

FALK v. HOWELL *et al.*

(Circuit Court, S. D. New York. March 31, 1888)

COPYRIGHT—INFRINGEMENT—BILL TO ENJOIN—AMBIGUITY.

A bill to enjoin the infringement of an alleged copyright, alleging disjunctively, in the language of Rev. St. U. S. § 4956, (which prescribes the prerequisites to the obtaining of a copyright,) that orator "before publication delivered at the office of the librarian of congress, or mailed to said librarian, a copy of the title of said photograph," is ambiguous, and tenders no issue.

In Equity. On bill for injunction.

I. N. Falk, for complainant.

Arnoux, Pitch & Woodford, for defendant.

LACOMBE, J. This is an application for a preliminary injunction to restrain the infringement of an alleged copyright of a photograph. The statute (Rev. St. U. S. § 4956) provides that "no person shall be entitled to a copyright unless he shall, before publication, deliver at the office of the librarian of congress, or deposit in the mail, addressed to the librarian of congress, * * * a * * * copy of the title of the * * * article * * * for which he desires a copyright, * * * nor unless he shall also, within ten days from the publication thereof, deliver at the office of the librarian of congress, or deposit in the mail, addressed to the librarian of congress, * * * two copies * * * of such article." The complainant in this case does not show that he delivered a copy of the title at the office of the librarian, nor that he deposited the same in the mail, addressed to such officer; neither does he show that he delivered the two copies required by the statute, at such office, nor that he deposited the same in the mail, addressed as therein required. The averments in the bill referring to these statutory requirements are as follows:

"Before the publication * * * your orator * * * delivered at the office of the librarian of congress, or deposited in the mail, addressed to the librarian of congress, at Washington, D. C., a printed copy of the title of said photograph, * * * and * * * also within ten days from the publication thereof * * * delivered at the office of the librarian of congress, or deposited in the mail, addressed to the librarian of congress, at Washington, D. C., two copies," etc.

This is alternative pleading. It is ambiguous and tenders no issue, and is not a sufficient averment of compliance with the statutory requisites. The motion is denied, with leave to renew upon other papers.

VAN CAMP v. MARYLAND PAVEMENT CO.

(Circuit Court, D. Maryland. April 2, 1888.)

PATENTS FOR INVENTIONS—EXTENT OF CLAIM—ASPHALT PAVEMENT.

In an action for infringement of letters patent No. 174,648, issued March 14, 1876, to Aaron Van Camp, for improvement in concrete pavements, it appeared that the invention consisted in the use of crushed and pulverized rock, 60 per cent. thereof finely crushed, and 40 per cent. crushed more coarsely, heated and saturated with dead oil, crude petroleum, or the residuum of petroleum mixed with natural asphaltum previously dissolved to a pitch by crude petroleum, the object sought being to obtain the proper proportions necessary to form a hard and durable concrete; that there were numerous older patents using the same ingredients in various proportions for the attainment of the same end; that defendant did not use the materials in the specified proportions, and altogether omitted the previous saturation of the crushed rock with oil. *Held*, that, in view of the previous state of the art, the invention could not be considered as a new composition of matter, but as a mere process, in which the specified proportions of the materials, and the saturation with oil, were essential features, and that defendant, not having used them in his process, had not infringed the patent.

In Equity. On bill to restrain infringement of letters patent.

Aaron Van Camp brought a bill against the Maryland Pavement Company to restrain the alleged infringement of letters patent No. 174,648.

John G. Bennett and *Arthur Stump*, for plaintiff.

Brown & Brune, *Upham & Proctor*, and *Strawbridge & Taylor*, for defendant.

MORRIS, J. The complainant seeks relief for the alleged infringement by defendant company of patent No. 174,648, granted to complainant March 14, 1876, as the inventor of an improvement in concrete pavements, the specifications and claim of which are as follows:

"To all whom it may concern: Be it known that I, Aaron Van Camp, of Washington city, in the county of Washington and District of Columbia, have invented certain new and useful improvements in concrete pavements for streets and sidewalks; and I do hereby declare that the following is a full, clear, and exact description thereof, which will enable others skilled in the art to which it appertains to make and use the same. I take crushed and pulverized rock, sixty per centum of the finer pulverized portion, and forty per cent. of the coarser. The crushing and pulverizing process should be continued until the even or naturally smooth surface of the stone is entirely destroyed. The object of crushing and pulverizing the rock is to obtain sharp angles and rough surfaces. I use the blue limestone; but it is evident that any hard rock; boulder, or gravel, when crushed and pulverized, will answer my purpose. The rock thus crushed and pulverized I subject to heat, so as to expel the moisture. I then add dead oil, crude petroleum, or the residuum of petroleum, until the rock becomes perfectly saturated. While thus heated, I add about twenty per cent. of natural asphaltum,—Cuban, Trinidad, or California,—that has been previously dissolved by crude petroleum, or the residuum of petroleum, until it has assumed the consistency of bitumen or pitch. I have found by experience that by saturating the crushed pulverized rock, as above stated, it will absorb more asphaltum, and produce a more perfect concretion and cementation. What I desire to claim and secure by letters patent is: In a concrete pavement, the use of crushed and pulverized rock,