

devices which compose the first claim are, therefore, the step, elastic connection, and bolster, and the question is whether these devices, substantially, are not found in the Eureka spindle. I am of opinion that they are. It seems to me that both machines are substantially the same and operate substantially the same way. The fact that in the Eureka the step moves with reference to the bolster-bearing, and in the Birkenhead the bolster-bearing moves with reference to the step, is not such a change as should relieve the defendant from the charge of infringement.

The object of this invention was to obtain an elastic bearing. The tube is composed of the step, the elastic connection, and the bolster-bearing, as seen in Figs. 5 and 6 of the patent. To hold that the insertion of this tube in the machine so that the step becomes elastic instead of the bolster-bearing is no infringement because the claim says "elastic bolster," would, it seems to me, be giving too narrow a construction to the claim. Stress is laid upon the circumstance that, in the correspondence which took place with the patent office, Mr. Eddy, for the patentee, admitted that the step is practically non-elastic, the bolster being elastic only. But this was simply according to the fact, and we find that the whole object of this correspondence was to make the terms of the claims correspond with the terms used in the description of the structure in the specification. I am unable to see how this amounted to any such disclaimer on the part of the patentee as to preclude his recovery in the present case.

If the first claim is infringed, so is the second, which is like the first, with the addition of the oil reservoir, which is found of substantially the same construction in the defendant's device. The position of the defendant that the spindle tips less with a yielding step and fixed bolster than with a fixed step and yielding bolster does not seem to have been made out. There is quite a conflict of evidence as to the precise difference in the working of the Birkenhead and the Eureka spindles under the varying conditions of unbalanced loads, and in view of all the evidence, I think it safe to conclude that there is no marked distinction between the two. I am of opinion that the defendant's machine infringes the first and second claims of the Birkenhead patents, and that the complainant is entitled to recover accordingly. Decree for complainant.

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### HUNTINGTON v HARTFORD HEEL-PLATE Co.

(Circuit Court, D. Connecticut. February 9, 1888.)

#### PATENTS FOR INVENTIONS—ANTICIPATION—HEEL PLATES.

The Pyke English patent, as a whole, shows a theoretical and fanciful method of making shoes, but it shows a last, the edge of which is a steel plate formed with radially placed inclines surrounding the entire edge of the last. Nails or brads being forced through the sole and insole, "their points come against the inclines of the last, and are thereby clinched or riveted." *Held*, that the Pyke patent is an anticipation of letters patent No. 296,623, to Frederick Richardson, for securing heel plates to rubber shoes, as the latter should be construed.

In Equity. On motion to dissolve injunction.

This is a motion by the Hartford Heel-Plate Company, defendant, to dissolve the preliminary injunction granted to restrain the infringement of letters patent No. 296,623, to Frederick Richardson, for a die for securing heel-plates to rubber shoes. See *ante*, 281. The motion is based upon the alleged fact that English letters patent of 1851, No. 13,621, to James Pyke, which were found during an examination which was instituted after the hearing of the motion for an injunction, contain the radially placed inclined planes of the plaintiff's patent.

*Wm. Edgar Simonds*, for plaintiff.

*Charles E. Mitchell*, for defendant.

SHIPMAN, J. This is a motion to dissolve the preliminary injunction which was recently granted against the infringement of letters patent No. 296,623, to Frederick Richardson, for die for securing heel-plates to rubber shoes. The motion is based upon the alleged fact that the English letters patent of 1851, No. 13,621, to James Pyke, which were found during an examination which was instituted after the hearing of the motion for an injunction, contain the radially placed inclined planes of the plaintiff's patent.

The Pyke patent, as a whole, shows a theoretical and fanciful method of making shoes, but it also shows a last, the edge of which is a steel plate formed with radially placed inclines surrounding the entire edge of the last. Nails or brads being forced through the sole and insole, "their points come against the inclines of the last, and are thereby clinched or riveted."

The Richardson patent, as it was said in the former opinion, is a narrow one, and is limited to radially placed inclined planes, which serve to curve and clinch the ends of the prongs. I do not think that it can be successfully claimed that the Pyke patent does not show this feature, although it can probably be successfully insisted that the English invention, as a whole, was useless and was a failure.

