

oil by a fire-test while in the process of manufacture. Infringement by the defendant is sufficiently proved.

There should be a decree for the complainant, but, as he has been defeated as to one of the patents declared on, it should be without costs.

VACUUM OIL Co. v. BUFFALO LUBRICATING OIL Co., (Limited.)

(Circuit Court, N. D. New York. July 16, 1884.)

PATENT PROCESS FOR OIL—REISSUE—UNLAWFUL CLAIM.

The claim of the reissue of a patent for making an oil product by the use of steam, in vacuo, cannot be unlawfully broadened so as to include the oil product, no matter by what process produced.

In Equity.

George B. Selden and T. Outerbridge, for complainant.

James A. Allen and Corlett & Hatch, for defendant.

COXE, J. This is an equity action founded upon reissued letters patent No. 7,321, granted to the complainant, as assignee, on the twenty-sixth of September, 1876. The application was filed January 29, 1876. The original patent, No. 58,020, was issued to M. P. Ewing, September 11, 1866.

Of the various defenses interposed but one will be examined, viz., that the reissue is void for the reason that the claim is improperly expanded. The claims are as follows:

ORIGINAL.

As a new manufacture, an oil-product, as above described, when produced from crude petroleum by the evaporation therefrom of the lighter hydrocarbons in vacuo by the use of steam or its equivalent, to prevent burning, substantially as herein set forth.

REISSUE.

An unburned, residual, heavy hydrocarbon-oil, substantially as described.

It will be observed that in the reissue the product alone is claimed, all reference to the manner in which it is produced is omitted. The original limited the invention to a heavy residual oil produced from crude petroleum by the evaporation therefrom of the lighter hydrocarbons in vacuo by the use of steam or its equivalent. The attempt in the reissue is to claim the oil product, no matter by what process produced; to sweep into complainant's net every new method of producing the desired result, and every improvement upon the old method, which had been discovered during an interval of nearly 10 years, or which may be discovered in the future. It is suggested that the claim should be read in connection with the description, and if so read the precise manner of manufacture described in the original

is pointed out. It is true that it should be so read, and it may be conceded that the original process is referred to. But the description does not limit the invention to a product produced by vacuum distillation with the aid of steam; on the contrary, the intention to provide for all contingencies is boldly announced in these words:

"It is not intended to limit the present claim of invention to the product of precisely the same process hereinbefore described, as modifications thereof may be readily made embodying the same principle of distillation at low temperature, to which the obtaining of the product in question is due."

That the claim of the reissue has been unlawfully broadened there can be little doubt; and the long lapse of time after the date of the original brings the case within the recent decisions of the supreme court.

There should be a decree for the defendant, with costs.

CRANDAL and others v. PARKER CARRIAGE GOODS Co.

(Circuit Court, N. D. New York. July 7, 1884.)

1. PATENT LAW—REISSUED PATENT—DUTIES OF COURTS.

When it can be seen that the patentee seeks, by apt words of description, to secure what he has honestly invented and nothing more, the courts should hesitate to regard with favor the accusations now so freely made against re-issued patents.

2. SAME—IMPROVEMENT IN BOX-LOOPS, ETC.

Reissued patent for "improvement in box-loops for carriage tops," held valid: following *Crandal v. Watters*, 20 Blatchf. C. C. 97; S. C. 9 FED. REP. 659.

In Equity.

Neri Pine and Charles M. Stone, for complainants.

Stem & Peck, for defendant.

COXE, J. The complainants are owners of reissued letters patent, granted to Charles H. Davis for an "improvement in box-loops for carriage tops. The validity of the patent was adjudicated in the case of *Crandal v. Watters*, 20 Blatchf. C. C. 97; S. C. 9 FED. REP. 659. Although the issues presented are not in all respects identical, the reasoning of that case must determine the present controversy.

It is argued that the patent is void for want of novelty, and several patents, not before the court in *Crandal v. Watters*, are introduced in support of this defense. The patent issued to E. M. Blodgett July 25, 1865, for an "improvement in gaiter-fastenings," describes an apparatus bearing some similitude to the complainants' invention. The devices of the other patents referred to are dissimilar in many important particulars. The object of the Blodgett invention is "to apply the staple-fastenings of cloth-gaiters to the flap of the same in such a manner that the cloth about these fastenings will not fray out and