

every part of the device is rendered adjustable, so that it may be applied to a dress of any size or style, and fill it out perfectly, in order that trimming may be placed upon it." The patent describes both a waist form and a skirt form. The present suit is confined to the skirt form. The skirt form shows a series of upright ribs corresponding in general outline to the skirt of a lady's dress, surrounding a standard. The form is suspended from the outer ends of several series of braces, the inner ends of the braces being provided with adjusting mechanism for adjusting them up or down on a central standard, and thereby contract or expand the entire form, or by adjusting one or more sets of braces to contract or expand the form at different points. The defendants are charged with infringement of the second claim of the patent, which is as follows: "In combination with the standard, *a*, and ribs, *c*, the double braces, *e*², sliding blocks, *f*¹, *f*², and rests, *h*¹, *h*², substantially as and for the purpose set forth." This claim describes the hip portion of the skirt. In defendants' form there is a standard like Hall's, and surrounding ribs designed to impart shape to a dress, and so arranged as to be adjustable through their entire length. In the upper or hip portion of the form there are found the series of double or oppositely inclined braces, such as are seen in the Hall patent. Claim 2 is made up of a combination of five elements, and it is apparent that defendants' form has the standard, the ribs or their equivalent, and the double braces of the Hall patent. The question of infringement turns upon whether the defendants' form contains the sliding blocks, *f*¹, *f*², and the rests, *h*¹, *h*². In place of the upper sliding block and rest the defendants have a collar, which is fixed to the standard, and in place of the lower sliding block and rest they have substituted a nut and threaded standard. The outer ends of the braces are hinged to this fixed collar, instead of to a sliding block, and the inner ends of the braces are hinged to the nut in place of a sliding block. I am satisfied that these adjusting devices are substantially the equivalent of each other. A nut and threaded standard for adjusting the inner ends of hinged braces was a known equivalent for a sliding block and rest. This is shown by the patent granted Charles Franke, September 7, 1875. So the fixed collar in defendants' form must be considered the equivalent of the Hall block and rest. Assuming the upper rest in the Hall device to be provided with a thumb-screw, so as to enable it to be adjusted vertically on the standard, still, when once it is fixed, it does not differ from the fixed collar of the defendants' device. I regard this change made by the defendants as a formal one. Confining ourselves strictly to the second claim of the patent, it seems to me clear that the defendants' device is an infringement of this claim. There is nothing in the prior state of the art as exhibited in the record which can be called an anticipation of the Hall patent, though each of the elements of the second claim, with the exception, perhaps, of the ribs, is found to be old. I am of opinion that complainant is entitled to a decree, and it is so ordered. Decree for complainant.

KRAUS *et al.* v. FITZPATRICK *et al.*

(Circuit Court, S. D. New York. February 24, 1888.)

PATENTS FOR INVENTIONS—DESIGN PATENTS—CORSETS—PATENTABILITY.

The design patent No. 13,620, dated February 13, 1883, and granted to Frank Walton, being a design for corsets, readily distinguishable by ordinary persons from those of any prior design, is valid.

In Equity. On bill for injunction.

Bill for injunction by Leopold Kraus *et al.* against James G. Fitzpatrick *et al.*, for infringement of design patent No. 13, 620, dated February 13, 1883.

Robert H. Duncan, for orators.

Lawrence E. Sexton, for defendants.

WHEELER, J. This suit is brought upon design patent No. 13,620, dated February 13, 1883, and granted to Frank Welton, assignor to the orators, to run seven years, for a corset. The principal features of the design, as specified in the claim, are a ribbed band at the lower edge, extending from the extreme front up over the hip, and down to the rear portion, and a series of ribs each side of the central hip line, beginning at the top and extending downward, and diverging onto the ribbed band. The shape given to the corset by extending the lower edge up over, instead of around, the hip, appears to add to the utility of the corset as an article of manufacture, as well as to its appearance. The patent is not, however, for an article of manufacture as such, which would have to be taken out under other provisions of the law than those relating to design patents; but is merely for the new appearance given to the article by constructing it according to the design. But the fact that a corset made according to the design would have that utility would not appear to make the design any the less patentable, if in itself, as a design, it was sufficiently new. The test of infringement of a design patent appears to be the existence of such similarities as will lead ordinary persons to think the articles in question are the same. *Gorham Co. v. White*, 14 Wall. 511; *Jennings v. Kibbe*, 20 Blatchf. 353, 10 Fed. Rep. 669. The test of novelty would, therefore, appear to be the existence of such differences between articles embodying the patented design and those existing before as would be recognized by the same class of persons. *Lehnbeuter v. Holthaus*, 105 U. S. 94. The nearest approach to the design of this patent shown by the evidence, and the one most relied upon by the defendants, is that shown in the patent to Paul T. Hertzog, No. 12,773, dated February 21, 1882. That has the ribbed band at the lower edge, but not extending up over the hip so far; and it does not have the series of ribs, distinguishable from the rest, on each side of the hip line. Most of the special features of this design are to be found, separately, in prior things, but they are nowhere combined so as to make such an effect as a whole; and that is what is to be looked at. *Perry v. Starrett*