

NEW YORK FILTER MFG. CO. v. CHEMICAL BLDG. CO.

(Circuit Court, E. D. Missouri, E. D. April 20, 1899.)

No. 4,200.

1. PATENTS—PRELIMINARY INJUNCTION.

Where infringement prior to the suit clearly appears by the use of an infringing attachment, which may be easily disconnected and as readily connected again to the other parts of the device, the mere fact that a few days before the suit was commenced defendant disconnected such attachment, and informed complainant that he would no longer use it, is not sufficient ground for refusing a preliminary injunction. Under such circumstances complainant is entitled to greater security than the mere statement of defendant that he will not further infringe.

2. SAME—IMPROVEMENT IN WATER FILTERS.

The Hyatt patent, No. 293,740, for an improvement in the art of filtering water, held infringed on motion for a preliminary injunction.

This was a suit in equity by the New York Filter Manufacturing Company against the Chemical Building Company for alleged infringement of letters patent No. 293,740, issued to Isaac S. Hyatt for an improvement in the art of filtration of water. The cause was heard on a motion for preliminary injunction.

Paul Reiss and Bond, Adams, Pickard & Jackson, for complainant.
George W. Taussig, for defendant.

ADAMS, District Judge. This is an application for a preliminary injunction. The bill and moving papers show that complainant's patent has been upheld and declared valid by several prior adjudications, all of which are cited in the case of Manufacturing Co. v. Jackson (decided by this court Dec. 27, 1898) 91 Fed. 422. Infringement by defendant prior to the institution of this suit clearly appears. Upon this state of facts the application must be granted, unless the fact, as shown by defendant's affidavits, that defendant, a few days before this suit was instituted, and when the same was imminent, disconnected the infringing attachment, and informed complainant that it would no longer use the same, constitutes sufficient cause for denying the same. The fact appears that the infringing attachment in question can be easily disconnected from defendant's filter, and as readily connected again. The adaptability of the filter to such facile changes affords a constant temptation to defendant, as well as a constant menace to complainant. Under such circumstances it seems to me that the interests of both parties will be subserved by granting the application. Not only so, but complainant is entitled, on the showing made, to greater security against a once existing infringement than the mere statement by defendant that it will not further infringe. This is supported by abundant authority. Walk. Pat. §§ 676, 701; Curt. Pat. § 335; Chemical Works v. Vice, 14 Blatchf. 179, 20 Fed. Cas. 1355; Celluloid Mfg. Co. v. Arlington Mfg. Co., 34 Fed. 324; Gilmore v. Anderson, 38 Fed. 846; White v. Walbridge, 46 Fed. 526; Spindle Co. v. Turner, 55 Fed. 979. As is said in these authorities: "If the defendant intends in good faith to keep its promise,

the injunction will not harm it; otherwise, it will be a security for the complainants that their rights will not again be invaded." The application for a preliminary injunction is granted.

RICHARDSON v. D. M. OSBORNE & CO. et al.

(Circuit Court of Appeals, Second Circuit. April 4, 1899.)

No. 55.

1. PATENTS—INFRINGEMENT SUIT—LACHES.

A patent owner who, for about 14 years, witnesses the extensive and increasing manufacture and sale of an alleged infringing machine, without taking any steps to enforce his rights, is guilty of laches precluding him from maintaining an infringement suit.

2. SAME—HARVESTERS.

The right of the owner of the Fowler patent, No. 181,664, for an improvement in machines for bundling grain, to sue for infringement, held to have been lost by laches.

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

This was a suit in equity by James G. Richardson against D. M. Osborne & Co. and others for alleged infringement of a patent for an improvement in machines for bundling grain. In the circuit court the bill was dismissed because of complainant's laches (82 Fed. 95), and the complainant has appealed.

Horatio C. King and George A. Clement, for appellant.

James J. Storrow and Frederick P. Fish, for appellees.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. Letters patent No. 181,664 were granted on August 29, 1876, to Thaddeus Fowler, as inventor, and to James G. Richardson and his two brothers, Wilbur J. Richardson and Isaac S. Richardson, as assignees of one-half of the patent, for an improvement in machines for bundling grain. A bill in equity, verified on June 8, 1893, which was based upon the alleged infringement of this patent, was brought in the Northern district of New York by James G. Richardson, who became the owner of the entire patent on October 7, 1890, against D. M. Osborne & Co., a corporation, and its officers. The defenses which were relied upon were the unexplained laches of the owners of the patent in attempting to enforce their alleged rights, the prior invention of the patented structure by John F. Appleby, noninfringement, and nonpatentability. The circuit court dismissed the bill by reason of the laches of the owners of the patent. The invention is a part of a harvester, and was a device which will automatically discharge the bundle of grain when a certain predetermined quantity has been gathered, and consisted in a beater, which, having pressed the grain into the holder, was combined with a deliverer, which, when the beater had attained a predetermined pressure upon the bundles, was caused to remove the gathered bundle from the holder, either to the binding machine or to a binding ma-