IN THE HIGH COURT OF AUSTRALIA.

Jantzen (Australia) Ltd

v.

Paterson Laing & Bruce

REASONS FOR JUDGMENT.

*Judgment delivered at*_____

on April 6 1938

H. J. Green, Government Printer, Melbourne.
C.5060.

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 incidental 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.

HIGH COURT OF AUSTRALIA · SYDNEY REGISTRY · OFFICE SEAL

BY THE COURT

H. Hardman

DISTRICT REGISTRAR.

JANTSEN (AUSTRALIA) LTD v PATERSON LAING & BRUCE

ORAL JUDGMENT DIXON J.

I agree. This case affords 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 notwithstanding 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 his 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 ~~matters 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 which in the discovered 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 (I), (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.