

to set up a practically abandoned claim to the prejudice of others, who, deceived by his silence and apparent acquiescence, have introduced his device into many of the leading cities of the country.

The language of Mr. Justice BRADLEY in delivering the opinion of the supreme court in *Miller v. Brass Co.* 104 U. S. 350, is exactly pertinent to this case:

“But it must be remembered that the claim of a specific device or combination, and an omission to claim other devices or combinations apparent on the face of the patent, are, in law, a dedication to the public of that which is not claimed. It is a declaration that that which is not claimed is either not the patentee's invention, or, if his, he dedicates it to the public. The legal effect of a patent cannot be revoked unless the patentee surrenders it and proves that the specification was framed by real inadvertence, accident, or mistake, without any fraudulent or deceptive intention on his part; and this should be done with all due diligence and speed. * * * It will not do for the patentee to wait until other inventors have produced new forms of improvement, and then with a new light thus acquired, under pretense of inadvertence and mistake, apply for such an enlargement of his claim as to make it embrace these new forms.”

If this language may be used with references to devices or combinations apparent upon the face of the patent, with much greater force may it be applied to a claim which was not even suggested in the original patent or in the drawing annexed thereto, and was only shown by a model preserved in the archives of the patent-office, the existence of which could only be learned by a search instituted for that purpose.

The third claim of the reissue only remains to be considered. This is for a “combination of the hydrant or fire-plug pipe, A, supply-pipe, B, valve, D, casing, C, and stuffing box, H, substantially as and for the purpose shown.” It is substantially a restatement, in somewhat more specific language, of the second claim of the original patent. We have already expressed the opinion that the invention claimed in the original patent was that of a cylinder valve operating in a suitable case, in connection with a waste-water valve. If this be the proper construction, then defendants are not guilty of an infringement, inasmuch as they make use of a puppet valve in place of the cylinder valve, B, unless the puppet valve can be treated as the equivalent of the cylinder valve. But if the two valves be treated as equivalents for each other, (and we are inclined to think they ought to be,) then the combination is destitute of novelty, for in all the hydrants exhibited there is an upright stock, A, hydrant tube, B, a horizontal section, B, a valve for turning off and on the water, a stuffing box, H, and a loose casing for protecting the hydrant from the surrounding earth. In the New York hydrant it is a mere wooden box covering the entire hydrant. In the Race & Mathews patent of 1858 it is a tube loosely inclosing the hydrant tube, but held at the top by an overlapping flange. In view of the opinion we have already expressed regarding the first claim, we think the patentee

should be confined, in the construction of this claim, to such a loose casing as is exhibited in the drawing attached to the original patent, viz., one wherein the end play is confined by an overlapping flange, and, thus interpreted, the claim is anticipated by the Race & Mathews patent of 1858. It results that the bill must be dismissed.

FRICKE *v.* HUM.

(Circuit Court, W. D. Pennsylvania. November Term, 1877.)

1. PATENTS FOR INVENTIONS — FRICKE COPPER-CABLE LIGHTNING-RODS CONSTRUED.

Letters patent No. 112,137, dated February 28, 1871, for an improvement in copper-cable lightning-rods, granted to Joseph R. Fricke, construed, and held to be restricted to the peculiar form of manufacture therein particularly described.

2. SAME—CLAIMS.

If the patentee meant to assert a right to the exclusive use of coreless strands, he should have indicated that intention with reasonable clearness, and not left the claim to rest upon what, at the best, is but a doubtful implication.

In Equity.

W. S. Wilson and Bakewell & Kerr, for complainant.

S. C. Schoyer, for defendant.

ACHESON, J. The plaintiff is the grantee of letters patent No. 112,-137, dated February 28, 1871, for an improvement in copper-cable lightning-rods. The object and nature of his invention are set forth succinctly and clearly in his specification. The purpose, as therein stated, is to produce a copper-cable lightning-rod of greater flexibility than those theretofore made, of an equal mass of material, and having a superior conducting capacity, and so made as to admit of the convenient increase of the size and conducting power of the cable conductor by adding to one that is already made one or more additional layers of wire or "strands of wire." The usual mode of making copper-cable lightning-rods, the specification states, has been "to unite a number of strands of copper-wire, as a 'cable-laid' rope is made." That "form of manufacture," it is alleged, necessarily gives great rigidity to the copper cable, and makes it less convenient to coil for transportation, or to turn neatly at the angles of buildings to which it is applied. These objections, it is claimed, are obviated by the plaintiff's invention, which also produces a cable of better and more merchantable appearance, and secures the further economic advantage that the machinery required to make any size of cable need only be adapted to work one size of wire. To secure the specified results, says the patentee in his specification,—

"I make my improved cable as follows: Around a central wire, strand or wire, or wire rope, I wind a number of parallel wires or strands of wire, and