

base-plate proper, but upon the post or pivot of the latch-bar, into which a weighted latch falls, although the base-plate may be elevated.

The first claim of the plaintiff's patent must be construed in accordance with the extent of his invention, which was a base-plate elevated above the lower sash, so that the hinged pendant could engage with notches upon the base-plate proper, irrespective of the thickness of the sash, and cannot cover a fastener, although having a plate elevated above the lower sash, which fastener is furnished with a weighted latch which engages with notches on the edge of the flange at the top of the post above the sweep.

The second claim is, in general, for the cam-hook or keeper upon its base-plate, which is so cut away underneath as to enable the hook to be cast without a core, in combination with the latch-bar having a lip, and also a projection to project beyond the open space, and furnish a support for the latch-bar. I doubt whether this construction contains a patentable invention. The "undercutting" of the front of the base-plate, and the corresponding lengthening of the latch-bar, hardly seem to deserve the name of invention, in view of the many mechanical arrangements of this sort which are known to workers in metals. But, if it is technically patentable, the defendants' fastener does not have such a rearward projection as the patent calls for, but has the latch-bar of the customary style of construction.

The bill is dismissed.

CELLULOID MANUF'G Co. v. AMERICAN ZYLONITE Co. and others.¹

(Circuit Court, S. D. New York. June 15, 1886.)

PATENTS FOR INVENTIONS—PETITION FOR REHEARING.

Petition for rehearing, upon the ground of newly-discovered evidence on the question of public use, denied, and the opinion expressed on the former hearing, 26 Fed. Rep. 692, adhered to.

Petition for Rehearing.

Horace M. Ruggles and *Benj. F. Thurston*, for the petition.

Frederic H. Betts and *Wm. D. Shipman*, against the petition.

SHIPMAN, J. This is a petition by the defendants for a rehearing, upon the ground of newly-discovered evidence upon the question of the public use in this country of the patented invention for more than two years before the application for a patent. The affidavits show that more dental plates were sold by the Albany Dental Plate Company before October, 1872, than I had supposed, and that all were not of poor quality, and that the patentees caused to be issued, in

¹ Edited by Charles C. Linthicum, Esq., of the Chicago bar.

1871 and 1872, laudatory advertisements in regard to the perfection of their celluloid dental plates, and that some dentists thought them satisfactory. Their advertisements and opinions do not make much impression upon my mind, because I am somewhat familiar with the opposition of dentists to the dental vulcanite patent. I am satisfied that this defense, always one which must be clearly proved, cannot be made out, because I do not think that the inventors, before they started their Newark factory in the spring of 1873, were themselves sure how to obtain a result which should be both certain and satisfactory, and I do not think that they attained, prior to 1873, any uniformity of result, either good or poor, except in the minds of persons who were very anxious that celluloid should be a success. The affidavits upon both sides, taken as a whole, tend to confirm my previous opinion that this defense cannot be sustained.

The petition for rehearing upon the ground of newly-discovered evidence is denied.

THE OREGON.¹

HOLT and another v. THE OREGON.

(District Court, E. D. Wisconsin. May 3, 1886.)

1. COLLISION—SCHOONER UNDER SAIL AND Schooner IN TOW—ERROR IN LOCATING VESSELS BY SOUND—CHANGE OF COURSE IN FOG.

During a dense fog a collision occurred between the schooner M. and two other schooners in tow of the steamer O. The fog signals of both the steamer O. and the schooner M. were sounded as required by statute, but the M.'s horn was not heard by the O. The O.'s whistle was heard by the M., and endeavors were made to determine her bearing by locating the sound. The O. was first seen by the M. when about 50 feet distant. From the presumed direction of the sound, it was supposed by the M. that the O.'s course was astern of the M., and, as the latter vessel was sailing at a moderate speed, close-hauled, on the starboard tack, no change of course was made until the O. was actually seen. *Held*, that as the steamer's lights could not be seen, sound formed the only guide furnished the M., and that an error in locating sound, under the circumstances, was not a fault; and that as the M. was sailing at a moderate speed, close-hauled, on the starboard tack, the circumstances were such that the master of the M. was justified in concluding that a change of course might increase the hazard.

2. SAME—LIGHTED TORCH—FAILURE TO EXHIBIT, WHEN JUSTIFIED.

The schooner failed to show a lighted torch. It was not proven, to the satisfaction of the court, that the torch, if shown, might not, *possibly*, have been seen. *Held*, that though it be possible that the torch, if shown, might not have been seen far enough off to have done any good, such a possibility furnished no excuse for its absence. Nothing short of an absolute certainty that it could do no good, to be established by proof on the trial, can justify an omission to obey the rule.

3. SAME—FAILURE TO KEEP OUT OF THE WAY, PRIMA FACIE PROOF OF FAULT ON PART OF STEAMER—SPEED IN FOG.

The steamer's speed was diminished upon the coming up of the fog. According to the testimony of her crew, she was, at the time of collision, steam-

¹Reported by Theodore M. Etting, Esq., of the Philadelphia bar.