

## UNITED STATES v. BACHARACH et al.

(Circuit Court of Appeals, Second Circuit. March 1, 1899.)

No. 57.

## CUSTOMS DUTIES—"PLATEAUX."

"Plateaux," which are braids or plaits of straw sewed or woven together into an oval form, and are used for making women's hats, but have to be manipulated into the form desired, and pressed or wired so as to retain that form, and are then trimmed, are properly classified, not under Tariff Act Oct. 1, 1890 (26 Stat. 567) par. 460, § 1, "as manufactures of \* \* \* not specially provided for in this act," but under paragraph 518, § 2, exempting from duty "braids, plaits, laces, and similar manufactures composed of straw \* \* \* suitable for making or ornamenting hats, bonnets and hoods."

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

Henry C. Platt, for the United States.

Stephen G. Clarke, for appellees.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. The importations in controversy are commercially known as "plateaux," are braids or plaits of straw sewed or woven together into an oval form, are bought and sold by the dozen or piece, and are used for making women's hats. They are not complete hats, but require to be manipulated into the form desired, and pressed or wired so as to retain that form, and are then trimmed with ribbon or other materials. This appeal presents the question whether the importations were properly classified for duty under paragraph 460, § 1, of the tariff act of October 1, 1890 (26 Stat. 567), as "manufactures of \* \* \* straw \* \* \*," not specially provided for in this act," or whether they should have been classified under paragraph 518, § 2, of that act, which exempts from duty "braids, plaits, laces, and similar manufactures composed of straw \* \* \* suitable for making or ornamenting hats, bonnets and hoods." We concur with the circuit court in the opinion that the importations were exempt from duty. They were not braids or plaits of straw, in a commercial sense, according to the testimony; but they were similar manufactures composed of straw, and suitable for making hats. Paragraph 518 supplies the more specific designation of the articles in controversy. The decision of the circuit court is accordingly affirmed.

## WARREN FEATHERBONE CO. v. WARNER BROS. CO.

(Circuit Court, D. Connecticut. February 22, 1899.)

No. 966.

## 1. PATENTS—PLEADING IN INFRINGEMENT SUITS.

It is no ground of demurrer that the bill fails to allege that the inventions set forth and claimed in the patent sued on were not abandoned before the application therefor. The defense must be interposed by answer showing the facts.

## 2. SAME—DRESS OR GARMENT STAYS.

The Warren patent, No. 389,993, for an improved dress or garment stay, constructed by taking two pieces of "any fabric or material \* \* \* of any desired width," and, after inserting between them "any suitable elastic substance, \* \* \* a row of stitching is made longitudinally in the center portion of the stay," is void on its face for want of novelty.

## 3. SAME.

The Warren patent, No. 327,626, for a method of attaching stiffenings for dress waists, is not void on its face for want of novelty and invention.

This was a suit in equity by the Warren Featherbone Company against the Warner Bros. Company for alleged infringement of two patents for improvements in dress or garment stays.

Fred L. Chappell and Sullivan & Cromwell, for complainant.  
Seabury C. Mastick, for defendant.

TOWNSEND, District Judge. To the bill herein alleging infringement of letters patent Nos. 327,626 and 389,993, issued to E. K. Warren, and assigned to complainant, defendant demurs, assigning the following reasons, namely:

1. The bill fails to allege that the inventions set forth and claimed in said patents were not abandoned before the application therefor. This ground of demurrer is not well taken. Abandonment, not appearing on the face of the bill, is a defense which must be interposed by answer showing the facts. Walk. Pat. § 602; United States Electric Lighting Co. v. Consolidated Electric Light Co., 33 Fed. 869; Western Electric Co. v. Sperry Electric Co., 7 C. C. A. 164, 58 Fed. 192; Mast, Foos & Co. v. Dempster Mfg. Co., 71 Fed. 701, 705; Fruit-Jar Co. v. Wright, 94 U. S. 92.

