

on file in the office of a collector of internal revenue outside the district where the proceeding is pending.

Harlan Cleveland, for the United States.
Sidney G. Stricker, for claimant.

SAGE, District Judge. This case is before the court on motion to require the government, before trial, to produce to the attorney for the intervening petitioner any and all books or writings in its possession or power, which contain: First, evidence pertinent to the issues,—that is to say, any and all reports or returns of the gaugers who gauged and inspected the brandy in question; second, any and all reports or returns made by the distillers or wholesale liquor dealers in whose possession or control said brandy has ever been; third, any and all writings or correspondence or copies thereof between any of the parties who may have had any connection with the removal or shipment of said brandy. The demand is as sweeping and comprehensive as it could be made, and, if sanctioned by the order of the court, would compel the government to submit its entire evidence to the inspection and examination of counsel for the defendant in advance of the trial, which, in a proceeding for forfeiture based upon a charge of fraud in violation of the internal revenue laws of the United States, ought not to be allowed. But in the brief of counsel for the intervener the demand is modified to “seeking a discovery of the original measurements of the packages, the only existing evidence of which is the return of the gauger under form 59½ as made to the revenue department, which is in its exclusive possession and control, and which can be reached by no other process than this motion.” The intervener is a wholesale liquor dealer, who claims to have purchased the packages from the distillers. But the United States attorney has not in his possession these original measurements. They are technically, it is true, in the possession of the government, that is to say, of the internal revenue department, but they are on file in the state and district where the brandy was distilled, and the intervener is entitled, upon application, to an inspection, or to a certified copy of them. It is not the duty or province of the government to transport the originals here for the convenience of the intervener and his counsel, or to procure certified copies for that purpose. The originals are in the proper custody directed by the law, but not within this jurisdiction. If the intervener wishes to inspect them, he will have to make his application there, or procure from the collector of the proper district certified copies. The motion will be overruled.

PRIEST v. COATES CLIPPER MANUF'G CO.
(Circuit Court, D. Massachusetts. June 25, 1897.)

No. 475.

PATENTS—INVENTION—HAIR CLIPPERS.

The Priest reissue, No. 11,411 (original No. 478,461), for an improvement in hair clippers, involves, in substance, merely a rearrangement of parts and change of proportions, resulting in no new function, and no new advantages of a striking character, and is therefore void for want of invention.

This was a suit in equity by Joseph K. Priest against the Coates Clipper Manufacturing Company for alleged infringement of reissued letters patent No. 11,411, granted April 10, 1894, to the complainant, for an improvement in hair clippers. The original patent (No. 478,461) was issued July 5, 1892.

C. C. Morgan and John S. Richardson, for complainant.

Fish, Richardson & Storrow and A. D. Salinger, for defendant.

PUTNAM, Circuit Judge. The only real issue in this case is that of patentable invention. As presented here, this raises a pure question of fact, as to which different minds might, perhaps, be differently impressed, but which seems to the court to offer an easy and clear solution. On a question so purely one of fact as this, it is sufficient to state the general considerations which lead to the result we have reached, without discussing all the details pro and con confirming it, or apparently controverting it. The patent relates to improvements in hair clippers and shears, and the claims in issue are as follows:

"(1) In a clipper, a movable cutter, operating handles, a comb plate, and a spring connected to said handles, and arranged in a space or chamber below the highest portion of the inner end of the pivotally movable handle, whereby compactness is secured, and provision is made for the removal of the spring in a downward direction after the comb plate is removed, without changing the relation of the handles to each other, substantially as described.

"(2) In a clipper, the combination of the cutter operating handle, formed with an arched or bowed portion, and with a pendent, hollow, cylindrical bearing; the stationary handle having a housing portion, and a hollow-shouldered, cylindrical bearing projecting from said housing portion, and passing through the cylindrical bearing of the movable handle; the coupling and spring-tension key bolt, the comb plate, the cutter plate, and a spring arranged in a space between the arched portion of the movable handle and the upper surface of the comb plate, and made removable in a downward direction when the comb plate is removed,—substantially as described."

