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 & Colton Wire-Cloth Co. v. Clinton Wire-Cloth Co., by the circuit court of appeals for this circuit. 14 C. C. A. 646, 67 Fed. 790, 792.

It follows, therefore, that the bill must be dismissed, with costs, and it is so ordered.

BINNS v. ZUCKER & LEVETT CHEMICAL CO. et al.

(Circuit Court, S. D. New York. August 21, 1895.)

1. PATENTS-NOVELTY AND INVENTION-ANALOGOUS USE.

- The use, in a buffing wheel composed of superposed scraps of fibrous material, of spiral instead of radial stitching, or stitching in concentric circles, for the purpose of remedying such defects as whipping out of stitches, variations of density, and uneven wearing away at the periphery, is not so analogous to the previous employment, in composition grinding and polishing wheels, of metal strips imbedded therein, and running spirally outward from the center for the purpose of strengthening resistance to centrifugal strain, as to deprive such spiral stitching of its claim to novelty and patentable invention.
- 2. SAME—INVENTION—FAILURE OF PRIOR EXPERIMENTERS. The fact that two persons skilled in the art, having before them the same problems as the patentee, attempted to solve them, and failed, is persuasive evidence that the successful device of the patent involves invention.
- 3. SAME-PRIOR USE-PRESUMPTION FROM PATENT.

The presumption created by the patent is not overcome by evidence of prior use, which, when viewed in its most favorable light, merely raises a doubt whether the patentee was the original inventor of the device.

4 SAME—BUFFING WHEELS. The Binns patent, No. 306,463, for a buffing wheel, shows patentable invention, and is valid.

This was a bill by Robert Binns against the Zucker & Levett Chemical Company and others for infringement of a patent.

Chas. E. Mitchell, for complainant. Betts, Atterbury, Hyde & Betts, for defendants.

TOWNSEND, District Judge. Complainant, by this bill, asks for an injunction and accounting by reason of defendants' infringement of his patent No. 306,463 for a buffing wheel, dated October 14, 1884. The defenses urged are lack of patentable novelty and prior use. The prior art relating to buffing wheels, the defects therein, and the invention covered by the patent, are accurately stated by the patentee, as follows:

"Heretofore buff wheels have been made of pieces of textile, fibrous, and other material united by sewing through and through the mass of superposed pieces in radial lines or concentric circles. In using such wheels, the workmen open the periphery of the wheel to loosen the pieces; and as the wheel is worn, its periphery being made most dense by and in the lines of stitching, it follows that there will be a constant variation and inequality in the density and effectiveness of the active surface of the wheel. This defect produces bad work. Furthermore, with the radial stitching, as the wheel wears, the stitch threads whip out and cut the workman's hands, and this defect is, if anything, aggravated by sewing in concentric circles. Now, in attempts to overcome these defects, I have found that, by sewing the material of the wheel together by stitches arranged in a spiral line continuous from the rim of the wheel to its center, I get a wheel of practically uniform density