

Case No. 5,597.
GOODYEAR DENTAL VULCANITE CO. ET AL. V. ROOT. SAME V. PERRY.
SAME V. SCHEMERHORN ET AL. SAME V. BENJAMIN. SAME V. IRELAND.

[1 Ban. & A. 384;¹ 6 O. G. 154.]

Circuit Court, N. D. New York.

July 21, 1874.

PATENTS—IMPROVEMENT IN ARTIFICIAL GUMS AND
PALATES—ABANDONMENT TO PUBLIC.

1. The validity of Cummings' patent, reissue No. 1,904, for "improvement in artificial gums and palates," sustained. Dental Vulcanite Co. v. Wetherbee [Case No. 3,810] and Goodyear Dental Vulcanite Co. v. Smith [Id. 5,598], cited and followed.

[Cited in Goodyear Dental Vulcanite Co. v. Willis, Case No. 5,603.]

2. Cummings applied for a patent in April, 1855, and was finally rejected by the commissioner, February, 1856. In 1859, he unsuccessfully moved for a rehearing. In March, 1864, he renewed his application; whereupon the patent office reversed its former decision and the patent was granted June 7, 1864. The invention went into public use about 1860: *Held*, that the invention was not thereby abandoned, or relinquished to the public.

[Cited in Goodyear Vulcanite Co. v. Willis, Case No. 5,603; Colgate v. Western Union Tel. Co., Id. 2,995.]

These were bills in equity, filed against the defendants [Albert E. Root, Perry, Schemerhorn, Benjamin, Ireland, and others], who are dentists, for infringement of reissued letters patent No. 1,904, granted to the Dental Vulcanite Company, assignee of John A. Cummings, for "improvement in artificial gums and palates." The claim in the patent is for: "The plate of hard rubber or vulcanite, or its equivalent, for holding artificial teeth, or teeth and gums, substantially as described." The nature of the invention, and construction of the patent, is fully set forth in the cases of Dental Vulcanite Co. v. Wetherbee [Case No. 3,810] and Goodyear Dental Vulcanite Co. v. Smith [Id. 5,598]. Cummings filed his caveat, May 14, 1852. Applied for a patent, April 12, 1855. This application was rejected, May 19, 1855, and again rejected, August 14, 1855, and again rejected, February 6, 1856. In 1859, a motion was made before the commissioner, for a rehearing, or for an appeal to the board of examiners, which motion was denied. On March 25, 1864, a renewed application was filed. On April 7, 1864, the patent office wrote to Cummings, acknowledging that injustice had been done in the former rejection, and the patent was thereupon allowed, and was issued on June 7, 1864 [No. 43,009.] There was evidence, that tended to show poverty on the part of the inventor, and efforts by him to raise money to prosecute his application, during these periods. The invention went into public use, about 1860.

E. N. Dickerson and B. F. Lee, for complainants.

Wm. H. Bright, for defendants.

HUNT, Circuit Justice. The court decides, on the authority of the cases of Dental Vulcanite Co. v. Wetherbee [Case No. 3,810] and Goodyear Dental Vulcanite Co. v.

GOODYEAR DENTAL VULCANITE CO. et al. v. ROOT. SAME v. PERRY. SAME v. SCHEMERHORN et al. SAME v. BENJAMIN. SAME v. IRELAND.

Smith [Id. 5,598], that the reissued letters patent No. 1,904, dated March 21, 1865, reissued to the Dental Vulcanite Company, assignee of John A. Cummings, are valid; that the invention covered thereby, is patentable; that it was not abandoned, or relinquished to the public, and, that it was not in public use, or on sale, for more than two years prior to said Cummings' application for a patent, with his consent or allowance. Decree ordered for complainants.

{For other cases involving this patent, see note to Dental Vulcanite Co. v. Wetherbee, Case No. 3,810.}

¹ {Reported by Hubert A. Banning, Esq., and Henry Arden, Esq., and by Jabez S. Holmes, Esq., and here compiled and reprinted by permission.}