

thority to impose any duty on such free goods. If during or at the end of said period she elected to assert her prerogative, and change her mind, then, and not until then, did the collector acquire the right to impose a duty upon such articles as should not be exported. As the reduction of rates of duty provided for manufactures of wool took effect January 1, 1895, such rates were the ones imposed by law when these articles first became dutiable. The decision of the board of general appraisers is reversed.

WIEDERER et al. v. UNITED STATES.

(Circuit Court, S. D. New York. February 16, 1897.)

CUSTOMS DUTIES—CLASSIFICATION—MIRROR PLATES.

Mirror plates, not framed, but intended to be put in frames or cases, are dutiable as mirrors, under paragraph 102 of the tariff act of 1894.

Comstock & Brown, for importers.
Henry O. Sedgwick, Asst. U. S. Atty.

TOWNSEND, District Judge (orally). The articles in question are commercially known as "mirror plates." They were assessed for duty as mirrors, under paragraph 102 of the tariff act of August 1, 1894. The importer protests, claiming that they are dutiable, under paragraphs 92 and 97 of said act, as "cylinder glass, polished and also beveled, not exceeding 16x24 inches square." The word "mirror" has no commercial or trade meaning. There is no such trade term as a "framed mirror," or a "mirror with frame," or "mirror without case." The word must be taken in its ordinary sense. The evidence shows that these plates are sold to be put in frames or cases. These plates are mirrors without frames. There is considerable evidence that they are known as "mirrors." They are not parts of mirrors. The addition of a frame or case neither changes their character or use nor advances them into a new article. This conclusion renders it unnecessary to consider the further forcible contention of counsel for the United States that the paragraphs relied upon by the importer do not cover this class of silvered cylinder glass articles. The decision of the board of general appraisers is affirmed.

BORGFELDT et al. v. UNITED STATES.

(Circuit Court, S. D. New York. February 16, 1897.)

CUSTOMS DUTIES—CLASSIFICATION—GLASS ATOMIZERS.

Atomizers, consisting of ornamented glass vessels, with metal and rubber tops which are essential parts of the articles, the glass being the most valuable component, are dutiable under paragraph 102 of the tariff act of 1894 as manufactures of glass or of which glass is the component material of chief value, and not as articles of glass or glass bottles, under paragraphs 88-90.

This was an application by George Borgfeldt & Co. for a review of the decision of the board of general appraisers affirming the decision of the collector of the port of New York as to the rate of

duty on certain atomizers, consisting of bottles or vessels of glass, cut or ornamented, and surmounted with a metal top to which is attached a rubber bulb.

Comstock & Brown, for importers.
Henry S. Sedgwick, U. S. Atty.

TOWNSEND, District Judge (orally). The articles in question are atomizers. They were assessed for duty under paragraphs 88, 89, and 90 of the tariff act of 1894 as "articles of glass,—cut or ornamented," or "glass bottles." The importer protests, claiming that they are dutiable, under paragraph 102 of said act, as manufactures of glass, or of which glass is the component material of chief value. Inasmuch as the earlier paragraphs of said act contain exhaustive provisions for specific articles of glass, and inasmuch as India rubber and metal are substantial essential elements in the construction of these completed articles whereof glass is the component material of chief value, I think they should have been classified under the specific provisions of paragraph 102, which was apparently inserted in order to provide a different rate of duty for a great variety of articles made in part of glass and in part of other materials. The decision of the board of general appraisers is reversed.

WARREN CHEMICAL MANUF'G CO. v. UNITED STATES.

(Circuit Court, S. D. New York. February 16, 1897.)

CUSTOMS DUTIES—CLASSIFICATION—FREE LIST—COAL-TAR PRODUCTS.

Coal-tar products, not shown to be oils in fact or to be chemically, commercially, or commonly known as distilled oils, are free, under paragraph 443 of the tariff act of 1894, as products of coal tar not specifically provided for, and are not dutiable as distilled oils, under paragraph 60.

Comstock & Brown, for importers.
James T. Van Rensselaer, Asst. U. S. Atty.

TOWNSEND, District Judge (orally). The merchandise in question is known as "coal-tar product" or "dead oil." The finding of the board of general appraisers that it is a product of coal tar is supported by the preponderance of the evidence, and is affirmed. It was assessed for duty at 25 per centum ad valorem, under the provision for "products known as distilled oils," in paragraph 60 of the tariff act of August 28, 1894. The importer has protested, claiming that it is free as a "product of coal tar, not a color or dye, not specifically provided for," under the provisions of paragraph 443 of said act. Counsel for the United States contends that the term "distilled oils" has in the trade a definite meaning, synonymous with "essential oils," or oils derived from vegetable substances; and that, as congress has included in paragraph 60 both the terms "essential oils" and "distilled oils," it must thereby have intended to include under the two terms something more than the commercially known distilled oils, namely, oils in fact distilled from nonvegetable

substances, such as oils distilled from coal tar. Whether the contention of the importer that the word "known" necessarily means, in this connection, "commercially known," it is unnecessary to determine. It has not been shown, however, that this article is an oil in fact, or that it is chemically or commercially or commonly known as "distilled oil." The decision of the board of general appraisers is therefore reversed, and the article should be admitted free under paragraph 443 of said act.

HANIFEN v. E. H. GODSHALK CO. et al.

(Circuit Court, E. D. Pennsylvania. December 16, 1896.)

1. PATENTS—DATE OF INVENTION—INVENTION ABROAD.

As against an infringer, the owner of a patent may, to avoid alleged anticipation or prior use, carry back the invention by proving the actual date thereof, though the same was made in a foreign country.

2. SAME.

In the case of two patents, each for a knitted fabric as an article of manufacture, one for an improvement in plush goods, and the other for "Astrakhan Cloth" (articles of distinct species), the former would not be an anticipation of the latter, even if the only change necessary to produce the Astrakhan cloth was the substitution of one kind of yarn for another.

On Rehearing.

3. SAME—KNITTED FABRICS—ASTRAKHAN CLOTH.

The Bywater patent, No. 374,888, for an improvement in knitted fabrics, whereby Astrakhan cloth is produced, *held* anticipated by the Booth British patent, No. 756, of 1881.

This was a suit by John E. Hanifen, trading as John E. Hanifen & Co., against the E. H. Godshalk Company and Edward H. Godshalk, for alleged infringement of a patent for an improvement in knitted fabrics.

Joseph C. Fraley and Wm. P. Preble, for complainant.
Strawbridge & Taylor, for defendants.

DALLAS, Circuit Judge. The bill in this case prays the usual relief for the alleged infringement by the defendants of patent No. 374,888, dated December 13, 1887, issued to Levi Bywater, assignor to the complainant, for an improvement in knitted fabrics. The claim sued upon is as follows:

"(2) A knitted fabric composed of face and back yarns of different materials, the face yarn being looped at regular intervals and on alternate stitches of adjacent rows of the back yarn, and being matted and curly, and having a smooth back, whereby the said fabric has the appearance of looped or Astrakhan cloth, as described."

The only defenses which need be discussed are anticipation and prior use. The application was filed on December 22, 1883, but the plaintiff claims that the date of actual invention has been carried back to November, 1880. The defendants, on the other hand, insist, as matter of law, that, inasmuch as the date set up is of invention made in England, it would not, even if established, be material; and also, as matter of fact, that the invention of the patent has not been shown