

The Hansons' Twenty Years Product-by-Process War (1837-1859)

In 1837, the Hansons created a new lead pipe, unique – but where that uniqueness could only be expressed with reference to the method of its manufacture, a true “product by process” innovation. Hansons’ patent was first unsuccessfully litigated before a Supreme Court that did not reckon with a yet to be fully developed product by process form to define an invention. *Le Roy v. Tatham*, 55 U.S. (14 How.) 156, 175 (1853) (McLean, J.).

The second time at the highest court the process limitation to the product definition was appreciated; this was a first successful Supreme Court “product-by-process” case. *Le Roy v. Tatham*, 63 U.S. (22 How.) 132 (1859)(McLean, J.).

Circuit Recognition of Product-by-Process Claiming as from 1874: In the Federal Circuit’s epic product-by-process wars starting in 1992 and running to *Abbott Laboratories v. Sandoz, Inc.*, 566 F.3d 1282 (Fed. Cir. 2009)(en banc in part), the final case cites ten nineteenth century product-by-process precedents (counting both majority and dissenting opinions), but all are at least 15 years junior to the 1859 *Le Roy v. Tatham*. See *The Wood–Paper Patent*, 90 U.S. (23Wall.) 566 (1874); *Smith v. Goodyear Dental Vulcanite Co.*, 93 U.S. (3 Otto) 486 (1876); *Smith v. Goodyear Dental Vulcanite Co.*, 93 U.S. 486 (1877); *Merrill v. Yeomans*, 94 U.S. (4 Otto) 568 (1877); *Goodyear Dental Vulcanite Co. v. Davis*, 102 U.S. (12 Otto) 222 (1880); *Plummer v. Sargent*, 120 U.S. 442 (1887); *Goodyear Dental Vulcanite Co. v. Davis*, 102 U.S. 222 (1880); *Cochrane v. Badische Anilin & Soda Fabrik*, 111 U.S. 293(1884); *Globe Nail Co. v. U.S. Horse Nail Co.*, 19 F. 819 (C.C.D.Mass.1884); *Plummer v. Sargent*, 120 U.S. 442 (1887).

Regards,
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