

aration of the first pair to burn and the arc-forming separation between the added pair—is not in any one of the claims. In order to make out a case of infringement, the former element must be gotten out of, and the latter must be gotten into, each claim. This, in my judgment, cannot be done. The lamps made under patent No. 418,758 do not contain mechanism constructed to cause the dissimultaneous initial separations of the carbons, nor do the lamps made under patent No. 502,535, nor do the lamps made under patent No. 502,538. I hold, therefore, that no infringement is made out in either suit. The order will be, in each case, that the bill be dismissed for want of equity.

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EXCELSIOR COAL CO. v. OREGON IMP. CO.<sup>1</sup>

(Circuit Court of Appeals, Ninth Circuit. June 27, 1895.)

No. 196.

INFRINGEMENT OF PATENTS—COAL SCREENS AND CHUTES.

The Roberts reissue, No. 7,341, for an improvement in coal screens and chutes, consisting principally in a reservoir between the receiving hopper and the delivery chute, *held* not infringed by an apparatus which has no reservoir, but uses a gate near the end of the chute by which the flow of the coal can be controlled. *Black Diamond Coal Min. Co. v. Excelsior Coal Co.*, 15 Sup. Ct. 482, 156 U. S. 611, followed.

Appeal from the Circuit Court of the United States for the Northern District of California.

This was a bill in equity by the Excelsior Coal Company against the Oregon Improvement Company for alleged infringement of re-issued patent No. 7,341, dated October 10, 1876, to Martin R. Roberts, for an "improvement in coal screens and chutes." The circuit court dismissed the bill, and complainant appeals.

John L. Boone, for appellant.

Sydney V. Smith, for appellee.

Before GILBERT, Circuit Judge, and KNOWLES and BELLINGER, District Judges.

BELLINGER, District Judge. This is a suit to enjoin the infringement of a patent for an improvement in coal screens and chutes. The court, in the decree appealed from, refused to grant the relief prayed for and dismissed the bill of complaint. The improvement, styled by the parties an "apparatus," consists of a receiving hopper, a reservoir, a screen, and a chute, so arranged in a portable machine that coal can be continuously dumped into the hopper from a swinging tub, while at the same time it is delivered screened into carts from the chute. The especial feature of the apparatus, which permits this to be done, is the interposition of a reservoir between the receiving hopper and the delivery chute. It is the employment of this reservoir that enables the machine to "accomplish the new operation, mode, result, and effect." The respondent's apparatus is a large, stationary machine, composed of long V-shaped hoppers, with gates at the lower side at intervals,

<sup>1</sup> Rehearing pending.

which open into chutes with screen bottoms. About six feet from the ends of the chutes a board is inserted, forming a gate which can be raised and lowered at either end, and by means of which the flow of coal through the chutes is checked and controlled.

Since the arguments of this case, the supreme court of the United States, in *Black Diamond Coal Min. Co. v. Excelsior Coal Co.*, 156 U. S. 611, 15 Sup. Ct. 482, held that the use of the respondent's hopper and screening device did not involve an infringement of the Excelsior Company's patent, "if for no other reason, because it lacked the reservoir" of that patent. That decision in effect disposes of this case. The decree appealed from, dismissing the complainant's bill of complaint, is affirmed.

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AMERICAN FIBER-CHAMOIS CO. v. WILLIAMSON et al.

SAME v. BUCKSKIN-FIBER CO. et al.

(Circuit Court, N. D. Ohio, E. D. June 5, 1895.)

1. PATENTS—INFRINGEMENT SUITS—JURISDICTION AND PRACTICE.

The power of the courts to declare, on demurrer to the bill, that a patent sued on is invalid on its face for want of novelty and utility, is well settled; but such power should not be exercised except in a very plain case, and where the conduct of the complainant shows that the suit is brought to harass mere dealers, and not manufacturers.

2. SAME—FLEXIBLE PAPER.

The McLauchlin patent, No. 511,789, and the Scott patent, No. 216,108, relating to processes of manufacturing flexible paper, are void for want of novelty and invention.

These were suits for infringement of two patents relating to the process of manufacturing flexible paper.

Thos. J. Johnston and Phillip, Munson & Phelps, for complainant.  
M. D. Leggett and A. E. Lynch, for respondents.

RICKS, District Judge. These are two bills filed by the complainant to sustain the validity of letters patent No. 511,789, dated January 2, 1894, issued to John C. McLauchlin. They were filed, one in March and the other in April last. Answers were filed to the same, denying the validity of the patent and denying infringement. The defendants sought to speed these cases as rapidly as possible, and waived the usual time for answer, and served the complainant with notice to file its replication, or they would move to dismiss the bills for want of prosecution. Thereupon the complainant asked leave to dismiss the bills without prejudice, and at the same time file two new bills against the same defendants, the new bills differing from the old ones in the respect that letters patent No. 216,108, dated June 3, 1879, issued to T. Seymour Scott, for an improvement in the manufacture of flexible paper, had since the filing of the former bills been assigned to the complainant, and the new bills were therefore based upon both the McLauchlin and the Scott patents. The defendants, in view of the action of the plaintiff in asking for leave to dismiss its original bills without prejudice, prayed leave of