

and the lever are to be eliminated from the claim, and it is to be construed as covering only the substitution of a single padlock staple rotating with the shaft for the three fixed, but otherwise precisely similar, padlock staples of Lukens, there is no substantial invention shown; nothing above ordinary mechanical skill; and under the later decisions the patent (as to this claim) cannot be sustained. *Atlantic Works v. Brady*, 107 U. S. 192, 2 Sup. Ct. Rep. 225; *Hollister v. Manufacturing Co.*, 113 U. S. 59, 5 Sup. Ct. Rep. 717; *Thompson v. Boisselier*, 114 U. S. 1, 5 Sup. Ct. Rep. 1042; *Pomace-Holder Co. v. Ferguson*, 119 U. S. 336, 7 Sup. Ct. Rep. 382.

The junior patent, No. 273,450, is to be similarly construed. In view of the state of the art, it can only be sustained when closely restricted to the specified elements, each of them being held material to the claim. When so construed, the variances found in defendants' stand—notably the vertical motion of the shaft, G, and the entire omission of the additional shaft, E, with its spring and recess—are such as to relieve the structure from the charge of infringement.

The bill of complaint should be dismissed, with costs.

HAMMERSCHLAG MANUF'G CO. v. SPALDING *et al.*

(*Circuit Court, D. Massachusetts.* November 17, 1886.)

PATENTS FOR INVENTIONS—INFRINGEMENT—WAXED PAPER.

In view of the broad construction given to the fifth claim of reissued letters patent No. 8,460, of October 22, 1878, to Siegfried Hammerschlag, for a process of making waxed paper by machinery, in *Hammerschlag v. Wood*, 18 Fed. Rep. 175, and other similar decisions, *held*, that the "Spaulding Machine" was an infringement, and that a preliminary injunction should issue.

In Equity. On motion for preliminary injunction.

The bill was filed to enjoin an alleged infringement of reissued letters patent No. 8,460, of October 22, 1878, (original No. 193,867, of August 7, 1877,) to Siegfried Hammerschlag, for a process of making waxed paper by machinery. The fifth claim of the reissue is as follows:

"The method herein set forth of waxing paper, consisting in spreading the wax upon the surface, heating the paper from the opposite side to spread and fuse the wax into the fabric of the paper, removing the surplus wax, and remelting and polishing the wax upon the paper, substantially as set forth."

Frost & Coe and *Livermore & Fish*, for complainants.

H. D. Hadlock, *Thomas Weston, Jr.*, and *Lorenzo Dow*, for defendant.

COLT, J. In view of the broad construction given to the fifth claim of the Hammerschlag patent by various courts, and especially in view of

¹The opinion in this case reached us but recently. It is now published in connection with the opinion on final hearing, reported *infra*.

the decision of Judge LOWELL in the *Wood Case*, 18 Fed. Rep. 175; I am clearly of opinion that the complainant is entitled to a preliminary injunction. The Spaulding machine manifestly comes within the scope of these decisions. Differences of such a class as exist between the Spaulding and Hammerschlag machines have been held not to relieve a party from the charge of infringement. Injunction granted.

HAMMERSCHLAG MANUF'G CO. v. SPALDING *et al.*

(Circuit Court, D. Massachusetts. May 8, 1888.)

1. PATENTS FOR INVENTIONS—REISSUE—WAXED PAPER.

Claim 5 of reissued letters patent No. 8,460, of October 22, 1878, to Siegfried Hammerschlag, for a process of making waxed paper by machinery, is identical with the second claim of the original, viz., No. 193,867, of August 7, 1877, and the reissue was applied for within 14 months after the date of the original. *Held*, the validity of the reissue never having been questioned in any of the numerous prior decisions sustaining the patent, the claim should be sustained.

2. SAME—PATENTABILITY—ANTICIPATION.

Claim 5 of reissued letters patent No. 8,460, of October 22, 1878, to Siegfried Hammerschlag, for a process of making waxed paper by machinery, *held* not anticipated by Edison. Following *Hammerschlag v. Wood*, 18 Fed. Rep. 175.

In Equity. On final hearing.

Frost & Coe and *Livermore & Fish*, for complainants.

H. D. Hadlock, *Thomas Weston, Jr.*, and *Lorenzo Dow*, for defendant.

COLT, J. The fifth claim of the Hammerschlag reissued letters patent No. 8,460 has been sustained by the court in this circuit, and in a number of other contested cases in several other circuits. *Hammerschlag v. Wood*, 18 Fed. Rep. 175; *Same v. Scamoni*, 7 Fed. Rep. 584; *Same v. Garrett*, 9 Fed. Rep. 43; *Same v. Bancroft*, 32 Fed. Rep. 585. In the present case, after an exhaustive hearing on the motion for a preliminary injunction, I held that the defendants' machine came within the scope of these decisions. I see no reason to change the view then taken. I agree with Judge GRESHAM, in the case of this complainant against Bancroft, "that a proper regard for uniformity of decision, especially in litigation of this character, should incline other courts to hold the patent valid against the same or substantially the same defenses until all controversy over its validity is put at rest by a decree of the supreme court of the United States." The new defenses which it is contended are raised in this case can hardly be said to be new. It is said that the fifth claim of the reissue is void. This claim is identical with the second claim of the original patent, and the reissue was applied for within 14 months after the date of the original. The validity of the reissue has never been questioned in prior decisions sustaining the patent, and, in spite of the elaborate argument of defendants' counsel, I deem it my duty to uphold