

Case No. 5,590. GOODYEAR DENTAL VULCANITE CO. ET AL. V. FLAGG.
[9 O. G. 153.]

Circuit Court, S. D. New York.

1876.

PATENTS—VULCANIZED RUBBER—WHAT IS AN INFRINGEMENT THEREOF.

1. The courts have determined that the construction to be given plaintiff's patent was India-rubber "and the compounds commonly employed therewith reduced to a soft plastic state, capable of vulcanization, and subsequently vulcanized."
2. In the process described by defendant, he does not use India-rubber, or any substance capable of vulcanization. The substance used by him is rendered plastic, and not hardened by heat.

[This was a bill in equity by the Goodyear Dental Vulcanite Company and others against Eben M. Flagg.]

E. N. Dickerson and B. P. Lee, for plaintiffs.

W. D. Shipman, C. A. Seward, and E. Luther Hamilton, for defendant

BLATCHFORD, District Judge. I do not find that any decision has been made in regard to the plaintiff's patent, which gives to it such a construction as necessarily includes the process and substance used by the defendant In the Gardiner Case the defendant did not compound India-rubber with sulphur, but he compounded India-rubber with iodine, and he employed heat to harden the rubber. Goodyear Dental Vulcanite Co. t. Gardiner [Case No. 5,591]. In the Smith Case the view of the court was that the material to be used under the plaintiff's patent in carrying out the invention patented was to be India-rubber, "and the compounds commonly employed therewith reduced to a soft plastic condition, capable of vulcanization and subsequently vulcanized." *Goodyear Dental Vulcanite Co. v. Smith* [Id. 5,598]. It appears from the description of the process used by the defendant in this suit that he does not use India-rubber or any substance capable of vulcanization; that the substance he uses is one which is rendered plastic by heat, and is not hardened by heat; that heat is used in the process to soften the substance and render it plastic, and not to harden it, and that the substance, after being molded, is hardened by being cooled. It is not sufficiently clear that this process is embraced in the claim of the plaintiff's patent to warrant the granting of an injunction until one is awarded as the result of a decree for the plaintiffs on final hearing.