

hot-air furnaces. That claim is as follows: "A furnace having secured thereto a detachable radiator, which is provided with one or more horizontal flues opening from a dome leading from the furnace, * * * substantially as and for the purposes set forth." The specifications provided that the radiator should be seated in a sand-cup joint, and secured to the furnace by means of a flange, slots, and lugs, which securely locked it in position, it being made detachable by bringing the lugs opposite the slots. The alleged infringing furnace consisted, also, of a detachable radiator and dome, but the radiator was not secured to the furnace by lugs and slots, or by any other equivalent means of securing it against displacement by gas explosion. The defendants claimed that, in view of the state of the art, and the language of the specifications, claim 1 of the letters patent should be limited to the elements used for securing the radiator to the furnace, and denied the infringement.

Edwin H. Risley and *Edward Wetmore*, for complainants.

William Townsend, (*Walter D. Edmonds*, of counsel,) for defendants.

BLATCHFORD, Justice. The words of claim 1 of the Goodenow & Owens patent, "a furnace having secured thereto a detachable radiator," "substantially as and for the purpose set forth," require, by reference to the descriptive part of the specification, that the radiator shall not only be detachable, but shall be secured by the flange, N, the slots, N', and the lugs, O, which, as the specification says, securely lock it in position, it being made detachable by bringing the lugs opposite to the slots. The state of the art also requires this interpretation of the claim. As the defendants' furnace contains no such means, and no equivalent means of securing the radiator in position, there is no infringement, and the bill must be dismissed, with costs.

EDWARD BARR Co., Limited, v. NEW YORK & NEW HAVEN AUTOMATIC SPRINKLER Co.

(Circuit Court, S. D. New York. August 18, 1887.)

1. PATENTS FOR INVENTIONS—RIGHT TO PRELIMINARY INJUNCTION—PRESUMPTION OF VALIDITY.

To entitle a complainant to a preliminary injunction, restraining the infringement of letters patent, there must be a special presumption in favor of the validity of the patents, arising from an adjudication in a federal court, acquiescence by the public, or a successful interference in the patent-office.

2. SAME—FIRE-EXTINGUISHER.

A preliminary injunction, restraining the infringement of letters patent No. 307,456, November 4, 1884, and No. 357,987, February 15, 1887, for automatic "fire-extinguisher," denied, as nothing appeared in the motion papers showing such a former adjudication, public acquiescence, or successful interference in the patent-office, between the parties or their privies.

8. SAME—PRESUMPTION—PARTIES TO—RESTRICTION OF—INTERFERENCE.

A presumption of validity arising from a successful interference in the patent-office only applies against the parties to the interference and their privies. It does not extend to litigants who do not make the infringing article under a grant from the interferer.

Philip R. Voorhees, for complainant.

Wetmore & Jenner, for defendant.

LACOMBE, J. This is an application for a preliminary injunction to restrain defendants from infringing two patents owned, in whole or in part, by complainant. Both these patents cover improvements in apparatus for the automatic extinguishment of fires. The first patent, No. 307,456, was granted November 4, 1884, to Frank Gray, and it is contended that one claim only of such patent is infringed. The other patent, No. 357,987, was granted February 15, 1887, to William S. Gray, (jointly with Frank Gray,) and it is contended that it is infringed in its entirety.

Before a preliminary injunction to restrain infringement of a patent is granted there must be a special presumption that the patent is valid. That presumption does not arise from the presentation of the unattended letters patent. It may be shown, however, by proof, that the patent has been suitably adjudicated in a federal court, and there held valid, or that its validity has been suitably acquiesced in by the public, or that the patent has successfully undergone an interference in the patent-office. When either of these facts appears, the validity of the patent will be presumed. Walk. Pat. § 665, and cases cited.

As to the first of these patents, (No. 307,456, to Frank Gray,) that namely for an independent pipe, there has been neither adjudication nor interference. The only proof of acquiescence is a general allegation in the bill; no facts bearing on this point are disclosed. Nearly three years have elapsed since its issue, but to what extent specimens of the patented article were made and sold by the patentees, or under their license, or, indeed, whether any one ever made or used such apparatus, does not appear. The complainant, therefore, has not made out such *prima facie* case as entitles him to a preliminary injunction under the first patent.

As to the second patent, there has been no adjudication, and the time since it was issued is so short that, without exceptional circumstances, (which are not shown,) it cannot be claimed that there has been general acquiescence. The complaint relies on a successful interference in the patent-office, to which one Bishop was a party. That such a successful interference is sufficient ground for presuming the validity of a patent is abundantly settled by authority, with one restriction; namely, that such presumption arises only against the parties to the interference, and their privies. In *Greenwood v. Bracher*, 1 Fed. Rep. 856; *Smith v. Halkyard*, 16 Fed. Rep. 414; and *Pentlarge v. Beeston*, 14 Blatchf. 354,—the defendants had been parties to the interference. In *Holliday v. Pickhardt*, 12 Fed. Rep. 147, the defendants were the representatives of Carø, who was a party to the interference, and whose product was before the patent-