

to suggest its adaptability, without essential change, to his purpose; and it seems to me he merely appropriated it to a new use by putting it into a combination where it simply performs its old function, although it operates on a different material for a different result. The machine of the defendant in this case, while it is a check protector like the complainant's, does its work in a different way, and I see no reason why the inventor or patentee of defendants' machine had not the same right to go to the old art and select a movable bearing for one of his feed rollers as the patentee in this case had. What I mean is that as it was old, as shown by the proof, to make check protectors with a movable upper feed roller, there is no invention in making such a machine with a movable lower feed roller; and a claim for such lower feed roller, in combination with other parts of the mechanism, is not for a new and patentable combination, although it may make a more convenient machine. For these reasons I am of opinion that so much of the complainant's device as is covered by claims 4 and 5 is not novel, and the bill will be dismissed for want of equity.

**BROWN MANUF'G CO. v. DAVID BRADLEY MANUF'G CO.**

(Circuit Court, N. D. Illinois. June 18, 1892.)

**1. PATENTS FOR INVENTIONS—NOVELTY—CULTIVATOR COUPLINGS.**

The first claim of letters patent No. 190,816, issued May 15, 1877, for an improvement in couplings for cultivators, consisting of a pipe box provided with a projection adapted to co-operate with a spring, weight, or the draught, to rock the pipe box against, or with the weight of the rear cultivators or plows, is void for want of novelty, having been anticipated by letters patent issued June 11, 1872, to William Haslup. *Manufacturing Co. v. Deere*, 21 Fed. Rep. 709, reversed.

**2. SAME—EXTENT OF CLAIM—COMBINATION.**

Said claim cannot be considered a combination claim for the combination of the pipe box with a spring or weight and a plow beam and axle, since a claim cannot be treated as a combination claim, in the absence of the word "combination," and of a statement of the specific elements of which it is composed.

In Equity. Bill by the Brown Manufacturing Company against the David Bradley Manufacturing Company for an injunction and accounting.

*George H. Christy and W. T. Underwood*, for complainant.  
*West & Bond*, for defendant.

BLDGERT, District Judge. This is a bill for an injunction and accounting by reason of the alleged infringement of patent No. 190,816, granted to W. P. Brown, May 15, 1877, for an "improvement in couplings for cultivators." The patentee says in his specifications:

"My invention relates to an improved form of coupling for fastening the forward ends of the beams of plows or gangs to the axle of a wheeled cultivator. The improvement consists in the particular construction and arrangement of a tube or pipe box, turning loosely upon the horizontal ends of the crank axle, and connected, through an adjustable stirrup or sleeve and

bracket, with a head having a long bearing at right angles to the pipe box, to which head the forward ends of the plow beam are bolted, while the pipe box, is provided with means for turning it against the gravity of the attached cultivator in the rear, whereby the said cultivators are manipulated with greater ease, as hereinafter more fully described. \* \* \* To render the manipulation of the plows or cultivators easy, I provide an arrangement whereby either springs, weights, or the draught power may be utilized for sustaining a part of the weight of the said cultivators when they are lifted from the ground to be hung up or shifted laterally. In accomplishing this, I construct the pipe box with a hooked arm, M, and arrange a stiff spring, N, of metal or rubber, upon the main frame above, so as to engage, by means of a loop, with the end of the arm, M, to rock the pipe box; and, as the cultivator beam in the rear is rigidly attached to the pipe box by the stirrup or the sleeve of the screw bolt, the spring has the tendency to rock the pipe box, and assist the driver in lifting the cultivators. I do not claim, broadly, the application of springs to sustain a part of the weight of the cultivator, as this is shown in my patent No. 128,701, of 1872; but I do claim a pipe box provided with an arm or projection adapted to rock the same."

The patent contains three claims, but infringement is only charged as to the first of these claims, which is:

"(1) The pipe box provided with a projection adapted to co-operate with a spring, weight, or the draught, to rock the said pipe box against or with the weight of the rear cultivators or plows, substantially as and for the purpose described."

The defenses relied upon are: (1) That this claim is void for want of novelty; (2) that the defendant does not infringe.

It is insisted on the part of the complainant that this is a combination claim, and must be considered as such, and that there must be read into the claim a spring or weight, a plow beam and axle, such as are described in the specifications. I cannot concur with the counsel for complainant in this view of the claim. In terms, it is a specific claim for a pipe box, with a projection adapted to co-operate with a spring. It does not suggest, or state, that it is a combination claim, but proceeds, as it seems to me, upon the assumption that the patentee was the original and first inventor of a pipe box, with a projection adapted to co-operate with a spring. A claim cannot be treated as a combination claim, in the absence of the word "combination," and of a statement of the specific elements of which it is composed. *Burden v. Corning*, 2 Fish. Pat. Cas. 495. "When a claim is explicit, the courts cannot alter or enlarge it. \* \* \* The courts cannot be expected to wade through the history of the art, and spell out what might have been but has not been claimed. When the terms of a claim in a patent are clear and distinct, (as they always should be,) the patentee, in a suit brought upon a patent, is bound by it. He can claim nothing beyond it. \* \* \* He cannot show that his invention is broader than the terms of the claim, or, if broader, he must be held to have surrendered the surplus to the public." *Keystone Bridge Co. v. Phoenix Iron Co.*, 95 U. S. 278. "Claims for devices cannot be changed to claims for combination by construction." *Couse v. Johnson*, 16 O. G. 719; *Ice Co. v. Packer*, 24 O. G. 1274.

