

HOFF and another v. IRON-CLAD MANUF'G Co.

(Circuit Court, S. D. New York. April 27, 1887.)

PATENTS FOR INVENTIONS—INFRINGEMENT—COAL-HODS.

The first claim of letters patent granted June 19, 1888, to Charles Hoff, for "the method of forming the body of a coal-hod, or other similar vessel, which consists, substantially as before set forth, in first forming a cone-shaped body from a suitable blank, then folding in the cone-end of said body in crimps to form the bottom," if not void for want of novelty, having been anticipated by the letters patent of Great Britain, No. 3,578, of November 3, 1873, granted to Haseltine, must be limited to a method consisting among other things in folding in the cone-end of the body to form the bottom of the vessels in a series of annular ribs or rings; and upon this construction of it the defendant does not infringe in forming a part of its coal-hod bottoms by folding in the sides and then closing the space between the ends with a cap; modifying, on rehearing, 27 Fed. Rep. 307.

In Equity. On rehearing. For original opinion see 27 Fed. Rep. 307.

After the original decision, the defendant obtained leave to amend its answer and an order for a rehearing on the ground of newly-discovered evidence, which consisted chiefly of the letters patent of Great Britain, No. 3,578, of November 3, 1873.

George J. Murray and A. v. Briesen, for complainants.

Ernest C. Webb and Frederic H. Betts, for defendant.

WALLACE, J. In view of the English patent to Haseltine of November 3, 1873, which has been introduced by the defendant, since it was permitted to amend its answer and have a rehearing of the cause, the first claim of the complainants' patent, if not void for want of novelty, can only be sustained by limiting it to one in which the method consists among other things in folding in the cone-end of the body to form the bottom of the vessel in a series of annular ribs or rings. It is doubtful whether the claim is capable of this interpretation. If it is not, the Haseltine patent anticipates it, because that patent clearly describes the method as applied to cylindrical vessels made of any suitable material. The method is the same whether applied to a cylindrically shaped body or a tapering or cone-shaped body. Without deciding that novelty is negatived; it suffices that upon the narrowed construction which it must receive in order to save it, the defendant does not infringe.

The bill is dismissed, with costs.

UNION EDGE SETTER Co. v. KEITH. SAME v. CUMMINGS and others.
SAME v. PROUTY and others.

(Circuit Court, D. Massachusetts. June 6, 1887.)

PATENTS FOR INVENTIONS—NOVELTY—SOLE BURNISHERS.

Letters patent No. 173,284, to Helms, for an improvement in machines for burnishing sole edges, consisting of a combination of the burnishing tool, rest for the face of the sole, and finger-rest, considered, and *held* void for want of novelty; the burnishing tool, with a guard, or, as Helms calls it, "rest for the face of the sole," being old, and a finger-rest being described in the prior patent to B. J. Tayman, of March 11, 1873.

In Equity.

J. E. Maynard, for complainants.

F. W. Porter and *Geo. L. Roberts*, for Keith and Prouty.

John L. S. Roberts, for Cummings.

COLT, J. The question of the patentability of the first claim of Helms' patent, No. 173,284, has been fully argued in the rehearing granted in the suit against Keith. The claim is for the combination of the burnishing tool, rest for the face of the sole, and finger-rest, in a machine for burnishing sole edges. It is not denied that the burnishing tool, with a guard, or, as Helms calls it, "rest for the face of the sole," is old, and a finger-rest is also found described in a prior patent granted to B. J. Tayman, March 11, 1873. The defendants contend that the first claim of the Helms patent is for a combination of old elements, each element having substantially the same function as in prior devices, and that no new result is produced, and that, therefore, the combination is not patentable under well-settled rules of law. While the argument of the plaintiff is ingenious, I do not think this position of the defendants has been successfully met.

The main ground on which the plaintiff seeks to sustain the patent is that Helms, by means of the guard and finger-rest, is able to present a shoe to a reciprocating tool, and that this is a very different thing from presenting a shoe to a rotary cutter or burnisher; in other words, that Helms was the first to solve the difficulty of how to present a shoe to a reciprocating rubbing tool, and that this required invention. But the practical question is, what means does Helms employ for this purpose, and are those means old and well known? Now, we find reciprocating tools for burnishing sole edges to be old. We find the Helms burnishing tool, with a guard, to be as old as the old hand tool; and we find the finger-rest clearly set out in the Tayman patent, and other forms of rests are referred to in prior patents. To employ an old hand tool on a reciprocating machine, in connection with a Tayman finger-rest, to accomplish an old result, is not a patentable combination. That the Tayman finger-rest is found on a rotary cutter or burnisher, and that rotary cutters can be used without the finger-rest, does not do away with the fact that we find described in the Tayman patent a finger-rest, and that,