

defendant estimates their cost at \$1.26½ per gross. The master estimates their cost at \$1.03. Inasmuch as the master's estimate of cost on the other buckles exceeds that of defendant, and the defendant has furnished no definite statement of errors on this No. 1,403 which I am able to adopt or complainant's counsel admits to be correct, I shall adopt the master's instead of the defendant's estimate of cost, which gives a cost of \$9,762.21; and deducting this profit from the admitted selling price of \$14,245.23 leaves \$4,483.02, which, added to \$323.13 profits on the other series, makes \$4,806.15. In regard to the selling price adopted by complainant, the actual selling price of the buckles sold separately was 15½ per cent. above the cost, as admitted by complainant. In the case of No. 1,403 the selling price is more than 45 per cent. above the cost, which indicates that it is sufficiently high; that is, the complainant is allowed about three times the proportionate profit on No. 1,403 that was made on the other numbers in which the actual selling price and cost are admitted by complainant. Furthermore, as the claims allowed do not cover the whole buckle, and as defendant improved the buckle for this particular purpose, and added a new element thereto, the share of profit to be assigned to the buckle must, as the report in other ways makes evident, be a matter of opinion, upon which different minds would necessarily differ. I think the above amount is as much as should be assigned to the buckle and recovered by complainant upon all the facts before me, and especially in view of her delay in enforcing her rights. Let judgment be entered for complainant for said sum of \$4,806.15.

PERKINS ELECTRIC SWITCH MFG. CO. v. GIBBS ELECTRIC MFG. CO.
et al.

(Circuit Court, D. Connecticut. June 20, 1898.)

1. PATENTS—CONSTRUCTION OF CLAIMS—PROCEEDINGS IN PATENT OFFICE.

A patentee should not necessarily be estopped by statements of his solicitor in explaining the claims; but where he deliberately acquiesces in the rejection of a broad claim, and substitutes therefor a narrower one, as a condition of securing the patent, he cannot thereafter insist on a construction which will cover what was thus abandoned.

2. SAME—ELECTRIC SWITCHES.

The Gibbs patent, No. 517,100, for an improvement in electric switches of the form known as "snap switches," covers a new and useful improvement, but must be limited to the precise construction shown.

This was a suit in equity by the Perkins Electric Switch Manufacturing Company against the Gibbs Electric Manufacturing Company and others for alleged infringement of a patent.

C. L. Buckingham, for complainant.

Phillipp, Phelps & Sawyer and J. J. Kennedy, for defendants.

TOWNSEND, District Judge. Bill in equity on patent No. 517,100, granted March 27, 1894, to complainant, as assignee of one Gibbs. Defendants claim that they manufacture under patent No.

557,198, granted to said Gibbs. The invention relates to that form of electric switch known as a "snap switch." Complainant and defendants each use devices which comprise the ordinary insulating base, with stationary contacts, and the lock latch and trip, of the prior art. Each use what will hereafter be called the "two-part block"; the complainant actuating it by a screw and nut, while the defendants use a rack and pinion. The complainant, after the manner of owners of patents for electrical devices, claims that this two-part block feature is a great invention, "and constitutes such an important contribution to the art that the patent may be regarded as of the pioneer class, and, as such, interpreted to cover, not the mere forms shown, but, as well, the real invention of the claims." The claims in suit alleged to cover this feature are the following:

"(1) An electric switch, having a base with stationary contacts; a rigid lock, independent of any conducting parts; and a rotary handle, with a screw thread bearing a two-part block (one part having conducting poles, and the other part normally engaging with the lock on the base, but adapted to be released therefrom by the rotation of the handle spindle); and a spring, connected between the spindle and a portion of the block, for throwing the block when the spindle is sufficiently rotated,—substantially as specified. (2) An electric switch, having a base with stationary contacts, and a rotary handle spindle, with a screw thread; a threaded nut borne by the screw; a block, with conducting poles, loosely connected with the nut; a lock on the base for temporarily holding the nut and block against rotation; and a spring for rotating the block when the nut is released from the lock,—substantially as specified. (3) An electric switch, having a base with stationary contacts, and a rotary handle spindle, with a screw thread; a threaded nut borne by the screw; a block, with conducting poles, held rotarily with, but movable sideways independent of, the nut; a circular ratchet on the base beneath the nut; and a spring, with one end connected with the spindle and the other with the nut,—substantially as specified."

The "two-part block," so-called, of the patent, consists of "a threaded nut that is preferably provided with wings, the bottom edges of which, when the nut is screwed down the thread, are adapted to make contact with the teeth of the ratchet on the base," and "a circular block of insulating material which holds a pair of conducting poles." A screw-threaded spindle bears this nut, and when said spindle is rotated the nut is drawn up said spindle until it is freed from the teeth of said ratchet, when it springs forward, and carries the block of insulating material to a point where its poles make or break contact between stationary rigid contacts below, and spring arms above, said block. Whether such a mere locking nut forms a part of a block, and whether complainant's device is a two-part block, as distinguished from the prior art, is a question of names, and immaterial. The term did not originally appear in the patent at all, and now is nowhere to be found except in the first claim. The essential consideration is the functional result of this construction. The block, being "loosely supported, so that it rotates with, but moves sideways independently of, the nut," floats, as it were, between the contacts, and thus secures better contacts, is adapted to use in switches constructed or assembled by unskilled labor, and thus cheapens the product. The complainant's patent covers a practical construction. But, stripped of the dazzling halo which conventionally adorns appliances designed to deal with that mysterious agent,

electricity, and viewed in the everyday light of the prior art, it is merely a new and useful improvement, effected by the skillful adaptation of well-known means so as to secure greater freedom of movement. Complainant has made more out of its patent than the patentee conceived, by the discovery of the importance of the distinction between one-part and two-part blocks; but nevertheless the patent is a good one, within narrow limits.

