

inquiry regarding rumors that the former designed "giving up handling" the Budweiser of the complainant. It reads:

"Permit us to say that thus far we haven't any such intention. On the contrary, we purpose to sell your Budweiser bottled beer so long as there is but a little profit in it. You have certainly been misinformed on this point."

Following this, the defendant proceeded to make its new brew of so-called "Budweiser," with which it entered the same market so held for and through the complainant, with bottles and labels in obvious departure from those previously used for its own production, and in which there were then marked points of similitude to those of complainant, although since discarded. And the attempted explanations on behalf of the defendant as to the reasons for selecting this name tend to confirm the view I have indicated, rather than an ingenuous choice, as argued on behalf of defendant.

5. The answer of the defendant distinctly "alleges that it applied said designation to beer brewed according to the Budweiser process in order to designate the manner of brewing said beer, and to show its quality"; but the testimony introduced on its behalf denies the fact of any such distinctive process, and explains that the reference in the answer was to the general European process which prevails in Vienna, Berlin, Pilsen, and elsewhere; being "a different process than that in America," and not applicable to Budweis distinctively, because, as stated by Mr. Miller, there is no "such thing known in the brewing world as the 'Budweiser process.'" Therefore the attempted justification of truthful use of the name clearly fails. On the other hand, the denials of the existence of such process are not founded upon personal knowledge, and are entitled to no weight as against the positive testimony on the other side. Assuming a belief on its part that there was no Budweiser process, the defendant committed a wrong in adopting the name, under the circumstances. With the process existing as shown on behalf of the complainant, the defendant neither conforms to it in fact, nor attempts conformity, and the name is not truthfully applied. In either view, the bill must be sustained.

The objection by defendant to the testimony introduced by complainant in rebuttal does not seem to be well taken, if material. The other objections are also overruled, and decree will be entered for complainant in accordance with this opinion.

ROWE v. BLODGETT & CLAPP CO.

(Circuit Court, D. Connecticut, June 15, 1898.)

No. 936.

1. PATENT SUITS—DEMURRER TO BILL.

On demurrer to a bill for want of invention, appearing on the face of a patent, it is not the duty of the court to investigate the prior art.

2. SAME—DESIGN FOR HORSESHOE CALK.

The Rowe patent, No. 26,587, for a design for a horseshoe calk, is not, on its face, so manifestly lacking in invention as to be declared invalid on demurrer to a bill for infringement.

This was a suit in equity by Allen H. Rowe against the Blodgett & Clapp Company for alleged infringement of a design patent for a horseshoe calk.

W. E. Simonds, for complainant.
L. P. N. Marvin, for defendant.

TOWNSEND, District Judge. To this bill in equity for infringement of patent No. 26,587, granted to complainant February 2, 1897, for a design for a horseshoe calk, defendant demurs on the ground that said design "is the product of mere mechanical skill, not amounting to a patentable invention." The defendant, in his brief, cites a number of patents, and asks the court to take judicial notice thereof, and thereupon to hold that the configuration claimed in the patent in suit is lacking in originality and beauty. The court has no personal knowledge as to these matters, and does not understand that, in a hearing on a demurrer, it is its duty to investigate the prior art. As a matter of fact, the writer supposed that the ordinary horseshoe calk was an integral part of the horseshoe, hammered to a point by a blacksmith. It is perhaps possible that evidence might be introduced to show that said design was patentable, as a "new and original shape or configuration of an article of manufacture." The demurrer is therefore overruled.

PELZER v. GEISE. SAME v. ACME GAS FIXTURE & METAL CO. SAME
v. BUCK. SAME v. HORN & BRANNEN MFG. CO.

(Circuit Court, E. D. Pennsylvania. June 25, 1898.)

Nos. 37-39, 41.

PATENTS—PRELIMINARY INJUNCTION—EFFECT OF PRIOR DECISIONS.

The circuit court and the circuit court of appeals for the Third circuit held that several claims of an original patent were invalid. Thereafter the circuit court of appeals in the Second circuit, after duly considering such prior decision, sustained the validity of a reissue of the patent. *Held* that, in a subsequent suit in the circuit court of the Third circuit on the reissue, the court, on motion for a preliminary injunction, would regard the decisions in the Second circuit sustaining the reissue as controlling upon it.

These were four suits instituted by complainant, Pelzer, against different defendants for alleged infringement of a patent for improvements in electrical fixtures. The causes were heard on motions for preliminary injunction.

Richard N. Dyer, for complainant.

Hector T. Fenton, Theodore F. Jenkins, and Samuel Gustine Thompson, for respondents.

DALLAS, Circuit Judge. The above-stated cases are suits upon reissued letters patent No. 11,478, granted March 12, 1893, to Luther Stieringer, for an improvement in electrical fixtures. The original (No. 259,235) was dated June 6, 1882, and was applied for March 15, 1882. A motion for a preliminary injunction has been made in each case. These motions were argued at the same time,