

these head-boards an element in his combination. They were in his lounge for other purposes, and he saw fit to appropriate them to the purpose of these folding-rods, and has a patent upon that in combination with the other parts of this lounge; and, having elected to make these head-boards an element in his combination, he can only claim an infringement when the head-board, or some colorable substitute for them, is used.

It is, perhaps, unfortunate for this patentee that he did not see that any rest which would hold the folding-rods at the proper angle was just as useful as the head-boards, and it would hardly seem possible that a mechanic looking at a drawing or model of his lounge could have escaped the observation that the folding-rods might rest just as well upon the end-pieces of the frames as upon the head-boards; and therefore he might, if he had seen fit to do so, have covered the idea of resting the folding-rods upon either the head-boards or end-pieces of his frame. In other words, any rest which would hold the folding-rods at the required angle might have been properly considered as his invention, if he had claimed it; but complainant saw fit to take his patent, so far as this feature of his device is concerned, upon the head-boards as an essential element of his structure, and the court can only protect him in what he has so claimed.

I am therefore reluctantly impelled to the conclusion that this defendant does not use the complainant's patent, so far as it is covered by the second claim. The bill is therefore dismissed for want of equity.

AUSABLE HORSE-NAIL Co. v. NEW HAVEN HORSE-NAIL Co. and others.

SAME v. NEW HAVEN NAIL Co. and others.

(Circuit Court, D. Connecticut. August 22, 1887.)

1. PATENTS FOR INVENTION—MANUFACTURE OF HORSESHOE NAILS—RESTRICTION OF CLAIM—COMBINATIONS.

In an action for infringement of claim 1 of letters patent No. 139,332, granted the National Horse-Nail Company, as assignee of Robert Ross, May 27, 1873, for an improved machine for beveling and trimming horseshoe nails, consisting of a constantly revolving feed-screw, with a continuous and non-intermittent motion, *held* that, in view of the prior state of the art and the language of the specifications, the claim must be restricted to the particular elements of the combination therein, and that this claim was not infringed by a device for beveling and trimming horseshoe nails, which required an intermittent feed.

2. SAME.

In an action for infringement of claim 2 of letters patent No. 177,237, granted Nelson W. Goodrich, May 9, 1876, for an improved machine for beveling and trimming horseshoe nails, consisting of a horizontal and intermittent carrier ring, operating on a stationary ring, and provided with teeth projecting downward below its lower surface, serving to retain it in place, as well also for carrying and holding the nail blanks to the dies, *held* that, in view of the prior state of the art, and the language of the specifications, the

claim must be restricted to the particular elements of the combination therein, and that this claim was not infringed by a device for beveling and trimming horseshoe nails, which consisted of a horizontal, intermittent carrier ring, without such projecting teeth.

In Equity.

This is an action for alleged infringements of letters patent No. 139,332, granted to the National Horse-Nail Company, as assignee of Robert Ross, May 27, 1873, and No. 177,237, granted to Nelson W. Goodrich, May 9, 1876, for an improved machine for beveling and trimming horseshoe nails. Complainants charged that the alleged inventions in these two patents were capable of conjoint use in one machine, and that the defendants had so used them, and prayed for an injunction and an accounting.

The Ross patent described a machine for beveling and trimming the points of horseshoe nails, and contained eight claims of novelty; but, under the complainant's proof, the infringement was restricted to the first claim, which was for a combination of a constantly revolving feed-screw, and a bar parallel to it, and point beveling dies, so arranged that, while the operation of the dies was intermittent, their movement was so timed as to operate on the nail blanks without practically stopping them in their passage through the machine.

The Goodrich patent also described an improved machine for beveling and trimming horseshoe nails, containing three claims; but by complainant's proof the infringement was restricted to the second claim, which was for a carrier consisting of a horizontal and intermittent carrier ring, resting on a stationary ring, and provided with teeth projecting downward below its lower surface, serving to retain it in its place on the stationary ring, and also adapted for carrying and holding the nails to the dies. The defendants' machine consisted also of an intermittent carrier ring, operating in a horizontal plane, but was not provided with the downward projecting teeth, and the beveling machine or dies operated while the nail blanks were held at rest. The defendants, in their answer and proofs, claimed that, in view of the prior state of the art, and the language of the specifications, each of the claims in this controversy is restricted to the particular elements of the combination therein recited, and deny that they employ these particular elements.

Gifford & Brown, for complainants.

Mr. Mitchell and E. H. Rogers, for defendants.

BLATCHFORD, Justice. Only claim 1 of the Ross patent, No. 139,332, is alleged to have been infringed, and only claim 2 of the Goodrich patent, No. 177,237, is alleged to have been infringed. In view of the state of the art, and of the language of the specification of the Ross patent, claim 1 of that patent must be restricted to the particular elements of the combination therein recited. The constantly revolving feed-screw of the Ross patent, with its continuous and non-intermittent motion, cannot be used in combination with the devices of the defendants' machine, which require an intermittent feed, and perform their operations while the nail

blanks are at rest. In view of the state of the art, and of the language of the specification of the Goodrich patent, claim 2 of that patent must be restricted to the particular elements of the construction therein recited. The "carrier" of claim 2 is the ring of claim 1, which rotates, and is provided with the downwardly projecting teeth. The defendants' ring has no such teeth.

Each of the two bills is dismissed, with costs.

AUSABLE HORSE-NAIL CO. v. ESSEX HORSE-NAIL CO. and others.
(Two Cases.)

SAME v. SARANAC HORSE-NAIL CO. and others. (Two Cases.)

(Circuit Court, N. D. New York. August 22, 1887.)

Benj. F. Thurston and Livingston Gifford, for complainants.
Arthur v. Briesen, for defendants.

In these cases the same questions as in *Ausable Horse-Nail Co. v. New Haven Horse-Nail Co.*, ante, 92, were determined, and the same opinion filed.

CELLULOID MANUF'G CO. v. CELLONITE MANUF'G CO.

(Circuit Court, D. New Jersey. July 12, 1887.)

1. TRADE-MARK—NEWLY-COINED WORD.

The plaintiff was incorporated in 1871, by the name of the "Celluloid Manufacturing Company," and from that time used its corporate name in the manufacture and sale of various compounds of pyroxyline, which it designated as "celluloid," to distinguish it from similar compounds made by others. The word "celluloid" was originally coined and used to a limited extent by certain individuals who assigned their interests in the same to the plaintiff, when incorporated, and the plaintiff from that time stamped said word on the articles manufactured by it, and registered the word in the patent-office in 1873, and again in 1883. The defendant was incorporated in 1886, by the name of the "Cellonite Manufacturing Company," the corporators having been previously associated under a different name, and prepared to manufacture and sell compounds of pyroxyline under the name of "cellonite," stamped with said word; which compounds they had previously designated as "pasbosene," and by other names. The plaintiff thereupon filed its bill to restrain infringement of its trade-mark. *Held*, that the similarity was sufficient, under the circumstances, to mislead an ordinarily unsuspecting purchaser, and that the plaintiff was entitled to the relief sought.

2. SAME—CORPORATIONS.

In dealing with corporations, an unlawful imitation of a name is subject to the same rules of law which apply where the parties are unincorporated firms or companies.

3. SAME—ABANDONMENT.

Where a word is coined and used as a trade-mark, and stamped on articles manufactured from a certain substance, the fact that such word subsequently