IN RE GEORGE S. BISHOP. APPEAL FROM REFUSAL TO GRANT PATENT.

QUESTION ON APPEAL.—Features of novelty and utility not embraced in the claims, and brought out for the first time upon the argument before the judge, can have little influence in the determination of the questions before him.

INVENTION—IDENTITY—IMMATERIAL CHANGES.—When two devices perform the same function in substantially the same way, mere details of mechanical construction—as size, position, and mode of attachment—regarded as immaterial to the question of identity.

(Before MERRICK, J., District of Columbia, March, 1857.)

MERRICK, J.

This case having been appealed to me, one of the assistant judges of the United States Circuit Court for the District of Columbia, the 20th day of March, at 10 o'clock A. M., was fixed as the time, and the chancery room at the City Hall as the place, of hearing said appeal; at which time and place the applicant, by his attorney in fact, J. H. Merrill, appeared, and further time was given him—until Tuesday, 24th of March—when the applicant and his said counsel appeared at my chambers, and were heard upon their whole case, and in explanation of the models and drawings by them presented, as well as upon those relied upon and exhibited by the Office. The whole case has been duly considered, and every paper filed in it has been carefully read by me and the models and drawings examined.

The specification claims as the special point of novelty in the proposed arrangement of machinery "the placing within the bumper, or securing thereto, a sliding block, the same having formed in its end a V-shaped chamber for the purpose of guiding, centering, and holding the links in a horizontal position."

Upon comparing the claim with that embraced by the patent of Warren D. Hatch, of October 2d, 1849, and the rejected application of James McCullum, filed January 23d, 1854, it is apparent that all the forms of machines are substantially present in their machines, which are exhibited by the applicant; nor is there any new effect produced by his invention. The sliding block is common to all the machines. In the two cases of Hatch and McCul-

lum it has superadded a combination of spiral spring to operate its automatic movement. The party does not claim that dispensation with automatic movement is any part of his improvement. It would certainly not in a case like this be a novelty or an invention. The novelty is in the production, not the absence of automatic force. Now, the automatic principle being out of view, we find the sliding block common to all the cases, and operating simply to hold up the coupling-pin when adjusted, and to let it drop into the link when removed by propulsion from the end of the link already attached to another car, which is to be coupled to the one having either of the machines in question attached to it. The claimant has urged in his arguments that a certain vertical motion which his block is capable of (being much smaller in its vertical dimension than the space inclosing it) is an element of patentable novelty and utility; but whatever his argument, no such claim was made before the Commissioner by his specification, and its utility can have little influence in determining the question of novelty of those forms and effects on which he relies. The claimant further relies upon the V-shaped chamber of the block as novel. Its whole novelty, of course, consists in its adaptation as a guide of the link to its place where it must receive the falling coupling-pin. The wedge-like flaring or V-shape of the sliding block is present in Hatch's machine, differing from the present in being applied vertically instead of horizontally; but the principle of applying the sloping surface to guide the impinging body to its proper place is manifest; and if there were any special novelty in applying such a guiding surface laterally instead of vertically, that also is anticipated by the machine of McCullum, not, indeed, upon the block itself, but to the outer adit—the sides of the opening in the bumper head. McCullum, in his specification, calls for the adit opening to be "flared," as he terms it, both vertically and horizontally, for the purpose of guiding the link. Now, the V-shape in the block is the same shape as the flared or wedge shape on the bumper of McCullum, and its transfer or prolongation into the block produces no new effect, nor calls for the exercise of any inventive faculty; it is a familiar device used to produce an obviously familiar result.

Finding in the case and the reasons of appeal no ground to impeach the correctness of the conclusions which have been

reached by the Acting Commissioner, his decision rejecting the application for a patent, as set forth in the specification, is affirmed; and this, my opinion, is accordingly hereby certified to the Commissioner of Patents this 31st day of March, A. D. 1857.

J. H. Merrill, for the appellant.

IN RE ZENUS CORBIN AND GEDISON MARTLETT. APPEAL FROM REFUSAL TO GRANT PATENT.

COMPOSITION OF MATTER—INVENTION—ARTIFICIAL HONEY.—An artificial honey, consisting of sugar, water, rosin, butter, cream of tarter, gum arabic, honey, essence of peppermint, and isinglass, compounded in a described manner and in definite proportions, and forming a substance which closely resembles the genuine article in appearance, taste, and flavor, and which would seem to be a wholesome article of consumption, is a new and useful composition of matter, and forms the proper subject-matter of a patent.

SM—SM—NOVELTY—UTILITY.—It is not an objection to such an imitation, on the ground of novelty, that it closely resembles the natural product, since that varies in composition from natural causes, and is made in an entirely different manner, nor, on the ground of utility, that it is a deception, and calculated to impose an inferior article upon the public, since the specification expressly declares its factitious character, and furnishes the formula by which it is made.

NATURAL PRINCIPLES—PRACTICAL APPLICATIONS.—Natural principles and operations cannot be appropriated; but when they have been practically applied, as in this case, to produce a cheap and healthy substitute for a useful article of diet, there is sufficient utility to support a patent.

COMPOSITION—INGREDIENTS—NEW COMBINATION.—It is not necessary that the ingredients of a composition of matter should be new, or that they have not been before used for similar purposes, if the combination is new; that is, if they have not been before compounded in the same proportions.

(Before MORSELL, J., District of Columbia, April, 1857.)

STATEMENT OF THE CASE.

At the hearing before the judge, Examiner Gate was sworn and was asked a single question, as follows:

Question. "Please examine the proportions of the ingredients