

Case No. 4,410. ELLITHORP v. ROBERTSON.  
[1 MacA. Pat. Cas. 634.]

Circuit Court, District of Columbia.

April, 1859.

ISSUANCE OF PATENTS—LACHES IN MAKING APPLICATION.

[Many years' delay in applying for a patent, without sufficient excuse, during which time the invention has gone into public use, takes away the right to a patent.]

[See Case No. 4,408.]

[Appeal from the decision of the commissioner of patents.]

Low & Haskell, for appellant.

MORSELL, Circuit Judge. The points decided by me on the 28th of September, 1858 [Case No. 4,409], in a case of appeal from the decision of the commissioner of patents between the above-named parties for an "improvement in sewing machines," it appears to

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me, are involved in the issue in this case. The objection in that case to granting a patent to the appellant was the great lapse of time which had been suffered to occur between the discovery of the applicant's invention and the time of his application, and of its being suffered to go into public use in the interval. The circumstances which were offered to prove this. I was satisfied were sufficient. The invention claimed in this case is of the same date, and the facts and circumstances in that case are applicable to this. There is, however, evidence offered in this case to excuse the delay. I have carefully examined it, and should have been glad to have discovered in it enough for that purpose, but have not upon further deliberation upon the questions of law as settled by me upon the particular case then before me, I have found no reason to change my opinion. I think, therefore, the decision of the commissioner in this case is correct, and ought to be affirmed, which is accordingly done.