

Carvill Manufacturing Company, testified that he himself had made carts possessing all the essential characteristics of the Putnam cart prior to 1877; that he made such carts at Lewiston, Me., where they were at that time in general use. This testimony was, in effect, contradicted by that given by the complainant, who testified that there were only two kinds of carts in use prior to 1880,—a “butcher cart,” and sulkies,—and that the invention of Putnam in 1880 had effected a great change in the manufacture, use, and sale of carts. As the witness A. D. Carvill testified also in the case of Truman v. Holmes, on behalf of the defendant in that case, as to the prior use, manufacture, and sale of carts similar to the carts covered by the Putnam patent, and the verdict of the jury was in favor of the complainant, that case may be considered as conclusive on this court in the present case upon the question of prior use; no other or additional evidence appearing to have been introduced in this case. But, as previously stated, giving the case of Truman v. Holmes, 14 C. C. A. 517, 67 Fed. 542, all the persuasive authority which that decision may be entitled to upon the question of prior use, or any other defense to the validity of the patent presented in that case, it does not, in my opinion, in view of the additional and uncontradicted evidence given in the case at bar, conclude this court in this case upon the question of prior publication; and I therefore hold that the Putnam patent, No. 232,207, issued in 1880, is void for want of novelty, it having been anticipated, as shown by the prior publications proven in this case. The bill will therefore be dismissed, with costs to the defendant, and it is so ordered.

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WELSBACH LIGHT CO. v. REX INCANDESCENT LIGHT CO.

(Circuit Court, S. D. New York. March 19, 1898.)

**PATENT SUITS—PLEADING.**

In an infringement suit, a mere allegation in the bill that the patent sued on covers new and useful improvements in the “manufacture of gas incandescents,” with a statement of the number and date of the patent, is an insufficient description of the invention, when unaccompanied with profert of the patent itself, and makes the bill demurrable.

This was a suit in equity by the Welsbach Light Company against the Rex Incandescent Light Company for infringement of a patent. The cause was heard on demurrer to the bill.

John R. Bennett, for plaintiff.

Louis Hicks, for defendant.

WHEELER, District Judge. The bills allege that one Carl Auer von Welsbach was the first inventor of certain new and useful improvements in the “manufacture of gas incandescents,” for which letters patent of the United States, numbered 409,531, were on the 20th day of August, 1889, issued to him, assignor to the plaintiff, with profert of the assignment. No profert of the patent is made, nor other description of the invention set out. The bill is demurred to for this cause, among others not so well founded; and the demurrer

has been argued. That the invention should be set out in the bill by allegation, profert of the patent or copy of it annexed, so as to inform the defendant what is claimed to have been infringed, is so fundamental that it need hardly be stated. In *Dickerson v. Greene*, 53 Fed. 247, and *American Bell Tel. Co. v. Southern Tel. Co.*, 34 Fed. 803, relied upon by the plaintiff to show the sufficiency of a general description of the invention, the bills each made profert of the patents. The profert of the assignment is argued to be sufficient to supply this defect, but it adds nothing in this behalf. For this defect the demurrer must be sustained. The complainant should, however, have leave to amend. Demurrer sustained, with leave to amend by next rule day.

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REGINA MUSIC-BOX CO. v. CUENDET.

(Circuit Court, S. D. New York. May 13, 1898.)

No. 9.

PATENTS—INFRINGEMENT—MUSIC BOXES.

The Brachhausen patent, No. 577,835, for an improved star wheel standard for music boxes, held valid and infringed.

This was a suit in equity by the Regina Music-Box Company against Emile Cuendet for infringement of a patent for an improvement in music boxes.

Antonio Knauth, for complainant.

SHIPMAN, Circuit Judge. The bill in equity in this case was based upon the infringement of the only claim of letters patent No. 577,835, dated March 2, 1897, and issued to Gustav A. Brachhausen, assignor to the complainant, for an improved star wheel standard for music boxes. The defendant appeared in the case, and filed an answer, but did not plead prior anticipatory patents. The complainant filed a replication. Prima facie proof was taken, and infringement was proved. The defendant called no witness, but stated in the record that it was "very common in foundries of all kinds to cast two or more finished brackets (for supporting arbors and shafts) into a base. Evidence of such combinations is to be found in toys, gates, and fences as well as in many other classes of machinery." The complainant thereupon called witnesses, mainly for the purpose of showing the patentable or inventive character of the improvement. These witnesses the defendant cross-examined. The question which was made by the defendant was apparently confined to the inventive character of the subject of the patent. Upon the argument the complainant appeared by his counsel Antonio Knauth, Esq., and the defendant did not appear. I perceive no reason why the usual interlocutory decree for an injunction against the infringement of the claim of the patent and for an accounting should not be entered.