

operative machine. *Reeves v. Bridge Co.*, 5 Fish. Pat. Cas. 456; *Lubricator Manuf'g Co. v. Renchard*, 9 Fed. Rep. 293, (opinion by Mr. Justice Matthews;); *Drill Co. v. Simpson*, 29 Fed. Rep. 288; *Ellithorpe v. Robertson*, 4 Blatchf. 307; *Draper v. Mills Corp.*, 13 O. G. 276; *Odell v. Stout*, 22 Fed. Rep. 159.

Further objection to reversing the decree is made on behalf of appellee on the ground that Christie was not the true inventor of the machine for which he obtained the patent. It is said that Christian Keck, who was in his employ, was the real inventor. We do not see how this is a subject which can be here investigated. The question here (section 4915, Rev. St.) is only whether Seybold was the first and true inventor. It is certain that some one reduced the invention to practice before Seybold did, and, if that is so, Seybold is not the first and true inventor, unless he was using reasonable diligence to adapt and perfect his conception; and we have found that he was not doing this. If Christie's patent is void because he was not the first and true inventor, and Keck was, that would not entitle Seybold to a patent. The commissioner of patents did not consider the question, and we think he acted rightly in this respect.

On the whole case we find, therefore, that Seybold is not the true and first inventor. The decree of the court below is reversed, with instructions to dismiss the bill at the costs of the complainant.

---

MASTEN v. HUNT et al.

(Circuit Court of Appeals, First Circuit. April 13, 1893.)

No. 40.

1. PATENTS FOR INVENTIONS—CONSTRUCTION OF CLAIM—COMBINATION.

Letters patent No. 321,833, issued July 7, 1885, to Cornelius E. Masten, for a firecracker, covers, in claim 1, the match, B, the fuse, C, in combination with the solid plug, D, and body, A, substantially as set forth. The specification makes no reference to the prior state of the art, and merely states that the invention produces "a more desirable article" "than is now in ordinary use," without particularizing the points constituting the improvement. *Held*, that the presumption of novelty applies to the combination as a whole, and, in the absence of evidence as to the prior state of the art the court has no power to declare that the match, B, or its equivalent was not essential, and to hold that a like cracker, with a continuous fuse, is an infringement. 51 Fed. Rep. 216, affirmed.

2. SAME.

The use of the conjunction "and" between the words "match, B," and "fuse, C," does not show that the match and fuse constitute but one element, of which a continuous fuse would be the equivalent. 51 Fed. Rep. 216, affirmed.

Appeal from the Circuit Court of the United States for the District of Massachusetts.

In Equity. This was a suit by Cornelius E. Masten against Edward S. Hunt and others for the infringement of letters patent No. 321,833, issued July 7, 1885, for a firecracker. The circuit court dismissed the bill; its opinion, which is adopted by the circuit

court of appeals, together with a full statement of the facts of the case, being reported in 51 Fed. Rep. 216. The complainant appeals. Affirmed.

Charles C. Morgan and John S. Richardson, for appellant.  
James E. Maynadier, for appellees.

Before COLT, Circuit Judge, and NELSON and WEBB, District Judges.

NELSON, District Judge. We agree with the learned circuit judge who decided this case in the court below, for the reasons given in his opinion, which we adopt as the opinion of this court, that the appellant has shown no infringement of his patent by the appellees. A common safety fuse inserted through a plug, such as is used by the appellees in the manufacture of cannon crackers,—a device as old as the art of blasting,—cannot possibly be an equivalent for the combined fuse and match described in the first claim of the patent.

Decree affirmed.

MORSS v. DOMESTIC SEWING-MACH. CO.

(Circuit Court of Appeals, First Circuit. April 13, 1893.)

No. 12.

PATENTS FOR INVENTIONS—INFRINGEMENTS—EQUIVALENTS—DRESS FORMS.

Claim 1 of letters patent No. 233,239, issued October 12, 1880, to John Hall, for an improvement in dress forms, whereby they may be made more readily adjustable to the varying styles and sizes of dresses, was for "the combination with ribs, c, of the springs, h, each pair of springs having their upper ends secured to a single rib, substantially as and for the purpose specified." The specifications show the ribs to be divided into sections, with the two springs attached to the upper section, and spreading downward to the adjoining ribs, and expressly disclaim as new the stretchers, blocks, rests, and band, and their operation to expand and contract the dress form at pleasure. *Held*, that the patent was limited to the specific device, and that the equivalent thereof was not contained in the patent of November 29, 1887, to William H. Knapp, having double ribs composed of a single U-shaped wire, extending in an unbroken piece their entire length, and rigidly attached to a segmented waistband. 48 Fed. Rep. 113, affirmed.

Appeal from the Circuit Court of the United States for the District of Massachusetts.

In Equity. This was a suit by Charles A. Morss against the Domestic Sewing-Machine Company for the infringement of letters patent No. 233,239, granted to John Hall, October 12, 1880, for a new and useful improvement in dress forms. The circuit court dismissed the bill, its opinion, which is adopted by the circuit court of appeals, being reported in 48 Fed. Rep. 113. Complainant appealed. Affirmed.

Payson E. Tucker and Charles F. Perkins, for appellant.  
John Dane, Jr., for appellee.

Before PUTNAM, Circuit Judge, and NELSON and WEBB, District Judges.