

"Having described my improved process of forming hollow spheroidal bodies, I would state that I am aware that very small articles, like beads, have heretofore been shaped by compressing the ends only of tubular sections into a rounded form, without shaping the periphery thereof, the tube being comparatively thick in relation to size of the article to be formed, so that sufficient body is provided in the tube to prevent crimping or doubling; and I am aware that larger hollow articles have been swaged into more or less rounded form, from comparatively thin tubular metal, by first casting a thick temporary lining of soft metal into the tube, to give body thereto, and then shaping in one or more sets of rounded dies. But my invention differs from the former in making bodies of any desired size without using tubing of a thickness increased as the diameter is enlarged, and also in not only swaging and upsetting the ends of the tube into a smaller diameter, but also enlarging the diameter of the middle part thereof; and it differs from the latter most essentially in not employing lining of soft metal, or any other material; and it differs from both in that, whereas in those cases there is only a changing of the shape of the tube, there is no upsetting of the metal, making it thinner in some parts and in others thicker, my process does thus greatly change the thickness of the metal in different places; and, so far as I am aware, I am the first to discover that comparatively thin tubes of large diameter can be swaged and upset into spheroidal form by dies, and that the metal can thereby be upset, without crimping, to receive the desired forms."

It seems manifest, from these various statements of the patentee, that he thereby limited himself to a swaging or upsetting process which does not embrace the process used by defendants. Of course, he is not estopped by the original disclaimer, which was afterwards stricken out. But, as is forcibly urged by counsel for defendants, said language "is a distinct statement upon the record of the facts as he knew them to exist, and, although the statement never became a part of the patent, it nevertheless discloses the inventor's conception of the true nature of his invention, and what was new and what was old." In the patent itself the patentee says, "My process does thus greatly change the thickness of the metal in different places," by swaging and upsetting the metal, and differs from the prior art, where "there is only a changing of the shape of the tube, there is no upsetting of the metal, making it thinner in some parts in others thicker." And he claims to be the first discoverer of this capacity of such metal tubes to be thus "upset without crimping," and shows in his drawings only plain tubes as the ones possessing such capacity. Inasmuch as defendants' process is applied only to corrugated tubes, and changes the shape of such tubes solely by folding or unfolding the corrugations therein, and does not upset the metal, or make it thicker in some parts and thinner in others, in which respects it differs from the alleged discovery of the patentee, as described by him and differentiated from the prior art, there is no infringement. Let the bill be dismissed.

PUTNAM v. BROOKER et al.

(Circuit Court, S. D. New York. August 31, 1895.)

PATENTS—INFRINGEMENT—BOTTLE STOPPERS.

The Morhous patent, No. 377,043, for an improvement in wire ball bottle-stopping devices, if patentable at all, must be strictly confined to the device described in the specifications and shown in the drawings, and

is not entitled to the broad doctrine of equivalents. *Held*, therefore, that it was not infringed.

This was a bill in equity by Henry W. Putnam against Smith A. Brooker and others for alleged infringement of a patent.

Arthur v. Briesen, for complainant.

Stephen H. Olin, for defendants.

TOWNSEND, District Judge. This is a final hearing on the ordinary bill praying for an injunction and accounting by reason of the alleged infringement of patent No. 377,043, granted, January 3; 1888, to Frederick P. Morhous, and assigned to complainant. An application for a preliminary injunction was denied.

This patent is for an improvement in the class of bottle-stopper devices which are attached by means of wire bails to the necks of bottles, and so arranged with a hinged stopper that the mouth of the bottle may be quickly and securely closed and easily opened. The prior art was so crowded with minor improvements upon the original device that there was scarcely standing room for invention when this patentee entered the field. A consideration of what he found therein and of what he did, and of defendants' construction, shows that he is in this dilemma: either his patent is void, or defendants do not infringe. In several of the earlier devices the stoppers both slid longitudinally upon, and rotated freely about, the bail. In patent No. 275,101, granted, April 3, 1883, to Abram V. Whiteman, while the cover rotated freely, longitudinal movement was prevented by so confining the horizontal part of the bail within the flat surface of the cover that the edges of the cover pressed against the vertical sides of the bail. Objection having been taken to the introduction of evidence as to this patent, on the ground that it was not set up in the answer, the consideration thereof has been confined to its bearing upon the state of the prior art. The patentee of the patent in suit accomplished the same result by so bending the upper part of the bail that it fitted and revolved in a hollow space, formed by a recess in the center of the stopper or cover and an elevated cap piece secured to the stopper. But, on the same day on which he took out said patent, he also took out patent No. 377,042 for a bottle stopper; having the same bent bail confined in a recess in the center of the stopper, the only material difference being that, in this earlier patent, the metal portion of the stopper was first rigidly cast upon the bent bail, and the bail was then turned, as the patentee says, so as to permit slight oscillatory motion, but not complete revolution. It does not appear that it might not be further turned, so as to permit complete revolution, as in the device of the patent in suit, or that it would not naturally wear into infringement thereof in practical use.

The defendants' device operates upon the same principle as that of complainant. It has a bail similarly bent, and preventing longitudinal movement by the contact of the upwardly extending sides of the bend in the bail with a cap piece secured to the stopper.

