

The suggestion that the elements of the first claim are merely aggregated, and not patentably combined, is, in my opinion, not well founded. The law as laid down in *National Cash-Register Co. v. American Cash-Register Co.*, 3 C. C. A. 563, 53 Fed. 367, is plainly applicable to the facts of this case.

The contention that Rood and Vaughan were not joint inventors of anything more than the cutter cylinder specifically claimed has not been overlooked, but need not be discussed. As I view the case, it cannot be sustained. Decree for complainant.

ELLIOTT et al. v. HARRIS et al.

(Circuit Court, N. D. Ohio, E. D. December 3, 1898.)

No. 5,810.

PATENTS—PRELIMINARY INJUNCTION.

When the patents sued on have never been adjudicated, a preliminary injunction will be denied, in the absence of a showing that the public has long used the inventions, and has acquiesced in the validity thereof.

This was a suit in equity by William E. Elliott and the Elliott Button-Fastener Company against Abraham M. Harris and Nicholas Flemming for alleged infringement of three patents. The cause was heard on motion for a preliminary injunction.

Taggart, Knappen & Denison, for complainants.
Albert M. Austin, for respondent A. M. Harris.

RICKS, District Judge. Counsel for the defendants very properly quote from *Robinson* (Pat. § 1173) the three things essential to maintaining a preliminary injunction in a patent case: (1) that the patent is valid; (2) that plaintiff is the owner of a legal or equitable interest therein; and (3) that the defendant is about to commit an act of infringement. The complainants sue upon three patents, neither one of which has ever been adjudicated. In order to entitle them to an injunction, they must therefore show that the public has long used said patents, and has acquiesced in the validity thereof, and has never undertaken by litigation to question the patentee's exclusive rights thereto, or the validity of said patents. They allege certain acts of the defendants, which, in a proper case, might be held to be contributory infringement, but which are not shown to be such by the facts in this case. The case, as made out and submitted, is deficient, and fails to establish any one of the grounds named which would entitle the complainants to a preliminary injunction. Such an injunction is not issued, unless the rights of the complainant thereto are clearly established. They are certainly not so established in this case. The motion for preliminary injunction is therefore disallowed.

RISDON IRON & LOCOMOTIVE WORKS v. TRENT.

(Circuit Court, N. D. California. January 23, 1899.)

No. 12,293.

1. PATENTS—INFRINGEMENT—CONSTRUCTION OF CLAIMS.

Infringement cannot be avoided by reading into a broad claim specific devices claimed in narrower claims of the same patent.

2. SAME.

A change of form does not avoid infringement, unless the patentee has specified a particular form as the means by which the effect of the invention is produced, or otherwise confines himself to a particular form of what he describes. Even when a change of form somewhat modifies the construction, the action, or utility of the patented thing, noninfringement will seldom result from such a change.

3. SAME—INFRINGEMENT—PARTIES LIABLE.

Defendant was a member of a firm of architects which advertised by circulars, etc., to furnish ore-crushing mills; but, having no manufacturing plant of their own, on receiving orders, contracted with others to furnish the machinery, according to plans and specifications furnished by them. They thus furnished designs for an infringing machine, which was made mainly by the owner, at his own factory; and they erected and fitted it for operation at his mine, receiving therefor a commission. *Held*, that the firm was a contributory infringer, so as to make a member thereof liable.

4. SAME—ORE CRUSHERS.

The Schierholz patent, No. 538,884, for an ore-crushing mill, in which the principal feature is the combination of a fixed vertical central shaft with flexible intermediate mechanism between the gear and the crushing rolls, covers a pioneer invention, and is entitled to the application of the doctrine of equivalents to suppress later combinations of the same elements or of mechanical equivalents therefor. *Held*, therefore, that claim 4 was infringed by the Bingham or Trent and the Bradley machines.

This was a suit in equity by the Risdon Iron & Locomotive Works against L. C. Trent for alleged infringement of a patent for an ore crusher.

Wheaton & Kalloch, for complainant.
N. A. Acker, for respondent.

MORROW, Circuit Judge. This is a suit for the infringement of letters patent No. 538,884, dated May 7, 1895, for an ore crusher. The inventor was August H. Schierholz, whose application for the patent was filed in the patent office February 5, 1895. By an assignment made after the application, and before the granting of the letters patent, Schierholz transferred all the property in the invention to the complainant.

The invention relates to improvements in ore-crushing machines, in which crushing rolls are caused to travel within the circumference of a pan, upon suitable dies arranged around the periphery, and which have a fixed central post, and consists of novel means for driving the rolls, and allowing for the irregularities of movement caused by the ore over which the rolls pass, without interfering with the vertical shaft or its gear and connections. The details of construction are explained by reference to the accompanying drawings: