

## Legal Notes.

**SUBSTITUTION OF MATERIALS.**—A suit in equity was brought by the National Tooth Crown Company against Macdonald (170 Fed. Rep., 617), for an infringement of the White patent for a mold for shaping metallic tooth-crowns. The defendant set up prior letters patent granted to J. C. Parker for an improved swage for dental plates, as an anticipation of the White patent. The complainant's invention was designed for the manufacture of metallic tooth-crowns formed of a single piece of metal, without soldered seams, and completely conforming to the contour of the natural tooth.

A cast is first taken of the tooth to which the crown is to be applied, and from it a metallic die is made. A disk of gold is then shaped into a cap or cup, by means common in the art, fitted to the metallic die, and manipulated by mild hammering to reduce and round the edges of its grinding surface. At this point the mold contained in the complainant's device enters into use. He provides a casing containing a soft metal core or mold, with a hole for the reception of the metallic die and its gold covering. By pressure the die is forced into the soft metal, and the soft metal itself, acting in accordance with the laws governing fluids under pressure, forces or swages the sides of the thin gold or other metallic cap into conformity with the inner metallic die. In the alleged anticipatory device, a mold is made from the initial impression of the plaster cast, a thin plate of aluminium, gold, or other ductile material is roughly formed around the mold, and the mold then placed within a cup-shaped casing. A quantity of granular, shot-like material is then placed around the mold, filling the space between the mold and the casing. Vertical pressure is brought to bear upon the shot-like material. By reason of the curved surface of the casing, and the conversion of the shot into a solidified mass under pressure, the pressure upon the mold is practically equal in all directions, and the thin metal plate is thus made to conform to the contour of the mold.

The same law of operation is undoubtedly involved in these devices. In the Parker patent it is stated that the object is to obtain a pressure that will be practically equal, without the use of water or other liquid. For this purpose, shot-like material is used as an adjustable medium. In the complainant's device a soft, solid material was used in the place of the shot. The idea of each device was to produce a perfectly formed or contoured covering upon a certain shaped die—in the Parker patent a dental plate, and in the complainant's patent a tooth-crown—without seaming or soldering. In each case a receptacle approximating to the form of the die was used, and the intervening space filled with a material that, under vertical pressure, gave lateral pressure upon the die, thus swaging the metallic covering to the perfect contour of the die.

It was urged that the complainant's device differed from that of Parker in that the character of the article intended to be formed—namely, the tooth-crown—is of a wholly different shape from the dental plate; that instead of a comparatively flat curved plate, which may be formed by means of force acting in a vertical direction, the object was to compress laterally a cup or sack-like shell around a die. Also, that the variation in form of the interior of the casing of the complainant's device, and the providing of an aperture in the casing for the escape of superfluous metal, constituted such an improvement in the art as to involve invention. In the opinion of the court these variations from the earlier patent were merely such a carrying forward of the original idea as would naturally present itself to the mind of any skilled metal worker. "Something more is required to support a patent than a slight advance over what has preceded it, or merely superiority in workmanship or finish." (*International Tooth Crown Co. v. Gaylord*, 140 U. S., 55, 62; 11 Sup. Ct., 716; 35 L. Ed., 347.) Substitution of materials in the production of an article is not invention, unless such substitution involves a new mode of construction, or develops new uses and properties of the article made; or, where the superiority of the substituted article is shown to consist not only in greater cheapness and greater durability, but also in more efficient action. Such a showing was not made in this case. A decree was entered for the defendant.

**AN ELECTRIC CONVERTER DECISION.**—Suits for infringement of letters patent issued to George Westinghouse, Jr., and to Elihu Thomson, for cooling transformers, were brought by Westinghouse Electric and Manufacturing Company and the Thomson-Houston Electric Company against Union Carbide Company, (117 Fed. Rep. 495). Decrees were given for the complainants in the Circuit Court. An appeal was taken, and the decree affirmed as to the Westinghouse patent, and reversed as to the Thomson patent.

Claim 4, of the Westinghouse patent, covers an electric converter constructed with open spaces in its core and an inclosing case containing oil or paraffin, adapted to circulate through the spaces and about the converter for the purpose of cooling the converter. The defendant tried to show that this scheme was anticipated by the Stanley patent of 1886 for an induction-coil, which patent is for a converter, the spaces on the core being so stamped as to form interior and exterior teeth. The description and drawing of the Stanley patent show a base plate and perforated cover adapted to ventilate the cover and to protect it from physical injury. Hence the prior art shows every element of the combination claimed, and a physical combination of the same elements except that the separation in the Stanley invention and the construction of the inclosing case was prohibitive of the purposes of the claim in suit. This claim covers such an inclosing case as will confine the non-conducting fluid, and such open spaces in the core as will permit the circulation of the liquid through them. The Court held that Westinghouse was the first to patent such an air-tight converter. For the prior design excluded the novel idea of circulating oil through the tube and intervening spaces of the coils and plates. In the Court's opinion the patentee was entitled to his claim. As we have remarked, the Circuit Court of Appeals affirmed the decision.

The Thomson patent is for cooling transformers, designed to preserve the transformer practically cool by exposing oil or other insulating fluid in which the transformer is immersed to some special artificial cooling medium, which may be passed through the oil or through which the oil may be circulated. The Thomson-Houston Company claimed that Thomson was the first to cool oil in the Westinghouse converter, by exposing it to a pipe of running water. The Court held that he was not, in view of a British patent granted to Pyke and Barnett in 1890, on which all the claims of his original application were rejected.

These inventors say in their specification:

"It is obvious that the external substances into which the heat is finally dissipated may be air, water, etc., and that the cooling vessel may be internal or external to the apparatus container."

It was held that the Thomson invention was simply the use of an old device for a new and analogous purpose, without the necessity of any adaptation in order to discharge the old function in the new device. Its confessed commercial success could not, therefore, be accepted as evidence of invention.

**AN IMPORTANT TRADE MARK DECISION.**—The Lion Fig and Date Company, of Chicago, Ill., last November filed an application for the registration of a label with the Commissioner of Patents. A refusal to register the label resulted in an appeal to the Commissioner. The subject of the label was described as follows:

"The word 'Brittlenut' printed in red ink in diagonal script, the first letter of which word extends from nearly top to bottom of the label. In the upper curve of said letter is placed a lion's head. Below the word Brittlenut and also printed in red ink in three lines are the words 'The Lion Fig and Date Company, Chicago, Ill.' The entire label is printed in red ink on yellow glazed paper."

The Examiner held that the word "Brittlenut" is an arbitrary and fanciful word, and that the label was believed to be artistic. According to the Patent Office rules, a label must describe the product to which it is to be applied. Finding that the word "Brittlenut" is composed of two words, and that the compound word probably means that the confection contains some kind of a nut and is brittle in character, nevertheless he does not think that the word in any way describes a confection composed of sugar, syrup, and peanuts. The Commissioner in sustaining the Examiner said that, although the two words "brittle" and "nut" had well-known meanings when used alone, yet when used together they could not be said to describe the confection made by the applicant. Indeed, he even went so far as to declare the combination of the two words indicated no confection at all.

In previous cases it has been held that the word "label" itself necessarily implies that it is descriptive of the article to which it is applied, and that this must be indicated in the print or label itself, and not merely in a statement made by the application accompanying it.

**KIPLING'S "TRADE MARK" SUIT.**—For the second time Rudyard Kipling has lost his action against G. P. Putnam's Sons for infringement of copyright and trade mark and unfair competition. In 1899 the Putnams bought from Kipling's authorized publishers a number of unbound sheets of Kipling's writings and bound them up, together with some of his uncopyrighted writings, to form a Brushwood edition. On fifteen sets there was imprinted an elephant's head, inclosed in a circle. This, Kipling alleged, was his exclusive literary trade mark. The

court held that the Putnams had a perfect right to purchase unbound leaves of Kipling's copyrighted works and to resell them in bindings of their own. Judge Lacombe in the following terms flouted Kipling's contention that the Putnams appropriated his trade mark:

"The proposition that an author can protect his writings by a trade mark is unique and, at first blush, seems somewhat startling. It is certainly offensive to the æsthetic and poetic taste to place such poems as the 'Recessional' and 'The Last Chanty' in the same category with pills and soap, to be dealt in as so much merchandise. We do not intend to decide that such a trade mark is sanctioned by the law, but even if it were, it is manifest that the mark does not lose its characteristics because used to designate an unusual variety of 'goods.' In other words, the author, assuming that he may have such protection, must comply with the law if he would have a valid trade mark."

**AN IMPORTANT COPPER PATENT DECISION.**—In the United States Circuit Court, January 31, 1903, Judge Knowles decided that the Manhes process of converting copper ore into commercial copper was not new; that it was merely the Bessemer process of converting iron into steel as applied to copper, and that for that reason the owners of the patent were entitled to no damages from the Boston and Montana Mining Company for alleged infringement of the patent. Before the legal opinion has been published it is impossible for us to say on exactly what grounds the Court held the patent invalid. This much is, however, certain, the mere fact that the Bessemer process had been applied to copper refining is hardly a good ground for declaring a patent invalid, unless, indeed, the original Bessemer patent claims covered the refining of all metals by means of the converter. How important the decision is may be gathered from the fact that almost all the copper mined in the United States is converted by the Manhes process. Had the complainants maintained their action, damages amounting to many thousand dollars would have been awarded. It remains to be seen what the Court of Appeals will decide.

A law still obtains in France, under which any workman who divulges information regarding a secret process practised in any industry, to a foreigner, or even to a Frenchman resident abroad, commits a penal offense, and for such is liable to a sentence ranging from two to five years' imprisonment and a fine from \$100 to \$4,000. He is furthermore subjected to from five to ten years' police supervision after his release from jail. Even the communication of such information to another Frenchman resident in France is punishable, though the sentence in this case is not so severe, the sentence varying from three months' to five years' imprisonment, accompanied by a fine ranging from three to forty dollars. On the other hand, a French employer is entitled, without reserve, to any invention or discovery made by a workman in his employ that is within the scope of the work undertaken at the factory.

**CONSTRUCTION OF CONTRACTS OF ASSIGNMENT.**—In the case of the Goodyear Shoe Machinery Company against Dancel (119 Fed. Rep. 692), it appeared that the assignee of a patent contracted to pay to the assignor in each year while the patent "remains in force as a valid patent, the sum of \$5,000 as an annuity." The court held that such payments do not cease on the death of the assignor simply because they are termed annuities, and that payment may be forced by the legal representatives so long as the patent remains in force. Furthermore, it was held that because the assignee of the contract assumed the obligations of his assignor, he did not become a party to the contract, so that he could be sued thereon at law by the other party, nor could such an action be maintained on the doctrine of subrogation, which pertains to equity alone.

**LIMITATION AS TO PROCESS.**—A claim of a patent for a new chemical product, which is described with such clear marks of identification that it can be readily recognized aside from the process by which it is made, is not limited to the product of a particular process because such a process is described in the specification and is the only process by which it can be produced.

A patent specification is addressed not to lawyers, but to those skilled in the art to which the subject-matter appertains. It matters not how many other people fail to comprehend the meaning of the patent so long as the craftsman familiar with the art can understand it.

A mechanical equivalent must be capable of use as a substitute for something else, and competent to perform the functions of a particular device for which it may be substituted.