

lose at most the benefits only of competition from one who cannot compete without violating his own word and just obligation.

Nor does this case present an instance where a settled public policy is attempted to be circumvented by a private contract, such as that which relates to the statute of limitations, usury, etc. The settled public policy of the country, on the contrary, is to give to the inventor the fruit of his invention, and, if a given individual agrees to leave the field to him to whom the government has granted the patent, the public has suffered no wrong. A case might be conceived where, by widespread contracts such as these, an invention without merit might, by the buying up of the whole field of manufacturers, exclude competition; but such a conception is the nightmare of conjecture rather than a possibility of reality. If it should ever become a practical menace, some remedy would doubtless be discovered. It has no application to the case at bar at least, and does not persuade me that the defendants should have that which they fairly contracted away.

The proof satisfies me that the Davis & Rankin Building & Manufacturing Company is only a corporate name for Daniel J. Davis and Thomas Rankin. The men behind this corporation, responsible for its doings and recipients of its profits, are Davis and Rankin. They, as individuals, made the contract under consideration, and they cannot, in my opinion, escape its just obligations by metamorphosing themselves into an artificial person. A decree may, therefore, be entered finding that there is reasonable ground for complainants' claim that the Houston-Thomson patent is valid; but the court does not at this time pass upon its validity; that the machines of the defendants, if the patent is valid, are probably infringements; that Davis and Rankin entered into the contract referred to in this opinion; and that the Davis & Rankin Manufacturing Company is, under the circumstances of this case, bound thereunder; that the defendants are thereby estopped from denying the validity of complainants' patents, and restraining defendants from infringing the patent.

CEREALINE MANUF'G CO. v. BATES et al.

(Circuit Court, D. Indiana. January 2, 1897.)

No. 9,015.

1. PATENTS—DISCLAIMER—BROADENING CLAIM.

An element of a combination claim cannot be eliminated by a disclaimer, so as to broaden the claim, or make it rest on other elements than those on which it was predicated when issued.

2. SAME—IMPROVEMENT IN BREWING.

The Gent patent, No. 262,761, for an improvement in the art of brewing malt liquors, *held* not infringed.

This was a suit by the Cerealine Manufacturing Company against Hervey Bates and Hervey Bates, Jr., for alleged infringement of a patent.

Rowland Cox and Miller, Winter & Elan, for complainant.

Duncan & Smith, Charles Martindale, and Robt. H. Parkinson, for defendants.

BAKER, District Judge. This is a suit for the alleged infringement of letters patent No. 262,761, dated August 15, 1882, and granted to Joseph F. Gent, assignor, for an improvement in the art of brewing malt liquors. The complaint is in the usual form, and the answer sets up noninvention and noninfringement. The claim of the patent is as follows:

"In the art of brewing malt liquors from barley, malt, and corn, the process of mashing, which consists in steeping a percentage, as set forth, of hullless corn flakes simultaneously with malt and hops, whereby the preliminary cooking of the corn product is eliminated from the mashing process, and the subsequent fermentation improved."

By a disclaimer filed November 16, 1894, pending the suit, the claim of the patent was changed to read as follows:

"In the art of brewing malt liquors from barley, malt, and corn, the process of mashing, which consists in steeping a percentage, as set forth, of hullless corn flakes simultaneously with malt, whereby the preliminary cooking of the corn product is eliminated from the mashing process, and the subsequent fermentation improved."

