

form, so that it is altogether unadapted to the application of clamp-bolts, the use of which is indispensable to the adjustability of the cable. Hence it lacks an essential feature of the patented "arrangement." Besides this, the cross-bar, which sustains the hods, is attached to the cable by a depression in one of the links, in which it rests, and is held by a simple screw passing through the cross-bar and the cable link. And, finally, but one cross-bar is used, in which are V-shaped notches to hold the hods, which are prevented from tilting by bars projected from each side of the V. With these notable differences in form and function, these devices cannot be identified by any rule of equivalency, and hence we cannot adjudge the defendant guilty of infringement.

The bill is dismissed, with costs.

UNDERWOOD v. WARREN and another.¹

(Circuit Court, E. D. Missouri. June 10, 1885.)

PATENTS FOR INVENTIONS—TRACK-DRILLS.

The combination covered by letters patent No. 205,927, issued to F. J. Underwood for an improvement in railroad-track drills, is not infringed by the use of the device described in letters patent No. 186,225, by the addition of a vertical screw with a thumb-piece, for the purpose of holding the sliding block in position.

In Equity.

G. M. Stewart and Britton A. Hill, for complainant.

Parkinson & Parkinson, for defendants.

TREAT, J., (orally.) The case of *Underwood v. Warren and March* is a suit for infringement of a patent. Most of the elements of this case have been heretofore considered, and the views of the court will be found in 20 FED. REP. 697.

All that is necessary to determine the question now presented can be expressed in a very few words. The Underwood patent, No. 205,927, dated July 9, 1878, is a combination patent. The defendants use the Belan patent, of which they are the proprietors, which patent was issued November 18, 1876, numbered 186,225. Both of these patents are for ratchet-drills in connection with rails, or more especially fish-plates on rails. The Belan patent consisted of two parallel bars, with clamps extending therefrom to hold them in position, and clamped to the railroad bar; and in order to operate the drill there was a movable block between the bars, with a horizontal screw running through it at the particular point where it was desired to bore the railroad bar. By screwing up horizontally the boring apparatus,

¹ Reported by Benj. F. Rex, Esq., of the St. Louis bar.

the end could be effected. It was ascertained, however, that such a device was not sufficiently rigid to effect the end; hence the subsequent patent, fully described in the opinion heretofore given by the court, which is a combination patent. Instead of taking two parallel bars through which slides a movable block with the horizontal screw, the new patent takes only one bar with a mortice-block sliding on it, to be held in position, as occasion requires, by a wedge on the side of it, or as stated, "any other equivalent device." But the force of plaintiff's patent is in the combination; that is, the taking of a single bar with a mortice-slide and a wedge, or an equivalent contrivance as a vertical screw, to keep it in position while the ratchet-drill is boring a hole through the fish-plate, or the bar to which the fish-plate is to be attached. There is no element in the Underwood patent which is not in the Belan patent, except that in the Underwood combination there is a single bar instead of two parallel bars, with an addition which makes a separate claim of what is called a bail, whereby the single bar can be raised or lowered so that you may bore horizontally.

That is sufficient for a general description. It so happens that the proprietors of the Belan patent have everything that they had before, only they have chosen, in order to hold the sliding block in position more firmly than had been done under the original Belan patent, to bore vertically through it, and by means of a screw and a thumb-piece to hold it firmly in position. Now, it is a most familiar principle in the law of patents that one who has a combination cannot sue for an infringement any person who does not use his entire combination. If he has chosen to insert in his combination elements that are unnecessary, his patent meets with very little favor. In this particular case, however, there is no infringement of his combination at all. The averment seems to be that by using a vertical screw with a thumb-piece, which is the most familiar mechanical element to hold a slide in position, the defendants have infringed this complainant's combination. They have not used the combination, nor any new element of it.

The bill is dismissed. There is no infringement.

HOLIDAY and others v. MATTHESON and others.

(Circuit Court, S. D. New York. 1885.)

PATENTS FOR INVENTIONS—UNCONDITIONAL SALE OF PATENTED ARTICLE IN FOREIGN COUNTRY—RIGHT OF PURCHASER FROM VENDEE TO USE OR SELL IN UNITED STATES.

The owner of a patent in the United States for an invention, who has sold the patented article in England without restriction or conditions, cannot treat as an infringer one who has purchased the article in England of the vendee of the patentee, and restrain him from using or selling the article in the United States.

WALLACE, J. This motion for a preliminary injunction raises the question whether the owner of a patent in the United States for an invention, who has sold the patented article in England without restriction or conditions, can treat as an infringer one who has purchased the article in England of a vendee of the patentee, and can restrain him from using or selling the article here. This question has been decided adversely to the complainant in this court upon a motion to punish the defendants for contempt in violating an injunction obtained in a former suit between the parties; and it was held by Judge WHEELER in substance that the sale carried all the rights to the article which the complainants, the vendors, had, including the right to use it or sell it whenever the complainants could do so. *Holiday v. Mattheson*, Op. MS. That decision is controlling upon this motion, but it is proper to add that the reasons upon which it proceeds are satisfactory, and would prevail if the question were an original one between these parties and in this court.

When the owner sells an article without any reservation respecting its use, or the title which is to pass, the purchaser acquires the whole right of the vendor in the thing sold: the right to use it, to repair it, and to sell it to others; and second purchasers acquire the rights of the seller, and may do with the article whatever the first purchaser could have lawfully done if he had not parted with it. The presumption arising from such a sale is that the vendor intends to part with all his rights in the thing sold, and that the purchaser is to acquire an unqualified property in it; and it would be inconsistent with the presumed understanding of the parties to permit the vendor to retain the power of restricting the purchaser to using the thing bought in a particular way, or in a particular place, for a limited period of time, or from selling his rights to others. It is quite immaterial whether the thing sold is a patented article or not; or whether the vendor is the owner of a patent which gives him a monopoly of its use and sale. If these circumstances happen to concur the legal effect of the transaction is not changed, unless by the conditions of the bargain the monopoly right is impressed upon the thing purchased; and if the vendor sells without reservation or restriction, he parts with his monopoly so far as it can in any way qualify the rights of the purchaser.