

would understand the nature of the materials required, although it is true as disclosed by the evidence that there was at that time a practical difficulty in obtaining a supply in the market.

I am of opinion, however, that the specification was, for the purpose of deceiving the public, made to contain less than the whole truth relative to the invention and hence that the patent must be held to be invalid. Rev. St. § 4920. The patentee had discovered previously to his application that the dye used should be waterproof, and that the yielding surface used in polishing should be an inflated air cushion. The use of a waterproof dye, he testifies, is "an important feature"; and as to the air cushion, he testifies that it "is necessary to be practical," and that without this "it would not be my process." The specification, however, contains no reference to these requirements. The necessity of a waterproof dye is hardly even suggested, and the polishing surface is described as formed of cotton cloth or chamois skin, covering a bed of "felt or any other suitable material." Since the great importance of the waterproof quality in the dye was well understood by the inventor, as well as the absolute necessity to his process of a certain specific yielding surface, I must hold that the purpose to deceive the public is necessarily implied from his failure even to suggest these requirements.

The bill will be dismissed with costs to the respondents.

KENNEDY VALVE MANUF'G CO. v. CHAPMAN VALVE MANUF'G CO.

(Circuit Court, D. Massachusetts. June 22, 1896.)

No. 554.

PATENTS—LIMITATION BY PRIOR ART—VALVE INDICATORS.

The Kennedy patent, No. 404,844, for a valve indicator, must be limited, in view of the prior state of the art, to the specific structure shown and described; and the real invention consists simply in the use of a movable sleeve, in combination with the other parts, with the resultant advantage that the valve can endure rough handling, and is little liable to derangement and destruction.

W. P. Preble, Jr., for complainant.
William H. Chapman, for defendant.

CARPENTER, District Judge. This is a bill in equity to restrain an alleged infringement of the first claim of letters patent No. 404,844, issued June 11, 1889, to Daniel Kennedy, for valve indicator. The claim is as follows:

"(1) In a valve having a casing A and boss A', with operating shaft B, having a screw thread b, the combination therewith of a sleeve D, surrounding such boss and connected therewith by the longitudinal groove a', and pin D², so as to allow longitudinal motion, and the yoke D', connecting such sleeve with the thread b, all arranged for joint operation, as herein specified."

This is a device whereby the upward and downward movement of the sleeve discloses, through a slot or opening therein, alternately, the words "open" and "shut," or other marks which may

indicate whether the valve is open or shut. The devices theretofore in use, as the specification says, were "too slight and too easily deranged," and the patentee discovered "that it is practicable to make such indication by the movement of a sleeve surrounding the upper portion of the valve casing, and which sleeve may be made of any desired thickness, so as to endure as rough handling and be as little liable to derangement and destruction as the other portions of the valve." The device used by the respondent is shown in letters patent No. 486,610, issued November 22, 1892, to Jason Giles, for valve indicator, in which the words or symbols indicating whether the valve is shut or open are carried on a sign plate which moves upward and downward, exposing the words through a slot in a face plate. On a broad construction of the claim it seems to me clear that the respondent infringes. The complainant claims a construction which he states as follows:

"Complainant contends that Daniel Kennedy was the first person ever to conceive and reduce to practice the idea of making a valve indicator tell its own story by visible words. In this he was a pioneer and, as such, entitled to the broadest and most liberal construction of his claim which the state of the art, when he obtained his patent, would justify. Other inventors had made valve indicators which could be interpreted by persons acquainted with the inside working of the valve mechanism, but Kennedy was the first ever to make a valve indicator which could be immediately understood by everybody, whether he knew how the valve worked or not. Kennedy did this by putting upon the valve indicator the word 'Open' and the word 'Shut,' in large, plain letters, so situated that only one could be seen at a time, and that the opening and closing of the valve automatically uncovered one of these words and concealed the other in true agreement with the actual condition of the valve. He did this in a way that made the mechanism durable, absolutely accurate, and not readily tampered with or deranged; but the main idea was the absolute certainty that no English-speaking person, man, woman, or child, could fail to understand the condition of the valve at a glance, with or without any mechanical knowledge. Durableness, security against derangement and correspondence with the actual condition of the valve are nothing without the power of speaking to the uneducated mind through the common medium of the English language. All these qualities, except the faculty of speech, had been given to valve indicators before; but Kennedy was the first to cause the valve, as one of the witnesses expressed it, 'to make its own report.'"