2. The bill fails to show that the alleged inventions are capable of combined use, or of conjoint action, or that the defendant uses them conjointly. The conclusions hereafter stated dispense with the necessity of considering this point.

3. It appears on the face of the patents that each of them is invalid. The point of invalidity is well taken as to patent No. 389,993. The specifications describe an improved dress or garment stay, which is constructed by taking two pieces of "any fabric or material \* \* \* of any desired width, \* \* \* and, after inserting between them any suitable elastic substance, \* \* \* a row of stitching is made longitudinally through the center portion of the stay," etc. The claim is as follows:

"A dress stay formed of a composite blade and separate covering pieces or faces of greater width than said blade, and stitched at opposite sides and intermediate the width thereof, thereby tightening the covering, and increasing the tension of the stay, the side edges of the covering strips forming selvages for securing the stay throughout its length to the garment, substantially as set forth."

The utter lack of possible novelty in a claim for a dress stay made in the same way as from time immemorial our coats, collars, and cuffs have been made or stiffened, namely, by sewing a stiffening material between the outer surface and inner lining, is self evident. See *Bowman v. De Grauw*, 60 Fed. 907.

Patent No. 327,626 is for a "Method of Attaching Stiffenings to Dress Waists." The patentee says: "The object of this invention is to provide the seams of a dress waist with a stiffening material con-

nected with the seam of the dress fabric or outside material, and the lining, without the formation of separate pockets;" and thereby it is claimed certain objections in the prior art are obviated, and certain advantages obtained. The claim is for:

"The method of attaching the stiffening material to seams by placing it in the open seam after the main seam is sewed, and attaching it to the fabric by stitching its sides to the inside portion of the open seam without connecting it with the main seam, substantially as described."

—That is, as explained by the specification, the patentee takes a dress waist having the ordinary seams therein, and opening the flaps of said main seams,—i. e. the portions of extra fabric on either side of the main seams,—inserts stiffening material therein, and so stitches it to the flaps independently of the main seam, preferably by diagonal lines of stitching, known as zigzag or feather stitch, that while it firmly supports the fabric, and conforms to the figure and its movements, it does not wrinkle the dress waist or cut through the ends. It would be obviously inexpedient, in passing on this demurrer, to express an opinion as to the merits of this alleged invention, except as to the question whether or not on the face of the patent it is void for want of patentable novelty. Whether or not this is the mere ordinary expedient of the dressmaker; whether or not this method would naturally occur to those skilled in the art; whether or not the invention of new kinds and forms of stiffening material would have suggested this attachment,—cannot be determined, except by such examination of the prior art as would naturally be presented upon final hearing. It is sufficient for the determination of this demurrer to say that the method is not necessarily upon its face so devoid of patentability that the court could not, upon evidence of novelty, utility, and universal adoption, find that it involved the exercise of the faculty of invention.

The demurrer is overruled as to patent No. 327,626, and sustained as to patent No. 389,993, without costs to either party.

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BLUM et al. v. KERNGOOD.

(Circuit Court, D. Maryland. Feb. 5, 1898.)

PATENTS—INFRINGEMENT—WAISTBAND FASTENERS.

The Ewig patent, No. 408,300, for a waistband fastener for trousers, *held* to contain only one novel feature, namely, a slot having a straight edge across the plate, over which the two edges of the cloth can be stitched; and *held*, further, that this was not a pioneer invention, and was not infringed by defendant's device.

This was a suit in equity by Isaac Blum and William S. Wheatfield against Herman Kerngood, trading as the Alma Button Company, for alleged infringement of patent No. 408,300, issued to John Ewig, August 6, 1889, for waistband fasteners.

Isidor Rayner and Price & Stewart, for complainants.  
Thos. G. Hayes and Louis B. Berner, for defendant.