The patentee says in his specification:

"The improvement consists in the particular construction and arrangement of a tube or pipe box. \* \* \* I do not claim broadly the application of springs; \* \* \* but I do claim a pipe box provided with an arm or projection adapted to rock the same."

This language clearly imports that the patentee intended to make a claim for the device, standing alone, of a pipe box with a projection; that is, such a projection as is adapted to co-operate with a spring to rock the pipe on the axle. And this view of the first claim is much strengthened and confirmed by the fact that the second claim is a combination claim of all the elements which complainant insists should be read into the first claim, when, if what is now insisted upon as the true construction of the first claim is correct, this second claim is wholly superfluous. Upon the issue of want of novelty, a large number of prior patents have been put into the case, such as the Luppen of 1870, the Coonrod of 1867, the Stover of 1870, and the Litchfield & Corbin of 1873; all of which show a pipe box or sleeves fitting loosely upon the axle, so as to allow the pipe to be rocked vertically upon the axle. But the patent which seems to me to most fully anticipate the device, covered by the first claim of complainant's patent, is the patent of William Haslup, of June 11, 1872. This patent shows a sleeve or pipe box working upon a crank axle for the purpose of attaching the plow thereto, and enabling it to be rocked upon the axle, and a projection rigidly attached to the pipe box, and extending upward to the driver's seat in the form of a lever, whereby the plow can be rocked upon the axle by the hand of the driver. This device seems to me, in every respect, to be an anticipation of this first claim. The arm, O, extending upward to the driver's seat, is manifestly a projection which is adapted to co-operate with a spring or weight to rock the pipe box against or with the weight of the cultivator. Here is a pipe box with a projection ready made to hand, adapted to co-operate with a spring exactly like the device described in this claim. It will be noticed that the spring is no part of the claim. The pipe box must have a projection adapted to co-operate with a spring, that is, a projection to which a spring can be attached which will aid in rocking the plow upon the axle, or, as the claim says, to rock the pipe box, when, of course, it would rock a plow if it was properly attached to the pipe. With this view of the construction to be put upon this claim, and the relation of the device therein described to the older art, I am of opinion that this claim is void for want of novelty.

BROWN MANUF'G CO. v. DEERE & CO.

(Circuit Court, N. D. Illinois. June 18, 1892.)

In Equity.

A. W. Train and George W. Christy, for complainant.

Bond, Adams & Pickard, for defendant.

BLODGETT, District Judge. This is a bill in equity for the alleged infringement of patent No. 190,816, granted May 15, 1877, to William P. Brown, for an "improvement in couplings for cultivators." Infringement is charged of the first claim only of the patent, which is: "(1) The pipe box provided with a projection adapted to co-operate with a spring, weight, or the draught, to rock the said pipe box against, or with the weight of the rear cultivators or plows, substantially as and for the purpose described." On a former hearing of this case, upon the pleadings and proofs before me, the patent was held to be valid, and the defendants held to have infringed the same, and an interlocutory decree entered, referring the case to a master to take an accounting of profits and damages. Subsequently, in examining other cases, such strong doubts arose in my mind as to the correctness of the finding that I ordered a reargument, and, after such reargument and a re-examination of the proofs in the case, I have come to the conclusion that my former decision, reported in 21 Fed. Rep. 709, was wholly erroneous, and feel compelled to enter a decree finding this claim void for want of novelty, and dismissing the bill for want of equity. My reasons for doing this will be found at length in the decision this day rendered in the case of *Same Complainant v. David Bradley Manuf'g Co.*, 51 Fed. Rep. 226.

AMERICAN PAPER PAIL & BOX CO. et al. v. NATIONAL FOLDING BOX & PAPER CO.

(Circuit Court of Appeals, Second Circuit. July 20, 1892.)

1. PATENTS FOR INVENTIONS—PRELIMINARY INJUNCTION—PRIOR ADJUDICATION—APPEAL.

On appeal from a preliminary injunction, the prior adjudication on which such injunction was based will, in the absence of some controlling reason, have the same weight with the circuit court of appeals which it should have had with the circuit court which granted the injunction.

2. SAME.

The review of the interlocutory order for an injunction cannot be converted into a review of the final adjudication upon which it is based; but while the circuit court, upon a motion for an injunction, might deem itself constrained, contrary to its own judgment, to adopt the rulings of another circuit court upon questions of law made at final hearing, the circuit court of appeals is at liberty to re-examine such rulings, dispose of the questions of law conformably to its own convictions, and accord to the former adjudication such weight as in its own judgment such adjudication was entitled to upon the motion.

3. SAME—IMPROVEMENT IN PAPER BOXES—INFRINGEMENT.

The circuit court for the southern district of New York having adjudicated the validity of the second claim of letters patent No. 171,866, for an improvement in paper boxes, (41 Fed. Rep. 139,) thereafter granted a preliminary injunction, based upon such prior adjudication, against a third party, (48 Fed. Rep. 913,) no new de-