

various forms so as to have the so-called semicircular slot, but with body plates having other than straight edges within the slots, and yet available for all the supposed functions of that edge. As illustrated in one of the foregoing drawings, the edge might be notched or undulating; and the other forms illustrated afford examples any one of which, in respect to the particular functions in question, is the plain equivalent of the form of the patent, and in all reason should be said to infringe, if the patent had real merit. It is to be observed, further, that, while the word "semicircular" is one of definite mathematical meaning, it manifestly was not used in this patent in the strict sense. The slot shown in the drawings does not approximate a semicircle, unless reference is made only to the portion of the slot within that part of the loop which is turned back upon the plate; and, if that be the reference, it does not include the straight edge at the base, which alone has been treated as important. The reference, however, seems clear, is to the entire slot, and that, instead of being semicircular, has a straight depth between parallel lines well-nigh equal to twice the radius of the semicircular top with which it is crowned. The base of the true semicircle, in the drawing of the patent, as well as in the other cuts shown, we have indicated by a dotted line, and there is nothing in the specification and claim which requires that the portion of the slot outside of the semicircular part shall be of any particular shape. As illustrated in the patent, it is a parallelogram, but it may be in any of the forms illustrated, and in many other conceivable shapes, without impairing the efficiency of the fastener in any respect deemed important. By the opinion in *Blum v. Kerngood* no one of those designs could be deemed an infringement, but, if the patent had genuine merit, it ought to cover them all. Our conclusion is that it contains nothing essentially new. The straight edge is fully anticipated in the Delpy clasp, and if it could, in any stage of the art, have been an inventive act to add to that device projecting ears, the anticipation is found in the Ewig patent of 1887, as well as in other earlier patents. There is certainly no merit in so bending a loop as to leave curved shoulders projecting beyond the body of the plate. It would be difficult to do the bending in a way to leave the necessary space between the plate and the loop, without producing the projecting shoulders. The prior art seems to admit of no theory on which the patent can be deemed valid. The decree below is therefore reversed.

Judge SHOWALTER did not participate in this decision.

PELZER v. NEWHALL et al.

(Circuit Court, N. D. Illinois. April 13, 1899.)

1. PATENTS—PRELIMINARY INJUNCTIONS—CONFLICTING DECISIONS.

On a motion to dissolve a preliminary injunction, when it appears that the circuit courts of appeals in two different circuits have reached opposite conclusions on the questions involved, the circuit court will adopt the reasoning of that one which impresses it as being most correct.

2. SAME—ELECTRIC LIGHT FIXTURES.

Stieringer reissue, No. 11,478 (original, No. 259,235), for improvements in electric fixtures, construed, as to claim 1, as being limited to the particular insulating device described, and therefore *held* not infringed.

This was a suit in equity by William Pelzer against Newhall and others to enjoin the alleged infringement of reissued letters patent, No. 11,478, granted March 12, 1895, to Luther Stieringer, for an improvement in electrical fixtures, which covers a device for attaching electric lighting fixtures to gas pipes by an insulated connection. The original patent, No. 259,235, was granted to said Stieringer June 6, 1882. The cause was heard on a motion to dissolve a preliminary injunction.

Poole & Brown and Richard Dyer, for complainant.

Barnes, Barnes & Bartelme, for defendants.

KOHLSAAT, District Judge. This matter comes on to be heard upon the motion of defendants for the dissolution of a preliminary injunction heretofore granted herein against defendants, restraining the alleged infringement of reissued letters patent No. 11,478, dated March 12, 1895; the preliminary injunction being on the first claim of the reissued patent. The court has before it the opinions of two circuit courts of appeals covering the question at issue in this suit, in which opinions antagonistic conclusions are reached. The court therefore feels at liberty to closely examine the reasoning of each of the said courts, and the grounds upon which they arrive at their respective conclusions, in addition to the facts brought out on this hearing, as it is admitted that the statements of fact set forth in those opinions are substantially correct, and to adopt the reasoning of either of said courts, in so far as it may impress this court as being correct, and may be applicable to this case. The decisions referred to are those of *Maitland v. Manufacturing Co.*, 29 C. C. A. 607, 86 Fed. 124, decided in the Second circuit, and *Manufacturing Co. v. Pelzer*, 91 Fed. 665, decided in the Third circuit. In view of the wide scope of the first claim of the reissued patent, which, in the mind of this court, is so broad as to cover all possible devices for the insulation of electric light fixtures from grounded pipes to which they may be attached, it is the opinion of the court that to sustain this claim would be practically to sustain a patent upon the principle of insulation itself, when applied to a combination of grounded pipes, and electric light fixtures attached thereto. Following the reasoning of the court of appeals of the Third circuit, this court is of the opinion that the first claim of the reissued patent is only valid when restricted to the particular insulating device, as distinguished from the general principle of insulation, shown in said reissue, and in the original patent upon which it is based; and, as the insulating devices used by defendants do not, in the mind of the court, infringe the devices described and set forth in the said reissue, or the original patent on which it is based, the injunction in this case should be dissolved. It is so ordered.

WHITNEY et al. v. TIBBOL et al.

(Circuit Court of Appeals, Ninth Circuit. February 6, 1899.)

No. 458.

1. STIPULATIONS—CONSTRUCTION—ADMISSIONS—SHIPPING.

A stipulation reciting that prior to the departure of a vessel on a voyage claimants made advances to her owners, and that upon her return the cargo was taken by claimants in payment of the advances, admits that the owners of the vessel owned the cargo up to the time when claimants took it, and that no freight has been paid therefor.

2. SEAMEN—LIEN FOR WAGES—LIABILITY OF CARGO FOR FREIGHT.

For their wages, seamen have a lien upon the cargo for the freight, or a reasonable charge therefor, though the vessel and cargo belong to the same person.

3. SAME—LOSS OF LIEN.

A lien in favor of seamen on the cargo for the freight is not divested by a delivery of the property to one who made advances to the owners of the vessel in fitting her out and furnishing her with supplies before she set out on the voyage.

Appeal from the Circuit Court of the United States for the Northern District of California.

Myrick & Deering and A. P. Van Duzer, for appellants.

H. W. Hutton, for appellees.

Before GILBERT and ROSS, Circuit Judges, and HAWLEY, District Judge.

GILBERT, Circuit Judge. The appellees were seamen on a voyage upon the barkentine Marion from San Francisco to Alaska. On their return to San Francisco they libeled the bark for their wages, and she was sold. Her proceeds were insufficient to pay the wages, and the appellees libeled and caused to be seized her cargo, consisting of 850 barrels of salmon in a warehouse in San Francisco, claiming that they had a lien thereon to the extent of the freight. The substance of the allegations of the libel was that the owners of the bark were the owners of the salmon, and that the latter owed freight money to the vessel, which had not been paid, in the sum of \$1,750. The appellants, C. E. Whitney & Co., answered, denying that the owners of the vessel ever owned the salmon, and denying that any freight money was due, and alleging that all freight had been paid. The district court decreed that the owners of the vessel owned the salmon, and that the seamen had a lien upon the latter for the freight, which was fixed at the sum of \$850, or at the rate of \$1 per barrel. Upon the appeal it is contended that the district court erred in ruling—First, that freight was due to the ship from the owners of the salmon; second, that the owners of the vessel were the owners of the cargo; and, third, that the seamen had a lien upon the salmon, and could seize the same in the possession of the appellants after the termination of the voyage.

The only proof that freight had been earned, and that the freight money had not been paid, is furnished in a stipulation of the parties