MORRIS, District Judge. A defense relied upon is noninfringement. The specification of patent No. 408,300 describes a hook and eye

device, in which the hook is made of a broad, flat, thin piece of metal, turned back upon itself. It is designed to be placed between the two thicknesses of material of which the waistband of a pair of trousers is made. The specifications also describe a peculiar catch, but that is not infringed. It is only with the hook that we are concerned in this case. The novelty of the hook, and the invention which Ewig supposed he had discovered, can be quite clearly understood from the specification, when read in connection with the state of the art, and a previous patent (No. 375,699) to the same inventor, mentioned in the specification. A broad hook, made of thin sheet metal, inserted between the outer and inner thicknesses of the waistband, with a broad catch opposite to it, has the advantage of keeping the waistband flat, and of distributing the pull over considerable surface, and of counteracting the tendency of the pull to wrinkle the waistband. But the broad body plate of the hook inserted between the two thicknesses of cloth at their edges had this disadvantage: that the edges of cloth were free, and gave no support to the hook, and had a tendency to gape open, which was unsightly. The improvement of the patent was that a portion of the hook plate was cut away, so that through the slot thus left the edges of the cloth could be sewed together. But the mere cutting away of a portion of the metal, leaving a slot of any shape, was not new, as is shown by the French hooks in common use, illustrated by the exhibits. The novelty consisted in cutting a slot of the shape and for the purpose indicated by the patent. This was a slot having a straight edge across the plate, over which the two edges of cloth could be stitched, and which effected two beneficial results. One was that the edges, being stitched together just as if the hook was not there, did not gape open, and presented a neat appearance. The other was that the straight transverse edge of the slot presented to the straight stitching of the edges of the cloth a wide bearing, at right angles to the line of the pull, which tended to keep the hook firmly in its place, and to resist puckering in the waistband, and keep it flat and neat in appearance. The specification describes the slot as semicircular, because it was round in the hook, and straight like the diameter of a circle at the base of the hook. If the hook was turned back on itself just at the straight edge of its base, it is obvious that the body of the hook could not be inserted between the two layers of cloth far enough to permit the two edges of cloth to be brought together to be stitched; and for that reason the portion bent back to form the hook is bent over at a little distance from the straight edge, so as to leave what are, in the specification, called the "shoulders, e, e."

FIG. 2.

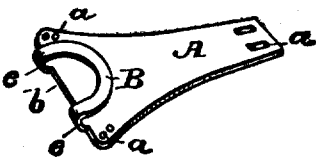
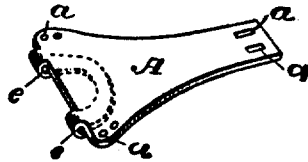


FIG. 3.



Claim 1, as first submitted to the patent office, and rejected, was as follows:

"(1) In a garment fastening, the combination with a catch, C, of the hook, B, having slot, b, substantially as and for the purpose specified."

This claim was rejected, apparently for the reason that a slotted hook was old. The specification was then amended so as to more distinctly point out the improvement, by inserting this:

"Referring to the drawings, the letter A indicates one member of my fastening, consisting of a piece of sheet metal rounded at one end, and having a semicircular slot in said end. Said slotted and rounded end is bent over and back upon the body of the member, A, to form a hook, B, and is bent so as to leave shoulders, e, projecting beyond the edge of the body, A, for the purpose hereinafter described."

In the original specification it was said:

"I have found, in practice, that when the hook, B, is at all wide, the edges of the cloth are not sufficiently supported by threads; and, to remedy this defect, I cut away the center of the hook to form a slot, b, as shown in Figs. 1, 2, 3 of the drawing, which permits the cloth to be stitched through said slot, thus not only permitting the cloth to be stitched substantially along its entire edge, but also assisting in firmly securing the member, A, in place."

The original specification was amended by inserting in the clause above quoted the following:

"And the hook portion, B, is so bent over upon the body portion, A, as to leave the shoulders, e, e, projecting beyond said body, A, which allows the two layers of cloth on each side of the member, A, to meet slightly beyond the edge of the member, A, and permits," etc.

