

as rubber would. The invention was of means to make the substitution. The body was to be contrived of convenient size, with the proper tenon and shoulder, for holding the cork sleeve, without having it too large, or in the way, at the upper end; and the metal tube with outward turning points, for protecting the sleeve at the lower end, and for holding the pen, was to be planned. This could not probably be accomplished by telling a good workman in penholders to do it. Creative thought and calculation seem to have been necessary, and to have been sufficiently involved in arranging the parts, although old, or of old material, to amount to patentable invention. *C. & A. Potts & Co. v. Creager*, 155 U. S. 597, 15 Sup. Ct. 194. The penholder brought out was a new, and seemingly a patentable, manufacture.

The defendant's penholder seems to be made in exact accordance with the plaintiff's patent, except that the metal tube, instead of being formed at the lower end into a series of radial points, which are turned outward, over and upon the lower end of the cork sleeve, is turned outward whole against the end edge of the cork sleeve, which is left, or made, perpendicular. This difference, however, does not seem to be actually material, or to have been conclusively made material, by the terms of the patent. The turned outward straight edge of the defendant's tube does the same thing as the turned outward crooked edge of the metal tube of the patent, and in substantially the same way. The one is the equivalent of the other so far as either is material, and the variance is in an unimportant detail. The substance of the patented invention appears to have been taken. Decree for plaintiff.

BALL & SOCKET FASTENER CO. v. COHN et al.

(Circuit Court, S. D. New York. December 5, 1898.)

PATENTS—SUIT FOR INFRINGEMENT—MULTIFARIOUSNESS OF BILL.

A bill for the infringement of a patent, which also alleges, and seeks to recover damages for, unfair trade and competition in the sale of the patented article prior to the issuance of the patent, is multifarious; the two causes of action being entirely distinct from each other.

These are two suits in equity by the Ball & Socket Fastener Company against Julius Cohn and others, each for the infringement of a patent, and for an accounting, and the recovery of damages for unfair competition in trade. Heard on demurrers to the bills.

George O. G. Coale, for plaintiff.
Odin B. Roberts, for defendants.

WHEELER, District Judge. One suit is brought for alleged infringement of patent No. 604,637, applied for June 20, 1895, dated May 24, 1898, and granted to William S. Richardson, assignor to the plaintiff, for an improvement in detachable fasteners for gloves and garments. The other is brought for alleged infringement of design patent No. 27,865, applied for April 29, 1897, dated November 16, 1897, granted to William S. Richardson for a design for the socket member

of such fasteners, and assigned, with back damages for infringement, May 20, 1898, to the plaintiff. Each bill, besides, alleges:

"That the orator has been long in business, and has established a good standing, and began to make and sell the patented fastener in the summer of 1895, for which there has been and is a large market; that the articles in question are small, and sold in large quantities, and that it is extremely difficult, though not impossible to those skilled in the art, to determine whether certain fasteners are made by your orator, and under said letters patent, or are made in defiance of your orator's said right, so closely do defendants' fasteners resemble your orator's; that the defendants, so your orator is informed and believes, are large jobbers and distributors, and have been and are selling fasteners in varying quantities to other dealers, made in imitation of your orator's said fastener (by whom your orator is ignorant), and until recently have sold said goods in bulk, and without disclosing upon the package by whom they were made or sold; and your orator is informed and believes that the said spurious and infringing goods have been sold surreptitiously in large quantities in all parts of this country, and in unfair competition with the goods of your orator, and that these defendants have availed themselves of said advertising of your orator, and of the business push and enterprise by which your orator first made known the value of these goods to the public, to make sales herein complained of, to the manifest injury of your orator, and the defendants have derived and still continue to derive from such use of the said invention, and of the reputation of your orator, large gains and profits,"—and prays that "the said defendants may be compelled by decree of this court to account for and pay over to your orator all such gains and profits as have accrued to or have been received by them by reason of their unlawful acts hereinbefore complained of, and also the damages which your orator has sustained by said unlawful acts of the said defendants."

