

Rev. St.,) the court is not at liberty to consider it. The objection was taken before the examiner, and the defendants were thus notified at the earliest possible moment of the complainant's position, and yet no motion to amend the answer was addressed to the court.

The patent granted to Henry Hirsch, March 5, 1872, does not anticipate the complainant's patent or affect it in the remotest degree. The compound covered by the Hirsch patent consists of paraffine, bees-wax, and gypsum.

The complainant is entitled to the usual decree.

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BALDWIN v. CONWAY & Co., Limited.

(Circuit Court, S. D. New York. December 1, 1887)

PATENTS FOR INVENTIONS—INFRINGEMENT—INJUNCTION.

The plaintiff applied for a preliminary injunction to restrain the infringement of a patent. The patent had not been adjudicated on, and it was questionable if the invention was patentable. *Held*, that a preliminary injunction should not issue.

G. G. *Frelinghuysen*, for complainant.

John H. *Kitchen*, for defendant.

LACOMBE, J. This is an application for a preliminary injunction to restrain the defendant from infringing the patent for improvement in police nippers granted to the plaintiff July 7, 1874, and numbered 152,822.

It appears that police nippers consisting of a small chain of suitable length with a cross-bar attached at each end, similar to those used on chain halters and trace chains, were in use for many years prior to plaintiff's application. When nippers thus made were used, the links of the chain being twisted between the fingers of the policeman, pinched and hurt them, thus preventing his keeping as firm a hold as necessary. When, also, for any cause it became necessary to twist the chain more or less, in order to adapt the nippers to prisoners having small hands or wrists, the difficulty was increased. In the original nippers the chain is fastened to an eye which projects inwardly from the cross-bar about three-eighths of an inch. The plaintiff's alleged invention consists merely in elongating this eye to about four times its original length, thus bringing the chain entirely without the hand, and preventing the injury to the fingers from the movement of the links.

There has been no adjudication upon the patent; and, while it may be that the elongation of this eye is, as the plaintiff claims, a patentable invention within the decisions, and not obnoxious to the criticisms so forcibly expressed in *Atlantic Works v. Brady*, 107 U. S. 200, 2 Sup. Ct. Rep. 225, still its claim to be considered such rests on so slender a foun-

dation that, in the absence of an adjudication in its favor, a preliminary injunction should not issue.

The motion is denied.

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HAMMACHER and others v. WILSON.

(Circuit Court, D. Massachusetts. November 3, 1887.)

1. PATENTS FOR INVENTIONS—INFRINGEMENT—DAMAGES AND PROFITS.

Under a decree directing the master to take an account of the profits which the defendant had received from the infringement of the patented invention, and to report the damages, if any, in addition to the profits, the master found that the complainant's profits were in excess of his damages, and reported the amount of the profits realized by the defendant attributable to the patented invention. *Held*, that an allowance to the defendant of 10 per cent. of the entire profits, as manufacturer's profits, was reasonable, and that the complainant was not entitled to any damages in addition to profits.

2. SAME.

On an accounting for infringement, it appeared that, prior to a certain date, the defendant had had an exclusive license to manufacture and sell the patented article, paying a license fee of about 10 per cent. on the proceeds realized, and that subsequently the complainant had acquired a similar license, which continued in force to the bringing of the suit, paying a royalty of three cents per article on all sales. *Held*, that the evidence failed to show such an established license fee as would constitute a proper measure of damages.

3. SAME.

Whether or not the statement made on the accounting of the costs in the manufacture and sale of the patented article, and patented improvements thereon, presented a reliable basis for the calculation of profits made, and whether or not the master should not, therefore, have reported the license fee alone, as the proper amount of the complainant's recovery, are questions of fact for the master.

4. SAME—INFRINGEMENT—DAMAGES—MASTER'S REPORT.

Upon the hearing of exceptions to a master's report of profits, the defendant requested the court to direct the master to report the evidence necessary to a clear understanding of the exceptions. It appeared that the evidence was taken orally before the master, who only took notes, and that no request was made at the time that the testimony should be reported to the court. The master stated that it would be impossible to convey to the court a correct idea of all the testimony upon the accounting. *Held*, that the motion should be refused.

In Equity. On exceptions to master's report. See 26 Fed. Rep. 239.

*D. C. Linscott*, for complainants.

*I. D. Van Duzee*, for defendant.

COLT, J. This case now comes before the court on exceptions to the master's report. The master was directed to take an account of the profits which the defendant had received from the infringement of the patented invention, and to report the damages, if any, in addition to the profits, which the complainants have sustained since August 16, 1880. The master finds that the defendant has made and sold 4,092 pairs of the infringing pedal feet, and that the profits realized by the defendant