

HICKS *v.* OTTO AND OTHERS.

Circuit Court, S. D. New York. July 25, 1883.

PATENTS FOR INVENTIONS—AMENDMENTS.

Motion for an amendment to answer, and commission to take testimony in a foreign country to prove who is the original inventor of a patent, will not be allowed when the affidavits filed by plaintiff show that there is no evidence to sustain the amendment.

In Equity.

Von Briesen & Steele, for defendants.

Frost & Coe, for orator.

WHEELER, J. The motion of defendants, now heard, for an amendment of the answer, and a commission to take the testimony of Denton, in London, to show that he, and not Peroni, is the original inventor of improvements in thermometers, patented to the orator as assignee of Peroni, must be denied. While such motions are granted with liberality, some prospect is required that there is evidence to support the amendment which can be had. Here, the affidavit of Denton, filed by the orator in opposition to the motion, stating that he does not claim to be and is not, and that Peroni is, the original inventor, and his refusal to make an affidavit for the defendants to the contrary, on their application, show that there is no such prospect. Motion denied.