Flower Vs. Detroit

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Appellant : Flower

Respondent : Detroit

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Flower v. Detroit

No. 203

Argued April 3, 1888

Decided May 14, 1888

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE EASTERN DISTRICT OF MICHIGAN

SYLLABUS

Claim 1 of reissued letters patent No. 6990, granted March 14, 1876, to Thomas R. Bailey, Jr., for an " improvement in hydrants," namely,

"In combination with a hydrant or fire plug, a detached and surrounding casing C, said casing adapted to have an independent up and down motion sufficient to receive the entire movement imparted by the upheaval of the surrounding earth by freezing, without derangement or disturbance of the hydrant or plug proper, substantially as shown,"

is invalid as being an unlawful expansion of the original patent.

The drawing of the original patent was materially altered, and new matter was introduced into the specification of the reissue.

"The decision in *Parker & Whipple Co. v. Yale Clock Co.,* 123 U. S. 87 , applied to this case."

In the present case, the reissue was not applied for until nearly eight years after the original patent was granted, and the reissue was taken with the manifest intention of covering, by an enlarged claim, structures which in the meantime had gone into extensive public use and which were not covered by any claims of the original patent.

Claim 3 of the reissue, namely "The combination of the hydrant or fireplug pipe A, supply pipe B, valve D, casing C, and stuffing box H, substantially as and for the purpose shown," is either an unlawful expansion in regard to the casing of what is found in the original patent or, if construed narrowly in regard to the casing, is anticipated, on the question of novelty.

In equity for the infringement of letters patent. Decree dismissing the bill. Complainants appealed.

MR. JUSTICE BLATCHFORD delivered the opinion of the Court.

This is a suit in equity, brought in the Circuit Court of the United States for the Eastern District of Michigan, by James

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Flower, Thomas Flower, and George Flower, against the City of Detroit, the Fire Commission of the City of Detroit, Benjamin Vernon, President thereof, and the Board of Water Commissioners of the of the City of Detroit for the infringement of reissued letters patent No. 6,990, granted March 14, 1876, on an application filed February 17, 1876, to Thomas R. Bailey, Jr., for an "improvement in hydrants," the original patent, No. 75,344, having been granted to said Bailey, March 10, 1868. Among the defenses set up in the answer, it was alleged that new matter, not constituting any substantial part of the alleged invention upon which the original patent was granted, was introduced into the specification of the reissue, and that the reissue is not for the same invention as the original patent, and is void. The specifications and claims of the original and of the reissue are here placed one after the other, the parts in each which are not found in the other being in italic:

" *ORIGINAL* "

"To all whom it may concern:"

"Be it known that I, T. R. Bailey, Jr., of Lockport, in the County of Niagara and State of New York, have invented a new and improved hydrant fire plug, and I do hereby declare *that* the following *is* a full, clear, and exact description thereof, which will enable *those* skilled in the art to make and use the same, reference being had to the accompanying *drawings, forming* part of this specification."

"This invention relates to *a new and improved method of constructing* fire plugs or hydrants, *and the invention consists in operating a cylinder valve in a suitable case, and in the arrangement and combination of parts connected therewith as hereinafter described.* "

"Figure 1 represents a longitudinal central section of the hydrant, *showing the parts of which it is composed and the manner of their arrangement.* Fig. 2 *is* a

cross-section of *Fig. 1* through *the line x x* ."

" *Similar letters of reference indicate corresponding parts.* "

"A represents the hydrant tube, from which *the* water is discharged. B is the horizontal section which is connected with the 'water main' and which *forms* the valve chamber."

"C is a loose casing around the hydrant tube *for protecting the tube from dirt, etc.* D is the cylinder valve *which has* its seat at its lower end, *on* elastic *or leather* packing, secured in a groove, as *seen in the drawing* at *a* . E is a rod, having a screwthread on its upper end, by which the valve is operated. F is a sleeve nut *which engages* with the screw on the rod, *raising* and lowering *it a* the nut is turned. This nut is turned by a wrench on the head, G."

"The sleeve nut is *secured* in the cap of the hydrant by a collar, and packing under the hollow cylinder stuffing box H, *as seen in the drawing.* J is a yoke, which is attached to the rod E by a set screw, and *which* is *secured* in the tube A and prevented from turning as it moves up and down by projecting lugs, as *seen in* Fig. 2, *and* it will be seen that the arrangement is such that the rod and valve may be raised and lowered without being rotated. *This secures* a uniform and perfect bearing of the valve on its seat, the packing *a* remaining undisturbed."

