

plainant is a pioneer in the art, was the first to make an operative snowplow for the making and cleaning of roads, and is therefore entitled to a broad construction for his patent. It is evident that the complainant's patent cannot be stretched to cover the defendant's adjustable rutter, without making it cover also the Hewittsville adjustable rutter; and, if the defendant's rutter is an infringement of the complainant's device, the Hewittsville rutter must be an anticipation. *Knapp v. Morss*, 150 U. S. 221, 14 Sup. Ct. 81; *Miller v. Manufacturing Co.*, 151 U. S. 186, 14 Sup. Ct. 310. I think the evidence shows that the complainant is not by any means a pioneer in the art of making snowplows, and should be limited to the specific construction shown in his patent. These the defendant does not use. There is more difference between the Brazel patent and the snowplow and rut cutter used by the defendant than there is between the Wyman and Brazel patents. And I can see nothing in the Brazel patent that does not appear in the previous patents, while in the Wyman patent is presented every essential principle of structure or operation seen in the complainant's device. The complainant's bill of complaint will be dismissed, with costs.

PEASE v. WHITE MFG. CO. et al.

(Circuit Court, D. Minnesota. October 10, 1898.)

PATENTS—WANT OF INVENTION—WOVEN WIRE MATS.

The Pease patent, No. 399,554, for a woven-wire mat and scraper, as to claim 3, is void for lack of invention or patentable novelty.

This is a suit for infringement of a patent and for an accounting.

P. H. Gunckel and W. H. Blodgett, for complainant.

A. C. Paul, for defendants.

LOCHREN, District Judge. This suit was brought to restrain the defendants from alleged infringement of letters patent No. 399,554, for woven-wire mat and scraper, issued to complainant March 12, 1889, and for an accounting of profits. On the hearing it was conceded that May 1, 1885, should be taken and accepted as the date of complainant's alleged invention. The complainant contends that the mat and scraper woven of spiral wires, manufactured and sold by the defendant the White Manufacturing Company, infringes claims 1 and 3 of the complainant's said patent, wherein he claims as his invention:

"(1) As an improved article of manufacture a wire mat and scraper composed of a system of primary coils interwoven with each other, and a transverse system of locking coils interwoven with each other and with the primary coils, the turns of the locking coils lying outside of the successive primary coils, whereby the several coils are held against depthwise movement on each other, all substantially as described."

"(3) In combination, in an interwoven fabric of spirals of wire, the primary fabric and the secondary fabric, the coils of the two sets crossing each other and interwoven, so that the planes common to the points of intersection in the two sets are approximately coincident, all substantially as described."

The drawings in complainant's patent, while within the description of claim 3, show only the fabric particularly described, in language less broad, in claim 1; having a system of primary coils of spiral wire interwoven with each other, and a transverse system of locking coils of like wire interwoven with each other and with the primary coils, so that the turns of the locking coils lie outside of the turns of the successive primary coils, each bracing against the other. The only difference between the fabric shown by said drawings and described in said claim 1 of complainant's patent and the alleged infringing fabric of the defendants is that in the latter the turns of the locking coils do not lie outside of the turns of the primary coils, but are intertwined with the turns of the primary coils. The complainant contends that this variation is immaterial, and that the defendant's fabric is in all substantial respects the exact equivalent of the fabric shown in the drawings, and described in claim 1 of complainant's patent, and that it is clearly covered by claim 3 of said patent.

The defendants contend that complainant's patent is invalid for want of novelty and invention, in view of the state of the art at the date of the alleged invention, at least in respect to the broad language of the third claim of that patent. The evidence shows that at the date of the alleged invention, May 1, 1885, the art of weaving and locking transverse into parallel spiral coils of wire, in the making of wire fabrics for various uses, was old and well known. This is shown in patent No. 124,927, issued March 24, 1872, to W. D. Adams, for improvement in spring-bed bottoms and sofas, showing a wire fabric in which parallel coils of spirals running in one direction are not interlocked with each other, but are interlocked with transverse similar coils at each crossing. In his specifications he mentions that spring beds had theretofore been made of spiral coils horizontally arranged in parallel lines, and twisted or wound into each other, forming a web, but with no springs or filling running crosswise. The combination of the Adams method with this old method described in the same patent will produce the defendants' fabric, if the interlocking of the parallel and transverse coils are coincident. In patent No. 140,160, issued June 24, 1873, to J. W. C. Peters, for improvement in woven-wire fabrics, a fabric of spiral wire woven into another similar fabric, so that one ply alone comes to the surface on one side, and the other ply on the opposite side, is shown; and here, also, a mere variation in the interlocking of the wires would produce the defendants' fabric. In the Canadian patent issued April 30, 1884, to Henry Theodore Windt, for improvement in door mats, there are also shown two series of wire spirals at right angles to each other, interlocked together both parallel and crosswise, for bracing and support, forming a single fabric, but so linked as to present ridges on each surface instead of the level surfaces of complainant's and defendants' mats.

