

## MURPHY ET AL. V. KISSLING ET AL.

{1 Ban. & A. 534; Holmes, 432; 7 O. G. 302.}<sup>1</sup>

Circuit Court, D. Massachusetts. Oct., 1874.

PATENTS—IMPROVED BRUSH  
HEAD—ANTICIPATION—INFRINGEMENT.

1. The patent granted to John Dwyer, administrator, etc., of Francis McLaughlin, deceased, January 11, 1870, for an improved brush head, provided with an angular groove, and a rubber ring fitted therein, *held* valid, and not anticipated by a door-stop provided with a rubber, fitted in an angular groove.
2. The patent held to be infringed by the defendants' brush head, which, though different in form, embodies the patented invention.

{This was a suit [by Thomas E. Murphy and others against Laurent Kissling and others] under letters patent [No. 98,787] for an improved brush, granted to Francis McLaughlin January 11, 1870, being the same patent that was involved in the suit of *Murphy v. Eastham* [Case No. 9,949]. The object of the McLaughlin invention was to obviate the danger of breaking glass and injuring the surface of wood or other substances to be washed or dusted by contact with the brush head. To this end the patentee proposed to form a groove in the brush head or stock, near the bristles, and in this groove to insert a rubber band, one edge or angle of which should project outward and prevent injurious contact between the brush head and the surface to be cleaned. The novelty of the invention and the scope of the patent were fully discussed in the case above referred to.}<sup>2</sup>

J. L. Newton, for complainants.

J. T. Wilson, for defendants.

SHEPLEY, Circuit Judge. This bill in equity is brought for an alleged infringement of the letters patent, granted for the invention, by Francis McLaughlin, of an improved brush. So far as the defence, set up, of want of novelty in the invention, relates to the evidence introduced by defendants of the Monzani patent, and the rejected applications of Williams and Crittenden, it has been fully considered in the case of Murphy v. Eastham [Case No. 9,949]. The defendant also sets up, as anticipating the invention of McLaughlin, a door-stop made, and used and sold, by D. C. Smart, Smart's door-stop had an angular groove in it, with a rubber ring fitting therein, in the same manner, as in the brush head in the McLaughlin invention. It was not new, at the date of the McLaughlin invention, to put a rubber ring into an angular groove. What was new, was, his combination of a brush head with an angular groove and a rubber ring fitting therein, whereby the elements of the combination, operated together, and jointly, in the function of the brush. The infringement, in this case, is clear. Defendants use a rubber ring fitting into an angular groove in the brush head, in the same manner as in the McLaughlin patent. They claim, that their rubber ring performs another function also; that, as they extend their rubber ring by a flange between the two surfaces of the two parts of the brush head, where they unite at the bottom of the groove, as their brush is constructed, the rubber forms a packing which makes the joint tight. This would be only an improvement, at best, upon the McLaughlin invention. But, if the groove in the McLaughlin brush, be made square, and an elastic band be used, fitting this square groove, it would act in the same way as a packing to exclude the water from the joint, if the joint was at the bottom of the groove. This is one of the forms of McLaughlin's invention, and is shown in Exhibit G. This is a clear case of an attempt to evade infringement

by a change of form merely. Decree for injunction and account.

{For another case involving this patent, see [Murphy v. Eastman, Case No. 9,949.](#)}

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

<sup>2</sup> {From 7 O. G. 302.}

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