It is said by the complainant that the inclines of the Pyke patent are all in the same direction, and that the Richardson patent should be construed to be for radially inclined planes, the inclines of which are placed in opposite directions. Inasmuch as the specification stated that "these inclines may also be placed, as shown in the die, D, (shown in Fig. 4,) so that each pair of pins are turned and bent towards each other and forced into the material;" and as no stress was placed upon the direction of the inclines in the statement of the invention; and as the claims did not limit the invention in this respect; and as this construction of the patent was not suggested in the affidavit of the plaintiff's expert, which was used upon the original motion,—I do not think that it is wise, upon the decision of this motion, to place such a construction at the *ex parte* suggestion of the plaintiff, in order to free the patent from the question of novelty. If this feature is of importance, the exact restriction which properly belongs to the invention can be placed upon it by a disclaimer.

A good deal was said upon the hearing of this motion in regard to

business grievances, at the instance of the plaintiff, which made a dissolution of the injunction important to the defendant. I do not propose to enter into the conflicting equities of this part of the case, but to look simply at the rights of the parties by virtue of patents.

I think that the Pyke patent is an anticipation of the Richardson patent, as the latter ought now to be construed, and that therefore the injunction should be dissolved.

WOLLENSAK *v.* SARGENT *et al.*, (three cases.)

(Circuit Court, D. Connecticut, February 20, 1888.)

1. PATENTS FOR INVENTIONS — PATENTABILITY — PRELIMINARY INJUNCTION — TRANSOM.

The invention described in letters patent No. 136,801, reissue No. 9,307, issued to John F. Wollensak, July 20, 1880, which merely provides for a proper support for the upright rod of a transom lifter, to prevent its being bent by the weight of the transom, consisting of a guide or loop beyond the rod's junction with the lifting-arm, and the extension of the rod to the loop, is of such doubtful patentability as to prevent the issuance of an injunction *pendente lite* against its infringement.

2. SAME—REISSUE—DELAY.

The reissue of a patent, which was merely an expansion of the original claim, was made eight years after the original grant. No excuse was offered for delay during the first four years. *Held*, that the delay invalidated the reissue; following *Wollensak v. Reiher*, 115 U. S. 96, 5 Sup. Ct. Rep. 1137.

3. SAME—INFRINGEMENT—TRANSOM.

Defendant's device for lifting transoms having the essential elements described in letters patent No. 191,088, issued May 22, 1877, to John F. Wollensak, to-wit, a long stationary guide, with holes and notches, a spring locking bolt fitting into the holes, a sliding block or head-piece carrying a spring bolt up and down the guide, and means for disengaging the locking device with one hand, and without changing the hold, is an infringement of such patent, following *Wollensak v. Reiher*, 28 Fed. Rep. 424.

4. SAME—EXTENT OF CLAIM—IMPROVEMENT.

The improvement in a transom lifter, embraced in letters patent No. 196,851, issued November 6, 1877, to John F. Wollensak, consisting in the substitution of a metal plate in place of guide-eyes, and the patentee having voluntarily limited his claim to a plate slotted at both ends, a lifter having a plate not slotted at both ends is not an infringement.

5. SAME—PATENTABILITY—JUDICIAL DECISION.

The patentability of the invention described in letters patent reissue No. 9,307, issued to John F. Wollensak, July 20, 1880, having been cast in doubt by the decision of the supreme court in the case of *Wollensak v. Reiher*, 115 U. S. 87, 5 Sup. Ct. Rep. 1132, in which the court refuses to decide that point, acquiescence in the validity of the patent before the decision does not bar one from afterwards contesting it.

6. SAME—PATENTABILITY—ADJUDICATION IN FAVOR OF.

In a suit for the infringement of a patent, the bill was demurred to upon the ground of the non-patentability of the invention. *Held*, in a subsequent suit for the same cause, that the overruling of the demurrer upon defendant's failure to appear and argue it, was not an adjudication in favor of patentability.

In Equity. On motion for preliminary injunction.