

perfected Appel machines, but of imperfect machines, in the experimental stage of development. Appel, the inventor, was employed by the Cleveland Paper Company, at Cleveland. October 17, 1878, the Cleveland Paper Company made a contract with the Lincoln Paper-mill Company, of St. Catherine's, Ontario, for two Appel machines. One of these machines was delivered in January, 1879, and the second in June of the same year. The testimony, however, is conclusive on the point that these machines made imperfect bags, and that it took more than a year after the receipt of the first machine to perfect it. Appel himself went to Canada to aid in perfecting the machine. As to the third Appel machine, called the Pettee machine, the evidence is by no means clear or satisfactory that it was in public use prior to September 29, 1879. Whatever use of this machine took place before this date seems to have been of an experimental character. If the machines sold or used prior to September 29, 1879, were not capable of working the process, then it cannot be said that the process invention was sold or in public use for more than two years prior to the application for the patent in suit. There was no real invention of the process until a machine was constructed to work the process. *Union Manuf'g Co. v. Lounsbury*, 2 Fish. 389.

Upon careful consideration, I am of opinion that none of the defenses urged against the validity of the Appel patent in suit are good, and that the patent should be sustained. Decree for complainants.

HUMPHREYS' HOMEOPATHIC MEDICINE Co. v. ARMSTRONG.

(*Circuit Court, S. D. New York. February 22, 1887.*)

COPYRIGHT—INFRINGEMENT—PRELIMINARY INJUNCTION—EVIDENCE.

On a motion for a preliminary injunction to restrain an infringement of a copyright, when plaintiff has shown a copyright of a book, and a copy of a book having the same title, and has shown that defendant is publishing a book containing extracts from it, but has failed to show that the copy shown is a copy of the book copyrighted, and defendant denies that it is, *held*, that there is no ground for a preliminary injunction.

In Equity.

B. P. Ryan, for plaintiff.

Thomas Winsor, for defendant.

WHEELER, J. This is a motion for a preliminary injunction to restrain an alleged infringement of a copyright. The plaintiff has shown a copyright of a book, and shown a copy of a book having the same title, and shown that the defendant is publishing a book containing extracts from it. But the plaintiff has not in any manner shown that the copy shown is a copy of the book which was copyrighted, and the defendant denies that it is. The plaintiff has therefore failed to show any ground for a preliminary injunction. Motion denied.

WESTERN & WELLS MANUF'G CO. v. ROSENSTOCK.

(Circuit Court, S. D. New York. February 22, 1887.)

PATENTS FOR INVENTIONS—INFRINGEMENT—SPECIFICATIONS.

Although the bustle manufactured and sold by defendant was made, for all practical purposes, in imitations of the bustle patented by complainant, except that it was of *rattan* instead of *wire*, yet, as complainant in his specifications limited himself to a bustle made of wire, he authorized the public to make and use bustles of any other material, and cannot complain of such use as an infringement of his rights.

In Equity.

Wayne MacVeagh and *Richards & Brown*, for complainant.
Livingston Gifford, for defendant.

WALLACE, J. The bustle which the defendant is manufacturing and selling is made, for all practical purposes, in imitation of the bustle of the complainant's patent, except it is of braided rattan instead of braided or plaited wire. But the complainant's patent is limited, by the express phraseology of its claims, to a bustle of wire, and it is impossible by construction to impart such a degree of elasticity to these claims as will enable them to embrace bustles made of any other material. The specification states that the "invention consists of a bustle composed of braided or plaited wire, in the form of a tubular section or sections, duly provided with means for securing it to the person of the wearer, or to a garment." The specification also states that to carry out the invention the patentee takes "wire of a suitable kind, (preferably tempered steel wire,) and braids or plaits it into a seamless tube." The specification then describes the details of form and arrangement, disclaims the application of plaited or braided wire as a dress stiffening merely, and concludes with the following claims:

"(1) A bustle comprising a tubular section or sections of braided or plaited wire, provided with means of attachment to a wearer or garment, substantially as set forth. (2) A bustle comprising a plurality of tubular sections of plaited or braided wire, secured to waistband or fastening device substantially as set forth. (3) The combination, with a waistband or attaching device, of a bustle-body composed of a seamless section or sections, of tubular form, of braided or plaited wire, substantially as set forth."

The doctrine of equivalents cannot be invoked to substitute a rattan bustle for the wire bustle of these claims. By limiting himself to a bustle made of wire, the patentee authorized the public to make and use bustles of any other material without an invasion of his exclusive right.

The motion to attach the defendant for contempt in violating the preliminary injunction heretofore granted is denied.