

CELLULOID MANUF'G CO. v. AMERICAN ZYLONITE CO. *ET AL.*

*Circuit Court, S. D. New York.*

April 18, 1888.

PATENTS FOR INVENTIONS—INVENTION—CELLULOID.

The discovery by Stevens that fusel oil was an efficient and cheap solvent of camphor, in conjunction with nitro-cellulose, was patentable, although it was known previously that fusel oil was a solvent of camphor, and that various essential oils could be used in conjunction with camphor in the manufacture of pyroxyline.

In Equity. Bill for infringement of patent.

*C. Wyllys Betts* and *Frederic H. Betts*, for complainant.

*T. W. Osborn* and *H. M. Ruggles*, for defendants.

WALLACE, J. Stevens was the first to discover the value of fusel oil as a solvent of camphor in conjunction with nitro-cellulose. It was known previously that fusel oil was a solvent of camphor, and that various essential oils could be used in conjunction with camphor in the manufacture of pyroxyline; but some of these oils were not efficient, and some were useless as substitutes for the *menstrua* used in producing the conversion of pyroxyline when mixed with camphor. It is doubtless true, that by experimenting with the whole list of essential oils any competent chemist could have ascertained that fusel oil would, while acting as a solvent of the camphor, be efficient in producing the proper conversion of pyroxyline, and could have reached the discovery by a process of exclusion. But this is not enough to defeat a patent. By his experiments Stevens obtained a menstruum which gave a better result than the *menstrua* previously used, and at less expense. The fact that alcohol had been used for many years as a menstruum, when a cheaper solvent could have been used, and would have been, if the availability of fusel oil as a substitute had been obvious to those skilled in the art, is inconsistent with the suggestion that nothing but the mere exercise of judgment was involved in selecting it as a substitute. There should be a decree for the complainant.