

In Equity.

Amos Broadnax, for complainant.

E. Cooper Shapley, for respondent.

BUTLER, J. Starting with the usual presumption in favor of the plaintiff's patent, (269,519,) we do not find anything in the state of the art that would justify us in deciding it to be invalid. Each of the claims should receive a strict construction. Even in this view we think both of them are infringed by the defendant's device. As respects the first, infringement is scarcely denied; and as respects the second, we think it is plainly shown. A decree must be entered in the plaintiff's favor.

BURR v. KIMBARK.¹

(Circuit Court, N. D. Illinois. July 26, 1886.)

PATENTS FOR INVENTIONS—INJUNCTION—ESTOPPEL.

Where defendant had been a licensee under the patents on which he was sued, and at one time claimed to own them, and had dealt extensively in the patented articles, the infringement being clear, *held*, that he was hardly in position to deny the validity of the patents, and a preliminary injunction granted.

In Equity.

Munday, Evarts & Adcock, for complainant.

Coburn & Thacher, for defendant.

BLODGETT, J. This is a motion for an injunction restraining the defendant from the use of devices covered by patents issued to the complainant as follows: One dated September 23, 1873, for an "improvement in wagon bodies;" one dated February 27, 1877, for "an improvement in dash-boards;" and one dated February 20, 1877, for "an improvement in wagon-body irons." The infringement of these patents by the defendant is fully established by the proof filed in the case, and in fact is not denied by the defendant. The defendant, however, denies the validity of the patents, and the utility of the devices covered by them, and also denies complainant's title to the patents in question. The fact of infringement being established clearly by the proofs, and it also appearing by the proof that the defendant has been a licensee of the complainant for the use of these patents, and at one time claimed to be the owner of the patents, and entitled to their use, and that he has extensively dealt in the patented article, it would seem that defendant is now hardly in position to seriously question the validity of the patent. At least, under the

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

circumstances, I think the complainant is entitled to a preliminary injunction restraining the defendant from the use of devices covered by the patent until such time as the case can be fully investigated upon the final hearing.

BUSELL TRIMMER Co. and others v. STEVENS and others.¹

(Circuit Court, D. Massachusetts. September 14, 1886.)

1. PATENTS FOR INVENTIONS—SOLE TRIMMERS.

Letters patent No. 238,303, of March 1, 1881, to William D. Orcutt, for improvements in rotary cutters for trimming the edges of boot and shoe soles, held void for want of patentable novelty.

2. SAME—DOUBLE USE.

The application of an old and well-known form of blade from a hand tool for trimming sole edges to an old gear cutter, for trimming such edges, is merely a case of double use, and therefore not patentable.

In Equity.

Chauncey Smith and J. E. Maynadier, for complainants.

T. W. Porter, for defendants.

Before GRAY and COLT, JJ.

COLT, J. This suit is brought upon letters patent No. 238,303, issued March 1, 1881, to William D. Orcutt, one of the complainants, for improvements in rotary cutters for trimming the edges of boot and shoe soles. The invention relates to that class of rotary cutters consisting of a series of blades arranged about a common hub. The blades are described as having a flat front face, a flat rear face, and a top surface. Extending across the top surface there are a number of ridges, making a molded or fancy surface, which is the converse of the sole edge desired. The flat front faces of the blades are not radial, but are inclined so as to make each blade slightly hooked. This is said to be desirable for the purpose of cutting, as distinguished from scraping, the sole edge. The blades are ground on their front faces, and they are made quite thick, so that they may be ground back as they become dull. The top surface of the blades is slightly inclined, so as to give the necessary clearance in cutting. The first claim is as follows:

“A rotary cutter for trimming sole edges, the blades, *d*, of which are provided with flat front faces, *a*, and having their outer or peripheral ends, *c*, moulded throughout to a uniform shape, the converse of the desired shape to be given to the sole edge, and slightly eccentric to the axis of the cutter, substantially as described.”

The second claim gives more in detail the form of the front surface, by referring to the ridges; otherwise it is much like the first.

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