

account of a breach of them by the defendant, and brought this suit against him as an infringer, and obtained an injunction against the use by him of an infringing machine. At the defendant's request the plaintiff withdrew the cancellation. The item of \$270 mentioned in the master's report, and the decision of the court upon it, is made up of royalties reckoned at the licensed rate for the use of the infringing machine. The report of the master appears to be based wholly upon a stipulation filed, and neither the report nor stipulation shows what the relation of the parties was in respect to the license,—whether it was while the cancellation was in force, or while the license was in force, that the use was made of the infringing machine for which the \$270 was allowed. This was a material matter in the disposition of the case, but was treated by the master and court as the parties by the stipulation left it. Since the decision, and before final decree entered, the defendant has moved to have the report recommitted to the master for the purpose of having the fact appear as to when this use was had, and presented an affidavit in support of the motion tending to show that it was while the cancellation was in force. The plaintiff insists, in opposition to the motion, that it was while the license was in force. It is not contended but that it is still within the power of the court to recommit the report. The amount involved is so small that if the right to that sum was all there was to follow the final disposition of the case, it might seem wisest to leave the case to stand as it would upon the facts as left by the stipulation of the parties. But this appears to be a test case to some considerable extent, and one that is likely to be appealed, for the purpose of settling some of the questions involved, in view of other and greater interests, and upon which the matter desired to be shown may be quite material. Under these circumstances it seems to be better that this case should be so completed as to present the questions to be decided in all the aspects which may ultimately be found to be material. For these reasons the motion is granted.

Motion granted and report recommitted to master.

DODDS v. STODDARD and others.¹

(Circuit Court, S. D. Ohio, W. D. July, 1883.)

I. PATENTS FOR INVENTIONS—HORSE RAKES—CONSTRUCTION.

Letters patent No. 65,573, granted J. M. Wanzer, assignee of James Hollingsworth, June 11, 1867, for an improvement in horse rakes, held invalid for want of novelty as to the first claim, and not infringed as to the second, third, and fourth claims.

¹Re.orted by Herbert D. Blakemore, Esq., of the Cincinnati bar.

2. SAME—DEVICES DISTINGUISHED.

Complainant's mechanism consisting of tubular oscillating rake-teeth bearings, with three passages at right angles, formed to *abut* directly against each other; bearings for supporting the front ends of the teeth, having sliding pins with eyes, sustained upon springs and playing in guides above and below said eyes, and combinations of these tubular and eye-bearings, with rake teeth of a double-curved form, rocking-frame and arms of a horse rake, in view of the state of the art, *held, not infringed* by defendant's rake, in which the tubular bearings do not *abut* directly against each other, but are spaced by rings or washers, where the front end of the teeth are supported in tubular guides, sustained by springs, and play freely through slots in such guides, and having combinations of these tubular bearings and guides, rake teeth of the double-curved form, and rocking-frame.

3. SAME—TUBULAR BEARINGS OF FORM TO ABUT ANTICIPATED BY BEARINGS OF SAME FORM THOUGH NOT ABUTTING.

The first claim for tubular bearings of a form to abut against each other, *held, anticipated* by tubular bearings, which, though they are not shown nor described as so abutting, might, without any change of construction, have been made to abut against each other.

In Equity. Final hearing upon pleadings and proofs.

Parkinson & Parkinson, for complainant.

Stem & Peck, for defendants.

SAGE, J. The complainant sues for infringement of a patent for improvement in horse rakes, granted to his assignor, J. M. Wanzer, assignee of James Hollingsworth, the inventor, June 11, 1867. The defendants admit that since February 2, 1881, they have made hay rakes substantially in accordance with expired patent No. 41,433, granted to James Hollingsworth, February 2, 1864, and allege that they have added thereto several minor improvements, the invention of the defendant E. Fowler Stoddard. They deny the validity of the letters patent sued upon, and say that said Hollingsworth was not the original or first inventor of the alleged improvements therein described, and that said alleged improvements do not constitute a patentable invention, and that they are not novel; and they further say that they were described and shown in letters patent, named and described in the answer, long prior to said alleged invention of said Hollingsworth.

The patentee's claim in the patent sued on is:

(1) For the construction of a rake-tooth bearing, (which is described in the specifications as an oscillating tubular bearing, constructed with three passages through it, and constituting a means for attaching a tooth to a bar so as to articulate thereon, and also a means whereby the tooth can readily be attached or detached at pleasure, and adjusted forward or backward, according to the character of the ground over which the rake is to be drawn,) with three passages at right angles to each other, when said bearings are of a form to abut directly against one another, and the teeth extend clear through the top passages of the bearing, substantially in the manner and for the purposes described.

(2) The construction of eye-bearings for supporting the rake teeth at their front ends; each bearing holding a spring, substantially as described.

