

term "further action" seems to include the middle or puncturing roll as a part of the pressure mechanism. Claim 5 contains the following: "And a series of two or more rolls, adjusted at different distances from said carrier, and successively acting to partially impale the fruit on the carrier teeth, and rupture and displace the skin of the fruit." Again, in claim 7: "A series of two or more rolls, acting to impale the fruit upon the teeth and exclude the seeds therefrom." In claims 9, 10, and 11, the "pressure mechanism" includes all three rolls, acting to impale the fruit and exclude the seeds therefrom. Claim 8 would therefore seem to some extent to be inconsistent with the other claims of the patent, in that it calls for a "puncturing mechanism, acting independently of the pressure mechanism." In addition to the apparent intention of the patentee, as evidenced by the foregoing extracts from the claims, an examination of the practical operation of the La Due device does not seem to disclose such independently acting puncturing mechanism. If it could be said, however, that there is such a mechanism covered by the specifications and claims (taken as a whole) of complainant's patent, the respondents' device does not infringe claim 8, as it does not contain such an independently acting device. It follows that there is no infringement of claims 6, 7, and 8. The evidence is, however, sufficient to entitle the complainant to a decree on claims 1, 2, 3, 4, and 5.

DICKERSON v. ARMSTRONG.

(Circuit Court, S. D. New York. May 24, 1899.)

PATENTS—VIOLATION OF INJUNCTION AGAINST INFRINGEMENT—EFFECT OF ERROR AS TO DEFENDANT'S NAME.

Defendant, whose true name was James, made sales of an article in infringement of a patent thereon. A suit for infringement was commenced by the owner of the patent against "Frank Armstrong, alias James"; and an order issued therein restraining "the said defendant, Frank Armstrong," from making further sales, which order was served on the defendant. *Held* that, defendant being in fact the person guilty of the infringement complained of, he was bound by the order, and subsequent sales of the article by him subjected him to punishment for contempt.

On Motion to Punish for Contempt in Disobeying Injunction.

Anthony Grëff, for the motion.

Joel Marks, opposed.

LACOMBE, Circuit Judge. A statement of the facts which are conceded, either by express admission of the individual attached, or by his failure to controvert the moving affidavits, will relieve this case of all difficulty. In the month of March, 1898, and prior thereto, William T. James, the person now under attachment, resided at No. 97 Perry street, in this city, and there occasionally sold phenacetine, in infringement of the patent, "as an accommodation," to one Frank J. Armstrong, who made his headquarters there. On March 3, 1898, one Klappenburg came to 97 Perry street, and there met said James, whom, in the course of conversation, he referred to as Armstrong.

James thereupon informed him that his name was ——— James, and that he came from Wales, Great Britain. He there and then sold to Klappenburg 10 boxes of infringing phenacetine, showed him about 250 packages of phenacetine, offered to sell him 100 boxes at \$25, and told him that he had about \$500 worth of goods on hand. On April 1, 1898, a deputy marshal called at 97 Perry street, and asked James, who opened the door, for Mr. Armstrong. Upon being informed that Armstrong was not in, the marshal asked his name, and, upon his replying "James," handed him an order to show cause, with a restraining order, in this cause. The order is entitled, "Edward N. Dickerson v. Frank Armstrong, alias James;" and the order restrained "the said defendant, Frank Armstrong" (i. e. Frank Armstrong, alias James), from continuing the sale of the infringing article. The order was accompanied with affidavits which showed that the Frank Armstrong named as defendant was the individual who had sold the 10 boxes of phenacetine to Klappenburg, and had offered to sell the latter a much larger quantity, and who on that occasion represented himself to be "——— James." Inasmuch as it was James' act which was complained of, and the sale of the goods which he exhibited that was sought to be enjoined, and the papers served on him enjoined the individual offender, whether his true name was Armstrong or James, it seems clear that the recent sale by James of a further lot of the infringing article was in disobedience of the order. In punishment of his contempt he may stand committed for 15 days (the time of confinement under attachment to be credited), and until he shall pay a fine of \$250.

SMITH et al. v. UHRICH.

(Circuit Court, E. D. Pennsylvania. May 26, 1899.)

No. 22.

