

commercial designation, which cannot be disregarded without doing violence to the cardinal rule in the construction of tariff acts. It follows that, if they are described by the provision at all, they are described by the last clause, and are subject to the ad valorem duty. We conclude that sardines packed in a tin box of a larger size than the ordinary "whole box," if there are such, as well as in boxes smaller than quarter boxes, are intended to be dutiable at 40 per centum ad valorem. The judgment of the circuit court is accordingly reversed.

ENTERPRISE MANUF'G CO. OF PENNSYLVANIA v. SNOW et al.

(Circuit Court, D. Connecticut. April 4, 1895.)

No. 822.

PLEADINGS IN PATENT CASES—SUFFICIENCY OF BILL—PROPERT OF PATENT.

A bill for infringement, which makes profert of the letters patent, without other description of the patented invention, is sufficient as against a demurrer. *La Republique Francaise v. Schultz*, 57 Fed. 37, followed.

This was a bill by the Enterprise Manufacturing Company of Pennsylvania against Levi T. Snow and others for infringement of a patent.

Howson & Howson and C. E. Mitchell, for complainant.
Albert H. Walker, for defendants.

TOWNSEND, District Judge. The demurrer to this bill alleges as follows: "That the bill does not contain any description, delineation, or definition of any patented claim that is alleged to have been infringed by the defendants." The bill merely makes profert of the patent. The demurrer raises the question whether such profert is equivalent to a sufficient description of the patented invention. This question has been presented and considered in prior cases in this circuit. The practice referred to does not seem to be supported by principle, except, possibly, upon the theory that the patent itself is the foundation of the statutory right of the complainant. Upon this ground, and in view of the manifest convenience of such a course, and its general adoption, I followed the prior decision in *La Republique Francaise v. Schultz*, 57 Fed. 37. The exhaustive brief of counsel for defendants forcibly suggests the reasons why the substitution of such profert for an adequate description of the patent is contrary to the rules of equity. It is not necessary to express any opinion upon the merits of the question, inasmuch as I feel bound by the settled practice, and by the prior decisions in the various circuits to the effect that profert of the patent is sufficient. The demurrer is therefore overruled.

JENSEN CAN-FILLING MACH. CO. et al. v. NORTON et al.

(Circuit Court of Appeals, Ninth Circuit. January 28, 1895.)

No. 134.

1. **PATENTS—INFRINGEMENT OF COMBINATION CLAIMS—EQUIVALENTS.**
Infringement of combination claims can only be made out by showing that defendant's machine has substantially every one of the elements composing the combination, or mechanical equivalents for any that are omitted; and "mechanical equivalents," as used in this connection, means devices previously known, which, in the particular combination of the patent, can be adapted to perform the functions of those specified devices for which they are substituted without changing the inventor's idea of means.
2. **SAME—INFRINGEMENT—CAN-MAKING MACHINES.**
The Norton patent (No. 250,096) for a machine for soldering side seams of cans construed, as to claims 2 and 3, and the same *held* not infringed by a machine made according to the Jensen patent (No. 442,484).
3. **SAME.**
The Leavitt patent (No. 250,266) for a can-body forming machine construed, as to claims 2 and 12, and the same *held* not infringed by the said Jensen machine.
4. **SAME—LIMITATION BY PRIOR ART.**
The Norton patent (No. 395,795) for a can forming and soldering machine construed, as to claims 1, 2, 3, 4, 5, and 10, and the same *held* to be limited by the prior state of the art to the specific devices shown; and, being so limited, *held*, further, that they are not infringed by the Jensen can-body making machine (patent No. 442,484).
5. **SAME.**
The Hipperling patent (No. 366,482) for wiping surplus solder from the inside of can bodies analyzed, as to claim 1, and *held* not infringed by the solder-wiping device of the Jensen machine.
6. **SAME.**
The Leavitt patent (No. 444,000) for a can-body forming and side-seam soldering machine construed and limited, as to claims 20, 22, 23, 25, 26, 27, 28, 30, and 31, and the same *held* not infringed by the Jensen machine.

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

This was a bill in equity by Edwin Norton and Oliver W. Norton against the Jensen Can-Filling Machine Company, Mathias Jensen, and John Fox, for infringement of certain patents. The circuit court dismissed the bill, as to said Fox, and granted an injunction against the remaining defendants. The latter appeal.

Wheaton, Kalloch & Kierce, for appellants.

Estee & Miller and Mundy, Evarts & Adcock, for appellees.

Before ROSS, HANFORD, and MORROW, District Judges.

HANFORD, District Judge. This is a suit in equity commenced in the United States circuit court for the district of Oregon by the appellees against the appellants and one John Fox, for alleged infringements of the following United States patents, viz.: No. 250,096, to Edwin Norton, granted November 29, 1881, on machine for soldering side seams of cans. No. 250,266, to F. M. Leavitt, granted November 29, 1881, on machine for making the seams of sheet-metal cans. No. 366,482, granted to W. Hipperling, July 12,