This part of the alleged invention, as set forth in the specifications, consists in sustaining the front ends of the rake teeth by means

of sliding pins, having eyes formed on them for receiving the ends of the teeth, said pins being sustained upon springs, and supported in guides above and below their eyes, in such manner as to form supports for the teeth against lateral displacement; also to afford the teeth an additional spring action to hold them down to their work, and allow them to rise and pass over obstructions which may be in their path.

(3) The combination of the jointed bearings (described in first above) and eye-bearings (described in second above) with a rake tooth of the form substantially as in the letters patent described.

The rake tooth is described in the specification as having a gradual curve from the rear to the forward supporting bar, which feature, in conjunction with a set-screw on the middle bearing,—the tubular bearing,—allows the tooth to be adjusted backward or forward, whereby one set of teeth can be adapted for level land, or for rough and uneven land, and for heavy and light raking.

(4) The combination of the tubular bearings above described with set-screws, (the holes for receiving the set-screws being perpendicular to the tooth, so that the screw serves to secure the tooth rigidly to the bearing, and to admit of its forward or backward adjustment,) the rocking-frame with its arms, and the eye-bearings (described in second above) with their springs, substantially in the manner and for the purposes described.

The hay rake which the defendants admit they have manufactured since February 2, 1881, and which, it is claimed, is an infringement of the patent sued upon, has—

(1) An oscillating tubular rake-tooth bearing, constructed with three passages through it at right angles to each other, and constituting a means for attaching a tooth to a bar, so as to articulate thereon, and also a means whereby the tooth can readily be attached or detached at pleasure, and adjusted forward or backward, according to the character of the ground over which the rake is to be drawn: and the tooth extends clear through the top passages of the bearing, substantially (indeed, it may be said, identically) in the manner and for the purposes described in the complainant's patent.

The tubular bearings in the defendants' rake are of the same shape, form, and construction as the tubular bearings in the complainant's rake. But in the defendants' rake these bearings do not abut directly against each other, as do the tubular bearings in the complainant's rake, but they abut against metal rings or washers, which space the distances between them.

(2) The defendants' rake has eye-bearings for supporting the rake teeth at their front ends, each bearing holding a spring. The eye-bearings in the defendants' rake differ in form from those described in the complainant's patent, in that they consist of a tube having a slot or elongated opening, in its two opposite sides, of the proper size to permit the front end of the rake tooth to be inserted and pass through the slots, and play freely up and down in the tubular guide.

(3) The combination of the tubular bearings with the rings or washers, above described, and eye-bearings, (as above described,) and a rake tooth substantially of the form of the rake tooth described in the letters patent under

which the complainant claims. There is no appreciable difference between the tooth in the defendants' rake and that in the complainant's.

(4) The combination of the tubular bearings, separated or spaced by rings or washers, as above described, with set-screws, (the holes for receiving the set-screws being perpendicular to the tooth, so that the screw serves to secure the tooth rigidly to the bearing and to admit of its forward or backward adjustment,) the rocking-frame with its arms, (which are substantially as in the complainant's rake,) and the eye-bearings, as above described, with their springs.

It is thus made clear that the only differences between the complainant's rake and that manufactured by the defendants are—*First*, that the tubular bearings in the defendants' rake do not abut directly against each other, as do the tubular bearings in the complainant's rake, but are separated or spaced by rings or washers, which fill the intervening spaces between the bearings; and, *second*, in defendants' rake the guides or eye-pieces of the eye-bearings are held stationary and the tooth plays up and down in the slots therein; while in complainant's rake the eye-piece, or guide, plays up and down with the tooth through holes in the bars.

The rocking-frame was not new at the date of the alleged invention described in the complainant's patent.

An oscillating tubular bearing, having three passages at right angles to each other, the tooth extending clear through the top passage of the bearing, and having a set-screw serving to secure the tooth rigidly to the bearing, and to admit of its forward or backward adjustment, was known and used before the date of said alleged invention, as were also guides, or eye-pieces, substantially the same as those used by the defendants.

The patentee of the complainant's rake, in his application for letters patent therefor, claimed the construction of a rake-tooth bearing with three passages at right angles to each other, as described in his specifications and as used in complainant's rake, and the commissioner of patents found that the claim was anticipated in the patent to Hollingsworth of February 2, 1864, whereupon the patentee accepted the decision of the commissioner, and modified his claim so as to make it apply when said bearings were of a form to abut directly against each other, as described in his application. He also claimed for adjusting rake teeth backward or forward when said teeth were constructed and supported by eye-bearings, substantially as described in his application, and the commissioner having found that this claim, too, was anticipated, the patentee erased said claim, and he is therefore estopped from making such claim, or from maintaining that the form of the tooth in the patent sued on is substantially different from that known and used before the date of his alleged invention.

