

band, which the patentee, under the direction of the patent-office, made material in the original patent, and would not infringe that. *Fay v. Cordesman*, 109 U. S. 408; S. C. 3 Sup. Ct. Rep. 236. If it infringes the reissue, the infringement must be of the combination without the forward band, which was applied for and rejected, and the rejection acquiesced in. What was so given up by the applicant was effectually disclaimed and surrendered to the public, (*Mahn v. Harwood*, 112 U. S. 354; S. C. 5 Sup. Ct. Rep. 174;) unless there is something to distinguish this case in this respect from that. The patentee appears to have been ignorant of the rejection and change of claim until shortly before the reissue. Had he known of the rejection he might, and probably would, have pursued a different course from what the solicitor took for him. It is argued that therein was a sufficient mistake to allow of a restoration of the original claim by a reissue as a correction. But there was no mistake in the presentation of the original claim. No part was left out or varied, by any misunderstanding between the inventor and the draughtsman of his application. He succeeded in applying for exactly what he wanted. The patent-office acted upon his application understandingly and in due course. The mistake, if any, lay between him and the solicitor in not prosecuting the application in the direction of an appeal. This does not appear to be such a mistake as would allow him to resume what the records of the patent-office would show he had for so long a time left surrendered. These considerations make the validity of the reissue in respect to this infringement too doubtful to warrant a preliminary injunction.

Motion denied, and provisional stay of proceedings vacated.

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RICHARDS v. HAYS.

(Circuit Court, E. D. Pennsylvania. April 28, 1885.)

PATENTS FOR INVENTIONS—SQUIBS FOR BLASTING—NOVELTY—PRIOR USE.

The prior use of fuses embodying the essential features of the patents Nos. 8,361 and 134,128 being shown, *held*, that such patents are void for want of novelty.

In Equity.

*Chas. Howson and E. G. Buller*, for plaintiff.

*Guy E. Farguhar, F. T. Chambers, and George Harding*, contra.

PER CURIAM. This bill is founded upon two patents issued to Samuel H. Daddow, and to Esther H. Daddow, executrix of Samuel H. Daddow, Nos. 8,361 and 134,128, respectively. They are both for improvements in squibs for blasting, and it is alleged that the first claim of 8,361 and the second claim of 134,128 have been infringed

by the defendant. Numerous witnesses have been examined touching their prior knowledge and use of fuses embodying the essential features of those described in both patents. If this testimony is believed, it is decisive against the complainant. While it would serve no useful purpose to consider it in detail, it is sufficient to say that we are unable to discredit it, and hence the bill is dismissed, with costs.

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DEPLANQUE *v.* RIPKA and others.

(*Circuit Court, E. D. Pennsylvania.* April 28, 1885.)

PATENTS FOR INVENTIONS—PLAQUES FOR PAINTING AND DECORATION—INFRINGEMENT.

The evidence failing to satisfy the court that the Deplanque Plaque is infringed by the plaque of Ripka, the bill is dismissed.

In Equity.

*Jerome Carty*, for plaintiff.

*J. Cooke Longstreth*, *contra*.

BUTLER, J. The parties may stand upon the presumptions arising out of the respective patents involved. The evidence touching the validity of the plaintiff's letters (aside from this presumption) is not conclusive. It seems probable that he got his ideas, and instruction how to carry them out, from Mr. Ripka. This question cannot be settled by the witnesses' recollections of dates, on which the plaintiff relies. If Ripka tells the truth, there can be little doubt that he communicated the information on which the plaintiff proceeded. If the plaintiff had made the discovery at the time Ripka refers to, the conversation could not, it would seem, have occurred. The plaintiff would not have listened to the suggestions without revealing his discovery, especially would not have replied as Mr. Ripka swears he did. This testimony must therefore be accepted, or discarded for want of integrity in the witness. He is, however, corroborated in part by Miss Brightenbaugh. But granting that the plaintiff did not thus get his information, it is extremely doubtful whether any invention or discovery is involved in what he did. The materials used, and the combination employed, are old. Panels for decoration were made of the same materials, combined in the same way, long before. The moulding of similar substances was common; and in most instances this seems to have been done as the plaintiff does it,—that is, by the use of some liquid, or the application of heat, to moisten the substance, and render it pliable. The only thing which clearly seems to be new is the application of the material to the formation of a plaque; and this was simply moulding it in a particular form, which certainly is not patentable of itself. Still, in the view we entertain of the case,