

and profits it has received from such infringement, and awarding a perpetual injunction, and an accounting of such gains and profits as prayed in the bill and costs.

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CONSOLIDATED FASTENER CO. v. AMERICAN FASTENER CO.

(Circuit Court, N. D. New York. May 21, 1899.)

No. 6,713.

1. PATENTS—PRELIMINARY INJUNCTION—PUBLIC ACQUIESCENCE.

To take the place of an adjudication, public acquiescence must be long continued, under such circumstances as to induce the belief that infringements would have occurred but for the fact that a settled conviction existed in the minds of manufacturers, vendors, and users that the patent was valid, and must be respected. A patent which is not molested simply because it is for no one's interest to infringe is not "acquiesced" in, within the legal acceptance of that term.

2. SAME—PROOF OF INFRINGEMENT.

To obtain a preliminary injunction, the complainant must, on the question of infringement, satisfy the court beyond a reasonable doubt.

3. SAME.

The Mead patent, No. 437,161, for a garment fastener, considered, and a preliminary injunction denied, because the proofs left the question of infringement in doubt.

This was a suit in equity by the Consolidated Fastener Company against the American Fastener Company for alleged infringement of a patent. The cause was heard on a motion for preliminary injunction.

John R. Bennett and Odin B. Roberts, for complainant.  
W. H. Kenyon, for defendant.

COXE, District Judge. This is a motion for a preliminary injunction seeking to restrain the infringement of the first claim of letters patent No. 437,161, granted to Albert G. Mead, September 23, 1890, and now owned by the complainant.

The patent has never been adjudicated. There has been no general acquiescence. Infringement is stoutly denied. Where these conditions concur the rule is well nigh universal that a preliminary injunction should not issue. *Smith v. Meriden Britannia Co.*, 92 Fed. 1003, and cases cited.

In order to take the place of an adjudication acquiescence must be long continued in such circumstances as to induce the belief that infringements would have occurred, but for the fact that a settled conviction existed in the minds of manufacturers, vendors and users that the patent was valid and must be respected. A patent which is not molested simply because it is for no one's interest to infringe is not "acquiesced" in within the legal acceptance of that term.

It is true that the Mead patent has been in existence since September, 1890, and has not been infringed; but on the other hand it is asserted, and not contradicted, that neither Mead nor the complainant ever made and put upon the market a fastener em-

bodying the device covered by the first claim. It never went into commercial use.

Upon the question of infringement the complainant must, in order to obtain the summary relief demanded, satisfy the court beyond a reasonable doubt.

The claim covers "a female member made in two parts" and it is conceded that if the claim be strictly construed and limited to two parts, the defendant does not infringe, for the reason that more than two parts are actually assembled in the construction of its button-hole member.

That the claim is susceptible of the construction contended for by the defendant cannot be denied. It is enough for the present motion that the court entertains doubt as to the propriety of the complainant's contention. For manifest reasons the court should not at this stage of the litigation extend the discussion beyond the point necessary for the decision of the motion in hand.

The motion must be denied.

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**BUNDY MFG. CO. v. DETROIT TIME-REGISTER CO.**  
(Circuit Court of Appeals, Sixth Circuit. May 2, 1899.)

No. 604.

**1. PATENTS—INFRINGEMENT—JOINDER OF ELEMENTS.**

One may not escape infringement by the mere joinder of two elements into one integral part, if the united part effects the same results, in substantially the same way, as the separate parts before the union.

**2. SAME—MECHANICAL EQUIVALENTS—WORKMEN'S TIME RECORDERS.**

In a workman's time recorder, the mere substitution, for a turning key having the workman's number on its ward, of a pushing key having such number upon a fin, the function of each being to set in motion mechanism which operate the impression devices, is but the use of a mechanical equivalent.

**3. SAME.**

A patent for a workman's time recorder, in which the printing is done by pressing a recording strip against the type by a blow from an impression hammer, is infringed by a mechanism in which the type is pressed upon the recording strip by pressure only. The two methods are mere mechanical equivalents.

**4. SAME—CONSTRUCTION OF PATENT.**

To be entitled to the benefit of the doctrine of equivalents, it is not essential that the patent shall be for a pioneer invention in the broad sense of that term. If the invention is one which marks a decided step in the art, and has proved of value to the public, the patentee will be entitled to the benefit of the rule of equivalents, though not in so liberal a degree as if his invention were of a primary character.

**5. SAME—MERITORIOUSNESS OF INVENTION.**

The meritoriousness of an improvement depends—First, upon the extent to which the former art taught or suggested the step taken; and, second, upon the advance made in the usefulness of the machine as improved.

**6. SAME—ESTOPPEL BY ACCEPTING ACTION OF PATENT OFFICE.**

To be estopped by the action of the patent office, the patentee must be shown to have surrendered something which he now claims in order to obtain that which was allowed.