

We know of no principle of patent construction which, in such a case (the improvement being novel), would require the court to read into the claim the particular concrete form of improvement shown in the drawings and in the descriptions of such drawings. The order of the circuit court is affirmed, with costs.

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FRANK et al. v. HESS et al.

(Circuit Court, E. D. Pennsylvania. December 13, 1897.)

No. 11.

1. PATENTS FOR DESIGNS.

Design patents cannot be enlarged by the specification, but are limited to the particular design shown in the drawings filed.

2. SAME—DESIGN FOR CAP.

Design patent No. 26,533, issued to Jacob Frank for a design for a cap, consisting of a succession of diamond-shaped figures encircling the rim of the cap, and a single rosette, is not infringed by a cap having a different style of rosette, and, on the rim, rhombus-shaped figures, which, when the cap is held in a sloping position, appear to be diamond-shaped; the general effect of the design being dissimilar.

This was a suit in equity by John Frank and Jacob Frank, co-partners trading as John Frank & Son, against S. Wildman Hess and Rolando Silver, co-partners trading as Hess & Silver, for an alleged infringement of design patent No. 26,533, issued to Jacob Frank for a design for a cap.

Jerome Carty, for complainants.

J. M. Moyer, for respondents.

DALLAS, Circuit Judge. This is a suit upon a patent dated January 12, 1897 (No. 26,533), issued to Jacob Frank, for "design for a cap." The specification expressly refers to the accompanying drawings as "forming a part thereof." It also states that the leading feature of the patentee's design for a cap is the "rim of the same, with ornamentations thereon." It is further specified (referring to the drawings) that "on the rim are geometrically-shaped figures, D, and the rosette, E." Fig. 1 of the accompanying drawings shows a succession of diamond-shaped figures encircling the rim of the cap, together with a single, circular rosette attached to the rim at a point between two of the diamond-shaped figures before mentioned. What is claimed is the "design for a cap, substantially as described and shown." The position taken by the complainant's counsel, that this patent should be so construed as to cover any and every kind of geometrically-shaped figure, when applied, for the purpose of ornamentation, to the rim of a child's cap is clearly untenable. The monopoly must be confined to the particular design described and shown, and, being so confined, the design of the defendant cannot be held to conflict with it. The two designs not only are not identical, but they do not present the same impression to the eye; nor can I believe that an ordinary purchaser, giving any attention to the subject of design, would be misled into supposing that that of the defendant is that of

the complainant. It is true that the defendant uses a succession of devices, which, when the cap is held in a sloping position, appear to be, severally, of a diamond shape; but, when both caps are held upon a horizontal plane, the effect of the one is wholly different from that produced by the other. For the diamond upon the plaintiff's cap there is substituted a rhombus upon the defendant's, and the space between each of these respective figures is about twice as great in the defendant's design as in that of the complainant. To these differences in detail, separately considered, I would not attach importance; but because, as a whole, they result in producing quite distinct pictures, they are controlling. The respective rosettes are so absolutely unlike as to render any comparison of them unnecessary. The bill is dismissed, with costs.

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DEERE & CO. V. ROCK ISLAND PLOW CO.

(Circuit Court of Appeals, Seventh Circuit. January 3, 1898.)

No. 356.

1. PATENTS—COMBINATIONS—NEW RESULTS.

The new result which a combination is required to attain is a result which is new and distinguishable as compared with results produced by the elements in their separate state, or as assembled in a mere aggregation, without functional relations to each other. A combination is not unpatentable merely because its results may also have been produced by other combinations.

2. SAME—CORN PLANTERS.

The Waterman patent, No. 480,304, for improvements in corn planters, does not cover, in its first claim, a mere aggregation, but a patentable combination, in which the force generated by the friction between the outer edges of the disks (which cover the corn, and at the same time support and carry the seed box) and the ground works the mechanism in the seed box to drop the corn in fixed quantities; the disks being at the same time, by reason of their variable angular adjustment to the line of travel of the machine, functional in determining the distance between the charges of grain as deposited in the furrow.

Woods, Circuit Judge, dissenting.

Appeal from the Circuit Court of the United States for the Southern Division of the Northern District of Illinois.

This was a suit in equity by Deere & Co., a corporation, against the Rock Island Plow Company, for alleged infringement of a patent for improvements in corn planters. The circuit court dismissed the bill for want of novelty in the patent, and the complainant has appealed.

L. L. Bond, A. H. Adams, C. E. Pickard, and J. L. Jackson, for appellant.

John G. Manahan and Edward Rector, for appellee.

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

SHOWALTER, Circuit Judge. Appellant, a corporation, exhibited its bill in the circuit court, alleging infringement by appellee, which is also a corporation, of the first claim of letters patent of the United States numbered 480,304. This patent was issued August 9, 1892. Complainant owns the same, as assignee of the inventor, Lewis E. Wa-