

Each of these claims departs from the original statement of the invention.

Leaving out the statements as to conversion and subsequent treatment which are not novel, and the statement that the starch, when converted, was to be in a state of free flowing suspension in water, which is not novel, the first claim is reduced to the use of "a purified thin boiling or modified starch."

The second claim, treated in the same way, and leaving for subsequent consideration the words following "so that," is, for the use of "a thin boiling or modified starch."

I have come to the conclusion that in this patent the words "thin boiling" and "modified" are to be regarded as synonymous, and that in clause 1 the word "purified" must be regarded as qualifying "starch," and that this claim is for a starch which has been made thin boiling (or modified), and has then been purified.

I find nothing in the statement of the invention to justify any claim for a purified starch, as distinct from a modified starch. . . .

I have . . . come to the conclusion that there is no infringement, and I would so find even if I had come to the conclusion that the patent covered any degree of modification—because the processes are essentially different. The starch used by the defendants is not, in any aspect of the case, a "purified thin boiling or modified starch"—it is essentially a "purified starch."

I must now ascertain the rights of the parties upon the agreement and its oral supplement.

Both parties agree that what was done with reference to the glucose annex was under the oral agreement. Section III. was not regarded as adequate. . . .

There undoubtedly was a bargain that the new annex should be erected at the joint expense, under the supervision of Duryea.

I do not think there was any bargain made such as claimed by Duryea, that each was to have an equal interest in the building.

If the process was a success, then Benson (the president of the defendant company) was to refund Duryea his share of the cost. Failure was not contemplated, and there was no agreement as to what was to be then done. . . .

I fix \$3,500 as the price to be now charged to Mr. Benson, and it will be declared that he is the owner of the whole. I do not think it was intended that Duryea should have no interest in the material which entered into the building if the process was a failure. He would have a half interest in any salvage.