

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.

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.

BRIGGS v. DUELL.

(Circuit Court, D. Connecticut. March 29, 1898.) No. 912.

PATENTS—REISSUE—APPARATUS FOR PLANING CAKES OF ICE.

The incorporation, into the first claim of the Briggs patent, No. 367,267, for an apparatus for planing cakes of ice (which claim was adjudged invalid by the circuit court of appeals), of new matter describing a cutter consisting of a number of points which will not only cut but groove the ice in one operation, and of an ice elevator adapted to positively force the ascending cakes into contact with the cutter, would not make the claim patentable so as to warrant a reissue.

This was a bill in equity by John N. Briggs against C. H. Duell, commissioner of patents, to obtain a decree that complainant is entitled to a reissue of his patent, No. 367,267, for an apparatus for planing cakes of ice.

Benj. F. Lee (Pollock & Mauro, on the brief), for complainant.
W. A. Megrath, for defendant.

TOWNSEND, District Judge. Bill in equity for a decree that applicant is entitled to a reissue of patent No. 367,267 in accordance with the provisions of Rev. St. § 4915. On July 26, 1887, said patent was issued to the complainant for "an apparatus for planing cakes of ice." The first claim in his original application had been rejected, and, as amended, was as follows:

"The combination, with the cutter-head and the racks directly attached thereto, of the guides for both cutter-head and the racks, arranged perpendicularly to the plane of the elevator, the pinions mounted on said guides and engaging in said racks, and the levers or arms for operating said pinions, all constructed substantially as described, so that the depth of the cut may be directly and positively regulated by means of the levers, as herein specified."

In a suit for infringement of this claim Judge Coxe held that said claim must be limited to the precise mechanism described, and that the claim as thus limited was not infringed. *Briggs v. Ice Co.*, 54 Fed. 376. Upon appeal the circuit court of appeals held that, in view of the prior art, the claim was destitute of patentable novelty. *Id.*, 8 C. C. A. 480, 60 Fed. 87. The complainant thereupon amended his claims, and applied for a reissue of said patent. One of the amended claims was as follows:

"(3) The combination with the cutter-head and the racks directly attached thereto, of the guides for both cutter-head and racks, arranged perpendicularly to the plane of the elevator, the pinions mounted on said guides and engaging in said racks, and the levers or arms for operating said pinions, a cutter consisting of a number of points entering the ice in such a manner as not only to cut but to groove it at one operation, and an ice elevator adapted to positively force the ascending cakes of ice into contact with the cutter and groover, all constructed substantially as described, so that the depth of the cut may be directly and positively regulated by means of the levers, and the ice at the same time properly grooved for storage."

The only difference between said original and this amended claim consists in the insertion in the latter of the following language:

"A cutter consisting of a number of points entering the ice in such a manner as not only to cut but to groove it at one operation, and an ice elevator adapted to positively force the ascending cakes of ice into contact with the cutter and groover."