

The only evidence in the case is that which I have called your attention to, and that is all the evidence before you from which you can compute the damages to which the plaintiff is entitled for the infringement. It is frequently the case that a license fee is established by the owner of a patent for the use of his invention, and that is ordinarily the basis upon which a jury estimate its verdict. But there is no evidence in this case of a license fee ever having been established by the plaintiff for these patents, or fixed by a court; and therefore the jury has no such evidence of that character to guide them. The jury have simply the saving which results from the use of the patented devices over the old process. Upon this evidence the jury are justified, if they see fit, in finding a verdict of \$1.95 per 1,000 or \$1.75 per 1,000, which was the amount suggested by the counsel for the plaintiff. There is no claim here that this amount should exceed \$1.95 per 1,000 cans; and the jury therefore will be justified in finding that sum, or any other less sum which they think would be a fair compensation to the plaintiff for the infringement of his rights as the owner of the patents. I will read to you the prayer which the plaintiff has asked the court to give. I am requested to instruct you that the jury are to award the plaintiff a sum equal to the actual damage caused by the infringement; and in forming their estimate of damages they are to consider as evidence of such damages the amount of profits or savings made by the defendant by the use of the infringing device over what the defendant could have made by the use of tools free and open to the public use. And I instruct you that in accordance with that prayer you are to award the plaintiff an amount equal to his damage, and you are to consider as evidence the gains or savings made by the defendant by the use of the patented device. You are also to find the amount of the plaintiff's damages per 1,000 cans. The verdict which the clerk will hand to you will contain a memorandum of the number of cans on which the device has been used by the defendant,—50,000; and you are to fill the blank with the amount which you find the damage to be per 1,000 cans.

LOW v. BARSTOW STOVE Co.

SAME v. MAGEE FURNACE Co.

(Circuit Court, D. Massachusetts. December 10, 1888.)

1. PATENTS FOR INVENTIONS—PATENTABILITY—ORNAMENTAL TILES.

The claim in letters patent No. 336,242, issued February 16, 1886, to John G. Low, for "an improvement in the art of decorating surfaces, consisting in applying thereto, by pins or screws passing through holes in the tile, ornamental tiles of appropriate patterns," is void for want of invention, though limited by the specifications to rosette tiles, perforated through their geometrical center, attached with round-headed screws, which harmonize with the rosette.

2. SAME.

Letters patent No. 336,243, issued the same day to the same patentee, for "a medallion tile, formed with a rabbet upon its edge, and glazed into the rab-

bet, in combination with a perforated plate suited to the contour of the projecting medallion, and with suitable backing to the tile attached to said perforated plate," are also void for want of invention.

In Equity. Bills for infringement of patents.

T. W. Clarke, for complainant.

David A. Burr, for defendants.

COLT, J. These suits are brought on two letters patent, granted February 16, 1886, to the complainant, John G. Low, for improvements in the art of tile decoration. The claim in patent No. 336,243 is as follows:

"As an improvement in the art of decorating metallic or other surfaces, a medallion tile, formed with a rabbet upon its edge, and glazed into the rabbet, in combination with a perforated plate suited to the contour of the projecting medallion, and with suitable backing to the tile attached to said perforated plate, substantially as and for the purposes described."

The claim in patent No. 336,242 is as follows:

"An improvement in the art of decorating surfaces to be ornamented, consisting in applying thereto, by pins or screws passing through holes in the tile, ornamental tiles of appropriate patterns, and glazed to their bases, substantially as and for the purpose described."

The main defense to these patents is want of invention. I have carefully considered all that has been urged in support of the validity of these patents, and I am unable to find any invention in them, in view of the prior state of the art. Both of the patents may describe tiles which present a very pleasing and artistic appearance to the eye, but it does not follow from this that it required, in the sense of the patent law, the exercise of the inventive faculty to produce them. The improvement described in patent No. 336,243 consists in making the tile medallion in form, with a rabbet upon its edge, and glazed into the rabbet, in combination with a perforated plate and backing to attach the tile to the plate. Now, it is proved beyond question that a square tile, formed with a rabbet, and glazed into the rabbet, in combination with a perforated plate and suitable backing, was in use at the time Low made his alleged invention. It may also be said that a round medallion without the rabbeted edge was old at this time. Under these circumstances, the changing of a square tile with a rabbeted edge to a round or medallion tile with a rabbeted edge, involved no such exercise of the inventive faculty as entitles the party to a patent under the law. As for patent No. 336,242, the claim appears to be broad enough to cover any ornamental tiles glazed to their bases through which are applied pins or screws, but the complainant contends that this claim is limited by the specification and drawings to rosette tiles, perforated through their geometrical center, attached with round-headed screws or pins, which harmonize with the rosette. But, as thus limited, the claim is manifestly void for want of invention. It was old in the art to attach porcelain or earthen knobs, and shields of various forms, glazed to their base, to articles by means of screws or pins passing through holes in their center or upon their sides.

In view of this there was no inventive skill required to decorate a surface by applying thereto a perforated rosette tile, glazed to its base, and secured by a pin or screw passing through a hole in its center or elsewhere. For these reasons, and without entering upon the other defenses raised, the bills should be dismissed.

EAGLE MANUF'G CO. v. CHAMBERLAIN PLOW CO.

(Circuit Court, N. D. Iowa, E. D. December 13, 1888.)

1. PATENTS FOR INVENTIONS—INFRINGEMENT—CULTIVATORS.

Letters patent No. 242,497, to E. A. Wright, for an improvement in cultivators, the object of which is to assist in raising the beams, by means of a combination of a wheeled frame, and vertically rotating beams, with lifting springs so attached that a greater lifting effect is produced as the beam is elevated, without having the springs exert any material lifting strain while the cultivator is in operation, are infringed by a device consisting of a spiral spring connected with an arched axle, and with a shoulder upon the sleeve, to which the drag-beam is attached, so that when the beam is in its operative position the spring exerts no lifting effect, but, when the same is elevated, the shoulder is rotated forward, and the spring operating on the shoulder as a lever assists in raising it.

2. SAME—PRELIMINARY INJUNCTION.

On a bill to restrain the infringement of a patent for an improvement which constitutes but a small part of the machine, when the question of infringement is open, and defendant avers that he had no knowledge of complainant's patent before suit brought, and that he obtained no aid from the invention specified in it, and for some years has manufactured the improved machines, a preliminary injunction will be refused on condition that defendant files periodical statements of the number manufactured since suit brought, and deposits with the clerk a reasonable royalty for each, and files a bond for performance and for payment of damages.

In Equity. On motion for preliminary injunction.

Bill by the Eagle Manufacturing Company against the Chamberlain Plow Company to restrain the infringement of letters patent No. 242,497, issued to E. A. Wright, June 7, 1881.

Nathaniel French, for complainant.

Powers & Lacy, for defendant.

SHIRAS, J. The complainant corporation is the owner of letters patent No. 242,497, issued to E. A. Wright, for an improvement in walking cultivators, and in the bill herein filed avers that the defendant corporation is manufacturing and selling cultivators containing the improvement covered by the Wright patent in violation of the rights of complainant, and, in aid of the relief prayed in the bill, a motion is made for the granting of a preliminary injunction. In the cases of *Manufacturing Co. v. Bradley*, and *Same v. Moline, M. & S. Co.*, 35 Fed. Rep. 295, 299, the Wright patent was sustained as valid, and the defendants were restrained from infringing the same. In the light of these decisions it is not nec-