

the mark upon the article itself, and for allowing the patentee in lieu thereof "to fix to the article, or to the package wherein one or more of them are contained, a label containing the like notice," that it is inadmissible, as it seems to me, to change the statute by construction into a question merely of profit to the patentee. Upon the statements of the amended complaint, the matter seems to be brought down to this: That the patent, though in itself valid, would nevertheless be of no value to the patentee unless the substituted marking of the crate be held sufficient; because otherwise the patent cannot be worked commercially with any profit to the patentee. But this is only saying, in effect, that the patent law, as it stands, is not adapted to such articles of very small value; and that it cannot practically be made use of to give a monopoly in the manufacture of such articles. But that fact, though true, cannot give the court any authority to change by construction the plain words and meaning of the statute, or to secure to the plaintiff a monopoly upon conditions which the law does not admit. The demurrer must, therefore, be sustained.

SIMPKINS v. PERRY PIE CO. et al.

(Circuit Court, E. D. Missouri, E. D. May 16, 1893.)

No. 3,267.

PATENTS FOR INVENTIONS—INFRINGEMENT—OVENS.

Letters patent No. 355,568, issued January 4, 1887, to Alvin T. Simpkins, for an improvement in bakers' ovens, was for an oven having chambers above and below, divided into flues, through which the products of combustion pass backwards and forwards until they reach the chimney, in front, with upright flues in the front corners connecting the upper and lower chambers. The same device was already in use, but resulted in the overheating of the rear part of the oven, to obviate which the patentee used, and claimed as his invention, a wall in the lower chamber situated a "suitable distance" in front of the back wall. The patent contained nothing further as to the exact location of this wall. Respondents use ovens 14 feet long, without this additional wall, but with a ledge extending from the rear wall 6 inches under the oven, to support the floor. *Held*, that this ledge has no important function towards equalizing the heat in an oven of this length, and hence it does not infringe complainant's patent.

In Equity. Suit by Alvin T. Simpkins against the Perry Pie Company and others for the infringement of letters patent No. 355,568, issued January 4, 1887, to complainant, for an improvement in bakers' ovens. Bill dismissed.

Wm. M. Eccles, for complainant.

Geo. H. Knight and Rassieur & Schnurmacher, for defendants.

HALLETT, District Judge. Complainant's oven is heated through the walls, and not by carrying the flames of the furnace into the chamber of the oven. There are chambers above and below the oven, which are divided into flues, through which the products of combustion pass backward and forward until at length they reach

the chimney, which is at the front, near the center of the oven. There are upright flues at the front and in remote corners of the oven, connecting the lower and upper chambers. At the date of complainant's invention, January 4, 1887, the use of such chambers for heating an oven through the hearth and roof was well known, but the method then prevailing resulted in overheating the back part of the chamber of the oven, so that the process of baking proceeded much more rapidly in the back than in the front of the oven. To equalize the heat in all parts of the oven, complainant transferred the upright flues connecting the upper and lower chambers from the back wall of the oven to the front. He thus closed the back wall of the oven from all contact with the flames and hot air of the furnace, and made an important step towards reducing the temperature of that part of the oven. But he claimed nothing in the way of invention on account of this change. The new feature of complainant's oven is an upright wall traversing the lower chamber near the back, which shortens the chamber somewhat, and prevents the blast of the furnace from going to the back wall. In the opinion of complainant, it was necessary to prevent the products of combustion from going to the back wall of the oven, and for that purpose he inserted a wall in the lower chamber "a suitable distance" in front of the back wall. The claims of the patent—two in number—read as follows:

"(1) In bakers' ovens, the upright wall, c, in combination with oven, a, and side walls, d, of brick setting, substantially as shown, and for the purpose described.

"(2) In bakers' ovens, the upright wall, c, horizontal flues, i, j, vertical flues, k, and horizontal flues, 1, 1', in combination with oven, a, substantially as shown, and for the purpose described."

