

construction of these means is nowhere described. The question of their identity is therefore not clear. The presumption of patentable difference as to the details of construction raised by the grant of the later Jenik patent has not been overcome.

A decree may be entered for an injunction and accounting as to claim 8 of patent No. 383,258. As to reissue No. 11,079, the bill may be dismissed. The complainants to recover one-half of their costs.

SAGENDORPH v. HUGHES.

(Circuit Court, E. D. Pennsylvania. July 10, 1899.)

1. DESIGN PATENTS—ANTICIPATION.

If two designs are so much alike that one may readily be taken for the other by an ordinary observer, the earlier constitutes an anticipation of the later, notwithstanding differences in detail and in non-essential matters.

2. SAME—METALLIC SIDING FOR BUILDINGS.

The Sagendorph patent, No. 17,235, for a design for metallic siding for buildings, which covers a representation of raised brickwork with intermediate depressed grooves curved in cross section, is void, because of anticipation by the Hardy patent, No. 163,991, for a covering for the exterior walls of buildings.

Connolly Bros., for complainant.

James S. Williams, for respondent.

McPHERSON, District Judge. The complainant is the owner of design patent No. 17,235, issued April 5, 1897, the claim of which is as follows:

"In a design for metallic siding for buildings, the representation of raised brickwork with intermediate depressed grooves * * * curved in cross section, substantially as shown and described."

He alleges that the defendant is infringing the patent by manufacturing metallic siding nearly, if not quite, identical in substance and appearance with the siding that he has been making and selling under his patent for several years. Infringement is not denied, if the patent is valid; but the defendant denies its validity upon two grounds: (1) Because the design was not new or original, but was an imitation merely, and not an invention. (2) Because, if the design be patentable, it had been anticipated by P. T. Hardy in June, 1875,—patent No. 163,991 having been granted to him in that month for "a covering for the exterior walls of buildings, composed of a sheet of lead or other soft metal, having impressed or otherwise formed upon its outer face the configuration of brick, stone, or other facing usually employed for walls, substantially as and for the purpose specified"; and also because the complainant's design had been similarly anticipated by patent No. 296,647, granted in April, 1884, to Peter Toglio, for "imitation brick weatherboarding for frame houses, made with grooves on its surface, treated in the manner described, substantially as shown and for the purpose set forth."

I shall not consider the first ground of defense, because I think the second ground has been established. "The true test of identity of

design is sameness of appearance,—in other words, sameness of effect upon the eye * * * of an ordinary observer.” *Smith v. Saddle Co.*, 148 U. S. 674, 13 Sup. Ct. 768. Tried by this test, the complainant’s design has been anticipated by Hardy’s patent at least, and probably by Toglio’s, also. There are some differences in detail. Only one surface of Hardy’s siding is intended to be presented to the eye, while either surface of the complainant’s siding may be thus presented; and the curves of the grooves differ somewhat. But these are not essential matters. To the ordinary eye, the two designs are so much alike that one may readily be taken for the other. I am of opinion, therefore, that the complainant’s design was not patentable, because it was anticipated by Hardy’s patent. The bill must be dismissed, with costs.

PATENT-BUTTON CO. v. PILCHER.

(Circuit Court, D. Kentucky. June 3, 1899.)

1. PATENTS—CONSTRUCTION AND INFRINGEMENT—BUTTONS.

The Williams & Lade patent, No. 439,920, for an improvement in buttons, analyzed, construed, and *held* not infringed.

2. SAME—AMENDMENT TO ANSWER.

Where written instruments in the nature of an assignment were filed in the case subsequent to the original answer, and long before the cause was submitted, *held*, that it was proper to allow an amendment to the answer to conform to these proofs.

George Cook and W. B. Dixon, for complainant.
L. N. Dembitz, for defendant.

EVANS, District Judge. The complainant’s patentees, Williams & Lade, made application for a patent on buttons some time in the early part of 1890, and filed with their application drawings, specifications, and claims. In their application they made various claims, as will be seen from the file wrapper in evidence here, all of which were rejected by the examiners as being already met by anticipations. Subsequently, from time to time, they filed various amendments to their specifications and claims, to meet the objections of the examiners, all of which were successively rejected for the reason that they presented no novelties; and finally, on September 22, 1890, they filed an amendment, claiming as a novelty, and an improvement over the then known state of the art, the wedge of their button; stating the same to be the same length as the shank of the button, and that the small end of this wedge, when the buttons were fastened to the cloth, should be tightly compressed in the orifice in the plane of the base of the shank of the button, thus locking the two parts together, and thus retaining the two parts of the button rigidly in place against any strain. In their brief to the department, accompanying this last amendment, they state:

“Applicants’ claims are now limited to a button in which the wedge is substantially the full length of the stud on the shank, thereby clearly distinguishing their button from Platt’s; and it is because of this difference in construc-