

**Moffitt Vs. Rogers**

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**Decided On :** Oct-30-1882

**Appeal No. :** 106 U.S. 423

**Appellant :** Moffitt

**Respondent :** Rogers

**Judgement :**

Moffitt v. Rogers - 106 U.S. 423 (1882)

U.S. Supreme Court Moffitt v. Rogers, 106 U.S. 423 (1882)

**Moffitt v. Rogers**

**Decided October 30, 1882**

**106 U.S. 423**

*APPEAL FROM THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE DISTRICT OF MASSACHUSETTS*

**SYLLABUS**

Reissued letters patent No. 6162, granted to John R. Moffitt for an "improvement in the manufacture of heel stiffeners for boots and shoes," are void inasmuch as they cover a contrivance essentially different from that described in the specification of the original letters.

This is a suit in equity brought by John R. Moffitt against Rogers and Moore for their alleged infringement of reissued letters patent No. 6162, granted Dec. 8, 1874, to him for an improvement in the manufacture of heel stiffeners for boots and shoes. The original letters No. 127,090 bear date May 21, 1872.

Heel stiffeners, or counters, as they are sometimes called, were formerly made by hand, the leather while wet upon the last being shaped by the blows of the shoemaker's hammer. Previously, however, to the date of the complainant's original letters patent, ready-made molded counters were manufactured by placing the counterblank across the opening of the mold and forcing it into the mold by a plunger or former, or by placing the blank upon the back of the stationary former and forcing it around the former by the pressure of the mold. Counters had also been shaped on machines by which a rolling pressure was applied. As early as 1853, machines known as the Nichols were employed. This machine had a rotating "former" circular in cross-section, which was applied by pressure to another circular roller, conforming to this "former" longitudinally, the object being to set leather into the proper shape either for soles or heel stiffeners.

In the specification of his original patent, Moffitt declared:

"In 'molding' to shape ready-made counters or stiffeners for heels of boots and shoes made of various materials, but usually of waste bits of leather, a difficulty exists by reason of the peculiar shape required in getting an equal or sufficient pressure upon all parts of such counter so as to get uniform hardness throughout, and also a further difficulty in getting a true and proper permanent form throughout all parts, because the material

will differ in character in different parts of the same counter, some of it, especially in leather, being of a more spongy nature than other parts. This difference or lack of homogeneity prevents a uniform solidity, and precludes the true preservation of the shape which a mold may impart."

"The object of my invention is not only to make more perfect ready-made shaped counters than can be made by any molding process, but also to make a new article of manufacture, *viz.*, a 'rolled' counter, prepared, solidified, and uniformly hardened and set to shape by rolling pressure, such rolling action producing a new as well as better article, and admitting of producing the same from material hitherto found too intractable, such as leather board, sheet metal, etc. Instead, therefore, of shaping the stiffener in mold, I employ no mold of any kind, but use a moving former A, devised by me, of a shape adapted to give the desired shape to the counters, and set eccentrically on a shaft B, the shaft being arranged to have a continuous or reciprocating rotary movement, either by hand or by power as described. Beneath this former I place a roller C, having a profile as shown, the converse of and conforming to that of the 'former,' the shaft of the roller having its bearings in the main frame D. The shaft of the former has its bearings in a swing frame E. F is a treadle strap, whereby the swing-frame may be pulled down to give any required degree of pressure, and which also permits the eccentric former to rise and fall, as in its movements it rides and rolls over the surface of the counter, the counterpiece being placed centrally upon the 'former' and being rubbed and rolled as well as squeezed between them while being brought into shape."

"The 'former,' as will be seen, projects further from its axis on one side than on the other, so as to conform nearly to the general form of the curves of the inside of a shaped counter. This gives a rolling action in addition to the squeezing over the whole body of the counter."

The cross-section of the "former," as shown by the drawings and model, was elongated, with one or both ends semicircular.

The specification proceeds:

"The end g of the 'former' need

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not be a plane, as shown in Fig. 1, but instead may be rounded at its opposite end, as shown in Fig. 3, so that it may be continuously revolved and in either direction. In such case I prefer to place the shaft in its center or equally distant from both ends."

"Instead of a single roll, a pair of auxiliary rolls may be used, as shown in Fig. 4, one on each side of the single one."

The claims were thus stated:

"I claim"

"1. The described apparatus for rolling to shape heel stiffeners or counters."

"2. I also claim as a new article of manufacture heel stiffeners or counters shaped and compacted by a rolling action, as described."

"3. I also claim the process herein described of shaping and setting to shape heel stiffeners or counters by rolling, as distinguished from molding."

The specification of the reissued patent is substantially to same as that of the original patent, with the following exceptions:

For the term "rollers" in the original specification, the words "supports or rollers" are substituted in the reissued specification, and the word "mechanism" in the first claim of the reissue.

In the reissued specification, the requirement that the "former" should be set eccentrically on a shaft, and the statement that the former projects further from the axis on one side than the other, are omitted.