It is plain, therefore, that, at the time of the complainant's alleged invention, the art of making fabrics of spiral wire with parallel coils locked together, and interlocked with like transverse coils also locked together, was old and well known, as was also the fact that the manner of locking and interlocking the spirals could be varied largely,

and the meshes made loose or close, flexible or rigid, as desired. In that state of the art, I am brought to the conclusion that there was no invention or patentable novelty in the complainant's weave of wire fabrics, within the purview of the patent laws. "It was never the object of these laws to grant a monopoly for every trifling device, every shadow of a shade of an idea, which would naturally and spontaneously occur to any skilled mechanic or operator in the ordinary progress of manufactures. Such an indiscriminate creation of exclusive privileges tends rather to obstruct than to stimulate invention." *Atlantic Works v. Brady*, 107 U. S. 192, 200, 2 Sup. Ct. 225; *Slawson v. Railroad Co.*, 107 U. S. 649, 654, 2 Sup. Ct. 663.

Claim 3 of complainant's patent cannot be sustained as covering all such fabrics where the planes common to the points of intersection in the two sets of spiral wires are approximately coincident. Waiving the consideration of the vagueness which the word "approximately" introduces into the claim, the state of the art was such at the date of complainant's alleged invention that planes of such points of intersection were matter of choice to operators in varying the construction and appearance of a well-known fabric. If the peculiarity in the weave described in claim 1 of complainant's patent, and shown in the drawings in that patent, in respect to the turns of the locking coils lying outside of the successive primary coils, is of any use or value, it may be regarded as patentable. On the hearing that peculiarity was not, by the complainant, claimed to be either useful or valuable; and, if it is, there is no infringement, as that peculiar locking device is not used in the construction of defendants' fabric.

Let a decree be entered dismissing the bill of complaint, with costs.

THE NEWARK.

(Circuit Court of Appeals, Third Circuit. September 20, 1898.)

No. 1.

COLLISION—TUG AND TOW WITH STEAMER—CHANNELS AND PIERS.

A tug with a barge in tow was slowly passing out from her pier into the Hudson river, having given the usual long whistle to notify vessels of her approach, when she received two short whistles from a steamboat, and stopped to allow her to pass to the westward. The steamboat failed to starboard her helm, in accordance with her own signal, until it was too late to avoid collision with the barge, although it was midday, and she had plenty of water way to pursue a safe course. *Held*, that the steamboat was solely at fault, the failure to observe her plain duty being gross negligence.

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

Flavel McGee, for appellants.

Robert D. Benedict, for appellee.

Before ACHESON and DALLAS, Circuit Judges, and BRADFORD, District Judge.

BRADFORD, District Judge. The libel in this case was filed by the Knickerbocker Ice Company, owner of the barge Barmore, against the steamboat Newark, to recover damages for injuries sustained by the barge in a collision with the steamboat on the Hudson river a short distance off the end of pier No. 47, on the easterly side of the river, August 30, 1895. The steamboat was adjudged by the court below to have been solely at fault, and it was decreed that the libellant recover accordingly. A careful examination of the evidence has satisfied us that the decree should be affirmed. No culpability appears on the part of the barge, or of the tug R. G. Townsend, which had the barge in tow on the occasion in question. While slowly passing out under one bell and before leaving the slip the tug blew the usual long whistle to notify vessels on the river of its approach. When the steamboat gave her first signal of two short whistles the tug with the barge promptly stopped in order that the steamboat might safely pass up the river to the westward of them. The signal thus given by the steamboat was a notification to the tug and barge that she would so pass to the westward. If the steamboat had, upon first blowing her whistle, immediately put her helm to starboard she would, according to the evidence, have swung sufficiently to port to enable her to clear the barge. But this she omitted to do; and when she did starboard her helm it was too late. It was in the middle of the day, she had plenty of water way and there was nothing to prevent her from pursuing a proper and safe course. Nothing but gross negligence can account for the omission by the steamboat to observe her plain duty. The decree of the court below is affirmed.