As to the upright wall, c, here referred to, it is obvious that its proper position in the lower chamber would depend very much upon the length of the oven. In the case of a short oven the flames of the furnace immediately in front of the chamber would go to the back wall of the chamber, which is also the back wall of the oven, with great force, and it might be overheated. By extending the oven, and thus removing the back wall to a greater distance from the furnace, the danger of overheating would be diminished until it would entirely disappear. The scale of the drawings accompanying complainant's patent is not given, and therefore we cannot say to what length of oven the wall, c, traversing the lower heat chamber, is applicable. In the description of the oven it is said that the wall is to be placed "at a suitable distance forward from the rear wall," without stating what shall be a suitable distance for any length of oven.

Respondents have several ovens of the same pattern, which are alleged to infringe complainant's patent. They are all 14 feet long, and the rear wall extends 6 inches under the oven. There is no wall separate from the rear wall, as described in complainant's patent. A ledge is added to the rear wall for the purpose, it is said, of supporting the hearth or floor of the oven, and the ledge is the feature on which complainant relies as infringing his patent.

In an oven of the length of 14 feet, I am of the opinion that the ledge mentioned has no important function towards equalizing the temperature of the oven. If the ledge were removed, and the heat turned towards the front by the back wall alone, the operation of the oven would be the same. I am therefore constrained to say that respondents have not infringed complainant's patent, and the bill ought to be dismissed, with costs.

PERRIN et al. v. MANHATTAN RY. CO. SAME v. METROPOLITAN
EL. RY. CO. SAME v. NEW YORK EL. R. CO.

(Circuit Court, S. D. New York. April 4, 1892.)

**PATENTS FOR INVENTIONS — CONSTRUCTION OF CLAIM — ANTICIPATION — TRUCK
COUPLINGS.**

Claim 2 of letters patent No. 50,518, issued October 17, 1865, to Henry H. Trenor, covers "the method of coupling the cars or vehicles of a train of two or more cars or vehicles by means of the connecting links attached to the pivots or kingbolts of the trucks, substantially as herein set forth." There is nothing in the specifications to limit this language. *Held*, that the claim cannot be limited to the coupling of cars or vehicles having four-wheeled trucks, and is therefore void for anticipation by the English patent of December 13, 1838, to Deville, in which the same method is shown in coupling two carriages having two-wheeled trucks.

In Equity. These were three suits brought by the complainants against the Manhattan Railway Company, the Metropolitan Elevated Railway Company, and the New York Elevated Railroad Company, respectively, for infringement of a patent. Bill dismissed.

Edward N. Dickerson, for complainants.
Benjamin F. Lee, for defendants.

WALLACE, Circuit Judge. The second claim of the patent in suit, No. 50,518, (granted October 17, 1865, to Henry H. Trenor,) the only claim now in controversy, cannot by any reasonable construction be limited to a method of coupling cars or vehicles having four-wheeled trucks. The specification states as follows:

"The danger and difficulty attending the running of railroad cars on railroads, or of a series of vehicles on common roads, whether propelled by traction engine or otherwise, consist in the curves or sinuosities of the roads. On railroads the cars are deviated from the straight line by friction of the wheels on the sides of the rails, which is directly proportionate to the pressure and speed, and inversely to the radius of the curve, so that to adapt the wheels to the curve of the rail much power is absorbed, while the strain on the rails and the liability of running off the track are proportionately increased. To obviate this is the object of my invention, and it consists in a method of adapting all the axles or trucks of the train of cars or vehicles to the curves or direction taken by the leading axle or truck. This I have accomplished by combining with axles or trucks or vehicles, of whatever description, when pivoted so as to have a center of motion, a system of connection or coupling whereby the movement of the one is necessarily transmitted to the others. In the drawings, Fig. 1 represents an elevation of a train composed of two four-wheel truck cars placed on a curve of a railroad. Fig. 2 is a plan view of the same."