WALKER GLASS CO. v. SOUWEINE and others.

(Circuit Court, S. D. New York. July 25, 1885.)

PATENTS FOR INVENTIONS—POCKET-COMB CASES—PATENT NO. 184,310—NOVELTY.

Patent No. 184,310, granted to Charles W. Walker, November 14, 1870, for an improvement in pocket-comb cases, *held* not void for want of novelty.

In Equity.

M. B. Andrus, for complainant.

Henry F. Goken, for defendants.

WALLACE, J. The invention specified in the complainant's patent (No. 184,310, granted to Charles W. Walker, November 14, 1876, for improvement in pocket-comb cases) is shown by the proofs to have been perfected by the patentee in the spring of 1875, although the application for the patent was not filed until October, 1876. No reason is shown for the delay that intervened between the time when a patent might have been applied for and the time when the application was made. In the absence of any explanatory facts, evidence offered to carry back the date of the invention to a period considerably anterior to the application for a patent, in order to save the patent from being defeated for want of novelty, should be critically examined. Here, however, a disinterested and intelligent witness was produced, whose testimony was clear and decisive to the point, and no attempt was made to controvert or impair the accuracy and truthfulness of his narrative.

The only defense interposed is want of novelty, predicated upon the public use and sale in this country of the comb-cases manufactured by Probst, in Nuremburg, Germany. It is entirely clear that the Probst comb-cases were imported by dealers in this country and sold here in 1876, and it is not doubted that such comb-cases were substantially the comb-case of the patent. But there is not evidence showing the public use or sale of similar articles prior to 1876, of sufficient cogency and conclusiveness to overthrow the presumption of novelty arising from the grant of the patent. When record or written evidence, such as the invoices from the files of the custom-house, is produced, the importations of the article are not shown to antedate 1876. The case of the defendants is left to rest upon the unaided recollection of several witnesses, some of whom are evidently mistaken as to dates, and none of whom are able to fortify by any corroborative circumstances their statement of the general fact that such articles were in the market here prior to 1876.

A decree is ordered for complainant.

New York Grape Sugar Co. *v*. Buffalo Grape Sugar Co. and others.

Same *v*. American Grape Sugar Co. and others.

(*Circuit Court, N. D. New York.* July 23, 1885.)

1. Patents for Inventions—Laches of Patentee—Right of Vendee to Recover Damages.

   The patentee's previous laches and indifference in regard to the use of his patents by defendant corporation *held* sufficient to prevent the enforcement by a court of equity of the pecuniary claims of his vendee against it for infringements before the purchase of the patent

2. Same—Infringement by Corporation—Purchase by Former Directors—Right of Assignee to Damages.

   When the executive officers and managers of a corporation that has been infringing a patent, having sold their stock, purchase the patent, their assignee will not be allowed in equity to make the corporation pay the profits created by their own acts of infringement.

In Equity.

Dickerson & Dickerson, for plaintiffs.

John R. Bennett and *Sherman S. Rogers*, for defendants.

Shipman, J. This is a motion to amend the interlocutory decrees in the entitled causes, so as to provide for an accounting of the profits and an assessment of the damages which accrued upon patents 65,-664, 81,883, and 137,911, prior to the plaintiffs' purchase thereof. The facts in the cases are stated at length in the published opinions in 18 Fed. Rep. 638, and 20 Fed. Rep. 505. Upon these facts two questions arise:

1. Are the claims against the Buffalo Grape Sugar Company, which Joseph J. Gilbert assigned, through Messrs. Phillip and Morgan, to the Messrs. Jebb, for the profits and damages which had accrued upon the infringement of his patents Nos. 65,664 and 81,883, such as should be enforced by a court of equity in this suit, commenced in 1881?

The position of the defendants is that if Mr. Gilbert had brought against the Buffalo Company a bill for an injunction and an account, instead of making the assignment, he would have been successfully met, so far as the accounting of profits and damages before the commencement of the suit was concerned, by the principle that "laches and neglect are always discountenanced" by a court of equity. It is urged by the plaintiff that, assuming it to be true as found by the court, that the entire patented process was not used until 1878–79, there was but a brief period during which Gilbert could have been chargeable with laches. If this was the entire case, the defendants' position would be exceedingly weak. The facts are that in 1868 Fox & Williams were using the machinery described in the Gilbert patent of 1867, and his process, up to and including the deposit upon the tables. Fermenich & Williams were also using the same part of the process.