

so far from making the use private, indelibly stamps it as public, by showing that the machines were used for the common profit of both partners, and not experimentally by complainant. In *Henry v. Soapstone Co.*, supra, the court says:

"The courts very properly limit the meaning of 'public use' to a use in the ordinary way, and they may so limit the word 'sale,' if they can ever be persuaded of the fact; but, whether use or sale, that particular transaction must be experimental, or it is within the forfeiture of the statute."

Complainant's application for his patent was made January 5, 1891; so that the prior use must have been, and, as I have already shown, was, before January 5, 1889.

The improvements, which complainant made in the machine in 1890, namely, increased weight to the pendulum lever, and some changes about the jaws, are not of the substance of the patent, nor did they add anything patentable to the machine; and consequently they do not save the patent from the invalidating effect of the prior public use to which I have adverted. *Manufacturing Co. v. Sprague*, supra; *Machine Co. v. Hargett*, 28 Fed. 567; *United States Electric Light- ing Co. v. Edison Lamp Co.*, 51 Fed. 24.

Complainant's objections to the evidence of prior use, on the ground of irrelevancy, are not well taken. The answer of defendants, in its fourteenth subdivision, pleads expressly complainant's prior use of the machine at Los Angeles, Cal.

The above rulings render it unnecessary for me to pass upon the other issues raised by the pleadings, and discussed in the briefs of the parties. A decree dismissing the bill will be entered.

THATCHER MFG. CO. v. CREAMERY PACKAGE MFG. CO. et. al.

(Circuit Court of Appeals, Seventh Circuit. February 7, 1899.)

No. 531.

PATENTS—INFRINGEMENT—IMPROVEMENT IN MILK BOTTLES.

The Barnhart patent, No. 411,368, for improvements in means for capping and sealing milk bottles, construed, and held not infringed.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

This was a suit in equity by the Thatcher Manufacturing Company against the Creamery Package Manufacturing Company, Charles M. Gates, and George Walker for the alleged infringement of a patent.

John W. Munday, for appellant.

George P. Fisher, Jr., for appellees.

Before WOODS and JENKINS, Circuit Judges, and BUNN, District Judge.

PER CURIAM. This appeal is from a decree dismissing for want of equity a bill brought to obtain an injunction against infringement of letters patent No. 411,368, issued on September 17, 1889, to Harvey P. and Samuel L. Barnhart for "improvements in means for capping and sealing milk bottles." The claim reads as follows:

"The combination, with the jar or bottle hereinbefore described, the circular neck or outlet portion of which comprises upon its interior wall an offset, the upper face of which lies in a plane passing through the neck at a right angle to the longitudinal axis thereof, that part of the wall immediately above said offset being truly cylindric, while the remaining portion of said wall is of slightly flaring outline, as set forth, of the wafer-like ligneous disk described, saturated with paraffin, seated upon the said offset within the cylindric portion of the neck, whereby, without other fastenings, the mouth of the bottle is effectually closed, as set forth."

The specification contains the following not less specific description of the bottle:

"The opening of the bottle at b, b, is large enough to allow the disk to freely enter the neck, but slightly contracted as it approaches the shoulder, until, within a distance therefrom slightly in excess of the thickness of the disk, as at c, c, it becomes exactly parallel with the outer surface of the bottle mouth. * * * The peculiar shape of the bottle neck, at first a funnel of exceedingly slight taper, then a section of a true cylinder, against which rises the shoulder or offset. * * * The cap having a firm and close engagement upon its periphery with the cylindric portion of the neck."

In the alleged infringing device, the portion of the bottle neck above the shoulder, instead of being cylindric, is in the form of the frustum of a cone, through the narrower portion of which the disk must be pushed into position; and, in view of the very clear and specific terms of the claim, which leave no room for construction, this court approves the conclusion of the circuit court that there had been no infringement. See *McClain v. Ortmayer*, 141 U. S. 419, 12 Sup. Ct. 76. The words "truly cylindric" are not held to mean mathematically cylindric, but they do mean that that part of the wall immediately above the offset shall be, as nearly as in practice it may be made, truly cylindric, and do not admit of voluntary departure from that form. Whether, in view of the prior art, which certainly would compel a very narrow construction, the claim is valid, need not be considered. The decree below is affirmed.

THE GEORGE L. GARLICK.

(District Court, E. D. New York. December 30, 1898.)

1. COLLISION — STEAM VESSELS PASSING — RESPONSIBILITY FOR EXECUTION OF SIGNALS.

Where steam vessels are meeting head to head, the greater responsibility for the due execution of the signal to pass rests upon the vessel initiating the maneuver.

2. SAME—DUTY TO ABANDON MANEUVER.

When one of two meeting vessels has given a proper signal for passing, which has been accepted by the other, and the latter has done her part to execute it, the evidence must be strong to justify a court in holding her in fault for a collision because she did not interrupt the maneuver, in the course of its execution, on perceiving that it was not being properly executed by the vessel that initiated it, as it was her duty to hold to the course agreed upon until all doubt that the other vessel would not or could not observe her own signal had been dispelled.¹

¹ As to signals of meeting vessels, see note to *The New York*, 30 C. C. A. 630.