

PHENIX CASTER Co. v. SPIEGEL and others.¹

TUCKER and others v. OGBORN and others.

(Circuit Court, D. Indiana. January 28, 1886.)

1. PATENTS FOR INVENTIONS—CONSTRUCTION OF CLAIM.

The combination covered by the patent in question accomplished no new result in mechanics, and differed from previous known combinations only in the construction of one or two of the parts, whereby, perhaps, a better but certainly not a different kind of result was accomplished than had been before effected. *Held*, that the patent must be limited to these details of construction.

2. SAME.

When an applicant for a patent acquiesces in the decision of the patent-office, that the novelty of his device consists merely in an improved construction of details, the claim cannot, by a liberal construction, be made to include anything else.

In Chancery.

C. P. Jacobs, for complainants.

C. H. Burchard and Parkinson & Parkinson, for defendants.

WOODS, J. The action in each of these cases is for infringement of letters patent No. 190,152, granted May 1, 1877, to Alexander C. Martin, for "improvement in furniture casters," the plaintiffs claiming title by virtue of certain assignments of the patent. The infringement charged against Spiegel & Co. consisted in the possession and sale of an article known as the "Yale Caster," made at New Haven, Connecticut. The complaint against Ogborn and the Richmond Caster Company, in the other case, is for the manufacture, use, and sale of casters made under letters patent No. 273,278, granted March 6, 1883, to the Richmond Caster Company, as assignee of Ogborn.

Besides disputing the plaintiffs' title to the Martin patent, the defendants in each case deny infringement, and also the validity of that patent. The prior art, also, is shown by reference to numerous earlier patents, both American and English, which it is alleged anticipated the Martin combination entirely; or, at least, in so far as to impose upon it a strict construction, limiting it to the particular arrangement of parts described, and excluding any pretense of infringement by the defendants.

After a painstaking consideration of the evidence and accompanying models, the opinions of the experts, and the arguments and briefs of counsel, which upon both sides have been quite exhaustive, I am compelled to the conclusion in each case that infringement has not been shown, and consequently that the bills must be dismissed. The combination of the patent in question accomplished no new result in mechanics, and differed from previous known combinations, designed

¹ Reported by Charles C. Linthicum, Esq., of the Chicago bar.

for the same and like purposes, only in the construction of one or two of the parts, whereby, perhaps, a better but certainly not a different kind of result was accomplished than had been before effected. More than this cannot be justly claimed, as it seems to me. Besides, it appears that Martin's application for a patent was rejected and withdrawn two or more times; the examiner insisting, upon certain references, "that all applicant's novelty in entire device was expressed only by words 'as specified.'" In obedience to this ruling the claim, and perhaps the specifications, was modified, and the patent granted. It follows that the patent cannot now, by a liberal construction, be made to include anything so denied by the patent-office; and without this, the devices of the defendants cannot, I think, be said to infringe.

Bill in each case dismissed.

YODER v. MILLS and others.

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

PATENT LAW—INVENTOR HAS THE MERIT, NOT THE MACHINIST.

He who conceives the device must have the merit thereof, and enjoy the profit, not he by whose mechanical skill the conception was, at the inventor's request, put into tangible form.

In Equity.

William A. Redding, for complainant.

M. Daniel Connolly, for respondents.

MCKENNAN, J. The subject 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