

It is very obvious that by the act of June 10, 1890, congress did not intend to give to the circuit courts jurisdiction to re-examine and decide all the questions which might be appealed from the decision of the collector to the board of general appraisers. An appeal may be taken from the collector to the board of appraisers "as to the rate and amount of duties chargeable upon imported merchandise, including all dutiable costs and charges, and as to all fees and exactions of whatever character." An appeal from the board of appraisers to the circuit courts may be taken "as to the construction of the law and the facts respecting the classification of such merchandise and the rate of duty imposed thereon under such classification." The circuit court is given jurisdiction "to hear and determine the questions of law and fact involved in such decision respecting the classification of such merchandise and the rate of duty imposed thereon under such classification." It is obvious that the present appeal is not from any decision respecting the classification of the goods as burlaps, or the rate of duty imposed thereon under the classification. It is conceded that the goods are properly classified as burlaps, and that the rate of duty is properly  $1\frac{1}{2}$  cents per pound. The only question is as to the actual weight of the goods on which the duty is to be computed. This is not a question of law or of fact respecting the classification. It is a question of ascertaining the actual weight of the goods imported. *Passavant v. U. S.*, 148 U. S. 214-219, 13 Sup. Ct. 572; *In re Klingenberg*, 57 Fed. 195. In my judgment, this is not a question which the circuit court is given jurisdiction to hear and determine, and the appeal must be dismissed.

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HUTTON v. STAR SLIDE SEAT CO. OF SPRINGFIELD.

(Circuit Court, S. D. Ohio, W. D. March 28, 1894.)

No. 4,619.

PATENTS—INFRINGEMENT SUITS—PLEADING.

Failure to aver that the invention of the patent has not been previously patented or described in any printed publication is a defect which may be taken advantage of by special demurrer.

Suit in equity by George B. Hutton against the Star Slide Seat Company of Springfield for infringement of a patent. Heard on special demurrer to the bill.

Price & Stewart, for complainant.  
Paul A. Staley, for defendant.

SAGE, District Judge (orally). The defendant demurs specially to the bill that it does not set forth that the invention described in the patent sued upon has not been previously patented or described in any printed publication. The bill states that the invention was not known or used by others before complainant's invention or discovery thereof, and was not in use or on sale in this country for more than two years before his application for letters patent therefor. That this averment is good against a general demurrer was held in

McCoy v. Nelson, 121 U. S. 484, 7 Sup. Ct. 1000. In *Coop v. Institute*, 47 Fed. 899, it was held that the omission of the averment in regard to the invention having been patented or discovered in a printed publication was a defect in form which could be taken advantage of by special demurrer, and should be remedied by amendment. To the same effect see *Consolidated Brake-Shoe Co. v. Detroit Steel & Spring Co.*, Id. 894; *Overman Wheel Co. v. Elliott Hickory Cycle Co.*, 49 Fed. 859; and *Hanlon v. Primrose*, 56 Fed. 600. The demurrer will be sustained at the cost of complainant, with leave to present an amendment within 20 days with an application for leave to file.

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HOLTZER v. CONSOLIDATED ELECTRIC MANUF'G CO. et al.

(Circuit Court, D. Massachusetts. March 13, 1894.)

No. 2,923.

1. PATENTS—CONSTRUCTION OF CLAIMS—GALVANIC BATTERIES.

The first claim of the Holtzer patent for an improvement in galvanic batteries (No. 327,878) includes a "negative electrode, consisting of a carbon cup provided with a cover integral with it," etc. The specifications state that the "negative element and top or cover of the jar are formed of a single integral piece of molded material." *Held*, that the word "integral," as used in the claim, involves the idea of a cup and cover molded in one piece, and cannot be construed as relating to a whole composed of parts spacially distinct.

2. SAME—INVENTION.

The Holtzer patent No. 327,878, for a galvanic battery in which the negative electrode consists of a cup and cover molded in one piece, and having a central opening for the reception of the positive electrode, shows patentable invention in securing utility and durability through simplified methods.

This is a bill filed by Charles W. Holtzer against the Consolidated Electric Manufacturing Company and others for infringement of a patent for an improved construction of galvanic batteries.

Fish, Richardson & Storrow, for complainant.  
Philip Mauro, for defendants.

ALDRICH, District Judge. The complainant seeks protection for an alleged invention covered by letters patent No. 327,878. The device or invention is supposed to produce an improved construction of galvanic batteries, sometimes called "agglomerate batteries" and sometimes called "open-circuit batteries." The complainant's battery, manufactured under the claims of such letters patent, is known in the United States and in foreign countries as the "Holtzer Cylinder Battery," and it is alleged that the defendants' battery adopts the substantial improvement resulting from the invention covered by such letters patent.

It is not understood that the complainant rests his case upon discovery of agencies employed to generate electricity, but upon improved methods calculated to make known agencies more practical and useful; that the invention is in the direction of simplicity