

The rigid supporting frame mentioned in these claims is the motor frame of the Rice patent, which is not found in the Walker apparatus. Nor does the Walker motor frame proper show the side pieces sleeved on the axle of the car, and carrying the journal bearings for the shafts, nor a motor frame independent of the motor. From observations already made, it is manifest that the Walker motor has not appropriated the combinations covered by these claims.

In addition to the matters that we have already referred to in detail, we think, with the learned circuit judge, that:

"It cannot be denied that the respondent was within its right in using its peculiar motor, which normally locates its armature at its axis, and, as a necessary element to the operation of its motor, in using its armature shaft as a pivot. All this is in the common field of mechanical construction. What would remain would be the question of holding the motor in position. This would, in ordinary course, be by support either at its center or at its radial poles, and, in either case, rigidly or elastically. In the normal work of construction, the mechanical engineer must select; and, in an art of so common a character as that of so suspending heavy working parts elastically as to minimize the shock, he might rightfully select either. This is all which has been done by the respondent. Therefore, if complainant's patent is so broad as to cover respondent's device, it is too broad to be sustained."

The conclusion we have reached is that, in construction and mode of operation, the Walker motor is distinctly different from that described in the Rice patent, and that it does not infringe any of the claims relied upon by the complainant. The decree of the circuit court is affirmed, with the costs of this court to the appellee.

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BRIDGEPORT MFG. CO. et al. v. WILLIAM SCHOLLHORN CO.

(Circuit Court of Appeals, Second Circuit. January 2, 1899.)

No. 29.

PATENTS—VALIDITY AND INFRINGEMENT—PLIERS.

The Bernard patent, No. 427,220, for pliers having parallel jaws and sheet-metal handles, so attached as to apply the power at both sides of the jaws, and having an unobstructed opening between the jaws for the passage of a rod, wire, or tool, construed, and held valid and infringed as to claim 1, and not infringed as to claim 2.

Appeal from the Circuit Court of the United States for the District of Connecticut.

This was a suit in equity by the William Schollhorn Company against the Bridgeport Manufacturing Company and others for alleged infringement of a patent for an improvement in pliers. The circuit court rendered a decree for complainant upon the first claim of the patent involved (84 Fed. 674), and the defendants have appealed.

Henry Schreiter and Alexander Van Cott, for appellants.  
John K. Beach, for appellee.

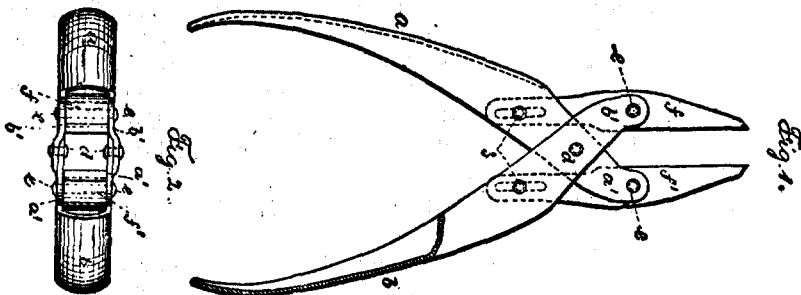
Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

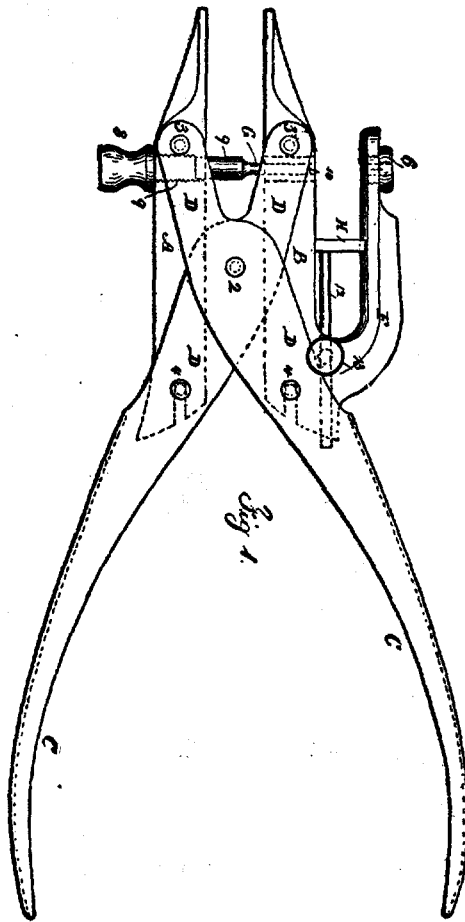
SHIPMAN, Circuit Judge. The questions upon this appeal are in regard to the validity and infringement of claim 1 of letters patent No.

427,220, dated May 6, 1890, to William A. Bernard, for an improvement in pliers. The circuit court for the district of Connecticut found in favor of the complainant, which is the present owner of the patent, upon each issue. The inventor said in his specification that his object was, "to provide an unobstructed opening through between the parallel jaws for the passage of a rod, wire, or tool, and to adapt sheet-metal handles to the jaws in such a manner that the power will be applied equally at both sides of the jaws, to insure the proper strength and uniformity of movement." Henry B. Russell, in letters patent No. 188,262, dated March 13, 1877, and Chester W. Sykes, in letters patent No. 21,525, dated September 14, 1858, had shown pliers with parallel jaws. Each device contained a single pair of lever-handles inside of the jaws, and the handles and jaws in each device were connected in the middle of the length of the jaws so that the bearing for the handles was very narrow. The Bernard device has "double X lever-handles upon the exterior of the jaws, whereby an open space is left between such jaws, the jaws being inclosed with the lever"; and there is a broad bearing surface upon the jaws, which are enabled to grasp firmly the rod to be held. The patent to Peter Broadbrooks, No. 329,133, dated October 27, 1885, was simply for cutting nippers, which consisted of two levers pivoted to each other, the jaw ends of the lever being integral with the handles, and a recess between the sides of the levers through which the wire which is to be cut can be passed. Neither patent is an anticipation of the Bernard invention, which was a decided advance upon Sykes and Russell, because the rod or wire to be gripped could be passed between the jaws throughout their length, and held with a firm grip. The means by which this was accomplished were inventive in their character. The two claims are as follows:

(1) The combination, with the solid jaws, *f, f'*, of the lever-handles, *a, a'*, *b, b'*, of sheet metal, bent up to form hollow hand portions, the parts, *a', b'*, being flat, or nearly so, and crossing each other at opposite sides of the jaws, and connected by the pivot, *d*, substantially as set forth.

