rod, and lever, all arranged so that the float valve will be held to its seat by the weight of water above, and, when raised into a full supply of water, held off its seat by the water below it, substantially as described."

The statute (section 4887) provides:

"But every patent granted for an invention which has previously been patented in a foreign country shall be so limited as to expire at the same time with the foreign patent."

The identity of invention patented required by the statute is of material substance, and does not extend to minor details. Siemens' Adm'r v. Sellers, 123 U. S. 276, 8 Sup. Ct. 117. Open tanks, containing floats connected with inlet valves or spindles for opening them with falling, and closing them with rising, water, and an overflow, appear to have been long known before this invention, as is well shown by the admission in the Canadian patent and otherwise. What Robertson invented appears to have been the balanced float attached to the valve or spindle of an outlet larger than the inlet, which, when in place, is held down by the water, closing the outlet, and, when raised, is floated, letting water out, till the falling water lets it again down to place. In a closed tank no overflow could be used; in an open one, it would be necessary. The Canadian patent is for this balanced float valve, in combination with other parts, in a tank for intermittent supply; and the United States patent is for the same thing, in various combinations with other parts in such a tank. They appear to be for the same invention, in substance, and by the expiration of the former the latter was ended. Bill dismissed.

McKAY-COPELAND LASTING MACH. CO. v. COPELAND RAPID-LASTER MANUF'G CO.

(Circuit Court of Appeals, First Circuit. April 24, 1897.)

No. 199.

PATENTS—ANTICIPATION—MACHINE FOR FLANGING COUNTERS.

The Hurlbut and Kennard patent, No. 243,917, for a machine for flanging the counters of boots and shoes, is void because of anticipation by the device for bending wood for which a patent was issued to Kriebel, October 24, 1865. 77 Fed. 306, affirmed.

Appeal from the Circuit Court of the United States for the District of Maine.

This was a suit in equity by the McKay-Copeland Lasting Machine Company against the Copeland Rapid-Laster Manufacturing Company for alleged infringement of letters patent No. 243,917, issued July 15, 1881, to R. H. Hurlbut and C. E. Kennard, for a machine for flanging the counters of boots and shoes. The circuit court dismissed the bill after a hearing on the merits (77 Fed. 306), and the complainant has appealed.

Frederick P. Fish and James J. Storrow, for appellant.

Elmer P. Howe and Walter K. Griffin, for appellee.

Before COLT, Circuit Judge, and WEBB and ALDRICH, District Judges.

PER CURIAM. The whole controversy in this cause is in regard to the first and third claims of the complainant's patent, which two claims are substantially the same. They relate to the single matter of clasping and drawing the leather of shoe counters closely to the last or former. Upon deliberate examination of the device covered by the two claims named, and making due allowance for the nature of the material to be manipulated, we are of opinion that the circuit court correctly held that the invention of the complainant was anticipated by the Kriebel patent, issued October 24, 1865. The decree of the circuit court is affirmed, with costs.

A. B. DICK CO. v. WICHELMAN.

(Circuit Court, S. D. New York. April 12, 1897.)

1. PATENTS—INFRINGEMENT—STENCIL SHEETS.
   In a patent for coated or waxed sheets of paper for stencils, the specifications described, as a preferred method, the coating of the sheets by immersing them in a bath "of melted gummy or waxy substance, such as paraffine, of about 120° F. fusion point, or any other suitable method of waxing paper now known in the arts." The claim was for paper "coated with a substance impervious to ink, as paraffine, substantially as described." *Held*, that the expression "about 120° F." was not an absolute guide, and that the claim was infringed by a coating of the specified consistency, though its fusion point was above 140° F.

2. SAME.
   The Broderick patent, No. 377,706, for a "prepared sheet for stencils," construed, and *held* infringed.

This was a suit in equity by the A. B. Dick Company against Frederick A. Wichelman for alleged infringement of letters patent No. 377,706, issued February 7, 1888, to John Broderick, for a "prepared sheet for stencils." A decree was heretofore entered by the court for an account of profits and damages. See 74 Fed. 799, where a fuller statement of the case will be found. The cause is now heard on exceptions to the master's report.

Daniel H. Driscoll, for plaintiff.
Frederick A. Wichelman, pro se.

WHEELER, District Judge. An interlocutory decree was entered herein for an account of profits and damages from infringement by defendant of patent No. 377,706, for waxed stencil sheets owned by plaintiff. A. B. Dick Co. v. Wichelman, 74 Fed. 799. The master has reported as profits $981.75. Hearing has now been had on an exception that:

"Defendant will show at the time the master's report comes up for confirmation that the paper waxed by him for stencil sheets was made entirely different from the waxed paper described in the specifications of patent No. 377,706, and that he is therefore not liable for any sums of money to complainant for profits made; and defendant furthermore claims that the decretal order of

April 22, 1895, directed the master to ascertain and report defendant's profits growing out of paper made for stencils by defendant in violation of patent No. 377,706, and that under such directions it was the master's duty to ascertain what said patent covered."

