

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.

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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

this claim. The defendants have the right of appeal to the supreme court; and, before adjudging a patent to be bad, which has been sustained in this and other circuits, the court should feel convinced beyond doubt that those decisions were wrong. The alleged anticipation of Edison was in substance before Judge LOWELL in the *Wood Case*, and this testimony cannot be said to be new in the *Hammerschlag* litigation, and therefore it affords no sufficient ground for successfully attacking the validity of the patent. A decree should be entered for complainant. Decree for complainant.

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ANSONIA BRASS & COPPER CO. v. ELECTRIC SUPPLY CO.

(Circuit Court, D. Connecticut. May 18, 1888.)

PATENTS FOR INVENTIONS—PATENTABILITY—INVENTION—REHEARING.

Petitions for rehearing the above-entitled cause for infringement of letters patent No. 272,660, dated February 20, 1883, to A. A. Cowles, for an improvement in insulated electric conductors, (32 Fed. Rep. 18.) denied, upon the ground that the patent is void for want of patentable invention.

In Equity. Bill to restrain an alleged infringement of letters patent No. 272,660, of February 20, 1883, to Alfred A. Cowles, for an improvement in insulated electric conductors. The bill having been dismissed, (32 Fed. Rep. 81,) complainant now moves for a rehearing.

*Joshua Pusey* and *Chas. E. Mitchell*, for the motion.

*Morris W. Seymour* and *Benj. F. Thurston*, *contra*.

SHIPMAN, J. These are two petitions for a rehearing of the above-entitled cause, which was decided September 3, 1887, (32 Fed. Rep. 81.) The first is based upon an error of the court upon the record, in coming to the conclusion that paint was so applied to the Holmes wire, which preceded the Cowles wire, as to produce a non-combustible insulator. The second is based upon alleged newly-discovered evidence, which tends to prove that the Holmes covering was not non-combustible. The allegations in the second petition, which explain why the testimony was not obtained before the original hearing, are an insufficient foundation upon which to base an application for a rehearing, but the strength of the case adequately appears upon the first petition with the accompanying affidavits, which throw light upon the proper interpretation of Edwin Holmes' testimony. The petitioners do not deny that Holmes, as early as in 1860, insulated his wire by the process which he described in his testimony, and which is recited in the opinion, viz., by covering the wire with a double coat of thread, each layer being successively painted. He also used two other processes,—by one he covered the wire with two layers, and then painted; and by the second he painted a single thread covered, wiped off the surplus paint, dried the coat, and covered the wire with another layer of thread. The first process, which I will call the Holmes method, produced the best insulation. The affidavits show