"Provision is made for the discharge of the waste water by an orifice beneath the valve D *marked f* , which orifice is opened and closed by a valve *marked g, as seen in the drawing. h is* a wing *on* the top of this valve."

"As the cylinder valve D descends, the angular flange *i* on its inside *strikes* the wing *h and* raises the valve as *seen* in the drawing, *thus allowing* any water which may remain in the hydrant to escape through the orifice *f* and aperture *k* . *It will be thus seen that no water will be left in the hydrant to freeze in cold weather.* "

"The tube A is secured to the horizontal section B by a ring nut *m* , which contains recesses for packing rings around the valve, as seen at *n n* . Packing *around* the valve is secured by another ring nut *o* and also under the end of the tube A, as *seen* in the *drawing.* "

"P represents the discharge pipe, with a screw for the attachment of the hose, and a cap piece for covering the pipe when the hydrant is not in use."

" *Having thus described my invention,* I claim *as new, and desire to secure by letters patent* --"

"1. A hydrant or water plug, *constructed substantially as shown and described; that is to say, with the parts A and B connected together, as shown, and with a* cylinder valve and a waste water valve connected and operated *in combination* substantially as herein *specified.* "

"2. *The arrangement of the parts* A, B, valve D, case C, and stuffing box H, *as herein described,* for the purpose *specified.* "

" *REISSUE* "

"To all whom it may concern:"

"Be it known that I, T. R. Bailey, Jr., of Lockport, in the County of Niagara and State of New York, have invented a new and improved hydrant fire plug, and I do hereby declare the following *to be* a full, clear, and exact description thereof, which will enable *others* skilled in the art *to which my invention relates* to make and use the same, reference being had to the accompanying *drawing, which forms a* part of this specification."

"This invention relates to *improvements in the construction of* fire plugs or hydrants."

" *In the drawing,* Figure 1 represents a longitudinal central section of a hydrant, *according to my invention;* "

"Fig. 2, a cross-section of *the same* through lines *x x of Fig. 1.* "

" *My invention consists in the following parts and combinations, as hereinafter specified and claimed, wherein* "

"A represents the hydrant tube, from which water is discharged. B is the horizontal section which is connected with the water main, and which *may form* the valve chamber."

"C is a loose *movable* casing around the hydrant tube. D is the cylinder valve, *having* its seat at its lower end, *upon suitable* elastic packing, secured in a groove, *as shown* at *a* . E is a rod having a screw thread on its upper end by which the valve is operated. F is a sleeve nut *engaged* with the screw nut on the rod *E, lifting* and lowering *said rod* as the nut is turned *one way or another.* This nut is turned by a wrench *or crank or other suitable device* on the head G."

"The sleeve nut is screwed in the cap of the hydrant by a collar, and packing under the hollow cylinder stuffing box H. J is a yoke, which is attached to the rod E by a set screw *or its equivalent,* and *it* is *screwed* in the tube A and prevented from turning, as it moves up and down, by projecting lugs, as *shown in detail* at Fig. 2. It will be *noticed* that the arrangement is such that the rod and valve may be raised and lowered without being rotated, *thus securing* a uniform and perfect bearing of the valve on its seat, the packing *a* remaining undisturbed."

"Provision is made for the discharge of the waste water by an orifice *f* beneath the valve D, which orifice is opened and closed by a valve *g* . A wing *h is provided upon* the top of this valve."

"As the cylinder valve D descends, the angular flange *i* on its inside, *striking* the wing *h* , raises the valve, as *shown* in the drawing, *and allows* any water which may remain in the hydrant to escape *down* through the orifice *f* and aperture *K, thus preventing any retention of water above the freezing level.* "

"The tube *A'* is secured to the horizontal section B by a ring nut *m* , which contains recesses for packing rings around the valve, as *shown* at *n* . Packing

about the valve is *also* secured by another ring nut *o* and also under the end of the tube A, as *shown* in the *drawings.* "

"P represents the discharge pipe, with a screw for the attachment of the hose, and a cap piece for covering the pipe when the hydrant is not in use."

"@It will be observed that the casing C loosely rests upon the main B or upon a branch projecting upward from the same. This casing extends upward, enveloping the main portion of the water pipe, A at least that portion which is subterranean. Said casing extends upwards, and fits loosely about the plug or hydrant at the portion A'. Above the upper terminus of the casing C is provided the bead a upon the hydrant proper. Sufficient space is left between the bead a and the upper terminus of the casing C to permit of sufficient up and down play of the said casing C for the purpose which will hereafter more fully appear. This distance between the bead and casing may be adjusted to any desired distance, thus lengthening or shortening it, by means of its screw attachment at its base."

