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IN THE HIGH COURT OF AUSTRALIA.

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*Jantzen (Australia)  
Ltd*

v.

*Pateron Laing & Bruce*

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**REASONS FOR JUDGMENT.**

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Judgment delivered at \_\_\_\_\_  
on April 6 1938

79/1937

IN THE HIGH COURT OF AUSTRALIA )

NEW SOUTH WALES REGISTRY )

No. 79 of 1937.

ON APPEAL from the Supreme court of New  
South Wales in Equity

BETWEEN

JANTZEN (AUSTRALIA) LIMITED

(Plaintiff) Appellant.

AND

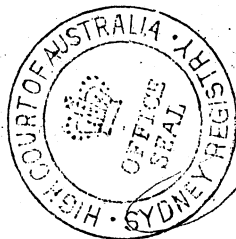
PATERSON LAING & BRUCE LIMITED

(Defendant) Respondent.

Before their Honours, The Chief Justice, Mr. Justice Starke and  
Mr. Justice Dixon.

Wednesday the sixth day of April One thousand nine hundred and  
thirty eight.

THIS APPEAL COMING ON TO BE HEARD the fifth day of April One thousand  
nine hundred and thirty eight and this day WHEREUPON AND UPON  
READING the Transcript record of proceedings transmitted to this  
Court by the Acting Deputy Registrar in Equity of the Supreme Court  
of New South Wales AND UPON HEARING what was alleged by Mr. G. B.  
Thomas and Mr. D. F. Kelly of Counsel on behalf of the abovenamed  
Appellant AND by Mr. C. A. Weston of King's Counsel and Mr. A. C. Gain of  
Counsel for the abovenamed Respondent THIS COURT DOTH ORDER that  
the Appeal herein be and the same is hereby dismissed and this Court  
doth further order that it be referred to the proper officer of this  
Court to tax and certify the costs of the Respondent of and incident-  
al to this Appeal and that such costs when so taxed and allowed be  
paid by the Appellant to the Respondent or to Mr. Kevin John Tracy  
its Solicitor upon service of a copy of the Certificate of Taxation.



BY THE COURT

*K. Hardman*  
DISTRICT REGISTRAR.

JANTSEN (AUSTRALIA) LTD v PATERSON LAING & BRUCE

ORAL JUDGMENT

DIXON J.

I agree. This case <sup>affords</sup> is another example of a type of difficulty in patent litigation which occurs with increasing frequency. An article of common use is made and is established upon the market as useful in the sense that it is capable of extensive and profitable sale. Research shows that nothing exactly like it has previously appeared and that some intelligent appreciation of the demands of the community was necessary in order to provide it and then upon that basis an application is made for a patent. Difficulty is felt in denying its novelty and difficulty is felt in denying that some ingenuity was required in order to provide it ; but not <sup>withstanding</sup> that, it is, I think, true that in most of such cases no patentable subject matter is exhibited. Old cases provide probably the best authorities in dealing with such a description of alleged invention, cases such as that of the whalebone bustle, the carriage spring and

so on. Attachment of clothing and other things to the body is a matter which has probably occupied man's time too much over the greater portion of <sup>his</sup> history. It is true that in modern times we are more interested in bathing suits than in suits of armour and in the progress of our development the niceties of such things appeal to us with greater fascination, but it must be true that the mode of attaching things to the human body is one of the most studied and used branches of manipulative art. It seems to me unlikely, almost to the degree of impossibility that in ~~man's patentable~~ the use and position of straps and similar means of attachment patentable subject matter could be found. It cannot be enough to support a claim based upon the application of a particular arrangement or method of attachment to the purpose of a special kind of apparel that the precise method has never been used for that purpose before.

In the present case Mr Thomas has with great ingenuity, I think, brought forward points <sup>in</sup> which <sup>he</sup> <sup>discovered</sup> have a basis of merit in this

invention almost philosophical in character. Unfortunately the framer of the invention did not rise to those abstract heights of thought in considering how that particular garment should be attached and I agree that in claims (1), (2), (3), and (4) the omission of the points now most relied upon is more remarkable than the statement of inventive subject-matter. In (5) and (6) claims are made which appear to have for their object an increase in the ambit of the monopoly claimed rather than in the inventive idea for carrying it out.

In my opinion the specification shows no subject matter for a patent.