

CONSOLIDATED FASTENER CO. v. HAYS et al.

(Circuit Court, N. D. New York. June 14, 1899.)

No. 6,749.

1. PATENTS—INFRINGEMENT—IMPROVEMENT.

One has no right to appropriate an invention by adding thereto a new function, which in no way changes the action of the patented combination.

2. SAME—BUTTONS.

The Mead patent, No. 325,430, for improvements in buttons, construed, and held infringed by the device of the Pringle patent, No. 600,114.

This was a suit in equity by the Consolidated Fastener Company against Daniel Hays and Lewis A. Tate for alleged infringement of a patent for an improvement in buttons. The cause was heard on a motion for preliminary injunction.

John R. Bennett and Odin B. Roberts, for complainant.

Julian C. Dowell and Melville Church, for defendants.

COXE, District Judge. This is a motion for a preliminary injunction to restrain the infringement of letters patent No. 325,430, granted to Albert G. Mead, September 1, 1885, for improvements in buttons. The validity of the patent was affirmed in *Kent v. Simons*, 39 Fed. 606. Since then the patent has been several times before the courts and has, in each instance, been upheld. Upon this motion the only question open for discussion is the question of infringement, although, here also, the logical deduction from the *Kent* decision leads to a conclusion adverse to the defendants. The infringing devices are so nearly similar that there can be little doubt that the result would have been the same had the defendants' button been before the court instead of the button there held to infringe. The observation of the judge that "the defendants' fastener is the Mead fastener, with some slight changes in construction," is as applicable to this cause as to the one he was considering.

It is thought that the defendants' socket member is as near the combination of the second claim of the patent as was the device held to infringe in the *Kent* Case. The principal difference is that the eyelet sleeve is split so as to give resiliency to the end which comes in contact with the head of the stud which is made solid, thus making a spring socket instead of a spring stud. This addition may or may not be an improvement, but it is entirely clear that the defendants cannot appropriate the Mead invention by adding thereto a new function which in no way changes the action of the patented combination. It will hardly be pretended that after the decision referred to the defendants in the *Kent* Case could have escaped infringement by making such a slit in the Raymond button. Especially is this true in view of the fact that the Pringle patent, No. 600,114, under which the defendants manufacture, shows a slitted socket with a solid stud and an unslitted socket with a spring stud as alternative and equivalent constructions. The language of Pringle's specification is as follows:

"I have shown in Fig. 1 a slitted or spring stud catch for use with a non-resilient stud, while in Fig. 2 is illustrated an unslitted stud catch designed to

be used with a slitted or spring stud. In fact any suitable form of stud may be used with my stud catch, and my stud catch may be used with various kinds of button heads or may be clenched directly to the material; and I do not desire to be understood as being limited to the details shown."

The only other difference which demands attention is that the anvil plate of the patent has a hole in its center and the corresponding part of the defendants' device is not so perforated. The absence of this hole is immaterial. If it were present the defendants' device would operate precisely as it does now.

The motion is granted.

DEERE et al. v. ARNOLD.

(Circuit Court, N. D. New York. June 14, 1899.)

1. PATENTS—ANTICIPATION—HARROWS.

The Barley patent, No. 256,619, for improvements in harrows, held not anticipated as to its fifth claim by the Wiard & Bullock patent, No. 229,217, for improvements in plows.

2. SAME—CONCLUSIVENESS OF PROCEEDINGS IN PATENT OFFICE.

It seems that a patent regularly issued and valid on its face cannot be declared void by the courts because of a clerical error of an examiner in failing to follow the rules of practice in the patent office.

This was a suit in equity by Deere & Co. against O. M. Arnold for alleged infringement of letters patent No. 256,619, issued to James H. Barley April 19, 1882, for improvements in harrows. After a final hearing, the court, on January 3, 1899, filed an opinion sustaining the patent, and holding that it had been infringed by defendant. See 92 Fed. 186. The defendant now moves for a rehearing on the ground of newly-discovered evidence.

John R. Bennett, for complainant.

G. A. Prevost, for defendant.

COXE, District Judge. The first branch of this motion has reference to letters patent, No. 229,217, granted June 22, 1880, to Wiard & Bullock for improvements in plows. Permission is asked to introduce this patent in evidence together with certain exhibits made thereunder illustrating the manner of fastening the wheel and jointer standard to the plow beam. At the hearing the complainant consented that these exhibits, all of them antedating the Barley patent, should be regarded as before the court, and the reargument proceeded at once. The complainant has filed no papers in opposition. The matter is thus left with the court upon the moving papers alone and these contain very little to aid the court in reaching a correct understanding of the Wiard & Bullock patent and devices. However, the device in question is not a complicated one and may be readily comprehended. The original record is not before the court, but as the evidence is now recalled it is thought that the Wiard & Bullock reference does not approximate the combination of the fifth claim of the Barley patent as closely as several exhibits which were discussed at final hearing—notably the patents of Cambridge and Beauregard. If the court has correctly construed the fifth claim of the Barley pat-