This showing is only that the fusion point of the coating of his sheets is above 140° F., and he insists that such sheets are not covered by the patent, because this point is so high. The patent mentions a coating such as paraffine of about 120 degrees. It was before the circuit court for the district of New Jersey (A. B. Dick Co. v. Fuerth, 57 Fed. 834); and again before this court, held by Judge Townsend (A. B. Dick Co. v. Henry, 75 Fed. 388). The claims make no mention of any fusion point, and they are not limited by the specification to any particular fusion point by number of degrees, except by the expression mentioned. That expression seems to be an example merely of a method of beneficial use, and not an absolute guide; and, as an example, it gives latitude by mentioning about, not exactly, 120 degrees. The fusion point of the coating, which may not be paraffine, is that which will leave the consistency specified as proper for producing the required result. This appears to be well shown in these cases by various modes of expression of substantially the same meaning. The proofs before the master well showed the coating of the defendant's sheets to have been of this consistency. The Hammerschlag patent, upon the result of litigation respecting which the defendant here much relies, was for a method of waxing paper by machinery, and not for waxed sheets of paper for stencils, or of any sort. Manufacturing Co. v. Wichelman, 38 Fed. 430. The judgment there has no legitimate bearing upon any question here. Exceptions overruled.

CARROLL v. GOLDSCHMIDT et al.

(Circuit Court, S. D. New York. April 14, 1897.)

1. PATENTS—INFRINGEMENT SUITS—RES JUDICATA.
   When purchasers of a machine, on being sued for infringement, justify under an alleged equitable right or title to the patent in suit claimed by the manufacturers of their machine, a prior decree obtained by plaintiff's assignors, enjoining said manufacturers from infringing the patent, is admissible, and would seem to be conclusive both as to plaintiff's title to the patent and the validity thereof.
2. SAME—EQUITABLE TITLE—PAROL AGREEMENT.
   A parol agreement between the members of a firm that all inventions and patent rights obtained by either of them "should be the property of the firm, and should belong to both whilst members of that firm," gives to each partner a right to the use by the firm of inventions for which the other obtained a patent; but such right ends on the dissolution of the partnership, leaving the title in the partner to whom the patent is issued.

Arthur v. Briesen, for plaintiff.
Edwin H. Brown and W. Laird Goldsborough, for defendants.

WHEELER, District Judge. This suit is brought on letters patent of the United States No. 395,077, dated December 25, 1888, and granted to Henry Blackford Payne, of Nottingham, England, assign-

or of one-half to A. G. Jennings & Sons, for a warp-knitting machine; and on letters patent No. 397,140, dated February 5, 1889, and granted to the same Payne and William Campion, of Nottingham, assignors to A. G. Jennings & Sons, for a warp-knitting machine. Both patents were assigned regularly to the plaintiff, as the trustee of Payne and of Jennings. The first consists of a warp machine, which combines a needle-bar, having bearded needles, a presser-bar, a point or sinker-bar, a fixed sley-bar, guide-bars, mechanism by which motion is imparted to the needle-bar, presser-bar, point or sinker-bar, and guide-bars from a longitudinal cam shaft, and devices for imparting endwise motion to the guide-bars. The claims are for various combinations of these parts. The second is expressly for improvements on the first, and consists of a warp machine, which combines a needle-bar, having bearded needles, a presser-bar, a sinker-bar to which is secured the sley, said sley being placed below the sinkers on the sinker-bar, guide-bars, and mechanism by which motion is imparted to said bars from cams of a longitudinal cam shaft; the laterally reciprocating motion of the guide-bars being extended or shortened by suitable adjusting mechanism, and endwise motion being imparted simultaneously thereto by a rotary stud-wheel and lever connection. The claims are for various combinations of these parts in such a machine. The principal new elements of these combinations are the independent presser-bar and stationary sinker-bar.

Payne was a partner, at Nottingham, with William Henry Revis, in the manufacture of such machines, and Campion was in their employ. These inventions were used in their business, and patented in England. The assets of the firm went to an assignee, and finally to Revis, who became a partner in the firm there of Revis, Brewin & Marriott, which also manufactured and sold such machines in England, using, among others, these inventions. Payne made such machines for sale in this country. He claimed that Revis, Brewin & Marriott sent machines to this country. In 1891, Payne brought a suit on each one of these patents in this court, against Revis and Jennings, for infringements. Service was made on Revis, and he answered that he and Payne had been partners at Nottingham, under the firm names of H. B. Payne & Co. and J. B. Whitehall & Co., and that Campion was one of the employés of the partnership; that the partnerships paid all the expenses, and furnished all the materials and necessary facilities, for experimenting, perfecting, and testing the inventions; and that it was understood and agreed between Revis and Payne and Campion that all the inventions and improvements which should be made or discovered by themselves, or by their workmen, during the continuance of the partnership, should be the property of and held and used for the benefit of the partnership; and that the patents issued therefor, either in England or any country foreign to the firms, should be the property of the partnership; and that, by reason of these facts, the inventions patented in these letters patent were and continued to be the property of the partnership; and that these patents, therefore, in equity, belonged to him, and to the firm of which he was a member. The bills were amended by leave of court, and Marriott made a party defendant; and, on failure of Revis to answer