

his former patent the complainant seems to recognize that this was only substituting one well-known fastening for another, for he says, "It is evident other forms of clutches and fastenings may be made within wide scope, as I do not wish to confine myself to fastenings shown." This proposition is unquestionably true. Mere changes of form in the clutching mechanism which produce no new result would readily occur to the skilled mechanic. The prior art is full of similar forks; they are even shown as applied to opera glasses. Indeed, it would seem that the idea might have occurred to any one who had seen an old fashioned clothes-pin. The first claim has an additional element—a tube or socket—but the defendants are not charged with infringing this claim. It follows that the complainant is entitled to the usual decree upon claims 4 and 7 of the patent of 1882.

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KRICK v. JANSEN.

(Circuit Court, S. D. New York. August 25, 1892.)

1. PATENTS FOR INVENTIONS—PLEADING—ALLEGATION OF OWNERSHIP.

In a bill for infringement it is insufficient merely to allege that complainant became the owner of the patent on a certain date, without also alleging continued ownership at the time of filing the bill.

2. SAME—ALLEGATION AS TO PRIOR USE AND SALE.

A bill for infringement is demurrable when it merely states that the alleged invention had not been in public use or on sale for more than two years prior to the application with the patentee's consent or allowance.

3. SAME—NOVELTY—DEMURRER—FLORAL DESIGNS.

Letters patent No. 408,416, issued to William C. Krick, are for an improvement in floral designs, whereby, instead of tying single flowers to a toothpick and sticking them into a floral piece, so as to form a letter or design, the letter or design is first cut out of some stiff material, the flowers fastened to it, and when the form is complete it is fastened to the floral piece by toothpicks. *Held*, that a want of patentable novelty is not so manifest on the face of the patent as to render a bill for infringement demurrable.

In Equity. Suit by William C. Krick against Edward Jansen for infringement of a patent. On demurrer to the bill. First ground of demurrer sustained, and second ground overruled.

*Isaac S. McGiehan*, for complainant.

*Goepel & Raeger*, for defendant.

TOWNSEND, Circuit Judge. This is a demurrer to a bill in equity for relief for infringement of letters patent No. 408,416 for an improvement in floral letters or designs. The first ground of demurrer assigned is "that it appeareth by the complainant's own showing by the said bill that he is not entitled to the relief prayed for." Under this demurrer, defendant claims that the bill is defective (1) because it states that the alleged invention had not been in public use or on sale for more than two years prior to the application of complainant *with his consent or allowance*; (2) because complainant, while stating the date on which he

became the owner of the patent, has failed to allege ownership at the date of filing his bill. The complaint is defective in both these particulars. *Blessing v. Trageser*, 34 Fed. Rep. 753. The first ground of the demurrer is sustained, with liberty to the complainant to amend within 20 days without costs.

The second ground of demurrer assigned is want of patentable novelty on the face of the patent. The patent is for an improvement in floral letters or designs, whereby, instead of tying single flowers to a toothpick, and sticking them, when so tied, into a floral piece, so as to form a letter or design thereon, the letter or design is first cut out of some stiff material, and the flowers fastened to it. When the form is complete, it is fastened to the floral piece by toothpicks. The question is whether this improvement involves invention. The patentee alleges that he is the first inventor and discoverer of this improvement. He claims that the questions of novelty and utility were heard and decided in his favor by the commissioner of patents, and that his invention has displaced all other methods of making floral designs. The question of patentable novelty is a question of fact, and, except in a very clear case, it ought not to be decided until after an opportunity has been given to submit evidence thereon. *Blessing v. Trageser*, *supra*; *Dick v. Supply Co.*, 25 Fed. Rep. 105. And where this question is doubtful, an extensive use by the public may serve to resolve the doubt in favor of the patentee. *Topliff v. Topliff*, 59 O. G. 1257, 12 Sup. Ct. Rep. 825. I am not satisfied that the want of patentable novelty is so palpably manifest on the face of the patent that the bill of complaint should be dismissed on demurrer. The second ground of demurrer is overruled.

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FRANCIS *et al.* v. KIRKPATRICK & Co., Limited.

(Circuit Court, W. D. Pennsylvania. September 17, 1889.)

No. 28.

1. PATENTS FOR INVENTIONS—INVENTION—SHEET-HEATING FURNACES.

Letters patent No. 408,475, granted August 6, 1889, to Evan James Francis and Charles Banfield, for "a bottom for heating furnaces, formed of segregated masses, broken pieces, or fragments of noncombustible material having interstitial passages, and presenting a broken or uneven surface," disclose a patentable invention.

2. SAME—ANTICIPATION.

The defense of anticipation examined, discussed, and overruled.

In Equity. Bill by Evan James Francis and Charles Banfield against Kirkpatrick & Co., Limited, for infringement of a patent. Decree for complainants.

*J. I. Kay*, for complainants.

*D. F. Patterson*, for defendants.

Before ACHESON, Circuit Judge, and BUFFINGTON, District Judge.