DECISIONS RELATING TO PATENTS, TRADE MARKS, ETC.

United States Circuit Court.—Northern District of New York.

BIGNALL *vs.* HARVEY *et al.*—PATENT FOR COOLING AND DRYING MEAL.

Blatchford, J.:

This suit is brought on reissued letters patent granted to John Deuchfield, January 16, 1872, for fourteen years from April 20, 1858, for an improvement in cooling and drying meal.

1. A printed publication, in order to defeat a patent, must furnish such clear and definite information as to enable a skilled person, beyond any reasonable doubt, by following them, without aid from anything not known when they were made, to construct an apparatus like that patented.

2. A patent granted to a person of one name and reissued under a different—as granted to Deuchfield and reissued to Deuchfield—is a question of identity merely, and proof is always competent in such a case.

Infringement of the first claim of the reissue is proved and not contested. As the patent has expired, there can be no injunction, but the plaintiff is entitled to the usual decree in other respects in regard to said first claim.

The same decision is made in the cases of the same plaintiff against Thomas Elwood and others, Henry Roder and others, and Sidney R. Brown and others.

United States Circuit Court—Eastern District of New York.

CLARKE, TRUSTEE, *vs.* JOHNSON.

Benedict, J.:

This is an action for an account and an injunction to restrain the defendant from making a certain form of disk used for valve seats in steam joints, upon the ground that such manufacture infringes a patent issued to Nathaniel Jenkins, August 3, 1869, known as reissue No. 3,579, and now owned by the plaintiff.

1. Reissued letters patent No. 3,579, granted to Nathaniel Jenkins, August 3, 1869, construed to be for elastic packing composed of four-tenths refractory earthy or stony matter mixed with rubber prepared for vulcanization by using less than twenty five per cent of sulphur, and then vulcanized, whence results a material composed of forty per cent and over of refractory matter held together by a skeleton of soft rubber.

2. The patent is not infringed by valve seat disks containing sulphur in excess of the above proportion, whereby vulcanite is formed when the compound is subjected to a vulcanizing heat.

3. Although it is known that both rubber and vulcanite become soft at the temperature at which steam packings are used, it does not follow that the employment of vulcanite for rubber as the skeleton of a packing is a mere substitution of material, particularly in view of the different qualities presented by packings made by the two methods.

4. In *Jenkins vs. Walker* (1 O. G., 359) the excess of sulphur united with lead or litharge to form refractory material, and in *Jenkins vs. Johnson*, the excess of sulphur was taken up by the oxides of lead or iron in a similar manner.

Held that the plaintiff has failed to prove infringement, and the bill is dismissed with costs.

United States Circuit Court.—Northern District of Illinois.

ROBERTS *vs.* SHELDON *et al.*—TRADE MARK FOR NEEDLES.

Blodgett, J:

1. The word "Parabola," registered June 27, 1871, by Robert J. Roberts, of New York, as a trade mark for needles, held to be not descriptive, but an arbitrary term adopted by complainant to distinguish his needles from those of other manufacturers, and his right to so select and apply it affirmed.

2. The use of it by another manufacturer, prefixed by the manufacturer's name, would be, in accordance with a former decision of the court, "that any prefix or suffix used with the trade mark would not give others the right to use it in connection with the manufacture of similar goods," an infringement of the exclusive right of the complainant to use that term to designate goods of his manufacture.

I shall order an injunction on the complainant's filing a bond in the penal sum of $5,000, conditioned for the payment of any damages which the defendant may sustain by reason of the issuing of the injunction, and also require complainant to put in his proof within thirty days after the answer in this case is filed as a condition of the granting of the injunction.

United States Circuit Court—District of California.

THE GIANT POWDER COMPANY *vs.* THE CALIFORNIA VIGORIT POWDER COMPANY *et al.*

Field, J.:

1. Reissued letters patent granted to Alfred Nobel, March 17, 1874, for explosive compounds, declared to be invalid.

2. A reissue can only be had when the original patent is inoperative or invalid from one of two causes—either by reason of a defective or insufficient specification or by reason of the patentee claiming as his own invention or discovery more than he had a right to claim as new—and even then only where the error has arisen from inadvertence, accident, or mistake, and without any fraudulent or deceptive intention.

