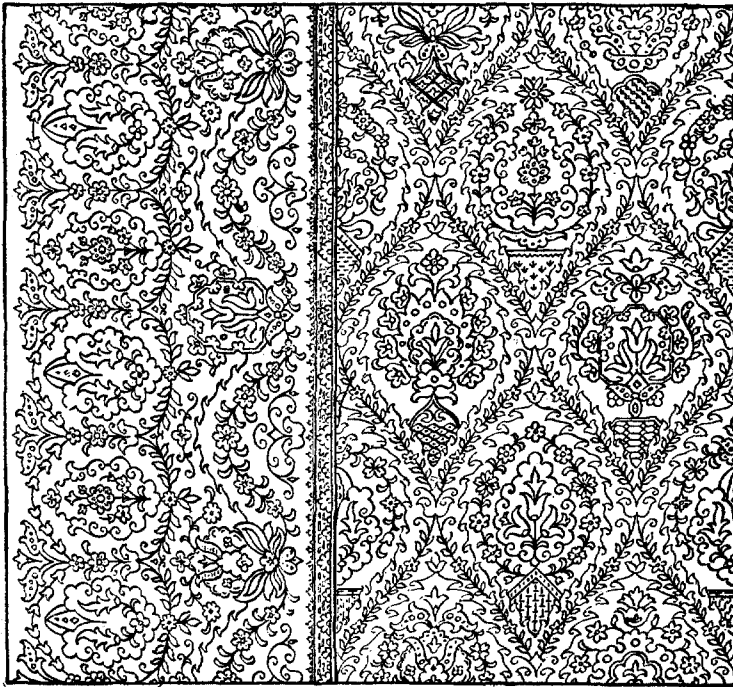
The Marchetti patent, No. 23,362, for a design for a carpet, is void because of anticipation as to claim 1, which covers a body having a series of diamond-shaped figures, the size of which are formed by a curving stem-work bearing small flower forms, and the interior of the diamond-shaped figures having conventional flower forms at their centers, around which are concentric rows of flower and leaf forms, etc.

This was a suit in equity by John Crossley & Sons, Limited, against William J. Hogg, for alleged infringement of a patent for a design for carpets.

Witter & Kenyon, for complainant.
Louis W. Southgate, for defendant.

COLT, Circuit Judge. This is a bill in equity, brought for the infringement of letters patent No. 23,362, granted June 12, 1894, to Giulio Marchetti, for a design for a carpet. The specification says:

"The body, A, comprises a series of diamond-shaped figures, the sides of which are formed by a curving stem-work bearing small flower forms. These diamond-shaped figures have conventional flower forms at their centers, around which are arranged concentric rows of flower and leaf forms, each row or series having the same general outline as the main figure. At the bottom of each figure is an ornament somewhat resembling a shield or pendant. The border, B, consists of an inner portion and an outer portion. The inner portion consists of a double line of wavy stem-work, one line bearing small flower forms, and the other bearing leaf-like serrations. In the depressions of these wavy lines are bunches or sprays of flower forms surrounded by ornamental stem-work. The outer portion of the border consists of a wavy stem-work bearing small leaf and flower forms, the crests of the contiguous wave portions being joined by bands of flowery stem-work, each of which is curved so as to form, with its corresponding wave-portion, a circular figure. In the center of each of these circular figures is a bunch or spray of small flower forms surrounded by an ornamental stem-work."



B

A

Claims 1 and 2 are as follows:

- "(1) In a design for a carpet, the body substantially as shown and described.
 (2) In a design for a carpet, the border substantially as shown and described."

The main defense in this case is anticipation. Upon careful comparison of the patented design with defendant's exhibit lithographic plate representing an old French plate of the fifteenth century, which is contained in a book entitled "L'Ornement Des Tissues," published in Paris in 1877, and received by the Astor Library in 1886, I am of opinion that there is nothing new or original in the Marchetti patent. The main outlines of the patented design are identical with those of the old French plate, and the differences between the two designs are limited to mere changes in detail. The first claim of the patent is therefore void for want of invention. The second claim, which relates to the border, is subordinate to the main design, and as to this claim I find that the defendant does not infringe. Bill dismissed, with costs.

SIMONDS ROLLING-MACH. CO. v. HATHORN MANUF'G CO.

(Circuit Court, D. Maine. November 20, 1897.)

No. 487.

1. PATENTS—INFRINGEMENT SUITS—EQUITY PROCEDURE—EXPERIMENTS.

In an infringement suit an alleged anticipating patent was set up, which did not, on its face, expressly show anticipatory matter, but respondent claimed that it was capable of an anticipatory use. The complainant, by a motion, represented to the court that it had experimented with such patent, but was unable to produce any practical, anticipatory results, and had taken proofs to that effect; that the respondent had introduced evidence tending to show that its own experiments were successful; further, that respondent was invited to witness complainant's experiments, but respondent's experiments were made aside from complainant. Complainant therefore moved the court for an order requiring respondent to repeat its experiments in the presence of complainant's witnesses. *Held* that, while the court might, perhaps, have authority to make such an order, the relief was so extraordinary as not to be granted except when plainly necessary; and, as the court would doubtless have power, at the proper time, to send the matter to a master to have experiments made under proper directions, the motion should be denied.

2. CROSS-EXAMINATION OF WITNESSES.

Where a cross-examination has been closed after notice to the complainant, the court will not, on his motion, require the respondent to produce the witness for further cross-examination.

This was a suit in equity by the Simonds Rolling-Machine Company against the Hathorn Manufacturing Company for alleged infringement of a patent. The cause was heard on the complainant's motion to require the respondent to repeat certain experiments in the presence of plaintiff's witnesses, and also to require defendant to produce a certain witness for further cross-examination.

Fish, Richardson & Storrow, for complainant.

Phillips & Anderson and Charles P. Stetson, for defendant.

PUTNAM, Circuit Judge. The present matter is an interlocutory motion by the complainant pending a bill in equity to restrain al-