1. PATENTS—INFRINGEMENT BY IMPROVERS.

An improvement may be itself patentable, but the inventor of the improvement acquires no right to appropriate the main invention to which his improvement relates; and it is of no consequence that a patented article be so dealt with as to impair its usefulness, if its essential features be still retained.

2. SAME—INTRODUCTION OF EVIDENCE.

The defendant should complete his evidence with respect to the state of the art before the taking of complainant's testimony in rebuttal, and any additional testimony and exhibits thereafter taken, even for the sole purpose of narrowing the claims, will be suppressed on motion.

3. SAME—VALIDITY AND INFRINGEMENT—SPRING-TOOTH HARROWS.

The Smith patent, No. 522,435, for improvements in spring-tooth harrows, construed, and held valid and infringed as to claims 1 and 2.

In Equity.

M. W. Jacobs, for complainants.

Clark C. Wood, for respondent.

DALLAS, Circuit Judge. This is a suit upon letters patent No. 522,435, dated July 3, 1894, granted to William E. Smith, for im-

provements in spring-tooth harrows. The claims alleged to have been infringed are as follows:

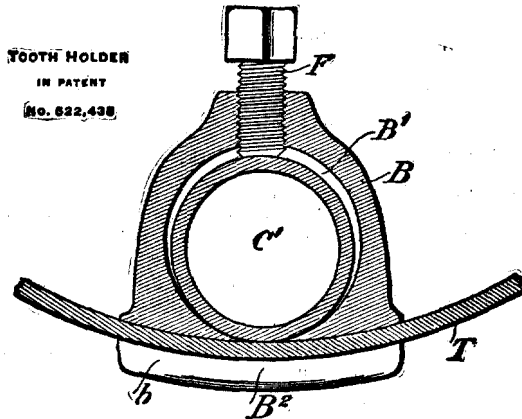
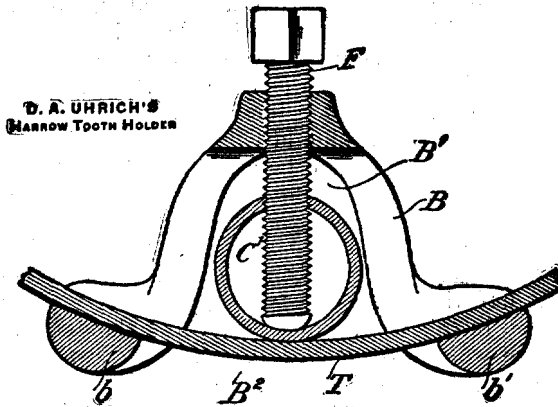
"(1) The combination of the hub and spring tooth mounted therein, of the cylinder mounted in the hub, and means for pressing the cylinder onto the tooth to secure it in position, substantially as described. (2) The combination with the hub, having ribs forming a recess for the reception of the tooth, and having an opening therethrough of a cylinder fitting the opening loosely, and bearing on the tooth, and means for pressing the cylinder in position, substantially as described."

The presumption of its validity which arises from the grant of this patent has not been overcome. The invention to which it relates is, however, neither a primary nor a great one. It follows that it must be sustained, but that the monopoly which it creates is not to be expanded by interpretation. Yet, although its claims are to be confined to the specific combinations which they describe, their scope should not be so restricted as to admit of the avoidance of infringement by resort to merely colorable and evasive variations; and, in my opinion, the differences between the combination of the two claims in suit and that of the defendant amount to nothing more. This, in substance, has been testified to by the complainants' expert, upon grounds which I think entirely satisfactory; and the correctness of his conclusions has been impugned but by two witnesses, neither of whom can be said to be disinterested, and one of whom, at least, does not appear to be free from bias. The complainants' expert to whom I have referred, produced a drawing, prepared by himself, illustrating the constructions in controversy, upon which he had marked the corresponding features and component parts of the respective devices, with the same reference letters. The following is a reproduction of that drawing.