3. The power to accept a surrender and issue new letters patent is vested exclusively in the Commissioner of Patents. He must judge of the sufficiency of the original specification, whether the same is defective in any particular, whether such defect was the result of an unintentional error, and, if so, to what extent a new or additional specification should be allowed to describe correctly the invention claimed.

4. But this does not preclude the examination by the court of the original and reissued patents, to see whether or not they disclose on their face a case in which the Commissioner has no jurisdiction to act, or a case in which, by his determination, he has exceeded his jurisdiction; if so, the reissued letters patent must fall.

5. The record of a judgment of a judicial tribunal may be in all cases examined to see whether such tribunal had jurisdiction of the subject matter and of the person of the defendant, and if such jurisdiction be wanting the judgment is ineffectual for any purpose.

6. Whenever it appears, on a comparison of the two instruments, that the original patent is valid, it is clear that the Commissioner has exceeded his jurisdiction, and the reissue is without authority of law.

7. When it appears, upon comparison, that the specification of the reissue only differs from the original in containing an invention of broader scope, it is clear that the original patent must be valid if the reissue would be.

8. If the original patent is valid to the extent of its claim, a reissue is without authority of law.

9. Where an invention was described in one portion of the specification as compounded of the explosive substance nitro-glycerine and an inexplosive porous substance, and in another portion of the specification a more detailed description of the porous substance was given without mentioning its inexplosive character: *Held*, that the two passages are to be read together, and that the invention is a compound of nitro-glycerine with an inexplosive porous substance of the character described.

10. Where the original patent described a compound consisting of two ingredients, one of which was an inexplosive porous substance, a reissue covering all porous substances, whether explosive or inexplosive, which would form with nitro-glycerine a compound equally safe for handling, is void as for a different invention.

11. Case of *Russell vs. Dodge* (3 Otto, 463) commented on and approved.

The complainant is the holder of a patent bearing date March 17, 1874, for an alleged new explosive compound known as "dynamite or giant powder." For some time since its issue the defendants have been engaged in making, selling, and using an explosive compound averred to be substantially the same as the compound described in the patent. This suit is brought for the alleged infringement, with a prayer that the defendants may be required to account and pay over to the complainant the income and profits obtained by them from this violation of its rights, and be restrained from further infringement.

The compound patented is claimed to be the invention of Alfred Nobel, a distinguished engineer of Sweden. His invention, whatever may have been its extent, was assigned to one Bandmann, in April, 1868, and in May following a patent for the same was issued to him for the term of seventeen years. Soon afterward Bandmann assigned his interest to the complainant, the Giant Powder Company, a corporation created under the laws of California, and in October, 1873, this company surrendered the patent and obtained reissued letters for the residue of the term. In March, 1874, this reissue was also surrendered and new letters patent were issued, for the infringement of which the present suit is brought.

The bill alleges that the surrender of the original letters, the first reissue, its surrender, and the second reissue were each made for "good and lawful cause," but it does not specify what that cause was. The allegation will, however, be taken to be that the cause was one for which the statute authorized a surrender and a reissue. The bill also alleges that each reissue was for the same invention described in the original patent.

The answer denies both of these allegations and avers that the original letters and the first reissue were not surrendered because they were invalid by reason of a defective and insufficient specification arising from inadvertence, accident, or mistake, without any fraudulent intention on the part of the patentees, and charges that they were surrendered upon false representations with the intent to interpolate and obtain in reissued letters claims and grants for more than was embraced by the invention of Nobel described in the original patent, and that the reissued letters were not for the same invention, but for another and different one. And the defendants insist that for this and other reasons the reissued letters are invalid.

The Commissioner is an officer of limited authority, and whenever it is apparent upon inspection of the patents that he has acted without authority or has exceeded it his judgment must necessarily be regarded as invalid. His action must be restricted to the particular cases mentioned in the statute that only authorizes a reissue when from an unintentional error in the description of the invention the patent is invalid or inoperative, or when the claim of the patentee exceeds his invention. It is not sufficient that the patent does not cover all that the patentee could have claimed if his specifications had come up to his invention. If he has invented or discovered something beyond his original specifications and claim, his course is not to endeavor to cover it by a reissue, but to seek a separate patent for it.

