

such a case. The court there holds that when the language of an act is explicit there is great danger in departing from the words actually used, in order to give effect to the supposed intention of the legislature, and that in such circumstances the court should not so construe the statute as to embrace cases, because no good reason can be assigned why they were not included within its provisions. The court further emphasizes the rule that it is not for the court to add to or subtract from the express provisions of the law, but only to interpret the law as it exists, leaving to congress to make provision for cases where such enactment may operate unjustly. In view of the failure of congress to make any distinction between the various classes of articles in said schedule, other than by the use of a word in the title, which, by the settled definition of courts and legislature, excluded the articles in question, and in the absence of any positive evidence of intention to include said articles within the provisions of said paragraph, I think it would be a violation of the principles of construction and interpretation to extend the language of said paragraph so as to include "worted goods." The decision of the board of general appraisers is reversed.

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EVERETT v. HAULENBEEK et al.

(Circuit Court, S. D. New York. July 8, 1895.)

1. JURISDICTION OF FEDERAL COURTS—PATENT INFRINGEMENT SUITS—LICENSES.  
The federal courts have jurisdiction of a suit for infringement of a patent notwithstanding that a license is set up in defense, so that the question of its existence is involved, and must be tried in trying the question of infringement. Jurisdiction in respect to infringement includes jurisdiction of all questions whether the license covered the infringement.
2. PATENTS—INVENTION.  
The discovery of a method of preparing peas by cooking and flattening them while moist without breaking or comminuting them, producing flat disks, while preserving the individuality of the peas, *held* to show invention over the old methods of preparing various grains by cooking and crushing, comminuting, desiccating, or otherwise breaking or dividing them while soft.
3. SAME—PREPARATION OF PEAS.  
The Beach patent, No. 215,313, for an improvement in the preparation of peas, by cooking and flattening them while moist, without breaking them, *held* valid and infringed.

This was a bill by William W. Everett against John W. Haulenbeek and others for infringement of a patent for an improved method of preparing peas.

Walter D. Edmonds, for plaintiff.

Nelson Smith, for Peter Haulenbeek.

Clarkson A. Collins, for John Haulenbeek and William Mitchell.

WHEELER, District Judge. The plaintiff, a citizen of Missouri, brings this suit against the defendants John W. Haulenbeek and William L. Mitchell, as principals, and Peter Haulenbeek, as aider and abettor under a pretended license, citizens of New York, for

infringement of patent No. 215,313, dated May 13, 1879, and granted to Henry H. Beach, for an improvement in preparation of peas by cooking them in hot vapor, and flattening them while moist, without breaking or comminuting them, thus changing their shape from globular to that of flat disks, and preserving their individuality. The claim is for, as a new article of manufacture, cooked and flattened peas, as set forth. The defendant Peter Haulenbeek sets up a license by plea supported by answer. The defendants John W. Haulenbeek and Mitchell set up by answer anticipations, with two years' prior use, and deny the validity of the patent; and admit making and selling steamed and flattened peas substantially the same as those described and claimed in the patent. Both answers are traversed.

Question is made whether this court has jurisdiction touching the license; but the suit is not brought upon the license, nor against it, but for infringement; and when the license is set up as an answer to allegations of infringement the existence of the license is involved, and must be tried in trying the question of infringement. *Hammacher v. Wilson*, 26 Fed. 241. More clearly, jurisdiction of a question of infringement must include all questions whether the license covers the infringement. This license was personal, for practicing the invention within prescribed territory, and required a monthly account, with payment of royalties. This would not seem to carry any right to aid and abet others in practicing the invention. The testimony of Peter Haulenbeek exhibits a desire to show that John W. Haulenbeek, with Mitchell as partner, practiced it for him, under this license; but the form of defense, the circumstances, and Mitchell's testimony, are opposed to this view, and John W. has not testified. Upon the whole, their infringement seems to have been done in their own behalf, independently of, and not for, Peter. In trespasses all who are guilty are principals, and those who do not so far participate as to be principals are not guilty; and Peter Haulenbeek does not appear, on all the evidence, to have so far had a part in what John W. and Mitchell did as to be liable for it. The bill must therefore be dismissed as to him, but, in consideration of his attitude, without costs.

The question remaining as to the other defendants, as made by their answer, is solely as to the validity of the patent. That the cooking, or partial cooking, of various grains, and crushing, comminuting, desiccating, or otherwise breaking or dividing them, while in a soft state, were old and well-known processes, many of them patented, and all of them in use at the time of this invention, is amply shown by the evidence. None of these methods merely flattened the kernels, but all included some form of breaking them. The patent distinguishes this invention from all of those things by providing for flattening and preserving individuality without any breaking. The two-years prior use rests substantially upon the same things. The want of patentable novelty, as illustrated in *Glue Co. v. Upton*, 97 U. S. 3, is strongly urged in behalf of these defendants. The substance of a pea is said to be, and is, the same, whether left round or made flat. The change is of form, merely,

and the patent is solely for this change of form after cooking. In that case Mr. Justice Field, in delivering the opinion of the court, after stating the substance of the specification, said:

"It thus appears that the invention claimed is not any new combination of ingredients, creating a different product, or any new mechanical means by which a desirable change in the form of a common article of commerce is obtained, but it consists only of the ordinary flake glue reduced to small particles by mechanical division."

This invention is not applicable to, not useful for, single peas, but to masses of peas, of varying diameters, reducing them to uniform thickness for evenness in drying or roasting. The patent covers such a desirable and useful change of form, which is more than a mere reduction in size. If any part of the invention is in the process of cooking the peas first, so that they can be flattened to uniform thickness without breaking, and then flattening them, the process so inheres in the product, like that in *Smith v. Vulcanite Co.*, 93 U. S. 486, as to make the product of the process patentable. Upon these considerations the patent seems to be valid, and the plaintiff to be entitled to a decree against those infringing it. Let a decree be entered for the plaintiff against John W. Haulenbeek and Mitchell for an injunction and an account, with costs; and dismissing the bill as to Peter Haulenbeek, without costs.

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UNION SWITCH & SIGNAL CO. et al. v. PHILADELPHIA & R. R. CO.  
et al.

(Circuit Court, E. D. Pennsylvania. May 28, 1895.)

No. 66.

**PLEADING IN PATENT CASES—MULTIFARIOUS BILL.**

A bill which alleges infringement of five different patents, without showing that the inventions or improvements covered by them are conjointly used by defendants, or all used in or upon the same machine, device, article, or apparatus, or are capable of such conjoint use, is bad for multifariousness. *Consolidated Electric Light Co. v. Brush-Swan Electric Light Co.*, 20 Fed. 502, followed.

This was a bill by the Union Switch & Signal Company and others against the Philadelphia & Reading Railroad Company and others for infringement of five patents relating to apparatus for electric railway signaling. Defendants demurred to the bill.

J. Snowden Bell and George H. Christie, for complainants.  
Witter & Kenyon, for defendants.

DALLAS, Circuit Judge. Upon the argument I inclined to think that it might be possible to sustain this bill against the charge of multifariousness, and so avoid multiplicity of suits. After careful examination of the bill, however, and upon full consideration of the authorities, especially of the case of *Consolidated Electric Light Co. v. Brush-Swan Electric Light Co.*, 20 Fed. 502, I am convinced that it would be a mistaken and oppressive exercise of the discre-

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