But it has neither the recess in the stopper nor the cavity in the cap specifically illustrated, described, and claimed in the patent in suit. The means for preventing longitudinal movement is as much like that shown in said Whiteman patent as that of the patent in suit. It is practically the same as that used from time immemorial to confine the handle of the ordinary tin pail. The only feature of novelty in the patent in suit is the specific means for securing an old result, and which the patentee claimed as follows:

"1. In a bottle stopper, the combination of the bail, B, having bend or enlargement, e, stopper, E, having recess, g, for the reception of the bend or enlargement, e, and a cap, F, for holding the stopper on the bail, and permitting its rotation thereon, substantially as described.

"2. In a bottle stopper, the combination of the bail, B, having bend or enlargement, e, stopper, E, having recess, g, and cap, F, having cavity, h, over the recess, g, said cap being secured on the stopper, substantially as described."

It is at least extremely doubtful whether there is any patentable novelty in the patent in suit. But in any event, in view of said Whiteman patent and the prior Morhous patent, and the general art as shown in the pail-handle construction, this patent is of such a character that the broad doctrine of mechanical equivalents cannot be invoked in its behalf. The very elements relied on to show patentable novelty are the ones omitted from the device used by the defendants. The patentee must be strictly confined to the self-imposed limitations of the device described in his specifications, shown in his drawings, and covered by his claims. "If, however, the patent could be sustained at all, it would have to be restricted and confined to the specific combination described in the second claim, as indicated by the letters of reference in the drawings, and each element specifically pointed out is an essential part thereof. * * * If any validity could be conceded to the patent, the limitation and restriction which would have to be placed upon it by the action of the patent office, and in view of the prior art, would narrow the claim, or confine it to the specific structure therein described, and, as thus narrowed, there could be no infringement on the part of appellants if a single element of the patentee's combination is left out of the appellants' device." *Knapp v. Morss*, 150 U. S. 221, 228, 14 Sup. Ct. 81.

It is unnecessary to consider the other questions raised. The admissions of this defendant, who is not the manufacturer, but is only a user of the stopper complained of, should not be permitted to affect the rights of the public upon the question of patentable novelty. Let the bill be dismissed.

EDISON ELECTRIC LIGHT CO. v. ELECTRIC ENGINEERING & SUPPLY CO.

(Circuit Court, N. D. New York. February 27, 1896.)

No. 6,071.

PATENTS—LIMITATION OF CLAIMS—ELECTRIC LAMPS.

The Bergmann patent, No. 311,100, for an electric lamp socket, in which is used a disk of noncombustible insulating material (preferably of lava), and a circuit controller key of a special form, must be confined to the precise structures described and shown, and is not entitled to the benefit of the doctrine of equivalents. *Held*, therefore, that it is not infringed by a socket made according to the Hinds patent of 1891, in which the insulating disk is of porcelain, and the circuit controller key is of different structure and operation from that of Bergmann.

This was a bill in equity by the Edison Electric Light Company against the Electric Engineering & Supply Company for alleged infringement of a patent relating to sockets for incandescent electric lamps. On final hearing.

The patent, No. 311,100, on which this action is founded, was granted to Sigmund Bergmann, January 20, 1885, for improvements in sockets for incandescent electric lamps. The improvements relate to sockets designed to receive lamps whose terminals are a screw-threaded ring and a plate on the base of the lamp. The object was to provide a compact socket, having few parts, a small amount of insulating material and a simple circuit-controller. The specification says, among other things,

"A is a disk of insulating material. I prefer to use a non-combustible and non-carbonizable material, such as lava. This is desirable in a socket of this character, because the contacts and terminals are placed close together in a small space, so that there may sometimes be danger of a short circuit between them, and also circuit is continually being made and broken by the socket key, in some cases causing considerable spark. * * * The socket, constructed as described, is of a neat appearance, is very compact, has no useless mass of insulating material, being merely a metal skeleton with just enough insulation to separate the terminals, all the circuit connections being carried by the single insulating disk instead of being divided among two or more insulating portions, as heretofore. The circuit controller making and breaking circuit upon the lamp tip employs fewer parts and is simpler in construction than any heretofore used, while it is very efficient in operation, and the whole may be put together or taken apart with great readiness, the parts being easily separable."

As stated by the patentee the socket is compact and simple. It is of the usual type and differs from those which preceded it in matters of detail only. No minute or extended description is necessary. The socket will be readily understood by reading the above excerpts in connection with the claim. The claims involved are as follows:

"1. In a socket for an electric lamp, the combination of two circuit terminals, one a sleeve adapted to make contact with the band or ring terminal, the other a spring movable into and out of contact with the bottom terminal of the lamp, substantially as set forth."

"3. In a socket for an electric lamp, the combination, with a disk of insulating material, of a contact sleeve for making contact with the band or ring terminal of the lamp, a contact piece for making contact with the bottom terminal of the lamp, and two terminals for the circuit wires leading to the socket, all said socket contacts and terminals being carried by the said insulating disk, substantially as set forth.

"4. In a socket for an electric lamp having two terminals for making connection with corresponding lamp terminals, the combination of a metal supporting portion and a disk of insulating material carried thereby and car-