The claims of the reissued patent are as follows:

1. In a machine for making counters or stiffeners for boots and shoes, a turning or revolving former in combination with mechanism for holding and shaping the blank over it

2. The revolving or turning counter-former A, in combination with a supporting roll or rolls for rolling or for rolling and flanging blank stock into heel stiffeners, substantially as shown and described.

"3. The process described of forming the heel-seat of a counter by means of a former having a motion about a center, and which gives to the heel seat a drawing or rubbing action against a flange or bearing surface in addition to the rolling action. "

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The infringement charged against the defendants was in the use by them of the device described in the reissued letters patent of Louis Cote, dated June 2, 1874.

The specification of this patent declares:

"The invention or machine consists of a rotary head of a spherical, spheroidal, or sphero-cylindrical shape fixed upon and concentrically with a rotary shaft, in combination with a stationary mold correspondingly or approximately so concaved whereby, by the revolution of the said rotary head within the mold, a piece of leather of suitable form introduced between them may be drawn into and through the concavity of the mold and receive a curved form lengthwise and withdrawn, and thereby be adapted for use as a stiffening for a boot or shoe."

A clear idea of the contrivance covered by the Cote patent may be derived from the drawings which illustrated the specification.

On final hearing of the cause, the circuit court dismissed the bill, and the complainant appealed.

MR. JUSTICE WOODS delivered the opinion of the Court, and, after stating the case, proceeded as follows.

The evidence leaves no doubt in our minds that the first claim of Moffitt's reissued patent is broader than any claim of his original patent. The original patent covered an elongated heel-shaped former, set eccentrically upon its shaft. This was an essential part of the invention described in the original patent. The specification declares: "I use a *former,' A, of a shape adapted to give the desired shape to the counter, and set eccentrically on the shaft B.*" *The "former" shown by the drawings is elongated and heel-shaped in cross-section. The specification further declares:*

"The 'former,' as will be seen, projects further from its axis on one side than on the other, so as to conform nearly to the general form of the curves of the inside of the shaped counter. This gives a rolling

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action in addition to the squeezing over the whole body of the counter."

The specification of the reissued patent omits both of these statements, and thus allows a "former" to be made, if desired, with a circular cross-section, and to be set concentrically on its shaft. It is therefore clear that it covers a contrivance essentially different from that described in the original specification and claim.

The first claim of Moffitt's reissued patent differs materially from the specification and first claim of the original patent in another particular. The original specification thus describes the means by which the blank stock is pressed against the "former:"

"Beneath the former I place a roller C, having a profile, as shown, the converse of and conforming to that of the former, the shaft of the roller having its bearings in the main frame D."

It is also stated that "instead of a single roll a pair of auxiliary rolls may be used, as in figure 4, one on each side of the single one." In the first claim of the reissued patent, the device of one or three rolls is expanded to cover "any mechanism for holding and shaping the blank over" the "former."

It therefore appears that the specification and first claim of the original patent was intended to cover an elongated heel-shaped former, eccentrically set upon its shaft, against which the material of which the counter was to be made was pressed by a revolving roller or rollers, and that the first claim of the reissued patent was expanded so that it might cover a "former" circular in cross-section, concentrically set, and revolving in the semicircular groove of a stationary mold, by which the material was pressed against the former.

The difference between the device covered by the specification and first claim of the original patent, and the device which might be embraced by the specification and first claim of the reissued patent, is essential and palpable.

If the evidence proves any infringement, it is of the first claim only of complainant's reissued letters patent by the use of the machine covered by the patent granted to Louis Cote June 2, 1874.

The purpose of the complainant to cover by his reissued

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patent the invention described in the Cote patent is clear, and is not denied. It is evident that the Cote machine does not infringe the original patent of Moffitt. The "former" described in the original specification of Moffitt being elongated in cross-section and eccentrically set upon its shaft, could not have either a rotating or reciprocating movement in the semicircular grooved mold of the Cote patent, and by no stretch of construction could the stationary grooved mold of the latter patent be considered the equivalent of the cylindrical revolving rollers of Moffitt's original patent.

The specification and first claim of the reissued patent is a plain attempt to include a device which was not and could not be fairly covered by the original patent. That claim is therefore for that reason void. [\*Gill v. Wells\*, 22 Wall. 1](#); [\*The Wood Paper Patent\*, 23 Wall. 566](#); [\*Powder Company v. Powder Works\*, 98 U. S. 126](#) ; [\*Ball v. Langles\*, 102 U. S. 128](#) ; [\*Miller v. Brass Company\*, 104 U. S. 350](#) ; [\*James v. Campbell\*, 104 U. S. 356](#) ; [\*Heald v. Rice\*, 104 U. S. 737](#) ; [\*Bantz v. Frantz\*, 105](#)

[U. S. 160](#) ; *Johnson v. Railroad Company*, [105 U. S. 539](#) . And the evidence shows no infringement of any other claim of the reissued patent.

The decree of the circuit court dismissing the bill was therefore right and must be

*Affirmed.*

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