

PARKER *et al.* v. DICKINSON.

(Circuit Court, E. D. New York. April 9, 1889.)

1. PATENTS FOR INVENTIONS—PATENTABILITY—INVENTION—SYRINGES.

Letters patent No. 819,937, June 9, 1885, to Russell Parker and others, are void so far as they profess to protect the combination of a reservoir with normally flat walls in a syringe, such reservoir, in connection with an atomizer, having been described in the prior Kennish patent.

2. SAME.

A syringe having a normally flat tube between the pump-bulb and discharge orifice, in place of a non-collapsible tube connected with a collapsible bulb, is more compact, and less expensive, produces a more direct flow, is not so liable to become foul, may be more readily cleaned, admits of a more exact administration of small doses, and avoids all risk of the admixture of air with the injectant. Syringes thus made are rapidly supplanting the older forms. Flattened tubing was previously known. *Held*, that the second claim of the patent, which covers the flattened tubing in such combination, is valid.

In Equity.

Bill by Russell Parker and others against Charles B. Dickinson.

Edwin H. Brown, for complainants.

H. A. West, for defendant.

LACOMBE, J. This is a suit to restrain infringement of letters patent No. 319,937, granted to complainants June 9, 1885, for improvement in syringes. This opinion should be read in connection with that in *Dickinson v. Parker*, *ante*, 411, handed down to-day. As therein indicated, the combination, in an apparatus such as this, of a reservoir with normally flat walls was not within the field of invention after Kennish had taken out his patent. It was suggested therein, and by his failure to claim it it was abandoned to the public. All that there is of the patent sued upon, therefore, is the substitution of a collapsible (normally flattened) tube between the pump-bulb and the discharge orifice, in place of a non-collapsible tube, with which is connected a collapsible bag or bulb. This is a narrow combination; and, in view of the fact that flattened tubing was known before, (though not, it is true, in this combination,) I should be inclined to hold that complainants had merely devised a non-patentable change of form, were it not for the evidence of the witnesses in the trade. Besides being made more compact and inexpensive by the change, complainants' syringe seems to possess practical advantages, when in use, not possessed by those in which the collapsible reservoir is distinct from the outlet tube. A more direct flow is produced; it is not so liable to become foul; may be more readily cleaned; admits of a more exact administration of small doses; and avoids all risks of the admixture of air with the injectant. This evidence, in connection with the proof that the new syringes are rapidly supplanting the older forms, is very persuasive; and the second claim of the complainants' patent must be sustained. The exhibits showing defendant's so-called "Vienna Syringes" are plainly infringements of such second claim. Usual decree for complainants.

WHITMAN SADDLE CO. v. SMITH *et al.*

(Circuit Court, D. Connecticut. April 6, 1889.)

1. PATENTS FOR INVENTIONS—DESIGN—PATENTABILITY—UTILITY—SADDLES.

Design letters patent No. 10,844, September 24, 1878, to Royal E. Whitman, describe a design for saddles in which the pommel rises at the fork to a point level or nearly level with the raised and prolonged cantle, and the pommel on its rear side falls nearly perpendicularly for some inches, when it is joined by the line forming the profile of the seat. The saddle has a special utility consisting in its adaptation to the lines of the horse's back and shoulders, the roominess of its seat, and in its permitting the rider's knees to come in close contact with the horse. *Held*, that the design is useful, so as to be patentable under Rev. St. § 4929, authorizing the issue of a patent for any new, useful, and original shape or configuration of any article of manufacture.

2. SAME—NOVELTY.

The military Jenifer saddle, or the Jenifer-McClellan saddle, had a high, peaked cantle, and a high, prominent pommel, and the Granger saddle had a "cut back" pommel and a low, broad cantle. *Held*, that though the Whitman design had prominent features of each of those saddles, and united two halves of old trees, it still had patentable novelty.

3. SAME—INFRINGEMENT.

The photograph shows the point of junction of the rear side of the pommel with the profile of the seat to be an angle, while it is a curve in the manufactured articles of both plaintiff and defendant. Defendant's saddle being an exact reproduction of that made by plaintiff, and there being a substantial sameness in the patented and manufactured designs as a whole, which would deceive an ordinary purchaser, *held*, that defendant infringes.

In Equity.

Bill by the Whitman Saddle Company against Charles B. Smith and others, to restrain the infringement of a patent.

Benj. F. Thurston, for plaintiff.

Wm. Edgar Simonds, for defendants.

SHIPMAN, J. This is a bill in equity which is based upon the alleged infringement of design letters patent No. 10,844, dated September 24, 1878, to Royal E. Whitman, for a design for saddles. In the patent the inventor says that the nature of his design is fully illustrated in the photographic picture which accompanies the specification. He further says that the pommel rises at the fork to a point on, or nearly on, a horizontal level with the raised and prolonged cantle, and that the pommel on its rear side falls nearly perpendicularly for some inches, when it is joined by the line forming the profile of the seat. He then proceeds to carefully describe, by reference to the letters contained in the picture, the lines and curves of his design, which description it is useless to reproduce here, in the absence of the picture, whose presence is necessary to make the description plain. The patentee then says:

"I am aware that portions of the curves employed by me have been used in the designing of saddles; but, when combined with a longitudinally slotted tree, the lines I employ to give the profile form a new design for saddles, and giving the general idea, in the front, lower, and rear lines, of a sea-fowl or vessel modeled upon the same curves, and by these curves and lines giving the impression of lightness, grace, and comfort, that could not as well be