

bury Button") has quite as good a periphery support as the complainant's. Indeed, when the wire constituting the thread-bar and periphery of this button is inclosed within the disks, it is difficult, if not impossible, to distinguish it from the complainant's, even in form, except that the bar is bent at the center, which, as we have seen, is immaterial. Woodbury's patent contemplates and suggests a covering for the wire, and this of course may be of the metallic disks then in use, or other material. The Thalheimer button is identical with the complainant's even in form, its thread-bar is straight, and the ends fitted to the periphery. While Mr. Thalheimer testifies very positively to its manufacture prior to the date of complainant's patent, a question is raised respecting his accuracy. The view we entertain renders a decision of this question unnecessary. If the complainant was not actually anticipated, it is very clear, we think, that what he did does not embrace invention. He simply straightened the bar of the old glove button, and possibly exercised greater care to make its length correspond with the diameter of the disks, or straightened the bar of the Woodbury button, and added a covering, as suggested by that patent. The testimony and argument directed to the points of cheapness, lightness, and strength (elsewhere than at the periphery) are aside of the question involved.

As we hold the claim to be invalid, the question of infringement need not be considered. The bill must be dismissed with costs.

CELLULOID MANUF'G Co. v. ARLINGTON MANUF'G Co.

(Circuit Court, D. New Jersey. January 10, 1888.)

PATENTS FOR INVENTIONS—ACTIONS FOR INFRINGEMENT—PRELIMINARY INJUNCTION.

Defendant corporation did not deny infringement, but claimed that it had ceased to infringe before bill filed, and did not intend to renew the use of the infringing machine which still remained in its possession. *Held*, the patent having been adjudicated to be valid, that a preliminary injunction should be granted.

In Equity. Bill for infringement of letters patent No. 199,908, of February 5, 1878, to John W. Hyatt, assignor to the Celluloid Manufacturing Company, for the manufacture of celluloid and other plastic compositions. On motion for preliminary injunction.

Rowland Cox, for the motion.

John R. Bennett, contra.

WALES, J. The patent has been held to be valid.¹ The defendant admits, or at least does not deny, infringement, but claims that it had ceased to infringe before the bill was filed, and does not intend to renew

the use of the infringing machine. It still continues in possession of all the contrivances and appliances to enable it to violate the patent, but promises not to use them for that purpose. This is a naked and unsupported promise. The practice of the courts in such cases is well settled. In *Woodworth v. Stone*, 3 Story, 752, it was decided that "a bill for an injunction will lie, if the patent-right is admitted or has been established, without any established breach, upon well-grounded proof of an apprehended intention on the part of the defendant to violate the plaintiff's right." *A fortiori* should an injunction issue where, as in the present case, the defendant has already infringed, and nothing but a mere promise stands in the way of its doing so again. The general rule is stated in *Walk. Pat. § 676*, and concludes as follows: "Indeed, no injunction can be averted by affirmative evidence that the defendant has ceased to infringe, even though coupled with a promise that he will infringe no more." See, also, *Curt. Pat. § 422*, which gives the same rule, only in different language. Further authority on the same point may be found in *Chemical Works v. Vice*, 14 Blatchf. 179, and in *Losh v. Hague*, 1 Webst. Pat. Cas. 200. If the defendant intends in good faith to keep its promise, the injunction will not harm it; otherwise, it will be a security for the plaintiff that its rights will not again be invaded. The plaintiff is entitled to a decree.

MICHAELIS *et al.* v. ROESSLER *et al.*

(Circuit Court, D. New Jersey. January 18, 1888.)

1. PATENTS FOR INVENTIONS—EXTENT OF CLAIM—PROCESS FOR MANUFACTURING CHLOROFORM.

The second claim of letters patent No. 322,194, of July 14, 1885, to Gustavus Michaelis, for "the manufacture of chloroform and purified acetates," is as follows: "The production of chloroform from the liquid products resulting from the decomposition of crude acetates at high temperatures by subjecting said liquid products to the action of a hypochlorite, and removing the chloroform therefrom by distillation, substantially as described." The patent contained no reference to the color or degree of crudeness of the acetates, and stated that the brown acetates were preferable for the purpose. *Heid*, the gray acetates being distinguishable, as respects crudeness, from the brown only in a slight degree, that they were embraced in the term "crude acetates."

2. SAME—INFRINGEMENT.

Gray acetates being embraced in the term "crude acetates," as used in the second claim of letters patent No. 322,194, of July 14, 1885, to Gustavus Michaelis for "the manufacture of chloroform and purified acetates," their use in the production of chloroform in combination with a method of distillation substantially the same as that described in the Michaelis patent is an infringement thereof.

3. SAME—VALIDITY—INACCURACIES IN SPECIFICATIONS.

There being no room for doubt that Gustavus Michaelis (letters patent No. 322,194, of July 14, 1885) was the first to discover that chloroform could be advantageously obtained from the liquid products resulting from the decomposition of crude acetates of lime by the method of distillation described in the patent, and it being very clear that the production of chloroform was greatly cheapened by that discovery, the patent is not invalidated by the facts that