

EMERSON *et al.* v. HUBBARD *et al.*

(Circuit Court, W. D. Pennsylvania. March 2, 1888.)

## PATENTS FOR INVENTIONS—ASSIGNMENT—RIGHTS OF ASSIGNEE—PRIOR INFRINGEMENTS.

Mere intention, not signified in an assignment of letters patent to include therein claims for infringements previously committed, will not suffice to invest the assignee with any equitable title to those claims; and such assignee, after bill filed, in a suit for infringement brought by him, having procured an assignment of said claims, will not be permitted in that suit to set up by a supplemental bill this post assignment.

## In Equity.

*Sur* motion for leave to file a supplemental bill, which was exhibited to the court.

*Wm. L. Pierce*, for complainants.

*W. Bakewell*, for respondents.

ACHESON, J. It seems to be quite plain that the assignments set up in the original bill transferred the title to the letters patent only, and did not carry the claims for previous infringements. *Moore v. Marsh*, 7 Wall. 515. Now, giving to the allegations contained in the proposed supplemental bill the fullest effect, the plaintiffs' alleged equitable title to those claims rests upon the mere intention of the parties to those assignments thereby to transfer them. But no such intention appears on the face of the instruments. At best it is a case of naked intention verbally expressed, but not carried out. No particulars are stated, or facts disclosed, from which the plaintiff might deduce any equitable title. The assignments of the patents to the plaintiff was for the nominal consideration of five dollars. In fine, it is not shown to the court that the plaintiff had the shadow of right in or to the claims in question until nearly five months after this suit was brought, when assignments thereof were executed. These post assignments the plaintiff seeks, by means of a supplemental bill, to have "considered as included in the cause of action as set forth in the original bill, and more particularly as a part of complainant's title, as set forth in paragraph 12 thereof." But a plaintiff cannot support a bad title by acquiring another after the filing of the original bill, and bringing it in by supplemental bill. 2 Daniell, Ch. Pr. 1594, note 2; *Tonkin v. Lethbridge*, Coop. Ch. 43; *Pilkington v. Wignall*, 2 Madd. 240; Story, Eq. Pl. § 339. Being of opinion that this motion should be disallowed for the reasons above indicated, I do not think it necessary to consider the defendants' further objections to the motion. The motion is denied.

## LIGOWSKI CLAY-PIGEON Co. v. AMERICAN CLAY-BIRD Co.

(Circuit Court, S. D. Ohio. March 6, 1888.)

## 1. PATENTS FOR INVENTIONS—CLAY-BIRD TRAPS—INFRINGEMENT.

The only object of the invention, as stated in the specification, covered by letters patent No. 252,230, of January 10, 1882, to the Ligowski Clay-Pigeon Company, as assignee of George Ligowski, for "target traps," is to furnish a trap especially adapted for throwing the saucer or cup shaped flying target formed as a thin shell of clay or similar material, suitably hardened, and slotted at or near its periphery, and provided with a detachable tongue, embraced by letters patent No. 231,919, of September 7, 1880, to said Ligowski. In the trap used by the American Clay-Bird Company, the clamp of the trap-lever is in form and construction so unlike that of the Ligowski patent that, while it can be used for throwing a saucer or cup shaped target, it cannot be made to throw the targets described in the Ligowski specification in the manner set-out in his patents; nor, on the other hand, can the Ligowski clamp be made to throw the targets thrown by the American Clay-Bird Company's trap, unless they are provided with tongues, or their equivalents. *Held*, that the clamp of the American Clay-Bird Company's trap-lever was the equivalent of that of Ligowski, and being so, the fact that it might be an improvement did not render its use any the less an infringement.

## 2. SAME—LETTERS No. 252,230—INVENTION.

The first claim of letters patent No. 252,230, of January 10, 1882, to the Ligowski Clay-Pigeon Company, as assignee of George Ligowski, for target traps, is as follows: "The combination, in a target trap, of a spring-lever, a rack, and an adjustable tension-arm carrying the trigger, with which latter is engaged said lever, as herein described." The holding clamp for grasping the target is omitted from the claim. The target referred to is that covered by letters patent No. 231,919, of September 7, 1880, to said Ligowski. *Held*, that the omission of the holding clamp did not invalidate the claim, that being susceptible of ready application in any desired form by a skilled mechanic, and that the limited combination in the claim was not anticipated by the patents to Bogardus, Call, and others in evidence; the saucer shape of the Ligowski target giving it, when projected horizontally or at an angle by the trap, a rapid rotation upon a vertical or inclined axis, and the concavity, which imprisoned the air, causing the target to rise in a curve with a downward convexity, like that followed by a bird rising from its cover; a result the exact reverse of that secured by previously known projectiles, and insuring, in addition, a gradual descent.

## 3. SAME—INFRINGEMENT.

The second claim of the same patent is for "the combination of spring-lever, head, segmental rack, adjustable tension-arm and trigger, as herein described." The third claim is for "the combination in the target trap of the head, having the spring portion of the lever coiled about it, the jointed standards, the notched knuckles, and the bolts and nuts connecting the same." The various styles of traps pictured in the circulars and advertisements of the American Clay-Bird Company, offered in evidence, showed a segmental rack in the same combination, and serving the same purpose, as that described in Ligowski's second claim. *Held*, that the second and third claims were valid, and infringed by said traps; every element of the third claim appearing in said traps, save for the substitution of the old and equivalent ball and socket joint for the knuckle joints.

## 4. SAME.

The fourth claim is for "the combination, in a target trap, of a clamp consisting of the bar, pivoted lever, spring, seven-threaded rod, and adjustable nut, as described." *Held* valid.

## 5. SAME—WANT OF NOVELTY.

The fifth claim of letters patent No. 252,230, of January 10, 1882, to the Ligowski Clay-Pigeon Company, as assignee of George Ligowski, for target traps, covers nothing more than a spring-latch. *Held* invalid, as not displaying invention, and the device being so old and well known that the court would take judicial cognizance of it without notice or proof.