It seems to me that all the requirements of the description above quoted are met by the drawing of letters patent No. 141,839, issued August 12, 1873, to James Walsh, for improvement in valve cocks. The complainant insists that the words "open" and "closed" in this drawing are descriptive only, and are not intended to be inscribed on the valve. They are not referred to in the specification, and it does not appear that valves were made on which the words were inscribed. Since, however, the words plainly appear on the valve, in the place appropriate therefor in connection with the pointed projection on the lower end of the vertically moving rod, and since the specification speaks of a "pointer or sliding rod * * * serving as an indicator to show the position of the valve," I should be slow to find patentable invention in a device to which no new function could be assigned except that which the complainant here claims for his invention. However that may be, the objection does not apply to the device shown in letters patent No.

266,241, issued October 17, 1882, to Edward Weston, for cut-off for electric circuits, in which the function of the patented device, as the complainant above states it, is performed in an electric cut-out, which "performs an analogous function with respect to an electric current to that performed by a valve with respect to a current of water, steam, air, etc."

The state of the art shows, then, as it seems to me, that the invention consists simply in the use of a sleeve, with its alleged resultant advantage, in the case of a valve, that it can "endure rough handling" and is "little liable to derangement and destruction." As to whether it has this advantage, there is no evidence in the record, and I am inclined to give the complainant the benefit of the presumption arising from the grant of the patent, and hold the claim valid for the specific structure shown and described. The respondent does not infringe the claim as so construed, and the bill will therefore be dismissed with costs.

STROM MANUF'G CO. v. WEIR FROG CO.
(Circuit Court, S. D. Ohio, W. D. June 1, 1896.)

No. 4,605.

1. PATENTS—SUFFICIENCY OF DESCRIPTION—SWAGING RAIL BRACES.

The Alkins patent, No. 352,286, for an improvement in rail braces, consisting in striking them up from a metal blank, *held*, in view of the antiquity of the art of swaging, not to be void as to claims 1, 2, 3, 9, and 10, for want of a sufficient description to comply with Rev. St. § 4888, though the process is not stated in detail. *Kilbourne v. W. Bingham Co.*, 1 C. C. A. 617, 50 Fed. 697, followed.

2. SAME—NOVELTY AND INVENTION.

There is no patentable invention involved in swaging, or striking up by means of a die, from a blank of malleable iron or steel, a rail brace of a form which had previously been made of cast metals. *Kilbourne v. W. Bingham Co.*, 1 C. C. A. 617, 50 Fed. 697, followed.

3. SAME.

The Alkins patent, No. 352,286, for an improvement in rail braces, consisting in swaging them from blanks, is void on its face for want of novelty and invention.

4. SAME—DEMURRER FOR WANT OF INVENTION.

The cause should be considered upon the merits, on demurrer to the bill, whenever it appears upon the face of the patent that it lacks invention. *Locomotive Works v. Medart*, 15 Sup. Ct. 745, 158 U. S. 68, followed.

This was a suit in equity by the Strom Manufacturing Company against the Weir Frog Company for alleged infringement of letters patent No. 352,286, issued November 9, 1886, to Charles Alkins for improvements in rail braces. The cause was heard on demurrer to the bill.

In describing his invention, the patentee says:

"This invention relates to the manufacture of rail braces which are employed for the purpose of bracing the rails of a railroad, particularly at frogs or switches, or at points where bends or curves occur in the road. These braces are usually constructed with a base portion adapted to be spiked down upon a cross-tie or other appropriate bed, and with an abutment rising from