(2) The combination, with the parallel jaws, *f, f'*, of the lever-handles, *a, a'*, *b, b'*, of sheet metal, bent up to form hollow hand portions, the parts, *a', b'*, being flat, or nearly so, and crossing each other at opposite sides of the jaws, the pivotal rivets, *d, d*, in line with each other, the rivets, *e*, passing through the respective parts, *a', b'*, and the jaws and rivets, *3*, passing through the metal of the handles and through slots in the jaws, substantially as set forth.





The question of most importance is that of the infringement of claim 1. In the patented device the crossing handles are pivoted, as they cross each other by a separate rivet, *d*, so that, as there are two pairs of cross handles, there are two rivets in line with each other, and at opposite sides of the jaws, and there is no obstruction between the jaws. In the defendants' pliers the two pair of cross lever-handles are pivoted upon a common pivot, which extends across between the jaws, and a rod cannot be passed below the fulcrum of the tool. The manner in which the heels of the jaws are connected with the handles differs from the method described in claim 2. The connection in the Bernard tool by means of a slot and pin does not exist, but a cam is substituted, upon which the heels of the jaws slide when they are moved outward. There is no infringement of claim 2.

The specification, which describes the devices of both claims, says that the levers are pivoted by two rivets, *d*, and claim 1 says that the levers are connected by the pivot, *d*. If the claim necessarily limits

the construction to two rivets on opposite sides of the jaws, so that there is no obstruction between the handles as well as jaws, there is no infringement. The whole device is described in claim 2, which requires an open space between handles as well as jaws. The part of the device from the jaws to the fulcrum of the tool is contained in claim 1, which describes the means by which the jaws are enabled to grasp the rod or wire throughout their entire length, which is the substantial improvement upon former tools, and is contained in the defendants' device. A common pivot is the equivalent of the two pivots, *d*, of claim 1. The decree of the circuit court is affirmed, with costs.

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MICHAELIS et al. v. LARKIN et al.

(Circuit Court, E. D. Missouri, E. D. February 7, 1899.)

No. 4.026.

1. P. TENTS—CONSTRUCTION OF CLAIMS—AMENDMENT OF APPLICATION.

The rejection of a claim in an application for a patent, and its subsequent modification by the applicant, and his acceptance of a patent on the amended claim, amounts to a disclaimer as to the matter eliminated.

2. SAME—INFRINGEMENT—IMPROVEMENT IN MANUFACTURE OF CHLOROFORM.

The Michaelis patent, No. 322,194, claim 2, for an improvement in the manufacture of chloroform, construed, and *held* valid, but limited by the specification and the proceedings in the patent office to the process of manufacturing chloroform from the ketones having a higher boiling point than acetone, and using as the foundation a crude or "brown" acetate, as distinguished from the commercially purified or "gray" acetates. As so construed and limited, the patent is not infringed by the manufacture of chloroform from acetone, derived from the dry distillation of the gray acetate of lime, the distillate containing 86 per cent. of acetone, though it also contains, as a necessary incident to distillation, which cannot practicably be separated, from 3 to 5 per cent. of the higher boiling ketones, covered by the patent.

This is a suit in equity by Gustavus Michaelis and others against Edward Hiles Larkin and others for the alleged infringement of a patent.

Dickerson & Brown and Campbell & Ryan, for complainants.  
Paul Bakewell, for defendants.

ADAMS, District Judge. This is a suit for the infringement of letters patent of the United States, No. 322,194, for certain new and useful improvements in the manufacture of chloroform and acetic acid, or purified acetates, dated July 14, 1885. The patentee describes his invention as follows:

"This invention is based upon the discovery that when a crude acetate, as of lime, is subjected to a dry distillation, only very small quantities of acetone,  $\text{CH}_3\text{COCH}_3$ , boiling at  $56^\circ$  centigrade, are formed, while very considerable quantities of dimethylacetal,  $\text{C}_2\text{H}_4(\text{OCH}_3)_2$ , boiling between  $60^\circ$  and  $65^\circ$  centigrade; ethylmethylacetal,  $\text{C}_2\text{H}_4(\text{OC}_2\text{H}_5)\text{OCH}_3$ , boiling at  $85^\circ$  centigrade; methyl dimethylketone,  $\text{CH}_3\text{COCH}_2\text{CH}_3$ , boiling between  $75^\circ$  and  $77^\circ$  centigrade; methylethylketone,  $\text{CH}_3\text{COC}_2\text{H}_5$ , boiling between  $75^\circ$  and  $80^\circ$  centigrade; diethylketone,  $\text{C}_2\text{H}_5\text{COC}_2\text{H}_5$ , boiling between  $75^\circ$  and  $80^\circ$  centigrade; metacetone,  $\text{C}_6\text{H}_{10}\text{O}$ , boiling between  $82^\circ$  and  $86^\circ$  centigrade,—and other still higher boiling ketones, as dumasins, and