

ure of their right to relief. *Keystone Bridge Co. v. Phoenix Iron Co.*, 95 U. S. 274, 278, was a case where the manufacture of round bars, flattened and drilled at the eye, for use in the lower chords of iron bridges, was held not to be an infringement of a patent for an improvement in such bridges, where the specification described the patented invention as consisting in the use of wide and thin drilled eye bars applied on edge; and Mr. Justice Bradley, delivering the opinion of the court, said: 'It is plain, therefore, that the defendant company, which does not make said bars at all (that is, wide and thin bars), but round and cylindrical bars, does not infringe this claim of the patent. When a claim is so explicit, the courts cannot alter or enlarge it. If the patentees have not claimed the whole of their invention, and the omission has been the result of inadvertence, they should have sought to correct the error by a surrender of their patent and an application for a reissue. * * * But the courts have no right to enlarge a patent beyond the scope of its claim as allowed by the patent office, or the appellate tribunal to which contested applications are referred. When the terms of a claim in a patent are clear and distinct (as they should always be), the patentee, in a suit brought upon the patent, is bound by it. * * * He can claim nothing beyond it.'

To the same effect is the case of *Deering v. Harvester Works*.

It follows from these views that the instruction will have to be granted. To make myself clear as to the grounds of my ruling, defendant's motion is denied on the first point, to wit, that defendant is only the agent of the Singer Sewing-Machine Company. It is granted on the second point, to wit, that the defendant is not guilty of infringement because the machines sold by him are not similar to that described in the plaintiff's patent.

Mr. Boone: Will your honor permit us to save an exception?

The Court: Of course. Gentlemen of the jury, you may not understand my views, which are more or less technical, and addressed to the lawyers rather than to the jury, but it follows that it devolves upon me as a matter of law to instruct you to bring in a verdict for the defendant. This being a matter of law, you have no concern with it. If I have committed an error, it is easily corrected. You will therefore find a verdict for the defendant. You can do that by retiring to the jury room, or select one of your number as foreman here, and sign the verdict.

The jury accordingly selected one of their number as foreman, and signed a verdict in favor of the defendant.

JOHNSON CO. v. PENNSYLVANIA STEEL CO.

(Circuit Court, E. D. Pennsylvania. May 14, 1895.)

No. 21.

PATENTS—LIMITATION—ROLLING MILLS.

The Moxham patent, No. 303,036, for an improvement in rolls for rolling metal blooms or piles into girder shapes, construed as to claim 2, and held to be limited to rolls having a "pass" substantially of the contour shown in the drawings, and therefore held not to have been infringed.

This was a bill by the Johnson Company against the Pennsylvania Steel Company for infringement of a patent relating to rolling mills.

Harding & Harding, for complainant.
Philip T. Dodge and Joshua Pusey, for defendant.

DALLAS, Circuit Judge. This is a suit brought by the Johnson Company, a corporation of the state of Kentucky, and having a rolling mill and plant at Johnstown, Pa., against Pennsylvania Steel Company, a Pennsylvania corporation, having a rolling mill and plant at Steelton, Pa., for infringement of the second claim of letters patent No. 303,036, dated August 5, 1884, granted to Arthur J. Moxham, and by him assigned to the complainant.

The claim involved reads as follows:

"(2) A set of rolls for rolling metal blooms or ples into girder shapes, provided with a dummy pass or grooves, having spaces, as at E and D, substantially of the contour indicated in Fig. 2, the desired shape of metal in the space E being imparted by elongation, but in the space D mainly by displacement independently of elongation, all substantially as described and for the purposes set forth."

The learned counsel of the complainant have ingeniously argued "that rolling is a combination of the entering piece and the pass into which it is entered," and that "the true scope of the claim under consideration, to be effective, like all rolling actions, consists in the combination of a piece having certain characteristics, and a pass adapted to act upon that piece in a particular manner." The plaintiff's case rests upon the assumption that the claim should be construed in accordance with the theory thus suggested, but I find it impossible to acquiesce in this. It is strenuously insisted by the defendant that its pass does not act upon the piece in the "particular manner" in which the plaintiff's pass acts upon it; but, waiving this question, it is, at least, clear that the defendant's pass is not "substantially of the contour indicated in Fig. 2" of the patent, and I have no doubt that to the pass so specified the claim in suit should be restricted. To give to the language by which the action of the pass is described the effect of burdening this great industry with a monopoly covering any pass whatever by means whereof the peculiar desired shape may be imparted to the metal, "mainly by displacement independently of elongation," would be to construe the patent as for the mechanical operation or function of the device, and this, too, in contravention of the plain terms of the claim, by which a particular structure is specifically designated.

The bill is dismissed.

MAST, FOOS & CO. et al. v. IOWA WINDMILL & PUMP CO.

(Circuit Court, N. D. Iowa, Cedar Rapids Division. May 13, 1895.)

1. PATENTS—REISSUES—BROADENING OF CLAIMS.

A reissue which broadens the original claims can only be had when mistake or inadvertency is shown whereby the original patent failed to cover what it was then intended should be covered, and when the application for a reissue is made within a reasonable time; and, where the application is delayed for nearly three years, it is too late.

2. SAME—ANTICIPATION—PRIOR USE.

The fact that another than the patentee first conceived the idea of his invention, and reduced it to a successful experimental form, does not