in which the inventor could operate. After the patent of 1880 there was no room for the patent of 1883. It deals with improvements which are only such changes of form as would suggest themselves to ordinary workmen. For instance, ring staples, four-prong staples and other staples, varying in form, were very old. It was obvious that many of these could not be driven through the oblong slot and clinched on the anvil of the 1880 patent. It would naturally occur to a mechanic who had been accustomed to drive round bolts through round holes to make the hole square if he were given a square bolt to drive. So one familiar with the process of driving staples through paper would see at once the impossibility of making a cruciform fastening through an oblong slot. If he wished the staples to cross at right angles he would naturally make a cross-shaped slot and clinching base. If he wished to use a staple with a suspending ring he would at once see the necessity of making room for the ring to pass. Such changes seem so perfectly obvious that he who made them would require no assistance from the prior art. If, however, he needed advice, he had only to turn to the Magill and other patents to find the information ready at his hand. Conceding that the patent in hand shows improvements over the patent of 1880, they are not improvements which the law recognizes as patentable; they may be more convenient, but they perform no new function and produce no new result. The bill is dismissed, with costs.

BERGNER *et al.* *v.* KAUFMANN *et al.*

(*Circuit Court, S. D. New York.* November 29, 1892.)

DESIGN PATENTS—PATENTABILITY—ALBUM CASES.

Design patent No. 20,347, issued November 25, 1890, to Frederick Bergner, for an album case set upright on a baseboard, and having on its exterior an oval, ornamental frame, with an open center, is invalid, since the patentee invented neither the album case nor the ornamental frame, but merely conceived the idea of placing the ornament on the case; and this conception is not patentable, for the statute only provides for patents on designs for articles of manufacture and for ornaments to be placed upon or worked into such articles.

In Equity. Suit by Frederick Bergner and others against Isaac Kaufmann and others for infringement of a patent. Bill dismissed.

W. P. Preble, Jr., for orators.

A. v. Briesen, for defendants.

WHEELER, District Judge. This suit is brought upon design patent No. 20,347, dated November 25, 1890, for an album case set on a baseboard in an upright or nearly vertical position, having on its exterior an oval, ornamental frame with an open center. The defendants put dimond-shaped mirrors, with such ornamental borders, on similar album cases. This style of album case is not new. The patent therefore must be held to be for an ornament upon the case as an article of manu-

facture, under the third clause of section 4929, Rev. St., providing for design patents. Such ornamental frames were old, and well and generally known. The orator, who is the patentee, testifies, in answer to question 25: "I make no claim to be the designer of this frame." Besides this, the defendants' mirror does not look like this frame, and would not infringe the patent for this ornament.

The orator did not design an album case, proper; nor an ornament, proper, for an album case; but he appears to have conceived the idea of placing such an ornament upon an album case. The statute provides for patents upon designs for articles of manufacture, and for patents upon ornaments to be placed upon or worked into such articles, but does not appear to provide for a patent for the mere placing of an ornament on such articles. This patent does not, therefore, appear to be valid, or to be infringed. Let a decree be entered dismissing the bill.

MACK v. SPENCER OPTICAL MANUF'G CO. *et al.*

(Circuit Court, S. D. New York. November 28, 1892.)

1. PATENTS FOR INVENTIONS—ANTICIPATION—EVIDENCE.
   A patent should not be overthrown on the uncorroborated testimony of a witness 72 years old, professing to describe in minute detail alleged anticipating devices which he constructed 30 years before in the ordinary course of his trade; especially when it does not appear that anything has occurred during that time to aid or refresh his recollection. *The Barbed-Wire Patent*, 12 Sup. Ct. Rep. 443, 143 U. S. 275, followed.
2. SAME—INVENTION—OPERA-GLASS HOLDERS.
   Claims 4 and 7 of letters patent No. 268,112, issued November 28, 1882, to William Mack, for improvements in opera-glass holders, show patentable invention, and are valid as covering a detachable telescopic opera-glass holder having at the upper end a clutch or fastening device adapted to clasp the transverse bars or cylinder of an opera glass. *Mack* v. *Levy*, 48 Fed. Rep. 69, distinguished.
3. SAME—MECHANICAL SKILL.
   The opera-glass holder of this patent could not have been the result of mere mechanical skill operating upon the mirror holders, monkey wrenches, car couplers, gun wipers, toothbrushes, and mops of the prior art, but required the exercise of inventive faculty.
4. SAME.
   Letters patent No. 339,543, issued March 12, 1889, to the same inventor, possess no patentable invention, in so far as they merely provide for corrugations on the telescopic sections of his prior patent to prevent twisting, and for the substitution of a longitudinally forked attaching device for the original clutch.

In Equity. Suit for infringement of two letters patent granted to William Mack. These patents have been the subject of judicial decision, on final hearing, in *Mack* v. *Levy*, 43 Fed. Rep. 69–73; on contempt proceedings, in the same case, 49 Fed. Rep. 857; and on motion for a preliminary injunction in the suit at bar, 44 Fed. Rep. 346. Decree for complainant.

H. A. West, for complainant.

Charles C. Gill, for defendants.