The statute authorizing a reissue was intended to protect against accidents and mistakes, and it is only when thus restricted that it can be regarded as a beneficial statute. If a patentee does not embrace by his specifications and claim all that he might have done, and there has been no clear mistake, inadvertence, or accident in their preparation, the presumption of law is that he has abandoned to the use of the public everything outside of them, or at least has postponed any additional claim for further consideration.

Looking at the original patent and the reissued patent and the specifications annexed to them, we find that the material difference between them is as to the extent of the invention. The original patent covers a compound of nitro-glycerine and an inexplosive porous absorbent which will take up the nitro-glycerine and render it safe for transportation, storage, and use without loss of its explosive power. The reissued patent enlarges the scope of the invention so as to embrace a compound of nitro-glycerine with any porous substance, explosive or inexplosive, which will be equally safe for use, transportation, or storage.

The specifications annexed to the original patent were clear and sufficiently explicit for the compound composed of nitro-glycerine and the inexplosive porous substance mentioned, and the claim was only for a composition of matter made of the ingredients, in the manner, and for the purposes described in them. There was therefore nothing to correct in a reissue, according to the decision in *Russell vs. Dodge* (3 Otto, 463). The claim was as extensive as the invention specified, and there is no pretense that this was not sufficient to cover a compound of nitro-glycerine with inexplosive porous absorbents.

Now, reading the history of the labors of Alfred Nobel to utilize the explosive power of nitro-glycerine and render it safe to transport, handle, and use—the experiments he tried, first, to explode the nitro-glycerine in mass; then, in consequence of the dangers attending its use, to prevent its explosion when handled; the patents he obtained in Europe; his experience in the use of gunpowder and other explosives with nitro-glycerine—it is impossible to believe that he intended anything different from the natural meaning of the term he used. He knew well the danger attending the use of nitro-glycerine with explosive absorbents, and in limiting his claim to its use with inexplosive absorbents we must presume that he at that time intended to abandon all claim to compounds of a different character, or at least to leave such claim open for further consideration. If we read his own language in an application made three years afterward for a new patent for a compound with explosive absorbents presented to the Commissioner of Patents by the complainant, and therefore adopted and approved by it, there can be but little doubt on the subject. Soon after the new patent was obtained the application for a reissue was made, evidently that it might reach back to the date of the original patent and cover inventions of other parties during the intermediate period, or that which had gone into public use.

It nowhere appears that he had any knowledge or belief when the first patent was issued that the admixture of nitro-glycerine with explosive substances would produce a safety powder. That was a discovery which he did not make or claim to have made. So when in his specifications he mentions charcoal as an absorbent, he observes that it has the "defect of being itself a combustible material."

To our mind, looking at the history of the invention and reading the specification of the patent in its light, it is clear that the inventor used the word "inexplosive" in its natural and ordinary sense, and that the attempt to limit that meaning is an afterthought of his assignees, desiring to bring within the reach of the patent, compounds in no respect within his contemplation. In other words, the reissued letters cover a compound not claimed by Nobel and not embraced in the original patent.

It follows that, in our judgment, the complainant has no just cause of complaint against the defendants, and its suit must be dismissed with costs; and it is so ordered.

AGRICULTURAL INVENTIONS.

Mr. Abram H. Smith, of Wauseon, O., has patented an improved hay elevator, so constructed that it may be easily operated, and will not allow the loaded fork to settle down or sag while being carried from the barn floor to the mow.

An improved plow truck has been patented by Mr. Henry C. Strong, of Mauston, Wis. The object of this invention is to furnish trucks for moving plows from place to place in manufactories, warehouses, salesrooms, and upon farms. It is so constructed that the plows can be easily moved without danger of breaking, marring, or wearing them.

An improved corn planter has been patented by Mr. Theodore T. Daniels, of Morrison, Ill. This invention relates to an apparatus which may be attached to corn planters of various descriptions for the purpose of opening furrows for the reception of the corn dropped from the seed box.

An improved plow attachment for cultivators has been patented by Mr. Homer J Potter, of Centralia, Kan. This invention consists in a novel construction, arrangement, and combination of devices connected with a plow beam, whereby provision is made for attaching the plow beam to a cultivator after the cultivator beams have been detached.

A combined cultivator and cotton-chopper, so constructed as to scrape, chop, and dirt a row of plants at each passage across the field, has been patented by Mr. James W. Gilbert, of Hoboken, Ala. This machine can be easily controlled by the plowman.

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