The combination of tubular bearings, as in the complainant's rake, (excepting that they were not jointed,—that is, did not abut against each other,) and eye-bearings with a tooth substantially as described in the application for the patent sued upon, was anticipated in the

Hollingsworth patent of February 2, 1864, and the tubular bearings described in said patent are of a form to abut directly against one another. This is shown by defendant's exhibit, "Expired Hollingsworth Modifications." It is true that in that patent the tubular bearings are not described, nor are they shown by the model which is in evidence as abutting directly against each other, but their form is such that, without any change of construction, they might have been made to so abut; and the claim in the complainant's patent is for *the form* of the bearings.

In the defendant's rake the tubular bearings do not abut directly against one another. They are separated by metal rings or washers. If these rings or washers served no other purpose, it might well be insisted that they are only continuations of the tubular bearings, and are not deprived of any office or operation by being severed from them, instead of being made solid with them. But in the complainant's rake the tubular bearings differ in length, and have to be cast from different patterns on account of the end standards, and the arm or lever used for the purpose of stiffening the frame and strengthening the bars at the point where the power is applied for oscillating the frame. In the defendants' rake the tubular bearings are all of the same length. They may be cast from the same pattern, and are interchangeable, which is a great advantage to the manufacturer, and, in case of breakage, to the purchaser and user. The rings or washers serve to fill the spaces between the bearings, and obviate the necessity of having bearings of different lengths, which cannot be avoided if the bearings abut directly against each other. The introduction of the rings or washers is, therefore, an improvement; and, inasmuch as tubular bearings of a form to abut directly against one another are found in the expired Hollingsworth patent, the complainant's appeal to the doctrine of mechanical equivalents is not well taken.

It results that the defendants' rake is not an infringement of either of the combinations of the complainant's patent, and as the eye-bearing in defendants' rake is found substantially in the expired Hollingsworth patent, and the first claim in complainant's patent is anticipated, as already stated, in the expired Hollingsworth patent, there is no infringement of the first or second claims.

No questions depending upon the agreement of dissolution of partnership between the complainant and the defendant John W. Stoddard, referred to in the bill, can be considered in this court, for the reason that, the parties being citizens of Ohio, the state courts have exclusive jurisdiction, excepting of questions arising under the patent laws of the United States.

The bill must, therefore, be dismissed.

Wood and another v. PACKER.

(Circuit Court, D. New Jersey. July 14, 1883)

1. PATENTS FOR INVENTIONS—REISSUE.

Reissued letters patent No. 9,368, dated August 31, 1880, for an improved coal cart with a sliding extension chute, *held* valid.

2. SAME—PATENTABILITY OF COMBINATION OF OLD ELEMENTS.

A mere aggregation of old things is not patentable, and, in the sense of the patent law, is not a combination. In a combination the elementary parts must be so united that they will dependently co-operate and produce some new and useful result, and such result must be a product of the combination and not a mere aggregate of several results, each the complete product of the combined elements.

3. SAME—NOVELTY—RESULT.

The subject-matter of a supposed invention is new, in the sense of the patent law, when it is substantially different from what has gone before it, and this is determined by the character of the result, and not the amount of skill, ingenuity, or thought exercised; and if the result has been substantially different from what had been effected before, the invention is patentable.

4. SAME—MECHANICAL SKILL.

When the results are produced by mere mechanical skill, or where the change is only in degree and not new, the improvement is not patentable.

5. SAME—REISSUE—VOID CLAIM.

An entire reissue will not be avoided on account of the existence of one void claim.

In Equity.

F. C. Lowthorp, Jr., for complainant.

James Buchanan, for defendant.

NIXON, J. This action is brought against the defendant for infringing certain reissued letters patent, No. 9,368, dated August 31, 1880. The Delaware Coal & Ice Company was the owner of the original patent, No. 73,684, and brought suit in this court against the same defendant for their infringement. It was found, upon examination, that although the patentee in his specifications stated the nature of his invention to consist in the funnel-shaped mouth attached to the cart, in combination with the chute and valve, he had failed to make any claim for such combination; and as none of the separate constituents, as set forth in the three claims, were new, the court was obliged to hold that the defendant was not shown to have infringed anything claimed in the complainant's patent. Since then the original patent has been surrendered, and a reissue obtained, with quite a different statement of the inventor's claims. They are as follows: (1) The combination of the body of a coal cart with a sliding extension chute, substantially as and for the purpose set forth; (2) the combination of the body of a coal cart and the outlet, having a gate or valve, with a sliding extension chute, adapted to the said outlet, substantially as specified.

The answer sets up three defenses: (1) That the reissue is void because the combination claimed is an expansion of the original; (2) want of novelty in the patent; (3) non-infringement.

The second is the only one of these defenses which seems to have merit, or which has been the occasion of any serious or extended in-