

Alleged combination in which one element is novel.

Where it was old in a time-recording mechanism to provide a revolving drum operated by clockwork, a record-sheet to be wound thereon as the drum revolved, and a marking-point which made a mark on the record-sheet when placed in contact therewith, and it was also old to make a record on a lamp-black surface by the removal of a portion of such surface by means of a coacting stylus, it does not involve invention to use in a time-recording mechanism a record-sheet having a removable surface in combination with a stylus which removes a portion of said surface, although the record-sheet itself may be novel (See card 3660 S-3) In re Hawley, 121 O.G. 691 (1905). S

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Substitution of new element in old combination.

The substitution for an old element in a combination of an element performing a similar function, but constructed in a different way, does not render the combination itself patentable where there is no resultant change in the operation. In such a case, although the substituted element may be superior, the invention lies in the element and not in the combination. Id. 3660-S (5896)

Code message not an "art"

(C. C. N. Y. 1911). The Berardini patent No. 889,094, for a code message, claims 1 to 6, held invalid, the subject-matter thereof not falling within any of the statutory classes of invention. Claim 4 reads as follows: "A code message comprising a series of elements, the number of which is a multiple of the number of elements constituting a code unit, each code unit consisting of two portions, one of which indicates the value or amount of the order, while the other is a record mark identifying the parties to the transaction, the message also including means indicating the value of the elements representing the amounts of the orders." Held that if the invention falls within any of the statutory classes of invention it must be an "art". On this point the court said: If, therefore, this patent be construed as not merely for a thing called a "code message," but for a system of transmitting code messages, for a process or method of cable communication in cipher, the question arises whether such a process or such an art is patentable upon the evidence. * * * No particular code message can be produced which in every exemplar thereof is the single subject of this patent. Indeed, the claims are misnomers. The patent is not intended to be for a code message, in the sense that patents have been granted for books of a peculiar kind. The patent is really for a system of devising code messages, and as such it is obnoxious. The patent is really for advice. It is for an art only in the sense that one speaks of the art of painting, or the art of curving the thrown baseball. Such arts, however ingenious, difficult, or amusing, are not patentable within any statute of the U. S. Berardini v. Tocci, 190 F. 329.

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