

YODER v. MILLS.¹

(Circuit Court, E. D. Pennsylvania. October 28, 1885.)

PATENTS FOR INVENTIONS—PRIORITY—INFRINGEMENT—COMBINATION PATENT.

The employment of mechanical skill to construct a machine in accordance with ideas furnished by another gives no right to the invention. The entire merit is in him whose inventive suggestiveness conceived the invention.

In Equity.

William A. Redding, for complainant.

M. Daniel Connolly, for respondents.

MCKENNAN, J. The object of this suit is a patent to Lorenzo T. Yoder for an invention relating to the manufacture of candy, dated December 4, 1883, and numbered 289,488. The patent contains four claims, but no evidence is produced to show any infringement of the first two. The third and fourth claims are the only ones touching which there is any contest. They are both for combinations of mechanical devices, and differ only in that, to the elements specified in the third claim, is added a "cover, A," of peculiar construction, and thus the fourth claim is constituted.

Nor is there any substantial controversy between the parties upon the question of infringement. It is clear that the machine made by the defendants is, in every essential feature, identical with that described in the patent.

The only contested inquiry in the case involves the right to the invention itself. All the evidence exhibited relates to it. Both parties claim the merit which the patent apparently accords to the complainant, and, without discussing the evidence, it is enough for us to say that, in view of the decided preponderance of the proofs, it is justly devolved upon him. The conception of the invention belongs to him, and all that the defendants contributed was the necessary mechanical skill, furnished at his request, to embody it in an operative form. He did not lose the merit which is due to inventive suggestiveness, and devolve it upon the mechanic whose only function was to materialize it. *Watson v. Bladen*, 4 Wash. C. C. 582; *Blandy v. Griffith*, 3 Fisher, 609.

But some doubt may be entertained as to the right of the complainant to appropriate the combination covered by the fourth claim of the patent, treating it as an entirety. The cover, A, which is an indispensable constituent of the combination, was not devised by him, but was suggested and constructed solely by one of the defendants. Whether that claim, then, is enforceable against the defendants we do not deem it imperative on us to decide. We will, therefore, adjudge that the patent is valid in so far as the *third* claim is involved, that an injunction issue against the infringement of that claim, and that

¹ Reported by C. B. Taylor, Esq., of the Philadelphia bar.

the profits or damages accruing from the past infringement thereof be ascertained by a master; and a decree will be prepared accordingly.

BZZELL *v.* ANDREWS and others.¹

(Circuit Court, E. D. Pennsylvania. October 26, 1885.)

PATENTS FOR INVENTIONS—INFRINGEMENTS.

When a patent has been issued for an invention which consists in a peculiar arrangement of old elements or parts, it must be construed strictly, and the monopoly limited substantially to the special character of the parts and the particular organization described. A machine which may be forced to produce a similar result will not be regarded as an infringement if that was not the object of its construction.

In Equity.

Geo. S. Boutwell, for complainant.

Charles Howson, for respondent.

BUTLER, J. The first claim of the patent involved reads as follows:

"In combination with the abrading roller, G, the bearing roller, K, the pivoted roller-frame, I, I', I'', the set-screws, L, and the springs, M, said parts being constructed in the manner and for the purpose substantially as specified."

The charge of infringement relates to this claim alone.

The elements or parts named being old, the claim must be confined within narrow limits. The state of the art requires a strict construction, limiting the monopoly, substantially, to the special character of parts, and the particular organization, described. These parts are—*First*, the abrading roller; *second*, the bearing roller; *third*, the pivoted bearing roller-frame; *fourth*, the set-screws; *fifth*, the springs.

The character of the parts, and the organization, are aptly described in the specifications.

The design or purpose of the machine, as stated by the plaintiff, is "to enable the rough loose fibers upon the inner side of the tanned skins of animals to be easily and quickly removed, so as to leave the surface smooth, and not injure the leather;" and the machine itself is designated an "improved machine for whitening and shaving leather." The invention consists, as the plaintiff says, "in the means employed for pressing a skin in front of, and regulating its pressure upon, the abrading roller, substantially as and for the purpose stated." The several parts are constructed and combined, solely with a view to this end.

The mode of operation is described as follows: "The bearing roller is moved outward, until the skin can be passed over the same, with its inner side towards the abrading roller, after which the operator's foot is removed from the foot-bar, and the springs move this roller

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