

CELLULOID MANUF'G CO. V. AMERICAN  
ZYLONITE CO. AND OTHERS.<sup>1</sup>

*Circuit Court, S. D. New York.* June 15, 1886.

PATENTS FOR INVENTIONS—PETITION FOR  
REHEARING.

Petition for rehearing, upon the ground of newly-discovered evidence on the question of public use, denied, and the opinion expressed on the former hearing, 36 Fed. Rep. 692, adhered to.

Petition for Rehearing.

*Horace M. Ruggles* and *Benj. F. Thurston*, for the petition.

*Frederic H. Betts* and *Wm. D. Shipman*, against the petition.

SHIPMAN, J. This is a petition by the defendants for a rehearing, upon the ground of newly-discovered evidence upon the question of the public use in this country of the patented invention for more than two years before the application for a patent. The affidavits show that more dental plates were sold by the Albany Dental Plate Company before October, 1872, than I had supposed, and that all were not of poor quality, and that the patentees caused to be issued, in 751 1871 and 1872, laudatory advertisements in regard to the perfection of their celluloid dental plates, and that some dentists thought them satisfactory. Their advertisements and opinions do not make much impression upon my mind, because I am somewhat familiar with the opposition of dentists to the dental vulcanite patent. I am satisfied that this defense, always one which must be clearly proved, cannot be made out, because I do not think that the inventors, before they started their Newark factory in the spring of 1873, were themselves sure how to obtain a result which should be both certain and satisfactory, and I

do not think that they attained, prior to 1873, any uniformity of result, either good or poor, except in the minds of persons who were very anxious that celluloid should be a success. The affidavits upon both sides, taken as a whole, tend to confirm my previous opinion that this defense cannot be sustained.

The petition for rehearing upon the ground of newly-discovered evidence is denied.

<sup>1</sup> Edited by Charles C. Linthicum, Esq., of the Chicago bar.

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