"(4) In a clipper, a reciprocating cutter and vibrating operating handle, in combination with an axial portion, a stationary handle, comb plate, and a power spring connected to said handles; said operating, vibrating handle, and the other parts named, being constructed to allow of the spring being arranged about said axial portion, and below the forward portion of the movable handle, whereby compactness is secured, and the spring can be removed downwardly when the comb plate is removed,—substantially as described."

All the elements in this combination are generic, and the combination itself is old, except only the provision for the removal of the spring in a downward direction, or downwardly; and, on any fair construction of the claims, this is the only novel feature which they seek to cover. Our conclusion as to this is made quite certain by the following statement in the application:

"The object of my invention is, while greatly simplifying and increasing the durability of hair clippers, to afford room below the movable handle, and between it and the comb plate, for the location of the spring by which the cutter is enabled to shear or clip the hair on the return stroke of the movable handle, and by so locating it render the clipper more compact, and of less height between the spring pressure regulating nut and the comb plate, and also afford great convenience in applying the spring to the handles, and also afford convenience for the removal of the spring and separation of the parts of the clipper, either for sharpening the cutter, repairing, removing an old and putting in a new spring, cleaning, oiling, or for other operations; it being simply necessary to remove the nut, bolt, comb, and cutter plates, and invert the clipper,

to have the parts exposed so that either or all of the above-mentioned operations can be performed."

The specification describes other mechanical improvements which may be of value, but which clearly were not claimed, and which, therefore, we need not notice. The substance of the device, as patented, is only a rearrangement of the parts, and a change of the proportions, of what was otherwise old, each of which is of that common class ordinarily involving no invention; resulting also, in the case at bar, in no new function, and in no new advantages of any striking or extraordinary character. We cannot, therefore, hold that the device was patentable. The complainant urges on us the salability of the improved cutter, but in this respect the case falls within the rules of *Manufacturing Co. v. Holtzer*, 15 C. C. A. 63, 67 Fed. 907, and of *Codman v. Amia*, 70 Fed. 710. Moreover, for aught that appears, the salability of the cutter came from the improved features which are not covered by the patent. Let the respondent file a draft decree dismissing the bill, with costs, on or before June 30, 1897; and the complainant corrections thereof on or before July 1, 1897.

KELLY et al. v. SPRINGFIELD RY. CO. et al.

(Circuit Court, S. D. Ohio, W. D. June 29, 1897.)

PATENTS—INFRINGEMENT—ELECTRIC RAILWAYS.

The Green patents, Nos. 465,407 and 465,432, for improvements in electric railways; in which the electrical current was conducted along insulated track rails, the car wheels serving as contact devices, if valid at all, are not infringed by the overhead trolley electric railway system now in use.

This was a suit in equity by Oliver S. Kelly and the General Electric Company against the Springfield Railway Company and others for alleged infringement of certain patents for electric railways. On final hearing.

Butterworth & Dowell and F. P. Fish, for complainants.

Paul A. Staley, Kerr & Curtis, and James H. Hoyt, for respondents.

SAGE, District Judge. This suit is for the infringement of letters patent Nos. 465,407 and 465,432, issued December 15, 1891, to George F. Green, assignor to complainant Oliver S. Kelly, for improvements in electric railways, upon applications filed, respectively, August 19, 1879, and May 15, 1886, the latter application being a division or continuation of the former.

The record covers over 1,500 pages of printed matter, and the briefs over 350 pages. It would be impossible, within the proper limits of an opinion, to consider the evidence or the arguments in detail. I shall not attempt to do more than state conclusions in general terms.

The gist of the inventions set forth and claimed in the patents consists in the use of a stationary source or generator of electricity, connected through conductors extending along the line of travel, and