

largement of the system so as to adapt it to the needs of a much larger newspaper, by the use of a greater number of lettered hooks, and the lettering of the galleys instead of their being designated by rule of the office and in the memory of the compositor.

The description of the invention which was given by the patentee upon his cross examination is as follows:

"When the compositor has emptied his type on the galley, he is instructed by my invention, 149,092, to deposit his copy on a receptacle corresponding to the galley where his matter is, or corresponding to the take-mark on his copy and thereby keep the copy for that galley or article distinct and separate from all other copy or matter, for the more immediate convenience of the proof-reader, and without the labor usually entailed on a copy-sorter."

The invention thus described was substantially used in the *Sun* office, and the patented improvement was a convenient modification of, but not a substantial advance upon, the *Sun's* system.

Believing that the invention was not patentable, I have not examined the question of infringement.

The bill is dismissed.

CAHN v. WONG TOWN ON.

(Circuit Court, D. California. February 4, 1884.)

PATENTS—COMBINATION OF SEPARATE DEVICES—SUBCOMBINATION.

The fact that a device, comprising several patentable elements, has been patented as a whole, will not prevent the patentee from afterwards securing a patent for a combination of any number of the elements less than the whole, provided he applies for it before the lesser combination has been two years in public use.

In Equity.

M. A. Wheaton, for complainant.

J. L. Boone, contra.

SAWYER, J., (orally.) This action is upon a patent. The patent consists of lapping over two pieces of leather in making the seam of a boot or any other work of the kind, running a line of rivets along, and then a line of stitching on each side of the line of rivets, so as to make a compact, tight seam. The plea sets up that the patentee in this case, on a prior occasion, procured a patent, and that this other and prior patent is for the same thing, with the addition of a piece of India rubber inserted between the two pieces of leather. The strip of India rubber having been inserted, a line of rivets is run along with two lines of stitching, one on each side of the line of rivets, in the same manner as in the second patent. The defendant claims that the second patent is not a new invention; that it is merely a combination of a part of the elements of the first patent, or of the prior invention, and therefore that the second patent is void, as not covering

a new invention. I think, probably, that would be the case if the patentee were a different inventor—if the patentee in the prior patent had been a different person from the patentee in the second, I am inclined to think so. But the prior patentee is the same man, and doubtless if he had made the invention at the time he obtained his first patent, he might have got a patent for the subcombination, omitting one element—the slip of India rubber. And it does not appear in the plea that this second invention has been in public use or on sale for more than two years, whereby it would be abandoned to the public. The inventor failed, therefore, if he is the inventor of both at the same time, to obtain a patent for all he was entitled to. If he was the inventor at that time, he was entitled to patent the second or subcombination of elements, omitting the inserted strip of India rubber, as well as the first combining all the elements. He might, perhaps, have got a reissue covering both, if his invention of the subcombination is sufficiently indicated in the specification of the first patent; but he has chosen to obtain an independent patent for the subcombination. If he invented it at the same time with the other he might undoubtedly have obtained a patent in the first instance. I think if it was patentable with the additional element of the India rubber, the subcombination, without the addition of the India rubber, invented at the same time, would be patentable. Justice FIELD says, in the *Giant Powder Case*,¹ that this is the proper mode of proceeding when there is another invention for which an independent patent might have been obtained, but has been omitted. If he was the inventor of both he was entitled to patent both, the subcombination without the strip of India rubber, as well as the entire combination of the lapping of the leather and the intervention of a piece of India rubber to make the seam tighter, and better still in combination with the line of rivets and line of stitching on each side of it. He being the first person to invent both, I think it was patentable as to both. He doubtless did invent the subcombination as well as the entire combination at the same time. He embraced the subcombination in the last patent without the additional element intervening; and it does not appear that it was on sale for two years before the application for the last patent. I think the plea, then, should be overruled. And it so ordered

¹ 4 FED. REP. 720; 5 FED. REP. 197

GLOUCESTER ISINGLASS & GLUE Co. v. Brooks and others.

Circuit Court D. Massachusetts. February 13, 1884.

1. PATENTS—EXTRACTION OF GELATINE FROM FISH-SKINS.

Letters patent No. 167,123, for a process of extracting gelatine from fish-skins, sustained against letters No. 177,764, granted to another person for a like process, and the latter held to be an infringement.

2. SAME—DECISIONS OF THE PATENT-OFFICE.

The decisions of the commissioner of patents, though entitled to great weight upon questions of priority, are not conclusive.

In Equity.

Browne, Holmes & Browne, for complainant.

James E. Maynodier, for defendant.

NELSON, J. The original of the plaintiff's patent was granted to John S. Rogers, August 24, 1875, No. 167,123, for a new and useful process of extracting gelatine or ichthyocolla from salted fish-skins. It was reissued June 1, 1880, No. 9,226, and again reissued July 13, 1880, No. 9,296. The invention has proved of great value commercially, and it has certainly the merit of patentability. It is also new, unless it was anticipated by Isaac Stanwood, to whom a patent was granted for the same process, May 23, 1876, No. 177,764, and reissued May 17, 1881, No. 9,715. The specifications and claims of both the original and reissued patents of Rogers are the same in substance, the difference between them in phraseology being slight and immaterial. In the second reissue he states the process to be this:

"My invention is to utilize such salted skins of fish; and in carrying it out the first portion of it is to desalt the skins, such portion of the process causing the removal of the scales from the skins, it being accomplished by soaking the skins in cool water, and agitating them therein sufficiently to extract the salt from them. The water should be changed repeatedly until the salt may have been separated from the skins, after which they are to be put into fresh water, which should be gradually heated to a boiling temperature, and kept so for three hours, more or less, until the gelatine may have been sufficiently extracted from the skins by the water so heated. Next, the superfluous matter or matters should be removed from the gelatinous solution now procured, and it (the gelatinous solution) should be strained or filtered in order to obtain it in a purified state. Finally, the liquid is to be suitably evaporated by introducing the solution into pans or moulds, or upon slabs, and exposing to the atmosphere until it may be sufficiently condensed for use, whether as an article of food or as a glue for mechanical purposes."

His claim is:

"The process, substantially as described, of obtaining gelatine from salted fish-skins, it consisting in desalting and boiling them, separating from the gelatinous solution so obtained the superfluous matter or matters, and reducing it (the solution) by evaporation to the necessary consistency for use, as set forth."

The evidence shows that in the years 1872 and 1873 an extensive business was carried on in Gloucester, in the preparation of what is