"The main function of the casing C is to prevent derangement of parts during cold weather by the ground alternately freezing and thawing around the hydrant or plug. This process of freezing causes the surrounding earth, by its expansion, to lift or upheave, and thus be liable to derange the hydrant or plug. This upheaval or movement is received by the casing C, which, by its capability of sliding loosely up and down, will accommodate the upheaval of the earth above mentioned without any liability to derange the plug or hydrant. This is the chief function of the casing C, although it likewise serves the purpose of protection to the water pipe A.@"

" *What* I claim *is* --"

" *1. In combination with a hydrant or fire plug, a detached and surrounding casing C, said casing adapted to have an independent up and down motion sufficient to receive the entire movement imparted by the upheaval of the surrounding earth by freezing without derangement or disturbance of the hydrant or plug proper, substantially as shown.* "

"2. *In combination with* a hydrant or *fire* plug *pipe* A, the *supply pipe* B, and cylinder valve and waste valve, connected and operated substantially as herein *shown and described.* "

"3. *The combination of the hydrant or fire plug pipe* A, *supply pipe* B, valve D, *casing* C, and stuffing box H, *substantially* as *and* for the purpose *shown.* "

The material difference between the descriptive parts of the two specifications is that in the reissue, it is stated that the casing C is movable, and that sufficient space is left between the bead *a* , upon the hydrant proper, and the upper terminus of the casing, C, to permit of sufficient up and down play of the casing, C, to allow it to slide loosely up and down, to accommodate the upward and downward movement of the earth during the process of freezing and thawing, without any

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image:a

liability to derange the plug or hydrant. The casing could not thus slide loosely up and down unless sufficient space were left between the bead *a* and the upper terminus of the casing. No suggestion of such arrangement is found in the specification of the original patent, and the drawing of that patent shows no space between the upper terminus of the casing and

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the bead or flange above it. This is new matter introduced into the specification of the reissue, contrary to the express inhibition of 4916 of the Revised Statutes.

Claim 1 of the reissue is for an invention not indicated or suggested in the original patent -- namely the independent up and down motion of the casing. In addition to this, the drawing of the original patent shows a close contact between the top of the casing and the bead or flange above it, so as absolutely to forbid any such independent up and down motion of the casing as is covered by the first claim of

the reissue, while the drawing, Fig. 1, of the reissue, shows a sufficient space between the top of the casing and the bead or flange above it to admit of such independent up and down motion. Issue having been joined, proofs were taken on both sides, and the circuit court entered a decree dismissing the bill, from which the plaintiffs have appealed. Its opinion accompanies the record, and is reported in 22 F. 292. It held that the reissued patent was in valid as matter of law upon a comparison of the original with the reissue. We concur in this view.

It is sought to sustain the validity of the reissue by attempting to show that the model filed in the Patent Office with the original application exhibited the invention covered by the first claim of the reissue. It is doubtful whether that fact is satisfactorily established. But, irrespective of this, the case falls directly within the recent decision of this Court in *Parker & Whipple Co. v. Clock Co.,* 123 U. S. 87 . It was held in that case that what was suggested in the original specification, drawings, or Patent Office model is not to be considered as a part of the invention intended to have been covered by the original patent, unless it can be seen from a comparison of the two patents that the invention which the original patent was intended to cover embraced the things thus suggested or indicated in the original specification, drawings, or Patent Office model and unless the original specification indicated that those things were embraced in the invention intended to have been secured by the original patent. *See also Hoskin v. Fisher,* 125 U. S. 217 . In the present

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case, it cannot be seen from a comparison of the two patents that the original specification indicated that what is covered by the first claim of the reissue was intended to have been secured by the original.

In the present case also the reissue was not applied for until nearly eight years after the original patent was granted, and the reissue was taken with the manifest intention of covering, by an enlarged claim, structures which in the meantime had gone into extensive public use and which were not covered by any claim of the original patent.

Infringement is alleged only of claims 1 and 3 of the reissue. As to the casing C of the third claim, it cannot, any more than the casing C of the first claim, be held to cover a casing which has the independent up and down motion referred to. Such casing must be construed to be the casing exhibited in the drawing annexed to the original patent -- that is, one in which the up and down play is restricted by the overlapping bead or flange. On any other construction, claim 3 is an unlawful expansion in regard to the casing of what is found in the original patent. In addition to this, if the casing of claim 3 is only a casing which has no end play, it is anticipated by what is shown in letters patent No. 19,206, granted to Race and Mathews January 26, 1858, which patent was the subject of the decision of this Court in *Mathews v. Machine Co.,* 105 U. S. 54 .

The decree of the circuit court is affirmed.