

There are other claims for particular pieces of mechanism used in moving the cartridges.

The defendant sets up prior knowledge of, and use by, among others, Christopher M. Spencer; and, among others, patent No. 255,894, dated April 4, 1882, and granted to Christopher M. Spencer and Sylvester H. Roper, for a magazine firearm having an actuating hand piece beneath the barrel, and connected with a swinging breech, for removing exploded shells and inserting cartridges, without taking the gun from the shoulder. The proofs show clearly that Roper made a gun according to his patent early in 1882, before the Spencer and Roper patent, and also that Spencer and Roper invented the gun of their patent before Roper did that of his. So, the Spencer and Roper patent, as such, can, as argued, have no effect upon the validity of this Roper patent; but the prior knowledge and use of Spencer and Roper may defeat so much of this patent as is for what was in that. *James v. Campbell*, 104 U. S. 356. While the patent covers these other new mechanisms, these claims cover only the actuating hand piece connected, by means undescribed, with the piston breech, which was a well-known part of such a gun in different forms. The Spencer and Roper gun had precisely such a hand piece connected by means described with a swinging breech, which was also a well-known part of such a gun, also in different forms. The difference between the Spencer and Roper gun and the Roper gun seems for present purposes to be that in the former the means for connecting the actuating hand piece with the breech are described, and in the latter not; and in the form of the mechanism of the breeches with which the actuating hand piece is connected. So far as these claims go, the hand piece and connecting means operate in precisely the same way with one form of breech as with the other, and produce the same result in capacity for being fired without being taken from the shoulder; the difference in the operation of the guns being wholly in the mechanism of the different breeches which is not covered by, but is outside of, these claims. In this view, the Spencer and Roper invention seems to anticipate these claims as they stand by themselves. *Wright v. Yuengling*, 155 U. S. 47, 15 Sup. Ct. 1. If not, changing the connection of the hand piece from a swinging to a piston breech, without more, would seem to be merely putting the hand piece and means of connection to a new use in the same place, which would not be patentable there separately from the parts connected with. Bill dismissed.

CELLULOID CO. v. ARLINGTON MFG. CO.

(Circuit Court, D. New Jersey. February 15, 1898.)

1. PATENTS—ANTICIPATION—PROCESSES.

A patent for a process of producing imitation onyx from pyroxylin compounds is not anticipated by prior processes for producing from the same compounds imitations of veined ivory, mottled amber, tortoise shell, etc.; it appearing that an imitation of onyx had long been desired, but never before obtained.

2. SAME.

The Stevens & Harrison patent, No. 546,360, for the production of imitation onyx from pyroxylin compounds, and the Thurber & Schaefer patent, No. 542,452, for an improvement in celluloid articles, and the process of manufacturing the same, construed, and held not anticipated, valid, and infringed.

This was a suit in equity by the Celluloid Company against the Arlington Manufacturing Company for alleged infringement of certain patents.

J. E. Hindon Hyde, for complainant.

John R. Bennett, for defendant.

ACHESON, Circuit Judge. The bill charges the defendant with infringement of two letters patent, of which the complainant is assignee, namely, letters patent No. 546,360, dated September 17, 1895, granted to John H. Stevens and Edwin D. Harrison, assignors to the complainant, for the "production of imitation onyx from pyroxylin compounds," and letters patent No. 542,452, dated July 9, 1895, granted to Charles H. Thurber and Christian W. Schaefer, assignors to the complainant, for an "improvement in celluloid articles, and in the process of manufacturing the same." The defense most relied on is lack of invention. In support of this branch of the defense a number of prior patents have been introduced. Not one of them, however, relates to the production of imitation onyx, or to the manufacture of the articles described in patent No. 542,452. None of them, then, can be said to anticipate either of the patents in suit. It is true, as appears from some of these earlier patents and otherwise, that the production from pyroxylin compounds of imitations of natural substances, such as veined ivory, mottled amber, tortoise shell, etc., was older than the invention here involved. But artificial onyx, in a pyroxylin composition, although long desired, had never been produced before the invention of Stevens & Harrison. They were the first to produce a pyroxylin imitation of onyx. Their patent describes a method, consisting of several successive steps, for the manufacture from pyroxylin compounds of imitation onyx, exhibiting the stratified, cloudlike markings of pale tints, with the strong yellow or brown color breaking through in a direction opposed to the trend of the lighter strata. The claims are for the described method or process, and for the product. The product, as already intimated, is entirely new, and is undoubtedly useful. The described and claimed method seems to me to be also new. I do not find that the particular method described in the Stevens & Harrison patent had ever been previously used in the treatment of pyroxylin compounds, or otherwise. There is no evidence to show that the method is not new. The prior practice set forth in France's application is not the method described by Stevens & Harrison. Nor is the product of these two methods the same. The France method produces imitation agate, but it will not produce imitation onyx. Neither will the Stevens & Harrison method produce imitation agate. There is an essential difference both in the methods and the products. The grant of the Stevens & Harrison patent is prima facie evidence of invention.

Lehnbeuter v. Holthaus, 105 U. S. 94. The presumption of patentability thus arising has not been rebutted here by any evidence.

This last observation is equally applicable to the patent to Thurber & Schaefer, No. 542,452. The novelty of the process of manufacture described and claimed in and by that patent has not been impeached. The blanks out of which the defendant made the Huyler baskets were not provided with the irregular edge required by this patent. Therefore these baskets did not anticipate the invention, and are not within the claims of the patent. The defendant, then, is at liberty to continue the manufacture of those baskets. This patent is for the specific kind of articles, and for the particular process of manufacture, therein mentioned and described. Within its limited scope, I do not see why the patent should not be sustained. There is here no evidence whatever to overthrow the presumption of patentability which the patent itself raises.

There is ample evidence of infringement by the defendant of both the patents in suit. The testimony of the complainant's witnesses, I think, makes out a clear prima facie case of infringement of each of the patents. Upon this branch of the case the defendant offered no evidence. If the defendant's methods or processes were different from those of the patents, it was an easy thing to show the fact. But there is not even a sworn denial of infringement. Let a decree be drawn in favor of the complainant, in accordance with the views expressed in the foregoing opinion.

NORTH BRITISH RUBBER CO. v. JANDORF et al.

(Circuit Court, S. D. New York. December 29, 1897.)

1. PATENTS—LIMITATION OF CLAIMS.

The patent law is not intended to secure a monopoly of all the natural developments of a general principle to the person who happens to make some special construction embodying it a few weeks in advance of others, when it appears that such improvements were certain to be made in a short time.

2. INFRINGEMENT—BICYCLE TIRES.

A patent which is clearly for a cushion tire having a tube filled with air or a roll of sponge rubber, merely to support and increase the activity of the tire, is not infringed by a tire having an inner tube completely encircled by an outer sheath to which is attached flanges, which are pressed into recesses formed by the flanges of the rim, so that when the tire is inflated they are securely locked in position and hold the tire firmly in place.

3. SAME.

The Bartlett patents, reissue No. 11,216 (original No. 448,793) and original No. 466,532, both for improvements in bicycle tires, if valid at all, are not entitled to a broad construction; and, being limited to the actual invention, *held*, that they were not infringed.

This was a suit in equity by the North British Rubber Company against Jandorf and others for alleged infringement of certain patents for improvement in bicycle tires.

Frederick H. Betts and Edwin H. Brown, for complainant.
Offield, Towle & Linthicum, for defendants.