In explanation of this drawing the witness testified as follows:

"It will be noted that each of the devices illustrated in the blue print embodies the hub or yoke, B, which may be made of cast metal or otherwise, but it is shown therein that it is cast in one piece; and each is provided with the opening, B¹, and the underside is provided with lugs, bb¹, projecting inwardly, and forming the seat for the shank of the tooth, T. Each of said structures has also the opening, B², through the bottom, between the ribs, and to the opening B¹. And the said ribs are so arranged that when the tooth is in position it will extend slightly into the opening B¹. Through the opening B¹ passes a cylinder or piece of metal tubing, which is termed the connector, C, in the specification of the patent. Said connector is employed to tie together the longitudinal bars of the frame, by the aid of a bolt passing through the longitudinal bars and through said connector. Therefore the said connector performs the same function and is the equivalent of the crossbar of an ordinary harrow frame. I furthermore observe, in said blue print, that in each instance the aforesaid tube or connector is pressed down on the underlying tooth shank so as to effectually clamp it on the ribs, bb¹, by the setscrew, F, connected to the hub or yoke, B, in substantially the same manner."

Upon the whole evidence, I am satisfied of the substantial identity of the parts as thus indicated. In appearance, of course, the two devices are not precisely alike; but this, in itself, is immaterial. Perhaps the most striking differences are that in the defendant's arrangement the setscrew is longer than in that of the patent, and extends through a hole in the cylinder, and presses upon its inner surface, and that the ribs are in the one device transverse, while in the



other they are longitudinal; but that the real purpose, mode of operation, and effect of these elements is the same in both instances is perfectly plain.

It has been contended that the defendant has attained some advantages which the patentee had not attained, and that he has relinquished others which the patentee must have regarded as important. I have not been persuaded that this is true, but, if it were, it would not be material. An improvement may be itself patentable, but the inventor of an improvement acquires no right to appropriate the main invention to which his improvement relates; and it is of no consequence that a patented article be so dealt with as to impair its usefulness, if its essential features be still retained. The attempt has also been made to differentiate the two constructions by reason of the absence of a disk and bolt from that of the defendants, but

these parts are not included in claims 1 and 2, and are expressly added in claim 3, which is not alleged to have been infringed.

The motion made by counsel for the complainants to suppress a portion of the deposition of Clarence E. Bement, taken on June 23, 1898, and certain exhibits referred to in said deposition, must be allowed. The defendant should have completed his evidence with respect to the state of the art before the taking of complainants' testimony in rebuttal. He had no right to introduce additional testimony and exhibits, even for the sole purpose of narrowing the claims, after the evidence of the complainants had all been taken, and their expert had been fully examined with reference to the prior art as it had then been made to appear. A number of patents were introduced in this irregular manner, and the only witness called to explain them was Clarence E. Bement, who did not do so in sufficient detail to adequately support the opinions which he expressed. Yet, being reluctant to disregard any matter which might possibly be persuasive, I have, with such aid as could be derived from Mr. Bement's testimony and the arguments of counsel, examined these patents, but cannot find that, if offered in due season, they would have changed the conclusion which I have reached. Decree for complainants.

WESTINGHOUSE ELECTRIC & MANUFACTURING CO. v. CATSKILL
ILLUMINATING & POWER CO.

(Circuit Court, S. D. New York. May 17, 1899.)

PATENTS—VALIDITY—ELECTRICAL TRANSMISSION OF POWER.

The Tesla patent, No. 511,559, for certain new and useful improvements in "electrical transmission of power," is not void on its face, as covering merely a mode of operation involving only the function of certain machines or apparatus, but is for a new method of producing an electrical result, which method is carried out by the use of apparatus.

This was a suit in equity by the Westinghouse Electric & Manufacturing Company against the Catskill Illuminating & Power Company for alleged infringement of certain patents. The bill was demurred to by defendant, in so far as it was based upon letters patent No. 511,559, issued December 26, 1893, to Nikola Tesla for certain new and useful improvements in the "electrical transmission of power"; the ground of the demurrer being that the patent, on its face, is for a mode of operation involving only the function of certain machines or apparatus, and therefore covering a process not patentable under the law.

The patent, excepting the formal parts, was in full as follows:

"In certain patents, heretofore granted, I have shown and described a system of electrical power transmission, in which each motor contained two or more independent energizing circuits, through which were caused to pass alternating currents, having in each circuit such a difference of phase that by their combined or resultant action they produced a rotary progression of the poles or points of maximum magnetic effect of the motor, and thereby maintained the rotation of its movable element. In the system referred to and described in said patents, the production or generation of the alternating currents, upon the combined or resultant action of which the operation of the