

did not prosecute the Bradley application, but allowed it to lie dormant in the patent office for many years. On the other hand, Bradley himself did not move again upon it for nearly two years after the contract was made. And we think it may fairly be said that the Cowles Company, finding their own and that of Bradley and Crocker sufficient for their purposes, had no special requirement for the Bradley application, which at that time stood rejected, though such rejection was not final. While, on the other hand, if Bradley supposed his own application still available for his own advantage, it is somewhat singular, knowing that it related to a then rapidly-developing industry, he should have left it so long neglected. Bradley claims that his process is capable of being carried on continuously by simply adding unfused ore, but there is the same capacity in this respect in the Cowles process. In either of them, by tapping the tank or other containing vessel at or near the bottom and making provision for a constant supply of material by any common method, the process could be continued indefinitely. Such supplements would not alter the process itself, and would indeed be only such as ordinary skill would provide if it should be found desirable to employ them. Upon the whole case, we are satisfied that the inventions covered by the Bradley application were intended to be included by the terms of the contract; that Bradley's unauthorized proceedings thereon, whereby he procured his patents, must be held to inure to the benefit of the Cowles Electric Smelting & Aluminum Company. The result is that the decree below should be reversed, the original bill dismissed, and the relief prayed by the cross bill should be granted.

EXCELSIOR COAL CO. v. OREGON IMP. CO.

(Circuit Court of Appeals, Ninth Circuit. February 23, 1897.)

No. 196.

PATENTS—INFRINGEMENT—COAL SCREENS.

The Roberts reissue, No. 7,341, for an improvement in coal screens and chutes, is not infringed by an apparatus lacking the reservoir which is the principal feature of the Roberts patent, and controlling the flow of coal only by the use of gates at the upper and lower ends of the chute. *Excelsior Coal Co. v. Oregon Imp. Co.*, 16 C. C. A. 219, 69 Fed. 246, reaffirmed.

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

John L. Boone, for appellant.

Sydney V. Smith, for appellee.

Before GILBERT and ROSS, Circuit Judges, and HAWLEY, District Judge.

GILBERT, Circuit Judge. After a rehearing of this cause, we have no doubt that the former decree of this court affirming the decree of the circuit court in dismissing the complainant's bill, reported in 16 C. C. A. 219, 69 Fed. 246, was correct. Our conclusion at that time was based upon the decision of the supreme court

in the case of *Black Diamond Coal Min. Co. v. Excelsior Coal Co.*, 156 U. S. 611, 15 Sup. Ct. 482. The complainant's patent is for an improvement in coal screens and chutes. It consists in the combination of a receiving hopper, with a reservoir, a screen, and a chute, so arranged in a portable machine that coal may be continuously dumped into the hopper from a swinging tub as it is unladen from the vessel, or otherwise, while at the same time it is delivered screened in carts from the chute. The principal feature of the patent is the reservoir, O. The reservoir is directly below the hopper and at the top of the chute, or rather it is an enlargement of the upper end of the chute. In the patent it is said that the function of the reservoir is that of "a store room, so that, in case of temporary delay in the vehicle carrying the coal to the yards, the work of unloading the ship or other vessel can proceed without the necessity of piling the coal upon the wharf." In the case of *Black Diamond Coal Min. Co. v. Excelsior Coal Co.*, above referred to, the coal screen which was used by the Black Diamond Company differed from the appellee's device in this case only in the fact that it had but one gate in the chute, while the appellee's has two. The supreme court, in the opinion in that case, referring to the patent, said:

"If there be any invention at all, then, in the combinations specified in the third and fourth claims, it is in the introduction of the reservoir, O, beneath the hopper, which is really an enlargement of the chute, for the purpose of affording a lodgment for the coal until it is drawn off for use. Great stress was laid by plaintiff's counsel upon this feature of the invention, but, even conceding it to be patentable, there is nothing corresponding to it in the defendant's machine. On the contrary, the coal falls through a square opening in the bottom of the hopper directly upon the chute, where it is detained by a gate, which is kept closed until the coal is withdrawn. It is evident that the hopper itself is substantially the only reservoir, although a small amount of coal is necessarily detained in the upper part of the chute until the gate is raised. The chute is nowhere enlarged to form a reservoir."

The gates in the appellee's screen are placed, the one at the top of the chute, and the other near its lower end. If there is no reservoir in the Black Diamond Company's chute, it necessarily follows that there is none in that of the appellee. The presence of two gates in the appellee's chute, as the same are used, cannot create a reservoir corresponding to that of the patent. Both gates must be opened in order to permit the outflow of coal. The appellee's chute is not enlarged so as to furnish a reservoir. It is but a means of outlet from the hopper, which is the only reservoir, and it is not itself a storage place for coal. There is clearly no infringement. The decree of the circuit court will be affirmed, with costs to the appellee, as before ordered.

PHILADELPHIA CREAMERY SUPPLY CO., Limited, v. DAVIS & RANKIN BLDG. & MANUF'G CO.

(Circuit Court, N. D. Illinois. March 8, 1897.)

PATENTS FOR INVENTIONS—INFRINGEMENT—MILK CREAMERS.

Letters patent, No. 239,569, issued April 5, 1881, to Theodore Bergner, for creaming machines, were based upon specifications providing for the removal of the skimmed milk by means of a pump, which specifications were amended three years after filing so as to cover the entire process of creaming milk mechanically by centrifugal force. *Held*, that since the only new element in the device was the method of removing the milk, such patent was not infringed by a creaming device in which no pump was used.

In Equity. Suit by the Philadelphia Creamery Supply Company, Limited, against the Davis & Rankin Building & Manufacturing Company, to restrain the alleged infringement of a patent.

Banning & Banning and Chas. H. Aldrich, for complainants.
Pierce & Fisher and Robert S. Taylor, for defendants.

GROSSCUP, District Judge. The bill is to restrain the infringement of letters patent No. 239,569, issued April 5, 1881, to Theodore Bergner, assignee of Edwin J. Houston and Elihu Thompson; and letters patent No. 192,662, issued January 29, 1884, to Theodore Bergner, assignee of Wilhelm Le Feldt and Carl G. O. Lentsch. The last-named patent having expired, since the bill was filed, by reason of a German patent, no relief is asked thereon. The relief claimed is based on the fifth, sixth, seventh, and eighth claims of the first-named patent. The patent relates to machines of the class in which the separation of the lighter and heavier constituents of liquids is effected by the action of centrifugal force, and is said to be particularly adaptable to cases in which, from the nature of the materials dealt with, centrifugal machines of the ordinary type cannot be employed; for example, in the separation of two mingled liquids of different density, as in the creaming of milk. The claims broadly cover the process of creaming milk mechanically by centrifugal force. The claims are as follows:

(5) The process of creaming milk mechanically, skimming off the cream mechanically, and removing the skimmed milk mechanically by centrifugal force. (6) The process of creaming milk mechanically, skimming off the cream mechanically, and augmenting the volume of the charge so as to remove both the cream and the skimmed milk separately by centrifugal force. (7) The process of creaming milk mechanically, skimming off the cream mechanically, and supplying fresh milk under a regulated feed, so as to drive off the cream and skimmed milk separately, while maintaining incipient and progressive separations of the supply into accretions of cream and skimmed milk. (8) The process of creaming milk, and skimming off the cream by the action of centrifugal force.

The original specifications were filed April 24, 1877, but the claims above recited were not those annexed to such specifications, but were first suggested by the patent office January 19, 1880, and were afterwards filed by the patentee July 19, 1880. It will thus be seen that an interval of nearly three years intervened between the filing of the application and specifications and the perfecting of the claims as they