The bills have been demurred to for multifariousness, and the cases have been heard together. If the bills had not gone back of the issue of the respective patents, in alleging the unfair and unlawful competition in trade, they would have been good, as setting out only the different consequences of the same act, as held by Judge Shipman in *Adee v. Peck Bros. & Co.*, 39 Fed. 209, followed by Judge Dallas in *Jaros Hygienic Underwear Co. v. Fleece Hygienic Underwear Co.*, 60 Fed. 622. The plaintiff does not, and would not seem to be entitled to, set up and recover for any infringement before the grant of the patents. *Rein v. Clayton*, 37 Fed. 354; *Kirk v. U. S.*, 163 U. S. 49, 16 Sup. Ct. 911. The unlawful competition before that is entirely distinct from any infringement after; and the setting that up as a ground for relief, with that for the infringement of the patent in each case, makes two cases for distinct relief in the same bill. That the relief sought for the unlawful competition before the patents is of the same nature as that which might be included with that for the infringements after, does not cure the difficulty. The acts are separate, and their consequences distinct. The defendants, as the bills are framed, would have to answer two separate and distinct matters in each case. If this could be required, these two bills could, probably, as well have been joined in one as to have been brought separately. Demurrers sustained.

BRILL v. ST. LOUIS CAR CO. et al.

(Circuit Court of Appeals, Eighth Circuit. November 28, 1898.)

No. 1,049.

1. PATENTS—CONSTRUCTION OF CLAIMS—AMENDMENT OF APPLICATION.

Where an applicant for a patent amends and limits his claims and specification to meet objections of the patent office, whether such objections were well founded or not, he is not entitled to the benefit of the original claims under the patent issued, nor to a construction making the amended claims as broad as those abandoned.

2. SAME—LIMITATION OF CLAIM BY SPECIFICATION.

The words "substantially as set forth," at the end of a claim, refer to the specification, and make it an essential part of the claim; and, where the language of the claim is general, it is limited by the more specific description contained in the specification.

3. SAME—TRUCKS FOR STREET CARS.

The Brill patent, No. 432,115, for a street-car truck, as to claims 1, 4, and 6, must be limited to a combination of parts, an essential element of which is that the housings of the axle-boxes shall extend to or below the bottom of such axle-boxes. Claim 3, which described the truck frame, was anticipated by the frame shown in the Woodbury patent, No. 48,008, for a frame for a steam street car.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

This was a suit by John A. Brill, the appellant, against the St. Louis Car Company et al., the appellees, to restrain the infringement of letters patent No. 432,115, which was issued to John A. Brill on July 15, 1890, pursuant to an application filed on April 27, 1889. The invention covered by the patent relates to street-railway car trucks of the kind that are designed to carry electric motors, grips, or other analogous devices. In his specification the inventor stated that the object of his invention was "to provide a truck frame of which the housings or pedestals for the axle-boxes form a component part of the truck frame, which is wholly supported upon or suspended from the axle-boxes, so that neither the frame, pedestals, nor appurtenances mounted on the frame, are subject to the vertical vibration of the car body, and an easier riding car body and an easier traveling running gear and truck frame are provided, and which admits of easy and quick removal of any or all of the wheels and axle-boxes for repairs or replacement, without necessitating the dismantling of the truck frame. * * *" The invention claimed by the patentee is fairly disclosed by the drawings Nos. 4, 5, and 9, which appear on the opposite page. In the drawings last referred to, B represents the axle of the car; b the axle-box; C represents the housings or pedestals for the axle-boxes, which are not secured to the body of the car, but are supported by the axle-boxes. The pedestals, so termed, are in the form of an inverted U, shown more clearly in Fig. 9, and the sides thereof extend to or below the bottom of the axle-boxes, as disclosed in Fig. 5, to maintain them in their normal position. The ends of the pedestals, c', shown in Figs. 4 and 5, are connected together by side bars, d, shown in Fig. 4, to form the frame, D, of which the pedestals, C, are an integral or component part, and constitute the truck frame for the car. Between the top bar, c, of the pedestals, and the axle-boxes, b, are interposed cushions of rubber, c², to provide a spring support for said pedestals on the axle-boxes. Through vertical openings in the pedestal ends, c', pass posts, F (see Fig. 4), which depend from the sills, a, of the car body. The lower ends of the posts, F, are suitably braced by a brace, H, shown in Fig. 4, which is bolted to the car sill, a, and by a truss-rod, I, which is also shown in Fig. 4. Surrounding the posts, F, are car springs, the lower ends of which rest on the frame, D, or on the ends of the pedestals, c'. The only claims of the patent that are involved in the present action are claims Nos. 1, 3, 4, and 6, which are as follows: