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A DIGEST

OF

PROCESS AND COMPOSITION

AND ALLIED

DECISIONS IN PATENT CASES

By

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PREFACE.

The intention of the patent law of the United States is to give a monopoly for seventeen years to the discoverer of a new art or a new utility in any substance, structure or piece of machinery. The inventor is required to publish a brief, clear description of his invention and to carefully define it (viz: claim it), so that anyone may at any time find out whether he is infringing on the rights of the inventor. Of course in carrying out this law many practical difficulties arise. It is, for example, often difficult to decide how far a definition or claim can be pushed in covering items substantially the same though not technically so. Then, too, the definition must cover a distinct step in advance and not something that is simply better but not otherwise new; further, the definition must cover the real invention and not a mere application of it.

It is obviously impossible for the Patent Office or the courts to examine every workshop and factory, so in judging whether the improvement is really new it is necessary to take such published data as are available and decide from these whether the applicant for a patent has shown such an improvement as any skilled mechanic might be expected to extemporize or whether it is more than that and so deserving of a patent. In facing these difficulties the courts have laid down certain fundamental principles, such as that it is not patentable to put an old machine to a new use; that an abandoned experiment cannot defeat a later patent; and that where an improvement goes into extensive use from its own merits, a patent allowed on it must have been justified.

The compiler would suggest that no satisfactory definition of a process has yet been given in any decision. The most satisfactory is that in *Cochrane* v. *Deener* (11 O. G. 687), construed in the light of *Busch* v. *Jones* (184 U. S. 599). The compiler, however, believes that the courts are coming slowly around to a definition somewhat as follows, viz: whenever an invention is capable of being adequately defined and protected by a claim reading "means for . . . . in combination with means for . . . . ," or "means for . . . . comprising . . . . ," the invention is a machine or a manufacture. If it cannot be so claimed it is a process, a composition of

matter, or possibly a manufacture. This definition would have rendered the process patent void in *Eastern, etc.*, v. *Standard* (41 O. G. 231) (a method of folding paper bags), but in view of *Boyden* v. *Westinghouse* (73 O. G. 1067), the mechanical patent could have been construed to cover all possible infringements. The above definition is of course negative, and will probably be found too far reaching. The compiler believes that in the present advanced state of the mechanical arts, it is nearly equivalent to the following positive statement, which, though less easy to apply, is less harsh and therefore fairer, viz: a process is not patentable when it merely recites the obvious and necessary steps of producing a given product, but where the novelty resides in the application of some law of chemistry, or some law of physics relating to the behavior of molecules or the ether (such as fluid flow or the action of light), or where the novelty turns on the fact that the objects are treated according to the law of chance and not in any definite order,—when the novelty turns on the use of any of these laws, then it involves a patentable process.

Such a definition does not however clear up the question of the patentability of the products of processes. Products which are strictly compositions, viz: chemical compounds or mixtures homogeneous in every direction, have given the courts little trouble in their construction since the decision in *Cochrane* v. *Badische Anilin,* etc. (111 U. S. 293), but products which are "manufactures" are a difficult subject to deal with, see *e. g. Mosler Lock Co.* v. *Mosler* (43 O. G. 354), *Universal Winding Co. v. Willimantic* (80 O. G. 1273) and *Downes* v. *Teter-Heany* (150 F. R. 122), and broad deductions from such decisions are almost forbidden. There is one Commissioner's Decision, *ex parte Kny* (63 O. G. 1403), which shows how easy it may be to make false generalizations in answering narrow questions regarding processes. To the compiler the few remarks in *Universal* v. *Willimantic, supra,* though questioned on appeal (92 F. R. 391), seem the best summary yet made, and these briefly are: that a product to be patentably new must have undoubtedly novel characteristics of its own and be defined by such, and that if the process is manifest given the article the latter alone is patentable. *Downes* v. *Teter-Heany, supra,* only emphasizes the words "undoubtedly" and "its own."

This digest is not intended to be an absolutely complete index to process cases, but rather a working handbook of process and composition decisions and of such allied decisions as will throw light on them. It has often been difficult to collate the decisions of this type bearing on a given question. In trying to overcome this difficulty the compiler has read at least cursorily most of the published patent cases from 1789 down to date. The syllabi, it will be noted, are extremely short, and are intended to be rather catch headings than summaries of the cases. It is suggested that users of this digest should not depend absolutely on them unless certain of the limitations laid down in the original decisions.

The decisions have been grouped roughly, as shown in the table of contents, under a system devised after much experimenting, though still unsatisfactory. For the most part they are only entered once, and then under the narrowest heading available, thus, for example, a suit for infringement turning on the question of a new step is entered under the latter heading only.

Finally it may be remarked that this digest was prepared for private use in examining applications, and is published at the suggestion of several attorneys. It is altogether likely that in a digest prepared from that point of view in odd moments, decisions have been omitted which should have been included in a work designed for the public,—the compiler will be glad to have such called to his attention. He would take this opportunity to thank those who have given him encouragement and suggestion—in particular Mr. C. C. Stauffer, principal examiner of Division 15, who has been his guide in reading patent law.

NOTE.

The abbreviations used in citing cases are, for the most part, those commonly employed. Those that may be confusing are:

Fish. for Fisher Patent Cases.
F. R. for Federal Reporter.
Fed. Cas. for Federal Cases.
Ban & A. for Banning and Arden Patent Cases.
Brodix for Brodix Patent Cases.
MacArthur for MacArthur Patent Cases.
Gourick for Gourick's Washington Digest.
O. G. for Official Gazette, U. S. Patent Office.
C. D. for Decisions of the Commissioner of Patents (cited by year).

In a few instances the letters C. D. (Commissioner's Decision), U. S. (Supreme Court), etc., have been inserted after a decision to show its authority. The digest has been brought down to include 156 F. R.; 207 U. S.; 29 App. D. C.; 133 O. G.; and 19 Gourick. A few scattered cases have also been included,—some very recent ones.

It may be convenient to remember that all Supreme Court patent cases up to 1890 are found chronologically arranged in Brodix Patent Cases, and that all cases in the lower courts prior to 1880 are in Federal Cases, arranged alphabetically.

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PROCESS DIGEST.

PROCESS DEFINED—A principle cannot be the subject of a valid patent, but as applied it may be the subject of a patentable invention. *Household Co.* v. *Neilson*, 1 Webster Patent Cases 673.

A principle to be the subject of a patent must be embodied. *Neilson* v. *Harford*, 1 Webster Patent Cases 331.

A process which is merely an abstract idea is not patentable. *Bradford* v. *Expanded Metal Co.*, 146 F. R. 984. Also *Union Mfg. Co.* v. *Lounsbury*, 2 Fisher 389.

A process includes all methods or means which are not effected by mechanism or mechanical combinations. *Corning* v. *Burden*, 15 Howard 252.

A process is a mode of treatment of certain materials to produce a given result, an act or a series of acts performed upon the subject matter to be transformed and reduced to a different state or thing. *Cochrane* v. *Deener*, 11 O. G. 687.

Processes of manufacture involving chemical or other similar elemental action are patentable, though mechanism may be necessary in the application or carrying out of such processes. *Risdon*, etc., v. *Medart*, etc., 158 U. S. 68.

A process does not necessarily involve chemical action, *e. g.*, cementing linoleum. *Melvin* v. *Thomas Potter*, etc., 91 F. R. 150.

A process depends on the principles involved and not on a detailed example of the method. *Tilghman* v. *Werk*, 1 Fisher 229.

A process means the application or operation of some element or power of nature, or of one subject to another. The invention consists in the application of old and well-known principles to new and useful purposes. *Boyd* v. *Cherry*, 60 O. G. 160.

PROCESS VALIDITY—A process patent must disclose a tangible product or change in quality or character. *Manhattan Gen. Const. Co.* v. *Helios Upton Co.*, 135 F. R. 784.

Process claims that do not include all

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steps necessary to produce the stated or any useful result are not patentable. *In re Creveling*, 117 O. G. 1167.

The fact that only one way is known does not forbid a patent for that one. *Dolbear* v. *American*, etc., 45 O. G. 377.

A process for simple manipulation is probably patentable, and a mechanical claim for mechanism operating thus if a basic patent will be construed to cover the function. *Boyden* v. *Westinghouse*, etc., 73 O. G. 1067; *Le Roy* v. *Tatham*, 55 U. S. 156.

A process for chemical or other elemental action is patentable. For the mere function of a machine is not patentable. For a process or method of mechanical nature not absolutely dependent on a machine though best illustrated thereby is patentable, though involving no chemical or other elemental action. *In re Weston*, 94 O. G. 1786; *ex parte Davis*, 12 Gourick 86; *ex parte Chisholm*, 2 Gourick 5; *ex parte Rogers*, 4 Gourick 24; *ex parte Dalton*, 4 Gourick, 7; *ex parte Scott*, 4 Gourick 40; *ex parte Stewart*, 5 Gourick 89.

A process patent which is merely an operative theory is void. *Manhattan Genl. Const. Co.* v. *Helios Upton Co.*, 135 F. R. 785.

A process of burning acetylene consisting in "projecting a small cylinder of gas, in surrounding the same with an envelope of air . . . " is valid. *Kirchberger* v. *American*, etc., 128 F. R. 599.

Granting a void patent on an improvement does not impair rights under the basic patent. *Westinghouse*, etc., v. *Electric*, etc., 142 F. R. 545.

A process patent will not be held void on its face when there seems to be some utility in the steps. *Fabric Coloring Co.* v. *Alexander Smith*, etc., 109 F. R. 328.

A process is patentable when not dependent on a given mechanism or the equivalent thereof. *Dayton*, etc., v. *Westinghouse*, etc., 118 F. R. 562.

The process for conveying speech by

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modifying a continuous electric current is a true process invention. *Dolbear* v. *American*, etc., 43 O. G. 377.

The process of applying a wrapper to a cigar . . . . is not for the mere function of a machine nor principle of nature. *J. R. Williams*, etc., v. *Miller*, 97 O. G. 2308.

A claim in a mechanical patent which covers only the effect or function of a device is invalid. *Cleveland Fdry. Co.* v *Detroit Vapor Stove Co.*, 131 F. R. 740; *ex parte Young*, 46 O. G. 1635; *ex parte Jaeger*, 46 O. G. 163. *Moulton* v. *Comr. Pat.*, 61 O. G. 1480.

A patent reciting merely the mechanical method of making a product is void if a patent for the product exists. *Mosler Safe and Lock Co.* v. *Mosler*, 43 O. G. 354.

A process for opening the flow of oil wells by exploding nitroglycerine under a water tamp is valid. *Roberts* v. *Dickey*, 1 O. G. 4. Same v. *Schreiber*, 2 F. R. 855, Same v. *Walley*, 14 F. R. 167.

The process of moistening and pounding sheets of paper is not a mere aggregation or mechanical process but more or less chemical. *Amer. Fibre*, etc., v. *Buckskin*, etc., 75 O. G. 833 (C.C.A.).

A process of making a coil consisting in securing pivot pins in axial line of the coil and simultaneously adjusting the needle supporting pivot so that the point of the needle is located . . . . is a valid process. *In re Weston*, 94 O. G. 1786.

The process of making a coil consisting in drawing a section of sheet metal over a mandrel and subjecting it to pressure till desired configuration is acquired and then turning down the lateral edges, not patentable. *In re Weston*, 94 O. G. 1786.

Imparting a coexisting movement to two reciprocating catch pieces in the operation of the trip cut-off valve,—not a valid process. *Sickels v. Falls Co.*, 4 Blatchf. 508.

Reducing the hinge portion of shells to a suitable thickness and then cutting button blanks,—is not a patentable process. *In re Weber*, 117 O. G. 1494.

A process patent must differ from a machine patent more than in substituting the word "method" for the word "means." *In re Creveling*, 117 O. G. 1167.

The manner of use does not define a machine, this is effected by its structure and capabilities. *Sewing Machine Co.* v. *Frame*, 28 O. G. 96; *Dunlap* v. *Willbrandt*, 151 F. R. 223; *Boston Elastic Fabrics Co.* v. *Easthampton*, 1 Ban. & A 222.

The mere substitution of mechanical for hand power is not patentable. *Marchand v. Emken*, 49 O. G. 1841; *Wyeth* v. *Stone*, 1 Story 273.

PROCESS VALIDITY—*continued.*
Process of folding paper bags held valid. *Eastern.* etc., v. *Standard*, etc., 41 O. G. 231.

Process of cutting and sewing a boot to produce crimps is different from the article. *Kelleher* v. *Darling*, 14 O. G. 673.

Process of recording telegrams valid. *French* v. *Rogers*, 1 Fish. 133.

If a man invent an improved machine his patent should be for his machine, not for a method or principle. *Barrett* v. *Hall*, 1 Robb Pat. Cas. 207.

A process of making egg cases held not patentable. *American Strawboard Co.* v. *Elkhart*, etc., 84 F. R. 960.

A process does not exist for making a shoe apart from the machine, and it is in that in which the invention resides and for which only a valid patent can issue. *Mackay* v. *Jackman*, 12 F. R. 615.

A process for weaving hammocks covers mere mechanical operations and is void. *Travers* v. *Hammock and Fly Net Co.*, 75 O. G. 678; but see same v. *Am. Cordage Co.*, 70 O. G. 277.

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Mere mechanical operations like looping and drawing threads do not appear patentable apart from the means. *Mackay* v. *Jackman*, 22 O. G. 85; *ex parte Over*, 9 Gourick 52.

A process must be independent of a machine,—book binders' press. *Busch* v. *Jones*, 184 U. S. 599.

A process for making prismatic glass windows which simply recites cutting, using a pattern, assembling, etc., is void. *Daylight Glass Mfg. Co.* v. *Amer. Prismatic*, 140 F. R. 174.

A process of coaling ships at sea covers function of the mechanism only and is void. *In re Cunningham*, 102 O. G. 824.

A process not distinguishable from the function of apparatus is not patentable. *Wells Glass Co.* v. *Henderson*, 67 F. R. 930.

Functional claims—see also *ex parte Kundsen*, 72 O. G. 589; *Gray* v. *James*, 1 Robb Pat. Cas. 120; *Bean* v. *Smallwood*. 2 Robb Pat. Cas. 133; *Parkham* v. *American*, 4 Fish. 468; *Swain* v. *Ladd*, 11 O. G. 153; *Union Gas Engine Co.* v. *Doak*, 88 F. R. 86; *Queen & Co.* v. *Friedlander*, 149 F. R. 771; *ex parte Cunningham*, 101 O. G. 2228; *Hatch* v. *Moffit*, 15 F. R. 252; *ex parte Raymond*, 1 Gourick 84; *Coddington* v. *Propfe*, 105 F. R. 951; *Matthews* v. *Shoneberger*, 4 F. R. 635; *ex parte McClain*, 119 O. G. 1585; *ex parte Thompson*, 4 Gourick 8; *ex parte Holt*, 6

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Gourick 42; *ex parte Hibbard*, 11 Gourick 8; *ex parte Wagner*, 14 Gourick 37; *ex parte Trier*, 7 Gourick 22; *ex parte Wood*, 16 Gourick 4.

Claims which merely recite the operation of an apparatus and the steps of putting it together are invalid. *Ex parte Dixon*, 123 O. G. 653.

A process is not the mere function of a machine when the operation is supplemented by something else. *Ex parte Shippen*, 1875 C. D. 126

A process involving merely the mechanical operation of a combination of mechanical elements is void. *Stokes*, etc., v. *Heller*, 96 F. R. 104; *Brainard* v. *Cramme*, 12 F. R. 621.

Process of making wire glass held valid. *Streator* v. *Wire Glass Co.*, 97 F. R. 950.

Process of suspending cables may be valid. *Chinnock* v. *Patterson*, 112 F. R. 531.

Filtering beer without foaming by withdrawing the air while it passes from cask to keg, is a valid process. *Uhlman* v. *Arnholdt*, etc., 53 F. R. 485; *Germ.-Am. Filter Co.* v. *Loew*, 155 F. R. 124.

Making nuts by compression at welding heat and punching while compressed, is a valid claim and the condition of the iron is a valid distinction *Wood* v. *Cleveland*, etc., 4 Fish. 550.

Forging by pairs of dies moved in opposite directions is valid. *Hathorn Mfg. Co.* v. *Simonds*, etc., 90 F. R. 201.

A process not involving chemical or other elemental idea is not patentable. *Stokes*, etc., v. *Heller*, 96 F. R. 104.

A process of controlling fermentation by which new results are produced is patentable. *Cameron Septic Tank Co.* v. *Village*, etc., 57 Engineering Record 99 (C. C. A.).

Creasing paper by blows successively lighter is function of apparatus only. *Chicopee Folding Box Co.* v. *Rogers*, 32 F. R. 695.

Making bevel-edged cards by cutting, etc., when piled obliquely is patentable. *Hale* v. *Brown*, 37 F. R. 783.

Process of determining grade of lubricating oil by applying fire test during manufacture is patentable. *Everest* v. *Buffalo*, etc., 20 F. R. 848; but see 22 F. R. 252.

The propulsive effect of the vertical motion of water in a reaction wheel operating by its centrifugal force and so directed by mechanism is patentable. *Parker* v. *Hulme*, 1 Fish. 44; *Wintermute* v. *Redington*, 1 Fish. 239.

Shaping edges of glass articles by "removing by blows at successive points closely adjacent the edge, the edge and a

PROCESS VALIDITY—*continued.*
portion of the opposite side of the article in pieces approximately uniform in quantity" is merely a function of a machine. *Conroy* v. *Penn Elec. and Mfg. Co.*, 155 F. R. 421.

A process of forming a foundation or subbase for walls held valid. *Breuchaud* v. *Mutual Life Ins. Co.*, 157 F. R. 844.

A process of coloring photographs by mounting on glass, painting, etc., is valid. *Irish* v. *Knapp*, 5 Ban. and A. 47.

The mere grant of a machine patent is no bar to the validity of a process patent applied for after said grant but within two years of it. *Eastern* v. *Standard*, 30 F. R. 65.

A new process may require greater care, but its validity is not thereby injured. *Lawther* v. *Hamilton*, 42 O. G. 487.

A process if only slightly useful may be patentable. *Gibbs* v. *Hoefner*, 19 F. R. 323.

A process which is useful only to counterfeit a better article is void. *Rickard* v. *Du Bon*, 103 F. R. 868.

A process of training animals is not patentable. *Ex parte Kelly*, 3 Gourick 85.

A "system for spacing letters" which defines width, etc., in terms of height is not patentable. *Ex parte Meinhardt*, 129 O. G. 3503.

A method of bookkeeping is not patentable. *Ex parte Dixon*, Fed. Case 3927.

PROCESS NOVELTY—A process which consists in applying old substances in a new machine is not patentable. *Pratt* v. *Thompson*, etc., 83 F. R. 516.

Devices which might be used in a process are not an anticipation if a new result is obtained. *Carnegie*, etc., v. *Cambria*, 99 O. G. 1866.

Anticipation of process for repairing asphalt construed. *U. S. Repair*, etc., v. *Assyrian Asphalt Co.*, 183 U. S. 591.

Enameling wire by electric current held anticipated. *In re Carpenter*, 24 App. D. C. 110.

Novelty can only be construed in light of the prior art. *Downes* v. *Teter-Heany*, etc., 144 F. R. 106; 150 F. R. 122.

A process is not anticipated by incomplete and imperfect experiments. *Amer. Wood Paper Co.* v. *Fibre*, etc., 23 Wall. 566.

An accidental unutilized anticipation of a process is not an anticipation. *Tilghman* v. *Proctor*, 102 U. S. 707.

A process producing a previously unknown result is new though the steps separately and together are old. *Mowry* v. *Whitney*, 14 Wall. 620; *ex parte Peters*, 7 Gourick 36.

PROCESS NOVELTY — *continued.*

A process may be new though the product is old. *Amer. Wood Paper Co.* v. *Fibre*, etc., 25 Wall. 566; *Taber*, etc., v. *Marceau*, 87 F. R. 871; *ex parte Nemino*, 6 Gourick 74.

A proces must be definably new to be patentable. *Daylight*, etc., v. *American*, etc., 144 F. R. 454.

A machine lacking the one element to produce a salable article does not anticipate a process that is commercially successful. *Streator* v. *Wire Glass Co.*, 97 F. R. 950.

"The application of the expansive and contracting power of a metal rod by different degrees of heat . . . ." is anticipated by any structure accomplishing the same result. *Foote* v. *Silsby*, 2 Blatchf. 260.

A new art widely adopted is presumably novel and patentable. *Thomson*, etc., v. *Two Rivers*, 63 F. R. 120.

A process of coloring ruby glassware by reheating is novel though a similar less effective process had been used with other colors. *Libbey* v. *Mt. Washington*, 26 F. R. 757.

A process is not novel because applied to new material when not so limited in the specification. *Holiday* v. *Pickhardt*, 29 F. R. 853.

A process of treating milk by water-sealing the cans is not anticipated by occasional use of the process when no value was accorded to it. *Boyd* v. *Cherry*, 50 F. R. 279.

To be valid a patent must disclose a material improvement. *Wellman* v. *Midland Steel Co.*, 117 F. R. 825.

A process of treating fabric involving as new the utilization of the natural oil of the fibre is patentable. *Ex parte Cords*, 15 Gourick 4.

Where the reference was thirty-six years old and had not been successfully used and applicant showed why, the process is patentable. *Ex parte Quirin*, 10 Gourick 69.

A process now successful because of mechanical skill held patentable. *Ex parte Blair*, 3 Gourick 85.

Using a well-known mold and a well-known composition is not patentable. *Ex parte Higgins*, 3 Gourick 61.

A process of casting metal is not anticipated by one that involves difficulties which applicant avoids. *Ex parte Scaman*, 9 Gourick 86.

Process which is merely utilizing waste is void. *Ex parte Weber*, 16 Gourick 20.

Merely directing a hot blast to increase heat is not novel. *Ex parte Reynolds*, 13 Gourick 6.

PROCESS NOVELTY — *continued.*

Claims adding "heating over a water bath" are patentably distinct in one application from those omitting that. *Ex parte Ach*, 13 Gourick 38.

"Introducing . . . ." and "introducing during . . . ." are not duplicates. *Ex parte Reese*, 16 Gourick 72.

Where steps remain the same but vary in extent in mechanical processes they are the same. *Kahn* v. *Starrells*, 131 F. R. 404; *ex parte Whitaker*, 18 Gourick 53.

A series of steps of breaking, screening, etc., does not anticipate similar steps applied to a different material for a different purpose. *Johnson* v. *Foods Mfg. Co.*, 141 F. R. 73.

A new process that revolutionizes an industry must be patentable and is to be construed broadly. *Hammerschlag* v. *Seamont*, 7 F. R. 584.

A process producing new and extraordinary and satisfactory results must be patentable. *R. Thomas*, etc., v. *Elec.*, 97 O. G. 1838; *Carnegie*, etc., v *Cam*, etc., 99 O. G. 1866 (U. S.).

Evolution of art in pipe welding distinguished from invention. *National Tube* v. *Spang*, 125 F. R. 23.

A process is not an anticipation u if invented later it would have bee infringement. *Electric Smelting*, et *Pittsburgh Reduction Co.*, 125 F. R. 9

A process for making welded rail j must be valid in view of the great ad evidenced by wide use. *Falk Mfg.* (*Missouri R. Co.*, 103 F. R. 295.

Adding one well-known process to other does not constitute invention u a better or a different result is obta *Mond* v. *Duell*, 91 O. G. 1437; *Ri Burt*, 17 O. G. 799 (C. D.); *ex parte* 1 Gourick 83.

A prior "paper" patent does not n sarily forbid a later patent. *Ideal St Co.* v. *Crown Cork and Seal Co.*, 131 244.

A new process is not vitiated by a of novelty in the apparatus. *New Pr Fermentation Co.* v. *Maas*, 39 O. G. 1 *Guarantee, etc.*, v. *New Haven*, et F. R. 268.

A process is not novel when it i parently the only and obvious metho producing a known article. *Mica Insu Co.* v. *Commercial Mica Co.*, 157 F. R *Universal Winding Co.* v. *Williman* O. G. 1273, but see 92 F. R. 391 (C. C.

A process is patentable if it produces new result, however simple it may seem. *U. S. Mitis Co.* v. *Midvale Steel Co.*, 125 F. R. 103.

A novel process, however simple, must be patentable if it proves of marked util-

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y. *Eppinger* v. *Rickey*, 3 Ban. and A. 63; *ex parte Rudd*, 6 Gourick 42; *ex parte Bidleman*, 4 Gourick 74.

An old process put to a use not analogous where the adaptation requires inventive ability is patentable. *Lovell Mfg. Co.* v. *Cary*, 147 U. S. 623.

Merely doing a thing better or more thoroughly is not patentable. *Roberts* v. *Ryer*, 91 U. S. 150.

A process may be valid though it may be difficult at times to state exactly in specific instances where it differs from others. *Waterbury Brass Co.* v. *Miller*, 5 Fish. 48.

A process for making a dish of wood is void when patents have been granted for the dish and the machine for making it. *Oval Wood Dish Co.* v. *Sandy Creek*, 60 F. R. 85.

Process of forming a chain stitch is infringed by a process differing in degree. *Caunt* v. *United*, etc., 132 F. R. 976.

Process is anticipated by former use where product was successful, though not commercially so. *U. S. Electric*, etc., v. *Edison*, 51 F. R. 24.

A process is novel if it includes new steps and produces a result unattained before. *Celluloid Mfg. Co.* v. *Russell*, 37 F. R. 676.

A prior erroneous publication will not defeat a valuable later patent. *Badische* v. *Halle*, 104 F. R. 802.

Deodorizing oils by treating them with copper matte is patentable. *Ex parte Frasch*, 77 O. G. 1427.

Rubbing emery against glass does not anticipate sand blast. *Tilghman* v. *Morse*, 1 O. G. 574.

Driving cattle off a railroad track with a blast of sand does not anticipate sand blast for cutting. *Tilghman* v. *Morse*, 1 O. G. 574.

Claiming sensitizing does not distinguish patentably from photographing in a reproduction process. *Ex parte Wickers*, 124 O. G. 1531 (C. D.).

Cutting hides to size for shoe soles before tanning is anticipated by cutting for any other purpose, and then tanning. *Adamson* v. *Dederick*, 2 O. G. 523.

Nickel plating process not anticipated by electrolitic process incapable of producing a practical result. *United Nickel Co.* v. *Anthes*, 1 O. G. 578.

A process is anticipated if operations were performed substantially the same irrespective of success. *Waterman* v. *Thompson*, 2 Fish. 461.

Stowing ice on edge is not patentable though its utility has just been discovered. *In re Kemper*, MacArthur 1.

PROCESS NOVELTY — *continued.*

Old process is not patentable because applied to new material to produce a similar though not identical result. *Howe* v. *Abbott*, 2 Robb Pat. Cas 90, but see *ex parte Goodwin*, 2 Gourick 43.

Where patents were held void by supreme court for want of novelty a later reissue is void. *Jones* v. *McMurray*, 18 O. G. 6.

A process if old cannot be incorporated into a patent to enable a whole industry to be monopolized. *Wright and Cotton*, etc. v. *Clinton*, etc., 72 O. G. 1046.

A process is not anticipated by apparatus working on a somewhat different principle. *Schlicht*, etc., v. *Acolipyle Co.*, 117 F. R. 290.

Covering ball with knit covering held anticipated. *In re Droop*, 133 O. G. 517.

Process of folding and pasting envelopes held not patentable. *Arnold* v. *Pettee*, 3 App. Comr. Pat. 353.

An old process for preserving food is not patentable when applied to corn. *Jones* v. *Hodges*, 1 Holmes 37; see also *ex parte von Ahnbach*, 4 Gourick 8.

A process is not anticipated by one not exactly the same. *Jones* v. *Merrill*, 8 O. G. 401.

Imperfect abandoned machines do not anticipate a process. *Gottfried* v. *Phillip Best*, etc., 17 O. G. 675.

A complex and expensive machine is not anticipation of a simple economical process. *Gottfried* v. *Bartholmae*, 13 O. G. 1128.

A process is not invented till a machine is constructed to work the process. *Union Mfg. Co.* v. *Loundsbury*, 2 Fish. 389.

Arguments to novelty of apparatus employed are not pertinent in a process claim. *In re Henry*, MacArthur 467.

Process of burning wet fuel could not have been carried out in prior apparatus and so is novel. *Brown* v. *Thorne*, 2 O. G. 388.

Process of making hoopskirts is valid though the means are old. *Ex parte Mann*, 3 App. Comr. Pat. 367.

PROCESS ANALOGOUS ART—An old process applied unchanged with the same result though never before contemplated s not patentable. *Miller* v. *Foree*, 33 O G. 1497; *Pennsylvania R. Co.* v. *Locomotive*, etc., 27 O. G. 207.

A process applied to new material is not patentable. *Adams* v. *Loft*, 4 Ban. and A. 495.

If means for the reduction of metallic oxides in general are not patentable, the same are not patentable for a specific oxide. *Mond* v. *Duell*, 91 O. G. 1437.

PROCESS ANALOGOUS ART—*continued.*

It is not invention to discover that an old process is better than would have been expected when applied to new working—the difference is one of degree. *Lovell Mfg. Co.* v. *Cary*, 147 U. S. 623.

A process for making an elastic armlet is anticipated by the same process for other products. *Blakesley Novelty Co.* v. *Connecticut Web Co.*, 78 F. R. 480.

Cooling by water a saw that cuts celluloid is anticipated by water-cooled saws in other arts. *Celluloid Mfg. Co.* v. *Noyes*, 25 F. R. 319.

Electric smelting may include both the use of a reagent to combine with a non-metallic element and the use of a current alone. *Cowles, etc.*, v. *Lourey*, 79 F. R. 331.

A patent for electric smelting ores is infringed by smelting silica. *Electric*, etc., v. *Carborundum Co.*, 102 F. R. 618.

A process of applying metal spokes to hubs is anticipated by one of applying metal trimmings to tubular bodies. *Bettendorf Patents Co.* v. *J. R. Little M. W. Co.*, 123 F. R. 433.

A process is the same for hardening wire whether it be round or flat, though not so described in the specification. *Waterman* v. *Thompson*, 2 Fish. 461.

Soldering a strip on a can is equivalent to soldering a wire. *De Florzen* v. *Reynolds*, 3 Ban. & A. 292.

Painting on canvas with a spray anticipates such on china. *Fry* v. *Rockwood Pottery Co.*, 101 F. R. 723.

A process is not patentable merely because applied to a new subject. *Brown* v. *Piper*, 91 U. S. 37. *Ex parte Little*, 1869 C. D. 25.

A process for making carbon paper anticipates the same applied to photographic films. *Eastman Co.* v. *Getz*, 84 F. R. 458.

Compressing bituminous insulation anticipates compressing parafline one. *Western Electric*, etc., v. *Ansonia*, etc., 9 F. R. 706.

A method of bottling soda water anticipated the same applied to beer. *Golden Gate Mfg. Co.* v. *Newark*, etc., 130 F. R. 114; *Zinsser* v. *Kremer*, 39 F. R. 111; 48 F. R. 296.

A pewterer's furnace anticipates a cask pitching device. *Crescent Brewing Co.* v. *Gottfried*, 128 U. S. 158.

Heating molds by hot air anticipates similar heating of beer casks. *Gottfried* v. *Crescent Brewing Co.*, 9 F. R. 762.

Cementing cups by a glaze anticipates fusing them together. *In re Locke*, 17 App. D. C. 314.

Dyeing and tanning are distinct arts. *Tannage Patent Co.* v. *Zahn*, 70 F. R. 1003; same v. *Donallan*, 93 F. R. 810.

PROCESS ANALOGOUS ART—*continued.*

A process patent covers any analogous purpose,—making sound castings. *U. S. Mitis Co.* v. *Carnegie*, 89 F. R. 343.

A process of treating gums cannot anticipate tanning where one cannot be used for the other. *Tannage Patent Co.* v. *Zahn*, 70 F. R. 1003.

Clarifying olive oil, water, etc., by bone black does not anticipate filtering petroleum oil through bone black. *National Filtering Oil Co.* v. *Arctic*, etc., 4 Fish. 514.

Holding paper in place by a vacuum does not anticipate so holding a cigar wrapper. *J. R. Williams*, etc., v. *Miller*, 97 O. G. 2308.

Comminuted mica scales molded do not anticipate a built-up mica sheet. *Mica Insulator Co.* v. *Union Mica Co.*, 137 F. R. 928.

Bleaching fibrous material does not anticipate bleaching pyroxylin. *Spill* v. *Celluloid*, etc., 2 F. R. 707.

Coating Welsbach mantels with paraffine to be later burned off is not anticipated by soaking them in metallic salts to permanently strengthen them. *Welsbach Light Co.* v. *Rex*, etc., 90 F. R. 1006.

Casting tin does not anticipate molding vulcanite. *Smith* v. *Goodyear*, etc., 11 O. G. 246.

A process of pouring glaze into nested insulators so as to fill both joints and crevices and make a single mass is not anticipated by built-up insulators or by the process of fusing them together. *R. Thomas*, etc., v. *Electric*, etc., 97 O. G. 1838.

A process of making cylindrical rolled plate is patentable over flat rolling. *Burden Wire*, etc., v. *Williams*, 128 F. R. 927.

Molding built up mica sheet is not patentable over molding iron, tin, etc. *Mica Insulator Co.* v. *Union*, etc., 137 F. R. 928.

Cutting films of glue is anticipated by cutting wax, paint, etc. *Rawson* v. *Western Sand Blast Co.*, 118 F. R. 516.

Tempering wire by drawing it through a die is not anticipated by a prior die for straightening. *American Mfg. Co.* v. *Lane*, 3 Bann & A. 268.

Curing meat by circulating dried air covers purposes similar though not named in the specification. *Pike* v. *Potter*, 3 Fish. 55.

An economical method of cutting linen collars anticipates the same in cutting paper ones. *Snow* v. *Taylor*, 14 O. G. 861.

A dyeing process does not anticipate a similar tanning one when the effect seems different. *Tannage Patent Co.* v. *Adams*, 79 O. G. 158; same v. *Zahn*, 74 O. G. 143.

Striking up a rail brace by a die is not patentable over casting it. *Strom* v. *Weir*, 77 O. G. 1125.

PROCESS ANALOGOUS ART—*continued.*

Using a sand blast to scale iron is not patentable. *Ex parte Spear*, 16 O. G. 1052.

Shredding pith distinguished from disintegrating. *Ex parte Yearicks*, 10 Gourick 54.

Separating wood chips anticipates separating cork. *Ex parte Serra*, 20 Gourick 7.

Roasting sulphur by fuel is old and some sulphur ores burn when started. Starting with sulphur is not patentable. *Ex parte Swart*, 19 Gourick 20.

Claims are not patentable where they say cement and another cement is old in art. *Ex parte Warren*, 18 Gourick 4.

A process formerly applied to cylinders is not new because applied to flat phonograms. *American*, etc., v. *Universal*, 145 F. R. 636, 643.

Process of regulating electric lights does not anticipate a similar one for controlling speed of electric cars. *Electric Car Co.* v. *Nassau*, 91 F. R. 142.

Electrolysis of aluminum ore in a bath of cryolite is not anticipated by electrolysis of sodium and potassium salts while fused. *Electric Smelting*, etc., v. *Pittsburgh*, 125 F. R. 926.

Process of sewing stars on flags is anticipated by the same used to fasten patches to fabrics. *Bowman* v. *De Grauw*, 60 F. R. 907.

Process of reducing corn in the stalk is anticipated by the same used for wheat. *Appleton* v. *Star.*, 60 F. R. 411.

PROCESS EQUIVALENT ELEMENTS—

A specification that says "straw or such other fibrous material" is broader than straw alone. *Wood Paper Co.* v. *Fibre*, etc., 23 Wall. 566.

A paper board process using cold water and one per cent alkali does not infringe a patent for hot water alone. *National News Board Co.* v. *Elkhardt*, etc., 115 F. R. 328.

Sheets of brass may not infringe tinfoil in calendering iregular shapes of hard rubber. *Poppenhusen* v. *N. Y. Guttapercha Comb Co.*, 2 Fish. 80; but *contra* *Poppenhusen* v. *Falk*, 2 Fish. 213.

A turpentine solution of rubber may infringe a claim to oil in vulcanizing hard rubber. *Poppenhusen* v. *Falk*, 1 Fish. 213.

A claim for a latent solvent that becomes active only under certain conditions is not infringed by a solvent that is always active. *Celluloid Mfg. Co.* v. *Cellonite Mfg. Co.*, 42 F. R 900.

A process of making celluloid with solvents for both camphor and pyroxylin is patentable over old methods. *Celluloid Mfg. Co.* v. *American*, etc., 35 O. G. 135.

"Free from potash" means free from

PROCESS EQUIVALENT ELEMENTS— *(continued)*

free potash in a solution for electroplating. *United Nickel Co.* v. *Manhattan Brass Co.*, 16 Blatchf. 68; same v. *Harris*, 17 O. G. 325; same v. *Keith*, 5 O. G. 272

Carbonizing filaments with sulphuric acid is patentable over the use of syrup. *Westinghouse*, etc., v. *Beacon Lamp Co.*, 95 F. R. 462.

A "suitable size" in fibre chamois does not anticipate a thin solution of gelatin. *Am. Fibre Chamois Co.* v. *Buckskin*, etc., 72 F. R. 508.

Using a new dyestuff in finishing shoes does not make a new process. *Electric B. and S. Finishing Co.* v. *Little*, 128 F. R. 732.

A process for making battery plates "by pressure" is not infringed by applying material with a trowel. *Brush Elec. Co.* v. *Elec. Accum. Co.*, 47 F. R. 48.

Changing from broiling and steaming to boiling in packing meat is not a new process. *Western Packing Co.* v. *Hunter*, 21 O. G. 1689.

Flattening peas without breaking is patentable over crushing and breaking. *Everett* v. *Haulenbeek*, 68 F. R. 911.

Heating by direct steam is patentable over dry heating though the coffee so heated generates steam. *Arnold* v. *Phelps*, 29 O. G. 538.

Heating oilseed by ordinary steam does not infringe a claim for superheated steam. *Binder* v. *Atlanta*, etc., 73 F. R. 480.

Ripening wine by artificial heat inside a cask is not patentable over ripening wine by artificial heat outside a cask. *Dreyfus* v. *Searle*, 42 O. G. 491.

Equivalent structure defined. *Universal Brush Co.* v. *Sonn*, 146 F. R. 517.

Process of raising cream in water-sealed cans is not anticipated by cans in a water-sealed tank. *Vermont*, etc., v. *Gibson*, 56 F. R. 143.

Process whose only novelty consists in using material in more convenient form is void. *Phillips* v. *Kochert*, 31 F. R. 39; *ex parte McClintock*, 17 Gourick 68.

Process of embossing cards in definite places will not cover embossing a card cut to the shape of the embossing. *Schwartz* v. *Housman*, 88 F. R. 519.

Process of producing variegated enamel ware by applying a partial second coating adapted to coagulate over a plain first coat, is not anticipated by a double coat of one kind of enamel. *Lalance* v. *Haberman*, 55 F. R. 292.

Process of coating metals with rubber by first coating with a suitable metal film is not anticipated by a similar process in-

PROCESS EQUIVALENT ELEMENTS— *continued.*

capable of producing the same result. *Hood* v. *Boston*, 21 F. R. 67.

Making a compound ingot by compressing an outer tube is infringed by expanding an inner one. *Burden*, etc., v. *Williams*, 128 F. R. 927.

Refining zinc by "diffusing metallic aluminum throughout the bath of zinc . . . " is infringed if the principle is used though possibly details are omitted. *Delaware*, etc., v. *Woofall*, 55 F. R. 988.

Varying temperature of vulcanizing does not escape infringement. *Goodyear* v. *N. Y. Gutta Percha*, etc., 2 Fish. 312.

A process is the same though temperatures differ. *United Indurated Fibre Co.* v. *Wuppany*, 83 F. R. 485.

The degree of heat is immaterial in annealing springs. *Cary* v. *Wolff*, 32 O. G. 257.

Changing the degree of drying in celluloid does not escape infringement. *Celluloid Mfg. Co.* v. *American*, etc., 36 O. G. 1043.

Heating asphalt by hot water or steam is a valid new step over dry heating to expel moisture. *Pacific Contracting Co.* v. *Bingham*, 62 F. R. 281; same v. *Southern*, etc., 48 F. R. 300.

A process to be patentable must differ more than in degree of grinding *Commercial Co.* v. *Fairbank Co.*, 51 O. G. 965.

Grinding only to break is patentable over fine grinding in yeast process. *Ex parte Blumer*, 72 O. G. 1783.

Grinding wood by moving across fibres in the plane with them is patentable over art showing grinding across ends or diagonally. *Miller* v. *Androscoggin Pulp*, 1 O. G. 409.

A process involving adhesion by roughened surface is not infringed by one using polished surface working on a different principle. *Celluloid Mfg. Co.* v. *Arlington Mfg.*, 52 F. R. 740.

Using cooled slag plus lime or silica for mineral wool is not anticipated by patent for adding lime to slag for cement. *Western*, etc., v. *Globe*, etc., 77 O. G. 1127.

Making imitation chamois by pounding paper wet with solution of glue is not infringed if glue is omitted. *Am. Fibre*, etc., v. *Port Huron*, etc., 75 O. G. 833.

A process of treating tobacco by using gum arabic is infringed by using an equivalent adhesive and is not anticipated by the use of substances not distinctly adhesive. *Kimball* v. *Hess*, 15 F. R. 393.

Water tamping explosives in oil wells is infringed by any liquid in a column of sufficient height to attain result. *Roberts* v. *Roter*, 5 Fish. 295.

PROCESS EQUIVALENT ELEMENTS— *continued.*

Substituting chemical equivalents (iron salts for alum) does not avoid infringement. *Schwarzwalder* v. *N. Y. Filter Co.*, 72 O. G. 1043.

Bromine as an oxidizing agent is infringed by sulphuric acid (claim was for product of process). *Badische*, etc., v. *Cummins*, 4 Ban. & A. 489.

Making chloroform from gray acetate of lime does not infringe a patent for brown when the claim was so limited in view of office actions. *Michaelis* v. *Larkin*, 91 F. R. 778.

Using a new but equivalent solution is infringement. *United Nickel Co.* v. *Pendelton*, 24 O. G. 705.

Applying a second coat of enamel does not escape a patent for a single coat where the first coat has the functions of the single one. *National Enameling and S. Co.* v. *New England*, etc., 139 F. R. 643.

Electric smelting involving diffusion of heat is not infringed by a process using localized heat. *Electric*, etc., v. *Carborundum Co.*, 83 F. R. 492.

A process for utilizing exhaust steam in extracting tan is not infringed by using direct steam. *Bridge* v. *Brown*, 6 Fish. 236.

Using a die at last stage of making a hat infringes the process of using a die for embossing, though it may have been previously shaped (claim to product). *Baldwin* v. *Bernar*, 2 O. G. 320; also *Baldwin* v. *Schultz*, 2 O. G. 315, 319.

Process of making gas by heating petroleum by introducing hot natural gas is not infringed by using cold natural gas. *Smith* v. *Pittsburgh Gas Co.*, 42 F. R. 145.

Forging nails hot, cold rolling slightly and shearing does not infringe hot cutting and cold rolling, in view of prior art. *Globe*, etc., v. *Superior*, etc., 27 F. R. 450.

Process of backing engraved plates may not cover electrotypes. *Wickers* v. *McKee*, 29 App. D. C. 25.

Electrolysis of "carbonaceous anodes" covers also those partly of carbon. *Pittsburgh*, etc., v. *Cowles*, 55 F. R. 301.

Producing gas in a closed chamber is novel and useful and so valid. *Guarantee*, etc., v. *New Haven*, etc., 39 F. R. 268.

A "closed chamber" is no limitation in drying. *Stuart* v. *Auger*, etc., 149 F. R. 748.

Stretching hats over a former does not infringe forming between dies. *Doubleday* v. *Bracheo*, 2 Fish. 560.

A process is not infringed by a machine using dies different from those described to be essential to process. *Clark* v. *Kennedy Mfg. Co.*, 11 O. G. 67.

PROCESS EQUIVALENT ELEMENTS—*continued.*

Shrinking hat bodies by jets of steam infringes a bath of hot water. *Burr* v. *Prentiss*, 4 Fed. Cas. 821.

Vulcanizing rubber plus oil, plus benzoin infringes a patent for vulcanizing rubber. *Goodyear* v. *Rust*, 3 Fish. 456.

Vulcanizing rubber plus benzoin infringes patent for rubber. *Goodyear* v. *Berry*, 3 Fish. 439; *Goodyear* v. *Dunbar*, 1 Fish. 472.

Vulcanizing by steam infringes vulcanizing by heat. *Goodyear* v. *Central R. R.*, etc., 1 Fish. 626.

PROCESS NEW STEP—Applying material to a secondary battery plate as a paste is patentable over using a powder. *Electric Accum. Co.* v. *Julien Electric Co.*, 38 F. R. 117.

Treating a wooden pipe with tar and sawdust makes wood pipes practical and so is patentable though the invention is very narrow. *Hobbie* v. *Smith*, 27 F. R. 657.

Making starch by controlling the density of the liquids to separate the products is a novel step. *Chicago Sugar Rfg. Co.* v. *Charles Pope Glucose Co.*, 84 F. R. 977.

A process for making concrete blocks in situ is patentable over making them elsewhere. *Schillinger* v. *Gunther*, 4 Ban. & A. 479.

Introducing the exact quantity of water necessary to slake lime is not a patentable novelty. *Lauma* v. *Urschel White Lime Co.*, 136 F. R. 190.

The process of forming hats of fur by throwing the fur in properly regulated quantities is not a valid claim. *Burr* v. *Duryea*, 1 Wall. 531.

"Predetermined" does not make a claim novel. *Ex parte Johnston*, 4 Gourick 74; see also *De Lamar* v. *De Lamar*, 117 F. R. 240.

A process must be definitely new to be patentable—the use of ether as an anesthetic is invalid. *Morton* v. *N. Y. Eye Infirmary*. 2 Fish. 320.

Manufacturing hats with "covering cloth wet with hot water" construed and held anticipated. *Wells* v. *Hagaman*, 29 Fed. Cas. 648.

Finishing house interiors with jambs prepared elsewhere is not patentable over the ordinary method. *Roehr* v. *Bliss*, 98 F. R. 120.

Merely adding compressing to gluing and nailing is not patentable. *Dodge Mfg. Co.* v. *Collins*, 106 F. R. 935.

Feeding material to an old machine in a different manner is not a new process for making pills. *In re Colton*, 21 App. D. C. 17.

PROCESS NEW STEP—*continued.*

Varying a degree of heating does not constitute patentable novelty unless this involves a completely new idea. *In re Musgrove*, 10 App. D. C. 164.

A process of curing fish which turns on the discovery of an inner skin is patentable. *Crowell* v. *Harlow*, 5 Ban. & A. 63.

Putting on a second coat before the first dries is the same as after drying. *Ansonia*, etc., v. *Electrical Supply Co.*, 144 U. S. 11.

Imitating copied letters by pressing a moist material against them and then removing same is anticipated by ordinary copying,—throwing away the copy is immaterial. *Hall* v. *Ahrend*, 144 F. R. 748.

Fumigating trees at night is not patentable where the process is old, but is found more efficient at night. *Wall* v. *Leck*, 74 O. G. 377.

If two liquids mixed fail to dye, but do so if applied in succession, the former is impractical and does not anticipate. *Imperial*, etc., v. *Stein*, etc., 75 O. G. 1551.

Remelting cooled slag with lime or silica and then making it into mineral wool is not anticipated by the use of hot slag when patentee makes a better product. *Western Mineral Wool*, etc., v. *Globe*, etc., 77 O. G. 1127.

Remelting slag with lime and silica is patentable over the use of hot slag in mineral wool. *Bemis Car Box Co. v. B. & P. El. St. Ry. Co.*, 75 F. R. 403.

Making aluminum by electrolysis of alumina in a bath of cryolite is patentable though the solubility was previously known. *Pittsburgh Reduction Co.* v. *Cowles*, etc., 64 F. R. 125.

Adding water, etc., in a different order without kneading in granulating nitrocellulose is patentable over the kneading process. *Wolff* v. *E. I. Du Pont De Nemours*, 134 F. R. 863.

Pressing a sheet against a file surface with a blunt point to make a mimeograph stencil—construed. *Edison* v. *Hardie*, 68 F. R. 489.

Alkaline fermentation is patentable over acid in the manufacture of starch. *Ex parte Blumer*, 72 O. G. 1783 (C. D.).

Making a tube very long and then welding and cutting to lengths and then finishing each length is patentable over welding and then trimming ends. *Ex parte Patterson*, 116 O. G. 2533.

Burning acetylene by "projecting a small cylinder of gas, in surrounding the same with an envelope of air . . . . " is not anticipated by burners that mix the air. *Kirchberger* v. *American*, 128 F. R. 599.

PROCESS NEW STEP—*continued.*

Soldering by dipping in melted solder is anticipated by pouring melted solder on the joint. *Adams* v. *Wilson*, 21 F. R. 648.

Treating milk with other matters by passing through an ejector is anticipated by the same method of treating in less efficient apparatus. *Burrel* v. *Elgin*, 96 F. R. 234.

A process is not new when all steps but one are old and that is old in other connections. *Evans* v. *Sucss*, 86 F. R. 779; *Rawson* v. *Western*, 118 F. R. 575.

A process is new if the steps differ and some are omitted that were formerly necessary. *U. S. Glass Co.* v. *Atlas*, 90 F. R. 724.

Making brushes by forcing a tuft of bristles into a chambered frame, compressing the face of the composition in the frame and supporting the bristles till the composition hardens is infringed by its equivalent. *Universal Brush Co.* v. *Sonn*, 146 F. R. 517.

Treating rawhide involving liming is not infringed when that step is omitted. *Royer* v. *Coupe*, 146 U. S. 524.

Casting phonographic blanks does not infringe expanding in the mold. *National Phonograph Co.* v. *Am. Gramophone Co.*, 135 F. R. 808.

Producing hollow spheroidal bodies by swaging and upsetting is not infringed by a process involving folding or buckling. *Jackson* v. *Burmingham Brass Co.*, 79 F. R. 801; also 72 F. R. 269.

Forging and cutting away surplus avoids forging and compressing edge. *Simonds*, etc., v. *Hathorn*, 93 F. R. 958.

One new step makes a new process. *Ex parte Kalteyer*, 57 O. G. 1127; *Klein* v. *Park*, 3 Ban. & A. 145; *ex parte Huston*, 4 Gourick 25; *ex parte Grant*, 3 Gourick 77; *ex parte Mahes*, 3 Gourick 77.

Vulcanizing a shoe made of built-up fabric anticipates vulcanizing a shoe of integral fabric. *Meyer* v. *Pritchard*, 7 O. G. 1012.

Purifying flour by mingling with air purified by centrifugal action and by repeatedly using the same air is patentable over same process except that air was purified by settling chamber. *Ex parte Holt*, 68 O. G. 536 (C. D.).

Heating by direct steam differs patentably from heating dry, though the coffee so heated generates steam. *Arnold* v. *Phelps*, 29 O. G. 538.

Artificially blowing sand for the sand blast means forcibly and is valid. *Tilghman* v. *Morse*, 5 Fish. 323.

Stirring gelatinized mass construed. *Wolff* v. *E. I. Du Pont*, etc., 134 F. R. 863.

A process is not patentable unless a distinctly new step is clearly described and claimed. *Ceraline Mfg. Co.* v. *Bates*, 101 F. R. 280; *Sewall* v. *Jones*, 91 U. S. 171.

An addition to a process though small if it greatly reduces cost must be patentable. *Guarantee Trust*, etc., v. *New Haven Gas Light Co.*, 39 F. R. 268.

A process though similar if not carried out to produce the same result will be patentable. *Lockwood* v. *Hooper*, 25 F. R. 910.

A process for spinning complete bottoms on lead pipes is valid since no one ever carried it to completing the bottoms. *Baker Lead Mfg. Co.* v. *National Lead Co.*, 135 F. R. 546.

The heating of vulcanizing molds by steam is a valid process. *Carew* v. *Boston Elastic Fabric Co.*, 5 Fish. 90.

Process for subjecting pith to a heated blast of air is not anticipated by the process for breaking and separating pith as there is no high temperature involved in that. *Marsden* v. *Duell*, 87 O. G. 1239.

A process for hulling peas is not anticipated by a machine probably incapable of doing that process *Chisholm* v. *Randolph*, etc., 135 F. R. 814; *Chisholm* v. *Ranastot*, 135 F. R. 815.

To add old processes to obtain a better result is patentable. *Bate Refrigerating Co.* v. *Gillett*, 97 F. R. 387.

Omitting a step makes a new process. *Hammerschlag* v. *Garrett*, 107 F. R. 479; *Lawther* v. *Hamilton*, 42 O. G. 487; *Andrews* v. *Wright*, 13 O. G. 969.

To be new a process must include a step distinctly new. *American Gramophone Co.* v. *Universal*, etc., 145 F. R. 636.

Omitting a step with improved results makes a new process. *Lawther* v. *Hamilton*, 42 O. G. 487.

Gas for singeing is patentable over a flame of wood, coal, etc. *Hall* v. *Jarvis*, 1 Webster Pat. Cas. 100.

The discovery that long washing a dyestuff makes it soluble involves invention. *Badische*, etc., v. *Kalle*, 94 F. R. 163.

A process can be anticipated only by a similar process, though like construction in a machine is anticipation of a machine. *Carnegie*, etc., v. *Cambria*, 99 O. G. 1866.

A process may be patentable though its product not. *Cochrane* v. *Badische*, etc., 111 U. S. 293.

A process is not patentable because it produces a new result. *Howe* v. *Abbott*, 2 Story, 190.

A new process for an old result is patentable. *Howe* v. *Abbott*, 2 Story, 190.

PROCESS, NEW SEQUENCE—Any combination though utilizing existing patents,

PROCESS NEW SEQUENCE—*continued.* if it produces new and useful results, is patentable. *Crane* v. *Price*, 1 Webster Pat. Cas. 375.

A process may be made up of old processes, but combined in certain specified arrangements, etc., will be patentable. *Amer. Wood Paper Co.* v. *Fibre*, etc., 32 Wall. 566.

A process may be patentable though all the steps are old. *German-American Filter Co.* v. *Erdich*, 98 F. R. 300.

Mere grouping surgical processes and increasing their speed is not patentable. *International Tooth Crown Co.* v. *Gaylord*, 140 U. S. 55.

Utilizing the slop of whisky by straining and chilling is valid though each step is old. *Frankfort Whisky Process Co.* v. *Mill Creek*, etc., 37 F. R. 532.

Processes are not alike when the steps differ and one omits steps essential to the other. *U. S. Glass Co.* v. *Atlas Glass Co.*, 90 F. R. 724

A new result from grouping old processes is patentable *Wallace* v. *Noyes*, 23 O. G. 435.

Method of folding a paper box is not patentable in view of prior art. *Union Biscuit Co.* v. *Peters*, 125 F. R. 603.

Order and manner of folding paper bags held not novel. *Union*, etc., v. *Waterbury*, 74 O. G. 269.

Simultaneously filtering and coagulating held a valid distinction from a sequence of steps. *Schwarzwalder* v. *N. Y. Filter Co.*, 72 O. G. 1043.

Producing colored photographs on glass is novel though the steps are old. *Irish* v. *Knapp*, 18 O. G. 735.

Molding and vulcanizing simultaneously is not anticipated by either step alone. *Carew* v. *Boston*, etc., 1 O. G. 91.

Cooking corn hominy moist, grinding and drying it is patentable though each single step is old. *Maryland Hominy*, etc., v. *Dorr*, 46 F. R. 773.

Pasteurizing beer by moving bottles continuously through pasteurizing agent is not anticipated by moving the agent past stationary bottles. *In re Wagner*, 105 O. G. 1783.

If a process is merely the function of a machine another capable of performing the same function might be an anticipation, but only because the function of a machine is not patentable at all. *Carnegie*, etc., v. *Cambria*, etc., 99 O. G. 1866.

A process of embossing tobacco at one stage is anticipation of doing so at another stage. *Miller* v. *Force*, 116 U. S. 22.

A process of molding celluloid by heating first below and then above is infringed though sequence is reversed. *Celluloid*, etc., v. *American*, etc., 42 O. G. 961.

PROCESS NEW SEQUENCE—*continued.*

If in several processes the order of the steps differs and so do the results the processes are not modifications of each other. *Ex parte McDougal*, 18 O. G. 130 (C. D.).

Mere rearrangement of old processes does not involve invention. *Schwartz* v. *Housman*, 88 F. R. 519.

Altering sequence does not confer patentability. *Ex parte Brown*, 7 Gourick 20; *ex parte Richardson*, 8 Gourick 21.

PROCESS, INFRINGEMENT—A process patent is not infringed unless every step is used. *Mowry* v. *Whitney*, 14 Wall. 620; *Royer* v. *Chicago Mfg. Co.*, 20 F. R. 853.

Omission of a step avoids infringement. *Hudson* v. *Draper*, 4 Fish. 256; *Heller* v. *Bauer*, 19 F. R. 96.

A process patent covers all the advantages of the process for whatever purpose carried out. *U. S. Mitis Co.* v. *Midvale Steel Co.*, 135 F. R. 103.

"Whoever discovers that a certain useful result will be produced in any art, machine, manufacture or composition of matter, by the use of certain means, is entitled to a patent for it. . . . And any one may lawfully accomplish the same end, without infringing the patent, if he uses means substantially different from those described." *O'Reilly* v. *Morse*, 15 How. 62.

An improvement if undoubted is infringed even if the terms of the claim are avoided. *Columbia Wire Co.* v. *Kokomo Steel*, etc., 143 F. R. 116.

A process is infringed by one having the same steps but a different theory of operation. *Hammerschlag* v. *Scamoni*, 20 O. G. 75; *Goodyear* v. *Rust*, 3 Fish. 456.

A claim based on a vague specification is not infringed unless every step is precisely followed by defendant. *Detmold* v. *Reeves*, 1 Fish. 127.

A process to infringe must show substantial identity. *Burr* v. *Cowperthwait*, 4 Blatchf. 163.

A process including a step a patent avoids escapes infringment. *Cotter* v. *New Haven Copper Co.*, 23 O. G. 740.

Equivalent means for accomplishing the same immediate result is infringement. *Warren Featherbone Co.* v. *Am. Featherbone Co.*, 133 F. R. 303.

Omitting one ingredient or step avoids infringement. *Kennedy* v. *Solar Refining Co.*, 69 F. R. 716; *Dittmar* v. *Rix*, 17 O. G. 973.

Where reactions are rapid a still more rapid performance is infringement. *Delaware Metal Refining Co.* v. *Woofall*, 53 F. R. 988.

A different order of steps does not avoid

PROCESS INFRINGEMENT — *continued.*

infringement. *Hammerschlay*, etc., v. *Bancroft*, 40 O. G. 1339.

Inventing an improvement does not entitle the inventor of it to use the original process. *Goodyear* v. *Berry*, 3 Fish. 439; also *Goodyear Dental Vulcanite Co.* v. *Evans*, 3 Fish. 390; *Tilghman* v. *Proctor*, 102 U. S. 707 (overruling *Mitchell* v. *Tilghman*, 19 Wall. 287).

A new method of carrying out a patented process is patentable but must have the consent of original patentee. *Tilghman* v. *Proctor*, 19 O. G. 895.

A new mode of carrying out a patented process is infringement. *Morley Sewing Machine*, etc., v. *Lancaster*, 47 O. G. 267.

Filtering and simultaneously coagulating is infringed by accomplishing result though not exactly by the patented method. *N. Y. Filter Co.* v. *Niagara*, etc., 78 O G. 1255.

A process which is an improvement in a well-developed art is to be construed narrowly. *Taber Bas Relief*, etc., v. *Marceau*, 87 F. R. 871; *Root* v. *Lamb*, 7 F. R. 222; *Glocester* v. *Le Page*, 30 F. R. 370.

A process of baling cotton is to be limited by the theory shown in the file wrapper, and one working on a different theory does not infringe. *Rembert*, etc., v. *American*, 129 F. R. 355.

A claim including "slowly turning during such process" held infringed though this step was omitted (assignee suing patentee). *Alvin Mfg. Co.* v. *Scharling*, 100 F. R. 87.

A process is not infringed if some steps are omitted. *Heller* v. *Bauer*, 19 F. R. 96.

A patent long acquiesced in by the public will be presumed valid. *Knox*, etc., v. *Drake*, 53 F. R. 790.

A process of butt welding is not infringed by a method sometimes used before the invention of the patent. *Lee* v. *Upson*, 42 F. R. 531.

Where a product shows evidence that a patented process was used and defendants deny it but do not show any other process infringement is presumed. *Goldie* v. *Diamond State Iron Co.*, 64 F. R. 237.

A process may not infringe another though the products are not distinguishable. *Plummer* v. *Sargent*, 120 U. S. 442.

Continuous accidental use previous to a patent enables the user to continue without infringement. *Dorlan* v. *Guie*, 25 F. R. 816.

"In . . . . the use of . . . ." is a process claim and must be held to positively include every step named. Omission of a step avoids infringement. *Van Camp* v. *The Maryland*, etc., 43 O. G. 884.

Adding a little alum does not avoid a chrome tannage patent. *Ford Morocco Co.* v. *Tannage Patent Co.*, 84 F. R. 644.

If a specification makes both the process and ingredients essential, all must be employed to infringe. *Goodyear*, etc., v. *Davis*, 19 O. G. 543.

The remedy of a process patentee lies against the manufacturer not against the vendor of the product. *Welsbach*, etc., v. *Union*, etc., 91 O. G. 2574.

A process for varnishing metal and then heating till the metal and varnish are oxidized together is not infringed by heating but not oxidizing. *Tucker* v. *Burditt*, 5 Ban. & A. 220.

Using more sulphur does not avoid a patent for hard rubber containing 20 per cent of sulphur. *Goodyear* v. *Matthews*, 1 Robb Pat. Cas. 50; also same v. *Muller*, 3 Fish. 259.

Where a process differs in details and the theory of operation is wholly different there probably is no infringement. *Commercial Mfg. Co.* v. *Fairbank Canning Co.*, 27 F. R. 78.

Where a patent covers only common operations it cannot be made to cover results unknown to the patentee. *Sanford Mills* v. *Massachusetts Mohair Plush Co.*, 119 F. R. 355.

The inventor of a totally new process and product is entitled to a broad construction of his invention. *Goodyear* v. *N. Y. Central R. R.*, 1 Fish. 627.

The first discoverer is entitled to protection on an article made by his process, and unless a different process is shown he will be protected. *Pickhardt* v. *Packard*, 30 O. G. 179.

A process avoiding the terms of a claim and differing in principle does not infringe. *Celluloid Mfg. Co.* v. *Arlington Mfg. Co.*, 52 F. R. 741.

A process infringes if it is substantially the same and seeks the same result. *Morey* v. *Whitney*, 5 Fish. 494.

Making nails by cold rolling shank is infringed by a process which includes rolling the head. *Globe*, etc., v. *U. S.*, etc., 19 F. R. 819.

It is not infringement merely to sell a material to be used in a patented process where it has other use in the same art. *Geis* v. *Kimber*, 44 O. G. 108.

Making or selling a machine adapted to carry out a process is not infringement where intent to infringe does not appear. *Bullock* v. *Westinghouse*, 129 F. R. 105.

Injunction will not issue when defendant says he does not infringe and offers to take plaintiff through his factory but latter does not go. *General Electric Co.* v. *McLaren*, 140 F. R. 876.

PROCESS INFRINGEMENT — *continued.*

A process for filtering is infringed by selling apparatus to be so used. *German-Am. Filter Co.* v. *Loew*, etc., 103 F. R. 302; also *Boyd* v. *Cherry*, 60 O. G. 160.

Making and selling machines for a patented process is taking part in infringement. *J. R. Williams & Co.* v. *Miller*, etc., 97 O. G. 2308.

Carrying out one necessary step of a process with goods bought with previous steps completed is infringement. *Goodyear* v. *Blake*, 10 Fed. Cas. 646.

Ownership of a patented machine is not license to use it in a patented process. *Expanded Metal Co.* v. *Bradford*, 136 F. R. 870. (Patent held invalid on appeal, 146 F. R. 984). But see *Vermont*, etc., v. *Gibson*, 64 O. G. 300.

A by-product, value partly dependent on nature of ore, cannot be part of damages. *Wetherill* v. *N. J. Zinc Co.*, 1 Ban. & A. 485.

Where infringer could have used a cheaper process, damages are the whole profit. *Whitney* v. *Mowry*, 4 Fish. 207.

Basis for damages is saving over what old method would have cost. *Black* v. *Thorne*, 7 O. G. 176.

An infringer must pay profits as damages though his skill made them great. *Lawther* v. *Hamilton*, 64 F. R. 221.

An infringer making no apparent profit pays only nominal damages and complainant pays cost. *Everst* v. *Buffalo*, etc., 31 F. R. 742.

Infringement damages may be greater than infringer's profits where damage was greater. *Carew* v. *Boston*, etc., 1 O. G. 91.

A loss of material in a patented process is not allowable as an offset in damages. *Tilghman* v. *Proctor*, 125 U. S. 136; see also *Tilghman* v. *Mitchell*, Fed. Cas. 14041.

The entire advantage defendant had by infringing is proper measure of damages. *Providence Rubber Co.* v. *Goodyear*, 9 Wall. 788.

An infringer is liable only for profits made in using the patented process; where he does not actually use the process he cannot be charged. *Mowry* v. *Whitney*, 14 Wall. 620.

An infringer is liable for presumed profits though he may not have made any. *Andrews* v. *Creegan*, 7 F. R. 477.

Public offering to sell licenses is not permission to others to experiment. *Clark* v. *Tannage Patents Co.*, 84 F. R. 643.

Profits obtained for increased price of unpreserved fish by ability to withdraw fresh fish from market by using complainant's patent are not recognizable. *Piper* v. *Brown*, Fed. Case 11181.

PROCESS, INTERFERENCE—Where one party claims the process only, the issue of the interference should not include the product. *Calm* v. *Schweinitz* v. *Dolley* v. *Geisler*, 86 O. G. 1633 (C. D.).

Processes and apparatus are not genus and species, but independent inventions, and an application for a process should be issued irrespective of apparatus interference. *Ex parte Atwood*, 44 O. G. 341.

There is no interference in fact when one party includes a step not in the issues or the claims of the other party. *Bullier* v. *Willson*, 87 O. G. 180 (C. D.).

An issue will read on a process which includes a step designed to facilitate subsequent steps. *Wickers* v. *McKee*, 124 O. G. 905 (C. D.).

Where two work together and file separate applications the one who furnished the suggestion is the true inventor. *Flather* v. *Weber*, 21 App. D. C. 179.

Where the invention is narrow, reduction to practice must involve every element in the process put in issue. *McKnight* v. *Pohle*, 22 App. D. C. 219; *Wickers* v. *McKee*, 29 App. D. C. 4; *Sherwood* v. *Drewson*, 130 O. G. 657.

Reduction to practice means actually carrying it out. Merely making a device for carrying it out is not sufficient. *Croskey* v. *Atterbury*, 9 App. D. C. 207.

Filing an allowable application in the Patent Office is conclusive reduction to practice. *Croskey* v. *Atterbury*, 9 App. D. C. 207.

To sustain priority reduction to practice must be successful. *Jones* v. *Wethcrill*, MacArthur 409.

Reduction to practice to be conclusive must be complete in details. *Appert* v. *Schmertz*, 13 App. D. C. 117.

The inventor of a tanning bath composition is entitled to interference with another who discloses it as one step in a process, but the issues must be limited to the single bath. *Rosell* v. *Allen*, 16 App. D. C. 559.

A caveat does not negative an earlier reduction to practice. *Calhoun* v. *Hodgson*, 5 App. D. C. 21.

The person who has an idea and first contrives means of giving effect to the idea is prior inventor. *Carter* v. *Carter*, MacArthur 388.

One reducing to practice the theory of another is not a sole inventor. *Arnold* v. *Bishop*, MacArthur 27.

A process belongs to the discoverer even though he was employed to make the necessary investigations. *Damon* v. *Eastwick*, 14 F. R. 40.

Agitation of a retort is not included in "giving it a rotary or other equivalent

PROCESS INTERFERENCE — *continued.*

motion." *Allen* v. *Alter*, 3 App. Comr. Pat. 322.

The successful inventor is the prior one. *Gold*, etc., v. *U. S.*, etc., 3 Fish. 489.

Reduction to practice even if more than a laboratory test, is not conclusive unless practical operation is demonstrated. *Pohle* v. *McKnight*, 119 O. G. 2519.

A process belongs to the successful carrier out. *Burrows* v. *Wetherill*, MacArthur 315, but see same v. *Lehigh Zinc Co.*, 1 Ban. & A. 529.

A caveat to be conclusive against reduction to practice must be specific. *Collins* v. *White*, 3 App. Comr. Pat. 392.

An indefinite broad claim may be anticipated by a clear specific one in interference proceedings, under Sec. 4918 Revised Statutes. *General Chemical Co.* v. *Blackmore*, 156 F. R. 968.

PROCESS, SPECIFICATION — A patent must show means, unless obvious, for accomplishing the result or it is void. *Downton* v. *Yaeger Milling Co.*, 5 Ban. & A. 112; *Kilbourne* v. *Bingham*, 60 O. G. 577.

Where the specification details only part of process it must be assumed that all else is old. *Farrel* v. *United Verde Copper Co.*, 121 F. R. 552.

Mention of particular means in a patent to show their advantage does not limit the patent to such. *Dolbear* v. *American*, etc., 43 O. G. 377.

A feature mentioned in specification by way of recommendation only cannot be read into a claim even to limit it. *Holliday* v. *Pickhardt*, 29 F. R. 853.

Means described must be essential not mere adjunct means. *Russell* v. *Dodge*, 93 U. S. 460.

Means to attain the result must be shown—a mere idea is not patentable. *Bradford* v. *Expanded Metal Co.*, 146 F. R. 984.

Form is immaterial, even though inaccurate, if the import is clear. *Wyeth* v. *Stone*, 1 Story 273.

A patent involving special material and special dies is void unless these are set forth. *Ballou* v. *Potter*, 110 F. R. 969.

A theory set forth will not, even though wrong, be construed to narrow the patent. *U. S. Mitis Co.* v. *Midvale Steel Co.*, 135 F. R. 103.

A patent should be so plain that an ordinary manufacturer at the date of the patent is able to carry out the process by its instructions. *Matheson* v. *Campbell*, 79 O. G. 686.

Perfect operation is not essential, but those skilled in the art must easily understand the description. *Dolbear* v. *American*, etc., 43 O. G. 377.

PROCESS SPECIFICATION — *continued.*

A patent should have description of means for carrying it out unless obvious to those skilled in the art. *Tilghman* v. *Procter*, 19 O. G. 859.

A process must be clearly and certainly described or the patent is void. *National Chemical*, etc., v. *Swift*, 100 F. R. 451.

A patent must be clear enough to enable one skilled in the art to use it without further experiment. *Bene* v. *Jeantee*, 47 O. G. 402.

A patent is sufficiently clear if the object is clear and the directions enable those skilled in the art to carry it out. *Mowry* v. *Whitney*, 5 Fish. 494; *Lalance*, etc., v. *Haberman*, 55 F. R. 292; *Goodyear* v. *Wait*, 3 Fish. 242; *Celluloid Mfg. Co.* v. *Russell*, 37 F. R. 676.

A process patent must be for more than a mere idea—the concept must be embodied and this embodied disclosure must be the patent specification. *Detmold* v. *Reeves*, 1 Fish. 127.

To be valid a process must be so disclosed that carrying it out is not dependent on experiment. *Detmold* v. *Reeves*, 1 Fish. 127.

Specific temperatures and pressures mentioned in the specification by way of limit in one direction are not to be read into the claim as limits in other directions. *Buchanan* v. *Howland*, 2 Fish. 341.

A patent is void if the result is not obtained by following the directions given. *Kennedy* v. *Solar Refining Co.*, 69 F. R. 716.

A patent is not void because no theory or a mistaken one is set forth. *Hemolin Co.* v. *Harway*, etc., 138 F. R. 54.

If means and operations are clearly set forth a patent is good though the principle on which it is based is omitted even designedly. *Andrews* v. *Cross*, 19 O. G. 1705.

Theory of operation need not be disclosed. *Eames* v. *Andrews*, 39 O. G. 1319.

New matter inserted by attorneys is void. *Eagleton Mfg. Co.* v. *Mfg. Co.*, 111 U. S. 490.

An enameling formula inserted in a reissue does not affect the patent. *St. Louis*, etc., v. *Quinby*, 16 O. G. 135.

A process described but not claimed may be applied for on another application if filed within two years. *Eastern*, etc., v. *Standard*, 41 O. G. 231.

A patent is not void because the specification mentions the use of a substance never used as described. *McKesson* v. *Carnrick*, 9 F. R. 45.

Errors in a parent must be vital to

PROCESS SPECIFICATION — *continued.*
affect its validity. *Michaelis* v. *Roessler*, 34 F. R. 325.

The specification should be brief. *Schlicht*, etc., v. *Æolipyle Co.*, 117 F. R. 299.

PROCESS, CLAIMS — A process claim later inserted in an apparatus application is valid though no new oath was added. *John R. Williams*, etc., v. *Miller*, etc., 97 O. G. 2308; but see *ex parte Gaylord*, 117 O. G. 2366; *ex parte Rurick*, 106 O. G. 7651; *ex parte Perkins*, 55 O. G. 139.

Where names of ingredients in claims vary from the specification the patent probably is void. *Smith* v. *Murry*, 36 O. G. 1045.

Where mechanical skill is used to modify the machine used in a process the patented process is limited to such details as are shown. *Johnson Co.* v. *Tidewater Steel Wks.*, 50 F. R. 90.

Dilute acid does not infringe a claim to "acid of sufficient strength," where the specification called for undiluted acid. *Chemical Rubber Co.* v. *Raymond*, etc., 71 F. R. 179.

A patent cannot be construed to cover more than is set forth in the specification and claims. *L. Durand*, etc., v. *Green* etc., 67 O. G. 814.

Claims must be based on directions in the specification which are sufficient to carry out these steps. *In re Creveling*, 25 App. D. C. 532.

A step will be protected which makes the product operative even if misunderstood by inventor. *Edison Elec. Lt. Co.* v. *U. S.*, etc., 52 F. R. 300.

Reissue, claiming step not described in the original, is void. *American*, etc., v. *Atlantic*, etc., 15 O. G. 467.

A process claim added in a reissue is void when not clearly described in original. *Kelleher* v. *Darling*, 14 O. G. 673.

Where an original is suggestive it is not new matter to use such in a reissue. *Carew* v. *Boston*, etc., 1 O. G. 91.

A process patent may be reissued to cover the product. *Goodyear* v. *Providence*, etc., 76 U. S. 499; but see *Legett* v. *Standard Oil Co.*, 149 U. S. 237.

An original patent for an article produced by a given process will support a reissue for both process and product. *Tucker* v. *Burditt*, 4 Ban. & A. 569. *Merrill* v. *Yeomans*, 11 O. G. 970.

A claim for a result by whatever means or for a process to whatever applied would be too broad. *Bailey*, etc., v. *Lincoln*, 4 Fish. 379.

"Oils . . . . by treating them substantially as described" covers only the

PROCESS CLAIMS — *continued.*
product of that process. *Merrill* v. *Yeomans*, 5 O. G. 268.

A process patent covers the process only. *Goodyear* v. *Central*, etc., 1 Fish. 626.

A clear description of the process and some machinery by which it can be carried out covers all machinery or apparatus which will accomplish the same purpose in the same way. *Bridge* v. *Brown*, Holmes 53.

"In a . . . . the use of . . . . " is a process claim though attempting to cover a composition and every step named must be held essential. *Van Camp* v. *Maryland Pavement Co.*, 43 O. G. 884.

Smelting process construed. *Wetherill* v. *N. J. Zinc Co.*, 5 O. G. 460.

Process of making turpentine and saving by-products construed. *Georgia*, etc., v. *Bilfinger*, 129 F. R. 131.

Claims must be construed in light of the prior art. *Cary Mfg. Co.* v. *De Haven*, 88 F. R. 698.

Method of electrical transmission of power construed. *Tesla* v. *Scott*, 97 F. R. 588.

Process of making mineral wool anticipated. *U. S. Mineral Wool Co.* v. *Manville*, 125 F. R. 770.

Process of making iron from slag anticipated. *Vinton* v. *Hamilton*, 104 U. S. 485.

"The mode herein described of making buttonholes" covers process only. *Ferris* v. *Batcheller*, 70 F. R. 714.

Claims are sufficient if they point out the steps. *Ex parte Zalinski*, 2 Gourick 21.

Failure to claim certain steps is only dedication to the public. *Ex parte Fauche*, 11 Gourick 66.

Process is not covered unless claimed. *Grant* v. *Walter*, 47 O. G. 1220.

Puddling iron—claim covered machine only. *Corning* v. *Burden*, 15 How. 267.

A patent covers only the steps actually claimed. *Mowry* v. *Whitney*, 5 Fish. 494.

A claim to be valid must actually set forth the invention and cannot be limited beyond the specification. If broad enough to cover non-patentable matter it is void. *Bracewell* v. *Passaic Print Wks.*, 107 F. R. 467.

Modifications suggested by specification and not barred by the wording of the claim are within the patent. *Pittsburgh Reduction Co.* v. *Cowles*, etc., 69 O. G. 789.

Means claimed must be adequate to produce result. *Downton* v. *Yeager Milling Co.*, 1 F. R. 199. *Ex parte Rowe*, 8 Gourick 84.

"The manufacture of the deodorized . . . . by treating . . . . " consti-

PROCESS CLAIMS — *continued.*

tutes a process claim. *Merrill* v. *Yeomans*, 11 O. G. 970.

A patent does not cover the product unless claimed as such. *Merrill* v. *Yeomans*, 11 O. G. 970.

Claiming an "exact quantity" where quantity is not given in the specification probably renders patent void. *De Lamar* v. *De Lamar*, etc., 117 F. R. 240.

Claims to more than the actual discovery are void. *Matheson* v. *Campbell*, 78 F. R. 910.

A process patent would be extended beyond the real invention if it included later discoveries. A machine is independent of such discoveries. *Bailey*, etc., v. *Lincoln*, 4 Fish. 379.

Absence of substances can be claimed. *United Nickel Co.* v. *Harris*, 15 Blatsch. 319.

If product is necessary and obvious result of process, product only is patentable *Ex parte Trevette*, 97 O. G. 1173.

If process claim is rejected when qualified by brief description of the article produced, a more specific description of product does not change scope of the claim. *Ex parte Creecllus*, 116 O. G. 2531.

Process may sometimes be claimed in reissue of a machine patent. *In re Heroult*, 127 O. G. 3217 (App. D. C.) (distinguishing *James* v. *Campbell*, 104 U. S. 356; *Wing* v. *Anthony*, 106 U. S. 142; *Heald* v. *Rice*, 104 U. S. 737; *Brainard* v. *Cramme*, 22 O. G. 769; *Eachus* v. *Broomall*, 115 U. S. 429); see also *ex parte Harrison*, 2 Gourick 13.

"Uniting by placing . . . . " covers a process. *Collender* v. *Bailey*, 13 O. G. 277.

Continuous molding construed. *Pressed Prism, etc.*, v. *Continuous*, etc., 150 F. R. 355.

Continuous process for clarifying water construed. *N. Y. Filter Mfg. Co.* v. *Elmira*, etc., 82 F. R. 450.

Continuous smelting construed. *Wetherill* v. *New Jersey Zinc Co.*, 1 Ban. & A. 105.

Continuous working of a machine construed. *Cimiotte Unhairing Co.* v. *Amer.*, etc., 108 F. R. 82.

PROCESS, PRODUCT—Must be identified by certain characteristics or tests and those of prime importance are those the patent itself sets up. *Matheson* v. *Campbell*, 79 O. G. 686.

Process alone is not enough to identify an article. *Cochrane* v. *Badische*, etc., 111 U. S. 293; *Risdon*, etc., v. *Medart*, 71 O. G. 751.

May be sometimes defined by process of making. *Ex parte Scheckner*, 15 Gourick 70; *ex parte Painter*, 57 O. G. 999; but see *ex parte Lupton*, 1874 C. D. 40; *ex parte Truesdell*, 1870 C. D. 123; *ex parte Cobb*, 1874 C. D. 60; *ex parte Sellers*, 1872 C. D. 197; *ex parte Wangemann*, 15 Gourick 25.

PROCESS, PRODUCT — *continued.*

Products are not identical if the processes differ and the tests set up by the earlier patent establish a distinction. *Carl L. Jensen Co.* v. *Clay*, 59 F. R. 290.

A new process does not make a new product. *Am. Wood Paper Co.* v. *Fiber*, etc., 23 Wall. 566.

Product described by process and by clear identifying characteristics is patentable. *Maurer* v. *Dickerson*, 113 F. R. 870.

Process and product cannot both be included in one claim. *Merrill* v. *Yeomans*, 5 O. G. 268.

Cloth rubber gaskets boiled with plumbago in oil held patentable. *Griffith* v. *Murray*, 46 F. R. 660.

Fertilizer of tank waters anticipated. *National*, etc., v. *Swift & Co.*, 104 F. R. 86.

If new and useful, a product is patentable though produced by a process similar to others. *Badische*, etc., v. *Kalle*, 94 F. R. 163.

A product though made by a process so as to be in one piece is not patentable unless it has some new function. *General Elec.* v. *Yost*, 139 F. R. 567.

A totally new product is entitled to a broad construction (defined by process of making). *Pickhardt* v. *Packard*, 22 F. R. 531.

A coating is not an abstract idea or a principle of nature, but is concrete and so patentable. *United Nickel Co.* v. *Pendleton*, 15 F. R. 739.

Product is not covered unless claimed. *Merrill* v. *Yeomans*, 94 U. S. 568; *Ferris* v. *Batcheller*, 70 F. R. 714; *Durand* v. *Green*, 60 F. R. 392; 61 F. R. 819; *Durand* v. *Schulze*, 61 F. R. 819.

Must be definably new, not merely better, to be patentable. *Sanitas Nut Food Co.* v. *Voigt*, 139 F. R. 551.

Must have definite characteristics to be patentable. *McKloskey* v. *Dubois*, 8 F. R. 710; *Hale* v. *Brown*, 37 F. R. 783.

Though better, as the product of a given machine it is not patentable unless novel. *Wooster* v. *Calhoon*, 6 Fish. 514.

An old article made on a new machine is not patentable. *Draper* v. *Hudson*, 6 Fish. 327.

Product is infringed by the same product though produced by a different process. *Badische*, etc., v. *Hamilton Mfg. Co.*, 13 O. G. 273.

Product obtained by extracting,—source is immaterial. *Am. Wood Paper Co.* v. *Fibre*, etc., 23 Wall. 566.

PROCESS, PRODUCT — *continued.*

If product is old a patent for it as product of a given process is void. *Societe Fabriques*, etc., v. *George Lueders & Co.*, 135 F. R. 102.

Product is not patentable unless novel. *Ex parte Latimer*, 46 O. G. 1638.

The licensee of a process is owner of the product and can do with it as he likes. *Washing Machine Co.* v. *Earle*, 2 Fish. 203.

"Tube . . . . cast . . . . and free from blowholes and other similar defects when produced as herein stated" covers the product only and is void, for other processes had produced such, though not so successfully. *Am. Tube Wks.* v. *Bridgewater*, etc., 132 F. R. 16.

Chewing gum held anticipated by its use by natives; and the process of purifying was old in purifying rubber. *Adams* v. *Loft*, 4 Ban. & A. 495.

Comminuted glue not patentable. *Milligin*, etc., v. *Upton*, 97 U. S. 3.

Chocolate-colored varnished plates do not anticipate ferrotype plates when former are not suitable for use as latter. *Heddon* v. *Eaton*, 11 Fed. Cas. 1019.

Paper collar infringed by the use of equivalent though different paper and coating. *Hoffman* v. *Aronson*, 4 Fish. 456.

Paper collar coated with composition "substantially as described" is valid. *Hoffman* v. *Stiefel*, 3 Fish. 456; but see *Underwood* v. *Gerber*, 63 O. G. 1063.

If new material makes product available it is patentable. *Goodyear* v. *Willis*, 7 O. G. 41.

Chymosin is not infringed by impure chymosin when product is identified only by process of preparation. *Blumenthal* v. *Burrell*, 53 F. R. 105.

Where a claim for a product apparently refers to the process by "substantially as described," the product is limited to the particular process. *Downes v. Teter-Heany*, 150 F. R. 122.

Product limited by disclaimers to the result of a given process is not infringed unless process is proved. *Societe*, etc., v. *Lueders*, 142 F. R. 753.

If a process is old so is its product. *Victor Talking Mach. Co.* v. *American*, 145 F. R. 189; but see *Kellcher* v. *Darling*, 14 O. G. 673; *Hanifer* v. *E. H. Goldshalk*, 79 O. G. 510; *ex parte Butterfield*, 4 Gourlck 7.

A patent covers equivalents known at filing date even though not isolated. *Read Holiday & Sons* v. *Schulze Berge*, 78 F. R. 493.

A small quantity of bromine infringes a vacuum in incandescent lamp. *Edison*, etc., v. *Waring*, etc., 59 F. R. 358.

A patent for an effect is void. *Le Roy* v. *Tatham*, 14 How. 156.

PROCESS, PRODUCT — *continued.*

Product claimed as result of process covers product only. *Dittmar* v. *Rix*, 1 F. R. 342.

A comparatively worthless insoluble dyestuff does not anticipate a valuable soluble one. *Badische*, etc., v. *Kalle*, 104 F. R. 802.

Prior inventor of a process is prior inventor of its product *Ex parte Carpenter*, 110 O. G. 2233; also *Kyle* v. *Corner*, 118 O. G. 2216.

Where a process is obvious, given the product, a valid patent can issue only for the latter. *Universal*, etc., v *Willimantic*, etc., 80 O. G. 1273.

A process patent may be reissued to cover product. *Badische*, etc., v. *Higgins*, 14 O. G. 414.

A patent for oil produced by a given process will not support a reissue for such oil irrespective of the process. *Vacuum Oil Co.* v. *Buffalo*, etc., 20 F. R. 850; *ex parte Tainter*, 1 Gourick 24.

A "clean knit face" is not anticipated by a fabric knit through and through. *Chase* v. *Fillebrown*, 58 F. R. 374.

The well-known method of making swaged metal blanks anticipates a seamless tooth crown. *Rynear* v. *Evans*, 83 F. R. 696.

COMPOSITION, NOVELTY, ETC. — Must be so clearly described that those skilled in the art can make it, but a single typical example of the method is sufficient. *Allen* v. *Hunter*, 1 Fed. Cas. 476; *Wood* v. *Underhill*, 46 U. S. 1.

A vague specification compelling the user to experiment makes the patent void. *Stevens* v. *Seber*, 11 App. D. C. 245.

A patent must give sufficient information to enable those skilled in the art to make it. *Panzyl* v. *Battle Island Paper Co.*, 138 F. R. 48.

The patent must clearly describe the composition, not leave the user to experiment. *Tyler* v. *City of Boston*, 7 Wall. 327.

A composition and the conditions of its use must be so described that those skilled in the art need no further directions. *Keith* v. *Hobbs*, 69 Mo. 84.

A composition must be claimed as such, it is not invention to put it to the use for which it was made. *Underwood* v. *Gerber*, 63 O. G. 1063.

A new product described by clear marks of identification is patentable though made by any process, even though only one is known. *Maurer* v. *Dickerson*, 113 F. R. 870.

Claiming a group of named solvents is valid and is not a monopoly of principle. *Celluloid*, etc., v. *F. Crane*, etc., 36 F. R. 110.

COMPOSITION, NOVELTY, ETC.—*continued.*

A lost art is not an anticipation. *Gayler* v. *Wilder*, 10 How. 477.

Omitting an ingredient supposed essential is patentable. *Tarr* v. *Folsom*, 1 Ban. & A. 24.

Physical characteristics may create novelty though chemical ones show identity. *Bridgeport*, etc., v. *Hooper*, 5 F. R. 63.

Equivalents depend on prior art. *Smith* v. *Murray*, 27 F. R. 69.

Where mere mechanical skill is used to modify proportions, the composition is not patentable. *International Terra Cotta*, etc., v. *Maurer*, 44 F. R. 622.

Asbestos combined with oxychloride cement does not anticipate magnesia carbonate when use is different. *Keasbey*, etc., v. *Philip Carey*, etc., 139 F. R. 571.

A patent for the use of a well-known article in a well-known form is void. *Tarr* v. *Webb*, 5 Fish. 593.

A composition may be patentable for a new use,—an anti-friction compound does not anticipate an acid resistant though similar. *Jenkins* v. *Walker*, 5 Fish. 347.

Merely utilizing waste material does not confer patentability. *In re Maule*, MacArthur 271.

One composition does not anticipate another not adapted to the same use. *Jenkins* v. *Walker*, 1 O. G. 359.

A composition is anticipated by a description of it though no process of production is given. *In re Schaeffer*, 2 D. C. App. 1.

Honey is not of uniform composition and so cannot anticipate artificial honey. *In re Corbin*, MacArthur 521.

A table beverage is patentable. *Rogers* v. *Ennis*, 3 Ban. & A. 366.

A remedial compound which is nothing more than such a compound of medicinal agents as could be made by the exercise of the skill of a physician is not patentable. *Ex parte Crippen*, Hart's Digest 238 (C. D.).

A true composition cannot be rejected on an aggregation of references. *Ex parte Hammond*, 3 Gourick 53.

A discovery of new qualities in a composition does not render it patentable. *Ex parte Snow*, 4 Gourick 90.

A patent for soap containing residuum is not infringed by soap containing other residuums discovered later and having other properties. *Parsons* v. *Colgate*, 15 F. R. 600.

Maltha is practically identical with asphalt and other petroleum residues. *Standard*, etc., v. *Reynolds*, 65 F. R. 509. (See appeal 68 F. R. 483.)

Newly-discovered solvents for celluloid are not covered in previous patent. *Spill* v. *Celluloid Mfg. Co.*, 10 F. R. 290.

Bronze dressing for leather is not anticipated by one that failed to work. *Cahill* v. *Brown*, 3 Ban. & A. 580.

Baking powder of phosphoric acid and alkaline carbonates is not patentable over flour, tartaric acid and alkaline carbonates. *Rumford*, etc., v. *Lauer*, 5 Fish. 615.

A composition is not anticipated by the same article when its utility was not even dreamed of. *Wickelman* v. *A. B. Dick Co.*, 88 F. R. 264; *Ajax*, etc., v. *Brady*, 153 F. R. 409.

Shellac, kaolin and a filler are not a patentable novelty. *Welling* v. *Crane*, 21 F. R. 706.

Shellac, flock and a pigment are not a patentable novelty. *Welling* v. *Crane*, 14 F. R. 571.

Silica in billiard chalk anticipated. *Hoskins* v. *Matthes*, 108 F. R. 405.

"Absence of . . . ." is a valid claim. *United Nickel Co.* v. *Central Pacific R. Co.*, 36 F. R. 186.

Vaseline in printer's ink is valid novelty. *A. B. Dick Co.* v. *Belke*, etc., 86 F. R. 149.

Ordinary alcohol is not patentable over dehydrated in combination with camphor as a solvent for pyroxylin. *Spill* v. *Celluloid*, etc., 21 F. R. 631.

Dissolved bone is not patentable over ground bone in a fertilizer. *Boykin*, etc., v *Baker & Co.*, 9 F. R. 699.

Using purer articles is not patentable. *Buckan* v. *M'Kesson*, 7 F. R. 100.

Granular phosphoric acid makes baking powder patentable over powdered. *Rumford*, etc., v. *N. Y. Baking Co.*, 134 F. R. 385.

A composition may be patentable though made of old ingredients. *In re Corbin*, MacArthur 521.

A new product must be a new composition though all the ingredients may be old. *Goodyear* v. *N. Y. Gutta Percha Co.*, 2 Fish. 313; *ex parte Heide*, 1875 C. D. 135; *Kirk* v. *Elkins*, 19 F. R. 417.

Making imitation onyx from celluloid involves only mechanical skill, and the product is not patentable. *Arlington*, etc., v. *Celluloid Co.*, 97 F. R. 91; see also *Cheneau* v. *Comr. Pat.*, 70 O. G. 924.

A claim only covers ingredients within reasonable limits. *Francis* v. *Mellor*, 5 Fish. 153.

Identity of name does not prove identity of product. *Badische*, etc., v. *Hamilton Mfg. Co.*, 3 Ban. & A. 241.

Incombustible ingredients do not make insulation novel. *Ansonia*, etc., v. *Electrical*, etc., 32 F. R. 81.

COMPOSITION, NOVELTY, ETC. — *continued.*

Fusel oil is patentable as pyroxylin solvent, though old as a solvent for camphor, and though it was known that many essential oils were pyroxylin solvents. *Celluloid*, etc., v. *Am. Zylonite Co.*, 35 F. R. 301.

A paste to improve whitewash does not anticipate a similar dry powder as plaster retarder. *King* v. *Anderson*, 90 F. R. 500; see also *ex parte Horlick*, 1875 C. D. 57.

Composition restraining setting of lime involving dry powder is not anticipated by a similar paste to restrain plaster of Paris. *King* v. *Anderson*, 90 F. R. 500.

To support a reissue for a composition, a process patent must be such that the invention of one involves the invention of the other *Powder Co.* v. *Powder Wks.*, 98 U. S. 126; see also *Francis* v. *Mellor*, 1 O. G. 48.

Borated cotton having new properties is valid over a mixture of boric acid and cotton. *Seabury & Johnson* v. *Am Ende*, 152 U. S. 561.

An alloy having new properties that are distinctive is patentable. *Ajax*, etc., v. *Brady*, etc., 153 F. R. 409.

Adding an ingredient and substituting another does not avoid infringement. *Wonson* v. *Peterson*, 13 O. G. 548.

Clay plus porcelain earth or its equivalent is infringed if silex is used. *Pasteur*, etc., v. *Funk*, 52 F. R. 146.

Tar and augur borings infringe tar and sawdust. *Hobbie* v. *Smith*, 27 F. R. 656.

Adding oil wintergreen or birch to beer makes a new and valid composition. *Rogers* v. *Ennis*, 14 O. G. 601.

Partially coked coal is not patentable. *Musgrave* v. *Comr. Pats.*, 78 O. G. 2047.

"A paint consisting of oxide of copper" is void—a new use for a well-known material. *Tarr* v. *Webb*, 2 O. G. 568.

Pulverized argillaceous earth and coal tar mixed to consistency of mortar and hardening on exposure to a solid slate roof is not anticipated by thin mixtures used as paint. *Plastic Slate Roofing*, etc., v. *Moore*, 1 Holmes 167.

A composition which merely consists in adding an adulterant is not patentable. *In re Weida*, 6 O. G. 681.

The true inventor is one who furnishes the suggestions, not mere detail modifications of recognized equivalents. *French* v. *Halcomb*, 120 O. G. 1824.

COMPOSITION, INFRINGEMENT, ETC. — A composition depends on the nature of the combination not on the exact ingredients. *Ryan* v. *Goodwin*, 3 Summer 514.

COMPOSITION, INFRINGEMENT, ETC. — *continued.*

An equivalent of a substance is another having substantially the same effect. *Matthews* v. *Skates*, 1 Fish. 602.

To prove infringement complainant must show that the infringer used the same ingredients in substantially the same proportions. *Francis* v. *Mellor*, 5 Fish. 153.

A composition infringes if it has the qualities of the patented article and the ingredients are identical and substantially in the proportions disclosed. *Goodyear* v. *Mullee*, 5 Fish. 259.

Omitting a claimed ingredient avoids infringement. *Lane* v. *Levi*, 21 App. D. C. 168.

Omitting an ingredient without substituting another avoids infringement. *Rees* v. *Gould*, 15 Wall. 437.

A composition intended to be used in a mixture, and so would infringe a patent, is itself an infringement. *Alabastine Co.* v. *Payne*, 27 F. R. 559.

Glycerine and glue used to prevent tubing of intestinal tissues from leaking, infringe a patent for same in rubber or cloth tubing. *Taylor* v. *Archer*, 4 Fish. 449.

Leather, etc., saturated with glycerine to make it gas proof is not infringed by a coating of glue, glycerine, etc., where the glycerine plays a different part. *Union Tubing Co.* v. *Patterson*, 27 F. R. 79.

Rubber vulcanized with iodine infringes sulphur as a vulcanizing agent. *Goodyear*, etc., v. *Gardiner*, 4 Fish. 224.

A mixture of lard and paraffine oil to treat stencil board covers all mixtures of similar consistency. *Sproull* v. *Pratt*, etc., 108 F. R. 961.

A material that is not fibrous will not infringe a claim for finely-ground fibrous material. *Coddington* v. *Propfe*, 112 F. R. 1016.

Electroplating with acetates infringes a claim to double sulphates. *United Nickel Co.* v. *Pendleton*, 15 F. R. 739.

Finely-ground fibrous material covers its equivalent, *i. e.*, any material that is fine and fibrous though not actually ground. *Coddington* v. *Propfe*, 105 F. R. 950; 108 F. R. 86.

A composition is not infringed by the use of any or all of its ingredients unless used as claimed or for the purpose required in the combination. *Byam* v. *Eddy*, 2 Blatchf. 521.

It is not infringement to use an equivalent expressly disclaimed in the specification. *Byam v. Farr*, 1 Curt. 260.

An utterly different article infringes if it has an equivalent function. *Welsbach*, etc., v. *Sunlight*, etc., 87 F. R. 221.

COMPOSITION, INFRINGEMENT, ETC. —*continued.*

Stearic acid is a fatty substance within the definition of tallow. *Propfe* v. *Coddington*, 108 F. R. 86.

Merely adding a new ingredient mechanically mixed and easily identified does not avoid infringement. *Atlantic*, etc., v. *Ditmar*, etc., 9 F. R. 316.

Adding a well-known ingredient often added at judgment in analogous compositions does not avoid infringement. *Hoffman* v. *Aronson*, 4 Fish. 456.

The term equivalent when speaking of machines has a certain definite meaning, but when used with regard to the chemical action of such fluids as can be determined only by experiment, it only means equally good. *Tyler* v. *City of Boston*, 7 Wall. 327.

A patent for saponine extracted from vegetables combined with soda water is infringed by products containing it for use in such combination. *Bowker* v. *Dows*, 15 O. G. 510..

A patent for the coating of granules is infringed by the same result by similar means though the defendant claims he does not coat. *Columbia*, etc., v. *Rutherford*, 58 F. R. 788.

Altering proportions to avoid the terms or a patent but obtaining the same result is infringement. *Goodyear* v. *Mullee*, 3 Fish. 209.

Sulphur in rubber packing is a refractory material and an infringement. *Jenkins* v. *Johnson*, 5 Fish. 433.

A composition patent is not infringed by an equivalent invented later. *Colgate* v. *Law Tel. Co.*, 5 Ban. & A. 437; *Wonson* v. *Gilman*, 11 O. G. 1011.

Equivalents discovered after the date of a patent are not covered by it. *Woodward* v. *Morrison*, 5 Fish. 357.

Powdered silver conductor infringes "conductor passing through glass" though it was unknown at time of issue of patent. *Edison*, etc., v. *Boston*, etc., 62 F. R. 397.

Equivalent solvents construed. *Chadeloid Chem. Co.* v. *De Ronde*, 146 F. R. 988.

An equivalent though very different is an infringement. *Tarr* v. *Folsom*, 1 Ban. & A. 24.

Plaster of Paris as a smooth lining is infringed by its equivalent in utility though hardening on a different principle. *Roots* v. *Hyndman*, 6 Fish. 439.

Arsenite of copper in a paint is not infringed by oxide of copper. *Wonson* v. *Gilman*, 2 Ban. & A. 590.

A composition containing hard rubber essentially does not infringe a similar one of soft rubber. *Clarke* v. *Johnson*, 17 O. G. 1403.

COMPOSITION, INFRINGEMENT, ETC. —*continued.*

A soap containing quartz as a novel element is infringed by another soap containing same. *Eastman* v. *Hinckel*, 5 Ban. & A. 1.

Dry ammonia detergent with additional alkali is not infringed by one without the additional alkali. *Columbia Chem. Wks.* v. *Rutherford*, 58 F. R. 787.

A surface of "a piece of vulcanized rubber" is infringed by the equivalent of rubber plus earthy material. *Dalton* v. *Nelson*, 2 Ban. & A. 227.

Dry mince meat compound is not infringed by one containing 12½ per cent of boiled cider. *Dougherty* v. *Doyle*, 63 F. R. 474.

Soft construed in wax stencil paper. *A. B. Dick Co.* v. *Pomeroy*, etc., 117 F. R. 154.

Paraffine, stearine and sugar are not anticipated by gypsum, paraffine and beeswax. *Kiesele* v. *Haas*, 32 F. R. 794.

Acid phosphate and bicarbonate of soda infringes phosphoric acid or acid phosphate plus alkaline carbonate. *Rumford*, etc., v. *Hecker*, 2 Ban. & A. 351.

Heat insulating compound of asbestos, lime putty, charcoal and pumice is infringed by clay, asbestos and hair with superposed clay, charred fibre, etc. *U. S.*, etc., v. *Merrimack*, 2 Ban. & A. 167.

Rubber, plumbago, copper, zinc, lead, sulphur infringes rubber, gum shellac, Paris white, French chalk, litharge, lamp black, sulphur. *Jenkins* v. *Walker*, 5 Fish. 347.

Flour, zinc chloride, alum, corrosive sublimate, oil of cloves infringes flour, salt, alum, corrosive sublimate. *Woodward* v. *Morrison*, 5 Fish. 357.

Zinc white, starch, glue, glycerine, damar do not infringe zinc white, castor oil, collodion. *Baldwin* v. *Schultz*, 5 Fish. 75.

Fine mica infringes absorbent material in dynamite. *Atlantic*, etc., v. *Mowbray*, 12 O. G. 3.

Nitrate of soda, charcoal and sulphur infringe infusorial earth in dynamite. *Atlantic*, etc., v. *Goodyear*, 13 O. G. 45.

Dynamite containing 6 per cent nitroglycerine does not infringe 10–20 per cent where the binders vary. *Atlantic*, etc., v. *Climax*, etc., 72 F. R. 924.

Nitrate of soda, charcoal and nitroglycerine infringe infusorial earth in dynamite. *Atlantic*, etc., v. *Parker*, 16 O. G. 495.

Dynamite is infringed by nitroglycerine, nitrate of potash, sulphur, fibre, charcoal and resin. *Atlantic*, etc., v. *Rand*, 16 O. G. 87.

Using a present commercial article does

COMPOSITION, INFRINGEMENT, ETC. —*continued.*

not avoid infringement because patentee could not originally obtain a satisfactory article and so claimed a purified article. *United*, etc., v. *California*, etc., 25 F. R. 475.

"Refractory, earthy, stony" in rubber packing construed. *Jenkins* v. *Johnson*, 5 Fish. 433.

Carbonate of lead infringes "earthly material" in match heads. *Bryan* v. *Stevens*, 4 Fed. Cas. 510.

Where a manufacturer swears he does not infringe though dealers say he does and no chemist testifies, no injunction will issue. *Gutta Percha*, etc., v. *Goodyear*, 2 Ban. & A. 212.

An article made wholly from an infringing composition warrants the entire presumed profits as damages. *Welling* v. *La Bau*, 34 F. R. 40; see also *Stephens* v. *Felt*, 1 Fish. 144.

MISCELLANEOUS MANUFACTURES— Manufacture as used in the patent law has a very comprehensive sense, embracing whatever is made by the art or industry of man not being a machine, a composition of matter or a design. *Johnson* v. *Johnson*, 67 O. G. 1332.

A crude structure not showing means to make it operative does not anticipate a successful one. *Miller* v. *Mawhinney*, 105 F. R. 523.

A corset is anticipated by a prior description even though such contained no description of method of manufacture. *Cohn* v. *U. S. Corset Co.*, 93 U. S. 366.

Structure for passing air through hot tubes and then into a barrel does not anticipate one passing air through a fire and then into the barrel. *Gottfried* v. *Bartholomae*, 3 Ban. & A. 309; also *Gottfried* v. *Philip*, etc., 5 Ban. & A. 4.

Placing a gas machine outside a building is not patentable. *Gilbert*, etc., v. *Mfg. Co.*, 12 Brodix 281.

A fabric must be definably new,—tightness and elasticity do not confer patentability. *Smith* v. *Nichols*, 21 Wall. 112.

Roughness is merely a feature of degree and is not patentable. *Guidet* v. *City of Brooklyn*, 105 U. S. 550.

Filament is a sufficient definition. *Edison*, etc., *v. U. S.*, etc., 52 F. R. 300.

A saw with hardened teeth is patentable. *Thompson* v. *N. T. Bushell Co.*, 96 F. R. 238.

Fly paper is not patentable because better, it must be novel. *Andrews* v. *Thum*, 67 F. R. 911.

Where argument of applicant limited invention to vulcanized rubber in teeth plate, celluloid does not infringe. *Goodyear* v. *Davis*, 102 U. S. 222.

MISCELLANEOUS MANUFACTURES— —*continued.*

Where the government ordered goods to be made under a patent, and the manufacturer thought they were so made, payment on the royalty by the government cannot be avoided because though the goods were fully up to requirements it is possible some detail of the patented process was not followed. *Harvey Steel Co.* v. *U. S.*, 39 Ct. of Cls. 297.

Where one application had a claim broad enough to cover both solid and liquid pyroxylin and another applicant admitted he did not invent the solid, there is interference as to liquid only. *France* v. *Stevens*, 5 Gourick 71.

An insulating composition using powdered soapstone will interfere with powdered asbestos. *Pratt* v. *Thomson*, 7 Gourick 53.

Acetanilid as an element of a composition will interfere with phenyl acetamide where the commercial names seem to cover the same thing. *France* v. *Stevens*, 5 Gourick 71.

Reduction to practice is conclusive as to new ingredients only when such have been positively identified. *Stevens* v. *Scher*, 11 App. D. C. 245.

Where two applications are partly in interference, one party cannot file an additional application covering equivalent named by the other. *Bowen* v. *Herriet*, MacArthur 310.

Weather strips of semi-cylindrical rubber are not anticipated by those requiring grooves in the door. *Ex parte Leach*, 3 App. Commr. Pat. 267.

Weather strip of folded sheet rubber does not infringe one of elastic material "like felt or rubber." *Vincent* v. *Judd*, 13 Brodix 177.

A spelling block having letters systematically arranged on its various faces is not patentable over blocks having various arrangements. *Hill* v. *Houghton*, 1 Ban. & A. 291.

A structure calculated to produce effects by shadows in rubber mats is patentable. *N. Y. Belting*, etc., v. *N. J.*, etc., 48 F. R. 556.

Fireproof fabric is limited by the art cited when application was before the office. *N. Y. Asbestos*, etc., v. *Ambler*, etc., 103 F. R. 316.

A hard rubber teeth plate mounted on gold infringes hard rubber plate. *Goodyear*, etc., v. *Preterre*, 14 O. G. 346.

Packing of rubber and canvas is not anticipated by the product of processes which could not produce the structure

MISCELLANEOUS MANUFACTURES—*continued.*

claimed. *Magowan* v. *N. Y. Belting Co.*, 141 U. S. 332.

Paper saturated with maltha is anticipated by maltha mixed with a solvent and suitable for paint. *Reynolds* v. *Standard Paint Co.*, 68 F. R. 483.

Adding details to an old structure for a new use does not make it novel. *Newark Watch Case Co.* v. *Wilmot*, etc., 68 F. R. 507.

Hard rubber teeth plate held valid over plate of tin. *Goodyear*, etc., v. *Smith*, 5 O. G. 585.

Spiral stitching in a buffing wheel is patentable over radial. *Binns* v. *Zucker*, etc., 70 F. R. 711.

Celluloid plate made sewable by putting between leather sheets is valid. *Collins* v. *Gleason*, 68 F. R. 915.

A slight change not obvious to those skilled in several arts may be patentable. *Gandy* v. *Main Belting Co.*, 143 U. S. 588.

Patentability depends on utility resulting from a distinct change,—not better material or more skill. *Many* v. *Sizer*, 1 Fish. 28.

Where utility of change of form is not apparent on principle the burden of proof of patentability lies on applicant. *In re Jackson*, MacArthur 485.

A partly perforated battery plate is patentable over one completely perforated where improvement is apparent. *Elec. Accum. Co.* v. *N. Y.*, etc., 50 F. R. 81.

Imitation bronze obtained by oxidizing a very thin film of oil on iron is not infringed by a coat of varnish. *Tucker* v. *Sargent*, 9 F. R. 299.

In a vault light the size may be a material element. *Lake* v. *Fitzgerald*, 6 Fish. 420.

A frame for a brush does not anticipate a similar one for a mirror. *Clark* v. *Scott*, 5 Fish. 245.

A soda water generator anticipates a fire extinguisher. *Northwestern*, etc., v. *Philadelphia*, etc., 1 Ban. & A. 177.

Making a curb of two layers instead of one or with obtuse angle instead of right is not patentable where no evidence shows greater utility. *MacKnight* v. *McNiece*, 64 F. R. 115.

Metal having lining in close contact is infringed by one interposing a sheet 2-100 inch thick. *Steel Clad*, etc., v. *Mayor*, 77 F. R. 736.

Making structures integral is common and great novelty must be shown to sustain patentability. *Consolidated*, etc., v. *Holtzer*, 67 F. R. 905.

Integral cannot cover parts specially distinct. *Holtzer* v. *Consol. Elec.*, etc., 60 F. R. 748.

MISCELLANEOUS MANUFACTURES—*continued.*

Making in one piece what was formerly made in two is not patentable. *General Elec. Co.* v. *Yost*, etc., 130 F. R. 568.

A sizing of starch is not equivalent to rubber in asbestos rope. *H. W. Johns*, etc., v. *Robertson*, 77 F. R. 985.

A collar made out of a given fabric is not patentable where patentee did not invent either the shape or the fabric. *Union Paper Collar Co.* v. *Van Deusen*, 23 Wall. 530.

Collar of paper and muslin does not cover muslin to reinforce buttonholes. *Union Paper Collar Co.* v. *White*, 2 Ban. & A. 60.

Carpet lining made by folding a single sheet of paper infringes one made by pasting sheets at folded edges. *Fales* v. *Wentworth*, 5 Fish. 302.

Pasting together two fabrics formerly used together unpasted is not patentable. *Johnson* v. *Hero Fruit Jar Co.*, 55 F. R. 656.

Corrugating a nail may be invention. *Dunar* v. *Albert Field*, etc., 4 Ban. & A. 518.

Structure not performing the same function does not infringe. *Brown* v. *Rubber Step Mfg. Co.*, 3 Ban. & A. 233.

A covering wire with practically no elasticity does not infringe a similar structure having an elastic covering wire. *West* v. *Silver Wire*, etc., 3 Fish. 306.

A whip covered with a knit fabric is patentable. *Strong* v. *Noble*, 3 Fish. 586.

"Metal" strip, though inserted by amendment, will cover its equivalent like hard rubber. *Thrall* v. *Poole*, 89 F. R. 718.

Adding metal to leather stiffening is not patentable. *Crouch* v. *Roemer*, 103 U. S. 797.

Change of color or material does not make a new fabric. *Smith* v. *Elliott*, 5 Fish. 313.

New use for old material not patentable. *Gardner* v. *Herz*, 118 U. S. 180.

Corrugated iron step does not anticipate a rubber one. *Rubber Step Mfg. Co.* v. *Metropolitan*, etc., 3 Ban. & A. 252.

Angular groove containing rubber ring is infringed by a circular or polygonal one. *Murphy* v. *Eastham*, 5 Fish. 306.

"In a waterproof electro-magnet covers of non-magnetic metal . . . . . " is not patentable in view of common knowledge. *In re Hayes*, 27 App. D. C. 393.

Brake shoe of steel set in wrought iron is anticipated by a similar vice and armour plate structure. *American*, etc., v. *Ry.*, etc., 143 F. R. 540.

Leather plaster anticipates similar structure in fly paper. *Andrews* v. *Thum*, 67 F. R. 91.

MISCELLANEOUS MANUFACTURES—*—continued.*

A structure in an essentially different art is not always anticipation. *Forsyth* v. *Garlock*, 142 F. R. 461.

It is infringement to come within the spirit of an invention, though avoiding the terms of a claim. *Phillips* v. *City of Detroit*, 3 Ban. & A. 153.

Laminated wooden rim in a bicycle wheel is more than a substitution of a new material and is so patentable. *Fairbanks* v. *Moore*, 78 F. R. 490.

New material is patentable where it requires invention to adapt it to the new use. *Sandusky*, etc., v. *Cumstock*, 13 Brodix 222.

New material does not confer patentability. *Hotchkiss* v. *Greenwood*, 52 U. S. 248.

A structure attaining a totally new result is infringed by another attaining same result. *Treadwell* v. *Fox*, 3 App. Comr. Pat. 201.

A packing of elastic core covered with saturated canvas with warp threads diagonal is patentable over the roll alone. *Tuck* v. *Bramhill*, 3 Fish. 400.

"Depressions and elevations substantially equal in number and surface" held valid in a pavement. *Ex parte Tillman*, 3 App. Comr. Pat. 282.

In a rubbing machine an India rubber surface is infringed by its equivalent though composed of stuffed cloth or leather. *Taylor* v. *Wood*, 8 O. G. 90.

Whip covered with woven fabric does not infringe patent for knit covering. *Strong* v. *Noble*, 3 Fish. 586.

Paper embossed to represent a given fabric is not patentable. *Union Paper Collar Co.* v. *Leland*, 7 O. G. 221; same v. *Van Deusen*, 2 O. G. 361.

Folded paper collar not patentable over a similar linen one. *Union Paper Collar Co.* v. *Van Deusen*, 2 O. G. 361.

"Digester of a shell and a continuous lining of cement" is valid. *Am. Sulphite Pulp Co.* v. *Hoarland*, 80 O. G. 515.

Rubber-coated ring anticipates an artificial ivory-coated one. *Rubber*, etc., v. *Welling*, 97 U. S. 7.

Papier-mache may cover sheet metal in a spittoon. *Ingersoll* v. *Turner*, 2 Ban. & A. 89.

Vulcanized fibre in an insulating lining anticipates paper. *Marshall* v. *Pettingell*, 153 F. R. 578.

Sulphur candle bound with fireproof paper does not infringe a metal-bound one. *Seabury* v. *Johnson*, 76 F. R. 456.

A stone pavement anticipates a similar wood one. *Brown* v. *District of Columbia*, 47 O. G. 398; also *Phillips* v. *City of Detroit*, 111 U. S. 604.

MISCELLANEOUS MANUFACTURES—*—continued.*

A harness pad having a bearing surface of vulcanized rubber or gutta-percha is not anticipated by other surfaces. *American*, etc., v. *Hogg*, 2 O. G. 59.

A tire made from a given fabric is not patentable when a patent exists for the fabric. *Palmer* v. *Lozier*, 90 F. R. 732.

Operative article is complete reduction to practice, though not made of same materials as commercial article. *Nerden* v. *Spaulding*, 114 O. G. 1828.

OFFICE PRACTICE—DIVISION, ETC.—The rule (old 41) that a machine and a process cannot be joined in one application is too severe. *Steinmetz* v. *Allen*, 102 O. G. 231 (U. S.).

Where process and apparatus are mutually dependent they may be joined in one application. *Ex parte Curtis*, 57 O. G. 1128; *ex parte Hyde*, 50 O. G. 1293; *ex parte Norwood*, 50 O. G. 1129; *ex parte Lord*, 50 O. G. 987; *ex parte McMahan*, 48 O. G. 255; *ex parte Tyne*, 17 O. G. 56; *ex parte Morningstar*, 2 Gourick 4; but see *ex parte Carpenter*, 3 Gourick 45.

A machine, a process and the product may be included in one application. *Ex parte Bailey*, 13 O. G. 228; *ex parte Elders*, 12 O. G. 2; but see *ex parte Tymeson*, 83 O. G. 593.

It is within discretion of the office to issue separate patents for a machine, a process and their product. *McKay* v. *Dibert*, 19 O. G. 1351.

Where process and apparatus are not one invention they must be applied for separately. *Ex parte Ament*, 116 O. G. 596; *ex parte Chapman*, 102 O. G. 820; *ex parte Fish*, 91 O. G. 1615; *ex parte Frash*, 91 O. G. 459; *ex parte Boucher*, 88 O. G. 545; *ex parte Everson*, 63 O. G. 1381; *ex parte Simonds*, 44 O. G. 445; *ex parte Herr*, 41 O. G. 463; *Gage* v. *Kellogg*, 32 O. G. 381 (C. C.); *ex parte Blythe*, 30 O. G. 1321; *ex parte Woodbury*, 5 Gourick 40; *ex parte Currier*, 4 Gourick 89; *ex parte Rosell*, 15 Gourick 22.

Where division has been required, the process will not be rejected on the apparatus. *Ex parte Chambers*, 51 O. G. 1943.

Claims to the function of an apparatus should be rejected, not required to be divided out. *Ex parte Frash*, 117 O. G. 1166; *ex parte Steinmetz*, 117 O. G. 901.

Where application covered process and product an amendment including apparatus must not be entered. *Ex parte Ferrell*, 106 O. G. 766.

Process and product may sometimes be claimed in one application. *Ex parte Adams*, 106 O. G. 541; *ex parte Dallas*, 106

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O. G. 996; *ex parte Cowper-Coles*, 100 O. G. 681; *ex parte Thomson*, 66 O. G. 653; *ex parte Demeny*, 64 O. G. 1649; *ex parte Hines*, 60 O. G. 576; *ex parte Tainter*, 47 O. G. 135; *ex parte Young*, 33 O. G. 1390; *ex parte Welch*, 15 Gourick 37; *ex parte Ives*, 15 Gourick 23; *ex parte Stanwood*, 4 Gourick 43.

Where process and product are inseparable and a sub-process and its product are also inseparable, all may be joined in one application. *Ex parte Du Motay*, 16 O. G. 1002.

Where examiner states that a product can be made by several processes it is evident that the product is old and therefore should be canceled, not divided out. *Ex parte Kny*, 65 O. G. 1403; but see *ex parte Butterfield*, 4 Gourick 7.

A process and product must be applied for separately where they are not one invention. *Ex parte Adams*, 106 O. G. 541; *ex parte Very*, 106 O. G. 766; *ex parte Christensen*, 105 O. G. 1261; *ex parte Schmidt*, 100 O. G. 2632; *ex parte Foulis*, 100 O. G. 232; *ex parte Powell*, 99 O. G. 1384; *ex parte Parent*, 98 O. G. 1970; *ex parte Reid*, 96 O. G. 2060; *ex parte Erdman*, 93 O. G. 2531; *ex parte Greenfield*, 58 O. G. 274; *ex parte Blythe*, 30 O. G. 1321; *ex parte O'Neil*, 16 O. G. 1049; *ex parte Clay*, 13 Gourick 54; *ex parte McHale*, 18 Gourick 41; *ex parte Willing*, 4 Gourick 24.

Having elected one species of claims the applicant cannot shift back. *Ex parte Nobel*, 84 O. G. 1144; *ex parte Randall*, 95 O. G. 2063; *ex parte Plimpton*, 101 O. G. 2567; *ex parte Maddux*, 106 O. G. 764; *ex parte Macdonald*, 13 Gourick 37.

Having prosecuted his case for one species he cannot shift to another by amendment. *Ex parte Lawley*, 113 O. G. 1967; *ex parte Christensen*, 105 O. G. 1261; *ex parte Pennington*, 2 Gourick 4; *ex parte Steffin*, 2 Gourick 83; *ex parte Kinzer*, 3 Gourick 78; but see *ex parte Brueckner*, 13 Gourick 38.

Where an examiner states a product is old in requiring division he must give reasons. *Ex parte Pastor Perez de la Sala*, 42 O. G. 95.

Division is required between a structure and a composition employed in it. *Ex parte Bennet*, 105 O. G. 1262.

A composition and the method of using it must be applied for separately. *Ex parte Tschirner*, 97 O. G. 187.

Both composition and the method of using it can be claimed in one application. *Ex parte Collins*, 4 Gourick 89.

Method of making a matrix and article

OFFICE PRACTICE—DIVISION, ETC.— —*continued.*

cast therein must be applied for separately. *Ex parte Jennens*, 108 O. G. 1567.

A composition patent can contain but a single claim. *Ex parte Lippincott*, 16 O. G. 632. Overruled by *ex parte Hentz*, 26 O. G. 437; see *ex parte Gassman*, 90 O. G. 959.

Processes that contribute to one result may stand in one application, but not alternative processes. *Ex parte McDougal*, 18 O. G. 130; *ex parte Oxnard*, 88 O. G. 1526; *ex parte Elbers*, 1877 C. D. 123; *ex parte Smith*, 16 O. G. 630.

In an application for a process or a composition the claims must not include less than the ingredients and steps described as essential. *Ex parte Loeser*, 9 O. G. 837; *ex parte Wheat*, 16 O. G. 360; but see *ex parte Wilson*, 16 O. G. 96; *Niedringhaus* v. *Marquard* v. *McConnell*, 18 Gourick 67; *ex parte McMullen*, 10 Gourick 38.

Division is required between claims to refrigeration and to preserving. *Ex parte Rappleye*, 85 O. G. 2096.

Where an application claimed a machine and disclosed a process but stated the process was applied for separately, the second is a division of the first. *Forbes* v. *Thomson*, 33 O. G. 2042; see *Richardson* v. *Leidgen*, 77 O. G. 153 (C. D.).

An apparatus application cannot be withdrawn from issue to incorporate process claims from a forfeited application. *Ex parte Hopkinson*, 54 O. G. 264; *ex parte Adams*, 3 Gourick 45.

A divisional application cannot include a different process claim from that in original. *Ex parte Lillie*, 53 O. G. 2041.

Where a process application is rejected and examiners-in-chief on appeal say that the true invention lies in an implement, a new application is necessary to cover that. *Ex parte Aberli*, 91 O. G. 2371; but see *ex parte Prindle*, 19 Gourick 72.

Where a process only sets forth the obvious method of making a product, the claims should be drawn to the latter. *Ex parte Trevette*, 97 O. G. 1173.

In saying claims are functional the examiner must cite the state of the art. *Ex parte Zalinski*, 2 Gourick 21.

The question whether claims are functional is appealable. *Ex parte Zalinski*, 2 Gourick 21; *ex parte Lockwood*, 2 Gourick 43; *ex parte Heuser*, 3 Gourick 27; *ex parte Read*, 3 Gourick 45.

Where apparatus originally included claims nominally apparatus and process, but some were really to the product, claims to the latter can be inserted after division. *Ex parte Heyl-Dia*, 13 Gourick 86.

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—*continued.*

Process claims can be added to apparatus case at any time before final rejection. *Ex parte Harley*, 4 Gourick 89.

Process and product can stand together though only one claim to process covers the product and the other claims are some to less and some to more than those essential to the claimed product. *Ex parte Patrick*, 11 Gourick 36.

Process and article claims can stand together where one process claim is broad enough to cover the article claims. *Ex parte Leavitt*, 13 Gourick 36.

But one apparatus can stand in an application claiming process and sub-processes. *Ex parte Byrne*, 2 Gourick 12.

Composition claims must show a clear line of division to warrant division. *Ex parte Geisler*, 13 Gourick 5.

Composition used internally cannot stand in same case with the same plus one ingredient intended for external use. *Ex parte Nail*, 3 Gourick 63.

Where oils were used in a composition either together or alternatively division was not required. *Ex parte Goldsmith*, 15 Gourick 23.

Question whether a claim to some of the ingredients is allowable in a composition is appealable. *Ex parte Hill*, 9 Gourick 84.

Where applicant makes the use of a given gas the essential feature of his

OFFICE PRACTICE—DIVISION, ETC.—
—*continued.*

process the claims must be restricted to that. *Ex parte Henderson*, 12 Gourick 85.

When one name cannot cover two equivalent substances, an alternative is permissible. *Ex parte Grundy*, 12 Gourick 23.

Claims naming the elements of treating liquors are allowable in a process. *Ex parte Vorel*, 4 Gourick 7.

Where composition is defined by the process of making it the examiner is justified in objecting to the claims. *Ex parte Diehl*, 5 Gourick 74.

Process should not be limited to "uniformly" when that is not the gist of the invention. *Ex parte Shaw*, 10 Gourick 68.

A process case requires a drawing that is operative though it may illustrate only one of several alternatives. *Ex parte Holton*, 7 Gourick 6; *ex parte Daniel*, 11 Gourick 69; *ex parte Sault*, 15 Gourick 4.

The applicant can claim in any language that will bear construction though it may be difficult. *Ex parte Stearns*, 10 Gourick 68; *ex parte Witherlick*, 17 O. G. 55.

Claim reading "in an ordinary blast furnace" is formal. *Ex parte Ellershausen*, 11 Gourick 54.

"In the manner described" is sufficient definition. *Ex parte Lisbonne*, 5 Gourick 27.

A claim should be either to a manufacture or a process, not to the use of a thing. *Ex parte Mayall*, 1873 C. D. 134; *ex parte Avel*, 11 Gourick 2.

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