

motors, and thus regulating the speed of a car. The Paine patent, with its groups of incandescent lamps, told nothing to the inventor who was trying to protect an electric car motor in action from the inflow of a current dangerous both to machinery and to passengers. It follows that claims 20, 21, and 22 were also infringed. The order of the circuit court is affirmed, with costs.

AMERICAN BOX-MACH. CO. v. HUGHES et al.

(Circuit Court of Appeals, Second Circuit. December 7, 1898.)

No. 26.

PATENTS—INFRINGEMENT—BOX-COVERING MACHINES.

The Munro patent No. 298,879, for an improvement in box covering and trimming machines, construed, and held not infringed.

Appeal from the Circuit Court of the United States for the Southern District of New York.

This is an appeal from an interlocutory order of the circuit court of the United States for the Southern district of New York, which granted an injunction pendente lite against the infringement of claims 2 and 3 of letters patent No. 298,879, dated May 20, 1884, to Gordon Munro, for an improvement in box covering and trimming machines. Munro had received letters patent, dated July 26, 1881, and numbered 244,919, for a machine for applying a single external covering of paper upon boxes, which patent was sustained by Judge Blodgett in the Seventh circuit. Box Co. v. Wilson, 50 Fed. 425. Patent No. 298,879 was for a machine of the same general character, but which applied two or more external coverings simultaneously upon boxes, was called the double-strip patent, and was sustained by Judge Butler in the Third circuit (Machine Co. v. Day, 32 Fed. 585), and by Judge Coxe in this circuit, who delivered an oral decision. The question upon this appeal was that of infringement.

Lysander Hill, for appellant.

Edmund Wetmore, for appellees.

Before WALLACE and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. The machine of the patent in suit had a reel containing a roll of covering paper, which was adjustable laterally on its shaft, in either direction, by being clamped between two disks or washers. The patentee says in his specification that he was thus enabled to put any number of reels or rolls upon one shaft, and confine each roll by clamping disks, "whereby the material will be properly fed to the paste roller, and be kept in right lines with the guides and the trimming material." A second reel, upon which was wound the second or trimming material, was also supported upon a separate shaft at a different level, and contained the appliances and reel-locating disks of the first reel. After the strips of material have been pasted, they pass through guides, which are metallic rods, in which are formed bends or recesses, "which are made of such size as will conform, respectively, to the width of the covering and the trimming material being used; and these guides should have as many such recesses as there are separate strips of the covering or the

trimming material." Each bend receives one of the strips. "The guide of the trimming strip is so adjusted relatively to the other that it will apply the trimming strips to the covering strips, as may be desired." All the strips then pass over a roller, "where they are brought in contact with each other and adhere together."

Claims 2, 3, and 6 are as follows:

"(2) An apparatus for applying simultaneously a plurality of strips to a box, consisting of a rotatable box support, reels for the strips, pasting mechanism, and guiding mechanism for the several strips, whereby they are caused to overlap, and a suitable supporting frame, all substantially as described, whereby the strips are pasted, overlapped, and wound upon the box, as set forth.

"(3) An apparatus for applying simultaneously a plurality of strips to a box, consisting of a suitable supporting frame, a rotatable box support, reels for the strips, pasting mechanism, and laterally adjustable guiding mechanism for the several strips, all substantially as described."

"(6) The trimming and covering strip reels, placed one above the other, and laterally adjustable with reference to one another, for the purpose of regulating the overlapping of the strips, in combination with the pasting mechanism and the tempering rollers, substantially as and for the purpose hereinbefore set forth."

The motion for a temporary injunction was brought upon the belief that the defendant used the Munro two-strip machine, with separate shafts at different levels, but substituted for the guides an iron bar, which served to guide the trimming strip and to control its travel relative to the covering strip, so that the two came together, one overlapping the other. One witness testified that this construction was used, but the truth of his statement was so strongly denied that the alleged infringement must rest upon the position that the laterally adjustable rolls were the only guides, and constituted the guiding mechanism of claims 2 and 3. This position was acquiesced in by the circuit judge, who said: "The mounting of the reels on different shafts and at different levels, making the reels laterally adjustable, seemed to constitute 'guiding mechanism,' within the meaning of the patent." We do not concur in this construction, but are of opinion that the specification shows that the guiding mechanism of claims 2 and 3 are the guides specially described and pointed out, or their equivalent; and that the laterally adjustable reels, while they may tend to keep the material in right lines with the guides and so regulate to some extent the overlapping of the strips, cannot properly be called "guiding mechanism." The specification is so specific in regard to the character and office of the guides as to show that there was in the mind of the patentee a distinction between adjustable reels and guides. The order of the circuit court is reversed, with costs.

ROSE v. HIRSH et al.

(Circuit Court, E. D. Pennsylvania. December 21, 1898.)

No. 58.

1. PATENTS—INFRINGEMENT—ELEMENTS OF DAMAGES AND PROFITS.

A defendant, adjudged to have used as a component part of his finished product an article which infringes plaintiff's patent, must account for any profit or advantage gained by his wrongdoing; and, while the measure of such recovery is usually the enhanced price received for his product, such measure is not exclusive; and, where it is shown that he lessened the cost of his product by the use of the infringing instead of the patented article, the difference may properly be considered as a gain for which he should account.

2. SAME—EVIDENCE TO SUPPORT DECREE FOR PROFITS.

A decree for profits against an infringer cannot be given unless the evidence discloses the existence of profits, and affords a basis for determining the amount thereof.

This was a suit in equity by John Rose against Henry Hirsh and others for infringement of a patent. Heard on exceptions to report of master as to damages and profits.

Henry E. Everding, for complainant.
Strawbridge & Taylor, for respondents.

DALLAS, Circuit Judge. This case is before the court on exceptions to the report of the master, to whom it had been referred to ascertain and state an account of the gains, profits, and advantages which had accrued to the defendants from their infringement of the complainant's rights under the first claim of letters patent of the United States No. 504,944, as well as the damages sustained by the complainant by reason of the said infringement. The claim above referred to is as follows:

"(1) A tubular metal stick for umbrellas or parasols, said stick being drawn down near one end so that the tubular end portion of the stick is reduced in diameter and increased in thickness as compared with the body of the stick, substantially as specified."

The master found and reported that the evidence before him would not warrant the award of any substantial amount, and accordingly recommended a decree for nominal damages only. The plaintiff has filed seven exceptions. Of these, the fifth and sixth relate to the refusal of the master to find in accordance with a proposition which is stated upon the brief of the complainant as follows: "That the complainant has been damaged to a certain sum of money, which can be estimated readily by ascertaining what he would have received from the defendants for each gross of rods which they purchased from Riehl and others, had those rods been purchased of complainant." In other words, the complaint made by the fifth and sixth exception is that the master should, upon the basis indicated, have assessed damages to the plaintiff, irrespective of the question, presently to be considered, respecting the profit alleged to have accrued to the defendants by reason of their use of the infringing article. These two exceptions are, in my opinion, not well taken.