

I do not intend to be understood as holding that the employer became the owner of this patent, but that it acquired, under the facts, the right to use the particular tools which complainant made and put voluntarily into use in defendant's factory at defendant's expense.

Although it may hardly be necessary to the disposition of this case, I will further say that the proof in this record is such as to fully, as I think, sustain the position that this patent should and must be held void for want of novelty. The characteristics of the complainant's patent, and wherein it differs from the ordinary and old-fashioned drills or reamers, is in the insertion of removable cutters to do the reaming and the squaring. There is no doubt but what both these processes could have been accomplished, and have been heretofore accomplished, with other tools. The advantage claimed for the complainant's tool is that when the cutters become dull or worn out they can be taken out and sharpened or replaced with new ones; and, if this were a new device, if the complainant was the first to show a removable cutter in a tool for reaming or squaring or boring brass or iron, it might be such an improvement over the former reaming and squaring tools as would entitle him to a patent; but the proof in this case is ample to show that tools provided with cutters, like the cutters, C and E, described in this patent, had been used long prior to the time complainant entered the field. There can be no doubt, from the proof, that implements like defendant's Exhibit Goode and defendant's Exhibit Kley had been in use for upwards of 10 years, at least, prior to the date of complainant's patent. Both these tools show removable cutters of different shapes, and which it would only require a slight mechanical adaptation to make them do all the work which the complainant's tool has done or is capable of doing. In view of the state of the art, therefore, it seems very clear to me that complainant's tool is nothing but an adaptation, perhaps to a new use, of a tool well known in the art long prior to the date of his alleged invention, and this adaptation is not such as required invention, but simply mere mechanical change, which any machinist, or person skilled in the use of tools, could do. I therefore hold both branches of this defense are sustained by the proof, and the bill is dismissed for want of equity.

KETCHAM, Receiver, and others v. JACQUES and others.

(Circuit Court, N. D. Illinois. August 4. 1884.)

PATENTS FOR INVENTIONS—BOXES—PATENT No. 132,174—INFRINGEMENT.

Patent No. 132,174, issued to Henry R. Heyel, assignee of the American Paper Box Company, dated October 8, 1872, "for an improvement" in boxes, in view of the state of the art at the time of issuance of the patent, must be confined to a certain-shaped box and cover, the depth and width of which must bear certain relations, and, although the inventor fastened his box with staples, that does not enable Heyel to treat as infringers all box-makers who use flaps and staples, or who use staples horizontally, nor is such patent infringed by defendants' box.

In Equity.

BLODGETT, J. This is a bill to restrain the infringement of letters patent No. 132,174, issued to Henry R. Heyel, assignee of the American Paper Box Company, dated October 8, 1872, for "an improvement in boxes," and for an accounting. Defendants deny infringement, and also insist that the Heyel patent is void for want of novelty. The complainant's patent is for a device in the manufacture of "boxes to be made of paper, pasteboard, thin wood, or other flexible material;" and the specifications describe the box as constructed from a rectangular piece of paper or other material, in which slits are cut at right angles to the sides of the blank so as to form flaps, which are turned up to a right angle with the bottom, thus forming the sides and ends of the box. The outer flaps are so formed that when folded over around the end flap their ends will not overlap, but will meet flush with each other and extend to the top of the box, and the outer flaps are thus secured in place by staples applied horizontally, or nearly so, and the legs of the staples are driven through both flaps and clinched on the inside. A box constructed after the description of complainant's patent was adapted to receive a cover; the cover being constructed in the same manner as the body of the box. The defendants sell a kind of tray made of thin wood or veneer, with sloping sides or ends, used mainly by retail grocers as packages for butter, cheese, honey, and other commodities. Their tray has no cover, and is not adapted to receive one, but the ends of the flaps are fastened by staples applied horizontally through all the flaps, and clinched on the inside. In view of the state of the art, as disclosed in the proof, I am of opinion that complainant's patent must be strictly construed. The patent states that the flaps are to be bent or folded perpendicularly to the plane of the blank; that is, his box must have four perpendicular sides, and from the necessity of the case, must be just half as deep as it is wide, because he provides that the ends of the flaps, *b, b*, must meet flush in the center of the end.

The defendants' tray is made by cutting the blanks at an angle, so that when the ends and sides are turned up they give the box a tray-