Claim 1, as amended and allowed, is as follows:

"(1) In a garment fastening, the combination with catch, C, of the plate, A, having the rounded hook, B, provided with a semicircular slot and the shoulders, e, e; said plate, A, being perforated at a, a, substantially as shown and described, and for the purposes specified."

It appears by the amended specification, as well as by the amended claim, that the patentee pointed out and claimed the semicircular slot, with the shoulders, e, e, as his invention or improvement. His original claim 1, which was, broadly, for the hook having a slot, was rejected; and the restricted claim for the semicircular slot with the shoulders was allowed. The patent examiners were clearly right in this restriction. A slot was old, but a semicircular slot made of that shape for the purpose of presenting a straight transverse edge to the stitching was new; and the bending of the hook so as to form the shoulders beyond the straight edge for the purpose of allowing space for the edges of the two layers of cloth to meet was new, as a device for that particular purpose, in connection with a solid body plate. There was nothing new in the projecting ears on each side, with perforations for threads. These ears appeared in the patent to Ewig, December 27, 1887 (No. 375,699), and are there called a "lip" or projection provided with one or more perforations." In the patent in suit it is merely said in the specifications that the body of the hook is provided with perforations for the passage of the threads for securing it to the garment; and in claim 1, that plate, A, is perforated at a, a, as shown and described. The ears, therefore, which may be used for the perforations, are not covered by any-

thing in the specification and claim, and, in my opinion, in view of the state of the art, and Ewig's previous patent, could not rightly have been claimed. The defendant's hook, which is charged to be an infringement, is like the complainant's hook, except that it does not have the semicircular slot. It has an elliptical slot, which extends as far into the body of the metal as it does into the part which forms the hook; and while it permits the edges of the two layers of cloth to be stitched across, just as the old French hook did, it does not present to the stitching any bearing to resist the pull. It is urged that such an edge is presented by the ears on each side of the hook, and that they are the equivalent of the straight edge cut out in the center of the hook. It may be that on defendant's device the edge of the ears help to remedy the absence of the center straight edge, but it must be remembered that complainant's device, although it has proved highly successful, and has gone wonderfully into use by the trade, is not a pioneer invention. Haarvig's patent, No. 144,334, November 4, 1873, shows a waistband fastening for pantaloons, made of flat metal, attached by perforations in ears at each side; and the Weinberg patent, No. 60,600, December 18, 1866, exhibits a form of hook and eye fastener for the waistband of pantaloons; and Ewig's patent, No. 375,699, December 27, 1887, was a device for the same purpose. There was nothing, therefore, new in the substitution of a hook and eye device of any known form for buttons for this purpose. Patentable novelty was restricted to a new form of device, or an improvement on an old form, requiring invention. All forms had for their object to resist strain; to keep the device securely in place; to be sightly in appearance and moderate in cost. In the device now in suit, nothing distinguishes it from Ewig's prior patent but the semicircular slot made in the form, which remedies the difficulty which Ewig says he encountered when using a wide hook, viz. that the edges of the cloth were not sufficiently supported by the threads, and with the advantage, when used, that it resulted in the body plate of the hook being more securely held in place. This semicircular slot is all that I find that was patentable in complainant's device, and, treating the patent in suit as a good patent for that, I do not find that the defendant infringes; and the bill must be dismissed.

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DODGE et al. v. FULTON PULLEY CO. et al.

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

No. 39.

PATENTS—INFRINGEMENT—SEPARABLE PULLEYS.

The Dodge and Philion patent, No. 260,462, for a separable pulley, designed to secure a larger surface of contact with the shaft, and a firmer adhesion thereto, when the separable halves are bolted together, is limited by the prior art to a pulley in which the parts, when placed together, come in contact at the rim while remaining separate at the hub, and is not infringed by a pulley so constructed that the meeting faces of the separate halves, when placed together, lie in the same plane and come in contact throughout their length.