

HELLER AND ANOTHER V. BAUER AND
OTHERS.¹

Circuit Court, C. D. Missouri. January 7, 1884.

PATENT FOR PROCESS—INFRINGEMENT.

Where a patent process consists of a number of steps, all well known except the first and last, the use of all except the first and last steps will not infringe the patent

In Equity.

M McKeag for plaintiffs.

E. J. O'Brien for defendants.

TREAT, J. This is a suit for an alleged infringement of plaintiffs' rights under patent No. 164,858. The patent is for a process "intended for all oil-finished work when it is desired to represent a rich veneering, or imitation of wood." The successive steps of the process are enumerated in the claim and set out in the specifications. There is nothing new in the pigments used, nor in their mixtures with oil. Such mixtures were known long before the patent was issued,—not only in oil, but also in water and beer. Nor was there anything new in the use of a crumpled cloth, for the manipulation mentioned, to work out the blending of colors, so as to imitate different kinds of woods. The patent contains no disclaimers, and therefore it is somewhat vague in its terms. A proper construction, however, shows clearly enough that it is for a process for enameling wood, consisting essentially of successive steps to be taken in the use of various pigments, etc., as described; each of which steps is an essential part of the process itself.

It appears from the evidence that the defendants did not use either the first or last of the steps named, and it is doubtful whether the plaintiffs have ever used either of them. The other steps were well known, and

had long been in use, and no patent therefor would have been grantable. If the addition of the first and last steps enumerated made a new process within the purview of the patent law, it is obvious that there could be no infringement unless those were used. It is doubtful whether the patent is not void for want of novelty, but it is not necessary to decide that question. It is clear that no infringement has been proved.

The bill will be dismissed, with costs.

¹ Reported by Ben. F. Rex, Esq., of the St. Louis bar.

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