purpose of alarms or notice, instead of manual action. Here there was the use of old things; and the arrangement or contrivance, the invention, which was determined to be patentable, consisted in the *modus operandi*—the motion of the engine instead of direct manual action. It was thought also sufficiently useful. I cite this case for the principle of it. In this case the whole preparation is ready as soon as it leaves the hands of the manufacturer, at much less expense, and very beneficial to the public as an article of trade, especially to business men.

I am therefore of opinion that the Commissioner erred in refusing to grant the patent in this case, and that the said decision ought to be, and is hereby, reversed.

P. H. Watson, for the appellant.

IN RE S. S. JEWETT AND F. H. ROOT, APPLICANTS. APPEAL FROM REFUSAL TO GRANT PATENT.

REJECTION OF APPLICATION—NOTICE THEREOF—NEW REFERENCES ON APPEAL.—When an application for a patent is rejected, the applicant is entitled to notice thereof, and to be furnished with such information and references as may be useful in judging of the propriety of renewing his application or altering his specification; and it would be a substantial denial of this right for the judge, upon appeal, to rest an adverse decision upon references for the first time presented in the Commissioner's answer to the reasons of appeal.

SM—SM—CASE REMANDED.—When the Commissioner's answer virtually abandoned the reference originally referred to and relied upon, references then for the first time presented, the decision overruled and case remanded.

(Before MORSELL, J., District of Columbia, May, 1853.)

STATEMENT OF THE CASE.

The application under consideration in this case afterwards issued as patent No. 9780, June 14th, 1852. (For diagram, see Patent Office Report, 1853, vol. 1, page 223.)

Opinion of the court.

MORSELL, J.

Appeal from the decision of the Commissioner of Patents refusing to grant a patent for alleged improvements in stoves, which consisted in attaching sliding-doors to stoves or grates instead of the more common stove-door opening on a hinge. The appellants claim that their improvement involves a combination of three things. The first is the fire-place or furnace; the second is a horizontally sliding-door to close the front of the fire-place; and the third is a recess in one or both of the door-jambs, completely separated from the fire-place, so as to prevent smoke and flame from circulating through it; which recess is adapted to the reception of the door, and the door is fitted to slide into it, and when in, will be concealed from view on the outside and protected from the smoke and flame on the inside, so that when within the recess the outside of the doors will not be liable to become smoked; consequently, when drawn out, no part of the surface exposed to view will be rendered offensive by smoke and soot. In stating the usefulness and advantages of their improvements, they say: "This construction and arrangement of the parts confines the soot to the inner side of the door and keeps that always concealed from view and out of the way, so as to avoid soiling the garments of those who approach the doors to open or shut them; while the sliding-doors and recesses possess these advantages, that they also avoid the rush of smoke and flame into the apartment that attends the sudden opening of hinged doors.

The Commissibner in his report states that the invention was sufficiently described in the specification, illustrated in the drawings, and shown in the models. It does not appear to have been a case of interference or opposition, but to have been decided on the ground of want of novelty, and for that reason rejected. The report states that on the 7th of July, 1851, the application was examined and rejected on that ground, and a reference was given for an example of a sliding-door to the rejected application of C. Hitzelberger. On the 9th of the same month a reconsideration of this decision was requested, for the reason that the reference given was to a sliding-door for a dwelling-house or stone front, which ought not to bar the applicant from receiving a patent for a sliding-door as applied, because the results in the latter were widely different. On the 11th of the same month the appli-

cation was again rejected, and a new reference was given to the rejected application of W. C. Hibbard. It was contended that the devices of the two are not analogous, because of the radical difference of function which they are appointed, respectively, to perform; from which decision this appeal was taken. The substance of the reasons of appeal are correctly stated in the report.

On the day and place appointed for hearing the appeal the appellants appeared by their counsel, and an examiner on the part of the Office, who laid before the judge the grounds of the Commissioner's decision in writing, with the original papers and the evidence in the cause, as already in part alluded to.

The report further states "that in one of the early modifications of the stove which still bears his name Doctor Franklin introduced vertical sliding-doors for regulating the draft and for security against the falling of brands or coals out upon the floor of the room," &c.

Again, "that on the 22d of April, 1835, a patent was granted to E. Ingall, in which he claims as his invention the application of horizontally sliding-doors to stoves and grates of all descriptions."

These latter references having been made for the first time at the trial of the appeal before the judge, were objected to by the appellants upon the ground of surprise. And it has been urged in the argument that, if an opportunity had been afforded them, they could have shown a radical and substantial difference between their improvement and that contained in Ingall's patent, in which latter the open door is, and only can be, partially concealed, as the plate behind which it is pushed is only about half its own width. In the feature of concealing the door this stove, therefore, furnishes no answer to the appellants' claim. Further, the recess to receive the door and insulate it from the fire does not appear in Ingall's stove; consequently his stove only embraces two of the three elements of the appellants' combination—the sliding-door and the fire-place, but not the recess for concealing and protecting the door; this nowhere appears in connection with the sliding-door and fire-place prior to the invention of the appellants. They claim the right to have had an opportunity also afforded them of so amending or altering their specification as to embrace only that part of the invention or discovery not within the patent of Ingall.

Syllabus.

The law under which the right is claimed is the seventh section of the act of 1836, which, after limiting and specifying the three instances to which the Commissioner's examination is confined, says, in the event of the existence of either of the conditions, that he shall notify the applicant thereof, giving him briefly such information and references as may be useful in judging of the propriety of renewing his application, or of altering his specification to embrace only that part of the invention or discovery which is new.

If these references are to be considered by the judge as grounds on which his opinion in this appeal is to be based, then the rule of law above stated and relied on by the appellants is certainly applicable, more especially as it appears that the references originally referred to as the grounds of the Commissioner's decision, and from which this appeal was taken, so far from now being confided in, are virtually abandoned.

I have therefore thought proper, and do hereby decide, that the said decision of the Commissioner of Patents be, and the same is hereby, reversed for the purposes aforesaid, and the Commissioner is hereby directed to proceed in the said case accordingly.

P. H. Watson, for the appellant.

WILLIAM F. TYSON, APPELLANT,

vs.

JAMES RANKIN, JR., APPELLEE,

vs.

EBENEZER BEARD, APPELLEE. INTERFERENCE.

QUESTION OF PRIORITY OF INVENTION—IMPLIES INTERFERENCE—INTERFERING MACHINES.—The question of priority of invention can only arise in such manner as to defeat an application for a patent when there is an interference according to the principles of the patent law, by which principles