made no examination whatever. The mere possibility of a mistake, however, is not sufficient. As was said in Heinz v. Lutz, 146 Pa. St. 592, 23 Atl. 314: 'It is not enough that there may be a possibility of deception. The offending label must be such that it is likely to deceive persons of ordinary intelligence.' "

There will be a decree dismissing the complainant's bill, with costs.

CAPITAL CASH-REGISTER CO. v. NATIONAL CASH-REGISTER CO.

(Circuit Court of Appeals, Second Circuit. November 7, 1895.)

PATENTS—INFRINGEMENT—CASH REGISTERS.

The Campbell patent, No. 253,506, for an improvement in cash registering apparatus, construed (on appeal from an order granting a preliminary injunction) as to the third claim, and the same *held* infringed by defendant's apparatus.

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

This was a bill in equity by the National Cash-Register Company against the Capital Cash-Register Company for alleged infringement of letters patent No. 253,506, issued February 14, 1882, to Michael Campbell, for improvements in cash-registering apparatus. The circuit court made an order granting a preliminary injunction, from which order the defendant appealed.

Franklin Scott and C. E. Mitchell, for appellant.

Edward Rector, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. This appeal, which is from an order granting a preliminary injunction, involves the single question whether the defendant's apparatus infringes the third claim of the patent in suit, as that claim has been construed by the circuit court of appeals for the Third circuit. 3 C. C. A. 559, 53 Fed. 367. The contention for the appellant is that its apparatus does not embody that of the patent, because it dispenses with the "mediate connection" between the drawer holder, D, of the patent, and the series of keys which is an element of claim 3. The drawer holder, D, is a lever, the rear end of which projects downward onto the drawer, and engages the rear end thereof; in other words, the thing which holds the drawer. The defendant's machine connects such a drawer holder with the keys by the mediate connection of a frame carrying a horizontal crossbar which unites its ends. The mediate connection of the patent is any device by means of which the movement of the keys can be transmitted to the drawer holder. The frame with its horizontal crossbar of the defendant's apparatus is such a device. It is quite immaterial that the drawer holder is made integral with the frame.

CODMAN et al. v. AMIA.

(Circuit Court, D. Massachusetts. November 14, 1895.)

No. 316.

1. PATENTS—ANTICIPATION—PRIOR ART.
The defense of anticipation, or of want of invention, in view of the prior state of the art, is not affected by the fact that the prior devices relied on were not designed for the particular use to which the device of the patent sued on is peculiarly adapted, if they in fact would perform the same functions. Wright & Colton Wire-Cloth Co. v. Clinton Wire-Cloth Co., 14 C. C. A. 646, 67 Fed. 790, followed.

2. SAME—ATOMIZER.
The Shurtleff patent, No. 447,064, for an improvement in atomizers, is void, in view of the prior state of the art, for want of invention in respect to the combinations covered by claims 1 and 2. Manufacturing Co. v. Holtzer, 15 C. C. A. 63, 67 Fed. 907, applied.

This was a bill by Benjamin S. Codman and others against Joseph Amia for alleged infringement of letters patent No. 447,064, issued February 24, 1891, to Asabel M. Shurtleff for an improvement in atomizers.

Lange & Roberts, for complainants.
Arthur von Briesen, for defendant.

ALDRICH, District Judge. In this cause the complainants stand on the first and second claims of their patent, which are:

"(1) In an atomizer, a vial and a cap or stopper, combined with a nozzle secured directly to said cap or stopper, and adapted to be applied in the nostrils, and in open communication with the interior of said vial, a liquid tube, extending down into the vial, atomizing orifices contained within said nozzle, and an air tube provided with an air-forcing device, all constructed and arranged to operate substantially as described.

"(2) In an atomizer, a vial and cap or stopper therefor, having its top formed with a seat for the nozzle, combined with a liquid and air tube, atomizing orifices in said tubes, and a nozzle fitting said seat, substantially as described."

The device which the complainants say amounts to patentable invention consists in securing known atomizing parts directly to a cap or cover of a vial, and adapting the whole for use as an atomizer, for throwing spray into the nostrils. It would seem that the functions and ideas embodied in the complainants' atomizer, aside from the rigid attachment, were all known in the prior art, and especially disclosed in the German patent of 1886, known as the "Osterwald Patent," and the American patent of 1881, known as the "Heine Patent." This being so, the combination which results from securing the various parts directly to the cap or cover of the vial was not, under the doctrine of Manufacturing Co. v. Holtzer, 15 C. C. A. 63, 67 Fed. 907, patentable invention.

The claim of the complainants that the older atomizers were not designed for the particular use to which their device is peculiarly adapted is no answer (Potts & Co. v. Creager, 155 U. S. 597, 606, 15 Sup. Ct. 194) to the fact that the older devices would perform the same functions. This doctrine was recently applied to Wright &