

prior art discloses that the fingers were the only novel feature in the patent. All the elements which comprise this claim were old. In prior machines we find the combination of a stationary carriage, presser plate, and side and front grippers; also the combination of a reciprocating carriage, presser plate, and side grippers. The claim at most, therefore, can only cover a narrow invention. The infringement of this claim depends upon whether there is found in defendant's machine the equivalent of the reciprocating carriage. We do not understand that the claim is limited by its terms to a reciprocating carriage, provided the defendant uses an equivalent in the same combination. The argument of the plaintiff is that reciprocating and rotating carriages were well-known equivalents at this time, and that, as the defendant uses a rotary carriage in combination with the other elements of the claim, it infringes; but this must be upon the assumption that the two carriages perform the same function, or were well-known equivalents.

The defendant contends that it does not use any carriage in the sense of the plaintiff's patent. In the plaintiff's machine the blank is delivered from the feed rolls upon the carriage or table, and is then clamped upon it by the presser plate and grippers acting simultaneously, and is so held during the action of the fingers in making the diamond fold. Such was the general function of the table in all prior machines.

In the defendant's machine the lower feed roll must be held to be the equivalent of the reciprocating table, if such table can be said to exist at all in the machine. This lower feed roll has upon it a front gripper and side grippers, which operate in opening the bottom of the bag; but these grippers do not act at the same time to press the blank down upon the feed roll, nor does the tucker so act. After the front gripper seizes the lower ply of the blank, the bottom is opened while the blank is suspended between the grippers and the rolls which hold the upper ply. At no time, therefore, is the blank operated upon on a table, within the meaning of the plaintiff's patent. Again, the front gripper in the defendant's machine is not the front gripper of the patent. The front gripper on defendant's feed roll only assists to open the bag in part, and ceases to operate before the side grippers and the presser plate come into action. In the plaintiff's machine all the grippers and the presser plate act instantaneously to bind the blank to the bed or carriage. If the lower feed roll can be said to be in any proper sense a table, it does not have the function of the plaintiff's reciprocating carriage. Giving, therefore, as broad a construction to this claim as the state of the art will justify, we do not think the defendant's machine contains the same or the equivalent organization or combination of parts.

The remaining claims are for combinations or subcombinations of the various parts covered by the first two claims, and they all include as elements the fingers and reciprocating carriage. For the reasons already given there is no infringement of these claims.

Decree of the circuit court affirmed.

PUTNAM, Circuit Judge. If the record in this case is to be opened, I agree with the conclusions of the majority of the court; but, as the patentees have never made any use of their alleged invention, nor attempted to do so, nor permitted its use by others, nor given an explanation of the nonuser, or any reason for it, I doubt whether the case submitted is not one of a mere legal right, and whether the complainant should not be left to its remedy at common law, if entitled to any relief at all.

PAINE v. TRASK.

(Circuit Court, D. Massachusetts. August 11, 1892.)

No. 2403.

PATENTS FOR INVENTIONS—ASSIGNMENT—EVIDENCE.

In a suit for the infringement of a patent the defense was that complainant had no title, and defendant introduced an assignment thereof by him, duly recorded in the patent office. Complainant alleged that this was a forgery, and the surviving witness to the instrument testified that he had no recollection of signing it. Complainant admitted, however, that he had placed the sale of the patent in the hands of the alleged assignee; that, after a certain difficulty between them, such assignee had said to him that the signature to the assignment was genuine, as he could show by expert witnesses; and that one of the witnesses thereto said to him that he had seen him execute the assignment. Other witnesses testified that complainant had told him he had sold the patent. *Held*, that the evidence was not sufficient to show the assignment invalid, and the bill should be dismissed.

In Equity. Suit by George C. Paine against Henry D. Trask for the infringement of a patent. Bill dismissed. Affirmed in 56 Fed. Rep. 233.

Charles H. Drew, for complainant.
John L. S. Roberts, for defendant.

COLT, Circuit Judge. This suit is brought for infringement of letters patent No. 182,769, dated October 3, 1876, granted to the complainant for a "new and improved regulator for hot-air furnaces." The first defense set up is the invalidity of complainant's title to the patent. The defendant introduces in evidence a copy of an assignment of the patent, dated October 21, 1879, made to the American Automatic Furnace Regulator Company. This assignment was witnessed by C. C. Dickerman and A. J. Kebler, and was recorded in the patent office, January 22, 1880. He also introduces in evidence a copy of a prior agreement under date of September 12, 1879, by which the complainant agreed to assign to the said Dickerman his patent and all improvements thereof, "the same to be absolutely assigned by said Dickerman or myself to an association or corporation for the manufacture of said articles." This agreement was recorded in the patent office, January 21, 1880. It further appears that in December, 1878, the complainant assigned all right in the patent for certain states and territories to his brother, Henry F.