

prior form of construction. Indeed, such a construction would be fatal to the patent. The claim being thus construed, it is clear the respondents' device does not infringe.

The question still remains, can the bill be sustained upon the design patent for a table leg? On November 29, 1893, the complainant applied for a design patent for a table leg, which was granted January 2, 1894. "The leading feature in my design," the specification recites, "consists of a table leg with an upper end of a generally square shape, with one of its corners beveled off, and with a projection protruding from the beveled corner." He had on December 2, 1891, applied for a mechanical patent for a fastening for table legs, which, in substance, showed in combination the form of leg embodied in the design patent. The complainant testifies that he made his invention in the latter part of the summer of 1891, and began manufacturing the tables in the fall, or the latter part of the summer, of 1891. Conceding for present purposes that a table leg which had been embodied in combination in a mechanical patent issued before the present application was made, which is not in itself an article of commerce, and which, when used in a table, so far as the "projection protruding from the beveled corner" is concerned, is wholly hidden from view, and in no way appeals to the eye; conceding, we say, that it can be the subject of a design patent, and conceding that a design patent could issue on an application made November 29, 1893, for a design which, by the applicant's admission, had been perfected more than two years previously, and had been publicly used and manufactured in the fall or latter part of the summer of 1891,—the question still remains whether there was any novelty in the design shown. On this point the issue is with the respondents. Exhibit G, introduced by complainant, and admitted by him to have been manufactured by respondents before the device in suit, shows a table leg with an upper end of a generally square shape, with one of its corners beveled, and a projection protruding from such beveled corner. The only difference between it and the design-patent device is that Exhibit G has a fixed nut on the end of the projection. Such being the case, there certainly was no patentable novelty in dispensing with the nut. Where the two designs are, in their prominent features, identical, as they are here, and their sole difference lies in that the protuberance of one has a small nut at the end, and the other has none, the difference is not of such material character as to afford ground for the grant of a design patent. We are therefore of opinion the design patent is void for want of patentable novelty. Let a decree dismissing the bill be drawn.

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TROY LAUNDRY MACHINERY CO. v. ADAMS LAUNDRY MACHINERY CO. et al.

(Circuit Court of Appeals, Second Circuit. March 17, 1896.)

PATENTS—INFRINGEMENT—LAUNDRY DAMPENING MACHINES.

The Wendell and Wiles patent, No. 401,770, for an improvement in dampening machines, is so limited by the action of the patent office and

the acquiescence of the patentees therein, and by the specific language of the claims and specifications, that the thin textile covering of the dampening rollers, which is an element of each claim, cannot be construed to include a thick covering of felt.

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

This was a suit in equity by the Troy Laundry Machinery Company against the Adams Laundry Machinery Company and others for alleged infringement of a patent for a dampening machine. The circuit court dismissed the bill, and complainant appealed.

E. B. Stocking, for appellant.

Wm. W. Morrill and Nelson Davenport, for appellees.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. The object of the invention described in the patent in suit, No. 401,770, its novel features of construction, and the particular object and beneficial effect of the thin textile covering which is one of the elements of the patented combinations, are fully stated in the opinion of Judge Coxe in *Troy Laundry Machinery Co. v. Sharp*, 54 Fed. 712, and the necessity of a restatement of these facts is obviated. In view of the limitations placed upon the claims of the patent by the action of the patent office, and acquiesced in by the patentees, and in view of the specific language of the claims and of the description in the patent, we are of the opinion that the "thin textile covering" of the dampening rollers which is an element of each claim cannot be construed to include a covering of felt of the thickness used in the machines of the defendant, and consequently that the defendants have not infringed the patent. The decree of the circuit court is affirmed, with costs.

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STATE OF MISSOURI, to use of PUBLIC SCHOOLS OF CAPE GIRARDEAU COUNTY, v. ALT et al.

(Circuit Court, E. D. Missouri, E. D. April 14, 1892.)

REMOVAL OF CAUSES—DIVERSE CITIZENSHIP—NOMINAL PARTIES.

An action by a county school board against an alien to cancel, for the benefit of the public schools, a deed to certain swamp lands, made by the county commissioner, was brought, by permission of a statute, in the name of the state of Missouri. The ground alleged was that the deed was invalid for want of a seal, and the county was made a defendant because it refused to join as a complainant. *Held*, that both the state and the county were merely nominal parties, and the alien defendant was entitled to remove the cause.

This was a bill in the name of the state of Missouri, in behalf of, and to the use of, the public schools of Cape Girardeau county, against William John Alt and Cape Girardeau county, to procure the cancellation of a deed. The cause was removed by defendant from a state court, and is now heard on motion to remand.