

valid, unless it is limited to the bridge or check-piece of the original claim. With that construction, there is no infringement, and the bill is dismissed.

INGHAM and others v. PIERCE and others.

(Circuit Court, W. D. Michigan, S. D. 1887.)

PATENTS FOR INVENTIONS—NOVELTY—CLAIM—BASKET HANDLES.

In a suit for an infringement by a patentee claiming under letters patent No. 121,054, for an "improvement in platforms or handles for fruit-baskets," it appeared that the advantages claimed were that the patented top was removable, allowing baskets to be nested, and assisted in better securing a network over the fruit; but these features were not novel. It also appeared that the patented article possessed a novel feature in a wire bent over at the top, and brought down *through a hole* in the standard, to secure the standards of the cover to the basket, which held the cover more rigidly in its place than other baskets in which such wire is brought down *on the side*, outside or inside, of the standard. *Held*, that the patent, being otherwise wanting in novelty, could not be supported for this feature, which was dormant in it and unclaimed.

In Equity. Suit for infringement of patent.

Ross Shinn and Dyrenforth & Dyrenforth, for complainants.

Taggart & Denison, for defendants.

SEVERENS, J. The bill in this cause was filed for the purpose of restraining an alleged infringement of the rights secured by letters patent to Joseph Knapp, September 21, 1871, for an "improvement in platforms or handles for fruit-baskets," No. 121,054. The complainants are the assignees of Knapp, the patentee. Several defenses are set up: (1) Want of novelty; (2) that defendants have not infringed; (3) abandonment by the patentee. The case has been heard on pleadings and proofs.

The conclusions arrived at by the court from a consideration of the pleadings, proofs, and exhibits, and the argument are as follows:

First. The specifications and claims on which the Knapp patent issued, indicate that the nature of the invention consisted in a removable platform or support, so arranged that it may be conveniently fastened to an ordinary fruit-basket, and in part hold the netting in place over the fruit, while at the same time it serves as a support to another basket on top for transportation, etc. The advantage claimed by the inventor for his improvement was that it supplied an independent top, which could be made anywhere, and could be attached for use at the same time the netting was put on, and afterwards detached. Thus the baskets could be nested, and conveniently sent from the factory to the place of using, and, after the contents were marketed, the baskets could be returned nested, which could not be done in the ordinary way of constructing the basket with the cover attached. The alleged invention was in the construction of the cover of thin strips of stuff extending horizontally across the top

of the basket, but elevated from it by short standards, which rested upon the rim of the basket. A wire bent over at the top descended through a hole in the standard, and, continuing through the basket rim, was turned under and around it, to secure the standards of the cover to the basket. The thin strips above mentioned were tacked on to the top of the erect standards at each end of the strips, thus preventing the wire which goes through the standard from getting loose. The inventor disclaimed the elevated platform, as such; it having been in previous use. His claim was for a removable platform or handle consisting of the above arrangement, which would also allow the cover to be so attached as to in part hold the netting, covering the fruit, in place. From this claim, as illustrated by the specifications, it is apparent that the peculiar feature and resultant benefit designed by the inventor was, as stated, in the "advantage" of his improvement which I have above set forth from his specifications; that is to say, the providing a removable cover, thus allowing the nesting of the baskets for transportation, and allowing also an added facility in securing the netting over the fruit.

Second. It is clear from the evidence and the exhibits that the elevated platform top was in use some time before this alleged invention, and was to a very considerable extent so constructed as to be removable. Indeed, the only difference between the patented structure and one of these in quite extensive previous use consisted in this: that whereas, in the former, the wire was put *through* the standard, as above shown, and then was turned about the basket rim, to secure it in place, in the latter the wire, after being hooked into the top of the standard, was brought down on the *side*, outside or inside, of the standard, and then turned about the basket rim. Some of the previous patterns had been patented; others not. There was therefore no novelty in any feature which the inventor had in contemplation in making claim for his patent, or which, by the most liberal construction of his specifications and claim, can be suspected to have occurred to him.

Third. It turns out, however, that the putting the wire through the standard, instead of down the side of it, has a tendency to hold the cover more rigidly to its place when attached than the other method, and in that respect has more of utility; but this feature was not claimed, or, so far as appears, thought of. It sometimes happens that an invention contains features of utility which may be adapted to other uses than those specifically contemplated by the inventor, but those uses are kindred uses, or are an extension of the features into use in the development of art. In these cases the feature of utility exists in the patent, and is expressed by the claims, but the use is broadened. That principle would not support a patent claimed and granted for a feature which was not novel, as protecting it for another feature which was dormant in it, and afterwards proving to be useful.

Fourth. There are other serious obstacles to the complainants, but, upon the view taken of the first ground, it is not necessary to discuss them.

The bill must be dismissed, with costs.

STEVENSON *v.* MAGOWAN and others.

(Circuit Court, D. New Jersey. July 12, 1887.)

1. PATENTS FOR INVENTIONS—VALID ONLY IN PART—USE OF REMAINDER—VULCANIZING APPARATUS.

In the patent issued to Burritt M. Hotchkiss and George M. Allerton, complainant's assignors, May 23, 1871, for an improvement in vulcanizing apparatus, consisting of the application of hydraulic pressure to the moulds in a vulcanizing chamber, the invention claimed was a cylinder and piston outside the vulcanizing chamber, and pipes connecting with a supply of fluid or liquid under pressure, whereby the power exerted to hold the moulds together with a yielding force is independent of the vulcanizing operation. The evidence showed that the patent granted to George E. Hayes, January 14, 1868, and the condition of the art of vulcanizing rubber prior to this time, anticipated and invalidated all of complainant's patent, except the vulcanizing chamber. The defendants used machinery substantially covered by complainant's patent, except that they used no vulcanizing chamber. *Held* no infringement.

2. SAME—SUIT FOR INFRINGEMENT—FAILURE TO PLEAD PRIOR USE—EFFECT.

Where notice is not given in the answer of a specified prior use of the invention described in the patent, it cannot be set up as an anticipation of such invention; but, as exhibiting the state of the art, the evidence is competent to aid the court in putting a proper construction on the patent.

Joshua Pusey, for complainant.

F. C. Louthrop, Jr., for defendants.

BRADLEY, J. The bill in this case is filed for an injunction, damages, etc., under a patent issued May 23, 1871, to Burritt M. Hotchkiss and George M. Allerton, for an improvement in vulcanizing apparatus, consisting of the application of hydraulic pressure to the moulds in a vulcanizing chamber, instead of pressure by screws and clamps, or by the steam generated in the chamber; the piston and cylinder producing the pressure being outside of the chamber, and the pressure being regulated by safety-valves, so as not to be greater than necessary. This patent has been assigned to the complainant, and the defendants are charged with infringing it, and set up prior discovery, want of invention, and non-infringement. Under the first head, they refer to two patents of an earlier date than the plaintiff's—one granted to A. B. Woodward, January 16, 1866, reissued May 19, 1868; and the other granted to George E. Hayes, January 14, 1868. Woodward placed his flask and mould in a cylindrical boiler, in connection with a piston, and, by producing steam in the boiler, created a pressure by means of the piston, which compressed the two sections of the flask together, at the same time that the steam vulcanized the rubber in the mould. This clearly does not anticipate the specific device described in the patent of the complainant. Hayes produced pressure by steam in a tank or cylindrical compressor, the top of which, by a telescopic connection with the body, (made steam tight by packing,) could be pressed and driven upward, and on the top of this was placed the flask in such a manner as to receive the pressure by means of a ram connected with the flask by a clamp or otherwise;