

port. This ruling was accepted as a "wholesome and salutary one." Within the past 10 years, however, numerous decisions in this and other circuits have accepted certain determinations of the patent-office as the equivalent of a decision on the merits by a federal court. Whether, in view of the present current of decision in the supreme court, and of the character of many of the patents which are presented for adjudication, these determinations should hereafter be accorded the same weight as heretofore, need not now be considered. It seemed sufficient, for the purposes of the motion for a preliminary injunction, to show that all the patent-office determinations up to this time accepted by the courts had been such as a statute required that office to make. The denial of complainants' motion in the case at bar was but a refusal to advance the existing rule beyond the limit already reached, or to give the same weight to determinations made by the patent-office solely because of the requirements of its own procedure. Though the line between these two groups may be arbitrary, it is well defined, and, having followed the authorities up to such line, this court now declines to take the step which will establish a precedent for passing it.

SHERMAN v. NUTT.

(*Circuit Court, D. Connecticut. May 23, 1888.*)

PATENTS FOR INVENTIONS—THREATENED INFRINGEMENT—INJUNCTION.

Under Rev. St. U. S. § 4921, providing that "the several courts vested with jurisdiction of cases arising under the patent laws shall have power to grant injunctions, according to the course and principles of courts of equity, to prevent the violation of any right secured by patent," a bill in equity will lie in the circuit court between parties who are residents of the same state to prevent an anticipated infringement of a patent, no infringement having actually occurred.

In Equity. On demurrer to bill.

Suit brought by George B. Sherman against Joseph Nutt to restrain infringement of a patent.

Wm. Edgar Simonds, for plaintiff.

Morris W. Seymour, for defendant.

SHIPMAN, J. This is a general demurrer to a bill in equity for an injunction against the infringement of letters patent, which are owned by the plaintiff. The patent is for an improvement which was jointly invented by the plaintiff and defendant, who made joint application for a patent. Pending the application, the defendant assigned to the plaintiff all his interest in said invention and said patent. The parties are citizens of this state. The bill alleges that the defendant is now constructing, in this state, a machine, with full intent to use the same, in infringement of said patent, and it is infringing and will infringe upon

the plaintiff's exclusive rights thereunder. The demurrer is upon the ground—it being admitted that this court has jurisdiction of the cause only by reason of its subject-matter, and that the jurisdiction of the court is such only as is authorized or conferred by the statutes of the United States,—that a bill in equity, in the circuit court, between parties who are residents of the same state will not lie to prevent an anticipated infringement, no infringement having actually occurred. Section 4921 of the Revised Statutes provides that “the several courts vested with jurisdiction of cases arising under the patent laws shall have power to grant injunctions according to the course and principles of courts of equity, to prevent the violation of any right secured by patent.” In my opinion the suit is one arising under the patent laws of the United States, and is properly brought. “The case is not like that of an action at law for the breach of a patent, to support which it is indispensable to establish a breach before the suit was brought.” “A bill will lie for an injunction if the patent right is admitted, or has been established, upon well-grounded proof of an apprehended intention to violate the patent right.” *Woodworth v. Stone*, 3 Story, 749. The same doctrine is declared in *Poppenhusen v. Comb Co.*, 4 Blatchf. 184.

The demurrer is overruled.

COLGAN *et al.* v. DANHEISER *et al.*

(*Circuit Court, N. D. Illinois. May 17, 1888.*)

1. TRADE-MARKS—DESCRIPTIVE WORDS.

The words “Taffy Tolu,” as applied to chewing-gum, being descriptive of the character of the article, rather than indicative of its origin, are not susceptible of appropriation as a trade-mark by one having no patent for the exclusive use of the ingredients which constitute the article, or for the article itself.

2. SAME—MANNER OF PACKING AND LABELING.

Complainant, a manufacturer of chewing-gum, put the article up in small bundles, each consisting of six small oblong cakes bound together with a rubber band, and each cake wrapped in a white label bearing two black imprints about the size and shape of the cakes themselves, the imprints being designed and made to rest conspicuously one on each side of the cake, and the most conspicuous imprint being the words “Colgan's Taffy Tolu Chewing-Gum.” *Held*, the words indicated not being susceptible of appropriation as a trade-mark, that complainant was not entitled to an injunction in the absence of proof that he had first established a reputation for his goods by thus packing and labeling them, and that defendant had attempted to supplant him in the market by an unlawful use of such devices.

In Equity. Bill to enjoin use of alleged trade-mark.

Schmitt & Hubbell, for complainants.

Israel Cowen and West & Bond, for respondents.

GRESHAM, J. The complainants' label their small packages with the words “Colgan's Taffy Tolu Chewing-Gum,” and insist that by virtue of