

not infringe the complainants' patent, which, properly construed, in the light of the teachings of the art existing at the date of the application, requires the complainants to start their process with the use of a crude brown acetate, with the purpose then and thereafter to secure the least quantity of acetone (the use of which is excluded by their patent), and the largest quantity of the higher-boiling ketones.

I cannot close this opinion without reference to the case of *Michaelis v. Roessler*, 34 Fed. 325, 38 Fed. 742, which is relied on by complainants' counsel as decisive of this case. I have had the full records of these cases before me, and have given them attentive consideration. There can be no doubt but that the evidence before me bearing on the prior state of the art, and on the important and controlling issue of infringement, is different in important and vital respects from that which was before the court in the New Jersey case. I therefore cannot escape the conviction that, if the same evidence had been before the learned judges who sat in that case, a different result would have there ensued.

A decree must be entered dismissing the bill.

AMERICAN SKEWER CO. v. HELMS.

(Circuit Court, E. D. Pennsylvania. January 24, 1899.)

PATENTS—INFRINGEMENT—SKEWER MACHINES.

The Anderson patent, No. 250,700, and the McNutt patent, No. 378,934, both for machines for pointing skewers, construed, and held not anticipated, valid, and infringed, the former as to claim 1, and the latter as to claim 2.

This was a suit in equity by the American Skewer Company against Peter D. Helms for alleged infringement of certain patents covering machines for pointing skewers.

Chester Bradford, for complainant.

Horace Pettit, for respondent.

DALLAS, Circuit Judge. This is a suit upon letters patent No. 250,700, dated December 13, 1881, to Leonard Anderson, and No. 378,934, dated March 6, 1888, to Lindsay B. McNutt, each of which is for a "machine for pointing skewers." The controversy involves the first claim of the Anderson patent, which is as follows:

"(1) The combination of the worm or equivalent gear, D², skewer-feeders, D, circular trough, D¹, and cutters, E E, substantially as and for the purposes shown;"

—And the second claim of the McNutt patent, which is as follows:

"(2) The combination, substantially as set forth, of the platen, the curved ways and brackets supported above the platen, sleeves journaled upon the brackets and carrying feed-rolls, and a cutter-shaft passing through said sleeves, and having an independent lateral adjustment therein."

The nature of the defense appears from a proposition which is thus affirmed in the defendant's brief:

"That claim 1 of the Anderson patent, and claim 2 of the McNutt patent, in suit, if valid at all, are strictly limited to the specific constructions de-

scribed, involving the detailed elements of the claim, and that defendant's machine does not infringe, but embodies, as far as the patents in suit are concerned, only such elements as were common property, and old and well known at the date of the alleged inventions of the said patents."

This proposition presents the question in the case: Must the claims in suit be so restricted as to be exclusive of the defendant's machine, or else be held to be invalid? The respondent asserts that this question should be answered affirmatively, because, as he contends, the prior state of the art requires it, and the proceedings in the patent office preclude the complainant from asserting the contrary. The position thus taken rests upon the existence of certain differences in the details of two machines which, neither in construction nor mode of operation, can be said to be so simple as not to require explanation; and yet the respondent, though he has put in evidence a number of earlier patents, and the file wrappers and contents of those in suit, has called no witness to elucidate the devices to which they relate, or to impeach the correctness of the views of the witness called by the complainant, an expert whose qualifications and credibility there is absolutely nothing to discredit. In *Hanifen v. E. H. Godshalk Co.*, 28 C. C. A. 511, 84 Fed. 649, it was held that expert testimony should not be given conclusive effect if, in the opinion of the court, it be not well founded; but in that case no reasons had been given by the expert for his conclusions, and their acceptance would have resulted in striking down a patent, whereas in the present case the witness has intelligently supported the opinions he has expressed, and the effect of rejecting them would be, not to sustain, but to defeat or narrow the patents sued on. That the defendant's machine is, in its material features, very like that described and claimed in the complainant's patents is made manifest by inspection, although, undoubtedly, there are some differences in construction. But the expert to whom I have referred, while admitting these differences, has, in substance, testified that they amount to nothing but the mere substitution of well-known and obvious mechanical equivalents for the similar and corresponding parts covered by the first claim of the Anderson patent, and by the second claim of the patent to McNutt. My own understanding of the matter accords with this statement of fact, and its acceptance is fatal to the defense relied on. It might be conceded that this is not a case in which the doctrine of equivalents should be applied with especial liberality, but the value of no patent ought to be destroyed by so construing it as to admit of its evasion by making structural changes in details which effect no departure from the principle of the invention. It has, however, been argued that these patents, if not "strictly limited to the specific constructions described," are invalid. That is to say, as I understand it, that the parts of the machinery designated in the respective claims must be restricted to the precise forms designated, because corresponding parts, if not the same in point of form, though having the same purpose in the combination, and effecting that purpose in substantially the same manner, cannot, without invalidating the patents, be regarded as identical or conflicting. This contention challenges the correctness of the action of the patent office. It involves the assumption that each of these patents was granted for a subject-matter which was either absolutely devoid

of novelty, or which, though immaterially varied, was essentially old. The presumption is that neither of these things was done; and that presumption, in my opinion, should, under the circumstances of this case, be accorded very great weight. The Boynton patent, upon which the respondent mainly relies, was very carefully considered, and although the proceedings were prolonged, and several of the claims originally presented were rejected, yet, in the end, those now in controversy were allowed, and, in the absence of explanatory testimony in support of the contention that their allowance was improper, there is nothing which would justify the court in saying that the patents were erroneously issued, or in so limiting their scope as practically to annul them. Decree for complainant.

SPRAGUE ELECTRIC RAILWAY & MOTOR CO. v. NASSAU ELECTRIC
R. CO. (two cases).

(Circuit Court, E. D. New York. January 24, 1899.)

PATENTS—ELECTRIC RAILWAY MOTORS.

The Sprague patent, No. 324,892, for an electric railway motor, construed, and held infringed as to claims 2 and 6.

In suit No. 1, complainant moves to punish defendant for contempt in disobeying an injunction against infringement of claims 2 and 6 of the Sprague patent (324,892), which was before the circuit court of appeals in this circuit. 88 Fed. 82. In suit No. 2, complainant asks an injunction against the structures complained of in the first suit, under claims 2, 4, and 6 of the same patent, claim 4 never having been adjudicated.

Frederic Betts, for the motion.

George Harding, Jr., opposed.

LACOMBE, Circuit Judge. The words "flexible connections," in claim 2, and "flexibly supported," in claim 6, refer to the flexible suspension spoken of in the opinion, by which, in combination with centering the one part on the axle, both armature and field magnet always maintain precisely the same relative position under every vertical or lateral movement of the car. It may be that defendant's present devices, in which wooden blocks, with a core large enough to allow play of the bolt which passes through them, constitute the support, are deleterious when the parts become loose, but nevertheless they do under such conditions give substantially the same freedom of movement to the nose end of the motor as was given by the "flexible connections" of the Sprague patent. The numerous affidavits which assert that no good mechanic would allow the parts to become loose, that all loose nuts are at once tightened up, and most positive directions given to have all connections rigid, are of little weight in contradiction of the express statements as to cars examined, in which freedom of movement of the nose end of the motor was found to exist, the distinguishing numbers of such cars being given. It