

urged on the argument, and I understand is abandoned. Infringement is not denied—if the patent is valid.

In support of the first ground of defense three specimens of fabric made several years before the date of the patent—two of them designated as Brooks Fabric Nos. 1 and 2, and the third as Stead & Miller's Fabric No. 1. A careful examination of these exhibits and comparison of them with the plaintiff's fabric, in the light of the expert testimony, has not satisfied me that they show the invention described and claimed in the patent. It may be admitted that the question is not entirely free of difficulty; but my judgment, after patient examination, is as stated. A discussion of the subject here, which must consist in a written comparison of the elements of the several fabrics, and an analysis of the conflicting testimony of the witnesses called, would be useless.

The conduct of the defendants respecting the patent is entitled to weight in considering the question of its validity. The patentee was in their employment, and they encouraged him in securing the invention, apparently that they might enjoy the monopoly thus afforded. After the patent issued they manufactured the fabric extensively for some years, paying a small royalty for the privilege. They were intelligent in the art, and of large experience; and yet they did not seem to doubt the validity of the patent until the patentee had left their employment, and the license had expired.

The third ground of defense—"that the fabric was not the result of invention, but of accident"—presents less difficulty. The clear weight of the evidence, as well as the admissions arising from the defendants' conduct, just adverted to, is in my judgment against it.

I do not find, therefore, anything in the proofs sufficient to repel the presumption of novelty and invention which attaches to the action of the patent office in granting the letters.

The bill is sustained, and a decree may be prepared accordingly.

JOHNSON v. HERO FRUIT-JAR CO.

(Circuit Court, E. D. Pennsylvania. May 9, 1893.)

No. 30.

PATENTS FOR INVENTIONS—VALIDITY—SEALING GASKETS.

The claims of letters patent No. 408,177, issued July 30, 1889, to Daniel W. Johnson, for sealing disks for jars, covered "a sealing gasket for jars, having a base of waterproof material backed with and secured to a felted material," and also "a sealing gasket consisting of a body of felted material having waterproof material secured to its opposite faces." Long prior to the application for this patent there were in use sealing gaskets composed of a disk of parchment and a disk of felt, arranged the one on the other, but not secured together. *Held*, that pasting together the faces of the old disks, which is all that is contemplated by the patent, does not involve invention, and the patent is void.

In Equity. Suit by Daniel W. Johnson against the Hero Fruit-Jar Company for infringement of complainant's patent. Bill dismissed.

Charles B. Collier, for complainant.
Geo. J. Harding, for defendant.

DALLAS, Circuit Judge. Prior to the application for the patent in suit, "sealing gaskets" composed of a disk of parchment and a disk of felt, arranged the one upon the other but not secured together, were in use for effecting, and did effect, an air-tight sealing of jars or other vessels to which, for that purpose, they were applied. There was also in use a patented "packing for packages, cans, and vessels of all kinds, in which fluids are to be transported or kept," "composed of a body of tough, flexible material, a sheet of tin or other foil applied thereto, and a flexible waterproof protection or covering;" and the three layers thus described were "glued, cemented, or pasted together." The patent in suit is to Daniel W. Johnson, for "sealing disks for jars," etc., and is No. 408,177, dated July 30, 1889. The claims are:

"(1) A sealing gasket for jars or other vessels, having a base of waterproof material backed with and secured to a felted material, substantially as described. (2) A sealing gasket consisting of a body of felted material having waterproof material secured to its opposite faces, substantially as described."

The novelty of the subject-matter of these claims is at least questionable; but, assuming it to have been new to "secure" the components of the gaskets previously in use, invention was not involved in pasting together the opposite faces of the old disks, and this is all that was done or proposed by the patentee, or is alleged to be done by the defendant. A decree dismissing the bill, with costs, will be entered.

DETWILER v. BOSLER.¹

(Circuit Court, E. D. Pennsylvania. May 9, 1893.)

No. 16.

1. PATENTS FOR INVENTIONS—INFRINGEMENT—MILLS.

Letters patent No. 188,783, granted March 27, 1877, to John S. Detwiler, for an improvement in grinding mills, claimed "the combination of a pair of stones set to grind coarse, with a second pair of stones, of larger diameter, set to grind fine, and run at a lower speed than the upper and smaller pair of stones; the partially ground grain falling from the upper to the lower stones, and passing from the latter in the form of flour." *Held*, that the claim was infringed by the use of rollers revolving in a vertical plane instead of stones revolving in a horizontal plane, the process and its results being essentially the same in other respects; for such rollers are the well-known equivalents of the stones.

2. SAME—EQUIVALENCE—ESTOPPEL.

The patentee was not estopped to set up such equivalence to sustain his claim of infringement by reason of the fact that in a communication to the patent office before his patent was granted he claimed that the result obtainable by his invention was distinguishable from that produced by crushing rollers; for the failure of an inventor to perceive the adaptability of a known equivalent to the practice of his invention does not debar his right to protection against its invasion by the use of such equivalent.

3. SAME—VALIDITY—"GRADUAL REDUCTION" OF FLOUR.

The device claimed by the patent involves invention, though the "gradual reduction" process effected by it was not new.

¹ Rehearing granted.