The claim, as it stood at the time of the alleged infringement, as well as at the time the suit was brought, was for "the steeping of a percentage of hullless corn flakes simultaneously with malt and hops." Assuming the quick malt of the defendants to be identical in character and composition with the corn flakes of the complainant, there is no evidence in the record showing that the defendants, or any one with their knowledge or consent, ever steeped quick malt simultaneously with malt and hops in the brewing process. Nothing more can be claimed to have been done or authorized by them than that they sold "quick malt" to be steeped with malt, without the use of hops, in the process of brewing; hence no infringement is shown unless the disclaimer has broadened the complainant's claim, and has a retroactive effect, in giving a right to recover on grounds on which no recovery could have been had as the claim was originally drawn and allowed by the patent office. This is not the office of a disclaimer. A patent cannot be broadened by a disclaimer, nor made to rest upon other elements than those on which it was predicated when allowed and issued. There were two elements, namely, "malt and hops," with which the corn flakes were required to be simultaneously steeped, as specified in the patent when it was granted. The elimination of one element, namely, "hops," clearly broadens the claim. If one element may be disclaimed out of a combination patent, there would be no limit to the changes which might be effected; and, if a retroactive operation were to be given to such a disclaimer, the door would be open to great fraud and oppression.

For these reasons, the bill will be dismissed for want of equity, at the cost of the complainant.

ROGERS et al. v. FITCH et al.

(Circuit Court, S. D. New York. December 31, 1890).

PATENTS—VALIDITY—INFRINGEMENT—MATTRESSES.

The Fulton patent, No. 322,366, for a mattress, the lower portion of which is sunk below the bed rail, held valid and infringed.

This was a suit by Charles P. Rogers and others against Benjamin Fitch and others for alleged infringement of a patent for a mattress.

James A. Whitney, for plaintiffs.

Robert Grier Monroe, for defendants.

WHEELER, District Judge. This suit is brought upon patent No. 322,366, applied for May 12, 1884, granted July 14, 1885, to Samuel Fulton, for a mattress, and assigned to the plaintiffs. The patentee states in the specification that:

"The object of this invention is to provide a mattress which, when placed in position upon a bedstead or equivalent support, will maintain all the advantages incident to the usual or normal thickness of the mattress itself, without the undesirable height incident to the use of mattresses of ordinary construction. This object I accomplish by means of my said invention, which comprises a mattress having a rabbeted circumference, so formed and arranged that, when the mattress is placed in position upon a bedstead, the lower portion thereof will sink within or below the rails of the bedstead, thereby permitting only a small portion of the thickness of the mattress to extend above the rails, so that by this means no material additional height is given to the bed by the placing of the mattress upon the bedstead, and the bed, considered as a whole, is made much more compact than if the mattress were placed bodily upon the rails, with its whole thickness extended above the same."

"A is the upper circumferential frame of the mattress, made of wood or other suitable material. B is the lower circumferential frame thereof, of less diameter and width. This lower frame is connected with the upper by iron hangers, C, attached to the frames, respectively, by screws or other suitable means, in such manner that the lower frame is suspended from the upper."

"I do not limit myself to the precise construction of the parts herein shown, or the precise means of connecting said parts together, the essence of my invention consisting in a mattress circumferentially rabbeted, in such manner that, while its upper portion may be supported by the bedstead, its lower and depressed part will be suspended from its upper portion, and situated below the level of the top of the frame of the bed."

The claim alleged to be infringed is:

"(1) As a new article of manufacture, a mattress for bedstead, the circumference of which is rabbeted, to enable it to be supported at its upper part by the rails of the bedstead with its lower part suspended between said rails, all substantially as and for the purpose herein set forth."

The answer sets up that the patent is void:

"(1) Because, before the supposed invention by the said Fulton of said alleged improvement, the same thing, in all substantial and patentable respects, or substantial and material part or parts thereof, was or were described in letters patent of the United States, and particularly in patents No. 189,104, granted T. R. Jones, April 3, 1877; No. 251,630, granted F. A. Palmer, December 27, 1881; No. 237,586, granted F. A. Palmer, February 8, 1881; No. 271,062, granted Henry A. Hale, January 23, 1883.

"(2) Because, before the supposed invention by the said Fulton of said alleged improvement, the same had been made by others in this country, and particularly by William H. Judson, Chicago, Ill., now residing at 101 W. 78th street, New York, and used by G. W. Holt, of 54 Pine street, New York City."