

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.

SHAVER v. SKINNER MANUF'G Co.

(Circuit Court, N. D. Iowa, C. D. January Term, 1887.)

1. **PATENTS FOR INVENTIONS—NOVELTY—COMBINATION OF OLD APPLIANCES.**
The facts that a patent for a device, consisting of a combination of appliances previously used separately, was granted after the device had been subjected to rigid scrutiny and comparison with previous patents by the patent-office examiners, and that the combination, although useful, did not appear to have been used or proposed before, *held* sufficient to sustain the patent, as against a defense of want of novelty.
2. **SAME—CO-OPERATION OF ELEMENTS.**
A transverse spring, included in a patented device designed to reduce the strain upon the side springs, reach, and head-block in wagons, *held* to aid in producing the general result aimed at, contrary to the claim made by the defendants in a suit for infringement, and the patent therefore not to be invalidated by its being included.
3. **SAME—INFRINGEMENT—SIMILAR DEVICE.**
The use of a device doing the same work, in substantially the same way, and accomplishing substantially the same result as another patented device, is an infringement of the patent.
4. **SAME—IMPROVEMENT.**
An improvement including a patented device or combination infringes the patent.
5. **SAME—IMPROVEMENT IN WAGON GEAR—UTILIZING DEVICE FOR ADDITIONAL PURPOSE.**
A patent upon a device for an improvement in wagon gear, designed to render the wagon gear elastic, and to relieve the strain upon the side springs, reach, and head-block, is infringed by using a device substantially the same, although the latter is utilized also to aid the wagon to track.
6. **SAME—SPECIFICATIONS—DISCLAIMER.**
It being expressly stated in the specifications attached to a patent that the claimant makes no claim to a certain combination patented by another, *held*, that the patent conferred no right to the use of such combination.

In Equity. Bill to restrain infringement of patent, and for an accounting.

Cummins & Wright, for complainant.

E. B. Soper, Graham & Cady, G. W. Dyer, and R. S. Iles, for defendants.

SHIRAS, J. In the bill filed in this cause, complainant avers that on the twenty-third day of August, 1881, letters patent were duly issued to him for an improvement in wagon gear, the object of which is stated to be to provide a device whereby the usual strain upon the side springs, reach, and head-block is avoided, and the wagon gear is rendered more elastic; the claim being stated in the following terms:

"In a wagon gear, the combination, with the wagon-box, A, transverse spring, K, and side springs, M, of the rocking rod or equalizer, N, provided with a forked end, *n*, and bolts, *h*, substantially as herein shown and described, whereby the wagon gear is made more elastic, as set forth."

The bill also avers that the defendant company is engaged in the manufacture and sale of wagons, in the construction of which complainant's patented combination is used, whereby his rights as patentee are in-