Patent No. 435,152, granted August 26, 1890, to Norton, sufficiently shows the status of the patent in suit, with reference to the prior art. It shows the lock, latch, trip, and spring of complainant's patent, and a perforated block of insulating material, and a cam-faced disk, from which two pins extend down so as to pass through said perforations into corresponding holes in the base, and is operated like complainant's switch. It is immaterial whether this is a one-part or a two-part block. It does not provide means for such free floating or sidewise movement as are shown in complainant's patent. Its contacts are rigid, and therefore the range of sidewise movement of the blocks must be limited. But it is cited here in order to show what slight modifications were required to adapt existing appliances to the new requirements of the electric switch art. Neither complainant nor defendants construct their switches in accordance with the specifications of the patents under which they respectively profess to make them. Defendants use a block like that covered by the patent in suit. But their handle has no "screw thread, bearing a two-part block," nor "threaded nut borne by the screw," as claimed in the patent in suit. Their switch is operated by means of a rack and pinion, as described in patent No. 557,198, to defendant Gibbs. The pinion is borne by the spindle, and is located in a recess in the block, and a sliding rack meshes with it. When the handle is turned, the pinion moves the rack outward to work a catch, which moves at right angles to the axis of the spindle until the block is unlocked and rotated by the spring in the ordinary way for making or breaking contact. The complainant claims that the defendant Gibbs, by the substitution of the rack and pinion, merely sought to evade his former patent, and that the one is the equivalent of the other. If this were a broad patent, there would be more force in this contention. But, as defendants have neither screw nor nut, we must examine the file wrapper for further light. I do not think the patentee should necessarily be estopped by statements made by his solicitor in explaining the claims. But here the broad claim was rejected, and the applicant, as a condition of securing his patent, deliberately acquiesced in such rejection, and, as a condition of receiving a patent, abandoned the broad claim, and substituted therefor a narrower one. Upon notice from the patent office of the adverse claims of the public, the inventor is at liberty to stake out his boundaries where he sees fit, but he cannot then fix them by a rolling stone, to be afterwards pushed into the domain occupied by the public. In the first claim, as originally filed, the two-part block construction was neither referred to nor claimed. The claim was rejected on the Norton patent, No. 430,252, and Johnson patent, No. 427,328. The claim was then so amended as to refer to

"the locking part of the block for throwing the block," and was again rejected, in the following language:

"Claim 1 covers no more, broadly, than the mere use of the idea of the independent locks of 435,152 on the switches of 427,328. Such use, broadly, is not patentable. The applicant is limited to his specific construction."

Patent No. 435,152 is the Norton patent, already discussed. The claim was again amended; the attorney for the expert arguing as to said claim as follows:

"It cannot be said to cover merely the use of the Norton lock on a Johnson switch. This claim is limited to a specific construction, and the structure claimed is not found in the references cited against the former first claim."

The claim was again rejected, and claim 1 of the patent in suit substituted therefor; the attorney for the applicant saying, *inter alia*:

"The reference cited does not have a screw thread bearing a two-part block, one part having conducting poles, and the other part engaging with a lock on the base, which is now an element of the first claim."

Claims 2 and 3, which are limited in terms to a screw-threaded spindle and threaded nut, were allowed as filed, and the objection to the first claim was amended so as to cover a certain specific construction. In these circumstances, complainant's claim should be limited to the precise construction stated by the patentee, and should not be extended to cover the broad construction abandoned by him in the patent office. And inasmuch as the defendants do not use "a screw thread bearing a two-part block," and operating horizontally, but a rack and pinion moving at right angles to the axis of the spindle, they do not infringe said first, second, and third claims. The fourth claim is a narrow claim in terms. It was narrowed by the action of the applicant in the patent office to a "block of insulating material, bearing loose poles of conducting material." It abundantly appears from the record that this claim means "poles free to move a little longitudinally in the block," as stated in the specification. The defendants' conducting poles are rigidly screwed to the block of insulating material, and therefore said block holds rigid and fixed poles, not loose poles, of conducting material. Let the bill be dismissed.

THE RITA.

(District Court, D. South Carolina. June 2, 1898.)

1. PRIZE—CONDEMNATION—ENEMY'S VESSEL.

A Spanish merchant vessel captured, after the declaration of war, by a United States cruiser while bound from a neutral to a Spanish port, is lawful prize, not being within the exceptions mentioned in the president's proclamation of April 26, 1898.

2. SAME—DECLARATION OF WAR.

The act of April 25, 1898, declaring that war has existed since April 21, 1898, between the United States and the kingdom of Spain, fixes the precise period when the peculiar duties and obligations imposed by the condition of war arise.